TITLE: FEDERAL REGISTER.

REEL NO: 2 OF 8

VOLUME: 54 ISSUES: 144-160
PAGES: 31319-34766

DATE: JULY 28 - AUGUST 21, 1989

PUBLICATION NO: 2575.00

NOTES: THE PAPER AND INK USED IN THE ORIGINAL MATERIAL AFFECT THE QUALITY OF THE MICRO-EDITION. THIS REPRODUCTION IS MADE FROM THE BEST COPY AVAILABLE.

THIS PERIODICAL MAY BE COPYRIGHTED, IN WHICH CASE THE CONTENTS REMAIN THE PROPERTY OF THE COPYRIGHT OWNER. THE MICROFORM EDITION IS REPRODUCED BY AGREEMENT WITH THE PUBLISHER. DUPLICATION OR RESALE WITHOUT PERMISSION IS PROHIBITED.

UNIVERSITY MICROFILMS INTERNATIONAL, ANN ARBOR, MICHIGAN

7-28-89
Vol. 54 No. 144

federal register

Friday
July 28, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 89 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

7-28-89
Vol. 54 No. 144
Pages 31319-31492

federal register

Friday
July 28, 1989

BEST COPY AVAILABLE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 54, No.
Friday, July 28, 1989

Agricultural Marketing Service
RULES
Fresh apples diversion program, 31319
Lemons grown in California and Arizona, 31321
PROPOSED RULES
Pineapples; grade standards, 31338

Agriculture Department
See also Agricultural Marketing Service; Forest Service; Rural Electrification Administration
NOTICES
Meetings:
National Plant Genetic Resources Board, 31353

Alaska Power Administration
NOTICES
Wholesale power rates:
Eklutna Project, 31364
Snettisham Project, 31364

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Commerce Department
See Export Administration Bureau; Foreign-Trade Zones Board; National Oceanic and Atmospheric Administration

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list, 1989:
Additions and deletions, 31357
(2 documents)

Defense Department
See also Navy Department; Uniformed Services University of the Health Sciences
RULES
Security:
National security information program; implementation, 31333
Uniformed Services University of the Health Sciences:
School of Medicine admission policies and procedures, 31335
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Noncommercial cost principles, 31480
NOTICES
Grants and cooperative agreements; availability, etc.:
Defense environmental restoration program, 31358
Meetings:
Electron Devices Advisory Group, 31362
Wage Committee, 31362

Education Department
NOTICES
Meetings:
National Assessment Governing Board, 31363

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 31391

Energy Department
See Alaska Power Administration; Western Area Power Administration

Environmental Protection Agency
RULES
Hazardous waste:
Identification and listing—
Chlorofluorocarbons (CFCs) used as refrigerants, 31335
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 31375
Weekly receipts, 31375

Executive Office of the President
See Presidential Documents, Trade Representative, Office of United States

Export Administration Bureau
NOTICES
Meetings:
Electronic Instrumentation Technical Advisory Committee, 31354, 31355
(2 documents)

Farm Credit Administration
RULES
Farm credit system:
Funding and fiscal affairs, loan policies and operations, and funding operations—
Minimum capital adequacy standards; correction, 31323

Federal Aviation Administration
RULES
Airworthiness directives:
British Aerospace, 31323
General Electric Co., 31324
Control zones, 31326
(2 documents)
Standard instrument approach procedures, 31328
Transition areas, 31327
(2 documents)
PROPOSED RULES
Transition areas, 31346
(2 documents)
NOTICES
Advisory circulars; availability, etc.:
Aircraft—
Normal category rotorcraft certification, 31399
Production certification multinational/multicorporate consortia, 31399

Federal Communications Commission
NOTICES
Rulemaking proceedings; petitions filed, granted, denied, etc.; correction, 31405

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 31404

Federal Home Loan Bank Board
NOTICES
Conservator appointments:
American Interstate Savings Association, F.A., 31376
Amerimac Savings Bank, F.S.B., 31376
Centennial Federal Savings & Loan Association, 31376
Commonwealth Federal Savings & Loan Association, 31376
Continental Federal Savings & Loan Association, F.A., 31376
Cornerstone Federal Savings Association, 31376
Cross Roads Savings & Loan Association, F.A., 31376
First Federal Savings & Loan Association Bakersfield, 31377
First of Kansas Savings, 31377
First State Federal Savings Association, 31377
Guardian Federal Savings & Loan Association, 31377
New Mexico Federal Savings Association, 31377
Parish Federal Savings & Loan Association, 31377
Pioneer Federal Savings & Loan Association, F.A., 31377
Royal Palm FS&LA, 31377
Skokie Federal Savings & Loan Association, F.A., 31378
Receiver appointments:
Alamo Savings Association of Texas, 31378
American Interstate Savings, 31378
Centennial Savings Bank, FSB, 31378
Commonwealth Savings & Loan Association, 31378
Continental Federal Savings & Loan Association, 31378
Cornerstone Savings Association, 31378
Cross Roads Savings & Loan Association, 31378
First Federal Savings & Loan Association, 31379
First of Kansas Banking & Savings Association, 31379
First State Federal Savings Association, 31379
Habersham Federal Savings Bank, 31379
Missouri Savings Association, 31379
New Mexico Federal Savings & Loan Association, 31379
Parish Federal Savings Bank, 31379
Pioneer Federal Savings & Loan Association, 31379
Royal Palm Savings Bank, 31380
Sierra Federal Savings & Loan Association, 31380
Skokie Federal Savings & Loan Association, 31380
University Savings Association, 31380
Applications, hearings, determinations, etc.:
First Federal Savings & Loan Association Akron et al., 31380

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 31404
Applications, hearings, determinations, etc.:
Bierman, Donald J., 31380
Canadian Imperial Bank of Commerce et al., 31380
Multibank Financial Corp., 31381
PAER Bancorp, Inc., et al., 31381

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations, 31382

Fish and Wildlife Service
PROPOSED RULES
Hunting:
Refuge specific hunting regulations, 31348

Food and Drug Administration
RULES
Food for human consumption:
Aspartame, 31332
Human drugs:
Hair grower and hair loss prevention products (OTC) Correction, 31405
PROPOSED RULES
Drug Price Competition and Patent Term Restoration Act; implementation; abbreviated new drug applications Correction, 31405
NOTICES
Committees; establishment, renewal, termination, etc.:
Center for Drug Evaluation and Research public advisory committees; nominations, 31383

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Alaska, 31355, 31356
(2 documents)

Forest Service
NOTICES
Environmental statements; availability, etc.:
Clearwater National Forest, ID, 31353

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Noncommercial cost principles, 31480

Government Printing Office
NOTICES
Meetings:
Depository Library Council, 31383

Health and Human Services Department
See Food and Drug Administration; Health Care Financing Administration; Public Health Service

Health Care Financing Administration
NOTICES
Meetings:
International Classification of Diseases, Ninth Revision, Clinical Modification Coordination and Maintenance Committee, 31385

Health Resources and Services Administration
See Public Health Service

Housing and Urban Development Department
NOTICES
Agency information collection activities under OMB review, 31386, 31387
(2 documents)
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 31386

Interior Department
See Fish and Wildlife Service; Land Management Bureau; National Park Service

Labor Department
See Employment Standards Administration; Occupational Safety and Health Administration

Land Management Bureau
RULES
Grazing administration:
Livestock grazing on public lands, 31484
PROPOSED RULES
Forest management:
Resale of timber from uncompleted contracts, 31347
NOTICES
Environmental statements; availability, etc.:
Powder River I Federal coal production region, MT, 31388
Oil and gas leases:
Utah, 31389
Realty actions; sales, leases, etc.:
California, 31389
New Mexico, 31389
Withdrawal and reservation of lands:
Alaska, 31390
Washington; correction, 31391

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Noncommercial cost principles, 31480
NOTICES
Meetings:
Advisory Council, 31392

National Labor Relations Board
NOTICES
Unfair labor practice hearing rescheduling; experimental procedure modification, 31392

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
North Pacific Fishery Management Council, 31357

National Park Service
NOTICES
Blackstone River Valley National Heritage Corridor; proposed plan, 31391

Navy Department
NOTICES
Meetings:
Naval Research Advisory Committee, 31363

Nuclear Regulatory Commission
NOTICES
Agency information collection activities under OMB review, 31393
Environmental statements; availability, etc.:
Southern California Edison Co. et al., 31394
Meetings:
Reactor Safeguards Advisory Committee, 31394
Applications, hearings, determinations, etc.:
Philadelphia Electric Co. et al., 31395

Occupational Safety and Health Administration
RULES
Safety and health standards:
Powered platforms for building maintenance; alternative stabilization systems, 31408

Office of United States Trade Representative
See Trade Representative, Office of United States

Personnel Management Office
NOTICES
Absence and leave:
Voluntary leave bank program—
Approved agencies and administrative subunits; list, 31398

Presidential Documents
PROCLAMATIONS
Special observances:
Week of Recognition and Remembrance for Those Who Served in the Korean War, National (Proc. 6001), 31491
Lyme Disease Awareness Week (Proc. 6000), 31489

Public Health Service
See also Food and Drug Administration
NOTICES
Agency information collection activities under OMB review, 31385

Research and Special Programs Administration
RULES
Pipeline safety:
Natural gas transportation, etc.—
American Petroleum Institute standard 1104 update (welding pipelines, etc.); incorporation by reference; correction, 31405
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 31400, 31401
(2 documents)

Rural Electrification Administration
PROPOSED RULES
Telephone loan program; loan funds advance; order and method, 31344

Securities and Exchange Commission
RULES
Investment companies:
Registered management investment companies; independent public accountant, selection time period, 31329

Trade Representative, Office of United States
NOTICES
European Community:
Increased duties on certain products, 31398

Transportation Department
See also Federal Aviation Administration; Research and Special Programs Administration
NOTICES
Aviation proceedings:
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 31399

Uniformed Services University of the Health Sciences
NOTICES
Meetings:
USUHS Fifth Annual Conference on Military Medicine, 31363

United States Information Agency
NOTICES
Art objects, importation for exhibition:
International Impressions: Recent Prints from Belgium's Frans Masereel Center, 31403

Veterans Affairs Department
NOTICES
Meetings:
Vietnam Veterans Readjustment Problems Advisory Committee, 31403

Western Area Power Administration
NOTICES
Power and transmission rates adjustments:
Boulder City Area Office and Salt Lake City Area Office Projects, 31365
Power marketing plans, etc.:
Navajo Generating Station, AZ, 31368
Power rate adjustments:
Pick-Sloan Missouri Basin Program, 31370

Separate Parts In This Issue

Part II
Department of Labor, Occupational Safety and Health Administration, 31488

Part III
Department of Defense; General Services Administration; National Aeronautics and Space Administration, 31480

Part IV
Department of Interior, Bureau of Land Management, 31484

Part V
The President, 31489

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6000 31489
6001 31491

7 CFR
81 31319
910 31321
Proposed Rules:
51 31338
1754 31344

12 CFR
615 31323

14 CFR
39 (2 documents) 31323, 31324
71 (4 documents) 31326, 31327
97 31328
Proposed Rules:
71 (2 documents) 31346

17 CFR
270 31329

21 CFR
172 31332
310 31405
Proposed Rules:
314 31405
320 31405

29 CFR
1910 31408

32 CFR
159a 31333
242 31335

40 CFR
261 31335

43 CFR
4100 31484
Proposed Rules:
5440 31347

48 CFR
Proposed Rules:
31 31480

49 CFR
192 31405
193 31405
195 31405

50 CFR
Proposed Rules:
32 31348

Rules and Regulations

Federal Register
Vol. 54, No. 144
Friday, July 28, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 81

Regulation Governing the Fresh Apples Diversion Program for 1988 Crop Apples

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim rule sets forth the terms of the Fresh Apples Diversion Program for 1988 corp apples pursuant to clause (2) of section 32 of the Act of August 24, 1935 (7 U.S.C. 612c) ("Section 32"). The interim final rule describes acceptable outlets, the provisions of eligibility for payment, the rate of payment to shippers, and other conditions of participation. The program will assist apple growers faced with oversupplies and low prices.

DATES: Effective July 25, 1989. Comments must be received on or before August 14, 1989 in order to be assured of consideration.

ADDRESSES: Send comments on the interim final rule to Donald A. Thibeault, Chief, Commodity Procurement Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2548—South Building, Washington, DC 20090–6456. All written submissions made pursuant to this rule will be made available for public inspection in Room 2548—South Building, USDA, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Donald A. Thibeault at the above address or at (202) 447–6391.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35, and have been assigned OMB control numbers 0581–0162.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration (13 CFR 121.1) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. Because there is a preponderance of entities shipping fresh apples that meet these gross revenue limitations, it is anticipated that the majority of the program participants could be classified as small entities.

This interim final rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified "non major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 29115 (June 24, 1983).

The title and number of the Federal Assistance Program to which this interim final rule applies will be: Title—Section 32 Diversion Program; Number—10.166, as will be found in the 1990 edition of the Catalog of Federal Domestic Assistance.

Interested parties are invited to submit comments with respect to this action. However, pursuant to 5 U.S.C. 553, it is also found and determined that, upon good cause, it is impracticable, unnecessary and contrary to the public interest to give notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action is intended to provide relief in an emergency situation; (2) applies to be diverted will be accepted in the containers in which they exist and participants will require no additional time to acquire materials and process the product; and (3) the commodity is perishable and would be affected by undue delay.

Background

Clause (2) of section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), ("Section 32") authorizes the Secretary of Agriculture to "encourage the domestic consumption of such [agricultural] commodities or products by diverting them, by the payment of benefits or indemnities or by other means, from the normal channels of trade and commerce * * *". Section 32 also authorizes the Secretary to use section 32 funds "at such times, in such manner, and in such amounts as the Secretary of Agriculture finds will effectuate substantial accomplishment of any one or more of the purposes of this section." Furthermore, "[d]eterminations by the Secretary as to what constitutes diversion and what constitutes normal channels of trade and commerce and what constitutes normal production for domestic consumption shall be final."

Recent USDA statistics indicate that as of May 1, 1989, the national supply of fresh 1988 crop apples was 53 percent greater than the previous three-year average. Based on these statistics and other market factors the Secretary has determined that fresh 1988 crop apples are in surplus supply and that the domestic consumption of such apples will be encouraged by using up to $15 million dollars of section 32 funds to divert the apples from the normal channels of trade and commerce under a Fresh Apples Diversion Program (Program).

AMS will make payments to parties that possess 1988 crop fresh apples and divert such apples by August 31, 1989, to charitable organizations, ethanol production facilities, livestock feeding operations, and other nontraditional outlets. Through this program, AMS is soliciting bids from those who possess 1988 crop fresh apples for the diversion of such apples to nontraditional channels of commerce. Payments for the diversion of such apples will be made on a competitive basis. Those parties which submit the lowest bids to divert qualifying apples will be accepted until the fund of $15,000,000 of section 32 funds is exhausted. Accordingly, this interim final rule provides the terms and conditions under which the program will be administered by AMS.

List of Subjects in 7 CFR Part 81

Fresh apples, Fresh apples diversion program.

For the reasons set forth above, Chapter I of Title 7 shall be amended by adding a new Part 81 to reads as follows:

PART 81—SECTION 32 DIVERSION PROGRAMS

Subpart—Fresh Apples Diversion Program

Sec.
81.1 General statement.
81.2 Administration.
81.3 Definitions.
81.4 Bid procedure.
81.5 Claims for payment.
81.6 Compliance with program provisions.
81.7 Disputes.

Authority: 49 Stat. 750, 774; 7 U.S.C. 612c.

Subpart—Fresh Apples Division Program

§ 81.1 General statement.

Pursuant to the authority provided in section 32 of the Act of August 24, 1935 (7 U.S.C. 612c) ("Section 32"), the Secretary will compensate holders of 1988 crop fresh apples for diverting such apples to nontraditional channels of trade including charitable institutions, ethanol/alcohol production facilities, livestock feed operations, and other such outlets subject to the conditions set forth in this rule. A maximum of $15,000,000 of section 32 funds has been set-aside for this purpose. Holders of 1988 crop fresh apples are invited to submit bids for diverting such apples. This apple diversion program will encourage the domestic consumption and assist in the removal of surplus apples.

§ 81.2 Administration.

The program provided for in this subpart will be administered under the general direction and supervision of the Director, Fruit and Vegetable Division, Agricultural Marketing Service. In the field this program will be carried out under the supervision of the Federal Supervisor of the Federal-State Inspection Service in the State from which the apples are being diverted.

§ 81.3 Definitions.

The following terms as used in this subpart shall have the following meanings.

(a) "AMS" means the Agricultural Marketing Service within the United States Department of Agriculture (USDA).

(b) "Apples" means 1988 crop fresh apples produced and stored within the continental United States under the following conditions:

(1) Apples, packed in 40-pound cartons or cartons with 12/3-pound poly bags, that meet the requirements of U.S. Fancy Grade, 2¼ inch minimum diameter and U.S. Condition Standards for Export; or

(2) Apples, packed in bulk bins, that meet the requirements of U.S. Fancy grade, 2¼ inches minimum diameter and the U.S. Condition Standards for Export.

(c) "Bulk bins" mean bins which are large open top "box like" containers usually holding from ½ to 1 ton of products such as fresh or frozen fruits and vegetables.

(d) "Charitable Institutions" mean those organizations which offer food, housing and other necessities to low income, homeless or other persons in need of assistance in obtaining basic sustenance.

(e) "Diversion" means the delivery of fresh apples to an eligible outlet.

(f) "Diverter" means a holder whose application for payment under this subpart has been approved by AMS.

(g) "Eligible Outlet" means a charitable institution, ethanol production facility, livestock feeding operation, or other similar organizations as approved by AMS.

(h) "Holder" means an individual, partnership, association, or corporation located in the continental United States that is in possession of apples as of July 3, 1989.

§ 81.4 Bid procedure.

(a) *Applications.* (1) Holders of apples desiring to participate in this program must submit an application on an offer form "Application for Participation in Fresh Apple Diversion Program" furnished by AMS or a form which contains all the information required by the AMS offer form. At a minimum, each application must contain the following items: (i) A statement that it is subject to the terms and conditions of the Fresh Apples Diversion Program, (ii) name and telephone number of the firm, (iii) the name and title of the person making the offer, (iv) quantity and payment rate of offer, (v) whether offered in carton or bulk, (vi) shipping point, (vii) proof of authority to transfer possession of apples and (viii) a statement that the apples will be diverted by August 31, 1989. Offer forms, modifications, or withdrawals must be received by the Chief, Commodity Procurement Branch, Fruit and Vegetable Division, AMS, by 1:00 p.m., Eastern Daylight Time (e.d.t.), on August 2, 1989.

(2) Applications for participation should be addressed as follows:

(i) For applications being submitted via the U.S. Postal Service (regular, express, certified, and registered mail):

USDA Fruit & Vegetable Division,
Application to Divert Fresh Apples,
P.O. Box 23693, Washington, DC
20026–3693.

(ii) For applications being submitted via private express mails (e.g., DHL and Federal Express):

Application to Divert Fresh Apples, C/O
Chief, C. P. Branch, F & V Division,
Room 2548–S, U.S. Department of
Agriculture, 14th & Independence
Ave., SW., Washington, DC 20250.

(iii) For application submitted via Western Union Hot Line, TWX, Telex, and FAX:

Application to Divert Fresh Apples.

(3) Facilities for receiving applications by TWX, telex, or FAX are as follows:

TWX/Telex No.	Answer back	FAX by telephoning
TWX No. 710–822–9424	ASCS WASH DC	202/475–3049 (Automatic Ricoh).
TWX No. 710–822–1104	4755210EVDFL	202/447–7271 (Automatic Ricoh).
Telex No. 89–491	ASCS WSH	

(4) If verification of receipt of a telegraphic or FAX machine offer by USDA is desired, call 202/447–5502 from 8:00 a.m. to 4:30 p.m., e.d.t. *A completed offer application shall be sent immediately via fastest mail after an offer is made in such a manner.*

(5) *Offers, modifications, or withdrawals of offers shall be received by USDA not later than 1:00 p.m., e.d.t. at Washington, DC, on August 2, 1989.* A late application, modification of application, or withdrawal of application received after the exact time specified for receipt will not be considered unless it is received before award is made and either:

(i) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of application; or

(ii) It was sent by mail or telegram and it is determined by AMS that the late receipt was due solely to mishandling by AMS after receipt at the AMS mail or telegraphic installation.

(b) *Acceptance of Application.* (1) Applications for participation will be approved competitively on a payment per pound of apples basis. Maximum payment for apples will be based on the Market News Service price quotations for apples diverted on the day bids are due, but in no instance will such maximum payment exceed $8.20 per carton or $16.50 per hundredweight for apples in bulk bins. AMS shall recognize that apples shipped in cartons have higher packaging costs than apples shipped in bulk bins. Accordingly, AMS will utilize a price diffrential of 4 cents per pound between cartons and bins in the bid evaluation process.

(2) Acceptance of applications will be made by prepaid telegram, filed at Washington, DC., not later than midnight, e.d.t., August 8, 1989.

§ 81.5 Claims for payment.

(a) In order to obtain payment, all claims must be received by USDA not later than September 30, 1989. USDA will endeavor to make payment within 30 days following receipt of necessary documentation. Claims for payment under this program shall be addressed to the Director, Kansas City ASCS Commodity Office, USDA, P.O. Box 419205, Kansas City, MO 64141–0205 (Telephone Number: 816/926/6205). The claim submitted must include the following documents:

(1) A copy of the diverter's application to participate in the program. (A certified copy of the accepted application will be furnished to successful participants.)

(2) A properly executed Federal-State Inspection Service certificate covering the lot of apples. The Inspector must witness the loading of apples with the truck/railroad car number shown on the inspection certificate.

(3) A receipt signed by the consignee of the diverted apples that states:

(i) Name and address of consignee and diverter;

(ii) The quantity of apples received by consignee;

(iii) The final use of the apples; and

(iv) Identification number of delivery vehicle.

(b) For apples packaged in cartons that fail to meet the requirements of § 81.3(b)(1) no payments under this program will be authorized. For apples in bulk bins which fail to meet the requirements of § 81.3(b)(2), payments will be based on the percentage of the apples meeting the grade size and condition requirements: *Provided,* That no payment shall be made for any lot of apples wherein the percentage of apples affected by decay or internal breakdown exceeds 2 percent or the percentage of apples further advanced in ripeness than firm ripe exceeds 20 percent.

§ 81.6 Compliance with program provisions.

(a) AMS may deny any diverter the right to participate in this program or the right to receive payments in connection with any diversion previously made under this program or require the refunding of payments made under this subpart, if AMS determines that the diverter has:

(1) Failed to use or failed to cause to be used any quantity of apples diverted under this program exclusively for approved program outlets; or

(2) Not acted in good faith in connection with any transaction under this program; or

(3) Failed to discharge fully any obligation assumed by him under this program.

(b) The diverter shall permit authorized representatives of USDA at any reasonable time to have access to his premises to inspect and examine such apples that are being diverted or stored for diversion, and to inspect and examine the diverter's facilities for diverting apples in order to determine to what extent there is or has been compliance with the provisions of this program.

(c) The diverter shall keep accurate records and accounts showing the details relative to the diversion and disposition of such apples. The diverter shall permit authorized representatives of USDA and the General Accounting Office at any reasonable time to inspect, examine and make copies of such records and accounts in order to determine to what extent there is or has been compliance with provisions of this program. Such records and accounts shall be retained by the diverter for three years after date of last payment to diverter under the program or for two years after date of audit of records by USDA as provided herein, whichever is the later.

(d) Persons making any misrepresentation of facts in connection with this program for the purpose of defrauding USDA will be subject to the applicable civil and criminal provisions of the United States Code.

§ 81.7 Disputes.

Any party with a dispute concerning terms of this program that cannot be resolved by the Chief, Commodity Procurement Branch, AMS, may request a hearing and a review for a final decision by the Deputy Administrator, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090–6456.

Signed at Washington, DC on July 25, 1989.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 89–17744 Filed 7–25–89; 4:15 pm]
BILLING CODE 3410–02–M

---

7 CFR Part 910

[Lemon Reg. 676]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule with request for comments.

SUMMARY: Regulation 676 establishes the quantity of fresh California-Arizona lemons that may be shipped to the fresh domestic market at 380,000 cartons during the period July 30 through August 5, 1989. This action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 676 (§ 910.976) is effective for the period July 30 through August 5, 1989. Comments are due August 28, 1989.

ADDRESSES: Interested persons are invited to submit written statements in triplicate to: Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and

will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act (the Act) (7 U.S.C. 601-674), as amended, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

At the beginning of each marketing year, the Lemon Administrative Committee (Committee) submits a marketing policy to the Department which discusses, among other things, the potential use of volume and/or size regulations for the ensuing season. The Committee's 1989-90 season marketing policy contemplated the use of volume regulation this season. The U.S. Department of Agriculture has completed a preliminary review of that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

Lemons regulated under Marketing Order No. 910 are grown in California and Arizona. For marketing order purposes, the production area is divided into three districts: District 1, representing Central California; District 2, representing Southern California; and District 3, representing Arizona and the desert area of California. The estimated production for the 1989-90 crop season is 39,324 cars (1 car equals 1,000 cartons; 1 carton equals 38 pounds).

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic fresh market is fairly static, receiving roughly 14,900 to 16,500 cars per year unless unusual conditions occur. Quantities utilized in the export market have ranged from about 7,700 to 8,900 cars per year during the past four years. Exports vary depending on factors such as the amount of competitive supplies, foreign monetary exchange rates, quality, quantity, and trade practices. The processing market is basically a residual outlet, and shipments to this market have ranged from 13,400 to 32,700 cars per year during the past four years. Estimated crop utilization for the 1989-90 season is 16,500 cars for domestic fresh markets, 8,500 cars for export, with the remaining 14,324 cars for processing and other outlets.

The California-Arizona lemon industry is characterized by a large number of growers that are located over a large geographical area. The number of growers is estimated to be in the range of 2,000 to 2,500. There are approximately 85 handlers of California-Arizona lemons in the regulated area.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

Volume regulations issued under the authority of the Act and Marketing Order No. 910 are intended to provide benefits to both producers and consumers. Producers benefit in areas such as increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from pre-planned shipping levels, resulting in a more stable market. Consumers are assured of a steady supply of lemons in the market throughout the marketing season.

The benefits and costs of issuing regulations are difficult to quantify, as indicated in various studies regarding effects of marketing orders and criteria for measuring their effects. Although the information currently available to the AMS is limited, the known costs to growers of implementing the regulations appear to be significantly offset when compared to the potential benefits of regulation.

The reporting and recordkeeping requirements under M.O. 910 are incurred by handlers of lemons. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

If volume regulations were not to be used during the 1989-90 season, it is likely that most of these reporting and recordkeeping functions would still be carried out. The method of calculating the quantities of lemons available for fresh shipment by handlers for any given week is based on information gathered over several previous weeks' time. Therefore, there is an incentive to keep and maintain records in anticipation of future implementation of regulation. Further, the aggregate statistics distributed by the Committee are useful to handlers as they make their individual marketing decisions.

Based on consideration of the conditions that exist in the lemon industry at this time, the Administrator of the AMS has determined that the issuance of weekly volume regulations will not have a significant economic impact on a substantial number of small entities. However, the submission of comments on the economic impacts on small entities are encouraged from all interested parties. This matter will be further evaluated in view of the applicable comments received.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. This action is based upon the recommendation and information submitted by the Committee and upon other available information and is consistent with the Committee's marketing policy for 1989-90.

The Committee met publicly on July 25, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is good. It is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. There is insufficient time between the date when information upon which this regulation is based became available and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.976 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.976 Lemon Regulation 676.

The quantity of lemons grown in California and Arizona which may be handled during the period July 30, 1989, through August 5, 1989, is established at 380,000 cartons.

Dated: July 26, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-17611 Filed 7-27-89; 8:45 am]

BILLING CODE 3410-02-M

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052-AA79

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; Correction

AGENCY: Farm Credit Administration.

ACTION: Final rule; correction.

SUMMARY: The Farm Credit Administration (FCA) is correcting a printing error that appeared in the final rule which amended the regulation relating to minimum permanent capital standards. The final rule appeared in the **Federal Register** on October 6, 1988 (53 FR 39229).

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT:

William G. Dunn, Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4402

or

Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020, TDD 883-4444

SUPPLEMENTARY INFORMATION: In printing the final rule for publication in the **Federal Register**, the "%" symbol was inadvertently left out of the chart in § 615.5210(e)(3)(iii).

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS AND FUNDING OPERATIONS

Subpart H—Capital Adequacy

§ 615.5210 [Amended]

1. On page 39250, middle of the first column, the chart in § 615.5210(e)(3)(iii) is corrected as follows:

[In percent]

Remaining maturity	Interest rate contracts	Exchange rate contracts
Less than 1-year	0	1.0
1 year and over	0.5	5.0

Dated: July 24, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89-17621 Filed 7-27-89; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-CE-03-AD; Amendment 39-6266]

Airworthiness Directives; British Aerospace (BAe) PLC, Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to British Aerospace (BAe) PLC, Jetstream 3101 airplanes which have incorporated Omnibus Modification 7380 and Kit 3279A for increased gross weight. The action modifies or replaces the existing pilot's and copilot's operating limitations placards and incorporates an Airplane Flight Manual (AFM) revision, which reduces the maximum maneuvering speed. The original instructions for Omnibus Modification 7380 inadvertently omitted revised operating limitation placards and the necessary AFM revision. If the erroneous speeds are not corrected, continued use of higher than design speeds will result in reduced fatigue life of major structural components which may cause premature failure.

DATES: *Effective date:* August 29, 1989.

Compliance: As prescribed in the body of the AD.

ADDRESSES: BAe Alert Service Bulletin (ASB) Jetstream 11-A-JA-880140, dated February 23, 1988, and Particular Amendment P/46 to AFM Document No. HP.4.10, applicable to this AD may be obtained from British Aerospace (BAe) PLC, Manager, Product Support, Civil Aircraft Division, Prestwick Airport, Ayrshire, KA92RW, Scotland; Telephone (44-292) 79888; or British Aerospace Inc., Technical Librarian, P.O. Box 17414, Dulles International Airport, Washington DC 20041; Telephone (703) 435-9100. This information may also be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30; or Mr. John P. Dow Sr., Project Support Section-Foreign, ACE-109, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD requiring modifying or replacing the existing pilot's and copilot's operating limitations placards and incorporating an airplane Flight Manual revision on certain BAe Jetstream Model 3101 airplanes was published in the **Federal Register** on March 17, 1989 (54 FR 11224). The proposal resulted when British Aerospace (BAe) PLC made design changes to the Jestream Model 3101 airplanes that would permit increasing the maximum takeoff gross weight from 14,550 pounds to 15,212 pounds. The airplane modifications necessary to permit operation at the heavier gross weights were classified as Omnibus Modification 7380, and Kit 3279A of modification 7380.

Several airplanes were so modified during production and others have been field modified. Subsequently, it was discovered that the placards provided in Kit 3279A and the associated AFM revision did not revise the maximum permissible maneuvering airspeed (VA) in accordance with the approved design data. Because of the increased gross weight, the maximum maneuvering speed (the maximum speed at which full control deflection may be used without exceeding design structural loads) was reduced from the previously approved speed of 180 knots IAS to 176 knots IAS. The use of flight controls to full deflection at airspeeds greater than 176 knots IAS may cause excessive structural loads and invalidate existing life-limits on major structural components of the airplane. Consequently, BAe issued ASB Jetstream 11–A–JA880140, dated February 23, 1988, and Particular Amendment P/46 to AFM Document No. HP.4.10 which modifies or replaces the existing operating limitations placards and revises the existing AFM.

The Civil Aviation Authority (CAA), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom (UK), has classified this ASB and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under UK registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CAA–UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of BAe ASB Jetstream 11–A–JA880140, dated February 23, 1988, and Particular Amendment P/46 to AFM Document No. HP.4.10 and the mandatory classification of this ASB by the CAA–UK, and concluded that the condition addressed by BAe Alert Service Bulletin (ASB) Jetstream 11–A–JA–880140, dated February 23, 1988, and Particular Amendment P/46 to AFM Document No. HP.4.10 was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change.

The FAA has determined that this regulation involves 122 airplanes at an approximate one-time cost of $50 for each airplane, a total one-time fleet cost of $6,100 to the private sector. Therefore, the cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant impact on any small entities operating these airplanes. The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39 [Amended]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

British Aerospace (BAe) PLC: Applies to Jetstream Model 3101 (all serial numbers) airplanes which have Kit 3279A embodied as part of Omnibus Modification 7380, certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To assure operation of the airplane within the design airspeed limitations, accomplish the following:

(a) Modify the pilot's and copilot's operating limitations placards and revise the Airplane Flight Manual in accordance with British Aerospace Alert Service Bulletin 11–A–JA880140, dated February 23, 1988.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this Ad may be used if approved by the Manager, Aircraft Certification Office, AEU–100, Europe, Africa, Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to British Aerospace, Inc., Technical Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on August 29, 1989.

Issued in Kansas City, Missouri, on July 18, 1989.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–17690 Filed 7–27–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–ANE–43; Amendment 39–6259]

Airworthiness Directives; General Electric Company (GE) CF6–80A/A1/A2/A3 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires installation of fire shields to the upper surface of the accessory compartment in the area of the low pressure turbine (LPT) recoup manifold on GE CF6–80A/A2 turbofan engines and to the axial fuel supply manifold in the area of the LPT recoup manifold on GE CF6–80A1/A3 turbofan engines. The AD is needed to provide increased fire protection in the event of a fire escaping from the LPT recoup manifold which could lead to fuel leakage and possible engine fire.

EFFECTIVE DATES: August 31, 1989.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of August 31, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletins (SB) may be obtained from General Electric, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, Ohio 45246, or may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Richard Woldan, Engine Certification Branch, ANE–142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7096.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD which requires installation of fire shields to the upper surface of the accessory compartment in the area of the LPT recoup manifold on GE CF6–80A/A2 turbofan engines and to the axial fuel supply manifold in the area of the LPT recoup manifold on GE CF6–80A1/A3 turbofan engines was published in the **Federal Register** on March 22, 1989 (54 FR 11740).

The proposal was prompted by one event involving a CF6–80A engine where an external fire resulted from a Number 5R bearing failure. The fire progressed through the Number 5R bearing sump and the LPT recoup manifold, impinged on and entered into the accessory compartment. High temperatures in the accessory compartment damaged fuel carrying lines, resulting in fuel leakage which sustained the fire. The CF6–80A2 design is similar to that of the CF6–80A.

The FAA also determined that the axial fuel supply manifold on CF6–80A1/A3 engines is located in the same area as the LPT recoup manifold and, like the CF6–80A, is also susceptible to fire impingement and possible fuel leakage.

Since this condition is likely to exist or develop on other engines of the same type design, the AD requires installation of fire shields to the upper surface of the accessory compartment in the area of the LPT recoup manifold on CF6–80A/A2 engines and to the axial fuel supply manifold in the area of the LPT recoup manifold on CF6–80A1/A3 engines.

Interested persons have been afforded an opportunity to participate in the making of this amendment.

On comment was received which indicated no objection to the adoption of the proposed amendment.

Accordingly, the proposal is adopted as proposed without change.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation involves approximately 400 engines and the operator's cost per engine would be negligible since the manufacturer has agreed to give a parts and labor credit allowance as noted in the SB's. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the rule affects only operators using aircraft in which CF6–80A/A1/A2/A3 engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

General Electric Company: Applies to General Electric Company (GE) CF6–80A/A1/A2/A3 turbofan engines.

Compliance is required as indicated, unless already accomplished.

To provide increased fire protection in the event of a fire escaping from the LPT recoup manifold which could lead to fuel leakage and possible engine fire, accomplish the following prior to August 31, 1989:

(a) Install on CF6–80A/A2 engines, two zirconia-coated fire shields. Part Numbers (P/N) 1306M85G01 and 1306M86G01, in accordance with GE CF6–80A series Alert Service Bulletin (ASB) A72–512, Revision 1, dated May 24, 1988.

(b) Install on CF6–80A1/A3 engines, fire shield, P/N 1306M84P02, in accordance with GE CF6–80A series ASB CF6–80A A72–510, Revision 2, dated November 14, 1988.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternative method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD, may be approved by the Manager, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803.

The installation of the required fire shields shall be done in accordance with the procedures given in GE CF6–80A series ASB A72–512, Revision 1, dated May 24, 1988 (CF6–80A/80A2 engines) or ASB A72–510, Revision 2, dated November 14, 1988, (CF6–80A1/A3 engines). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, Ohio 45246. Copies may be inspected at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803, or at the Office of the Federal Register, 1100 L Street, Room 8301, Washington, DC 20591.

This amendment becomes effective on August 31, 1989.

Issued in Burlington, Massachusetts, on June 23, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89-17691 Filed 7-27-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AWP-12]

Establishment of Camarillo, CA, Control Zone and Revision of Oxnard, CA, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a control zone at Camarillo, California, to provide controlled airspace for aircraft executing instrument approach and departure procedures to and from Camarillo Airport. This action will also revise the adjoining Oxnard, California, control zone.

EFFECTIVE DATE: 0901 u.t.c., September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Jon L. Semanek, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-0433.

SUPPLEMENTARY INFORMATION:

History

On May 23, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a control zone at Camarillo, California, to provide controlled airspace for aircraft executing instrument approach and departure procedures to and from Camarillo Airport. This action will also revise the adjoining Oxnard, California, control zone. (54 FR 22307)

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a control zone at Camarillo, California, and revises the description of the Oxnard, California, control zone where it adjoins the Camarillo, California, control zone. This action will provide controlled airspace for the conduct of instrument approach and departure procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Camarillo, CA [New]

Within a 5 mile radius of Camarillo Airport (lat. 34°12'50"N., long. 119°05'36"W.), beginning at lat. 34°15'25"N., long. 119°09'15"W., clockwise to lat. 34°09'15"N., long. 119°02'45"W.; then counter-clockwise via the 5 mile radius circle of NAS Point Mugu (lat. 34°07'09"N., long. 119°07'07"W.); to lat. 34°11'20"N., long. 119°08'20"W., then direct to the point of beginning and that area within 2 miles each side of the Camarillo VOR 072° (087T) radial, extending from the 5 mile radius zone to 7 miles east of the VOR. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

3. Oxnard, CA [Revised]

Within a 5 miles radius of Oxnard/Ventura County Airport (lat. 34°12'03"N., long. 119°12'23"W.), beginning at lat. 34°07'45"N., long. 119°12'40"W.; clockwise to 34°15'25"N., long. 119°09'15"W.; then direct to lat. 34°11'20"N., long. 119°08'20"W.; then counter-clockwise via the 5 mile radius circle of NAS Point Mugu (lat. 34°07'09"N., long. 119°07'07"W.) to the point of beginning. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Los Angeles, California on July 18, 1989.

John Mayrhofer,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 89-17693 Filed 7-27-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ANM-21]

Yakima Control Zone, Yakima, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the hours of effectiveness of the Yakima, Washington, Control Zone from full-time to part-time. Severe budgetary constraints were placed on the Yakima Weather Service Office which resulted in weather observations not being available 24-hours daily. This action updates aeronautical publications and provides accurate information to the aviation user.

EFFECTIVE DATE: 0901 u.t.c., August 27, 1989.

FOR FURTHER INFORMATION CONTACT: Jerry Parker, ANM-538, Federal Aviation Administration, Docket No. 88-ANM-21, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Telephone: (206) 431-2536.

SUPPLEMENTAL INFORMATION:

History

On May 18, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the hours of effectiveness of the Yakima Control Zone, Yakima, Washington, (54 FR 21433).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Accordingly, the rule is adopted as proposed.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the description of the Yakima, Washington Control Zone. Section 71.171 of Part 71 was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Yakima, Washington [Amended]

Add: "The Control Zone shall be effective during the specified dates and times established by a Notice to Airmen. The effective date and time will thereafter be continuously established in the Airport/Facility Directory." after the last sentence in the current description.

Issued in Seattle, Washington, on June 28, 1989.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 89-17692 Filed 7-27-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket Number 89-ACE-17]

Alteration of Transition Area—El Dorado, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the transition area description at El Dorado, Kansas. The El Dorado, Kansas, Municipal Airport has been renamed the Captain Jack Thomas/El Dorado Airport. Accordingly, the transition area description is being altered to reflect this name change.

EFFECTIVE DATE: 0901 u.t.c., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

The Rule

The purpose of this amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the transition area description at El Dorado, Kansas. The El Dorado, Kansas, Municipal Airport has been renamed the Captain Jack Thomas/El Dorado Airport. Accordingly, alteration of the El Dorado transition area description is necessary to reflect this name change. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

Since this action is a minor technical amendment in which the public would not be particularly interested, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

El Dorado, KS [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Captain Jack Thomas/El Dorado Airport (lat. 37°46'32"N., long. 96°48'58"W.), and within 3 miles each side of the El Dorado NDB (lat. 37°46'46"N., long 96°48'58"W.) 217° bearing extending from the 5-mile radius area to 8.5 miles southwest of the NDB.

This amendment becomes effective at 0901 u.t.c. November 16, 1989.

Issued in Kansas City, Missouri, on July 12, 1989.

William Behan,

Acting Manager, Air Traffic Division.

[FR Doc. 89-17688 Filed 7-27-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket Number 89-ACE-09]

Alteration of Transition Area—Maryville, Missouri

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the 700-foot transition area at Maryville, Missouri. The present transition area does not encompass certain airspace above Rankin Airport near Maryville, Missouri. The purpose of this amendment is to include that airspace in the Maryville transition area designation.

EFFECTIVE DATE: 0901 u.t.c. November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist,

Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

History

On May 4, 1989, the FAA published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Maryville, Missouri (54 FR 19195). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the 700-foot transition area at Maryville, Missouri. The present transition area does not encompass certain airspace above Rankin Airport near Maryville, Missouri. The purpose of this amendment is to include that airspace in the Maryville transition area designation.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

Maryville, MO [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Maryville Memorial Airport (lat., 40°21'00" N., long. 94°54'45" W.), and 3 miles either side of the 333° bearing from the Emville, Missouri, NDB (lat., 40°20'54" N., long. 94°54'55" W.) from the 5-mile radius to 8.5 miles northwest of the NDB.

This amendment becomes effective at 0901 u.t.c. November 16, 1989.

Issued in Kansas City, Missouri, on July 13, 1989.

William Behan,

Acting Manager, Air Traffic Division.

[FR Doc. 87-17689 Filed 7-27-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 25970; Amdt. No. 1405]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment established, amends, suspends, or evokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESS: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoke Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation

by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in the amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule under Executive Order 1229; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on July 21, 1989.

Robert L. Goodrich,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective September 21, 1989*

Imperial, CA—Imperial County, VOR-A, Amdt. 4
Ontario, CA—Ontario Intl, VOR/DME RWY 8L, Orig.
Kahului, HI—Kahului, NDB RWY 2, Orig.
Moen Island, Federate States of Micronesia—Truk Intl, NDB/DME RWY 22, Amdt. 2
Chickasha, OK—Chickasha Muni, NDB RWY 17, Orig.
Bay City, TX—Bay City Muni, NDB RWY 13, Amdt. 2
George West, TX—Live Oak County, VOR/DME-A, Orig.
Chetek, WI—Chetek Muni-Southworth, VOR/DME RWY 17, Orig.

** * * Effective August 24, 1989*

Vacaville, CA—Nut Tree, VOR-A, Amdt. 4
Vacaville, CA—Nut Tree, RNAV RWY 20, Orig.
Washington, DC—Dulles Intl, VOR/DME or TACAN 12, Amdt. 7
Washington, DC—Dulles Intl, NDB RWY 1R, Amdt. 16
Washington, DC—Dulles Intl, ILS/DME RWY 1L, Amdt. 3
Washington, DC—Dulles Intl, ILS RWY 1R, Amdt. 21
Washington, DC—Dulles Intl, ILS-1 RWY 12, Amdt. 4
Washington, DC—Dulles Intl, ILS-2 RWY 12, Orig., CONVERGING
Washington, DC—Dulles Intl, ILS-1 RWY 19L, Amdt. 8
Washington, DC—Dulles Intl, ILS-2 RWY 19L, Orig., CONVERGING
Washington, DC—Dulles Intl, ILS-1 RWY 19R, Amdt. 20
Washington, DC—Dulles Intl, ILS-2 19R, Orig., CONVERGING
Orlando, FL—Orlando Executive, LOC BC RWY 25, Amdt. 19
Chicago, IL—Chicago O'Hare Intl, NDB RWY 27R, Amdt. 22
Chicago, IL—Chicago O'Hare Intl, ILS RWY 27R, Amdt. 24
LaPorte, IN—LaPorte Muni, VOR-A, Amdt. 5
LaPorte, IN—LaPorte Muni, RNAV RWY 20, Amdt. 3
Lebanon, NH—Lebanon Muni, ILS RWY 18, Amdt. 2
Lebanon, NH—Lebanon Muni, MLS RWY 18, Amdt. 1

** * * Effective July 19, 1989*

Blacksburg, VA—Virginia Tech, LOC RWY 12, Amdt. 1

** * * Effective July 7, 1989*

St Louis, MO—Lambert/St Louis Intl, ILS RWY 24, Amdt. 41
Dallas-Fort Worth, TX—Dallas/Fort Worth Intl, ILS-2 RWY 17L, Amdt. 2, CONVERGING
Dallas-Fort Worth, TX—Dallas/Fort Worth Intl, ILS-2 RWY 17R, Amdt. 2, CONVERGING
Dallas-Fort Worth, TX—Dallas/Fort Worth Intl, ILS-2 RWY 18L, Amdt. 1, CONVERGING
Dallas-Fort Worth, TX—Dallas/Fort Worth Intl, ILS-2 RWY 18R, Amdt. 1, CONVERGING
Dallas-Fort Worth, TX—Dallas/Fort Worth Intl, ILS-2 RWY 35R, Amdt. 1, CONVERGING
Dallas-Fort Worth, TX—Dallas/Fort Worth Intl, ILS-2 RWY 36L, Amdt. 1, CONVERGING.

[FR Doc. 89-17694 Filed 7-27-89; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-17077; File No. S7-5-89]

RIN 3235-AD57

Time Period During Which the Board of Directors of a Registered Management Investment Company Must Select the Company's Independent Public Accountant

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is announcing the adoption of a rule that expands the time period during which certain registered management investment companies must select an independent public accountant. Absent this rule, those companies would be required to comply with the narrower statutory time period unless they obtained individual exemptive orders from the Commission. The rule eliminates the need to obtain those exemptive orders.

EFFECTIVE DATE: August 28, 1989.

FOR FURTHER INFORMATION CONTACT: Brian P. Kindelan, Special Counsel, (202) 272–2048, or Christopher Sprague, Staff Attorney, (202) 272–7779, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting rule 32a–3 under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the "Act"), which will expand the time period during which certain registered management investment companies ("companies") must select an independent public accountant ("accountant").

Executive Summary

Section 32(a)(1) of the Act (15 U.S.C. 80a–31(a)(1)) requires a company to select its accountant at a board of directors meeting held within 30 days before or after the beginning of the company's fiscal year (the "60 day window") or at any time before the annual meeting of shareholders in that year. In March 1989, the Commission issued a release ("proposing release") on proposed rule 32a–3 under the Act, which would have exempted certain companies from the 60 day window.[1] The Commission received four letters of comment in response to the proposal. The rule, as adopted, has been modified in some respects to address the concerns of the commenters.

The rule sets out the following alternative time periods during which the accountant may be selected: (a) 90 days before or after the beginning of the fiscal year (the "180 day window"), or (b) 30 days before or 90 days after the beginning of the fiscal year (the "120 day window"). The 180 day window is available only to companies that are part of a set of investment companies ("set")[2] whose members have staggered fiscal year ends, are organized in a jurisdiction not requiring them to hold regular annual meetings of shareholders,[3] and do not in fact hold a regular annual shareholders' meeting in the fiscal year in which the rule is relied on. A company that is not part of a set of investment companies (or is part of a set whose members have identical fiscal year ends) may use the 120 day window if organized in a jurisdiction not requiring the company to hold regular annual meetings of shareholders, and the company does not in fact hold a regular annual shareholders' meeting in the fiscal year in which the rule is relied on.

The Commission is adopting this rule because of numerous applications that have been filed seeking an exemption from the 60 day window. The rule will reduce significantly the need for companies to obtain individual exemptions in this area.

Background

Section 32(a)(1) of the Act states that it shall be unlawful for any registered management company to file with the Commission any financial statement signed or certified by an independent public accountant, unless such accountant shall have been selected at a board of directors meeting held within 30 days before or after the beginning of the fiscal year or at any time before the annual meeting of stockholders in that year. The legislative history of section 32(a) and the reasons for proposing rule 32a–3 are discussed in the proposing release, and will not be repeated here.[4] In essence, proposed rule 32a–3 would have codified several exemptive orders issued by the Commission to companies that sought an expanded window for accountant selection.[5] The four comment letters received generally supported the proposal, but recommended that certain provisions should be modified or eliminated. The rule, as adopted, has been modified after consideration of the commenters' concerns.

Discussion

This section discusses provisions in rule 32a–3 that reflect changes from the proposed rule, as well as provisions that have been left unchanged.

1. Separate Definition of Stand-Alone Company

Proposed rule 32a–3(b)(2) would have defined a "stand-alone company" as "any registered management investment company that is not in a family of investment companies, or is in a family, each of whose members has the same fiscal year end." On further reflection, the Commission believes that this definition could cause confusion, because it would classify some companies in a fund complex as stand-alone companies. Accordingly, the final rule eliminates this separate definition, but incorporates the concept it expresses directly into the 120 day window proviso.[6]

2. Availability of the Rule

One commenter maintained that a new Maryland statute would make proposed rule 32a–3 unavailable for some companies organized in that state. Under section 2–501 of the Maryland Corporations and Associations Code, if the charter or bylaws of an investment company registered under the Act so provides, the company may not be required to hold an annual meeting of stockholders in any year in which the Act does not require the company to hold a meeting of stockholders for the election of directors.[7] Under a recent amendment to section 2-501, if a company is required by the Act to hold a meeting of stockholders to elect directors, then that meeting "shall be designated as the annual meeting of stockholders for that year."[8]

The commenter suggested that a company might rely on one of the expanded windows of rule 32a–3 to select its accountant, but later in that same fiscal year be compelled by the Act to hold a shareholders' meeting to elect directors. If that company were organized in Maryland, such a meeting would be deemed an annual meeting under the new Maryland law. Under the circumstances, according to the commenter, such a company could be viewed as having violated section 32(a)(1); the company's attempt to rely on proposed rule 32a–3 would have failed because the availability of the proposal was conditioned on a company not holding an annual stockholders' meeting in the fiscal year in which it relies on the rule.[9] The commenter expressed the opinion that a company should not be precluded from relying on rule 32a–3 merely because the company holds such a stockholders' meeting.

The instances in which the Act's requirements would trigger the commenter's concerns are relatively rare. The Act requires a meeting of stockholders to elect directors only "in the event that at any time less than a majority of the directors of the company holding office at that time were elected by the holders of the outstanding voting securities," in which case a meeting of such holders must be held within 60 days "for the purpose of electing directors to fill any existing vacancies in the board of directors unless the Commission shall by order extend such period."[10] Nevertheless, the Commission does not wish a company whose shareholders' meeting called for that purpose is deemed an annual meeting by the law of Maryland or any other state to lose the rule 32a–3 exemption solely for that reason. Accordingly, paragraph (a) of the final rule excludes from the rule's ambit only companies that have held a "*regular* annual stockholders' meeting" (emphasis added), which should be understood to refer to an annual shareholders' meeting held as a matter of course.

3. Companies Eligible To Use Expanded Windows

The proposed rule would have permitted a 180 day window (90 days before or 90 days after the start of the fiscal year) for accountant selection to a company in a family of investment companies ("family") whose members have staggered fiscal year ends, that is organized in a state not requiring the company to hold annual meetings of stockholders, and that does not in fact hold such a meeting in the fiscal year in which the rule is relied on. For a stand-alone company—which was defined as any company that is not in a family, or is in a family, each of whose members has the same fiscal year end—the proposed rule would have permitted a 120 day window (30 days before or 90 days after the start of the fiscal year) for accountant selection. One commenter recommended that the 180 day window be made available to stand-alone companies. The commenter argued that the 180 day window would give stand-alone companies more flexibility to permit more efficient and meaningful accountant review, and would simplify the rule.

The commenter's proposal to extend the 180 day window to stand-alone companies would, in theory, provide such companies with more flexibility in their accountant selection process. In the main, however, stand-alone companies have not expressed a need for the 180 day window.[11] Particularly in light of the specific time periods required by section 32(a)(1), the Commission declines to provide relief from the section in an exemptive rule that is more expansive than the demonstrated needs of the investment company industry.

The same commenter also recommended that a company that holds an annual meeting of stockholders be granted a 90 day window prior to the beginning of its fiscal year for accountant selection. The commenter argued that this would give such a company increased flexibility in determining the timing of accountant selection and in scheduling board meetings. The Commission declines to adopt the commenter's suggestion; the commenter offered no convincing reason why a company would schedule an annual meeting so early in its fiscal year as to make compliance with section 32(a)(1) itself difficult. In addition, no companies have applied for exemptive relief of the sort suggested by the commenter.

4. Definition of Family of Investment Companies

Paragraph (b)(1) of the proposed rule defined "family of investment companies" as any two or more companies "which share the same investment adviser or principal underwriter and hold themselves out to investors as related companies for purposes of investment and investor services." Two commenters argued that the concept of "family of investment companies" should turn on common management or control, rather than on whether the companies hold themselves out as related companies. One commenter also argued that shared investment advisers and shared principal underwriters are a more pertinent indicator of common management than are the company's public representations. A commenter also noted that there may be some subjectivity associated with determining whether two or more companies hold themselves out as related companies.

In response to the comments, the definition in the final rule is expanded to include two or more registered management investment companies "(1) that have a common investment adviser or principal underwriter, or (2) if the investment adviser or principal underwriter of one of the companies is an affiliated person as defined in section 2(a)(3)(C) of the Act [15 U.S.C. 80a–2(a)(3)(C)] of the investment adviser or principal underwriter of each of the other companies." This revised definition is consistent with several recent exemptive orders that apply to funds with the same or affiliated investment advisers or principal underwriters.[12] The rule retains, however, the "holding out" portion of the definition. While the Commission agrees that common management is important, such management is much more likely to exist if companies are also held out as related than if, for example, the companies merely use the same principal underwriter. In addition, while the requirement has some subjectivity, it has been used in form N–SAR under the Act [17 CFR 274.101] for some time. Finally, to distinguish the expanded definition of the final rule from the definition of "family of investment companies" used in form N–SAR, the final rule will use the phrase "set of investment companies."

Cost/Benefit of Action

To evaluate the benefits and costs associated with the proposed rule, the Commission specifically requested commenters to provide views and data as to the costs and benefits associated with the proposal. The commenters agreed that investment companies to which the rule would apply would file fewer applications for exemption and would be able to hold fewer board of directors meetings. The rule also would allow the board of directors of eligible companies to make better-informed decisions concerning the selection of an accountant. The Commission would benefit because its staff would no longer have to review exemptive applications in this area.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission certified at the time the rule was published that proposed rule 32a–3 would not, if adopted, have a significant impact on a substantial number of small entities. No comments were received regarding the certification.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended as shown:

---

[1] *See* Investment Company Act Rel. No. 16842 (Mar. 1, 1989) (54 FR 9843, Mar. 8, 1989).

[2] As discussed below, the term "family of investment companies" used in proposed rule 32a–3 is termed "set of investment companies" in the final rule, and is redefined. *See infra* note 12 and accompanying text.

[3] *See* section 2 of the Discussion, *infra*, which discusses the concept of a regular annual shareholders' meeting.

[4] *See* proposing release, *supra* note 1, at nn. 3–17 and accompanying text.

[5] *See generally* the proposing release.

[6] *See* rule 32a–3(a)(2).

[7] Md. Corps. & Ass'ns Code Ann. § 2–501 (Michie Supp. 1985).

[8] This provision, which was part of Maryland House of Delegates Bill 988, was signed into law on May 25, 1989. The effective date of the law is July 1, 1989.

[9] *See* proposed rule 32a–3(a).

[10] Section 16(a) of the Act (15 U.S.C. 80a–16(a)).

[11] The 180 day window has been requested by a stand-alone company in only one instance. MacKay-Shields Mainstay Series Fund, Investment Company Act Rel. Nos. 16675 (Dec. 2, 1988) (53 FR 49810, Dec. 9, 1988) (notice of application) and 16733 (Dec. 30, 1988) (order).

[12] *E.g.*, Alex. Brown Cash Reserve Fund, Investment Company Act Rel. Nos. 16524 (Aug. 12, 1988) (53 FR 31795, Aug. 19, 1988) (notice of application) and 16550 (Sept. 7, 1988) (order).

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read as follows:

Authority: Secs. 38, 40, 54 Stat. 841–842; 15 U.S.C. 80a–37, 80a–39; the Investment Company Act of 1940, as amended. 15 U.S.C. 80a–1 et seq.; unless otherwise noted. * * * Section 270.32a–3 is also issued under Sec. 6(c) (15 U.S.C. 80a–6(c)).

2. By adding § 270.32a–3 to read as follows:

§ 270.32a–3 Exemption from provision of section 32(a)(1) regarding the time period during which a registered management investment company must select an independent public accountant.

(a) A registered management investment company ("company") organized in a jurisdiction that does not require it to hold regular annual meetings of its stockholders, and which does not hold a regular annual stockholders' meeting in a given fiscal year, shall be exempt in that fiscal year from the requirement of section 32(a)(1) of the Act (15 U.S.C. 80a–31(a)(1)) that the independent public accountant ("accountant") be selected at a board of directors meeting held within 30 days before or after the beginning of the fiscal year or before the annual meeting of stockholders in that year, *provided*, that such company is either:

(1) In a set of investment companies as defined in paragraph (b) of this section, if not all the members of such set have an identical fiscal year end and if such company selects an accountant at a board of directors meeting held within 90 days before or after the beginning of that fiscal year; or

(2) Not in a set of investment companies, or is in a set, each of whose members has the same fiscal year end, and if such company selects an accountant at a board of directors meeting held within 30 days before or 90 days after the beginning of that fiscal year.

(b) For purposes of this rule, "set of investment companies" means any two or more registered management investment companies that hold themselves out to investors as related companies for purposes of investment and investor services, and

(1) That have a common investment adviser or principal underwriter, or

(2) If the investment adviser or principal underwriter of one of the companies is an affiliated person as defined in section 2(a)(3)(C) of the Act (15 U.S.C. 80a–2(a)(3)(C)) of the investment adviser or principal underwriter of each of the other companies.

By the Commission.

Jonathan G. Katz,

Secretary.

July 21, 1989.

[FR Doc. 89–17697 Filed 7–27–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 86F–0383]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame as a sweetener in fruit spreads, fruit toppings, and fruit syrups. This action is in response to a petition filed by the NutraSweet Co.

DATES: July 28, 1989; written objections and requests for a hearing by August 28, 1989.

ADDRESSES: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 7, 1986 (51 FR 35693), FDA announced that a food additive petition (FAP 6A3963) had been filed by the NutraSweet Co., Box 1111, 4711 Golf Rd., Skokie, IL 60076, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame as a sweetener in fruit spreads, toppings, and syrups where standards of identity do not preclude its use.

The agency has determined that the phrase "use of aspartame as a sweetener in fruit spreads, toppings and syrups" used in the filing notice may be misinterpreted to reflect uses other than the requested uses. Therefore, to clarify the intent of the petition, the agency has reworded the requested use to "the safe use of aspartame as a sweetener in fruit spreads, fruit toppings, and fruit syrups." Furthermore, the uses approved by this amendment do not include the use of aspartame in food products subject to the standards of identity for fruit butters, jellies, preserves, and related products or for fruit pies (21 CFR Parts 150 and 152). The introductory paragraph of § 172.804 provides that aspartame may only be used for these purposes "for which standards of identity established under section 401 of the Act do not preclude such use."

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended in § 172.804(c) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before August 28, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 172.804 is amended by adding new paragraph (c)(21) to read as follows:

§ 172.804 Aspartame.

* * * * * *

(c) * * *

(21) Fruit spreads, fruit toppings, and fruit syrups.

* * * * * *

Dated: July 18, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–17606 Filed 7–27–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 159a

[DoD 5200.1–R]

Information Security Program Regulation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This amendment adds material that was inadvertently omitted at the end of Appendix A to 32 CFR Part 159a, printed on Tuesday, June 27, 1989 (54 FR 26998).

EFFECTIVE DATE: June 1, 1986.

PART 159a—[AMENDED]

1. The authority citation continues to read as follows:

Authority: E.O. 12356, 5 U.S.C. 301.

2. Appendix A is amended by adding the following at the end of the Appendix as follows:

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 24, 1989.

BILLING CODE 3810–01–M

BEST COPY AVAILABLE

Country	TOP SECRET	SECRET	CONFIDENTIAL	
United Kingdom	TOP SECRET	SECRET	CONFIDENTIAL	RESTRICTED
Uruguay	ULTRA SECRETO	SECRETO	CONFIDENCIAL	RESERVADO
USSR	СОВЕРШЕННО СЕКРЕТНО	СЕКРЕТНО	НЕ ПОДЛЕЖАЩИЙ ОГЛАШЕНИЮ	ДЛЯ СЛУЖЕБНОГО ПОЛЬЗОВАНИЯ
Viet Nam French	TRES SECRET	SECRET DEFENSE	CONFIDENTIEL DEFENSE	DIFFUSION RESTREINTE
Vietnamese	TỐI-MẬT	MẬT	KIN	TU MẬT

INTERNATIONAL ORGANIZATION	TOP SECRET	SECRET	CONFIDENTIAL	(SEE CHAPTER XI)
NATO	COSMIC TOP SECRET	NATO SECRET	NATO CONFIDENTIAL	NATO RESTRICTED

NOTES:

In all instances foreign security classification systems are not exactly parallel to the U.S. system and exact equivalent classifications cannot be stated. The classifications given above represent the nearest comparable designations that are used to signify degrees of protection and control similar to those prescribed for the equivalent U.S. classifications.

"ATOMAL" information is an exclusive designation used by NATO to identify "Restricted Data" or "Formerly Restricted Data" information released by the U.S. Governmei to NATO.

[FR Doc. 89-17611 Filed 7-27-89; 8:45 am]
BILLING CODE 3810-01-M

32 CFR Part 242

[DoD Directive 6010.7]

Admission Policies and Procedures for the School of Medicine, Uniformed Services University of the Health Sciences

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This amendment makes administrative changes to 32 CFR Part 242. It also raises the age from 32 to 34 years old for a Uniformed Services University of the Health Sciences student who have served on active duty in the Armed Forces that he or she may exceed the normal age limitation (age 28) by a period equl to the time served on active duty provided he or she does not become age 34 by June 30 of the year of admission.

EFFECTIVE DATE: June 6, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Mannix, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814, telephone (703) 295–3028.

List of Subjects in 32 CFR Part 242

Medical and dental schools; Military personnel.

Accordingly, 32 CFR Part 242 is amended as follows:

PART 242—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 10 U.S.C. 2112.

2. Section 242.4 is amended by revising paragraph (a)(2) and amending paragraph (a)(5)(ii) by changing "5210.9" to 5200.2".

§ 242.4 Policies.

* * * * *

(a) * * *

(2) Are at least 18 years old at the time of matriculation, but have not become 28 years old as of June 30 in the year of admission. However, any student who has served on active duty in the Armed Forces may exceed the age limitation by a period equal to the time served on active duty provided that student has not become 34 years old by June 30 in the year of admission.

* * * * *

§§ 242.4, 242.5 and 242.7 [Amended]

3. Paragraphs 242.4(c), 242.5(d), and 242.7(c) are amended by changing "(Health and Environmental) to "(Health Affairs)".

§ 242.10 [Amended]

4. Paragraph 242.10 is amended by changing "(Comptroller)" to "(Health Affairs)."

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 24, 1989.

[FR Doc. 89–17612 Filed 7–27–89; 8:45 am]

BILLING CODE 3810–10–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH–FRL–3620–3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Availability of data pertaining to the hazardous characteristics of CFC refrigerants and clarification of the applicability of RCRA subtitle C regulations to CFC refrigerants.

SUMMARY: EPA's Office of Air and Radiation has been undertaking efforts to encourage the recycling of chlorofluorocarbons (CFCs) used as refrigerants. In conducting these efforts, it has become evident that many people in the regulated community hold misconceptions regarding the applicability of Subtitle C of the Resource Conservation and Recovery Act (RCRA) to CFCs when used as refrigerants. The resulting confusion has often served to hinder the implementation of recycling schemes designed to mitigate the adverse impacts of CFCs on the environment, in particular, the depletion of the ozone layer. Therefore, EPA's Office of Solid Waste and Emergency Response is publishing today's Notice to clarify the applicability of RCRA Subtitle C to CFC refrigerants. In addition, today's Notice announces data which will greatly simplify the burden that the generator of any solid waste must undertake to determine whether the solid waste is hazardous by demonstrating that CFC refrigerants will not exhibit a characteristic of a hazardous waste under normal operating conditions.

EFFECTIVE DATE: July 28, 1989.

ADDRESS: The data announced in this Notice are in the administrative record identified as Docket Number F–89–CFCA–FFFFF and is located in the EPA RCRA Docket (located in Room M2427) 401 M Street SW., Washington, DC 20460. The docket is open from 9:00 am to 4:00 pm, Monday through Friday, except for public holidays. To review docket materials, the public must make an appointment by calling (202) 475–9327. The public may make copies of the docket materials at a cost of $.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information regarding the applicability of RCRA to CFCs or regarding the data announced in this Notice, contact Mitch Kidwell, Office of Solid Waste (OS–332), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475–8551. For information regarding the recycling of CFC refrigerants, contact Jean Lupinacci, Office of Air and Radiation, Global Change Division (ANR–445), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–7750.

SUPPLEMENTARY INFORMATION:

Background

On May 19, 1980, the Environmental Protection Agency (EPA) promulgated a final rule pursuant to section 3001 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA). This rule (45 FR 33084) specifically listed 85 process wastes as hazardous wastes and approximately 400 chemicals as hazardous wastes if they are, or are intended to be, discarded. It also identified four characteristics of hazardous wastes to be used by persons handling a solid waste in determining whether that waste is a hazardous waste (see 40 CFR Part 261 Subpart C).

The list of hazardous wastes (see 40 CFR 261.31–261.33) includes certain chlorofluorocarbons (CFCs). These CFCs are listed as certain spent halogenated solvents from non-specific sources (i.e., F001 and F002, found at 40 CFR 261.31) and two CFCs are listed as commercial chemical products (i.e., dichlorodifluoromethane (CFC–12) and trichloromonofluoromethane (CFC–11), U075 and U121, respectively, found at 40 CFR 261.33(f).

Note: F001 includes all chlorofluorocarbons used in degreasing; F002 includes only limited chlorofluorocarbons, including trichlorofluoromethane.

The applicability of RCRA Subtitle C regulations to CFCs is limited to three basic scenarios: (1) Where CFCs are used as solvents and the wastes containing the CFCs meet the F001 and F002 listing descriptions, (2) where either dichlorodifluoromethane (CFC–12) or trichloromonofluoromethane (CFC–11) is an unused commercial chemical product, off-specification commercial chemical product, inner liner or

container residue, or spill residue that is (or is intended to be) discarded, or (3) where CFCs are solid wastes that exhibit a characteristic of hazardous waste. However, through efforts by EPA's Office of Air and Radiation to promote the recycling of CFC refrigerants, it has become evident that some confusion exists in the regulated community regarding the RCRA regulatory status of CFC refrigerants. Today's Notice of Data Availability will clarify this status.

Clarification of the RCRA Regulatory Status of CFCs Used as Refrigerants

By way of clarifying the regulatory status of recycled CFC refrigerants, the Agency will discuss the first two scenarios listed above, and announce data that applies to the third scenario (i.e., whether CFC refrigerants exhibit a characteristic of hazardous waste). First, the spent solvent listings found at 40 CFR 261.31 (specifically, CFCs listed under F001 and F002) apply solely to wastes containing listed solvents when they are used for their solvent properties. CFCs used as refrigerants are not typically subject to the spent solvent listings because, as refrigerants, the CFCs are not used as solvents. Second, the U-listings found at 40 CFR 261.33(f) apply to commercially pure grades of listed chemicals, technical grades, and formulations in which the listed chemical is the sole active ingredient. The U-list does not include chemical mixtures where the listed chemical is not the sole active ingredient, and does not apply to chemicals that have been used for their intended purpose. Thus, CFC refrigerants that are removed from a refrigeration system and are reclaimed would not be classified as "commercial products," but rather would be classified as "spent materials." If the CFC refrigerants were not used for their solvent properties, they could not be F001 or F002 wastes, and thus, these spent materials could only be hazardous wastes under the characteristics of 40 CFR 261.21–261.24.

As a spent material, a CFC refrigerant is a solid waste. It is therefore the generator's responsibility to test the waste or apply knowledge of the waste to determine whether the waste exhibits a characteristic of a hazardous waste (see 40 CFR 261.5(f)(1), 261.5(g)(1) and 262.11(c)). The characteristics of a hazardous waste (i.e., ignitability, corrosivity, reactivity, or EP toxicity) are found at 40 CFR 261.21–261.24. The "generator" includes each person, by site, whose act or process produces a hazardous waste, or whose act first causes the waste to become subject to regulation. In most cases, the generator would be the owner of the refrigeration equipment, as well as the service person or company who, in servicing the equipment, collects the material for reclamation (i.e., there may be "co-generator" situations (see 45 FR a 72026)). This Notice announces the availability of data that relate to a generator's application of knowledge of the waste in addressing the possible hazardous characteristic of corrosivity (see 40 CFR 261.22).

The Agency has previously determined that CFC refrigerants are not likely to exhibit a characteristic of a hazardous waste; however, the Agency maintained reservations regarding the characteristic of corrosivity (see the July 21, 1988 letter from Sylvia K. Lowrance, Director of EPA's Office of Solid Waste to Mr. Marshall R. Turner, Vice President of Racon Refrigerants, included in the docket for this Notice). EPA was concerned about the possible formation of hydrochloric acid due to the breakdown of the CFCs at high compressor temperatures. EPA has since received data (included in the docket for this Notice) demonstrating that the conditions under which CFC refrigerants would break down and form hydrochloric acid, while theoretically possible, are not a practical possibility during normal use. Generators of CFC refrigerants that are reclaimed are not required to test their wastes to determine that their CFCs are not hazardous wastes. Of course, the generator is required to know if the CFC is a hazardous waste. Therefore, in circumstances where something outside the realm of normal practice may cause a CFC refrigerant to exhibit a characteristic (e.g., a CFC refrigerant is inadvertently mixed with an acid material), generators may need to determine, using testing or knowledge, whether the waste is hazardous. Even if the material is a hazardous waste, full Subtitle C management standards may not apply. Exemptions for household hazardous waste or waste from small quantity generators may apply to some of these wastes (see 40 CFR 261.4(b)(1); 40 CFR 261.5).

The Agency notes, however, that the preceding discussions pertain to Federal regulations. While EPA strongly encourages State regulatory agencies to adopt similar regulations to facilitate the recycling of CFC refrigerants, States can and do have their own regulations which may be more stringent than Federal regulations. The regulated community is advised to consult the appropriate State regulatory agency to determine the State regulatory status of CFC refrigerants that are recycled.

List of Docket Materials

1. July 21, 1988 letter from Sylvia K. Lowrance, Director of EPA Office of Solid Waste, to Marshall R. Turner of Racon Refrigerants.
2. August 3, 1988 letter from Stephen O. Andersen and Jean Lupinacci of EPA Office of Air and Radiation to David J. Stirpe of the Air-Conditioning and Refrigeration Institute.
3. October 11, 1988 letter from David J. Stirpe of the Air-Conditioning and Refrigeration Institute to Stephen O. Andersen and Jean Lupinacci of EPA Office of Air and Radiation.
4. August 8, 1988 letter from David J. Bateman of E.I. du Pont de Nemours and Company to Stephen O. Andersen of EPA Office of Air and Radiation.
5. September 5, 1988 letter from R.E. Boberg of Allied-Signal Inc. to David J. Stirpe of the Air-Conditioning and Refrigeration Institute.
6. September 28, 1988 letter from L. Denise Pope of Racon Inc. to David Stirpe of the Air-Conditioning and Refrigeration Institute, and attachment entitled "Development of Worst Case Scenario."
7. August 25, 1988 EPA internal memorandum from N. Dean Smith of the Industrial Processes Branch to Steve Andersen of the Program Development Division, and attachment (an excerpt from "Test Methods for Evaluating Solid Wastes" (SW–846).
8. November 8, 1988 letter from J.E. Cox of American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. to Jean Lupinacci of EPA Office of Air and Radiation, and two enclosures: "Rates of Thermal Decomposition of CHCLF2 and CF2CL2" by Frances J. Norton (1957) and "Reactions of Chlorofluorocarbons with Metals" by B.J. Eiseman (1963).
9. June 10, 1988 letter from Harold J. Lamb of Racon Inc. to Joseph M. McGuire of the Air-Conditioning and Refrigeration Institute.
10. September 14, 1987 letter from L. Denise Pope of Racon Inc. to John P. Goetz of the Kansas Department of Health and Environment.
11. October 5, 1987 letter from John S. Ramsey of the Kansas Department of Health and Environment to L. Denise Pope of Racon Inc.
12. October 21, 1987 letter from L. Denise Pope of Racon Inc. to John S. Ramsey of the Kansas Department of Health and Environment.
13. October 30, 1987 letter from John S. Ramsey of the Kansas Department of Health and Environment to L. Denise Pope of Racon Inc.

14. January 22, 1988 Racon Inc. internal memorandum from L. Denise Pope to the File.
15. February 1, 1988 letter from Marshall R. Turner of Racon Refrigerants to Lee Thomas, Administrator of EPA.
16. March 21, 1988 letter from Matthew A. Straus of EPA Characterization and Assessment Division to Marshall R. Turner of Racon Inc.
17. May 20, 1988 internal Racon Inc. memorandum from L. Denise Pope to the File.

Date: July 14, 1989.

Robert Duprey,

Acting Assistant Administrator.

[FR Doc. 89–17383 Filed 7–27–89; 8:45 am]

BILLING CODE 6560–50–M

Proposed Rules

Federal Register
Vol. 54, No. 144
Friday, July 28, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-89-200]

Pineapples; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action would revise the voluntary U.S. Standards for Grades of Pineapples. The Pineapple Growers Association of Hawaii has requested that the U.S. standards be revised to bring them in line with current cultural and marketing practices. This association represents growers and shippers that distribute approximately 84 percent of the pineapples consumed in the United States. The Agricultural Marketing Service (AMS), in cooperation with industry, has the responsibility to develop and improve standards of quality, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

DATES: Comments must be postmarked or courier dated on or before September 26, 1989.

ADDRESSES: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056, South Building, Washington, DC 20090-6456. Comments should make reference to the date and page numbers of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Philip C. Eastman, at the above address or call (202) 447-2482.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as "nonmajor" under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. This proposed revision of the U.S. Standards for Grades of Pineapples will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, this action proposes changes to these U.S. standards which will bring the standards into conformity with current marketing practices.

The United States Standards for Grades of Pineapples were last revised on February 23, 1953. The Pineapple Growers Association of Hawaii has requested modifications in the U.S. standards that include the following changes in requirements for the grades and definitions of terms, new terms and definitions, as well as changes and additions in the scoring limits for defects.

Changes in Requirements

—The current standards apply only to pineapples with tops, while the proposed standards would apply to pineapples with or without tops. This change in the requirements would allow pineapples whose tops have been cut off to be graded and certified to a U.S. grade.

—The current U.S. Fancy and U.S. No. 1 grades require the tops to be straight and reasonably straight respectively, while in the proposed standards the tops would be required to be moderately straight or not more than moderately curved respectively. These changes in straightness requirements would be more in line with what is now commonly accepted in the marketplace and allow more pineapples to meet either the requirements of the U.S. Fancy or U.S. No. 1 grade.

—The U.S. Fancy grade in the current standards requires tops to be not less than 5 inches nor more than 1½ times the length of the fruit. The U.S. No. 1 grade in the current standards requires tops to be not less than 4 inches nor more than twice the length of the fruit. With current cultural and marketing practices, excessively short tops have not been a significant factor affecting sales of pineapples. The elimination of the minimum top length will permit pineapples with tops removed to be graded and certified under the proposed standards.

—In the current standards, fresh cracks and evidence of rodent feeding are scored on the general definitions of damage and or serious damage. The proposed standards would require that each grade be free from these defects.

—The current standards make no reference to overripe, freezing, or decay of the tops. The proposed standards would make these "free from" defects. Overripe, freezing, and decay in the tops of pineapples are considered by the pineapple industry to be serious disorders, therefore any amount that is visible would be a defect in the proposed standards.

—Internal breakdown, is currently scored when present in any degree. The pineapple industry feels this is too restrictive and has requested that the proposed standards provide specific areas of the pineapple flesh which might be light to medium brown without being scored as a defect. This change is included in the proposal.

Changes in Definition of Terms

—In the current standards "Mature" is defined as the stage of development which will ensure completion of the ripening process, while the proposed standards redefine it to mean a stage of development where a pineapple is usable and edible. This change is a more easily understood definition for mature, and indicates pineapples which meet U.S. grade standards must be palatable.

—"Well trimmed" in the current standards means the stem has been cut off so the fruit will stand straight on a flat surface. In the proposed standards, the term has been changed to "Stems removed" which means the stem is removed so it does not extend more than one inch below the base of the pineapple. The term and definition were changed in the proposed standards to be more in line with what is currently accepted practice in marketing pineapples.

—"Similar varietal characteristic color" for tops in the current standards means that at shipping point the tops are of good green color, and in receiving markets they are fairly good green color and relatively free from dryness and discoloration. Because of the variation in natural color that sometimes develops in the tops of pineapples, the proposed standards would redefine similar varietal characteristic color of tops to mean that the tops in a lot may vary from green to reddish green color. Since there would be specific scoring limits in the Classification of Defects, the proposed standards would not make reference to an allowable degree of discoloration.

—In the current standards, "Fairly uniform" size is defined for counts of 18 or less in standard southeastern crates as a variation of not more than ⅝ inch in diameter and for counts over 18 in number the pineapples may not vary more than ½ inch in diameter. In recent years, however, southeastern crates have fallen into disuse. For this reason and to provide a simpler way to establish fairly uniform size, the proposed standards redefines "Fairly uniform" to mean that the fruit within individual containers do not vary more than 1½ pounds from smallest to largest.

New Terms and Definitions

The following terms and accompanying definitions are included in the proposed standards because they are used in the grading and certification of pineapples.

—"Frozen (fruit)" means the fruit is affected by freezing so that some portion is in a hardened state with ice crystals present.

—"Frozen (tops)" means the tops are to some degree, hardened by freezing with ice crystals present.

—"Freezing injury (fruit)" means the edible flesh is glassy, watersoaked, and/or discolored as is characteristic of having been frozen.

—"Freezing injury (tops)" means the leaf tissue is glassy, watersoaked, and/or discolored as is characteristic of having been frozen.

—"Shell" means the external surface or rind of the fruit.

—"Flesh" means the internal edible portion of the fruit.

—"Decay" means breakdown or disintegration of the tops or breakdown, disintegration or fermentation of the pineapple caused by bacteria or fungi.

Tolerances—Changes in the Method for Determining the Amount of Defects Allowed for Samples and Lots

In the current standards a percentage is used for the amount of defects in the individual samples, as well as for a lot of pineapples as a whole. The proposed standards would use limits that are based on the number of fruit in a chart. This method would be easier and faster to utilize in grading pineapples, in that there is no need to make calculations as with percentages. Generally, the proposed tolerances are similar to those in the current standards.

Size and Marking Requirements

The proposed standards would not change the size and marking requirements in the current standards.

Changes in Scoring Limits in the Classification of Defects

Changes in the proposed standards include the addition of specific definitions for scoring defects where the current standards has only a general definition for injury, damage, and serious damage. There are also changes in the scoring limits in the proposal which are more specific than those in the current standards.

CHANGES IN LIMITS FOR DEFECTS [1]

[Injury—U.S. Fancy]

	Current standards	Proposed standards
Tops:		
Discoloration	Shipping points, the tops are of good green color characteristic of well-grown pineapples, and in the receiving markets, are fairly good green color and relatively free from dryness and discoloration.	When more than 10 percent of the crown leaves are discolored.
Mechanical or other means	No specific limit in standards [2]	When physical injury (cleanliness, mechanical damage) more than slightly affects the appearance of the pineapple.
Fruit:		
Bruising	No specific limit in standards [2]	When any bruise extends into flesh more than ¼ inch and when a bruise or combination of bruises affects an aggregate area of a circle more than 1½ inches in diameter.
Sunburn	More than slightly affecting appearance	When there is bleaching of and a slight softening of the shell affecting an aggregate area more than 1½ inches in diameter.
Gummosis	More than very slight	When gum deposits penetrate into the flesh or causes discoloration of the shell affecting an aggregate area more than ¼ inch in diameter.
Internal breakdown	No specific limit in standards [2]	When more than 5 percent of the edible flesh has a distinct light brown to medium brown discoloration which more than slightly detracts from the appearance or edible quality of the fruit.
Insects and insect feeding	No specific limit in standards [2]	When an aggregate area more than ½ inch in diameter has any insects attached to the surface (e.g. scale) or any injury from insect feeding, which more than slightly detracts from the appearance, edible, or shipping quality of the fruit.
Healed cracks	No specific limit in standards [2]	When healed cracks more than slightly detract from the appearance, edible, or shipping quality of the fruit.
Mechanical or other means	No specific limit in standards [2]	When physical injury (cleanliness, mechanical damage) more than slightly affects the appearance or edible quality of the pineapple.

[1] Defects are based on a 10 size fruit (ten 4-pound average fruit per 40 pound box). Accordingly larger or smaller fruit are permitted to have defects relative to their size.

[2] However, can apply the general definition limit for "Injury" which means any defect which more than slightly affects the appearance or the edible or shipping quality of the fruit.

CHANGES IN LIMITS FOR DEFECTS [1]

[Damage (U.S. No. 1)]

	Current standards	Proposed standards
Tops:		
Discoloration	Shipping points, the tops are of good green color characteristic of well-grown pineapples, and in the receiving markets, are fairly good green color and relatively free from dryness and discoloration.	When more than 25 percent of the crown leaves are discolored.
Crown slips	Not more than 5 crown slips, not more than 2 of which may be more than 2¾ inches in length.	When more than 5 crown slips, or when more than 2 crown slips are more than 2¾ inches in length.
Mechanical or other means	No specific limit in standards [2]	When physical injury (cleanliness, mechanical damage) materially affects the appearance of the pineapple.
Fruit:		
Bruising	No specific limit in standards [2]	When any bruise extends into flesh more than ½ inch, and when a bruise or combination of bruises affects an aggregate area more than 2¼ inches in diameter.
Sunburn	No specific limit in standards [2]	When there is bleaching of and a moderate softening of the shell affecting an aggregate area more than 2¼ inches in diameter.
Gummosis	No specific limit in standards [2]	When gum deposits slightly penetrate into the flesh or causes discoloration of the shell affecting an aggregate area more than ½ inch in diameter.
Internal breakdown	No specific limit in standards [2]	When more than 10 percent of the edible flesh has a light to medium brown discoloration which materially detracts from the appearance or edible quality of the fruit.
Insects and insect feeding	No specific limit in standards [2]	When an aggregate area more than ¾ inch in diameter has any insects attached to the surface (e.g. scale) or any injury from insect feeding, which materially detracts from the appearance, edible, or shipping quality of the fruit.
Healed cracks	Not badly cracked	When healed cracks on the eyes are more than ¼ inch in width and not more than 1 inch in depth or which materially detracts from the appearance, edible, or shipping quality of the fruit. When healed cracks between the eyes materially affect the appearance of the fruit shell.
Mechanical or other means	No specific limit in standards [2]	When physical injury (cleanliness, mechanical damage) materially affects the appearance or edible quality of the pineapple.

[1] Defects are based on a 10 size fruit (ten 4-pound average fruit per 40 pound box). Accordingly larger or smaller fruit are permitted to have defects relative to their size.

[2] However, can apply the general definition limit for "Damage" which means any defect which materially affects the appearance, or the edible or shipping quality of the fruit.

CHANGES IN LIMITS FOR DEFECTS [1]

[Serious Damage (U.S. No. 2)]

	Current standards	Proposed standards
Tops:		
Discoloration	Shipping points, the tops are of good green color characteristic of well-grown pineapples, and in the receiving markets, are fairly good green color and relatively free from dryness and discoloration.	When more than 50 percent of the crown leaves are discolored.
Mechanical or other means	No specific limit in standards [2]	When physical injury (cleanliness, mechanical damage) seriously affects the appearance of the pineapple.
Fruit:		
Bruising	No specific limit in standards [2]	When any bruise extends into flesh more than ¾ inch and when a bruise or combination of bruises affects an aggregate area of a circle more than 3 inches in diameter.
Sunburn	No specific limit in standards [2]	When there is bleaching of and severe softening of the shell affecting an aggregate area more than 3 inches in diameter.
Gummosis	No specific limit in standards [2]	When gum deposits readily penetrate into the flesh or causes discoloration of the shell affecting an aggregate area more than 1 inch in diameter.
Internal breakdown	No specific limit in standards [2]	When more than 20 percent of the edible flesh has a distinct medium dark brown or brown-black discoloration which seriously detracts from the appearance or edible quality of the fruit.

CHANGES IN LIMITS FOR DEFECTS [1]—Continued

[Serious Damage (U.S. No. 2)]

	Current standards	Proposed standards
Insects and insect feeding	No specific limit in standards [2]	When an aggregate area more than 1 inch in diameter has any insects attached to the surface (e.g. scale) or any injury from insect feeding which seriously detracts from the appearance, edible, or shipping quality of the fruit.
Healed cracks	No specific limit in standards [2]	When healed cracks on the eyes are more than ½ inch in width or more than 1 inch in depth or which seriously detract from the appearance, edible, or shipping quality of the fruit. When healed cracks between the eyes seriously affect the appearance of the fruit shell.
Mechanical or other means	No specific limit in standards [2]	When physical injury (cleanliness, mechanical damage) seriously affects the appearance or edible quality of the pineapple.

[1] Defects are based on a 10 size fruit (ten 4-pound average fruit per 40 pound box). Accordingly larger or smaller fruit are permitted to have defects relative to their size.

[2] However, can apply the general definition limit or "Serious Damage" which means any defect which seriously affects the appearance, or the edible or shipping quality of the fruit.

Grade Standards Format Changes

The current standards are organized to contain provisions for grades, unclassified pineapples, application of tolerances, size and marking requirements and definitions. The proposed standards would provide for an updated format for the standards to reflect current formating and organization for fresh commodity standards.

List of Subjects in 7 CFR Part 51

Fresh fruits, vegetables, and other products (Inspection, certification, and standards).

PART 51—[AMENDED]

For reasons set forth in the preamble, it is proposed that 7 CFR Part 51 be amended as follows:

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624.

2. Subpart—United States Standards for Pineapples is revised to read as follows:

Subpart—United States Standards for Grades of Pineapples

General

Sec.

51.1485 General.

Grades

51.1486 U.S. Fancy.
51.1487 U.S. No. 1.
51.1488 U.S. No. 2.

Tolerances

51.1489 Tolerances.

Size and Marking Requirements

51.1490 Size and marking requirements.

Definitions

51.1491 Similar varietal characteristics.
51.1492 Mature.
51.1493 Overripe.
51.1494 Stems removed.
51.1495 Well formed.
51.1496 Fairly well formed.
51.1497 Fairly uniform in size.
51.1498 Freezing injury or frozen (fruit).
51.1499 Freezing injury or frozen (tops).
51.1500 Single top.
51.1501 Crown slips.
51.1502 Shell.
51.1503 Flesh.
51.1504 Similar varietal characteristic color for tops.
51.1505 Decay.
51.1506 Internal breakdown.
51.1507 Injury.
51.1508 Damage.
51.1509 Serious damage.

Classification of Defects

51.1510 Classification of defects.

Subpart—United States Standards for Grades of Pineapples

General

§ 51.1485 General.

(a) Compliance with the provisions of these standards shall not excuse failure to comply with provisions of applicable Federal or State Laws.

(b) These standards are applicable to fresh pineapples with or without tops provided that pineapples with tops attached or with tops removed may not be commingled in the same container.

Grades

§ 51.1486 U.S. Fancy.

"U.S. Fancy" consists of pineapples which meet the following requirements:

(a) Basic requirements for fruit:
(1) Similar varietal characteristics;
(2) Mature;
(3) Well formed; and,
(4) Stems removed.
(b) Basic requirements for tops:
(1) Similar varietal characteristic color;
(2) Single stem;
(3) Moderately straight;
(4) Well attached to fruit; and,
(5) Not more than 1½ times the length of the fruit.
(c) Fruit free from:
(1) Fresh cracks;
(2) Evidence of rodent feeding;
(3) Freezing injury or frozen;
(4) Overripe; and,
(5) Decay.
(d) Tops free from:
(1) Crown slips;
(2) Freezing injury or frozen; and,
(3) Decay.
(e) Fruit free from injury by:
(1) Bruising;
(2) Sunburn;
(3) Gummosis;
(4) Internal breakdown;
(5) Insects;
(6) Healed cracks; and,
(7) Mechanical or other means.
(f) Tops free from injury by:
(1) Discoloration; and,
(2) Insects.
(g) Tolerances. (See § 51.1489)

§ 51.1487 U.S. No. 1.

"U.S. No. 1" consists of pineapples which meet the following requirements:

(a) Basic requirements for fruit:
(1) Similar varietal characteristics;
(2) Mature;
(3) Well formed; and,
(4) Stems removed.
(b) Basic requirements for tops:
(1) Similar varietal characteristic color;
(2) Single stem;
(3) Not more than moderately curved;
(4) Well attached to fruit; and,
(5) Not more than twice the length of the fruit.
(c) Fruit free from:

(1) Fresh cracks;
(2) Evidence of rodent feeding;
(3) Freezing injury or frozen;
(4) Overripe; and,
(5) Decay.
(d) Tops free from:
(1) Freezing injury or frozen; and,
(2) Decay.
(e) Fruit free from damage by:
(1) Bruising;
(2) Sunburn;
(3) Gummosis;
(4) Internal breakdown;
(5) Insects;
(6) Healed cracks; and,
(7) Mechanical or other means.
(f) Tops free from damage by:
(1) Discoloration;
(2) Crown slips; and,
(3) Insects.
(g) Tolerances. (See § 51.1489)

§ 51.1488 U.S. No. 2.

"U.S. No. 2" consists of pineapples which meet the following requirements:
(a) Basic requirements for fruit:
(1) Similar varietal characteristics;
(2) Mature; and,
(3) Fairly well formed.
(b) Basic requirements for tops:
(1) Similar varietal characteristic color;
(2) Well attached to fruit;
(3) Not completely curved over; and,
(4) Not more than two fairly well developed stems.
(c) Fruit free from:
(1) Fresh cracks;
(2) Evidence of rodent feeding;
(3) Freezing injury or frozen;
(4) Overripe; and,
(5) Decay.
(d) Tops free from:
(1) Freezing injury or frozen; and,
(2) Decay.
(e) Fruit free from serious damage by:
(1) Bruising;
(2) Sunburn;
(3) Gummosis;
(4) Internal breakdown;
(5) Insects;
(6) Healed cracks; and,
(7) Mechanical or other means.
(f) Tops free from serious damage by:
(1) Discoloration; and,
(2) Insects.
(g) Tolerances. (See § 51.1489)

Tolerances

§ 51.1489 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, based on sample inspection, the number of defective specimens in the individual sample, and the number of defective specimens in the lot shall be within the limitations specified in Tables I and II.

TABLE I.—SHIPPING POINT [1]

[Number of 25-Count Samples [3]]

Factor	Grades	AL [2]	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
Decay	All	1	0	[4]0	1	1	[4]1	2	2	[4]2	3	3	3	3	[4]3	4	4	4	4	4	[4]4	5	5	5	5	5
Damage, Serious Damage (Including Decay).	U.S. Fancy, U.S. No. 1.	4	3	4	5	7	8	9	10	11	12	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
Total Defects, Including Injury, Damage, Serious Damage, and Decay.	All	6	4	7	10	13	15	18	20	22	25	27	29	32	34	36	39	41	43	45	48	50	52	54	57	59	61

Factor	Grades	AL [2]	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50
Decay	All	1	[4]5	6	6	6	6	6	[4]6	7	7	7	7	7	7	7	[4]7	8	8	8	8	8	8	[4]8	9	9	[4]9
Damage, Serious Damage (Including Decay).	U.S. Fancy, U.S. No. 1.	4	30	31	32	34	35	36	37	38	39	40	41	42	43	44	45	46	46	47	48	49	50	51	52	53	54
Total Defects Including Injury, Damage, Serious Damage, and Decay.	All	6	63	65	68	70	72	74	76	79	81	83	85	87	90	92	94	96	98	100	103	105	107	109	111	113	116

[1] Shipping point as used in these standards, means the point of origin of the shipment in the production area or at port of loading for ship stores or overseas shipments, or in the case of shipments from outside the continental United States, the port of entry into the United States.
[2] All-Absolute limit permitted in individual 25-count sample.
[3] Sample size—25 count.
[4] Preferred number of samples for this acceptance number.

TABLE II—EN ROUTE OR AT DESTINATION [1]

[The number of samples examined shall correspond to the number of containers in the lot shown in chart (a). The total number of defects may not exceed that shown for the total number of fruit examined in chart (b)]

Number of containers in the lot	1 to 150	151 to 300	301 to 750	751 to 1200	1201 or more
Chart (a): Number of 25 count samples examined	2	4	6	8	10

Factor	Grades	Absolute limit	Number of 25 count samples				
			2	4	6	8	10
Chart (b):							
Decay	All	2	1	3	4	4	5
Damage (U.S. Fancy) or Serious Damage (US. NO. 1) by Permanent Defects, Excluding Decay.	U.S. Fancy, U.S. No. 1	4	4	7	9	11	14
Total Damage (U.S. Fancy) or Serious Damage (US. NO. 1) Including Decay.	U.S. Fancy, U.S. No. 1	4	4	7	10	13	15

Factor	Grades	Absolute limit	Number of 25 count samples				
			2	4	6	8	10
Total Permanent Defects	All	6	7	13	18	22	27
Total Defects	All	7	8	14	19	25	30
Total Number Fruit Examined			50	100	150	200	250

[1] En Route or at designation means any point other than shipping point as described on Page 21. Table I. Footnote 1. Shipping Point.

Size and Marking Requirements

§ 51.1490 Size and marking requirements.

(a) The pineapples in each container shall be fairly uniform in size and the count shall be plainly stamped, stenciled, or otherwise marked on the container.

(b) In order to allow for variations incident to proper packing, not more than 5 percent of the packages in any lot may fail to meet the requirements pertaining to size and marking.

Definitions

§ 51.1491 Similar varietal characteristics.

"Similar varietal characteristics" means the pineapples in any lot are similar in type and character of growth.

§ 51.1492 Mature.

"Mature" means the pineapple has reached the stage of development where ripening has progressed to a degree where the fruit is usable and edible.

§ 51.1493 Overripe.

"Overripe" means the fruit is soft and past commercial utility.

§ 51.1494 Stems removed.

"Stems removed" means the stem at the base of the fruit has been removed so that it does not extent more than one inch beyond the outermost bottom portion of the butt of the fruit.

§ 51.1495 Well formed.

"Well formed" means the fruit shows good shoulder development and is not lopsided or distinctly pointed, and that the sides are not noticeable flattened.

§ 51.1496 Fairly well formed.

"Fairly well formed" means the fruit is not excessively lopsided, or excessively flattened at the shoulders or sides.

§ 51.1497 Fairly uniform in size.

"Fairly uniform in size" means the weight of the fruit within individual containers does not vary more than 1½ pounds from smallest to largest.

§ 51.1498 Freezing injury or frozen (fruit).

(a) "Freezing injury (fruit)" means the edible flesh is glassy, watersoaked, and/or discolored characteristic of having been frozen.

(b) "Frozen (fruit)" means the fruit is affected by freezing so that some portion is in a hardened state with ice crystals present.

§ 51.1499 Freezing injury or frozen (tops).

(a) "Freezing injury (tops)" means the leaf tissue is glassy, watersoaked, and/or discolored as is characteristic of having been frozen.

(b) "Frozen (tops)" means the tops are to some degree, hardended by freezing with ice crystals present.

§ 51.1500 Single top.

"Single top" means the fruit has only one prominent main stem at the crown of the fruit.

§ 51.1501 Crown slips.

"Crown slips" means the small secondary top growths at the crown of the fruit.

§ 51.1502 Shell.

"Shell" means the external hard surface or rind of the fruit.

§ 51.1503 Flesh.

"Flesh" means the internal edible portion of the fruit.

§ 51.1504 Similar varietal characteristic color for tops.

"Similar varietal characteristic color for tops" means the tops in a lot may vary from a characteristic green to reddish-green color.

§ 51.1505 Decay.

"Decay" means breakdown or disintegration of the tops or breakdown, disintegration or fermentation of the pineapple caused by bacteria or fungi.

§ 51.1506 Internal breakdown.

"Internal breakdown" means a physiological deterioration which results in a watersoaked or brown or blackish discoloration.

§ 51.1507 Injury.

"Injury" means any defect listed in the Classification or Defects section or any other defect or combination of defects which more than slightly detracts from the appearance, edible, or shipping quality of the fruit.

§ 51.1508 Damage.

"Damage" means any defect listed in the Classification of Defects section or any other defect or combination of defects which materially detracts from the appearance, edible, or shipping quality of the fruit.

§ 51.1509 Serious damage.

"Serious damage" means any defect listed in the Classification of Defects section or any other defect or combination of defects which seriously detracts from the appearance, edible, or shipping quality of the fruit.

Classification of Defects

§ 51.1510 CLASSIFICATION OF DEFECTS [1]

Defects	Injury	Damage	Serious damage
Tops:			
Discloration	When more than 10 percent of the crown leaves are discolored.	When more than 25 percent of crown leaves are discolored.	When more than 50 percent of the crown leaves are discolored.
Crown slips	Free from	When more than 5 crown slips or when more than 2 are over 2¾ inches in length.	
Mechanical or other means.	When physical injury (cleanliness, mechanical damage) more than slightly affects the appearance of the pineapple.	When physical injury (cleanliness, mechanical damage) materially affects the appearance of the pineapple.	When physical injury (cleanliness, mechanical damage) seriously affects the appearance of the pineapple.

§ 51.1510 CLASSIFICATION OF DEFECTS [1]—Continued

Defects	Injury	Damage	Serious damage
Fruit:			
Bruising	When any bruise extends into flesh more than ¼ inch and when a bruise or combination of bruises affects an aggregate area of a circle more than 1½ inches in diameter.	When any bruise extends into flesh more than ½ inches and when bruise or combination of bruises affects an aggregate area more than 2¼ inches in diameter.	When any bruise extends into flesh more than ¾ inch and when a bruise or combination of bruises affects an aggregate area of a circle more than 3 inches in diameter.
Sunburn	When there is bleaching of and a slight softening of the shell affecting an aggregate area more than 1½ inches in diameter.	When there is bleaching of and a moderate softening of the shell affecting an aggregate area more than 2¼ inches in diameter.	When there is bleaching of and servere softening of the shell affecting an aggregate area more than 3 inches in diameter.
Gummosis	When gum deposits penetrate into the flesh or causes discoloration of the shell affecting an aggregate area more than ¼ inches in diameter.	When gum deposits slightly penetrate into the flesh or causes discoloration of the shell affecting an aggregate area more than ½ inch in diameter.	When gum deposits readily penetrate into the flesh or causes discoloration of the shell affecting an aggregate area more than 1 inch in diameter.
Internal breakdown	When more than 5 percent of the edible flesh has a distinct light brown to medium brown discoloration which more than slightly detracts from the appearance of edible quality of the fruit.	When more than 10 percent of the edible flesh has a light to medium brown discoloration which materially detracts from the appearance or edible quality of the fruit.	When more than 20 percent of the edible flesh has a distinct medium to dark brown or brow—black discoloration which seriously detracts from the appearance or edible quality of the fruit.
Insects and insect feeding.	When an aggregate area more than ½ inch in diameter has any insects attached to the surface (e.g. scale) or any injury from insect feeding, which more than the appearance, edible, or shipping quality of the fruit.	When an aggregate area more than ¾ inch in diameter has any insects attached to the surface (e.g. scale) or any injury from insect feeding, which materially detracts from the appearance, edible, or shipping quality of the fruit.	When an aggregate area more than 1 inch in diameter has any insects attached to the surface (e.g. scale) or any injury from insect feeding which seriously detracts from the appearance, edible, or shipping quality of the fruit.
Healed cracks	When healed cracks more than slightly detract from the appearance, edible, or shipping.	When healed cracks on the eyes are more than ¼ inch in width and not more than 1 inch in depth or which materially detract from the appearance, edible, or shipping quality of the fruit. When healed cracks between the eyes materially affect the appearance of the fruit shell.	When healed cracks on the eyes are more than ½ inch in width or more than 1 inch in depth or which seriously detract from the appearance, edible, or shipping quality of the fruit. When healed cracks between the eyes seriously affect appearance of the fruit shell.
Mechanical or other means.	When physical injury (cleanliness, mechanical damage) more than slightly affects the appearance or edible quality of the pineapple.	When physical injury (cleanliness, mechanical damage) materially affects the appearance or edible quality of the pineapple.	When physical injury (cleantiness, mechanical damage) seriously affects the appearance of edible quality of the pineapple.

[1] Classification of Defects is based on a 10 size fruit (ten, 4-pound average fruit per 40 pound box). Accordingly larger or smaller fruit are permitted to have defects relative to their size.

Dated: July 20, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-17411 Filed 7-27-89; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1754

RIN 0572-AA32

Advance and Disbursement of Funds—Telephone Loan Program

July 6, 1989.

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration proposes to amend Part 1754, Advance and Disbursement of Funds—Telephone Loan Program, of Chapter XVII in Title 7 of the Code of Federal Regulations by amending § 1754.9. This amendment shall provide for the orderly advance of funds on telephone loans.

All telephone loan program borrowers will be affected by this amendment to § 1754.9

DATE: Public comments concerning this proposed rule must be received by REA no later than September 11, 1989.

ADDRESS: Comments may be mailed to F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2250, South Building, U.S. Department of Agriculture, Washington, DC 20250. Comments received may be inspected in Room 2250 between 8:15 a.m. and 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2250, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382-8530. The Draft Regulatory Impact Analysis describing the options considered in developing this rule amendment is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major.".

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This rule amendment contains no information or recordkeeping requirements which would require approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 et. seq.).

Background

Historically, REA has advanced loan funds against the oldest loans first and in the case of concurrent REA-RTB loans, against the RTB loans first. The Agriculture Appropriations Act for Fiscal Year 1989, Pub. L. 100-460, permits borrowers to select the loans funds are advanced against during fiscal year 1989.

Since Government loans and guarantees are made for specific projects and purposes, it is important in maintaining the integrity of a loan to advance the funds from a particular loan against the specific projects and purposes approved for that loan rather than some other loan. The proposed rule achieves this by tying the advance of funds to the particular loan containing the purposes to be financed by the advance. For example, if a borrower receives a $500,000 loan to purchase a central office switch, monies advanced for that switch will be advanced from that loan.

When concurrent REA-RTB loans are involved, the funds for jointly financed purposes (generally, all but the RTB Class B stock) will be advanced proportionally. For example, a borrower receives concurrent REA-RTB loans in the amount of $1,020,000, $600,000 of REA loan funds and $420,000 of RTB loan funds (including $20,000 for the purchase of Class B stock). If no funds have been advanced as of October 1, 1989, each advance for a jointly financed loan purpose will consist of 60 percent REA loan funds ($600,000/$1,000,000) and 40 percent RTB loan funds ($400,000/$1,000,000). Funds for the purchase Class B stock will be advanced from the RTB loan only. If, however, on October 1, 1989, some funds had already been advanced, then the proportionment factor will be based on the unadvanced amounts on that date of REA and RTB funds available for jointly financed purposes. For example, if $220,000 of RTB loan funds (including $20,000 for the purchase of Class B Stock) had been advanced prior to October 1, 1989, each advance for a jointly financed loan purpose will consist of 75 percent REA loan funds ($600,000/$800,000) and 25 percent RTB loan funds ($200,000/$800,000).

List of Subjects in 7 CFR Part 1754

Loan programs—communications, Telecommunications, Telephone.

Therefore, REA hereby proposes to amend 7 CFR Part 1754 as follows:

PART 1754—[AMENDED]

1. The authority citation for 7 CFR Part 1754 continues to read as follows:

Authority: U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

§ 1754.92 [Amended]

2. Present § 1754.9(a) is removed.

3. Present § 1754.9 (b), (c), and (e) are designated § 1754.9 (c), (d), (e), and (f) respectively.

4. Section 1754.9 (a) and (b) are added to read as follows:

§ 1754.9 Order and method of advances of telephone loan funds.

(a) Until October 1, 1989, borrowers may specify the sequence of advances of funds under any combination of approved telephone loans from REA, RTB, or FFB, pursuant to Pub. L. 100-460. If the borrower does not specify the sequence, REA will contact the borrower to determine the sequence.

(b) Beginning October 1, 1989, funds for an approved purpose will be advanced against the loan in which funds were included for that purpose. When concurrent REA-FTB loans are made, some purposes may be associated with only one loan, such as purchase of RTB stock, which is always associated with the RTB loan. Most concurrent REA-RTB loan purposes, however, are jointly financed with funds included in both loans. Advances will be made as follows:

(1) When a purpose is associated with only one loan, funds for that purpose will be advanced against that loan.

(2) Advances for purposes jointly financed by concurrent REA-RTB loans will be advanced simultaneously against the loans in proportion to the amounts in the loans for such purposes. REA will calcuate the proportionment factor, which will specify the proportional amount of funds from the REA and RTB loans to be used for each advance for jointly financed purposes.

(i) If no advances were made prior to October 1, 1989, the proportionment factor for jointly financed purposes will be based on the originally approved amounts in the loan for such purposes.

(ii) If the concurrent REA-RTB loans were partially advanced as of October 1, 1989, the proportionment factor for jointly financed purposes will be based on the unadvanced funds remaining in the loans for such purposes as of October 1, 1989.

(iii) When a purpose is associated with only one loan that is part of concurrent REA-RTB loans, such as purchase of RTB stock, the amount for that purpose will be excluded by REA in determining the proportionment for jointly financed purposes.

(iv) REA will notify the borrower of (*a*) the amount included in the concurrent REA-RTB loans that is not associated with jointly financed purposes, and (*b*) the proportionment factor that will be used for advances for jointly financed purposes. For concurrent REA-RTB loans approved before October 1, 1989, the borrower will be notified at the time of the first advance subject to this rule. For concurrent REA-RTB loans approved on or after October 1, 1989, the borrower will be notified at the time of notification of loan approval.

(3) Funds applied from prior loans to subsequent loan purposes will be advanced before funds from subsequent loans following the provisions in paragraphs (a) (1) and (2) of this section.

* * * * *

Dated: July 12, 1989.

John N. Arnesen,

Acting Administrator, Rural Electrification Administration.

[FR Doc. 89-17682 Filed 7-27-89; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ACE-18]

Proposed Alteration of Transition Area—Emporia, Kansas.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to alter the 700-foot transition area at Emporia, Kansas, to provide additional controlled airspace for aircraft executing instrument approaches to the Emporia, Kansas, Municipal Airport. The existing transition area designation at this location delineates two extensions of 8 and 12.5 miles, respectively, but fails to contain a description of the radius surrounding the airport. The intent of this proposal is to include a 5-mile radius, around the Emporia Municipal Airport, in the Emporia, Kansas, 700-foot transition area description.

DATES: Comments must be received on or before September 15, 1989.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408. The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri. An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in triplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, Section 71.181 of the Federal Aviation Regulations (14 CFR Part 71) to altering the 700-foot transition area at Emporia, Kansas. To enhance airport usage at the Emporia, Kansas, Municipal Airport, additional controlled airspace is being provided for aircraft executing instrument approach procedures to this airport by the inclusion of a 5-mile radius surrounding the airport in the transition area designation. The intended effect of this action is to ensure segregation of aircraft using approach procedures under instrument flight rules (IFR) from other aircraft operating under visual flight rules (VFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Emporia, KS [Revised]

The airspace extending upward from 700 feet above the surface within a 5-mile radius of the Emporia Municipal Airport (lat. 38°19'48" N., long. 96°11'21" W.) and within 2 miles either side of the Emporia VORTAC 134° radial, extending from the 5-mile radius to 8 miles southeast of the VORTAC and 5 miles either side of the 010° bearing from the airport extending from the 5-mile radius to 12.5 miles north.

Issued in Kansas City, Missouri, on July 11, 1989.

William Behan,

Acting Manager, Air Traffic Division.

[FR Doc. 89-17696 Filed 7-27-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASW-25]

Proposed Revision of Transition Area: Lake Charles, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at Lake Charles, LA. The development of a new standard instrument approach procedure (SIAP) to the Southland Field Airport, Sulphur, LA, utilizing the Lake Charles Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made this proposed revision necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing this new SIAP to the Southland Field Airport. Coincident with this proposal would be the changing of the status of the Southland Field Airport from visual flight rules (VFR) to instrument flight rules (IFR).

DATES: Comments must be received on or before September 15, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 89-ASW-25, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASW-25."

The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the transition area at Lake Charles, LA. The development of a new SIAP to the Sulphur Southland Field Airport, utilizing the Lake Charles VORTAC, has necessitated the proposal of this revision. This proposal would expand the existing Lake Charles Transition Area to include Sulphur Southland Field Airport. The intended effect of this proposed revision is to provide adequate controlled airspace for aircraft executing the new SIAP to the Sulphur Southland Field Airport. Coincident with this action would be the changing of the airport status from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Lake Charles, LA [Amended]

By adding to the end of the legal description: And within a 7-mile radius of the Sulphur Southland Field Airport (latitude 30°07'53" N., longitude 93°22'34" W.).

Issued in Fort Worth, TX on July 11, 1989.

Larry L. Craig,

Manager, Air Traffic Division Southwest Region.

[FR Doc. 89-17695 Filed 7-27-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-230-07-6310-02]

RIN 1004-AB39

43 CFR Part 5440

Conduct of Sales

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend provisions of the existing regulations in 43 CFR Part 5440, Conduct of Sales. The Department of the Interior has determined that it is necessary to amend the existing regulations concerning the resale of timber from uncompleted contracts to allow the original purchaser to participate in the resale only under certain circumstances and conditions.

DATE: Comment period expires August 28, 1989. Comments received or postmarked after this date may not be considered in the decisionmaking process on the final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Department of the Interior, 1800 'C' Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dave Estola (503) 231-6837 or Lyndon Werner (202) 653-8864.

SUPPLEMENTARY INFORMATION: The Department of the Interior has determined that the existing regulations on the resale of timber from uncompleted contracts are inadequate.

Under existing regulations, purchasers of sales which subsequently are not completed may bid on the resale of any timber remaining on the contract area provided that all of the timber has been felled and paid for. When the remaining timber is resold, the original purchaser receives a refund, less the costs of resale, in an amount equal to the resale bid rates or the original contract rates per species, whichever is less, in accordance with provisions of the timber sale contract. If the new purchaser happens also to have been the original purchaser, the purchaser effectively receives an extension of time to complete the contract with minimal monetary penalty.

The proposed rulemaking would restructure § 5442.2 for clarity and amend it in several ways. First, it would remove the requirement in the current regulation that the original purchaser cut the timber before the contract expiration date in order to qualify to bid on resale of his earlier uncompleted contract. Second, it would remove the definitions of "person" and "affiliate" now contained in paragraph (a). These definitions are being replaced in another rulemaking that would include definitions of "affiliate" and "purchaser" in § 5400.0–5 of this title. Finally, it would add a requirement that the original purchaser agree to retention by the Bureau of Land Management of the original payment under the uncompleted contract, less the cost of resale, as a credit toward the total purchase price of the resale contract, in order to be awarded the resale contract. Other basic requirements contained in the current regulation remain in this proposed rulemaking, although restated for clarity. These are that, for the section to apply, (1) 50 percent or more of the timber included in the new sale is required to be timber from the uncompleted contract; (2) the contract has not been canceled for purchaser's breach; and (3) the purchaser is required to have made full payment on the original contract by its expiration date.

The objective of this rulemaking is to encourage timely performance of original contracts and prompt performance of resale contracts in order to promote a more orderly forest management process and revenue flow.

The principal authors of this proposed rulemaking are Dave Estola, Oregon State Office, and Lyndon Werner, Washington Office, assisted by the staff of the Division of Legislation and Regulatory Management.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Additionally, as required by Executive Order 12630, the Department has determined that the rulemaking would not cause a taking of private property.

This rulemaking does not contain information collection requirements that require approval by the Office of Management Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR Part 5440

Forest and forest products, Conduct of sales, Government contracts, Public lands.

Under the authority of section 5 of the Act of August 28, 1937 (43 U.S.C. 1181e), and the Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*), Chapter II of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 5440—[AMENDED]

1. The authority citation for Part 5440 continues to read as follows:

Authority: Sec. 5, 50 Stat. 875; 61 Stat. 681, as amended; 69 Stat. 367; 43 U.S.C. 1181e; 30 U.S.C. 601 *et seq.*

2. Section 5442.2 is revised to read as follows:

§ 5442.2 Resale of timber from uncompleted contracts.

(a) This section applies to the sale of timber only when 50 percent or more of the timber included in the sale is timber remaining from an uncompleted contract. A bid from a purchaser who held the uncompleted contract, or an affiliate of such purchaser will be considered only if (1) the contract was not canceled for purchaser's breach and (2) payment was completed by the expiration date.

(b) The purchaser who held the uncompleted contract, or affiliate of such purchaser, shall, upon execution of the resale contract, agree to the retention by the Bureau of Land Management of the original payment under the uncompleted contract for the unremoved timber as a credit, less the costs of resale, toward the purchase price of the resale contract.

June 14, 1989.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR Doc. 89–17624 Filed 7–27–89; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AA71

Refuge-Specific Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to amend certain regulations in 50 CFR Part 32 that pertain to migratory game bird, upland game, and big game hunting on individual national wildlife refuges. Refuge hunting programs are reviewed annually to determine whether the regulations governing individual refuge hunts should be modified, deleted or added to. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitats may warrant modifications to ensure the continued compatibility of hunting with the purposes for which the individual refuges involved were established and, to the extent practical, make refuge hunting programs consistent with State regulations.

DATE: Comments must be received on or before August 28, 1989.

ADDRESS: Address comments to: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 18th and C Streets, NW., MS 670–ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Larry LaRochelle, Division of Refuges, U.S. Fish and Wildlife Service, 18th and C Streets, NW., MS 670–ARLSQ, Washington, DC 20240; Telephone (703) 358–2036.

SUPPLEMENTARY INFORMATION: 50 CFR Part 32 contains provisions governing hunting on national wildlife refuges. Hunting is regulated on refuges to (1) ensure compatibility with refuge purposes, (2) properly manage the wildlife resource, (3) protect other refuge values, and (4) ensure refuge user safety. On many refuges, the Service policy of adopting State hunting regulations is adequate in meeting these objectives.

On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific hunting regulations may be issued only after a wildlife refuge is opened to migratory game bird, upland game, or big game hunting through publication in the **Federal Register**. These regulations may list the wildlife species that may be hunted, seasons, bag limits, methods of hunting, descriptions of open areas, and other provisions. Prevously issued refuge-specific regulations for migratory game bird, upland game, and big game hunting are contained in 50 CFR 32.12, 32.22, and 32.32 respectively. Many of the proposed amendments to these sections are being promulgated to standardize and clarify the existing language of these regulations.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. It is, therefore, the purpose of this proposed rulemaking to seek public input regarding these proposed amendments. Accordingly, interested persons may submit written comments to the Assistant Director, Refuges and Wildlife (address above) by the end of the comment period. All substantive comments will be considered by the Department prior to issuance of a final rule.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that such uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act. Hunting plans are developed for each refuge prior to opening it to hunting. In many cases, refuge-specific hunting regulations are included in the hunting plan to ensure the compatibility of the hunting programs with the purposes for which the refuge was established. Initial compliance with the NWRSAA and Refuge Recreation Act is ensured when hunting plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR. Continued compliance is ensured by annual review of hunting programs and regulations.

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; or a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The proposed amendments to the codified refuge-specific hunting regulations would make relatively minor adjustments to existing hunting programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions. The benefits accruing to the public are expected to exceed by a large margin the costs of administering this rule. Accordingly, the Department of the Interior has determiend that this proposed rule is not a "major rule" within the meaning of E.O. 12291 and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements are presently approved by OMB under #1018–0014 Economic and Public Use Permits. These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is ensured when hunting plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR. Refuge-specific hunting regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The changes proposed in this rulemaking would not substantially alter the existing uses of the refuges involved. Information regarding hunting permits and the conditions that apply to individual refuge hunts and maps of the hunt areas are available at refuge headquarters or can be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 Multnomah Street, Portland, Oregon 97232; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303; Telephone (404) 331–0833.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont,

Virginia and West Virginia. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158; Telephone (617) 965–8222.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

Region 7—Alaska (Hunting on Alaska refuges is in accordance with State regulations. There are no refuge-specific hunting regulations for these refuges). Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3538.

Larry LaRochelle, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this proposed rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

Accordingly, it is proposed to amend Part 32 of Chapter I of Title 50 of the Code of Federal Regulations as set forth below:

PART 32—[AMENDED]

1. The authority citation for Part 32 would continue to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k,664,668dd, and 715i.

2. Section 32.12 would be amended by revising (e)(4); revising (f)(6)(v); adding a new (f)(6)(vii); adding a new (f)(8)(v); revising (f)(15)(vi); removing (j); redesignating (k) through (z) as (j) through (y); revising (j)(5) introductory text; revising (p)(6); adding a new (y)(1)(iii); revising (aa) (5) and (6); revising (bb)(1)(i); revising (hh)(8)(iii); removing (ll)(3); and redesignating (ll)(4) as (ll)(3).

§ 32.12 Refuge-specific regulations; migratory game birds.

* * * * *

(e) *Arkansas*—* * *

(4) *White River National Wildlife Refuge.* Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(f) *California*—* * *

(6) *Lower Klamath National Wildlife Refuge.** * *

(v) Air-thrust, inboard water-thrust and boats with motors greater than 25 horsepower are not permitted.

* * * * *

(vii) Only nonmotorized boats and boats with electric motors are permitted on Unit 9.

* * * * *

(8) *Modoc National Wildlife Refuge.** * *

(v) Hunters may not possess more than 25 shells after leaving the parking area.

* * * * *

(15) *Tule Lake National Wildlife Refuge.** * *

(vi) Air-thrust, inboard water-thrust and boats with motors greater than 25 horsepower are not permitted.

* * * * *

(j) *Idaho*—* * *

(5) *Kootenai National Wildlife Refuge.* Hunting of geese, ducks, and coots is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(p) *Louisiana*—* * *

(6) *Tensas River National Wildlife Refuge.* Hunting of ducks, coots, woodcock and snipe is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(y) *Nevada*—(1) *Pahranagat National Wildlife Refuge.** * *

(iii) Hunting of waterfowl, coots, moorhens, and snipe is permitted only on the opening day of the season and alternate days throughout the remainder of the season.

* * * * *

(aa) *New Jersey—Edwin B. Forsythe National Wildlife Refuge.** * *

(5) In Hunting Area C of the Barnegat Division, hunting is restricted to designated areas, with each site limited to one party of hunters.

(6) Use of Hunting Unit 3 of the Brigantine Division may be restricted to certified Young Waterfowl Program trainees for up to 30 days as posted.

* * * * *

(bb) *New Mexico—(1) Bitter Lake National Wildlife Refuge.** * *

(i) Hunters must use and be in possession of only shells containing steel shot.

* * * * *

(hh) *Oregon*—* * *

(8) *Lower Klamath National Wildlife Refuge.** * *

(iii) Air-thrust, inboard water-thrust and boats with motors greater than 25 horsepower are not permitted.

* * * * *

3. Section 32.22 would be amended by revising (d) (6) and (7); (e)(4)(i); (e)(10)(i); (i)(2); (j)(3)(i); (q) (3)(i), (6) and (7)(i); (z)(1); (aa)(1)(ii); and (ff)(10)(ii); removing (hh)(2)(ii); redesignating (hh)(2)(iii) as (hh)(2)(ii); and revising (jj)(5).

§ 32.22 Refuge-specific regulations; upland game.

* * * * *

(d) *Arkansas*—* * *

(6) *Wapanocca National Wildlife Refuge.* Hunting of squirrel, rabbit, beaver, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(7) *White River National Wildlife Refuge.* Hunting of squirrel, rabbit, beaver, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(e) *California*—* * *

(4) *Lower Klamath National Wildlife Refuge.** * *

(i) In the controlled pheasant hunting area, entry permits are required for the first 4 days hunting is permitted for all hunters 16 years of age or older. Hunters under the age of 16 hunting the controlled area must be accompanied by an adult with a permit.

* * * * *

(10) *Tule Lake National Wildlife Refuge.** * *

(i) In the controlled pheasant hunting area, entry permits are required for the first 4 days hunting is permitted for all hunters 16 years of age or older. Hunters under the age of 16 hunting the controlled area must be accompanied by an adult with a permit.

* * * * *

(i) *Georgia*—* * *

(2) *Savannah National Wildlife Refuge.* Hunting of squirrels and feral hogs is permitted on designated areas of the refuge subject to the following conditions: Permits are required.

* * * * *

(j) *Idaho*—* * *

(3) *Deer Flat National Wildlife Refuge.** * *

(i) Hunting of pheasant, quail, and partridge is permitted on the Lake Lowell Sector.

* * * * *

(q) *Louisiana*—* * *

(3) *D'Arbonne National Wildlife Refuge.** * *

(i) Hunting of raccoon and opossum is permitted only during January and December of odd numbered years and only during daylight hours during the state squirrel season.

* * * * *

(6) *Tensas National Wildlife Refuge.* Hunting of squirrel, rabbit and raccoon is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(7) *Upper Quachita National Wildlife Refuge.** * *

(i) Hunting of raccoon and opossum is permitted only during December and January of odd numbered years and only during daylight hours during the state squirrel season.

* * * * *

(z) *Nevada*—(1) *Pahranagat Nation Wildlife Refuge.* Hunting of quail and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only on the opening day of the season and alternate days throughout the remainder of the season.

(ii) Hunting of jackrabbit is permitted only during the regular State season for cottontail rabbit.

* * * * *

(aa) *New Mexico*—(1) *Bitter Lake National Wildlife Refuge.** * *

(ii) Hunters must use and be in possession of only shells containing steel shot.

* * * * *

(ff) *Oregon*—* * *

(10) *Umatilla National Wildlife Refuge.** * *

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day and New Years Day on the McCormack Unit.

* * * * *

(jj) *Tennessee*—* * *

(5) *Tennessee National Wildlife Refuge.* Hunting of squirrel and raccoon is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

4. Section 32.32 would be amended by revising (d)(5); (i) (1), (3) and (6); (j); (n); (r) (3) and (4)(i); removing (r)(4)(ii); redesignating (r)(4) (iii) and (iv) as (r)(4) (ii) and (iii) respectively; revising (r) (7) and (8)(i); removing (r)(8)(ii); redesignating (r)(8) (iii) and (iv) as (r)(8) (ii) and (iii) respectively; revising (cc)(1) introductory paragraph and (cc)(1) (i) and (ii); removing (cc)(1)(iii); adding (dd)(3)(iv); revising (gg) (3) and (4); (ll)(2) (v), (vii), (viii), (ix) and (3); (oo) (viii) and (x) and (rr)(2)(iv).

§ 32.32 Refuge-specific regulations; big game.

(d) *Arkansas*—* * *

(5) *White River National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(i) *Georgia*—(1) *Blackbeard Island National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(3) *Harris Neck National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(6) *Wassaw National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(j) *Georgia and South Carolina—Savannah National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(n) *Illinois, Iowa and Missouri-Mark Twain National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Hunting of deer is permitted on the Gardner and Big Timber Divisions and on Turkey and Otter Islands.

* * * * *

(r) *Louisiana*—* * *

(3) *Catahoula National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Daily permits are required.

* * * * *

(4) *D'Arbonne National Wildlife Refuge.* * * *

(i) Either-sex deer hunting with firearms will be for nine consecutive days beginning with the first day of the Union Parish either-sex season.

* * * * *

(7) *Tensas National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(8) *Upper Quachita National Wildlife Refuge.* * * *

(i) Either-sex deer hunting with firearms will be for nine consecutive days beginning with the first day of the Union Parish either-sex season.

* * * * *

(cc) *Nevada—(1) Desert National Wildlife Range.* Hunting of bighorn sheep and deer is permitted on designated areas of the range subject to the following conditions:

(i) Bighorn sheep and deer guides are required to obtain Special Use Permit prior to taking clients on to the range.

(ii) Natural bighorn sheep mortalities (pick-up heads) found on the range are government property and possession or removal of them from the range is not permitted.

(dd) New Jersey—* * *

(3) *Supawna Meadows National Wildlife Refuge.* * * *

(iv) Use or possession of alcoholic beverages while hunting is prohibited.

* * * * *

(gg) *North Carolina*—* * *

(3) *Mackay Island National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(4) *Pee Dee National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions: Permits are required.

* * * * *

(11) *South Carolina*—* * *

(2) *Carolina Sandhills National Wildlife Refuge.* * * *

(v) In addition to the State bag limits, two antlerless deer may be taken during each of the three hunt seasons. * * *

(vii) Hunters are required to wear a minimum of 500 square inches of fluorescent orange material visible above the waistline.

(viii) Firearms must be unloaded and cased or dismantled while being transported in a vehicle.

(ix) Hunting within 100 feet of maintained roads or within 500 feet of the paved wildlife drive is prohibited.

* * * * *

(3) *Pinckney Island National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(oo) *Texas—Aransas National Wildlife Refuge* * * *

(viii) Baiting in any form, introduction of any material or food as bait or attractant, or possession of such food or material is prohibited. This includes, but is not limited to, corn, grain, hay and mineral blocks. * * *

(x) Hunters must satisfy the Entrance Fee requirement authorized by the Emergency Wetlands Resources Act.

* * * * *

(rr) *Virginia*—* * *

(2) *Chincoteague National Wildlife Refuge.* * * *

(iv) Hunters, during the State firearms season, must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

Dated: June 22, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-17589 Filed 7-27-89; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 54, No. 144
Friday, July 28, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Plant Genetic Resources Board Meeting

According to the Federal Advisory Committee Act of October 1972 (Pub. L. 92-463, 86 Stat. 770-776), the USDA, Science and Education, announces the following meeting:

Name: National Plant Genetic Resources Board.

Date: November 14-15, 1989.

Time: 8:30 a.m.-5 p.m., November 14; 8:30 a.m.-5 p.m., November 15.

Place: Room 104-A, Williamsburg Room, Administration Building, Department of Agriculture, Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review matters that pertain to plant germplasm in the United States and possible impacts on related national and international programs; and discuss other initiatives of the Board.

Contact Person: H.L. Shands, Executive Secretary, National Plant Genetic Resources Board, U.S. Department of Agriculture, BARC-West, Room 140, Building 005, Beltsville, Maryland 20705. Telephone: (301) 344-3311.

Done at Beltsville, Maryland, this 12th day of July 1989.

Henry L. Shands,

Executive Secretary, National Plant Genetic Resources Board.

[FR Doc. 89-17661 Filed 7-27-89; 8:45 am]

BILLING CODE 3410-03-M

Forest Service

Fuzzy Bighorn Timber Harvest Project; Clearwater National Forest, Clearwater County, ID

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will analyze and disclose the environmental impacts of a proposal to harvest and regenerate timber, reconstruct existing roads and construct new roads in portions of Orogrande Creek and Weitas Creek on the Pierce Ranger District. This proposal area was originally part of the RARE II Bighorn Weitas Roadless Area (#1306). An environmental impact statement (EIS) will be prepared which will document the analysis. This EIS will tier to the Clearwater National Forest Land and Resource Management Plan of September, 1987, which provides overall guidance in achieving the desired future condition for the area. The primary purpose of the proposed action is to improve big game range and produce timber, improving growth and yield on suitable ground.

Some preliminary scoping was initiated for this project in March, 1988. The Forest Service is seeking information and comments from Federal, State, local agencies and other individuals or organizations who may now be interested in or affected by the proposed actions. This input will be used in preparing the Draft EIS (DEIS). This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those wich have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies.

The agency invites written comments and suggestions on the issues and management opportunities for the area being analyzed.

DATE: Comments concerning the scope of the analysis should be received by September 30, 1989 to receive timely consideration in the preparation of the Draft EIS.

ADDRESS: Send written comments to Thomas C. Blunn, District Ranger, Pierce Ranger District, P.O. Box 308, Kamiah, ID 83536.

FOR FURTHER INFORMATION CONTACT: Larry Des Roches, Fuzzy Bighorn Interdisciplinary Team Leader, or Thomas C. Blunn, District Ranger, Pierce Ranger District, Clearwater National Forest, P.O. Box 308, Kamiah, ID 83536.

SUPPLEMENTARY INFORMATION: The proposed action involves approximately 6600 acres of which 5400 acres is in the Bighorn Weitas Roadless (#1306). The total area of the Bighorn Weitas Roadless Area (#1306) is 235,510 acres. Management activities under consideration would occur in tributaries of Orogrande Creek and Weitas Creek. Included in the area of analysis are all or portions of the following: sections 24, 25,26, 35, and 36 T38N, R7E and Sections 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33 and 34 T38N, R8E, Boise Meridian.

The Land and Resource Management Plan for the Clearwater National Forest provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards, guidelines, and management area direction.

The areas of proposed harvest and reforestation for the Fuzzy Bighorn project are within Management Areas E1, C8S, C3, C4 and M2. Forest plan direction states that Management Area E1 consists of lands wich are generally the most productive timber land On the Forest. The management goal is to provide optimum, sustained production of wood products in a cost effective manner as well as provide adequate protection of soil and water quality, manage viable elk populations, manage a range of fish habitat potential and manage a roaded natural setting for dispersed recreation.

Management Area C8S consists of lands of high value fishery streams, productive timber land, and key big-game summer range. The management goal is to maintain high quality wildlife and fishery objectives while producing timber from the productive forest land.

Management Area C3 contains land within inventoried big-game winter range and unsuitable for timber management. The management goal is to provide winter forage and thermal cover for big game.

Management Area C4 contains land within inventoried big game winter range and suitable for timber management. The management goal is to provide sufficient forage and cover for existing and projected big game populations in conjunction with achieving timber production outputs.

BEST COPY AVAILABLE

Management Area M2 consists of lands that are riparian and timber producing along perennial streams. The management goal is to manage for multiple use integrated with adjacent areas E-1 and C4, giving special consideration to protect water and other riparian resources.

The analysis will consider a range of alternatives. One of these will be the "no-action" alternative in which all harvest and regeneration activities would not be implemented. Other alternatives will examine various levels and locations of harvest and regeneration to provide emphasis on differing mixes of timber and non-timber resource values.

The analysis will disclose the environmental effects of alternative ways of implementing the Forest Plan. The Forest Service will analyze and document the direct, indirect and cumulative environmental effects of the alternatives. In addition, the EIS will disclose the analysis of site specific mitigation measures and their effectiveness.

Public participation is especially important at several points of the analysis. People may visit with Forest Service official sat any time during the analysis and prior to the decision. However, two periods of time are identified for the receipt of comments on the analysis. The two public comment periods are during the scoping process (now thru September 30, 1989) and during review of the Draft EIS (December 1989).

The U.S. Fish and Wildlife Service, Department of the Interior, will be informally consulted throughout the analysis. To meet the requirements of the Endangered Species Act, the U.S. Fish and Wildlife Service will review the EIS and Biological Assessment and, if necessary, render a formal Biological Opinion of the effects on the Threatened and Endangered Species including the grizzly bear, and gray wolf.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by November 30, 1989. At that time, the EPA will publish a notice of availability of the DEIS in the **Federal Register**. After a 45 day public comment period, the comments received will be analyzed and considered by the Forest Service in the final environmental impact statement (FEIS). The FEIS is scheduled to be completed March, 1990.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement may be waived or dismissed by the courts. Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The Forest Service will respond in the FEIS to the comments received on the DEIS. The District Ranger who is the responsible official for this EIS will make a decision regarding this proposal considering the comments, responses, environmental consequences discussed in the FEIS and the applicable laws, regulations and policies. The decision and reasons for the decision will be documented in a Record of Question.

Thomas C. Blunn, District Ranger for the Pierce Ranger District, Clearwater National Forest, is the Responsible Official.

Thomas C. Blunn,

District Ranger, Pierce Ranger District, Clearwater National Forest.

Date: July 14, 1989.

[FR Doc. 89-17633 Filed 7-27-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held August 23 and 24, 1989, 9:00 a.m., in the JFK Federal Building, Scolley Square, Boston, Massachusetts. On August 23 the meeting will convene in Executive Session at 9:00 a.m. The Open Session will convene at 1:00 p.m. On August 24 the meeting will reconvene at 9:00 a.m. in Executive Session and continue to its conclusion. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to electronics and related equipment and technology.

Agenda

Executive Session August 23, 9:00 a.m.–12:00 p.m.

1. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

General Session August 23, 1:00 p.m.–5:00 p.m.

2. Opening remarks by the Chairman.
3. Presentation of papers or comments by the public.
4. Presentation by Galileo Electro-Optics Corporation on microchannel technology.
5. Discussion of the following CCL's:
   - 1522—Lasers
   - 1529—Electronic equipment for testing & measuring
   - 1531—Frequency synthesizers
   - 1533—Signal analyzers
   - 1556—Optical elements & elements for optical tubes
   - 1584—Cathode-ray oscilloscopes
   - 1585—Photographic equipment

Executive Session August 24, 9:00 a.m.–5:00 p.m.

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded two weeks prior to the meeting date to the following address:

Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 4069A, U.S. Department of Commerce, 14th & Constitution Ave. NW., Washington, DC 20230

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes please call Lee Ann Carpenter, 202–377–2583.

Date: July 24, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 17609 Filed 7-27-89; 8:45 am]

BILLING CODE 3510-DT-M

Laser and Opto-Electronic Subcommittee of the Electronic Instrumentation Technical Advisory Committee; Closed Meeting

A meeting of the Laser and Opto-Electronic Subcommittee of the Electronic Instrumentation Technical Advisory Committee will be held August 22, 1989, 9:00 a.m. in the Executive Dining Room, JFK Federal Building, Scolley Square, Boston, Massachusetts. The Subcommittee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to lasers and related equipment and technology. The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes please call Lee Ann Carpenter, 202–377–2583.

Dated: July 24, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 17610 Filed 7-27-89; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Order No. 437]

Resolution and Order Approving the Application of the Municipality of Anchorage, Alaska, for a Foreign-Trade Zone in Anchorage; Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Municipality of Anchorage, Alaska, filed with the Foreign-Trade Zones Board (the Board) on December 15, 1987, and amended on February 22, 1989, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone at sites in Anchorage, within the Anchorage Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out its zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority

To Establish, Operate, and Maintain a Foreign-Trade Zone in Anchorage, Alaska

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Municipality of Anchorage, Alaska (the Grantee) has made application (filed December 15, 1987, FTZ Docket 44–87, 52 FR 48555, and amended on February 22, 1989, 54 FR 8371) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Anchorage, Alaska, within the Anchorage Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 160, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued

thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 18th day of July, 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board.
Robert A. Mosbacher,
Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 89-17602 Filed 7-27-89; 8:45 am]
BILLING CODE 3510-DS-M

[Order No. 436]

Resolution and Order Approving the Application of the City of St. Paul, Alaska, for a Foreign-Trade Zone in St. Paul; Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of St. Paul Island, Alaska, filed with the Foreign-Trade Zones Board (the Board) on December 14, 1987, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone on St. Paul Island, at St. Paul Municipal Airport, a Customs User Fee Airport, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied if approval is initially given for a restricted period until the issue of reimbursability for zone supervision at Customs user fee airports is resolved, approves the application for one year from the date of activation, subject to extension upon application to the Board.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority

To Establish, Operate, and Maintain a Foreign-Trade Zone In St. Paul, Alaska

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the City of St. Paul, Alaska (the Grantee) has made application (filed December 14, 1987, FTZ Docket 43–87, 52 FR 48556) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in St. Paul, Alaska, adjacent to the St. Paul Customs User Fee Airport;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) would be satisfied if approval is initially given subject to the time limit in the resolution accompanying this action;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 159, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, the one-year time limit in the resolution accompanying this action, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a resonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 18th day of July, 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board.
Robert A. Mosbacher,
Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 89-17603 Filed 7-27-89; 8:45 am]
BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Meeting Cancellation

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The public meeting on July 27–28, 1989, of the North Pacific Fishery Management Council's Habitat Committee as published in the **Federal Register** (54 FR 30104), has been cancelled. A new meeting date has not yet been set. All other information as originally published remains unchanged.

For more information contact Steve Davis, Deputy Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone (907) 271–2809.

Dated: July 25, 1989.

David S. Crestin,
Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-17808 Filed 7-26-89; 2:16 pm]
BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: August 28, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On May 5 and June 9, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 19428 and 24733) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018). No comments were received in direct response to the proposed additions to the Procurement List. However, during the comment period, the Committee received a letter from the Governor of a State requesting that a portion of the annual Federal requirement for the elastic gauze bandage, the medical packet and other dressings be shared with an Indian Tribe. According to the letter, the Tribe was in the process of developing the capability to produce these and other dressings. The Committee has decided to add the entire portion because under its regulations it is required to make a decision based upon the impact of a proposed addition on the current or most recent supplier for the item and not a potential supplier. The Committee also noted that taking the approach proposed by the Governor would not assure that the Indian Tribe in question would receive a contract for the remaining portion of the annual requirement. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1989:

Commodities

Bandage, Gauze, Elastic
6510–00–913–7906
Medical Packet, Individual Survival Kit, Airman's
6545–00–231–9421
Pin, Tent, Metal
8340–00–985–7461

Services

Janitorial/Custodial
U.S. Courthouse, Ford and Walker Streets, Augusta, Georgia
Janitorial/Custodial
Washington National Records Center Complex, Suitland and Silver Hill Roads, Suitland, Maryland.

Beverly L. Milkman,
Executive Director.

[FR Doc. 89-17699 Filed 7-27-89; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1989 Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received a proposal to add to Procurement List 1989 commodities to be produced by workshops for the blind or other severely handicapped.

Comments must be received on or before: August 28, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1989, which was published on November 15, 1988 (53 F.R. 46018):

Starter Rope, Engine
2990–00–972–7950
Cap, Utility, Camouflage
8405–01–246–4176
8405–01–246–4177
8405–01–246–4178
8405–01–246–4179
8405–01–246–4180
(50% of Government requirement)
Cover, Toxicological Agents Protective
8415–00–261–6443
Brassard, Army, Military
8455–01–236–1174
Kit, Maintenance

8485-00-753-6335.
Beverly L. Milkman,
Executive Director.
[FR Doc. 89-17700 Filed 7-27-89; 8:45 am]
BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Environmental Restoration Program

ACTION: Notice of fund availability and application instructions.

SUMMARY: The Department of Defense (DoD), through the Defense Environmental Restoration Program (DERP), involves State governments in the environmental restoration of DoD installations (hereinafter referred to as "cleanups"). DoD will make funds available to State governments for their support services associated with cleanups. DoD cleanups and State support services shall be consistent with the applicable provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Superfund Amendments and Reauthorization Act of 1986 (SARA), State laws, and the National Contingency Plan (NCP). DoD is soliciting applications for funding for State services supporting DERP.

DATES: Applications will be accepted July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Applications can be submitted to: U.S. Department of Defense, Office of the Deputy Assistant Secretary of Defense (Environment) (DASD(E)), The Pentagon, Room 3D833, Washington, DC 20301-4000. For further information contact: Lieutenant Colonel Ken Cornelius, USAF (202) 325-2211.

SUPPLEMENTARY INFORMATION:

I. Introduction

SARA, Section 211 (Title 10—Armed Forces, U.S. Code, Sections 2701-2707, and 2810) requires the Secretary of Defense to carry out a program of environmental restoration at facilities under his jurisdiction. The program is known as the Defense Environmental Restoration Program (DERP). Activities of the program described as "the identification, investigation, research and development, and cleanup of contamination from hazardous substances, pollutants, and contamination" must be carried out subject to, and in a manner consistent with, Section 120 of CERCLA (relating to Federal facilities). SARA Section 211 and CERCLA Sections 210 and 121 require DoD to provide the opportunity for appropriate State authorities to be involved in several specified aspects of the program. Program activities are funded through the annual Environmental Restoration, Defense (ER,D) appropriations to the Defense Environmental Restoration Account (DERA).

To resolve several issues regarding State involvement in the program, DoD and a State workgroup have developed model language for a Department of Defense and State Memorandum of Agreement (DSMOA) regarding State support services to DoD for activities funded under the ER,D appropriation. The purpose of a DSMOA is to expedite the cleanup of DoD installations within a State and to ensure compliance with applicable State laws and regulations. An executed DSMOA is an overarching agreement of commitment between DoD and a State, but it does not obligate nor commit funds. The model DSMOA language is provided at the end of this notice.

An executed DSMOA is mandatory for funding consideration. Funds from DERA will be made available through a cooperative agreement with each State that provides support services to DoD in carrying out the provisions of DERP under a DSMOA in accordance with applicable provisions of CERCLA/SARA, State laws, and the NCP.

II. Cooperative Agreements

It is the intention of DoD to sign one cooperative agreement with each State to cover State support services for cleanup activities at all installations in the State as they are listed in Appendix A of a DSMOA. DoD expects that pursuant to a DSMOA, reimbursements for State services shall not exceed one (1) percent of the estimated total costs for all of the work funded under DERP since October 17, 1986, and that may be funded in the future, or a total of $50,000, whichever is greater. The State may ordinarily request that up to a maximum of twenty-five (25) percent of the total State services' funds (one (1) percent of the estimated total costs for all work funded under DERP) may be provided in accordance with Section II of a DSMOA during any fiscal year. At least ten (10) percent of a State services funding request will be provided in accordance with Section II of a DSMOA during a fiscal year if the State requests an allocation of ten (10) percent or more.

III. Who May Apply

DoD will accept applications only from the State Agency authorized by the State to enter into a DSMOA and a Cooperative Agreement on behalf of the State.

IV. What Can Be Found

State services qualifying for reimbursement include:

(1) Technical review, comments and recommendations on all documents or data required to be submitted to the State under an agreement between the State and a DoD component, all documents or data that a DoD component requests the State to review, and all documents or data that are provided by a DoD Component to the State for review as a result of a request from the State made under applicable State law.

(2) Identification and explanation of State applicable or relevant and appropriate requirements related to response actions at DoD installations.

(3) Site visits to review DoD response actions and ensure their consistency with appropriate State requirements, or in accordance with site-specific requirements established in other agreements between the State and DoD component.

(4) Participation in cooperation with DoD in the conduct of public education and public participation activities in accordance with Federal and State requirements for public involvement.

(5) Services provided at the request of DoD in connection with participation in Technical Review Committees.

(6) Preparation and administration of a cooperative agreement to implement the DSMOA, including the estimate of State costs.

(7) Additional services that may be set forth in the DSMOA or are included in installation-specific agreements.

V. Evaluation Criteria for Awards

DoD will evaluate only those applications with an accompanying executed DSMOA. DoD shall use the following criteria for evaluating applications and making awards:

(1) The feasibility and responsiveness of the project's management plan;

(2) Assurance that there will be a timely provision of services;

(3) Reasonableness of cost estimates; and

(4) The capacity of the Applicant to carry out the proposed activity.

VI. Submission Procedures

A complete application package consists of: (1) Standard Form 424 (SF) 424 (Application for Federal Assistance); (2) SF 424A (Budget Information—Non-Construction Programs); (3) SF 424B (Assurances—Non-Construction Programs); (4) a Project Narrative including a description on an installation by installation basis of the work to be undertaken along with associated cost/budgetary information; (5) a management plan; and (6) "Certification Regarding Drug-free Workplace Requirements."

The proposal narrative is a critical element in each application. It shall include: (1) A brief overall description of the proposed State services, personnel and resources to be utilized, and intended outcome of the State's services; (2) a description on an installation-by-installation basis of the work to be undertaken along with associated cost/budgetary information; and (3) a management plan describing the State's approach to providing appropriate and timely support services, including organizational framework, assignment and scheduling processes, and quality assurance/quality control methods.

At a minimum, the description of work to be undertaken should list the types and number of activities anticipated during each year for each installation, such as: Review and comment on draft remedial investigation/feasibility study (RI/FS) (or on other specified documents or data); identification/explanation of State applicable or relevant and appropriate requirements (ARARs); participation in public involvement activities; and participation in Technical Review Committee (TRC) meetings, etc.

The cost/budgetary information should show how estimated hours and costs are related to the proposed services for each installation, preferably in tabular or matrix form keyed to the services listed in Section I.B. of a DSMOA.

Mailing Address and Telephone

U.S. Department of Defense, Office of the Deputy Assistant Secretary of Defense (Environment), The Pentagon, Room 3D833, Washington, DC 20301-4000. Attn: Director of Environmental Restoration: Telephone (202) 325-2211.

Number of Copies of Final Proposal

All applicants must submit one (1) signed original application and two (2) copies to the Director of Environmental Restoration and one copy to the DoD point of contact for each installation covered by the application. Each copy must be covered with an executed SF 424.

VII. Compliance

The following laws, regulations, and procedures apply to applicants for and recipients of funding:

(1) The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Pub. L. 96-510.

(2) The Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499.

(3) The National Contingency Plan (NCP), 40 CFR Part 300.

(4) The applicable Office of Management and Budget Circulars (A-87, A-102, and A-128).

(5) Drug-Free Workplace Requirements; as embodied in the Notice of Interim Final Rules as published in the January 31, 1989 **Federal Register**, Part II, pp. 4946-4960 as applicable.

(6) Department of Defense Uniform Requirements for Grants and Cooperative Agreements to State and Local Governments, 32 CFR Part 278.

(7) The Department of Defense State Memorandum of Agreement (DSMOA).

(8) The cooperative agreement.

The recipient must carry out activities assisted under this program in compliance with public laws prohibiting discrimination because of race, color, national origin, sex, handicap, and age in programs and activities receiving Federal assistance.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
July 24, 1989.

Department of Defense and State Memorandum of Agreement (DSMOA)

In order to expedite the cleanup of hazardous waste sites on Department of Defense (DoD) installations within the State of _____ and ensure compliance with the applicable State law and regulations of the State, DoD and the [State Agency] on behalf of the State of [State] enter into this Agreement.

Except as otherwise specified, the terms in this document are unique to this document only.

Section I—Reimbursement of State Costs

A. Coverage

1. This Agreement covers reimbursement of the costs associated with providing State services to Department of Defense installations for activities funded under the Environmental Restoration, Defense (ER,D) appropriation. Installations covered by this Agreement are those owned by the Federal government on the effective date of the Agreement including installations with sites on the National Priorities List (NPL) and installations with sites not on the NPL. The installations covered by this Agreement are listed in Attachment A. This Agreement does not cover the costs of services rendered prior to October 17, 1986; services at properties not owned by the Federal government; and activities funded from sources other than ER,D appropriation.

2. Unless a site-specific agreement provides otherwise, this Agreement is the mechanism for payment of the costs incurred by the State in providing the services listed in paragraph B of this Agreement in relation to ER,D funded activities at the installations covered by this Agreement. Full payment of State costs pursuant to this Agreement constitutes final settlement of any claims the State of _____ may have for performance of services outlined in Section I(B) with respect to ER,D funded work carried out after October 17, 1986, at all of the installations covered by this Agreement, except for those State costs covered by a site-specific agreement.

3. DoD agrees to seek sufficient funding through the DoD budgetary process in accordance with Section II and to pay the State of _____ for the services specified in paragraph B for all ER,D funded activities at installations covered by this Agreement, subject to the conditions and limitations set forth in this section.

B. Services

State services that qualify for payment under this Agreement include the following types of assistance provided by the State commencing at site identification and continuing through construction, as well as any other activities that are funded by ER,D:

1. Technical review, comments and recommendations on all documents or data required to be submitted to the State under an agreement between the State and a DOD Component, all documents or data that a DoD Component requests the State to review, and all documents or data that are provided by a DoD Component to the State for review as a result of a request from the State made under applicable State law.

2. Identification and explanation of State applicable or relevant and appropriate requirements related to response actions at DoD installations.

3. Site visits to review DoD response actions and ensure their consistency with appropriate State requirements, or in accordance with site-specific requirements established in other agreements between the State and DoD Component.

4. Participation in cooperation with DoD in the conduct of public education and public participation activities in accordance with Federal and State requirements for public involvement.

5. Services provided at the request of DoD in connection with participation in Technical Review Committees.

6. Preparation and administration of a cooperative agreement (CA) to implement this Agreement, including the estimates of State costs.

7. Other services that the State will provide that are set out in this Agreement or are included in installation-specific agreements.

C. Accounting Procedures

1. Subject to the provisions of paragraphs D and E, reimbursement of eligible State costs incurred between October 17, 1986, and the date of this Agreement shall be paid if the costs have been documented using accounting procedures and practices that reasonably identify the nature of the costs involved, the date the costs were incurred, and show that the costs were entirely attributable to activities at an installation covered by this Agreement.

2. Payment of eligible State costs for services provided after the effective date of this Agreement must comply with all applicable Federal procurement and auditing requirements.

D. Maximum Reimbursement

Reimbursement for services provided under paragraph B for all installations included in Attachment A shall not exceed one (1) percent of the estimated total costs for all of the work that has been funded by ER,D since October 17, 1986, and that will in the future be funded by ER,D or a total of $50,000, whichever is greater. Estimates of cleanup costs developed under this Agreement are provided solely for the purpose of calculating the amount of funding the State is eligible to receive.

E. Annual Budget Limits

The State may ordinarily request that up to a maximum of twenty-five (25) percent of the total State services funds for all installations listed in Attachment A be provided in accordance with Section II during any fiscal year. DoD may approve an annual budget limit that exceeds twenty-five (25) percent of the total State services funds if the State demonstrates the need for a higher percentage based on the scope of the work projected during the fiscal year. At least ten (10) percent of a State's services funding request will be provided in accordance with Section II of this Agreement during a fiscal year if the State requests an allocation of ten (10) percent or more for services under this Agreement. The State may carry over unused funds into subsequent years. If the cost of State services during a fiscal year exceeds the annual budget limit, the State may expend its own funds to pay the costs of those services. To the extent allowable under Federal procedures for cooperative agreements, the State may then seek reimbursement of these costs in a subsequent year through a cooperative agreement as long as the total amount of the payments to the State does not exceed the one (1) percent ceiling, or the annual budget limit for that fiscal year. A payment schedule for reimbursement of past costs will be devised by the State of _____ and the DoD.

F. Adjustment of Cost Estimates

The State or DoD may request a review of total estimated ER,D funded project costs covered by this Agreement once during the terms of a cooperative agreement. The total project costs shall be revised to reflect the new estimates. The ceiling of one (1) percent of the total project costs shall be adjusted based on the revisions of the total project costs since October 17, 1986. If the total project costs following the Record of Decision (ROD) or equivalent document are lower than previously estimated, the State remains entitled to payment as follows:

a. the State is entitled to payment of all services rendered prior to completion of the new estimate so long as they are within the ceiling of the previous estimate; and,

b. reimbursement of future incurred costs for providing services, at the option of the state, in an amount either:

1. Up to a total of previous and future costs of one (1) percent of the revised estimate; or,

2. The lesser of:

(i) one quarter (¼) of one (1) percent of the post ROD or equivalent documents costs; or,

(ii) the remaining balance of the one (1) percent entitlement under the previous estimate.

G. Procedures for Reimbursement

Procedures for State reimbursement through cooperative agreements (CAs) are as described in Attachment B and in accordance with Office of Management and Budget (OMB) Circulars A–102, A–87, and A–128. After a CA is awarded, the (State Agency) may submit a request for advance or reimbursement to DoD on a quarterly basis. DoD will process the request and transfer funds in accordance with Circular A–102. Within 60 days after the end of each quarter, the (State Agency) shall submit to DoD a status report, including cost summaries which directly relate allowable costs actually incurred by the State under this Agreement during the quarter for services at each installation. Allowable costs shall be determined in accordance with this Agreement and Circular A–87. DoD shall reconcile continuing awards and close out completed awards in accordance with Circular A–102. Auditing of States programs shall be accomplished in accordance with Circular A–128.

H. Additional Work

When an installation requests that a State perform a specific technical study or similar technical support that could otherwise be done by a contractor, and (State Agency) agrees to do the work, funding will be negotiated between the installation and the State outside of this Agreement.

I. Emergencies

In an emergency situation involving a threat to public health or the environment, the State must, unless the nature of the emergency does not permit notification, notify the DoD Component prior to taking removal action in order to be reimbursed for its reasonable costs. Reimbursement of the State for its work will be handled directly between the DoD component and the State, and outside of this Agreement. Disagreements that arise under this paragraph are subject to the Dispute Resolution process in section IV.

Section II—Funding and the Priority System

A. The Office of the Deputy Assistant Secretary of Defense (Environment), as the designee of the Office of the Secretary of Defense responsible for carrying out the Defense Environmental Restoration Program, and the DoD components shall seek sufficient funding through the DoD budgetary process to carry out their obligation for response actions at DoD installations within the State. Funds authorized and appropriated annually by Congress under the ER,D appropriation in the DoD Appropriations Act shall be the source of funds for all work contemplated by this Agreement.

B. Should the ER,D appropriation be inadequate in any year to meet the total DoD requirements for cleanup of hazardous or toxic contaminants, DoD shall establish priorities among sites in a manner which maximizes the protection of human health and the environment. In the prioritization process, DoD shall employ a model which has been and will be further developed with the assistance of the States and the EPA. Future enhancements or refinements to the model shall occur in consultation with the States and the EPA. DoD shall also involve the States and the EPA in its use of this prioritization model through review of technical site data. The DoD components shall receive and give full consideration to information provided by the States regarding factors to be considered in decisionmaking in the annual prioritization process for allocating resources available for cleanups. The State accepts that a DoD prioritization system developed and operated as described in this subparagraph is needed and provides a reasonable basis for allocating funds among sites in the interest of a national worst first cleanup program. To that extent, the State will make every effort to abide by the priorities developed thereunder.

C. Nothing in this Agreement shall be interpreted to require obligation or payment with regard to a site remediation in violation of the Anti-Deficiency Act [31 U.S.C. 1341].

Section III—Lead Agencies

Each DoD Component shall designate an individual responsible for managing remedial and removal actions for each installation within the State. This individual shall be responsible for coordinating all tenant activities at the installation with regard to the remedial and removal action program. The individual will also act as remedial project manager (RPM) within the meaning of the National Contingency Plan (40 CFR Part 300).

The State shall designate a lead State agency for each DoD installation within the State. (This agency may vary by installation). The lead State agency for an installation shall coordinate among other State agencies to represent a single State position as to remedial/removal actions at the installation. The lead State agency shall designate a State Agency Coordinator (SAC) who shall be the single point-of-contact between the appropriate DoD component installation and the State regarding State involvement in the remedial and removal actions program at the installation.

Section IV—Dispute Resolution

A. The Remedial Project Manager (RPM) and the State Agency Coordinator (SAC) shall be the primary points of contact to coordinate the remedial and removal program at each military installation within the State, including the resolution of disputes. With regard to installation or sites for which there are executed Federal Facility Agreements under CERCLA section 120, dispute resolution provisions as specified in those agreements shall govern. For other sites, it is the intention of the parties that all disputes shall be resolved at the lowest possible level of authority as expeditiously as possible within the following framework. All timeframes for resolving disputes below may be lengthened by mutual consent.

1. Should the RPM and SAC be unable to agree, the matter shall be referred in writing as soon as practicable but in no event to exceed ten (10) working days after the failure to agree, to the installation commander and the chief of the designated program office of the lead State agency or their mutually agreed upon representatives designated in writing.

2. Should the installation commander and the chief of the designated program office of the lead State agency or their mutually agreed upon representatives designated in writing be unable to agree within ten (10) working days, the matter shall be elevated to the head of the lead State agency and a counterpart member of the lead Service involved who shall be a general/flag officer or a member of the senior executive service.

3. Should the head of the lead State agency and the counterpart DoD representative fail to resolve the dispute within 20 working days the matter shall be referred to the Governor and the Service Secretary concerned for resolution.

B. It is the intention of the parties that all disputes shall be resolved in this manner. Alternative dispute resolution methods may be used. In the event that the Governor and the Service Secretary are unable to resolve a dispute, the State retains any enforcement authority it may have under State and Federal law.

Section V—Reopener

The terms of this Agreement may be modified at any time by mutual Agreement of the parties. If a party requests the Agreement to be reopened but the other party does not concur, the matter will be referred to an individual designated in writing by the signators to this agreement. In the event they fail to agree within 10 working days the matter will be referred to the signators of this agreement or their successors in office. If no resolution is reached within 20 days, the Agreement shall not be reopened.

Section VI—Termination

This Agreement may be terminated by either party at the expiration of any cooperative agreement entered into pursuant to this Agreement if the party seeking termination has notified the other party in writing at least 90 days prior to the expiration of the cooperative agreement. After receiving a notice of termination, a party may invoke the dispute resolution process in Section V. Each signator of the agreement may involve other officials to whom they report in the process of resolution. The parties by mutual agreement may also refer the matter to the Governor of the State of _____ and his(her) counterpart within the Department of Defense. Alternative dispute resolution methods may be used. Failing their agreement, this Agreement shall be considered terminated as of the date the cooperative agreement expires.

State signature block for Agency signing on behalf of the State

---

DoD signature block

Attachment A to DSMOA DOD Installations Covered by this Agreement

State of _____

Army

1. e.g., Fort _____
2. etc.

Navy

1. e.g., Naval Air Station _____
2. etc.

Air Force

1. e.g., _____ Air Force Base
2. etc.

Defense Logistics Agency

1. e.g., Defense Supply Center _____
2. etc.

Installations may be added to this list periodically as necessary in accordance with Section V, Reopener.

Procedures for State Reimbursement

• The Deputy Assistant Secretary of Defense for Environment (DASD(E)) and the Head of the Agency signing on behalf of the State will sign the DSMOA.

• The DSMOA is the overarching agreement of commitment between the DoD and the State, but does not obligate or commit funds.

• Reimbursement will be accomplished, using Federal procedures for cooperative agreements (CAs), with States that have signed DSMOAs. Eligible activities are limited to those authorized for the Defense Environmental Restoration Program (DERP), and funded by the Defense Environmental Restoration Account (DERA), Sections 2701 et seq., of Title 10 U.S.C., and as specified in the DSMOA.

—Reimbursement will commence as soon as possible with DERA funds.

• DoD policies and procedures for processing CA applications and payments will be developed with input from the States and announced in a **Federal Register** notice.

—In general, these activities will be centralized in the ODASD(E).

—It is anticipated that these policies and procedures will encompass the following: who may apply; what can be funded; evaluation criteria for awards; submission procedures and closing dates for receipt of applications; and State responsibilities.

—Within this framework, it is anticipated that monitoring and quarterly reporting procedures for States' program status and financial status will be developed.

• Administration of CAs will be in accordance with Office of Management and Budget (OMB) Circular A–102, Grants and Cooperative Agreements with State and Local Governments, and Title 32 CFR Part 278, Office of the Secretary of Defense, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

—A State will submit a complete application package for Federal assistance, consisting of Standard Form 424 (SF 424) and attachments, including a proposal narrative, the signed DSMOA, and a project mangement plan. The State's application must also include a description of the type and amount of support services that the State plans to provide for each installation covered in the DSMOA for the specific award period of the CA.

—CAs will be awarded for a term of two years, based on an annual estimate of requirements. Applications will be accepted after signature of the DSMOA by both parties; DoD processing time for applications is expected to be two months.

—The DASD(E) will accept the application, review it, and make a decision as to the award. This CA agreement, when signed by both the DASD(E) and the Head of the Agency signing on behalf of the state, comprises the contractual relationship between the DoD and the State.

—States may request funds in accordance with the methods outlined in OMB Circular A–102 and 32 CFR Part 278. These documents provide for the following methods of payment: (1) Advances (Letter of Credit), (2) Reimbursement, and (3) Working Capital Advances. A state may request a payment method in its cooperative agreement application.

• Allowable costs will be determined in accordance with OMB Circular A–87, Cost Principles for State and Local Governments. Specific services to be provided by the States will be as described in the DSMOA.

• Auditing of States programs will be accomplished in accordance with OMB Circular A–128, Audits of State and Local Governments.

The following is additional information regarding the general procedures that DoD plans to use in implementing DSMOAs and CA's with the States:

1. DoD DASD(E) will invite States to sign DSMOAs and submit applications for CAs.

2. DASD(E) will send a memorandum (Attachment C) to the DoD Components (Army, Navy, Air Force, DLA, and other DoD agencies) asking them to cooperate with the States and compile necessary data. The States and Installations will communicate directly on response activities anticipated to take place over the next two years and on the total DERA cost estimate.

3. DoD Components will use their Chain-Of-Command to develop and pass on data to DASD(E): Component Headquarters will give the message to their Major Commands (e.g., Army Materiel Command), and the Major Commands will forward the message to their Installations (e.g., Sacramento Army Ammunition Depot).

4. The Components will provide information, obtained from their Installations and Major Commands, to DASD(E) by State.

5. Each State contacts DASD(E) about its desire to have a DSMOA and CA, and works with DoD to have State-specific information inserted into the provisions where indicated in the model language and to fill out the CA application.

6. DASD(E) and the State sign the DSMOA and the CA.

7. The State submits requests for payment in advance based on anticipated workload or for reimbursement of services provided under the CA, on a quarterly basis.

8. Quarterly In-Process Reviews (IPRs), or alternative arrangements by mutual consent, will be held between DASD(E) staff and the State agency. IPRs will include State progress reports concerning activities and funding.

9. CA audits will be carried out in accordance with OMB Circular A-128.

The Office of the Assistant Secretary of Defense

Washington, DC 20301-8000

Attachment C to DSMOA—Letter to DOD Components

July 18, 1989.

Production and Logistics

E

Memorandum for Deputy Assistant Secretary of the Army, Environmental, Safety and Occupational Health, OASA (I&L), Deputy Director for Environment, OASN (S&L), Deputy Assistant Secretary of the Air Force, (E,S&OH), SAF/RQ, Director, Defense Logistics Agency (DLA-W)

Subject: DoD Components' Cooperation with the States for Cooperative Agreements on Site Cleanups

I am sending letters to the directors of State environmental agencies inviting them to enter into DoD and State Memoranda of Agreements (DSMOAs). There has been a recent strong State expression of interest in them. I request that you inform the appropriate people in your Component that they should be ready by mid-July to respond to requests from the States for information necessary for the States to prepare applications for cooperative agreements (CAs) in accordance with Attachment B of the model DSMOA language.

Once a State and I have signed a DSMOA or started the process toward signature, the lead State agency can be expected to contact persons or offices designated by the Components as being "lead" for the Installation Restoration Program (IRP) for the installations listed in Attachment A of the DSMOA. States will need to determine what DERA-funded activities the installations have planned for the period of the proposed CAs (FY90/91). Each State will use this information to help prepare its application for a cooperative agreement and its request for funds. The designated installation representative should also give information to the State regarding probable *DERA-funded* activities through the life of the program, including total estimated cost. This will help the State plan its activities under the lifetime cap. The cost information should be acceptable to you before it is provided to the States.

This information is generally available from your program planning activities, FY90/91 DERA budget development data, and anticipated RI/FS results. States should also have much of this information if they are receiving notice of program activities and participating in such areas as: review of program planning and IRP documents, meetings of technical review committees, negotiation and implementation of interagency agreements, and public participation activities.

Since the CAs will be centrally administered by DoD, we request Components to give my office the same total DERA cost information you provide the States. We would also like a summary of planned activities for the next two years (FY90/91) that the installation IRP representatives give to the States. Please try to provide this within four weeks of giving it to the States. Since the CAs are envisioned to encompass two years, the information on planned program activities and cost estimates will need to be updated every two years. During the CA period, if there is a significant change in response activities or estimated costs, the Component should notify the State as soon as possible. I will be providing you additional guidance on this matter in the next two weeks.

Please provide a copy of the attached model DSMOA language to those who will be responsible for providing the necessary information to the States.

We will also provide more detailed information in the following documents as they are developed:

- DoD Policies and Procedures for the Cooperative Agreements Program under DSMOAs
- **Federal Register** notice announcing the program and the availability of funds.

Cooperation and communication are paramount to the success of this program. I encourage you and your installations to make every effort to continually build a good working relationship with your counterparts in the State agencies. I believe that a cooperative effort with the States, to include mutual consideration of each others comments and program objectives, is the key to cost-effective and timely execution of the Defense Environmental Restoration Program.

Thank you for your continuing efforts in making the program a success. If you have questions or comments, Sam Napolitano remains my point of contact for DSMOAs, and Lt Col Ken Cornelius has the lead in carrying out the CA Program. You may reach either of them at (202) 325-2211 (Autovon: 221-2214) in our offices in Alexandria, Virginia.

William H. Parker, III,

Deputy Assistant Secretary of Defense (Environment).

Attachment

[FR Doc. 89-17614 Filed 7-27-89; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday and Thursday, 16 & 17 August 1989.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 24, 1989.

[FR Doc. 89-17613 Filed 7-27-89; 8:45 am]

BILLING CODE 3810-01-M

Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, September 5, 1989; Tuesday, September 12, 1989; Tuesday, September 19, 1989; and Tuesday, September 26, 1989 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552(b)(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D64, The Pentagon, Washington, DC 20301.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 24, 1989.

[FR Doc. 89-17615 Filed 7-27-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee will meet on August 14-18 and August 21-25, 1989, at the Naval Ocean Systems Center, San Diego, California. All sessions of the meeting will commence at 8:00 a.m. and terminate at 5 p.m. on all days. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to discuss basic and advanced research. The agenda for the meeting will include briefings, presentations and discussions related to International Research and Development, Tactical Defense Suppression in the year 2000, and Determining the Impact of Directed Energy Weapons on U.S. Navy Warfare Mission Areas. These briefings, discussions and presentations will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L. W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000. Telephone Number: (202) 696-4870.

Date: July 25, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-17631 Filed 7-27-89; 8:45 am]

BILLING CODE 3810-AE-M

Uniformed Services University of the Health Sciences

Call For Abstracts—USUHS Fifth Annual Conference on Military Medicine

The Fifth Annual Conference on Military Medicine will be held on October 5 and 6, 1989, at the Uniformed Services University of the Health Sciences in Bethesda, Maryland. The theme of the conference this year will be, "Health Promotion for Maximum Readiness." Abstracts for poster presentations on the theme of the Conference as well as on general topics in miliary medicine are requested.

The Conference will consist of speakers and panel discussions on topics including, "Success in Behavior Modification," "Health Risk Appraisal" and "Primary Prevention from a Corporate Perspective." Topics will cover the theoretical and practical implications for the present and the future. In addition to the formal presentations and poster sessions, a "Meet the Professor" luncheon is scheduled.

Poster presentations in all areas of military medicine as well as with the theme of the Conference are encouraged. Please submit an original abstract of no more then 250 words and three opies including a current curriculum vitae to Deborah Gardner, Conference Coordinator, Room C1024, 4301 Jones Bridge Road, Bethesda, Maryland 20814-4799. Please indicate your name, rank, correct title, complete military or business address including telephone number, at the top of your abstract. Poster displays should be no larger than 6 feet long by 4 feet wide. Deadline for submission of abstracts: 1 September 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 24, 1989.

[FR Doc. 89-17616 Filed 7-27-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Analysis, Reporting and Dissemination Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: August 10, 1989.

Time: 10:00 a.m. until adjourment.

Location: U.S. Department of Education, National Assessment Governing Board, Suite 4060, Mary E. Switzer Building, 330 C Street SW., Washington, DC 20202-7583.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Staff Director, National Assessment Governing Board, U.S. Department of Education, Suite 4060, Mary E. Switzer Building, 330 C Street SW., Washingtron, DC 20202-7583. Telephone: (202) 732-1824.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title 2III-C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 21988 (Pub. L. 100-297) (20 U.S.C. 1221e-1).

The Board is established to advise the Commissioner for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas

to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The Analysis, Reporting and Dissemination Committee of the National Assessment Governing Board will meet via teleconference in Washington, DC on August 10, 1989 from 10:00 a.m. until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The proposed agenda includes a review of the procedures and strategies to be followed in reporting National Assessment data.

Records are kept of all Board proceedings, and are available for public inspection at the U.S. Department of Education, Mary E. Switzer Building, 330 C Street SW., Room 4060, Washington, DC from 8:30 a.m. to 5:00 p.m.

Dated: July 24, 1989.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89-17617 Filed 7-27-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Alaska Power Administration

Proposal to Extend Wholesale Power Rates; Eklutna Project

AGENCY: Alaska Power Administration, Department of Energy.

ACTION: Notice of proposal to extend wholesale power rates—Eklutna Project.

SUMMARY: Alaska Power Administration (APA) is proposing to extend the existing rate schedules for the Eklutna Project for a 5-year period beginning October 1, 1989. The existing rates are 19 mills a kilowatt-hour for firm energy, 10 mills a kilowatt-hour for non-firm energy, and .3 mills a kilowatt-hour for wheeling. Under Department of Energy policies, APA reviews rate adequacy each year. The most recent review shows the existing rates are adequate to meet repayment requirements for the period covered by the extension. The proposed rate extension will be submitted to the Deputy Secretary of Energy for interim approval and to the Federal Energy Regulatory Commission for review and final approval.

DATES: August 28, 1989.

FOR FURTHER INFORMATION CONTACT: The rates proposal and supporting studies are available upon request. Submit request for this information and written comments to: Gordon J. Hallum, Chief, Power Division, U.S. Department of Energy, Alaska Power Administration, P.O. Box 020050, Juneau, AK 99802-0050.

SUPPLEMENTARY INFORMATION: Authorities for the proposed rate extension are the Eklutna Project Act of July 31, 1950 (64 Stat. 382, as amended) and the Department of Energy Organization Act (Pub. L. 95-91).

Rate extensions are conducted according to procedures in 10 CFR Part 903. By Delegation Order No. 0204-108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Under Secretary the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place in effect on a final basis or to disapprove rates developed by the Administrator under the delegation. By DOE N 1110.29 dated October 27, 1988, published at 54 FR 3841 (January 26, 1989) the Secretary redelegated the authority from the Under Secretary to the Deputy Secretary to approve such rates on an interim basis.

The existing rate schedules were initially approved for a 5-year period beginning October 1, 1984. The rates apply for power sold from the Eklutna Hydroelectric Project to three electric utilities serving the Anchorage and Matanuska Valley areas of Alaska.

The Administration continues to advocate divestiture of APA, and a legislative proposal to authorize the divestiture will be forwarded for Congressional consideration soon. The rate extension basically continues present rate policies under existing law until Congress acts on the divestiture.

Environmental Impact: The proposed rate extension will have no significant environmental impact within the meaning of the Environmental Policy Act of 1969. The proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Robert J. Cross,

Administrator.

[FR Doc. 89-17704 Filed 7-27-89; 8:45 am]

BILLING CODE 6450-01-M

Proposal to Extend Wholesale Power Rates; Snettisham Project

AGENCY: Alaska Power Administration, Department of Energy.

ACTION: Notice of proposal to extend wholesale power rates—Snettisham Project.

SUMMARY: Alaska Power Administration (APA) is proposing to extend the existing rate schedule for the Snettisham Project for a 2-year period beginning October 1, 1989. The existing rate is 28.8 mills a kilowatt hour for firm energy. This rate expires September 30, 1989. Under Department of Energy policies, APA reviews rate adequacy each year. The most recent review shows the existing rate is adequate to meet repayment requirements for the period covered by the extension.

DATES: August 28, 1989.

FOR FURTHER INFORMATION CONTACT: The rates proposal and supporting studies are available upon request. Submit request for this information and written comments to: Gordon J. Hallum, Chief, Power Division, U.S. Department of Energy, Alaska Power Administration, P.O. Box 020050, Juneau, AK 99802-0050.

SUPPLEMENTARY INFORMATION: Authorities for the proposed rate extension are section 204 of the 1962 Flood Control Act (82 Stat. 875) and the Department of Energy Organization Act (Pub. L. 95-91).

Rate extensions are conducted according to procedures in 10 CFR Part 903. By Delegation Order No. 0204-108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Under Secretary the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place in effect on a final basis or to disapprove rates developed by the Administrator under the delegation. By DOE N 1110.29 dated October 27, 1988, published at 54 FR 3841 (January 26, 1989) the Secretary redelegated the authority from the Under Secretary to the Deputy Secretary to approve such rates on an interim basis.

The existing rate schedules were initially approved for a 3-year period beginning November 1, 1986 through September 30, 1989. The rates apply for power sold from the Snettisham Hydroelectric Project to one electric utility serving the Juneau area and the State of Alaska, Department of Fish and Game, F.R.E.D. Division.

The Administration continues to advocate divestiture of APA, and a legislative proposal to authorize the divestiture will be forwarded for Congressional consideration soon. The rate extension basically continues present rate policies under existing law until Congress acts on the divestiture.

Environmental Impact: The proposed rate extension will have no significant environmental impact within the meaning of the Environmental Policy Act of 1969. The proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Robert J. Cross,

Administrator.

[FR Doc. 89-17705 Filed 7-27-89; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Power and Transmission Rates for the Boulder City Area Projects and Salt Lake City Area Integrated Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rates for economy energy service, short-term firm capacity/energy sale or exchange service, and nonfirm transmission service for the Boulder City Area (BCA) projects and Salt Lake City Area (SLCA) Integrated Projects (IP), and order placing these rates into effect on a final basis.

SUMMARY: In an April 13, 1989, **Federal Register** notice (54 FR 14859), the Western Area Power Administration (Western) announced plans to implement power and transmission rates for Economy Energy Service, Short-Term Firm Capacity/Energy Sale or Exchange Service, and Nonfirm Transmission Service. These rates would be applicable to the BCA projects and the SLCA/IP. Following the analysis of the public comments received as a result of this proposal, Western has finalized these rates.

These rates are applicable only to discretionary or coordination sales that are short-term commitments of 1 year or less. Coordination sales represent short-term firm or nonfirm power that is available over and above other marketing obligations.

Western has joined the Western Systems Power Pool (WSPP), and these rates are patterned after the WSPP rates whereby the actual rate for each transaction is negotiated and mutually agreed to by the buyer and the seller.

On April 27, 1989, the Federal Energy Regulatory Commission (FERC) approved a 1-year extension of the WSPP, through April 30, 1990. The FERC encouraged the WSPP members to file for a temporary extension or a permanent pool by January 1, 1990, with lower pool-wide price ceilings for generation and transmission services. When Western joins the WSPP, current and future price ceilings for WSPP members will apply to all of Western's WSPP transactions taking place under these rates.

Timely implementation of the rates for Economy Energy Service, Short-Term Firm Capacity/Energy Sale or Exchange Service, and Nonfirm Transmission Service will improve Western's BCA projects and SLCA/IP operations by allowing them to offer a wider range of services.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Fullerton, Director, Division of Marketing and Rates, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401-3396, (303) 231-1545.

SUPPLEMENTARY INFORMATION: Western is one of five power marketing administrations of the Department of Energy (DOE). It markets and transmits power in 15 Central and Western States, primarily from Federal hydroelectric powerplants. The BCA and the SLCA market the power generated from several hydroelectric powerplants, which are primarily located in the Upper and Lower Colorado River Basins. In addition, the BCA markets a portion of the generation from the Navajo coal-fired powerplant of the Central Arizona Project. The power marketing functions of both Areas include transmission service as well as power sales. The transmission systems provide interconnections between Federal powerplants as well as interconnections between various Federal, public, and investor-owned utility systems. Western markets both firm and nonfirm power and transmission service.

Western may enter into transactions both through WSPP and through other agreements. Except for the rates for Short-Term Firm Capacity/Energy Sale or Exchange Service, which will be applicable to WSPP transactions only, the rates will be used by Western for both WSPP and non-WSPP transactions, as appropriate.

Economy Energy Service

Western sells short-term surplus energy, called Fuel Replacement Energy, to entities that reduce power production from fossil-fueled powerplants to conserve fuel. Selling surplus energy at 85 percent of a powerplant's fuel cost provided a basis for pricing and could be adhered to when a specific powerplant could easily be identified and the price of the energy directly related to the fuel saved. However, present-day situations in the utility industry have changed from when the sale of Fuel Replacement Energy was initiated more than 20 years ago. Today, major utilities have numerous plants in daily operation that have a wide range of operating costs. Because of multiple-unit operations, utilities often reduce power generation of more than one unit when buying energy from another utility. A utility's highest cost unit is not always the one reduced in power level because of such considerations as take or pay coal contracts or transmission constraints. Minimum power levels of large plants also affect which units may be backed down.

Economic dispatch has evolved among utilities in order to improve the economic utilization of both generation and transmission facilities. Because of this, and other considerations, pricing of short-term surplus energy transactions among power suppliers is driven by factors other than fuel savings at a particular plant. It is increasingly more difficult, and less significant, for Western to base short-term surplus energy prices on fuel savings associated with a specific generating unit.

Some short-term surplus energy sales, previously conducted as Fuel Replacement Energy sales, can be more appropriately conducted under the proposed category of Economy Energy Service. Quantifiable conservation of fuel will still be accomplished but the energy prices will directly reflect all factors, which establish short-term energy prices among thermal suppliers.

The Economy Energy Service rate is as follows:

The rate for Economy Energy Service is based upon the pricing for nonfirm energy sales among the power suppliers within the interconnected systems.

Economy Energy Service is set forth in Rate Schedules BCAP-EEI and SLIP-EEI for the BCA projects and the SLCA/IP respectively.

For marketing and operational flexibility, Western may also continue to sell surplus energy as Fuel Replacement Energy, and the methodology for determining the Fuel Replacement Energy rate will be maintained.

Short-Term Firm Capacity/Energy Sale or Exchange Service

From time to time, the BCA and the SLCA have firm power available for coordination transactions; i.e., firm power that is available over and above the normal marketing obligations, including seasonal offers made by the SLCA/IP. Such power, committable for less than 1 year, may be peaking only or peaking with energy. The energy may or may not be marketed on an exchange basis. The rate for this service would be

an alternative to using one or more of the components of the then current firm power rates. The Short-Term Firm Capacity/Energy Sale or Exchange Service rate will provide Western with increased marketing flexibility.

The rate for Short-Term Firm Capacity/Energy Sale or Exchange Service will be utilized for WSPP commitments of less than 1 year and will be as follows:

The rate for Short-Term Firm Capacity/Energy Sale or Exchange Service is based upon the pricing for firm capacity and energy sales among the participants of the Western Systems Power Pool.

The rate for Short-Term Firm Capacity/Energy Sale or Exchange Service is not set forth in a rate schedule. Western will offer this service only under the WSPP agreement that includes the above rate schedule.

Nonfirm Transmission Service

The BCA and the SLCA provide Nonfirm Transmission Service on an as-available basis. Any revenues generated from Nonfirm Transmission Service help offset the need for future power and transmission rate increases.

If a fixed nonfirm wheeling rate is too high, it may not encourage the efficient use of Western's future available transmission system capacity. If the rate is too low, it may not result in fair compensation to Western. A flexible Nonfirm Transmission Service rate is a way to encourage the most efficient and economical use of Western's transmission systems.

For the BCA projects, the Nonfirm Transmission Service rate, as provided for by Rate Schedule BCAP–NFT1, is an alternative to the current Nonfirm Transmission Service rate of 1.4 mills per kilowatthour (kWh) provided by Rate Schedule PD–NFT2, Parker-Davis Project, Schedule of Rates for Nonfirm Transmission Service. The new rate will also be an alternative to established charges for the Central Arizona Project and the Pacific Northwest-Pacific Southwest Intertie (Southern Division, alternating current) system Nonfirm Transmission Service.

In the SLCA, transmission is only provided through the Colorado River Storage Project (CRSP), not the SLCA/IP. Therefore in the SLCA the CRSP Nonfirm Transmission Service rate will be Rate Schedule SP–NFT3, CRSP, Schedule of Rates for Nonfirm Transmission Service, and will replace Rate Schedule SP–NFT2.

For both the BCA projects and the SLCA CRSP, the Nonfirm Transmission Service rate can be used to provide additional transmission services not presently provided, such as firm standby service as defined by the WSPP agreement. Western will use the proposed Nonfirm Transmission Service rate for all wheeling transactions under the WSPP, provided the transaction is for less than 1 year.

The rate for Nonfirm Transmission Service is as follows:

The rates for Nonfirm Transmission Service are based upon the pricing for Nonfirm Transmission Service within the interconnected system.

Discussion of Issues—Public Comments

During the 30-day comment period, Western received three comment letters, one of which requested additional information that has been provided. Western's responses to the comments are as stated below:

A. One commenter expressed concern that Western may plan to limit the type of transmission service it will offer under WSPP and noted that no utility has been admitted to the WSPP under a request for special conditions that would limit use of the agreement. The commenter is also concerned that WSPP will increase competition for use of Western's transmission system and threaten priority of use of the transmission system occurring under an existing contract.

Response

1. Western intends to participate fully in WSPP, to the extent that services offered are for discretionary or coordination sales that are short-term commitments of 1 year or less. Coordination sales represent short-term firm or nonfirm power that is available over and above normal marketing obligations (54 FR 14859). Specifically, Western will offer, as system availability allows, nonfirm and firm standby transmission service as identified in the WSPP agreement, as long as the commitment is for less than 1 year.

Western does not feel that it is requesting special conditions of the WSPP agreement by not offering firm transmission service. The WSPP agreement carries no obligation to buy or sell. Section D–3.1 of the WSPP agreement provides that each party shall be the sole judge as to the extent and conditions under which it is willing to provide services. The intent of WSPP is to provide for supplementary market-based transactions under real-time market conditions.

2. The WSPP agreement does not replace or supersede existing commitments. Capacity, energy, and transmission services offered through WSPP will only be discretionary sales that are over and above normal marketing obligations, including existing contracts.

B. One entity requested an explanation of how Western customers, who do not have generation/load dispatching capabilities, could make use of the proposed rates and services.

Response

Western, in a letter to the entity, indicated that these rates are intended primarily to be used for transactions between Western and other WSPP members or other utilities with generation/load dispatching capabilities. Benefits of WSPP membership, including extra revenues from either Economy Energy Service sales or Fuel Replacement Energy sales, having greater access to market information, keeping expenses down through better system utilization (particularly transmission facilities), lower purchase costs, and better prices for short-term discretionary sales, help hold down the rate required for firm power service and firm transmission service. These benefits are passed on to all Western customers through these lower rates.

C. One customer expressed the following concerns that the proposed transmission rates might adversely impact its costs for purchases of excess Federal power:

1. Any rate increase for transmission might be made applicable to short-term arrangements for the purchase of excess CRSP power during the summer season. Such a transmission rate applicable to that excess capacity would do serious economic damage and make those resources more expensive than alternate resources that were otherwise available when these contracts were agreed upon.

2. Any excess resources available from Hoover, Parker, or Davis Dams might not be economical if short-term transmission arrangements on the Parker-Davis Project system are at this new rate.

3. Fuel Replacement Energy and other short-term resources, otherwise available to preference entities, might not be available under the new rates.

Response

The proposed Nonfirm Transmission Service rates will not affect short-term purchases of SLCA/IP capacity and energy because such sales include transmission to CRSP designated points of delivery.

2. With the exception of the CRSP Nonfirm Transmission Service, the rates will not supersede rates provided for under existing contracts. The Boulder Canyon Project customers have firm transmission contracts with Western for delivery of all of the Boulder Canyon Project energy and capacity, including entitlements to Schedule C energy. Since the Federal transmission systems in the BCA are heavily subscribed, the delivery of excess Boulder Canyon Project or Parker-Davis Project capacity, if and when available, will depend on the availability of transmission capacity at that time. Availability of transmission capacity to deliver excess capacity from such projects will be affected more by transmission system use by customers with firm delivery rights than it will by the rate structure for Nonfirm Transmission Service.

3. When available, any seasonal excess SLCA/IP capacity will continue to be offered first to preference customers under existing firm rates. After the preference customers are satisfied, any additional SLCA/IP capacity not committed to preference entities will be sold on the open market either as Short-Term Firm Capacity/Energy Sale or Exchange Service or as Economy Energy Service at the proposed rates. Long-term firm marketing and sales of seasonal firm SLCA/IP capacity and associated energy will not change with the adoption of these rates.

Fuel Replacement Energy will continue to be offered to Western's customers with Fuel Replacement contracts. Most of Western's Fuel Replacement sales (87 percent in fiscal year 1988) are to customers who are already members of the WSPP, so it is unlikely that the proposed Economy Energy Service rate or Western's membership in WSPP will significantly affect the availability of Fuel Replacement Energy or other short-term energy resources.

Procedural Authorization

Power rates for Western are established pursuant to the DOE Organization Act of August 4, 1977 (42 U.S.C. 7101, *et seq.*); the Reclamation Act of 1902 (43 U.S.C. 372, *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and the acts specifically applicable to the project system involved.

Delegation Order No. 0204–108, effective May 30, 1986 (51 FR 19744, May 30, 1986), as amended, delegated to the Administrator of Western the authority to develop and place in effect, on a final basis, power and transmission rates for short-term sales; i.e., sales of no more than 1-year duration.

Environmental Compliance

Section D of the DOE guidelines for compliance with the National Environmental Policy Act (NEPA) (52 FR 47662) address short-term sales. Under section D of these guidelines, the execution of contracts, marketing plans, or allocation plans for the short-term or seasonal allocations (less than 1 year) of existing or excess power resource to customers who can receive these resources over existing transmission systems are categorically excluded from NEPA analysis. Therefore, an environmental assessment or an environmental impact statement will not be prepared for this action.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act (Act) of 1980 (5 U.S.C. 601, *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. Under 5 U.S.C. 601(2), rates or services of particular applicability are not considered rules within the meaning of the Act. Because the rate is for services provided by Western from particular projects, no flexibility analysis is required.

Determination Under Executive Order 12991

The DOE has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291 (46 FR 13193, February 17, 1981). In addition, Western has an exemption from sections 3, 4, and 7 of Executive Order 12291, and therefore will not prepare a regulatory impact statement.

Order

In view of the foregoing, and pursuant to the authority delegated to me by the Secretary of Energy in Delegation Order No. 0204–108, dated December 14, 1983, as amended, I hereby approve and place into effect on a final basis, effective at the beginning of the August 1989 billing period, a new rate for Economy Energy Service (Rate Schedules BCAP–EE1 and SLIP–EE1), Short-Term Firm Capacity/Energy Sale or Exchange Service, and Nonfirm Transmission Service (Rate Schedules BCAP–NFT1 and SP–NFT3) for the BCA projects and the SLCA/IP.

Issued at Golden, Colorado, July 14, 1989.

William H. Clagett,

Administrator.

[Rate Schedule BCAP-EE1]

Boulder City Area Projects; Schedule of Rates for Economy Energy Service

Effective: At the beginning of the August 1989 billing period.

Available: This schedule is available for the sale of economy energy including sales under the Western Systems Power Pool (WSPP) agreement. The offer of economy energy under this schedule shall be determined by Western Area Power Administration (Western) Boulder City Area.

Applicable: This rate is applicable for all sales of wholesale economy energy. WSPP sales shall be subject to the terms and conditions specified in the WSPP agreement.

Character and Conditions of Service: Alternating current 60 hertz, three-phase, delivered, and metered at the voltages and points established by contract or specified in advance by Western.

Rate: The rate for Economy Energy Service is based upon the pricing for nonfirm energy sales among the power suppliers within the interconnected systems. The rate will be mutually agreed to in advance by Western and the purchasing entity.

[Rate Schedule SLIP–EE1]

Salt Lake City Area Integrated Projects; Schedule of Rates for Economy Energy Service

Effective: At the beginning of the August 1989 billing period.

Available: This schedule is available for the sale of economy energy including sales under the Western Systems Power Pool (WSPP) agreement. The offer of economy energy under this schedule shall be determined by Western Area Power Administration (Western) Salt Lake City Area.

Applicable: This rate is applicable for all sales of wholesale economy energy. WSPP sales shall be subject to the terms and conditions specified in the WSPP agreement.

Character and Conditions of Service: Alternating current 60 hertz, three-phase, delivered, and metered at the voltages and points established by contract or specified in advance by Western.

Rate: The rate for Economy Energy Service is based upon the pricing for nonfirm energy sales among the power suppliers within the interconnected systems. The rate will be mutually agreed to in advance by Western and the purchasing entity.

[Rate Schedule BCAP–NFT1]

Boulder City Area Projects; Schedule of Rates for Nonfirm Transmission Service

Effective: At the beginning of the August 1989 billing period.

Available: This schedule is available for the Nonfirm Transmission Service on the Boulder City Area Projects transmission systems, including transactions pursuant to the Western Systems Power Pool (WSPP) agreement.

Character and Conditions of Service: Transmission service on an interruptable basis for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the service contract or in advance by the Western Area Power Administration (Western). Conditions for curtailment shall be determined by Western.

Rate: The rates for Nonfirm Transmission Service are based upon the pricing for Nonfirm Transmission Service within the interconnected system. The rate shall be mutually agreed to in advance by Western and the purchasing entity.

Adjustments

For Reactive Power: None. There shall be no entitlement to transfer of reactive kilovolt-amperes at delivery points, except when such transfers may be mutually agreed upon by the contractor and the contracting officer or their authorized representatives.

For Losses: Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract. If a service contract is not available, the losses shall be specified in advance and may be included in the rates for the service.

[Rate Schedule SP-NFT3]

Colorado River Storage Project; Schedule of Rates for Nonfirm Transmission Service

Effective: At the beginning of the August 1989 billing period.

Available: This schedule supersedes SP-NFT2 and is available for the Nonfirm Transmission Service on the Colorado River Storage Project transmission system, including transactions pursuant to the Western Systems Power Pool (WSPP) agreement.

Character and Conditions of Service: Transmission service on an interruptable basis for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the service contract or in advance by the Western Area Power Administration (Western). Conditions for curtailment shall be determined by Western.

Rate: The rates for Nonfirm Transmission Service are based upon the pricing for Nonfirm Transmission Service within the interconnected system. The rate shall be mutually agreed to in advance by Western and the purchasing entity.

Adjustments

For Reactive Power: None. There shall be no entitlement to transfer of reactive kilovoltamperes at delivery points, except when such transfers may be mutually agreed upon by the contractor and the contracting officer or their authorized representatives.

For Losses: Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract. If a service contract is not available, the losses shall be specified in advance and may be included in the rates for the service.

[FR Doc. 89-17706 Filed 7-27-89; 8:45 am]

BILLING CODE 6450-01-M

Final Allocation of Power from the Navajo Generating Station

AGENCY: Western Area Power Administration, DOE.

ACTION: Final allocation of power from the Navajo Generating Station, Central Arizona Project.

SUMMARY: Section 107 of the Hoover Power Plant Act of 1984 (98 Stat. 1333) (Act) provides that capacity and energy associated with the United States interest in the Navajo Generating Station (Navajo), which is in excess of the pumping requirements of the Central Arizona Project (CAP) and certain needs for desalting and protective pumping facilities under the Colorado River Basin Salinity Control Act of 1974 (43 U.S.C. 1591, *et seq.*) (Navajo Surplus), shall be marketed and exchanged by the Secretary of Energy. The Act provides that in the sale and exchange of Navajo Surplus, the Secretary of the Interior shall adopt the plan deemed most acceptable, after consultation with the Secretary of Energy, the Governor of Arizona, and Central Arizona Water Conservation District (CAWCD) (or its successor) for the purposes of optimizing the availability of Navajo Surplus and providing financial assistance in the timely construction and repayment of construction costs of the authorized features of the CAP. The Act also provides that rates for Navajo Surplus shall not exceed levels that allow for an appropriate saving for the contractor.

On December 1, 1987, the Commissioner of Reclamation (Reclamation) adopted the Navajo Power Marketing Plan (Plan) on behalf of the Secretary of the Interior. The Plan was published in the **Federal Register** on December 21, 1987 (52 FR 48328). The Plan, a cooperative effort among Federal, State, and local entities, provides the criteria to be used in the sale and exchange of Navajo Surplus after the date of initial operation of the New Waddell Dam. The date of initial operation of the New Waddel Dam, as defined in the Plan (section III (I)), is scheduled to occur on or before October 15, 1992, as determined by Reclamation.

By **Federal Register** notice (53 FR 17102) published May 13, 1988, the Western Area Power Administration (Western) requested applications and applicant profile data for Navajo Surplus that would be available for sale and exchange after the date of initial operation of New Waddell Dam through September 30, 2011.

Western reviewed all of the applications received pursuant to its May 13, 1988, **Federal Register** notice and developed proposed allocations which were published in the **Federal Register** on May 12, 1989 (54 FR 20834). Western believed that the proposed allocations best met the intent of the Plan. Western did not conduct formal public meetings relative to the proposed allocation but did consider all written comments in making the final determination of Navajo Surplus allocations. All written comments received by Western in response to the proposed allocation are addressed herein.

DATES: The effective date of these final allocations will be July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Earl W. Hodge, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477-3255.

Background

Section 107 of the Act required the Secretary of the Interior to adopt the plan deemed most acceptable for the purposes of optimizing the availability of Navajo Surplus and providing financial assistance in the timely construction and repayment of construction costs of the authorized features of the CAP. The Act provides that electrical capacity and energy associated with the United States interest in Navajo, which is in excess of the pumping requirements of the CAP and certain needs for desalting and protective pumping facilities, shall be marketed and exchanged by the Secretary of Energy in a manner consistent with the Plan adopted by the Secretary of the Interior.

Navajo Surplus, which is primarily a capacity resource, is being marketed and allocated in accordance with the adopted Plan wherein capacity and energy will be available for sale and exchange on a long-term basis. Capacity and energy will be available for delivery throughout the year, onpeak and offpeak during the long-term contract period.

The long-term sales contracts shall become effective when executed by the parties in accordance with terms of the Navajo contracts, and shall remain in effect until September 30, 2011. Delivery of capacity and energy will begin after the date of initial operation of the New Waddell Dam, which is scheduled for October 15, 1992.

Final Allocations

Navajo Surplus is being allocated for sale in accordance with the priority requirements of section VI of the Plan as set out below:

1. Federal preference entities within Arizona,
2. Federal preference entities within the Boulder City marketing area,
3. Federal preference entities in adjacent Federal marketing areas, and;
4. Nonpreference entities in the Boulder City marketing area.

In the event that a potential contractor fails to execute a contract within the period specified by Western and in accordance with the terms and conditions offered by Western, or if a contract is terminated in accordance with the terms of the contract, the allocation to that entity will be withdrawn.

Any capacity and associated energy withdrawn or returned to Western may be reallocated without further public process and reoffered by Western in accordance with the order of priority specified above. In reallocating the power, Western will use the same methodology used in these final allocations. The power being reallocated may be offered first to these allottees or contractors up to the amounts initially requested.

The Act also provides that Arizona entities, regardless of preference status, shall have first opportunity for electrical capacity and energy-exchange rights as necessary to implement the Plan. Western, in consultation with CAWCD and Reclamation, may determine that any capacity and energy not contracted for by Arizona entities for exchange may be offered for long-term sale in the order of priority stated above or may be offered to non-Arizona entities for exchange.

Pursuant to the Act and the priority criteria of the Plan, the benefits of the Navajo Surplus go first to the entities in the State of Arizona. Since there were more than sufficient applications from first-priority entities within the State of Arizona, Western has made the final allocation by prorating all available Navajo Surplus for sale and exchange to Arizona applicants in the amounts shown in Tables 1 and 2. The other applicants and the rationale for denial of an allocation were published in the May 12, 1989, **Federal Register** notice.

Response to Comments

Western received four comments in response to the proposed Navajo Surplus Allocations published in the May 12, 1989, **Federal Register**. Of those comments received, two were in support of and concurred with Western's proposed allocations.

The following comments were received either in opposition to or suggesting a modification to Western's May 12, 1989, proposal:

1. Dixie-Escalante Rural Electric Association Inc., Beryl, Utah, (Dixie-Escalante) commented that its application submitted on behalf of the Littlefield, Arizona, portion of its system should be reconsidered for an allocation. Dixie-Escalante maintains that the Littlefield, Arizona, load is within the first priority requirements of section VI of the Plan. Dixie-Escalante supported its position by stating that, "The Arizona portion of our system is electrically separate from Utah and all power from such an allocation would be used only by Arizona customers. This guarantees that power from the Navajo Plant would benefit only Arizona customers."

The final allocation is consistent with the Act, the Plan, and the allocation criteria previously published in the **Federal Register**. The Plan is explicit as to priority requirements, found in section VI, with first priority being given to Federal preference entities within the State of Arizona. Western believes that the first priority for Federal preference entities within Arizona does not include Federal preference entities outside of the State of Arizona having some portion of their load in Arizona. Federal preference entities in neighboring States with some portion of their load in Arizona fall within the coverage of the second or third priorities. Western stated in the May 12, 1989, **Federal Register** notice that Dixie-Escalante is classified as a third-priority applicant because it is a Utah entity with loads in Utah and Arizona.

Western has also reviewed the applicant profile data submitted by Dixie-Escalante, in addition to the letter from the Intermountain Consumer Power Association (ICPA) that transmitted the Dixie-Escalante application. Western provided in the May 12, 1989, **Federal Register** notice (appendix B) a listing of all members of the ICPA applying for a Navajo Surplus allocation; no request is noted for Littlefield, Arizona. Furthermore, in reviewing the Dixie-Escalante applicant profile data, Western finds no mention of, or request for service to, Littlefield, Arizona. Western finds no identification of Littlefield, Arizona, on the ICPA agent's system map submitted by Dixie-Escalante, nor can Western find reference to a Littlefield, Arizona, load or request for allocation in Dixie-Escalante's responses to "Requirement 28," "Requirement 3," "Requirement 4," or "Requirement 5" in the applicant profile data submitted.

Western believes that it has properly considered all applicants and has properly classified Dixie-Escalante as a third-priority applicant.

2. Western received one comment from the Veterans Administration's Regional Medical Center, San Diego, California (VA), a nonapplicant. The VA's comment centered on, "a reconsideration by Western of priorities or the establishment of a requirement for displacement of power from allotments established from primary consideration or on an exchange basis." Further, "The use of power within geographic areas should receive further consideration on a rating and ranking priority system. Federal agencies defraying costs from taxpayer supported revenues should receive high priority such as health care and educational institutions * * *."

Western maintains that it has properly considered all applicants according to the Act, the Plan, and the published criteria which form the basis for the final allocations and the allocations are consistent with existing policies, Federal regulations, and law.

In its comments, the VA requested power for the VA's medical centers in Prescott, Phoenix, or Tucson, Arizona; San Diego, California; or Salt Lake City, Utah. These entities did not submit an application for long-term Navajo Surplus and were, therefore, not considered in the allocation process.

Subsequent to publishing the proposed allocations for long-term Navajo Surplus in the May 12, 1989, **Federal Register**, Western was notified that the following entities have withdrawn their application and returned their proposed allocation. Those entities withdrawing are Davis-Monthan Air Force Base, Luke Air Force Base, and the Department of the Army, Yuma Proving Ground. The total proposed allocation returned to Western as of the date of this notice is 5 megawatts (MW).

Western has allocated the 5 MW among the remaining applicants in accordance with the criteria published in the May 12, 1989, **Federal Register**. Any additional returned allocations will be reallocated in a like manner.

Western utilized the following formula to distribute the available Navajo Surplus to the final applicants:

[(Individual Applicant's 3-Year Average Annual Load
– Individual Applicant's Annual Allocation of Federal Resources)

÷ (Total All Applicants' 3-Year Average Annual Load
− Total All Applicants' Annual Allocation of Federal Resources)]
× 250.0 MW (Rounded to the nearest 1 MW)

Western is allocating a total of 250 MW of Navajo Surplus for sale to the following entities that qualify as first-priority applicants for sale of Navajo Surplus as provided by the Plan, section V.A.:

TABLE 1.—FINAL ALLOCATION FOR SALE OF NAVAJO SURPLUS

Entity	Allocation in MW
Arizona Power Pooling Association, Arizona	42.0
Papago Tribal Utility Authority, Arizona	2.0
Bureau of Indian Affairs, San Carlos Irrigation Project, Arizona	5.0
Salt River Project, Arizona	200.0
Page Electric Utility, Arizona	1.0
Total	250.0

Additionally, Western is allocating a total of 150 MW of Navajo Surplus for exchange to the following entities qualified as first-priority applicants for exchange of Navajo Surplus as provided by the Plan, section V.B.:

TABLE 2.—FINAL ALLOCATION FOR EXCHANGE OF NAVAJO SURPLUS

Entity	Allocation in MW
Arizona Public Service Company, Arizona	102.0
Arizona Power Pooling Association, Arizona	11.0
Tucson Electric Power Company, Arizona	37.0
Total	150.0

These final allocations remain the same as published in the May 12, 1989, **Federal Register**.

Executive Order 12291

Under the provisions of section 3 of Executive Order 12291, dated February 19, 1981, a regulatory impact analysis must be made prior to the publication of a major rule. This proposal is of a technical nature and considered to be a nonmajor rule within the meaning of the Executive order. Western has an exemption from sections 3, 4, and 7 of Executive Order 12291; accordingly, no clearance of this procedure by the Office of Management and Budget (OMB) is required.

National Environmental Policy Act

In compliance with the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations, and the Department of Energy guidelines for compliance with NEPA (52 FR 47662), Western prepared an environmental assessment of the potential impacts of the marketing of long-term Navajo Surplus. The date of Finding of No Significant Impact was March 18, 1988. The Department of Energy has determined that Western's proposed actions as described in the environmental assessment will not lead to any significant environmental impacts.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*), each agency, when required to publish a general notice of a proposed rule, shall prepare for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, this proposal relates to particular electric services and rates provided by Western. Under 5 U.S.C. 601(2), such rules and practices relating to services are not considered "rules" within the meaning of this Act. Accordingly, no regulatory flexibility analysis is required.

Issued at Golden, Colorado, July 14, 1989.

William H. Clagett,
Administrator.

[FR Doc. 89-17707 Filed 7-27-89; 8:45 am]
BILLING CODE 6450-01-M

Notice of a Rate Order—Pick-Sloan Missouri Basin Program

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order for the Pick-Sloan Missouri Basin Program (P-SMBP).

SUMMARY: Notice is given of Rate Order No. WAPA-35 by the Deputy Secretary placing the rate adjustment for the P-SMBP into effect on an interim basis, on the first day of the October 1989 billing period, for power marketed by the Western Area Power Administration (Western).

The P-SMBP power repayment study (PRS) for fiscal year (FY) 1987 requires a 0.88 mills/kWh increase (from 7.44 mills/kWh to 8.32 mills/kWh) in the power rate to ensure repayment of the project. The PRSs are prepared annually in accordance with the Department of Energy (DOE) Order RA 6120.2. The last increase was based upon the FY 1982 PRS.

The results of the FY 1987 PRS are being compared to a widely distributed FY 1986 PRS. The comparison shows the following differences:

1. The projected operation and maintenance (O&M) expenses for the 100-year repayment period have increased a total of $533 million.

2. The projected replacements in the study period have increased $48 million.

3. Other revenue, which is projected from other services provided by the power system, is reduced in the study period by $103 million. Because of recent experience, we have projected higher firm power load factors, which in turn reduced the surplus sales; and projected reduced transmission service revenues.

4. Due to the above factors, repayment of the interest-bearing costs is not as timely in the FY 1987 study as in the FY 1986 study, and the additional interest expense accrued over the study period is $373 million.

Of the above factors, the one with the most impact is the matter of increased O&M expenses. O&M expenses are increasing due to inflation as well as responses to programmatic requirements. Programmatic requirements have resulted in increased personnel and equipment expenditures in such areas as: Computer support, financial system management, safety programs, conservation and renewable energy programs, and environmental concerns. Federal full-time equivalency has remained essentially the same for the past several years. However, support services contracts have increased to accommodate additional program requirements.

In keeping with the project legislation, Western's policy for rate adjustments and DOE Order RA 6120.2, I am approving on an interim basis this request for a rate adjustment for the P-SMBP.

FOR FURTHER INFORMATION CONTACT:

Mr. James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107-5800, (406) 657-6532

Mr. Robert C. Fullerton, Director, Division of Marketing and Rates, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231-1545

Mr. Ronald K. Greenhalgh, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5581.

[Rate Order No. WAPA-35]

Order Confirming, Approving, and Placing in Effect a Rate Adjustment for the Pick-Sloan Missouri Basin Program

June 28, 1989.

In the matter of Western Area Power Administration Rate Adjustment for Pick-Sloan Missouri Basin Program (P-SMBP).

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7101, et seq., the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation), under the Reclamation Act of 1902, 43 U.S.C. 371, et seq., as amended and supplemented by subsequent enactments, and particularly by section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485h(c), and acts specifically applicable to the Pick-Sloan Missouri Basin Program (P-SMBP), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664, December 14, 1983, as amended), the Secretary of Energy delegated: (1) To the Administrator of the Western Area Power Administration (Western), the authority on a nonexclusive basis to develop power and transmission rates; (2) to the Deputy Secretary, the authority on a nonexclusive basis to confirm, approve, and place in effect on an interim basis, power and transmission rates; and (3) to the Federal Energy Regulatory Commission (FERC), the authority on an exclusive basis to confirm, approve, and place in effect on a final basis, remand, or disapprove rates developed by the Administrator under the delegation.

This rate order is issued pursuant to such delegations to the Administrator and the Deputy Secretary, and the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions for the Alaska Power Administration, Southeastern Power Administration, Southwestern Power Administration, and Western at 10 CFR 903, published at 50 FR 37835 on September 18, 1985, with corrections published at 50 FR 48075, November 21, 1985.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664, December 14, 1983, as amended), the Secretary of Energy delegated to the Administrator on a nonexclusive basis, the authority to develop power and transmission rates, and delegated to the Deputy Secretary on a nonexclusive basis, the authority to confirm, approve, and place in effect on an interim basis, power and transmission rates, and to the Federal Energy Regulatory Commission (FERC), the authority on an exclusive basis to confirm, approve, and place in effect on a final basis, remand, or disapprove rates developed by the Administrator under the Delegation.

The rate adjustment for the P-SMBP has been conducted in accordance with the procedural rules applicable to Western. Proceedings were initiated on November 7, 1988, with publication of a **Federal Register** notice (53 FR 44945), which officially announced the proposed rate adjustment and procedures for public participation. A series of public information forums were held on December 7 through December 9, 1988, in Northglenn, Colorado; Sioux City, Iowa; Fargo, North Dakota; and Billings, Montana. Two public comment forums were held January 10 and 11, 1989, at Northglenn, Colorado, and Sioux Falls, South Dakota. The consultation and comment period extended through February 6, 1989.

Various comments were received at the meetings and during the consultation and comment period. Three major issues and several miscellaneous issues were raised. After reviewing and considering the comments received, and the records of the meetings, this rate order was assembled to respond to the comments offered during the public rate adjustment process. Western has concluded that the P-SMBP rate adjustment is needed to meet cost-recovery criteria.

Therefore, Rate Order No. WAPA-35, confirming and approving the P-SMBP rate adjustment on an interim basis, is hereby issued, and the new rate schedules will be promptly submitted to the FERC for confirmation and approval on a final basis.

Issued in Washington, DC, June 28, 1989.

W. Henson Moore,
Deputy Secretary.

Effective Date

The new rates will become effective on the first day of the October 1989 billing period and will be in effect pending the FERC's approval of them or substitute rates on a final basis, or until superseded.

Description of Rates

Although the P-SMBP is considered a single entity for financial and repayment purposes, the power generated by the P-SMBP is marketed in two separate and distinct areas. These are known as the Eastern Division and the Western Division, and each has its own marketing plan and method for collecting revenues required from firm power sales.

The proposed composite Eastern and Western Division wholesale firm power rate for the P-SMBP will yield 8.32 mills/kWh versus the current 7.44 mills/kWh, which constitutes a 0.88 mills/kWh increase over the current wholesale firm power rate.

Eastern Division

The proposed firm power rate schedule for the Eastern Division only is expected to yield a composite rate of 8.02 mills/kWh. Current Eastern Division rare schedules are designed to yield 7.14 mills/kWh. The proposed and current firm power rates are shown below:

Class of power	Present	Proposed
Firm Capacity (kW)	$1.65/kW-month.	$1.85/kW-month
Firm Energy (kWh) up to and including 60-Percent Monthly Load Factor.	4.41 mills/kWh.	5.06 mills/kWh
Above 60-Percent Monthly Load Factor.	7.79 mills/kWh..	8.44 mills/kWh
Peaking Capacity (kW).	$9.90/kW-season.	11.10/kW-season
Peaking Energy (kWh).	4.41 mills/kWh.	5.05 mills/kWh
Seasonal Firm	Same as Firm Power Rate.	Same as Firm Power Rate.

Western Division

The Loveland Area Office recently finalized a marketing plan entitled "Post-1989 General Power Marketing and Allocation Criteria, Pick-Sloan Missouri Basin Program-Western Division" (Post-1989 Marketing Criteria). Details of this plan were published on January 31, 1986, in the **Federal Register** at 51 FR 4012 and again on January 23,

1987, in the **Federal Register** at 52 FR 2597. A major feature of this plan was the integration for marketing purposes of the resources of the P–SMBP–Western Division with those of the Fryingpan-Arkansas Project (Fry-Ark). In addition, a blended rate for P–SMBP-Western Division/Fry-Ark power will be established.

Because of the blended rate, there will be no Loveland Area Office power rate schedules specific to just the P–SMBP or the Fry-Ark; therefore, all discussion in this rate order concerning future Western Division revenue will be expressed in terms of revenue requirements rather than the typical discussion of "mills/kWh."

Firm Power: Based upon the existing firm composite rate of 8.54 mills/kWh, and the projected energy sales of approximately 2,036 GWh used in the power repayment study (PRS), the Western Division's current yield from firm power is $17,386,082. This is calculated as follows:

Current Yield:		
$0.00854 kWh =	× 2,035,841,000	$17,386,082
Proposed increase:		
$0.00088 kWh =	× 2,035,841,000	1,791,540
Proposed firm revenue requirement		19,177,622

Peaking Power: Under the Post–1989 Marketing Criteria, excess capacity previously marketed as peaking power will be included as part of the firm power sales, with an expected return of $1,425,600 per year.

$1.65/kW-month × 72,000 kW =	× 12 months	[1] $1,425,600
Proposed total revenue requirements		20,603,222

[1] Western Division excess capacity marketed as peaking power in the FY 1987 PRS will be included as part of the firm power sales in future power repayment studies to be consistent with the Post-89 Marketing Criteria.

The proposed rate of return for the P–SMBP–Western Division of $20,603,222 per year will be recovered as part of the blended rate schedule being developed for the Loveland Area Projects, which will include the annual revenue requirements for Fry-Ark. This rate schedule associated with the Post–1989 Marketing Criteria will be proposed to go into effect with the October 1989 billing period and will be the subject of a subsequent and separate formal rate adjustment procedure.

Statement of Revenue and Related Costs

The rate adjustment would increase average annual firm power revenues for the total P–SMBP by about $11.2 million. This is necessary to satisfy the cost-recover criteria as set forth in DOE Order No. RA 6120.2. A breakdown of costs by class of service is not available.

The following table (taken from the revised FY 1987 PRS) provides estimates of revenue data for firm power and peaking sales through the proposed rate approval period.

Year	Eastern division winter peaking	Eastern division summer peaking	Firm commercial	Western division peaking
1990	$3,712,500	$3,712,500	$86,012,160	$1,425,600
1991	3,702,600	3,653,100	86,902,400	1,425,600
1992	3,702,600	3,653,100	86,902,400	1,425,600
1993	3,702,600	3,653,100	86,902,400	1,425,600
1994	3,702,600	3,653,100	86,902,400	1,425,600

The data shown as "Firm Commercial" is for energy sales in both the Eastern and Western Divisions of the P–SMBP.

It should be noted that the PRS contains only one variable—the composite rate for future firm power (capacity and energy combined) sales on a per kWh basis. Revenues from other sources are estimated and entered into the study. The study adjusts this composite firm power rate until sufficient revenues are generated to meet cost recovery criteria. The actual rate schedules designed to yield these revenues are determined by adjusting both capacity and energy rates. The actual revenues collected for each class of service will vary from those estimated in the published FY 1987 PRS as hydrological and market conditions change.

Revenues from Western Division's transmission service rate are not shown separately in the published FY 1987 PRS, but are included in the "Other Revenue" column of that study.

Explanation of Rate Development Process and Chronological Discussion of the Procedural History of the Filing

Proceedings on the proposed rate adjustment were initiated on September 27, 1988, when a letter announcing preliminary informal customer meetings was mailed to all firm power customers and other interested persons. These meetings were conducted at four different locations on October 18 and 19, 1988. At these preliminary meetings, Western representatives explained the need for the increase and answered questions from those attending.

On November 7, 1988, a formal 90-day customer consultation and comment period was initiated with an announcement of the proposed rate adjustment published in the **Federal Register** at 53 FR 44945. This notice also announced four public information forums conducted December 7 through 9, 1988, and two public comment forums conducted January 10 and 11, 1989. The information forums were further advertised with a November 25, 1988, press release. On November 18, 1988, a mailing of a final customer brochure was made to all customers and other interested persons. This mailing also included a letter announcing the public information and comment forums. At the information forums, Western representatives again explained the need for the rate increase and answered questions. The comment forums were conducted to give the public an opportunity to comment for the record. Other comments were received through February 6, 1989, and have been considered in the preparation of this rate order.

The notice of proposed power rate adjustment published at 53 FR 44945 on November 7, 1988, was for an initial composite Eastern and Western Division, P–SMBP wholesale firm power rate that would yield 8.51 mills/kWh or an increase of 1.07 mills/kWh. Following the informal meetings, which were held on October 18 and 19, 1988, Western reviewed the study data, and found projections for Western Division generation had not been properly included in the study. When these and other refinements were made, the final composite rate was reduced to 8.32 mills/kWh, which is the proposed increase of 0.88 mills/kWh.

Project History and General PRS Description

A complete discussion regarding the project history, and the general history and description of the PRS, is found in the November 1988 customer brochure.

Basis for Rate Development—Eastern Division

The Eastern Division firm power rate schedule will be increased so as to yield a net average return of approximately 8.02 mills/kWh. This is an increase of 0.88 mills/kWh over the average return of 7.14 mills/kWh anticipated from the sale of firm power under the P–SED–F2 rate schedule. The seasonal firm power rate will be adjusted to be equal to the firm power rate.

A customer's individual load characteristics determine the net revenue yield from the sale of power and energy to that customer under any rate schedule that incorporates both a demand and an energy charge. These characteristics include load factor (the relationship between the energy use and peak demand for any given time period), kW-months per year (the relationship of the offpeak monthly demands to the annual peak demand), wheeling discounts (under certain circumstances a one mill/kWh discount will be granted if the United States is relieved of the cost of delivering power over a third party transmission system), and voltage discounts (under certain circumstances a discount of 5 percent of the gross power bill will be granted to the customers if the United States is relieved of the cost of transforming power from one voltage to another). The composite of the individual customer characteristics determines what the proposed P–SMBP Eastern Division rate schedule will yield in net revenue. For example, as load factor increases (energy requirements increase faster than capacity (or demand)), the per unit net yield (mills/kWh) from this type of rate design will decline. The opposite is also true. In addition, as the kW-months per year characteristic increases, there is more revenue (demand charge), even though the overall kWh sales have not changed. If either of the discount characteristics (in lieu of wheeling and voltage) change, then the net yield under a rate schedule is altered.

Due to the comments received during our 1987 informal public meetings relating to how system characteristics affect rate design, we have altered the way we develop the characteristics. Instead of using a 5-year rolling average of actual data, we have now projected what we estimate these characteristics will be in about 2 years after this new rate goes into effect. This should provide a rate design that reflects the system characteristics we anticipate during the time the rate is actually in effect.

Basis for Rate Development—Western Division

The rate schedules for the P–SMBP–Western Division are associated with the Post-1989 Marketing Criteria, which are scheduled to go into effect on the first day of the October 1989 billing period, and will be the subject of a subsequent and separate formal rate adjustment procedure.

Discussion of Issues—Public Comments

Most of the comments received at the public meetings, and in correspondence throughout the 90-day customer consultation and comment period, dealt with the cost allocations of the Corps joint-use expenses for O&M, the overall increases in projected O&M expenses, and the possible renegotiation of the contract with the State of Wyoming for repayment of the State's investment in Buffalo Bill Dam.

Issue. The changes in cost allocations of the Corps joint-use expenses for O&M work.

Response. The Corps has recently altered its method of assigning multipurpose O&M expense to power for repayment purposes. This began with FY 1987 data when the Corps began using the "current use" method of assigning these costs instead of the "ultimate development" percentages used in the past. This was discussed in our public meetings. Western proposed that the "current use" method be utilized for this adjustment. The customers are apparently in agreement with that proposal, but indicated that the issue be carefully reviewed prior to any future PRS. Meetings are now underway to determine the validity of this change by the Corps.

Issue. Projections of O&M expenses.

Response. Prior to the formal public participation period, customers questioned the magnitude of the O&M expenses utilized in the PRS. Accordingly, during the public information forums, Western presented a detailed analysis of the O&M expenses in one budget year for all three entities involved: Western, the Corps, and Reclamation. Also discussed were the methods used to project O&M expenses for the outyears of the PRS. The customers indicated an appreciation for being allowed to examine these costs in detail, and a good general understanding of the budget process.

As a result of this analysis, specific questions were raised about the nonrecurring replacement items included in the Western Division O&M budget as well as the assignment of direct and overhead costs among the projects administered by the Western Division. The amounts shown as nonrecurring replacement items in the Western Division O&M budget represent several smaller items that are not identified separately, but are combined and a portion of that total is included in O&M to assure repayment as an annual cost. The matter of the assignment of direct and overhead costs is a reclassification of certain administrative costs that previously were included in the construction accounts, but now are properly shown as O&M expense.

Issue. The possibility of renegotiating the contract terms on Buffalo Bill Dam modification with the State of Wyoming.

Response. Western's Office of General Council is of the opinion that the interest rate which applicable to the Buffalo Bill Dam modification is established by statute. The contract in question is a three-party agreement among Reclamation, Western, and the State of Wyoming. Informal contract was made with the State of Wyoming to advise them as to the power customers' comments about pursuing the possibility of renegotiating the contract. It is possible that some mutually agreeable change in the contract, such as a change in contract term, could address concerns expressed by the customers and also be beneficial to the State. Western will coordinate with Reclamation and the State to determine if either party has an interest in opening the contract for discussion.

Additional Issues

In addition to the above, several issues were raised by customers and other interested persons, and addressed by Western. These issues were related to the following general categories:

1. *Status of Investment Repayment.* A customer asked if the $721 million repaid so far out of the $1.6 billion of total power investment means that the dams are 45 percent repaid. Western explained that the $721 million is the amount we have applied to repayment of the overall project investment, but that it would not necessarily mean that 45 percent of a particular dam has been repaid.

2. *Effects of the Bureau Reorganization.* There were questions about whether the recent Bureau reorganization, which consolidated three Regional Offices into one office at Billings, was reflected in the study, since

BEST COPY AVAILABLE

Bureau costs seem to be going up. The answer is that the increased Bureau costs shown in the study generally are for on-going construction; O&M costs (which include the effects of the consolidation) have not increased significantly.

3. *Interest Rate Used.* A customer asked if the interest rate in the FY 1987 PRS was the same as in the FY 1986 PRS. Western responded that the interest rate for future investments changed from 8.875 percent in the 1986 study to 8.5 percent in the 1987 study.

4. *Review of Bureau and Corps O&M Costs.* There was a question whether Western has an opportunity to determine the validity of the Bureau and Corps O&M expenses that are used in the study. Western replied the while we basically accept another agency's data, we reserve the right to ask questions, and in fact, do frequently ask for explanations of major changes or of things in the data that we do not understand.

5. *Confusion About Replacement Investment.* There was confusion about two amounts given in relation to the replacement investment during the budget period. Western understands how there could be confusion between a $48 million and a $43 million amount that had been mentioned in the presentation. The $48 million amount is the total difference in replacements during the budget periods on the separate FY 1986 and FY 1987 studies. While the rest is budgeted in the Eastern Division, $43 million of the $48 million is budgeted in the Western Division.

6. *Clarification of the Term "Budget Year."* Someone asked for clarification of what is meant by "budget year." Western explained that in the context of the discussion, the budget year was the first year of the 5-year budget that we were operating under for the time that the study was done.

7. *Firm and Nonfirm Sales as Related to "Other Revenue."* There was a request to clarify how the relation between firm and nonfirm sales has contributed to decreased "other revenue" projections. Western said that "other revenue" is composed of income from several items, such as transmission service revenues, etc., as well as from nonfirm sales. Specifically, however, there is only so much energy generation that can be produced in any one year by a hydrosystem; and customer load factors are gradually increasing. The higher load factors result in more of the available energy being dedicated to supply firm contracts, leaving less energy for the nonfirm or surplus sales.

A related question had to do with why the trend of increasing customer load factors did not cause an increase in the tip-up rate for those sales above a 60-percent load factor. The answer was that as load factors go up, we are in effect selling more energy at the existing tip-up rate, which provides more income for those purchases we do have to make to support the above 60-percent load factor sales.

8. *Factors Causing the Rate Increase.* There was a request to summarize the factors that were causing the rate increase. Western observed that increases in O&M costs coupled with decreases in "other revenue" result in higher interest expenses (because the unpaid balance of investment is higher than it otherwise would have been).

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA), Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), and DOE Guidelines published in the Federal Register on December 15, 1987 (52 FR 47662), Western conducted an environmental evaluation of this proposed rate adjustment.

Section D of the DOE Guidelines indicates that the level of documentation for NEPA compliance is based in part on a comparison of the proposed rate adjustment and the rate of inflation since the last adjustment. Because this proposed adjustment is less than the rate of inflation since the last rate adjustment, and because there does not seem to be serious customer objection to this rate adjustment, Western has prepared a determination memorandum that concludes no further environmental analyses are required.

Availability of Information

All studies, comments, letters, memoranda, and other documents made or kept by Western for the purpose of developing the power rates are and will be available for inspection and copying at the Billings Area Office, Western Area Power Administration, 2525 4th Avenue North, Billings, Montana 59101, telephone: (406) 657-6532.

Submission to FERC

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective the first day of the October 1989 billing period, rate Schedules P-SED-F3 and P-SED-FP3. These rates shall remain in effect on an interim basis pending the FERC confirmation and approval of them or substitute rates on a final basis, or until they are superseded.

Issued at Washington, DC, June 28, 1989.

W. Henson Moore,

Deputy Secretary.

[Schedule P-SED-F3; Supersedes Schedule P-SED-F2]

Billings Area Office—Pick-Sloan Missouri Basin Program—Eastern Division

Schedule of Rates for Firm Power Service

Effective: The first day of the October 1989 billing period.

Available: Within the marketing area served by the Eastern Division of the Pick-Sloan Missouri Basin Program.

Applicable: To the power and energy sold to customers as firm power service through each meter at each point of delivery.

Monthly Rate: Capacity Charge: $1.85 per kilowatt of billing demand for firm power service as defined by the power sales contract.

Energy Charge: 5.06 mills per kilowatthour for all energy delivered as firm power service. An additional 3.38 mills per kilowatthour will be assessed for all energy delivered as firm power service which is in excess of 60-percent monthly load factor and within the delivery obligations under the provisions of the power sales contracts.

Adjustments: For Character and Conditions of Service: Customers who receive deliveries at transmission voltage may in some instances be eligible to receive a 5-percent discount on capacity and energy charges when facilities are provided by the customer which result in a sufficient savings to the United States to justify the discount. The determination of eligibility for receipt of the voltage discount shall be exclusively vested in the United States.

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overrun shall be billed at ten times the above rate.

For Power Factor: None. The customer will normally be required to maintain a power factor at the point of delivery between 95-percent lagging and 95-percent leading.

[Schedule P-SED-FP3; Supersedes Schedule P-SED-FP2]

Billings Area Office—Pick-Sloan Missouri Basin Program—Eastern Division

Schedule of Rates for Firm Peaking Power Service

Effective: The first day of the October 1989 billing period.

Available: To the customers of the Billings Area Office with generating resources enabling them to utilize firm peaking power service.

Applicable: To the power sold to customers as firm peaking power service.

Monthly Rate: Capacity Charge: $1.85 per kilowatt of the effective contract rate of delviery for peaking power or the maximum amount scheduled, whichever is the greater.

Energy Charge: 5.06 mills per kilowatthour for all energy scheduled for delivery without return.

Adjustments: Billing for unauthorized overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual obligation for peaking capacity and/or energy, such overrun shall be billed at 10 times the above rate.

[FR Doc. 89-17708 Filed 7-27-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3622-1]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed July 17, 1989 Through July 21, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890195, Draft, FHW, CA, I-5/Santa Ana Freeway Widening and Interchanges I-5/CA-22 and I-5/CA-91 Reconstruction, Funding, Cities of Santa Ana, Orange, Anaheim, Fullerton and Buena Park, Orange County, CA, Due: September 20, 1989, Contact: Michael Cook (916) 551-1310.

EIS No. 890196, Draft, FAA, TX, New Austin Airport Construction, Airport Layout Plan and Location Approval, Cities of Austin and Manor, Travis County, TX, Due: September 11, 1989, Contact: Mo Keane (817) 624-5606.

EIS No. 890197, Final, USA, UT, Tooele Army Depot On-Site Facility for Disposal of Stockpiled Chemical Agents and Munitions, Construction and Operation, Tooele County, UT, Due: August 28, 1989, Contact: Lewis Walker (202) 695-7824.

EIS No. 890198, Final, FHW, OR, North Marine Drive Improvement, I-5 to Rivergate Industrial District, Funding and Section 10/404 Permits, Multnomah County, OR, Due: August 28, 1989, Contact: Dale Wilken (503) 399-5749.

EIS No. 890199, DSuppl, EPA, CA, City of Los Angeles Wastewater Treatment Facilities Plan, Construction/Operation, Updated Information, Grant, Los Angeles County, CA, Due: September 14, 1989, Contact: Susan Johnson (415) 974-8288.

EIS No. 890200, Final, FHW, ND, MN, I-94 Corridor Improvements, Horace Road to US 75, Funding COE Section 404 Permit and U.S. Coast Guard Permit, Cass County, ND and Clay County, MN, Due: August 28, 1989, Contact: John Kliethermes (701) 250-4202.

EIS No. 890201, Final, AFS, ID, Wing Creek-Twentymile Timber Sale and Road Construction, Geographic Display Area Management Plan, Implementation, Nezperce National Forest Land and Resource Management Plan, Elk City and Clearwater Ranger Districts, Idaho County, ID, Due: August 28, 1989, Contact: Thomas Kovalicky (208) 983-1950.

EIS No. 890202, DSuppl, BLM, MT, Powder River I Regional Federal Coal Tracts, Leasing, Assessment of Economic, Social and Cultural Impacts on the Northern Cheyenne and Crow Indian Tribes, Yellowstone, Big Horn and Rosebud Counties, MT, Due: September 26, 1989, Contact: Loren Cabe (406) 255-2923.

EIS No. 890203, Draft, APH, AL, AZ, AR, CA, FL, GA, KS, LA, MS, MO, NM, NC, OK, SC, TN, TX, VA, PRO, National Boll Weevil Cooperative Control Program, Implementation and Funding, AL, AZ, AR, CA, FL, GA, KS, LA, MS, MO, NM, NC, OK, SC, TN, TX, VA, Due: September 11, 1989, Contact: Mike Werner (202) 436-8565.

EIS No. 890204, Draft, UAF, CA, Space Launch Complex 7 (SLC-7) Construction and Operation, South Vandenberg Air Force Base, Santa Barbara County, CA, Due: September 11, 1989, Contact: John Edwards (213) 643-0934.

EIS No. 890205, Final, SFW, KY, TN, Reelfoot Lake Water Level Management Plan, Implementation, Fulton County, KY and Lake and Obion Counties, TN, Due: August 28, 1989, Contact: John Oberheu (404) 331-3594.

Amended Notices: EIS No. 890145, DSuppl, AFS, AK, Alaska Pulp Long-Term Timber Sale/Road Construction, Phase II 1981-86 and 1986-89 Operating Plan Amendments, Meed-Bay, Freshwater-Whitestone, Corner Bay, and Kuia Island Analysis Areas, Tongass National Forest, AK, Due: August 15, 1989, Contact: James Pierce (907) 586-8871.

Published FR 7-21-89—Incorrect due date.

Dated: July 25, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89-17709 Filed 7-27-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3622-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 10, 1989 through July 14, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D-AFS-J61076-CO, Rating EO2, Lake Catamount Resort Construction, Special Use Permit, 404 Permit, Routt National Forest, Routt County, CO.

Summary: EPA feels this document does not fully explore all feasible and practicable alternatives which would reduce project impacts to waters of the United States, including wetlands. EPA requested additional information related to proposed mitigation.

ERP No. D-AFS-J65152-MT, Rating EO2, Upper Yaak River Drainage Area, Timber Harvest and Road Construction/Reconstruction, Kootenai National Forest, Lincoln County, MT.

Summary: EPA supports selection of alternatives 7 and 8 of the draft EIS over alternative 6 (preferred alternative) because they provide a greater degree of protection to the Forests' resources. EPA believes that the proposed timber harvest level has the potential to adversely impact water quality, soil productivity, and riparian areas. None of the alternatives in the draft EIS appear to be consistent with the Forest Plan standards and guidelines for water quality protection and road density in grizzly habitat.

ERP No. D-FHW-E40719-SC, Rating EO2, Northern Outer Bypass Construction, US 501 to US 17, Funding, COE Section 10 and 404 Permits and US Coast Guard Section 9 Permit, City of Conway, Horry County, SC.

Summary: EPA has strong environmental reservations concerning the projected loss of several hundred acres of forested wetlands and recommends that alternative alignments be re-examined to reduce anticipated wetland destruction. Detailed compensation plans to offset unavoidable wetland losses also need to

be developed and included in subsequent NEPA documents.

ERP No. D–FHW–H40140–MO, Rating LO, South Riverfront Expressway Construction, Front Street Interchange on I–435 to US 24, Funding, Cities of Independence, Kansas City and Sugar Creek, Jackson County, MO.

Summary: EPA believes that the draft EIS satisfactorily addresses the potential impacts of the proposed project and that the coordination addressing the loss of 4(f) land will result in acceptable mitigation.

ERP No. D–SCS–E36165–MS, Rating EC2, Long Beach Watershed Plan, Flood Damage Reduction, Funding, Harrison County, MS.

Summary: EPA has environmental concerns regarding the secondary impacts of residential/commercial development associated with the proposed flood control measures. This development could reduce the benefits on which EPA justified the habitat losses required to provide increased flood protection.

Final EISs

ERP No. F–NAS–E12004–00, Galileo Mission Project, Galileo Spacecraft Preparation and Operation Plan, Implementation, Solar System Exploration Program (Tier 2).

Summary: EPA has no objections to the project as described in the final EIS.

Dated: July 25, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89–17710 Filed 7–27–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL HOME LOAN BANK BOARD

[LN4/2]

American Interstate Savings Association, F.A.; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for American Interstate Savings Association, Los Angeles, California on July 20, 1989.

Dated: July 25, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–17639 Filed 7–27–89; 8:45am]

BILLING CODE 6720–01–M

Amerimac Savings Bank, F.S.B.; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2)(1982), as amended, the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Amerimac Savings Bank, F.S.B., Hillsboro, Illinois on June 28, 1989.

Dated: July 20, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–17640 Filed 7–27–89; 8:45am]

BILLING CODE 6720–01–M

[LN4/2]

Centennial Federal Savings & Loan Association; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Centennial Federal Savings and Loan Association, Greenville, Texas on July 13, 1989.

Dated: July 20, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–17641 Filed 7–27–89; 8:45am]

BILLING CODE 6720–01–M

[LN4/2]

Commonwealth Federal Savings & Loan Association; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. section 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Commonwealth Federal Savings and Loan Association, Ft. Lauderdale, Florida on July 20, 1989.

Dated: July 25, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–17642 Filed 7–27–89; 8:45 am]

BILLING CODE 6720–01–M

[LN4/2]

Continental Federal Savings & Loan Association, F.A.; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Continental Federal Savings and Loan Association, F.A., Oklahoma City, Oklahoma on July 13, 1989.

Dated: July 20, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–17643 Filed 7–27–89; 8:45 am]

BILLING CODE 6720–01–M

[LN4/2]

Cornerstone Federal Savings Association; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Houston, Texas on July 13, 1989.

Dated: July 20, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–17644 Filed 7–27–89; 8:45 am]

BILLING CODE 6720–01–M

[LN4/2]

Cross Roads Savings & Loan Association, F.A.; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Cross Roads Savings and Loan Association, F.A., Checotah, Oklahoma, on July 13, 1989.

Dated: July 20, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–17645 Filed 7–27–89; 8:45 am]

BILLING CODE 6720–01–M

First Federal Savings & Loan Association of Bakersfield; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2)(1982), as amended, the Federal Home Loan Bank Board has duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for First Federal Savings and Loan Association of Bakersfield, Bakersfield, California, on June 28, 1989.

Dated: July 20, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–17646 Filed 7–27–89; 8:45 am]

BILLING CODE 6720–01–M

[LN4/2]

First of Kansas Savings; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for First of Kansas Savings, a Federal Savings and Loan Association, Hays, Kansas on July 20, 1989.

Dated: July 25, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–17647 Filed 7–27–89; 8:45 am]

BILLING CODE 6720–01–M

[LN4/2]

First State Federal Savings Association; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for First State Federal Savings Association, San Antonio, Texas on June 28, 1989.

Dated: July 20, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 17649 Filed 7–27–89; 8:45 am]

BILLING CODE 6720–01–M

The Guardian Federal Savings and Loan Association; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2) (1982), as amended, the Federal Home Loan Bank Board has duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for The Guardian Federal Savings and Loan Association, Bakersfield, California, on June 28, 1989.

Dated: July 20, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 17648 Filed 7–27–89; 8:45 am]

BILLING CODE 6720–01–M

[LN4/2]

New Mexico Federal Savings Association; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for New Mexico Federal Savings Association, Albuquerque, New Mexico on July 20, 1989.

Dated: July 25, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–17650 Filed 7–27–89; 8:45 am]

BILLING CODE 6720–01–M

[LN4/2]

Parish Federal Savings & Loan Association; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Parish Federal Savings and Loan Association, Denham Springs, Louisiana on July 19, 1989.

Dated: July 25, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–17652 Filed 7–27–89; 8:45 am]

BILLING CODE 6720–01–M

[LN4/2]

Pioneer Federal Savings & Loan Association, F.A.; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Pioneer Federal Savings and Loan Association, F.A., Plymouth, Indiana on July 13, 1989.

Dated: July 20, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–17653 Filed 7–27–89; 8:45 am]

BILLING CODE 6720–01–M

[LN4/2]

Royal Palm FS&LA; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Royal Palm FS&LA, West Palm Beach, Florida, on July 19, 1989.

Dated: July 25, 1989.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-17654 Filed 7-27-89; 8:45 am]
BILLING CODE 6720-01-M

[LN4/2]

Skokie Federal Savings & Loan Association, F.A.; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Skokie Federal Savings and Loan Association, F.A., Skokie, Illinois on July 19, 1989.

Dated: July 25, 1989.
By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-17655 Filed 7-27-89; 8:45 am]
BILLING CODE 6720-01-M

[LN-4/1]

Alamo Savings Association of Texas; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for Alamo Savings Association of Texas, San Antonio, Texas ("Association") with the FSLIC as sole receiver for the Association on June 28, 1989.

Dated: July 20, 1989.
By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-17656 Filed 7-27-89; 8:45 am]
BILLING CODE 6720-01-M

[LN-4/1B]

American Interstate Savings; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as sole receiver ("Receiver") for American Interstate Savings, A Federal Savings and Loan Association, Los Angeles, California ("Association") July 20, 1989.

Dated: July 25, 1989.
By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-17657 Filed 7-27-89; 8:45 am]
BILLING CODE 6720-01-M

[LN-4/1]

Centennial Savings Bank, FSB; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for Centennial Savings Bank, FSB, Greenville, Texas ("Association") with the FSLIC as sole receiver for the Association on July 13, 1989.

Dated: July 20, 1989.
By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-17658 Filed 7-27-89; 8:45 am]
BILLING CODE 6720-01-M

[LN-4/1A]

Commonwealth Savings & Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(1) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Commonwealth Savings and Loan Association, Ft. Lauderdale, on July 20, 1989.

Dated: July 25, 1989.
By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 87-17659 Filed 7-27-89; 8:45 am]
BILLING CODE 6720-01-M

[LN-4/1]

Continental Federal Savings and Loan Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Act, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as conservator for Continental Federal Savings and Loan Association, Oklahoma City, Oklahoma ("Association") with the FSLIC as sole receiver for the Association on July 13, 1989.

Dated: July 20, 1989.
By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-17660 Filed 7-27-89; 8:45 am]
BILLING CODE 6720-01-M

[LN-4/1A]

Cornerstone Savings & Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(1) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Cornerstone Savings Association, Houston, Texas, on July 13, 1989.

Dated: July 20, 1989.
By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 87-17661 Filed 7-27-89; 8:45 am]
BILLING CODE 6720-01-M

[LN-4/1]

Cross Roads Savings & Loan Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for Cross Roads Savings and Loan Association, Checotah, Oklahoma ("Association") with the FSLIC as sole receiver for the Association on July 13, 1989.

Dated: July 20, 1989.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-17663 Filed 7-27-89; 8:45 am]
BILLING CODE 6720-01-M

[LN-4/1B]

First Federal Savings & Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation ("FSLIC") as sole receiver ("Receiver") for First Federal Savings and Loan Association, Americus, Georgia ("Association") June 22, 1989.

Dated: July 20, 1989.
By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-17664 Filed 7-27-89; 8:45 am]
BILLING CODE 6720-01-M

[LN-4/1]

First of Kansas Banking & Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for First of Kansas Banking and Savings Association, Hays, Kansas ("Association") with the FSLIC as sole receiver for the Association on July 20, 1989.

Dated: July 25, 1989.
By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-17665 Filed 7-27-89; 8:45 am]
BILLING CODE 6720-01-M

[LN-4/1]

First State Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for First State Savings Association, San Antonio, Texas ("Association") with the FSLIC as sole receiver for the Association on June 28, 1989.

Dated: July 20, 1989.
By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-17666 Filed 7-27-89; 8:45 am]
BILLING CODE 6720-01-M

[LN-4/1B]

Habersham Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation ("FSLIC") as sole receiver ("Receiver") for Habersham Federal Savings Bank, Cornelia, Georgia ("Association"), June 28, 1989.

Dated: July 20, 1989.
By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-17667 Filed 7-27-89; 8:45 am]
BILLING CODE 6720-01-M

[LN-4/1A]

Missouri Savings Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(1) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Missouri Savings Association, Clayton, Missouri on June 28, 1989.

Dated: July 20, 1989.
By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-17668 Filed 7-27-89; 8:45 am]
BILLING CODE 6720-01-M

[LN-4/1B]

New Mexico Federal Savings & Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation ("FSLIC") as sole receiver ("Receiver") for New Mexico Federal Savings & Loan Association, Albuquerque, New Mexico ("Association") July 20, 1989.

Dated: July 25, 1989.
By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-17669 Filed 7-27-89; 8:45 am]
BILLING CODE 6720-01-M

[LN-4/1B]

Parish Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation ("FSLIC") as sole receiver ("Receiver") for Parish Federal Savings Bank, Denham Springs, Louisiana ("Association") July 19, 1989.

Dated: July 25, 1989.
By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-17670 Filed 7-27-89; 8:45 am]
BILLING CODE 6720-01-M

[LN-4/1A]

Pioneer Federal Savings & Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(1) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Pioneer Federal Savings and Loan Association, Plymouth, Indiana, on July 13, 1989.

Dated: July 20, 1989.
By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-17672 Filed 7-27-89; 8:45 am]
BILLING CODE 6720-01-M

[LN-4/1]

Royal Palm Savings Bank; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for Royal Palm Savings Bank, West Palm Beach, Florida ("Association") with the FSLIC as sole receiver for the Association on July 20, 1989.

Dated: July 25, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-17673 Filed 7-27-89; 8:45 am]

BILLING CODE 6720-01-M

[LN-4/1B]

Sierra Federal Savings & Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation ("FSLIC") as sole receiver ("Receiver") for Sierra Federal Savings and Loan Association, Beverly Hills, California ("Association") July 19, 1989.

Dated: July 25, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-17674 Filed 7-27-89; 8:45 am]

BILLING CODE 6720-01-M

[LN-4/1]

Skokie Federal Savings & Loan Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(D) of the Home Owner's Loan Act, as amended, 12 U.S.C. 1464(d)(6)(D), (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for Skokie Federal Savings and Loan Association, Skokie, Illinois ("Association") with the FSLIC as sole receiver for the Association on July 19, 1989.

Dated: July 25, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-17675 Filed 7-27-89; 8:45am]

BILLING CODE 6720-01-M

[LN-4/1]

University Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for University Savings Association , Houston, Texas ("Association") with the FSLIC as sole receiver for the Association on May 23, 1989.

Dated: July 20, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni

Assistant Secretary.

[FR Doc. 89-17676 Filed 7-27-89; 8:45am]

BILLING CODE 6720-01-M

[No. AC-775; FHLBB NOS. 0042 and 2188]

First Federal Savings & Loan Association of Akron and Western Reserve Federal Savings Bank of Cleveland; Final Action; Approval of Conversion Application

Date: July 17, 1989.

Notice is hereby given that on June 30, 1989, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the applications of First Federal Savings and Loan Association of Akron, Akron, Ohio and Western Reserve Savings Bank of Cleveland, Cleveland, Ohio, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 200 Atrium TWO, 221 E. 4th Street, Cincinnati, Ohio 45201.

By the Federal Home Loan Bank Board.

John F. Ghizzoni

Assistant Secretary.

[FR Doc. 89-17677 Filed 7-27-89; 8:45am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 21, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice president) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Donald J. Bierman,* Shawnee, Oklahoma; to acquire 31.7 percent of the voting shares of Commerce Bancorporation, Inc., McCloud, Oklahoma, and thereby indirectly acquire Bank of Commerce, McCloud, Oklahoma.

Board of Governors of the Federal Reserve System, July 24, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-17626 Filed 7-27-89; 8:45 am]

BILLING CODE 6210-01-M

Canadian Imperial Bank of Commerce, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 21, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Canadian Imperial Bank of Commerce,* Toronto, Canada; to engage *de novo* through Wood Gundy Corp., New York, New York, in acting as an introducing broker with respect to transactions in futures, forward and options contracts on bank-eligible securities, including Canadian government securities, pursuant to § 225.25(b)(18) of the Board's Regulation Y. Comments on this application must be received by August 11, 1989.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *MidState Banks, Inc.,* Cordele, Georgia; to engage *de novo* in making, acquiring, or servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Financial Bancshares, Inc.* ("Applicant"), St. Louis, Missouri; to engage *de novo* through First Financial Mortgage, Inc. ("Company"), St. Louis, Missouri, in seeking to identify persons interested in obtaining long-term residential real estate financing, primarily real estate brokers and home builders. Once the prospective borrower is identified and his credit and collateral scrutinized, the terms of the proposed loan will be negotiated with the borrower. At approximately the same time, Company will seek, from an institutional investor active in the secondary residential real estate mortgage market, a preliminary commitment to purchase the proposed loan. Once such a commitment is available, Company will close the loan principally with funds borrowed from Applicant's subsidiary banks. Shortly thereafter, Company will sell the loan to the previously committed institutional investor. Company will not retain the servicing associated with the loan; that right will also be sold by Company in the secondary market (usually to the same institutional investor). These activities will be conducted pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 24, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-17627 Filed 7-27-89; 8:45 am]

BILLING CODE 6210-01-M

Multibank Financial Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 14, 1989.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Multibank Financial Corp.,* Dedham, Massachusetts; to retain ownership of 5.80 percent of the voting shares of Andover Bancorp, Inc., Andover, Massachusetts, and Andover Savings Bank, Andover, Massachusetts; 5.64 percent of the voting shares of The Waltham Corporation, Waltham, Massachusetts, and Waltham Savings Bank, Waltham, Massachusetts; and 6.70 percent of the voting shares of First Woburn Bancorp, Inc., Woburn, Massachusetts, and Woburn Five Cents Savings Bank, Woburn, Massachusetts. All of the subsidiary banks engage in Massachusetts Savings Bank Life Insurance.

Board of Governors of the Federal Reserve System, July 24, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-17628 Filed 7-27-89; 8:45 am]

BILLING CODE 6210-01-M

PAER Bancorp, Inc.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 18.42(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 21, 1989.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *PAER Bancorp, Inc.*, Bushkill, Pennsylvania; to become a bank holding company by acquiring at least 61 percent of the voting shares of The Peoples National Bank of Rowlesburg, Rowlesburg, West Virginia.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First State Bancorp, Inc.*, Harwood Heights, Illinois; to acquire 100 percent of the voting shares of Parkway Bank of Schaumburg, Schaumburg, Illinois.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Kansas Bank Corporation*, Liberal, Kansas; to acquire 100 percent of the voting shares of Elkhart Financial Company, Elkhart, Kansas, and thereby indirectly acquire First National Bank of Elkhart, Elkhart, Kansas.

Board of Governors of the Federal Reserve System, July 24, 1989.
William W. Wiles,
Secretary of the Board.

[FR Doc. 89-17629 Filed 7-27-89; 8:45 am]
BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division by the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 7-10-89 AND 7-21-89

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Bass plc, Darryl Lapointe, Tampa Bay Hotel Associates	89-1778	07/10/89
Bass plc, L.M. Nelson, Tampa Bay Hotel Associates	89-1731	07/10/89
Asahi Corporation, PhoneMate, Inc., Phonemate, Inc	89-1831	07/10/89
Burlington Resources Inc., The Louisiana Land and Exploration Company, The Louisiana Land and Exploration Company,	89-2006	07/10/89
Frank Lyon, Jr. Trust, Frank Lyon, Sr. and Marion B. Lyon, Frank Lyon Company (Frank Lyon Distributing Company)	89-2038	07/10/89
Dobson Park Industriess plc, Elgar Electronics Corporation, Elgar Electronics Corporation,	89-2092	07/10/89
Financiere Strafor, Hauserman, Inc., certain assets of Hauserman, Inc	89-2094	07/10/89
Jiro Fujimaki, Persis Corporation, ASA Properties Hawaii, Inc	89-2101	07/10/89
C.H. Industrials PLC, SGC Holding Company, Inc., Sheller-Globe Corporation	89-2106	07/10/89
Crabtree Capital Corporation, Mutual of Omaha Insurance Company, Omaha Financial Life Insurance Company	89-2109	07/10/89
Ste' Parisienne d'Enterprises et de Participations, Comstock Group, Inc. Comstock Group, Inc	89-2116	07/10/89
J.H. Whitney & Co., Prime Computer, Inc., Prime Computer, Inc	89-2118	07/10/89
Preferred Risk Mutual Insurance Company, Preferred Risk Life Insurance Company, Preferred Risk Life Insurance Company	89-2119	07/10/89
American Express Company, DR Holdings Inc. of Delaware, DR Holdings Inc. of Delaware	89-2123	07/10/89
Ken Miller, Kinder-Care, Inc., Kinder-Care, Inc	89-2139	07/10/89
First Chicago Corporation, Reading & Bates Corporation, Golden Oak Mining Company and Belva Coal Company	89-2140	07/10/89
Acadia Partners, L.P., Price Right Drugs, Inc., Price Right Drugs, Inc	89-2142	07/10/89
American Financial Corporation, ABQ Corporation, Talbot Agency, Inc	89-2149	07/10/89
Mr. Holger Hjelm, Aktiebolaget Volvo, STC Scandinavian Trading Company AB	89-2157	07/10/89
Orix Corporation, Commodities Corporation, Commodities Corporation	89-2170	07/10/89
Tull Gearreald, Kinder-Care, Inc., Kinder-Care, Inc	89-2173	07/10/89
Ken Miller, Kinder-Care, Inc., Kinder-Care Learning Centers, Inc	89-2174	07/10/89
Tull Gearreald, Kinder-Care, Inc., Kinder-Care Learning Centers, Inc	89-2175	07/10/89
Salem Carpet Mills, Inc., Howard Stein, Howard Carpet Mill's, Inc. and Howard Properties, Inc	89-2040	07/11/89
Trelleborg AB, McNally, Inc. McNally, Inc	89-2077	07/11/89
Sequoia Ventures Inc., Grossman's Inc., Northwest Division	89-2134	07/11/89
Pennsylvania Blue Shield, Inter-County Health & Inter-County Hospitalization Plan, Inter-County Health & Inter-County Hospitalization Plan,	89-1993	07/12/89
International Controls Corporation, Raymond P. Park, South Charleston Stamping and Manufacturing Company	89-2089	07/12/89
Carrefour, Office Depot, Inc., Office Depot, Inc	89-2152	07/12/89
The Marcade Group Inc., Mr. Jeffrey Clyman, Avirex Ltd	89-2078	07/13/89
Attwoods plc, Charles J. Carite, Atlantic Recovery and Transfer System, Inc., et al	89-2156	07/13/89
Attwoods plc, Alvin H. White, Atlantic Recovery and Transfer System, Inc., et al	89-2160	07/13/89
Agip S.p.A., Steuart Investment Company, Steuart Petroleum Company	89-1863	07/13/89
Farmers Union Central Exchange, Incorporated, National Cooperative Refining Association, National Cooperative Refining Association	89-2027	07/14/89
The Ochs Trust, Time, Inc., WWT Partnership	89-2041	07/14/89
The Ochs Trust, c/o Fred Mason, Dale W. Lang, WWT Partnership	89-2042	07/14/89
Mr. Chak Fu Chan, 761 Hotel Associates, 761 Hotel Associates, (Grand Bay Hotel)	89-2072	07/14/89
ESAB AB, L-TEC Company, L-TEC Company	89-2073	07/14/89
Mr. Kimio Haneda, Buyco, Inc., Ka'u Agribusiness Co., Inc	89-2100	07/14/89
American Telephone and Telegraph Company, Sun Microsystems, Inc., Sun Microsystems, Inc	89-2102	07/14/89
Reliance Group Holdings, Inc., Frank B. Hall & Co., Inc., Frank B. Hall & Co., Inc	89-2111	07/14/89
First Chicago Corporation, Gefinor S.A., Duo-Tang Products Division of Sheaffer Eaton, Inc	89-2120	07/14/89
S.A. Dolomies de Marche-les Dames, M.A. Rikard, Allied Products Company	89-2125	07/14/89
Policy Management Sytsems Corporation, John W. Blaney, Advanced System Applications, Inc	89-2148	07/14/89
Ado Shoji Co., Ltd., Edward B. Slatkin, Dana Point Resort Partners	89-2150	07/14/89
Saratoga Partners II, L.P., Marshall H. Haas, Haas Publishing Companies, Inc	89-2151	07/14/89
Caisse Centrale des Mutuelles Agricoles, Sorema N.A. Holding Corporation, Sorema N.A. Holding Corporation	89-2153	07/14/89
Citicorp, Cummins Engine Company, Inc., Cummins Financial, Inc	89-2161	07/14/89
ABQ Corporation, Central Banking System, Inc., Coast Program of Arizona, Inc	89-2162	07/14/89

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 7-10-89 AND 7-21-89—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Metropolitan Life Insurance Company, J.C. Penney Company, Inc., J.C. Penney Casualty Insurance Company	89-2154	07/14/89
Frontenac Venture V Limited Partnership, The Jesup Group, Inc., Arrco Playing Card Company, Inc. and The United States	89-2179	07/14/89
Ado Shoji Co., Ltd., Thomas F. and Paula Slatkin, Dana Point Resort Partners	89-2181	07/14/89
Household International, Inc., Atlantic Financial Federal, Atlantic Financial Federal	89-2189	07/14/89
Unilever N.V. and Unilever PLC, Minnetonka Corporation, Minnetonka Corporation	89-2198	07/14/89
Den Almindelige Gensidige Brandforsikring AF 1792, Sorema N.A. Holding Corporation, Sorema N.A. Holding Corporation	89-2216	07/14/89
Veba Aktiengesellschaft, Raymond B. Preston, P.B. & S. Chemical Company, Inc	89-2057	07/17/89
The Prudential Insurance Company of America, Thomson McKinnon, Inc., Thomson McKinnon, Inc	89-2076	07/17/89
Uniden Corporation, Gary H. and Virginia A. de Kat, Impulse Manufacturing, Inc	89-2084	07/17/89
Omnicom Group Inc., Thomas A. Schutz Co., Inc., Thomas A. Schutz Co., Inc	89-2085	07/17/89
Standard Shares, Inc., NV Verenigd Bezit VNU, VNU Business Publications, Inc	89-2127	07/17/89
Halliburton Company, Kuwait Petroleum Corporation, C F Braun Inc	89-2130	07/17/89
Waterford Co-Operative Society Limited, Borden, Inc., Borden, Inc	89-2182	07/17/89
Waste Management, Inc., The Wheelabrator Group, Inc., The Wheelabrator Group, Inc	89-2192	07/18/89
Tyler Capital Fund L.P., Mr. Sam M. Winston, Oliver & Winston, Inc	89-2026	07/19/89
Pembridge Associates, Inc., DRG public limited company, DRG public limited company	89-2098	07/19/89
Triton Energy Corporation, Mr. Dibo Attar, Aero Services International, Inc	89-2099	07/19/89
Midwest Energy Company, William N. Steitz, Century Contractors West, Inc	89-2135	07/19/89
American Capital and Research Corporation, Ben Kacyra, a natural person, Cygna Group	89-2155	07/19/89
J. Baxter Brinkmann, Charles H. Dyson and Margaret M. Dyson, Kelly Industries, Inc., KP Industries, Inc. et al	89-2167	07/19/89
Jupiter Corporation, Household International, Inc., GC Thorsen, Inc. and Household Manufacturing Overseas	89-2190	07/19/89
Hanson PLC, Consolidated Gold Fields PLC, Consolidated Gold Fields PLC	89-2197	07/19/89
Lowe Howard-Spink & Bell plc, The Interpublic Group of Companies, Inc., Lowe Marschalk, Inc	89-2168	07/20/89
The Interpublic Group of Companies, Inc., Lowe Howard-Spink & Bell plc, Lowe Howard-Spink & Bell plc	89-2169	07/20/89
Automatic Data Processing, Inc., Automatic Business Centers, Inc., Automatic Business Centers, Inc	89-2186	07/20/89
Courtaulds plc, Products Research & Chemical Corporation, Products Research & Chemical Corporation	89-2200	07/20/89
Charter Medical Corporation, Park Healthcare Company, Park Place Hospital, Inc	89-2213	07/20/89
CH Financial Corporation, Alan S. Fogg, Sr., Farm Stores, Inc	89-2079	07/21/89
The Morgan Stanley Leveraged Equity Fund II, L.P., Amoco Company, Amoco Container Company	89-2124	07/21/89
Charles F. Dolan, Republic Cable Partners of Arizona, L.P., Republic Cable Partners of Arizona, L.P	89-2144	07/21/89
Mark Mendelson, Trusthouse Forte PLC, The Plaza Partnership	89-2199	07/21/89
Unilever N.V. and Unilever PLC, Minnetonka Corporation, Minnetonka Corporation	89-2201	07/21/89
Merrill Lynch & Co., Inc., Emco Sales and Service Inc., Emco Sales and Service Inc	89-2203	07/21/89
IHC Toshi Jigyo Kumiai, M.C. Holding Partners, M.C. Holding Partners	89-2204	07/21/89
Unilever N.V. and Unilever PLC, Minnetonka Corporation, Calvin Klein Cosmetics Corporation	89-2205	07/21/89
Mr. Morihiro Sekiyama, Holiday Corporation, Embassy Suites, Inc	89-2214	07/21/89
Merrill Lynch & Co., Inc., Emco Holdings Corporation, Emco Holdings Corporation	89-2223	07/21/89
JWP Inc., Computer Applications Corporation, Computer Applications Corporation	89-2231	07/21/89
Nippon Sanso K.K., Household International, Inc., The Thermos Company	89-2232	07/21/89
Harry Gray, Mel Klein & Partners, L.P., American Medical International, Inc., American Medical International, Inc	89-2245	07/21/89
Harry Gray, Mel Klein & Partners, L.P., IMA Holdings Corp., IMA Holdings Corp	89-2246	07/21/89
CS First Boston, Inc., IMA Holdings, Inc., IMA Holdings, Inc	89-2247	07/21/89
Bernard and Lilly Schreier, Israel Investors Corporation, Israel Investors Corporation	89-2249	07/21/89
Scott's Hospitality Inc., Mr. Jack Lew, Manchu Global Holdings Limited	89-2263	07/21/89

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.
Donald S. Clark,
Secretary.

[FR Doc. 89-17701 Filed 7-27-89; 8:45 am]
BILLING CODE 6750-01-M

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer will meet October 18-20, 1989, at the Rosslyn Westpark Hotel, 1900 Fort Myer Drive, Arlington, Virginia.

The purpose of this meeting is to discuss the Depository Library Program.

The meeting is open to the public. Anyone who wishes to attend should notify the Conference Manager, David H. Brown, U.S. Government Printing Office (SM), Washington, DC 20401. Telephone: (202) 275-2255.

General participation by members of the public, or questioning of Council members or other participants, shall be permitted with approval of the Chair.

Joseph E. Jenifer,
Acting Public Printer.

Dated: July 14, 1989.

[FR Doc. 89-17634 Filed 7-27-89; 8:45 am]
BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Members on Public Advisory Committees in the Center for Drug Evaluation and Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on certain public advisory committees in the Center for Drug Evaluation and Research. Nominations will be accepted for current vacancies and vacancies that

will or may occur on the committees during the next 12 months and beyond.

FDA has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates. Final selection from among qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for receipt of nominations.

ADDRESSES: All nominations for membership, except for consumer-nominated members, should be sent to Jack Gertzog (address below). All nominations for consumer-nominated members should be sent to Catherine P. Beck (address below).

FOR FURTHER INFORMATION CONTACT:

Jack Gertzog, Advisors and Consultants Staff (HFD–9), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

or

Catherine P. Beck, Office of Consumer Affairs (HFE–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of members for the following 14 advisory committees for vacancies listed below. Individuals should have expertise in the activity of the committee.

1. *Anesthetic and Life Support Drugs Advisory Committee:* Three vacancies occurring June 30, 1990.

2. *Anti-Infective Drugs Advisory Committee:* Six vacancies occurring November 30, 1989.

3. *Arthritis Advisory Committee:* Three vacancies occurring September 30, 1990.

4. *Cardiovascular and Renal Drugs Advisory Committee:* Six vacancies occurring June 30, 1990.

5. *Dermatologic Drugs Advisory Committee:* Two vacancies occurring August 31, 1990.

6. *Endocrinologic and Metabolic Drugs Advisory Committee:* Five vacancies occurring June 30, 1990.

7. *Fertility and Maternal Health Drugs Advisory Committee:* Five vacancies occurring June 30, 1990, including the consumer-nominated member.

8. *Gastrointestinal Drugs Advisory Committee:* Three vacancies occurring June 30, 1990.

9. *Oncologic Drugs Advisory Committee:* Three vacancies occurring June 30, 1990.

10. *Peripheral and Central Nervous System Drugs Advisory Committee:* Three vacancies occurring January 31, 1990.

11. *Psychopharmacologic Drugs Advisory Committee:* Four vacancies occurring June 30, 1990.

12. *Pulmonary-Allergy Drugs Advisory Committee:* Three vacancies occurring June 30, 1990.

13. *Radiopharmaceutical Drugs Advisory Committee:* Four vacancies occurring June 30, 1990, including the consumer-nominated member.

The functions of the 13 committees listed above are to review and evaluate available scientific, technical, and medical data concerning the safety and effectiveness of marketed and investigational human drugs for use in the area of medical specialties, indicated by the title of the committee, and to make appropriate recommendations to the Commissioner of Food and Drugs.

14. *Drug Abuse Advisory Committee:* Four vacancies occurring June 30, 1990.

The functions of the Drug Abuse Advisory Committee are to: (1) Advise the Commissioner regarding the scientific and medical evaluation of all information gathered by both the Department of Health and Human Services (DHHS) and the Department of Justice regarding the safety, efficacy, and abuse potential for drugs or other substances; and (2) recommend actions to be taken by DHHS regarding the marketing, investigation, and control of such drugs or other substances.

Criteria for Members

Persons nominated for membership on the committees described above must have adequately diversified research and/or clinical experience appropriate to the work of the committee in such fields as allergy, anesthesiology, surgery, infectious diseases, rheumatology, cardiology, dermatology, endocrinology, obstetrics and gynecology, gastroenterology, oncology, neurology, psychiatry, nuclear medicine, internal medicine, epidemiology, statistics, hematology, pediatrics, microbiology, nuclear biology, biochemistry, or other appropriate areas of expertise.

The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, research, and/or public service relevant to the field of activity of the committee. The term of office is 4 years.

Criteria for Consumer-Nominated Members

FDA currently attempts to place on each of the committees described above one voting member who is nominated by consumer organizations. These members are recommended by a consortium of 12 consumer organizations which has the responsibility for screening, interviewing, and recommending consumer-nominated candidates with appropriate scientific credentials. Candidates are sought who are aware of the consumer impact of committee issues, but who also possess enough technical background to understand and contribute to the committee's work. This would involve, for example, an understanding of research design, benefit/risk, and the legal requirements for safety and efficacy of the products under review, and considerations regarding individual products. The agency notes, however, that for some advisory committees, it may require such nominees to meet the same technical qualifications and specialized training required of other expert members of the committee. The term of office for these members is 4 years. Nominations for all committees listed above are invited for consideration for membership as openings become available.

Nomination Procedure

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Nominations shall specify the committee for which the nominee is recommended. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the advisory committee, and appears to have no conflict of interest that would preclude committee membership. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)) and 21 CFR Part 14, relating to advisory committees.

Dated: July 21, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–17638 Filed 7–27–89; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[BPD–641–N]

Medicare and Medicaid Programs; ICD–9–CM Coordination and Maintenance Committee Meeting

AGENCY: Health Care Financing Adminstration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) Coordination and Maintenance Committee. The public is invited to participate in the discussion of the topic areas.

DATES: The meeting will be held on Thursday and Friday, August 10 and 11, 1989, from 9:00 a.m. to 4:00 p.m. Eastern Daylight Saving Time.

ADDRESSES: The meeting will be held in Room 800 Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrice Robins, (301) 966–9364.

SUPPLEMENTARY INFORMATION: The ICD–9–CM is the clinical modification of the World Health Organization's International Classification of Diseases, Ninth Revision. It is the coding system required for use by hospitals and other health care facilities in reporting both diagnoses and surgical procedures for Medicare, Medicaid, and all other health-related DHHS programs. The work of the ICD–9–CM Coordination and Maintenance Committee will allow this coding system to continue to be an appropriate reporting tool for use in Federal programs.

The Committee is composed entirely of representatives from various Federal agencies interested in the International Classification of Diseases (ICD) and its modification, updating, and use of Federal programs. It is co-chaired by the National Center for Health Statistics and the Health Care Financing Administration.

At this meeting, the Committee will discuss: contrast media with magnetic resonance imaging (MRI), incomplete percutaneous transluminal coronary angioplasty (PTCA), duration of ventilatory therapy, condylectomy, implantable venous access devices, resection of pectoralis major and minor muscle for recurrent cancer of the breast, excision or destruction of urethral tissue or lesion (open vs. closed), excision of eyelid fascia, closed chest heart-lung bypass, subluxation of the spine, abortion with reported live fetus, Goodpasture syndrome, cystic kidney disease, intractable pain, vaginal delivery with history of c-section, angiodysplasia, radiotherapy session, maintenance chemotherapy, aftercare involving intermittent dialysis, complication of bone marrow transplant, toxic gastroenteritis; and other topics.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance Program; No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: July 21, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89–17781 Filed 7–27–89; 8:45 am]

BILLING CODE 4120–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on July 21, 1989.

(Call Reports Clearance Officer on 202–245–2100 for copies of package.)

1. Exempt Infant Formula—0910–0158—The Infant Formula Act authorized the Secretary of DHHS to establish terms and conditions for the continued exemption of infant formulas. This rule establishes terms and conditions and provides increased assurance of safety and appropriate nutrient content of infant formulas for consumers. Respondents: Businesses or other for-profit, small businesses or organizations.

	No. of respondents	No. of hours per response	No. of responses per respondent
Disclosure-Labeling 21 CFR 107.50(b)(3)(4)(c)(4).	4	80 hrs.	1
Recordkeeping 21 CFR 107.50(c)(3)*.			
Reporting 21CFR 107.50(e)(2)*.			

Estimated Annual Burden: 320 hours.
* Burden included in OMB No. 0910–0179.

2. Interim Guidelines for Implementing the Orphan Drug Act—0910–0167—These guidelines have been established to provide sponsors with detailed instructions for seeking FDA recommendations on orphan drug protocols and/or FDA designation as an orphan drug under the Orphan Drug Act (Pub. L. 97–415). Respondents: Businesses or other for-profit, small businesses or organizations.

	No. of respondents	No. of hours per response	No. of responses per respondent
Requests for Written Recommendations.	6	125 hrs.	1
Orphan Drug Designation.	50	125 hrs.	1

Estimated Annual Burden: 7,000 hours.

3. Emergency Epidemic Investigations—0920–0008—The Centers for Disease Control (CDC) receives requests from State and local health departments for scientific, medical and technical assistance in the event of an epidemic or medical emergency. This clearance package is used so that CDC scientists have means of collecting data once in the field. *Respondents:* Individuals or households. *Number of Respondents:* 20,000; *Number of Reponses per Respondent:* 1; *Average Burden per Response:* .25 hours; *Estimated Annual Burden:* 5,000 hours.

4. IHS Grants for the Development, Construction, and Operation of Facilities and Services—0917–0005—Information collected is used to select grantees to perform facility construction, operation, provision or maintenance.

Grants are awarded to improve the capacity of American Indian Tribes to enter into contracts for these purposes or to obtain technical assistance for program planning and evaluation for design, monitoring, and evaluation of Federal programs serving the tribes. *Respondents:* State or local governments, non-profit institutions. *Number of Respondents:* 100; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 6 hours; *Estimated Annual Burden:* 600 hours.

5. Application for Temporary Marketing Permits (21 CFR 130.17(c), (i))—0910–0133—This voluntary regulation allows manufacturers to market test foods to gather data for the purpose of amending food standards. It allows for potential technological advances and economic savings while assuring product safety and is in the interest of consumers. *Respondents:* Businesses or other for-profit. *Number of Respondents:* 18; *Number of Responses per Respondent:* 1.1; *Average Burden per Response:* 12.8 hours; *Estimated Annual Burden:* 255 hours.

6. National Nursing Home Survey Followup Wave III—0920–0224—There is currently great demand for data on the dynamics of long-term care use among those responsible for health policy. The National Nursing Home Survey Followup Wave III is a cost effective means of obtaining data on this topic. The survey design targets for re-interview approximately 3,200 respondents to the National Nursing Home Survey Followup Waves I and II. *Respondents:* Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations. *Number of Respondents:* 6,100; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 0.104 hours; *Estimated Annual Burden:* 633 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: July 24, 1989.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89-17731 Filed 7-27-89; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-1917; FR-2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

DATES: July 28, 1989.

ADDRESSES: For further information, contact Morris Bourne, Department of Housing and Urban Development, Room 9140, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing-and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Date: July 24, 1989.

James E. Schoenberger,

General Deputy, Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89-17679 Filed 7-27-89; 8:45 am]

BILLING CODE 4210-27-M

Office of Administration

[Docket No. N-89-2025]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: July 20, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: National Survey of Lead-Based Paint in Housing.

Office: Office of Policy Development and Research.

Description of the Need for the Information and Its Proposed Use: HUD will survey potential owners and occupants of contaminated housing to estimate the incidence of lead-based paint and the cost and benefits of abatement. The survey will also be used to develop a plan for abatement.

Form Number: None.

Respondents: Individuals or Households, State or Local Governments, Businesses or Other For-Profit.

Frequency of Submission: Other.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Screening	3,000		1		.16		500
Questionnaire	400		1		.50		200
Testing	400		1		1.50		600

Total Estimated Burden Hours: 1,300.

Status: New.

Contact: Steve Weitz, HUD, (202) 755-4370, John Allison, OMB, (202) 395-6880.

Date: July 20, 1989.

[FR Doc. 89-17687 Filed 7-27-89; 8:45 am]

BILLING CODE 4210-01-M

Office of Housing

[Docket No. N-89-2024]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for emergency processing an information collection package with respect to the section 223(f), section 221(d) and section 232 Coinsurance Programs.

The information collected will be in the form of automated data and is necessary to (1) permit the Department to complete its evaluation of the program by September 1, 1989, at which time, the moratorium on approving new coinsuring lenders is scheduled to end. At that time, the revisions to correct the present problems (i.e., unacceptable default rates, overmortgaging, etc.) are to be in place. (2) enable the Department to detect potential defaults and losses to HUD's insurance fund, and (3) assist the Department in identifying those lenders who require closer scrutiny and possible suspension from the coinsurance program. This automated data will assist the Department in its responsibility to provide on-going monitoring of the coinsuring lenders and on-going evaluation of coinsured projects to assure adherence and compliance to statutory and regulatory requirements. The Department has requested OMB to complete its paperwork review of the Coinsurance Umbrella Reporting System within three (3) working days. Any control number issued by OMB to cover this emergency situation would be valid for no more than 90 days.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

This notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, or reinstatement, and (9) the telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: July 24, 1989.

James E. Schoenberger,

General Deputy, Assistant Secretary for Housing.

Proposal: Collecting Information under the Coinsurance Umbrella Reporting System.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This automated data collection system will enable HUD to evaluate and review on an on-going basis the coinsuring lender's underwriting practices and subsequent project performance. The information will assist the Department in its responsibility to monitor lenders to assure adherence and compliance to statutory and regulatory requirements.

Form Number: None.

Respondents: Lenders that have been approved to participate in the section 223(f), section 221(d), and section 232 coinsurance programs.

Frequency of Submission: Monthly.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden:	70		12		3.34		2,806

Status: New.

Contact: Steven Hans, HUD (202) 426-7113, John Allison, OMB (202) 395-6988.

Date: July 24, 1989.

[FR Doc. 89-17686 Filed 7-27-89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-020-08-4121-09; DES 89-15]

Availability of Draft Powder River I Supplemental Environmental Impact Statement

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of a draft supplement to the Powder River I Regional Coal Environmental Impact Statement (EIS).

SUMMARY: In accordance with the Montana U.S. District Court's decision in *Northern Cheyenne* v. *Secretary of the Interior, et al.*, Civil No. 82-116 (D. Mont. May 28, 1985), and Section 102(C) of the National Environmental Policy Act of 1969, a draft Powder River I Supplemental EIS (EIS) has been prepared by the Bureau of Land Management's (BLM) Miles City, Montana District Office. The draft EIS Supplement addresses possible economic, social, and cultural impacts on the Northern Cheyenne and Crow Tribes from leasing up to 11 Powder River Round I federal coal tracts, including 5 tracts for which the BLM actually issued coal leases following the Powder River Round I Federal coal lease sale. All the tracts being analyzed in the draft EIS Supplement are located in the Montana portion of the Powder River coal region. The draft EIS Supplement measures the socioeconomic and cultural effects of three leasing options against two baseline or "no action" alternatives. Upon completion of the final EIS Supplement, the Secretary will be asked to decide if the 5 coal leases issued by the BLM following the Powder River Round I Federal coal lease sale should have been issued and, if so, what additional lease stipulations should be imposed, if any.

DATES: Comments on the draft EIS Supplement will be accepted through September 26, 1989. Written comments should be sent to: Loren Cabe, Project Manager, Powder River I Supplemental EIS, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107. Oral or written comments may also be submitted at the following scheduled meetings, which are open to the general public:

(1) September 12, 1989, 7:00 p.m., at Hardin Middle School, 611 W. 5th Street, Hardin, Montana 59034.

(2) September 13, 1989, 7:00 p.m., at the Lame Deer Bingo Hall, Lame Deer, Montana.

All comments received during the review period, whether written or oral, concerning the adequacy of the draft Supplemental EIS will be considered in the preparation of the final Supplemental EIS.

ADDRESSES: Copies of the draft EIS Supplement will be available at the public libraries in Hardin (Big Horn County), Forsyth (Rosebud County), and Broadus (Powder River County), Montana, and at the college libraries on the Northern Cheyenne and Crow Reservations. Copies of the draft EIS Supplement are also available from the Miles City District Office, P.O. Box 940, Miles City, Montana 59301-0940, (406) 232-4331. Public reading copies are available for review at the following locations:

BLM, Office of Public Affairs, Main Interior Building, Room 5600, 18th and C Streets, NW., Washington, DC 20240.

BLM, Montana State Office, Records Assistance, 222 N. 32nd Street, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: Loren Cabe, Project Manager, Powder River I Supplemental EIS, BLM Montana State Office, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107, Telephone (406) 255-2920.

SUPPLEMENTARY INFORMATION: In April and October 1982, the Department of the Interior held the Powder River Round I Federal coal lease sale. Eight lease tracts in the Montana portion of the Powder River Federal Coal Production Region were offered for sale. High bids were accepted on 6 of these tracts. Only five leases were issued. These were: (1) Colstrip A and B; (2) Colstrip C; (3) Colstrip D; (4) West Decker; and (5) Cook Mountain.

Shortly before the April 1982 Federal coal lease offering, the Northern Cheyenne Tribe filed suit claiming that the Powder River I Regional Coal Sale Environmental Impact Statement (EIS) did not consider the effects of Federal coal leasing on the Northern Cheyenne Tribe or the Reservation. This case, *Northern Cheyenne* v. *Secretary of the Interior, et al.* (Civil No. 82-116), was decided May 28, 1985, in the U.S. District Court, Billings, Montana. The Court found that the Department's final EIS for the Powder River I coal lease sale was flawed because it: (1) Failed to adequately analyze economic, social, and cultural impacts specific to the Northern Cheyenne Tribe and Reservation, and (2) did not discuss ways to mitigate such effects. In the Court's Order, also issued May 28, 1985, the Court directed the Secretary of the Interior to cancel the five Montana leases that the BLM had issued in 1982 as part of the Powder River I regional coal lease sale.

The Department, along with the successful bidders, subsequently requested the District Court to reconsider and amend that portion of its May 28, 1985, order which canceled the leases. The Government and the lessees contended that invalidating the Montana leases was an extreme remedy that was not justified in light of the Court's failure to balance the equities involved before it granted relief. In October 1986, the Court granted the motions and issued an amended Order. The amended Order rescinded the Court's earlier direction that the Montana leases were to be cancelled by the Secretary. Instead, the Court suspended the Cook Mountain and West Decker leases until a supplement to the Powder River I Regional Coal EIS is prepared. However, the Court allowed operations to continue on three maintenance lease tracts (Colstrip A and B, Colstrip C, and Colstrip D) provided that development and mining on these tracts would be halted by the Secretary if they were shown to cause significant socioeconomic impacts to the Northern Cheyenne Tribe and Reservation. In conclusion, the Court noted that once the final EIS Supplement was completed, the Secretary must reconsider whether the five Montana leases should have been issued and whether additional mitigation measures should be imposed.

The Northern Cheyenne Tribe subsequently appealed the October 1986 amended Order to the Ninth Circuit Court of Appeals. In March 1988, the Appeals Court reversed the District Court's amended Order and remanded it to the District Court for further action. In July 1988, the Appeals Court refused the Department's request for reconsideration. The District Court has not yet taken any action as a result of the Appeals Court decision.

The draft EIS Supplement, prepared in response to the District Court's decision, analyzes the socioeconomic and cultural effects of leasing 11 Federal coal lease tracts in the Montana portion of the Powder River Federal Coal Production Region. The 11 tracts are evaluated under three Federal coal leasing alternatives. Socioeconomic and cultural effects of the three leasing options are measured against two "no action" or baseline alternatives.

A Scoping Issues Summary and Technical Report for this Supplement were also prepared and are available at the Miles City District Office location shown under **ADDRESSES.**

The EIS Supplement will be used by the Secretary of the Interior in reaching a decision as to whether the 5 Montana leases issued by the BLM following the Powder River Round I Federal coal lease sale should have been issued and, if so, whether additional mitigation measures should be imposed. Information in the EIS Supplement may also be used for other coal-related decisions in Montana.

Dated: July 21, 1989.

John H. Farrell,

Acting Director, Office of Environmental Project Review.

[FR Doc. 89-17495 Filed 7-27-89; 8:45 am]

BILLING CODE 4310-84-M

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease U-44744 for lands in Carbon County, Utah, was timely filed and required rentals and royalties accruing from March 1, 1989, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease U-44744 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective March 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Ted D. Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-17604 Filed 7-27-89; 8:45 am]

BILLING CODE 4310-DQ-M

[CACA 17697]

Realty Actions; Sales, Leases; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public lands; Lassen County, California.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Mount Diablo Meridian, California

T. 37 N., R. 11 E.,
Sec. 6: Lots 1, 2, SW1/4NE1/4, NW1/4SE1/4
A total of 160.89 acres.

In exchange for these lands, the Federal Government will acquire tracts of non-federal lands in Lassen County from Fred W. and Shirley L. Bath, Ash Valley, Adin, California 96006. The lands are described as follows:

Mount Diablo Meridian, California

T. 37 N., R 11 E.,
Sec. 5: Lots 1, 2, SE1/4NE1/4
T. 37 N., R 12 E.,
Sec. 32: NE1/4NW1/4
Total of 160.93 acres.

All mineral rights in the public lands and private lands will be exchanged.

The purpose of the exchange is to acquire non-federal lands that provide rare plant habitat for inclusion in the Ash Valley Research Natural Area and Area of Critical Environmental Concern. These values far outweigh the values found on the Federal lands to be exchanged. The exchange will benefit the general public and the local agricultural economy, and provide improved management of Federal and private lands. The exchange is consistent with Bureau planning and has been discussed with Lassen County. The public interest will be well served by making the exchange.

The value of the lands to be exchanged is approximately equal and the acreage will be adjusted or money will be used to equalize the values upon completion of the final land appraisal.

There will be reserved to the United States in the public lands to be exchanged, a right-of-way thereon for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 43 U.S.C. 945).

The publication of this notice in the **Federal Register** shall segregate the public lands described herein from all other forms of appropriation and entry under the public land laws and the mining laws for a period of two years. The exchange is expected to be consummated before the end of that period.

Detailed information concerning the exchange, including the environmental assessment and the record of non-federal participation, is available for review at the Bureau of Land Management's District Office, 705 Hall Street, Susanville, California 96130, and at the Alturas Resource Area Office, 120 South Main Street, Alturas, California 96101.

DATE: The publication date of this notice will commence the 45 day comment period (September 11, 1989). Within that 45 day time period, interested parties may submit comments to the District Manager.

ADDRESS: Comments should be sent to the Susanville District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130.

C. Rex Cleary,

District Manager.

[FR Doc. 89-17635 Filed 07-27-89; 8:45 am]

BILLING CODE 4310-40-M

[NM-010-3110-10-9202/GP9-0116]

Albuquerque District, New Mexico

Realty Action; Exchange, Federal Surface and Subsurface in Dona Ana County, NM, for Private Minerals Within El Malpais National Conservation and National Monument Area in Cibola County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described Federal surface and subsurface located within Dona Ana County has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

New Mexico Principal Meridian

T. 23 S., R. 1 E.,
Section 28, SW¼NW¼, SW¼;
Section 33, NW¼.
Containing 360.00 acres.

In exchange for this Federal surface and subsurface estate, the United States has selected approximately 59,513.18 acres of privately owned minerals with Cibola County in the El Malpais National Conservation Area (NCA) and the National Monument (NM) near Grants, New Mexico, listed as follows:

T. 7 N., R. 10 W.,
Section 7, Lots 1-4, E½, E½W½;
Section 19, Lots 1-4, E½, E½W½.
T. 8 N., R. 10 W.,
Section 9, N½, SW¼, NW¼SE¼;
Section 11, All;

Section 15, All;
Section 17, NW¼NE¼, W½.
T. 6 N., R. 11 W.,
Section 1, All;
Section 3, Lots 1–4, S½N½, S½;
Section 5, Lots 1–4, S½N½, S½;
Section 7, Lots 1–4, E½, E½W½;
Section 9, All;
Section 11, All;
Section 15, All;
Section 17, All;
Section 19, Lot 1, N½NE¼, NE¼NW¼;
Section 21, N½N½.
T. 7 N., R. 11 W.,
Section 1, Lots 1–4, S½N½, S½;
Section 9, SE¼NE¼, SE¼SW¼, E½SE¼, SW¼SE¼;
Section 11, E½, E½W½, SW¼NW¼, E½SW¼;
Section 13, All;
Section 15, All.
T. 7 N., R. 11 W.,
Section 17, S½S½;
Section 19, E½;
Section 21, All;
Section 23, All;
Section 25, All;
Section 27, All;
Section 29, All;
Section 31, Lots 1–4, E½, E½W½;
Section 33, All;
Section 35, All.
T. 6 N., R. 12 W.,
Section 5, Lots 1–4, S½N½, S½;
Section 7, Lots 1–4, E½, E½W½;
Section 9, All;
Section 17, All;
Section 19, Lots 1–4, E½, E½W½;
Section 21, All;
Section 27, All;
Section 29, All;
Section 31, Lots 1–4, E½, E½W½;
Section 33, All;
Section 35, All.
T. 7 N., R. 12 W.,
Section 1, Lots 1–4, S½N½, S½;
Section 3, Lots 1–4, S½N½, S½.
T. 7 N., R. 12 W.,
Section 5, Lots 1–4, S½N½, S½;
Section 7, E½, E½W½;
Section 9, All;
Section 11, All;
Section 13, NW¼NW¼;
Section 15, All;
Section 17, All;
Section 19, NE¼;
Section 21, All;
Section 23, N½, SW¼;
Section 31, Lots 1–4, E½, E½W½.
T. 8 N., R. 12 W.,
Section 3, Lots 1–4, S½N½, S½;
Section 9, All;
Section 11, All;
Section 13, W½;
Section 15, All;
Section 23, All;
Section 25, All;
Section 27, All;
Section 29, All;
Section 31, Lots 1–4, E½, E½W½;
Section 33, All;
Section 35, All.
T. 6 N., R. 13 W.,
Section 1, Lots 1–4, S½N½, S½;
Section 3, Lots 1–4, S½N½, S½;
Section 5, Lots 1–4, S½N½, S½;
Section 7, Lots 1–4, E½, E½W½;
Section 9, All;
Section 11, All;
Section 13, All;
Section 15, All;
Section 17, All;
Section 19, Lots 1–4, E½, E½W½;
Section 21, All;
Section 23, All;
Section 25, All;
Section 27, All;
Section 29, All;
Section 31, Lots 1–4, E½, E½W½;
Section 33, All;
Section 35, All.
T. 7 N., R. 13 W.,
Section 5, Lots 1–4, S½N½, S½;
Section 7, Lots 1–4, E½, E½W½;
Section 9, All;
Section 17, All;
Section 19, Lots 1–4, E½, E½W½;
Section 21, All;
Section 23, All;
Section 25, All;
Section 27, All;
Section 29, All;
Section 31, Lots 1–4, E½, E½W½;
Section 33, All;
Section 35, All.
T. 7 N., R. 13 W.,
Section 15, Lots 1–4, E½, E½W½;
Section 21, All;
Section 23, All;
Section 25, All;
Section 27, All;
Section 29, All;
Section 31, Lots 1–4, E½, E½W½;
Section 33, All;
Section 35, All.
T. 8 N., R. 13 W.,
Section 31, Lots 1–4, E½, E½W½.

Upon completion of the final appraisal, the actual acreage exchanged will be adjusted to reflect equal values as much as possible. The purpose of the exchange is to consolidate Federal mineral ownership for the Federal government within El Malpais National Conservation Area (NCA) and National Monument (NM). This action is consistent with land ownership adjustments as set forth in the Record of Decision for the Rio Puerco Resource Management Plan (RMP) approved January 16, 1986 and the Southern Rio Grande Management Framework Plan, Plan Amendment approved December 1986. The purpose of this Notice of Realty Action is twofold. First, this notice will provide a response period of forty-five (45) days during which public comments will be accepted regarding this exchange proposal. Secondly, this action as provided in 43 CFR 2201.1(b), should segregate the public lands described in this Notice from all appropriation under the public land laws, including the mining and mineral leasing laws subject to prior existing rights. This segregation will terminate upon the issuance of patent or 2 years from the date of publication of this Notice in the **Federal Register** or upon publication of a Notice of Termination.

FOR FURTHER INFORMATION CONTACT: Yolanda Vega at the above address or telephone (505) 761–4504 (FTS 474–4504).

ADDRESS: On or before October 12, 1989, interested parties may submit comments to the District Office at the above address. Any comments submitted to the Las Cruces Office will be forwarded to the Albuquerque District Office. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any actions by the State Director, this realty action will become the final determination.

SUPPLEMENTARY INFORMATION: 1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. All valid existing rights and reservations of records.

Dated: July 20, 1989.

Jack Hall,
Acting District Manager.

[FR Doc. 89–17991 Filed 7–27–89; 8:45 am]
BILLING CODE 4310–FB–M

[AK–932–00–4214–10; AA–5964]

Termination of Proposed Withdrawal and Reservation of Lands; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a portion of a proposed withdrawal and reservation of land requested by the Forest Service, Department of Agriculture, for use as a scenic and recreation area.

EFFECTIVE DATE: July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–3342.

SUPPLEMENTARY INFORMATION: Notice of a proposed withdrawal and reservation of lands for the Forest Service, Department of Agriculture, was published in the **Federal Register** on March 25, 1971 (36 FR 5624), and November 16, 1979 (44 FR 66078). The purpose of the application, serial number AA–5964, was for use as a scenic and recreation area. The Forest Service has cancelled its application insofar as it affects the following described land:

Seward Meridian (Unsurveyed)

T. 8 N., R. 1 W.
Sec. 15, all those lands within State Selection AA–17587.

The area described contains approximately 180 acres.

At 8:00 a.m. Alaska Daylight Time, on the date of this publication, such lands will be relieved of the segregative effect of the proposed withdrawal.

Sue A. Wolf,
Chief, Branch of Land Resources.

[FR Doc. 87–17636 Filed 7–27–89; 8:45 am]
BILLING CODE 4310–JA–M

[OR–943–09–4214–10; GP9–290; OR–42920(WASH)]

Partial Termination of Proposed Withdrawal; Washington; Correction

The land description in FR Doc. 89–15260, published on page 27217, in the issue of Wednesday, June 28, 1989, is hereby corrected as follows:

On page 27217, under Okanogan National Forest, the land description reads "T. 36 N., R. 26 E.", and is corrected to read "T. 36 N., R. 16 E".

Robert E. Mollohan,
Acting Chief, Branch of Lands and Minerals Operations.

Dated: July 20, 1989.

[FR Doc. 89–17637 Filed 7–27–89; 8:45 am]
BILLING CODE 4310–33–M

National Park Service

Blackstone River Valley National Heritage Corridor; Extension of Public Comment Period

Notice is hereby given that public written comment on the proposed plan for the Blackstone River Valley National Heritage Corridor will be extended to August 2, 1989.

The Blackstone River Valley National Heritage Corridor was established pursuant to Pub. L. 99–647. That law also established and directed a Commission to prepare a Cultural Heritage and Land Use Plan, and to submit the plan to the governors of the states of Massachusetts and Rhode Island and to the Secretary of the Interior for review and approval.

Under consideration for the proposed plan are the following objectives:

1. Protect Historic Resources.
2. Protect Natural Resources.
3. Complete the State Park and Forest Systems in the Corridor.
4. Promote Recreational Activities.
5. Interpret Corridor Resources.
6. Sponsor Educational and Research Activities.
7. Protect Valley Character through Wise Land Use.
8. Develop Public Awareness.
9. Promote Compatible Economic Revitalization.

Comments postmarked by August 2, 1989 and addressed to the national heritage corridor offices will be accepted. Comments should be mailed to: Executive Director, Blackstone River Valley National Heritage Corridor, P.O. Box 34, Uxbridge, MA 01569.

James R. F[illegible]per,
Executive Director.

[FR Doc. 89–176304 Filed 7–27–89; 8:45 am]
BILLING CODE 4310–70–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Kentucky	KY89–4 (Jan. 6, 1989).	p.293. p.294.
Kentucky	KY89–6 (Jan. 6, 1989).	p.305. p.306.
Kentucky	KY89–29 (Jan. 6, 1989).	p.370a. p.370c.
New York	NY89–2 (Jan. 6, 1989).	p.683. p.684.

New York.....	NY89-3 (Jan. 6, 1989).	p.701. pp.702-703.
New York.....	NY89-5 (Jan. 6, 1989).	p.717. p.718.
New York.....	NY89-6 (Jan. 6, 1989).	p.727. p.728.
New York.....	NY89-7 (Jan. 6, 1989).	p.737. p.738.
New York.....	NY89-10 (Jan. 6, 1989).	p.769. p.770.
New York.....	NY89-11 (Jan. 6, 1989).	p.781. p.782.
New York.....	NY89-12 (Jan. 6, 1989).	p.789. p.790.
New York.....	NY89-13 (Jan. 6, 1989).	p.799. p.800.
New York.....	NY89-17 (Jan. 6, 1989).	p.817. p.818.
New York.....	NY89-18 (Jan. 6, 1989).	p.827 p.828.
Tennessee.....	TN89-4 (Jan. 6, 1989).	p.1090. p.1091.
Tennessee.....	TN89-5 (Jan. 6, 1989).	p.1095. p.1096.

Volume II:

Illinois.....	IL89-14 (Jan. 6, 1989).	p.191. pp.192-194.
Illinois.....	IL89-15 (Jan. 6, 1989).	p.201. pp.202-204.
Michigan.....	MI89-7 (Jan. 6, 1989).	p.499. p.500.
Missouri.....	MO89-4 (Jan. 6, 1989).	p.665. p.666.
Ohio.....	OH89-2 (Jan. 6, 1989).	p.787. pp.790,793.
Ohio.....	OH89-28 (Jan. 6, 1989).	p.863. 865.
Ohio.....	OH89-29 (Jan. 6, 1989).	p.869. pp.873,878.

Volume III:

Colorado.....	CO89-1 (Jan. 6, 1989).	p.105. pp.106-107.
Washington.....	WA89-3 (Jan. 6, 1989).	p.401. pp.402-403.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscriptions(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 19th day of July 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-17361 Filed 7-27-89; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice (89-55)

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC).

DATES: August 16, 1989, 8:30 a.m. to 5 p.m., and August 17, 1989, 9 a.m. to 12:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 5026, Federal Office Building 6, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia D. Fries, Code ADA-2, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-8766.

SUPPLEMENTARY INFORMATION: The NAC was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Dr. John L. McLucas and is composed of 24 members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, aerospace medicine, space science and applications, space systems and technology, space station, commercial programs, and history, as they relate to NASA's activities.

The meeting will be open to the public up to the seating capacity of the room, which is approximately 40 persons including Council members and other participants. Visitors will be requested to sign a visitor's register.

Type of meeting: Open.

Agenda

August 16, 1989

8:30 a.m.—Introductory Remarks.
8:45 a.m.—Overview.
9 a.m.—Space Transportation Task Force.
10:30 a.m.—Aeronautics and Space Technology.
11 a.m.—Space Flight.
1 p.m.—The NASA Institution.
1:30 p.m.—Space Science and Applications.
3 p.m.—Space Station.
3:30 p.m.—Space Exploration.
5 p.m.—Adjourn.

August 17, 1989

9 a.m.—Commercial Programs.
10:30 a.m.—Space Operations Planning.
11:30 a.m.—Discussion.
12:30 p.m.—Adjourn.

July 21, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-17623 Filed 7-27-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL LABOR RELATIONS BOARD

Rescheduling of Unfair Labor Practice Hearings; Notice of Extension

AGENCY: National Labor Relations Board.

ACTION: Notice of Extension of Experimental Modification of Procedures Governing the Rescheduling of Unfair Labor Practice Hearings, and Re-notification of Upcoming Public Comment Period.

SUMMARY: Notice is hereby given that the National Labor Relations Board will extend until November 30, 1989, the one-year experiment it commenced on August 1, 1988, which transferred, under certain circumstances, the authority to reschedule unfair labor practice hearings from the Regional Directors to the administrative law judges. (See 53 FR 26,348). Parties are hereby also re-notified of the upcoming public comment period regarding the experiment.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary.

1717 Pennsylvania Avenue NW., Room 701, Washington, DC 20570, Telephone: (202) 254-9430.

SUPPLEMENTARY INFORMATION: Section 102.16 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, currently permits the Agency's Regional Directors to extend the date of a scheduled unfair labor practice hearing either upon his/her own motion or upon proper cause shown by any other party. As it appeared that there was a public perception that this procedure was unfair, and recognizing the detrimental effect such adverse public perceptions may have on the Agency's continued credibility and stature, on August 1, 1988, the National Labor Relations Board implemented a one-year experiment in all of its Regional Offices whereby the authority currently granted the Regional Directors under Section 102.16 was transferred, under certain circumstances, to the administrative law judges. Specifically, the experiment provided that with respect to all unfair labor practice complaints issued between August 1, 1988 and July 31, 1989, the authority to extend the date of a scheduled hearing shall reside with the administrative law judges, except that the Regional Directors shall retain the authority to extend the date of a scheduled hearing in the following limited circumstances:

(1) Where all parties agree to extension of the date of hearing;

(2) Where a new charge or charges have been filed which if meritorious might be appropriate for consolidation with the pending complaint;

(3) Where negotiations which could lead to settlement of all or a portion of the complaint are in progress;

(4) Where issues related to the complaint are pending before the General Counsel's Division of Advice or Office of Appeals' or

(5) Where more than 21 days remain before the scheduled date of hearing.

The experiment provided that, except in these limited circumstances, all motions to extend the date of the hearing during the one-year experimental period should be filed with the Division of Judges in accordance with the procedures set forth in § 102.24 of the Rules and Regulations. Where a motion to extend the date of a scheduled hearing has been granted by an administrative law judge, the authority to set a new date for the hearing shall be retained by the Regional Director.

The original Notice of the experiment invited parties to submit comments on or before the thirtieth day following the conclusion of the experiment (i.e. on or before August 30, 1989). Parties are herein again invited to submit comments during this comment period. Comments should be sent to: Office of the Executive Secretary, 1717 Pennsylvania Avenue NW., Room 701, Washington, DC 20570, Telephone: (202) 254-9430. In the interim, pending the Board's review of such comments and the experiment in general, notice is hereby given that the experiment will be extended until November 30, 1989.

Dated, Washington, DC., July 24, 1989.
By direction of the Board.
National Labor Relations Board.

Joseph E. Moore,

Acting Executive Secretary.

[FR Doc. 89-17678 Filed 7-27-89; 8:45 am]

BILLING CODE 7545-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.
2. The title of the information collection:
   —DOE/NRC Forms 741 & 741A—Nuclear Material Transaction Report and NUREG/BR-0006, instructions for completing forms 741, 741A, and 740M
   —DOE/NRC Form 740M—Concise Note
   —IAEA Form N-71—Design Information Questionnaire
3. The form number if applicable: Same as item 2 above.
4. How often the collection is required:
   —*DOE/NRC Form 741/741A:* As occasioned by special nuclear material or source material transfers, receipts, or inventory changes that meet certain criteria.
   —*DOE/NRC Form 740M:* When specified in Facility Attachments or Transitional Facility Attachments, or as necessary to inform the U.S. or IAEA of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the US/IAEA Safeguards Agreement.
   —*IAEA For N-71:* Once.
5. Who will be required or asked to report: Persons licensed to possess specified quantities of special nuclear material or source material, and in the case of IAEA Form N-71, licensees of facilities on the U.S. eligible list who have been notified in writing by the Commission to submit the form.
6. An estimate of the number of responses:
   —DOE/NRC Form 741/741A: 20,000
   —DOE/NRC Form 740M: 1,140
   —IAEA Form N-71: 2
7. An estimate of the total number of hours needed to complete the requirement or request:
   —DOE/NRC Form 741/741A: 1 hour per response; total 20,000 hours
   —DOE/NRC Form 740M: 1 hour per response; total 1,140 hours
   —IAEA Form N-71: 360 hours per response; total 720 hours
8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.
9. Abstract:
   —NRC and Agreement State licensees are required to make inventory and accounting reports on DOE/NRC Form 741/741A for certain source or special nuclear material inventory changes, for transfers or receipts of special nuclear material, or for transfer or receipt of 1 kilogram or more of source material.
   —Licensees affected by 10 CFR Parts 75 and related sections of Parts 40, 50, 70, and 150 are required to submit DOE/NRC Form 740M to inform the U.S. or IAEA of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the U.S./IAEA Safeguards Agreement.
   —Licensees of facilities that appear on the U.S. eligible list, pursuant to the U.S./IAEA Safeguards Agreement, and who have been notified in writing by the Commission, are required to complete and submit a Design Information Qeustionnaire, IAEA Form N-71.

"Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150-0003, -0056, & -0057), Office of Management and Budget, Washington, DC 20503.

BEST COPY AVAILABLE

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 20 day of July 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89–17685 Filed 7–27–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–361 and 50–362]

Southern California Edison Co., et al.; San Onofre Nuclear Generating Station, Units 2 and 3 Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses No. NPF–10 and No. NPF–15 issued to Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Stations, Units 2 and 3, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action: The proposed amendments would revise certain technical specifications to increase the interval for the 18-month surveillance tests to at least once per refueling interval, which is defined as 24 months, in support of the nominal 24-month fuel cycle. Proposed change PCN–252 would revise Technical Specification 3/4.8.1.1, "AC Sources." Proposed change PCN–256 would revise Technical Specifications 3/4.3/1, "Reactor Protective Instrumentation," and 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation." Proposed change PCN–281 would revise Technical Specification 3/4.3.3.3, "Seismic Instrumentation."

The Need for the Proposed Action: The proposed amendments are required to prevent unnecessary plant shutdowns to perform surveillance tests which cannot be performed during plant operation.

Environmental Impacts of the Proposed Action: For each of the proposed amendments, the licensees provided analyses to demonstrate the reliability of the systems. The staff reviewed the licensees' analyses and agrees that there would be little or no chance of failure during an additional testing interval of 1.5 months beyond the maximum interval of 22.5 months currently allowed by the Technical Specifications. Therefore, the staff has approved the proposed 24-month surveillance interval for these proposed changes but has not allowed a 25% extension of the interval as is normally permitted by Specification 4.0.2.

As a result, the proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendments do not otherwise affect routine radiological plan effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendments. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendments do not affect nonradiological plane effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

The Notices of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action were published in the **Federal Register** on February 21, 1989 (54 FR 7493) for PCN–252, on February 24, 1989 (54 FR 8033) for PCN–281, and on February 24, 1989 (54 FR 8035) for PCN–256. No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action: Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Units 2 and 3, dated April 1981 and its Errata dated June 1981.

Agencies and Persons Consulted: The NRC staff has reviewed the licensees' request that supports the proposed amendments. The NRC staff did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the applications for amendments dated October 24, 1988, November 7, 1988, and January 16, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 24th day of July 1989.

For the Nuclear Regulatory Commission.

Donald E. Hickman,

Project Manager,

Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–17684 Filed 7–27–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on August 10–12, 1989 in Room P–110, 7920 Norfolk Avenue, Bethesda, Md. Notice of this meeting was published in the **Federal Register** on June 20, 1989.

Thursday, August 10, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–8:45 a.m.: Comments by ACRS Chairman—The ACRS Chairman will report on items of current interest.

8:45 a.m.–10: a.m.: Nuclear Power Plant Technical Specifications (Open)—The Committee will have a briefing and discussion of NRC and industry efforts to improve technical specifications for nuclear power plants.

10:15 a.m.–11:30 a.m.: Nuclear Power Plant Operating Experience (Open)

The Committee will hear and discuss a report (NUREG–1275, Vol. 5) regarding progress in scram reduction in commercial power reactors.

11:30 a.m.–12:30 p.m.: Premeeting Discussion for Meeting with NRC Commissioners (Open)—The Committee will review topics to be discussed with NRC Commissioners including NRC human factors program and initiatives, electrical power reliability at nuclear plants, occupational radiation exposure from hot particles, BWR core power stability, and reliability and diversity.

2:00 p.m.–3:30 p.m.: Meeting with NRC Commissioners—One White Flint North, Rockville, Md. (Open)—The Committee will discuss with the NRC Commissioners the items noted above.

4:30 p.m.–6:30 p.m.: Maintenance of Nuclear Plants (Open)—The Committee will review and comment on proposed NRC policy statement and an associated regulatory guide regarding maintenance of nuclear power plants.

Friday, August 11, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–9:45 a.m.: Meeting with Director, Office of Nuclear Materials Safety and Safeguards (NMSS) (Open/Closed)—A briefing and discussion will be held regarding topics of mutual interest including the scope and nature of NMSS activities, security provisions at nuclear plants, and anticipated review of uranium enrichment plant.

Portions of this session will be closed as necessary to discuss information related to security provisions at nuclear facilities.

9:45 a.m.–12:00 Noon and 1:00 p.m.–3:00 p.m.: GE Advanced Boiling Water Reactor (Open/Closed)

The Committee will conduct an initial session regarding its review of the application for design certification of this standardized nuclear plant.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this facility.

3:15 p.m.–4:30 p.m.: NUMARC Activities (Open)—The Committee will hear a briefing by a NUMARC representative on their activities regarding the regulatory process, the NRC-industry interface, and other items of mutual interest.

4:30 p.m.–5:30 p.m.: Future ACRS Activities (Open)—The Committee will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

5:30 p.m.–6:00 p.m.: Appointment of ACRS Members (Open/Closed)—The Committee will discuss qualifications of candidates proposed for consideration as nominees for appointment to the ACRS.

Portions of this session will be closed as appropriate to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Saturday, August 12, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–12:00 Noon: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to matters being considered.

1:00 p.m.–2:30 p.m.: Subcommittee Activities (Open)—The Committee will discuss the status of assigned ACRS subcommittee activities in designated areas including proposed integration of the regulatory process, and reliability of check valves in nuclear power plants.

2:30 p.m.–3:30 p.m.: Miscellaneous (Open)—The Committee will complete discussion of items considered during this meeting. Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 27, 1988 (53 FR 43487). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). Proprietary Information applicable to the matters being discussed (5 U.S.C. 552b(c)(4)), and Safeguards/Security Information applicable to specific nuclear facilities (5 U.S.C. 552b(c)(3)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 8:15 a.m. and 5:00 p.m.

Date: July 24, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–17599 Filed 7–27–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–277/278]

Philadelphia Electric Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–44 and DPR–56, issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company and Atlantic City Electric Company, (the licensees), for operation of the Peach Bottom Atomic Power Station, Unit Nos. 2 and 3 located in York County, Pennsylvania.

The proposed amendment would revise the Technical Specification (TS) Limiting Conditions for Operations (LCO) and Surveillance Requirements (SRs) for the Containment Cooling System (CCS) in TS 3/4.5.B and would revise related requirements for diesel generator (DG) testing in TS 3/4.5.F and the associated BASES in accordance with the licensee's application dated August 26, 1988. The application responds to issues identified in NRC Inspection Reports 50–277/85–07; 50–278/85–07 and 50–277/86–16; 50–278/86–17 concerning (a) clarification of the specific LCO and SR requirements for components of the CCS and (b) revision of the alternate system testing requirements upon the inoperability of a diesel generator.

Inspection Report 85–07 identified concerns which are based on apparent inconsistent definitions between TS 3/4.5.B and the BASES of what constitutes the CCS. The residual heat removal system is designed for three modes or subsystems of operation: shutdown cooling, containment cooling and low pressure coolant injection to the reactor

vessel. The major equipment of the residual heat removal system (RHRS) includes four heat exchangers, four main system pumps (RHR pump) and four high pressure service water (HPSW) pumps for each unit. The containment cooling function also includes three modes of operation: drywell spray, torus spray and torus cooling depending upon the alignment of valves and piping within the system. Each of the three containment cooling modes utilizes HPSW to remove heat from the RHR heat exchangers. The BASES identify the CCS as consisting of residual heat removal (RHR or LPCI) pumps and high pressure service water (HPSW) pumps. The concern identified by the Inspection Report 85–07 was that the licensee interpreted the CCS to consist only of the HPSW pump. In addition, it was noted that the specific coolant paths for the three modes of operation of the CCS, namely drywell spray, torus cooling and torus spray, are described in the FSAR but are not specifically reflected in the TS. The Inspection Report thus concluded that the TS were incomplete in this regard.

In addition to similar comments made in IR 85–07, inspection report 86–16/17 also noted that the TS 3/4.5.F requirement to perform daily testing of 24 safety related pumps on the inoperability of one DG is not consistent with the Standard Technical Specifications which do not require such alternate testing of the ECCS pumps.

The licensee has responded with nineteen identified types of changes to the TS which augment and clarify the CCS specifications, revise the alternate testing required for inoperable DG conditions and provide associated administrative changes.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability of consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Changes 1 through 13 include administrative changes in nomenclature, clearer identification of components and systems, changes to ensure consistency and editorial changes to support the remaining numbered changes discussed below. The Commission has provided guidance for the application of the criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include: Example (i) "A purely administrative change to technical specifications: For example, a change to achieve consistency throughout the technical specifications, corrections of an error, or a change in nomenclature." The proposed changes, as discussed above, are examples of such administrative changes. Since these proposed changes are encompassed by an example for which no significant hazard exists, the staff has made a proposed determination that they involve no significant hazards consideration.

Changes 14, 15, 16, 17—Jointly, these changes accomplish one of the major objectives of the licensee's proposed amendment which is to redefine, reformat and to provide greater specificity and restrictions in the technical specifications regarding the major components and systems required to effect the containment cooling function; namely the diesel generator emergency power supply, the HPSW pumps and the MDVs involved with the drywell spray and torus spray and cooling modes of the RHRS. In this regard the licensee has expanded SR 4.5.B.1 to include the MOV's (Change 14), has reworded SR 4.5.B.3 to clarify that its applicability is to the HPSW pumps (Change 15) and has expanded LCO 3.5.B.4 (Change 16) and the corresponding SR 4.5.B.4 (Change 17) to now include further restrictions specifying that two independent loops must be maintained, the components of each loop and limits on the inoperability of one or both loops for the individual modes of the RHR (drywell spray, torus spray and torus cooling). Thus, the currently defined "containment cooling subsystem loops" components would now be reflected in the TS as two loops each of RHR in the drywell spray, torus spray and torus cooling modes by the expansion of 3/4.5.B.4 into new 3/4.5.B.4, 3/4.5.B.5 and 3/4.5.B.6 and by the rewording of SR 4.5.B.3 so that it applies to the HPSW portion of the containment cooling system. These proposed changes are intended to maintain the current intent of these specifications but with further restrictions and clarifications.

The Commission has provided guidance for application of the criteria for no significant hazards consideration determination by providing examples of amendments that are not likely to involve significant hazards considerations (51 FR 7751). These examples include: Example (ii) "A change that constitutes an additional limitation, restriction or control not presently included in the technical specifications: for example, a more stringent surveillance requirement." The proposed changes numbered 14, 15, 16 and 17, as discussed above, are examples of such changes. Since the proposed changes are encompassed by an example for which no significant hazard exists, the staff has made a proposed determination that they involve no significant hazards consideration.

Change 18 proposes to revise the operating restrictions of LCO 3.5.F.1 for one diesel generator inoperable so that only the low pressure core and containment cooling systems powered by the remaining operable DGs need be operable. This would not reduce the as-analyzed ability of the plant to respond to the design basis accident since the systems powered by the inoperable diesel generator would not be given credit in the analyses for mitigation of design basis accidents. The licensee has provided a discussion of the proposed changes as they relate to the three standards articulated above. The licensee states that these changes will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Four design basis accidents described in Section 14 of the UFSAR are the: Control Rod Drop Accident, the Loss of Coolant Accident, the Refueling Accident and the Main Steam Line Break. Since no credit can be taken for operability of the Low Pressure Core and Containment Cooling Systems which are powered by the inoperable diesel generator, the precursors, initial conditions, assumptions or sequences-of-events of these conditions, as described in the UFSAR are not impacted. It is, therefore, concluded that the probability or consequences of an accident previously evaluated are not increased.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

Removing the mechanical operability requirement of systems which do not have a reliable electrical source, as the associated diesel generator is inoperable, will not introduce potential new accident precursors, since no credit can be taken for their operability.

(3) Involve a significant reduction in a margin of safety.

The inoperable diesel generator renders the power supply to the Low Pressure Core and Containment Cooling System loops unreliable. Thus, these loops are effectively rendered inoperable. It is, therefore, concluded that removing this mechanical operability requirement does not decrease a margin of safety.

Change 19 proposes to delete the alternate testing requirements of SR 4.5.F.1 for the low pressure core and containment cooling systems when one diesel generator is inoperable. The licensee states that this change will reduce unnecessary system startup stresses as well as reduce system unavailability resulting from systems being out of service during testing and that this change is consistent with the Standard Technical Specifications. The licensee has provided a discussion of the proposed change as it relates to the three standards articulated above. The licensee states that these changes will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The reliability and redundancy of the Low Pressure Core and Containment Cooling Systems, along with the Surveillance Requirements established in other sections of the Technical Specifications, assure the operability of these systems necessary to mitigate the consequences of an accident.

Four design basis accidents described in Section 14 of the UFSAR are: the Control Rod Drop Accident, the Loss of Coolant Accident, the Refueling Accident and the Main Steam Line Break. Change request (19) will not adversely impact the precursors, initial conditions, assumptions or sequences-of-events of these accidents, as described in the UFSAR. Therefore, an increase in the probability or consequences of an accident previously evaluated is not created.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

Surveillance and operability requirements are not potential new accident precursors. The surveillance tests and their criteria will remain unchanged, and excessive challenges to the ECCS will be reduced. It is, therefore, concluded that implementation of Change Request (19) will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety.

Relaxing the accelerated testing provisions will reduce longterm equipment wear-out and encourage preventive maintenance at more frequent intervals. For these reasons, a net improvement in the reliability of these essential systems can be anticipated, thus enhancing the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration for changes 18 and 19 above and agrees with the licensee's analyses. Accordingly, the Commission has proposed to determine that the above changes 18 and 19 do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be addressed to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice.

Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 28, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interests in the proceeding; and (3) the possible effect of any order which may entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license

amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 325-6000 (in Missouri 1 (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler, Director, Project Directorate I-2, Division of Reactor Projects I/II: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Conner and Wetterhahn, 1747 Pennsylvania Avenue NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)–(v) and 2.714(d).

For futher details with respect to this action, see the application for amendment dated August 26, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Local Document Room, at the Government Publications Section, State Library of Pennsylvania, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Dated at Rockville, Maryland, this 21st day of July 1989.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I-2 Division of Reator Projects I/II Office of Nuclear Reactor Regulation.

[FR Doc. 89-17683 Filed 7-27-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

RIN 3206-AD69

Absence and Leave; Voluntary Leave Bank Program

AGENCY: Office of Personnel Management.

ACTION: Notification of approved agencies.

SUMMARY: The Office of Personnel Management (OPM) is announcing the agencies and administrative subunits approved to participate in the voluntary leave bank program authorized by Public Law 100-566.

FOR FURTHER INFORMATION CONTACT: John P. Cahill, (202) 632-5056.

SUPPLEMENTARY INFORMATION: OPM published interim regulations governing the voluntary leave bank program authorized by Pub. L. 100-566 in the Federal Register on April 28, 1989 [54 FR 18267]. In response to our request for participation by interested Federal agencies, the following agencies (or, where indicated, administrative subunits of agencies) applied for and have received approval to participate in the voluntary leave bank program:

Defense Nuclear Agency (excluding the Field Command)
Environmental Protection Agency
Farm Credit Administration
Federal Mediation and Conciliation Service
National Gallery of Art
Occupational Safety and Health Review Commission
Department of the Treasury (Internal Revenue Service only)

The approved agencies must implement the voluntary leave bank program no later than July 31, 1989.

U.S. Office of Personnel Management.

Constance B. Newman,

Director.

[FR Doc. 89-17785 Filed 7-27-89; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-62]

Modification to the Determination To Impose Increased Duties on Certain Products of the European Community

AGENCY: Office of the United States Trade Representative.

ACTION: Modification to the harmonized tariff schedule of the United States.

SUMMARY: The United States Trade Representative suspends the application of the increased duty on imports of certain pork hams and shoulders from the European Community.

EFFECTIVE DATE: 12:01 a.m., July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Laura Anderson, (202) 395-3074.

SUPPLEMENTARY INFORMATION: In Proclamation No. 5759 of December 24, 1987, the President increased United States customs duties on certain articles the product of the European Community (EC) in response to action by the EC prohibiting imports into the European Community of U.S. beef and beef products. The increased duties apply to products exported from the EC on or after January 1, 1989, or entered or withdrawn from warehouse for consumption on or after February 1, 1989.

Following imposition of the increased duties, the United States and the European Community announced the formation of the Task Force to develop ways in which U.S. meat exporters might resume shipping to the Community. As a result of the Task Force discussions, the United States and the European Community agreed on an interim measure operated by the EC to enable U.S. producers of meat not treated with hormones to ship to Europe. The United States agreed to reduce its retaliation to the extent that U.S. beef and beef products are shipped under the interim measure.

Partial Suspension of Increased Duties

Pursuant to the authority granted to me in Proclamation No. 5759, I am hereby suspending the increased duty imposed by that Proclamation on pork hams and shoulders provided for in subheading 9903.23.05 of the Harmonized Tariff Schedule of the United States. I have determined that it is in the interest of the United States to suspend the increased duty on such pork hams and shoulders in response to the shipment of U.S. meat to the EC.

Modifications

Pursuant to the authority delegated by the President to the USTR in Proclamation 5759, the increased duty imposed by subheading 9903.23.05 in Annex B to Proclamation 5759 is suspended.

The Harmonized Tariff Schedule of the United States is hereby modified accordingly. The modifications to the HTS made by this amendment are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after 12:01 July 28, 1989.

This determination shall be published in the Federal Register.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 89-17726 Filed 7-27-89; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week ended July 21, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 46406.
Date Filed: July 18, 1989.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 15, 1989.
Description: Application of United Air Lines, Inc. Pursuant to section 401 of the Act and Subpart Q of the Economic Regulations applies for amendment of its certificate of public convenience and necessity for Route 57 to authorize service between points in the United States and Paris, France.

Docket No. 46408.
Date Filed: July 18, 1989.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 15, 1989.
Description Application of United Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Economic Regulations applies for a certificate of public convenience and necessity to authorize service between Chicago, Illinois, Washington, DC, San Francisco, California, and New York, N.Y., on the one hand, and London, England, on the other hand.

Docket No. 46409.
Date Filed: July 18, 1989.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 15, 1989.
Description: Application of United Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Economic Regulations applies for a certificate of public convenience and necessity to authorize service between Chciago, Illinois, and Washington, DC, on the one hand, and Prestwick/Glasgow, Scotland, on the other hand.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-17605 Filed 7-27-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Change 2, Advisory Circular 27-1]

Certification of Normal Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance.

SUMMARY: Change 2, Advisory Circular (AC) 27-1 Certification of Normal Category Rotorcraft, consolidates FAA guidance and provides information on methods of compliance with the airworthiness standards for normal category rotorcraft. As part of the FAA effort to achieve national standardization in rotorcraft certification, it serves a ready reference for manufacturers, modifiers, FAA design evaluation engineers, flight test engineers, and engineering flight test pilots. This material has no legally binding status and must be treated as advisory only.

DATE: Change 2, AC 27-1, was issued by the Rotorcraft Directorate, Aircraft Certification Service, in Fort Worth, Texas, on April 24, 1989.

How to Order: A copy of Change 2, AC 27-1, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or from any of the Government Printing Office bookstores located in major cities throughout the United States. Identify the publication as Change 2, AC 27-1, Certification of Normal Category Rotorcraft, Stock Number 050-007-826-1. The cost is $6.50 per copy. Send a check or money order, made payable to the Superintendent of Documents, with your request. Orders for mailing to foreign countries should include an additional 25 percent of the total price to cover handling. No c.o.d. orders are accepted.

FOR FURTHER INFORMATION CONTACT: Debra H. Myers, FAA, Regulations Group, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193-0111, telephone (817) 624-5118.

Issued in Fort Worth, Texas, on July 11, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate Aircraft Certification Service.

[FR Doc. 89-17632 Filed 7-27-89; 8:45 am]

BILLING CODE 4910-13-M

[Advisory Circular 21-27]

Production Certification Multinational/ Multicorporate Consortia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice announces the availabilty of Advisory Circular 21-27, Production Certification Multinational/ Multicorporate Consortia. Advisory Circular 21-27 provides information and guidance concerning an acceptable means, but not the only means, of demonstrating compliance with the requirements of Federal Aviation Regulations Part 21. Certification Procedures for Products and Parts, Subpart G, regarding the evaluation and approval of the quality control system of a multinational and/or multicorporate consortia seeking a production certificate (PC).

ADDRESS: Copies of AC 21-27 can be obtained from the following: Federal Aviation Administration. Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591.

Issued in Washington, DC, on July 19, 1989.

David W. Ostrowski,

Acting Assistance Director, Aircraft Certification Service.

[FR Doc. 89-17698 Filed 7-27-89; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

Office of Hazardous Materials Transportation; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before August 28, 1989.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10200–N	Van Leer Verpackungen Gmbh, Hamburg, Germany.	49 CFR Part 173, Subparts D, E, F, H	To authorize manufacture, marking and sale of a non-DOT specification 55 gallon steel drum for those materials authorized for shipment in a DOT specification 17E STC 20/18 gauge steel drum. (modes 1, 2, 3).
10201–N	Amax Metals Recovery, Inc., Braithwaite, LA.	49 CFR 173.154	To authorize shipment of a spent catalyst, flammable solid, n.o.s., classed as a flammable solid in non-DOT specification 1-ton flexible intermediate bulk containers with a plastic liner. (modes 1, 3).
10202–N	Degussa Corp., Ridgefield Park, NJ	49 CFR 173.266	To authorize shipment of hydrogen peroxide up to 70%, classed as an oxidizer, in IM 101 portable tanks. (modes 1, 2).
10203–N	Morton Thiokol, Inc., Marshall, TX	49 CFR 173.91(a)(2)	To authorize shipment of an illuminating projectile, Special Fireworks, Class B explosive, in a specially designed package (pallet top, skidded bottom configuration). (modes 1, 3).
10204–N	KECO R.&D., Inc., Houston, TX	49 CFR 173.331, 175.3	To auth. shpmt. of gas identification sets containing various flam. & nonflam., gases; poison A; flam. liqs; and corr. mats. in lid. quantities sealed in metal tubes, not to exceed 40CC, in 40 carbon steel butt welded pipe 1¼"d closed w/threaded caps w/teflon sealant to form gas tight seal. (modes 1, 2, 3, 4).
10205–N	Celtic Trading of Florida, Seminole, FL	49 CFR 173.260(a)(3)	To authorize shipment of spent electric storage batteries, wet, classed as corrosive mat., on pallets, with 200lb test cardboard layer seperators with each layer stretch wrapped and banded in plastic with pallets placed in a strong outside container. (modes 1, 2, 3).
10206–N	E.I. du Pont de Nemours & Co., Wilmington, DE.	49 CFR 179.101–1, Table Note 4	To authorize painting of the upper two-thirds of DOT specification 112/114 tank cars in a color other than white when used for transportation of aniline oil and nitrobenzene, Class B poisons. (mode 2).
10207–N	Atlantic Research Corp., Gainesville, VA.	49 CFR 173.88(e)(2)(ii)	To authorize shipment of Rocket Motors in a propulsive state, classed as Class B explosive in a DOT specification 16A container. (modes 1, 3).
10208–N	Sensidyne, Inc., Clearwater, FL	49 CFR 172.101 Table, 173.328, 173.332, 173.343, 175.3,	To auth. shipment of limited quantities of Class B poisons & Class A poisons in 10ml glass ampules, flame sealed, with 5 ampules sealed in heat-sealed wrap with 2 of these packets in an intermediate cont., encapsulated in a heat-sealed bag overpacked in a 600 lb test double-wall fiberboard box. (modes 1, 4, 5).
10209–N	Southwest Energy, Inc., Tucson, AZ	49 CFR 173.114(i)	To authorize transportation of a blasting agent, n.o.s., classed as a blasting agent, in DOT specification MC–306, MC–307, and MC–312 cargo tanks. (mode 1).
10210–N	Gowen Co., Yuma, AZ	49 CFR 173.359(b)(1)	To authorize shipment of methyl parathion and parathion mixtures (over 50% solution), classed as Poison B, in 55 gallon DOT specification 5C stainless steel drums. (mode 1).
10211–N	CP Industries, Inc., McKeesport, PA	49 CFR 173.302, 173.304, 175.3	To authorize mfg., marking & sale of non-DOT cylinders built in conformance with the requirements of the DOT spec. 3A, 3AX, 3AA, & 3AAX cylinders except that 2 bend tests may be performed in lieu of the flattening test for shipment of flammable & nonflammable liquified & non-liquified gases. (modes 1, 2, 3, 4, 5).
10212–N	Puerto Rico Marine Management, Inc., San Juan, PR.	49 CFR 172.326(a)(1); (2)(ii)	To authorize use of IM–101 and 102 and IMO designation types 1 and 2 without marking the name of the hazardous material on them. (modes 1, 2, 3).
10213–N	Occidental Chemical Corp., Dallas, TX	49 CFR 172.202, 172.3, 172.301, 172.400, 172.504.	To authorize shipment of various hazardous materials in quantites not to exceed 5 gallons without complying with the packaging, marking, and labeling requirements when being shipped between sections of a plant separated by a public road and between operations 2.9 miles apart. (mode 1).
10214–N	Van Leer Verpackungen GmbH, Hamburg, Germany.	49 CFR 173.262, 173.266	To authorize shipment of a Hydrogen Peroxide solution (not over 60% peroxide), classed as an oxidizer and Hydrobromic acid not to exceed 63% concentration, classed as a corrosive material in DOT specification 34 drums. (modes 1, 2, 3).

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10215–N	Champagne Specialties Inc., Fairport, NY.	49 CFR 173.34(h)	To authorize removal & replacement of footrings on cylinders by welding or brazing on DOT 3A, 3AA, 3B, & 3C cylinders used for transport of liquified and non-liquified compressed gases, classed as flammable and non-flammable. (mode 1).
10216–N	Motor Transportation Services, Cortland, NY.	49 CFR 173.34(l)	To authorize rebuilding of DOT 4B, 4BA, 4BW cylinders without destructive testing for transportation of Propane, classed as a flammable gas. (mode 1).
10217–N	Moli Energy Ltd., Burnaby, BC, Canada	49 CFR 172.101, 172.420, 175.3	To authorize transportation of four cell series-paralled connected lithium batteries without diodes. (modes 1, 2, 3, 4, 5).
10218–N	Rederit Otto Danielsen, Holte, Denmark.	49 CFR 176.315(c)	To authorize use of a fire hose with a nozzle which is permanently open but is activated with a pump switch in a cargo vessel. (mode 3).
10219–N	Bayern-Chemie Gmbh, Ottobrunn, Germany.	49 CFR 171.11	To authorize shipment of automotive system passenger side inflators as flammable solids. (modes 1, 2, 3, 4).
10220–N	Martin Marietta, Denver, CO	49 CFR 172.500, 173.77, 177.821	To authorize shipment of space launch hardware, containing detonating cord, Class A explosive in a vehicle without placarding transported over a specially designated route by commercial carrier. (mode 1).
10221–N	Williams International, Walled Lake, MI	49 CFR 173.102	To authorize Turbofan Engines F107–WR–400 containing an explosive power device, Class B explosive to be shipped as a Class C explosive when packaged as authorized in the Department of Navy container Certificate NA–85–517. (modes 1, 4).
10222–N	Baker Sand Control, Houston, TX	49 CFR 172.101, 173.182, 173.234	To authorize shipment of ammonium nitrate in water and sodium nitrite in water, classed as oxidizers in marine portable tanks, MC–307 or MC–312 cargo tanks. (modes 1, 3).

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazards Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on July 21, 1989.

J. Suzanne Hedgspeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89–17619 Filed 7–27–89; 8:45 am]

BILLING CODE 4910–60–M

Office of Hazardous Materials Transportation; Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described on footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before August 14, 1989.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
3128–X	U.S. Department of Defense, Falls Church, VA	3128
5112–X	do	5112
5923–X	Linde Gases of the Midwest, Inc., Chicago, IL	5923
5923–X	Union Carbide Industrial Gases, Inc., Danbury, CT	5923
5923–X	Linde Gases of the Southeast, Inc., Wilmington, NC	5923
5923–X	Linde Gases of Florida, Inc., Tampa, FL	5923
5923–X	Linde Gases of the West, San Ramon, CA	5923
5923–X	Linde Gases of the Mid-Atlantic, Inc., Moorestown, NJ	5923
5923–X	Linde Gases of the Great Lakes, Inc., Cleveland, OH	5923
5923–X	Linde Puerto Rico, Inc., Gurabo, PR	5923
5923–X	Linde Gases of New England, Inc., West Hartford, CT	5923
5945–X	Cardox Corp., Walnut Creek, CA	5945
6016–X	Huber Supply Company, Inc., Mason City, IA	6016
6250–X	U.S. Department of Defense, Falls Church, VA	6250
6325–X	Austin Powder Co., Cleveland, OH	6325
6530–X	AGL Welding Supply Company, Inc., Clifton, NJ	6530
6530–X	Brown Welding Supply, Inc., Salina, KS	6530
6769–X	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE	6769
6800–X	Semco Plastic Drum, Inc., Lockport, IL	6800
6816–X	General Dynamics/Convair Div., San Diego, CA	6816
6861–X	Teledyne McCormick Selph, Hollister, CA	6861
6974–X	Tavco, Inc., Chatsworth, CA	6974
7052–X	Proxim. Inc., Mountain View, CA	7052
7052–X	Northrop Electronics System Div., Hawthorne, CA	7052
7087–X	3M/Transportation, St. Paul, MN	7087

Application No.	Applicant	Renewal of exemption
7205–X	U.S. Department of Defense, Falls Church, VA	7205
7235–X	Luxfer USA Ltd., Riverside, CA (See Footnote 1)	7325
7607–X	The Foxboro Co., South Norwalk, CT	7607
7753–X	FMC Corp., Philadelphia, PA	7753
7835–X	Sunoz Inc., Charlotte, NC	7935
7835–X	Lincoln Big Three, Inc., Baton Rouge, LA	7835
7907–X	Hercules, Inc., Wilmington, DE	7907
7907–X	C-I-L Inc., North York, Ontario, Canada	7907
8006–X	Esquire Novelty Corp., Amsterdam, NY	8006
8180–X	Dow Corning Corp., Midland, MI	8180
8230–X	Seastar Chemicals, Sidney, British Columbia, CN	8230
8244–X	Vann Systems, a Division of Halliburton Co., Houston, TX	8244
8244–X	Halliburton Services, Duncan, OK	8244
8278–X	Maintenance Mechanical Corp., Houston, TX	8278
8307–X	U.S. Department of Defense, Falls Church, VA	8307
8445–X	Monsanto Chemical Co., St. Louis, MO	8445
8445–X	Aqua-Tech, Inc., Port Washington, WI	8445
8445–X	U.S. Department of Defense, Falls Church, VA	8445
8445–X	The Dow Chemical Co., Midland, MI	8445
8445–X	McDonnell Aircraft Co., St. Louis, MO	8445
8445–X	DowBrands, Indianapolis, IN	8445
8453–X	Pacco Inc., So., Olympia, WA	8453
8453–X	El Dorado Chemical Co., St. Louis, MO	8453
8602–X	Minnesota Valley Engineering, Inc., New Prague, MN	8602
8698–X	Taylor-Wharton, Inc., Theodore, AL	8698
8708–X	Great Lakes Chemical Corp., El Dorado, AR	8708
8716–X	Whittaker-Yardney Power Systems, Waltham, MA	8716
8716–X	Cyprus Foote Mineral Co., Malvern, PA [2]	8716
8750–X	Applied Companies, San Fernando, CA	8750
8772–X	Akzo Chemicals Inc., Chicago, IL	8772
8901–X	Great Lakes Chemical Corp., El Dorado, AR	8901
8915–X	Union Carbide Industrial Gases, Inc., Danbury, CT [3]	8915
8988–X	Schlumberger Well Services, Houston, TX	8988
9047–X	Linde Gases of the Southeast, Inc., Wilmington, NC	9047
9047–X	Union Carbide Industrial Gases, Inc., Danbury, CT	9047
9047–X	Linde Gases of the West, San Ramon, CA	9047
9047–X	Linde Gases of Florida, Inc., Tampa, FL	9047
9047–X	Linde Gases of Southern California, Inc., Santa Ana, CA	9047
9047–X	Linde Gases of the South, Inc., Houston, TX	9047
9047–X	Linde Gases of the Mid-Atlantic, Inc., Moorestown, NJ	9047
9047–X	Linde Gases of the Great Lakes, Inc., Cleveland, OH	9047
9047–X	GenEx, Ltd., Des Moines, IA	9047
9047–X	Linde Gases of the Midwest, Inc., Chicago, IL	9047
9047–X	Linde Puerto Rico, Inc., Gurabo, PR	9047
9047–X	Linde Gases of of New England, Inc., West Hartford, CT	9047
9047–X	UNIGAS, Inc., Mercedita, PR	9047
9066–X	BMW of North America, Inc., Montvale, NJ	9066
9066–X	Porsche Cars North America, Inc., Reno, NV	9066
9114–X	AT&T Technologies, Inc., Lee's Summit, MO	9114
9116–X	Hoover Group, Inc., Beatrice, NE	9116
9130–X	Great Lakes Chemical Corp., El Dorado, AR	9130
9130–X	Hydrotech Chemical Corp., Marietta, GA	9130
9130–X	Olin Chemicals, Stamford, CT	9130
9144–X	Cajun Bag & Supply Co., Crowley, LA	9144
0149–X	Ethyl Corp., Baton Rouge, LA	9149
9169–X	PASCO Zinc Corp. (formerly Pacific Smelting), Torrance, CA	9169
9174–X	McDonnell Aircraft Co., St. Louis, MO	9174
9312–X	National Aeronautics & Space Administration (NASA), Washington, DC	9312
9355–X	Eastman Kodak Co., Rochester, NY	9355
9380–X	ARCO Pile Line Co., Independence, KS [4]	9380
9436–X	Union Carbide Industrial Gases, Inc., Danbury, CT	9436
9456–X	General Electric Co., Waterford, NY	9456
9456–X	Dow Corning Corp., Midland, MI	9456
9460–X	Tracor Aerospace, Inc., East Camden, AR	9460
9464–X	Broco, Inc., Rialto, CA	9464
9480–X	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE	9480
9480–X	Air Products and Chemicals, Inc., Allentown, PA	9480
9506–X	Akzo Chemicals Inc., Chicago, IL	9506
9512–X	Bryson Industrial Services, Inc., Lexington, SC	9512
9530–X	National Refrigerants, Inc., Plymouth Meeting, PA	9530
9536–X	Transway Systems, Inc., Stoney Creek, Ont. Canada	9536
9610–X	Federal Cartridge Co., Anoka, MN	9610
9717–X	Mobay Corp., Kansas City, MO	9717
9728–X	Smith Systems Operation, Corpus Christi, TX	9728
9751–X	C-I-L Inc., North York, Ont., Canada	9751
9755–X	Explosive Technology, Inc., Fairfield, CA	9755
9769–X	Aqua-Tech, Inc., Port Washington, WI	9769
9769–X	Safety-Kleen Envirosystems Co., Inc., Manati, PR	9769
9780–X	Majestic Lubricating Co., Tulsa, OK	9780
9782–X	Grumman Aircraft Systems, Bethpage, NY	9782
9797–X	National Aeronautics & Space Administration (NASA), Washington, DC	9797
9822–X	U.S. Department of Defense, Falls Church, VA	9822
9889–X	Assmann Corp. of America, Garrett, IN [5]	9889
9971–X	Fisher Scientific Co., Fair Lawn, NJ [6]	9971
10028–X	E.I. Du Pont De Nemours & Co., Wilmington, DE [7]	10028
10184–X	Union Carbide Industrial Gases Inc., Danbury, CT [8]	10184
10192–X	Eli Lilly and Co., Indianapolis, IN [9]	10192
10196–X	Penox Technologies Inc., Pittston, PA [10]	10196

[1] To renew and modify FRP–2 cylinder standard to require 3000 psi minimum shear strength instead of 5000 psi.

[2] To authorize reuse of 55-gallon capacity DOT-17C drums exempt from certain reconditioning requirements when shipping lithium metal, classed as a flammable solid between various company facilities.

[3] To authorize atmospheric gases, helium, tetrafluoromethane or mixtures thereof containing up to 21 percent oxygen, classed a nonflammable gas and mixtures of atmospheric gases (except oxygen).

[4] To authorize two 15 gallon sump tanks and one 15 gallon or one 38 gallon sump tank containing a flammable liquid, n.o.s. to be shipped on a 2-ton truck.

[5] To authorize polythylene portable tanks containing certain corrosive liquids, flammable liquids, or an oxidizer to be shipped in optional metal frames.

[6] To authorize rail freight and cargo vessel as additional modes of transportation.

[7] To modify the exemption to authorize DOT specification 112A200W tank cars for shipment of dimethyl sulfate, classed as a corrosive material.

[8] To reissue exemption originally issued on an emergency basis to authorize shipment of a specific gas mixture in DOT-4BW cylinder retested in accordance with Section 173.34(e)(9)–(10) modes 1, 2, 3.

[9] To renew exemption issued on an emergency basis to authorize shipment of Isopropyl Alcohol classed as a flammable liquid in a DOT Specification 12B fiberboard box with handholes by modes 1, 2, and 4).

[10] To reissue exemption issued on an emergency basis to authorize the manufacture, mark and sell of non-DOT cylinders similar to DOT–4L for shipment of oxygen classed as non-flammable gas by modes 1–4.

Application No.	Applicant	Parties to exemption
6016–P	Linde Gases of the Great Lakes, Inc., Cleveland, OH	6016
6874–P	Sino Pacific Trading Co., Brisbane, Queen's Land, Australia	6874
6874–P	Nevada Chemicals, Inc., Salt Lake City, UT	6874
6874–P	Mining Services International (MSI), Salt Lake City, UT	6874
7052–P	Environmental Pacific Corp., Lake Oswego, OR	7052
7835–P	Welders Supply Company (WESCO), Billerica, MA	7835
8009–P	Marlin Gas Transport, Inc., Palm Harbor, FL	8009
8156–P	National Specialty Gases, Durham, NC	8156
8214–P	Mitsubishi Motor Sales of America, Inc., Cypress, CA	8214
8426–P	Gallighen, Inc., Ventura, CA	8426
8445–P	Dow Corning Corp., Midland, MI	8445
8451–P	Trojan Corp., Allentown, PA	8451

Application No.	Applicant	Parties to exemption
8451–P	United Technologies Corp., San Jose, CA	8451
8451–P	Talley Defense Systems, INc., Mesa, AZ	8451
8518–P	Gallighen, Inc., Ventura, CA	8518
8519–P	Lykes Brothers Steamship Company, Inc., New Orleans, LA	8519
8931–P	Marsulex, Inc., North York, Ontario, Canada	8931
9271–P	The Atchison, Topeka and Santa Fe Railway Co., Chicago, IL	9271
9331–P	Albright & Wilson Americas, Toronto, Ont., Canada, Toronto, Ont., Canada	9331
9610–P	ACTIV Industries, Inc., Kearneysville, WV	9610
9632–P	Chemical Industries of Northern Greece (SICNG), 541.10 Thessaloniki, Greece	9632
9711–P	Fuji Photo Film USA, Inc., Elmsford, NY [1]	9711
9741–P	Batteries Recovery Services, Inc. (B.R.S.), Medley, FL	9741
9845–P	Marsulex, Inc., North York, Ontario, Canada	9845
10054–P	The Atchison, Topeka and Santa Fe Railway Co., Chicago, IL	10054
10094–P	Air Products and Chemicals, Inc., Allentown, PA	10094
10184–P [1]	Linde Gases of the South, Inc., Houston, TX	10184
10184–P	Linde Gases of of the Southeast, Inc., Wilmington, NC	10184
10188–P	Chevron Pipe Line Co., San Francisco, CA	10188
10188–P	Point Arguello Pipeline Co., San Francisco, CA	10188

[1] Request party status and to authorize an alternate type packaging consists of a 2.1 gallon polyethylene container packaged in a fiberboard box.

This notice of receipt of application is for renewal of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on July 21, 1989.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89–17620 Filed 7–27–89; 8:45 am]

BILLING CODE 4910–60–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition

Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "International Impressions: Recent Prints from Belgium's Frans Masereel Center" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Georgia Museum of Art in Athens, Georgia, beginning on or about October 21, 1989 to on or about December 3, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Richard H. Swan,

Acting General Counsel.

Date: July 21, 1989.

[FR Doc. 89–17600 Filed 7–27–89; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Readjustment Problems of Vietnam Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 that a meeting of the Advisory Committee on Readjustment Problems of Vietnam Veterans will be held August 9 and 10, 1989. This is a regularly scheduled meeting for the purpose of reviewing VA and other relevant services to Vietnam veterans and to formulate Committee recommendations and objectives. The meeting on Wednesday, August 9, 1989, will be held in the Omar Bradley Conference Room at VA Central Office, 810 Vermont Avenue NW., Washington, DC 20420. The following day's meeting will be held in Room 119 at VA Central Office.

The meeting on August 9 will begin at 9 a.m. and conclude at 4 p.m. The day's agenda will consist of internal Committee planning and work activities to include special task group reports, subcommittee assignments, plans for future objectives and field visits, and review of Committee organization and role. The meeting on August 10 will begin at 8 a.m. and conclude at 4 p.m. The second day's agenda will consist of a report on the interagency liaison activities and service availability regarding recently separated military personnel, an update on the new National Center for Post-Traumatic Stress Disorder, an update on Readjustment Counseling Service with particular attention to contract programs, and a discussion on the coordination of treatment and compensation of PTSD. Both days' meetings will be open to the public up to the seating capacity of the room.

Due to limited seating capacity of the room, those who plan to attend or who have questions concerning the meeting should contact Arthur S. Blank, Jr., M.D., Director, Readjustment Counseling Service, Department of Veterans Affairs, (phone number: 202–233–3317/3303).

Due to delays in administrative processing, this notice provides less than 15 days advance notice to the public.

Dated: July 25, 1989.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 89–17760 Filed 7–27–89; 8:45 am]

BILLING CODE 8320–01–M

[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202–485–8827, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 54, No. 144
Friday, July 28, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, August 2, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 25, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-17762 Filed 7-25-89; 4:51 pm]

BILLING CODE 6210-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:21 a.m. on Friday, July 21, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act; and (2) matters concerning the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: July 25, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 87-17785 Filed 7-26-89; 8:45 am]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 54, No. 144
Friday, July 28, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1737]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

Correction

In notice document 89-17084 beginning on page 30601 in the issue of Friday, July 21, 1989, make the following correction:

On page 30601, in the 3rd column, in the 1st paragraph, in the 13th line, "[insert date of 16 days after FR pub date]" should read "August 7, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 80N-0357]

RIN 0905-AA06

Hair Grower and Hair Loss Prevention Drug Products for Over-the-Counter Human Use

Correction

In rule document 89-15955 beginning on page 28772 in the issue of Friday, July 7, 1989, make the following corrections:

1. On page 28772, in the 2nd column, in the second complete paragraph, in the 10th line, "1989" should read "1990".
2. On page 28774, in the first column, in the last line, "is" should read "in".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 314 and 320

[Docket No. 85N-0214]

RIN 0905-AB63

Abbreviated New Drug Application Regulations

Correction

In proposed rule document 89-16024 beginning on page 28872 in the issue of Monday, July 10, 1989, make the following corrections:

§ 314.127 [Corrected]

1. On page 28933, in the third column, in § 314.127(h)(2)(i)(C), in the second and fourth lines, "parental" should read "parenteral".

§ 320.1 [Corrected]

2. On page 28938, in the third column, in the section heading reading "**329** § 320.1 Definitions.", remove "**329**".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192, 193, and 195

[Docket No. PS-108, Amdt. No. 192-64, 193-6, and 195-41]

RIN 2137-AB68

Incorporation by Reference of Portions of American Petroleum Institute Standard 1104, Seventeenth Edition, 1988

Correction

In rule document 89-15435 beginning on page 27881 in the issue of Monday, July 3, 1989, make the following correction:

Appendix A to Part 193 [Corrected]

On page 27882, in the third column, in amendatory instruction 4, in the fourth line, "188" should read "1988".

BILLING CODE 1505-01-D

federal register

Friday
July 28, 1989

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Powered Platforms for Building Maintenance; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-700 A]

RIN 1218-AA33

Powered Platforms for Building Maintenance

AGENCY: Occupational Safety and Health Administration (OSHA).

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is amending its Standard for Powered Platforms for Building Maintenance, 29 CFR 1910.66, Subpart F, to allow the use of alternative stabilization systems. The standard had allowed only stabilization systems which provided continuous positive means of engagement between the platform and the building facade. Such systems had proven to be infeasible for application to many new buildings with discontinuous vertical facades. In addition, the amendment updates existing requirements using performance-oriented language, expands the scope to include coverage of interior installations (atriums) and includes requirements for emergency planning, employee training and personal fall protection for employees using powered platforms.

EFFECTIVE DATE: January 24, 1990.

ADDRESS: In compliance with 28 U.S.C. 2112(a), the Agency designates for receipt of petitions for review of the standard, The Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, Room S-4004, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3649, 200 Constitution Ave., NW., Washington, DC 20210, (202) 523-8148.

SUPPLEMENTARY INFORMATION:

I. Background

A powered platform is a suspended, manned platform that is installed on a building and is used to maintain the building facade. It is part of an installation which consists of the working platform, suspension means, fall arrest systems and the requisite operating and control devices.

The previous OSHA powered platform standard (29 CFR 1910.66), adopted in 1971, required that all platforms be stabilized by direct attachment to continuous guide rails in the building facade, whenever the building height is greater than 130 feet (39.6 m) in height. For structures less than 130 feet (39.6 m) in height, continuous guide rails were not required, but the platform had to be equipped with building face rollers and angulated suspension wire ropes, which would cause the platform to exert pressure against the building facade. The purpose of these requirements was to stabilize the platform while it is in use by absorbing wind forces and horizontal forces caused by personnel movement on the platform.

During the years immediately following the promulgation of the OSHA standard, most high rise buildings were designed with straight building facades. This design adapted readily to the continuous guiderail requirement. In recent years, however, architects have also been designing buildings with multiple vertical planes, setbacks and complicated corner arrangements. These design changes may be the result of aesthetic considerations or an effort to conserve energy. Energy costs, for example, have led to building designs with fewer and smaller windows, projecting awnings to reduce cooling needs and recessed windows to provide insulation from outside temperatures.

These changes in building design have often made it difficult, infeasible, or costly to use continuous guide rails on many building facades. As a result, the new designs for high rise buildings have been responsible for the development of new types of stabilization systems for powered platforms. These new systems have provided employers the opportunity to select appropriate stabilization equipment that is capable of providing equivalent safety for workers and significant cost savings.

The previous OSHA powered platform standard did not address or allow this developing technology, and OSHA had received a significant number of requests for variances from the standard. These requests addressed the use of alternate stabilization systems on newly designed single and multiple faced buildings, and allowed for employee fall protection and platform related training. However, while these requests were often successful, the OSHA variance process is a regulatory procedure that can result in delays, and which must be pursued for each project. A compliance directive, OSHA Instruction STD 1-3.3, was issued by OSHA in November 1982 to allow intermittent stabilization in some circumstances, but it is limited in scope and cannot address the rapid changes in building design and related platform stabilization methods.

A need existed, therefore, to update the OSHA standard to address alternate stabilization systems for the purpose of providing industry with alternate methods of adapting to the new building designs. At the same time, an updated standard would have to continue to provide employers with an equivalent level of safety and to improve safety where possible in other areas of powered platform work. For these reasons, OSHA began the rulemaking process for amending the OSHA standard covering powered platforms.

II. History of Regulation

The previous OSHA standard for powered platforms (29 CFR 1910.66) was promulgated in 1971 from a national consensus standard (American National Standards Institute (ANSI) A120.1-1970) under section 6(a) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 655(a).

In the response to the need for employers to select alternate stabilization systems to the system required in the OSHA standard, OSHA published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** on February 11, 1983 (48 FR 6368). The ANPR solicited data and views regarding the appropriate content and scope of an amendment to 29 CFR 1910.66. Information was sought on alternate stabilization systems and the need to revise or add other provisions in this section. Also, the ANPR addressed a number of issues pertinent to the standard. First, is there a need for the development of performance criteria in addressing hazards associated with stabilization systems? Second, what should OSHA require in the identification, design, maintenance and use of alternate stabilization systems? Third, what are the best methods for the training of employees in the inspection and operation of powered platforms? Fourth, should more comprehensive criteria be developed for fall protection systems? Fifth, should appropriate changes be made in the standard to reflect changes in industry practice and changes in related provisions of OSHA's General Industry Standard? Sixth, what limitations should be placed on operating powered platforms under severe weather conditions?

The ANPR invited interested persons to submit written comments on the issues raised in the ANPR by March 14, 1983. The comment period was extended to May 16, 1983 (48 FR 14005) in response to commenters who requested additional time to make their submissions. Thirty written comments were received in addition to seven requests for extending the comment period. Commenters recommended that OSHA use performance criteria in addressing alternate stabilization systems; require training of employees in the operation of powered platforms; notify building owners of installation deficiencies and amend the current standard to reflect changes in related OSHA's General Industry Standards and ANSI standards. Also, information and data were received in response to the specific issues raised in the ANPR.

On January 22, 1985, OSHA published (50 FR 2890) a proposed amendment of its powered platform standard. The Notice of Proposed Rulemaking (NPRM) invited interested persons to submit written comments on the proposed standard and to file objections and requests for a public hearing. The original date for the close of the comment period was set for March 25, 1985, but was subsequently extended, at the request of commenters, to June 3, 1985 (50 FR 15756).

OSHA reopened the comment period on June 26, 1985 to permit the filing of written comments on the Preliminary Regulatory Impact Assessment (PRIA), which had not been available for public review during the earlier comment period. Written comments on the PRIA were to be received by August 1, 1985 (50 FR 27307). Forty-nine written comments were received, including nine requests for a hearing. These comments identified seven primary issues:

1. Should the equipment that is used to maintain the elevated interior of buildings (atriums) be addressed in a separate standard, or should the proposal be revised to address atriums?
2. Is there a need for a limit on the horizontal movement of an intermittently stabilized platform?
3. Should OSHA modify the proposed requirement that a secondary suspension system be used in conjunction with horizontal lifelines, if vertical lifelines are not selected for employee fall protection?
4. Should the proposed formula for calculating the safety factor of the suspension wire rope be amended, if the efficiency of the rope termination is taken into account?
5. Should OSHA retain the proposed electrical requirements, such as a voltage drop limit and a circuit disconnect switch, now addressed in the National Electric Code, but which is not addressed in OSHA's electrical standards under 29 CFR Part 1910, Subpart S?
6. Should OSHA expand its requirements for the protection of platform members if heat producing processes or corrosive substances are used on the platform?
7. Should OSHA require that written work procedures be provided for employee training?

In addition to these primary issues, OSHA requested information and suggestions on a number of other issues. These issues addressed intermittent and button guide stabilization systems, supported equipment, davit sockets and weight limits, wire rope terminations and inspections, cable stabilization, platform passage and roll, roof carriage stability and personal fall arrest systems. All of these issues are reviewed in the Summary and Explanation of the Final Rule (Section IV).

In response to the hearing requests, OSHA published a notice of informal hearing, listing these issues, on November 22, 1985 (50 FR 48222). The informal hearing was convened by Judge Leonard N. Lawrence on February 19, 1986, pursuant to section 6(b)(3) of the Act (29 U.S.C. 655(b)(3)) and 29 CFR Part 1911. The hearing included testimony from 25 witnesses. Judge Lawrence established a post-hearing period for the submission of additional comments and briefs extending through April 13, 1986. In response to requests from several hearing participants to extend the time to file additional data and evidence, Judge Lawrence extended the time to receive post-hearing data, evidence and briefs through May 23, 1986.

The entire record, including 112 exhibits and 928 transcript pages, was certified by Judge Lawrence on April 5, 1986, in accordance with 29 CFR 1911.17. Copies of materials in the record, as well as an index of the record, may be obtained from the OSHA Docket Office, Room N-2634, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210.

The final standard is based on a full consideration of the entire record of this proceeding including materials discussed or relied on in the proposal, the record of the informal hearing, and all written comments and exhibits received.

III. New Issues

A. Portable Suction Cups

During the post-hearing comment period, OSHA received a suggestion (EX. 50) that OSHA should investigate the use of portable suction cups (glazier type) as an alternate means of stabilizing a powered platform. Although the suggested alternative was received by OSHA very late in the rulemaking process, OSHA considered it to be an interesting concept and sought by letter comments (EX. 112) from all hearing participants on its possible use, so that OSHA would have a basis to reopen the rulemaking and offer guidelines on the method, if appropriate.

A significant number of commenters (EX. 48, 52, 54, 59, 68, 69, 78, 80, 85) opposed the use of glazier type portable suction cups for platform stabilization. These commenters were concerned that the suction cups would require extreme surface cleanliness; could be applied only to smooth hard surfaces such as glass and granite; and might not safely support the loads imposed on them.

In addition, they expressed concern that the building curtain wall or glass area would not be designed to sustain the imposed loading; the vacuum could not be maintained over a long period of time; and the location of the suction cups on the building would be determined by the operator rather than on the basis of an engineering stabilization system.

One commenter (EX. 54) stated that he could not support the use of suction cups without extensive testing. Even if such tests proved that the cups would support the loads, he believed it was essential that the operator be trained in their care and use to insure that the cups were kept clean enough to maintain a holding effect at the building face. Also, if the cups should lose their vacuum, they could fall and injure operators on the platform.

In support of the use of suction cups, one commenter (EX. 60) believed that these cups could be applied to existing buildings, provided the glass or building curtain wall could support the imposed loads.

Another supporting commenter (EX. 50, 86) stated that although the stabilization device had not been extensively studied, he believed that an engineered system for platform stabilization, using suction cups, was feasible with existing technology. He believed that a properly engineered system would provide equivalent platform stabilization and result in substantial installation and operating cost savings. This commenter noted that suction cups are only one of many other devices or systems which could be utilized for platform stabilization. The others include permanent magnets, electromagnets in the building, a vacuum system and regenerative adhesives.

OSHA has not directly addressed the use of suction cups as stabilization devices in the final rule, since there is

insufficient evidence and data for a standard on these devices at this time and since notice and comment on this specific issue was not provided. OSHA notes however that the final rule, requires that all equipment installations, including stabilizing components such as suction cups, would be designed by a professional engineer, paragraph (f)(1)(i). Therefore, a stabilization method, such as suction cups, would be acceptable if designed by a professional engineer and equivalent to existing stabilization methods listed in the standard (f)(5)(i)(F). OSHA intends, as noted in Appendix A, item 11, that one acceptable method of demonstrating the equivalency of a stabilization method is to provide an engineering analysis by a registered professional engineer. Such an engineering analysis would address the equivalency of a proposed stabilization method in its function, ease and method of use, durability and adaptability to the work environment. In addition, the analysis would determine the capability of the building and the stabilizer devices to meet the required loading and other relevant safety criteria.

B. Level-Sensing Devices

During the informal hearing period, a commenter (TR 2/20, p. 26) recommended that OSHA require a level sensing device on the platform. This device would sense an out-of-level condition (more than five degrees) on a two-point suspended platform, and discontinue power to the hoist causing this condition until the platform is brought to a level condition by the use of the opposite hoist unit.

This commenter claimed there have been a number of incidents in New York City where a platform has gotten out of level, causing it to become jammed in the mullion track. This condition necessitated a rescue of the operators from the stranded platform. No injury or accident data was provided to OSHA to support the need for this device.

A New York State official (EX. 87), in a post hearing comment, stated that there was only one notable incident (with no injury) which led to the inclusion of the level-sensing device requirement in the New York safety standards. New York is currently considering whether it should change its requirement for out-of-level criteria on platforms from five degrees to ten degrees.

Several individuals (TR 2/20, pp. 70, 109, 369) who gave testimony at the hearing disagreed with the need for requiring a level-sensing device on a two-point suspended powered platform. They contended that since employee operation is the primary reason for out-of-level platforms, if employees are properly trained in platform operation and in the handling of emergencies this would prevent the occurrence of an out-of-level condition. Since a mercury switch is used in the device, they noted that the device would be extremely sensitive to any platform vibration or swaying, and that this vibration or swaying would cause the switch to go on and off continuously. This on and off operation could cause the hoist motors to operate on starting currents which can eventually contribute to a motor burnout. A motor burnout could place the operators in jeopardy, since they would be stranded on the platform until rescued.

A platform manufacturer (TR 2/20, p. 369) testified that his company's experience with these devices in New York has convinced him that these devices are unreliable, costly and a major source of maintenance service calls.

From the hearing testimony presented, OSHA did not receive sufficient evidence of an employee hazard due to out-of-level platforms to warrant the need for a standard requirement on this issue. In fact, the commenters pointed out that the device itself can present unique hazards for employees when it is used. OSHA believes that employee training in the operation of a powered platform, as required in paragraph (i)(1)(i), and the perception by employees of an out-of-level platform would prompt them to take the necessary action to prevent a hazardous condition from occurring.

IV. Summary and Explanation of Final Rule

The final standard revising 29 CFR 1910.66 follows the language and format of the proposal, except for a number of changes based on OSHA's review of the entire rulemaking record. The rulemaking record includes the written comments, hearing testimony, data and comments submitted during the hearing and post-hearing period.

Following is a discussion of the requirements in the amended powered platform standard. This preamble discusses only those provisions which were addressed by public comment or testimony. For those proposed provisions for which no post-proposal submissions were received, and which are unchanged from the proposed rule, the preamble references the specific page in the Notice of Proposed Rulemaking of January 22, 1985 (50 FR 2890) where a discussion of the provision can be found. The numbers in brackets refer to specific references in the comments to the January 22, 1985 proposal, the February 19, 1986 hearing Exhibits (EX.), and hearing transcript page numbers, e.g. (TR 2/19, p. 100).

OSHA defines the scope of this standard in paragraph (a). In most major respects, OSHA has retained the scope of the previous powered platform standard and of the proposal. Thus, § 1910.66 continues to cover powered platform installations for building maintenance which are permanently dedicated to maintaining a specific structure or group of structures. OSHA has expanded the previous scope to include powered platforms used to perform maintenance on elevated interiors of buildings (atriums), as well as on building exteriors.

OSHA proposed to continue to limit this standard to permanent installations. Temporary suspended scaffolds are presently covered by 29 CFR 1910.28(g) and a proposed revision of that standard is scheduled for the coming year. For this reason OSHA did not raise the issue of whether to incorporate coverage of temporary scaffold installations into § 1910.66.

During this rulemaking, however, some participants questioned continuation of separate standards. One major concern recited was that permanent and temporary installations use similar equipment and employees face similar hazards and, therefore, these installations should be regulated by the same standard (see EX. 9–30, 9–37), and testimony of Lee B. Herzog (TR 2/20, p. 195). Additional comments noted specific deficiencies in 29 CFR 1910.28(g), such as not providing scaffold stabilization when a scaffold is moving between work stations. (See Lawrence R. Stafford, EX. 9–28, TR 2/20, p. 87; Kurt W. Daigel, EX. 9–22; TR 2/20, p. 342.)

On the other hand, other participants noted potential problems in combining temporary scaffolds and permanent platform installations in one standard. Safety concerns were raised by both union and industry groups. Window Cleaners Local #16 (EX. 84) and the Scaffold Industry Association (EX. 9–40) contended that inclusion of the temporary units in the proposal would impose requirements on these units that would, in effect, reduce the number in use. The union claimed that such a reduction would reduce the number of jobs for employees operating these temporary units. Economic concerns were cited by Joseph Puccinelli of Safeway Steel Products (TR 2/20, p. 276) and the Window Cleaning Contractors Association (TR 2/20, p. 474), who speculated that if the more expensive requirements of § 1910.66 were imposed on temporary units, this would result in less frequent building maintenance and losses for companies performing maintenance.

OSHA appreciates the concerns and suggestions presented by commenters and hearing participants during this rulemaking proceeding on the subject of temporary suspended scaffolds. OSHA has summarized the comments received on this subject, and has presented them here to provide a public record of the concerns expressed by the interested parties. However, as noted previously, temporary suspended scaffolds are presently covered in § 1910.28(g) and a proposed revision of this standard is scheduled for the coming year. Comments on temporary units received in the present rulemaking will be more properly addressed at the time of that proposed revision. Addressing those comments in this rulemaking would delay both rulemakings because of the need to evaluate differing technical and economic issues. Paragraph (a) has been reworded to clarify the exclusion of temporary suspended scaffolds from coverage by this standard.

In the Notice of Hearing of November 22, 1985 (50 FR 48222), OSHA requested comment on whether the coverage of platform installations used to maintain the elevated interior of buildings (atriums) should be addressed in a separate standard or whether the proposed paragraph (b)(1) which applied only to "exterior maintenance" should be revised to address atriums. This question was addressed by a number of commenters (EX. 9–10, 9–25, 9–31 9–35, 9–45; 14–1, 14–3; 15–4, 15–8, 15–13, 15–18; 50) and hearing participants (TR 2/19, pp. 50, 170, 171, 178, 203, 229, 239; TR 2/20, pp. 31, 85, 86, 96, 315, 334, 459, 474).

The Tennessee Valley Administration (TVA) (EX. 14–3) supported the need for a separate standard to address atriums, since these installations generally had unique structural configurations which presented problems in platform rigging, suspension, stability and operational procedures. This commenter also noted that the securing of vertical life lines and emergency rescue procedures in this interior environment had to be separately addressed.

The Window Cleaning Contractors Association (TR 2/20, p. 459) concurred with TVA in that atriums generally have designs which pose special problems for building maintenance that should be addressed in a separate standard.

Lerch, Bates and Associates (TR 2/19, p. 178) also favored a separate standard for atriums. This commenter observed that interior installations are generally not self-powered or subjected to wind forces.

OSHA Consultant David E. Hoberg (TR 2/29 pp. 50, 170) recommended that the proposed paragraph (b)(1) be revised to include the coverage of atriums under this standard. He pointed out that the equipment and operating methods for interior and exterior installations are similar and are used by the same employees in maintaining a building. He further stated that with the absence of wind forces, work station tie-in devices would be sufficient for platform stability and would eliminate the need for continuous or intermittent restraints in atrium installations.

The California Department of Industrial Relations (EX. 9–45) agreed with Mr. Hoberg that exterior and interior platform installations were closely related, and that atrium installations should be addressed in the proposal.

Kurt W. Daigel (TR 2/20, p. 334) of the New York State Department of Labor and Lawrence R. Stafford (TR 2/20, p. 85, 86) also favored the revision of the proposed paragraph to include atrium coverage, provided that the platform installation is designed by a professional engineer. In addition, they recommended that adequate operating instructions and emergency rescue procedures for an atrium installation be addressed in the proposal.

OSHA agrees with the commenters and those testifying at the hearing that the standard should address permanent platform installations used in atriums. First, there are more significant similarities in the equipment and operations used at the interiors and exteriors of buildings. Second, the proposed standard's provisions easily address atrium installations, with minor exceptions. Third, including protection of employees working in atriums against similar powered platform hazards is appropriate and avoids the unnecessary delay in providing specific coverage for these workers. Employee training requirements in the standard would address the difference in work procedures for exterior and interior work. Paragraph (a), therefore, now extends this standard to permanent exterior and interior installations.

In response to the need expressed for emergency rescue requirements, paragraph (e)(9) adequately provides requirements for both interior and exterior building maintenance, including atriums. Further, since the building and equipment installations are required to be designed by a professional engineer under paragraphs (e)(1)(i) and (f)(1)(i), OSHA believes that concerns expressed about unique atrium structural problems affecting employee safety are adequately addressed.

Proposed paragraph (a) stated that this section did not apply where building maintenance is performed at heights 35 foot (10.1 m) or below. The 35 foot (10.1 m) exclusion was based on Section 101 of the ANSI A120 draft standard—November 1981. OSHA now recognizes, however, that this exclusion by ANSI was meant to avoid requiring that buildings which are less than 35 foot (10.1 m) in height have a permanent powered platform installation. OSHA does not require that a building owner install a permanent powered platform installation for building maintenance. However, if such a platform is installed, then this standard would apply to the total height of the building, including the initial 35 foot (10.1 m). OSHA believes that employees should be protected from hazards at all levels where the platform is used. OSHA, therefore, is deleting the 35 foot (10.1 m) exclusion in the standard.

One participant (TR 2/20, p. 458, 459) believed that temporary suspended scaffolds can be used safely on buildings up to 300 feet (91.5 m), and suggested that OSHA not require permanent powered platform installations below 300 feet (91.5 m). In addition, this commenter believed that powered platforms installations are costly and cannot be justified at the lower levels.

The issue of when permanent powered platforms installations should be required was not raised by OSHA in the proposal, and OSHA finds that there is insufficient evidence to suggest how such a requirement for permanent installations would be triggered. In addition, OSHA believes that the building owner is in the best position to determine the type of building maintenance equipment he or she should use based on considerations of feasibility, aesthetics, costs, safety and other relevant factors.

OSHA notes that both the scope and application language remain essentially unchanged from the proposal. However, OSHA has partly transposed the contents of these paragraphs as proposed. Thus, OSHA proposed that the "application" of this standard be limited to permanently dedicated exterior installations. OSHA has determined that this criterion more properly defines the "scope" of the standard, with the inclusion of interior installations.

Also, OSHA had proposed the "scope" of this standard be limited to maintenance performed in excess of 35 feet (10.1 m). The "scope" also described the building maintenance tasks. Upon review, OSHA determined, as noted

above, that the 35 foot (101.1 m) limitation be deleted. The description of building maintenance tasks remains in the "scope" in paragraph (a) of the standard.

Paragraph (b)(1) states that the standard applies to all permanent installations completed 180 days after the effective date of this standard. This paragraph clarifies proposed paragraph (b)(3) which addressed new installations.

OSHA notes that paragraph (b)(1) does not prevent an employer from adhering to the requirements of the standard for an installation completed during the 180 day period.

An equipment manufacturer (EX. 9–43) noted that 180 days may not be adequate, since it may take a year or more to complete a building. James W. Fortune (TR 2/20, p. 317), who testified for OSHA stated, however, that the proposal properly addresses new construction.

This provision is consistent with the six months exclusion in the ANSI A120 draft standard January 1986 (EX. 15–8). In addition, OSHA observes that there has been adequate notice in the Federal Register of the proposed changes to the present regulation, and ample time for review has been given to all parties so they can adjust to the proposed changes.

Paragraph (b)(1) also states that the standard applies to all major modifications to existing installations completed after the 180 day period.

This provision was supported by Brian L. Gartner (TR 2/20, p. 169) and Thomas J. O'Shea (TR 2/20, p. 317) who agreed that major replacements or modifications to existing platform installations which affect the building and/or platform equipment should comply with the standard. They believe it was incumbent on building owners to apply the latest safety standards to these major modifications.

OSHA also notes that the ANSI A120 draft standard January—1986 (EX 15–8) requires that major changes to those portions of the building that provide primary support for the platform equipment should be accomplished in such a manner as to meet requirements of current safety standards.

OSHA is in agreement with the need for applying the requirements of this standard to major modifications of existing installations and is including this application in the Final Rule under paragraph (b)(1). Major modifications would include work similar to that involved when a new building or facility is built or when a new wing or floors are added to an existing building. Major modifications would not include work involving window replacements or other building facade and roof changes which do not affect the suspension or stabilization of the platform equipment.

Several commenters (EX. 9–34, 9–37, 9–43) supported the need to exempt existing platform installations from the revised standard, as in proposed paragraph (b)(2). OSHA agrees that the design of many existing buildings and platform equipment may prohibit complete compliance with the revised standard. Also many of these existing installations may already be designed to meet the stabilization requirements listed in OSHA Instruction Standard 1–3.3 of November 1, 1982.

OSHA, however, has determined it is necessary that existing installations at least comply with paragraphs (g), (h), (i) and (j) as well as Appendices C and D. Paragraph (g) addresses the inspections and tests to be conducted on powered platforms. Paragraph (h) addresses powered platform maintenance. Paragraph (i) addresses platform operations (employee training and platform use) which is not covered in the unrevised standard. Paragraph (j) addresses personal fall protection for employees on all types of working platforms, while the existing standard only addresses personal fall protection for employees on two-point working platforms. Appendix C, referenced in paragraph (j), addresses personal fall protection. Appendix D addresses building and equipment requirements for installations purchased and used after August 27, 1981, but before July 23, 1990, and carries forward the requirements of paragraphs a, b, c, and d of the standard. These paragraphs cover building and equipment design, construction and inspection. The discussion of the testimony and comments received on paragraphs (g), (h), (i), (j), Appendix C and Appendix D is found in the preamble sections addressing these paragraphs.

OSHA had proposed in paragraph (c) that the employer be required to obtain a certification from the building owner that the powered platform installation meets paragraphs (e), (f), (g) and (h), of the standard. The reason for this proposed requirement was OSHA's recognition that in many cases the employer is a contractor who provides employees to perform building maintanance using powered platfroms installed by the building owner. The structural integrity and operational safety of those platforms, their anchorages, and related equipment such as hoists depends on their design, installation and maintenance. The building owner will have the knowledge to evaluate whether the platform installations were designed, installed and maintained in compliance with this standard. If the building owner is also the employer of the employees who perform the building maintenance no burden would be created by the proposed requirement that the employer obtain a certification from the building owner. If however, as in the majority of cases, the building owner does not employ the maintenance workers, concern was expressed that the building owner's reluctance to issue a certification would be unfair and ineffective (TR 2/20, pp. 401, 426). Under the proposal only the employer of the maintenance workers could be cited for the failure to obtain a certification. Little incentive would be provided in the standard to encourage the building owner to certify: his options would be to contract with employers who were willing to take their chances and work on uncertified platforms, or where feasible to use temporary platforms.

OSHA recognizes that it is the building owner who has the information to design his building to conform to these standards. The Agency therefore has determined that in order to advance the remedial purposes of the Act that the standard will require that the building owner be responsible for assuring the employer that his building and equipment conform to specified requirements of the standard.

OSHA also has reduced the scope of the required certification rather than, as in the proposal, requiring the certification to broadly attest to total compliance with provisions of paragraphs (e), (f), (g) and (h). The provision now requires certification that the platform installation meets the critical design criteria set out and that it be designed and installed under the supervision of a registered professional engineer. These design criteria are not amenable to evaluation by the employer who is not the building owner, since compliance or non compliance is concealed from view or even close inspection. Since most of the design requirements are expressed in the standard as performance criteria, and the performance can be evaluated only by sophisticated tests and calculations, OSHA is also concerned about Agency capability to inspect for hidden defects.

As stated above, the requirement in paragraph (c)(1) does not reference each provision which it covers. Rather, the relevant subject areas, such as load capabilities, stability factors, horizontal forces and the design of carriages, hoisting machines, wire ropes, stabilization systems and electrical equipment, are stated. OSHA believes that the provisions to be covered by the

assurance requirement are easily identifiable in the standard. To assist the public in identifying major design criteria, however, OSHA is describing the provisions which it intends to cover by subject matter immediately below.

Load requirements apply to both building and equipment design. The major provisions deal with building anchors, stabilizer ties and guide buttons in (e)(2)(iii); (A)(5), (A)(6) and (B)(6). Building load factors cover occupant loads, (f)(1)(ii), as does the counterpart equipment provision, (e)(1)(iv). Paragraph (f)(3) contains load requirements for hoist motors, (i)(M), and transportable outriggers, (ii) (F) and (H); paragraph (f)(4) specifies load capabilities for hoisting machines, (v), and the winding drum attachment, (viii). Load factors for suspended unit components are contained in paragraph (f)(5); for platforms and wire ropes, (f)(5)(vi)(I), and platforms and attachments in (f)(5)(vi)(F), and wire rope connections in (f)(7)(i).

Stability factors for designated equipment are set apart in paragraph (f) of the standard. They cover carriage stability, (f)(3)(i) (G) and (C)(i), anchorages for outriggers, (f)(3)(ii)(C), lateral stability of outriggers, (f)(3)(ii)(E), and stability of davits, (f)(3)(iii)(A) and of units not suspended at the ends, (f)(5)(i)(D). Platform roll, which affects stability, is covered in paragraph (f)(5)(ii)(C).

Design requirements linked to specified forces apply to buildings and equipment. Thus, an angulation force of at least 10 pounds (44.4 N) must be maintained when angulated roping permitted for the top 75 feet of the building is used (e)(2)(ii). The force required to push a manually propelled carriage or to rotate a davit shall not exceed 40 pounds per person (444.8 N), (f)(3)(i)(C) and (f)(3)(iii)(D).

Design requirements related to carriages are set apart in paragraph (f)(3)(i) of the standard. They cover traversing speed, (i)(B), protective devices and interlocks, (i)(F), resistance to overturning, (G)(2), interlocks for the tie-down device, (G)(3), and breaking systems, (H), and (H)(1).

Primary and secondary brake requirements for hoisting machines are listed in paragraphs (f)(4)(ix), (ix)(A), (ix)(B)(*1*) and (ix)(B)(*2*). In addition, requirements for hoisting machines are listed for arresting overspeed descent, (f)(4) and limiting platforms speed, (f)(5)(ii)(G).

Design factors and material requirements for suspension wire rope are set apart in paragraphs (f)(7) (ii) and (iii).

The maintenance of continuous contact of the platform with the building facade is required with intermittent stabilization systems, (e)(2)(iii)(A), and angulated roping systems, (e)(2)(iii)(C).

In addition to the basic requirement that powered platform electrical wiring and equipment design must comply with Subpart S (§§ 1910.302–1910.308), design criteria in paragraphs (e) and (f) include the following provisions: limiting service voltage droppage to five percent at any power circuit outlet, (e)(11)(ii), and an independent equipment power circuit, (e)(11)(iii). Electrical components must be designed for exterior use, (f)(8)(ii); cables protected against overtensioning damage; (f)(8)(iii); controls included to protect against overloads, three phase reversal and phase failure, (f)(8)(iv); controls operative only under limited circumstances, (f)(8)(vi) (A) and (B); power to be interrupting automatically when wire rope slackens, (f)(8)(vi)(C); prevent unsafe upward and downward travel with directional switches, (f)(8)(vii); supply emergency stop switches for remote controlled roof-powered platforms, (f)(8)(viii); and supply overload devices for cables in constant tension, (f)(8)(ix).

The Agency believes that this requirement is squarely within the permitted range of regulation. In various regulatory contexts, the Agency has required employers who are not the direct employers of the employees exposed to a particular hazard to warn of defects, take remedial action or provide information to the directly employing employer. For instance, the Hazard Communication standard requires that upstream manufacturers provide information to downstream employers to protect their employees (29 CFR 1910.1200). A similar requirement in the earlier benzene standard was upheld by the Court of Appeals. The Court stated: "(p)lacing the responsibility to warn downstream employees of concealed hazards on those upstream employers who create the hazards and know of the hazards is consistent with the remedial purpose of the Act and is within OSHA's broad authority to prescribe warning labels." *American Petroleum Institute* v. *OSHA* (581 F. 2d 493, 51 (1978)). cf. *Mourning* v. *Family Publications Services*, 411 U.S. 356 (1973).

Paragraph (d) establishes terms for definitions used in the standard and commonly recognized in the industry. No comments were received on the following terms: Anemometer, angulated roping, cable, carriage, certification, control, guide shoe, interlock, operating device, primary brake, prime mover, registered professional engineer, building face roller, rope, speed reducer, stability factor, stabilizer tie, tie-in-guides, transportable outriggers, verify, weatherproof, winding drum hoist. No change is made in these definitions in the Final Rule. The discussion of each of these proposed definitions is found in the preamble of the Notice of Proposed Rulemaking of January 22, 1985 (50 FR 2890) on pages 2909 and 2910. Major clarifying changes have been made to the definitions for; "combination cable" and "installation."

Kurt W. Daigel (EX. 9–31, 9–41) recommended that the proposed definition for "babbitted fastenings" be eliminated, since babbitted fastenings are no longer accepted practice. Hoberg (EX. 19B, 19–c; TR 2/19, p. 53) noted the term "babbitted fastenings" should be replaced by the term "speltered sockets" or a more generic term such as "poured sockets," since babbitted fastenings should be prohibited for wire rope used for powered platforms. This commenter observed that babbitted fastenings are used in elevator rope terminations, but such fastenings would be unacceptable if used in a traction hoist because of the wire rope turning in the socket. In addition, Mr. Hoberg noted that babbitted fastenings are rated at 25 percent efficiency while fastenings for wire rope should have at least an 80 percent efficiency.

OSHA notes that the recommendations made by these commenters for the prohibition of babbitted fastenings for hoisting rope is supported in the text "Handbook of Rigging for Construction and Industrial Operations," 3rd edition, by W. Rossnagel, P.E., on page 55, which addresses wire rope fastenings.

OSHA is deleting the proposed definition for "babbitted fastenings" and is adding a definition for the generic term "poured socket" in the Final Rule. This definition is based on a definition of this term on page 28 of the *Wire Rope Manual*, second edition, published by the American Iron and Steel Institute.

Spider Staging Sales Company and Daigel (EX. 9–22, 9–31, 9–41) recommended deletion of the word "exterior" in the proposed definition of building maintenance, claiming the standard should also cover interior maintenance activities as well. The California Department of Industrial Relations (EX. 9–45) suggested that the definition include the terms "scheduled maintenance," which would cover window cleaning activities, and "unscheduled maintenance," which would cover caulking, sandblasting, etc.

Since, as explained above, OSHA is expanding the scope of the standard to

BEST COPY AVAILABLE

include interior maintenance, it therefore agrees that the definition of "building maintenance" should reflect this change and is deleting the proposed modifying phrase, "exterior."

OSHA is not adding the terms "scheduled maintenance" and "unscheduled maintenance" in the Final Rule since it believes it is unnecessary to show this differentiation in the definition. Windows are washed, stones cleaned, glass replaced—sometimes regularly, and sometimes on an as-needed basis, as determined by inspection.

Daigel (EX. 9–22) and Hoberg (EX. 19B) concurred in suggesting that the definition for "traveling cable" as proposed in paragraph (d)(9) be deleted. They believed that this definition is unnecessary, since the term "cable" is adequately defined in the Final Rule and there is no specific need to define cable types in the standard. OSHA agrees, and the definition for traveling cable is deleted in the Final Rule.

It was suggested that the term "catalog strength" be changed to the term "rated strength" since it is more generic and permits the engineer to adjust for arbitrary catalog listings and installation limits (TR 2/19, p. 53, EX. 19B). OSHA accepts the suggestion of a commenter and is changing the term in the Final Rule.

OSHA is including a definition for "competent person" to substitute for a proposed definition for "qualified person." OSHA notes that the term is meant to identify persons who will conduct equipment and wire rope inspections and persons who will train other employees in the use and inspection of powered platforms. The building owner has the responsibility for the designation of the person he or she deems qualified to conduct equipment and wire rope inspections, while the employer would designate the person that would train other employees in the use and inspection of powered platforms. Because the term "qualified person" is used in Appendix C, and in Part 1926 to refer to formally trained persons, OSHA believes that it is inappropriate and confusing to use "qualified person" as proposed. OSHA had made specific the areas of competence for the "competent person" as suggested by a commenter (EX. 9–20).

It was claimed (EX. 19B) that the proposed definition of "continuous pressure" was awkward and difficult to interpret, because of the use of the terms "device" and "control." OSHA agrees and has changed the definition in the Final Rule.

Daigel (EX. 9–22) suggested deleting the phrase "and for transferring the platform between these locations" in the proposed definition of "davit." The phrase might imply it is permissible to use a davit for moving a platform horizontally across a building face.

Hoberg (TR 2/19, p. 54, EX. 19B, 19C) noted that the davit definition could also describe a carriage, and that it was important to differentiate between davits, carriages and outriggers to obtain effective compliance with the standard. Mr. Hoberg recommended specific changes in the definition which would conform to the equipment described in the proposal and illustrate the characteristics unique to davits. In addition, this commenter recommended adding two additional definitions: "ground-rig davit" and "roof-rig davit" in the final rule since requirements for these two types were included in the proposal. OSHA agrees with the suggestions made by both commenters and is changing the "davit" definition and adding definitions for ground-rig davit and roof-rig davit in the Final Rule.

The proposed standard had provided a generic definition for equipment tie-ins. OSHA is deleting this definition in the final rule since the specific tie-in used in the proposal is defined under "stabilization tie."

Daigel (EX. 9–31) stated that the proposed definition for "equivalent" was far too broad and should include the phrase "protect against a hazard" to make it more specific. OSHA believes that there may be alternative designs, materials or methods which can contribute to a safe workplace but which may not directly "protect against a hazard." OSHA, therefore, has determined that the definition for "equivalent" remain unchanged in the Final Rule.

Daigel (EX. 9–22) and Hoberg (EX. 19B) suggested that the proposed definition for "ground rigging" be clarified. The proposed definition, as stated, might wrongfully imply that roof-powered platforms may not be used when ground rigging. OSHA concurs with the commenters and is changing the definition in the Final Rule to eliminate this implication.

A commenter (EX. 9–41) suggested that the proposed definition for "guide roller" be changed and made similar to the proposed definition for "guide shoe." OSHA notes, however, that a "guide shoe" is different from a "guide roller" in that it provides a sliding contact between the building guides and the shoe. In addition, comments by Hoberg (EX. 19–B) and the proposed definition in the ANSI A120 draft standard—January 1986 (EX. 15–8) concur in support of the definition as stated in the proposal. OSHA believes a guide roller is adequately described in the proposed definition and the paragraph, therefore, is unchanged in the Final Rule.

The proposed definitions for "multiple wrap drum hoist" and "single wrap drum hoist" are deleted since these terms are not used in the Final Rule.

The proposed definition for a "hoist machine" has been modified for clarification. The word "powered" is added before the word "device."

The proposed definition for "installation" has been changed to improve clarity. In addition, OSHA is deleting the word "exterior" in the definition since the rule is to apply to exterior and interior building maintenance.

The proposed definition for "intermittent stabilization" specifies the vertical placement of the building anchors on a building face. Hoberg (EX. 19–B) claims there is nothing unique about the verticality, since the anchors are spaced horizontally and vertically, and suggested that the phrase "vertical" be deleted. OSHA accepts the suggestion and the definition is changed in the Final Rule.

The California Department of Industrial Relations (EX. 9–45) recommended that the proposed definition for "lifeline" be broadened to include both horizontal and vertical lifelines. OSHA agrees and is changing the definition in the Final Rule.

It was noted (TR 2/19, p. 54, EX. 19–B) that the term "live load" means "moving and dynamic" in other related regulations and standards. For consistency with other standards, the commenter suggested deleting the word "static" in the title of the proposed definition for "live load." OSHA agrees and is changing the title of the definition in the Final Rule.

A comment from Hoberg (EX. 19–B) was intended to clarify the proposed definition for "obstruction detector." He suggested the substitution of the term "control," which is defined in the proposal, for the term "device." OSHA agrees with this suggestion and is changing the definition in the Final Rule.

The term "operating control" was used in the proposal at (f)(3)(i)(F) and was not defined. OSHA agrees with Hoberg (EX. 19–B) and developed a definition that is added in the Final Rule.

Comments received from the New York State Department of Labor (EX. 9–41), Kurt W. Daigel (EX. 9–31) and Hoberg (EX. 19–B) concurred in the need for clarification of the proposed definition for "outrigger." Because an outrigger is differentiated from a davit in the regulations, Mr. Hoberg suggested

the definitions should be similar so that differences are clear when definition comparisons are made. OSHA agrees with the commenters and the definition for "outrigger" is changed in the Final Rule. In addition, OSHA is substituting the term "working platform," which is defined, for the term "powered platform."

Comments received from Spider Staging Sales Company (EX. 9–43), Daigel (EX. 9–31), and Hoberg (EX. 19–B) regarding the proposed definition for "rated load" reveal a variety of opinions on how this definition should be written. Mr. Daigel would prefer that the definition address only a hoist load, while the Spider Staging Sales Company suggested the definition should address the loading for the powered platform system. Mr. Hoberg noted that there could be serious consequences in the misinterpretation of this term and recommended a series of load term definitions to avoid this problem. OSHA accepts Mr. Hoberg's recommendations, which also address suggestions by Mr. Daigel and Spider Staging Sales Company, and the proposed definition of rated load is replaced in the Final Rule with four separate load definitions. These definitions are used in the Final Rule text.

K.W. Daigel (EX. 9–22) suggested that the proposed definitions for a roof-powered platform and a self-powered platform be simplified through the appropriate use of the word "hoist." OSHA agrees and both definitions are modified in the Final Rule.

Daigel (EX. 9–22) and the New York State Department of Labor (EX. 9–41) suggested that the phrase "protected against injury" be replaced in the proposed definition for "safe surface" with the phrase "protected against falling." OSHA agrees that protection against falling is the major concern for employees who use a building surface to prepare rigging or to gain access to powered platforms. Accordingly, OSHA is changing the definition in the Final Rule.

OSHA is making minor changes to the proposed definition for "secondary brake." The term now focuses on the function, i.e., to arrest the descent of a powered platform in the event of an overspeed condition or in an emergency. In addition, OSHA has dropped proposed language which described other possible reasons for activating secondary brakes in reply to comments (EX. 9–22, 9–31, 9–41).

Although no comment was received on the proposed definition of "stability factor," OSHA believes it is appropriate to explain the criteria used in the stability factor. The stabilizing moment is the algebraic sum of the moments of force acting on the inboard side of the fulcrum in a platform installation support. The overturning moment is the algebraic sum of the moments of force acting on the outboard side of the fulcrum in a platform installation support. The physical significance of the moment of a force about an axis lies in the fact that it is a measure of the tendency of the force to turn the body on which the force acts about that axis. The definition remains unchanged in the Final Rule.

The New York State Department of Labor (EX. 9–41) and Daigel (EX. 9–31) recommended that the proposed definition for "supported equipment" be revised to show the characteristics distinguishing that term from "suspended equipment." These commenters also recommended that OSHA consider deleting this definition entirely since this type of equipment may not be in use.

OSHA is aware of at least one instance where supported equipment has been built, tested and installed on a building. Such equipment uses building members rather than wire rope for support, and is best applied on sloped surfaces and in atriums. In addition, the draft standard ANSI A120—January 1986 (EX. 15–8) continues to include provisions addressing supported equipment. OSHA has decided to retain the provisions addressing supported equipment in the Final Rule and, as a consequence, is leaving unchanged the proposed definition for supported equipment in the Final Rule. OSHA believes the definition adequately describes the unique characteristics of supported equipemnt and provides an easy comparison with the definition for suspended equipment.

Daigel (EX. 9–22) claimed that the proposed definition for "suspended equipment" would negate all the effort that has been expended in the industry to preclude horizontal movement of platforms across the building face except when in the uppermost storage position. He also suggested that the definition should be compatible with the definition for a two-point (two suspension wire ropes) suspended scaffold in the OSHA standard 29 CFR 1910.21(f)(34).

OSHA agrees that the definition should be modified to avoid the implication that platforms can be moved horizontally across a building face, but does not agree that the definition should follow the format of 29 CFR 1910.21(f)(34). The proposed definition was intended to be a generic definition for suspended equipment and would cover one point (one suspension wire rope), two-point (two suspension wire ropes), and four-point (four suspension wire ropes) types of powered platforms.

OSHA addresses the issue of platform horizontal movement in its change of the definition for "suspended equipment" in the Final Rule.

The New York State Department of Labor (EX. 9–41) and Daigel (EX. 9–22) recommended that the proposed definition for "suspended scaffolds" be deleted, since it is covered under the definition for suspended equipment. However, each term is used in a different context at paragraphs (b)(1) and (f)(5)(i), and therefore requires a separate definition. The definition is unchanged from the proposal in the Final Rule.

The New York State Department of Labor (EX. 9–41) stated that the proposed definition for "tail line" could also mean a line between a safety belt and a hanging lifeline. However, in the context of this standard, the tail line is only used in reference to a suspension wire rope and a clarifying change is made in the Final Rule.

The proposed definition for "tie-in device," paragraph (d)(54), is deleted since this term is not used in the Final Rule.

The proposed definition for a "traction drum hoist" did not refer to a traction sheave hoist, which is another basic type of traction hoist. It was suggested (EX. 19–B) that the definition be given the generic title of "traction hoist" and include both traction drum hoist and traction sheave hoist references in the definition text. OSHA agrees with the suggestion and the definition is changed in the Final Rule.

The proposed definition for "transportable equipment" is deleted, since the term is not used in the Final Rule.

It was suggested (TR 2/19, p. 56, EX. 19–B) that the definition for "trolley system" be changed to a definition for a "trolley carriage" for the purpose of providing clarity and consistency in the Final Rule. The commenter noted that carriages and trolley systems are defined as having identical functions, and reasoned there should be safety controls on overhead supported trolleys equal to those provided on underfoot supported carriages. OSHA believes the commenter's suggestion has merit and is changing the definition in the Final Rule. Appropriate changes are also made in the text of the Final Rule to reflect the definition change.

Kurt W. Daigel (EX. 9–22) and the New York State Department of Labor (EX. 9–41) suggested eliminating the term "exterior" in the definition for

"working platform." OSHA agrees, since the application of the proposal is being expanded to include interior maintenance. OSHA also is adding the term "Manned" to be consistent with regulatory text.

Paragraph (e) proposed general requirements for buildings which utilize powered platform installations. No comments were received on paragraphs (e)(1)(ii), (e)(1)(iii), (e)(1)(iv), (e)(2)(iii)(A)(4), (e)(6), (e)(10), (e)(11)(i), (e)(11)(iii), (e)(11)(v), and no change is made in these paragraphs in the Final Rule. The discussion of each of these provisions is found in the preamble of the Notice of Proposed Rulemaking of January 22, 1985 (50 FR 28990) on pages 2896, 2897 and 2898. Proposed provision (e)(2)(iii)(A)(4) is included in paragraph (e)(2)(iii)(A) of the Final Rule.

Paragraph (e)(1) proposed the general requirements which apply to buildings that utilize working platforms.

The California Department of Industrial Relations (EX. 9–45) suggested that the proposed paragraph (e)(1) include a requirement for locating detailed engineering plans at the work site to ensure that proper replacement parts will be provided when needed. The Final Rule addresses the commenter's concern regarding installation repairs in paragraph (e)(10). This paragraph requires that repairs to the building affecting suspended equipment installations not affect the capability of the building to meet the requirements of the standard.

The Spider Staging Sales Company (EX. 9–43) suggested changing the application of proposed paragraph (e)(1) to "building maintenance which utilize suspended systems." In response, OSHA points out that the paragraph addresses specific building requirements in an installation which must be met for compliance. The paragraph does not address building maintenance.

Proposed paragraph (e)(1)(i) required that building attachments and equipment be designed by a registered professional engineer experienced in such design. Hoberg (TR 2/19, p. 49) stated that this was a sound approach, but noted that the design criteria to be used were not included. The commenter observed that in many states an engineer attests to technical compliance with a reference design standard or standards. This was confirmed in at least one state by a submission received from Carl J. Thurnau (EX. 87) of the New York State Department of Labor. In the New York State Advisory Standard #101 for the construction, operation and maintenance of swinging scaffolds, recognized design standards are listed which the state considers acceptable in applications for approval of suspended scaffolds.

In the ANSI A120 draft standard—January 1986 (EX. 15–6), design criteria are addressed in section 202. In this section, the criteria are based on the limitations (stresses, deflections, etc.) established by nationally recognized standards promulgated by a number of organizations.

OSHA agrees that some guidelines are needed for the design criteria used by the engineer. Following the approach used by the ANSI A120 draft standard—January 1986 (EX. 15–6), OSHA is adding to Appendix A a list of organizations which have established nationally recognized design standards applicable to powered platform installations.

The New York State Department of Labor (EX. 9–41) and Kurt W. Daigel (EX. 9–31) suggested deleting the proposed requirement for building installations in (e)(1)(v) because it was too broad. This requirement stated that the building installation shall allow for the safe use and operation of the equipment. OSHA agrees and has changed the provision of the Final Rule to require that only those affected parts of the building be designed to allow the equipment to be used without exposing employees to hazards.

Proposed paragraph (e)(2)(i) would have required building exteriors to have tie-in guides which are building face components that provide a continuous means of positive engagement between the the building and suspended unit. The definition of the term "tie-in guides" states that the guides provide continuous positive engagement between the suspended equipment and the building. For reasons of consistency, OSHA is changing the revision at paragraph (e)(2)(i) in the Final Rule by requiring that building exteriors be provided with tie-in guides and deleting those phrases which are in the definition of the term "tie-in guides."

The proposal, in paragraph (e)(2)(ii), would have allowed tie-in guides to be eliminated if not feasible due to exterior building design, for uppermost elevations. Tie-in guides would have been eliminated from the upper 75 feet (22.9 m) provided angulated roping is employed and continuous contact is maintained by the platform with building face. For the upper 50 feet (15.3 m), no angulated roping or continuous contact would have been required.

Two commenters (EX. 9–23, 9–43) recommended that the tie-in guide exclusion for upper elevations be increased to 130 foot (39.6 m), the same distance as was permitted in proposed paragraph (e)(2)(iii)(c) for elevations above ground level. OSHA believes the two environmental conditions are not comparable. First, the wind pressure effect on tall buildings is usually greatest at the top corners of a building. Second, the column effect of air on the exterior of a building increases with building heights. This uplifting wind tends to "dam up" under a platform and get between the platform and the building, moving the platform away from the building. For these reasons, OSHA cannot accept the recommendation that the tie-in guide exclusion for upper elevations be increased to 130 foot (39.6 m).

Kurt W. Daigel (EX. 9–22) and Hoberg (EX. 19B) concurred in suggesting that OSHA should reword this exclusion to require that there should be continuous contact between the platform and the building face at the 50 foot (15.3 m) upper-most elevations. This suggestion addresses the objection to the upper 50 foot (15.3 m) exclusion by Leonard Nork (TR 2/20, p. 23) who stated that employees can be subjected to hazards at elevated building heights due to the windy conditions if tie-in guides are not used.

Other commenters (EX. 9–31, 9–41, 15–8) and hearing participants (TR 2/19 p. 182; 2/20–311, 334) supported the upper 75 foot (22.9 m) exclusion. James W. Fortune (TR 2/19, p. 182) and Douglas A. Greenaway (EX. 15–8) also believed that the upper 75 foot (22.9 m) exclusion should be reworded to require a minimum angulation force of 10 pounds (44.4 N) on the building face.

In response to these comments, OSHA agrees that an exception to continuous positive engagement of the working platform the building should be made in such a manner so as not to increase the risk to employees when they are working near roof top elevations. Accordingly, if tie-in guides are excluded at the uppermost elevations, there is a real need to provide an alternate method of platform stabilization because of the wind forces which can occur at these elevations. The platform stabilization required for the upper 50 foot (15.3 m) should be no less than is required at the upper 75 foot (22.9 m) level. Therefore OSHA is deleting the reference to 50 foot (15.3 m), retaining the 75 foot (22.9 m) exclusion as proposed and adding the requirement for a minimum angulation force of 10 pounds (44.4N) in the Final Rule. This revision from the proposal is requiring a continuous contact between the platform and the building face, if the platform is not stabilized with tie-in guides for the upper 75 foot (22.9 m) level. In addition, OSHA is deleting the word "continuous" in the Final Rule, since the word is contained in the definition of tie-in guides and therefore is redundant.

Proposed paragraph (e)(2)(iii) is being modified in the final rule for clarity and for consistency with other related provisions. First, as in the previous paragraph the word "continuous" is deleted since this word is already contained in the definition of tie-in guides. Second, the phrase "required in (e)(2)(i)" is added to show the relationship of this exclusion provision to the original requirement. Third, a reference to paragraphs (e)(2)(iii) (A), (B) and (C) is added to complete the reference to three guide systems—anyone of which is required if tie-in guides are not used.

Requirements for powered platform installations using intermittent stabilization systems were proposed in paragraph (e)(2)(iii)(A). A considerable number of commenters (EX. 9–22, 9–23, 9–25, 9–28, 9–29, 9–31, 9–34, 9–35, 9–37, 9–41; EX. 15–4, 15–8, 15–13; 19B; 38; 50; 88) and hearing witnesses (TR 2/19, pp. 58, 153, 174, 230; TR 2/20, pp. 23, 115, 311, 333) addressed this provision. The three primary issues raised were the proposed 14-inch (355.6 mm) limit on platform displacement, the wind velocity of 40 miles per hour (64.3 km/hr) as a design criteria, and the related lateral displacement tables in Appendix C.

Daigel (TR 2/20, p. 333), Thomas J. O'Shea (TR 2/20, p. 311), and James W. Fortune (TR 2/19, p. 230) claimed that the 14-inch (355.6 mm) limit on platform displacement was based on the faulty premise that normal platform movement in excess of 14 inches (355.6 mm) would cause a worker to fall. They contended that normal wind forces will move a 2,000-pound (89.6 kg) platform very slowly along the face of a building because of the platform weight and the frictional forces which are in opposition to these wind forces. In addition, they claimed the platform would remain level and tend to right itself during this movement. Only high winds, they continued, have a significant effect on platform stabilization, and this is the main reason for using stabilizer ties.

Daigel (TR 2/20, p. 333) also pointed out that under normal operating conditions, in the absence of winds, the platform may displace in excess of 14 inches (355.6 mm) laterally, due to variables such as worker movement on the platform, building face roller condition and contact, and differences in actuation of the platform hoist controls.

Lawrence R. Stafford (EX. 15–4), Thomas J. O'Shea (EX. 15–13), and Hoberg (TR 2/19, p. 58) noted that the rate of platform displacement and a worker's reaction time would determine a worker's stability on a platform. Since these criteria are so variable, they contended that assigning numerical limits for platform displacement for the purpose of assuring worker stability is not feasible and should be omitted. These same commenters observed that the designer of the building installation can limit the horizontal displacement of a platform for a specific building through proper vertical spacing of the building anchors, platform weight and stabilizer tie length.

Hoberg (EX. 19–B) recommended that OSHA should delete the 14-inch (355.6 mm) limit on platform displacement, and require instead that the intermittent stabilization system be designed to prevent sudden horizontal movement of the platform. It is the sudden movement of the platform, Hoberg contended, that is more likely to cause a worker to lose his or her stability on the platform.

OSHA is appreciative of this new data submitted by the commenters and witnesses relative to the 14-inch (355.6 mm) proposed limit on platform displacement. This new data, which indicated that the proposed limit would not achieve OSHA's intended purpose, had not been considered in the study (EXH. 2) prepared for OSHA on intermittent stabilization. After considering the new data, OSHA is deleting this proposed requirement and substituting performance language which requires the system to be capable of preventing sudden platform horizontal movement. The Agency believes that this provision addresses the hazard more effectively.

Several commenters (EX. 9–23, 9–25, 9–28, 9–37, 9–41) and persons who testified at the hearing (TR 2/20, pp. 23, 311) objected to the 40 miles per hour (64.3 km/hr.) velocity criterion in the proposed requirement (e)(2)(iii)(A). These commenters believed that workers should not be required to work on a platform when exposed to winds even approaching this velocity. However, it was not OSHA's intention that this criterion be used as a limit on worker exposure. The 40 miles per hour (64.3km/hr) velocity criterion was intended to serve as the design basis for the proposed 14-inch limit (355.6 mm) on platform displacement. Since OSHA is not promulgating the proposed displacement limit, the 40 miles per hour (64.3 km/hr) criterion also is eliminated in the Final Rule.

OSHA also is eliminating the tables proposed for inclusion in Appendix C in the Final Rule. They were intended to provide guideline data to building installation designers on lateral displacement in an intermittent stabilization system. James W. Fortune (TR 2/19, p. 174), Thomas J. O'Shea (TR 2/20, p. 311), and Daigel (TR 2/20, P. 311) noted during the public hearing that these tables should be deleted for several reasons. First, the introduction of wind velocity variables in the tables in excess of 25 miles per hour (40.2 km/hr) implied that workers would be permitted to work on a platform in these wind exposures. Second, building installation designers would develop their own designs for intermittent stabilization systems specifically suited to each building and would not utilize the guidelines presented in Appendix C. Third, if OSHA should decide to delete the 14-inch (355.6 mm) displacement limit in the proposal, the tables would be nnecessary. Since OSHA has agreed that the limit on platform displacement is to be eliminated in the Final Rule, the tables in Appendix C are also deleted.

OSHA had proposed that the maximum vertical interval between building anchors in an intermittent stabilization system be 50 foot (15.3 m). A large number of comments (EX. 14–1; 15–4; 9–13, 9–25, 9–31, 9–41, 9–43; TR 2/19, pp. 60, 185; TR 2/20, pp. 23, 92, 267, 313) were received in response to OSHA'S request for comments on this provision in the November 22, 1985 Notice of Hearing (50 FR 48222).

Some commenters, James W. Fortune (TR 2/19 p. 185), Daigel (EX. 9–31) and the New York State Department of Labor (EX. 9–41) suggested that the maximum interval between building anchors should be less than 50 foot (15.3 m) for buildings in excess of 500 foot (153 m) in height because of the generally higher wind velocities at those elevations.

Thomas J. O'Shea (TR 2/20, p. 313) and Lawrence R. Stafford (EX. 15–4) believed there was no engineering justification to reduce the anchor interval to a specific distance at the higher elevations in the regulation. They contended that this spacing should be decided by a competent professional engineer based on an evaluation of the entire system, platform size, wind design values for the site, and the profile of the facade.

The Travelers Insurance Company (EX. 14–1), Daigel (EX. 9–31), and Lawrence R. Stafford (TR 2/20, p. 92) recommended that the proposed 50 foot (15.3 m) interval be reduced to 40 foot (12.2 m) regardless of the building height. Lawrence R. Stafford noted that New York State has had excellent experience with the 40 foot (12.2 m) limit.

Another group of commenters, Hoberg (EX. 19–B, TR 2/19, p. 60), Acme

Fabricators (EX. 9–13), Spider Staging Sales (EX. 9–43), and Richard W. Hoffman (TR 2/20, p. 207) recommended that the building anchor interval be limited to three floors or 50 foot (15.3 m), whichever is less. These commenters argued that the three floor limit has worked out quite well in their experience and is acceptable to most architects. In addition, if a floor limit is not introduced it is possible that in some buildings with eight feet six inch floors (2.6 m), the proposed provision permitting a maximum of 50 foot (15.3 m) would allow building anchors every four floors. Therefore, it is conceivable for some buildings to have building anchors every four floors and on other buildings every three floors. These commenters concluded that for uniformity and safety, ease of installation, operation and design, the three floor limit of not greater than 50 foot (15.3 m) was recommended.

OSHA agrees with the latter group of commenters and is changing the proposed requirement in the Final Rule accordingly. OSHA believes that because of the variability of conditions which exist at each building site, it is appropriate that this provision establish a set of minimum criteria for spacing of anchors allowing the necessary flexibility to deal with the particular conditions encountered. Due to the various site conditions that have been identified such as the wind environment at various elevations, the platform length and weight, and the facade profile, the responsible architect or engineer should have the latitude to consider these variables in locating the appropriate building anchors. If a tall building requires additional building anchors, or if certain conditions along a building edge require a building anchor at every floor, the provision should allow the architect or engineer to address each situation. Furthermore, OSHA believes that in a time of crisis, a worker will look for a building anchor at a given floor level rather than at a distance that is irregularly spaced with respect to the building facade panels.

Finally, the change in the Final Rule for the building anchor interval to a three floor limit is consistent with current OSHA Instruction STD 1–3.3 of November 12, 1985 (EX. 102), which addresses intermittent stabilization systems.

Other requirements for building anchors are also changed from the proposal. Hoberg (EX. 19–B, 19–C) suggested that the proposed provision requiring the anchors to be in vertical rows be modified, since some buildings have different spacings at different elevations as part of the architectural design. This commenter also believed that it is an unsafe practice to use the building anchors to move the platform horizontally across the face of the building, and suggested OSHA address this practice in the provision. Lee B. Herzog (EX. 9–29) noted that the proposal would imply that four stabilizer attachments are required for a platform using a four wire rope suspension system. This commenter suggested changing the provision to require that only two stabilizer attachments need be used for this type of system.

OSHA agrees with the commenters and has changed provisions (e)(2)(iii)(A)(2) and (e)(2)(iii)(A)(3) in the Final Rule to reflect their suggestions.

Hoberg (EX. 19–B, 19–C) suggested that OSHA also address the hazard which could occur if building anchors were to cut or entangle lifelines, wire ropes or cables. This commenter noted that the catching of suspension wire ropes and life-lines on external anchors was an almost universal complaint among workers using these systems he contacted. OSHA agrees and is addressing this hazard in a new paragraph (e)(2)(iii)(A)(4) in the Final Rule.

The required capability of intermittent stabilization system components was also at issue. The proposal required intermittent stabilization system components to be capable of supporting, without failure, at least four times the maximum intended load applied or transmitted to the components.

Daigel (EX 9–31) and Thomas J. O'Shea (TR 2/20, p. 213) recommended that OSHA also address the loading requirement on each building anchor. These commenters believed that the minimum load for each anchor should be 600 pounds (2668 N) based on their field observations of these systems.

Hoberg (EX. 19B, 19c) supported the need for addressing anchor loading requirements. This commenter recommended, however, that the minimum anticipated load on a single building anchor should be 300 pounds (1334 N). This recommendation was based on criteria that included a platform end area of 10 square feet (0.9 m^2) enclosed with steel mesh, a wind force from a 100 miles/hour (160.8 km/hr.) wind, a four to one safety factor and the sharing of the wind load by two building anchors. Mr. Hoberg believed that only those building anchor arrangements in which one anchor must withstand all of the load should have a greater capability factor than where two anchors can share the load.

OSHA agrees that the 300 pound (1334 N) minimum anticipated loading per anchor is adequate if both anchors share the load, and this requirement is included in paragraph (e)(2)(iii)(A)(5) in the Final Rule. For installations, where both anchors do not share the load, paragraph (e)(2)(iii)(A)(6) addresses those instances.

Hoberg (EX. 19c) suggested that OSHA require the building anchors and stabilizer ties to have the capability of withstanding anticipated wind loads if a platform should be stranded on a building face due to some mechanical or electrical failure. In addition, he suggested that a single anchor should have the capability to sustain these wind loads if the anchors have different spacing than the suspension wire ropes.

OSHA believes these suggestions have merit and is including them in the Final Rule in paragraph (e)(2)(iii)(A)(6).

Several commenters, Lawrence R. Stafford (EX. 15–4), Thomas J. O'Shea (EX. 15–13), and Daigel (EX. 15–14) supported the proposed paragraph which would have prohibited the use of ground rigged platforms on intermittent stabilization systems. They claimed a feasible system has not been developed which will provide the necessary stabilization of the platform. OSHA's proposed prohibition also was based on the Agency's belief that "on a ground rigged platform, the stabilizer ties cannot be attached to the building anchors during the first ascent to the roof" (50 FR 2397, January 22, 1985).

Many other commenters (EX. 9–13, 9–23, 9–34, 9–37; 19B) and hearing witnesses (TR 2/19, p. 184; TR 2/20 pp. 305, 309), however, recommended that such platforms not be prohibited based on their experience and observations.

Powered Platforms Company (EX. 9–23), Acme Fabricators Company (EX. 9–13), and Joseph Puccinelli (TR 2/20, p. 306) claimed that special provisions can be made to provide stabilizers at each floor level as a ground rigged platform ascended. James W. Fortune (TR 2/19 p. 184) provided OSHA with a drawing of a building in California in which stabilization was provided for a ground rigged platform and contended that employee work procedures, similar to those used for roof rigged platforms, could be used in deploying the intermittent ties. Robert W. Hursh (EX. 101) also provided OSHA with sketches and analysis of a similar ground rigged platform arrangement. Hoberg (EX. 19B) claimed that the proposed prohibition is based on the assumption that the ropes or platforms cannot be restrained except by a worker on the platform, and that this assumption is incorrect. This commenter noted that access panels in the building face would allow the suspension wire rope to be restrained to the building anchors prior to the ascent of a ground rigged platform.

Based on the new data provided by the commenters which show that ground rigged platforms can be stabilized intermittently, OSHA agrees to eliminate the prohibition in the Final Rule. Stabilization of the ground rigged platform during its ascent, however, is required under paragraph (f)(5)(v)(H).

In addition, the Final Rule contains other provisions which will also ensure that the use of ground rigged platforms on intermittent stabilization systems will not present a hazard to employees. First, under paragraph (e)(1)(i) and (f)(1)(i), the building and equipment components are to be designed by a registered professional engineer. Second, under paragraph (c), the employer is required to obtain a certification from the building owner that the installation meets the requirements of this standard. Third, under paragraph (i)(1)(iii), employees must be trained in the operating procedures peculiar to ground rigged platforms with intermittent stabilization systems.

Requirements for powered platform installations using button guide stabilization systems are set out in paragraph (e)(2)(iii)(B). These systems include a guide track mounted on the platform and guide buttons mounted on the building face which engage the track during ascent and descent. Lawrence R. Stafford (EX. 9–35; TR 2/20, p. 153), Daigel (EX. 9–22, 9–31; TR 2/20, p. 334), and the Window Cleaning Contractors Association (EX. 9–20) objected to the inclusion of this alternate stabilization system in the standard. These commenters claimed that there were certain problems with these systems, such as lifelines catching on the buttons and button misalignment due to the variance in building construction. Other problems that were claimed included possible button breakage due to guide track hang-up and hand injuries from handling the guide tracks mounted on the platform.

James W. Fortune (EX. 43; TR 2/19, pp. 176, 186) and Hoberg (EX. 19B, 19C; TR 2/19, pp. 57, 163) supported the use of a button guide stabilization system as an alternate stabilization system. In response to the objections raised against these systems, these two commenters noted that the problems noted were a function of improper design, improper suspension of safety lines and inadequate training of employees. These commenters claimed to have observed a number of button guide stabilization systems which have operated satisfactorily. Hoberg (EX. 19B) recommended that several provisions be added to this section which address the problems of lifelines, button breakage and alignment, and guide track operation.

OSHA agrees with these commenters, for the reasons stated, that this alternate stabilization system should be retained in the standard. OSHA also is including the relevant provisions recommended by Hoberg in the Final Rule and these are identified as paragraphs (e)(2)(iii)(B)(1), (e)(2)(iii)(B)(2), (e)(2)(iii)(B)(3), (e)(2)(iii)(B)(5) and (e)(2)(iii)(B)(6). In summary, OSHA is changing the proposed requirements for button guide stabilization systems under paragraph (e)(2)(iii)(B) in the following manner.

First, the word "continuous" and the last sentence of proposed paragraph (e)(2)(iii)(B) are deleted. The word "continuous" is already contained in the definition of tie-in-guides. The last sentence of this paragraph which addressed guide bar requirements is transferred in the Final Rule to paragraph (f)(5)(vi)(A), which addresses equipment requirements. Second, for purposes of clarity, proposed paragraph (e)(2)(iii)(B)(1) is rewritten as paragraphs (e)(2)(iii)(B) (2) and (3). Their content remains the same. Third, proposed paragraph (e)(2)(iii)(B)(2) is being rewritten as paragraph (e)(2)(iii)(B)(4). The word "bar" is changed to the more descriptive word "track," and OSHA is clarifying the fact that when the guide track initially engages the first building anchor a gap in the continuous engagement will occur. Fourth, the proposed paragraph (e)(2)(iii)(B)(3) is being rewritten as paragraph (e)(2)(iii)(B)(6), since OSHA agrees with Hoberg's (EX. 19B) comment that the proposed provision does not properly address the loading of button guide stabilization system components. This commenter suggested that the paragraph be changed to insure that the anchor and building components be capable of sustaining without damage at least the weight of the platform. If this capability is not provided, then provisions must be made in the guide tracks or guide track connectors to prevent the platform and its attachments from transmitting the weight of the platform to the anchor and building components.

In addition to these specific requirements, OSHA notes that a number of other provisions in the final rule generally address the issues raised with regard to button guide stabilization systems. These provisions include paragraph (e)(1)(i), which addresses design of any building installation by a registered professional engineer, and paragraphs (i)(1)(i) and (i)(1)(ii), which address the training of employees operating powered platforms.

Requirements for powered platform installations, where the suspended portion of the equipment does not exceed 130 feet (39.6 m) above a safe surface, were set out in proposed paragraph (e)(2)(iii)(c). A number of commenters (EX. 9–22, –23, –28, –34, –35; 15–8, –14; 88) and persons who gave hearing testimony (TR 2/19, pp. 98, 103; TR 2/20, pp. 23, 333) addressed this provision. The primary issues raised were the 14-inch (355.6 mm) limit on platform displacement and the wind velocity criteria of 40 miles per hour (64.3k m/hr).

Daigel (EX. 9–22, 15–14, TR 2/20, p. 333) raised the same objections to the 14-inch (355.6 mm) limit on platform displacement in proposed paragraph (e)(2)(iii)(C) as he had on this same limit in proposed paragraph (e)(2)(iii)(A).

Hoberg (EX. 19B) also recommended that OSHA delete the proposed 14-inch (355.6 mm) limit on platform displacement, since it is the rate of displacement and not the displacement distance that would affect a worker's stabilization in a suspended platform. Since the rate of displacement is so variable and the assignment of a numerical limit is not feasible, this commenter suggested that OSHA require that the installation be designed to prevent sudden movement of the platform. After considering this new data presented by the commenters on the proposed 14-inch (355.6 mm) limit, OSHA finds that platform displacement is due to many factors and thus OSHA is deleting this requirement in the Final Rule and substituting performance language for controlling the platform displacement.

Several commenters (EX. 9–23, 9–34, 9–35; 15–14) and a hearing participant (TR 2/20, p. 23) objected to the 40 miles per hour (64.3 km/hr) wind velocity criterion in the proposed requirement (e)(2)(iii)(c). These commenters believed it is an unsafe practice to require employees to work on a platform when exposed to winds of this velocity. OSHA is deleting the velocity criterion in the Final Rule for the same reasons that were given in the deletion of this same criterion in proposed paragraph (e)(2)(iii)(A).

Hoberg (EX. 19B, 88; TR 2/19, p. 96) and Douglas A. Greenaway (EX. 15–8) recommended that OSHA retain the requirement in the present standard for a minimum angulation force of 10 pounds (44.4 N) as required in the proposed paragraph (e)(2)(iii)(C).

Hoberg stated that such a requirement would ensure there is a force available of given magnitude that can resist the lateral movement of the platform caused by employees walking on the platform. This commenter stated that, from his own experience, such a requirement is feasible even at the bottom of a 130-foot (39.6 m) drop. The 10-pound force (44.4 N), he continued, may be obtained by tie-backs or any other feasible method applicable to the installation.

OSHA agrees with these commenters that the platform should remain in contact with the building facade with a force of not less than 10 pounds (44.4 N), and this provision is retained in the Final Rule. Such a provision will ensure platform stabilization for employees working on platform installations with suspensions of less than 130 feet (39.6 m) without tie-ins to the building facade. Such a provision will also address Leonard Nork's (TR 2/20, p. 23) concern for employee safety on such installations because of the lack of tie-ins.

Since OSHA has decided that the scope of the Final Rule will cover platform installations used in the interiors of buildings (atriums) which have areas requiring maintenance, platform stabilization in this environment is addressed by this standard. Comments received on proposed stabilization provisions for platforms used on building exteriors concluded that employee movement on the platform contributed to platform displacement and an unsafe work surface. Tie-in guides and other equivalent methods are required in the final rule for the purpose of addressing this employee movement on exterior platforms. Hoberg (TR 2/19, p. 17), Daigel (EX. 9–31), and the Tennessee Valley Administration (EX. 14–3) concur in the need for a similar stability requirement for platforms used in atriums. Although a continuous or intermittent tie-in may not be necessary in an atrium because wind conditions are not a factor, they recommended that the platform be tied off at each work station to ensure platform stability. Hoberg noted that a restraint is necessary because of the extensive platform movement that results from employees pushing off from a work surface or from walking on the platform during work activities.

OSHA agrees that a tie-off of the platform at each work station is one method of providing stability in an atrium environment, but it is not the only method. OSHA believes that the building owner should have the option of utilizing stabilization methods generally used for exterior environments if one of these methods serve his purpose. OSHA, therefore, is providing this flexibility in selecting a stabilization method in paragraph (e)(2)(iv).

Guarding requirements for employees working on roofs while performing exterior building maintenance were proposed in paragraph (e)(3).

Proposed paragraph (e)(3)(i) provided that guarding be provided on the roof perimeter to protect employees from falling while they were performing exterior building maintenance. This guarding was to have met the provisions of Subpart D of 29 CFR 1910. In the Final Rule, paragraph (e)(3)(i) references a specific standard, rather than all of Subpart D, to provide a more specific reference in the current General Industry Standards.

Several commenters (EX. 15–23, 57, 87) and persons who gave testimony at the hearing (TR 2/21, pp. 19, 26, 28) addressed paragraph (e)(3)(ii). Raymond Horvath (TR 2/21, p. 19) noted that the referenced Subpart D of Part 1910 in the proposed provision does not address the required horizontal distance of the perimeter roof guard from the face of the building being serviced. This commenter also noted that the ANSI draft standard A120.1—January 1986 (EX. 15–8) requires 12 inches (309 mm) for this horizontal distance, but he believed that this distance is insufficient because many parapet walls are in excess of 12 inches thick. If a builder were strictly to comply with a 12-inch (309 mm) distance in these cases, a guard rail (perimeter roof guard) would require bends or angles, at additional cost, or the guard rail would have to penetrate the top of the parapet.

For feasibility and with due regard to employee safety, Mr. Horvath recommended that the perimeter roof guard be located no less than six inches (152 mm) inboard of the inside face of the parapet wall or roof edge curb of the building being serviced. Further, he recommended that the location of this guard not exceed 18 inches (457 mm) from the exterior building face.

Lawrence R. Stafford (TR 2/21, p. 28) agreed with Mr. Horvath on the 18-inch (457 mm) limit, since any larger dimension could conceivably inhibit the use of davit installations. Mr. Stafford also agreed that bending of a guardrail above a parapet is undesirable, since it would provide a ledge on the inboard side of the guardrail and thus reduce the effective height of the guardrail if a person were to stand on the ledge.

OSHA agrees with these commenters and is modifying the perimeter roof guard provision in the final rule under (e)(3)(ii) to conform with Mr. Horvath's recommendation, for the purpose of affording feasibility in complying with the perimeter roof guarding requirements.

Powered Platforms Manufacturing Company (EX. 9–23) suggested that proposed paragraph (e)(4), which addresses stops for trackless equipment, require stops only if an event could occur that would cause hazardous conditions for employees. Douglas A. Greenaway (EX. 15–8), in his submission of the ANSI A120 draft standard—January 1986, recommended that equipment stops be required by OSHA for trackless type equipment. Hoberg (EX. 19B, 19C) recommended that OSHA require equipment stops for the purpose of protecting employees from a crushing or shearing hazard if equipment should leave its intended travel areas.

OSHA agrees that a requirement for equipment stops should be included for three reasons. First, if trackless equipment should leave its designated areas, a hazard could result for employees due to a structural failure of the roof when the equipment is moved away from its structural support. Second, since most trackless surfaces are concrete slabs mounted on a roof, equipment dropping from this surface could create a pinch, crush or fall hazard for employees. Third, an employee could be trapped between a wall and the equipment if the equipment moved away from its designated path.

In addition to retaining the requirement for equipment stops (e)(4), in the final rule, OSHA is addressing the crushing and shearing hazard for employees, and removing the redundant proposed phrase "or being positioned."

Acme Fabricators Inc. (EX. 9–13) supported the need to provide safe areas for maintenance and storage of carriages as proposed in paragraph (e)(5). Hoberg (EX. 19B) concurred and also suggested replacing the words "supported equipment" with "suspended equipment" for clarity and for consistency with the definition of trolley carriage, in the Final Rule.

OSHA agrees and the appropriate revisions are made in the Final Rule in paragraph (e)(5).

Several commenters (EX. 15–8, 19B, 57) supported the need for tie-down anchors to be of noncorrosive metal as proposed in paragraph (e)(7). Douglas A. Greenaway (EX. 15–8) would also require inspection of these anchors for compliance with design requirements by a registered professional engineer, followed by an inspection report. Hoberg (EX. 19B) suggested clarifying

language to improve the meaning of the provision.

OSHA agrees to clarify the provision in the Final Rule as suggested by Hoberg. However, OSHA believes that a requirement for an inspection of the anchors would be unnecessary, since the building installation requirements are to be designed by a registered professional engineer under paragraph (e)(1)(i), the employer would have to be assured by the building owner that the installation has met those requirements under paragraph (c) in the Final Rule, and there is no evidence indicating failure of anchors.

James W. Fortune (TR 2/19, p. 196) suggested deleting the requirement for cable stabilization in proposed paragraphs (e)(8)(i) and (e)(8)(ii), since he believed this was a design function. However, a number of commenters (EX. 9–13, 9–31, 9–41; 15–4, 15–8; 19B, 19–C; 57) supported the need for the stabilization of cables and hanging lifelines. Lawrence R. Stafford (EX. 15–4) noted that such stabilization will prevent these cables and lifelines from creating an employee hazard as a result of striking building glass areas. Richard W. Hoffman (EX. 57) commented that strong winds acting on a lifeline can move employees to the leeward side of a platform and severely limit their movements. Daigel (EX. 9–31) recommended deleting the phrase "any other force" in the provision, while Hoberg (EX. 19B) suggested that paragraphs (e)(8)(i) and (e)(8)(ii) be combined because of their similarity.

OSHA agrees that the proposed requirement for cable and lifeline stabilization should be retained in the Final Rule. In addition to the reasons expressed by commenters in support of this requirement, OSHA believes that stabilization will help to further reduce employee hazards by reducing the abrasion of cables and lifelines. The stabilization of cables and lifelines can be provided by any method which limits their displacement by wind or other forces. OSHA also agrees to combine proposed paragraphs (e)(9)(i) and (e)(8)(ii) in the Final Rule into a new paragraph (e)(8)(i) for the purpose of reducing verbiage.

Several commenters (EX. 15–8, 19B, TR 2/20, p. 334) supported the proposed stabilization requirement for tensioned hanging cable in paragraph (e)(8)(iii). Acme Fabricators Inc. (EX. 9–13) also supported the need for this requirement but suggested that stabilization be provided at the more frequent intervals of 200 foot (61 m) rather than the proposed 600 foot (183 m). Swing Stage Inc. (EX. 9–29) questioned the need for this requirement since it believed that unstabilized tensioned cables might mark a building face but not affect the safety of employees on the platform.

OSHA believes it is necessary for these cables to be stabilized for a number of reasons. First, many of these cables are brought directly over a parapet and can become chafed through movement since they are adjacent to the building face. Second, if these cables become damaged, employees may be exposed to shock hazards from failed power conductors. Third, on high buildings wind forces can be greater on these cables than on the platform itself. Finally, the tensioned cables need to be stabilized so as to prevent the tension from interfering with the overload limiting devices on the hoisting cables.

OSHA cannot support the need for cable stabilization at the more frequent intervals of 200 foot (61 m) rather than the proposed 600 foot (183 m), since there is no evidence that a hazard exists when tensioned cables are stabilized at 600 foot (183 m). The requirement remains unchanged in the Final Rule and is renumbered as paragraph (e)(8)(ii).

A significant number of commenters (EX. 9–25, 9–37, 9–45; 14–3; 15–8; 19B; 65–20) and hearing witnesses (TR 2/19, pp. 55, 63; TR 2/20, pp. 24, 35, 54, 65, 84, 109, 496) recommended that OSHA require a written emergency action plan for employees in lieu of communicating such a plan orally as in proposed paragraph (e)(9). Becor Western Inc. (EX. 9–37) believed the plan should be written to assure that it has been thought out in advance and that the plan has been accurately communicated to employees. Hoberg (2/19, p. 63) noted that few employees remember an oral plan during an emergency and suggested that the written plans be kept at the manned communication facility in the building along with the emergency phone numbers and equipment logs. Leonard Nork (TR 2/20, p. 24) stated that employees should be given a written copy of the emergency action plan for their training to insure proper implementation of the plan. Mr. Nork also suggested that a record be kept of the employee who had been trained in these emergency procedures and the name of the instructor who performed the training. Other commenters (EX. 14–3, 9–45) and a hearing participant (TR 2/20, p. 84) observed that it was especially important to utilize written emergency action plans for building work sites having complicated atriums and exterior facades.

OSHA did not receive any comments which supported the use of oral methods rather than written methods in the training of employees in an emergency action plan.

OSHA has considered the comments received on this issue and agrees that written emergency action plans are necessary for employees who use powered platforms. The work site of a powered platform may require unusual methods to correct a hazardous situation and employees must be knowledgeable in these methods to prevent further risk or injury. Such knowledge would be difficult for employees to retain over a period of time without reference to a written plan, since many buildings are maintained on three- and six-month cycles. OSHA believes that if employees are made aware of and have ready access to the emergency procedures that would be necessary if they have an accident on a suspended powered platform, they will have a heightened awareness of the need to follow safe procedures and use fall arrest equipment at all times.

Accordingly, OSHA is revising proposed paragraph (e)(9) in the Final Rule. The revision requires employers to develop and implement emergency procedures through the use of written emergency action plans. The plan must explain the procedures to be followed by employees when emergencies occur during platform operations. In addition, the plan is required to explain to employees that they inform themselves about the building emergency escape routes, procedures and alarm systems before they operate a platform to service the building.

OSHA is removing the word "exterior" in the Final Rule as it was proposed in paragraph (e)(11), since the scope of this standard is changed to include interior building maintenance.

The National Conference of States on Building Codes and Standards (NCSBCS) (EX. 9–15) questioned the need for OSHA to address voltage drop for building electrical wiring in paragraph (e)(11)(ii), since it is currently addressed in the National Electrical Code. Lawrence R. Stafford (EX. 15–4) and the Tennessee Valley Administration (EX. 14–3) argued that OSHA should address voltage drop in the standard since the National Electrical Code may change and the desired requirements would be lost. In response to these comments, OSHA notes that the National Electrical Code is no longer referenced in Subpart S (Electrical) of OSHA's General Industry Standards and therefore, the subject of voltage drop was addressed in the proposal. It was the intent of the provision to ensure that proper voltage is available at the electrical outlets to

ensure reliable platform operation. Low voltage may reduce lifting capacity of the hoist and/or may cause overheating. High voltage may increase torque and the lifting capacity beyond the overload limit settings.

Hoberg (EX. 19B, TR 2/19, p. 63) agreed that the proposed provision requiring the voltage drop to be limited to five percent is reasonable. However, he contended that the control of equipment voltage is often beyond the capability of the employer or building owner to correct. This commenter suggested that the voltage drop addressed in the standard should be measured from the building service vault and not from the power circuit outlet. It was his belief that it is only possible to ensure that the building electrical wiring be of such capacity that when full load is applied to the equipment power circuit, not more than a five percent drop from building service vault voltage shall occur at any power circuit outlet.

OSHA agrees and proposed paragraph (e)(11)(ii) is revised in the Final Rule to reflect this change in measurement of the voltage drop.

Paragraph (e)(11)(iii) requires that the equipment power circuit be an independent electrical circuit separate from other equipment used within or on the building. Powered platforms often require nearly all the power available on a roof circuit. Inadvertent use of a power tool or other equipment on a circuit while the platform hoists are using that circuit can trip the overcurrent protection of the circuit, stranding the platform personnel. The National Conference of States on Building Codes and Standards (EX. 9–15) suggested that this requirement be incorporated in the National Electrical Code (NEC) in lieu of the standard. However, OSHA does not control the requirements listed in the NEC and no longer references the NEC in its standard. Therefore, the provision is retained as proposed in the Final Rule.

As proposed, paragraph (e)(11)(iv) would have required that the disconnect switch for the power circuit have the capability of being locked in the "off" position. This provides the employees with the capability of preventing unauthorized operation of the platform. Hoberg (EX. 19B, TR 2/19, p. 64) recommended that the provision should also require that the disconnect switch have the capability of being secured in the "ON" position. He noted that this capability is important during equipment operation when workers are suspended over the side of the building and are not near the disconnect switch. The disconnect switch should then be secured in the "ON" position so that power cannot be inadvertently interrupted.

The New York State Department of Labor (EX. 87) concurred with Mr. Hoberg. The New York Advisory Standard #101 requires that means be provided so that all switches are locked in the "ON" position while a platform is in use.

OSHA agrees with the commenters and proposed paragraph (e)(11)(iv) is revised in the Final Rule to require a disconnect switch to have the capability to be locked both in the "ON" and "OFF" positions and also requires that the disconnect switch be locked in the "ON" position when the platform is in use.

OSHA requested specific comment on the feasibility of the requirement in proposed paragraph (e)(11)(vi) that electrical service receptacles not be located on the parapet side of the carriage. Several commenters (EX. 9–30, 9–31, 9–41; 19B) and a hearing witness (TR 2/19, p. 54) recommended that this prohibition be deleted for a number of reasons. First, receptacles located on the parapet side are on the side of the roof carriage where the operator is looking while aligning the carriage with the edge of the building. While this aligning is being done, the power cable is in sight and serves as a continuous reminder to the operator not to run over it. Second, receptacles located on the parapet are above the flashing so workers never have to stand in water or shovel out snow to make an electrical connection. This potentially dangerous condition could occur, however, if non-parapet receptacles were used. Third, curbs are required in the standard to prevent roof carriages from traveling outside intended travel areas.

OSHA agrees with these commenters and is deleting this paragraph in the Final Rule. Deletion of this paragraph will also permit the employer and/or owner of the building to locate the receptacles in the optimum location for feasibility and employee safety.

Paragraph (f)(1) introduces the general requirements for equipment used for building maintenance. Since this standard is to apply to exterior and interior building maintenance, the word "exterior" in the proposal is removed in the final rule. No comments were received on proposed paragraphs (f)(3)(i)(B), (f)(3)(i)(D), (f)(3)(i)(F), (f)(3)(i)(G), (f)(3)(i)(K), (f)(3)(i)(L), (f)(3)(i)(N). The discussion of each of these provisions is found in the preamble of the Notice of Proposed Rulemaking of January 22, 1985 (50 FR 2890) on page 2912.

A commenter (EX. 31) and hearing witness (TR 2/23, p. 314) supported the requirement in paragraph (f)(1)(i) that equipment shall be designed by or under the direction of a registered professional engineer. However, another commenter (EX. 9–28) and hearing participant (TR 2/20, p. 331) claimed that this requirement as proposed was not complete, since the proposed definition of equipment only referred to the platform. These commenters believed that the entire equipment installation should be engineered to assure compatibility with the building on which it is installed. An equipment installation, in their opinion, would include carriages, davits and outriggers. OSHA agrees with these commenters, and is changing the requirement in the Final Rule for paragraphs (f)(1) and (f)(1)(i) to address all equipment in powered platform installations. In addition, OSHA notes that for equipment installations, guidelines for the design criteria are needed by the engineer. OSHA is adding to Appendix A a list of organizations which have established nationally recognized design standards applicable to powered platforms. The basis for this list was discussed above under paragraph (e)(1)(i) in this preamble.

Several commenters (EX. 9–17, 9–31, 9–34) recommended that the minimum live load of 250 pounds (11.2 kg) for each occupant of a platform proposed in paragraph (f)(1)(ii) be revised to include the weight of the occupants and any tools and materials used on the platform. Douglas A. Greenaway (EX. 15–8), recommended that OSHA retain the requirement for occupant loading as proposed.

In response to the commenters, OSHA notes that the common load capacities of equipment made in the United States are in increments of 250 pounds (11.2 kg), starting at 500 pounds (22.4 kg). In addition, the average adult male does not weigh more than 180 pounds (8.1 kg) and adding tools, equipment and materials per occupant would probably only raise the load to approximately 210 pounds (9.4 kg). The live load factor raises this to 250 pounds (11.2 kg), which is a conservative total. The provision, therefore, is unchanged in the Final Rule.

A number of commenters (EX. 9–35, 9–43, 15–8, 19B) and a hearing testifier (TR 2/19, p. 65) recommended that the minimum storage wind design load proposed in paragraph (f)(1)(iii) be changed from forces generated by a 75 mile per hour (33.5 m/s) wind to forces generated by a 100 mile per hour (44.7 m/s) wind. Lawrence R. Stafford (EX. 9–35), Hoberg (EX. 19B), and Spider Staging Sales Company (EX. 9–43) noted that 100 mile per hour winds are not uncommon on some building roofs and many local building codes require higher loads. In addition, many modern buildings do not have the wind protection for exposed equipment that the older flat-topped buildings have. OSHA agrees with these commenters and further observes that wind damage to equipment may put employees at risk from equipment failure during later operations. This provision is revised in the Final Rule to address forces generated by a 100 mile per hour (44.7 m/s) wind.

Paragraph (f)(1)(iv) as proposed had required equipment installations exposed to wind during operation to have the capability of withstanding forces generated by winds of 60 miles per hour (26.9 m/s). This provision was based on a proposed limitation on employee exposure to 40 miles per hour (17.9 m/s) winds while operating a continuous positively engaged platform. Since OSHA has agreed with previous commenters that employees should not be exposed to winds in excess of 25 miles per hour (11.2 m/s) while operating a platform, the 60 miles per hour (26.9 m/s) proposed requirement can be reduced appropriately. Therefore, OSHA is in agreement with several commenters (EX. 9–31, 9–35, 9–41, 15–8) who have recommended that the proposed 60 miles per hour (26.9 m/s) requirement be changed to 50 miles per hour (22.4 m/s) in paragraph (f)(1)(iv).

Bolted connections were required to be self-locking or secured to prevent loosening by vibration in proposed paragraph (f)(2). Hoberg (EX. 19B) noted that the only reliable methods to prevent loosening of connections by vibration are design and torque. By contrast, he noted that lock nuts and other devices can prevent loss of the connections by vibration. This commenter suggested that the provision be revised to address loss rather than loosening by vibration. OSHA agrees and this provision is so changed in the Final Rule.

The California Department of Industrial Relations (EX. 9–45) suggested that OSHA require that fasteners and platform components be made of materials suitable for exterior maintenance and galvanically compatible with one another, under paragraph (f)(2). It was also suggested (EX. 19B) that OSHA also require that the equipment comply with recognized standards for design and construction under paragraph (f)(2). In response to these commenters, OSHA notes that provision (f)(1)(i) requires that the equipment be designed by a registered professional engineer experienced in such design. It can be expected that such a qualified person would be familiar with the materials and standards for such equipment installations. In addition, a list of recognized standards applicable to this equipment has been provided in Appendix A. The paragraph (f)(2), therefore, has not been changed in the Final Rule.

Proposed paragraph (f)(3) listed a number of methods for suspending equipment, and also permitted equivalent methods of suspension. Hoberg (EX. 19B) recommended the deletion of the trolley system method since it is redundant. OSHA agrees, since the listed carriage method would also include trolley carriages, and the deletion is made in the Final Rule.

Two commenters (EX. 9–31, 9–41) suggested deleting the term "equivalent methods" and would have OSHA use the variance process to address nonlisted methods of suspension. OSHA believes that the proposed provision adequately places the responsibility on the employer for proving to OSHA that any new suspension method is equivalent to the listed methods, without using the variance process. Also, this provision, as proposed, will not inhibit an employer from developing new suspension methods. It remains unchanged in the Final Rule.

A number of commenters (EX. 9–31, 9–35, 9–37, 9–43; 19B) objected to the wording in the proposed introductory paragraph (f)(3)(i) for carriage requirements which included a description of how a carriage may be used. They stated there is an implication that it is the only way it can be used. In addition, there was the implication that if all elements noted in the description were not included on an installation, a violation of the regulation would exist. It was recommended (EX. 19B) that the provision be replaced with a more suitable introduction for carriage requirements. OSHA agrees that the proposed wording in the introductory paragraph may unnecessarily imply a limit on the use of a carriage, and therefore has changed the wording in the Final Rule.

Proposed paragraph (f)(3)(i)(A) required that the horizontal movement of a carriage be controlled to ensure safe operation. Hoberg (TR 2/19, p. 66) stated that this provision does not address the shear or crush hazard for employees due to a moving carriage when one operator has his or her attention directed to alignment, and the other operator is watching the cable or aiding in the alignment. The commenter recommended that the carriage have a control to interrupt power should an operator be caught between a wall or parapet and the machine. OSHA agrees that such a hazard can occur and is adding this requirement in paragraph (f)(3)(i)(E) in the Final Rule to address this hazard.

The maximum allowable horizontal force necessary for an employee to move a manually propelled carriage is addressed in paragraph (f)(3)(i)(C). OSHA agrees with comments which noted there are a number of hazards for employees pushing carriages at applicable elevated areas. These hazards include pinching, falling, tripping, and strain on the worker during the pushing operation. These hazards are further compounded by a work surface which may be slippery due to rain, ice and snow, or sloped due to drainage requirements. OSHA had proposed a limitation of 100 pounds (444.8 N) for the maximum allowable force needed for horizontal movement. Leonard Nork (TR 2/20, pp. 24, 56) objected to the use of any manually propelled carriage because of the surface hazards faced by employees. This commenter also believed that if manually propelled carriages were used, the 100 pounds (444.8 N) force should be reduced since it discriminated against female and older employees who generally do not possess the necessary strength to move such carriages. Hoberg (TR 2/19, pp. 66, 106, EX. 19B) also questioned the 100 pound (444.8 N) limit. In his review of Human Factors data (data utilized in the designing of equipment for human use) and their application to pushing a manually propelled carriage, he calculated that the limit should be changed from a 100 pound (444.8 N) force to a 40 pound (177.9 N) force. Hoberg's calculations were based on data developed by Stover H. Snook (1978) for industrial workers, which is illustrated in *Human Factors Engineering and Design*, fifth edition, published in 1982 by McCormick and Sanders, figure 7–24, page 210, and verified by Hoberg's own experience in designing roof carriages.

The proposed limit of a 100 pounds (444.8 N) horizontal force was based on the ANSI A120 draft standard—November 1981. In a review of current relevant Human Factors data, OSHA did not locate any information which supported the 100 pound (444.8 N) limit. OSHA agrees that the Human Factors data, as referenced by Hoberg (TR 2/19, pp. 66, 106) in his comments supporting a 40 pounds (177.9 N) limit, are applicable

to the work done by employees pushing a manually propelled carriage on a smooth level surface.

Importantly, the published data supporting this limit in the text referenced above are readily obtainable by the registered professional engineer in developing his criteria for a platform installation. In the Final Rule, therefore, OSHA is changing the 100 pounds (444.8 N) limit on the horizontal force required of employees in pushing a carriage to a 40 pounds (177.9 N) limit.

Paragraph (f)(3)(i)(E) addresses requirements for traversing controls of a powered roof carriage. Lee B. Herzog (EX. 9–29) and Hoberg (EXH. 19B) each recommended that this provision should require an emergency stop device for interrupting power to the carriage drive motors. These commenters gave several reasons for this recommendation. First, during alignment with roof indicators to ensure proper placement of the carriage with respect to the building tie-in guides, it is not uncommon for a second employee to be on the other side of the carriage, unseen by the operator, helping to direct the carriage movement. Second, roofs often are noisy, due to the noise from chiller fans, pumps and other running equipment; and warnings often cannot be heard. Third, large carriages may weigh as much as 40 tons (36,363 kg), have several drive motors, and have the capability of moving in either direction. Fourth, these carriages generally operate in very tight areas, especially when moving into a garage. In this type of working environment, these commenters believed it is essential that the employee who is not operating the carriage have access to an overriding stop button opposite the control end of the carriage, which will stop the carriage if a shear or crush hazard exists. OSHA agrees with these commenters and the emergency stop devices are required in the Final Rule.

Paragraph (f)(3)(i)(G)(1) addresses the stability factor of a carriage against overturning during horizontal traversing. Lee B. Herzog (EX. 9–29) and Hoberg (EX. 19B, 19c) recommended that the stability factor include the effects of wind forces as well as the effects of impact which were already included in the proposal. The commenters observed that if a platform is carried outside the wheelbase of a carriage, it could overturn. Since the load of a platform is carried by the carriage at the suspension points overhead, whenever the carriage strikes a curb the resulting impact can severely affect the stability of the carriage. The crush and pinch hazards for employees which could result from this impact were addressed in the proposed paragraph. These commenters noted, however, that the wind forces on such a suspended platform can also greatly reduce the stability of the carriage and introduce crush and pinch hazards for employees, and they believed that these wind forces should also be addressed in this provision.

OSHA agrees and the effect of wind on carriage stability is addressed in the Final Rule in paragraph (f)(3)(i)(G)(1).

Several comments were received on the stability factor of a carriage during the operation of a system as addressed in proposed paragraph (f)(3)(i)(G)(2), which would have required a stability factor of four against overturning. Acme Fabricators Company (EX. 9–13) supported the proposed stability factor. Richard W. Hoffman (EX. 9–30) believed the stability factor should be three rather than four. Hoberg (EX. 19B) noted, however, that under certain conditions the stability factor of four in the proposal can be seriously exceeded at hoist motor stall, and the carriage can overturn. His concern was that the proposed provision addressed operating loads, but did not address the greatest source of overturning force, motor torque, which is addressed in the present regulation. He suggested that OSHA retain the present requirements for roof carriage stability, § 1910.66(c)(3)(ii) and (iii), and also prohibit the use of flowing counter weights. These weights have been used to achieve proper stability, but have resulted in fatalities.

OSHA agrees that the regulation should ensure that the suspended equipment and the hoists do not pull the carriage over the side. The installation should be so designed that no source of force, such as motor torque, can upset the carriage, and flowing counter weights should not be necessary to achieve stability.

In the Final Rule, new paragraphs (f)(3)(i)(M) and (f)(3)(i)(G)(2) replace proposed paragraph (f)(3)(i)(G)(2). The new paragraphs are a clarification of the present requirements under § 1910.66(c)(3)(ii) and (iii) relating to stability factors for carriages. Paragraph (f)(3)(i)(G)(2) addresses the overturning criteria and the design stresses which may not be exceeded in the installation. Paragraph (f)(3)(i)(M) addresses the forces imposed on the hoist motors by the installation.

In a number of platform installations, the carriage system's stability is provided by a tie-down device secured to the building structure. This stability option was not addressed in the proposal and OSHA requested comments on the feasibility and utility of this option in the Notice of Hearing (50 FR 48222). A number of commenters (EX. 9–29, 9–31, 9–41; 15–4) and a hearing witness recommended that OSHA address this option in the standard. James W. Fortune (TR 2/19, p. 198) noted that the carriage tie-downs are normally utilized in conjunction with rubber tired roof carriages running on concrete runways. Mr. Fortune noted that the purpose of the tie-down is to give the carriage system the required safety factor against overturning, without having to add excessive amounts of counterweights. Mr. Fortune and the other commenters also recommended that the tie-down be equipped with an interlock that will not permit vertical platform movement unless the interlock is engaged. OSHA agrees with these commenters and a provision on tie-downs is included in the Final Rule as paragraph (f)(3)(i)(G)(3).

In the proposal, at paragraph (f)(3)(i)(I), an automatic brake or locking system was required for preventing unintentional traversing of power traversed carriages. Spider Staging Sales Company (EX. 9–43), Douglas A. Greenaway (EX. 15–8), and Hoberg (EX. 19B) suggested that the intent of the provision would be better served if OSHA issued a more general requirement. In addition, Hoberg (EX. 19B) suggested that power assisted carriages should also be included in this provision.

OSHA agrees that an automatic brake or lock would not be the only acceptable means of preventing the carriage from traversing unintentionally. However, from a performance point of view, OSHA can accept only equivalent means that are used to prevent the carriage from inadvertent movement which could injure an employee. The provision is changed in the Final Rule by eliminating the specific requirement, and it is also renumbered as paragraph (f)(3)(i)(H).

For the same reasons, proposed paragraph (f)(3)(i)(j) which addressed the means to prevent unintentional traversing of manually propelled carriages is also changed in the Final Rule. Any equivalent means which will prevent inadvertent movement of the carriage is acceptable, and this revised paragraph is renumbered as paragraph (f)(3)(i)(I).

Proposed paragraph (f)(3)(i)(K) is unchanged in the Final Rule and renumbered as paragraph (f)(3)(i)(j).

Proposed paragraph (f)(3)(i)(L) is unchanged in the Final Rule and renumbered as paragraph (f)(3)(i)(K).

Proposed paragraph (f)(3)(i)(M) is unchanged in the Final Rule and renumbered as paragraph (f)(3)(i)(L).

OSHA is deleting from the Final Rule the provisions addressing trolley systems which had been proposed as (f)(3)(ii), (f)(3)(ii)(A) and (f)(3)(ii)(B) because they are redundant with other provisions.

A number of commenters (Ex. 9–13, 9–23, 9–37; 15–8, 15–22 and a hearing witness (TR 2/19, p. 193) supported the proposed height limits for transportable outriggers when used with a ground rigged platform, paragraph (f)(3)(ii). The Acme Fabricators Company (EX. 9–13) and Douglas A. Greenway (Ex. 15–8) agree that an outrigger installation with points of suspension in excess of 130 foot (39.6 m) and below 300 foot (91.5 m) should provide continuous positive means of engagement for the platform. Some commenters (EX. 9–31, 9–41) suggested that the 300 foot (91.5 m) limit should be 150–200 foot (45.8 m) because of the possible exposure by employees during the rigging operations to wind gusts in excess of 25 miles per hour (40.2 km/hr.). OSHA has not received any accident data or other evidence which supports the need for reducing the 300 foot (91.5 m) limit. In addition, OSHA does not expect employers to put employees at risk by rigging in high winds and in violation of operating wind limits (paragraph (i)(2)(v)). The suspension height limits, therefore, are unchanged in the Final Rule.

In the Notice of Informal Hearing (50 FR 48222) published on November 22, 1985, OSHA requested comments on whether it should permit the 300 foot (91.5 m) limit on the outrigger installations, provided some mechanical means is provided to raise and lower cables, life lines and wire rope. OSHA received a diversity of comments on this issue. Hoberg (TR 2/19, p. 241) suggested that no more than 40 pounds (177.9 N) of manual effort should be required of employees to raise or lower lines whether or not they are mechanically assisted. James W. Fortune (TR 2/19, p. 189) noted that California regulations require mechanical assistance for employees in rigging installations over 130 foot (39.6 m) in height. This commenter believed these regulations had some merit since working conditions can be hazardous for employees in handling lines over a parapet.

Other commenters (EX. 9–20, 9–23, 15–22), however, have experienced no problems for employees in handling lines in these installations for suspension heights up to 300 foot (91.5 m). Designed Equipment Corporation (EXH. 15–22), for example, stated that lengths of electrical cable used at 300 feet (91.5 m) heights weigh less than 100 pounds (45.3 kg), and employees have not experienced any difficulty in handling these cables.

OSHA believes employers should be concerned with the effort required of their employees to lift electrical cables and lines when rigging for an outrigger installation. The need for mechanical assistance in this operation for employees would vary considerably depending on the weight of the line or cable, the height of the parapet, the condition of the work surface, and the age and physical condition of the specific employee involved in the operation. Sufficient Human Factors data is not available for OSHA to specify a limit on the weight of cable and lines an employee may raise from ground level without mechanical assistance, and therefore, such a limit is not included in the Final Rule.

Paragraph (f)(3)(ii)(A) sets the suspension height limits for transportable outriggers at 300 foot (91.5 m), and references the tie-in guides in paragraph (e)(2) of the standard. The reference to the tie-in guide systems provides options for the employer in selecting the means for stabilizing the platform.

Several commenters (EX. 9–25, 9–31, 9–35, 9–41; 15–8; 19B) recommended that OSHA eliminate the proposed requirement which addressed the storage of ground rigged platforms on the face of a building after each day's use. Leonard Nork (EX. 9–25) stated that such platforms are difficult to tie in safely overnight and are subject to unpredicted overnight storms. Another commenter (EX. 19B) agreed and noted that this practice would require anchorages to be designed for storm loads; prevent inspections of suspension ropes, cables and lifelines before use; and promote exiting of platforms by employees at elevated levels without fall arrest equipment. OSHA agrees with the commenters that platform storage on a building face can impose additional hazards on employees.

The requirements for disengagement of ground rigged working platforms which prohibit the practice of storing ground rigged platforms on the face of a building after each day's use are listed below under paragraph (f)(5)(iv)(B). Proposed paragraph (f)(3)(iii)(B) which would have permitted this practice is revised and renumbered to be (f)(3)(ii)(B) in the Final Rule.

Spider Staging Sales Company (EX. 9–43) and Hoberg (EX. 19B) have stated that if an anchorage for an outrigger is to be verified as to its suitability for use as an outrigger anchorage, then it should be so designed. However, they noted that the proposed paragraph (f)(3)(iii)(C) did not include a design reference. OSHA agrees with the commenters that a clarification is warranted, and is including the design reference in the Final Rule. In addition, this paragraph is renumbered as (f)(3)(ii)(C).

No comments were received on proposed paragraph (f)(3)(iii)(D), and this paragraph is renumbered as (f)(3)(ii)(D) in the Final Rule. The discussion of this provision is found on page 2899 in the preamble of the Notice of Proposed Rulemaking of January 22, 1985 (50 FR 2890).

OSHA proposed in (f)(3)(iii)(E) that a transportable outrigger be designed to prevent roll-over. Several commenters (EX. 19C, 9–37, 9–43) and a hearing witness (TR 2/19, p. 68) stated that the accidental lateral load addressed in the provision is difficult to determine in advance, but suggested a reasonable load be stated in the provision. One commenter (TR 2/19, p. 68) observed that the greatest potential source of roll-over is the hoist. He noted that the worst condition to be considered is when the outriggers are incorrectly spaced. Under this condition, the suspension ropes angle towards the center of the platform and this angle increases as the platform ascends. As a result, the hoist generates a roll-over force as the outriggers are drawn together. This commenter recommended that the outriggers be designed to prevent roll-over from a force of at least 70 percent of the rated load of the hoist.

OSHA agrees with the commenter's recommendation for lateral load in this lateral stability requirement, and this is included in the Final Rule. In addition, the paragraph is renumbered (f)(3)(ii)(E).

No comments were received on proposed paragraph (f)(3)(iii)(G). However, OSHA is replacing the word "capacity" in the paragraph with the word "load" to ensure consistency with the definition of the "hoist rated load." In addition, the paragraph is renumbered as (f)(3)(ii)(F). No comments were received on proposed paragraph (f)(3)(iii)(G), and the paragraph is renumbered as (f)(3)(ii)(G).

A number of commenters (EX. 9–35, 9–45; 15–8) strongly suggested that OSHA add requirements for outrigger tiebacks. The California Department of Industrial Relations (EX. 9–45) noted that such tieback requirements have been in Section 3292(f) of California's General Industry Safety Orders since 1985 (EX. 104). This commenter stated that the cost of providing tieback anchorage is incidental during the construction of the building, especially when one considers the safety benefits gained from having

such anchorages. Lawrence R. Stafford (EX. 9–35) suggested that OSHA follow the ANSI A120 draft standard—January 1986 (EX. 15–8) which requires that the tieback be a wire rope with a minimum diameter of 5/16-inch (8.0 mm).

OSHA agrees with these commenters that tiebacks for transportable outriggers are necessary, since they would provide a back-up system in case the counterweights become displaced. Although the tiebacks alone may not keep a scaffold from tipping, they will keep the system from falling to the ground. Standpipes, vents, other piping systems, and electrical conduits are not acceptable points of anchorage because they are often made of materials that cannot support the loads that would be imposed on them if a counterweight system were to fail.

To address the use of transportable tiebacks in the Final Rule, OSHA is adding two provisions—paragraphs (f)(3)(ii) (H) and (I). Paragraph (f)(3)(ii)(H) requires that the tieback rope be strong enough to sustain the same load sustained by the suspension rope. Performance language is used rather than specifying the tieback rope diameter. In addition, this paragraph requires that the tieback rope be secured to a verified building anchorage. A verified anchorage, as defined in paragraph (d), is one that is accepted by a registered professional engineer. Paragraph (f)(3)(ii)(I) describes how the tieback rope is to be installed on the installation.

Paragraph (f)(3)(iii) covers requirements for davits used to support working platforms. Paragraph (f)(3)(iii)(A) requires that all davit systems have a stability factor of four against overturning.

OSHA agrees with the comments of a commenter (EX. 19B) that the requirements for davits used on "roof rigged systems" and "ground rigged systems" should be clarified. The Final Rule sets out the specific requirements for davits used on "roof rigged systems" in paragraph (f)(3)(iii)(B) and for "ground rigged systems" in paragraph (f)(3)(iii)(C). To further clarify the application of the various requirements, OSHA has also defined "roof rigged davits" and "ground rigged davits."

Lawrence R. Stafford (EX. 9–35) and Douglas A. Greenaway (EX. 15–8) suggested that proposed paragraph (f)(3)(iv)(C)(*1*) be revised by replacing the term "guarded area" with the term "safe surface" which is defined in the proposal. In addition, they suggested that the access or egress to and from a platform not require a worker to climb over a building's parapet or guard railing.

OSHA believes that both of these suggestions have merit, and is including them in the Final Rule under renumbered paragraph (f)(3)(iii)(B)(1).

No comments were received on proposed paragraph (f)(3)(iv)(C)(2), and this paragraph is renumbered as (f)(3)(iii)(B)(2) in the Final Rule.

A number of commenters (EX. 15–8; 9–35, 9–37, 9–45) and a hearing witness (TR 2/19, p. 189) supported the proposed height limits for davits when used with ground rigged platforms in proposed paragraph (f)(3)(iv)(D)(1). Powered Platforms Manufacturing Company (EX. 9–23) and Becor Western (EX. 9–37) agreed with OSHA that a davit installation with points of suspension in excess of 130 foot (39.6 m) and below 300 foot (91.5 m) should provide continuous means of engagement for the platform.

At the other end of the comment spectrum, several commenters (EX. 9–7, 9–13; 15–22) have suggested that OSHA place no limit on the height at which davits can be used with ground rigged platforms. These commenters claimed that a davit system usage should be limited solely by the capability of the davit based on its design. California's Department of Industrial Relations (EX. 9–45), however, argued that a 300 foot (91.5 m) limit is necessary because davit installations are labor intensive and require special knowledge and training for proper rigging and safe use. In addition, California noted that these concerns increase with higher installations, as do electrical problems associated with long flexible cords. Douglas A. Greenaway (EX. 15–8) also promoted a 300 foot (91.5 m) limit for davits used with ground-rigged platforms.

After considering all the comments received on height limits for proposed paragraph (f)(3)(iv)(D)(*1*), OSHA has determined that the proposed limits should not be deleted and is retaining the proposed limits in the Final Rule in paragraph (f)(3)(iii)(C)().

In the Notice of Hearing (50 FR 46224) published on November 22, 1985, OSHA requested comments on whether it should require mechanical means to raise and lower cables, life lines and wire rope when the point of suspension exceeds 130 foot (39.6 m). Hoberg (EX. 19B) recommended that no more than 40 pounds (177.9 N) of manual effort should be required of employees to raise or lower lines, whether or not they are mechanically assisted. Designed Equipment Corporation (TR 2/21 p. 9), however, noted that in their experience employees have not had any problems in raising or lowering 300 foot (91.5 m) of electric cable.

This discussion on the manual effort required of employees to raise or lower lines and cables over a building parapet for a davit installation is similar to the previous discussion on outrigger installation under paragraph (f)(3)(ii)(A). OSHA's conclusion following that previous discussion also applies to paragraph (f)(3)(iii)(C)(*1*). Sufficient Human Factor data is not available for OSHA to specify a limit on the weight of cables and lines an employee may raise or lower from ground level without mechanical assistance, and therefore, such a weight limit is not included in the Final Rule.

OSHA is revising proposed paragraph (f)(3)(iv)(D)(*1*) to clarify the suspension height limits for davits and to reference the tie-in guides on paragraph (e)(2) of the standard. The reference to the tie-in guide systems provides options for the employer in selecting the means for stabilizing the platform. In addition, the paragraph is renumbered as paragraph (f)(3)(iii)(C)(*1*).

A commenter (EX. 19B) noted that the word "horizontal" is redundant and should be deleted from proposed paragraph (f)(3)(iv)(D)(*2*). OSHA agrees and the word is deleted in the Final Rule in renumbered paragraph (f)(3)(iii)(C)(*2*).

Proposed paragraph (f)(3)(iv)(E)(*1*), which addresses a davit rotation locking device, was based on provision 305.1(d)(1) of the ANSI A120 draft standard—November 1981. The current ANSI A120 draft standard—January 1986 no longer includes the provision. Several commenters (EX. 9–23, 9–29, 9–43) and a hearing witness (TR 2/19, p. 191) recommended that this provision be deleted from the standard. James W. Fortune (TR 2/19, p. 191) commented that requiring the davits to be locked would also require an employee to climb back and forth over a parapet, and on and off a powered platform each time a platform was to be deployed or retracted—a dangerous practice. Swing Stage Inc. (EX. 9–29) stated that the preferred practice is to strike a balance between ease of rotation and sufficient resistance to turning so that the davit remains in its working position. This commenter urged that the locking requirements be dropped in the absence of any evidence of a safety hazard resulting from the lack of a rotation lock.

OSHA agrees and the provision is deleted in the Final Rule. In addition to the comments in support of the deletion, OSHA notes that the stabilization provisions under paragraph (e)(2) will limit any employee risk due to any movement of the davit while it is in the working position.

The horizontal force necessary for an employee to move a rotatable davit was to be limited to 100 pounds (444.8 N) by proposed paragraph (f)(3)(iii)(E)(*2*). Several commenters (EX. 15–8; 9–31, 9–41) suggested that OSHA eliminate the force requirement and substitute a requirement that the davit be provided with bearings to permit easy rotation. Hoberg (TR 2/19, P. 159) disagreed and stated that bearings are not as important as keeping the davit socket base in a vertical position. If the socket base is at an angle from a vertical position, he contended, it becomes much more difficult for an employee to push a platform uphill to get it over a parapet.

Several commenters (EX. 9–25, 9–35; 19B) claimed the 100 pounds (444.8 N) was excessive, especially for women and older employees. Leonard Nork (EX. 9–25) supported Hoberg (EX. 19B) who recommended that OSHA use performance language which addresses the ability of employees to rotate the davit within Human Factors data limits. For this provision, Hoberg (EX. 19B) suggested that OSHA use a 40 pound (177.9 N) limit. Hoberg (EX. 19B) used the same arguments in support of the 40 pound (177.9 N) limit for a force to be employed in moving a carriage under paragraph (f)(3)(i)(C).

In addition to the comments expressed, OSHA recognizes a risk to employees in allowing them to exert a 100 pound (444.8 N) horizontal force on a davit when they are in close proximity to the edge of a parapet. OSHA, therefore, is changing the 100 pound (444.8 N) limit to 40 pounds (177.9 N) in the final rule under renumbered paragraph (f)(3)(iii)(D). OSHA's reasons for supporting the change to 40 pounds (177.9 N) in paragraph (f)(3)(i)(C) for carriages also apply to the change being made in this provision.

An employer would have been required by the proposal (paragraph (f)(3)(iv)(F)(*1*)) to provide a means of transport for a transportable davit if it weighed more than 75 pounds (34 kg). This proposed weight limit was based on an evaluation of comments received in response to the ANPRM (48 FR 30–6371). Two commenters (EX. 9–13; 15–8) and two hearing witnesses (TR 2/19, p. 110; TR 2/20, p. 103) suggested that OSHA require all davits, regardless of weight, be provided with a means of transport, since many davits weigh between 70 and 100 pounds (31.7 kg and 45.3 kg). Lawrence R. Stafford (2/20–103) stated that the costs for providing the means of transporting all davits would be small compared to the cost of injuries sustained by employees. No accident data or costs were provided to support this claim. Hoberg (EX. 19B, TR 2/19, p. 70, TR 2/19, p. 110) recommended, however, that an employee should not be required to carry a davit or part of a davit weighing more than 40 pounds (18 kg). If the davit weighed more than 40 pounds (18 kg) per person for a two-man team, he recommended that transporting means be provided, and that the center of gravity of the davit be kept below 36 inches (914 mm) during transport.

The recommendation by Mr. Hoberg is based on Human Factors data developed by Stover H. Snook (1978) and illustrated in *Human Factors Engineering and Design*, fifth edition, published in 1982 by McCormick and Sanders, Fig. 7–23, p. 209, and also verified by Hoberg's own experience in designing davits. Mr. Hoberg noted that since most maintenance operations have two employees working together, davits or parts of davits weighing over 80 pounds (36 kg) should have a means of transport which two employees can use. It was Mr. Hoberg's opinion that the regulation should not penalize engineering ingenuity if the owner wishes to use a davit that comes in 25 or 30 pound (11.3 kg or 13.6 kg) sections and eliminates the need for providing transporting means.

Mr. Hoberg gave several reasons for recommending a 36-inch (914 mm) height limit for the center of gravity of a davit while being transported. First, he noted that the real problem in transporting the davit is not the weight, but the weight distribution. Some davits are 14 feet (4.3 m) long, and weigh 150–190 pounds (67.5 kg–85.5 kg) with the center of gravity above the head of the employees when the davit is held upright while transported. If the transporting means, such as a cart, were to strike a roof crack, the davit could easily fall if it were held upright, becoming a hazard to employees.

OSHA has considered all the comments and Human Factors data presented and concludes that there is insufficient data to support a requirement that all davits be provided with a means for transport. Since Human Factors data supports an 80 pound (36 kg) weight limit for two persons, OSHA is changing the proposed 75 pound (34 kg) weight limit to 80 pounds (36 kg). *Human Factors Engineering and Design*, which contains Human Factors data, is a recognized text and is readily available to engineers who design davits. In addition, OSHA is adding in the Final Rule, under renumbered paragraph (f)(3)(iii)(E)(*1*) the requirement that the center of gravity of the davit shall be at or below 36 inches (914 mm) above a safe surface during transport. Since many building parapets are 42 inches (1066 mm) high, the limit on the center of gravity height will also reduce the likelihood of loss of the davit over the parapet.

Several commenters (EX. 9–13, 9–31, 9–41; 15–4) suggested that the proposed paragraph (f)(3)(iv)(F)(*2*) be changed to allow davits to be inserted into sockets horizontally before being raised to a vertical position. Other commenters (EX. 19B, TR 2/19, p. 190) supported a requirement which allows davits to be inserted or removed at a position of not more than 35 degrees above the horizontal.

Acme Fabricators Inc. (EX. 9–13) stated that positioning of a davit other than from the horizontal would require lifting of the davit, with the possibility of employees sustaining injury or loosing control of the davit. Hoberg (EX. 19B) believed that the elevation of the pivot point in respect to the worker's position is the critical factor when planning for the safe use of the heavy davits.

Because of a typographical error in the proposal, the proposed requirement would have permitted the insertion of a davit into its socket at a position of more than 35 degrees above the horizontal. The provision should have read, "not more than 35 degrees above the horizontal." OSHA is adding the word "not" in the Final Rule and renumbering the paragraph (f)(3)(iii)(E)(*2*).

This change, OSHA believes, properly addresses the comments received on this provision, and also affords the equipment designer the option of designing the davit for insertion and removal from a horizontal position up to and including a position which is 35 degrees above the horizontal.

No comments were received on proposed paragraph (f)(3)(iv)(F)(*3*) and this paragraph has been renumbered as (f)(3)(iii)(E)(*3*).

A number of commenters (EX. 9–31, 9–41; 15–8; 19B) recommended that OSHA change the requirement that a hoist be capable of preventing any overspeed descent of the load in proposed paragraph (f)(4)(ii) to a requirement that the hoist be capable of arresting such overspeed descent. Daigel (EX. 9–31) noted that the overspeed descent is arrested rather than prevented by the hoist. OSHA agrees and this change is made in the Final Rule.

No comments were received on proposed paragraph (f)(4)(ii)(A), which lists the acceptable power sources for hoists, and it is rephrased but unchanged in the Final Rule under paragraph (f)(4)(iii).

A number of commenters (EX. 9–31, 9–41, 9–43; 15–8; 19B) and hearing witnesses (TR 2/19, p. 70; TR 2/20, p. 497) addressed the proposed paragraph (f)(4)(ii)(B) which prohibited the use of gasoline engines as prime movers for any hoisting machine. Becor Western Inc. (TR 2/20, p. 497) recommended that OSHA change the word "gasoline" to a generic term such as "internal combustion" since diesel and propane engines have similar fire hazards. Spider Staging Sales Company (EX. 9–43) recommended that OSHA should not consider any flammable energy source as an acceptable power source.

Hoberg (TR 2/19, p. 20) believed that flammable liquids of any kind should be prohibited from the elevated work platform because of the limited egress. Also, he noted there would be a loss of support when the aluminum of most platforms became heated if a fire occurred as well as the danger of igniting the overhead ropes.

OSHA agrees that the provision should address all flammable energy sources because of the hazards in their use that may be faced by employees. However, since paragraph (f)(4)(iii) has identified the only acceptable power sources, OSHA believes there is no need to identify the unacceptable power sources. In paragraph (f)(4)(iv), OSHA is prohibiting the carrying of flammable liquids on the platform.

A commenter (EX. 19b) suggested that proposed paragraph (f)(4)(iii), which addressed the capability of a hoist to raise or lower a load be shortened for clarity.

OSHA agrees and this clarification is made in the Final Rule in paragraph (f)(4)(v).

Spider Staging Sales Company (EX. 9–43) and Hoberg (EX. 19B) recommended that the prohibition against the use of friction type speed reducers in hoisting machines be deleted in proposed paragraph (f)(4)(iv). They believed that this prohibition is contradictory, since friction type hoists are permitted and friction type brakes are used to stop the hoists.

OSHA agrees and this provision is deleted in the Final Rule.

Douglas A. Greenaway (EX. 15–8) supported proposed paragraph (f)(4)(v), which requires that the moving parts of a hoisting machine be guarded. However, paragraph (f)(4)(vi) references § 1910.212(a) (1) and (2) instead of § 1910.219 as proposed. OSHA believes these paragraphs are a more specific reference for the guarding of hoisting machines than § 1910.219, which primarily addresses the guarding of machines with power transmission belt systems.

Proposed paragraph (f)(4)(vi) required that hoisting drums and sheaves be compatible for use with the required rope size. Becor Western (EX. 9–37) suggested that OSHA include the ratio of the pitch diameter of the sheave or drum (D) to the nominal diameter of the rope (d), and recommended a ratio of sixteen to one. Another commenter (EX. 19B, 19C) recommended that OSHA modify the proposed requirement to include performance language rather than require a specific ratio be met.

OSHA agrees with this commenter that a specific ratio for this purpose has not been established in the industry because of the many variables involved such as sheave and hoist diameter, wire rope diameter, loading, etc. OSHA is, therefore, using performance language in the Final Rule to address the issue of compatibility and size in paragraph (f)(4)(vii).

Proposed paragraph (f)(4)(vii) required that the wire rope attachment in a winding drum be capable of developing four times the rated capacity of the hoist. Daigel (EX. 9–31) suggested that the provision include a requirement that the wire rope portion of the attachment shall develop at least 90 percent of the wire rope breaking strength. He noted that a poor and inefficient connection could result if the wire rope portion of the attachment is not given proper consideration.

In response, OSHA notes that in proposed paragraph (f)(7)(i), the suspension wire rope and connections (terminations) used must meet the specifications recommended by the hoisting machine manufacturer. Consequently, the manufacturer would be expected to specify connections which would be compatible with its equipment. OSHA is, therefore, retaining proposed paragraph (f)(4)(vii) as written in the Final Rule in paragraph (f)(4)(viii), except the word "load" is substituted for the word "capacity." This change in wording is to assure consistency with the definition of the rated load of the hoist.

Becor Western (EX. 9–37) recommended that OSHA delete the word "radial" in proposed paragraph (f)(4)(viii), which addressed the frictional contact between the wire rope and a traction drum or sheave. Becor Western stated that equivalent methods have been developed by manufacturers which are completely reliable and which do not depend on radial forces for reliable frictional contact.

Hoberg (EX. 19B) suggested deleting this whole provision. He noted that if the word "radial" is deleted, the remaining phrase "continuous force" would apply equally to winding drums, since these drums require "continuous force" for frictional contact.

OSHA has considered the comments presented and agrees that the word "radial" is misleading and incorrect in its proposed context. If the word "radial" is deleted, the balance of the requirement would have no special relevance to traction hoists. OSHA is deleting this provision in the Final Rule.

A commenter (EX. 19B, TR 2/19, p. 71) observed that proposed paragraph (f)(4)(ix) would mean that the primary and secondary braking systems could be used together to stop and hold 25 percent over the rated hoist load. He stated that the real needs are for each brake system to stop and hold what the hoist is capable of lifting, and for assured independent braking action.

Douglas A. Greenaway (EX. 15–8) supported the above commenter's statement on the necessary capability of each system.

OSHA notes that the rated load of the hoist is defined as the operating load allowed by the manufacturer. The hoist can actually lift more than its rated load. OSHA, therefore, agrees with the commenters that this provision should address each braking system's ability to stop and hold 125 per cent of the lifting capacity of each hoist rather than the rated load of each hoist.

Daigel (EX. 9–31), William Ayres (EX. 91), Hoberg (EX. 19B) and Douglas A. Greenaway (EX. 15–8) noted that OSHA had not included the function of the primary braking system in proposed paragraph (f)(4)(ix)(A). They suggested that the primary braking system be required to engage automatically when power to the prime mover is removed.

OSHA agrees that the primary braking system should not be manually actuated after the hoist motor is stopped, but should automatically set when power to the prime mover is interrupted for any reason. In the Final Rule, OSHA is adding the function of the primary braking system to the provision which is renumbered as (f)(4)(ix)(A).

In the Notice of Hearing (50 FR 48222) OSHA requested comments on suggestions made by a pre-hearing commenter (EX. 9–31) to expand the secondary brake provisions in proposed paragraph (f)(4)(ix)(B). The commenter (EX. 9–31) claimed that the proposed provisions were inadequate.

The first pre-hearing comment would have required that the secondary brake actuate only under prescribed emergency conditions. Hoberg (TR 2/19, p. 71) believed that this suggested requirement is counter to the concept of a secondary-emergency back-up brake being the stop of last resort, and that the brake should stop the hoist and its load under any condition, known or unknown. He argued that a "prescribed emergencies" exemption should not be permitted in the regulation.

The second pre-hearing comment would have required that the secondary brake act on a specific component of a winding drum, traction drum or traction-sheave hoist. James W. Fortune (TR 2/19, p. 195) and Hoberg (TR 2/19, p. 71) agreed that this suggested addition should not be included in the criteria for secondary brakes. These commenters stated that any brake always acts on a specific component of equipment whether it is intended or not, and without a definition of the component, the statement is meaningless. In addition, they indicated that as a performance regulation, the regulation should say what is to be done, not how to do it.

The third pre-hearing comment would have required that the secondary brake not fail to operate because of outside contamination. Hoberg (TR 2/19, p. 72) argued that this brake criteria should not be included in the Final Rule for a number of reasons. First, the addition is redundant since the proposed requirement that the brakes stop and hold the hoist and its load has no implicit or explicit exemption for contamination, temperature, height of building or any other criterion. Second, since the term "contamination" is not defined, it can mean the brake must operate if submerged in water and frozen; if packed in hot sand; if covered with hot grease—or any other imaginable contaminant. Third, the suggested addition has the implication that reasonable care and maintenance is not necessary to insure proper operation of these brakes.

The fourth pre-hearing comment would have required that the brake actuation impose no more than a specified amount of loading on hoisting system components. Hoberg (TR 2/19, p. 73) disagreed that this criteria should be added to the secondary brake provision. He believed that the specified amount of loading could be addressed in his recommended change to proposed paragraph (f)(4)(ix) that the hoist stop and hold what it can lift. In addition, he believed that the loading issue is also addressed in the requirement of proposed paragraph (f)(1)(i) that equipment be designed by a registered professional engineer.

The fifth pre-hearing comment would have required that the secondary brake not be bypassed or prevented from operating by any other device.

Cliff Theve (TR 2/20, p. 180) objected to this addition because it would prohibit the use of a hoisting machine with a controlled descent feature or a speed governor for emergency descent of a platform without power. He argued that hoisting machines of this type have been built and used safely for a number of years in the industry. Other reasons given by Mr. Theve not to include this additional criteria were: One, a controlled descent feature in a hoist is a quicker safer alternative to hand cranking by workers who are stranded and/or injured on an elevated platform; two, his own company has a ten-year history in the manufacture and sale of this type of hoist without a worker injury or accident; and three, the controlled descent feature does not prevent the secondary brake from becoming actuated if the primary brake fails and the platform reaches an overspeed condition.

Several other commenters (EX. 14–2, 14–4, 14–5) who are users of hoists with controlled descent features also objected to any prohibition of this type of hoist. In their experience, the controlled descent feature had not been the cause of hoist failures and had been effective in providing a safe descent when necessary.

OSHA has considered all the comments presented and is not adding the five additional criteria to proposed paragraph (f)(4)(ix)(B). Based in the record of this Rulemaking, OSHA has determined that these criteria are either redundant, unreasonable or inappropriate for secondary brake regulation. OSHA is renumbering the provision as paragraph (f)(4)(ix)(B)(*1*).

In the submission of the ANSI A120 draft standard—January 1986 by Douglas A. Greenaway (EX. 15–8), the secondary brake criteria included a provision which required the secondary brake, when activated, to stop and hold the platform within a vertical distance of 24 inches (609.6 m). OSHA believes that a specific limit on this stopping distance is necessary to assure adequate fall protection for employees, and is adding this provision in the Final Rule as paragraph (f)(4)(ix)(B)(*2*).

Several commenters (EX. 9–29, 19B, 91) argued that the proposed requirement for lubrication of a hoisting machine in paragraph (f)(4)(x) was too broad. According to these commenters, a strict interpretation of this provision would mean lubrication of all parts, whether needed or not. Swing Stage Inc. (EX. 9–29) noted that there are many modern materials which provide years of reliable service without conventional lubrication and many components are stationary without any need for lubrication.

OSHA agrees with these commenters and is revising the lubrication provision to address only those components in a hoisting machine which require lubrication in paragraph (f)(4)(x).

Werner Company Inc. (EX. 9–34) suggested that the load reference in proposed paragraph (f)(5)(i)(A) be more clearly defined. This commenter believed that the intended load should include the weight of the users and any material on the platform. OSHA agrees with this commenter and is changing the phrase "maximum intended load" to be "maximum intended live load" in the Final Rule. The term "live load" is defined in the standard.

Werner Company Inc. (EX. 9–34) has questioned whether the terms "suspended unit," "unit weight" and "live load" in proposed paragraph (f)(5)(i)(B) are referring to the platform itself or the total system. In response, OSHA states that the term "suspended unit" is referring to the platform itself. The load rating plate provides information which is used to prevent the loading of a platform in excess of its maximum intended load. The load rating plate addressed in the proposed paragraph is required to state the "unit weight" and the "live load rating" of the platform. For consistency with the definitions used in the Final Rule, the term "live load rating" is changed to "rated load" in the Final Rule at (f)(5)(i)(C).

Douglas A. Greenaway (EX. 15–8) and Hoberg (EX. 19C) agreed that proposed paragraph (f)(5)(i)(C) is incomplete. These commenters believed that the paragraph should address both the position of the live load and the stability factor ratio that is to be used in maintaining continuous stability of the suspended unit. OSHA agrees with these commenters that the use of a 1.5 to 1 stability factor against upset and the need to address the position of the live load in the suspended unit is necessary in the Final Rule. OSHA addresses these issues in paragraph (f)(5)(i)(D).

Several commenters (EX. 9–22, 9–31, 9–35) suggested deleting proposed paragraph (f)(5)(i)(E)(*3*), which addressed button guide systems. The same arguments for deletion of these systems were presented earlier when commenters addressed proposed paragraph (e)(2)(iii)(B). OSHA did not find the arguments presented for deletion persuasive then and retained paragraph (e)(2)(iii)(B), and is doing likewise for proposed paragraph (f)(5)(i)(E)(*3*) by retaining it in the Final Rule as (f)(5)(i)(F)(*3*).

In paragraph (f)(5)(i)(F)(*1*), OSHA proposed that a suspended unit shall be

provided with a guardrail system and a four inch (102 mm) high toeboard. OSHA is revising the toeboard provision to provide equivalent protection and consistency with OSHA's proposed Construction Standard addressing the use of scaffolds (Notice of Proposed Rulemaking (51 FR 42708) published on November 25, 1986. The revised toeboard provisions which will also be considered in OSHA's proposed revision of Subpart D of Part 1910, are added as (f)(5)(i)(G) (*5*), (*6*), (*7*) and (*8*).

Several commenters (EX. 9–35, 9–37) suggested that OSHA revise proposed paragraph (f)(5)(i)(F)(*2*) to include a 42 inch (106.6 cm) high limit for the top guardrail on the ends and outboard side of the platform. Also, Spider Staging Sales Company (EX. 9–43) suggested that the top guardrail have the capability of withstanding a 200 pound (890 N) force rather than a 100 pound (445 N) force. OSHA's proposed requirements for a 36-inch (914 cm) top guardrail with a capability of withstanding a 100 pound (445 N) force are consistent with proposed related OSHA scaffold standards for construction (51 FR 42708) and reflect the fact that this type of guardrail is intended to be supplemented by personal fall arrest systems.

This consistency of approach in OSHA's fall protection standards for powered platforms and scaffolds is based on the use of two types of guardrail systems. The first type is capable by itself of providing adequate fall protection for employees. The second type of guardrail system is one which is used primarily as an edge delineator and to prevent misstepping. Personal fall arrest systems must be worn with the second type of guardrail system because of the reduced strength characteristics (100 pounds (445 N) force) and lower top rail heights (36 inches (91.4 cm)) of this type of system.

Since this powered platform standard requires employees to be protected by personal fall arrest systems (paragraph j), as the primary means of fall protection, guardrails on the platform need not be strong enough to prevent falls. Accordingly, the standard provides for the second type of guard rail system to be used on powered platforms. Proposed paragraph (f)(5)(i)(F)(*2*), therefore, is unchanged in the Final Rule.

Two commenters (EX. 9–31, 9–43) recommended that OSHA increase the capability of the midrail in a guardrail system from a 75-pound (333 N) force as proposed in paragraph (f)(5)(i)(F)(*3*) to the same force as the top rail. Again, since OSHA is proposing that a personal fall arrest system be used for employees, the midrail in this guardrail system is primarily part of the edge delineation and need not have the greater strength. Accordingly, the paragraph is unchanged in the Final Rule.

OSHA proposed in paragraph (f)(5)(i)(F)(*4*) that the material used between the toeboard and top guardrail on a platform contain no opening large enough to allow the passage of a ball two inches (51 mm) in diameter. The New York State Department of Labor (EX. 9–41) recommended that this provision be changed to agree with the New York State requirement of three-quarters of an inch (19 mm). Hoberg (EX. 19B) was concerned that a two-inch (51 mm) opening would allow employees to pass a lifeline through these openings which could be hazardous if the platform suspension ropes should fail. This commenter suggested a one-inch (21.5 mm) opening.

OSHA has considered these comments and the need for the openings in the material to be small enough to prevent potential falling objects from passing through. OSHA, therefore, has rewritten this provision as a performance requirement in paragraph (f)(5)(i)(G)(*4*) in the Final Rule, which is also consistent with related proposed OSHA construction standards on scaffolds.

In the Notice of Hearing (50 FR 48225), OSHA solicited comment on the proposed requirement in paragraph (f)(5)(ii)(A) that a 12-inch (305 mm) wide passage be provided at or past any obstruction on the platform. A number of commenters (EX. 9–20, 9–35, 9–37, 9–43, 9–45; 15–4, 15–8; 88–6) and hearing witnesses (TR 2/19, pp. 23, 111, 197; TR 2/20, pp. 64, 78, 154, 187, 369, 497) addressed this provision.

Leonard Nork (2/20–64) suggested that the passage be increased to 18 inches (458 mm), otherwise some workers might climb on the midrail or top guardrail to pass by any obstruction on the platform. A number of commenters (EX. 15–4, 15–8; 9–35, 9–45) and hearing witnesses (TR 2/19, p. 197; TR 2/20, pp. 154, 187, 497), however, supported OSHA's 12-inch (305 mm) proposed requirement. Becor Western (TR 2/20, p. 497), for example, noted that a 12-inch space (305 mm) is more than adequate for platform occupants, while an 18-inch (458 mm) space would have an economic impact since it would require a 36-inch (916 mm) wide platform or undesirable counterweights due to a relocation of the hoist.

Spider Staging Sales Company (EX. 9–43; TR 2/20, p. 369) observed that OSHA should be more concerned with a safe passage past an obstruction on the platform and not physical dimensions. Hoberg (EX. 88–6) supported the 12–inch (305 mm) passage, but suggested that OSHA also be concerned with other hazards at the obstruction location such as moving parts and the potential of inadvertent operation of hoisting machine controls.

OSHA notes that proper training of employees, as required by paragraph (i)(1)(ii), will inform employees of obstruction hazards and machine guarding, as required by paragraph (f)(4)(vi), and will help to prevent employee exposure to hazards when passing obstructions on the platform. Based on the record of this rulemaking, OSHA has decided to retain the 12-inch (305 mm) provision in the Final Rule under paragraph (f)(5)(ii)(A).

OSHA proposed in paragraph (f)(5)(ii)(B) that any opening in a platform flooring be capable of preventing the passage of a one-inch (25 mm) diameter ball. If the opening were larger, a metal screen capable of rejecting a one-inch (25 mm) ball would need to be placed under the opening.

OSHA received a variety of opinions from commenters (EX. 9–13, 9–41, 9–43; 15–8; 19B; 87; 91) on the proper size of the opening in the flooring. The New York State Department of Labor (EX. 9–43) recommended that OSHA match the New York regulations on platforms, which call for an opening which would prevent the passage of a three-quarter inch (19 mm) ball. Spider Staging Sales Company (EX. 9–43) and Douglas A. Greenaway (EX. 15–8) supported OSHA's proposed opening dimension. Hoberg (EX. 19–B) expressed concern that the one-inch (25 mm) opening criteria would allow employees to pass life lines and cables through the openings, and suggested that a nine-sixteenths of an inch (14 mm) criteria be used.

Following a review of the comments on this provision, OSHA has concluded that a performance requirement should be used in paragraph (f)(5)(ii)(B) to address the identified hazards instead of a specific size opening. In this requirement, the flooring shall contain no opening that would allow the passage of lifelines, cables and potential falling objects. This performance requirement addresses the potential failure of a personal fall arrest system if life lines should be passed through a platform floor and the suspension system should fail, and the hazard to other employees from objects falling through the platforms openings.

OSHA had proposed in paragraph (f)(5)(ii)(C) that the means of suspension for a platform shall limit the roll about its longitudinal axis to a maximum of 15 degrees from a horizontal plane. R. D. Werner (EX. 9–34) suggested that OSHA change the maximum limit to five degrees since he believed that the 15 degree maximum was too large due to the additional loading that would be introduced into the platform as a result of such a platform roll.

A number of commenters and hearing witnesses (EX. 15–4, 15–8; TR 2/19, pp. 75, 197) supported the 15 degree maximum limit on platform roll. Lawrence R. Stafford (EX. 15–4) noted that every two-point suspended platform will roll since it is suspended at its center of gravity, and that to reduce the roll limit below 15 degrees one would have to change the center of gravity or add weight, either of which would be objectionable. In addition, this commenter noted that a reduced roll limit would virtually outlaw the use of many traction hoists since the mass of the hoist is above the platform deck and not under the platform deck as is the case with most drum type hoists. James W. Fortune (TR 2/19, p. 197) noted that the proper location of building face rollers would help to limit any platform roll. In addition, Mr. Fortune noted that the 15 degrees is a maximum roll limit and it is unlikely that platforms would be designed to reach this limit.

OSHA has considered all the comments received and has decided to retain the proposed paragraph (f)(5)(ii)(C) in the Final Rule. Properly designed suspension means and the use of proper stabilization methods used can limit the platform roll to a 15 degree maximum limit. Most platforms are built to the Underwriters Laboratory Standard, UL 1322, "Fabricated Scaffold Stages and Planks". This standard states that the platform shall withstand, without failure or visible damage to the structure, a load equal to three times the rated load of the platform, when one side rail is raised so that the decking is at an angle of 15 degrees to the horizontal. In addition, most employees would find it difficult to work on a platform with a platform surface at an angle of greater than 15 degrees from the horizontal plane, and would endeavor to return the work surface to a normal position. Finally, OSHA has not received any accident data that would support a change from the 15 degree roll limit.

Hoberg (EX. 19B) recommended that OSHA delete the words describing the different types of cable in proposed paragraph (f)(5)(ii)(D) since they were redundant. OSHA agrees and the words are deleted in the Final Rule.

Douglas A. Greenaway (EX. 15–8) and Hoberg (EX. 19B) recommended that OSHA clarify proposed paragraph (f)(5)(ii)(F) which addressed the interruption of the power supply on a platform. They noted that the provision should make it clear that the requirement provides for the interruption of the power supply for all hoist motors at each operating station on the platform. OSHA agrees that a clarification is warranted and the change is made in the Final Rule.

Some commenters (EX. 9–13, 9–35, 9–43) recommended that OSHA lower the maximum platform speeds limited by proposed paragraph (f)(5)(ii)(G). OSHA proposed maximum rated speeds of 50 and 75 feet per minute (0.3 ms and 0.4 ms) with single and multi-speed hoists, respectively. Lawrence R. Stafford (EX. 9–35) suggested that OSHA limit the platform speed to 20 feet per minute (0.12 m/s) when intermittent stabilization is used. Spider Staging Sales Company (EX. 9–43) suggested that OSHA limit the platform speed to 35 feet per minute (0.21 m/s) when continuous stabilization is used because of the potential hangup of the platform in the guides. Douglas A. Greenaway (EX. 15–8), supported OSHA's proposed platform speeds.

In response to the comments, OSHA notes that the proposed platform speeds are maximum rated speeds and not speeds which must be met for all conditions of stabilization. Also, the proposed maximum speeds are not required speeds for either roof-powered or platform-powered platforms. The need for higher platform speeds often occurs on very tall buildings, employing continuous guides, when it is desirable to reduce the ascent time for efficiency reasons. The registered professional engineer who is responsible for the design of the equipment in the installation (paragraph (f)(1)(i) would determine the proper platform speed that is suitable for the stabilization system and building site. OSHA, therefore, is retaining the proposed provision in the Final Rule.

Proposed paragraph (f)(5)(ii)(I) required fire extinguishers to be installed on working platforms. Spider Staging Sales Company (EX. 9–43) believed that the requirement for fire extinguishers on platforms would be ineffective. This commenter claimed that the extinguishers would be stolen and were potentially dangerous if they dropped from the platform. Acme Fabricators Incorporated (EX. 9–13) and California's Department of Industrial Relations (EX. 9–45) supported OSHA's proposed requirements for extinguishers.

OSHA agrees with the latter commenters that a fire extinguisher should be installed on a powered platform. Employees need to have the capability of protecting themselves from fires involving combustible materials, flammable materials or electrical equipment which might occur on an elevated platform. If extinguishers are stolen or dropped because of poor installation or usage, these are conditions which employers can correct through training and monitoring of the worksite, and these conditions are not valid reasons for not installing extinguishers. OSHA is retaining the proposed paragraph (f)(5)(ii)(I) in the Final Rule.

Daigel (EX. 9–31) suggested that OSHA replace the term "self-locking" with the term "self-latching" in proposed paragraph (f)(5)(ii)(J) which addressed platform access gates. OSHA agrees that the term "self-latching" is a more appropriate term because the gates are closed with a latch rather than a lock. A self-latching provision would ensure that the access gates do not open inadvertently and expose employees to a fall hazard.

OSHA is making this change in the Final Rule and transferring this provision to paragraph (f)(5)(ii)(J).

Paragraph (f)(5)(ii)(K), as in the proposal, requires a guardrail system or ladder handrails if the access to or the egress from a platform is 48 inches (1.2 m) above a safe surface. This guarding requirement is consistent with the related OSHA General Industry Standard, § 1910.23(a)(1), which addresses employee protection when working on open sided floors, platforms and runways. Support for the requirement was received from Lawrence R. Stafford (EXH. 9–35). OSHA is retaining this proposed provision in the Final Rule.

Several commenters (EX. 15–8; 9–31, 9–35, 9–41) recommended that OSHA revise proposed paragraph (f)(5)(ii)(L) which addressed platforms containing overhead structures which would restrict emergency access from the platform, and which would have required such platforms to have a secondary wire rope suspension system or a suspension by four wire ropes. Daigel (EX. 9–31) noted that the actual intent of the provision was to prevent the use of vertical lifelines by employees when working on platforms with overhead structures. Employees using such vertical life lines would be exposed to the hazard from the overhead structure if the suspension wire rope should fail. Douglas A. Greenaway (EX. 15–8), concurred with Mr. Daigel and also recommended that the platform occupant be secured to a fall arrest system employing a horizontal life line,

and that the platform also be equipped with a secondary wire rope system or be suspended by four wire ropes as stated in the proposal.

OSHA believes that the recommendations addressing proposed paragraph (f)(5)(ii)(L) have merit. For employee protection, it is important to clarify and emphasize the necessary measures to be taken to avoid risks to employees working on platforms with overhead structures. The use of horizontal life lines for employees, and the suspension methods listed in the proposal, together provide the means to address these risks. OSHA is revising proposed paragraph (f)(5)(ii)(L) in the Final Rule to reflect the above comments.

Becor Western (EX. 9–37) and Hoberg (EX. 19 B) agreed that OSHA should remove the prohibition in proposed paragraph (f)(5)(ii)(L) which stated that the secondary wire rope tail line cannot hang below the platform. This provision was based on Section 307.5.10(c) of the ANSI A120 draft standard—November 1981. Mr. Hoberg noted that the prohibition would require that the secondary rope be gathered in or below the platform with a powered tensioning device. Powered Platform Manufacturing Company (EX. 9–23) also agreed that the prohibition on the tail line should be deleted.

OSHA has concluded that the prohibition should be removed since no evidence has been provided to show that a freely hanging tail line presents a hazard for employees. This conclusion is also supported by the change in the latest ANSI draft standard A120—January, 1986 which no longer includes this prohibition. The removal of this prohibition will also remove the need for employers to install tension devices to avoid piling of the rope above the platform.

Paragraph (f)(5)(ii)(M) requires the use of vertical lifelines on two point suspended platforms, however, if a secondary suspension system is used in conjunction with horizontal lifelines anchored to the platform, vertical lifelines need not be used for fall arrest protection on such working platforms. This provision is unchanged from the proposal.

In the Notice of Hearing (50 FR 46225), OSHA solicited comment on this requirement. In response to this notice, some commenters (EX. 9–24, 9–31, 9–41, 9–45) claimed that horizontal lifelines are used because of the limitations that exist in the use of vertical lifelines on tall buildings. For example, the use of long lifelines can result in abraded lifelines due to excessive rigging and handling; can require special rescue efforts if a suspension wire rope fails; and can cause employees to be pulled off the platform if a strong wind force bears on the lifeline.

In response to the comments on the limitations of vertical lifelines, OSHA makes the following observations. First, all lifelines are subject to routine inspection by users, paragraph (g)(5)(ii), to detect any condition, such as abrasion, which might affect their continued capability of protecting employees from falls and necessitating removal. Second, when lifelines exceed 200 foot (61 m), paragraph (e)(8) requires that lines be stabilized to restrict their displacement by wind or any other force. This provision would address concerns expressed by commenters regarding broken windows and employees being pulled off platforms because of wind. In addition, employees would be prohibited from working on platforms when the wind velocity on the platform exceeds 25 miles per hour (40.2 km/hr). Also, OSHA has not received any accident data which has shown that employees have been pulled off platforms because of wind forces on vertical lifelines. Third, proposed paragraph (i)(1)(ii)(C), would require employees to be trained in emergency action plan procedures. Such training would include employee instruction on procedures to follow in the event the employees were suspended from a vertical or horizontal lifeline. Finally, as discussed further below, if the employer does not want to use a vertical lifeline for any reason, the standard provides the option of using a horizontal lifeline system with a secondary suspension system.

OSHA also received a number of comments from hearing witnesses (TR 2/19, p. 192, TR 2/20, pp. 105, 156) and other commenters (EX. 9–3, 9–24, 9–43) who objected to the required use of a secondary suspension system in conjunction with horizontal lifelines on two-point suspended working platforms. Lawrence R. Stafford (TR 2/20, p. 105) stated that this provision would eliminate the use of davits and outriggers because of the additional weight of storing the secondary rope on the platform, and the lack of a physical location to hang the secondary rope. This commenter noted that this would result in the use of more roof carriages and larger and heavier building roofs to accommodate these carriages. The same commenter stated that it would also be inpractical to use secondary suspension systems with selfpowered platforms.

Hoberg (EX. 88–4) disagreed that the additional weight of a secondary wire rope on a platform would inhibit the use of davits and out-riggers. He noted that the total weight of two 500 foot (153 m) secondary lines would be approximately 170 pounds (77 kg) and would only have a minor effect on very long platforms. Since the Final Rule would not address existing installations in the use of davits and outriggers, he stated that properly designed davits and outriggers would have the capability of supporting secondary lines and power winders.

James W. Fortune (EX. 43–2, TR 2/20, p. 162) and Hoberg (EX. 88–4) also disagreed with the previous commenter that secondary systems cannot be used on self-powered platforms. These commenters concurred that there were a number of buildings in the United States that were utilizing secondary suspension systems on such platforms, some with dual-wired traction hoists and dual-eyed movable davits.

A significant number of commenters (EX. 15–20, 19 B, 43–2, 88–4, 99) and hearing witnesses (TR 2/19, pp. 27, 76, 128, 240; TR 2/20, pp. 162, 272, 496) supported the use of a secondary suspension system with a horizontal lifeline on a two-point suspended working platform. Hoberg (TR 2/19, pp. 27, 128) stated that if one of the two suspended wire ropes should fail, an employee attached to a horizontal lifeline would be subjected to a pendulum effect and a free fall the length of the platform plus the length of the body belt lanyard. Such a fall could result in serious injury or death. From his own experience (EX. 99), and from a review of OSHA accident data (EX. 100–7), Mr. Hoberg noted that the forces resulting from such a fall have been severe enough to cause failure of the belt lanyard attachment and the death of the employees. It was Mr. Hoberg's (EX. 99) belief that the centrifugal forces resulting from the failure of one out of two suspension ropes could also cause the failure of the remaining suspension rope and/or its support. Mr. Hoberg concluded that the potential injury that an employee might endure, if a suspension wire rope failed while using a fall arrest system containing a horizontal lifeline, warranted the use of a secondary suspension system.

When questioned at the hearing, a number of witnesses (TR 2/20, pp. 156, 344, 496) who had objected to the use of secondary suspension systems in their comments responded that they had not considered the pendulum effect and free fall resulting from a failure of one of two suspension wire ropes.

After reviewing the comments and the hearing testimony, OSHA is retaining the proposed paragraph (f)(5)(ii)(M) in the Final Rule. This conclusion is based on a number of reasons. First, the primary purpose of the provision is to provide an employee with an adequate personal fall arrest system when working on a two-point suspended platform. An independent vertical lifeline, as part of the fall arrest system, should be the first choice in achieving this protection. However, if a vertical lifeline is not used, then a horizontal lifeline anchored to the platform and a secondary suspension system would be the other available option. The secondary suspension system is necessary to provide fall arrest in the event one of the two suspension ropes should fail. Second, the provision would only apply to new installations which must all be designed by a registered professional engineer for a specific building site. Third, secondary suspension systems have been used in the industry for a number of years. Fourth, employers are not limited in the type of secondary suspension systems they may employ. As noted by Hoberg (TR 2/19, p. 76), an employer may use another set of suspension ropes, a nontensioned independent rope equipped with an automatic auxillary over-speed brake, or a tensioned combination cable also used as a traveling cable. Although OSHA is retaining proposed paragraph (f)(5)(ii)(M), it is changing some of the terms used in the paragraph to achieve consistency with other provisions in the Final Rule.

Under (f)(5)(ii)(N) in the Final Rule, OSHA is clarifying the reference to the traveling cable system in the proposal. The phrase "traveling cable system" in the proposal is replaced with the phrase "cable connected to the platform" in the Final Rule. OSHA is also clarifying several other terms in the proposal.

A number of provisions, (f)(5)(iv)(A), (f)(5)(v)(B), (f)(5)(v)(D), and (f)(5)(v)(F) which address single point and ground rigged platforms, as well as intermittently stabilized platforms, are set out in the Final Rule and are unchanged from the proposal.

Proposed paragraph (f)(5)(iii)(A) permitted employers to have the option of providing a separate vertical life line as part of a fall arrest system for each employee on a single point suspended platform. A number of commenters and hearing witnesses (EX. 9–23, 9–31, 9–41; 19 B; TR 2/19, pp. 77, 132) recommended that OSHA delete this option on this type of platform. Daigel (EX. 9–31) stated that this option is deficient since a failure of the primary suspension rope would cause the platform to fall and injure other employees below. Hoberg (TR 2/19, pp. 77, 132) agreed and noted that such a failure could also cause an overhead device, used for stability on this platform, to strike an employee on the platform or hook the vertical lifeline. This commenter also stated that the employee should be secured to a horizontal lifeline anchored to the platform, in lieu of a vertical lifeline, to arrest any fall from the platform.

OSHA agrees with these commenters and is revising the proposed requirement in the Final Rule. In addition, OSHA is deleting proposed paragraph (f)(5)(iii)(B) since paragraph (f)(5)(iii)(B) in the Final Rule addresses all single point suspended platforms.

Hoberg (EX. 19B) recommended that OSHA delete proposed paragraph (f)(5)(iii)(C) since this provision required that single point suspended working platforms be either continuously engaged to a building guide or intermittently secured. Hoberg noted that these requirements are also listed in proposed paragraph (f)(5)(i)(E). OSHA agrees to this deletion in the Final Rule.

Several commenters and hearing witnesses (EX. 9–25, 9–35, 9–43; TR 2/19, p. 158; TR 2/20, pp. 25, 39, 107) recommended that OSHA delete the provision in proposed paragraph (f)(5)(iv)(B) that would have allowed a platform to be secured in a suspended position against a building face after each day's use. Leonard Nork (EX. 9–25; TR 2/20, p. 25) stated that this current practice is contributing to a number of unsafe conditions and procedures. First, it is very difficult, if not impossible, to secure a suspended platform overnight against the face of many buildings built in recent years. Second, such platforms can be subjected to sudden overnight storms which can cause a great amount of damage to the platform and the building. Third, employees are subjected to fall hazards due to the difficulties of access and egress to and from such suspended platforms.

OSHA had requested comment on the feasibility and adequacy of this requirement in the Notice of Proposed Rulemaking (50 FR 2914). OSHA agrees with these commenters, and is changing proposed paragraph (f)(5)(iv)(B) in the Final Rule to disallow the practice of storing a platform overnight against the building face.

OSHA is deleting proposed paragraph (f)(5)(iv)(C) which addressed two stabilization methods to be used with ground-rigged platforms. These stabilization methods are regulated by paragraph (f)(5)(i)(E) in the general requirements for suspended platforms. That provision permits the use of any of four stabilization methods (continuous, intermittent, button guide and angulated roping) or their equivalent with ground-rigged platforms.

Lawrence R. Stafford (EX. 9–35) and Daigel (EX. 9–31) objected to allowing the use of button guide stabilization systems with ground rigged platforms. Similar objections were raised by these commenters on proposed paragraph (e)(2)(iii)(B) which permits the use of button guide stabilization systems. These objections were addressed by OSHA in the discussion of proposed paragraph (e)(2)(iii)(B) above and which explained why button guide stabilization was retained in that provision of the Final Rule. For the same reasons, OSHA is retaining the use of button guide stabilization systems for ground rigged platforms.

Section (f)(5)(v) regulates intermittently stabilized platforms. Several commenters (EX. 9–22, 9–31, 9–35; 19 B) and a hearing witness (TR 2/19, p. 113) suggested that OSHA not require in proposed paragraph (f)(5)(v)(A) that stabilizer ties be adjustable in length. The stabilizer ties were proposed to be adjustable to affect the predetermined angulation of the suspension wire rope by changing the tie length, as necessary. These commenters noted however, that the length of the stabilizer tie is set by the design of each installation and adjustability is not required. Hoberg (TR 2/19, p. 113) noted that there are acceptable methods of tie-in, using a stabilizer tie, that are not adjustable. This commenter stated that OSHA should not require an adjustable tie since there are other methods which can be utilized.

OSHA agrees with these commenters and is revising proposed paragraph (f)(5)(v)(A) in the Final Rule to provide this flexibility. In addition, this paragraph is renumbered as (f)(5)(v)(E).

Proposed paragraph (f)(5)(v)(C) which addresses the hazards associated with storing stabilizer ties on the platform has been modified and included in paragraph (i)(2)(vii) in the Final Rule. The modification incorporates Hoberg's (TR 2/19, p. 60, EX. 19C) suggestion that the provision address the hazards associated with the ties becoming entangled in the machinery. Proposed paragraph (f)(5)(v)(D) addressed the requirement that the hoist power supply be interrupted if the platform contacts the stabilizer tie during its ascent. This provision is retained, clarified and renumbered as (f)(5)(v)(C).

Powered Platforms Manufacturing Company (EX. 9–23) recommended that OSHA delete proposed paragraph (f)(5)(v)(E) which prohibited intermittently stabilized platforms from extending beyond the building corner.

BEST COPY AVAILABLE

This commenter stated that if the stabilization system is designed properly to allow for proper suspension rope tie-in, continuous contact with the building face and expected wind loading, there is no reason that a platform cannot extend beyond the building corner.

OSHA agrees that this provision is too restrictive and makes the following observations. First, it is expected that the registered professional engineer designing an intermittent stabilization system (paragraph (f)(1)(i)) for a platform that extends beyond the building corners would address specific criteria such as proper suspension rope tie-in, continuous contact and expected wind loading. Second, intermittent stabilization provisions under paragraph (e)(2)(iii)(A) in the Final Rule require that the platform be kept in continuous contact with the building facade. Third, employee training provisions in paragraph (i)(1)(i) in the Final Rule require employees to be proficient in the operation and safe use of the particular powered platforms to be operated. Fourth, platforms on buildings with unusual corner arrangements may require extensions for employees to perform maintenance beyond or around building corners.

OSHA, therefore, is deleting the prohibition against intermittently stabilized platforms from extending beyond building corners.

Several commenters (EX. 9–31, 9–35, 9–41, 9–43) recommended that the proposed requirement for upper and lower building face rollers in proposed paragraph (f)(5)(v)(F) be deleted. These commenters stated that experience with intermittent stabilization systems has shown that upper and lower building face rollers do not make platforms more stable. However, they do contribute to more weight and cost. Hoberg (EX. 19B) suggested that OSHA require that rollers not be placed at the anchor placing if exterior anchors are used on the building face.

Based on the information provided by the commenters, OSHA is deleting the requirement for upper and lower building face rollers in the Final Rule. OSHA believes Mr. Hoberg's suggestion has merit and is including his suggestion in the Final Rule under renumbered paragraph (f)(5)(v)(D). OSHA also notes that the basic requirement for building face rollers for all suspended equipment remains in paragraph (f)(5)(i)(E).

OSHA had proposed a 10-foot (3.0 m) required distance between building face rollers in paragraph (f)(5)(v)(G). Powered Platforms Manufacturing Company (EX. 9–23) stated that the distance was excessive and that a six-foot (1.8 m) distance is sufficient for stabilization. Daigel (EX. 9–22) supported the 10-foot (3.0 m) requirement, but recognized there would be a number of building designs in which this would be unattainable. For example, this commenter noted that when a platform is encompassed in an interior building corner, a 10-foot (3.0 m) distance may not be available to the designer.

OSHA has considered the views of the commenters and has decided to delete the provision. This has been done in recognition of the fact that the distance between face rollers is affected by a number of variables at each specific building site. The registered professional engineer, under paragraph (f)(1)(i), is expected to design the equipment to meet the OSHA requirement at paragraph (e)(2)(iii)(A) for stabilization at each building site. The engineer, therefore, would select the appropriate distance between face rollers to ensure stabilization.

Proposed paragraph (f)(5)(v)(H) is renumbered as (f)(5)(v)(A) in the Final Rule.

Hoberg (EX. 19 C; 2/19, p. 61) recommended that OSHA maintain consistency with the building section of the Final Rule at paragraph (e)(2)(iii)(A) and require that the platform shall be in constant contact with the building face. OSHA agrees, and is adding this provision at paragraph (f)(5)(v)(F).

A commenter (EX. 19C) suggested that OSHA ensure that the attachment and removal of a stabilizer tie not require the platform to be moved horizontally. OSHA believes this suggestion has merit since these ties are not meant to be used for repositioning a platform on a building face. In addition, such a repositioning operation could expose employees to a pinch point hazard in the attachment and removal of a stabilizer tie. OSHA is incorporating this provision under paragraph (f)(5)(v)(G) in the Final Rule.

In his comments and hearing testimony, Hoberg (EX. 19C; TR 2/19, p. 61, 100) recommended that OSHA require that the platform-mounted equipment and suspension wire rope shall not be structurally damaged by the loads from the stabilizer tie or its building anchor when the stabilizer tie is attached to the suspension wire rope. In addition, it was recommended that the wire rope and platform-mounted equipment shall have the capability of withstanding a load that is at least twice the ultimate strength of the stabilizer tie. It was Mr. Hoberg's belief that the stabilizer tie should not be the cause of a wire rope or platform-mounted equipment failure which could endanger the personnel using the platform.

OSHA agrees that this issue is a matter of concern and should be addressed in the Final Rule. The registered professional engineer, who is responsible in paragraphs (e)(1)(i) and (f)(1)(i), for the design of the installation must consider the possible failure of the suspension wire rope and platform-mounted equipment and the need to avoid this occurrence. OSHA addresses this issue in the Final Rule under paragraph (f)(5)(v)(H).

Requirements for powered platform installations using button guide stabilized systems were proposed in paragraph (f)(5)(vi). Lawrence R. Stafford (EX. 9–35; 15–4; TR 2/20, p. 113) objected to the inclusion of this alternate stabilization system in the standard. This commenter stated that there were certain problems with these systems, such as button breakage and guardrail damage due to guide track hangup, and possible hand injuries from handling the guide tracks mounted on the platform. Mr. Stafford believed that these systems must be engineered to work properly. Daigel (TR 2/20, p. 357) agreed with Mr. Stafford that these systems have to be engineered to be effective and also noted that New York State does not preclude the use of these systems.

James W. Fortune (TR 2/19, p. 235) stated that in his experience with button guide systems, the guide track does not present a hazard for employees. In addition, he noted that button guide systems developed by his company have operated satisfactorily.

Hoberg (EX. 19B) recommended that OSHA require that the platform and its attachments in a button guide stabilization system not be structurally damaged by the loads imposed on it by the guide track. OSHA agrees and is adding this provison at paragraph (f)(5)(vi)(F).

In response to the comments received on this alternate stabilization system, OSHA observes that the Final Rule is requiring in paragraphs (e)(1)(i) and (f)(1)(i) that a registered professional engineeer be responsible for the design of these installations. This requirement should address the problems associated with improper design that result in button breakage and guide track hangups. In addition, any problems associated with the operation of these systems are addressed in paragraph (i)(1)(i) which requires employees to be trained in the particular platform to be operated.

In large part, OSHA is retaining the button guide stabilization system as proposed. A few provisions have been renumbered and some word changes have been made.

In the Notice of Hearing (50 FR 48222), OSHA requested comments on a recommendation made by some pre-hearing commenters that requirements for supported equipment be deleted, as listed in paragraphs (f)(6) (i), (ii) and (iii). Lawrence R. Stafford (EX. 15–4) and Daigel (EX. 15–14) reiterated their pre-hearing comments that these requirements be deleted, and stated that supported systems have not been fully proven and should not be a part of the standard.

The ANSI A120 draft standard—January 1986, submitted by Douglas A. Greenaway (EX. 15–8), continued to list the requirements for supporting equipment that were listed in the earlier ANSI A 120 draft standard—November 1981. These requirements served as the basis for the requirements listed in the proposal.

Hoberg (EXH. 19B) stated that supported platform systems do exist and have been in operation for some time. This commenter recommended that OSHA continue to retain these requirements in the Final Rule.

In response to commenters who have objected to the placement of the supported systems requirements in the proposal, OSHA has not received any information which has shown installation deficiencies or hazards to employees for supported installations which are in use. In addition, proposed paragraphs (e)(1)(i) and (f)(1)(i) would require that all future supported installations be designed by a registered professional engineer experienced in such design.

OSHA, therefore, has determined that there should not be any unnecessary restriction on the means available to employers for elevating and lowering powered platforms, and is retaining the proposed requirements for supported equipment in paragraphs (f)(6) (i), (ii), (iii) and (iv) in the Final Rule. Paragraph (f)(6)(i) requires that supported equipment maintain a vertical position relative to the building facade without the use of friction. Paragraph (f)(6)(ii) requires that means be employed to provide climbing traction for the supported equipment. Paragraph (f)(6)(iii) requires the use of launch guide mullions to align drive wheels. Paragraph (f)(6)(iv) requires that supported platforms shall comply with certain requirements of suspended platforms.

In the Notice of Hearing (50 FR 48222) OSHA requested specific comments on proposed paragraph (f)(7)(i) which required suspension wire ropes and connections to meet the specifications recommended by the hoisting machine manufacturer. Pre-hearing commenters (EX. 9–17, 9–19) have suggested that OSHA list the types of connections that can be used, and require the connections to have the capability of developing at least 80 percent of the rated breaking strength of the wire rope. The wire rope connection capability is presently a requirement in ANSI A120–1970.

Douglas A. Greenaway (EX. 15–8) and Hoberg (EX. 19B) supported OSHA's proposed requirements in paragraph (f)(7)(i), which do not list the types of connections. In addition, Mr. Hoberg recommended that combination cable should also be a component that must meet the specifications of a hoisting machine manufacturer, since it is also used to suspend equipment.

OSHA has considered the comments received and in the Final Rule is revising paragraph (f)(7)(i) in the following manner. First, combination cable is added to the provision as a component that must meet the specifications recommended by the hoist manufacturer. Second, in response to the prehearing commenters, OSHA is adding a requirement that the wire rope connections be capable of developing at least 80 percent of the rated breaking strength of the wire rope. Third, OSHA has decided not to provide a listing of rope connections since such information is available in industrial catalogs. Also, any such listing would imply that only the listed connections are acceptable to OSHA.

In the Notice of Hearing (50 FR 48222), OSHA requested specific comments on proposed paragraph (f)(7)(ii), which provided the formula to be used in calculating the safety factor of the suspension wire rope and which is contained in the existing standard. A pre-hearing commenter (EX. 9–17) suggested that the formula be amended to take into account the efficiency of the termination by adding the efficiency (E) of the wire rope termination to the numerator as follows:

$$F = \frac{(S)(E)(N)}{W}$$

where, "F" is the factor of safety; "S" is the manufacturer's catalog strength of one suspension rope; "N" is the number of suspension ropes under load; and "W" is the maximum static load at any point of travel.

Athough the commenter admitted that this change would require a reduction in the working load of the platform to maintain the required 10:1 safety factor, he believed this would provide a much more accurate factor of safety. In a post-hearing comment, this commenter (EX. 30) stated that introducing the terminal efficiency factor into the formula would take into account the strength of the total rope system.

Hoberg (EX. 19B, 88–5; TR 2/19, p. 78) stated that this formula may be incorrectly considered an "engineering factor" of safety, as opposed to a "design factor," if the termination efficiency is included. An engineering factor of safety, in his view, would include terminal efficiency, bending efficiency and any other engineering consideration. In addition, Mr. Hoberg noted that the term "factor of safety" in the proposed formula was used in establishing minimum requirements for the wire rope itself and not for the wire rope assembly which includes terminal efficiency and bending efficency. In order to eliminate confusion, Mr. Hoberg recommended that OSHA change the term "factor of safety" to "design factor," as the American Iron and Safety Institute had done in its *Wire Rope Manual*, Second Edition, 1981, page 77.

Douglas A. Greenaway (EX. 15–8) supported the use of the term "design factor" in this provision.

Lawrence R. Stafford (EX. 15–4) claimed that if OSHA introduced the terminal efficiency factor into the formula, this action would doom all existing platform type hoists since larger size ropes would be needed.

OSHA agrees that the term "factor of safety" is inappropriate for the formula in proposed paragraph (f)(7)(ii). This formula is used to calculate the capability of the suspension wire rope to support, without failure, its working load. The formula is only a ratio of the rated strength of the wire rope to the rated working load, and should be more appropriately identified as a "design factor."

The formula is not intended to provide an engineering safety factor for the total rope system, which would necessarily include a number of other engineering criteria. OSHA, therefore, is changing paragraph (f)(7)(ii) in the following manner. First, the term "design factor" replaces the term "factor of safety." Second, the term "rated strength" replaces the term "catalog strength" since it is more generic and permits the engineer to adjust for arbitrary catalog listings. The term "rated strength" is defined in the Final Rule. Third, the term "rated working load" replaces the term "maximum static load" and the phrase "on all ropes" is added for clarification.

"Rated working load" is also defined in the Final Rule.

Several commenters (EX. 9–17, 9–19; 15–8; 19B; 30; 91) believed that proposed paragraph (f)(7)(iii) was too restrictive in requiring that suspension ropes shall be of improved plow steel or equivalent. The Mac Whyte Company (EX. 9–17, 9–30) stated that improved plow steel should be the minimum grade acceptable to OSHA, since there are many equipment designs that required higher strength ropes to maintain the design factor. OSHA agrees with these commenters that the proposed provision should be clarified to permit the use of wire rope that is of a higher strength than improved plow steel. OSHA, therefore, is revising the proposed provision in the Final Rule by requiring the grade of suspension wire rope to be at least improved plow steel or equivalent rather than improved plow steel or equivalent.

No comments were received on proposed paragraph (f)(7)(iv), however, OSHA is changing the term "factor of safety" to "design factor" for consistency with paragraph (f)(7)(ii).

Proposed paragraph (f)(7)(v) prohibited the use of more than two reverse bends in each suspension wire rope. Daigel (EX. 9–31) suggested that reverse bends in a wire rope be prohibited with respect to wire rope lay length. Hoberg (EX. 19B) agreed and suggested that, based on accepted standards, more than one reverse bend in six wire rope lays should be prohibited.

OSHA understands that the reason for caution in using reverse bends in wire rope is because undue stresses are introduced into the rope if adequate wire rope lay length is not allowed for the rope to relax before reverse bending. OSHA, therefore, is changing this provision in the Final Rule to permit no more than one reverse bend in six wire rope lays.

One commenter (EX. 9–19) suggested that OSHA add two other requirements: First, that the diameter of the sheave used to accomplish the change in direction of the wire rope must be the same as the diameter required for the hoisting sheaves and drums; and second, that a reference be added as to the minimum drum and sheave diameter to be used for any application.

In response, OSHA notes that paragraph (f)(4)(vii) addresses the issue of drum and sheave diameters in performance language in the hoisting section of the standard. OSHA believes that the drum and sheave diameters to be used for a specific application would be more properly determined by the engineer responsible for the design of the installation. Paragraph (f)(4)(vii), therefore, does not include any reference to drum and sheave diameters in the Final Rule.

Two commenters (EX. 9–13, 15–8) and one hearing witness (TR 2/19, p. 193) supported OSHA's requirements in proposed paragraph (f)(7)(vi)(A) relative to rope tags. Acme Fabricators (EX. 9–13) stated that the information on the tag is very useful for safety reasons. For example, it is important that the date the wire rope was installed appear on the tag as well as the size and manufacturer of the rope. From this information, an employer will have knowledge of the age of the rope and can replace the rope with a rope of the same specifications from the same manufacturer, when necessary. This provision remains unchanged in the Final Rule, except the term "rated strength" replaces the term "catalog strength" in renumbered paragraph (f)(7)(vi)(E). The term "rated strength" is defined in paragraph (a).

Proposed paragraphs (f)(7)(vi) (B) and (C), which address rope tag requirements, remain unchanged from the proposal, and are renumbered as paragraphs (f)(7)(vii) and (f)(7)(viii).

Proposed paragraphs (f)(7)(vii) and (f)(7)(ix) are also unchanged from the proposal and are renumbered as paragraphs (f)(7)(ix) and (f)(7)(xi). Paragraph (f)(7)(ix) requires a sufficient wire rope length when a winding drum hoist is used, and paragraph (f)(7)(xi) prohibits the lengthening or repairing of suspension wire ropes.

Becor Western Inc. (EX. 9–37) and Douglas A. Greenaway (EX. 15–8) supported proposed paragraph (f)(7)(viii), which requires a sufficient wire rope length when traction and sheave type hoists are used. Becor Western Inc. (EX. 9–37) also suggested that OSHA change the phrase "lowest point of vertical travel" in the paragraph to read "lowest possible point of vertical travel," and eliminate the unnecessary verbiage following the word "feet." This commenter believed this change was necessary to achieve consistency with proposed paragraph (f)(7)(vii). OSHA agrees and the provision is changed in the Final Rule and renumbered as paragraph (f)(7)(x).

Paragraph (f)(7)(x) prohibits the use of babbitted fastenings for suspension wire rope. The reasons for this prohibition are contained in a discussion above which addresses the deletion of the term "babbitted fastenings."

Concerning paragraph (f)(8)(i), also unchanged from the proposal, Hoberg (TR 2/19, p. 79) had suggested that OSHA require that an independent ground lead be connected to the platform frame and hoist. In response, OSHA notes that in Subpart S, electrical, there are generic grounding requirements under § 1910.304(f)(5)(v) which would cover the platform frame and hoist.

Paragraph (f)(8)(ii) covering design and location of electrical runway conductor systems remains unchanged in the Final Rule and was supported during the rulemaking (EX. 15–8).

Daigel (EX. 9–31) suggested that OSHA delete proposed paragraph (f)(8)(iii) which required cables to be protected from damage due to striking the building, because other provisions cover this hazard.

OSHA agrees that paragraph (e)(8), which addresses cable stabilization, is meant to prevent the cable from being damaged by striking the building, and is deleting the redundant part of paragraph (f)(8)(iii) in the Final Rule.

Proposed paragraph (f)(8)(iv) is deleted in the final rule because it is redundant with paragraph (f)(5)(ii)(D).

Spider Staging Sales Company (EX. 9–43) and Hoberg (EX. 19B, C) noted that the protective devices for phase reversal and phase failure, addressed in proposed paragraph (f)(8)(v), are a polyphase phenomenon and are not required on single phase equipment. Accordingly, it was suggested that the term "three phase reversal" be substituted to clarify this provision. OSHA agrees and is setting this requirement in paragraph (f)(8)(iv) in the Final Rule.

Paragraph (f)(8)(v), which requires the operator to follow predetermined procedures established by the control system, remains unchanged from the proposal.

Paragraph (f)(8)(vii)(A) in the proposal has been revised and redesignated in the Final Rule as (f)(8)(vi)(A). Daigel (EX. 9–31) questioned the need for requiring a tie-down (mechanical retainment) for carriages which are counter-weighted with a four to one stability factor against overturning as proposed. Richard W. Hoffman (EX. 9–30) questioned the need for mechanical retainment of trackless carriages at an established operating point. This commenter believed that the only function of this requirement was to prevent horizontal traversing of the carriage when the platform is over the side of the building.

OSHA agrees that a carriage with the required stability factor against overturning does not need a tie-down anchor, and is revising the provision accordingly in the Final Rule. OSHA does believe, however, that all carriages, trackless or not, should be required to have a tie-down anchor if sufficient counterweight is not provided.

Daigel (EX. 9–31) suggested that OSHA delete proposed paragraph (f)(8)(vii)(B) which addressed the electrical operating device for power-operated carriages. This commenter noted that paragraph (f)(3)(i)(F) in the carriage section of the standard addresses a similar hazard. OSHA agrees, and paragraph (f)(8)(vii)(B) as proposed is deleted in the Final Rule.

Several commenters (EX. 15–8; 9–30, 9–43) recommended that OSHA change its overload protection requirements to permit down travel when excess suspension wire rope tension is encountered. Richard W. Hoffman (EX. 9–30) noted that if an excess load is applied to the wire rope when a platform is on the rise, it should be possible to lower the platform to clear any obstruction.

Also, Daigel (EX. 9–30) has suggested that OSHA clarify the conditions now listed in the present standard under which the load limiting device will be utilized. This commenter suggested that OSHA require that the overload protection be utilized when the load is in excess of 125 percent of the rated load of the platform than when the tension in a hoisting rope exceeds 150 percent of its normal tension based on the rated load divided by the number of suspension ropes.

OSHA believes these comments have merit and is revising proposed paragraph (f)(8)(vii)(C) in the Final Rule to reflect the changes suggested by the commenters. In addition, OSHA is renumbering this paragraph to be (f)(8)(vi)(B).

OSHA proposed in paragraph (f)(8)(vii)(D) that an automatic detector be provided that will interrupt power to the hoisting motors and apply the primary brakes if any suspension wire rope becomes slack. Hoberg (EX. 19B, 19C; TR 2/19, pp. 79, 122, 123) and Douglas A. Greenaway (EX. 15–8) supported this provision. Hoberg noted, however, that this is the most commonly removed safety device because it is nearly impossible to move the platform to a new station if it is necessary to ground rig or store the platform. As soon as the platform sets down, the motors stop, and there is no wire rope slack available. This commenter, therefore, suggested that a constant pressure bypass switch provision be made available during rigging operations.

OSHA believes the suggestion proposed by Mr. Hoberg has merit and this is included in the Final Rule. In addition OSHA is rephrasing the paragraph for clarification and renumbering the paragraph to be (f)(8)(vi)(C).

Several commenters (EX. 9–30; 15–8; 19B, 19C) recommended that OSHA apply the requirements addressing directional limit switches to self-powered platforms. Richard W. Hoffman (EX. 9–30) stated that these requirements are as pertinent to self-powered equipment as they are to roof powered equipment. In addition, Daigel (EX. 9–31) recommended that OSHA delete the phrase "if required by the configuration of the building" in the requirement addressing lower directional switches. Mr. Daigel believed that some form of lower limit protection is required for all powered platforms.

OSHA accepts the recommendations presented by the commenters and is revising these proposed provisions in the Final Rule. In addition, the paragraphs are combined in one paragraph in (f)(8)(vii). OSHA notes that the lower directional limit switch requirements are especially important when platforms are used over skylights and atriums.

A commenter (EX. 9–35) suggested that OSHA require emergency stop switches on all platforms, and not just on remote controlled, roof powered manned platforms, as required in proposed paragraph (f)(8)(ix). No accident data or other justification was provided by this commenter to support this suggestion. OSHA is retaining proposed paragraph (f)(8)(ix) in the Final Rule without change and is renumbering the paragraph to be (f)(8)(viii).

Hoberg (EX. 19C) recommended that OSHA require that an overload device be provided for cables which are in constant tension. This commenter stated that this requirement is necessary to prevent the tensioned cables from affecting the operation of the load limiting device required under proposed paragraph (f)(8)(vii)(C), or affecting the platform roll limiting requirement which affects stability under proposed paragraph (f)(5)(ii)(C). This commenter also stated that it was important that the setting of these overload devices be coordinated with the overload settings of other devices so as not to affect their proper function. In addition, the commenter noted that the overload device should be designed to interrupt equipment travel in the down direction when the tension limit is reached.

OSHA believes this recommendation has merit and is adding a provision in the Final Rule as paragraph (f)(8)(ix).

Paragraph (g) covers inspection and testing requirements. Daigel (EX. 9–31) suggested that OSHA add the word "initial" before the word "service" in proposed paragraph (g). OSHA accepts this suggestion as an aid in clarifying when field testing must be done. This commenter further suggested that the phrase "no installation shall be subjected to a load in excess of 125 percent of its rated load" be added to this paragraph. The purpose of this addition is to forestall possible damage to an installation during initial testing and avoid exposure of employees to risks which might be incurred during subsequent operation of the installation. OSHA agrees with this commenter and his concerns about the hoist and is adding a modified phrase in the Final Rule to limit testing loads for hoists to 125 percent of their rated load.

Becor Western Inc. (EX. 9–37) recommended that OSHA add the phrase "at intervals specified by the manufacturer/ supplier" after the word "person" in paragraph (g)(2)(ii).

OSHA agrees with this commenter that such an addition to the requirement would contribute to a safer working environment for employees. Manufacturers and their agents, such as suppliers, can provide useful information to the employer/owner on inspection procedures as well as proper inspection intervals for the equipment they have supplied. In addition, this requirement would be consistent with the reference to manufacturer procedures required in proposed paragraph (g)(3). The addition to paragraph (g)(2)(ii) is made in the Final Rule. OSHA is substituting the term "competent person" for the term "qualified person" in paragraphs (g)(2)(i) and (g)(2)(ii) for the reasons noted earlier in the discussion on definitions of these terms.

Leonard Nork (TR 2/20, pp. 26, 59) and Acme Fabricators Inc. (EXH. 9–13) recommended that OSHA require that a recordkeeping program be provided by employers for the inspection of platform installations in proposed paragraphs (g)(2)(i) and (ii). It was their belief that these records be kept for the use of all concerned parties involved in the safety of the installation.

OSHA revised many of its existing recordkeeping requirements in 29 CFR Part 1910 in a Final Rule published in the **Federal Register** (51 FR 34552) on September 29, 1986. This rulemaking revision was in response to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), which set goals for the phased reduction of Federal information gathering activities. In this rulemaking, OSHA replaced provisions which required more detailed written records with provisions that would require a "certification record" to

distinguish the new form of documentation from the records previously required. The certification record contains the date the work was performed, the signature of the person who performed the work, and an identifier for the equipment or installation which was tested or inspected. For the purpose of maintaining a consistency with this certification record procedure used in other OSHA standards, and in response to the commenters, OSHA is requiring in paragraph (g)(2)(iii) that a certification record be kept by the building owner for the inspections and tests required in paragraphs (g)(2)(i) and (ii). OSHA believes, based on the past use of certification records, that such records provide useful information without an unnecessary recordkeeping burden. OSHA also notes that paragraphs (c)(1) and (c)(2) require the building owner to assure the employer on a continuing basis that the installation meets the major design and structural requirements of this standard.

OSHA requires, in paragraph (g)(2)(iv), that platforms be inspected for visible defects before every use and after each occurrence that could affect the platform's structural integrity. Several commenters (EX. 32, 87, 91) supported this requirement and it remains unchanged in the Final Rule, except the word "powered" is replaced with the word "working" since "working platform" is defined in the Final Rule.

Acme Fabricators Inc. (EX. 9–13) and Thomas J. O'Shea (TR 2/20, p. 314) supported the maintenance inspection requirements proposed in paragraph (g)(3). Other commenters and a hearing witness (EX. 9–37, 9–45; 87; TR 2/20, p. 28) recommended that OSHA include a requirement that a detailed maintenance log be kept for each inspection. California's Department of Industrial Relations (EX. 9–45) stated that a formalized record of maintenance kept on the site provides a uniform means of determining the maintenance status of the equipment to assure safe operations.

As noted previously in this document, OSHA has developed a method which requires building owners to provide a "certification record" for inspections and tests which are required to be performed. OSHA intends to use this certification requirement to ensure that maintenance inspections required in (g)(3)(i) are completed by the building owner. This certification requirement will not prohibit a building owner from maintaining additional records for his or her own use. The wording in proposed paragraph (g)(3) addressing certification is changed in paragraph (g)(3)(ii) of the Final Rule to provide consistency with other certification provisions in the standard.

OSHA had intended to continue to require maintenance inspections to be performed at least every 30 days in proposed paragraph (g)(3), at the same frequency as required by paragraph (e)(3) of the present standard. The discussion on this frequency was found in the preamble to the Notice of Proposed Rulemaking in the Federal Register on January 22, 1985 (50 FR 2903). However, the language of proposed paragraph (g)(3), as published, appeared to allow periods of greater than 30 days. This was not OSHA's intention. As the preamble explained, the frequency was to remain the same as in the existing standard. Therefore, paragraph (g)(3) should have stated that the inspection and test of each platform shall be made every 30 days, except where the cleaning cycle is less than 30 days such inspections and tests shall be made prior to each cleaning cycle. OSHA is changing the proposed wording of paragraph (g)(3) in the Final Rule to correct this error in the maintenance inspection frequency. In addition, OSHA is substituting the term "competent person" for the term "qualified person" in paragraph (g)(3)(i) for the reasons noted in the definition section of this document.

OSHA proposed in paragraph (g)(4)(i) the inspection and testing of governors and secondary brakes at intervals not exceeding 12 months. Becor Western Inc. (EX. 9–37) suggested that OSHA require inspections "at intervals specified by the manufacturer/supplier" after the word "tested," but not to exceed 12 month intervals.

OSHA agrees with this commenter that the suggested addition would improve the working environment for employees. Manufacturers and suppliers provide employers with important information on proper inspection intervals and procedures for the equipment that has been provided. The addition to paragraph (g)(4)(i) is made in the Final Rule.

No comments were received on proposed paragraphs (g)(4) (ii), (iii) and (iv) and these are retained in the Final Rule.

OSHA is substituting the term "competent person" for the term "qualified person" in paragraph (g)(4)(v) for the reasons noted in the definitions section of this document.

Hoberg (TR 2/19, p. 80; EX. 19C) recommended that OSHA require a daily test be made of the secondary brake governor and actuating device before each day's use. This commenter believed it was important that this be done to make sure that this equipment would operate properly if an emergency should occur. Harry Fisher (TR 2/19, p. 121) believed that this recommendation would be too restrictive for winding drum equipment where the brake and governor device are enclosed within the drum and not easily accessible. This commenter noted, however, that there are provisions on the drum of such equipment for inspection of the brake drum to make sure that the brake itself is free to move.

OSHA believes that the recommendation made by Mr. Hoberg has merit. Two recent investigations (EX. 100–1, 100–7) by OSHA of powered platform accidents have illustrated the need for this requirement. In each accident, secondary brakes did not function in an emergency situation and this resulted in the death of two employees. If a test of the secondary brake governor and activating device had been performed before use and appropriate corrective measures taken, the deaths might have been prevented. OSHA, therefore, is requiring at paragraph (g)(4)(vi) that a daily test be conducted of the secondary brake governor and actuating device before use. For equipment where this test is not feasible, as suggested by Harry Fisher (TR 3/20, p. 368), a visual inspection of this equipment will be required before use to ensure that the brake can function when necessary.

In the Notice of Hearing (50 FR 48222) OSHA requested comments on the proposed inspection and replacement requirements for suspension wire rope located in paragraph (g)(5). In addition, OSHA also requested comments on the related issue of suspension wire rope maintenance and inspection records.

Several commenters and a hearing witness (EX. 9–37, 15–8, 87; TR 2/19, p. 81) responded on the issue of wire rope maintenance and use. Hoberg (TR 2/19, p. 81) stated that in his opinion there were few properly installed and lubricated wire ropes that experienced fatigue or wear. This commenter also observed that there were many wire ropes left on roofs with little environmental protection for long periods of time before they were used.

Becor Western Inc. (EX. 9–37) and Carl J. Thurnau (EX. 87) supported requirements for wire rope maintenance and use. These commenters recommended requirements for proper wire rope storage to prevent damage or deterioration; proper installation to avoid crushing, nicks or sharp bends; and the following of unreeling and lubricating provisions recommended by the wire rope manufacturer.

OSHA agrees with these commenters that the subject of wire rope maintenance and use should be addressed by OSHA. If the wire rope is not maintained and used properly, it will have reduced capability to suspend equipment and reduced ability to operate properly with the equipment. These factors can immediately increase the risk for employees using powered platforms. OSHA is not assigning specific requirements for wire rope maintenance and use because of the variety of suspension wire rope applications, and the need for the employer to follow the wire rope manufacturer's recommendations in these applications. In addition, OSHA notes that the New York State Department of Labor Standard 101 (EX. 87) requires suspension wire rope to be maintained in accordance with manufacturer's recommendations. OSHA, therefore, for the reasons stated, is requiring that the employer shall follow procedures recommended by the wire rope manufacturer in the maintenance and use of wire rope in paragraph (g)(5)(i) of the Final Rule.

On the subjects of wire rope inspection and replacement, OSHA received a significant number of comments on the issues of inspection frequency, who should inspect wire ropes, wire rope replacement criteria and inspection records.

On the first issue of inspection frequency, a number of commenters (EX. 87; TR 2/19, p. 81; 2/20, p. 491) supported the monthly inspection of suspension wire rope in proposed paragraph (g)(5). A number of other commenters (EX. 9–17, 9–37; 15–8; 87; TR 2/19, pp. 80, 193; TR 2/20, p. 491) suggested that OSHA also require a visual inspection of the wire rope before every use. Becor Western Inc. (TR 2/20, p. 491) believed it was essential that employees using the wire rope be trained to discover gross damage to the wire rope, which may be an immediate hazard, before using the platform.

OSHA agrees that a visual inspection of the wire rope for defects has merit. An OSHA fatality investigation involving a powered platform (EX. 100–7) revealed that the primary cause of the fatality was the failure of the suspension wire rope which had not been inspected on a regular basis. OSHA, therefore, is requiring in paragraph (g)(5)(ii) that a visual examination is to be made of a suspension wire rope by a competent person before every use. The term "competent person" is substituted for the term "qualified person" in paragraphs (g)(5)(ii) and (g)(5)(iii) for the reasons noted in the definitions section of this document.

On the second issue, who should do the inspection of wire rope, Becor Western Inc. (TR 2/20, p. 491) and Hoberg (TR 2/19, p. 81) stated that a wire rope inspector should have the experience and training to judge the capability of the wire rope to continue to suspend equipment.

OSHA agrees, since the results of the monthly inspection are used to determine the need to replace the wire rope. This inspector would determine whether the wire rope has sufficient integrity to support the platform with the desired design factor until the next inspection is performed. OSHA, therefore, is requiring in paragraph (g)(5)(iii) of the Final Rule that a competent person conduct the monthly inspection of the suspension wire rope.

On the third issue, wire rope replacement, OSHA received many comments (EX. 9–25, 9–37; 15–8; 30; 87; 88; TR 2/19, p. 81, 159, 193; TR 2/20, pp. 41, 491) on whether the suspension wire rope should be replaced at a regular interval, or be replaced based on the condition of the wire rope at the time of inspection. This latter method was proposed in paragraph (g)(5). Leonard Nork (EX. 9–25, TR 2/20, p. 41) suggested that OSHA require wire rope to be replaced on an 18-month interval, rather than rely only on replacement criteria used during an inspection. This commenter believed it was the only way to ensure that deficient wire ropes would be replaced on a regular basis.

Some commenters (EX. 87; TR 2/19, p. 81; TR 2/20, p. 491) suggested that OSHA require wire rope replacement at a specified interval, in addition to relying on the results of regular inspections of the wire rope. Hoberg (EX. 88) suggested that a wire rope might continue in use after a specified interval had passed if a qualified person inspected the wire rope and found it in good condition.

Other commenters (EX. 9–37; 15–8; 30; TR 2/19, pp. 159, 193; TR 2/20, p. 491) rejected the use of a specified interval and supported OSHA's provision in proposed paragraph (g)(5) which states that the need for replacement shall be determined by regular inspection and based on the condition of the wire rope inspected. Becor Western Inc. (EX. 9.37) noted that it would be difficult to establish a proper wire rope replacement interval because of the variety of factors which affect wire rope at each worksite, such as environment, maintenance and usage. This commenter believed that a daily inspection by the operators of the platform, a thorough monthly inspection by a qualified person, and the use of proper replacement criteria during the inspection would be the best program for determining the need for wire rope replacement.

In addition, Becor Western Inc. (EX. 9–37) recommended that OSHA transfer the wire rope replacement criteria, which were proposed for inclusion in the non-mandatory Appendix A, to the standard itself. This commenter stated that OSHA should list the criteria in the standard that would serve as the minimum conditions for replacing the wire rope during an inspection.

OSHA has considered all the comments on the issue of wire rope replacement and has determined that the proposed method in paragraph (g)(5) of replacing wire rope is the preferred method, and is retained in the Final Rule. This method provides for daily and monthly inspections by qualified persons and the use of criteria for determining the need to replace the wire rope. This determination is based on several reasons.

First, in addition to the proposed monthly inspection, OSHA is requiring in paragraph (g)(5)(ii) that the wire rope be inspected before every use for gross deficiencies. This inspection will provide an early alert on any wire rope deterioration.

Second, OSHA is requiring in paragraph (g)(5)(iii) that the monthly inspection be conducted by a competent person. This requirement will enhance the quality of the inspection conducted since the replacement of the rope is a decision based on the replacement criteria and the judgment and experience of the inspector. Replacement of the wire rope in this method is focused on the capability of the wire rope to suspend equipment, and not an arbitrary replacement interval.

Third, the selection of a specific rope replacement interval for all wire rope would be arbitrary and without any supporting data to justify the selected interval. The life of a wire rope on a worksite is greatly affected by such variables as exposure to the environment, proper handling, storage, usage and maintenance. In addition, the use of a mandatory replacement interval may cause some employers to rely more on this as a means of wire rope replacement control, and less on a regular inspection by a competent person during the intervening period. Also, if an inspection by a competent person shows the wire rope to be sound, it would be unnecessary and costly to discard the wire rope because a mandatory replacement time has been reached.

OSHA is requiring in paragraph (g)(5)(i) that the employer shall follow procedures recommended by the wire rope manufacturer in the maintenance and use of the wire rope. The adherence to these manufacturer's recommendations by the employer would have a noticeable effect on the life of the wire rope, and would be a major factor affecting wire rope replacement.

Since OSHA is requiring in paragraph (g)(iv) that the wire rope be replaced based on the condition found during an inspection of the wire rope, it is appropriate that the minimum conditions for replacement be listed in the standard rather than the Appendix. The listing of these minimum criteria does not prevent the employer from using more stringent criteria in determining the need for replacing wire rope during an inspection. OSHA, therefore, is transferring the wire rope replacement criteria from Appendix A to paragraph (g)(5)(iv)(A).

A number of comments were received on the wire rope replacement criteria listed in proposed Appendix A. Some commenters (EX. 9–19, 15–8, 19B, 30) and a hearing witness (TR 2/20, p. 493) suggested that wire ropes should be removed if four randomly distributed broken wires are found in three lays or if two broken wires are found in one strand of three lays. Hoberg (EX. 19B) recommended that Table 1 in proposed Appendix A be clarified to show that replacement criteria can be either three wires in one strand or six wires in one rope lay. The MacWhyte Company (EX. 30) also noted that wire rope classification, as shown in Table 1, is not a factor in the criteria for wire rope replacement according to the *Wire Rope Users Manual*, Second Edition, 1981. This criteria is listed on page 57 (Table 13) of the Manual published by the American Iron and Steel Institute.

OSHA has considered all the comments and related available information and determined that three broken wires in one strand, or six broken wires in one rope lay, is a sufficient condition for replacement of a wire rope, regardless of its classification. Table 1 in Appendix A is being deleted, and the information from that table is renumbered as paragraph (g)(5)(iv)(A).

No comments were received on two other listed conditions for wire rope removal, which included rope distortion from crushing or kinking and evidence of heat damage. These conditions are listed in paragraphs (g)(5)(iv) (B) and (C) of the Final Rule.

The reduction of the original wire rope diameter was listed as a criterion for wire rope removal in proposed Appendix A. Hoberg (EX. 19B) suggested that for the measurement to be meaningful the diameter measurement of the wire rope should be done while it is under a specified load and compared against previous measurements of the original rope diameter under the same load. However, the Manual points out that even using these criteria may not always indicate the need for removal. The Manual lists the various conditions which may reduce rope diameter (Manual, page 53). Each safety related listed condition, such as abrasion, corrosion, loosening of rope lay and inner wire breakage has been separately identified by OSHA as an independent reason for removing the rope (§ 1910.66(g)(5)(iv)). Further, some reasons for rope diameter reduction are not safety related. Therefore, as recommended by the Manual, OSHA has omitted the reduction of wire rope diameter as a criterion for determining wire rope replacement. Therefore, the listed criteria in the Final Rule and the wire rope inspector's knowledge and experience should provide a sufficient basis for making the proper decision in replacing wire rope.

No comments were received on other wire rope replacement criteria listed in the proposed Appendix A, such as rusting, corrosion and pitting. OSHA is retaining these criteria and these are listed in paragraphs (g)(5)(iv) (D) and (F).

Two broken wires in the vicinity of end attachments was listed as a criterion for wire rope replacement in proposed Appendix A. Hoberg (EX. 19B) recommended that wire rope be replaced if a wire break occurred within 18 inches (460.8 mm) of the end attachments. From his experience, this commenter believed that a wire break in this area of the wire rope is significant since it is an indicator of severe stress conditions existing near the termination. OSHA also notes that the present phrase "in the vicinity of the end attachments" does not provide an inspector with a defined area of inspection for wire breaks.

OSHA, therefore, believes this comment has merit and is including the instance of a wire break occurring within 18 inches (460.8 mm) of the end attachments as a condition for wire rope removal. This criterion is listed in paragraph (g)(5)(iv)(E).

Proposed Appendix A lists core failure as another criterion for wire rope removal. Hoberg (EX. 19B) suggested that protrusion of the wire rope core be considered as evidence of core failure. This suggestion is supported by a statement on page 55 of the Manual.

OSHA accepts this suggestion and is modifying the criterion accordingly in paragraph (g)(5)(iv)(G).

Another condition for wire rope removal listed in the proposal, a valley break, is retained as paragraph (g)(5)(iv)(H). A "valley break" is a break in a wire located in one of two adjacent strands in a wire rope.

Hoberg (EX. 19B) noted that a wire rope is subjected to a significant amount of abrasion during its use, and suggested that the wire rope be replaced if the outer wire of the rope has lost one-third of the original diameter. This suggestion is supported by a statement on abrasion of wire rope on page 52 of the Manual.

OSHA recognizes the need to address severe abrasion of the wire rope as one of the criterion for replacement, and is including this in the Final Rule as a condition for wire rope removal. This condition is listed in paragraph (g)(5)(iv)(I).

On the fourth issue, inspection records, the California Department of Industrial Relations (EX. 9–45) and Becor Western Inc. (EX. 9–37, TR 2/20, p. 492) suggested that OSHA require written, dated and signed reports of the wire rope conditions found during monthly inspections, and that these reports be kept on file. California's Department of Industrial Relations stated that detailed records of wire rope inspections are necessary for efficient preventive maintenance practices.

OSHA agrees that a record of the wire rope monthly inspection is necessary to ensure its completion on a regular basis. As noted previously in this document, OSHA has developed a method which requires building owners to provide a "certification record" for inspections which are required to be performed. OSHA intends to use this certification requirement to ensure that wire rope inspections required in paragraph (G)(5)(iii) are completed by the building owners. OSHA, therefore, is requiring a certification record for each monthly inspection in paragraph (g)(5)(v) of the Final Rule.

Douglas A. Greenaway (EX. 15–8) supported proposed paragraph (g)(6) which addressed the testing of a hoist in the lifting direction prior to the lowering of personnel below the top elevation of the building. Lawrence R. Stafford (EX. 9–35) suggested that the provision be eliminated, since he believed this requirement would be fulfilled by the nature of the use of a platform. After consideration of the comments on this provision, OSHA is retaining it in the Final Rule under paragraph (g)(6).

A number of hearing testifiers (TR 2/20, pp. 314, 370; TR 2/21, p. 18) and a commenter (EX. 87) supported proposed paragraph (h)(1) which required equipment that affected safe operation to be maintained in proper working order. Harry Fisher (TR 2/20, p. 370) noted that in his experience, the lack of maintenance and training were the major causes of accidents.

OSHA is retaining this requirement in paragraph (h)(1) in the Final Rule.

Paragraphs (h)(2)(i) and (h)(2)(ii) required the cleaning of parts which are affected by dirt or other contaminants, and are basically unchanged from the proposal. In proposed paragraph (h)(2)(ii), the phrase "and free from dirt" is redundant and OSHA has deleted this phrase in the Final Rule.

Douglas A. Greenaway (EX. 15–8), supported proposed paragraphs (h)(3) (i), (ii) and (iii) which addressed periodic resocketing of wire rope fastenings. OSHA is retaining these requirements in paragraphs (h)(3) (i), (ii) and (iii) in the Final Rule. The term "babbitted fastenings" is replaced with the term "poured sockets." The reason for this change is given in the explanation for deleting the definition for "babbitted fastenings" earlier in this document.

In the Notice of Hearing (50 FR 48222), OSHA requested comments on a recommendation made by a pre-hearing commenter that the proposed requirement for periodic reshackling of suspension wire ropes (paragraph (h)(4)) be deleted. This commenter had stated that the periodic reshackling requirement would be more appropriate to the elevator industry, since the wire ropes used for elevators were more subject to failure due to more frequent operation of the equipment it suspended.

Leonard Nork (EX. 9–25) suggested that the interval between reshackling be decreased from 24 months to 18 months. No justification was given for this suggested change in frequency.

James W. Fortune (TR 2/19, p. 194) and Hoberg (TR 2/19, p. 82) recommended that OSHA retain the proposed requirement in the Final Rule. Mr. Fortune stated that the shackles are exposed to the elements, corrosion and caustic chemicals. In addition, he said that it was difficult to ascertain the condition of the wire rope inside the shackle.

OSHA agrees that reshackling of the suspension wire rope is necessary at a designated interval to maintain a reasonable level of safety for platform occupants. OSHA, therefore, is retaining this requirement in the Final Rule at paragraph (h)(4).

No comments were received on proposed paragraph (h)(5) which addressed the maintenance of roof systems. OSHA is retaining this provision in paragraph (h)(5) in the final rule.

Douglas A. Greenaway (EX. 15–8) supported proposed paragraphs (h)(6) and (h)(7) which addressed the maintenance of building face guiding members and the prohibition against making a safety device inoperative. OSHA is retaining both provisions in paragraphs (h)(6) and (h)(7) in the Final Rule.

Several hearing witnesses (TR 2/19, p. 83; TR 2/20, pp. 26, 102, 314) and a commenter (EX. 87) supported proposed paragraph (i)(1)(i) which required that employees be proficient in the operation, safe use and inspection of the particular platform they are operating. Lawrence R. Stafford (TR 2/20, p. 102) stated that it should be mandatory that each employer ensure that his or her employees use the equipment as it has been designed to be used.

OSHA is retaining this requirement in paragraph (i)(1)(i) in the Final Rule. The requirement to train all employees who work on powered platforms in their safe operation and inspection does not specify frequency of training. OSHA did not specify frequency because of the varying patterns of employment in the industry, with some employees working constantly for contractors doing building maintenance and others doing occasional maintenance on buildings their employers own. OSHA expects that employers will evaluate the need for refresher training based on the difference in equipment and buildings and the amount of time elapsed since the last training session.

The word "powered" in proposed paragraphs (i)(1)(i) (i)(1)(ii), (i)(1)(ii)(B), (i)(iii) and (i)(1)(iv) is changed to "working" in the Final Rule since the term "working platform" is defined in the standard.

A significant number of commenters (EX. 9–20, 15–8, 15–12; 38–3; 86–2; 88–6; 89) and hearing witnesses (TR 2/20, pp. 269, 278, 322, 370, 462, 494; TR 2/21, pp. 8, 17, 79) supported proposed paragraph (i)(1)(ii)(A) which required employee training in recognizing and preventing safety hazards associated with individual work tasks. The Window Cleaning Contractors Association (EX. TR 2/20, p. 462) and Becor Western Inc. (EX. TR 2/20, p. 494) each have developed training programs for employees which are now being used. Lee Herzog (TR 2/21, p. 17) stated that Canada has an employee training program for platform operators organized by manufacturers and distributors, in conjunction with a trade school. The Scaffold Industries Association (EX. 86–2) was developing a training program for its member companies at the time of the hearing.

Harry Fisher (TR 2/20, p. 370) of Spider Staging Sales Company stated that in his experience one of the major causes of platform accidents was the lack of training of the employee prior to the accident.

OSHA agrees that training of employees is as important as any other aspect of the standard for powered platforms. In Appendix A, paragraph 10 of the Final Rule, OSHA provides guidelines for employee training programs. Specific training requirements for their employees are to be determined by each employer.

OSHA is retaining paragraph (i)(1)(ii)(A), which addresses training, in the Final Rule.

Proposed paragraph (i)(1)(ii)(B) addresses the need for employee training in recognizing and preventing safety hazards on the particular type of platform being used. A large number of commenters (EX. 15–3, 15–8, 15–18, 37–2, 49–1, 87) and hearing witnesses (TR 2/20, pp. 36, 469; TR 2/21, pp. 12, 13, 17, 148) supported the need for this requirement. Leonard Nork (TR 2/20, p. 36) noted that employees must be trained in the use of different equipment they will be using because of the variations in equipment, stabilization methods and worksite conditions. Douglas A. Greenaway (EX 15–8), emphasized that the equipment should be used only by persons who have been instructed and trained in its use. Carl J. Thurnau (EX. 87) submitted a copy of the New York State Department of Labor regulations which address the standard conditions for the operation and maintenance of this equipment. One of the conditions requires a person who operates a powered platform to be thoroughly instructed in its use and control.

In addition, OSHA notes that lack of employee training in a specific platform installation was one of the major causes in at least four different powered platform accidents (EX. 97, 98, 100–3, 100–4). These accidents resulted in the death of two employees and in serious injuries to five other employees. In response to the comments received and the pertinent accident data, OSHA is retaining proposed paragraph (i)(1)(ii)(B) in the Final Rule.

Paragraph (i)(1)(ii)(C) required that employees be trained in emergency action plan procedures. Brian L. Gartner (EX. 37–2) and Lee B. Herzog (EX. 58) strongly supported the need for this requirement. Mr. Gartner believed that teaching an employee to be prepared for an emergency on an elevated powered

platform is as important as teaching him his operating work procedures. Mr. Herzog provided information on the difficulty encountered by firemen in attempting to rescue untrained workers who were stranded on an elevated powered platform.

OSHA agrees with these commenters and is retaining proposed paragraph (i)(1)(ii)(C) in the Final Rule.

Several commenters and hearing witnesses (EX. 9–1, 15–8; TR 2/20, p. 463, TR 2/21, p. 8) supported proposed paragraph (i)(1)(iii) which requires that a qualified person shall train employees in the operation and inspection of a platform. Douglas A. Greenaway (EX. 15–8), endorsed the need for employees to receive instruction by a qualified person in the use and control of a powered platform. Jacquelyn Kopp (TR 2/20, p. 463) suggested that this qualified person could be the building engineer, the foreman or the employer. Pedus Building Services (EX. 9–1) suggested that the instructor (qualified person) have no less than five years of work experience.

OSHA is in agreement with these commenters that employees should receive instructions only from a person who has had the proper experience and training. The proper selection of instructors for this purpose is critical in the safety training of employees and should be given due consideration by the employer. OSHA, however, does not believe it should specify the number of years of experience an instructor should have to be considered qualified. The term "competent person" is substituted for the term "qualified person" in paragraph (i)(1)(iii) for the reasons noted in the definitions section of this document.

In the Notice of Hearing (50 FR 48222), OSHA requested specific comment on proposed paragraph (i)(1)(iv) which required that written work procedures be provided for employee training. OSHA was seeking information on whether employers can use other methods of employee training in lieu of written work procedures as the core of the training program.

A significant number of commenters (EX. 14–1, 14–13, 15–4, 15–18, 86–2, 87, 88–6) and hearing witnesses (TR 2/19, pp. 63, 238, 248; TR 2/20, pp. 314, 324, 463, 502) overwhelmingly supported the need to require written work procedures for operator training. The Travelers Insurance Company (EX. 14–1) noted that its experience in reviewing employee training programs has shown that those programs which include written work procedures are far superior to those that do not have such procedures.

Daigel (TR 2/19, p. 238) noted that the complexity of current building exteriors and atriums requires designs by professional engineers, and detailed instructions for employees who are to maintain the facades of these buildings through the use of powered platforms. He claimed such detailed instructions are necessary to properly train employees in the rigging and operation of platforms used on new buildings with complex exteriors and atriums.

The Tennessee Valley Administration (EXH. 14–3) noted that written operating procedures, if properly prepared, provide continuity and consistency to the training effort. Related to this comment, Thomas J. O'Shea (TR 2/20, p. 314) stated that written procedures are important in the training of initial and future operators of powered platforms, since this training method insures training uniformity in an industry that experiences a high turnover in instructors and building managers who are responsible for the training.

A number of commenters (EXS. 15–18, 87) and hearing witnesses (TR 2/19, p. 248, TR 2/20, p. 463) stated that many of the manufacturers of this equipment provide operating manuals which employers can use as a basis for training their employees. Some manufacturers (TR 2/20, p. 502, EX. 9–13) conduct free operator training programs, using written work procedures, for employers who purchase their equipment. For example, Becor Western (EX. 55), a hoist manufacturer, conducts training programs for employees who use their equipment. This company, which utilizes written instructions in its training program, claimed that no one who had ever gone through their training program had ever been involved in an accident involving their equipment. A platform manufacturer, Spider Staging Sales Company (EX. 87), provides its customers with a written operating and maintenance plan for the equipment. An employer can utilize such a written plan in developing his own work procedures for training his employees.

Several employer organizations recommended the use of written work procedures for training. First, the Window Cleaning Contractors Association (TR 2/20 p. 463) strongly supported the need for written instructions in employee training. This Association stated that these instructions should be available to employees at all times should any question arise as work progresses on the job site. The Association also noted that the manufacturer can supply much of the information needed to develop these instructions. Second, the Scaffold Industries Association (EX. 86) is currently completing a core training program involving written procedures, which will be available to all members. The training program can then be supplemented as necessary by employers to suit their own training needs.

Hoberg (EX. 88–6) and the Window Cleaning Contractors Association (TR 2/20, p. 463) suggested the use of pictorial instructions when necessary. These commenters believed this type of instruction would be useful in communicating with employees having a language disability, and with those employees who must be familiar with a variety of rigging, operating and inspecting procedures for different building installations.

No objections were raised by any commenter or hearing witness to the use of written work procedures in employee training.

After consideration of the many comments received supporting the requirement for written work procedures, OSHA is in agreement with the commenters that this proposed provision should be retained. In addition to the reasons given by the commenters, OSHA has a number of other concerns which support the need for this requirement.

First, employees cannot be reasonably expected to remember work procedures for the rigging, operation and inspection of platforms with different stabilization systems that are used on a variety of building exteriors and interiors, each of which are only maintained two or three times a year.

Second, in some areas of the United States, where the literacy rate and the language facility for operators is low, it is absolutely necessary to provide appropriate communication materials in a training program for such operators. Pictorial instructions, in lieu of written instructions, may be very useful in these areas.

Third, the elevated work environment of a powered platform operator, by its very nature, can be very hazardous if the operator does not receive and have ready access to detailed instructions in the safe operation of the equipment, and is prepared to handle emergencies"when the occur. The record indicates that a lack of proper training has directly contributed to the death of at least one platform operator. An OSHA investigation (EX. 100–4) of a powered platform fatality and the injury of another employee revealed that lack of proper training was a major factor in causing the accident.

Fourth, the potential is great for serious injury or death to other

employees and public individuals below the platform due to unsafe practices or equipment failure.

OSHA, therefore, is retaining the requirement that the employer provide written work procedures at paragraph (i)(1)(iv) and is adding the requirement that employees be trained in these work procedures at paragraph (i)(1)(ii)(D). In addition, OSHA is permitting the use of pictorial methods of instruction, in lieu of written work procedures, if the training of employees is improved through the use of this method.

OSHA is transferring the training requirement for personal fall arrest systems from proposed Appendix D to the training section of the standard itself, under paragraph (i)(1)(ii)(E). This was done to consolidate all the training requirements in one section of the standard. USTAG (EX. 8–33) supported the proposed requirement for employee training in personal fall arrest systems and recommended minor clarifications to the provision. OSHA agrees with these recommendations and these have been included in paragraph (i)(1)(ii)(e).

A large number of commenters (EXS. 9–13, 15–8, 15–18) and hearing witnesses (TR 2/20, pp. 26, 55, 495, 500; TR 2/21, pp. 9, 17) have suggested various means by which OSHA should require written certification from the employer that an employee has satisfactorily completed his or her training. Becor Western (TR 2/20, p. 500) and Douglas A. Greenaway (EX. 15–8) have suggested that a certificate should be given to an employee by whoever performs the training. Leonard Nork (TR 2/20, p. 26) suggested that a record be kept of the date each employee was trained and the responsible instructor. Acme Fabricators Inc. (EX. 9–13) suggested that the employer be responsible for showing visible evidence that his or her employees have attended the necessary training sessions.

OSHA believes that the commenters' suggestions have merit. There is a definite need to insure that employees have been properly trained before working on elevated platforms, since equipment failures and improper operating practices can be hazardous. A record of such training is an important part of any employee training program. The record serves as a basis for determining the proficiency of operators on the platforms they are using for maintenance, as required in paragraph (i)(1)(i).

For consistency with other "certification record" requirements used in this standard, OSHA is requiring in paragraph (i)(1)(v) that the employer certify in writing that an employee has received training in the safe operation and inspection of a particular powered platform. The certification record would not prohibit employers from maintaining additional training records for their own use. Employers can comply with this requirement in such a way which least disrupts their operation. The employer may choose any method deemed to demonstrate compliance with the training requirements as long as it provides the identity of the person trained, the signature of the employer or person who conducted the training, and the date the training was completed.

Paragraph (i)(2)(i) addresses the loading of powered platforms. The R. D. Werner Company Inc. (EX. 9–34) noted that the phrase "not be loaded in excess of their maximum intended load ratings" was ambiguous and needed clarification. This commenter suggested that the load ratings be defined to include the load of the users and any material on the platform.

OSHA agrees, and is changing the provision to require that platform not be loaded in excess of the rated load, Paragraph (i)(2)(ii) in the proposal prohibited employees from working on platforms covered with"slippery materials, and it remains unchanged in the Final Rule.

In the Notice of Hearing (50 FR 48222); OSHA requested specific comment on proposed paragraph (i)(2)(iii) which required that platform members, including wire and synthetic rope, be shielded when a heat producing process or a corrosive substance is used for maintenance purposes.

A number of commenters (EX. 9–34, 9–43; 19B, 19C) and a hearing witness (TR 2/20, p. 263) stated that the provisions were insufficient to address the hazards for employees when using a heat producing process or corrosives. R. D. Werner Company, Inc. (EX. 9–34) and Richard W. Hoffman (TR 2/20, p. 263) recommended that employers should follow the recommendations of qualified persons, such as the manufacturer of the platform and the producer of the corrosive substance, to protect the platform members and rope from damage. R. D. Werner Company, Inc. (EX. 9–34) also recommended that if a wire rope is contacted by a heat producing process, it should be considered permanently damaged and should not be used to support platforms. Spider Staging Sales Company (EX. 9–43) and Hoberg (EX. 19B) strongly suggested that the platform be washed down with a neutralizing solution if acids or corrosives are used.

OSHA is in agreement with these commenters that additional measures are required to address the hazards posed to platform occupants when they use corrosives and heat producing processes. Most of the platforms built today are made of aluminum. Acids and corrosives have a tendency to degrade the heat treatment of the aluminum. This degradation greatly weakens the aluminum and makes it subject to failure. It is necessary, therefore, to take the necessary precautions to protect the platform members as well as the wire rope.

OSHA, therefore, is revising the proposed paragraph (i)(2)(iii) in the following manner:

First, employers will be required to follow the recommendations of acid or corrosive substance producers and the platform manufacturers to protect the platform members and wire rope from damage. If these recommendations are not available, the employer may obtain equivalent information from other available sources. In addition, the employer shall be required to wash down platforms with neutralizing solutions if exposed to acids or corrosives.

Second, in addition to protecting components of a platform and the wire or synthetic ropes when using a heat producing process, the employer shall not use ropes which have been contacted by a heat producing process to support a platform.

Paragraphs (i)(2)(iii) and (i)(2)(iv) in the Final Rule address these points.

Proposed paragraph (i)(2)(iv)(A) prohibited any work activity on a platform when the wind velocity at the platform level exceeded 40 miles per hour (64.3 km/hr). A number of commenters (EX. 9–31, 9–35, 9–37, 87) recommended that OSHA change this limitation to 25 miles per hour (40.2 km/hr). Leonard Nork (TR 2/20, p. 26) stated that the 40 miles per hour (64.3 km/hr) limitation is excessive, unsafe, and unnecessary.

OSHA has considered these comments in conjunction with other changes made to the proposal on the subject of wind velocity at paragraphs (e)(2)(iii)(A) and (e)(2)(iii)(C). The proposed 40 miles per hour (64.3 km/hr) velocity limitation was intended to serve as the design basis for the proposed 14–inch limit (355.6 mm) on platform displacement. Since this 14-inch (355.6 mm) limitation is eliminated in the Final Rule, the associated wind velocity of 40 miles per hour (64.3 km/hr) has also been eliminated.

Accordingly, OSHA is reducing and combining the verbiage in proposed paragraphs (i)(2)(iv)(A) and (B) by prohibiting work activity on all platforms, regardless of stabilization method, if the wind velocity exceeds 25

miles per hour (40.2 km/hr). The 25 mile per hour (40.2 km/hr) prohibition was supported by commenters (EX. 2–14, 2–22, 2–26, 2–28) who responded to questions raised on this subject in OSHA's Advance Notice of Proposed Rulemaking (48 FR 6368). In addition, the 25 mile per hour prohibition is also supported in the ANSI A120 draft standard—January 1986 (EX. 15–8). OSHA is permitting an exception to this limit on wind velocity of 25 miles per hour (40.2 km/hr) when the occupants are returning the platform to storage. Proposed paragraphs (i)(2)(iv)(A) and (B) are eliminated and replaced with renumbered paragraph (i)(2)(v) in the Final Rule.

Proposed paragraph (i)(2)(v) required that an anemometer be provided on the building to give information of on-site wind velocities prior to using the platform.

R. D. Werner Company, Inc. (EX. 9–34) stated that it was necessary for OSHA to define the location of the anemometer on the building, such as the roof, mid-height or ground level.

Some commenters (EX. 9–30, 19B) and hearing witnesses recommended that a portable (hand held) anemometer be used by platform occupants rather than relying on an anemometer located on the building. Richard W. Hoffman (EX. 9–30) stated that it was important to measure the wind velocity at the actual worksite while on the platform, while Hoberg (TR 2/19, p. 127) noted that roof-mounted anemometers cannot be relied on to give accurate wind velocity readings for each building face.

Leonard Nork (TR 2/20, p. 42) stated that, in the absence of building anemometers, employees have been using portable (hand held) anemometers on platforms in New York City.

OSHA has considered the comments addressing the issue of anemometers and makes a number of other observations. First, for employees to avoid working in winds in excess of 25 miles per hour (40.2 km/kr), it is necessary for them to have information on wind velocities just prior to and during their work periods on the platform. An anemometer on the roof of a building may have little or no correlation to the wind conditions on any given face of the building. It may record a much higher or much lower wind velocity than what is occurring at a work station area on the building face.

Second, due to current building designs which include irregular shapes and multi-roofs, one building face and elevation area could be virtually wind-free while at another nearby building face the wind could be quite strong.

Third, employers cannot rely only on local wind forecasts as a true measure of the wind velocity at a specific worksite.

Fourth, an anemometer mounted on a platform would provide employees with wind velocity information before and during any work activity on a building face.

OSHA, therefore, has concluded that proposed paragraph (i)(2)(v) should be changed and is requiring that an anemometer may be permanently mounted on the platform or it may be a portable (hand held) anemometer which is temporarily mounted on the platform during the working period. In addition, the phrase "on exterior installations" is added since an anemometer would not be required for interior installations (atriums).

Proposed paragraph (i)(2)(v) is replaced with renumbered paragraph (i)(2)(vi) in the Final Rule.

Paragraph (i)(2)(vii), which addresses the removal of unnecessary tools, materials and debris on a platform is changed from proposed paragraph (i)(2)(vi). As noted previously, paragraph (i)(2)(vii) incorporates the provision proposed in paragraph (f)(5)(v)(c).

Proposed paragraph (j) required employees to be protected by personal fall arrest systems and referenced an Appendix to the standard which covered fall arrest systems (originally proposed as Appendix D). Comments (EX. 14–1, 14–7, 15–4; TR 2/19, pp. 49, 198, 242; TR 2/20, p. 496, TR 2/21, p. 146) were received by OSHA on paragraph (j) and comments on similar issues were received on the proposed Appendix D. OSHA is addressing all of these issues in its response to comments received on the proposed Appendix D which follows. In addition, "Appendix D" in the proposal is redesignated as "Appendix C" in the Final Rule.

A new paragraph (k) is being added to establish an effective date of January 24, 1990. Paragraph (b) of the standard provides for different application of § 1910.66 to new and existing installations, depending on whether the installations are completed within 180 days of the effective date.

Appendices

The final standard contains four appendices. Two of the appendices, A and B, provide guidelines to assist employers and employees to implement provisions of the standard. Appendix C and D, however, set out mandatory provisions. Appendix C sets out the requirements for personal fall arrest systems, and Appendix D sets out the requirements for powered platform installations which exist or are completed no later than 180 days following the effective date of the standard, and which were installed after the effective date of the unamended standard (August 27, 1971, 36 FR 10466).

OSHA notes that none of the statements in Appendices A and B should be construed as imposing a mandatory requirement on employers that is not otherwise imposed by the standard. In addition, these appendices are not intended to detract from any obligation that the standard imposes.

Appendix A

Some of the guideline data in proposed Appendix A have been changed or new data have been added in the final rule. These changes and additions were based on public comments that were received or information that has become available to OSHA since the proposal was issued.

Paragraph 1 describes the content of Appendix A and the options the employer has in complying with the standard.

Paragraph 2 (assurance) was added to provide additional information for employers to comply with the requirements of paragraph (c) in the Final Rule which required the owner of the installation to provide the employer with specific information.

Paragraph 3 (design requirements) was added to list some of the design criteria that a professional engineer would use in designing an installation as required in paragraphs (e)(1)(i) and (f)(1)(i) in the Final Rule.

Hoberg (EX. 19B, 106) suggested that the guide sizes listed for both internal and external tie-in guides in the proposal are too large for standard installations and should be changed in the Final Rule to a minimum of one inch (25 mm) deep, two inches (50 mm) wide, with a three-quarter inch (19 mm) throat. Spider Staging Sales Co. (EX. 9–43) also suggested that a reduction in guide sizes was warranted.

OSHA accepts this suggestion and is changing these items in Appendix A in the Final Rule and renumbering them as Paragraph 4.

Hoberg (EX. 19B) also recommended that OSHA should point out in Appendix A that a poor design of continuous tie-in guides frequently is the cause of a hazardous situation in the use of these units. OSHA believes this suggestion has merit and is including a reference to this design problem in Paragraph 4 of Appendix A of the Final Rule.

No comments were received on paragraph 5 of Appendix A and this remains unchanged in the Final Rule.

Paragraph 6, covering stabilizer tie lengths, is added in the Final Rule. Daigel (EX. 9–31) and Hoberg (TR 2/19, p. 60) agreed that a stabilizer tie should be long enough to affect the predetermined angulation of the suspension cables, but that OSHA should not, as proposed, consider the specific length alone to be an important factor in maintaining platform stability. OSHA accepts their recommendation that the Agency should emphasize the need for a stabilizer tie that is easily installed, and yet short enough not to become entangled in parts of the platform.

Based on testimony and comment, OSHA agrees that Appendix A should not list unique or specific materials and products. Building owners and employers should have the option of selecting any type of stabilization system which meets the performance criteria and suits their needs. Accordingly, OSHA is replacing specific terms for components and materials with generic terms in Paragraph 7 and other portions of Appendix A.

General maintenance guidelines proposed in paragraph 8 of Appendix A are retained in the Final Rule under paragraph 9.

Becor Western Inc. (EX. 9–39) recommended that OSHA use mandatory language in the training guidelines provided in proposed Appendix A. For example, this commenter recommended that OSHA require employers to use on-the-job training and formal classroom training rather than have them consider the use of these training methods in meeting the training requirement.

In response, OSHA notes that in paragraph (i)(1)(ii), employers are required to train their employees in the safe operation of platforms. The Appendix provides guidelines which can be used by the employer in meeting this performance requirement. In this way, the employer has the option of selecting methods which are most suitable for training employees in meeting the performance requirement in the specific workplace.

Becor Western Inc. (EX. 9–39) also recommended that OSHA add a requirement that the employer provide a certificate of training for employees completing a training program. Without this certificate, an employee would not be permitted to operate a platform.

OSHA notes, in response, that in paragraph (i)(1)(i) it is required that a platform be operated only by persons who are proficient in the operation, safe use and inpection of the particular powered platforms to be operated. The employer is then required to certify that each employee has been trained. These requirements are utilized, in lieu of a requirement for a training certificate, to meet the goals of the Paperwork Reduction Act.

OSHA, therefore, is retaining the proposed training guidelines under item 10 in Appendix A of the Final Rule. In addition, the training guidelines are emphasizing the need to include employee instruction in handling emergencies at the workplace.

Guidelines for determining equivalency in the suspension and securing of powered platforms are retained in item 11 of Appendix A.

Appendix B

Appropriate changes are made in the text of Figures 2 and 3 of Appendix B to ensure consistency with relevant sections of the standard.

Appendix C

Paragraph (j) of the powered platform standard, § 1910.66(j), requires employees on powered platforms to be protected by personal fall arrest systems, meeting the requirements of Appendix C, Section I of this standard.

Appendix C, Section I establishes mandatory criteria and test methods for personal fall arrest systems. Section II sets out test methods which may be used to show compliance with certain criteria in Section I. Section III of the Appendix provides non-mandatory guidelines for employers to use in complying with the proposed criteria.

Appendix C is technologically feasible because it requires the use of personal fall protection systems that are already in use by many window washer and exterior building maintenance contractors. The performance criteria for personal fall protection components and systems are criteria that are well-established for manufacturers of this equipment.

OSHA has received a number of comments and testimony on the proposed Appendix. The following discussion summarizes this body of comments and testimony relative to Appendix C and identifies the changes to the proposal which have been made in this final rule and gives OSHA's reasons for the changes. It should be noted that this Appendix (Appendix C) had been proposed as Appendix D.

All comments and testimony received on the fall protection Appendix supported requirements that would protect employees on powered platforms from fall hazards. Two commenters recommended a separate standard (EXS. 8–14, 8–21), but supported the requirements in the proposed Appendix. Although OSHA has placed fall protection requirements in a separate appendix, this in no way indicates that the fall protection requirements are less important than others pertaining to powered platform workers. The reasons for placing these requirements in an Appendix to the final rule relate to OSHA's intention to develop a generic fall protection equipment standard for general industry in the future. These reasons are discussed further in the summary and explanation of the scope and application paragraph of Appendix C (paragraph (a)) below.

One participant (EX. 9–31) questioned whether proposing to place the fall protection rules in an Appendix would limit rulemaking participation by equipment designers and manufacturers. It should be noted, however, that the trade association representing manufacturers of personal fall protection equipment, other equipment manufacturers, and the U.S. Technical Advisory Group on Personal Equipment for Protection Against Falling, ISO/TC94/SC4, all participated in this rulemaking by providing comments and testimony on proposed Appendix D. Therefore, OSHA believes that substantial public participation has taken place. Further, although OSHA plans to develop a separate "generic" standard for personal fall protection equipment (see Item 1539 (RIN: 1218–AA48) of the Semi-Annual Regulatory Agenda (52 FR 40527, October 26, 1987)), the Agency has determined that it is necessary at this time to provide requirements and performance criteria for personal fall protection equipment used on powered platforms to protect employees from fall hazards while working from these platforms, because of the significant risks of fall hazards faced by such employees.

OSHA has considered alternative approaches suggested by participants. The United States Technical Advisory Group, an advisory group representing Government and private interests on personal equipment for protection against falling, ISO/TC94/SC4 (USTAG) recommended a "substitute" appendix which, unlike the proposed appendix that only specified significant design criteria and overall "system" requirements, would define components and subsystems of personal fall arrest systems, and recommended that specific requirements be provided for these, as well as for the complete system (EX. 8–33). While OSHA does not object to this approach in theory, it cannot be accomplished until requirements and standards for all such components and subsystems have been developed and

validated. The USTAG did not recommend the actual requirements and test methods for components in their "substitute" appendix. There are no American National Standards, or other national consensus standards which include requirements for all the components and subsystems recommended for inclusion by the USTAG.

OSHA believes that it is not necessary to establish detailed requirements and test methods for all components and subsystems of a fall protection system in order to provide employee safety. The requirements set forth in Appendix C establish the performance criteria for the overall system as the employee would use it. OSHA believes that this will assure employee safety without addressing the specifics of all components. It should be noted that OSHA's approach in Appendix C does not preclude the future development of requirements for components, which could be accomplished by voluntary standards writing bodies. OSHA's systems approach is consistent with the approach currently taken in existing voluntary standards for personal fall protection equipment.

Paragraph (a) of Section I, scope, states that this section includes the requirements for personal fall arrest systems required for use by all employees using powered platforms. OSHA has determined that the provisions in Appendix C, Section I, contain appropriate requirements for personal fall arrest systems used by employees working on powered platforms, based on the record of this rulemaking. As noted earlier, however, the Agency is also currently developing a "generic" proposed rule which will provide criteria for such fall arrest systems wherever they are used in general industry. The comments and data on fall arrest systems which were submitted to the record of the powered platforms rulemaking are also being used in the development of the generic rule. OSHA anticipates that the provisions on personal fall arrest systems in Appendix C, Section I, of the powered platforms standard will be consistent with the proposed requirements for those systems in the proposed generic rule.

Ultimately, OSHA intends to apply the generic rule to all uses of personal fall arrest systems in general industry, including powered platforms. Accordingly, the rulemaking on the generic rule will raise the issue of whether Appendix C, Section I, should be superseded by the generic requirements. One of the reasons for placing the fall arrest system requirements for powered platforms in a mandatory appendix instead of in the text of the standard itself was to facilitate its replacement in the future. Should OSHA later decide to apply the generic rule, the deletion of the appendix would not involve detailed reworking of the regulatory text in the powered platforms standard.

Paragraph (b) of Section I sets out definitions for terms used in Appendix C. OSHA is using the term "anchorage" rather than "fixed anchorage" as proposed. The rulemaking considered whether requirements for anchorages should be included in the criteria for personal fall arrest systems. USTAG recommended that the topic of anchorages be the subject of a separate standard for the voluntary standards community to address and for OSHA to then reference (EX. 8–33). At this time there are no separate voluntary standards for anchorages, so OSHA cannot rely on them for a proper and safe anchorage. OSHA disagrees with USTAG's view that an anchorage is not part of the personal fall arrest system, since without an anchorage the equipment will not function to arrest a fall. OSHA notes also that the equipment manufacturer, although usually not directly supplying the anchorage, can specify what anchorage is necessary to have the overall system function properly. Dr. Nigel Ellis in his written testimony (EX. 15–20) agrees with OSHA that the anchorage is part of the personal fall protection system.

Several comments were received on the definition of "body belt" (EXS. 8–14, 8–21, 8–33). All comments suggested deleting a reference to additional optional straps around the rib cage because it would combine two different types of equipment, i.e., body belts and chest-waist harnesses, into one definition. OSHA agrees with these comments and has deleted the reference to the secondary straps.

One comment was received on the definition of "buckle" (EX. 8–33) which suggested that the term was superfluous, and should be addressed in a separate national consensus standard for body support systems. OSHA disagrees since the term is used in the OSHA standard and there is not yet a national consensus standard for body support systems which includes this term. This definition has not been changed in the final standard.

One comment was received on the definition of "competent person" (EX. 8–33) which recommended that such a person must have technical competency on more than just components. OSHA agrees with this comment and has revised the definition in the final standard to require knowledge in the complete system, its application and its use. The definition is similar to the definition of the same term in the powered platform standard, but is more specific as it relates to fall protection.

OSHA is replacing the proposed term "hardware" with the term "connector." Two comments stated that "hardware" was too broad and one suggested that the term "connector" be used instead (EXS. 8–21, 8–33). OSHA agrees with these suggestions, notes that "connector" connotes the specific function at issue, has deleted the term "hardware," replaced it with the term "connector" and has expanded the definition.

Comments were received on the definition of "deceleration device" (EXS. 8–33, 15–20). It was suggested that this term be eliminated and replaced with three terms, "fall arrester," "energy absorber," and "self-retracting lifeline/lanyard" because the examples listed by OSHA in its proposed definition of deceleration device serve varying combinations of the function of these three suggested components. In particular, it was pointed out that a rope grab may or may not serve to dissipate a substantial amount of energy in and of itself. The distinction that the commenter was making was that some components of the system were "fall arresters" (purpose to stop a fall), others were "energy absorbers" (purpose to brake a fall more comfortably), and others were "self-retracting lifeline/lanyards" (purpose to take slack out of the lifeline or lanyard to minimize free fall). OSHA notes however, that it is difficult to clearly separate all components into these three suggested categories since fall arrest (stopping) and energy absorption (braking) are closely related. In addition, many self-retracting lifeline/lanyards serve all three functions very well (a condition which the commenter labels as a "subsystem" or "hybrid component"). OSHA believes that the only practical way to accomplish what is suggested would be to have test methods and criteria for each of the three component functions. However, at this time, there are no national consensus standards or other accepted criteria for any of the three which OSHA could propose to adopt.

In addition, OSHA's approach in the final standard is to address personal fall arrest equipment on a system basis. Therefore, OSHA does not have separate requirements for "fall arrestors," "energy absorbers" and "self-retracting lifeline/lanyards" because it is the performance of the complete system, as assembled, which is regulated by the OSHA standard. OSHA's final standard does not preclude the voluntary standards writing bodies from developing design standards for all of the various components and is supportive of this undertaking. OSHA notes that manufacturers may advertise specific attributes of deceleration devices, such as low arresting forces (shock absorbing qualities) and stopping distance (arresting qualities).

OSHA has, however, used the commenters' suggestions to clarify the definition of "deceleration device," as well as, further clarify the test methods applicable to the various assembled systems. This is discussed further below.

Several comments were received on the proposed definition for "deceleration distance" (EXS. 8–14, 8–33, 15–20). Concern was expressed by all commenters that it was only possible to evaluate the stopping distance for the device itself once it was activated. OSHA agrees with these comments and has revised the definition of deceleration distance to exclude lifeline elongation and any free fall distance which occurs before the device is activated. In addition, suggestions for clarification of the definition were accepted.

OSHA has added a definition for "equivalent" to clarify the meaning of this term as used in paragraph (c)(1), which provides for connectors made of equivalent materials to those made of drop forged, pressed or formed steel. "Equivalent" is defined to mean alternative designs, materials or methods to protect against a hazard which the employer can demonstrate will provide an equal or greater degree of safety for employees than the methods, materials or designs specified in the standard.

Comments received on the proposed definition of "force factor" (EXS. 8–33, 15–20, 8–4, 8–27, 15–10) and testimony presented (2/19–258, 2/21–128, 2/21–140–142, 2/21–38, 39, 44, 45, 46) all suggest that the term "force factor" is confusing, even to systems experts, and that it would not be needed if the factor was incorporated into the test methods. OSHA agrees with these comments and is deleting the term "force factor" from the final standard, but is incorporating the concept in the test methods in Section II.

One comment was received on the proposed definition of free fall (EX. 8–33) suggesting that the phrase "personal fall arrest system" should be used as well as the definition being further clarified to define when the free fall period ends. OSHA agrees with this suggestion and has revised the definition of free fall accordingly.

A comment was received on the proposed definition of "free fall distance" (EX. 8–33) which provided suggestions for clarification. OSHA agrees with this suggestion and has revised the definition of free fall distance accordingly, so that it is clear which extensions of equipment are excluded.

A commenter (EX. 8–33) pointed out that the proposed definition of body harness neglected to mention the pelvis as an important body support member and suggested a revised definition. OSHA agrees with the suggestion and has revised the definition of body harness accordingly.

USTAG (EX. 8–33) commented that the terms "lanyard," "lifeline," and "tie-off" which are used throughout the proposed standard are not defined and suggested that definitions be added for these terms. OSHA notes that the terms "rope grab" and "self-retracting lifeline/lanyard" which were used in the proposed standard were also not defined. OSHA believes that all these terms should be defined and has added definitions for each of the five terms in the final standard based on USTAG's comments.

Two comments were received on the proposed definition of "personal fall arrest system" (EX. 8–21, 8–33). Both suggested revisions to clarify the definition, and one recommended excluding "anchorages" from the definition. As discussed above, OSHA has determined that inclusion of anchorages in the system is proper. OSHA agrees with the other suggestions for clarification, and has revised the definition of personal fall arrest system accordingly.

USTAG (EX. 8–33, 2/21–39) recommended that a definition for qualified person be added since it is their belief that a qualified person is necessary for designing or selecting horizontal lifelines. Another commenter (EX. 15–20) recommended that a definition of qualified person be added and used in anchorage design. OSHA agrees with these comments and has added the suggested definition, which is consistent with other OSHA definitions.

Many comments (EX. 8–14, 8–21, 8–27, 8–33), and testimony (2/19–253, 259, 2/21–38, 47, 128) were received on "snap-hook." Suggestions were received to better define snap-hooks, distinguishing between locking and non-locking snap-hooks. OSHA agrees with the suggestions for a more comprehensive definition and has revised the definition of snap-hook accordingly.

USTAG commented (EX. 8–33) that the term "strength factor," like the term "force factor," was useful in theoretical discussion but confusing when used in the standard. OSHA agrees with this comment and has deleted the terms "strength factor" and "force factor" from the definitions and final standard, but has incorporated them into paragraph (d)(1)(iv) by requiring that personal fall arrest systems withstand twice the potential impact load.

USTAG commented (EX. 8–33) that the term "total fall distance" should be revised to make it clear that lanyard extension is included in deceleration distance. OSHA agrees with this comment. However, for clarity, OSHA has decided to use the term "deceleration distance" in the performance requirements and has deleted the term "total fall distance" from the final standard.

Paragraph (c)(1), like the proposal, requires that connectors be drop forged, pressed or formed steel, or equivalent materials. Two comments stated that OSHA should require components to meet specific tests rather than specify design processing and materials (EX. 8–21, 8–33). However, tests have not been submitted which would assure the integrity of the hardware components. Therefore, OSHA is relying on specifications which were taken, in part, from the OSHA Construction Standards (29 CFR 1926.104(e)) on personal fall arrest equipment. OSHA's experience is that these criteria conform to industry practice and that conforming components are reliable. OSHA has limited this requirement to connectors (critical load bearing hardware) and has also allowed these components to be made of equivalent materials. Thus, OSHA believes that the requirement now addresses the proper components and is not overly restrictive since equivalent materials are permitted.

A commenter (EX. 8–33) suggested that paragraph (c)(2) require that hardware meet the ASTM Salt Spray Test Standard to evaluate whether it is corrosion-resistant as required by the provision. OSHA believes, however, that components made of inherently corrosion-resistant materials, such as those cadmium plated, are widely acknowledged and do not need testing. Therefore, OSHA has retained the requirement as proposed, with the exception of changing the term "hardware" to "connectors" for the reasons discussed above (see discussion of connector definition).

Paragraphs (c) (3), (5), (6), and (10) contain, among other criteria, various limits expressed in pounds and kilonewtons. For example, the breaking strength of lifelines and lanyards in tension is required to be a minimum of 5,000 pounds (22.2 kN). These limits are based on the general requirement, taken from the ANSI A10.14–1975 Standard, that a personal fall arrest system have an arresting force not to exceed 10 times gravity. Assuming a worker design weight of 250 pounds (113 kg), the maximum permitted force would be 2,500 pounds (11.1 kN) (250×10= 2,500). Applying a safety factor of at least two for the components of the personal fall arrest system, these components must then have a minimum strength of 5,000 pounds (22.2 kN), which is the basis for the strength requirements in these paragraphs. (The test methods contained in Section II of Appendix C may be used to demonstrate that the assembled personal fall arrest system also maintains a safety factor of at least two.)

In reviewing the strength and force requirements of paragraphs (c)(3), (c)(5), (c)(6), (c)(9), (c)(10), and (d)(1), the reader will note that four of the provisions require a strength of 5,000 pounds (22.2 kN), one provision (paragraph (c)(9)) requires a safety factor of at least two to one, and another provision (paragraph (d)(1)) requires the system limit arresting forces to 900 pounds (4 kN) for body belts and 1,800 pounds (8 kN) for body harnesses.

At a glance, it may appear that there may be some inconsistencies in these requirements. For example, applying a safety factor of two to one to the arresting force limit for harnesses yields 3,600 pounds (16 kN) (2×1,800), which is significantly less than the 5,000 pounds (22.2 kN) required for other components, such as lanyards. However, even though the arresting force would not exceed 1,800 pounds (8 kN), the higher strength requirements of 5,000 pounds (22.2 kN) for components of the system are necessary because other factors affect the strength required for these components.

OSHA observes that comments and testimony presented by USTAG supported lowering the arresting force limits from those contained in the proposal, while at the same time supporting the higher strength limits (as proposed) for components, such as lanyards and snap-hooks. OSHA agrees with USTAG's comments that, even though the arresting force would not exceed 1,800 pounds (8 kN), the higher strength requirements of 5,000 pounds (22.2 kN) for components of the system are necessary because other factors affect the strength required for these components. For instance, if knots are tied in lanyards or lifelines the strength may be reduced by one-half. Also, if lanyards or lifelines strike the edge of materials or obstructions during fall arrest, the cutting action on these components can be sustained by the larger diameter, stronger ropes that would be required to achieve the higher strength requirement. Similarly, if snap-hooks and dee-rings strike objects during fall arrest, the higher strength will be needed to prevent failure of the components due to loading in other than simple tensile loading (such as shear loading). The rationale for the lower arresting forces in paragraph (d)(1) is discussed below.

One commenter (EX. 8–33), recommended that the tensile strength of lifelines and lanyards, proposed as 5,000 pounds (22.2 kN) breaking strength, be evaluated using Federal Standard 191 Test Method 6015 or 6016. OSHA does not believe that a specific test procedure for breaking strength needs to be specified since all test procedures used by manufacturers and associations for rating breaking strength adequately evaluated these components. Therefore, OSHA has adopted the proposed wording, unchanged, for the final standard in paragraph (c)(3).

Several comments were received on paragraph (c)(4) (EXS. 8–21, 8–24, 8–27, 8–33, 15–20) regarding the strength and method for measuring the strength of self-retracting lifeline/lanyard devices. The comments pointed out that in their experience many self-retracting lifeline/lanyard devices do not sustain the proposed force of 3,000 pounds without the brake slipping. This slipping is a part of the design of the devices to reduce fall arrest forces to a safe level. Thus, OSHA has revised paragraph (c)(4) in the final standard to require the components of self-retracting lifeline/lanyard devices to sustain a load of 3,000 pounds (13.3 kN) with the lifeline or lanyard in the fully extended position. The lower strength requirement of 3,000 pounds (13.3 kN) is based on permitting a very limited free fall distance while maintaining a safety factor of at least two.

USTAG (8–33) recommended that energy absorbers used as separate system components be capable of sustaining a minimum tensile load of 5,000 pounds (22.2 kN) when fully extended. OSHA agrees with this comment as it applies to rip-stitch lanyards, tearing and deforming lanyards, and self-retracting lifelines and lanyards which do not limit free fall distance to two feet (0.61 m) or less, and has added this requirement for these deceleration devices as paragraph (c)(5) in the final standard.

Comments and testimony received on proposed paragraph (c)(5) (EXS. 8–33, 15–20, 36, 2/21–52, 75, 76, 91, 143) discussed whether or not 100 percent proof-testing (testing each part before use) of snap-hooks and dee-rings is necessary to assure that the proposed requirement for a tensile strength of 5,000 pounds (22.2 kN) is met. OSHA's intent is to require that snap-hooks and dee-rings not fail to a degree that they will not sustain a load of 5,000 pounds (22.2 kN). Thus, permanent deformation of the components is allowed provided the part can still support the load. Commenters were not concerned with this strength requirement, but rather that heat treating and other manufacturing processes be properly followed. USTAG (8–33, 2/21–39) and a manufacturer of dee-rings and snap-hooks (2/21–75, 76) recommended that 100 percent proof testing of these components at a reduced load, allowing no permanent deformation or loss of function, be added to the strength requirement to assure that the strength requirement is met, since it was their experience that the heat treating and other manufacturing processes used for these parts did not always result in the desired strength of the parts (which when proof tested showed some parts to be only half their intended strength). OSHA agrees with this recommendation and has retained the strength requirement in paragraph (c)(6) as proposed, and added a new requirement in paragraph (c)(7) which requires proof-testing of snap-hooks and dee-rings. Therefore, these components would need to be spotchecked at a strength of 5,000 pounds (22.2 kN) allowing permanent deformation, and 100 percent checked at a strength of 3,600 pounds (16 kN) allowing no permanent deformation or loss of function.

Many comments (EXS. 8–14, 8–21, 8–27, 8–33, 15–10, 15–20, 36) and much testimony (EXS. 2/19–253, 2/21–38, 47, 117, 129, 142) were received on snap-hook design. USTAG, as well as other individual commenters, recommended that only locking snap-hooks be allowed due to the possibility of non-locking snap-hooks becoming accidentally disengaged during use. A number of accidents involving accidental disengagement ("roll-out") were cited in support of this position (EX. 8–33). The Industrial Safety Equipment Association (ISEA) and several other commenters argued that locking snap-hooks would not always prevent "roll-out." In addition, they pointed out that non-locking snap-hooks can be used safely as long as they are used properly (EX. 36). In particular, it was explained that a non-locking snap-hook must be matched with a dimensionally compatible attachment. Several commenters expressed the opinion that a locking snap-hook may also disengage if used with an incompatible connection. There is no evidence suggesting that locking snap-hooks have accidentally disengaged. In addition, comments and testimony received (EXS. 8–33, 36, 8–27, 2/19-259, 2/21–38, 47, 117, 129, 142) clearly supported a position that locking snap-hooks were superior to non-locking snap-hooks in minimizing "roll-out" accidents.

However, OSHA believes that the record shows that non-locking snap-hooks can be used safely, but only with dimensionally compatible attachments (2/19–254, 259). The use of dimensionally incompatible attachments with non-locking hooks is not acceptable because that practice increases the likelihood that the snap-hook will become disengaged. (A dimensionally compatible combination is one where the diameter of the dee-ring to which a snap-hook is attached is greater than the inside length of the snap-hook measured from the bottom (hinged end) of the snap-hook keeper to the inside curve of the top of the snap-hook, so that no matter how the dee-ring is positioned or moves (rolls) with the snap-hook attached, the dee-ring cannot touch the outside of the keeper so as to depress it open.) By contrast, OSHA believes that locking snap-hooks can be designed to prevent "roll-out" even if connected to incompatible attachments. Therefore, OSHA has added a provision to the final standard in paragraph (c)(8) which requires that snap-hooks have compatible dimensions in relation to the member to which they are connected so as to prevent unintentional disengagement of the snap-hook by depression of the snap-hook keeper by the connected member, or they shall be a locking type snap-hook designed to prevent disengagement of the snap-hook by the contact of the snap-hook keeper by the connected member.

Several comments (EXS. 8–4, 8–27, 8–33, 15–20, 2/21–39) were received on proposed paragraph (c)(6) and (c)(7) concerning horizontal lifelines, and anchorages. These comments were concerned about the difficulty in designing horizontal lifelines which could support 5,000 pounds (22.2 kN) per employee and the lack of a margin of safety in the proposed requirement for anchorage strength. Several of these commenters recommended that anchorages and horizontal lifelines be selected or designed by a qualified person. USTAG recommended that the strength of anchorages be a minimum of twice the potential dynamic loading force if certified by a qualified person, 5,000 pounds (22.2 kN) strength if not certified. USTAG also recommended that horizontal lifelines be designed by qualified persons. OSHA agrees in principle with these comments and has revised its provisions dealing with horizontal lifelines and anchorages so that a qualified person is involved in the design and use of horizontal lifelines. Paragraph (c)(9) in the final standard requires horizontal lifelines to be designed, installed and used as a part of a complete personal fall arrest system which maintains a safety factor of at least two, under the supervision of a qualified person. Paragraph (c)(10) requires anchorages to be capable of supporting a minimum load of 5,000 pound (22.2 kN) per employee attached, or be designed, installed and used as part of a complete personal fall arrest system under the supervision of a qualified person and maintaining a safety factor of a least two.

USTAG (EX. 8–33) recommended that ropes and straps used in lanyards, lifelines, and strength components of body belts and body harnesses be made from synthetic fibers. This recommendation was made because the strength of natural fiber rope is not reliable or predictable as it ages during use. In addition, the strength deterioration of this type of rope is not obvious nor always detectable during inspection. OSHA's information (EX. 11–2) confirms this recommendation and the Agency has added a new requirement in paragraph (c)(11) of the final standard to address this subject.

A significant volume of testimony and comments was received on proposed paragraph (d) which contains the criteria for system performance.

OSHA proposed in paragraphs I(d)(1)(i) and I (e)(3) of Appendix D (now Appendix C) to allow body belts to be used for up to a six foot (1.8 m) free fall distance and up to a force limit of 10 times the worker's weight (10 gn) or 1,800 pounds (8 kN) whichever is less (50 FR 2890). This was consistent with ANSI A10.14–1975 (EX. 11–1), and a NBS report (EX. 11–2). OSHA noted, however, that the variances and the compliance directive (STD. 1–3.3) issued to allow intermittent stabilization systems for powered platforms required body harnesses to be used, rather than body belts. Also, the draft ISO standard would restrict the use of body belts in fall arrest systems, and allow only body harnesses (EX. 11–3).

At the time of the proposal, OSHA also cited a study (EX. 11–4) which concluded that body belts should be prohibited because of their injury potential.

Recommended limitations on the use of body belts were also cited. They included two concepts: (1) Imposing a force limit, expressed in pounds, on the use of body belts and (2) allowing body belts to be used only for free falls of up to a specified distance, commonly two feet (0.6 m) (EXS. 11–5, 11–6).

After review of the comments and testimony relating to these issues as discussed further below, OSHA has decided that body belts may be used when the fall arrest system of which they are a part limits maximum arresting force on an employee to 900 pounds (4 kN) (paragraph (d)(1)(i)). Thus, the final rule has reduced the amount of arresting force permitted by half, from 1,800 to 900 pounds (8 kN–4 kN). OSHA believes that the final rule will protect employees against significant injury stemming from the use of body belts and that a total restriction on the use of body belts is unnecessary.

The reasons and evidence for these findings are as follows:

OSHA believes that the proper use of body belts, by trained personnel and subject to the restrictions in this appendix, is safe. Evidence concerning injury potential of using body belts, OSHA believes, relates to the improper use, or use under preventable unsafe conditions. For example, experiments of Dr. Maurice Amphoux were characterized as showing that the use of body belts is damaging, because the loads are concentrated on one strap (see EXS. 2/21–42). These studies found that prolonged suspension could result in injury. However, since OSHA has provided for prompt rescue (paragraph (e)(8)), and in light of other testimony showing the safe use of body belts in such conditions, OSHA believes that no inherent and inevitable damage flows merely from the use of body belts. Testimony from Dr. Nigel Ellis, also supported the proper use of body belts for fall arrest with limitations concerning suspension distance and rescue time (EXS. 2/21–123).

Systematic evidence on the injury potential of body belt use, based on actual use analysis was not available. Since in the past, fall protection has been provided for the most part by the use of body belts rather than harnesses, many participants testified generally on their knowledge of the performance of belts and of the inherent safety of using

belts. Leonard Nork, a representative of two unions whose members use powered platforms, testified that body belts are used just about exclusively in the State of New York on powered platforms (EXS. 3/20–46). Mr. Nork further stated that in over 30 years he did not know of any fatality caused by the use of a body belt (EXS. 3/20–48). Other participants testified of incidents where body belts allegedly caused injury, but first hand knowledge was lacking (EXS. 2/21–123). Mr. Nork also noted that there was worker resistance to the use of body harnesses because they "find them very, very cumbersome."

The Agency agrees with Mr. Nork that the degree of comfort provided by various systems is not relevant if "it can be demonstrated clearly that one system provides a greater measure of safety for workers" (see EXS. 3/20–48). However, the evidence on this record shows that belts can provide equivalent safety to harnesses when properly used, and the standard establishes the condition under which OSHA believes that such safety can be provided.

As stated above, OSHA has determined that body belt use must not exceed certain arrest force limitations. At the time of the proposal, OSHA believed that body belts could be safely used up to a force limit of 10 times the worker's weight or 1,800 pounds (8 kN) whichever is less. OSHA based this proposed limitation on the current ANSI standard (A10.14–1975, EX. 11–2), and an NBS Report (EX. 11–2).

Various participants supported different limitations: The Industrial Safety Equipment Association (ISEA) supported OSHA's proposed arresting force limitations. USTAG recommended that body belts be permitted only for work positioning and climbing protection. Even with such a limitation on use, USTAG recommended that maximum arrest force for body belts not exceed 900 pounds. USTAG stated that "empirical data from impact loading of humans and animals suggests that injury threshold may be in the neighborhood of 10 g's or even lower depending on (many variables)" (EX. 8–33). USTAG cited British standards which restrict the use of body belts to 5 g's for a 180 pound (82 kg) person (the equivalent of 900 pounds (4 kN) of force).

Based on the record, OSHA agrees with USTAG that a maximum arresting force of 1,800 pounds (8 kN) is acceptable when using a body harness but not acceptable when using a body belt. OSHA, therefore, is adopting the USTAG recommendation of a maximum force of 900 pounds (4 kN) as used in paragraphs (d)(1)(i) and (d)(1)(ii) of the final standard. OSHA notes that USTAG's recommendation applied to the maximum permitted force for positioning systems, not to fall arrest equipment. OSHA believes, however, that there is no reason to distinguish these applications in terms of the permitted force limit.

OSHA also proposed to limit body belt use to a six foot (1.8 m) free fall distance, and has retained this provision in paragraph (e)(3) that requires the rigging of personal fall arrest systems to limit free falls to six feet (1.8 m) or less. OSHA believes that the comments and testimony in the record have not identified free fall distance alone as a causative element in injuries during fall arrest using body belts. Rather, the amount of time an employee is suspended, and the degree of force impacted on a fallen employee appear to be the primary critical causative factors. As stated above, OSHA has addressed both of these critical factors separately in the standard. With the general system limitation on free fall distance set at six feet (1.8 m), an arrest force limitation of 900 pounds (4 kN), and a requirement for prompt rescue, OSHA believes that employees will be protected from injury from the use of body belts.

In addressing the method of expressing arresting force limits, nearly all comments (EXS. 8–4, 8–27, 8–29, 8–32, 8–33) and hearing testimony (EXS. 2/19–259, 2/21–39, 2/21–117, 2/21–118, 2/21–127, 2/21–128) provided their recommendations in terms of pounds (kN) arresting force rather than acceleration of gravity. To avoid confusion, OSHA is also expressing the limits of arresting force in paragraph (d)(1)(i) in terms of pounds (kN) force.

The proposal would have required a personal fall arrest system to bring an employee to a complete stop, with a deceleration distance of 42 inches (1.07 m) or less (proposed (d)(1)(ii)). Comments (EXS. 8–24, 8–14) were received on this proposed requirement. One commenter (EX. 8–24) recommended that the system, "bring an employee to a complete stop within 72 inches plus the length of the lanyard from the original position of the rope grip before a fall occurs. This will allow for a shock absorber to open up to a distance of 60 inches, and for a travel of the rope grip of 12 inches as it closes its grip onto the rope." Another commenter stated, "the 42 inch deceleration distance may be applicable to rope grabs and deceleration devices, but is too restrictive when applied to an entire "personal fall arrest system." This commenter pointed out that stretch of the lifeline alone could exceed 42 inches. OSHA agrees in principle with these comments and, as previously discussed, has revised the definition of "deceleration distance" so that the 42 inches (1.07 m) of deceleration distance relates only to the operation of the deceleration device itself (by excluding the free fall and lifeline elongation distances). Unobstructed travel of the device or rope grab before it activates would be considered free fall distance. In addition, a shock absorber which opens to an overall length of 60 inches (1.52 m) would not be prohibited, provided the distance during deceleration (while the shock absorber stretches, rips, tears, elongates, etc.), does not exceed 42 inches (1.07 m). OSHA has retained the proposed requirement and editorially revised it as paragraph (d)(1)(iii) of the final standard.

The proposal would have required a personal fall arrest system to contain a "strength factor" of not less than two to one, based on a design weight of 250 pounds (113 kg) per employee (proposed (d)(1)(iii)). As discussed previously under the definition of "strength factor;" the term "strength factor" and its use in the proposed standard are unnecessarily confusing (EXS. 8–27, 8–33) and therefore, OSHA has eliminated this term. The intent of this requirement was to require personal fall arrest systems to have a safety factor of at least two in their design. The proposed requirement has been replaced by a new requirement, paragraph (d)(1)(iv), in the final standard, which requires that personal fall arrest systems have sufficient strength to withstand twice the potential impact energy of an employee free falling a distance of six feet (1.8 m), or the free fall distance permitted by the system. The strength test in section II includes the necessary test weights and drop distances to assure a strength factor of at least two.

Paragraph (d)(2) states that personal fall arrest systems which meet the tests contained in section II of this appendix would be considered as complying with the proposed provisions (d)(1)(i) through (d)(1)(iv). Two comments (EXS. 8–14, 8–33) were received on this proposed requirement. One commenter suggested that other tests may be substituted if they provide equal protection when it is not possible (such as physical geometry of the systems) to run the tests in section II. USTAG recommended that test procedures in voluntary consensus standards be utilized, or if not available, testing be performed "in accordance with written test procedures of an accredited testing laboratory."

USTAG also suggested that the test required be correlated to specific

requirements in section I and that the test methods be mandatory (EX. 2/21–38).

In addressing the suggestions of USTAG and others, OSHA notes that with the definitions added, and the test methods revised and clarified in the final standard (as discussed below), there is no confusion as to which test methods apply to different types of personal fall arrest systems. Also, as discussed earlier, there are presently no applicable finalized consensus standards which OSHA could reference for testing. Additionally, no submissions to this record concerning written test procedures developed by U.S. laboratories for the types of equipment covered by the OSHA standard were made, and OSHA has no independent knowledge of such test procedures.

OSHA also agrees with the commenter who stated that the reference to test methods in section II for the provisions in paragraphs (d)(1)(i) through (d)(1)(iv) of the final standard should not be restrictive. The standard does not require that the performance criteria in paragraphs (d)(1) (i) through (iv) be met using the test methods in section II; it merely recognizes systems which meet those tests as being in compliance with those paragraphs. Other test methods may be used provided that they demonstrate compliance with the standard. OSHA envisions such methods being developed by a wide range of sources, including consensus groups and testing laboratories. The standard would allow the use of appropriate voluntary standards and test methods for personal fall arrest systems once they are completed. Accordingly, OSHA is retaining paragraph (d)(2) as paragraph (d)(2)(i) in the final standard which states only that personal fall arrest systems which meet the tests contained in section II of this appendix shall be considered as complying with the provisions of paragraphs (d)(1)(i) through (d)(1)(iv). However, the final rule also states that such compliance is assumed only when the system is used by employees having a combined person and tool weight of less than 310 pounds (140 kg). OSHA has added this maximum weight limitation so that the acceptable limits inherent in the specified test methods for strength and force will not be exceeded.

Dr. Nigel Ellis in his comments (EX. 15–20) and testimony (EXS. 2/21–142, 143) expressed concern in relating test weights to human weights. OSHA agrees that the limitations of the test procedures should be clearly stated to eliminate any confusion as to their applicability to heavy workers and has revised the proposal accordingly by limiting the applicability of the test criteria and protocols to employees having a combined person and tool weight of 310 pounds (140 kg) or less. In addition, OSHA has added paragraph (d)(2)(ii) to the final standard which states that systems used for employees having combined person and tool weights of 310 pounds (140 kg) or greater may be considered as meeting paragraphs (d)(1)(i) through (d)(1)(iv) provided that the criteria and protocols are modified appropriately to provide proper protection for these heavier weights. The test methods in section II of this appendix can be used for evaluating systems for use with heavier weights by increasing the test weights, reducing the permitted arresting force limits, or other appropriate modifications to account for the heavier worker weights, provided the requirements of paragraphs (d)(1)(i) through (d)(1)(iv) are met.

Proposed paragraph (e) contains requirements for the care and use of personal fall arrest systems.

One comment (EX. 8–33) was received on proposed paragraphs (e)(1), (e)(2), and (e)(6). However, all of the comments and testimony received (EXS. 8–14, 8–21, 8–27, 8–33, 15–10, 15–20, 36, 2/19–253, 259, 2/21–38, 47, 117, 129, 142) relative to locking and non-locking snap hooks discussed previously is indirectly applicable to these proposed requirements which would prohibit snap-hooks being connected to loops in webbing lanyards and to each other. USTAG suggested the following substitute provision,

> snap-hooks of the non-locking type shall not be engaged to webbing, rope or wire rope; to each other; to a dee-ring to which another snap-hook or other connector is attached; to a horizontal lifeline; or to any object which is incompatibly shaped or dimensioned in relation to the snap-hook such that unintentional disengagement could occur.

OSHA agrees in principle with this suggestion, however, other comments and testimony expressed the viewpoint that compatibility of the dimensions of attachments can also be important when locking snap-hooks are used. Therefore, OSHA is revising proposed paragraphs (e)(1), (e)(2) and (e)(6) to become paragraph (e)(1) in the final standard which requires that unless of a locking-type which would prevent unintentional disengagement, snap-hooks shall not be used for these connections.

Several comments (EXS. 8–2, 8–24) were received which suggested that rope grabs used on horizontal lifelines on scaffolds which might become vertical, be of a type that would lock in either direction on the lifeline. OSHA agrees with this suggestion and has added a provision in paragraph (e)(2) of the final standard which requires that devices used to connect to a horizontal lifeline which may become a vertical lifeline (such as a horizontal lifeline on a scaffold becoming vertical if the scaffold support at one end fails) be capable of locking in either direction on the lifeline.

Two comments (EXS. 8–21, 8–33) were received on proposed paragraph (e)(3). The intent of the requirement is that the personal fall arrest system be rigged so that an employee will not experience more than six feet (1.8 m) of free fall and be stopped by the system before hitting the ground or other surfaces which may be under the employee. It was suggested that the provision prohibit contact with an "obstruction." OSHA believes, however, that since many objects, such as a wall or a scaffold itself, might be considered "obstructions," adding the recommended language may make use of the personal fall arrest system impracticable because some contact with these objects may be unavoidable. USTAG suggested that this proposed requirement be revised to limit free fall distance to two feet (0.61 m) or less if a body belt or chest-waist harness is used. As discussed above, OSHA does not agree that this further limitation of free fall is necessary because the record does not show that free fall distance by itself will cause injury. Therefore, OSHA is adopting paragraph (e)(3) as proposed in the final standard.

USTAG commented (EX. 8–33) on proposed paragraph (e)(4) suggesting that the provision be revised to read, "Body support components in personal fall arrest systems shall be worn with the connecting subsystem attached to the fall arrest attachment located dorsally, near shoulder level in the case of harnesses, and in the center of the wearer's back in the case of body belts." OSHA agrees with the intent of this suggestion and has revised the provision to require that personal fall arrest systems be worn with the attachment point of the body belt located in the center of the wearer's back, and the attachment point of the body harness located in the center of the wearer's back near shoulder level, or above the wearer's head. This requirement is paragraph (e)(4) of the final standard.

USTAG supported (EX. 8–33) proposed paragraphs (e)(5) and (e)(7) as proposed. No other specific suggestions for revision were received. OSHA is adopting proposed paragraphs (e)(5) and (e)(7), without change because they state fundamental principles of

employee safety desired for personal fall arrest systems. They appear as paragraphs (e)(5) and (e)(6), respectively, in the final standard.

As discussed under proposed paragraph (e)(1), proposed paragraph (e)(6) has been incorporated into paragraph (e)(1) of the final standard.

Two comments (EXS. 8–21, 8–33) were received on proposed paragraph (e)(8) relating to "impact loading." One commenter suggested that vertical lifelines subjected to impact loading of two feet (0.61 m) or less should not be required to be removed from service and inspected by a competent person before reuse. In addition, it was suggested that personal fall arrest systems subjected to impact loading be returned to the manufacturer for inspection, since the commenter felt that the competent person may not be able to assess the extent of damage and suitability for reuse. USTAG supported the provision as proposed, however, and suggested adding an additional sentence to read, "In all cases, the manufacturer's instructions shall not be relaxed." OSHA disagrees that impact loading of vertical lifelines by impacts caused by free falls of two feet (0.61 m) or less should be exempted since the arresting forces may not be directly related to free fall distance. Depending on the system, an arrest of a two foot (0.61 m) free fall of an employee could result in significant impact loading. OSHA also disagrees that systems need to be returned to the manufacturer for proper evaluation, since, by definition, a competent person is "capable of identifying hazardous or dangerous conditions in any personal fall arrest system or any component thereof, as well as in their application and use with related equipment." OSHA also believes that the USTAG suggestion not to relax manufacturer's instructions is part of the competent person's responsibilities. Accordingly, OSHA is adopting proposed paragraph (e)(8), unchanged, as paragraph (e)(7) of the final standard.

Several comments (EXS. 8–33, 15–20) and testimony (EXS. 2/21–125, 2/21–42) expressed concern about the need for prompt rescue following fall arrest, especially when body belts are used, since prolonged suspension may be harmful to employees. OSHA agrees with these comments and has added paragraph (e)(8) to the final standard which will require assurance from the employer that he/she can provide for prompt rescue of employees in the event of a fall. If an employee is able to self-rescue after a fall, the employer would meet this requirement. The intent of this provision is that the employer evaluate the potential for fall arrest and that rescue support be provided in a timely manner to avoid long periods of post fall suspension. When it is not possible to evaluate self-rescue capability in advance, prudent employers should assume that employees will need rescue assistance and accordingly be prepared to offer it.

USTAG commented (EX. 8–33) on proposed paragraph (e)(9) of Appendix C supporting the proposed requirement for employee training and offering suggested clarifications to the provision. OSHA agrees with these recommendations, however, it has revised paragraph (e)(9) of Appendix C of the Final Rule to reference the training provisions of paragraph 1910.66(i)(1) and included USTAG's recommendations in Appendix C of the standard. The final rule requires that before an employee uses a specific system, that he/she be trained in the use of that system. If a component is changed, he/she must be instructed on the change.

Proposed paragraph (f) contains a requirement for the inspection of personal fall arrest systems prior to each use. Comments received (EXS. 8–13, 8–33) were supportive of this provision. USTAG suggested that inspection for function, as well as strength, be a criterion for inspections. OSHA agrees with this recommendation and has revised paragraph (f) of the final standard accordingly.

Section II of Appendix C provides test methods for manufacturer and employer use in evaluating whether personal fall arrest systems meet the criteria set out in paragraph (d)(1). Tests have been included for evaluating the strength, the arrest force, and the proper operation of the systems. These test methods are non-mandatory, and other tests may be used to evaluate the system.

USTAG recommended that the tests included in the proposed standard be mandatory. OSHA does not believe that specific tests need to be mandatory, since OSHA believes that as long as the requirements (i.e., for strength, force, maximum fall distance, etc.) in section I of the final standard are properly tested and met, the systems will provide proper protection. The test methods are included as one means of determining the system's ability to meet the requirements. In addition, most employers are not equipped to perform these tests or other appropriate tests. In most cases, sample testing will be performed by equipment manufacturers. OSHA anticipates that most employers will rely on manufacturers of their fall protection systems to provide the necessary information to assure compliance with the standard.

A number of other comments (EXS. 8–4, 8–24, 8–14, 8–21, 8–33, 15–20, 15–10) and testimony (EXS. 2/19–254, 2/21–38, 44, 118, 130) were received on this section. One commenter expressed concern that the frequency response of the test equipment was not stated in the test procedures and recommended a frequency response of 1,000 Hz. Another commenter recommended that the average forces be used with a frequency response of 1,000 Hz, or alternatively that the peak force be used with a frequency response of 100 Hz. Mr. H. Crawford of the National Engineering Laboratory, East Kilbridge, Glasgow, in his February 13, 1986, letter, cited difficulties with using a frequency response of 1,000 Hz because of resonant frequencies in the test rig (EX. 107). OSHA has reviewed the information on frequency response and has decided to add a frequency response requirement of 120 Hz for load measuring instrumentation to the test procedures. OSHA believes that this frequency response will eliminate difficulties with the test rig and equipment, as well as insure that forces of durations which may be harmful to employees are measured.

USTAG recommended that testing, "* * * be in accordance with test procedures set forth in applicable approved consensus standards written and maintained in a view of this standard and its amendments." As discussed above, at present there are no approved consensus standards for personal fall arrest equipment which OSHA could use or adopt. USTAG also commented that the proposed terms "force factor" and "strength factor" were confusing. As discussed in definitions, above, OSHA has eliminated these terms from the final standard. By so doing, these factors have been incorporated into the test methods of the final standard. In the force test, the force factor of 1.4 has been applied to the test force limits so that the force limits on the human body of 900 pounds (4 Kn) and 1,800 pounds (8 Kn) for body belts and body harnesses in the final standard, as recommended by USTAG, become 1,260 pounds (5.6 Kn) and 2,520 pounds (11.2 Kn) respectively, in the test procedures (which use a rigid test weight). The force factor is essentially a conversion factor which is used to convert the human force limits to equivalent force limits when rigid test weights are used. This factor is necessary to properly relate test forces to forces experienced by humans during fall arrest. In the strength test, a strength factor of two, which is common industry practice, has been used to determine the test weight and free fall distances the test weight is to be dropped to achieve a strength safety factor of at least two for the various personal fall arrest systems.

Dr. Ellis, in his testimony, recommended replacing the proposed OSHA strength and force tests with a single test using a 300 pound (135 kg) test weight dropped 6 feet (1.8 m) for all personal fall arrest systems except retracting lanyard/lifeline systems designed to limit free fall to two feet (.61 m) or less, where the drop distance would be four feet (1.2 m). A test force limit of 1,800 pounds (8 Kn) was also recommended for body harnesses (body belts were not considered in this suggestion). OSHA explored the possibility of using this suggestion (or a similar approach) at the hearings during questioning of other hearing participants (EXS. 2/21–46, 131, 132, 140–142). Although the goal of a single test was supported, the feasibility and details of such a test were not supported. OSHA believes that the suggested test is not sufficient for demonstrating a strength safety factor of at least two and is overly rigorous in assuring acceptable arresting forces. OSHA does not believe there is sufficient information and test data to use a single test in the final standard. However, because the test limits are now all expressed in pounds force in the final standard (as discussed in paragraph (d) above), use of the 130 pound (59 kg) test weight is not adequate for lanyard system force testing. OSHA believes that a single test weight (220 pounds (100 Kg)) for force testing of all personal fall arrest systems will adequately test the system's capability to protect employees from injury due to fall arrest.

Two commenters (EXS. 8–14, 8–21) suggested that the phrase "worst case" used several places in the test methods be omitted or clarified. The tests are intended to evaluate systems in actual use conditions. Therefore, OSHA has eliminated this phrase from the final test procedures.

In summary, OSHA has been responsive to the comments received on the proposed test methods for personal fall arrest systems by: (a) Clarifying and simplifying the procedures where possible, (b) eliminating the term "force factor" and "strength factor" by including the effects of these factors in the test procedures, thus clarifying the final standard and test procedures, (c) providing force test past/fail criteria for body belts and body harnesses, (d) reducing the number of test weights required for testing to two (220 pounds (100 Kg) and 300 pounds (135 Kg)) and (e) adding a provision to address the frequency response time of the load measuring instrumentation (120 Hz) which will further refine the test procedures. OSHA believes that Section II of Appendix C of the final standard now provides clear and definitive test procedures which may be used by or for most employers to evaluate whether personal fall arrest systems comply with the requirements contained in Section I of the final standard.

Section III provides non-mandatory guidelines for personal fall arrest systems which are meant to aid employers in complying with the mandatory provisions of Section I of this Appendix.

A number of comments (EXS. 8–14, 8–21, 8–27, 8–33) were received on the non-mandatory guidelines suggesting clarifications and additional information. USTAG recommended an extensive rewrite of the non-mandatory guidelines to improve their clarity. In addition, USTAG suggested that the discussion of horizontal lifelines be omitted from discussion because the subject is more properly dealt with, in a formal way, by qualified persons. OSHA agrees with the suggestion that horizontal lifelines should be designed and installed under the supervision of a qualified person and has added this to the requirements in Section I, as discussed above in proposed paragraphs (c)(6) and (c)(7). However, OSHA believes that information concerning horizontal lifelines is desirable for inclusion in the non-mandatory guidelines so that employers will realize that there are many factors to consider when a horizontal lifeline is used and that involvement of a qualified person is necessary before one is used. OSHA accepts the comments provided to improve and clarify the non-mandatory guidelines and has revised Section III of the final standard to reflect these comments.

Appendix D

OSHA is republishing certain paragraphs of the unrevised powered platforms standard as Appendix D. These paragraphs are (a), (b), (c) and (d) which address, respectively: definitions; general requirements; Type F and Type T powered platforms; and building and equipment design, construction and installation in the unrevised standard (§ 1910.66 (1987)).

The purpose of Appendix D is to continue to provide coverage of building and equipment installations for powered platforms which exist or are completed up to six months (180 days) after these amendments are effective, and which were installed after the effective date of the unamended standard (August 27, 1971, 36 FR 10466). The new, amended requirements governing how buildings and equipment are to be designed, constructed and installed for safe powered platform operation apply only to installations completed after six months (180 days) of the effective date of this Final Rule, or July 23, 1990. To preclude a gap in coverage, Appendix D requires that older installations continue to comply with the existing requirements covering this area. OSHA chose the 180 day lag time to give engineers and builders sufficient time to incorporate the new requirements in their designs. No participant questioned the adequacy of this period to incorporate these changes in installations underway. OSHA further noted that the public has had notice of the substance of most unchanged provisions since January 1985, when the NPRM was published. If, however, a new powered platform installation is completed before the 180 day period ends the designing engineer may choose to use the amended standard's requirements for building and equipment safety as his guide. OSHA will allow this option, and will not require the building owner to notify OSHA in advance if he designs and installs powered platforms conforming to the amended standard after the revised standard is effective, but before the grace period has expired.

OSHA believes that continuing coverage of existing building and equipment under relevant provisions of the unrevised standard, now Appendix D, is necessary for employee protection and that these requirements provide adequate design factors for assuring continued structural integrity. OSHA proposed continuing the requirement that existing installations be judged by the unrevised standards, and no objections were received.

As noted later, employees on all powered platforms, regardless of when installed, benefit from the new requirements in the amended standard covering training, inspection, maintenance and personal fall protection.

OSHA notes that paragraph (a), "Definitions" in this Appendix, applies only to this Appendix. The definitions in the amended standard likewise apply to provisions of the amended standard, not to this Appendix. Variance decisions and field compliance directives relating to provisions of the unamended standard included in Appendix D will remain in effect until they are withdrawn or superseded by OSHA.

BEST COPY AVAILABLE

The format and regulatory text of Appendix D is virtually identical to the unamended standard. The appendix also updates certain references and excludes certain provisions of the unamended standard which are unrelated to building and equipment requirements.

For example, personal fall protection requirements in paragraphs (b)(5)(ii) and (b)(8) in the unamended standard have not been included in Appendix D since these requirements have been superseded by requirements in paragraph (j) and Appendix C of the amended standard. Further, as noted above, all employers whose employees work on powered platforms must also comply with paragraphs (g), (h), (I), (j), and Appendix C of the amended standard regardless of the installation date of the powered platforms. These provisions cover inspections and tests, (g); maintenance, (h); operations (training and use), (i); personal fall protection, (j); and Appendix (c).

V. Summary of the Regulatory Impact Analysis and Regulatory Flexibility Assessment

Introduction

In accordance with Executive Order 12291 (46 FR 13193, February 17, 1981), OSHA assessed the potential impact of this revised standard. Based on the Executive Order criteria, OSHA has determined that this revised standard would not be a "major" action necessitating further economic impact evaluation. Accordingly, OSHA prepared a Regulatory Impact Assessment (RIA) which is available from the OSHA Docket Office.

OSHA has determined that the revised standard will have the net effect of reducing the costs of compliance because it will permit the use of alternative methods of powered platform stabilization. Employers will be allowed to choose the most cost-effective methods of providing the necessary level of employee safety.

The data for this assessment are based upon a December 15, 1983, study by Arthur Young and Co., entitled, "Analysis of Technological and Economic Factors of Proposed Revisions to OSHA Regulations on Powered Platforms" and upon the public comments submitted: in response to the ANPR; in response to the NPR; during the public hearings; and during the post-hearing comment period.

Powered Platform Terminology and Technology

Powered platforms and suspension scaffolds are the basic types of powered suspended work surfaces used to perform such outside building maintenance tasks as window washing, building and window caulking, inspecting building exteriors, etc. A powered platform covered under 29 CFR 1910.66 (Subpart F) is a powered suspended work surface that is permanently dedicated to a specific building and is the property of the building owner. A suspension scaffold covered under 29 CFR 1910.28 (Subpart D) is a powered suspended work surface that is brought to the building and is the property of the window washer and/or the outside building maintenance contractor. The selection of either a powered platform or a suspension scaffold for exterior building maintenance is made by the building developer when the building is initially designed. Although there are approximately 10 times more suspension scaffolds than powered platforms used for window washing and exterior building maintenance, approximately 90 percent of the new high-rise office buildings (60 stories or more) utilize powered platforms because it is often technologically infeasible to use suspension scaffolds on very tall buildings. In addition, powered platforms are safer at very high elevations than are suspension scaffolds because powered platforms are less susceptible to being destabilized by wind than are suspension scaffolds.

OSHA *does not require* that a powered platform be used on any building. OSHA does require, however, that if a powered platform is used, then the Subpart F requirements must be met.

The existing Subpart F requires all powered platforms to use a continuous track stabilization system that consists of indented mullions or T-rails embedded in the building wall and guide rollers or shoes attached to the platform that lock the platform to the building by remaining in continuous contact with the indented mullions or T-rails. The continuous track stabilization system is the least expensive platform stabilization system to install on buildings of straight vertical steel (aluminum) and glass curtain walls. Architectural styles that feature offsets in walls, however, make continuous track stabilization systems technically infeasible on many of those buildings.

In 1972, the button system stabilization design was developed for powered platforms. In this system, a vertical line of buttons are set into a building wall and the platform contains two vertical bar guides at each end of the platform. As the platform transverses the building, the bar guides engage the buttons and lock the platform to the building.

In addition, an intermittent tie-in stabilization system was developed for powered platforms. In this system, platform stabilization is provided by lanyards that secure the suspension ropes to anchors set into the building wall. The building anchors are set at fixed intervals (usually from 30 to 50 feet) and the adjustable lanyards are designed to produce enough tension below the tie-in point to secure the platform against the building.

These intermittent tie-in stabilization systems were the subject of several applications for variances from Subpart F. The variance procedures include technical review and public comment concerning the safety of the particular installation requesting the variance. Since the first variance application in 1977, OSHA has granted five variances and there were 23 pending variance applications when OSHA issued a Compliance Directive (OSHA Instruction STD 1-3.3) on November 1, 1982, instructing compliance officers to consider all buildings with straight building faces using intermittent tie-in stabilization systems to be in compliance with Subpart F.

Number of Buildings and Powered Platforms

Although the revised standard affects every building that has a powered platform, not every such building is affected by every provision. In particular, although all buildings are affected by the provisions governing powered platform maintenance, only buildings to be constructed are affected by the new provisions governing powered platform design and installation. OSHA estimates that there are 6,865 existing buildings with 9,600 powered platforms and that 265 new buildings with 370 powered platforms are constructed annually. Of these new buildings, OSHA estimates that under the revised standard, 140 will use the continuous track stabilization system, 115 will use the intermittent tie-in stabilization system, and 10 will use the button stabilization system.

Population at Risk

The population-at-risk are the employees who use powered platforms to service high-rise office buildings. These employees are employed in the two industry sectors of: (1) Window cleaning contractors (a subset of SIC 7349 "Building Cleaning and Maintenance Services, Not Elsewhere Classified"); and (2) caulking building exteriors, sandblasting of building exteriors, and steam cleaning of building exteriors (subsets of SIC 1799, "Special Trade Contractors, Not Elsewhere Classified" and of other firms in SIC 7349).

OSHA estimates that 8,150 employees of whom 6,900 are window washers and 1,250 are exterior building maintenance workers may work on a powered platform and be at risk from the potential hazard of falling from an elevation.

Benefits

There is no available estimate of the total number of fatalities and injuries associated with falls from powered platforms because the employees who use powered platforms are only a subset of the employees in SIC 7349 and SIC 1799.

In addition, the injuries associated with falls from powered suspended work platforms also include falls from suspension scaffolds. Using the OSHA inspection data from July 1972 through June 1988, there have been 11 reported incidents involving eight fatalities and nine hospitalized injuries associated with falls from powered platforms. In 10 of these 11 reported incidents (six of the fatalities and all nine of the hospitalized injuries), the employee did not wear personal fall protection. Compliance with the revised Subpart F, which requires both fall protection and training in the use of fall protection, would have prevented the six fatalities and nine hospitalized injuries associated with these 10 incidents.

In addition, the revised standard will make it easier for building developers to install powered platforms on certain types of high-rise office buildings and these powered platforms would substitute for suspension scaffolds or single-man controlled descent devices. As all of the public comment and testimony reported that powered platforms are safer work surfaces than are suspension scaffolds or single-man controlled descent devices, any substitution of powered platforms for suspension scaffolds or single-man controlled descent devices will increase employee safety.

Finally, intermittent tie-in and button stabilization systems, if used correctly, are as safe as continuous track stabilization systems. The revised Subpart F would ensure that those employees working on powered platforms with intermittent tie-ins and button stabilization systems will receive the same protection as received by those employees working on powered platforms with continuous track stabilization systems.

Technological Feasibility

The revised standard is technologically feasible because it allows the use of platform stabilization methods that are already being used on existing buildings. The new design and installation requirements apply only to new powered platforms and all of the technical information and equipment necessary to comply with the revised standard is developed and in use.

Cost of Compliance

OSHA used the baseline of existing Subpart F requirements to estimate the cost of compliance savings expected to result from the revised design and installation provisions for future powered platforms. OSHA, however, used the baseline of current industry practices to estimate the cost of compliance with platform maintenance, employee powered platform training, improving the personal fall protection system, and employee training on personal fall protection systems provisions.

As seen in Table A, OSHA estimated that, on an annual basis, compliance with the revised Subpart F will generate net cost savings of $1.670 million. Building owners will incur savings of $2.889 million and window washers and exterior building maintenance contractors will incur additional costs of $1.219 million. Of this $1.219 million additional cost, $462,000 will be spent to comply with Subpart F requirements and $757,000 will be spent to comply with the personal fall protection system requirements in the mandatory Appendix C.

Regulatory Flexibility and International Trade

In accordance with the Regulatory Flexibility Act of 1980 (Pub. L. 96-353, 94 Stat. 1164 (5 U.S.C. 601 et seq.)), the Assistant Secretary assessed the potential economic impact of the revised standard on small entities and concluded that it will have no significant impact on small entities. OSHA similarly concluded that the revised standard will have no impact on international trade.

Environmental Impact Assessment

The Final Rule and its alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.), the regulations of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and the Department of Labor's (DOL's) NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the Final Rule will have no significant environmental impact. The procedures and applications of the proposed provisions do not impact on air, water or soil quality, plant or animal life, the use of land, or other aspects of the environment and therefore will have no significant effect on the environment.

TABLE A—COST OF COMPLIANCE WITH THE REVISED SUBPART F BY INDUSTRY SECTOR AND PROVISION

[In millions of 1987 dollars]

Industry (provision)	Annual cost of compliance
Building Owners	
Alternative Stabilization Systems	(3.111)
Maintenance	0.216
Tags and Labels	0.006
Subtotal Savings	(2.889)
Contractors	
Subpart F	
Platform Safety Training	0.422
Emergency Action Plan	0.004
Anemometer	0.036
Subtotal Subpart F Costs	0.462
Appendix C	
New Fall Protection Systems	0.013
Improve Fall Protection Systems	0.400
Fall Protection System Training	0.344
Subtotal Appendix C Costs	0.757
Contractor Subtotal Costs	1.219
Total Net Savings	(1.670)

Note: Numbers in parenthesis are cost savings.
Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, 1988.

VI. OMB Approval Under the Paperwork Reduction Act

This section contains a collection of information in paragraphs 1910.66(e)(9), 1910.66(f)(5)(i)(C), 1910.66(f)(5)(ii)(N), 1910.66(f)(7)(vi), 1910.66(f)(7)(vii), 1910.66(f)(7)(viii) and 1910.66(i)(1)(iv) which pertain to the development and implementation of a written emergency action plan, platform load rating, emergency operating device, use, wire rope information and work procedures for training. The Office of Management and Budget (OMB) has reviewed this collection and approved it through May, 1991. The approval number is 1218-0121.

Public reporting burden for this collection of information is estimated to average 8.73 hours (or minutes) per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of

information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N1301, 200 Constitution Avenue, NW., Washington, DC 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1218–0121), Washington, DC 20503.

VII. Federalism

This standard has been reviewed in accordance with Executive Order 12612 52 FR 41685 (October 30, 1987) regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act), expresses Congress' clear intent to preempt State laws relating to issues with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act a State can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards.

The Federal standard for powered platforms is drafted so that employees using this equipment in every State would be protected by general, performance-oriented standards. To the extent that there are State or regional peculiarities caused by the climate, building codes, employee diversity or other factors, States with occupational safety and health plans approved under Section 18 of the OSH Act would be able to develop their own State standards to deal with any special problems. Moreover, the performance nature of this standard, of and by itself, allows for flexibility by States and platform operators to provide as much safety as possible using varying methods consonant with conditions in each State.

In short, there is a clear national problem related to occupational safety and health in the powered platform industry. While the individual States, if all acted, might be able collectively to deal with the safety problems involved, most have not elected to do so in the seventeen years since the enactment of the OSH Act. Those States which have elected to participate under Section 18 of the OSH Act would not be preempted by this regulation and would be able to deal with special, local conditions within the framework provided by this performance-oriented standard while ensuring that their standards are at least as effective as the Federal standard.

VIII. State Plan Applicability

The 25 states with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of this publication date. These states are: Alaska, Arizona, California, Connecticut (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for state and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington and Wyoming. Until such time as a state standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these states.

List of Subjects in 29 CFR Part 1910

Building maintenance; Inspections; Occupational Safety and Health; Personal fall protection systems; Powered platforms; Safety; Stabilization; Suspended equipment; Training.

Authority

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4(b), 6(b), 8(c), 8(d) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, 29 CFR Part 1910 is amended as set forth below.

Signed at Washington, DC this 14th day of July 1989.

Alan C. McMillan,

Acting Assistant Secretary of Labor.

Part 1910 of Title 29 of the Code of Federal Regulations is amended as follows:

PART 1910—[AMENDED]

1. The authority citation for Subpart F continues to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable.

Sections 1910.66, .67, .68 and .70 also issued under 29 CFR Part 1911.

2. By revising § 1910.66 of 29 CFR Part 1910 to read as follows:

§ 1910.66 Powered platforms for building maintenance.

(a) *Scope.* This section covers powered platform installations permanently dedicated to interior or exterior building maintenance of a specific structure or group of structures. This section does not apply to suspended scaffolds (swinging scaffolds) used to service buildings on a temporary basis and covered under Subpart D of this Part, nor to suspended scaffolds used for construction work and covered under Subpart L of 29 CFR Part 1926. Building maintenance includes, but is not limited to, such tasks as window cleaning, caulking, metal polishing and reglazing.

(b) *Application*—(1) *New installations.* This section applies to all permanent installations completed after July 23, 1990. Major modifications to existing installations completed after that date are also considered new installations under this section.

(2) *Existing installations.* (i) Permanent installations in existence and/or completed before July 23, 1990 shall comply with paragraphs (g), (h), (i), (j) and Appendix C of this section.

(ii) In addition, permanent installations completed after August 27, 1971, and in existence and/or completed before July 23, 1990, shall comply with Appendix D of this section.

(c) *Assurance.* (1) Building owners of new installations shall inform the employer before each use in writing that the installation meets the requirements of paragraphs (e)(1) and (f)(1) of this section and the additional design criteria contained in other provisions of paragraphs (e) and (f) of this section relating to: required load sustaining capabilities of platforms, building components, hoisting and supporting equipment; stability factors for carriages, platforms and supporting equipment; maximum horizontal force for movement of carriages and davits; design of carriages, hoisting machines, wire rope and stabilization systems; and design criteria for electrical wiring and equipment.

(2) Building owners shall base the information required in paragraph (c)(1) of this section on the results of a field test of the installation before being placed into service and following any major alteration to an existing installation, as required in paragraph (g)(1) of this section. The assurance shall also be based on all other relevant available information, including, but not limited to, test data, equipment specifications and verification by a registered professional engineer.

(3) Building owners of all installations, new and existing, shall inform the employer in writing that the installation has been inspected, tested and maintained in compliance with the requirements of paragraphs (g) and (h) of this section and that all protection anchorages meet the requirements of paragraph (I)(c)(10) of Appendix C.

(4) The employer shall not permit employees to use the installation prior to receiving assurance from the building owner that the installation meets the requirements contained in paragraphs (c)(1) and (c)(3) of this section.

(d) *Definitions.*

"Anemometer" means an instrument for measuring wind velocity.

"Angulated roping" means a suspension method where the upper point of suspension is inboard from the attachments on the suspended unit, thus causing the suspended unit to bear against the face of the building.

"Building face roller" means a rotating cylindrical member designed to ride on the face of the building wall to prevent the platform from abrading the face of the building and to assist in stabilizing the platform.

"Building maintenance" means operations such as window cleaning, caulking, metal polishing, reglazing, and general maintenance on building surfaces.

"Cable" means a conductor, or group of conductors, enclosed in a weatherproof sheath, that may be used to supply electrical power and/or control current for equipment or to provide voice communication circuits.

"Carriage" means a wheeled vehicle used for the horizontal movement and support of other equipment.

"Certification" means a written, signed and dated statement confirming the performance of a requirement of this section.

"Combination cable" means a cable having both steel structural members capable of supporting the platform, and copper or other electrical conductors insulated from each other and the structural members by nonconductive barriers.

"Competent person" means a person who, because of training and experience, is capable of identifying hazardous or dangerous conditions in powered platform installations and of training employees to identify such conditions.

"Continuous pressure" means the need for constant manual actuation for a control to function.

"Control" means a mechanism used to regulate or guide the operation of the equipment.

"Davit" means a device, used singly or in pairs, for suspending a powered platform from work, storage and rigging locations on the building being serviced. Unlike outriggers, a davit reacts its operating load into a single roof socket or carriage attachment.

"Equivalent" means alternative designs, materials or methods which the employer can demonstrate will provide an equal or greater degree of safety for employees than the methods, materials or designs specified in the standard.

"Ground rigging" means a method of suspending a working platform starting from a safe surface to a point of suspension above the safe surface.

"Ground rigged davit" means a davit which cannot be used to raise a suspended working platform above the building face being serviced.

"Guide button" means a building face anchor designed to engage a guide track mounted on a platform.

"Guide roller" means a rotating cylindrical member, operating separately or as part of a guide assembly, designed to provide continuous engagement between the platform and the building guides or guideways.

"Guide shoe" means a device attached to the platform designed to provide a sliding contact between the platform and the building guides.

"Hoisting machine" means a device intended to raise and lower a suspended or supported unit.

"Hoist rated load" means the hoist manufacturer's maximum allowable operating load.

"Installation" means all the equipment and all affected parts of a building which are associated with the performance of building maintenance using powered platforms.

"Interlock" means a device designed to ensure that operations or motions occur in proper sequence.

"Intermittent stabilization" means a method of platform stabilization in which the angulated suspension wire rope(s) are secured to regularly spaced building anchors.

"Lanyard" means a flexible line of rope, wire rope or strap which is used to secure the body belt or body harness to a deceleration device, lifeline or anchorage.

"Lifeline" means a component consisting of a flexible line for connection to an anchorage at one end to hang vertically (vertical lifeline), or for connection to anchorages at both ends to stretch horizontally (horizontal lifeline), and which serves as a means for connecting other components of a personal fall arrest system to the anchorage.

"Live load" means the total static weight of workers, tools, parts, and supplies that the equipment is designed to support.

"Obstruction detector" means a control that will stop the suspended or supported unit in the direction of travel if an obstruction is encountered, and will allow the unit to move only in a direction away from the obstruction.

"Operating control" means a mechanism regulating or guiding the operation of equipment that ensures a specific operating mode.

"Operating device" means a device actuated manually to activate a control.

"Outrigger" means a device, used singly or in pairs, for suspending a working platform from work, storage, and rigging locations on the building being serviced. Unlike davits, an outrigger reacts its operating moment load as at least two opposing vertical components acting into two or more distinct roof points and/or attachments.

"Platform rated load" means the combined weight of workers, tools, equipment and other material which is permitted to be carried by the working platform at the installation, as stated on the load rating plate.

"Poured socket" means the method of providing wire rope terminations in which the ends of the rope are held in a tapered socket by means of poured spelter or resins.

"Primary brake" means a brake designed to be applied automatically whenever power to the prime mover is interrupted or discontinued.

"Prime mover" means the source of mechanical power for a machine.

"Rated load" means the manufacturer's recommended maximum load.

"Rated strength" means the strength of wire rope, as designated by its manufacturer or vendor, based on standard testing procedures or acceptable engineering design practices.

"Rated working load" means the combined static weight of men, materials, and suspended or supported equipment.

"Registered professional engineer" means a person who has been duly and currently registered and licensed by an authority within the United States or its territories to practice the profession of engineering.

"Roof powered platform" means a working platform where the hoist(s) used to raise or lower the platform is located on the roof.

"Roof rigged davit" means a davit used to raise the suspended working platform above the building face being serviced. This type of davit can also be used to raise a suspended working platform which has been ground-rigged.

"Rope" means the equipment used to suspend a component of an equipment installation, i.e., wire rope.

"Safe surface" means a horizontal surface intended to be occupied by personnel, which is so protected by a fall protection system that it can be reasonably assured that said occupants will be protected against falls.

"Secondary brake" means a brake designed to arrest the descent of the suspended or supported equipment in the event of an overspeed condition.

"Self powered platform" means a working platform where the hoist(s) used to raise or lower the platform is mounted on the platform.

"Speed reducer" means a positive type speed reducing machine.

"Stability factor" means the ratio of the stabilizing moment to the overturning moment.

"Stabilizer tie" means a flexible line connecting the building anchor and the suspension wire rope supporting the platform.

"Supported equipment" means building maintenance equipment that is held or moved to its working position by means of attachment directly to the building or extensions of the building being maintained.

"Suspended equipment" means building maintenance equipment that is suspended and raised or lowered to its working position by means of ropes or combination cables attached to some anchorage above the equipment.

"Suspended scaffold (swinging scaffold)" means a scaffold supported on wire or other ropes, used for work on, or for providing access to, vertical sides of structures on a temporary basis. Such scaffold is not designed for use on a specific structure or group of structures.

"Tail line" means the nonsupporting end of the wire rope used to suspend the platform.

"Tie-in guides" means the portion of a building that provides continuous positive engagement between the building and a suspended or supported unit during its vertical travel on the face of the building.

"Traction hoist" means a type of hoisting machine that does not accumulate the suspension wire rope on the hoisting drum or sheave, and is designed to raise and lower a suspended load by the application of friction forces between the suspension wire rope and the drum or sheave.

"Transportable outriggers" means outriggers designed to be moved from one work location to another.

"Trolley carriage" means a carriage suspended from an overhead track structure.

"Verified" means accepted by design, evaluation, or inspection by a registered professional engineer.

"Weatherproof" means so constructed that exposure to adverse weather conditions will not affect or interfere with the proper use or functions of the equipment or component.

"Winding drum hoist" means a type of hoisting machine that accumulates the suspension wire rope on the hoisting drum.

"Working platform" means suspended or supported equipment intended to provide access to the face of a building and manned by persons engaged in building maintenance.

"Wrap" means one complete turn of the suspension wire rope around the surface of a hoist drum.

(e) *Powered platform installations—Affected parts of buildings.* (1) *General requirements.* The following requirements apply to affected parts of buildings which utilize working platforms for building maintenance.

(i) Structural supports, tie-downs, tie-in guides, anchoring devices and any affected parts of the building included in the installation shall be designed by or under the direction of a registered professional engineer experienced in such design;

(ii) Exterior installations shall be capable of withstanding prevailing climatic conditions;

(iii) The building installation shall provide safe access to, and egress from, the equipment and sufficient space to conduct necessary maintenance of the equipment;

(iv) The affected parts of the building shall have the capability of sustaining all the loads imposed by the equipment; and,

(v) The affected parts of the building shall be designed so as to allow the equipment to be used without exposing employees to a hazardous condition.

(2) *Tie-in guides.* (i) The exterior of each building shall be provided with tie-in guides unless the conditions in paragraph (e)(2)(ii) or (e)(2)(iii) of this section are met.

Note: See Figure 1 in Appendix B of this section for a description of a typical continuous stabilization system utilizing tie-in guides.

(ii) If angulated roping is employed, tie-in guides required in paragraph (e)(2)(i) of this section may be eliminated for not more than 75 feet (22.9 m) of the uppermost elevation of the building, if infeasible due to exterior building design, provided an angulation force of at least 10 pounds (44.4 n) is maintained under all conditions of loading.

(iii) Tie-in guides required in paragraph (e)(2)(i) of this section may be eliminated if one of the guide systems in paragraph (e)(2)(iii)(A), (e)(2)(iii)(B) or (e)(2)(iii)(C) of this section is provided, or an equivalent.

(A) Intermittent stabilization system. The system shall keep the equipment in continuous contact with the building facade, and shall prevent sudden horizontal movement of the platform. The system may be used together with continuous positive building guide systems using tie-in guides on the same building, provided the requirements for each system are met.

(*1*) The maximum vertical interval between building anchors shall be three floors or 50 feet (15.3 m), whichever is less.

(*2*) Building anchors shall be located vertically so that attachment of the stabilizer ties will not cause the platform suspension ropes to angulate the platform horizontally across the face of the building. The anchors shall be positioned horizontally on the building face so as to be symmetrical about the platform suspension ropes.

(*3*) Building anchors shall be easily visible to employees and shall allow a stabilizer tie attachment for each of the platform suspension ropes at each vertical interval. If more than two suspension ropes are used on a platform, only the two building-side suspension ropes at the platform ends shall require a stabilizer attachment.

(*4*) Building anchors which extend beyond the face of the building shall be free of sharp edges or points. Where cables, suspension wire ropes and lifelines may be in contact with the building face, external building anchors shall not interfere with their handling or operation.

(*5*) The intermittent stabilization system building anchors and components shall be capable of sustaining without failure at least four times the maximum anticipated load applied or transmitted to the components and anchors. The minimum design wind load for each anchor shall be 300 (1334 n) pounds, if two anchors share the wind load.

(*6*) The building anchors and stabilizer ties shall be capable of sustaining anticipated horizontal and vertical loads from winds specified for roof storage design which may act on the platform and wire ropes if the platform is stranded on a building face. If the building anchors have different spacing than the suspension wire rope or if the building requires different suspension spacings on one platform, one building anchor and stabilizer tie shall be capable of sustaining the wind loads.

Note: See Figure 2 in Appendix B of this section for a description of a typical intermittent stabilization system.

(B) Button guide stabilization system.

(*1*) Guide buttons shall be coordinated with platform mounted equipment of paragraph (f)(5)(vi) of this section.

(*2*) Guide buttons shall be located horizontally on the building face so as to allow engagement of each of the guide tracks mounted on the platform.

(*3*) Guide buttons shall be located in vertical rows on the building face for proper engagement of the guide tracks mounted on the platform.

(*4*) Two guide buttons shall engage each guide track at all times except for the initial engagement.

(*5*) Guide buttons which extend beyond the face of the building shall be free of sharp edges or points. Where cables, ropes and lifelines may be in contact with the building face, guide buttons shall not interfere with their handling or operation.

(*6*) Guide buttons, connections and seals shall be capable of sustaining without damage at least the weight of the platform, or provision shall be made in the guide tracks or guide track connectors to prevent the platform and its attachments from transmitting the weight of the platform to the guide buttons, connections and seals. In either case, the minimum design load shall be 300 pounds (1334 n) per building anchor.

Note: See paragraph (f)(5)(vi) of this section for relevant equipment provisions.

Note: See Figure 3 in Appendix B of this section for a a description of a typical button guide stabilization system.

(C) System utilizing angulated roping and building face rollers. The system shall keep the equipment in continuous contact with the building facade, and shall prevent sudden horizontal movement of the platform. This system is acceptable only where the suspended portion of the equipment in use does not exceed 130 feet (39.6 m) above a safe surface or ground level, and where the platform maintains no less than 10 pounds (44.4 n) angulation force on the building facade.

(iv) Tie-in guides for building interiors (atriums) may be eliminated when a registered professional engineer determines that an alternative stabilization system, including systems in paragraphs (e)(2)(iii) (A), (B) and (C), or a platform tie-off at each work station will provide equivalent safety.

(3) *Roof guarding.* (i) Employees working on roofs while performing building maintenance shall be protected by a perimeter guarding system which meets the requirements of paragraph (c)(1) of § 1910.23 of this Part.

(ii) The perimeter guard shall not be more than six inches (152 mm) inboard of the inside face of a barrier, i.e. the parapet wall, or roof edge curb of the building being serviced; however, the perimeter guard location shall not exceed an 18 inch (457 mm) setback from the exterior building face.

(4) *Equipment stops.* Operational areas for trackless type equipment shall be provided with structural stops, such as curbs, to prevent equipment from traveling outside its intended travel areas and to prevent a crushing or shearing hazard.

(5) *Maintenance access.* Means shall be provided to traverse all carriages and their suspended equipment to a safe area for maintenance and storage.

(6) *Elevated track.* (i) An elevated track system which is located four feet (1.2 m) or more above a safe surface, and traversed by carriage supported equipment, shall be provided with a walkway and guardrail system; or

(ii) The working platform shall be capable of being lowered, as part of its normal operation, to the lower safe surface for access and egress of the personnel and shall be provided with a safe means of access and egress to the lower safe surface.

(7) *Tie-down anchors.* Imbedded tie-down anchors, fasteners, and affected structures shall be resistant to corrosion.

(8) *Cable stabilization.* (i) Hanging lifelines and all cables not in tension shall be stabilized at each 200 foot (61 m) interval of vertical travel of the working platform beyond an initial 200 foot (61 m) distance.

(ii) Hanging cables, other than suspended wire ropes, which are in constant tension shall be stabilized when the vertical travel exceeds an initial 600 foot (183 m) distance, and at further intervals of 600 feet (183 m) or less.

(9) *Emergency planning.* A written emergency action plan shall be developed and implemented for each kind of working platform operation. This plan shall explain the emergency procedures which are to be followed in the event of a power failure, equipment failure or other emergencies which may be encountered. The plan shall also explain that employees inform themselves about the building emergency escape routes, procedures and alarm systems before operating a platform. Upon initial assignment and whenever the plan is changed the employer shall review with each employee those parts of the plan which the employee must know to protect himself or herself in the event of an emergency.

(10) *Building maintenance.* Repairs or major maintenance of those building portions that provide primary support for the suspended equipment shall not affect the capability of the building to meet the requirements of this standard.

(11) *Electrical requirements.* The following electrical requirements apply to buildings which utilize working platforms for building maintenance.

(i) General building electrical installations shall comply with §§ 1910.302 through 1910.308 of this Part, unless otherwise specified in this section;

(ii) Building electrical wiring shall be of such capacity that when full load is applied to the equipment power circuit not more than a five percent drop from building service-vault voltage shall occur at any power circuit outlet used by equipment regulated by this section;

(iii) The equipment power circuit shall be an independent electrical circuit that shall remain separate from all other equipment within or on the building, other than power circuits used for hand tools that will be used in conjunction with the equipment. If the building is provided with an emergency power system, the equipment power circuit may also be connected to this system;

(iv) The power circuit shall be provided with a disconnect switch that can be locked in the "OFF" and "ON" positions. The switch shall be conveniently located with respect to the primary operating area of the equipment to allow the operators of the equipment access to the switch;

(v) The disconnect switch for the power circuit shall be locked in the "ON" position when the equipment is in use; and

(vi) An effective two-way voice communication system shall be provided between the equipment operators and persons stationed within the building being serviced. The communications facility shall be operable and shall be manned at all times by persons stationed within the building whenever the platform is being used.

(f) *Powered platform installations—Equipment*—(1) *General requirements.* The following requirements apply to equipment which are part of a powered

platform installation, such as platforms, stabilizing components, carriages, outriggers, davits, hoisting machines, wire ropes and electrical components.

(i) Equipment installations shall be designed by or under the direction of a registered professional engineer experienced in such design;

(ii) The design shall provide for a minimum live load of 250 pounds (113.6 kg) for each occupant of a suspended or supported platform;

(iii) Equipment that is exposed to wind when not in service shall be designed to withstand forces generated by winds of at least 100 miles per hour (44.7 m/s) at 30 feet (9.2 m) above grade; and

(iv) Equipment that is exposed to wind when in service shall be designed to withstand forces generated by winds of at least 50 miles per hour (22.4 m/s) for all elevations.

(2) *Construction requirements.* Bolted connections shall be self-locking or shall otherwise be secured to prevent loss of the connections by vibration.

(3) *Suspension methods.* Elevated building maintenance equipment shall be suspended by a carriage, outriggers, davits or an equivalent method.

(i) *Carriages.* Carriages used for suspension of elevated building maintenance equipment shall comply with the following:

(A) The horizontal movement of a carriage shall be controlled so as to ensure its safe movement and allow accurate positioning of the platform for vertical travel or storage;

(B) Powered carriages shall not exceed a traversing speed of 50 feet per minute (0.3 m/s);

(C) The initiation of a traversing movement for a manually propelled carriage on a smooth level surface shall not require a person to exert a horizontal force greater than 40 pounds (444.8 n);

(D) Structural stops and curbs shall be provided to prevent the traversing of the carriage beyond its designed limits of travel;

(E) Traversing controls for a powered carriage shall be of a continuous pressure weatherproof type. Multiple controls when provided shall be arranged to permit operation from only one control station at a time. An emergency stop device shall be provided on each end of a powered carriage for interrupting power to the carriage drive motors;

(F) The operating controls(s) shall be so connected that in the case of suspended equipment, traversing of a carriage is not possible until the suspended portion of the equipment is located at its uppermost designed position for traversing; and is free of contact with the face of the building or building guides. In addition, all protective devices and interlocks are to be in the proper position to allow traversing of the carriage;

(G) Stability for underfoot supported carriages shall be obtained by gravity, by an attachment to a structural support, or by a combination of gravity and a structural support. The use of flowing counterweights to achieve stability is prohibited.

(*1*) The stability factor against overturning shall not be less than two for horizontal traversing of the carriage, including the effects of impact and wind.

(*2*) The carriages and their anchorages shall be capable of resisting accidental over-tensioning of the wire ropes suspending the working platform, and this calculated value shall include the effect of one and one-half times the stall capacity of the hoist motor. All parts of the installation shall be capable of withstanding without damage to any part of the installation the forces resulting from the stall load of the hoist and one half the wind load.

(*3*) Roof carriages which rely on having tie-down devices secured to the building to develop the required stability against overturning shall be provided with an interlock which will prevent vertical platform movement unless the tie-down is engaged;

(H) An automatically applied braking or locking system, or equivalent, shall be provided that will prevent unintentional traversing of power traversed or power assisted carriages;

(I) A manual or automatic braking or locking system or equivalent, shall be provided that will prevent unintentional traversing of manually propelled carriages;

(J) A means to lock out the power supply for the carriage shall be provided;

(K) Safe access to and egress from the carriage shall be provided from a safe surface. If the carriage traverses an elevated area, any operating area on the carriage shall be protected by a guardrail system in compliance with the provisions of paragraph (f)(5)(i)(F) of this section. Any access gate shall be self-closing and self-latching, or provided with an interlock;

(L) Each carriage work station position shall be identified by location markings and/or position indicators; and

(M) The motors shall stall if the load on the hoist motors is at any time in excess of three times that necessary for lifting the working platform with its rated load.

(ii) *Transportable outriggers.* (A) Transportable outriggers may be used as a method of suspension for ground rigged working platforms where the point of suspension does not exceed 300 feet (91.5 m) above a safe surface. Tie-in guide system(s) shall be provided which meet the requirements of paragraph (e)(2) of this section.

(B) Transportable outriggers shall be used only with self-powered, ground rigged working platforms.

(C) Each transportable outrigger shall be secured with a tie-down to a verified anchorage on the building during the entire period of its use. The anchorage shall be designed to have a stability factor of not less than four against overturning or upsetting of the outrigger.

(D) Access to and egress from the working platform shall be from and to a safe surface below the point of suspension.

(E) Each transportable outrigger shall be designed for lateral stability to prevent roll-over in the event an accidental lateral load is applied to the outrigger. The accidental lateral load to be considered in this design shall be not less than 70 percent of the rated load of the hoist.

(F) Each transportable outrigger shall be designed to support an ultimate load of not less than four times the rated load of the hoist.

(G) Each transportable outrigger shall be so located that the suspension wire ropes for two point suspended working platforms are hung parallel.

(H) A transportable outrigger shall be tied-back to a verified anchorage on the building with a rope equivalent in strength to the suspension rope.

(I) The tie-back rope shall be installed parallel to the centerline of the outrigger.

(iii) Davits. (A) Every davit installation, fixed or transportable, rotatable or non-rotatable shall be designed and installed to insure that it has a stability factor against overturning of not less than four.

(B) The following requirements apply to roof rigged davit systems:

(*1*) Access to and egress from the working platform shall be from a safe surface. Access or egress shall not require persons to climb over a building's parapet or guard railing; and

(*2*) The working platform shall be provided with wheels, casters or a carriage for traversing horizontally.

(C) The following requirements apply to ground rigged davit systems:

(*1*) The point of suspension shall not exceed 300 feet (91.5 m) above a safe surface. Guide system(s) shall be provided which meet the requirements of paragraph (e)(2) of this section;

(*2*) Access and egress to and from the working platform shall only be from a safe surface below the point of suspension.

(D) A rotating davit shall not require a horizontal force in excess of 40 pounds (177.9 n) per person to initiate a rotating movement.

(E) The following requirements shall apply to transportable davits:

(*1*) A davit or part of a davit weighing more than 80 pounds (36 kg) shall be provided with a means for its transport, which shall keep the center of gravity of the davit at or below 36 inches (914 mm) above the safe surface during transport;

(*2*) A davit shall be provided with a pivoting socket or with a base that will allow the insertion or removal of a davit at a position of not more than 35 degrees above the horizontal, with the complete davit inboard of the building face being serviced; and

(*3*) Means shall be provided to lock the davit to its socket or base before it is used to suspend the platform.

(4) *Hoisting machines.* (i) Raising and lowering of suspended or supported equipment shall be performed only by a hoisting machine.

(ii) Each hoisting machine shall be capable of arresting any overspeed descent of the load.

(iii) Each hoisting machine shall be powered only by air, electric or hydraulic sources.

(iv) Flammable liquids shall not be carried on the working platform.

(v) Each hoisting machine shall be capable of raising or lowering 125 percent of the rated load of the hoist.

(vi) Moving parts of a hoisting machine shall be enclosed or guarded in compliance with paragraphs (a)(1) and (2) of § 1910.212 of this part.

(vii) Winding drums, traction drums and sheaves and directional sheaves used in conjunction with hoisting machines shall be compatible with, and sized for, the wire rope used.

(viii) Each winding drum shall be provided with a positive means of attaching the wire rope to the drum. The attachment shall be capable of developing at least four times the rated load of the hoist.

(ix) Each hoisting machine shall be provided with a primary brake and at least one independent secondary brake, each capable of stopping and holding not less than 125 percent of the lifting capacity of the hoist.

(A) The primary brake shall be directly connected to the drive train of the hoisting machine, and shall not be connected through belts, chains, clutches, or set screw type devices. The brake shall automatically set when power to the prime mover is interrupted.

(B)(*1*) The secondary brake shall be an automatic emergency type of brake that, if actuated during each stopping cycle, shall not engage before the hoist is stopped by the primary brake.

(*2*) When a secondary brake is actuated, it shall stop and hold the platform within a vertical distance of 24 inches (609.6 mm).

(x) Any component of a hoisting machine which requires lubrication for its protection and proper functioning shall be provided with a means for that lubrication to be applied.

(5) *Suspended equipment*—(i) *General requirements.* (A) Each suspended unit component, except suspension ropes and guardrail systems, shall be capable of supporting, without failure, at least four times the maximum intended live load applied or transmitted to that component.

(B) Each suspended unit component shall be constructed of materials that will withstand anticipated weather conditions.

(C) Each suspended unit shall be provided with a load rating plate, conspicuously located, stating the unit weight and rated load of the suspended unit.

(D) When the suspension points on a suspended unit are not at the unit ends, the unit shall be capable of remaining continuously stable under all conditions of use and position of the live load, and shall maintain at least a 1.5 to 1 stability factor against unit upset.

(E) Guide rollers, guide shoes or building face rollers shall be provided, and shall compensate for variations in building dimensions and for minor horizontal out-of-level variations of each suspended unit.

(F) Each working platform of a suspended unit shall be secured to the building facade by one or more of the following methods, or by an equivalent method:

(*1*) Continuous engagement to building anchors as provided in paragraph (e)(2)(i) of this section;

(*2*) Intermittent engagement to building anchors as provided in paragraph (e)(2)(iii)(A) of this section;

(*3*) Button guide engagement as provided in paragraph (e)(2)(iii)(B) of this section; or

(*4*) Angulated roping and building face rollers as provided in paragraph (e)(2)(iii)(C) of this section.

(G) Each working platform of a suspended unit shall be provided with a guardrail system on all sides which shall meet the following requirements:

(*1*) The system shall consist of a top guardrail, midrail, and a toeboard;

(*2*) The top guardrail shall not be less than 36 inches (914 mm) high and shall be able to withstand at least a 100-pound (444 n) force in any downward or outward direction;

(*3*) The midrail shall be able to withstand at least a 75-pound (333 n) force in any downward or outward direction; and

(*4*) The areas between the guardrail and toeboard on the ends and outboard side, and the area between the midrail and toeboard on the inboard side, shall be closed with a material that is capable of withstanding a load of 100 pounds (45.4 KG.) applied horizontally over any area of one square foot (.09 m^2). The material shall have all openings small enough to reject passage of life lines and potential falling objects which may be hazardous to persons below.

(*5*) Toeboards shall be capable of withstanding, without failure, a force of at least 50 pounds (222 n) applied in any downward or horizontal direction at any point along the toeboard.

(*6*) Toeboards shall be three and one-half inches (9 cm) minimum in length from their top edge to the level of the platform floor.

(*7*) Toeboards shall be securely fastened in place at the outermost edge of the platform and have no more than one-half inch (1.3 cm) clearance above the platform floor.

(*8*) Toeboards shall be solid or with an opening not over one inch (2.5 cm) in the greatest dimension.

(ii) *Two and four-point suspended working platforms.* (A) The working platform shall be not less than 24 inches (610 mm) wide and shall be provided with a minimum of a 12 inch (305 mm) wide passage at or past any obstruction on the platform.

(B) The flooring shall be of a slip-resistant type and shall contain no opening that would allow the passage of life lines, cables and other potential falling objects. If a larger opening is provided, it shall be protected by placing a material under the opening which shall prevent the passage of life lines, cables and potential falling objects.

(C) The working platfrom shall be provided with a means of suspension that will restrict the platform's inboard to outboard roll about its longitudinal axis to a maximum of 15 degrees from a horizontal plane when moving the live load from the inboard to the outboard side of the platform.

(D) Any cable suspended from above the platform shall be provided with a means for storage to prevent accumulation of the cable on the floor of the platform.

(E) All operating controls for the vertical travel of the platform shall be of

the continuous-pressure type, and shall be located on the platform.

(F) Each operating station of every working platform shall be provided with a means of interrupting the power supply to all hoist motors to stop any further powered ascent or descent of the platform.

(G) The maximum rated speed of the platform shall not exceed 50 feet per minute (0.3 ms) with single speed hoists, nor 75 feet per minute (0.4 ms) with multi-speed hoists.

(H) Provisions shall be made for securing all tools, water tanks, and other accessories to prevent their movement or accumulation on the floor of the platform.

(I) Portable fire extinguishers conforming to the provisions of § 1910.155 and § 1910.157 of this part shall be provided and securely attached on all working platforms.

(J) Access to and egress from a working platfrom, except for those that land directly on a safe surface, shall be provided by stairs, ladders, platforms and runways conforming to the provisions of Subpart D of this part. Access gates shall be self-closing and self-latching.

(K) Means of access to or egress from a working platform which is 48 inches (1.2 m) or more above a safe surface shall be provided with a guardrail system or ladder handrails that conform to the provisions of Subpart D of this part.

(L) The platform shall be provided with a secondary wire rope suspension system if the platform contains overhead structures which restrict the emergency egress of employees. A horizontal lifeline or a direct connection anchorage shall be provided, as part of a fall arrest system which meets the requirements of Appendix C, for each employee on such a platform.

(M) A vertical lifeline shall be provided as part of a fall arrest system which meets the requirements of Appendix C, for each employee on a working platform suspended by two or more wire ropes, if the failure of one wire rope or suspension attachment will cause the platform to upset. If a secondary wire rope suspension is used, vertical lifelines are not required for the fall arrest system, provided that each employee is attached to a horizontal lifeline anchored to the platform.

(N) An emergency electric operating device shall be provided on roof powered platforms near the hoisting machine for use in the event of failure of the normal operating device located on the working platform, or failure of the cable connected to the platform. The emergency electric operating device shall be mounted in a secured compartment, and the compartment shall be labeled with instructions for use. A means for opening the compartment shall be mounted in a break-glass receptable located near the emergency electric operating device or in an equivalent secure and accessible location.

(iii) *Single point suspended working platforms.* (A) The requirements of paragraphs (f)(5)(ii)(A) through (K) of this section shall also apply to a single point working platform.

(B) Each single point suspended working platform shall be provided with a secondary wire rope suspension system, which will prevent the working platform from falling should there be a failure of the primary means of support, or if the platform contains overhead structures which restrict the egress of the employees. A horizontal life line or a direct connection anchorage shall be provided, as part of a fall arrest system which meets the requirements of Appendix C, for each employee on the platform.

(iv) *Ground-rigged working platforms.* (A) Groundrigged working platforms shall comply with all the requirements of paragraphs (f)(5)(ii) (A) through (M) of this section.

(B) After each day's use, the power supply within the building shall be disconnected from a ground-rigged working platform, and the platform shall be either disengaged from its suspension points or secured and stored at grade.

(v) *Intermittently stabilized platforms.* (A) The platform shall comply with paragraphs (F)(5)(ii)(A) through (M) of this section.

(B) Each stabilizer tie shall be equipped with a "quick connect-quick disconnect" device which cannot be accidently disengaged, for attachment to the building anchor, and shall be resistant to adverse environmental conditions.

(C) The platform shall be provided with a stopping device that will interrupt the hoist power supply in the event the platform contacts a stabilizer tie during its ascent.

(D) Building face rollers shall not be placed at the anchor setting if exterior anchors are used on the building face.

(E) Stabilizer ties used on intermittently stabilized platforms shall allow for the specific attachment length needed to effect the predetermined angulation of the suspended wire rope. The specific attachment length shall be maintained at all building anchor locations.

(F) The platform shall be in continuous contact with the face of the building during ascent and descent.

(G) The attachment and removal of stabilizer ties shall not require the horizontal movement of the platform.

(H) The platform-mounted equipment and its suspension wire ropes shall not be physically damaged by the loads from the stabilizer tie or its building anchor. The platform, platform mounted equipment and wire ropes shall be able to withstand a load that is at least twice the ultimate strength of the stabilizer tie.

Note: See Figure II in Appendix B of this section for a description of a typical intermittent stabilization system.

(vi) *Button-guide stabilized platforms.* (A) The platform shall comply with paragraphs (f)(5)(ii)(A) through (M) of this section.

(B) Each guide track on the platform shall engage a minimum of two guide buttons during any vertical travel of the platform following the initial button engagement.

(C) Each guide track on a platform that is part of a roof rigged system shall be provided with a storage position on the platform.

(D) Each guide track on the platform shall be sufficiently maneuverable by platform occupants to permit easy engagement of the guide buttons, and easy movement into and out of its storage position on the platform.

(E) Two guide tracks shall be mounted on the platform and shall provide continuous contact with the building face.

(F) The load carrying components of the button guide stabilization system which transmit the load into the platform shall be capable of supporting the weight of the platform, or provision shall be made in the guide track connectors or platform attachments to prevent the weight of the platform from being transmitted to the platform attachments.

Note: See Figure III in Appendix B of this section for a description of a typical button guide stabilization system.

(6) *Supported equipment.* (i) Supported equipment shall maintain a vertical position in respect to the face of the building by means other than friction.

(ii) Cog wheels or equivalent means shall be incorporated to provide climbing traction between the supported equipment and the building guides. Additional guide wheels or shoes shall be incorporated as may be necessary to ensure that the drive wheels are continuously held in positive engagement with the building guides.

(iii) Launch guide mullions indexed to the building guides and retained in alignment with the building guides shall be used to align drive wheels entering the building guides.

(iv) Manned platforms used on supported equipment shall comply with the requirements of paragraphs (f)(5)(ii)(A), (f)(5)(ii)(B), and (f)(5)(ii)(D) through (K) of this section covering suspended equipment.

(7) *Suspension wire ropes and rope connections.* (i) Each specific installation shall use suspension wire ropes or combination cable and connections meeting the specification recommended by the manufacturer of the hoisting machine used. Connections shall be capable of developing at least 80 percent of the rated breaking strength of the wire rope.

(ii) Each suspension rope shall have a "Design Factor" of at least 10. The "Design Factor" is the ratio of the rated strength of the suspension wire rope to the rated working load, and shall be calculated using the following formula:

$$F = \frac{S(N)}{W}$$

Where:
F=Design factor
S=Manufacturer's rated strength of one suspension rope
N=Number of suspension ropes under load
W=Rated working load on all ropes at any point of travel

(iii) Suspension wire rope grade shall be at least improved plow steel or equivalent.

(iv) Suspension wire ropes shall be sized to conform with the required design factor, but shall not be less than 5/16 inch (7.94 mm) in diameter.

(v) No more than one reverse bend in six wire rope lays shall be permitted.

(vi) A corrosion-resistant tag shall be securely attached to one of the wire rope fastenings when a suspension wire rope is to be used at a specific location and will remain in that location. This tag shall bear the following wire rope data:

(A) The diameter (inches and/or mm);

(B) Construction classification;

(C) Whether non-preformed or preformed;

(D) The grade of material;

(E) The manufacturer's rated strength;

(F) The manufacturer's name;

(G) The month and year the ropes were installed; and

(H) The name of the person or company which installed the ropes.

(vii) A new tag shall be installed at each rope renewal.

(viii) The original tag shall be stamped with the date of the resocketing, or the original tag shall be retained and a supplemental tag shall be provided when ropes are resocketed. The supplemental tag shall show the date of resocketing and the name of the person or company that resocketed the rope.

(ix) Winding drum type hoists shall contain at least three wraps of the suspension wire rope on the drum when the suspended unit has reached the lowest possible point of its vertical travel.

(x) Traction drum and sheave type hoists shall be provided with a wire rope of sufficient length to reach the lowest possible point of vertical travel of the suspended unit, and an additional length of the wire rope of at least four feet (1.2 m).

(xi) The lengthening or repairing of suspension wire ropes is prohibited.

(xii) Babbitted fastenings for suspension wire rope are prohibited.

(8) *Control circuits, power circuits and their components.* (i) Electrical wiring and equipment shall comply with Subpart S of this Part, except as otherwise required by this section.

(ii) Electrical runway conductor systems shall be of a type designed for use in exterior locations, and shall be located so that they do not come into contact with accumulated snow or water.

(iii) Cables shall be protected against damage resulting from overtensioning or from other causes.

(iv) Devices shall be included in the control system for the equipment which will provide protection against electrical overloads, three phase reversal and phase failure. The control system shall have a separate method, independent of the direction control circuit, for breaking the power circuit in case of an emergency or malfunction.

(v) Suspended or supported equipment shall have a control system which will require the operator of the equipment to follow predetermined procedures.

(vi) The following requirements shall apply to electrical protection devices:

(A) On installations where the carriage does not have a stability factor of at least four against overturning, electrical contact(s) shall be provided and so connected that the operating devices for the suspended or supported equipment shall be operative only when the carriage is located and mechanically retained at an established operating point.

(B) Overload protection shall be provided in the hoisting or suspension system to protect against the equipment operating in the "up" direction with a load in excess of 125 percent of the rated load of the platform; and

(C) An automatic detector shall be provided for each suspension point that will interrupt power to all hoisting motors for travel in the "down" direction, and apply the primary brakes if any suspension wire rope becomes slack. A continuous-pressure rigging-bypass switch designed for use during rigging is permitted. This switch shall only be used during rigging.

(vii) Upper and lower directional switches designed to prevent the travel of suspended units beyond safe upward and downward levels shall be provided.

(viii) Emergency stop switches shall be provided on remote controlled, roof-powered manned platforms adjacent to each control station on the platform.

(ix) Cables which are in constant tension shall have overload devices which will prevent the tension in the cable from interfering with the load limiting device required in paragraph (f)(8)(vi)(B) of this section, or with the platform roll limiting device required in paragraph (f)(5)(ii)(C) of this section. The setting of these devices shall be coordinated with other overload settings at the time of design of the system, and shall be clearly indicated on or near the device. The device shall interrupt the equipment travel in the "down" direction.

(g) *Inspection and tests*—(1) *Installations and alterations.* All completed building maintenance equipment installations shall be inspected and tested in the field before being placed in initial service to determine that all parts of the installation conform to applicable requirements of this standard, and that all safety and operating equipment is functioning as required. A similar inspection and test shall be made following any major alteration to an existing installation. No hoist in an installation shall be subjected to a load in excess of 125 percent of its rated load.

(2) *Periodic inspections and tests.* (i) Related building supporting structures shall undergo periodic inspection by a competent person at intervals not exceeding 12 months.

(ii) All parts of the equipment including control systems shall be inspected, and, where necessary, tested by a competent person at intervals specified by the manufacturer/supplier, but not to exceed 12 months, to determine that they are in safe operating condition. Parts subject to wear, such as wire ropes, bearings, gears, and governors shall be inspected and/or tested to determine that they have not worn to such an extent as to affect the safe operation of the installation.

(iii) The building owner shall keep a certification record of each inspection and test required under paragraphs

(g)(2)(i) and (ii) of this section. The certification record shall include the date of the inspection, the signature of the person who performed the inspection, and the number, or other identifier, of the building support structure and equipment which was inspected. This certification record shall be kept readily available for review by the Assistant Secretary of Labor or the Assistant Secretary's representative and by the employer.

(iv) Working platforms and their components shall be inspected by the employer for visible defects before every use and after each occurrence which could affect the platform's structural integrity.

(3) *Maintenance inspections and tests.* (i) A maintenance inspection and, where necessary, a test shall be made of each platform installation every 30 days, or where the work cycle is less than 30 days such inspection and/or test shall be made prior to each work cycle. This inspection and test shall follow procedures recommended by the manufacturer, and shall be made by a competent person.

(ii) The building owner shall keep a certification record of each inspection and test performed under paragraph (g)(3)(i) of this section. The certification record shall include the date of the inspection and test, the signature of the person who performed the inspection and/or test, and an identifier for the platform installation which was inspected. The certification record shall be kept readily available for review by the Assistant Secretary of Labor or the Assistant Secretary's representative and by the employer.

(4) *Special inspection of governors and secondary brakes.* (i) Governors and secondary brakes shall be inspected and tested at intervals specified by the manufacturer/supplier but not to exceed every 12 months.

(ii) The results of the inspection and test shall confirm that the initiating device for the secondary braking system operates at the proper overspeed.

(iii) The results of the inspection and test shall confirm that the secondary brake is functioning properly.

(iv) If any hoisting machine or initiating device for the secondary brake system is removed from the equipment for testing, all reinstalled and directly related components shall be reinspected prior to returning the equipment installation to service.

(v) Inspection of governors and secondary brakes shall be performed by a competent person.

(vi) The secondary brake governor and actuation device shall be tested before each day's use. Where testing is not feasible, a visual inspection of the brake shall be made instead to ensure that it is free to operate.

(5) *Suspension wire rope maintenance, inspection and replacement.* (i) Suspension wire rope shall be maintained and used in accordance with procedures recommended by the wire rope manufacturer.

(ii) Suspension wire rope shall be inspected by a competent person for visible defects and gross damage to the rope before every use and after each occurrence which might affect the wire rope's integrity.

(iii) A thorough inspection of suspension wire ropes in service shall be made once a month. Suspension wire ropes that have been inactive for 30 days or longer shall have a thorough inspection before they are placed into service. These thorough inspections of suspension wire ropes shall be performed by a competent person.

(iv) The need for replacement of a suspension wire rope shall be determined by inspection and shall be based on the condition of the wire rope. Any of the following conditions or combination of conditions will be cause for removal of the wire rope:

(A) Broken wires exceeding three wires in one strand or six wires in one rope lay;

(B) Distortion of rope structure such as would result from crushing or kinking;

(C) Evidence of heat damage;

(D) Evidence of rope deterioration from corrosion;

(E) A broken wire within 18 inches (460.8 mm) of the end attachments;

(F) Noticeable rusting and pitting;

(G) Evidence of core failure (a lengthening of rope lay, protrusion of the rope core and a reduction in rope diameter suggests core failure); or

(H) More than one valley break (broken wire).

(I) Outer wire wear exceeds one-third of the original outer wire diameter.

(J) Any other condition which the competent person determines has significantly affected the integrity of the rope.

(v) The building owner shall keep a certification record of each monthly inspection of a suspension wire rope as required in paragraph (g)(5)(iii) of this section. The record shall include the date of the inspection, the signature of the person who performed the inspection, and a number, or other identifier, of the wire rope which was inspected. This record of inspection shall be made available for review by the Assistant Secretary of Labor or the Assistant Secretary's representative and by the employer.

(6) *Hoist inspection.* Before lowering personnel below the top elevation of the building, the hoist shall be tested each day in the lifting direction with the intended load to make certain it has sufficient capacity to raise the personnel back to the boarding level.

(h) *Maintenance*—(1) *General maintenance.* All parts of the equipment affecting safe operation shall be maintained in proper working order so that they may perform the functions for which they were intended. The equipment shall be taken out of service when it is not in proper working order.

(2) *Cleaning.* (i) Control or power contactors and relays shall be kept clean.

(ii) All other parts shall be kept clean if their proper functioning would be affected by the presence of dirt or other contaminants.

(3) *Periodic resocketing of wire rope fastenings.* (i) Hoisting ropes utilizing poured socket fastenings shall be resocketed at the non-drum ends at intervals not exceeding 24 months. In resocketing the ropes, a sufficient length shall be cut from the end of the rope to remove damaged or fatigued portions.

(ii) Resocketed ropes shall conform to the requirements of paragraph (f)(7) of this section.

(iii) Limit switches affected by the resocketed ropes shall be reset, if necessary.

(4) *Periodic reshackling of suspension wire ropes.* The hoisting ropes shall be reshackled at the nondrum ends at intervals not exceeding 24 months. When reshackling the ropes, a sufficient length shall be cut from the end of the rope to remove damaged or fatigued portions.

(5) *Roof systems.* Roof track systems, tie-downs, or similar equipment shall be maintained in proper working order so that they perform the function for which they were intended.

(6) *Building face guiding members.* T-rails, indented mullions, or equivalent guides located in the face of a building shall be maintained in proper working order so that they perform the functions for which they were intended. Brackets for cable stabilizers shall similarly be maintained in proper working order.

(7) *Inoperative safety devices.* No person shall render a required safety device or electrical protective device inoperative, except as necessary for tests, inspections, and maintenance. Immediately upon completion of such tests, inspections and maintenance, the device shall be restored to its normal operating condition.

(i) *Operations*—(1) *Training.* (i) Working platforms shall be operated only by persons who are proficient in the operation, safe use and inspection of the particular working platform to be operated.

(ii) All employees who operate working platforms shall be trained in the following:

(A) Recognition of, and preventive measures for, the safety hazards associated with their individual work tasks.

(B) General recognition and prevention of safety hazards associated with the use of working platforms, including the provisions in the section relating to the particular working platform to be operated.

(C) Emergency action plan procedures required in paragraph (e)(9) of this section.

(D) Work procedures required in paragraph (i)(1)(iv) of this section.

(E) Personal fall arrest system inspection, care, use and system performance.

(iii) Training of employees in the operation and inspection of working platforms shall be done by a competent person.

(iv) Written work procedures for the operation, safe use and inspection of working platforms shall be provided for employee training. Pictorial methods of instruction, may be used, in lieu of written work procedures, if employee communication is improved using this method. The operating manuals supplied by manufacturers for platform system components can serve as the basis for these procedures.

(v) The employer shall certify that employees have been trained in operating and inspecting a working platform by preparing a certification record which includes the identity of the person trained, the signature of the employer or the person who conducted the training and the date that training was completed. The certification record shall be prepared at the completion of the training required in paragraph (i)(1)(ii) of this section, and shall be maintained in a file for the duration of the employee's employment. The certification record shall be kept readily available for review by the Assistant Secretary of Labor or the Assistant Secretary's representative.

(2) *Use.* (i) Working platforms shall not be loaded in excess of the rated load, as stated on the platform load rating plate.

(ii) Employees shall be prohibited from working on snow, ice, or other slippery material covering platforms, except for the removal of such materials.

(iii) Adequate precautions shall be taken to protect the platform, wire ropes and life lines from damage due to acids or other corrosive substances, in accordance with the recommendations of the corrosive substance producer, supplier, platform manufacturer or other equivalent information sources. Platform members which have been exposed to acids or other corrosive substances shall be washed down with a neutralizing solution, at a frequency recommended by the corrosive substance producer or supplier.

(iv) Platform members, wire ropes and life lines shall be protected when using a heat producing process. Wire ropes and life lines which have been contacted by the heat producing process shall be considered to be permanently damaged and shall not be used.

(v) The platform shall not be operated in winds in excess of 25 miles per hour (40.2 km/hr) except to move it from an operating to a storage position. Wind speed shall be determined based on the best available information, which includes on-site anemometer readings and local weather forecasts which predict wind velocities for the area.

(vi) On exterior installations, an anemometer shall be mounted on the platform to provide information of on-site wind velocities prior to and during the use of the platform. The anemometer may be a portable (hand held) unit which is temporarily mounted during platform use.

(vii) Tools, materials and debris not related to the work in progress shall not be allowed to accumulate on platforms. Stabilizer ties shall be located so as to allow unencumbered passage along the full length of the platform and shall be of such length so as not to become entangled in rollers, hoists or other machinery.

(j) *Personal fall protection.* Employees on working platforms shall be protected by a personal fall arrest system meeting the requirements of Appendix C, Section I, of this standard, and as otherwise provided by this standard.

(k) *Effective date.* This section is effective January 24, 1990.

(The information collection requirements contained in this section are approved by the Office of Management and Budget (OMB) and listed under OMB control number 1218–0121.)

Appendix A to Section 1910.66, Guidelines (Advisory)

1. *Use of the Appendix.* Appendix A provides examples of equipment and methods to assist the employer in meeting the requirements of the indicated provision of the standard. Employers may use other equipment or procedures which conform to the requirements of the standard. This appendix neither adds to nor detracts from the mandatory requirements set forth in § 1910.66.

2. *Assurance.* Paragraph (c) of the standard requires the building owner to inform the employer in writing that the powered platform installation complies with certain requirements of the standard, since the employer may not have the necessary information to make these determinations. The employer, however, remains responsible for meeting these requirements which have not been set off in paragraph (c)(1).

3. *Design Requirements.* The design requirements for each installation should be based on the limitations (stresses, deflections, etc.), established by nationally recognized standards as promulgated by the following organizations, or to equivalent standards:

AA—The Aluminum Association, 818 Connecticut Avenue, NW., Washington, DC, 20006
Aluminum Construction Manual
Specifications For Aluminum Structures
Aluminum Standards and Data

AGMA—American Gear Manufacturers Association, 101 North Fort Meyer Dr., Suite 1000, Arlington, VA 22209

AISC—American Institute of Steel Construction, 400 North Michigan Avenue, Chicago, IL 60611

ANSI—American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018

ASCE—American Society of Civil Engineers, 345 East 47th Street, New York, NY 10017

ASME—American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017

ASTM—American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103

AWS—American Welding Society, Inc., Box 351040, 550 NW. LeJeune Road, Miami, FL 33126

JIC—Joint Industrial Council, 2139 Wisconsin Avenue NW., Washington, DC 20007

NEMA—National Electric Manufacturers Association, 2101 L Street, NW., Washington, DC 20037

4. *Tie-in-guides.* Indented mullions, T-rails or other equivalent guides are acceptable as tie-in guides in a building face for a continuous stabilization system. Internal guides are embedded in other building members with only the opening exposed (see Figure 1 of Appendix B). External guides, however, are installed external to the other building members and so are fully exposed. The minimum opening for tie-in guides is three-quarters of an inch (19 mm), and the minimum inside dimensions are one-inch (25 mm) deep and two inches (50 mm) wide.

Employers should be aware of the hazards associated with tie-in guides in a continuous stabilization system which was not designed properly. For example, joints in these track systems may become extended or discontinuous due to installation or building settlement. If this alignment problem is not corrected, the system could jam when a guide roller or guide shoe strikes a joint and this would cause a hazardous situation for employees. In another instance, faulty design will result in guide rollers being mounted in a

line so they will jam in the track at the slightest misalignment.

5. *Building anchors (intermittent stabilization system).* In the selection of the vertical distance between building anchors, certain factors should be given consideration. These factors include building height and architectural design, platform length and weight, wire rope angulation, and the wind velocities in the building area. Another factor to consider is the material of the building face, since this material may be adversely affected by the building rollers.

External or indented type building anchors are acceptable. Receptacles in the building facade used for the indented type should be kept clear of extraneous materials which will hinder their use. During the inspection of the platform installation, evidence of a failure or abuse of the anchors should be brought to the attention of the employer.

6. *Stabilizer tie length.* A stabilizer tie should be long enough to provide for the planned angulation of the suspension cables. However, the length of the tie should not be excessive and become a problem by possibly becoming entangled in the building face rollers or parts of the platform machinery.

The attachment length may vary due to material elongation and this should be considered when selecting the material to be used. Consideration should also be given to the use of ties which are easily installed by employees, since this will encourage their use.

7. *Intermittent stabilization system.* Intermittent stabilization systems may use different equipment, tie-in devices and methods to restrict the horizontal movement of a powered platform with respect to the face of the building. One acceptable method employs corrosion-resistant building anchors secured in the face of the building in vertical rows every third floor or 50 feet (15.3 m), whichever is less. The anchors are spaced horizontally to allow a stabilization attachment (stabilizer tie) for each of the two platform suspension wire ropes. The stabilizer tie consists of two parts. One part is a quick connect-quick disconnect device which utilizes a corrosion-resistant yoke and retainer spring that is designed to fit over the building anchors. The second part of the stabilizer tie is a lanyard which is used to maintain a fixed distance between the suspension wire rope and the face of the building.

In this method, as the suspended powered platform descends past the elevation of each anchor, the descent is halted and each of the platform occupants secures a stabilizer tie between a suspension wire rope and a building anchor. The procedure is repeated as each elevation of a building anchor is reached during the descent of the powered platform.

As the platform ascends, the procedure is reversed; that is, the stabilizer ties are removed as each elevation of a building anchor is reached. The removal of each stabilizer tie is assured since the platform is provided with stopping devices which will interrupt power to its hoist(s) in the event either stopping device contacts a stabilizer during the ascent of the platform.

Figure 2 of Appendix B illustrates another type of acceptable intermittent stabilization system which utilizes retaining pins as the quick connect-quick disconnect device in the stabilizer tie.

8. *Wire Rope Inspection.* The inspection of the suspension wire rope is important since the rope gradually loses strength during its useful life. The purpose of the inspection is to determine whether the wire rope has sufficient integrity to support a platform with the required design factor.

If there is any doubt concerning the condition of a wire rope or its ability to perform the required work, the rope should be replaced. The cost of wire rope replacement is quite small if compared to the cost in terms of human injuries, equipment down time and replacement.

No listing of critical inspection factors, which serve as a basis for wire rope replacement in the standard, can be a substitute for an experienced inspector of wire rope. The listing serves as a user's guide to the accepted standards by which ropes must be judged.

Rope life can be prolonged if preventive maintenance is performed regularly. Cutting off an appropriate length of rope at the end termination before the core degrades and valley breaks appear minimizes degradation at these sections.

9. *General Maintenance.* In meeting the general maintenance requirement in paragraph (h)(1) of the standard, the employer should undertake the prompt replacement of broken, worn and damaged parts, switch contacts, brushes, and short flexible conductors of electrical devices. The components of the electrical service system and traveling cables should be replaced when damaged or significantly abraded. In addition, gears, shafts, bearings, brakes and hoisting drums should be kept in proper alignment.

10. *Training.* In meeting the training requirement of paragraph (i)(1) of the standard, employers should use both on the job training and formal classroom training. The written work procedures used for this training should be obtained from the manufacturer, if possible, or prepared as necessary for the employee's information and use.

Employees who will operate powered platforms with intermittent stabilization systems should receive instruction in the specific ascent and descent procedures involving the assembly and disassembly of the stabilizer ties.

An acceptable training program should also include employee instruction in basic inspection procedures for the purpose of determining the need for repair and replacement of platform equipment. In addition, the program should cover the inspection, care and use of the personal fall protection equipment required in paragraph (j)(1) of the standard.

In addition, the training program should also include emergency action plan elements. OSHA brochure #3088 (Rev.) 1985, "How to Prepare for Workplace Emergencies," details the basic steps needed to prepare to handle emergencies in the workplace.

Following the completion of a training program, the employee should be required to demonstrate competency in operating the equipment safely. Supplemental training of the employee should be provided by the employer, as necessary, if the equipment used or other working conditions should change.

An employee who is required to work with chemical products on a platform should receive training in proper cleaning procedures, and in the hazards, care and handling of these products. In addition, the employee should be supplied with the appropriate personal protective equipment, such as gloves and eye and face protection.

11. *Suspension and Securing of Powered Platforms (Equivalency).* One acceptable method of demonstrating the equivalency of a method of suspending or securing a powered platform, as required in paragraphs (e)(2)(iii), (f)(3) and (f)(5)(i)(F), is to provide an engineering analysis by a registered professional engineer. The analysis should demonstrate that the proposed method will provide an equal or greater degree of safety for employees than any one of the methods specified in the standard.

Appendix B to Section 1910.66, Exhibits (Advisory)

The three drawings in Appendix B illustrate typical platform stabilization systems which are addressed in the standard. The drawings are to be used for reference purposes only, and do not illustrate all the mandatory requirements for each system.

BILLING CODE 4510-26-M

Figure 1. Typical Self-Powered Platform—Continuous External or Indented Mullion Guide System

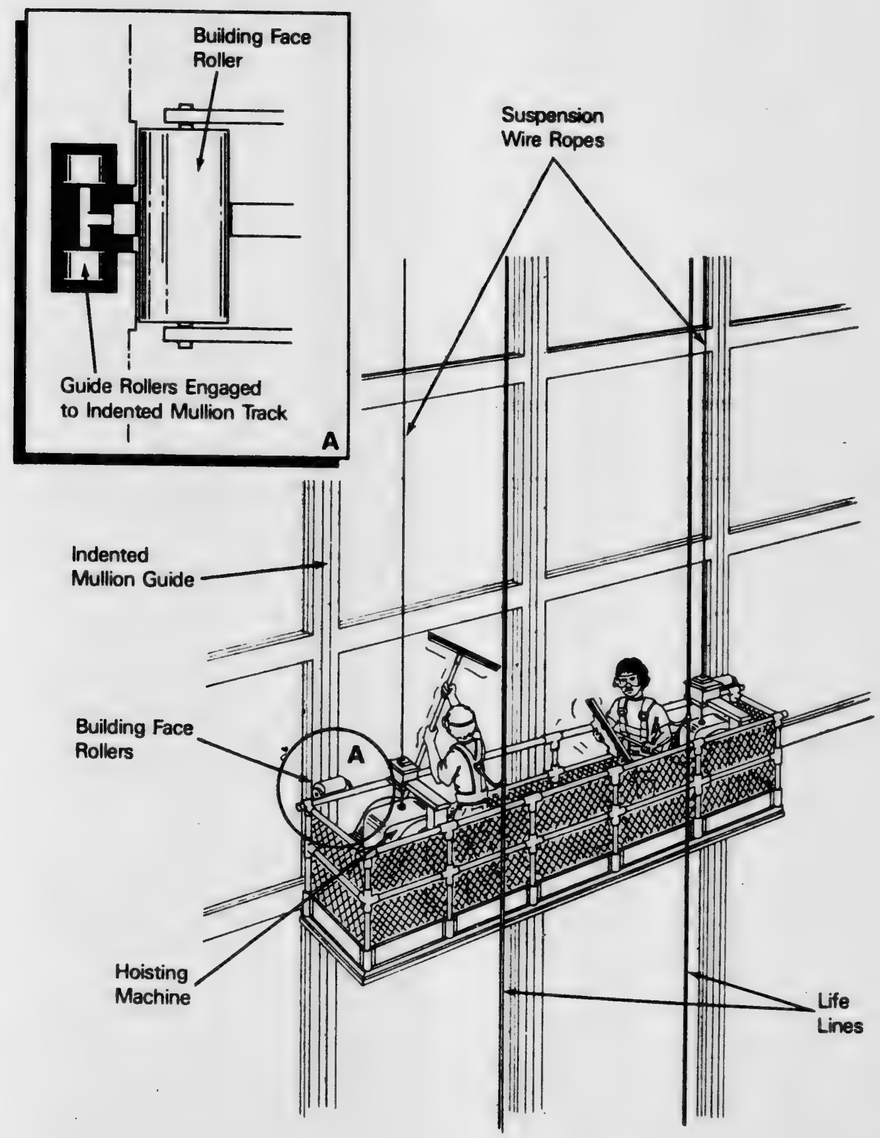


Figure 2. Typical Self-Powered Platform--Intermittent Tie-In System

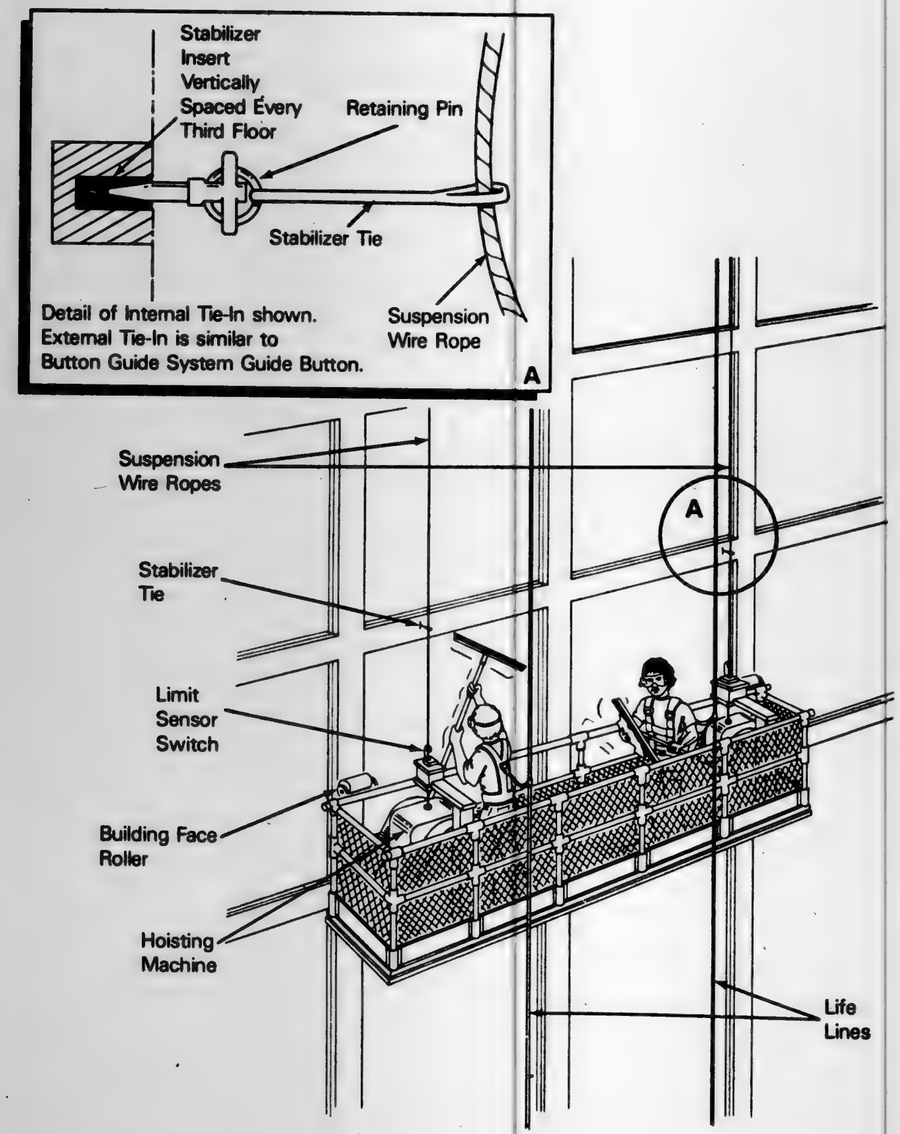
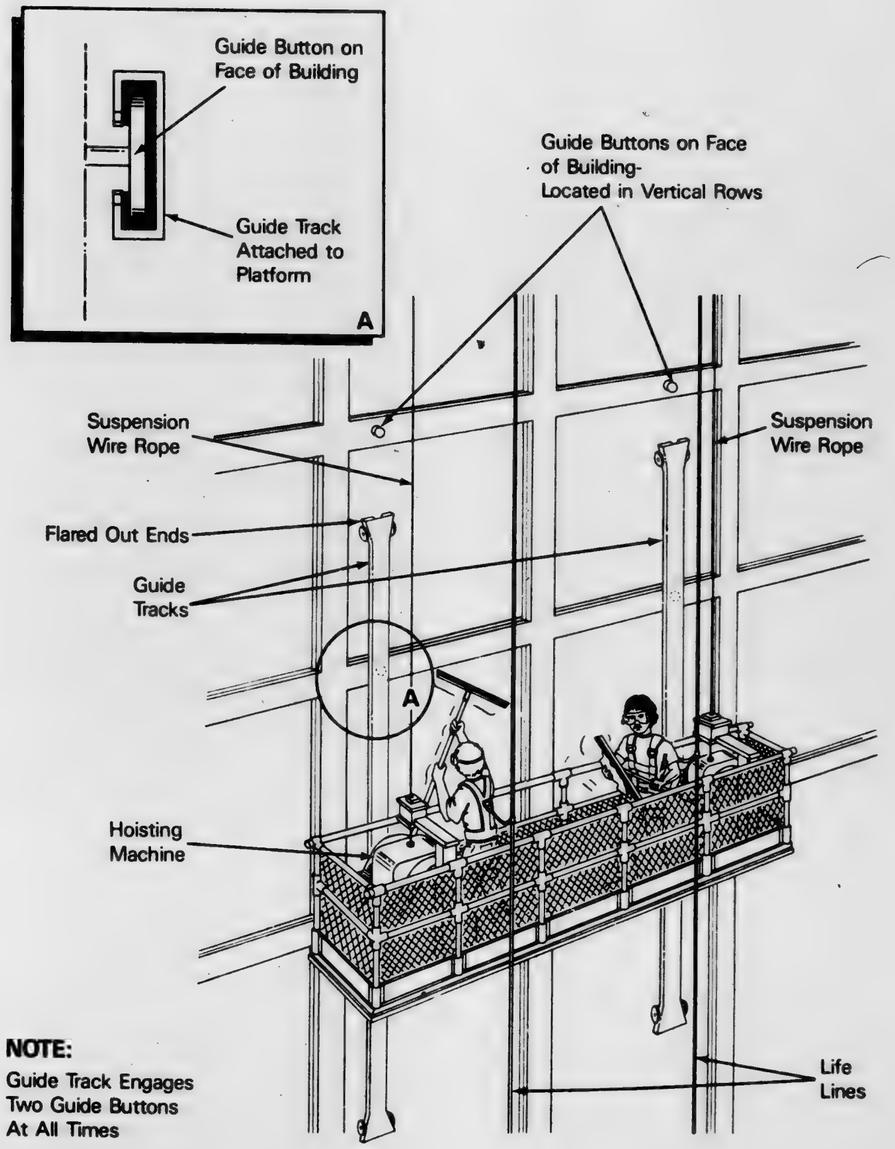


Figure 3. Typical Self-Powered Platform--Button Guide System



NOTE:
Guide Track Engages
Two Guide Buttons
At All Times

BILLING CODE 4510-26-C

Appendix C to Section 1910.66, Personal Fall Arrest System (Section I—Mandatory; Sections II and III—Non-Mandatory)

Use of the Appendix

Section I of Appendix C sets out the mandatory criteria for personal fall arrest systems used by all employees using powered platforms, as required by paragraph (j)(1) of this standard. Section II sets out nonmandatory test procedures which may be used to determine compliance with applicable requirements contained in section I of this Appendix. Section III provides nonmandatory guidelines which are intended to assist employers in complying with these provisions.

I. *Personal fall arrest systems*—(a) *Scope and application.* This section establishes the application of and performance criteria for personal fall arrest systems which are required for use by all employees using powered platforms under paragraph 1910.66(j).

(b) *Definitions.* "Anchorage" means a secure point of attachment for lifelines, lanyards or deceleration devices, and which is independent of the means of supporting or suspending the employee.

"Body belt" means a strap with means both for securing it about the waist and for attaching it to a lanyard, lifeline, or deceleration device.

"Body harness" means a design of straps which may be secured about the employee in a manner to distribute the fall arrest forces over at least the thighs, pelvis, waist, chest and shoulders with means for attaching it to other components of a personal fall arrest system.

"Buckle" means any device for holding the body belt or body harness closed around the employee's body.

"Competent person" means a person who is capable of identifying hazardous or dangerous conditions in the personal fall arrest system or any component thereof, as well as in their application and use with related equipment.

"Connector" means a device which is used to couple (connect) parts of the system together. It may be an independent component of the system (such as a carabiner), or an integral component of part of the system (such as a buckle or dee-ring sewn into a body belt or body harness, or a snap-hook spliced or sewn to a lanyard or self-retracting lanyard).

"Deceleration device" means any mechanism, such as a rope grab, ripstitch lanyard, specially woven lanyard, tearing or deforming lanyard, or automatic self retracting-lifeline/lanyard, which serves to dissipate a substantial amount of energy during a fall arrest, or otherwise limits the energy imposed on an employee during fall arrest.

"Deceleration distance" means the additional vertical distance a falling employee travels, excluding lifeline elongation and free fall distance, before stopping, from the point at which the deceleration device begins to operate. It is measured as the distance between the location of an employee's body belt or body harness attachment point at the moment of activation (at the onset of fall arrest forces) of the deceleration device during a fall, and the location of that attachment point after the employee comes to a full stop.

"Equivalent" means alternative designs, materials or methods which the employer can demonstrate will provide an equal or greater degree of safety for employees than the methods, materials or designs specified in the standard.

"Free fall" means the act of falling before the personal fall arrest system begins to apply force to arrest the fall.

"Free fall distance" means the vertical displacement of the fall arrest attachment point on the employee's body belt or body harness between onset of the fall and just before the system begins to apply force to arrest the fall. This distance excludes deceleration distance, lifeline and lanyard elongation but includes any deceleration device slide distance or self-retracting lifeline/lanyard extension before they operate and fall arrest forces occur.

"Lanyard" means a flexible line of rope, wire rope, or strap which is used to secure the body belt or body harness to a deceleration device, lifeline, or anchorage.

"Lifeline" means a component consisting of a flexible line for connection to an anchorage at one end to hang vertically (vertical lifeline), or for connection to anchorages at both ends to stretch horizontally (horizontal lifeline), and which serves as a means for connecting other components of a personal fall arrest system to the anchorage.

"Personal fall arrest system" means a system used to arrest an employee in a fall from a working level. It consists of an anchorage, connectors, a body belt or body harness and may include a lanyard, deceleration device, lifeline, or suitable combinations of these.

"Qualified person" means one with a recognized degree or professional certificate and extensive knowledge and experience in the subject field who is capable of design, analysis, evaluation and specifications in the subject work, project, or product.

"Rope grab" means a deceleration device which travels on a lifeline and automatically frictionally engages the lifeline and locks so as to arrest the fall of an employee. A rope grab usually employs the principle of inertial locking, cam/lever locking, or both.

"Self-retracting lifeline/lanyard" means a deceleration device which contains a drum-wound line which may be slowly extracted from, or retracted onto, the drum under slight tension during normal employee movement, and which, after onset of a fall, automatically locks the drum and arrests the fall.

"Snap-hook" means a connector comprised of a hookshaped member with a normally closed keeper, or similar arrangement, which may be opened to permit the hook to receive an object and, when released, automatically closes to retain the object. Snap-hooks are generally one of two types:

1. The locking type with a self-closing, self-locking keeper which remains closed and locked until unlocked and pressed open for connection or disconnection, or

2. The non-locking type with a self-closing keeper which remains closed until pressed open for connection or disconnection.

"Tie-off" means the act of an employee, wearing personal fall protection equipment, connecting directly or indirectly to an anchorage. It also means the condition of an employee being connected to an anchorage.

(c) *Design for system components.* (1) Connectors shall be drop forged, pressed or formed steel, or made of equivalent materials.

(2) Connectors shall have a corrosion-resistant finish, and all surfaces and edges shall be smooth to prevent damage to interfacing parts of the system.

(3) Lanyards and vertical lifelines which tie-off one employee shall have a minimum breaking strength of 5,000 pounds (22.2 kN).

(4) Self-retracting lifelines and lanyards which automatically limit free fall distance to two feet (0.61 m) or less shall have components capable of sustaining a minimum static tensile load of 3,000 pounds (13.3 kN) applied to the device with the lifeline or lanyard in the fully extended position.

(5) Self-retracting lifelines and lanyards which do not limit free fall distance to two feet (0.61 m) or less, ripstitch lanyards, and tearing and deforming lanyards shall be capable of sustaining a minimum tensile load of 5,000 pounds (22.2 kN) applied to the device with the lifeline or lanyard in the fully extended position.

(6) Dee-rings and snap-hooks shall be capable of sustaining a minimum tensile load of 5,000 pounds (22.2 kN).

(7) Dee-rings and snap-hooks shall be 100 percent proof-tested to a minimum tensile load of 3,600 pounds (16 kN) without cracking, breaking, or taking permanent deformation.

(8) Snap-hooks shall be sized to be compatible with the member to which they are connected so as to prevent unintentional disengagement of the snap-hook by depression of the snap-hook keeper by the connected member, or shall be a locking type snap-hook designed and used to prevent disengagement of the snap-hook by the contact of the snaphook keeper by the connected member.

(9) Horizontal lifelines, where used, shall be designed, and installed as part of a complete personal fall arrest system, which maintains a safety factor of at least two, under the supervision of a qualified person.

(10) Anchorages to which personal fall arrest equipment is attached shall be capable of supporting at least 5,000 pounds (22.2 kN) per employee attached, or shall be designed, installed, and used as part of a complete personal fall arrest system which maintains a safety factor of at least two, under the supervision of a qualified person.

(11) Ropes and straps (webbing) used in lanyards, lifelines, and strength components of body belts and body harnesses, shall be made from synthetic fibers or wire rope.

(d) *System performance criteria.* (1) Personal fall arrest systems shall, when stopping a fall:

(i) Limit maximum arresting force on an employee to 900 pounds (4 kN) when used with a body belt;

(ii) Limit maximum arresting force on an employee to 1,800 pounds (8 kN) when used with a body harness;

(iii) Bring an employee to a complete stop and limit maximum deceleration distance an employee travels to 3.5 feet (1.07 m); and

(iv) Shall have sufficient strength to withstand twice the potential impact energy of an employee free falling a distance of six feet (1.8 m), or the free fall distance permitted by the system, whichever is less.

(2)(i) When used by employees having a combined person and tool weight of less than 310 pounds (140 kg), personal fall arrest systems which meet the criteria and protocols contained in paragraphs (b), (c) and (d) in Section II of this Appendix shall be considered as complying with the provisions of paragraphs (d)(1)(i) through (d)(1)(iv) above.

(ii) When used by employees having a combined tool and body weight of 310 pounds (140 kg) or more, personal fall arrest systems which meet the criteria and protocols contained in paragraphs (b), (c) and (d) in Section II may be considered as complying with the provisions of paragraphs (d)(1)(i) through (d)(1)(iv) provided that the criteria and protocols are modified appropriately to provide proper protection for such heavier weights.

(e) *Care and use.* (1) Snap-hooks, unless of a locking type designed and used to prevent disengagement from the following connections, shall not be engaged:

(i) Directly to webbing, rope or wire rope;

(ii) To each other;

(iii) To a dee-ring to which another snap-hook or other connector is attached;

(iv) To a horizontal lifeline; or

(v) To any object which is incompatibly shaped or dimensioned in relation to the snap-hook such that the connected object could depress the snap-hook keeper a sufficient amount to release itself.

(2) Devices used to connect to a horizontal lifeline which may become a vertical lifeline shall be capable of locking in either direction on the lifeline.

(3) Personal fall arrest systems shall be rigged such that an employee can neither free fall more than six feet (1.8 m), nor contact any lower level.

(4) The attachment point of the body belt shall be located in the center of the wearer's back. The attachment point of the body harness shall be located in the center of the wearer's back near shoulder level, or above the wearer's head.

(5) When vertical lifelines are used, each employee shall be provided with a separate lifeline.

(6) Personal fall arrest systems or components shall be used only for employee fall protection.

(7) Personal fall arrest systems or components subjected to impact loading shall be immediately removed from service and shall not be used again for employee protection unless inspected and determined by a competent person to be undamaged and suitable for reuse.

(8) The employer shall provide for prompt rescue of employees in the event of a fall or shall assure the self-rescue capability of employees.

(9) Before using a personal fall arrest system, and after any component or system is changed, employees shall be trained in accordance with the requirements of paragraph 1910.66(i)(1), in the safe use of the system.

(f) *Inspections.* Personal fall arrest systems shall be inspected prior to each use for mildew, wear, damage and other deterioration, and defective components shall be removed from service if their strength or function may be adversely affected.

II. *Test methods for personal fall arrest systems (non-mandatory)*—(a) *General.* Paragraphs (b), (c), (d) and (e), of this Section II set forth test procedures which may be used to determine compliance with the requirements in paragraph (d)(1)(i) through (d)(1)(iv) of Section I of this Appendix.

(b) *General conditions for all tests in Section II.* (1) Lifelines, lanyards and deceleration devices should be attached to an anchorage and connected to the body-belt or body harness in the same manner as they would be when used to protect employees.

(2) The anchorage should be rigid, and should not have a deflection greater than .04 inches (1 mm) when a force of 2,250 pounds (10 kN) is applied.

(3) The frequency response of the load measuring instrumentation should be 120 Hz.

(4) The test weight used in the strength and force tests should be a rigid, metal, cylindrical or torso-shaped object with a girth of 38 inches plus or minus four inches (96 cm plus or minus 10 cm).

(5) The lanyard or lifeline used to create the free fall distance should be supplied with the system, or in its absence, the least elastic lanyard or lifeline available to be used with the system.

(6) The test weight for each test should be hoisted to the required level and should be quickly released without having any appreciable motion imparted to it.

(7) The system's performance should be evaluated taking into account the range of environmental conditions for which it is designed to be used.

(8) Following the test, the system need not be capable of further operation.

(c) *Strength test.* (1) During the testing of all systems, a test weight of 300 pounds plus or minus five pounds (135 kg plus or minus 2.5 kg) should be used. (See paragraph (b)(4), above.)

(2) The test consists of dropping the test weight once. A new unused system should be used for each test.

(3) For lanyard systems, the lanyard length should be six feet plus or minus two inches (1.83 m plus or minus 5 cm) as measured from the fixed anchorage to the attachment on the body belt or body harness.

(4) For rope-grab-type deceleration systems, the length of the lifeline above the centerline of the grabbing mechanism to the lifeline's anchorage point should not exceed two feet (0.61 m).

(5) For lanyard systems, for systems with deceleration devices which do not automatically limit free fall distance to two feet (0.61 m) or less, and for systems with deceleration devices which have a connection distance in excess of one foot (0.3 m) (measured between the centerline of the lifeline and the attachment point to the body belt or harness), the test weight should be rigged to free fall a distance of 7.5 feet (2.3 m) from a point that is 1.5 feet (46 cm) above the anchorage point, to its hanging location (six feet below the anchorage). The test weight should fall without interference, obstruction, or hitting the floor or ground during the test. In some cases a non-elastic wire lanyard of sufficient length may need to be added to the system (for test purposes) to create the necessary free fall distance.

(6) For deceleration device systems with integral lifelines or lanyards which automatically limit free fall distance to two feet (0.61 m) or less, the test weight should be rigged to free fall a distance of four feet (1.22 m).

(7) Any weight which detaches from the belt or harness should constitute failure for the strength test.

(d) *Force test*—(1) *General.* The test consists of dropping the respective test weight specified in (d)(2)(i) or (d)(3)(i) once. A new, unused system should be used for each test.

(2) *For lanyard systems.* (i) A test weight of 220 pounds plus or minus three pounds (100 kg plus or minus 1.6 kg) should be used. (See paragraph (b)(4), above.)

(ii) Lanyard length should be six feet plus or minus two inches (1.83 m plus or minus 5 cm) as measured from the fixed anchorage to the attachment on the body belt or body harness.

(iii) The test weight should fall free from the anchorage level to its hanging location (a total of six feet (1.83 m) free fall distance) without interference, obstruction, or hitting the floor or ground during the test.

(3) *For all other systems.* (i) A test weight of 220 pounds plus or minus three pounds (100 kg plus or minus 1.6 kg) should be used. (See paragraph (b)(4), above.)

(ii) The free fall distance to be used in the test should be the maximum fall distance physically permitted by the system during normal use conditions, up to a maximum free fall distance for the test weight of six feet (1.83 m), except as follows:

(A) For deceleration systems which have a connection link or lanyard, the test weight should free fall a distance equal to the connection distance (measured between the centerline of the lifeline and the attachment point to the body belt or harness).

(B) For deceleration device systems with integral lifelines or lanyards which automatically limit free fall distance to two feet (0.61 m) or less, the test weight should free fall a distance equal to that permitted by the system in normal use. (For example, to test a system with a self-retracting lifeline or lanyard, the test weight should be supported and the system allowed to retract the lifeline or lanyard as it would in normal use. The test weight would then be released and the force and deceleration distance measured).

(4) A system fails the force test if the recorded maximum arresting force exceeds 1,260 pounds (15.6 kN) when using a body belt, and/or exceeds 2,520 pounds (11.2 kN) when using a body harness.

(5) The maximum elongation and deceleration distance should be recorded during the force test.

(e) *Deceleration device tests*—(1) *General.* The device should be evaluated or tested

under the environmental conditions, (such as rain, ice, grease, dirt, type of lifeline, etc.), for which the device is designed.

(2) *Rope-grab-type deceleration devices.* (i) Devices should be moved on a lifeline 1,000 times over the same length of line a distance of not less than one foot (30.5 cm), and the mechanism should lock each time.

(ii) Unless the device is permanently marked to indicate the type(s) of lifeline which must be used, several types (different diameters and different materials), of lifelines should be used to test the device.

(3) *Other self-activatinq-type deceleration devices.* The locking mechanisms of other self-activating-type deceleration devices designed for more than one arrest should lock each of 1,000 times as they would in normal service.

III. *Additional non-mandatory guidelines for personal fall arrest systems.* The following information constitutes additional guidelines for use in complying with requirements for a personal fall arrest system.

(a) *Selection and use considerations.* The kind of personal fall arrest system selected should match the particular work situation, and any possible free fall distance should be kept to a minimum. Consideration should be given to the particular work environment. For example, the presence of acids, dirt, moisture, oil, grease, etc., and their effect on the system, should be evaluated. Hot or cold environments may also have an adverse affect on the system. Wire rope should not be used where an electrical hazard is anticipated. As required by the standard, the employer must plan to have means available to promptly rescue an employee should a fall occur, since the suspended employee may not be able to reach a work level independently.

Where lanyards, connectors, and lifelines are subject to damage by work operations such as welding, chemical cleaning, and sandblasting, the component should be protected, or other securing systems should be used. The employer should fully evaluate the work conditions and environment (including seasonal weather changes) before selecting the appropriate personal fall protection system. Once in use, the system's effectiveness should be monitored. In some cases, a program for cleaning and maintenance of the system may be necessary.

(b) *Testing considerations.* Before purchasing or putting into use a personal fall arrest system, an employer should obtain from the supplier information about the system based on its performance during testing so that the employer can know if the system meets this standard. Testing should be done using recognized test methods. Section II of this Appendix C contains test methods recognized for evaluating the performance of fall arrest systems. Not all systems may need to be individually tested; the performance of some systems may be based on data and calculations derived from testing of similar systems, provided that enough information is available to demonstrate similarity of function and design.

(c) *Component compatibility considerations.* Ideally, a personal fall arrest system is designed, tested, and supplied as a complete system. However, it is common practice for lanyards, connectors, lifelines, deceleration devices, body belts and body harnesses to be interchanged since some components wear out before others. The employer and employee should realize that not all components are interchangeable. For instance, a lanyard should not be connected between a body belt (or harness) and a deceleration device of the self-retracting type since this can result in additional free fall for which the system was not designed. Any substitution or change to a personal fall arrest system should be fully evaluated or tested by a competent person to determine that it meets the standard, before the modified system is put in use.

(d) *Employee training considerations.* Thorough employee training in the selection and use of personal fall arrest systems is imperative. As stated in the standard, before the equipment is used, employees must be trained in the safe use of the system. This should include the following: Application limits; proper anchoring and tie-off techniques; estimation of free fall distance, including determination of deceleration distance, and total fall distance to prevent striking a lower level; methods of use; and inspection and storage of the system. Careless or improper use of the equipment can result in serious injury or death. Employers and employees should become familiar with the material in this Appendix, as well as manufacturer's recommendations, before a system is used. Of uppermost importance is the reduction in strength caused by certain tie-offs (such as using knots, tying around sharp edges, etc.) and maximum permitted free fall distance. Also, to be stressed are the importance of inspections prior to use, the limitations of the equipment, and unique conditions at the worksite which may be important in determining the type of system to use.

(e) *Instruction considerations.* Employers should obtain comprehensive instructions from the supplier as to the system's proper use and application, including, where applicable:

(1) The force measured during the sample force test;

(2) The maximum elongation measured for lanyards during the force test;

(3) The deceleration distance measured for deceleration devices during the force test;

(4) Caution statements on critical use limitations;

(5) Application limits;

(6) Proper hook-up, anchoring and tie-off techniques, including the proper dee-ring or other attachment point to use on the body belt and harness for fall arrest;

(7) Proper climbing techniques;

(8) Methods of inspection, use, cleaning, and storage; and

(9) Specific lifelines which may be used. This information should be provided to employees during training.

(f) *Inspection considerations.* As stated in the standard (Section I, Paragraph (f)), personal fall arrest systems must be regularly inspected. Any component with any significant defect, such as cuts, tears, abrasions, mold, or undue stretching; alterations or additions which might affect its efficiency; damage due to deterioration; contact with fire, acids, or other corrosives; distorted hooks or faulty hook springs; tongues unfitted to the shoulder of buckles; loose or damaged mountings; non-functioning parts; or wearing or internal deterioration in the ropes must be withdrawn from service immediately, and should be tagged or marked as unusable, or destroyed.

(g) *Rescue considerations.* As required by the standard (Section I, Paragraph (e)(8)), when personal fall arrest systems are used, the employer must assure that employees can be promptly rescued or can rescue themselves should a fall occur. The availability of rescue personnel, ladders or other rescue equipment should be evaluated. In some situations, equipment which allows employees to rescue themselves after the fall has been arrested may be desirable, such as devices which have descent capability.

(h) *Tie-off considerations.* (1) One of the most important aspects of personal fall protection systems is fully planning the system *before* it is put into use. Probably the most overlooked component is planning for suitable anchorage points. Such planning should ideally be done before the structure or building is constructed so that anchorage points can be incorporated during construction for use later for window cleaning or other building maintenance. If properly planned, these anchorage points may be used *during* construction, as well as afterwards.

(2) Employers and employees should at all times be aware that the strength of a personal fall arrest system is based on its being attached to an anchoring system which does not significantly reduce the strength of the system (such as a properly dimensioned eye-bolt/snap-hook anchorage). Therefore, if a means of attachment is used that will reduce the strength of the system, that component should be replaced by a stronger one, but one that will also maintain the appropriate maximum arrest force characteristics.

(3) Tie-off using a knot in a rope lanyard or lifeline (at any location) can reduce the lifeline or lanyard strength by 50 percent or more. Therefore, a stronger lanyard or lifeline should be used to compensate for the weakening effect of the knot, or the lanyard length should be reduced [or the tie-off location raised) to minimize free fall distance, or the lanyard or lifeline should be replaced by one which has an appropriately incorporated connector to eliminate the need for a knot.

(4) Tie-off of a rope lanyard or lifeline around an "H" or "I" beam or similar support can reduce its strength as much as 70 percent due to the cutting action of the beam edges. Therefore, use should be made of a webbing lanyard or wire core lifeline around the beam; or the lanyard or lifeline should be protected from the edge; or free fall distance should be greatly minimized.

(5) Tie-off where the line passes over or around rough or sharp surfaces reduces strength drastically. Such a tie-off should be avoided or an alternative tie-off rigging should be used. Such alternatives may include use of a snap-hook/dee ring connection, wire rope tie-off, an effective padding of the surfaces, or an abrasion-resistance strap around or over the problem surface.

(6) Horizontal lifelines may, depending on their geometry and angle of sag, be subjected to greater loads than the impact load imposed by an attached component. When the angle of horizontal lifeline sag is less than 30 degrees, the impact force imparted to the lifeline by an attached lanyard is greatly amplified. For example, with a sag angle of 15 degrees, the force amplification is about 2:1 and at 5 degrees sag, it is about 6:1. Depending on the angle of sag, and the line's elasticity, the strength of the horizontal lifeline and the anchorages to which it is attached should be increased a number of times over that of the lanyard. Extreme care should be taken in considering a horizontal lifeline for multiple tie-offs. The reason for this is that in multiple tie-offs to a horizontal lifeline, if one employee falls, the movement of the falling employee and the horizontal lifeline during arrest of the fall may cause other employees to also fall. Horizontal lifeline and anchorage strength should be increased for each additional employee to be tied-off. For these and other reasons, the design of systems using horizontal lifelines must only be done by qualified persons. Testing of installed lifelines and anchors prior to use is recommended.

(7) The strength of an eye-bolt is rated along the axis of the bolt and its strength is greatly reduced if the force is applied at an angle to this axis (in the direction of shear). Also, care should be exercised in selecting the proper diameter of the eye to avoid accidental disengagement of snap-hooks not designed to be compatible for the connection.

(8) Due to the significant reduction in the strength of the lifeline/lanyard (in some cases, as much as a 70 percent reduction), the sliding-hitch knot should not be used for lifeline/lanyard connections except in emergency situations where no other available system is practical. The "one-and-one" sliding hitch knot should never be used because it is unreliable in stopping a fall. The "two-and-two," or "three-and-three" knot (preferable), may be used in emergency situations; however, care should be taken to limit free fall distance to a minimum because of reduced lifeline/lanyard strength.

(i) *Vertical lifeline considerations.* As required by the standard, each employee must have a separate lifeline when the lifeline is vertical. The reason for this is that in multiple tie-offs to a single lifeline, if one employee falls, the movement of the lifeline during the arrest of the fall may pull other employees' lanyards, causing them to fall as well.

(j) *Snap-hook considerations.* Although not required by this standard for all connections, locking snap-hooks designed for connection to suitable objects (of sufficient strength) are highly recommended in lieu of the non-locking type. Locking snap-hooks incorporate a positive locking mechanism in addition to the spring loaded keeper, which will not allow the keeper to open under moderate pressure without someone first releasing the mechanism. Such a feature, properly designed, effectively prevents roll-out from occurring.

As required by the standard (Section I, paragraph (e)(1)) the following connections must be avoided (unless properly designed locking snap-hooks are used) because they are conditions which can result in roll-out when a nonlocking snap-hook is used:

- Direct connection of a snap-hook to a horizontal lifeline.
- Two (or more) snap-hooks connected to one dee-ring.
- Two snap-hooks connected to each other.
- A snap-hook connected back on its integral lanyard.
- A snap-hook connected to a webbing loop or webbing lanyard.
- Improper dimensions of the dee-ring, rebar, or other connection point in relation to the snap-hook dimensions which would allow the snap-hook keeper to be depressed by a turning motion of the snap-hook.

(k) *Free fall considerations.* The employer and employee should at all times be aware that a system's maximum arresting force is evaluated under normal use conditions established by the manufacturer, and in no case using a free fall distance in excess of six feet (1.8 m). A few extra feet of free fall can significantly increase the arresting force on the employee, possibly to the point of causing injury. Because of this, the free fall distance should be kept at a minimum, and, as required by the standard, in no case greater than six feet (1.8 m). To help assure this, the tie-off attachment point to the lifeline or anchor should be located at or above the connection point of the fall arrest equipment to belt or harness. (Since otherwise additional free fall distance is added to the length of the connecting means (i.e. lanyard)). Attaching to the working surface will often result in a free fall greater than six feet (1.8 m). For instance, if a six foot (1.8 m) lanyard is used, the total free fall distance will be the distance from the working level to the body belt (or harness) attachment point plus the six feet (1.8 m) of lanyard length. Another important consideration is that the arresting force which the fall system must withstand also goes up with greater distances of free fall, possibly exceeding the strength of the system.

(l) *Elongation and deceleration distance considerations.* Other factors involved in a proper tie-off are elongation and deceleration distance. During the arresting of a fall, a lanyard will experience a length of stretching or elongation, whereas activation of a deceleration device will result in a certain stopping distance. These distances should be available with the lanyard or device's instructions and must be added to the free fall distance to arrive at the total fall distance before an employee is fully stopped. The additional stopping distance may be very significant if the lanyard or deceleration device is attached near or at the end of a long lifeline, which may itself add considerable distance due to its own elongation. As required by the standard, sufficient distance to allow for all of these factors must also be maintained between the employee and obstructions below, to prevent an injury due to impact before the system fully arrests the fall. In addition, a minimum of 12 feet (3.7 m) of lifeline should be allowed below the securing point of a rope grab type deceleration device, and the end terminated to prevent the device from sliding off the lifeline. Alternatively, the lifeline should extend to the ground or the next working level below. These measures are suggested to prevent the worker from inadvertently moving past the end of the lifeline and having the rope grab become disengaged from the lifeline.

(m) *Obstruction considerations.* The location of the tie-off should also consider the hazard of obstructions in the potential fall path of the employee. Tie-offs which minimize the possibilities of exaggerated swinging should be considered. In addition, when a body belt is used, the employee's body will go through a horizontal position to a jack-knifed position during the arrest of all falls. Thus, obstructions which might interfere with this motion should be avoided or a severe injury could occur.

(n) *Other considerations.* Because of the design of some personal fall arrest systems, additional considerations may be required for proper tie-off. For example, heavy deceleration devices of the self-retracting type should be secured overhead in order to avoid the weight of the device having to be supported by the employee. Also, if selfretracting equipment is connected to a horizontal lifeline, the sag in the lifeline should be minimized to prevent the device from sliding down the lifeline to a position which creates a swing hazard during fall arrest. In all cases, manufacturer's instructions should be followed.

Appendix D to Section 1910.66, Existing Installations (Mandatory)

Use of the Appendix

Appendix D sets out the mandatory building and equipment requirements for applicable permanent installations completed after August 27, 1971, and no later than July 23, 1990 which are exempt from the paragraphs (a), (b)(1), (b)(2), (c), (d), (e), and (f) of this standard. The requirements in Appendix D are essentially the same as unrevised building and equipment provisions which previously were designated as 29 CFR 1910.66 (a), (b), (c) and (d) and which were effective on August 27, 1971.

Note: All existing installations subject to this Appendix shall also comply with paragraphs (g), (h), (i), (j) and Appendix C of the standard 29 CFR 1910.66.

(a) *Definitions applicable to this appendix*—(1) *Angulated roping.* A system of platform suspension in which the upper wire rope sheaves or suspension points are closer to the plane of the building face than the corresponding attachment points on the platform, thus causing the platform to press against the face of the building during its vertical travel.

(2) *ANSI.* American National Standards Institute.

(3) *Babbitted fastenings.* The method of providing wire rope attachments in which the ends of the wire strands are bent back and are held in a tapered socket by means of poured molten babbitt metal.

BEST COPY AVAILABLE

(4) *Brake—disc type.* A brake in which the holding effect is obtained by frictional resistance between one or more faces of discs keyed to the rotating member to be held and fixed discs keyed to the stationary or housing member (pressure between the discs being applied axially).

(5) *Brake—self-energizing band type.* An essentially undirectional brake in which the holding effect is obtained by the snubbing action of a flexible band wrapped about a cylindrical wheel or drum affixed to the rotating member to be held, the connections and linkages being so arranged that the motion of the brake wheel or drum will act to increase the tension or holding force of the band.

(6) *Brake—shoe type.* A brake in which the holding effect is obtained by applying the direct pressure of two or more segmental friction elements held to a stationary member against a cylindrical wheel or drum affixed to the rotating member to be held.

(7) *Building face rollers.* A specialized form of guide roller designed to contact a portion of the outer face or wall structure of the building, and to assist in stabilizing the operators' platform during vertical travel.

(8) *Continuous pressure.* Operation by means of buttons or switches, any one of which may be used to control the movement of the working platform or roof car, only as long as the button or switch is manually maintained in the actuating position.

(9) *Control.* A system governing starting, stopping, direction, acceleration, speed, and retardation of moving members.

(10) *Controller.* A device or group of devices, usually contained in a single enclosure, which serves to control in some predetermined manner the apparatus to which it is connected.

(11) *Electrical ground.* A conducting connection between an electrical circuit or equipment and the earth, or some conducting body which serves in place of the earth.

(12) *Guide roller.* A rotating, bearing-mounted, generally cylindrical member, operating separately or as part of a guide shoe assembly, attached to the platform, and providing rolling contact with building guideways, or other building contact members.

(13) *Guide shoe.* An assembly of rollers, slide members, or the equivalent, attached as a unit to the operators' platform, and designed to engage with the building members provided for the vertical guidance of the operators' platform.

(14) *Interlock.* A device actuated by the operation of some other device with which it is directly associated, to govern succeeding operations of the same or allied devices.

(15) *Operating device.* A pushbutton, lever, or other manual device used to actuate a control.

(16) *Powered platform.* Equipment to provide access to the exterior of a building for maintenance, consisting of a suspended power-operated-working platform, a roof car, or other suspension means, and the requisite operating and control devices.

(17) *Rated load.* The combined weight of employees, tools, equipment, and other material which the working platform is designed and installed to lift.

(18) *Relay, direction.* An electrically energized contactor responsive to an initiating control circuit, which in turn causes a moving member to travel in a particular direction.

(19) *Relay, potential for vertical travel.* An electrically energized contactor responsive to initiating control circuit, which in turn controls the operation of a moving member in both directions. This relay usually operates in conjunction with direction relays, as covered under the definition, "relay, direction."

(20) *Roof car.* A structure for the suspension of a working platform, providing for its horizontal movement to working positions.

(21) *Roof-powered platform.* A powered platform having the raising and lowering mechanism located on a roof car.

(22) *Self-powered platform.* A powered platform having the raising and lowering mechanism located on the working platform.

(23) *Traveling cable.* A cable made up of electrical or communication conductors or both, and providing electrical connection between the working platform and the roof car or other fixed point.

(24) *Weatherproof.* Equipment so constructed or protected that exposure to the weather will not interfere with its proper operation.

(25) *Working platform.* The suspended structure arranged for vertical travel which provides access to the exterior of the building or structure.

(26) *Yield point.* The stress at which the material exhibits a permanent set of 0.2 percent.

(27) *Zinced fastenings.* The method of providing wire rope attachments in which the splayed or fanned wire ends are held in a tapered socket by means of poured molten zinc.

(b) *General requirements.* (1) Design requirements. All powered platform installations for exterior building maintenance completed as of August 27, 1971, but no later than [insert date, 180 days after the effective date], shall meet all of the design, construction and installation requirements of Part II and III of the "American National Standard Safety Requirements for Powered Platforms for Exterior Building Maintenance ANSI A120.1–1970" and of this appendix. References shall be made to appropriate parts of ANSI A120.1–1970 for detail specifications for equipment and special installations.

(2) *Limitation.* The requirements of this appendix apply only to electric powered platforms. It is not the intent of this appendix to prohibit the use of other types of power. Installation of powered platforms using other types of power is permitted, provided such platforms have adequate protective devices for the type of power used, and otherwise provide for reasonable safety of life and limb to users of equipment and to others who may be exposed.

(3) *Types of powered platforms.* (i) For the purpose of applying this appendix, powered platforms are divided into two basic types, Type F and Type T.

(ii) Powered platforms designated as Type F shall meet all the requirements in Part II of ANSI A 120.1–1970, American National Standard Safety Requirements for Powered Platforms for Exterior Building Maintenance. A basic requirement of Type F equipment is that the work platform is suspended by at least four wire ropes and designed so that failure of any one wire rope will not substantially alter the normal position of the working platform. Another basic requirement of Type F equipment is that only one layer of hoisting rope is permitted on winding drums. Type F powered platforms may be either roof-powered or self-powered.

(iii) Powered platforms designated as Type T shall meet all the requirements in Part III of ANSI A120.1–1970 American National Standard Safety Requirements for Powered Platforms for Exterior Building Maintenance, except for section 28, Safety Belts and Life Lines. A basic requirement of Type T equipment is that the working platform is suspended by at least two wire ropes. Failure of one wire rope would not permit the working platform to fall to the ground, but would upset its normal position. Type T powered platforms may be either roof-powered or self-powered.

(iv) The requirements of this section apply to powered platforms with winding drum type hoisting machines. It is not the intent of this section to prohibit powered platforms using other types of hoisting machines such as, but not limited to, traction drum hoisting machines, air powered machines, hydraulic powered machines, and internal combustion machines. Installation of powered platforms with other types of hoisting machines is permitted, provided adequate protective devices are used, and provided reasonable safety of life and limb to users of the equipment and to others who may be exposed is assured.

(v) Both Type F and Type T powered platforms shall comply with the requirements of Appendix C of this standard.

(c) *Type F powered platforms*—(1) *Roof car, general.* (i) A roof car shall be provided whenever it is necessary to move the working platform horizontally to working or storage positions.

(ii) The maximum rated speed at which a power traversed roof car may be moved in a horizontal direction shall be 50 feet per minute.

(2) *Movement and positioning of roof car.* (i) Provision shall be made to protect against having the roof car leave the roof or enter roof areas not designed for travel.

(ii) The horizontal motion of the roof cars shall be positively controlled so as to insure proper movement and positioning of the roof car.

(iii) Roof car positioning devices shall be provided to insure that the working platform is placed and retained in proper position for vertical travel and during storage.

(iv) Mechanical stops shall be provided to prevent the traversing of the roof car beyond its normal limits of travel. Such stops shall be capable of withstanding a force equal to 100 percent of the inertial effect of the roof car in motion with traversing power applied.

(v)(a) The operating device of a power-operated roof car for traversing shall be located on the roof car, the working platform, or both, and shall be of the continuous

pressure weather-proof electric type. If more than one operating device is provided, they shall be so arranged that traversing is possible only from one operating device at a time.

(b) The operating device shall be so connected that it is not operable until:

(*1*) The working platform is located at its uppermost position of travel and is not in contact with the building face or fixed vertical guides in the face of the building; and

(*2*) All protective devices and interlocks are in a position for traversing.

(3) *Roof car stability.* Roof car stability shall be determined by either paragraph (c)(3)(i) or (ii) of this Appendix, whichever is greater.

(i) The roof car shall be continuously stable, considering overturning moment as determined by 125 percent rated load, plus maximum dead load and the prescribed wind loading.

(ii) The roof car and its anchorages shall be capable of resisting accidental over-tensioning of the wire ropes suspending the working platform and this calculated value shall include the effect of one and one-half times the value. For this calculation, the simultaneous effect of one-half wind load shall be included, and the design stresses shall not exceed those referred to in paragraph (b)(1) of this Appendix.

(iii) If the load on the motors is at any time in excess of three times that required for lifting the working platform with its rated load the motor shall stall.

(4) *Access to the roof car.* Safe access to the roof car and from the roof car to the working platform shall be provided. If the access to the roof car at any point of its travel is not over the roof area or where otherwise necessary for safety, self-closing, self-locking gates shall be provided. Applicable provisions of the American National Standard Safety Requirements for Floor and Wall Openings, Railings and Toeboard, A12.1–1967, shall apply.

(5) *Means for maintenance, repair, and storage.* Means shall be provided to run the roof car away from the roof perimeter, where necessary, and to provide a safe area for maintenance, repairs, and storage. Provisions shall be made to secure the machine in the stored position. For stored machines subject to wind forces, see special design and anchorage requirements for "wind forces" in Part II, section 10.5.1.1 of ANSI A120.1–1970 American National Standard Safety Requirements for Powered Platforms for Exterior Building Maintenance.

(6) *General requirements for working platforms.* The working platform shall be of girder or truss construction and shall be adequate to support its rated load under any position of loading, and comply with the provisions set forth in section 10 of ANSI A120.1–1970, American National Standard Safety Requirements for Powered Platforms for Exterior Building Maintenance.

(7) *Load rating plate.* Each working platform shall bear a manufacturer's load rating plate, conspicuously posted; stating the maximum permissible rated load. Load rating plates shall be made of noncorrosive material and shall have letters and figures stamped, etched, or cast on the surface. The minimum height of the letters and figures shall be one-fourth inch.

(8) *Minimum size.* The working platform shall have a minimum net width of 24 inches.

(9) *Guardrails.* Working platforms shall be furnished with permanent guard rails not less than 36 inches high, and not more than 42 inches high at the front (building side). At the rear, and on the sides, the rail shall not be less than 42 inches high. An intermediate guardrail shall be provided around the entire platform between the top guardrail and the toeboard.

(10) *Toeboards.* A four-inch toeboard shall be provided along all sides of the working platform.

(11) *Open spaces between guardrails and toeboards.* The spaces between the intermediate guardrail and platform toeboard on the building side of the working platform, and between the top guardrail and the toeboard on other sides of the platform, shall be filled with metalic mesh or similar material that will reject a ball one inch in diameter. The installed mesh shall be capable of withstanding a load of 100 pounds applied horizontally over any area of 144 square inches. If the space between the platform and the building face does not exceed eight inches, and the platform is restrained by guides, the mesh may be omitted on the front side.

(12) *Flooring.* The platform flooring shall be of the nonskid type, and if of open construction, shall reject a $^{9}/_{16}$-inch diameter ball, or be provided with a screen below the floor to reject a $^{9}/_{16}$-inch diameter ball.

(13) *Access gates.* Where access gates are provided, they shall be self-closing and self-locking.

(14) *Operating device for vertical movement of the working platform.* (i) The normal operating device for the working platform shall be located on the working platform and shall be of the continuous pressure weatherproof electric type.

(ii) The operating device shall be operable only when all electrical protective devices and interlocks on the working platform are in position for normal service and, the roof car, if provided, is at an established operating point.

(15) *Emergency electric operative device.* (i) In addition, on roof-powered platforms, an emergency electric operating device shall be provided near the hoisting machine for use in the event of failure of the normal operating device for the working platform, or failure of the traveling cable system. The emergency operating device shall be mounted in a locked compartment and shall have a legend mounted thereon reading: "For Emergency Operation Only. Establish Communication With Personnel on Working Platform Before Use."

(ii) A key for unlocking the compartment housing the emergency operating device shall be mounted in a break-glass receptacle located near the emergency operating device.

(16) *Manual cranking for emergency operation.* Emergency operation of the main drive machine may be provided to allow manual cranking. This provision for manual operation shall be designed so that not more than two persons will be required to perform this operation. The access to this provision shall include a means to automatically make the machine inoperative electrically while under the emergency manual operation. The design shall be such that the emergency brake is operative at or below governor tripping speed during manual operation.

(17) *Arrangement and guarding of hoisting equipment.*

(i) Hoisting equipment shall consist of a power-driven drum or drum contained in the roof car (roof-powered platforms) or contained on the working platform (self-powered platform).

(ii) The hoisting equipment shall be power-operated in both up and down directions.

(iii) Guard or other protective devices shall be installed wherever rotating shafts or other mechanisms or gears may expose personnel to a hazard.

(iv) Friction devices or clutches shall not be used for connecting the main driving mechanism to the drum or drums. Belt or chain-driven machines are prohibited.

(18) *Hoisting motors.* (i) Hoisting motors shall be electric and of weather-proof construction.

(ii) Hoisting motors shall be in conformance with applicable provisions of paragraph (c)(22) of this appendix, Electric Wiring and Equipment.

(iii) Hoisting motors shall be directly connected to the hoisting machinery. Motor couplings, if used, shall be of steel construction.

(19) *Brakes.* The hoisting machine(s) shall have two independent braking means, each designed to stop and hold the working platform with 125 percent of rated load.

(20) *Hoisting ropes and rope connections.* (i) Working platforms shall be suspended by wire ropes of either 6×19 or 6×37 classification, preformed or nonpreformed.

(ii) [Reserved]

(iii) The minimum factor of safety shall be 10, and shall be calculated by the following formula:

$F = S \times N / W$

Where

S = Manufacturer's rated breaking strength of one rope.

N = Number of ropes under load.

W = Maximum static load on all ropes with the platform and its rated load at any point of its travel.

(iv) Hoisting ropes shall be sized to conform with the required factor of safety, but in no case shall the size be less than $^{5}/_{16}$ inch diameter.

(v) Winding drums shall have at least three turns of rope remaining when the platform has landed at the lowest possible point of its travel.

(vi) The lengthening or repairing of wire rope by the joining of two or more lengths is prohibited.

(vii) The nondrum ends of the hoisting ropes shall be provided with individual shackle rods which will permit individual adjustment of rope lengths, if required.

(viii) More than two reverse bends in each rope is prohibited.

(21) *Rope tag data.* (i) A metal data tag shall be securely attached to one of the wire rope fastenings. This data tag shall bear the following wire rope data:

(a) The diameter in inches.
(b) Construction classification.
(c) Whether nonpreformed or preformed.
(d) The grade of material used.
(e) The manufacturer's rated breaking strength.
(f) Name of the manufacturer of the rope.
(g) The month and year the ropes were installed.

(22) *Electrical wiring and equipment.* (i) All electrical equipment and wiring shall conform to the requirements of the National Electrical Code, NFPA 70–1971; ANSI C1–1971 (Rev. of C1–1968), except as modified by ANSI A120.1–1970 "American National Standard Safety Requirements for Powered Platforms for Exterior Building Maintenance." For detail design specifications for electrical equipment, see Part 2, ANSI A120.1–1970.

(ii) All motors and operation and control equipment shall be supplied from a single power source.

(iii) The power supply for the powered platform shall be an independent circuit supplied through a fused disconnect switch.

(iv) Electrical conductor parts of the power supply system shall be protected against accidental contact.

(v) Electrical grounding shall be provided.

(a) Provisions for electrical grounding shall be included with the power-supply system.

(b) Controller cabinets, motor frames, hoisting machines, the working platform, roof car and roof car track system, and noncurrent carrying parts of electrical equipment, where provided, shall be grounded.

(c) The controller, where used, shall be so designed and installed that a single ground or short circuit will not prevent both the normal and final stopping device from stopping the working platform.

(d) Means shall be provided on the roof car and working platform for grounding portable electric tools.

(e) The working platform shall be grounded through a grounding connection in a traveling cable. Electrically powered tools utilized on the working platform shall be grounded.

(vi) Electrical receptacles located on the roof or other exterior location shall be of a weatherproof type and shall be located so as not to be subject to contact with water or accumulated snow. The receptacles shall be grounded and the electric cable shall include a grounding conductor. The receptacle and plug shall be a type designed to avoid hazard to persons inserting or withdrawing the plug. Provision shall be made to prevent application of cable strain directly to the plug and receptacle.

(vii) Electric runway conductor systems shall be of the type designed for use in exterior locations and shall be located so as not to be subject to contact with water or accumulated snow. The conductors, collectors, and disconnecting means shall conform to the same requirements as those for cranes and hoists in Article 610 of the National Electrical Code, NFPA 70–1971; ANSI C1–1971 (Rev. of C1–1968). A grounded conductor shall parallel the power conductors and be so connected that it cannot be opened by the disconnecting means. The system shall be designed to avoid hazard to persons in the area.

(viii) Electrical protective devices and interlocks of the weatherproof type shall be provided.

(ix) Where the installation includes a roof car, electric contact(s) shall be provided and so connected that the operating devices for the working platform shall be operative only when the roof car is located and mechanically retained at an established operating point.

(x) Where the powered platform includes a powered-operated roof car, the operating device for the roof car shall be inoperative when the roof car is mechanically retained at an established operating point.

(xi) An electric contact shall be provided and so connected that it will cause the down direction relay for vertical travel to open if the tension in the traveling cable exceeds safe limits.

(xii) An automatic overload device shall be provided to cut off the electrical power to the circuit in all hoisting motors for travel in the up direction, should the load applied to the hoisting ropes at either end of the working platform exceed 125 percent of its normal tension with rated load, as shown on the manufacturer's data plate on the working platform.

(xiii) An automatic device shall be provided for each hoisting rope which will cut off the electrical power to the hoisting motor or motors in the down direction and apply the brakes if any hoisting rope becomes slack.

(xiv) Upper and lower directional limit devices shall be provided to prevent the travel of the working platform beyond the normal upper and lower limits of travel.

(xv) Operation of a directional limit device shall prevent further motion in the appropriate direction, if the normal limit of travel has been reached.

(xvi) Directional limit devices, if driven from the hoisting machine by chains, tapes, or cables, shall incorporate a device to disconnect the electric power from the hoisting machine and apply both the primary and secondary brakes in the event of failure of the driving means.

(xvii) Final terminal stopping devices of the working platform:

(a) Final terminal stopping devices for the working platform shall be provided as a secondary means of preventing the working platform from over-traveling at the terminals.

(b) The device shall be set to function as close to each terminal landing as practical, but in such a way that under normal operating conditions it will not function when the working platform is stopped by the normal terminal stopping device.

(c) Operation of the final terminal stopping device shall open the potential relay for vertical travel, thereby disconnecting the electric power from the hoisting machine, and applying both the primary and secondary brakes.

(d) The final terminal stopping device for the upper limit of travel shall be mounted so that it is operated directly by the motion of the working platform itself.

(xviii) Emergency stop switches shall be provided in or adjacent to each operating device.

(xix) Emergency stop switches shall:

(a) Have red operating buttons or handles.
(b) Be conspicuously and permanently marked "Stop."
(c) Be the manually opened and manually closed type.
(d) Be positively opened with the opening not solely dependent on springs.

(xx) The manual operation of an emergency stop switch associated with an operating device for the working platform shall open the potential relay for vertical travel, thereby disconnecting the electric power from the hoisting machine and applying both the primary and secondary brakes.

(xxi) The manual operation of the emergency stop switch associated with the operating device for a power-driven roof car shall cause the electrical power to the traverse machine to be interrupted, and the traverse machine brake to apply.

(23) *Requirements for emergency communications.* (i) Communication equipment shall be provided for each powered platform for use in an emergency.

(ii) Two-way communication shall be established between personnel on the roof and personnel on the stalled working platform before any emergency operation of the working platform is undertaken by personnel on the roof.

(iii) The equipment shall permit two-way voice communication between the working platform and

(a) Designated personnel continuously available while the powered platform is in use; and

(b) Designated personnel on roof-powered platforms, undertaking emergency operation of the working platform by means of the emergency operating device located near the hoisting machine.

(iv) The emergency communication equipment shall be one of the following types:

(a) Telephone connected to the central telephone exchange system; or

(b) Telephones on a limited system or an approved two-way radio system, provided designated personnel are available to receive a message during the time the powered platform is in use.

(d) *Type T powered platforms*—(1) *Roof car.* The requirements of paragraphs (c)(1) through (c)(5) of this Appendix shall apply to Type T powered platforms.

(2) *Working platform.* The requirements of paragraphs (c)(6) through (c)(16) of this Appendix apply to Type T powered platforms.

(i) The working platform shall be suspended by at least two wire ropes.

(ii) The maximum rated speed at which the working platform of self-powered platforms may be moved in a vertical direction shall not exceed 35 feet per minute.

(3) *Hoisting equipment.* The requirements of paragraphs (c) (17) and (18) of this Appendix shall apply to Type T powered platforms.

(4) *Brakes.* Brakes requirements of paragraph (c)(19) of this Appendix shall apply.

(5) *Hoisting ropes and rope connections.* (i) Paragraphs (c)(20) (i) through (vi) and (viii) of this Appendix shall apply to Type T powered platforms.

(ii) Adjustable shackle rods in subparagraph (c)(20)(vii) of this Appendix shall apply to Type T powered platforms, if the working platform is suspended by more than two wire ropes.

(6) *Electrical wiring and equipment.* (i) The requirements of paragraphs (c)(22) (i) through (vi) of this Appendix shall apply to Type T powered platforms. "Circuit protection limitation," "powered platform electrical service system," all operating services and control equipment shall comply with the specifications contained in Part 2, section 26, ANSI A120.1–1970.

(ii) For electrical protective devices the requirements of paragraphs (c)(22) (i) through (viii) of this Appendix shall apply to Type T powered platforms. Requirements for the "circuit potential limitation" shall be in accordance with specifications contained in Part 2, section 26, of ANSI A120.1–1970.

(7) *Emergency communications.* All the requirements of paragraph (c)(23) of this Appendix shall apply to Type T powered platforms.

[FR Doc. 89–17053 Filed 7–27–89; 8:45 am]
BILLING CODE 4510–26–M

federal register

Friday
July 28, 1989

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31
Federal Acquisition Regulation (FAR); Noncommercial Cost Principles; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31

Federal Acquisition Regulation (FAR); Noncommercial Cost Principles

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering revising FAR Subparts 31.3, 31.6, and 31.7 to set forth a new rule on the allowability of costs incurred under Federal contracts with educational institutions, state and local governments, Federally recognized Indian tribal governments, and nonprofit organizations.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 26, 1989, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 89–61 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755. Please cite FAR Case 89–61.

SUPPLEMENTARY INFORMATION:

A. Background

Pub. L. 99–145, the FY 1986 DoD Authorization Act, was enacted November 4, 1985. Title IX of the Act, the Defense Procurement Improvement Act, 1985, amended Chapter 137 of Title 10 U.S.C. by adding a new section 2324, "Allowable costs under defense contracts." Paragraph (e) of section 2324 made ten different costs unallowable and required the Secretary of Defense to prescribe regulations implementing this section. Since the enactment of Pub. L. 99–145, additional statutory cost prohibitions have been included under paragraph (e) of section 2324 by Pub. L. 100–180 (golden parachute payments), Pub. L. 100–370 (commercial insurance), Pub. L. 100–456 (severance pay to foreign nationals), and Pub. L. 100–700 (criminal, civil, or administrative proceedings). These statutory provisions apply to contracts with both commercial and noncommercial entities.

These statutes were implemented with respect to contracts with commercial organizations in Federal Acquisition Circular (FAC) 84–15, effective April 7, 1986, for Pub. L. 99–145; FAC 84–35, effective April 4, 1988, for Pub. L. 100–180; the 1984 edition of the Federal Acquisition Regulation for Pub. L. 100–370; and FAC 84–44, effective March 29, 1989, for Pub. L. 100–456 and 100–700. While the law applied to defense contracts only, the DAR Council and the Civilian Agency Acquisition Council agreed that for Governmentwide regulatory uniformity, the revised cost principles should be incorporated into the FAR and applied to all contracts with commercial organizations.

The cost principles for Federal contracts with noncommercial organizations are specified in Subpart 31.3, Contracts with Educational Institutions, in Subpart 31.6, Contracts with State, Local, and Federally Recognized Indian Tribal Governments, and in Subpart 31.7, Contracts with Nonprofit Organizations. Each of these three subparts incorporates by reference and invokes, respectively, the Office of Management and Budget (OMB) Circulars A–21, Cost Principles for Educational Institutions, A–87, Cost Principles for State and Local Governments, and A–122, Cost Principles for Nonprofit Organizations.

In order to ensure that the requirements of Public Laws 99–145, 100–180, 100–370, 100–456, and 100–700 are observed pending revision of the OMB Circulars above, the proposed rule would amend Subparts 31.3, 31.6, and 31.7 to provide regulatory coverage implementing these statutes. The proposed FAR coverage would apply only to contracts with noncommercial entities and would not affect grants and cooperative agreements which are also subject to the OMB Circulars. It is envisioned that upon final approval of Circular revisions, that the regulatory coverage contained in this rule will be rescinded.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. Comments from small entities and other affected organizations concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 89–610 (FAR Case 89–61) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because compliance with the rule will not impose reporting, recordkeeping, or information collection requirements on noncommercial entities.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: July 24, 1989.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, 48 CFR Part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.303 is revised to read as follows:

31.303 Requirements.

(a) Contracts that refer to this subpart for determining allowable costs under contracts with educational institutions shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with paragraph (c) of this section, and the revision of OMB Circular A–21 in effect on the date of contract award.

(b) Agencies are not expected to place additional restrictions on individual items of cost.

(c) Certain aspects of OMB Circular A–21 are inconsistent with 10 U.S.C. 2324. Therefore, for purposes of determining allowability of costs incurred under Federal contracts which refer to this subpart, the following unallowability provisions in Subpart 31.2 are applicable, in addition to those cited in OMB Circular A–21: 31.205–1(f), 31.205–6(g)(2)(i), 31.205–6(1), 31.205–8, 31.205–14, 31.205–15(a), 31.205–19(a)(4), 31.205–22, 31.205–46(d), 31.205–47, and 31.205–51.

3. Section 31.603 is revised to read as follows:

31.603 Requirements.

(a) Contracts that refer to this subpart for determining allowable costs under contracts with State, local, and Indian tribal governments shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with paragraph (c) of this section, and the revision of OMC Circular A–87 which is in effect on the date of contract award.

(b) Agencies are not expected to place additional restrictions on individual items of cost.

(c) Certain aspects of OMB Circular A–87 are inconsistent with 10 U.S.C. 2324. Therefore, for purposes of determining allowability of costs incurred under Federal contracts which refer to this subpart, the following unallowability provisions in Subpart 31.2 are applicable, in addition to those cited in OMB Circular A–87: 31.205–1(f), 31.205–6(g)(2)(i), 31.205–6(1), 31.205–8, 31.205–14, 31.205–15(a), 31.205–19(a)(4), 31.205–22, 31.205–46(d), 31.205–47, and 31.205–51.

4. Section 31.703 is revised to read as follows:

31.703 Requirements.

(a) Contracts which refer to this subpart for determining allowable costs shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with paragraph (c) of this section, and the revision of OMC Circular A–122 in effect on the date of contract award.

(b) Agencies are not expected to place additional restrictions on individual items of cost.

(c) Certain aspects of OMB Circular A–122 are inconsistent with 10 U.S.C. 2324. Therefore, for purposes of determining the allowability of costs incurred under Federal contracts which refer to this subpart, the following unallowability provisions in Subpart 31.2 are applicable, in addition to those cited in OMB Circular A–122: 31.205–1(f), 31.205–6(g)(2)(i), 31.205–6(1), 31.205–8, 31.205–14, 31.205–15(a), 31.205–19(a)(4), 31.205–46(d), 31.205–47, and 31.205–51.

[FR Doc. 89–17703 Filed 7–27–89; 8:45 am]

BILLING CODE 6820–JC–M

federal register

Friday
July 28, 1989

Part IV

Department of the Interior

Bureau of Land Management

43 CFR Part 4100
Grazing Administration Exclusive of Alaska; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

RIN 1004-AB61

[AA-220-08-4320-02; Circular No. 2620]

43 CFR Part 4100

Grazing Administration Exclusive of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends a section of regulations for the management of domestic livestock grazing on the public lands administered by the Bureau of Land Management. The revising regulation was issued by the Department of the Interior as a proposed rulemaking and published in the **Federal Register** on December 8, 1988 (53 FR 49565) with a public comment period of 60 days ending on February 8, 1989. Nine comments were received and considered during the development of the final rulemaking. This final rulemaking revises § 4110.4–2(a) to allow the authorized officer to determine on a case-by-case basis whether to cancel or suspend a grazing preference in whole or in part, or, where resource conditions warrant, to permit livestock grazing preferences to continue unchanged despite a reduction in the acreage available for livestock grazing.

EFFECTIVE DATE: August 28, 1989.

ADDRESS: Inquiries or suggestions should be sent to: Director (140), Bureau of Land Management, Room 5555–MIB, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Billy R. Templeton, (202) 653–9193.

SUPPLEMENTARY INFORMATION: This final rulemaking provides the authorized officer the flexibility to make determinations on a case-by-case basis to maintain, cancel or suspend a grazing preference where there is a reduction in the acreage available for livestock grazing.

The existing regulations at § 4110.4–2(a) require that where there is a decrease in public land acreage available for livestock grazing use within an allotment, grazing permits or leases and grazing preferences must be canceled in whole or in part. However, in certain circumstances, the public land acreage lost to livestock grazing may be very small and the remaining acreage in the allotment may produce sufficient forage for livestock to support the grazing preference. In other situations, the land may be committed to a mining operation and later again be available for livestock grazing when the mining operation is completed and the land rehabilitated.

For these reasons, and in recognition of range administrative purposes, the existing regulations are revised to deal more logically with the livestock grazing permittees and lessees. Rather than be required to modify or cancel a grazing lease/permit or preference, the authorized officer shall have the authority to make a determination that takes into account the level of available forage for livestock and the magnitude of the change in public land acreage.

The proposed rulemaking was published in the **Federal Register** on December 8, 1988 (53 FR 49565) with a 60 day public comment period ending on February 8, 1989. During the 60 day comment period, 9 comments were received: 5 from associations; 2 from state governments; and 2 from a Federal agency.

Most of the public comments supported the proposed regulations, citing flexibility in decision making to reflect site specific conditions as a positive revision of the rules. Commenters opposing the proposed regulations expressed a spectrum of views concerning the agency's intent ranging from the proposed rules being another effort to eliminate livestock grazing on public lands to the proposed rulemaking having an objective of keeping grazing preferences at maximum levels.

By this final rulemaking the field level manager is given the latitude and flexibility to make sound land use decisions based on existing resource conditions and not be restricted by regulations which mandate cancellation of a grazing permit or lease, in whole or in part, when an allotment has any loss of acreage.

One comment expressed a concern that most of the decisions, pursuant to these regulations, will be to reduce existing livestock use levels. The Bureau of Land Management does not anticipate that the final rule will result in an increase in decisions that reduce livestock use levels. The current regulation provides that the authorized officer must cancel or suspend a grazing preference when acreage is reduced, regardless of forage sufficiency. The revision would allow cancellation of the grazing preference on those allotments where there is a significant decrease in the public land available. The preference may be suspended where forage availability is temporarily reduced or remain unchanged where there is sufficient forage available, as determined by the authorized officer. Therefore, the final rule is unchanged.

One comment points out that the proposed rulemaking does not discuss the possibility of range improvements as a means to maintain grazing preference. Range improvements are addressed in a separate subsection (4120.3) which presently is not being revised. The final rule is unchanged.

Another comment suggests that the entire grazing preference system needs revision. This suggestion is beyond the scope of this rulemaking. Therefore, the final rule is unchanged.

One comment suggests that in order to cancel, suspend or modify a grazing preference the Bureau of Land Management would be required to conduct new range analysis and/or studies. This is not the intent of the rulemaking. The authorized officer generally has existing data from standard range analysis and/or study methods on file at the District or Resource Area Office to determine if an adjustment of the grazing preference is needed. Thus, only in a small number of cases would a new range analysis and/or study have to be initiated. Therefore, the final rule remains unchanged.

One comment recommends the first sentence in § 4110.4–2(a)(2) be changed to read as follows: "Grazing preference may be cancelled, suspended or modified in whole or in part through standard range analysis, study methods and/or available data acceptable to the Authorized Officer to protect the remaining public lands." It is the Bureau of Land Management's policy that any data used for decision making purposes must be gathered using standard methodologies consistent with standards established by the agency. Data from sources other than those which are standards of the agency are not acceptable. Therefore, the final rule remains unchanged.

One comment recommends changing the term "equitably" to "proportionately". The commenter proposed that the final rule at 4110.4–(a)(2) read: "* * * Cancellations or suspensions will be apportioned as agreed upon among authorized users or, in the event of failure to reach agreement, will be proportionately apportioned by the authorized officer among authorized users in direct proportion to their respective grazing preference." This suggestion is beyond the scope of this rulemaking and would, if accepted, result in a substantive change that the public has not been able to comment on. Therefore, this part of the subsection has not been rewritten.

The principal author of this final rulemaking is Bruce E. Dawson, Division of Rangeland Resources, Bureau of Land Management, assisted by Deborah Lanzone of the Division of Legislation and Regulatory Management.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Additionally, the final rule will not cause a taking of private property under Executive Order 12630.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management, Reporting and recordkeeping requirements.

Under the authorities set forth below, § 4110.4–2, Group 4100, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

Subpart 4110—Grazing Management

1. The authority citation for Part 4100 continues to read as follows:

Authority: 43 U.S.C. 315, 315a–315r, 1701 et seq., 1182d, and 98 Stat. 1837.

2. Section 4110.4–2(a) is revised to read:

§ 4110.4–2 Decrease in land acreage.

(a) Where there is a decrease in public land acreage available for livestock grazing within an allotment:

(i) Grazing permits or leases may be canceled, suspended, or modified as appropriate to reflect the changed area of use.

(ii) Grazing preference may be canceled or suspended in whole or in part. Cancellations or suspensions determined by the authorized officer to be necessary to protect the public lands will be equitably apportioned by the authorized officer based upon the level of available forage and the magnitude of the change in public land acreage available, or as agreed to among the authorized users and the authorized officer.

* * * * *

James M. Hughes,

Deputy Assistant Secretary of the Interior.

June 1, 1989.

[FR Doc. 89–17625 Filed 7–27–89; 8:45 am]

BILLING CODE 4310–84–M

federal register

Friday
July 28, 1989

Part V

The President

Proclamation 6000—Lyme Disease Awareness Week, 1989

Proclamation 6001—National Week of Recognition and Remembrance for Those Who Served in the Korean War, 1989

Federal Register
Vol. 54, No. 144
Friday, July 28, 1989

Presidential Documents

Title 3—

The President

Proclamation 6000 of July 26, 1989

Lyme Disease Awareness Week, 1989

By the President of the United States of America

A Proclamation

Lyme disease, also known as Lyme borreliosis, was first recognized in Lyme, Connecticut, in 1975. Seven years later, its cause, a spirochete or spiral-shaped bacterium called Borrelia burgdorferi, was discovered by a researcher at the National Institute of Allergy and Infectious Diseases. Although the northeastern United States has the highest number of cases, Lyme disease has spread to more than 40 States. In 1988, there were more than 5,000 reported cases of Lyme disease, and it has been estimated that many more people have been infected with the disease.

Lyme disease is transmitted to humans through the bite of the deer tick, which inhabits primarily grasslands and wooded areas. Deer ticks are carried by several different animals including deer, cats, dogs, raccoons, and field mice.

A common early symptom of Lyme disease is the appearance of a localized ring-shaped rash with a clearing in the center. Other signs may include flu-like symptoms such as fatigue, mild headache, body aches, and a slight fever. The chances of successful treatment with antibiotics are greatest in the early stages of the disease. Unfortunately, in many instances, early symptoms may go unnoticed or may never appear. In addition, because it can resemble other illnesses, Lyme disease is sometimes misdiagnosed. If not treated early, serious complications may develop that can affect the heart, nervous system, or joints. Lyme disease in pregnant women can result in miscarriages, stillbirths, and birth defects.

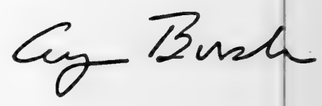
To avoid deer ticks and reduce the chance of contracting Lyme disease, people who are going into wooded areas or tall grass should wear long-sleeved shirts and long pants and apply tick repellant to their clothing. They should also thoroughly check for ticks upon returning indoors. The deer tick is smaller than a dog tick and is most likely to transmit Lyme disease in the nymphal stage when it is very tiny. Anyone bitten by a tick should watch for symptoms suggestive of Lyme disease and seek early medical treatment if they occur.

Recognizing the widespread impact of Lyme disease and the need for research in this field, the National Institutes of Health is committed to finding better ways of identifying, preventing, and treating all tick-borne illnesses.

To enhance public awareness of Lyme disease and its debilitating side effects, the Congress, by Senate Joint Resolution 142, has designated the week beginning July 23, 1989, as "Lyme Disease Awareness Week" and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning July 23, 1989, as Lyme Disease Awareness Week. I call upon all government agencies, health organizations, communications media, and people of the United States to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of July, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-17921
Filed 7-27-89; 12:02 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6001 of July 26, 1989

National Week of Recognition and Remembrance for Those Who Served in the Korean War, 1989

By the President of the United States of America

A Proclamation

In 1950, at the beginning of the post-World War II economic boom, America suddenly found itself engaged in another war. This time the enemy was communism, and the battlefield was Korea. America's men and women in uniform left their mark in history once again and added another litany of unfamiliar names to the list of places where Americans have fought and died to defend freedom—names like Pork Chop Hill, Inchon, and the Pusan Perimeter.

When the communist army of North Korea invaded and attacked the Republic of Korea to the south, it was the beginning of an armed hostility that would eventually involve 21 nations and continue for more than 3 years. Taking the lead in attempting to restore freedom and independence to the people of Korea was the United States of America.

In order to reclaim the territorial integrity of South Korea, a United Nations command was created with the United States serving as the executive agent. Twenty other member nations provided military contingents to serve under the United Nations banner.

The United States' deep commitment to freedom was demonstrated by the number of Americans who served and sacrificed in this bloody conflict. Over 5,700,000 American service men and women were involved directly or indirectly in the war; 54,246 Americans made the supreme sacrifice, dying so that others might be free. Over 100,000 were wounded, and still thousands of others were captured and endured starvation, disease, and physical and psychological torture.

Although the Korean War has been known as America's "Forgotten War," those who served have never forgotten, and our Nation must never forget the great price these men and women paid for the cause of liberty and the right of self-determination.

Soon a magnificent monument will be raised on the grounds of the Mall in Washington. The 38 figures that will march silently for all eternity across that panorama will honor, in eloquent fashion, all who served in the Korean War.

In respect, gratitude, and recognition of those Americans who served in the Armed Forces during the Korean War, the Congress, by Senate Joint Resolution 85, has designated the week beginning July 24, 1989, as "National Week of Recognition and Remembrance for Those Who Served in the Korean War" and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning July 24, 1989, as National Week of Recognition and Remembrance for Those Who Served in the Korean War. I urge the press, radio, television, and all information media to observe the week with appropriate ceremonies and activities. Further, I direct all departments and agencies of the United States and urge interested organiza-

tions, groups, and individuals to fly the American flag at half-staff on July 27, 1989, in honor of those Americans who died as a result of their service in Korea.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of July, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-17922
Filed 7-27-89; 12:03 pm]
Billing code 3195-01-M

Reader Aids

Federal Register
Vol. 54, No. 144
Friday, July 28, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

27855-28016.....3
28017-28408.....5
28409-28664.....6
28665-28794.....7
28795-28998.....10
28999-29316.....11
29317-29528.....12
29529-29700.....13
29701-29874.....14
29875-30006.....17
30007-30204.....18
30205-30364.....19
30365-30534.....20
30535-30710.....21
30711-30880.....24
30881-31004.....25
31005-31162.....26
31163-31318.....27
31319-31492.....28

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

302.....28964
305.....28964
310.....28964

3 CFR

Proclamations:
5995.....28409
5996.....28993
5997.....28999, 30633
5998.....29313
5999.....30873
6000.....31489
6001.....31491

Executive Orders:
May 5, 1855 (Revoked in part by PLO 6737).....30215
August 30, 1916 (Partial revocation).....31030
1500 (Revoked by PLO 6734).....30215
10153 (Amended by EO 12683).....31162
11958 (Amended by EO 12680).....28995
12163 (Amended by EO 12680).....28995
12171 (Amended by EO 12681).....28997
12680.....28995
12681.....28997
12682.....29315
12683.....31162

Administrative Orders:
Presidential Determinations:
No. 89-16 of June 22, 1989.....28017

5 CFR

1201.....28632
1202.....28657
1203.....28658
1204.....28658
1205.....28662
1206.....28664
1209.....28654

Proposed Rules:
900.....28428
930.....30898

7 CFR

2.....28665, 30711, 31163
15.....31163
29.....27855
33.....29317
81.....31319
301.....31005
400.....28019, 28411
401.....28795
455.....30007
905.....29318, 30711
910.....28796, 29701, 30535, 31321
916.....27856, 30365
917.....27856, 29321, 30365
921.....29319
922.....29319
923.....29319
924.....29319
928.....29318
929.....29323
946.....27862
948.....29324
955.....29325
958.....29324
981.....30713
989.....29326
1040.....29327
1139.....30881
1260.....28019
1421.....30714
1446.....30366
1822.....29329
1823.....29329
1910.....29329
1941.....28019, 29329
1942.....29329
1943.....28019, 29329
1944.....29329
1945.....29329, 30882
1951.....28019, 28020, 28411, 29329
1955.....29329
1965.....29329
1980.....28021, 30882

Proposed Rules:
29.....27883
51.....30632, 31338
52.....30750
319.....29566
401.....28019, 28428, 28820
449.....28429
911.....29338
917.....30392
920.....31042
926.....30393
927.....29340
947.....29341
948.....30394
967.....30754
987.....29342
989.....29343
1036.....30898
1131.....30903
1446.....30395
1754.....31344
1762.....27883
1864.....29569
1930.....29901
1944.....29901
1956.....29569
1965.....29569

BEST COPY AVAILABLE

5 CFR

100.....29438
103.....29438, 29440, 29875
210a.....29875
211.....30368
216.....30368
242.....29438
245.....29440
245A.....29434, 29442
264.....29438
299.....29438, 30369

Proposed Rules:

103.....29344
242.....29050

9 CFR

77.....31164
92.....29003

Proposed Rules:

54.....29576
75.....28070

10 CFR

2.....27864, 29008
7.....28554
26.....29139
39.....30883
51.....27864
60.....27864

Proposed Rules:

2.....28822
30.....30049
40.....30049
50.....30049, 30905
60.....30049
70.....30049
72.....30049
150.....30049
764.....29732

11 CFR

Proposed Rules:

100.....31286
9004.....31286
9034.....31286

12 CFR

226.....28665
528.....30535
531.....30535
615.....31323
701.....31165, 31182
741.....31182

Proposed Rules:

5.....28072
32.....30054
202.....29734
335.....30976
523.....30555
545.....30555
561.....27885
563.....27885
700.....31198
701.....31198
705.....31198
741.....31198

13 CFR

115.....30823

14 CFR

39.....28022, 28023, 28025, 28026, 28028, 28554, 29008, 29009, 29529, 29530, 29534, 29535, 29537, 29538, 30007, 30009, 30718–30721, 30885, 30886, 31008, 31010, 31323, 31324
71.....28029, 29539, 29540, 29817, 29888–29891, 30722, 31326, 31327
91.....28769, 29698, 29892
97.....28029, 30010, 31328
107.....28765
108.....28985

Proposed Rules:

Ch. I.....28074
1.....28978
14.....29978
39.....29050–29056, 29577, 30059–30062, 29579, 29580, 29582, 30755, 30757, 30758, 30906, 31045–31047, 31049–31051
43.....30866
65.....30866
Subpart E.....30759–30762
71.....28074, 29057–29059, 29907, 30633, 30759–30762, 31346
73.....30762
75.....29908, 29909
91.....28978
108.....28982
121.....28978
125.....28978
129.....28978
135.....28978
145.....30866
380.....31052
399.....31052

15 CFR

50.....29010
771.....29011
774.....28665
786.....29011
799.....30011

Proposed Rules:

8b.....31002
25.....28430

16 CFR

305.....28031

Proposed Rules:

703.....29910

17 CFR

34.....30684
200.....28796
201.....28797
211.....29333
240.....28799, 30013
241.....28799
270.....31329

Proposed Rules:

230.....30063, 30076
240.....30087
250.....29739
259.....29739

18 CFR

37.....30370

19 CFR

10.....28412
101.....31011
134.....29540
141.....28412
178.....28412

20 CFR

218.....30723
655.....28037

Proposed Rules:

404.....30907
416.....30907

21 CFR

172.....31332
173.....31012
175.....30731
177.....29018
178.....31013
310.....28772, 28780, 31405
520.....29543, 30205
522.....29543, 30205
524.....29543, 30205, 30542
548.....30205
556.....28051
558.....28051, 28154, 29335, 29544
573.....29019
862.....30206
1308.....28414

Proposed Rules:

10.....28872
184.....31055
310.....28872
314.....28872, 31405
320.....28823, 28872, 31405
341.....28442
610.....30093
640.....30093

22 CFR

34.....28415
51.....30373
514.....30033

23 CFR

Proposed Rules:

625.....29910, 30095
645.....29910
658.....29060

24 CFR

203.....28053
235.....30889
570.....31294
887.....31282

26 CFR

1.....28576
602.....28576

Proposed Rules:

1.....28075, 28683, 29061

27 CFR

5.....29701

Proposed Rules:

9.....29739, 30398

28 CFR

Proposed Rules:

73.....30910

29 CFR

70.....30503
1910.....28054, 28154, 29142, 29545, 29546, 30704, 31408
1915.....29142
1917.....29142
1918.....29142
1926.....29546, 30704
2550.....30520
2610.....27872, 28944, 29702
2619.....29703
2622.....27872
2644.....27872
2670.....29025
2675.....29025
2676.....29892

Proposed Rules:

1602.....30097
1627.....30097
1910.....30401, 30557

30 CFR

20.....30512
57.....30508
75.....30513
77.....30513, 30515
938.....29704

Proposed Rules:

75.....30510
715.....28443
761.....30557
914.....30764
916.....29742
920.....30098
936.....29583

31 CFR

103.....28416, 30542
316.....30633
342.....30633
344.....28752
351.....30633

Proposed Rules:

800.....29744

32 CFR

159a.....31333
199.....30732
290.....31014
242.....31335
706.....30206, 30375
861.....31184

Proposed Rules:

281.....30227

33 CFR

100.....28814, 29547, 30034–30037
117.....30038, 30890, 31027–31029
165.....28814, 30544
167.....28061
334.....31142

Proposed Rules:

100.....29348
110.....31059
117.....31060

34 CFR

200.....30736
203.....30190
222.....30039
303.....30823

35 CFR

103.....29335
117.....29335
135.....29335

Proposed Rules:

103.....29584
133.....29584

36 CFR

13.....30005

37 CFR

1.....29548, 30375
2.....29548
201.....27873

38 CFR

3.....28445
17.....28667, 28673
19.....28445
21.....28676
36.....30382

Proposed Rules:

1.....30099
36.....28683, 30207

39 CFR

111.....27879
221.....29706
222.....29706
223.....29706
224.....29706
225.....29706
226.....29706
227.....29706
228.....29706
229.....29706

Proposed Rules:

3001.....30557

40 CFR

52.....27880, 29310, 29554, 30040, 29555, 29893–29895, 30891
82.....28062, 29336
131.....28662
141.....29998
180.....30632
228.....29034, 29712
261.....31335
271.....28677, 29557
704.....30211, 30632
721.....31298
761.....28418
763.....29460
796.....29715
797.....29715

Proposed Rules:

22.....29516
52.....28684, 28689, 29061, 29063, 29349
60.....28447, 29352
81.....29349
82.....29353
123.....30405
130.....30765
142.....29516
261.....30406
264.....30228
265.....30228
300.....29820
302.....29306
355.....29306, 30700
403.....30405
707.....29524

41 CFR

101–26.....31030
101–38.....30892
302–1.....29716

42 CFR

57.....28065
405.....29717
442.....29717
447.....29717
483.....29717
488.....29717
489.....29717
498.....29717

Proposed Rules:

424.....30558

43 CFR

4100.....31484

Public Land Orders:

1742 (Revoked in part by PLO 6738).....30214
2301 (Revoked in part by PLO 6735).....30213
6702 (Corrected by PLO 6732).....30214
6725 (Corrected by PLO 6739).....30214
6729 (Corrected by PLO 6736).....30213
6731.....30973
6732.....30214
6733.....30213
6734.....30215
6735.....30213
6736.....30213
6737.....30215
6738.....30214
6739.....30214
6740.....31030

Proposed Rules:

4.....30766
3160.....30766
5440.....31347
5450.....29357
5460.....29357

44 CFR

64.....30384, 30545, 30547
65.....31185, 31186
67.....31187

Proposed Rules:

67.....30415, 31199
325.....30565

45 CFR

302.....30216
303.....30216
304.....30216
305.....30216

46 CFR

502.....29036
580.....31030

Proposed Rules:

588.....30425

47 CFR

1.....29037, 30548, 31031
2.....30041
22.....28815, 28816, 30895, 31031
36.....31032
73.....28677, 28678, 29038 29559–29561, 29719, 29720, 30041, 30042, 30389, 30549, 30737, 30738, 30896, 30897, 31033, 31034, 31189, 31190
74.....29039, 30043
80.....29040
90.....28678
97.....30823

Proposed Rules:

Ch. I.....28789
2.....28823
15.....28690, 28691, 28693
73.....27904, 28077, 28695, 28696, 29067, 29587, 29588, 29755, 29756, 30567, 30568, 30766, 30767, 31061, 31062
87.....28823

48 CFR

1.....29278
4.....29278
7.....29278
8.....29278
14.....29278
15.....29278
17.....29278
19.....29278, 30708
22.....29278
25.....29278
36.....29278
37.....29278
38.....29278
47.....29278
51.....29278
52.....29278, 30708
53.....29278
203.....30738
204.....28419
207.....31035
208.....30738
209.....30738, 31035
212.....30738
213.....30738
214.....30738
215.....30738, 31035
216.....30738
217.....30738
219.....30738, 31035
222.....30738
223.....30738
225.....31035
226.....31035
236.....30738
242.....30738
245.....30738
252.....30738, 31035
253.....30738
271.....30738
503.....29720
505.....29720
552.....29720
705.....28068
706.....28068
715.....28068
752.....28068
809.....30043
810.....30043
814.....30043
816.....30043
828.....30043
852.....30043
870.....30043
Ch. 18.....28186
2919.....30389

Proposed Rules:

15.....29296
31.....31480
43.....29296
47.....29984
52.....29296, 29984
203.....30911
209.....30911
219.....30101
246.....30101
252.....30911
914.....30569
915.....30569
916.....30230
917.....29757
935.....29757
952.....30569
970.....30230

49 CFR

27.....31039
89.....28680
171.....28750
172.....28750
173.....28750
176.....28750
178.....28750
192.....27881, 31405
193.....27881, 31405
195.....27881, 31405
390.....28818
391.....28818
393.....28818
571.....29041–29045, 30223
1011.....29337
1320.....30748

Proposed Rules:

171.....31144
172.....31144, 31158
173.....31144
174.....31144
175.....31144
176.....31144
177.....31144
390.....29912
512.....28696
571.....29067–29071, 29915, 30427, 30571
572.....29071

50 CFR

17.....29652, 29655, 29658, 29726, 30550, 31190
204.....30045
285.....29896
299.....29896
602.....30826
640.....30045
642.....29561, 30554
652.....30749
661.....28818, 29730, 30390, 31196
663.....30046
672.....28422, 28681, 30224
674.....28423, 30225
675.....30390

Proposed Rules:

17.....29915, 30572, 30577, 31201–31216
20.....29640, 30858
32.....31348
285.....29359, 29916
640.....31063
672.....30102
675.....30102

LIST OF PUBLIC LAWS

Last List July 26, 1989

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not

published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.J. Res. 174/Pub. L. 101–58

To designate the decade beginning January 1, 1990, as the "Decade of the Brain". (July 25, 1989; 103 Stat. 152; 3 pages) Price: $1.00

S.J. Res. 137/Pub. L. 101–59

Designating January 7, 1990, through January 13, 1990, as "National Law Enforcement Training Week". (July 25, 1989; 103 Stat. 155; 2 pages) Price: $1.00

OL
4

S

L
8

89

MI

OL
54
SS
1
4
5
L
31
989
MI

7-31-89
Vol. 54 No. 145

federal register

Monday
July 31, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 89 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

7-31-89
Vol. 54 No. 145
Pages 31493-31644

federal register

Monday
July 31, 1989

BEST COPY AVAILABLE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 54, No. 145
Monday, July 31, 1989

Agricultural Marketing Service
RULES
Almonds grown in California, 31501, 31502
(2 documents)
PROPOSED RULES
Tobacco inspection:
Permissive inspection and grading; fees and charges, 31530

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service

Air Force Department
NOTICES
Senior Executive Service:
Performance Review Boards; membership, 31555

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animals products:
Eggs other than hatching eggs; Salmonella enteritidis, 31504

Commerce Department
See Export Administration Bureau; International Trade Administration; National Oceanic and Atmospheric Administration

Customs Service
RULES
Administrative rulings; nationwide uniformity, etc., 31511

Defense Department
See Air Force Department

Education Department
NOTICES
Meetings:
Education Statistics Advisory Council, 31555
National Assessment Governing Board, 31556
(2 documents)
Student Financial Assistance Advisory Committee, 31557

Employment Policy, National Commission
See National Commission for Employment Policy

Energy Department
See Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Alaska, 31522
Missouri, 31524
PROPOSED RULES
Hazardous waste:
Indentification and listing—
Exclusions, 31548

Executive Office of the President
See Presidential Documents

Export Administration Bureau
NOTICES
U.S.-Japan machine tool voluntary restraint agreement; special issue licenses, 31555

Federal Aviation Administration
RULES
Airworthiness directives:
Bell, 31506
Boeing, 31507, 31509
(2 documents)
CASA, 31510
Sikorsky, 31505
PROPOSED RULES
Airworthiness directives:
Aerospatiale, 31535
Beech, 31536
CASA, 31537
Grob Werke GmbH & Co. KG, 31531
Honeywell, Inc., 31539
McDonnell Douglas Helicopter Co., 31532
Tracor Aerospace, Inc., 31533
Control zones, 31540
Repair station rules, repairmen certification rules etc.; regulatory review; meetings
Correction, 31540
NOTICES
Exemption petitions; summary and disposition, 31608

Federal Communications Commission
NOTICES
Meetings; Sunshine Act, 31639

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 31639

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Texas, 31574
(2 documents)
Flood insurance study back-up data; fee charge system, 31574

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Cimarron Chemical, Inc., et al., 31557
JMC Selkirk, Inc., 31558
Natural gas certificate filings:
El Paso Natural Gas Co. et al., 31561
Natural gas companies:
Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend, 31558–31560
(3 documents)

Applications, hearings, determinations, etc.:
Arkla Energy Resources, 31567
Granite State Gas Transmission, Inc., 31567
National Fuel Gas Supply Corp., 31568
Texas Gas Transmission Corp., 31568
Transco Energy Ventures Co., 31568

Federal Maritime Commission
NOTICES
Agreements filed, etc., 31575, 31576
(2 documents)

Federal Trade Commission
PROPOSED RULES
Comprehensive Smokeless Tobacco Health Education Act; health warnings in advertising on utilitarian objects (pens, pencils, clothing, and sporting goods), 31541

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 31584

Food and Drug Administration
RULES
Food additives:
Adjuvants, production aids, and sanitizers—
2-(8-Heptadecenyl)-4,5-dihydro-1H-imidazole-1-ethanol, 31518

Health and Human Services Department
See also Food and Drug Administration; Health Care Financing Administration; Public Health Service
RULES
Acquisition regulations:
Procurement integrity, 31527

Health Care Financing Administration
NOTICES
Medicare:
Peer review organizations—
Area designation, 31576

Health Resources and Services Administration
See Public Health Service

Hearings and Appeals Office, Energy Department
NOTICES
Special refund procedures; implementation, 31569

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Maximum mortgage limits for high-cost areas, 31519

Interior Department
See Fish and Wildlife Service; Land Management Bureau; National Park Service; Reclamation Bureau

Internal Revenue Service
PROPOSED RULES
Income taxes:
Nonresident alien individuals and foreign corporations; untimely filing of returns, 31545

International Trade Administration
NOTICES
Countervailing duties:
Portland hydraulic cement from Costa Rica; correction, 31640

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Consolidated Rail Corp., 31589

Justice Department
See Justice Programs Office

Justice Programs Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Family violence information dissemination program, 31589
Law enforcement training and technical assistance, 31591

Labor Department
NOTICES
Agency information collection activities under OMB review, 31594

Land Management Bureau
NOTICES
Meetings:
Helicopters and motorized vehicles used in gathering wild horses and burros, 31582
Realty actions; sales, leases, etc.:
Nevada, 31583
(2 documents)

National Commission for Employment Policy
NOTICES
Meetings, 31595
(2 documents)

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Grumman Olson, 31609

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management plans; guidelines
Correction, 31529, 31640
(2 documents)

National Park Service
NOTICES
Meetings:
Chesapeake and Ohio Canal National Historical Park Commission, 31584

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 31595

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Commonwealth Edison Co., 31596
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 31596, 31597
(2 documents)

Vermont Yankee Nuclear Power Corp., 31597

Personnel Management Office
NOTICES
Excepted services:
Schedules A, B, C; positions placed or revoked—
Update, 31598

Presidential Documents
ADMINISTRATIVE ORDERS
Refugees; admissions numbers (Presidential Determination 89-15 of June 19, 1989), 31493
Seychelles; defense articles and services (Presidential Determination 89-18 of July 20, 1989), 31495
Tanzania; defense articles and services (Presidential Determination 89-20 of July 20, 1989), 31497
Uganda; defense articles and servies (Presidential Determination 89-21 of July 20, 1989), 31499
EXECUTIVE ORDERS
Central Intelligency Agency Retirement and Disability System (EO 12684), 31643

Public Health Service
See also Food and Drug Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
City-based health promotion and year 2000 national health objectives implementation for Blacks and Native Americans, 31578
Meetings:
National Commission on Acquired Immune Deficiency Syndrome, 31582

Reclamation Bureau
NOTICES
Contract negotiations:
Quarterly status tabulation of water service and repayment, 31584

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 31610

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Depository Trust Co., 31600, 31601
(2 documents)
Applications, hearings, determinations, etc.:
Lifeline Healthcare Group, Ltd., 31602
Ryan Mortgage Acceptance Corp. V, 31602

Small Business Administration
NOTICES
Agency information collection activities under OMB review, 31605
Disaster loan areas:
Connecticut, 31606
Delaware et al., 31606
Louisiana et al., 31606
New York, 31607
Texas, 31607
Meetings; regional advisory councils:
Illinois, 31607
Applications, hearings, determinations, etc.:
Bishop Capital II, L.P., 31607
First Growth Capital, Inc., 31608

State Department
NOTICES
Export-Import Bank financial guarantees and insurance:
Colombia; anti-narcotics equipment purchase, 31608

Transportation Department
See Federal Aviation Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration

Treasury Department
See Customs Service; Internal Revenue Service

Separate Parts In This Issue

Part II
The President, 31643

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
12684.....31643
Administrative Orders:
Presidential Determinations:
No. 89-15 of June 19, 1989.....31493
No. 89-18 of July 20, 1989.....31495
No. 89-20 of July 20, 1989.....31497
No. 89-21 of July 20, 1989.....31499

7 CFR
981 (2 documents).....31501, 31502
Proposed Rules:
29.....31530

9 CFR
94.....31504

14 CFR
39 (5 documents).....31505-31507, 31509, 31510
Proposed Rules:
39 (7 documents).....31531-31533, 31535-31537, 31539
43.....31540
65.....31540
71.....31540
1451.....31540

16 CFR
Proposed Rules:
307.....31541

19 CFR
177.....31511

21 CFR
178.....31518

24 CFR
201.....31519
203.....31519
234.....31519

26 CFR
Proposed Rules:
1.....31545

40 CFR
52 (2 documents).....31522, 31524
81.....31524
Proposed Rules:
261.....31548

48 CFR
303.....31527

50 CFR
602 (2 documents).....31529, 31640

Federal Register
Vol. 54, No. 145
Monday, July 31, 1989

Presidential Documents

Title 3—

The President

Presidential Determination No. 89-15 of June 19, 1989

Emergency Determination of Additional FY 1989 Refugee Admissions Numbers Pursuant to Section 207(b) of the Immigration and Nationality Act

Memorandum for the United States Coordinator for Refugee Affairs

In accordance with Section 207(b) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. 1157(b), and after appropriate consultation with the Congress, I hereby determine that an unforeseen refugee emergency exists, and that an increase in the worldwide refugee admissions ceiling for Fiscal Year 1989 from 94,000, as authorized in Presidential Determination 89-2 of October 5, 1988, to 116,500 in order to accommodate the admission of additional refugees from Eastern Europe and the Soviet Union, is justified as required by Section 207(b) of the Act. Federal funding may be used for a total of up to 112,500 admissions in accordance with the following regional allocations:

Africa	2,000
East Asia, First Asylum	28,000
East Asia, Orderly Departure program	22,000
Eastern Europe/Soviet Union	50,000
Latin America/Caribbean	3,500
Near East/South Asia	7,000

The provisions of Presidential Determination No. 89-2 are retained, except to the extent superseded by this Determination.

You are hereby directed to report this Determination to the Congress immediately and to publish it in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, June 19, 1989.
cc: The Secretary of State
The Attorney General
The Secretary of Health and Human Services

[FR Doc. 89-17971
Filed 7-27-89; 4:35 pm]
Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 89-18 of July 20, 1989

Eligibility of Seychelles To Receive Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 503 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2311, and Section 3(a)(1) of the Arms Export Control Act, 22 U.S.C. 2753(a)(1), I hereby find that the furnishing of defense articles and services to the Government of Seychelles will strengthen the security of the United States and promote world peace.

You are directed on my behalf to report this finding to the Congress and to publish it in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, July 20, 1989.

[FR Doc. 89-17972
Filed 7-27-89; 4:36 pm]
Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 89–20 of July 20, 1989

Eligibility of Tanzania To Receive Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 503 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2311, and Section 3(a)(1) of the Arms Export Control Act, 22 U.S.C. 2753(a)(1), I hereby find that the furnishing of defense articles and services to the Government of Tanzania will strengthen the security of the United States and promote world peace.

You are directed on my behalf to report this finding to the Congress and to publish it in the **Federal Register.**

THE WHITE HOUSE,
Washington, July 20, 1989.

[FR Doc. 89–17973
Filed 7–27–89; 4:37 pm]
Billing code 3195–01–M

Presidential Documents

Presidential Determination No. 89–21 of July 20, 1989

Eligibility of Uganda To Receive Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 503 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2311, and Section 3(a)(1) of the Arms Export Control Act, 22 U.S.C. 2753(a)(1), I hereby find that the furnishing of defense articles and services to the Government of Uganda will strengthen the security of the United States and promote world peace.

You are directed on my behalf to report this finding to the Congress and to publish it in the **Federal Register.**

THE WHITE HOUSE,
Washington, July 20, 1989.

[FR Doc. 89–17974
Filed 7–27–89; 4:38 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 54, No. 145
Monday, July 31, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[FV-89-055FR]

Handling of Almonds Grown in California; Proposed Extension of Date for Satisfying Inedible Disposition Obligation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule temporarily changes the date from July 31, 1989, to August 31, 1989, by which handlers of California almonds must satisfy 25 percent of their 1988–89 crop year inedible disposition obligations. Handlers must satisfy the remaining 75 percent of their inedible disposition obligations by the current July 31, 1989, date. This action is taken in conjunction with a final rule, published elsewhere in this issue of the **Federal Register**, which transfers a 25 percent reserve percentage in effect for the 1988–89 crop year to the salable category.

EFFECTIVE DATE: July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, Room 2525, South Building, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 981, both as amended (7 CFR Part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatability.

There are approximately 115 handlers of almonds subject to regulation under the marketing order and approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action gives handlers of California almonds an additional month to satisfy 25 percent of their 1988–89 crop year inedible disposition obligation. Therefore, this action relaxes restrictions on almond handlers and will not impose any additional burden or costs on handlers.

Based on the above, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

This final rule revises, for 1989 only, § 981.442 of "Subpart—Administrative Rules and Regulations." The action is based on the unanimous recommendation of the Almond Board of California (Board), the agency responsible for local administration of the order, and upon other available information.

Section 981.42 of the order provides that handlers are required to deliver a quantity of almond kernels equal to their inedible disposition obligation to the Board or Board-accepted crushers, feed manufacturers, or feeders. A handler's inedible disposition obligation is the percentage of inedible kernels in lots received by such handler during a crop year, as determined by the Federal-State Inspection Service, less any tolerance in effect for the crop year. Section 981.42 also provides that the Board may establish rules and regulations necessary to the administration of these provisions.

Paragraph 981.442(a)(5) of the rules and regulations provides that each handler's inedible disposition obligation is satisfied when the almond meat content of the material delivered to accepted users equals the inedible disposition obligation, but no later than July 31 succeeding the crop year in which the obligation was incurred. This action extends the July 31 date to August 31 for 25 percent of handlers' disposition obligations incurred during the 1988–89 crop year only. Thus, handlers have until August 31, 1989, to satisfy the final 25 percent of their 1988–89 crop year inedible disposition obligation. Handlers still must satisfy the other 75 percent of their inedible disposition obligation by July 31, 1989.

The 25 percent of handlers' inedible disposition obligation to which the extension applies corresponds to the 25 percent of the 1988–89 merchantable almond crop which handlers have held in reserve, and which the Board recommended for release to the salable category effective August 1, 1989. A final rule to release the 25 percent reserve to the salable category effective August 1, 1989, is published elsewhere in this issue of the **Federal Register.** While the reserve was in effect, handlers were required to withhold 25 percent of their marketable almond receipts from normal domestic and export markets. Consequently, many handlers took no action to process those almonds. Handlers customarily satisfy their inedible disposition obligations with inedible quality almonds removed during processing. Therefore, since the 25 percent reserve will not be released to the salable category until August 1, 1989, handlers may need additional time

to process those almonds to satisfy the 25 percent of their inedible disposition obligations which corresponds to the 25 percent reserve.

Notice of this action was published in the **Federal Register** on June 29, 1989 (54 FR 27386). That proposal provided a 10-day period for interested persons to submit their comments. No comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is found that extending the date for satisfying the inedible disposition obligation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). This action relaxes restrictions on handlers by extending a July 31, 1989, deadline concerning 25 percent of handlers' inedible disposition obligation. Therefore, this action should take effect on July 31, 1989, and should correspond to the release of the 25 percent reserve to the salable category that is made effective August 1, 1989, and published in this issue of the **Federal Register**.

List of Subjects in 7 CFR Part 981

Almonds, California, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. The last sentence in paragraph (a)(5) of § 981.442 is revised to read as follows:

Note: This revision will not appear in the annual Code of Federal Regulations.

§ 981.442 Quality control.

(a) * * *

(5) * * * Each handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than July 31 succeeding the crop year in which the obligation was incurred: *Provided*, That for 1988–89 crop year almonds, handlers have until August 31, 1989, to satisfy the 25 percent of their disposition obligation which corresponds to the 25 percent reserve almonds released to salable almonds.

* * * * *

Dated: July 27, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–17947 Filed 7–28–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 981

[FV–88–120FR–A]

Handling of Almonds Grown in California; Revision of Salable, Reserve, and Export Percentages for the 1988–89 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the salable and reserve percentages for marketable California almonds received by handlers during the 1988–89 crop year, which began on July 1, 1988. The salable percentage is increased from 75 to 100 percent, and the reserve percentage is correspondingly decreased from 25 percent to 0 percent. This action relieves restrictions on handlers and is necessary to provide a sufficient quantity of almonds to meet normal domestic and export market needs.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, Room 2524–S, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 981, both as amended (7 CFR Part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under critiera contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 115 handlers of almonds subject to regulation under the almond marketing order and approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action removes a requirement that all handlers of California almonds hold 25 percent of marketable almonds received during the 1988–89 crop year in reserve. Handlers may now ship 100 percent of their merchantable almonds received during the 1988–89 crop year to any market they desire. Therefore, this action relaxes restrictions on almond handlers and will not impose any additional burden or costs on handlers.

Based on the above, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

On January 25, 1989, a final rule was published in the **Federal Register** (54 FR 3584) establishing salable, reserve, and export percentages of 75 percent, 25 percent, and 0 percent, respectively, for the 1988–89 crop year. That action was based on a recommendation of the Almond Board of California (Board), which works with the U.S. Department of Agriculture (Department) in administering the order, at its July 20, 1988, meeting. The recommendation was made pursuant to §§ 981.47 and 981.49 of the order, based on the then current estimates of marketable supply and combined domestic and export trade demand for the 1988–89 crop year.

On May 12, 1989, the Board met to review the salable and reserve percentages that had been established for the 1988–89 crop year and the supply and demand estimates from which those percentages were derived. At that meeting, pursuant to § 981.48 of the order, the Board recommended an increase in the salable percentage from 75 percent to 100 percent of the 1988–89 marketable production, and a corresponding decrease in the reserve percentage from 25 percent to 0 percent. The Board recommended that this revision take place effective August 1, 1989.

The estimates used by the Board on May 12, 1989, in reviewing the salable and reserve percentages are shown below. The Board's July 20, 1988, estimates are shown as a basis for comparison.

MARKETING POLICY ESTIMATES—1989 CROP

[Kernelweight basis in millions of pounds]

	Initial estimates	Revised estimates
Estimated production:		
1. 1988 Production	580.0	585.5
2. Loss and exempt—(4 percent)	23.2	23.4
3. Marketable production	556.8	562.1
Estimated trade demand:		
4. Domestic	160.0	159.0
5. Export	370.0	383.1
6. Total	530.0	542.1
Inventory adjustment:		
7. Carryin 7/1/88	112.8	117.5
8. Additional carryin 8/1/88	112.8	112.8
9. Desirable carryover 6/30/89	113.2	113.2
10. Desirable additional carryover 8/1/89	0	137.1
11. Adjustment (item 9 plus item 10 minus item 7 minus item 8)	−112.4	20.0
Salable and reserve percentages:		
12. Adjusted trade demand (item 6 plus item 11)	417.6	562.1
13. Reserve (item 3 minus item 12)	139.2	0
14. Salable percent (item 12 ÷ item 3 × 100)	75	100
15. Reserve percent (100% minus item 14)	25	0

Estimated 1988 crop production has increased from 580.0 million kernelweight pounds to 585.5 million kernelweight pounds. Estimated weight loss resulting from the removal of inedible kernels by handlers and losses during manufacturing has increased from 23.2 million kernelweight pounds to 23.4 million kernelweight pounds. Therefore, marketable production is increased from 556.8 million kernelweight pounds to 562.1 million kernelweight pounds.

Estimated 1988–89 domestic trade demand has decreased from 160.0 to 159.0 million kernelweight pounds. Estimated 1988–89 export trade demand has increased from 370.0 to 338.1 million kernelweight pounds. Therefore, total estimated 1988–89 trade demand is increased from 530.0 to 542.1 million kernelweight pounds.

Carryin on July 1, 1988, has increased from 112.8 to 117.5 million kernelweight pounds. Additional carryin on August 1, 1988, remains at 112.8 million kernelweight pounds. Estimated salable carryover on June 30, 1989, based on the 75 percent salable percentage in effect at that time, is expected to remain at 113.2 million kernelweight pounds.

The revised estimates include an additional desirable carryover of salable almonds on August 1, 1989, of 137.1 million kernelweight pounds. At its May 12, 1989, meeting, the Board reported that as of April 30, 1989, 190.2 million kernelweight pounds of salable almonds remained unshipped to supply domestic and export trade demand. The Board indicated that this quantity was ample to supply market needs through July 31, 1989. The Board also reported that for the period August 1, 1988, through September 15, 1989, (at which time 1989 crop almonds are expected to be available) shipments are estimated to total 636.9 million pounds and that a comparable quantity of almonds would be needed to supply domestic and export trade demand for the period August 1, 1989, through September 15, 1990 (at which time 1990 crop almonds are expected to be available). However, the Board reported that the National Agricultural Statistical Service's preliminary estimate of 1989 crop production is only 450.0 million kernelweight pounds, and that the Board's preliminary estimate of 1989 marketable production is only 427.5 million kernelweight pounds. Therefore, it appears that the 1989 crop will not be sufficient to meet 1989–90 crop year trade demand needs and carryover requirements for use during the early months of the 1990–91 crop year until 1990 crop almonds are available for shipment. While the carryover of an estimated 113.2 million kernelweight pounds of salable almonds on June 30, 1989, will make up part of the deficiency, the release of the estimated 137.1 million kernelweight pound reserve will be necessary to ensure that sufficient quantities of almonds are available to meet 1989–90 trade demand needs. Therefore, an increase of the salable percentage from 75 percent to 100 percent as of August 1, 1989, is warranted.

A proposed rule based on the Board's May 12, 1989, recommendation was published in the **Federal Register** on June 29, 1989, (54 FR 27385). That proposal provided a 10-day period for interested persons to submit their comments. One comment was received from Brian C. Leighton, counsel to Cal-Almond, Inc. Mr. Leighton stated that his client supports releasing the 25 percent reserve to the salable category. However, Cal-Almond, Inc., believes that the reserve should be released immediately rather than effective August 1, 1989, for several reasons as discussed below.

Mr. Leighton stated that waiting until August 1, 1989, to release the 25 percent reserve to the salable category is unfair to handlers who had reached a sold-out position with respect to salable almonds prior to the Board's May 12, 1989, recommendation and who, therefore, would have no almonds to sell until the August 1, 1989, release date. Mr. Leighton believes that this gives handlers, who had salable almonds unsold as of May 12, a monopoly on the market from May 12 to August 1, 1989. Section 981.48 of the order authorizes actions to increase salable percentages in effect for California almonds taking into account such information as estimated marketable production, trade demand, carryin, and carryover for all handlers in the aggregate.

The Board had reported that the available supply of salable almonds that remained unshipped was ample to supply market needs only through July 31, 1989. It was concluded that the 1989 crop would not be sufficient to meet the 1989–90 crop year trade demand needs and carryover requirements for use during the early months of the 1990–91 crop year until 1990 crop almonds are available for shipment. Accordingly, the action contained in this rule was proposed. In addition, the order places no restrictions on when handlers may sell their salable almonds; therefore, all handlers are free to sell their salable almonds at any time during the season. Thus, individual marketing strategies employed by handlers to sell their salable almonds have no bearing on the Secretary's decision to release reserve almonds to the salable category.

In his comment, Mr. Leighton also stated that by not releasing the reserve until August 1, 1989, the Secretary would, in effect, be issuing flow-to-market restrictions from May 12, to August 1, 1989.

The action taken by this final rule is not a flow-to-market regulation nor would such a regulation be authorized under the order. Flow-to-market regulations are designed to avoid market gluts by stabilizing the volume of shipments moving to market on a week-by-week basis during the normal marketing season. This is done through handler allotments, which restrict the amount of a commodity which handlers may ship during a given period. These allotments are based on the amounts of a commodity currently available, on the amounts shipped in a previous period, or a combination of the two. The action taken by this final rule does not establish weekly volume regulations and does not establish handler allotments.

Mr. Leighton concluded his comment by stating that it makes no sense to limit the supply of almonds reaching the market from May 12 to August 1, 1989,

and then release the reserve (estimated at 139.2 million kernelweight pounds) one month before the 1989 crop (estimated at 450.0 million kernelweight pounds) is available to sell. Mr. Leighton indicated that the latter action is likely to depress prices. However, it is the Department's position that the 75 percent salable percentage provides an ample supply of almonds to supply market needs through July 31, 1989. As of April 30, 1989, 190.2 million kernelweight pounds of almonds remained unshipped to supply market needs for the period May 1 through July 31, 1989. During the corresponding May 1 through July 31 period for the years 1988, 1987, and 1986, actual shipments totalled only 98.0, 68.1, and 82.8 million kernelweight pounds, respectively.

On the other hand, as discussed above, it appears that the estimated 1989 crop of 450.0 million kernelweight pounds will be insufficient to meet 1989–90 crop year market needs and carryover requirements. Furthermore, Mr. Leighton is incorrect when he implies that the entire 1989 almond crop will be available for market on September 1, 1989. Almonds are customarily harvested from August through November, and additional time is required for processing. Therefore, it is the Department's position that releasing the reserve effective August 1, 1989, is unlikely to have a depressing effect on prices.

For the reasons stated above, Mr. Leighton's objections are denied.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is found that the revision of the salable and reserve percentages, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). This action will relax restrictions on handlers by allowing them to ship additional almonds to salable outlets and should be made effective August 1, 1989, to provide a sufficient quantity of almonds for normal domestic and export needs and to maintain the current momentum of sales.

List of Subjects in 7 CFR Part 981

Almonds, California, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Salable, Reserve, and Export Percentages

2. Section 981.236 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 981.236 Salable, reserve and export percentages for almonds during the crop year beginning July 1, 1988.

The salable reserve, and export percentages, during the crop year beginning July 1, 1988, shall be 100 percent, 0 percent, and 0 percent, respectively.

Dated: July 27, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–17948 Filed 7–28–89; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 89–111]

Importation of Eggs Other Than Hatching Eggs

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are affirming, with one change, an interim rule that established restrictions on the importation of eggs (other than hatching eggs) from all countries where *Salmonella enteritidis*, phage-type 4, is considered to exist. These restrictions are necessary to prevent the importation of eggs (other than hatching eggs) that could introduce *Salmonella enteritidis*, phage-type 4, into the United States.

EFFECTIVE DATE: July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Bowen, Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, Room 757, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7834.

SUPPLEMENTARY INFORMATION: In an interim rule published in the **Federal Register** on April 13, 1989 (54 FR 14792–14796, Docket No. 89–013), we amended 9 CFR Part 94 by establishing restrictions on the importation of eggs (other than hatching eggs) from countries where *Salmonella enteritidis (S. enteritidis)*, phage-type 4, is considered to exist. The effective date of the interim rule was incorrectly stated as "April 12, 1989." A correction of the effective date was published in the **Federal Register** on June 23, 1989 (54 FR 26486) to read "April 13, 1989." These amendments were necessary to prevent the importation of eggs (other than hatching eggs) that could introduce *S. enteritidis*, phage-type 4, into the United States. Comments were required to be received on or before June 12, 1989.

We received one comment, which suggested revising the term *"Salmonella enteritidis"* to *"Salmonella enteritidis* serotype *enteritidis"* to ensure that everyone recognizes our rule refers to one serotype of the species *Salmonella enteritidis*, rather than to all serotypes in *Salmonella enteritidis*. We agree that these terms should be clarified and have revised the definitions of *"Salmonella enteritidis"* and *"Salmonella enteritidis*, phage-type 4," accordingly.

The facts presented in the interim rule still provide a basis for this rulemaking. Therefore, we are affirming the provisions of the interim rule with the change noted above.

Effective Date

All of the provisions of this final rule have been in effect since April 13, 1989. This document simply affirms them and clarifies the meaning of *Salmonella enteritidis*. We are making this final rule effective upon publication to allow immediate revision of the definitions for *"Salmonella enteritidis"* and *"Salmonella enteritidis*, phage-type 4." We believe this is necessary to prevent confusion in the enforcement of the regulations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Most eggs regulated under this rulemaking are table eggs, that is, eggs for human consumption. In the United States, very few table eggs are imported; annually, only about 156 million compared to 68 billion domestically produced.

Under the regulations affirmed by this final rule, imported table eggs must come from flocks that meet certain requirements in the country of origin or must be imported for breaking and pasteurization at an approved establishment. According to Agricultural Marketing Service records, all table eggs imported into the United States during FY 1987, FY 1988, and the first quarter of FY 1989 were imported for breaking and pasteurization. Moreover, because of the presence of VVND in the countries of origin, the eggs from all but two countries, Canada and Finland, were required to be processed at approved establishments. Importations of table eggs from Canada are not affected by this rulemaking.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR 3015, Subpart V.)

List of Subjects in 9 CFR Part 94

Animal diseases, Exotic Newcastle disease, Garbage, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, Salmonellosis.

Accordingly, we are adopting as a final rule, with one change, the interim rule that amended 9 CFR Part 94, and that was published at 54 FR 14792–14796 on April 13, 1989.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for Part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 94.0, revise the definitions of *"Salmonella enteritidis"* and *"Salmonella enteritidis*, phage-type 4," to read as follows:

§ 94.0 Definitions.

* * * * *

Salmonella enteritidis. Salmonella enteritidis serotype *enteritidis*, an organism that causes salmonellosis.

Salmonella enteritidis, phage-type 4. A virulent type of *Salmonella enteritidis* serotype *enteritidis*.

* * * * *

Done in Washington, DC, this 25th day of July 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–17794 Filed 7–28–89; 8:45 am]

BILLING CODE 3410–34

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–ASW–56; Amdt. 39–6279]

Airworthiness Directives; Sikorsky Aircraft Model S–61N and S–61NM Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an airworthiness directive (AD) which requires periodic inspections for cracks in the main landing gear (large sponson) truss assemblies; a one-time hardness test of the butt-welded lug of sponson truss components; and replacement of the components, as necessary, on Sikorsky Model S–61N and S–61NM series helicopters. This amendment is needed to add alternate configurations of truss tube assemblies which have welded lugs and to delete a reference to certain hazardous brand name paint removers.

DATES: Effective Date: August 25, 1989. Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from Sikorsky Aircraft, 600 Main Street, Stratford, Connecticut 06601–1381, or may be examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Building 3B, Room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Richard B. Noll, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Park, Burlington, Massachusetts 01803, telephone (617) 273–7111.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39–6131 (54 FR 6512; February 13, 1989), AD 89–04–01, which currently requires periodic inspections for cracks in the main landing gear (large sponson) truss assemblies; a one-time hardness test of the butt-welded lug of sponson truss components to determine if the hardness is within an approved range; and replacement of the components, as necessary, on Sikorsky Model S–61N and S–61NM series helicopters. The one-time hardness test is applicable to truss tube assemblies which have a butt-welded end fitting with a lug welded to the end fitting. A Tungsten inert gas (TIG)-welded single piece end fitting which has the lug as an integral part of the fitting does not require the hardness test.

Since issuing the AD, the FAA has determined that an additional alternate configuration exists in which the TIG-welded end fitting also has a welded lug and should be tested for hardness. Therefore, the FAA is amending AD 89–04–01, Amendment 39–6131, by making the AD applicable to the alternate configurations on Sikorsky Model S–61N and S–61NM series helicopters.

In addition, the FAA has determined that certain types of paint removers referenced in the AD might be potentially hazardous to users. Therefore, the FAA is amending Amendment 39–6131 to delete the references to these paint removers by brand name and has added a reference to a military specification for suitable paint removers.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days from publication.

The regulations adopted herein will not have substantial direct effects on the

states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-6131 (54 FR 6512, February 13, 1989), AD 89-04-01, by revising paragraph (a) introductory text; by adding a NOTE following paragraph (a) introductory text; by revising paragraph (a)(1); by adding a Note following paragraph (a)(1); by revising Table 1; and by revising paragraph (b)(3) as follows:

Sikorsky Aircraft: Applies to Model S-61N and S-61NM series helicopters certificated in any category. (Docket No. 88-ASW-56)

* * * * *

(a) Within the next 50 hours' time in service after the effective date of this AD, conduct a hardness test of each welded lug of sponson truss tube assemblies, part numbers (P/N) S6125-51212-4 and S61250-51233-042, aft lower truss tube assembly—left side; S6125-51212-5 and S61250-51233-043, aft lower truss tube assembly—right side; S6125-51214-3 and S61250-51235-041, forward upper truss tube assembly—left and right side; and S6125-51214-4 and S61250-51235-042, aft upper truss tube assembly—left and right side, as follows:

Note: Tube assemblies with single piece end fittings do not require a hardness check of the lug.

(1) Remove paint from lugs using a clean cloth dampened with suitable paint remover.

Note: Paint remover in compliance with MIL-R-81294 is acceptable.

* * * * *

TABLE 1.—INSPECTION SCHEDULE AND AREAS: PARAGRAPH (B)

Inspection interval, number of landings	Sponson tube truss assembly P/N	Inspection locations
500	S6125-51212-1, 61250-51233-041.	Inboard & outboard tube-to-fitting welds and clevis. Two welded manufacturing holes.
	S6125-51212-4, -5, S6125-51214-3, -4, 61250-51233-042, -043, 61250-51235-041, -042.	Inboard & outboard tube-to-fitting welds. Two welded manufacturing holes.
	S6125-51213-1, -041.	Inboard tube-to-fitting weld. Weld. manufacturing hole.
	61250-51234-041	Inboard tube-to-fitting weld. Weld. manufacturing hole.
2500	S6125-51212-4, -5, S6125-51214-3, -4.	Lug-to-fitting weld. Lug hole.
	61250-51233-042, -043, 61250-51235-041, -042.	Lug hole. Lug-to-fitting weld (if applicable).
	61250-51234-041	Clevis and lug hole.

(b) * * *

(3) Remove paint from lugs, fittings, and welded manufacturing holes indicated in Table 1 using a clean cloth dampened with suitable paint remover (ref. paragraph (a)(1) Note). Rinse with fresh water and dry.

* * * * *

This amendment becomes effective August 25, 1989.

This amendment amends Amendment 39-6131 (54 FR 6512; February 13, 1989), AD 89-04-01.

Issued in Fort Worth, Texas, on July 19, 1989.

John J. Shapley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89-17769 Filed 7-28-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-ASW-55; Amdt. 39-6283]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 206A and 206B Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This amendment corrects an editorial error in an airworthiness directive (AD) which revised the FAA-approved Rotorcraft Flight Manual (RFM) and Rotorcraft Flight Manual Supplements (RFMS) to require that the particle separator engine air induction kit and snow deflectors be installed on Bell Model 206A and 206B helicopters when operating in falling and/or blowing snow. The correction now accurately reflects the revision level of one of the RFM Supplements.

EFFECTIVE DATE: July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Tyrone D. Millard, FAA, Rotorcraft Certification Office, ASW-170, Fort Worth, Texas 76193-0170, telephone (817) 624-5177.

SUPPLEMENTARY INFORMATION: On April 27, 1989, the FAA issued AD 89-10-11, Amendment 39-6211 (54 FR 20117; May 10, 1989), applicable to Bell Model 206A and 206B helicopters, which requires that both the particle separator and snow deflectors be installed on Bell Model 206A and 206B helicopters when operating in falling and/or blowing snow.

Paragraph (b) of the AD specifies that adding certain RFM and RFMS revisions to the basic RFM, as applicable, is an approved alternate method of compliance with paragraph (a) of the AD. However, paragraph (b) incorrectly specified RFM No. BHT-206B3-FM-1, Rev. 19. The correct revision level is RFM No. BHT-206B3-FM-1, Rev. 18. Action is taken to correct the final rule accordingly.

Since this action only corrects an editorial error in a final rule, it has no adverse economic impact and imposes no additional economic burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by correcting paragraph (b) of Amendment 39-6211 (54 FR 20117; May 10, 1989), AD 89-10-11, as follows:

* * * * *

(b) Adding the following RFM and RFMS revisions to the basic RFM manual, as applicable, is an approved alternate method of compliance with paragraph (a) of this AD:

BHT-206A-FM-1, Rev. D-39
BHT-206A-FMS-18, Rev. 6
BHT-206A-FMS-24, Rev. 3
BHT-206B-FM-1, Rev. B-39
BHT-206B-FMS-15, Rev. 4
BHT-206B-FMS-18, Rev. 3
BHT-206B3-FM-1, Rev. 18
BHT-206B3-FMS-12, Rev. 1
BHT-206B3-FMS-10, Rev. 1

This amendment becomes effective August 31, 1989.

Issued in Fort Worth, Texas, on July 20, 1989.

John J. Shapley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89-17770 Filed 7-28-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-217-AD; Amdt. 39-6281]

Airworthiness Directives; Boeing Model 737 Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Model 737 series airplanes, which requires ultrasonic inspections of the bonded waffle doublers for delamination between body station (BS) 360 and BS 1016. This proposal is prompted by reports of delamination of the bonded waffle doublers on several airplanes. This condition, if not corrected, could lead to inability of the airplane to carry fail-safe loads, which may result in rapid decompression.

EFFECTIVE DATE: September 5, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Mudrovich, Airframe Branch, ANM-120S; telephone (206) 431-1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 737 airplanes, which requires ultrasonic inspections of the bonded waffle doublers for delamination between body station (BS) 360 and BS 1016, was published in the **Federal Register** on February 24, 1989 (54 FR 7951). The comment period ended April 21, 1989.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America had several comments on behalf of its members. One ATA member requested that the proposed area of inspection be limited to locations between BS 360 and BS 1016, 2 bays above and 1 bay below lap splices at Stringer (S)-4 and S-10 as required by AD 88-22-11, Amendment 39-6059 (53 FR 44156; November 1, 1988), on earlier Model 737 airplanes, instead of the entire waffle doubler area, as proposed. The FAA does not concur. The proposed inspections are required to find disbonded waffle doublers in any area between BS 360 and BS 1016 due to a process problem during manufacture, and are not related to the lap splice inspections required by of AD 88-22-11.

Two ATA members requested that the use of blind fasteners be allowed as an interim repair for up to 3,000 flight cycles. The FAA concurs and the final rule has been revised to reflect this comment in paragraph B.1.

One ATA member commented that the fastener heads should be visible prior to accomplishing the required high frequency eddy current (HFEC) inspections. The FAA concurs that it is not possible to accomplish the HFEC inspection without seeing the fastener heads. The final rule has been revised, in paragraph B.1., by clarifying that visibility of the fastener head is necessary.

Two ATA members commented that the preventative modification of a skin lap splice, where doubler disbond is detected, should not be required prior to further flight if cracks are found in the splice. The commenters suggested that modification should be required prior to the accumulation of 3,000 flight cycles following inspection and crack repair. This would be consistent with the Model 737 skin lap splice repairs required by AD 88-22-11. The FAA concurs and the final rule has been revised to reflect this comment in paragraph B.1.

The ATA requested that the proposed reporting requirements only require operators to report positive findings, and that they be given 7 days after completion of any inspections to submit such findings. The FAA agrees in part with this comment. The FAA requires both positive and negative findings in order to compile a complete set of data to provide necessary verification that the process problem affects only a limited number of airplanes, and to investigate how disbonded doublers for this group of airplanes has affected the fatigue life of the lap splice. However, it is reasonable to allow 7 days instead of 48 hours to submit such findings. Therefore, the final rule has been revised in paragraph C. to allow 7 days after inspection for submittal of any finding, positive or negative.

The manufacturer commented that, since there is no evidence to support a requirement to accomplish the lap splice preventative modification on uncracked panels within 4,500 flight cycles, as proposed, modification should be accomplished in accordance with the time periods specified in AD 89-09-03, Amendment 39-6184 (54 FR 15741; May 19, 1989), which requires lap splice preventative modifications for cold bonded airplanes on a variable scale depending on airplane flight cycles. In the interim, the manufacturer suggests that inspections should continue at 4,500 flight-cycle intervals until accomplishment of the modification. The FAA agrees in part with this commenter. To provide consistency with previous FAA actions, specifically AD 89-09-03,

BEST COPY AVAILABLE

and in light of the lack of evidence to support mandatory modification within 4,500 flight cycles, the final rule has been revised in paragraph B.2. to require preventative modification, on uncracked panels, within 24 months after finding doubler disbond; and inspections at 4,500 flight cycles intervals until modification.

The manufacturer also commented that cracks found should be repaired prior to further flight. The FAA concurs with this comment. Although the proposed rule implied this in paragraph C., the final rule has been clarified by adding a direct statement in paragraph B. which states that cracks are to be repaired prior to further flight.

The manufacturer recommended that the applicability be limited to airplanes, line numbers from 520 through 610, based on completion of a review of airplane manufacturing records; operator reports, and the results of a Boeing Inspection Program recently completed. The FAA concurs. This additional data verifies incorporation of the improved bonding process on airplanes line numbers 611 through 750; therefore, the FAA has determined that those airplanes do not require inspection. The final rule has been revised to limit the applicability to airplanes from line number 520 through 610. The economic analysis paragraph, below, has been revised accordingly.

Due to the changes made, based on the comments received, the final rule has been revised for clarity by combining paragraphs B. and C. of the proposed rule into one paragraph B. with subparagaphs B.1. and B.2.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the changes previously noted. These changes will neither increase the economic burden on any operator, nor increase the scope of the AD.

There are approximately 90 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 37 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 manhours per airplane to accomplish the required inspections, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $29,600.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, line numbers 520 through 610, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inability of the airplane to carry fail-safe loads due to disbonded doublers, and to reduce the possibility of rapid decompression, accomplish the following:

A. Within the next 12 months after the effective date of this AD, conduct a one-time external ultrasonic inspection for disbonding of bonded waffle doublers not mechanically fastened to the fuselage skin between body station (BS) 360 and BS 1016, in accordance with Boeing Non-Destructive Test Manual, Document D6-37239, Chapter 4, subparagraph 53-30-01. Repair doubler disbond, prior to further flight, in accordance with an FAA-approved method using mechanical fasteners.

B. If disbond is detected, accomplish the following:

1. Prior to further flight, perform a high frequency eddy current (HFEC) inspection for cracks along the upper rivet row of the lower lap splice for the entire length of the affected panel, in accordance with Boeing Alert Service Bulletin 737-53A1039, Revision 4, dated April 14, 1988. Repeat these inspections at intervals not to exceed 4,500 flight cycles until accomplishment of the lap splice preventative modification. If cracks are found, repair prior to further flight, in accordance with the service bulletin. Within 3,000 flight cycles following repair, accomplish the lap splice preventative modification on the affected panel, which includes installation of oversize protruding head solid fasteners in the upper rivet row, in accordance with the service bulletin and constitutes terminating action for the inspections required by this paragraph. Blind fasteners may be used as an interim repair only, and must be replaced with protruding head solid fasteners within 3,000 flight cycles following installation. If, during inspections required by this paragraph, the paint inhibits identification of the fastener heads or cracks, the paint must be stripped using an FAA-approved chemical stripper.

2. Within 24 months after detection of disbonding in accordance with paragraph A., above, accomplish the lap splice preventative modification of the affected panel, which includes installation of oversize protruding head solid fasteners in the upper rivet row, in accordance with Boeing Alert Service Bulletin 737-53A1039, Revision 4, dated April 14, 1988. Accomplishment of this paragraph constitutes terminating action for the inspection requirements of paragraph B.1., above.

C. Within 7 days after completion of any inspection required by this AD, submit a report of findings, positive or negative, to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, through the Principal Maintenance Inspector. The report must include the line number of the airplane inspected, the number of cycles, and the inspection method used.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Transport Airplane Directorate, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This Amendment becomes effective September 5, 1989.

Issued in Seattle, Washington, on July 20, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-17776 Filed 7-28-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-195-AD; Amdt. 39-6282]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires inspection and replacement, if necessary, of the wing outboard leading edge slat control rods. This amendment is prompted by reports of fractures of the wing outboard leading edge slat control rods. Fracture of both control rods on one slat would result in loss of ability to control the position of the affected slat, which could adversely affect the controllability of the airplane.

EFFECTIVE DATE: September 5, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 767 series airplanes, which requires the inspection and replacement, if necessary, of the wing outboard leading edge slat control rods, was published in the **Federal Register** on January 31, 1989 (54 FR 4834). The comment period ended March 29, 1989.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter stated that Boeing is developing a new control rod and suggested that the proposed inspections and replacement be delayed until the new control rods are available. The FAA does not concur. To delay this action would be inappropriate, since the FAA has determined that an unsafe condition exists and that inspections must be conducted to ensure continued safety. Additional rulemaking may be considered, however, once new rods are developed, approved, and available.

One commenter stated that, since it has not found any cracked or fractured control rods, it does not believe that there is any problem with the control rods and, therefore, the proposal should be withdrawn. The FAA does not concur. The FAA has received numerous reports of cracked or fractured rods, and considers this evidence that an unsafe condition exists. AD action to correct this unsafe condition is, therefore, warranted.

One commenter suggested that failure of the control rods would not affect safety. The FAA does not concur. Failure of both control rods for a slat would result in a disconnect of the slat, which could adversely affect the controllability of the airplane.

One commenter requested that the initial compliance time be changed to 2,000 landings or 15 months to permit scheduling this inspection during the next "C" check at the operator's maintenance base, where there is capability to conduct the inspections. The FAA concurs that it is desirable to conduct the high-frequency eddy current inspection at the main base; however, it has determined that the accomplishment of this inspection would not create an undue burden because of time or complexity. Therefore, the FAA does not consider extending the compliance time to be justified.

Another commenter stated that its airline has been unable to obtain the necessary probes and standards to accomplish the required ultrasonic inspections and this could jeopardize its ability to comply with the AD. The FAA has been advised that Boeing has revised the Nondestructive Test Manual to provide the necessary instructions concerning the probes and standards. Therefore, all necessary equipment should be available to conduct the inspections required by the proposed AD and the FAA finds that revisions are not necessary in the final rule.

Another commenter stated that the ultrasonic inspection method is unreliable and that Boeing is now developing an eddy current inspection method to inspect the control rods for cracks. Therefore, the commenter requested the AD not be issued until the new inspection is developed. The FAA does not concur. The ultrasonic inspection method is providing reliable inspection results. Further, the FAA is not aware of an eddy current inspection technique (for inspection of the control rods) currently under development. The FAA has determined that the current ultrasonic inspection is adequate to detect the cracking, and the requirements of the rule in this regard, as proposed, are appropriate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 132 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 60 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,200.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, listed in Boeing Service Bulletin 767–57–0021, dated August 25, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracks in the outboard wing leading edge slat control rods, accomplish the following:

A. Within the next 1,200 landings or 9 months, whichever occurs first, after the effective date of this AD, unless accomplished within the last 800 landings or 6 months, whichever occurs later, visually inspect the wing outboard leading edge slat control rods in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–57–0021, dated August 25, 1988.

1. If the date of manufacture (stamped on the control rod) is June 1983 or later, no further action is required.

2. If the date of manufacture is illegible or is prior to June 1983, ultrasonically inspect the control rods for cracks in accordance with Figure 1. of Boeing Service Bulletin 767–57–0021, dated August 25, 1988. If cracks or fractures are detected, replace prior to further flight, in accordance with Figure 2. of the service bulletin. Repeat the ultrasonic inspection of the control rods manufactured prior to June 1983 at intervals not to exceed 2,000 landings or 15 months, whichever occurs first.

B. Installation of control rods manufactured June 1983, or later, terminates the inspection requirements of paragraph A.2., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Transport Airplane Directorate, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 5, 1989.

Issued in Seattle, Washington, on July 20, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–17779 Filed 7–28–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–NM–37–AD; Amdt. 39–6280]

Airworthiness Directives; CASA Model C–212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to CASA Model C–212 series airplanes, which currently requires incorporation of a revision to the FAA-approved maintenance inspection program that provides for structural inspections of the mechanical flap control system, and replacement, as necessary. That action was prompted by a structural reevaluation of the entire flap control system, which identified certain significant structural components which need to be inspected for damage, including corrosion and cracking, to assure the continued airworthiness of the flap system. This amendment specifies the compliance time for accomplishment of the initial inspection of the wing flap control system. This amendment is prompted by a further assessment of the wing flap control system inspection intervals, and the need to clarify the initial inspection requirement. Corrosion or cracking in components of the wing flap control system, if not detected or corrected, could compromise the structural integrity of the flap system.

EFFECTIVE DATE: September 5, 1989.

ADDRESSES: The applicable service information may be obtained from Construcciones Aeronauticas, S.A. (CASA), Getafe, Madrid, Spain. This information may be examined at FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Standardization Branch, ANM–113; telephone (206) 431–1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by revising AD 89–02–08, Amendment 38–6111 (54 FR 1341; January 13, 1989), applicable to CASA Model C–212 series airplanes, to clarify the compliance time for accomplishment of the initial inspection of the wing flap control system, was published in the **Federal Register** on April 19, 1989 (54 FR 15768).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

CASA stated that nine airplanes have been inspected in accordance with the service information identified in the proposed rule. They noted that, although the number of flights completed on each of the airplanes inspected was well below the 20,000 landings proposed by CASA in the Supplemental Inspection Document called out in the proposed rule, no defects were found. Based on this data, CASA considers there is no technical justification for the 4,000 landings identified in the proposed rule for the initial inspection. The FAA infers from the CASA comment that they are requesting a change in the compliance time for the initial inspection from 4,000 landings as proposed to 20,000 landings as stipulated in the service information. The FAA does not concur. The limited service history for the CASA C–212 does not justify extending the threshold for the initial inspection to 20,000 landings. The FAA has determined that an initial inspection at 4,000 landings will ensure that any cracks or corrosion in the flap control system will be detected and corrected in a timely manner before an unsafe condition develops.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

It is estimated that 61 airplanes of U.S. registry will be affected by this AD, that it will take approximately 11 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $26,840. (The Supplemental Structural Inspection is to be repeated every 4,000 landings at this same cost).

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39–6111 (54 FR 1341; January 13, 1989), AD 89–02–08, as follows:

CASA: Applies to all CASA Model C–212 series airplanes, certificated in any category. Compliance is required as indicated below, unless previously accomplished.

To ensure continuing structural integrity of the wing flap control system, accomplish the following:

A. Within six months after February 17, 1989 (the effective date of AD 89–02–08, Amendment 39–6111), incorporate a revision into the FAA-approved maintenance inspection program that will provide for inspection of the wing flap control system in accordance with CASA Document COM. 212–206, Revision 1, dated May 20, 1988. The non-destructive inspection techniques set forth in the CASA C–212 non-destructive procedures (27–50–01 through 27–50–05) provide acceptable methods for accomplishing the inspections required by this AD. All inspection results, positive or negative, must be reported to CASA Product Support, in accordance with instructions in the CASA Flap Control System Inspection Document. This Supplemental Structural Inspection (SSI) is to be repeated at intervals not to exceed 4,000 landings.

B. Prior to the accumulation of 4,000 landings, or within six months after the effective date of this amendment, whichever occurs later, inspect the wing flap control system in accordance with CASA Document COM. 212–206, Revision 1, dated May 20, 1988.

C. Cracked structure or damaged components detected during the inspections required by paragraphs A. and B., above, must be replaced prior to further flight, in accordance with CASA Document COM. 212–206, Revision 1, dated May 20, 1988.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Construcciones Aeronauticas, S.A. (CASA), Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

The Amendment amends AD 89–02–08, Amendment 39–6111.

This Amendment becomes effective September 5, 1989.

Issued in Seattle, Washington, on July 19, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–17777 Filed 7–28–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

RIN 1515–AA71

Administrative Procedures

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends Part 177, Customs Regulations, by changing certain existing procedures and creating other new procedures that will enhance and expedite Customs dealings with the importing public. The amendments create a new procedure to promote nationwide uniformity in Customs decisions consistent with the mandate of the Anti-Drug Abuse Act of 1988 and allow commercial importers to receive binding rulings on tariff classification under the Harmonized Tariff Schedule of the United States at Customs districts. Further, the amendments clarify the circumstances under which the effective date of a ruling can be delayed in recognition of an importer's reliance on a previous, more favorable ruling and the obligations of a recipient of a tariff classification ruling letter if entry of merchandise described in the ruling letter is subsequently made. The document also removes the "clearly wrong" test as the standard by which Customs determines whether certain established and uniform practices should be changed.

EFFECTIVE DATE: August 30, 1989.

FOR FURTHER INFORMATION CONTACT: John T. Roth, Commercial Rulings Division (202) 566–5868.

SUPPLEMENTARY INFORMATION:

Background

The administrative rulings program administered by the Customs Service provides a means by which commercial importers can import their products with some certainty regarding Customs treatment of their importation. With the

passage of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), and the replacement of the Tariff Schedules of the United States with the Harmonized Tariff Schedule of the United States (HTSUS), Customs is experiencing a far greater use of the administrative rulings program than ever before.

Accordingly, Customs published a notice in the **Federal Register** (54 FR 8208) on February 27, 1989, proposing changes in its ruling program to accommodate its increased use by importers, to improve Customs responsiveness to the ruling requests received, and to promote greater uniformity in the decisions being issued. The amendments proposed to: (1) Create a new procedure to promote nationwide uniformity in Customs decisions; (2) allow commercial importers to receive binding rulings on tariff classification under the HTSUS at Customs districts; (3) clarify the circumstances under which the effective date of a ruling can be delayed in recognition of an importer's reliance on a previous, more favorable ruling; (4) clarify the obligations of a recipient of a tariff classification ruling letter if entry of merchandise described in the ruling letter is subsequently made; (5) remove the "clearly wrong" test as the standard by which Customs determines whether certain established and uniform practices should be changed; and (6) clarify the extent to which previously issued rulings can be the subject of a request for internal advice.

Fourteen comments were received in response to the notice of proposed rulemaking. A summary of each proposed change and a discussion of comments regarding the proposed change follows.

District Ruling Program

Summary

Commercial importers may apply in writing for an advance binding tariff classification under the HTSUS at the Customs district where the merchandise will be imported or at any other district where the importer would have reason to do business. This program began January 1, 1989, on a trial basis. All rulings issued under this program are binding for the recipient at all ports of entry. The target turn-around time for a binding ruling under this program is 30 days, or 120 days if Headquarters must be involved. Proposed changes to the Customs Regulations to implement this program involved expanding the authority to issue prospective tariff classification rulings from Headquarters and the Regional Commissioner, New York, to all Customs districts and to limit each request to a district office for a ruling to five merchandise items, all of which must be of the same class or kind. The proposed rule also stated that in addition to the information prescribed in § 177.2(b)(1), (2)(i) and (ii), and (5), Customs Regulations (19 CFR 177.2(b)(1), (2)(i) and (ii), and (5)), when submitting a ruling request, a request to the district must include the name of the manufacturer and seller (if available), the country of origin and the importer of record number which will be used at entry.

Discussion of Comments

Comments were generally favorable regarding the institution of the district rulings program. Some commenters recommended that the scope of the program be broadened to cover Customs rulings in areas other than tariff classification. It was also recommended that we not limit each ruling request to a district office to five merchandise items.

With the enactment of the HTSUS, the resources of the district ruling program were of necessity directed toward providing tariff classification advice on an expedited basis. Customs now does not have the resources to expand the program to other rulings.

In order to afford the importing community equal access to expedited rulings, it is necessary to limit district rulings program ruling requests to five items. It is Customs intent to issue all of its rulings as expeditiously as possible. With this goal in mind, we will periodically review the program to ascertain ways in which it can better serve the public.

Also, Customs has recently established uniform procedures for providing pre-entry classification decisions to the importing public. These procedures—which shift the emphasis of the classification function from transaction based analysis after importation to up-front advice regarding future importations—are designed to complement the district rulings program by expeditiously supplying importers with binding classification rulings. While participation in the pre-entry classification program is granted on a case-by-case basis, all merchandise is eligible for consideration.

It has been pointed out that in certain industries, importations routinely occur simultaneously with the filing of requests for binding rulings. Because the district rulings program is limited to "prospective" transactions, certain importers were concerned that they may not be able to avail themselves of the program's expeditious procedures.

While the district rulings program is limited to prospective transactions, this does not preclude the importing public from receiving district rulings for "continuing transactions"—i.e., while a district ruling will not be issued regarding transactions currently pending before a field office, an importer may still receive a binding ruling regarding prospective transactions (that is, later importations) involving merchandise which is identical to that involved in a current transaction. Internal Advice procedures are available for current transactions.

Some commenters took issue with the requirement that an importer provide the name of the manufacturer or seller when seeking a district ruling. They argue that the name of the manufacturer or seller is irrelevant to a classification decision. Further, an importer often will not have chosen his sources until receipt of the ruling letter. Sourcing is frequently changed for various business reasons such as pricing, quota restraints and production demands.

Customs is well aware that when an importer submits a request for a binding ruling the manufacturer or seller is often unknown. This information is required only if known. While we agree that this information would have no bearing on the classification issue, submission of the manufacturer or seller's name would aid in the facilitation of quota requirements and streamline processing at both release and summary.

Uniformity of Customs Officers' Decisions

Summary

Section 7361(c) of the Anti-Drug Abuse Act of 1988 (Title VI, Pub. L. 100–690)—requires the Secretary of the Treasury to promulgate regulations to provide for nationwide uniformity of certain decisions made by Customs officers and to establish procedures by which certain parties affected by the lack of such uniformity may have the alleged inconsistencies resolved. Accordingly, Customs proposed procedures to permit port authorities and any party entitled to either protest a decision of the Customs Service under the protest procedures set forth in sections 514 and 515 of the Tariff Act of 1930, as amended (19 U.S.C. 1514,1515), or utilize the Domestic Interested Party petition procedures set forth in section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516) to petition the Customs Service for resolution of an inconsistency or lack of uniformity alleged to exist in: (1) A decision of a Customs officer permitted to be protested by section 514(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(a)), or (2) decisions to conduct intensified examinations or inspections of merchandise at various ports of entry.

It was proposed that the petitioning party be required to furnish information sufficient to document the alleged inconsistency. For tariff classification rulings, competing entries must be identified as to port of entry, date and entry number, and the merchandise must be fully described. In the case of alleged inconsistencies in the inspection or examination of merchandise, the petitioning party must furnish information sufficient to document that a pattern of inconsistency exists. A "pattern of inconsistency" was defined as three or more documented instances in which inspections or examinations were conducted within a particular port that appear inconsistent with inspection or examination decisions of another port or ports when substantially identical shipments are involved. Upon receipt of a properly filed petition, Customs will immediately verify the facts alleged and upon verification will publish a notice in the **Federal Register** that the petition has been received, describing the alleged inconsistency, and permit 15 days for public comment. After analysis of the public comment, Customs will issue a decision to the petitioner, transmit copies to the ports involved and publish a summary of the decision in the **Federal Register** and Customs Bulletin. The response to a petition is not protestable.

Discussion of Comments

Commenters, although generally in favor of the uniformity procedures, had the following concerns. Some commenters suggested that we more clearly define what consititutes a "pattern of inconsistency." In the preamble of the proposed regulations, it was stated that a pattern of inconsistency must be shown regarding "substantially identical shipments" within a particular port, while the proposed regulation stated the pattern of inconsistency must be established where "substantially similar" merchandise is involved. Some commenters were also unclear as to whether the inconsistencies must all occur in one port.

Customs wishes to clarify. A "pattern of inconsistency" would exist where three or more instances are documented in which inspections or examinations are conducted that appear inconsistent with other inspection and examination decisions when substantially similar merchandise is involved. The three or more instances of inconsistency may occur in different ports. While inconsistencies involving shipments of the same importer, manufacturer, commodity and country of origin may clearly be the subject of this petitioning process, inconsistencies involving shipments that are not identical, but substantially similar, may also be the subject of a petition.

Some commenters believe that Customs response to a petition for consistent treatment should be protestable.

Customs believes that this is unnecessary. Section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514) provides when an action by Customs is protestable. A petitioner who alleges inconsistent treatment and is dissatisfied with Customs is not entitled to protest unless there is an actual liquidation or other action subject to protest under Part 174, Customs Regulations (19 CFR Part 174) and sections 514 and 515 of the Tariff Act of 1930, as amended (19 U.S.C. 1514 and 1515).

It was commented that steps should be taken that when a "multiple petition" is returned to a sender, accompanied by a copy of the accepted petition, confidential information is not disclosed regarding the accepted petition.

Customs agrees. A provision is added to the regulations requiring a petitioner to provide a "sanitized" copy of his petition.

Other commenters stated that the applicable public comment period on a petition should be increased from 15 to at least 30 days.

Customs believes that a 15 day comment period is appropriate. This time frame is necessary in order for Customs to expidite the issuance of its decisions.

Delaying the Effective Date of Certain Rules

Summary

Customs proposed to amend § 177.9, Customs Regualtions (19 CFR 177.9) to specify that it may, from time to time, delay the effective date of rulings which modify or reverse earlier written rulings, or which modify the manner in which Customs has treated "substantially identical" transactions in the past. Customs may provide for the delay on its own initiative or it may act upon a request for a delay made by the recipient of the ruling.

Discussion of Comments

It was recommended by a commenter that equitable relief should be granted not only in cases of detrimental reliance, but also in cases where an importer is placed at a competitive disadvantage owing to inequality of treatment. By requiring a showing of detrimental reliance, it is argued that importers for whom rulings are pending—and who thus cannot claim a lack of knowledge that the rate of duty may increase on their merchandise—are disadvantaged vis-a-vis other importers of the same type merchandise who, because they are not party to the ruling, are in a position to establish the required reliance for a grant of delay of an effective date of a ruling.

Customs does not agree with this commenter's reading of the language in proposed 19 CFR 177.9(d)(3). The section states that "a delay may be granted with respect to the party to whom the ruling letter was issued or to any other party, provided such party can demonstrate * * * that they reasonably relied on the earlier ruling to their detriment." In effect, insofar as coverage under the proposed rule is not limited to importers who lack knowledge regarding the pendency of an issue before Customs which may result in a higher rate of duty for their importations, the rule does not penalize one importer vis-a-vis another importer of the same merchandise. Rather, the rule is specifically intended to afford importers an opportunity to make whatever adjustments are necessary once they become aware of a possible modification of Customs treatment. Under the proposed rule, it is envisioned that Customs will carefully examine all relevant factors in making a determination of whether and for how long to grant a delay in an effective date of a ruling.

It was also recommended that we extend the period for granting delays in the effective date of rulings from 90 days, to 180 days, or even to 360 days.

Customs disagrees. While our proposed amendment is intended to mitigate the adverse impact of rulings modifying earlier rulings relied upon by importers, sound public policy also requires that we give expeditious effect to the requirements of the law. We believe that limiting any delay to 90 days properly balances these considerations.

Another commenter suggested that we reduce from two years the period for which an affected party must demonstrate that Customs treatment was sufficiently continuous to establish that the party reasonably relied on receiving such treatment in arranging future transactions.

Customs believes the importer is misreading the language of the amendment. The requirement that an affected party submit evidence covering a 2 year period is not to be interpreted

as requiring substantially identical transactions spanning an entire 2 year period. Rather, an importer is required to list and otherwise provide whatever relevant evidence exists for the 2 year period immediately prior to the date of the issuance of the modifying ruling.

Finally, it has been suggested that we delete the language which would allow Customs, in analyzing past liquidations claimed to be inconsistent with a subsequently issued ruling, to give "diminished weight" to liquidations involving "transactions of small quantities or values" or merchandise which has been "processed without examination and/or import specialist review."

Delaying the effective date of rulings constitutes an exercise of discretionary authority based on the equitable principle of reliance. In determining whether and for how long to delay the effective date of a ruling which so qualifies, Customs should be able to consider all relevant factors. The extent to which Customs has physically examined previous importations or carefully reviewed information on prior transactions are relevant factors.

Obligation of Recipients of Letter Rulings

Summary

Customs proposed to amend § 177.8(a)(2), Customs Regulations (19 CFR 177.8(a)(2)) to expressly set forth the obligation of an importer to enter merchandise under a tariff classification consistent with that contained in any classification ruling received by the importer which is in effect. The amendment also requires that a copy of the ruling be attached to the documents filed with the appropriate Customs office in connection with that transaction or shall otherwise indicate with the information filed for that transaction that a ruling has been received.

Discussion of Comments

Some commenters stated that there is no justification for requiring either that a copy of a ruling letter be submitted or that each transaction include a statement that a ruling has been issued. They believe that this would impose an unnecessary burden and expense on importers.

Customs expends considerable resources in providing tariff classifications to the importing public. Insofar as Customs is bound by the classification rulings it issues, it is only appropriate that the importing public be bound as well.

Although Customs shares the aversion to requiring an additional piece of paper in the entry summary package, one of our major considerations is to ensure that Customs honors its commitment to uniformly apply ruling decisions throughout the country. Without a method for the Import Specialist to know that a ruling exists, an importer risks having summaries rejected or classifications changed due to different views.

Customs is considering implementing a procedure where, under certain circumstances, a ruling could be filed once at each port of entry where the merchandise is entered and reference made to the ruling number on each summary line. We are programming rulings indicators in the Automated Commercial Systems (ACS) on the summary line item screens. When this becomes operational, a copy of a ruling will not be required for Automated Broker Interface (ABI) filers for summary filing. We are also developing a rulings module in ACS to ease field access to rulings. Until that time, however, we believe it is critical to uniformity and in the best interest of the importer to require a paper copy.

Some commenters state that they are entitled to enter merchandise at the tariff rate they feel is warranted.

Customs believes that if a ruling is requested, it should be followed. Making entry consistent with a binding Customs ruling in no way diminishes the available avenues of administrative appeal. Protests may still be filed under Part 174, Customs Regulations, and section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514).

Some commenters suggested that we should clarify what constitutes a "ruling letter" and provide assurance that only the specific party to whom a ruling is issued is requested to submit that ruling to Customs.

To the extent that the proposed amendment may be ambiguous regarding what constitutes a ruling letter, the amendment is revised to make it clear that it contemplates coverage limited to binding classification rulings, including pre-entry classification decisions issued under Part 177 of the regulations to the party to be bound. It is Customs intent that this amendment does not apply to parties other than those parties to whom the ruling letter in question is issued.

Finally, it has been suggested that Customs should enumerate the specific penalty proceedings which may be instituted against importers who enter merchandise contrary to the requirements set forth in the amendment.

Customs disagrees. As with Customs penalty proceedings in general, penalties may vary depending on a range of factors, such as the differential in the rate of duties, the degree of negligence and the value of the merchandise involved.

Elimination of "Clearly Wrong" Test

Summary

Customs proposed to remove the "clearly wrong" standard from § 177.10(b) of the Customs Regulations.

Discussion of Comments

It has been suggested that our proposal to eliminate the "clearly wrong" test is misguided. Specifically, it is argued that the test should be retained because it promotes certainty and uniformity in the importing process.

We do not believe that removal of this provision would adversely affect the importing community. Under the relevant statutory and case law, Customs may only disturb a practice if there exists a compelling reason to do so, and only then after full consideration of public comment. In short, we believe the test has proven to be unrealistic, unnecessary and confusing.

Conclusion

After careful consideration of all the comments received and further review of the matter, it has been determined that the amendments, with the modifications discussed above, should be adopted.

Executive Order 12291

The document does not meet the criteria for a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1515–0103. The estimated average annual burden per respondent and/or recordkeeper is .1666 or .50 hours depending on individual circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to U.S. Customs Service, Paperwork Management Branch, Washington, DC 20229, or the Office of Management and Budget, Paperwork Reduction Project (1515–0103), Washington, DC 20503.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 177

Administrative practice and procedure.

Amendments to the Regulations

Part 177 of the Customs Regulations (19 CFR Part 177) is amended as set forth below:

PART 177—ADMINISTRATIVE RULINGS

1. The authority citation for Part 177, Customs Regulations (19 CFR Part 177), is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, unless otherwise noted. section 177.12 also issued under Pub. L. 100–690 (19 U.S.C. 1514 note).

2. Section 177.0, Customs Regulations is amended by revising the first sentence and the following parenthetical to read as follows:

§ 177.0 Scope.

This part relates to the issuance of rulings to importers and other interested persons by the United States Customs Service. * * *

3. Section 177.1, Customs Regulations, is amended by revising the second sentence of paragraph (a)(1), the last sentence of paragraph (b), and the first sentence of both paragraph (d)(1) and (d)(2) to read as follows:

§ 177.1 General ruling practice and definitions.

(a) *The issuance of rulings generally*—(1) *Prospective transactions* * * * For this reason, the Customs Service will give full and careful consideration to written requests from importers and other interested parties for rulings or information setting forth, with respect to a specifically described transaction, a definitive interpretation of applicable law, or other appropriate information. * * *

* * * * *

(b) *Oral advice.* * * * However, oral inquiries may be made to Customs Service offices regarding existing rulings, the scope of such rulings, the types of transactions with respect to which the Customs Service will issue rulings, the scope of the rulings which may be issued, or the procedures to be followed in submitting ruling requests, as described in this part.

* * * * *

(d) *Definitions.* (1) A "ruling" is a written statement issued by the Headquarters Office or the appropriate office of Customs as provided in this part that interprets and applies the provisions of the Customs and related laws to a specific set of facts. * * *

(2) An "information letter" is a written statement issued by the Customs Service that does no more than call attention to a well-established interpretation or principle of Customs law, without applying it to a specific set of facts. * * *

4. Section 177.2, Customs Regulations, is amended by revising the last sentence of paragraph (a), adding a new sentence to the end of paragraph (b)(2)(ii)(A), revising paragraph (b)(2)(ii)(B), revising paragraph (b)(2)(ii)(C) and revising the first sentence of paragraph (d) to read as follows:

§ 177.2 Submission of ruling requests.

(a) *Form.* * * * Requests for tariff classification rulings should be addressed to the Regional Commissioner of Customs, New York Region, Attn: Classification Ruling Requests, New York, New York 10048, or to any Area or District office of the Customs Service.

(b) *Content* * * *

(2) *Description of transaction* * * *

(ii) *Tariff classification rulings.* (A) * * * Individual requests for rulings submitted to Area or District offices will be limited to five (5) merchandise items, all of which must be of the same class or kind.

(B) Rulings issued by the New York Region or by other Area or District offices are limited to prospective transactions. Only the Headquarters Office will prepare final decisions under § 177.11 (Requests for Advice by Field Officers), or § 174.23 (Further Review of Protests), § 177.10 (Change of Practice), decisions under Part 175 of this Chapter (petitions under Section 516, Tariff Act of 1930, as amended), decisions under § 177.12 (Inconsistent Customs decisions), and decisions under Policies and Procedures Manual Supplement 2126–01.

(C) The requesting party may send the request directly to the Director, Commercial Rulings Division, U.S. Customs Service, Washington, DC 20229. The Headquarters Office retains authority to independently review all tariff classification ruling letters issued by the New York Region and other Area and District Offices. If the importer or other person to whom a ruling letter is issued disagrees with the tariff classification set forth in a ruling issued by the New York Region or other Area or District offices, he may petition the Director, Commercial Rulings Division, U.S. Customs Service, Washington, DC 20229, for review of the ruling.

* * * * *

(d) *Requests for immediate consideration.* The Customs Service will normally process requests for rulings in the order they are received and as expeditiously as possible. * * *

5. Section 177.3 is revised to read as follows:

§ 177.3 Nonconforming requests for rulings.

A person submitting a request for a ruling that does not comply with all of the provisions of this part will be so notified in writing, and the requirements that have not been met will be pointed out. Except in the case of ruling requests submitted to Area or District offices, such person will be given a period of thirty (30) days from the date of the notice (or such longer period as the notice may provide) to supply any additional information that is requested or otherwise conform the ruling request to the requirements referred to in the notice. The Customs Service file with respect to ruling requests which are not brought into compliance with the provisions of this part within the period of time allowed will be administratively closed and the request removed from active consideration until such time as the deficiencies cited in the notice are corrected. A request for a ruling that is removed from active consideration by reason of failing to comply with the provisions of this part may be treated as withdrawn. In the case of ruling requests made to Area or District offices, a failure to comply with the provisions of this part will result in the return of the ruling request with the notice specifying the deficiencies and such requests will not be considered as having been filed until such deficiencies are corrected.

§ 177.4 [Amended]

6. Section 177.4(b) is amended by removing the second sentence.

7. Section 177.4(d) is amended by removing the words "by the Headquarters Office" at the end of the section.

8. Section 177.5 is amended by revising the second sentence to read as follows:

§ 177.5 Change in status of transaction.

* * * In particular, the Customs Service office to which the request was made must be advised when any transaction described in the ruling request as prospective becomes current and under the jurisdiction of a Customs Service field office. * * *

9. Section 177.8 is amended by revising the first sentence of paragraph (a)(1), all of paragraph (a)(2), and the last sentence of paragraph (a)(3) to read as follows:

§ 177.8 Issuance of rulings.

(a) *Ruling letters*—(1) *Generally.* The Customs Service will endeavor to issue a ruling letter setting forth a determination with respect to a specifically described Customs transaction whenever a request for such a ruling is submitted in accordance with the provisions of this part and it is in the sound administration of the Customs and related laws to do so. * * *

(2) *Submission of ruling letters to field offices.* Any person engaging in a Customs transaction with respect to which a binding tariff classification ruling letter (including pre-entry classification decisions) has been issued under this part shall ascertain that a copy of the ruling letter is attached to the documents filed with the appropriate Customs Service office in connection with that transaction, or shall otherwise indicate with the information filed for that transaction that a ruling has been received. Any person receiving a ruling setting forth the tariff classification of merchandise shall set forth such classification in the documents or information filed in connection with any subsequent entry of that merchandise; the failure to do so may result in a rejection of the entry and the imposition of such penalties as may be appropriate. A ruling received after the filing of such documents or information shall immediately be brought to the attention of the appropriate Customs Service field office.

(3) *Disclosure of ruling letters.* * * * All ruling letters issued by the Customs Service will be available, upon written request, for inspection and copying by any person (with any portions determined to be exempt from disclosure deleted).

* * * * *

10. Section 177.9 is amended by revising paragraph (a), revising the concluding text of paragraph (d)(2), and adding new paragraphs (d)(3) and (e) to read as follows:

§ 177.9 Effect of ruling letters; modifications or revocation.

(a) *Effect of ruling letters generally.* A ruling letter issued by the Customs Service under the provisions of this part represents the official position of the Customs Service with respect to the particular transaction or issue described therein and is binding on all Customs Service personnel in accordance with the provisions of this section until modified or revoked. In the absence of a change of practice or other modification or revocation which affects the principle of the ruling set forth in the ruling letter, that principle may be cited as authority in the disposition of transactions involving the same circumstances. Generally, a ruling letter is effective on the date it is issued and may be applied to all entries which are unliquidated, or other transactions with respect to which the Customs Service has not taken final action on that date. See, however, paragraphs (d) and (e) (ruling letters which modify previous ruling letters or positions) and § 177.10(e) (ruling letters published in the *Customs Bulletin*).

* * * * *

(d) *Modification or revocation of ruling letters* * * *

(2) *Effect of modification or revocation of ruling letters.* * * *

* * * * *

Nothing in this paragraph will prohibit the retroactive modification or revocation of a ruling with respect to a transaction which was not prospective at the time the ruling was issued, inasmuch as such a transaction was not entered into in reliance on a ruling from the Customs Service.

(3) *Effective dates.* Generally, a ruling letter modifying or revoking an earlier ruling letter will be effective on the date it is issued. However, the Customs Service may, upon application or on its own initiative, delay the effective date of such a ruling for a period of up to 90 days from the date of issuance. Such a delay may be granted with respect to the party to whom the ruling letter was issued or to any other party, provided such party can demonstrate to the satisfaction of the Customs Service that they reasonably relied on the earlier ruling to their detriment. All parties applying for a delay will be issued a separate ruling letter setting forth the period, if any, of the delay to be provided. In appropriate circumstances, the Customs Service may decide to make its decision, with respect to a delay, applicable to all affected parties, irrespective of demonstrated reliance; in this event, a notice announcing the delay will be published in the Customs Bulletin and individual ruling letters will not be issued.

(e) *Ruling letters modifying past Customs treatment of transactions not covered by ruling letters*—(1) *General.* The Customs Service will from time to time issue a ruling letter covering a transaction or issue not previously the subject of a ruling letter and which has the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions of either the recipient of the ruling letter or other parties. Although such a ruling letter will generally be effective on the date it is issued, the Customs Service may, upon application by an affected party, delay the effective date of the ruling letter, and continue the treatment previously accorded the substantially identical transaction, for a period of up to 90 days from the date the ruling letter is issued.

(2) *Applications by affected parties.* In applying to the Customs Service for a delay in the effective date of a ruling letter described in paragraph (e)(1) of this section, an affected party must demonstrate to the satisfaction of the Customs Service that the treatment previously accorded by Customs to the substantially identical transactions was sufficiently consistent and continuous that such party reasonably relied thereon in arranging for future transactions. The evidence of past treatment by the Customs Service shall cover the 2-year period immediately prior to the date of the ruling letter, listing all substantially identical transactions by entry number (or other Customs assigned number), the quantity and value of merchandise covered by each such transaction (where applicable), the ports of entry, and the dates of final action by the Customs Service. The evidence of reliance shall include contracts, purchase orders, or other materials tending to establish that the future transactions were arranged based on the treatment previously accorded by the Customs Service.

(3) *Decision by Customs to grant delay.* The Customs Service will examine all factors relevant to the issue of reliance in determining whether, and for what period, to delay the effective date of a ruling letter described in paragraph (e)(1) of this section. In particular, the Customs Service will examine the past transactions on which reliance is claimed to determine whether there was an examination of the merchandise (where applicable) by the Customs Service or the extent to which those transactions were otherwise examined and analyzed by the Customs Service to determine the proper application of the Customs laws and regulations. In general, transactions involving small quantities or values, as well as informal entries and other entries or transactions which the Customs Service, in the interest of commercial facilitation and accommodation, processes expeditiously and without examination and/or import specialist review, will be given diminished weight in establishing the required history of consistent and continuous Customs treatment. Unless a notice covering all affected parties is published in the *Customs Bulletin*, each affected party applying for a delay in the effective date of the ruling letter will be advised in a separate ruling letter of the extent to which a delay in the effective date will be applied to their transactions.

§ 177.10 [Amended]

11. Paragraph (b) of § 177.10 is amended by removing the last senctence.

12. Section 177.11(b)(1) is revised to read as follows:

§ 177.11 Requests for advice by field offices.

* * * * *

(b) *Certain current transactions.*

(1) *When a ruling has been issued*—(i) *Requests by field offices.* If any Customs Service office has issued a ruling letter with respect to a particular Customs transaction and the Customs Service field office having jurisdiction over that transaction believes that the ruling should be modified or revoked, the field office will forward to the Headquarters Office, pursuant to § 177.9(b)(1), a request that the ruling be reconsidered. The field office will notify the importer or other person to whom the ruling letter was issued, in writing, that it has requested the Headquarters Office to reconsider the ruling.

(ii) *Requests by importers and others.* If the importer or other person to whom a ruling letter is issued disagrees with the Customs Service field office having jurisdiction over the transaction to which the ruling relates as to the proper application of the ruling to the transaction, the field office will, upon receipt of a written request submitted in accordance with the procedure set forth in paragraph (b)(3) of this section, request advice from the Headquarters Office as to the proper application of the ruling to the transaction. Such advice may not be requested for the purpose of seeking reconsideration of a ruling with which the importer or other person to whom the ruling letter was issued disagrees.

13. A new § 177.12 (19 CFR 177.12) is added to Subpart A to read as follows:

§ 177.12 Inconsistent customs decisions.

(a) *Generally.* Certain decisions made by Customs officials at one field location which are inconsistent with decisions being made by Customs officials at another location may be brought to the attention of Customs Headquarters for resolution by a petition filed by an interested party. The types of decisions which may be the subject of such a petition, a description of the parties who qualify as interested parties, and the period of time in which the petition may be filed are set forth below.

(1) *Inconsistent decisions subject to petition.* The decisions which may be the subject of a petition include:

(i) Decisions described in section 514(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(a)), made with respect to the same, or substantially similar, merchandise; and

(ii) Repeated decisions to conduct intensified inspections or examinations of merchandise at ports of entry.

(2) *Interested Parties.* The following parties shall be considered interested parties entitled to file a petition under this section:

(i) Parties described in section 514(c)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(c)(1)), as eligible to file a protest under section 514;

(ii) A port authority; and

(iii) An "interested party," as described in section 516(a)(2) of the Tariff Act of 1930, as amended (19 U.S.C. 1516(a)(2)).

(3) *Time for filing.* In the case of decisions described in section 514(a) of the Tariff Act, the petition must be filed within the time prescribed by section 514(c)(2), for filing a protest with respect to the later (or latest) of the decisions which are the subject of the petition. In the case of repeated decisions to conduct intensified inspections or examinations of merchandise at ports of entry, the petition must be filed within ninety (90) days of the later (or latest) such decision.

(b) *Petition*—(1) *Form.* The petition shall be in the form of a letter addressed to the Office of Regulations and Rulings, U.S. Customs Service, Washington, DC 20229–0001. Three copies of the petition should be submitted, if possible.

(2) *Content.* The petition should contain a complete description of the inconsistent decisions complained of, including the ports of entry (or other Customs office) where the decisions were made, entry numbers, and the dates (or approximate dates) such decisions were made. The information set forth in the petition must be sufficient to demonstrate the inconsistency of the decisions described and that the merchandise, or circumstances in which the allegedly inconsistent decisions were made, were substantially similar. In the case of repeated decisions regarding the inspection or examination of merchandise, the decisions must be sufficient in number to demonstrate a pattern of inconsistency not attributable to random selection. Any information which the petitioner considers to be confidential business information should be so noted pursuant to § 177.2(b)(7) of this Subpart and a sanitized version of his petition should be submitted as well as the three copies requested in paragraph (b)(1) of this section. Petitions which do not contain information sufficient to permit the Customs Service to verify that the decisions described have occurred will not be considered properly filed and will be returned to the petitioner for additional information. Only one petition will be accepted by the Customs Service with respect to the decisions alleged to be inconsistent.

(i) *Tariff classification decision.* In the case of decisions involving the tariff classification of merchandise, the petition should also include, with respect to each of the decisions described, the information requested in §§ 177.2 (b)(1) and (b)(2)(ii) of this Subpart, including a sample (see § 177.2(b)(3)).

(ii) *Other subjects addressable by administrative rulings.* In the case of other decisions involving subjects which could be addressed under the administrative rulings procedure provided for in §§ 177.1 through 177.10 of this Subpart, the information contained in §§ 177.2 (b)(1), (b)(2)(iii) and/or (b)(2)(iv), as applicable, should be also furnished for each of the decisions addressed by the petition.

(c) *Publication and public comment.* Upon receipt of a properly filed petition, notice will be published in the **Federal Register** announcing the receipt of the petition and describing the decisions alleged to be inconsistent. Public comment on the petition will be permitted for a period of fifteen (15) days after publication. Public comment regarding the proper disposition of the petition shall be limited to that submitted in writing, either with the

petition or in response to the Federal Register solicitation of public comment.

(d) *Determination of petition; distribution and publication.* Within fifteen (15) days after the close of the period for public comment referred to in paragraph (c) of this section, the Customs Service will issue a decision to the petitioner addressing the inconsistency complained of. That decision will either conform the inconsistent decisions to the current views of the Customs Service as to the proper tariff classification or other disposition of the subject of those decisions or explain why no inconsistency exists. Copies of the decisions to the petitioner will be transmitted directly to all ports (or other Customs offices) identified in the petition and will be distributed through the Customs Information Exchange or by other means to such other ports or offices as may be necessary to correct any inconsistency identified. A summary of the decision will also be published in the Federal Register and the weekly Customs Bulletin.

(e) *Effective date.* Unless otherwise specified in the decision, a decision issued in response to a petition filed under this section will be effective immediately and, where applicable, applied to all entries for which liquidation is not final.

(f) *Effect on other procedures.* The filing of a petition under this procedure shall not preclude the petitioner or any other person entitled to do so from filing a protest or a domestic interested party petition regarding the same matter under the procedures set forth in sections 514, 515 and 516 of the Tariff Act of 1930, as amended and Parts 174 and 175 of this Chapter, provided the applicable requirements set forth therein are complied with. However, the decision issued in response to the petition may serve as the basis for the disposition of any protest so filed, or as an information letter setting forth the position of the Customs Service pursuant to Subpart A of Part 175 of this Chapter. The decision issued in response to a petition filed under this section is not itself a decision subject to protest under sections 514–515 of the Tariff Act and Part 174 of this Chapter.

William von Raab,

Commissioner of Customs.

Approved: July 24, 1989.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89–17601 Filed 7–28–89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 88F–0203]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2-(8-heptadecenyl)-4,5-dihydro-1*H*-imidazole-1-ethanol as an additive for lubricants with incidental food contact. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: Effective July 31, 1989; written objections and requests for a hearing by August 30, 1989.

ADDRESSES: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of July 21, 1988 (53 FR 27568), FDA announced that a food additive petition (FAP 8B4093) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) be amended to provide for the safe use of 2-(8-heptadecenyl)-4,5-dihydro-1*H*-imidazole-1-ethanol as a multipurpose additive for lubricants with incidental food contact.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before August 30,1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.3570 is amended in paragraph (a)(3) by alphabetically adding a new entry to the table to read as follows:

§ 178.3570 Lubricants with incidental food contact.

* * * * * *

(a) * * *

(3) * * *

Substances	Limitations
* * *	* * *
2-(8-Heptadecenyl)-4,5-dihydro-1*H*-imidazole-1-ethanol (CAS Reg. No. 95–38–5).	For use at levels not to exceed 0.5 percent by weight of the lubricant.
* * *	* * *

* * * * *

Dated: July 21, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–17786 Filed 7–26–89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N–89–2016; FR–2672]

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing, Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This Notice amends the list of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act by increasing "high-cost" mortgage limits for Rutland County, Vermont; Ulster County, New York; St. Mary's County, Maryland; Albermarle County and the City of Charlottesville, Virginia; Spotsylvania County and the City of Fredericksburg, Virginia; the Miami-Hialeah, Florida PMSA; Monroe County, Florida; Tippecanoe County, Indiana; Los Alamos County, New Mexico; Park County, Colorado; Churchill County, Nevada; and Coconino County, Arizona. It also adds to the list "high-cost" mortgage limits for Sagadahoc County, Maine; Kent County, Delaware; Glynn County, Georgia; Maury County, Tennessee; Bartholomew County, Indiana; Sandoval County, New Mexico; and Blaine and Bonneville Counties, Idaho. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high-prevailing housing sales prices.

EFFECTIVE DATE: July 31, 1989.

FOR FURTHER INFORMATION CONTACT: For single family: Morris Carter, Director, Single Family Development Division, Room 9270; telephone (202) 755–6720. For manufactured homes: Robert J. Coyle, Director, Title I Insurance Division, Room 9160; telephone (202) 755–6880; 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA), 12 U.S.C. (1710–1749), authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and combination manufactured homes and lots. The NHA, as amended by the Housing and Community Development Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, sections 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam and Hawaii.

On April 7, 1989 (54 FR 14075), the Department published an amendment to the listing of areas elibible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act, and their applicable limits for each area. A correction document to that amendment was published April 25, 1989 (54 FR 16360).

This Document

Today's document increases high-cost mortgage amounts for Rutland County, Vermont; Ulster County, New York; St. Mary's County, Maryland; Albermarle County and the City of Charlottesville, Virginia; Spotsylvania County and the City of Fredericksburg, Virginia; the Miami-Hialeah, Florida PMSA; Monroe County, Florida; Tippecanoe County, Indiana; Los Alamos County, New Mexico; Park County, Colorado; Churchill County, Nevada; and Coconino County, Arizona. It also adds to the list "high-cost" mortgage limits for Sagadahoc County, Maine; Kent County, Delaware; Glynn County, Georgia; Maury County, Tennessee; Bartholomew County, Indiana; Sandoval County, New Mexico; and Blaine and Bonneville Counties, Idaho.

These amendments to the high-cost areas appear in two parts. Part I explains high-cost limits for mortgages insured under Title I of the National Housing Act. Part II lists changes for single family residences insured under section 203(b) or 234(c) of the National Housing Act.

National Housing Act High Cost Mortgage Limits

I. Title I: Method of Computing Limits

A. *Section 2(b)(1)(D). Combination manufactured homes and lot (excluding Alaska, Guam and Hawaii):* To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .80. For example, Rutland County, Vermont has a one-family limit for $97,850. The combination home and lot loan limit for Rutland County is $97,850 × .80 or $78,280.

B. *Section 2(b)(1)(E): Lot only (excluding Alaska, Guam and Hawaii):* To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Rutland County, Vermont has a one-family limit of $97,850. The lot-only loan limit for Rutland County is $97,850 × .20 or $19,570.

C. *Section 2(b)(2). Alaska, Guam and Hawaii):* The maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam and Hawaii are as follows:

1. For manufactured homes: $56,700. (40,500 × 140%).

2. For combination manufactured homes and lots: $75,600. ($54,000 × 140%).

3. For lots only: $18,900. (13,500 × 140%).

II. Title II: Updating of FHA Sections 203(b), 234(c) and 214 Area-Wide Mortgage Limits.

Region I

HUD Field Office—Burlington Office

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Rutland County, VT	$97,850	$110,200	$133,900	$154,500

Region I

HUD Field Office—Bangor Office

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Sagadahoc County, ME	$99,750	$112,350	$136,500	$157,500

Region II

HUD Field Office—Albany Office

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Ulster County, NY	$101,250	$114,000	$138,000	$160,500

Region III

HUD Field Office—Baltimore Office

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
St. Mary's County, MD	$90,250	$101,650	$123,500	$142,500

Region III

HUD Field Office—Richmond Office

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Albermarle County, VA and the City of Charlottesville	$83,600	$94,150	$114,400	$125,400
Spotsylvania County, VA and City of Fredericksburg	$90,150	$101,500	$123,350	$142,350

Region III

HUD Field Office—Wilmington Office

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Kent County, DE	$76,000	$85,600	$104,000	$120,000

Region IV

HUD Field Office—Atlanta Office

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Glynn County, GA	$76,000	$85,600	$104,000	$120,000

Region IV

HUD Field Office—Coral Gables Office

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Miami-Hialeah, FLA PMSA: Dade County, FL	$94,500	$106,450	$129,350	$149,250
Monroe County, FL	$101,250	$114,000	$139,000	$160,500

Region IV

HUD Field Office—Nashville Office

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Maury County, TN	$76,500	$86,150	$104,650	$120,750

Region V

HUD Field Office—Indianapolis Office

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Bartholomew County, IN	$83,800	$94,400	$114,700	$132,350
Tippecanoe County, IN	$79,700	$89,750	$109,050	$125,850

Region VI

HUD Field Office—Albuquerque Office

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Los Alamos County, NM	$101,250	$114,000	$138,000	$160,500
Sandoval County, NM	$72,150	$81,300	$98,750	$113,950

Region VIII

HUD Field Office—Denver County

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Park County, CO	$78,250	$88,150	$107,100	$123,600

Region IX

HUD Field Office—Phoenix Office

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Coconino County, AZ	$89,300	$100,550	$122,200	$141,000

Region IX

HUD Field Office—Reno Office

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Churchill County, NV	$85,500	$96,300	$117,000	$135,000

Region X

HUD Field Office—Boise Office

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Blaine County, ID	$91,200	$102,700	$124,800	$144,000
Bonneville County, ID	$70,300	$79,150	$96,200	$111,000

Dated: July 24, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89-17764 Filed 7-28-89; 8:45 am]

BILLING CODE 4210-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3602-3]

Approval and Promulgation of Implementation Plans; Alaska

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves amendments to the State Air Quality Control Plan for the State of Alaska as submitted by the Alaska State Department of Environmental Conservation (ADEC) on September 12, 1988. These amendments are to Chapter 52 of the Alaska Administrative Code, Emission Inspection and Maintenance Requirements for Motor Vehicles. EPA is approving these amendments because the changes will improve the operation and efficiency of the vehicle emission program in the State of Alaska.

EFFECTIVE DATE: This action will be effective on September 29, 1989, unless notice is received before August 30, 1989, that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment period on this action.

ADDRESSES: Copies of material submitted to EPA may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Air Programs Branch, Environmental Protection Agency, Docket 10A-88-8, 1200 Sixth Avenue AT-082, Seattle, Washington 98101.

State of Alaska, Department of Environmental Conservation, 3220 Hospital Drive, Juneau, Alaska 99811.

Comments should be addressed to: Laurie M. Kral, Air Programs Branch AT-082, Environmental Protection Agency, 1200 Sixth Avenue (10A-88-8), Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Michael Lidgard, Air Programs Branch AT-082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442-4233, FTS: 399-4233.

SUPPLEMENTARY INFORMATION: The Cities of Anchorage and Fairbanks began their inspection and maintenance (I/M) program on July 1, 1985. This program requires owners of model year 1975 and newer cars and trucks to have their vehicles annually inspected for emission problems, or upon initial registration in the State. EPA solicited public comment on its proposed approval of the Anchorage and Fairbanks programs on March 10, 1986 (51 FR 7961) and March 7, 1986 (51 FR 8203 (3/10/86) and approved these programs on September 15, 1986 (51 FR 32638). As a revision to the State of Alaska Air Quality Control Plan, a new State Regulation 18 AAC Chapter 52 (Emissions Inspection and Maintenance Requirements for Motor vehicles) was approved.

On September 12, 1988, ADEC submitted amendments to its 18 AAC Chapter 52 (Emission Inspection and Maintenance Requirements for Motor Vehicles). The amendments are specifically to four sections of the regulations. They are:

18 AAC 52.010 (Purpose and General Requirements)

(3) *Addition:* Requires owner of registered vehicle to present a valid certificate of inspection before renewing registration.

(3b) *Addition:* The word "nonleased" vehicles with an emission control system must maintain that system is added.

(3d) *Addition:* Requires use of Maintenance Practices for individuals who maintain, repair or service emission control systems.

(3e) *Addition:* Registered owner may register a vehicle or renew a vehicle with the Department of Public Safety only after obtaining a valid certification of inspection.

(3g) *Addition:* Requires temporary residency within the State for more than 90 days to obtain a certificate of inspection for owner's vehicle.

18 AAC 52.020 (Vehicles Subject to This Chapter)

(1) *Addition:* Registration of a vehicle by owner with temporary residency.

18 AAC 52.070 (Waivers)

(5)(A)-(C) *Addition:* Provisions for a vehicle which has been modified to use only natural gas, or a fuel that is principally methane, liquefied petroleum gas or a fuel that is principally propane.

18 AAC 52.900 (Definitions)

(14) *Addition:* Unauthorized modifications means modifications that have not been performed according to a recall campaign or service bulletin "authorized by a vehicle's manufacturer" or "by the State of Alaska Department of Environmental Conservation."

I. EPA Action

Today EPA approves the following revisions to the State of Alaska Air Quality Control Plan since these changes will improve the operational procedures and will not affect the program's effectiveness.

II. Administrative Review

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments on any or all of these revisions approved herein, the action on these revisions will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action on those revisions and another will begin a new rulemaking by announcing a proposal of the action on these revisions and establish a comment period.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. section 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

Under section 307(b) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 29, 1989. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Date: April 21, 1989.

Robert S. Burd,

Acting Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Alaska was approved by the Director of the Office of Federal Register on July 1, 1982.

Title 40, Chapter I of part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart C—Alaska

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.70 is amended by adding paragraph (c)(15) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(15) On September 12, 1988, the State of Alaska Department of Environmental Conservation submitted revisions to AAC 18 Chapter 52 (Emission Inspection and Maintenance Requirements for Motor Vehicles). Those sections amended through June 2, 1988, are: 18 AAC 51.010 [Purpose and General Requirements] (a)(3), (b), (d), (e), and (g); 18 AAC 52.020 [Vehicles Subject to this Chapter] (1); 18 AAC 52.070 [Waivers] (5)(A) through (C); and 18 AAC 52.900 [Definitions] (14).

(i) Incorporation By Reference.

(A) September 12, 1988 letter from the State of Alaska Department of Environmental Conservation to EPA Region 10.

(B) Chapter 52 [Emissions Inspection and Maintenance Requirements for Motor Vehicles] section 52.010 [Purpose and General Requirements (a)(3), (b), (d), (e), and (g); section 52.020 [Vehicles Subject to This Chapter] (1); section 52.070 [Waivers] (5)(A) through (C); and section 52.900 [Definitions] (14) as adopted by the State of Alaska Department of Environmental Conservation on March 10, 1988.

3. Section 52.75 is revised to read as follows:

§ 52.75 Contents of the approved state-submitted implementation plan.

The following sections of the State Air Quality Control Plan (as amended on the dates indicated) have been approved and are part of the current State Implementation Plan:

Volume II: Analysis of Problems, Control Action

Section I. Background

A. Introduction (7/1/82)
B. Air Quality Control Regions (7/1/82)
C. Attainment/Nonattainment Designations (7/1/83)

Section II. State Air Quality Control Program (11/1/83)

Section III. Areawide Pollutant Control Program

A. Statewide Transportation Control Program (6/1/85)
B. Anchorage Transportation Control Program (6/1/85)
B.10.1 through 10.6 Anchorage Air Pollution Curtailment Actions (6/26/87)
C. Fairbanks Transportation Control Program (6/1/85)
C.10.1 through 10.9 Fairbanks Emergency Episode Prevention Plan (6/26/87)
D. Total Suspended Particulate Matter (7/1/82)
E. Ice Fog (7/1/82)
F. Open Burning (10/30/83)
G. Wood Smoke Pollution Control (7/1/83)
H. Lead Pollution Control (7/1/83)

Section IV. Point Source Control Program

A. Summary (10/30/83)
1. Annual Review Report (10/30/83)
B. State Air Quality Regulations (10/30/83)
C. Local Programs (10/30/83)
D. Description of Source Categories and Pollutants
1. Typical Point Sources (10/30/83)
2. Summary of Major Emitting Facilities (10/30/83)
E. Point Source Control
1. Introduction (10/30/83)
F. Facility Review Procedures
1. Who needs a permit? (10/30/83)
2. Standard Application Procedures (10/30/83)
3. PSD Application Procedures (10/30/83)
Preliminary report and meeting (10/30/83)
Pre-construction monitoring (10/30/83)
PSD application format (10/30/83)
4. Nonattainment Application Procedures (10/30/83)
G. Application Review and Permit Development (10/30/83)
1. Application Review (10/30/83)
2. Permit Development Requirements (10/30/83)
Monitoring and Testing Requirements (10/30/83)
Ambient Monitoring (10/30/83)
Continuous Emissions Monitoring (10/30/83)
Source Testing (10/30/83)
3. Prevention of Significant Deterioration Review (10/30/83)
Basis of Program (10/30/83)
PSD Regulations (10/30/83)
PSD Analysis (10/30/83)
4. Nonattainment Area Review (10/30/83)
5. New Source Performance Standards Source Review (10/30/83)
6. Visibility Review (10/30/83)
7. Sources under EPA Review (10/30/83)
H. Permit Issuance Requirements (10/30/83)

Section V. Ambient Air Monitoring

A. Purpose (7/1/82)
B. Completed Air Monitoring Projects (7/1/82)
1. Carbon Monoxide (7/1/82)
2. Nitrogen Oxides (7/1/82)
3. Sulfur Dioxide (7/1/82)
4. Ozone (7/1/82)
5. Total Suspended Particulates (TSP) (7/1/82)
6. Lead (7/1/82)
C. Air Monitoring Network (7/1/82)
1. Network Description (7/1/82)
2. Station Designations (7/1/82)
3. Air Quality Monitoring Procedures (7/1/82)
4. Ambient Sampling for Specific Pollutants (7/1/82)
E. Annual Review (7/1/82)

Volume III. Appendices

Section II. State Air Quality Control Program

II.A. State Air Statutes, except Section 46.03.170 (11/15/83)
State Attorney General Opinions on Legal Authority—(2/29/72, 2/29/80)
Title 18 Environmental Conservation, Chapter 50. Air Quality Control (10/30/83), (6/7/87)
TITLE 18 Environmental Conservation, Chapter 52 Emissions Inspections and Maintenance Requirements for Motor Vehicles (5/19/85), (8/2/88)
II.B. Municipality of Anchorage/Cook Inlet ADEC Agreements (11/15/83)
II.C. Fairbanks North Star Borough Ordinances, except Section 8.04.070/FNSB & ADEC Agreements (11/15/83)

Section III. Areawide Pollutant Control Program

III.B.3-a Anchorage Graphs of Highest and Second Highest CO readings for Each Site (11/15/83)
III.B.5-a Anchorage Traffic Improvements (11/15/83)
III.B.5-b Anchorage Contingency Plan (11/15/83)
III.B.5-c Anchorage Transit Ridership (11/15/83)
III.B.8-a Anchorage Graphs of Projected CO Concentrations for Each Site (11/15/83)
III.G Ordinance of the City and Borough of Juneau (10/6/83)

III.H Support Documents for Lead Plan (11/15/83)

Section IV. Point Source Control Program

IV.1 PSD Area Classification and Reclassifications (11/15/83)
A. Class I Area Boundaries (11/15/83)
B. Areas Protected from Visibility Degradation (11/15/83)
C. Reclassification (11/15/83)
1. Limitations on PSD Reclassification (11/15/83)
2. PSD Reclassification Procedures (11/15/83)
IV.2 Compliance Assurance (11/15/83)
IV.3 Testing Procedures (11/15/83)

Section V. Ambient Air Monitoring

ADEC Ambient Analysis Procedures (11/15/83)

[FR Doc. 89–17737 Filed 7–28–89; 8:45am]
BILLING CODE 6560–50–M

40 CFR Parts 52 and 81

[FRL–3621–8]

Approval and Promulgation of Air Quality Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Missouri—Approval of Missouri's PM_{10} State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rulemaking takes final action to approve Missouri's PM_{10} SIP. Missouri developed a PM_{10} SIP in response to EPA's 1987 promulgation of a new ambient air quality standard for particulate matter. The new standard includes only those particles nominally smaller than 10 micrometers (PM_{10}). The particulate emission control regulations presently contained in Missouri's approved SIP are not altered by this action because there is a high probability that all areas of the state are presently attaining the PM_{10} air quality standard without additional particulate matter controls.

This rulemaking also redesignates certain areas of Missouri from nonattainment for total suspended particulates (TSP) to unclassifiable.

EFFECTIVE DATE: This action will become effective on September 29,1989 unless notice is received by August 30, 1989 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at:

Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101
Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65101
Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dewayne E. Durst at (913) 236–2893 (FTS 757–2893).

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1987 (52 FR 24634), EPA promulgated a new National Ambient Air Quality Standard (NAAQS) for particulate matter. The new standard applies only to particles with a nominal aerodynamic diameter of 10 micrometers or less (PM_{10}). The new standard replaces total suspended particulates (TSP) as an ambient air quality standard.

In order for states to regulate PM_{10}, they must make certain changes in their rules and regulations and in the SIPs. The changes to the rules and the SIP must ensure that the PM_{10} NAAQS are attained and maintained; that new and modified sources which emit PM_{10} are reviewed; that PM_{10} is one of the pollutants to trigger alert, warning, and emergency actions; and that the state's monitoring network be designed to include PM_{10} monitors. These changes must be made regardless of the existing levels of PM_{10} in any area of the state.

Where existing TSP and PM_{10} monitoring data indicate there is a high probability that PM_{10} standards are being exceeded in an area, a control strategy is required to show how PM_{10} emissions will be reduced to provide for attainment and maintenance of the PM_{10} NAAQS. This is called a group I area. If the existing data show there is a lower probability that PM_{10} standards are being exceeded in an area, the states are required to commit to perform additional PM_{10}10 monitoring in that area and to prepare a control strategy if the data show with certainty that the standards are being exceeded. This is called a group II area. The commitments must be submitted in the form of a SIP revision and are termed a "committal" SIP.

If available particulate matter data indicate the PM_{10} air quality is better than the standards, EPA presumes that the existing SIP is adequate to demonstrate attainment and maintenance of the PM_{10} standards. This is termed a group III area.

The regulations call for the PM_{10} SIPs to be submitted nine months after the federal PM_{10} regulations went into effect on July 31, 1987. However, because of the burdensome administrative requirements for adoption of rules in some states, they were given some flexibility in the scheduling of their PM_{10} SIP submissions.

PM_{10} Attainment Status in Missouri

Based upon existing TSP and PM_{10} air quality data, there are no areas in Missouri where the PM_{10} standards are likely to be exceeded. Thus, the entire state of Missouri has been placed in the group III PM_{10} category. Therefore, based on available data and in accordance with the Clean Air Act and EPA regulations, Missouri must meet the following requirements in order for EPA to approve its SIP for PM_{10}: (1) Adopt acceptable revisions to its preconstruction review rules, (2) revise the emergency episode rules to incorporate PM_{10}, and (3) revise the air quality monitoring plan to provide for sampling of PM_{10} in ambient air.

Missouri's PM_{10} SIP Submittal

Missouri developed its PM_{10} SIP in three separate parts. These were: (1) Revisions to the air quality monitoring plan, (2) revisions to the Missouri rules to incorporate PM_{10} in the following provisions: air quality standards, definitions, reference methods for ambient sampling, permit rules, and emergency episode plans, and (3) a separate narrative SIP revision which explains the entire process for regulating PM_{10} in Missouri. Separate hearings were held for each of the three parts described above. The hearing on the air monitoring plan was held March 17, 1988, and the plan was submitted to EPA on March 29, 1988. The hearing on the amendments to the Missouri administrative rules was held February 18, 1988; the rules became effective April 28, 1988; and they were submitted to EPA on May 12, 1988. The hearing on the narrative plan was held May 19, 1988, and it was submitted to EPA on June 15, 1988.

Review of the Missouri PM_{10} Submittal

The Missouri submittal has been reviewed to determine if it meets the requirements of the Clean Air Act, EPA regulations, and applicable policies. The regulations most pertinent to this rulemaking are found in the July 1, 1987, **Federal Register** (52 FR 24672). The July 1, 1987, regulation is supplemented with EPA policy contained in a PM_{10} SIP Development Guideline (EPA–450/2–86–001) dated July 1987 with a supplement dated June 1988.

The state of Missouri held three public hearings as described above on the various portions of its PM_{10} SIP submittal. Comments on the proposed rules are summarized and state responses provided in the Missouri Register of April 18, 1988, where the final rule is printed. Certifications that the hearings took place were submitted with each portion of the PM_{10} SIP.

The state resources needed to implement the PM_{10} SIP for Missouri are contained in the annual State/EPA Agreement (SEA) signed by the Director of the Missouri Department of Natural Resources and the Regional Administrator of EPA Region VII. Because there are no group I areas in Missouri, implementation of the PM_{10} SIP will not involve a new control strategy for particulate matter in the state. Rather, it will involve continued enforcement of existing particulate matter emission regulations, review of new sources for PM_{10} and TSP, and operation of air monitoring network composed of both TSP and PM_{10} monitors. All of these activities are covered in the SEA.

Missouri followed legal notice requirements when announcing the public hearings on various portions of the PM_{10} SIP. Local control agencies, adjoining states, EPA, local planning agencies, elected officials, and the public were officially notified of the PM_{10} hearing. No significant new planning requirements are involved in the PM_{10} SIP development or in its implementation in Missouri and, therefore, this revision imposed no new requirements under subpart M of 40 CFR Part 51, Intergovernmental consultation.

Missouri rule 10 CSR 10–6.110 provides the authority to require sources to record and submit information on emissions of air contaminants in order to determine if the sources are in compliance with applicable emission regulations. This rule is presently approved as part of the Missouri SIP. This same rule also requires that emission data collected by the state must be made available to the public. The state also has authority to require installation and maintenance of continuous emission monitoring devices and to require reporting the data it collects in a specified format.

As a basis for implementing the PM_{10} requirements in Missouri, the state adopted PM_{10} as an ambient air quality standard in its rule 10 CSR 10–6.010. The state also adopted by reference EPA regulation 40 CFR Part 50, Appendix J, Reference Method for the Determination as PM_{10} in the Atmosphere, and 40 CFR Part 50, Appendix K, Interpretation of the National Ambient Air Quality Standards for Particulate Matter. State adoption of air quality standards is not a requirement of the Clean Air Act. However, EPA is approving the state's adoption of a PM_{10} ambient air quality standard because it is an integral part of the state's plan to maintain the federal standard.

Missouri revised its definition of particulate matter by adding two subsections, one being TSP and the other particulate matter—10 micron (PM_{10}). The subsection for TSP references 40 CFR Part 50, Appendix B, Reference Method for the Determination of Suspended Particulates in the Atmosphere. The subsection for PM_{10} references 40 CFR Appendix J. Thus, the state has adopted rules which are consistent with EPA's definitions of particulate matter, TSP, and PM_{10}

Missouri did not adopt definitions for particulate matter emissions or PM_{10} emissions. It contends that its rules make a clear distinction between particulate matter and PM_{10} in the ambient air and emissions of these pollutants. After reviewing Missouri rule 10 CSR 10–6.060, Permits Required, and more specifically subsections (1)(A) and (7)(A), and Table 1 of this rule, EPA agrees that major new and modified sources in Missouri must be reviewed for particulate matter emissions and PM_{10} emissions.

The Missouri SIP is presently approved as meeting the requirements of 40 CFR Part 51 for review of new and modified sources. This includes all the requirements of 40 CFR Subpart 51.165, Permit Requirements, and 40 CFR Subpart 51.166, Prevention of Significant Deterioration of Air Quality (PSD).

Missouri revised its rule 10 CSR 10–6.060, Permits Required, by adding TSP emissions and PM_{10} emissions to the list of pollutants which trigger PSD review of major new and modified sources. Missouri requested that all areas of the state which are presently designated nonattainment for TSP be redesignated to unclassified. That redesignation is part of this rulemaking. Therefore, all areas of the state will either be designated as attainment or unclassified for TSP, and the PSD regulations will apply for TSP throughout the state.

The state has exempted sources from preapplication monitoring of PM_{10} and TSP if the projected or existing ambient concentration of those pollutants are less than 10 $\mu g/m^3$, 24-hour average.

Missouri rule 10 CSR 10–6.060(5)(B) requires the installation of best available control technology for particulate matter emissions and PM_{10} emissions on each major source, if the source has the potential to emit significant amounts of those pollutants. The same requirements apply to major modifications if there would be a significant net emission increase at the sources. The significance levels for TSP and PM_{10} are identified in Missouri rule 10 CSR 10–6.060, Subsection (7)(A), Table 1.

Missouri's rule 10 CSR 10–6.060(3)(A)2. allows a permit to be issued to a new or modified source only if the source will not interfere with attainment or maintenance of ambient air quality standards. This provision satisfies the requirements of 40 CFR Part 51.165(b).

Missouri rule 10 CSR 10–6.060(5)(C)3. prohibits major proposed sources and modifications from causing, in conjunction with other applicable emission increases or decreases, an increase in TSP ambient levels above the applicable PSD increments. The increments are contained in state rule 10 CSR 10–6.060(7)(E), Table 5. The table has been revised to clarify that the Class I, II, and III increments apply to TSP. State rule 10 CSR 10–6.060(8)(H)2. has been revised to clarify that the PSD increment for sources impacting federal mandatory Class I areas can receive an air quality increment variance if the TSP increase is consistent with 40 CFR Part 51.166(P)(4). State rule 10 CSR 10–6.060(8)(H)(2) as revised is acceptable.

Missouri rule 10 CSR 10–6.060(5)(C) requires that sources analyze the ambient air quality in the area a new source would impact, and this analysis would include both PM_{10} and TSP matter. This satisfies the requirements of 40 CFR Part 51.155m (i), (ii), and (iii).

Emergency Episode Plans

Missouri revised its rule 10 CSR 10–6.130, Controlling Emissions During Episodes of High Air Pollution Potential, so that the rule is consistent with 40 CFR Part 51, Appendix L, in all respects. There are no group I PM_{10} areas in Missouri, so new contingency plans for emergency episodes have not been developed. The state of Missouri, the city of St. Louis, St. Louis County, and Kansas City developed contingency plans for major sources in their jurisdictions in the early 1970s. These plans require curtailment of activities which emit particulate matter during an episode without regard to the particle size of the material. The plans will now be activated by elevated levels of PM_{10} rather than TSP. Requirements for PM_{10} episode monitoring are contained in Missouri's revised monitoring SIP, which is described below.

Missouri rule 10 CSR 10–6.130 contains provisions which require the Director of the Missouri Air Program to take certain actions at the various episode levels. These actions are consistent with the source curtailment Tables I, II, and III of 40 CFR Part 51, Appendix L. Missouri's PM_{10} emergency episode plan is acceptable.

After reviewing the Missouri PM_{10} SIP submission, it has been determined that it meets all the requirements of the CAA, EPA regulations, and policies and is, therefore, approvable as part of the Missouri SIP. The existing emission control regulations pertaining to particulate matter and visible emissions are not altered by this action, and all such regulations presently contained in Missouri's SIP remain in effect.

EPA Action: Missouri's PM_{10} SIP is approved. Specifically, this action approves revisions to Missouri's rules 10 CSR 10–6.010, Ambient Air Quality Standards; 10 CSR 10–6.020, Definitions; 10 CSR 10–6.040, Reference Methods; 10 CSR 10–6.060, Permits Required, and 10 CSR 10–6.130, Controlling Emissions During Episodes of High Air Pollution Potential. These revisions became effective April 28, 1988.

Redesignation of TSP Nonattainment Areas

The final rulemaking of July 1, 1987 (52 FR 24682), promulgating the PM_{10} standard discussed an area redesignation policy with respect to TSP. The policy encouraged states to request redesignation of TSP nonattainment areas to unclassifiable for TSP at the time they submit their PM_{10} control strategies. The rulemaking stated that when EPA approves the control strategy as sufficient to attain and maintain the PM_{10} NAAQS, the redesignation will also be approved. An area designation for TSP must be retained until EPA promulgates PM_{10} increments, because the PSD increment system for TSP must be utilized until then. The TSP increment system depends on the existence of section 107 designations. Once states have PM_{10} SIPs in place and EPA promulgates PM_{10} increments, the TSP designations can be eliminated. No other regulatory provisions of the Clean Air Act or EPA regulations are any longer tied to the TSP designations, so states are not required to justify their TSP redesignation requests.

Missouri requested that all areas of the state which are presently designated nonattainment for TSP be redesignated to unclassified. This request was contained in section (4)(d) of Missouri's PM_{10} SIP submittal on June 15, 1988. Because there are no group I or group II areas in Missouri, it is presumed that the existing particulate matter SIP is adequate to demonstrate attainment and maintenance of the PM_{10} standards. The state has identified its existing particulate matter SIP in its submission. This is essentially a listing of all state rules for controlling particulate matter. Therefore, the existing SIP is deemed adequate to attain and maintain the PM_{10} air quality standards. Missouri's request to redesignate all TSP nonattainment areas to unclassified is acceptable.

Specifically, there are areas in the city of St. Louis and the city of St. Joseph which are presently designated primary nonattainment for TSP. There are also areas of St. Louis, St. Joseph, and Kansas City which are designated secondary nonattainment for TSP. All of these areas are hereby redesignated to unclassified for TSP. These areas are more specifically identified in 40 CFR Part 81, Subpart C, § 81.326.

EPA Action: EPA approves Missouri's request to redesignate TSP nonattainment areas to unclassifiable.

PM_{10} Monitoring

Missouri's monitoring SIP was originally approved by EPA in September 1984 as meeting the requirements of 40 CFR 58.20. For the most part, the monitoring SIP is generic and does not contain references to any of the criteria pollutants. However, the monitoring SIP was revised to substitute PM_{10} or particulate matter for those instances where TSP was mentioned in the originally approved plan. The revisions made in the Missouri monitoring SIP are acceptable.

EPA Action: EPA approves Missouri's Air Quality Monitoring Plan (revised 1988).

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective September 29, 1989 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective September 29, 1989.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under 5 U.S.C. 605(b), I certify that this rulemaking will not have a significant impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Act, as amended, petitions for judicial review of this action must be filed in the United State Court of Appeals for the appropriate circuit by September 29, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Air pollution control, Incorporation by reference, and Particulate matter.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Note: Incorporation by reference of the State Implementation Plan for the state of Missouri was approved by the Director of the Federal Register on July 1, 1982.

Date: July 11, 1989.

Morris Kay,

Regional Administrator.

PART 52—[AMENDED]

40 CFR Part 52 is amended as follows:

Subpart AA—Missouri

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1320 is amended by adding a new paragraph (c)(66) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(66) The Missouri Department of Natural Resources submitted revisions to its state implementation plan to incorporate PM_{10} on March 29, 1988, May 12, 1988, and June 15, 1988.

(i) Incorporation by reference.

(A) Revisions to the following Missouri air pollution rules:

10 CSR 10–6.010	Ambient Air Quality Standards
10 CSR 10–6.020	Definitions
10 CSR 10–6.040	Reference Methods
10 CSR 10–6.060	Permits Required
10 CSR 10–6.130	Controlling Emissions During Episodes of High Air Pollution Potential

These rules were published in the Missouri Register on April 18, 1988, and became effective April 28, 1988.

(ii) Additional material

(A) A revision to the Missouri Monitoring Plan was submitted March 29, 1988.

(B) A narrative description of the PM_{10} SIP for the state of Missouri was submitted June 15, 1988.

§ 52.1332 [Amended]

3. The table in § 52.1332, Attainment dates for national standards is revised to read as follows:

Air quality control region	Pollutant							
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Ozone	PM_{10}
	Primary	Secondary	Primary	Secondary				
Metropolitan Kansas City Interstate	b	e	d	d	d	5/31/75	b	d
Southwest Missouri Intrastate	a	a	d	d	d	d	d	d
Southeast Missouri Intrastate	d	d	d	d	d	d	d	d
Northern Missouri Intrastate	a	a	d	d	d	d	d	d
Metropolitan St. Louis Interstate	b	e	d	d	d	c	c	d

Note: Sources subject to plan requirements and attainment dates established under section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with these requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR Part 52 (1978) § 52.1332. Only portions of those AQCRs with attainment dates after July 1975 have new attainment dates under the 1977 Clear Air Act Amendments. The reader is referred to 40 CFR Part 81 for identification of the designated areas under section 107(d) of the Act.

a. July 1975.
b. December 31, 1982.
c. December 31, 1987.
d. Air quality levels presently below secondary standards.
e. Secondary standard attainment date to be determined by secondary attainment plan.

PART 81—[AMENDED]

Part 81 of Chapter I, Title 40

40 CFR Part 81, Chapter C, is amended as follows:

Subpart C—Missouri

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

§ 81.326 [Amended]

2. Section 81.326, Missouri, is amended by revising the first three entries in the status designation table for TSP to read as follows:

MISSOURI—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
St. Louis AQCR (070):				
St. Louis (an area extending west about 2 miles from the Mississippi River, north to near I–270 and south to about 1 mile beyond the city limits			x	
Remainder of the city of St. Louis			x	
Remainder of AQCR				x
Kansas City AQCR (094):				
Kansas City (an area extending approximately from the Kansas state line east along Red Bridge Road and 115th Street to Missouri Highway 291, then north to I–70, east to Missouri Highway 7, north to U.S. Highway 24 west to Missouri Highway 291, north to Missouri Highway 152, west to Missouri Highway 9, south to U.S. Highway FF, and due south to the state line)			x	
St. Joseph: Within city limits			x	

[FR Doc. 89–17736 Filed 7–28–89 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Part 303

Procurement Integrity

AGENCY: Office of the Secretary, HHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of the Secretary, Department of Health and Human Services is amending its acquisition regulation to implement Procurement Integrity, section 6 of the Office of Federal Procurement Policy (OFPP) Act Amendments of 1988, Pub. L. 100–679 and the Federal Acquisition Regulation (FAR) coverage at FAR 3.104.

DATES: *Effective Date:* July 31, 1989.

Comment Date: Comments must be received by September 14, 1989.

ADDRESS: Any person or organization wishing to submit data, views, or comments pertaining to the interim rule may do so by filing them with Norman Audi, Division of Acquisition Policy, OAGM–OMAC–OASMB, Room 517D, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Norman Audi, (202) 245–0326.

BEST COPY AVAILABLE

SUPPLEMENTARY INFORMATION:

A. Background

The FAR was amended by FAC 84-47 to implement section 6 of the OFPP Act Amendments of 1988, 54 FR 20488. The FAR was amended on May 23, 1989, 54 FR 22282, to delay the implementation date until July 16, 1989. The Act prohibits certain activities by competing contractors and Government procurement officials during the conduct of a Federal agency procurement. In general, these prohibited activities involve soliciting or discussing post-Government employment, offering or accepting a gratuity, or soliciting or disclosing proprietary or source selection information. The Act also contains certification and disclosure provisions for both contractors and Government officials, imposes post-employment restrictions on Government officials and employees, and provides for criminal, civil, administrative, and contractual penalties for violations of the Act.

This interim rule provides guidance to the Department's managers on internal requirements which are necessary to implement the law and FAR regulation on Procurement Integrity. It also provides the public with the Department's procedures in reviewing and resolving alleged violations of the Act.

B. Determination To Issue Interim Regulation

A determination has been made to issue this regulation as an interim rule. This action is necessary to implement the FAR interim rule for immediate use by Department of Health and Human Services personnel. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments in response to this interim rule will be considered in formulating a final rule.

C. Regulatory Flexibility Act

This interim rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this interim rule will not have a significant impact on small business entities.

D. Paperwork Reduction Act

This document does not contain information collection requirements which require the approval of the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

The provisions of this interim rule will be issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Part 303

Government procurement.

48 CFR Chapter 3 is amended in the manner set forth below.

Dated: July 24, 1989.

Kevin E. Moley,

Assistant Secretary for Management and Budget.

As indicated in the preamble, Chapter 3 of Title 48, Code of Federal Regulations, is amended as shown.

PART 303—[AMENDED]

1. The authority citation for Part 303 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2. In the table of contents, section 303.104 and sections 303.104-4 through 303.104-12 are added to Subpart 303.1 to read as follows:

Sec.
303.104 Procurement integrity.
303.104-4 Definitions.
303.104-5 Disclosure of proprietary and source selection information.
303.104-6 Restrictions on Government officials, employees, and consultants.
303.104-9 Certification requirements.
303.104-11 Processing violations or possible violations.
303.104-12 Ethics program training requirements.

303.104 Procurement integrity.

303.104-4 Definitions.

(h)(1) "Procurement official" means any individual who has participated personally and substantially in the conduct of a procurement. The following classes of employees may be considered procurement officials depending on the circumstances prevailing in a given case: contracting officers, contract specialists, contract administrators, procurement agents, procurement clerks, cost/price analysts, procurement analysts, clerical support and administrative personnel, auditors, professional staff of the Division of Cost Allocation, acquisition review and approval officials, contract clearance staff, board of award members, supervisory procurement officials, small and disadvantaged business utilization specialists, project officers, project managers, program officials, officials who provide special program clearances and approvals, program managers, technical evaluation panelists, peer reviewers, source selection evaluation board members, source selection advisory council members, source selection authorities, finance officials, and procurement lawyers. Concept peer reviewers are not considered to be procurement officials when participating in project concept reviews pursuant to 42 CFR 52h.10(a). However, concept peer reviewers, or other peer reviewers, who participate in a project approach review are procurement officials. When there is a question whether an individual is a procurement official, the activities of the individual should be analyzed by the contracting officer to determine whether there is both personal and substantial involvement in a procurement. If there is doubt in a particular case, the doubt should be resolved by including the individual as a procurement official. The contracting officer has the authority to decide who is or who is not a procurement official in a particular case. The opinion of the Office of the General Counsel (OGC) should be requested when the contracting officer believes the situation is particularly complex or sensitive. When the contracting officer's decision is disputed by the individual whose status as a procurement official is in question, the matter will be referred to the Principal Official Responsible for Acquisition (PORA) for a final determination.

(k)(1) "Source selection information" includes "derivative documents" which are documents containing references to or directly citing or paraphrasing proprietary or source selection information.

303.104-5 Disclosure of proprietary and source selection information.

(a) The contracting officer or any other individual who prepares, makes or controls proprietary, source selection information, or derivative documents shall—

(1) Ensure documents are marked as prescribed in FAR 3.104-4 (j) and (k);

(2) Provide physical security for documents in the office environment during and after duty hours; and

(3) Ensure security of interoffice mailing of documents by using opaque envelopes, double wrapping with more than one envelope, and sealing of envelopes, as necessary.

(b) Individuals responsible for preparing derivative documents are responsible for marking such documents in accordance with FAR 3.104-5(b).

(c) Only the contracting officer has the authority to authorize individuals, or classes of individuals, access to proprietary or source selection information for each procurement except for paragraph (d) of this section.

(d) The following classes of individuals are authorized blanket access to only that source selection information developed before a request for contract is sent to the contract office, or to later modifications or supplements to such information—

(1) The generators of the requirements, including program, scientific, and technical experts involved in the development of the statements of work, specifications, evaluation plans, budget estimates, or similar documents;

(2) Reviewing officials; and

(3) Supervisors in the management chain of the individuals listed in paragraphs (d) (1) and (2) of this section. The contracting officer shall inlcude in the contract file names and functions of any other individuals authorized access to proprietary or source selection information.

303.104-6 Restrictions on Government officials, employees, and consultants.

(b) Procurement officials leaving the Department will be required to complete the certification set forth in Chapter 1-90 of the General Administration Manual if that official leaves the Department during the conduct of a procurement expected to result in a contract or modification in excess of $100,000. The administrative officer will forward a copy of the certification to each responsible contracting officer for incorporation into the contract file.

303.104-9 Certification requirements.

(c) The contracting officer shall include the contracting officer certification in the contract file for each contract action over $100,000. Including the certificate in the contract file shall be considered notification to the head of the agency.

(e)(2) The waiver shall be submitted to the Office of Acquisition and Grants Management in the Office of Management and Acquisition, Office of Management and Budget in the Office of the Secretary for review and approval before submission to the head of the agency.

303.104-11 Processing violations or possible violations.

(a)(1) The contracting officer determination that a reported violation or possible violation of the statutory prohibitions has no impact on the impending award or selection of a source must be submitted through channels, along with supporting documentation, to the PORA for review and approval of the determination before award of a contract.

(2) The contracting officer's determination that a reported violation or possible violation of the statutory prohibitions has an impact on the pending award or selection of a source must be referred through channels, along with all related information available, to the PORA (if the PORA is an SES) or to another SES official designated by the OPDIV. That individual will—

(i) Refer the matter immediately to the Office of Acquisition and Grants Management in the Office of Management and Acquisition, Office of Management and Budget, Office of the Secretary for review, which office may consult with the Office of the General Counsel and the Office of the Inspector General, as appropriate; and

(ii) Determine the action to be taken on the procurement in accordance with FAR 3.104-11 (c) and (d).

(b) The individual in paragraph (a)(2) of this section acts as the agency head designee with respect to actions taken under the FAR clause at 52.203-10, Remedies for Illegal or Improper Activity.

303.104-12 Ethics program training requirements.

(a) The Office of Acquisition and Grants Management in the Office of Management and Acquisition (OAGM), Office of Management and Budget in the Office of the Secretary is responsible for developing a training module which can be used by the Department's OPDIVs and Regional offices to train procurement officials. Upon receipt of the module, each OPDIV and Regional Office must train the procurement officials set forth in 303.104-4(h)(1) before they can act as procurement officials.

(b) After the training has been completed, each procurement official must sign the "Procurement Official's Certificate of Procurement Integrity" before he/she can act as a procurement official on any procurement. The certificate shall be submitted to the servicing personnel office, where the certificate will be filed on the left side of the employee's Official Personnel Folder. A copy of the certificate shall be provided to the contract office which shall maintain a list of the procurement officials who have signed the certificates.

(c) Procurement officials who serve multiple contracting offices (such as procurement lawyers) shall submit copies of their certificates to OAGM with the originals being transmitted to their servicing personnel office. OAGM shall maintain a list of such procurement officials and inform cognizant contracting officers upon telephonic request whether particular individuals are included on the list.

[FR Doc. 89-17788 Filed 7-28-89; 8:45 am]

BILLING CODE 4110-04-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 602

[Docket No. 81011-9132]

Guidelines for Fishery Management Plans; Corrections

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; corrections.

SUMMARY: This document corrects some errors in the final rule revising national standard guidelines for fishery management plans published July 24, 1989 (54 FR 30826).

EFFECTIVE DATE: August 23, 1989.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, 301-427-2334.

In rule document 89-17017 beginning on page 30826 in the issue of July 24, 1989, make the following corrections:

§ 602.14 [Corrected]

1. On page 30838, second column, in § 602.14(b)(1), line 2 of that paragraph change "FCZ" to "EEZ".

Appendix A to Subpart B [Corrected]

2. In Appendix A to Subpart B, under Standard 2, page 30843, second column, paragraph (2)(b), line 3, "item (1)" should read "item (a)" and, several paragraphs below, in paragraph (2)(g), line 3, "item (6)" should read "item (f)".

3. Under Standard 3, page 30843, in the first full paragraph of the third column, in lines 7 and lines 10 of that paragraph change "FCZ" to "EEZ".

Dated: July 25, 1939.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89-17810 File 1 7-28-89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 145
Monday, July 31, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-89-005]

RIN 0581-AA19

Tobacco; Fees and Charges for Permissive Inspection and Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Tobacco Inspection Act requires the Secretary to fix and collect fees and charges for the voluntary inspection and certification of tobacco upon request. This proposed rule would increase the fees and charges currently in force for permissive grading to reflect increased costs of operating the program. In addition, the fee structure would be revised so that all costs of the service would be charged on an hourly basis. The previous billing fee to users consisted of an hourly rate, to which travel, per diem and administrative costs were added. Under the Act, fees collected must cover, as nearly as practicable, the Department's costs for performing the inspection service, including administrative and supervisory costs. This increase does not affect the fee for the mandatory inspection of tobacco sold at designated auction markets.

DATES: Comments are due on or before August 30, 1989.

ADDRESSES: Send comments to the Director, Tobacco Division, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456. Comments will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456. Telephone (202) 447-2567.

SUPPLEMENTARY INFORMATION: This proposed rule would increase the fees and charges under which permissive tobacco inspection and grading services are provided to those requesting the services. The Tobacco Inspection Act requires that permissive inspections be made available to interested parties on a fee basis sufficient to cover the costs incurred by the Department for the inspection and certification, the establishment of standards, and other services, including administrative and supervisory costs. Authority for these regulations is contained in the Tobacco Inspection Act (7 U.S.C. 511-511q).

The current hourly fee schedule for domestic permissive inspection has been in effect since November 4, 1985, as published in the Federal Register (50 FR 45805) on November 4, 1985.

Previously, users of the service were billed the standard hourly rate, plus travel and administrative costs. The new proposed hourly fee would include all of the costs of the program in one rate which would include travel, as well as the costs for salary and administrative services. This fee structure would reduce the time and costs of calculating charges by eliminating the need to pro-rate travel expenses when inspectors perform both mandatory and permissive inspections, or permissive inspections for more than one party, on the same trip. The change would also make users' costs more predictable for each use of the service. Past experience indicates that it is unlikely that costs for any user would be significantly more or less over a season than if travel costs were billed separately.

The Department conducts a yearly review of the financial status of this program to determine whether the fee is sufficient. As a result of this review, it has been determined that the present fees are insufficient to cover the Department's costs. The major factors causing the need for additional funds are increases in Government salaries, travel allowances and administrative costs since 1985. Therefore, the Department is proposing that the base hourly rate of $22.30 be revised to read "hourly rate shall be $29.45," the overtime rate of $26.60 shall be "$35.15," and the Sunday and holiday rate of $33.34 be "$44.05."

This rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "nonmajor rule" because it does not meet any of the criteria established for major rules under the Executive Order.

Additionally, in conformance with the provisions of Public Law 96-354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. Few of the entities which would be affected by this rule are small businesses. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last 3 years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. This proposed rule would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this proposed rule would not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and would not alter the market share or competitive positions of small entities relative to the large entities and would in no way affect normal competition in the marketplace. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the tobacco inspection program.

All persons who desire to submit written data, views, or arguments for consideration in connection with this proposal may file them with the Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, not later than August 30, 1989.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Tobacco.

Accordingly, the Department proposes to amend the regulations under the Tobacco Inspection Act contained in 7 CFR Part 29 as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. The authority statement for Subpart B continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

2. Section 29.123 is amended by revising paragraph (b) to read as follows:

§ 29.123 Fees and charges.

* * * * *

(b) *Domestic permissive inspection and certification.* Fees and charges for inspection at redrying plants and receiving points shall comprise the cost of salaries, travel, per diem, and related expenses to cover the cost of performing the service. Fees shall be for actual time required to render the service calculated to the nearest 30-minute period. The hourly rate shall be $29.45. The overtime rate for service performed outside the inspector's regularly scheduled tour of duty shall be $35.15. The rate of $44.05 shall be charged for work performed on Sundays and holidays. These same fees or charges shall be applicable for hogshead, bale, case, or sample inspections.

* * * * *

Dated: July 26, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-17793 Filed 7-28-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-CE-13-AD]

Airworthiness Directives; Grob Werke GmbH & Company KG (Burkhart Grob) Model Twin Astir, Model Twin Astir Trainer, Model G103 Twin II, Model G103A Twin II Acro Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Grob Werke GmbH & Company KG Model Twin Astir, Model Twin Astir Trainer, Model G103 Twin II, Model G103A Twin II Acro Gliders which would require an ultrasonic inspection of both end spar spigots for damage and replacement of these spar spigots as required. This proposal was prompted by discovery of spigot fatigue failure during laboratory special load spectra fatigue tests. The proposed actions will preclude spigot failure and the resultant loss of the glider.

DATES: Comments must be received on or before October 30, 1989.

ADDRESSES: The technical information referenced in this NPRM may be obtained from Grob Systems, Incorporated, Aircraft Division, I-75 and Airport Drive, Bluffton, Ohio 45817; Telephone: (419) 358-9015. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-13-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Heinz Hellebrand, Brussels Aircraft Certification Staff, AEU-100, FAA, c/o American Embassy, 15 Rue de la Loi B1040, Brussels, Belgium. Telephone 793.21.10 extension 2718; or Mr. James S. Kishi, ACE-106, Small Airplane Certification Directorate, FAA, 601 East Twelfth Street, Room 1656, Kansas City, Missouri 64106; Telephone: (816) 426-6933.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-13-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

Fatigue tests on a Grob Werke GmbH Twin Astir series glider using a special load spectra, produced spar spigot fatigue failure after approximately 14,000 simulated winch launches. To date, no spar spigots have failed during operation. As a result, Grob Werke GmbH & Co. KG issued service bulletin Technical Information TM 315-36, dated June 23, 1988, which recommends examining the spar spigots by the ultrasonic method and exchanging the spar spigots if required. The Luftfahrt-Bundesamt (LBA), who has the responsibility and authority to maintain the continuing airworthiness of these gliders in the Federal Republic of Germany, has classified Technical Information TM 315-36, dated June 23, 1988, and the actions recommended therein by the manufacturer, as mandatory to assure the continued airworthiness of the affected gliders. On gliders operated under the Federal Republic of Germany registration, this action has the same effect as an AD on gliders certified for operation in the United States. The FAA relies upon the certification of LBA with FAA review of pertinent documentation in finding compliance of the design of these gliders with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States. The FAA has examined the available information related to the issuance of Technical Information TM 315-36, dated June 23, 1988, and the mandatory classification of this service bulletin by the LBA. Based on the foregoing, the FAA believes that the condition addressed by the above service information is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require the Model Twin Astir, Model Twin Astir Trainer, Model G103 Twin II and Model G103A Twin II ACRO gliders undergo an ultrasonic method inspection of the spar spigots for damage and exchange the spar spigots with new spigots as required.

The FAA has determined there are approximately 130 gliders affected by the proposed AD. The cost of the ultrasonic method of inspection for spar spigot damage and exchanging the spigots per the proposed AD is estimated to be $1,800 per glider. The total cost is estimated to be $234,000 to the private sector. This cost per glider is less than the threshold significant cost amount for those small entities operating one glider and the FAA has determined, on the basis of the aircraft registration records, that less than five percent of the owners of the affected gliders own more than one of the affected gliders and may incur a cost greater than the significant amount threshold.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Grob Werke GMBH & Company KG (BURKHART GROB): Applies to Models Twin Astir and Twin Astir Trainer (Serial Numbers (S/N) 3000 through 3291); G103 Twin II (S/N 3501 through 3878, and 33879 through 34078); and G103A Twin II ACRO (S/N 3544 through 34078).

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To preclude failure of the wing spar spigots, accomplish the following:

(a) Within the next 500 takeoffs after the effective date of this AD, inspect the wing spar spigots for damage in accordance with the ultrasonic inspection procedures specified in GROB WERKE GmbH Technical Information TM 315-38, dated June 23, 1988.

(1) If damage is found, prior to further flight remove and replace the spigot with a Fail-Safe Spigot using the procedures specified in the above-referenced service information.

(2) If no damage is found, within the next 500 takeoffs remove and replace the spigots with Fail-Safe Spigots using the procedures specified in the above-referenced service information.

Note: Note 5 in the Type Certificate Data Sheet G39EU Burkhart Grob Model G103 Twin Astir, Model G103 Twin II, and Model G103A Twin II Acro, Revision 3, dated April 2, 1984, states:

Major airframe repairs must be accomplished at FAA certified repair stations rated for composite construction of small aircraft, using Grob Werke repair methods for the model of interest, approved by the FAA.

The replacement of the wing spigots is considered major airframe repair.

(b) An equivalent means of compliance with this AD may be used if approved by the Manager, Brussels Aircraft Certification Staff, AEU-100, FAA, c/o American Embassy, 15 Rue de la Loi B1040, Brussels, Belgium.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Grob Systems, Incorporated, Aircraft Division, I-75 and Airport Drive, Bluffton, Ohio 45817; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 19, 1989.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-17766 Filed 7-28-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-ASW-24]

Airworthiness Directives; McDonnell Douglas Helicopter Company (MDHC) Model 369D, E, F, and FF Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) which requires an initial inspection, a repetitive pilot's preflight check, the removal of damaged parts, and a repetitive inspection of the tail rotor transmission/tail boom extension mounting studs on all McDonnell Douglas Helicopter Company (MDHC) Model 369D, E, F, and FF helicopters. This proposed amendment is needed to alleviate an unduly burdensome check and record-keeping requirement on the pilot and to update reference information.

DATES: Comments must be received on or before September 14, 1989.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, Texas 76193-0007, or delivered in duplicate to Room 158, Building 3B, of the Regional Rules Docket at the above address. Comments must be marked: Docket No. 88-ASW-24. Comments may be inspected at the above location in Room 158 between 8 a.m. and 4:30 p.m. Monday through Friday, except Federal holidays.

The applicable service information notices may be obtained from: MDHC Technical Publications, Building 543/D214, McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Mesa, Arizona 85205-9797; telephone (602) 891-6484, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Davis, Aerospace Engineer, Airframe Branch, ANM-123L, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5233.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed amendment by submitting such written data, views, or arguments as they desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Regional Rules Docket, Federal Aviation Administration, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, Texas 76193-0007, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket Number 88-ASW-24. The postcard will be date/time stamped and returned to the commenter.

This notice proposes to amend Amendment 39-5964 (53 FR 30023; August 10, 1988), AD 88-17-09, which currently requires a preflight check of the tail rotor transmission installation for security in accordance with MDHC Service Information Notices on MDHC Model 369D, E, F, FF helicopters. After issuing Amendment 39-5964, the FAA has determined that (1) performing the preflight check of the tail rotor transmission installation and recording the entry as required by § 43.9 prior to each flight, has placed an unnecessary burden on the pilot; (2) that properly torqued studs are highly unlikely to loosen significantly in such short periods of time; and (3) less frequent checks are warranted without affecting the level of safety. Therefore, the FAA is proposing to amend Amendment 39-5964 by reducing the frequency of the checks to intervals of 25 hours' time in service on MDHC Model 369D, E, F, FF helicopters.

This notice also proposes to update the address in the incorporation by reference paragraph. The incorporation by reference of MDHC Service Informatin Notice (SIN) DN-151/EN-39/FN-2, dated October 10, 1987, was previously approved by the Director of the Federal Register as of August 10, 1988.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposed rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation is relieving in nature and imposes no additional burden on any person. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-5964 (53 FR 30023; August 10, 1988), AD 88-17-09, by revising paragraph (a)(2) and (b)(2); and by revising the address of MDHC in the incorporation by reference paragraph that follows paragraph (d).

McDonnell Douglas Helicopter Company (MDHC) (Hughes Helicopters, Inc.): Applies to Model 369 D, E, F, and FF helicopters, certificated in any category, which have tail rotor transmission/tail boom extension mounting studs Part Number (P/N) MS51992A803-13 or -14 installed. (Docket No. 88-ASW-24)

* * * * *

(a) * * *

(2) Within the next 25 hours' time in service after the effective date of this amended AD, and at intervals not to exceed 25 hours' time in service from the last check, conduct a check for security in accordance with MDHC SIN DN-151/EN-39/FN-28, Part II, paragraph a, dated October 10, 1987. The checks required by this paragraph may be performed by the pilot and must be recorded in accordance with FAR § 43.9.

* * * * *

(b) * * *

(b) Within the next 25 hours' time in service after the effective date of this amended AD, and at intervals not to exceed 25 hours' time in service from the last check, conduct a check of the tail boom extension installation for security in accordance with MDHC SIN DN-151/EN-39/FN-28, Part II, paragraph a, dated October 10, 1987. The checks required by this paragraph may be performed by the pilot and must be recorded in accordance with FAR § 43.9.

These inspections and procedures shall be done in accordance with MDHC Mandatory SIN DN-151/EN-39/FN-28, dated October 10, 1987. These documents may be obtained from MDHC Technical Publications, Building 543/D214, McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Mesa, Arizona 85205-9797, telephone (602) 891-6484. A copy may also be inspected at the Office of the Assistance Chief Counsel, Federal Aviation Administration, 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

Issued in Fort Worth, Texas, on July 19, 1989.

John J. Shapley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89-17768 Filed 7-28-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-ASW-23]

Airworthiness Directives; Tracor Aerospace, Inc., TA-7800 Omega/VLF Navigation Systems Computers With Certain Receiver Processor Units (RPU) Installed in, but Not Limited to, the Following: Boeing Models 707, 727, and 737; McDonnell Douglas MD-80, DC-8, DC-9; Lockheed Models L-382, Jetstar 1329; Beech Model 200; Cessna Model 441; Avions Marcel Dassault Model 50; Piper Model PA-42; Hawker Siddeley Model HS-125; Fairchild Swearingen SA226T(B); North American Rockwell Model NA-265, and General Dynamics Model 22 (Convair 880)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require replacement of certain Tracor Aerospace, Inc., Navigation Systems software on various small and large airplanes. The proposed AD is needed to prevent serious navigation errors which could cause loss of an aircraft.

DATES: Comments must be received on or before September 14, 1989.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, Texas 76193–0007, or delivered in duplicate to Room 158 of the Regional Rules Docket at the above address. Comments must be marked: Docket No. 89–ASW–23. Comments may be inspected at the above location in Room 158 between 8 a.m. and 4 p.m. weekdays except Federal holidays.

The applicable service bulletin may be obtained from: Manager, Technical Services, Tracor Aerospace, Inc., 6500 Tracor Lane, Austin, Texas 78725–2070, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas S. Donnelly, Federal Aviation Administration, Special Programs Office, ASW–192, Fort Worth, Texs 76193–0190; telephone (817) 624–5189.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. Communications received on or before the closing date for comments will be considered by the FAA before any final action is taken on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. Comments submitted will be available, both before and after the closing date for comments, in the Federal Aviation Administration, Regional Rules Docket, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, TX, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket Number 89–AWS–23. The postcard will be date/time stamped and returned to the commenter.

The FAA has recently received a report of a DC–8 aircraft being operated by an air carrier experiencing a course deviation by as much as approximately 300 miles to the North while en route to Honolulu from Los Angeles. This navigation error was determined to have been caused by failure of the Tracor Aerospace, Inc., TA–7800 Omega Navigation System software to recognize a weak Great Britain (GBR) radio signal. This software anomaly allowed the system to operate in the Dead Reckoning Mode without the required annunciation to the flightcrew.

Since this condition is likely to exist on other airplanes equipped with the same systems, the proposed AD would require the installation of a placard prohibiting use of the GBR radio station until the defective software can be exchanged on airplanes equipped with Tracor TA–7800 Omega/VLF Navigation Systems incorporating software program 851001 or 851002.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation only involves 167 airplanes of various types in the world fleet. It is estimated that 150 airplanes of U.S. Registry would be affected by this AD; that it would take approximately 1 manhour per airplane to accomplish the required actions; and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. Operators is estimated to be $6,000. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, would not have a significant economid impact, positive or negative, on a substantial number of small entities under the critiera of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a) 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Tracor Aerospace, Incorporated: Applies to TA–7800 Omega/VLF Navigation Systems, with receiver processor unit (RPU) Part Numbers (P/N) 138000–7004, –7007, –7017, –7114, –7115, –7117, –7124, –7125, –7127, –7204, –7224, –7227, and –7247 with software program No. 851001 or 851002 installed in, but not limited to, the following airplanes by certain Supplemental Type Certificates (STC): Boeing Models 707, 727, and 737; McDonnell Douglas MD–80, DC–8, Dc–9; Lockheed Models L–382, Jetstar 1329; Beech Model 200; Cessna Model 441; Avions Marcel Dassault Model 50; Piper Model PA–42; Hawker Siddeley Model HS–125; Fairchild Swearingen Sa226T(B); North American Rockwell Model NA–265, and General Dynamics Model 22 (Convair 880). (Docket No. 89–ASW–23)

Compliance required as indicated, unless already accomplished.

To prevent navigation errors when using the Great Britain (GBR) radio station, which could result in loss of the aircraft, accomplish the following:

(a) Within the next 10 hours' time in service, accomplish the following:

(1) Fabricate a placard with the words, "DESELECT 58 PRIOR TO EACH FLIGHT" using letters 0.125 inches high or greater, or use the placard supplied by Tracor Aerospace in Service Bulletin (SB) 138000–00–01, dated January 24, 1989. Mount this placard on the uppermost part of each TA–7800 Omega/VLF Navigation Control Display Unit (CDU).

(2) Thereafter, prior to each flight and until the TA–7800 software Program No. 851001 or 851002 is replaced as described in paragraph (b), deactivate the GVR VLF radio station by deselecting 58 as follows:

(i) Turn the CDU function select switch to the TEST position.

(ii) Press the CLR (clear) function on the data keyboard.

(iii) Key 58 into the left window on CDU.

(iv) Press the ENT (enter) function on the data keyboard.

(v) Press CLR (clear), 0, ENT (enter) functions on the data keyboard.

(vi) Verify the left window on the CDU displays "58 OFF" and the right window displays a single digit and the letter "0."

(b) Within 90 days after the effective date of this AD, remove the Tracor TA–7800 RPU P/N's 138000–7004 –7007, –7017, –7114, –7115, –7117, –7124, –7125, –7127, –7204, –7224, –7227, and –7247 with software program No. 851001 or 851002, and replace with Tracor TA–7800 RPU P/N's 138000–7004, –7007, –7017, –7114, –7115, –7117, –7124, –7125, –7127, –7204, –7224, –7227, and –7247 with software program No. 890201 or 890202 respectively.

(1) Verify the software identification numbers as follows:

(i) Turn the function select switch on the CDU panel to the TEST position.

(ii) Press CLR (clear), 19, ENT (enter) on the data key board.

(iii) Verify program No. 890201 or 890202 in the right hand display of the CDU.

Note: Software program Nos. 890201 and 890202 replace software programs Nos. 851001 and 851002, respectively.

(2) Add the software verification test procedure specified in (b)(1)(iii) above to the Limitations Section of the related FAA approved Airplane Flight Manual Supplement (AFMS). This may be accomplished by inserting a copy of this AD in the AFMS Limitations Section.

(3) After verification of the software specified in (b)(1)(iii) above has been completed satisfactorily, remove and discard the "DESELECT 58 PRIOR TO EACH FLIGHT" placard.

(4) Replace the Tracor TA–7800 pilot guide, publication T7800–3A, Revisions 1 through 5 with Tracor publication T7800–3A, Revision No. 6, dated April 14, 1989, which lists software programs Nos. 890201 and 890202.

Note: A revised pilot guide will be supplied by Tracor and shipped with each reworked receiver processor unit.

(c) In accordance with FAR § 43.9, make a log book entry which shows compliance with this AD.

(d) An alternate means of compliance or adjustment of the compliance time, which provides an equivalent level of safety, may be used when approved by the Manager, Special Programs Office, Aircraft Certification Service, FAA, Southwest Region, Fort Worth, TX 76193–0190.

(e) Special flight permits may be issued in accordance with FAR §§ 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Fort Worth, Texas, on July 19, 1989.

John J. Shapley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89–17767 Filed 7–28–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–NM–126–AD]

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Aerospatiale Model ATR42 series airplanes, which would require installation of an anti-icing advisory system. This proposal is prompted by reports that flight crews have been unaware of the significance of the accretion of ice on the airplane while operating in certain icing conditions. This condition, if not corrected, could lead to loss of control of the airplane.

DATES: Comments must be received no later than August 30, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–126–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Standardization Branch, ANM–113; telephone (206) 431–1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–126–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

There have been several incidents involving partial loss of control due to ice accretion on Aerospatiale Model ATR42 series airplanes operating in icing conditions, including freezing rain. These incidents have been attributable to the crew being unaware of the severity or significance of ice accretion, not following Airplane Flight Manual procedures for operation when in icing conditions, and/or not recognizing the onset of a stall resulting from ice accretion. This condition, if not corrected, could lead to loss of control of the airplane.

Aerospatiale has developed an anti-icing advisory system, comprising an ice detector, stick shaker, a change in the angle of attack at which stall warning occurs, and Airplane Flight Manual changes to reflect higher minimum speeds when operating in icing conditions. The ice detector is an advisory system which provides an annunciation to the flight crew when icing conditions exist. The change in angle of attack for stall warning provides an earlier warning of approaching stall conditions, and the stick shaker provides an improved stall warning awareness.

Aerospatiale has issued Service Bulletins ATR42–27–0021, Revision 8, dated May 2, 1989; ATR42–30–0017, Revision 3, dated January 20, 1989; AT42–30–0018, Revision 4, dated June 14, 1989; ATR42–30–0021, revision 2, dated May 22, 1989; AT42–30–0024, Revision 1, dated February 13, 1989; and ATR42–30–0027, Revision 1, dated February 21, 1989; which describe procedures for

installing and acitivating the anti-icing advisory system and stick shaker, described above.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design, an AD is proposed which would require installation of an anti-icing advisory system in accordance with the service bulletins described above.

It is estimated that 50 airplanes of U.S. registry would be affected by this AD, that it would take approximately 300 manhours per airplane to accomplish the required modification, and that the average labor cost would be $40 per manhour. The cost for parts is estimated to be $45,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,850,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation Safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Applies to all Model ATR42 series airplanes, certificated in any category. Compliance required within the next 60 days, after the effective date of this AD, unless previously accomplished.

To improve protection against loss of control when operating in icing conditions, including freezing rain, accomplish the following:

A. Install an anti-icing advisory system in accordance with Aerospatiale Service Bulletins ATR42-27-0021, Revision 8, dated May 2, 1989; ATR42-30-0017, Revision 3, dated January 20, 1989; ATR42-30-0018, Revision 4, dated June 14, 1989; ATR42-30-0021, Revision 2, dated May 22, 1989; ATR42-30-0024, Revision 1, dated February 13, 1989; and ATR42-30-0027, Revision 1, dated February 21, 1989.

B. An alternate means of compliance or adjustment of the compliance time may be used when approved by the Manager, Standardization Branch, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 31, 1989.

Darrell M. Pederson, Acting Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-17775 Filed 7-28-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-CE-14-AD]

Airworthiness Directives; Beech Models 19A, B19, M19A, 23, A23, A23A, A23-19, A23-24, B23, C23, A24, A24R, B24R Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Beech Models 19A, B19, M19A, 23, A23, A23A, A23-19, A23-24, B23, C23, A24, A24R, and B24R Airplanes, which would require installation of provisions for lubrication and inspection of the aileron push rods. There have been several reports of failure of the aileron push rod forward bearings on Beech Models A23-19, B24R, and C23. This action is necessary to prevent failures of the aileron push rod forward ends and possible loss of aileron control.

DATES: Comments must be received on or before September 19, 1989.

ADDRESSES: Beech Service Bulletin No. 2198, dated April 1989, applicable to this AD may be obtained from Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, KS 67201-0085. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration, Central Region, Office of the Assistance Chief Counsel, Attention: Rules Docket No. 89-CE-14-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, FAA, Wichita Aircraft Certification Office, ACE-120W, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209, Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments

specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-14-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

There have been several reports of failure of the aileron push rod forward bearings on Beech Models A23-19, B24R, and C23. There has been one injury accident in which the rod end failed before or during takeoff causing the leading edge of the aileron to deflect downward past full travel. Control of the airplane could not be maintained with the remaining aileron. The probable cause of the rod end failure was the lack of adequate lubrication of the push rod forward bearing due in part to their inaccessible location. Therefore, Beech Service Bulletin Number 2198 provides a kit that adds access provisions to facilitate inspection and lubrication of the aileron push rod forward ends. The Service Bulletin calls for a one-time inspection of the rod ends for corrosion, with replacement as necessary, and lubrication of the rod end bearings. Corrosion is evident by restriction of movement of the rod ends. The Beech 19, 23, and 24 Series Shop Manual has been revised to show this rod end and set forth continuing inspection and lubrication intervals. Since the condition described is likely to exist or develop in other Beech Models of the same design, the proposed AD would require compliance with Beech Service Bulletin No. 2198, dated April 1989 on Beech Models 19A, B19, M19A, 23, A23, A23A, A23-19, A23-24, B23, C23, A24, A24R, and B24R Airplanes.

The FAA has determined there are approximately 3,500 airplanes affected by the proposed AD. The cost of labor and parts in the proposed AD is estimated to be $370 per airplane. The total cost is estimated to be $1,295,000 to the private sector. The cost of this modification will not have a significant economic impact on the private sector.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Beech: Applies to Beech airplanes listed below, certificated in any category:

Models	Serial Nos.
A23-19, 19A, M19A, B19.	MB-1 through MB-816, except MB-814.
23, A23, A23A, B23, C23.	M-1 through M-1879, except M-1875.
A23-24, A24	MA-1 through MA-368.
A24R	MC-2 through MC-150.
B24R	MC-152 through MC-451, except MC-311 and MC-449.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent the possiblity of separation of aileron push rods and resulting loss of aileron control, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) accomplish the following in accordance with Beech Service Bulletin No. 2198, dated April 1989:

(1) Install inspection openings in the wing lower skins.

(2) Inspect the aileron rod ends for corrosion and freedom of movement. If serviceable, lubricate the rod and bearings. If corrosion is evident, prior to further flight replace the rod end with a new P/N 169-380082-3 rod end as specified in the above service bulletin. Corrosion is evident by restriction of movement of the rod ends.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where the AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209, Telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the document referred to herein upon request to the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; or may examine this document at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 20, 1989.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-17774 Filed 7-28-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-125-AD]

Airworthiness Directives; CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to CASA Model C-212 series airplanes, which currently requires replacement of certain elevator, rudder, and aileron trim control system rods, levers, links, and tabs. This action would require similar replacement in accordance with a later revision to the service bulletin specified in the existing AD, and would provide

additional time for compliance. This proposal is prompted by reports that the kits and service information previously supplied by the manufacturer could not be utilized on all airplanes. This condition, if not corrected, could result in airframe damage due to flutter.

DATES: Comments must be received no later than September 18, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-125-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Construcciones Aeronauticas S.A. (CASA) Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:
Mr. Robert C. McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68996, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:
Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-125-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On August 25, 1988, the FAA issued AD 87-18-08 R1, Amendment 39-6013 (53 FR 34038; September 2, 1988), applicable to CASA Model C-212 series airplanes, to require replacement of certain elevator, rudder, and aileron trim control system rods, levers, links, and tabs. That action was prompted by a FAA determination that, in the event of certain failures in these control systems, the potential exists for damage to the airframe due to flutter.

Since issuance of that AD, the FAA has determined that the kits and service information previously supplied by the manufacturer, and required by the existing AD, cannot be utilized on all airplanes.

CASA has issued Service Bulletin 212-27-25, Revision 6, dated February 24, 1989, which described procedures for replacement of certain elevator, rudder, and aileron trim control system rods, levers, links and tabs. This service bulletin revision corrects errors in modification instruction and identifies new parts supplied for the accomplishment of the required modification. The Dirección General De Aviación Civil (DGAC), which is the airworthness authority of Spain, has classified this service bulletin as mandatory, and has issued Spanish Airworthiness Directive 01-89 addressing this subject.

This airplane model is manufactured in Spain and Indonesia and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would supersede AD-87-18-08 R1 with a new airworthiness directive that would require similar replacement in accordance with the revised service bulletin previously described, and would provide additional time for compliance.

It is estimated that 44 airplanes of U.S. registry would be affected by this AD, that it would take approximately 275 manhours per airplane to accomplish the required actions, and the average labor cost would be $40 per manhour. The required parts are estimated to cost $60,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,124,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that the proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6013 (53 FR 34038; September 2, 1988), AD 87-18-08 R1, with the following new airworthiness directive:

CASA: Applies to all Model C-212 series airplanes, certified in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent airframe damage due to flutter caused by certain single failure conditions of the trim control system components, accomplish the following:

A. Replace elevator, rudder, and aileron trim control system components, in accordance CASA Service Bulletin 212-27-25, Revision 6, dated February 24, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Construcciones Aeronauticas S.A. (CASA) Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 19, 1989.

Darrell M. Pederson,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-17780 Filed 7-28-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-98-AD]

Airworthiness Directives; Honeywell Attitude and Heading Reference System AH-600, as Installed in, but Not Limited to de Havilland Model DHC-8, British Aerospace Model BAe 125-800, Cessna Model 650, and Aerospatiale Model ATR42-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to Honeywell Attitude and Heading Reference Systems (AHRS), with certain Honeywell Attitude and Heading Reference Units (AHRU) installed, which currently requires installation of modified AHRU's in the pilot's system. This action would require installation of modified AHRU's in the pilot's, copilot's, and any auxiliary system. This proposal is promoted by the determination that defective AHRU's may be installed in the pilot, copilot's, and auxiliary AHRU's. This condition, if not corrected, could result in the loss of attitude and heading display to the pilot and copilot.

DATES: Comments must be received no later than September 18, 1989.

ADDRESSES: Send comments on the proposal, in duplicate, to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-98-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Honeywell Inc., Sperry Commercial Flight Systems Group, Business and Commuter Aviation Systems Division, 5353 West Bell Road, Glendale, Arizona 85308. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT:
Mr. Robert T. Razzeto, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5355.

SUPPLEMENTARY INFORMATION:
Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing FAA to acknowledge the receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-98-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On December 9, 1988, the FAA issued AD 88-26-05, Amendment 39-6093 (53 FR 51094; December 20, 1988), to require installation of modified AHRU's in the pilot's AHRS system on certain transport category airplanes. That action was prompted by reports of dual, simultaneous failures of AH-600 AHRS. This condition, if not corrected, could result in loss of attitude and heading displays for both pilots, and possible loss of control of the airplane.

Since issuance of that AD, the FAA has determined that all AHRU's, Part Numbers 7003360-931, -932, -933, -934, -935, and -936, Serial Numbers 0100 through 0277, without Mod Level F, regardless of position installation on the airplane, are subject to the same problem addressed in the existing AD and must be removed from service to avoid the possibility of reinstallation of these units, which may result in loss of AHRS display to either pilot.

The FAA has reviewed and approved Honeywell Service Bulletin 7003360-34-32, dated August 2, 1988, which describes procedures for modification of circuit card assemblies to prevent false gyro speed failure flag indications during abnormal DC power surges.

Since this condition is likely to exist or develop on other airplanes of this same type design, a new AD is proposed which would supersede AD 88-26-05, to require installation of modified AHRU's in the pilot's, copilot's, and any auxiliary system, in accordance with the service bulletin previously described.

There are approximately 117 airplanes of the affected design in the worldwide fleet. It is estimated that 60 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Required modification parts will be supplied by Honeywell at no charge to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,200.

The regulations proposed therein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons discussed above, I certify that this proposed regulation (1)

is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air Transportation, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 88-26-05, Amendment 39-6093 (53 FR 51094; December 20, 1988), with the following new airworthiness directive:

Honeywell, Inc., Sperry Commercial Flight Systems Group, Business and Commuter Aviation Systems Division (Sperry Corporation): Applies to Honeywell AH-600 Attitude and Heading Reference System (AHRS) Strapdown Attitude and Heading Reference Unit (AHRU), Part Numbers 7003360-931, -932, -933, -934, -935, and -936, with Serial Numbers 0100 through 0277. Compliance is required as indicated, unless previously accomplished.

Note: These systems are known to be installed in, but not limited to, de Havilland Model DHC-8, British Aerospace (Commerical Aircraft) Limited Model BAe 125-800, Cessna Model 650, and Aerospatiale Model ATR42-300 series airplanes.

To eliminate the possibilty of the primary atitude and heading displays on both sides of the instrument panel failing simultaneously, accomplish the following:

A. Within 10 days after January 9, 1989 (the effective date of Amendment 39-6093), inspect airplanes with Honeywell AH-600 AHRS installed to determine the part number, serial number, and Mod Level of the strapdown AHRU installed in the pilot's (Number 1) AHRS. Prior to further flight after inspection, remove all AHRU Part Numbers 7003360-931, -932, -933, -934, -935, and -936, with Serial Numbers 0100 through 0277, without Mod Level "F", from service in the pilot's (Number 1) AHRS. Install the same part number with Mod Level "F" incorporated, or modify the AHRU in accordance with Honeywell Inc., Service Bulletin 7003360-34-32, dated August 2, 1988.

Note: Serial numbers of the strapdown AHRU are eight digit numbers; the first four are date code and the last four are the individual unit identifier. Serial numbers referred to in this AD are the last four numbers of the serial number.

B. Within 60 calendar days after the effective date of this amendment, inspect airplanes with the Honeywell AH-600 AHRS installed to determine the part number, serial number, and Mod Level of the strapdown AHRU installed in the copilot's (Number 2) AHRS and the auxiliary (Number 3) AHRS. Within 345 days after the inspection, remove all AHRU Part Numbers 7003360-931, -932, -933, -934, -935, and -936, with Serial Numbers 0100 through 0277, without Mod Level "F", from service in the copilot's (Number 2) AHRS and the auxiliary (Number 3) AHRS. Install the same part number with Mod level "F" incorporated, or modify the AHRU in accordance with Honeywell Inc., Service Bulletin 7003360-34-32, dated August 2, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Honeywell, Inc., Sperry Commercial Flight Sytems Group, Business and Commuter Aviation Systems Divison, 5353 West Bell Road, Glendale, Arizona 85308. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on July 19, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certificate Service.

[FR Doc. 89-17778 Filed 7-28-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 43, 65 and 1451

[Docket No. 25965]

Repair Station and Repairmen Certification Rules; Regulatory Review; Meetings; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of insertion of docket number.

SUMMARY: The FAA is correcting errors that appeared in the **Federal Register** on July 24, 1989, 54 FR 30866, under "Participation at a meeting", in the third column of the preamble, the Docket No. 25965 should have occurred in two different places but was omitted. Please correct the document so the Docket number will read "25965".

FOR FURTHER INFORMATION CONTACT: Barbara Crawford, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267-3780.

Michael Triplett,

Program Management Staff.

[FR Doc. 89-17772 Filed 7-28-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-31]

Proposed Amendment To Control Zone; Fayetteville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to amend the Fayetteville, NC, control zone from full-time to part-time. Weather reporting service is conducted by FAA Airport Traffic Control Tower (ATCT) personnel. Currently, the ATCT is not staffed during the period 0000 to 0600 local time. This amendment would allow the control zone to be effective during the specific dates and times established by Notice to Airman (NOTAM) and thereafter as published in the Airport/Facility Directory. Also, the airport name would be changed from Fayetteville Municipal Airport (Grannis Field) to Fayetteville Regional/Grannis Field Airport and a minor correction would be made in the airport geographic position coordinates.

DATE: Comments must be received on or before September 11, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-31, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in devloping reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-31." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the operating hours of the Fayetteville, NC, control zone. Weather reporting service is conducted by FAA Airport Traffic Control Tower personnel. Currently, the control tower is not staffed between midnight and 6 a.m. local time. This amendment would allow the control zone to be effective during the specific dates and times established in advance by NOTAM and thereafter as published in Airport/Facility Directory. Additionally, the airport name would be changed from Fayetteville Municipal Airport (Grannis Field) to Fayetteville Regional/Grannis Field Airport and a minor correction would be made in airport geographic position coordinates. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Fayetteville, NC [Amended]

Change the phrase, "Within a five-mile radius of Fayetteville Municipal Airport (Grannis Field) (latitude 34°59'22"N, longitude 78°52'52"W)" to read, "Within a five-mile radius of Fayetteville Regional/Grannis Field Airport (latitude 34°59'29"N, longitude 78°52'49"W)" and add the following sentences at the end of the existing description, "This control zone is effective during the specific dates and times established in advance by Notice to Airman. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory."

Issued in East Point, Georgia, on July 18, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-17771 Filed 7-28-89; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 307

Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On November 4, 1986, pursuant to the Comprehensive Smokeless Tobacco Health Education Act of 1986 ("Smokeless Tobacco Act" or "Act"), the Federal Trade Commission ("Commission") issued final regulations (51 FR 40003 (1986)). Among other things, the regulations implemented the Act's requirements for the display of health warnings in the labeling and advertising of smokeless tobacco products and for the submission of plans specifying the method used to rotate, display, and distribute the mandated health warnings. The regulations, which took effect on February 27, 1987, exempted "utilitarian objects for personal use, such as pens, pencils, clothing, or sporting goods"

from the Act's requirement that advertising for smokeless tobacco products bear warning labels. This exemption was challenged in court. Pursuant to a court order entered in that proceeding, the Commission is deleting the exemption for utilitarian items from its regulation, and proposing a method for displaying the required health warnings on utilitarian objects.

All persons are hereby given notice of the opportunity to submit written data, views, and arguments concerning this proposal.

DATES: Written comments will be accepted on or before August 30, 1989.

Comments on this request for OMB review must be submitted on or before August 30, 1989.

ADDRESS: Send comments to Secretary, Federal Trade Commission, 6th & Pennsylvania Ave., NW., Washington, DC 20580. Submissions should be marked "Proposed Amendments to Smokeless Tobacco Regulations."

Send comments (concerning paperwork matters only) to Mr. Don Arbuckle, FTC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503. Copies of the request for OMB review may be obtained from the Public Reference Section, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Anne V. Maher (202) 326–2987. Division of Advertising Practices, Federal Trade Commission, 6th & Pennsylvania Ave. NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A—Background

The Smokeless Tobacco Act is to educate the public about the adverse health effects entailed in smokeless tobacco use. To achieve this end, the Act requires the random display of three health warnings on the packaging and in the advertising of smokeless tobacco products.

Specifically, the Smokeless Tobacco Act mandates that one of the following three health warnings appear in the labeling and advertising (with the exception of outdoor billboard advertising) of smokeless tobacco products:

WARNING: THIS PRODUCT MAY CAUSE MOUTH CANCER

WARNING: THIS PRODUCT MAY CAUSE GUM DISEASE AND TOOTH LOSS

WARNING: THIS PRODUCT IS NOT A SAFE ALTERNATIVE TO CIGARETTES

The Act also provides that the warnings be displayed in a conspicuous and prominent place, in conspicuous and legible type in contrast with all other printed material. The Act specifies a circle and arrow format for the warning statement in advertising, and directs the Commission to issue regulations requiring the three warnings to be rotated in advertising every 4 months. In addition, the Act requires the marketers of smokeless tobacco products to submit to the Commission for approval plans for complying with the display requirements.

In its final regulations implementing the Smokeless Tobacco Act, 16 CFR Part 307, the Commission exempted "utilitarian objects for personal use, such as pens, pencils, clothing and sporting goods" from the Act's requirement that all advertising display the warnings. These objects display the manufacturers' brandnames and logos, and sometimes brief selling messages; are either sold or given to consumers for their personal use; and include such items as clothing, sporting goods, cuspidors, towels, blankets, and furniture.

The Commission's decision to exempt utilitarian items was challenged in court on the ground that the Act did not grant the Commission authority to exempt such items from the Act's warning requirements. Subsequently, the court ordered the Commission to delete the exemption.[1] As a result, the Commission is hereby issuing notice of its intention to delete the exemption for utilitarian items, and seeking comment on its amendment to the regulation. In addition to deleting the utilitarian item exemption, the amendment proposes a method for manufacturers to display the mandated warnings on such items.

Section B discusses the proposed amended regulations under the Smokeless Tobacco Act to implement the court's decision.

Section B—Discussion of the Proposed Amendments to the Regulations

Amendment to Rule 3 (16 CFR 307.3) to Include Definition of "Utilitarian Objects"

Section 307.3 contains the definitions of the terms used in the regulation. Section 307.3 is amended to add subsection (n), a definition for utilitarian objects as "items that are sold or given by any manufacturer, packager or importer to consumers for their personal use, that display the brandname, logo, or selling message of any smokeless tobacco product. Such items include, but are not limited to, clothing, sporting goods, towels, cuspidors, and furniture."

Deletion of Exemption in Rule 4 (16 CFR 307.4) for Utilitarian Objects

Section 307.4 currently sets forth the acts that are prohibited by the regulations. The next to last sentence of subsection (b) provides that utilitarian objects are exempted from the warning requirement. The proposed amended rule deletes that sentence.

Redesignation of Rules 9, 10 and 11 (16 CFR 307.9, 307.10 and 307.11) as Rules 10, 11 and 12.

Because a new section is inserted in the regulation in order to set forth the requirements for disclosing the health warnings on utilitarian items, the three final sections of the regulations must be renumbered.

Amendment through New Rule 9 (16 CFR 307.9), Entitled, "Requirements For Disclosure on Utilitarian Object Advertising."

A new section is proposed to set out the requirements for displaying the health warnings on utilitarian items. Proposed § 307.9 is divided into three subsections, each one containing a separate requirement for the display of warnings on utilitarian objects. Subsection (a) tracks the requirements for disclosure in print advertising by mandating that the warning be in the circle and arrow format in the same proportions as set forth in the existing § 307.7(b), and by requiring the warning to be in a clear and legible type in contrast with the surrounding printed material.

In addition, proposed subsection (a) provides that the warning statement should follow the existing §§ 307.7 (c) and (d) which set forth the requirements for a conspicuous warning in print ads. Those sections allow for two alternative means of ensuring the conspicuousness of the warnings in print ads; the proposed amended regulation also allows for use of either alternative as the means for ensuring that the warning is conspicuous on utilitarian items.

Under the first alternative (existing § 307.7(c)), the warning statement and the rule must be printed in a color that contrasts with the background on which the circle and arrow are printed and, in addition, the color of the field within the circle and arrow must contrast with the background of the advertisement on which they appear. Under the second alternative (existing § 307.7 (d)), the warning statement and the rule must appear in a clearly visible color against a solid but not necessarily different background. This alternative would cover the situation where the warning is placed as a transparency directly onto the ad. In this second alternative, however, because there is no contrast to draw the reader's eye to the warning, the regulation specifies a warning approximately 30 percent larger than the warnings with contrasting backgrounds. Also, proposed § 307.9(a) includes the proviso that in no case must the warning size exceed the size of the largest print on the object. For example, if a brandname appears in one inch print size over the pocket of a polo shirt, and there are no other words or logos on the shirt, the print size of the warning would not have to be bigger than the name, even though the display area of the ad would otherwise dictate that the warning be larger.

Given the many different types and shapes of utilitarian objects, the Commission will not attempt to specify what constitutes the advertising display area on a utilitarian object. Instead, the display area is more broadly defined as the visible area on the object surrounding the brandname, logo or selling message. For example, the display area on a tee shirt is the front or back area of the shirt, excluding any sleeves; and, for a baseball cap, the display area would be the conical area of the cap, excluding the brim. The display area for a cuspidor would be that of the bowl area, excluding any lip or rim. For other objects, the size of the display area may be difficult to discern and the Commission will take this into account in determining whether a warning statement is conspicuous within the meaning of the Smokeless Tobacco Act and these regulations. In applying this provision, the Commission expects calculations of the advertising display area to be made in good faith. The Commission is particularly interested in receiving comments on what constitutes the advertising display area on a utilitarian object for purposes of determining the size of the warning statement.

Subsection (b) requires that the warning must be affixed to the object with the same permanence and durability as all other graphic matter on the object. This requirement takes into account the fact that the warning may be affixed in a variety of ways—e.g., printed, embroidered, embossed, engraved, etc.—depending upon the material of the utilitarian object—e.g., plastic, glass, wood, cloth, metal, etc. This requirement seeks to assure that the warning will last at least as long as the advertising on the utilitarian object.

Subsection (c) requires that the warning is placed in a conspicuous and prominent location on the object. A conspicuous and prominent location is defined as one that is proximate to and on the same surface as the smokeless tobacco brandname, logo or selling message, whichever is the most conspicuous, and one that is visible when the brandname, logo or selling message is visible. Thus, if an object has more than one surface, the warning must appear on each surface that the brandname, logo or selling message appears. Furthermore, the warning must be placed so that it is visible when the brandname, logo or selling message is visible. In determining which material is the most conspicuous for purposes of determining placement of the warning, the Commission expects the smokeless tobacco companies to use a common sense approach.

Amendment to Redesignated Rule 12(b) (16 CFR 307.12(b))

As explained above, the Commission proposes to redesignate § 307.11 as § 307.12. This section describes the requirements for the rotation, display and dissemination of warning statements in smokeless tobacco advertising. Subsection (a) first reiterates the substance of section (3)(c)(2) of the Smokeless Tobacco Act that requires smokeless tobacco companies to rotate the 3 warnings every 4 months for each brand. Subsection (a) expressly provides that any plan may take into account practical constraints on the production and distribution of advertising.

Subsection (b) provides a non-exclusive list of the ways that plans may satisfy the Smokeless Tobacco Act, and emphasizes that there may be more than one method of compliance. Subsection (c) requires the submission to the Commission of samples of advertising as part of the company's compliance plan. The Commission proposes to amend subsection (b) to provide that a satisfactory plan for utilitarian items could provide for rotation according to the date that the object is either manufactured or ordered. The Commission is interested in receiving comments regarding appropriate methods to ensure that the warnings are rotated on utilitarian items in accordance with the Act and these regulations.

Section C—Invitation to Comment

Before adopting these proposed amended regulations as final, consideration will be given to any written comments timely submitted to the Secretary of the Commission. Comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission Regulations, on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Public Reference Section, Room 130, Federal Trade Commission, 6th & Pennsylvania Avenue, NW., Washington, DC 20580.

Section D—Paperwork Reduction

The proposed deletion of the exemption for utilitarian items will not affect the information collection requirements (as defined by the rules implementing the Paperwork Reduction Act) contained in the smokeless tobacco regulations. The required rotational warning disclosures are the "public disclosure of information originally supplied by the Federal government to the recipient for th[at] purpose," and are, therefore, not within the scope of the Paperwork Reduction Act. 5 CFR 1320.7(c)(2) (1988). The Commission is proposing an amendment to the reporting requirement (redesignated § 307.12) in order to give guidance on options for rotating the warnings on utilitarian items. This provision does involve the "collection of information" as defined by 5 CFR 1320.7(c)(1) (1988).

The original requirement for the submission of plans by marketers of smokeless tobacco products was submitted to, and approved by, the Office of Management and Budget. OMB Control No. 3084–0082. The Commission is requesting that OMB approve the amended requirement and extend the current clearance accordingly. The supporting statement accompanying that request recommends that the current burden estimate of 2000 hours be continued. Some fourteen firms will be submitting amended plans under the rule. These plans will require an average of less than 140 hours each to prepare.

Section E—Regulatory Flexibility Act

When the smokeless tobacco regulations were first proposed, the FTC certified that the Regulatory Flexibility Act requirement for regulatory analysis was not applicable because the regulations did not appear to have a significant economic impact on a substantial number of small entities. 51 FR 24378 (1986). The proposed amendments do not change the regulations in a manner sufficient to alter that determination. In order to ensure, however, that no substantial economic impact is being overlooked, public comment is requested on the effect of the proposed regulations on

[1] *Public Citizen. et al. v. Federal Trade Commission.* No. 88–5209. (DC Cir. March 14, 1989), *aff'g.*, 688 F. Supp. 667 (1988).

costs, profitability, competitiveness, and employment in small entities.
Subsequent to the receipt of public comments, it will be decided whether the preparation of a final regulatory flexibility analysis is warranted.

In light of the above, it is certified that the proposed amendments will not have a significant economic effect on a substantial number of small entities. 5 USC 605(b) (1982). A certification to that effect has been filed with the Small Business Administration.

Section F—Effective Date

The provisions of the Smokeless Tobacco Act that required the display of health warnings in the labeling and advertising of smokeless tobacco products became effective on February 27, 1987, and the portions of the regulation that concerned the submission of plans for the rotation, display and distribution of the warning statements became effective on December 19, 1986. The effective date for these regulations, which implement the display requirements on utilitarian objects will be the date the final rule is published.

Section G—Questions

The Commission is seeking comments on aspects of the proposed amendments to the regulations. Without limiting the scope of issues on which it is seeking comment, the Commission is particularly interested in receiving comments on the following questions:

Question 1. Proposed subsection (n) of § 307.3 provides a definition for utilitarian objects as "items that are sold or given by any manufacturer, packager or importer to consumers for their personal use and that display the brandname, logo, or selling message of any smokeless tobacco product, including but not limited to, clothing, sporting goods, towels, pencils, cuspidors, or furniture."

A. Are there objects that smokeless tobacco companies use for promotion purposes that are not covered by the proposed definition?

B. What kinds of objects, excluding all print or audio-visual advertising, are used to promote smokeless tobacco products?

Question 2: Given the many different types and shapes of utilitarian objects, the Commission has not attempted to specify what constitutes the advertising display area on a utilitarian object for purposes of determining the size of the warning statement. Instead, proposed § 307.9(a) broadly defines the display area for an advertisement on a utilitarian object as the visible area on which the brandname, logo or selling message appears. Section 307.9(a) also provides several examples of what constitutes the advertising display area on specific types of utilitarian objects—e.g., tee shirts, caps and cuspidors.

A. Should the regulation attempt to define the advertising display area on a utilitarian object more specifically or narrowly? If so, what, specifically, should the definitions be?

B. Will the proposed definition ensure that the warning statement on utilitarian objects is conspicuous? If not, what specific definitions will provide for greater certainty?

Question 3: The Smokeless Tobacco Act and regulations require smokeless tobacco companies to rotate the three warnings every four months for each brand. The redesignated § 307.12 provides a non-exclusive list of the ways that plans may satisfy the Act, emphasizing that there may be more than one method of compliance, and expressly providing that any plan may take into account practical constraints on the production and distribution of advertising. Subsection (c) requires the submission to the Commission of samples of advertising as part of the company's compliance plan. The Commission proposes to amend subsection (b) of the redesignated § 307.12 to provide that a satisfactory plan include rotation according to the date that the utilitarian object is either manufactured or ordered.

Are there other methods that would be appropriate for companies to utilize in rotating the warnings in accordance with the Act and these regulations?

List of Subjects in 16 CFR Part 307

Health warnings, Smokeless tobacco, Trade Practices.

Accordingly, it is proposed that Part 307 of 16 CFR be amended as follows:

PART 307—REGULATIONS UNDER THE COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION ACT OF 1986

1. The authority for Part 307 continues to read as follows:

Authority: 15 U.S.C. 4401 *et seq.*

2. Section 307.3 is amended by adding paragraph (n) as follows:

§ 307.3 Terms defined.

* * * * *

(n) "Utilitarian objects" means items that are sold or given by any manufacturer, packager or importer to consumers for their personal use and that display the brandname, logo, or selling message of any smokeless tobacco product. Such items include, but are not limited to, clothing, sporting goods, towels, cuspidors, or furniture.

§ 307.4 [Amended]

3. Section 307.4 is amended by removing the following sentence from paragraph (b): "This requirement does not apply to utilitarian object for personal use, such as pens, pencils, clothing, or sporting goods."

§§ 307.9 through 307.11 [Redesignated as §§ 307.10 through 307.12]

4. Sections 307.9 through 307.11 are redesignated as sections 307.10 through 307.12, respectively.

5. A new § 307.9 is added:

§ 307.9 Requirements for disclosure on utilitarian objects.

(a) In the case of advertisements for smokeless tobacco products on utilitarian objects, the warning statements required by the Act and these regulations must be in a conspicuous and legible type in contrast with all other printed material on the object and must appear within the circle and arrow format. The proportions of the circle and arrow shall be deemed to be conspicuous if in accordance with those set forth in § 307.7(b). The required warning statement shall be deemed to be conspicuous if it conforms to the requirements and proportions as set forth in § 307.7(d). For purposes of determining the size of the warning statement, the display area for an advertisement on a utilitarian object shall be the visible area on which the brandname, logo or selling message appears. For example, the display area for a tee shirt is the entire front or back of the shirt, excluding any sleeves; and, for a baseball cap, the display area would be the conical area of the cap, excluding the brim. The display area for a cuspidor would be that of the bowl area, excluding any lip or rim. However, in no case must the size of the warning statement exceed the size of the largest size type in a display area.

(b) The warning statement required by the Act and these regulations must be printed, embossed, embroidered or otherwise affixed to the utilitarian object with the same permanence and durability as the product name, logo or selling message.

(c) The warning statement required by this Act and these regulations must be in a conspicuous and prominent location on the object. A conspicuous and prominent location on the object is one that is proximate to and on the same surface as the smokeless tobacco brandname, logo or selling message, whichever is the most conspicuous, and is visible when the brandname, logo or selling message is visible.

6. Section 307.12 is amended by adding the following sentence to paragraph (b) directly before the last sentence of the paragraph:

§ 307.12 Rotation, display, and dissemination of warning statements in smokeless tobacco advertising.

* * * * *

(b) * * * A satisfactory plan for utilitarian objects could provide for rotation according to the date that the object is either manufactured or ordered. * * *

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-17702 Filed 7-28-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-74-86]

RIN 1545-AJ74

Untimely Filing of Income Tax Returns by Nonresident Alien Individuals and Foreign Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to denial of deductions and credits to nonresident alien individuals and foreign corporations that do not file true and accurate income tax returns by the time limits set forth in the proposed regulations. These regulations are necessary so that the income tax returns will be filed in a timely manner.

DATES: Written comments and requests for a public hearing must be delivered or mailed by September 29, 1989. The amendments are proposed to be effective for taxable years ending after July 31, 1990.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:CORP:T:R [INTL-74-86], Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, (Attn: CC:CORP:T:R) (202-566-6384, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1545-0089), Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collections of information in these regulations are in §§ 1.874-1 and 1.882-4. This information is required by the Internal Revenue Service to allow it to properly determine the taxable income of and tax owed by nonresident alien individuals and foreign corporations. The likely respondents are nonresident alien individuals and foreign corporations. The burdens on the nonresident alien individuals and foreign corporations are the burdens associated with Forms 1040NR and 1120F.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 874 and 882 of the Internal Revenue Code.

Explanation of Provisions

Section 871(b) provides that a nonresident alien individual engaged in a trade or business within the United States shall be taxed on taxable income which is effectively connected with the conduct of the trade or business within the United States. Likewise, under section 882(a)(1), a foreign corporation engaged in a trade or business within the United States is taxed on its taxable income effectively connected with the conduct of the trade or business in the United States. In determining the amount of effectively connected taxable income, both the nonresident alien individual and the foreign corporation are allowed to deduct from their effectively connected gross income expenses which are properly allocated and apportioned to that gross income. The nonresident alien individual or the foreign corporation will be entitled to those deductions, as well as to credits, only if that taxpayer files a true and accurate return, in the manner prescribed in subtitle F of the Code, including on the return all the information which may be necessary for the calculation of the deductions and credits. *See* sections 874(a) and 882(c)(2). Since the filing of a timely return is one of the requirements set forth in subtitle F, these regulations provide that otherwise allowable deductions and credits will be allowed only if a return is filed by the time limits as set forth in these regulations.

Under these regulations, whether a return has been filed on a timely basis for purposes of section 874(a) or 882(a)(2) is dependent upon whether the nonresident alien individual or foreign corporation has filed a return for the taxable year immediately preceding the taxable year for which deductions or credits are claimed. If a return was filed for the immediately preceding taxable year, a return for the current taxable year must be filed within one year of the extended due date, as set forth in sections 6072 and 6081, for filing that return. If a return has not been filed for the immediately preceding taxable year, or if the current year is the first year for which a return is required under section 874(a) or 882(c)(2), the current year's return must have been filed no later than the earlier of the date which is one year after the extended due date, as set forth in sections 6072 and 6081, for filing that return or the date the Internal Revenue Service mails a notice informing the taxpayer that a tax return has not been filed and that no deductions or credits may be claimed. The filing deadlines set forth in these regulations may be waived by the District Director, in rare and unusual circumstances if good cause for such waiver, based on the facts and circumstances, is established by the taxpayer.

Drafting Information

The principal author of these regulations is Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, other personnel from offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, both on matters of substance and style.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held

upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is to be held, notice of the time and place will be published in the **Federal Register**

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business. The collections of information contained in this document, for which no substantive change is proposed, are currently approved by the Office of Management and Budget under the Paperwork Reduction Act (OMB Control Nos. 1545–0089 and 1545–0126).

List of Subjects in 26 CFR §§ 1.861–1 through 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR Part 1 are as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. The heading and text for § 1.874–1 are revised to read as follows:

§ 1.874–1 Allowance of deductions and credits to nonresident alien individuals.

(a) *Return required.* A nonresident alien individual shall receive the benefit of the deductions and credits otherwise allowable with respect to the income tax, only if the nonresident alien individual timely files or causes to be filed with the Philadelphia Service Center, in the manner prescribed in subtitle F, a true and accurate return of the total income which is effectively connected with the conduct of the nonresident alien individual's trade or business within the United States. This paragraph shall not be construed, however, to deny the credits provided by sections 31, 33 and 34. In addition, notwithstanding the requirement that a nonresident alien must file a timely return in order to receive the benefit of the deductions and credits otherwise allowable with respect to the income tax, the nonresident alien individual may, for purposes of determining the amount of tax to be withheld under section 1441 from remuneration paid for labor or personal services performed within the United States, receive the benefit of the deduction for personal exemptions provided in section 151, to the extent allowable under section 873(b)(3) and paragraph (c)(3) of § 1.873–1, by filing a claim therefor with the withholding agent. The amount of the deduction for the personal exemptions and the amount of the tax to be withheld under those circumstances shall be determined in accordance with paragraph (e)(2) of § 1.1441–3.

(b) *Filing deadline for return.* (1) As provided in paragraph (a) of this section, for purposes of computing the nonresident alien individual's taxable income for any taxable year, otherwise allowable deductions and credits will be allowed only if a return for that taxable year is filed by the nonresident alien individual on a timely basis. For taxable years of a nonresident alien individual ending after July 31, 1990, whether a return for the current taxable year has been filed on a timely basis is dependent upon whether the nonresident alien individual filed a return for the first preceding taxable year. If a return was filed for the first preceding taxable year, the required return for the current taxable year must be filed within one year of the due date, as extended, as set forth in sections 6072 and 6081, and the regulations under those sections, for filing that return. If no return for the first preceding taxable year has been filed, or if the current taxable year is the first taxable year of the nonresident alien individual, the required return for the current taxable year must have been filed no later than the earlier of the date which is one year after the extended due date, as set forth in sections 6072 and 6081, for filing that return or the date the Internal Revenue Service mails a notice to the nonresident alien individual advising the nonresident alien individual that the current year tax return has not been filed and that no deductions or credits (other than those specified in paragraph (b) of this section) may be claimed by the nonresident alien individual.

(2) The filing deadlines set forth in paragraph (b)(1) of this section may be waived by the District Director, in rare and unusual circumstances if good cause for such waiver, based on the facts and circumstances, is established by the nonresident alien individual.

(3) If a nonresident alien individual conducts limited activities in the United States in a taxable year which the nonresident alien individual determines does not give rise to gross income which is effectively connected with the conduct of a trade or business within the United States as defined in section 871(b) and the regulations under that section, the nonresident alien individual may nonetheless file a return for that taxable year on a timely basis under paragraph (b)(1) of this section and thereby protect the right to receive the benefit of the deductions and credits attributable to that gross income if it is later determined, after the return was filed, that the original determination was incorrect. On that timely filed return, the nonresident alien individual is not required to report any gross income effectively connected with a U.S. trade or business but should attach a statement indicating that the return is being filed for the reason set forth in this paragraph (b)(3). The nonresident alien individual may follow the same procedure if the nonresident alien individual determines initially that he or she has no United States tax liability under the provisions of an applicable income tax treaty. In the event the nonresident alien individual relies on the provisions of an income tax treaty to reduce or eliminate the income subject to taxation, or to reduce the rate of tax to which that income is subject, disclosure may be required pursuant to section 6114.

(c) *Allowed deductions*—(1) *In general.* Except for losses of property located within the United States, charitable contributions and personal exemptions (see section 873(b)), deductions are allowed to a nonresident alien individual only to the extent they are connected with gross income which is effectively connected with the conduct of the nonresident alien individual's trade or business in the United States. See paragraph (a) of this section for requirement that a return be filed.

(2) *Verification.* At the request of the Internal Revenue Service, a nonresident alien individual claiming deductions from gross income which is effectively connected with the conduct of a trade or business in the United States must furnish at the place designated pursuant to § 301.7605–2(a) information sufficient to establish that the nonresident alien individual is entitled to the deductions in the amounts claimed. All information must be furnished in a form suitable to permit verification of claimed deductions. The Internal Revenue Service may require, as appropriate, that an English translation be provided with any information in a foreign language. If a nonresident alien individual fails to furnish sufficient information, the Internal Revenue Service may in its discretion disallow any claimed deductions in full or in part.

(d) *Return by Internal Revenue Service.* If a nonresident alien individual has various sources of income within the United States, so that from any one source, or from all sources combined, the amount of income shall call for the assessment of a tax greater than that withheld at the source in the case of that individual, and a return of income has not been timely filed by him or on his behalf, the Internal Revenue Service shall:

(1) Cause a return of income to be made,

(2) Include on the return the income described in §§ 1.871–7 or § 1.871–8 of that individual from all sources concerning which it has information, and

(3) Assess the tax.

If the nonresident alien individual is not engaged in a U.S. trade or business and § 1.871–7 is applicable, the tax shall be assessed on the basis of gross income without allowance for deductions or credits (other than the credits provided by sections 31, 33 and 34) and collected from one or more sources of income within the United States. If the nonresident alien individual is engaged in a U.S. trade or business and § 1.871–8 applies, the tax on the income of the nonresident alien individual that is not effectively connected with the conduct of a U.S. trade or business shall be assessed on the basis of gross income, determined in accordance with the rules of § 1.871–7, without allowance for deductions or credits (other than the credits provided by sections 31, 33 and 34) and collected from one or more of the sources of income within the United States. Tax on income that is effectively connected with the conduct of a U.S. trade or business shall be assessed in accordance with either section 1, 55 or 402(e)(1) without allowance for deductions or credits (other than the credits provided by sections 31, 33 and 34) and collected from one or more of the sources of income within the United States.

(e) *Alien resident of Puerto Rico, Guam, American Samoa, or the Northern Mariana Islands.* This section shall not apply to a nonresident alien individual who is a bona fide resident of Puerto Rico, Guam, American Samoa, or the Northern Mariana Islands during the entire taxable year. See section 876 and § 1.876–1.

Par. 3. The heading and text for § 1.882–4 are revised to read as follows:

§ 1.882–4 Allowance of deductions and credits to foreign corporations.

(a) *Foreign corporations*—(1) *In general.* A foreign corporation engaged in a trade or business within the United States is allowed the deductions which are properly allocated and apportioned to the foreign corporation's taxable income which is effectively connected, or treated as effectively connected, with its conduct of a trade or business within the United States. The foreign corporation is entitled to credits which are attributable to that effectively connected taxable income.

(2) *Return necessary.* A foreign corporation shall receive the benefit of the deductions and credits allowed to it with respect to the income tax, only if it timely files or causes to be filed with the Philadelphia Service Center, in the manner prescribed in subtitle F, a true and accurate return of its total taxable income which is effectively connected, or treated as effectively connected, for the taxable year with the conduct of a trade or business in the United States by that corporation. The deductions and credits allowed such a corporation electing under a tax convention to be subject to tax on a net basis shall be obtained by filing a return of income in the manner prescribed in the regulations under the tax convention. In addition, disclosure of the election may be required pursuant to section 6114.

(3) *Filing deadline for return.* (i) As provided in paragraph (a)(2) of this section, for purposes of computing the foreign corporation's taxable income for any taxable year, allowable deductions will be allowed only if a return for that taxable year is filed by the foreign corporation on a timely basis. For taxable years of a foreign corporation ending after July 31, 1990, whether a return for the current taxable year has been filed on a timely basis is dependent upon whether the foreign corporation filed a return for the first preceding taxable year. If a return was filed for the first preceding taxable year, the required return for the current taxable year must be filed within one year of the due date, as extended, as set forth in sections 6072 and 6081 and the regulations under those sections, for filing that return. If no return for the first preceding taxable year has been filed or if the current taxable year is the first taxable year of the foreign corporation, the required return for the current taxable year must have been filed no later than the earlier of the date which is one year after the extended due date, as set forth in sections 6072 and 6081, for filing that return or the date the Internal Revenue Service mails a notice to the foreign corporation advising the corporation that the current year tax return has not been filed and that no deductions or credits may be claimed by the taxpayer.

(ii) The filing deadlines set forth in paragraph (a)(3)(i) of this section may be waived by the District Director, in rare and unusual circumstances if good cause for such waiver, based on the facts and circumstances, is established by the foreign corporation.

(iii) If a foreign corporation conducts limited activities in the United States in a taxable year which the foreign corporation determines does not give rise to gross income which is effectively connected with the conduct of a trade or business within the Unites States as defined in section 871(b) and the regulations under that section, the foreign corporation may nonetheless file a return for that taxable year on a timely basis under paragraph (a)(3)(i) of this section and thereby protect the right to receive the benefit of the deductions and credits attributable to that gross income if it is later determined, after the return was filed, that the original determination was incorrect. On that timely filed return, the foreign corporation is not required to report any gross income effectively connected with a U.S. trade or business but should attach a statement indicating that the return is being filed for the reason set forth in this paragraph (a)(3). The foreign corporation may follow the same procedure if it determines initially that it has no United States tax liability under the provisions of an applicable income tax treaty. In the event the foreign corporation relies on the provisions of an income tax treaty to reduce or eliminate the income subject to taxation, or to reduce the rate of tax, disclosure may be required pursuant to section 6114.

(4) *Return by Internal Revenue Service.* If a foreign corporation has various sources of income within the United States and a return of income has not been timely filed by it or on its behalf, in the manner prescribed by subtitle F, the Internal Revenue Service shall

(i) Cause a return of income to be made,

(ii) Include on the return the income

BEST COPY AVAILABLE

described in § 1.882–1 of that corporation from all sources concerning which he has information, and

(iii) Assess the tax and collect it from one or more of those sources of income within the United States, without allowance for any deductions or credits.

If the income of the corporation is not effectively connected with the conduct of a U.S. trade or business, the tax will be assessed under § 1.882–1(b)(1) on a gross basis, without allowance for any deduction or credit (other than the credits allowed by sections 33 and 34). If the income is effectively connected with the conduct of a U.S. trade or business, tax will be assessed in accordance with either section 11, 55 or 1201(a) without allowance for any deduction or credit (other than the credits allowed by sections 33 and 34).

(b) *Allowed deductions*—(1) *In general.* Except for charitable contributions and gifts (see section 882 (c)(1)(B)), deductions are allowed to a foreign corporation only to the extent they are connected with gross income which is effectively connected with the conduct of a trade or business in the United States. Deductible expenses (other than interest expense) are properly allocated and apportioned to effectively connected gross income in accordance with the rules of § 1.861–8. For the method of determining the interest deduction allowed to a foreign corporation, see § 1.882–5. See paragraph (a)(2) of this section for requirement that a return be filed.

(2) *Verification.* At the request of the Internal Revenue Service, a foreign corporation claiming deductions from gross income which is effectively connected with the conduct of a trade or business in the United States must furnish at the place designated pursuant to § 301.7605–1(a) information sufficient to establish that the corporation is entitled to the deductions in the amounts claimed. All information must be furnished in a form suitable to permit verification of claimed deductions. The Internal Revenue Service may require, as appropriate, that an English translation be provided with any information in a foreign language. If a foreign corporation fails to furnish sufficient information, the Internal Revenue Service may in its discretion disallow any claimed deductions in full or in part.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 89–17725 Filed 7–28–89; 8:45 am]
BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3621-9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Denial

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to deny a petition submitted by Bethlehem Steel Corporation (BSC), Lackawanna, New York, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

DATES: EPA is requesting public comments on today's proposed decision. Comments will be accepted until September 14, 1989. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision by filing a request with Joseph Carra, whose address appears below, by August 15, 1989. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS–305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS–343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–89–B6DP–FFFFF".

Requests for a hearing should be addressed to Joseph Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS–340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., (Room M2427), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Linda Cessar, Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475–9828.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste. The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste and to determine the impact the waste has had on human health and the environment.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because BSC is seeking a delisting for waste managed on site, ground-water monitoring data collected from the area where the petitioned waste is contained are necessary to determine whether hazardous constituents have migrated to the underlying ground water. Ground-water monitoring data collected from BSC's monitoring wells will help characterize the potential impact (if any) of the unregulated disposal of BSC's waste on human health and the environment.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at requested hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

A. Bethlehem Steel Corporation, Lackawanna, New York

1. Petition for Exclusion

Bethlehem Steel Corporation (BSC), located in Lackawanna, New York, was engaged in steel- and ironmaking operations prior to 1983. BSC petitioned the Agency to exclude the waste contained in an on-site 0.2 acre treatment pit, presently listed as EPA Hazardous Waste No. K062—"Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332)". The listed constituents for EPA Hazardous Waste No. K062 are hexavalent chromium and lead. The treatment pit contains approximately 6,000 cubic yards of material, including spent pickle liquor (SPL) sludge, excess steelmaking and blast furnace (from ironmaking processes) slags, a small amount of coke fines/ash, and dredgings from a creek which flows through the facility property (Smoke Creek).

Between 1973 and October 1982, BSC used its treatment pit (also referred to by BSC as the spent pickle liquor (SPL) sludge landfill) for the "in-situ" neutralization/stabilization and disposal of its spent pickle liquor wastes. Specifically, BSC poured its spent pickle liquor waste over lime-rich alkaline steelmaking and blast furnace (from ironmaking) slags that had been disposed of in the treatment pit. The resultant SPL sludge (which precipitated within the slag matrix) was generated by the reaction (*i.e.*, neutralization) between the slag and the lime.

BSC's petition requested a determination of whether its treatment pit waste is exempt from hazardous waste regulation under 40 CFR 261.3(c)(2)(ii)(A). Specifically, this exemption includes sludge generated by the lime neutralization of spent pickle liquor (K062) unless the sludge exhibits one or more of the characteristics of hazardous waste. The Agency promulgated this exemption (see 49 FR 23284, June 5, 1984) after determining that lime neutralization of spent pickle liquor, when properly conducted, consistently generates a waste that does not meet the criteria of the original listing. The Agency believes, however, that BSC's lime neutralization of its spent pickle liquor waste did not include many of the treatment steps that are characteristic of the neutralization processes that the Agency identified in developing the K062 exemption. Specifically, BSC's treatment did not ensure uniform and thorough mixing of the spent pickle liquor with the reactive lime. On September 24, 1985, the Agency notified BSC by letter of its determination that the treatment pit waste is not exempt from hazardous waste regulation under 40 CFR 261.3(c)(2)(ii)(A).

BSC's petition also included a request to delist (*i.e.*, exclude) its waste because it does not believe that the waste meets the criteria of the listing. BSC claims that the partially neutralized spent pickle liquor sludge is not hazardous because the constituents of concern are present either in insignificant concentrations or, if present at significant levels, are in an essentially immobile form. BSC also believes that the waste is not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous). The review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d) (2)–(4). Today's proposal to deny this petition for exclusion is the result of the Agency's evaluation of BSC's petition.

2. Background

BSC petitioned the Agency to exclude its waste on June 28, 1985 and subsequently provided additional information. In support of its petition, BSC submitted (1) general descriptions

of its manufacturing process, including schematic diagrams; (2) total constituent data for the EP toxic metals, nickel, cyanide, and sulfide for samples of the petitioned waste; (3) Extraction Procedure (EP) and Oily Waste Extraction Procedure (OWEP) leachate analysis results for the EP toxic metals and nickel for samples of the petitioned waste; (4) EP and OWEP leachate analysis results for cyanide (using distilled water) for samples of the petitioned waste; (5) total oil and grease analyses data for samples of the petitioned waste; and (6) results from characteristics testing for ignitability, corrosivity, and reactivity; and (7) ground-water monitoring data for the unit containing the petitioned waste.

BSC conducted primary metalmaking operations during the period that spent pickle liquor was treated and disposed of in the treatment pit. BSC has since discontinued its steel- and ironmaking operations at the Lackawanna Plant. BSC's steelmaking process involved refining molten iron with oxygen, flux (*i.e.*, dolomite or lime), and alloying materials in a basic oxygen furnace to produce carbon steels. BSC's ironmaking process involved smelting of iron bearing materials (*i.e.*, iron ore, sinter, and scrap) with coke, flux (*i.e.*, dolomite and lime), and preheated air in blast furnaces. As stated previously, slag resulting from both the steel- and ironmaking process was disposed of in BSC's treatment pit.

BSC also generated spent pickle liquor at its cold strip mill continuous pickling facility and bar mill batch pickling facility. The spent pickle liquor wastes were collected in tanks and discharged to the treatment pit in batches using tank trucks. BSC used the treatment pit for the "in-situ" neutralization/stabilization and disposal of its spent pickle liquor wastes. BSC claims that the spent pickle liquor is the only hazardous waste that was disposed of in the treatment pit and that no spent pickle liquor has been treated/disposed of in the treatment pit since October 7, 1982. After October 1982, BSC sent all spent pickle liquor generated at the cold strip facility to an off-site Publicly Owned Treatment Works (POTW) for reuse as a water treatment chemical. In addition, the spent pickle liquor generated at the bar mill was sent off-site for disposal. BSC did not report whether additional solid wastes (other than the steel- and ironmaking slags, coke fines/ash, and creek dredgings) were disposed of in the treatment pit.

For waste management units like BSC's treatment pit, petitioners are normally requested to divide each unit into quadrants and randomly collect five full-depth core samples from each quadrant. The five full-depth core samples are then composited (mixed) by quadrant to produce composite samples. See "Test Methods for Evaluating Solid Wastes: Physical/ Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW-846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530-SW-85-003), April 1985.

On April 27, 1984, BSC collected one grab sample from the immediate vicinity of the location where spent pickle liquor was most commonly discharged into the treatment pit. In September 1984, BSC collected five core samples that extended the entire vertical depth of the treatment pit (20 feet). One of the samples was collected near the spent pickle liquor discharge location; the remaining four samples were collected in a "star" pattern around the spent pickle liquor discharge location. During sample collection, BSC found that the presence and distribution of SPL sludge was not uniform (vertically and horizontally) throughout the treatment pit. BSC believed that this non-uniform distribution warranted compositing portions of core samples such that the full spectrum of slag/SPL sludge material was characterized. BSC subsequently conducted a visual inspection of the core samples and combined individual sections of the five separate core samples with similar appearance into seven composite samples. BSC believes that the resultant composites account for the varying leaching characteristics of the waste that may exist due to the different quantities of SPL sludge entrapped within the slag matrix. Specifically, three of the seven composite samples represented waste containing a significant amount of SPL sludge (greater than 35 percent); two of the seven composite samples represented waste containing moderate amounts of SPL sludge (between 10 and 35 percent); and two of the seven composite samples represented waste containing trace amounts of SPL sludge (between 0 and 35 percent). While this compositing strategy does not conform to the Agency's standard sampling protocol for waste management units, the Agency believes that the sampling did characterize to some extent the slag/SPL sludge contained in the treatment pit. However, as explained more fully below, the Agency was unable to rely on these samples due to analytical reasons.

BSC analyzed the grab sample collected in April 1984 for the total concentrations (*i.e.*, mass of a particular constituent per mass of waste) of the EP toxic metals, nickel, and cyanide and the extraction procedure (EP) leachate concentrations (*i.e.*, mass of a particular constituent per unit volume of extract) of lead and chromium. In September 1984, BSC analyzed the seven composite samples for the total constituent concentrations of chromium and lead and EP leachate concentrations of the EP toxic metals, nickel, and cyanide.

During May 1985 BSC also re-analyzed four of the seven composite samples for total constituent and EP leachate concentrations of the EP toxic metals and nickel, total constituent concentrations of cyanide and sulfide, and total oil and grease content. On September 24, 1985, the Agency requested BSC to provide OWEP results for the EP toxic metals, nickel, and cyanide on at least four representative samples of the petitioned waste. In this letter, the Agency stated that these analyses could be conducted on samples already collected. In response to the Agency's request, four of seven composite samples were again re-analyzed, during the fall of 1985, for leachable concentrations of the EP toxic metals, nickel, and cyanide using the Oily Waste Extraction Procedure (SW-846, Method 1330). The results from these two analysis rounds in 1985 are of questionable validity because the maximum sample holding times recommended in SW-846 were exceeded. However, for the sake of completeness, the Agency presented the results of all of these analyses in today's proposed denial. The Agency, when it provides guidance to petitioners on sampling and analysis procedures, now requests that samples be analyzed within SW-846 recommended maximum holding times in order for analyses to be considered valid. The Agency, however, did not request BSC to conduct additional analyses because there was sufficient basis to propose denial of the petition without this information.

BSC also submitted ground-water monitoring information collected from wells monitoring the treatment pit in an attempt to demonstrate that waste contained in the unit had not adversely impacted ground-water quality. The ground-water monitoring information submitted by BSC and received from state and EPA Regional authorities included: (1) Well location information; (2) boring logs and well construction details for each well; (3) water levels and water level contour maps; and (4) results of the analysis of ground-water samples.

3. Agency Analysis

BSC used SW-846 Methods 7060 through 7760 to quantify the total constituent concentrations of the EP toxic metals and nickel in the treatment pit waste. BSC used "Methods for the Chemical Analysis of Water and Wastes" Methods 335.2 and 425, respectively, to quantify total cyanide and sulfide levels in the treatment pit waste. SW-846 Methods 1310 and 1330 (standard EP and OWEP, respectively) were used to determine the leachable concentrations of the EP toxic metals, nickel, and cyanide in the treatment pit waste. Table 1 presents the maximum total constituent, EP leachate, and OWEP leachate concentrations of the EP toxic metals, nickel, cyanide, and sulfide.

TABLE 1.—Maximum Total Constituent and EP/OWEP Leachate Concentrations (ppm) Treatment Pit Waste

Constituents	Total constituent analyses	Leachate analyses	
		EP	OWEP
Arsenic	0.40	0.007	<0.01
Barium	415	0.306	0.38
Cadmium	0.17	0.003	<0.005
Chromium	120	0.003	<0.01
Lead	170	0.014	<0.01
Mercury	0.01	0.0004	<0.0002
Nickel	19.4	0.58	0.59
Selenium	0.11	0.003	0.009
Silver	<0.01	<0.001	<0.01
Cyanide (total)	72.6	—	<0.02
Sulfide	5.7	NA	

<: Denotes that the constituent was not detected at the detection limit specified in the table.
NA: Analysis for leachable concentrations, of sulfide is not necessary because the Agency's level of regulatory concern is based on total constituent concentrations of reactive sulfide.

The detection limits in Table 1 represent the lowest concentrations quantifiable by BSC, when using the appropriate analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits.)

Using "Standard Methods for the Examination of Water and Wastewater," 14th edition, Method 502D, BSC determined that its treatment pit waste had a maximum oil and grease content of 2.68 percent. These analyses were conducted on samples that had exceeded SW-846 recommended maximum holding times. However, the Agency accepts these analyses as an indication of the oily nature of the waste. For the determination of the percent oil and grease, delay in analysis would tend to decrease the apparent amount of oil in the sample. Because the expired samples still contained oil and grease levels in excess of one percent, the Agency considered the waste to be an oily waste.

Petitioners are required to modify the EP procedure in accordance with the Oily Waste EP (OWEP) methodology if the oil and grease content of the waste exceeds one percent. Wastes having more than one percent total oil and grease may either have significant concentrations of the constituents of concern in the oil phase which may not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample. See SW-846 Method 1330. BSC provided standard EP data as well as OWEP data (on expired samples) in support of its petition. Because there was sufficient basis to propose denial of the petition, the Agency did not require BSC to provide additional OWEP results on representative samples of the treatment pit waste.

On the basis of test results provided by BSC pursuant to 40 CFR 260.22, none of the samples analyzed exhibited the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

BSC submitted a signed certification stating that the treatment pit contains approximately 6,000 cubic yards of waste. The Agency reviews a petitioner's estimate and, on occasion, has requested a petitioner to reevaluate estimated waste volume. EPA accepts BSC's certified estimate of 6,000 cubic yards.

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to deny BSC's petition. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has initiated a spot-check sampling and analysis program to verify the representative nature of data for some percentage of the submitted petitions, and may select facilities likely to be proposed for exclusion for spot-check sampling.

4. Agency Evaluation

The Agency's review of BSC's petition included an evaluation of the treatment pit waste (*e.g.*, adequacy of the sampling strategy, assessment of the total and leachable constituent levels in the waste) and the potential impact of the treatment pit waste on the underlying aquifer. The Agency reviewed BSC's arguments concerning the presence of hazardous constituents (*e.g.*, those constituents listed in 40 CFR Part 261, Appendix VIII), other than those tested for, in the treatment pit waste. BSC claims that additional hazardous constituents are not expected to be present in the petitioned waste given the nature of the facility's pickling operations and raw materials used in these pickling operations. The Agency believes that BSC's analyses and presentation were insufficient to demonstrate that the waste contains no other hazardous constituents. Specifically, BSC did not provide a comprehensive description of all solid wastes (including the composition of the slags) that were disposed of in the treatment pit; BSC only explained that pickling operations would not have generated wastes that contained additional hazardous constituents. Because all solid wastes disposed of in the treatment pit are also considered hazardous in accordance with 40 CFR 261.3(a)(2)(iv) (the mixture rule), BSC should have also demonstrated that these wastes did not contain additional hazardous constituents. The Agency typically requires petitioners to submit analytical results or mass balance calculations for constituents expected to be present in petitioned wastes. The Agency, however, did not request BSC to provide further information about additional hazardous constituents in the treatment pit waste because sufficient data existed to support a proposed denial of the petition.

In evaluating petitioned wastes such as BSC's, the Agency typically uses its vertical and horizontal spread (VHS) landfill model which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 28, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. However, because BSC's characterization of the petitioned waste was inadequate (*e.g.*, OWEP results were not provided for samples within SW-846 recommended maximum holding times), the Agency believes it is inappropriate to use the modeling evaluation as a basis in today's decision. The Agency believes that the results of the evaluation using unacceptable input parameters would not be an accurate assessment of the

potential hazards of the petitioned waste.

After reviewing information describing the ground-water monitoring system at the treatment pit, the Agency determined that the ground-water monitoring system for the treatment pit is inadequate to fully characterize either the ground-water flow direction(s) or ground-water quality at the treatment pit. The system was originally designed to monitor both the treatment pit and a nearby tar sludge impoundment as a single waste management area (HWM-1). Well MW-1U1 was installed to serve as an upgradient well for the waste management area. While three wells were installed as downgradient wells for the tar sludge impoundment, only well MW-1D1 was installed to serve as a downgradient well for the treatment pit. The Agency believes that the single downgradient well (MW-1D1) is inadequate for fully characterizing the impact of the treatment pit waste on ground-water quality.

Information contained on well logs submitted by BSC also raised several concerns about the construction of MW-1U1 and MW-1D1. In particular, the Agency is concerned that MW-1D1 was screened in "black ash" while MW-1U1 was screened in gravel and slag. The "black ash" in which MW-1D1 is screened may also affect the chemical composition of the ground water by acting as a filtering aid, adsorption agent, buffer, or reagent. Additionally, the Agency is concerned that the screened portion of MW-1D1 is 20 feet shorter than the screened portion of MW-1U1. Lastly, the Agency is concerned that MW+1U1 was installed in what appears to be a contaminated area. The well log for MW-1U1 indicates that both "foamy green water" and "grey to black water" were encountered during drilling. In addition, elevated concentrations of benzene have been reported in well MW-1U1 (see Table 2). Therefore, the Agency believes that the construction and placement of the two wells (MW-1U1 and MW-1D1) support a conclusion that the well system is inadequate.

Despite the inadequacies of the monitoring system for the treatment pit, the Agency believes the monitoring data from the single downgradient well demonstrate that the treatment pit may have contributed to ground-water contamination in excess of the health-based levels used in delisting decision-making. EPA did not request that BSC provide additional ground-water monitoring data because the existing information from well MW-1D1 was of sufficient concern to support a proposed denial of BSC's petition. Specifically, data from the analysis of samples collected from the existing ground-water monitoring system at the treatment pit indicate that the petitioned unit may have adversely impacted ground-water quality. Table 2 presents the hazardous constituents which were detected at concentrations exceeding the health-based levels used for delisting decision-making in ground-water samples collected from downgradient well, MW-1D1. Table 2 also presents analyses of ground-water samples collected from upgradient well, MW-1U1.

TABLE 2.—CONCENTRATIONS OF HAZARDOUS CONSTITUENTS IN GROUND-WATER THAT EXCEED DELISTING HEALTH-BASED LEVELS IN THE DOWNGRADIENT WELL (PPM) TREATMENT PIT

Parameter and sampling date	Levels of regulatory concern [1]	Monitoring wells [2]	
		MW-1U1	MW-1D1
Lead	0.05		
6-6-85 [3]		<0.01	0.06
7-86 [4]		0.030J	0.270
Cadmium	0.01		
4-25-85		NR	0.014
1-88		<0.005	0.013
1,1-Dichloroethane	0.00038		
6-11-86		<0.001	0.003
7-86		ND	0.0033
2-87		NR	0.008
11-6-87 (NYDEC)		NR	0.010
11-6-87		<0.005	0.010
1-88		<0.005	0.010
Trichloroethylene	0.005		
6-11-86		<0.001	0.009
7-86		ND	0.0082
2-87		NR	0.009
11-6-87 (NYDEC)		NR	0.0096
11-6-87		<0.005	0.009
1-88		<0.005	0.010
Fluorene	0.002		
7-86		0.0080	0.028
11-6-87 (NYDEC)		NR	0.0036J
11-6-87		<0.010*	<0.010*
1-88		<0.010*	<0.010*
Phenanthrene	0.002		
7-86		0.012	0.025
11-6-87 (NYDEC)		NR	0.0024J
11-6-87		0.013	<0.010*
1-88		0.014	<0.010*
Anthracene	0.002		
7-86		ND	0.0036
11-6-87 (NYDEC)		NR	<0.020
11-6-87		<0.010*	<0.010
1-88		<0.010*	<0.010*
Benzene	0.005		
7-86		0.340	0.0051
11-6-87		0.430	0.009
1-88		0.340	0.008

[1] See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.
[2] MW-1U1 is an upgradient well; MW-1D1 is a downgradient well.
[3] All values reported by BSC unless otherwise noted.
[4] Lead concentration in trip blank was estimated as 0.020 ppm.
NR—Not reported.
J—Indicates an estimated value. This flag is used either (1) when estimating a concentration for tentatively identified compounds where a 1:1 response is assumed or (2) when the mass spectral data indicate the presence of a compound that meets the identification criteria, but the result is less than the specified detection limit and greater than zero. For example, if the limit of detection is 0.010 ppm and a concentration of 0.003 ppm is calculated, the result is reported as 0.003J.
ND—Not detected; detection limit unspecified.
<—Denotes that the constituent was not detected at the detection limit specified in the table.
*—Compound present, but not quantifiable below measurable detection limit.
NYDEC—Value reported by New York Department of Environmental Control.

Table 3 presents the concentrations of non-hazardous constituents detected in ground-water samples collected from MW-1U1 and MW-1D1. Although increases in the concentrations of constituents listed in Table 3 (and decreases in pH) in MW-1D1 with respect to MW-1U1 would not themselves warrant denial of a delisting petition, they provide further support for the Agency's conclusion that the treatment pit is impacting ground-water quality.

TABLE 3.—CONCENTRATIONS OF NON-HAZARDOUS CONSTITUENTS AND WATER QUALITY PARAMETERS IN GROUND-WATER (PPM) TREATMENT PIT

Parameter and sampling date	Monitoring wells [1]	
	MW-1U1	MW-1D1
Chloride		
12-18-85 [2]	130	2,000
6-11-86	97	2,500
7-86	166	2,700
12-86	78	3,827
6-87	160	2,000
11-6-87	200	190***
1-88	190	3,300
Iron		
12-18-85	0.59	19.1
6-11-86	0.33	56.3
7-86	0.280	110
Manganese		
12-18-85	0.058	0.76
6-11-86	<0.010	0.608
7-86	0.0091	0.880
NO_3-N		
12-18-85	0.57	7.76
11-6-87	<0.1	0.14
1-88	0.17	3.4
pH [3]		
2-21-85	12.1	7.3
4-25-85	11.7	6.9
6-6-85	11.8	6.7
7-18-85	10.6	5.8
12-18-85	12.18	6.80
6-11-86	11.20	7.00
7-86	11.72	6.67
12-86	11.67	6.58
6-87	10.59**	8.24**
11-6-87	11.26**	6.85**
1-88	11.48**	7.17**
Specific Conductance [3]		
12-18-85	2,530	8,090
6-11-86	2,330	8,580
7-86	2,140	9,010
12-86	2,663	12,359
6-87	2,300**	9,800**
11-6-87	1,350**	5,760**
1-88	2,470**	11,260**

TABLE 3.—CONCENTRATIONS OF NON-HAZARDOUS CONSTITUENTS AND WATER QUALITY PARAMETERS IN GROUND-WATER (PPM) TREATMENT PIT—Continued

Parameter and sampling date	Monitoring wells [1]	
	MW-1U1	MW-1D1
Total Organic Carbon (TOC)		
12-18-85	3.6	5.3
6-11-86	10.0	13.6
7-86	7.4	11.1
12-86	8.5	14.3
TOX		
12-18-85	0.014	0.018
6-11-86	0.023	0.024
7-86	0.340J	0.726
12-86	0.048	0.085
6-87	<0.005	0.071
11-6-87	0.010	0.099
1-88	0.024	0.067
Sulfate		
6-11-86	276	1,180
12-86	268	1,106
6-87	340	1,100
11-6-87	210	400***
1-88	180	820
Potassium		
6-11-86	79	171
12-86	72.8	219
1-88	76.0	257

[1] MW-1U1 is an upgradient well; MW-1D1 is a downgradient well.
[2] All values reported by BSC.
[3] Specific conductance and pH are reported in umhos/cm and standard units, respectively.
NR—Not reported.
J—Estimated value (see footnote to Table 2).
<—Denotes that the constituent was not detected at the detection limit specified in the table.
*—Compound present, but not quantifiable below measurable detection limit.
**—Field data.
***—BSC believes that sample bottles were switched. Chloride concentration may actually be 3,100 ppm (not 190 ppm) and sulfate concentration may actually be 1,000 ppm (not 400 ppm).

5. Conclusion

The Agency believes that BSC has failed to demonstrate that its petitioned waste is not hazardous. The Agency believes that data from the analyses of samples collected from the existing ground-water monitoring system at the treatment pit indicate that the petitioned unit may have contributed to ground-water contamination. Specifically, the Agency believes that the ground-water monitoring data from the existing well system are not adequate to eliminate the treatment pit as a source of ground-water contamination and, to the contrary, provide a basis for concluding that the treatment pit waste is contributing to ground-water contamination. Furthermore, the Agency believes that the petitioned waste's potential to contribute to ground-water contamination is a sufficient basis for denial because the Agency, in its evaluation of a petition, must determine whether factors (including additional constituents) could cause the petitioned waste to be hazardous (see 40 CFR 260.22(a)(2)). The Agency is not obligated to show conclusively that the waste is hazardous.

In addition, the Agency also considers BSC's petition to be incomplete. As stated previously, the Agency believes that BSC's characterization of the petitioned waste was inadequate (*e.g.*, holding times were exceeded, inappropriate analytical methods were used, and the presence of other hazardous constituents potentially present in the waste were not quantified). The Agency, however, did not request BSC to provide further information about additional hazardous constituents in the treatment pit waste because sufficient data existed to support a proposed denial of the petition. As stated previously, the Agency did not believe it appropriate to use the VHS model evaluation as a basis in today's decision because acceptable analytical data were not provided.

The Agency, therefore, proposes to deny Bethlehem Steel Corporation's petition for exclusion of the waste described in its petition as EPA Hazardous Waste No. K062 and contained in its treatment pit at its Lackawanna, New York facility. The treatment pit waste should continue to be subject to regulation under 40 CFR Parts 260 through 268 and the permitting standards of 40 CFR Part 270.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six

months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would not change the existing requirements for persons generating hazardous wastes. This facility has been obligated to manage its waste as hazardous before and during the Agency's review of its petition. Because a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this denial should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The proposed denial of this petition, if promulgated, would not impose an economic burden on this facility because prior to submitting and during review of the petition, this facility should have continued to handle its waste as hazardous. The denial of the petition means that they are to continue managing their waste as hazardous in the manner in which they have been doing, economically, and otherwise. There is no additional economic impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 USC §§ 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative, may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities. The facility included in this notice does not constitute a small entity. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et. seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous Materials, Waste Treatment and Disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: July 17, 1989.

Robert L. Duprey,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 89–17735 Filed 7–28–89; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 54, No. 145
Monday, July 31, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Machine Tool Special Issue License: Request for Comments

AGENCY: Department of Commerce, Bureau of Export Administration, Export Administration.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby solicits public comments on a request for special issue licenses under Article 8 of the U.S.-Japan machine tool voluntary restraint agreement.

DATES: Comments must be submitted no later than August 10, 1989.

ADDRESSES: Send all comments to John A. Richards; Deputy Assistant Secretary for Industrial Resource Administration; Room H3878; U.S. Department of Commerce; 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Edward Levy, Section 232 Program Manager, Department of Commerce, Room H3878, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Machine Tools provides for the issuance of special issue licenses when it is determined "that there is a need for the importation into the USA of arrangement products in excess of the (VRA) export limit." Generally, the Department of Commerce is prepared to grant such requests (1) when the machine in question meets a unique national security need, (2) when the machine will directly support an increase in U.S. machine tool manufacturing capacity, or (3) when a customer can demonstrate that a comparable tool cannot be obtained from domestic or available foreign suppliers. Special issue licenses are granted for a limited time period and for a specified number of machines.

The Department has received a request for a special issue license to import a machining center from Japan. The machine is a double column verticle spindle machining center, capable of 5-sided machining and meets the following specifications: table size of 59" wide x 20" long; X axis travel of 197", Y axis travel of 79", Z axis travel of 28"; positioning of accuracy of +/– 0.0002 inches; position repeatability of 0.00012 inches; the effective width between columns of 80.71 inches; distance from spindle nose to table of 0–59.06 inches; working surface of 59 x 189 inches; height of table from floor of 31.50 inches; feedrate of 0.04—157 ipm; rapid traverse of 591 imp and maximum load capacity of 44,000 pounds.

The Department is particularly interested in receiving public comments on the availability of comparable tools from domestic or available foreign suppliers. Any party interested in commenting on this request should send written comments as soon as possible, and not later than August 10, 1989.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Bureau of Export Administration's Office of Security and Management Support, Room 4886 at the above address; telephone (202) 377–2593.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89–17782 Filed 7–28–89; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Performance Review Boards List of Members

Below is a list of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Office of the Secretary of the Air Force

BG Michael P. McRaney
BG Basil H. Pflumm

Air Staff

Dr. David E. Anderson
Mr. Grover L. Dunn
Mr. Roy C. Gay

Air Force Logistics Command

Ms. Diann L. McCoy
Mr. Gerald L. Yanker

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–17784 Filed 7–28–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

Advisory Council on Education Statistics; Meeting

AGENCY: Advisory Council on Education Statistics (ACES).

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: September 7–8, 1989.

ADDRESS: 555 New Jersey Avenue NW., Room 326, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Iris Silverman, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, Room 400J, Washington, DC 20208–5574. Telephone: (202) 357–6831.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics is established under section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and

Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. The meeting of the Council is open to the public.

The proposed agenda includes the following: NCES: Three Years After the National Academy of Sciences' Evaluation; ACES Agenda Planning; Confidentiality Issues and Sharing of Data; Work-in-Progress—Standards Revision and Quality Assurance.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW., Room 400J, Washington, DC 20208–5574.

Date: July 25, 1989.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89–17802 Filed 7–28–89; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Technical Methodology Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: August 18, 1989.

Time: 2 p.m. until adjournment.

Location: U.S. Department of Education, National Assessment Governing Board, Suite 4060, Mary E. Switzer Building, 330 C Street SW., Washington, DC 20202–7583.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Staff Director, National Assessment Governing Board, U.S. Department of Education, Suite 4060, Mary E. Switzer Building, 330 C Street SW., Washington DC 20202–7583. Telephone: (202) 732–1824.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provision Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), 20 U.S.C. 1221E–1.

The Board is established to advise the Commissioner for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The Technical Methodology Committee of the National Assessment Governing Board will meet via teleconference in Washington, DC on August 18, 1989 from 2 p.m. until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The proposed agenda includes a discussion of issues related to reporting student achievement on a state-by-state comparison basis. Committee members will be updated on the progress toward the determination of procedures and strategies to be followed in reporting State comparative data.

Records are kept of all Board proceedings, and are available for public inspection at the National Assessment Governing Board office, U.S. Department of Education, Suite 4060, Mary E. Switzer Building, 330 C Street SW., Washington, DC 20202–7583, from 8:30 a.m. to 5 p.m.

Date: July 25, 1989.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89–17729 Filed 7–28–89; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Reading Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: August 14, 1989.

Time: 1:00 p.m. until adjournment.

Location: U.S. Department of Education National Assessment Governing Board, Suite 4060, Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20202–7583.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Staff Director, National Assessment Governing Board, U.S. Department of Education, Suite 4060, Mary E. Switzer Building, 330 C Street, SW., Washington DC 20202–7583. Telephone: (202) 732–1824.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title 2III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 21988 (Pub. L. 100–297); 20 USC 1221e–1).

The Board is established to advise the Commissioner for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The Reading Committee of the National Assessment Governing Board will meet via teleconference in Washington, DC on August 14, 1989 from 1:00 p.m. until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The proposed agenda includes review and approval of the logistical arrangements for the public hearings on the Reading Objectives for the 1992 Assessment; and other matters pertaining to the Reading Committee's responsibilities.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, Mary E. Switzer Building, 330 C Street, SW., Room 4060, Washington, DC from 8:30 a.m. to 5:00 p.m.

Date: July 25, 1989.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89–17730 Filed 7–28–89; 8:45 am]

BILLING CODE 4000–01–M

Advisory Committee on Student Financial Assistance; Hearing and Meeting

AGENCY: Advisory Committee on Student Financial Assistance.

ACTION: Notice of upcoming hearing and meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming hearing and meeting of the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of the opportunity to attend.

DATES: August 14, 1989 beginning at 1:00 p.m. and ending at 4:00 p.m.; August 15, 1989 beginning at 9:00 a.m. and ending at 5:00 p.m.; and August 16, 1989 beginning at 9:00 a.m. and ending at 12:00 Noon.

ADDRESS: The Hoover Institution at Stanford University, Stauffer Auditorium, Herbert Hoover Memorial Building, Stanford, California 94305.

FOR FURTHER INFORMATION CONTACT: Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Room 4600, ROB–3, 7th & D Streets, S.W., Washington, DC 20202–7582 (202) 732–3439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Pub. L. 100–50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, and conducting a study of institutional lending in the Stafford Student Loan Program. The Congress has also directed the Advisory Committee to provide assistance in preparing for the reauthorization of the Higher Education Act.

The Advisory Committee will meet in Stanford, California from 1:00 p.m. to 4:00 p.m. on August 14; from 9:00 a.m. to 5:00 p.m. on August 15; and from 9:00 a.m. to 12:00 Noon on August 16.

The proposed agenda of the meeting includes: (a) Activities of the Subcommittee on Need Analysis and Delivery System; (b) Advisory Committee Reauthorization Activities; and (c) Discussion of National Service and other issues.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Room 4600, 7th and D Streets SW., Washington, DC from the hours of 9:00 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: July 21, 1989.

Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 89–17761 Filed 7–28–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF89–50–001, et al.]

Cimarron Chemical, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Cimarron Chemical, Inc.

[Docket No. QF89–50–001]

July 21, 1989.

On July 14, 1989, Cimarron Chemical, Inc. (Applicant) of 1400 Post Oak Boulevard, Suite 625, Houston Texas 77056 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The original application was filed on November 17, 1988, and certification was granted on March 28, 1989; Cimarron Chemical, Inc., 46 FERC ¶ 62,312 (1989). The facility will be located near the hamlet of Vilas, in Baca County, Colorado. The recertification is requested due to an increase in the net electric power production capacity from 67.8 MW to 72.8 MW. In addition, the thermal output of the facility, in the form of extraction steam, will now be used in drying agricultural products, such as alfalfa, as opposed to its use in absorption chillers for refrigeration under the original application. In all other respects, the facility remains essentially the same as that set forth in the original application.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. South Carolina Public Service Authority

[Docket No. ES89–31–000]

July 21, 1989.

Take notice that on July 14, 1989, the South Carolina Public Service Authority ("Authority") filed an application with the Federal Energy Regulatory Commission ("Commission"), pursuant to section 204 of the Federal Power Act, seeking authority to issue not more than $100 million in Tax-exempt commercial paper. The Authority asks, in the alternative, an order dismissing the application for lack of jurisdiction.

Comment date: August 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Ruth M. Davis

[Docket No. ID–2418–000]

July 24, 1989.

Take notice that on July 6, 1989, Ruth M. Davis, Applicant, tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Trustee (Director), Consolidated Edison Company of New York, Inc.
Director, Principal Mutual Life Insurance Company
Director, Control Data Corporation

Comment date: August 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Connecticut Yankee Atomic Power Company

[Docket No. EL87–23–005]

July 24, 1989.

Take notice that on July 3, 1989, Connecticut Yankee Atomic Power Company (Connecticut Yankee) tendered for filing changes to its 1967 Supplementary Power Contract. Connecticut Yankee states that these changes are being made in compliance with the Commission's Order on Remand issued on May 18, 1989.

Comment date: August 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Century Power Corp.

[Docket No. ER89-562-000]

July 24, 1989.

Take notice that on July 17, 1989, Century Power Corporation (Century) tendered for filing two letter agreements amending the 1989 Sales Agreement between Century and San Diego Gas & Electric Company (San Diego). The amendments reflect, among other related changes, SDG&E's decisions to purchase 50 MW rather than 100 MW during June 1989, SDG&E's election to extend the contract through the end of 1989, and an attempt by the parties to clarify their intent concerning off-peak energy purchases.

Century requests waiver of notice so that the submittals can become effective as of June 1, 1989.

Comment date: August 7, 1989, in accordance with Standard Paragraph E at the end of this document.

6. Niagara Mohawk Power Corp.

[Docket No. ER88-604-000]

July 24, 1989.

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk), on June 26, 1989, tendered for filing an agreement between Niagara Mohawk and The United Illuminating Company dated April 27, 1989.

The April 27, 1989 agreement is to provide for the sale by Niagara Mohawk Power Corporation of peaking capacity and related energy to The United Illuminating Company. The terms of this agreement and the period during which the purchase of peaking capacity can occur shall commence on May 1, 1989 and shall continue until April 30, 1994.

Copies of this filing were served upon The United Illuminating Company and the New York State Public Service Commission.

Comment date: August 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17754 Filed 7-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF89-274-000]

JMC Selkirk, Inc.; Application for Commission Certificatin of Qualifying Status of a Cogeneration Facility

July 24, 1989.

On July 11, 1989, JMC Selkirk, Inc. (Applicant), of One Bowdoin Square, Boston, Massachusetts 02114, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.208 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Selkirk, New York. The facility will consist of a combustion turbine generator, a supplementary fired heat recovery steam generator, and a non-condensing steam turbine generator. Thermal energy recovered from the facility will be sold to the General Electric Company for space heating and for use in the manufacture of plastics. The net electric power production capacity of the facility will be 79.9 MW. The primary source of energy will be natural gas. Construction of the facility is scheduled to being November 1989.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17751 Filed 7-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI89-460-000, et al.]

Mitchell Energy Corp., et al.; Applications for Certificates and Abandonment of Service

July 24, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.[1]

Any person desiring to be heard or to make any protest with reference to said applications should on or before August 9, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI89-460-000 (G-7331), B, June 12, 1989.	Mitchell Energy Corporation, P.O. Box 4000, The Woodlands, TX 77387-4000.	Tennessee Gas Pipeline Company, Decker Prairie & Tomball Field, Montgomery & Harris Counties, Texas.	Certain wells plugged and abandoned. Other acreage assigned 12-31-88 to Tortuga Operating Company.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI89-474-000, E, July 3, 1989	Amoco Production Company, 1670 Broadway, Denver, CO 80202.	Williams Natural Gas Company, Hugoton Field, Finney County, Kansas.	Acreage acquired 7-1-88 from Gaylord S. Davidson Trust No. 1.
CI89-478-000, A, July 10, 1989	Matagorda Island Exploration Corporation, P.O. Box 1330, Houston, TX 77251-1330.	Williams Natural Gas Company, Panoma Field, Morton County, Kansas.	New lease acquired for acreage previously dedicated by Amoco Production Company in Docket No. G-4904.
CI89-480-000 (CI75-680), F, July 14, 1989.	TXP Operating Company, 2800 Post Oak Blvd., P.O. Box 1396, Houston, TX 77251-1396.	Texas Gas Transmission Corporation, Eugene Island Block 342, Offshore Louisiana.	Acreage acquired 8-21-85 and 2-1-87 from Huffco Petroleum Corporation and 12-1-88 from Texaco Inc.

Filing Code: A—Initial service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial succession.

[FR Doc. 89-17752 Filed 7-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1837-000]

CNG Transmission Corp; Request Under Blanket Authorization

July 20, 1989.

Take notice that on July 19, 1989, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26302-2450, filed in Docket No. CP89-1837-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation services for IESCO and seven other shippers (Shippers), under the blanket certificate issued in Docket No. CP86-311-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and to open to public inspection.

CNG states that, pursuant to the respective transportation service agreements, it would transport natural gas from various receipt points on its system and would deliver the gas to various interconnections between CNG and certain local distribution companies and pipelines. The receipt and delivery points, along with maximum daily, estimated average daily and annual volumes (dt equivalent), are shown on the attached Appendix A.

CNG advises that service under § 284.223(a) commenced May 2, 1989, on behalf of IESCO as reported in Docket No. ST89-4015-000. Appendix A also lists commencement dates and related ST docket numbers for services provided the other shippers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

APPENDIX A

Shipper customer	Max dt/day, average dt/day, annual dt	Receipt point	Delivery point	Commencement date	Related docket
1. IESCO	5,000 5,000 1,825,000	D	HGI	5-2-89	ST89-4015
2. Endevco Marketing Company	4,000 775 282,875	B	NIMO	5-12-89	ST89-4013
3. Stone Resource & Energy Corporation	10,000 25 9,125	C	EOG	5-23-89	ST89-4014
4. Aluminum Co. of America	4,200 2,428 886,220	D	EOG	5-25-89	ST89-4012
5. Energy Buyers Service Corp	5,000 207 75,555	D	NYSEG	6-5-89	ST89-4011
6. Energy Buyers Service Corp	5,000 992 362,080	D	RG&E	6-5-89	ST89-4010
7. Empire Natural Gas Corporation	5,000 25 1,625	A	NYSEG	6-6-89	ST89-4009
8. X Energy, Inc	5,000 96 35,040	C	North Penn	6-7-89	ST89-4008

Legend of LDC/PL Delivery Points

EOG—East Ohio Gas Company
HGI—Hope Gas, Inc.
NIMO—Niagara Mohawk Power Corporation
North Penn—North Penn Gas Company
NYSEC—New York State Electric & Gas Corporation
RG&E—Rochester Gas & Electric Corporation

Legend of Receipt Points

A—Various interconnects between Tennessee Gas Pipeline Company and CNB
B—Various receipt points in WV/PA/NY

C—Various interconnects between Texas Gas Transmission Corporation and CNG
D—Various interconnects between Texas Eastern Transmission Corporation and CNG

[FR Doc. 89-17755 Filed 7-28-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. G-2737-007, et al.]

Conoco Inc., et al; Applications for Termination or Amendment of Certificates

July 24, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.[1]

Any person desiring to be heard or to make any protest with reference to said applications should on or before August 10, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-2737-007, D, Mar. 21, 1989	Conoco Inc., P.O. Box 2197, Houston, TX 77252.	Williams Natural Gas Company, West Panhandle Field, Gray County, Texas.	Assigned eff. 3-1-89 to Amarillo Natural Gas Company, Inc.
G-2737-008, D, Mar. 21, 1989	Conoco Inc	Williams Natural Gas Company, West Panhandle Field, Gray County, Texas.	Assigned eff. 3-1-89 to Prairie Oil Company.
G-8592-002, D, June 8, 1989	Oryx Energy Company, P.O. Box 2880, Dallas, TX 75221-2880.	United Gas Pipe Line Company, Pistol Ridge Field, Forrest County, Mississippi.	Assigned eff. 7-1-85 to A.W. Dugan Petroleum.
G-8592-003, D, June 8, 1989	Oryx Energy Company	United Gas Pipe Line Company, Pistol Ridge Field, Forrest County, Mississippi.	Assigned eff. 11-1-85 to Sherman Stampley.
G-10723-000, D, July 7, 1989	Union Pacific Resources Company, P.O. Box 7, Forth Worth, TX 76101.	Colorado Interstate Gas Company, S.W. Camp Creek, Beaver County, Oklahoma.	Assigned eff. 1-1-89 to Swift Energy Company.
G-17864-000, D, June 12, 1989	Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052.	Panhandle Eastern Pipe Line Company, Mohler Field, Meade County, Kansas.	Assigned eff. 12-1-88 to Hi Inc.
G-18378-000, D, June 5, 1989	Texaco Producing Inc	Florida Gas Transmission Company, Half Moon Reef Field, Arkansas County, Texas.	Assigned eff. 3-1-89 to O'Sullivan & Scully, Inc.
G-19127-002, D, June 5, 1989	Texaco Inc., P.O. Box 52332, Houston, TX 77052.	Phillips 66 Natural Gas Company, Hugoton Field, Moore County, Texas.	Assigned eff. 12-1-88 to NM&O Operating Company, D.W. Morris and J.H. Ferris, Jr.
G-19563-001, D, July 3, 1989	Anadarko Petroleum Corporation, P.O. Box 1330, Houston, TX 77251.	K N Energy, Inc., Texas County, Oklahoma.	Assigned eff. 5-1-87 to Vernon E. Faulconer, Inc.
CI63-148-000, D, May 9, 1989	Union Oil Company of California, P.O. Box 7600, Los Angeles, CA 90051.	ANR Pipeline Company, South Campbell Field, Major County, Oklahoma.	Assigned eff. 3-1-89 to Post Oak Oil Company.
CI63-1261-000, D, Mar. 6, 1989	Amoco Production Company, P.O. Box 50879, New Orleans, LA 70150.	Valley Gas Transmission, Inc., West Hackberry Field, Cameron Parish, Louisiana.	Assigned eff. 11-1-88 to Alltex Exploration, Inc.
CI67-266-002, D, June 26, 1989	BHP Petroleum Company Inc., San Felipe Suite 3600, Houston, TX 77057.	Arkla Energy Resources, a division of Arkla, Inc., Cedars Field, LeFlore County, Oklahoma.	Assigned eff. 9-1-88 to John C. Oxley.
CI67-1650-002, D, July 14, 1989	Conoco Inc	Panhandle Eastern Pipe Line Company, South Peek Field, Roger Mills County, Oklahoma.	Assigned eff. 4-1-89 to Maynard Oil Company.
CI69-187-000, D, Mar. 21, 1989	BHP Petroluem Company Inc	Transwestern Pipeline Company, Rock Tank Field, Eddy County, New Mexico.	Assigned eff. 6-1-87 to Bledsoe Petro Corporation.
CI75-245-003, D, June 16, 1989	Oryx Energy Company	Arkla Energy Resources, a division of Arkla, Inc., S.W. Field, Kingfisher County, Oklahoma.	Assigned eff. 10-1-84 to Beck Pump and Supply, Inc.
CI75-680-003, D, June 5, 1989	Texaco Inc	Texas Gas Transmission Corporation, Eugene Island Block 342, Offshore, Louisiana.	Assigned eff. 12-1-88 to Elf Aquitaine Operating, Inc., and TXP Operating Company.
CI75-784-001, D, Apr. 3, 1989	Tenneco Exploration, Ltd., P.O. Box 2511, Houston, TX 77252.	Tenneco Oil Company, Eugene Island Blocks 342 & 343, Offshore Lousiana	Assigned eff. 3-15-85 to Huffco Petroleum Corporation.
CI77-20-001, D, July 7, 1989	Union Pacific Resources Company	Mississippi River Transmission Corporation, S.W. New Liberty Field, Beckham County, Oklahoma.	Assigned eff. 1-1-89 to Swift Energy Company.
CI77-266-003, D, July 7, 1989	Union Pacific Resources Company	Mississippi River Transmission Corporation, Little Washita Fiedl, Grady County, Oklahoma.	Assigned eff. 1-1-89 to Swm Energy Company.
CI84-32-001, D, Apr. 3, 1989	Tenneco Exploration, Ltd	Tennessee Gas Pipeline Compnay, Eugene Island Blocks 342 & 343, Offshore Louisiana.	Assigned eff. 3-15-85 to Huffco Petroleum Corp.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI87-807-002, D, July 11, 1989	Sonat Exploraton Company, P.O. Box 1513, Houston, TX 77251-1513.	Arkla Energy Resources, a Division of Arkla, Inc., Britt Ranch Field, Wheeler County, Texas.	Assigned eff. 11-1-88 to Main Energy, Inc., Graig International, Inc. and Lancer Resources, Ltd.
CI88-190-001, D, April. 12, 1989	Enron Oil and Gas Company, P.O. Box 1188, Houston, TX 77251.	Northern Natural Gas Company, Division of Enron Corp., Ship Shoal Block 84, Offshore Louisiana.	Assigned eff. 7-1-88 to Amoco Production Company.
CI89-335-000 (G-3762), D, Mar. 6, 1989.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	El Paso Natural Gas Company Fulcher-Kutz Picture Cliffs, San Juan County, New Mexico.	Assigned eff. 3-1-86 to Amoco Production Company and 1-1-87 to Hondo Oil & Gas Company.
CI89-370-000 (G-5668), D, Apr. 17, 1989.	BP Exploration Inc., P.O. Box 4587, Houston, TX 77210.	Texas Gas Transmission Corporation, S. Lewisburg Field, Acadia and St. Landry Parishes, Louisiana.	Assigned eff. 10-1-88 to Amerada Hess Corporation.
CI89-458-000 (CI71-763), D, June 31, 1989.	Texaco Inc	Texas Eastern Transmission Corporation, Maben Sheely Field, Oktibbeha County, Mississippi.	Assigned eff. 12-1-86 to Energy Properties Inc.
CI89-475-000 (CI67-1838), D, July 3, 1989.	BHP Petroleum Company, Inc	Williams Natural Gas Company, East Clark and Rhodes Fields, Harper County, Texas and Barber County, Kansas.	Assigned eff. 5-1-83 to A.L. Abercrombie, Inc. and F. Doyle Fair.
CI89-476-000 (CI64-1123), D, July 3, 1989.	Anadarko Petroleum Corporation	K N Energy, Inc., Texas County, Oklahoma.	Assigned eff. 12-31-86 to Vernon E. Faulconer, Inc.

[FR Doc. 89-17753 Filed 7-28-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP89-1812-000, et al.]

El Paso Natural Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP89-1812-000]

July 19, 1989.

Take notice that on July 14, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-1812-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Union Oil Company of California (Union Oil), a producer, under the blanket certificate issued in Docket No. CP88-433-00, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that pursuant to a transportation service agreement dated April 21, 1989, under its Rate Schedule T-1, it proposes to transport up to 86,000 MMBtu per day equivalent of natural gas for Union Oil. El Paso states that it would transport the gas from any receipt point on its system, as provided in Exhibit "A" of the transportation agreement, and would deliver the gas to a delivery point on the borderline between the States of Arizona and California near Topock, Arizona, as shown in Exhibit "B" of the agreement.

El Paso advises that service under § 284.233(a) commenced June 1, 1989, as reported in Docket No. ST89-3943-000. El Paso further advises that it would transport 45,000 MMBtu on an average day and 16,425,000 MMBtu annually.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. El Paso Natural Gas Company

[Docket No. CP 89-1813-000]

July 19, 1989

Take notice that on July 14, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-1813-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Independents' Gas Services (Independents' Gas), a producer, under the blanket certificate issued in Docket No. CP88-433-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that pursuant to a transportation service agreement dated January 10, 1989, under its Rate Schedule T-1, it proposes to transport up to 52,750 MMBtu per day equivalent of natural gas for Independents' Gas. El Paso states that it would transport the gas from any receipt point on it system, as provided in Exhibit "A" of the transportation agreement, and would deliver the gas to delivery points in the states of Colorado, New Mexico, Oklahoma, and Texas, as shown in Exhibit "B" of the agreement.

El Paso advises that service under § 284.223(a) commenced May 27, 1989, as reported in Docket No. ST89-3896-000. El Paso further advises that it would transport 5,275 MMBtu on an average day and 1,925,375 MMBtu annually.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Trunkline Gas Company

[Docket No. CP89-1778-000]

July 19, 1989.

Take notice that on July 11, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-1778-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Natural Gas Clearinghouse (N.G.C.) under the blanket certificate issued in Docket No. CP86-586-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline states that it proposes to transport up to 50,000 dt per day on an interruptible basis on behalf of N.G.C. pursuant to a Transportation Agreement dated February 24, 1989, between Trunkline and N.G.C. (Transportation Agreement). The Transportation Agreement provides for Trunkline to receive gas from various existing points of receipt on its system. Trunkline will then transport and redeliver subject gas, less fuel and unaccounted for line loss, to Sabine Pipeline Company (Sabine) in Vermillion County, Louisiana.

Trunkline also states that the estimated daily and estimated annual quantities would be 5,000 dt and 1,825,000 dt, respectively.

Trunkline further states that it commenced this service June 1, 1989, as reported in Docket No. ST89-3978-000.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Columbia Gulf Transmission Company

[Docket No. CP89-1768-000]

July 19, 1989.

Take notice that on July 11, 1989, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP89-1768-000 a request pursuant to §§ 175.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform a firm transportation service for Exxon Corporation (Exxon), a producer, under Columbia Gulf's blanket certificate issued in Docket No. CP86-239-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia Gulf states that pursuant to a transportation agreement dated June 1, 1989, it proposes to receive up to 22,000 million Btu of natural gas per day from Exxon at a specified point in St. Mary Parish, Louisiana and redeliver the gas at a specified point in Acadian Parish, Louisiana. Columbia Gulf estimates that the peak day and average day volumes would be 22,000 million Btu's and that the annual volumes would be 8,030,000 million Btu's. It is stated that on June 1, 1989, Columbia Gulf commenced a 120-day transportation service for Exxon under § 284.223(a), as reported in Dockedt No. ST89-3921-000.

Columbia Gulf further states that no facilities need be constructed to implement the service. Columbia Gulf states that the agreement provides for a term expiring on October 31, 1989. Columbia Gulf proposes to charge rates and abide by the terms and conditions of its Rate Schedule FTS-2.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Gas Transmission Corporation

[Docket No. CP89-1771-000]

July 19, 1989.

Take notice that on July 11, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1771-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Penzoil Products Company (Penzoil), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 4,500 MMBtu of natural gas on a peak day, 2,200 MMBtu on an average day and 803,000 MMBtu on an annual basis for Penzoil. Texas Gas states that it would perform the transportation service for Penzoil under Texas Gas' Rate Schedule IT. Texas Gas indicates that it would transport the gas form various receipt points to a delivery point located in Warren County, Ohio.

It is explained that the service commenced June 7, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3932. Texas Gas indicates that no new facilities would be necessary to provide the subject service.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Trunkline Gas Company

[Docket No. CP89-1779-000]

July 19, 1989.

Take notice that on July 11, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1779-000 a request pursuant to §§ 157.205(b) and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis for Natural Gas Clearinghouse, Inc. (N.G.C.), a shipper and marketer of natural gas, under its blanket certificate issued in Docket No. CP86-586-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline states that the maximum daily, average daily and annual quantities that it would transport for N.G.C. would be 50,000 dt equivalent of natural gas, 2,000 dt equivalent of natural gas and 730,000 dt equivalent of natural gas, respectively.

Trunkline states that it would transport natural gas for N.G.C. from various points in Illinois, Louisiana, offshore Louisiana, Texas and Tennessee to a delivery point in Bolivar County, Mississippi.

Trunkline indicates that in a filing made with the Commission in Docket ST89-3977, it reported that transportation service for N.G.C. commenced on June 1, 1989 under the 120-day automatic authorization provisions of Section 284.223(a).

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1780-000]

July 19, 1989.

Take notice that on July 11, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1780-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on an interruptible basis, for Consolidated Fuel Corporation (Consolidated), a market of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated May 18, 1989, between Panhandle and Consolidated (Agreement), Panhandle would transport up to 30,000 dekatherms (Dt.) per day equivalent of natural gas for Consolidated. Panhandle further states that the Agreement provides for it to receive the natural gas at existing points of receipt on its system in the states of Colorado, Kansas, Oklahoma and Texas. Panhandle would then transport and redeliver the natural gas, less fuel used and unaccounted-for line loss, to Haven Pool in Reno County, Kansas.

Panhandle states that Consolidated has indicated that the estimated daily and estimated annual quantities would be 20,000 Dt. and 7,300,000 Dt., respectively.

Panhandle states that service under § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)) commenced on June 1, 1989, as reported in Docket No. ST89-3968-000.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Tennessee Gas Pipeline Company

[Docket No. CP89-1781-000]

July 19, 1989.

Take notice that on July 12, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1781-000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Ultramar Oil & Gas Limited (Ultramar), a producer of natural gas, under its blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that the maximum daily, average daily and annual quantities that it would transport for Ultramar would be 3,300 dt equivalent of natural gas, 3,300 dt equivalent of natural gas and 1,204,500 dt equivalent of natural gas, respectively.

Tennessee indicates that in Docket No. ST89-3993, filed with the Commission on June 27, 1989, it reported that transportation service for Ultramar had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89-1799-000]

July 19, 1989.

Take notice that on July 12, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188 filed in Docket No. CP89-1799-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Centran Corporation (Centran), under the authorization issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern would perform the proposed interruptible transportation service for Centran, a marketer of natural gas, pursuant to an interruptible transportation agreement IT-1 dated June 1, 1989 (transportation agreement number 72704). The term of the transportation agreement is for two years from the date of initial delivery, and month to month thereafter unless terminated upon 30 days prior written notice to the other party. Northern proposes to transport on a peak day up to 10,000 MMBtu; on an average day up to 7,500 MMBtu; and on an annual basis 3,650,000 MMBtu of natural gas for Centran. It is stated that unless Northern agrees in writing to a lower rate, Centran shall pay Northern each month for transportation service at the maximum rates or charges in effect from time to time under Rate Schedule IT-1, or any effective superseding rate schedule on file with the Commission. Northern proposes to receive the subject gas from various existing receipt points on its system for transportation to various existing delivery points on its system. Northern avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. Northern commenced such self-implementing service on June 19, 1989, as reported in Docket No. ST89-3945-000.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Colorado Interstate Gas Company

[Docket No. CP89-1800-000]

July 19, 1989.

Take notice that on July 12, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-1800-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Questar Energy Company (Questar), a marketer of natural gas, under CIG's blanket certificate issued in Docket No. CP86-589, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to transport, on an interruptible basis, up to 15,000 Mcf of natural gas per day for Questar pursuant to a transportation agreement dated December 1, 1988, between CIG and Questar. CIG would receive gas from various existing points of receipt on its system in Kansas, Wyoming, and Colorado and redeliver equivalent volumes of gas, less fuel gas and lost and unaccounted-for gas, for the account of Questar in Sherman County, Texas.

CIG further states that the estimated average daily and annual quantities would be 5,000 Mcf and 1,825,000 MMcf, respectively. Service under § 284.223 (a) commenced on May 7, 1989, as reported in Docket No. ST89-3560-000, it is stated.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Northern Natural Gas Company Division of Enron Corporation

[Docket No. CP89-1802-000]

July 19, 1989.

Take notice that on July 12, 1989, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1802-000, a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for General Atlantic Resources Inc., (General), a producer of natural gas, under the certificate issued in Docket No. CP88-435-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern requests authorization to transport up to 30,000 MMBtu of natural gas per day, pursuant to a May 24, 1989, agreement between Northern and General from receipt points located in New Mexico to delivery points located in Kansas, New Mexico, Oklahoma and Texas. Northern would provide the service to General under the provisions of its Rate Schedule IT-1, it is indicated. Northern further states that the average and annual quantities would be 22,500 MMBtu and 10,950,000 MMBtu, respectively.

Northern states that the transportation of natural gas for General commenced May 24, 1989, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations as reported in Docket No. ST89-3998-000.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Southern Natural Gas Company

[Docket No. CP89-1804-000]

July 19, 1989.

Take notice that on July 12, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-1804-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Hadson Gas Systems, Inc. (Hadson), under Southern's blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern requests authorization to transport, on an interruptible basis, up to a maximum of 20,000 MMBtu of

natural gas per day for Hadson from receipt points located in Offshore Texas, Offshore Louisiana, Texas, Louisiana, Mississippi and Alabama to delivery points located in Gerogia and Alabama. Southern anticipates transporting an annual volume of 7,300,000 MMBtu.

Southern states that the transportation of natural gas for Hadson commenced May 13, 1989, as reported in Docket No. ST89-3734-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Southern in Docket No. CP88-316-000.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Colorado Interstate Gas Company

[Docket No. CP89-1833-000]

July 20, 1989.

Take notices that on July 18, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado, 80944, filed in Docket No. CP89-1833-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for NAGASCO, Inc. (NAGASCO), a marketer of natural gas, under CIG's blanket certificate issued in Docket No. CP86-589, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to transport, on an interruptible basis, up to 75,000 Mcf of natural gas per day for NAGASCO pursuant to a transportation agreement dated May 3, 1989, between CIG and NAGASCO. CIG would receive gas from various existing points of receipt on its system in Moore County, Texas and redeliver equivalent volumes of gas, less fuel gas and lost and unaccounted-for gas, for the account of NAGASCO in Sweetwater County, Wyoming.

CIG further states that the estimated average daily and annual quantities would be 60,000 Mcf and 22,000,000 Mcf, respectively. Service under § 284.223(a) commenced on May 8, 1989, as reported in Docket No. ST89-3851-000, it is stated.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Colorado Interstate Gas Company

[Docket No. CP89-1822-000]

July 20, 1989.

Take notice that on July 17, 1989, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-1822-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Grace Petroleum Corporation (Grace), under the blanket certificate issued in Docket No. CP86-589, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG states that pursuant to a transportation service agreement dated March 1, 1989, under its Rate Schedule TI-1, it proposes to transport up to 10,000 Mcf per day of natural gas for Grace. CIG states that it would transport the gas from various existing points of receipt on its system in Wyoming, and would redeliver the gas, less fuel gas and lost and unaccounted-for gas, for the account of Grace in Beaver County, Oklahoma; Weld and Kiowa Counties, Colorado; Park, Fremont, Sweetwater and Converse Counties, Wyoming; Moore and Sherman Counties, Texas; and Kearny County, Kansas.

CIG advises that service under § 284.223(a) commenced May 19, 1989, as reported in Docket No. ST89-3849-000. CIG further advises that it would transport 10,000 Mcf on an average day and 3.65 Bcf annually.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Williams Natural Gas Company

[Docket No. CP89-1823-000]

July 20, 1989.

Take notice that on July 17, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-1823-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Stone Container-Resources & Energy Division (Stone), a marketer, under the blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG states that pursuant to a transportation service agreement dated May 15, 1989, under its Rate Schedule ITS, it proposes to transport up to 10,000 MMBtu per day equivalent of natural gas for Stone. WNG states that it would transport the gas from various receipt points in Kansas, Oklahoma and Wyoming, and would deliver the gas to various delivery points on WNG's pipeline system located in Kansas and Missouri.

WNG advises that service under § 284.223(a) commenced June 1, 1989, as reported in Docket No. ST89-4041-000. WNG further advises that it would transport 10,000 MMBtu on an average day and 3,650,000 MMBtu annually.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Columbia Gulf Transmission Company

[Docket No. CP89-1767-000]

July 21, 1989.

Take notice that on July 11, 1989, Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama, Houston, Texas 77027, filed in Docket No. CP89-1767-000 a request pursuant to §§ 157.205 and 284.223(b) of the Federal Energy Regulatory Commission's (Commission) Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Phibro Distributors Corporation (Phibro), a marketer of natural gas, under Columbia Gulf's blanket certificate issued in Docket No. CP86-239-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia Gulf states that pursuant to transportation service agreements dated May 12, 1989, it proposes to receive from Phibro, on an interruptible basis, up to 100,000 MMBtu of natural gas per day at specified points located onshore and offshore Texas and Louisiana, and to redeliver the gas at specified delivery points located onshore and offshore Texas and Louisiana and in Mississippi and Tennessee. The volume anticipated to be transported on a peak day is a maximum of 100,000 MMBtu, and on an average day up to 50,000 MMBtu, and based on an average-day figure, approximately 18,250,000 MMBtu on an annual basis.

Columbia Gulf states that on June 1, 1989, it commenced the transportation service for Phibro under the 120-day automatic authorization provisions of § 284.223(a) of the Commission's Regulations as reported with the Commission in Docket No. ST89-3974-000.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Williams Natural Gas Company

[Docket No. CP89-1826-000]

July 21, 1989.

Take notice that on July 17, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa Oklahoma 74101, filed in Docket No. CP89-1826-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of The Kansas Power & Light Company (KPL), a local distribution company, under WNG's blanket certification issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG proposes to transport, on an interruptible basis, up to 100,000 MMBtu equivalent of natural gas on a peak day, 100,000 MMBtu equivalent on an average day and 36,500,000 MMBtu equivalent on an annual basis for KPL. It is stated that WNG would receive the gas for KPL's account at various receipt points on WNG's system in Kansas, Missouri, Oklahoma, Texas, and Wyoming and would deliver equivalent volumes at various points on WNG's system in Kansas, Missouri, Nebraska and Oklahoma. It is asserted that the transportation service would use existing facilities and would not require the construction of additional facilities. It is explained that the transportation service commenced June 1, 1989, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4036.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1829-000]

July 21, 1989.

Take notice that on July 17, 1989, Panhandle Eastern Pipe Line Company (Panhandle) P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1829-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for Boyd Rosene and Associates, Inc. (Boyd), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Specifically, Panhandle requests authority to transport up to 85,000 dt per day on an interruptible basis, pursuant to a transportation agreement dated May 18, 1989, between Panhandle and Boyd. Panhandle states that the transportation agreement provides for Panhandle to receive gas from various existing points of receipt on its system in the states of Colorado, Kansas, Oklahoma, and Texas. Panhandle states that it would then redeliver subject gas, less fuel used and unaccounted for line loss, to Haven Pool in Reno County, Kansas. Panhandle indicates that the total volume of gas to be transported for Boyd on a peak day would be 85,000 dt; on an average day would be 20,000 dt; and on an annual basis would be 7,300,000 dt. It is further stated that the average day and annual volumes are based upon Boyd's estimates, and the actual volumes are dependent upon Boyd's requirements.

Panhandle states that it commenced the transportation of natural gas for Boyd on June 1, 1989, at Docket No. ST89-4136-000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. Panhandle indicates that it proposes no new facilities in order to provide this transportation service.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1819-000]

July 21, 1989.

Take notice that on July 17, 1989 Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-1819-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Union Texas Products Corporation (Union), a shipper and marketer of nautral gas pursuant to Panhandle's blanket certificate issued in Docket No. CP86-585-000 and section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Panhandle requests authority to transport up to 20,000 Dt. per day on an interruptible basis on behalf of Union pursuant to a Transportation Agreement dated June 2, 1989 between Panhandle and Union (Transportation Agreement). The Transportation Agreement provides for Panhandle to receive gas from various existing points of receipt on its system. Panhandle will then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to U.T. Chester Plant in Woodward County, Oklahoma.

The Shipper states that the estimated daily and estimated annual quantities would be 20,000 Dt and 7,300,000 Dt., respectively. Service under § 284.223(a) commenced on June 2, 1989, as reported in Docket No. ST89-4050-000.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Northern Natural Gas Company, Division of Enron Corporation

[Docket No. CP89-1803-000]

July 21, 1989.

Take notice that on July 12, 1989, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 75251-1188, filed in Docket No. CP89-1803-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation for Sonat Marketing Company (Sonat), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000 under section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Northern states that it proposes to transport, on an interruptible basis, up to 20,000 million Btu of natural gas per day for Sonat from a receipt point in Fort Bend County, Texas and to a delivery point in Haskell, Kansas. Northern anticipates transporting 15,000 million Btu of natural gas on an average day and 7,300,000 million Btu of natural gas on an annual basis. Northern also states that construction of facilities will not be required to provide the proposed service.

Northern states that the transportation of natural gas for Sonat commenced on June 2, 1989, as reported in Docket No. ST89-3970-000, for a 120-day period pursuant to § 284.223 (a)(1) of the Commission's Regulations and the blanket certificate issued to Northern in Docket No. CP86-435-000.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

21. K N Energy, Inc.

[Docket No. CP89-1811-000]

July 21, 1989.

Take notice that on July 14, 1989, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado, 80215 filed, in

Docket No. CP89-1811-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 205) for authorization to construct and operate three sales taps for delivery of gas to end users under Applicant's blanket certificate issued in Docket No. CP83-140-000, CP83-140-001 and CP83-140-002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in request which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate three sales taps along its jurisdictional pipeline in the states of Nebraska and Wyoming. Applicant states that the gas would be used for irrigation, grain drying and domestic purposes with maximum daily and annual volumes of 319 Mcf, respectively.

Applicant asserts that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on Applicant's peak day and annual deliveries.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. Northwest Pipeline Company

[Docket No. CP89-1814-000]

July 21, 1989.

Take notice that on July 14, 1989, Northwest Pipeline Corporation (Northwest), 285 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1814-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Roseburg Forest Products Co., (Roseburg), an end user of natural gas, under Northwest's blanket certificate issued in Docket No. CP88-578-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport natural gas for Roseburg pursuant to the Rate Schedule TI-1, for a term continuing to February 10, 1989, and on a yearly basis thereafter. It is stated that the volumes of natural gas to be transported are 1,800 MMBtu on a peak day, 100 MMBtu on an average day, and 36,500 MMBtu on an annual basis, and that Northwest would transport the subject gas through its system from any transportation receipt point to any transportation delivery point on its system. Northwest states that service under § 284.223(a) commenced on June 10, 1989, as reported in Docket No. ST89-4096-000, filed July 3, 1989.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. Williams Natural Gas Company

[Docket No. CP89-1825-000]

July 21, 1989.

Take notice that on July 17, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-1825-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Consolidated Fuel Corporation (Consolidated), a marketer, under the blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport on an interruptible basis for Consolidated up to 20,000 MMBtu of natural gas on a peak day, approximately 20,000 MMBtu on an average day, and 7,300,000 MMBtu on an annual basis. Williams states that it would transport this gas from various receipt points in Colorado, Kansas, Oklahoma, Texas and Wyoming to various delivery points on Williams' system in Missouri. Williams explains that service commenced June 8, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4093-000.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. Northern Natural Gas Company

[Docket No. CP89-1821-000]

July 21, 1989.

Take notice that on July 17, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, Houston, Texas 77251, filed in Docket No. CP89-1821-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install a new delivery point to serve Peoples Natural Gas Company, Division of Utilitcorp United Inc. (Peoples), under its blanket authorization issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to install a new delivery point in order to serve Peoples' residential resale natural gas customers in the Barrington Lake subdivision of Dubuque County, Iowa. Northern proposes to deliver up to 138 Mcf on a peak day and 15,873 Mcf on an annual basis to Peoples. Northern also states that its deliveries to Peoples would be within the firm entitlements authorized for Peoples on April 7, 1989, in Docket No. CP89-677-000.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

25. Northwest Pipeline Company

[Docket No. CP89-1810-000]

July 21, 1989.

Take notice that on July 14, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1810-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act for Union Pacific Resources Company (Union Pacific), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport gas for Union Pacific, on an interruptible basis, pursuant to a transportation agreement dated May 29, 1989, as amended June 19, 1989. Northwest explains that service commenced June 11, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-4097-000. Northwest further explains that the peak day quantity would be 15,000 MMBtu, the average daily quantity would be 10,000 MMBtu, and that the annual quantity would be 3,650,000 MMBtu. Northwest explains that it would receive natural gas for Union Pacific's account from various sources and interconnects with other pipeline companies in Wyoming, Colorado, Utah, Oklahoma, Washington, and Oregon and would redeliver the gas for Union Pacific's account at essentially all the delivery points located on Northwest's system in Oregon, Idaho, Colorado, Utah, Washington, and Wyoming.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

26. Williams Natural Gas Company

[Docket No. CP89-1824-000]

July 21, 1989.

Take notice that on July 17, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa Oklahoma 74101, filed in Docket No. CP89-1824-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide transportation for Mountain Iron & Supply Company (Mountain Iron), a marketer of natural gas, under WNG's blanket certificate issued in Docket No. CP86-631-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG requests authorization to transport natural gas on an interruptible basis for Mountain Iron from various points of receipt in Kansas and Oklahoma to various delivery points on WNG's pipeline system located in Kansas and Missouri. WNG states that the volumes of natural gas to be transported would be 1,000 MMBtu on a peak day, 1,000 MMBtu on an average day, and 365,000 MMBtu on an annual basis. WNG further states that transportation under § 284.223(a) of the Commission's Regulations commenced June 1, 1989, as reported in Docket No. ST89-4040-000.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

27. El Paso Natural Gas Company

[Docket No. CP89-1816-000]

July 21, 1989.

Take notice that on July 14, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978 filed a request for authorization at Docket No. CP89-1816-000, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations Under the Natural Gas Act, to provide interruptible transportation service for Gulf Gas Utilities Company (Shipper), under its blanket certificate issued at Docket No. CP88-433-000, all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

El Paso requests authority to transport up to 79 MMBtu of natural gas per day for Shipper from any point of receipt on El Paso's system to a point of delivery in the State of New Mexico. El Paso states that the estimated daily and annual quantities would be 79 MMBtu and 28,835 MMBtu, respectively. El Paso further states that transportation service under § 284.223(a) commenced on June 15, 1989, as reported at Docket No. ST89-4098-000.

Comment date: September 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the

Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17756 Filed 7-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA89-1-31-003, TQ89-3-31-002, RP89-52-002]

Arkla Energy Resources; Filing of Revised Tariff Sheets, Reflecting Tariff Adjustment and Take-or-Pay Recovery

July 24, 1989

Take notice that on July 19, 1989, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the tariff sheets listed on Appendix A, attached to the filing.

AER states that its revised tariff sheets reflect revisions to its PGA clause to more clearly describe the direct billing to Williams Natural Gas Company that was approved by Commission order dated March 31, 1989, also revisions to clarify the determination of demand costs in the total rate under Rate Schedule G-2 and corrections of clerical errors in the tariff sheets filed in its PGAs effective April 1, 1989 and July 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 31, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17746 Filed 7-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA89-1-4-004 and TQ89-7-4-001]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

July 24, 1989.

Take notice that on July 18, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing the revised tariff sheets listed below in its FERC Gas Tariff, First Revised Volume No. 1 containing changes in rates for effectiveness on the dates shown below:

Proposed Effective Dates

Substitute Twenty-Third Revised Sheet No. 7, January 1, 1989.
Second Substitute Twenty-Fourth Revised Sheet No. 7, February 1, 1989.
Second Substitute Twenty-Fifth Revised Sheet No. 7, April 1, 1989.
Second Substitute Twenty-Sixth Revised Sheet No. 7, May 1, 1989.
Substitute Twenty-Seventh Revised Sheet No. 7, July 1, 1989.
Substitute Twenty-Seventh Revised Sheet No. 7, July 1, 1989.

According to Granite State the revised tariff sheets are submitted in compliance with an order terminating a technical conference in Docket No. TA89-1-4-000, *et al.*, issued June 22, 1989, and a letter order in Docket No. TQ89-7-4-000, issued July 7, 1989. Granite State states that the June 22, 1989 order resulted from a review of its first annual purchased gas cost filing, including an examination of Granite State's accounting in its deferred purchase gas cost accounts for imbalances in transportation service deliveries. It is stated that the order terminating the technical conference directed Granite State to remove from its deferred purchase gas cost accounts the carrying charges on transportation gas volumes not delivered and to recalculate the surcharge adjustments for deferred purchase gas costs accordingly. It is further stated that the July 7, 1989 letter order, relating to Granite State's quarterly purchased gas adjustment, effective July 1, 1989, directed Granite State to refile the tariff sheet stating the revised rates in that filing to correct the Current Adjustment applicable to its Rate Schedule CD-2 rates.

Granite State further states that copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the

BEST COPY AVAILABLE

regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before July 31, 1989. Protests will be considered by the Commission in determinng the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17747 Filed 7-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-5-16-001]

National Fuel Gas Supply Corp.; Filing

July 24, 1989.

Take notice that on July 18, 1989, National Fuel Gas Supply Corporation (National) filed Substitute Second Revised Sheet No. 71-D and Substitute Third Revised Sheet No. 72-D to its FERC Gas Tariff, First Revised Volume No. 1, to be effective August 1, 1989.

National states that these tariff sheets correct the take-or-pay principal amount and total monthly allocation attributable to Tennessee Gas Pipeline Company's take-or-pay costs.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before July 31, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17748 Filed 7-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1830-000]

Texas Gas Transmission Corp; Request Under Blanket Authorization

July 24, 1989.

Take notice that on July 18, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1830-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of TXG Gas Marketing Company (TXG) under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport, on an interruptible basis, up to a maximum of 70,000 MMBtu of natural gas per day for TXG from receipt points located in Arkansas, Illinois, Indiana, Kentucky, Louisiana, offshore Louisiana, Ohio, Texas and offshore Texas to delivery points located in Louisiana. Texas Gas anticipates transporting, on an average day 5,000 MMBtu and an annual volume of 2,007,500 MMBtu.

Texas Gas states that the transportation of natural gas for TXG commenced June 2, 1989, as reported in ST89-4055-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Texas Gas in Docket No. CP88-686-000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17749 Filed 7-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1808-000]

Transco Energy Ventures Co.; Petition for Declaratory Order

July 24, 1989.

Take notice that on July 13, 1989, Transco Energy Ventures Company (Tevco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1808-000, a petition for an order declaring that a certain activity as proposed by Tevco is a temporary act or operation for which the issuance of a certificate under section 7(c) of the Natural Gas Act (NGA) is not required in the public interest and is therefore exempt from the requirements of that section. The activity, it is stated, for which Tevco seeks the exemption is the operational field testing of a new prototype low cost, high efficiency compressor design at Transcontinental Gas Pipe Line Corporation's (Transco) Compressor Station 100 in Chilton County, Alabama, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is stated that Tevco, in conjunction with Pipeline Compressor Systems, Inc, has designed and developed a new high efficiency, low cost 8,000 horsepower monobloc gas pipeline compressor. It is also stated that a prototype of this compressor design has been constructed and undergone complete and extensive full load factory testing. Tevco states that it is now prepared to perform final testing and evaluation of the compressor under actual field operating conditions and upon the successful completion of such testing, to begin commercial manufacture and marketing of this new low cost compressor.

Tevco states that the Monobloc compressor represents an advancement in pipeline compressor technology resulting in significant savings in capital and operating and maintenance costs over conventional compressor systems. Tevco states that the compressor is comprised of a high speed, high efficiency induction motor driving two separate compressor sections. It is explained that the motor's rotor is supported by extremely low friction magnetic radial and thrust bearing and is driven by a solid state variable frequency drive system. Also, it is explained, the compressor's controls include valve sequencing, auto start/shutdown and various system monitoring and shutdown devices.

Tevco states that it has caused extensive in-house factory testing of the Monobloc to be performed; however, prior to introduction to market, the Monobloc must be tested under actual operating conditions for a period of approximately three to five years to evaluate the system's reliability. It is stated that Transco has agreed to permit Tevco to place in service and test the Monobloc at Compressor Station 100 on Transco's pipeline located in Chilton County, Alabama.

Tevco maintains that the testing of the Monobloc is a temporary and minor operation. Tevco explains that the Monobloc's testing will be temporary, three to five years depending upon the initial degree of success of the test. Tevco also explains that the test is a minor operation in that it affects only one compressor station on Transco's pipeline and will not require the replacement or removal of any existing equipment. It is further explained that testing of the Monobloc will have no effect on Transco's rates. It is stated that Tevco and Transco have entered into a lease arrangement to facilitate the testing of the Monobloc and that Transco has agreed to pay Tevco an amount equal to the cost Transco would have otherwise incurred in operating its own compressor equipment. It is also stated that Transco's ratepayers will not bear any costs associated with system design, prototype construction, equipment procurement, site preparation, installation or operation and maintenance of the Monobloc compressor. In addition, it is stated that the Monobloc compressor will be installed in parallel with Transco's existing equipment which will serve as a back-up should the Monobloc experience a failure or be shut down for evaluation or maintenance. It is stated that should the need arise, Transco's existing equipment can immediately be placed on line without affecting service.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 14, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17750 Filed 7-28-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $1,078,000,000, plus accrued interest, in crude oil violation amounts obtained from Texaco Inc., Case No. KFX-0066. The OHA has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Applications for refund must be filed in duplicate by October 31, 1989, or 90 days after the publication of this Notice in the **Federal Register**, whichever is later, and should be addressed to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2860.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the final procedures that the DOE has formulated to distribute crude oil overcharge funds obtained from Texaco Inc. pursuant to a Consent Order made final on August 29, 1988. The first installment of these funds is being held in an interest-bearing escrow account pending distribution by the DOE and future installments will be remitted to the DOE over the next five years.

The OHA has decided to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined petroleum products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund must be filed in duplicate by October 31, 1989 or 90 days after the publication of this Notice in the **Federal Register**, whichever is later, and should be sent to the address set forth at the beginning of this notice. The information which claimants should include in their applications is explained in the Decision which immediately follows. Any claimant that has already filed a crude oil refund application need not file again.

Date: July 25, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

July 25, 1989.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Texaco Inc.

Case Number: KFX-0066.

Date of Filing: September 28, 1988.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures pursuant to the guidelines set forth in 10 CFR Part 205, Subpart V (Subpart V). *See* 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price and allocation regulations where the identity of such persons or the amount of their refunds cannot be readily ascertained by the ERA. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

On September 28, 1988, the ERA filed a Petition for the Implementation of Special Refund Procedures to distribute funds received from Texaco Inc. (Texaco) under the terms of an August 29, 1988 consent order with Texaco. Pursuant to the terms of the consent order, Texaco is required to remit a total of $1,198,000,000 to the DOE for distribution in accordance with 10 CFR Part 205, Subpart V.[1] On September 28, 1988, Texaco remitted to the DOE an initial payment of $348 million which was deposited in an interest-bearing escrow account maintained by the U.S. Treasury. As of June 30, 1989,

[1] In accordance with the terms of the consent order, Texaco has also remitted $52,000,000 to the United States District Court of the District of Kansas in settlement of its obligations in the DOE Stripper Well Exemption Litigation, M.D.L. 378.

$20,285,608.77 in interest had accrued on this amount. As stated in the consent order, Texaco has agreed to pay the balance of its obligation in accordance with the following timetable:

(a) $190 million plus accrued interest within 18 months of the effective date of the consent order.

(b) 4 annual payments of $165 million plus accrued interest.

On March 24, 1989, the OHA issued a Proposed Decision and Order (PDO) tentatively establishing Subpart V procedures for the distribution of the Texaco consent order fund. *Texaco Inc.*, 54 FR 13420 (April 3, 1989). This Decision and Order finalizes the procedures to be used for distributing that portion of the Texaco consent order funds which is attributable to alleged crude oil violations.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy concerning crude oil overcharges. 51 FR 27899 (August 4, 1986) ("the MSRP"). The MSRP, which was issued as a result of a court-approved Final Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378 (D. Kan.), provides that crude oil overcharge monies will be divided among the states, federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge monies may be reserved initially to satisfy valid claims by injured purchasers of crude oil and refined petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has decided to apply the MSRP in all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 6, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987). The Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the Subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of price controls and prove that they were injured by the alleged crude oil overcharges. The Notice indicated that end-users of petroleum products whose businesses were unrelated to the petroleum industry will not be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per-gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would include the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement and a portion of the funds in the MDL 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 1987 Notice, *see, e.g., Shell Oil Co.*, 17 DOE ¶ 85,204 (1988), and *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988), and these procedures have been approved by the United States District Court for the District of Kansas. Various States had filed a motion with that Court, claiming that the OHA had violated the Settlement Agreement by employing presumptions of injury and by improperly calculating the refund amount to be used in this proceeding. On August 17, 1987, the Court issued an Opinion and Order denying the States' motion in its entirety. The court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *In Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318, 1323 (D. Kan. 1987). The court also ruled that, as specified in the April 1987 Notice, the OHA could calculate refunds by including a portion of the M.D.L. 378 overcharges. The latter ruling was affirmed by the Temporary Emergency Court of Appeals. *In Re: The Department of Energy Stripper Well Exemption Litigation*, 857 F. 2d 1481 (Temp. Emer. Ct. App. 1988).

II. The Proposed Decision and Order

As stated above, on March 24, 1989, the OHA issued a Proposed Decision and Order tentatively establishing procedures for the distribution of the $1,198,000,000 Texaco consent order fund, plus interest. In the PDO, we proposed to divide the consent order fund into two pools: a refined product pool consisting of $120,000,000 plus accrued interest, and a crude oil pool of $1,078,000,000 plus accrued interest. We believed this was the most reasonable way to divide the funds and it was consistent with the division suggested by ERA in its Notices announcing the signing and finalization of the Texaco consent order. *See* 53 FR 15106 (April 27, 1988); 53 FR 32929 (August 29, 1988). The refined product pool would be made available to purchasers of Texaco refined products who demonstrate that they were injured as a result of Texaco's alleged regulatory violations in the sale of these products. Additionally, we proposed that the total refined product amount be taken out of Texaco's initial payment of $348 million. We further proposed that the crude oil pool would be distributed in accordance with the MSRP and the April 1987 Notice. We proposed that the crude oil fund would be comprised of $228 million from Texaco's initial payment and all future payments received from Texaco. In this Decision and Order, we will establish procedures for distributing the Texaco crude oil pool only. Procedures for the distribution of the refined product pool will be issued at a future date.[2]

Pursuant to the MSRP, the OHA proposed in the PDO to reserve initially 20 percent of the crude oil pool for direct restitution to applicants who claim that they were injured by the alleged crude oil violations. The remaining 80 percent of the funds would be distributed to the state and federal governments for indirect restitution. After all valid claims are paid, any remaining funds in the individual crude oil claims reserve also would be divided equally between the states and federal governments. The federal government's share ultimately would be deposited in the general fund of the Treasury of the United States.

In the PDO, the OHA proposed to require applicants for refunds from the crude oil pool to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged crude oil overcharges. We stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry could use a presumption that they absorbed the crude oil overcharges, and need not submit further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a per gallon volumetric refund amount derived by dividing the amount of funds in the crude oil pool by the total consumption of petroleum products in the United States during the period of price controls.[3] Finally, we proposed to combine the Texaco crude oil volumetric refund amount with all of the volumetric refund amounts obtained in each crude oil refund proceeding implemented to date under the MSRP. Comments were solicited regarding the tentative distribution process set forth in the Proposed Decision.

[2] In addition, this Decision does not consider proposed requirements for refund applications submitted by filing services and other representatives. *See* PDO Part IV. Those proposals, if adopted, will apply only to applications submitted in the Texaco refined product proceeding.

III. Discussion of Comments Received

In response to the Proposed Decision, the OHA received written submissions from state governments, a number of law firms, and several other representatives of potential claimants in this proceeding. In addition, on June 27, 1989, we held a public hearing at which oral testimony was presented regarding the proposed procedures. Only those comments which concern the disbursement of the crude oil pool will be considered in this Decision.

Several firms commented regarding the proper amounts of monies to be reserved for the crude oil and refined product pools. Two of the commenters, Energy Refunds Inc. (ERI) and the National Association of Texaco Wholesalers (NATW) contend that the refined product pool should be increased and the crude oil pool decreased. The NATW, an organization that represents present and former Texaco consignees and wholesalers, bases its position on the fact that the States have already been granted "extremely substantial refunds" as a result of the Stripper Well Settlement. Furthermore, the NATW contends that our proposed division of monies ignores numerous complaints filed with the DOE by petroleum product resellers that alleged that Texaco violated the Mandatory Price and Allocation Regulations pertaining to refined products. These alleged violations, the NATW claims, resulted in Texaco product resellers incurring a greater injury than refund applicants in previous Subpart V proceedings. According to the NATW, the present division of funds would be insufficient to compensate purchasers of Texaco refined products for that injury. Finally, the NATW argues that increasing the size of the refined product pool would not lessen the amount of money available to the states and federal government for indirect restitution since they would receive any excess funds after all direct claims have been paid. ERI contends that since the ERA, in its Notice announcing the signing of the Texaco consent order, determined that the maximum liability for alleged refined product violations was approximately 16 percent of its total maximum liability, the refined product pool should be increased from the proposed amount of $120,000,000 to $200,091,996, which is approximately 16 percent of the total consent order fund.

In contrast, one commentor, attorney Philip Kalodner (Kalodner), contends that the proposed crude oil pool is not large enough and the refined products pool is too large. Kalodner, who represents various end-users in the crude oil refund proceeding, asserts that a Proposed Remedial Order (PRO) issued to Texaco on May 12, 1987 (Case No. NTXROOA1), alleged violations responsible for 80 to 90 percent or more of Texaco's refined product overcharge liability. That PRO was never finalized. In contrast, he maintains the vast majority of the alleged crude oil overcharges by Texaco were the subject of a final Remedial Order. *See Texaco Inc.*, 14 DOE ¶ 83,037 (1986).[4] Kalodner concludes that the refined product pool should be reduced to $60 million and crude oil pool increased to $1,138,000,000.

We do not agree with the contentions raised in support of either increasing or decreasing the monies in the crude oil and refined product pools. Each one is flawed by self-serving arguments. Initially, it is important to reiterate our position stated in the PDO that the Texaco consent order is a negotiated compromise of all alleged violations, both known and unknown, and not a dollar for dollar settlement of the outstanding DOE enforcement proceedings involving Texaco. In the process of negotiating the consent order, the ERA evaluated the allegations raised against Texaco, and entered into a settlement that it believed fairly concluded all administrative and legal proceedings, as well as accounted for unknown allegations, litigation risks and interest payments since the date of alleged violation. *See PDO*, 54 FR at 13421 n.4; Notice of Final Consent Order with Texaco Inc., 53 FR 32929, 32931 (August 29, 1988). Accordingly, it is not proper for the commentors to attempt to rely on individual remedial orders, either proposed or final, as the sole basis for the composition of the crude oil and refined product pools. None of these proceedings had finality in any sense. Moreover, the Texaco settlement includes potential violations that have not yet ripened into enforcement documents and may not have been previously considered. None of the commentors considers the impact of these unspecified violations, and therefore, their estimates of the proper size of the crude oil and refined product pools are inadequate.[5]

Furthermore, we reject the NATW's contention that the crude oil pool should be decreased since the States (and the federal government) have already been compensated under the Stripper Well Settlement Agreement. The receipt of a portion of the Texaco crude oil monies by the state and federal governments is in no way intended to compensate these entities for their purchases of refined petroleum products on which overcharges occurred. Instead, these funds are intended to provide *indirect* restitution through state energy programs and deposits into the federal Treasury. Distribution of crude oil monies in this way has been recognized as an equitable and efficient way to provide restitution to the unidentified (and unidentifiable) purchasers of refined petroleum products. *See In Re: The Department of Energy Stripper Well Exemption Litigation* 653 F.Supp. 108 (D. Kan. 1986) (approving Settlement Agreement); *MSRP*, 51 FR. 27901. The fact that the states and the federal governments have served as a conduit for indirect restitution in no way precludes them from also serving as an effective channel for restitution for the

[3] As a number of commenters on the proposed procedures pointed out, in calculating the proposed Texaco crude oil volumetric refund amount, we erroneously used in the numerator only the 20 percent of the crude oil pool reserved for individual claimants. This error has been corrected in this Decision and Order. *See* Part IV.A., *infra*.

[4] Kalodner argues that it is likely that the DOE would have prevailed in Texaco's appeal of the Remedial Order since its basic position was accepted by the Temporary Emergency Court of Appeals in *DOE v. Louisiana*, 90 F. 2d 180 (Temp. Emer. Ct. App. 1982).

[5] Additionally, Kalodner's claim that a single PRO issued on May 12, 1987 represents the large majority of alleged refined product violations ignores the issuance of at least five Remedial Orders that involved allegations of substantial violations of the price regulations in Texaco's sales of refined products. *See Texaco Inc.*, 14 DOE ¶ 83,016 (1986) (Case No. HRO–0012) ($142,783,783 in overcharges alleged for violations in pricing and cost recoveries relating to motor gasoline and No. 2 fuel oil); 14 DOE ¶ 83,034 (1986) (Case No. HRO–0272) ($810,813.58 in overcharges for violations in pricing of motor gasoline and distillates); 14 DOE ¶ 83,047 (1986) (Case No. HRO–0273) ($1,499,781.41 in overcharges for violations in pricing of motor gasoline and distillates); 15 DOE ¶ 83,003 (1986) (Case No. HRO–0092) ($163,979.47 in overcharges for misapplication of the equal application rule in sales of NGLPs); 15 DOE ¶ 83,027 (1987) (Case No. HRO–0275) ($1,148,378.55 in overcharges for violations in the pricing of propane and $275,821.81 in cost overrecoveries); 16 DOE ¶ 83,016 (1987) (Case No. HRO–0276) ($101,324.97 in overcharges for violations in sales of propane).

Texaco crude oil funds. [6] Accordingly, we are not persuaded to increase or decrease the size of the crude oil pool. The proposed division suggested by ERA is in our opinion the most equitable split of the Texaco consent order fund and is made in recognition of both the known and unknown alleged violations committed by Texaco.

Another issue raised by commenters involves the 20 percent reserve amount we proposed for individual crude oil claims. Kalodner argues that the reserve should be increased in order to guarantee the principle of "full parity" for all refund claimants. [7] Based upon his calculations, the 20 percent reserve amount from this and other crude oil refund proceedings will not be sufficient to guarantee full parity for crude oil refund applicants.

We have repeatedly considered similar claims by Kalodner and have not found them convincing. *See, e.g., Shell Oil Co.* 17 DOE ¶ 85,204 (1988); *Hood Goldsberry*, 18 DOE ¶ 85,902 at 89,476 (1989). The Settlement Agreement specifically requires that no more than 20 percent of the total escrowed funds be reserved to pay direct claims and permits only downward adjustment of the reserve from the initial 20 percent figure. Settlement Agreement ¶ IV.B.6 The 20 percent reserve amount provides sufficient funds for direct restitution, and Kalodner's concern that additional funds will be needed to pay valid claims is unwarranted. [8] Consequently, we will not reserve more than 20 percent of the Texaco crude oil pool for payments of claims, but, instead, will adopt our proposal to reserve the full 20 percent.[9]

One commenter, Michael O'N. Barron (Barron), requests that claimants who purchased crude oil directly from Texaco during the period of controls be allowed to receive a per gallon refund greater than the volumetric amount afforded to applicants whose claims are based on purchases of refined petroleum products. The OHA's procedures for granting refunds based upon direct purchases of crude oil are explained in *New York Petroleum Inc./Ashland Oil Inc.*, 16 DOE ¶ 85,613 (1987) (*New York Petroleum/Ashland*), and *Concoco Inc./Delmarva Power*, 17 DOE ¶ 85,622 (1988) (*Conoco/Delmarva*). As those cases indicate, crude oil overcharges tend to be different in type and magnitude from refined product overcharges, and imputation of a volumetric amount is not necessarily appropriate. Calculation of a refund amount for direct purchasers of crude oil is instead determined by the circumstances of the particular case. [10] We will therefore not calculate a separate volumetric refund factor for direct purchasers of crude oil.

Finally, ERI contends that resellers and retailers who filed late claims for refunds from the Stripper Well escrow accounts in Kansas should be able to receive crude oil refunds from oil overcharge funds held by the DOE without providing a detailed demonstration of injury as proposed in the PDO. To support its contention, ERI notes that resellers and retailers did not have to prove injury in order to receive refunds from the Stripper Well escrows. The firm also refers to the words of United States District Court Judge Frank Theis, who stated that "any claimant who has filed a late claim is not without a remedy. Resellers who forego filing claims under the Resellers Order may be eligible for refunds by the Department of Energy's Office of Hearings and Appeals." *In Re: The Department of Energy Stripper Well Exemption Litigation, slip op.* at 2 (D. Kan April 7, 1987). According to ERI, because Judge Theis did not state that reseller claimants needed to demonstrate injury, the OHA should not require an injury showing in a proceeding referred to by Judge Theis as the proper forum for resellers to seek a refund. Furthermore, ERI contends that a detailed demonstration of injury is "unreasonable and unattainable" for resellers, and that the OHA has already been presented with sufficient evidence in the Stripper Well proceeding to conclude that resellers were inured by crude oil overcharges. ERI's March 31, 1989 comments at 2.

We are not persuaded by ERI's comments. ERI misreads Judge Theis' comments. While he noted untimeliness in applying to the Resellers Escrow was not fatal, he simply offered another avenue. He did not predict success or prescribe that the more beneficial standards for disbursements from the Resellers Escrow be applied. Nor did he prescribe that the same standards that applied to end-user applicants in the Subpart V proceeding be applied to resellers who applied in that proceeding. In fact, the Stripper Well Settlement Agreement, which was specifically approved by Judge Theis, requires that crude oil monies in the DOE escrows be distributed in accordance with traditional Subpart V procedures, and that "each claimant must affirmatively demonstrate that it had been injured by the alleged [crude oil] violation[s] . . ." *See Stripper Well Settlement Agreement* ¶ VI.B.1.; *see also* 10 CFR § 205.280 (refunds to be made to "injured persons"). In the case of resellers, we have stated on numerous occasions that a showing of injury requires a demonstration that the alleged overcharges were absorbed and not passed through to their customers. *See, e.g.*, April 10 Notice 52 FR at 11742; *Robert H. Bennett*, 18 DOE ¶85,270 (1988).[11]

IV. The Refund Procedures

A. Refund Claims

After considering the comments received, we have concluded that

[6] Additionally, the NATW is incorrect in its claim that an increase in the size of the refined product pool would have no adverse effect other than to delay the states' receipt of these funds. If the NATW's request were granted the refined product volumetric refund amount would be increased. This would result in a larger per gallon refund amount for each successful product applicant and a corresponding reduction in the amount of money available for direct and indirect restitution for crude oil overcharges.

[7] The full parity approach of calculating the crude oil volumetric includes in the numerator of the volumetric the $1.4 billion in the M.D.L. 378 escrow account at the time of settlement minus the $415 million awarded to refiners, retailers and resellers plus the crude oil overcharge payments that were in the DOE's escrow account at the time of the Settlement Agreement and subsequent crude oil settlement amounts. This approach was adopted to compensate refund recipients in the M.D.L. 378 and Subpart V proceedings on an equal basis. This approach most fairly and equitably effectuates restitution for the injury they suffered as a result of crude oil overcharges and is also the most administratively efficient since it tends to eliminate repetitive reapplications and obviates the need to consider peaky issues of upstream overcharge absorption. *See* April 1987 Notice, 52 FR 11741.

[8] For this reason, we will not follow Kalodner's suggestion that we petition the M.D.L. 378 Court for permission to increase the reserve.

[9] The States, which in prior proceedings have requested that we reduce the reserve amount, in the present case simply request that we reduce the 20 percent reserve amount if we determine that less than that amount is necessary to pay direct claimants. It continues to be our position that we will reduce the reserve amount if we determine that the full 20 percent is not needed to pay direct claimants.

[10] In *New York Petroleum/Ashland*, the claimant relied upon the finding of a Remedial Order which stated an overcharge amount for the purchases made by the claimant. In *Conoco/Delmarva*, the claimant was an end-user of crude oil that was not a party to any remedial action taken against the firm. In order to determine an appropriate refund, we calculated a volumetric based on the total dollar amount of the crude oil pool divided by the total gallons of crude oil sold by the consent order firm. In both cases, the applicant was responsible for demonstrating that it was injured by its purchases from the consent order firm.

[11] As indicated in Part IV.A *infra*, resellers may attempt to prove injury through the use of econometric evidence of the type that was submitted in the Stripper Well evidentiary hearing. ERI has not, however, stated that it intends to make such a showing for resellers in its comments on the PDO.

$1,078,000,000 of the consent order amounts covered by this Decision, including $228 million of the Texaco funds currently available, plus interest, should be distributed in accordance with the crude oil refund procedures proposed in the PDO.[12] As indicated in Part III *supra*, we have decided to reserve initially the full 20 percent of the $228 million crude oil violation portion of Texaco's initial payment to the DOE, or $45,600,000, plus interest,[13] for direct refunds to claimants. The amount of the reserve may be adjusted downward later if circumstances warrant.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based on alleged refined product overcharges, *MAPCO, Inc.*, 15 DOE ¶85,097 (1986); *Mountain Fuel Supply Co.*, 14 DOE ¶85,475 (1986) (Mountain Fuel). As in non-crude oil cases, applicants will be required to document their purchase volumes and demonstrate that they were injured. Following Subpart V precedent, reasonable estimates of purchase volumes may be submitted. *Greater Richmond Transit Co.*, 15 DOE ¶85,028 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund. End-users of ultimate consumers of petroleum products whose businesses are unrelated to the petroleum industry and who were not subject to the DOE price regulations are presumed to have absorbed rather than passed on alleged crude oil overchargers. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased. The end-user presumption of injury is rebuttable, however. *Berry Holding Co.*, 16 DOE ¶85,405 at 88,797 (1987). If an interested party submits evidence which is of sufficient weight to rebut the end-user presumption, the applicant will be required to produce further evidence of injury.

Resellers and retailers of petroleum products must submit detailed evidence of injury, and may not use presumptions of injury established by the OHA in refund cases involving refined petroleum products.[14] They can, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶90,507 (June 19, 1985). *See* Petroleum Overcharge Distribution and Restitution Act of 1986, section 3003(b)(2), 15 U.S.C. 4502.

Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Settlement Agreement have waived their rights to apply for crude oil refunds under Subpart V. *See Mid-America Dairymen, Inc.* v. *Herrington*, 3 Fed. Energy Guidelines ¶26,617 (Temp. Emer. Ct. App. 1989); *accord, Boise Cascade Corp.*, 18 DOE ¶85,970 (1989).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil violation amount currently available ($228 million) by the total consumption of petroleum products in the United States during the period of price controls.[15] The volumetric refund amount calculated in this manner is $0.0001128 per gallon. In paying claims, we will combine all of the volumetric refund amounts obtained in each crude oil refund proceeding implemented to date under the MSRP. The total per gallon volumetric refund amount available as calculated prior to addition of the Texaco crude oil funds was $0.0009835267. *See Hood Goldsberry*, 18 DOE ¶85,902 (1989). That figure has now increased to $0.0011076067.[16] A crude oil refund applicant will be required to submit only one application for all crude oil overcharge amounts for which procedures have been implemented to date. Any party that has previously submitted a refund application in crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date. To apply for a crude oil refund, applicants should submit the following information before October 31, 1989 or 90 days from the date of publication of this Decision in the **Federal Register**, whichever is later: [17]

(1) Identifying information including the applicant's name, addres, and social security number or employer identification number, an indication whether the applicant is a corporation, the name and telephone number of a person to contact for any additional information, and the name and address of the person who should receive the refund check;

(2) A short description of the applicant's business and how it used petroleum products. If the applicant did business under more than one name, or a different name during the period of price controls, the applicant should list these names;

(3) If the applicant's firm is owned by another company, or owns other companies, a list of those other companies' names and their relationships to the applicant's firm;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973, through January 27, 1981, the number of gallons of each product purchased during each year of that period, and the total number of gallons for all products purchased on which the applicant bases its claim;

(5) An explanation of how the applicant obtained the volume figures above, and an explanation of its method of estimation if the applicant used estimates to determine its purchase volumes;

(6) A statement that neither the applicant, its parent firm, affiliates, subsidiaries, successors nor assigns has waived any right it may have to receive a refund in these cases (i.e. that it has not filed for a refund from any of the escrow accounts established pursuant to the Settlement Agreement);

(7) If the applicant is not an end-user whose business is unrelated to the petroleum industry, a showing that the applicant was injured by the alleged overcharges (i.e., that the applicant did not pass the overcharges through to its own customers); and

(8) If the applicant is a regulated utility that purchased more than 5 million gallons of petroleum products, a certification that it will notify the state utility commission of any refund received and that it will pass on the entirety of its refund to its retail customers.

All applications should be typed or printed, clearly labelled "Application for

[12] As of June 30, 1989, $13,291,130.87 in interest had accrued on the $228 million. Therefore, the portion of the crude oil pool that will be disbursed pursuant to this Decision and Order totals $241,291,130.87.

[13] As of June 30, 1989, $2,858,226.17 in interest had accrued on this amount.

[14] They also cannot use the end-user presumption of injury for those gallons consumed for their own use in their petroleum operations. *See Martin Gas Sales, Inc.*, 18 DOE ¶85,545 (1989).

[15] We will use the estimate that 2,020,997,335,000 gallons of petroleum products were consumed in the United States during the period August 1973 through January 1981. *Mountain Fuel*, 14 DOE at 88,888 n.4 (1986).

[16] This volumetric amount will increase as future payments are received from Texaco. Based on the crude oil violation monies previously received by the DOE, the OHA recently announced that it was increasing the refund rate at which escrow applicants in these proceedings are paid to $0.0008 per gallon. *See Crude Oil Supplemental Refund Distribution*, 18 DOE ¶85,878 (1989). This refund rate will be increased, from time to time, to reflect any additional monies received by the DOE.

[17] This application deadline applies to applications for refunds from all crude oil monies to be remitted by Texaco, including future payments.

Crude Oil Refund," submitted in duplicate and mailed to the following address:

Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

B. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining 80 percent of the $228 million plus interrest in alleged crude oil violation amounts subject to this Decision, or $182,400,000 million plus interest, should be disbursed equally to the states and federal government for indirect restitution. As of June 30, 1989, the accrued interest on these funds was $10,632,904.70. The total amount to be disbursed to the states and federal government pursuant to this determination is therefore $193,032,904.70.

Accordingly, we will direct the DOE's Office of the Controller to segregate the $193,032,904.70 available for disbursement to the states and federal government and transfer one-half of that amount, or $96,516,452.35, into an interest-bearing subaccount for the states, and one-half, or $96,516,452.35, to an interest-bearing subaccount for the federal government. In the near future, we will issue a Decision and Order directing the DOE's Office of the Controller to make the appropriate disbursements to the individual states from their respective subaccount. Issuance of these orders is necessary to improve our ability to track the various disbursements to the states. Each individual state's percentage share of funds is set forth in Exhibit H to the Settlement Agreement and is based on each state's consumption of petroleum products during the period of price controls. When disbursed, these funds will be subject to the same use limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

It is therefore ordered that:

(1) Applications for Refund from the alleged crude oil overcharge funds remitted to the Department of Energy by Texaco Inc. pursuant to the Consent Order finalized on August 29, 1988 may now be filed.

(2) All applications submitted pursuant to paragraph (1) above must be filed no later than October 31, 1989 or 90 days from the publication of this Decision and Order in the **Federal Register**, whichever is later.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer $241,291,130.87 from the Texaco Inc. subaccount, Consent Order Number PTXE006A1Z, pursuant to Paragraphs (4), (5), and (6) of this Decision.

(4) The Director of Special Accounts and Payroll shall transfer $96,516,452.35 of the funds obtained pursuant to paragraph (3) above, plus interest which accrues from June 30, 1989 to the date of transfer, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer $96,516,452.35 of the funds obtained pursuant to paragraph (3) above, plus interest which accrues from June 30, 1989 to the date of transfer, into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $48,258,226.17 of the funds obtained pursuant to paragraph (3) above, plus interest which accrues from June 30, 1989 to the date of transfer, into the subaccount denominated "Crude Tracking-Claimants 2," Number 999DOE008Z.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date: July 25, 1989.

[FR Doc. 89-17809 Filed 7-28-89; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-828-DR]

Texas; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-828-DR), dated May 19, 1989, and related determinations.

DATED: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472; (202) 646-3614.

Notice: The notice of a major disaster for the State of Texas, dated May 19, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 19, 1989:

The counties of Blanco, Burnet, Comanche, Lamar, Mason, Red River, and Somervell for Individual Assistance and Public Assistance.

The counties of Anderson, Archer, Baylor, Cherokee, Clay, Coryell, Denton, Gregg, Jack, Jefferson, Leon, Limestone, McCulloch, Panola, San Jacinto, Shelby, Titus, Van Zandt, Walker, and Young for Public Assistance. (Individual Assistance has previously been designated for these counties.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-17792 Filed 7-28-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-836-DR]

Texas; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-836-DR), dated July 18, 1989, and related determinations.

DATED: July 25, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472; (202) 646-3614.

Notice: The notice of a major disaster for the State of Texas, dated July 18, 1989, is hereby amended to add the Public Assistance program and amend the county designations as follows:

The counties of Hardin, Jasper, Liberty, Newton, and Tyler for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-17793 Filed 7-28-89; 8:45 am]

BILLING CODE 6718-02-M

Fee Charge System for Flood Insurance Study Back-up Data

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of intent.

SUMMARY: This notice of intent advises that the Federal Insurance Administration intends to implement a fee charge system for retrieval, reproduction and distribution of technical and administrative support data retained within the engineering study data package (ESDP) when this data is distributed upon request to all entities not directly involved in the Flood Insurance Study process. This program will begin on October 15, 1989, and contributes to the self-support of the National Flood Insurance Program.

DATE: Comments must be received on or before August 30, 1989.

ADDRESS: Comments should be mailed to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 840, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Brian R. Mrazik, Assistant Administrator, Office of Risk Assessment, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, Telephone (202) 646-2766.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) was enacted in 1968 to make flood insurance available in participating communities throughout the nation. Flood Insurance Studies establishing special flood hazard areas, risk zones, floodways and base flood elevations for individual flood-prone communities have been prepared by the Federal Insurance Administration (FIA). After the Flood Insurance Study is published the technical and administrative support data developed during the conduct of the study is microfilmed and stored for future reference within an Engineering Study Data Package (ESDP). Microfilm copies of this data are also routinely provided to the designated NFIP State Coordinating Agencies and appropriate District Offices of the U.S. Army Corps of Engineers at that time. The data is frequently utilized by FEMA and its Flood Insurance Study and technical evaluation contractors. It is less frequently requested by other Federal, state and local government agencies and private engineering and consulting firms, real estate developers and individuals.

Since 1981, the Federal Insurance Administration has made the data available free of charge to all requestors. As the program has grown and matured, the costs associated with retrieving, reproducing, and distributing the data have increased. Also, the number of non-FEMA related data requests is steadily growing so that it now costs the Federal Insurance Administration approximately $100,000 annually to provide this service to outside requestors.

The Federal Insurance Administration has decided to implement measures to recover the costs associated with providing this service. It is proposed to assess an ESDP user fee charge effective October 15, 1989 to those organizations and individuals not directly involved in the Flood Insurance Study process. Under this proposal, all entities except FIA's Flood Insurance Study contractors, technical evaluation contractors and Federal agencies primarily involved in flood studies would be charged for data requests. These Federal agencies are the U.S. Army Corps of Engineers, U.S. Department of the Interior, U.S. Department of Agriculture, National Oceanographic and Atmospheric Administration, Tennessee Valley Authority, and United States Geological Survey. The NFIP State Coordinating Agencies and District Offices of the Corps of Engineers will continue to rountinely receive free microfilm copies of the ESDP information as it is produced. One copy of any technical support information requested by a community during the statutory 90-day appeal period for their flood insurance study will also be provided free of charge.

The fee charge operation will also provide enhanced services such as paper and computer disk copies of data. Currently, data is transmitted to requestors on microfilm or hardcopy form only.

The proposed fee will be based on recovery of the actual costs incurred by FIA for the labor and material consumed in retrieving, reproducing, and distributing the data to the requestor as well as a prorated share of the additional management, administrative, and operating expenses associated with the data retrieval and fee charge operation.

Although the cost of individual requests will vary depending upon the volume and medium of the data to be reproduced and distributed as well as the complexity of researching and retrieving that data, the cost of the average request, based on a recent sample of data requests, should be approximately $100-$150. All requests must be submitted in writing and the requestor will be notified of the total charge prior to incurring any financial obligation.

Fee payments will be required in advance of the shipment of data. The proposed method of payment is prepayment by check or money order made payable to the National Flood Insurance Program. The requestor will receive a receipt for their records or billing purposes.

The fees collected by the fee-charge operation will be deposited to the National Flood Insurance Fund because it is the source of funding utilized to provide these services.

Anyone who has an interest in the ESDP user fee charge system should provide their comments in accordance with the date and address listed above.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-17791 Filed 7-28-89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010644-003.

Title: City of Los Angeles Terminal Agreement.

Parties: City of Los Angeles, Indies Terminal Company.

Synopsis: The Agreement amends the basic agreement (Agreement No. 244-010644), which expires on July 31, 1989, to provide a holdover period until October 31, 1989. The compensation provisions of the basic agreement will continue during the holdover period.

Agreement No.: 224-010826-004.

Title: City of Los Angeles Terminal Agreement.

Parties: City of Los Angeles, Overseas Shipping Company, Inc. (Tenant).

Synopsis: The Agreement provides for its termination effective July 21, 1989.

Agreement No.: 224-200268.

Title: City of Los Angeles Terminal Agreement.

Parties: City of Los Angeles, Stevedoring Services of America (SSA).

Synopsis: The Agreement provides SSA with the non-exclusive ten-year assignment of approximately 101 acres including 5,650 feet of wharf at Berths 215-225 in the Port of Los Angeles. SSA will use the premises for the docking

and mooring of vessels and for the assembling, distributing, loading and unloading of cargo on or from such vessels over, through and upon such premises. The Agreement provides for revenue sharing with a minimum annual guarantee and revenue sharing breakpoints that vary during the first five years of the Agreement.

Agreement No.: 224–010954–003.
Title: Georgia Ports Authority Terminal Agreement.
Parties: Georgia Ports Authority, Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, Nippon Liner Systems, Ltd.
Synopsis: The Agreement extends the term of the basic agreement (Agreement No. 224–010954) from July 1, 1989 through September 30, 1989. It also makes adjustments to the Wharfage and Equipment Incentive Rates. All other terms and conditions of the basic agreement will remain unchanged.

By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
Dated: July 25, 1989.

[FR Doc. 89–17745 Filed 7–28–89; 8:45 am]
BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–006190–054.
Title: United States Atlantic/Venezuela Freight Association d/b/a United States Atlantic/Venezuela Freight Association.
Parties: Consorcio Naviero de Occidente, C.A., King Ocean Service de Venezuela, S.A., Venezuelan Container Service, Maritima Aragua, S.A., American Transport Lines, Inc., Companhia Anonima Venezolana De Navegacion.
Synopsis: The proposed modification would: (1) Include rates on excepted commodities; (2) provide for space chartering and rationalization of service; (3) include service contracts covering excepted commodities; and (4) restate the Agreement.

Agreement No.: 202–010390–020.
Title: United States Atlantic & Gulf/Ecuador Freight Association.
Parties: Crowley Caribbean Transport, Inc., Lykes Bros. Steamship Co., Inc., Naviera Del Pacifico C.A., Transportes Navieros Equatorianos.
Synopsis: The proposed modification would clarify that no party may transport cargo in the Conference trade at rates other then those specified in the Conference tariff.

Agreement No.: 202–010987–009.
Title: United States/Central America Liner Association.
Parties: Crowley Caribbean Transport, Inc., Sea-Land Service, Inc., Seaboard Marine Ltd., Crowley Trailer Marine Transport, Corp.
Synopsis: The proposed modification would provide for rationalization of service, prohibit independent action on loyalty contracts, and restate the Agreement.

Agreement No.: 202–011231–003.
Title: United States Gulf/Venezuela Steamship Conference d/b/a United States Gulf/Venezuela Freight Association.
Parties: American Transport Lines, Inc., Companhia Anonima Venezolana De Navegacion, Maritima Aragua, S.A.
Synopsis: The proposed modification would: (1) Include rates on excepted commodities; (2) provide for space chartering and rationalization of service; (3) include service contracts covering excepted commodities; and (4) restate the Agreement.

By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
Dated: July 25, 1989.

[FR Doc. 89–17711 Filed 7–28–89; 8:45 am]
BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HSQ–172–FNC]

Medicare Program; Peer Review Organizations; Area Designation

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice with comment period.

SUMMARY: This notice announces the redesignation of an area consisting of the State of Hawaii and the territories of American Samoa, Guam and the Commonwealth of the Northern Mariana Islands as a single Utilization and Quality Control Peer Review Organization (PRO) review area. Presently, the State of Hawaii comprises one review area and the listed territories another review area. This change will enhance the efficiency and effectiveness of the administration of PRO activities.

DATE: The PRO area redesignation in this final notice is effective on September 29, 1989. However, we will consider public comments on the PRO area designation. Comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on September 29, 1989.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ–172–FNC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code HSQ–172–FNC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION, CONTACT: Michael Rappaport, (301)–966–6894.

SUPPLEMENTARY INFORMATION:

I. Background

1. Program Description

The Utilization and Quality Control Peer Review Organization (PRO) program is used to assure that health care services and items for which payment may be made in whole or part under the Medicare program are medically necessary, are delivered in the appropriate setting, and are of a quality which meets professionally recognized standards. The PRO program was established by the Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97–248), which amended Subpart B of Title XI of the Social Security Act (the Act). The individual PROs may also contract with State agencies to provide review of health care services furnished under the Medicaid program, and with the Department of Defense to provide review of health care services furnished under the Civilian Health and Medical Programs of the Uniformed Services (CHAMPUS). The PRO program is based on two fundamental concepts of health care review: that physicians are the most appropriate persons to assess the quality of medical care delivered by physicians; and that local community-based peer review and local standard setting are the most effective means for ensuring appropriate utilization of health resources and facilities.

Section 1153(a) of the Act requires the Secretary to divide the United States into geographic areas, designated as PRO areas, for the purpose of entering into contracts with entities to perform the peer review function. We do not need to issue regulations in order to designate or change PRO areas because authority to designate or change PRO areas is within the broad statutory authority given to the Secretary under section 1153 of the Act. However, we believe that it would be beneficial to permit interested parties an opportunity to comment on any redesignations. Consequently, we are continuing our previously established notice and comment procedure to announce the redesignation of a PRO area.

The current designation of PRO areas was announced on February 27, 1984 (49 FR 7202). Each of the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands were designated as separate review areas. At the same time, the areas consisting of Guam, American Samoa, the Northern Mariana Islands and the Trust Territory of the Pacific Islands were designated as a single area for purpose of PRO review.

2. Area Designation Criteria

Section 1153(a)(2) of the Act provides the criteria that the Secretary is to use to designate PRO review areas. They are:

- Each state must generally be designated as a geographic review area for PRO purposes.
- The Secretary must establish local or regional review areas only where the volume of review activity or other relevant factors (as determined by the Secretary) warrant such establishment, and the Secretary determines that review activity can be carried out with equal or greater efficiency by establishing local or regional areas. In applying these requirements, the Secretary must take into account the number of Medicare and Medicaid hospital admissions in each State. Any State having less than 80,000 admissions annually must be established as a single statewide area.
- The Secretary may not establish a local or regional area having fewer than 60,000 total admissions under review annually (including, public and private pay patients) unless he or she determines that other relevant factors warrant otherwise;
- No local or regional review area may be designated that is not a self-contained medical service area having a full spectrum of medical services, including services of medical specialists.

II. Need for Revised Area Designation

Our proposed notice to establish the original PRO review areas published on August 15, 1983 (48 FR 36976), included a recommendation that there be a regional PRO review area comprised of the State of Hawaii together with Guam, American Samoa, and the Trust Territory of the Pacific Islands. A number of commenters objected to this proposed regional PRO review area based on their view that, under the PRO program, the administration of such a large geographic area would not be cost effective. After evaluation of these concerns in the final notice published February 27, 1984 (49 FR 7209), we designated the State of Hawaii as a PRO review area. The areas consisting of Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands were establish as another PRO review area.

Since we established the PRO area consisting of Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Island as a single PRO review area, we have found it difficult to administer a contract with a local peer review organization. The statute imposes restrictions (relative to physician membership and the availability of physician reviewers) on the types of organizations eligible to contract as PROs. In this review area, no eligible local organization has expressed an interest in competing for the PRO contract, in response to our request for bids from local organizations for the contract award. Consequently, since 1984 the PRO contract for this review area has been awarded to the Hawaii PRO, separately and distinct from its contract to conduct review operations in Hawaii.

Our experience indicates that the previous comments concerning the economic inefficiency of administering the large geographic area of the combined Hawaii and Pacific areas are no longer valid. In addition, since the Hawaii based PRO has been responsible for the Medicare peer review in American Samoa, Guam, and the Northern Mariana Islands for a substantial period of time, we feel the designation of these review areas into a single review area would not compromise the working relationship that has developed. Because the patient population in all of the affected areas is small, combining the areas also adds to efficient and effective program operations. The size of the resulting review data base will enhance meaningful demographic and statistical analysis. Furthermore, PRO surveillance of potential quality of care concerns based on this increased data base should improve. We believe combining these two areas into a single, more efficient PRO area will not dimish current recognition of the unique characteristics of the beneficiary population and local medical practice.

III. Revised PRO Area

It is our intention that the area composed of the State of Hawaii, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands be a single designated PRO review area. (The trusteeship of the areas previously known as the Trust Territory of the Pacific Islands and mentioned in previous notices has been dissolved by Congress. The remaining districts are not eligible for service under Title XVIII or Title XIX. Therefore, no PRO review area designation is necessary for these geographic areas.)

This change is necessary because past experience shows there have been no qualified local organizations to place bids for the PRO contract in the existing review area. Maintaining the current designation of separate review areas requires the administration of two separate contracts with the same organization, an administrative burden to the Government and to the PRO contractor. Virtually all medical care subject to review in the Pacific area, except for the State of Hawaii, is furnished by the Government and no other reviewers are available in the area who can conduct review with complete independence and objectivity. We feel that consolidating the areas into one designated PRO review area will

enhance the efficiency and effectiveness of the PRO programs.

IV. Response to Comments

Because of the large number of pieces of correspondence we normally receive on a with opportunity for public comment, notice we are not able to acknowledge or respond to them individually. We will consider all comments contained in correspondence that we receive by the date specified in the "DATE" section of this preamble, and will respond to the comments in the preamble of a revised final notice if we find it necessary to issue a revised notice.

V. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any notice that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final notice with a comment period combines Hawaii, with American Samoa, Guam and the Commonwealth of the Northern Mariana Islands as a single area for purposes of PRO review.

As stated earlier in this notice, the rationale for the change in the review area designation is that there are no known qualified local organizations who have placed a bid for the PRO contract in the area of American Samoa, Guam and the Commonwealth of the Northern Mariana Islands area. Each PRO contract for this area has been awarded to the Hawaii PRO as a separate and distinct contract from the one that implements its operations in Hawaii. To maintain the current designation of the Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands area as a separate review area presents an administrative burden to the Government and the PRO contractor. Combining the areas presents programmatic advantages which will result in savings to the contractor. Although we have no way of determining the magnitude of any effect of this notice in advance, we believe there will be a cost savings because the contractor would be required to submit only a single bid for the entire area.

Under this redesignation, combining these two review areas into a single, more efficient PRO area, we will continue to recognize the unique characteristics of the beneficiary population and local medical practice. We believe the efficiency and effectiveness of the review programs will be enhanced and the affected beneficiaries will benefit from the resultant program improvements.

This final notice does not meet the $100 million criterion nor do we believe that it meets the other E.O. 12291 criteria. Therefore, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all PRO contractors are treated as small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

Because there will be no changes to the character of medical review services currently being provided in the affected areas, there will be no adverse effect on either the beneficiaries or the health care providers. By easing the administrative burden on the designated PRO contractor, we believe the contractor's efficiency and effectiveness will be enhanced.

For the reasons cited above, we are not preparing a regulatory flexibility analysis since we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on a substantial number of small entities or a significant economic impact on the operations of a substantial number of small rural hospitals.

(Sec. 1153 of the Social Security Act (42 U.S.C. 1320c–2) Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance)

Dated: June 27, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89–17732 Filed 7–28–89; 8:45 am]

BILLING CODE 4120–01–M

Public Health Service

Cooperative Agreement to Support Healthy Cities and Implementation of the Year 2000 National Health Objectives for Special Populations

The Office of Disease Prevention and Health Promotion announce the availability of funds for Fiscal Year 1989 for cooperative agreements to advance city-based health promotion and to promote implementation of the year 2000 national health objectives for blacks and Native Americans.

The Office of Disease Prevention and Health Promotion (ODPHP) was established by Pub. L. 94–317, the National Consumer Health Information and Health Promotion Act of 1976, and functions under the provisions of Title XVII of the Public Health Service Act, as amended. Located in the Office of the Assistant Secretary for Health, within the Department of Health and Human Services, the mission of ODPHP is to provide leadership for disease prevention and health promotion. The Office formulates national health goals and objectives; coordinates Department of Health and Human Services (DHHS) activities in disease prevention, health promotion, preventive health services, and health information and education; and stimulates public and private programs to improve the health of the Nation. ODPHP is organized around four areas: prevention policy, clinical preventive services, nutrition policy, and health communications.

Background

At the turn of the century, infectious diseases were the leading killers in the United States. Now, nearly half of all disease and premature death can be traced to lifestyle factors such as smoking, improper diet, and lack of exercise. Identifying the behaviors, practices, and habits that enhance or threaten health, and encouraging the adoption of healthy behaviors, has great potential for preventing disease and disability.

Improvements in the health status of Americans over the past decade can be attributed, in part, to the national commitment to health promotion first described in *Healthy People: The Surgeon General's Report on Health Promotion and Disease Prevention*, which presented health goals for the five major life stages, infancy through old age. A national plan for achieving the goals was developed by the Public Health Service, containing 226 measurable prevention objectives to be achieved by 1990. The plan, titled *Promoting Health/Preventing Disease: Objectives for the Nation* was published in 1980. The so-called 1990 objectives, addressing 15 priority areas, can be divided into three broad categories: health promotion; health protection; and personal preventive services. For example, the five priority areas under "health promotion" are: smoking and health; misuse of alcohol and drugs; nutrition; physical fitness and exercise; and control of stress and violent behavior.

The sustained emphasis on health information and health promotion needed to meet the 1990 objectives is being achieved in a variety of ways—education, research, and public information dissemination—and involves a partnership of Federal, State, local, voluntary, and private sector participants. ODPHP has worked over the past decade to extend the reach of health promotion and disease prevention programs through cooperative agreements with national organizations with local chapters, affiliates, or members. Cooperative agreements are granted as part of the National Health Promotion Program, as described in the Catalog of Federal Domestic Assistance.

FY 1989 Priorities

To expand health promotion and disease prevention programs, ODPHP fosters partnerships with the private sector. To this end, ODPHP intends to establish cooperative agreements with national membership organizations for two initiatives: (1) Expanding city-based health promotion and (2) developing health promotion programs for blacks and Native Americans based on the year 2000 national health objectives. An announcement issued by ODPHP in February 1989, sought proposals for health promotion programs based on the year 2000 objectives from national membership organizations representing Hispanics, Asian Americans/Pacific Islanders, blacks, people with disabilities, children in schools, adolescents, older people, worksites, and clinical settings. Competition under Initiative 2 of this announcement is being reopened for national membership organizations representing either blacks or Native Americans.

Eligibility Requirements

These Cooperative Agreements are limited to national membership organizations, due to limitations on availability of funds and as a function of the kinds of public-private collaborations that the initiatives entail. Requests to Congress for funds for the National Health Promotion Program have specified this limitation of applicant eligibility. Further, ODPHP has historically facilitated Public Health Service work with national membership organizations to implement national health promotion and disease prevention programs and policies.

Competition for Initiative II, Targeting Special Populations for Health Promotion and Disease Prevention, is further limited to organizations that represent either Native Americans or blacks. These two cooperative agreements are part of a larger ODPHP initiative to promote implementation of the year 2000 national health objectives among special populations (including Hispanics, Asian Americans, adolescents, older people, and people with disabilities) and at particular sites (including worksites, clinical settings, and schools), through cooperative agreements awarded to national membership organizations in June 1989. As representatives of particular groups, membership organizations are in a unique position to identify the most appropriate and effective ways of reaching members of special population groups with health promotion programs.

To be eligible to participate in these cooperative agreements, an organization must meet all of the following requirements:

- Be a national, private, nonprofit organization;
- Have a national membership, state/local chapters, and/or other well-defined membership structure;
- Demonstrate an understanding of the current and potential role of the membership in health promotion and disease prevention;
- Have in place a variety of ways to inform members and other interested groups about how to become involved in meeting the purposes of the cooperative agreement; and
- Demonstrate top level support within the organization for the project and, where appropriate, demonstrate similar support from the membership.

For purposes of this announcement, national membership organizations are defined as organizations with individual or institutional members in a majority of the States or in a sufficient number of States to reach a majority of the special population or site. "Members" must voluntarily and expressly associate themselves with the organization as through payment of a membership fee or other declaration of association (i.e., request and receipt of a membership card or certificate of membership).

Period of Performance

If funds are available and if performance is satisfactory, the cooperative agreements will be awarded for project periods of three years. To obtain funding after the initial budget period, continuation applications and approvals will be required for each subsequent 12-month period. Continuation applications will not be subject to competitive review but will be subject to review for satisfactory progress and availability of funds.

Terms and Conditions

Monies allocated for cooperative agreements are not intended to cover all of the costs that will be incurred in the process of completing the projects. Applicants should demonstrate a commitment of financial or in-kind resources to support proposed projects. Organizations may use awarded funds to support salaries of individuals assigned to the project. However, due to the modest support offered through the cooperative agreements, applicants are urged to restrict funding of salaries to approximately 30 percent of the awarded funds to insure that sufficient resources remain to accomplish the purpose of the project. Federal funds offered through this announcement may be used to develop or purchase project materials, directly related project activities, and project-related travel.

In proposed budgets, applicants should earmark funds for their project director to participate in up to two two-day meetings in Washington, DC, in each project year. The purpose of the meetings will be to consult with ODPHP and coordinate with other cooperative organizations, as appropriate.

ODPHP Involvement

ODPHP will:

1. Provide a significant portion of the time of a professional staff person to work with award recipients.

2. Disseminate materials and information generated by the cooperative agreement that are of interest beyond the organization's own membership through the ODPHP National Health Information Center.

3. Help locate and make available appropriate information and technical assistance from other government sources.

4. Provide liaison with other government agencies as appropriate.

5. Work directly with each recipient to develop effective marketing, information, and other materials, through critical review of all work products and assistance with any necessary substantive changes.

Application Process

1. All applications must be submitted with a signed copy of PHS Form 5161, with the required information filled in appropriately. The required application form with instructions will be mailed to potential applicants who make telephone requests to Ms. Loretta Logan at (202) 472–5583 or write to her at ODPHP/PHS, Department of Health and Human Services, Switzer 2132, 330 C Street, SW, Washington, DC 20201. For further programmatic information or clarification, contact Ashley Files (202) 472–5583.

2. All applications must be either received or postmarked on or before 5:00 p.m. on August 28, 1989. Applications postmarked but not received by August 28, 1989, will be eligible only if they are received in time for orderly processing and review.

3. Application packages should be mailed or delivered to: Ms. Loretta Logan, Office of Disease Prevention and Health Promotion/PHS/DHHS, 2132 Switzer Building, 330 C Street, SW. Washington, DC 20201.

4. Applications must be typed on one side of the page only.

5. The original and two copies of each application, with attachments and documents, must be submitted.

6. Applications for projects that are national in scope for which the Department has no funding discretion to approve specific sites or projects, such as this program, are excluded from coverage under Executive Order 12372. This program is incorrectly listed as covered under Executive Order 12372 in the 1989 CAtalog of Federal Domestic Assistance.

Application Requirements

Applications must include the following information:

1. A description of the organization and its membership, documentation that it meets all the eligibility requirements, and examples of the organization's activities substantiating its ability to undertake the proposed project.

2. Measurable goals and objectives for the full term of the cooperative agreement.

3. A descritpion of how the project will contribute to the Public Health Service's efforts to promote health, prevent disease, and improve quality of life.

4. A detailed list of the tasks that will be undertaken in the first budget period and the outcomes expected at the end of that period.

5. A detailed budget for the first budget period.

6. A brief list of the tasks that will be undertaken in each of the remaining budget periods, as appropriate, and how they will contribute the project's goals and objectives.

7. A timetable for each budget period of the project.

8. An evaluation plan that will show how the impact of the proposed project will be measured, if feasible, or the effectiveness of the process in meeting project goals and objectives.

9. The background and qualifications of the individual(s) who will manage and staff the project. If the individual(s) is not now known, provide a list of the qualifications that will be sought.

10. If it is anticipated that any portion of the program will be subcontracted for year one, information about the role the subcontractors will play and their qualifications. If the applicant expects to subcontract any portion of the project during the reminding years, a description of the role the subcontractors will play and their qualifications should be included.

11. If organizations are working together on a proposal, information about the role each will play, along with complete eligibility information. Specify leadership responsibility and project management structure.

12. Further information given as "Special Application Requirements" in each of the initiative summaries below.

Review and Selection Process

Applications will be screened by ODPHP upon receipt to assure that all eligibility requirements have been met. Applications meeting these requirements will be reviewed by a Federal panel of reviewers using the criteria outlined below. The results of this review will be recommended to the Director of ODPHP for FY 1989 cooperative agreement awards. ODPHP intends to make awards in September 1989.

Evaluation Criteria

1. Understanding the Project—20

Understanding of the issues that the project proposes to address. Clarity, feasibility, and practicality of the goals and objectives of the project and the plan to meet them.

2. Methodology and Approach—30

Soundness, practicality, and feasibility of the technical approach to the work, including how the tasks are to be carried out, anticipated problems, and proposed solutions. The potential for the project to make a significant contribution to health promotion and disease prevention. Feasibility and appropriateness of the proposed evaluation plan.

3. Organizational Capability—25

Commitment of management and members to the project, as demonstrated, in part, through commitment of financial or in-kind resources to support proposed project. Relevant experience of the organization in conducting similar projects. Adequacy of project management to keep project on track and on schedule. Demonstrated ability to reach key audiences with project.

4. Project Direction, Management, and Staffing—25

Management plan, advisory and supervisory structure, and qualifications and relevant experience of proposed staff both in the content and execution of proposed project. Relevant experience could include, but would not be limited to, communications and marketing of issues and programs to diverse constituents, health promotion and disease prevention program activities, and data collection and analysis.

Initiative 1: Promoting Healthy Cities ($75,000 Each Budget Period, One Project)

Purpose and Objectives

The Office of Disease Prevention and Health Promotion would like to help expand city-based health promotion in the United States. Using the World Health Organization's Healthy Cities project as a model, ODPHP is interested in cultivating city interest in health promotion projects. Of particular interest are projects that go beyond the traditional health agencies to include residents, local government, businesses, the schools, and community groups in setting local health priorities and making real improvements in local health status. A major thrust of the United States Healthy Cities activities is to connect cities with the information and expertise they need to mount health promotion campaigns and advance the health and well-being of their citizens.

American cities have access to a wealth of resources, expertise, and guidance to help them pursue community-wide health improvement. The Public Health Service, other Federal agencies, and the private sector all produce and distribute materials that support and inform community health promotion. However, these materials and resources come from a large number of sources. Examples of projects and publications that could be valuable resources to United States Healthy Cities include:

From the Public Health Service

- The National Heart, Lung, and Blood Institute has developed and disseminated *With Every Beat of Your Heart: An Idea Book for Community Heart Health Programs* and *Community Guide to Cholesterol Resources.*
- The Centers for Disease Control operates the PATCH program—Planned Approach to Community Health—and, in cooperation with several public health organizations, promotes use of *Model Standards: A Guide to Community Preventive Health Services.*
- The Health Resources and Service Administration's Community and Migrant Health Centers, as well as the Maternal and Child Health block grant, fund primary health care in communities across the nation.

From the Private Sector

- The Prudential Foundation, working with the Hastings Center, published *Community Health Decisions: A Grassroots Movement in Bioethics.*
- The Kellogg Foundation has funded "Healthy Cities Indiana," a six-city project to develop broad-based city health plans and actions.
- The Chesapeake Bay Foundation has brought together representatives from government, business, the community, and environmental advocacy groups to confront the pollution problems threatening the environment and the Chesapeake Bay.

From Other Federal Agencies

- The National Traffic Safety Administration promotes community solutions to drunk driving and motor vehicle crash prevention.

To help cities interested in health promotion make the best use of existing information and resources, we would like to enter into a cooperative agreement with an organization that can simplify and promote participation in city-based health promotion. Activities could include, but are not limited to:

1. Convening an annual meeting of individuals and group representatives expert in Healthy Cities, municipal planning, and local health promotion.

2. Creating and maintaining a bibliography of community level disease prevention and health promotion information.

3. Preparing a "how-to" package for communities interested in beginning a Healthy Cities project. Such a package could rely heavily on existing information prepared by the World Health Organization, the U.S. Public Health Service, and other public and private sector health information/community organization projects.

4. Devising, and setting in motion, an effective way of: (1) keeping United States Healthy Cities apprised of Healthy Cities expansion; (2) reporting on progress and problems in U.S. and international Healthy Cities; and (3) in general, generating interest in city-based health promotion.

5. Creating and maintaining a data base of Healthy Cities contacts (both program operators and experts in community health promotion/planning).

Approximately $75,000 per year, for a maximum of three years, will be available to support this project. The cooperative agreement will be overseen by the Office of Disease Prevention and Health Promotion, with the cooperation of the Centers for Disease Control, the Health Resources and Services Administration, and the National Institutes of Health.

Special Considerations

At the heart of the Healthy Cities concept is the formation of an alliance among governments, voluntary agencies, citizens, and businesses working together to improve the health and well-being of city residents. Applicants should demonstrate an ability to reach multiple sectors and programs. National organizations that demonstrate they can involve (for example) city and county government, city planners, employers, health officers, universities, and schools will be given preference.

Initiative II. Putting the Year 2000 National Health Objectives into Practice: Targeting Special Populations for Health Promotion and Disease Prevention ($50,000 per Project Each Budget Period, 2 Projects Total)

The Public Health Service is now in the process of setting new national objectives for reducing preventable death and disability by the year 2000, to succeed the 1990 health objectives set in 1980. Many of the new objectives will aim specifically at improving the health of special populations at higher risk for illness, disability, or premature death. To help meet these year 2000 targets, cooperative agreements will be awarded to national membership organizations, or cooperating groups of national organizations, to promote targeted health promotion/disease prevention programs for blacks and Native Americans.

Background

The year 2000 health objectives will be published in July 1990, as the second "Surgeon General's Report on Disease Prevention and Health Promotion." ODPHP is responsible for managing the development of the new objectives, a process that has involved extensive input from professional associations, voluntary organizations, and other national membership groups, academicians, corporate leaders, and the public.

The year 2000 national health objectives will likely fall within the following 21 priority areas:

1. Nutrition
2. Physical Activity
3. Tobacco use
4. Alcohol and Other Drugs
5. Sexual Behavior
6. Violent and Abusive Behavior
7. Functional Independence of older people
8. Environmental Health
9. Occupational Safety and Health
10. Unintentional Injuries
11. Maternal and Infant Health
12. Immunization Infectious Diseases
13. HIV Infection
14. Sexually Transmitted Diseases
15. High Blood Cholesterol and High Blood Pressure
16. Cancers
17. Other Chronic Disorders
18. Oral Health
19. Emotional and Behavioral Disorders
20. Health Education and Access to Preventive Services
21. Surveillance and Data Systems

Each of the 21 priority areas will include specific objectives for the total population as well as targets for special populations who, compared with the general population, experience significantly higher disease rates, higher levels of risk, or lower levels of awareness, services, or protection. For example, specific objectives might be set to address high blood pressure in the total population along with a separate target for blacks.

ODPHP requests applications for cooperative agreements with national membership organizations, or groups of cooperating organizations, that want to help put the year 2000 health objectives into practice. Award recipients must represent either blacks or Native Americans.

Each award recipient will be expected to produce a national health promotion plan for its special population, based on the year 2000 national health objectives.

The plans should specify the recipients' priorities and identify short- and long-term strategies for meeting the year 2000 health objectives. Plans should not focus on a single priority area, but rather address the broad range of health promotion and disease prevention issues facing targeted populations. Although each plan will be tailored to meet the specific needs of the targeted population, the plans are expected to follow general guidelines agreed upon at a meeting of award recipients so that implementation plans are generally consistent.

A draft of the year 2000 health objectives will be made available to each award recipient. ODPHP will also give each recipient a list of the specific year 2000 targets proposed for their population. However, applicants may wish to use the draft objectives in developing their proposals. Copies of the draft may be requested by contacting Ms. Loretta Logan, Office of Disease Prevention and Health Promotion/PHS/DHHS, 2132 Switzer Building, 330 C Street, SW. Washington, DC 20201. Although the final objectives will not be available until spring of 1990, the draft will offer award recipients a solid starting point.

The specific activities each organization will undertake to carry out its plans are expected to depend on the resources of the organization, as well as the organization's interests and priorities. Activities could include, but are not limited to, some of the following:

1. Developing and marketing a health promotion workbook, based on implementing the year 2000 national health objectives, for local chapter use.
2. Identifying and publicizing health promotion/disease prevention programs that have worked for special populations and demonstrating how these programs could work for local chapters, local communities, or other appropriate groups/settings.
3. Stimulating development of new health promotion and disease prevention programs for members.
4. Training members in health promotion program development.
5. Creating a health promotion resource center or information data base for member or chapter use.
6. Creating an award program for local chapters that excel in bringing health promotion to their members.
7. Informing members (and other interested groups) about the year 2000 national health objectives and about the organization's plans for helping the nation achieve them.
8. Evaluating the plan and promotional activities to determine whether or not health promotion and disease prevention is being expanded within the target population.

Approximately $50,000 per year, for a maximum of three years, will be available to support each of these projects.

Special Application Requirements

The application should follow the process and requirements given above. In addition:

- Describe the organization's experience in strategic and/or long range planning:
- Describe how the development of a national health promotion/disease prevention plan would fit in which the organization's present priorities and how health promotion/disease prevention programs could be integrated into the organization's future plans.
- Demonstrate authority and experience in representing the membership at the national, State, and local levels.

Further Information

This **Federal Register** Notice contains information collections required from respondents for the subject cooperative agreements. The information collection is approved under OMB control number 0937–01879. Projects funded through cooperative agreements that involve collections of information from 10 or more individuals will be subject to review under the Paperwork Reduction Act.

For further information or clarification, contact: Asley Files, Room 2132, Switzer Building, 330 C. Street, SW. Washington, DC 20201.

(National Health Promotion Program, Catalog of Federal Domestic Assistance Number 13.990.)

Date: July 24, 1989.

J.M. McGinnis,

Deputy Assistant Secretary for Health, (Disease Prevention and Health Promotion), Assistant Surgeon General.

Appendix A—Recommended Publications

The following publications may be useful in the preparation of applications for the cooperative agreements announced herein. All the publications may be ordered from: ODPHP National Health Information Center, P.O. Box 1133, Washington, DC 20013–1133, 800–336–4797, 01–565–4167 in Maryland.

"The 1990 Health Objectives for the Nation: A Midcourse Review" (1986), Order No. F0013, $3 handing fees.

"Promoting Health/Preventing Disease: Objectives for the Nation" (1980, Order No. F0009, $3 handling fee.

"Healthy People: The Surgeon General's Report on Health Promotion and Disease Prevention" (1979), Order No. F0005, $3 handing fees.

"A Review of State Activities Related to the Public Health Service's Health Promotion and Disease Prevention Objectives for the Nation"(1986), Order No. M0002, $2 handling fee.

Additional reports and papers are available. Contact the ODPHP National Health Information Center for a copy of the ODPHP Publications List.

[FR Doc. 89–17789 Filed 7–28–89; 8:45 am]

BILLING CODE 4161-17-M

National Commission on Acquired Immune Deficiency Syndrome; Meeting

This is to announce the following meeting of a National advisory body.

Name: National Commission on Acquired Immune Deficiency Syndrome.

Date and Time: August 3, 1989 from 9:30 a.m.–3:00 p.m.

Place: Hyatt Regency Washington, Regency A Room 400 New Jersey Avenue, NW., Washington, DC 20001.

The meeting is open to the public.

Purpose: The general purpose of the Commission is to carry out activities promoting the development of a national consensus on policy concerning acquired immune deficiency syndrome (AIDS), as provided in the Commission's enabling legislation, Pub. L. 100–607. This will be the initial meeting of the Commission.

Agenda: Agenda items for the meeting will include the selection of a Chairman, discussion of the future directon of the Commission, and attention to a number of organizational and administrative matters.

The meeting is being held on short notice in order to allow the Commission to promptly elect its Chairman and begin its work.

Anyone requesting information regarding the subject Commission should contract: Ms. Iris Gelberg at 202–472–4248. Agenda items are subject to change as priorities dictate.

Dated: July 27, 1989.

John Gallivan,

PSH Regulations Officer.

[FR Doc. 89–17983 Filed 7–28–89; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–09–4370–12]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of hearing.

SUMMARY: A Public Hearing will be held on Wednesday, August 23, 1989 at 10:00 a.m. in the Carson City District Office Conference Room, 1535 Hot Springs Road, Suite 300, Carson City, Nevada.

The purpose of the hearing is to obtain public input on the Bureau of Land Management's use of helicopters and motorized vehicles in the management of wild horses and burros.

FOR FURTHER INFORMATION CONTACT: Tim Reuwsaat, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada, 89706, telephone (702) 882–1631.

James W. Elliott,

District Manager, Carson City District.

[FR Doc. 89–17739 Filed 7–28–89; 8:45 am]

BILLING CODE 4310-HC-M

[NV–930–09–4212–14; N–50906]

Realty Action; Proposed Noncompetitive Sale; Storey County, Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice of realty action on proposed sale.

SUMMARY: The following described land comprising 0.64 acre has been examined and identified as suitable for sale pursuant to Section 203 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713), at no less than fair market value:

Mount Diablo Meridian

T. 17 N., R. 21 E.,
Sec. 32, Lots 30, 32, 33, 34 and 35, Block 2, Range B (within the Gold Hill Townsite).

The land will be offered by a direct sale to William F. and Anne E. Lipscomb. Sale of the land will authorize an inadvertent unauthorized occupancy that could not be accomplished through the Color of Title Act. The land has been identified for disposal in the Walker Resource Management Plan. The proposed sale is consistent with Bureau and local government planning.

The public land to be conveyed is encumbered by certain mining claims filed pursuant to the mining laws of the United States, 30 U.S.C. 21, et. seq. The conveyance will be made subject to those claims and to any and all rights that the holders thereof may have pursuant to the laws of the United States and the State of Nevada.

The conveyance will also be subject to other valid existing rights and the following reservation to the United States:

A right-of-way thereon for ditches and canals constructed by the authority of the United States; Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

The patent will also be subject to:

1. Mining Claim No. NMC 108782 (Alto #3).

2. The right of the mining claimant to continue to prospect for, mine and remove locatable minerals under applicable law.

3. The right of the mining claimant to obtain mineral patent to both the surface and mineral estate within the mining claim if valid discovery was made prior to date of the sale patent.

4. The right of the mining claimant to obtain patent to the mineral estate only if discovery was made subsequent to date of the sale patent.

The United States of America, by issuance of a sale patent, does not intend to preclude the Patentees from challenging the validity of any mining claim located on the land being conveyed.

The Patentees, by acceptance of patent, will waive any liability against the United States in the event of subsequent title litigation.

Detailed information concerning the sale is available for review at the Carson City District Office.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from all forms of appropriation under the public land laws, including location under the general mining laws. The segregative effect of this notice of realty action shall terminate upon issuance of patent or other document of conveyance to such land, upon publication in the **Federal Register** of a termination of the segregation, or 270 days from the date of publication, whichever occurs first.

The land will be offered no earlier than 60 days after the date of this notice. For a period of 45 days after the date of this notice, interested parties may submit comments to the Bureau of Land Management, Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City Nevada 89706. Any adverse comments will be evaluated by the District Manager. The Nevada State Director, Bureau of Land Management, may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Failure to accept the offer to purchase the land, within the time specified by the authorized officer, shall constitute a waiver of the preference consideration. If the preference is waived, the land will not be offered through competitive sale procedures.

James W. Elliott,

District Manager.

Date: July 19, 1989.

[FR Doc. 89–17738 Filed 7–28–89; 8:45 am]

BILLING CODE 4310-HC-M

[NV–930–09–4212–11; N–46816]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, Nevada

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 20 S., R. 62 E.,
section 14, N½SE¼
Aggregating 80 acres (gross)

This parcel of land contains approximately 80 acres. The Clark County Department of Parks and Recreation intends to use the land for a recreational public park facility. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County as follows:

40' on the north and west;
50' on the east and 30' on the south

2. Those rights for powerline purposes which have been granted to the Corps of Engineers by Permit No. NEV–046022 under the Act of January 13, 1916; 44LD513.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Date: July 17, 1989.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 89-17740 Filed 7-28-89; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.):

Applicant: Riverside County, Riverside, CA; File No. PRT-739678.

The applicant requests a permit under Section 10(a)(1)(B) of the Endangered Species Act to incidentally take Stephens' kangaroo rat (*Dipodomys stephensi*), an Endangered Species, in the course of otherwise lawful development and conservation activities. The applicant has submitted with his application a Habitat Conservation Plan for the Stephens' kangaroo rat.

The applicant requests the permit to incidentally take Stephens' kangaroo rat in association with various proposed public and private projects in the western portion of the County. The area covered by the proposed permit would include much of the historical range of the species within the County and would allow taking, for a period of two years, resulting from the development of up to 4,500 acres (20 percent) of the 22,000 acres of remaining occupied habitat known for the species.

Under the proposed conservation plan for the permit, up to 4,500 acres (private lands) of occupied habitat adjacent to lands currently in public ownership would be acquired and managed for the long-term benefit of the species. Comparable acreages of land would be acquired prior to issuance of County permits to destroy similar acreages of habitat. The acquisition of the private lands would be funded, in part, from mitigation fees ($1,950 per acre) collected by the applicant (the County).

Copies of the permit application, associated plan and other supporting documentation are on file at the following location and are available for inspection by the public during normal business hours: Assistant Regional Director-Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 1002 NE. Holladay Street, Portland, OR 97232-4181 (503/231-6150).

Interested parties may comment on this application within 30 days of the date of this publication by submitting written views, arguments, or data at the above address. Please refer to the permit file number PRT-739678 when submitting comments.

Date: July 26, 1989.

R. K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 89-17790 Filed 7-28-89; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Chesapeake and Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting will be held Saturday, September 9, 1989 at the Senior Citizens Center, 19 Frederick Street, Cumberland, Maryland.

The Commission was established by Pub. L. 91-664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows: Mrs. Sheila Rabb Weidenfeld, Chairman, Washington, DC, Mrs. Dorothy Tappe Grotos, Arlington, Virginia, Mr. Samuel S.D. Marsh, Bethesda, Maryland, Mr. James F. Scarpelli, Sr., Cumberland, Maryland, Ms. Elise B. Heinz, Arlington, Virginia, Professor Charles P. Poland, Jr., Chantilly, Virginia, Captain Thomas F. Hahn, Shepherdstown, West Virginia, Mr. Rockwood H. Foster, Washington, DC, Mr. Barry A. Passett, Washington, DC, Mrs. Jo Reynolds, Potomac, Maryland, Ms. Nancy C. Long, Glen Echo, Maryland, Mrs. Minny Pohlmann, Dickerson, Maryland, Dr. James H. Gilford, Frederick, Maryland, Mr. Edward K. Miller, Hagerstown, Maryland, Mrs. Sue Ann Sullivan, Williamsport, Maryland, Mrs. Josephine L. Beynon, Cumberland, Maryland, Mr. Robert L. Ebert, Cumberland, Maryland.

Matters to be discussed at this meeting include:

1. Old and new business.
2. Superintendent's report.
3. Committee reports, Plans and Projects Committee, Recreation Policies and Issues Committee, Resource Protection Committee.
4. Public comments.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Richard L. Stanton, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Date: July 24, 1989.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 89-17765 Filed 7-28-89; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation. Department of the Interior.

ACTION: Notice of proposed contractual actions pending through September 1989.

Pursuant to 43 CFR 426.20, the Bureau of Reclamation will publish notice of proposed or amendatory repayment contract actions or any contract for the delivery of water for irrigation or other uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. The Bureau of Reclamation announcements of repayment and water service contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of

Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary of the Interior or the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that the contract action may or will have "significant" environmental effects.

Pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in the **Federal Register** dated February 22, 1982, Vol. 47, page 7763, a tabulation is provided below of all proposed contractual actions in each of the five Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during July, August, or September of 1989. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved. The identity of the approving officer, and other information pertaining to a specific contract proposal, may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region.

This notice is one of a variety of means being used to inform the public about proposed contractual actions. Individual notices of intent to negotiate, and other appropriate announcements, are made in the **Federal Register** for those actions found to have widespread public interest. When this is the case, the date of publication is given.

Acronym Definitions Used Herein

(FR) Federal Register
(ID) Irrigation District
(IDD) Irrigation and Drainage District
(M&I) Municipal and Industrial
(D&MC) Drainage and Minor Construction
(R&B) Rehabilitation and Betterment
(O&M) Operation and Maintenance
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(P-SMBP) Pick-Sloan Missouri Basin Program
(CRSP) Colorado River Storage Project
(SRPA) Small Reclamation Projects Act
(BCP) Boulder Canyon Project

Pacific Northwest Region: Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, Idaho 83724-0043, telephone (208) 334-1894.

1. Cascade Reservoir water users, Boise Project, Idaho: Repayment contracts for irrigation and M&I water; 29.221 acre-feet of stored water in Cascade Reservoir.

2. Brewster Flat ID, Chief Joseph Dam Project, Washington: Amendatory repayment contract; land reclassification of approximately 360 acres to irrigable; repayment obligation to increase accordingly.

3. Individual irrigators, M&I, and miscellaneous water users, Pacific Northwest Region, Idaho, Oregon, and Washington: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

4. Rogue River Basin water users, Rogue River Basin Project, Oregon: Water service contracts; $5 per acre-foot or $50 minimum per annum, terms up to 40 years.

5. Willamette Basin water users, Willamette Basin Project, Oregon: Water service contracts; $1.50 per acre-foot or $50 minimum per annum, terms up to 40 years.

6. Irrigation districts and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

7. Sixty Palisades Reservoir spaceholders. Minidoka Project, Idaho-Wyoming: Contract amendments to extend term for which contract water may be subleased to other parties.

8. City of Cle Elum, Yakima Project, Washington: Amendatory or replacement M&I water service contract; 2,200 acre-feet (1,350 gallons per minute) annually for a term of up to 40 years.

9. Three IDs, Flathead Indian Irrigation Project, Montana: Repayment of costs associated with rehabilitation of irrigation facilities.

10. Baker Valley ID, Baker Project, Oregon: Irrigation water service contract on a surplus interruptible basis to serve up to 13,000 acres; sale of excess capacity in Mason Reservoir (Phillips Lake) for a term of up to 40 years.

11. Individual irrigators and the North Unit ID, Crooked River Project, Oregon: Repayment or water service contracts for up to 25,000 acre-feet of storage space in Prineville Reservoir.

12. Various Projects, Pacific Northwest Region: R&B contracts for replacement of needle valves at storage dams.

13. Palisades Water Users, Inc., Minidoka-Palisades Project, Idaho: Repayment contract for an additional 500 acre-feet of storage in Palisades Reservoir.

14. Individual irrigators, Willow Creek Project, Oregon: Repayment or water service contracts for up to 3,500 acre-feet of storage space in Willow Creek Reservoir.

15. Roza ID, Yakima Project, Washington: Proposed supplementary deferment contract. Defer 1 year (2 installments) of construction payments because of cost incurred by the district to obtain additional water supplies in anticipation of drought.

16. Vale Oregon ID, Vale Project, Oregon: Supplementary deferment contract to defer the 1988 construction installment under authority of the Act of September 21, 1959. The district has experienced a significant reduction in water supply for the 1988 season.

17. Five Project Spaceholders, Minidoka-Palisades Project, Idaho-Wyoming: Contract amendments to provide for rental of water to other parties.

18. Bridgeport ID, Chief Joseph Project, Washington: Interim and long-term Warren Act contracts for the use of an irrigation outlet in Chief Joseph Dam.

19. Five Irrigation Districts, Arrowrock Division, Boise Project, Idaho: Repayment contract for Safety-of-Dams repair to Deer Flat Dam.

20. State of Wyoming, Palisades Project, Idaho: Repayment contract for the sale of 33,000 acre-feet of uncontracted space in Palisades Reservoir.

21. Hermiston ID, Umatilla Project, Oregon: Repayment contract for Safety-of-Dams repair to Cold Springs Dam.

22. Ochoco ID and various individual spaceholders, Crooked River Project, Oregon: Repayment contract for Safety-of-Dams repair to Arthur Bowman Dam.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825-1898, telephone (916) 978-5030.

1. Tuolumne Regional Water District, CVP, California: Water service contract, up to 9,000 acre-feet from New Melones Reservoir.

2. Calaveras County Water District, CVP, California: Water service contract;

2,000 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

3. Individual irrigators, M&I, and miscellaneous water users, Mid-Pacific Region, California, Oregon, and Nevada: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; Temporary Warren Act contracts for use of project facilities for terms up to 1 year; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

Note: Copies of the standard form of temporary water service contracts for the various types of service are available, upon written request, from the Regional Director at the address shown above.

4. Friant Unit Contractors, CVP, California: Renewal of existing long-term water service contracts with numerous contractors on the Friant-Kern Canal whose contracts expire 1988–1995. Water quantities in existing contracts range from 1,200 to 175,440 acre-feet.

5. San Luis Water District, CVP, California: Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

6. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

7. State of California, CVP, California: Contract(s) for, (1) sale of interim water to the Department of Water Resources for use by the State Water Project Contractors, and (2) acquisition of conveyance capacity in the California Aqueduct for use by the CVP, as contemplated in the Coordinated Operation Agreement.

8. Madera ID, Madera Canal, CVP, California: Warren Act contract to convey and/or store nonproject Soquel water through project facilities.

9. County of Tulare, CVP, California: Amendatory water service contract, to provide an additional 1,908 acre-feet and reallocate 400 acre-feet of water from the Ducor ID for a total increase of 2,308 acre-feet.

10. Shasta Dam Area Public Utilities District, CVP, California: Renewal of M&I water supply contract. Less than 6,000 acre-feet.

11. U.S. Fish and Wildlife Service, CVP, California: Long-term contract for water supply for Federal refuge in Grasslands area of California.

12. City of Redding, CVP, California: Amendatory M&I water supply contract.

13. City of Dos Palos, CVP, California: Contract for the use of surplus capacity in the San Luis Canal. The contract will allow the exchange of water with Central California ID and transportation to a new point of delivery. The result will be a significant improvement in quality of water made available to the city's water users.

14. North Kern Water Storage District, Buena Vista Water Storage District, Tulare Lake Basin Water Storage District, and Hacienda Water District, Kern River Project, California: Amendatory contract to provide storage space for M&I water.

15. Contra Costa Water District, CVP, California: Amendatory water service contract to add an additional point of delivery to accommodate the district's proposed Los Vaqueros Project. Amendment will also conform contract to current water ratesetting policies.

16. San Juan Suburban Water District, CVP, California: Amend Contract No. 14–06–200–152A to provide for the current CVP water rates to conform the contract with the provisions of sections 105 and 106 of Pub. L. 99–546.

17. Centerville Community Services District, CVP, California: Water service contract for up to 1,560 acre-feet of M&I water annually.

18. Shasta County Water Agency, CVP, California: Amendatory water service contract to provide for reduction in annual entitlement.

19. Kern County Water Agency, CVP, California: Temporary agricultural water supplies of up to 100,000 acre-feet for 1 year.

20. Central Valley Project, California: Amendatory contract to include the provision of the Act of July 2, 1956 (70 Stat. 483) in existing water service contracts.

21. California Department of Corrections, CVP, California: Water service for up to 1,000 acre-feet of water annually to serve the Sierra Conservation Center (a State prison) near Jamestown, California.

22. Beneficiaries of Link River Dam, Klamath Project, California/Oregon: Contract to provide for repayment of reimbursable costs associated with Safety of Dam expenditures.

23. Redwood Valley Water District, SRPA, California: Amendatory SRPA loan repayment contract.

24. Placer County Water Agency, CVP, California: Amendatory contract to provide for the current CVP water rates.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 427 (Nevada Highway and Park Street), Boulder City, Nevada 89005, telephone (702) 293–8536.

1. Amendment to Contract No. 176r–696 between the Bureau of Reclamation and the Department of the Army to increase the maximum amount of water delivered to the Yuma Proving Grounds from 55 acre-feet to 975 acre-feet, pursuant to the recommendation of the Arizona Department of Water Resources.

2. Agricultural and M&I water users, CAP, Arizona: Water service subcontracts; a certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

3. Southern Arizona Water Rights Settlement Act: Sale of up to 28,200 acre-feet per year of municipal effluent to the city of Tucson, Arizona.

4. Contracts with five agricultural entities located near the Colorado River, BCP, Arizona: Water service contracts for up to 1,920 acre-feet per year total.

5. Gila River Indian Community, CAP, Arizona: Water service contract for delivery of up to 173,100 acre-feet per year.

6. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

7. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: Contracts for repayment of Federal expenditures for construction of distribution systems.

8. State of Arizona, BCP, Arizona: Contract for an undetermined amount of Colorado River water for M&I use on State-owned land.

9. State of Arizona, BCP, Arizona: Contract for an undetermined amount of Colorado River water for agricultural use and related purposes on State-owned land.

10. Contract with four individual holders of miscellaneous present perfected rights to Colorado River water totalling 4.5 acre-feet, pursuant to the January 9, 1979, Supplemental Decree of the United States Supreme Court in *Arizona* v. *California* (439 U.S. 419).

11. Contracts for delivery of surplus water from the Colorado River, when available, with Emilio Soto and Sons, for 1,836 acre-feet per year; Kennedy Livestock, for 480 acre-feet per year.

12. Imperial ID and/or the Coachella Valley Water District, BCP, California: Contract providing for exchange of up to 10,000 acre-feet of water per year from a well field to be constructed adjacent to the All-American Canal (AAC) for an equivalent amount of Colorado River water and for O&M of the well field, Lower Colorado Water Supply Project, California.

13. Lower Colorado Water Supply Project, California: Water service and repayment contracts with nonagricultural users in California for consumptive use of up to 10,000 acre-feet of Colorado River water per year in exchange for an equivalent amount of water to be pumped into the AAC from a well field to be constructed adjacent to the canal.

14. Hutchison present perfected rights contract amendment to reflect the transfer of part of the right to Winterhaven, California, Supreme Court Decree in *Arizona* v. *California* and BCP.

15. Winterhaven present perfected rights contract for a portion of Hutchison Present Perfected Rights transfer to Winterhaven, Supreme Court Decree in *Arizona* v. *California* and BCP.

16. County of San Bernardino, SRPA, California: Repayment contract for a $28.6 million loan.

17. Wellton-Mohawk IDD and Gold Dome Mining Corporation (Corporation), Gila Project, Arizona: Contract for delivery of 6.14 acre-feet of water per year to the Corporation through Wellton-Mohawk Division facilities.

18. Wellton-Mohawk IDD, Gila Project, Arizona: Exchange agreement providing for a reduction in Wellton-Mohawk IDD's contractual right to consumptively use 22,000 acre-feet of Colorado River water per year, providing for discharge of the IDD's repayment obligation and exemption from the full-cost pricing and acreage limitation provisions of Federal Reclamation law; Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988.

19. Water delivery contracts with seven Phoenix area cities providing for the delivery of up to 27,000 acre-feet per year through the CAP; Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988.

20. Agreements with seven Phoenix area cities providing for the lease of the Salt River Pima-Maricopa Indian Community's CAP entitlement of 13,300 acre-feet per year to the cities; Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988.

21. Salt River Pima-Maricopa Indian Community, CAP, Arizona: Amendatory CAP water delivery contract providing for extension of the contract term and authorizing the Community to lease its CAP water to the Phoenix area cities; Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988.

22. Salt River Pima-Maricopa Indian Community, Salt River Project, Arizona: Amendatory agreement to increase the Community's allotment of Bartlett Dam water from the Salt River Project; Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988.

23. Roosevelt Water Conservation District, Salt River Project, Arizona: Agreement assigning a portion of the District's CAP agricultural water to seven Phoenix area cities; Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988.

24. Roosevelt Water Conservation District, Salt River Project, Arizona: Agreement to extend the term of the District's water salvage contract; Salt River Pima-Maricopa Indian Water Rights Settlement Act of 1988.

25. Tohono O'odham Nation, SRPA, Tucson, Arizona: Repayment contract for an $8.2 million loan to the Schuk Toak District.

26. San Carlos IDD, San Carlos Project, Arizona: Repayment contract for District's share of the Safety-of-Dams repair to Coolidge Dam.

27. Gila River Indian Community, San Carlos Project, Arizona: Repayment contract for Community's share of the Safety-of-Dams repair to Coolidge Dam.

28. Sturges Trust, Gila Project, Arizona: Contract for delivery of 8,500 acre-feet of Colorado River water per year for agricultural use as recommended by the State of Arizona and to recognize the present perfected right to the use of Colorado River water.

29. Phoenix Area Cities, CAP, Arizona: Amendment to the CAP Plan 6 Funding Agreement to extend the deadline to demand the return of funds contributed for the Cliff Dam alternative water supply.

Upper Colorado Region: Bureau of Reclamation, P.O. Box 11568, 125 South State Street, Salt Lake City, Utah 84147, telephone (801) 524–5435.

1. Individual irrigators, M&I, and miscellaneous water users, Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) The Benevolent and Protective Order of the Elks, Lodge No. 1747, Navajo Reservoir, CRSP, New Mexico: Water service contract; 20 acre-feet per year for municipal use; contract term for 40 years from execution.

(b) Mt. Crested Butte Water and Sanitation District, Blue Mesa Reservoir, CRSP, Colorado: Water service contract; 25 acre-feet per year to support present diversion rights for municipal use; contract term for 40 years from execution.

2. La Plata Conservancy District, Animas-La Plata Project, New Mexico: Repayment contract; 9,900 acre-feet per year for irrigation, terms consistent with binding cost-sharing agreement, dated June 30, 1986.

3. San Juan Water Commission, Animas-La Plata Project, New Mexico: Repayment contract; 30,800 acre-feet per year for M&I, terms consistent with binding cost-sharing agreement, dated June 30, 1986.

4. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,500 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 3,300 acre-feet in Phase Two. Contract terms to be consistent with binding cost-sharing agreement and water rights settlement agreement, in principle.

5. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 26,400 acre-feet per year for irrigation use in Colorado; and 900 acre-feet per year for irrigation use in New Mexico. Contract terms to be consistent with binding cost-sharing agreement and water rights settlement agreement.

6. Navajo Indian Tribe, Animas-La Plata Project, New Mexico: Repayment contract; 7,600 acre-feet per year for M&I use.

7. State of Colorado, Animas-La Plata Project, Colorado: Escrow Account Agreement.

8. Uintah Water Conservancy District, Jensen Unit, CUP, Utah: Amendatory repayment contract to reduce M&I water supply and corresponding repayment obligation.

9. Vermejo Conservancy District, Vermejo Project, New Mexico: Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Public Law 98–550.

10. Conejos Water Conservancy District, San Luis Valley Project, Colorado: Amendatory contract to place operation, maintenance, and replacement costs on a variable basis commensurate with the availability of project water.

11. Weber Basin Water Conservancy District, Weber Basin Project, Utah: Repayment contract for R&B of the A.V. Watkins Dike.

12. Ogden River Water Users Association, Ogden River Project, Utah: Repayment contract for R&B of portions of the Pineview Dam, Ogden Canyon Conduit, Ogden-Brigham Canal and South Ogden Highline Canal

13. South Cache Water User's Association, Hyrum Project, Utah: Repayment contract for R&B of portion of Hyrum Dam, Hyrum/Mendon Canal,

BEST COPY AVAILABLE

Hyrum Feeder Canal, Wellsville Canal, and other miscellaneous work.

14. State of Colorado, San Luis Valley Project, Colorado: Cost-sharing contract for Closed Basin Division.

15. Miscellaneous M&I and irrigation water users in New Mexico, San Juan-Chama Project, New Mexico-Colorado: Repayment contracts for remaining project water allocated in 1975 or before. Contract amounts vary from 60 to 3,000 acre-feet

16. Individual irrigators, M&I users, and miscellaneous water users, Dallas Creek Project, Wayne N. Aspinall Unit, CRSP, Colorado: Drought relief pursuant to Disaster Assistance Act of 1988 for temporary water service contracts for surplus project water up to 10,000 acre-feet through 1989.

Great Plains Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone (406) 657–6413.

1. Individual irrigators, M&I, and miscellaneous water users, Great Plains Region, Montana, Wyoming, North Dakota, South Dakota, Colorado, Kansas, Nebraska, Oklahoma, and Texas: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Fort Shaw ID, Sun River Project, Montana: R&B loan repayment contract; up to $1.5 million.

3. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

4. Owl Creek ID, Owl Creek Unit, P–SMBP, Wyoming: Amendatory water service contract to reflect reduced water supply benefits being received from Anchor Reservoir.

5. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts for the marketable yield to water users within the Colorado River Basin of Western Colorado.

6. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Second round negotiations of a water service contract for sale of the regulatory capacity of Ruedi Reservoir.

7. East Slope Storage system, Pueblo Reservoir, Twin Lakes, and Turquoise Reservoir, Fryingpan-Arkansas Project, Colorado: Contract for temporary and long-term storage and exchange contracts.

8. Cedar Bluff ID No. 6, Cedar Bluff Unit, P–SMBP, Kansas: Amendatory repayment contract to relieve all contract obligations. The reservoir storage capacity has been sold to the State of Kansas for fish, wildlife, recreation, and other purposes.

9. Mirage Flats ID and the Nebraska Game and Parks Commission, Mirage Flats Project, Nebraska: Agreement to retain storage in Box Butte Reservoir for fish, wildlife and recreation purposes.

10. Frenchman Valley Irrigation District, Frenchman Unit, P–SMBP, Nebraska: Pending passage of legislation, renegotiate District's existing contract to reduce payments based on payment ability and reduced water supply.

11. Northern Colorado Water Conservancy District and the Municipal Subdistrict, Colorado-Big Thompson Project, Colorado: Contract for storage and conveyance of water for the Windy Gap Project; Amendatory contract to make administrative and technical revisions to conform the contract terms and conditions to the Windy Gap Project as actually constructed and operated.

12. Department of Natural Resources and Conservation, SRPA, Montana: Grant and loan contract for rehabilitation of Middle Creek Dam to meet required safety criteria and to increase reservoir storage capacity by 1,917 acre-feet which will be utilized for irrigation and municipal purposes.

13. Garrison Diversion Unit, P–SMBP, North Dakota: Repayment contract; Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to bring the terms in line with the Garrison Diversion Unit Reformulation Act of 1986. Negotiation of repayment contracts with irrigators and M&I users.

14. Gray Goose ID, Gray Goose Unit, P–SMBP, South Dakota: Contract negotiations to integrate Gray Goose ID into the P–SMBP as authorized pursuant to section 1120 of the Water Resource Development Act of January 21, 1986 (Pub. L. 99–662).

15. Hilltop ID, Hilltop Unit, P–SMBP, South Dakota: Contract negotiations to integrate Hilltop ID into the P–SMBP as authorized pursuant to section 1120 of the Water Resource Development Act of January 21, 1986 (Pub. L. 99–662).

16. PacifiCorp, formerly Pacific Power and Light Company, Glendo Unit, P–SMBP, Wyoming: Contract negotiations for renewal of water storage contract for 2,000 acre-feet of nonproject industrial water.

17. Corn Creek ID, Glendo Unit, P–SMBP, Wyoming: Repayment contract for 10,350 acre-feet of supplemental irrigation water from Glendo Reservoir.

18. Hidalgo County ID No. 1, Lower Rio Grande Valley, Texas: Supplemental SRPA loan contract for approximately $13,205,000. The contracting process is dependent upon final approval of the supplemental loan report.

19. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma: Amendatory repayment contract for remedial work.

20. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Contract for the repayment of costs incurred by the United States for the construction of the Sulphur, Oklahoma, pipeline and pumping plant.

21. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Amendatory contract for revised repayment schedule to reflect credit for project lands transferred to National Park Service under Pub. L. 94–235 for the Chickasaw National Recreation Area.

22. Highland-Hanover ID, Boysen Unit, P–SMBP, Wyoming: R&B loan repayment.

23. Upper Bluff ID, Boysen Unit, P–SMBP, Wyoming: R&B loan repayment.

24. Board of Water Commissioners of the City and County of Denver, the Colorado River Water Conservation District, and the Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado: Operating agreement for substitution of water in the proposed Muddy Creek or Rock Creek Reservoir for Green Mountain Reservoir water.

25. City of Dickinson, Heart River Unit, P–SMBP, North Dakota: Renegotiate water service contract number I79r–1412. Existing contract expires on September 24, 1989.

26. Malta Irrigation District, Milk River Project, Montana: R&B contract for repayment of $5,600,000 loan.

27. Glasgow Irrigation District, Milk River Project, Montana: R&B contract for repayment of $2,050,000 loan.

28. Twin Loups ID, North Loup Project, P–SMBP, Nebraska: Amendatory D&MC contract to increase ceiling from $500,000 to $2.5 million.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

(1) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(2) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(3) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

(4) Written comments on proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within the time limits set forth in the advance public notices.

(5) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(6) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

(7) In the event modifications are made in the form of a proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary.

Factors which shall be considered in making such a determination shall include, but are not limited to: (i) The significance of the impact(s) of the modification, and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Joe D. Hall,

Acting Commissioner of Reclamation.

Date: July 24, 1989.

[FR Doc. 89–17728 Filed 7–28–89; 8:45 am]

BILLING CODE 4310–09–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167 (Sub. 1093X)]

Consolidated Rail Corp.; Exemption To Abandon Railroad in Broome County, NY

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 3.1-mile line of railroad between milepost 196.6 and milepost 199.7 in Broome County, NY.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 30, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 10, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by August 21, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Jonathan M. Broder, Consolidated Rail Corporation, 1138 Six Penn Center Plaza, Philadelphia, PA 19103.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 4, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 19, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–17561 Filed 7–28–89; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989); 49 CFR 1152.50(d)(4). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Office of Justice Programs

Family Violence Information Dissemination Program

AGENCY: Department of Justice, Office of Justice Programs, Office for Victims of Crime.

ACTION: Notice of availability of funds and request for applications for Family Violence Information Dissemination Program grants.

SUMMARY: The Office for Victims of Crime is publishing this notice to announce the availability of funds under a new program initiative to provide information regarding services that are available to victims of family violence and documentation of family violence incidents, to victims of family violence and their families. Demonstration grants will be made available to local law enforcement agencies, working in coordination with local social service agencies, shelters and hospitals, to develop and disseminate materials related to the rights of abused family members and the services available to abused family members. The law enforcement agencies will also be required to work with other service providers to develop procedures whereby an abused family member could receive a written report of each incident of physical abuse reported as well as a copy of the initial police report.

DATE: Applications are due by September 6, 1989.

ADDRESS: Address applications to: Office for Victims of Crime, National

Victims Initiative Division, 633 Indiana Ave., NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Claudio P. Belloldi, National Victims Initiative Division, (202) 272–6500. Additionally, information concerning model programs and practices is available from the National Criminal Justice Reference Service, 1600 Research Boulevard, Rockville, Maryland 20850, and the National Victims Resource Center, Box 6000, Rockville, Maryland 20850 (301) 251–5525.

SUPPLEMENTARY INFORMATION:

(a) Background

The Child Abuse Prevention, Adoption and Family Services Act of 1988, Pub. L. 100–294, § 303(b)(2), 102 Stat. 125, amending the Family Violence Prevention and Services Act, Pub. L. 98–457, 98 Stat. 1757, 42 U.S.C. 10410. Title III (Sec. 301–303, inclusive) of this Act is entitled the "Family Violence Prevention and Services Act." The overall purpose of Title III is to: demonstrate the effectiveness of assisting states in efforts to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents; and to provide technical assistance and training in the area of family violence to states, local public agencies, nonprofit private organizations, and other persons seeking such assistance.

42 U.S.C. 10410(b)(2)(A), the family violence information component, relates specifically to local law enforcement agencies providing various forms of information to persons who are victims of family violence, stating as follows:

(2)(A) The Secretary shall award grants or contracts to local law enforcement agencies, acting in coordination with domestic violence shelters, social service agencies and hospitals, for the purpose of:

(i) the development of materials, to be provided to each abused family member at the time such spouse is identified by law enforcement officers, hospital personnel, social services personnel, education counseling personnel, and other appropriate personnel involved in the identification of family violence cases that include:

(I) an explanation in basic terms of:

(aa) the rights of the abused family member under the laws of the jurisdiction involved; and

(bb) the services available to the abused family member, including intervention, treatment, and support services; and

(II) phone numbers and addresses for the services described in subparagraph (A)(ii);

(ii) the development of procedures whereby domestic violence shelter, hospital, social service, or law enforcement personnel provide to an abused family member a written report, relating to each incidence of physical abuse reported by the family member, that includes a description of physical injuries to the family member observed by such personnel; and

(iii) the development of systems whereby domestic violence shelter or local social service personnel, with the consent of the abused family member involved, may obtain from local law enforcement personnel information relating to abuse of such family member, including a report describing the initial contact of such family member and the law enforcement agency.

(B) The Secretary shall provide assurances that procedures will be developed under this paragraph to guarantee the confidentiality of the records maintained.

The responsibilities for implementing the provisions of this section of the Act are delegated to the Attorney General under the provisions of 42 U.S.C. 10410 (c).

The information provisions of the Act as well as a separate section related to developing data on individual characteristics relating to family violence and the objective documentation of the data on the incidence of family violence were companion amendments. Congress found that in many of the reported cases of family violence, the family member had been previously abused. However, because of the nature of family violence and the various agencies which respond, many cases were not officially reported. Therefore, a victim who wanted to provide documentation to past abusive acts was unable to do so.

The two new provisions of the Act will begin to address this shortcoming. The Department of Health and Human Services is now required to develop data on the victims of family violence and their dependents based on injuries that are brought to the attention of hospital, social service, or law enforcement personnel, whether or not formal civil or criminal action is taken. Further, in addition to requiring the collection of data, the Act now requires that information concerning the availability of services and shelters be placed into the hands of the victims as soon as possible. Often victims do not know their rights or the location of the closest shelter.

(b) Purpose

The Office for Victims of Crime is making $40,000 available to local law enforcement agencies for grants not to exceed $10,000 in order to improve the information available to victims of family violence. Specifically, the funds will be used to: develop and distribute informational materials to family violence victims; develop procedures whereby domestic violence shelters, hospitals, social service agencies and local law enforcement agencies provide family violence victims with a written report related to the abuse reported by that individual; and develop a system whereby domestic violence shelter or local social service personnel, with the consent of the victim, may obtain from the local law enforcement agency information relating to abuse of the victim, including a report describing the initial contract of such family member and the law enforcement agency.

(c) Eligible Applicants

Applications will be accepted from any local enforcement agency including: town or village police departments, city police departments, county police departments, and sheriffs departments. The chief executive of any town, village and/or county can make application on behalf of his/her law enforcement agency if assurances are provided within the application that he/she has the support of the local law enforcement agency. Applications submitted directly from a local law enforcement agency must be submitted by the head of the agency.

(d) Program Description

The Family Violence Information Dissemination Program contains three program elements. In order to be eligible for funding consideration, each applicant must address each of the elements. The three elements of the program are:

1. Development of informational materials for family violence victims. Law enforcement agencies are requested to either develop, revise and/or reprint materials that can be used by law enforcement officers, hospital personnel, social service personnel, educational counseling personnel, and other personnel involved in the identification of family violence cases. The materials should contain: information that relates to the rights of the victim under the law of the jurisdiction involved; the services available to the abused family member, including intervention, treatment, and support services; and phone numbers and addresses for all these services.

Informational materials should be developed in sufficient quantity to meet the needs of a particular community or jurisdiction and should be relevant and appropriate to the population served. Areas serving populations where English is primarily the second language are encouraged to develop materials that are culturally relevant and in a form and language that is clearly comprehended.

To ensure appropriateness of material, applicants are encouraged to involve personnel from other agencies which respond to family violence cases. Further, the applicant must provide assurances from these other agencies of collaborative efforts and that the materials will be utilized.

2. Development of procedures whereby domestic violence shelters, hospitals, social service agencies and local law enforcement agencies provide family violence victims with a written report related to the abuse reported by that individual. Law enforcement agencies are required to work with agencies that commonly are involved in the identification of family violence cases in developing and implementing a procedure that ensures that victims of family violence receive a written report of each incident of abuse reported. The applicant must secure cooperation of the appropriate agencies and the assurance from agencies that they will comply with the procedures that are developed.

3. Develop a system whereby domestic violence shelters or local social service personnel, with the consent of the victim, may obtain from the local law enforcement agency information relating to abuse of the victim, including a report describing the initial contact with such family members and the law enforcement agency. One of the problems experienced by family violence victims is that incidence reports regarding their victimization have not been made available to the victim. Without this documentation, victims have often had difficulty in obtaining timely judicial relief and protection. Applicants must describe the method for making incident reports on all family violence incidents, which they are called to investigate, available to the victim or an authorized representative of the victim. Applicants must also provide assurances that the process developed will be utilized.

(e) Selection Criteria

In determining which applications to fund, the Office for Victims of Crime will consider the following:

A. the degree to which the applicant has addressed the three program requirements, including obtaining all applicable assurances of cooperation:

1. development and production of informational materials; (20 points)

2. development and implementation of procedures to ensure that family violence victims receive a written report of each incident; (20 points)

3. development and implementation of a method for making the law enforcement agency's information available to family violence victims. (20 points)

B. The comprehensiveness of the proposed material to be developed and evidence of involvement of appropriate agencies. (10 points)

C. The ethnic and cultural relevance of the material to be developed, depending upon the composition of the community. (10 points)

D. The cost benefit ratio of the material/procedures to be developed, i.e. how many people will benefit from this program and the likelihood that programs will become self-sustaining. (10 points)

E. The demonstrated need for development of new and/or revised materials and procedures in the community. (10 points)

(f) Grant Period and Award Amount

The Office for Victims of Crime will make $40,000 available for this program. The Office anticipates making four grants. The grants will be for 12 months and will cover 100% of the project costs. Applicants are requested to prepare a budget not to exceed $10,000.

(g) Submission Deadlines

Applications must be received by September 6, 1989. Applications which are hand delivered must be received by the close of business: 5:00 P.M. E.D.T.

(h) Applications

Applicants should submit three (3) copies of thier completed proposal by the deadline established above. All submissions must include:

A. A completed and signed Federal Assistance application on the current Standard Form 424. Copies of the required forms, and any information or clarification regarding them, may be obtained by writing the Office for Victims of Crime, National Victims Initiative Division, 633 Indiana Ave NW., Washington, DC, 20531. (202)–272–6500.

B. A summary of the full proposal, not to exceed one page.

C. A program narrative of not more than ten (10) double spaced typed pages. The narrative should describe how the applicant intends to address each of the three program elements.

D. A proposed budget outlining all direct and indirect costs contemplated by the applicant. Proposed expenditures should be listed for each of the following categories: personnel, fringe benefits, travel, equipment, supplies, contractual, and indirect costs. A short narrative justification of each budgeted cost should also be included.

All three copies of the application must be sent or hand delivered to: Office for Victims of Crime, 633 Indiana Avenue NW., Washington, DC 20531, by the deadline established above.

(i) Notification Under Executive Order 12372

This program provides support for training and technical assistance for law enforcement and other personnel as well as the development of materials and procedures to assist in addressing issues related to family violence. The Department of Health and Human Services, under whose authority these funds are transferred to the Department of Justice, excludes this program from coverage under Executive Order 12372. As this program is national in scope, the requirements of Executive Order 12372 are waived.

Approved:

Jane Nady Burnley,

Director, Office for Victims of Crime.

[FR Doc. 89–17907 Filed 7–28–89; 8:45 am]

BILLING CODE 4410–18–M

Law Enforcement Training and Technical Assistance Grants

AGENCY: Department of Justice, Office of Justice Programs, Office for Victims of Crime

ACTION: Notice of availability of funds and request for applications for law enforcement training and technical assistance grants.

SUMMARY: The Office for Victims of Crime (OVC) is publishing this notice to announce the availability of Family Violence Prevention and Services Act funds for Fiscal Year 1989. The purpose of these funds is to provide training and technical assistance to local and state law enforcement agencies on the response to incidents of family violence.

DATE: Applications are due by September 6, 1989.

ADDRESS: Address applications to: Office for Victims of Crime, National Victims Initiative Division, 633 Indiana Ave, NW., Washington DC 20531.

FOR FURTHER INFORMATION CONTACT: Claudio Belloli, National Victims Initiative Division, (202) 272–6500. Additionally, information concerning model programs and practices is available from the National Criminal Justice Reference Service, 1600 Research

Boulevard, Rockville, Maryland 20850, and the National Victims Resource Center, Box 6000, Rockville, Maryland 20850, (301) 251–5525.

SUPPLEMENTARY INFORMATION:

(a) Background

The authority for this program is found in The Family Violence Prevention and Services Act, Pub. L. No. 98–457, section 311, 98 Stat. 1763, 42 U.S.C.A. section 10410 (a) and (b) [1] (West Supp. 1989). The overall purpose of this Act is: to demonstrate the effectiveness of assisting states in efforts to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents; and to provide technical assistance and training in the area of family violence to states, local public agencies, nonprofit private organizations, and other persons seeking such assistance.

42 U.S.C. 10410, Law Enforcement Training and Technical Assistance Grants and Contracts, authorizes the Department of Justice to provide regionally-based training and technical assistance to personnel of local and state law enforcement agencies in methods for responding to incidents of family violence. Funds for these efforts are transferred annually to the Department of Justice, Office of Justice Programs (OJP) from the Department of Health and Human Services (DHHS), Office of Human Development Services.

This announcement applies only to 42 U.S.C.A. section 10410 (a) and (b)[1]. A separate **Federal Register** announcement has been developed for section 311, 42 U.S.C.A. section 10410 (b)(2)(A), known as the Family Member Abuse Information and Documentation Project. The term "family violence" is defined in 42 U.S.C.A. § 10410(1) to mean any act or threatened act of violence, including any forceful detention of any individual which:

(A) results or threatens to result in physical injury; and

(B) is committed by a person against another individual (including an elderly person) to whom such person is or was related by blood or marriage or with whom such person is or was lawfully residing.

The Office for Victims of Crime has received funds from the Department of Health and Human Services to administer the Law Enforcement Training and Technical Assistance portion of the Family Violence Prevention and Services Act since 1986. In FY 1986, $700,000 was transferred to the Office of Justice Programs; in FY 1987, $500,000 was transferred; and in FY 1988, $400,000 was transferred. All the funds transferred to OJP, except for $150,000 of funds transferred in FY 1986, have been used for developing and implementing programs and for training law enforcement executives and trainers. The $150,000 transferred in FY 1986 was utilized by the National Institute of Justice to help support research projects related to law enforcement intervention in domestic violence cases.

More specifically, grants have been made to the Victim Service Agency (VSA) of New York City and the National Organization of Black Law Enforcement Executives (NOBLE) for the following activities.

- Phase I (VSA): During this initial phase of training, law enforcement executives were provided with a clear understanding of the causes, nature and appropriate response to family violence. Executives were also assisted in developing effective operational procedures for their agencies through regional policy development conferences. Law enforcement agencies throughout the country were surveyed regarding their family violence policies, practices and training programs. Information collected was used to develop model operational procedures for handling family violence cases, training manuals for law enforcement executives and policy makers, and a training video tape.
- Phase II (VSA): Phase II was intended to give training officers the tools to implement effective policies and practices. VSA developed and conducted a training program for law enforcement training officers. A trainers' manual entitled, "Training and Operational Procedures: A Coordinated Response to Domestic Violence" and a video tape were produced.
- Phase III (NOBLE): Utilizing the material produced under the previous grants, NOBLE has conducted regional training for state and local law enforcement executives and mid-level managers. This training will conclude in January 1990.

Law enforcement training provided thus far under the auspices of the Family Violence Prevention and Services Act has had a significant impact. To date, training has been provided to approximately 1200 persons, representing 450 law enforcement agencies. A survey of the departments that have been trained indicates that of those that responded to the survey (58), 45 of them (78% of the respondents), changed their policies because of the training they received. These jurisdictions affect a population of over 16 million people. Policy changes adopted by these agencies include: development and implementation of pro-arrest and/or mandatory arrest policies; expansion of victim assistance services; mandated reporting of all domestic violence incidents; increased community coordination; enhanced on-scene investigation; review and refining of definitions related to domestic violence; and development of written policies. However, because the training has focused on broad policy issues and has been regional, there has been little opportunity to tailor training to the laws of an individual state.

(b) Purpose

The Office for Victims of Crime is making $360,000 available to organizations and agencies that have had previous experience in training law enforcement officers, law enforcement trainers and law enforcement policy makers. The organizations selected will be required to develop and implement a training program for law enforcement policy makers and officers on the most effective procedures and policies for responding to incidents of family violence within a given state.

(c) Eligible Applicants

Applications will be accepted from any organization or agency that has had experience in training law enforcement policy makers and officers in responding to family violence incidents. As this program will focus primarily on training of law enforcement policy makers and developing a training curriculum for line officers within a particular state, the applicant should have experience in and knowledge about the applicable laws in that state. Further, as it is recognized that the amount of funds available for this program cannot address all the training needs of a particular state, preference will be given to applicants who demonstrate an investment of non-Federal resources in the development of this program. Resources may be in the form of staff time, utilization of existing training materials and facilities.

As competition will be based upon the best possible application, agencies and organizations representing a single state are encouraged to join together in developing an application. No more than one application per state will receive funding.

Since the purpose of the program is to provide training to the maximum number of law enforcement officers, preference will be given to state law enforcement training programs which have an ongoing role in training of law enforcement personnel.

(d) Program Description

Approximately six projects will be funded. Each project must focus primarily on the training and policy development needs of an individual state. However, while focusing on the needs of an individual state, the training program should be broad enough so that law enforcement officials from neighboring states who wish to attend will benefit from the training.

The Office for Victims of Crime does not want to duplicate existing training efforts in a particular state. The goal is to ensure that the information that has been developed under previous grants is utilized and made more relevant to specific state circumstances.

Under this program we are requesting the applicants to review their current family violence training program and either update, modify, expand and/or supplement their current law enforcement family violence training curricula.

Each program should contain, at a minimum, the following components:

- Develop and implement a training program for state and local law enforcement management personnel and policy makers on effective policies and procedures for responding to incidents of family violence. The program should include statewide/regional training sessions for sheriffs, chiefs of police and other law enforcement policy makers and mid-level managers. The training sessions should be formatted and tailored to reach as many policy makers as possible. Further, in designing the training program the applicant should consider adapting training material that has been developed under previous grants or materials which are currently available to the state. Funds could be used to modify, update, amend, or expand existing training documents.
- The curriculum should be applicable to all line law enforcement officers operating within a particular state. It should utilize current up-to-date information, procedures and policies. Applicants are encouraged to ensure that all material is consistent with state law and with accepted law enforcement practices regarding intervening in family violence situations. Many of the practices and policies advocated by the Office for Victims of Crime can be found in the recommendations of the Attorney General's Task Force on Family Violence and in materials developed by the Victim Services Agency (New York City) under a previous grant. Activities that would be acceptable under this portion of the program are:
- Development of short instructional video tapes. The tapes would present a situation(s) that a law enforcement officer would expect to encounter and would require the officer to take a course of action and explain his/her reasoning for taking this action.
- Revision of the existing training curriculum to incorporate actions which need to be taken because of the passage of new family violence related laws.
- Supplementing outdated training material with more relevant and timely material. Applicants may wish to consider supplementing existing material with computer software tailored to the training needs of law enforcement officers.
- Rewriting the existing curriculum to make it more specific for line officers. Some training curricula, while appropriate, are too long for all officers to attend. Reducing existing curricula so that more officers could benefit from the training would be allowable.
- Develop a plan for ensuring that the line officer training program developed under the auspices of or in conjunction with this grant program is implemented.

(e) Selection Criteria

In determining which applications to fund, the Office for Victims of Crime will consider the following:

1. Experience in developing and delivering law enforcement family violence training, including the expertise and background of staff assigned to this effort. (10 points)
2. Appropriateness to program design and approach to identified problem. (20 points)
3. Soundness of methodology. (20 points)
4. Cost effectiveness and investment of agencies' own training resources. (20 points)
5. Extent to which existing material is utilized and to which materials are consistent with practices and policies of the Attorney General's Task Force on Family Violence and materials developed under previous grants. (10 points).
6. The number of persons and agencies that will benefit from training received under this grant program. (20 points)

(f) Funds Available

The Office for Victims of Crime will make $360,000 available for this program effort.

(g) Grant Period and Award Amount

The Office for Victims of Crime anticipates making up to six grants. The grants will be for eighteen (18) months and will cover 100 percent of the project costs. Though no matching funds are required, preference will be given to applicants who demonstrate an investment of non-Federal resources in the development of this program. Grant awards will range from $50,000 to $75,000 and will be based upon need.

(h) Submission Deadlines

Applications must be received by September 6, 1989. Applications which are hand delivered must be received by the close of business (5:00 P.M. E.D.T.).

(i) Applications

Applicants should submit three (3) copies of their completed proposal by the deadline established above. All submissions must include:

A. A completed and signed Federal Assistance application on the current Standard Form 424. Copies of the required forms, and any information or clarification regarding them, may be obtained by writing the Office for Victims of Crime, National Victims Initiative Division, 633 Indiana Ave N.W., Washington, D.C. 20531. (202) 272–6500.

B. A summary of the full proposal, not to exceed one page.

C. A program narrative of not more than twenty (20) double spaced typed pages. The narrative should include the following information:

1. A clear, concise statement of the issues surrounding the problem and a summary of how the proposed work conforms to practices and policies of the Attorney General's Task Force on Family Violence;
2. A clear statement of the project objectives including an approximation of the number of law enforcement personnel to be trained, a list of the major milestones of events, activities, products, and a timetable for completion.
3. A clear statement which describes the approach and strategy to be utilized in responsding to each of the tasks identified in the program description. Applicants should indicate how the training package will be individualized for the proposed target audience, and how the organization plans to maximize attendance;
4. The proposed organization and management plan, including, at a minimum, the staff of the project, with their experience, the time commitments of the staff to individual project tasks and current agency training resources used to support the project;
5. A proposed budget outlining all direct and indirect costs contemplated by the applicant. Proposed expenditures should be listed for each of the following categories: personnel, fringe benefits, travel, equipment, supplies, contractual,

and indirect costs. A short narrative justification of each budgeted cost should also be included. It is anticipated that a subcontract relationship with the developer of the training curriculum may be established. If such a relationship is contemplated, a separate detailed budget should be submitted;

6. Copies of vitae for the professional staff.

All three copies of the application must be sent or hand delivered to: Office for Victims of Crime, 633 Indiana Avenue, NW., Washington, D.C. 20531, by the deadline established above.

(j) Notification Under Executive Order 12372:

This program provides support for training and technical assistance for law enforcement and other personnel to assist in addressing issues related to family violence. The Department of Health and Human Services, under whose authority these funds are transferred to the Department of Justice, excludes this program from coverage under Executive Order 12372. This training and technical assistance program is national in scope and the statutory requirement for "regionally based training" will be offered by selected grantees in a few cities nationwide. Therefore, the requirements of Executive Order 12372 are waived.

Approved:

Jane Nady Burnley,

Director, Office for Victims of Crime.

[FR Doc. 89-17908 Filed 7-28-89; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatetments. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Employment and Training Administration
Standard Questionnaire for Manufacturing Firms
1205-0194; ETA 8561 A/B/C
On occasion
Business or other-for-profit; Small businesses or organizations700 respondents; 3,975 total hours; 4.25 hrs. per response; 1 form

Data and information needed to prepare Secretary of Labor reports to the President under sections 202 and 224 of the Trade Act of 1974 as amended which are used in determining type(s) of import relief, if any, to be granted to import impacted industries.

Extension

Employment and Training Administration
Customer Survey Data Request
1205-0190; ETA 8562
On occasion
Business or other for-profit; Small businesses or organizations18, 630 respondents; 20,493 total hours; 1 hr 6 min. per response; 1 form

Information needed for Secretary of Labor to make determinations of eligibility of petitioning workers to apply for trade adjustment assistance in accordance with sections 222, 223, and 249 the Trade Act of 1974 as amended, affecting manufacturers, wholesalers, retailers and distributors.

Occupational Safety and Health Administration
Oganizational statement for fire brigades
1218-0075
Businesses or other for-profit2,750 responses; 269 hours

The organizational statement describes what the fire brigade is expected to do, and will help employees understand their duties and responsibilities as fire brigade members. It will also inform compliance officers of the type of firefighting which will be performed, and if the level of training is consistent with that type of firefighting.

Occupational Safety and Health Administration
Diving Related Recordkeeping
1218-0069
Businesses or other for-profit; small businesses or organizations3,000 respondents; 111,005 total burden hours; 421,200 forms; 0.263544 hours per response;

These requirements/records are directed toward assuring the safety/health of divers exposed to hyperbaric conditions during and after undersea activities. Additionally, the safety standards requiring records pertaining to diving equipment are intended to bring about a safe workplace and, thus, better assure the occupational safety of the divers.

President's Committee on Employment of the Handicapped
Job Accommodation Network Project
JAN-PCEH
On occasion
State or local governments; businesses or other for profit; Federal agencies or employees; small businesses or organizations5200 responses; 2600 hours; 1 form

The collection of data with the proposed direct-mail questionnaire will permit the development of a computer-based information resource which may be accessed by representatives of business for the purpose of identifying accommodations which will assist handicapped persons in obtaining employment.

Employment Standards Administration
Request for State or Federal Workers' Compensation Information
1215-0060; CM-905
On occasion
State or local governments; Federal agencies or employees4400 respondents; 1100 total hours; 15 min. per response; 1 form

30 U.S.C. 922 and 20 CFR 725.535 specify that beneficiaries or DCMWC have their benfeits reduced by those amounts which they may receive from State or other Federal workers' compensation programs attributable to a black lung related disability.

Signed at Washington, DC this 24th day of July, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89-17741 Filed 7-28-89; 8:45 am]

BILLING CODE 4510-23-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Hearing

ACTION: Notice of hearing location.

SUMMARY: This announcement is to notify the public of the location of the Los Angeles, California hearing. The location of the hearing is in the Seminar Room, Economics Hall, at the Museum of Science and Industry, University of Southern California Campus, 700 State Drive, Los Angeles, California. This was originally announced in the **Federal Register** on Wednesday, July 19, 1989 at page 30293.

DATES: Thursday, August 3, 1989, 9:00-1:00; Friday, August 4, 1989, 9:00-12:00.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, DC 20005, (202) 724-1545.

Signed at Washington, DC, this 21st day of July.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 89-17743 Filed 7-28-89; 8:45 am]

BILLING CODE 4510-23-M

Meeting

ACTION: Notice of meeting location.

SUMMARY: This announcement is to notify the public of the location of the Los Angeles, California meeting. The location of the meeting is in the Manhattan Room at the Compri Hotel-LAX, 1985 East Grand Avenue, El Segundo, California, 90245. This was originally announced in the **Federal Register** on Wednesday, July 19, at page 30293.

DATE: Thursday, August 3, 1989, 1:30-4:30.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, DC 20005, (202) 724-1545.

Signed at Washington, DC, this 21st day of July.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 89-17742 Filed 7-28-89; 8:45 am]

BILLING CODE 4510-23-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by August 30, 1989. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the *Federal Register* on July 27, 1989.

The application received is as follows:

Applicant

J. Alan Campbell, P.O. Box 209, Athens, Georgia 30603.

Activity for Which Permit Requested

Taking, Entering protected areas. The applicant is an artist who will be observing, drawing, painting, photographing, and otherwise recording antarctic wildlife. He requests permission to enter selected protected areas. No physical handling of specimens is intended. The applicant will be in Antarctica in support of NSF's effort to make available to the public information on Antarctica and the U.S. Antarctic Program.

Location

Palmer Station and vicinity, Antarctica.

Dates

September 1989—November 1989.

Charles E. Myers,

Permit Office.

[FR Doc. 89-17734 Filed 7-28-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-254 and 50-265]

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering issuance of exemptions from the requirements of 10 CFR Part 50, Appendix R, to Commonwealth Edison Company (CECo, the licensee) for the Quad Cities Nuclear Power Station (Units 1 and 2) located in Rock Island County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant certain plant specific exemptions from the requirements for "Fire Protection of Safety Shutdown Capability" prescribed in Section III.G of Appendix R to 10 CFR Part 50. More specifically, CECo requested exemptions from: (1) Subsection III.G.1–fire protection features shall be provided to assure at least one train of equipment necessary for hot shutdown would be undamaged by fire, and systems necessary for cold shutdown could be repaired within 72 hours; (2) Subsection III.G.2.a–cables and equipment, and associated non-safety circuits, of redundant trains shall be separated by a 3-hour rated fire barrier; and (3) Subsection III.G.3–where provisions of subsection III.G.2 cannot be met, then alternative or dedicated shutdown capability shall be provided, including installation of a fire detection and fixed-fire suppression system.

The Need for the Proposed Action

Since it is not possible to predict all conditions or plant configurations under which a fire can occur and propagate, the Appendix R rule only prescribes general fire protective measures. As such, there will be instances where plant specific configurations or system features could safely allow for a different kind of protection from fire damage than specified in the rule (i.e., Section III.G).

For these situations, strict compliance may not be required to meet the underlying purpose of the rule. Whereupon for special circumstances identified in 10 CFR § 50.12, the licensee can be permitted to forego unnecessary plant modifications. For the particular instances in this proposed action, the licensee has demonstrated by detailed fire hazards analysis that existing protection and/or other proposed modifications will provide a level of safety for certain plant areas and zones which is equivalent to the technical requirements in subsections III.G.1, III.G.2, and III.G.3 of Appendix R.

Environmental Impact of the Proposed Action

The proposed exemptions are intended to provide a level of safety equivalent to the technical requirements of Section III.G of Appendix R. These exemptions will not change the types, or allow an increase in the amounts, of effluents that may be released offsite. Nor would they result in an increase in individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemptions.

With regard to potential nonradiological impacts, the proposed exemptions involve features located entirely within restricted areas as defined by 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemptions.

Alternative Use of Resources

This action does not involve the use of resources which were not previously considered in the Final Environmental Statement (construction permit and operating license) for Quad Cities Nuclear Power Station, Units 1 and 2, dated September 1972.

Alternative to the Proposed Action

Since the Commission has concluded there are no measurable environmental impacts associated with the proposed exemptions, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemptions would be to require rigid compliance with the requirements of Section III.G in Appendix R of 10 CFR Part 50. Such action would not enhance the protection of the environment and would result in unwarranted licensee expenditures of engineering and construction resources, as well as associated capital costs.

Agencies and Person Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the aforementioned environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter requesting exemptions dated December 18, 1984, and as supplemented by letters dated December 4, 1985, June 25, 1986, July 22, 1986, January 12, 1978, September 30, 1987, October 1, 1987, November 20, 1987, November 23, 1987 and November 30, 1987. These letters are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555; and at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Dated at Bethesda, Maryland, this 24th day of July 1989.

For the Nuclear Regulatory Commission.

Paul C. Shemanski,

Acting Director, Project Directorate III–2, Division of Reactor Projects III, IV, V, and Special Projects.

[FR Doc. 89–17803 Filed 7–28–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–456 and 50–457]

Commonwealth Edison Co.; Issuance of Amendment to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 20 to Facility Operating License Nos. NPF–72 and NPF–77 issued to Commonwealth Edison Company, which revised the Technical Specifications for operation of the Braidwood Station, Units 1 and 2, located in Will County, Illinois. The amendments were effective as of the date of their issuance.

The amendments authorize increasing the Braidwood spent fuel pool storage capacity from 1,060 to 2,670 storage locations.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1054, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on February 14, 1989 (54 FR 6787). No

request for a hearing or petition for leave to intervene was filed.

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an Environmental Assessment and Finding of No Significant Impact has been prepared. A Notice of Issuance of Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on July 18, 1989 (54 FR 30120). Based on the Environmental Assessment, the Commission has determined that the issuance of the amendment will not result in any significant environmental impact.

For further details with respect to the actions see (1) the application for amendment dated January 3, 1989, supplemented January 24 and February 10, 1989, (2) Amendment No. 20 to License Nos. NPF–72 and NPF–77, and (3) the Commission's related Safety Evaluation and Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., and the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland this 20th day of July 1989.

For the Nuclear Regulatory Commission.

Paul C. Shemanski,

Acting Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89–17804 Filed 7–28–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–373 and 50–374]

Commonwealth Edison Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 66 to Facility Operating License No. NPF–11 and Amendment No. 50 to Facility Operating License No. NPF–18, issued to Commonwealth Edison Company, (the licensee), which revised the Technical Specifications for operation of the LaSalle County Station, Units 1 and 2, located in LaSalle County, Illinois. The amendments were effective as of the date of issuance.

The amendments eliminate the provisions of Section 4.0.2.b of the Technical Specifications applying to refuel outage interval surveillances. Elimination of this requirement will allow scheduling of refueling interval surveillances to correspond to actual scheduled refuel outages with no impact on safety.

These revisions to the licenses of LaSalle County Station, Units 1 and 2, are in response to the licensee's application for amendment dated December 4, 1987, supplemented March 10, 1989.

The application for the amendment complies with the standard and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this was published in the **Federal Register** on April 14, 1989 (54 FR 15040). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.32(d)(4) an environmental impact statement or negative declaration and environmental assessment and finding of no significant impact need not be prepared in connection with issuance of the amendment.

For further details with respect to the actions see (1) the application for amendment December 4, 1987, supplemented March 10, 1989, and Amendment No. 66 to License No. NPF–11, (2) Amendment No. 50 to License No. NPF–18, and (3) the Commission's related Safety Evaluation and Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC, and the Public Library of Illinois Valley Community College, Rural Route No. 1, Ogleby, Illinois 61348. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland this day of July 19, 1989.

For the Nuclear Regulatory Commission.

Paul C. Shemanski,

Acting Director, Project Directorate III–2, Division of Reactor Projects III, IV, V, and Special Projects.

[FR Doc. 89–17805 Filed 7–28–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corp.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 114 to Facility Operating License No. DPR–28 issued to Vermont Yankee Nuclear Power Corporation, (the licensee), which revised the Technical Specifications for operation of the Vermont Yankee Nuclear Power Station located in Windham County, Vermont. The amendment was effective as of the date of issuance.

The amendment revised the Technical Specifications to eliminate the present requirements to test the remaining train(s) of the ECCS and SLC systems immediately and daily thereafter when one train has a component out of service.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this was published in the **Federal Register** on January 26, 1988 (53 FR 2114). A request for a hearing was received from the State of Vermont and the Commonwealth of Massachusetts. Subsequently, the two intervenors and the applicant filed a joint motion to dismiss the proceeding. The Atomic Safety and Licensing Board granted the motion to dismiss in an Order dated May 23, 1989.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact (54 FR 30619) related to the action and has concluded that an environmental impact statement is not warranted and that the issuance of this amendment will not have a significant adverse effect on the quality of the human environment.

For further details with respect to the actions see (1) the application for

amendment dated December 7, 1987, and clarified by letters dated July 15, 1988 and June 8, 1989, (2) Amendment No. 114 to License No. DPR–28, and (3) the Commission's related Safety Evaluation and Environmental Assessment.

All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building, Lower Level, 2120 L Street NW., Washington, DC, and at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 21st day of July 1989.

For the Nuclear Regulatory Commission

Morton B. Fairtile,

Project Manager, Project Directorate I–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–17606 Filed 7–28–89; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632–0729.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on July 6, 1989 (54 FR 28525). Individual authorities established or revoked under Schedule A, B, or C between June 1, 1989, and June 31, 1989, appear in a listing below.

Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exception was established:

Department of Commerce, National Oceanic and Atmospheric Administration

Field positions, GS–9 and below, in the Ocean and Atmospheric Administration's National Marine Fisheries Service conducting fish and processed fish products inspection, funded by the private sector. New appointments under this authority may not be made after July 1, 1990. Effective June 28, 1989.

Schedule B

The following exception was established:

National Endowment for the Humanities

One position of Humanities Administrator, GS–1701–12, Office of the Assistant Chairman for Programs. Effective June 28, 1989.

Schedule C

U.S. Arms Control and Disarmament Agency

One Secretary (Stenography) to the Director. Effective June 6, 1989.

One Secretary (Stenography) to the Deputy Director. Effective June 21, 1989.

U.S. Department of Agriculture

One Staff Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective May 31, 1989. Note: This position should have appeared in the listing dated Wednesday, July 6, 1989; 54 FR 28527.

One Special Assistant to the Secretary. Effective June 19, 1989.

One Staff Assistant to the Secretary. Effective June 22, 1989.

One Confidential Assistant to the Administrator, Food Safety and Inspection Service. Effective June 22, 1989.

One Staff Assistant to the Administrator, Agricultural Stabilization and Conservation Service. Effective June 22, 1989.

One Confidential Assistant to the Special Assistant to the Secretary. Effective June 22, 1989.

One Confidential Assistant to the Associate Administrator, Foreign Agricultural Service. Effective June 25, 1989.

One Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective June 29, 1989.

One Staff Assistant to the Administrator, Foreign Agricultural Service. Effective June 29, 1989.

One Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective June 29, 1989.

One Confidential Assistant to the Assistant Secretary for Marketing and Inspection Services. Effective June 29, 1989.

One Special Assistant to the Administrator, Office of Transportation. Effective June 29, 1989.

One Confidential Assistant to the Assistant Secretary for Science and Education. Effective June 29, 1989.

Department of Commerce

One Confidential Assistant to the Deputy Under Secretary. Effective June 5, 1989.

One Director, Congressional Affairs Staff, to the Under Secretary for the Bureau of Export Administration. Effective June 6, 1989.

One Chief of Congressional Affairs to the Director, Minority Business Development Agency. Effective June 5, 1989.

One Special Assistant to the Deputy Assistant Secretary for Congressional Affairs. Effective June 5, 1989.

One Director of Public Affairs to the Under Secretary for Travel and Tourism. Effective June 8, 1989.

One Confidential Assistant to the Deputy Assistant Secretary for International Economic Policy. Effective June 9, 1989.

One Confidential Assistant to the Deputy Under Secretary. Effective June 9, 1989.

One Deputy to the Chief of Staff. Effective June 9, 1989.

One Special Assistant to the Deputy Secretary. Effective June 9, 1989.

One Confidential Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective June 9, 1989.

One Director, Office of Public Affairs, to the Under Secretary for International Trade. Effective June 12, 1989.

One Confidential Assistant to the Deputy Assistant Secretary for International Economic Policy. Effective June 19, 1989.

One Special Assistant to the Director General, U.S. and Foreign Commercial Services. Effective June 14, 1989.

One Congressional Liaison Assistant to the Director of Congressional Affairs. Effective June 19, 1989.

One Chauffeur to the Secretary. Effective June 21, 1989.

One Confidential Assistant to the Deputy Assistant Secretary for Africa, Near East, and South Asia, International Trade Administration. Effective June 21, 1989.

One Private Secretary to the Deputy Under Secretary for International Trade. Effective June 22, 1989.

One Confidential Assistant to the Chief of Staff. Effective June 22, 1989.

One Special Assistant to the Assistant Secretary for Export Administration. Effective June 27, 1989.

One Deputy to the Director, Office of Public Affairs. Effective June 27, 1989.

One Special Assistant to the Deputy Director, Office of Congressional Affairs. Effective June 27, 1989.

One Confidential Assistant to the Deputy Under Secretary for International Trade. Effective June 27, 1989.

One Confidential Assistant to the Deputy Assistant Secretary for Trade Information and Analysis. Effective June 29, 1989.

One Confidential Assistant to the Assistant Secretary, National Oceanic and Atmospheric Administration. Effective June 29, 1989.

One Confidential Assistant to the Deputy Assistant Secretary for Trade Development. Effective June 30, 1989.

One Confidential Assistant to the Deputy Assistant Secretary for Congressional Affairs. Effective June 30, 1989.

One Executive Assistant to the Assistant Secretary for Trade Development. Effective June 30, 1989.

One Congressional Affairs Specialist to the Director, Office of Legislative Affairs. Effective June 30, 1989.

One Special Assistant to the Director, Office of Public Affairs. Effective June 30, 1989.

Department of Defense

One Staff Assistant (Stenography) to the Assistant to the Vice President for National Security Affairs. Effective June 12, 1989.

One Personal and Confidential Assistant to the Ambassador to NATO. Effective June 29, 1989.

Department of Energy

One Staff Assistant to the General Counsel. Effective June 1, 1989.

One Staff Assistant to the Deputy General Counsel for Environment, Conservation and Legislation. Effective June 1, 1989.

One Staff Assistant to the Director, Office of Minority Economic Impact. Effective June 2, 1989.

One Speechwriter to the Deputy Assistant Secretary for External Affairs. Effective June 6, 1989.

One Staff Assistant to the Assistant Secretary for Nuclear Energy. Effective June 6, 1989.

One Staff Assistant to the Assistant Secretary, Management and Administration. Effective June 6, 1989.

One Staff Assistant to the Deputy Assistant Secretary for Energy Emergencies. Effective June 6, 1989.

One Director, Division of Congressional Affairs, to the Director, Office of External Affairs. Effective June 6, 1989.

One Staff Assistant to the Deputy Assistant Secretary for External Affairs. Effective June 6, 1989.

One Staff Assistant to the Chief of Staff to the Secretary. Effective June 19, 1989.

One Staff Assistant to the Assistant Secretary for Fossil Energy. Effective June 19, 1989.

Two Staff Assistants to the Assistant Secretary for Fossil Energy. Effective June 19, 1989.

One Staff Assistant to the General Counsel. Effective June 19, 1989.

One Staff Assistant to the General Counsel. Effective June 21, 1989.

One Special Assistant to the Chief of Staff to the Secretary. Effective June 29, 1989.

Department of Transportation

One Director, Office of Media Relations and Special Projects, to the Assistant Secretary for Public Affairs. Effective June 8, 1989.

One Deputy to the Director, Office of Congressional Affairs. Effective June 27, 1989.

Two Congressional Liaison Officers to the Director, Office of Congressional Affairs. Effective June 30, 1989.

Department of Education

One Special Assistant to the Deputy Under Secretary for Management. Effective June 2, 1989.

One Director, Recognition Division, to the Director, Programs for the Improvement of Practice. Effective June 12, 1989.

One Special Assistant to the Under Secretary. Effective June 19, 1989.

One Confidential Assistant to the Deputy Assistant for Higher Education Programs. Effective June 22, 1989.

One Special Assistant to the Director, Interagency Operations Staff. Effective June 22, 1989.

One Confidential Assistant to the Deputy Under Secretary for Management. Effective June 27, 1989.

One Staff Assistant to the Deputy Under Secretary for Management. Effective June 27, 1989.

One Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective June 27, 1989.

One Special Assistant to the Deputy Under Secretary for Management. Effective June 27, 1989.

One Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective June 27, 1989.

One Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective June 27, 1989.

One Confidential Assistant to the Assistant Secretary for Educational Research and Improvement. Effective June 29, 1989.

Equal Employment Opportunity Commission

One Special Assistant to the Chairman. Effective June 22, 1989.

Environmental Protection Agency

One Special Assistant to the Administrator. Effective June 30, 1989.

Department of Health and Human Services

One Special Assistant to the Director, Office of Family Assistance. Effective June 19, 1989.

One Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation. (Congressional Liaison). Effective June 19, 1989.

One Executive Assistant to the Director, Office of Child Support Enforcement. Effective June 19, 1989.

One Confidential Assistant to the Administrator, Health Care Financing Administration. Effective June 20, 1989.

One Special Assistant to the Assistant Secretary for Public and Indian Housing. Effective June 21, 1989.

One Director, Scheduling, Securing and Protection, to the Secretary. Effective June 22, 1989.

One Special Assistant to the Under Secretary. Effective June 28, 1989.

Department of Housing and Urban Development

One Staff Assistant to the Deputy Assistant for Public and Indian Housing. Effective June 2, 1989.

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective June 6, 1989.

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective June 12, 1989.

One Intergovernmental Relations Office, to the Deputy Under Secretary for Intergovernmental Relations. Effective June 14, 1989.

One Special Assistant to the Regional Administrator-Regional Housing Commissioner. Effective June 19, 1989.

One Special Assistant to the Assistant Secretary for Public and Indian Housing. Effective June 19, 1989.

One Special Assistant to the Assistant Secretary for Policy Development and Research. Effective June 19, 1989.

One Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations. Effective June 19, 1989.

Department of Interior

One Special Assistant to the Director, Bureau of Land Management. Effective June 2, 1989.

One Special Assistant for Control and Correspondence to the Special Assistant for Policy and Programs. Effective June 12, 1989.

One Confidential Assistant to the Assistant Secretary for Policy, Budget and Administration. Effective June 29, 1989.

Department of Justice

One Special Assistant to the Director, Community Relations Service. Effective June 2, 1989.

One Deputy to the Director, Office of Public Affairs. Effective June 2, 1989.

Department of Labor

Two Special Assistants to the Assistant Secretary for Employment and Training. Effective June 12, 1989.

One Staff Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective June 14, 1989.

One Staff Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective June 21, 1989.

One Special Assistant to the Assistant Secretary for Employment and Training. Effective June 21, 1989.

One Staff Assistant to the Deputy Under Secretary for International Affairs. Effective June 29, 1989.

Office of Management and Budget

One Confidential Secretary to the Deputy Director. Effective June 12, 1989.

One Confidential Secretary to the Deputy Director. Effective June 12, 1989.

President's Commission on Executive Exchange

One Associate Director for Education to the Executive Director. Effective June 9, 1989.

Department of State

One Special Assistant to the Head of the U.S. Delegation to Geneva for Arms Reduction Negotiations. Effective June 2, 1989.

One Special Assistant to the Assistant Secretary, International Organization Affairs. Effective June 27, 1989.

One Secretary (Typing) to the Assistant Secretary for Legislative Affairs. Effective June 27, 1989.

One Coordinator, Intergovernmental Affairs, to the Deputy Assistant Secretary for Public Diplomacy. Effective June 29, 1989.

Department of the Treasury

One Public Affairs Specialist to the Associate Commissioner for Congressional Affairs. Effective June 19, 1989.

One Special Assistant to the Under Secretary (Finance). Effective June 19, 1989.

One Staff Assistant to the Director, United States Mint. Effective June 29, 1989.

United States Information Agency

One Program Officer to the Supervisory Public Affairs Specialist. Effective June 8, 1989.

One Special Assistant to the Director of Private Sector Committees. Effective June 8, 1989.

Office of the United States Trade Representative

One Confidential Secretary to the U.S. Trade Representative. Effective June 12, 1989.

One Congressional Affairs Officer to the Assistant U.S. Trade Representative for Congressional Affairs. Effective June 27, 1989.

Authority: 5 U.S.C. 3301, 3303; E.O. 10555, 3 CFR 1954–1958 Comp., P. 218.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 89–17763 Filed 7–28–89; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[34–27052 DTC–89–1]

Self-Regulatory Organizations; Depository Trust Company; Order Granting Temporary Approval of a Proposed Rule Change

July 21, 1989.

On January 18, 1989, the Depository Trust Company ("DTC") filed a proposed rule change (File No. SR–DTC–89–1) with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change would institute a new Rush Withdrawal Transfer ("RWT") service for corporate issues settling in next-day funds that are not full Fast Automated Securities Transfer ("FAST") issues.[2] On April 24, 1989, the Commission published notice of this proposed rule change in the **Federal Register** to solicit comments from interested persons.[3] On May 9, 1989, DTC amended the proposed rule change to incorporate DTC's procedures for the RWT service.[4] No comments were received. This order approves the proposal on a pilot basis through December 30, 1989.

I. Description

DTC proposes to replace its urgent Certificate on Demand ("COD") withdrawal service [5] for corporate securities issues settling in next-day funds that are ineligible for DTC's Fast Automated Securities Transfer ("FAST") program with RWT. Under RWT, DTC will endeavor to make available to participants requesting this service, certificates registered in the participant's name (or another name as directed by the participant), on a next-day basis. Currently, DTC fills urgent COD withdrawal requests by delivering certificates on a next-day basis, registered in DTC's nominee name endorsed to the participant.

DTC has made special arrangements with transfer agents to process ownership transfers under RWT on an expedited basis. Thus, DTC expects RWT transfer agents located in New York City to turnaround certificates within one day and transfer agents located outside of New York City to turnaround certificates within two days.

DTC plans to implement the new RWT service on a pilot basis for at least three months with fifteen New York City transfer agents and fifty transfer agents located outside New York City. DTC will continue to fill COD requests from participants for issues not included in the pilot program with certificates from DTC's vault.[6]

II. DTC's Rationale

DTC believes the rule change is consistent with the requirements of the Act because it will reduce the risk associated with handling physical certificates and the costs of storing large numbers of corporate certificates in an assortment of round-lot quantities to match participants' most likely requirements for CODs. It will eliminate a costly urgent withdrawal structure and staffing that is no longer needed on a routine basis, reduce risks associated with that structure, and will cease to mutualize a cost that is better addressed and priced as exception processing. In addition, DTC believes that the one-step transfer process offered by RWT is more efficient than the existing two-step procedure in which DTC endorses the certificate over to its participant, and then that participant, or the person that ultimately receives the certificate, must send it to the transfer agent to transfer it into its name.

DTC believes that there is little or no need for a sameday or expedited certificate withdrawal service for corporate securities because the rules of the New York Stock Exchange ("NYSE"), the National Association of Securities Dealers ("NASD"), and other self-regulatory organizations (such as the Municipal Securities Rule Board, "MSRB") require that all delivery against payment settlements in depository-eligible corporate securities occur by book-entry at securities depositories.[7] For other kinds of settlement, and for purposes other than settlement, where participants may need to deliver physical certificates, DTC believes RWT usually will be sufficient to accommodate the need of its participants.

III. Discussion

The Commission preliminarily believes that the proposal is consistent with Section 17A of the Act because it will promote the safeguarding of securities in DTC's custody or control or for which it is responsible. However, the Commission is concerned that the implementation of RWT not disrupt the prompt and accurate clearance and settlement of securities, and therefore, believes that DTC's approach to implement this new service on a pilot basis is appropriate.

DTC plans to monitor the certificate turnaround performance of all transfer agents participating in the RWT pilot programs.[8] DTC will compile transfer agent turnaround statistics on a bi-weekly basis, will solicit comments from transfer agents participating in the RWT service about all aspects of the service, and will report this information to the Commission.

DTC will evaluate the statistics and other information it collects concerning transfer agent performance throughout the pilot period and will use this information to determine the overall performance of the RWT service and transfer agents' individual performance. DTC will continue to provide COD service in issues served by transfer agents that fail to meet RWT turnaround standards until their performance meets RWT turnaround standards. As with CODs, DTC will not guarantee that every RWT request can be filled within the projected time frame. DTC anticipates that RWT turnaround will be at least as fast as current turnaround for denomination split-ups, and that RWT may be even faster because of the incentive provided to the transfer agent by the opportunity to earn a rush transfer fee.[9] The Commission hopes the pilot program will facilitate next-day withdrawals and provide further data in order to assess the extent to which certificates are still needed to enable broker-dealers to settle trades without incurring overnight financing costs.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act and, in particular, Section 17A.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–89–1) be, and hereby is, approved until December 30, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–17758 Filed 7–28–89; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78(b)(1) 1981.

[2] DTC's FAST program allows DTC to leave securities with transfer agents in the form of balance certificates registered in the depository's nominee name, Cede & Co. The balance certificates are adjusted daily according to DTC's deposit and withdrawal activity. A "full" FAST issue transfer agent agrees to fill requests for urgent withdrawals through Withdrawals-by-Transfer, which is the manner in which certificates are routinely transferred into the name of a participant, from the DTC's nominee name, Cede and Co.

[3] Securities Exchange Act Release No. 26730 (April 14, 1989), 54 FR 16438–F (April 24, 1989).

[4] DTC also provided the Commission with additional information concerning DTC's proposal and requested that this proposal be implemented on a pilot basis. *See* letter to Ester Saverson, Jr., Branch Chief, Division of Market Regulation, Commission, from Patricia H. Trainor, Associate Counsel, The Depository Trust Company, dated May 31, 1989.

[5] An urgent COD withdrawal is a request for immediate delivery of physical certificates. DTC fulfills such requests by removing certificates (registered in DTC's nominee name or, if applicable, in bearer form) from its vault and endorsing them over to the requesting participant. DTC will attempt to satisfy a COD request only if it has sufficient vault inventory. Securities Exchange Act Release No. 26883 (June 1, 1989), 54 FR 24615 (June 8, 1989).

[6] After the pilot program has ended DTC plans to continue to offer the COD service on a limited basis until it has exhausted its vault inventory.

[7] *See* NYSE Rule 387 (a)(5), NASD 66 (a)(5), and MSRB Rule G–12 (f) and G–15 (d) (iii).

[8] DTC expects to receive approximately 100 RWT requests for day.

[9] DTC's fee for processing each RWT request will be $22.50, plus a pass-through of any rush transfer fees the transfer agent charges DTC. If DTC fills an urgent request with a certificate registered in the name of DTC's nominee from its vault inventory, the fee will be the usual corporate COD fee of $10.25. *See* Securities Exchange Act Release No. 26980 (June 23, 1989), 54 FR 28135 (July 5, 1989).

[34–27053 DTC–89–12]

Self Regulatory Organizations; The Depository Trust Company; Proposed Rule Change Regarding Revision of Existing Rules

July 21, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on July 3, 1989 the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described below. The proposal would make certain technical corrections to DTC's rules. The Commission is publishing this notice to solicit comment.

I. Description of Proposal

DTC proposes to make minor revisions to some of its rules. DTC states that its proposal would eliminate obsolete references and clarify the meaning of certain provisions contained in its rules. The proposal contains one substantive change to DTC's Rule 6, to eliminate the requirement that securities eligible for DTC services must be processed by a transfer agent located in the United States.

II. DTC's Rationale for the Proposal

DTC states that it has adopted the proposal pursuant to Section 17A(b)(3) of the Act. section 17A(b)(3) provides, among other things, that no clearing agency shall be registered unless the Commission determines that the rules of the clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. DTC believes that its proposed rule change will have such an effect.

III. Request for Comments

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will by order approve such proposed change or institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons can submit written comments about the proposal by filing six copies of their comments with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at DTC's principal office.

All comments should refer to the file number SR–DTC–89–12 and should be submitted by August 21, 1989.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–17750 Filed 7–28–89; 8:45 am]

BILLING CODE 8010–01–M

[File No. 500–1]

Lifeline Healthcare Group, Ltd.; Order of Suspension of Trading

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Lifeline Healthcare Group, Ltd., a Delaware corporation with executive offices located at 1913 W. Tacoma, Suite C, Broken Arrow, Oklahoma 74012, and that questions have been raised about recent market activity in the securities of the company and the adequacy and accuracy of publicly disseminated information concerning, among other things, the valuation of the company's assets, the results of its business operations, recent acquisitions announced by the company, the identity of certain owners of five percent or more of the company's common stock, and the nature and terms of the distribution of a stock dividend authorized by the company on April 8, 1989. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Lifeline Healthcare Group, Ltd.

Therefore, it is ordered, Pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Lifeline Healthcare Group, Ltd., over-the-counter or otherwise, is suspended for the period from 9:30 a.m. (e.d.t.) on July 26, 1989, through 11:59 p.m. (e.d.t.) on August 4, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–17807 Filed 7–28–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17079; 812–7246]

Ryan Mortgage Acceptance Corporation V; Application

July 24, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the investment Company Act of 1940 ("1940 Act").

Applicant: Ryan Mortgage Acceptance Corporation V (the "Issuer" or "Applicant").

Relevant 1940 Act Section: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order to exempt it from all provisions of the 1940 Act in connection with the issuance and sale of collateralized mortgage obligations and the sale of certain residual interests.

Filing Date: The application was filed on February 17, 1989, and was amended on May 16, 1989, June 13, 1989 and July 21, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 18, 1989, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 111 Ryan Court, Pittsburgh, PA 15205.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272–2847, or Stephanie M. Monaco, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee by either going to the SEC's Public Reference Branch or contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a wholly-owned limited purpose finance subsidiary of NVR Mortgage L.P., which is, in turn, an indirect wholly-owned mortgage banking subsidiary of NVRyan L.P. Applicant was organized to issue series of mortgage collateralized bonds ("Bonds") to facilitate the financing of long-term residential mortgages.

2. Each series of Bonds will be issued under the terms of an indenture (the "Indenture") between Applicant and a trustee (the "Trustee"), as supplemented by one or more series supplements. Each Indenture will be qualified under the Trust Indenture Act of 1939, as amended, unless an appropriate exemption is available.

3. Applicant may sell its right to receive funds released from the lien of the Indenture not required to pay principal and interest on the Bonds ("Residual Interests") to certain institutional and non-institutional investors, as described more fully under "Applicant's Conditions."

4. The mortgage-related collateral ("Mortgage-Related Collateral") securing the Bonds will be limited to (i) fully modified pass-through mortgage certificates or graduated payment mortgage-backed securities as to which the Government National Mortgage Association ("GNMA") guarantees the timely payment of principal and interest ("GNMA Certificates"), (ii) guaranteed mortgage pass-through certificates ("FNMA Certificates") issued by the Federal National Mortgage Association ("FNMA"), (iii) mortgage participation certificates, (iv) whole mortgage loans secured by first liens on single (one to four) family residential properties ("Mortgage Loans") or (v) other mortgage related securities secured by Mortgage Loans ("Non-Agency Certificates"). Mortgage Certificates, Mortgage Loans and Non-Agency Certificates are referred to as "Mortgage-Related Collateral."

5. No party will be able to impair the security afforded by the Mortgage-Related Collateral, reserve funds, accounts or other collateral securing a series of Bonds (the "Bond Collateral") because, without the consent of each affected bondholder, no party will be able to: (a) Change the stated maturity on any Bond; (b) reduce the principal or rate of interest (or the manner of determining the rate of interest on floating-rate Bonds) on any Bond; (c) change the priority of repayment on any class of any series of Bonds; (d) impair or adversely affect the Bond Collateral securing a series of Bonds; (e) permit the creation of a lien ranking prior to or on parity with the lien of the related Indenture with respect to the Bond Collateral; or (f) otherwise deprive the bondholders of the security afforded by the lien of the related Indenture.

6. The interests of the bondholders will not be compromised or impaired by the sale of Residual Interests. The sale of Residual Interests will not alter the payment of cash flows under the Indenture, including the amounts to be deposited in the collection account or any reserve fund created under the Indenture to support the payment of principal and interest on the Bonds.

7. Except to the extent permitted by the limited right to substitute Mortgage-Related Collateral described in paragraph 3 under "Applicant's Conditions," it will not be possible for holders of the Residual Interests for a series of Bonds to alter the Bond Collateral securing such series and in no event will such right to substitute Mortgage-Related Collateral result in a diminution in the value or quality of such collateral.

8. Limited purpose financing entities affiliated with homebuilders, thrifts, commercial banks, mortgage bankers and other entities engaged in mortgage finance but not affiliated with the Issuer (each a "Participant") may enter into funding agreements with the Issuer ("Funding Agreements"). In such event, Mortgage-Related Collateral owned by a Participant ("Pledged Mortgage-Related Collateral") will be pledged to the Issuer as security for a loan from the Issuer to the Participant of all or a portion of the proceeds from the sale of a series of Bonds. The indebtedness created by each Funding Agreement will be evidenced by one or more promissory notes ("Notes"). The Issuer will assign its entire right, title and interest in the Funding Agreements (other than the Issuer's right to receive fees, to indemnification and to reimbursement as provided for in such Notes and Pledged Mortgage-Related Collateral) to the Trustee as security for such series of Bonds. Each Participant will be obligated to repay the indebtedness evidenced by the Notes by causing payments on the Pledged Mortgage-Related Collateral securing such Notes to be made directly to the Trustee in amounts sufficient to pay such Participant's share of principal and interest on the Bonds, together with certain administrative expenses of the Issuer. The Pledged Mortgage-Related Collateral pledged by a Participant under any Funding Agreement will only secure the Participant's Note or Notes with respect to a single series of Bonds, and will not secure the Notes of any other Participant. Each Participant will not engage in any activity other than those directly related to the Funding Agreements and Notes, and will have no other significant assets other than the Pledged Mortgage-Related Collateral securing its Notes. Each Participant will be organized and operated in accordance with rating agency guidelines to make such Participant "bankruptcy remote."

9. In the case of each series of Bonds: (a) The Issuer will hold no substantial assets other than the Bond Collateral securing such Bonds; (b) the Mortgage-Related Collateral securing such series will have a collateral value determined under the Indenture, at the time of issuance and following each payment date, equal to or greater than the outstanding principal balance of the Bonds; (c) distributions of principal and interest received on the Mortgage-Related Collateral securing the Bonds (together with cash available to be withdrawn from any reserve funds), plus reinvestment income thereon, will be sufficient to make timely payments of principal of and interest on the Bonds and to retire each class of Bonds by its stated maturity; and (d) the Bond Collateral will be assigned to the Trustee and will be subject to the lien of the related Indenture.

10. The Issuer has registered an aggregate of $600,000,000 of Bonds under the Securities Act of 1933, as amended (the "Securities Act") pursuant to Registration Statements on Form S–11 (No. 33–21535 and 33–7192). The Issuer may elect to treat the collateral securing a series of Bonds as a REMIC.

Applicant's Conditions

Applicant agrees that, if the order requested by the application is granted, such order will be expressly conditioned on the following:

1. Each series of Bonds will be registered under the Securities Act, unless such Bonds are offered in a transaction that is exempt from registration pursuant to section 4(2) of the Securities Act.

2. The Bonds will be "mortgage-related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. Some or all of the Mortgage-Related Collateral securing a series of Bonds may be Pledged Mortgage-Related Collateral. In addition to Mortgage-Related Collateral, a series of Bonds may also be secured by cash, eligible investments satisfactory to the rating agency rating such series, or letters of credit held in reserve funds intended to compensate for certain interest shortfalls satisfactory to the rating agency rating such series. All Mortgage-Related Collateral will consist only of GNMA Certificates, FNMA Certificates, FHLMC Certificates, Non-Agency Certificates or Mortgage Loans. All Non-Agency Certificates will be pass-through certificates or participation certificates that are neither issued nor guaranteed by an agency or instrumentality of the United States and that evidence the entire undivided interest in a pool of Mortgage Loans.

3. The Issuer will have a right to substitute other Mortgage-Related Collateral for the initial Mortgage-Related Collateral securing a series of Bonds only if the substituted Mortgage-Related Collateral: (i) Is of equal or better quality than the Mortgage-Related Collateral replaced; (ii) has payment terms and cash flows similar to those of the Mortgage-Related Collateral for which substitution is made; (iii) is insured or guaranteed at least to the same extent as the Mortgage-Related Collateral for which substitution is made; and (iv) meets the conditions set forth in paragraphs 2, 4 and 6 under "Applicant's Conditions." Substitution for Mortgage Loans (including, for the purposes of this paragraph, any Mortgage Loan underlying any Note or Non-Agency Certificate pledged as Mortgage-Related Collateral) is further limited as follows: Mortgage Certificates may be substituted for Mortgage Loans, but new Mortgage-Related Collateral may be substituted for Mortgage Loans initially pledged as Mortgage Related Collateral only in the event of default, late payments or other defects with respect to the Mortgage Loans for which substitution is made. In addition, new Mortgage-Related Collateral may not be substituted for more than 20% of the aggregate face amount of the Mortgage Loans initially pledged as Mortgage-Related Collateral or for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as collateral. In no event may any new Mortgage-Related Collateral be substituted for substitute Mortgage-Related Collateral. Notes may be substituted for the initial Notes securing a series of Bonds only if the substitution of the Pledged Mortgage-Related

Collateral securing such Notes would be permitted under the conditions (including the conditions as to the aggregate amount of Mortgage-Related Collateral for which substitution may be made) set forth in this paragraph.

4. All Bond Collateral securing a series of Bonds will be held by the Trustee under the related Indenture or on behalf of the Trustee by an independent custodian. Neither the custodian nor the Trustee may be an affiliate (as the term "affiliate" is defined in Rule 405 under the Securities Act) of the Issuer or any holder of a controlling interest in the Issuer (as the term "control" is defined in Rule 405 under the Securities Act). The Trustee will be granted a first priority perfected security or lien interest in and to all Bond Collateral directly or indirectly securing each series of Bonds.

5. Each series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with the Issuer. The Bonds will not be "redeemable securities" within the meaning of section 2(a)(32) of the Act.

6. The master servicer of Mortgage Loans pledged to secure a series of Bonds (including, for the purposes of this paragraph, any Mortgage Loan underlying any Note or Non-Agency Certificate pledged as Mortgage-Related Collateral) will not be an affiliate of the Trustee, the custodian, the Issuer or any holder of a controlling interest in the Issuer (as the term "control" is defined in Rule 405 under the Securities Act). If there is no master servicer for Mortgage Loans pledged to secure a series of Bonds, no servicer of those Mortgage Loans will be an affiliate of the Trustee, the custodian, the Issuer or any holder of a controlling interest in the Issuer. In addition, any master servicer and servicer of a Mortgage Loan will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential mortgage loans. The agreement governing the servicing of Mortgage Loans will obligate the servicer to provide substantially the same services with respect to the Mortgage Loans as it is then currently required to provide in connection with the servicing of mortgage loans insured by the Federal Housing Administration, guaranteed by the Veterans' Administration or eligible for purchase by FNMA or FHLMC.

7. At least annually, a firm of independent certified public accountants will audit the books and records of the Issuer and will report on whether the anticipated payments of principal and interest on the Mortgage-Related Collateral continue to be adequate to pay the principal of and interest on the Bonds in accordance with their terms. Upon completion, copies of the report(s) of such accountants will be provided to the Trustee.

8. The Mortgage-Related Collateral will be paid down as Mortgage Loans or the mortgages underlying other types of Mortgage-Related Collateral are repaid, but, subject to the Issuer's limited right to substitute collateral as set forth in paragraph 3 under "Applicant's Conditions," no Mortgage-Related Collateral directly or indirectly securing a series of Bonds may be released from the lien of the Indenture prior to retirement in full of all Bonds of such series. In addition, except for the sale or assignment of Bonds or Residual Interests or to the extent permitted by the Issuer's limited right to substitute Mortgage-Related Collateral, beneficial and legal ownership of all Mortgage-Related Collateral deposited with the Trustee will not be transferred until such time as the Trustee releases such Mortgage-Related Collateral from the Indenture.

9. The Issuer will not pledge Bond Collateral to secure any series of Bonds with a collateral value which exceeds 120% of the aggregate principal amount of such Bonds.

10. Each class of floating-rate Bonds will have a set maximum interest rate (an interest rate cap) and may or may not have a minimum interest rate (with respect to floating-rate Bonds which vary inversely with an index). The maximum and minimum interest rates may vary from period to period, and will always be specified in the related prospectus or series supplement.

11. At the time of the pledge and assignment of the Bond Collateral to the Trustee, as well as during the life of the Bonds of such series, the scheduled payments of principal and interest to be received by the Trustee on the Bond Collateral will be sufficient to provide for the full and timely payment of all principal and interest on the Bonds of such series then outstanding, even if the interest rates on variable rate Bonds are the maximum applicable interest rates for each specified period.

12. The Bond Collateral for each series of Bonds will be reviewed independently by the nationally recognized statistical rating agency rating the Bonds (as well as by a firm of independent certified public accountants) in order to insure that the collateral is sufficient in light of the rating requested to meet all required payments as stated above.

13. The Residual Interest relating to a series of Bonds will be offered and sold to no more than 100 investors who are either (i) institutional investors or (ii) "accredited investors," as such term is defined in Rule 501(a) promulgated under the Securities Act, other than institutional investors ("Accredited Investors"). The Issuer will sell or assign its Residual Interests relating to any series of Bonds only if the Mortgage-Related Collateral pledged to secure such series is limited to GNMA Certificates, FNMA Certificates, or FHLMC Certificates or Funding Agreements secured by GNMA Certificates, FNMA Certificates, or FHLMC Certificates. Institutional investors will have knowledge and experience in financial and business matters sufficient to enable them to evaluate the risks of purchasing a Residual Interest and to understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and the Residual Interest therein. Accredited Investors that purchase a Residual Interest relating to a series of Bonds will be limited to no more than 15, and each such Accredited Investor (i) will purchase, at a minimum, $200,000 of such Residual Interest (measured by market value at the time of purchase) and (ii) will have a net worth at the time of purchase in excess of $1,000,000 (exclusive of primary residence). Further, Accredited Investors will (i) have knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, sufficient to enable them to evaluate the risk of purchasing a Residual Interest, (ii) have direct, personal and significant experience in investments in mortgage-related securities and (iii) as a result of such knowledge and experience, understand the volatility of interest rate fluctuations as they affect the value of mortgage-related securities and Residual Interests therein. Residual Interest holders may include mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, mutual funds (any investment company will be required to satisfy itself that the purchase of a Residual Interest will comply with section 12(d)(1) of the Act), real estate investment trusts, master limited partnerships and/or other institutional or non-institutional investors as described above (institutional investors and Accredited Investors are collectively referred to herein as "Eligible Purchasers").

14. Any conveyance of a Residual Interest to an Eligible Purchaser will qualify as a transaction not involving a public offering within the meaning of section 4(2) of the Securities Act.

15. Holders of the Residual Interest relating to a series of Bonds will be required to represent that they are purchasing such Residual Interest for investment purposes and that they will hold such Residual Interest in their own name and not as nominee for undisclosed investors. As a condition to selling all or a portion of the Residual Interest from a series of Bonds, each purchaser will be required to agree that it will not resell such interest unless (i) the subsequent purchaser is an Eligible Purchaser; (ii) after the sale there would be no more than 100 holders of such Residual Interest, and (iii) the subsequent purchaser agrees to be subject to the same representations and undertakings as are applicable to the reselling purchaser. In addition, the Indenture will prohibit the transfer of any Residual Interest if there would be more than 100 holders of the Residual Interest with respect to such series of Bonds at any time.

16. No holder of a controlling interest in any series of Bonds (as the term "control" is defined in Rule 405 under the Securities Act) will be affiliated with either the custodian or the rating agency rating the Bonds.

17. A Residual Interest holder will not be an affiliate (as the term affiliate is defined in Rule 405 under the Securities Act) of the Trustee, the custodian or any rating agency rating the related series of Bonds.

18. Any election by the Issuer to treat the arrangement by which any series of Bonds is issued as a REMIC will not increase the level of expenses incurred by the REMIC. If the Issuer elects to treat the arrangement by which a series of Bonds is issued as a REMIC, the Issuer will provide for the payment of administrative fees and expenses incurred in connection with the issuance and administration of the Bonds, in a manner satisfactory to each rating agency rating the Bonds, by one or more of the following methods:

(i) A third party, whose credit is acceptable to the agency rating the Bonds and the Trustee, will guarantee the payment of such fees and expenses;

(ii) One or more reserve funds will be established to provide for the payment of fees and expenses. In establishing such fund or funds, maximum fees typically will be projected, assuming current inflation projections required by the rating agency at the time of the issuance of the Bonds and the establishment of such reserve funds. Thereafter, the Trustee will look solely to such reserve funds for the payment of fees and expenses. The procedure used to calculate the anticipated level of fees and expenses will be reasonable and will have been successfully used in the past by other issuers to calculate the amount of available funds sufficient to pay administrative fees and expenses and to ensure that such funds will be adequate to cover future administrative fees and expenses;

(iii) The Bonds will be secured by Mortgage-Related Collateral, the value of which is in excess of the amount necessary to make payments of principal and interest on the Bonds. Such excess or a portion thereof will be applied to the payment of administrative fees and expenses; and

(iv) The owners of the beneficial or residual interests of each series of Bonds will be personally liable pursuant to the provisions of the Indenture for the fees and expenses of the Issuer with respect to such series not otherwise payable from one of the sources described above.

The anticipated level of fees and expenses will be more than adequately provided for regardless of which of the methods described above (which methods may be used in combination) is selected by the Issuer to provide for the payment of such fees and expenses.

19. If the Issuer elects to treat the arrangement by which any Bonds are issued as a REMIC and the sale of Residual Interests results in the transfer of control (as the term "control" is defined in Rule 405 under the Securities Act) of such REMIC, the exemptive relief afforded by any order granted on the application would not apply to subsequent Bond offerings by such REMIC.

20. If any of the equity interests in the Issuer are transferred and such transfer results in the transfer of control (as the term "control" is defined in Rule 405 under the Securities Act) of the Issuer, the relief afforded by any order granted on the application would not apply to subsequent Bond offerings by the Issuer or any REMIC.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-17757 Filed 7-28-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before August 30, 1989. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538. OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

Title: Business Intellectual Property Protection Survey.

Form Nos.: SBA Form 1685.

Frequency: On occasion.

Description of respondents: Small Businesses which will provide information which will enable the Office of Advocacy to update its existing patent research, analyze the use of trade secrets, copyrights and licensing.

Annual Responses: 1,604.

Annual Burden Hours: 887.

Title: Financial Assistance Request to Participate in International Trade Exhibition or Mission.

Form Nos.: 1369, 1369.1, 1369.2, 1369.3.

Frequency: On occasion.

Description of respondents: Small businesses wishing to participate in overseas export promotion events.

Annual Responses: 125.

Annual Burden Hours: 218.75.

Title: Client Export Profile.

Form Nos.: 1174.

Frequency: On occasion.

Description of respondents: Small Businesses seeking export counseling.

Annual Responses: 5000.

Annual Burden Hours: 850.

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 89-17719 Filed 7-28-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2371]

Declaration of Disaster Loan Area; Connecticut

As a result of the President's major disaster declaration on July 18, 1989, I find that the counties of Litchfield and New Haven, in the State of Connecticut, constitute a disaster loan area due to damages from thunderstorms, tornadoes, and severe winds which occurred on July 10, 1989. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on September 18, 1989, and for economic injury until the close of business on April 18, 1990, at the address listed below: Disaster Area 1 Office, Small Business Administration, 15–01 Broadway, Fair Lawn, New Jersey 07410, or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of Fairfield, Hartford, and Middlesex, in the State of Connecticut; Hampden and Berkshire Counties, in the State of Massachusetts; and Dutchess County in the State of New York, may be filed until the specified date at the above location.

The interest rates are:

	Percent
Homeowners with Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Businesses and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.125

The number assigned to this disaster for physical damage is 237112, and for economic injury the numbers are 679600 for the State of Connecticut; 679700 for the State of Massachusetts; and 679800 for the State of New York.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: July 21, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89–17716 Filed 7–28–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Areas #2364, #2365, #2366, & #2367]

Delaware (and Contiguous Counties in the States of New Jersey, Pennsylvania, and Maryland); Declaration of Disaster Loan Area

New Castle County and the contiguous county of Kent in the State of Delaware, as well as the contiguous counties of Gloucester and Salem in the State of New Jersey; Delaware and Chester Counties in the State of Pennsylvania; and Cecil and Kent Counties in the State of Maryland, constitute a disaster area as a result of damages from heavy rains and flooding which occurred July 4 through July 6, 1989. Applications for loans for physical damage may be filed until the close of business on September 18, 1989 and for economic injury until the close of business on April 20, 1990 at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308 or other locally announced locations.

The interest rates are:

	Percent
Homeowners with Credit Available Elsewhere	8.000
Homeowners without Credit Available Elsewhere	4.000
Businesses with Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
Businesses and Non-Profit Organizations (EIDL) without Credit Available elsewhere	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	9.125

The numbers assigned to this disaster are 236406 for physical damage and 678500 for economic injury for the State of Delaware; 236506 and 678600 for the State of New Jersey; 236606 and 678700 for the State of Pennsylvania; and 236706 and 678800 for the State of Maryland.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Date: July 20, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89–17717 Filed 7–28–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2368]

Louisiana (and Contiguous Counties in the State of Texas) Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 18, 1989, I find that the parishes of Allen, Beauregard, Calcasieu, East Baton Rouge, Grant, Iberville, Natchitoches, Pointe Coupee, Rapides, and Winn, in the State of Louisiana, constitute a disaster loan area due to damages from Tropical Storm Allison beginning on June 25, 1989. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on September 18, 1989, and for economic injury until the close of business on April 18, 1990, at the address listed below:

Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051.

or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous parishes of Ascension, Assumption, Avoyelles, Bienville, Caldwell, Cameron, Concordia, DeSoto, East Feliciana, Evangeline, Iberia, Jackson, Jefferson Davis, LaSalle, Livingston, Red River, Sabine, St. Landry, St. Helena, Upper St. Martin, Vernon, West Baton Rouge, and West Feliciana, in the State of Louisiana, and the counties of Newton and Orange, in the State of Texas, may be filed until the specified date at the above location.

The interest rates are:

	Percent
Homeowners with Credit Available Elsewhere	8.000
Homeowners without Credit Available Elsewhere	4.000
Businesses with Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
Businesses and Non-Profit Organizations (EIDL) without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	9.125

The number assigned to this disaster for physical damage is 236811 and for economic injury the numbers are 678900 for the State of Louisiana, and 679000 for the State of Texas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: July 20, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89–17720 Filed 7–28–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2369]

Declaration of Disaster Loan Area; New York

Schoharie County and the contiguous counties of Albany, Delaware, Greene, Montgomery, Otsego, and Schenectady, in the State of New York, constitute a disaster area as a result of damages from severe storms and tornadoes which occurred on July 10, 1989. Applications for loans for physical damage may be filed until the close of business on September 21, 1989, and for economic injury until the close of business on April 23, 1990 at the address listed below:

Disaster Area 1 Office, Small Business Administration, 15–01 Broadway, Fair Lawn, NJ 07410.

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with Credit Available Elsewhere	8.000
Homeowners without Credit Available Elsewhere	4.000
Businesses with Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
Businesses and Non-Profit Organizations (EIDL) without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	9.125

The number assigned to this disaster for physical damage is 236912 and for economic injury the number is 679400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Date: July 21, 1989.

Katherine Bulow,

Acting Administrator.

[FR Doc. 89–17718 Filed 7–28–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2370]

Texas; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 18, 1989, I find that the Counties of Hardin, Harris, Jasper, Jefferson, Liberty, Newton, Orange, San Jacinto, and Tyler, in the State of Texas, constitute a disaster loan area due to damages from Tropical Storm Allison which occurred June 25 through July 7, 1989. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on September 16, 1989, and for economic injury until the close of business on April 18, 1990, at the address listed below:

Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051.

or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of Angelina Brazoria, Chambers, Fort Bend, Galveston, Montgomery, Polk, Sabine, San Augustine, Trinity, Walker, and Waller, in the State of Texas, may be filed until the specified date at the above location.

The Louisiana counties that are contiguous to the above-named counties have been covered in a separate declaration for the same occurrence.

The interest rates are:

	Percent
The interest rates are:	
Homeowners with Credit Available Elsewhere	8.000
Homeowners without Credit Available Elsewhere	4.000
Businesses with Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
Businesses and Non-Profit Organizations (EIDL) without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	9.125

The number assigned to this disaster for physical damage is 237011 and for economic injury the number is 679500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 20, 1989

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89–17721 Filed 7–28–89; 8:45 am]

BILLING CODE 8025–01–M

Region V Advisory Council; Public Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Chicago, will hold a public meeting at 10:00 a.m. on Tuesday, August 22, 1989, at the Holiday Inn, Mart Plaza, 350 N. Orleans St., Chicago, Illinois, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John L. Smith, District Director, U.S. Small Business Administration, 219 South Dearborn Street, Room 437, Chicago, Illinois, 60604, phone (312) 353–4508.

July 25, 1989.

R. William Crovella II,

Acting Director, Office of Advisory Councils.

[FR Doc. 89–17715 Filed 7–28–89; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02–0527]

Bishop Capital II, L.P.; Issuance of a Small Business Investment Company License

On January 30, 1989, a notice was published in the **Federal Register** (Vol. 54, No. 18, Page 4372) stating that an application has been filed by Bishop Capital II, L.P., Newark, New Jersey, with the Small Business Administration (SBA) pursuant to the Regulations governing small business investment companies (13 CFR 107.102) (1989) for a license as a small business investment company.

Interested parties were given until close of business March 1, 1989, to submit comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02–0527 on July 3, 1989, to Bishop Capital II, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: July 24, 1989.

[FR Doc. 89–17714 Filed 7–28–89; 8:45 am]

BILLING CODE 8025–01–M

BEST COPY AVAILABLE

[Application No. 04/04-5251]

First Growth Capital, Inc.; Application for License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989) by First Growth Capital, Inc. (the Applicant), 4630 Chambers Road, Macon, Georgia 31206, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 et seq.), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors, and shareholder of the Applicant are as follows:

Name and address	Title or relationship	Percentage of shares owned
Vijay Kumar Patel, 55 Frontage Road, Forsyth, Georgia 31029.	President/ Manager/ Director.	0
Vidya Arun Patel, c/o New Forsyth Inn, 55 Frontage Road, Forsyth, Georgia 31029.	Secretary/ Director.	0
Divakar Ramanath Kamath, 6W Kincard Drive, Cranbury, New Jersey 08512.	Director	0
Krisgit Investments, Inc., 55 Frontage Road, Forsyth, Georgia 31029.	Shareholder	*100

* 100 percent owned by Mr. Vijay K. Patel.

The Applicant will begin operations with a capitalization of $1,025,000 and will be a source of equity capital and long term loan funds for qualified small business concerns.

The Applicant will conduct its operations in the State of Georgia. As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this Notice will be published in the newspaper of general circulation in the Macon, Georgia area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: July 24, 1989.

[FR Doc. 89-17713 Filed 7-28-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1120]

Determinations on Export-Import Bank Financial Guarantees and Insurance for Purchase of Anti-Narcotics Equipment by Colombia

Pursuant to section 4703 of the Anti-Drug Abuse Act of 1988, and Executive Order 12680 of July 5, 1989, I hereby determine that:

(1) The defense articles and services for which the Government of Colombia requested Export-Import Bank financial guarantees in its letters serial 1760 of February 23, 1989, and MDCPE-001 of April 19, 1989, are being sold primarily for anti-narcotics purposes; and

(2) the sale of these defense articles and services and the provision by the Export-Import Bank of guarantees or insurance for such sale would be in the national interest of the United States.

This determination shall be reported to the Congress immediately, and shall be published in the **Federal Register**.

Date: July 13, 1989.

Lawrence S. Eagleburger,

Deputy Secretary of State.

[FR Doc. 89-17727 Filed 7-28-89; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-89-30]

Petition for Exemption; Summary and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: August 21, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 25, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 19634
Petitioner: Douglas Aircraft Corporation
Sections of the FAR Affected: 14 CFR 121.310(d)(4)
Description of Relief Sought: To extend Exemption No. 3055D that allows operations of DC-8 aircraft with an emergency light system without a cockpit control device that has an "on," "off," and "armed" position. Exemption No. 3055D will expire on December 1, 1989.

Docket No.: 25876
Petitioner: Stephen A. Micks
Regulations Affected: 14 CFR 61.39(a)(l)
Description of Relief Sought: To relieve the petitioner of the requirement to pass the written test since the beginning of the 24th month before the month in which the flight test was taken.

Docket No.: 25921
Petitioner: American Airlines
Sections of the FAR Affected: 14 CFR 108.23
Description of Relief Sought: To allow petitioner to complete security training for its crewmembers within an 18-month time frame instead of the 12-month timeframe required by § 108.23.

Docket No.: 25942
Petitioner: Gerard A. Preiser
Sections of the FAR Affected: 14 CFR 91.42(a)(l) and (2)
Description of Relief Sought: To allow petitioner to operate five aircraft with an airworthiness certificate issued under the experimental category to be used for the purpose of skywriting.

Docket No.: 072CE
Petitioner: Beech Aircraft
Sections of the FAR Affected: 14 CFR 23.207(c)
Description of Relief Sought: To permit type of certification of the Beach Model 2000 airplane with a stall warning beginning at airspeeds greater than 10 knots or 15 percent above the stall speed, as required by § 23.207(c)

Docket No.: 23499
Petitioner: Lifeline Pilots
Regulations Affected: 14 CFR 61.118(a)
Discription of Relief Sought/ Disposition: To permit private pilots who perform flight services for petitioner to be reimbursed for their fuel expenses. *Grant, July 10, 1989, Exemption No. 5068.*

Docket No.: 25211
Petitioner: Eastern Air Lines, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378
Description of Relief Sought/ Disposition: To extend Exemption No. 4796 that allows petitioner to utilize foreign original equipment manufacturers (OEM) that are certificated and appropriately rated by the Civil Aviation Authority of France, Italy, West Germany, or the United Kingdom to perform maintenance, preventive maintenance, and alterations outside the United States on petitioner's Airbus 300 airplanes, parts, and equipment. *Grant, June 29, 1989, Exemption No. 4796A.*

Docket No.: 25219
Petitioner: Presidential Airways, Inc., d/b/a/ Presidential Airways, d/b/a United Express
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378
Description of Relief Sought/ Disposition: To extend Exemption No. 4813 that allows petitioner to utilize the original equipment manufacturers (OEM's) to perform maintenance outside of the United States on component parts of petitioner's BAe-146 aircraft. The petitioner has also requested that the exemption be amended to permit petitioner to utilize the OEM's to perform maintenance outside the United States on component parts of its BAe-146 aircraft, without limitation to warranty repairs. *Grant June 29, 1989, Exemption No. 4813A.*

Docket No.: 25594
Petitioner: Regal Air
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To allow pilots employed by petitioner to remove and install aircraft seats as required for a paticular flight. *Grant July 20, 1989 Exemption No. 5073.*

Docket No.: 25805
Petitioner: Ameriflight, Inc.
Section of the FAR Affected: 14 CFR 135.89(b)(3)
Description of Relief Sought/ Disposition: To allow petitioner to operate jet aircraft between 35,000 and 41,000 feet MSL without requiring one pilot at the controls to wear an oxygen mask. *Denial, July 17, 1989, Exemption No. 5071.*

Docket No.: 25786
Petitioner: United Parcel Service
Section of the FAR Affected: 14 CFR 121.337.
Description of Relief Sought/ Disposition: To allow the combination of oxygen masks and smoke goggles that are approved to FAA TSO-C99 and are presently in use on petitioner's all-cargo aircraft to be used in meeting the requirements of the FAR. *Denial, July 12, 1989, Exemption No. 5069.*

Docket No.: 25866
Petitioner: Evergreen International Airlines, Inc.
Section of the FAR Affected: 14 CFR 121.337
Description of Relief Sought/ Disposition: To allow the combination of oxygen masks and smoke goggles approved to FAA Technical Standard Order C99 and presently in use on petitioner's all-cargo aircraft in meeting the requirements of § 121.337 *Denial, July 12, 1989, Exemption No. 5070.*

Docket No.: 25949
Petitioner: Presidential Airways
Sections of the FAR Affected: 14 CFR 121.411(a)(1), (2), (3), and (6) and 121.413(b) and (c)
Description of Relief Sought/ Disposition: To allow petitioner to utilize certain highly qualified pilot flight and simulator instructors from Boeing Canada, de Havilland Division (DHC) and FlightSafety, Canada for the purpose of training petitioner's initial cadre of pilots in the DHC Dash 8-300 type airplane in Canada and the United States without holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart N of Part 121. The training would be conducted in either Canadian- or U.S.-registered aircraft. *Partial Grant, July 18, 1989, Exemption No. 5072.*

[FR Doc. 89-17773 Filed 7-28-89; 8:45am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. IP89-05; Notice 1]

Receipt of Petition for Determination of Inconsequential Noncompliance; Grumman Olson

Grumman Olson of Sturgis, MI., has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.101, Federal Motor Vehicle Safety Standard (FMVSS) No. 101, "Controls and Displays," on the basis that it is inconsequential as it related to motor vehicle safety.

This Notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Prior to 1987, Standard No. 101 specified an identification symbol for the headlamp control. Beginning in 1987, this symbol was no longer allowed and was replaced by an identification

symbol for the master light switch control. The latter symbol is now required by Standard No. 101 when one control activates multiple lighting systems (i.e., headlights, taillights, clearance lights). Grumman Olson used the old headlamp control identification symbol to equip 2,100 walk-in vans mounted on Ford E-350 stripped chassis in 1987, 1988 and 1989. Therefore, these vehicles are not in compliance with Standard No. 101.

Grumman Olson supports its petition for inconsequential noncompliance for the following reasons:

1. The light switch is identified by the old symbol which was required in 1980 and allowed until 1987.

2. Since the symbol has been in use for seven years it is recognized as the light switch.

3. These types of vehicles are generally used in fleets which have a mixture of old and new trucks. The old trucks would contain the old symbol. Therefore, drivers would be familiar with it and understand that it denotes the light switch in new vehicles.

Interested persons are invited to submit written data, views and arguments on the petition of Grumman Olson described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that five copies be submitted.

All comment received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 30, 1989.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8).

Issued on: July 26, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-17787 Filed 7-28-89; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in January—March 1989. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
970-P	DOT-E 970	Voltaix, Inc, Branchburg, NJ	49 CFR 173.21(b), 173.300, 173.302(g).	To become a party to exemption 970. (Modes 1, 2.)
1479-X	DOT-E 1479	U.S. Department of Defense, Falls Church VA.	49 CFR 172.101, 173.318, 178.338	To authorize use of non-DOT specification cargo tanks, for transportation of liquid flourine and liquid nitrogen. (Mode 1.)
1862-X	DOT-E 1862	Greer Hydraulics, Inc., Cleveland, OH.	49 CFR 173.302(a)(1), 175.3	To authorize shipment of nitrogen in hydraulic accumulators. (Modes 1, 2, 3, and 4.)
2000-P	DOT-E 2000	Linde Gases of New England, West Hartford, CT.	49 CFR 172.101, 173.304(a), 173.316(a)(2).	To become a party to exemption 2000. (Mode 1.)
2000-P	DOT-E 2000	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	49 CFR 172.101, 173.304(a), 173.316(a)(2).	To become a party to exemption 2000. (Mode 1.)
2000-P	DOT-E 2000	UNIGAS, Inc., Ponce, PR	49 CFR 172.101, 173.304(a), 173.316(a)(2).	To become a party to exemption 2000. (Mode 1.)
2000-P	DOT-E 2000	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 172.101, 173.304(a), 173.316(a)(2).	To become a party to exemption 2000. (Mode 1.)
2000-P	DOT-E 2000	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 172.101, 173.304(a), 173.316(a)(2).	To become a party to exemption 2000. (Mode 1.)
2000-P	DOT-E 2000	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 172.101, 173.304(a), 173.316(a)(2).	To become a party to exemption 2000. (Mode 1.)
2000-X	DOT-E 2000	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 172.101, 173.304(a), 173.316(a)(2).	To authorize use of a non-DOT specification portable tank or a DOT Specification 4L cylinder, for shipment of flammable liquefied compressed gases. (Mode 1.)
2000-P	DOT-E 2000	Linde Gases of the South Inc., Houston, TX.	49 CFR 172.101, 173.304(a) 173.316(a)(2).	To become a party to exemption 2000. (Mode 1.)
2582-P	DOT-E 2582	Linde Gases of New England, West Hartford, CT.	49 CFR 175.3, Part 173, Subparts D, E, F, G.	To become a party to exemption 2582. (Modes 1, 2, 3, and 4.)
2582-P	DOT-E 2582	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	45 CFR 175.3, Part 173, Subparts D, E, F, G.	To become a party to exemption 2582. (Modes 1, 2, 3, and 4.)
2582-P	DOT-E 2582	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 175.3, Part 173, Subparts D, E, F, G.	To become a party to exemption 2582. (Modes 1, 2, 3, and 4.)
2582-P	DOT-E 2582	Linde Gases of the Midwest, Inc., Hillside, IL.	49 CFR 175.3, Part 173, Subparts D, E, F, G.	To become a party to exemption 2582. (Modes 1, 2, 3, and 4.)
2582-P	DOT-E 2582	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 175.3, Part 173, Subparts, D, E, F, G.	To become a party to exemption 2582. (Modes 1, 2, 3, and 4.)
2582-P	DOT-E 2582	Linde Gases of the South, Inc., Houston, TX.	49 CFR 175.3, Part 173, Subparts D, E, F, G.	To become a party to exemption 2582. (Modes 1, 2, 3, and 4.)
2582-P	DOT-E 2582	Mobil Chemical Company, Stamford, CT.	49 CFR 175.3 Part 173, Subparts D, E, F, G.	To become a party to exemption 2582. (Modes 1, 2, 3, and 4.)
3004-P	DOT-E 3004	Linde Gases of the Midwest, Inc., Hillside, IL	49 CFR 173.302, 175.9	To become a party to exemption 3004. (Modes 1, 2, 4, and 5.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
3004-P	DOT-E 3004	Linde Gases of the Southeast, Inc., Wilmington, NC.	49 CFR 173.302, 175.3	To become a party to exemption 3004. (Modes 1, 2, 4, and 5.)
3004-P	DOT-E 3004	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.302, 175.3	To become a party to exemption 3004. (Modes 1, 2, 4, and 5.)
3004-P	DOT-E 3004	UNIGAS, Inc., Ponce, PR	49 CFR 173.302, 175.3	To become a party to exemption 3004. (Modes 1, 2, 4, and 5.)
3004-P	DOT-E 3004	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 173.302, 175.3	To become a party to exemption 3004. (Modes 1, 2, 4, and 5.)
3004-P	DOT-E 3004	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	49 CFR 173.302, 175.3	To become a party to exemption 3004. (Modes 1, 2, 4, and 5.)
3004-P	DOT-E 3004	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.302, 175.3	To become a party to exemption 3004. (Modes 1, 2, 4, and 5.)
3004-P	DOT-E 3004	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.302, 175.3	To become a party to exemption 3004. (Modes 1, 2, 4, and 5.)
3004-P	DOT-E 3004	Linde Puerto Rico, Inc., Gurabo, PR.	49 CFR 173.302, 175.3	To become a party to exemption 3004. (Modes 1, 2, 4, and 5.)
3004-P	DOT-E 3004	Linde Gases of The West, Oakland, CA.	49 CFR 173.302, 175.3	To become a party to exemption 3004. (Modes 1, 2, 4, and 5.)
3004-P	DOT-E 3004	GenEx, Ltd., Des Moines, IA	49 CFR 173.302, 175.3	To become a party to exemption 3004. (Modes 1, 2, 4, and 5.)
3004-P	DOT-E 3004	Linde Gases of the South, Inc., Houston, TX.	49 CFR 173.302, 175.3	To become a party to exemption 3004. (Modes 1, 2, 4, and 5.)
3109-X	DOT-E 3109	Raytheon Company, Lowell, MA	49 CFR 173.301(e), 173.302(a)(1), 175.3.	To authorize use of non-DOT specification pressure vessels, for shipment of a nonflammable, nonliquefied compressed gas. (Modes 1, 2, 3, 4, and 5.)
3109-X	DOT-E 3109	General Dynamics Corporation, East Camden, AR.	49 CFR 173.301(e), 173.302(a)(1), 175.3.	To authorize use of non-DOT specification pressure vessels, for shipment of a nonflammable, nonliquefied compressed gas. (Modes 1, 2, 3, 4, and 5.)
3109-X	DOT-E 3109	HR Textron, Inc.—Fuel/Pneumatics Division, Pacoima, CA.	49 CFR 173.301(e), 173.302(a)(1), 175.3.	To authorize use of non-DOT specification pressure vessels, for shipment of a nonflammable, nonliquefied compressed gas. (Modes 1, 2, 3, 4, and 5.)
3498-X	DOT-E 3498	U.S. Department of Defense, Falls Church, VA.	49 CFR 146.02-22, 146.09, 146.29-100, 146.29-43, 176.3, Part 107, Subpart B, Part 176, Subpart B, Part 177, Parts 172, Parts 174, Subparts C, D, F, H, Subparts I, J, L, M, Subparts N, O.	To authorize transport of vehicles loaded with military explosives classed as explosive A, B or C and other hazardous materials essential for military operations. (Modes 1, 2, and 3.)
3500-X	DOT-E 3500	U.S. Department of Defense, Falls Church, VA.	49 CFR 172.101, 172.300, 173.87	To authorize shipment of Lance rocket engines in specific configurations which contain Class B and Class C explosives. (Modes 1, 2.)
3630-X	DOT-E 3630	General Chemical Corporation, Parsippany, NJ.	49 CFR 177.839(a) 177.839(b)	To authorize use of a DOT Specification 33A polystyrene case to contain four 5-pint glass bottles of nitric acid. (Mode 1.)
4242-X	DOT-E 4242	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.134, 173.87	To authorize use of a non-DOT specification aluminum pressure vessel, for transportation of certain pyroforic mixture. (Modes 4, 5.)
4338-X	DOT-E 4338	Stauffer Chemical Company, Shelton, CT.	49 CFR 173.119(m) 173.245a, 173.247, 174.63(b).	To renew and to provide shipment of trisobutylvanadate, classed as a flammable liquid, titanium tetrachloride tetra-n-butyl titanate, classed as corrosive materials, other corrosive liquids specifically identified in DOT Specification 51 portable tanks. (Modes 1, 2, and 3.)
4453-X	DOT-E 4453	Brandywine Explosives & Supply, Inc., Lexington, KY.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	Quick Supply Co., Des Moines, IA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-P	DOT-E 4453	SherDeb Corporation, Lehigh Valley, PA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453. (Modes 1, 3.)
4453-P	DOT-E 4453	Reed Explosives, Inc., Blountsville, AL.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453. (Modes 1, 3.)
4453-X	DOT-E 4453	Energy Ventures Corp., dba Columbus Powder Company, Columbus, IN.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	Atlas Powder Company, Dallas, TX	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	Laverty Supply, Inc., Indianola, IA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	ETI Explosives Technologies, International Inc., Wilmington, DE.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	Kentucky Powder Company, Lexington, KY.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
4453-X	DOT-E 4453	Laurel Explosives, Inc., East Bernstadt, KY.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4575-P	DOT-E 4575	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.314(c), 173.315(a)	To become a party to exemption 4575. (Modes 1, 2, and 3.)
4575-P	DOT-E 4575	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 173.314(c), 173.315(a)	To become a party to exemption 4575. (Modes 1, 2, and 3.)
4575-P	DOT-E 4575	UNIGAS, Inc., Ponce, PR	49 CFR 173.314(c), 173.315(a)	To become a party to exemption 4575. (Modes 1, 2, and 3.)
4575-P	DOT-E 4575	Linde Gases of Florida, Inc, Tampa, FL.	49 CFR 173.314(c), 173.315(a)	To become a party to exemption 4575. (Modes 1, 2, and 3.)
4575-P	DOT-E 4575	Linde Gases of Southern California, Inc. Santa Ana, CA.	49 CFR 173.314(c), 173.315(a)	To become a party to exemption 4575. (Modes 1, 2, and 3.)
4575-P	DOT-E 4575	Linde Gases of The Southeast, Inc., Wilmington, NC.	49 CFR 173.314(c), 173.315(a)	To become a party to exemption 4575. (Modes 1, 2, and 3.)
4575-P	DOT-E 4575	Linde Gases of The Midwest, Inc., Hillside, IL.	49 CFR 173.314(c), 173.315(a)	To become a party to exemption 4575. (Modes 1, 2, and 3.)
4575-P	DOT-E 4575	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.314(c), 173.315(a)	To become a party to exemption 4575. (Modes 1, 2, and 3.)
4575-P	DOT-E 4575	Linde Gases of The West, Oakland, CA.	49 CFR 173.314(c), 173.315(a)	To become a party to exemption 4575. (Modes 1, 2, and 3.)
4575-P	DOT-E 4575	Linde Gases of the South, Inc., Houston, TX.	49 CFR 173.314(c), 173.315(a)	To become a party to exemption 4575. (Modes 1, 2, and 3.)
4719-X	DOT-E 4719	Halocarbon Products Corporation, North Augusta, SC.	49 CFR 173.314(c), 173.315(a)(1), 179.102-11.	To authorize shipment of certain compressed gases most of which are not listed in 49 CFR 173.314 and 173.315, in DOT Specification MC-330 and MC-331 cargo tanks or 105A300W, 112A340W, 114A340W, 106A500, 106A500X and 110A500W tank car tanks. (Modes 1, 2.)
4719-X	DOT-E 4719	Dow Chemical U.S.A., Freeport, TX	49 CFR 173.314(c), 173.315(a)(1), 179.102-11.	To authorize shipment of certain compressed gases most of which are not listed in 49 CFR 173.314 and 173.315, in DOT Specification MC-330 and MC-331 cargo tanks or 105A300W, 112A340W, 114A340W, 106A500, 106A500X and 110A500W tank car tanks. (Modes 1, 2.)
4719-X	DOT-E 4719	Allied-Signal Inc./Engineered Materials Sector, Morristown, NJ.	49 CFR 173.314(c), 173.315(a)(1), 179.102-11.	To authorize shipment of certain compressed gases most of which are not listed in 49 CFR 173.314 and 173.315, in DOT Specification MC-330 and MC-331 cargo tanks or 105A300W, 112A340W, 114A340W, 106A500, 106A500X and 110A500W tank car tanks. (Models 1,2.)
4726-X	DOT-E 4726	U.S. Department of Energy, Washington, DC.	49 CFR 173.245	To authorize transport of certain liquid metal fluorides, in non-DOT specification monel cylinders, overpacked in a strong wooden box with cushioning material. (Mode 1.)
4803-X	DOT-E 4803	Dowell Schlumberger, Inc., Tulsa, OK.	49 CFR 173.245, 173.248, 173.249, 173.263, 173.272, 173.289, 178.343-5.	To authorize use of non-DOT specification cargo tank motor vehicles, for shipment of certain corrosive liquids. (Mode 1.)
5022-X	DOT-E 5022	Morton Thiokol, Incorporated, Elkton, MD.	49 CFR 174.101(l), 174.104(d), 174.112(a), 174.86, 177.834(l)(1).	To authorize shipment of certain Class A and Class B explosives in temperature controlled equipment. (Modes 1,2.)
5022-X	DOT-E 5022	U.S. Department of Defense, Falls Church, VA.	49 CFR 174.101(l), 174.104(d), 174.112(a), 174.86, 177.834(l)(1).	To authorize shipment of certain Class A and Class B explosives in temperature controlled equipment. (Modes 1,2.)
5022-X	DOT-E 5022	Hercules Aerospace Company, Magna, UT.	49 CFR 174.101(l), 174.104(d), 174.112(a), 174.86, 177.834(l)(1).	To authorize shipment of certain Class A and Class B explosives in temperature controlled equipment. (Modes 1,2.)
5022-X	DOT-E 5022	United Technologies Chemical Systems, San Jose, CA.	49 CFR 174.101(l), 174.104(d), 174.112(a), 174.86, 177.834(l)(1).	To authorize shipment of certain Class A and Class B explosives in temperature controlled equipment. (Modes 1,2.)
5022-X	DOT-E 5022	Boeing Aerospace, Seattle, WA	49 CFR 174.101(l), 174.104(d), 174.112(a), 174.86, 177.834(l)(1).	To authorize shipment of certain Class A and Class B explosives in temperature controlled equipment. (Modes 1,2.)
5022-X	DOT-E 5022	Aerojet Solid Propulsion Company, Sacramento, CA.	49 CFR 174.101(l), 174.104(d), 174.112(a), 174.86, 177.834(l)(1).	To authorize shipment of certain Class A and Class B explosives in temperature controlled equipment. (Modes 1,2.)
5206-X	DOT-E 5206	Amos L. Dolby Company, Corsica, PA.	49 CFR 173.114a	To authorize privately operated bulk hopper-type units, for transportation of blasting agents. (Mode 1.)
5206-X	DOT-E 5206	Austin Powder Company, Cleveland, OH.	49 CFR 173.114a	To authorize privately operated bulk hopper-type units, for transportation of blasting agents. (Mode 1.)
5206-X	DOT-E 5206	El Dorado Chemical Company, St. Louis, MO.	49 CFR 173.114a	To authorize privately operated bulk hopper-type units, for transportation of blasting agents. (Mode 1.)
5206-P	DOT-E 5206	Atlas Powder Company, Dallas, TX	49 CFR 173.114a	To become a party to exemption 5206. (Mode 1.)
5206-X	DOT-E 5206	Nelson Brothers, Inc., Parish, AL	49 CFR 173.114a	To authorize privately operated bulk hopper-type units, for transportation of blasting agents. (Mode 1.)
5206-P	DOT-E 5206	Geenen Explosives, Inc., Kaukauna, WI.	49 CFR 173.114a	To become a party to exemption 5206. (Mode 1.)
5600-X	DOT-E 5600	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 175.3, Part 173, Subparts D, F, G.	To authorize transport of flammable or nonflammable compressed gases, flammable, corrosive liquids or oxidizers presently authorized to be shipped in a DOT Specification 3A cylinder, to be shipped in a non-DOT specification cylinder made to DOT-3A specification with certain exceptions. (Modes 1, 2, and 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
5600-X	DOT-E 5600	Ozark-Mahoning Company, Tulsa, OK.	49 CFR 175.3, Part 173, Subparts D, F, G.	To authorize transport of flammable or nonflammable compressed gases, flammable, corrosive liquids or oxidizers presently authorized to be shipped in a DOT Specification 3A cylinder, to be shipped in a non-DOT specification cylinder made to DOT-3A specification with certain exceptions. (Modes 1, 2, and 4.)
5600-X	DOT-E 5600	Solkatronic Chemicals, Inc., Fairfield, NJ.	49 CFR 175.3, Part 173, Subparts D, F, G.	To authorize transport of flammable or nonflammable compressed gases, flammable, corrosive liquids or oxidizers presently authorized to be shipped in a DOT Specification 3A cylinder, to be shipped in a non-DOT specification cylinder made to DOT-3A specification with certain exceptions. (Modes 1, 2, and 4.)
5600-X	DOT-E 5600	Amoco Oil Company, Whiting, IN	49 CFR 175.3, Part 173, Subparts D, F, G.	To authorize transport of flammable or nonflammable compressed gases, flammable, corrosive liquids or oxidizers presently authorized to be shipped in a DOT Specification 3A cylinder, to be shipped in a non-DOT specification cylinder made to DOT-3A specification with certain exceptions. (Modes 1, 2, and 4.)
5604-X	DOT-E 5604	Airco Industrial Gases Division of the BOC Group, Murray Hill, NJ.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 178.338.	To authorize party status to the reinstated exemption which authorizes shipment of liquid helium in non-DOT specification cargo tanks. (Modes 1, 3.)
5923-P	DOT-E 5923	Linde Gases of The Great Lakes, Inc., Cleveland, OH.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To become a party to exemption 5923. (Modes 1, 2, and 3.)
5923-P	DOT-E 5923	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To become a party to exemption 5923. (Modes 1, 2, and 3.)
5923-P	DOT-E 5923	Linde Gases of The Southeast, Inc., Wilmington, NC.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To become a party to exemption 5923. (Modes 1, 2, and 3.)
5923-P	DOT-E 5923	Linde Gases of The Midwest, Inc., Hillside, IL.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To become a party to exemption 5923. (Modes 1, 2, and 3.)
5923-P	DOT-E 5923	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To become a party to exemption 5923. (Modes 1, 2, and 3.)
5923-P	DOT-E 5923	Linde Gases of The Mid-Atlantic, Morrestown, NJ.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To become a party to exemption 5923. (Modes 1, 2, and 3.)
5923-P	DOT-E 5923	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To become a party to exemption 5923. (Modes 1, 2, and 3.)
5923-P	DOT-E 5923	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To become a party to exemption 5923. (Modes 1, 2, and 3.)
5923-P	DOT-E 5923	Linde Gases of The West, Oakland, CA.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To become a party to exemption 5923. (Modes 1, 2, and 3.)
5923-P	DOT-E 5923	Linde Gases of the South, Inc., Houston, TX.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To become a party to exemption 5923. (Modes 1, 2, and 3.)
6126-X	DOT-E 6126	Rhone-Poulenc Inc., Princeton, NJ	49 CFR 173.253(a)	To authorize shipment of chloracetyl chloride in DOT Specification 6D/2S or 2SL composite packaging. (Modes 1, 3.)
6126-X	DOT-E 6126	Monsanto Agricultural Company, St. Louis, MO.	49 CFR 173.253(a)	To authorize shipment of chloracetyl chloride in DOT Specification 6D/2S or 2SL composite packaging. (Modes 1, 3.)
6232-X	DOT-E 6232	U.S. Department of Defense, Washington, DC.	49 CFR 172.101, 173.102, 173.108, 173.176, 173.87, 175.3.	To authorize shipment of nonflammable gas, Class C explosive, and a flammable solid to be packaged in the same outside package. (Modes 1, 3, and 4.)
6232-X	DOT-E 6232	McDonnell Douglas Corp., Saint Louis, MO.	49 CFR 172.101, 173. 102, 173.108, 173.176, 173.87, 175.3.	To authorize shipment of nonflammable gas, Class C explosive, and a flammable solid to be packaged in the same outside package. (Modes 1, 3, 4).
6250-P	DOT-E 6250	McDonnell Douglas Corp., St. Louis, MO.	49 CFR 172.101, 173.102, 173.69, 173.79, 173.87, 173.92, 173.94, 176.83, 177.848.	To become a party to exemption 6250. (Modes 1, 3.)
6293-P	DOT-E 6293	Atlas Powder Co., Dallas, TX	49 CFR 173.21(b), 173.248	To become a party to exemption 6293. (Mode 1.)
6296-X	DOT-E 6296	Platte Chemical Co. Greeley, CO	49 CFR 173.377(g)	To authorize additional bag packagings, for transportation of certain Class B poisons in DOT Specification 44D multi-wall paper bags. (Modes 1, 2.)
6309-P	DOT-E 6309	Preferred Foam Products, Inc., Old Soybrook, CT.	49 CFR 173.315(a)(1), 174.63(b)	To become a party to exemption 6309. (Modes 1, 2.)
6309-P	DOT-E 6309	Eastern Foam Systems Inc. Stratford, CT.	49 CFR 173.315(a)(1), 174.63(b)	To become a party to exemption 6309. (Modes 1, 2.)
6418-P	DOT-E 6418	Cenex Land O Lake, Vancouver, WA.	49 CFR 173.357(b)	To become a party to exemption 6418. (Mode 1.)
6418-P	DOT-E 6418	Trical, Inc., Hollister, CA	49 CFR 173.357(b)	To become a party to exemption 6418. (Mode 1.)
6443-X	DOT-E 6443	Montana Sulphur & Chemical Co., Billings, MT.	49 CFR 173.315(a)(1)	To authorize use of DOT Specification MC-331 insulated cargo tanks not presently authorized, for transportation of a flammable gas. (Mode 1.)
6530-P	DOT-E 6530	Linde Puerto Rico, Inc., Gurabo, PR.	49 CFR 173.302(c)	To become a party to exemption 6530. Modes 1, 2.)
6530-P	DOT-E 6530	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.302(c)	To become a party to exemption 6530. Modes 1, 2.)
6530-P	DOT-E 6530	Linde Gases of the West Oakland, CA.	49 CFR 173.302(c)	To become a party to exemption 6530. Modes 1, 2.)
6530-P	DOT-E 6530	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.302(c)	To become a party to exemption 6530. Modes 1, 2.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6530-P	DOT-E 6530	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 173.302(c)	To become a party to exemption 6530. Modes 1, 2.)
6530-P	DOT-E 6530	UNIGAS, Inc., Ponce, PR	49 CFR 173.302(c)	To become a party to exemption 6530. Modes 1, 2.)
6530-P	DOT-E 6530	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 173.302(c)	To become a party to exemption 6530. Modes 1, 2.)
6530-P	DOT-E 6530	Linde Gases of The Midwest, Inc., Hillside, IL.	49 CFR 173.302(c)	To become a party to exemption 6530. Modes 1, 2.)
6530-P	DOT-E 6530	Linde Gases of The Great Lakes, Inc., Cleveland, OH.	49 CFR 173.302(c)	To become a party to exemption 6520. Modes 1, 2.)
6530-P	DOT-E 6530	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.302(c)	To become a party to exemption 6530. Modes 1, 2.)
6530-P	DOT-E 6530	Linde Gases of The Southeast, Inc., Wilmington, NC.	49 CFR 173.302(c)	To become a party to exemption 6530. Modes 1, 2.)
6530-P	DOT-E 6530	GenEx, Ltd., Des Moines, IA	49 CFR 173.302(c)	To become a party to exemption 6530. Modes 1, 2.)
6530-P	DOT-E 6530	Linde Gases of the South Houston, TX.	49 CFR 173.302(c)	To become a party to exemption 6530. Modes 1, 2.)
6557-X	DOT-E 6557	U.S. Department of Defense, Falls Church, VA.	49 CFR 175.3, 178.36-4(c), 178.37-4(c), 178.50-4(c).	To authorize deviation from the requirements of the inspector's report for DOT Specification 3A, 3AA and 4B cylinders. Modes 1, 2, 3, 4, and 5.)
6557-X	DOT-E 6557	General Fire Exginguisher Corp., Northbrook, IL.	49 CFR 175.3, 178.36-4(c), 178.37-4(c), 178.50-4(c).	To authorize deviation from the requirements of the inspector's report for DOT Specification 3A, 3AA and 4B cylinders. (Modes 1, 2, 3, 4, and 5.)
6614-X	DOT-E 6614	Ceilasto Plastics Corp., Marshall, MI.	49 CFR 173.263(a)(28), 173.277(a)(6).	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6614-X	DOT-E 6614	Esbro Chemical, Redwood, CA	49 CFR 173.263(a)(28), 173.277(a)(6).	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6614-X	DOT-E 6614	Jones Chemicals, Inc., Caledonia, NY.	49 CFR 173.263(a)(28), 173.277(a)(6).	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6614-X	DOT-E 6614	Continental Chemical Co., Sacramento, CA.	49 CFR 173.263(a)(28), 173.277(a)(6).	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6614-X	DOT-E 6614	Bison Laboratories, Inc., Buffalo, NY.	49 CFR 173.263(a)(28), 173.277(a)(6).	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6614-X	DOT-E 6614	GPS Industries, City of Industry, CA	49 CFR 173.263(a)(29), 173.277(a)(6).	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6614-X	DOT-E 6614	All Pure Chemical Co., Tracy, CA	49 CFR 173.263(a)(28), 173.277(a)(6).	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6614-X	DOT-E 6614	Arco Industries, Inc., Milwaukee, WI.	49 CFR 173.263(a)(28), 173.277(a)(6).	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6626-X	DOT-E 6626	Messer Griesheim Industries, Inc., Valley Forge, PA.	49 CFR 173.34(e)(15)(i), 173.34(e)(15)(v), 175.3.	To authorize use of DOT Specification 3A or 3AA cylinders and cylinders marked ICC-3, 3A or 3AA, for shipment of certain compressed gases. (Modes 1, 2, 3, 4, and 5.)
6658-X	DOT-E 6658	U.S. Department of Energy, Washington, DC.	49 CFR 173.65	To authorize use of a non-DOT specification open-head steel drum, for transportation of a certain Class A explosive. (Mode 1.)
6658-X	DOT-E 6658	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.65	To authorize use of a non-DOT specification open-head steel drum, for transportation of a certain Class A explosive. (Mode 1.)
6686-X	DOT-E 6686	Chilton Metal Products Division, Chilton, WI.	49 CFR 173.304, 178.65	To authorize use of a modified DOT Specification 39 steel cylinder, for transportation of a certain flammable gas. (Modes 1, and 2).
6691-P	DOT-E 6691	Linde Puerto Rico, Inc., Gurabo, PR.	49 CFR 173.34(e)(15)(i), Part 107, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4, and 5.)
6691-P	DOT-E 6691	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.34(e)(15)(i), Part 107, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4, and 5.)
6691-P	DOT-E 6691	Linde Gases of The West, Oakland, CA.	49 CFR 173.34(e)(15)(i), Part 107, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4, and 5.)
6691-P	DOT-E 6691	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.34(e)(15)(i), Part 107, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4, and 5.)
6691-P	DOT-E 6691	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 173.34(e)(15)(i), Part 107, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4, and 5.)
6691-P	DOT-E 6691	UNIGAS, Inc., Ponce, PR	49 CFR 173.34(e)(15)(i), Part 107, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4, and 5.)
6691-P	DOT-E 6691	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 173.34(e)(15)(i), Part 107, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4, and 5.)
6691-P	DOT-E 6691	Linde Gases of the Midwest, Inc., Hillside, IL.	49 CFR 173.34(e)(15)(i), Part 107, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4, and 5.)
6691-P	DOT-E 6691	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 173.34(e)(15)(i), Part 107, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4, and 5.)
6691-P	DOT-E 6691	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.34(e)(15)(i), Part 107, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4, and 5.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6691-P	DOT-E 6691	Linde Gases of the Southeast, Inc., Wilmington, NC.	49 CFR 173.34(e)(15)(i), Part 107, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4, and 5.)
6691-P	DOT-E 6691	GenEx, Ltd., Des Moines, IA	49 CFR 173.34(e)(15)(i), Part 107, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4, and 5.)
6691-P	DOT-E 6691	Linde Gases of the South, Inc., Houston, TX.	49 CFR 173.34(e)(15)(i), Part 107, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4, and 5.)
6695-P	DOT-E6695	Atochem Inc., Chemical Division, Glen Rock, NJ.	49 CFR 173.315	To become a party to exemption 6695. (Modes 1, 2, and 3.)
6752-X	DOT-E 6752	Pennwalt Corp., King of Prussia, PA.	49 CFR 173.301(d)(3), 173.304(a)(2).	To authorize use of DOT Speicification 3A, 3AA, 3AX, 3AAX or 3T cylinders to form part of a tube trailer or tube bank, for transportaiotn of a liquefied flammable compressed gas. (Modes 1, 2, and 3.)
6752-X	DOT-E 6752	ATOCHEM, Inc., Paris, France	49 CFR 173.301(d)(3), 173.304(a)(2).	To authorize use of DOT Specification 3A, 3AA, 3AX, 3AAX or 3T cylinders to form part of a tube trailer or tube bank, for transportation of a liquefied flammable compressed gas. (Modes 1, 2, and 3.)
6752-X	DOT-E 6752	3M Transportation Co., St. Paul, MN.	49 CFR 173.301(d)(3), 173.304(a)(2).	To authorize use of DOT Specification 3A, 3AA, 3AX, 3AAX or 3T cylinders to form part of a tube trailer or tube bank, for transportation of a liquefied flammable compressed gas. (Modes 1, 2, and 3.)
6762-X	DOT-E 6762	The DuBois Co., Sharonville, OH	49 CFR 173.266(b)(2), 175.3	To authorize the transport of chemical kits in plastic inside packagings and fiberboard outside packagings. (Modes 1, 2, 3, and 4.)
6765-P	DOT-E 6765	Iwatani International Corp., Tokyo, Japan.	49 CFR 173.318(a), 176.76(h)(4)	To become a party to exemption 6765. (Modes 1, 3.)
6765-P	DOT-E 6765	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.318(a), 176.76(h)(4)	To become a party to exemption 6765. (Modes 1, 3.)
6765-P	DOT-E 6765	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 173.318(a), 176.76(h)(4)	To become a party to exemption 6765. (Modes 1, 3.)
6765-P	DOT-E 6765	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.318(a), 176.76(h)(4)	To become a party to exemption 6765. (Modes 1, 3.)
6773-X	DOT-E 6773	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.314(c)	To authorize shipment of a flammable compressed gas, in a DOT Specification 105A600W tank car. (Mode 2.)
6805-P	DOT-E 6805	Union Carbide Industiral Gases, Inc., Danbury, CT.	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 6805. (Mode 1.)
6805-P	DOT-E 6805	Linde Gases of The West, Oakland, CA.	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 6805. (Mode 1.)
6805-P	DOT-E 6805	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 6805. (Mode 1.)
6805-P	DOT-E 6805	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 6805. (Mode 1.)
6805-P	DOT-E 6505	UNIGAS, Inc., Ponce, PR	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 6805. (Mode 1.)
6805-P	DOT-E 6805	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 6805. (Mode 1.)
6805-P	DOT-E 6805	Linde Gases of The Midwest, Inc., Hillside, IL.	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 6805. (Mode 1.)
6805-P	DOT-E 6805	Linde Gases of The Great Lakes, Inc., Cleveland, OH.	49CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 6805. (Mode 1.)
6805-P	DOT-E 6805	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 6805. (Mode 1.)
6805-P	DOT-E 6805	Linde Gases of the South, Inc., Houston, TX.	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 6805. (Mode 1.)
6824-X	DOT-E 6824	Bio-Lab, Inc., Decatur, GA	49 CFR 173.154, 173.217(a)	To authorize packagings not provided for in the Hazardous Materials Regulations, for shipment of certain oxidizing materials. (Modes 1, 2, 3.)
6932-P	DOT-E 6932	Atochem Inc., Chemical Division, Glen Rock, NJ.	49 CFR 173.264(b)(4)	To become a party to exemption 6932. (Modes 1, 3.)
6971-X	DOT-E 6971	Chem Service, Inc., West Chester, PA.	49 CFR Parts 100-199	To authorize an alternative method of packaging for reshippers who are returning the material to the holder of the exemption. (Modes 1, 2, 3, 4, and 5.)
7007-X	DOT-E 7007	Allied Universal Corp., Miami, FL	49 CFR 173.314(c), 179.3	To authorize shipment of chlorine in non-DOT specification multi-unit tank car tanks made in accordance with DOT Specification 110A500W. (Modes 1, 3.)
7052-P	DOT-E 7052	Trimble Navigation, Limited, Sunnyvalle, CA.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E7052	DC Battery Products, St. Paul, MN	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	GE Reuter-Stokes, Twinsburg, OH	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	Wood Group Wireline Products, Inc., Fort Worth, TX.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	Tracor Aerospace, Inc., Austin, TX	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	Aquatronics, Hadlock, WA	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	GE Aerospace, Philadelphia, PA	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	TDW Pipeline Surveys, Tulsa, OK	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, and 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7052-P	DOT-E 7052	Delta Environmental consultants, Inc., Tampa, FL.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, and 4.)
752-P	DOT-E 7052	The Bob Fournet Co., Lafayette, LA.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, and 4.)
7060-P	DOT-E 7060	Federal Express Corp., Memphis, TN.	49 CFR 175.702(b),175.75(a)(3)(ii)	To authorize carriage of non-fissile radioactive materials aboard cargo only aircraft when the combined transport index exceeds the usual authorized limits specified in Part 175 or the separation distance criteria cannot be met. (Mode 4.)
7063-X	DOT-E 7063	Twin Lake Chemical Co., Lockport, NY.	49 CFR 173.191(a)	To authorize use of a removable-head polyethylene container meeting all requirements of DOT Specification 35 (maximum gross weight 65 pounds), to transport a corrosive material. (Modes 1, 2, and 3.)
7071-X	DOT-E 7071	Clayton Chemical Co., Los Angeles, CA.	49 CFR 172.101, 173.245, 175.3	To authorize shipment of a certain corrosive liquid, in non-DOT specification polyethylene bottles overpacked in a non-DOT specification single-wall fiberboard box, or DOT Specification 20 polyethylene containers overpacked in a DOT Specification 12P fiberboard box. (Modes 1, 2, 3, and 4.)
7071-X	DOT-E 7071	Olin Hunt Specialty Products Corp., West Paterson, NJ.	49 CFR 172.101, 173.245, 175.3	To authorize shipment of a certain corrosive liquid, in non-DOT specification polyethylene bottles overpacked in a non-DOT specification single-wall fiberboard box, or DOT Specification 2U polyethylene containers overpacked in a DOT Specification 12P fiberboard box. (Modes 1, 2, 3, and 4.)
7252-X	DOT-E 7252	Explosives Technologies International, Wilmington, DE.	49 CFR 173.93	To authorize transport of Pourvex Extra and Tovex Extra in DOT Specification 17H metal drums. (Modes 1, 3.)
7268-P	DOT-E 7268	Linde Puerto Rico, Inc., Gurabo, PR.	49 CFR 173.304(a)(1)	To become a party to exemption 7268. (Modes 1, 2, and 3.)
7268-P	DOT-E 7268	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.304(a)(1)	To become a party to exemption 7268. (Modes 1, 2, and 3.)
7268-P	DOT-E 7268	Linde Gases of The West, Oakland, CA.	49 CFR 173.304(a)(1)	To become a party to exemption 7268. (Modes 1, 2, and 3.)
7268-P	DOT-E 7268	Linde Gases of The Southeast, Inc., Wilmington, DC.	49 CFR 173.304(a)(1)	To become a party to exemption 7268. (Modes 1, 2, and 3.)
7268-P	DOT-E 7268	UNIGAS, Inc., Ponce, PR	49 CFR 173.304(a)(1)	To become a party to exemption 7268. (Modes 1, 2, and 3.)
7268-P	DOT-E 7268	Linde Gases of The Midwest, Inc., Hillside, IL.	49 CFR 173.304(a)(1)	To become a party to exemption 7268. (Modes 1, 2, and 3.)
7268-P	DOT-E 7268	Linde Gases of The Great Lakes, Inc., Cleveland, OH.	49 CFR 173.304(a)(1)	To become a party to exemption 7268. (Modes 1, 2, and 3.)
7268-P	DOT-E 7268	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.304(a)(1)	To become a party to exemption 7268. (Modes 1, 2, and 3.)
7268-P	DOT-E 7268	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 173.304(a)(1)	To become a party to exemption 7268. (Modes 1, 2, and 3.)
7268-P	DOT-E 7268	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.304(a)(1)	To become a party to exemption 7268. (Modes 1, 2, and 3.)
7268-P	DOT-E 7268	Linde Gases of The South, Inc., Houston, TX.	49 CFR 173.304(a)(1)	To become a party to exemption 7268. (Modes 1, 2, and 3.)
7274-P	DOT-E 7274	Linde Puerto Rico, Inc., Gurabo, PR.	49 CFR 172.101, 173.318, 173.320, 176.30, 176.76(h).	To become a party to exemption 7274. (Mode 3.)
7274-P	DOT-E 7274	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 172.101, 173.318, 173.320, 176.30, 176.76(h).	To become a party to exemption 7274. (Mode 3.)
7274-P	DOT-E 7274	UNIGAS, Inc., Ponce, PR	49 CFR 172.101, 173.318, 173.320, 176.30, 176.76(h).	To become a party to exemption 7274. (Mode 3.)
7274-P	DOT-E 7274	Linde Gases of The Midwest, Inc., Hillside, IL.	49 CFR 172.101, 173.318, 173.320, 176.30, 176.76(h).	To become a party to exemption 7274. (Mode 3.)
7274-P	DOT-E 7274	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 172.101, 173.318, 173.320, 176.30, 176.76(h).	To become a party to exemption 7274. (Mode 3.)
7274-P	DOT-E 7274	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 172.101, 173.318, 173.320, 176.30, 176.76(h).	To become a party to exemption 7274. (Mode 3.)
7274-P	DOT-E 7274	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 172.101, 173.318, 173.320, 176.30, 176.76(h).	To become a party to exemption 7274. (Mode 3.)
7274-P	DOT-E 7274	Linde Gases of The South, Inc., Houston, TX.	49 CFR 172.101, 173.318, 173.320, 176.30, 176.76(h).	To become a party to exemption 7274. (Mode 3.)
7285-P	DOT-E 7285	Atochem Inc., Chemical Division, Glen Rock, NJ.	49 CFR 173.315(a)	To become a party to exemption 7285. (Modes 1, 2, and 3.)
7286-X	DOT-E 7286	Liquid Carbonic Specialty Gas Corp., Chicago, IL.	49 CFR 173.34(e)(15)(i)	To authorize shipment of certain nonliquefied compressed gases in DOT Specification 3A or 3AA cylinders and cylinders marked ICC-3, 3A or 3AA. (Modes 1, 2, 3, 4, and 5.)
7413-X	DOT-E 7413	Chilton Metal Products Division, Chilton, WI.	49 CFR 173.302(a), 173.304(a)(1), 175.3, 178.42.	to authorize transport of carbon dioxide or nitrogen, and compressed air in a non-DOT specification brazed steel cylinder. (Modes 1, 2, 3, 4, and 5.)
7451-P	DOT-E 7451	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.304, 173.315	To become a party to exemption 7451. (Modes 1, 3.)
7451-P	DOT-E 7451	Linde Gases of The Midwest, Inc., Hillside, IL.	49 CFR 173.304, 173.315	To become a party to exemption 7451. (Modes 1, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7451-P	DOT-E 7451	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 173.304, 173.315	To become a party to exemption 7451. (Modes 1, 3.)
7451-P	DOT-E 7451	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.304, 173.315	To become a party to exemption 7451. (Modes 1, 3.)
7451-X	DOT-E 7451	Union Carbide Corp., Danbury, CT	49 CFR 173.304, 173.315	To authorize use of Non-DOT specification pressure vessels, for transportation of a non flammable gas. (Modes 1, 3.)
7451-P	DOT-E 7451	Linde Gases of the South, Inc., Houston, TX.	49 CFR 173.304, 173.315	To become a party to exemption 7451. (Modes 1, 3.)
7495-X	DOT-E 7495	Ethyl Corp., Baton Rouge, LA	49 CFR 173.315(a)(1), 173.353, 174.63(b).	To authorize extension of the periodic retest and reinspection from 3 years to 5 years and replacement of the DOT MC-331 reference with DOT Specification 51. (Modes 1, 2, and 3.)
7495-X	DOT-E 7495	Ethyl Corp., Baton Rouge, LA	49 CFR 173.315(a)(1), 173.353, 174.63(b).	To authorize use of a portable tank built to DOT Specification MC-331 for transportation of chlorine, sulfur dioxide, ormethyl bromide. (Modes 1, 2, and 3.)
7526-X	DOT-E 7526	Sherex Chemical Co., Inc., Dublin, OH.	49 CFR 173.134	To authorize transport of certain pyrophoric liquids in non-DOT specification portable tanks. (Modes 1, 3.)
7526-X	DOT-E 7526	Schering AG, West Berlin, West Germany.	49 CFR 173.134	To authorize transport of certain pyrophoric liquids in non-DOT specification portable tanks. (Modes 1, 3.)
7546-X	DOT-E 7546	Grumman Aircraft Systems, Bethpage, NY.	49 CFR 173.119, 173.302(a), 173.304(a), 173.305(a), 173.34(d), 175.3.	To renew and to authorize an additional heat pipe assembly containing ammonia. (Modes 1, 2, and 4.)
7574-X	DOT-E 7574	Remmers Aviation, Inc., Burlington, IA.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appenein B.	To authorize transport of certain Class A, B and C explosives that are not permitted for air shipment or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
7605-X	DOT-E 7605	General Dynamics/Fort Worth Division, Fort Worth, TX.	49 CFR 173.101, 173.102, 173.113, 173.87, 173.92, 175.3, 176.83, 177.848.	To authorize transport of certain explosives contained in a partially dis-assembled aircraft or canopy assembly. (Modes 1, 3, and 4.)
7605-X	DOT-E 7605	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.101, 173.102, 173.113, 173.87, 173.92, 175.3, 176.83, 177.848.	To authorize transport of certain explosives contained in a partially dis-assembled aircraft or canopy assembly. (Modes 1, 3, and 4.)
7607-P	DOT-E 7607	Delta Environmental Consultants, Inc., Tampa, FL.	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Modes 4, 5.)
7607-P	DOT-E 7607	Versar Inc., Springfield, VA	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Modes 4, 5.)
7607-P	DOT-E 7607	Department of Health Services, Sacramento, CA.	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Modes 4, 5.)
7607-P	DOT-E 7607	On-Site Instruments, Columbus, OH.	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Modes 4, 5.)
7607-P	DOT-E 7607	Camp, Dresser and McKee, Chantilly, VA.	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Modes 4, 5.)
7607-X	DOT-E 7607	Radian Corp., Herndon, VA	49 CFR 172.101, 175.3	To authorize shipment of hydrogen in certain non-DOT specification seamless stainless steel cylinders. (Modes 4, 5.)
7616-P	DOT-E 7616	Chicago & Northwestern Transportation Co., Chicago, IL.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To become a party to exemption 7616. (Mode 2.)
7616-X	DOT-E 7616	CSX Transportation, Inc., Jacksonville, FL.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To authorize carrier to certify the shipping papers on behalf of the shipper when transporting certain hazardous materials by rail. (Mode 2.)
7616-X	DOT-E 7616	Southern Pacific Transportation Co., San Francisco, CA.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To authorize carrier to certify the shipping papers on behalf of the shipper when transporting certain hazardous materials by rail. (Mode 2.)
7616-X	DOT-E 7616	Kansas City Southern Railway Co. and Subsidiaries, Kansas City, MO.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To authorize carrier to certify the shipping papers on behalf of the shipper when transporting certain hazardous materials by rail. (Mode 2.)
7616-X	DOT-E 7616	Atchison, Topeka and Santa Fe Railway Co., Chicago, IL.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To authorize carrier to certify the shipping papers on behalf of the shipper when transporting certain hazardous materials by rail. (Mode 2.)
7616-X	DOT-E 7616	Norfolk Southern Corp., Norfolk, VA.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To authorize carrier to certify the shipping papers on behalf of the shipper when transporting certain hazardous materials by rail. (Mode 2.)
7616-X	DOT-E 7616	Chicago & Northwestern Transportation Co., Chicago, IL.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To authorize carrier to certify the shipping papers on behalf of the shipper when transporting certain hazardous materials by rail. (Mode 2.)
7616-X	DOT-E 7616	Consolidated Rail Corp. (Conrail), Philadelphia, PA.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To authorize carrier to certify the shipping papers on behalf of the shipper when transporting certain hazardous materials by rail. (Mode 2.)
7616-X	DOT-E 7616	Burlington Northern Railroad Co., Overland Park, KS.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To authorize carrier to certify the shipping papers on behalf of the shipper when transporting certain hazardous materials by rail. (Mode 2.)
7616-X	DOT-E 7616	Soo Line Railroad Co., Milwaukee, WI.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To authorize carrier to certify the shipping papers on behalf of the shipper when transporting certain hazardous materials by rail. (Mode 2.)
7616-X	DOT-E 7616	Grand Trunk Western Railroad Co., Pontiac, MI.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To authorize carrier to certify the shipping papers on behalf of the shipper when transporting certain hazardous materials by rail. (Mode 2.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7625–X	DOT–E 7625	Hydrite Chemical Co., Milwaukee, WI.	49 CFR 173.245, 173.249, 173.263, 173.268, 173.272.	To authorize transport of certain hazardous materials in DOT Specification 56 portable tanks. (Mode 1.)
7628–X	DOT–E 7628	Allied-Signal Inc., Morristown, NJ	49 CFR 173.264(a)(11), 173.265(b)(3).	To authorize use of DOT Specification 111A100W–5 tank cars equipped with a safety relief valve instead of a vent, for shipment of certain corrosive liquids. (Mode 2.)
7638–X	DOT–E 7638	Minnesota Valley Engineering, Inc., New Prague, MN.	49 CFR 173.316(a), 175.3	To authorize an additional model of the exempted cylinder. (Modes 1, 2, 3, and 4.)
7657–X	DOT–E 7657	Welker Engineering Co., Sugar Land TX.	49 CFR 173.119, 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3, 178.42.	To authorize manufacture, marking and sale of non-DOT specification stainless steel cylinders, for transportation of compressed gases. (Modes 1, 2, 3, and 4.)
7657–X	DOT–E 7657	Welker Engineering Co., Sugar Land, TX.	49 CFR 173.119, 173.302(a)(1), 173.304(a)(1) 173.304(b)(1), 175.3, 178.42.	To authorize manufacture, marking and sale of non-DOT specification stainless steel cylinders, for transportation of compressed gases. (Modes 1, 2, 3, and 4.)
7721–X	DOT–E 7721	Applied Companies, San Fernando, CA.	49 CFR 173.302(a)(4), 175.3	To authorize manufacture, marking and sale of non-DOT specification steel cylinders, for transportation of non-flammable, nonliquefied compressed gases. (Modes 1, 2, 4, and 5.)
7730–X	DOT–E 7730	The Western Co. of North America, Forth Worth, TX.	49 CFR 178.343–5(b)(2)(ii)	To authorize use of a DOT Specification MC–312 cargo tank, for transportation of certain corrosive materials. (Mode 1.)
7735–X	DOT–E 7735	Rheem Container Corp., Danbury, CT.	49 CFR 173.119, 173.264(a), 173.272(g), 173.346, 173.358, 173.359.	To authorize manufacture, marking and sale of DOT Specification 34 containers, for shipment of flammable liquids and corrosive materials and Class B poisonous liquids. (Modes 1, 2, and 3.)
7753–P	DOT–E 7753	FMC Corp., Philadelphia, PA	49 CFR 173.190(b)(2)	To become a party to exemption 7753 Modes 1, 2, and 3.)
7765–X	DOT–E 7765	Carleton Technologies Inc., Tampa, FL.	49 CFR 173.302(a)(4), 175.3	To authorize manufacture, marking and sale of nonrefillable, non-DOT specification pressure vessels, for transportation of compressed gases. (Mode 1, 2, and 4.)
7769–X	DOT–E 7769	Brunswick Corp./Defense Division Lincoln, NE.	49 CFR 173.302(a)(1), 175.3	To authorize manufacture, marking and sale of non-DOT Specification fiber reinforced plastic full composite cylinder, for transportation of certain nonflammable compressed gas. (Modes 1, 2, 3, 4, and 5.)
7774–X	DOT–E 7774	Pipe Recovery Systems, Inc., Houston, TX.	49 CFR 173.246, 175.3	To Authorize shipment of bromine trifluoride in non-DOT specification cylinders. (Modes 1, 2, and 4.)
7777–X	DOT–E 7777	Lang Engineering Co., Inc., Rochester, WI.	49 CFR 173.248	To authorize use of DOT Specification 34 polyethylene containers, DOT Specification 12B or 12P corrugated fiberboard boxes, or DOT Specification 6D or 37M cylindrical steel overspacked with an inside Specification 2SL polyethylene containers, for shipment of spent sulfuric acid. (Modes 1, 2, and 3.)
7811–X	DOT–E 7811	EM Science, Cincinnati, OH	49 CFR 173.119(a)(23), 173.125, 173.245(a)(18) 173.346(a)(21), 173.347(a)(8), 175.3, 178.210.	To authorize shipment of various alcohols (173.125) and to permit staples to be used as a method of closure for fiberboard box used as overpack. (Modes 1, 2, 3 and 4.)
7823–P	DOT–E 7823	Marubeni Corp., Tokyo, Japan	49 CFR 173.246	To become a party to exemption 7823. (Modes 1, 2, and 3.)
7834–X	DOT–E 7834	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.306(b)(4), 175.3	To authorize transport of nonliquefied sulfur hexafluoride in certain X-ray machines, overpacked in strong wooden or fiberboard boxes. (Modes 1, 2, 3, 4, and 5.)
7835–X	DOT–E 7835	Big Three Management Services, Inc., Houston, TX.	49 CFR 177.848, Part 107 Appen. B(1).	To authorize transport of cylinders bearing the flammable gas lable, the oxidizer label, the flammable liquid label, the corrosive label or the poison gas label and tank car tanks bearing the poison gas label on the same motor vehicle. (Mode 1.)
7835–P	DOT–E 7835	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 177.848, Part 107 Appen. B(1).	To become a party to exemption 7835. (Mode 1.)
7835–P	DOT–E 7835	Linde Gases of The West, Oakland, CA.	49 CFR 177.848, Part 107 Appen. B(1).	To become a party to exemption 7835. (Mode 1.)
7835–X	DOT–E 7835	Wilson Oxygen and Supply, Inc., Austin, TX.	49 CFR 177.848, Part 107 Appen. B(1).	To authorize transport of cylinders bearing the flammable gas label, the oxidizer label, the flammable liquid label, the corrosive label or the poison gas label and tank car tanks bearing the poison gas label on the same motor vehicle. (Mode 1.)
7835–P	DOT–E 7835	Linde Gases of Florida, Inc., Tapa, FL.	49 CFR 177.848, Part 107 Appen. B(1).	To become a party to exemption 7835. (Mode 1.)
7835–P	DOT–E 7835	UNIGAS, Inc., Ponce, PR	49 CFR 177.848, Part 107 Appen. B(1).	To become a party to exemption 7835. (Mode 1.)
7835–P	DOT–E 7835	Linde Gases of The Midwest, Inc., Hillside, IL.	49 CFR 177.848, Part 107 Appen. B(1).	To become a party to exemption 7835. (Mode 1.)
7835–P	DOT–E 7835	Linde Gases of The Great Lakes, Inc., Cleveland, OH.	49 CFR 177.848, Part 107 Appen. B(1).	To become a party to exemption 7835. (Mode 1.)
7835–P	DOT–E 7835	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 177.848, Part 107 Appen. B(1).	To become a party to exemption 7835. (Mode 1.)
7835–P	DOT–E 7835	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 177.848, Part 107 Appen. B(1).	To become a party to exemption 7835. (Mode 1.)
7835–P	DOT–E 7835	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 177.848, Part 107 Appen. B(1).	To become a party to exemption 7835. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
1835–X	DOT–E 7835	Airco, The Boc Group, Inc., Murray Hill, NJ.	49 CFR 177.848, Part 107 Appen. B(1).	To authorize transport of cylinders bearing the flammable gas label, the oxidizer label, the flammable liquid label, the corrosive label or the poison gas label and tank car tanks bearing the poison gas label on the same motor vehicle. (Mode 1.)
7835–X	DOT–E 7835	General Air Service & Supply, Denver, CO.	49 CFR 177.848, Part 107 Appen. B(1).	To authorize transport of cylinders bearing the flammable gas label, the oxidizer label, the flammable liquid label, the corrosive label or the poison gas label and tank car tanks bearing the poison gas label on the same motor vehicle. (Mode 1.)
7835–P	DOT–E 7835	GenEx, Ltd., Des Moines, IA	49 CFR 177.848, Part 107 Appen. B(1).	To become a party to exemption 7835. (Mode 1.)
7835–P	DOT–E 7835	Linde Gases of the South, Inc., Houston, TX.	49 CFR 177.848, Part 107 Appen. B(1).	To become a party to exemption 7835. (Mode 1.)
7835–X	DOT–E 7835	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 117.848, Part 107 Appen. B(1).	To authorize transport of cylinders bearing the flammable gas label, the oxidizer label, the flammable liquid label, the corrosive label or the poison gas label and tank car tanks bearing the poison gas label on the same motor vehicle. (Mode 1.)
7835–X	DOT–E 7835	Solkatronic Chemicals, Inc., Fairfield, NJ.	49 CFR 177.848, Part 107 Appen. B(1).	To authorize transport of cylinders bearing the flammable gas label, the oxidizer label, the flammable liquid label, the corrosive label or the poison gas label and tank car tanks bearing the poison gas label on the same motor vehicle. (Mode 1.)
7835–X	DOT–E 7835	Scott Speciality Gases, Plumsteadville, PA.	49 CFR 177.848, Part 107 Appen. B(1).	To authorize transport of cylinders bearing the flammable gas label, the oxidizer label, the flammable liquid label, the corrosive label or the poison gas label and tank car tanks bearing the poison gas label on the same motor vehicle. (Mode 1.)
7835–P	DOT–E 7835	Industrial Gas Products and Supply, Inc., Colorado Springs, CO.	49 CFR 177.843, Part 107 Appen. B(1).	To become a party to exemption 7835. (Mode 1.)
7835–X	DOT–E 7835	Liquid Carbonic Specialty Gas Corp., Chicago, IL.	49 CFR 177.848, Part 107 Appen. B(1).	To authorize transport of cylinders bearing the flammable gas label, the oxidizer label, the flammable liquid label, the corrosive label or the poison gas label and tank car tanks bearing the poison gas label on the same motor vehicle. (Mode 1.)
7835–X	DOT–E 7835	Matheson Gas Products, Inc., Secaucus, NJ.	49 CFR 177.848, Part 107 Appen. B(1).	To authorize transport of cylinders bearing the flammable gas label, the oxidizer label, the flammable liquid label, the corrosive label or the poison gas label and tank car tanks bearing the poison gas label on the same motor vehicle. (Mode 1.)
7835–X	DOT–E 7835	American Welding Supply, San Jose, CA.	49 CFR 177.848, Part 107 Appen. B(1).	To authorize transport of cylinders bearing the flammable gas label, the oxidizer label, the flammable liquid label, the corrosive label or the poison gas label and tank car tanks bearing the poison gas label on the same motor vehicle. (Mode 1.)
7846–P	DOT–E 7846	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.314(c)	To become a party to exemption 7846. (Modes 1, 3.)
7846–P	DOT–E 7846	Linde Gases of The West, Oakland, CA.	49 CFR 173.314(c)	To become a party to exemption 7846. (Modes 1 3.)
7846–P	DOT–E 7846	UNIGAS, Inc., Ponce,PR	49 CFR 173.314(c)	To become a party to exemption 7846. (Modes 1, 3.)
7846–P	DOT–E 7846	Linde Gases of The Midwest, Inc., Hillside, IL.	49 CFR 173.314(c)	To become a party to exemption 7846. (Modes 1, 3.)
7846–P	DOT–E 7846	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.314(c)	To become a party to exemption 7846. (Modes 1, 3.)
7846–P	DOT–E 7846	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 173.314(c)	To become a party to exemption 7846. (Modes 1, 3.)
7846–P	DOT–E 7846	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.314(c)	To become a party to exemption 7846. (Modes 1, 3.)
7846–P	DOT–E 7846	Linde Gases of the South, Inc., Houston, TX.	49 CFR 173.314(c)	To become a party to exemption 7846. (Modes 1, 3.)
7862–X	DOT–E 7862	General Electric Co., Milwaukee, WI.	49 CFR 173.302, 175.3	To authorize use of non-DOT specification aluminum, single trip, inside containers, for transportation of a nonflammable gas. (Modes 1, 4, and 5.)
7879–P	DOT–E 7879	Halliburton Logging Services, Inc., Fort Worth, TX.	49 CFR 173.246, 175.3, 178.42	To become a party to exemption 7879. (Modes 1, 2, 3, and 4.)
7879–X	DOT–E 7879	Gearhart Industries, Inc., Fort Worth, TX.	49 CFR 173.246, 175.3, 178.42	To authorize shipment of bromine trifluoride, in non-DOT specification seamless cylinders. (Modes 1, 2, 3, and 4.)
7886–X	DOT–E 7886	W. M. Barr & Co. Inc., Memphis, TN.	49 CFR 173.245, 178.210	To authorize shipment of a corrosive liquid, in non-DOT specification metal can/fiberboard box packaging. (Modes 1, 3.)
7969–X	DOT–E 7969	Crosby & Overton, Inc., Long Beach, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize transport of certain waste hazardous materials in non-DOT specification single compartment cargo tanks similar to DOT Specification 307/312 except for bottom outlet and circumferential reinforcement. (Mode 1.)
7991–P	DOT–E 7991	Norfolk and Western Railway Co., Roanoke, VA.	49 CFR Parts 100–177	To become a party to exemption 7991. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7991-P	DOT-E 7991	Southern Railway Co., Roanoke, VA.	49 CFR Parts 100–177	TO become a party to exemption 7991. (Mode 1.)
8008-X	DOT-E 8008	Wheaton Aerosols Co., Mays Landing, NJ.	49 CFR 173.1200, 173.305, 173.306(a), 175.3.	To authorize manufacture, marking and sale of non-DOT specification aerosol container consisting of a glass bottle externally coated with plastic, for shipment of compressed gases. (Modes 1, 2, 3, and 4.)
8009-X	DOT-E 8009	CP Industries, Inc., McKeesport, PA.	49 CFR 173.301(d)(2), 173.302(a)(3).	To authorize an increase in the maximum hardness value from HB262 to HB269 for the exempted packaging when hardness tested. (Mode 1.)
8009-X	DOT-E 8009	Pressure Transport, Inc., Austin, TX	49 CFR 173.301(d)(2), 173.302(a)(3).	To authorize use of DOT Specification 3AAX cylinders made of 4130X steel, for transportation of a compressed natural gas. (Mode 1.)
8009-P	DOT-E 8009	Horizon Energy Resources, Inc., Orlando, FL.	49 CFR 173.301(d)(2), 173.302(a)(3).	To become a party to exemption 8009. (Mode 1.)
8013-P	DOT-E 8013	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.302, 173.304, 175.3	To become a party to exemption 8013. (Modes 1, 4, and 5.)
8013-P	DOT-E 8013	Linde Gases of The West, Oakland, CA.	49 CFR 173.302, 173.304, 175.3	To become a party to exemption 8013. (Modes 1, 4, and 5.)
8013-P	DOT-E 8013	Linde Gases of The Midwest, Inc., Hillside, IL.	49 CFR 173.302, 173.304, 175.3	To become a party to exemption 8013. (Modes 1, 4, and 5.)
8013-P	DOT-E 8013	Linde Gases of The Southeast, Inc., Wilmington, DE.	49 CFR 173.302, 173.304, 175.3	To become a party to exemption 8013. (Modes 1, 4, and 5.)
8013-P	DOT-E 8013	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.302, 173.304, 175.3	To become a party to exemption 8013. (Modes 1, 4, and 5.)
8013-P	DOT-E 8013	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 173.302, 173.304, 175.3	To become a party to exemption 8013. (Modes 1, 4 and 5.)
8013-P	DOT-E 8013	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 173.302, 173.304, 175.3	To become a party to exemption 8013. (Modes 1, 4, and 5.)
8013-P	DOT-E 8013	Linde Gases of The Great Lakes, Inc., Cleveland, OH.	49 CFR 173.302, 173.304, 175.3	To become a party to exemption 8013. (Modes 1, 4, and 5.)
8013-P	DOT-E 8013	UNIGAS, Inc., Ponce, PR	49 CFR 173.302, 173.304, 175.3	To become a party to exemption 8013. (Modes 1, 4, and 5.)
8013-P	DOT-E 8013	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.302, 173.304, 175.3	To become a party to exemption 8013. (Modes 1, 4, and 5.)
8013-P	DOT-E 8013	Linde Gases of South Houston, TX	49 CFR 173.302, 173.304, 175.3	To become a party to exemption 8013. (Modes 1, 4, and 5.)
8080-X	DOT-E 8080	Occidental Chemical Corp., Dallas, TX.	49 CFR 173.164	To authorize renewal and an alternative sparger pipe system for the tank car tanks. (Mode 2.)
8084-X	DOT-E 8084	IRECO, Inc., Salt Lake City, UT	49 CFR 173.65(a)(5)	To authorize an additional packaging for shipment of High explosive, Class A explosive. (Modes 1, 2, and 3.)
8084-X	DOT-E 8084	IRECO, Inc., Salt Lake City, UT	49 CFR 173.65(a)(5)	Approval for an alternative packaging; identified as "Tovex T–1 Coils", a 50 foot long, 7/8 inch diameter tube overpacked in outside packaging prescribed in 173.65 (a)(1) and (a)(2). (Modes 1, 2, and 3.)
8084-X	DOT-E 8084	Austin Powder Co., Cleveland, OH	49 CFR 173.65(a)(5)	Approval for an alternative packaging; identified as "Tovex T–1 Coils", a 50 foot long, 7/8 inch diameter tube overpacked in outside packaging prescribed in 173.65 (a)(1) and (a)(2). (Modes 1, 2, and 3.)
8084-X	DOT-E 8084	ETI Explosives Technologies International, Inc., Wilmington, DE.	49 CFR 173.65(a)(5)	Approval for an alternative packaging; identified as "Tovex T–1 Coils", a 50 foot long, 7/8 inch diameter tube overpacked in outside packaging prescribed in § 173.65 (a)(1) and (a)(2). (Modes 1, 2, and 3.)
8086-X	DOT-E 8086	U.S. Department of Defense, Falls Church, VA.	49 CFR 172.101, 172.102, 172.301, 173.118(b), 173.119, 173.206, 173.87.	To authorize transport of a cruise missile containing hazardous materials, outside packaging must be a wooden box. (Mode 1.)
8086-X	DOT-E 8086	Boeing Aerospace, Seattle, WA	49 CFR 172.101, 172.102, 172.301, 173.118(b), 173.119, 173.206, 173.87.	To authorize transport of a cruise missile containing hazardous materials. (Mode 1.)
8091-P	DOT-E 8091	AT&T Information Systems Inc., Greensboro, NC.	49 CFR Parts 100–177	To become a party to exemption 8091. (Modes 4, 5.)
8096-X	DOT-E 8096	Pressure Pak Container, Inc., East Hampton, CT.	49 CFR 173.302(a)(1), 175.3, 178.42.	To authorize manufacture, marking and sale of non-DOT specification steel cylinders, made in compliance with DOT Specification 3E, for shipment of certain flammable and nonflammable gases. (Modes 1, 2, 3, 4, and 5.)
8099-X	DOT-E 8099	Rhone-Poulenc Ag Co., Research Triangle Park, NC.	49 CFR 173.365(a)(15)	To authorize use of non-DOT specification corrugated fiberboard boxes with an inner heat-sealed bag, for transportation of poisonous solids. (Modes 1, 2, and 3.)
8115-X	DOT-E 8115	Acurex Corp., Mountain View, CA	49 CFR 173.302(a)(1), 173.304(a), 173.304(d), 175.3.	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic hoop wrapped cylinder, for transportation of certain nonflammable compressed gases. (Modes 1, 2, 3, 4, and 5.)
8151-X	DOT-E 8151	Ropak West, Inc., La Mirada, CA	49 CFR 178.19, Part 173, Subparts D, F.	To authorize shipment of liquid hazardous materials, in non-DOT specification removable head polyethylene drums. (Modes, 1, 2, and 3.)
8156-P	DOT-E 8156	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To become a party to exemption 8156. (Modes 1, 2.)
8156-P	DOT-E 8156	Linde Gases of The West, Oakland, CA.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To become a party to exemption 8156. (Modes 1, 2.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8156-P	DOT-E 8156	Linde Gases of The Midwest, Inc., Hillside, IL.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To become a party to exemption 8156. (Modes 1, 2.)
8156-P	DOT-E 8156	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To become a party to exemption 8156. (Modes 1, 2.)
8156-P	DOT-E 8156	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To become a party to exemption 8156. (Modes 1, 2.)
8156-P	DOT-E 8156	Linde Gases of The Great Lakes, Inc., Cleveland, OH.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To become a party to exemption 8156. (Modes 1, 2.)
8156-P	DOT-E 8156	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To become a party to exemption 8156. (Modes 1, 2.)
8156-P	DOT-E 8156	GenEx, Ltd., Des Moines, IA	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To become a party to exemption 8156. (Modes 1, 2.)
8156-P	DOT-E 8156	Linde Gases of the South, Inc., Houston, TX.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To become a party to exemption 8156. (Modes 1, 2.)
8168-X	DOT-E 8168	Container Corp. of America/Plastics Division, Wilmington, DE.	49 CFR Part 173, Subparts E, F, H	To authorize manufacture, marking and sale of non-DOT specification fully removable head polyethylene drums, for shipment of certain corrosive solids and solid oxidizers. (Modes 1, 2, and 3.)
8178-X	DOT-E 8178	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.302(a), 173.34(d), 175.3.	To authorize use of a non-DOT specification cylinder, for a compressed nonliquefied gas. (Modes 1, 4.)
8184-X	DOT-E 8184	Trojan Corp., Spanish Fork, UT	49 CFR 173.65	To authorize transport of flake trinitrotoluene in non-DOT specification composite bags. (Modes 1, 2, and 3.)
8184-X	DOT-E 8184	Austin Powder Co., Cleveland, OH	49 CFR 173.65	To authorize transport of flake trinitrotoluene in non-DOT specification composite bags. (Modes 1, 2, and 3.)
8196-X	DOT-E 8196	Compagnie des Containers Reservoirs, Paris, France.	49 CFR 173.119, 173.315(a), 178.245.	To authorize use of a non-DOT IMO Type 5 specification portable tank, for transportation of certain compressed gases. (Modes 1, 2, and 3.)
8196-X	DOT-E 8196	Eurotainer, USA Inc., 75008 Paris, France.	49 CFR 173.119, 173.315(a), 178.245.	To authorize use of a non-DOT IMO Type 5 specification portable tank, for transportation of certain compressed gases. (Modes 1, 2, and 3.)
8196-X	DOT-E 8196	GCS Container Service, SA Chiasso, Switzerland.	49 CFR 173.119, 173.315(a), 178.245.	To authorize use of a non-DOT IMO Type 5 specification portable tank, for transportation of certain compressed gases. (Modes 1, 2, and 3.)
8214-X	DOT-E 8214	Mercedes-Benz of North America, Inc., Montvale, NJ.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To authorize a new packaging arrangement for shipment of inflators and modules for passive restraint systems. (Modes 1, 2, 3, and 4.)
8214-P	DOT-E 8214	Allied-Signal, Inc./Bendix safety Restraints Div., Knoxville, TN.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8214. (Modes 1, 2, 3, and 4.)
8214-P	DOT-E 8214	Nissan Motor Corp., in U.S.A., Gardena, CA.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8214. (Modes 1, 2, 3, and 4.)
8214-P	DOT-E 8214	Toyota Motor Corp., Torrance, CA	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8214. (Modes 1, 2, 3, and 4.)
8214-X	DOT-E 8214	Morton Thiokol, Inc., Ogden, UT	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To modify packaging to allow a void area at the base and increase the weight by 1½ inches. (Modes 1, 2, 3, and 4.)
8214-X	DOT-E 8214	Morton Thiokol, Inc., Ogden, UT	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To authorize transport of inflators and modules in passive restraint systems used in automobiles as flammable solids, n.o.s. (Modes 1, 2, 3, and 4.)
8214-X	DOT-E 8214	Mercedes-Benz of North America, Inc., Montvale, NJ.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To authorize transport of inflators and modules in passive restraint systems used in automobiles as flammable solids, n.o.s. (Modes 1, 2, 3, and 4.)
8214-P	DOT-E 8214	Saab-Scania of America, Inc., Orange, CT.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8214. (Modes 1, 2, 3, and 4.)
8214-X	DOT-E 8214	Chrysler Motors Corp., Center Line, MI.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To authorize transport of inflators and modules in passive restraint systems used in automobiles as flammable solids, n.o.s. (Modes 1, 2, 3, and 4.)
8220-X	DOT-E 8220	Applied Companies, San Fernando, CA.	49 CFR 173.320(a), 175.3	To authorize use of non-DOT specification girth welded steel cylinders, for transporation of nonflammable compressed gases, by aircraft and military weapons systems use only. (Modes 1, 2, and 4.)
8221-X	DOT-E 8221	Applied Companies, San Fernando, CA.	49 CFR 173.302(a), 175.3	To authorize use of non-DOT specification high pressure cylinders of welded construcion for military missile systems only. (Modes 1, 2, and 4.)
8228-X	DOT-E 8228	U.S. Department of Treasury (BATF), Washington, DC.	49 CFR 173.100(bb), 173.113(a)(1), 173.86.	To authorize transport of packages containing not in excess of 35 grams of one type of explosive material or one explosive device, not exceeding 35 grams, in a pasteboard carton packed in a DOT Specification 12H fiberboard box or a non-DOT specification corrugated fiberboard box. (Mode 1.)
8230-X	DOT-E 8230	G. Frederick Smith Chemical Co., Columbus, OH.	49 CFR 173.266(b)(6), 173.269(a)(4).	To authorize shipment of certain oxidizers, in non-DOT specification inside containers packed in DOT Specification 33A single bottle case. (Modes 1, 2, 3, and 4.)
8232-X	DOT-E 8232	Compagnie des Containers Reservoirs, Paris, France.	49 CFR 173.123(a), 173.315	To authorize use of a non-DOT specification portable tank, for transportation of certain compressed gases and a flammable liquid. (Modes 1, 2, and 3.)
8232-X	DOT-E 8232	Eurotainer, US Inc., 75008 Paris, France.	49 CFR 173.123(a), 173.315	To authorize use of a non-DOT specification portable tank, for transportation of certain compressed gases and a flammable liquid. (Modes 1, 2, and 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8232-X	DOT-E 8232	GCS Container Service, SA, Chiasso, Switzerland.	49 CFR 173.123(a), 173.315	To authorize use of a non-DOT specification portable tank, for transportation of certain compressed gases and a flammable liquid. (Modes 1, 2, and 3.)
8273-P	DOT-E 8273	Ford Motor Co., World Headquarters, Dearborn, MI.	49 CFR 171.11 (see paragraph 8.d), 173.153, 173.154, 175.3.	To become a party to exemption 8273. (Modes 1, 2, 3, and 4.)
8273-X	DOT-E 8273	TRW Vehicle Safety Systems, Washington, MI.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To authorize an alternative packaging method and an increase in the quantity of igniter composition to 1 gram. (Modes 1, 2, 3, and 4.)
8308-X	DOT-E 8308	Sky Cab, Inc., East Brunswick, NJ	49 CFR 174.447(a), 177.842(a), 177.842(b).	To authorize carriage of non-fissile radioactive materials packages via motor vehicles when their combined transport index exceeds 50 and/or the separation distance criteria can not be met. (Mode 1.)
8308-X	DOT-E 8308	Associated Couriers, Inc., Maryland Heights, MD.	49 CFR 174.447(a), 177.842(a), 177.842(b).	To authorize carriage of non-fissile radioactive materials packages via motor vehicles when their combined transport index exceeds 50 and/or the separation distance criteria can not be met. (Mode 1.)
8308-X	DOT-E 8308	MHC Messengers, Inc., Avenel, NJ	49 CFR 174.447(a), 177.842(a), 177.842(b).	To authorize carriage of non-fissile radioactive materials packages via motor vehicles when their combined transport index exceeds 50 and/or the separation distance criteria can not be met. (Mode 1.)
8308-X	DOT-E 8308	Caspersen, Inc., Glencoe, IL	49 CFR 174.447(a), 177.842(a), 177.842(b).	To authorize carriage of non-fissile radioactive materials packages via motor vehicles when their combined transport index exceeds 50 and/or the separation distance criteria can not be met. (Mode 1.)
8308-X	DOT-E 8308	American Priority Enterprises, Inc., Floral Park, NY.	49 CFR 174.447(a), 177.842(a), 177.842(b).	To authorize carriage of non-fissile radioactive materials packages via motor vehicles when their combined transport index exceeds 50 and/or the separation distance criteria can not be met. (Mode 1.)
8308-X	DOT-E 8308	Del-Med, Inc., So. Plainfield, NJ	49 CFR 174.447(a), 177.842(a), 177.842(b).	To authorize carriage of non-fissile radioactive materials packages via motor vehicles when their combined transport index exceeds 50 and/or the separation distance criteria can not be met. (Mode 1.)
8308-P	DOT-E 8308	American Courier Express Corp., Miramar, FL.	49 CFR 174.447(a), 177.842(a), 177.842(b).	To become a party to exemption 8308. (Mode 1.)
8445-P	DOT-E 8445	Waste Conversion, Inc., Hatfield, PA.	49 CFR Part 173, Subparts D, E, F, H.	To become a party to exemption 8445. (Mode 1.)
8445-P	DOT-E 8445	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR Part 173, Subparts D, E, F, H.	To become a party to exemption 8445. (Mode 1.)
8445-P	DOT-E 8845	E&K Hazardous Waste Services, Inc., Sheboygan, WI.	49 CFR Part 173, Subparts D, E, F, H.	To become a party to exemption 8445. (Mode 1.)
8445-X	DOT-E 8445	Drug & Laboratory Disposal, Inc., Plainwell, MI.	49 CFR Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8451-X	DOT-E 8451	Explosive Technology, Inc., Fairfield, CA.	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)
8451-P	DOT-E 8451	Olin Corp., Winchester Division, East Alton, IL.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, and 4.)
8451-X	DOT-E 8451	IRECO Inc., Salt Lake City, UT	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)
8451-P	DOT-E 8451	Olin Ordnance Corp., Marion, IL	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, and 4.)
8451-P	DOT-E 8451	Teledyne McCormick Selph, Hollister, CA.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, and 4.)
8453-X	DOT-E 8453	Nelson Brothers, Inc., Parrish, AL	49 CFR 173.114a	To authorize use of non-DOT Specification cargo tanks and DOT Specification MC-306, MC-307, or MC-312 stainless steel cargo tanks, to transport blasting agent. (Modes 1, 3.)
8487-X	DOT-E 8487	Brunswick Corporation/Defense Division, Lincoln, NE.	49 CFR 173.302(a)(1), 173.304(a)(2), 175.3, 178.44.	To authorize manufacture, marking and sale of non-DOT Specification fiber reinforced plastic aluminum lines full composite cylinder, limited for use as equipment components aboard aircraft, for transportation of certain nonflammable compressed gas. (Modes 1, 2, 3, 4, and 5.)
8489-P	DOT-E 8489	IRECO, Inc., Salt Lake City, UT	49 CFR 173.154, 173.162, 173.217, 173.245b.	To become a party to exemption 8489. (Modes 1, 2, and 3.)
8494-X	DOT-E 8494	Fruehauf Corp., Omaha, NE	49 CFR 178.342-6(a)	To authorize manufacture, marking and sale of DOT Specification MC-307 aluminum cargo tanks equipped with glass sight gauges in lieu of the acceptable gauging devices, for transportation of flammable liquids. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8495-X	DOT-E 8495	Walter Kidde, Wilson, NC	49 CFR 173.304(a)(1), 175.3, 178.47.	To authorize manufacture, marking and sale of welded steel container, fabricated in compliance with DOT Specification 4DS with certain exceptions, for transportation of nonflammable gases. (Modes 1, 2, 4, and 5.)
8496-X	DOT-E 8496	Hunter Drums, Limited, Bramalea Ontario, Canada.	49 CFR 173.266, Part 173, Subpart F.	To authorize the use of a 55-gallon DOT Specification 34 packaging to transport certain corrosive liquids and an oxidizer. (Modes 1, 2, and 3.)
8510-X	DOT-E 8510	The Dow Chemical Co., Freeport, TX.	49 CFR 173.178	To authorize shipment of salt-coated magnesium granules in a non-DOT specification wax-impregnated, intermediate bulk, fiberboard box with an inside polyethylene bag. (Modes 1, 2, and 3.)
8518-P	DOT-E 8518	Pacific Petroleum Corp., Orcutt, CA	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8518. (Mode 1.)
8518-P	DOT-E 8518	Unocal Oil & Gas Division, Ventura, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.,343-5.	To become a party to exemption 8518. (Mode 1.)
8519-X	DOT-E 8519	Atlantic Container Line, Limited, Elizabeth, NJ.	49 CFR 176.905(l)	To authorize stowage of motor vehicles with their fuel tanks containing gasoline, classed as a flammable liquid, in the same cargo compartment with other hazardous materials on specially equipped roll-on/roll-off cargo vessels. (Mode 3.)
8526-X	DOT-E 8526	Birko Corp., Westminster, CO	49 CFR 177.834(l)(2)(i)	To authorize shipment of flammable liquids and/or flammable gases, in temperature controlled equipment. (Mode 1.)
8526-P	DOT-E 8526	Birko Corp., Westminster, CO	49 CFR 177.834(l)(2)(i)	To become a party to exemption 8526. (Mode 1.)
8526-P	DOT-E 8526	Monkem Co., Inc., Joplin, MO	49 CFR 177.834(l)(2)(i)	To become a party to exemption 8526. (Mode 1.)
8526-P	DOT-E 8526	Fore Way Express, Inc., Wausau, WI.	49 CFR 177.834(l)(2)(i)	To become a party to exemption 8526. (Mode 1.)
8526-P	DOT-E 8526	Overnite Transportation Co., Richmond, VA.	49 CFR 177.834(l)(2)(i)	To become a party to exemption 8526. (Mode 1.)
8536-X	DOT-E 8536	Pennwalt Corp., Lucidol Division, Buffalo, NY.	49 CFR 173.157(a)(5)	To authorize an increase in the maximum allowable gross weight of a DOT Specification 12B corrugated fiberboard box, for shipment of wet benzoyl peroxide. (Modes 1, 3.)
8539-X	DOT-E 8539	Aero Taxi-Rockford, Inc., Rockford, IL.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize the carriage of certain Class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
8540-X	DOT-E 8540	U.S. Department of Defense Falls Church, VA.	49 CFR 176.83(b), Table II	To authorize shipment of oxygen candles in non-DOT specification triple wall corrugated fiberboard boxes. (Mode 3.)
8547-X	DOT-E 8547	Natico, Inc., Chicago, IL	49 CFR 176.116, Part 173, Subpart F.	To authorize manufacture, marking and sale of a non-DOT specification 55 gallon steel tight head drum incorporating a molded polyethylene top head, in lieu of a steel top head, for shipment of certain corrosive liquids. (Modes 1, 2.)
8554-X	DOT-E 8554	ECONEX Inc., Wheaton, IL	49 CFR 173.114a, 173.154, 173.93	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT specification MC-306, MC-307 and MC-312 cargo tanks. (Modes 1, 3.)
8554-X	DOT-E 8554	ECONEXPRESS Inc., Wheaton, IL	49 CFR 173.114a, 173.154, 173.93	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT Specification MC-306, MC-307 and MC-312 cargo tanks (Modes 1,3.).
8554-X	DOT-E 8554	Amos L. Dolby Co., Corsica, PA	49 CFR 173.114a, 173.154, 173.93	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT specification MC-306, MC-307 and MC-312 cargo tanks. (Modes 1, 3.)
8554-P	DOT-E 8554	SherDeb Corp., Lehigh Valley, PA	49 CFR 173.114a, 173.154, 173.93	To become a party to exemption 8554. (Modes 1, 3.)
8554-P	DOT-E 8554	Pacco Inc., Olympia, WA	49 CFR 173.114a, 173.154, 173.93	To become a party to exemption 8554. (Modes 1, 3.)
8555-X	DOT-E 8555	Morton Thiokol, Inc., Brigham City, UT.	49 CFR 173.92	To authorize rail as an additional mode of transportation and to incorporate provision from Approval BA-3078 into the exemption. (Mode 1.)
8561-X	DOT-E 8561	HTL Division of Pacific Scientific Co., Duarte, CA.	49 CFR 173.304(a)(1), 175.3, 178.44.	To authorize manufacture, marking and sale of non-DOT specification girth welded stainless steel cylinders, for transportation of a compressed gas. (Modes 1, 2, and 4.)
8569-X	DOT-E 8569	General Dynamics Corp., Fort Worth Division Fort Worth, TX.	49 CFR 172.101 Columbia 6(b), 173.276, 175.3.	To authorize the shipment of 6.6 gallons of hydrazine, aqueous solution, in non-DOT Specification, specially designed military packaging. (Modes 1, 3, and 4.).
8569-X	DOT-E 8569	U.S. Department of Defense, Falls Church, VA.	49 CFR 172.101 Columbia 6(b), 173.276, 175.3.	To authorize the shipment of 6.6 gallons of hydrazine, aqueous solution, in non-DOT Specification specially designed military packaging. (Modes 1, 3, and 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8571-X	DOT-E 8571	EM Science, Cincinnati, OH	49 CFR 173.119(a)(28), (b)	To authorize the shipment of various flammable liquids packaged in DOT specification 12A corrugated fiberboard box, with two inside metal can not over 10 liters capacity each. (Mode 1.)
8573-X	DOT-E 8573	All Pure Chemical Co., Inc., Tracy, CA.	49 CFR 173.21(a)(8	To authorize transport of certain solid oxidizers in non-DOT specification polyethylene bottles packed in a DOT Specification 12B double-wall corrugated fiberboard box (Modes 1, 2, and 3.)
8573-X	DOT-E 8573	Alstar Company Tracy, CA	49 CFR 173.217(a)(8)	To authorize transport of certain solid oxidizers in non-DOT specification polyethylene bottles packed in a DOT Specification 12B double-Wall corrugated fiberboard box (Modes 1, 2, and 3).
8582-P	DOT-E 8582	Iowa Interstate Railroad, Ltd., Iowa City, IA.	49 CFR 100–177	To become a party to exemption 8582. (Mode 1.)
8582-P	DOT-E 8582	The Cedar Rapids and Iowa City Railway Co., Cedar Rapids, IA.	49 CFR Parts 100–177	To become a party to exemption 8582. (Mode 1.)
8609-X	DOT-E 8609	Natico, Inc., Chicago, IL	49 CFR 177.841(e), 178.118	To authorize manufacture, marking and sale of non-DOT specification removable head metal drums, for transportation of poison B materials. (Mode 1.)
8691-X	DOT-E 8691	Aluminum Co. of America (ALCOA), Pittsburgh, PA.	49 CFR 173.333, 176.63(b)	To authorize transport of containers containing aluminum chloride contaminated with phosgene, in non-DOT specification stainless steel portable tanks; and semi-bulk bags. (Modes 1, 2, and 3.)
8692-X	DOT-E 8692	Mitsubishi International Corp., New York, NY.	49 CFR 173.154	To authorize shipment of sodium persulfate and ammonium persulfate in collapsible polyethylene-lined, woven polypropylene bags having a capacity not to exceed 2,200 pounds each. (Modes 1, 2, and 3.)
8693-X	DOT-E 8693	CANTRO, Inc., Olathe, KS	49 CFR 173.230	To authorize shipment of sodium metal dispersion in organic solvent in DOT Specification 4BW cylinders. (Modes 1, 3.)
8706-X	DOT-E 8706	Prairie State Equipment, Inc., Sioux Falls, SD.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks in full compliance with DOT Specification MC-307/MC-312 to transport flammable liquid, corrosive material or poison B. (Mode 1.)
8723-X	DOT-E 8723	Explosives Engineers, Inc., Sparks, MD.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
8723-P	DOT-E 8723	Explosives Experts, Inc., Sparks, MD.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723. (Modes 1, 3.)
8747-X	DOT-E 8747	Coppe Industries, Inc., Menomonee Falls, WI.	49 CFR 173.245, 173.249, 175.3	To authorize shipment of certain alkaline corroseive liquids, n.o.s., in an unlined 26/26 gauge DOT Specification 37C80 steel drum of five gallon capacity. (Modes 1, 2, 3, and 4.)
8802-X	DOT-E 8802	EVA, Eisenbahn-Verkehrsmittel, GmbH Dusseldorf, West Germany.	49 CFR 173.315	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of liquefied compressed gases. (Modes 1, 2, and 3.)
8806-X	DOT-E 8806	Natico, Inc., Chicago, IL	49 CFR 178.134	To authorize manufacture, marking and sale of non-DOT specification steel drum overpacks having polyethylene top heads for 55-gallon capacity inner DOT Specification 2SL polyethylene container, for transportation of various hazardous materials. (Modes 1, 2, and 3.)
8815-X	DOT-E 8815	Atlas Powder Co., Dallas, TX	49 CFR 173.114a(b)	To authorize transport of certain blasting agents in a cement mixer motor vehicle. (Mode 1.)
8815-X	DOT-E 8815	Nelson Brothers, Inc., Parrish, AL	49 CFR 173.114a(b)	To authorize transport of certain blasting agents in a cement mixer motor vehicle. (Mode 1.)
8862-P	DOT-E 8862	Linde Puerto Rico, Inc., Gurabo, PR.	49 CFR 173.119, 173.124(a)(4), 173.305.	To become a party to exemption 8862. (Mode 1.)
8862-P	DOT-E 8862	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.119, 173.124(a)(4), 173.305.	To become a party to exemption 8862. (Mode 1.)
8862-P	DOT-E 8862	Linde Gases of the West, Oakland, CA.	49 CFR 173.119, 173.124(a)(4), 173.305.	To become a party to exemption 8862. (Mode 1.)
8862-P	DOT-E 8862	Linde Gases of The Midwest, Inc., Hillside, IL.	49 CFR 173.119, 173.124(a)(4), 173.305.	To become a party to exemption 8862. (Mode 1.)
8862-P	DOT-E 8862	Linde Gases of The Southeast, Inc., Wilmington, NC.	49 CFR 173.119, 173.124(a)(4), 173.305.	To become a party to exemption 8862. (Mode 1.)
8862-P	DOT-E 8862	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.119, 173.124(a)(4), 173.305.	To become a party to exemption 8862. (Mode 1.)
8862-P	DOT-E 8862	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 173.119, 173.124(a)(4), 173.305.	To become a party to exemption 8862. (Mode 1.)
8862-P	DOT-E 8862	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 173.119, 173.124(a)(4), 173.305.	To become a party to exemption 8862. (Mode 1.)
8862-P	DOT-E 8862	Linde Gases of The Great Lakes, Inc., Cleveland, OH.	49 CFR 173.119, 173.124(a)(4), 173.305.	To become a party to exemption 8862. (Mode 1.)
8862-P	DOT-E 8862	UNIGAS, Inc., Ponce, PR	49 CFR 173.119, 173.124(a)(4), 173.305.	To become a party to exemption 8862. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8862-P	DOT-E 8862	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.119, 173.124(a)(4), 173.305.	To become a party to exemption 8862. (Mode 1.)
8862-P	DOT-E 8862	GenEx, Ltd., Des Moines, IA	49 CFR 173.119, 173.124(a)(4), 173.305.	To become a party to exemption 8862. (Mode 1.)
8862-P	DOT-E 8862	Linde Gases of the South, Inc., Houston, TX.	49 CFR 173.119, 173.124(a)(4), 173.305.	To become a party to exemption 8862. (Mode 1.)
8877-X	DOT-E 8877	Hoechst Celanese Corp., Somerville, NJ.	49 CFR 173.119, 173.245	To authorize shipment of certain materials described as flammable liquid, corroseive, n.o.s. (corroseive to skin only) and corroseive liquids, n.o.s. in DOT–12B65, 12A65 and 12A80 fiberboard boxes with inside glass bottles having a capacity not to exceed one gallon. (Modes 1, 2, and 3.)
8877-X	DOT-E 8877	Union Carbide Chemicals & Plastics Co. Inc., Danbury, CT.	49 CFR 173.119, 173.245	To authorize shipment of certain materials described as flammable liquid, corroseive, n.o.s. (corroseive to skin only) and corroseive liquids, n.o.s. in DOT–12B65, 12A65 and 12A80 fiberboard boxes with inside glass bottles having a capacity not to exceed one gallon. (Modes 1, 2, and 3.)
8877-X	DOT-E 8877	General Chemical Corp., Parsippany, NJ.	49 CFR 173.119, 173.245	To authorize shipment of certain materials described as flammable liquid, corroseive, n.o.s. (corroseive to skin only) and corroseive liquids, n.o.s. in DOT–12B65, 12A65 and 12A80 fiberboard boxes with inside glass bottles having a capacity not to exceed one gallon. (Modes 1, 2, and 3.)
8877-X	DOT-E 8877	PCR, Inc., Gainseville, FL	49 CFR 173.119, 173.245	To authorize shipment of certain materials described as flammable liquid, corroseive, n.o.s. (corroseive to skin only) and corroseive liquids, n.o.s. in DOT–12B65, 12A65 and 12A80 fiberboard boxes with inside glass bottles having a capacity not to exceed one gallon. (Modes 1, 2, and 3.)
8885-X	DOT-E 8885	Coppe Industries, Inc., Menomonee Falls, WI.	49 CFR 173.245, 173.249, 175.3	To authorize shipment of certain alkaline corroseive liquids, n.o.s., in an unlined tin can, overpacked in a non-DOT specification removable head molded polyethylene pail of five or six-gallon capacity, also containing a nonhazardous resin mix. (Modes 1, 2, 3, and 4.)
8901-X	DOT-E 8901	Soweco, Inc., Amarillo, TX	49 CFR 173.357	To authorize shipment of chloropicrin, in polyethylene bottles overpacked in non-DOT specification triple-wall, A–A–C flute, corrugated fiberboard boxes. (Mode 1.)
8901-X	DOT-E 8901	Hopkins Agricultural Chemical Co., Madison, WI.	49 CFR 173.357	To authorize shipment of chloropicrin, in polyethylene bottles overpacked in non-DOT specification triple-wall, A–A–C flute, corrugated fiberboard boxes. (Mode 1.)
8904-X	DOT-E 8904	Keith Huber, Inc., Gulfport, MS	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC–307/312 except for bottom outlet valve variations and certain other features, for transportation of flammable, corroseive or poisonous waste liquids or semi-solids. (Mode 1.)
8907-X	DOT-E 8906	FMC Corp., Philadelphia, PA	49 CFR 173.365	To authorize shipment of used, essentially empty containers that contain residual amounts of carbofuns, packed in a non-DOT specification double wall BC flute corrugation fiberboard box. (Mode 1.)
8910-X	DOT-E 8910	Canbar Inc., Waterloo, Ont., Canada.	49 CFR 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, linear low density polyethylene portable tank enclosed in a steel cage, for shipment of corroseive liquids. (Modes 1, 2.)
8915-P	DOT-E 8915	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 8915. (Modes 1, 3.)
8915-P	DOT-E 8915	Linde Gases of the West, Oakland, CA.	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 8915. (Modes 1, 3.)
8915-P	DOT-E 8915	Linde Gases of The Midwest, Inc., Hillside, IL.	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 8915. (Modes 1, 3.)
8915-P	DOT-E 8915	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 8915. (Modes 1, 3.)
8915-P	DOT-E 8915	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 8915. (Modes 1, 3.)
8915-P	DOT-E 8915	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 8915. (Modes 1, 3.)
8915-P	DOT-E 8915	Linde Gases of The Great Lakes, Inc., Cleveland, OH.	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 8915. (Modes 1, 3.)
8915-P	DOT-E 8915	UNIGAS, Inc., Ponce, PR	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 8915. (Modes 1, 3.)
8915-P	DOT-E 8915	Linde Gases of the South, Inc., Houston, TX.	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 8915. (Modes 1, 3.)
8917-X	DOT-E 8917	Fluor Daniel, Bellaire, TX	49 CFR 49 CFR 173.182, 176.400	To authorize transport of ammonium nitrate prills in a large, lined steel container. (Modes 1, 2, and 3.)
8923-P	DOT-E 8923	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.119(m), 173.3e	To become a party to exemption 8923. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8936-X	DOT-E 8936	Great Lakes Chemical Corp., El Dorado, AR.	49 CFR 173.357(b)(2)	To authorize shipment of a mixture containing 57% chloropicrin and 43% 1,3-dichloropropene, 1,2-dichloropropane and related hydrocarbons, respectively by weight, in non-authorized DOT Specification 5B metal drums. (Modes 1, 2, and 3.)
8938-X	DOT-E 8936	Cryogenic Services, Inc., Canton, GA.	49 CFR 173.304(a), 175.3	To authorize the use of a DOT Specification 4L cylinder to transport nonflammable gases. (Modes 1, 2, 3, and 4.)
8955-X	DOT-E 8955	Western Atlas International, Inc., Houston, TX.	49 CFR 173.110(c)(1), 173.60(b), 173.60(c).	To authorize transport of charged oil well guns with detonators attached. (Modes 1, 3.)
8958-X	DOT-E 8958	De La Mare Engineering, Inc., San Fernando, CA.	49 CFR 172.101, 173.60	To authorize transport of limited quantities of black powder, classed as a flammable solid, in DOT Specification 12H fiberboard boxes. (Modes 1, 2.)
8962-X	DOT-E 8962	HTL/Kin-Tech, Division/Pacific, Scientific Co. Durate, CA.	49 CFR 173.302(a), 175.3, 178.44	To authorize manufacture, marking and sale of non-DOT specification girth welded stainless steel cylinders, for transportation of a compressed gas. (Modes 1, 2, and 4.)
8966-X	DOT-E 8966	GPS Industries, City of Industry, CA.	49 CFR 173.263(a)(15), 173.277(a)(1), 178.205.	To authorize shipment of sodium hypochlorite solution, and hydrochloric acid solutions in four one-gallon polyethylene bottles enclosed in a bag of polyethylene film, packed in a corrugated fiberboard box complying with DOT Specification 12B except for hand holes authorized in side panels of box. (Mode 1.)
8966-X	DOT-E 8966	All Pure Chemical Co., Inc., Tracy, CA.	49 CFR 173.263(a)(15), 173.277(a)(1), 178.205.	To authorize shipment of sodium hypochlorite solution, and hydrochloric acid solutions in four one-gallon polyethylene bottles enclosed in a bag of polyethylene film, packed in a corrugated fiberboard box complying with DOT Specification 12B except for hand holes authorized in side panels of box. (Mode 1.)
8966-P	DOT-E 8966	Alstar Co., Tracy, CA	49 CFR 173.263(a)(15), 173.277(a)(1), 178.205.	To become a party to exemption 8966. (Mode 1.)
8968-X	DOT-E 8968	Degussa Corp., Ridgefield Park, NJ.	49 CFR 173.306	To authorize use of a non-DOT Specification IMO Type 1 portable tank, for transportation of a flammable solid. (Modes 1, 2, and 3.)
8971-X	DOT-E 8971	Western Atlas International, Inc., Houston, TX.	49 CFR 172.101 Column 4, 173.246, 175.3.	To authorize use of non-DOT specification steel cylinders of equal or greater integrity than those currently authorized, for transportation of a liquid oxidizer. (Modes 1, 2, 3, and 4.)
8978-X	DOT-E 8978	SAB NIFE A/S, Denmark	49 CFR 172.101, 175.3	To authorize transport of lithium cells containing more than 12 but not more than 50 grams of lithium metal, in non-DOT specification, non-reusable, open head, steel drums. (Modes 1, 2, 3, and 4.)
8978-X	DOT-E 8978	Whittaker-Yardney Power Systems/Comp., Headquarters Pawcatuck, CT.	49 CFR 172.101, 175.3	To authorize transport of lithium cells containing more than 12 but not more than 50 grams of lithium metal, in non-DOT specification, non-reusable, open head, steel drums. (Modes 1, 2, 3, and 4.)
8978-X	DOT-E 8978	Whittaker-Yardney Power Systems/Lithium Bat., Dept. Waltham, MA.	49 CFR 172.101, 175.3	To authorize transport of lithium cells containing more than 12 but not more than 50 grams of lithium metal, in non-DOT specification, non-reusable, open head, steel drums. (Modes 1, 2, 3, and 4.)
8988-P	DOT-E 8988	Owen Oil Tools, Inc., Fort Worth, TX.	49 CFR 172.101, 173.110, 173.60, 175.30.	To become a party to exemption 8988. (Modes 1, 3, and 4.)
8988-X	DOT-E 8988	Western Atlas International, Inc., Houston, TX.	49 CFR 172.101, 173.110, 173.60, 175.30.	To authorize transport of charged oil well guns as Class C explosive when the net weight of explosive material in the vehicle or vessel does not exceed 200 pounds. (Modes 1, 3, and 4.)
8988-P	DOT-E 8988	Halliburton Logging Services, Inc., Houston, TX.	49 CFR 172.101, 173.110, 173.60, 175.30.	To become a party to exemption 8988. (Modes 1, 3, and 4.)
8990-X	DOT-E 8990	Pressure Pak Container, Inc., East Hampton, CT.	49 CFR 173.302(a)(1), 175.3, 178.65-2, 178.65-5(a)(4).	To authorize manufacture, marking and sale of non-DOT specification nonrefillable steel inside cylinders, for transportation of nonflammable compressed gases. (Modes 1, 2, 3, 4, and 5.)
8991-X	DOT-E 8991	Lee-Ronal, Inc., Freeport, NY	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504(a), 173.126, 173.138, 173.237, 173.246, 173.35(a), 175.3.	To authorize manufacture, marking and sale of specially designed packagings for shipment of liquid and solid poisons without labels and packages bearing the DANGEROUS WHEN WET LABEL without placarding motor vehicles. (Modes 1, 2, and 4.)
8995-X	DOT-E 8995	Worum Chemical Co., St. Paul, MN	49 CFR 173.315(a)(1), 173.346, 174.63(b).	To authorize use of non-DOT specification steel portable tanks, for transportation of certain nonpoisonous, nonflammable compressed gases, and a class B poisonous liquid. (Modes 1, 2.)
8995-X	DOT-E 8995	Olin Corp., Stamford, CT	49 CFR 173.315(a)(1), 173.346, 174.63(b).	To authorize use of non-DOT specification steel portable tanks, for transportation of certain nonpoisonous, nonflammable compressed gases, and a class B poisonous liquid. (Modes 1, 2.)
8995-P	DOT-E 8995	Eastern Foam Systems, Inc., Stratford, CT.	49 CFR 173.315(a)(1), 173.346, 174.63(b).	To become a party to exemption 8995. (Modes 1, 2.)
8998-X	DOT-E 8998	Oil-Air Hydraulic, Inc., Brookshire, TX.	49 CFR 173.302(a)(1), 175.3	To authorize shipment of nitrogen in hydraulic accumulators. (Modes 1, 2, 3, and 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9010-X	DOT-E 9010	United Technologies, Chemical Systems Division, San Jose, CA.	49 CFR 173.88(e)(2)(ii), 173.92	To authorize transport of a large rocket motor with or without igniter installed and which may be in a propulsive state, or a rocket motor igniter. (Mode 1.)
9013-X	DOT-E 9014	Hunter Drums, Limited, Bramalea, Ontario, Canada.	49 CFR 173.262, 173.266	To authorize manufacture, marking and sale of DOT Specification 34 blowmolded, polyethylene container of 55 gallon capacity for transportation of corrosive liquids and oxidizers. (Modes 1, 2, and 3.)
9017-X	DOT-E 9017	EVA Eisenbahn-Verkehrsmittel-Gesellschaft GmbH, Dusseldorf, West Germany.	49 CFR 173.264(b)	To authorize use of a non-DOT specification IMO Type 5 portable tank, for transportation of anhydrous hydrofluoric acid. (Modes 1, 2, and 3.)
9017-X	DOT-E 9017	Mobay Corp., Pittsburgh, PA	49 CFR 173.264(b)	To authorize use of a non-DOT specification IMO Type 5 portable tank, for transportation of anhydrous hydrofluoric acid. (Modes 1, 2, and 3.)
9019-X	DOT-E 9019	Completion Services, Inc., Lafayette, LA.	49 CFR 173.119, 173.125, 173.263, 173.264, 173.277, 46 CFR 64.9.	To authorize use of a marine portable tank, for transportation of certain flammable and corrosive liquids. (Mode 1.)
9023-X	DOT-E 9023	Eurotainer, S.A., Paris, France	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of liquefied compressed gases. (Modes 1, 2, and 3.)
9024-X	DOT-E 9024	SLEMI, Paris, France	49 CFR 173.315	To authorize use of a non-DOT specification IMO Type 5 portable tank, for transportation of liquefied compressed gases. (Modes 1, 2, and 3.)
9024-X	DOT-E 9024	Arbel-Fauvet-Rail, St Laurent Blangy, France.	49 CFR 173.315	To authorize use of a non-DOT specification IMO Type 5 portable tank, for transportation of liquefied compressed gases. (Modes 1, 2, and 3.)
9034-P	DOT-E 9034	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.302, 173.304, 173.326, 173.334, 175.3.	To become a party to exemption 9034. (Modes 1, 2, 3, 4, and 5.)
9034-P	DOT-E 9034	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.302, 173.304, 173.326, 173.334, 175.3.	To become a party to exemption 9034. (Modes 1, 2, 3, 4, and 5.)
9034-P	DOT-E 9034	UNIGAS, Inc., Ponce, PR	49 CFR 173.302, 173.304, 173.326, 173.334, 175.3.	To become a party to exemption 9034. (Modes 1, 2, 3, 4, and 5.)
9034-P	DOT-E 9034	Linde Gases of The Southeast, Inc., Wilmington, NC.	49 CFR 173.302, 173.304, 173.326, 173.334, 175.3.	To become a party to exemption 9034. (Modes 1, 2, 3, 4, and 5.)
9034-P	DOT-E 9034	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 173.302, 173.304, 173.326, 173.334, 175.3.	To become a party to exemption 9034. (Modes 1, 2, 3, 4, and 5.)
9034-P	DOT-E 9034	Linde Gases of the West, Oakland, CA.	49 CFR 173.302, 173.304, 173.326, 173.334, 175.3.	To become a party to exemption 9034. (Modes 1, 2, 3, 4, and 5.)
9034-P	DOT-E 9034	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.302, 173.304, 173.326, 173.334, 175.3.	To become a party to exemption 9034. (Modes 1, 2, 3, 4, and 5.)
9034-P	DOT-E 9034	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 173.302, 173.304, 173.326, 173.334, 175.3.	To become a party to exemption 9034. (Modes 1, 2, 3, 4, and 5.)
9034-P	DOT-E 9034	Linde Gases of The Midwest, Inc., Hillside, IL.	49 CFR 173.302, 173.304, 173.326, 173.334, 175.3.	To become a party to exemption 9034. (Modes 1, 2, 3, 4, and 5.)
9034-X	DOT-E 9034	Airco—The BOC Group, Inc., Murray Hill, NJ.	49 CFR 173.302, 173.304, 173.326, 173.334, 175.3.	To authorize use of a previously unauthorized DOT Specification 3AL aluminium cylinder, for transportation of certain gases and gas mixtures. (Modes 1, 2, 3, 4, and 5.)
9034-P	DOT-E 9034	GenEx, Ltd., Des Moines, IA	49 CFR 173.302, 173.304, 173.326, 173.334, 175.3.	To become a party to exemption 9034. (Modes 1, 2, 3, 4, and 5.)
9034-P	DOT-E 9034	Linde Gases of the South, Inc., Houston, TX.	49 CFR 173.302, 173.304, 173.326, 173.334, 175.3.	To become a party to exemption 9034. (Modes 1, 2, 3, 4, and 5.)
9047-P	DOT-E 9047	Linde Puerto Rico, Inc., Gurabo, PR.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To become a party to exemption 9047. (Modes 1, 2, 3, 4, and 5.)
9047-P	DOT-E 9047	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To become a party to exemption 9047. (Modes 1, 2, 3, 4, and 5.)
9047-P	DOT-E 9047	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To become a party to exemption 9047. (Modes 1, 2, 3, 4, and 5.)
9047-P	DOT-E 9047	UNIGAS, Inc., Ponce, PR	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To become a party to exemption 9047. (Modes 1, 2, 3, 4, and 5.)
9047-P	DOT-E 9047	Linde Gases of The Southeast, Inc., Wilmington, DC.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To become a party to exemption 9047. (Modes 1, 2, 3, 4, and 5.)
9047-P	DOT-E 9047	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To become a party to exemption 9047. (Modes 1, 2, 3, 4, and 5.)
9047-P	DOT-E 9047	Linde Gases of the West, Oakland, CA.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To become a party to exemption 9047. (Modes 1, 2, 3, 4, and 5.)
9047-P	DOT-E 9047	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.124(a)(2) 173.124(a)(4), 175.3.	To become a party to exemption 9047. (Modes 1, 2, 3, 4, and 5.)
9047-P	DOT-E 9047	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To become a party to exemption 9047. (Modes 1, 2, 3, 4, and 5.)
9047-P	DOT-E 9047	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To become a party to exemption 9047. (Modes 1, 2, 3, 4, and 5.)
9047-P	DOT-E 9047	Linde Gases of the Midwest, Inc., Hillside, IL.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To become a party to exemption 9047. (Modes 1, 2, 3, 4, and 5.)
9047-P	DOT-E 9047	GenEx, Ltd., Des Moines, IA	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To become a party to exemption 9047. (Modes 1, 2, 3, 4, and 5.)
9047-P	DOT-E 9047	Linde Gases of the South, Inc., Houston, TX.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.2.	To become a party to exemption 9047. (Modes 1, 2, 3, 4, and 5.)
9058-P	DOT-E 9058	Halliburton Logging Services, Inc., Houston, TX.	49 CFR 173.304(a), 173.34(d), 175.3.	To become a party to exemption 9058. (Modes 1, 4.)

BEST COPY AVAILABLE

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9059-P	DOT-E	U.S. Department of Defense, Falls Church, VA.	49 CFR 172.101, 172.202, 172.302(d), 173.34(d)(4).	To become a party to exemption 9059. (Modes 1, 2.)
9059-P	DOT-E 9059	Cryogenic Rare Gas Laboratories Inc., Hanahan, SC.	49 CFR 172.101, 172.202, 172.302(d), 173.34(d)(4).	To become a party to exemption 9059. (Modes 1, 2.)
9063-X	DOT-E 9063	Hoechst Celanese Corp., Somerville, NJ.	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of non-flammable compressed gases. (Modes 1, 2, and 3.)
9066-P	DOT-E 9066	Arvin/Calspan, Buffalo, NY	49 CFR 171.11 (See paragraph 8.d.).	To become a party to exemption 9066. (Modes 1, 2, 3, 4.)
9108-X	DOT-E 9108	Trojan Corp., Spanish Fork, UT	49 CFR 173.77	To authorize transport of pentaerythrite tetranitrate (PETN) wet with 25% water in a 4 mil polyethylene bag placed in a DOT specification 12H fiberboard box. (Modes 1, 3.)
9108-X	DOT-E 9108	Atlas Powder Co., Dallas, TX	49 CFR 173.77	To authorize transport of pentaerythrite tetranitrate (PETN) wet with 25% water in a 4 mil polyethylene bag placed in a DOT specification 12H fiberboard box (Modes 1, 3.)
9108-X	DOT-E 9108	Austin Powder Co., Cleveland, OH	49 CFR 173.77	To authorize transport of pentaerythrite tetranitrate (PETN) wet with 25% water in a 4 mil polyethylene bag placed in a DOT specification 12H fiberboard box. (Modes 1, 3.)
9108-X	DOT-E 9108	Explosives Technologies International (ETI) Wilmington, DE.	49 CFR 173.77	To authorize transport of pentaerythrite tetranitrate (PETN) wet with 25% water in a 4 mil polyethylene bag placed in a DOT specification 12H fiberboard box. (Modes 1, 3.)
9108-X	DOT-E 9108	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.77	To authorize transport of pentaerythrite tetranitrate (PETN) wet with 25% water in a 4 mil polyethylene bag placed in a DOT specification 12H fiberboard box. (Modes 1, 3.)
9110-X	DOT-E 9110	Kerr-McGee Chemical Corp., Oklahoma City, OK.	49 CFR 173.183	To authorize shipment of sodium chlorate, in non-DOT specification collapsible polyethylene-lined, woven polypropylene bags having capacities ranged from 20 to 40 cubic feet. (Modes 1, 2, and 3.)
9120-X	DOT-E 9120	Western Atlas International, Inc., Houston, TX.	49 CFR 173.304(a), 173.34(d), 175.3.	To authorize the use of a non-DOT specification pressure vessel to transport certain flammable gases. (Modes 1, 2, 3, and 4.)
9138-X	DOT-E 9138	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.302(a), 173.34(d), 175.3.	To authorize shipment of nitrogen in a fiber reinforced plastic full composite cylinder without a safety relief device. (Modes 1, 4.)
9174-X	DOT-E 9174	National Aeronautics & Space Administration (NASA), Washington, DC.	49 CFR 173.302(a)	To authorize use of non-DOT specification cylindrical and spherical pressure vessels which are an integral part of the Space Shuttle Auxiliary Propulsion System rods, for transportation of helium and nitrogen. (Mode 1.)
9220-X	DOT-E 9220	Custom Packaging Systems, Inc., Manistee, MI.	49 CFR 173.182, 173.217, 173.245b.	To authorize manufacture, marking and sale of non-DOT specification collapsible flexible bag, disposable bulk container, for transportation of corrosive solids and oxidizers. (Modes 1, 2, and 3.)
9262-X	DOT-E 9262	Gearhart Industries, Inc., Fort Worth, TX.	49 CFR 173.100(v), 175.30	To authorize transport of oil well cartridges containing not more than 500 grains of high explosive as Class C explosive, in a DOT Specification 12B, 12H, 23F or 23H fiberboard box. (Modes 1, 3, and 4.)
9265-X	DOT-E 9265	Guinn Flying Service, Houston, TX	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives [that are not permitted for shipment by air, or in quantities greater than those prescribed for shipment by air] by cargo aircraft only. (Mode 4.)
9271-X	DOT-E 9271	CSX Transportation, Inc., Jacksonville, FL.	49 CFR 174.90	To authorize deviation from car separation requirements, for transportation of Class A and B explosives. (Mode 2.)
9275-P	DOT-E 9275	J.C.&F., Inc., Jersey City, NJ	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, and 5.)
9275-P	DOT-E9275	Fries & Fries, Cincinnati, OH	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, and 5.)
9275-X	DOT-E 9275	Hercules, Inc., Wilmington, DE	49 CFR Parts 100–199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, and 5.)
9275-X	DOT-E 9275	International Flavors & Fragrances (IFF-US), Hazlet, NJ.	49 CFR Parts 100–199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, and 5.)
9275-X	DOT-E 9275	Merrell Dow Pharmaceuticals, Inc., Cincinnati, OH.	49 CFR Parts 100–199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, and 5.)
9275-X	DOT-E 9275	The Upjohn Co., Kalamazoo, MI	49 CFR Parts 100–199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, and 5.)
9275-X	DOT-E 9275	Fritzsche, Dodge & Olcott, Inc., New York, NY.	49 CFR Parts 100–199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, and 5.)
9275-X	DOT-E 9275	Noxell Corp., Hunt Valley, MD	49 CFR Parts 100–199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, and 5.)
9275-X	DOT-E 9275	Ortho Pharmaceutical Corp., Somerset, NJ.	49 CFR Parts 100–199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, and 5.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9275-X	DOT-E 9275	A.H. Robins Co., Richmond, VA	49 CFR Parts 100–199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, and 5.)
9275-X	DOT-E 9275	Shaklee Corp., Hayward, CA	49 CFR Parts 100–199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, and 5.)
9275-X	DOT-E 9275	Carter-Wallace, Inc., Cranbury, NJ	49 CFR Parts 100–199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, and 5.)
9275-X	DOT-E 9275	BIC Corp., Milford, CT	49 CFR Parts 100–199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, and 5.)
9275-X	DOT-E 9275	The Proctor & Gamble Distribution Co., Cincinnati, OH.	49 CFR Parts 100–199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, and 5.)
9275-X	DOT-E 9275	Firmenich, Inc., Princeton, NJ	49 CFR Parts 100–199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, and 5.)
9275-X	DOT-E 9275	Amway Corp., Ada, MI	49 CFR Parts 100–199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, and 5.)
9275-X	DOT-E 9275	Liz Claiborne Cosmetics, North Bergen, NJ.	49 CFR Parts 100–199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, and 5.)
9275-X	DOT-E 9275	Scentura Creations, Atlanta, GA	49 CFR Parts 100–199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, and 5.)
9275-X	DOT-E 9275	Mary Kay Cosmetics, Dallas, TX	49 CFR Parts 100–199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, and 5.)
9275-X	DOT-E 9275	Parfums Stern, New York, NY	49 CFR Parts 100–199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, and 5.)
9275-X	DOT-E 9275	Giorgio of Beverly Hills, Santa Monica, CA.	49 CFR Parts 100–199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, and 5.)
9275-X	DOT-E 9275	Avon Products, Inc., New York, NY	49 CFR Parts 100–199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, and 5.)
9275-X	DOT-E 9275	Warner-Lambert Co., Morris Plains, NJ.	49 CFR Parts 100–199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, and 5.)
9275-X	DOT-E 9275	DuPont Pharmaceuticals, Inc., Waukegan, IL.	49 CFR Parts 100–199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, and 5.)
9289-X	DOT-E 9289	ICI Americas Inc., Wilmington, DE	49 CFR 173.118a(b)(1)	To renew and authorize additional combustible liquids identified by their trade names for shipment in metal or polyethylene portable tanks. (Mode 1.)
9308-X	DOT-E 9308	Pennwalt Corp., Buffalo, NY	49 CFR 173.243	To authorize shipment of a corrosive liquid, n.o.s., in a DOT Specification 2E polyethylene bottle equipped with a vented closure, to be overpacked in a DOT Specfication 12B40 fiberboard box. (Modes 1, 3.)
9316-X	DOT-E 9316	Fluoroware Inc., Chaska, MN	49 CFR 173.268, 173.28(k), 173.299, 178.35, 178.35a, Part 173, Subpart F.	To authorize renewal, the use of ¼ inch rivets, instead of ¼ inch bolts, as an alternative means of joining the polyethylene tank components and cargo vessel as additional mode of transportation. (Modes 1, 2, and 3.)
9319-X	DOT-E 9319	W. R. Grace & Co., Dearborn Division, Lake Zurich, IL.	49 CFR 173.245(a)(36)	To authorize DOT Specification 57 Type 304 or 316 stainless steel portable tanks, for water treatment compounds or boiler compounds, liquid that are not alkaline. (Modes 1, 2.)
9326-X	DOT-E 9326	Carbonaire, Inc., Palmerton, PA	49 CFR 173.315	To authorize transport of carbon dioxide refrigerated liquid, in non-DOT specification cargo tank that has been retested in accordance with MC-331 cargo tank retest requirements. (Mode 1.)
9329-X	DOT-E 9329	Western Atlas International, Inc., Houston, TX.	49 CFR 172.101 Column 6(b), 173.110, 173.80, 175.30.	To authorize transport of charged well casing jet perforating guns, classed as explosive A or explosive C. (Mode 4.)
9331-X	DOT-E 9331	Rio Linda Chemical Co., Inc., Sacramento, CA.	49 CFR 173.263(a)(10)	To authorize shipment of sodium chlorite solutions in water, in DOT Specification MC-306 and MC-307 cargo tanks. (Mode 1.)
9338-X	DOT-E 9338	Allied-Signal Inc., Morristown, NJ	49 CFR 179.302(a)	To authorize use of DOT Specification 106A500X and 110A500W multi-unit tank car tanks without a gas tight valve protection housing, for transportation of a corrosive material. (Modes 1, 2.)
9343-X	DOT-E 9343	Aluminum Company of America, Pittsburgh, PA.	49 CFR 173.206	To authorize transportation of lithium metal in stainless steel DOT Specification 51 portable tanks. (Mode 1.)
9354-X	DOT-E 9354	Companhia Nitro Quimica Brasileira, Sao Paulo, Sp Brazil.	49 CFR 173.217	To authorize transport of alcohol-wet nitrocellulose in non-DOT specification fiber drums. (Modes 1, 2, and 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9372-X	DOT-E 9372	Halliburton Logging Services, Inc., Houston, TX.	49 CFR 173.110(c)(1), 173.80(b), 173.80(c).	To authorize transport of charged oil well guns with detonators attached. (Modes 1, 3.)
9374-X	DOT-E 9374	Poly Processing Co., Inc., Monroe, LA.	49 CFR 173.114a(h)(3), 173.119, 173.256, 173.266, 173.268, 176.415, 176.83, 178.19, 178.253, Part 173, Subpart F.	To authorize an additional closure system for the non-DOT specification portable tank. (Modes 1, 2, and 3.)
9374-X	DOT-E 9374	Poly Processing Co., Inc., Monroe, LA.	49 CFR 173.114a(h)(3), 173.119, 173.256, 173.266, 173.268, 176.415, 176.83, 178.19, 178.253, Part 173, Subpart F.	To authorize an additional type metal frame design for use with a polyethylene portable tank for shipment of certain corrosive or flammable liquids, or oxidizer and a blasting agent. (Modes 1, 2, and 3.)
9374-X	DOT-E 9374	Poly Processing Co., Inc., Monroe, LA.	49 CFR 173.114a(h)(3), 173.119, 173.256, 173.266, 173.268, 176.415, 176.83, 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, cross-linked polyethylene portable tank enclosed within a protective steel frame, for shipment of corroeive liquids, flammable liquids or an oxidizer. (Modes 1, 2, and 3.)
9377-X	DOT-E 9377	Atlas Power Co., Dallas, TX	49 CFR 173.64(a)(5)	To authorize transport of high explosives containing more than 5% moisture in packagings without inner plastic bags or other linings. (Modes 1, 2, and 3.)
9381-X	DOT-E 9381	Pasco Zinc Corp., Torrance, CA	49 CFR 173.154	To authorize transportation of a water reactive solid, which evolves hydrogen slowly when wet, in open packagings such as drums, hopper trucks and gondola cars. (Modes 1, 2.)
9401-X	DOT-E 9401	Arbel-Fauvet-Rail, Paris, France	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of flammable and nonflammable liquefied compressed gases. (Modes 1, 2, and 3.)
9401-X	DOT-E 9401	ATOCHEM, Paris, France	49 CFR 173.315, 178.245	Authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of flammable and nonflammable liquefied compressed gases. (Modes 1, 2, and 3.)
9401-X	DOT-E 9401	Societe Nationale De Wagons-Reservoirs, Paris, France.	49 CFR 178.315, 178.245	To authorize manufacture, marking and sale of nonrefillable, non-DOT specification cylinders designed and manufactured in accordance with DOT-39 specification, except for material of construction. (Modes 1, 2, and 3.)
9406-X	DOT-E 9406	Ethyl Corp., Baton Routge, LA	49 CFR 173.301(d)(2), 173.302	To authorize transport of silicon tetrafluoride in DOT Specification 3AAX cylinders. (Mode 1.)
9413-X	DOT-E 9413	EM Science, Cincinnati, OH	49 CFR 173.286	To authorize transport of a chemical kit which contains small amounts of hydrochloric acid and zinc powder. (Mode 1.)
9414-P	DOT-E 9414	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.119, 173.245, 173.302(a)(5), 178.253.	To become a party to exemption 9414. (Modes 1, 3.)
9414-P	DOT-E 9414	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.119, 173.245, 173.302(a)(5), 178.253.	To become a party to exemption 9414. (Modes 1, 3.)
9414-P	DOT-E 9414	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 173.119, 173.245, 173.302(a)(5), 178.253.	To become a party to exemption 9414. (Modes 1, 3.)
9414-P	DOT-E 9414	Linde Gases of the West, Oakland, CA.	49 CFR 173.119, 173.245, 173.302(a)(5), 178.253.	To become a party to exemption 9414. (Modes 1, 3.)
9414-P	DOT-E 9414	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.119, 173.245, 173.302(a)(5), 178.253.	To become a party to exemption 9414. (Modes 1, 3.)
9414-P	DOT-E 9414	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 173.119, 173.245, 173.302(a)(5), 178.253.	To become a party to exemption 9414. (Modes 1, 3.)
9414-P	DOT-E 9414	Linde Gases of The Midwest, Inc., Hillside, IL.	49 CFR 173.119, 173.245, 173.302(a)(5), 178.253.	To become a party to exemption 9414. (Modes 1, 3.)
9414-P	DOT-E 9414	GenEx, LTD., Des Moines, IA	49 CFR 173.119, 173.245, 173.302(a)(5), 178.253.	To become a party to exemption 9414. (Modes 1, 3.)
9414-P	DOT-E 9414	Linde Gases of the South, Inc., Houston, TX.	49 CFR 173.119, 173.245, 173.302(a)(5), 178.253.	To become a party to exemption 9414. (Modes 1, 3.)
9430-P	DOT-E 9430	ENPAC Corp., Jacksonville, FL	49 CFR 173.3(c)	To become a party to exemption 9430. (Modes 1, 2.)
9430-X	DOT-E 9430	ENPAC Corp., Jacksonville, FL	49 CFR 173.3(c)	To authorize manufacture, marking and sale of non-DOT polyethylene/fiberglass removable head salvage drums or 90 gallon capacity for overpacking damaged or leaking packages of hazardous materials or for packing hazardous materials that have spilled or leaked, for repackaging or disposal. (Modes 1, 2.)
9431-X	DOT-E 9431	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.63, 173.65, 173.87, 173.93, 173.3.	To authorize several types of explosives in the same package, in quantities greater than authorized by 49 CFR 173.87. (Modes 1, 2, and 4.)
9433-X	DOT-E 9433	Aldrich Chemical Co., Inc., Milwaukee, WI.	49 CFR 173.302, 173.303, 173.304	To authorize transport of flammable gases at atmospheric pressure in glass bulbs not exceeding one liter capacity, packed in DOT Specification 12A/12B fiberboard boxes. (Mode 1.)
9436-P	DOT-E 9436	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h).	To become a party to exemption 9436. (Modes 1, 3.)
9443-X	DOT-E 9443	Hercules, Inc., Wilmington, DE	49 CFR 173.92(b), 175.3	To authorize transport of Class B rocket motors with igniters installed. (Modes 1, 3, and 4.)
9450-X	DOT-E 9450	Marison Co., South Elgin, IL	49 CFR 173.302(a), 173.304(a), 173.305(a), 175.3, 178.61.	To authorize manufacture, marking and sale of non-DOT specification cylinders made in compliance with DOT Specification 4BW with certain exceptions, for transportation of flammable and nonflammable gases. (Modes 1, 2, 3, 4, and 5.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9463-X	DOT-E 9463	Guzzler Manufacturing, Inc., Birmingham, AL.	49 CFR 173.119(a), (m), 173.245(a), 173.340-8(c), 173.346(a), 178.340-7, 178.342-5, 178.342-7(a), 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-307/312 except for full opening rear head for shipment of flammable, corrosive or poison B waste liquids or semi-solids (Mode 1.)
9480-X	DOT-E 9480	Messer Griesheim Industries, Inc., Valley Forge, PA.	49 CFR 173.302(a)(5)	To authorize transport of tetrafluoromethane and mixture thereof in DOT Specification 3AL cylinders. (Modes 1, 2, 3 and 4.)
9491-X	DOT-E 9491	Messer Griesheim Industries, Inc., Valley Forge, PA.	49 CFR 173.302, 173.304	To authorize transport of hexafluoroethane and trifluoromethane in DOT Specification 3AL cylinders. (Modes 1, 2, 3, 4, and 5.)
9507-X	DOT-E 9507	Union Carbide Corp., Danbury, CT	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To authorize use of a non-DOT specification full removable head salvage cylinder of 45 gallon capacity for overpacking damaged or leaking packages of pressurized and non-pressurized hazardous materials. (Mode 1.)
9507-X	DOT-E 9507	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To authorize use of a non-DOT specification full removable head salvage cylinder of 45 gallon capacity for overpacking damaged or leaking packages of pressurized and non-pressurized hazardous materials. (Mode 1.)
9507-P	DOT-E 9507	Messer Greisheim Industries, Valley Forge, PA.	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To become a party to exemption 9507. (Mode 1.)
9507-X	DOT-E 9507	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To authorize use of a non-DOT specification full removable head salvage cylinder of 45 gallon capacity for overpacking damaged or leaking packages of pressurized and non-pressurized hazardous materials. (Mode 1.)
9579-X	DOT-E 9579	IRECO, Inc., Salt Lake City, UT	49 CFR 173.154(a)(18)	To authorize use of non-DOT specification motor vehicle for bulk shipment of oxidizers. (Mode 1.)
9579-P	DOT-E 9579	Pepin-Ireco, Inc., Ishpeming, MI	49 CFR 173.154(a)(18)	To become a party to exemption 9579. (Mode 1.)
9607-P	DOT-E 9607	Revlon Professional Products Group, Jacksonville, FL	49 CFR Parts 100-199	To become a party to exemption 9607. (Modes 1, 4, and 5.)
9507-P	DOT-E 9507	Linde Puerto Rico, Inc., Gurabo, Pr.	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To become a party to exemption 9507. (Mode 1.)
9507-P	DOT-E 9507	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To become a party to exemption 9507. (Mode 1.)
9507-P	DOT-E 9507	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To become a party to exemption 9507. (Mode 1.)
9507-P	DOT-E 9507	UNIGAS, Inc., Ponce, PR	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.46.	To become a party to exemption 9507. (Mode 1.)
9507-P	DOT-E 9507	Linde Gases of The Southeast, Inc., Wilmington, DE.	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To become a party to exemption 9507. (Mode 1.)
9507-P	DOT-E 9507	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To become a party to exemption 9507. (Mode 1.)
9507-P	DOT-E 9507	Linde Gases of the West, Oakland, CA.	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To become a party to exemption 9507. (Mode 1.)
9507-P	DOT-E 9507	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To become a party to exemption 9507. (Mode 1.)
9507-P	DOT-E 9507	Linde Gases of The Great Lakes, Inc., Cleveland, OH.	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To become a party to exemption 9507. (Mode 1.)
9507-P	DOT-E 9507	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To become a party to exemption 9507. (Mode 1.)
9507-P	DOT-E 9507	MG Industries, Valley Forge, PA	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To become a party to exemption 9507. (Mode 1.)
9507-P	DOT-E 9507	Linde Gases of the South, Inc., Houston, TX.	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To become a party to exemption 9507. (Mode 1.)
9549-P	DOT-E 9549	Shaped Charge Specialist, Inc., Mansfield, TX.	49 CFR 173.100(v), 175.30	To become a party to exemption 9549. (Modes 1, 3, and 4.)
9554-X	DOT-E 9554	ENPAC Corp., Jacksonville, FL	49 CFR 173.257, 173.263, 173.268, 178.272, 173.358, 178.19.	To authorize manufacture, mark and sell of non-DOT specification 90-gallon polyethylene/fiberglass reinforced plastic (FRP) dual laminate composite drum, fully conforming with DOT Specification 34 with exceptions. (Modes 1, 2.)
9554-X	DOT-E 9554	ENPAC Corp., Jacksonville, FL	49 CFR 173.257, 173.263, 173.268, 178.272, 173.358, 178.19.	To authorize manufacture, mark and sell of non-DOT specification 90-gallon polyethlene/fiberglass reinforced plastic (FRP) dual laminate commposite drum, fully conforming with DOT Specification 34 with exceptions. (Modes 1, 2.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9610-P	DOT-E 9610	Remington Arms Co., Inc., Lonoke, AR.	49 CFR 172.203(a), (e), 172.204, 173.29(a), (d), Part 107, Appendix B, Parts 171–189.	To become a party to exemption 9610. (Modes 1, 2.)
9617-P	DOT-E 9617	Alamo Explosives Co., Inc., Houston, TX.	49 CFR 177.848(f), Part 107, Appendix B(1).	To become a party to exemption 9617. (Mode 1.)
9618-P	DOT-E 9618	ENPAC Corp., Jacksonville, FL	49 CFR 173.3(c)	To become a party to exemption 9618. (Modes 1, 2.)
9618-X	DOT-E 9618	ENPAC Corp., Jacksonville, FL	49 CFR 173.3(c)	To authorize an additional, smaller packaging identified as a salvage drum. (Modes 1, 2.)
9627-X	DOT-E 9627	TLC Air, Inc., Addison, TX	49 CFR 172.101, 172.204(d)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
9644-X	DOT-E 9644	Atlas Powder Co., Dallas, TX	49 CFR 178.218–11(a)	To authorize manufacture, marking and sale of a DOT Specification 23G cylindrical fiberboard box tested once a year instead of once every six months, for shipment of certain Class A explosives. (Mode 1.)
9658-X	DOT-E 9658	Fluoroware, Inc., Chaska, MN	49 CFR 173.119, 173.268, 173.299(b), 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, composite crosslinked or non-crosslinked polyethylene and Teflon PTA plastic portable tank, for shipment of corrosive liquids, flammable liquids or oxidizers. (Modes 1, 2.)
9672-X	DOT-E 9672	Ethyl Corp., Baton Rouge, LA	49 CFR 178.337–11(c)	To authorize shipment of flammable liquids, in DOT Specification MC–330 or MC–331 cargo tanks with a filling/discharge opening that does not have a remote self-closing internal valve. (Mode 1.)
9672-X	DOT-E 9672	Texas Alkyls, Inc., Westport, CT	49 CFR 178.337–11(c)	To authorize shipment of flammable liquids, in DOT Specification MC–330 or MC–331 cargo tanks with a filling/discharge opening that does not have a remote self-closing internal valve. (Mode 1.)
9672-P	DOT-E 9672	Akzo Chemical Inc., Chicago, IL	49 CFR 178–337–11(c)	To become a party to exemption 9672. (Mode 1.)
9673-X	DOT-E 9673	Mauser Packaging, Limited, Litchfield, CT.	49 CFR 178.224, Part 173.	To authorize manufacture, marking and sale of fiber drums not to exceed 250 liter capacity, comparable to DOT–21C except for the top and bottom heads which are made of 0.48 mm steel instead of 0.53mm (24 gauge) steel, for shipment of those hazardous materials authorized in DOT–21C fiber drums. (Modes 1, 2, and 3.)
9676-X	DOT-E 9676	EM Science Cincinnati, OH	49 CFR 173.119(b)(4), 173.125, 178.205.	To authorize shipment of certain flammable liquids contained in four inside glass bottles or PVC coated glass bottles of one gallon capacity each, overpacked in a corrugated fiberboard box conforming to DOT Specification 12B65 except for handholes in the side panels of the box. (Mode 1.)
9677-X	DOT-E 9677	Allied Universal Corp., Miami, FL	49 CFR 173.263(a)(15)	To authorize shipment of hydrochloric acid in non-DOT specification polyethylene bottles of one-gallon capacity, overpacked no more than 60 to a specifically-designed, heavy-wall cart, molded of high density polyethylene. (Mode 1.)
9679-X	DOT-E 9679	Michlin Diazo Products Corp., Dearborn, MI.	49 CFR 173.245(a)(21)	To authorize shipment of ammonium hydroxide, classed as a corrosive material, in a six gallon capacity, DOT Specification 2U polyethylene container, overpacked in a DOT Specification 12P fiberboard box. (Mode 1.)
9683-X	DOT-E 9683	Meter Engineers, Inc., Wichita, KS	49 CFR 173.119, 173.304, 173.315	To authorize manufacture, marking and sale of non-DOT specification containers described as mechanical displacement meter provers mounted on a truck chassis or trailer. (Mode 1.)
9685-X	DOT-E 9685	Certified Tank Manufacturing, Inc., Compton, CA.	49 CFR 173.154, 173.245b	To authorize manufacture, marking and sale of non-DOT specification roll on/roll off cylindrical tank containers for transportation of certain solidified mixtures of water flammable liquids and/or corrosive materials. (Mode 1.)
9686-X	DOT-E 9686	Fluoroware, Inc., Chaska, MN	49 CFR 173.119, 173.268, 173.299, 178.19, 178.35, 178.35a, Part 173, Subpart F.	To authorize shipment of nitric acid (71% concentration or less), classed as an oxidizer in the non-DOT specification composite polyethylene and plastic, portable tank. (Modes 1, 2.)
9689-X	DOT-E 9689	Olin Chemicals Corp., Stamford, CT.	49 CFR 176.76(a)(4)	To authorize drums containing dense or heavy materials such as toluene diisocyanate, and other hazardous materials not exceeding 12.09 pounds per gallon, to be secured against movement in a transport vehicle by the use of a fabric restraint dunnage system when shipped by cargo vessel. (Mode 3.)
9690-X	DOT-E 9690	Snyder Industries, Inc., Lincoln, NE	49 CFR 173.119, 176.340, 178.19, 178.253, Part 173, Subpart F.	To authorize the use of a non-DOT specification rotationally molded cross-linked or non-crosslinked polyethylene portable tank for the shipment of corrosive liquids, flammable liquids or an oxidizer. (Modes 1, 2.)
9694-P	DOT-E 9694	C–I–L Inc., Forest Products Division, Montreal, Quebec, Canada.	49 CFR 173.315(i)(13), 173.33(f)(9), 173.33(h)(5)(i).	To become a party to exemptoin 9694. (Mode 1.)
9696-X	DOT-E 9696	Fluoroware, Inc., Chaska, MN	49 CFR 173.119, 173.268, 173.299, 178.19, 178.35, 178.35a, Part 173, Subpart F.	To authorize shipment of nitric acid (71% concentration or less), classed as an oxidizer, in the non-DOT specification composite polyethylene and plastic, portable tanks. (Modes 1, 2.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9697-X	DOT-E 9697	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.31(c) Retest Table 1	To authorize shipment of waste antimony pentachloride, corrosive material, in out of test DOT–105A300W and DOT–105A500W tank cars to an additional location. (Mode 2.)
9700-X	DOT-E 9700	Dow Chemical Co., Midland, MI	49 CFR 173.315(l), 178.245	To authorize use of a DOT Specification 51 portable tank having pressure relief devices with a start-to-discharge pressure of 75 psig, for shipment of flammable, poisonous liquid. (Mode 3.)
9705-X	DOT-E 9705	E. I. du Pond de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.139	To authorize use of a DOT Specification 51 portable tank not previously authorized for polypropyleneimine, inhibited. (Mode 1.)
9710-X	DOT-E 9710	Union Carbide Corp., Linde Division Danbury, CT.	49 CFR 173.318, 177.840	To authorize abbreviated marking of the one-way travel time on the tank and on shipping papers. (Modes 1, 2, and 3.)
9711-X	DOT-E 9711	Konica Business Machines, U.S.A., Inc., Windsor, CT.	49 CFR 173.245(a)(12), 175.3	To authorize rail and air shipments of a corrosive material in a polyethylene bag, packed inside a corrugated fiberboard carton then a maximum of two cartons overpacked in a DOT Specification 12B box. (Modes 1, 2, and 4.)
9711-X	DOT-E 9711	Konica U.S.A., Inc., Englewood Cliffs, NJ.	49 CFR 173.245(a)(12), 175.3	To authorize rail and air shipments of a corrosive material in a polyethylene bag, packed inside a corrugated fiberboard carton then a maximum of two cartons overpacked in a DOT Specification 12B box. (Modes 1, 2, and 4.)
9716-X	DOT-E 9716	Comdyne I, Inc., West Liberty, OH	49 CFR 173.302(a)(1), 173.304(a), (d), 175.3.	To authorize the use of a FRP–1 type, non-DOT specification cylinder. (Modes 1, 2, 3, 4, and 5.)
9723-P	DOT-E 9723	Triumvirate, Inc., Quincy, MA	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723-X	DOT-E 9723	GSX Services, Inc., Columbia, SC	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9730-X	DOT-E 9730	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 172.101, 173.318, 178.30, 178.76(h).	To authorize use of super-insulated DOT Specification MC–338 cargo tank for transportation of flammable gas. (Mode 3.)
9735-X	DOT-E 9735	Hapag-Lloyd, AG, Hamburg, West Germany.	49 CFR 176.30(a), 46 CFR 146.29–14(a).	To authorize the Dangerous Cargo Manifest on cargo vessels owned and operated by Hapag-Lloyd AG to be retained in a location other than on or near the bridge of the vessel while the vessel is in port. (Mode 3.)
9744-X	DOT-E 9744	Akzo Chemicals, Inc., Chicago, IL	49 CFR 173.157(a)(5)	To increase the new weight authorized per package from 31.5 pounds to 32 pounds. (Mode 3.)
9746-P	DOT-E 9746	Airco/BOC, Murray Hill, NJ	49 CFR 173.264	To become a party to exemption 9746. (Modes 1, 3.)
9748-X	DOT-E 9748	Greif Bros. Corp., Springfield, NJ	49 CFR 178.224, Part 173.	To authorize water as an additional mode of transportation. (Modes 1, 2, and 3.)
9785-P	DOT-E 9785	Maersk, Inc., Madison, NJ	49 CFR 173.30, 176.11, 176.83.	To become a party to exemption 9785. (Modes 1, 2, and 3.)
9785-P	DOT-E 9785	Thos & Jas Harrison LTD, Liverpool, England.	49 CFR 173.30, 176.11, 176.83.	To become a party to exemption 9785. (Modes 1, 2, and 3.)
9785-X	DOT-E 9785	Compagnie Generale Maritime, Paris, France.	49 CFR 173.30, 176.11, 176.83.	To authorize stowage and segregation of hazardous materials transported in freight containers to be in accordance with the proposed Amendment 24–86 to the International Maritime Dangerous Goods Code. (Modes 1, 2, and 3.)
9785-X	DOT-E 9785	Polish Ocean Lines, 81–310 Gdynia, Poland.	49 CFR 173.30, 176.11, 176.83.	To authorize stowage and segregation of hazardous materials transported in freight containers to be in accordance with the proposed Amendment 24–86 to the International Maritime Dangerous Goods Code. (Modes 1, 2, and 3.)
9785-P	DOT-E 9785	Lykes Bros. Steamship Co., Inc., New Orleans, LA.	49 CFR 173.30, 176.11, 176.83.	To become a party to exemption 9785 (Modes 1, 2, and 3.)
9785-P	DOT-E 9785	Puerto Rico Marine Management, Inc., San Juan, PR.	49 CFR 173.30, 176.11, 176.83.	To become a party to exemption 9785 (Modes 1, 2, and 3.)
9785-X	DOT-E 9785	Independent Container Line Ltd., Richmond, VA.	49 CFR 173.30, 176.11, 176.83.	To authorize stowage and segregation of hazardous materials transported in freight containers to be in accordance with the proposed Amendment 24–86 to the International Maritime Dangerous Goods Code. (Modes 1, 2, and 3.)
9785-X	DOT-E 9785	Hapag-Lloyd (America), Inc., Staten Island, NY.	49 CFR 173.30, 176.11, 176.83.	To authorize stowage and segregation of hazardous materials transported in freight containers to be in accordance with the proposed Amendment 24–86 to the International Maritime Dangerous Goods Code. (Modes 1, 2, and 3.)
9785-X	DOT-E 9785	Atlantic Container Line, Elizabeth, NJ.	49 CFR 173.30, 176.11, 176.83.	To authorize stowage and segregation of hazardous materials transported in freight containers to be in accordance with the proposed Amendment 24–86 to the International Maritime Dangerous Goods Code. (Modes 1, 2, and 3.)
9785-X	DOT-E 9785	Sea-Land Service, Inc., Elizabeth, NJ.	49 CFR 173.30, 176.11, 176.83.	To authorize stowage and segregation of hazardous materials transported in freight containers to be in accordance with the proposed Amendment 24–86 to the International Maritime Dangerous Goods Code. (Modes 1, 2, and 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9785-P	DOT-E 9785	NYK Line, chiyoda-ku, Tokyo 100, Japan.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785. (Modes 1, 2, and 3.)
9788-X	DOT-E 9788	Certified Cylinder, Inc., Crossville, TN.	49 CFR 173.34	To authorize replacement of bottoms, rebuilding, retesting and certification of 4B, 4BA, and 4BW240 and 4E cylinders. (Mode 1.)
9828-X	DOT-E 9828	Mobay Corp., Kansas City, MO	49 CFR 173.365(a)(7)	To authorize shipment of azinphos methyl mixtures, solid, classed as Poison B contained in DOT specification 12B fiberboard boxes without being contained in PVA packets. (Modes 1, 2.)
9833-X	DOT-E 9833	Wacker Chemical (USA), Inc., Canaan, CT.	49 CFR 173.364	To authorize shipment of monochloroacetone, stabilized classed as an irritating material, in a DOT Specification 51 portable tank. (Modes 1, 3.)
9833-X	DOT-E 9833	Wacker-Chemie GmbH, Munich 22, West Germany.	49 CFR 173.364	To authorize shipment of monochloroacetone, stabilized classed as an irritating material, in a DOT Specification 51 portable tank. (Modes 1, 3.)
9902-P	DOT-E 9902	Purusar Corp., Sunnyvale, CA	49 CFR 173.273	To become a party to exemption 9902. (Mode 1.)
9916-P	DOT-E 9916	Petrolite Corp., St. Louis, MO	49 CFR 173.124(a)(6)(i), (iii), (vii)	To become a party to exemption 9916. (Modes 1, 2, and 3.)
9916-P	DOT-E 9916	Petrolite Corp., St. Louis, MO	49 CFR 173.124(a)(6)(i), (iii), (vii)	To become a party to exemption 9916. (Modes 1, 2, and 3.)
9923-X	DOT-E 9923	Chemical Handling Equipment Co., Inc., Toledo, OH.	49 CFR 173.118a, 173.119, 173.125, 173.266, 176.340, 176.19, 176.253, Part 173, Subpart F.	To authorize combustible liquids as additional materials and cargo vessel as an additional mode of transportation. (Modes 1, 2, and 3.)
9924-X	DOT-E 9924	U.S. Department of Energy, Washington, DC.	49 CFR 173.420(a)(4)	To authorize shipment of depleted uranium hexafluoride, low specific activity, classed as radioactive materials, in a DOT authorized packaging, Model 48G, filled to 62% of its certified volumetric capacity. (Modes 1, 2.)
9934-P	DOT-E 9934	Advance Research Chemicals, Inc., Catoosa, OK.	49 CFR 173.274, 175.3	To become a party to exemption 9934. (Modes 1, 4.)
9941-X	DOT-E 9941	Morton Thiokol, Inc., Huntsville Division, Huntsville, AL.	49 CFR 173.86(e)(2)(ii), 173.92(a)(i), 173.92(b).	To authorize additional packaging for shipment of Rocket motors, Class B explosive. (Mode 1.)
9946-P	DOT-E 9946	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.327(a)	To become a party to exemption 9946. (Modes 1, 2, and 3.)
9946-P	DOT-E 9946	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.327(a)	To become a party to exemption 9946. (Modes 1, 2, and 3.)
9946-P	DOT-E 9946	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 173.327(a)	To become a party to exemption 9946 (Modes 1, 2, and 3.)
9946-P	DOT-E 9946	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.327(a)	To become a party to exemption 9946. (Modes 1, 2, and 3.)
9946-P	DOT-E 9946	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 173.327(a)	To become a party to exemption 9946. (Modes 1, 2, and 3.)
9946-P	DOT-E 9946	Linde Gases of the Midwest, Inc., Hillside, IL.	49 CFR 173.327(a)	To become a party to exemption 9946. (Modes 1, 2, and 3.)
9946-P	DOT-E 9946	Linde Gases of the West, Oakland, CA.	49 CFR 173.327(a)	To become a party to exemption 9946. (Modes 1, 2, and 3.)
9946-P	DOT-E 9946	Linde Gases of the South, Inc., Houston, TX.	49 CFR 173.327(a)	To become a party to exemption 9946. (Modes 1, 2, and 3.)
9946-P	DOT-E 9946	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 173.327(a)	To become a party to exemption 9946. (Modes 1, 2, and 3.)
9946-P	DOT-E 9946	Unigas, Inc., Ponce, PR	49 CFR 173.327(a)	To become a party to exemption 9946. (Modes 1, 2, and 3.)
9946-P	DOT-E 9946	Linde Puerto Rico Inc., GURABO, PR.	49 CFR 173.327(a)	To become a party to exemption 9946. (Modes 1, 2, and 3.)
9953-P	DOT-E 9953	Monroe Trucking, Inc., West Monroe, LA.	49 CFR 177.834(i)(2)(i)	To become a party to exemption 9953. (Mode 1.)
9953-P	DOT-E 9953	Fore Way Express, Inc., Wausau, WI.	49 CFR 177.834(i)(2)(i)	To become a party to exemption 9953. (Mode 1.)
9953-P	DOT-E 9953	Monkem Company, Inc., Joplin, MO.	49 CFR 177.834(i)(2)(i)	To become a party to exemption 9953. (Mode 1.)
9953-P	DOT-E 9953	National Starch and Chemical Corp., Bridgewater, NJ.	49 CFR 177.834(i)(2)(i)	To become a party to exemption 9953. (Mode 1.)
9955-P	DOT-E 9956	DX Systems, Inc., Houston, TX	49 CFR 173.277(a)(9), 178.340, 178.343.	To become a party to exemption 9956. (Mode 1.)
10032-P	DOT-E 10032	Eurotainer, Paris, France	49 CFR 173.315, 178.245	To become a party to exemption 10032. (Modes 1, 2, and 3.)
10057-X	DOT-E 10057	Hamilton Standard, Div. of United Technologies, Windsor Locks, CT.	49 CFR 173.276	To renew party status originally issued on emergency basis to authorize shipment of hydrazine, anhydrous, classed as a flammable liquid in specially designed modular propulsion system. (Modes 1, 4.)
10057-X	DOT-E 10057	U.S. Department of Energy, Washington, DC.	49 CFR 173.276	To renew exemption originally issued on an emergency basis to authorize shipment of hydrazine, anhydrous, class as a flammable liquid in specially designed modular propulsion system. (Modes 1, 4.)
10061-X	DOT-E 10061	Morton Thiokol, Inc., Aerospace Group, Brigham City, UT.	49 CFR 173.92	To authorize transport of rocket motors via highway. (Mode 1.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9788-N	DOT-E 9788	Certified Cylinder, Inc., Crossville, TN.	49 CFR 173.34	To authorize replacement of bottoms, rebuilding, retesting and certification of 4B, 4BA and 4BW240 propane cylinders. (Mode 1.)
9873-N	DOT-E 9873	Hercules, Inc., Wilmington, DE	49 CFR 173.184, 175.3	To authorize shipment of nitrocellulose with not less than 25% water by weight classed as a flammable solid in a non-DOT combination package consisting of a plastic sack sealed by a tightening band around the neck in a non-DOT specification fiberboard box sealed by glue and taping. (Modes 1, 2, 3, and 4.)
9970-N	DOT-E 9970	Hercules Inc., Wilmington, DE	49 CFR 172.101, 172.300, 175.65(e).	To authorize shipment RDX wet with ethyl acetate in polyethylene bags overpacked in fiber drums. (Mode 1.)
9972-N	DOT-E 9972	The lubrizol Corp., Wickliffe, OH	49 CFR 173.225	To authorize shipment of Phosphorus pentasulfide in non-DOT specification railroad tank car tanks. (Mode 2.)
9974-N	DOT-E 9974	S.S.I. Group, Limited, Fairdale, KY	49 CFR 172.504, 173.178	To authorize shipment of packages of a flammable solid in a privately owned vehicle without a "Flammable Solid W" placard on the vehicle. (Mode 1.)
9990-N	DOT-E 9990	Honeywell Inc., Brooklyn Park, NY	49 CFR 173.113	To authorize transport of Detonating Fuzes, Class C explosives, in a packaging not authorized in 49 CFR. (Mode 1.)
9995-N	DOT-E 9995	Copps Industries, Inc., Menomonee Falls, WI.	49 CFR 173.249, 175.3	To authorize transport of alkaline corrosive liquids in one quart capacity metal can, packed in non-DOT specification removable head polyethylene pail. (Modes 1, 2, 3, and 4.)
10001-N	DOT-E 10001	Union Carbide Corp., Danbury, CT	49 CFR 173.316, 173.320	To authorize transport of argon containing up to 10% oxygen as a refrigerated liquid, in DOT Specification 4L cylinders. (Mode 1.)
10022-N	DOT-E 10022	Union Carbide Corp., Linde Division Danbury, CT.	49 CFR 173.119, 173.245, 173.246, 173.247, 173.251, 173.264, 173.273, 173.302, 173.304, 173.328, 173.34, 173.345.	To authorize use of a non-DOT Specification full removable head, steel salvage cylinder of approximately 55 gallon capacity for overpacking damaged or leaking packages of pressurized and non-pressurized hazardous materials. (Mode 1.)
10027-N	DOT-E 10027	Japan Oxygen, Inc., Long Beach, CA.	49 CFR 173.316	To authorize shipment of Helium, refrigerated liquid, classed as Nonflammable gas, in a non-DOT Specification container, similar to a DOT Specification MC-338 cargo tank. (Modes 1, 3.)
10028-N	DOT-E 10028	E.I. Du Pont De Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.255(a)(4)	To authorize shipment of Dimethyl sulfate in DOT Specification 112A400W tank car tanks. (Mode 2.)
10031-N	DOT-E 10031	Universal Cryogenics Corp., Alburtis, PA.	49 CFR 172.203, 173.316, 173.320, 176.30, 176.76(h), 176.338.	To authorize manufacture, marking and sale of non-DOT specification, insulated portable tanks for transportation of liquefied helium. (Modes 1, 3.)
10032-N	DOT-E 10032	Arbel-Fauvet-Rail, Dousi, Cedex, France.	49 CFR 173.315, 178.245	To authorize shipment in liquefied flammable and nonflammable gases in non-DOT specification IMO Type 5 steel portable tanks. (Modes 1, 2, and 3.)
10038-N	DOT-E 10038	General American Transportation Corp., Chicago, IL.	49 CFR 173.31(a)(5), 173.31(a)(6), 173.31(a)(7), Part 179.	To authorize the transport of DOT specification tank cars containing a residue of a hazardous material without a coupler vertical restraint system, while enroute to a scrap yard for dismantling. (Mode 2.)
10040-N	DOT-E 10040	Atlas Powder Co., Dallas, TX	49 CFR 173.133	To authorize shipment of a material classed as a flammable liquid, containing 10.2 percent nitroglycerin in a DOT specification 21P fiber drum with a 25 or 25L liner not exceeding 30 gallons capacity. (Modes 1, 3.)
10041-N	DOT-E 10041	Lofland Company of Arkansas, Little Rock, AR.	49 CFR 173.245(a)(31)	To authorize transport of alkaline corrosive liquids in DOT Specification MC-306 cargo tanks constructed of mild steel in lieu of stainless steel. (Mode 1.)
10045-N	DOT-E 10045	Federal Express Corp., Memphis, TN.	49 CFR 173.447(a), 177.842(a), 177.842(b).	To authorize shipment of non-fissile radioactive materials via motor vehicle when the combined transport index exceeds 50 and/or separation distances cannot be maintained (Mode 1.)
10046-N	DOT-E 10046	Eveready Battery Co., Inc., Cleveland, OH.	49 CFR Parts 100–177	To authorize shipment of specified type of lithium cell excepted from the requirements of the Department's Hazardous Materials Regulations. (Modes 1, 2, 3, 4, and 5.)
10069-N	DOT-E 10069	Martin Electronics, Inc., Perry, FL	49 CFR 172.101, 173.88, 173.91	To authorize shipment of special fireworks, classed as a Class B explosives, as a Class C explosive when shipped separately from the initiating device. (Mode 1.)
10084-N	DOT-E 10084	Composite Engineering Co., Corona, CA.	49 CFR Part 173 Subparts D, F and H as applicable.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks manufactured from fiberglass reinforced plastic similar to the DOT Specifications MC312 and 307 cargo tanks for transportation of those materials authorized for transport in DOT Spec MC312 and 307 cargo tanks. (Mode 1.)
10097-N	DOT-E 10097	Hercules Inc., Magna, UT	49 CFR 173.86(e)(2)(ii), 173.92(a)(1), 173.92(b).	To authorize transport of rocket motors in a propulsive state and with igniters installed in packagings not authorized in 49 CFR 173.92. (Mode 1.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9235-N	DOT-E 10099	Pacific Rim Packaging Corp., Richmond, CA.	49 CFR 178.115-6	To authorize manufacture, marking and sale of non-DOT specification steel drums of 24-gauge thickness and six-gallon capacity, to be used in place of 24 gauge, five-gallon capacity, DOT Specification 17E steel drums, for transportation of various hazardous materials. (Modes 1, 2, and 3.)
10104-N	DOT-E 10104	Bowater Bulk Packaging Limited, West Yorkshire, England.	49 CFR 173.182	To authorize manufacture, marking and sale of flexible, intermediate bulk containers constructed of woven polypropylene and lined with polyethylene, having a capacity of approximately 2200 pounds each, for shipment of an oxidizer. (Modes 1 2, and 3.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 3095-X	DOT-E 3095	Dowell Schlumberger, Inc., Tulsa, OK.	49 CFR 173.119(a), 173.245(a), 173.248(a), 173.263(a), 173.264, 173.283, 173.289, 178.342-5, 178.343-5.	To authorize use of a non-DOT specification cargo tank, for shipment of certain hazardous materials (Modes 1, 3.)
EE 3109-X	DOT-E 3109	General Dynamics Corp., East Camden, AR.	49 CFR 173.301(e), 173.302(a)(1), 175.3.	To authorize use of non-DOT specification pressure vessels, for shipment of a nonflammable, nonliquefied compressed gas. (Modes 1, 2, 3, 4, and 5.)
EE 5206-X	DOT-E 5206	Nelson Brothers, Inc., Parish, AL	49 CFR 173.114a	To authorize privately operated bulk hopper-type units, for transportation of blasting agents. (Mode 1.)
EE 5948-X	DOT-E 5948	U.S. Department of Energy, Washington, DC.	49 CFR 173.247(b), 173.416, 173.467.	To authorize shipment of radioactive waste materials in ATMX 500 or 600 rail cars. (Mode 2.)
EE 6614-X	DOT-E 6614	Hasa Chemicals, Inc., Saugus, CA	49 CFR 173.263(a)(28), 173.277(a)(6).	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
EE 6614-X	DOT-E 6614	Clearwater Chemical Corp., Clearwater, FL.	49 CFR 173.263(a)(28), 173.277(a)(6).	To authorize use of non-DOT specification polyethylene bottles, packed inside a highly density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
EE 6614-X	DOT-E 6614	Steelcrete Co., Novi, MI	49 CFR 173.263(a)(28), 173.277(a)(6).	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
EE 6752-X	DOT-E 6752	3M Transportation Co., St. Paul, MN.	49 CFR 173.301(d)(3), 173.304(a)(2).	To authorize use of DOT Specification 3A, 3AA, 3AX, 3AAX or 3T cylinders to form part of a tube trailer or tube bank, for transportation of a liquefied flammable compressed gas. (Modes 1, 2, and 3.)
EE 7052-X	DOT-E 7052	Pointer, Inc., Tempe, AZ	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
EE 7052-X	DOT-E 7052	Pointer, Inc., Tempe, AZ	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
EE 7769-X	DOT-E 7769	Brunswick Corporation/Defense Division, Lincoln, NE.	49 CFR 173.302(a)(1), 175.3	To authorize manufacture, marking and sale of non-DOT Specification fiber reinforced plastic full composite cylinder, for transportation of certain nonflammable compressed gas. (Modes 1, 2, 3, 4, and 5.)
EE 7891-X	DOT-E 7891	Spectrum Chemical Manufacturing Corp., Gardena, CA.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504 Table 1, 172.504(a), 173.126, 173.138, 173.237, 173.246, 173.25(a), 175.3.	To authorize transport of packages bearing the DANGEROUS WHEN WET label, in motor vehicles which are not placarded FLAMMABLE SOLID W. (Modes 1, 2, and 4.)
EE 7891-X	DOT-E 7891	Spectrum Chemical Manufacturing Corp., Gardena, CA.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504 Table 1, 172.504(a), 173.126, 173.138, 173.237, 173.246, 173.25(a), 175.3.	To authorize transport of packages bearing the DANGEROUS WHEN WET label, in motor vehicles which are not placarded FLAMMABLE SOLID W. (Modes 1, 2, and 4.)
EE 7943-X	DOT-E 7943	Chem Lab Products, Inc., Ontario, CA.	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To authorize shipment of corrosive liquids in one or two one-gallon polyethylene containers packed in fiberboard boxes, complying with DOT Specification 12B except for handholes in top flaps. (Mode 1.)
EE 8445-X	DOT-E 8445	University of Minnesota, Minneapolis, MN.	49 CFR Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
EE 8723-X	DOT-E 8723	Winchester Building, Supply Co., Inc., Winchester, VA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize transport of lithium batteries containing parallel branches of series connected cells without diodes. (Modes 1, 3.)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 8885-X	DOT-E 8885	Coppe Industries, Inc., Menomonee Falls, WI.	49 CFR 173.245, 173.249, 175.3	To authorize shipment of certain alkaline corrosive liquids, n.o.s., in an unlined tin can, overpacked in a non-DOT specification removable head molded polyethylene pail of five or six-gallon capacity, also containing a non-hazardous resin mix. (Modes 1, 2, 3, and 4.)
EE 9271-X	DOT-E 9271	CSX Transportation, Inc., Jacksonville, FL.	49 CFR 174.90	To authorize deviation from car separation requirements, for transportation of Class A and B explosives. (Mode 2.)
EE 9331-X	DOT-E 9331	Rio Linda Chemical Co., Sacramento, CA.	49 CFR 173.263(a)(10)	To authorize shipment of sodium chlorite solutions in water, in DOT Specification MC-306 and MC-307 cargo tanks. (Mode 1.)
EE 9929-X	DOT-E 9929	Morton Thiokol, Inc., Elkton Division, Elkton, MD.	49 CFR 172.101, 173.92	To authorize transport of rocket motors in packaging that exceeds the weight prescribed in the Department's Hazardous Materials Regulations. (Modes 1, 3, and 4.)
EE 10081-X	DOT-E 10081	Morton Thiokol, Inc., Aerospace Group, Brigham City, UT.	49 CFR 173.92	To authorize transport of rocket motors via highway. (Mode 1.)
EE 10105-N	DOT-E 10105	Occidental Chemical Corp., Pasadena, TX.	49 CFR 173.29(c)(2)	To authorize a one-time shipment of a tank car which contains a residue of chlorine with a defective liquid valve equipped with a chlorine "C" kit. (Mode 2.)
EE 10106-N	DOT-E 10106	Dynamit Nobel Special Chemistry, Troisforl, West Germany.	49 CFR 171.12, 172.101, 172.102, 175.3.	To authorize transport of tetrazole-1-acetic acid in fiber drums. (Modes 1, 4.)
EE 10126-N	DOT-E 10126	Moli Energy Limited, Burnaby, B.C., Canada.	49 CFR 172.101, 172.420	To authorize transport of lithium batteries containing parallel branches of series connected cells without diodes. (Mode 1.)
EE 10127-N	DOT-E 10127	Morton Thiokol, Inc., Huntsville, AL.	49 CFR 173.92	To authorize transport of a rocket motor with igniter installed and in a packaging not authorized by 49 CFR. (Mode 1.)
EE 10127-P	DOT-E 10127	Space Services, Inc., Houston, TX	49 CFR 173.92	To become a party to exemption 10127. (Mode 1.)
EE 10128-N	DOT-E 10128	LCP Chemicals & Plastics, Inc., Edison, NJ.	49 CFR 173.31(B), 179.102-2	To authorize a one-time shipment of chlorine in a DOT Specification 105A500W tank car tank with a defective safety relief valve equipped with a chlorine "C" kit applied on the safety relief valve. (Mode 2.)
EE 10137-N	DOT-E 10137	Beverage Service & Equipment, Inc., Orlando, FL.	49 CFR 176.76(b)	To authorize shipment of carbon dioxide, refrigerated liquid, classed as a nonflammable gas, in MC-330 cargo tanks aboard a cargo vessel not presently prescribed in the regulations. (Mode 3.)
EE 10144-N	DOT-E 10144	Atlas Powder Co., Dallas, TX	49 CFR 173.62, 173.86	To authorize one-time transport of an unapproved nitroglycerin solution in packagings not authorized in 49 CFR. (Mode 1.)

WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
4575-X	EM Science, Cincinnati, OH	49 CFR 173.314(c), 173.315(a)	To authorize use of DOT specification 106A500X and 110A500W multiunit tank car tanks; DOT specification 105A300W, 112A340W, 114A340W tank car tanks and the proposed AAR 120A300W, 112A340W tank cars, for transportation of certain liquefied compressed gases. (Modes 1, 2, and 3.)
7768-P	Hewlett-Packard Co., Loveland, CO	49 CFR 173.154, 173.217, 173.245b, 173.365, 178.19.	To become a party to exemption 7768 (Modes 1, 2, and 3.)
7803-P	Hewlett-Packard Co., Loveland, CO	49 CFR 178.19, Part 173, Subparts D, F	To become a party to exemption 7803 (Modes 1, 2, and 3.)
8363-X	X-Plo, Inc., Plattsburgh, NY	49 CFR 173.93(a)	To authorize shipment of certain solid propellant explosives in metal canisters overpacked in DOT specification 12H 65 fiberboard boxes. (Modes 1, 3.)
8723-X	Atlas Powder Co., Dallas, TX	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
8944-P	Linde Gases of the West, Oakland, CA	49 CFR 173.302(c)(2), 173.302(c)(3), 173.302(c)(4), 173.34(e), Part 107, Appendix B.	To become a party to exemption 8944 (Modes 1, 3.)
8944-P	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.302(c)(2), 173.302(c)(3), 173.302(c)(4), 173.34(e), Part 107, Appendix B.	To become a party to exemption 8944 (Modes 1, 3.)
8944-P	Linde Gases of Florida, Inc., Tampa, FL	49 CFR 173.302(c)(2), 173.302(c)(3), 173.302(c)(4), 173.34(e), Part 107, Appendix B.	To become a party to exemption 8944 (Modes 1, 3.)
9052-P	Hewlett-Packard Co., Loveland, CO	49 CFR 173.118a, 173.119, 173.125, 176.340, 178.19, 178.253, Part 173, Subpart F.	To become a party to exemption 9052 (Modes 1, 2, and 3.)
9690-P	Tri-River Chemical Co., Inc., Pasco, WA	49 CFR 173.119, 176.340, 178.19, 178.253, Part 173, Subpart F.	To become a party to exemption 9690 (Modes 1, 2.)
9785-P	Lexzau, Scharbau & Co., Hamburg, West Germany.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785 (Modes 1, 2, and 3.)
9785-P	3M Co., St. Paul, MN	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785 (Modes 1, 2, and 3.)

WITHDRAWAL EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9963-X	Railcar Maintenance Co., San Francisco, CA.	49 CFR 173.314	To authorize shipments of liquefied petroleum gas in DOT specification 105S300W tank cars which are equipped with thermal protection systems that have not yet been tested. (Mode 2.)

Denials

1479-X—Request by Allied-Signal Inc., Morristown, NJ to authorize use of vacuum insulated, liquid nitrogen cooled, non-DOT specification cargo tank motor vehicle, for transportation of nonflammable compressed gases denied February 3, 1989.

7476-X—Request by Thompson Tank & Manufacturing Company, Inc., Long Beach, CA to authorize manufacture, marking and sale of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-307 or MC-312 with certain exceptions, for transportation of flammable, corrosive and poisonous waste materials denied February 28, 1989.

9212-P—Request by Island Gases Limited, Christiansted St. Croix U.S., VI to authorize manufacture, marking and sale of non-DOT specification vacuum insulated portable tanks, for shipment of carbon dioxide, refrigerated liquid denied February 28, 1989.

9980-N—Request by Aero Enterprises International, Corpus Christi, TX to authorize shipment of Battery, wet, filled with acid, in a non-DOT Specification packaging identified as Start Cart, which is used for starting helicopters or for supplying power to helicopters denied February 28, 1989.

10095-N—Request by Moli Energy Limited, Burnaby, B.C., Canada to authorize transport of rechargeable lithium batteries on passenger-carrying aircraft denied January 23, 1989.

Issued in Washington, DC, on June 14, 1989.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89-17618 Filed 7-28-89; 8:45 am]

BILLING CODE 4910-60-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 145
Monday, July 31, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

July 26, 1989.

The Federal Communications Commission will hold an Open Meeting on the subjects listed on Wednesday, August 2, 1989, which is scheduled to commence at 2:00 p.m., in room 856, at 1919 M Street, NW.

Agenda, Item No, and Subjects

General—1—*Title:* Amendment of Parts 2 and 15 of the Rules with regard to the operation of spread spectrum systems. *Summary:* The Commission will consider a Notice of Proposed Rule Making concerning the operations of Part 15 spread spectrum systems in the 902–928 MHz, 2400–2483.5 MHz and 5725–5850 MHz bands.

General—2—*Title:* Further Studies on the Availability of Spectrum Advanced Television. *Summary:* The Commission will consider an interim report describing further studies conducted by the Office of Engineering and Technology on the availability of spectrum for advanced television.

Private Radio—1—*Title:* Frequency Coordination in the Private Radio Land Mobile Radio Services. *Summary:* The Commission will consider a Notice of Proposed Rule Making dealing with frequency coordination in the private land mobile radio services.

Mass Media—1—*Title:* Advanced Television Systems and Their Impact on the Existing Television Broadcast Service; Review of Technical and Operational Requirements of Part 73–E; Reevaluation of the UHF Television Channel and Distance Separation Requirements of Part 73 of the Commission's Rules. *Subject:* The Commission will consider a Policy Statement and Second Further Notice of Inquiry concerning the policy, economic, legal and technical issues related to the introduction of advanced television technologies.

Mass Media—2—*Title:* Amendment of § 73.3555 of the Commission's Broadcast Multiple Ownership Rules. *Summary:* The Commission will consider petitions for reconsideration of the Second Report and Order in MM Docket No. 87-7.

Mass Media—3—*Title:* Applications in the Direct Broadcast Satellite (DBS) service for construction permits for new systems and for modification of construction permits for authorized systems, filed by the fifth round of DBS applicants, and petitions to deny certain of those applications. *Summary:* In connection with considering these applications, the Commission will consider its DBS orbital allocations policy and the merits of the petitions to deny.

Mass Media—4—*Title:* Notice of Proposed Rulemaking concerning Potential Uses of certain Orbital Allocations by Operators in the Direct Broadcast Satellite (DBS) service. *Summary:* The Commission will consider adopting the subject Notice of Proposed Rulemaking.

This Meeting may be continued the following work day to allow the Commission be complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632-5050.

Issued: July 28, 1989.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89-17891 Filed 7-27-89; 10:52 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:06 a.m. on Tuesday, July 25, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider: (1) Matters relating to the possible failure of certain insured banks; (2) matters concerning the Corporation's corporate activities; and (3) matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: July 26, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-17888 Filed 7-27-89; 9:56 am]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 54, No. 145
Monday, July 31, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[C-223-401]

Portland Hydraulic Cement From Costa Rica; Final Results of Countervailing Duty Administrative Review, Determination To Cancel Suspension Agreement, and Resumption of Investigation

Correction

In the issue of Thursday, July 20, 1989, on page 30503-30505,in the first column, in the correction to notice document 89-16133, the headings are corrected to read as set forth above.

On the same page, in the same column, in the first paragraph of the correction, in the second line, "29077" should read "29078".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 602

[Docket No. 81011-9132]

Guidelines for Fishery Management Plans

Correction

In rule document 89-17017 beginning on page 30826 in the issue of Monday, July 24, 1989, make the following corrections:

§ 602.11 [Corrected]

1. On page 30835, in the second column, in § 602.11(c)(9)(ii), in the first line, the date should read "November 21, 1989".

§ 602.13 [Corrected]

2. On page 30837, in the third column, in § 602.13(d)(1)(v), in the last line, "this" should read "the".

3. On the same page, in the same column, in § 602.13(d)(2), in the fifth line, "water" should read "waters".

§ 602.17 [Corrected]

4. On page 30840, in the third column, in § 602.17(b)(2)(v), in the third line, "efficient" was misspelled.

5. On the same page, in the same column, in § 602.17(c), in the sixth line, insert "or" after "State,".

BILLING CODE 1505-01-D

federal register

Monday
July 31, 1989

Part II

The President

Executive Order 12684—Conforming the Central Intelligence Agency and Civil Service Retirement and Disability Systems

Federal Register
Vol. 54, No. 145
Monday, July 31, 1989

Presidential Documents

Title 3—

The President

Executive Order 12684 of July 27, 1989

Conforming the Central Intelligence Agency and Civil Service Retirement and Disability Systems

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including section 292 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended (50 U.S.C. 403 note) (the "Act"), and in order to conform the Central Intelligence Agency Retirement and Disability System to certain amendments to the Civil Service Retirement and Disability System, it is hereby ordered as follows:

Section 1. The Director of Central Intelligence shall maintain the Central Intelligence Agency Retirement and Disability System in accordance with the following principles:

(a) In computing an annuity for an employee whose service includes service on a part-time basis performed on or after April 7, 1986, such service, other than service subject to the Federal Employees Retirement System, shall be computed as follows:

(1) the average pay of the employee, to the extent that it includes pay for service performed in any position on a part-time basis, shall be determined by using the annual rate of basic pay that would be payable for full-time service in the position; and

(2) the benefit so computed shall then be multiplied by a fraction equal to the ratio that the employee's actual service, as determined by prorating an employee's total service to reflect the service that was performed on a part-time basis, bears to the total service that would be creditable for the employee if all of the service had been performed on a full-time basis.

(b) The provision of section 221(b)(3)(C) of the Act regarding the termination of annuity to surviving spouses due to remarriage prior to age 60 shall hereafter be administered by the Central Intelligence Agency by substituting age 55 in lieu of age 60.

(c) The provisions of section 221(g)(1) of the Act regarding the remarriage of surviving spouses before, on, and after age 60 shall hereafter be administered by the Central Intelligence Agency by substituting age 55 in lieu of age 60.

Sec. 2. Section 1(a) of this order shall be given retroactive effect to April 7, 1986. Section 1(b) and (c) of this order shall be effective on the date of signature.

George Bush

THE WHITE HOUSE,
July 27, 1989.

[FR Doc. 89-18003
Filed 7-28-89; 10:53 am]
Billing code 3195-01-M

Reader Aids

Federal Register

Vol. 54, No. 145

Monday, July 31, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

27855-28016	3
28017-28408	5
28409-28664	6
28665-28794	7
28795-28998	10
28999-29316	11
29317-29528	12
29529-29700	13
29701-29874	14
29875-30006	17
30007-30204	18
30205-30364	19
30365-30534	20
30535-30710	21
30711-30880	24
30881-31004	25
31005-31162	26
31163-31318	27
31319-31492	28
31493-31644	31

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

302	28964
305	28964
310	28964

3 CFR

Proclamations:

5995	28409
5996	28993
5997	28999, 30633
5998	29313
5999	30873
6000	31489
6001	31491

Executive Orders:

May 5, 1855 (Revoked in part by PLO 6737)	30215
August 30, 1916 (Partial revocation)	31030
1500 (Revoked by PLO 6734)	30215
10153 (Amended by EO 12683)	31162
11958 (Amended by EO 12680)	28995
12163 (Amended by EO 12680)	28995
12171 (Amended by EO 12681)	28997
12680	28995
12681	28997
12682	29315
12683	31162
12684	31643

Administrative Orders:

Presidential Determinations:

No. 89-15 of June 19, 1989	31493
No. 89-16 of June 22, 1989	28017
No. 89-18 of July 20, 1989	31495
No. 89-20 of July 20, 1989	31497
No. 89-21 of July 20, 1989	31499

5 CFR

1201	28632
1202	28657
1203	28658
1204	28658
1205	28662
1206	28664
1209	28654

Proposed Rules:

900	28426
930	30898

7 CFR

2	28665, 30711, 31163
15	31163
29	27855
33	29317
81	31319
301	31005
400	28019, 28411
401	28795
455	30007
905	29318, 30711
910	28796, 29701, 30535, 31321
916	27856, 30365
917	27856, 29321, 30365
921	29319
922	29319
923	29319
924	29319
928	29318
929	29323
946	27862
948	29324
955	29325
958	29324
981	30713, 31501, 31502
989	29326
1040	29327
1139	30881
1260	28019
1421	30714
1446	30366
1822	29329
1823	29329
1910	29329
1941	28019, 29329
1942	29329
1943	28019, 29329
1944	29329
1945	29329, 30882
1951	28019, 28020, 28411, 29329
1955	29329
1965	29329
1980	28021, 30882

Proposed Rules:

29	27883, 31530
51	30632, 31338
52	30750
319	29566
401	28019, 28428, 28820
449	28429
911	29338
917	30392
920	31042
926	30393
927	29340
947	29341
948	30394
967	30754
987	29342
989	29343

1036.....30898
1131.....30903
1446.....30395
1754.....31344
1762.....27883
1864.....29569
1930.....29901
1944.....29901
1956.....29569
1965.....29569

8 CFR

100.....29438
103.....29438, 29440, 29875
210a.....29875
211.....30368
216.....30368
242.....29438
245.....29440
245a.....29434, 29442
264.....29438
299.....29438, 30369

Proposed Rules:

103.....29344
242.....29050

9 CFR

77.....31164
92.....29003
94.....31504

Proposed Rules:

54.....29576
75.....28070

10 CFR

2.....27864, 29008
7.....28554
26.....29139
39.....30883
51.....27864
60.....27864

Proposed Rules:

2.....28822
30.....30049
40.....30049
50.....30049, 30905
60.....30049
70.....30049
72.....30049
150.....30049
764.....29732

11 CFR

Proposed Rules:

100.....31286
9004.....31286
9034.....31286

12 CFR

226.....28665
528.....30535
531.....30535
615.....31323
701.....31165, 31182
741.....31182

Proposed Rules:

5.....28072
32.....30054
202.....29734
335.....30976
523.....30555
545.....30555
561.....27885
563.....27885
700.....31198
701.....31198
705.....31198
741.....31198

13 CFR

115.....30823

14 CFR

39.....28022, 28023, 28025, 28026, 28028, 28554, 29008, 29009, 29529, 29530, 29534, 29535, 29537, 29538, 30007, 30009, 30718–30721, 30885, 30886, 31008, 31010, 31323, 31324, 31505–31507, 31509, 31510
71.....28029, 29539, 29540, 29817, 29888–29891, 30722, 31326, 31327
91.....28769, 29698, 29892
97.....28029, 30010, 31328
107.....28765
108.....28985

Proposed Rules:

Ch. I.....28074
1.....28978
14.....29978
39.....29050–29056, 29577, 30059–30062, 29579, 29580, 29582, 30755, 30757, 30758, 30906, 31045–31047, 31049–31051, 31531–31533, 31535–31537, 31539
43.....30866, 31540
65.....30866, 31540
71.....28074, 29057–29059, 29907, 30633, 30759–30762, 31346, 31540
73.....30762
75.....29908, 29909
91.....28978
108.....28982
121.....28978
125.....28978
129.....28978
135.....28978
145.....30866
380.....31052
399.....31052
1451.....31540

15 CFR

50.....29010
771.....29011
774.....28665
786.....29011
799.....30011

Proposed Rules:

8b.....31002
25.....28430

16 CFR

305.....28031

Proposed Rules:

307.....31541
703.....29910

17 CFR

34.....30684
200.....28796
201.....28797
211.....29333
240.....28799, 30013
241.....28799
270.....31329

Proposed Rules:

230.....30063, 30076
240.....30087
250.....29739
259.....29739

18 CFR

37.....30370

19 CFR

10.....28412
101.....31011
134.....29540
141.....28412
177.....31511
178.....28412

20 CFR

218.....30723
655.....28037

Proposed Rules:

404.....30907
416.....30907

21 CFR

172.....31332
173.....31012
175.....30731
177.....29018
178.....31013, 31518
310.....28772, 28780, 31405
520.....29543, 30205
522.....29543, 30205
524.....29543, 30205, 30542
548.....30205
556.....28051
558.....28051, 28154, 29335, 29544
573.....29019
862.....30206
1308.....28414

Proposed Rules:

10.....28872
184.....31055
310.....28872
314.....28872, 31405
320.....28823, 28872, 31405
341.....28442
610.....30093
640.....30093

22 CFR

34.....28415
51.....30373
514.....30033

23 CFR

Proposed Rules:

625.....29910, 30095
645.....29910
658.....29060

24 CFR

201.....31519
203.....28053, 31519
234.....31519
235.....30889
570.....31294
887.....31282

26 CFR

1.....28576
602.....28576

Proposed Rules:

1.....28075, 28683, 29061, 31545

27 CFR

5.....29701

Proposed Rules:

9.....29739, 30398

28 CFR

Proposed Rules:

73.....30910

29 CFR

70.....30503
1910.....28054, 28154, 29142, 29545, 29546, 30704, 31408
1915.....29142
1917.....29142
1918.....29142
1926.....29546, 30704
2550.....30520
2610.....27872, 28944, 29702
2619.....29703
2622.....27872
2644.....27872
2670.....29025
2675.....29025
2676.....29892

Proposed Rules:

1602.....30097
1627.....30097
1910.....30401, 30557

30 CFR

20.....30512
57.....30508
75.....30513
77.....30513, 30515
938.....29704

Proposed Rules:

75.....30510
715.....28443
761.....30557
914.....30764
916.....29742
920.....30098
936.....29583

31 CFR

103.....28416, 30542
316.....30633
342.....30633
344.....28752
351.....30633

Proposed Rules:

800.....29744

32 CFR

159a.....31333
199.....30732
290.....31014
242.....31335
706.....30206, 30375
861.....31184

Proposed Rules:

281.....30227

33 CFR

100.....28814, 29547, 30034–30037
117.....30038, 30890, 31027–31029
165.....28814, 30544
167.....28061
334.....31142

Proposed Rules:

100.....29348

110.....31059
117.....31060

34 CFR

200.....30736
203.....30190
222.....30039
303.....30823

35 CFR

103.....29335
117.....29335
135.....29335

Proposed Rules:

103.....29584
133.....29584

36 CFR

13.....30005

37 CFR

1.....29548, 30375
2.....29548
201.....27873

38 CFR

3.....28445
17.....28667, 28673
19.....28445
21.....28676
36.....30382

Proposed Rules:

1.....30099
36.....28683, 30207

39 CFR

111.....27879
221.....29706
222.....29706
223.....29706
224.....29706
225.....29706
226.....29706
227.....29706
228.....29706
229.....29706

Proposed Rules:

3001.....30557

40 CFR

52.....27880, 29310, 29554, 30040, 29555, 29893–29895, 30891, 31522, 31524
81.....31524
82.....28062, 29336
131.....28662
141.....29998
180.....30632
228.....29034, 29712
261.....31335
271.....28677, 29557
704.....30211, 30632
721.....31298
761.....28418
763.....29460
796.....29715
797.....29715

Proposed Rules:

22.....29516
52.....28684, 28689, 29061, 29063, 29349
60.....28447, 29352
81.....29349
82.....29353
123.....30405
130.....30765
142.....29516
261.....30406, 31548
264.....30228
265.....30228
300.....29820
302.....29306
355.....29306, 30700
403.....30405
707.....29524

41 CFR

101–26.....31030
101–38.....30892
302–1.....29716

42 CFR

57.....28065
405.....29717
442.....29717
447.....29717
483.....29717
488.....29717
489.....29717
498.....29717

Proposed Rules:

424.....30558

43 CFR

4100.....31484

Public Land Orders:

1742 (Revoked in part by PLO 6738).....30214
2301 (Revoked in part by PLO 6735).....30213
6702 (Corrected by PLO 6732).....30214
6725 (Corrected by PLO 6739).....30214
6729 (Corrected by PLO 6736).....30213
6731.....30973
6732.....30214
6733.....30213
6734.....30215
6735.....30213
6736.....30213
6737.....30215
6738.....30214
6739.....30214
6740.....31030

Proposed Rules:

4.....30766
3160.....30766
5440.....31347
5450.....29357
5460.....29357

44 CFR

64.....30384, 30545, 30547
65.....31185, 31186
67.....31187

Proposed Rules:

67.....30415, 31199
325.....30565

45 CFR

302.....30216
303.....30216
304.....30216
305.....30216

46 CFR

502.....29036
580.....31030

Proposed Rules:

588.....30425

47 CFR

1.....29037, 30548, 31031
2.....30041
22.....28815, 28816, 30895, 31031
36.....31032
73.....28677, 28678, 29038, 29559–29561, 29719, 29720, 30041, 30042, 30389, 30549, 30737, 30738, 30896, 30897, 31033, 31034, 31189, 31190
74.....29039, 30043
80.....29040
90.....28678
97.....30823

Proposed Rules:

Ch. I.....28789
2.....28823
15.....28690, 28691, 28693
73.....27904, 28077, 28695, 28696, 29067, 29587, 29588, 29755, 29756, 30567, 30568, 30766, 30767, 31061, 31062
87.....28823

48 CFR

1.....29278
4.....29278
7.....29278
8.....29278
14.....29278
15.....29278
17.....29278
19.....29278, 30708
22.....29278
25.....29278
36.....29278
37.....29278
38.....29278
47.....29278
51.....29278
52.....29278, 30708
53.....29278
203.....30738
204.....28419
207.....31035
208.....30738
209.....30738, 31035
212.....30738
213.....30738
214.....30738
215.....30738, 31035
216.....30738
217.....30738
219.....30738, 31035
222.....30738
223.....30738
225.....31035
226.....31035
236.....30738
242.....30738
245.....30738
252.....30738, 31035
253.....30738
271.....30738
303.....31527
503.....29720
505.....29720
552.....29720
705.....28068
706.....28068
715.....28068
752.....28068
809.....30043
810.....30043
814.....30043
816.....30043
828.....30043
852.....30043
870.....30043
Ch. 18.....28186
2919.....30389

Proposed Rules:

15.....29296
31.....31480
43.....29296
47.....29984
52.....29296, 29984
203.....30911
209.....30911
219.....30101
246.....30101
252.....30911
914.....30569
915.....30569
916.....30230
917.....29757
935.....29757
952.....30569
970.....30230

49 CFR

27.....31039
89.....28680
171.....28750
172.....28750
173.....28750
176.....28750
178.....28750
192.....27881, 31405
193.....27881, 31405
195.....27881, 31405
390.....28818
391.....28818
393.....28818
571.....29041–29045, 30223
1011.....29337
1320.....30748

Proposed Rules:

171.....31144
172.....31144, 31158
173.....31144
174.....31144
175.....31144
176.....31144
177.....31144
390.....29912
512.....28696
571.....29067–29071, 29915, 30427, 30571
572.....29071

50 CFR

17.....29652, 29655, 29658, 29726, 30550, 31190
204.....30045
285.....29896
299.....29896
602.....30826, 31529, 31640
640.....30045
642.....29561, 30554
652.....30749
661.....28818, 29730, 30390, 31196
663.....30046
672.....28422, 28681, 30224
674.....28423, 30225

BEST COPY AVAILABLE

675.....30390

Proposed Rules:

17.....29915, 30572, 30577, 31201–31216
20.....29640, 30858
32.....31348
285.....29359, 29916
640.....31063
672.....30102
675.....30102

LIST OF PUBLIC LAWS

Last List July 28, 1989

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.R. 1722 / Public Law 101–60

Natural Gas Wellhead Decontrol Act of 1989 (July 26, 1989; 103 Stat. 157; 3 pages) Price: $1.00

S.J. Res. 85 / Public Law 101–61

To designate the week of July 24 to July 30, 1989, as the "National Week of Recognition and Remembrance for Those Who Served in the Korean War" (July 26, 1989; 103 Stat. 160; 2 pages) Price: $1.00

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783–3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Jan. 1, 1988
3 (1988 Compilation and Parts 100 and 101)	21.00	[1] Jan. 1, 1989
*4	15.00	Jan. 1, 1989
5 Parts:		
1–699	14.00	Jan. 1, 1988
700–1199	15.00	Jan. 1, 1988
1200–End, 6 (6 Reserved)	13.00	Jan. 1, 1989
7 Parts:		
*0–26	15.00	Jan. 1, 1989
27–45	12.00	Jan. 1, 1989
46–51	16.00	Jan. 1, 1988
52	23.00	[2] Jan. 1, 1988
*53–209	18.00	Jan. 1, 1989
210–299	22.00	Jan. 1, 1988
300–399	12.00	Jan. 1, 1989
400–699	17.00	Jan. 1, 1988
700–899	22.00	Jan. 1, 1988
900–999	26.00	Jan. 1, 1988
1000–1059	15.00	Jan. 1, 1988
*1060–1119	13.00	Jan. 1, 1989
1120–1199	11.00	Jan. 1, 1989
1200–1499	17.00	Jan. 1, 1988
*1500–1899	10.00	Jan. 1, 1989
*1900–1939	11.00	Jan. 1, 1989
1940–1949	21.00	Jan. 1, 1988
1950–1999	18.00	Jan. 1, 1988
2000–End	6.50	Jan. 1, 1988
8	11.00	Jan. 1, 1988
9 Parts:		
*1–199	20.00	Jan. 1, 1989
200–End	17.00	Jan. 1, 1988
10 Parts:		
0–50	18.00	Jan. 1, 1988
51–199	14.00	Jan. 1, 1988
200–399	13.00	[3] Jan. 1, 1987
*400–499	14.00	Jan. 1, 1989
*500–End	28.00	Jan. 1, 1989
11	10.00	[2] Jan. 1, 1988
12 Parts:		
*1–199	12.00	Jan. 1, 1989
200–219	10.00	Jan. 1, 1988
220–299	14.00	Jan. 1, 1988
300–499	15.00	Jan. 1, 1989
500–599	18.00	Jan. 1, 1988
600–End	12.00	Jan. 1, 1988
13	20.00	Jan. 1, 1988
14 Parts:		
1–59	21.00	Jan. 1, 1988
60–139	19.00	Jan. 1, 1988
140–199	10.00	Jan. 1, 1989
200–1199	20.00	Jan. 1, 1988
1200–End	12.00	Jan. 1, 1988
15 Parts:		
*0–299	12.00	Jan. 1, 1989
300–399	20.00	Jan. 1, 1988
400–End	14.00	Jan. 1, 1988
16 Parts:		
0–149	12.00	Jan. 1, 1989
*150–999	14.00	Jan. 1, 1989
1000–End	19.00	Jan. 1, 1989
17 Parts:		
1–199	14.00	Apr. 1, 1988
200–239	14.00	Apr. 1, 1988
240–End	21.00	Apr. 1, 1988
18 Parts:		
1–149	15.00	Apr. 1, 1988
150–279	12.00	Apr. 1, 1988
280–399	13.00	Apr. 1, 1988
400–End	9.00	Apr. 1, 1988
19 Parts:		
1–199	27.00	Apr. 1, 1988
200–End	5.50	Apr. 1, 1988
20 Parts:		
1–399	12.00	Apr. 1, 1988
400–499	23.00	Apr. 1, 1988
500–End	25.00	Apr. 1, 1988
21 Parts:		
1–99	12.00	Apr. 1, 1988
100–169	14.00	Apr. 1, 1988
170–199	16.00	Apr. 1, 1988
200–299	5.00	Apr. 1, 1988
300–499	26.00	Apr. 1, 1988
500–599	20.00	Apr. 1, 1988
600–799	7.50	Apr. 1, 1988
800–1299	16.00	Apr. 1, 1988
1300–End	6.00	Apr. 1, 1988
22 Parts:		
1–299	20.00	Apr. 1, 1988
300–End	13.00	Apr. 1, 1988
23	16.00	Apr. 1, 1988
24 Parts:		
0–199	15.00	Apr. 1, 1988
200–499	26.00	Apr. 1, 1988
500–699	9.50	Apr. 1, 1988
700–1699	19.00	Apr. 1, 1988
1700–End	15.00	Apr. 1, 1988
25	24.00	Apr. 1, 1988
26 Parts:		
§§ 1.0–1–1.60	13.00	Apr. 1, 1988
§§ 1.61–1.169	23.00	Apr. 1, 1988
§§ 1.170–1.300	17.00	Apr. 1, 1988
§§ 1.301–1.400	14.00	Apr. 1, 1988
§§ 1.401–1.500	24.00	Apr. 1, 1988
§§ 1.501–1.640	15.00	Apr. 1, 1988
§§ 1.641–1.850	17.00	Apr. 1, 1988
§§ 1.851–1.1000	28.00	Apr. 1, 1988
§§ 1.1001–1.1400	16.00	Apr. 1, 1988
§§ 1.1401–End	21.00	Apr. 1, 1988
2–29	19.00	Apr. 1, 1988
30–39	14.00	Apr. 1, 1988
40–49	13.00	Apr. 1, 1988
50–299	15.00	Apr. 1, 1988
300–499	15.00	Apr. 1, 1988
500–599	8.00	[4] Apr. 1, 1980
600–End	6.00	Apr. 1, 1988
27 Parts:		
1–199	23.00	Apr. 1, 1988
200–End	13.00	Apr. 1, 1988
28	25.00	July 1, 1988

Title	Price	Revision Date
29 Parts:		
0–99	17.00	July 1, 1988
100–499	6.50	July 1, 1988
500–899	24.00	July 1, 1988
900–1899	11.00	July 1, 1988
1900–1910	29.00	July 1, 1988
1911–1925	8.50	July 1, 1988
1926	10.00	July 1, 1988
1927–End	24.00	July 1, 1988
30 Parts:		
0–199	20.00	July 1, 1988
200–699	12.00	July 1, 1988
700–End	18.00	July 1, 1988
31 Parts:		
0–199	13.00	July 1, 1988
200–End	17.00	July 1, 1988
32 Parts:		
1–39, Vol. I	15.00	[5] July 1, 1984
1–39, Vol. II	19.00	[5] July 1, 1984
1–39, Vol. III	18.00	[5] July 1, 1984
1–189	21.00	July 1, 1988
190–399	27.00	July 1, 1988
400–629	21.00	July 1, 1988
630–699	13.00	[6] July 1, 1986
700–799	15.00	July 1, 1988
800–End	16.00	July 1, 1988
33 Parts:		
1–199	27.00	July 1, 1988
200–End	19.00	July 1, 1988
34 Parts:		
1–299	22.00	July 1, 1988
300–399	12.00	July 1, 1988
400–End	26.00	July 1, 1988
35	9.50	July 1, 1988
36 Parts:		
1–199	12.00	July 1, 1988
200–End	20.00	July 1, 1988
37	13.00	July 1, 1988
38 Parts:		
0–17	21.00	July 1, 1988
18–End	19.00	July 1, 1988
39	13.00	July 1, 1988
40 Parts:		
1–51	23.00	July 1, 1988
52	27.00	July 1, 1988
53–60	28.00	July 1, 1988
61–80	12.00	July 1, 1988
81–99	25.00	July 1, 1988
100–149	25.00	July 1, 1988
150–189	24.00	July 1, 1988
190–299	24.00	July 1, 1988
300–399	8.50	July 1, 1988
400–424	21.00	July 1, 1988
425–699	21.00	July 1, 1988
700–End	31.00	July 1, 1988
41 Chapters:		
1, 1–1 to 1–10	13.00	[7] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[7] July 1, 1984
3–6	14.00	[7] July 1, 1984
7	6.00	[7] July 1, 1984
8	4.50	[7] July 1, 1984
9	13.00	[7] July 1, 1984
10–17	9.50	[7] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[7] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[7] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[7] July 1, 1984
19–100	13.00	[7] July 1, 1984
1–100	10.00	July 1, 1988
101	25.00	July 1, 1988
102–200	12.00	July 1, 1988
201–End	8.50	July 1, 1988

Title	Price	Revision Date
42 Parts:		
1–60	15.00	Oct. 1, 1988
61–399	5.50	Oct. 1, 1988
400–429	22.00	Oct. 1, 1988
430–End	22.00	Oct. 1, 1988
43 Parts:		
1–999	15.00	Oct. 1, 1988
1000–3999	26.00	Oct. 1, 1988
4000–End	11.00	Oct. 1, 1988
44	20.00	Oct. 1, 1988
45 Parts:		
1–199	17.00	Oct. 1, 1988
200–499	9.00	Oct. 1, 1988
500–1199	24.00	Oct. 1, 1988
1200–End	17.00	Oct. 1, 1988
46 Parts:		
1–40	14.00	Oct. 1, 1988
41–69	14.00	Oct. 1, 1988
70–89	7.50	Oct. 1, 1988
90–139	12.00	Oct. 1, 1988
140–155	12.00	Oct. 1, 1988
156–165	13.00	Oct. 1, 1988
166–199	14.00	Oct. 1, 1988
200–499	20.00	Oct. 1, 1988
500–End	10.00	Oct. 1, 1988
47 Parts:		
0–19	18.00	Oct. 1, 1988
20–39	18.00	Oct. 1, 1988
40–69	9.00	Oct. 1, 1988
70–79	18.00	Oct. 1, 1988
80–End	19.00	Oct. 1, 1988
48 Chapters:		
1 (Parts 1–51)	28.00	Oct. 1, 1988
1 (Parts 52–99)	18.00	Oct. 1, 1988
2 (Parts 201–251)	18.00	Oct. 1, 1988
2 (Parts 252–299)	18.00	Oct. 1, 1988
3–6	20.00	Oct. 1, 1988
7–14	25.00	Oct. 1, 1988
15–End	26.00	Oct. 1, 1988
49 Parts:		
1–99	13.00	Oct. 1, 1988
100–177	24.00	Oct. 1, 1988
178–199	20.00	Oct. 1, 1988
200–399	19.00	Oct. 1, 1988
400–999	24.00	Oct. 1, 1988
1000–1199	18.00	Oct. 1, 1988
1200–End	18.00	Oct. 1, 1988
50 Parts:		
1–199	17.00	Oct. 1, 1988
200–599	13.00	Oct. 1, 1988
600–End	13.00	Oct. 1, 1988
CFR Index and Findings Aids	29.00	Jan. 1, 1989
Complete 1989 CFR set	620.00	1989
Microfiche CFR Edition:		
Complete set (one-time mailing)	125.00	1984
Complete set (one-time mailing)	115.00	1985
Subscription (mailed as issued)	185.00	1987
Subscription (mailed as issued)	185.00	1988
Subscription (mailed as issued)	188.00	1989

Title	Price	Revision Date
Individual copies	2.00	1989

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1988 to Dec. 31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.



Just Released

Code of Federal Regulations

Revised as of January 1, 1989

Quantity	Volume	Price	Amount
_____	Title 10—Energy Part 500 to End (Stock No. 869-007-000-33-1)	$28.00	$_____
_____	Title 12—Banks and Banking Parts 1 to 199 (Stock No. 869-007-00035-8)	12.00	_____
_____	Title 15—Commerce and Foreign Trade Parts 0 to 299 (Stock No. 869-007-00047-1)	12.00	_____
_____	Title 16—Commercial Practices Parts 150 to 999 (Stock No. 869-007-00051-0)	14.00	_____

A cumulative checklist of CFR issuances appears every Monday in the Federal Register in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

Total Order $_____

Please do not detach

Order Form **Mail to:** Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed find $_____. Make check or money order payable to Superintendent of Documents. (Please do not send cash or stamps). Include an additional 25% for foreign mailing.

Charge to my Deposit Account No.

☐☐☐☐☐☐-☐

Order No._____

VISA® MasterCard

Credit Card Orders Only

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me the Code of Federal Regulations publications I have selected above.

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

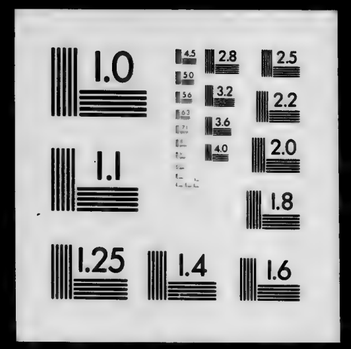
(or Country)

PLEASE PRINT OR TYPE

For Office Use Only.

	Quantity	Charges
Enclosed		
To be mailed		
Subscriptions		
Postage		
Foreign handling		
MMOB		
OPNR		
UPNS		
Discount		
Refund		

OL
4
S S
4
5
L
1
89
MI



VOL
54
ISS
1
4
6
AG
1
1989
UMI

8-1-89
Vol. 54 No. 146

federal register

Tuesday
August 1, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 89 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

OL
4
S S
1
4
6
G
1
989
MI

8-1-89
Vol. 54 No. 146
Pages 31645-31796

federal register

Tuesday
August 1, 1989

BEST COPY AVAILABLE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-783-3238
Magnetic tapes	275-3328
Problems with public subscriptions	275-3054

Single copies/back copies:

Paper or fiche	783-3238
Magnetic tapes	275-3328
Problems with public single copies	275-3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523-5240
Magnetic tapes	275-3328
Problems with Federal agency subscriptions	523-5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 54, No. 146
Tuesday, August 1, 1989

Agricultural Marketing Service
RULES
Dairy products; grading, inspection, and standards:
Butter, 31645

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Federal Grain Inspection Service; Forest Service

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
National boll weevil cooperative control program, 31710
Meetings:
Foreign Animal and Poultry Diseases Advisory Committee, 31711

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Continental Graphics Corp., 31741

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Delaware, 31714

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration

Conservation and Renewable Energy Office
NOTICES
Consumer product test procedures; waiver petitions:
Trane Co., Inc., 31723

Defense Department
See also Navy Department
NOTICES
Senior Executive Service:
Performance Review Board; membership, 31723

Drug Enforcement Administration
RULES
Chemical Diversion and Trafficking Act of 1988; implementation:
Precursor and essential chemicals, and tableting and encapsulating machines; records, reports, imports, and exports, 31657
Practice and procedure:
Investigative and law enforcement personnel; civil prosecution exemption, 31669

Employment and Training Administration
NOTICES
Adjustment assistance:
A-1 Rit & Tool Co. et al., 31747
GLI-United Plastics, 31748

Energy Department
See Conservation and Renewable Energy Office; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department

Environmental Protection Agency
RULES
Hazardous waste:
Identification and listing—
Exclusions, 31675
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Deinked paper fiber, 31674
Toxic substances:
Comprehensive assessment information rule; list additions
Correction, 31680
NOTICES
Agency information collection activities under OMB review, 31730, 31731
(2 documents)

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 31653
Cessna, 31651
Lockheed, 31652
McDonnell Douglas, 31649
Restricted areas, 31655
Transition areas, 31654
PROPOSED RULES
Airworthiness directives:
Pratt & Whitney, 31693, 31694
(2 documents)
Control zones, 31696, 31698–31700
(5 documents)
Jet routes, 31705
Transition areas, 31697, 31701–31704
(5 documents)
NOTICES
Airport noise compatibility program:
Charlotte/Douglas International Airport, NC, 31759
Drake Field Airport, AR, 31760
Rickenbacker Airport, OH, 31761

Federal Communications Commission
RULES
Radio stations; table of assignments:
Illinois, 31686
Kansas, 31686
Minnesota et al., 31685
Pennsylvania, 31685
Virginia, 31685
NOTICES
Agency information collection activities under OMB review, 31731

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 31764

Federal Emergency Management Agency
RULES
Federal crime insurance program:
Commercial plan classification and rating structure, and residential and commercial policy terminology, 31661

Federal Energy Regulatory Commission
PROPOSED RULES
Electric utilities (Federal Power Act):
Generic determination of rate of return on common equity for public utilities, 31706
NOTICES
Natural gas certificate filings:
Valley Gas Transmission, Inc., et al., 31724

Federal Grain Inspection Service
NOTICES
Agency designation actions:
Arizona, 31713
Florida, 31713
Nebraska et al., 31712
Texas, 31712
Texas et al., 31712

Federal Home Loan Bank Board
NOTICES
Conservator appointments:
Clover Federal Savings & Loan Association, 31731
Organization, functions, and authority delegations:
Federal Savings and Loan Insurance Corporation, conservator for insolvent insured institutions; etc., 31731

Federal Maritime Commission
NOTICES
Agreements filed, etc., 31732, 31733
(4 documents)

Federal Reserve System
RULES
Securities credit transactions; OTC margin stocks list (Regulations G, T, U, and X), 31646

Federal Trade Commission
NOTICES
Prohibited trade practices:
Firestone Fire & Rubber Co. Inc., 31733

Food and Drug Administration
PROPOSED RULES
Biological products:
Blood and blood products; labeling requirement removed
Correction, 31765

Forest Service
NOTICES
Meetings:
Mount St. Helens Scientific Advisory Board, 31714

General Services Administration
NOTICES
Agency information collection activities under OMB review, 31733

Health and Human Services Department
See also Food and Drug Administration; Social Security Administration
NOTICES
Organization, functions, and authority delegations:
National Institutes of Health, 31733

Hearings and Appeals Office, Energy Department
NOTICES
Cases filed, 31729

Housing and Urban Development Department
RULES
Community development block grants:
Special projects expenditures; increased local discretion, 31670

Interior Department
See also Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office
NOTICES
National Environmental Policy Act; implementation, 31735
Senior Executive Service:
Performance Review Board; membership, 31736

Internal Revenue Service
RULES
Income taxes:
National principal contract income, 31672
PROPOSED RULES
Income taxes:
National principal contract income; cross reference, 31708
NOTICES
Capital construction fund, nonqualified withdrawals; interest, 31762

International Trade Administration
NOTICES
Countervailing duties:
Carbon steel products from Sweden, 31714
Applications, hearings, determinations, etc.:
Argonne National Laboratory, 31716
Associated Universities, Inc., 31717
California State University et al., 31717
(2 documents)
Energy Department et al., 31720
Princeton University, 31721
Rensselaer Polytechnic Institute, 31722
Texas A&M University et al., 31719
University of Maryland at Baltimore et al., 31719
University of Nebraska Medical Center et al., 31720
University of Utah et al., 31718
University of Wisconsin, 31718

International Trade Commission
NOTICES
Meetings; Sunshine Act, 31764

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
CSX Transportation, Inc., 31738
Garden City Northern Railway, Inc., 31739
Intermountain Western Railroad Co., 31738

Justice Department
See also Antitrust Division; Drug Enforcement Administration; Justice Programs Office
NOTICES
Agency information collection activities under OMB review, 31740

Pollution control; consent judgments:
Printed Circuits, Inc., et al., 31740

Justice Programs Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Native American discretionary programs—
Child abuse cases, 31741
Law enforcement training and technical assistance, 31744

Labor Department
See also Employment and Training Administration; Occupational Safety and Health Administration
NOTICES
International labor affairs:
Worker rights, internationally recognized; export processing zones, 31746

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Idaho, 31736
Withdrawal and reservation of lands:
Idaho, 31736

Maritime Administration
NOTICES
Capital construction fund, nonqualified withdrawals; interest, 31762

Minerals Management Service
PROPOSED RULES
Outer Continental Shelf; oil, gas, and sulphur operations:
Well-completion and workover operations; minimum training requirements, 31768
NOTICES
Outer Continental Shelf operations:
North American Datum reference; offshore coordinate values, 31737

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Inter-Arts Advisory Panel, 31748

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Lamps, reflective devices, and associated equipment—
Replaceable bulb headlamps; downward torque deflection requirements, 31687

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Pacific Coast groundfish, 31688
NOTICES
Capital construction fund, nonqualified withdrawals; interest, 31672
Permits:
Marine mammals, 31722

National Park Service
NOTICES
Concession contract negotiations:
Grand Portage-Isle Royale Transportation Lines, Inc., 31737

Navy Department
NOTICES
Meetings:
Naval Academy, Board of Visitors, 31723

Nuclear Regulatory Commission
RULES
Advisory committees; establishment, utilization, and termination; policies and procedures, 31646
NOTICES
Meetings; Sunshine Act, 31764
Applications, hearings, determinations, etc.:
Combustion Engineering, Inc., 31749
Detroit Edison Co., 31749, 31750
(2 documents)
Northern States Power Co., 31751

Occupational Safety and Health Administration
RULES
Safety and health standards, etc.:
Formaldehyde; occupational exposure
Correction, 31765

Postal Rate Commission
NOTICES
Post office closings; petitions for appeal:
Montpelier, MS, 31751

Presidential Documents
PROCLAMATIONS
Special observances:
POW/MIA Recognition Day, National (Proc. 6002), 31794
EXECUTIVE ORDERS
Government employees:
Noncompetitive conversion (EO 12685), 31796

Public Health Service
See Food and Drug Administration

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Depository Trust Co., 31752
Dreyfus Life & Annuity Index Fund, Inc., et al., 31755
Home Life Insurance Co. et al., 31758
Philadelphia Stock Exchange, Inc., 31754, 31755
(2 documents)

Social Security Administration
RULES
Supplemental security income:
Retrospective monthly accounting; certain assistance payments exception, 31656

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities under OMB review, 31737

Transportation Department
See Federal Aviation Administration; Maritime Administration; National Highway Traffic Safety Administration

Treasury Department
See also Internal Revenue Service

NOTICES
Agency information collection activities under OMB review, 31762

Separate Parts in This Issue

Part II
Department of the Interior, Minerals Management Service, 31768

Part III
The President, 31794

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6002.....31794
Executive Orders:
12685.....31796

7 CFR
58.....31645

10 CFR
7.....31646

12 CFR
207.....31646
220.....31646
221.....31646
224.....31646

14 CFR
39 (4 documents).....31649, 31651–31653
71.....31654
73.....31655
Proposed Rules:
39 (2 documents).....31693, 31694
71 (10 documents).....31696–31704
75.....31705

18 CFR
Proposed Rules:
37.....31706

20 CFR
416.....31656

21 CFR
1310.....31657
1313.....31657
1316.....31669
Proposed Rules:
610.....31765
640.....31765

24 CFR
570.....31670

26 CFR
1.....31672
602.....31672
Proposed Rules:
1.....31708

29 CFR
1910.....31765

30 CFR
Proposed Rules:
250.....31768

40 CFR
180.....31674
261.....31675
704.....31680

44 CFR
80.....31681
83.....31681

47 CFR
73 (5 documents).....31685, 31686

49 CFR
571.....31687

50 CFR
663.....31688

Rules and Regulations

Federal Register
Vol. 54, No. 146
Tuesday, August 1, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA–88–119]

Grading and Inspection, General Specifications for Approved Dairy Plants and Standards for Grades of Dairy Products; Revision of United States Standards for Grades of Butter

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document revises the United States Standards for Grades of Butter. The standards have been revised to minimize the impact of the "short" body defect in the grading process. The revision take into consideration the changes in production technology and marketing practices. Modern commercial packaging equipment tends to rework bulk butter in such a way that any existing "short" body defect in the butter is either eliminated or greatly minimized when packaged for the commercial market.

EFFECTIVE DATE: August 31, 1989.

FOR FURTHER INFORMATION CONTACT: Roland S. Golden, USDA/AMS/Dairy Division, Dairy Standardization Section, P.O. Box 96456, Room 2750–S, Washington, DC 20090–6456, (202) 447–7473.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as a "non-major" rule under criteria contained therein.

The Administrator of the Agricultural Marketing Service has determined that this final rule will not have a significant economic impact on a substantial number of small entities because it concerns a voluntary standard and the revision does not increase costs to those utilizing the standard.

In addition, the Agency's Dairy Standardization Section conducted a review of the United States Standards for Grades of Butter. The objective of the review was to obtain both current and historical information relating to the impact of the "short" body defect in the butter grading process. "Short" body relates to the brittleness of butter and is influenced by processing techniques.

The review involved the collection and evaluation of information from the Agency's Dairy Grading Section and from the American Butter Institute, which represents the butter industry. It was determined from this information that modern commercial packaging equipment is able to rework butter in such a way that any "short" body defect in the butter is eliminated or greatly minimized when the butter is converted into retail packages.

Because of this, less importance should be given to the "short" body defect when grading butter. Formerly, the standards required that butter possessing a "definite short" body defect would receive the next lower grade. However, with the present packaging technology, such downgrading is inappropriate since the defect no longer exists when the butter is packaged for consumers. Therefore, the U.S. Standards for Grades of Butter are revised to minimize the impact of the "short" body defect. Also, the definition of "short" body characteristics is amended to add a definition for "pronounced short."

Changes Adopted in the Final Rule

This document makes the following changes in the United States Standards for Grades of Butter:

1. Deletes the "½" disrating for "slight short."

2. Changes the "1" disrating for "definite short" to a "½" disrating.

3. Provides for a "1" disrating for "pronounces short."

4. Adds a definition for "pronounced short" in the "Explanation of Terms" section.

USDA grade standards are voluntary standards that are developed to assist the orderly marketing process. Dairy plants are free to choose whether or not to use these grade standards. USDA grade standards for dairy products have been developed to identify the degree of quality in the various products. Quality in general refers to usefulness, desirability, and value of the product—its marketability as a commodity. When butter is officially graded, the USDA regulations governing the grading of manufactured or processed dairy products would be in effect. These regulations also require that fees and charges be assessed for grading services provided by USDA.

Response to Industry Comment

A rulemaking document proposing the changes outlined above was published in the Federal Register on March 7, 1989 (54 FR 9452). A 30-day comment period was provided so that interested persons could submit comments on the proposed changes.

The Agency received one comment from an individual representing a farmer-owned cooperative. This commenter stated that the butter manufacturers would benefit from the proposed change and that consumers thus would benefit from the savings in manufacturing costs. However, this individual also suggested that the "short" body defect should be deleted completely from the standards.

The Agency believes that while a "short" body defect usually is greatly reduced by modern packaging equipment, a *pronounced* "short" body defect would not be sufficiently reduced by reworking. It is the experience of the Agency that this degree of the "short" body defect in butter could cause product losses to the packaging company due to the breaking and splitting of the bulk butter during the repackaging process. This loss would mean extra costs to the packagers and eventually to the consumer. Consequently, the pronounced short defect should affect the final grade of the butter, as provided by this final rule.

List of Subjects in 7 CFR Part 58

Food grades and standards, Dairy products.

For the reasons set forth in the preamble, 7 CFR Part 58 is amended as follows:

PART 58—[AMENDED]

1. The authority citation for 7 CFR Part 58 continues to read as follows:

Authority: Sections. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627 unless otherwise noted.

2. In § 58.2627, Table II is revised to read as follows:

§ 58.2627 Specifications for U.S. grades of butter.

* * * * *

TABLE II—CHARACTERISTICS AND DISRATINGS IN BODY, COLOR, AND SALT

Characteristics	Disratings		
	S	D	P
Body:			
Short		½	1
Crumbly	½	1	
Gummy	½	1	
Leaky	½	1	2
Mealy or grainy	½	1	
Weak	½	1	
Sticky	½	1	
Ragged boring	1	2	
Color:			
Wavy	½	1	
Mottled	1	2	
Streaked	1	2	
Color specks	1	2	
Salt:			
Sharp	½	1	
Gritty	1	2	

S—Slight; D—Definite; P—Pronounced

3. Section 58.2635(b)(6) is revised to read as follows:

§ 58.2635 Explanation of terms.

* * * * *

(b) * * *

(6) *Short.* The texture is short-grained, lacks plasticity and tends toward brittleness. The intensity is described as "slight" when the butter lacks pliability and tends to be brittle; "definite" when sharp and distinct breaks form as pressure is applied against the butter plug; and "pronounced" when sharp and distinct breaks form in the butter surface when the trier is inserted, or when segments of the butter plug separate along fracture lines.

* * * * *

Signed at Washington, DC, on July 27, 1989.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 89–17933 Filed 7–31–89; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 7

[RIN 3150–AD25]

Advisory Committees; Policies and Procedures; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on June 27, 1989 (54 FR 26947), that defines the policies and procedures to be followed by the Nuclear Regulatory Commission in the establishment, utilization, and termination of advisory committees. The action is necessary to correct a paragraph that was inadvertently mislabeled and an incorrect cross-reference.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Acting Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7758.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 27, 1989, in the left-hand column of page 26951, make the following correction:

PART 7—[Corrected]

1. In § 7.10, the second paragraph designated as paragraph (b) is correctly designated as paragraph (c). In addition, the introductory text of the correctly designated paragraph (c) is revised to read as follows:

§ 7.10 The NRC Advisory Committee Management Officer.

* * * * *

(c) For purposes of paragraph (b) of this section, the term "records" includes (but is not limited to):

* * * * *

Dated at Bethesda, Maryland, this 28th day of July 1989.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 89–17912 Filed 7–31–89; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221, and 224

Regulations G, T, U and X; Securities Credit Transactions; List of Marginable OTC Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks is comprised of stocks traded over-the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List is published four times a year by the Board as a guide for lenders subject to the regulations and the general public. This document sets forth additions to or deletions from the previously published List which was effective May 8, 1989, and will serve to give notice to the public about the changed status of certain stocks.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2781. For the hearing impaired *only*, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Set forth below are stocks representing additions to or deletions from the Board's List of Marginable OTC Stocks. This supersedes the last List which was effective May 8, 1989. Additions and deletions for the List were published on April 24, 1989 (54 FR 16357). A copy of the complete List incorporating these additions and deletions is available from the Federal Reserve Banks.

The List of Marginable OTC Stocks includes those stocks that meet the criteria in Regulations G, T and U (12 CFR Parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR Part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The List also includes any stock designated

under a Securities and Exchange Commission (SEC) rule as qualified for trading in the national market system (NMS security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable at broker-dealers upon the effective date of their NMS designation. The names of these stocks are available at the Board and the SEC and will be incorporated into the Board's next quarterly List.

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the List specified in 12 CFR 207.6 (a) and (b), 220.17 (a) and (b), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of this List as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the List is effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6(c) (Regulation G), 12 CFR §§ 220.2(s) and 220.17(c) (Regulation T), and 12 CFR 221.2(j) and 221.7(c) (Regulation U), there is set forth below a listing of deletions from and additions to the Board's List of Marginable OTC Stocks:

Deletions From List

Stocks Removed For Failing Continued Listing Requirements

American Carriers, Inc.
No par common
American Continental Corporation
$.01 par common
$1.00 par exchangeable preferred
American Insured Mortgage Investors '84
Depository units of limited partnership interest
Animed, Inc.
$.01 par common
Applied Data Communications, Inc.
$.01 par common
Aris Corporation
$.01 par common
ASK Corporation
No par common
Associated Companies, Inc.
No par common
Avant-Garde Computing, Inc.
No par common
BI Incorporated
No par common
Big Bear, Inc.
$.01 par common
Bio-Technology General Corp.
$.01 par common
Biomerica Inc.
$.04 par common
Bombay Palace Restaurants, Inc.
$.01 par common
BSD Medical Corporation—Delaware
$.01 par common
Butler National Corporation
$.10 par common
Candela Laser Corporation
$.01 par common
Carolin Mines, Ltd.
Class A, no par common
Celina Financial Corporation
Class A, $.50 par common
Chaparral Resources, Inc.
$.10 par common
Charlotte Charles, Inc.
$.10 par common
Charter-Crellin, Inc.
$.01 par common
Chemex Pharmaceuticals, Inc.
Warrants (expire 05–29–89)
Class 1, warrants (expire 05–20–90)
Circle Express, Inc.
No par common
CMS Advertising, Inc.
$.01 par common
Colorocs Corporation
Class D, warrants (expire 05–04–89)
Comcast Corporation
5½% convertible subordinated debentures
Commonwealth Mortgage Company, Inc.
$.10 par common
Comp-U-Check, Inc.
$.10 par common
Costco Wholesale Corporation
7¼% convertible subordinated debentures
Crescott, Inc.
$.001 par common
De Tomaso Industries, Inc.
$2.50 par common
Dest Corporation
$.01 par common
Digitech, Inc.
$.10 par common
Eagle Telephonics, Inc.
$.01 par common
Electro-Catheter Corporation
$.10 par common
EMS Systems, Ltd.
No par common
Energy Conversion Devices, Inc.
$.01 par common
Exovir, Inc.
$.01 par common
Farm House Foods Corporation
$.05 par common
Great Southern Federal Savings Bank (Georgia)
$1.00 par common
GTS Corporation
$.01 par common
Haber, Inc.
$.01 par common
Voting, $2.00 par cumulative convertible preferred
Harvard Group, PLC
American Depository Receipts for ordinary shares (par value 2p)
Health Images, Inc.
Series A, $.01 par cumulative convertible preferred
Integrated Resources American Insured Mortgage Investors '85
Depository units of limited partnership interest
Kaypro Corporation
No par common
Kenilworth Systems Corporation
$.01 par common
Kimbark Oil & Gas Company
$.10 par common
Kings Road Entertainment, Inc.
$.01 par common
Kreisler Manufacturing Corporation
$.50 par common
Lund Enterprises, Inc.
Warrants (expire 04–30–91)
Margaux, Inc.
$.01 par common
Maxicare Health Plans, Inc.
No par common
7% convertible subordinated debentures
Municipal Development Corporation
$.01 par common
National Business Systems, Inc.

VOL 54 ISS 146 AG 1 1989 UMI

No par common
New Visions Entertainment Corporation
$.001 par common
Series A, par cumulative convertible preferred
Nucorp, Inc.
Warrants (expire 10–31–89)
OCG Technology, Inc.
$.10 par common
Olson Industries, Inc.
$3.00 par common
Paper Corporation of America
Series B, $.01 par preferred stock
Ragen Corporation
$.125 par common
Regina Company, Inc., The
$.0001 par common
Reliable Life Insurance Company, Inc.
Class A, $1.00 par common
Ridgewood Properties, Inc.
$.01 par common
Royal Business Group, Inc.
$1.00 par common
RTI, Inc.
$.01 par common
Sahlen & Associates, Inc.
$.001 par common
Scherer, R.P. Corporation
$1.00 par convertible preferred
Scribe Systems, Inc.
$.01 par common
Southland Financial Corporation
$1.00 par common
Staar Surgical Company
$.01 par common
Status Game Corporation
$.01 par common
Sun State Savings and Loan Association (Arizona)
$1.00 par common
Total Health Systems, Inc.
$.01 par common
TS Industries, Inc.
$.02 par common
United Building Services Corporation of Delaware
$.01 par common
United States Antimony Corporation
$.01 par common
Vicon Fiber Optics Corporation
$.10 par common
Vipont Pharmaceutical, Inc.
Warrants (expire 08–25–89)

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

American Income Life Insurance Company
$1.00 par common
Apollo Computer, Inc.
$.02 par common
7¼% convertible subordinated debentures
Bank of Redlands
$1.25 par common
Berry Petroleum Company
Class A, $.01 par common
Blockbuster Entertainment Corp.
$.10 par common
Brandywine Savings & Loan Association (Pennsylvania)
$1.00 par common
Brinkman Instruments, Inc.
$.01 par common
Brintec Corporation
$.01 par common
Cadnetix Corp.
$.01 par common
Cherokee Group, The
No par common
Colonial American Bankshares Corporation
$5.00 par common
Component Technology Corp.
$.01 par common
Conversion Industries, Inc.
No par common
CPI Corporation
$.40 par common
Criterion Group, Inc.
Class A, $.01 par common
Enseco Incorporated
$.01 par common
Envirodyne Industries, Inc.
$.10 par common
Excelan, Inc.
$.01 par common
Falstaff Brewing Corporation
$1.00 par common
General Ceramics, Inc.
$1.00 par common
Holmes, D.H. Company, Limited
$2.50 par common
HWC Distribution Corp.
$.01 par common
Irwin Magnetic Systems, Inc.
$.001 par common
ISC Systems Corporation
No par common
Itel Corporation
$1.00 par common
Class B, Series C, $1.00 par convertible perferred
Kemper Corporation
$5.00 par common
Krueger, W.A. Company
$.20 par common
Land of Lincoln Savings and Loan
$1.00 par common
Mayfair Industries, Inc.
$.01 par common
MBS Textbook Exchange, Inc.
$.01 par common
National FSI, Inc.
$.01 par common
Network Equipment Technologies, Inc.
$.01 par common
Pacific Western Bancshares
No par common
Plant Genetics, Inc.
$.01 par common
Poly-Tech, Inc.
No par common
Polymer International Corp.
$.01 par common
Princeville Corp.
$.20 par common
Property Trust of America
$1.00 par shares of beneficial interest
Rowe Furniture Corporation
$1.00 par common
Servico, Inc.
$.10 par common
Sound Warehouse, Inc.
$.01 par common
Stocker & Yale, Inc.
$1.00 par common
Stotler Group Inc.
$1.00 par common
Superior Electric Company, The
$1.00 par common
TCF Financial Corporation
$.01 par common
Thrifty Rent-a-Car System, Inc.
$.05 par common
Timberjack Corporation
$.01 par common
Total System Services, Inc.
$.10 par common
United Artists Communications, Inc.
$.01 par common
Universal Furniture Limited
$.01 par ordinary shares
Vitronics Corporation
$.01 par common
Waxman Industries, Inc.
No par common

Additions to the List

Akzo, N.V.
American Depository Receipts
Alameda Bancorporation
$2.50 par common
America First Financial Fund 1987—A Limited Partnership
Beneficial unit certificates, representing limited partnership interest
Bank Maryland Corp.
$.05 par common
Biogen, Inc.
$.01 par convertible exchangeable preferred
Bytex Corporation
$.10 par common
CCAIR, Inc.
$.01 par common
Cell Technology, Inc.
$.01 par common
Warrantes (expire 08–27–92)
Chemdesign Corporation
$.01 par common
Chempower, Inc.
$.10 par common
Cirrus Logic, Inc.
No par common
Columbia Pictures Entertainment, Inc.
Warrants (expire 06–01–92)
Comptronix Corporation
$.01 par common
Conservative Savings Bank (Nebraska)
$.01 par common
Consilium, Inc.
No par common
Cooker Restaurant Corporation
No par common
CRH, PLC
American Depository Receipts
Duty Free International, Inc.
$.01 par common
Dyncorp
Class A, 17% redeemable preferred
Eastchester Financial Corporation
$.01 par common
Fidelity Federal Savings Bank (Virginia)
$8.00 par common
First Financial Management Corp.
7% convertible subordinated debentures
First Merchants Corporation
No par common
First Western Bancorp, Inc.
(Pennsylvania)
$5.00 par common
Fleet Aerospace, Inc.
$.01 par common
Foothill Independent Bancorp
No par common
Goal Systems International, Inc.
No par common
Handex Environmental Recovery, Inc.
$.01 par common
Independent Bankgroup, Inc. (Vermont)
$1.00 par common
James Madison Limited
$1.00 par common
Kentucky Medical Insurance Company
Class A, $2.80 par common
Lifeline Healthcare Group, Ltd.
$.10 par common
Miniscribe Corporation
7½% convertible subordinated debentures
Mission-Valley Bancorp (California)
No par common
Nationwide Cellular Service, Inc.
$.01 par common
Warrants (expire 05–04–92)
New Milford Bank & Trust Company, The (Connecticut)
$5.00 par common
Pioneer Federal Savings Bank (Washington)
$1.00 par common
POP Radio Corporation
$.01 par common
Providence and Worchester Railroad Company
$.50 par common
Rexhall Industries, Inc.
No par common
Robert Half International, Inc.
7¼% convertible subordinated debentures
Schultz Sav-O Stores, Inc.
$.05 par common
Sevenson Environmental Services, Inc.
$.10 par common
Staples, Inc.
$.0008 par common
Symantec Corporation
$.01 par common
Synetic, Inc.
$.01 par common
Tele-Communications, Inc.
Rights (expire 01–31–95)
Tocor, Inc.
Units (expire 12–31–94)
Tseng Labs, Inc.
$.005 par common
United Artists Entertainment Company
Class A, $.001 par common
Class B, $.001 par common
Unitog Company
$.01 par common
UNR Industries, Inc.
Warrants (expire 05–31–95)
Xsirius Scientific, Inc.
$.01 par common
Yankee Energy System, Inc.
$5.00 par common

By order of the Board of Governors of the Federal Reserve System, acting by its Staff Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)(18)), July 28, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-17887 Filed 7-31-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-23-AD; Amdt. 39-6287]

Airworthiness Directives; McDonnell Douglas Model DC-9 and C-9 (Military) Series, Including Model DC-9-80 Series and Model MD-88 Airplanes, Equipped With a Ventral Aft Pressure Bulkhead

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-9 and C-9 (Military) series, including Model DC-9-80 series and Model MD-88 airplanes, which currently requires optically aided visual inspections for airplanes with a ventral aft pressure bulkhead, and repair or replacement, as necessary, of the aft pressure bulkhead attach tee. This amendment revises the current optically aided visual inspection program for airplanes equipped with a ventral aft pressure bulkhead, to require a repetitive high frequency eddy current inspection of the attach tee from the aft side of the bulkhead; and deletes the option for low frequency eddy current inspection from the forward side of the aft pressure bulkhead. This amendment is prompted by a recent report of a crack in the aft pressure bulkhead attach tee. If this condition is not corrected, bulkhead attach tee cracks may develop, which could result in rapid depressurization of the fuselage in flight and cause severe structural damage to the airplane.

EFFECTIVE DATE: September 7, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, DC9/MD80 Program Manager, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach California 90806–2425; telephone (213) 988–5321.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 88–13–09, Amendment 39–5954 (53 FR 21411; June 8, 1988), applicable to Model DC–9 and C–9 (Military) series, including Model DC–9–80 series and Model MD–88 airplanes, to require optically aided visual inspections, and repair or replacement, as necessary, of the aft pressure bulkhead attach tee, was published in the Federal Register on April 12, 1989 (54 FR 14656).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Three commenters stated that the proposed rule should not be adopted because the manufacturer is currently developing an optional low frequency eddy current inspection technique from the forward side of the bulkhead. They requested that the proposed rule await release of final service information to provide the operators with a procedure to inspect and repair the attach tees. The FAA disagrees. The FAA is aware that the manufacturer is developing a new nondestructive inspection technique. When this technique has been fully developed and approved, the FAA may consider revising this AD to incorporate the new nondestructive inspection technique. In consideration of the safety implications of the addressed unsafe conditions, however, the FAA considers that it would be inappropriate to delay the issuance of this final rule

action until such an inspection technique is available.

Three commenters stated that the proposed rule incorrectly referenced the manufacturer's service bulletin and part numbers. The FAA agrees, and the appropriate references and part numbers have been incorporated into the final rule.

One commenter stated that the proposed rule should be revised to specify the manufacturer's rework drawings that provide instructions for replacing existing aft pressure bulkhead tee caps with new improved tee caps. The FAA agrees, and the appropriate references and instructions have been incorporated into the final rule.

One commenter stated that the replacement of existing attach tees with the improved attach tee in accordance with the manufacturer's service rework drawing should constitute terminating action for the inspection requirements of this AD, and should be included in the proposed rule as terminating action. The FAA disagrees. Due to the multiple-site nature of the reported cracking, and current nondestructive inspection technology, the need exists for continual inspections at intervals which are supported by tests and analysis.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,400 Model DC–9 series airplanes of the affected design in the worldwide fleet. It is estimated that 740 airplanes of the affected design in the worldwide fleet. It is estimated that 740 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $592,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39–5954 (53 FR 21411; June 8, 1988), AD 88–13–09, as follows:

McDonnell Douglas: Applies to Model DC–9 series and C–9 (Military) including Model DC–9–80 series and Model MD–88 airplanes, equipped with a ventral aft pressure bulkhead, certificated in any category. Compliance is required as indicated, unless previously accomplished within the last 3,500 landings.

To prevent cracks which could result in structural failure of the ventral aft pressure bulkhead, accomplish the following:

A. Prior to the accumulation of the number of landings indicated in the table below, and thereafter at intervals not to exceed 3,500 landings, inspect the aft side of the ventral aft pressure bulkhead attach tee section around the entire periphery of the fuselage, in accordance with the procedures outlined in paragraphs A.1., A.2., and A.3., below.

TABLE

Accumulated landings as of the effective date of this AD	Initial inspection prior to accumulation of the following landings after effective date of this AD
35,000—49,999	1,500 landings.
50,000—59,999	1,000 landings.
60,000 or more	300 landings.

For airplanes with less than 35,000 landings as of September 6, 1985, conduct the initial inspection before the accumulation of 36,500 landings.

1. Remove any sealant from the inspection area of tee section that might hinder optically aided and high frequency eddy current inspections. Clean dirt, grease, and all foreign materials from the inspection area using lint-free wipers and 1,1,1 trichloroethane solvent or equivalent; and

2. Using an optically aided visual inspection technique, inspect the 5910130–47, –55, and –56 attach tees, in accordance with McDonnell Douglas Service Sketch 3660B, dated February 26, 1985; and

3. Using a high frequency eddy current inspection technique, in accordance with McDonnell Douglas Alert Service Bulletin A53–231, dated February 24, 1989, Accomplishment Instructions, Paragraph 2, Inspection Procedure B., inspect the 5910130–51, –53, and –54 attach tees from the aft side of the bulkhead.

Note: Inspection Procedure B. is applicable to the ventral bulkhead configuration, however, except that the applicable part numbers referenced in paragraph A.3., above, are to be used in-lieu of those part numbers referenced in ASB53–231.

B. If cracks are found, prior to further flight, replace the cracked tee cap or repair by splicing in a section of the tee cap with a new, like or improved part, in accordance with McDonnell Douglas Service Rework Drawings SR09530001, Revision C, dated August 18, 1987; or SR09530001, Revision "Advance D", dated October 29, 1987, or SR09530056, Revision "B", dated March 27, 1989. Prior to the accumulation of 35,000 landings after the repair or replacement, resume the repetitive inspections in accordance with paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

This amendment supersedes Amendment 39–5954, AD 88–13–09.

This amendment becomes effective September 7, 1989.

Issued in Seattle, Washington, on July 24, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–17861 Filed 7–31–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–NM–40–AD; Amdt. 39–6286]

Airworthiness Directives; Cessna Model 550 and 551 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Cessna Model 550 and 551 series airplanes, which requires inspection of both engine fuel flow transmitter installations, and replacement, if necessary, of certain defective transmitters. Replacement of transmitters with two-piece electrical connector end fittings is required. This proposal is prompted by reports of failure of the two-piece electrical connector fitting, resulting in loss of fuel pressure and total engine power loss. This condition, if not corrected, could lead to additional incidents of total engine power loss and the potential for engine compartment fires.

EFFECTIVE DATE: September 7, 1989.

ADDRESSES: The applicable service information may be obtained from Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington; or at the FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Pearson, Aerospace Engineer, FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4427.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Cessna Model 550 and 551 series airplanes, which requires inspection for and removal of Cessna Part Number 9912031–5 fuel flow transmitters having a two-piece electrical connector end fitting, and replacement with Cessna Part Number 9912031–6 fuel flow transmitters, was published in the Federal Register on April 28, 1989 (54 FR 18304).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the proposed rule.

Since issuance of the proposal, the manufacturer has issued Revision 1 to Cessna Service Bulletin SB550–73–1, dated April 19, 1989. This revision merely clarifies certain wiring replacement procedures. The final rule has been changed to specify Revision 1 as the appropriate service document.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. This change will neither increase the economic burden on any operator nor increase the scope of the rule.

It is estimated that 134 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $21,440.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Cessna: Applies to Model 550 and 551 series airplanes, Unit Numbers –0002 through –0207 and –0209, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent failure of fuel flow transmitter electrical connector end fittings, which could result in total engine power loss or an engine compartment fire, accomplish the following:

A. Within the next 50 hours time-in-service after the effective date of this AD, inspect both engines to determine whether Cessna Part Number (P/N) 9912031–6 fuel flow transmitters are installed, in accordance with Cessna Service Bulletin SB550–73–2, dated February 10, 1989.

B. If Cessna P/N 9912031–6 fuel flow transmitters are installed on both engines, no further action is necessary.

C. If Cessna P/N 9912031–5 fuel flow transmitters are installed, inspect the transmitter electrical connector end fitting for each, in accordance with Cessna Service Bulletin SB550–73–2, dated February 10, 1989.

1. If each Cessna P/N 9912031–5 fuel flow transmitter is determined to have a one-piece electrical connector end fitting, no further action is necessary.

2. Each Cessna P/N 9912031–5 fuel flow transmitter determined to have a two-piece electrical connector end fitting must be replaced, either:

a. Prior to further flight, in accordance with Cessna Service Bulletin SB550–73–1, Revision 1, dated April 19, 1989; or

b. Within 6 months after the effective date of this AD, in accordance with Cessna Service Bulletin SB550–73–1, Revision 1, dated April 19, 1989, provided that the fitting is initially inspected in accordance with Paragraph 5 of Cessna Service Bulletin SB550–73–2, dated February 10, 1989, and inspected thereafter at intervals not to exceed 25 hours time-in-service, and found to be free of cracks between the electrical connector receptacle and the end fitting base. Any transmitter having a cracked fitting must be replaced prior to further flight, in accordance with Cessna Service Bulletin

SB550-73-1, Revision 1. Replacement of a transmitter in accordance with Cessna Service Bulletin SB550-73-1, Revision 1, constitutes terminating action for the repetitive inspection requirements of this paragraph for the transmitter replaced.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region.

Note: If appropriate, the request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Wichita Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington; or at the FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

This amendment becomes effective September 7, 1989.

Issued in Seattle, Washington on July 24, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-17862 Filed 7-31-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 89-NM-01-AD; Amdt. 39-6288]

Airworthiness Directives; Lockheed Model 382 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Lockheed Model 382 series airplanes, which requires periodic inspections of the nose landing gear (NLG) strut assemblies to detect corrosion and cracking in the steering collar area, and rework or replacement, if necessary. This amendment is prompted by a report of failure of a NLG strut assembly, which resulted in the separation of the NLG from the airplane during landing. This condition, if not corrected, could lead to loss of controllability of the airplane upon landing.

EFFECTIVE DATE: September 7, 1989.

ADDRESSES: The applicable service information may be obtained from Lockheed Aeronautical Systems Company, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Atlanta Aircraft Certification Office, FAA, Central Region, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Bentley, Aerospace Engineer, Airframe Branch (ACE-120A), Atlanta Aircraft Certification Office, FAA, Central Region, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991-2910.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Lockheed Model 382 series airplanes, which requires periodic inspections of the nose landing gear (NLG) strut assemblies to detect corrosion and cracking in the steering collar area, was published in the **Federal Register** on March 1, 1989 (54 FR 8550).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The sole commenter, Lockheed, requested that the proposed repetitive inspection interval of 3,000 hours time-in-service be revised to 3,150 hours so that inspections could be accomplished during operators' regular maintenance schedules, and so as to fit Lockheed's recommended time between overhaul of 12,600 hours. The FAA concurs and has determined that extension of the repetitive inspection interval by an additional 150 hours will not have an adverse impact on safety. The final rule has been revised accordingly.

Lockheed indicated that it is revising the applicable service bulletin to include additional information concerning procurement of equipment and to update certain rework procedures to reflect current practices. Lockheed requested that issuance of the final rule be delayed until this revision is available. The FAA does not concur. Lockheed has advised the FAA that the revision to the service bulletin will not be issued until November 1989. In light of the safety implications addressed in the AD, the FAA considers it inappropriate to delay this action until that time. The FAA has determined that the procedures provided in the current issue of the service bulletin are adquate to accomplish the requirements of this AD.

Lockheed also provided updated information as to the current number of affected airplanes in the worldwide and U.S. fleet. The eonomic impact analysis paragraph below has been revised to include this new information.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. These changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 36 Model 382 series airplanes of the affected design in the worldwide fleet. It is estimated that 21 airplanes of U.S. registry will be affected by this AD, that it will take approximately 74 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $62,160 for the initial inspection cycle.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Lockheed: Applies to Model 382 series airplanes, serial numbers 3946 through 4637, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the nose landing gear strut assembly, accomplish the following:

A. Within the next 250 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 3,150 hours time-in-service, perform an inspection for corrosion of the nose landing gear strut assembly, part number 388071-3, in accordance with Lockheed Service Bulletin 382-32-31, dated September 5, 1979.

1. If corrosion is detected which is within the limits specified in the service bulletin, rework in accordance with the service bulletin prior to further flight.

2. If corrosion is detected which is outside the limits specified in the service bulletin, prior to further flight, accomplish one of the following:

a. Replace the defective cylinder assembly, part number 371675-1 with a serviceable cylinder assembly; or

b. Modify the nose landing gear strut and components in accordance with Lockheed Service Bulletin 382-32-23, dated March 17, 1978.

B. Modification of the nose landing gear strut and components in accordance with Lockheed Service Bulletin 382-32-23, dated March 17, 1978, constitutes terminating action for the inspection requirements of this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Atlanta Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Lockheed Aeronautical systems Company, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Atlanta Aircraft Certification Office, FAA, Central Region, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

This amendment becomes effective September 7, 1989.

Issued in Seattle, Washington, on July 24, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-17864 Filed 7-31-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 89-NM-38-AD; Amdt. 39-6289]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires replacement of the upper door liner track pivot bolts on the aft passenger doors. This amendment is prompted by a report of interference between the pivot bolt and the escape slide packboard. This condition, if not corrected, could result in failure of the escape slide to properly deploy and the door to fully open, thus delaying and possibly jeopardizing successful emergency evacuation of an airplane.

EFFECTIVE DATE: September 7, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Roger S. Young, Airframe Branch, ANM-120S; telephone (206) 431-1929. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 767 series airplanes, which requires replacement of the upper door liner track pivot bolts on the aft passenger doors, was published in the **Federal Register** on May 1, 1989 (54 FR 18536).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter expressed no objection to the proposed rule.

Since issuance of the Notice, Boeing has issued Revision 1 to Alert Service Bulletin 767-25A0109, dated April 27, 1989. This revision incorporates the "Notice of Status Change" which was cited in paragraph A. of the proposal. The final rule has been revised to reference Revision 1 of the alert service bulletin.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously noted. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 212 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 98 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The cost of the required parts is estimated to be less than $50. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $28,420.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 767 series airplanes, identified in Boeing Alert Service Bulletin 767-25A0109, Revision 1, dated April 27, 1989, listed in Group 1 on which Boeing Service Bulletin 767-25-0036 has been accomplished, and airplanes listed in Group 2, certificated in any category. Compliance is required within 18 months after the effective date of this AD, unless previously accomplished.

To ensure that the escape slide will deploy properly, accomplish the following:

A. Replace the upper door liner pivot bolts, in accordance with Boeing Alert Service Bulletin 767-25A0109, Revision 1, dated April 27, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 7, 1989.

Issued in Seattle, Washington, on July 24, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-17883 Filed 7-31-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AGL-11]

Alteration to Transition Area, Eagle River, WI

AGENCY: Federal Aviation Administraton (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the existing Eagle River, WI, transition area to accommodate a new VOR/DME Runway 04 Standard Instrument Approach Procedure (SIAP) to Eagle River Union Airport, Eagle River, WI. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, May 30, 1989, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the existing Eagle River, WI, transition area airspace (54 FR 22914).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the designated transition area airspace near Eagle River, WI. The present transition area is being modified to accommodate a new VOR/DME Runway 04 SIAP to Eagle River Union Airport, Eagle River, WI.

The development of the procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Eagle River, WI [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Eagle River Union Airport (Lat. 45°55'55" N., Long. 89°16'04" W.); and within 3 miles each side of the 037° bearing from the airport, extending from the 5-mile radius area to 7.5 miles northeast of the airport; and within 3 miles each side of the 201° bearing from the airport, extending from the 5-mile radius area to 6 miles southwest of the airport.

Issued in Des Plaines, Illinois, on July 21, 1989.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89-17885 Filed 7-31-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 88-ASW-60]

Establishment of Restricted Area R-6318; Marfa, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Restricted Area R-6318, located near Marfa, TX, for the deployment of a tethered aerostat-borne radar system within the restricted area at the request of the United States Customs Service. This action allows the Customs Service to provide surveillance of airspace from the surface up to 14,000 feet mean sea level (MSL) and to detect low-altitude suspect aircraft attempting to penetrate the airspace. The notice of proposed rulemaking (NPRM) for the establishment of R-6318 also included the establishment of R-6316, R-6317, and the alteration of Federal Airway V-13. Preparations for the deployment of a tethered aerostat-borne radar system are completed at the site for R-6318 but have not been completed at the sites for R-6316 and R-6317. The Customs Service is ready to begin operations at the site for R-6318; therefore, action is being taken to establish R-6318 prior to the establishment of R-6316 and R-6317.

EFFECTIVE DATE: 0901 u.t.c., August 10, 1989.

FOR FURTHER INFORMATION CONTACT: Jesse B. Bogan, Jr., Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On March 10, 1988, the FAA proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to establish Restricted Areas R-6316 located near Eagle Pass, TX; R-6317 located near El Sauz, TX; R-6318 located near Marfa, TX; and to alter the description of VOR Federal Airway V-13 located in the vicinity of El Sauz, TX (54 FR 10167). This action would allow the Customs Service to provide surveillance of airspace and to detect low-altitude suspect aircraft attempting to penetrate the airspace. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Comments on the proposal were received from the United States Air Force (USAF), the Texas Aeronautical Commission (TAC), and the Aircraft Owners and Pilots Association (AOPA). Only those comments specifically related to R-6318 are listed since this document pertains only to the establishment of R-6318.

The USAF objected to the 15,000 feet MSL ceiling of R-6318 at the proposed location. The restricted area would be located under the Valentine Military Operations Area which has a base of 15,000 feet MSL. The USAF suggested to the Customs Service that the ceiling of the proposed restricted area, R-6318, should be lowered to 14,000 feet MSL. The Customs Service agreed with the suggestion of the USAF and has requested that the FAA establish R-6318 with a ceiling of 14,000 feet MSL instead of the 15,000 feet MSL ceiling as proposed in the NPRM. Therefore, R-6318 will be established with a ceiling of 14,000 feet MSL instead of the 15,000 feet MSL ceiling as proposed in the NPRM.

The TAC submitted the following written comments to the FAA:

1. The TAC objected to the proposed location of R-6318 which would block the VFR flyway between Marfa and Van Horn, TX, along U.S. Highway 90 and the southern pacific railroad tracks. The commission stated that low flying VFR aircraft in marginal VFR conditions traveling east and turning south to avoid R-6318 would easily lose sight of the highway and railroad tracks, and aircraft traveling west and turning north around the restricted area would be at risk from the rising terrain approximately 1.25 nautical miles northeast of R-6318. While it is true that VFR pilots may lose sight of VFR landmarks, e.g., the railroad tracks or the highway, while circumnavigating the restricted area, pilots will be able to establish their aircraft on a heading or course which would allow them to sight the railroad tracks or the highway within a relatively short time or distance. In addition, circumnavigating the restricted area to the northeast may require pilots to make altitude adjustments in VFR conditions to compensate for the rising terrain located northeast of the restricted area. The altitude adjustment, if desired by the pilot, can be taken without any safety problems.

2. The TAC expressed a concern that pilots would be unable to determine the exact location of the aerostat balloon within the restricted area, and that the unlit tether cables of the aerostat balloon would be a considerable risk for any VFR pilot flying through the restricted area. The restricted area is designed to completely contain the aerostat balloon and its cables, lighted or unlighted. We recognize the pilot's desire to be able to see the balloon and its cable, but it is the pilot's responsibility to remain clear of a restricted area between the designated altitudes and during the time of designation for the restricted area, unless the pilot has advance permission to traverse the restricted area. Therefore, determining the exact location of an aerostat balloon within a restricted area and the lighting of its cables would be inconsequential to a pilot.

3. The TAC recommended that alternate sites be studied before any final decision is made on the exact location of the aerostat balloon. Prior to the selection of a site for the restricted area, the Customs Service considered several sites for the restricted area. The site selected for the establishment of the restricted area was determined to be the best possible site for the deployment of a tethered aerostat-borne radar system.

Comments received from the AOPA are as follows:

1. Public hearings should be held to allow for user input. Due to the nature of the aerostat program and security, the Customs Service felt that public hearings prior to the establishment of the aerostat restricted areas would not be in the best interest of the aerostat program.

2. The aerostat balloons should not be flown prior to being indicated on the aeronautical charts, and the FAA should publish Notices to Airmen (NOTAMs) concerning the establishment of the restricted areas. The Customs Service has requested to establish the restricted area as soon as possible in order to execute the radar surveillance systems of the aerostat program. Delaying the deployment of the aerostat would have a significant/adverse impact on the schedule and cost of the proposed radar surveillance systems in the southwest. The FAA will inform the public of the

VOL 54 ISS 146 AG 1 1989 UMI

establishment of R–6318 by publishing the information in the NOTAMs prior to the effective date for the establishment of R–6318. This information will appear in the August special notice procedures between August 10 and September 21, 1989. Subsequently, R–6318 will appear on the en route charts beginning September 21, 1989, and should appear on other related aeronautical charts as they are published.

3. The Customs Service should place strobe lights on the aerostat balloons' tether cables. The FAA does not require the Customs Service to place strobe lights on the aerostat balloons' tether cables while the balloons are within the confines of the restricted area. Also, the Customs Service feels that placing strobe lights on the aerostat balloons' tether cables would pose a dangerous threat to the aerostat balloons during inclement weather, as well as a danger to operators when they retrieve the balloon during lightning activity.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations establishes Restricted Area R–6318 in the vicinity of Marfa, TX. The Customs Service will deploy a tethered aerostat-borne radar system with the capability of detecting low-altitude suspect aircraft attempting to penetrate the airspace at this location. The system will increase the probability of the interception and interdiction of suspect aircraft and provide low-altitude radar coverage for the Customs Service. In order to achieve the aim of the Customs Service, it is necessary to restrict airspace from the surface to 14,000 feet MSL, within a 2-statute-mile radius of a point on the Marfa very high frequency omni-directional radio range (VOR) 292° radial, 21 miles from the VOR.

With the exception of that part of the notice which proposed to establish R–6316, R–6317, alter V–13, change the ceiling of R–6318 from 15,000 feet MSL to 14,000 feet MSL, and editorial changes, these amendments are the same as those proposed in the notice. A separate action will be taken at a later date to establish R–6316, R–6317, and alter V–13, after preparations for the deployment of the tethered aerostat-borne radar systems are completed at those sites. Section 73.63 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

Effective Date

The FAA finds good cause for making this amendment effective in less than 30 days after publication because the Customs Service has indicated that delaying the deployment of the aerostat would have a significant/adverse impact on the schedule and cost of all proposed radar surveillance systems in the southwest. Pilots in the vicinity of Marfa, TX, will be informed of the establishment of R–6318 prior to the effective date through the NOTAM system.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.63 [Amended]

2. § 73.63 is amended as follows:

R–6318 Marfa, TX [New]

Boundaries. A 2-mile radius centered at lat. 30°26'00"N., long. 104°20'00"W.
Designated altitudes. Surface to 14,000 feet MSL.
Time of designation. Continuous.
Controlling agency. FAA, Albuquerque ARTCC.
Using agency. United States Customs Service.

Issued in Washington, DC, on July 25, 1989.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 89–17886 Filed 7–31–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulation No. 16]

RIN 0960–AC49

Supplemental Security Income for the Aged, Blind, and Disabled; Exception of Certain Assistance Payments From Retrospective Monthly Accounting

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule implements section 1611(c)(5) of the Social Security Act (the Act) as added by section 9106 of Pub. L. 100–203 (the Omnibus Budget Reconciliation Act of 1987). Section 1611(c)(5) of the Act, effective April 1, 1988, provides that the Supplemental Security Income (SSI) benefit for a month will be computed using the amount of certain assistance payments received in the same month, rather than the amount of these payments received in a prior month.

EFFECTIVE DATE: This rule is effective on August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1755.

SUPPLEMENTARY INFORMATION: Pursuant to section 1611(c) of the Act, the SSI benefit amount is determined based on income in the second prior month rather than the current month. This is known as retrospective monthly accounting (RMA). The statute provides an exception to this general rule under which benefit amounts for the first 3 months of eligibility or reeligibility are based on income in the first month of eligibility or reeligibility. These provisions are contained in 20 CFR 416.420.

Section 1611(c)(5) of the Act, as added by section 9106 of Pub. L. 100–203, provides a further limited exception to the statutory rule for counting income in determining benefit amounts. Under this special rule, income in the form of certain assistance payments will be considered in determining the benefit amount for the month in which it is received (the current month) rather than having such income received in a prior month determine the current month's benefit amount. These assistance payments are as follows:

(1) Aid to families with Dependent Children under title IV–A of the Social Security Act (the Act);

(2) Foster Care under title IV–E of the Act;

(3) Refugee Cash Assistance pursuant to section 412(e) of the Immigration and Nationality Act;

(4) Cuban and Haitian Entrant Assistance pursuant to section 501(a) of Pub. L. 96–422; and

(5) Bureau of Indian Affairs general assistance and child welfare assistance pursuant to 42 Stat. 208 as amended.

This final rule amends § 416.420(b) of the current regulations to include this statutory change.

Justification for Dispensing With Rulemaking Procedures

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and comment procedures when an agency finds there is good cause for dispensing with such procedures. Section 553(b)(3)(B) of the APA exempts application of notice and comment rulemaking procedures "when the agency for good cause finds * * * that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest." We are dispensing with notice and comment rulemaking in the case of this rule because such rulemaking is unnecessary since this rule merely reflects the provisions of section 1611(c)(5) of the Social Security Act, as added by section 9106 of Pub. L. 100–203, and does not contain any policies established by the Secretary.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291, because program and administrative costs are entirely the result of legislation and not this rule. The program and administrative costs will be insignificant and savings are estimated at less than $1 million a year. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act of 1980

This regulation imposes no reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 13–807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: May 31, 1989.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: July 5, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 416 of Title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart D of Part 416 continues to read as follows:

Authority: Secs. 1102, 1611 (a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382 (a), (b), (c), and (e), 1382a, 1382f, and 1383.

2. In § 416.420, a new paragraph (b)(4) is added to read as follows:

§ 416.420 Determination of benefits; general.

* * * * *

(b) *Exceptions to the general rule.*—

* * *

(4) *Income derived from certain assistance payments.* We use your income in the current month from the programs listed below to determine your benefit amount for that same month. The assistance programs are as follows:

(i) Aid to Families with Dependent Children under title IV–A of the Social Security Act (the Act);

(ii) Foster Care under title IV–E of the Act;

(iii) Refugee Cash Assistance pursuant to section 412(e) of the Immigration and Nationality Act;

(iv) Cuban and Haitian Entrant Assistance pursuant to section 501(a) of Pub. L. 96–422; and

(v) Bureau of Indian Affairs general assistance and child welfare assistance pursuant to 42 Stat. 208 as amended.

* * * * *

[FR Doc. 89–17845 Filed 7–31–89; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1310 and 1313

Records, Reports, Imports, and Exports of Precursor and Essential Chemicals, Tableting Machines and Encapsulating Machines

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures designed to implement the requirements of the Chemical Diversion and Trafficking Act of 1988. The rule contains the requirements for the recordkeeping, reporting, importing, and exporting of precursor and essential chemicals and recordkeeping and reporting on tableting machines and encapsulating machines.

EFFECTIVE DATE: Part 1310 (the format required on records and reports) will be effective August 31, 1989; Part 1313 will be effective October 30, 1989; except §§ 1313.15(a) and 1313.24(a) which will be effective on August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Gitchel, Chief, State and Industry Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Introduction

On February 8, 1989, a notice of proposed rulemaking designed to implement the Chemical Diversion and Trafficking Act of 1988 (the "Act") was published in the **Federal Register** (54 FR 6144–6151). The proposed rule provided the opportunity for interested parties to submit comments on these proposed regulations on or before March 27, 1989.

The numbering system for Parts 1310 and 1313 has been revised from the proposed regulations to be consistent with the numbering in existing regulations in 21 CFR Part 1300.

Thirty-four interested parties filed comments. A section-by-section analysis of the comments and the DEA's consideration of them are set forth below.

Part 1310—Records and Reports of Listed Chemicals and Certain Machines

Several comments were received stating that the Piperidine Report (DEA Form 420) and its relevant regulations be deleted from this section. To avoid any confusion, DEA wishes to clarify that the previous Part 1310, to include the

DEA Form 420, the seven-day and the semiannual reports, is deleted and replaced by the current Part 1310.

Definitions (§ 1310.01)

Fourteen comments addressed the definitions of "regulated person" and "retrievable" and the exemptions to a "regulated transaction" as being unclear, confusing, or not in compliance with the Act. The DEA has redefined the term "regulated person" to more closely parallel the definition of "person", as used elsewhere in Title 21 (See 21 CFR 1301.02(j)).

One comment stated that the definition of "regulated person" should be expanded to include the parent and subsidiaries, affiliates and related companies. However, it is DEA's view that companies that are separate legal entities will be treated for the purposes of these regulations as separate "regulated persons".

Four comments asked whether a licensed customs broker is in any sense a "regulated person" and also exprssed concern about the role of common carriers. The broker becomes a regulated person only when it meets the definition of a chemical importer or exporter, as explained in § 1310.01(f)(1)(ii), § 1313.02(b) and § 1313.02(f).

Several comments took exception to § 1310.01(f)(1)(i), which establishes the exemption for certain domestic, lawful transactions for "agents and employees". The comments stated that the proposed exemption would add confusion to the clear language of the Act, would create the need for excessive, unnecessary and unintended recordkeeping and reporting and would be redundant. It is the intent of the regulation to ensure that records are available and that the ability exists to assign specific responsibility. As such, specific definition of those persons who are covered by the exemption is necessary.

One comment objected to § 1310.01(f)(1)(i) by addressing the unrelated topic of warehouses and public terminals. Exemptions which apply to warehouses and public terminals are specifically covered under § 1310.01(f)(1)(ii).

One comment noted the incorrect reference mentined at the end of § 1310.01(f)(1) (ii) and (iii); "this section" and "this title or title III". DEA concurs and the wording has been changed to reflect the proper reference.

It was noted by DEA that part of the exemption relating to tableting machines and encapsulating machines specified under § 1310.01(f)(2) had been inadvertently omitted from the proposed regulations. The missing language has been incorporated into this subsection.

One comment requested a clarification of the term "manufacture". Three comments questioned if the Act applied to chemicals "used in the manufacture" of products manufactured under the approval of the Federal Food, Drug, and Cosmetic Act. It was not the intent to regulate "use or consumption in manufacture". A regulated transaction does not cover receipt of listed chemicals, except by a regulated person. Also, a specific exemption from the term regulated transaction is provided for a "chemical mixture" as set forth in § 1310.01(g).

Two comments took exception to the use of "readily" in the definition of "retrievable" (§ 1310.01(h)), stating that timeliness should not be a primary concern and that it adds nothing to the definition. Clearly, one of the purposes of the Act is to provide law enforcement access to information which is accurate and can be responded to in a timely manner. Therefore, timeliness is a major concern.

Three comments addressed the need to define the terms "tableting" and "encapsulating" machines, as regulated by the Act. DEA has incorporated the definitions into the final regulations (§§ 1310.01 (i) and (j)). One comment asked for specific clarification of the status of a specific encapsulating machine which is addressed with this added definition. The proposed § 1310.01(i) is redesignated as paragraph (k).

Substances Covered (§ 1310.02)

Several comments addressed the 30 days advance notice of additions of substances as listed chemicals, specified in § 1310.02(c), as being insufficient, inadequate, and in need of improvement. These parties have misinterpreted this subsection. Prior to implementing the addition or deletion of substances as listed chemicals, DEA will publish in the **Federal Register** a proposed rule allowing 30 days for comments. It has been and will continue to be this agency's practice to provide for reasonable effective dates and sufficient time to establish compliance with the regulations at the time any final order is published adding a new chemical.

One comment suggested that DEA adopt a similar mechanism described in Section 6053(b) of the Act for adding new chemicals to the list. That section provides for the Attorney General to forward to the Office of Management and Budget (OMB) any proposed regulations for OMB's comments and recommendations. DEA currently forwards all proposed rules and final rules to OMB for review pursuant to E.O. 12291, except those required to be made "on the record." Since this is not an "on the record" rulemaking, all proposals for adding or deleting chemicals from the list of listed chemicals will be reviewed by OMB.

One comment requested DEA to include a period of time for establishing "regular customers" and "regular suppliers" after adding a substance as a listed chemical. Although the Act does not contain a provision for this additional period, DEA recognizes the usefulness of this suggestion and intends to provide an opportunity for such submissions under any final order which may be issued under § 1310.02(h).

Several comments addressed the need for DEA to specifically identify the listed chemicals by means of a numbering system already in use by the chemical industry to minimize uncertainty regarding which chemicals are regulated. DEA has reviewed the three numbering systems specifically mentioned in the comments (CAS, TSUS, and Schedule B) and has determined that they were designed for other purposes and do not specifically meet the needs of the Act. In addition, there are overlaps and repetitions within each of these systems which may cause additional confusion.

However, DEA will produce a reference guide as an aid to the regulated industry.

Persons Required To Keep Records and File Reports (§ 1310.03)

Three comments addressed a reference missing from § 1310.03. This section should end "* * * shall keep a record of the transaction as specified by § 1310.04 and file reports as specified by § 1310.05." DEA agrees with these comments and has made the appropriate modifications.

Maintenance of Records (§ 1310.04)

Several comments requested further explanation of the phrase "the principal place of business", as specified in the proposed § 1310.04(c). DEA has inserted additional language into this subsection clarifying that any regulated person who conducts regulated transactions at more than one location shall keep records at each location. To allow flexibility to companies with multiple locations, a provision for a single central recordkeeping location is provided. However, each regulated person operating at multiple locations where records are stored must devise a system to ensure that the recordkeeping and reporting requirements are not being

evaded. This subsection was subdivided to facilitate a better understanding of its purpose.

One comment suggested that records be maintained for at least five to seven years. This recommendation would be inconsistent with the specific time limits for keeping records established by the Act.

Reports (§ 1310.05)

Several comments requested further clarification of the terms "extraordinary quantity", "uncommon method of payment", and "unusual or excessive losses". These terms apply to situations which appear to be outside the framework of a normal business transaction. The chemical industry is expected to understand the nature of its legitimate business transactions and must make informed decisions as to whether the above terms apply to any of their transactions. DEA intends to make available informal guidance, as opposed to regulations, to assist the chemical industry in meeting this requirement.

Two comments requested clarification of the term "nearest" DEA office mentioned in §§ 1310.05(a) and (b). This regulation has been reworded to reflect that contacts are to be made to the DEA Divisional office for the area in which the regulated person making the report is located. DEA office locations are available in telephone directories and will be available in DEA guidelines.

Sixteen comments addressed the reporting requirements for quantitative and cumulative thresholds as being vague and ambiguous and also requested further clarification. The threshold limits apply only to the maintenance of records under Part 1310 and for import/export transactions under Part 1313 and do not automatically trigger the filing of reports on regulated transactions. It was not the intent of DEA to imply that reporting was required for virtually every chemical transaction that exceeds the quantitative or cumulative thesholds. To avoid the unintentional confusion concerning the application of quantitative and cumulative thresholds, DEA has removed subsection (c) from § 1310.05 and placed it under § 1310.04(f) where it is more appropriate. Reports are still required for any transactions which meet the specific reporting requirements of § 1310.05.

Several comments addressed the level of the threshold quantities. One comment requested that these quantitative thresholds be replaced with percentage amounts, relative to the previous year's experience. Comments from law enforcement agencies expressed that the proposed thresholds were too high for chemicals not used in the production of pharmaceuticals and suggested a zero threshold for these chemicals. Among the comments, there was no consensus nor were any alternatives provided. The figures outlined in the regulations were arrived at after substantial internal study and discussions with industry. DEA intends to be flexible with experience regarding thresholds, but these these thresholds will remain for the initial implementation of the Act.

One comment requested DEA to establish an upper threshold limit in which shipments which exceed these thresholds are not regulated. This is not provided for in the Act and cannot otherwise be justified at this time.

As suggested by several comments and to assist in the structuring of an industry monitoring system, the cumulative threshold provision (§ 1310.04(f)) has been revised to assess the quantities involved on the basis of a calendar month, rather than on a 30-day period as originally proposed.

One comment proposed that DEA consider having each supplier send in monthly compilations of all chemical shipments in a format similar to the reporting currently required for pharmaceuticals under control of the Controlled Substances Act. DEA cannot levy this as a requirement as it is not authorized by the Act.

DEA has added a sentence to § 1310.05(a)(3) clarifying which regulated person is responsible for reporting an in-transit loss. The supplier is responsible for reporting the loss to DEA. Section 1310.05(a)(4) specifies reporting requirements for domestic transactions only for tableting machines and encapsulating machines. DEA will propose the export reporting requirements at a later date.

Contents of Records and Reports (§ 1310.06)

To avoid confusion, DEA has deleted the reference to "reports" in § 1310.06(a). Also, six comments were received concerning the telephone number requirement, identification of customers, and the reporting burden. DEA has deleted the telephone number as required information on the record, but the telephone number, where obtainable, is required on reports made to DEA and on the declarations for exports of listed chemicals.

Three comments stated that DEA has substantially underestimated the reporting burden on regulated persons. Several modifications referenced above will serve to reduce the reporting burden and DEA deems the estimate to be accurate. As provided, future comments regarding this burden estimate should be directed to OMB, as specified in § 1310.06.

Proof of Identity (§ 1310.07)

Fifteen comments were received regarding the requirement to "identify the other party" involved in a regulated transaction specified in § 1310.07. A distinction has been made between elements of proof of identity for domestic transactions and export transactions. To further clarify when this requirement must occur, the phrase "at the time the order is placed" has been added to § 1310.07(a).

Several comments addressed the need for alternatives to obtaining the signature of a purchaser or the purchaser's agent due to the ever increasing number of orders generated electronically, the blanket purchase orders negotiated at the beginning of each year, and the fact that in most sales the seller does not receive a document signed by the buyer.

This section has been modified to provide flexibility to firms in meeting the requirement based upon normal business practices, but maintaining the need for the clear and provable establishment of the identity of the other party. The rule provides that prior to an initial transaction with a new customer, the parties document the proof of identity and authorized signature. This authorized signature can be maintained on file but must be updated annually. The initial transaction record must reflect a unique identification number and the signature of the authorized agent. If a firm chooses, subsequent transactions need not have the signature of the authorized agent; however, the supplier must ensure that the purchaser/authorization has not changed.

Also, this section has been modified to include acceptable identification for domestic electronic orders, such as computer passwords.

Part 1313—Importation and Exportation of Precursors and Essential Chemicals

Two comments recommended that throughout this Part the word "notification" be used rather than "declaration" in describing DEA Form 486. The DEA Form 486, Precursor and Essential Chemical Import/Export Declaration, is the required method of notification which the Administrator has established for chemical imports and exports.

One comment requested an exemption to filing reports of precursors and essential chemicals for activities between companies and foreign subsidiaries within the same

BEST COPY AVAILABLE

corporation. Such an exemption would be inconsistent with the requirements of the Act.

Several comments suggested that DEA be consistent in the wording used to describe when to file a DEA Form 486. Therefore, the subsections throughout this Part that contain the words "provided", "furnished", and "filed" have been changed to "received". However, for transactions covered by § 1313.12 and § 1313.21, a DEA Form 486 must still be received at DEA not later than 15 days prior to the date of importation or exportation.

Based on numerous comments regarding the compromising of confidentiality, the difficulty in keeping the form with the shipment, and the form's utility in the foreign country, the five-part DEA–486 has been changed to a three-part form, eliminating foreign distribution for both import and export. The Act provides the Attorney General authority to require such form as he deems appropriate for the purpose of notification, and DEA Form 486 meets this requirement.

Two comments challenged the language of §§ 1313.13(a) and 1313.22(a) that imports (or exports) of chemicals must be for "medical, commercial, scientific, or other legitimate uses". DEA cannot conceive of another purpose for such importation or exportation, other than for illicit purposes. This is the very concept for which this legislation was created, and the wording remains unchanged.

Also, the terms "the regulated, chemical importer" under § 1313.13(c)(1) and "the regulated, chemical exporter" under § 1313.22(c)(1) were considered unclear. The proposed phrases are redundant, and the word "regulated" has been deleted from both subsections.

Several comments discussed possible variances in amounts reported on DEA Form 486 and the actual quantity imported/exported, due to, for example, evaporation or seepage during shipping. Historical knowledge of any losses does not relieve the regulated person from reporting the amount received or shipped. Companies should be able to document normal experiences and the actual quantity exported from the United States or foreign country shall be reported on DEA Form 486.

Two comments requested DEA consider using existing import/export documents required by other federal agencies in lieu of a DEA form. Several federal agencies regulate imports and exports, each with different authority and jurisdiction. However, DEA does not operate within the mandates and regulations of these other agencies. The Act clearly provides DEA the authority to promulgate its own regulations independent of other federal agencies.

Two comments asked that DEA allow the use of telefax equipment to file necessary declarations. Although not an item for inclusion in the regulations, DEA has already established this capability in anticipation of the Act. The DEA telex number for import/export transactions is (202) 307–8570.

Scope (§ 1313.01)

One comment stated that the term "those sections" in § 1313.01 was unclear. This section has been clarified to read "that section", specifically referring to Section 1018 of the Act (21 U.S.C. 971).

Definitions (§ 1313.02)

Two comments urged that the definitions of "regulated person" and "regulated transaction" outlined in Part 1310 either be included or incorporated by reference in Part 1313. DEA agrees that such a modification would clarify that those terms also apply in Part 1313 and therefore the definitions have been restated in § 1313.02.

Four comments suggested that the word "article" in the definitions of "chemical export" and "chemical import" in §§ 1313.02 (a) and (c) be changed to conform with the language in the Act. DEA has substituted the term "listed chemical" wherever the word "article" is mentioned.

Two comments addressed the phrase "that is not in conflict with the laws of the country to which it is intended for import" as part of the definition of "chemical export". A new definition has been added which deletes this phrase. A new section (§ 1313.25) has been added in which DEA will publish a notice of foreign import restrictions on listed chemicals of which the DEA has knowledge.

One comment recommended the "exporter of record" be considered the exporter and that the "importer of record", as defined in the U.S. Customs Consumption Summary, be the chemical importer. These definitions have been modified to ensure specific and clear responsibility is assigned. The importer/exporter of record as defined in the comment may not have all of the facts relevant to the transaction. The revised definition has been modified based on comments and input from the U.S. Customs Service and now specifies the responsibility for submission of the export declaration to meet the requirements of the Act.

Several comments questioned the criteria used in determining "an established business relationship" and suggested that in defining an established business relationship DEA accept previous transactions in non-regulated products as sufficient to establish a business relationship for purposes of the Act. Some of these comments also addressed the phrase "and accepted by" mentioned in the term "regular customer". All comments were reviewed carefully and many changes were made in this area. The term "established business relationship" has been defined separately for imports and exports and incorporated into § 1313.02. Only previous transactions in the specific listed chemical apply in meeting an established business relationship. Also, the phrase "and accepted by" has been deleted from the definition of regular customer.

One comment stated that the definition of "chemical importer" was ambiguous as it relates to the jurisdiction and customs territory of the United States. The appropriate definitions have been modified with input from the U.S. Customs Service.

One comment found the statement "* * * from the jurisdiction of the United States into the customs territory of the United States * * *" as ambiguous. This is a standard definition used in distinguishing tariff laws from all other applicable laws.

Importation of Precursor and Essential Chemicals Requirement of Authorization to Import (§ 1313.12)

§§ 1313.12 (a) and (b) have been rewritten to clarify when the filing of DEA Form 486 must be accomplished. Subsection (c) was created to address the waiver of the 15-day notification requirement as it pertains to filing a DEA Form 486. These modifications were made based on comments DEA addressed previously under Part 1313.

Contents of Import Declaration (§ 1313.13)

One comment recommended that DEA permit the regulated community to use bonded warehouses to store listed precursor and essential chemicals if the appropriate import notice either has not been given in a timely manner or is deemed insufficient. The use of a bonded warehouse has no bearing on the requirement to submit a DEA Form 486 for any importation meeting or exceeding the quantitative thresholds. Any importation meeting or exceeding the quantitative thresholds and found not to contain the appropriate documentation would be in violation of the Act and subject to the penalties outlined in the Act.

Several comments addressed the requirement in § 1313.13(c)(4) to include the license number for importers on the DEA Form 486 emphasizing the unavailability of this information. This requirement has been deleted from the regulations and the DEA Form 486.

Distribution of Import Declaration (§ 1313.14)

The five-part Precursor and Essential Chemical Import/Export Declaration (DEA Form 486) was changed to a three-part form, as previously mentioned under Part 1313. Previously designated copies 1 and 2 for foreign distribution have been eliminated and copies 3, 4, and 5 have been renumbered, with the new copy 1 being the regulated person's copy, the new copy 2 being DEA's copy, and the new copy 3 being the U.S. Customs Service copy.

One comment suggested that the DEA From 486 was contrary to the U.S. Customs Service's program to require electronic or "paperless transfers" of forms, etc., by 1990. This Act responds to a current specific law enforcement need. Future administrative provisions will be considered as experience dictates.

Waiver of 15-day Advance Notice for Chemical Importers (§ 1313.15)

The question was raised concerning provisions for "emergency shipments" for new customers. DEA cannot foresee any life threatening emergency which could render the 15-day notice established by the Act as impractical. DEA, as has been its practice, will attempt to provide assistance to the regulated industry in truly exigent circumstances.

Several companies proposed different scenarios which they believe would make it difficult, if not impossible, to file the DEA Form 486 15 days prior to importation. The law is very clear on this issue and this requirement is unchanged.

DEA's authority was questioned concerning the statutory notice function which was described as a "premarketing clearance and registration." DEA does not recognize this as a premarket clearance, only as a 15-day notification period in order for this agency to perform the responsibilities formally envisioned in the Act.

One comment objected to the use of the word "grant" in § 1313.15(b) and § 1313.24(b), as it relates to regular supplier and regular customer status, on the ground that its use was not authorized by Congress. These subsections have been rewritten to parallel the language of the Act.

Three comments were received concerning DEA's authority to require information specified in § 1313.15(c)(1–8) and the confidentiality of the information. This subsection has been rewritten keeping in mind the concerns of the industry and the needs of DEA. DEA will take action to ensure confidentiality is maintained within DEA. This agency has handled proprietary information under the Controlled Substances Act for years and has established procedures and experience in this area.

One comment expressed concern about the requirement that chemical importers must supply the identity of each foreign chemical supplier within 30 days from the promulgation of these regulations. This requirement is clearly outlined in the Act.

Five comments questioned the relevancy of the requirements of § 1313.15(g) and § 1313.24(f). DEA agrees that these subsections are covered by Part 1310 and has deleted both from the final regulations.

One comment recognized inconsistencies of § 1313.15(h) with previously stated sections. To correct these inconsistencies, the referenced citation was changed to § 1313.12, and the phrase "for all chemical imports" was eliminated.

One comment stated DEA does not have the authority to rescind regular supplier status. DEA has determined that §§ 1313.15 (i) and (j) were redundant as this information is already specified in § 1313.15 and has been deleted. These changes will make the regular supplier determination more workable.

The subsections within § 1313.15 have been renumbered to reflect the above changes.

Exportation of Precursors and Essential Chemicals Requirement of Authorization to Export (§ 1313.21)

Two comments addressed the phrase "that is not in conflict with the laws of the country to which it is intended for export" as expressed in § 1313.21(b). DEA will publish a notice of countries which have imposed restrictions for listed chemicals. Section 1313.25 has been created for this purpose. It will be the obligation of the regulated industry to review the **Federal Register** for these notices. Where such notices have been published, there is a presumption that the regulated persons have made good faith efforts to familiarize themselves with these restrictions and will abide by them.

Contents of Export Declaration (§ 1313.22)

Two comments requested that the phrase "authorized to export" be deleted since the remaining language is sufficient for DEA's purposes. DEA agrees with these comments and has deleted this phrase from § 1313.22(b).

Five comments were directed to the complex and time-consuming procedures involved in the return of exported chemicals which were refused, rejected or otherwise undeliverable. The procedures have been reevaluated, and new procedures have been established to expedite the return of the listed chemicals. The shipment must be returned to the regulated person as soon as possible. A written notification outlining the circumstances must be forwarded to DEA following the return within a reasonable time.

Distribution of Export Declaration (§ 1313.23)

The modifications to DEA Form 486 are explained under Distribution of Import Declaration. In regard to exports, the new copy 3 must be presented to the U.S. Customs Service along with a copy of the Shippers Export Declaration.

Waiver of 15-day Advance Notice for Chemical Exporters (§ 1313.24)

One comment requested that a mechanism be provided to give the U.S. Customs Service notice that the 15-day notification requirement has been waived. This suggestion has been incorporated into the DEA Form 486.

One comment suggested that filing DEA Form 486 for each shipment to regular customers would be unmanageable and recommended quarterly or yearly regular customer reports. This suggestion is not in accordance with the Act.

One comment recommended that at the time of initial notification an exporter be permitted to apply for "regular customer" status for all listed chemicals, even if within the preceding two-year period the customer has not purchased all of the listed chemicals. DEA will not recognize regular customer status without a business relationship having been established for each specified chemical.

One comment recommended adding the words "if known" to the end of § 1313.24(d)(3). DEA concurs with this requested addition and has moved this section to a new definition contained in § 1313.02(j).

One comment recommended that DEA allow up to 120 days to supply complete customer lists to the Administrator after publication of these regulations. The Act specifically states that the regular customer list shall be received not later than 30 days after the publication of the final regulations.

One comment stated that DEA does not have the authority to disqualify a regular customer. Section 1018(c)(1) of the Act states specifically that the Attorney General "may disqualify any regular customer" as specified in the Act.

Two comments stated DEA had no authority to limit the 15-day advance notice waiver for listed precursor chemicals based on the Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances. Section 1313.24(j) has been deleted from the final regulations.

Transshipment and In-Transit Shipment of Precursors and Essential Chemicals

Advance Notice of Importation for Transshipment or Transfer (§ 1313.31)

Five comments were received addressing this section. Two comments asked for clarification of "regulated person" as it relates to transshipments that originate from foreign countries. The party who caused the transshipment or transfer is responsible for notification.

Two comments discussed the need for waiver requirements. Providing a waiver of the reporting requirements would only encourage diversion into the illicit market. To prevent the United States from having its borders facilitate the transfer of chemicals for illicit operations, the United States needs the time to determine the legitimacy of the customer.

Suspension of Shipments (§ 1313.41)

One comment requested clarification on how this authority will be exercised. The comment also pointed out that the Act states the "legal and factual basis" for suspension must be provided by the Administrator. The Act specifies the requirements for the suspension of a shipment and the wording of the regulation has been changed to parallel the language of the Act.

Request for Hearing (§ 1313.54)

Two subsections have been added to clarify the procedures governing hearings.

Miscellaneous

Two comments requested DEA to include in the regulations the penalties pertaining to noncompliance with the Act. Regulations are not the appropriate forum for listing penalties; they are clearly set forth in the Act.

The Piperidine Report (DEA Form 420), OMB approval 1117–0017, is eliminated.

The Administrator of the Drug Enforcement Administration hereby certifies that this final rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This rule is not a major rule for purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291 and section 6053(b) of Pub. L. 100–690, this rule has been reviewed by the Office of Management and Budget. The information collection requirements in the proposed rule were approved by the Office of Management and Budget on February 3, 1989. Modifications of the information collection requirements, set forth in this final rule, were approved on July 19, 1989.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

21 CFR Part 1310

Drug enforcement administration, Drug traffic control, Reporting and recordkeeping requirements.

21 CFR Part 1313

Drug enforcement administration, Drug traffic control, Exports, Imports, Reporting requirements.

For reasons set out in the preamble, Chapter II, Title 21, Code of Federal Regulations is amended as follows.

1. Part 1310 is revised to read as follows:

PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES

Sec.

1310.01 Definitions.
1310.02 Substances covered.
1310.03 Persons required to keep records and file reports.
1310.04 Maintenance of records.
1310.05 Reports.
1310.06 Content of records and reports.
1310.07 Proof of identity.

Authority: 21 U.S.C. 802, 830, 871(b).

§ 1310.01 Definitions.

As used in this part, the following terms shall have the meanings specified:

(a) The term "Act" means the Controlled Substances Act, as amended (84 Stat. 1242; 21 U.S.C. 801) and/or the Controlled Substances Import and Export Act, as amended (84 Stat. 1285; 21 U.S.C. 951).

(b) The term "listed chemical" means any listed precursor chemical or listed essential chemical.

(c) The term "listed precursor chemical" means a chemical specifically designated by the Administrator in § 1310.02(a) that, in addition to legitimate uses, is used in manufacturing a controlled substance in violation of this title and is critical to the creation of a controlled substance.

(d) The term "listed essential chemical" means a chemical specifically designated by the Administrator in § 1310.02(b) that, in addition to legitimate uses, is used as a solvent, reagent, or catalyst in manufacturing a controlled substance in violation of this title.

(e) The term "regulated person" means any individual, corporation, partnership, association, or other legal entity who manufactures, distributes, imports, or exports a listed chemical, a tableting machine, or an encapsulating machine.

(f) The term "regulated transaction" means:

(1) A distribution, receipt, sale, importation or exportation of a threshold amount as determined by the Administrator which includes a cumulative threshold amount for multiple transactions of a listed chemical, except that such term does not include:

(i) A domestic lawful distribution in the usual course of business between agents or employees of a single regulated person; in this context, agents or employees means individuals under the direct management and control of the regulated person;

(ii) A delivery of a listed chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier, or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman, except that if the carriage or storage is in connection with the distribution, importation, or exportation of a listed chemical to a third person, this paragraph does not relieve a distributor, importer, or exporter from compliance with this part of Part 1313 of this chapter;

(iii) Any category of transaction specified by regulation of the Administration as excluded from this definition as unnecessary for enforcement of the Act;

(iv) Any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act; or

(v) Any transaction in a chemical mixture.

(2) A distribution, importation, or exportation of a tableting machine or encapsulating machine except that such term does not include a domestic lawful distribution in the usual course of business between agents and employees of a single regulated person; in this context, agents or employees means individuals under the direct management and control of the regulated person.

(g) The term "chemical mixture" means a combination of two or more chemical substances, at least one of which is not a listed precursor chemical or listed essential chemical, except that such term does not include any combination of a listed precursor chemical or a listed essential chemical with another chemical that is present solely as an impurity or which has been created to evade the requirements of the Act.

(h) The term "retrievable" means that records required by this section are kept by automatic data processing systems or other electronic or mechanized recordkeeping systems in such a manner that they can be readily retrieved and separated out from all other records in a reasonable time and/or records are kept on which the listed chemicals, tableting machines, and encapsulating machines are asterisked, redlined, or in some other manner visually identifiable apart from other items appearing on the records or the maintained separate from all other records.

(i) The term "tableting machine" means any manual, semi-automatic, or fully automatic equipment which may be used for the compaction or molding of powdered or granular solids, or semi-solid material, to produce coherent solid tablets.

(j) The term "encapsulating machine" means any manual, semi-automatic, or fully automatic equipment which may be used to fill shells or capsules with any powdered, granular, semi-solid, or liquid material.

(k) Any term not defined in this section shall have the definition set forth in section 102 and 1001 of the Act (21 U.S.C. 802 and 951) and § 1301.02 of this chapter.

§ 1310.02 Substances covered.

The following chemicals have been specifically designated by the Administrator of the Drug Enforcement Administration as the listed chemicals subject to the provisions of this part and Part 1313 of this chapter.

(a) Listed Precursor Chemicals:
(1) Anthranilic acid and its salts
(2) Benzyl cyanide
(3) Ephedrine, its salts, optical isomers, and salts of optical isomers
(4) Ergonovine and its salts
(5) Ergotamine and its salts
(6) N-Acetylanthranilic acid and its salts
(7) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers
(8) Phenylacetic acid and its salts
(9) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers
(10) Piperidine and its salts
(11) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers
(12) 3,4-Methylenedioxyphenyl-2-propanone

(b) Listed Essential Chemicals:
(1) Acetic anhydride
(2) Acetone
(3) Benzyl chloride
(4) Ethyl ether
(5) Hydriodic acid
(6) Potassium permanganate
(7) 2-Butanone (or Methyl Ethyl Ketone or MEK)
(8) Toluene

(c) The Administrator may add or delete a substance as a listed chemical by publishing a final rule in the **Federal Register** following a proposal which shall be published at least 30 days prior to the final rule.

(d) Any person may petition the Administrator to have any substance added or deleted from paragraphs (a) or (b) of this section.

(e) Any petition under this section shall contain the following information:

(1) The name and address of the petitioner;

(2) The name of the chemical to which the petition pertains;

(3) The name and address of the manufacturer(s) of the chemical (if known);

(4) A complete statement of the facts which the petitioner believes justifies the addition or deletion of the substance from paragraphs (a) or (b) of this section;

(5) The date of the petition.

(f) The Administrator may require the petitioner to submit such documents or written statements of fact relevant to the petition as he deems necessary in making a determination.

(g) Within a reasonable period of time after the receipt of the petition, the Administrator shall notify the petitioner of his decision and the reason therefor. The Administrator need not accept a petition if any of the requirements prescribed in paragraph (e) of this section or requested pursuant to paragraph (f) of this section are lacking or are not clearly set forth as to be readily understood. If the petitioner desires, he may amend and resubmit the petition to meet the requirements of paragraphs (e) and (f) of this section.

(h) If a petition is granted or the Administrator, upon his own motion, proposes to add or delete substances as listed chemicals as set forth in paragraph (c) of this section, he shall issue and publish in the **Federal Register** a proposal to add or delete a substance as a listed chemical. The Administrator shall permit any interested person to file written comments regarding the proposal within 30 days of the date of publication of his order in the **Federal Register**. The Administrator will consider any comments filed by interested persons and publish a final rule in accordance with his decision in the matter.

§ 1310.03 Persons required to keep records and file reports.

Each regulated person who engages in a regulated transaction involving a listed chemical, a tableting machine, or an encapsulating machine shall keep a record of the transaction as specified by § 1310.04 and file reports as specified by § 1310.05.

§ 1310.04 Maintenance of records.

(a) Every record required to be kept subject to § 1310.03 for a listed precursor chemical, a tableting machine, or an encapsulating machine shall be kept by the regulated person for four years after the date of the transaction.

(b) Every record required to be kept subject to § 1310.03 for a listed essential chemical shall be kept by the regulated person for two years after the date of the transaction.

(c) A record under this section shall be kept at the regulated person's place of business where the transaction occurred, except that records may be kept at a single, central location of the regulated person if the regulated person has notified the Administration of the intention to do so. Written notification must be submitted by registered or certified mail, return receipt requested, to the Special Agent in Charge of the DEA Divisional Office for the area in which the records are required to be kept.

(d) The records required to be kept under this section shall be readily retrievable and available for inspection and copying by authorized employees of the Administration under the provisions of 21 U.S.C. 880.

(e) The regulated person with more than one place of business where records are required to be kept shall devise a system to detect any party purchasing from several individual locations of the regulated person thereby seeking to avoid the application of the cumulative threshold or evading the requirements of the Act.

(f) The quantitative threshold or the cumulative amount for multiple

transactions within a calendar month to be utilized in determining whether a receipt, sale, importation or exportation is a regulated transaction is as follows:

(1) Listed Precursor Chemicals:

Chemical	Threshold by base weight
(i) Anthranilic acid and its salts	30 kilograms.
(ii) Benzyl cyanide	1 kilogram.
(iii) Ephedrine, its salts, optical isomers, and salts of optical isomers	1 kilogram.
(iv) Ergonovine and its salts	10 grams.
(v) Ergotamine and its salts	20 grams.
(vi) N-Acetylanthranilic acid and its salts	40 kilograms
(vii) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers	2.5 kilograms.
(viii) Phenylacetic acid and its salts	1 kilogram.
(ix) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers	2.5 kilograms.
(x) Piperidine and its salts	500 grams.
(xi) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers	1 kilogram
(xii) 3,4-Methylenedioxyphenyl-2-propanone	20 kilograms.

(2) Listed Essential Chemicals:

(i) Imports and Exports

Chemical	Threshold by volume	Threshold by weight
(A) Acetic anhydride	250 gallons	1,023 kilograms.
(B) Acetone	500 gallons	1,500 kilograms.
(C) Benzyl chloride	N/A	4 kilograms.
(D) Ethyl ether	500 gallons	1,364 kilograms.
(E) Hydriodic acid	40 liters (57%)	22.8 kilograms.
(F) Potassium permanganate	N/A	500 kilograms.
(G) 2-Butanone (MEK)	500 gallons	1,455 kilograms.
(H) Toluene	500 gallons	1,591 kilograms.

(ii) Domestic Sales

Chemical	Threshold by volume	Threshold by weight
(A) Acetic anhydride	250 gallons	1,023 kilograms.
(B) Acetone	50 gallons	150 kilograms.
(C) Benzyl chloride	N/A	1 kilogram.
(D) Ethyl ether	50 gallons	135.8 kilograms.
(E) Hydriodic acid	10 liters (57%)	5.7 kilograms.
(F) Potassium permanganate	N/A	55 kilograms.
(G) 2-Butanone (MEK)	50 gallons	145 kilograms.
(H) Toluene	50 gallons	159 kilograms.

(iii) The cumulative threshold is not applicable to domestic sales of Acetone, 2-Butanone (MEK), and Toluene.

§ 1310.05 Reports.

(a) Each regulated person shall report to the Special Agent in Charge of the DEA Divisional Office for the area in which the regulated person making the report is located, as follows:

(1) Any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance that the regulated person believes may indicate that the listed chemical will be used in violation of this part.

(2) Any proposed regulated transaction with a person whose description or other identifying characteristic the Administration has previously furnished to the regulated person.

(3) Any unusual or excessive loss or disappearance of a listed chemical under the control of the regulated person. The regulated person responsible for reporting a loss in-transit is the supplier.

(4) Any domestic regulated transaction in a tableting machine or an encapsulating machine.

(b) Each report submitted pursuant to paragraph (a) of this section shall, whenever possible, be made orally to the DEA Divisional Office for the area in which the regulated person making the report is located at the earliest practicable opportunity after the regulated person becomes aware of the circumstances involved and as much in advance of the conclusion of the transaction as possible. Written reports of transactions listed in paragraphs (a)(1), (a)(3) and (a)(4) of this section will subsequently be filed as set forth in § 1310.06 within 15 days after the regulated person becomes aware of the circumstances of the event. A transaction may not be completed with a person whose description or identifying characteristic has previously been furnished to the regulated person by the Administration unless the transaction is approved by the Administration.

§ 1310.06 Content of records and reports.

(a) Each record required by § 1310.03 shall include the following:

(1) The name and address of each party to the regulated transaction.

(2) The date of the regulated transaction.

(3) The name, quantity and form of packaging of the listed chemical or a description of the tableting machine or encapsulating machine (including make, model and serial number).

(4) The method of transfer (company truck, picked up by customer, etc.).

(5) The type of identification used by the purchaser and any unique number on that identification.

(b) For purposes of this section, normal business records shall be considered adequate if they contain the information listed in paragraph (a) of this section and are readily retrievable from other business records of the regulated person.

(c) Each report required by § 1310.05 shall include the information as specified by § 1310.06(a) and, where obtainable, the telephone number of the other party. A report submitted pursuant to § 1310.05(a)(1) or (a)(3) must also include a description of the circumstances leading the regulated person to make the report, such as the reason that the method of payment was uncommon or the loss unusual. If the report is for a loss or disappearance under § 1310.05(a)(3), the circumstances of such loss must be provided (in-transit, theft from premises, etc.).

(d) A suggested format for the reports is provided below:

Supplier:
Name _____
Business Address _____
City _____
State _____
Zip _____
Business Phone _____
Purchaser:
Name _____
Business Address _____
City _____
State _____
Zip _____
Business Phone _____
Identification _____
Shipping Address (if different than purchaser address):
Street _____
City _____
State _____
Zip _____
Date of Shipment _____
Name of Listed Chemical(s) _____
Quantity and Form of Packaging _____
Description of Machine:
Make: _____
Model: _____
Serial # _____
Method of Transfer _____
If Loss or Disappearance:
Date of Loss _____
Type of Loss _____
Description of Circumstances _____

Public reporting burden for this collection of information is estimated to average ten minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Drug Enforcement Administration, Records Management Section, Washington, DC 20537; and to the Office of Management and Budget, Paperwork Reduction Project No. 1117–0024, Washington, DC 20503.

§ 1310.07 Proof of identity.

(a) Each regulated person who engages in a regulated transaction must identify the other party to the transaction. For domestic transactions, this shall be accomplished by having the other party present documents which would verify the identity of the other party to the regulated person at the time the order is placed. For export transactions, this shall be accomplished by good faith inquiry through reasonably available research documents or publicly available information which would indicate the existence of the foreign customer. No proof of identity is required for foreign suppliers.

(b) The regulated person must verify the existence and apparent validity of a business entity ordering a listed chemical, tableting machine or encapsulating machine. For domestic transactions, this may be accomplished by such methods as checking the telephone directory, the local credit bureau, the local Chamber of Commerce or the local Better Business Bureau. For export transactions, a good faith inquiry to verify the existence and apparent validity of a foreign business entity may be accomplished by such methods as verifying the business telephone listing through international telephone information, the firm's listing in international or foreign national chemical directories or other commerce directories or trade publications, confirmation through foreign subsidiaries of the U.S. regulated person, verification through the country of destination's embassy Commercial Attache, or official documents provided by the purchaser which confirm the existence and apparent validity.

(c) When transacting business with a new representative of a firm, the regulated person must verify the claimed agency status of the representative.

(d) For sales to individuals or cash purchasers, the type of documents and other evidence of proof must consist of at least a signature of the purchaser, a driver's license and one other form of identification. Any exports to individuals or exports paid in cash are suspect and should be handled as such. For such exports, the regulated person shall diligently obtain from the purchaser or independently seek to confirm clear documentation which proves the person is properly identified such as through foreign identity documents, driver's license, passport information and photograph, etc. Any regulated person who fails to adequately prove the identity of the other party to the transaction may be subject to the specific penalties provided for violations of law related to regulated transactions in listed chemicals.

(e) For a new customer who is not an individual or cash customer, the regulated person shall establish the identity of the authorized purchasing agent or agents and have on file that person's signature, electronic password, or other identification. Once the authorized purchasing agent has been established, the agent list may be updated annually rather than on each order. The regulated person must ensure that shipments are not made unless the order is placed by an authorized agent of record.

(f) With respect to electronic orders, the identity of the purchaser shall consist of a computer password, identification number or some other means of identification consistent with electronic orders and with § 1310.07(e).

For reasons set out in the preamble, Title 21, Code of Federal Regulations, Part 1313 is added to read as follows.

PART 1313—IMPORTATION AND EXPORTATION OF PRECURSORS AND ESSENTIAL CHEMICALS

Sec.
1313.01 Scope.
1313.02 Definitions.

Importation of Precursors and Essential Chemicals

1313.12 Requirement of authorization to import.
1313.13 Contents of import declaration.
1313.14 Distribution of import declaration.
1313.15 Waiver of 15-day advance notice for chemical importers.

Exportation of Precursors and Essential Chemicals

1313.21 Requirement of authorization to export.
1313.22 Contents of export declaration.
1313.23 Distribution of export declaration.
1313.24 Waiver of 15-day advance notice for chemical exporters.
1313.25 Foreign import restrictions.

Transshipment and In-Transit Shipment of Precursors and Essential Chemicals

1313.31 Advance notice of importation for transshipment or transfer.
1313.41 Suspension of shipments.

Hearings

1313.51 Hearings generally.
1313.52 Purpose of hearing.
1313.53 Waiver of modification of rules.

Sec.
1313.54 Request for hearing.
1313.55 Burden of proof.
1313.56 Time and place of hearing.
1313.57 Final order.

Authority: 21 U.S.C. 802, 830, 871(b), 971.

§ 1313.01 Scope.

Procedures governing the importation, exportation, transshipment and in-transit shipment of precursors and essential chemicals pursuant to section 1018 of the Act (21 U.S.C. 971) are governed generally by that section and specifically by the sections of this part.

§ 1313.02 Definitions.

(a) The term "chemical export" means transferring ownership or control, or the sending or taking of threshold quantities of listed chemicals out of the United States (whether or not such sending or taking out constitutes an exportation within the meaning of the Customs and related laws of the United States).

(b) The term "chemical exporter" is a regulated person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the listed chemical out of the United States.

(c) The term "regulated person" means any individual, corporation, partnership, association, or other legal entity who manufactures, distributes, imports, or exports a listed chemical, a tableting machine, or an encapsulating machine.

(d) The term "regulated transaction" means:

(1) A distribution, receipt, sale, importation or exportation of a threshold amount as determined by the Administrator which includes a cumulative threshold amount for multiple transactions of a listed chemical, except that such term does not include:

(i) A domestic lawful distribution in the usual course of business between agents or employees of a single regulated person; in this context, agents or employees means individuals under the direct management and conttol of the regulated person;

(ii) A delivery of a listed chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier, or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman, except that if the carriage or storage is in connection with the distribution, importation, or exportation of a listed chemical to a third person, this paragraph does not relieve a distributor, importer, or exporter from compliance with this part of Part 1310;

(iii) Any category of transaction specified by regulation of the Administration as excluded from this definition as unnecessary for enforcement of the Act;

(iv) Any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act; or

(v) Any transaction in a chemical mixture.

(2) A distribution, importation, or exportation of a tableting machine or encapsulating machine except that such term does not include a domestic lawful distribution in the usual course of business between agents and employees of a single regulated person; in this context, agents or employees means individuals under the direct management and control of the regulated person.

(e) The term "chemical import" means with respect to a listed chemical, any bringing in or introduction of such listed chemical into either the jurisdiction of the United States or into the Customs territory of the United States (whether or not such bringing in or introduction constitutes an importation within the meaning of the tariff laws of the United States).

(f) The term "chemical importer" is a regulated person who, as the principal party in interest in the import transaction, has the power and responsibility for determining and controlling the bringing in or introduction of the listed chemical into the United States.

(g) The term "regular customer" means a person with whom the regulated person has an established business relationship for a specified listed chemical or chemicals that has been reported to the Administration subject to the criteria established in § 1313.02(j).

(h) The term "regular supplier" means a supplier with whom the regulated person has an established business relationship that has been reported to the Administration subject to the criteria established in § 1313.02(i).

(i) The term "established business relationship with a regular supplier" means the regulated person has purchased a listed chemical from a foreign supplier at least once within the past six months, or twice within the past twelve months. The term also means that the regulated person has provided the Administration with the following information in accordance with the Waiver of 15-day advance notice requirements of § 1313.15:

(1) The name, street address, telephone number, telex number and, where available, the facsimile number of the chemical importer and of each regular supplier; and

(2) The frequency and number of transactions occurring during the preceding 12-month period.

(j) The term "established business relationship with a foreign customer" means the regulated person has exported a listed chemical at least once within the past six months, or twice within the past twelve months to a foreign manufacturer, distributor, or end user of the chemical that has an established business in the foreign country with a fixed street address. A person or business which functions as a broker or intermediary is not a customer within the meaning of this section. The term also means that the regulated person has provided the Administration with the following information in accordance with the Waiver of 15-day advance notice requirements of § 1313.24:

(1) The name and street address of the chemical exporter and of each regular customer;

(2) The telephone number, telex number, contact person, and where available, the facsimile number for the chemical exporter and for each regular customer;

(3) The nature of the regular customer's business (i.e., importer, exporter, distributor, manufacturer, etc.), and if known, the use to which the listed chemical or chemicals will be applied;

(4) The duration of the business relationship;

(5) The frequency and number of transactions occurring during the preceding 12-month period;

(6) The amounts and the listed chemical or chemicals involved in regulated transactions between the chemical exporter and the regular customer;

(7) The method of delivery (direct shipment or through a broker or forwarding agent); and

(8) Other information that the chemical exporter considers relevant for determining whether a customer is a regular customer.

(k) The term "Customs territory of the United States" means the several states, the District of Columbia, and Puerto Rico.

(l) The term "jurisdiction of the United States" means the Customs territory of the United States, the Virgin Islands, the Canal Zone, Guam, American Samoa, and Palau.

(m) Any term not defined in this section shall have the definition set forth in sections 102 and 1001 of the Act (21 U.S.C. 802 and 951), and §1301.02 and § 1310.01 of this chapter.

Importation of Precursors and Essential Chemicals

§ 1313.12 Requirement of authorization to import.

(a) Each regulated person who imports a listed chemical that meets or exceeds the threshold quantities identified in § 1310.04(f) of this chapter shall notify the Administrator of the importation not later than 15 days before the transaction is to take place.

(b) A completed DEA Form 486 must be received at the following address not later than 15 days prior to the importation:

Drug Enforcement Administration, P.O. Box 28346, Washington, DC 20038.

A copy of the completed DEA Form 486 may be transmitted directly to the Drug Enforcement Administration, Drug Control Section, through electronic facsimile media not later than 15 days prior to the importation.

(c) The 15-day advance notification requirement for listed chemical imports may be waived for any regulated person who has satisfied the requirements for reporting to the Administration an established business relationship with a foreign supplier. For such imports, the DEA Form 486 must be received by the Drug Enforcement Administration, Drug Control Section on or before the date of importation through use of the mailing address listed in § 1313.12(b) or through use of electronic facsimile media.

§ 1313.13 Contents of import declaration.

(a) Any precursor or essential chemical listed in § 1310.02 of this chapter may be imported if that chemical is necessary for medical, commercial, scientific, or other legitimate uses within the United States. Chemical importations into the United States for immediate transfer/transshipment outside the United States must comply with the procedures set forth in § 1313.31.

(b) Any regulated person who desires to import a threshold or greater quantity of a listed chemical shall notify the Administration through procedures set forth in § 1313.12 and distribute three copies of DEA Form 486 as directed in § 1313.14.

(c) The DEA Form 486 must be executed in triplicate and must include the following information:

(1) The name, address, telephone number, telex number, and, where available, the facsimile number of the chemical importer; the name, address, telephone, telex, and where available, the facsimile number of the broker or forwarding agent (if any); and

(2) The name and description of each listed chemical as it appears on the label or container, the name of each chemical as it is designated in 1310.02 of this chapter, the size or weight of container, the number of containers, the net weight of each listed chemical given in kilograms or parts thereof; and the gross weight of the shipment given in kilograms or parts thereof; and

(3) The proposed import date, the foreign port of exportation and the first U.S. Customs Port of Entry; and

(4) The name, address, telephone number, telex number, and, where available, the facsmile number of the consignor in the foreign country of exportation.

§ 1313.14 Distribution of import declaration.

The required three copies of the precursor and essential chemical import declaration (DEA Form 486) will be distributed as follows:

(a) Copy 1 shall be retained on file by the regulated person as the official record of import. Import declaration forms involving a listed precursor chemical must be retained for four years; declaration forms for listed essential chemicals must be retained for two years.

(b) Copy 2 is the Drug Enforcement Administration copy used to fulfill the notification requirements of Section 6053 of the Chemical Diversion and Trafficking Act of 1988, as specified in § 1313.12.

(c) Copy 3 shall be presented to the U.S. Customs Sevice along with the customs entry. If the import is a regulated transaction for which the 15-day advance notice requirement has been waived, the regulated person shall declare this information to the U.S. Customs Service Official by checking the block on the DEA Form 486 designated for this purpose.

§ 1313.15 Waiver of 15-day advance notice for chemical importers.

(a) Each regulated person shall provide to the Administration the identity of any regular supplier of the regulated person not later than August 31, 1989, along with the information required by § 1313.02(i) for documenting an established business relationship with a regular supplier.

(b) Not later than October 30, 1989, each regular supplier so identified in notifications made under paragraph (a) of this section shall be a regular supplier for purposes of waiving the 15-day advance notice requirement, unless the regulated person is otherwise notified in writing by the Administration.

(c) A supplier identified on an initial DEA Form 486 submitted after October 30, 1989, shall, after the expiration of the 15-day period, qualify as a regular supplier, unless the Administration otherwise notifies the regulated person in writing.

(d) All chemical importers shall be required to file a DEA Precursor and Essential Chemical Import/Export Declaration (DEA Form 486) as required by § 1313.12.

Exportation of Precursors and Essential Chemicals

§ 1313.21 Requirement of authorization to export.

(a) No person shall export of cause to be exported from the United States any chemical listed in § 1310.02 of this chapter, which meets or exceeds the threshold quantities identified in § 1310.04(f) of this chapter until such time as the Administrator has been notified. Notification must be made not later than 15 days before the transaction is to take place. In order to facilitate the export of listed chemicals and implement the purpose of the Act, regulated persons may wish to provide notification to the Administration as far in advance of the 15 days as possible.

(b) A completed DEA Form 486 must be received at the following address not later than 15 days prior to the exportation:

Drug Enforcement Administration, P.O. Box 28346, Washington, DC 20038.

A copy of the completed DEA Form 486 may be transmitted directly to the Drug Enforcement Administration, Drug Control Section, through electronic facsimile media not later than 15 days prior to the exportation.

(c) The 15-day advance notification requirement for listed chemical exports may be waived for any regulated person who has satisfied the requirements of § 1313.24 for reporting to the Administration an established business relationship with a foreign customer as defined in § 1313.02(j). A DEA Form 486 export declaration to a foreign customer must be received by the Drug Enforcement Administration, Drug Control Section, on or before the date of exportation through use of the mailing address listed in § 1313.21(b) or transmitted directly through use of electronic facsimile media.

(d) No person shall knowingly or intentionally export or cause to be exported a listed chemical in violation of the law of the country to which the chemical is exported. Likewise, no

person shall export or cause to be exported any listed chemical when that person has reasonable cause to believe the regulated transaction is in violation of the law of the country to which the chemical is exported. The Administration will publish a notice of foreign import restrictions for listed chemicals of which DEA has knowledge as provided in § 1313.25.

§ 1313.22 Contents of export declaration.

(a) Any precursor or essential chemical listed in § 1310.02 of this chapter which meets or exceeds the quantitative threshold criteria established in § 1310.04(f) of this chapter may be exported if that chemical is needed for medical, commercial, scientific, or other legitimate uses.

(b) Any regulated person who desires to export a threshold or greater quantity of a listed chemical shall notify the Administration through procedures outlined in § 1313.21 and distribute three copies of DEA Form 486 as directed in § 1313.23.

(c) The DEA Form 486 must be executed in triplicate and must include all the following information:

(1) The name, address, telephone number, telex number, and, where available, the facsimile number of the chemical exporter; the name, address, telephone number, telex number, and, where available, the facsimile number of the export broker, if any;

(2) The name and description of each listed chemical as it appears on the label or container, the name of each listed chemical as it is designated in § 1310.02 of this chapter, the size or weight of container, the number of containers, the net weight of each listed chemical given in kilograms or parts thereof, and the gross weight of the shipment given in kilograms or parts thereof;

(3) The proposed export date, the U.S. Customs port of exportation, and the foreign port of entry; and

(4) The name, address, telephone, telex, and where available, the facsimile number of the consignee in the country where the chemical shipment is destined; the name(s) and address(es) of any intermediate consignee(s).

(d) Notwithstanding the time limitations included in paragraph (b) of this section, a regulated person may receive a waiver of the 15-day advance notification requirement following the procedures outlined in § 1313.24.

(e) Declared exports of listed chemicals which are refused, rejected, or otherwise deemed undeliverable may be returned to the U.S. chemical exporter of record. A brief written notification (this does not require a DEA Form 486) outlining the circumstances must be sent to the Drug Enforcement Administration, P.O. Box 28346, Washington, DC 20038, following the return within a reasonable time. This provision does not apply to shipments that have cleared foreign customs, been delivered, and accepted by the foreign consignee. Returns to third parties in the United States will be regarded as imports.

§ 1313.23 Distribution of export declaration.

The required three copies of the precursor and essential chemical export declaration (DEA Form 486) will be distributed as follows:

(a) Copy 1 shall be retained on file by the chemical exporters as the official record of export. Export declaration forms involving a listed precursor chemical must be retained for four years; declaration forms for listed essential chemicals must be retained for two years.

(b) Copy 2 is the Drug Enforcement Administration copy used to fulfill the notification requirements of Section 6053 of the Chemical Diversion and Trafficking Act of 1988, as specified in § 1313.21

(c) Copy 3 shall be presented to the U.S. Customs Service at the port of exit along with the Shippers Export Declaration for each export of a listed chemical or chemicals.

§ 1313.24 Waiver of 15-day advance notice for chemical exporters.

(a) Each regulated person shall provide to the Administration the identity and information listed in § 1313.02(j) for an established business relationship with a foreign customer not later than August 31, 1989.

(b) Not later than October 31, 1989, each regular customer so identified in notifications made under § 1313.24(a) shall be a regular customer for purposes of waiving the 15-day advance notice requirement, unless the regulated person is otherwise notified in writing by the Administration.

(c) Each foreign customer identified on an initial DEA Form 486 submitted after the effective date of the implementation of Part 1313 shall, after the expiration of the 15-day period, qualify as a regular customer, unless the Administration otherwise notifies the regulated person in writing.

(d) The Administrator may notify any chemical exporter that a regular customer has been disqualified or that a new customer for whom a notification has been submitted is not to be accorded the status of a regular customer. In the event of a disqualification of an established regular customer, the chemical exporter will be notified in writing of the reasons for such action.

Public reporting (one-time) burden for this collection of information is estimated to average four hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing and collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Drug Enforcement Administration, Records Management Section, Washington, DC 20537; and to the Office of Management and Budget, Paperwork Reduction Project No. 1117-0025, Washington, DC 20503.

§ 1313.25 Foreign import restrictions.

Any export from the United States in violation of the law of the country to which the chemical is exported is subject to the penalties of Title 21 United States Code 960(d).

§ 1313.31 Advance notice of importation for transshipment or transfer.

(a) A quantity of a chemical listed in § 1310.02 of this chapter that meets or exceeds the threshold reporting requirements found in § 1310.04(f) of this chapter may be imported into the United States for transshipment, or may be transferred or transshipped within the United States for immediate exportation, provided that advance notice is given to the Administration.

(b) Advance notification must be provided to the Drug Enforcement Administration, P.O. Box 28346, Washington, DC 20038, not later than 15 days prior to the proposed date the listed chemical will transship or transfer through the United States. The written notification (not a DEA Form 486) shall contain the following information:

(1) The date the notice was executed;

(2) The complete name and description of the listed chemical as it appears on the label or container.

(3) The name of the listed chemical as designated by § 1310.02 of this chapter.

(4) The number of containers and the size or weight of the container for each listed item;

(5) The new weight of each listed chemical given in kilograms or parts thereof;

(6) The gross weight of the shipment given in kilograms or parts thereof;

(7) The name, address, telephone number, telex number, business of the foreign exporter and, where available, the facsimile number;

(8) The foreign port of exportation;

(9) The approximate date of exportation;

(10) The complete identification of the exporting carrier;

(11) The name, address, business, telephone number, telex number, and, where available, the facsimile number of the importer, transferor, or transshipper;

(12) The U.S. port of entry;

(13) The approximate date of entry;

(14) The name, address, telephone number, telex number, business of the consignee and, where available, facsimile number of the consignee at the foreign port of entry;

(15) The shipping route from the U.S. port of exportation to the foreign port of entry at final destination;

(16) The approximate date of receipt by the consignee at the foreign port of entry; and

(17) The signature of the importer, transferor or transshipper, or his agent, accompanied by the agent's title.

(c) Unless notified to the contrary prior to the expected date of delivery, the importation for transshipment or transfer is considered approved.

(d) No waiver of the 15-day advance notice will be given for imports of listed chemicals in quantities meeting or exceeding threshold quantities for transshipment or transfer outside the United States.

§ 1313.41 Suspension of shipments.

(a) The Administrator may suspend any importation or exportation of a chemical listed in § 1310.02 of this chapter based on evidence that the chemical proposed to be imported or exported may be diverted to the clandestine manufacture of a controlled substance. If the Administrator so suspends, he shall provide written notice of such suspension to the regulated person. Such notice shall contain a statement of the legal and factual basis for the order.

(b) Upon service of the order of suspension, the regulated person to whom the order applies under paragraph (a) of this section must, if he desires a hearing, file a written request for a hearing pursuant to §§ 1313.51–1313.57.

Hearings

§ 1313.51 Hearings generally.

In any case where a regulated person requests a hearing regarding the suspension of a shipment of a listed chemical, the procedures for such hearing shall be governed generally by the procedures set forth in the Administrative Procedure Act (5 U.S.C. 551–559) and specifically by section 6053 of the Chemical Diversion and Trafficking Act (Pub. L. 100–690), by 21 CFR 1313.52–1313.57, and by the procedures for administrative hearings under the Controlled Substances Act set forth in §§ 1316.41–1316.67 of this chapter.

§ 1313.52 Purpose of hearing.

If requested by a person entitled to a hearing, the Administrator shall cause a hearing to be held for the purpose of receiving factual evidence regarding the issues involved in the suspension of shipments within 45 days of the date of the request, unless the requesting party requests an extension of time.

§ 1313.53 Waiver of modification of rules.

The Administrator or the presiding officer (with respect to matters pending before him) may modify or waive any rule in this part by notice in advance of the hearing, if he determines that no party in the hearing will be unduly prejudiced and the ends of justice will thereby be served. Such notice of modification or waiver shall be made a part of the record of the hearing.

§ 1313.54 Request for hearing.

(a) Any person entitled to a hearing pursuant to § 1313.52 and desiring a hearing shall, within 30 days after receipt of the notice to suspend the shipment, file with the Administrator a written request for a hearing in the form prescribed in § 1316.47 of this chapter.

(b) If any person entitled to a hearing or to participate in a hearing pursuant to § 1313.41 fails to file a request for a hearing or a notice of appearance, or if he so files and fails to appear at the hearing, he shall be deemed to have waived his opportunity for the hearing or to participate in the hearing, unless he shows good cause for such failure.

(c) If all persons entitled to a hearing or to participate in a hearing waive or are deemed to waive their opportunity for the hearing or to participate in the hearing, the Administrator may cancel the hearing, if scheduled, and issue his final order pursuant to § 1313.57.

§ 1313.55 Burden of proof.

At any hearing regarding the suspension of shipments, the Agency shall have the burden of proving that the requirements of this part for such suspension are satisfied.

§ 1313.56 Time and place of hearing.

(a) If any regulated person requests a hearing on the suspension of shipments, a hearing will be scheduled no later than 45 days after the request is made, unless the regulated person requests an extension to this date.

(b) The hearing will commence at the place and time designated in the notice given pursuant to paragraph (a) of this section but thereafter it may be moved to a different place and may be continued from day to day or recessed to a later day without notice other than announcement thereof by the presiding officer at the hearing.

§ 1313.57 Final order.

As soon as practicable after the presiding officer has certified the record to the Administrator, the Administrator shall issue his order regarding the suspension of shipment. The order shall include the findings of fact and conclusions of law upon which the order is based. The Administrator shall serve one copy of his order upon each party in the hearing.

John C. Lawn,

Administrator, Drug Enforcement Administration.

Date: July 7, 1989.

[FR Doc. 89-17837 Filed 7-31-89; 8:45 am]

BILLING CODE 4410-09-M

21 CFR Part 1316

Exemption From Civil Prosecution for Investigative and Law Enforcement Personnel of the Drug Enforcement Administration

AGENCY: Drug Enforcement Administration (DEA).

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to implement a provision of the Chemical Diversion and Trafficking Act of 1988 which exempts certain employees of the DEA from civil prosecution in the event that they make an unauthorized disclosure of information referred to in paragraph (c)(1) of Section 310 of the Controlled Substances Act (21 U.S.C. 830).

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, State and Industry Section, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Telephone: (202) 307-7297.

SUPPLEMENTARY INFORMATION: On January 25, 1989, in a notice of proposed rulemaking published in the **Federal Register** (54 FR 3622) the Administrator of the DEA proposed to clarify a provision of the Chemical Diversion and Trafficking Act which specifies that,

although any person who is aggrieved by a disclosure of information in violation of Section 310 of the Controlled Substances Act may bring a civil action against the violator for appropriate relief, a civil action may not be brought against investigative or law enforcement personnel of the DEA who make such a disclosure. The proposed rule provided the opportunity for interested parties to submit comments and objections to the proposed rulemaking. Three chemical suppliers, the Chemical Manufacturers Association (CMA) and the National Association of Chemical Distributors (NACD), expressed concern that the DEA exceeded its Congressional authority by making the definition of "investigative personnel" contained in 21 CFR 1316.21 overly broad. They felt that the proposed definition of "investigative personnel" could be construed as including any employee of DEA. The Administrator of the DEA is convinced that the definition of "investigative personnel" is consistent with the intent of Congress as it pertains only to those managers, Diversion Investigators, attorneys, analysts and support personnel employed by DEA who are involved in the processing, reviewing and analyzing of declarations and other relevant documents or data relative to regulated transactions or who are involved in conducting investigations initiated pursuant to the receipt of such declarations, documents or data. Clearly, this excludes the majority of DEA personnel. Two chemical suppliers, the CMA and the NACD, felt that the definition of "law enforcement personnel" contained in 21 CFR 1316.21 is too broad. In response to these comments, additional language has been added to this definition to restrict the exemption from civil prosecution for unauthorized disclosure of information to those Special Agents of the DEA who, in the course of their official duties, gain knowledge of such confidential information. Due to a conflict in numbering, the new sections of 21 CFR set forth in this final rule which were previously numbered 1316.91 and 1316.92 in the proposed rule of January 25, 1989 have been renumbered 1316.23 and 1316.24.

The Administrator of the DEA hereby certifies that this matter will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601).

This rule is not a major rule for purposes of E.O. 12291 of February 17, 1981. Pursuant to sections 3(c)(3) and 3(e)(2)(c) of E.O. 12291, this final rule has been reviewed by the Office of Management and Budget.

This action has been analyzed with the principles and criteria contained in E.O. 12616, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1316

Administrative practice and procedure, Drug, enforcement administration, Drug traffic control, Research, Seizures and forfeiture.

For reasons set out above, Title 21, Code of Federal Regulations, Part 1316, is amended as follows:

PART 1316—ADMINISTRATIVE FUNCTIONS, PRACTICES AND PROCEDURES

Subpart B—Protection of Researchers, Research Subjects, Investigative Personnel and Law Enforcement Personnel

1. The authority citation for Subpart B is revised to read as follows:

Authority: 21 U.S.C. 830, 871(b).

2. Part 1316 is amended redesignating existing section 1316.21 as 1316.23, redesignating existing section 1316.22 as 1316.24 and by adding Sections 1316.21 and 1316.22 to read as follows:

§ 1316.21 Definitions.

As used in this part, the following terms shall have the meanings specified:

(a) The term "investigative personnel" includes managers, Diversion Investigators, attorneys, analysts and support personnel employed by the Drug Enforcement Administration who are involved in the processing, reviewing and analyzing of declarations and other relevant documents or data relative to regulated transactions or are involved in conducting investigations initiated pursuant to the receipt of such declarations, documents or data.

(b) The term "law enforcement personnel" means Special Agents employed by the Drug Enforcement Administration who, in the course of their official duties, gain knowledge of information which is confidential under such section.

§ 1316.22 Exemption.

(a) Any person who is aggrieved by a disclosure of information in violation of subsection (c)(1) of Section 310 of the Controlled Substances Act (21 U.S.C. 830) may bring a civil action against the violator for appropriate relief.

(b) Notwithstanding the provision of paragraph (a), a civil action may not be brought under such paragraph against investigative or law enforcement personnel of the Drug Enforcement Administration.

Date: July 7, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-17836 Filed 7-31-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[RIN 2506-AA93]

[Docket No. R-89-1444; FR-2669]

Revision of Subpart E To Provide Increased Local Discretion in Applying Limitations on Special Projects Expenditures

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: Recently, Secretary Kemp announced an initiative designed to encourage local governments to combat drug use by establishing positive youth programs providing sports, cultural and other activities as alternatives to the drug environment. The Secretary proposed making available, from the Secretary's Discretionary Fund under section 107(a)(4) of the Housing and Community Development Act of 1974, competitive special projects grants of up to $25,000, with a required 100% cash match from local Community Development Block Grant (CDBG) or other public or private funds.

HUD's regulations set out restrictions which, in some situations, are more limiting as to the amount of a grant which may be used for "public service" activities, as defined in the regulations, than could be permitted under the governing statutory provision.

The purpose of this rule revision is to increase the effectiveness of special projects grants awarded to achieve objectives, as in the case of the recently announced Youth Sports program, which can best be met through public service type activities. The rule therefore provides a choice of alternative calculations under which a local government can determine the maximum statutorily permissible amount of a special project grant that can be used for public service activities.

EFFECTIVE DATE: October 3, 1989.

FOR FURTHER INFORMATION CONTACT: Roy Gonnella, Director, Secretary's Funds Division, Office of Program Policy Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6092. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background; Description of This Rule

A new initiative to make grants from the Secretary's Discretionary Fund to aid in establishing or enhancing Youth Sports clubs at public housing sites with identified severe drug problems was proposed recently by the Secretary. Special projects grants of up to $25,000 would be made available on a competitive basis to units of local government planning and undertaking vigorous efforts to rid public housing areas of the drug problem. Applicants would be invited to design a variety of youth sports, cultural or other programs to best address their local situation and most effectively leverage local resources.

To the extent that existing regulatory limitations on the use of grant funds for public service activities can in some cases be more restrictive than the maximum amount allowable under the statutute, local governments could be hampered in their planning for the expenditure of these grants for the intended purpose.

HUD's present Special Projects Program regulations state at § 570.410(c) that eligible special project activities are those eligible under 24 CFR Part 570—Community Development Block Grants—Subpart C—Eligible Activities. Section 570.201(e) of Subpart C sets forth the eligibility requirements for public service activities, including the statutorily derived limitation on the amount of funds that may be used for public services.

Section 105(a)(8) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(8)) provides that "not more than 15 per centum of the amount of *any assistance* to a unit of general local government *under this title* may be used for [public service] activities." (Emphasis added.) Section 570.201(e)(2) implements this provision by applying the limitation to each grant.

The Department believes that the 1974 Act permits the application of the 15% limitation either to each separate grant amount received by a local government, or to the *aggregate* of grants received under title I of the 1974 Act by the local government in a particular Federal fiscal year.

Accordingly, the Department is amending the Special Projects Program regulations to give the local government the option of calculating the amount of special project grant funds that may be used for public services based upon 15 percent of *either* the special projects grant, *or* the aggregate of the special projects grant plus the community development block grant received by the local government in the same federal fiscal year under the Community Development Block Grant (CDBG) Entitlement or State Program. The second option permits the local government to use special projects funds for public services in an amount equal to 15 percent of the *sum* of the special project grant funds plus grant funds received for the same federal fiscal year under the CDBG Entitlement or State Program—less the amount of the Entitlement or State Program grant funds that will be used for other public service activities.

The regulation also gives a third option to CDBG Entitlement Program grantees that are given a statutory exception to the 15 percent limitation. (The statutory exception is implemented at existing § 570.201(e)(3).) The local government may use special project grant funds in an amount equal to the amount of the Entitlement grant funds received for the same federal fiscal year that may be used for public service activities, less the amount of the Entitlement grant funds that will be used for other public service activities.

Justification for Final Rulemaking

It is the Department's usual practice to publish regulations changes as proposed rule making for public comment before adopting the changes as final. In this instance, the Secretary finds that there is good cause for publishing this rule for effect as promptly as is permissible under section 7(o)(3) of the Department of HUD Act (HUD's legislative review statute). The Youth Sports initiative is considered a particularly meritorious idea for combatting the effects of illegal drugs in public housing, and the program is one based on competitive applications from communities volunteering to undertake locally developed initiatives of this kind. The effect of this rule is to provide a higher degree of discretion in local governments to make determinations concerning the kinds of expenditures they would like to undertake under the Special Projects program. Since the rule decreases the amount of regulatory control placed upon grantees by the Department, while preserving fully the statutory limitation on public services spending on a program-wide basis, the Secretary has determined that delaying the effectiveness of this rule to await public comment would be unnecessary and contrary to the public interest.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection during regular business hours (weekdays 7:30 to 5:30 p.m.) in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981 (Executive Order 12291). An analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities, because the rule's subject matter is limited to the introduction of a discretionary means of applying the Community Development program's statutory limitation on grant expenditures for public service activities, and should not introduce additional costs for any grantee, large or small, nor disadvantage small grantees in any way.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the policies contained in this rule have no significant impact on family formation, maintenance, or general well-being and, thus, are not subject to review under the Order. The rule would remove a potential regulatory burden on local government grantees associated with the manner in which grant funds may be expended.

While beneficial results are expected from some of the local decisions that the rule would facilitate, there is no direct impact on Family-related issues involved in the rule.

The General Counsel, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this rule do not have federalism implications and, therefore, are not subject to review under the Order. This rule is consonant with principles of federalism in that it broadens the degree of local discretion provided for in carrying out a Federal statutory directive.

This rule was not listed in the Department's Semiannual Agenda of Regulations published at 54 FR 16708 on April 24, 1989, under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program number is 14.227.

List of Subjects in 24 CFR Part 570

Accordingly, 24 CFR Part 570, Subpart E is amended as follows:

PART 570—[AMENDED]

1. The authority citation for Part 570 is revised to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart E—Secretary's Fund

2. Section 570.410(c) is revised by redesignating the present paragraph as paragraph (c)(1), and by adding a new paragraph (c)(2), to read as follows:

§ 570.410 Special projects program.

* * * * *

(c) *Eligible activities.* * * *

(2) The amount of funds awarded to a unit of general local government under this section that may be used for public service activities is limited. The applicant may use whichever of the following methods of calculation yields the highest amount:

(i) Fifteen percent of the special projects grant;

(ii) An amount equal to 15 percent of the sum of special project grant funds plus grant funds received for the same federal fiscal year under the Entitlement or State program, less the amount of the Entitlement or State program grant funds which will be used for other public service activities; or

(iii) In the case of an applicant that is an Entitlement grantee subject to the exception in § 570.201(e)(3), an amount equal to the amount of the Entitlement grant funds received for the same federal fiscal year that may be used for public service activities, less the amount of the Entitlement grant funds which will be used for other public service activities.

* * * * *

Date: July 25, 1989.

Audrey E. Scott,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 89-17905 Filed 7-31-89; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8258]

RIN 1545-AL26

Allocation of Income Attributable to Certain Notional Principal Contracts Under Section 863(a)

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary Income Tax Regulations which set forth the source of income attributable to certain notional principal contracts (notional principal contract income). This action is necessary to provide guidance to foreign and domestic corporations and individuals. The temporary regulations set forth in this document also serve as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective for notional principal contract income includible in income on or after December 24, 1986. An election is provided to apply the rules of these regulations to notional principal contract income includible in income before December 24, 1986.

FOR FURTHER INFORMATION CONTACT: Charles T. Plambeck of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. (Attention: CC:CORP:T:R) (202–566–6284, not a toll-free call.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public disclosure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545–0132. The estimated annual burden per respondent varies from five minutes to two hours, depending on individual circumstances, with an estimated average of one hour and twenty-five minutes.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

For further information concerning this collection of information, where to submit comments on this collection of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble of the cross-reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Background

Notice 87–4, 1987–1 C.B. 416, described anticipated allocation rules for swap income and swap expense attributable to certain interest rate swap agreements. Generally, Notice 87–4 provided that swap income would be sourced by reference to the residence of the recipient of the swap income. The Notice also solicited comments regarding the source of swap income received by a qualified business unit of a taxpayer.

This document contains temporary regulations (contemplated in the foregoing Notice) under section 863(a) of the Internal Revenue Code of 1986 relating to the allocation of income attributable to certain notional principal contracts. Section 863(a) provides that the Secretary may promulgate regulations to allocate items of income, expenses, losses, and deductions, other than those specified in sections 861(a) and 862(a), to sources within or without the United States. Income attributable to a notional principal contract is not income specified in section 861(a) or 862(a).

Comments

Five commentators submitted comments to the Internal Revenue Service on the rules contained in Notice 87–4.

Three commentators requested that swap income received by a qualified business unit of a taxpayer be sourced to the residence of the qualified business unit (generally, where its principal place of business is located) with safeguards to prevent the artificial use by United States taxpayers of this rule to source swap income outside the United States. The temporary regulations generally incorporate these comments.

Another commentator requested that a domestic corporation which is a so-called "80/20 company" be treated as a foreign resident for purposes of sourcing swap income. The temporary regulations do not incorporate this comment because the qualified business unit exception adopted by the temporary regulations adequately allows a domestic corporation to source its notional principal contract income outside the United States in appropriate circumstances.

Finally, two commentators requested that the scope of the rules contemplated by Notice 87–4 be broadened to include any notional principal contract, including those where no party to the agreement is a United States resident or has as its functional currency the United States dollar, or where the contract is not denominated in United States dollars. The temporary regulations generally incorporate these comments. However, the regulations do not apply where the payments required to be made under the notional principal contract are determined by reference to a nonfunctional currency. These transactions are the subject of forthcoming regulations under section 988. It is anticipated that the regulations under section 988 will provide sourcing rules similar to those described in this regulation. The source of income from certain other financial products is determined under section 865.

Explanation of Provisions

This regulation generally determines the source of notional principal contract income. It is anticipated that the Internal Revenue Service in the future will address related issues not addressed in this regulation, including the computation of gain or loss upon the disposition of a notional principal contract and the proper time for inclusion or deduction of notional principal contract income or expense. See generally Notice 89–21, 1989–8 I.R.B. 23.

Section 1.863–7T(a)(1) defines notional principal contract income as income attributable to a notional principal contract and describes, generally, a notional principal contract. A notional principal contract is defined narrowly to exclude transactions which give rise to foreign currency gain or loss. Section 1.863–7T(a)(2) provides that § 1.863–7T is effective for notional principal contract income includible in income on or after December 24, 1986.

Section 1.863–7T(b)(1) provides that the source of notional principal contract income is determined by reference to the residence of the taxpayer. Sections 1.863–7T(b) (2) and (3) provide exceptions to residence based sourcing under § 1.863–7T(b)(1). Section 1.863–7T(b)(2) provides that the source of notional principal contract income is determined by the residence of a qualified business unit of the taxpayer, rather than the taxpayer, if certain conditions are met. Section 1.863–7T(b)(3) provides that notional principal contract income will be treated as effectively connected United States source income in certain circumstances. The Commissioner is specifically interested in receiving comments regarding the ability of taxpayers to satisfy the conditions of section 1.863–7T(b) (2) or (3) in circumstances which involve global trading. Section 1.863–7T(c)(1) allows a taxpayer to make an election to source notional principal contract income includible in income before December 24, 1986 according to the rules of § 1.863–7T and provides rules relating to the effect of such election. Section 1.863–7T(c) (2) and (3) provides the time and manner for making the election provided in § 1.863–7T(c)(1). Section 1.863–7T(d) provides an example illustrating the principles of § 1.863–7T. Finally, section 1.863–7T(e) provides certain cross references.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) and the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these temporary regulations are Charles Thelen Plambeck, of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, and F. Scott Farmer, formerly of that office. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.861–1—1.997–1

Income taxes, Aliens, Exports, DISC, Foreign Investments in U.S., Foreign Tax Credit, FSC, Sources of income, United States investments abroad.

List of Subjects in 26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended to read as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sections 1.863–1T(d) and 1.863–7T are issued under 26 U.S.C. 863(a).

Par. 2. New § 1.863–7T is added immediately after § 1.863–6 to read as follows:

§ 1.863–7T Allocation of income attributable to certain notional principal contracts under section 863(a) (temporary).

(a) *Scope*—(1) *Introduction.* This section provides rules relating to the source and, in certain cases, the character of notional principal contract income. Notional principal contract income is income (other than foreign currency gain within the meaning of section 988(b)) attributable to a notional principal contract. Generally, a notional principal contract is an interest rate swap, cap, floor, collar, or similar financial instrument that provides for the payment of amounts by one party to another at specified intervals calculated by reference to an interest rate index upon a notional principal amount in exchange for specified consideration or a promise to pay similar amounts. For this purpose, an agreement shall not be considered a notional principal contract unless the notional principal amount and each of the payments under the agreement are denominated in terms of and are determined by reference to the taxpayer's functional currency. In addition, an agreement between a taxpayer and a qualified business unit

(as defined in section 989(a)) of the taxpayer shall not be considered a notional principal contract.

(2) *Effective date.* This section applies to notional principal contract income includible in income on or after December 24, 1986. See paragraph (c) of this section for an election to apply the rules of this seotion to notional principal contract income includible in income before December 24, 1986.

(b) *Source of notional principal contract income*—(1) *General rule.* Unless paragraph (b) (2) or (3) of this section applies, the source of notional principal contract income shall be determined by reference to the residence of the taxpayer as determined under section 988(a)(3)(B)(i).

(2) *Qualified business unit exception.* The source of notional principal contract income shall be determined by reference to the residence of a qualified business unit of a taxpayer if—

(i) The taxpayer's residence, determined under section 988(a)(3)(B)(i), is the United States;

(ii) The qualified business unit's residence, determined under section 988(a)(3)(B)(ii), is outside the United States;

(iii) The qualified business unit is engaged in the conduct of a trade or business where it is a resident as determined under section 988(a)(3)(B)(ii); and

(iv) The qualified business unit and any other qualified business unit of the taxpayer described in paragraph (b)(2)(ii) and (iii) of this section are the only active and material participants in negotiating and acquiring the notional principal contract. Participation in connection with the negotiation or acquisition of a notional principal contract may be disregarded if the district director determines that a purpose for such participation was to affect the source of notional principal contract income.

(3) *Effectively connected notional principal contract income.* Notional principal contract income that under principles similar to those set forth in § 1.864–4(c) arises from the conduct of a United States trade or business shall be sourced in the United States and such income shall be treated as effectively connected to the conduct of a United States trade or business for purposes of sections 871(b) and 882(a)(1).

(c) *Election*—(1) *Eligibility and effect.* A taxpayer may make an election to apply the rules of this section to all, but not part, of the taxpayer's notional principal contract income for all taxable years (or portion thereof) beginning before December 24, 1986, for which the period of limitations for filing a claim for refund under section 6511(a) has not expired. If the taxpayer makes this election in the time and manner provided in paragraph (c) (2) and (3) of this section, then, with respect to such taxable years (or portion thereof), no tax shall be deducted or withheld under sections 1441 and 1442 with respect to payments of the taxpayer attributable to a notional principal contract. The election may be revoked only with the consent of the Commissioner.

(2) *Time for making election.* The election specified in paragraph (c)(1) of this section shall be made by November 29, 1989.

(3) *Manner of making election.* The election described in paragraph (c)(1) of this section shall be made by attaching a statement to the tax return or an amended tax return for the applicable taxable year. The statement shall—

(i) Contain the name, address, and taxpayer identifying number of the electing taxpayer;

(ii) Identify the election as a "Notional Principal Contract Election under § 1.863–7T"; and

(iii) Specify each taxable year described in paragraph (c)(1) of this section in which payments were made.

(d) *Example.* The operation of this section is illustrated by the following example:

(1) On January 1, 1990, X, a calendar year domestic corporation, entered into an interest rate swap contract with FZ, an unrelated foreign corporation. X does not have a qualified business unit outside the United States. Under the contract, X is required to pay FZ fixed rate dollar amounts, and FZ is required to pay X floating rate dollar amounts, each determined solely by reference to a notional dollar denominated principal amount specified under the contract. The contract is a notional principal contract under § 1.863–7T(a) because the contract provides for the payment of amounts at specified intervals calculated by reference to an interest rate index upon a notional principal amount in exchange for a promise to pay similar amounts, and the notional principal amount and each of the payments under the agreement are denominated in terms of the same currency, the dollar.

(2) Assume that during 1990 X had net notional principal contract income of $100 in connection with the notional principal contract described in (i) above. Under paragraph (b)(1) of this section, the source of X's income attributable to the swap agreement is domestic.

(e) *Cross References.* See § 1.861–9T(b) for the allocation of expense to certain notional principal contracts. For rules relating to the taxable amount of notional principal contract income allocable under this section to sources inside or outside the United States, see § 1.863–1(c).

PART 602—[AMENDED]

Par. 3. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table § 1.863–7T * * * 1545–0132.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of Treasury.

June 29, 1989.

[FR Doc. 89–17826 Filed 7–31–89; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300198A; FRL–3623–5]

Deinked Paper Fiber; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes that deinked paper fiber be exempted from the requirement of a tolerance when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops only. This regulation was requested by Jellinek, Schwartz, Connolly, and Freshman, Inc., on behalf of Edward Lowe Industries, Inc.

EFFECTIVE DATE: August 1, 1989.

ADDRESS: Written objections, identified by the document control number, [OPP–300198A], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Kerry B. Leifer, Registration Support Branch, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Registration Support Branch, Rm. 726, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703) 557–5180.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of May 17, 1989 (54 FR 21236), in which it was announced that Jellinek, Schwartz, Connolly, and Freshman, Inc., on behalf of Edward Lowe Industries, Inc., had requested that the Administrator propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for deinked paper when used as a carrier in pesticide formulations applied to growing crops only.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the rule will protect the public health. Therefore, the rule is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 24, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 121 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredients, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * *		
Paper fiber, deinked or recycled, conforming to 21 CFR 109.30(a)(9) and 21 CFR 176.260.		Carrier.
* * * * *		

* * * * *

[FR Doc. 89–17918 Filed 7–31–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 261

[SW–FRL–3623–1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for specified waste generated by Clay Equipment Corporation, Cedar Falls, Iowa. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: August 1, 1989.

ADDRESS: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m. in room M2427, Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The reference number for this docket is "F–89–CEEF–FFFFF." The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Robert Kayser, Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–4536.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine (1) that the waste to be excluded is not hazardous based upon the criteria for which is was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of this Rulemaking

Clay Equipment Corporation (Clay), located in Cedar Falls, Iowa, petitioned the Agency to exclude from hazardous waste control a specific waste that it generates. After evaluating the petition, EPA proposed, on September 16, 1988, to exclude Clay's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32. See 53 FR 36070.

This rulemaking addresses public comments received on the proposal and finalizes the proposed exclusion.

II. Disposition of Petition

Clay Equipment Corporation, Cedar Falls, Iowa

1. Proposed Exclusion

Clay petitioned the Agency for an exclusion of its wastewater treatment sludge, presently listed as EPA Hazardous Waste Nos. F006 and F009. Clay based its petition on the claim that the constituents of concern, although present in the waste, were in an essentially immobile form. Furthermore, to support its claim that both the non-listed and listed constituents of concern are not present in the wastewater treatment sludge above levels of regulatory concern, Clay submitted results from total constituent and Oily Waste Extraction Procedure (OWEP) and/or EP toxicity analyses for all the EP toxic metals, nickel and cyanide. These analyses were performed on representative samples of Clay's wastewater treatment sludge.

The Agency evaluated the information and analytical data provided by Clay in support of its petition and determined that the hazardous constituents found in the petitioned waste would not pose a

threat to human health. Specifically, the Agency used its Vertical and Horizontal Spread (VHS) model to predict the potential mobility of the hazardous constituents found in the petitioned waste. Based on this evaluation, the Agency determined that the constituents in Clay's waste would not leach and migrate at concentrations above the health-based levels used in delisting decision-making. See 53 FR 36070, September 16, 1988, for a more detailed explanation of why EPA proposed to grant Clay's petition for its wastewater treatment sludge.

2. Agency Response to Public Comments

The Agency received public comments on the proposed rule from three interested parties. All three commenters opposed the Agency's proposed decision to exclude Clay's wastewater treatment sludge. The comments made by the three interested parties are discussed below.

Petition-Specific Comments. One commenter stated that the wastewater treatment sludge filter cake still exhibits one of the criteria for which it was listed—the presence of significant concentrations of the inorganic constituents of concern (*ie.*, hexavalent chromium and complexed cyanide). The commenter further stated that the waste contained significant concentrations of lead. Two other commenters also stated that the waste contained significant concentrations of cyanide.

The Agency agrees that the presence in F006 and F009 wastes of significant total constituent concentrations of the constituents of concern was one of the reasons for listing these wastes as "T" (toxic) wastes. See 40 CFR 261.11(a)(3)(ii) and "Background Document, Resource Conservation and Recovery Act Subtitle C, Hazardous Waste Management, section 3001, Identification and Listing of Hazardous Waste—Electroplating and Metal Finishing Operations," 1980. The Agency, however, believes that the data presented in the Background Document broadly characterize the physical/chemical nature of untreated electroplating and stripping wastes and that these data are not waste-specific, *i.e.*, representative of the physical/chemical nature of Clay's electroplating and stripping wastes. Specifically, EPA believes it is reasonable to expect that, as the total constituent concentration of an unbound or loosely bound metal present in a waste increases, the potential for the metal to leach from the waste also increases (generally, the higher the total constituent concentration of an unbound or loosely bound metal, the higher the potential EP leachate concentration). Thus, wastes having significant total concentrations of unbound or loosely bound constituents are more likely to impact the underlying ground water than wastes having lower total concentrations of unbound or loosely bound constituents. In this case, however, the metals and cyanide in Clay's waste are tightly bound within the waste matrix. Thus, the Agency believes that the levels of these constituents present in Clay's waste should not pose a threat to either human health or the environment. The Agency's conclusion that the constituents of concern (both listed and unlisted) are tightly bound in the waste matrix and thus are not available for leaching is supported by both the analysis of Clay's manufacturing processes and the results of the OWEP leachate analyses. See below.

As stated in the proposal, Clay manufactures agricultural equipment and implements, of which approximately 99 percent are ferrous and one percent stainless steel. See 53 FR 36071, September 16, 1988. Clay's waste, therefore, is expected to consist primarily of insoluble iron hydroxides, cyanide complexed with iron, smaller amounts of other metals (*e.g.*, chromium) as co-precipitates, and oil and grease. The iron-cyanide complexes contained in Clay's waste (ferricyanides and ferrocyanides) are expected to be extremely stable and insoluble in water. The stability constants for ferricyanide and ferrocyanide are on the order of 10^{52} and 10^{47}, respectively. See Broderius, S.J., 1973. (As the stability constant increases, the tendency of the complex to dissociate and reform as a less stable complex decreases.)

The Agency's conclusion that most of the cyanide in Clay's waste is tightly bound in iron-cyanide complexes is further supported by both the low OWEP concentration of cyanide and low concentration of reactive cyanide (0.11 mg/l and 14.8 mg/kg, respectively) in Clay's waste. See 53 FR 36073, September 16, 1988. Specifically, if the cyanide present in Clay's waste was not tightly bound, the levels of leachable and free cyanide would have been higher.

EPA evaluated the potential mobility of Clay's waste using the maximum OWEP leachate concentrations and the vertical and horizontal spread (VHS) model. For the small volume of waste generated by Clay (190 cubic yards), the VHS Model predicted a dilution factor of approximately 32.3. The VHS model analysis provides a conservative and reasonable worst-case evaluation of the waste's effect on the underlying aquifer. The predicted compliance-point concentrations resulting from this analysis were below the levels of concern used for delisting purposes. See 53 FR 36075, September 16, 1988, for a description of the modeling analysis of Clay's waste.

Furthermore, in delisting evaluations, EPA considers all the factors for which the waste was listed, as well as factors other than those for which the waste was originally listed, that could cause the waste to be hazardous. See 42 U.S.C. 6921(f). For this specific wastestream, based on the above discussion, EPA does not believe that any other factors, including elevated total constituent concentrations of the constituents of concern, could cause this wastestream to present a hazard to human health and the environment.

Two commenters stated that the Agency only considered the leachable levels of hazardous constituents and did not consider waterborne and airborne dispersal of the waste. One of these commenters further stated that the waste does not need to migrate in order to affect human health and the environment. Specifically, the commenter stated that the environment could come to the waste (presumably at its current location) in the form of children at play, waterfowl, aquatic organisms, and fishermen.

The Agency does not believe it reasonable to expect that children waterfowl, aquatic organisms, or fishermen will ever be directly exposed to Clay's waste. The lagoon in which the waste is stored is relatively small and of such a nature (sludge with 30 percent solids content) that it would be unlikely to support the aquatic organisms necessary to attract either waterfowl or fishermen. In addition, as explained in the proposed decision, the Agency believes that the level of reactive cyanide and reactive sulfide are low enough, that the waste does not pose a threat to human health via inhalation. See 53 FR 36075, September 16, 1988. Furthermore, since Clay's waste has a solids content of approximately 30 percent, the Agency believes that airborne exposure to particulates containing hazardous contaminants from the waste is unlikely.

Lastly, upon promulgation of this exclusion, Clay must either dispose of their waste on-site or ensure that the waste is delivered to an off-site storage, treatment or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. See 53 FR 36076, September 16, 1988. As a result, Clay will be required either to close the impoundment in accordance with all applicable Subtitle D requirements or transport the waste to a facility which will dispose of the material in a covered landfill. In either case, direct contact with the waste will be prevented in the future. Thus, long-term environmental exposure could only result from contact with surface waters receiving contaminated ground water, or from the consumption of drinking water (*i.e.*, ground water) contaminated with leachate derived from the material.

With regard to waterborne dispersal of the waste, the VHS model analysis described in the proposal shows that leachate from the waste that travels through ground water should not exceed health-based levels.

The Agency acknowledges that it may also be possible for surface water runoff to transport contaminants from the waste to a nearby surface water body. However, the Agency does not believe that analysis of such overland transport of contaminants as a reasonable exposure route for the petitioned waste would compel a different result for this petition. Contamination of surface water might occur through runoff from the petitioned waste. However, EPA believes that the concentrations of any hazardous constituents in that runoff will tend to be lower than the levels in the EP leachate analyses reported in the proposal due to the acidic medium of the EP test. Furthermore, any transported constituents would be further diluted in the surface water body. Finally, the Agency notes that the discharge of surface water runoff would be regulated under the Clean Water Act if the runoff were collected or channeled (see 40 CFR 122.2). As a result, the Agency continues to believe that under reasonable worst-case conditions, the disposal of Clay's waste will not present a threat to either human health or the environment.

One commenter was concerned whether the chromium in Clay's waste is hexavalent chromium or trivalent chromium. The commenter believed that because the Agency did not address the possible presence of hexavalent chromium, the Agency should both require testing to determine the relative and absolute amounts of hexavalent and trivalent chromium in the waste and set a conditional testing requirement for hexavalent chromium.

The Agency disagrees with the commenter. Specifically, EPA's hazard modeling analysis essentially treated the entire portion of the EP leachable concentration of chromium as hexavalent chromium because the health-based standard used for chromium is based on the toxicity of the hexavalent species. See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket. The analysis did not show a leaching potential for chromium at a level of concern. Thus, the Agency believes that it is unnecessary to require Clay, as a condition of its onetime exclusion, to test its waste for the presence of hexavalent chromium.

One commenter noted that the subheading in Table 1 of the proposed notice (presenting the maximum total constituent concentrations) incorrectly stated that the results were "OWEP constituent analyses." See 53 FR 36073, September 16, 1988. An error was made during the publication of the proposed notice. The subheading should have been: "Total constituent concentrations."

One commenter questioned the relationship between the analytical difficulties in analyzing the tetrahydrofuran (THF)/toluene extract and erroneously high mobile metal concentrations. The commenter also questioned why the data from these analyses were rejected. See 53 FR 36073 for details.

The OWEP method (SW–846 Method No. 1330) has three steps. The first and the third steps (a liquid and solid separation and an aqueous leaching experiment, respectively) are performed as in the regular EP procedure (SW–846 Method No. 1310). The second step, however, is an extraction of the waste (after initial filtration) with two strong organic solvents (THF and toluene). This second step removes the oil and the total amount of metal contained in the oil. The concentration of the metals from each of the three steps are then used to calculate the mobile metal concentration (MMC) for each metal. Therefore, should analytical difficulties arise during the analysis of the THF/toluene extract, the calculation of the MMC will be incorrect. In Clay's case, the independent laboratory reported that the erroneous results obtained from the second step of the OWEP caused the calculated MMC's to be inappropriately high. The laboratory reevaluated the waste using the OWEP and believes that the results of this reevaluation (derived from analyses performed without analytical difficulties) are valid. The Agency accepted the laboratory's explanation for why the data obtained from the first analyses were invalid, and thus, rejected these data. See 53 FR 36073, September 16, 1988.

Lastly, the same commenter inferred that analytical difficulties encountered by the laboratory in performing the OWEP supports the need to review the characterization of the sludge against the Land Disposal Restrictions Program's best demonstrated available technology (BDAT) standards. The Agency disagrees with the commenter's conclusion that the analytical difficulties encountered in the OWEP analyses support the need to review the characterization of the sludge using BDAT standards. EPA believes that the OWEP analyses adequately characterizes the mobility of the EP toxic metals and nickel in wastes exhibiting one percent or more total oil and grease.

One commenter stated its belief that Clay's certified estimate of 190 cubic yards of sludge was low. The commenter suggested that for 190 cubic yards of sludge, the probability-weighted cost of a successful delisting petition does not appear to be markedly different from properly disposing of the waste and, therefore, the delisting of such quantity seemed a marginal investment for Clay to undertake.

The Agency disagrees with the commenter and notes that the commenter did not supply any substantive information to support its conclusion. The Agency reviewed Clay's estimated volume of sludge and based upon the dimensions and depth of the sludge, the Agency accepted Clay's certified estimated waste volume. Clay stated that the dimensions of its oval shaped impoundment were 70 feet x 40 feet. Clay also stated that the depth of the sludge ranged from two to five feet and that the average depth was approximately three feet. The Agency believes that the commenter's analysis of disposal costs for Clay's waste did not consider the volume of associated berm soils and underlying soils which would have to have been removed had Clay's petition been denied. The cost of disposing of the waste, berm soils, underlying soils and other costs associated with liability insurance and unit closure would be greater than just the disposal costs associated with the Subtitle C disposal of 190 cubic yards of hazardous waste. All petitioners, including Clay, are advised by the Agency to consider a variety of factors, including the costs of disposal as a hazardous waste, when deciding to prepare and submit a delisting petition. Even so, the Agency notes that it has received delisting petitions for much smaller quantities of waste.

Lastly, one commenter suggested that EPA incorrectly used an interim guidance level of 250 mg/kg for total releasable cyanide (found in section 7.3.3.2 of SW–846), which is used to

determine whether a waste is too reactive to be placed in a double-lined minimum technology landfill unit, as the basis for determining that Clay's waste was not hazardous. The commenter believed that EPA erroneously cited the absence of the cyanide reactivity characteristic as proof that the toxicity of the cyanide is of such low level as to allow the total removal of the management controls required by RCRA Subtitle C. The commenter also stated that EPA should not delist any waste with detectable levels of releasable cyanides, which are much more mobile than complexed cyanides and cyanide salts for which the waste was originally listed.

The Agency did not obtain the 250 mg/kg level for reactive cyanide from section 7.3.3.2 of SW–846 as the commenter suggested. Rather, as stated in the proposed rule, the 250 mg/kg level for reactive cyanide is based upon an "Interim Agency Thresholds for Toxic Gas Generation." See 53 FR 36075, September 16, 1988 and "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket. The Agency agrees that the releasable form of cyanide may be more mobile in the environment than complexed cyanide or cyanide salts. However, the Agency used the results obtained from the EP toxicity analyses performed on Clay's waste for total cyanide to determine that the cyanide in all forms was not mobile and therefore would not pose a threat to human health and the environment. See 53 FR 36075, September 16, 1988.

EPA's Modeling Approach. Two commenters questioned the Agency's proposed use of the VHS model to evaluate Clay's waste. One commenter believed that the Agency was "guesstimating" by using the VHS model to predict hypothetical compliance-point concentrations. The second commenter questioned the Agency's statement that clogging would offset hydraulic head. Both commenters believed that the Agency should consider a reasonable worst-case scenario, one in which clogging does not occur. As a result, both commenters felt that EPA was underestimating the effects of Clay's waste on the underlying ground water and that, in light of the fact that the VHS calculated compliance-point concentration approaches 40% of the level of regulatory concern, EPA could not properly conclude that the waste would not be hazardous when disposed in a surface impoundment.

The Agency agrees that delisting decisions should be based on reasonable worst-case scenarios. The Agency also believes, however, that the use of the VHS model to evaluate waste disposed of in a surface impoundment is appropriate. Furthermore, the Agency believes that the commenter may have misinterpreted the discussion of competing mechanisms. The Agency did not say that the effects of clogging completely offset the potential effects of hydraulic head on leachate generation. See 53 FR 36074, September 16, 1988. However, just as it is reasonable to assume that a filter will become clogged after continual use, the Agency believes that it is reasonable to assume that the interstitial spaces in the soils beneath the impoundment will become "clogged." Thus, the Agency believes that it is reasonable to expect clogging to occur in both the surface impoundment and landfill disposal scenario.

The Agency does not believe that the offsetting mechanisms of sorption, retardation, and clogging completely negate the potential effects of hydraulic head. However, as noted in the proposed rule, the Agency believes that the VHS model is sufficiently conservative to allow the Agency to evaluate wastes disposed of in surface impoundments. Neither commenter offered any specific information or analysis to suggest this conclusion is invalid. Furthermore, EPA believes it would be inherently arbitrary to adjust the compliance-point concentrations predicted by the VHS model upward to account for potential surface impoundment effects absent any such analysis.

One of the commenters also stated that the apparent lack of ground-water contamination at Clay's facility, after approximately twelve years of operation, is insufficient evidence for the Agency to conclude that the waste will not exhibit long-term adverse effects on the underlying aquifer. In addition, the commenter stated that, although Clay could not place additional hazardous wastes in its impoundment, Clay could place nonhazardous liquids in the unlined impoundment, thus creating greater hydraulic head and increasing the chances of future ground-water contamination. The commenter also inferred that the waste, if moved to another site having different geologic and hydrogeologic conditions, could adversely affect the underlying acquifer at the new site.

The Agency believes that the commenter's concern that the waste may exhibit long-term adverse effects on the underlying ground water is unfounded. Specifically, the VHS model does not consider time as a variable. Rather, the VHS model calculates the amount of dilution occurring in the aquifer based on the volume of waste, the waste's leaching potential, and the distance between the disposal site and the nearest hypothetical downgradient drinking-water well. The Agency realizes that the ground-water monitoring data submitted by Clay indicates only that Clay's waste has not yet adversely affected the underlying ground water. The Agency, however, used the VHS model to conclude that Clay's waste also will not adversely affect ground water in the future.

The Agency acknowledges that it is possible that Clay could use its surface impoundment to treat, store, and dispose of nonhazardous wastes once the petitioned waste is excluded from Subtitle C regulation. The Agency also acknowledges that the addition of nonhazardous liquids to Clay's surface impoundment could create a hydraulic head above the solids. However, as discussed above, EPA believes that the VHS model is sufficiently conservative to be used for waste disposed of in a surface impoundment. See also 53 FR 36071, September 16, 1988. The VHS model uses conservative, reasonable worst-case assumptions regarding site characteristics and distance to the hypothetical downgradient drinking-water well. EPA's evaluation of Clay's waste was waste-specific; therefore, the Agency believes that the waste will remain nonhazardous regardless of the site-specific characteristics of the final disposal site. In response to the commenter's specific concerns with the current disposal site (*i.e.*, the impoundment), the Agency also notes that Clay stated in its petition that it plans to close (and not reuse) the impoundment.

Inconsistencies Between Delisting and Closure. One commenter believed that Clay had violated the timing-of-closure provisions of RCRA. See 40 CFR Parts 265.112(d) and 113(a). Specifically, the commenter stated that because Clay last placed hazardous waste into its surface impoundment in April 1984, closure of the surface impoundment should have commenced within 90 days, in accordance with the applicable closure regulations (or by a later date if the Regional Administrator granted Clay an extension). The commenter asserted that the delisting mechanism was not intended to allow facilities that failed to undertake closure in a timely fashion to escape the Subtitle C system, and that the Agency, by granting Clay an exclusion, was rewarding Clay for violating the timing-of-closure provisions. The commenter also stated that failure to close the impoundment presents an environmental hazard.

EPA agrees that delays in closing Clay's surface impoundment did occur. The agency also agrees that the delisting process was not intended to allow facilities that failed to undertake closure in a timely manner to escape the Subtitle C system. EPA discourages the delay of enforcement actions for facilities that have filed a delisting petition, and has distributed a policy directive to the EPA Regions to this effect. However, EPA believes that whether or not Clay violated the closure regulations should not directly effect the delisting decision. By granting the exclusion, the Agency is not "rewarding" Clay for closure delays; a decision to exclude the petitioned waste does not preclude EPA from taking appropriate enforcement action for any violations of RCRA that occurred prior to the delisting.

The Agency strongly disagrees with the implication that EPA's action regarding the schedule for closure activities in any way undermines the delisting decision. On the contrary, EPA believes it would be imporper to allow Clay's enforcement status to influence directly the Agency's decision on Clay's delisting petition. Furthermore, the Agency does not agree that failure to close the impoundment presents an environmental hazard. Based upon a complete characterization and assessment of Clay's waste and a review of the ground-water monitoring data, EPA determined that Clay's waste does not present a threat to human health or the environment. As discussed previoulsy, EPA believes that the waste will remain nonhazardous regardless of the characteristics of the final disposal site (including an impoundment that has not been closed under RCRA Subtitle C regulations).

Inconsistencies Between the Delisting Program and the Land Disposal Restrictions Program. Three commenters stated that there are inconsistencies between delisting levels proposed for Clay and the Land Disposal Restrictions Program's (LDRP) final best demonstrated available technology (BDAT) treatment levels for F006 wastes. See 53 FR 36070, September 16, 1988, and 53 FR 31153, August 17, 1988, respectively. Specifically, the commenters stated that the EP leachate concentration of cadmium in Clay's wastewater treatment sludge exceeds the BDAT treatment standard for cadmium that EPA has established for F006 waste by nearly two times. Furthermore, one commenter stated that, although EPA has not yet proposed a BDAT treatment standard for cyanide in F006 wastes, establishment of a BDAT treatment standard near 6300 ppm (the amount of cyanide in Clay's waste) is unlikely. The commenters believed that it makes no sense for EPA to allow a waste that could not be legally disposed of at a Subtitle C site—because it exceeds DBAT levels set for cadmium—to be managed as a nonhazardous waste. One commenter stated that the Agency should not grant any delisting petitions until the differences between the Delisting Program and the LDRP are reconciled through public participation/comment solicited using the Federal Register.

As discussed earlier, the Agency believes that the cyanide present in Clay's waste exists mainly as a ferricyanide and/or ferrocyanide complex. EPA believes these immobile iron-cyanide complexes do not present a threat to human health via ingestion of contaminated drinking water. See 53 FR 36075, September 16, 1988. However, the Agency does not believe that it is possible to reduce the level of cyanide present in waste using chemical oxidation technologies, including electrolytic oxidation, alkaline chlorination, wet air oxidation, and ozonation. These technology-based approaches for reducing the level of cyanide, however, were not necessary in this specific case.

The Agency agrees with the commenters that there are differences in approach between some of the decision criteria used in individual delisting decisions and those used in the Land Disposal Restriction Program. However, these differences are appropriate given the separate functions of the two programs and their different regulatory coverage. The Delisting Program and the LDRP are fundamentally different in that the Delisting Program's standards are health-based and the LDRP's BDATs and treatment standards are technology-based. See RCRA section 3001 (42 U.S.C. 6921) and RCRA section 3004 (42 U.S.C. 6924(m)), respectively. The Agency, however, believes that both the health-based and technology-based approaches of the Delisting Program and the LDRP, respectively, the protective of human health and the environment. Therefore, the Agency does not believe that it is appropriate or necessary to delay delisting decisions.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that Clay's wastewater treatment sludge should be excluded from hazardous waste control. The Agency, therefore, is granting a final, one-time exclusion to Clay Equipment Corporation, located in Cedar Falls, Iowa, for its wastewater treatment sludge described in its petition as EPA Hazardous Waste Nos. F006 and F009 disposed of in its on-site surface impoundment. The exclusion only applies to the wastewater treatment sludge contained in Clay's on-site surface impoundment.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

IV. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this rule

BEST COPY AVAILABLE

should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. § 533(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazarous wastes, thereby enabling the facility to treat its waste as nonhazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. § 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Date: July 25, 1989.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922.]

2. In Table 1 of Appendix IX, add the following wastestreams in alphabetical order:

Appendix IX—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	•
Clay Equipment Corporation.	Cedar Falls, Iowa.	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F006) and spent cyanide bath solutions (EPA Hazardous Waste No. F009) generated from electroplating operations and disposed of in an on-site surface impoundment. This is a onetime exclusion. This exclusion was published on August 1, 1989.
•	•	•

[FR Doc. 89–17919 Filed 7–31–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 704

[OPTS–82013G; FRL–3623–3]

Comprehensive Assessment Information Rule; Correction

AGENCY: Environmental Protection Agency [EPA].

ACTION: Final rule; correction.

SUMMARY: This document corrects several typographical errors that appeared in the Comprehensive Assessment Information Rule technical amendment that was published in the **Federal Register** of June 14, 1989.

EFFECTIVE DATE: This document is effective August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room EB–44, 401 M Street SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 14, 1989 (54 FR 25398), EPA amended the Comprehensive Assessment Information Rule (CAIR) by adding chemical substance trade names to the list of substances subject to reporting. This document corrected three typographical errors that appeared in that document. This document also extends the reporting time for processors who were not aware of their reporting requirement because of the typographical error. The reporting dates for those persons will be calculated from the effective date of this document, rather than from the effective date of the technical amendment of June 14, 1989.

Dated: July 25, 1989.

Frank D. Kover,

Chief, Chemical Screening Branch, Office of Toxic Substances.

Therefore, 40 CFR Part 704 is amended as follows:

PART 704—[AMENDED]

1. The authority citation for Part 704 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

§ 704.225 [Corrected]

2. By correcting § 704.225(b) as follows:

a. The code "X/P" is changed to read "X/P,P" wherever it appears under the Who Must Report column in the entire chemical listing.

b. The seventeenth entry under CAS No. 91–08–7/584–84–9 is changed to read "920C134 COROCOOL™ curing agent".

c. Under CAS No. entry 1321–38–6/26471–62–5, the question selection number "8.96" is changed to read "8.06".

[FR Doc. 89–17920 Filed 7–31–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 80 and 83

RIN 3067–AB33

Federal Crime Insurance Program

AGENCY: Federal Emergency Management Agency [FEMA].

ACTION: Final rule.

SUMMARY: These revisions to the Federal Crime Insurance Program achieve the following: Revise the basic classification and rating structure of the commercial rating plan; exclude coverage on vacant residential property and provide greater clarity to existing policy provisions under both the residential and commercial policies by providing more precise policy terminology.

EFFECTIVE DATE: September 1, 1989. This rule applies to Federal Crime Insurance business written after September 1, 1989 and renewal policies not billed as of September 1, 1989 to existing policyholders.

FOR FURTHER INFORMATION CONTACT: Robert J. DeHenzel, Project Officer, Federal Emergency Management Agency, Federal Insurance Administration, Donohoe Building, 500 C Street, SW., Room 433, Washington, DC 20472, Telephone number (202) 646–3440.

SUPPLEMENTARY INFORMATION: On June 14, 1989 FEMA published for comment in the **Federal Register** (Vol. 54, Page 25308) a proposed rule containing revisions to the existing Federal Crime Insurance regulations. These amendments to the Federal Crime Insurance Program (FCIP) Regulations are the result of the experience gained over the past eighteen years the Program has been in operation. The Federal Insurance Administration (FIA) desires to improve service to policyholders and to more closely align the Program with the underwriting and rating methods used by the private insurance sector, while reducing the general taxpayers' burden with more equitable sharing of the cost of crime losses between the general taxpayers and the program insureds.

In 1985, the Federal Insurance Administration implemented a new commercial rating plan for the Federal Crime Insurance Program. This new plan had four major objectives: (1) That the plan be simple to apply, (2) that the plan be similar to the Insurance Services Office (ISO) rating plan in order for the results to be easily transferable to the voluntary market, (3) that the plan eliminate as many internal subsidies as possible, and (4) that the plan offer loss prevention incentives to mitigate losses. Four years have elapsed since the plan was implemented. Therefore, it was desirable for the FIA to conduct a classification rate level study in an actuarially sound manner to verify that the model rating plan was correct and permit the commercial crime rates to move to their indicated rate level based on actual experience. The study conducted for the FIA by its servicing carrier, National Con Serv, Inc. and its actuary, Tillinghast, indicates that the Insurance Services Office (ISO) advisory rates have increased five times since 1985 and a substantial rate increase is appropriate for several of the FCIP business classifications. The Administration however proposes to balance the rate increase to no more than 5% for each business class. This action is in keeping with Congressional intent to limit an FCIP rate increase in 1989 to 5%.

Certain terminology in the residential and commercial policy forms could benefit from further definition and these revisions to the Federal Crime Insurance regulations bring greater clarity to the policy provisions by clarifying the policy exclusions relative to loss to business property, burglary loss from a motor vehicle and loss if a property is vacant. The revised regulations also limit recovery under the commercial policy to the amount of an advance or loan extended by an insured as a pledge or collateral and to specifically exclude coverage when an alarm system is found not to have been maintained in working order at the time of loss, for reasons within the control of the insured.

No written comments were received during the comment period.

FEMA has determined that an environmental impact statement is not needed for this final rule. A copy of the finding of no significant impact and an environmental assessment is available at the above address.

FEMA has also determined that this rule will not have a significant economic impact on a substantial number of small entities, and so has not conducted a regulatory flexibility analysis.

This final rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and hence no regulatory analysis has been prepared. Finally FEMA has determined that this rule does not contain a collection of information requirements as described in section 3504(b) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Parts, 80 and 83

Federal Crime Insurance Program.

Accordingly, 44 CFR Part 80, and 83 are amended as follows:

PART 80—DESCRIPTION OF PROGRAM AND OFFER TO AGENTS

1. The authority citation for Part 80 continues to read as follows:

Authority: 12 U.S.C. 1749bbb et seq.; Reorganization Plan No 3 of 1978; EO 12127.

2. Section 80.1 is amended by adding a new definition under paragraph (a)[24] to read as follows:

§ 80.1 Definitions.

(a) • • •

(24) "Vacant Property" means a property "without contents", that is, a premises from which all personal property has been removed.

• • • • • •

3. Section 80.5 paragraph (b)(7) is revised to read as follows:

§ 80.5 Duties of Servicing companies. (Amended)

• • • • • •

(b) • • •

(7) Deposit the applicant's premium check in a special bank account. If no policy is issued, refund the amount of the premium to the applicant.

• • • • • •

PART 83—COVERAGE, RATES, AND PRESCRIBED POLICY FORMS

1. The authority citation for Part 83 continues to read as follows:

Authority: 12 U.S.C. 1749bbb *et seq.*; Reorganization Plan No. 3 of 1978; EO 12127.

Subpart A—Residential Crime Insurance Coverage

§ 83.5 Required residential policy form.

2. Section 83.5 (a) is amended by revising portions of the Residential Crime Insurance Policy Form in the following respects:

(a) Subparagraph entitled "Exclusions" is amended by revising Exclusion (d) and adding two additional exclusions (f) and (g).

This Policy does not apply:

• • • • • •

(d) To loss of property pertaining to a business, trade, profession or occupation of an insured

* * * * *

(f) To any burglary loss from a motor vehicle.

(g) To loss while the property is vacant

Subpart B—Commercial Crime Insurance Coverage

3. Section 83.25 paragraph (e) is revised to read as follows:

§ 83.25 Commercial crime insurance rates.

* * * * *

(e) The following tables shall be used to determine rates for commercial risks.

FEDERAL CRIME INSURANCE PROGRAM, COMMERCIAL CRIME INSURANCE RATES, SEPTEMBER 1989

[Annual Premiums—Class 1]

Amount of insurance	Gross receipts											
	Less than $100,000		$100,000–$199,999		$200,000–$299,999		$300,000–$499,999		$500,000–$999,999		$1,000,000 or greater	
	Option		Option		Option		Option		Option		Option	
	1	2	1	2	1	2	1	2	1	2	1	2
1,000	86	118	130	176	130	176	172	234	214	290	342	464
2,000	164	210	246	312	246	312	326	416	406	520	648	834
3,000	240	302	360	452	360	452	478	602	596	752	958	1202
4,000	310	384	468	576	468	576	624	766	780	958	1244	1530
5,000	368	434	554	654	554	654	738	870	920	1086	1472	1734
6,000	388	476	582	714	582	714	778	954	970	1188	1550	1900
7,000	404	508	604	760	604	760	806	1014	1008	1266	1610	2024
8,000	420	538	626	806	626	806	836	1074	1044	1340	1670	2148
9,000	424	548	634	824	634	824	844	1096	1054	1368	1686	2188
10,000	432	570	648	852	648	852	866	1136	1078	1418	1726	2268
11,000	456	620	686	930	686	930	914	1240	1140	1548	1824	2478
12,000	476	662	714	994	714	994	954	1320	1188	1648	1902	2640
13,000	488	680	730	1022	730	1022	972	1362	1214	1702	1942	2722
14,000	492	684	738	1040	738	1040	980	1382	1226	1726	1964	2764
15,000	496	702	746	1054	748	1054	994	1402	1240	1754	1980	2806

Option 1: Burglary only.
Option 2: Robbery only.
Option 3: A combination of coverages under options 1 and 2 in uniform or varying amounts. The premium for option 3 is the sum of the rates for amounts of coverage selected under options 1 and 2.
Discounts on these rates are afforded for businesses with alarm systems/safes. A discount of 10% is given for policies with option 3.

FEDERAL CRIME INSURANCE PROGRAM, COMMERCIAL CRIME INSURANCE RATES, SEPTEMBER 1989

[Annual Premiums—Class 2]

Amount of Insurance	Gross receipts											
	Less than $100,000		$100,000–$199,999		$200,000–$299,999		$300,000–$499,999		$500,000–$999,999		$1,000,000 or greater	
	Option		Option		Option		Option		Option		Option	
	1	2	1	2	1	2	1	2	1	2	1	2
1,000	102	148	158	220	158	220	208	294	258	364	412	582
2,000	196	284	294	394	294	394	390	526	488	656	780	1048
3,000	288	380	430	570	430	570	574	758	714	946	1144	1512
4,000	372	484	558	724	558	724	744	966	928	1204	1486	1928
5,000	438	546	660	824	660	824	878	1094	1096	1366	1754	2186
6,000	464	600	698	898	698	898	926	1196	1158	1496	1852	2392
7,000	484	636	722	958	722	958	964	1274	1204	1592	1926	2548
8,000	500	676	752	1016	752	1016	1002	1352	1250	1688	2000	2700
9,000	506	690	760	1034	760	1034	1014	1378	1266	1720	2024	2754
10,000	520	716	782	1074	782	1074	1040	1430	1296	1786	2074	2858
11,000	552	782	828	1172	828	1172	1100	1556	1374	1946	2198	3116
12,000	576	832	864	1248	864	1248	1150	1664	1436	2078	2298	3322
13,000	588	856	882	1288	882	1288	1176	1716	1486	2142	2346	3426
14,000	592	872	890	1306	890	1306	1186	1738	1482	2174	2370	3478
15,000	600	884	898	1326	898	1326	1200	1766	1498	2206	2396	3528

Option 1: Burglary only.
Option 2: Robbery only.
Option 3: A combination of coverages under options 1 and 2 in uniform or varying amounts. The premium for option 3 is the sum of the rates for amounts of coverage selected under options 1 and 2.
Discounts on these rates are afforded for businesses with alarm systems/safes. A discount of 10% is given for policies with option 3.

FEDERAL CRIME INSURANCE PROGRAM, COMMERCIAL CRIME INSURANCE RATES, SEPTEMBER 1989

[Annual Premiums—Class 3]

Amount of insurance	Gross receipts											
	Less than $100,000		$100,000–$199,999		$200,000–$299,999		$300,000–$499,999		$500,000–$999,999		$1,000,000 or greater	
	Option		Option		Option		Option		Option		Option	
	1	2	1	2	1	2	1	2	1	2	1	2
1,000	118	156	176	228	176	228	234	304	290	380	464	606
2,000	218	274	328	412	328	412	436	548	544	680	872	1092
3,000	322	394	484	592	484	592	642	790	800	984	1282	1576
4,000	416	502	626	754	626	754	834	1006	1040	1254	1664	2008
5,000	492	572	738	854	738	854	980	1140	1224	1422	1958	2276
6,000	518	624	780	936	780	936	1038	1246	1294	1556	2070	2488
7,000	540	664	810	998	810	998	1082	1328	1348	1660	2156	2650
8,000	562	706	842	1056	842	1056	1122	1410	1400	1758	2240	2814
9,000	570	718	852	1078	852	1078	1136	1436	1418	1794	2268	2866
10,000	582	746	874	1118	874	1118	1164	1488	1454	1858	2326	2974
11,000	618	810	926	1220	926	1220	1234	1624	1542	2026	2468	3244
12,000	648	868	970	1298	970	1298	1292	1730	1612	2160	2580	3456
13,000	660	892	990	1340	990	1340	1318	1782	1648	2230	2638	3566
14,000	668	908	1002	1360	1002	1360	1334	1812	1666	2262	2662	3620
15,000	674	920	1012	1380	1012	1380	1348	1840	1682	2296	2692	3672

Option 1: Burglary only.
Option 2: Robbery only.
Option 3: A combination of coverages under options 1 and 2 in uniform or varying amounts. The premium for option 3 is the sum of the rates for amounts of coverage selected under options 1 and 2.
Discounts on these rates are afforded for businesses with alarm systems/safes. A discount of 10% is given for policies with option 3.

FEDERAL CRIME INSURANCE PROGRAM, COMMERCIAL CRIME INSURANCE RATES, SEPTEMBER 1989

[Annual Premiums—Class 4]

Amount of insurance	Gross receipts											
	Less than $100,000		$100,000–$199,999		$200,000–$299,999		$300,000–$499,999		$500,000–$999,999		$1,000,000 or greater	
	Option		Option		Option		Option		Option		Option	
	1	2	1	2	1	2	1	2	1	2	1	2
1,000	130	160	196	238	196	238	260	318	324	394	518	630
2,000	246	284	368	428	368	428	490	570	612	708	976	1134
3,000	360	410	540	618	540	618	718	822	894	1022	1434	1638
4,000	468	522	700	786	700	786	932	1046	1162	1304	1860	2086
5,000	548	592	826	888	826	888	1098	1184	1370	1478	2192	2364
6,000	582	648	872	972	872	972	1162	1296	1450	1620	2318	2590
7,000	604	690	906	1038	906	1038	1208	1380	1508	1722	2416	2758
8,000	628	732	942	1098	942	1098	1256	1464	1568	1826	2510	2924
9,000	636	748	956	1120	956	1120	1272	1494	1588	1862	2542	2980
10,000	654	774	978	1162	978	1162	1304	1548	1628	1932	2604	3092
11,000	694	844	1040	1266	1040	1266	1382	1686	1726	2106	2764	3370
12,000	722	898	1086	1352	1086	1352	1446	1800	1806	2248	2890	3596
13,000	740	928	1108	1394	1108	1394	1478	1854	1846	2316	2952	3706
14,000	748	940	1122	1414	1122	1414	1496	1884	1864	2352	2986	3762
15,000	756	958	1134	1436	1134	1436	1510	1912	1886	2386	3016	3820

Option 1: Burglary only.
Option 2: Robbery only.
Option 3: A combination of coverages under options 1 and 2 in uniform or varying amounts. The premium for option 3 is the sum of the rates for amounts of coverage selected under options 1 and 2.
Discounts on these rates are afforded for businesses with alarm systems/safes. A discount of 10% is given for policies with option 3.

FEDERAL CRIME INSURANCE PROGRAM, COMMERCIAL CRIME INSURANCE RATES, SEPTEMBER 1989

[Annual Premiums—Class 5]

Amount of insurance	Gross Receipts											
	Less than $100,000		$100,000–$199,999		$200,000–$299,999		$300,000–$499,999		$500,000–$999,999		$1,000,000 or greater	
	Option		Option		Option		Option		Option		Option	
	1	2	1	2	1	2	1	2	1	2	1	2
1,000	124	140	186	212	186	212	248	282	308	348	492	560
2,000	228	254	346	380	346	380	458	504	572	628	916	1006
3,000	336	364	502	546	502	546	670	728	836	908	1338	1452

FEDERAL CRIME INSURANCE PROGRAM, COMMERCIAL CRIME INSURANCE RATES, SEPTEMBER 1989—Continued

[Annual Premiums—Class 5]

Amount of insurance	Gross Receipts											
	Less than $100,000		$100,000–$199,999		$200,000–$299,999		$300,000–$499,999		$500,000–$999,999		$1,000,000 or greater	
	Option		Option		Option		Option		Option		Option	
	1	2	1	2	1	2	1	2	1	2	1	2
4,000	432	464	652	696	652	696	866	926	1078	1156	1726	1848
5,000	504	526	756	788	756	788	1008	1050	1258	1310	2014	2096
6,000	538	576	806	864	806	864	1076	1148	1342	1434	2150	2294
7,000	564	614	846	918	846	918	1128	1224	1408	1526	2252	2442
8,000	588	648	884	974	884	974	1178	1296	1470	1620	2352	2592
9,000	596	662	896	994	896	994	1194	1324	1494	1648	2388	2640
10,000	616	686	924	1030	924	1030	1230	1372	1536	1714	2458	2738
11,000	658	748	988	1122	988	1122	1314	1496	1640	1866	2628	2988
12,000	694	798	1040	1198	1040	1198	1382	1594	1726	1990	2764	3186
13,000	710	824	1062	1234	1062	1234	1418	1644	1768	2054	2830	3296
14,000	716	836	1076	1252	1076	1252	1434	1670	1792	2084	2864	3334
15,000	724	846	1090	1270	1090	1270	1452	1692	1812	2114	2900	3386

Option 1: Burglary only.
Option 2: Robbery only.
Option 3: A combination of coverages under options 1 and 2 in uniform or varying amounts. The premium for option 3 is the sum of the rates for amounts of coverage selected under options 1 and 2.
Discounts on these rates are afforded for businesses with alarm systems/safes. A discount of 10% is given for policies with option 3.

FEDERAL CRIME INSURANCE PROGRAM, COMMERCIAL CRIME INSURANCE RATES, SEPTEMBER 1989

[Annual Premiums—Class 6]

Amount of Insurance	Gross Receipts											
	Less than $100,000		$100,000–$199,999		$200,000–$299,999		$300,000–$499,999		$500,000–$999,999		$1,000,000 or greater	
	Option		Option		Option		Option		Option		Option	
	1	2	1	2	1	2	1	2	1	2	1	2
1,000	126	126	186	190	186	190	250	252	308	312	496	500
2,000	232	226	346	340	346	340	460	452	574	564	918	900
3,000	336	326	502	490	502	490	670	654	836	812	1338	1302
4,000	432	416	648	624	648	624	864	832	1076	1038	1722	1660
5,000	500	472	752	708	752	708	1002	940	1250	1176	2000	1882
6,000	538	516	804	774	804	774	1074	1030	1340	1286	2144	2058
7,000	564	548	846	826	846	826	1128	1098	1408	1370	2252	2192
8,000	590	582	886	874	886	874	1182	1164	1472	1454	2360	2324
9,000	600	592	898	890	898	890	1200	1186	1498	1480	2394	2368
10,000	618	616	926	924	926	924	1234	1230	1542	1538	2466	2460
11,000	664	670	996	1006	996	1008	1326	1340	1654	1676	2646	2680
12,000	700	716	1048	1074	1048	1074	1396	1430	1764	1788	2788	2858
13,000	716	740	1074	1106	1074	1106	1430	1474	1790	1842	2860	2946
14,000	724	750	1088	1126	1088	1126	1450	1498	1810	1870	2896	2992
15,000	736	760	1102	1140	1102	1140	1468	1518	1834	1896	2934	3036

Option 1: Burglary only.
Option 2: Robbery only.
Option 3: A combination of coverages under options 1 and 2 in uniform or varying amounts. The premium for option 3 is the sum of the rates for amounts of coverage selected under options 1 and 2.
Discounts on these rates are afforded for businesses with alarm systems/safes. A discount of 10% is given for policies with option 3.

•

§ 83.26 [Amended]

5. Section 83.26(b) is amended by revising portions of the "Commercial Crime Insurance Policy" in the following respects:

(a) Under the heading entitled "Exclusions", paragraph (f) is amended to read as follows:

* * * * *

(f) To any loss if the premises are not equipped with the protective devices required as a condition of eligibility for the purchase of this policy or if the insured has failed to take reasonable action to maintain the protective devices in working order in accordance with the regulations of the Federal Insurance Administration, as published at the time of the inception of the current term of the policy in Subchapter B, Part 80 et seq., Chapter I, Title 44, Code of Federal Regulations.

* * * * *

(b) Under the heading "Conditions" Section 5 entitled "Limits of Liability; settlement options", the second paragraph is amended to read as follows:

* * * * *

The limit of the insurer's liability for loss shall not exceed the applicable limit of insurance stated in the Application, nor what it would cost at the time of loss to repair or replace the property with other property of like kind and quality, nor as respects securities the actual cash value thereof at the close of business on the business day next preceding the day on which the loss was discovered, nor as respects other property to the actual cash value thereof at the time of loss: provided, however, that the actual cash value of such other property held or originally acquired by the insured as a pledge, or as collateral for an advance or a loan, shall be deemed not to exceed the value of the property as determined and recorded by the insured when making the advance or loan, nor, in the absence of such record, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates.

* * * * *

These Admendments issued under 12 U.S.C. 1749bbb–17.

Harold T. Duryee,

Federal Insurance Administrator.

[FR Doc. 89–17680 Filed 7–31–89; 8:45 am]

BILLING CODE 6718–21–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–503; RM–6422]

Radio Broadcasting Services; Bowling Green, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 245A to Bowling Green, Virginia, as that community's first local FM service, at the request of Rappahannock Communications Group. *See* 53 FR 22548, June 16, 1988. The channel allotment can be made in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.8 kilometers (1.1 miles) south of the city. The restricted site coordinates are 38–02–03 and 77–21–12. With this action, this proceeding is terminated.

DATES: Effective September 11, 1989. The window period for filing applications will open on September 12, 1989, and close on October 12, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–503, adopted July 7, 1989, and released July 26, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments, is amended under Virginia, by adding Bowling Green, Channel 245A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–17835 Filed 7–31–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–258; RM–6347]

Radio Broadcasting Services; Covington, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Robin B. Thomas, allots Channel 268A to Covington, Pennsylvania, as the community's first local FM service. Channel 268A can be allotted to Covington in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 41–44–41 and West Longitude 77–04–39. Canadian concurrence has been received since Covington is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective September 11, 1989. The window period for filing applications will open on September 12, 1989, and close on October 12, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–258, adopted July 7, 1989, and released July 26, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, is amended by adding the following entry: Covington, Pennsylvania, Channel 268A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–17834 Filed 7–31–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–141; RM–6030 & 6407]

Radio Broadcasting Services; Spring Grove and Preston, Minnesota, and Mason City, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 252C2 for Channel 252A at Spring Grove, Minnesota, and modifies the license of Station KQYB to specify the new channel in response to a petition filed by Sun Communications, Inc. To accommodate the upgrade at Spring Grove, we shall substitute Channel 250A for 252A at Mason City, Iowa, and modify the license for Station KCMR to specify the new channel. The coordinates for Channel 252C2 at Spring Grove are 43–40–37 and 91–44–14. The coordinates for Channel 250A at Mason City are 43–07–18 and 93–11–32.

A counterproposal was filed by KFIL, Inc. requesting the substitution of Channel 252C2 for Channel 276A at Preston, Minnesota, and modification of its license for Station KFIL to specify the higher class channel. After comparative evaluation of the communities to determine which could provide a new service to the largest population within the gain areas of the predicted C2 service contours, the Commission concluded that the Spring Grove proposal should prevail. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–141, adopted June 30, 1989, and released July 26, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In Section 73.202(b), the Table of FM Allotments is amended under Minnesota by removing Channel 252A and adding Channel 252C2 at Spring Grove.

3. In Section 73.202(b), the Table of FM allotments is amended under Iowa by removing Channel 252A and adding Channel 250A at Mason City.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–17833 Filed 7–31–89; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 89–54; RM–6634]

Radio Broadcasting Services; Derby, Augusta and Herington, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 242C2 for Channel 240A at Derby, Kansas, and modifies the license for Station KRZZ–FM, to specify operation on the higher class channel. This action is taken in response to a petition filed by New West Radio, Inc. The coordinates for Channel 242C2 are 37–37–03 and 97–20–11. To accommodate the upgrade at Derby, it is necessary to make substitutions in two other Kansas communities. Channel 289A can be substituted for Channel 242A at Herington, Kansas. There is one application on file for the channel at Herington at coordinates 38–38–17 and 96–57–46. Channel 283A can be substituted for Channel 242A at Augusta, Kansas. There are three applications pending for the Augusta channel. Channel 283A will work at each of the applicant's specified sites: 37–43–21 and 97–03–55 (880728NI), 37–39–56 and 97–02–12 (880727MO) and 37–42–00 and 97–02–33 (880728MV). The applicants for the Herington and Augusta channels will be permitted to specify the new Class A channel and retain their cut off protection, since the channels are equivalent. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–54, adopted July 7, 1989, and released July 26, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington DC 20037.

PART 73—[AMENDED]

List of Subjects in 47 CFR Part 73

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Kansas, by removing Channel 240A and adding Channel 242C2 at Derby, by removing Channel 242A and adding Channel 283A at Augusta, and by removing Channel 242A and adding Channel 289A at Herington.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–17832 Filed 7–31–89; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 87–605; RM–6037, RM–6217]

Radio Broadcasting Services; Bismarck and Danville, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 235A to Danville, Illinois, (RM–6217) as that community's third service. Channel 235A can be allotted to Danville in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.9 kilometers (7.4 miles) east of Danville. The restricted site coordinates are 40–08–15 and 87–28–55. The proposed allotment of Channel 225A at Bismarck, Illinois, (RM–6037), is denied. With this action, this proceeding is terminated.

DATES: Effective September 11, 1989; The window period for filing applications will open on September 12, 1989, and close on October 12, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 87–605, adopted July 7, 1989, and released July 26, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

PART 73—[AMENDED]

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM

Allotments is amended by adding Channel 235A at Danville, Illinois.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–17831 Filed 7–31–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85–15; Notice 10]

RIN 2127–AC53

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Interim final rule and request for comments.

SUMMARY: This interim final rule suspends the effectiveness of the downward torque deflection requirements for external mechanical aiming of replaceable bulb headlamps (paragraph S7.7.5.1(a)) and establishes a new effective date. It is occasioned by a July 12, 1989 petition from General Motors which argued that NHTSA, in setting the original effective date of June 8, 1989 for these and other amendments to Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, had erroneously concluded that the only effect of the amendments was to relieve restrictions. The petitioner informed the agency that the June effective date for the downward torque deflection requirements for replaceable bulb headlamps posed compliance difficulties for a model line beginning production July 27, 1989. In recognition that the amendments did add a new requirement for manufacturers of systems incorporating replaceable bulb headlamps, NHTSA grants the petition, and adopts a new effective date of December 1, 1989 for the downward torque deflection requirements.

This notice is published as an interim final rule without prior notice and the opportunity for comment. However, NHTSA requests comments on this rule. Following the close of the comment period, NHTSA will publish a notice responding to the comments, and, if appropriate, NHTSA will further amend the provisions of this rule.

DATES: The rule is effective August 1, 1989. Comments on this interim rule are due not later than August 31, 1989.

ADDRESS: Written comments should refer to the docket number and notice number, and be submitted to Docket Section, NHTSA, Room 5109, 400 Seventh St., SW., Washington, DC 20590. Docket hours are from 8:00 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine, Office of Rulemaking, NHTSA (202–366–5280).

SUPPLEMENTARY INFORMATION:

Following consideration of comments received regarding a notice of proposed rulemaking published on December 29, 1987 (52 FR 49038), NHTSA published amendments to Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, on May 9, 1989 (54 FR 20066). With the exception of two requirements for equipment marking, the amendments became effective 30 days after their publication in the **Federal Register**.

With respect to the May 1989 amendments, the Managing Director of NHTSA announced that "Because of the need to relieve design restrictions and encourage innovation", good cause had been shown for an effective date earlier than 180 days after issuance of the rule, and that the effective date would be 30 days after publication. The finding of good cause was made pursuant to section 103(e) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(e)), which provides that amendments to the Federal safety standards shall become effective not "sooner than one hundred and eighty days from the date" the amendment is issued, "unless the [Administrator] finds, for good cause show, that an earlier or later effective date is in the public interest, and publishes his reason for such finding." Excepted from the effective date of 30 days after publication were two new "mandatory" equipment marking provisions. An effective date of December 1, 1989, was specified for both of those provisions.

General Motors (GM) has submitted a petition noting that paragraph S7.7.5.1(a) does not relieve design restrictions or encourage innovation for replaceable bulb headlamps. Instead, its downward torque deflection test imposes a new requirement for systems of replaceable bulb headlamps (though such a test has been applicable for some time to sealed beam headlamps). GM further argued that imposition of the requirement without sufficient lead time for manufacturers to design, validate, and adopt product changes is not in the public interest. It asked that the effective date of December 1, 1989, be extended to the downward torque deflection requirements of paragraph S7.7.5.1(a) applicable to replaceable bulb headlamps, consistent with the requirements of section 103(e) of the Act.

The December 1987 proposal involved both a reparagraphing of existing requirements of Standard No. 108, and amendments intended to simplify the standard by relieving design restrictions. It also sought regulatory symmetry by extending some requirements applicable to sealed beam headlamps, to those with replaceable bulbs. Proposals of this nature, of course, would impose new requirements on manufacturers of replaceable bulb headlamps. In reviewing comments on the December 1987 notice, however, NHTSA found no indication from any commenter that an effective date other than the proposed one of 30 days after publication of the final rule would be required for compliance with the downward torque deflection requirements. Accordingly, the agency adopted the effective date as proposed, with the two exceptions previously noted.

GM is technically correct that the agency's previous finding of relief of a design restriction was erroneous with respect to the downward torque deflection requirement. NHTSA grants its petition, and is issuing this interim final rule amending paragraph S7.7.5.1(a) immediately to specify that it becomes effective on December 1, 1989 with respect to headlighting systems designed to conform to paragraph S7.5 (replaceable bulb headlamps).

This notice is published as an interim final rule, without prior notice and opportunity to comment. NHTSA believes that there is good cause for its finding that notice and comment is impracticable, unnecessary, and contrary to the public interest in this instance within the meaning of 5 U.S.C. 553(b)(3)(B). This conclusion is based upon the facts that the requirements to which it is directed have been in effect since June 8, 1989, that NHTSA was unaware of GM's compliance difficulties before receipt of the July 12, 1989 petition, that GM cannot achieve compliance with respect to a model line beginning production on July 27, 1989, and that an immediate amendment is therefore required to afford relief from the prematurely imposed requirements. This means that good cause is found for an immediate effective date within the meaning of 5 U.S.C. 553(d)(1), with the relief of a restriction.

As an interim final rule, this regulation is fully in effect upon its

publication in the **Federal Register**. No further regulatory action by NHTSA is essential to the effectiveness of this rule.

However, in order to benefit from comments which interested persons and the public may make, the agency requests that comments be submitted to the docket for this notice. Commenters are asked to address the question of whether the duration of the suspension of the effectiveness of the downward torque deflection requirements should be shorter or longer than December 1, 1989. All comments submitted in response to this notice will be considered by the agency. Following the close of the comment period, NHTSA will publish a notice responding to the comments, and, if appropriate, NHTSA will amend the provisions of this rule.

This notice provides a comment period of 30 days instead of the usual 60 days to facilitate the efforts of the agency to take final action as quickly as possible regarding the length of the suspension.

The publication of this interim final rule affects none of the impacts of the final rule as discussed in the May 9, 1989 notice adopting amendments to Standard No. 108, or the Federalism assessment.

Interested persons are invited to submit comments on this interim final rule. It is requested, but not required, that 10 copies be submitted. All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their preliminary arguments in a concise fashion. All comments received before the close of business on the comment closing date listed above will be considered and will be available in the docket for examination both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Following the close of the comment period, NHTSA will publish a notice responding to comments and, if appropriate, will amend the provisions of this rule. Comments received too late for consideration will be considered as suggestions for future rulemaking action. The agency will continue to file relevant information as it becomes available. It is recommended that interested persons continue to examine the docket for new material. Those persons desiring to be notified upon receipt of their comments by the docket should enclose a stamped self-addressed postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, motor vehicle safety, motor vehicles.

In consideration of the foregoing, 49 CFR 571.108 Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* is amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C 1392, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Paragraph S7.7.5.1(a) is revised to read as follows:

* * * * *

(a) Each headlamp system, other than a headlamp system designed to conform to paragraph S7.5, that is designed to use such external aiming devices shall not deviate more than 0.30 degree when a downward torque of 20 lb.-in. (2.25 N-m) is applied to the headlamp in its normal operating position, through the lamp's mechanical axis at the plane of the forwardmost aiming pad. Each headlamp system that is designed to conform to paragraph S7.5 and that is designed to use such external aiming devices, and which is manufactured on or after December 1, 1989, shall comply with this paragraph.

* * * * *

Issued on July 27, 1989.

Jeffrey R. Miller,

Acting Administrator, National Highway Traffic Safety Administration.

[FR Doc. 89-17909 Filed 7-27-89; 12:24 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 81130-8265]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restrictions, inseason adjustment to specifications, and request for comments.

SUMMARY: NOAA announces adjustments to restrictions on fishing in the ocean off of Washington, Oregon, and California in 1989 for yellowtail rockfish and Pacific ocean perch, increases the optimum yield (OY) quota for Pacific ocean perch, and seeks public comment on these actions. These actions are authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan and modify fishing restrictions imposed on January 1, 1989 for these species. Lower trip limits are necessary to mitigate biological stress to Pacific ocean perch and to avoid biological stress to the yellowtail rockfish stocks that is expected to occur if landings are not further restricted. This action is intended to lower fishing rates and prevent biological stress. The increase in OY would allow unavoidable incidental catches in other fisheries to be landed, and avoid or reduce the probability of a fishery closure before the end of the year.

EFFECTIVE DATE: 0001 hours (Pacific Daylight Time) July 26, 1989, until modified, superseded, or rescinded. Comments will be accepted through August 16, 1989.

ADDRESSES: Submit comments on these actions to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, Rodney R. McInnis at 213-514-6199, or the Pacific Fishery Management Council at 503-221-6352.

SUPPLEMENTARY INFORMATION: This action (1) modifies fishing restrictions imposed January 1, 1989 (54 FR 299, January 5, 1989) for yellowtail rockfish, a component of the *Sebastes* complex, and Pacific ocean perch (POP) taken off the coasts of Washington, Oregon, and California, and (2) adjusts the OY quota for POP caught in the Columbia area off the States of Oregon and Washington (announced at 54 FR 32, January 3, 1989). This action is authorized under the regulations at 50 CFR Part 663, which implement the Pacific Coast Groundfish Fishery Management Plan (FMP).

The FMP and its implementing regulations at 50 CFR 663.22(a) allow the Secretary to reduce fishing levels to prevent or reduce biological stress in any species or species complex, consistent with the objectives and priorities of the FMP. When landing rates for any species or species complex have been projected to reach an acceptable biological catch (ABC) estimate or other specified harvest level (an OY quota or harvest guideline) before the end of the year, the Pacific Fishery Management Council (Council) has recommended reducing the rate of landings while extending the fishery as long as possible throughout the year. In doing so, the Council intended to allow catches taken unavoidably while fishing for other species (incidental catches) to be landed to minimize the waste of fish that otherwise must be discarded if a fishery is closed prematurely. By slowing the fishery and avoiding premature closure, the discarding of incidental catches is minimized and the likelihood of biological stress on the resource is lessened.

The FMP and regulations at 50 CFR 663.22(b) also provide for increasing the OY quota in season if the increase would not cause biological stress and would promote full utilization of the resource, according to the implementing regulations at 50 CFR 663.22(b).

At its November 1988 meeting, the Council endorsed the determination of its Groundfish Management Team (GMT) that biological stress could occur if landings of yellowtail rockfish and POP were unrestricted in 1989. Harvest guidelines (for yellowtail rockfish and the *Sebastes* complex), quotas (for POP), and trip limits intended to keep landings within the harvest guidelines and quotas were imposed on January 1, 1989.

At the July 1989 Council meeting, the GMT projected that both the harvest guideline for yellowtail rockfish, a component of the *Sebastes* complex, and the OY for POP in the Columbia area would be reached before the end of the year, and would be exceeded by unavoidable incidental catches thereafter. The Council's recommendations to reduce fishing levels and to provide for landings of incidental catches of both species are discussed below.

The Sebastes Complex and Yellowtail Rockfish

The *Sebastes* complex of rockfish includes all rockfish species caught under the FMP except widow rockfish, shortbelly rockfish, and POP. Yellowtail rockfish is a dominant and often unavoidable component of the *Sebastes* complex. Landings of the *Sebastes* complex have been restricted since 1983 to protect yellowtail rockfish. Because yellowtail rockfish is found mostly north of Coos Bay, Oregon (43°21'34" N. latitude), the management measures for yellowtail rockfish adjusted by this notice apply only to this area.

The *Sebastes* complex and yellowtail rockfish are managed with harvest guidelines. Thus, landings are not automatically prohibited when they reach a certain level. Instead, management measures are designed to keep landings from greatly exceeding the harvest guideline. The harvest guideline for the *Sebastes* complex north of Coos Bay equals the sum of the estimated ABCs of the species in the complex. Because yellowtail rockfish is the only species in the *Sebastes* complex believed to need protection, and because yellowtail rockfish have been at or above the level needed to produce the maximum sustainable yield (MSY), more severe restrictions or closure of the fishery for these species has not been warranted in the past when the harvest guideline was reached.

The 1989 harvest guideline for the *Sebastes* complex north of Coos Bay is 10,500 mt, including 3,900 mt of yellowtail rockfish. At the July 10-14, 1989 Council meeting, the GMT estimated that coastwide landings of yellowtail rockfish through June 17, 1989 were 2,427 metric tons (mt), an increase of about 4 percent from the same period in 1988. Based on observed and expected landing rates, the GMT projected that the harvest guideline for the *Sebastes* complex would be reached by October 22, 1989 and for yellowtail rockfish on August 22, 1989. Because yellowtail rockfish is the only component of the *Sebastes* complex needing protection, the Council did not recommend further reductions on landings of the complex. However, the Council recommended that landings of yellowtail rockfish should and could be reduced. According to the GMT, landings of yellowtail rockfish would need to be reduced by 57 percent to avoid reaching the harvest guideline before the end of 1989. Therefore, the Council recommended reducing the current weekly trip limit from 7,500 pounds to 3,000 pounds and imposing a maximum percentage limit of 20 percent of the *Sebastes* complex on board, whichever is greater.

Biweekly and twice-weekly landing options would continue to be available. The biweekly option accommodates vessels that are capable of longer and larger trips than allowed under the weekly limit. If this adjusted trip limit does not sufficiently slow the catch, further restrictions may be imposed later in the year.

Secretarial Action: The Secretary concurs with the Council's recommendation and herein modifies paragraphs (3)(a), (b), and (c) for the *Sebastes* complex at 54 FR 299 (January 5, 1989) as follows:

1. In paragraph (3)(a) which announces the weekly trip limits for the *Sebastes* complex caught north of Coos Bay, change only the first sentence to read: "Except for the biweekly and twice-weekly trip limits provided in paragraphs (3)(b) and (3)(c), no more than 25,000 pounds of the *Sebastes* complex (including no more yellowtail rockfish than 3,000 pounds, or 20 percent of the legal *Sebastes* complex on board, whichever is greater) may be taken and retained, possessed, or landed per vessel per fishing trip in a one-week period north of Coos Bay."

2. In paragraph (3)(b) which announces the biweekly trip limits for the *Sebastes* complex caught north of Coos Bay, change only the first sentence to read: "If the fishery management agency of the state where the fish will be landed is notified as required by state law (WAC 220-44-050: OAR 635-04-033: CF&GCA 7652), no more than 50,000 pounds of the *Sebastes* complex (including no more yellowtail rockfish than 6,000 pounds or 20 percent of the legal *Sebastes* complex on board, whichever is greater) may be taken and retained, possessed, or landed per vessel per fishing trip in a two-week period north of Coos Bay."

3. In paragraph (3)(c) which announces the twice-weekly trip limits for the *Sebastes* complex caught north of Coos Bay, change only the first sentence to read: "If the fishery management agency of the state where the fish will be landed is notified as required by state law (WAC 220-44-050: OAR 635-04-033: CF&GCA 7652), no more than 12,500 pounds of the *Sebastes* complex (including no more yellowtail rockfish than 1,500 pounds or 20 percent of the legal *Sebastes* complex on board, whichever is greater) may be taken and retained, possessed, or landed per vessel per fishing trip north of Coos Bay."

The rest of paragraphs (3) (a), (b), and (c) and the other provisions at 54 FR 299 pertaining to yellowtail rockfish, the *Sebastes* complex, and POP remain in effect.

Pacific Ocean Perch (POP)

POP is considered to be under long-term stress and has been managed for nine years under a 20-year rebuilding schedule intended to increase the stock to levels that will produce the MSY. During this time, the POP stock has shown little sign of rebuilding despite extremely restrictive fishing regimes. Although the stock has not been rebuilding, it also is not declining and appears to be relatively stable, below the level that would produce the 2,500 mt MSY, since the FMP was implemented. Rebuilding POP depends on recruitment of large year classes which occurs infrequently. However, Canadian scientists have reported evidence of at least one strong year class off the Canadian coast and it is

possible that this year class has recruited to the U.S. fishery in the Columbia area. The increased catch in 1989 may in fact indicate that rebuilding is occurring. There is no recent independent assessment to confirm the status of the POP stock.

To maximize the potential for rebuilding, the 1989 ABC was set at zero. However, incidental catches of this species in other fisheries are unavoidable. Trip limits and OYs have been implemented each year that were designed to accommodate only these small incidental catches. These incidental catches are not expected to intensify or cause additional biological stress on POP, and will not result in the stock being overfished.

The 1989 OY quota for POP is 500 mt in the Vancouver area and 800 mt in the Columbia area. The current coastwide trip limit is 5,000 pounds or 20 percent of all legal fish on board, whichever is less.

Adjusting the trip limit. At the July 10–13, 1989 Council meeting, the GMT estimated that landings of POP in the Columbia area through June 17, 1989 were 602 mt, an increase of about 47 percent from the same period in 1988. Based on observed and expected landing rates, the GMT projected that the OY for the Columbia area would be reached by July 31, 1989 and that landings must be reduced by 72 percent to avoid reaching the OY before the end of the year. The OY in the Vancouver area is not expected to be reached in 1989.

The Council acknowledged that some targeting may have occurred under the current trip limit, particularly as limits for other species become more severe. Thus, to eliminate any incentive for targeting on POP, the Council recommended further reducing the trip limit from 5,000 pounds or 20 percent of all legal fish on board, whichever is less, to 2,000 pounds or 20 percent of all legal fish on board, whichever is less. As in the past, the percentage limit applies only if more than 1,000 pounds of POP are on board. The trip limit will continue to apply coastwide to discourage anyone who might exceed the limit and allege the fish were caught elsewhere. Because POP are not abundant south of the Columbia area, this trip limit is not expected to restrict fisheries there.

In formulating its recommendations, the Council recognized that small amounts of POP are caught unavoidably in fisheries for other species. A complete prohibition against landing POP, which must occur when the OY is reached, would not reduce any further the fishing mortality of POP caught while fishing for other species. It only would result in discards of POP. Therefore, the Council recommended changing the trip limit for POP to accommodate the unavoidable incidental catch and waste which would result from discarding it after landings were prohibited.

The only other measure which could keep the catch of POP within the 800 mt OY would be to prohibit all fishing for associated species in the Columbia area. POP are caught in small amounts with almost all groundfish species caught with bottom or roller trawl gears between 90 and 180 fathoms. This includes Dover and petrale soles, sablefish, and the *Sebastes* complex of rockfishes, representing about 23,500 mt and 70 percent of the landed groundfish catch from the Columbia area in 1987. Consequently, closing these fisheries until the end of the year in order to avoid further catches of POP would have an unacceptably severe economic impact on the fishing industry. Furthermore, closure of these fisheries would not contribute significantly to the restoration of POP unless closed on a long-term basis. Even when rebuilt to the MSY level, POP would produce only 2,500 mt annually. The Council preferred to continue these more productive and valuable fisheries off Oregon and Washington even though it would not provide for the most rapid rebuilding of the POP resource.

Increasing the OY. The Council recognized that, even with the severe reduction to the trip limit imposed by this notice, the OY in the Columbia area would be reached before the end of the year. It recommended increasing the 1989 OY by 30 percent, from 800 mt to 1,040 mt. This increase, in conjunction with the severe reduction in trip limits, is intended to allow the unavoidable catch to be landed rather than discarded.

The FMP's implementing regulations at 50 CFR 663.22(b) provide for inseason increases to OY that cumulatively do not exceed the OY set at the beginning of the current fishing year by more than 30 percent. They also require consultation with the Council, a determination that the increase would not cause biological stress to that or any other species, that it would promote full utilization of the groundfish resource, and that the following factors be considered.

(i) *Exploitable biomass and spawning biomass relative to MSY levels for the species under consideration.* The exploitable biomass and spawning biomass for POP are well below levels which would produce MSY.

(ii) *Fishing mortality rate relative to MSY levels for the species under consideration.* POP is below the level which will produce MSY. Fishing mortality in 1989 is expected to exceed the level which would produce MSY, even with the severe management measures imposed in this notice.

(iii) *Magnitude of incoming recruitment.* Recruitment to the fishery has been less than desired, and there is some indication that even if no POP were harvested, the 20-year rebuilding schedule would not be met. However, anecdotal information from Canada suggests the presence of at least one strong year class off the Canadian coast. It is not known whether this years' class will recruit to the Columbia area fishery off Oregon and Washington, or whether it explains the high catch of POP in the Columbia area this year. Landings in the U.S. portion of the Vancouver area have not increased in 1989.

(iv) *Protected effort and corresponding catches relative to ABC.* The 1989 ABC is zero according to the rebuilding schedule for POP. However, minimal OYs have been set each year in recognition of unavoidable incidental catches in other fisheries. Fishing effort in 1989 may have been increased in response to severe restrictions in alternative fisheries. Landings through June 17, 1989 are 47 percent higher than in the same time period in 1988. If not further restricted in 1989, the OY in the Columbia area would be reached on July 31, 1989, after which time all landings of POP from the Columbia area would be prohibited. However, fishing mortality due to incidental catches would not be reduced even if all landings of POP were prohibited.

(v) *In the case of species normally taken in mixed catches, the relative contribution of the species to the total catch.* The target fishery for POP is fairly selective, which is why POP has been managed by numerical OY quotas. However, small catches of POP in other groundfish fisheries are unavoidable. If landings were to be prohibited, POP would continue to be caught, and would be discarded and wasted. The recommended trip limit of 2,000 pounds or 20 percent, whichever is less, is intended to enable these incidental catches to be landed.

(vi) *The impact, if any, of the proposed increase in OY on other species.* The increase in OY is not expected to affect any other species of groundfish. The increase will allow unavoidable catches to be landed. It will not increase fishing mortality.

After considering the above factors, the Secretary finds that although POP already is biologically stressed, the 30 percent increase in OY, in conjunction with the trip limits imposed by this notice, will not cause or intensify the biological stress on POP because fishing mortality will not increase. In addition, full utilization will be accomplished by enabling incidental catches to be landed rather than discarded.

Secretarial Action: The Secretary concurs with the Council's recommendations and takes the following actions:

1. Paragraph (1) at 54 FR 299, January 5, 1989 for POP is modified as follows:

(1) For Pacific ocean perch coastwide (Washington, Oregon, and California), no more than 2,000 pounds or 20 percent (round weights) of all legal fish on board, whichever is less, may be taken and retained, possessed, or landed per vessel per fishing trip. This provision applies only when more than 1,000 pounds (round weight) of Pacific ocean perch are on board.

Note: Twenty percent of all legal fish on board including Pacific ocean perch is equivalent to 25 percent of all legal fish on board other than Pacific ocean perch.

2. Table 2 (published at 54 FR 32, January 3, 1989) is revised for POP as indicated below. Only the portions that pertain to POP are revised and printed here.

TABLE 2.—FINAL SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1989

[In thousands of metric tons]

	Total OY	DAP	JVP	DAH	Reserve	TALFF
Pacific ocean perch	[1] 1.54	[1] 1.54	0.0	[1] 1.54	0.0	0.0

[1] Of this 1,540 metric tons, 500 metric tons is for the Vancouver area and 1,040 metric tons is for the Columbia area.

Inseason Adjustments

At subsequent meetings, the Council will continue to review the best data available and may recommend further modifications to these management measures.

Other Fisheries

U.S. vessels operating under an experimental fishing permit issued under 50 CFR 663.10 also are subject to these restrictions unless otherwise provided in the permit.

Landings of groundfish in the pink shrimp, spot and ridgeback prawn fisheries are governed by regulations at 50 CFR 663.28. If fishing for groundfish and pink shrimp, spot or ridgeback prawns in the same fishing trip, the groundfish regulations in this notice apply.

Classification

The determination to impose these fishing restrictions is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

An Environmental Impact Statement (EIS) was prepared for the FMP in 1982 in accordance with the National Environmental Policy Act (NEPA). The alternatives and environmental impacts of this Notice of Fishing Restrictions are not significantly different than those considered in the EIS for the FMP. Therefore this action is categorically excluded from the NEPA requirements to prepare an Environmental Assessment in accordance with paragraph 5a(3) of the NOAA Directives Manual 02–10, because the alternatives and their impacts have not changed significantly.

These actions are taken under the authority of 50 CFR 663.22 and 663.23, and are in compliance with Executive Order 12291. The actions are not subject to the Regulatory Flexibility Act because there is no notice and comment period preceding the effective date of this notice. The actions do not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The biweekly and twice-weekly trip limit options are required by state law and do not represent an additional collection of information subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* These notifications are voluntary, and benefit the fishermen by minimizing the impact on their normal fishing operations by providing the choice of making smaller, shorter trips or larger, longer trips than under the weekly trip limits. Notifications are submitted to the appropriate state fishery management agency, not to the Federal government. The notification procedures in this **Federal Register** notice for biweekly and twice-weekly trip limit options are the same as those already in effect for landings of the *Sebastes* complex and yellowtail rockfish.

Section 663.23 of the groundfish regulations states that the Secretary will publish a notice of action reducing fishing levels or increasing OYs in proposed form unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to public interest. Section 663.23 also states that any notice issued under this section will not be effective until 30 days after publication in the **Federal Register**, unless the Secretary finds and publishes with the notice good cause for an earlier effective date. The Secretary has determined that, if left unrestricted, further catches in 1989 unquestionably will exceed the 3,900 mt harvest guideline for yellowtail rockfish and the 800 mt Columbia area OY for POP, increasing the likelihood of biological stress on those stocks. Prompt action to limit these fishing rates is necessary to protect yellowtail rockfish and POP and alleviate the necessity for fishery closures before the end of 1989. Delay in implementation of the trip limits most likely would result in an even more accelerated rate of landings by fishermen anticipating more restrictive limits later in the year. If landings are substantially increased, the projections made by the GMT will not be valid and the management measures set forth in this notice will not adequately slow the fishery. As a result, additional, more restrictive measures would need to be imposed. The increase to OY must be implemented before July 31, 1989. The 800 mt OY in the Columbia area is projected to be reached on that date. If the OY is not increased, all landings of POP will be prohibited until the end of the year. Closure of the POP fishery will not reduce fishing mortality or protect the resource. Consequently, further delay of these actions is impracticable and contrary to the public interest.

The public has had opportunity to comment on these management measures. The public participated in the Groundfish Select Group, GMT, Groundfish Advisory Subpanel, and Council meetings in June and July 1989 that generated the management actions endorsed by the Council and the Secretary.

List of Subjects in 50 CFR Part 663

Administrative practice and procedures, Fisheries, Fishing.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 26, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-17864 Filed 7-26-89; 5:06 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 146
Tuesday, August 1, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-ANE-34]

Airworthiness Directives; Pratt & Whitney (PW) JT8D-1, -1A, -1B, -7, -7A, -7B, -9, -9A, -11, -15, -15A, -17, -17A, -17R, and -17AR Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to amend Airworthiness Directive (AD) 86-09-02 R1, which requires inspections to detect cracks in the combustion chambers. The proposed amendment relaxes the current removal criteria for cracks in the 2-3 combustion chamber liner seam joint. Allowing additional revenue service for combustion chambers with certain 2-3 liner seam joint cracks beyond the limits of AD 86-09-02 R1 will not compromise the level of airworthiness established by AD 86-09-02 R1 which was needed to prevent uncontained combustion chamber outer case failure due to cracking and distress of combustion chambers.

DATES: Comments must be received on or before October 31, 1989.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 85-ANE-34, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311, at the above address.

Comments delivered must be marked: Docket No. 85-ANE-34.

Comments may be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable alert service bulletin (ASB) may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Thomas Boudreau, Engine Certification Branch, ANE-141, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7121.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 85-ANE-34. The postcard will be date/time stamped and returned to the commenter.

This document proposes to amend AD 86-09-02 R1, Amendment 39-5277, as amended by Amendment 39-5372 (51 FR 28807; August 12, 1986), by allowing additional revenue service for combustion chambers with certain 2-3 liner seam joint cracks in excess of 8 inches. AD 86-09-02 R1 requires immediate removal from revenue service of any chamber with greater than 8 inches cumulative circumferential cracking in any one liner. PW ASB 5639, Revision 4, dated November 29, 1988, allows for limited revenue service for combustion chambers with 2-3 liner seam joint cracks in excess of 8 inches.

Since issuing AD 86-09-02 R1, several operators have experienced scheduling difficulties caused by immediate engine removal due to circumferential cracking in the 2-3 liner seam joint. Service experience and engine test data indicate that 2-3 liner seam joint cracks do not progress appreciable when subjected to a limited amount of engine operation. Furthermore, additional support is provided by the cross over tubes and air scoop. Also, the combustion chamber 2-3 seam area is in a non-oxidized zone and, therefore, is not exposed to the high level of thermal fatigue and distress as other liners in the chamber. Consequently, allowing a limited amount of revenue service with some combustion chambers having 2-3 liner seam joint cracks in excess of 8 inches does not compromise the existing level of airworthiness established by AD 86-09-02 R1.

The FAA has determined that AD 86-09-02 R1 can be amended to allow a limited amount of revenue service for combustion chambers with certain 2-3 liner seam joint cracks in excess of 8 inches. Since this condition is likely to exist or develop in other engines of the same type design, the proposed AD would amend AD 86-09-02 R1, Amendment 39-5372 (51 FR 28807; August 12, 1986), and allow certain PW JT8D engines to operate for a maximum of 10 cycles or 12 hours engine operation, whichever occurs first, with certain combustion chamber 2-3 liner seam joint cracks in excess of 8 inches.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves approximately 7,120 engines (domestic fleet) with no cost increase. It has also

been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the proposed rule affects only operators using aircraft in which JT8D engines are installed, none of which are believed to be small entities. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979; and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, and Incorporation by reference.

The Proposed Amendment

Acordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39–5372 (51 FR 28807; August 12, 1986), Airworthiness Directive (AD) 86–09–02 R1.

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines.

Revise AD 86–09–02 R1 as follows:

(a) Replace all references to "Pratt & Whitney (PW) Alert Service Bulletin (ASB) 5639, Revision 1, dated March 21, 1986", with "PW ASB 5639, Revision 4, dated November 29, 1988".

(b) Add the following sentence at the end of paragraphs (a)(6), (b)(6), (c)(1)(v), and (c)(2)(iv): "If cracking to the second to third liner seam joint is in excess of 8 inches, additional revenue service may be permitted as stated in paragraph (f) below".

(c) Add the following paragraph (f) immediately following paragraph (e):

(f) Combustion chambers which exhibit circumferential cracking in the second to third liner seam joint in excess of 8 inches may continue revenue service beyond the limitations of paragraph (a), (b), and (c) above as follows:

(1) Remove from service within 10 cycles or 12 hours time in service (TIS) since last inspection, whichever occurs first, any chamber exhibiting 2–3 liner seam joint cracking in excess of 8 inches but less than 12 inches in length.

(2) Remove from service within 10 cycles or 12 hours TIS since last inspection, whichever occurs first, any chamber exhibiting 2–3 liner seam joint cracking 12 inches or more but less than 14 inches in length, which has less than 0.150 inches axial misalignment of adjacent cross-over tubes, and which shows no air scoop cracks.

(3) Remove from service, prior to further flight, chambers exhibiting 2–3 liner seam joint cracking 12 inches or more, and either of the following conditions:

(i) Air scoop cracks or

(ii) Axial misalignment of adjacent crossover tubes greater than 0.150 inches.

(4) Remove from service, prior to further flight, chambers exhibiting 2–3 liner seam joint cracking 14 inches or more.

Issued in Burlington, Massachusetts, on April 21, 1989.

Jack A. Sain, Manager,
Engine and Propeller Directorate Aircraft Certification Service.

[FR Doc. 89–17858 Filed 7–31–89; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–ANE–37]

Airworthiness Directives; Pratt & Whitney (PW) JT9D–7R4 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt an airworthiness directive (AD) that would require initial and repetitive inspections, and removal from service of certain high pressure compressor (HPC) turbine driveshafts installed in PW JT9D–7R4 series turbofan engines. The AD would also establish a reduced low cycle fatigue life limit for certain HPC turbine driveshafts. The proposed AD is needed to prevent the occurrence of cracked HPC turbine driveshafts which could result in loss of engine power, and/or inflight engine shutdown.

DATES: Comments must be received on or before October 31, 1989.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 88–ANE–37, 12 New England Executive Park, Burlington, Massachusetts 01803 or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: Docket No. 88–ANE–37.

Comments may be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable service bulletins (SB) and alert service bulletins (ASB) may be obtained from Pratt & Whitney, Publications Department, P.O. Box 611, Middletown, Connecticut 06457, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Engine Certification Branch, ANE–142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7082.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the agency before any final action is taken on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 88–ANE–37. The postcard will be date/time stamped and returned to the commenter.

There have been twenty-one HPC turbine driveshafts found with circumferential cracks in the threads which mate with the Number 3 bearing retaining nut. These cracks originate at the root of the forward thread and propagate in low cycle fatigue (LCF) through the shaft to the inside diameter surface. Nineteen turbine driveshafts were found cracked as a result of thread inspection conducted during shop visits, and two were found as a result of engine removal due to high vibration. Analysis indicates that the cracking problem is the result of high stress in the current thread geometry.

The FAA has determined that these cracked HPC turbine driveshafts may result in loss of engine power, and/or inflight shutdown. Since this condition is likely to exist or develop on other engines of the same type design, the proposed AD would require initial and repetitive inspections of HPC turbine driveshafts, Part Numbers (P/N) 5001195–01, 796245, 799570, and 803128, in accordance with PW ASB 72–375, Revision 1, dated January 25, 1989, on JT9D–7R4 series turbofan engines. This proposed AD also would require that those HPC turbine driveshafts with no service time entering into service after December 31, 1989, be removed from service at a reduced LCF life limit. After December 31, 1994, HPC turbine driveshafts installed in PW JT9D–7R4 series turbofan engines, except for the JT9D–7R4G2 model, must be removed from service at reduced LCF life limit. Those HPC turbine driveshafts installed in PW JT9D–7R4G2 model engines must also be removed from service at a reduced LCF life limit after December 31, 1998. Service experience has shown that the JT9D–7R4G2 model engine accumulates cycles at a much slower rate than other JT9D–7R4 series engines.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation only involves approximately 375 engines at an approximate total cost of 865,000 dollars. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected, since the proposed rule affects only operators using aircraft in which JT9D–7R4 series engines are installed, none of which are believed to be small entities. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, and Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT9D–7R4 series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent failure of high pressure compressor (HPC) turbine driveshafts, Part Numbers (P/N) 5001195–01, 796245, 799570, and 803128, which could result in loss of eingine power, and/or inflight engine shutdown, accomplish the following:

(a) Eddy current inspect rear threads of the HPC turbine driveshafts, in accordance with PW Alert Service Bulletin (ASB) 72–375, Revision 1, dated January 25, 1989, and remove from service and replace HPC turbine driveshafts found cracked with a serviceable part as follows:

(1) For those HPC turbine driveshafts which have not been inspected prior to the effective date of this AD, in accordance with Service Bulletin (SB) 72–365, dated June 23, 1988; SB 72–365, Revision 1, dated July 12, 1988; ASB 72–375, dated October 28, 1988; or ASB 72–375, Revision 1, dated January 25, 1989; inspect in accordance with the following schedule:

(i) Inspect at the next shop visit or prior to accumulating 8,000 cycles in service (CIS), whichever occurs first, those HPC turbine driveshafts with 7,500 CIS or less on the effective date of this AD.

(ii) Inspect at the next shop visit or prior to accumulating 500 CIS, whichever occurs first, those HPC turbine driveshafts with greater than 7,500 CIS on the effective date of this AD.

(2) For those HPC turbine driveshafts which have been previously inspected prior to the effective date of this AD, in accordance with SB 72–365, dated June 23, 1988; SB 72–365, Revision 1, dated July 12, 1988; ASB 72–375, dated October 28, 1988; or ASB 72–375, Revision 1, dated January 25, 1989, inspect in accordance with the following schedule:

(i) Inspect at the next shop visit or prior to accumulating 8,000 CIS, whichever occurs first; or not to exceed 2,500 cycles since last inspection (SLI), whichever occurs later, those HPC turbine driveshafts with 7,500 CIS or less on the effective date of this AD.

(ii) Inspect at the next shop visit or prior to accumulating 500 CIS whichever occurs first; or not to exceed 2,500 cycles SLI, whichever occurs later, those HPC turbine driveshafts with greater than 7,500 CIS on the effective date of this AD.

Note: Shop visit definition for the purpose of this AD is anytime the low pressure turbine module is removed.

(b) Eddy current reinspect HPC turbine driveshafts, in accordance with PW ASB 72–375, Revision 1, dated January 25, 1989, at the next shop visit, or prior to accumulating 2,500 CLI, whichever occurs first. Remove from service and replace HPC turbine driveshafts found cracked with a serviceable part.

(c) Inspections in accordance with paragraphs (a) and (b) of this AD are no longer required for HPC turbine driveshafts P/N 5001195–01, 796245, and 799570 once their low cycle fatigue (LCF) limits are reduced from 30,000 cycles to 2,000 cycles, or for P/N 803128 once their LCF limits are reduced from 30,000 cyles to 8,700 cycles.

(d) Reduce the LCF limit of the HPC turbine driveshaft as specified in paragraph (c) and remove the HPC turbine driveshaft from service in accordance with the following:

(1) Remove from service prior to accumulating the reduced LCF life limit for those HPC turbine driveshafts incorporated into service after December 31, 1988, with no previous service time.

(2) Remove from service prior to accumulating the reduced LCF life limit, after December 31, 1994, for those HPC turbine driveshafts installed in any PW JT9D–7R4 series engines, except for the PW JT9D–7R4G2 model engines.

(3) Remove from service prior to accumulating the reduced LCF life limit, after December 31, 1998, for those HPC turbine driveshafts installed in PW JT9D–7R4G2 model engines.

(e) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(f) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternative method of compliance with the requirements of this proposed AD or adjustments to the compliance times specified in this proposed

AD, may be approved by the Manager, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on April 21, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89-17869 Filed 7-31-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AEA-07]

Proposed Alteration of Control Zone, Elmira, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The nature of this proposed action is to reduce the airspace requirements for the control zone established at the Elmira/Corning Regional Airport (formerly known as the Chemung County Airport), Elmira, New York. The Elmira, New York Air Traffic Control Tower (ATCT) has requested that the control zone be revised to reflect the actual airspace needed to contain instrument operations. In addition, Runway 01-19 has been closed, and the associated Instrument Approach Procedures have been cancelled as a result of a previous airspace study. This airspace revision would involve a reduction in the size of the control zone established for the airport. In addition, the control zone description would be updated to reflect the current airport name.

DATES: Comments must be received on or before September 5, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Charles B. Shuler, Manager, Systems Management Branch, AEA-530, Docket No. 89-AEA-07, Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Systems Management Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J. F. K. International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Curtis Brewington, Systems Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 917-0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AEA-07." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The Federal Aviation Administration is considering an amendment to Section 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the control zone established at the Elmira/Corning Regional Airport, Elmira, New York by reducing the amount of airspace required to contain instrument operations.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (4 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Elmira, NY [Amended]

Change "Chemung County Airport" to read "Elmira/Corning Regional Airport";

Delete section which reads as follows: "within 2 miles each side of the centerline of Runway 19 extended southerly from the 5-mile radius zone for 2 miles".

Issued in Jamaica, New York, on July 7, 1989.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 89-17870 Filed 7-31-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AEA-15]

Proposed Alteration of Transition Area, Great Bend, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The development of a new NDB Runway 15 Standard Instrument Approach Procedure (SIAP) to the Wheeler Sack Army Air Field (AAF), Fort Drum, New York dictates the revision of the 700 foot transition area established at Great Bend, New York.

DATES: Comments must be received on or before September 5, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Charles S. Shuler, Manager, Systems Management Branch, AEA-530, Docket No. 88-AEA-15, Eastern Region, Federal Bulding # 111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Systems Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Curtis Brewington, Systems Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 917-0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AEA-15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the description of the Great Bend, New York transition area. A new Standard Instrument Approach Procedure has been developed to the Wheeler Sack AAF. Due to the development of this new procedure, the FAA proposes to amend the 700 foot transition area in order to provide airspace protection for aircraft executing this procedure. This proposal would also delete that part of the current transition area description which describes the 1,200 foot transition area already contained in the State of New York 1,200 foot transition area description. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Revised]

2. Section 71.181 is amended as follows:

Great Bend, NY [Revised]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the center, lat. 44°03'00"N., long. 75°44'00"W., of Wheeler Sack A.A.F., NY; within an 8-mile radius of the center of the airport, extending clockwise from a 052°(T)065°(M) bearing to a 122°(T) 135°(M) bearing from the airport; within an 11-mile radius of the center of the airport, extending clockwise from a 122°(T) 135°(M) bearing to a 152°(T) 165°(M) bearing from the airport; within a 13.5-mile radius of the center of the airport, extending clockwise from a 152°(T) 165°(M) bearing to a 182°(T) 195°(M) bearing from the airport; within a 10.5-mile radius of the center of the airport, extending clockwise from a 182°(T) 195°(M) bearing to a 229°(T) 242°(M) bearing from the airport within 4.5 miles each side of the Watertown, NY VORTAC (lat. 43°57'07"N., long. 76°03'54"W.) 053°(T) 086°(M) radial, extending from the 7-mile radius area and the 10.5 mile radius area

to the VORTAC, and within 5 miles each side of the Watertown, NY, VORTAC 056°(T) 069°(M) radial, extending from the 7-mile radius area and the 10.5-mile radius area to the VORTAC.

Issued in Jamaica, New York, on July 7, 1989.

John D. Canoles,

Manager, Air Traffic Division

[FR Doc. 89-17875 Filed 7-31-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 88-AEA-12]

Proposed Alteration of Control Zone; Newburgh, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend the description of the Newburgh, NY, Control Zone to reflect a change in the hours of operation from part time to full time.

DATES: Comments must be received on or before September 5, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Charles S. Shuler, Manager, Systems Management Branch, AEA-530, Docket No. 88-AEA-12, Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Systems Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Curtis Brewington, Systems Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 917-0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AEA-12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the description of the Newburgh, New York Control Zone. This amendment would involve changing the hours of operation of the control zone to reflect the 24-hour operation of the control tower (non-Federal), as well as continuous weather reporting capability. The control zone meets the requirements for 24-hour establishment. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Newburgh, NY [Amended]

Delete last sentence which reads as follows:

This control zone is effective from 0000-2359 hours, local time, Tuesday through Friday; 0000-2300 hours, local time, Saturday; 0700-2300 hours, local time, Sunday; 0700-2400 hours, local time, Monday.

Issued in Jamaica, New York, on July 7, 1989.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 89-17876 Filed 7-31-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 89-AEA-13]

Proposed Alteration of Control Zone; Trenton, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Morrisville, Pennsylvania Airport has been closed. As a result the Federal Aviation Administration finds it necessary to modify the description of the Trenton, NJ control zone. The intent of this proposed action is based upon the fact that the closed airport no longer requires that an exclusionary zone (cutout) be provided.

DATES: Comments must be received on or before September 5, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Charles S. Shuler, Manager, Systems Management Branch, AEA-530, Docket No. 89-AEA-13, Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Systems Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, Systems Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0587.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AEA-13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Section 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the description of the Trenton, New Jersey control zone due to the closure of the Morrisville, Pennsylvania airport. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Trenton, NJ [Amended]

Delete portion of description which reads as follows: "excluding the portion within a 1-mile radius of the Morrisville, PA. Airport (lat. 40°12'00" N., long. 74°48'55" W.)"

Issued in Jamaica, New York, on July 7, 1989.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 89-17878 Filed 7-31-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 89-AEA-10]

Proposed Alteration of Control Zone; Morristown, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: As the result of the cancellation of numerous Standard Instrument Approach Procedures (SIAPs) into the Morristown Municipal Airport, Morristown, New Jersey, the FAA no longer finds it necessary to retain those portions of the control zone which were required to contain those instrument operations. The intent of this action would be to reduce the amount of controlled airspace necessary to contain arriving and departing flights from the surface to 1,000 feet above ground level.

DATES: Comments must be received on or before September 5, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Charles S. Shuler, Manager, Systems Management Branch, AEA-530, Docket No. 89-AEA-10, Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

BEST COPY AVAILABLE

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Systems Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, Systems Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0657.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AEA-10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Section 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the description of the Morristown, New Jersey, Control Zone due to the cancellation of numerous SIAPs. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Morristown, NJ [Revised]

That airspace within a 5-mile radius of the center, lat. 40°47'57"N., long. 74°24'55"W., of Morristown Municipal Airport, Morristown, NJ. This control zone is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published continuously in the Airport/Facility Directory.

Issued in Jamaica, New York, on July 18, 1989.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 89-17879 Filed 7-31-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 88-AEA-16]

Establish Control Zone, Wheeler Sack, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the U.S. Army has requested a control zone at the Wheeler Sack Army Field (AAF) in order to accommodate expanding operations at this field. The airport meets the criteria in FAA Handbook 7400.2C for the establishment of a control zone. In addition, this control zone would accommodate existing and planned Instrument Approach Procedures into this airport.

DATES: Comments must be received on or before September 5, 1989.

ADDRESSES: Send comments on the rule in triplicate to:

Charles S. Shuler, Manager, Systems Management Branch, AEA-530, Docket No. 88-AEA-16, Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Systems Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Curtis Brewington, Systems Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald

Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 917-0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AEA-16." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMS

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a control zone at the Wheeler Sack, New York Army AAF to accommodate expanding operations at the field. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [New]

2. Section 71.171 is amended as follows:

Wheeler Sack, NY [New]

Within a 5 mile radius of the center (lat. 44°03'11" N., long. 75°43'17" W.) of the Wheeler Sack Army Airfield, Fort Drum, NY; within 2.5 miles each side of the 309° (T) 322° (M) bearing from the Fort Drum RBN (lat. 44°04'07" N. long. 75°44'11" W.), extending from the 5 mile radius zone to 6 miles northwest of the Fort Drum RBN and within 2 miles each side of the Watertown VORTAC (lat. 43° 57'00" N. long. 76°04'00" W.) 065° (T) 078° (M) radial extending from the 5 mile radius zone to 12 (nautical) miles northeast of the Watertown VORTAC.

Issued in Jamaica, New York, on July 7, 1989.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 89-17871 Filed 7-31-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 89-AEA-15]

Proposed Establishment of Transition Area; Farmington, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration finds it necessary to establish a 700-foot Transition Area at Farmington, PA to support the establishment of a Runway 23 Standard Instrument Approach Procedure (SIAP) which has been developed for the Nemacolin Airport, Farmington, PA. The intended effect of this proposed action would be to separate aircraft executing the SIAP under instrument meteorological conditions on an instrument flight plan from aircraft operating under visual flight rules (VFR).

DATES: Comments must be received on or before September 5, 1989.

ADDRESSES: Send comments on the rule in triplicate to:

Charles S. Shuler, Manager, Systems Management Branch, AEA-530, Docket No. 89-AEA-15, Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Systems Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, Systems Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AEA-15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace for Instrument Flight Rules (IFR) procedures at the Nemacolin Airport, Farmington, PA. The additional airspace would segregate aircraft operating under VFR conditions from aircraft operating under IFR procedures. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Farmington, PA [New]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Nemacolin Airport, Farmington, PA (lat. 39°48'20"N., long. 79°32'57"W.) and within 4.5 miles each side of the Indian Head VORTAC 221° radial extending from the 7-mile radius area to the VORTAC.

Issued in Jamaica, New York, on July 18, 1989.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 89-17872 Filed 7-31-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AEA-01]

Proposed Revocation of Transition Area, Quarryville, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The cancellation of the Standard Instrument Approach Procedure (SIAP) for the Quarryville/Tanglewood Airport dictates the revocation of the 700 foot transition area established for this procedure. The associated SIAP for this airport was cancelled as the result of a previous study.

DATES: Comments must be received on or before September 5, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Charles S. Shuler, Manager, Systems Management Branch, AEA-530, Docket No. 89-AEA-01, Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Systems Management Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Curtis Brewington, Systems Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 917-0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AEA-01." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Section 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the transition area at Quarryville, Pennsylvania, which the cancellation of the VOR/DME-A Standard Instrument Approach Procedure dictates. On April 13, 1988, the FAA circularized a notice (Airspace Study No. 88-AEA-005-NR), advising the public of the cancellation. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§71.181 [Amended]

2. Section 71.181 is amended as follows:

Quarryville, PA [Removed]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the center (lat. 39°51'00"N. long. 76°12'55"W. of Tanglewood Airport, Quarryville, PA, and within 4.5 miles each side of the Lancaster, PA, VORTAC 166° radial extending from the 6.5-mile radius area to the VORTAC.

Issued in Jamaica, New York, on July 7, 1989.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 89-17873 Filed 7-31-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AEA-03]

Establishment of Transition Area, Danville, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The nature of this proposed action is to establish a 700 feet transition area to accommodate a new Milton, PA, VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) Copter VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) 336 Standard Instrument Approach Procedure to the Geisinger Medical Center, Danville, Pennsylvania. The intended effect of this action would be to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before September 5, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Charles S. Shuler, Manager, Systems Management Branch, AEA-530, Docket No. 89-AEA-03, Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Systems Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Curtis Brewington, Systems Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 917-0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address lsited above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AEA-03." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered

before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area for the Geisinger Medical Center, Danville, Pennsylvania to accommodate an established Instrument Approach Procedure to the Medical Center. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule proposed will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [New]

2. Section 71.181 is amended as follows:

Danville, PA [New]

That airspace extending upward from 700' above the surface within a 5-mile radius of the Geisinger Hospital Helipad (lat. 40°58'05"N., long. 76°36'25" W.); and within 4-miles each side of the 321°(T) 330°(M) bearing from the Geisinger Hospital Helipad to the 5-mile radius.

Issued in Jamaica, New York, on July 7, 1989.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 89–17877 Filed 7–31–89; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 89–AEA–05]

Proposed Revocation of Transition Area, Rehoboth Beach, DE

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The closure of the Rehoboth Aircrafters Airport, Rehoboth Beach, Delaware, dictates the revocation of the 700 foot transition area established for this airport. The associated Standard Instrument Approach Procedures (SIAP) for this airport were cancelled as the result of a previous study.

DATES: Comments must be received on or before September 5, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Charles S. Shuler, Manager, Systems Management Branch, AEA–530, Docket No. 89–AEA–05, Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Systems Management Branch, AEA–530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Curtis Brewington, Systems Management Branch, AEA–530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 917–0857).

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–AEA–05." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future

NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The Federal Aviation Administration is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the transition area at Rehoboth Beach, Delaware. On March 21, 1989, the FAA circularized a notice (Airspace Study No. 89–AEA–013–NR), advising the public of the cancellation of the SIAP for this airport. In addition, this airport is currently closed and is no longer used as a charted reference. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Rehoboth Beach, Delaware [Removed]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the center (lat. 38°43'10"N. long. 75°07'35"W.) of Rehoboth Aircrafters Airport, Rehoboth Beach, DE, and within 2 miles each side of the Waterloo, DE, VORTAC 144° radial extending from the 5-mile radius area to the VORTAC. This transition area is effective from sunrise to sunset, daily.

Issued in Jamaica, New York, on July 7, 1989.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 89–17874 Filed 7–31–89; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 75

[Airspace Docket No. 89–ASW–6]

Proposed Alteration of Jet Route J–138

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Jet Route J–138 by extending it from Lake Charles, LA, direct to Semmes, MS. The extension of J–138 would improve the flow of Houston departure traffic proceeding to the Florida area. This action would also improve traffic flow in the Houston, TX, terminal area, and reduce controller workload.

DATES: Comments must be received on or before September 18, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Docket No. 89–ASW–6, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace–Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ASW–6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the description of Jet Route J–138 located in the vicinity of Lake Charles, LA. The FAA proposes to extend J–138 from the Lake Charles VOR direct to the

Semmes VOR. This action would improve traffic flow in the Houston terminal area and expedite departures proceeding eastbound to Florida and to northeast areas. This action would also reduce controller workload. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. § 75.100 is amended as follows:

J-138 [Amended]

By removing the words "to Lake Charles, LA." and substituting the words "Lake Charles, LA; to Semmes, MS."

Issued in Washington, DC, on July 20, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-17560 Filed 7-31-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM89-15-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities

July 25, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is instituting a sixth annual proceeding concerning generic determination of the rate of return on common equity for public utilities. The Commission has established a discounted cash flow (DCF) formula to determine the average cost of common equity for the jurisdictional operations of public utilities and a quarterly indexing procedure to calculate benchmark rates of return. In this proceeding, the Commission proposes to determine the growth rate and flotation cost adjustment factors to be used in the quarterly indexing procedure during the year beginning February 1, 1990. The Commission proposes that these benchmark rates of return remain advisory, as were those resulting from the previous five annual proceedings.

DATE: An original and 14 copies of the written comments on this proposed rule must be filed with the Commission by September 8, 1989.

ADDRESS: All filings should refer to Docket No. RM89-15-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice of proposed rulemaking will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) institutes a sixth annual proceeding concerning generic determination of the rate of return on common equity for public utilities.[1] The Commission has established a discounted cash flow (DCF) formula to determine the average cost of common equity for the jurisdictional operations of public utilities and a quarterly indexing procedure to calculate benchmark rates of return.[2] In this proceeding, the Commission proposes to determine the growth rate [3] and flotation cost adjustment [4] factors to be used in the quarterly indexing procedure during the 12 months beginning February 1, 1990. The Commission proposes that these benchmark rates of return remain advisory, as were those resulting from the previous five annual proceedings.[5]

[1] The annual proceedings were established by Order No. 369, Generic Determination of Rate of Return on Common Equity for Electric Utilities, 49 FR 20946 (July 25, 1984), FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶30,562 (July 18, 1984), *reh'g denied*, Order No. 369-A, 49 FR 46351 (Nov. 26, 1984).

[2] *See* Order No. 510, Generic Determination of Rate of Return on Common Equity for Public Utilities, 53 FR 51752 (Dec. 23, 1988), III FERC Stats. & Regs. ¶30,843 (Dec. 19, 1988). This was the fifth annual proceeding and in it the Commission readopted the DCF formula it had used in the first four annual proceedings.

[3] The growth rate is the expected annual rate of growth of dividends on common stock. The growth rate for the electric utility industry is a factor in the constant growth rate DCF model that the Commission adopted in Order No. 420 to determine the average cost of common equity and to calculate the quarterly benchmark rate of return for public utilities.

[4] Flotation costs include underwriters' compensation and legal and printing fees incurred by utilities when they sell new shares of their common stock. An adjustment for flotation costs is another factor in the formula for calculating the benchmark rate of return.

[5] The first annual proceeding resulted in Order No. 420, 50 FR 21802 (May 29, 1985), FERC Stats. & Regs., [Regulations Preambles 1982-1985] ¶30,644 (May 20, 1985), *reh'g denied*, Order No. 420-A, 50 FR 34086 (Aug. 23, 1985). The second annual proceeding resulted in Order No. 442, 51 FR 343 (Jan. 6, 1986), III FERC Stats. & Regs. ¶30,677 (Dec. 26, 1985), *reh'g*, Order No. 442-A, 51 FR 22505 (June 20, 1986), III FERC Stats. & Regs. ¶30,702 (June 11, 1986). The third annual proceeding resulted in Order No. 461, 52 FR 11 (Jan. 2, 1987), III FERC Stats. & Regs. ¶30,722 (Dec. 24, 1986), *reh'g denied*, Order No. 461-A, 52 FR 5757 (Feb. 26, 1987). The fourth annual proceeding resulted in Order No. 489, 53 FR 3342 (Feb. 5, 1988), III FERC Stats. & Regs. ¶30,795 (Jan. 29, 1988), *reh'g*, Order No. 489-A, 53 FR 11991 (Apr. 12, 1988). The fifth annual proceeding resulted in Order No. 510, 53 FR 51752 (Dec. 23, 1988), III FERC Stats. & Regs. ¶30,843 (Dec. 19, 1988). In Order No. 510, the Commission encouraged wider use of the generic rate of return in individual cases, citing several recent cases. *See, e.g.*, Connecticut Light and Power, *et al.*, 43 FERC ¶61,508 at 62,284 and 62,287 (June 22, 1988), *reh'g* 45 FERC ¶61,370 (Dec. 6, 1988); Yankee Atomic Electric Co., *et al.*, 40 FERC ¶61,372 at 62,210 (Sept. 30, 1987), *reh'g*, 43 FERC ¶61,232 (May 6, 1988); Ocean State Power, 44 FERC ¶61,261 (Aug. 19, 1988); and Allegheny Generating Co., 44 FERC ¶61,436 at 62,380 (Sept. 30, 1988).

[6] 16 U.S.C. 824d (1982).

[7] *See* note 1.

II. Background

Section 205(a) of the Federal Power Act (FPA) requires that all electric rates subject to the jurisdiction of the Commission be "just and reasonable."[6] In the exercise of this statutory responsibility, the Commission seeks to set rates of return on common equity that are fair to both utility ratepayers and utility stockholders. The allowed rate of return is now determined individually for each utility on a case-by-case basis. In July 1984, the Commission adopted procedures for the generic determination of a benchmark rate of return on common equity and for its application in individual cases.[7] The Commission has conducted five prior annual proceedings to determine the average cost of common equity for the jurisdictional operations of public utilities and has made those rates advisory. In that advisory status, benchmark rates are intended to provide guidance to parties in rate proceedings and to serve as a reference point for the Commission in setting allowed rates of return.

III. Discussion

The Commission has established a discounted cash flow methodology for estimating the rate of return on common equity. Specifically, that formula is:

$$k = (1 + .5g)\, y + g$$

where:

k = market required rate of return
y = current dividend yield (current annual dividend rate divided by current market price)
g = expected annual dividend growth rate
(1 + .5g) = dividend adjustment factor for quarterly dividend payments

The dividend yield used in this DCF formula is the median of the dividend yields of those companies that remain in a sample of utilities after application of certain screening criteria. The Commission begins with a group of approximately 100 publicly traded electric utilities or combination companies that meet the following standards:

(1) The utility is predominantly electric;

(2) The stock of the utility is traded on either the New York or American Stock Exchange;

(3) The utility is included in the Utility Compustat II data base; and

(4) The utility is not excluded by the Commission based on a case-by-case determination that its data is unavailable or inappropriate.

The Commission excludes companies from the sample if:

(1) The company's common stock is no longer publicly traded due to merger or other action;

(2) The company has decreased or omitted a common dividend payment in the current or prior three quarters; or

(3) The Commission determines on a case-by-case basis that some other occurrence has caused the dividend yield for that company to be substantially misleading and to bias the resulting quarterly average.

The quarterly dividend yield for each company is computed by dividing the dividend rate by the price. The dividend rate is the "indicated dividend rate," which is the last declared quarterly dividend multiplied by four. The price used in calculating the quarterly dividend yield is the simple average of the three monthly high and low prices for the quarter. The dividend yield used in the quarterly indexing procedure is the average of the two most recent quarterly median yields.

As required by § 37.4 of the Commission's regulations, the Commission is proposing to establish the growth rate and flotation cost adjustment to be used in the quarterly indexing procedure for the 12 months beginning February 1, 1990.

A. Growth Rate

To estimate the expected annual dividend growth rate, the Commission proposes to rely primarily on a fundamental analysis approach and a two-stage growth model, as it did in the most recent annual proceeding.[8] In the fundamental analysis approach, the two underlying components of expected annual dividend growth, growth from retention of earnings and growth from sales of new common stock, are evaluated. Growth from retention of earnings, or internal growth, is a function of expected return on common equity (r) and the expected retention ratio (b). Growth from sales of new common stock, or external growth, is a function of the amount of stock expected to be sold (s) and the expected price of those sales relative to book value (v). The formula for estimating the growth rate based on this fundamental analysis is $g = br + sv$. The two-stage growth analysis involves separate evaluation of near-term and long-term growth expectations.

The Commission also proposes to consider other data and methods for estimating the expected growth rate, but primarily as a check on the reasonableness of its growth rate determination based on the fundamental and two-stage growth analyses.

B. Flotation Cost Adjustment

Flotation costs are incurred by utilities when they sell new shares of their common stock and include issuance costs, such as underwriters' compensation and legal and printing fees. Although relatively small, flotation costs are not accounted for elsewhere in a company's cost of service and are therefore included in the calculation of the cost of common equity.

The Commission proposes to continue its existing policy on flotation costs by calculating an industry average adjustment to the required rate of return to compensate utilities for issuance costs only.[9] The Commission proposes to estimate the adjustment to the required rate of return for flotation costs using the following formula:

$$k^* = \frac{fs}{(1 + s)}$$

where:

k^* = flotation cost adjustment to required rate of return
f = industry average flotation cost as a precentage of offering price
s = proportion of new common equity expected to be issued annually to total common equity

This formula determines an increment to the cost of common equity which reflects the average annualized amount

[8] *See* Order No. 510, 53 FR 51752 (Dec. 23, 1988).

[9] The Commission adopted this flotation cost policy in Order No. 420 and reaffirmed it in Order Nos. 442, 461, 489, and 510.

of flotation costs incurred by the utility industry.

IV. Written Comment Procedure

The Commission invites all interested persons to submit written data, views, and other information concerning the proposals in this Notice. All comments in response to this Notice should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 and should refer to the Docket No. RM89-15-000. An original and fourteen copies should be filed with the Commission on or before September 8, 1989.

Written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room, Room 1000, 825 North Capitol Street, NE., Washington, DC, during regular business hours.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act [10] requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. Nearly all of the jurisdictional utilities which would be affected by the proposed rule are too large to be considered "small entities" within the meaning of the Act.[11] Accordingly, the Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

VI. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for a Commission action that may have a significant effect on the human environment.[12] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[13] The Commission has found that matters affecting rates for the purchase or sale of electricity are not major federal actions that have a significant environmental impact.[14] The generic rate of return is a factor to be considered in the determination of electric rates. Thus, no environmental assessment or environmental impact statement is necessary for the requirements of this Notice of Proposed Rulemaking.

VII. Paperwork Reduction Act

The Paperwork Reduction Act [15] and the Office of Management and Budget's (OMB) regulations [16] require that the OMB approve certain information collection requirements imposed by agency rule. The proposed rule in this proceeding does not impose any information collection requirements. Therefore, the Commission is not submitting this rule to the OMB for review or approval.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17855 Filed 7-31-89; 8:45 am]

BILLING CODE 6717-01-M

[10] 5 U.S.C. 601-612 (1982).

[11] The Act defines a "small entity" as a small business, a small not-for-profit enterprise or a small governmental jurisdiction. 5 U.S.C. 601(6) (1982). A "small business" is defined by reference to Section 3 of the Small Business Act, as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a) (1982).

[12] Order No. 486, Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987), codified at 18 CFR Part 380.

[13] *Id.*, codified at § 380.40.

[14] *Id.*, codified at § 380.4(a)(15).

[15] 44 U.S.C. 3501-3520 (1982).

[16] 5 CFR 1320.13 (1987).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-773-87]

RIN 1545-AL25

Allocation of Income Attributable to Certain Notional Principal Contracts Under Section 863(a)

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing temporary Income Tax Regulations under section 863(a) which prescribe the source of income attributable to certain notional principal contracts (notional principal contract income). The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by October 2, 1989. The regulations are proposed to be effective for notional principal contract income includable in income on or after [DATE WHICH IS THIRTY DAYS AFTER PUBLICATION OF A FINAL REGULATION IN THE FEDERAL REGISTER].

ADDRESSES: Send comments and requests for a public hearing to: Commisioner of Internal Revenue, Attention: CC:CORP:T:R (INTL-773-87), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Charles T. Plambeck of the Office of the Associate Chief Counsel (International) within the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R (INTL-773-87) ((202) 566-6284, not toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer TR:FP, Washington, DC 20224.

The collection of information in this regulation is in section 1.863-7T(c). This information is required by the Internal Revenue Service to provide taxpayers an option to elect to apply the rules retroactively to open taxable years. This information will be used to determine which taxpayers have elected retroactive use of the regulation. The likely respondents will be businesses or other for-profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

The estimated annual burden per respondent varies from five minutes to two hours, depending on individual circumstances, with an estimated average of one hour and twenty-five minutes. The estimated number of respondents is 54,824. The estimated annual frequency of responses is once. The estimated total annual reporting burden is 77,606 hours.

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the Federal Register add new § 1.863-7T to Part 1 of Title 26 of the Code of Federal Regulations. Final regulations are by this document proposed on the basis of these temporary regulations. For the text of the temporary regulations, see T.D. 8258. The preamble to the temporary regulations explains this addition to the Income Tax Regulations.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) and the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these proposed regulations are Charles T. Plambeck of the Office of the Associate Chief Counsel (International) within the Office of the Chief Counsel, Internal Revenue Service, and F. Scott Farmer, formerly of that office. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

List of Subjects in 26 CFR 1.861—1.907-1

Income taxes, Aliens, Exports, DISC, Foreign Investments in U.S., Foreign Tax Credit, FSC, Sources of Income, United States Investments Abroad.

Proposal of Regulations

The temporary regulations, [T.D. 8258] published in the Rules and Regulations portion of this issue of the Federal Register are hereby also proposed as final regulations under section 863(a) of the Internal Revenue Code of 1986.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 89-17827 Filed 7-31-89; 8:45 am]

BILLING CODE 4830-01-M

Notices

Federal Register
Vol. 54, No. 146
Tuesday, August 1, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-134]

National Boll Weevil Cooperative Control Program Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a draft environmental impact statement for the National Boll Weevil Cooperative Control Program. This document also requests comments and gives notice that public meetings will be held to promote Federal, State, and local agency, as well as the public, involvement in the development of the final environmental impact statement. The impacts on the environment of the eradication of boll weevil will be evaluated in the environmental impact statement. A copy of the draft environmental impact statement was sent to the Environmental Protection Agency on July 21, 1989, pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)), by the Animal and Plant Health Inspection Service.

DATES: We will consider written comments if they are received on or before October 2, 1989. Public meetings will be held in Phoenix, Arizona, on August 14, 1989; in Lubbock, Texas, on August 16, 1989; and in Montgomery, Alabama, on August 18, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Michael T. Werner, Deputy Director, Environmental Documentation, BBEP, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket 89-134. Comments we receive may be inspected at USDA, 14th and Independence Avenue, SW., Room 1141, South Building, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

The public meetings will be held at the following locations: (1) Cooperative Agricultural Extension Service, 4341 East Broadway, Phoenix, Arizona 85040 on August 14, 1989; (2) City of Lubbock Civic Center, 1501 6th Street, Lubbock, Texas 79401 on August 16, 1989; (3) Richard Beard Building 1445 Congressman W. L. Dickerson Drive, Montgomery, Alabama 36193 on August 18, 1989.

Copies of the draft environmental impact statement (DEIS) are available for review at the following locations: Southeastern Boll Weevil Eradication Program, USDA-APHIS-PPQ, 2119 East South Boulevard, Medical Plaza Building, Suite 204, Montgomery, Alabama 36116, (205) 288-0237; USDA-APHIS-PPQ, 611 East 6th Street, Room 202, Austin, Texas 78701, (512) 482-5241; Southwest Boll Weevil Eradication Program, USDA-APHIS-PPQ, 4320 East Broadway, Phoenix, Arizona 85040, (602) 261-3670; and the APHIS Reading Room, USDA, Room 1141 South Building, 14th & Independence Avenue, SW., Washington, DC 20250.

Interested persons may obtain a copy of the DEIS by writing to Michael T. Werner, Deputy Director, Environmental Documentation, BBEP, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Michael T. Werner, Deputy Director, Environmental Documentation, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8565.

SUPPLEMENTARY INFORMATION: This document requests comments and gives notice of meetings by the Animal and Plant Health Inspection Service (APHIS) to allow public involvement in the development of the final environmental impact statement (FEIS) for the National Boll Weevil Cooperative Control Program. Accordingly, comments at the meetings and written comments by mail are invited from the public, from Federal, State and local agencies that have an interest in APHIS or related programs, and from Federal and State agencies that have either jurisdiction by law or special expertise regarding any national program issue or environmental impact that should be discussed in the draft environmental impact statement (DEIS).

Public Meeting Procedures

Public meetings are a continuing part of the environmental impact statement process. An APHIS representative will preside at the meetings, where comments will be heard concerning any issue that would be relevant for the final EIS. Interested persons may appear and be heard in person, by attorney, or other representative. Each meeting will begin at 9:00 a.m. and end at 4:00 p.m. local time; however, a meeting may end earlier if all registered persons have been heard. Persons who wish to speak should register at the desk located at the meeting entrance. Pre-meeting registration will be conducted at each meeting location from 8:00 a.m. to 9:00 a.m. on the meeting date. Registered persons will be heard in the order of registration; unregistered persons who wish to speak will be afforded the opportunity after the registered persons have been heard. Since the time for each speaker may be limited, speakers are encouraged to submit written comments and to summarize these comments at the public meetings.

Background

The boll weevil was introduced to the United States in 1892 near Brownsville, Texas. From that point of introduction the weevil spread quickly, and by 1922 it had completely infested a 15-State region known since as the Boll Weevil Belt. This area involves nearly 11 million acres of cotton.

As the boll weevil spread eastward and westward from its point of origin, it caused more damage than any other cotton pest. It is currently the most important agricultural pest in the United States, responsible for more than $300 million in annual losses and control costs for cotton. The damage caused by the boll weevil and other pests has been estimated to be 7 to 20 percent of the U.S. cotton crop.

In infested areas, economic losses are traditionally prevented only by intensive use of chemicals by cotton growers. Frequently, these chemicals must be applied repeatedly during the growing season to control weevils and any resulting secondary pests. Within the proposed program area, the boll weevil may be the indirect cause of much of the damage caused by the bollworm, the tobacco budworm, and spider mites, because insecticides used to control the boll weevil destroy many of the natural enemies of these species. This, in turn, often results in higher crop losses and even more intensive use of insecticides to protect the crop from these pests. This boll weevil cycle results in very few options for growers using pest management control strategies against other pests.

APHIS initiated a Boll Weevil Eradication Trial in North Carolina and Virginia during 1978 through 1982. That trial demonstrated that the boll weevil can be eradicated, and further, that the eradication of the boll weevil can also increase the value of land not previously planted for cotton production. Using county acreage figures, a regression model, and adjusting for other factors, cotton acreage increased from 50 to 60 percent due to the Boll Weevil Eradication Trial.

The success of this trial program on nearly 40,000 acres resulted in program expansion to other cotton producing areas. A significant benefit of the program is the decline in cotton insecticide application for the eradication zone following the program. The decline in pesticide usage was estimated to be 55 percent. In the buffer zone, private insect control expenditures also declined by about 14 percent.

APHIS has cooperated in three major boll weevil control programs: Southeast, Texas High Plains, and Southwest. In the majority of these programs, APHIS has provided technical advice, and has participated only in the collection and distribution of survey and monitoring information. In the Southeast program, however, APHIS has been responsible for managing and supervising the entire program in four States: Alabama, Florida, Georgia, and South Carolina. Because of the success of the trial program and of the three cooperative programs, and the desire to instill greater uniformity in national efforts to control the boll weevil, APHIS has examined ways to implement a coordinated national program that coverts the entire Boll Weevil Belt. The scope of this program, and the multi-year nature of the endeavor, result in the need to prepare a comprehensive EIS for this program.

Alternatives

The following program alternatives were identified for the National Boll Weevil Control Program and discussed in the DEIS: (1) No action, (2) beltwide eradication of the boll weevil (preferred alternative), and (3) beltwide suppression of the boll weevil.

Control method alternatives identified and discussed in the DEIS include: (1) Cultural control, (2) mechanical control, (3) sterile insect technique, (4) chemical control, and (5) biological control.

Major Issues

Following are some of the major issues discussed in the DEIS:

(1) Impacts of the alternatives on the biological environment, including target and nontarget species;

(2) Impacts of the alternatives on the physical environment, including soil, water quality, and air quality; and

(3) Impacts of the alternatives on other aspects of the human environment, such as wilderness areas, domestic animals, recreation, public health and safety, the cultural environment, public attitudes, energy, and the economy.

Preparation of Final EIS

APHIS will consider all comments in the development of the final EIS for the National Boll Weevil Cooperative Control Program. Following the 60-day comment period, a final EIS will be prepared. A "Notice of Availability" of the final EIS will be published in a subsequent **Federal Register** notice.

Done in Washington, DC, this 27th day of July 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-17932 Filed 7-31-89; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 89-129]

Advisory Committee on Foreign Animal and Poultry Diseases; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

SUMMARY: We are giving notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

Place, Dates, and Time of Meeting: The meeting will be held in the Ballroom of the Colony Inn Hotel, 1157 Chapel Street, New Haven, Connecticut, on August 16-17, 1989, from 8 a.m. to 5 p.m. each day.

FOR FURTHER INFORMATION CONTACT: Dr. David E. Herrick, Chief Staff Veterinarian, Import-Export Animals Staff, Veterinary Services, APHIS, USDA, Room 765, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8590.

SUPPLEMENTARY INFORMATION: The purpose of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (Committee) is to advise the Secretary of Agriculture of means to suppress, control, or eradicate an outbreak of foot-and-mouth disease, or other destructive foreign animal or poultry disease, in the event these diseases should enter the United States. The Committee also advises the Secretary of Agriculture of means to prevent these diseases.

The meeting will be open to the public. Written statements concerning meeting topics may be filed with the Committee before or after the meeting by sending them to the above address, or may be filed at the meeting. The committee is also offering interested persons an opportunity to make oral presentations at the meeting on two topics, importation of llamas and alpacas and importation of ostriches and other flightless birds.

A session concerning the regulation of llama and alpaca importations and disease problems associated with imported llamas and alpacas will be held between 1:00 p.m. and 3:00 p.m. on August 16. A session concerning the regulation of ostrich importations and disease problems associated with imported ostriches, particularly heartwater and East Coast Fever spread by African Bont ticks, will be held between 9:00 a.m. and 12:00 noon on August 17.

A representative of the Animal and Plant Health Inspection Service (APHIS) will preside at these sessions, and APHIS representatives will provide background and technical information on each topic. We request that all persons attending either of these sessions register with the presiding officer immediately prior to the start of the session. Each session will be conducted in the form of an informal workshop to discuss problems and suggestions pertaining to the topic of the session. We ask that anyone who reads a statement provide two copies to the presiding officer at the session. If the number of participants at a session warrants it, the presiding officer may limit the time for each speaker so that everyone wishing to speak has the opportunity.

Done in Washington, DC, this 28th day of July 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-18007 Filed 7-31-89; 8:45 am]

BILLING CODE 3410-34-M

Federal Grain Inspection Service

Designation Renewal of the Fremont (NE) and Titus (IN) Agencies

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Fremont Grain Inspection Department, Inc. (Fremont) and Titus Grain Inspection, Inc. (Titus) as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: September 1, 1989.

ADDRESSES: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Fremont's and Titus' designations terminate on August 31, 1989, and requested applications for official agency designation to provide official services within specified geographic areas in the March 1, 1989, **Federal Register** (54 FR 8578). Applications were to be postmarked by March 31, 1989. Fremont and Titus were the only applicants for designation in their area and each applied for designation renewal in the entire area currently assigned to that agency. The Service announced the applicant names in the May 1, 1989, **Federal Register** (54 FR 18550) and requested comments on the applicants for designation. Comments were to be postmarked by June 15, 1989. No comments were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and in accordance with section 7(f)(1)(B), determined that Fremont and Titus are able to provide official services in the geographic areas for which the Service is renewing their designations. Effective September 1, 1989, and terminating August 31, 1992, Fremont and Titus are designated to provide official inspection functions in their specified geographic area, as previously described in the March 1 **Federal Register**.

Interested persons may obtain official services by contacting the agencies at the following telephone numbers: Fremont at (402) 721-1270 and Titus at (317) 497-2202.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: July 20, 1989.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 89-17796 Filed 7-31-89; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Amarillo (TX) Agency and the State of Wisconsin

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic area currently assigned to Amarillo Grain Exchange, Inc. (Amarillo) and the Wisconsin Department of Agriculture, Trade and Consumer Protection (Wisconsin).

DATE: Comments must be postmarked on or before September 15, 1989.

ADDRESSES: Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628, South Building, P.O. Box 96454, Washington, DC 20090-6454.

Telemail users may respond to [LLEBAKKEN/FGIS/USDA] telemail.

Telex users may respond as follows:

TO: Lewis Lebakken
TLX: 7807351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the June 1, 1989, **Federal Register** (54 FR 23498). Applications were to be postmarked by July 3, 1989. Amarillo and Wisconsin were the only applicants for designation in those areas and each applied for the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Date: July 20, 1989.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 89-17797 Filed 7-31-89; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Farwell (TX) Agency

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of an agency will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agency. The official agency is William D. Prince dba Farwell Grain Inspection Company (Farwell).

DATES: Applications must be postmarked on or before August 31, 1989.

ADDRESSES: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

All applications received will be made available for public inspection at this address located at 1400 Independence Avenue SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Farwell, located at 120 3rd Street, Farwell, TX, was designated under the Act as official agency on February 1, 1987, to provide official inspection functions.

The official agency's designation terminates on January 31, 1990. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Farwell, in the States of New Mexico and Texas, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In New Mexico: Bernalillo, Chaves, Curry, DeBaca, Eddy, Guadalupe, Lea, Quay, Roosevelt, San Miguel, Santa Fe, Torrance, and Union Counties.

In Texas: Bailey, Deaf Smith (west of State Route 214), Lamb (south of U.S. Route 70 and west of FM 303), and Parmer Counties.

Interested parties, including Farwell, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning February 1, 1990, and ending January 31, 1992. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Date: July 20, 1989.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 89-17798 Filed 7-31-89; 8:45 am]

BILLING CODE 3410-EN-M

No Official Agency To Be Designated in Phoenix, AZ, Geographic Area (AZ)

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces that there will be no official agency designated to provide official inspection services under the U.S. Grain Standards Act, as Amended (Act), in the Phoenix, Arizona, geographic area.

EFFECTIVE DATE: September 1, 1989.

ADDRESSES: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Agricultural Seed Laboratories, Inc. (Agri Seed) requested cancellation of its designation. The Service granted this request effective April 15, 1989, and requested comments from interested parties on the need for locally-provided service in the geographic area formerly assigned to Agri Seed, in the April 14, 1989, **Federal Register** (54 FR 14980). Comments were to be postmarked by May 30, 1989; none were received.

As a result, based upon available information including information concerning the need for service in the geographic area, the Service has determined in accordance with the provisions of the Act that official services provided by an official agency or a regular basis are not needed. Accordingly, the Service has determined that no official agency will be designated within La Paz, Maricopa, Pinal, and Yuma Counties, Arizona. Any requests for official inspection service from persons or firms located within this area should be directed to the FGIS Plainview Field Office at (806) 293-4482, which will arrange for service.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Date: July 25, 1989.

Neil E. Porter,

Acting Director Compliance Division.

[FR Doc. 89-17799 Filed 7-31-89; 8:45 am]

BILLING CODE 3410-EN-M

No Official Agency To Be Designated in the State of Florida (FL)

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces that there will be no official agency designated to provide official inspection services under the U.S. Grain Standards Act, as Amended (Act), in the State of Florida. The Service will continue to provide such services.

EFFECTIVE DATE: September 1, 1989.

ADDRESSES: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service has been providing all official inspection services within the State of Florida. In the May 19, 1989, **Federal Register** (54 FR 21645), the Service requested applications for designation as an official agency for the conduct of all or specified functions involved in official grain inspection in the State of Florida. Applications were to be postmarked by June 19, 1989; none were received.

As a result, the Service has determined in accordance with the provisions of the Act that no official agency will be designated within the State of Florida. The Service has determined that there is a need for such

official services within the State of Florida. In addition, no official agency within a reasonable proximity can provide such services on an interim basis. As a result, any requests for official inspection service from persons or firms located within this area should continue to be directed to the FGIS Mobile Field Office at (205) 690–2114.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Date: July 25, 1989.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 89–17899 Filed 7–31–89; 8:45 am]

BILLING CODE 3410–EN–M

Forest Service

Scientific Advisory Board, Mount St. Helens National Volcanic Mounument, Gifford Pinchot National Forest, Clark County, Vancouver, WA; Meeting

The Mount St. Helens Scientific Advisory Board will meet at 8:30 a.m., September 7, 1989, at the Mount St. Helens National Volcanic Monument Visitor Center, 3029 Spirit Lake Highway, Castle Rock, Washington 98611, to receive information on and discuss the following:

1. Coldwater Lake—Johnston Ridge update.
2. Castle Lake containment plans.
3. 1990 Research initiative update.
4. Annual report on the protection of the NVM.
5. Open discussion of topics of interest to the Advisory Board and public comments.

The meeting will be open to the public. Persons who wish to make a statement to the Board should notify Dr. Jack K. Winjum, Chairperson, c/o Gifford Pinchot National Forest, 6926 E. Fourth Plain Blvd., Vancouver, Washington 98668, 206–696–7570. Written statements may be filed with the Board before or after the meeting.

Date: July 20, 1989.

Richard A. Ferraro,

Acting Regional Forester.

[FR Doc. 89–17897 Filed 7–31–89; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Delaware Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:00 p.m., on Monday, August 21, 1989, in Conference Room 3207 of Boggs Federal Building, 844 King Street, Wilmington, Delaware. The purpose of the meeting is to release two reports, one regarding legal assistance available to minority prisoners, and the second regarding nutrition services for the minority elderly, census data on the Hispanic elderly, and the State's Grant-in-Aid program, and also to plan activities for Fiscal Year 1990.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairman Henry A. Heiman (302/658–1800) or John I. Binkley, Director of the Eastern Regional Division at (202/523–5264; TDD 202/376–8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 24, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89–17901 Filed 7–31–89; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–401–401]

Certain Carbon Steel Products From Sweden; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On September 15, 1988, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain carbon steel products from Sweden. We have now completed that review and determine the net subsidy for the period March 20, 1985 through December 31, 1985 to be 4.58 perecent *ad valorem*.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 35883) the preliminary results of its administrative review of the countervailing duty order on certain carbon steel products from Sweden (50 FR 41547; October 11, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments from Sweden of cold-rolled carbon steel flat-rolled products, whether or not corrugated or crimped; whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width and of any thickness; whether or not in coils. During the review period, such merchandise was classifiable under item numbers 607.8320, 607.8350, 607.8355 and 607.8360 of the Tariff Schedules of the United States Annotated. These products are currently classifiable under HTS item numbers 7208.11.00, 7208.12.00, 7209.13.00, 7209.21.00, 7209.22.00, 7209.23.00, 7209.24.50, 7209.31.00, 7209.32.00, 7209.33.00, 7209.34.00, 7209.41.00, 7209.43.00, 7209.44.00, 7209.90.00, 7211.30.50, 7211.41.70 and 7211.49.50.

The review covers the period March 20, 1985 through December 31, 1985 and 10 programs: (1) Regional development incentives; (2) reconstruction loans; (3) structural loans; (4) government equity infusions; (5) government equity guarantees; (6) government acquisitions of assets for SSAB; (7) research and development grants; (8) employment promotion grants; (9) government export credits; and (10) municipal and county subsidies.

Sventsk Stall SB ("SSAB") was the only Swedish exporter of the subject merchandise to the United States during the period or review.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. At the request of the respondent, SSAB, we held a public hearing on January 12, 1989.

Comment 1: SSAB contends that the Department should not evaluate SSAB's equityworthiness based on the past financial results of the investing companies. SSAB was formed through an asset acquisition, not a merger, and there were no appropriate financial statements for evaluating SSAB's equityworthiness at the time of its formation in 1978. Instead, the Department should evaluate the Government of Sweden's equity infusion on the basis of the soundness of the investment. The fact that two private companies, Granges and Stora Kopparbergs (Stora), invested in SSAB indicates that SSAB was a prudent investment for the Government of Sweden as well. The major precondition for the government's financing of SSAB was that an extensive restructuring should be carried out in the Swedish carbon steel industry aimed at improving productivity and profitability.

SSAB further contends that the Department's focus on considerations that would motivate a hypothetical U.S. investor to determine whether SSAB was unequityworthy is incorrect. The equityworthiness of SSAB must be approached from the point of view of a Swedish investor. Unlike a U.S. investor, a Swedish investor would have placed more emphasis on asset values than on earnings potential. The Department also failed to take into consideration that the steel industry is capital-intensive and, as such, not likely to yield quick profits.

Department's Position: SSAB was formed in 1978 as a joint-venture between Granges AB and Stora (both privately-owned), Statsfore-tag/Norbottens Jarnverk AB (NJA) (government-owned) and the Government of Sweden. Under the terms of the formation agreement, Granges, Stora and NJA each transferred to SSAB steel assets valued at 700 million Swedish kronor (MSEK) in exchange for 25 percent shares of SSAB stock. The government also contributed 700 MSEK in cash in exchange for a 25 percent share of SSAB stock.

We have consistently held that government provision of equity *per se* does not confer a subsidy. Government equity infusions are countervailable only when they occur on terms inconsistent with commercial considerations. Where there is no market-determined price for the shares, it is necessary to assess the prospects of the company at the time of the investment. Although the steel industry is capital-intensive, any private investor motivated by commercial considerations would invest in a company if the investment is expected to yield a reasonable rate of return within a reasonable period of time.

Because Granges and Stora invested in SSAB does not necessarily make SSAB a reasonable commercial investment. During the 1970's, the overall demand for steel in Sweden was virtually stagnant while at the same time imports increased annually at an average rate of five percent. As a result, Swedish steel-producing companies faced excessive inventory build-up, reduced sales and low profitability or losses. In an effort to become competitive, Granges and Stora entered into a joint venture with NJA by combining their commercial-grade carbon steel-producing assets while the Government of Sweden provided capital. The companies invested in SSAB to concentrate operations, increase efficiency and competitiveness and remain going concerns. They were not disinterested investors objectively evaluating the potential return on their investment.

In analyzing the formation of SSAB and the government's initial investment, we examined the report of an official commission that studied the Swedish carbon steel industry, entitled "The Commercial Steel Industry in the Decade of the 1980's." We also analyzed a five-year forecast for SSAB for the period 1978 through 1982 that was based, in part, on the commission's report. The forecast projected that SSAB would not begin making a profit until 1982.

The financial data and the economic condition of the steel industry at the time of the equity investment indicated the following: (1) That SSAB was projected to become profitable at the end of its fifth year, with no projections beyond 1982, (2) that the anticipated rate of return on equity, based on the projected profit, would be too low to provide a reasonable rate of return on investment, and (3) that the demand for Swedish steel in the home and export market remained uncertain. Based on this information, we determined that the Government of Sweden's 1978 equity investment in SSAB was not made in accordance with commercial considerations.

Comments 2: SSAB contends that the provision of a promissory note to SSAB by the Government of Sweden for the purchase of a railroad from Granges did not benefit SSAB. Two independent studies prepared in 1977 assessed the value of the assets transferred from Granges, Stora and NJA, to be relatively equal. The three investing companies negotiated a figure of 700 MSEK as the value for the assets each transferred, and the 700 MSEK of assets transferred from Granges to SSAB included the railroad. The transfer of Granges' steel, mining and railroad assets would have resulted in an unsustainable book loss for Granges. Therefore, the Swedish government decided to offset this book loss by making the railroad transfer a separate transaction. Granges required 480 MSEK to cover the difference between the book value and the transfer value of its steel assets to SSAB. The note was never carried on SSAB's financial statement because payments were made directly to Granges by the government. Accordingly, it was Granges, not SSAB, that benefited from the transfer. SSAB, by signing over the note to Granges, was simply a conduit between the government and Granges.

Department's Position: We disagree. The SSAB formation agreement states that Granges would transfer its railroad to SSAB in exchange for 480 MSEK. Payment of the 480 MSEK to Granges consisted of SSAB's assumption of Granges railroad pension liabilities, and the National Debt Office's issuance of a 12-year promissory note for 343.3 MSEK bearing interest of 8.25 percent per annum. The government made a special authorization of funds with which to pay off the promissory note and, because SSAB signed over the note issued on its behalf to Granges, the government makes payments directly to Granges. Since the Government of Sweden is paying off the promissory note and SSAB is relieved of a debt obligation that it otherwise would have assumed, we determined that the 343.3 MSEK promissory note confers a benefit on SSAB.

Comment 3: SSAB contends that the government's payment of 530 MSEK to NJA did not confer a benefit on SSAB. NJA incurred a book loss because (1) the book value of its steel assets transferred to SSAB exceeded the negotiated price of 700 MSEK, (2) it had an operating loss for 1977, and (3) it abandoned its "steel works 80" employment project. The write-off of steel assets on NJA's balance sheet was offset by the government's payment of 530 MSEK to NJA. If the government had not made the payment to NJA, the company would

have had to liquidate. The government payment was needed only to keep NJA a viable corporation.

Department's Position: NJA, a government-owned company, transferred steel assets to SSAB. In return, NJA received stock from SSAB valued at 700 MSEK and cash of 530 MSEK from the government. Since the transfer of NJA's steel assets to SSAB was conditioned on NJA's receiving 530 MSEK from the government (to cover the loss in book value of the assets transferred to SSAB), we consider the 530 MSEK to be an assumption of cost by the government on behalf of SSAB. Therefore, we determine that the 530 MSEK contributed by the government to effect this transfer confers a countervailable benefit on SSAB.

Comment 4: SSAB contends that the Department incorrectly found SSAB to be unequityworthy in 1981 when additional equity was provided by the investing companies and the Government of Sweden. Financial projections at the time of SSAB's creation forecast that SSAB would need additional funds in 1981 to cover losses. In 1981, the additional capital was required partly to cover the projected losses and also to restore SSAB's debt/equity ratio, which had been affected by SSAB's acquisition of the TIBNOR group of companies. The Department's conclusion that Stora relinquished its shares in SSAB rather than investing additional capital in 1981 is incorrect. Stora chose to forego new investment in SSAB because of other financial commitments, and its decision to relinquish its shares in SSAB at this time does not indicate that SSAB was unequityworthy.

Department's Position: We disagree. At the time of the government's 1981 equity infusion, SSAB was not operating profitably. However, SSAB's successive losses from 1978 through 1980 did not reduce the company's equity base because the Government of Sweden allowed SSAB to cover these losses and maintain its equity by converting funds from its reconstruction loans in an amount equal to each year's losses to the equity account. SSAB's actual losses for 1978 through 1980 exceeded the projected losses. As a result, the government approved an additional reconstruction loan to cover the losses for 1981. Because SSAB's return on equity continued to be negative and the prospects of the world steel industry remained precarious, we determine that the Government of Sweden's 1981 equity investment in SSAB was not made in accordance with commercial considerations.

Comment 5: SSAB claims that the agreement between the Government of Sweden and Granges to purchase Granges shares in 1991 has not been correctly characterized or countervailed by the Department. As part of the 1981 transactions to provide SSAB with needed capital, the government agreed to redeem Granges' shares in SSAB in 1991 for the sum of 875 MSEK, provided that SSAB had not declared bankruptcy or gone into liquidation. The 875 MSEK figure represented a new investment of 375 MSEK, with interest compounded at approximately 10 percent per annum for nine years. However, the long-term rate of interest on Swedish government obligations in 1981 was 13.5 percent. Therefore, the government's conditional promise to pay Granges 875 MSEK in 1991 was worth considerably less than 375 MSEK in 1981.

Department's Position: We did not compare Granges' guaranteed rate of return to a long-term interest rate on Swedish obligations because we are treating the additional 375 MSEK investment by Granges in SSAB as equity, not as a loan. In our final determination (50 FR 33375; August 19, 1985), we treated the funds provided by Granges to SSAB as a loan. We have reconsidered this approach and have concluded that the transaction is not equivalent to a loan because SSAB is not obligated to repay the funds. We treated the 375 MSEK as an equity infusion that the government provided indirectly (through Granges) to SSAB. Because we have determined that SSAB was unequityworthy in 1981, this equity infusion bestows a countervailable benefit on SSAB.

Comment 6: SSAB requests that the Department test the conditional reconstruction loans as grants to make sure that they have not been excessively countervailed.

Department's Position: We have determined that the amount of countervailing duties calculated for the conditional reconstruction loans is significantly lower than if we had treated these loans as grants.

Comment 7: SSAB argues that the employment promotion grants are not countervailable. In the final determination of *Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794; February 26, 1987), the Department found the same program not countervailable.

Department's Position: In *Certain Stainless Steel Hollow Products from Sweden*, we found that the companies in question were not relieved of any obligations they otherwise would have incurred absent the employment promotion grants. In this case, we were not provided with such information and cannot ascertain what SSAB's costs and obligations would have been absent grants under this program. Therefore, as best information available, we conclude that the Government of Sweden is assuming costs that SSAB otherwise would have had to pay and that this program confers a countervailable domestic subsidy.

Final Results of Review

After considering all of the comments received, we determine the net subsidy during the period March 20, 1985 to December 31, 1985 to be 4.58 percent *ad valorem*.

The Department will instruct the Customs Service to assess countervailing duties of 4.58 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after March 20, 1985, and exported on or before December 31, 1985.

The Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 4.58 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Commerce Regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22).

Eric L. Garfinkel,

Assistant Secretary for Import Administration.

Date: July 24, 1989.

[FR Doc. 89-17812 Filed 7-31-89; 8:45 am]

BILLING CODE 3510-DS-M

Argonne National Laboratory; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC.

Docket Number: 88-124. *Applicant:* Argonne National Laboratory, Argonne, ILL 60439. *Instrument:* X-ray (Wavelength) Spectrometer and Accessories, Model FCS-40. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 53 FR 15103. April 27, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer. The accessory is pertinent to the intended uses.

We know of no domestic accessory which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-17813 Filed 7-31-89; 8:45 am]

BILLING CODE 3510-DS-M

Associated Universities, Inc.

Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materals Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89-039. *Applicant:* Associated Universities, Inc., Upton, NY 11973. *Instrument:* Cytogenetic Scanning Analyzer System, Model Cytoscan. *Manufacturer:* Image Recognition Systems, United Kingdom. *Intended Use:* See notice at 54 FR 4876, January 31, 1989.

Comments: None Received.

Decision: Approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the instrument was ordered (November 11, 1988).

Reasons: The foreign instrument automatically locates metaphase chromosomes and provides a 1024 element CCD imaging array. The National Institutes of Health advises in its memorandum dated April 19, 1989 that: (1) This capability is pertinent to the applicant's intended purposes and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which was being manufactured in the United States at the time it was ordered.

Frank. W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-17814 Filed 7-31-89; 8:45 am]

BILLING CODE 3510-DS-M

California State University et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-255R. *Applicant:* California State University, Long Beach, CA 90840. *Intended Use:* See notice at 54 FR 18689, May 2, 1989.

Docket Number: 89-076. *Applicant:* Veterans Administration Medical Center, Kansas City, MO 64128. *Intended Use:* See notice at 54 FR 11993, March 2, 1989.

Instrument: Stopped Flow Spectrofluorimeter, Model SF-51. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Reasons for This Decision:* The foreign instrument provides: (1) A dead time of 0.65 ms, (2) a rate constant less than $2000s^{-1}$, (3) temperature control to ±0.02 degrees C and (4) a totally inert flow circuit. *Advice Submitted By:* National Institutes of Health, May 16, 1989.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health and National Institute of Standards and Technology advise that: (1) The capabilities of the foreign instrument described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to the foreign instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-17815 Filed 7-31-89; 8:45 am]

BILLING CODE 3510-DS-M

California State University et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-288. *Applicant:* California State University, Fullerton, CA 92634. *Instrument:* Electron Microscope, Model H-7000-3. *Manufacturer:* Hitachi Ltd., Japan. *Intended Use:* See notice at 53 FR 43463, October 27, 1988. *Instrument Ordered:* July 27, 1988.

Docket Number: 89-105. *Applicant:* Oregon State University, Corvallis, OR 97331-2082. *Instrument:* Electron Microscope, Model CM12. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 54 FR 13727, April 5, 1989. *Instrument Ordered:* January 20, 1989.

Docket Number: 89-116. *Applicant:* Lovelace Biomedical and Environmental Research Institute, Albuquerque, NM 87115. *Instrument:* Electron Microscope, Model H-7000. *Manufacturer:* Hitachi Scientific Instruments, Japan. *Intended Use:* See notice at 54 FR 18689, May 2, 1989. *Instrument Ordered:* January 5, 1989.

Docket Number: 89-121. *Applicant:* Georgia Department of Human Resources, Atlanta, GA 30394. *Instrument:* Electron Microscope, Model CM10. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 54 FR 18690, May 2, 1989. *Instrument Ordered:* January 6, 1989.

Docket Number: 89-122. *Applicant:* Carnegie Mellon University, Pittsburgh, PA 15213-3890. *Instrument:* Electron Microscope, Model JEM-400OEX. *Manufacturer:* JEOL, Japan. *Intended Use:* See notice at 54 FR 18690, May 2, 1989. *Instrument Ordered:* November 24, 1987.

Docket Number: 89-123. *Applicant:* Kingsbrook Jewish Medical Center, Brooklyn, NY 11203. *Instrument:*

Electron Microscope, Model H-600-3. *Manufacturer:* Hitachi Scientific Instruments, Japan. *Intended Use:* See notice at 54 FR 18690, May 2, 1989. *Instrument Ordered:* January 27, 1989.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-17818 Filed 7-31-89; 8:45 am]

BILLING CODE 3510-DS-M

University of Utah et al.; Consolidation Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-120R. *Applicant:* University of Utah, Salt Lake City, UT 84112. *Instrument:* Scanning Electron Microscope, Model Camscan Series 2. *Manufacturer:* Cambridge Scanning Co., Ltd., United Kingdom. *Intended Use:* See notice at 54 FR 3635, January 25, 1989. *Reasons for This Decision:* The foreign instrument provides a retractable light optical microscope in the specimen chamber that is coaxial with the electron optical axis with magnification better than 200x for targeting the electron beam. *Advice Submitted by:* National Institute of Standards and Technology, April 27, 1989.

Docket Number: 88-028. *Applicant:* Oklahoma State University, Stillwater, OK 74078-0447. *Instrument:* Mass Spectrometer, Model TS-250. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* FY See notice at 54 FR 4874, January 31, 1989. *Reasons for This Decision:* The foreign instrument provides: (1) Resolution to 125,000, (2) scan rates to 0.1 second per decade and (3) MS/MS and FAB capabilities. *Advice Submitted by:* National Institutes of Health, April 19, 1989.

Docket Number: 88-035. *Applicant:* University of Tennessee, Knoxville, TN 37996-0810. *Instrument:* Scanning Electron Microscope, Model S-800. *Manufacturer:* Hitachi, Japan. *Intended Use:* FY The foreign instrument provides a field emission electron source, a resolution (lattice) of 2.0. nm and a beam current density to 100 amperes per square centimeter. *Advice Submitted by:* National Institutes of Health, April 19, 1989.

Docket Number: 88-0042. *Applicant:* USDA/ARS, Children's Nutrition Center, Houston, TX 77030. *Instrument:* Gas-Isotope-Ratio Mass Spectrometer, Model PRISM. *Manufacturer:* VG Instruments, Inc., United Kingdom. *Intended Use:* FY See notice at 54 FR 4877, January 31, 1989. *Reasons for This Decision:* The foreign instrument provides: (1) A guaranteed internal precision of 0.008‰ for 75 bar µl samples (ST)) or CO_2, (2) an externally adjustable triple Faraday collector, and (3) an automatic cold-finger microvolume inlet. *Advice Submitted by:* National Institutes of Health, May 2, 1989.

Docket Number: 88-043. *Applicant:* Duke University, Durham, NC 27706. *Instrument:* Mass Spectrometer, Model SIRA Series II. *Manufacturer:* VG Isogas, United Kingdom. *Intended Use:* See notice at 54 FR 4877, January 31, 1989. *Reasons for This Decision:* The foreign instrument provides an external precision of 0.04‰ for CO^2 with cyrogenic traps and elemental analyzer and 0.40‰ with a continuous flow inlet. *Advice Submitted by:* National Institutes of Health, May 2, 1989

Docket Number: 89-044. The Connecticut Agricultural Experience Station, New Haven, CT 06504. *Instrument:* Mass Spectrometer, Model Concept IS. *Manufacturer:* Kratos Analytical, United Kingdom. *Intended Use:* See Notice at 54 FR 4677, January 31, 1989. *Reasons for This Decision:* The foreign instrument provides: (1) Resolution to 80,000, (2) scan speed to 0.1 second per decade and (3) continuous flow FAB. *Advice Submitted by:* National Institutes of Health, May 2, 1989.

Docket Number: 88-050. *Applicant:* University of North Carolina at Chapel Hill, Chapel Hill, NC 27599-7020. *Instrument:* Piezomanipulator for Microelectrodes, Model PM20N. *Manufacturer:* Biomedizinische Instrumente, West Germany. *Intended Use:* See notice at 54 FR 7461, February 21, 1989. *Reasons for This Decision:* The foreign instrument provides forward advances with a velocity of 25 µm/us and variable step size to 0.5 µm. *Advice Submitted by:* National Institutes of Health, May 16, 1989.

Docket Number: 88-052. *Applicant:* North Carolina State University, Raleigh, NC 27695-7609. *Instrument:* Chlorophyll Fluorescence Measuring System. *Manufacturer:* Heinz Walz Mess-ander Regeltechnik, West Germany. *Intended Use:* See notice at 54 FR 7462, February 21, 1989. *Reasons for this Decision:* The foreign instrument provides in situ measurements of chlorophyll fluorescence that is independent of ambient light intensity. *Advice Submitted by:* National Institutes of Health, May 16, 1989.

Docket Number: 88-109. *Applicant:* University of Cincinnati, Cincinnati, OH 45221-0172. *Instrument:* Vibrating-Tube Densimeter, Model 03-D. *Manufacturer:* SODEV, Inc., Canada. *Intended Use:* See notice at 54 FR 15536, April 18, 1989. *Reasons for This Decision:* The foreign instrument provides an operating temperature range of -5 to 105°C, accuracy of ±0.02°C. reproducibility of 0.005°C and a stability of 0.001°C. *Advice Submitted by:* National Institute of Standards and Technology, May 16, 1989.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health and National Institute of Standards and Technology advise that: (1) The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-17823 Filed 7-31-89; 8:45 am]

BILLING CODE 3510-DS-M

University of Wisconsin; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87-182R2. *Applicant:* University of Wisconsin-Madison, Madison, WI 53706. *Instrument:* NMR Spectrometer, Model AM 500 and NMR Spectrometer Data Station. *Manufacturer:* Bruker Instruments, Switzerland. *Intended Use:* See notice at 52 FR 19904, May 28, 1987.

Comments: None received.

Decision: Approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the purchase was contracted (July 3, 1985).

Reasons: The foreign instrument provides phase shifts of transmitter, decoupler and receiver to less than one degree with 12-bit accuracy. The National Institutes of Health advises in its memorandum dated April 19, 1989 that: (1) This capability is pertinent to the applicant's intended purposes and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which was being manufactured in the United States at the time it was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-17824 Filed 7-31-89; 8:45 am]

BILLING CODE 3510-DS-M

Texas A&M University et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89-120. *Applicant:* Texas A&M University, College Station, TX 77843.

Docket Number: 89-126. *Applicant:* University of Puerto Rico, Mayaguez, PR 00708.

Instrument: Electron Microprobe, Model SX50. *Manufacturer:* Cameca Instruments Inc., France. *Intended Use:* See notice at 54 FR 18689-18690, May 2, 1989. *Reasons for this Decision:* The foreign instrument is capable of quantitative analysis of EDS/WDX signals and permits real time display of spectral acquisition.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of the foreign instrument described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to the foreign instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-17820 Filed 7-31-89; 8:45 am]

BILLING CODE 3510-DS-M

University of MD at Baltimore et al; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89-059. *Applicant:* University of Maryland at Baltimore, Dental School, Baltimore, MD 21201. *Instrument:* Electron Microscope, Model JEM-1200EX/SEG. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 54 FR 7971, February 24, 1989. *Instrument Ordered:* August 9, 1988.

Docket Number: 89-065. *Applicant:* NYS Institute for Basic Research in Developmental Disabilities, Staten Island, NY 10314. *Instrument:* Electron Microscope, Model H-7000. *Manufacturer:* Hitachi, Japan. *Intended Use:* See notice at 54 FR 7972, February 24, 1989. *Instrument Ordered:* July 15, 1988.

Docket Number: 89-066. *Applicant:* Ames Laboratory—U.S. Department of Energy, Ames, IA 50011-3020. *Instrument:* Electron Microscope, Model CM30T. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 54 FR 11992, March 23, 1989. *Application Received by Commissioner of Customs:* January 23, 1989.

Docket Number: 89-071. *Applicant:* Arkansas Children's Hospital, Little Rock, AR 72202. *Instrument:* Electron Microscope, Model EM 902PC. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 54 FR 11991, March 23, 1989. *Instrument Ordered:* October 24, 1988.

Docket Number: 89-078. *Applicant:* Boston University, Boston, MA 02215. *Instrument:* Electron Microscope, Model CM12. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 54 FR 11993, March 23, 1989. *Instrument Ordered:* September 30, 1988.

Docket Number: 89-079. *Applicant:* Veterans Administration Medical Center, Durham, NC 27705. *Instrument:* Electron Microscope, Model JEM-1200EX. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 54 FR 11993, March 23, 1989. *Instrument Ordered:* December 29, 1988.

Docket Number: 89-081. *Applicant:* Univeristy of Mississippi Medical Center, Jackson, MS 39216. *Instrument:* Electron Microscope, Model EM 109T. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 54 FR 11993, March 23, 1989. *Instrument Ordered:* November 23, 1988.

Docket Number: 89-082. *Applicant:* Nassau County Medical Center, East Meadow, NY 11554. *Instrument:* Electron Microscope, Model EM109. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 54 FR 13407, April 3, 1989. *Instrument Ordered:* August 2, 1989.

Docket Number: 89-084. *Applicant:* St. Joseph's Hospital and Medical Center, Phoenix, AZ 85013. *Instrument:* Electron Microscope, Model CM12. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 54 FR 13407, April 3, 1989. *Instrument Ordered:* December 21, 1988.

Docket Number: 89-085. *Applicant:* Bellevue Hospital, New York, NY 10016. *Instrument:* Electron Microscope, Model EM 10C. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 54 FR 13472B, April 5, 1989. *Instrument Ordered:* November 8, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to

BEST COPY AVAILABLE

these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-17821 Filed 7-31-89; 8:45 am]

BILLING CODE 3510-DS-M

University of Nebraska Medical Center et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89-055. *Applicant:* University of Nebraska Medical Center, Omaha, NE 68131. *Instrument:* Computerized Videographic Movement Analysis System, Model WATSMART. *Manufacturer:* Northern Digital, Canada. *Intended Use:* See notice at 54 FR 9076, March 3, 1989. *Reasons For This Decision:* The foreign instrument provides digitized motion analysis derived from multiple position markers with simultaneous acquisition of force platform and EMG signals. *Advice Submitted by:* National Institutes of Health, May 16, 1989.

Docket Number: 89-058. *Applicant:* U.S. Environmental Protection Agency, Athens, GA 30613-7799. *Instrument:* Mass Spectrometer, Model VG 70VSEQ. *Manufacturer:* VG Analytical Ltd., United Kingdom. *Intended Use:* See notice at 54 FR 7971, February 24, 1989. *Reasons For This Decision:* The foreign instrument provides: (1) Resolution to 50 000, (2) scan speed to 0.5 second per decade and (3) MS/MS, FAB and thermospray capabilities. *Advice Submitted by:* National Institutes of Health, May 16, 1989.

Docket Number: 89-113. *Applicant:* University of Hawaii at Manoa, Honolulu, HI 96822. *Instrument:* 250 Ton 6mm Cubic-Anvil Type High Pressure Press Apparatus, Model TRY-250. *Manufacturer:* Riken Kiki Co., Ltd, Japan. *Intended Use:* See notice at 54 FR 18689, May 2, 1989. *Reasons For This Decision:* The foreign apparatus provides simultaneous pressure-temperature condition to 100 000 atmosphere.s and 2000°C. *Advice Submitted by:* National Institute of Standards and Technology, May 26, 1989.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health and National Institute of Standards and Technology advise that: (1) The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-17822 Filed 7-31-89; 8:45 am]

BILLING CODE 3510-DS-M

Department of Energy et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89-056. *Applicant:* U.S. Department of Energy, Argonne National Laboratory, Argonne, IL 60439-4812. *Instrument:* Mass Spectrometer, Model Series 800. *Manufacturer:* Kratos, United Kingdom. *Intended Use:* See notice at 54 FR 9076, March 3, 1989. *Reasons for This Decision:* The foreign instrument can resolve peaks in the mass region 237 to 241 amu when the ^{238}U peak is 100-1000 times more intense and is sensitive to concentrations of these elements below 0.01 wt. %.

Docket Number: 89-062. *Applicant:* Trustees of the University of Pennsylvania, Philadelphia, PA 19104. *Instrument:* Surface Forces Apparatus, Mark 2 PI. *Manufacturer:* Anutech Pty. Ltd., Australia. *Intended Use:* See notice at 54 FR 11992, March 23, 1989. *Reasons for this decision:* The foreign instrument can measure forces between surfaces with a sensitivity of 10.0 nanonewtons and a distance resolution of about 0.1 nanometer.

Docket Number: 89-068. *Applicant:* University of California, Berkeley, CA 94720. *Instrument:* Sonic Anemometer System. *Manufacturer:* Dobbie Instruments, Ltd., Australia. *Intended Use:* See notice at 54 FR 11990, March 23, 1989. *Reasons for this decision:* The foreign article provides a 0.005 m/s velocity resolution, measures 3 directional components at turbulent intensity >50% and provides a linearity of 1%.

Docket Number: 89-086. *Applicant:* Case Western Reserve University, Cleveland, OH 44106. *Instrument:* Electromagnetic Ground Conductivity Meter, Model EM31-DL. *Manufacturer:* Geonics Ltd., Canada. *Intended Use:* See notice at 54 FR 13725, April 5, 1989. *Reasons for this decision:* The foreign instrument provides in situ measurement of ground conductivity in milli-ohms per meter.

Docket Number: 89-099. *Applicant:* University of Oregon, Eugene, OR 94703. *Instrument:* Electron Microprobe, Model CAMEBAX SX50. *Manufacturer:* Cameca Instruments, France. *Intended Use:* See notice at 54 FR 13726, April 5, 1989. *Reasons for this decision:* The foreign instrument is capable of image analysis combining x-ray, electron and cathodoluminescence signals.

Docket Number: 89-104. *Applicant:* University of Maryland, College Park, MD 20742. *Instrument:* (FTIR) Spectrometer and Data System, Model DA3. *Manufacturer:* Bomem Inc., Canada. *Intended Use:* See notice at 54 FR 13727, April 5, 1989. *Reasons for this decision:* The foreign article provides an unapodized resolution of 0.026 cm^{-1}.

Docket Number: 89-100. *Applicant:* University of Houston, Houston, TX 77204-2770. *Instrument:* Dual Beam Low-Energy Ion Implanter. *Manufacturer:* VSW Scientific Instruments Ltd., United Kingdom. *Intended Use:* See notice at 54 FR 13726, April 5, 1989. *Reasons for this decision:* The foreign article provides low energy (10 keV to 10 eV) ion beams at fluxes up to 100 uA/cm^2.

Docket Number: 89-111. *Applicant:* South Dakota School of Mines and Technology, Rapid City, SD 57701. *Instrument:* ICP Mass Spectrometer, Model PlasmaQuad 2. *Manufacturer:* VG Isotopes Ltd., United Kingdom. *Intended Use:* See notice at 54 FR 15536, April 18, 1989. *Reasons for this decision:* The foreign instruemnt is capable of detecting elements, isotopes or impurities down to concentrations of ten parts per trillion.

Docket Number: 89-112 *Applicant:* University of Hawaii, Honolulu, HI

96822. *Instrument:* Rotating Anode X-ray Generator. *Manufacturer:* Rigaku, Japan. *Intended Use:* See notice at 54 FR 15536, April 18, 1989. *Reasons for this decision:* The foreign article provides 12 kW of brilliance with a power density of $12kW/mm^2$ using a 0.1x1mm focal spot size.

Docket Number: 89-124. *Applicant:* Stanford University, Stanford, CA 94305. *Instrument:* Dilution Refrigerator System, Model 1000. *Manufacturer:* Oxford Instruments North America Inc., United Kingdom. *Intended Use:* See notice at 54 FR 18690, May 2, 1989. *Reasons for this decision:* The foreign apparatus provides a cooling power to $4x10^2$ Kelvin.

Docket Number: 89-125. *Applicant:* Rutgers, The State University, Piscataway, NJ 08855. *Instrument:* Ion Gun. *Manufacturer:* Kratos Analytical, United Kingdom. *Intended Use:* See notice at 54 FR 18690, May 2, 1989. *Reasons for this decision:* The foreign article is an accessory for an existing system. It provides a variable beam diameter, ionization current of 5 to 25 milliamps and beam energy of 50 to 5000 eV.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-17817 Filed 7-31-89; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89-174. *Applicant:* Princeton University, Department of Physics, Jadwin Hall, P.O. Box 708, Princeton, NJ 08554. *Instrument:* Dilution Refrigerator, Model 400 TLE. *Manufacturer:* Oxford Instruments, United Kingdom. *Intended Use:* The instrument will be used for the study of the nuclear decay of short-lived radioactive isotopes, embedded in samples or detectors, that are cooled into the milli-Kelvin temperature region with ^3He-^4He refrigerator. *Application Received by Commissioner of Customs:* July 3, 1989.

Docket Number: 89-175. *Applicant:* Cornell University, Department of Geological Sciences, 4122 Snee Hall, Ithaca, NY 14853. *Instrument:* Inductively Coupled Plasma Mass Spectrometer, PlasmaQuad PQ+. *Manufacturer:* VG Elemental, United Kingdom. *Intended Use:* The instrument will be used for trace element analysis of geological materials and analysis of major elements, i.e., those elements present at concentrations above 0.1%. The materials to be studied include sedimentary, metamorphic and igneous rocks and various aqueous fluids such as seawater, riverwater, pore waters, etc. The primary educational purpose for the instrument will be graduate student training. *Application Received by Commissioner of Customs:* July 3, 1989.

Docket Number: 89-176. *Applicant:* Columbia University, Bilogical Sciences, 500 Fairchild Bldg., New York, NY 10027. *Instrument:* Two micromanipulators, Models WR-88-L and WR-88-R. *Manufacturer:* Narishige Scientific Instruments, Japan. *Intended Use:* The instrument will be used to handle microelectrodes on the microscope stage in order to make electrical recordings from single living cells obtained from frog nervous system. *Application Received by Commissioner of Customs:* July 3, 1989.

Docket Number: 89-177. *Applicant:* William Paterson College of New Jersey, 300 Pompton Road, Wayne, NJ 07470. *Instrument:* Mass Spectrometer, Model JMS-DX303HF. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* Studies of the chemical structure of coal and coal derived products, the chemical structure of molecules composing biological structure or biologically-active molecules and molecules toxic in nature. The experiments to be conducted will include analysis of chemicals using electron, chemical and fast atom bombardment ionization in order to clearly interpret the spectra. In addition, the instrument will be used to obtain knowledge on its function for extracting structural details of organic compounds in the courses Analytical Instrumentation 401, Biochemistry I & II (327, 328) and Biotechnology IV Proteins. *Application Received by Commissioner of Customs:* July 3, 1989.

Docket Number: 89-178. *Applicant:* University of Rochester, Department of Geological Sciences, 201 Hutchinson Hall, Rochester, NY 14627. *Instrument:* Rare Gas Mass Spectrometer, Model VG 5400. *Manufacturer:* VG Isotopes, United Kingdom. *Intended Use:* The instrument will be used to measure the concentration and isotopic composition of the rare gases, helium, neon and argon in samples of rocks, water, natural gases and air. The rare gas isotopic composition of various earth materials serves as an excellent tracer to study reaction pathways and processes in natural systems. *Application Received by Commissioner of Customs:* July 3, 1989.

Docket Number: 89-179. *Applicant:* U.S. Geological Survey, Geologic Division, Building 20, MS 973, Denver Federal Center, Denver, CO 80225. *Instrument:* Laser Ablation Inductively Coupled Plasma Mass Spectrometer. *Manufacturer:* VG Instruments, Inc., United Kingdom. *Intended Use:* The instrument will be used for studies of rock forming and ore minerals, specific zones and areas within mineral grains and fluid and gases contained in inclusions within rocks and minerals. Research will be conducted for the development of analytical methods in order to study trace element geochemistry and isotopic abundances of several geological systems for the improved understanding of the genesis of economic deposits of strategic minerals. *Application Received by Commissioner of Customs:* July 5, 1989.

Docket Number: 89-180. *Applicant:* University of Cincinnati, 498 Rhodes Hall, Cincinnati, OH 45221-0012. *Instrument:* Electron Microscope, Model CM20T. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for examining high temperature intermetallic alloys, directionally solidified alloys, diffusion-bonded steels, high-strength low-alloy steels, and polymeric-matrix composites. The investigations will be centered around understanding the microstructures of the material in order to determine fundamental mechanisms governing the properties/performance and their improvement through manipulation of both material composition and relevant processing parameters. In addition, the instrument

will be used for educational purposes in several materials science and engineering courses. *Application Received by Commissioner of Customs:* July 5, 1989.

Docket Number: 89–182. *Applicant:* Rutgers University, Department of Physics and Astronomy, P.O. Box 849, Piscataway, NJ 08854. *Instrument:* Kelvin Probe. *Manufacturer:* Delta Phi Elektronik, West Germany. *Intended Use:* The instrument will be used for the measurement of the work function of clean and adsorbate covered surface, performed in ultra high vacuum. This is an important parameter in the study a wide variety of surface related phenomena. Graduate students, postdoctoral candidates and undergraduates will use the instrument for their training and thesis research. *Application Received by Commissioner of Customs:* July 7, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–17818 Filed 7–31–89; 8:45 am]

BILLING CODE 3510-DE-M

Rensselaer Polytechnic Institute; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88–258. Applicant: Rensselaer Polytechnic Institute, Troy, NY 12180–3590. *Instrument:* Molecular Beam Epitaxy System, Model V90S and V90H. *Manufacturer:* VG Semicon, Ltd., United Kingdom. *Intended use:* See notice at 53 FR 37017, September 23, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a capability of processing 4" diameter Si substrates. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use being manufactured at the time the foreign article was purchased.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–17819 Filed 7–31–89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Permits; Notice of Hearing

AGENCY: National Marine Fisheries Service (NOAA Fisheries), NOAA, Commerce.

ACTION: Notice of hearing.

SUMMARY: The National Marine Fisheries Service (NOAA Fisheries) will hold a hearing on the application of the Golden Nugget-Strip Corporation, operating as The Mirage, for a permit to take captive born or rehabilitated (beached or stranded) bottlenose dolphins (Tursiops truncatus) for the purpose of public display. A notice was published June 12, 1989, (54 FR 23934), that the Golden Nugget-Strip Corporation had applied in due form for a permit for public display purposes under the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361–1407) (MMPA), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216). NOAA Fisheries received comments on the application and a request for a hearing. In an effort to ensure a complete record on which to base a decision, and in consideration of the interest expressed and issues raised concerning the application, NOAA Fisheries is granting the request to hold a hearing. Issues relevant to this particular application may be raised at the hearing. The hearing is open to any interested members of the public. The hearing record will remain open for ten working days after the date of hearing.

DATES: Persons wishing to testify at this hearing must notify the Information Contact listed below by August 8, 1989. The hearing will be held on Tuesday, August 15, 1989, at 10:00 a.m.

ADDRESS: 1335 East-West Highway, Silver Spring, Maryland.

FOR FURTHER INFORMATION CONTACT: Ann Terbush, Chief, Permit Division, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East–West Highway, Silver Spring, MD 20910 (301–427–2289).

SUPPLEMENTARY INFORMATION: NOAA Fisheries may issue permits to take or import marine mammals for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock.

In publishing the notice of application (54 FR 24934, June 12, 1989), NOAA Fisheries provided a 30 day period for submission of written data or views, or requests for a hearing. During this comment period, which ended July 12, 1989, NOAA Fisheries received approximately 550 letters. In addition, the Animal Protection Institute of America, on behalf of itself and six other animal welfare and environmental organizations, requested a hearing.

In accordance with section 104(d) of the MMPA, NOAA Fisheries must decide whether to issue or deny the application by the Golden Nugget-Strip Corporation for a public display permit within 30 days of the close of the hearing record. A number of letters recommended that NOAA Fisheries delay a decision on whether to issue a permit pending development of a comprehensive definition of, and policy concerning, the term "public display" through its permit program review process. The NOAA Fisheries permit program review is being conducted to review its programs and policies for issuing permits to take marine mammals for purposes of scientific research and public display pursuant to the MMPA, and for scientific research pursuant to the Endangered Species Act (see 54 FR 13099, March 30, 1989, and 54 FR 27663, June 30, 1989). Although one of the objectives of the permit program review is the development of a definition of "public display" consistent with the purposes of the MMPA, the results of the review will not be available at the time a decision on the permit is required by the Act. Consequently, a decision on this permit must be made on the basis of available information, present regulations, and existing policy; and before the completion of a comprehensive review of potentially applicable "public display" issues during the permit program review. In addition, there are many issues and concerns regarding whether certain activities or types of facilities constitute a "public display purpose." Many of these are not relevant to consideration of this particular application (e.g., dolphin feeding activities, whale watching activities, swim-with-dolphin programs, etc.). The "public display" issue raised in comment letters and relevant to this particular application, and concerning which NOAA Fisheries is soliciting additional comment through a hearing, is whether the maintenance of bottlenose dolphins by the Golden Nugget-Strip Corporation, operating as The Mirage, as described in the application is a "public display purpose" for which permits may be issued under the MMPA and implementing regulations.

Date: July 27, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–17984 Filed 7–31–89; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Office of the Secretary of Defense Performance Review Board

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Office of the Secretary of Defense, DoD Field Activities, the Joint Staff, the U.S. Court of Military Appeals, the Strategic Defense Initiative Organization, U.S. Mission to NATO, Defense Advanced Research Projects Agency, Defense Investigative Service, and the Defense Security Assistance Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Seniro Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Secretary of Defense.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Bobb, Assistant Director for Executive Personnel and Classification, Directorate for Personnel and Security, WHS, Office of the Secretary of Defense, Department of Defense, the Pentagon, (202) 697–8304.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the OSD PRB; specific PRB panel assignments will be made from this group. Executive listed will serve a one-year renewable term, effective August 1, 1989.

Office of the Secretary of Defense

Chairman

Robert L. Gilliat

Moderators

John V. Bolino
Geoffrey A. Cratch
Jeanne B. Fites
Henry H. Gaffney, Jr.
Richard G. Howe
Gregory D. Hulcher
Jordan E. Riser

Members

Alan J. Andreoni
Walter B. Bergmann, II
James W. Brooks, Jr.
William F. Coakley
Richard E. Donnelly
Nelson W. Eaton
Anthony R. Grieco
Sally K. Horn
David R. Israel
Belkis W. Leong-Hong
Ray W. Pollari
Ronnie H. Register
William J. Sharkey, Jr.
Nicholas A. Toomer

Alternates

Albert V. Conte
Thomas F. Granahan
Thomas E. Huggard
Fredric L. Menz
William M. McDonald
Robert R. Soule

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 26, 1989.

[FR Doc. 89–17863 Filed 7–31–89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Board of Visitors to the United States Naval Academy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet 11 September 1989, at the U.S. Naval Academy, Annapolis, Maryland. The session, which is open to the public, will commence at 8:30 a.m. and terminate at 12:00 p.m., 11 September 1989, in Room 301, Rickover Hall.

The purpose of the meeting is to make inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic method of the Naval Academy.

For further information concerning this meeting contact: Captain John W. Renard, U.S. Navy, Retired, Secretary to the Board of Visitors, Dean of Admissions, United States Naval Academy, Annapolis, Maryland 21402–5017.

Date: July 27, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–17869 Filed 7–31–89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

[Case No. F–017]

Energy Conservation Program for Consumer Products; Decision and Order Granting Waiver From Furnace Test Procedures to the Trane Company

AGENCY: Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–017) granting The Trane Company, Inc., a waiver for its TUC(—) series and TDC(—) series condensing furnaces from existing DOE test procedures.

FOR FURTHER INFORMATION CONTACT:

Carl E. Adams, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station, CE–132, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station, GC–12, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–9507

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, The Trane Company has been granted a waiver for its TUC(—) series and TDC(—) series condensing furnaces permitting the company to use an alternate test method.

Issued in Washington, DC, July 26, 1989.

John R Berg,

Assistant Secretary, Conservation and Renewable Energy.

In the Matter of: The Trane Company (Case No. F–017)

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619, 92 Stat. 3206, the National Appliance Energy Conservation Act of 1987 (NAECA), Pub.

L. 100–12, and the National Appliance Energy Conservation Amendment of 1988 (NAECA 1988), Pub. L. 100–357. The Act requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has amended the prescribed test procedure regulations, by adding § 430.27, to allow the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inadequate comparative data. 45 FR 64108 (September 26, 1980).

Pursuant to § 430.27(g), the Assistant Secretary shall publish in the **Federal Register** notice of each waiver granted and any limiting conditions of each waiver.

The Trane Company (Trane) filed a "Petition for Waiver" in accordance with § 430.27 of 10 CFR Part 430. DOE published in the **Federal Register** the Trane petition and solicited comments, data, and information respecting the petition. 54 FR 19226 (May 4, 1989). One comment was received from the Goodman Manufacturing Corporation which supported the waiver. DOE consulted with the Federal Trade Commission on May 25, 1989, concerning The Trane petition.

Assertions and Determinations

Trane's petition seeks a waiver from the DOE test provisions that require a 1.5 minute time delay between the ignition of the burner and the starting of the circulating air blower. Instead, Trane requests the allowance to test using a 30 second blower time delay when testing its TUC(−) series and TDC(−) series gas furnaces. Trane states that since the 30 second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of approximately 1.8 percent, the waiver should be granted.

Under specific circumstances, the DOE test procedures contain exceptions which allow testing with blower delay times of less than the prescribed 1.5 minute delay. Trane indicates that it is unable to take advantage of any of these exceptions for the TUC(−) series and TDC(−) series.

Since the blower controls incorporated on the Trane furnace are designed to impose a 30 second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30 second blower time delay when testing the Trane series furnace. Accordingly, with regard to testing the TUC(−) series and TDC(−) series furnaces only, today's Decision and Order exempts Trane from the existing provisions regarding blower controls and allows testing with the 30 second delay.

It is therefore ordered that:

(1) The "Petition for Waiver" filed by The Trane Company, (F–017) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3) and (4).

(2) Not withstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, The Trane Company shall be permitted to test its TUC(−) series and TDC(−) series gas furnaces on the basis of the test procedure specified in 10 CFR Part 430, with the modifications set forth below:

(i) Section 9.3.1 of ANSI/ASHRAE Standard 103–1982 is deleted and replaced with the following paragraph:

"Gas- and Oil-Fueled Central Furnaces. After Equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) come on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t−), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 in. of water gauge of the manufacturer's recommended on-period draft."

(ii) With the exception of the modification set forth in subparagraphs (i) above, The Trane Company shall comply in all respects with the test procedures specified in Appendix N of 10 CFR Part 430, Subpart B.

(3) The waiver shall remain in effect from the date of issuance of this Order until the Department of Energy prescribes final test procedures appropriate to the TUC(−) series and TDC(−) series condensing furnace manufactured by The Trane Company.

(4) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the applicant. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Issued in Washington, DC, July 26, 1989.

John R. Berg,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 89–17934 Filed 7–31–89; 8:45am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Dockets Nos. CP89–1719–000 et al.]

Valley Gas Transmission, Inc., et al.; Natural Gas Certificate Filings

July 24, 1989.

Take notice that the following filings have been made with the Commission:

1. Valley Gas Transmission, Inc.

[Docket No. CP89–1719–000]

Take notice that on June 29, 1989, Valley Gas Transmission, Inc. (Valley), 1301 McKinney, Suite 700, Houston, Texas 77010, filed in Docket No. CP89–1719–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Gulf Energy Marketing Company (Gulf), under the blanket certificate issued in Docket No. CP86–171–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Valley states that pursuant to a transportation agreement dated May 1, 1989, under its Rate Schedule T–2, it proposes to transport up to 18,000 Mcf per day of natural gas for Gulf. Valley states that it would transport the gas from various receipt points in Texas and Louisiana, as shown in Exhibit "A" of the transportation agreement, and would deliver the gas to the delivery points shown in Exhibit "B" of the agreement.

Valley advises that service under § 284.223(a) commenced June 1, 1989, as reported in Docket No. ST89–4029–000. Valley further advises that it would transport 7,668 Mcf on an average day and 2,400,000 Mcf annually.

Comment date: September 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company, Division of Enron Corporation

[Docket No. CP89–1754–000]

Take notice that on July 10, 1989, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89–1754–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition and operation of certain existing offshore facilities in the Matagorda Offshore Pipeline System (MOPS) and a certain pipeline lateral connected to MOPS from Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to acquire Southern's 50 percent interest in the Matagorda Island Block 686 (MAT 686) compression platform, two 3,300 horsepower compression units, liquids separation facilities and related equipment located on the platform and approximately 2,300 feet of 16-inch pipeline used to divert liquids from the inlet to the discharge side of the compression facilities. Also, Northern proposes to acquire Southern's 31.8182 percent interest in approximately 16.7 miles of the 24-inch pipeline lateral located in Mustang Island Block 758 (MUS 758) and Southern's 45 percent interest in a receiving station and appurtenant facilities located on a production platform at MUS 758. Northern states that the purchase of the MUS 758 facilities would provide Northern with an increase in capacity from approximately 127 MMcf per day to approximately 291 MMcf per day from MUS 758 to MAT 686. Further, Northern states both the MOPS facilities and the MUS 758 facilities would be acquired at Southern's net book value estimated to be $10,988,600, from internally generated funds.

Northern states that upon acquisition of these facilities Northern would also acquire Southern's capacity entitlements for these facilities. Northern indicates that these capacity entitlements would not be subject to any transportation contracts or request and would be fully available for allocation toward firm and/or interruptible requests for transportation services made upon Northern under its blanket certificate authority and/or Order 509 in accordance with its FERC gas tariff.

Comment date: August 14, 1989, in accordance with Standard Paragraph F at the end of this notice.

3. Columbia Gas Transmission Corporation and Texas Gas Transmission Corporation

[Docket No. CP89–1680–000]

Take notice that on June 22, 1989, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314 and Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, jointly referred to as Applicants, filed a joint application pursuant to sections 7(b) and 7(c) of the Natural Gas Act, as amended, granting Columbia permission and approval to abandon certain natural gas facilities and services. Under section 7(c), Applicants seek a certificate of public convenience and necessity authorizing Texas Gas to initiate natural gas sales service to Dayton Power and Light Company (Dayton), and further authorizing Applicants to construct, operate, and lease facilities subject to the jurisdiction of the Commission, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants' requested authorizations are as follows:

Columbia Request

Pursuant to Section 7(b)

(1) The abandonment of 119,000 Dt/d of contract demand to Dayton effective December 1, 1989.

Columbia's partial abandonment of service to Dayton will result in a reduction of Dayton's firm certificated sales entitlement under Columbia's CDS Rate Schedule from 244,000 Dt/d to 125,000 Dt/d.

(2) The abandonment by sale to Dayton of certain natural gas facilities.

Columbia will abandon by sale approximately 339 miles of natural gas pipeline with existing points of delivery and appurtenances for a negotiated price of $12 million. The abandonment will not result in the loss of service to any customer.

(3) The abandonment of certain points of delivery to Columbia Gas of Ohio, Inc. (COH) with related service being transferred to Dayton.

COH currently provides service to a number of mainline tap customers, 16 of which are right-of-way customers served off facilities owned by Panhandle Eastern Pipeline Company. The remaining customers are on the facilities being sold to Dayton. COH and Dayton have agreed to transfer this service to Dayton at the time of the sale.

Pursuant to Section 7(c)

(4) The construction, operation, and lease of facilities required to establish eight (8) new points of delivery to Dayton in Clinton, Madison, Montgomery, Greene, Champaign, and Clark Counties, Ohio.

The eight new points of delivery will consist of appurtenant measuring and regulating facilities required, as a result of the proposed sale, at an estimated cost of approximately $2 million. Dayton will pay Columbia the cost of the facilities plus interest at the FERC-approved rate. At such time as Dayton has paid the total cost of the facilities, Columbia will transfer title and ownership of such facilities to Dayton. Columbia will in turn lease certain measuring facilities.

Texas Gas Requests

Pursuant to Section 7(c)

(5) The initiation of firm sales service to Dayton under Texas Gas' Rate Schedule G–4 effective December 1, 1989.

Such service will be provided at a daily contract demand level of 102,856 MMBtu under Rate Schedule G–4.[1] Texas Gas also intends to render firm transportation in the amount of 18,000 MMBtu per day on a self-implementing basis under § 311 of the Natural Gas Policy Act.

(6) Establish two new points of delivery to Dayton at Lebanon, Ohio, and one in Butler County, Ohio.

The last point of delivery to Dayton is proposed at an existing interconnection between Texas Gas and Cincinnati Gas & Electric Company (Cincinnati) in Butler County, Ohio, which Dayton will utilize as a part of an existing

[1] Texas Gas has filed in its current rate settlement in Docket No. RP88–115–000 to offer sales service pursuant to either Texas Gas' existing G Rate Schedule or a new G4 Rate Schedule if the Stipulation and Agreement in Docket No. RP88–115–000, filed on February 16, 1989, is approved by the Commission.

transportation arrangement between Cincinnati and Dayton. Texas Gas seeks authority to relocate and modify its existing four-run meter station which serves Columbia near Lebanon, Ohio, dedicating two of the runs to Dayton and the remaining two to Columbia.

Comment date: August 14, 1989, in accordance with Standard Paragraph F at the end of the notice.

4. Colorado Interstate Gas Company

[Docket No. CP89–1717–000]

Take notice that on June 29, 1989, Colorado Interstate Gas Company (CIG), P.O. Box 1987, Colorado Springs, Colorado 80944, filed in Docket No. CP89–1717–000 a request pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the expansion of the peak day and seasonal capability of CIG's Fort Morgan Storage Field and in conjunction therewith expansion of the peak day and seasonal services provided by CIG pursuant to its FERC Gas Rate Schedule PS–1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, CIG states that it proposes the following:

- Increase the peak day deliverability of Fort Morgan from the previously authorized volume of 295 MMcf per day to 350 MMcf per day, an increase of 55 MMcf per day;
- Increase the seasonal deliverability of Fort Morgan from the present design volume of 7,100 MMcf to 7,400 MMcf, an increase of 300 MMcf seasonally;[1]
- Revise the winter withdrawal period available under Rate Schedule PS–1 to include the months of October and April;
- Increase the peaking service daily entitlements available pursuant to Rate Schedule PS–1 from the currently authorized level of 286,305 Mcf per day to 350,000 Mcf per day, an increase of 163,395 Mcf;
- Increase the peaking service capacity volume available pursuant to Rate Schedule PS–1 from the presently authorized level of 6,753,000 Mcf seasonally (November through March) to 7,549,395 Mcf seasonally (October through April);
- Revise the daily delivery obligation as a percent of the peaking service daily entitlement volume to conform to the extended winter withdrawal period.

CIG states that to carry out the increase in the peak day and seasonal deliverability, it proposes to reconnect two injection/withdrawal wells from the Fort Morgan low-pressure system to the Fort Morgan high-pressure system and to upgrade the station piping at the Fort Morgan Compressor Station from a maximum allowable operating pressure (MAOP) of 1,945 p.s.i.g. to an MAOP of 2,000 p.s.i.g. CIG indicates that the total estimated cost of the proposed facilities to increase the Fort Morgan deliverability is $181,300. CIG states that this cost will be financed from funds on hand and internally generated cash from operations.

Comment date: August 14, 1989, in accordance with Standard Paragraph F at the end of this notice.

5. Williams Natural Gas Company

[Docket No. CP89–1828–000]

Take notice that on July 17, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–1828–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Chevron, USA, Inc., (Chevron), a producer of natural gas, under its blanket certificate issued in Docket No. CP86–631–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams states that it proposes to transport natural gas for Chevron from various points of receipt in Kansas, Oklahoma and Texas to various points of delivery on Williams' system in Kansas, Texas and Wyoming.

Williams further states that the maximum daily, average daily and annual quantities that it would transport for Chevron would be 20,000 MMBtu equivalent, 15,000 MMBtu equivalent and 5,475,000 MMBtu equivalent of natural gas, respectively.

Williams states that transportation service for Chevron began on June 1, 1989 under the 120-day automatic authorization provisions of Section 284.223(a) as reported in Docket No. ST89–4037–000 filed with the Commission.

Comment date: September 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Northwest Pipeline Corporation

[Docket No. CP89–1747–000]

Take notice that on July 7, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP89–1747–000 an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval for the abandonment, effective October 31, 1989, of its LNG storage service for Greeley Gas Company (Greeley) under Rate Schedule LS–1 of Northwest's FERC Gas Tariff, Volume No. 1, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northwest states that by Commission Order issued April 1, 1982, in Docket No. CP82–140 Northwest was authorized to provide an LNG storage service for Greeley pursuant to a service agreement dated January 1, 1982, under Rate Schedule LS–1 of Northwest's FERC Gas Tariff, Volume No. 1. The service agreement covers the liquefaction, storage, vaporization and delivery of a storage capacity to 220,000 therms, with a daily storage demand of 25,000 therms, for a term expiring October 31, 1989.

It is further stated that Greeley notified Northwest, by letter dated April 24, 1989, that it elected not to extend its LS–1 service agreement past the October 31, 1989 expiration date and that the service was no longer needed. Accordingly, Northwest requests permission and approval to abandon its presently authorized LNG storage gas service for Greeley under Rate Schedule LS–1, it is stated. Northwest requests that the abandonment be made effective October 31, 1989, to coincide with the termination date of the service agreement. Northwest states that it does not propose to abandon any of its pipeline facilities in conjunction with this abandonment of service.

Comment date: August 14, 1989, in accordance with Standard Paragraph F at the end of the notice.

7. Texas Gas Transmission Corporation

[Docket No. CP89–1761–000]

Take notice that on July 10, 1989, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP89–1761–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to an abandon skid-mounted 2-inch measurement station known as the Kilroy-Iberia Lagoon 2-inch Meter Station in Iberia Parish, Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Gas originally installed the measurement facility to transport gas pursuant to the authority of Section 311 of the Natural Gas Policy Act. Such "point of receipt" was later used to transport gas on a jurisdictional basis for an end-user pursuant to Order 234–B and was reported by Texas Gas to the Commission under the automatic provisions of § 157.208(e) of the Commission's Regulations and the blanket certificate issued to Texas Gas in Docket No. CP82–407–000. The production associated with such facilities has since been abandoned by the producer and all wells plugged.

Comment date: August 14, 1989, in accordance with Standard Paragraph F at the end of the notice.

8. Southern Natural Gas Company

[Docket No. CP89–1752–000]

Take notice that on July 10, 1989, Southern Natural Gas Company (Southern), P. O. Box 2563, Birmingham, Alabama 35202–2563 filed in Docket No. CP89–1752–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Northern Natural Gas Company, Division of Enron Corp. (Northern) its interest in certain pipeline, compression and measurement facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that it proposes to abandon, by sale to Northern, its interest in a compression platform, two 3,300 horsepower compressor units, and approximately 2,300 feet of 16-inch pipeline located in Matagorda Island Block 686, offshore Texas (Block 686) at an interconnection with the Matagorda Offshore Pipeline System (MOPS), which extends from Block 686 to interconnections onshore with Houston Gas Pipe Line Company and Florida Gas Transmission Company (Florida) in Refugio County, Texas. Southern further states that Northern and Southern are joint owners of these compression facilities which were authorized by Commission order dated June 18, 1984, in Docket No. CP83–186, and that Northern has agreed to purchase Southern's interest in the compression facilities pursuant to a Purchase and Sale Agreement dated June 30, 1989, (Agreement). Upon completion of the sale to Northern, Northern would own 100 per cent of the facilities and obtain the incremental capacity in MOPS associated with the compression facilities, it is indicated.

In addition, Southern states that the Agreement also provides for the transfer to Northern by sale approximately 16.7 miles of 24-inch pipeline extending from Mustang Island Block 758, offshore Texas, (Block 758) to an interconnection with MOPS in Block 686. Southern states that it currently owns a 31.8182 per cent interest in the pipeline which is also owned by Northern, Florida, Natural Gas Pipeline Company of America (Natural) and Transcontinental Gas Pipe Line Corporation. Southern also proposes to abandon by sale to Northern its 45 per cent interest in the receiving station located on the production platform in Block 758 which is now owned by Southern, Natural and Florida.

Southern states that Northern would pay to Southern the depreciated value of Southern's interest in the facilities estimated to be $10,936,000. Southern states that it only requires the use of its share in the effective capacity in MOPS for it to take delivery of its system supply gas in the area and therefore, Northern can more efficiently use the incremental capacity in MOPS associated with the compression facilities and the capacity in the Block 758 pipeline.

Comment date: August 14, 1989, in accordance with Standard Paragraph F at the end of the notice.

9. Northwest Pipeline Corporation

[Docket No. CP89–1815–000]

Take notice that on July 14, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–1815–000, a prior notice request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for GasMark, Inc. (GasMark), a marketer of natural gas, under the blanket certificate issued Northwest in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states that pursuant to a Transportation Agreement dated February 10, 1988, as amended May 26, 1988, December 5, 1988, and April 27, 1989, under Rate Schedule T1–1, it proposes to transport up to 11,000 MMBtu of natural gas per day for GasMark from various existing receipt points on Northwest's system in Utah, Colorado, Wyoming, Oregon and Washington and redeliver the gas to various delivery points on Northwest's system in Colorado, Idaho, New Mexico, Oklahoma, Oregon, Utah, Washington and Wyoming.

Northwest states that no construction of facilities would be required to provide the transportation service.

Northwest further states that the maximum day, average day, and annual transportation volumes would be approximately 11,000 MMBtu, 100 MMBtu and 36,500 MMBtu, respectively.

Northwest advises that service under § 284.223(a) commenced June 10, 1989, as reported in Docket No. ST89–4095–000.

Comment date: September 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. United Gas Pipe Line Company

[Docket No. CP89–1805–000]

Take notice that on July 13, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1805–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing United to provide the transportation and delivery of natural gas for direct sale to American Cyanamid Company (American Cyanamid), a direct industrial customer, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Specifically, United requests authorization to implement an interruptible gas sales contract with American Cyanamid at its acrylic fiber plant located near the city of Pensacola, in Santa Rosa County, Florida. United states that the volume of natural gas to be delivered pursuant to the interruptible gas sales contract dated April 1, 1989, shall not exceed 13,500 MMBtu on any one day. It is further stated that the contract is effective for a term ending April 1, 1990, and shall continue month-to-month thereafter unless terminated by either party upon at least thirty days written notice, provided that any such notice shall not be effective prior to the expiration of the initial term of the contract. United states that the proposed direct sales of natural gas will be provided through the use of existing facilities. United states that it believes that implementation of the interruptible service requested is in the public interest because this action will provide an opportunity for American Cyanamid to continue to obtain supplies of natural gas at a competitive price.

Comment date: August 14, 1989, in accordance with Standard Paragraph F at the end of the notice.

[1] CIG states that the proposed increase of peak day deliverability and design seasonal deliverability would result in an increase of the design seasonal quantity from 7,061 MMcf to 7,360 MMcf (an increase of 299 MMcf) and a decrease of the base gas inventory from 7,079 MMcf to 6,962 MMcf (a decrease of 117 MMcf). CIG indicates that these changes would increase the total inventory (the design seasonal quantity added to the base gas inventory) from 14,140 MMcf to 14,332 MMcf, a net increase of 182 MMcf).

11. Tennessee Gas Pipeline Company

[Docket No. CP89-1765-000]

Take notice that on July 11, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1765-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of facilities necessary to enable Tennessee to deliver gas to an intrastate pipeline located in Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that it has previously installed miscellanous piping, metering facilities and cooling equipment at its existing interconnection with Channel Industries Gas Company (Channel) near Agua Dulce, Texas, pursuant to § 284.3 of the Commission's Regulations. Tennessee explains that these facilities enable Tennessee to deliver gas to Channel, thus providing suppliers access to additional markets and customers on downstream pipeline systems access to additional supplies. It is further explained that it provides Tennessee and shippers a means to avoid certain capacity constraints on Tennessee's facilities originating out of south Texas.

It is stated that, currently, the utilization of the facilities are limited to gas transported under Section 311 of the Natural Gas Policy Act of 1978 (NGPA). Tennessee requests authorization to utilize these facilities for gas not being transported under Section 311 of the NGPA, such as for gas being transported under Tennessee's blanket certificate under Part 284 Subpart G of the Commission's Regulations. Tennessee states that since it has already been reimbursed for the cost of the facilities requested by a section 311 shipper, granting the requested authorization will not involve additional costs to Tennessee.

Comment date: August 14, 1989, in accordance with Standard Paragraph F at the end of this notice.

12. Tennessee Gas Pipeline Company

[Docket No. CP89-1782-000]

Take notice that on July 12, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1782-000 an application pursuant to section 7(b) of the Natural Gas Act for an order granting permission and approval for the abandonment of a compressor unit, located in Lake Raccourci Field, in Lafourche Parish, Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

Tennessee states that the 1,000 horsepower solar compressor was placed in service in October 1974 pursuant to a request for authorization filed by Tennessee in Docket No. CP74-22. Tennessee further states that at this time, the compressor no longer satisfies the current compression needs of the field and should be replaced with a smaller compressor unit. Thus, Amoco Production Company has requested Tennessee to remove the 1,000 horsepower solar compressor and replace it with a new one. Tennessee states that it intends to use its blanket authority to install a smaller compressor upon receipt of abandonment authorization in the instant proposal.

Tennessee indicated that the cost of the proposed abandonment would be approximately $23,000 with an estimated salvage value of $313,000.

Comment date: August 14, 1989, in accordance with Standard Paragraph F at the end of this notice.

13. Tennessee Gas Pipeline Company

[Docket No. CP89-1832-000]

Take notice that on July 18, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1832-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Elf Aquitaine, Inc. (Elf Aquitaine), under Tennessee's blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee requests authorization to transport, on an interruptible basis, up to a maximum of 50,000 dekatherms of natural gas per day for Elf Aquitaine from receipt points located in Offshore Louisiana and Mississippi to delivery points located in Louisiana, Alabama, Mississippi and West Virginia. Tennessee anticipates transporting an annual volume of 18,250,000 dekatherms.

Tennessee states that the transportation of natural gas for Elf Aquitaine commenced June 15, 1989, as reported in Docket No. ST89-4130-000, for a 120-day period pursuant to Section 284.223(a) of the Commission's Regulations and the blanket certificate issued to Tennessee in Docket No. CP87-115-000.

Comment date: September 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Midwestern Gas Transmission Company

[Docket No. CP87-106-006]

Take notice that on June 28, 1989, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP87-106-006 pursuant to Section 7(c) of the Natural Gas Act, a petition to amend its certificate of public convenience and necessity issued in Docket No. CP87-106, so as to authorize an extension of the interruptible transportation service provided thereunder to Minnegasco, Inc. for a term to coincide with the authorization for the existing firm service, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Midwestern states the extension of the transportation service is in the public interest as the transportation service is necessary to provide access to sources of supply already committed under existing gas purchase arrangements.

Comment date: August 14, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

15. Texas Gas Transmission Corporation

[Docket No. CP89-1831-000]

Take notice that on July 18, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1831-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Phibro Distributors Corporation (Phibro), under its blanket authorization issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas would perform the proposed interruptible transportation service for Phibro, pursuant to an interruptible transportation service agreement dated May 10, 1989. The transportation agreement is effective through May 1989, and month to month thereafter until terminated by either party on thirty days written notice. Texas Gas proposes to transport 50,000 MMBtu on a peak and average day; and on an annual basis approximately 18,250,000 MMBtu of natural gas for Phibro. Texas Gas proposes to transport the subject gas from receipt points located in various blocks located Offshore Texas. Texas Gas proposes to deliver the gas to Phibro at the existing interconnection with ANR Pipeline Company located in Block 167, West Cameron Area, Offshore Louisiana. Texas Gas states that Phibro has identified the recipient of the gas as Orange & Rockland Utilities.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Texas Gas commenced such self-implementing service on June 4, 1989, as reported in Docket No. ST89-4057-000.

Comment date: September 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Southern Natural Gas Company

[Docket No. CP89-1807-000]

Take notice that on July 13, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563 filed in Docket No. CP89-1807-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on an interruptible basis for American Central Gas Companies, Inc. (American) under the blanket certificate issued in Docket No. CP88-316-000 under Section 7 of the Natural Gas Act, all as more fully set forth with the Commission and open to public inspection.

Southern states that pursuant to a Transportation Agreement dated May 10, 1989, it proposes to transport 100,000 MMBtu per day of natural gas for America under Southern's Rate Schedule IT, for a primary term of one month thereafter unless cancelled by either party.

Southern also states that the maximum day, average day and annual transportation would be 100,000 MMbtu, 20,000 MMbtu, and 7,300,000, respectively. Southern proposes to receive the gas at various receipt points in offshore Texas, offshore Louisiana, Mississippi and Alabama for delivery to various points in Georgia and Tennessee.

Southern further states it commenced their service May 16, 1989, or reported in Docket No. ST89-3704-000.

Comment date: September 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Williams Natural Gas Company

[Docket No. CP89-1827-000]

Take notice that on July 17, 1989, Williams Natural Gas Company (WNG) filed in Docket No. CP89-1827-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 for PSI, Inc. (PSI), all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG requests authorization to transport, on a firm basis, up to a maximum of 20,000 MMBtu of natural gas for PSI from various receipt points in Colorado, Kansas, Missouri, Oklahoma, Texas and Wyoming to various delivery points on WNG's system located in Kansas, Missouri, Nebraska, Oklahoma, Texas and Wyoming. WNG also anticipates transporting 20,000 MMBtu on an average day and 7,300,000 MMBtu on an anual basis.

WNG indicates that service commenced June 1, 1989, as reported in Docket No. ST89-4039-000.

Comment date: September 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17856 Filed 7-3-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of May 26 Through June 2, 1989

During the Week of May 26 through June 2, 1989, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE section sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

July 19, 1989.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 26 through June 2, 1989]

Date	Name and location of applicant	Case No.	Type of submission
05/30/89	William Albert Hewgley, Kingston, Tennessee.	KFA-0292	Appeal of an Information Request Denial. If Granted: The March 21, 1989 Freedom of Information Request Up Denial issued by the Office of Federal Investigations would be rescinded and William Albert Hewgley would receive access the a complete special security clearance re-investigation records requested.
06/30/89	Frank L. Bordell, Ballston Lake, New York.	KFA-0293	Appeal of an Information Request Denial. If Granted: The non-classified withheld portions of the requested document would be released to the appellant, as applied in Frank L. Bordell, Case No. KFA-0278.
05/30/60	Schenectady Gazette, Schenectady, New York.	KFA-0295	Appeal of an Information Request Denial. If Granted: The non-classified, withheld portions of the requested document would be released to the appellant, as applied in Schenectady Gazette, Case No. KFA-0218.
Do	Government Accountability Project, Washington, D.C..	KFA-0297	Appeal of an Information Request Denial. If Granted: The non-classified, withheld portions of the requested document would be released to the appellant, as applied in Government Accountability Project; Case No. KFA-0281.
Do	Robert G. Stater, Scotia, New York.	KFA-0298	Appeal of an Information Request Denial. If Granted: The non-classified, withheld portions of the requested documents would be released to the appellant, as applied in Robert G. Stater, Case No. KFA-0215.
05/31/89	Glen Milner, Seattle, Washington.	KFA-0294	Appeal of an Information Request Denial. If Granted: The May 9, 1989 Freedom of Information Request Denial issued by the Office of Albuquerque Operations would be rescinded, and Glen Milner would receive access to pages II-2 and II-3 of AL Chapter 56XA, Revision 1.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
05/26/89 thru 06/02/89	Crude Oil Refund, Applications Received.	RF272-75494 thru RF272-75498
Do	Atlantic Richfield Refund, Applications Received.	RF304-9314 thru RF304-9405
Do	Shell Refund, Applications Received.	RF315-5982 thru RF315-6066
05/30/89	Peoples Crown Service Station.	RF313-159
Do	Gar-Mar, Ltd	RF313-160
Do	Jauno & Tony Service Station.	RF307-9962
Do	Schafer Brothers & Company.	RF300-10821
06/01/89	Queen City Fuel Oil Co.	RF313-162
Do	Spectrum Stores, Inc	RF313-163
Do	Russell Petroleum Corporation.	RF313-164
Do	Astro, Inc	RF313-165
Do	McKeens Exxon	RF307-9963
Do	Yopp's Service Station.	RF307-9964
Do	O'Brien Oil Company, Inc.	RF307-9965
Do	Mabuhay Service Station.	RF300-10823
Do	Allied Stations	RF300-10824
06/02/89	Independent Oil & Coal Company.	RF314-30
Do	Mocar Oil Company	RF314-31
Do	Independent Oil & Coal Company.	RF314-30
06/05/89	Lee & Ed's Service Station.	RF309-1358

[FR Doc. 89-17935 Filed 7-31-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3622-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or beore August 31, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards for Iron and Steel Plants. (Subpart N). (EPA ICR #1069.03; OMB #2060-0029). This is a reinstatement of a previously approved collection.

Abstract: Sources must notify EPA of construction, modifications, start-ups, shutdowns, malfunctions, date and results of performance tests. Owners/Operators will maintain an instrument to record daily the time/duration of each steel production cycle and exhaust gas diversion from the main stack. Facilities using venturi scrubbers must install, calibrate and maintain devices to continuously measure pressure loss through the venturi constriction, and make semiannual reports of low pressure.

Burden Statement: The estimated average public burden for this collection of information is 514 hours for reporting and 1095 hours for recordkeeping. This estimate includes all aspects of the information collection including time for reviewing instructions, and gathering and maintaining the data needed.

Respondents: Owners/Operators of iron and steel plants

Estimated No. of Respondents: 12

Estimated Total Annual Burden on Respondents: 1,609 hours

Frequency of Collection: Semiannually and quarterly

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden to both of the following addresses:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395-3084)

Date: July 17, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89-17841 Filed 7-31-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3623-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382-2740).

DATE: Comments must be submitted on or before August 31, 1989.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Mobile Sources Emission Factors Survey (EPA ICR No. 0619; OMB No. 2060-0078). (This is a renewal of a previously approved collection).

Abstract: The Emission Factors Survey tests a random sample of privately owned motor vehicles stratified by class, mileage and geographical areas. The purpose is to characterize levels of exhaust pollutants for each combination in the sample. The data generated by this survey are used to model air pollution produced by mobile sources, and to determine the impact of regulations and the benefits of control programs.

Burden Statement: The public reporting burden for this collection of information is estimated to average .444 hour per response including the time for reviewing instructions.

Respondents: Owners of in-use motor vehicles.

Estimated No. of Respondents: 6500.

Estimated Total Annual Burden on Respondents: 2886 hours.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW, Washington, DC 20530.

Date: July 11, 1989

David Schwarz,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 89-17917 Filed 7-31-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 25, 1989.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501-3520).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

OMB Number: 3060-0024.

Title: Section 76.29, Special temporary authority rules in the cable television service.

Action: Extension.

Respondents: Businesses (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 1 response; 3 hours; 3 hours each.

Needs and Uses: Section 76.29 permits additional flexibility and procedural specificity when applying for special deviations from rules in situations requiring temporary and immediate action not otherwise possible under the more extended pleading requirement of general rules. Data used by FCC staff to assure that grant of special temporary authority will not cause interference to other stations.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89-17892 Filed 7-31-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Clover Federal Savings and Loan Association; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Clover Federal Savings and Loan Association, Beverly Hills, California on July 19, 1989.

Dated: July 26, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-17861 Filed 7-31-89; 8:45 am]

BILLING CODE 6720-01-M

[No. 89-2026]

Authority Delegation; Federal Savings and Loan Insurance Corp., Conservator for Insolvent Insured Institutions; etc.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

In the matter of amended delegation of authority to appoint the Federal Savings and Loan Insurance Corporation as conservator for insolvent FSLIC-insured institutions and amended delegation of authority to appoint the Federal Savings and Loan Insurance Corporation as receiver and replace the Federal Savings and Loan Insurance Corporation as conservator with the Federal Savings and Loan Insurance Corporation as receiver.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending Paragraph 2 of Resolution No. 89-538 and Paragraph 3 of Resolution No. 1471 by deleting the word "two" and inserting the word "three" in lieu of thereof in the first sentence of each such paragraph, which sentence shall read, as amended: "Each Executive Director may further designate no more than three subordinate officers, each of whom may exercise the authority conferred upon such Executive Director by this resolution.

DATE: July 21, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel for FSLIC, (202) 906-6851 or Debra A. Buie, Attorney, Office of General Counsel, (202) 906-6851, Federal Home Loan Bank Board, 1700 G. Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: By Resolution No. 89–538, dated March 7, 1989, the Federal Home Loan Bank Board ("Board") authorized the Executive Director of Federal Savings and Loan Insurance Corporation ("FSLIC"), the Executive Director of the Office of Regulatory Activities ("ORA") and the General Counsel (each an "Executive Director") to designate no more than two subordinate officers to exercise the authority conferred by that Resolution.

By Resolution No. 89–1471, dated May 15, 1989, the Board authorized the Executive Directors of FSLIC and ORA and the General Counsel (each an "Executive Director") to designate no more than two subordinate officers to exercise the authority conferred by that Resolution.

The Board has adopted the following resolution:

Resolved, That, Paragraph 2 of Resolution No. 89–538, dated March 7, 1989, and Paragraph 3 of Resolution No. 89–1471, dated May 15, 1989, be amended by deleting the word "two"and inserting the word "three" in lieu thereof in the first sentence of each such paragraph; and each such sentence shall read, as amended: "Each Executive Director may further designate no more than three subordinate officers, each of whom may exercise the authority conferred upon such Executive Director by this resolution".

The Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–17862 Filed 7–31–89; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200269

Title: Port of Galveston Terminal Agreement

Parties:

The Board of Trustees of the Galveston Wharves (The Wharves)

Pillsbury Company, Inc. (Pillsbury)

Synopsis: The Agreement provides that Pillsbury will participate with The Wharves in an incentive program to increase the movement of flour through the Port of Galveston. The term of this Agreement is for nine months.

Agreement No.: 224–200164–001

Title: Port of Oakland Terminal Agreement

Parties:

Port of Oakland (Port)

CMB N.V. (Compagnie Maritime Belge)

Naviera Pacifico, C.A.

Synopsis: The Agreement amends the basic agreement for the nonexclusive use of the Port's Charles P. Howard Terminal to add Naviera Pacifico, C.A. as an additional party to the agreement.

Agreement No.: 224–010774–005

Title: Georgia Ports Authority Terminal Agreement

Parties:

Georgia Ports Authority (GPA)

Evergreen Marine Corp. (Taiwan), Ltd.

Costa Container Line

Italia di Navigazione

Synopsis: The Agreement modifies the rate schedule of Agreement No. 224–010774 to provide for: consolidated rates for containers loaded and unloaded from vessels at GPA's terminal; a dockage charge of $4.55 per loaded TEU billed to the vessel operator; and, charges for services not included in the consolidated rate to be performed at 80 percent of current tariff rates.

Agreement No.: 224–200270

Title: Port of Oakland Terminal Agreement

Parties:

Port of Oakland (Port)

Mitsui O.S.K. Lines, Limited

Nippon Liner System (North America), Inc.

Synopsis: The Agreement provides for a license of a 3,701 acre parcel of land and Port Building No. C–516 to be used for establishing and maintaining a truck and rail terminal for distributing goods to and from trucks, rail cars and containers. The monthly rental of $12,358.30 is subject to increase based on the annual average monthly twenty foot equivalent use activity on the premises. The Agreement terminates on June 30, 1990.

By order of the Federal Maritime Commission.

Dated: July 26, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–17829 Filed 7–31–89; 8:45 am]

BILLING CODE 6730–01–M

Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice that on July 21, 1989, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and is considered effective from that date to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, of the Shipping Act of 1984:

Agreement No.: 224–200271

Title: International Longshoremen's Association Assessment Agreement

Parties: International Longshoremen's Association AFL–CIO and the Carriers Container Council, Inc.

Synopsis: The Agreement establishes a Carrier-ILA Container Freight Station Trust Fund for the purpose of receiving assessments from the parties for supplemental income and other fringe benefits, other than pension, and provides for disbursement of assessments.

By Order of the Federal Maritime Commission.

Dated: July 26, 1989

Joseph C. Polking,

Secretary.

[FR Doc. 89–17889 Filed 7–31–89; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–0200262–001.

Title: Georgia Ports Authority Agreement.

Parties: Georgia Ports Authority, Hapag-Lloyd A.G. (HL), Gulf Container Line, Compagnie Generale Maritime.

Synopsis: The Agreement amends the basic agreement (Agreement No. 224–200262) to provide a rate schedule for rail loading and unloading. It also provides a rate schedule, applicable only to HL, for stack utilization and computer service for customs releases.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: July 27, 1989.

[FR Doc. 17936 Filed 7–31–89; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–003813–012.

Title: Hawaii Terminal Agreement.

Parties: Department of Transportation of the State of Hawaii (Port), Matson Terminals, Inc. (MTI)

Filing Party: Edward Y. Hirata, Director of Transportation, State of Hawaii, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813

Synopsis: The Agreement amends the basic agreement providing for the Port's lease to MTI of certain terminal facilities at Honolulu, Hawaii. The purpose of the amendment is to (1) enlarge the area under lease by the addition of Easement K and L; (2) increase the annual ground rental proportionately; (3) substitute revised exhibits; and (4) restate § 3.3(1)(i) to add the purpose, area and ground rental of various parcels and easements.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: July 27, 1989.

[FR Doc. 89–17937 Filed 7–31–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

[Docket No. 8818]

The Firestone Tire and Rubber Company, Inc.

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on petition to reopen and modify the order.

SUMMARY: The Firestone Tire and Rubber Company, Inc., a corporate respondent in the order in Docket No. 8818, has petitioned the Federal Trade Commission to vacate or modify certain parts of a 1972 order against Firestone concerning the misrepresentation of automobile tires. This document announces the public comment period on the petition.

DATE: Deadline for filing comments in this matter is August 20, 1989.

ADDRESS: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. Requests for copies of the request should be sent to the Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Terrence J. Boyle, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–3016.

SUPPLEMENTARY INFORMATION: The order against Firestone in Docket No. 8818 was published at 37 FR 22,977 on October 27, 1972. The petitioner, Firestone, is a tire manufacturer. The order prohibits Firestone from representing that any tire is safe under all conditions of use or free from defects, requiring Firestone to make certain disclosures when it makes any representations concerning tire safety, and requires Firestone to substantiate fully and completely all safety or performance of superior quality claims. The petition to modify was placed on the public record on July 21, 1989.

Donald S. Clark,

Secretary.

[FR Doc. 89–17902 Filed 7–31–89; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to approve a new information collection, titled Procurement Integrity. This requires offerors for a contract, modification or extension, in excess of $100,000 to certify that neither the firm, nor its officers, employees, agents or consultants, during the conduct of a Federal agency procurement offered future employment opportunities or a gratuity to a Government Procurement official, or solicited proprietary or source selection information from any official of that agency.

AGENCY: Office of GSA Acquisition Policy and Regulations (V), GAS.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW, Washington, DC 20405.

Annual Reporting Burden: Firms responding, 800; responses, 1 per year; average hours per response, .0834; burden hours, 66.7.

For Further Information Contract: Edward McAndrew, 202–566–1224.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202–535–7691.

Dated: July 21, 1989.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 89–17849 Filed 7–31–89; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of Taxol as an Anticancer Agent

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) seeks a pharmaceutical company which can effectively pursue the clinical development of taxol for the treatment of cancer. The National Cancer Institute has established that this agent may be effective in treating several types of cancers including those of ovarian origin. The selected sponsor will be awarded a CRADA for the co-development of this agent.

ADDRESS: Questions about this opportunity may be addressed to Dale Shoemaker, Ph.D., Executive Secretary, Taxol Selection Committee, Division of Cancer Treatment, NCI, EPN, Room 718, Bethesda, Maryland 20892 (301) 496–7912, from whom further information including a summary copy of the preclinical and clinical data may be obtained.

DATE: In view of the important priority of developing new drugs for the treatment of cancer, this notice is active until September 15, 1989.

SUPPLEMENTARY INFORMATION: The Government is seeking a pharmaceutical company which, in accordance with the requirements of the regulations governing the transfer of Government-developed agents (37 CFR 404.8), can develop taxol to a marketable status to meet the needs of the public and with the best terms for the Government. Taxol is a novel chemically defined compound which has shown promising antitumor activity in several clinical trials. The drug has never been patented and classifies as an orphan agent. Isolation of the material is a long (2 years) process. The Division of Cancer Treatment (DCT), NCI, currently owns all of the harvested raw material and hence, all the taxol which will be in clinical trials for the next 2 years. The Cooperative Research and Development Agreement (CRADA) will allow a pharmaceutical company to provide resources in collaboration with the DCT, NCI, for the continuing preclinical and clinical development work in return for the exclusive rights to the source data from the pivotal Phase III clinical trials.

Specifically, taxol is a novel compound which is isolated from the bark of *Taxus brevifolia*, the Pacific or Western Yew, which is a very slow growing tree found only in the Pacific Northwest. Bark has only been collected from trees growing in the wild, and the stripping of bark results in the death of these trees. An alternative source has not been developed; a method of synthesis has not been established. Although it may be possible to obtain taxol from commercial propagation, this has not yet been attempted.

Demand for the drug has been increasing based on the promising antitumor activity that has been observed to date. During the Phase I evaluation of this agent, responses were seen in patients with non-small cell lung cancer, melanoma, head and neck carcinoma, gastric carcinoma, and ovarian carcinoma. Approximately a 30% objective response rate was observed in a recently completed Phase II trial in patients with relapsed or refractory ovarian cancer, a disease generally considered resistant to chemotherapy. Based on the increasing level of clinical interest, there is an urgent need to obtain greater quantities of taxol and to begin to develop this agent for potential commercial distribution. The Division of Cancer Treatment, NCI, is interested in establishing a CRADA with a pharmaceutical company to assist in the continuing development of Taxol. The government will provide all available expertise and information to date and will jointly pursue new trials as required giving the pharmaceutical company exclusive rights to the New Drug Application-directed clinical data from Phase III trials. The successful pharmaceutical company will provide the necessary financial and organizational support to complete further development of taxol to establish clinical efficacy and possible commercial status.

Sufficient bark (approximately 60,000 pounds) has been collected to provide taxol for a broad Phase II evaluation (which would permit definition of the tumor types in which this compound is active) and a randomized Phase III comparison against standard therapy in ovarian cancer. The extraction, isolation and purification of taxol from this collection is in various stages of completion. We have also initiated a procurement of an additional 60,000 pounds of the bark which may require approximately two years to obtain the pharmaceutical grade taxol for clinical use. Some financial support of these processes will be a condition of the CRADA.

The role of the Division of Cancer Treatment, NCI, includes the following:

1. The government has initiated a contract request for the collection of 60,000 pounds of *Taxus* bark. The successful pharmaceutical company will be allowed access to this resource.
2. The government will provide remaining crude extracts of the *Taxus* bark (approximately 25,000 pounds) for isolation and purification of taxol.
3. The government will provide information concerning the previous procedures employed to extract and isolate taxol.
4. The government will provide information concerning pharmaceutical manufacturing and controls and including dosage form development data.
5. The government will allow the pharmaceutical company to review and cross-file the Division's IND; it is likely that the company would wish to undertake trials independently.
6. The government will make the Division's IND proprietary under such circumstances.
7. The government will continue the clinical development of this compound under its extramural clinical trials network, thus insuring the clinical evaluation of the compound at no additional cost to the pharmaceutical company.

The role of the successful pharmaceutical company under the CRADA will include the following:

1. Provide the necessary funds and resources to complete the collection of the 60,000 pounds of *Taxus* bark.
2. Provide the necessary funds or resources for the isolation of taxol from the available bark.
3. Provide plans to independently secure future continuing supplies of taxol to assure continued clinical development.
4. Provide funds for formulation of the clinical product and offer necessary supplies to the DCT, NCI, for continued clinical development of this compound. The present dosage form of taxol contains a cremophor vehicle system which may be undersirable for very large trials and commercial use. Therefore, it is suggested that some consideration for new product development is needed.
5. Provide plan and support for clinical development leading to FDA approval for marketing.

Criteria for chodsing the pharmaceutical company include the following:

1. Experience in the development of natural products for clinical use.
2. Experience in preclinical and clinical drug development.
3. Experience and ability to produce, package, market and distribute pharmaceutical products in the United States and to provide the product at a reasonable price.
4. Experience in the monitoring, evaluation and interpretation of the data from investigational agent clinical studies under an IND.
5. A willingness to cooperate with the Public Health Service in the collection, evaluation, publication and maintaining of data from clinical trials of investigational agents.
6. A willingness to cost share in the development of taxol as outlined above. This includes acquisition of raw material and isolation or synthesis of taxol in adequate amounts as needed for future clinical trials and marketing.
7. An agreement to be bound by the DHHS rules involving human and animal subjects.
8. The aggressiveness of the development plan, including the appropriateness of milestones and deadlines for preclinical and clinical development.
9. Provisions for equitable distribution of patent rights to any inventions. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the Government (when a company employee is the sole inventor) or (2) an exclusive or nonexclusive license to the company on terms that are appropriate (when the Government employee is the sole inventor).

Dated: July 24, 1989.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 89–17911 Filed 7–31–89; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Environmental Policy Act; Proposed Implementing Procedures (516 DM 6, Appendix 8)

AGENCY: Department of the Interior.

ACTION: Notice of proposed additions to the Department of the Interior's Categorical Exclusions for the Office of Surface Mining Reclamation and Enforcement.

SUMMARY: This notice announces proposed additions to the categorical exclusions included in the Departmental Manual 516 DM 6, Appendix 8, that lists actions excluded from the National Environmental Policy Act (NEPA) procedures for the Office of Surface Mining Reclamation and Enforcement (OSMRE). The proposed categorical exclusions pertain to activities conducted under the Surface Mining Control and Reclamation Act (SMCRA).

DATE: Comments due August 31, 1989.

ADDRESS: Comments to John Farrell, Acting Director of Environmental Project Review, MS 4239, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. John Farrell, address above, telephone (202) 343–2116. For OSMRE, Catherine Roy, (202) 343–5143.

SUPPLEMENTARY INFORMATION: The proposed categorical exclusions would be added to the list of categorical exclusions in the Department of the Interior's Manual (516 DM 6, Appendix 8). They would exclude certain activities conducted under Title IV of SMCRA from further review for compliance with NEPA. Title IV sets out provisions for the reclamation of abandoned mines and authorizes the Secretary to provide grants to States for this purpose. The proposed exclusions are similar to Departmental categorical exclusion 1.3, which excludes actions such as routine financial transactions and transfers of funds.

The Department has previously reviewed the activities authorized under Title IV and excluded certain decisions relative to the approval of grants under the abandoned mine land (AML) program. The Department has now reviewed additional activities relating to the AML grants program and proposes to add three new categorical exclusions as subparagraphs 8.4.B(30), (31), and (32) to Appendix 8. The excluded activities would be limited to: (1) Administrative grants for the development or review of project proposals rather than to the actual operation or conduct of AML reclamation projects, (2) the transfer of AML funds to States and Tribes to be used in a special trust for future AML projects, and (3) the transfer of AML funds to be used as seed money for State-administered insurance for subsidence damage. These additional activities are categories of actions which do not individually or cumulatively have a significant effect on the human environment. If any of the exceptions to categorical exclusions listed in Appendix 2 to 516 DM 2 apply to individual actions within these proposed exclusions, however, an environmental document must be prepared.

Appendix 8 must be taken in conjunction with the Department's procedures (516 DM 1–6) and the Council on Environmental Quality regulations implementing the procedural provisions of NEPA (40 CFR 1500–1508). The Department's procedures were published in the **Federal Register** on April 29, 1980 (45 FR 27541) and revised on May 21, 1984 (49 FR 21437). Appendix 8 for OSMRE was published on January 23, 1981 (46 FR 7487).

Proposed Categorical Exclusion 30: Administrative Grants for the Development of Project Proposals for AML Grants. The Secretary may award grants to States or Indian Tribes for activities to reclaim and restore land and water resources damaged by past coal mining, including abandoned surface mine areas, abandonded coal processing areas, sealing and filling abandonded deep mine entries and voids, planting of lands adversely affected by past coal mining to prevent erosion and control of water pollution created by coal mine drainage (section 401(c)(1) of SMCRA). The grants are awarded in two separate, independent stages.

First, OSMRE awards administrative grants to States or Indian tribes for the development of a construction grant application, or project proposal. Approval these grants in no way commits OSMRE to award a grant for the construction project. The primary work resulting from these "first-stage" grants is administrative in nature, as it involves the development of an AML grant proposal and has no effect on the human environment.

In the second stage, OSMRE awards grants for the actual construction project. The decision on which construction grants to award is based in part on the results of the analysis in a NEPA document prepared on the proposed project. This document examines the specific environment of the proposed reclamation project and identifies both short-term and long-term effects on the environment expected from the project. Impacts from activities such as closing and sealing a specific portal are examined for their potential effects on wildlife in the area, particularly threatened and endangered bats or rodent species, and mitigation plans are identified.

The proposed categorical exclusion includes only the decision to award grants for the purpose of developing a construction grant application. The decision to award a construction grant would be subject to the NEPA process.

Proposed Categorical Exclusion 31: Use of AML funds to allow States or Tribes to set aside State share funds in a special trust fund for future AML projects. The Secretary may allow States or Tribes with approved AML plans to retain up to 10 percent of their annual State-share allocation in a special interest bearing trust fund to be used after August 3, 1992, for AML activities. This action would not have any effect on the human environment because it merely transfers monies to a State fund and no projects are identified for use of the funds. In the event that the authority to collect AML fees is not extended past the 1992 date, the future

use of the funds to continue reclamation activities after all collected funds have been appropriated to OSMRE to grant or expend would be a State action not subject to NEPA.

Proposed Categorical Exclusion 32: Use of AML funds in an insurance pool for the purposes of compensation for damage caused by mining prior to the date of the Act. In States with approved reclamation plans but no private insurance coverage available, the Secretary may grant funds to be used as "seed money" for a State-administered insurance pool for damage caused by subsidence resulting from underground mining. OSMRE does not consider the transfer of AML funds to establish a subsidence insurance program to cause any effects on the quality of the human environment.

Any comments on these proposed additions to the list of categorical exclusions in the Departmental Manual must be received by August 31, 1989 at the location in "ADDRESS" above to be considered. Comments received after that date will be considered only to the extent practicable.

Outline: Chapter 6 (516 DM 6) Managing the NEPA Process Appendix 8—Office of Surface Mining Reclamation and Enforcement 8.4 Categorical Exclusions

Dated: July 21, 1989.

John Farrell,

Acting Director, Environmental Project Review.

516 DM 6, Appendix 8
Office of Surface Mining Reclamation and Enforcement
8.4 *Categorical Exclusions*

* * * * *

B. * * *

(30) Development of project proposals for AML grants, including field work only to the extent necessary for the preparation and design of the proposal.

(31) Use of AML funds to allow States or Tribes to set aside State share funds in a special trust for future AML projects.

(32) Use of AML funds in an insurance pool for the purposes of compensation for damage caused by mining prior to the date of the Act.

[FR Doc. 89-17850 Filed 7-31-89; 8:45 am]
BILLING CODE 4310-10-M

Advisory Council on Historic Preservation; SES Performance Review Board

July 20, 1989.

AGENCY: Department of the Interior.

ACTION: Notice of SES performance review board appointments.

SUMMARY: This notice provides the names of those individuals who have been appointed by the Chairman of the Advisory Council on Historic Preservation to serve as members of the Advisory Council's SES Performance Review Board. Pursuant to the Memorandum of Understanding between the Advisory Council and the Department of the Interior, the SES performance appraisal plan for the Department has been adopted for use by the Advisory Council. The Performance Review Board will review the appraisal, award, and bonus recommendations for the SES members of the Advisory Council staff, and recommend final action to the Chairman. This notice is processed on behalf of the Advisory Council, as required by 5 U.S.C. 4314(c)(4).

DATE: These appointments are effective August 14, 1989.

FOR FURTHER INFORMATION CONTACT: J. Lynn Smith, Personnel Officer, Office of the Secretary (PMSP), Department of the Interior, Washington, DC 20240, Telephone number: 343-6702.

The names of the SES Performance Review Board members are:

Mr. Joseph Canny (Career), Director, Office of Transportation and Regulatory Affairs, Department of Transportation.
Mr. Peter J. Basso (Career), Deputy Chairman for Management, National Endowment for the Arts.
Mr. Jerry L. Rogers (Career), Associate Director for Cultural Resources, Department of the Interior.

Dated: July 20, 1989.

Charles E. Kay,

Assistant Secretary, Policy, Budget and Administration.

[FR Doc. 89-17851 Filed 7-31-89; 8:45 am]
BILLING CODE 4310-10-M

Bureau of Land Management

[ID-943-09-4212-13; I-23536]

Notice of Issuance of Land Exchange Conveyance Document; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to Faulkner Land and Livestock Co. of Gooding, Idaho 83330, for the following-described lands under section 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian, Idaho

T. 6 S., R. 15 E.
Sec. 20, SW¼;
Sec. 29, NW¼.
Comprising 320.00 acres of public land.

In exchange for these lands, the United States acquired the following-described lands:

Boise Meridian

T. 6. S., R. 16 E.
Sec. 16, N½
Comprising 320.00 acres of private land.

The purpose of the exchange was to acquire the non-federal land that will allow blocking up into better management units. The public interest was well served through completion of the exchange.

The values of the federal public land and the non-federal land in the exchange were both appraised at $18,000 and $16,000 respectively. Faulkner Land and Livestock Co. paid the $2,000 difference in values.

Dated: July 21, 1989.

John Davis,

Deputy State Director for Operations.

[FR Doc. 89-17896 Filed 7-31-89; 8:45 am]
BILLING CODE 4310-GG-M

[ID-943-09-4214-11; I-010821]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that a 99.50-acre withdrawal for the Clayton Ranger Station, continue for an additional 30 years. The land is now being used as an administrative site and the name changed to the Yankee Fork Ranger Station. The land would remain closed to surface entry and mining, but has been and would remain open to mineral leasing.

EFFECTIVE DATE: Comments should be received on or before October 30, 1989.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735. The U.S. Forest Service proposes that the existing land withdrawal made by Public Land Order No. 2304, be continued for a period of 30 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The land is described as follows:

Boise Meridian

T. 11 N., R. 17 E.
Sec. 29, Lots 4, 7, and 8.
The area described contains 99.50 acres in Custer County.

The withdrawal is essential for protection of substantial capital improvements on the administrative site. The withdrawal closed the land to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

William E. Ireland,

Realty Operations Section.

Dated: July 24, 1989.

[FR Doc. 89-17895 Filed 7-31-89; 8:45 am]
BILLING CODE 4310-GG-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information reproduced below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestion on the requirements should be made directly to the bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (1029-0043), Washington, DC 20503, telephone 202-395-7340.

Title: Bond and Insurance Requirements for Surface Coal Mining Operations Under Regulatory Programs, 30 CFR Part 800.

OMB Approval Number: 1029-0043.

Abstract: Respondents identify information and data on bonds to cover the cost of reclamation performed under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This information allows regulatory authorities to determine if such bonds are sufficient to comply with the SMCRA.

Bureau form number: None.

Frequency: On occasion.

Description of respondents: Mine operators seeking permits or seeking release of bond amounts.

Estimated completion time: 12 hours.

Annual responses: 1,730 hours.

Annual burden hours: 20,022.

Bureau clearance officer: Andrew DeVito, 202-343-5954.

Date: June 28, 1989.

Annetta L. Cheek,

Acting Chief, Division of Regulatory Development.

[FR Doc. 89-17894 Filed 7-31-89; 8:45 am]
BILLING CODE 4310-05-M

Minerals Management Service

Outer Continental Shelf; Notification Regarding Datum Reference

This document is notification that the Department of the Interior, Minerals Management Service (MMS) currently references its offshore coordinate values to North American Datum (NAD) 27.

It is also notification that the MMS is investigating conversion from NAD 27 to the new NAD 83 datum. To prevent the mixing of NAD 27 with NAD 83 data, the appropriate datum will be noted on future documents including Official Protraction Diagrams, Leasing Maps, and Supplemental Official Outer Continental Shelf Block Diagrams (Split Blocks).

The official notification of the establishment of a new datum was published in the **Federal Register** by the Department of Commerce on Friday, June 29, 1979 (Vol. 44, no. 127, p. 37969).

FOR FURTHER INFORMATION CONTACT: Leland F. Thormahlen, Chief Minerals Management Service Outer Continental Shelf Survey Group, Denver, Colorado (303) 236-7050.

Dated: July 25, 1989.

Approved.

William D. Bettenberg,

Associate Director for Offshore Minerals Management.

[FR Doc. 89-17846 Filed 7-31-89; 8:45 am]
BILLING CODE 4310-MR-M

National Park Service

National Park Service Proposes To Negotiate a Concession Permit With Grand Portage—Isle Royale Transportation Lines, Inc.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Grand Portage—Isle Royale Transportation Lines, Inc. authorizing it to continue to provide boat transportation facilities and services for the public at Isle Royale National Park, Michigan for a period of five (5) years from January 1, 1990, through December 31, 1994.

EFFECTIVE DATE: October 2, 1989.

ADDRESS: Interested parties should contact the Regional Director, Midwest Region, 1709 Jackson St., Omaha, NE 68102, for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed it's obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Date: July 13, 1989.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 89-17828 Filed 7-31-89; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31500]

CSX Transportation, Inc.—Operation Exemption—Line of Southern Electric Generating Co.

CSX Transportation, Inc. (CSXT), has filed a notice of exemption to operate approximately 7.5 miles of new rail line to be constructed by Southern Electric Generating Company (Segco) in Shelby County, AL.[1] The line will extend from CSXT's main line near Westover, AL to the Ernest C. Gaston Electric Generating Plant near Wilsonville, AL. The agreement pursuant to which CSXT will operate over Segco's newly constructed line is expected to be consummated prior to January 1, 1991.

Any comments must be filed with the Commission and served on: A. Jeff Milligan, Southern Company Services, Inc., P.O. Box 2625, Birmingham, AL 35202 and John R. Molm, 127 Peachtree Street, NE, Atlanta, GA 30043.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 26, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-17930 Filed 7-31-89; 8:45 am]

BILLING CODE 7035-01-M

[1] Segco is a subsidiary of Alabama Power Company and Georgia Power Company which, in turn, are wholly owned subsidiaries of the Southern Company, a public utility holding company. Segco has filed, concurrently with this notice, the following pleadings: (1) A petition for exemption from 49 U.S.C. 10901, for the construction of the rail line, in Finance Docket No. 31498, *Southern Electric Generating Company—Petition for Exemption—Construction of a Rail Line in Shelby County, AL*; (2) a petition for exemption from 49 U.S.C. 10746, the commodities clause, in Finance Docket No. 31499, *Southern Electric Generating Company—Petition for Exemption from Regulation Under 49 U.S.C. 10746*; and (3) a notice of exemption pursuant to 49 CFR 1185.1 and 1185.4, providing notice of an exemption for Mr. Edward L. Addison from the requirements of 49 U.S.C. 11322(a), interlocking directorates, in Finance Docket No. 31501, *Southern Electric Generating Company and Edward L. Addison—Exemption from 49 U.S.C. 11322, Interlocking Directorates.*

[Finance Docket No. 31494]

Intermountain Western Railroad Co.—Purchase—Union Pacific Railroad Co., Boise Group Branch Lines

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission accepts for consideration the application filed June 27, 1989, by Intermountain Western Railroad Company (IW) to purchase from Union Pacific Railroad Company (UP) 318.48 miles of rail lines in Idaho and Oregon and to acquire trackage rights over 61.56 miles of UP main line. The Commission finds this a minor transaction under 49 CFR Part 1180.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than August 31, 1989. Comments from the Secretary of Transporation and Attorney General of the United States must be filed by September 15, 1989. Applicants' reply is due October 5, 1989. Comments must be served on all parties of record within 10 days of the Commission's issuance of a service list. The Commission expects to issue the service list after September 15, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245. [TDD for hearing impaired: (202) 275-1721.]

ADDRESSES: Send an original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31494, Room 1324, Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy of all documents to the United States Secretary of Transportation, the Attorney General of the United States, and each of applicants' representatives:

Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 Seventh Street, SW, Washington, DC 20590.

Attorney General of the United States, Washington, DC 20530.

Karl Morell (IW), 1025 Thomas Jefferson St., NW., Suite 700, East Lobby, Washington, DC 20007.

Joseph D. Anthofer (UP), 1416 Dodge Street, Omaha, NE 68179.

SUPPLEMENTARY INFORMATION: Intermountain Western Railroad Company (IW) and Union Pacific Railroad Company (UP), collectively "applicants," seek Commission approval under 49 U.S.C. 11343, *et seq.*, for IW to purchase for $10.8 million certain properties of the UP. Applicants contend that this is a minor transaction under 49 CFR 1180.2(c), and they submitted a conforming application in accordance with the railroad consolidation procedures in 49 CFR Part 1180.

The properties subject to statutory prior approval requirements consist of: (1) Seven branch lines, known as the Boise Group, totalling 318.48 miles of track; and (2) 61.56 miles of trackage rights over UP main line.[1] The trackage rights extend from milepost 454.17 near Nampa, ID, to milepost 515.73 near Weiser, ID, and connect the end points of the Boise Group lines by way of Ada, Payette, Canyon, and Washington Counties, ID, and Malheur County, OR. The Boise Group consists of the following lines:

(1) The Boise Cut-Off line extends from milepost B423.79 near Orchard, ID, to milepost B467.72 near Nampa, a distance of 43.93 miles;

(2) The Homedale line extends from milepost 0.18 near Nyssa, OR, to milepost 33.5 near Marsing, ID, a distance of 33.32 miles;

(3) The Idaho Northern line extends from milepost 0.09 near Nampa, to milepost 99.73 near Cascade, ID, a distance of 99.64 miles;

(4) The Stoddard line extends from milepost 0.0 near Nampa, to milepost 17.65 near Stoddard, ID, a distance of 17.65 miles;

(5) The New Meadows line extends from milepost 0.32 near Weiser, to milepost 84.55 near Rubicon, ID, a distance of 84.23 miles;

(6) The Payette line extends from milepost 0.5 near Payette, ID, to milepost 29.07 near Emmett, ID, a distance of 28.57 miles; and

(7) The Wilder line extends from milepost 0.25 near Caldwell, ID, to milepost 11.39 near Wilder, ID, a distance of 11.14 miles.

IW is a Class III rail carrier jointly owned by noncarriers ITS, Inc. (ITS),[2] and Big Sky Industries, Inc. (Big Sky).[3] It now leases and operates a 4-mile line between Burns and Seneca, OR. This line does not connect with the Boise Group lines.

UP is a Class I rail carrier. It serves 66 shippers on its Boise Group lines. These shippers originated or terminated 30,697 revenue carloads in 1987. Traffic consists primarily of agricultural and lumber or wood products. The Boise Cutoff also carries industrial products and is used by Amtrak.

Applicants contend that the proposed transaction will not substantially reduce competition, create a monopoly, or restrain trade in freight surface transportation in any region of the United States. As applicants do not compete for the lines' traffic, the transaction will merely substitute one rail carrier for another on an existing line. The area presently benefits from substantial intermodal competition as it is served by motor carriers over a network of State, U.S., and Interstate highways. Applicants state that, if anything, the transaction should enhance intermodal competition by allowing more effective rail competition. Because the lines connect only with UP, applicants do not believe the transaction will significantly affect other rail carriers.

Applicants submit that IW's locally based operations will result in better service, tailored to the needs of existing and potential patrons. This more efficient and economical service allegedly should allow them to capture motor carrier traffic, and thereby enhance further their financial viability. IW also expects to achieve economies by sharing overhead and operating costs with the new lines.

IW intends to operate the lines with approximately 32 of its own employees under its own work rules, rates of pay, and benefits. Maintenance of way, communications, and signalling will be by outside contractors. As a result, UP's workforce will be reduced by approximately 100 positions. UP has not negotiated employee protective arrangements. It anticipates offering a limited number of voluntary separation allowances in certain crafts to diminish the transaction's adverse effects.

Any authority granted herein will be subject to the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), and in *Norfolk & Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), *as modified in Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980). *See* 49 U.S.C. 11347.

Under our consolidation regulations, we must determine initially whether a proposed transaction is major, significant, or minor. The proposed transaction, involving a Class I and a Class III railroad, has no regional or national significance and will neither result in a major market extension nor reduce the present level of competition. Accordingly, we find the proposal to be a minor transaction under 49 CFR 1180.2(c). Because the application substantially complies with the applicable regulations governing minor transactions, we are accepting it for consideration. We further find, however, that additional evidence on intermodal competition in the area affected by the proposed transaction will facilitate our consideration of the application. *See* 49 CFR 1180.6(a)(2)(i). Accordingly, applicants are hereby requested to provide additional evidence describing the motor carrier service available to shippers on the affected lines and its suitability for their traffic.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Any interested persons, including government entities, may participate in this proceeding by submitting written comments. Any person who files timely written comments shall be considered a party of record if the person's comments so request. In this event, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that this proposal is a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This application is accepted for consideration as a minor transaction under 49 CFR 1180.2(c).

2. The parties shall comply with all provisions stated above.

3. This decision is effective on the date of service.

Decided: July 25, 1989

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-17928 Filed 7-31-89; 8:45 am]

BILLING CODE 7035-01-M

[1] Rolling stock, yard track, and other properties are included in the purchase price.

[2] ITS is a wholly owned subsidiary of Intermountain Gas Industries, Inc. Both are Idaho corporations.

[3] Big Sky is a Nevada corporation. The common control of IW and other Class III carriers by Big Sky's individual owners was exempted from regulation in Finance Docket No. 31140 (Sub-No. 1), *David L. Durbano, et al.—Common Contr. Exemp.* (not printed), served May 17, 1989, and Finance Docket No. 31430 (Sub-No. 1), *David L. Durbano, et al.—Contin. in Contr. Exemp.* (not printed), served April 28, 1989.

[Finance Docket No. 31502]

The Garden City Northern Railway, Inc.—Acquisition and Operation Exemption—The Atchison, Topeka and Santa Fe Railway Co. and the Garden City, Gulf and Northern Railroad Co.

The Garden City Northern Railway, Inc. (GCN), a non-carrier, has filed a notice of exemption to acquire and operate approximately 30.59 miles of rail line located in Finney and Scott Counties, KS. The line, which extends between milepost 156.48 at or near Garden City and milepost 125.89 at or near Shallow Water, is presently owned by The Garden City, Gulf and Northern Railway Company and The Atchison, Topeka and Santa Fe Railway Company.

This transaction is related to a petition for exemption filed concurrently by Garden City Co-op, Inc. (Co-op), in Finance Docket No. 31203, *The Garden City Co-op, Inc.—Exemption from 49 U.S.C. 10746 and 11343*. That petition seeks an exemption from the requirements of 49 U.S.C. 11343 for Co-op to continue in control of GCN and from the provisions in 49 U.S.C. 10746, the "commodities clause". GCN expects to consummate this transaction upon Co-op receiving its exemption in Finance Docket No. 31203.

Any comments must be filed with the Commission and served on: Thomas F. McFarland, Jr., Belnap, Spencer, McFarland, Emrich & Herman, 20 North Wacker Drive, Suite 3710, Chicago, IL 60606; and (2) Dennis W. Wilson, The Atchison, Topeka and Santa Fe Railway

BEST COPY AVAILABLE

Company, 80 East Jackson Boulevard, Chicago, IL 60604–2401.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 26, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–17929 Filed 7–31–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

July 26, 1989.

The Office of Management and Budget (OMB) has been sent the following proposals for the collection of information for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act. Entries are grouped into submission categories. Each entry contains the following information:

(1) The title of the form or collection;

(2) The agency form number, if any and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond;

(6) An estimate of the total public burden hours associated with the collection; and,

(7) An indication as to whether section 3504(h) of Pub. L. 96–511 applies.

Comments and/or questions regarding the item(s) contained in this notice, especially regarding the estimated response time, should be directed to the OMB reviewer, Mr. Edward Clarke, on (202) 395–7340 and to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer and the Department of Justice's Clearance Officer of your intent as soon as possible. The Department of Justice's Clearance Officer is Mr. Larry E. Miesse who can be reached on (202) 633–4312.

Entries in this notice are for new collections (1) and extension of the expiration date(s) of a currently approved collection without any change in the substance or in the method of collection (3).

New

(1) Egyptian Claims Program.

(2) No form number. Foreign Claims Settlement Commission.

(3) One-time.

(4) Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations. Information will be used as a basis for determining entitlement to awards payable by the Department of the Treasury out of the Egyptian Indemnification Fund for property taken by the Egyptian Government; affected public consists of U.S. citizens and entities whose property was taken by that Government.

(5) 200 annual respondents at one hour each.

(6) 200 estimated annual burden hours.

(7) Not applicable under 3504(h).

Extensions

(1) Medical Examination of Aliens Seeking Adjustment of Status.

(2) I–693, Immigration and Naturalization Service.

(3) One-time.

(4) Individuals or households. Applicants for permanent resident status must establish that they are admissible to the United States. To be admissible, they must be free of defect, disease or disability as determined by a designated physician. This form is given by the applicant to the designated physician to allow the doctor to record the results of the examination. The form is then included in the alien's application file.

(5) 350,000 annual respondents at one and one-half hours each.

(6) 525,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) DEA/USMS/USSS Drugs of Abuse Chain of Custody Form.

(2) No form number. Drug Enforcement Administration.

(3) On occasion.

(4) Individuals or households. Information is needed to document and control the chain of custody for drug testing an individual selected for a job vacancy prior to actual employment under E.O. 12564, in order to maintain a drug-free workplace.

(5) 1,200 estimated annual respondents at .083 hours each.

(6) 100 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) Applicants for Individual Manufacturing Quota for a Basic Class of Controlled Substance.

(2) DEA–189. Drug Enforcement Administration.

(3) On occasion.

(4) Businesses or other for-profit. Applicants who desire to manufacture Schedule I and II controlled substances are required to apply on DEA–189. The information is used by DEA to calculate the individual manufacturing quotas for U.S. companies in the manufacture of controlled substances.

(5) 85 estimated annual respondents at .5 hours each.

(6) 43 estimated annual burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Departmental Clearance Officer, Department of Justice.

[FR Doc. 89–17931 Filed 7–31–89; 8:45 am]

BILLING CODE 4410–16–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department policy, 28 CFR 50.7, and Section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), notice is hereby given that on July 24, 1989, a proposed consent decree in *United States* v. *Printed Circuits, Inc., et al.*, Civil Action No. 86–7005 was lodged with the United States District Court for the Eastern District of Pennsylvania.

The proposed consent decree requires the defendants to reimburse the Hazardous Substance Superfund $275,000 in response costs incurred by the Environmental Protection Agency (EPA) to address the release or threat of release of hazardous substances at the Printed Circuit Site in Levittown, Pennsylvania. The parties to the consent decree are the United States, Printed Circuits, Inc., Millard A. and Judith B. Hendrickson, Scan Data Sales Corp., Leeds and Northrup Co. and Cirflex Systems, Inc.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Printed Circuits, Inc.*, DJ Ref. 90–11–3–150.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 3310 U.S. Court House, 601 Market Street, Philadelphia, Pennsylvania 19106 and at the Region III office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington DC 20530. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–17900 Filed 7–31–89; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Proposed Termination of Final Judgment United States v. Continental Graphics Corporation

Notice is hereby given that Continental Graphics Corporation has filed with the United States District Court for the Central District of California a motion to terminate the Final Judgment in *United States* v. *Continental Graphics Corporation*, Civil Action No. 1542–61–EC; and the Department of Justice ("Department"), in a stipulation filed with the court, has consented to termination of the judgment, but has reserved the right to withdraw its consent pending receipt of public comments. The complaint in this case (filed on December 6, 1961) alleged that a proposed merger between Continental's predecessor, Republic Corporation, and America Corporation violated section 7 of the Clayton Act by lessening competition in professional film processing in the United States. Besides blocking the proposed merger, the Final Judgment (entered on October 28, 1963) enjoined Republic from: (1) Acquiring any interest in any business involved in professional film processing except in certain designated geographical areas; (2) permitting any of its officers, directors, agents or employees from serving in such a capacity with any other professional film processor than Republic's own subsidiaries; and (3) allocating any business with, or engaging in any referrals to or from, America Corporation.

The Department has filed with the court a memorandum stating that termination of the judgment would serve the public interest because Continental no longer poses the competitive threat it once did. While the professional film processing industry is still concentrated today, Continental currently has only a minor share of the market. Thus, the judgment's injunctive provisions are no longer necessary to supplement the antitrust laws, to which Continental remains subject.

Copies of the Complaint and Final Judgment, defendant's motion papers, the stipulation containing the Government's consent, the Department's memorandum, and all further papers filed with the court in connection with this motion will be available for inspection at Room 3233, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone: 202–633–2481), and at the Office of the Clerk of the United States District Court for the Central District of California, 312 North Spring Street, Los Angeles, California 90012. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within the sixty-day period established by court order, and will be filed with the court. Comments should be addressed to Gary R. Spratling, Chief, San Francisco Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, CA 94102 (telephone: 415–556–6300).

John W. Clark,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 89–17899 Filed 7–31–89; 8:45 am]

BILLING CODE 4410–01–M

Office of Justice Programs

Office for Victims of Crime; Children's Justice Act Discretionary Grant Program for Native Americans

AGENCY: Department of Justice, Office of Justice Programs, Office for Victims of Crime, Jane Nady Burnley, Director.

ACTION: Notice of Availability of Funds.

SUMMARY: The Office for Victims of Crime (OVC) is publishing this notice to announce a $531,000 discretionary grant program for Native American Indian tribes designed to improve the handling of child abuse cases, particularly cases of child sexual abuse, in a manner which limits additional trauma to the child while improving the investigation and prosecution of these cases.

EFFECTIVE DATE: Applications are due by October 2, 1989.

ADDRESS: Address applications to the Office for Victims of Crime, 633 Indiana Avenue NW., Room 1352, Washington, DC 20531. Attention: Sue Shriner.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice should be directed to Sue Shriner or Toni Thomas, Program Specialists, Office for Victims of Crime, 633 Indiana Avenue NW., Room 1352, Washington, DC 20531.

SUPPLEMENTARY INFORMATION:

Background

The funds for this program will come from the Victims of Crime Act of 1984 (VOCA), as amended, 42 U.S.C. 10601 *et seq.* The Act established a Crime Victims Fund in the Department of the Treasury made up of monies received from certain Federal criminal fines; special penalty assessments; forfeited appearance bonds, bail bonds and collateral security; and literary profits due certain convicted Federal defendants. Under the provisions of 42 U.S.C. 10601 (d)(2)(A)(iv), of the first $100,000,000 deposited in the Fund in a particular year, 4.5% shall be available for grants as provided in 42 U.S.C. 10603(a). Under 42 U.S.C. 10601(g)(1) the Attorney General, acting through the Director of OVC, is authorized to use 15% of the funds available under 42 U.S.C. (d)(2)(A)(iv) to make grants for the purposes of assistiang Native American Indian tribes in developing, establishing, and operating programs designed to improve the handling, investigaiton and prosecution of child abuse cases, especially child sexual abuse cases. The Office for Victims of Crime has labeled this program the *Children's Justice Act Discretionary Grant Program for Native Americans.*

This is the first year of funding for the Children's Justice Act Discretionary Grant Program for Native Americans. The Children's Justice Act of which this program is a part was signed into law by President Reagan on August 27, 1986. The Act was passed in response to a recognition of the seriousness, complexity and escalating number of children who were reported as victims

of child abuse, especially child sexual abuse.

Reports of suspected child sexual abuse and neglect throughout the nation increased by 225% in the decade between 1976 and 1987. In 1987, over 2 million children were reported to authorities as suspected abuse or neglect victims. Approximately 40% of these reports were eventually substantiated. While much of this dramatic increase of reporting is probably due to an increased awareness of the nature of abuse and better reporting procedures, many professionals believe that not all cases of child abuse are reported.

The authors of the Children's Justice Act recognized that because of the peculiar nature of child sexual abuse, reports of such abuse require special investigation and prosecution and the victims require special handling to avoid being further traumatized. However, as a result of the publicity around a number of cases, many of the authors of the Children's Justice Act felt that child victims were being unnecessarily traumatized by the justice system.

The Children's Justice Act was designed to address the shortcomings of the criminal justice system in investigating and prosecuting child sexual abuse cases. Before a state could be eligible to receive funds from the Children's Justice Act, it was required to establish or designate a multi-disciplinary task force dealing with children's justice. Each task force was directed to:

- Review and evaluate State investigative, administrative and judicial handling of cases of child abuse, especially child sexual abuse.
- Make recommendations in the categories of: investigative, administrative and judicial handling of cases of child abuse; experimental, model and demonstration programs for testing innovative approaches; and techniques to improve the rate of successful prosecution or enhance the effectiveness of judicial and administrative action in child abuse cases.
- Make recommendations regarding the reform of state laws, ordinances, regulations and procedures to provide comprehensive protection for children from abuse.

States that met these criteria were eligible to receive a proportionate share of Children's Justice Act funds. In FY 87, 25 states shared in $2.8 million and in FY 88, 27 states shared in $3.5 million.

In 1987, the revelations of sexual abuse of Native American children on reservations and the problems tribes faced in trying to deal with the abuse became evident. Dealing with child sexual abuse in Indian country was found to be different and more difficult than dealing with abuse discovered off the reservations. The difficulties manifested themselves in such issues as: lack of trained practitioners to investigate, prosecute and treat child sexual abuse cases; geographic isolation; cultural diversity; and a lack of clear understanding of the roles and responsibilities of the various government entities that had authority to act upon allegations and findings of child sexual abuse on the reservations.

In order to respond more effectively to this situation, the Justice Department proposed that Children's Justice Act funds be made available to Indian tribes to improve the handling of child sexual abuse cases. In November 1988, President Reagan signed the Anti-Drug Abuse Act of 1988. This legislation amended the Victims of Crime Act by authorizing that 15% of the funds available for the Children's Justice Act be utilized to assist native American Indian tribes in developing, establishing and operating programs designed to improve the handling of child abuse cases, especially child sexual abuse. Under this program funds will be made directly to Native American tribal organizations as defined in 25 U.S.C. 450 b (1) to initiate or expand service in Indian country.

Purpose

The Office for Victims of Crime is making $531,000 available through a competitive process to Native American Indian tribes or other appropriate entities to develop, establish and operate programs, and modify procedures and practices which would improve the investigation and prosecution of serious child abuse cases, especially child sexual abuse cases, and improve the handling of child abuse cases in a manner which avoids additional trauma to the child. The Office for Victims of Crime is seeking to bring about systemic improvement in the way child sexual abuse cases are responded to on the Native American Reservations and other locations where Native Americans reside. The agency seeks program models that will foster greater cooperation between all agencies, i.e., law enforcement, prosecutors, health, mental health, social services and victim services that have responsibility for investigating, prosecuting and treating the child victims of these cases while at the same time reducing the trauma inherent in processing these types of cases. Awards will be made to selected eligible applicants.

OVC recognizes that each tribe functions differently. It does not intend to place a considerable number of restrictions on how the tribes may go about achieving these goals. It is expected, however, that all tribes be actively involved in improving the manner in which these cases are processed at the tribal level. It is also expected that tribes be actively involved in the manner in which referrals are coordinated with appropriate state and Federal authorities for prosecution.

Eligible Applicants

Applications will be accepted from the recognized leader or chief executive of the tribe. In those cases where the Tribal Council serves as the governing body, the application must be signed by the Chairman or other recognized leader of that group. Grants will be limited to Native American Indian tribal organizations as defined in 25 U.S.C. 450 b (1). For this purpose, "tribal organization" means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

There will be two categories of applicants. Applicants will compete only against those in their respective category. The first category will consist of all tribes that have an established multi-disciplinary Child Protection Team (CPT) that meets on a regularly scheduled basis. The second category will consist of those tribes that either have not yet formed a CPT or have an inactive CPT.

Selected applicants will not have to contribute any matching funds. However, indirect costs which are often imposed by Indian tribes on Federal grants are not permissible in VOCA funded victim assistance grant programs. Also, applicants will be required to become part of a consortium consisting of all other grantees who receive assistance under this initiative. the consortium members will meet twice during the life of the grant to discuss matters related to the implementation and operaton of the overall program as well as their specific grant.

Program Description

Approximately, eight to ten model projects will be funded. Each project must be designed to improve the investigation and prosecution of serious child abuse cases, especially child sexual abuse cases, and improve the handling of these cases in a manner which reduces trauma to the child. Emphasis will be placed upon projects which either develop or expand the use of multi-disciplinary teams (known in many areas as Child Protection Teams) including specialized prosecutorial units for the investigation, referral, and prosecution of child abuse cases.

The multi-disciplinary teams which are developed or expanded must include representatives of the tribe and state and Federal agencies that provide services to the tribe. These multi-disciplinary teams should assist in clarifying roles and responsibilities of all authoritien involved in these cases, including social services, law enforcement, and Federal prosecutors, so that a coordinated system is established to receive and respond to reports. The teams should be comprised of entities that have a role in the identification, initial investigation, treatment and prosecution of child abuse cases, including but not limited to: child protection workers, mental health personnel, police, Federal investigators, prosecutors and medical personnel. Program funds shall not be used to replace or serve as a substitute for funds already used for existing multi-disciplinary teams.

All multi-disciplinary teams will be required to develop and adhere to written policies regarding the roles and responsibilities of each of the agencies and professionals who participate in cases. The teams will also be required to develop procedures for handling all serious child abuse cases including all child sexual abuse cases. The primary emphasis should be placed upon child sexual abuse cases. The policies and procedures developed must employ practices which protect the child victim from further trauma while improving the probability of a successful investigation and prosecution.

Tribes are also encouraged to develop special legal units to advise the multi-disciplinary teams and to prosecute these cases in the tribal courts. The tribal prosecutor should also review the Tribal Codes to ensure they adequately address the issue of child abuse at the tribal level and that they protect the rights of child victims.

All special legal funded units that are involved in the prosecution of child sexual abuse cases will be required to use techniques that limit trauma to child victims.

Examples of activities that could be funded under this program are:

- The establishment or expansion of a multi-disciplinary team for the investigation and referral of child abuse cases. If this activity is chosen the applicant must indicate why the tribe has not yet developed such a unit.
- The establishment or expansion of a special unit/person to provide legal advice to the multi-disciplinary unit and/or prosecute child abuse cases at the tribal level.
- Training of multi-disciplinary teams and/or special legal counsel in commonly accepted innovative procedures for investigating and prosecuting child sexual abuse cases.
- Development of formal protocols among all parties involved in the investigation, referral, prosecution and treatment of child abuse cases. This includes funding for bringing representatives from the Federal, state and local agencies together to discuss and formulate formal policies and procedures for handling these cases.
- Development of treatment plans for victims of child abuse, to include payment for services not normally available to the tribe.
- Recommendations and plans for revision of tribal laws, rules and procedures to recognize the serious nature of child abuse, especially child sexual abuse.

Selection Criteria

All applicants will be placed in one of two established categories: (1) Those with active CPTs or (2) those who either do not have a CPT or have one that is inactive. The selection criteria for both groups will be identical; however, applicants will be required only to compete against other applicants in the same category. In determining which applications to fund, OVC will consider the following:

1. The need for such a program. Please indicate the following: the number of reported cases of child abuse and child sexual abuse over a period of time (information should be provided for the latest year complete information is available), the number of cases investigated, the number of children found to have been abused, the number of persons referred for prosecution and the number actually prosecuted. (20 points)

2. Cost effectiveness of the project. Cost effectiveness will be based upon review of a budget which accurately reflects how grant funds will be used to promote the effective handling, investigation and prosecution of cases. (20 points)

3. The appropriateness and soundness of program design. Appropriateness and soundness will be based upon such factors as: evidence of cooperation between tribal, local, state and Federal agencies and officials, including, where appropriate, the U.S. Attorney who has responsibility for prosecuting Federal crimes; where available written guidelines should be presented as evidence of previous cooperative efforts; description of the process to be used to coordinate activities among all agencies/individuals that have responsibility for dealing with child abuse cases and the relevance of program activities to the identified need. (30 points)

4. Evidence of a need and willingness to change current procedures, practices, laws and/or tribal codes in order to improve the investigation and prosecution of child abuse cases and reduce the trauma inherent in such prosecution. (20 points)

5. Description of how the efforts contemplated under this program will be continued when program funds expire. (10 points)

Each application will be scored based upon the above named criteria. Applications receiving the highest score in each group will be funded. OVC anticipates awarding approximately four to five grants in each group, for a total of eight to ten projects.

Applications

Applicants should submit three (3) copies of their completed proposal by the deadline established above. All submissions must include:

A. A completed and signed Standard Form 424, (Rev. 4-88), *Application for Federal Assistance*. Copies of the required forms, and any other information or clarification regarding them, may be obtained by writing or calling the Office for Victims of Crime, National Victims Initiative Division, 633 Indiana Avenue, NW., Washington D.C., 20531 (202) 272-6500.

B. A summary of the full proposal, not to exceed one page.

c. A program narrative of not more than 20-double spaced typed pages. The narrative should include the following information:

- A clear, concise statement of the problems experienced by the tribe in handling, investigating and prosecuting cases of serious child abuse.
- A description of how child abuse and child sexual abuse cases are currently handled, by tribal law enforcement, social services and the CPT, if it is operational. This description should include the role of all Federal and state agencies in investigating, referring, treating and prosecuting serious child abuse cases.

• A clear statement of the project objectives, including a listing of the major events, activities, products and a timetable for completion.

• Letters of support from agencies at the Federal, state and local levels that are also involved in handling, investigating and/or prosecuting serious child abuse cases.

• Copies of protocols involving the handling, investigation and prosecution of child abuse.

• The proposed management and staffing plan. These plans should include, at a minimum, a listing of the staff to be included as part of the project and the organization and affiliation of each of the staff. All persons paid for by this grant, as well as those who are involved in grant activities but are not paid, should be included in the management and staffing plan. For example, even if grant funds are to be used to support only a portion of a CPT, the composition of the entire CPT must be listed.

• A brief history of all grants the tribe received over the past two years related to: child abuse, spouse abuse, family violence, law enforcement and/or victimization.

D. A proposed budget outlining all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontracts, and travel to two consortium meetings. The funds the tribes receive from this grant could be used to pay for the travel to the consortium meetings. For planning purposes, travel should be figured to Denver, Colorado. As stated earlier, tribes are not permitted to impose indirect costs that are not directly related to the operation of this project.

E. Copies of vitae for the professional staff which summarize education and professional experience.

Application Deadline

Applications are due by (sixty days from publication in the **Federal Register**). Applications which are hand delivered must be received at the Office for Victims of Crime by the close of business (5:00 pm EST).

Grant Period and Award Amounts

The Office for Victims of Crime anticipates making approximately eight to ten grants. Grants will range from $40,000 to $100,000 and will be dependent upon demonstrated need of the tribe. A total of $531,000 is available for this grant program. The grants will be fore twelve (12) months and will cover 100% of the project costs (no matching funds are required).

Additional Information

The Office for Victims of Crime is also announcing in this **Federal Register** a Training and Technical Assistance Program for Native American Grantees and Subgrantees. The purpose of the Training and Technical Assistance Program is to provide a wide range of training and technical assistance to Native American Indian tribes that have received either a subgrant from a state that received an OVC Assistance to Victims of Federal Crime in Indian Country discretionary grant or a tribe that receives a Children's Justice Act discretionary grant under this announcement.

Approved.

Jane Nady Burnley,

Director, Office for Victims of Crime.

[FR Doc. 89-17853 Filed 7-31-89; 8:45 am]

BILLING CODE 4410-18-M

Office for Victims of Crime; Training and Technical Assistance for Native American Grantees and Subgrantees

AGENCY: Department of Justice, Office of Justice Programs, Office for Victims of Crime, Jane Nady Burnley, Director.

ACTION: Notice of Availability of Funds.

SUMMARY: The Office for Victims of Crime (OVC) is publishing this notice to announce a $300,000 discretionary grant program designed to provide a range of training and technical assistance to Native American Indian tribes and organizations that have received either a grant from *The Children's Justice Act Discretionary Grant Program for Native Americans* or a subgrant from either one of the two *Assistance to Victims of Federal Crime in Indian Country* discretionary grant programs.

EFFECTIVE DATE: Applications are due by October 2, 1989.

ADDRESS: Address applications to the Office for Victims of Crime, 633 Indiana Avenue, NW., Washington, DC 20531. Attention: Sue Shriner.

FOR FURTHER INFORMATION: Questions concerning this notice should be directed to Sue Shriner or Toni Thomas, Program Specialists, Office for Victims of Crime, 633 Indiana Avenue NW., Washington, DC 20531, (202) 272-6500.

SUPPLEMENTARY INFORMATION:

Background

The funds for this program will come from the Victims of Crime Act of 1984 (VOCA), as amended, 42 U.S.C. 10601 *et seq.*, and the Omnibus Crime Control and Safe Streets Act, as amended, 42 U.S.C. 3711, *et seq.* The Victims of Crime Act established a Crime Victims Fund in the Department of the Treasury made up of monies received from certain Federal criminal fines, special penalty assessments, forfeited appearance bonds, bail bonds and collateral security, and literary profits due certain convicted Federal defendants. Under the provisions of 42 U.S.C. 10601(d)(2)(A)(4)(iii), of the first $100,000,000 deposited in the fund in a particular year, 1% shall be available for grants as provided in 42 U.S.C. 10603(c) for training and technical assistance services to eligible crime victim service programs and for the financial support of services to victims of Federal crime by eligible crime victim assistance programs. OVC has made support for victim assistance to Native Americans in Indian country the highest priority for use of this 1% of the Crime Victims Fund. OVC will contribute $100,000 of its funds for this effort.

Under the provisions of 42 U.S.C. 3751, the Bureau of Justice Assistance is authorized to make additional Federal financial assistance available to public and private agencies and private nonprofit organizations for the purposes of undertaking educational and training programs for criminal justice personnel and providing technical assistance to States and local units of government. The Director of the Bureau of Justice Assistance has transferred $200,000 of discretionary grant funds authorized under Section 506 (b) of the Omnibus Crime Control and Safe Streets Act, as amended, to the Office for Victims of crime to address the purposes mentioned below.

In November 1988, the Office for Victims of Crime awarded grants to nine states to provide assistance to Native Americans who are victims of crime. Eligibility was limited to those states where the United States Government, through such agencies as the Bureau of Indian Affairs, the Federal Bureau of Investigation, or the U.S. Attorney's office, has the authority to investigate or prosecute crime in Indian country. The nine states—Arizona, Michigan, North Dakota, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming—received a total of $1,004,500. The grants ranged from $35,500 to $250,500. The state-designated victim assistance agencies are in the process of awarding subgrants to tribes and Native American organizations on reservations located in their states. These grants will enable tribes to address the pressing needs of Native American victims of crime who have very limited access to victim assistance services. It is anticipated that the states will eventually award a total of approximately 30 subgrants. The Indian tribes will use the funds for a variety of victim related programs including: shelters for abused women; crisis response to sexual assault victims; grief support groups; child abuse treatment; training for law enforcement officers for more effective responses to the needs of victims; and general victim service programs. Most of these projects will operate until April 30, 1990.

The response to the Office for Victims of Crime's first grant program to assist victims of Federal crime in Indian Country was so great that the Office announced a second grant program. On March 17, 1989, a total of $700,000 of discretionary grant funds was made available for the same purpose in the **Federal Register** (**Federal Register** Vol. 54, No. 51, p. 11304). The Office anticipates awarding $700,000 to states that have not received an award under the previous announcement. The Office for Victims of Crime will make 6-8 grant awards to the states. These awards will range from $30,000 to $200,000.

In another part of this **Federal Register** notice, the Office for Victims of Crime is also making funds available to Native American Indian tribal organizations to assist them in developing or expanding programs that improve the handling of child abuse cases, especially child sexual abuse cases.

Purpose

The Office for Victims of Crime is making $300,000 available to a public or private nonprofit agency, or consortium of agencies, to provide technical assistance and training to those Indian tribes and Native American organizations that have received a subgrant from either of the two *Assistance to Victims of Federal Crime in Indian Country* discretionary grant programs or received a discretionary grant made as part of the *Children's Justice Act Discretionary Grant Program for Native Americans.* The Office is seeking to ensure that all Native American tribes that have received support under any one of these initiatives are provided the training and technical assistance necessary to start and successfully operate their programs.

The Office recognizes the difficulties inherent in the development of new victim service programs and the need for technical support and training so that programs can achieve their stated goals and objectives. Several different approaches to providing technical assistance and training are needed because there are a variety of different types of programs being funded and the tribes that are implementing the programs have varying features, including: size, location, availability of resources and services, culture, legal structure and law enforcement jurisdiction.

Program Description

One project will be funded under this initiative. The project must be capable of providing a wide range of training and technical assistance services to all Indian tribes and organizations that have received a grant from the Office for Victims of Crime under either the Assistance to Victims of Federal Crime in Indian Country or the Children's Justice Act Discretionary Grant Program for Native Americans.

Within 45 days of the grant award,, the grantee will be expected to survey all eligible Indian grantees to assess their training and technical assistance needs.

Within 60 days of the grant award, the grantee will be expected to categorize and establish priorities for the training and technical assistance requested.

Within 60 days of the grant award, the grantee will be expected to submit to the Office for Victims of Crime a comprehensive 12-month plan for the development and delivery of technical assistance and training. The plan should be based upon information collected during the survey phase of the project and should include such information as: the types of technical assistance to be provided; the steps necessary to adapt suitable resources, the location for providing the assistance; anticipated attendance at training; the reason such training/technical assistance was selected; the cost of such training; the method of be used to assess the effectiveness of such training; and the period during which the training/technical assistance is to be provided. Within 60 days of the grant award, the grantee will also be expected to submit a plan for the assessment and delivery of ad hoc training and technical assistance requests.

The plan is subject to review and approval by OVC. If the initial plan is rejected, the grantee will have 15 days from the receipt of OVC's notice of rejection and comments to submit a revised plan which will also be subject to OVC's review and approval. Within 15 days of OVC's final approval of the plan the grantee should begin to provide on-site training and technical assistance.

The Office for Victims of Crime recognizes that the requests for training and technical assistance may exceed the availability of resources. Therefore, it is very important that the grantee develop a delivery plan which maximizes available resources. This could be done, in part, by: providing training and technical assistance on a regional basis; using other on-going training and technical assistance efforts to support this program's needs; using training and technical assistance material; brochures and guides that are already developed; establishing clear priorities for the provision of training and technical assistance; and utilizing trainers and technical assistance providers who are knowledgeable about Native American culture, custom and law.

While this project will operate for eighteen (18) months the Office for Victims of Crime anticipates that a majority of the training and technical assistance efforts will take place during the first twelve (12) months of the grant. The Office's priority is to ensure that all projects have the training and technical assistance necessary to begin operating effectively.

Selection Criteria

In determining which applications to fund, the Office for Victims of Crime will consider the following:

1. Experience of staff and proposed subcontractors in developing and delivering victims related technical assistance and training programs. (20 points).

2. Knowledge of the problems and issues inherent in developing and implementing victims related programs in Indian country. (10 points).

3. Comprehensiveness, cost effectiveness, timeliness and overall utility of the technical assistance and training delivery plan submitted in response to the program description section of this announcement. (30 points).

4. Personnel staffing plan that reflects expertise in multidisciplinary response to child sexual abuse, the range of victim service needs, working knowledge of Native American cultural differences and presence of Native American staff expertise. (20 points).

5. Evidence of understanding of jurisdictional issues in law enforcement and criminal prosecution on Indian reservations. Also, mental health, health and social service systems on reservations. (20 points).

Eligible Applicants

Public agencies, private agencies, organizations or consortia thereof, are eligible to apply. They must have knowledge of the subject matter and have expertise and experience in providing technical assistance and training on victim assistance. In the selection process, preference will be

given to Native American organizations, applicants that have a significant number of Native American staff members who have expertise in victim, child sexual abuse and related issues, or agencies that subcontract with a Native American organization for the provision of training and technical assistance services.

Time Period and Award Amount

One grant, not to exceed $300,000, will be made by the Office for Victims of Crime. The grant will be for an eighteen-month period. The applicant will not be required to providing matching funds for this program.

Application Deadline

Applications must be received by (SIXTY DAYS FROM PUB DATE). Mailed applications must be postmarked by this date. However, applications that are hand-delivered must be received by the close of business (5:00 P.M. EDT) on the deadline date at the Office for Victims of Crime, 633 Indiana Avenue NW., Washington, DC 20531.

Applications

Applicants should submit three (3) copies of their completed proposal by the deadline established above, each signed in the original.

Applications must include:

1. A completed and signed Federal Assistance application on the current Standard Form 424. Copies of the required forms, and eny information or clarification regarding them, may be obtained by writing or calling the Office for Victims of Crime, National Victims Initiative Division, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 272–6500.

2. An abstract of the full proposal, not to exceed one page.

3. A program narrative of not more than twenty (20) double-spaced typed pages which should include:

a. A clear statement which describes the approach and strategy to be utilized to complete the tasks identified in the program description;

b. The proposed organization and management plan to be used including, at a minimum, the staff of the project, and the time commitments of key staff to individual project tasks. A project director must be identified, with a clear indication of the amount of time to be devoted to the project;

c. Description of how the project will be evaluated.

4. A proposed budget outlining all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontracts, and a short narrative justification of each budgeted item cost. Any anticipated subcontracts must include a separate budget.

5. Copies of vitae for the professional staff which summarize education, clinical, research and training experience, and bibliographic information related to the proposed work.

All three copies of the application must be sent or hand delivered to: Office for Victims of Crime, 633 Indiana Avenue, NW., Washington, DC 20531, by the deadline established above.

Additional Information

This program will support those grantees and subgrantees that have received support from any one of three discretionary grant programs for Native Americans that the Office for Victims of Crime has made. A summary of those programs follows:

- Assistance to Victims of Federal Crime In Indian Country: Phase I.

This program was originally announced in the **Federal Register** on July 21, 1988 (**Federal Register**, Vol. 53, No. 140, pp. 27377–78). In November 1988, the Office for Victims of Crime awarded $1,004,500 to nine states. The state victim assistance agencies are in the process of subgranting the funds they received under this grant program. As of April 1, 1989, the following states have made the following progress in subgranting their funds:

Arizona	$250,500	5 subgrants
Michigan	$90,500	2 subgrants
North Dakota	$100,500	5 subgrants
Oregon	$35,500	1 subgrant
South Dakota	$195,500	8 subgrants
Utah	$50,500	2 subgrants
Washington	$170,500	0 subgrants
Wisconsin	$35,500	1 subgrant
Wyoming	$75,500	1 subgrant

- Assistance to Victims of Federal Crime in Indian Country: Phase II.

This program was announced in the **Federal Register** on March 17, 1989 (see **Federal Register**, Vol. 54, No. 51, pp. 11304–11306).

While no grant awards have yet been made by the Office for Victims of Crime, the Office does anticipate making up to eight awards to eligible state agencies by October 1989. The grants are to range from $30,000 to $200,000 and will be subgranted or contracted to Indian Tribes and other Native American organizations that are willing to establish or improve victim assistance programs in Indian country. States that received a grant in the initial program are not eligible to apply for these funds. At this time, the Office for Victims of Crime is uncertain of the number of subgrants the states will award once they receive their grants.

- The Children's Justice Act Discretionary Grant Program for Native Americans.

This program is also being announced in this **Federal Register**. The Office anticipates making approximately eight to ten grants directly to Indian tribes. The grants would be used by the tribes to improve the handling of child abuse cases, especially child sexual abuse cases, in a manner which limits additional trauma to the child and improves the investigation and prosecution of these cases. Grants are expected to be made in the Fall of 1989.

Approved.

Jane Nady Burnley,

Director, Office for Victims of Crime.

[FR Doc. 89–17854 Filed 7–31–89; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Bureau of International Labor Affairs

Export Processing Zones Study; Request for Information

SUMMARY: The Depart of Labor's Bureau of International Labor Affairs is conducting a study of internationally recognized worker rights in Export Processing Zones. This study is designed to ascertain the extent to which these worker rights differ in law or practice from worker rights in the rest of a country. Submission of information and material from the public is invited on this subject, with particular reference to the specific questions outlined below.

DATE: Information and material must be received by September 1, 1989.

ADDRESSES: Material may be mailed to Harold L. Davey, Foreign Service Coordinator, Bureau of International Labor Affairs, Room S–5006 Frances Perkins Bldg., 200 Constitution Ave., NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Background

The principal purpose of this study is to provide detailed information to be used in preparing a Department of Labor report to Congress on worker rights required under section 6306(b) of the Omnibus Trade and Competitiveness Act of 1988. The legislative history (House Report No. 100–40) states that "It is the committee's intent that this study and report identify so-called free trade or export processing zones where they exist and describe the status of internationally recognized worker rights within them."

Internationally Recognized Worker Rights

The internationally recognized worker rights are those described in the Generalized System of Preferences Renewal Act of 1984: right of association, right to organize and bargain collectively, prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

Scope

The International Labor Organization defines export processing zone as "a clearly delineated industrial estate which constitutes a free trade enclave in the customs and trade regime of a country, and where foreign manufacturing firms producing mainly for export benefit from a number of fiscal and financial incentives." As used in this study, the term export processing zone (EPZ) will generally include export processing zones and other offshore manufacturing facilities producing for export and receiving these benefits whether or not they are located in an industrial estate.

Aspects on Which Information is Being Sought

1. General Discussion of EPZs

General description of use, basic data such as number of zones and firms, geographical concentration, employment, importance in trade of countries, industrial/sectoral composition, projected growth, relation to U.S. trade preference programs, such as GSP, CBI or special tariff provisions such as TSUS 806.30 and 807.00 (now item 9802 under the new Harmonized System nomenclature).

2. General Discussion of Worker Rights

Discussion of the status of the five specified rights in EPZs as compared with the non-EPZ parts of the countries.

3. Individual Country Reports

On-site visits were made to 11 representative countries which will be the subject of country reports: Dominican Republic, Haiti, India, Jamaica, Korea, Malaysia, Mexico, Philippines, Sri Lanka, Thailand, and Tunisia. The following information is sought on these countries.

a. Economic role of EPZs in the country, including the number of firms, country of ownership, employment and compensation, types of goods produced, value of output/value added, destination of final products, importance to trade and economy of the country, labor force (age/sex/skill).

b. Status of worker rights in EPZs, including laws, practice, recent developments with regard to each worker right.

c. Differences, if any, between provision of worker rights within EPZs as compared to rest of the country.

Signed at Washington, DC, this 25th day of July 1989.

Shellyn McCaffrey,

Deputy Under Secretary for International Affairs.

[FR Doc. 89–17925 Filed 7–31–89; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

A-1 Rit & Tool Co. Service Center et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 11, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than ?

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 17th day of July 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
A-1 Rit & Tool Co. Serv. Center (Workers)	Lafayette, LA	7/17/89	6/26/89	23,131	Oil and gas.
Alert Shoe Corp. (ACTWU)	New York, NY	7/17/89	6/27/89	23,132	Shoes.
BTK Industries, Inc. (Workers)	El Paso, TX	7/17/89	6/26/89	23,133	Boyswear.
Bacock & Wilcox Co. (Workers)	Bryan, TX	7/17/89	6/22/89	23,134	Oil and gas.
Burlington Industries, Inc. (Workers)	Rocky Mont, NC	7/17/89	7/3/89	23,135	Draperies.
Clarion Sintered Metals (IAM&AW)	Ridgway, PA	7/17/89	6/28/89	23,136	Powder metal parts.
Columbus Auto Parts (UAW)	Columbus, OH	7/17/89	7/3/89	23,137	Steering linkage.
DeBari Fashions Finishing Corp. (Workers)	Middle Village, NY	7/17/89	6/29/89	23,138	Ladies' knit sweaters.
Delta Apparel, Inc. (ACTWU)	Knoxville, TN	7/17/89	6/29/89	23,139	Ladies', mens' and kids shirts.
Designers Workshop (Workers)	Phoenix, AZ	7/17/89	6/27/89	23,140	Fabric linens.
El Paso Natural Gas Co./Midkiff Plant, S. Reg. (Workers).	Midland, TX	7/17/89	6/30/89	23,141	Oil and gas.
Garan, Inc. (ACTWU)	Adamsville, TN	7/17/89	6/27/89	23,142	Men's knit shirts.
General Electric (IUE)	St. Holland, MI	7/17/89	6/26/89	23,143	Hermetic motors.
Globe Motors-Div. of LCS (Workers)	Dayton, HO	7/17/89	6/23/89	23,144	Small motors.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Hagen Tractor Sales, Inc. (Workers)	Paw Paw, MI	7/17/89	6/27/89	23,145	Tractors.
Hoke, Inc. (Company)	Cresskill, NJ	7/17/89	6/26/89	23,146	Valves.
Houston Processors, Inc. (Company)	Houston, TX	7/17/89	6/23/89	23,147	Seismic cross-section plots.
Kline Hydraulics (IAM)	Westerville, OH	7/17/89	6/30/89	23,148	Hydraulics pumps.
Levolor Corp. (Company)	Kent, WA	7/17/89	6/27/89	23,149	Window blinds.
Montgomery Drilling (Workers)	Bakersfield, CA	7/17/89	5/26/89	23,150	Oil and gas.
Nelson Oil & Gas, Inc. (Company)	Shreveport, LA	7/17/89	6/23/89	23,151	Oil and gas.
Paris Mfg., Corp. (Workers)	South Paris, ME	7/17/89	6/22/89	23,152	Cribs, sleds, high chairs, and swings.
Petrolite Corp.-Tretolite Div. (Workers)	St. Louis, MO	7/17/89	6/7/89	23,153	Oil and gas.
Philips Medical Systems N.A	Shelton, CT	7/17/89	6/30/89	23,154	X-ray equipment.
Philips Park-Noretco Div. of North American Philips (Company).	Essex, CT	7/17/89	6/21/89	23,155	Coffee makers.
Phoenix Geoscience, Inc. (Company)	Denver, Co	7/17/89	6/26/89	23,156	Oil and gas.
Schasvitz Engineering (Company)	Pennsauken, NJ	7/17/89	6/21/89	23,157	Transducers.
Schlumberger Well Serv. Corporate Headquarters (Company).	Dallas, TX	7/17/89	6/26/89	23,158	Oil and gas.
Teleflex, Inc., Marine Div. (UAW)	Limerick, PA	7/17/89	6/26/89	23,159	Conduits and controls for boats.
Texa Tek Core Serv. (Company)	Midland, TX	7/17/89	6/26/89	23,160	Oil and gas.
Trico Products Corp. (UAW)	Buffalo, NY	7/17/89	6/29/89	23,161	Windshield wipers and parts.
Western Wellchems (Company)	Denver, CO	7/17/89	6/22/89	23,162	Oil and gas.
Westinghouse Elec. Corp. (Company)	El Paso, TX	7/17/89	6/26/89	23,163	Electric motor coils.
Schlumberger Well Serv. Mid-America Div. (Company).	Oklahoma City, OK	7/17/89	6/26/89	23,164	Oil and gas.
Schlumberger Well Serv. Northeast Div. (Company).	Columbus, OH	7/17/89	6/26/89	23,165	Do.
Schlumberger Well Serv. Pacific Coast Div. (Company).	Ventura, CA	7/17/89	6/26/89	23,166	Do.
Schlumberger Well Serv. Rocky Mountain Div. (Company).	Aurora, CO	7/17/89	6/26/89	23,167	Do.
Schlumberger Well Serv. Southeast Div. (Company).	Shreveport, LA	7/17/89	6/26/89	23,168	Do.
Schlumberger Well Serv. West Texas Div. (Company).	Midland, TX	7/17/89	6/26/89	23,169	Do.
Schlumberger Well Serv. Coastal West Div. (Company).	Corpus Christi, TX	7/17/89	6/26/89	23,170	Do.

[FR Doc. 89-17924 Filed 7-31-89; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-22,773]

Gli-United Plastics; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.16 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Gli-United Plastics, Madison Heights, Michigan. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-22,773: Gli-United Plastics, Madison Heights, Michigan (July 12, 1989)

Signed at Washington, DC, this 19th day of July 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-17923 Filed 7-31-89; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Presenting Organizations Section) to the National Council on the Arts will be held on August 21, 1989, from 9:30 a.m.—6:00 p.m., August 22-25 from 9:00 a.m.—6:00 p.m., and August 26 from 9:00 a.m.—5:00 p.m. in Room M07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 26, 1989, from 9:00 a.m.-2:00 p.m. The topic for discussion will be policy issues.

The remaining portion of this meeting on August 21, 1989, from 9:30 a.m.—6:00 p.m., August 22-25 from 9:00 a.m.—6:00 p.m., and August 26 from 2:00—5:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-17852 Filed 7-31-89; 8:45 am]
BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-36, ASLBP No. 89-593-01-MLA]

Combustion Engineering, Inc.; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing, and, if necessary, to serve as the presiding officer to conduct the hearing in the event that an informal adjudicatory hearing is ordered in the following materials licensing proceeding.

Combustion Engineering, Inc.

Hematite Fuel Fabrication Facility, Special Nuclear Materials License No. SNM-33

This board is being established pursuant to a notice published by the Commission on May 24, 1989, in the Federal Register (54 FR 22,510) entitled, "Finding of no Significant Impact and Opportunity for a Hearing; Amendment of Special Nuclear Materials License; Combustion Engineering, Inc., Hematite, MO." The proposed amendment would authorize the Licensee to operate new pellet production lines at its plant in Hematite, Missouri.

The presiding officer in this proceeding is Administrative Judge Charles Bechhoefer.

Following consultation with the Panel Chairman, pursuant to the provisions of 10 CFR 2.722, the Presiding Officer has appointed Administrative Judge Jerry R. Kline to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Bechhoefer and Judge Kline in accordance with 10 CFR 2.701. Their addresses are:

Administrative Judge Charles Bechhoefer, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nculear Regulatory Commission, Washington, DC 20555

Administrative Judge Jerry R. Kline, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Bethesda, Maryland this 24th day of July 1989.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 89-17825 Filed 7-31-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-341]

Detroit Edison; Wolverine Power Supply Cooperative, Incorporated; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43, issued to the Detroit Edison Company and Wolverine Power Supply Cooperative, Inc. (the licensees), for operation of Fermi-2 located in Monroe County, Michigan.

In accordance with the licensees' application for amendment dated May 10, 1989, the amendment would revise the Technical Specifications (TS) to reflect design changes for the Reactor Protection System (RPS) which will eliminate the backup manual scram function and add further redundancy to the RPS capability to manually initiate a scram.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By Aug 31, 1989, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator

should be given Datagram Identification Number 3737 and the following message addressed to Lawrence A Yandell: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of the Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for Detroit Edison Company.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 10, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 27th day of July 1989.

For the Nuclear Regulatory Commission.

William O. Long,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–17913 Filed 7–31–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co.; Wolverine Power Supply Cooperative, Incorporated; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to the Detroit Edison Company and Wolverine Power Supply Cooperative, Inc. (the licensees), for operation of Fermi–2 located in Monroe County, Michigan.

In accordance with the licensees' application for amendment dated March 10, 1989 the amendment would revise the Technical Specifications (TS) by removing the Traversing Incore Probe (TIP) Purge System Isolation Valve listed in TS Table 3.6.3–1, from the TS. The subject penetration will be sealed closed during the first refueling outage scheduled for September 1989.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 31, 1989, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above data, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lawrence A. Yandell: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for Detroit Edison Company.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 10, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 27th day of July 1989.

For the Nuclear Regulatory Commission.

William O. Long,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–17914 Filed 7–31–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–282 and 50–306]

Northern States Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 86 to Facility Operating License No. DPR–42 and Amendment No. 81 to Facility Operating License No. DPR–60, issued to Northern States Power Company (the licensee), which revised the License for operation of the Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, located in Goodhue County, Minnesota.

The amendments are effective as of the date of issuance.

The amendments modified the license to add the provision for transferring by-product materials to the Prairie Island facility from other Northern States Power job sites.

The application for amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on March 7, 1989 (54 FR 9594). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendments dated October 24, 1988, (2) Amendment No. 86 to License No. DPR–42 and Amendment No. 81 to DPR–60 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401. A copy of items (2), and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Project III, IV, V & Special Projects.

Dated at Rockville, Maryland this 25th day of July 1989.

For the Nuclear Regulatory Commission.

Dominic C. DiIanni,

Project Manager, Project Directorate III–1, Division of Reactor Project–III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–17915 Filed 7–31–89; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Docket No. A89–11 Order No. 834]

Montpelier, Mississippi 39754 (Nancy Cliett, Petitioner); Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued July 28, 1989

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; W.H. "Trey" LeBlanc III; Patti Birge Tyson

Docket Number: A89–11

Name of Affected Post Office: Montpelier, Mississippi

Name(s) of Petitioner(s): Nancy Cliett

Type of Determination: Consolidation

Date of Filing of Appeal Papers: July 24, 1989

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before August 8, 1989.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

Appendix

July 24, 1989	Filing of Petition.
July 28, 1989	Notice and Order of Filing of Appeal.
August 18, 1989	Last day of filing of petitions to intervene [see CFR 3001.111(b)].
August 28, 1989	Petitioners' Participants Statement or Initial Brief [see 39 CFR 3001.115(a) and (b)].
September 18, 1989	Postal Service Answering Brief [see 39 CFR 3001.115(c)].
October 3, 1989	Petitioners' Reply Brief should Petitioners choose to file one [see 39 CFR 3001.115(d)].
October 10, 1989	Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116].
November 20, 1989	Expiration of 120-day decisional schedule [see 39 U.S.C. 404(b)(5)].

[FR Doc. 89–17910 Filed 7–31–89; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[34-27056; DTC-89-09]

Self-Regulatory Organizations; the Depository Trust Company; Order Approving a Proposed Rule Change To Establish an Interface With the National Securities Clearing Corporation's Mutual Fund Settlement, Entry and Registration Verification Service

July 24, 1989.

On April 25, 1989 the Depository Trust Company ("DTC") filed a proposed rule change (File No. SR-DTC-89-09) pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule would provide DTC members access to the National Securities Clearing Corporation's ("NSCC") Mutual Fund Settlement, Entry and Registration Verification Service ("Fund/SERV"). Notice of the proposed rule change appeared in the **Federal Register** of June 9, 1989.[2] No comments were received. On June 20, 1989, DTC amended its proposal.[3] As discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposal

The proposal amends DTC's rules and procedures to allow DTC participants, who are not already Fund/SERV members, access to NSCC's Fund/SERV system.[4] DTC participants acting in their capacity as mutual fund agents will not be eligible to participate in DTC's Fund/SERV program; instead, mutual fund agents must participate in Fund/SERV directly through NSCC.

The proposal will allow DTC participants to communicate mutual fund purchase and redemption orders to DTC before 4:00 p.m. (New York time ["NYT"]) for transmission to NSCC and subsequent re-transmission to mutual fund processors (NSCC's Fund/SERV members who receive purchase and redemption orders on behalf of eligible mutual funds) on any business day ("trade date" or "T"). DTC participants will be able to transmit these orders to DTC through DTC's Participant Terminal System ("PTS") network.[5] DTC will transmit those orders to NSCC, in one batch, by 7:00 p.m. NYT that day.[6] Once received, NSCC will assign a system control number to each order and review them to ensure that the data is submitted in acceptable format.[6] NSCC will return any orders that do not meet the format criteria to DTC. At 8:00 p.m. NYT of trade date, NSCC will forward those orders that are in compliance with NSCC's criteria to the appropriate mutual fund processors. NSCC also will re-transmit all orders (rejected as well as accepted) to DTC for internal tracking and auditing purposes.

Within two business days following trade date (*i.e.*, T + 1 or T + 2), the mutual fund processors will transmit to NSCC confirmations, rejections and orders that are not yet either confirmed or rejected. NSCC will convey this information to DTC, who will make the information accessible to its participants through the PTS network. DTC participants may submit corrections concerning the money values and the number of shares involving confirmed trades before 7:00 p.m. NYT of T + 2. Mutual fund processors, however, must reconfirm these corrections so that corrected orders can supersede the original orders. NSCC will delete any unconfirmed orders by 12 noon NYT of T + 2, and will inform both DTC and the mutual fund processors of any such deletions.[7]

On the fourth business day after trade date (T + 4), NSCC will create a file of all the confirmed orders that have been released for settlement by mutual fund processors on the next business day (T + 5 or "settlement date").[8] On the morning of settlement date, DTC will make this file available to its participants through the PTS network, and will transmit tickets to participants for all items due to settle on that date. DTC will net participant Fund/SERV payment obligations with other participant NDFS system payment obligations. At 5:00 p.m. NYT of T + 5, DTC participants will pay thier money settlement obligations to DTC in next-day funds in accordance with DTC's "Money Payment" Rule.[9] DTC, in turn, will settle directly with NSCC at approximately 5:00 p.m. NYT of the same day.[10]

DTC, like NSCC, does not guarantee Fund/SERV transactions. DTC must notify NSCC before 10:00 a.m. NYT of T + 5 that it has ceased to act for a participant in order to limit its liability. If DTC gives NSCC timely notice regarding its decision to cease to act for a participant who has defaulted on its Fund/SERV payment obligations, DTC's liability to NSCC for any debit amount relating to said participant would be limited to an amount equal to that of the participant's required Fund/SERV contribution. If DTC notifies NSCC later than 10:00 a.m. NYT of T + 5 that it has ceased to act for a participant, and NSCC cannot reverse or recover the credits made to mutual fund processors with respect to said DTC participant, DTC will pay NSCC all amounts due,

---

[1] 15 U.S.C. 78s(b)(1) (1981).

[2] Securities Exchange Act Release No. 26866 (June 2, 1989), 54 FR 24778 (June 9, 1989).

[3] Letter from Karen G. Lind, Associate Counsel DTC, to Ester Severson, Jr., Branch Chief Division of Market Regulation, Securities and Exchange Commission (June 20, 1989).

[4] Fund/SERV is a centralized, automated processing system for mutual fund purchases and redemptions. On November 20, 1987, the Commission approved NSCC's proposal to amend its rules and procedures in order to offer Fund/SERV as a permanent service to its participants. *See* Securities Exchange Act Release No. 25146 (November 20, 1987) 52 FR 45418 (November 27, 1987). *See also* Securities Exchange Act Release No. 23928 (February 20, 1986), 51 FR 6054 (February 27, 1986). (approving Fund/SERV as a pilot program); Securities Exchange Act Release No. 24068 (February 10, 1987), 52 FR 5228 (February 19, 1987) (continuing Fund/SERV as a pilot program).

[5] DTC's PTS network is an electronic system that permits direct communication between DTC and its participants, enabling participants to effect book-entry movements and other account related activity via remote terminal. On December 30, 1983, the Commission approved DTC's use of the PTS network. *See* Securities Exchange Act Release No. 20519 (December 30, 1983), 49 FR 988 (January 6, 1984).

[6] NSCC, however, will not check the accuracy of the data submitted by Fund/SERV participants.

[7] DTC's Fund/SERV interface service allows participants to transmit through the PTS network information pertaining to purchase and redemption orders as of a specific date, including trades not submitted on trade date or trades previously rejected from the system. These orders are denominated "as-of" orders and a participant may submit these orders at any time within six months after trade date. There are two differences between processing as-of and regular orders:

(1) Mutual fund processors have up to three business days to either reject or confirm an as-of order. This may result in settlement up to seven business days (instead of the normal five) after the trade has been submitted.

(2) While participants do not have the capability of correcting an as-of order, a participant has up to the first day after confirmation by the mutual fund processor to delete an as-of order if it disagrees with the confirmation issued by a mutual fund processor.

[8] Confirmed redemptions of book shares registered in street name settle automatically, normally on T + 5. Between T + 4 and T + 14, mutual fund processors must submit separate releases to settlement for confirmed redemptions of book shares registered in the customer's name of for physical shares so that these transactions can be settled through Fund/SERV. At 12 noon NYT of every business day between T + 4 and T + 13, NSCC will issue daily reminders to mutual fund processors and DTC about confirmed redemptions for which releases to settlement have not been received. At 11:00 a.m. NYT of T + 14 NSCC will delete redemption orders that have not been released to settlement by mutual fund processors. NSCC will convey this information to DTC and the mutual fund processors by 12 noon NYT of this same date.

[9] *See* The Depository Trust Company Rules, R. 9.

[10] A mutual fund processor will settle with NSCC at 1:00 p.m. NYT of T + 5 if it is in a net debit position. Fund/SERV settlements between NSCC and its participants and between mutual fund processors and NSCC, if the former are in a net credit position, will occur at 5:00 p.m. NYT of T + 5 in next day funds.

resulting from the participant's use of Fund/SERV.[11]

DTC will require each Fund/SERV Participant to make additional deposits (Fund/SERV contributions) to DTC's Next-Day Funds Settlement ("NDFS") Fund. A participant must deposit the required amounts in the manner prescribed by DTC's Rules.[12] The amount of the Fund/SERV contribution will be based on the daily settlement debits that a participant may have with any one eligible mutual fund family.[13] If a participant has daily Fund/SERV settlement debits of no more than $100,000 with respect to any fund family, the participant must contribute $5,000. If a participant has daily Fund/SERV settlement debits greater than $100,000, but not more than $500,000, with respect to any one fund family, the participant must contribute $10,000. If the participant has daily Fund/SERV settlement debits of more than $500,000 with any one fund family the contribution amount will be $20,000. DTC will calculate on a monthly basis each participant's contribution to determine whether the participant's daily debits for any one fund family exceed the point at which a higher Fund/SERV Fund contribution is required.[14] DTC will collect any additional required deposits monthly. On a quarterly basis, DTC will return any money resulting from a decrease in a participant's level of required contributions.

DTC will allocate any Fund/SERV related losses pursuant to the allocation plan set forth in its Rules.[15] If a Fund/SERV interface participant defaults on a payment obligation, DTC will use that participant's Fund/SERV contributions and, if necessary, the defaulting participant's deposits to the NDFS Fund.[16] Upon demand, the defaulting participant must deposit all amounts necessary to cover the resulting Fund/SERV contribution and NDFS Fund deposit deficiencies.[17] The defaulting participant will remain liable for the full amount of the obligation arising from its default even if it ceases to be a member.[18]

If DTC is unable to recover its loss by assessing either the defaulting participant's Fund/SERV contributions or its deposits to the NDFS Fund, DTC will recover the remaining loss by assessing the contributions of all Fund/SERV interface participants (other than the participant[s] responsible for the loss) *pro rata*, based on each Fund/SERV interface participant's contribution level at the time DTC discovered the loss.[19] DTC's loss allocation plan requires a participant to satisfy the deficiency in the amount of its required contribution level, resulting from the *pro rata* assessment, as soon as required by DTC.[20] DTC can make additional *pro rata* charges to a Fund/SERV participant (other than the participant[s] responsible for the loss) for the same loss or liability.[21]

In order to limit its liability for future losses or additional assessments, a participant may give notice of its intention to terminate its dealings with DTC within ten business days after receiving notice of a *pro rata* charge. While this participant will remain fully liable for the *pro rata* charge, its maximum liability for additional *pro rata* assessments attributable to the same loss will be the greater of either the participant's required Fund/SERV and NDFS contributions, as fixed at the time of the first *pro rata* charge, plus 100%, or the amount of all prior *pro rata* charges attributable to the same loss or liability for which the participant has not limited its liability within the ten day time frame.[22]

II. DTC's Rationale for the Proposed Rule Change

DTC believes the proposal is consistent with section 17A of the Act[23] because it promotes the prompt settlement of mutual fund transactions by providing its members an automated method to purchase, redeem, and register mutual fund securities with a mutual fund, through DTC. DTC believes that this automated processing system will reduce the dependency on less efficient methods, such as telephone calls and written correspondence, which are currently used by DTC participants to settle mutual fund purchases. DTC also believes that it has established appropriate risk management procedures, such as requiring additional clearing fund contributions and setting a loss allocation scheme, in order to protect itself and its members from unreasonable risks associated with Fund/SERV activity.

III. Discussion

The Commission believes that DTC's proposal is consistent with section 17A of the Act because it encourages the use of new data processing and communications techniques to promote a linkage between two clearance and settlement facilities, which will result in more efficient, effective and safe procedures for the clearance and settlement of mutual fund transactions. As the Commission has stated before, Fund/SERV achieves this goal by offering one centralized processing location where mutual fund purchase and redemption orders are submitted in one standardized format.[24]

DTC's proposal will foster cooperation with NSCC, allowing DTC participants to eliminate multiple communications and settlement arrangements between themselves and mutual fund processors. This simplification will in turn reduce the risks of failed deliveries, inadequate transaction records, operational errors and, ultimately, financial insolvency.[25] Thus, the Commission believes that the proposed interface will encourage the use of more efficient means of communication between broker-dealers and mutual fund processors, which will in turn result in a more effective clearance and settlement system for mutual fund transactions.

In its release setting forth the standards used to evaluate clearing agency registration applications, the Division of Market Regulation noted that it is proper for a "clearing agency to establish by rule an appropriate level of clearing fund contribution based, among other things, on its assessment of the risks to which it is subject."[26] DTC

---

[11] *See* DTC-NSCC Fund/SERV Linkage Agreement, § 2 (June 28, 1988).

[12] *See* The Depository Trust Company Rules, R. 4, section 1, para. 4.

[13] A fund family is the conglomerate of mutual funds controlled by the same mutual fund processor.

[14] Pursuant to its Rules, DTC may require a participant to deposit additional amounts to the Fund/SERV Fund. The Depository Trust Company Rules, R. 4, section 1, para. 3.

[15] *See* Letter from Karen G. Lind, Associate Counsel DTC, to Julius Leiman-Carbia, Staff Attorney Division of Market Regulation, Securities and Exchange Commission (July 18, 1989).

[16] The Depository Trust Company Rules, R. 4, section 3.

[17] *Id.*

[18] *Id.*

[19] DTC's Board of Directors may elect instead to apply the existing retained earnings or undivided profits or portions thereof, if these amounts are not enough to cover the loss. DTC may apply the Fund/SERV contributions on the same *pro rata* basis as if it had chosen not to use the existing retained earnings or undivided profits. *Id.* R. 4, section 4.

[20] *Id.* R. 4, section 5.

[21] *Id.* R. 4, section 8.

[22] *Id.* R. 4, section 8.

[23] 15 U.S.C. section 78q-1 (1981).

[24] *See generally* Securities Exchange Act Release No. 24068, *supra* note 4, at 5230-1; Securities Exchange Act Release No. 25508 (January 31, 1989) 54 FR 6051, 6052 (February 7, 1989).

[25] *See* Securities Exchange Act Release No. 24068, *supra* note 4, at 5230.

[26] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920, 41929 (June 23, 1980) (footnote omitted).

proposes to require from its Fund/SERV participants additional fund contributions, in order to protect itself and its membership from risks that could arise in connection with the Fund/SERV interface. This additional contribution requirement will be based upon a participant's level of Fund/SERV activity. The Commission believes that the proposed contribution requirement reflects the level of risk associated with Fund/SERV.[27]

Fund/SERV contributions will be separate from a DTC member's NDFS deposit requirements and will not be subject to the ceiling for DTC's NDFS Fund deposits. Moreover, DTC proposes to restrict the use of Fund/SERV contributions (other than contributions by a participant responsible for a loss incurred by DTC) to satisfy losses caused by Fund/SERV participants' defaults. While this would limit DTC's ability to mutualize default risks, the Commission has previously stated that " 'clearing fund protection can be organized responsibly in different ways at different clearing agencies.' " [28]

The Commission believes the proposal is likewise consistent with DTC's statutory obligation to safeguard funds and securities in DTC's possession or control.[29] While DTC will not guarantee Fund/SERV settlement payments, the proposal includes safeguards against losses due to member defaults. If, for example, DTC ceases to act for a participant, it can limit its liability to NSCC by notifying NSCC before 10:00 a.m. NYT of T + 5, seven hours before NSCC pays its Fund/SERV participants in next day funds at 5:00 p.m. of that same day. This action will enable NSCC to withhold payment and reverse any transactions made with respect to the defaulting DTC participant. Moreover, if DTC notifies NSCC after 10:00 a.m. NYT of T + 5, but before 8:00 a.m. NYT of the next business day, NSCC can stop payment on any funds paid to a mutual fund processor as a result of transactions by a DTC defaulting participant.[30]

In the event DTC and NSCC can neither cancel payment instructions nor recover the resulting payments, DTC will first attempt to cover any losses associated with Fund/SERV by using the responsible participant's Fund/SERV contributions. DTC will use the contributions of all other Fund/SERV participants if the defaulting participant's Fund/SERV contributions and deposits to the NDFS Fund are insufficient to cover the loss. The defaulting member, however, will remain liable for the amount of the default and, unlike other Fund/SERV participants, will not be able to limit its liability by ceasing to do business with DTC. By placing the burden of covering Fund/SERV related exposures, first, on the defaulting party and, then, on the other participants, DTC not only distributes liability equally among those benefiting from Fund/SERV, but also provides for a maximum assessment, thus allowing participants to ascertain, at any given time, their maximum potential liability.[31]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed filing (SR–DTC–89–09) be, and is hereby, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–17858 Filed 7–31–89; 8:45 am]

BILLING CODE 8010–01–M

[27] The Commission has approved similar contribution requirements for this service at other clearing agencies. *See* Securities Exchange Act Release No. 26377 (December 20, 1988), 53 FR 52546 (December 28, 1988) (Approving, *inter alia*, contribution requirements for NSCC's new category of Fund/SERV members); *see also* Securities Exchange Act Release No. 26506, *supra* note 24 (Approving, *inter alia*, contribution requirements for the Midwest Clearing Corporation's proposed interface with NSCC's Fund/SERV service).

[28] *See* Securities Exchange Act Release No. 26377, *supra* note 27, at 52548 (quoting Securities Exchange Act Release No. 19230 [November 10, 1982] 47 FR 51969).

[29] 15 U.S.C. 78q–1(b)(1)(F) (1981).

[30] In the Order approving the Midwest Clearing Corporation's proposed interface with NSCC's Fund/SERV, the Commission discussed a similar plan designed to avoid risks associated with Fund/SERV. *See* Securities Exchange Act Release No. 26506, *supra* note 24, at 8053.

[31] *See* Securities Exchange Act Release No. 18900, *supra* note 28 (Discussing the importance of a participant's ability to ascertain its maximum potential liability).

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–27051; File No. SR–Phlx–89–33]

Self-Regulatory Organization; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Responsibility To Make Ten-Up Markets

On May 30, 1989, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Phlx Options Floor Procedure Advice A–11 ("Advice") relating to the requirement of specialists and Registered Options Traders ("ROTs") (collectively referred to as "floor traders") to make ten-up markets in all options series traded on the Exchange.

The proposed rule change was noticed in Securities Exchange Act Release No. 26943 (June 19, 1989), 54 FR 26876 (June 26, 1989). No comments were received on the proposed rule change.

Currently, the Advice requires that Exchange floor traders ensure that public customer orders are filled to a minimum depth of ten contracts. This requirement applies whether the floor trader is quoting the best bid or offer for his or her own account or if the best bid or offer is made for an account other than a floor trader. If the best bid or offer is made by someone other than a floor trader for less than ten contracts, however, participation for the additional contracts needed to satisfy the minimum ten contract requirement shall be by the floor trader at the next best bid or offer.[3]

The proposed amendment to the Advice clarifies the obligation of floor traders to make ten-up markets by providing that if the best bid or offer is made by someone other than a floor trader for less than ten contracts, participation for the additional contracts needed to satisfy the minimum ten contract requirement shall be supplied at that same price by the floor trader quoting the previous best bid or offer. In all other respects, including the fine schedule and exemption from Phlx Rule 1033 for good cause shown, the Advice is substantively unchanged.

The Phlx states that the proposed rule change is designed to implement certain technical and clarifying language to the Advice to eliminate confusion as to whether the Advice requires floor traders to participate at the best bid or offer in the market, or merely at their stated bid or offer. The Phlx suggests that the proposed rule change will protect investors and promote the public interest by assuring a minimum ten contract execution of public customer orders.

The Commission finds that the proposed rule change is consistent with

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1988).

[3] If the ten-up requirement must be satisfied by several floor traders, either because several traders are quoting the best bid or offer or the next best bid or offer, it shall be done as agreed upon by them or otherwise be divided proportionately.

the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 [4] and the rules and regulations thereunder. Specifically, the proposed rule change will help eliminate Phlx member confusion regarding a floor trader's obligation to make ten-up markets by providing that if the best bid or offer for an option is made by someone other than a floor trader for less than ten contracts, then the floor trader(s) quoting the next best bid or offer must ensure the balance of the ten contract minimum at the best bid or offer in the market, rather than at the price quoted by such floor trader(s). Clarifying a floor trader's obligations under the ten-up market requirement should help promote the benefits associated with ten-up markets, such as enhanced competition in the Phlx's options markets and the facilitation of options transactions. Thus, the proposed rule change should contribute to a more free, open, and liquid market. In addition, the proposed rule change is consistent with section 11A of the Act [5] because it will promote fair competition among brokers and dealers and the practicability of brokers executing investors' orders in the best market.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

Dated: July 21, 1989.

[FR Doc. 89–17859 Filed 7–31–89; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f (1982).

[5] 15 U.S.C. 78k–1 (1982).

[6] 15 U.S.C. 78s(b)(2) 1982).

[7] 17 CFR 200.30–3(a)(12) (1982).

[Rel. No. 34–27054; File No. SR–Phlx–89–18]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Authorization of Foreign Currency Options Participants To Be Elected to the Exchange's Board of Governors

On March 31, 1989, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's By-Laws to permit foreign currency options participants to be nominated for election and, if elected, to serve as members of the Phlx Board of Governors.

The proposed rule change was noticed in Securities Exchange Act Release No. 26861 (May 22, 1989), 54 FR 23006, (May 30, 1989). No comments were received on the proposal.

In its filing, the Exchange stated that the authorization for foreign currency options participants to serve as members of the Phlx Board of Governors recognizes the contribution of the foreign currency options program to the Exchange. The Exchange noted that fourteen of twenty-one elected broker-governors are associated with participant organizations and the Chairman and both Vice-Chairmen of the Board of Governors also are affiliated with participant organizations. The Phlx stated that the proposed By-Law amendments will provide an opportunity for representation on the Phlx Board of Governors of a person associated solely with a foreign currency options participant organization.

Currently, Section 4–1 of the By-Laws requires that at least 9 of the 26 Governors shall be members who are primarily engaged in business on the Exchange Floor or general partners, executive officers or members associated with member organizations primarily engaged in business on the Exchange Floor. The Exchange proposes to amend this section to include participants who are primarily engaged in business on the Exchange Floor or participants associated with participant organizations primarily engaged in business on the Exchange Floor. Similarly, the Exchange proposes to amend the provision of this Section that requires that at least 9 of the 26 Governors shall be general partners, executive officers or members associated with member organizations which conduct a non-member public customer business to include participant organizations which conduct such public customer business. In addition, the Exchange proposes amendments to Section 3–6(c), (e), (f) and Section 3–7(a) of the By-Laws which would apply the terms set forth therein to foreign currency options participants.[3] Finally, the Phlx proposes to amend Section 3–6(a) of the By-Laws to provide that foreign currently options participants, in addition to members, general partners or officers of member organizations, may make recommendations to the Committee as to candidates for positions on the Board.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular the requirements of section 6(b)(3) of the Act which, among other things, requires that "[t]he rules of the exchange asssure a fair representation of its members in the selection of its directors and administration of its affairs * * *". Transactions in foreign currency options represent a substantial portion of the Phlx's options volume and revenue. By permitting a foreign currency options participant to be nominated for election and, if elected, to serve as a member of the Phlx Board of Governors, the Exchange's proposal will provide an opportunity for a more balanced representation of all constituencies of the Exchange's diverse membership and participants.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: July 24, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–17860 Filed 7–31–89; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1988).

[3] *See* Securities Exchange Act Release No. 26861, notes 2 and 3. These provisions relate to certain limitations on the nomination of a person for a position on the Board, or the continuation of such person in serving on the Board.

[4] 15 U.S.C. 78s(b)(2) (1982).

[5] 17 CFR 200.30–3(a)(12) (1988).

[Release No. IC–17061/812–7253]

Dreyfus Life and Annuity Index Fund, Inc., et al.

July 25, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for exemption under the Investment Company Act of 1940 ("Act").

Applicants: Dreyfus Life and Annuity Index Fund, Inc. (the "Fund") and certain Life Insurance Companies and Variable Life Insurance Separate Accounts (collectively "Applicants").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) of the Investment Company Act of 1940 from sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

Summary of Application: Applicants seek an order to the extent necessary to permit shares of the Fund to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies.

Filing Date: The application was filed February 24, 1989 and amended on May 12, 1989 and July 18, 1989.

Hearing or Notification of Hearing: If no hearing is ordered the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on August 21, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Dreyfus Life and Annuity Index Fund, Inc., 666 Old Country Road, Garden City, New York 11530.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst, at (202) 272-2048 or Clifford E. Kirsch, Acting Assistant Director, at (202) 272-3032 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representatives and Statements

1. The Fund is a Maryland Corporation registered under the Act as an open-end, non-diversified management investment company. The Fund intends to offer its shares to separate accounts of any interested insurance company in order to fund variable annuity contracts and variable life insurance contracts (collectively referred to herein as "variable contracts"). Insurance companies whose separate accounts own shares of the Fund are referred to herein as "participating insurance companies." It is anticipated that participating insurance companies will rely on Rules 6e-2, or 6e-3(T) under the Act, although some may rely on individual exemptive order as well, in connection with variable life insurance contracts. The use of a common management company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is commonly referred to, and is referred to herein, as "mixed funding." The use of a common management company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding." Applicants request an exemption for certain life insurance companies and variable life insurance separate accounts (and, to the extent necessary, the investment adviser and any principal underwriter and depositor of such accounts) from sections 9(a), 139(a), 159(a) and 15(b) of the act and rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder, to the extent necessary to permit mixed and shared funding.

2. Section 9(a) of the Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 99(a)(1) or (2). Rules 6e-2(b)(15) (i) and (ii), and 6e-3(T)(b)(15) (i) and (ii), provide exemptions from section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

3. The application states that the partial relief granted in Rules 6e-2(b)(15) and 6e-3(T)(b)(15) from the requirements of section 9 in effect limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act to apply the provisions of section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. Applicants state that it is unnecessary to apply section 9(a) to the many individuals in various unaffiliated insurance companies (or affiliated companies of participating insurance companies) that may utilize the Fund as the funding medium for variable contracts. Applicants argue that applying the requirements of section 9(a) because of investment by other insurer's separate accounts would be unjustified and would not serve any regulatory purpose. The application states that, on the other hand, the increased monitoring costs would reduce the net rates of return realized by contract owners.

4. The language of Rules 6e-2(b)(15(iii) and 6e-3(T)(b)(15)(iii) assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. The application states that pass-through voting privileges will be provided with respect to all variable contract owners so long as the Commission interprets the Act to require pass-through voting privileges for variable contract owners.

5. Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed.

6. Applicants also represent that the right under Rules 6e-2(b)(15) and 6e-3(T)(b)(15) of the insurance company to disregard contract owner's voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts and that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter or investment adviser initiated by contract owners. The application points out that the potential for disagreement is limited by the requirements in Rules 6e-2 and 6e-3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations.

7. Use of the Fund as a common investment medium for variable contracts would, according to Applicants, encourage more insurance companies to offer variable contracts. The application states that this would result in increased competition with respect to both variable contract design and pricing, and that this can be expected to result in more product variation and lower charges. Applicants also believe that mixed and shared funding should benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds and that granting the requested relief should result in an increased amount of assets available for investment by the Fund which may benefit variable contract owners by promoting economies of scale.

8. Applicants see no significant legal impediment to permitting mixed and shared funding. Applicants note that separate accounts organized as unit investment trusts have historically been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants believe that mixed and shared funding will have no adverse federal income tax consequences.

Applicants' Conditions

If the requested order is granted, Applicants consent to the following conditions:

1. A majority of the Board of Directors of the Fund shall consist of persons who are not "interested persons" of the Fund, as defined by section 2(a)(19) of the Act and the Rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any Director or Directors, then the operation of this condition shall be suspended (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board of Directors; (b) for a period of 60 days if a vote of shareholders is permitted to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the contract owners of all separate accounts investing in the Fund. An irreconcilable material conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Fund are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners; or (f) a decision by an insurer to disregard the voting instructions of contract owners.

3. Participating insurance companies and the Fund's investment adviser, Wells Fargo Investment Advisor ("WFIA") will report any potential or existing conflicts to the Board of Directors of the Fund. Participating insurance companies and WFIA will be responsible for assisting the Board in carrying out its responsibilities under these conditions, by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all insurers investing in the Fund under their agreements governing participation in the Fund and such responsibilities will be carried out with a view only to the interests of the contract owners.

4. If it is determined by a majority of the Board of Directors of the Fund, or a majority of its disinterested Directors, that a material irreconcilable conflict exists, the relevant insurance companies shall, at their expense and to the extent reasonably paracticable (as determined by a majority of the disinterested Directors), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to an including: (1) Withdrawing the assets allocable to some or all of the separate accounts from the Fund and reinvesting such assests in a different investment medium, or submitting the question whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., annuity contract owners, life insurance contract owners, or variable contract owners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (2) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund, and these responsibilities will be carried out with a view only to the interest of contract owners. For purposes of this condition (4), a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund, WFIA or the Dreyfus Corporation be required to establish a new funding medium for any variable contract. No participating insurance company shall be required by this condition (4) to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially adversely affected by the irreconcilable material conflict.

5. The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly to all participating insurance companies.

6. Participating insurance companies will provide pass-through voting privileges to all variable contract owners so long as the Commission continues to interpret the Act as requiring pass-through voting privileges for variable contract owners. Accordingly, participating insurance companies will vote shares of the Fund held in their separate accounts in a manner consistent with timely voting instructions received from contract owners. Each Participating insurance company will vote shares of the Fund held in its separate accounts for which no timely voting instructions from contract holders are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Participating insurance companies shall be responsible for assuring that each of their separate accounts participating in the Fund calculates voting privileges in a manner consistent with other participating insurance companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund.

7. The Fund will comply with all provisions of the Act requiring voting by shareholders, and in particular the Fund will either provide for annual meetings (except insofar as the Commission may interpret section 16 not to require such meetings), or comply with section 16(c) of the Act (although the Fund is not one of the trusts described in section 16(c) of

the Act) as well as with section 16(a) and, if and when applicable, 16(b). Further, the Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

8. The Fund shall disclose in its prospectus that: (1) The Fund is intended to be a funding vehicle for all types of variable annuity and variable life insurance contracts offered by various insurance companies, (2) material irreconcilable conflicts may possibly arise, and (3) the Fund's Board of Directors will monitor events in order to identify the existence of any material irreconcilable conflicts and determine what action, if any, should be taken in response to such conflicts. The Fund will notify all participating insurance companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate.

9. If and to the extent that Rule 6e-2 and Rule 6e-3(T) are amended, or Rule 6e-3 is adopted, to provide exemptive relief from any provision of the Act or the rules promulgated thereunder with respect to mixed or shared funding or terms and conditions materially different from any exemptions granted in the order requested in this application, then the Fund and/or the participating insurance companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e-2 and 6e-3(T), as amended, and Rule 6e-3, as adopted, to the extent such rules are applicable.

10. The participating insurance companies and/or WFIA shall at least annually submit to the Fund's Board of Directors such reports, materials or data as the Directors may reasonably request so that the Directors of the Fund may fully carry out the obligations imposed upon them by the conditions contained in this application and said reports, materials and data shall be submitted more frequently if deemed appropriate by the board of Directors. The obligations of the participating insurance companies to provide these reports, materials and data to the Fund's Board of Directors when it so reasonably requests, shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund.

11. All reports received by the Board of Directors of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying participating insurance companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-17926 Filed 7-31-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17080; File No. 812-7347]

Home Life Insurance Co., et al.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

Applicants: Home Life Insurance Company ("Home Life"), Home Life Separate Account V ("Variable Account"), W.S. Griffith & Co., Inc., ("Griffith") and Wood Logan Associates Inc. ("Wood Logan").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants seek an order to the extent necessary to permit the deduction of a 1.25% mortality and expense risk charge from the assets of the Variable Account with respect to certain variable annuity contracts.

Filing Date: The application was filed on June 30, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on August 21, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Stanley M. Lenkowicz, Home Life Insurance Company, 75 Wall Street, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney, at (202) 272-3046 or Clifford E. Kirsch, Acting Assistant Director, at (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application: the complete application is available for a fee from either the Public Reference Branch in person or the Commission's commercial copier which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Home Life is a mutual life insurance company organized under the laws of the State of New York on May 1, 1860. Home Life is the depositor of the Variable Account. The Variable Account is registered under the Act as a unit investment trust and was established to offer certain variable annuity contracts, including the variable portion of the contracts described in the application (the "Contracts"). The Variable Account is divided into subaccounts which invest in corresponding portfolios of NASL Series Trust (the "Trust").

2. Griffith is the principal underwriter of the Contracts. It is a broker-dealer registered under the Securities Exchange Act of 1934 ("1934 Act") and a member of the National Association of Securities Dealers, Inc.

3. Wood Logan, a Connecticut corporation registered as a broker-dealer under the 1934 Act, serves as the exclusive promotional agent for the Contracts.

4. The Contracts are flexible purchase payment individual deferred combination fixed and variable annuity contracts. The application pertains only to the variable portion of the Contract. Home Life is relying on certain exemptive provisions from the registration requirements under the Securities Act of 1933 and the Act to offer the fixed portion of the Contracts.

5. As reimbursement for providing administrative services under the Contracts, Home Life charges contract owners an annual administration fee of $30 and deducts from the subaccounts each valuation period an administration charge equal to .15% of the subaccount assets on an annualized basis. Applicants represent that the fees are based upon Home Life's current estimates of the administrative costs attributable to the Contracts over their lifetime, are guaranteed never to be increased, and are not designed or expected to generate a profit. Applicants rely on Rule 26a-1 under the Act to assess such fees.

6. No sales charge will be deducted from purchase payments as they are made. Instead, prior to the maturity date, a withdrawal charge (contingent deferred sales charge) will be assessed in circumstances where complete or partial withdrawals are attributed to purchase payments made within six years of the date of the withdrawal. The withdrawal charge declines 6-6-5-4-3-2% over the first six years that a purchase payment has been in the Contract. Applicants represent that the withdrawal charge is intended to reimburse Home Life for compensation paid to cover selling concessions to broker-dealers, preparation of sales literature and other expenses relating to sales activity. Applicants rely on Rule 6c-8 under the Act to impose the withdrawal charge.

7. To compensate it for assuming mortality and expense risks under the Contracts, Home Life deducts from each subaccount to a charge each valuation period at an effective annual rate of 1.25%, consisting of .80% for the mortality risks and .45% for the expense risks. The rate of the mortality and expense risk charge cannot be increased.

8. The mortality risk assumed by Home Life under the Contracts is the risk that annuitants may live for a longer period of time than estimated. Home Life assumes this mortality risk by virtue of annuity rates incorporated into the Contract which cannot be changed. This assures each annuitant that his longevity will not have an adverse effect on the amount of annuity payments. Also, Home Life guarantees that if the annuitant dies before the maturity date, it will pay a minimum death benefit. The expense risk assumed by Home Life is the risk that the administration fees, which fees cannot be increased, may be insufficient to cover actual expenses.

9. Applicants represent that the 1.25% mortality and expense risk charge is within the range of industry practice for comparable annuity products. Applicants state that this representation is based upon an analysis of publicly available information about selected similar industry products, taking into consideration such factors as the method used in charging sales loads, any contractual right to increase charges above current levels and the existence of charges against separate account assets for other than mortality and expense risks. Home Life will maintain at its principal office, available for the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made.

10. Applicants acknowledge that the withdrawal charge will be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the withdrawal charge. Home Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Variable Account and the contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Home Life at its principal office and will be available to the Commission. Moreover, Home Life represents that the Variable Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b-1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning the section 2(a)(19) of the Act.

11. Applicants conclude that for the reasons and upon the facts set forth in the application, the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-17927 Filed 7-31-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, Charlotte/Douglas International Airport, Charlotte, NC

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Charlotte, North Carolina, for Charlotte/Douglas International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is July 11, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas M. Roberts, Program Manager, Atlanta Airports District Office, Suite 101, 1680 Phoenix Parkway, Atlanta, Georgia, 30349. Telephone: FTS 257-9308, Comm (404) 994-5308.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Charlotte/Douglas International Airport are in compliance with applicable requirements of Part 150, effective July 11, 1989.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Charlotte. The specific maps under consideration are Noise Exposure Map 1989 and Noise Exposure Map 1994 in the submission. The FAA has determines that these maps for Charlotte/ Douglas International Airport are in compliance with applicable requirements. This determination is effective on July 11, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's

BEST COPY AVAILABLE

date, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These fuctions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agenices with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations.

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Atlanta Airports District Office, 1680 Phoenix Parkway, Suite 101, Atlanta, GA 30349

Mr. Jerry Orr, Aviation Director, Charlotte/Douglas International Airport, Charlotte, North Carolina.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in FAA, Southern Region, Atlanta, Georgia, July 11, 1989.

Samuel F. Austin,

Manager, Atlanta Airports District Office.

[FR Doc. 89-17865 Filed 7-31-89; 8:45 am]

BILLING CODE 4910-13-M

Approval of Noise Compatibility Program, Drake Field Airport, Fayetteville, AR

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of Fayetteville, AR, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On December 8, 1987, the FAA determined that the noise exposure maps submitted by the city of Fayetteville, AR, under Part 150 were in compliance with applicable requirements. On June 29, 1989, the Administrator approved the noise compatability program. Most of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Drake Field Airport noise compatibility program is June 29, 1989.

FOR FURTHER INFORMATION CONTACT: Donald C. Harris, Department of Transportation, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas, 76193-0612, (817) 624-5609. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Drake Field Airport, effective June 29, 1989.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5 Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Fort Worth, Texas.

The city of Fayetteville, AR, submitted to the FAA on February 13, 1987, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from October 5, 1983, through August 29, 1988. The Drake Field Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on January 27, 1988. Notice of this determination was published in the Federal Register on April 4, 1988.

The Drake Field FAR Part 150 Noise Exposure and Land Use Compatibility study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to (or beyond) the year 1993. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on January 29, 1988, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 10 proposed actions for noise mitigation (or and/or off) the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective June 29, 1989.

Outright approval was granted for 9 of 10 specific program elements. The measure which recommended adoption of airport height hazard zoning was disapproved because it does not contribute to noise mitigation. Five land use control recommendations and four administrative strategy recommendations were approved. These included land acquisition, zoning, and comprehensive planning.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on June 29, 1989. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available at the FAA office listed above and at the administrative offices of the Drake Field Airport, Fayetteville, AR.

Issued in Fort Worth, Texas, July 19, 1989.

Wm. Jack Sasser,

Manager, Airports Division.

[FR Doc. 89-17866 Filed 7-31-89; 8:45 am]

BILLING CODE 4910-13-M

Approval of Noise Compatibility Program Rickenbacker Airport, Columbus, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Rickenbacker Port Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On January 13, 1989, the FAA determined that the noise exposure maps submitted by the Rickenbacker Port Authority under Part 150 were in compliance with applicable requirements. On July 6, 1989, the Associate Administrator for Airports approved the Rickenbacker Airport noise compatibility program, as supplemented and revised by a document titled, "Revisions in Final Land Use Recommendations, May 1989". Nineteen of twenty-three proposed action elements of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Rickenbacker Airport noise compatibility program is July 6, 1989.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL-611.1, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7538. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Rickenbacker Airport, effective July 6, 1989.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Detroit Airports District Office in Belleville, Michigan.

The Rickenbacker Port Authority submitted to the FAA on April 4, 1988

the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from November 1986 through April 1988. The Rickenbacker Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on January 13, 1989. Notice of this determination was published in the Federal Register on March 23, 1989.

The Rickenbacker Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2007. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on January 13, 1989 and was required by a provision of the Act to approve or disapprove the program 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The submitted program, supplemented and revised by a document titled, "Revisions in Final Land Use Recommendations, May 1989", contained twenty-three proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator for Airports effective July 6, 1989.

Outright approval was granted for nineteen of the twenty-three specific program measures. Four measures were withdrawn by the authority (see May 9, 1989 letter). Three of the twenty-three measures submitted were "Noise Abatement Measures", These included formalizing existing civilian and military noise abatement procedures, and instituting new department procedures for specific runways. The next sixteen of the twenty-three measures submitted were "Land Use Management Measures", of which four measures (namely 3, 11b, 12b and 13) were withdrawn by the Authority. Land Use Management Measure 3 was withdrawn because it didn't have any direct impact on land use compatibility for noise. Land Use Management Measures 11b, 12b and 13 were withdrawn until further evaluation can be undertaken. The rest of the Land Use Management Measures included planning, zoning and subdivision recommendations/policies; acquiring land, easements and development rights; and soundproofing of schools. The last four measures of the twenty-three submitted, identified as "Other Implementation Measures", included administrative-type measures such as establishing a Noise Abatement Committee, responding to noise complaints, monitoring noise, updating noise contour maps and conducting an on-going review of the noise program.

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator for Airports on July 6, 1989. The record of Approval, as well as other evaluation materials and documents which comprised the submittal to FAA are available for review at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, Room 261, Des Plaines, Illinois 60018.

Federal Aviation Administration, Detroit Airports District Office, East Willow Run Airport, 8820 Beck Road, Belleville, Michigan 48111.

Rickenbacker Port Authority, Rickenbacker Airport, Building 109, A Avenue, Columbus, Ohio 43217.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, July 18, 1989.

Larry H. Ladendorf,

Acting Manager, Airports Division Great Lakes Region.

[FR Doc. 89-17857 Filed 7-31-89; 8:45am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Applicable Rate of Interest on Nonqualified Withdrawals From a Capital Construction Fund

Under the authority in section 607(h)(4)(B) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1177(h)(4)(B)), we hereby determine and announce that the applicable rate of interest on the amount of additional tax attributable to any nonqualified withdrawals from a Capital Construction Fund established under section 607 of the Act shall be 9.18 percent, with respect to nonqualified withdrawals made in the taxable year beginning in 1989.

The determination of the applicable rate of interest with respect to nonqualified withdrawals was computed, according to the joint regulations issued under the Act (46 CFR 391.7(e)(2)(ii), by multiplying eight percent by the ratio which (a) the average yield on 5-year Treasury securities for the calendar year immediately preceding the beginning of such taxable year bears to (b) the average yield on 5-year Treasury securities for the calendar year 1970. The applicable rate so determined was computed to the nearest one-hundredth of one percent.

William A. Creelman,

Maritime Administrator.

William E. Evans,

Administrator, National Oceanic and Atmospheric Administration.

Kenneth W. Gideon,

Assistant Secretary for Tax Policy.

So Ordered by:

Maritime Administrator, Maritime Administration.

Administrator, National Oceanic and Atmospheric Administration.

Assistant Secretary for Tax Policy, Department of the Treasury.

[FR Doc. 89-17801 Filed 7-31-89; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 26, 1989.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, P.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0045.

Form Number: IRS Form 976.

Type of Review: Resubmission.

Title: Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.

Description: Form 976 is used by shareholders of certain corporations and trusts to claim a reduction for dividends paid to shareholds. The IRS uses the form to determine if the shareholders have actually included the amount of the dividend in their gross income.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 500.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping, 5 hours, 59 minutes.
Learning about the law or the form, 47 minutes.
Preparing the Copying, assembling, and sending the form to IRS, 56 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping/ Reporting Burden: 3,730 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-17906 Filed 7-31-89; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 146
Tuesday, August 1, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:33 p.m. on Wednesday, July 26, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the application of The Co-operative Bank of Concord, Concord, Massachusetts, an insured state stock co-operative bank, for the Corporation's consent to purchase certain assets of and assume the liability to pay deposits made in Randolph Co-operative Bank, Randolph, Massachusetts, an insured state mutual co-operative bank, and for consent to establish the sole office of Randolph Co-operative Bank as a branch of The Co-operative Bank of Concord.

The Board also considered: (1) Matters relating to the possible failure of an insured bank; (2) matters relating to assistance agreements pursuant to section 13(c) of the Federal Deposit Insurance Act; and (3) matters concerning the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: July 27, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-18037 Filed 7-28-89; 11:54 am]

BILLING CODE 6714-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-89-27]

TIME AND DATE: Tuesday, August 8, 1989 at 3:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints: Certain Self-Inflating Mattresses (Docket No. 1514).
5. Inv. No. 731-TA-238 (F) (12-Volt Motorcycle Batteries from Taiwan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

July 27, 1989.

[FR Doc. 89-18039 Filed 7-28-89; 2:00 pm]

BILLING CODE 7020-02-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 31, August 7, 14, and 21, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 31

Tuesday, August 1

10:00 a.m.
Briefing on Status of EPRI Design Requirements Document for Advanced Light Water Reactors (Public Meeting)

Wednesday, August 2

10:00 a.m.
Briefing on Status of Nine Mile Point-1 (Public Meeting)

Thursday, August 3

2:30 p.m.
Briefing on NRC Thermal-Hydraulic Research Program (Public Meeting)
4:00 p.m. Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 7—Tentative

Thursday, August 10

2:00 p.m.
Periodic Briefing by Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, August 11

10:00 a.m.
Discussion of Full Power Operating License for Limerick-2 (Public Meeting)

Week of August 14—Tentative

Tuesday, August 15

10:00 a.m.
Periodic Briefing on EEO Program (Public Meeting)

Wednesday, August 16

10:00 a.m.
Briefing on Status of Calvert Cliffs (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 21—Tentative

There are no meetings scheuled for the Week of August 21.

ADDITIONAL INFORMATION: By a vote of 4-0 on July 26, the Commission determined pursuant to 5 U.S.C. 552b(e) and § 9.107(a) of the Commission's rule that Commission business required that "Affirmation of Order Requesing Information from the Parties for Immediate Effectiveness Review of Full Power Authorization for Limerick Unit 2" (Public Meeting) scheduled for July 26, be held on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (Recording)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.

Office of the Secretary.

July 27, 1989.

[FR Doc. 89-18062 Filed 7-28-89; 2:01 am]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 54, No. 146
Tuesday, August 1, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 610 and 640

[Docket No. 88N-0433]

Blood and Blood Products: Proposed Amendment to Allow for Alternative Procedures; Removal of a Labeling Requirement

Correction

In proposed rule document 89-16755 beginning on page 30093 in the issue of Tuesday, July 18, 1989, make the following correction:

On page 30094, in the first column, under **FOR FURTHER INFORMATION CONTACT:**, in the last line, the phone number should read "301-295-8188".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket Nos. H-225, 225A, 225B, 225C]

RIN 1218-0145

Occupational Exposure to Formaldehyde

Correction

In rule document 89-16439 beginning on page 29545 in the issue of Thursday, July 13, 1989, make the following correction:

On page 29546, in Table 1, in the first column, in the heading, in the second line, "of" should read "or".

BILLING CODE 1505-01-D

OL
54

SS
1
4
6

A G
1

989

MI

federal register

Tuesday
August 1, 1989

Part II

Department of the Interior

Minerals Management Service

30 CFR Part 250

Oil, Gas, and Sulphur Operations in the Outer Continental Shelf; Well-Completion and Workover Operations; Minimum Training Requirements; Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010-AB21

Oil, Gas, and Sulphur Operations in the Outer Continental Shelf: Well-Completion and Workover Operations; Minimum Training Requirements

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule revises the final rule which was published on April 1, 1988. That rule consolidated into one document rules governing oil and gas and sulphur operations in the Outer Continental Shelf (OCS). When MMS developed the final rule published on April 1, 1988, the training requirements under consideration were so different from the requirements which had been were published as a proposed rulemaking on March 18, 1986, that they could not be published as a final rule. Accordingly, MMS published the April 1, 1988 document without substantially revising requirements governing training of personnel engaged in oil and gas and sulphur operations in the OCS. It is now proposing this rule which would revise the minimum training requirements for personnel engaged in drilling and production operations on the OCS and establish new minimum training requirements for personnel engaged in well-completion and workover operations on the OCS.

DATES: Comments must be received or postmarked no later than October 2, 1989.

ADDRESSES: Written comments must be mailed or hand delivered to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 646; Herndon, Virginia 22070; Attention: Gerald D. Rhodes.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, telephone (703) 648-7816 or (FTS) 959-7816.

SUPPLEMENTARY INFORMATION: On March 18, 1986, Minerals Management Service (MMS) published a proposed rule in the **Federal Register** (51 FR 9316) to consolidate rules governing oil, gas, and sulphur operations in the OCS into a single document. The preamble to that proposed rule included a series of questions concerning training requirements for lessee and contractor personnel. The proposed rule included training requirements in the subparts that dealt specifically with drilling, well-workover, well-completion, and production operations. The comments received in response to the proposed rule included responses to the published questions as well as comments concerning specific training requirements. On April 1, 1988, MMS published a final rule in the **Federal Register** (53 FR 10596) based on the March 18, 1986, proposed rule. The final rule issued on April 1, 1988, included a Subpart O; it addressed training. That Subpart O, which is now in effect, contained many of the provisions previously in effect with only limited revisions. More extensive changes to the training requirements were under consideration; however, MMS believes that the more extensive changes should be published in this proposed rule for comment prior to development of a final rule. Accordingly, MMS is now issuing this notice of proposed rulemaking which addresses the comments received in response to the questions asked in the preamble to the March 18, 1986, notice of proposed rulemaking and proposes revised, restructured, and updated training requirements which are consolidated into a proposed new Subpart O, Training.

The following discussions pertain to the general questions on training requirements and programs.

Question 1—How can MMS best assure that personnel engaged in oil and gas operations in the OCS are adequately trained?

Comment—Several commenters suggested that MMS simply require that employers furnish personnel to work in the OCS who are qualified through training and experience to perform their assigned job. Job performance would be verified through performance records such as safety, testing, drills, training, and accident investigation. Another commenter urged that MMS well-control training requirements be modified to reference existing industry recommended practices for training.

Response—The suggestion that MMS verify training through examination of performance records such as safety and accident records was not adopted in the proposed rule. The discovery of deficiencies in training after a pollution incident or accident that injures or kills would not meet the objective of the OCS Lands Act. The MMS training program has been structured to assure that personnel working in the OCS receive the minimum level of training necessary to avoid or prevent, to the degree practicable, pollution incidents and accidents. Appropriate portions of the recommended practices that have been developed by the offshore oil and gas industry have been incorporated into the proposed regulations. Experience with offshore operations has demonstrated that well-control training can be most effectively regulated under a structured program with a standardized curriculum.

Comment—Several commenters agreed that the present training system was adequate, although improvements in clarity of the regulations, as well as the administration of the well-control training program, would be welcomed. One of these commenters further added that MMS should avoid any movement toward centralizing the administration of testing and should not become involved in any new areas of training. One commenter urged more strict surveillance of blowout preventer (BOP) schools and textbooks and the utilization of undercover Government inspectors to attend certified schools. Another commenter made specific suggestions including: The MMS should make sure schools last long enough for students to get past the confusion stage and into the learning stage; consider the possibility of standardized tests; and ensure that instructors are qualified and personnel records are kept current.

Response—Changes in the present regulations are being proposed to clarify requirements and simplify administration of the well-control training program. There are no plans at this time to centralize the administration of testing or to develop standardized tests. Testing procedures and sample questions will continue to be considered during the review of a school's request for certification. Field audits of schools provide further assurance that testing methods are implemented in accordance with the approved plan. Instructor qualifications will continue to be reviewed during the school certification process. Changes in instructors will continue to require MMS approval of the new instructors' qualifications. Oversight of testing procedures and competition among training organizations provide some assurance that the required material is properly taught. The proposed rule would expand current training requirements to include well-control training for lessee/contractor personnel working on well completions and workovers, as well as those personnel who work with production safety systems.

Question 2—To what extent, if any, should the training be provided by the Federal Government, OCS lessees, State educational and training institutions, or private training schools?

Comment—Commenters on this question agreed that the Federal Government should not play a major role as a provider of training. One commenter did suggest that the Government play a small part in training by teaching regulations and developing standardized tests for training institutions to use. Most commenters felt that training should be provided by OCS lessees and other major OCS employers with State and private training institutions being utilized as necessary to meet the needs of OCS employees.

Response—There are no plans for the Federal Government to become a provider of well-control training. Experience in this area indicates that training is best provided by OCS lessees in conjunction with State and private educational and training institutions. As previously noted, there are no plans to develop standardized tests for use by training institutions. There were several reasons why MMS did not adopt the recommendations that the Government develop standardized tests. The MMS does not believe that development of testing materials and procedures would be an effective alternative to certification of schools. There are certain areas of operations for which training produces results which are difficult to evaluate. In such cases, MMS must rely on the fact that if the trainee attends a course that properly instructs the trainee in those areas, then the trainee will learn from the training. For this reason, MMS has chosen to concentrate on regulating the quality of the training and regulating but not controlling the testing of the trainee. The majority of the commenters agreed with this approach. In addition, the experience to date with MMSS-OCS-T 1, Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations, has shown the current program to be effective for drilling well-control training. For these reasons, MMS is proposing rules which will attempt to streamline and improve the current process rather than abandoning a successful program in favor of a completely new approach. The MMS believes that the process proposed will be sufficient to assure the quality of training for OCS personnel, and that additional Government involvement in the testing of trainees is unnecessary.

Comment—A commenter suggested that MMS personnel who are involved in the evaluation of training schools receive specialized training to assure that they have the qualifications needed to certify the training schools. This commenter also suggested that the number of school inspections be increased and that State universities be utilized to certify, train, and test instructors. The commenter further stated that operators should be required to hold meetings to help rig crews become aware of any problems which might be encountered while working on a given well.

Response—The comments regarding the training and qualifications of MMS personnel are well taken; however, the scope of the question and the proposed rule are specifically directed to the training of offshore lessee and contractor personnel. All MMS personnel who evaluate schools for certification, or are utilized in field audits, are thoroughly familiar with requirements which must be met. As noted in the response to Question 1, the qualifications of a school's instructors are reviewed with the initial submittal and whenever there is a change in instructors.

Question 3—How should MMS assure itself that the training provided is adequate?

Comment—Several commenters advocated changes or more emphasis on certain aspects of the present system. These included suggestions that tests be standardized, that MMS train its inspectors and then more fully investigate schools, and periodic Government testing of students.

Response—As noted in the response to Question 1, there are no plans to produce standardized tests or for the Federal Government to test trainees at the completion of each course. Testing procedures and sample questions are reviewed during the evaluation and approval of a school's well-control training program. The MMS personnel are trained in both well-control and audit procedures. The frequency and thoroughness of MMS field audits of training activities are determined by scheduling available MMS resources to achieve the best means of assuring the quality of the training.

Comment—Several commenters felt that MMS could verify training by requiring that employers furnish personnel to work in the OCS who are qualified to perform the assigned job. These commenters further stated that the evaluation of the adequacy of training could best be accomplished by a review and evaluation of industry safety statistics and on-the-job performance. The indicators to be evaluated include performance records, testing drills, training, and accident investigations.

Response—These commenters made a similar comment with respect to Question 1. There are insufficient statistical indicators available to permit implementation of this suggestion. Safety records and accident reports provided the evidence of deficiencies in training which resulted in the establishment of the MMSS-OCS-T 1. It is expected that safety records and the contents of accident reports will continue to be considered when changes in MMS's established training requirements are under review.

Question 4—Should performance standards for job categories be established by MMS, industry, or others?

Comment—Several commenters felt that the development of performance standards for job categories should be left to industry. Many of these same commenters also felt that performance standards varied so much from employee to employee and from company to company that they could not be standardized industrywide. One commenter felt MMS should set performance standards to ensure that everyone followed the same rules because they felt that industry would be unable to agree on uniform guidelines. Another commenter felt that the current requirement of testing well-control students to different levels of expertise amounted to performance standards.

Response—It is recognized that the *manner* in which performance standards and job classifications are established *varies* widely from lessee to lessee. There is no intent to alter that situation.

However, those variations do not preclude the establishment of needed minimum-training requirements, specified by broad job category, as has been done in MMSS-OCS-T 1.

Question 5—Should MMS prescribe training criteria?

Comment—Several commenters thought that MMS should establish training criteria; however, a larger number of commenters were opposed to MMS prescribing criteria for training of lessee/contractor personnel. Several of those who opposed MMS prescribing training criteria felt that industry should be allowed to set the criteria through guideline standards such as American Petroleum Institute (API) Recommended Practice (RP) T-3, Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations. Another commenter who opposed MMS prescribing training criteria felt that MMS should prescribe results for performance of trained personnel.

Response—The importance of industry established training criteria such as those found in API RP T-3 is readily recognized. In its efforts to balance the use of industry standards and regulatory requirements, MMS has utilized industry guideline standards, where appropriate, in developing

regulatory requirements (i.e., for critical areas such as drilling well control).

Question 6—To what extent, if any, should on-the-job training be a part of MMS's training requirements?

Comment—Most commenters supported the concept of on-the-job training. However, many of those same commenters who favored on-the-job training were opposed to MMS establishing the training requirements. They felt that the extent of training provided should be left to the operators. These same commenters felt that the entire mix of training delivery modes should be left to lessees and operators. One commenter felt that on-the-job training should comprise about 80 percent of the training program. Another commenter suggested that a performance-based test be developed to qualify persons who are excellent field hands but are poor performers on written examinations.

Response—It is recognized that on-the-job training is an important method of instruction which plays a large part in any training, especially the training for many of the jobs offshore. On-the-job training in the form of hands-on drills is an integral part of the training requirements contained in governing regulations. Specific details of requirements for the training of individual employees on the job will continue to be the responsibility of individual employers. Lessees are required to utilize personnel who are trained and competent, and an operator-initiated program of on-the-job training can be a major part of the program. The commenter who suggested a performance-based test for those who are poor performers on written examinations should note that the requirements of proposed Subpart O provide for schools to state the methods to be used to instruct and test individuals who are believed to be qualified but nonresponsive to conventional education and testing techniques.

Question 7—Should MMS training requirements call for periodic retraining or refresher training?

Comment—The general consensus among commenters was that refresher training was good. Some commenters qualified their support with the following comments: (1) MMS should require refresher training for personnel who do a task periodically; (2) two refresher courses per year are needed; one is not adequate; (3) the annual well-control refresher course would be more effective if given every 2 years with a longer minimum class time; (4) refresher courses are desirable for well-control training but not safety-device training; and (5) in the area of drilling well control, refresher training should allow for upgrading of an employee's certification level in lieu of employers being required to attend a basic course. No comments were received which opposed the concept of required periodic refresher training.

Response—Refresher training is needed and should be required for personnel involved in drilling, completion, workover, and production operations. The proposed rule would continue the current requirement for a minimum of 8 hours of refresher training each year for drilling well-control courses. A minimum of 8 hours refresher training is the timeframe required to permit an adequate review of this basic material together with updates on new equipment and Government regulations. A minimum of 8 hours is also established for well-completion and workover, well-servicing, and production refresher courses. In the case of production safety systems, the refresher training will be required after 2 years rather than after 1 year. This is believed to be appropriate since the activities are more routine than well-control activities. Well-control activities are only conducted in drills or when unexpected circumstances arise. Operation, maintenance, and repair of production safety equipment are normal operations which a worker would perform frequently between courses.

Refresher training, as envisioned by the current and proposed rule, is not the proper vehicle for upgrading an employee's certification level.

Question 8—What is the appropriate training role for lessees, for oil and gas industry trade associations, and for others?

Comment—This question generated numerous responses; a few were in the form of suggestions regarding existing regulatory requirements. Commenters pointed out that lessees are responsible for training their employees through designing and conducting training classes to meet MMS requirements as well as hiring contractors whose employees are trained and qualified. The commenters recommended that the role of trade associations should be the writing of standards for an acceptable minimum level of training. The role of all others was depicted as providing training support in response to a free-market system.

Response—The roles played by both lessees and industry trade associations in training of employees for work in the OCS are basically those described above. It is expected that lessees, trade associations, and other interested parties will continue to have important roles and responsibilities for improving the training level of offshore employees and reducing accident and pollution rates in the OCS.

Question 9—Have the current MMS training requirements provided satisfactory results?

Comment—Responses to this question were generally positive; however, several commenters felt that the program could be improved. One commenter felt that the current program provides minimum satisfactory results, and any relaxation in requirements would be detrimental. Another felt that the basic requirements were adequate but that clarification of rules and better program administration would lead to improved training. Others felt that the program has been inefficient in the area of drilling well control and that more flexibility is needed in "curriculum adaptability to individual requirements" since the lessee or operator "is in the best position to determine the degree of training required."

Response—These comments have been considered as part of the evaluation of the training programs required under MMS regulations and the continuing effort to improve those programs. The proposed rule suggests a number of changes in current training programs in an effort to improve the effectiveness and flexibility of those programs. An objective of the proposed rule is improved efficiency of MMS training programs while striving to attain the overall goal of properly trained and qualified OCS workers.

Question 10—Should MMS adopt a training program different from its current program? If so, what should it be, how would it be an improvement over the current program, and what are the cost implications of any recommended changes?

Comment—One group of commenters suggested substantial modifications to the current program. These changes included: (1) the addition of hydrogen sulfide (H_2S) and workover certification to the current well-control curriculum, (2) the addition of antipollution safety-device training at certified well-control schools, (3) change the required attendance at basic BOP school to every 2 years with two refreshers in the intervening year, and (4) develop a training and certification course for instructors. Other commenters either felt that the status quo was acceptable or that MMS's well-control training program requirements should be reduced. Specifically, it was suggested that MMS model its well-control training program after its antipollution safety-device training program. It was further

suggested that senior personnel be exempted from attendance at the basic course if they satisfy an oral or written examination.

Response—The H_2S safety-training program is required at the rig site when operations are conducted in areas where there are zones known to contain H_2S or zones where its presence is possible. Much of the training needed to respond to a release of H_2S is site specific. Thus, it is better handled on the drilling rig. There are no plans to increase the frequency of required, successful completion of basic well-control training from at least once every 4 years to once every 2 years or to develop a training course for instructors. Instructor qualifications are reviewed as part of the review of a school's request for certification. The proposed rule would expand existing training requirements to require minimum levels of training in well control for lessee and contract personnel whose work relate to well-completion and workover operations. Additional oversight of safety-device training programs would also be initiated with this rulemaking. While currently certified well-control schools may offer any of the aforementioned types of training, they must obtain separate certification for each program. Compliance with the well-control training requirements developed in MMSS–OCS–T 1 is important to the continued safety of operations in the OCS. The proposed rule would require similar training for lessee and contractor employees working in well-completion, well-workover, and production operations.

Question 11—What are practical alternatives to the present MMS program for school certification, periodic recertification, and onsite evaluations that would maintain the standards of training?

Comment—Commenters suggested several alternatives. One suggested that MMS conduct both simulator and written testing. Another felt that MMS evaluators stress the results of a school's instructional program rather than precise details and paperwork. Another commenter requested that schools not be required to resubmit evidence of their entire program when applying for recertification but only be required to submit any changes in the program. A group of commenters felt that employers should be responsible for furnishing trained and qualified personnel, and MMS should gauge their performance against an industry standard by auditing documentation of training and observing field demonstrations of proficiency (such as emergency drills).

Response—There are no plans for MMS to initiate either simulator or written tests. The present program of school certification and audits to determine compliance with the approved plan will be continued. The proposed rule continues to require schools applying for recertification to submit only proposed changes from the currently approved program. There are no plans to adopt the suggestion that MMS gauge employee performance against an industry standard by auditing documentation of training and observing field demonstrations of proficiency.

Question 12—Might such alternatives include an approach in which MMS would require access to appropriate records at the field site, make periodic onsite evaluations of training facilities to determine compliance, and take such corrective actions as warranted?

Comment—Most respondents felt that periodic onsite evaluations and record checks were already being done and that such audits were an excellent means of ensuring the quality of training. Several commenters felt that MMS's primary evaluation of training quality should be based upon individual company statistics regarding accidents, spills, blowouts, etc. Another commenter felt that schools should be monetarily penalized for not adhering to the regulations, and the penalties should be listed in advance.

Response—There are no plans to verify training quality on a company-by-company basis. The examination of accident and other statistics relating to that company's operations in training would only become apparent as a result of a pollution incident or an accident. (See response to Question 1.) The MMS has found it to be more effective to work with the certified training facilities to correct areas of noncompliance, while striving to achieve the overall objective of highly-trained personnel working in the OCS.

The following discussions pertain to the questions on the current MMSS–OCS–T 1.

Question 1—How can the present program be improved, administrative procedures simplified, and costs reduced?

Comment—Three commenters felt that the well-control training program should be converted to the same type of program established for safety devices in OCS Order No. 5. They felt that this change would significantly reduce costs for both Government and industry. Other commenters provided detailed suggestions for reducing paperwork. Among these were suggestions to eliminate preenrollment forms which are never seen by MMS except during audits; to allow schools to change forms without MMS approval; to clearly define the acceptable minimum lengths of courses; to have only three classifications (Rotary Helper/Derrickman, Driller, and Drilling Supervisor); to devise a standard wallet card that would be considered adequate documentation in lieu of photocopies of certificates; and to allow a roster of crew training to suffice as rig-site documentation of training rather than have the contractor maintain a file drawer of certificate copies. Other commenters offered suggestions such as placing a limit on the number of schools per State (to reduce paperwork) and having MMS conduct a statistical review of the program to define problem areas.

Response—The many helpful comments received on this question are appreciated. As was discussed under Question 1 of the general questions on training, the importance of well-control training as well as the infrequent application of many well-control actions justify a structured program for well control. The present program is structured so that the public is assured that critical personnel in the OCS have received a minimum level of training that will aid in avoiding the loss of well control. Under this proposed rule, the number of job classifications for training purposes is reduced from five to two (floorhand and drilling supervisor). This reduction in job classifications for certification purposes should significantly reduce time and paperwork as well as making preenrollment documentation less burdensome. Under this rule, appropriate documentation would be furnished to the trainee upon successful completion of a course. Only six items of information are required on the certificate (trainee's name, trainee's social security number or identification number issued by MMS, name of training organization, course name and location, date of successful completion, and trainee's job classification). This record is then required to be maintained at the site of employment. Schools will continue to be evaluated on an individual basis during the certification process. Minimum acceptable lengths of time for courses have been identified. The suggestion to limit the number of schools per State was not adopted. Training programs will continue to be approved if they meet the prescribed qualification standards. The number of approved training courses will be determined by the number of training

organizations that obtain certification of qualified training programs.

Question 2—Is the curriculum too broad or too detailed?

Comment—Three commenters simply replied "too detailed," with one noting that broader classifications would be effective and permit site-specific details. Several respondents stated that the curriculum was not flexible enough. More flexibility would allow instructors greater freedom to cover specific facets of well control with differing emphasis based on the candidates present classification, experience level, and work situation. Another commented that the curriculum should be expanded to include instructor—level certification. A final commenter suggested specifically excluding service company representatives from the training requirements of T 1. The commenter maintained that both MMS inspectors and lessees occasionally interpret the regulations to require T 1 training of service company employees.

Response—The proposed rule considers broader job classifications and thus limits the number of training courses to be certified. Nothing in the current or proposed rule reduces the flexibility available to instructors so long as the core curriculum for well control is properly covered. Training organizations are free to use their preferred teaching methods and add to the core curriculum. The credentials of instructors are reviewed during the review for certification of a training program and when a change of instructors is proposed. The proposed regulations are specific in naming those job classifications that require employees who have well-control training. Lessees are free to establish additional requirements for the schools that train their employees.

Question 3—Are there too many or too few job classifications?

Comment—Several commenters felt that there were too few job classifications. One of these felt that additional job classifications should be added for such disciplines as Mud Engineer, Subsea Engineer, Directional Engineer, and Service Company Employees. Another commenter felt that Operator's Representative should be further subdivided to include separate designations for those with no prior field experience, limited field experience, and engineering experience only. Another felt that service company personnel should be a separate category. Two commenters felt that there were too many job classifications and felt that only two levels were needed: (1) Drilling Technician (Rotary Helper/Derrickman), and (2) Drilling Supervisor (Driller, Toolpusher, Operator's Representative). Two commenters felt that only three levels were needed: (1) Rotary Helper/Derrickman, (2) Driller, and (3) Drilling Supervisor.

Other commenters stated that there should be no additional classifications and offered no elaboration.

Response—The experience gained in certifying and monitoring training programs suggests that fewer job classifications could assure properly trained personnel in a more efficient manner. By combining job classifications, paperwork could be reduced for both training institutions and MMS without a reduction in the quality of training. The proposed rule has been modified to reflect this thinking. Two job classifications are identified in the proposed requirements, Floorhand and Drilling Supervisor. Training requirements for service company personnel will be based on the duties performed during drilling operations.

Question 4—Are there sufficient distinctions as to training requirements for each classification? What should the classifications be, and how should the training requirements differ for each classification?

Comment—Several commenters felt that there was both sufficient distinction between classifications and an appropriate number of classifications. They also felt there was no need to change the different training requirements. One commenter felt that the distinctions between Operator's Representative and Toolpusher should be combined into the category of Drilling Supervisor. Three job classifications would then be identified as Rotary Helper/Derrickman, Driller, and Drilling Supervisor. Another felt there should be only two training classifications, Derrickman and Operator's Representative. One commenter suggested that MMS stress the team approach in training requirements and not rigidly segment items that are taught to people who work side by side.

Response—As noted in the response to the previous question, modifications are being proposed in the present classification system with a view to decrease administrative burdens without a reduction in the quality of training. The proposed training requirements do not rigidly segment items that are taught to people who work side by side; rather, the requirements add important subjects to be covered in the training programs for workers with more authority and responsibility. Hands-on (simulator) training is normally taught as a team effort.

Question 5—Would refresher-course training less often than once a year suffice? Should refresher-course training be required more frequently than once a year for certain activities? Should refresher-course training be placed on a graduated scale so that the longer a person is active on the job, the farther apart the required training?

Comment—None of the respondents favored placing the requirements for refresher-course training on a graduated scale. Several commenters felt that a graduated scale would create an unnecessary burden in the administration of the program. On the question of frequency of refresher-course training, the following comments were received:

(1) Several commenters suggested retaining annual refresher courses.

(2) One felt that the frequency should be increased since it was rare to find a student who retained the ability to fill out a kill sheet from year to year.

(3) Three commenters felt that every 2 years was the appropriate interval for requiring completion of a refresher course.

(4) One commenter felt that persons who performed the tasks of their designated job classifications should attend refreshers every 3 years.

(5) One commenter felt that the refresher test should be administered without training to those who felt they could pass.

Response—The proposed rule continues the requirement of an annual refresher course. This requirement has worked well and has not proved unduly burdensome. Refresher training serves to maintain technical competence in well-control procedures and to demonstrate the importance of well control. The recommendation that workers who pass a test should be exempt from refresher training was not adopted.

Question 6—Should "hands-on" training be expanded?

Comment—Several respondents stated that the degree of "hands-on" training should be left to the discretion of the employer. Another stated that the regulations should be flexible enough to allow expansion without mandating it. (These commenters evidently thought the question referred to "on-the-job" training rather than the "hands-on" training on a simulator required by MMSS–OCS–T 1.) One commenter suggested that a minimum of eight simulator sessions be required during the basic course. This would include six gas kicks, one salt water kick, and one gas kick in oil base mud. Another commenter felt that five simulator problems would be enough.

Response—The proposed rule calls for a minimum of two practice problems and one official test problem using "hands-on" well-simulation equipment. Schools may exceed this requirement. In order to increase the involvement of individual students in "hands-on" training, the maximum number of students working with a simulator at one time has been reduced from four to three.

Question 7—Should MMS oversight of certified training institutions be expanded or reduced?

Comment—Several commenters felt that MMS oversight should be reduced and that MMS should observe items such as drills, performance data, and incidents to determine if a lessee's training is adequate. Another respondent stated that certification of training institutions should be the responsibility of lessees. Two commenters felt that the level of oversight should remain the same, but that improvements should be made in the administration of the program. Another felt that the focus should move away from the administration and toward the practical aspects of training. One commenter felt that oversight of training institutions should be greatly expanded.

Response—Audits conducted by MMS have discovered inadequacies in the training given at a number of certified institutions. These shortcomings were corrected soon after their discovery. The present scheduling of MMS-conducted audits is determined by the available resources as well as the results of past audits. Experience suggests a simple records check is sufficient to assure compliance of some training organizations while a few institutions must undergo a total evaluation of their course material and its presentation.

The following discussion pertains to questions on the development of training programs for lessee and contractor personnel whose work involves well-completion and workover operations.

Question 1—How should MMS establish training standards for well-completion and well-workover operations, and what should these standards include?

Comment—Four commenters suggested that MMS adopt the recommended practice document developed by API for Well-Control Training for Well-Completion and Well-Workover Operations, while another suggested MMS use trade association materials. One commenter suggested that MMS hire professional training consultants to review present training programs and establish guidelines on the basis of that review. One commenter suggested that additional curriculum on well-completion and well-workover operations be added to the drilling schools. They stated that the training is similar enough that extending the drilling school to cover the additional curriculum would be enough to certify personnel in well-completion and well-workover training. One commenter recommended that MMS solicit standards and comments from industry groups and individual operators.

Response—The proposed rule includes training requirements for lessee and contractor personnel who work in well-completion and well-workover operations. The API RP for well-control training was reviewed, and certain elements of the RP have been included in these proposed training requirements. Under the proposed rule, different criteria are applied to training for personnel who work in well-completion and well-workover operations than the criteria applied to training for personnel who work in drilling operations. The required training proposed for personnel who work in well-completion and well-workover operations would be applicable to floorhands, well-completion and workover supervisors, and some well-servicing workers (including, as appropriate, contractor employees).

Question 2—What are appropriate job classifications for such standards?

Comment—Two commenters suggested that the job classifications should be identical to the training standards established for employees working in drilling operations. One commenter suggested additional classifications such as mud engineers, directional drilling engineers, workover or completion service hands, and production personnel involved in well-workover or completion operations. Four commenters suggested MMS use the job classifications identified in the API recommended practice document on Well-Control Training for Well-Completion and Well-Workover Operations. One commenter said that job classifications should depend upon the operation being conducted. Another commenter suggested two job classifications, tehnician and supervisor.

Response—Under the proposed rule, lessee and contractor employees conducting well-completion or well-workover operations after the time the production casing is set, cemented, and pressure tested must have had training specific to the operations to be conducted and the equipment to be used. The job classifications contained in the proposed rule include floorhands, well-completion and workover supervisors, and well-servicing workers. This approach is expected to assure that all personnel involved in well-completion and well-workover operations receive training appropriate to the work they perform.

Question 3—What should be the relationship between drilling, well-completion and well-workover standards, and training?

Comment—Two commenters recommended that the two standards be combined into one extended training program since they are so similar. Four commenters suggested that the completion of either a drilling or a well-completion and well-workover course should qualify personnel to work in all of these operations. One commenter stated that it would depend upon whether the same rig/crew is used for both operations. One commenter suggested that the training must be different because there are fundamental differences in common wellbore conditions.

Response—The proposed rule provides that personnel conducting well-completion and well-workover operations are to be trained under a training program that is separate from the training programs developed for offshore personnel who work in drilling operations. It is recognized that some drilling crews also perform well-completion operations. To avoid placing unnecessary training requirements on these personnel, well-completion topics have been added to the curriculum required for well-control training programs for personnel employed in drilling operations. These personnel would then be exempted from taking a separate well-control training course for well-completion operations.

Under the proposed rule, the well-completion and workover well-control training programs are to be established for floorhands, well-completion and workover supervisors, and supervisors of snubbing, coil-tubing, and small-tubing operations. Lessee and contractor personnel who perform both drilling and well-workover operations are to receive well-control training for drilling and for well-completion and workover operations. To minimize the number of courses which will be required for these workers, schools will be able to combine the courses for drilling operations and for well-completion and workover operations into a single course.

Question 4—Should refresher courses be required and, if so, how often?

Comment—Four commenters recommended that refresher course

requirements follow the recommendations found in the API recommended practice document on Well-Control Training for Well-Completion and Well-Workover Operations. One commenter suggested that statistics be gathered and used to determine the appropriate frequency for refresher courses. Another suggested that the frequency of refresher training be based upon tests administered by MMS or a certified school. One commenter suggested that the basic course be taken every other year, with two refresher courses to be taken during the intervening year. One commenter suggested that a basic course be required every 4 years, with a refresher course every other year.

Response—The proposed rule requires that basic training courses be successfully completed every 4 years and that refresher courses be successfully completed annually for well-completion and workover training. The frequency of training prescribed in the API recommended practice document is considered inadequate, while the suggestion that a basic course should be passed every other year with two refresher courses to be taken in the intervening year is considered unnecessarily burdensome. The idea of basing the frequency of course attendance upon test results was viewed unduly burdensome to administer and monitor.

Question 5—What should be the implementation schedule for such a training requirement?

Comment—One commenter suggested that 6 months would be appropriate if it is done as an extension of the drilling training standards. Another commenter recommended 1 year from approval of the requirements; five commenters thought that 2 years were more appropriate. One commenter suggested that statistics be compiled to determine an implementation date.

Response—The proposed rule includes a 24-month implementation period (i.e., within 24 months after the effective date of a final rule, lessee and contractor personnel whose work involves well-completion and well-workover operations must successfully complete a basic course). Two years should be sufficient time for training schools to be certified and for lessees to provide their employees with the opportunity to receive the required training.

The following discussion pertains to the questions on development of a training program for personnel engaged in production operations.

Question 1—To strengthen the standard, should job classifications be added and, if so, which ones?

Comment—Three commenters stated that a strengthened training standard for production personnel is not necessary. In addition, they stated that it is not possible to address all titles used by operators for their production operations and maintenance personnel. Furthermore, they stated that MMS should pursue, with the API, any needed clarification of skills required for well-servicing personnel as opposed to lessee-operator personnel. One commenter suggested adding the following job classifications: Production design engineer, production foreman, operator, industrial repair specialist, and production electrician. Another commenter stated that the existing provisions in OCS Order No. 5, paragraph 5.7, are very good. Commenters stated that they do not agree that uncertainty and inefficiencies exist because of the straightforward way the MMS requirement is detailed.

Response—Under the proposed rule, lessee and contractor personnel who work with production safety systems and who must receive the required training include the person on the platform with overall responsibility for production operations and personnel engaged in the installation, testing, maintenance, repair, or operation of surface or subsurface safety devices. The training standard is designed to cover one broad job classification. Under this approach, all lessee and contractor personnel who work with production safety systems would be required to successfully complete a minimum training program. This training program is separate from the ones developed for lessee and contractor personnel who conduct well-completion and workover operations, including those who operate wireline, snubbing, or coil-tubing units.

Question 2—What training should be specified for each job classification?

Comment—Three operators stated that a strengthened training standard for production personnel is not necessary. One commenter stated that general safety-device training should suffice for all job classifications. Another commenter suggested that production safety-device training should be required for all production related job classifications. That commenter suggested having an additional requirement for the hands-on verification of skill of personnel involved in safety equipment maintenance and repair operations of lease-specific equipment.

Response—Under the proposed rule, jobs for personnel who maintain and repair production safety equipment are combined under one classification. The training standard established for personnel in that job classification includes certain aspects of API RP T–2.

Topics that production safety system personnel should be familiar with, such as wireline, snubbing, and coil-tubing operations and their relationship to production operations, have also been included in the required subject matter for any approved training program. Although hands-on verification of skill on lease-specific equipment is recognized as being beneficial, it has not been included in the proposed rule as a regulatory requirement.

Question 3—Should refresher courses be required, and if so, how often and what should be their content?

Comment—Three commenters stated that the standard for refresher courses does not need to be strengthened. One commenter stated that refresher training provides little benefit beyond on-the-job training. On the other hand, one commenter suggested that a refresher course be required for production foremen, operators, instrumentation specialists, and production electricians. That commenter stated that refresher training should include changes in the orders as well as the basic provisions of API RP T–2 and should be required every 2 years.

Response—Under the proposed rule, a refresher course requirement has been adopted for the production safety system training standard. The concept of refresher training parallels the requirements currently in place for drilling well-control training, which has been a successful program, although the proposed rule would require refresher training every 2 years for production personnel as opposed to annually for drilling personnel and well-completion and workover personnel.

Question 4—How should MMS properly recognize individuals trained under currently approved programs?

Comment—One commenter stated that it is not necessary for MMS to recognize individual's training. Two commenters suggested that MMS should recognize those persons having certificates or cards from accepted or approved API RP T–2 training schools as being qualified for a 2-year period from the date of their certification.

Response—Under the proposed rule, successful completion of basic and refresher training courses is required in order for trained personnel to maintain their qualifications under current operation requirements. The basic course is to be successfully completed every 4 years, while a refresher course must be successfully completed each year. Persons who have certificates or cards showing successful completion of accepted API RP T–2 training schools would be recognized as qualified pending the development and certification of training courses under the proposed rule.

Question 5—What is an appropriate timetable for development and implementation of such a training requirement?

Comment—Three commenters stated that the current requirements are adequate. One commenter suggested that any new training requirement should be given a 1-year implementation period from the time of approval.

Response—The proposed rule includes a 24-month implementation period. Two years should provide sufficient time for training courses to be developed and certified and for the lessee and contractor personnel to successfully complete the required training.

The following comments pertain to the provisions of § 250.68 of the proposed rule published March 18, 1986. The provisions contained in previously proposed § 250.68 have been moved to proposed Subpart O, Training, §§ 250.210 through 250.214.

Where a specific section or paragraph within proposed Subpart O is applicable, the section or paragraph is cited as an aid to the reader.

Comment—One commenter felt that training should reflect the performance standard approach more than is evident in proposed § 250.68. That commenter indicated that some mandatory training requirements, including frequencies for refresher training, should be kept in effect.

Response—The proposed rule would provide relatively uniform training requirements for lessee and contractor employees who carry out OCS activities. Well control during well-completion and well-workover operations and production safety systems are sufficiently important to the maintenance of safety operations and protection of the environment in the OCS to justify the establishment of minimum-training requirements.

Comment—A commenter felt that the training requirements of the present standard (MMSS–OCS–T 1) are valuable and thorough and that few changes in the training standard are necessary.

Response—Proposed changes to the present standard are aimed at reducing the administrative burden while maintaining the high quality of well-control training. Similar standards are being proposed for well-completion, well-workover, and production operations.

Comment—A commenter felt that MMS regulations should define who on a rig is in charge of well-control procedures in order to avoid questions of responsibility and related problems concerning contracts, liabilities, responsibilities, and legalities.

Response—The lessee is ultimately responsible for ensuring compliance with regulations, and that the proper steps are taken to ensure the protection of life and resources in the OCS. The relationship between lessees and their contractors is best left to the respective companies involved while recognizing that contractors act as agents for lessees. No change from the current regulations is proposed.

Comment—A commenter suggested that the current training requirements are adequate for the vast majority of personnel who require training, but that advanced training in well control might be appropriate for students who have successfully completed one basic and three refresher courses.

Response—The objective of the MMS training requirements is to ensure that individuals who work in OCS operations receive well-control training appropriate to their responsibilities and duties. Training organizations may offer, and personnel who work in the OCS may take, advanced training. A provision to this effect has been included in the proposed rule.

Comment—Several commenters suggested that MMS delete § 250.68, Training in well control, in its entirety and replace it with a training program based on API RP T–3. The commenters suggested that new MMS programs be tailored after MMS's safety device program of proposed § 250.125, Safety device training.

Response—Avoidance of blowouts through blowout prevention and well control is one of the primary safety and pollution prevention defenses available to prudent operators in the OCS. Current rules reflect the minimum needs for training in blowout prevention and well control during drilling operations. Proposed changes are intended to extend the coverage of the existing program to also cover well-completion and well-workover operations, where a major portion of OCS accidents occur. To this end, the proposed rule includes training requirements for lessee and contractor personnel whose work involves well completion, well workover, production safety systems, maintenance, and repair.

Comment—A commenter suggested that wording changes be made to paragraph (a) of § 250.68, Training in well control, to require that well-control training for well-completion and well-workover operations be provided to lessee and contractor personnel through the lessee's (contractor's) on-the-job training program or a certified training program established by a training organization. The choice of training programs would rest with the lessee or contractor who pays for the training.

Response—Some lessees and contractors have developed and maintained certified "in-house" programs while others provide employee training through public or private institutions that have developed and maintained certified training programs. On-the-job training suggests an unacceptable approach to well-control training. Some formal classroom training in well control is required to assure that offshore employees receive a minimum level of well-control training. (This training requirement is addressed at § 250.210(b), Personnel training requirements.)

Comment—One commenter felt that the job and position classifications listed in § 250.68(b), Personnel classifications, should be expanded to include mud engineer, subsea engineer, directional engineer, service company personnel, and production hands. Another commenter felt that the five proposed personnel classifications should be combined into two classifications, drilling technicians and drilling supervisors.

Response—Consolidation of the five proposed personnel classifications under two classifications as is now being proposed should result in a reduced amount of paperwork without sacrificing the quality of training to be provided offshore workers. Fewer job and position classifications will reduce the distinctions that the training facility, the lessee, and MMS have to make in the records maintained on trained employees. The proposed rule (§ 250.210(b)(1)) identifies two distinct job classifications for well-control training during drilling operations (floorhand and drilling supervisor). (Personnel classifications for the purpose of established well-control training courses are now listed at § 250.210(b).)

Comment—One comment on proposed § 250.68 (c) and (p), suggested that all student records should be maintained by the employer (lessee or contractor) (inferring that schools should have no responsibility for maintaining student records) at the rig site, office, and on the person (wallet card) of the employer. A commenter felt

that lessees should only be required to retain records relative to their own employees, and contractor employee records should be maintained by the contractor. Another commenter felt that employee records should be kept at a central office to reduce paperwork rather than having records at the lessee's field office nearest the OCS facility.

Response—Proposed § 250.68 (c) and (p) have been merged in this proposed rule (§ 250.210(c)). The proposed requirement that records of training be kept "at lessee's field office nearest the OCS facility for a period of 5 years" has been deleted from this proposed rule. The proposed rule would require that proof of training, such as a certificate issued by the organization providing well-control training, be maintained at the job site. Each training organization is also required to maintain records for each of the students who enters its training program(s).

Comment—One commenter felt that proposed § 250.68 (d) and (o) are contradictory or that paragraph (d) was misleading by making it look as if rotary helpers and derrickmen required no classroom training. Another respondent felt that wording should be added to paragraph (d) to require hands-on training of drillers, toolpushers, and operator's representatives to be performed at their job sites or at another site at the discretion of the lessee.

Response—Under the proposed rule, hands-on training requirements for rotary helpers and derrickmen previously found in § 250.68(d) have been merged into the general requirements for the training of floorhands (§ 250.210(b)).

Well-control courses for drilling supervisors are required to include "hands-on" training on simulators or a training well. Use of a simulator or training well in conjunction with classroom training is the only practical way this skill can be developed.

Comment—A commenter suggested that § 250.68 (e) and (f) require that rotary helpers and derrickmen be required to receive well-control training on an annual basis and that training organizations that provide well-control training for the rotary helper and derrickman job classification be evaluated in the same manner as training organizations that provide well-control training for employees with a higher level of responsibility.

Response—There is a great difference between the duties and responsibilities of a rotary helper or derrickman and those of a driller or toolpusher, especially during a crisis such as blowout or pressure control situation. The present training requirements for rotary helpers and derrickmen provide a fundamental explanation of well control and are designed to help these workers to better understand their role in the carrying out of well-control activities. The skills most needed by these workers in an emergency are practiced during the mandatory weekly blowout preventer drills. Thus, more formal training on an annual or other basis is not considered necessary to assure that floorhands are properly trained. (These requirements are now addressed in § 250.212(a).)

Comment—(Proposed § 250.68 (e)(1), (f)(2), (g)(2), (h)(2), and (i)(2) require that students receive general instructions on MMS regulations that pertain to the work in regard to well-control activities.) A commenter suggested that MMS highlight the appropriate sections of the Orders and provide them to training organizations that teach certified well-control programs as a guide base for instruction.

Response—The suggestion was not adopted. The MMS works with training organizations to assure proper knowledge and understanding of its requirements. The procedures MMS uses in this regard are not the subject of the proposed rule.

Comment—A commenter suggested that "equivalent experience" needs to be defined with a set of guidelines. Under proposed § 250.68 (f)(1), (g)(1), (h)(1), (i)(1), (j)(3), (j)(4), and (j)(5), a student would have to complete training for a job classification at a lower level or possess "equivalent experience" before being admitted to a training program.

Response—The phrase "equivalent experience" and references to prerequisite training and experience have been deleted from this proposed rule.

Comment—A commenter has proposed that, as a minimum, both the Driller's Method and the Wait-and-Weight Method be taught and understood during a basic well-control course. During refresher courses, the commenter feels that only one method should be taught. Proposed § 250.68(g)(8) requires that students receive instruction on one of the constant bottomhole pressure methods of well control such as the Driller's Method, Wait-and-Weight Method, Concurrent Method, or other applicable constant bottomhole pressure methods.

Response—The proposed rule proposes no change to the requirement. Satisfactory results have been realized by teaching a minimum of one constant bottomhole pressure method of well control. (This requirement is now addressed in § 250.212(c)(7).)

Comment—A commenter recommended that kill team members not be allowed to rotate during a simulator session but should be required to rotate positions between sessions. Under proposed § 250.68(n)(1)(xii), a candidate is to change positions as part of a team during the hands-on qualification test and simulator training.

Response—Under this proposed rule, at least two practice problems and one official test problem must be successfully completed as part of the hands-on training activities. Although the proposed rule is silent on the manning of positions during the hands-on test problems, sufficient familiarization of the candidates under instruction must be accomplished to insure that all candidates fully understand the duties and responsibilities of the team members at the various positions. To more properly assure in-depth student exposure to the "hands-on" experience, the maximum number of students per simulator exercise has been reduced from four to three. (This requirement is now addressed in § 250.212(f)(2).)

Comment—A commenter suggested that proposed § 250.68(g)(10) include a requirement that students at the driller level receive instructions in gas expansion equations.

Response—Current rules require instructions in gas bubble expansion calculations as part of the well-control training for both toolpushers and operator's representatives. Under the proposed broadened job classification of the drilling supervisors, drillers will be required to receive this training. (This requirement is now located at § 250.212(c)(16).)

Comment—A commenter felt that candidates should be required to document how they become familiar with the basic training of a rotary helper, a derrickman, a driller, and a toolpusher and the duties of each during well-control situations. Requiring this documentation would prevent persons unfamiliar with drilling rigs from acquiring the highest level of certification. Under proposed § 250.68(i)(1), candidates for operator's representative certification are required to be familiar with those basic duties and training.

Response—This suggestion was not adopted. The merger of five training categories into two has eliminated the need for the documentation of prerequisite experience and training.

Comment—One commenter felt that employees should have 3 months of actual work experience before they are sent to a training program so they will be more familiar when they begin training. Proposed § 250.68(j)(1)(i) requires that rotary helper candidates receive training for their level within the first 6 months of initial employment.

Response—No change in the proposed rule is requested. Lessees are expected to schedule training for their employees in a way that provides the most efficient use of their training dollar. Since this training is primarily given to entry level personnel, the training should familiarize students with equipment as part of the curriculum. (This requirement is now located in § 250.212(b)(1).)

Comment—One commenter suggested limiting students to 12 per lecture and 2 students per hands-on lab exercise. Proposed § 250.68 (n)(1)(iii) and (n)(2)(v) would limit class size to 20 students per lecture and 4 students per hands-on lab exercise.

Response—This proposed rule would limit to three the number of students per hands-on lab exercise. No change is proposed from the current MMS requirement of no more than 20 students per lecture. This student/teacher ratio should afford students an opportunity to obtain the appropriate level of training and understanding of well-control problems and their solutions. (These requirements are now located in § 250.211(a)(7) and § 250.212(f)(2).)

Comment—A commenter felt that only schools which are equipped with simulators or test wells with a subsea panel should receive certification to teach subsea candidates.

The commenter also listed hands-on problems that a simulator should reproduce for students such as gas kicks in water base mud, water kicks in water base mud, gas kicks in oil base mud, and water kicks in oil base mud. The commenter believed that simulators should also be able to simulate a secondary kick or lost circulation on the basis of how a student handles a primary kick.

Response—The proposed rule recognizes that additional information about the training facility's simulator or test well is needed in the original submittal of a training organization requesting certification of its training program. The text of the provision has been modified to require a more complete description, including whether a simulator is equipped with a subsea panel and the various types of kicks that can be simulated. The subjects to be included in a required curriculum have been expanded to require that all students be trained in both subsea and surface BOP well-control techniques.

(This requirement is now located in § 250.212(f).)

Comment—A commenter has suggested requirements in addition to the minimum requirements for testing methods found in proposed § 250.68 (n)(1)(vii), (n)(2)(vi), and (n)(7). These requirements are as follows:

(1) Simulator tests be conducted with only the student and the instructor present at the simulator. The commenter contends that it is difficult to evaluate several students on one simulator.

(2) The MMS should publish guidelines on the number of questions to be asked in the examination.

(3) The MMS should require annual redrafting and submittal of tests as part of a program to assure that tests are nonrepetitive and remain confidential.

Response—No changes have been proposed in the previously proposed requirements.

(1) During actual well-control situations, personnel work as a team to kill the threatened blowout; thus, a team test on a simulator has proven to be satisfactory. Sufficient familiarization is required during instruction to insure that candidates will understand the manning requirements of the various positions.

(2) The content, length, and quality of tests are best dealt with during the school evaluation and certification process.

(3) Current requirements state that the training institution must submit the methods they will use to assure that the test will be nonrepetitive and remain confidential. (These requirements are now in § 250.212(f).)

Comment—A commenter suggested that the certificate issued upon the successful completion of a course should also state whether the course passed was a basic or refresher course.

Response—This recommendation has been adopted in the proposed rule. (These requirements are now located in § 250.211 (b) and (c).)

Comment—A commenter felt that requirements for instructions relating to subsea BOP stacks should be slated in proposed § 250.68(n)(1)(x) for subsea certification. The commenter made the following detailed, suggested requirements:

(1) Simulator shall have subsea panel;

(2) Diverter procedures when drilling with and without riser;

(3) Choke line friction determinations;

(4) Selecting the proper kill rate;

(5) "U" tube effect as gas hits the choke line;

(6) Effects of bottomhole pressure when the choke line is full of gas;

(7) Removing trapped gas from stack after killing well;

(8) Choke and kill line fluids (i.e., water or drilling mud); and

(9) Riser collapse versus water depth.

Response—This recommendation has been adopted in this proposed rule. These are important points that should be covered in any subsea course. Items (5), (7), and (9) were found to be critical factors in a recent offshore blowout and, along with Item (3), have been added as § 250.212(c)(12). Item (1) has also been addressed in § 250.212(f) (1) and (4). All other items had already been addressed in the text of the proposed rule published in March 1986 and remain in this proposed rule.

Comment—A commenter has suggested that MMS develop a standard prerequisite form to be used by the schools in evaluating a candidate's entrance prerequisites.

Response—The MMS believes that a standardized form is unnecessary. Under the proposed rule, training organizations would not be required to verify that a candidate has prerequisite training or experience to take a course; however, a training organization would have to verify prior training before issuing a certificate for successful completion of a refresher course. This is because the proposed rule does not allow a person not currently trained for a job to become qualified for that job by taking a refresher course.

Comment—A commenter asked why training organizations are required to submit lists of all personnel who successfully complete training and the information listed in proposed § 250.68(n)(1)(xv). The MMS would not release similar data under the Freedom of Information Act.

Response—The information required by proposed § 250.68(n)(1)(xv) is utilized to verify training records kept at offshore work sites. (This requirement is currently in § 250.211 (b)(8) and (c)(8).)

Comment—A commenter recommended that training organizations certified to teach a basic well-control course be required to provide students with a training manual for their use and retention. Proposed § 250.68(n)(2)(ii) requires that training organizations giving refresher courses provide students with a training manual for their use and retention. The paragraph further states, in parenthesis, that this is not required for schools certified for a basic well-control course. A commenter felt that the waiver for schools certified for a basic course should be deleted.

Response—The proposed rule now contains clarifying language. The intent of the provision is to assure that schools that are certified to teach a basic course

do not have to submit a copy of their previously approved training manual for MMS review as part of an application for certification to teach a refresher course. (This requirement is now located in § 250.211(c).)

Comment—One commenter states that proper documentation of a student's qualifications and training should be maintained in the student's folder. Proposed § 250.68 (j)(3), (j)(4), and (j)(5) set forth the qualification requirements that must be met by drillers, toolpushers, and operator's representatives before they may participate in drilling operations in the OCS. Personnel must be trained in accordance with § 250.68 and must have successfully completed written and/or oral tests and hands-on demonstrations to verify their thorough understanding of the material.

Response—The revised proposed training regulations require training institutions to maintain records on each student and to provide each student with documentation of his/her successful completion of a training course for retention at the work site. (These requirements are now located at §§ 250.211(b)(8) and 250.212(e)(1) and (3).)

Comment—A commenter has suggested that the basic well control training be repeated every 2 years and that workers be required to take a refresher course twice during the intervening time period.

Response—This suggestion was not adopted. No compelling evidence has been provided that would mandate such an increase in the level and frequency of required training. (These requirements are now located in § 250.212(e).)

Comment—A commenter objected to the wording of § 250.68(j)(5)(ii) which states that a candidate for operator's representative qualification level must demonstrate the ability to "organize and direct a well-control operation." It was the commenter's view that this skill should not be required for certification.

Response—This recommendation was not adopted. The operator's representative is the lessee's ranking representative on an offshore facility. This person must be able to organize and direct well-control operations. Requirements for the operator's representative level have been included in the new drilling supervisor level. (These requirements are now located at § 250.212(e).)

Comment—A commenter felt that § 250.68(k)(4) required the closing in of the well during on-bottom drilling and stated that this action would endanger the wellbore and drill string as well as ensure that drills could not be run often enough to improve crew proficiency.

Response—Under the proposed rule, well-control drills are required weekly and are to be scheduled so that they will occur during a range of different operations. The provisions of proposed § 250.68(k)(4) outlined specific training objectives for well-control drills, and the actions listed are only to be taken "as appropriate" if the drill is conducted while drilling on-bottom. When scheduling BOP drills, well safety is always the primary concern, and the regulations emphasize that well-control drills should be carried out during activities selected to minimize danger to the operations. (This requirement is now located in Subpart D, Drilling.)

Comment—One commenter felt that proposed § 250.68(1) compels companies to send employees to higher rated training courses than warranted by their current job status. Proposed § 250.68(1) would require employees to obtain certification for a position if they are to act as a relief for that position without direct supervision by an employee qualified under the training requirements for higher job classification.

Response—No change has been made to specifically address this concern. The proposed rule simply requires that there be an appropriately trained and certified person on duty at all lines. The MMS has reduced the number of training categories from five to two (floorhand and drilling supervisor) to ensure that the correct minimum level of training can be provided to lessee and contractor personnel working in the OCS. (This requirement is now located in § 250.210(d).)

Comment—A commenter has suggested that any candidate who misses over 1 hour of class should be required to repeat the class.

Response—Under the proposed rule, candidates would be required to make up any missed portions of a class before credit is awarded. This wording should be sufficiently stringent while allowing some degree of flexibility. (This requirement is now in § 250.211(a)(6).)

Comment—One commenter listed a number of actions relative to recertification and onsite evaluation of training programs that the commenter wishes MMS to take. Proposed § 250.68(m)(9) and (m)(10) state the requirements for school recertification and announce the onsite evaluations of schools which will be conducted by MMS personnel. The commenter believed that MMS should notify the school 180 days before the 4th anniversary date of certification to remind personnel that recertification requests are due to MMS at least 90 days prior to the 4th anniversary; MMS onsite evaluators should be identified, in writing, and carry an evaluation checklist; schools should have time to reply to an evaluator's questions in writing; schools should have the right of legal representation during audits; evaluators should have both oil field and teaching experience; and evaluators should request specific information and not be allowed complete access to files.

Response—This recommendation was not adopted. The proposed rule intentionally limits specific instructions concerning MMS practices and procedures. Training organizations are expected to be aware of the limitations placed upon the certification of each of their certified training programs. The MMS auditors use the regulations or standards governing well-control training as a checklist when evaluating schools. Auditors discuss the evaluation with training school representatives, and schools are notified, in writing, of any deficiencies and given an appropriate amount of time to respond and/or take corrective action. All auditors have attended well-control schools and are well versed in applicable regulations. (These requirements are currently located in § 250.211(a).)

Comment—A commenter felt that modular-type courses should be allowed by MMS, and if MMS wants to state minimum time limits for instruction, these limits should be stated in proposed § 250.68(n)(1)(i). Proposed § 250.68(n)(1)(i) provides that a curriculum outline be submitted with a training organization's application showing the subject matter to be taught each day and the number of hours devoted to each subject.

Response—Nothing in the current or proposed regulations prohibits the use of modular-type courses in approved training programs. The proposed rule includes a 32-hour minimum time requirement for instruction in well control during drilling operations. (This requirement is now located in § 250.211(a).)

Comment—A commenter has suggested that a set of minimum requirements be developed for instructors. Implementation of this suggestion would include requiring instructors to take the basic course every year and to pass MMS developed tests before being recertified.

Response—Presently, complete qualifications of all instructors must be submitted for review during the evaluation and certification of a training organization's proposed training program. This information is used in combination with other information submitted with the application to assess the capability of a training organization and its instructors to provide the required training. Competition between training organizations for a share of lessees and contractors training dollars will also help to ensure the proper maintenance of quality instruction. It is reasonable to expect that lessees and contractors will enroll employees in training programs that provide the best training for the employee for the least money. (These requirements are now located at § 250.211(c) and (d).)

Summary of Proposed Rule

Proposed Subpart O, Training, contains requirements for training personnel who perform or supervise drilling, well-completion, well-workover, or production operations. The following discussion summarizes the proposed requirements.

Personnel in the position of rotary helper or derrickman would be classified as drilling floorhands. Content for training courses for drilling floorhands is included in the proposed rule. These courses would not be required to be MMS certified, and refresher courses would not be required. A drilling floorhand rating would be maintained by participating in drills as required by Subpart D, Drilling.

Drillers, toolpushers, and company representatives conducting drilling operations would be classified as drilling supervisors. Content for training courses for drilling supervisors is included in the proposed rule. Basic courses and refresher courses for drilling supervisors, and the schools teaching these courses, would be MMS certified. Personnel would be required to complete a basic course once every 4 years and a refresher course in intervening years.

Well-completion and well-workover personnel performing jobs equivalent to the drilling positions of rotary helper and derrickman would be classified as a well-completion and well-workover floorhand. Training would be required for such personnel performing operations without the tree in place. Content for training courses for well-completion and well-workover floorhands would not be MMS certified, and refresher courses would not be required. A well-completion and well-workover floorhand rating would be maintained by participating in drills as required by Subpart E, Well-Completion Operations, and Subpart F, Well-Workover Operations.

Well-completion and well-workover personnel performing in jobs equivalent to the drilling positions of driller, toolpusher, and operator's representative would be classified as well-completion and well-workover supervisor. Content for training courses for well-completion and well-workover supervisors is included in the proposed rule. Basic courses and refresher courses for well completion and well-workover supervisors, and the schools teaching the courses, would be MMS certified. Personnel would be required to complete a basic course once every 4 years and a refresher course in intervening years.

At least one person in each snubbing, coil-tubing, or small-tubing operations crew would be required to take basic and refresher courses. The content of these courses is included in the proposed rule. Basic and refresher courses and the schools teaching those courses would be MMS certified. Personnel would be required to complete a basic course once every 4 years and a refresher course in each intervening year.

Personnel responsible for the installation, testing, operation, repair, or maintenance of a production safety system and the person on the platform with overall responsibility for production operations would be required to take basic and refresher courses. The content of these courses is included in the proposed rule. The basic and refresher courses and the schools teaching those courses would be MMS certified. Personnel would be required to complete a basic course once every 4 years and a refresher course every two years.

Tables 1, 2, and 3 compare existing training requirements with the training requirements in the proposed rule. Table 1 deals with drilling operations and compares the existing training requirements with the proposed training requirements for rotary helpers and derrickmen. Table 2 also deals with drilling operations and compares existing training requirements to the proposed requirements for drillers, toolpushers, and company representatives. Table 3 deals with production operations and compares the existing training requirements with the proposed training requirements for production safety system workers and platform operators. Existing rules do not include specific requirements for training of personnel engaged in completion/workover operations with the tree removed or personnel engaged in well-servicing operations; therefore, a table is not included to deal with a comparison of training requirements for these operations.

Tables 1, 2, and 3 are presented as aids to the reader and are intended only as a summary. Interested parties should read the text of the proposed rule to determine the actual proposed requirements.

TABLE 1.—DRILLING OPERATIONS TRAINING FOR FLOORHANDS

[Rotary Helpers and Derrickmen]

	OCS Orders/T1 & current regulation	Proposed rules
Categories of personnel.	Rotary Helper ..... Derrickman.....	Floorhand.
MMS approval of program.	Submission to MMS.	No submission to MMS.
	Approval required.	No approval necessary.
Minimum length of courses.	Not specified	
Maintenance of qualifications.	Not specified Weekly drills	Weekly drills.

TABLE 2.—DRILLING OPERATIONS TRAINING FOR DRILLING SUPERVISORS

[Drillers, Toolpushers, and Operator's Representatives]

	OCS Orders/T1 & current regulation	Proposed rules
Categories of personnel.	Driller ..... Toolpusher Operator's Rep ...	Drilling supervisor.
MMS Approval of program.	Submission to MMS. MMS audit of school. Approval required.	Submission to MMS. MMS audit of school. Approval required.
Minimum length of courses.	Not specified	Basic course 32 hrs. Refresher course—8 hrs.
Maintenance of qualifications.	Basic course every 4 years Refresher course annually.	Basic course every 4 years. Refresher course annually.

TABLE 3.—PRODUCTION SAFETY SYSTEMS

	Current regulations	Proposed rules
Categories of personnel.	Production safety system workers. Platform operator.	Production safety system workers. Platform operator.
MMS Approval of program.	No approval process.	Submission to MMS. MMS audit of school. Approval required.
Minimum length of course.	Not specified	Basic course—32 hrs. Refresher course—8 hrs.

BEST COPY AVAILABLE

TABLE 3.—PRODUCTION SAFETY SYSTEMS—Continued

	Current regulations	Proposed rules
Maintenance of qualifications.	Training course once every 4 years.	Basic course once every 4 years. Refresher course once every 2 years.

Comments are invited concerning all aspects of the proposed rule governing training of personnel in the OCS. In addition, interested parties are invited to respond to the following questions:

(1) Separate courses are proposed for drilling operations and for well-completion and workover operations with the tree removed. Should these two areas be taught in separate courses or in a single combined course of longer duration than each separate course but not as long as the total of each course taught separately? Another option would be to allow the training schools the option of teaching the courses separately or in a combined course. The proposed rule allows the combination of any courses. The specified requirements for a standard course would also apply to a combined course, and the approval of the course would be handled on a case-by-case basis.

(2) In the proposed rule, the required courses for floorhands for drilling operations and for well-completion and workover operations with the tree removed do not require approval by MMS. Should the final rule include provisions requiring MMS approval for these courses for floorhands, or are the requirements in the proposed rule sufficient?

(3) In the proposed rule, floorhands for drilling operations and for well-completion and workover operations could maintain their qualifications by participating in weekly drills. Should floorhands be required to repeat training courses periodically (e.g., every 4 years)?

(4) The proposed rule does not include specific prerequisite requirements for a trainee to be eligible to take a course. Should prerequisites be included in the final rule, or should a potential trainee be able to attend any course the trainee wishes?

(5) Are the minimum course lengths in the proposed rule appropriate for the course subject matter? The proposed rule does not specify minimum course lengths for courses for supervisors of well-servicing operations (snubbing, coil-tubing, and small-tubing operations). The MMS will consider including minimum course lengths for well servicing in the final rule. What should the minimum course length be (how many hours) for a basic or refresher course for well-servicing operations?

(6) Should all well-servicing schools be required to teach all three well-servicing areas (snubbing, coil-tubing, and small-tubing operations), or should a training facility be allowed to have a course certified for one, two, or all three of the areas and have trainees become qualified in only the areas covered in the course? The proposed rule does not include specific training for supervisors of wireline operations. Should the final rule include requirements for training of supervisors of wireline operations?

(7) Is a separate course appropriate for well-servicing operations, or should well servicing be integrated into other training and a provision be added to require that an individual trained for production safety systems be present during well-servicing operations with the tree in place and that an individual trained in well-completion and workover well control be present during well-servicing operations with the tree removed?

(8) To measure the effectiveness of training programs, MMS may wish to randomly provide and/or administer tests other than those provided for in the training program. The MMS is considering including such testing authority in the final rule. Interested parties are invited to comment on the use of MMS developed and/or administered tests and to address the question of how MMS can best monitor the effectiveness of training programs.

The Department of the Interior (DOI) has determined that this document does not constitute a major rule under Executive Order 12291; and, therefore, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

The DOI has also determined that this document will not have a significant effect on a substantial number of small entities because, in general, the entities that engage in activities offshore are not considered small due to the technical complexities and financial resources necessary to conduct such activities.

Paperwork Reduction

The information collection requirements contained in proposed Subpart O, which are in addition to currently approved information collection, have been submitted to the Office of Management and Budget (OMB) for approval under 44 U.S.C. 3504(h). The collection of the additional information will not be required until it has been approved by OMB.

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer, Minerals Management Service, Mail Stop 632, 381 Elden Street, Herndon, Virginia 22070; and the Office of Information and Regulatory Affairs, Paperwork Reduction Project, Office of Management and Budget, Washington, DC 20503.

The DOI certifies that the rule does not represent a government action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment has not been prepared pursuant to Executive Order 12630, Government Action and Interference With Constitutionally Protected Property Rights.

Authors

The principal authors of this proposed rule are Lawrence H. Ake, John V. Mirabella, Charles J. Schoennagel, and Maurice L. Stewart.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Date: February 7, 1989.

Robert E. Kallman,

Director, Minerals Management Service.

For the reasons set forth in the preamble, Part 250 of Title 30 of the Code of Federal Regulations is proposed to be amended as follows:

PART 250—[AMENDED]

1. The authority citation for Part 250 continues to read as follows:

Authority: Sec. 204, Pub. L. 95-372, 92 Stat. 629 (43 U.S.C. 1334).

2. It is proposed to revise Subpart O of Part 250 to read as follows:

Subpart O—Training

Sec.
250.210 General.
250.211 Approval of training program.
250.212 Drilling well-control training.
250.213 Well-completion and workover well control.
250.214 Production safety system training.

Subpart O—Training

§ 250.210 General.

(a) *Training performance standard.* Lessee and contractor employees engaged in drilling, well-completion, well-workover, or production operations in the Outer Continental Shelf (OCS) shall be trained in the proper operation of equipment, methods of operation, and techniques to avoid hazards to people and property and to prevent pollution of the environment.

(b) *Personnel training requirements.* The training required for individual employees of lessees and contractors who work in the OCS shall be based upon the job function(s) the employee performs.

(1) Individuals engaged in oil, gas, or sulphur drilling operations shall be trained in well control and blowout prevention on the basis of two basic job classifications as follows:

(i) Drilling floorhands (includes the conventional drilling rig positions of rotary helper and derrickman or their equivalent) shall be trained in well control in accordance with the provisions of paragraphs (a) and (b) of § 250.212, Drilling well-control training, of this part, and

(ii) Drilling supervisors (includes the conventional drilling rig positions of driller, toolpusher, and operator's representative or their equivalent) shall be trained in well control in accordance with the provisions of paragraphs (c) through (f) of § 250.212, Drilling well-control training, of this part.

(2) Individuals engaged in oil or gas well-completion or workover operations after the time the production casing is set, cemented, and pressure tested shall be trained in blowout prevention and well control on the basis of the job classifications in (i) and (ii) of this paragraph (b)(2). Individuals engaged in well-completion operations prior to the initial installation of the tree may be trained in accordance with paragraph (b)(1) of this section in lieu of the well-completion and workover well-control training required by this paragraph (b)(2).

(i) Well-completion and workover floorhands (includes floorhands and employees in an equivalent job classification as well as the conventional drilling rig positions of rotary helper and derrickman or their equivalent) performing operations without the tree in place shall be trained in well control in accordance with the provisions of paragraphs (a) and (b) of § 250.213, Well-completion and workover well control, of this part.

(ii) Well-completion and workover supervisors (includes well-completion and workover supervisors and employees in an equivalent job classification as well as the conventional drilling rig positions of driller, toolpusher, and operator's representative or their equivalent) performing operations without the tree in place shall be trained in well control in accordance with the provisions of paragraphs (c) through (f) of § 250.213, Well-completion and workover well control, of this part.

(iii) At least one member of each well-servicing crew shall be trained in well control in accordance with the provisions of paragraphs (g) through (i) of § 250.213, Well-completion and workover well control, of this part, and shall be present at all times that snubbing, coil-tubing, or small-tubing operations are conducted on the OCS. For the purpose of this subpart, well servicing consists of snubbing, coil-tubing, and small-tubing operations.

(3) Personnel engaged in oil or gas production operations and classified as production safety system personnel (includes personnel engaged in the installation, repair, testing, maintenance, or operation of surface or subsurface safety devices and the individual on the platform with overall responsibility for production operations) shall be trained in accordance with the provisions of § 250.214, Production safety system training, of this part.

(c) *Training records.* A training organization that provides training for lessee and contractor employees identified in paragraph (b) of this section shall maintain a record of the training provided each trainee. The training organization shall provide each trainee who successfully completes a training course the documentation prescribed in this subpart. A copy of that documentation shall be maintained at the job site. A training organization shall not provide documentation of successful completion of a refresher course, unless the training organization determines the date of the trainee's most recent basic course and most recent refresher course to verify that the trainee is eligible to extend his/her qualifications through completion of a refresher course.

(d) *Relief assignments.* Any individual who temporarily works in place of another individual who has a job classification covered in paragraph (b) of this section shall have successfully completed the training requirements of that job classification, unless the temporary service is performed under the direct supervision of an individual onsite who has successfully completed the required training for that job classification.

(e) *Changes in certification.* A change in certification for a different job classification can only be accomplished through the successful completion of an approved basic course in well control designed to qualify the individual in the new job classification. An individual who has successfully completed a training program for a given job classification cannot change his/her certificate of training (e.g., from well-completion/workover supervisor to drilling supervisor or from surface to subsea) by successfully completing a refresher course.

(f) *Frequency of training.* (1) A basic or advanced course in well control or production safety systems must be successfully completed not later than 60 days after the 4th anniversary of the individual's last successfully completed basic or advanced course.

(2) Individuals are required to successfully complete an approved refresher course in well-control training not later than 60 days after the anniversary date for the individual's last successful completion of a basic course in well control, advanced course in well control, or refresher course in well control.

(3) Individuals are required to successfully complete an approved refresher course in production safety systems not later than 60 days after the 2nd anniversary of the individual's last successfully completed basic course in production safety systems, advanced course in production safety systems, or refresher course in production safety systems.

(4) A worker who does not complete a refresher course during the specified period in paragraphs (f)(2) and (f)(3) of this section shall repeat a basic course or an advanced course to recertify.

(g) *Other training requirements.* Well-control training requirements for individuals who work in OCS drilling, completion, and workover operations and production safety system training for individuals who work with production safety systems are detailed in this subpart. Additional training requirements are specified in other subparts and include the following:

(1) Pollution control—Subpart C, § 250.43 of this part,
(2) Crane operation—Subpart D, § 250.51(g) of this part,
(3) Welding and burning—Subpart D, § 250.52(b) of this part, and
(4) Hydrogen sulfide training—Subpart D, § 250.67(h)(2) of this part.

(h) *Departures.* The Deputy Associate Director for Offshore Operations may approve departures from these requirements when it is determined that such departure will not result in a reduction of the qualifications of personnel and that the departure is necessary due to unavoidable circumstances which make compliance with the requirements infeasible or impractical.

§ 250.211 Approval of training program.

(a) *Application for approval.* Training programs and implementation plans for both basic and refresher courses in well control and production safety systems shall be submitted to the Deputy Associate Director for Offshore Operations with a request for approval and certification. Training programs submitted by training organizations for approval and certification shall comply with the following:

(1) Two copies of a comprehensive detailed presentation of the proposed training program and implementation plan shall be submitted in looseleaf binder format.

(2) All proposed training programs and plans, together with related correspondence, shall be mailed to the Deputy Associate Director for Offshore Operations; Minerals Management Service, Mail Stop 647; 381 Elden Street; Herndon, Virginia 22070.

(3) The proposed training program and plan shall include the following:

(i) A training manual that is representative of the subject matter to be addressed during the course as it will be taught by the training organization.

(ii) An implementation plan furnishing the information described in this paragraph and either paragraph (c), (d), or (e) of this section.

(iii) A cross-reference relating elements described in the training manual to the requirements of this subpart.

(4) (i) A basic course or an advanced course in drilling well control, completion and workover well control with the tree removed, or production safety systems is required to include a minimum of 32 hours of instruction on subject matter covered in the approved course curriculum.

(ii) A basic or an advanced course in well servicing is required to include at least 24 hours of instruction on subject matter covered in the approved course curriculum.

(5) A refresher course in drilling well control, completion or workover well control with the tree removed, well servicing, well control, or production safety systems is required to include a minimum of 8 hours of instruction on subject matter covered in the approved refresher course curriculum.

(6) When two or more certified courses required under this subpart (e.g., drilling well control and completion/workover well control) are taught as a single course, the course length in the plan will be evaluated and approved on a case-by-case basis when MMS determines that all required material is adequately covered in the plan. Basic, advanced, or refresher courses may be combined in this manner.

(7) Course participants who are absent from any part of a course shall make up the missed portion before a written or simulator test is administered and before a certificate of successful completion is awarded.

(8) Classes shall contain no more than 20 candidates per lecture. A record of each candidate's attendance, including makeup actions where a part of a course is missed, shall be maintained by the instructor.

(9) Training organizations shall furnish MMS onsite evaluators with a copy of the training program and implementation plan approved by the Deputy Associate Director for Offshore Operations for their use during an onsite evaluation.

(10) A schedule of the courses that will be offered by a training organization shall be submitted to MMS after a training program is approved. A new course schedule shall be submitted at least annually thereafter. The schedule shall include the name of the course, class dates, type of course, and location where the course will be taught. The MMS shall be given advance notice of any changes to the schedule.

(11) Training organizations shall retain all required records for a period of 5 years starting with the date a training program and plan are approved. (At the end of the fifth year, a school may destroy the records of the first year, and at the end of the sixth year, a school may destroy the records of the second year, and so forth.)

(12) Training programs shall be approved for a maximum of 4 years.

(13) For basic courses, training organizations shall provide all candidates with a copy of the training manual for use and future reference by the candidates. For refresher courses and for advanced courses, training organizations shall provide each candidate with handouts necessary to update the manuals the candidate has as a result of previous training courses.

(14) A notification letter shall be sent to the Deputy Associate Director for Offshore Operations within 30 days of course completion informing MMS of each candidate who successfully completed the approved course. This letter shall contain the following information for each candidate:

(i) Name of training organization,
(ii) Candidate's full name,
(iii) Name of course (e.g., Well-completion and Workover Well Control),
(iv) Course type (i.e., basic, advanced, or refresher training),
(v) Options (e.g., surface or subsea qualification; snubbing, coil tubing, or small tubing),
(vi) Date candidate successfully completed course,
(vii) Name of instructor(s) teaching each element of the course,
(viii) Either a candidate's social security number or an MMS issued identification number,
(ix) Candidate's employer,
(x) Actual job title of candidate,
(xi) Job classification for which certification is awarded,
(xii) Test score for each candidate awarded a certificate,
(xiii) Training organization name and date of last basic training course or advanced course for the same job category (i.e., drilling, completion and workover, well servicing, or production safety systems) attended by candidate, and
(xiv) Training organization name and date of last refresher course taken by candidate.

(b)(1) Courses approved under MMSS–OCS–T 1, Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations, prior to the effective date of these regulations are deemed approved as drilling well-control training under this subpart until the expiration of the existing approval. However, individuals completing courses approved under MMSS–OCS–T 1 will only become certified for the applicable job classifications for which the course was approved. For example, an individual completing a driller's course approved under MMSS–OCS–T 1 would not be qualified as toolpusher or operator's representative without first taking the appropriate course approved under MMSS–OCS–T 1 or taking the drilling supervisor's course approved under this subpart.

(2) Applications for recertification shall be submitted at least 90 days prior to the 4-year anniversary date of the program approval and shall state the changes, additions, or deletions, if any, to the previously approved training program course material, curriculum, and implementation plan.

(c) *Basic course.* Training organizations applying for approval and certification for a basic course shall submit a proposed course training program and implementation plan which addresses each of the following:

(1) A curriculum outline describing subject matter content in relation to the requirements of these regulations. The outline submitted shall be similar to the format presented below:

Job Classification
First Day—(Number of Instructional Hours)
Subject X—5 hours
Detail A
Detail B
Detail C
Subject Y—3 hours
Detail D
Subject Z—2 hours
Detail E
Detail F
Second Day—(etc.)

(2) The names and qualifying credentials of instructors including education and experience (both work experience and teaching experience).

(3) The mailing and street address of the facility where training records will be maintained and the street address and directions to training facilities.

(4) Material presentation method (lecture, video, filmstrip, etc.) indicating the amount and approximate percentage of overall instructional time that each method of presentation will use as shown in the following example:

(i) Percentage of time by presentation method:
Lecture—70 percent
Video tape—10 percent
Filmstrip—10 percent
Simulator—10 percent

(ii) Amount of time by method of presentation:
Subject X—4-hour lecture plus 1-hour video tape
Subject Y—2-hour lecture plus 1-hour filmstrip

(5) A narrative description of the testing procedures (including a copy of a sample written test(s) to be given to candidates in each job classification). Testing procedures shall meet the following criteria:

(i) Take-home tests shall not be permitted.

(ii) A candidate must correctly answer at least 70 percent of all test questions to receive a passing grade.

(iii) Tests shall be nonrepetitive and confidential. All test results shall be retained in the student's file.

(iv) A retest may be given to a candidate if the retest is accomplished within 48 hours of the initial test. Questions or problems used to retest a candidate shall be different but of comparable difficulty to questions and problems used in the original test. If a candidate fails to answer correctly at least 70 percent of all questions and problems on a retest, the candidate must repeat and successfully complete the entire basic course before he/she receives a certificate of successful completion.

(6) A copy of proposed handouts, materials, or manuals to be provided and retained by the candidates for their use and future reference. These materials in combination shall form a student's complete training manual.

(7) A copy of the proposed certificate of successful completion designed to include the following:

(i) Candidate's full name,
(ii) Either a candidate's social security number or an MMS issued identification number,
(iii) Name of the training organization,
(iv) Course name (e.g., Basic Course in Drilling Well Control),
(v) Date of successful completion,
(vi) Job classification for which certificate is awarded (e.g., drilling supervisor), and
(vii) For refresher courses, the date of most recent successful completion of basic course or advanced for which the refresher course is given.

(8) The applicant shall also state the special methods that will be used to instruct and test those individual candidates who are believed to be qualified but who respond poorly to conventional education and testing techniques. The special methods may include, but need not be limited to, oral tests and/or tutorial assistance.

(d) *Advanced.* Training organizations applying for approval and certification for an advanced course shall submit a proposed course program and implementation plan which includes the information identified in paragraph (c) of this section for a basic course and any additional material proposed for inclusion in the course. The additional material may include new or advanced concepts and techniques, case studies, or other material. Testing requirements for an advanced course are the same as for a basic course.

(e) *Refresher course.* Training organizations applying for approval and certification for a refresher course shall submit a proposed training program and implementation plan which addresses each of the following:

(1) A curriculum outline describing subject matter content in relation to the requirements of these regulations.

(2) The name and qualifying credentials of instructors including education and experience (both work experience and teaching experience).

(3) The mailing and street address of the facility where training records will be maintained and the street address and directions to training facilities.

(4) Material presentation method (lecture, video, filmstrip, etc.) indicating the amount of time that will be used for each method of presentation.

(5) A copy of the proposed handouts, materials, or manuals to be provided and retained by the candidates for their use and future reference. These materials in combination shall form the complete refresher training manual. Submission of the refresher training manual is not required for training organizations that are already approved and certified to teach a basic course, provided the refresher manual includes the same material approved for the training manual for the basic course.

(6) A copy of proposed certificate of successful completion including the following:

(i) Candidate's full name,
(ii) Either a candidate's social security number or an MMS issued identification number,
(iii) Name of training organization,
(iv) Course name (e.g., Refresher Course in Drilling Well Control),
(v) Option (e.g., surface or subsea qualification; snubbing, coil tubing or small tubing),
(vi) Date of successful completion, and
(vii) Job classification for which certificate is awarded (e.g., drilling supervisor).

(f) Training organizations are subject to announced or unannounced audits.

§ 250.212 Drilling well-control training.

(a) *Floorhand training.* Floorhands engaged in drilling operations in the OCS shall be trained in blowout prevention and well control in accordance with the following criteria:

(1) A floorhand shall receive general instructions on blowout preventer (BOP) equipment and procedures consistent with the type of BOP system and procedures utilized on the drilling rig upon which the floorhand is employed. Instructions to floorhands shall include the purpose, operation, and general care for the following:

(i) Annular BOP with and without diverter system,

(ii) Diverter system,
(iii) Ram-type BOP,
(iv) Accumulator system,
(v) Drill string inside BOP,
(vi) Drill-string safety valve,
(vii) Kelly cock,
(viii) Choke manifold,
(ix) Degasser, and
(x) Adjustable choke.

(2) In addition to the above, floorhands shall receive instructions on the purpose, operation, and general care of the following auxiliary equipment:
(i) Mud-pit level indicator,
(ii) Mud-volume measuring device,
(iii) Mud-return indicator,
(iv) Gas detector,
(v) Mud-gas separator, and
(vi) Trip tank.

(3) Floorhands shall receive general instructions on blowout prevention and well-control operations and hands-on training at the job site for activities such as operation of the choke manifold, stand pipe, and mud-room valves which require settings for well-control operations different from those used in normal drilling operations.

(4) Floorhands shall receive general instructions on the care, handling, and characteristics of drilling and completion fluids including:
(i) Density,
(ii) Viscosity,
(iii) Fluid loss,
(iv) Salinity,
(v) Gas cutting, and
(vi) Procedure for increasing density.

(5) Floorhands shall receive general instructions on warning signals that indicate that a kick is occurring or about to occur or conditions that can lead to a kick, including the following:
(i) Gain in pit volume and/or increase in fluid return rate,
(ii) Hole not taking proper amount of fluid during trips,
(iii) Well flowing with pump shutdown,
(iv) Sloughing shale and its appearance at surface,
(v) Drilling rate change,
(vi) Change in salinity of drilling fluid,
(vii) Change in flow properties of drilling fluid, and
(viii) Trip, connection, and background gas changes.

(b) *Qualification procedures for floorhand.* No floorhand shall participate in drilling operations in the OCS for more than 6 months unless the following qualifications are met:

(1) A floorhand shall successfully complete training in well control for floorhands which meets the criteria set forth in paragraph (a) of this section. Documented evidence of each successfully completed element of training shall be maintained at the job site.

(2) A floorhand shall successfully complete a qualifying test consisting of participation in a well-control drill at the job site carried out within the time limit prescribed. The time required for a floorhand to carry out his/her responsibility during the well-control drill shall be entered on the driller's log, and appropriate documentation shall be furnished to the employee.

(3) To maintain qualification, a floorhand must participate in well-control drills, as prescribed in Subpart D, § 250.58, of this part. The date and time required to complete each drill shall be recorded on the driller's log.

(4) A training manual containing instructional material on the subjects described in paragraph (a) of this section shall be provided to floorhands for their use and retention for future reference.

(c) *Basic well-control course for drilling supervisors.* Individuals who work as a drilling supervisor in drilling operations in the OCS shall be trained in blowout prevention and well control in accordance with the following:

(1) A candidate shall receive instructions on all applicable Government regulations that pertain to the work with regard to well-control operations and blowout prevention equipment. Copies of the regulations or abstracts of pertinent provisions shall be furnished to the candidate. This material shall be kept current so that it reflects the latest revisions or additions to Government requirements. At a minimum, these instructions shall cover the following subject matter:
(i) Drilling procedures including field drilling rules,
(ii) Wellbore plugging and abandonment, and
(iii) A general discussion of pollution prevention and waste disposal with emphasis on its relation to well control.

(2) Candidates shall receive instructions on the care, handling, and characteristics of drilling and completion fluids including the following:
(i) Density,
(ii) Viscosity,
(iii) Fluid loss,
(iv) Salinity,
(v) Gas cutting, and
(vi) Procedure for increasing density.

(3) Candidates shall receive instructions on the major causes of an uncontrolled flow from a well including the following:
(i) Failure to keep the hole full,
(ii) Swabbing effect of pulling the pipe,
(iii) Loss of circulation,
(iv) Insufficient density of drilling fluid,
(v) Abnormally pressured formations, and
(vi) Effect of too rapid lowering pipe in the hole.

(4) Candidates shall receive instructions on the importance of measuring the volume of fluid required to fill the hole during trips and methods for measuring and recording hole-fill volumes. These instructions shall include the importance of filling the hole as it relates to shallow-gas conditions.

(5) Candidates shall receive instructions on the warning signals that indicate that a kick is occurring or about to occur and on conditions that can lead to a kick including the following:
(i) Gain in pit volume,
(ii) Increase in return fluid-flow rate,
(iii) Hole not taking proper amount of fluid during trip,
(iv) Drilling rate change,
(v) Decrease in circulating pressure or increase in pump strokes,
(vi) Trip, connection, and background gas changes,
(vii) Gas-cut mud,
(viii) Water-cut mud or chloride concentration change,
(ix) Sloughing shale and its appearance at the surface,
(x) Well flowing with pump shutdown, and
(xi) Change in flow properties of drilling fluid.

(6) Candidates shall receive instructions on the correct procedures for shutting in a well for well-control purposes, including use of the BOP system, the choke manifold, and/or the diverter system for well control. These instructions shall include the sequential steps to be followed.

(7) Candidates shall receive instructions on one of the following constant bottomhole pressure methods of blowout prevention and well control, including those conditions which may be unique to either a surface or subsea BOP stack:
(i) Driller's method,
(ii) Wait-and-weight method,
(iii) Concurrent (circulate and weight) method, and
(iv) Other applicable constant bottomhole pressure methods.

(8) Candidates shall participate in blowout-prevention and well-control exercises using a well simulator or a model well in accordance with paragraph (f) of this section.

(9) Candidates shall be instructed on calculations used in blowout prevention and well control and the basis for their use including the following:
(i) Fluid-density increase required to control fluid flow into wellbore,
(ii) Conversion between fluid density and pressure and the importance of that conversion in understanding danger of formation breakdown under the pressure caused by the fluid column particularly when setting casing in shallow formation,
(iii) Calculation of equivalent pressures at the casing seat with emphasis on the importance of casing seat depth,
(iv) Drop in pump pressure as fluid density increases during well-control operations; relationships between pump pressure, pump rate, and fluid density, and
(v) Pressure limitations on casings.

(10) Candidates shall receive instructions on unusual well-control situations which include, when:
(i) Drill pipe is off bottom,
(ii) Drill pipe is out of the hole,
(iii) Lost circulation occurs,
(iv) Drill pipe is plugged,
(v) There is excessive casing pressure, and
(vi) There is a hole in drill pipe.

(11) Candidates shall receive instructions on the following:
(i) Controlling shallow gas kicks,
(ii) Use of diverters, and
(iii) Use of marine risers.

(12) Candidates intending to receive subsea well-control qualification shall receive instructions on the special problems in blowout prevention and well control when drilling with a subsea BOP stack including:
(i) Choke line friction determinations,
(ii) Riser collapse,
(iii) Removal of trapped gas from the BOP stack after controlling a well kick, and
(iv) "U" tube effect as gas hits the choke line.

(13) Candidates shall receive instructions on the installation, operation, maintenance, and testing of BOP and diverter systems.

(14) Candidates shall receive instructions on the purpose, installation, operation, and general maintenance of the following auxiliary equipment:
(i) Fluid-pit level indicator,
(ii) Fluid-volume measuring device,
(iii) Fluid-return indicator,
(iv) Gas detector,
(v) Trip tank,
(vi) Gas separator,
(vii) Degasser, and
(viii) Adjustable choke.

(15) Candidates shall receive instructions on the limitations of the various items of equipment which will be subjected to pressure and/or wear.

(16) Candidates shall receive instructions on the mechanics involved in various well-control situations, including the following subjects:
(i) Gas-bubble migration and expansion,
(ii) Bleeding volume from a shut-in well during gas migration,
(iii) Excessive annular surface pressure,
(iv) Differences between a gas kick and a salt water and/or oil kick,
(v) Procedures and problems involved in stripping operations with drill pipe,
(vi) Special well-control techniques (such as, but not limited to, barite plugs and cement plugs),
(vii) Procedures and problems involved when experiencing lost circulation in well-control operations,
(viii) Procedures and problems involved when experiencing a kick while drilling in a hydrogen sulfide (H_2S) environment, and
(ix) Procedures and problems involved when experiencing a kick during snubbing, coil-tubing, or small-tubing operations.

(17) Candidates shall receive instructions on organizing and directing a well-killing operation and shall subsequently direct such an operation using a model well or simulation device.

(18) Candidates shall receive instructions on the purpose and usage of BOP closing units including the following:
(i) Charging procedures which include precharge and operating pressure,
(ii) Fluid volumes (usable and required),
(iii) Fluid pumps, and
(iv) Maintenance which includes charging fluid and inspection procedures.

(19) Candidates shall receive stripping and snubbing operations instructions on the use of the entire BOP system for working pipe in or out of a wellbore which is under pressure.

(20) Candidates shall receive instructions for detecting entry into abnormally pressured formations and the accompanying warning signals, including the following:
(i) Penetration rate change,
(ii) Shale-density change,
(iii) Mud-chloride content change,
(iv) Shale-cutting characteristics, and
(v) Trip, connection, and background gas changes.

(21) Candidates shall receive instructions on the various types of completion fluids utilized and potential problems caused by their use in well control, including the following:
(i) Gases,
(ii) Water base system,
(iii) Oil base system, and
(iv) Packer fluids.

(22) Candidates shall receive instructions on well-completion/well-control problems including the following:
(i) Multiple completions,
(ii) Running a drill stem test,
(iii) Perforating, and
(iv) Other completion operations.

(23) The course outline shall indicate which portions of the course will not be taught to students intending to receive only surface well-control qualification.

(d) *Refresher well-control course for drilling supervisors.* Individuals who work as a drilling supervisor in drilling operations in the OCS shall successfully complete a refresher course in well control after successful completion of a basic well-control course for drilling supervisors not later than 60 days after the anniversary date of the individual's last successful completion of a certified course for drilling supervisors (basic course in well control, advanced course in well control, or refresher course in well control). A refresher course in well control for drilling supervisors shall include the following:

(1) Candidates shall receive instructions in the most recent improvements in equipment or methods for well control and any applicable Government regulations that pertain to well-control operations and equipment.

(2) Candidates shall receive instructions on at least one constant bottomhole pressure method of well control.

(3) Candidates shall participate in simulator practice problems in well control, simulating a surface BOP stack or a subsea BOP stack, and at least one simulator well-control test problem. Candidates qualifying for subsea well control shall be assigned a subsea simulator problem.

(e) *Qualification procedures for drilling supervisors.* No individual employed as a drilling supervisor shall engage in operations in the OCS as a drilling supervisor unless the following qualifications are met:

(1) The individual shall have successfully completed the training requirements in § 250.212(c) of this section and pass written and/or oral tests and hands-on demonstrations to verify that the individual has a thorough understanding of the well-control equipment, techniques, and principles outlined in paragraph (c) of this section and is qualified to organize and direct a blowout prevention/well-control procedure during drilling operations. Evidence of the successful completion of training requirements shall be maintained at the job site.

(2) The individual shall maintain the qualification by the following:

(i) Successful completion of an approved basic well-control course for drilling supervisors or an advanced well-control course for drilling supervisors at least once every 4 years; and

(ii) Successful completion of a refresher well-control course for drilling supervisors not later than 60 days after the individual's last successful completion of a certified course for drilling supervisors (basic course in well control, advanced course in well control, or refresher course in well control).

(f) *Submission of well-control training programs for drilling supervisors.* Training programs and implementation plans for well-control training for drilling supervisors shall be submitted to the Deputy Associate Director for Offshore Operations for approval in accordance with § 250.211 of this subpart and the following additional requirements:

(1) The training program and plan shall contain the following specific information on the simulator or test well:

(i) Simulator or test well capability for surface and, if applicable, subsea BOP training,

(ii) Capability to simulate lost circulation and secondary kicks, and

(iii) Types of kicks that can be simulated.

(2) The training program and implementation plan shall include the methods to be used for performing the hands-on qualification tests. Qualification tests shall include at least two practice problems with the candidate's position rotated as part of a team. Teams working on the hands-on qualification tests shall consist of no more than three members.

(3) The training program and implementation plan shall stipulate that each candidate shall satisfactorily and completely perform the hands-on qualification test(s) which consists of a surface BOP stack or a subsea BOP stack simulation. Candidates qualifying for subsea well control shall be considered qualified for either surface or subsea operations.

(4) Any retest of a candidate must be accomplished within 48 hours of the initial test. Both hands-on and written test problems on a retest shall be different from the test problems originally given the candidate. If the candidate fails the retest, the candidate must participate in, and successfully complete, a basic course in well control for drilling supervisors.

§ 250.213 Well-completion and workover well control.

(a) *Floorhand training.* After 2 years following the effective date of this rule, individuals employed as floorhands, or the equivalent, in completion and/or workover operations without the tree in place in the OCS shall be trained in blowout prevention and well control in accordance with the following criteria:

(1) A floorhand, or employees in an equivalent job classification, shall receive general instructions on BOP equipment and procedures consistent with the type of BOP system and procedures utilized on the completion/workover rig (includes drilling rig used for well-completion operations) upon which the floorhand is employed. Instructions to floorhands or employees in an equivalent job classification shall include the purpose, operation, and general care of the following:

(i) Annular BOP,
(ii) Ram-type BOP,
(iii) Accumulator system,
(iv) Work string inside BOP,
(v) Work string safety valve,
(vi) Kelly cock,
(vii) Choke manifold,
(viii) Degasser,
(ix) Adjustable choke, and
(x) Wellhead and tree.

(2) In addition to the above, floorhands or employees in an equivalent job classification shall receive instructions on the purpose, operation, and general care of the following auxiliary equipment if present:

(i) Fluid-pit level indicator,
(ii) Fluid-volume measuring device,
(iii) Fluid-return indicator,
(iv) Gas detector,
(v) Fluid-gas separator, and
(vi) Trip tank.

(3) Floorhands or employees in an equivalent job classification shall receive general instructions on blowout and well control during well completion/workover operations such as operation of the choke manifold, stand pipe, filling the tubing and casing with fluid to control bottomhole pressure and removal of tree and tubing hanger.

(4) Floorhands or employees in an equivalent job classification shall receive general instructions in the care, handling, and characteristics of completion, workover, and packer fluids including:

(i) Functions of a completion/workover fluid,
(A) Well killing,
(B) Cleaning out a well,
(C) Plugging back to complete in a shallower interval, and
(D) Bridging agents.
(ii) Fluid types,
(A) Gases,
(B) Water base systems,
(C) Oil base systems, and
(D) Packer fluids.
(iii) Flow properties with emphasis on the following:
(A) Density (weight) and temperature offset,
(B) Viscosity,
(C) Procedure for fluid density (weight),
(D) Gas cutting,
(E) Fluid loss,
(F) Salinity,
(G) Solids content, and
(H) Caustic effect of brines and safe handling of fluids.

(5) Floorhands or employees in an equivalent job classification shall receive general instructions on warning signals that indicate that a kick is occurring or about to occur or conditions that can lead to a kick, including the following:

(i) Gain in pit volume and/or increase in fluid return rate,
(ii) Hole not taking proper amount of fluid during trips,
(iii) Well flowing with pump shutdown,
(iv) Change in flow properties of completion/workover fluid, and
(v) Trip, connection, and background gas changes.

(b) *Qualification procedures for floorhand.* No floorhand or employee in an equivalent job classification shall participate in well-completion or workover operations without the tree in place in the OCS for more than 6 months unless the following qualifications are met:

(1) A floorhand or an employee in an equivalent job classification shall successfully complete the training in well control which meets the criteria set forth in paragraph (a) of this section. Documented evidence of each successfully completed element of training shall be maintained at the job site.

(2) A floorhand or employee in an equivalent job classification shall successfully complete a qualifying test consisting of participation in a well-control drill at the job site carried out within the time limit prescribed. The time required for a floorhand or employee in an equivalent job classification to carry out his/her responsibility during the well-control drill shall be entered on the driller's log, and appropriate documentation shall be furnished to the successful employee.

(3) To maintain qualification, a floorhand or employee in an equivalent job classification must participate in weekly well-control drills, as prescribed in §§ 250.86 and 250.106 of Subparts E and F, respectively, of this part. The date and time required for the candidate to complete each drill shall be recorded in the operations log.

(4) A training manual containing instructional material on the subjects described in paragraph (a) of this section shall be provided floorhands and employees in an equivalent job classification for their use and retention for future reference.

(c) *Basic completion/workover well-control training course for supervisors.* After 2 years following the effective date of this rule, individuals employed as completion/workover supervisors in well-completion or well-workover operations without the tree in place in the OCS shall be trained in blowout prevention and well control in accordance with the following:

(1) A candidate shall receive instructions on all applicable Government regulations that pertain to the work in regard to completion/workover well-control operations and BOP equipment. Copies of current regulations or abstracts of pertinent provisions shall be furnished to the candidate. This material shall be kept current so that it reflects the latest revisions or additions to Government regulations. At a minimum, these instructions shall cover the following subject matter:

(i) Well-completion/workover requirements contained in Subparts E and F of 30 CFR Part 250.

(ii) Wellbore plugging and abandonment, and

(iii) A general discussion of pollution prevention and waste disposal with emphasis on its relation to well control.

(2) Candidates shall receive instructions on the care, handling, and characteristics of well-completion, workover, and packer fluids, including the following:

(i) Functions of a well-completion or workover fluid:
(A) Well control (killing),
(B) Cleaning out a well,
(C) Plugging back to complete a shallower interval, and
(D) Bridging agents.
(ii) Fluid types:
(A) Gases,
(B) Water-base system,
(C) Oil-base system and
(D) Packer fluids.
(iii) Fluid properties with emphasis on the following:
(A) Density (weight) and temperature offset,
(B) Viscosity,
(C) Procedure for increasing fluid density (weight),
(D) Gas cutting,
(E) Fluid loss,
(F) Salinity,
(G) Solids content,
(H) Gel strength,
(I) Crystallization, and
(J) Caustic effect of brines and safe handling of fluids.

(3) Candidates shall receive instructions on the major causes of an uncontrolled flow from a well, including the following:

(i) Failure to keep the hole full,
(ii) Swabbing effect of pulling the pipe,
(iii) Loss of circulation,
(iv) Insufficient density of completion/workover fluid,
(v) Abnormally pressured formations, and
(vi) Effect of too rapid lowering pipe in the hole.

(4) Candidates shall receive instructions on the importance of measuring the volume of fluid required to fill the hole during trips and methods for measuring and recording hole-fill volumes.

(5) Candidates shall receive instructions on the warning signals that indicate that a kick is occurring or is about to occur and on conditions that can lead to a kick, including the following:

(i) Gain in pit volume,
(ii) Increase in return fluid flow rate,
(iii) Hole not taking proper amount of fluid during trip,
(iv) Decrease in circulating pressure or increase in pump strokes,
(v) Trip, connection, and background gas changes,
(vi) Fluid cutting (weight loss),
(vii) Well flowing with pump shutdown, and
(viii) Change in flow properties of well-completion/workover fluid.

(6) Candidates shall receive instructions on the correct procedures for shutting in a well for well-control purposes, including use of the BOP system and the choke manifold for well control. These instructions shall include the sequential steps to be followed.

(7) Candidates shall receive instructions on one of the following constant bottomhole pressure methods for blowout prevention and well control, including those conditions which may be unique to either a surface or subsea BOP stack.

(i) Driller's method,
(ii) Wait-and-weight method,
(iii) Concurrent (circulate and weight) method, and
(iv) Other applicable constant bottomhole pressure methods.

(8) Candidates shall participate in blowout-prevention and well-control exercises using a well simulator or a model well in accordance with paragraph (f) of this section.

(9) Candidates shall be instructed on calculations used in blowout prevention and well control and the basis for their use, including the following:

(i) Hydrostatic pressure and pressure gradient,
(ii) Fluid-density increase required to control fluid flow,
(iii) Conversion between fluid density and pressure and the importance of that conversion in understanding danger of formation breakdown under the pressure caused by the fluid column,
(iv) Drop in pump pressure as fluid density increases during well-control operations; relationships between pump pressure, pump rate, and fluid density, and
(v) Pressure limitations on casings.

(10) Candidates shall receive instructions on unusual well control situations which shall include, but not be limited to, the following:

(i) Work string is off bottom,
(ii) Work string is out of the hole,
(iii) Lost circulation occurs,
(iv) Work string is plugged,
(v) There is excessive casing pressure,
(vi) There is a hole in work string,
(vii) There are multiple completions in the hole (more than one zone open to well), and
(viii) There is a hole in the casing string.

(11) Candidates intending to receive subsea well-control qualification shall receive instructions on the special problems in blowout prevention and well control when utilizing a subsea BOP stack including:

(i) Use of marine risers,
(ii) Choke line friction determinations,
(iii) Riser collapse,
(iv) Removal of trapped gas from the BOP stack after controlling a well kick, and
(v) "U" tube effect as gas hits the choke line.

(12) Candidates shall receive instructions on the installation, operation, maintenance, and testing of BOP systems.

(13) Candidates shall receive instructions on the purpose, installation, operation, and general maintenance of the following auxiliary equipment:

(i) Fluid-pit level indicator,
(ii) Fluid-volume measuring device,
(iii) Fluid-return indicator,
(iv) Gas detector,
(v) Trip tank,
(vi) Gas separator,
(vii) Degasser, and
(viii) Adjustable choke.

(14) Candidates shall receive instructions on the limitations of the

various items of equipment which will be subjected to pressure and/or wear.

(15) Candidates shall receive instructions on the mechanics involved in various well-control situations including the following subjects:

(i) Gas-bubble migration and expansion,

(ii) Bleeding volume from a shut-in well during gas migration,

(iii) Excessive annular surface pressure,

(iv) Differences between a gas kick and a salt water and/or oil kick,

(v) Procedures and problems involved in stripping and snubbing operations with work string,

(vi) Special well-control techniques such as, but not limited to, barite plugs, cement plugs, bullheading, and lubricate and bleed,

(vii) Procedures and problems involved when experiencing lost circulation in completion and workover operations, and

(viii) Procedures and problems involved when experiencing a kick while conducting completion/workover operations in a H_2S sulfide environment.

(16) Candidates shall receive instructions on organizing and directing a well-killing operation during completion and workover operations and shall subsequently direct such an operation using a model well or simulation device.

(17) Candidates shall receive instructions on the purpose and usage of BOP closing units, including the following:

(i) Charging procedures which include precharge and operating pressure,

(ii) Fluid volumes (usable and required),

(iii) Fluid pumps, and

(iv) Maintenance which includes charging fluid and inspection procedures.

(18) Candidates shall receive instructions on well-control problems during completion and workover operations, including the following:

(i) Killing a flow during a completion or workover operation,

(ii) Simultaneous drilling and completion or workover operations on the same platform,

(iii) Killing a producing well, and

(iv) Removing the tree.

(19) Candidates shall receive instructions in well-control equipment, including the following:

(i) Surface equipment,

(ii) Downhole tools and tubulars, and

(iii) Packers.

(20) Candidates shall receive instructions in, but are not limited to, the following topics:

(i) Reasons for well-completion or workover operations:

(A) Reworking a producing reservoir to control water and/or gas production,

(B) Water coning,

(C) Completing for production from a new reservoir,

(D) Completing a well in more than one reservoir,

(E) Stimulating a completion in a producing reservoir to increase production, and

(F) Repair mechanical failure.

(ii) Killing a producing well:

(A) Bullheading,

(B) Lubricate and bleed,

(C) Coil-tubing unit, and

(D) Snubbing unit.

(iii) Preparing the well for entry:

(A) Use of back pressure valves,

(B) Surface and subsurface safety systems,

(C) Removal of tree and tubing hanger, and

(D) Installation and testing of blowout preventer and wellhead prior to removal of back pressure valves and tubing plugs.

(21) The course outline shall indicate which portions of the course will not be taught to students intending to receive only surface well-control qualification.

(d) *Refresher completion/workover well-control training course for supervisors.* Individuals who are employed as a completion or workover supervisor in OCS completion or workover operations without the tree in place in the OCS shall successfully complete a refresher course in completion and workover well control not later than 60 days after the anniversary of the individual's last successful completion of a certified course in well control for supervisors of completion and/or workover operations without the tree in place (basic course in well control, advanced course in well control, or refresher course in well control). A refresher course in well control for supervisors of completion and/or workover operations without the tree in place shall include the following:

(1) Candidates shall receive instructions in the most recent improvements in equipment or methods for blowout prevention and well control and any applicable Government regulations that pertain to blowout-prevention and well-control operations and equipment.

(2) Candidates shall receive instructions on at least one constant bottomhole pressure method of well control.

(3) Candidates shall participate in at least one simulator practice problem in well control, simulating a surface BOP stack or a subsea BOP stack, and at least one simulator well-control test problem. Candidates attempting to qualify for subsea well control shall be assigned a subsea simulator problem.

(e) *Qualification procedures for completion/workover supervisor.* No individual employed as a completion or workover supervisor shall engage in supervising completion or workover operations without the tree in place in the OCS unless the following qualifications are met:

(1) The individual shall have successfully completed the training requirements in § 250.213(c) and passed written tests and hands-on demonstrations to verify that the individual has a thorough understanding of the well-control equipment, techniques, and principles outlined in paragraph (c) of this section and is qualified to organize and direct a blowout-prevention or well-control procedure during a completion or workover operation. Evidence of the successful completion of these training requirements shall be maintained at the job site.

(2) The individual shall maintain the qualification by the following:

(i) Successful completion of an approved basic completion/workover supervisor well-control course or an advanced completion/workover supervisor well-control course not later than 60 days after the 4th anniversary of the individual's last successful completion of a basic or advanced course in well control for supervisors of well-completion or workover operations with the tree removed.

(ii) Successful completion of a refresher course in completion and workover well-control operations in accordance with paragraph (d) of this section.

(f) *Submission of training programs for completion/workover well-control course.* Training programs and implementation plans for well-control training for supervisors of well-completion and workover operations without the tree in place shall be submitted to the Deputy Associate Director for Offshore Operations for approval in accordance with § 250.211 of this part and the following additional requirements:

(1) The training program and plan shall contain the following specific information on the simulator or test well:

(i) Simulator or test well capability for surface and, if applicable, subsea BOP training,

(ii) Capability to simulate lost circulation and secondary kicks, and

(iii) Types of kicks that can be simulated.

(2) The training program and implementation plan shall include the methods to be used for performing the hands-on qualification tests. Qualification tests shall include at least two practice problems with the candidate's position rotated as part of a team. Teams working on hands-on qualification tests shall consist of no more than three members.

(3) The training program and implementation plan shall stipulate that each candidate shall satisfactorily and completely perform the hands-on test which consists of a surface BOP stack or a subsea BOP stack simulation. Candidates qualifying for subsea well control shall be considered qualified for either surface or subsea operations.

(4) Any retest of a candidate must be accomplished within 48 hours of the initial test. Both hands-on and written test problems on a retest shall be different from the test problems originally given the candidate. If the candidate fails the retest, the candidate must participate in, and successfully complete, a basic course in well control for supervisors of well-completion and workover operations.

(g) *Basic well-control training course for well-servicing operations.* After 2 years following the effective date of this rule, at least one member of a well-servicing crew shall be trained in accordance with the following requirements and shall be present at all times when snubbing, coil-tubing, or small-tubing operations are being conducted. The trained individual need only be trained in the area of the operation which that individual will be conducting (i.e., snubbing, coil tubing, or small tubing).

(1) A candidate shall receive instructions on all applicable Government regulations that pertain to the work with regard to well-completion and workover well-control operations and blowout-prevention equipment. Copies of current regulations or abstracts of pertinent provisions shall be furnished to the candidate. This material shall be kept current so that it reflects the latest revisions or additions to Government requirements. At a minimum, these instructions shall include the following:

(i) Well-completion/workover procedures outlined in Subparts E and F of this part,

(ii) Emergency shutdown systems,

(iii) Production safety systems,

(iv) Well plugging and abandonment, and

(v) Pollution prevention and waste disposal.

(2) Candidates shall receive instructions in the care, handling, and characteristics of well-completion, workover, and packer fluids, including the following:

(i) Functions of a well-completion or workover fluid:

(A) Well control (killing),

(B) Cleaning out a well,

(C) Plugging back to complete a shallower interval, and

(D) Bridging agents.

(ii) Fluid types:

(A) Gases,

(B) Water base system,

(C) Oil base system, and

(D) Packer fluids.

(iii) Fluid properties with emphasis on the following:

(A) Density (weight) and temperature offset,

(B) Viscosity,

(C) Procedure for increasing fluid density (weight),

(D) Gas cutting,

(E) Fluid loss,

(F) Salinity,

(G) Solids content,

(H) Gel strength,

(I) Crystallization, and

(J) Caustic effect of brines and safe handling of fluids.

(3) Candidates shall receive instructions in well-control equipment including the following:

(i) Surface equipment:

(A) Well completion and workover equipment,

(B) BOP equipment, and

(C) Tree.

(ii) Tubulars:

(A) Tubing hanger,

(B) Backpressure valve (threaded/profile),

(C) Landing nipples,

(D) Lock mandrels for corresponding nipples and operational procedures for each,

(E) Gas lift equipment, and

(F) Running and pulling tools operation.

(4) Candidates shall receive instructions in the following topics:

(i) Reasons for well-completion and workover:

(A) Reworking a completion in a producing reservoir to control water and/or gas production,

(B) Completing for production in a new reservoir,

(C) Completing for production in more than one reservoir,

(D) Stimulating a completion in a producing reservoir to increase production, and

(E) Repair mechanical failure.

(ii) Killing a producing well:

(A) Bullheading,

(B) Lubricate and bleed,

(C) Coil-tubing unit, and

(D) Snubbing unit.

(iii) Preparing the well for entry:

(A) Surface and subsurface safety systems,

(B) Removal of tree and tubing hanger, and

(C) Installation and testing of blowout preventer and wellhead prior to removal of back-pressure valves and tubing plugs.

(iv) Procedure and problems involved when experiencing a kick while conducting completion/workover operations in an H_2S environment.

(5) Candidates shall receive instructions on the correct procedures for shutting in a well for well-control purposes, including controlling a well with the BOP system, and surface/subsurface safety system. These instructions shall include the sequential steps to be followed.

(6) Candidates intending to become qualified for snubbing operations shall receive instructions in snubbing units, including the following:

(i) Types:

(A) Rig assist, and

(B) Stand alone.

(ii) Applications:

(A) Running and pulling production or kill strings,

(B) Resetting weight on packers,

(C) Fishing for lost wireline tools or parted kill strings, and

(D) Circulating needed cement or fluid.

(iii) Equipment:

(A) Operating mechanism,

(B) Power supply,

(C) Control assembly and basket,

(D) Slip assembly,

(E) Mast and counterbalance winch, and

(F) Access window,

(iv) BOP equipment:

(A) Tree connection or flange,

(B) Rams,

(C) Spool,

(D) Traveling slips,

(E) Manifolds,

(F) Auxiliary—(FOSV, Inside BOP),

(G) Maintenance, and

(H) Testing.

(7) Candidates intending to become qualified for coil-tubing operations shall receive instructions in coil tubing units, including the following:

(i) Applications:

(A) Initiating flow,

(B) Cleaning out sand in tubing, and

(C) Performing stimulation operations.

(ii) Equipment description:

(A) Coil tubing,

(B) Reel,

(C) Injection head,

(D) Control assembly, and

(E) Injector hoist.
(iii) BOP equipment:
(A) Tree connection or flange,
(B) Rams,
(C) Injector assembly, and
(D) Circulating system.
(8) Candidates intending to become qualified for small-tubing operations shall receive instructions in small-tubing units, including the following:
(i) Applications:
(A) Stimulation operations,
(B) Cleaning out sand and other obstructions in tubing, and
(C) Plugback and squeeze cementing.
(ii) Equipment description:
(A) Derrick and drawworks,
(B) Small tubing,
(C) Pumps, and
(D) Weighted-fluids facilities.
(iii) BOP equipment.
(iv) Weighted fluids:
(A) Rams,
(B) Wellhead connection, and
(C) Check valve.
(9) Candidates shall receive instructions in special tools and systems, including the following:
(i) Automatic shut-down systems:
(A) Control points,
(B) Activator pilots,
(C) Monitor pilots,
(D) Control manifolds, and
(E) Subsurface system.
(ii) Flow string systems:
(A) Tubing,
(B) Mandrels and nipples,
(C) Flow couplings,
(D) Blast joints, and
(E) Sliding sleeves.
(iii) Pump down equipment:
(A) Purpose,
(B) Applications,
(C) Requirements,
(D) Surface circulating systems,
(E) Horizontal lubricators,
(F) Entry loops, and
(G) Tree connection/flange.
(10) Candidates shall receive instructions on the limitations on the various items of equipment which will be subjected to pressure and/or wear.

(h) *Refresher well-control training course for well-servicing operations.* To maintain their qualifications, individuals who are trained in well-servicing operations in the OCS shall successfully complete a refresher course in well control not later than 60 days after the anniversay date of the individual's last successfully completed certified well-servicing course (basic course, advanced course, or refresher course). A refresher course in well control for well-servicing operations shall contain instructions in the technological advances and improvements in equipment or methods for blowout prevention and well control and any new Government requirements applicable to well control during snubbing, coil-tubing, and small-tubing operations in the OCS. The candidate shall also pass a written test.

(i) *Qualification procedures for well servicing.* At least one member of a well-servicing crew shall be trained in accordance with the following requirements and shall be present at all times when snubbing, coil-tubing, or small-tubing operations are being conducted. The trained individual need only be trained in the area of the operation which that individual will be conducting (i.e., snubbing, coil tubing, or small tubing).

(1) The individual shall have successfully completed the applicable training requirements in § 250.213(g) of this section and passed a written test to verify that the individual has a thorough understanding of well-control equipment, techniques, and principles outlined in § 250.213(g) of this section and is qualified to organize and direct blowout-prevention or well-control activities during a snubbing, coil-tubing, or small-tubing operation. Evidence of the successful completion of required training shall be maintained at the job site. Such evidence shall indicate the area(s) for which the employee is trained (i.e., snubbing, coil tubing, and/or small tubing).

(2) The individual shall maintain the qualification by the following:

(i) Successful completion of the basic well control for well-servicing operations course or the advanced well-control course for well servicing at least once every 4 years, and

(ii) Successful completion of a refresher course in well control for well-servicing operations not later than 60 days after the anniversary date of the last successfully completed basic course in well-servicing well control, advanced course in well-servicing well control, or refresher course in well-servicing well control.

(j) *Submission of training program for well servicing.* Training programs and implementation plans for well-control training for well servicing shall be submitted to the Deputy Associate Director for Offshore Operations for approval in accordance with § 250.211 of this part.

§ 250.214 Production safety system training.

(a) *Basic production safety system personnel course.* During the 2-year period following the effective date of these regulations, personnel engaged in production operations shall be in compliance with training regulations in effect prior to the effective date of this rule. For individuals successfully completing a production safety systems course after May 31, 1988, and prior to 2 years after the effective date of these rules, the individual shall be considered to have completed a basic course in accordance with the requirements of this part if the course met the rules in effect at the time the course was taken. After 2 years following the effective date of this rule, each employee who is engaged in the installation, repair, testing, maintenance, or operation of a surface or subsurface safety device and the individual on the platform with overall responsibility for production operations shall be trained in accordance with the following:

(1) Each employee shall be familiar with oil and gas production operations and equipment.

(2) The employee shall receive instructions on all applicable Government regulations that pertain to the work with regard to production operations and surface and subsurface safety devices. Also, copies of current Government regulations or abstracts of pertinent provisions shall be furnished to the employee. These instructions shall include the following:
(i) Production safety devices,
(ii) Subsurface safety devices,
(iii) Design, installation, and operation of surface production safety equipment,
(iv) Additional production system requirements,
(v) Testing of production safety equipment and recording of the test results,
(vi) Quality assurance requirements for safety and pollution prevention equipment,
(vii) Pollution prevention and waste disposal requirements during production operations, and
(viii) General requirements for completion and workover operations (including snubbing, coil-tubing, and small-tubing units).

(3) The employee shall receive instructions on how failures or malfunctions in a system can cause abnormal conditions that must be brought under control by properly functioning safety devices.

(4) Employees shall receive instructions on the basic protection concepts, including the following:
(i) Undesirable events,
(ii) Protective shut-in action, and
(iii) Emergency support system (ESS).

(5) Employees shall receive instructions on the causes of failure in such systems, detection of abnormal conditions, primary protection devices and procedures, secondary protection devices and procedures, and location of safety devices for the control or mitigation of various undesirable events, including the following:
(i) Overpressure,
(ii) Leak,
(iii) Liquid overflow,
(iv) Gas blowby,
(v) Underpressure,
(vi) Excess temperature (fire and exhaust heated components),
(vii) Direct ignition source (fired components), and
(viii) Excess combustible vapors in the firing chamber (fired components).

(6) Each employee shall receive instructions on safety analysis concepts, including the following:
(i) Safety analysis table (SAT),
(ii) Safety analysis checklist (SAC), and
(iii) Safety analysis function evaluation (SAFE) chart.

(7) The employee shall receive instructions on the safety analysis of each basic process component used in a platform production process system including the following:
(i) Wellheads and flow lines,
(ii) Injection lines,
(iii) Headers,
(iv) Pressure vessels,
(v) Atmospheric vessels,
(vi) Fired and exhaust heated components,
(vii) Pumps,
(viii) Compressors,
(ix) Pipelines, and
(x) Heat exchangers (shell-tube).

(8) Employees shall receive hands-on training on safety devices to prepare him/her for installing, operating, repairing, or maintaining such equipment. In this context, operating includes testing, adjusting calibrations, and recording test and calibration results. Installing includes the original installation and replacement of equipment. Maintaining refers to preventive maintenance, routine repair, and replacement of defective or malfunctioning component parts. The major categories of equipment that shall be included in the training program, as a minimum, are the following:
(i) High-low-pressure sensors,
(ii) High-low-level sensors,
(iii) High-low-temperature sensors,
(iv) Combustible gas detectors,
(v) Pressure relief devices,
(vi) Flow line check valves,
(vii) Surface safety valves,
(viii) Shutdown valves,
(ix) Fire (flame, heat, or smoke) detectors,
(x) Auxiliary devices (3-way block and bleed valves, time relays, 3-way snap acting valves, etc.),
(xi) Surface-controlled subsurface safety valves and/or surface-control equipment, and
(xii) Subsurface-controlled subsurface safety valves.

(9) The following is applicable to schools which include subsurface equipment.
(i) Each employee shall receive instructions relating to inspections, testing, and maintenance of surface safety devices.
(ii) The employee shall receive instruction relating to inspection, testing, and maintenance of subsurface safety devices.
(iii) The employees shall receive instructions relating to the inspection, testing, and maintenance of surface-control systems for surface-controlled subsurface safety valves.

(10) The employees shall receive instructions in at least one safety device that illustrates the primary operation principle in each class of safety devices stated in § 250.214(a)(8) (i) through (xii) of this part, including the following:
(i) Basic principle of operation,
(ii) Limitations affecting application,
(iii) Most probable problems causing equipment malfunction or failure and the correction of these problems (e.g., replace bad o-rings, clear blocked orifice, replace broken spring),
(iv) Test for proper set point, operation, etc.,
(v) Adjustment, calibration, or reset where applicable,
(vi) Recording inspection results and malfunctions on appropriate format, and
(vii) Special techniques for installation of safety devices, including safety device orientation, special lubricants, and special installation tools.

(11) The employee shall receive instructions on the basic principle and logic of the emergency support system including the following:
(i) Combustible and toxic gas detection system,
(ii) Liquid containment system,
(iii) Fire loop system,
(iv) Other fire detection devices,
(v) Emergency shutdown system, and
(vi) Subsurface safety valves (SSSV).

(12) Each employee shall receive general instructions in the following well-completion and workover topics:
(i) Reasons for completion or workover,
(ii) Killing a producing well,
(iii) Preparing the well entry:
(A) Use of backpressure valves,
(B) Removal of tree, tubing, tubing hanger, and SSSV, and
(C) Installation and testing of BOP prior to initiating well-completion or workover operations.

(b) *Refresher production safety system personnel training course.* An employee who is engaged in the installation, repair, testing, maintenance, or operation of a surface or subsurface safety device, and the individual on the platform with overall responsibility for production operations shall successfully complete a refresher course in production safety systems approved under the provision of § 250.211 of this part not later than 60 days after the 2nd anniversary of the employee's most recent completion date for a course approved under § 250.211 for production safety systems. The refresher course shall contain, as a minimum, instructions in the most recent improvements in equipment for production safety systems and any applicable Government regulations that pertain to production safety systems. The candidate shall pass a written test.

(c) *Qualification procedures for production safety system personnel.* An employee who is engaged in the installation, repair, testing, maintenance, or operation of surface or subsea safety devices, and the individual on the platform with overall responsibility for production operations shall not engage in such operations in the OCS until he/she meets the following qualifications:

(1) The employee shall have successfully completed the training requirements in § 250.214(a) of this part and pass a written test to verify that the candidate has a thorough understanding of production safety systems outlined in § 250.214(a) of this part and is qualified to install, test, maintain, and operate surface and/or subsurface safety devices. Evidence that the training has been completed shall be maintained at the job site.

(2) The employee shall maintain the qualification by the following:
(i) Successful completion of an approved basic production safety system personnel training course at least once every 4 years, and
(ii) Successful completion of a refresher course in the installation, operation, repair, and maintenance of production safety systems not later than 60 days after the 2-year anniversary date for the individual's last successful completion of a basic course in production safety systems, an advanced course in production safety systems, or a refresher course in production safety systems.

(3) A manufacturer's representative need not be qualified in accordance with the requirements of § 250.214 of this part if the representative is working on equipment supplied by the company,

provided the representative has received training and is qualified by the manufacturer to install, service, or repair the specific safety device or safety system, and if the representative is accompanied by an individual trained under § 250.214 who is capable of evaluating the impact of the work done by the manufacturer's representative on the total system.

(4) On-the-job trainees working with safety devices and who are not trained in accordance with the regulation of this section shall be supervised by an individual who is present at the work site and who is qualified under this section.

[FR Doc. 89-17712 Filed 7-31-89; 8:45 am]
BILLING CODE 4310-MR-M

federal register

Tuesday
August 1, 1989

Part III

The President

Proclamation 6002—National POW/MIA Recognition Day, 1989

Executive Order 12685—Noncompetitive Conversion of Personal Assistants to Employees With Disabilities

Federal Register
Vol. 54, No. 146
Tuesday, August 1, 1989

Presidential Documents

Title 3—

The President

Proclamation 6002 of July 28, 1989

National POW/MIA Recognition Day, 1989

By the President of the United States of America

A Proclamation

Freedom is precious because it has been won for America at a very high price. Much of its cost has been borne by the brave and selfless members of our Armed Forces. Few Americans could more fully appreciate the value of liberty and self-government than those servicemen who were captured and imprisoned while defending those ideals. Many of these Americans were subjected to brutal treatment and torture by their captors in violation of fundamental standards of morality and international codes for the treatment of war prisoners. Many never survived.

The courage, faith, and devotion to duty demonstrated by these servicemen who risked their freedom—indeed, their lives—for our sake has moved the hearts of all Americans. Our Nation will not forget these heroes and the tremendous sacrifices they made for our country, nor will we forget our obligation to their families. All Americans recognize the profound suffering of those who continue to await word of their loved ones' fate.

The U.S. commitment to securing the release of any U.S. servicemen who may still be held against their will, to obtaining the fullest possible accounting for the missing, and to repatriation of all recoverable American remains, is unshakable. Because this Nation recognizes the dignity and worth of every individual and the inestimable value of every human life, we will not allow our POWs and MIAs to become lost to us. We shall continue to seek the truth about their fate and to ensure the peace of certainty for their families. The fullest possible accounting for the missing will continue to be a matter of highest priority.

In March, a POW/MIA Flag was raised in the Capitol Rotunda as a symbol of our Nation's concern for those servicemen who remain missing and unaccounted for, and as an expression of our determination to obtain a full and satisfactory accounting for them. That flag shall remain on display there until the POW/MIA issue is thus resolved.

To reaffirm our promise to keep faith with America's missing servicement and their families, the POW/MIA Flag will be flown over the White House, the Departments of State, Defense, and Veterans Affairs, the Selective Service System headquarters, and the Vietnam Veterans Memorial on September 15, 1989. It will also fly over the Vietnam Veterans Memorial on Memorial Day and Veterans Day.

In recognition of the special debt of gratitude all Americans owe to those who sacrificed their freedom in the service of our country, and as an expression of our support for their families, the Congress, by Senate Joint Resolution 129, has designated September 15, 1989, as "National POW/MIA Recognition Day" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim Friday, September 15, 1989, as National POW/MIA Recognition Day. I call upon all Americans to recognize that day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of July, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-18112
Filed 7-31-89; 10:32 am]
Billing code 3195-01-M

Editorial note: For the President's remarks of July 28 on signing Proclamation 6002, see the *Weekly Compilation of Presidential Documents* (vol. 25, no. 30).

Presidential Documents

Executive Order 12685 of July 28, 1989

Noncompetitive Conversion of Personal Assistants to Employees With Disabilities

By the authority vested in me as President by the Constitution and laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Upon recommendation by the employing agency, and subject to qualifications and other requirements prescribed by the Office of Personnel Management, an employee in a position in the excepted service under 5 C.F.R. 213.3102(11) as a reader, interpreter, or personal assistant for a handicapped employee, whose employment in such position is no longer necessary and who has completed at least 1 year of satisfactory service in such position under a non-temporary appointment, may be converted noncompetitively to a career or career-conditional appointment.

Sec. 2. This order shall be effective upon publication in the Federal Register.

THE WHITE HOUSE,
July 28, 1989.

[FR Doc. 89-18115
Filed 7-31-89; 10:38 am]
Billing code 3195-01-M

Reader Aids

Federal Register
Vol. 54, No. 146
Tuesday, August 1, 1989

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237
Code of Federal Regulations	
Index, finding aids & general information	523-5227
Printing schedules	523-3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230
The United States Government Manual	
General information	523-5230
Other Services	
Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

31645-31796.....1

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Last List: July 31, 1989

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 2214 / Public Law 101-62

To ratify certain agreements relating to the Vienna Convention on Diplomatic Relations (July 26, 1989; 103 Stat. 162; 1 page) Price: $1.00

S.J. Res. 110 / Public Law 101-63

Designating October 5, 1989, as "Raoul Wallenberg Day" (July 27, 1989; 103 Stat. 163; 2 pages) Price: $1.00

TABLE OF EFFECTIVE DATES AND TIME PERIODS—AUGUST 1989

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
August 1	August 16	August 31	September 15	October 2	October 30
August 2	August 17	September 1	September 18	October 2	October 31
August 3	August 18	September 5	September 18	October 2	November 1
August 4	August 21	September 5	September 18	October 3	November 2
August 7	August 22	September 6	September 21	October 6	November 6
August 8	August 23	September 7	September 22	October 10	November 6
August 9	August 24	September 8	September 25	October 10	November 7
August 10	August 25	September 11	September 25	October 10	November 8
August 11	August 28	September 11	September 25	October 10	November 9
August 14	August 29	September 13	September 28	October 13	November 13
August 15	August 30	September 14	September 29	October 16	November 13
August 16	August 31	September 15	October 2	October 16	November 14
August 17	September 1	September 18	October 2	October 16	November 15
August 18	September 5	September 18	October 2	October 17	November 16
August 21	September 5	September 20	October 5	October 20	November 20
August 22	September 6	September 21	October 6	October 23	November 20
August 23	September 7	September 22	October 10	October 23	November 21
August 24	September 8	September 25	October 10	October 23	November 22
August 25	September 11	September 25	October 10	October 24	November 24
August 28	September 12	September 27	October 12	October 27	November 27
August 29	September 13	September 28	October 13	October 30	November 27
August 30	September 14	September 29	October 16	October 30	November 28
August 31	September 15	October 2	October 16	October 30	November 29

OL
54
SS
1
4
6
AG
1
989
MI

VOL
54
ISS
1
4
7
AG
2
1989
UMI

8-2-89
Vol. 54 No. 147

federal register

Wednesday
August 2, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 89 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

OL
4
S S
1
4
7
G
2
989
MI

8-2-89
Vol. 54 No. 147
Pages 31797-31932

federal register

Wednesday
August 2, 1989

BEST COPY AVAILABLE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-783-3238
Magnetic tapes	275-3328
Problems with public subscriptions	275-3054

Single copies/back copies:

Paper or fiche	783-3238
Magnetic tapes	275-3328
Problems with public single copies	275-3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523-5240
Magnetic tapes	275-3328
Problems with Federal agency subscriptions	523-5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 54, No. 147
Wednesday, August 2, 1989

Agricultural Marketing Service
RULES
Milk marketing orders:
Eastern South Dakota, 31799
Potatoes (Irish) grown in—
Idaho and Oregon, 31798
Tobacco inspection:
Growers' referendum results, 31797
PROPOSED RULES
Celery grown in Florida, 31845
Cranberries grown in Massachusetts et al., 31844
Limes grown in Florida, 31843
Prunes (dried) produced in California, 31846

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Farmers Home Administration; Forest Service

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Federal drug testing program, urine testing for agencies; list of certified laboratories, 31885

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Horses from countries affected with CEM—
Temporary importation, 31800

Army Department
See Engineers Corps

Coast Guard
RULES
Drawbridge operations:
Florida, 31827
Regattas and marine parades:
Cambridge Classic Powerboat Regatta, 31826
PROPOSED RULES
Regattas and marine parades:
International Waterski Race, Colorado River, 31860
Southern California annual marine events, 31859

Commerce Department
See Export Administration Bureau; National Institute of Standards and Technology; National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Mexico, 31869

Commodity Futures Trading Commission
RULES
Conflict of interests, 31814
NOTICES
Meetings; Sunshine Act, 31917
(7 documents)

Defense Department
See Engineers Corps; Navy Department

Drug Enforcement Administration
RULES
Schedules of controlled substances:
N,N-Dimethylamphetamine, 31815
PROPOSED RULES
Schedules of controlled substances:
N,N-Dimethylamphetamine, 31855
NOTICES
Applications, hearings, determinations, etc.:
Abbott Laboratories, 31899
Esper, James M., D.O., 31899
First State Chemical Co., Inc., 31900
(2 documents)
Smithkline Chemicals, 31900

Employment and Training Administration
NOTICES
Adjustment assistance:
Alco Power, Inc., 31900
Dougherty Brothers Co., 31901
Jaclyn, Inc., 31901
Pathfinder Mines Corp., 31901

Energy Department
See also Federal Energy Regulatory Commission
NOTICES
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Grand Junction, CO; uranium mill cleanup, 31870
Natural gas exportation and importation:
Vesgas Co., 31871
Powerplant and industrial fuel use; new electric powerplant coal capability; compliance certifications:
Cogen Energy Systems, Inc., et al., 31872

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Coos Bay, OR, 31870

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Avermectin B1 and its delta-8,9-isomer, 31836
Iprodione, 31832
Methyl-2 [[[[N-(4-methoxy-6-methyl-1,3,5,-triazin-2-yl)methylamino], etc., 31830
Triadimenol, etc., 31833
PROPOSED RULES
Air quality planning purposes; designation of areas:
Kentucky, 31860
NOTICES
Committees; establishment, renewal, termination, etc.:
Stratospheric Ozone Protection Advisory Committee, 31879
Pesticide, food, and feed additive petitions:
Merck, Sharp & Dohme Research Laboratories, 31881
Pesticides; emergency exemptions, etc.:
Triflumizole, 31882

Pesticides; experimental use permits, etc.:
Chevron/Valent Chemical Co. et al., 31880
Pesticides; temporary tolerances:
Agrolinz, Inc., 31880
Superfund; response and remedial actions, proposed settlements, etc.:
City Industries Site, FL, 31883

Executive Office of the President
See Presidential Documents

Export Administration Bureau
RULES
Export licensing:
Forms; revisions, 31812

Farmers Home Administration
NOTICES
Agency information collection activities under OMB review, 31865

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 31803
Fairchild Industries, Inc., 31804
Fokker, 31808
McDonnell Douglas, 31806, 31809
(2 documents)
PROPOSED RULES
Airworthiness directives:
McDonnell Douglas, 31847
NOTICES
Parts manufacturers approval program evaluation; availability, 31912

Federal Communications Commission
RULES
Radio broadcasting:
License renewal process; abuse elimination, 31838
Radio services, special:
Maritime services—
VHF maritime transmitters; frequency selection capability restriction, 31839

Federal Emergency Management Agency
RULES
Preparedness:
Commercial nuclear power plants; emergency preparedness planning, 31920

Federal Energy Regulatory Commission
NOTICES
Natural Gas Policy Act:
Self-implementing transactions, 31872
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 31877
East Tennessee Natural Gas Co., 31878
(2 documents)
Texas Eastern Transmission Corp., 31878

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Kent and Ottawa County, MI, 31912
Lewis and Clark County, MT, 31913

Federal Maritime Commission
NOTICES
Meetings; Sunshine Act, 31917

Federal Railroad Administration
NOTICES
Emergency orders; passenger service prohibition:
Boston & Maine Corp. et al., 31915

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Boston Bank of Commerce Employee Stock Ownership Trust et al., 31883
Huntington Bancshares Inc., 31883
Lisco State Co., 31884
National City Corp. et al., 31885
Siteman, Alvin J., et al., 31884
Wegman, George M., 31885

Food and Drug Administration
NOTICES
Meetings:
Consumer information exchange, 31886

Forest Service
NOTICES
Environmental statements; availability, etc.:
Sequoia National Forest, CA, 31866
National Forest System lands:
Special uses permit holder housing, 31867

Health and Human Services Department
See Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration

Housing and Urban Development Department
PROPOSED RULES
Fair housing:
Accessibility guidelines; dwellings used by handicapped persons, 31856
NOTICES
Agency information collection activities under OMB review, 31886

Interior Department
See Land Management Bureau; National Park Service

Internal Revenue Service
RULES
Income taxes:
Interest expense allocation and apportionment and treatment of financial products that alter effective cost of borrowing, 31816
PROPOSED RULES
Income taxes:
Interest expense allocation and apportionment and treatment of financial products that alter effective cost of borrowing; cross reference, 31858

International Trade Commission
NOTICES
Import investigations:
Carrier materials bearing ink compositions to be used in dry adhesive-free thermal transfer process and signfaces made by such process, 31895
Electric power tools, battery cartridges, and battery chargers, 31896

Imported artificial breast prostheses and manufacturing processes, 31895
Limousines from Canada, 31897
Phenylene sulfide polymers and polymer compounds, and products containing same, 31898

Justice Department
See Drug Enforcement Administration

Labor Department
See Employment and Training Administration; Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Opening of public lands:
Wyoming, 31888
Resource management plans, etc.:
San Juan Resource Area, UT, 31888
Timber sales, high-priced; deferral payments, 31888

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Lamps, reflective devices, and associated equipment—
Replaceable bulb headlamp system (for motorcycles), 31840
NOTICES
Motor vehicle defect proceedings; petitions, etc.:
Dolan, Elizabeth A., 31914
Motor vehicle safety standards; exemption petitions, etc.:
Fleetwood Enterprises, Inc., 31914

National Institute of Standards and Technology
NOTICES
Senior Executive Service:
General and Limited Performance Review Boards; membership, 31867

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 31842
Ocean salmon off coasts of Washington, Oregon, and California, 31841
PROPOSED RULES
Fishery conservation and management:
Atlantic mackerel, squid, and butterfish, 31862
Gulf of Alaska, Bering Sea, and Aleutian Islands groundfish, 31861
NOTICES
Meetings:
New England Fishery Management Council, 31868
Pacific Fishery Management Council, 31868, 31869
(2 documents)
Permits:
Marine mammals, 31869
(2 documents)

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 31894

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 31917

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
USS Monterey, 31825

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Florida Power & Light Co., 31902
Meetings:
Reactor Safeguards Advisory Committee, 31902
Applications, hearings, determinations, etc.:
Illinois Power Co. et al., 31902

Occupational Safety and Health Administration
PROPOSED RULES
Safety and health standards:
Bloodborne pathogens; occupational exposure; human immunodeficiency virus (HIV), hepatitis B virus (HBV), etc., 31858

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
Power plant amendments:
Columbia River Basin fish and wildlife program, etc. Hearing, 31903

Presidential Documents
PROCLAMATIONS
Indonesia; U.S. copyright protection (Proc. 6003), 31931

Public Health Service
See Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration

Securities and Exchange Commission
PROPOSED RULES
Investment companies:
Registered investment companies; purchases of securities of foreign banks and foreign insurance companies, 31850
Securities:
Proprietary trading systems, 31850
NOTICES
Self-regulatory organizations; proposed rule changes:
Midwest Stock Exchange, Inc., 31904
National Association of Securities Dealers, Inc., 31905, 31909
(4 documents)
Applications, hearings, determinations, etc.:
GNLV, Corp., 31910

Small Business Administration
NOTICES
Disaster loan areas:
Kentucky et al., 31910
Louisiana et al., 31910
(2 documents)
Applications, hearings, determinations, etc.:
Midland Capital Corp., 31911

State Department
RULES
South Africa and fair labor standards, 31815

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See also Coast Guard; Federal Aviation Administration; Federal Highway Administration; Federal Railroad Administration; National Highway Traffic Safety Administration
RULES
Aviation proceedings:
Traffic and capacity statistics report; collection of service segment and charter data; foreign and U.S. air carriers, 31810
NOTICES
Aviation proceedings:
Hearings, etc.—
Central States Airlines, Inc., 31911
Flight International, Inc., 31911
Pacific Interstate Airlines, Inc., 31912

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
RULES
Adjudication; pensions, compensation, dependency, etc.:
Benefits at DIC rates in cases when death was not service-connected, 31828
Fraud; definition, 31828
Vocational rehabilitation and education:
Veterans education—
Procedural protections following loss of dependent, 31829
NOTICES
Agency information collection activities under OMB review, 31915

Separate Parts In This Issue

Part II
Federal Emergency Management Agency, 31920

Part III
The President, 31931

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
29 31797
945 31798
1076 31799
Proposed Rules:
911 31843
929 31844
967 31845
993 31846
9 CFR
92 31800
14 CFR
39 (5 documents) 31803–31809
217 31810
241 31810
Proposed Rule:
39 31847
15 CFR
773 31812
17 CFR
140 31814
Proposed Rules:
240 31850
270 31850
21 CFR
1308 31815
Proposed Rule:
1308 31855
22 CFR
60 31815
61 31815
62 31815
63 31815
64 31815
65 31815
24 CFR
Proposed Rule:
Ch. I 31856
26 CFR
1 31816
Proposed Rule:
1 31858
29 CFR
Proposed Rule:
1910 31858
32 CFR
706 31825
33 CFR
100 31826
117 31827
Proposed Rules:
100 (2 documents) 31859–31860
38 CFR
3 (2 documents) 31828
21 31829
40 CFR
180 (4 documents) 31830–31836
185 31836
186 (2 documents) 31832, 31836
Proposed Rules:
81 31860
44 CFR
352 31920
47 CFR
73 31838
80 31839
49 CFR
571 31840
50 CFR
661 31841
675 31842
Proposed Rules:
611 31861
620 31861
655 31862
672 31861
675 31861

Rules and Regulations

Federal Register
Vol. 54, No. 147
Wednesday, August 2, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-88-107]

Tobacco Inspection; Growers' Referendum Results

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document contains the determination with respect to the referendum on the designation of the consolidated flue-cured tobacco markets of Stoneville and Madison, North Carolina. A mail referendum was conducted during the period of June 5–9, 1989, among tobacco growers who sell their tobacco at auction in Stoneville and Madison, North Carolina, to determine producer approval of the designation of these two markets as one consolidated market. Eligible producers voted in favor of the designation. Therefore, for the 1989 and succeeding flue-cured marketing seasons, the Stoneville and Madison, North Carolina, tobacco markets shall be designated as and be called Stoneville-Madison. The regulations are amended to reflect this new designated market.

EFFECTIVE DATE: August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Room 502 Annex, Washington, DC 20090–6456, telephone (202) 447–2567.

SUPPLEMENTARY INFORMATION: A notice was published in the June 1, 1989, issue of the **Federal Register** (54 FR 23629) advising that a referendum would be conducted among flue-cured producers who market their tobacco on the Stoneville and Madison, North Carolina, markets to ascertain if such producers favored the designation of the consolidated market. Stoneville and Madison had been officially and separately designated on June 26, 1942 under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*).

The referendum was conducted among producers who were engaged in the production of flue-cured tobacco which they marketed in Stoneville and Madison, North Carolina, during the calendar year 1988. Ballots for the June 5–9 referendum were mailed to 1,155 producers. Approval required votes in favor of the proposal by two-thirds of the eligible voters who cast valid ballots. The Department received a total of 397 responses: 381 eligible producers voted in favor of the consolidation of the Stoneville and Madison markets; 15 eligible producers voted against the consolidation; and 1 ballot was determined to be invalid.

The notice of referendum announced the determination by the Secretary that the consolidated market of Stoneville-Madison, North Carolina, would be designated as a flue-cured tobacco auction market and receive mandatory, Federal grading of tobacco sold at auction for the 1989 and succeeding seasons, subject to the results of the referendum. The determination was based on the evidence and arguments presented at a public hearing held in Madison, North Carolina, on November 9, 1988, pursuant to applicable provisions of the regulations issued under the Tobacco Inspection Act, as amended. The referendum was held in accordance with the provisions of Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations set forth in 7 CFR 29.74.

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "nonmajor" rule because it does not meet any of the criteria established for major rules under the executive order.

Additionally, in conformance with the provisions of Pub. L. 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. Most tobacco producers and many tobacco warehouses are small businesses as defined in the Regulatory Flexibility Act. It has been determined that this action will not have a significant impact on a substantial number of small entities, and will not substantially affect the normal movement of the commodity in the marketplace. Good cause has been found for not postponing the effective date of this final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553). In order to facilitate the scheduling of sales, the designation of the combined market should be in effect during the entire sales season, which will begin in late July this year. Further, other requirements associated with designation are already in place because the markets being consolidated were previously designated separately.

List of Subjects in 7 CFR Part 29

Administrative practices and procedure, Tobacco.

For the reason set forth in the preamble, 7 CFR Part 29, Subpart D, is amended as follows:

PART 7—[AMENDED]

Subpart D—Order of Designation of Tobacco Markets

1. The authority citation for 7 CFR Part 29, Subpart D, continues to read as follows:

Authority: Sec. 5, 49 Stat. 732 as amended by sec. 157 (a) (i), 95 Stat. 374 (7 U.S.C. 511d).

§ 29.8001 [Amended]

2. In § 29.8001, the table is amended by removing under item (t) in the column Auction Markets the words Madison, North Carolina and Stoneville, North Carolina and by adding a new entry (ccc) to read as follows:

Territory	Type of tobaccos	Action markets	Order of designation	Citation
(ccc) North Carolina	Flue-cured	Stoneville-Madison	Aug. 2, 1989	

Dated: July 28, 1989.
Kenneth C. Clayton,
Acting Administrator.
[FR Doc. 89-18035 Filed 8-1-89; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 945

[Docket No. FV-89-065]

Idaho-Eastern Oregon Potatoes; Expenses and Assessment Rate

AGENCY: Agricultrual Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 945 for the 1989–90 fiscal period. Authorization of this budget allows the Idaho-Eastern Oregon Potato Committee to incure expenses necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1989 through July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 98 and Marketing Order No. 945 (7 CFR Part 945) both as amended, regulating the handling of Irish potatoes grown in designated counties in Idaho and Malheur County, Oregon. The marketing agreement and order are effective under the Agricultural Marketing Ageement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibilty.

There are approximately 70 handlers of Idaho-Eastern Oregon potatoes under this marketing order, and approximately 3,650 potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989–90 fiscal year was prepared by the Idaho-Eastern Oregon Potato Committee (committee), the agency responsible for local administration of the order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of potatoes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of potatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on May 24, 1989, and unanimously recommended a budget for the 1989–90 fiscal period of $78,180 and an assessment rate of $0.0026 per hundredweight of potatoes handled. This compares to the 1988–89 budget of $82,200. The assessment rate is the maximum permitted under the order and has remained the same for over two decades. The budget is $4,020 less than last year, reflecitng decreases of $2,320 for computer purchases and $5,400 for the purchase of an automobile for the manager's use. These decreases are partially offset by a five percent increase in committee staff salaries as well as increases in rent, postage, telephone and gasoline. With the assessment rate of $0.0026, anticipated fresh market shipments of 21 million hundredweight will yield $54,600 in assessment income. This, along with approximately $3,600 in fees, $1,000 in interest and $18,980 from the reserve, will be adequate for budgeted expenses. At the end of the fiscal period, the reserve fund is expected to approximate $22,000.

While this action will impose some additional costs on handlers, the costs are in the form of uniofrm assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits drived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Notice was given in the June 28, 1989 Federal Register (54 FR 27178) affording interested persons until July 10, 1989, to file written comments. None were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the Federal Register in that the 1989–90 fiscal period begins August 1, 1989, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during that period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting.

List of Subjects in 7 CFR Part 945

Marketing agreements, potatoes (Idaho and Oregon).

For the reasons set forth in the preamble, 7 CFR Part 945 is amended as follows:

PART 945—POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OR

1. The authority citation for 7 CFR Part 945 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 945.242 is added to read as follows:

Note:—This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations.

§ 945.242 Expenses and assessment rate.

Expenses of $78,180 by the Idaho-Eastern Oregon Potato Committee are authorized, and an assessment rate of $0.0026 per hundredweight of assessable potatoes is established for the fiscal period ending July 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: July 28, 1989.
William J. Doyle,
Acting Deputy Director, Fruit and Vegetable Division.
[FR Doc. 89-18031 Filed 8-1-89; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 1076

[AMS-89-022]

Milk in the Eastern South Dakota Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends for the months of August 1989 through February 1990 certain provisions of the Eastern South Dakota milk order. The provisions suspended relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Suspension of the provisions was requested by a cooperative association representing most of the producers supplying the market. The suspension is needed to prevent uneconomic movements of milk.

EFFECTIVE DATE: August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7183.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued June 13, 1989; published June 19, 1989 (54 FR 25726).

The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Eastern South Dakota marketing area.

Notice of proposed rulemaking was published in the Federal Register on June 19, 1989 (54 FR 25726), concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the proposed suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of August 1989 through February 1990 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1076.13, paragraphs (c) (2) and (3).

Statement of Consideration

This action removes for the months of August 1989 through February 1990 the limit on the amount of producer milk that a cooperative association or other handler may divert from pool plants to nonpool plants. The suspension was requested by Land O'Lakes, Inc. (LOL), an association of producers that handles most of the market's reserve milk supplies.

The order now provides that a cooperative association may divert up to 35 percent of its total member milk received at all pool plants or diverted therefrom during the months of August through February. Similarly, the operator of a pool plant may divert up to 35 percent of its receipts of producer milk (for which the operator of such plant is the handler during the month) during the months of August through February.

The suspension is necessary to assure the continued participation in the marketwide pool of producers historically associated with the Eastern South Dakota market. Operation of the 35 percent diversion limit during August through February would require LOL to deliver 65 percent of its milk to pool plants. According to the cooperative's estimates, only 45 to 53 percent of its milk will be needed at distributing plants. Without suspension of the diversion limit, the balance of LOL's members' milk would have to be delivered to a supply plant, unloaded, reloaded and then shipped to other plants merely to qualify the milk for pooling. The additional handling and hauling costs would be incurred by LOL and its member producers, with no offsetting benefits to other market participants.

In comments filed in support of the proposed suspension, LOL stated that requiring the full 65 percent of its milk to be delivered to pool plants would serve no useful purpose other than demonstrating the availability of a reserve supply of milk for Class I use. The cooperative argued that because the reserve milk will not be needed for Class I use, the requirement should be suspended.

In view of these circumstances, it is concluded that the diversion limits in the Eastern South Dakota milk order should be suspended for the months of August 1989 through February 1990 to ensure the orderly marketing of milk supplies. The suspension will prevent uneconomic movements of some milk through pool plants merely for the purpose of qualifying it for producer milk status under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that, without extensive unnecessary and expensive hauling and handling, substantial quantities of milk from producers who regularly supply the market otherwise would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were filed in opposition to this action.

Therefore, good cause exists for making this order effective upon publication in the Federal Register.

List of Subjects in 7 CFR Part 1076

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of § 1076.13 of the Eastern South Dakota order are hereby suspended for the months of August 1989 through February 1990, as follows:

PART 1076—MILK IN THE EASTERN SOUTH DAKOTA MARKETING AREA

1. The authority citation for Part 1076 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

§ 1076.13 [Amended]

2. In § 1076.13, paragraphs (c) (2) and (3) are suspended for the months of August 1989 through February 1990.

Signed at Washington, DC, on July 27, 1989.
Jo Ann R. Smith,
Assistant Secretary, Marketing and Inspection Services.
[FR Doc. 89-18036 Filed 8-1-89; 8:45 am]
BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 89-014]

Temporary Importation of Horses; Horses From Countries Affected With Contagious Equine Metritis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to allow horses from countries affected with contagious equine metritis (CEM) to be imported into the United States for no more than 60 days to compete in specified events, when specified requirements are met to prevent the horses from introducing CEM into the United States. This action is warranted to allow these horses to be imported into the United States when this can be done without undue risk to livestock in the United States.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Chester A. Gipson, Senior Staff Veterinarian, SPMDS, VS, APHIS, USDA, Room 768, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8954.

SUPPLEMENTARY INFORMATION: On December 16, 1988, we published a document in the **Federal Register** (53 FR 50539-50544, Docket Number 88-037), in which we proposed to amend the regulations in 9 CFR Part 92 (referred to below as the regulations), which contain provisions concerning the importation into the United States of specified animals and animal products, and which are designed to prevent the introduction into the United States of various diseases, including contagious equine metritis (CEM). CEM is a venereal disease of horses that affects fertility and breeding.

Specifically, we proposed provisions for the importation of horses from CEM-affected countries for no more than 60 days to compete in specified events. This amendment is warranted because it provides an additional means of importing these horses into the United States without undue risk of transmitting CEM to horses in the United States.

We solicited comments concerning the proposal for a 30-day period ending January 17, 1989, and received two comments. One of the comments was from the American Veterinary Medical Association (AMVA) and the other was from a private individual.

We have carefully considered the comments submitted in response to the proposal, and discuss below the issues raised by the comments. Based on the rationale set forth in the proposal and in this document, we have adopted the provisions of the proposal as a final rule with the changes discussed below.

Both commenters expressed concern that sufficient APHIS personnel might not be available to carry out the supervision required by the proposed rule. We agree that it is essential that APHIS personnel be available before a horse is imported and entered under the proposed rule. It was our implicit intent in proposing the changes to the regulations that an import permit would not be issued for a horse if sufficient personnel were not available to carry out the required APHIS functions. To clarify this intent, we are specifying in a new § 92.4(a)(1)(iii) that approval of an application for a permit to import a horse on a temporary basis for competition is contingent upon the Administrator determining that sufficient APHIS personnel are available to perform the required services. In the event that more than one application is received, APHIS personnel will be assigned in the order that we receive applications that otherwise meet the import permit application requirements in § 92.4.

One commenter stated that the proposed rule would increase the risk of horses from CEM-affected countries spreading disease, but that the increased risk would not be significant if the horses are tested prior to entry. We agree that, with certain exceptions, testing requirements are necessary to ensure that horses imported into the United States do not spread diseases to livestock in the United States. Such testing requirements already exist in the regulations, and are already applicable to horses imported from countries affected with CEM. Therefore, we are making no changes based on this comment.

Miscellaneous

The proposed rule included a definition of "Animal and Plant Health Inspection Service." However, we have since added a definition of "Animal and Plant Health Inspection Service" to Part 92 as part of another document. Therefore, it is not necessary to add that definition as part of this final rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this action will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The regulations already allow the importation of thoroughbred horses from specified CEM-affected countries, provided certain testing for CEM is done and provided specific requirements regarding the horses' histories are met. The regulations also allow the importation of all other horses over 731 days of age from CEM-affected countries, provided specified testing and treatment for CEM is carried out. The primary effect of this rule will be to shorten the time necessary to prepare a horse for temporary importation by eliminating the CEM testing and treatment requirements. This will enable foreign horses to stay in training longer and to compete in more events in their own country before being imported into the United States. The costs to owners or importers for our required inspection and supervision will be largely offset by expenses saved because the horses will not have to undergo the treatment and testing we currently require.

Further, the impact on United States horse owners from increased foreign competition for prize monies will be insignificant. In most cases, the horses that will be imported under this rule would otherwise have been imported under the regulations as they stand prior to the effective date of this rule. In those few cases where the increased competition will have some impact, the impact will be largely offset by increased purses due to the participation of foreign horses.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579-0040.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 is amended as follows:

PART 92—[AMENDED]

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 92.1 is amended by adding a definition of "APHIS representative" to read as follows:

§ 92.1 Definitions.

* * * * *

APHIS representative. A veterinarian or other individual employed by the Animal and Plant Health Inspection Service, United States Department of Agriculture, who is authorized to perform the services required by this part.

* * * * *

3. In § 92.2, paragraph (i)(2)(vii) is redesignated as (i)(2)(viii), and a new paragraph (i)(2)(vii) is added to read as follows:

§ 92.2 General prohibitions; exceptions.

* * * * *

(i) * * *

(2) * * *

(vii) Horses over 731 days of age imported into the United States for no more than 60 days to compete in specified events if the following conditions are met:

(A) The horse remains in the United States for no more than 60 days following the horse's release from the port of entry and, while in the United States, is moved according to the itinerary and methods of transport specified in the import permit provided for in § 92.4(a) of this part;

(B) While the horse is in the United States, the following conditions are met:

(1) Except when in transit, the horse is kept on a premises approved, orally or in writing, by an APHIS representative as being *(i)* not a breeding premises, and *(ii)* one that is or that contains a building in which the horse can be kept in a stall that is separated from other stalls containing horses either by an empty stall, an open area across which horses cannot touch each other, or a solid wall that is at least 8 feet high. If approval is oral, it will be confirmed in writing by the Administrator as soon as circumstances permit.

(2) While at the premises at which the horse competes, the horse is monitored by an APHIS representative to ensure that the provisions of paragraphs (i)(2)(vii)(B) *(1), (4),* and *(5)* of this section are met.

(3) While in transit, the horse is moved in either an aircraft or a sealed van or trailer; and, if the horse is moved in a sealed van or trailer, the seal is broken only by an APHIS representative at the horse's destination, except in situations where the horse's life is in danger;

(4) Except when actually competing or being exercised, the horse is kept in a stall that is separated from other stalls containing horses either by an empty stall, an open area, or a solid wall that is at least 8 feet high.

(5) The horse is not used for breeding purposes (including artificial insemination), does not have any other sexual contact with other horses, and does not undergo any genital examinations;

(6) After the horse is transported anywhere in the United States, any vehicle in which the horse is transported is cleaned and disinfected in the presence of an APHIS representative, according to the procedures specified in §§ 71.7 through 71.12 of this chapter, before any other horse is transported in the vehicle;

(7) The cleaning and disinfection specified in paragraph (i)(2)(vii)(B)*(6)* of this section is completed before the vehicle is moved from the place where the horse is unloaded (however, in those cases where the facilities or equipment for cleaning and disinfection are inadequate at the place where the horse is unloaded, the Administrator may allow the vehicle to be moved to another location for cleaning and disinfection, when the move will not pose a disease risk to other horses in the United States); and

(8) The owner or importer of the horse complies with any other provisions of this part applicable to him or her.

(C) All costs associated with the supervision and maintenance of the horse while in the United States will be borne by the horse's owner or importer in accordance with the provisions of paragraph (i)(2)(vii)(G) of this section.

(D) If the owner or importer wishes to change the horse's itinerary or the methods by which the horse is transported from that which he or she specified in the application for the import permit, the owner or importer must make the request for change in writing to the Administrator. Requests should be sent to the Administrator, c/o Import-Export Animals Staff, VS, APHIS, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782. The change in itinerary or method of transport may not be made without the written approval of the Administrator, who may grant the request for change when he or she determines that granting the request will not endanger other horses in the United States and that sufficient APHIS personnel are available to provide the services required by the owner or importer. If more than one application for an import permit is received, APHIS personnel will be assigned in the order that the applications that otherwise meet the requirements of this section are received.

(E) The Administrator may cancel, orally or in writing, the import permit provided for under § 92.4 of this part, whenever the Administrator finds that the owner or importer of the horse has not complied with the provisions of paragraphs (i)(2)(vii) (A), (B), (C), or (D) of this section or any conditions imposed under those provisions. If the cancellation is oral, the Administrator will confirm in writing the decision and the reasons for the decision, as soon as circumstances permit. Any person whose import permit is cancelled may appeal the decision in writing to the Administrator within 10 days after receiving oral or written notification of the cancellation, whichever is earlier. If the appeal is sent by mail, it must be postmarked within 10 days after the owner or importer receives oral or written notification of the cancellation, whichever is earlier. The appeal must include all of the facts and reasons upon which the person relies to show that the

import permit was wrongfully cancelled. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

(F) Except in those cases where an appeal is in process, any person whose import permit is cancelled must move the horse identified in the import permit out of the United States within 10 days after receiving oral or written notification of cancellation, whichever is earlier. The horse is not permitted to enter competition, from the date the owner or importer receives the notice of cancellation until removal of the horse from the United States or until resolution of an appeal in favor of the owner or importer. Except when being exercised, the horse must be kept, at the expense of the owner or importer, in a stall either on the premises at which the horse is located when the notice of cancellation is received, or, if the horse is in transit when the notice of cancellation is received, on the premises at which it is next scheduled to compete according to the import permit. The stall in which the horse is kept must be separated from other stalls containing horses either by an empty stall, an open area across which horses cannot touch each other, or a solid wall that is at least 8 feet high. In cases where the owners of the above specified premises do not permit the horse to be kept on those premises, or when the Administrator determines that keeping the horse on the above specified premises will pose a disease risk to horses in the United States, the horse must be kept, at the expense of the owner or importer, on an alternative premises approved by the Administrator.

(G) A horse imported under paragraph (i)(2)(vii) of this section must be maintained in the United States in accordance with a trust fund agreement executed by the horse's owner or importer. In accordance with the trust fund agreement for the importation of a horse under paragraph (i)(2)(vii) of this section, the horse's owner or importer must deposit with APHIS an amount equal to the estimated cost, including travel, salary, subsistence, administrative expenses, and incidental expenses, as determined by APHIS, for an APHIS representative *(1)* to inspect the premises at which the horse will compete; *(2)* to conduct the monitoring required by paragraph (i)(2)(vii)(B)*(2)* of this section; and *(3)* to supervise the cleaning and disinfection required by paragraph (i)(2)(vii)(B)*(6)* of this section. The amounts will be determined as explained in paragraph (i)(2)(vii)(H) of this section. If, during the horse's stay in the United States, APHIS determines that the amount deposited will be insufficient to cover services APHIS is scheduled to provide during the remainder of the horse's stay, APHIS will issue to the horse's owner or importer a bill to restore the deposited amount to a level sufficient to cover the estimated cost to APHIS for the remainder of the horse's stay in the United States. The horse's owner or importer must pay the amount billed within 14 days after receiving the bill. If the bill is not paid within 14 days after its receipt, APHIS will cease to perform the services provided for in paragraph (i)(2)(vii)(B) of this section, until the bill is paid. The Administrator will inform the owner or importer of the cessation of services orally or in writing. If the notice of cessation is oral, the Administrator will confirm, in writing, the notice of cessation and the reason for the cessation of services as soon as circumstances permit. In such a case, the horse must be kept, at the expense of the owner or importer and until the bill is paid, in a stall either on the premises at which the horse is located when the notice of cessation of services is received, or, if the horse is in transit when the notice of cessation of services is received, on the premises at which it is next scheduled to compete according to the import permit. The stall in which the horse is kept must be separated from other stalls containing horses either by an empty stall, an open area across which horses cannot touch each other, or a solid wall that is at least 8 feet high. In cases where the owners of the above specified premises do not permit the horse to be kept on those premises, or when the Administrator determines that keeping the horse on the above specified premises will pose a disease risk to other horses in the United States, the horse must be kept, at the expense of the owner or importer, on an alternative premises approved by the Administrator. Until the bill is paid, the horse is not permitted to enter competition. Any amount deposited in excess of the costs to APHIS to provide the required services will be refunded to the horse's owner or importer within 30 days after the horse is moved from the United States.

(H) The cost for APHIS to conduct the inspection and supervision required by paragraph (i)(2)(vii)(B) of this section is based on the following factors:

(1) Number of hours needed for an APHIS representative to conduct the required inspection and monitoring;

(2) For services provided during regular business hours (8 a.m. to 4:30 p.m., Monday through Saturday, except holidays), the average salary, per hour, for an APHIS representative;

(3) For services provided outside regular business hours, the applicable rate for overtime, night differential, or Sunday or holiday pay, based on the average salary, per hour, for an APHIS representative;

(4) Number of miles from the premises at which the horse competes to the APHIS office or facility that is monitoring the activities;

(5) Government rate per mile for automobile travel or, if appropriate, cost of other means of transportation between the premises at which the horse competes and the APHIS office or facility;

(6) Number of trips between the premises at which the horse competes and the APHIS office or facility that APHIS representatives are required to make in order to conduct the required inspection and monitoring;

(7) Number of days the APHIS representative conducting the inspection and monitoring must be in "travel status;"

(8) Applicable government per diem rate; and

(9) Cost of related administrative support services.

* * * * *

4. In § 92.4, paragraph (a)(1) is redesignated as paragraph (a)(1)(i), and new paragraphs (a)(1)(ii) and (a)(1)(iii) are added to read as follows:

§ 92.4 Import permits for ruminants, swine, horses from countries affected with CEM, poultry, poultry semen, animal semen, birds and for animal specimens for diagnostic purposes; [1] and reservation fees for space at quarantine facilities maintained by Veterinary Services.

(a) * * *

(1) * * *

(ii) Horses intended for importation under § 92.2(i)(2)(vii) of this part must meet the permit requirements of paragraph (a)(1)(i) of this section. Additionally, for horses intended for importation under § 92.2(i)(2)(vii) of this part, the horse's owner or importer must include the following information with the application for permit that is required by paragraph (a)(1)(i) of this section:

(A) That the application is being made for a horse that will remain in the United States for no more than 60 days;

(B) The names, dates, and locations of the events in which the horse will compete while in the United States;

(C) The names and locations of the premises on which the horse will be kept while in the United States, and the dates the horse will be kept on each premises; and

(D) The methods and routes by which the horse will be transported while in the United States.

(iii) Approval of an application for a permit to import a horse under § 92.2(i)(2)(vii) of this part is contingent upon a determination by the Administrator that sufficient APHIS personnel are available to provide the services required. If more than one application for an import permit is received, APHIS personnel will be assigned in the order that applications that otherwise meet the requirements of this section are received.

* * * * *

[1] For other permit requirements for birds, the regulations issued by the U.S. Department of the Interior (Part 17, Title 50, Code of Federal Regulations) and the regulations issued by the U.S. Department of Health and Human Services (Subpart J-1 of Part 71, Title 42, Code of Federal Regulations) should be consulted.

§ 92.17 [Amended]

5. Section 92.17 is amended by removing the phrase in the first sentence that currently reads "and, except as provided in § 92.2(i)(2) (i), (ii), (iii), (iv), (v), and (vi), the horses have not been in any country listed in § 92.2(i)(1) as affected with CEM during the 12 months immediately prior to their importation into the United States;" and adding in its place a phrase that reads "and, except as provided in § 92.2(i)(2) (i) through (viii), the horses have not been in any country listed in § 92.2(i)(1) as affected with CEM during the 12 months immediately prior to their importation into the United States;".

Done in Washington, DC, this 27th day of July 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-18006 Filed 8-1-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-137-AD; Amdt. 39-6291]

Airworthiness Directives; Boeing of Canada, Ltd., De Havilland Division, Model DHC-8 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) T89-14-52, which was previously made effective as to all known U.S. owners and operators of Boeing of Canada, Ltd., De Havilland Division, Model DHC-8 series airplanes by individual telegrams. This AD requires a visual inspection of the flap-drive primary torque tubes for signs of wear/damage due to chafing against the cooling ducts, and replacement of the torque tubes, if necessary. This action is prompted by one report of asymmetric flap deployment. This condition, if not corrected, could result in the flaps failing to deploy symmetrically and could result in a dangerous landing/takeoff configuration.

DATES: Effective August 21, 1989, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T89-14-52, issued July 7, 1989, which contained this amendment.

ADDRESSES: This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. C. Kallis, New York Aircraft Certification Office, ANE-173, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6427.

SUPPLEMENTARY INFORMATION: On July 7, 1989, the FAA issued telegraphic AD T89-14-52, applicable to certain Boeing of Canada, Ltd., De Havilland Division, Model DHC-8 series airplanes, which requires a visual inspection of the flap-drive primary torque tubes for signs of wear/damage due to chafing against the cooling ducts, and replacement of the torque tubes, if necessary; repositioning and replacement or repair of the cooling ducts, if necessary; and an operational check of the torque sensor is also required. Additionally, operators are required to report their inspection results to the FAA.

That action was prompted by one report of asymmetric flap deployment on a Model DHC-8 series airplane. The condition was indicated to the flight crew by the tendency of the airplane to roll upon flap extension. The flap-drive caution light did not indicate the condition and the flap position indicator remained at zero degrees. Investigation revealed a broken primary drive shaft between the inboard and outboard left-hand flaps, a broken splined coupling between the flap power unit and the right-hand primary drive shaft, and a malfunctioning secondary drive torque sensor. The left drive shaft failed due to chafing on a cooling duct. The torque sensor failed to detect shaft failure. This condition, if not corrected, could result in the flaps failing to deploy symmetrically and could result in a dangerous landing/takeoff configuration.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since the FAA determined that the unsafe condition could exist or develop on other airplanes of this same type design, it was found that immediate corrective action was required, that notice and public procedure thereon were impracticable and contrary to the public interest, and that good cause existed to make the AD effective immediately by individual telegrams issued on July 7, 1989, to all known U.S. owners and operators of De Havilland Model DHC-8 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

This is considered to be an interim action until final action has been identified, at which time the FAA may consider further rulemaking.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Federal Aviation Administration has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39-13 is amended by adding the following new airworthiness directive:

Boeing of Canada, Ltd., de Havilland Division: Applies to De Havilland Model DHC-8 series airplanes, Serial Numbers 3 and subsequent, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent asymmetric flap deployment, accomplish the following:

A. Within the next 25 hours time-in-service after the effective date of this AD:

1. Visually inspect the flap drive primary torque tubes in the vicinity of Station YW 170 of the left and right wing where it enters the outboard side of each nacelle for signs of damage/wear due to chafing. Torque tubes must be replaced prior to further flight if wear exceeds either 0.010 inch in depth or 180 degrees of the circumference of the shafts.

2. Inspect cooling ducts (Part Number DSC 287-12-70/60) in the vicinity of Station YW 170 of the left and right wing where it enters the outboard side of each nacelle for possible interference with the primary flap drive torque tube. Reposition cooling duct as necessary to provide a minimum clearance of 0.3 inch with the primary flap drive torque tube. If reinforcement wires of the cooling duct are broken due to chafing, the cooling duct must be repaired prior to further flight and replaced within 30 days.

3. Perform an operational check of the torque sensor, and take any indicated corrective actions, in accordance with Maintenance Program Task 2750/11. Refer to "Maintenance Program, Supplementary Information, PSM 1-8-7/1-83-7, Volume 2, Procedures—27, Page 15, dated 15 July 1988."

B. Within 7 days after the completion of the inspections required by paragraph A., above, submit a report of findings, positive or negative, to the Manager, New York Aircraft Certification Office, ANE-170, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581. Reports must include the airplane serial number.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, New York Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective August 21, 1989 as to all persons, except those persons to whom it was made immediately effective by telegraphic AD T89-14-52, issued July 7, which contained this amendment.

Issued in Seattle, Washington, on July 26, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-18009 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-138-AD; Amdt. 39-6292]

Airworthiness Directives; Fairchild Industries, Inc., Model F-27 and FH-227 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) 89-15-01, which was previously made effective as to all known U.S. owners and operators of Fairchild Industries, Inc., Model F-27 and FH-227 series airplanes by individual letters. This AD requires a dye penetrant inspection for cracks in the wing outer panel upper surface stringer splice fittings, and repair, if necessary. This action is prompted by a recent report of a cracked wing outer panel upper surface stringer splice fitting at Station 167. Undetected cracks could result in structural failure of the wing and inability of the airplane structure to carry required loads.

DATES: Effective August 21, 1989, as to all persons except those persons to whom it was made immediately effective by priority letter AD 89-15-01, issued July 13, 1989, which contained this amendment.

ADDRESSES: The applicable service information may be obtained from Maryland Air Industries, Inc., Hagerstown, Maryland 21740. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Socias, Airframe Branch, ANE-172, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581; telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION: On July 13, 1989, the FAA issued priority letter AD 89-15-01, applicable to Fairchild Model F-27 and FH-227 series airplanes, which requires a dye penetrant inspection for cracks in the wing outer panel upper surface stringer splice fittings, and repair, if necessary.

That action was prompted by a recent report of a cracked wing outer panel upper surface stringer splice fitting at Station 167. These fittings attach the wing outer panel to the wing center section, and are fabricated from 7079T6 aluminum alloy material, which is known to be susceptible to stress corrosion cracking. Undetected cracks could result in structural failure of the wing and inability of the airplane structure to carry required loads.

The FAA has reviewed and approved Maryland Air Industries, Inc. Alert Service Letters F27-681 and FH227-57-6, both dated June 29, 1989; Fairchild Service Bulletin F27-51-8, dated April 22, 1974 (reference paragraph 2A(6)(e), page 5; and Figure 14, page 24); and Fairchild Service Bulletin FH227-51-4, dated January 17, 1979 (reference paragraph 2A(6)(e), page 5; and Figure 14, page 23); which describe procedures for a dye penetrant inspection for cracks in the wing outer panel upper surface stringer splice fittings, and repair, if necessary.

Since this condition is likely to exist or develop on other airplanes of this same type design, this AD requires a dye penetrant inspection for cracks in the wing outer panel upper surface stringer splice fittings, and repair, if necessary, in accordance with the service bulletins and alert service letters previously described.

This AD also requires that all inspection results be reported to the FAA. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

This is considered to be interim action. Based on the information received from the operators' reports, the FAA will be able to determine the extent and nature of the addressed damage, and develop an appropriate repetitive inspection schedule and/or modification that will preclude the need for repetitive inspections. Once these are developed, the FAA may consider further rulemaking to revise this AD to require additional necessary action.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on July 13, 1989 to all known U.S. owners and operators of Fairchild Model F-27 and FH-227 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Federal Aviation Administration has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fairchild Industries, Inc.: Applicable to all Model F-27 and FH-227 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent structural failure of the wing due to undetected fatigue cracks, accomplish the following:

A. Within 25 hours time-in-service after the effective date of this AD, perform a dye penetrant inspection for cracks in the wing outer panel upper surface stringer splice fittings, in accordance with Fairchild Industries Service Bulletin F27-51-8, dated April 22, 1974 (reference paragraph 2A(6)(e), page 5; and Figure 14, page 24) or Fairchild Industries Service Bulletin FH227-51-4, dated January 17, 1979 (reference paragraph 2A(6)(e), page 5; and Figure 14, page 23), as appropriate, and Maryland Air Industries Alert Service Letters F27-681 and FH227-57-6, both dated June 29, 1989.

B. If cracks are found in the wing outer panel upper surface stringer splice fittings, remove and replace with serviceable parts prior to further flight.

C. Within 10 days after completion of the inspection required by paragraph A., above, submit a report of results of all inspections, positive or negative, to the Manager, New York Aircraft Certification Office, ANE-170, FAA, 181 South Franklin Avenue, Valley Stream, New York 11581.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE-170, FAA, New England Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, New York Aircraft Certification Office, ANE-170, FAA, New England Region

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Maryland Air Industries, Inc., Hagerstown, Maryland 21740. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York.

This amendment becomes effective August 21, 1989 as to all persons, except those persons to whom it was made immediately effective by priority letter AD 89-15-01, issued July 13, 1989, which contained this amendment.

Issued in Seattle, Washington, on July 26, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-18010 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-117-AD; Amdt. 39-6285]

Airworthiness Directives; McDonnell Douglas Model DC-8F-54, -55, DC-8-61F, -62F, -63F, -71F, -72F, and -73F Series Airplanes; Model DC-8-33 Airplanes With STC Number SA3403WE Incorporated; and Model DC-8-43 Airplanes With STC Number SA3749WE Incorporated

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing airworthiness directives (AD), applicable to certain Model DC-8 series airplanes, which currently require inspection and modification of the main cargo door hydraulic control valve and control panel access door, and visual inspection of the main cargo door to ensure that the door is locked prior to each takeoff. This amendment requires (1) inspection and modification of the main cargo door hydraulic control valve and control panel access door, (2) visual inspection of the main cargo door to ensure the door is locked prior to each takeoff, (3) inspection and modification of the exterior markings on the main cargo door, and (4) functional checks of the door-open indicating system. This amendment is prompted by a recent accident in which the main cargo door on a Model DC-9 series airplane opened in flight. Similar incidents of the Model DC-8 main cargo door opening in flight have been reported. This condition, if not corrected could result in loss of pressurization and control of the airplane.

EFFECTIVE DATE: August 18, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. George Y. Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM-132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; telephone (213) 988-5341.

SUPPLEMENTARY INFORMATION: In 1975, FAA issued AD 75-03-02, Amendment 39-2075, to require inspection, modification, and replacement, if necessary, of the main cargo door hydraulic control valve and control panel access door plate on McDonnell Douglas Model DC-8 series airplanes. That action was prompted by the inadvertent opening of the main cargo door on a McDonnell Douglas DC-8 series airplane during flight. This condition, if not corrected, could lead to loss of pressurization and control of the airplane.

In 1984, FAA issued AD 84-23-02, Amendment 39-4953, applicable to both Model DC-8 and DC-9 series airplanes, to require visual inspection of the main cargo door to ensure it is closed, latched, and locked prior to each takeoff; or modification of the original door-open indicating system and installation of a second door-open indicating system.

Since the issuance of those two AD's, a recent accident involving a Model DC-9 series airplane occurred, in which the main cargo door inadvertently opened during takeoff or shortly thereafter. This has prompted the FAA to further review the Model DC-8 main cargo door, since the design is similar to that of the Model DC-9. The review examined the main cargo door design, prior incidents of main cargo door inadvertent openings in flight, maintenance of the door, all available service information, and the existing airworthiness directives concerning the Model DC-8 main cargo door.

The FAA has determined that some Model DC-8 airplanes may not have proper exterior markings on the main cargo door, which are necessary to determine visually that the door is properly closed, latched, and locked. Also, the FAA has been advised that some crew members are leaning outside the main entrance door to visually check that the latch controls on the cargo door are in the locked position. Door locked indication can not be properly ascertained from the main entrance door.

The airplane involved in the accident described above did not have the dual door-open indicating system installed; its operator opted to rely on the visual inspection method of AD compliance. Aircraft which do not have the dual door-open indicating system (described in McDonnell Douglas DC-8 Service Bulletin 52-76) installed could have a latent failure condition in the original door-open indicating system such that the door-open annunciating light can extinguish with the cargo door merely resting on the door jamb in the closed, but not latched and locked, position. Also, properly securing the main cargo door hydraulic control panel access door can prevent inadvertent movement of the hydraulic control valve operating handle which is used to activate (open) the main cargo door. Based on the FAA review of the main cargo door design, operation, and maintenance, the FAA has determined that additional inspections, modifications, and checks are necessary to ensure that the Model DC-8 main cargo door is properly closed, latched, and locked prior to flight.

The FAA has reviewed and approved McDonnell Douglas All Operators Letter (AOL) 8-669, dated April 19, 1974; AOL 8-669A, dated April 30, 1974; and DC-8 Service Bulletin 52-76, Revision 3, dated January 29, 1976; which describe inspections, modifications, and checks of the main cargo door hydraulic control valve and control panel access door, the original door-open indicating system, and the new redundant door-open indicating system. The FAA has also approved the exterior markings on the main cargo door which are used when visually determining that the door is closed, latched, and locked.

McDonnell Douglas has also developed additional safety features to prevent the door from opening in flight. The FAA has approved McDonnell Douglas DC-8 Service Bulletins 52-74, Revision 2, dated November 19, 1975, which describes installation of a hydraulic isolation valve to shut off the hydraulic pressure to the control valve when the system is not in use; Service Bulletin 52-75, Revision 1, dated August 9, 1974, which describes installation of a viewing window in the exterior skin of the door for visual inspection of the lockpin position; and Service Bulletin 52-80, dated March 23, 1977, which describes installation of a vent door to improve the positive lock feature of the cargo door latching and locking system and to limit pressurization of the airplane.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD supersedes AD 75-03-02 and AD 84-23-02, and requires additional inspections, modifications, and checks of the main cargo door in accordance with the service bulletins previously described. All requirements currently imposed by AD 75-03-02 are incorporated into this AD.

The requirements of this AD supersede the requirements of AD 84-23-02 by requiring the operator to document compliance with the visual check requirement to ensure that the door is closed, latched, and locked prior to takeoff; deleting the requirement that a flight crew member, a mechanic, or a ramp supervisor ensure that the main cargo door is closed, latched, and locked prior to takeoff, placing that responsibility on the operator; requiring that the visual check of the exterior manual latch controls be accomplished from outside the airplane. In addition, the operator must provide qualified personnel and training on the door closing, latching, and locking procedures, as well as documentation of compliance with this AD.

This AD also requires additional inspection, modification, and checks by requiring initial and repetitive checks of the original door-open indicating system; initial and repetitive inspections of the main cargo door control panel access door and "T" handle clip; and inspection and remarking, if necessary, of the main cargo door exterior lockpin handle and latch actuating shaft markings.

Accomplishment of the modifications specified in McDonnell Douglas DC-8 Service Bulletins 52-74 R2, 52-75, 52-76 R3, and 52-80 will terminate certain inspections and checks required by this AD.

The requirements of this AD are considered to be interim measures. The FAA is currently evaluating all available modifications to the main cargo door system, as well as other actions, and may propose additional mandatory corrective actions to ensure that the Model DC-8 main cargo door will not inadvertently open in flight.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 75-03-02, Amendment 39-2075, and AD 84-23-02, Amendment 39-4953, with the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-8F-54, -55, DC-8-61F, -62F, -63F, -71F, -72F, and -73F series airplanes; Model DC-8-33 airplanes with STC Number SA3403WE incorporated; and Model DC-8-43 airplanes with STC Number SA3749WE incorporated; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inadvertent opening of the main cargo door in flight, a condition which could result in loss of pressurization and control of the aircraft, accomplish the following:

A. Within 14 days after the effective date of this AD, ensure that the main cargo door is closed, latched, and locked prior to takeoff following each operation of the door, in accordance with the procedures specified below. The procedures required by this paragraph must be accomplished by qualified and trained personnel, and the training program must be approved by the FAA Principal Maintenance Inspector (PMI). The method for documentation of compliance must also be approved by the FAA PMI.

1. From the outside of the airplane, perform a visual check of the exterior manual latch controls, to ensure that the latch actuating shaft and the lockpin handle are in the LOCK position; or

2. Perform a visual check of the latches and lockpins, located on the inside of the main cargo door, to ensure that the latches are in the closed position and the lockpins are in the locked position.

3. Prior to taxi, communicate to the flight crew that the main cargo door has been closed, latched, locked, and checked.

B. Unless the modifications described in paragraph E. of this AD have previously been accomplished, within the next 30 days after the effective date of this AD, and thereafter at intervals not to exceed 45 days, conduct a main cargo door-open indicating system functional check in accordance with paragraph 1 of McDonnell Douglas All Operators Letter (AOL) 8-669, dated April 19, 1974. If the main cargo door-open indicating system functional check is not successfully accomplished, repair the main cargo door-open indicating system prior to further flight, in accordance with AOL 8-669.

C. For airplanes with the hydraulic cargo door latch system, accomplish the following:

1. Within 30 days after the effective date of this AD, and thereafter at intervals not to exceed 45 days, inspect the main cargo door control panel access door plate and "T" handle stowage clip, in accordance with paragraph 2 of McDonnell Douglas AOL 8-669, dated April 19, 1974. In addition, inspect the control panel access door to ensure the door can be secured in the down and locked position. If the control panel access door can not be secured in the down and locked position, repair prior to further flight.

2. Unless previously accomplished in accordance with paragraph (2) of AD 75-03-02, Amendment 39-2075, within the next 30 days after the effective date of this AD, verify that the main cargo door hydraulic control valve shaft operates freely, without binding, between the operate neutral and neutral lock positions. This shall be accomplished by opening the main cargo door hydraulic control valve control panel access door; raising the "T" handle, Douglas P/N 4777888-1; and pulling the "T" handle vertically upward to its maximum travel (operate neutral position). When the vertical force on the "T" handle is relieved, the main cargo door hydraulic control valve shaft should return to the neutral lock (down) position without binding. Replace the main cargo door hydraulic control valve, Douglas P/N 5777869-5001 or 5919985-5001, prior to further flight, if the valve shaft does not return freely to the neutral lock position.

D. Within 30 days after the effective date of this AD, inspect the main cargo door exterior lockpin handle and latch actuating shaft markings, in accordance with Paragraph 7 of McDonnell Douglas AOL 8-669, dated April 19, 1974, and with one of the following McDonnell Douglas Drawings: 7718621-59 and -61, Revision "AV"; or 5633828, Revision "E"; or 5633939, Revision "C"; or 5804421, Revision "A/H". If the exterior markings are not correct, mark in accordance with any of the above McDonnell Douglas drawings prior to further flight.

E. Compliance with the requirements of paragraph B., above, may be terminated upon the installation of the main cargo door-open indicating circuit that utilizes a proximity switch, revision of the existing main cargo door-open indicating circuit, and the

installation of a main cargo door indicating system test circuit, as outlined in the Accomplishment Instructions of McDonnell Douglas DC-8 Service Bulletin 52-76, Revision 3, dated January 29, 1986.

F. Compliance with the requirements of paragraphs A., B., and E., above, may be terminated upon installation of the following modifications to the main cargo door systems:

1. Installation of a hydraulic isolation valve and control system in accordance with McDonnell Douglas DC-8 Service Bulletin 52-74, Revision 2, dated November 19, 1975;

2. Installation of a lock mechanism view window in accordance with McDonnell Douglas DC-8 Service Bulletin 52-75, dated August 9, 1974;

3. Installation of a new and modification of the existing main cargo door-open indicating system in accordance with McDonnell Douglas DC-8 Service Bulletin 52-76, Revision 3, dated January 29, 1986; and

4. Installation of a forward upper cargo door vent system in accordance with McDonnell Douglas DC-8 Service Bulletin 52-80, dated March 23, 1977.

G. The checks and modifications specified in paragraphs A. through F. of this AD are not required on airplanes which have the main cargo door deactivated and secured in the closed and locked position in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, until that door is reactivated.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment supersedes Amendment 39-2075, AD 75-03-02; and Amendment 39-4953, AD 84-23-02.

This amendment becomes effective August 16, 1989.

Issued in Seattle, Washington, on July 24, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-18013 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-129-AD; Amdt. 39-6284]

Airworthiness Directives; Fokker Model F-28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Fokker Model F-28 series airplanes, which currently requires a one-time visual inspection for cracks of the fuselage lap joint at stringer 73 between frame 4900 and frame 9805, and repair, if necessary. This amendment requires repetitive eddy current inspections for cracks of the fuselage lap joint at stringer 73 between frame 5305 and frame 9305, and repair, if necessary. This amendment is prompted by further examinations which revealed that, in addition to the visual cracks, cracks extended from the dimpled rivet holes for relatively long distances. This condition, if not corrected, could lead to reduced structural capability of the fuselage and subsequent decompression of the airplane.

EFFECTIVE DATE: August 16, 1989.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113, telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On March 8, 1989, FAA issued AD 89-07-01, Amendment 39-6157 (54 FR 11171; March 17, 1989), to require a one-time visual inspection of the fuselage lap joint at stringer 73 between frame 4900 and frame 9805 for cracks, and repair, if necessary. That action was prompted by reports of cracks in non-bonded fuselage lap joints; this cracking was due to fatigue cracking of the dimpled rivet holes. This condition, if not corrected, could lead to reduced structural capability of the fuselage and subsequent decompression of the airplane.

Since issuance of that AD, further examinations by the manufacturer revealed cracks in the non-bonded fuselage lap joint at stringer 73 between frames 7805 and 8805. In addition to the visual cracks, cracks extended from the dimpled rivet holes for relatively long distances and were not visible from the outside. Some of these cracks appeared to be "under-surface" cracks. This condition, if not corrected, could lead to reduced structural capability of the fuselage and subsequent decompression of the airplane.

Fokker has issued Service Bulletin F28/53-A94, Revision 1, dated July 5, 1989, which describes procedures to perform an eddy current inspection of the fuselage lap joint at stringer 73 between frame 5305 and frame 9305, to ensure that cracks in the dimpled rivet holes are detected at an early stage, and repair, if necessary. The Rijksluchtvaardienst (RLD), which is the airworthiness authority of the Netherlands, has classified this service bulletin as mandatory, and has issued the Netherlands Airworthiness Directive BLA No. 89-50 addressing this subject.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 89-07-01, Amendment 39-6157, to require a periodic high frequency eddy current inspection for cracks in the area of the fuselage lap joint at stringer 73, and the installation of a temporary repair, if necessary, in accordance with the service bulletin previously described.

Fokker intends to supersede the shielded pencil probe procedure specified in Service Bulletin F28/53-A94 (Revision 1) by revising the Structural Integrity Program Part 1 and the Non-Destructive Testing Manual to specify a more sensitive phase analyzing high frequency eddy current inspection procedure using a sliding probe. Additionally, Fokker is currently developing a service bulletin that will describe procedures for permanent repair of the lap joint at stringer 73, which will terminate the need for repetitive inspections. When these revisions and the service bulletin are developed and available, the FAA may consider further rulemaking action to address these subjects.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6157 (54 FR 11171; March 17, 1989), AD 89-07-01, with the following new airworthiness directive:

Fokker: Applies to Model F-28 series airplanes, Serial Numbers 11008 to 11241, inclusive, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the fuselage and subsequent decompression of the airplane, accomplish the following:

A. Inspect the fuselage lap joint at stringer 73 between frames 5305 and 9305 in accordance with Part 1 of Fokker Service Bulletin F-28/53-A94, Revision 1, dated July 5, 1989, and with the following schedule:

1. For airplanes that have accumulated 32,000 landings or more as of the effective date of this AD, inspect within 2 days after the effective date of this AD.

2. For airplanes that have accumulated fewer than 32,000 landings as of the effective date of this AD, inspect within 60 days after the effective date of this AD or prior to the accumulation of 20,000 landings, whichever occurs later.

B. Repeat the inspections required by paragraph A., above, at intervals not to exceed 1,000 landings.

C. If cracks are found, repair prior to further flight, in accordance with Part 2 of Fokker Service Bulletin F28/53-A94, Revision 1, dated July 5, 1989. After repair, continue to inspect in accordance with Part 1 of the service bulletin, at intervals not to exceed 1,000 landings.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc. 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment supersedes Amendment 39-6157, AD 89-07-01.

This amendment becomes effective August 16, 1989.

Issued in Seattle, Washington, on July 24, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-18017 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-171-AD; Amdt. 39-6290]

Airworthiness Directives; McDonnell Douglas Model DC-8 Series Airplanes Equipped With LH or RH Nose Landing Gear Upper Drag Link Assembly, Part Numbers (P/N) 5716882-1, -501, -503, 5717011-1, -501, or -503

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Clarification of final rule.

SUMMARY: This action certifies an existing airworthiness directive (AD), applicable to certain McDonnell Douglas DC-8 series airplanes, which currently requires inspections of the left (LH) and right (RH) nose landing gear upper drag link assembly for fatigue cracking and undersized drag link lug stiffening web, and modification or replacement, as necessary. This action clarifies paragraph C. of the AD by referencing the specific modification of the drag link assemblies subject to the inspections required by that paragraph.

EFFECTIVE DATE: August 2, 1989.

ADDRESSES: All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. David Y.J. Hsu, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5323.

SUPPLEMENTARY INFORMATION: On April 17, 1989, the FAA issued AD 89-10-03, Amendment 39-6203 (54 FR 18276; April 28, 1989), which requires inspection of the LH and RH nose landing gear (NLG)

upper drag link assembly for fatigue cracking and undersized drag link lower lug stiffening web, and modification or replacement, as necessary. That action was prompted by three reported failures of the link assembly which resulted in the collapse of the NLG and damage to the NLG and its adjacent structure. This condition, if not corrected, could result in collapse of the NLG during ground handling, takeoff, or landing.

The inspection requirements of paragraph C. of that AD are applicable to airplanes with drag link assemblies "modified in accordance with McDonnell Douglas DC–8 Service Bulletin 32–178, dated May 22, 1987." The FAA has received requests to clarify paragraph C. to specify what constitutes the applicable "modification" of the drag link assembly and what inspections are required to be accomplished on that modified assembly.

Accordingly, the FAA has revised paragraph C. of this rule to clarify that the applicable modified drag link assemblies are those that are partially modified in accordance with the McDonnell Douglas Service Bulletin, without shot peen and polish in accordance with Steps 9 and 10, Figure 1, of that service bulletin. The inspections are required, initially, upon the accumulation of 800 landings on the modified assembly, and thereafter at intervals of 200 landings (these inspection requirements are unchanged from the existing AD).

Since this action only clarifies information in a final rule, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft, Air transportation, Safety.

Adoption of the Clarification

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration clarifies Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423, 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 amended by clarifying paragraph C. of AD 89–10–03, Amendment 39–6203 (54 FR 18276; April 28, 1989), as follows:

McDonnell Douglas: Applies to Model DC–8 series airplanes, equipped with left (LH) or right (RH) nose landing gear (NLG) upper drag link assembly, P/N 5716882–1, –501, –503, 5717011–1, –501, or –503, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent collapse of nose landing gear during ground handling, takeoff, or landing, due to fatigue failure of the LH or RH nose landing gear (NLG) upper drag link lower lug, accomplish the following:

A. Within the next 400 landings after the effective date of this AD, unless already accomplished within the last 400 landings, conduct a magnetic particle or dye penetrant inspection of the LH and RH nose landing gear upper drag link assembly, and measure the lower lug stiffening web for minimum thickness, in accordance with McDonnell Douglas DC–8 Service Bulletin 32–178, dated May 22, 1987.

1. If cracks are found, or if the minimum web thickness measures .100" or less, before further flight, remove and replace the assembly in accordance with paragraph B. or D. of this AD.

2. If no cracks are found and the minimum web thickness measures greater than .100", repeat the inspection in accordance with paragraph A. of this AD at intervals not to exceed 200 landings, unless reworked in accordance with paragraph C. of this AD, or replaced in accordance with paragraph B. or D. of this AD.

B. If the drag link assembly is replaced with a new assembly not modified in accordance with McDonnell Douglas DC–8 Service Bulletin 32–178, dated May 22, 1987, upon the accumulation of 4,000 landings on the new assembly, perform the initial inspections in accordance with paragraph A. of this AD, and repeat these inspections at intervals not to exceed 200 landings.

C. If the drag link assembly is partially modified in accordance with McDonnell Douglas DC–8 Service Bulletin 32–178, issued May 22, 1987, without shot peen and polish in accordance with Steps 9 and 10, Figure 1, of the Service Bulletin, upon the accumulation of 800 landings on the modified assembly, perform the initial inspection in accordance with paragraph A. of this AD, and repeat the inspection at intervals not to exceed 200 landings.

D. Replacement of both LH and RH nose landing gear upper drag link assemblies with P/N 5716882–505 and 5717011–505, or modification of the drag link assembly in accordance with McDonnell Douglas DC–8 Service Bulletin 32–178, dated May 22, 1987, and reidentification of the drag link assembly as SR06328002–3, –5, –7, –9, –11, or –13, as applicable, constitutes terminating action for the inspection requirements of this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). This information may be examined at FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This clarification becomes effective.

Issued in Seattle, Washington, on July 25, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–18012 Filed 8–1–89; 8:45 am]

BILLING CODE 4910–13–M

Research and Special Programs Administration

14 CFR Parts 217 and 241

[Docket No. 44999]

RIN 2137–AA97, 2137–AB01

Aviation Economic Regulations; Report of Traffic, and Capacity Statistics; Collection of Service Segment and Charter Data; the "T–100 System"

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Final rule; change of effective date; partial grant of petitions for reconsideration.

SUMMARY: This action responds to issues raised in petitions for reconsideratoin of the final rule amending 14 CFR Parts 217 and 241 (Docket 44999) published in the Federal Register on November 16, 1988 (53 FR 46284). Petitions are granted to the extent that the effective date for foreign air carrier reporting requirements in 14 CFR Part 217 is extended to January 1, 1990, the same date as U.S. air carrier reporting requirements in 14 CFR Part 241. That portion of American's petition for rulemaking in Docket 46101 (a copy of which is in Docket 44999 as Exhibit 1 to the carrier's comment) pertaining to the release of data for international

operations of U.S. or foreign air carriers is denied.

EFFECTIVE DATE: January 1, 1990, for foreign air carriers (14 CFR Part 217).

FOR FURTHER INFORMATION CONTACT: Donald W. Bright or Richard J. King, Office of Aviation Information Management, DAI–10, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366–4384, or 366–4375, respectively.

SUPPLEMENTARY INFORMATION: Four petitions for reconsideration and eight answers have been filed with the Department concerning its issuance of a final rule amending 14 CFR Parts 217 and 241. The rule established a new traffic reporting system known as the "T–100 System" for U.S. and foreign air carriers. The pleadings encompass individual or consolidated petitions and answers filed by or on behalf of seventeen foreign air carriers, as follows.

Comments were filed by: Air Afrique, Air Canada, Air France, Alitalia, All Nippon Airways and Nippon Cargo Airlines (jointly), Avensa, BWIA International, Korean Air, Lan Chile, Thai Airways and JAT-Yugoslav Airlines. A single consolidated comment was filed on behalf of Air Canada; Air Jamaica; Balair Limited; Cathay Pacific Airways Limited; Lloyd Aereo Boliviano, SA; and Philippine Airlines. American Airlines also filed a comment.

Alitalia contended that assurance of confidentiality for its data was lacking, foreign air carriers would bear a greater burden than U.S. air carriers, and application of the rule to foreign air carriers would violate the spirit of bilateral agreements. American Airlines filed a comment in support of Alitalia's contention that there was burden for foreign air carriers and that additional time was needed to comply; American also urged prompt disclosure of T–100 data as opposed to holding the data confidential for three years. The confidentiality issues raised by American regarding the U.S. air carriers' domestic data are being considered under Docket 46101.

In their joint petition for reconsideration and for stay, Air Canada; Air Jamaica; Balair Limited; Cathay Pacific Airways Limited; Lloyd Aereo Boliviano, SA; and Philippine Airlines argue that the Department failed to consider adequately the costs and burdens associated with the new rule. They argue that those costs and burdens would be substantial and that, accordingly, the Department should reconsider whether to promulgate the rule. If, however, the Department were to proceed with promulgation, they argue that the rule's effective date for foreign air carriers should be stayed so as to give those carriers time to comply. All Nippon Airways and Nippon Cargo Airlines (jointly), and Avensa, Lan Chile, BWIA International, Air Afrique, and Korean Air answered in support of the joint petition.

A number of the foreign air carriers also requested either repeal or delay in the effective date of the rule, saying essentially that foreign air carriers (a) would be greatly burdened by the rule, (b) needed time to comply, and (c) should be placed on no worse footing than U.S. air carriers in terms of their data-filing obligations. The requests of the carriers may be summarized as follows: Thai Airways—Petition for repeal or, alternatively, for amendment to postpone the effective date as to foreign air carriers until January 1, 1990; JAT-Yugoslav Airlines—Request for waiver from immediate compliance; Air France—Motion for postponement of effective date; Alitalia—Petition for repeal or amendment of final rule. Alitalia argues that the exess burden on foreign air carriers would violate bilateral provisions on fair and equal opportunity to compete, and also raises concerns over confidential treatment of submissions. The European Civil Aviation Conference, in a letter (copy of which has been placed in Docket 44999) to Jeffrey Shane, then the Deputy Assistant Secretary of State for Transportation Affairs, requested deferral of the rule, stating that the confidentiality of the data could not be assured.

In essence, petitions of some foreign air carriers suggested that sec. 19–6 of 14 CFR Part 241, the portion of the final rule pertaining to public disclosure of traffic data, is inconsistent with the Department's obligations under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and that, because of those obligations, the Department will be unable to protect their sensitive data. The Department disagrees. It is the Department's view that detailed air carrier on-flight market and nonstop segment data on international operations by both U.S. and foreign air carriers is exempt from the mandatory release requirements of the FOIA.

Under exemption 3 of the FOIA, 5 U.S.C. 552(b)(3), information in agency records may be withheld if it is specifically exempted from disclosures by a statute, provided that the statute "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." Section 1104 of the Federal Aviation Act (49 U.S.C. 1504) is an exemption 3 statute, because it requires that information be withheld by the Department if its release "would prejudice the formulation and presentation of positions of the United States in international negotiations or adversely affect the competitive position of any air carrier in foreign air transportation." The Department believes that the premature release of international data submitted pursuant to the final rule would produce the harm specified in section 1104. Accordingly, public access to such data will be denied based on exemption 3 of the FOIA as long as the danger of such harm persists.

Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4), permits agencies to withhold commercial or financial information obtained from a person and privileged or confidential. Information is considered "confidential" for purposes of exempton 4 if its release would be likely either to impair the government's ability to obtain necessary information in the future or cause substantial harm to the competitive position of the person from whom the information was obtained (submitter). The Department believes that premature release of international data submitted pursuant to the final rule would be likely to impair the government's ability to obtain necessary information in the future. Accordingly, the Department will deny public access to international data pursuant to exemption 4 of the FOIA. Further, no discretionary public release will be made of data submitted pursuant to the final rule that appears to be "confidential" because its release would be likely to cause substantial competitive harm to the submitter unless the Department's regulations implementing Executive Order 12600 have been complied with. These regulations (§ 7.57 of 49 CFR Part 7) require written notice to the submitter concerning a request for the submitter's confidential commercial information, and consideration of the submitter's objections to release of that information. They also require that the submitter be given prior written notice of any decision to release any of the information over the submitter's objections.

As the above indicates, the Department intends to protect international data submitted pursuant to the final rule to the maximum extent permissible pursuant to exemptions 3 and 4 of the FOIA. In addition, in appropriate circumstances, other

BEST COPY AVAILABLE

exemptions may also be invoked by the Department to protect international data. For example, under some circumstances, data provided to the United States on a confidential basis by a foreign government, including information on a foreign air carrier owned by a foreign government, can be classified to protect national defense or foreign policy interests and withheld pursuant to exemption 1, 5 U.S.C. 552(b)(1).

As previously mentioned, confidentiality of U.S. air carrier's domestic data will be addressed in Docket 46101. This docket will address American Airlines' petition (supported by United Air Lines and British Airways and opposed by Thai Airways) concerning the confidential treatment of T–100 data. As to American's petition, the issue of the release of domestic data of U.S. air carriers warrants further consideration, and we have decided to examine that issue in Docket 46101. However, based on our review and conclusions regarding the issue of confidentiality and release of international data as discussed above, that portion of American's petition for rulemaking in Docket 46101 (a copy of which is in Docket 44999 as Exhibit 1 to the carrier's comment) pertaining to the release of data for international operations of U.S. or foreign air carriers is denied.

We have already decided, by separate action, to suspend the effective date of the rule for foreign air carriers (53 FR 52404, December 28, 1988). By our action today, we establish a new effective date of January 1, 1990, for the foreign air carrier provisions in 14 CFR Part 217, i.e., the same date as that for the U.S. air carrier provisions in 14 CFR Part 241. We regard this grant of a one year reporting extension as a positive response to the widely voiced request for relief expressed by the foreign air carriers.

Moreover, we reiterate what we said in the Final Rule (53 FR at 46286), namely: that the Department is sensitive to foreign air carrier concerns as regards reporting burdens and wants to minimize any potential reporting burden on air carriers as much as possible. We are prepared to work with the foreign air carriers to ensure a smooth transition to the new T–100 system. We have already begun this process by notifying foreign air carriers of our willingness to hold public workshops to facilitate their T–100 system reporting. We have conducted a survey of carrier interest in holding T–100 workshops. Based upon carrier responses, we anticipate conducting several workshops during 1989.

Against this background, we see no basis for repeal of the final rule or for any exemptions or waivers. Contrary to the assertions of some of the petitioners and commentors, we fully considered all of the submissions received before issuance of the rule last November. We specifically reviewed the allegations concerning foreign air carrier costs and burdens (53 FR at 46285–86 and 46288–89). We noted that based on a cross section survey of foreign air carriers, the average number of data lines for the group was about 20. We concluded that "twenty lines of data per month for a foreign air carrier is not an unreasonable burden in view of the Department's need for the data." In terms of burden hours, the final rule estimated that each T–100 submission would range from 1 to 20 hours to complete (53 FR at 46286). On the average, it is further estimated that the amount of hours per U.S. air carrier submission would average 7 hours (for the monthly T–100 reports) and 10 hours (for the T–100 quarterly reports, including supplementary Schedule T–1, T–2 and T–3). In contrast, foreign air carrier burden is estimated to average 1.5 hours (from a range of 1 to 3 hours per foreign air carrier). Finally, it is clear from the number of data elements (eleven for foreign air carriers as against a maximum of twenty-four for U.S. air carriers) that the Department has exerted a serious effort to limit the number of data items requested from foreign air carriers.

Thus, we adhere to our conclusion that foreign air carriers would not be unduly burdened. We also reiterate our belief that most foreign air carriers already generate the data for their own business purposes. This means that their burden emanates from conforming their data to the DOT rule, and as indicated in the final rule, that burden is justified in light of the benefits to be derived from aviation information collection and program use.

In addition, it is important to recall that we did not evaluate the foreign air carrier burden issue in isolation. We also considered the burdens faced by U.S. air carriers in complying with the numerous filing requirements that exist abroad. In these circumstances, we found that the obligations established by the T–100 system were well within the limits of common international reporting practices and were not unduly burdensome. In this light, the T–100 reporting system cannot represent in any way a denial of fair and equal opportunity to compete. We have seen nothing in any of the petitions or other post-rule pleadings that would persuade us to the contrary.

Further, we are not convinced by Air Canada's arguments that the U.S.-Canada data exchange program justifies an exemption or waiver for Canadian carriers. The Canadian reporting requirements for non-national carriers, including U.S. airlines, are among the most extensive in the world—many times more detailed and burdensome than the T–100 system. For example, Statement 6 pursuant to section 268 of the Canadian National Transportation Act provides for a daily airport activity report for each scheduled flight arriving at and departing from a Canadian airport. The Canadian information collection includes the following data elements which are not required to be reported in the T–100 system: flight number; identification of flights diverted from another point; available seats and available weight for revenue goods; and date and time of flight arrival or departure. Against this background, we conclude that the T–100 system filing requirements are entirely justified as to Canadian air carriers and that no exemption or waiver is warranted.

All other arguments made in the recent petitions and filings have either been fully discussed and acted upon here and in our previous decision, or present no basis for the Department to alter the decision in the final rule.

Accordingly, foreign air carriers have been granted a full year extension in their originally scheduled compliance date, and they shall begin complying with 14 CFR Part 217 effective January 1, 1990, the same date as U.S. air carriers begin complying with the T–100 system provisions in 14 CFR Part 241.

Issued in Washington, DC on July 27, 1989.

Travis P. Dungan,

Administrator, Research and Special Programs Administration, DOT.

[FR Doc. 89–18006 Filed 8–1–89; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 773

[Docket No. 90646–9146]

Export Licenses; Revision to Instructions for Form BXA–622P

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On February 14, 1989 (54 FR 6643), the Bureau of Export Administration published a final rule that revised the forms necessary to apply for export licenses (BXA–622P, BXA–622P–A, BXA–622P–B, formerly ITA–622P). The new forms allow use of Optical Character Recognition (OCR) for direct recording of export license information into the Commerce Department computer data base, thus eliminating the need for manual entry. In addition, the rule provided the revision of these forms to carry the "BXA" designation (e.g., BXA–622P) in order to reflect the Bureau of Export Administration as a separate entity from the International Trade Administration within the U.S. Department of Commerce.

This rule amends Supplement No. 5 to Part 773, establishing new instructions for Distribution License applicants when completing the new Form BXA–622P.

EFFECTIVE DATE: This rule is effective August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule contains collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0015. Public reporting for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project (0694–0015), Washington, DC 20503.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603 *et seq.*) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

5. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are always welcome on a continuing basis. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 773

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 773 of the Export Administration Regulations (15 CFR Parts 730–799) is amended as follows:

PART 773—[AMENDED]

1. The authority citation for 15 CFR Part 773 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*) and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. Supplement No. 5 to Part 773 is revised to read as follows:

Supplement No. 5 to Part 773—Instructions for Distribution License Applicants When Completing Form BXA–622P

(a) *Items 1, 5, 10 and 16:* See instructions in Supplement No. 1 to Part 772.

(b) *Item 2:* Enter "X" in the appropriate field to indicate which forms are attached. In the field marked OTHER enter "0052's", preceded by the number of consignees for whom forms were submitted.

(c) *Item 3:* If this is a resubmission of a previous application indicate the previous application control number, otherwise leave blank.

(d) *Item 4:* Enter, "Distribution License, Initial" or, if appropriate "Distribution License, Renewal." Include the six digit case number and "V" number of the previous license.

(e) *Items 7, 8, 13, 14:* Enter "N.A."

(f) *Item 8:* Enter "See Attached List" and label the attached list as "Attachment Item 6". When submitting an initial application, the list must include each consignee alphabetically by country. Complete addresses (city, street, etc.) must be furnished for each consignee. Post Office boxes are not acceptable. When submitting a renewal application, the consignees must be listed numerically by the consignee number previously assigned to them. This number should appear to the left of the name. This list must be submitted in duplicate. A separate list of those consignees being dropped from the renewal distribution license should also be included. Government agencies that meet the definition in § 775.2(b)(3) should be designated by the symbol (G) beside the name. Controlled-in-fact consignees should be designated by the symbol (A) next to their name, and independent consignees subject to written arrangements should be designated by the symbol (B) next to their names.

Also, if the application covers commodities listed in Supplement Nos. 1 or 4 to Part 773, the applicant shall prepare a list containing the end-user(s) of the commodities. Street and city addresses for each end-user must be furnished.

(g) Item 9 (a), (c), and (d) are all left blank. Item 9(b): List separately on the face of Form BXA–622P the Export Control Commodity Numbers (ECCN's) from the Commodity Control List (CCL) for the commodities proposed for coverage, with a summary description in estimated descending order of the anticipated export volume by value (e.g., 1565A computers; 1355A manufacturing machinery). Do not list more than the projected top six numbers. To the right of the commodity description put the estimated percentage of total exports under the license each such number is expected to represent in the first year following validation. Enter only the top six ECCN's on the face of the application.

(1) A separate list should be created (labeled "Attachment Item 9(b) Product Description") with a description of each type of commodity to be exported and the appropriate Export Control Commodity Number in the designated column. When the intent is to ship only certain types of goods within a CCL entry, the applicable paragraph

designations should be listed. No entries totally excluded by Supplement No. 1 to Part 773 may be listed. Brochures or product literature may be supplied at the option of the applicant; this may expedite processing of applications involving potentially sensitive products.

(2) Listings on the attachment of entries that are partially excluded by Supplement Nos. 1 or 4 to Part 773 must have the notation "except (insert paragraph number or description)" after the entry.

(3) Only commodities included in a CCL entry (or paragraph, if applicable) specifically listed on the application or attachment and approved by OEL may be exported under a Distribution License.

(4) Spare or replacement parts for listed commodities may be included without specifying a CCL entry if such parts shipments will not exceed 20% of the value of the total exports under the license and the applicant lists on the application—"Spare and replacement parts for commodities included in CCL entries (list entries)."

(5) The listing of the CCL entries by Export Control Commodity Number (and sub-paragraph designation, if applicable) will generally constitute a sufficient description of the commodities to be shipped.

(h) Enter the following statement at the bottom of the attachment to Item 9(b):

"Description of Commodity or Technical Data"

No commodity excluded from the Distribution License Procedure under the Export Administration Regulations or under this license will be exported to any consignee in any destination under this Distribution License if this application is approved.

(i) *Item 11:* Enter "self" or name of manufacturing company. If more than one enter "various" and describe in the comprehensive narrative statement.

(j) *Item 12:* Enter "see attached 6052's".

(k) *Item 15:* In this field marked "Additional Information" enter an estimate of the total dollar volume of sales or other transactions with all consignees in the commodities involved during the last twelve month period or last calendar year before submission of the application. Specify whether the sales were under a previous Distribution License, Individual Validated License, or General License. This amount does not represent a limit to expected exports.

(l) The pink copy entitled "Applicants File Copy" should be retained by the exporter before submission.

(Approved by the Office of Management and Budget under control number 0694-0015)

Dated: July 28, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-17954 Filed 8-1-89; 8:45 am]

BILLING CODE 3510-DT-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Conduct of Members and Employees of the Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule; recodification.

SUMMARY: The Commission is recodifing a recently revised portion of its Code of Conduct to promote ease of reference.

EFFECTIVE DATE: This recodification shall be effective on August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Susan M. Milligan, Attorney, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-7110.

SUPPLEMENTARY INFORMATION: On May 31, 1989, the Commission published revisions to its Code of Conduct. *See* 54 FR 23207 (May 31, 1989) (Final Rule). The codification of these revisions, however, is difficult to read. The Commission has determined to recodify the revisions in a more easily readable form.

List of Subjects in 17 CFR Part 140

Commodity futures, Conflicts of Interest, Ethics, Organization, Functions and procedures.

PART 140—[AMENDED]

Accordingly, the Commission recodifies its Code of Conduct, Subpart C of Part 140 of Chapter I of Title 17 of the Code of Federal Regulations as specified below:

1. The authority citation for Part 140 continues to read as follows:

Authority: 17 U.S.C. 12a.

2. Section 140.735-8 is amended by revising paragraph (b) to read as follows:

§ 140.735-8 Acceptance of things of value.

* * * * *

(b) *Exceptions.* This paragraph does not apply:

(1) When the circumstances make it clear that it is obvious family or personal relationships rather than the business of the persons concerned which govern and are the motivating factors;

(2) When, on infrequent occasions, food and refreshments of nominal value are offered in the ordinary course of a luncheon or dinner meeting or other meeting; [1a]

(3) When unsolicited advertising or promotional materials, such as pens, pencils, note pads, calendars, and other items of nominal value are offered;

(4) When local transportation is provided to the member or employee while he is on official business and alternative arrangements are impracticable;

(5) To customary loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees such as home mortgage loans;

(6) If the General Counsel approves in advance, to reasonable travel and subsistence expense reimbursement by potential employers provided the Commission member or employee is engaged in bona fide post-Commission employment negotiations and is not on official business at the time; or

(7) If the General Counsel approves in advance, to attendance and acceptance of food and refreshments served at widely-attended group events. In deciding whether Commission members and employees may attend and accept food and refreshments at such group events, the General Counsel will consider whether:

(i) It is in the Commission's interest that the Commission member or employee attend the event where food and refreshments are being served;

(ii) The sponsor of the event is an individual or entity that is regulated by the Commission, or an individual or entity that has some other business connection with the Commission or is directly involved in a matter pending before the Commission so that the timing or other circumstances surrounding the event would create an appearance of impropriety that outweighs the agency's interest in the Commission member's or employee's attendance;

(iii) The event will be of mutual interest to the government and industry such as a reception, seminar, conference, industry trade fair, or training session, whose informational value is not merely incidental to its entertainment value (in instances where the Commission has paid for a member's or employee's admission to a conference or seminar, the member or employee may participate in all events hosted by the conference organizers as part of the paid admission. However, attendance and acceptance of food and refreshments at receptions and other events hosted by parties other than the conference sponsor, but held during the course of the conference, must be approved in advance by the General Counsel in accordance with the requirements of this section.);

(iv) The food and refreshments offered in conjunction with the event will be excessive;

(v) There are any other relevant factors that should be considered in reaching a determination. [1b]

* * * * *

Issued in Washington, DC, on July 26, 1989 by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 89-17903 Filed 8-1-89; 8:45 am]

BILLING CODE 6351-01-M

[1a] For purposes of paragraph (b)(2) of this section, the Office of Government Ethics of the Office of Personnel Management has defined the term "meeting" to mean a luncheon, dinner, or other meeting attended by a large group at which the Commission member or employee is the guest speaker, or a meeting at which food is brought into facilitate the continuance of the work and is not itself the focus of the meeting. *See* October 23, 1987 Memorandum Re: Acceptance of Food and Refreshments by Executive Branch Employees from Donald E. Campbell, Acting Director, Office of Government Ethics at 4-5.

[1b] The Commission, with the concurrence of the Office of Government Ethics, may grant other exceptions if the Commission determines that an exception is warranted and appropriate in a particular situation. See 5 CFR § 735.202(b).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Extension of Temporary Placement of N,N-Dimethylamphetamine into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to extend the temporary scheduling of *N,N*-dimethylamphetamine in Schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq*). The temporary scheduling of this substance is due to expire on August 3, 1989. This notice will extend the temporary scheduling of N,N-dimethylamphetamine for six months or until rulemaking proceedings pursuant to 21 U.S.C. 811(a) are completed, whichever occurs first.

EFFECTIVE DATE: August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7189.

SUPPLEMENTARY INFORMATION: On August 3, 1988, the Administrator of DEA published a final rule in the Federal Register (53 FR 29232) amending § 1308.11(g) of Title 21 of The Code of Federal Regulations to temporarily place *N,N*-dimethylamphetamine into Schedule I of the CSA pursuant to the emergency scheduling provisions of 21 U.S.C. 811(h).

The final rule which became effective on August 3, 1988, was based on findings by the Administrator that the emergency scheduling of the above-referenced substance was necessary to avoid an imminent hazard to the public safety. Section 201(h)(2) of the CSA (21 U.S.C. 811(h)(2)) requires that the emergency scheduling of a substance expires at the end of one year from the effective date of the order. However, during the pendency of proceedings under 21 U.S.C. 811(a)(1) with respect to the substance, temporary scheduling of that substance may be extended for up to six months. Proceedings for the scheduling of a substance under 21 U.S.C. 811(a) may be initiated by the Attorney General (delegated to the Administrator of DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of the Department of Health and Human Services, or on the petition of any interested party. Such proceedings regarding *N,N*-dimethylamphetamine have been initiated by the Administrator.

Therefore, the temporary scheduling of *N,N*-dimethylamphetamine, which is due to expire on August 3, 1989, may be extended until February 3, 1990, or until proceedings initiated in accordance with 21 U.S.C. 811(a) are completed, whichever occurs first.

Pursuant to 21 U.S.C. 811(h)(2) the Administrator hereby orders that the temporary scheduling of *N,N*-dimethylamphetamine be extended until February 3, 1990 or until the conclusion of scheduling proceedings initiated in accordance with 21 U.S.C. 811(a), whichever occurs first.

Pursuant to Title 5, United States Code, section 605(b), the Administrator certifies that the extended scheduling of *N,N*-dimethylamphetamine into Schedule I of the CSA will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96-354). *N,N*-Dimethylamphetamine has no commercial use or manufacturer in the United States.

It has been determined that the extension of the temporary placement of *N,N*-dimethylamphetamine in Schedule I of the CSA under the emergency scheduling provision is a statutory exception to the requirements of Executive Order 12291 (46 FR 13193). This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparations of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Date: July 27, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-18028 Filed 8-1-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF STATE

22 CFR Parts 60, 61, 62, 63, 64, 65

[106.888]

RIN 1400-AA19

South Africa and Fair Labor Standards

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Comprehensive Anti-Apartheid Act of October 2, 1986 (Pub. L. 99-440) contains provisions on the fair labor standards to be implemented by U.S. firms in South Africa and Namibia. This final rule contains certain technical amendments to the regulations implementing the Act.

EFFECTIVE DATE: August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Robert L. Bruce, Office of Southern African Affairs, (202) 647-8433, or John R. Byerly or Antonio F. Perez, Office of the Legal Adviser, (202) 647-4110, Department of State.

SUPPLEMENTARY INFORMATION: Section 2 of Executive Order 12532 of September 9, 1985 (50 FR 36861) deals with the labor practices of U.S. nationals and their firms in South Africa. On November 8, 1985 the Department of State published draft implementing regulations as a proposed rule for public comment (50 FR 46455). The final rule was published on December 31, 1985 (50 FR 53308).

The Comprehensive Anti-Apartheid Act of 1986 (Pub. L. 99-440) ("the Act") codified the measures required under the September 9, 1985 Executive Order. The Act contains a Code of Conduct (section 208) which codifies the fair labor standards specified in Executive Order 12532. It also contains several provisions relating to the fair labor standards to be implemented by U.S. firms. These provisions were implemented by the final rule that was published by the Department of State on October 30, 1986 (51 FR 39655).

The Department of State has determined that certain technical amendments are required in the existing regulations. These amendments include clarifying requirements for questionnaires, correcting citations to the criminal penalty provisions of the Comprehensive Anti-Apartheid Act, updating citations of authority to take into account the expiration of the President's determinations under the International Emergency Economic Powers Act (50 U.S.C. 1701), and changing current regulations to require any national that receives a Category IIIB standing in the Signatory Companies annual rating program to file a questionnaire on February 15 during the calendar year after it has received that rating.

These amendments deal with a foreign affairs function of the United States and are thus excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. The basic regulations that are amended by this final rule were the subject of public comment because of the desirability of obtaining the public's views. However, the amendments deal with technical corrections and the continuing implementation of statutory requirements that have entered into force and consequently the amended regulations are promulgated as a final rule.

For the foregoing reasons, Title 22, Chapter I, Subchapter G, of the Code of Federal Regulations, is amended as set forth below:

1. The authority citations for Parts 60, 61, 62, 63, 64, and 65 are revised to read as follows:

Authority: Sec. 207, 208, 601, 603, and 604, Pub. L. 99-440 (22 U.S.C. 5035 (c)).

PARTS 60 AND 63—[AMENDED]

2. Parts 60 and 63 are amended to remove the word "Sullivan" and add in its place "Signatory Companies", and to remove the words "Sullivan Code" and add in their place "Statement of Principles for South Africa" in the following places:

(a) Section 60.1(b);
(b) Section 63.1(d);
(c) Section 63.3(c).

3. Section 63.1(b) is revised to read as follows:

§ 63.1 General policies.

* * * * *

(b) Failure to Register. Any such U.S. national who does not register with the Department of State prior to February 15, 1986 or thereafter within sixty days of meeting the criteria for registration, in accordance with § 62.1 shall be ineligible to receive the assistance specified in § 65.1 and shall be subject to the penalties specified in § 65.2.

* * * * *

4. Section 63.1(c) is amended to remove the second and third sentences and to replace them with the following sentence:

(c) * * * They shall so do by submitting to the Office of Southern African Affairs of the Department of State not later than February 15 of each calendar year a completed questionnaire furnished by the Department of State on an annual basis to all registrants.

* * * * *

5. Section 63.1(d)(1) is amended to remove the last two sentences and to replace them with the following sentence:

(d) * * *
(1) * * *

Any U.S. national participating in the Signatory Companies System who receives a Category IIIB standing shall not be deemed to be a *bona fide* participant pursuant to this subsection and must complete the required State Department questionnaire, in accordance with § 63.1(c).

* * * * *

6. Section 63.1(d)(2) is revised to read as follows:

(d) * * *

(2) Any U.S. national who becomes a participant in the Signatory Companies system during a calendar year and does not receive a rating during that calendar year shall be deemed to be a *bona fide* participant pursuant to § 63.1(d)(1) if, not later than February 15 of the following calendar year, it certifies by letter to the Office of Southern African Affairs of the Department of State that it is a participant in the Signatory Companies system.

PART 65—[AMENDED]

7. Section 65.2(a) is amended by revising the first two sentences to read as follows:

§ 65.2 Civil and criminal penalties.

(a) This subchapter is promulgated pursuant to the authority of the Comprehensive Anti-Apatheid Act of 1986 (Pub. L. 99-440). Sections 601 and 603 of the Comprehensive Anti-Apatheid Act are applicable to violations of this subchapter and to any license, ruling, regulation, order, direction, or instruction issued hereunder.* * *

* * * * *

Dated: June 21, 1989.

Herman J. Cohen,

Assistant Secretary of State for African Affairs.

[FR Doc. 89-17898 Filed 8-1-89; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8257]

RIN 1545-AN10

Transition Rules for the Allocation and Apportionment of Interest Expense and Rules Concerning the Treatment of Financial Products That Alter Effective Cost of Borrowing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary Income Tax Regulations relating to transition rules for the allocation and apportionment of interest expense for purposes of the foreign tax credit rules and certain other international tax provisions. This document also provides rules concerning the treatment of financial products that alter effective cost of borrowing. Changes to the transition rules were made by the Technical and Miscellaneous Revenue Act of 1988. These regulations are necessary to provide guidance needed by taxpayers engaging in international transactions in order to comply with these changes. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after December 31, 1988, except for § 1.861-9T(b)(6), which is effective for transactions entered into after September 14, 1988.

FOR FURTHER INFORMATION CONTACT: Charles Plambeck of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224 (Attention: CC:CORP:T:R (INTL-952-86)) (202-566-6284, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On September 11, 1987, the Federal Register published proposed regulations (52 FR 34589) to the Income Tax Regulations (26 CFR Part 1) under section 861 of the Internal Revenue Code of 1986. These regulations were issued under section 1215(c)(2) of the Tax Reform Act of 1986. Written comments responding to this notice were received. A public hearing was held on November 13, 1987. Section 1012(b)(2)(D) of the Technical and Miscellaneous Revenue Act of 1988 amended section 1215(c)(2) of the Tax Reform Act of 1986. The comments and revisions are discussed below.

Explanation of Provisions

These rules provide transition relief from the expense allocation rules of section 864(e), which reversed the provisions of prior law in a number of ways. While prior law permitted taxpayers to allocate and apportion interest expense on a separate company basis, section 864(e) requires a consolidated approach. While prior law permitted the use of a gross income method of apportionment, section 864(e) requires the use of an asset method. Other changes include the treatment of tax exempt assets and an earnings and profits adjustment to the basis of certain stock. These new rules are generally phased in over a three-year period in 25 percent increments, commencing with 1987. Generally, these percentages are applied to the amount of indebtedness outstanding on November 16, 1985 in order to compute the amount of a taxpayer's transition relief.

In addition, the rules provide supplemental transition relief from the consolidated approach to interest allocation for taxpayers that experienced net increases in total indebtedness in two different time periods. Taxpayers that are entitled to this kind of relief apply the rules of new law on a separate company basis to the amount of interest expense that is eligible for such treatment. Thus, interest expense for a given transition year can fall into one of three categories: old law, new law, and new law/separate company. This supplemental relief phases in over a four and five-year period, depending on the time period in which the net increase in indebtedness occurred.

The amount of indebtedness that is eligible for transition relief is reduced by any net decrease in indebtedness outstanding at any month-end since November 16, 1985. For taxpayers that experienced such a reduction, the reduced amount is used in lieu of the November 16, 1985 amount as the basis for computing transition relief. In the year in which a new month-end low is attained, the taxpayer may average its historic month-end low amounts for that year and use such average in lieu of the November 16, 1985 amount. In subsequent tax years, however, such averaging is not permitted. The averaging rule was adopted in response to criticism voiced concerning the rule of the proposed regulations that measured reductions solely on the basis of month-end debt levels, under a grant of authority contained in section 1215(c)(2)(A)(iii) of the Tax Reform Act of 1986, as amended by the Technical and Miscellaneous Revenue Act of 1988.

Reductions in indebtedness are deemed to first offset five-year indebtedness and then four-year indebtedness, both of which constitute subsets of the November 16, 1985 amount.

Thus, reductions first eliminate the supplemental relief from the consolidation rule, regardless of which particular indebtedness is reduced. Because a reduction in indebtedness by one affiliated corporation may be deemed to offset the indebtedness of another affiliated corporation under this stacking rule, an affiliated group must maintain separate company accounts of reductions reflecting the impact of reductions on the individual indebtedness of its members. If the transition indebtedness of a member of the affiliated group is reduced due to a paydown by another member of the group, the reduced level of transition indebtedness of that member does not change if either member leaves the affiliated group. Thus, if any member is transferred, the transferee must take account of reductions that precede its ownership. Although some commenters criticized the complexity associated with this rule, no alternative was presented that would preserve the effect of a reduction in indebtedness in the event of the transfer of an affiliated corporation and the rule was therefore retained.

As a general rule, the transition attributes of any corporation convey with the corporation. Commenters criticized a rule in the proposed regulations that permitted a transferee to take account of all the transition attributes of a transferred corporation in the year of transfer, regardless of when the transfer occurred. This rule has been modified to require a proration of transition attributes of a transferred corporation between the transferor and the transferee based on total months of ownership.

Commenters criticized a rule in the proposed regulations limiting the assumption of indebtedness, for purposes of these regulations, to a section 381 successor. This rule has been modified so that the transition-qualified indebtedness of one member of an affiliated group can be assumed by any other member. However, in the case of the disposition of any corporation that was relieved of indebtedness in such an assumption, the transferee must assume on or before the date of acquisition of the transferred corporation the transition-qualified indebtedness for which the transferred corporation was liable at the time of the acquisition. Otherwise, the assumed indebtedness ceases to qualify for transition relief.

Commenters requested guidance concerning the definition of indebtedness. The regulations clarify that only interest-bearing obligations and obligations having original issue discount constitute indebtedness for purposes of these regulations. An obligation must have attained that status as of any critical date identified in the regulations in order to be taken into account. It is not necessary to show that the debts outstanding at the end of any month were the same debts as were outstanding on any critical date.

For purposes of determining the actual percentage of indebtedness of any member of an affiliated group that is subject to any of the three possible sets of rules, commenters questioned the use of the year-end debt level as the denominator of the fraction (with computed relief in a given category serving as the numerator). The regulations have been modified to require the use of an average of month-end debt levels for the year as the denominator.

With respect to the addition of paragraph (b)(6) to § 1.861-9T, several commenters raised the question of whether losses on interest rate swaps or other derivative financial products that alter a taxpayer's effective cost of borrowing would constitute an expense equivalent to interest within the meaning of § 1.861-9T(b)(1). Other commenters asked whether gain on such financial products would offset allocable interest expense. When such

financial products operate to hedge a liability or themselves constitute the functional equivalent of a liability, they are within the intended scope of § 1.861–9T(b)(1). Losses from such financial products should be allocated and apportioned in the same manner as interest expense. The addition of paragraph (b)(6) is intended to clarify these issues. Paragraph (b)(6) is limited to financial products that alter the effective cost of borrowing where the financial product and borrowing are in the same currency. It should be noted that section 988 applies to transactions in nonfunctional currency. Where applicable, forthcoming regulations under section 988 will take precedence over the rules of this paragraph (b)(6). *See, e.g.*, Notice 87–11, 1987–1 C.B. 423.

Although the rules of paragraph (b)(1) were effective for taxable years commencing after December 31, 1986, the Service believes that it would be inappropriate to apply the rules of paragraph (b)(6) under the generally applicable effective date of paragraph (b)(1). Thus, the rules of paragraph (b)(6) are effective with respect to losses incurred on any of the financial products described in paragraph (b)(6)(i) that were entered into after September 14, 1988, which was the date of publication of paragraph (b)(1). The Service does not intend that losses on transactions described in paragraph (b)(6)(i) that were entered into prior to September 15, 1988 should be subject to the rule of paragraph (b)(1).

In contrast to the rules of paragraph (b)(1), the rules of paragraph (b)(6) permit taxpayers under certain circumstances effectively to reduce their apportionable interest expense by the amount of gains derived from the financial products that are the subject of paragraph (b)(6).

The Service has determined that, under certain conditions, taxpayers should be able to apply retroactively the paragraph (b)(6) rule for the netting of gains and interest expense with respect to gains realized on any of the financial products described in paragraph (b)(6)(i) that were entered into after September 14, 1988. These conditions are that the taxpayer must be able to demonstrate to the satisfaction of the Commissioner that substantially all of the financial products described in paragraph (b)(6)(i) (*i.e.*, liability hedges) to which the taxpayer became a party during the period between September 15, 1988 and August 2, 1989, were identified with the liabilities of the taxpayer in a substantially contemporaneous manner and that all losses attributable to such products were treated consistently. For this purpose, financial products described in paragraph (b)(6)(i) that were identified in a substantially contemporaneous manner with the taxpayer's assets (rather than its liabilities) shall be ignored.

Although the Service believes that similar treatment should be accorded to the gains and losses of financial services entities and other taxpayers, paragraph (b)(6)(iii) reserves on the treatment of financial services entities. The fact that paragraph (b)(6) does so reserve should not be interpreted to mean that the losses of a financial services entity from these transactions do not constitute an interest equivalent under paragraph (b)(1). The Service invites financial services entities to comment with respect to appropriate rules for computing such gains and losses, particularly with respect to identification and the interaction of such rules with Notice 87–4, 1987–1 C.B. 416. Losses on interest rate swaps that are not described in paragraph (b) and are not incurred by a financial services entity or a dealer are governed by Notice 87–4.

The Service will issue additional regulations concerning the timing and characterization of gains and losses realized or incurred in connection with the financial products that are the subject of paragraph (b)(6). See Notice 89–21, I.R.B. 1989–9 (Feb. 21, 1989), regarding rules concerning timing.

Some commenters have asked whether paragraph (b)(2) represents a comprehensive treatment of nonfunctional currency borrowings or whether other such borrowings would be subject to the rules of paragraph (b)(1). The Service has added paragraph (b)(7) in order to clarify that, as a general rule, gain or loss on section 988 transactions (other than those described in paragraph (b)(1), (b)(2), or (b)(6)) will only be considered to be an adjustment to interest expense to the extent required by the regulations to be issued under section 988. However, certain nonfunctional currency borrowings alter the effective cost of borrowing in functional currency in a manner similar to the rule of paragraph (b)(1) in the sense that a taxpayer borrowing nonfunctional currency can incur a loss in a series of related transactions while securing the use of funds in its functional currency. In such a case, it is appropriate to require the apportionment of the loss in the same manner as interest expense. New *Example* (2) has been added to paragraph (b)(1) to demonstrate how a loss on a nonfunctional currency borrowing that would not be subject to paragraph (b)(2) can operate as an interest equivalent.

New *Example* (3) has been added to demonstrate how the disposition of one leg of an interest rate swap, even if not properly recharacterized as an actual borrowing, can produce a constructive borrowing, rendering the swap payments on the other leg an interest equivalent subject to allocation and apportionment under the rule of paragraph (b)(1). The example goes on to note that the same result would apply in the case of a swap agreement in which the swap payments were not substantially contemporaneous if the pricing of the transaction is materially affected by the time value of money, but only to the extent that the expense or loss is incurred in consideration of the time value of money. The Service does not generally intend that this rule apply to noncontemporaneous swap payments that are found in standard interest rate swap contracts where the pricing of the transaction is not materially affected by the time value of money. Taxpayers are invited to comment concerning appropriate circumstances (including safe harbors) in which this rule should not apply.

Although *Example* (3) involves a swap contract, this swap contract differs from those described in paragraph (b)(6) in the sense that it does not adjust the effective cost of borrowing with respect to actual liabilities of the taxpayer, but, like the gold example already contained in paragraph (b)(1), has the effect of creating a cost of borrowing unrelated to an actual liability.

Finally, the first sentence of § 1.861–2(a)(1) is modified by replacing the words "issued or assumed" with the words "issued, assumed, or incurred." This revision is made in order to conform the regulations to the opinion by the Second Circuit in *Iglesias* v. *U.S.*, 848 F.2d 362 (2d Cir. 1988).

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) and the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is David Merrick of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from offices of the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects in 26 CFR 1.861–1 Through 1.997–1

Income taxes, Aliens, Exports, DISCs, Foreign investment in U.S., Foreign tax credit, FSC, Source of income, U.S. investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Income Tax Regulations

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. The first sentence of § 1.861–2(a)(1) is amended by removing the words "issued or assumed" and by inserting in their place the words "issued, assumed or incurred."

Par. 3. Section 1.861–9T is amended as follows:

1. By revising paragraph (b)(1) to read as set forth below, and

2. By adding immediately after paragraph (b)(5) a new paragraph (b)(6) and (b)(7).

§ 1.861–9T Allocation and apportionment of interest expense (Temporary regulations)

* * * * *

(b) *Interest equivalents*—(1) *Certain expenses and losses*—(i) *General rule.* Any expense or loss (to the extent deductible) incurred in a transaction or series of integrated or related transactions in which the taxpayer secures the use of funds for a period of time shall be subject to allocation and apportionment under the rules of this section if such expense or loss is substantially incurred in consideration of the time value of money. However, the allocation and apportionment of a loss under this paragraph (b) shall not affect the characterization of such loss as capital or ordinary for other purposes of the Code and the regulations thereunder.

(ii) Examples. The rule of this paragraph (b)(1) may be illustrated by the following examples.

Example (1). W, a domestic corporation, borrows from X two ounces of gold at a time when the spot price for gold is $500 per ounce. W agrees to return the two ounces of gold in six months. W sells the two ounces of gold to Y for $1000. W then enters into a contract with Z to purchase two ounces of gold six months in the future for $1,050. In exchange for the use of $1,000 in cash, W has sustained a loss of $50 on related transactions. This loss is subject to allocation and apportionment under the rules of this section in the same manner as interest expense.

Example (2). X, a domestic corporation with a dollar functional currency, borrows 100 pounds on January 1, 1987 for a three-year term at an interest rate greater than the applicable federal rate for dollar loans. At this time, the interest rate on the pound was approximately equal to the interest rate on dollar borrowings and the forward price on the pound, vis-a-vis the dollar, was approximately equal to the spot price. On January 1, 1987, X converted 100 pounds into dollars and entered into a currency swap that substantially hedged X's foreign currency exposure on the pound borrowing, both with respect to interest and principal. The borrowing, coupled with the swap, represents a series of related transactions in which the taxpayer secures the use of funds in its functional currency. Any net foreign currency loss on this series of transactions constitutes a loss incurred substantially in consideration of the time value of money and shall be apportioned in the same manner as interest expense. Thus, if the pound depreciates against the dollar, such that when the first payment on the pound borrowing is due the taxpayer has a currency loss on the swap payment hedging its first interest payment, such loss shall, even if the transaction is not integrated under section 988(d), be allocated and apportioned in the same manner as interest expense under the authority of this paragraph (b)(1).

Example (3). On January 1, 1987, X, a domestic corporation with a dollar functional currency, enters into a dollar interest rate swap contract with Y, a domestic counterparty. Under the terms of this agreement, X agrees to pay Y floating rate interest with respect to a notional principal amount of $100 for five years. In return, Y agrees to pay X fixed rate interest at 10 percent with respect to a notional principal amount of $100 for five years. On the same day, Y prepays the fixed leg of the swap by making a lump sum payment of $37 to X. This lump sum payment represents the present value of five $10 swap payments. Because X secures the use of $37 in this transaction, any net swap expense arising from the transaction represents an expense incurred substantially in consideration of the time value of money. Assuming this lump sum payment is not otherwise characterized as a loan from Y to X, and that X must amortize the $37 lump sum payment under the principles of Notice 89–21, any net swap expense incurred by X with respect to this transaction (*i.e.*, the excess, if any, of X's annual swap payment to Y over the annual amortization of the $37 lump sum payment that is taken into income by X) represents an expense equivalent to interest expense. The result would be the same if X sold the fixed leg to a third party for $37. While this example presents the case of a lump sum payment, the rules of paragraph (b)(1) would also apply to any transaction in which the swap payments are not substantially contemporaneous if the pricing of the transaction is materially affected by the time value of money. Thus, expenses and losses will be subject to apportionment under the rules of this section to the extent that such expenses or losses were incurred in consideration of the time value of money.

* * * * *

(6) *Financial products that alter effective cost of borrowing*—(i) *In general.* Various derivative financial products can be part of transactions or series of transactions described in paragraph (b)(1) of this section. Such derivative financial products, including interest rate swaps, options, forwards, caps, and collars, potentially alter a taxpayer's effective cost of borrowing with respect to an actual liability of the taxpayer. For example, a taxpayer that is obligated to pay interest at a fixed rate may, in effect, pay interest at a floating rate by entering into an interest rate swap. Similarly, a taxpayer that is obligated to pay interest at a floating rate may, in effect, limit its exposure to rising interest rates by purchasing a cap. Such a taxpayer may have gains or losses associated with such derivative financial products. This paragraph (b)(6) provides rules for the treatment of gains and losses from such derivative financial products ("financial products") that are part of transactions described in paragraph (b)(1) of this section and that are used by the taxpayer to alter its effective cost of borrowing with respect to an actual liability. This paragraph (b)(6) shall only apply where the hedge and the borrowing are in the same currency and shall not apply to the extent otherwise provided in section 988 and the regulations thereunder. The allocation and apportionment of a loss under this paragraph (b) shall not affect the characterization of such loss as capital or ordinary for other purposes of the Code and the regulations thereunder.

(ii) *Definition of gain and loss.* For purposes of this paragraph (b)(6), the term "gain" refers to the excess of the amounts properly taken into income under a financial product that alters the effective cost of borrowing over the amounts properly allowed as a deduction thereunder within a given taxable year. See, *e.g.*, Notice 89–21. The term "loss" refers to the excess of the amounts properly allowed as a deduction under such a financial product over the amounts properly taken into income thereunder within a given taxable year.

(iii) *Treatment of gain or loss on the disposition of a financial product.* [Reserved.]

(iv) *Entities that are not financial services entities.* An entity that does not constitute a financial services entity within the meaning of § 1.904–4(e)(3) shall treat gains and losses on financial products described in paragraph (b)(6)(i) of this section as follows.

(A) *Losses.* Losses on any financial product described in paragraph (b)(6)(i) of this section shall be apportioned in the same manner as interest expense whether or not such financial product is identified by the taxpayer under paragraph (b)(6)(iv)(C) of this section as a liability hedge.

(B) *Gains.* Gains on any financial product described in paragraph (b)(6)(i) of this section shall reduce the taxpayer's total interest expense that is subject to apportionment, but only if such financial product is identified by the taxpayer under paragraph (b)(6)(iv)(C) of this section as a liability hedge. Such reduction is accomplished by directly allocating interest expense to the income derived from such a financial product.

(C) *Identification of financial products.* A taxpayer can identify a financial product described in paragraph (b)(6)(i) of this section as hedging a particular interest-bearing liability (or any group of such liabilities) by clearly identifying on its books and records on the same day that it becomes a party to such arrangement that such arrangement hedges a given liability (or group of liabilities). In the case of a partial hedge, such identification shall apply to only that part of the liability that is hedged. If the taxpayer clearly identifies on its books and records a financial product as a hedge of an interest-bearing asset (or any group of such assets), it will create a rebuttable presumption that such financial product is not described in paragraph (b)(6)(i) of this section. A taxpayer may identify a hedge as relating to an anticipated liability, provided that such liability is in fact incurred within 120 days following the date of such identification. Gains and losses on such an anticipatory arrangement accruing prior to the time at which the liability is incurred shall constitute an adjustment to interest expense.

(v) *Financial services entities.* [Reserved.]

(vi) *Dealers.* The rule of paragraph (b)(6)(iv) of this section shall not apply to a person acting in its capacity as a regular dealer in the financial products described in paragraph (b)(6)(i) of this section. Instead, losses sustained by a regular dealer in connection with such financial products shall be allocated to the class of gross income from such arrangements. Gains of a regular dealer in notional principal contracts are governed by the rules of § 1.863–7T(b). Amounts received or accrued by any person from any financial product that is integrated as specified in Notice 89–90 with an asset shall not be treated as amounts received or accrued by a person acting in its capacity as a regular dealer in financial products.

(vii) *Examples.* The principles of this paragraph (b)(6) may be illustrated by the following examples.

Example (1). X is not a financial services entity or regular dealer in the financial products described in paragraph (b)(6)(i) of this section and has a dollar functional currency. In 1990, X incurred a total of $200 of interest expense. On January 1, 1990, X entered into an interest rate swap agreement with Y, in order to hedge its interest rate exposure with respect to a pre-existing floating rate liability. On the same day, X properly identified the agreement as a hedge of such liability. Under the agreement, X is required to pay Y an amount equal to a fixed rate of 10 percent on a notional principal amount of $1,000, Y is required to pay X an amount equal to a floating rate of interest on the same notional principal amount. Under the agreement, X received from Y during 1990 a net payment of $25. Because X identified the swap agreement as a liability hedge under the rules of paragraph (b)(6)(iv)(C), X may effectively reduce its total allocable interest expense for 1990 to $175 by directly allocating $25 of interest expense to the swap income. Had X not properly identified the swap as a liability hedge, this swap payment would have been treated as domestic source income in accordance with the rule of § 1.863–7T(b).

Example (2). Assume the same facts as Example (1), except that X did not properly identify the agreement as a liability hedge on January 1, 1990. In 1990, X made a net payment of $25 to Y under the swap agreement. This swap payment is allocated and apportioned in the same manner as interest expense under the rules of paragraph (b)(6)(iv)(A).

(viii) *Effective dates*—(A) *Losses.* The rules of this paragraph (b)(6) shall apply to losses on any transaction described in paragraph (b)(6)(i) of this section that was entered into after September 14, 1988.

(B) *Gains.* Except as provided in paragraph (b)(6)(viii)(C) of this section, the rules of this paragraph (b)(6) shall apply to any gain that was realized on any transaction described in paragraph (b)(6)(i) of this section that was entered into after August 14, 1989.

(C) *Exception for interim gains.* Taxpayers shall be permitted to apply the rules of this paragraph (b)(6) to any gain that was realized on any transaction described in paragraph (b)(6)(i) of this section that was entered into after September 14, 1988 and on or before August 14, 1989, if the taxpayer can demonstrate to the satisfaction of the Commissioner that substantially all of the arrangements described in paragraph (b)(6)(i) of this section to which the taxpayer became a party during that interim period were identified on the taxpayer's books and records with the liabilities of the taxpayer in a substantially contemporaneous manner and that all losses and expenses that are subject to the rules of this paragraph (b)(6) were treated in the same manner as interest expense. For this purpose, arrangements that were identified in a substantially contemporaneous manner with the taxpayer's assets shall be ignored.

(7) *Foreign currency gain or loss.* In addition to the rules of paragraph (b)(1), (b)(2), and (b)(6) of this section, any foreign currency loss that is treated as an adjustment to interest expense under regulations issued under section 988 shall be allocated and apportioned in the same manner as interest expense. Any foreign currency gain that is treated as an adjustment to interest expense under regulations issued under section 988 shall offset apportionable interest expense.

Par. 4. The text of § 1.861–13T is added to read as follows:

§ 1.861–13T Transition rules for interest expenses (temporary regulations).

(a) *In general*—(1) *Optional application.* The rules of this section may be applied at the choice of a corporate taxpayer. In the case of an affiliated group, however, the choice must be made on a consistent basis for all members. Therefore, a corporate taxpayer (or affiliated group) may allocate and apportion its interest expense entirely on the basis of the rules contained in §§ 1.861–8T through 1.861–12T and without regard to the rules of this section. The choice is made on an annual basis and, thus, is not binding with respect to subsequent tax years.

(2) *Transition relief.* This section contains transitional rules that limit the application of the rules for allocating and apportioning interest expense of corporate taxpayers contained in §§ 1.861–8T through 1.861–12T, which are applicable in allocating and apportioning the interest expense of corporate taxpayers generally for taxable years beginning after 1986. Sections 1.861–9(d) (relating to individuals, estates, and certain trusts) and 1.861–9(e) (relating to partnerships) are effective for taxable years beginning after 1986. Thus, the taxpayers to whom those sections apply do not qualify for transition relief under this section.

(3) *Indebtedness defined.* For purposes of this section, the term "indebtedness" means any obligation or other evidence of indebtedness that generates an expense that constitutes interest expense within the meaning of § 1.861–9T(a). In the case of an obligation that does not bear interest initially, but becomes interest bearing with the lapse of time or upon the occurrence of an event, such obligation shall only be considered to constitute indebtedness when it first bears interest. Obligations that are outstanding as of November 16, 1985 shall only qualify for transition relief under this section if they bear interest-bearing as of that date. For this purpose, any obligation that has original issue discount within the meaning of section 1273(a)(1) of the Code shall be considered to be interest-bearing.

(4) *Exceptions.* The term "indebtedness" shall not include any obligation existing between affiliated corporations, as defined in § 1.861–11T(d). Moreover, the term "indebtedness" shall not include any obligation the interest on which is directly allocable under §§ 1.861–10T(b) and 1.861–10T(c). Under § 1.861–9T(b)(6)(iv)(B), certain interest expense is directly allocated to the gain derived from an appropriately identified financial product. When interest expense on a liability is reduced by such gain, the principal amount of such liability shall be reduced pro rata by the relative amount of interest expense that is directly allocated.

(b) *General phase-in*—(1) *In general.* In the case of each of the first three taxable years of the taxpayer beginning after December 31, 1986, the rules of §§ 1.861–8T through 1.861–12T shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the general phase-in amount, as defined in paragraph (b)(2) of this section.

(2) *General phase-in amount defined.* Subject to the limitation imposed by paragraph (b)(3) of this section, the general phase-in amount means the amount which is the applicable percentage (determined under the following table) of the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985:

Taxable year beginning after December 31, 1986	Percentage
First	75
Second	50
Third	25

(3) *Reductions in indebtedness.* The general phase-in amount shall not exceed the taxpayer's historic lowest month-end debt level taking into account all months after October 1985. However, for the taxable year in which a taxpayer attains a new historic lowest month-end debt level (but not for subsequent taxable years), the general phase-in amount shall not exceed the average of month-end debt levels within that taxable year (without taking into account any increase in month-end debt levels occurring in such taxable Year after the new historic lowest month-end debt level is attained).

Example. X is a calendar year taxpayer that had $100 of indebtedness outstanding on November 16, 1985. X's month-end debt level remained $100 for all subsequent months until July 1987, when X's month-end debt level fell to $50. In computing transition relief for 1987, X's general phase-in amount cannot exceed $75 (900 divided by 12), which is the average of month-end debt levels in 1987. Assuming that X's month-end debt level for any subsequent month does not fall below $50, the limitation on its general phase-in amount for all taxable years after 1987 will be $50, its historic lowest month-end debt level after October 1985.

(c) *Nonapplication of the consolidation rule*—(1) *General rule.* In the case of each of the first five taxable years of the taxpayer beginning after December 31, 1986, the consolidation rule contained in § 1.861–11T(c) shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the special phase-in amount, as defined in paragraph (c)(2) of this section.

(2) *Special phase-in amount.* The special phase-in amount is the sum of—

(i) The general phase-in amount,

(ii) The five-year phase-in amount, and

(iii) The four-year phase-in amount.

(3) *Five-year phase-in amount.* The five-year phase-in amount is the lesser of—

(i) The applicable percentage (the "unreduced percentage" in the following table) of the five-year debt amount, or

(ii) The applicable percentage (the "reduced percentage" in the following table) of the five-year debt amount reduced by paydowns (if any):

Transition year	Unreduced percentage	Reduced percentage
Year 1	8⅓	10
Year 2	16⅔	25
Year 3	25	50
Year 4	33⅓	100
Year 5	16⅔	100

(4) *Four-year phase-in amount.* The four-year phase-in amount is the lesser of—

(i) The applicable percentage (the "unreduced percentage" in the following table) of the four-year debt amount, or

(ii) The applicable percentage (the "reduced percentage" in the following table) of the four-year debt amount reduced by paydowns (if any) to the extent that such paydowns exceed the five-year debt amount:

Transition year	Unreduced percentage	Reduced percentage
Year 1	5	5⅓
Year 2	10	16⅔
Year 3	15	37½
Year 4	20	100

(5) *Five-year debt amount.* The "five-year debt amount" means the excess (if any) of—

(i) The amount of the outstanding indebtedness of the taxpayer on May 29, 1985, over

(ii) The amount of the outstanding indebtedness of the taxpayer on December 31, 1983. The five-year debt amount shall not exceed the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985.

(6) *Four-year debt amount.* The "four-year debt amount" means the excess (if any) of—

(i) The amount of the outstanding indebtedness of the taxpayer on December 31, 1983, over

(ii) The amount of the outstanding indebtedness of the taxpayer on December 31, 1982.

The four-year debt amount shall not exceed the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985, reduced by the five-year debt amount.

(7) *Paydowns.* The term "paydowns" means the excess (if any) of—

(i) The aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985, over

(ii) The limitation on the general phase-in amount described in paragraph (b)(3) of this section.

Paydowns are first applied to the five-year debt amount to the extent thereof and then to the four-year debt amount for purposes of computing the five-year and the four-year phase-in amounts.

(d) *Treatment of affiliated group.* For purposes of this section, all members of the same affiliated group of corporations (as defined in § 1.861–11(d)) shall be treated as one taxpayer whether or not such members filed a consolidated return. Interaffiliate debt is not taken into account in computing transition

relief. Moreover, any reduction in the amount of interaffiliate debt is not taken into account in determining the amount of paydowns.

(e) *Mechanics of computation*—(1) *Step 1: Determination of the amounts within the various categories of debt.* Each separate member of an affiliated group must determine each of its following amounts:

(i) *November 16, 1985 amount.* The amount of its debt outstanding on November 16, 1985 (after the elimination of interaffiliate indebtedness).

(ii) *Unreduced five-year debt.* The amount of any net increase in the amount of its indebtedness on May 29, 1985 (after elimination of interaffiliate indebtedness) over the amount of its indebtedness on December 31, 1983 (after elimination of interaffiliate indebtedness).

(iii) *Unreduced four-year debt.* The amount of any net increase in the amount of its indebtedness on December 31, 1983 (after elimination of interaffiliate indebtedness) over the amount of its indebtedness on December 31, 1982 (after elimination of interaffiliate indebtedness), and

(iv) *Month-end debt.* The amount of its month-end debt level for all months after October 1985 (after elimination of interaffiliate indebtedness).

(2) *Step 2: Aggregation of the separate company amounts.* Each of the designated amounts for the separate companies identified in Step 1 must be aggregated in order to compute consolidated transition relief. Paragraph (e)(10)(iv) of this section (Step 10) requires the use of the taxpayer's current year average debt level for the purpose of computing the percentages of debt that are subject to the three sets of rules that are identified in Step 10. For use in that computation, the taxpayer should compute the current year average debt level by aggregating separate company month-end debt levels and then by averaging those aggregate amounts.

(3) *Step 3: Calculation of the lowest historic month-end debt level of the taxpayer.* In order to calculate the lowest historic month-end debt level of the taxpayer, determine the month-end debt level of each separate company for each month ending after October 1985 and aggregate these amounts on a month-by-month basis. On such aggregate basis, in any taxable year in which the taxpayer attains an aggregate new lowest historic month-end debt level, add together all the aggregate month-end debt levels within the taxable year (without taking into account any increase in aggregate debt level subsequent to the attainment of such lowest historic month-end debt level) and divide by the number of months in that taxable year, yielding the average of month-end debt levels for such year. Such average shall constitute the taxpayer's lowest historic month-end debt level for that taxable year in which the aggregate new lowest historic month-end debt level was attained. Unless otherwise specified, all subsequent references to any amount refer to the aggregate amount for all members of the same affiliated group of corporations.

(4) *Step 4: Computation of paydowns.* Paydowns equal the amount by which the November 16, 1985 amount exceeds the taxpayer's lowest historic month-end debt level, determined under Step 3.

(5) *Step 5: Computation of limitations on unreduced five-year debt and unreduced four-year debt.* (i) The unreduced five-year debt cannot exceed the November 16, 1985 amount.

(ii) The unreduced four-year debt cannot exceed the November 16, 1985 amount less the unreduced five-year debt.

(6) *Step 6: Computation of reduced five-year and reduced four-year debt*—(i) *Reduced five-year debt.* Compute the amount of reduced five-year debt by subtracting from the unreduced five-year debt (see Step 5) the amount of paydowns (see Step 4).

(ii) *Reduced four-year debt.* To the extent that the amount of paydowns (see step 4) exceeds the amount of unreduced five-year debt (see Step 5), compute the amount of reduced four-year debt by subtracting such excess from the unreduced four-year debt (see Step 1).

(iii) To the extent that paydowns do not offset either the unreduced five-year amount or the unreduced four-year amount, the reduced and the unreduced amounts are the same.

(7) *Step 7: Computation of the general phase-in amount.* The general phase-in amount is the lesser of—

(i) The percentage of the November 16, 1985 amount designated for the relevant transition year in the table below, or

(ii) The lowest group month-end debt level (see Step 3).

GENERAL PHASE-IN TABLE

Transition year	Percentage
Year 1	75
Year 2	50
Year 3	25

(8) *Step 8: Computation of Five-Year Phase-in Amount.* The five-year phase-in amount is the lesser of—

(i) The percentage of the unreduced five-year debt designated for the relevant transition year in the table below, or

(ii) The percentage of the reduced five-year debt designated for the relevant transition year in the table below.

FIVE-YEAR PHASE-IN TABLE

Transition year	Unreduced percentage	Reduced percentage
Year 1	8⅓	10
Year 2	16⅔	25
Year 3	25	50
Year 4	33⅓	100
Year 5	16⅔	100

(9) *Step 9: Computation of Four-year Phase-in Amount.* The four-year phase-in amount is the lesser of—

(i) The percentage of the unreduced four-year debt designated for the relevant transition year in the table below, or

(ii) The percentage of the reduced four-year debt designated for the relevant transition year in the table below.

FOUR-YEAR PHASE-IN TABLE

Transition year	Unreduced percentage	Reduced percentage
Year 1	5	6¼
Year 2	10	16⅔
Year 3	15	37½
Year 4	20	100

(10) *Step 10: Determination of group debt ratio and application of transition relief to separate company interest expense.* (i) The general phase-in amount consists of the amount computed under Step 7. Interest expense on this amount is subject to pre-1987 rules of allocation and apportionment.

(ii) The post-1986 separate company amount consists of the sum of the amounts determined under Steps 8 and 9. Interest expense on this amount is subject to post-1986 rules of allocation and apportionment as applied on a separate company basis. Thus, § 1.861-11T(c) does not apply with respect to this amount of indebtedness. Because the consolidation rule does not apply, stock in affiliated corporations shall be taken into account in computing the apportionment fractions for each separate company in the same manner as under pre-1987 rules.

(iii) The post-1986 one-taxpayer amount consists of any indebtedness that does not qualify for transition relief under Steps 7, 8, and 9. Interest expense on this amount is subject to post-1986 rules as applied on a consolidated basis.

(iv) To determine the extent to which the interest expense of each separate company is subject to any of these sets of allocation and apportionment rules, each company shall prorate its own interest expense using two fractions. The general phase-in fraction is the general phase-in amount over the current year average debt level of the affiliated group (see Step 2). The post-1986 separate company fraction is the post-1986 separate company amount over the current year average debt level of the affiliated group. The balance of each separate company's interest expense is subject to post-1986 one-taxpayer rules.

(f) *Example.* XYZ form an affiliate group.

(1) *Step 1:* Determination of the amounts within the various debt categories.

	Historic 3rd party debt	Increase
Company X:		
Nov. 16, 1985	$100,000	
May 29, 1985 (5-year)	90,000	$10,000
Dec. 31, 1983 (4-year)	80,000	10,000
Dec. 31, 1982	70,000	
Current Interest Expense	10,000	
Company Y:		
Nov. 16, 1985	200,000	
May 29, 1985 (5-year)	170,000	120,000
Dec. 31, 1983 (4-year)	50,000	10,000
Dec. 31, 1982	40,000	
Current Interest Expense	30,000	
Company Z:		
Nov. 16, 1985	300,000	
May 29, 1985 (5-year)	300,000	50,000
Dec. 31, 1983 (4-year)	250,000	100,000
Dec. 31, 1982	150,000	
Current Interest Expense	30,000	

(2) *Step 2:* Aggregation of the separate company amounts.

Aggregate Nov. 16, 1985	$600,000
Aggregate 5-year debt	180,000
Aggregate 4-year debt	120,000
Current year average debt level	700,000

(3) *Step 3:* Calculation of lowest historic month-end debt level.

An analysis of historic month-end debt levels indicates that in 1986, XYZ's aggregate month-end debt level fell to $500,000, which represents the lowest sum for all years under consideration. Because this historic low occurred in a prior tax year, there is no averaging of month-end debt levels in the current taxable year.

(4) *Step 4:* Computation of paydowns. The aggregate November 16, 1985 amount ($600,000), less the lowest historic month-end debt level ($500,000), yields a total paydown in the amount of $100,000.

(5) *Step 5:* Computation of limitations on aggregate unreduced five-year debt and aggregate unreduced four-year debt.

Aggregate Nov. 16, 1985 amount	$600,000
Aggregate unreduced 5-year debt	180,000
Aggregate unreduced 4-year debt	120,000

Because the November 16, 1985 amount exceeds the unreduced 4- and 5-year debt, the full amount of the 4- and 5-year debt qualify for transition relief. In cases where the November 16, 1985 amount is less than the 4- or 5-year debt (or the sum of both), the latter amounts are limited to the November 16, 1985 amount. See the limitations on the 4-year and 5-year debt amounts in paragraphs (c)(6) and (c)(5), respectively, of this section.

(6) *Step 6:* Computation of reduced five-year and four-year debt. The paydowns computed under Step 4 are deemed to first offset the aggregate unreduced five-year debt. Accordingly, the reduced amount of five-year debt is $80,000. Since the paydowns are less than the aggregate unreduced five-year debt, there is no paydown in connection with aggregate unreduced four-year debt. Accordingly, the unreduced four-year debt and the reduced four-year debt are both considered to be $120,000.

(7) *Step 7:* Computation of the general phase-in amount. In transition year 1, the general transition amount is the lesser of:

(i) 75 percent of the aggregate November 16, 1985 amount (75% of $300,000 = $450,000); or

(ii) the lowest month-end debt level since November 16, 1985 ($500,000).

Therefore, the general transition amount is $450,000.

(8) *Step 8:* Computation of the five-year phase-in amount. In transition year 1, the five-year phase-in amount is the lesser of:

(i) 8⅓ percent of the unreduced five-year amount (8⅓% of $180,000=$15,000); or

(ii) 10 percent of the reduced five-year amount (10% of $80,000=$8,000).

Therefore, the five-year phase-in amount is $8,000.

(9) *Step 9:* Computation of the four-year phase-in amount. In transition year 1, the four-year phase-in amount is the lesser of:

(i) 5 percent of the unreduced four-year amount (5% of $120,000=$6,000); or

(ii) 6¼ percent of the reduced four-year amount (6¼% of $120,000=$7,500).

Therefore, the four-year phase-in amount is $6,000.

(10) *Step 10:* Determination of group debt ratio and application of relief to separate company interest expense.

(i) As determined under Step 7, interest expense on a total of $450,000 of the XYZ debt in the first transition year is computed under pre-1987 rules of allocation and apportionment.

(ii) The sum of Steps 8 ($6,000) and 9 ($6,000) is $14,000. Interest expense on a total of $14,000 of XYZ debt is computed under post-1986 rules of allocation and apportionment as applied on a separate company basis.

(iii) The balance of XYZ's current year interest expense is computed under post-1986 rules of allocation and apportionment as applied on a consolidated basis. X, Y, and Z, respectively, have current interest expense of $10,000, $30,000, and $30,000. Thus, 64.3 percent (450,000/700,000) of the interest expense of each separate company is subject to pre-1987 rules. Two percent (14,000/700,000) of the interest expense of each separate company is subject to post-1986 rules applied on a separate company basis. Finally, the balance of each separate company's current year interest expense (33.7 percent) is subject to post-1986 rules applied on a consolidated basis.

(g) *Corporate transfers*—(1) *Effect on transferee*—(i) *General rule.* Except as provided in paragraph (g)(1)(ii) of this section, if a domestic corporation or an affiliated group acquires stock in a domestic corporation that was not a member of the transferee's affiliated group before the acquisition, but becomes a member of the transferee's affiliated group after the acquisition, the transferee group shall take into account the following transition attributes of the acquired corporation in computing its transition relief:

(A) November 16, 1985 amount;

(B) Unreduced five-year amount;

(C) Unreduced four-year amount; and

(D) The amount of any transferor paydowns attributed to the acquired corporation under the rules of paragraph (h)(1) of this section.

(ii) *Special rule for year of acquisition.* To compute the amount of the transition attributes described in paragraph (g)(1)(i) of this section that a transferee takes into account in the transferee's taxable year of the acquisition, such transition attributes shall be multiplied by a fraction, the numerator of which is the number of

months within the taxable year that the transferee held the acquired corporation and the denominator of which is the number of months in such taxable year. In order for the transferee to assert ownership of a subsidiary for a given month, the transferee and the acquired corporation must be affiliated corporations as of the last day of the month. In addition, the transferor and the transferee shall take account of the month-end debt level of the transferred corporation only for those months at the end of which the transferred corporation was a member of the transferor's or the transferee's respective affiliated group.

(iii) *Aggregation of transition attributes.* The transition attributes of the acquired corporation shall be aggregated with the respective amounts of the transferee group.

(iv) *Conveyance of transferor paydowns.* The total paydowns of the transferee group shall include the amount of any paydown of the transferor group that was attributed to the acquired corporation under the rules of paragraph (h)(1) of this section.

(v) *Effect of certain elections.* If an election—

(A) Is made under section 338(g) (whether or not an election under 338(h)(10) is made),

(B) Is deemed to be made under section 338(e) (other than (e)(2)), or section 338(f), or,

(C) Is made under section 338(e), no indebtedness of the acquired corporation shall qualify for transition relief for the year such election first becomes effective and for subsequent taxable years, and no other transition attributes of the acquired corporation shall be taken into account by the transferee group.

(2) *Effect on transferor*—(i) *General rule.* Except as provided in paragraph (g)(2)(ii) of this section, in the case of an acquisition of a member of an affiliated group by a nonmember of the group, the transferor shall not take into account the transition attributes of the acquired corporation in computing the transition relief of the transferor group in subsequent taxable years. Thus, the November 16, 1985 amount, the unreduced five-year and four-year debt amounts, and the end-of-month debt levels of the transferor group shall be computed without regard to the acquired corporation's respective amounts for purposes of computing transition relief of the tranferor group for years thereafter.

(ii) *Special rule for the year of disposition.* To compute the amount of the transition attributes described in paragraph (g)(2)(i) of this section that a transferor shall take into account in the transferor's taxable year of the disposition, such transition attributes shall be multiplied by a fraction, the numerator of which is the number of months within the taxable year that the transferor held the acquired corporation and the denominator of which is the number of months in such taxable year. In order for the transferor to assert ownership of a subsidiary for a given month, the transferor and the acquired corporation must be affiliated corporations as of the last day of the month.

(iii) *Effect of prior paydowns.* Any paydowns of the acquired corporation that are considered to reduce the debt of other members of the transferor group under the rules of paragraph (h)(1) of this section (whether incurred in a prior taxable year or in that portion of a year of disposition that is taken into account by the transferor) shall continue to be taken into account by the transferor group after the disposition.

(3) *Special rule for assumptions of indebtedness.* In connection with the transfer of a corporation, if the indebtedness of an acquired corporation is assumed by any party other than the transferee or another member of the transferee's affiliated group, the transition attributes of the acquired corporation shall not be taken into account in computing the transition relief of the transferee group. See paragraph (g)(2) of this section concerning the treatment of the transferor group. Also in connection with the transfer of a corporation, if the transferee or another member of the transferee's affiliated group assumes the indebtedness of an acquired corporation, such assumed indebtedness shall only qualify for transition relief during the period in which the acquired corporation remains a member of the transferee group. Further, if the transferee group subsequently disposes of the acquired corporation, the indebtedness of the acquired corporation will continue to qualify for transition relief only if the indebtedness is assumed by the new purchaser as of the time such corporation is acquired.

(4) *Effect of asset sales.* If substantially all of the assets of a corporation are sold, the indebtedness of such corporation shall cease to be qualified for transition relief. Thus, the transition attributes of such corporation shall not be taken into account in computing transition relief.

(h) *Rules for attributing paydowns among separate companies*—(1) *General rule.* In the case of a corporate transfer under paragraph (g) of this section, it is necessary to determine the amount of paydowns attributable to the acquired corporation. Under paragraph (c)(7) of this section, paydowns are deemed to reduce first the five-year phase-in amount, then the four-year phase-in amount, and then the general phase-in amount. Thus, for example, a reduction in indebtedness of the group caused by a reduction in the debt of a group member that has no five-year debt will nevertheless be deemed under this ordering rule to reduce the indebtedness of those group members that do have five-year debt. In order to preserve the effect of paydowns caused by a reduction, each member must determine on a separate company basis at the time of any transfer of any member of the affiliated group the impact of paydowns (including those paydowns occurring in the year of transfer prior to the time of the transfer) on the various categories of indebtedness.

(2) *Mechanics of computation.* Separate company accounts of paydowns are determined by prorating any paydown among all group members with five-year debt to the extent thereof on the basis of the relative amounts of five-year debt. Paydowns in excess of five-year debt are prorated on a similar basis among all group members with four-year debt to the extent thereof on the basis of the relative amounts of four-year debt. Paydowns in excess of four-year and five-year debt are prorated among all group members with general phase-in debt to the extent thereof on the basis of the relative amounts of general phase-in debt. After an initial paydown has been prorated among the members of an affiliated group, any further reduction in the amount of aggregate month-end debt level as compared to the November 16, 1985 amount is prorated among all members of the affiliated group based on the remaining net amounts of four-year and five-year debt.

(3) *Examples.* The rules of paragraphs (g) and (h) of this section may be illustrated by the following examples.

Example (1): Computing separate company accounts of reductions—(i) *Facts.* XYZ constitutes an affiliated group of corporations that has a calendar taxable year and the following transition attributes:

	Historic 3rd party debt	Increase
Company X:		
Nov. 16, 1985	$100,000	
May 29, 1985 (5-year)	80,000	$0
Dec. 31, 1983 (4-year)	80,000	10,000
Dec. 31, 1982	70,000	
Company Y:		
Nov. 16, 1985	200,000	
May 29, 1985 (5-year)	170,000	120,000
Dec. 31, 1983 (4-year)	50,000	10,000
Dec. 31, 1982	40,000	
Company Z:		
Nov. 16, 1985	300,000	
May 29, 1985 (5-year)	290,000	40,000
Dec. 31, 1983 (4-year)	250,000	100,000
Dec. 31, 1982	150,000	

In 1986, the XYZ group attained its lowest historic month-end debt level of $500,000. Because the November 16, 1985 amount is $600,000 the XYZ group therefore has a paydown in the amount of $100,000. This paydown partially offsets the $160,000 of five-year debt in the XYZ group.

(ii) *Analysis.* Applying the rule of paragraph (h)(1) of this section, separate company accounts of paydowns are computed by prorating the $100,000 paydown among those members of the group that have five-year debt. Accordingly, the paydown is prorated between Y and Z as follows:

To Y:

$$\$100{,}000 \times \frac{\$120{,}000}{\$160{,}000} = \$75{,}000$$

To Z:

$$\$100{,}000 \times \frac{\$40{,}000}{\$160{,}000} = \$25{,}000$$

Example (2): Corporate acquisitions—(i) *Facts.* The facts are the same as in example (1). On July 15, 1987, the XYZ group sells all the stock of Y to A. Having held the stock of Y for six months in 1987, the XZ group computes its transition relief for that year taking into account half of the transition attributes of Y. AY constitutes an affiliated group of corporations after the acquisition. Having held the stock of Y for six months in 1987, the AY group computes its transition relief for that year taking into account half of the transition attributes of Y. In 1987, the AY group attained a new lowest month-end debt level that yields an average lowest month-end debt level for 1987 of $150,000.

(ii) *Transferee group.* The following analysis applies in determining transition relief for purposes of apportioning the interest expense of the transferee group for 1987. The AY group has the following transition attributes for 1987:

	Historic 3rd party debt	Increase
Company A:		
Nov. 16, 1985	$100,000	
May 29, 1985 (5-year)	250,000	$5,000
Dec. 31, 1983 (4-year)	245,000	10,000
Dec. 31, 1982	235,000	
Company Y (half-year amounts):		
Nov. 16, 1985	100,000	
May 29, 1985 (5-year)	85,000	80,000
Dec. 31, 1983 (4-year)	25,000	5,000
Dec. 31, 1982	20,000	
Pre-acquisition year paydown by another member of the transferor group that reduced Y's five-year debt (one half of $75,000)	37,500	

Because the November 16, 1985 amount of the AY group in 1987 is $200,000 and because the 1987 average of historic month-end debt levels was $150,000, the AY group has a paydown in the amount of $50,000. In addition, the 1986 paydown by the XYZ group that was deemed to reduce Y debt is added to the paydown computed above, yielding a total paydown of $87,500. This amount is prorated between members, eliminating the four and five year debt of the AY group. Note that Y is only a member of the AY group for half of the 1987 taxable year. In 1988, Y's entire transition indebtedness and a $75,000 paydown must be taken into account in computing the amount of interest expense eligible for transition relief.

(iii) *Transferor group.* The following analysis applies in determining transition relief for purposes of apportioning the interest expense of the transferor group for 1987. The XZ group has the transition attributes stated below for 1987. In 1987, the XZ group attained a new lowest month-end debt level that yields an average lowest month-end debt level for 1987 of $250,000.

	Historic 3rd party debt	Increase
Company X:		
Nov. 16, 1985	$100,000	
May 29, 1985 (5-year)	80,000	$0
Dec. 31, 1983 (4-year)	80,000	10,000
Dec. 31, 1982	70,000	
Pre-disposition paydown that reduced X's debt	0	
Company Y (half-year amounts):		
Nov. 16, 1985	100,000	
May 29, 1985 (5-year)	85,000	80,000
Dec. 31, 1983 (4-year)	25,000	5,000
Dec. 31, 1982	20,000	
Pre-disposition paydown that reduced Y's debt	37,500	
Company Z:		
Nov. 16, 1985	300,000	
May 29, 1985 (5-year)	290,000	40,000
Dec. 31, 1983 (4-year)	250,000	100,000
Dec. 31, 1982	150,000	
Pre-disposition paydown that reduced Z's debt	25,000	

Because the revised November 16, 1985 amount of the XZ group is $500,000 and because the 1987 average of lowest historic month-end debt levels of the XZ group was $250,000, the XZ group has a paydown in the amount of $250,000. This paydown offsets the total five and four year debt of the XZ group. Had the 1987 paydown of the XZ group been an amount less than the five-year amount, the paydown would have been prorated based on Y's adjusted 5-year amount of $22,500 and Z's adjusted 5-year amount of $15,000.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved: July 3, 1989.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 89-17722 Filed 8-1-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has (1) determined that USS MONTEREY (CG-61) is a vessel of the

Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval cruiser; and (2) directed that a revision be made to one of the tables in the existing Part 706. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400 Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS MONTEREY (CG-61) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a naval cruiser. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided that the Judge Advocate General of the Navy has determined that the existing Table Four of 32 CFR 706.2 should be revised by amending the text of one of the paragraphs contained therein.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Four of § 706.2 is amended by revising the existing paragraph 1 to read as follows:

1. Ships other than aircraft carrier types (CV, CVN, AVT, LHA, LHD, and LPH) may not simultaneously exhibit the masthead lights required by Rule 27(b)(iii) and the lights required by Rule 27(b)(i) for vessels restricted in their ability to maneuver when such simultaneous exhibition will present a hazard to their own safe operations. In those instances, the lights required by Rule 27(b)(i) will be exhibited. Ships conducting flight operations also may not exhibit the stern light required by Rule 27(b)(iii).

3. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS MONTEREY	CG-61						X	X	38

Date: July 10, 1989.

Approved:

E.D. Stumbaugh,

Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.

[FR Doc. 89-18052 Filed 8-1-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-89-51]

Special Local Regulations for Marine Events; Cambridge Classic Powerboat Regatta; Hambrooks Bay, Choptank River, Cambridge, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are adopted for the Cambridge Classic Powerboat Regatta to be held in Hambrooks Bay, Choptank River, Cambridge, Maryland, July 29 and 30, 1989. These regulations will govern vessel activity during the actual races. The regulations are necessary due to the potential danger to waterway users, the confined nature of the waterway, and expected spectator craft congestion during the event.

EFFECTIVE DATES: The regulations are effective for the following periods: 9:00 a.m. to 6:00 p.m., July 29, 1989. 9:00 a.m. to 6:00 p.m., July 30, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of proposed rulemaking concerning these regulations in the **Federal Register** on June 30, 1989 (54 FR 27654). Interested persons were requested to submit comments. No comments were received in response to the notice of proposed rulemaking.

Drafting Information

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Cambridge Powerboat Regatta Association Inc. is the sponsor of this event. The event will consist of approximately 30 powerboats, ranging from 13 to 21 feet in length racing on a designated course within the regulated area. The races will be conducted in Hambrooks Bay, located on the Choptank River, between Great Marsh Point and Hambrooks Bar. Hambrooks Bay will be closed during the actual races. The Coast Guard Patrol Commander may allow vessel traffic to transit the area between heats. Since Hambrooks Bay is outside the main channel, waterborne traffic should not be severely disrupted.

Economic Assessment and Certification

These proposed regulations are not considered major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35-0551 is added to read as follows:

§ 100.35-0551 Hambrooks Bay, Choptank River, Maryland.

(a) *Definitions:* (1) Regulated area. The waters of Hambrooks Bay and Choptank River bounded by the arc of a circle with a radius of 1,200 yards and with its center located at latitude 38°35'20.0" North, longitude 76°05'20.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Group Baltimore.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall;

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of these regulations but may not block a navigable channel.

(c) *Effective periods.* The regulations are effective for the following periods: 9:00 a.m. to 6:00 p.m., July 29, 1989. 9:00 a.m. to 6:00 p.m., July 30, 1989.

Dated: July 21, 1989.

P.A. Welling,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 89-18048 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD7-88-48]

Drawbridge Operation Regulations; Kissimmee River, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule—revocation.

SUMMARY: This amendment revokes the regulations for the highway bridges over the Kissimmee River at State Roads 70, 78, and 98 which specify advance notification requirements for bridge openings. Under the provisions of this revocation, these bridges would no longer be considered as drawbridges, but as fixed bridges with removable spans. The owner of the bridges has indicated a willingness to open the spans upon 4 days advance notice. We do not consider it necessary to require this information to be included in Part 117 of Title 33 CFR.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, telephone (305) 536-4103.

SUPPLEMENTARY INFORMATION:

Discussion of Comments

The proposal to revoke these regulations drew a comment from the Army Corps of Engineers that the Kissimmee River was an authorized federal navigation project, and not an inactive federal navigation project as stated in the public notice. The matter has been clarified. No other comments were received. The final rule is unchanged from the proposed rule published on March 14, 1989 (54 FR 10563).

Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander D.G. Dickman, Jr., project attorney.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the bridges have not opened in the last 15 years. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a

significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); 33 CFR 117.43.

§ 117.295 [Amended]

2. Section 117.295 is amended by removing paragraphs (a), (c), and the paragraph designation (b) and redesignating the paragraph as the entire section.

Dated: July 19, 1989.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 89–18047 Filed 8–1–89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AD19

Definition of Fraud

AGENCY: Department of Veterans Affairs.

ACTION: Final regulation.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations concerning the definition of fraud. The amendment is necessary as the current definition of fraud, mandated by law, pertains exclusively to forfeiture. The effect of this amendment will be to establish a definition of fraud for all adjudication applications other than forfeiture.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Joel Drembus, Legal Consultant, Regulations Staff, Compensation and Pension Service (211B), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3005.

SUPPLEMENTARY INFORMATION: On pages 15781–82 of the **Federal Register** of April 19, 1989, VA published a proposed rule on the definition of fraud. Interested persons were given until May 19, 1989, to submit comments on the proposed rule. As no comments were received, the amendment is adopted without change.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this amendment is nonmajor for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program numbers are 64.100 through 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: July 13, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 3, Adjudication, is amended to read:

PART 3—ADJUDICATION

§ 3.1 [Amended]

1. In § 3.1(g)(4) remove the citation at the end which reads "(Pub. L. 89–670)".

2. In § 3.1, new paragraph (aa) is added and the crossreference at the end of the section is revised to read as follows:

§ 3.1 Definitions.

* * * * *

(aa) "Fraud":

(1) As used in 38 U.S.C. 103 and implementing regulations, fraud means an intentional misrepresentation of fact, or the intentional failure to disclose pertinent facts, for the purpose of obtaining, or assisting an individual to obtain an annulment or divorce, with knowledge that the misrepresentation or failure to disclose may result in the erroneous granting of an annulment or divorce; and

(Authority: 38 U.S.C. 210(c))

(2) As used in 38 U.S.C. 110 and 359 and implementing regulations, fraud means an intentional misrepresentation of fact, or the intentional failure to disclose pertinent facts, for the purpose of obtaining or retaining, or assisting an individual to obtain or retain, eligibility for Department of Veterans Affairs benefits, with knowledge that the misrepresentation or failure to disclose may result in the erroneous award or retention of such benefits.

(Authority: 38 U.S.C. 210(c))

Cross-References: Pension. See § 3.3. Compensation. See § 3.4. Dependency and indemnity compensation. See § 3.5. Preservation of disability ratings. See § 3.951. Service-connection. See § 3.957.

[FR Doc. 89–17976 Filed 8–1–89; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 3

RIN 2900–AD98

Benefits at DIC Rates in Certain Cases When Death Was Not Service-Connected

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning the payment of benefits to surviving spouses of certain veterans whose deaths were not service-connected. These changes are required in order to implement liberalizing legislation regarding specific marriage requirements. The intended effect of these changes is to expand eligibility to include those surviving spouses who meet the requirements of the liberalized law.

EFFECTIVE DATE: November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Donald England, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 30, 1989 (54 FR 13081) VA published a proposed regulatory amendment concerning the payment of benefits at DIC rates to the surviving spouses of certain veterans whose deaths were not service-connected. Interested persons were invited to submit written comments, suggestions or objections on or before May 1, 1989. Since no comments, suggestions or objections were received the regulation has been adopted as proposed with one technical change: the citation in 38 CFR 3.11 has been amended to reflect the recodification as 38 U.S.C. 418 of material formerly contained in section 410(b).

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Approved: July 7, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 3, Adjudication, is amended as follows:

PART 3—ADJUDICATION

§ 3.11 [Amended]

In § 3.11, remove the words "410(b)" where they appear and add, in their place, the words "418".

2. In § 3.22, the introductory text of paragraph (a) and the authority citation for paragraph (e) are revised to read as follows:

§ 3.22 Benefits at DIC rates in certain cases when death is not service connected.

(a) *Entitlement criteria.* Benefits authorized by section 418 of Title 38, United States Code, shall be paid to a deceased veteran's surviving spouse (see § 3.54(c)(2)) or children in the same manner as if the veteran's death is service connected when the following conditions are met:

* * * * *

(e) * * *

(Authority: 38 U.S.C. 418)

* * * * *

2. In § 3.54, paragraph (c)(2) is revised to read as follows:

§ 3.54 Marriage dates.

* * * * *

(c) *Dependency and indemnity compensation.*

* * * * *

(2) In order for a surviving spouse to be entitled to benefits under section 418 of Title 38, United States Code, in the same manner as if death is service connected, the marriage to the veteran shall have been for a period of not less than 2 years immediately preceding the date of the veteran's death, or for any period of time if a child was born of the marriage, or was born to them before the marriage.

(Authority: 38 U.S.C. 418)

* * * * *

[FR Doc. 89–17979 Filed 8–1–89; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 21

RIN 2900–AD58

Veterans Education; Procedural Protections Following Loss of Dependent

AGENCY: Department of Veterans Affairs.

ACTION: Final regulation.

SUMMARY: This regulation sets out procedures which the Department of Veterans Affairs (VA) will follow when considering reduction of the veteran's educational assistance allowance in certain instances because VA has received evidence that the veteran has lost a dependent. This amended regulation brings the procedures used in such circumstances into agreement with the procedures followed when a veteran is receiving disability compensation or pension and VA receives evidence that the veteran has lost a dependent. The effect of this proposal will be to improve and more clearly define procedural protections afforded the veteran.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Alan Zoeckler, Acting Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service (225C), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 10420 (202) 233–2668.

SUPPLEMENTARY INFORMATION: On pages 5944 and 5945 of the **Federal Register** of February 7, 1989, (54 FR 5944), there was published a notice of intent to amend Part 21 in order to improve and more clearly define the procedural protections afforded a veteran who is receiving educational assistance and has lost a dependent. Interested persons were given 30 days to submit comments, suggestions or objections. VA received no comments, suggestions or objections. Accordingly, VA is making the proposed amended regulation final.

The Department of Veterans Affairs has determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs certifies that this amended regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: July 5, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

In 38 CFR Part 21 Vocational Rehabilitation and Education, § 21.4132 is added to read as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

§ 21.4132 Procedural protections: reduction following loss of a dependent.

(a) *Notice of reduction required when a veteran loses a dependent.* (1) Except as provided in paragraph (a)(2) of this section, the Department of Veterans Affairs will not reduce an award of educational assistance allowance following the veteran's loss of a dependent unless:

(i) The Department of Veterans Affairs has notified the veteran of the adverse action, and

(ii) The Department of Veterans Affairs has provided the veteran with a period of 60 days in which to submit evidence for the purpose of showing that the educational assistance allowance should not be reduced.

(2) When the reduction is based solely on written, factual, unambiguous information as to dependency or marital status provided by the veteran or his or her fiduciary with knowledge or notice that the information would be used to determine the monthly rate of educational assistance allowance:

(i) The Department of Veterans Affairs is not required to send a prereduction notice as stated in paragraph (a)(1) of this section, but

(ii) The Department of Veterans Affairs will send notice contemporaneous with the reduction in educational assistance allowance.

(Authority: 38 U.S.C. 3012, 3013)

(b) *Prereduction notice.* Where a reduction in educational assistance allowance is warranted by reason of information concerning dependency received from a source other than the veteran, the Department of Veterans Affairs will:

(1) Prepare a proposal for the reduction of educational assistance allowance, setting forth material facts and reasons;

(2) Notify the veteran of his or her latest address of record of the contemplated action;

(3) Furnish detailed reasons for the proposed reduction;

(4) Inform the veteran that he or she has an opportunity for a predetermination hearing, provided that the Department of Veterans Affairs receives a request for such a hearing within 30 days from the date of the notice; and

(5) Give the veteran 60 days for the presentation of additional evidence to show that the educational assistance allowance should be continued at its present level.

(Authority: 38 U.S.C. 3012, 3013)

(c) *Predetermination hearing.* (1) If the Department of Veterans Affairs receives a timely request for a predetermination hearing:

(i) The Department of Veterans Affairs will notify the veteran in writing of the date, time and place for the hearing; and

(ii) Payments of educational assistance allowance will continue at the previously established level pending a final determination concerning the proposed reduction.

(2) The hearing will be conducted by a Department of Veterans Affairs employee:

(i) Who did not participate in the preparation of the proposal to reduce the veteran's educational assistance allowance, and

(ii) Who will bear the decision-making responsibility.

(Authority: 38 U.S.C. 3012, 3013)

(d) *Final action.* The Department of Veterans Affairs will take final action following the predetermination procedures specified in paragraph (c) of this section.

(1) If a predetermination hearing was not requested or if the veteran failed to report for a scheduled predetermination hearing, the final action will be based solely upon the evidence of record.

(2) If a predetermination hearing was conducted, the Department of Veterans Affairs will base final action upon:

(i) Evidence adduced at the hearing,

(ii) Evidence contained in the claims file at the time of the hearing, and

(iii) Any additional evidence obtained following the hearing pursuant to necessary development.

(3) Whether or not a predetermination hearing was conducted, a written notice of the final action shall be issued to the veteran setting forth the reasons for the decision, and the evidence upon which it is based.

(4) When a reduction of educational assistance allowance is found to be warranted following consideration of any additional evidence submitted, the effective date of the reduction or discontinuance shall be as specified under the provisions of § 21.4135 of this part. (For information concerning the conduct of the hearing see § 3.103 (c) and (d) of this chapter.)

(Authority: 38 U.S.C. 3012, 3013)

[FR Doc. 89-17978 Filed 8-1-89; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 7F3540/R1033; FRL-3622-7

Pesticide Tolerance for Methyl 2-[[[[N-(4-Methoxy-6-Methyl-1,3,5-Triazin-2-yl)Methylamino] Carbonyl]Amino]Sulfonyl] Benzoate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide methyl 2-[[[[N-(4-methoxy-6-methyl-1,3,5-triazin-2-yl)methylamino]carbonyl] amino]sulfonyl] benzoate (also known as "Express™") in or on wheat grain at 0.05 part per million (ppm), wheat straw at 0.1 ppm, barley grain at 0.05 ppm, and barley straw at 0.1 ppm. The regulation was requested by E.I. du Pont de Nemours & Co., Inc.

EFFECTIVE DATE: July 14, 1989.

ADDRESS: Written objections, identified by the document control number, [PP 7F3540/R1033], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Larry Schnaubelt, Acting Product Manager (PM) 23, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1830.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register on November 25, 1987 (52 FR 45237) which announced that the E.I. du Pont de Nemours & Co., Inc., Walker's Mill Building, Barley Mill Plaza, Wilmington, DE 19898, has submitted pesticide petition (PP) 7F3540 to EPA proposing to amend 40 CFR Part 180 by establishing tolerances for residues of the herbicide methyl 2-[[[[N-(4-methoxy-6-methyl-1,3,5-triazin-2-yl)-methylamino] carbonyl]amino] sulfonyl]benzoate ("Express™") in or on the raw agricultural commodities wheat grain at 0.05 ppm, wheat straw at 0.1 ppm, barley grain at 0.05 ppm, and barley straw at 0.1 ppm.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The data considered in support of the petition include: (1) An 18-month feeding/oncogenic study in Charles River Crl:CD-1 (ICR) BR strain mice fed dosages of 0, 3, 30, and 225 milligrams/kilogram/day (mg/kg/day) with an NOEL (no-observable-effect level) of 3 mg/kg/day and an LOEL (lowest-observable-effect level) of 30 mg/kg/day based on decreased body weight gain in both sexes, an increased incidence of age-related effects (amyloidosis and thyroid inflammation in both sexes, testicular atrophy (seminiforous degeneration and oligospermia) and mortality in males given 225 mg/kg/day). No oncogenic effects were observed in the study. (2) A 2-year feeding/oncogenic study in Sprague-Dawley rats fed dosages of 0, 1.25, 12.5, and 62.5 mg/kg/day with a statistically significant increase in the incidence of mammary gland adenocarcinomas in treated female rats at 62.5 mg/kg/day (HDT), an NOEL of 1.25 mg/kg/day and an LOEL of 12.5 mg/kg/day based on reduced body weight gains in treated males and females. (3) A 1-year feeding study in dogs fed dosage levels of 0, 0.625, 6.25, and 37.5 mg/kg/day with an NOEL of 0.625 mg/kg/day and an LOEL of 6.25 mg/kg/day (both sexes) based on elevated blood levels of bilirubin and aspartate aminotransferase (AST), increased urinary volume and decreased body weight gain in males, and in females, elevated bilirubin, AST, creatinine, and globulin levels as well as decreased body weight gain. (4) A 90-day feeding study in dogs fed dosages of 0, 1.25, 12.5, and 62.5 mg/kg/day with an NOEL of >62.5 mg/kg/day (HDT). (5) A 90-day feeding study in rats fed dosages of 0, 5, 87.5, and 250 mg/kg/day with an NOEL of 5 mg/kg/day and an LOEL of 87.5 mg/kg/day; there were no treatment-related histopathological effects. (6) A teratology study in rats fed dosage levels of 0, 20, 125, and 500 mg/kg/day with an NOEL of 20 mg/kg/day (LDT) for both maternal and developmental toxicity and an LOEL of 125 mg/kg/day. Maternal effects at the 125- and 500-mg/kg/day dose levels include decreased body weight gain and food consumption and an increased incidence of excess salivation; fetal effects include decreased body weights and increased numbers of resorptions (only at the highest dose tested). (7) A teratology study in rabbits fed dosage levels of 0, 5, 20, and 80 mg/kg/day with an NOEL for maternal and developmental toxicity of 20 mg/kg/day, an LOEL for maternal and developmental toxicicty of 80 mg/kg/day (HDT); maternal effects include decreased feed consumption and an increased incidence of abortions, and fetuses had slightly reduced body weights. (8) A two-generation reproduction study in rats with an NOEL of 1.25 mg/kg/day and an LOEL of 12.5 mg/kg/day based on decreased body weight gain; there were no reproductive or developmental effects observed at any dose level tested (HDT of 50 mg/kg/day). (9) A gene mutation assay in *Salmonella typhimurium* and Chinese hamster ovary cells *in vitro*. These assays were negative; structural chromosomal damage, including a micronucleus test in mice and a cytogenetics assay in rats. Both assays were negative; an unscheduled DNA synthesis assay in rat primary hepatocytes *in vitro*. The assay was negative for genotoxicity.

Methyl 2-[[[[N-(4-methoxy-6-methyl-1,3,5-triazin-2-yl) methylamino] carbonyl]amino]sulfonyl] benzoate has been classified by the Agency into Category C (possible human oncogen) because of a statistically significant increase in the incidence of malignant tumors (mammary gland adenocarcinomas) in female Sprague-Dawley strain rats. The increased incidence exceeded the historical control range. The Agency has determined that a quantitative oncogenic risk assessment for this chemical is not appropriate because: (1) The tumors were observed only in one sex and one species; (2) the tumors were significantly increased only at the highest dose tested at which the compound was clearly toxic and exceeded a maximum adequately high dose to assess oncogenic potential; (3) structural analogs show little evidence of oncogenic potential; (4) quantification has not been found appropriate for the s-triazine analogs; (5) there is a possible association between the induced tumors and a hormonal influence at the high test doses, and (6) in addition, there was no evidence of genetic toxicity shown in several studies.

The Scientific Advisory Panel has recommended that "Express™" be placed in Category D on the grounds that the only evidence for carcinogenicity was obtained with doses that greatly exceeded the MTD. The Panel noted that the negative data obtained with male rats and mice and the lack of positive genetic toxicity also supported Category D. The Agency believes that the data on carcinogenicity for this chemical do not indicate a strong likelihood that this chemical poses a significant risk to human health.

The acceptable daily intake (ADI) based on the 1-year dog feeding study (NOEL of 0.625 mg/kg/day) and an uncertainty factor of 100 is calculated to be 0.0063 mg/kg/day. The theoretical maximum residue contribution for this tolerance is calculated to be 0.000073 mg/kg/day. The current action will occupy 1.16 percent of the ADI. There are no published tolerances for this chemical. The pesticide is useful for the purposes of this tolerance rule.

The nature of the residue is adequately understood, and adequate analytical methods (high-performance liquid chromatography with a photoconductivity detector) are available for enforcement purposes. Prior to its publication in the *Pesticide Analytical Manual*, Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from: By mail, Calvin Furlow, Public Information Branch, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number, Crystal Mall #2, Rm. 242, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-4432.

There are currently no actions pending against the registration of this chemical. No secondary residues are expected in meat, milk, poultry, or eggs from this use.

Based on the above information considered by the Agency, it is concluded that the tolerances established by amending 40 CFR Part 180 will protect the public health. The tolerances are therefore established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the Federal Register, file written objections with the Hearing Clerk, Environmental Protection Agency, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

BEST COPY AVAILABLE

The Office of Management and Budget has exempted this regulation from section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: July 14, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. New § 180.451 is added, to read as follows:

§ 180.451 Methyl 2-[[[[N-(4-methoxy-6-methyl-1,3,5-triazin 2-yl) methylamino] carbonyl]amino]sulfonyl] benzoate; tolerances for residues.

Tolerances are established for the residues of the herbicide methyl 2-[[[[N-(4-methoxy-6-methyl-1,3,5-triazin 2-yl)methylamino] carbonyl]amino] sulfonyl] benzoate in or on the following raw agricultural commodities:

Commodities	Parts per million
Barley, grain	0.05
Barley, straw	0.10
Wheat, grain	0.05
Wheat, straw	0.10

[FR Doc. 89-17840 Filed 8-1-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 180 and 186

[PP 6F3443, PP 6H5507/R1014; FRL-3622-6]

Pesticide Tolerances for Iprodione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the fungicide iprodione in or on rice at 10.0 parts per million (ppm), rice straw at 20.0 ppm, eggs at 1.5 ppm, poultry fat at 3.5 ppm, poultry liver at 5.0 ppm, poultry meat and meat byproducts (except liver) at 1.0 ppm, rice hulls at 50.0 ppm, and rice bran at 30.0 ppm. These regulations to establish the maximum permissible level for residues of iprodione in or on raw agricultural commodity and feed commodities were requested by Rhone-Poulenc, Inc.

EFFECTIVE DATE: Effective on July 12, 1989.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Acting Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 1, 1986 (51 FR 35034), which announced that Rhone-Poulenc, Inc., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted a pesticide petition (6F3443) proposing to amend 40 CFR 180.399 and a feed additive petition (6H5507) proposing to amend 40 CFR 186.3750 (formerly 21 CFR 561.263 prior to recodification in the **Federal Register** of June 29, 1988 (53 FR 24666)) to establish tolerances for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)- N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] in or on rice at 10 parts per million (ppm), rice straw at 20 ppm, eggs at 1.5 ppm, poultry fat at 3.5 ppm, poultry liver at 5.0 ppm, poultry meat and meat byproducts (except liver) at 1.0 ppm, rice hulls at 50.0 ppm, and rice bran at 30.0 ppm.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The data considered include:

1. A three-generation rat reproduction study using dosage levels of 0, 250, 500, and 2,000 ppm with a no-observed-effect level (NOEL) of 500 ppm (25 mg/kg bwt/day), a reproductive lowest-effect level (LEL) of 2,000 ppm (100 mg/kg bwt/day), and a systemic NOEL equal to or greater than 2,000 ppm (100 mg/kg bwt/day);

2. A rabbit teratology study in which the following doses were administered by gavage: 0, 20, 60, and 200 milligrams/kilograms body weight (mg/kg bwt), resulting in a developmental toxicity NOEL equal to or greater than 60 mg/kg bwt, and a lowest effect level of 200 mg/kg bwt.

3. A rat teratology study in which the following doses were administered by gavage: 0, 40, 90, and 200 mg/kg bwt, resulted in a developmental toxicity NOEL equal to 90 mg/kg bwt (considered supplementary under current guidelines and may be upgraded to minimum with additional information), and lowest effect level of 200 mg/kg bwt.

4. A 24-month feeding/oncogenicity study in rats using dosage levels of 125, 250, and 1,000 ppm (6.25, 12.5, and 50 mg/kg bwt/day), which showed no oncogenic effects under the conditions of the study;

5. An 18-month oncogenicity study in mice using dosage levels of 200, 500, and 1,250 ppm (28.6, 71.4, and 178.6 mg/kg bwt/day), which showed no oncogenic effects under the conditions of the study.

6. A 1-year dog feeding study using dosage levels of 168, 600, and 3,600 ppm (4.2, 15, and 90 mg/kg bwt/day) with a NOEL of 168 ppm (4.2 mg/kg bwt/day) and an LEL of 600 ppm (15 mg/kg bwt/day); and

7. A 90-day dog feeding study using dosage levels of 800, 2,400, and 7,200 ppm (20, 60, and 180 mg/kg bwt/day) with a NOEL of 2,400 ppm (60 mg/kg bwt/day) and an LEL of 7,200 ppm (180 mg/kg bwt/day).

Data currently lacking include an appropriate animal metabolism study. The registrant will be submitting this study to the Agency by the end of 1989.

The acceptable daily intake (ADI), based on the NOEL of 4.2 mg/kg bwt/day from the 1-year dog feeding study and using a hundredfold safety factor, is calculated to be 0.04 mg/kg bwt/day. The exposure from the proposed tolerance is 0.001583 mg/kg/day and utilizes 4.0 percent of the ADI. The total exposure from the previously established tolerances, using expected residues and percent of crop treated data, plus the proposed tolerance is 28.1 percent of the ADI for the overall U.S. population.

There are no regulatory actions pending against this registration of iprodione. The metabolism of iprodione in plants and animals, except for an appropriate toxicology laboratory animal metabolism study as noted above, is adequately understood for the purposes of the tolerance. An analytical method, gas liquid chromatography using an electron capture detector, is available in the *Pesticide Analytical Manual*, Vol. II, for enforcement purposes.

Based on the information cited above, the Agency has determined that the establishment of these tolerances for residues of iprodione is appropriate. Therefore, the tolerances are established as set forth below. Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk at the address given above.

Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 186

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: July 12, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In Part 180:

a. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. Section 180.399 is amended in paragraph (a) by adding and alphabetically inserting the following raw agricultural commodities and in paragraph (b) by revising the entries for the following raw agricultural commodities, to read as follows:

§ 180.399 Iprodione; tolerance for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Rice grain	10.0
Rice straw	20.0
* * * * *	

(b) * * *

Commodities	Parts per million
* * * * *	
Eggs	1.5
* * * * *	
Poultry, fat	3.5
Poultry, liver	5.0
Poultry, meat	1.0
Poultry mbyp (except liver)	1.0
* * * * *	

PART 186—[AMENDED]

2. In Part 186:

a. The authority citation for Part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.3750 by adding and alphabetically inserting in the table therein the commodities rice bran and rice hulls, to read as follows:

§ 186.3750 Iprodione; tolerances for residues.

* * * * * *

Commodities	Parts per million
* * * * *	
Rice bran	30.0
Rice hulls	50.0
* * * * *	

[FR Doc. 89-17839 Filed 8-1-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 3F2854 and 4F3155/R1035; FRL-3624-1]

Triadimenol; Establishment of Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances in or on raw agricultural commodities of plant origin for the combined residues of the fungicide *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol, hereafter referred to as triadimenol and its butanediol metabolite, 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4-triazol-1-yl)-1-butanediol, calculated as triadimenol; and in or on the raw agricultural commodities of animal origin for the combined residues of the fungicide triadimenol and its metabolities contain the chlorophenoxy moiety, calculated as triadimenol. This rule to establish maximum permissible levels of combined residues of the pesticide and certain of its metabolites in or on the commodities was requested by Mobay Corp.

EFFECTIVE DATE: Effective on July 25, 1989.

ADDRESS: Written objections, identified by the document control number (PP3F2854 and 4F3155/R1035), may be submitted to: the Hearing Clerk (A-110), Environmental Protection Agency, Rm. M-3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan T. Lewis, Acting Product Manager (PM) 21, Registration Division (H-7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of April 20, 1983 (48 FR 16960), amended in the **Federal Register** of September 30, 1983 (48 FR 44905), and further amended in the **Federal Register** of March 1, 1989 (54 FR 8594), proposing to amend 40 CFR Part 180 by establishing tolerances for the fungicide triadimenol and its metabolites containing chlorophenoxy and triazole moieties (expressed as the fungicide) in or on the raw agricultural commodities grain of wheat, barley, oats, and rye, corn forage, fresh corn (including sweet), grain of corn (including field and popcorn) and corn fodder at 0.05 ppm; green forage of wheat, barley, oats, and rye at 2.5 ppm; straw of wheat, barley, oats, and rye and meat, fat, and meat by-products of cattle, goats, hogs, horses, and sheep at 0.1 ppm; and meat, fat, and meat by-products of poultry, milk, and eggs at 0.01 ppm.

EPA also issued a notice, published in the **Federal Register** of January 16, 1985 (50 FR 2340), amended in the **Federal Register** of March 1, 1989 (54 FR 8594), proposing to amend 40 CFR 180 by

establishing tolerances for the fungicide triadimenol and its metabolites containing chlorophenoxy and triazole moieties (expressed as the fungicide) in or on the raw agricultural commodities sorghum grain and dry sorghum forage at 0.01 ppm and green forage of sorghum at 0.05 ppm.

There were no comments received in response to the notices of filing. To clarify the residues of regulatory concern containing the chlorophenoxy and triazole moieties, the Agency has decided that the tolerance expression for plant commodities should consist of triadimenol and its butanediol metabolite, 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4-triazol-l-yl)-1,3-butanediol, calculated as triadimenol. The tolerance expression for animal commodities consists of the parent compound, triadimenol and its metabolites containing the chlorophenoxy moiety, calculated as triadmenol.

Since triadimenol is a metabolite of 1-(4-chlorophenoxy)-3,3-dimethyl-l-(1*H*-1,2,4-triazol-l-yl)-2-butanone, hereafter referred to as triadimefon, which is also an active ingredient regulated under 40 CFR 180.410, the Agency is amending 40 CFR 180.3 by adding new paragraph (d)(13), to read as follows:

(13) Where tolerances are established for residues of both 1-(4-chlorophenoxy)-3,3-dimethyl-l-(1*H*-1,2,4-triazol-l-yl)-2-butanone (triadimefon) and *beta*-(4-chlorophenoxy)-alpha-(1,1-dimethyl-ethyl)-1*H*-1,2,4-triazole-l-ethanol (triadimenol) including its butanediol metabolite 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4-triazol-l-yl)-1,3-butanediol in or on the same raw agricultural commodity and its products thereof, the total amount of such residues shall not yield more residue than that permitted by the higher of the two tolerances.

The data submitted in support of the petitions and other relevant materials have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the tolerances include the following:

1. A 2-year feeding/oncogenicity study with rats using dietary concentrations of 0, 125, 500, and 2,000 ppm, equivalent to 0, 6.25, 25.0, and 100 mg/kg bwt/day in males and females. Clinical chemistry findings suggest that the target organ for toxicity may be the liver. The levels of serum glutamic oxaloacetate transaminase (SGOT) and serum glutamic pyruvic transaminase (SGPT) were consistently higher at 2,000 ppm in males and females when compared to untreated controls, and some increase in these two parameters was also observed at 500 ppm. Although there was an accompanying small increase in liver weight at 2,000 ppm in females, there were no accompanying increases in histopathologic changes of the liver in either sex. There were only marginal effects seen on other clinical chemistry parameters, and no effect of the test compound was seen in clinically observed signs of toxicity, food consumption, hematology, or urinalysis parameters. The systemic NOEL (no observed effect level) is 125 ppm (6.25 mg/kg/day for males and females) based on the increase in liver enzymes (SGOT and SGPT). The systemic LEL (lowest effect level) was 500 ppm (25 mg/kg/day for males and females). The chemical was not oncogenic to rats under the testing conditions.

2. A 2-year chronic feeding/oncogenicity study in mice using dietary concentrations of 0, 125, 500, and 2,000 ppm (equivalent to doses of 0, 18, 72, and 285 mg/kg/day for males and females). The results of blood chemistry, organ weights, and gross and histological examinations indicate that the liver is the target organ. There were time- and dose-related increases in SAP (serum alkaline phosphatase), SGOT and SGPT activities in both male and female animals receiving 500 and 2,000 ppm of the test material.

In addition, increased incidence of enlarged livers, hyperplastic nodules, and increased liver weights in both male and female animals receiving 2,000 ppm of test material were detected at necropsy. Female animals receiving 2,000 ppm doses exhibited a significant increase in the incidences of liver adenomas only, a compound-related oncogenic effect. In males, there were no differences in the incidences of these lesions in treated and control males, and the incidences of liver adenomas were similar to those observed in historical controls.

Based on this evidence, the Agency classified this chemical as a Category C (possible human carcinogen) in accordance with the EPA Guidelines for Carcinogen Risk Assessment (see the Federal Register of September 24, 1986 (51 FR 33992)). This evaluation was confirmed by the Agency's Scientific Advisory Panel on December 15, 1987. However, it was also concluded that this evidence of carcinogenicity did not warrant a low-dose extrapolation of risks since the tumors were only benign, were observed in only one sex of one species, and were present only at the highest dose tested. Moreover, the chemical was negative in the genotoxic assay battery.

Based on blood chemistry findings, the systemic NOEL and the LEL are 125 ppm and 500 ppm, respectively (equivalent to 18 and 72 mg/kg/day for males and females).

3. A 2-year male and female dog feeding study using doses of 0, 150, 600 and 2,400 ppm (equivalent to 0, 3.75, 15, and 60 mg/kg bwt/day for males and females). The NOEL is 150 ppm based on changes in enzyme levels (equivalent to 3.75 mg/kg bwt/day for males and females). The LEL is 600 ppm. Although there were significant decreases in mean body weights in males receiving 150 and 2,400 ppm and in females receiving 600 and 2,400 ppm, the biological significance of these changes could not be assessed. There were noted increases in alkaline phosphatase N-demethylase and cytochrome P-450 in males receiving 2,400 ppm and significant increases in N-demethylase in females receiving 600 and 2,400 ppm and in cytochrome P-450 in females receiving 2,400 ppm when compared to controls.

4. A 6-month dog feeding study using doses of 0, 10, 30, and 100 ppm (equivalent to 0, 0.25, 0.75, 2.5 mg/kg bwt/day for males and females). The NOEL was 2.5 mg/kg, the highest dose level tested.

5. A 3-month rat feeding study using doses of 0, 150, and 600 ppm (equivalent to 0, 7.5, and 30 mg/kg bwt/day for males and females) demonstrated a decrease in body weight, in hematocrit values, and in eosinophil count and medium cell hemoglobin and demonstrated an increase in the high-dose group and a dose-related increase in liver weight. The NOEL is 7.5 mg/kg and the LEL is 30 mg/kg.

6. A 3-month dog feeding study using doses of 0, 150, 600 and 2,400 ppm (equivalent to 0, 3.75, 15, and 60 mg/kg bwt/day for males and females). Weight gain in all male groups and in the highest dose female group was significantly less than the control. Alkaline phosphatase in males and females showed a dose-related negative trend. There were no gross pathological changes. Effects at 15 mg/kg included an increase in serum cholesterol level in males. Although the NOEL appeared to be less than 3.75 mg/kg, based on reduced body weight and decreased alkaline phosphatase in males, the Agency has concluded that effects below 15 mg/kg in the 2-year dog study were not biologically significant and the longer-term study supercedes the 90-day dog study. Therefore, the NOEL remains at 3.75 mg/kg.

7. A rabbit teratology study with a NOEL for maternal toxicity of 8 mg/kg. The maternal LEL was 40 mg/kg based on decreased body weight gains and food consumption. The developmental NOEL and LEL were 40 mg/kg and 200 mg/kg, respectively. This study has to be resubmitted with all the findings statistically analyzed on a per-litter and per-fetus basis in order to be upgraded from its current classification as core supplementary.

8. A rat teratology study using dose levels of 0, 30, 60, and 120 mg/kg/day was determined to be core supplementary because the NOEL for developmental toxicity (supernumerary ribs) was not definitively established. The NOEL and LOEL (lowest observed effect level) for maternal toxicity for this study are 30 and 60 mg/kg/day, respectively, based on decreases in maternal body weight, body weight gain, and food consumption at 60 and 120 mg/kg/day. Increased embryolethality (embryotoxicity) was only observed at the highest dose level tested (120 mg/kg/day). This study must be repeated to clearly define a NOEL for developmental toxicity.

The above rat study indicted that triadimenol caused a dose-dependent, statistically significant increase in the incidence of rudimentary supernumerary ribs. Althought the effect at the low dose level was not statistically significant, it was considered to be treatment related because of the dose-related trend.

The biological significance of the manifestation of supernumerary ribs is subject to scientific debate, especially if the ribs are not fully developed (rudimentary). Nonetheless, the margin of safety (MOS) for this effect must be taken into consideration. The MOS is the ratio between the NOEL for the effect and the acute exposure in mg/kg/day. A NOEL for developmental toxicity could not be defined in the rat teratology study but it is unlikely to be far below the threshold (LEL) of 30 mg/kg/day observed in the current study.

Based on worker exposure information and an estimation of the NOEL at about 15 mg/kg/day for developmental toxicity (rudimentary supernumerary ribs in rats) and assuming a maximum dermal penetration of about 10%, a margin of safety was calculated to be >100 for factory workers involved in seed treatments using a closed system.

9. A reverse mutation assay (AMES), a dominant lethal test in mice, DNA damage/repair, unscheduled DNA synthesis, *in vitro* and *in vivo* (rat) cytogenic assays, and a forward mutation in mice, all of which were negative for mutagenic effects.

10. A rat multigeneration reproduction study using doses of 0, 20, 100, and 500 ppm (equivalent to 0, 1, 5, and 25 mg/kg bwt/day for males and females) indicated that the NOEL and LOEL for both parental and pup toxicity are 100 and 500 ppm, respectively, based on significant body weight and organ weight changes. The NOEL for reproductive toxicity is 500 ppm, the highest dose level tested.

The provisional acceptable daily intake (PADI) based on the 2-year dog feeding studies (NOEL of 3.75 mg/kg bwt/day), and using a hundredfold uncertainty factor, is calculated to be 0.038 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) of the proposed tolerances is 0.000448 mg/kg/day and utilizes 1.175 percent of the PADI for the U.S. population. For non-nursing infants and children, the TMRC will represent 2.766 and 2.596 percent of the PADI, respectively.

For acute dietary exposure purposes, an average margin of safety (MOS) was determined to be 12,000 for females of child-bearing age, with a range of 3,100 to 47,000 based on high or low food consumption.

The nature of the residue is adequately understood. The residues of concern in plants consist of the parent compound, triadimenol and its butanediol metabolite, 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4,-triazol-1-yl)-1,3-butanediol, calculated as triadimenol. The residues of concern in animal products consist of the parent compound, triadimenol, and its metabolites containing the chlorophenoxy moiety, calculated as triadimenol.

Adequate analytical methods are available for enforcement purposes. Methods are available in the "Pesticide Analytical Manual," Vol. II (PAM II) for enforcement of the tolerances on livestock commodities. The method for plants has been submitted to the FDA for publication in PAM II. Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Room 242, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-4432.

The pesticide is considered useful for the purposes for which the tolerances are sought. Based on the information and data considered, the Agency concludes that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected of this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Pursuant to the requirement of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

The Office of Management and Budget has exempted this rule from the requirement of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 25, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.3, by adding new paragraph (d)(13), to read as follows:

§ 180.3 Tolerances for related pesticide chemicals.

* * * * *

(d) * * *

(13) Where tolerances are established for residues of both 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone (triadimefon) and beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol (triadimenol) including its butanediol metabolite, 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4-triazol-1-yl)-1,3-butanediol, in or on the

same raw agricultural commodity and its products thereof, the total amount of such residues shall not yield more residue than that permitted by the higher of the two tolerances.

* * * * *

3. By adding new § 180.450, to read as follows:

§ 180.450 Beta-(4-Chlorophenoxy)-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol; tolerances for residues.

(a) Tolerances are established for the combined residues of the fungicide *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethyl-ethyl)-1*H*-1,2,4-triazole-1-ethanol (triademenol) and its butanediol metabolite, 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4-triazol-1-yl)-1,3-butanediol, calculated as triadimenol, in or on the following commodities:

Commodities	Parts per million
Barley, grain	0.05
Barley, green forage	2.5
Barley, straw	0.1
Corn, fodder	0.05
Corn, fresh (including sweet) (K+CWHR)	0.05
Corn, forage	0.05
Corn, grain	0.05
Oats, grain	0.05
Oats, green forage	2.5
Oats, straw	0.1
Rye, grain	0.05
Rye, green forage	2.5
Rye, straw	0.1
Sorghum, grain	0.01
Sorghum, green forage	0.05
Sorghum, fodder	0.01
Wheat, grain	0.05
Wheat, green forage	2.5
Wheat, straw	0.1

(b) Tolerances are established for the combined residues of the fungicide *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol (triadimenol) and its metabolites containing the chlorophenoxy moiety, calculated as triadimenol, in or on the following commodities:

Commodities	Parts per million
Cattle, fat	0.1
Cattle, meat	0.1
Cattle, mbyp	0.1
Eggs	0.01
Goats, fat	0.1
Goats, meat	0.1
Goats, mbyp	0.1
Hogs, fat	0.1
Hogs, meat	0.1
Hogs, mbyp	0.1
Horses, fat	0.1
Horses, meat	0.1
Horses, mbyp	0.1
Milk	0.01
Poultry, fat	0.01
Poultry, meat	0.01
Poultry, mbyp	0.01
Sheep, fat	0.1
Sheep, meat	0.1
Sheep, mbyp	0.1

[FR Doc. 89-18058 Filed 8-1-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 180, 185, and 186

[PP 8F3592 and FAP 8H5550/R1032; FRL-3623-9]

Pesticide Tolerances for Avermectin B_1 and its Delta-8,9-Isomer

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules establish tolerances for the residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on certain raw agricultural commodities (RACs) food and feed commodities. These regulations to establish maximum permissible levels for the residues of the chemical were requested pursuant to petitions by Merck and Co., Inc., Merck Sharp and Dohme Research Laboratories.

EFFECTIVE DATE: August 2, 1989.

ADDRESS: Written objections, identified by the document control number [PP 8F3592 and FAP 8H5550/R1032], may be submitted to the:

Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail:

George LaRocca, Product Manager (PM) 15, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 200, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2400.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of February 3, 1988 (53 FR 3074), which announced that Merck and Co., Inc., Merck Sharp and Dohme Research Laboratories, Hillsborough Rd., Three Bridges, NJ 08887, had submitted pesticide petition (PP) 8F3592 proposing to establish tolerances in or on the RACs citrus whole fruit at 0.005 part per million (ppm), cattle meat and meat byproducts at 0.005 ppm, and milk at 0.001 ppm for residues of the insecticide/miticide avermectin B_1 and its delta-8,9-isomer (a mixture of avermectins containing > 80 percent avermectin B_{1a} (5-0-demethyl avermectin A_{1a}) and < 20 percent avermectin B_{1b} (5-0-demethyl-25-di(1-methylpropyl)-25-(1-methylethyl) avermectin A_{1a})) and food/feed additive petition (FAP) 8H5550 proposing that 21 CFR Parts 193 and 561 (redesignated as 40 CFR Parts 185 and 186 in the **Federal Register** of June 29, 1988 (53 FR 24667)), be amended by establishing a regulation to permit the combined residues of the avermectin B_1 and its delta-8,9-isomer in the food commodity citrus oil at 0.10 ppm and the feed commodity dried citrus pulp at 0.03 ppm.

The petition was subsequently amended in a notice published in the **Federal Register** of July 5, 1989 (54 FR 28109), by increasing the proposed tolerances for the RACs citrus, whole fruit and cattle meat and meat byproducts to 0.02 ppm and milk to 0.005 ppm and the feed commodity dried citrus pulp to 0.10 ppm.

The Agency received a comment in response to the Notice of Filing from the Florida Citrus Mutual in support of the subject petition and food-feed additive regulation. Florida Citrus Mutual stated that establishment of these tolerances and approval for use of the insecticide avermectin B_1 on citrus to control rust mite would be economically beneficial to Florida citrus growers. Florida Citrus Mutual based this conclusion on their interpretation of data demonstrating that this insecticide can be applied at very low application rates without loss of effectiveness, is compatible with oil and copper and as such is an excellent choice for use in the summer when rust mite on citrus is most important, and that the insecticide had no detrimental effects on natural enemies and non-target organisms.

No other comments were received in response to the notices of filing.

A tolerance has been established for avermectin B_1 and its delta-8,9-isomer on cottonseed (see the **Federal Register** of May 31, 1989 (54 FR 23209)), with an expiration date of March 31, 1993, to cover residues expected to be present for 1 year after the period of conditional registration. To be consistent with the tolerances of avermectin B_1 and its delta-8,9-isomers on cottonseed, EPA is establishing tolerances for this pesticide on citrus, whole fruit; cattle meat and meat byproducts; and milk in 40 CFR 180.449; for citrus oil in 40 CFR 185.300; and for dired citrus pulp in 40 CFR 186.300, with an expiration date of March 31, 1993.

In the May 31, 1989 **Federal Register**, EPA issued a conditional registration for avermectin B_1 with an expiration date of March 31, 1992. The registration was made conditional since certain data were lacking. In order to evaluate the effects of avermectin B_1 on fish, mammals, and aquatic invertebrates and evaluate the effects in or on soil, several data requirements must be fulfilled during the period of conditional registration. Such requirements include a fish life-cycle study (section 72-5) which must be submitted to the Agency by October 1991; a simulated aquatic biological field study (section 72-7) which is due by October 1991; a simulated mammalian field test (section 71-5) which is due by October 1991; results of the analyses of the three remaining soil core replicates (field dissipation study—section 164-1) which must be submitted by July 24, 1989; and an adsorption/desorption study (section 163-1) which must be submitted by June 1990.

The data submitted in the petitions and other relevant material have been evaluated. The toxicology data considered in support of the tolerances include a 12-month oral toxicity study in dogs with a no-observed-effect level (NOEL) of 0.25 milligram (mg)/kilogram (kg)/day; a 24-month rat chronic feeding/oncogenicity study with a NOEL of 1.5 mg/kg/day with no oncogenic effects observed at dose levels up to and including 2.0 mg/kg/day, the highest does tested (HDT); a 22-month mouse chronic toxicity/oncogenicity study with a NOEL of 4 mg/kg/day with no oncogenic effects observed at dose levels up to and including 8 mg/kg/day (HDT); and a two-generation rat reproduction study with a NOEL of 0.12 mg/kg/day. At a dose level of 0.40 mg/kg/day (HDT), the toxic effects observed in this study were increased number of dead pups at birth, decreased viability and lactation indices, decreased pup body weights, and retinal anomalies in some offspring. Avermectin B_1 was negative for mutagenic effects in the Ames assay, V-79 mammalian cell assay, in vitro chromosomal aberration assay in Chinese Hamster Ovary cells, and in vivo cytogenic assay in male mice. In a rat in vitro hepatocyte mutagenicity assay, avermectin B_1 at doses of 0.3 and 0.6 millimoles produced an increase in single-strand DNA breaks. However, when the assay was carried out in vivo at 10.6 mg/kg, no mutagenic effects were observed in hepatocytes of rats. No teratogenic effects were observed in rats at dose levels up to and including 1.6 mg/kg/day (HDT). No teratogenic effects were observed in a rabbit teratology study with dose levels up to and including 1.0 mg/kg/day. However, in a series of developmental toxicity studies, avermectin B_1 produced maternal toxicity (lethality) and developmental toxicity (cleft palate) in CF_1 mice. The NOEL for maternal toxicity was 0.05 mg/kg/day, and for developmental toxicity was 0.2 mg/kg/day.

The delta-8,9-isomer avermectin B_1 is a plant photodegradate which processes avermectin-like toxicological activity. Since this isomer is not produced in animals, additional toxicology studies were conducted on this isomer. These studies include a series of developmental toxicity studies on rats and mice. The delta-8,9-isomer was negative for teratogenicity in rats at doses up to and including 1.0 mg/kg/day (HDT). However, in CF_1 mice the delta-8,9-isomer, like avermectin B_1, produced maternal toxicity (lethality) and developmental toxicity (cleft palate). The NOEL for maternal toxicity was 0.10 mg/kg/day, and the NOEL for developmental toxicity was 0.06 mg/kg/day. The delta-8,9-isomer did not produce adverse reproductive effects in a one-generation rat reproduction study at doses up to and including 0.4 mg/kg/day (HDT) and was also negative in the Ames mutagenicity assay at doses up to 3,000 µg/plate.

Because of the developmental effects seen in animal studies, Agency used the two-generation rat reproduction study with a safety factor of 300 to assess chronic dietary exposure and establish an acceptable daily intake (ADI). The 300-fold safety factor was employed to account for (1) inter- and intra-species differences, (2) pup death observed in the reproduction study, (3) maternal toxicity (lethality) NOEL = 0.05 mg/kg/day, and (4) cleft palate in the mouse teratology study with the isomer, NOEL = 0.06 mg/kg. The ADI, based on a NOEL of 0.12 mg/kg/day from a two-generation rat reproduction study and a safety factor of 300, is 0.0004 mg/kg/body weight (bwt)/day. Residue estimates used in exposure calculations were based upon processing studies, field trial data, and animal feeding studies. The estimated exposure for the overall U.S. population resulting from the proposed tolerance on citrus (PP8F3592 and FAP8H5550) plus the published tolerance on cottonseed is 0.000115 mg/kg body weight/day, which represents approximately 29 percent of the ADI. The two most highly exposed population subgroups, non-nursing infants and children 1 to 6 years old, had estimated exposures of 0.000258 mg/kg body weight/day (64 percent of the ADI), and 0.000298 mg/kg body weight/day (75 percent of the ADI), respectively.

Additionally, a dietary acute exposure analysis for this tolerance and pending tolerances for this chemical was conducted using the NOEL of 0.06 mg/kg/day for developmental toxicity in CF_1 mice for the delta-8,9-isomer. The Tolerance Assessment System (TAS) subgroup of interest in this analysis is women aged 13 and above, which is the TAS subgroup most closely approximating women of child-bearing age. The margins of safety for the average woman of child-bearing age was calculated to be 1,579; none of the target population is expected to have an MOS of less than 125, even assuming tolerance level residues.

Nondietary margins of safety for these effects (maternal toxicity and developmental toxicity) were also calculated for persons engaged in the application of avermectin to citrus (mixers/loaders/applicators and harvesters) and were found to exceed 100 in all instances.

The metabolism of the chemical in plants and livestock for these RAC uses is adequately understood. Adequate analytical methods (HDLC—Fluorescence Methods) are available for enforcement. Prior to publication in the *Pesticide Analytical Manual*, Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from: By mail:

Calvin Furlow, Public Information Branch (H-7506C), Field Operations Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 242, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-4432.

The tolerances established by amending 40 CFR Parts 180, 185 and 186 will be adequate to cover residues in or on citrus fruit, cattle meat, meat byproducts, and milk, and citrus oil and dried citrus pulp.

There are currently no actions pending against the registration of this product.

Based on the above information and data considered, the Agency concludes that the tolerances are useful for the purposes for which they are sought and that they will protect the public health. Therefore, the tolerances are established as set forth below with an expiration date of March 31, 1993. After receipt and evaluation of the data required to support the conditional registration of avermectin B_1 and its delta-8,9-isomer, the Agency will consider establishing permanent tolerances without an expiration date

for residues of the chemical and its metabolite.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk (address above). Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 601-612)), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from the tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180, 185 and 186

Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 25, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In Part 180:

a. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. Section 180.449 is revised, to read as follows:

§ 180.449 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

Tolerances, to expire March 31, 1993, are established for the combined residues of the insecticide avermectin B_1 and its delta -8,9-isomer [a mixture of avermectins containing > 80 percent avermectin B_{1a} (5-O-demethyl avermectin A_{1a}) and < 20 percent avermectin B_{1b} (5-O-demethyl-25-di(1-methylpropyl)-25-(1-methylethyl) avermectin A_{1a})] in or on the following commodities:

Commodities	Part per million	Expiration date
Citrus, whole fruit	0.02	Mar. 31, 1993.
Cattle, meat	0.02	Do.
Cattle, mbyp	0.02	Do.
Milk	0.005	Do.

PART 185—[AMENDED]

2. In Part 185:

a. The authority citation for Part 185 continues to read as follows:

Authority: 21 U.S.C. 346.

b. Section 185.300 is revised, to read as follows:

§ 185.300 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

Tolerances, to expire March 31, 1993, are established for the combined residues of the insecticide avermectin B_1 and its delta 8,9-isomer [a mixture of avermectins containing > 80 percent avermectin B_{1a} (5-O-demethyl avermectin A_{1a}) and < 20 percent avermectin B_{1b} (5-O-demethyl-25-di(1-methylpropyl)-25-(1-methylethyl) avermectin A_{1a})] in or on the following commodity:

Commodity	Part per million	Expiration date
Citrus oil	0.10	Mar. 31, 1993.

PART 186—[AMENDED]

3. In Part 186:

a. The authority citation for Part 186 continues to read as follows:

Authority: 21 U.S.C. 346.

b. Section 186.300 is revised, to read as follows:

§ 186.300 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

Tolerances, to expire March 31, 1993, are established for the combined residues of the insecticide avermectin B_1 and its delta, 8,9-isomer [a mixture of avermectins containing > 80 percent avermectin B_{1a} (5-O-demethyl avermectin A_{1a}) and < 20 percent avermectin B_{1b} (5-O-demethyl-25-di(1-methylpropyl)-25-(1-methylethyl) avermectin A_{1a})] in or on the following commodity:

Commodity	Part per million	Expiration date
Dried citrus pulp	0.10	Mar. 31, 1993.

[FR Doc. 89-18057 Filed 8-1-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 81-742]

Broadcast Services; Comparative Renewal and Abuse of the Renewal Process

AGENCY: Federal Communications Commission.

ACTION: Final rule; establishment of effective date.

SUMMARY: The policies and amended rules set out in the *First Report and Order in BC Docket 81-742* (Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants in the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process), 4 FCC Rcd 4780 (released May 16, 1989), *summarized in* 54 FR 22595 (May 25, 1989) were adopted subject to Office of Management and Budget approval of the new information collection requirements under the Paperwork Reduction Act of 1980. The changes adopted relate to settlement agreements, transmitter site availability, and other policies arising in renewal and comparative renewal proceedings.

The required Office of Management and Budget approvals have now been obtained and the rule and policy changes will accordingly become effective on August 7, 1989.

In accordance with paragraph 70 of the *Report and Order*, all applicants not yet designated for hearing that have relied upon the availability of the transmitter site of an existing licensee against whom they are competing will have an additional thirty days (until the close of business on September 6, 1989) to amend their applications in accordance with the new policy to show reasonable assurance of site availability and, if necessary, to amend the engineering data submitted.

EFFECTIVE DATE: August 7, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marilyn Mohrman-Gillis, Mass Media Bureau, Policy and Rules Division at (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-18150 Filed 8-1-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 80

[PR Docket No. 88-507; FCC 89-230]

Maritime Services; Amendment of the Maritime Services Rules (Part 80) To Restrict the Frequency Selection Capability of VHF Maritime Transmitters to Maritime Frequencies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This rule restricts the frequency selection capability of VHF maritime transmitters to maritime frequencies. This is accomplished by establishing new technical standards for transmitter type acceptance and by phasing out the manufacture, sale and installation of transmitters capable of indiscriminate frequency selection. This action will reduce the interferences caused by maritime stations to public safety and other radio services.

EFFECTIVE DATE: September 7, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William P. Berges, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554. (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 88-507, adopted July 13, 1989, and released June 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The full text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

On October 25, 1988, the Commission released a *Notice of Proposed Rule Making*, PR Docket No. 88-507, FCC 88-319, 53 FR 44210, November 2, 1988, which proposed to restrict the frequency selection capabilities of VHF maritime transmitters to maritime frequencies. VHF maritime transmitters now being manufactured employ frequency synthesizers that are capable of being programmed by station operators to operate on maritime as well as other frequency channels not available to the maritime service. This leads to operations on unauthorized channels and can cause interference to public safety and other radio services. Establishing new type acceptance technical standards for VHF maritime transmitters is an efficient and effective means of restricting operations to VHF maritime frequencies. The Report and Order discusses the comments filed regarding the proposed rules in the *Notice of Proposed Rule Making* and provides for equipment phase out periods designed to minimize any adverse impact upon manufacturers, dealers and consumers.

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of the decision, which may be obtained from the Commission or its copy contractor.

The Report and Order contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Ordering Clauses

Authority for issuance of this Report and Order is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

It is ordered, That Part 80 of the Commission's Rules is amended as shown at the end of this document effective as indicated in the "**EFFECTIVE DATE**" paragraph of this document.

It is further ordered, That a copy of the Report and Order be sent to the Chief Counsel for advocacy of the Small Business Administration.

It is further ordered, That this proceeding is terminated.

List of Subjects in 47 CFR Part 80

Ship stations, Coast stations, Communication equipment.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amended Rules

Part 80 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. In § 80.203, paragraph (a) is revised, paragraphs (b) through (j) are redesignated as paragraphs (c) through (k), and a new paragraph (b) is added to read as follows:

§ 80.203 Authorization of transmitters for licensing.

(a) Each transmitter authorized in a station in the maritime services after September 30, 1986, except as indicated in paragraphs (f), (g) and (h) of this section, must be type accepted by the Commission for Part 80 operations. The procedures for type acceptance are contained in Part 2 of this chapter. Transmitters of a model type accepted or type approved before October 1, 1986 will be considered type accepted for use in ship or coast stations as appropriate.

(b) The external controls, of maritime station transmitters capable of operation in the 156-162 MHz band and manufactured in or imported into the United States after August 1, 1990, or sold or installed after August 1, 1991, must provide for selection of only maritime channels for which the maritime station is authorized. Such transmitters must not be capable of being programmed by station operators using external controls to transmit on channels other than those programmed by the manufacturer, service or maintenance personnel.

(1) Any manufacturer procedures and special devices for programming must only be made available to service companies employing licensed service and maintenance personnel that meet the requirements of § 80.169(a) and must not be made available with information normally provided to consumers.

(2) The channels preprogrammed by manufacturers, service and maintenance personnel for selection by the external controls of a maritime station transmitter must be limited to those channels listed in this Part and the duplex channels listed in Appendix 18 of the international Radio Regulations. The duplex channels listed in Appendix 18 of the international Radio Regulations must be used only in the specified duplex mode. Simplex operations on Appendix 18 duplex channels that are

not in accordance with this Part are prohibited.

(3) Programming of authorized channels must be performed only by a person holding a first or second class radiotelegraph operator's certificate or a general radiotelephone operator's license using any of the following procedures:

(i) Internal adjustment of the transmitter;

(ii) Use of controls normally inaccessible to the station operator;

(iii) Use of external devices or equipment modules made available only to service and maintenance personnel through a service company; and

(iv) Copying of a channel selection program directly from another transmitter (cloning) using devices and procedures made available only to service and maintenance personnel through a service company.

(4) VHF maritime radio station transmitters capable of being programmed by station operators by means of external controls that are installed in a maritime station by August 1, 1991, are authorized for use indefinitely at the same maritime station.

* * * * *

[FR Doc. 89-17893 Filed 8-1-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 28]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule delays the effective date of the lens marking requirements for motorcycle headlamps equipped with a light source other than the HB Types specified in Motor Vehicle Safety Standard No. 108 (paragraph S5.1.1.29) and establishes a new effective date. It responds to a July 13, 1989, petition from BMW of North America, Inc., for reconsideration of a June 1989 final rule. In its petition, BMW stated that it could not comply with the requirement with only a month's leadtime. Leadtime of 30 days was provided, based on the rationale that the June final rule would relieve restrictions. In recognition that the amendments did add a new requirement for manufacturers of systems incorporating replaceable bulb headlamps, NHTSA grants the petition, and adopts a new effective date of January 1, 1990 for the lens marking requirement.

DATES: The amendment made by this notice to Standard No. 108 is effective August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, NHTSA (202-366-5276).

SUPPLEMENTARY INFORMATION: NHTSA published a notice amending Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, on June 29, 1989 (54 FR 27362), the primary purpose of which was to allow manufacturers of motor vehicles to use a new type of standardized replaceable light source in headlamps, as an alternative to existing light sources. The effective date set by the notice is July 31, 1989.

With respect to these amendments, the agency announced that "Since the amendment does not impose any new requirements but instead relieves a restriction, the agency finds for good cause shown that an effective date earlier than 180 days is in the public interest. This finding was made pursuant to section 103(e) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(e)), which provides that the effective date of an amendment to a Federal motor vehicle safety standard "shall not be sooner than one hundred and eighty days or later than one year from the date the order is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest, and publishes his reasons for such finding."

The June amendment allows motor vehicle manufacturers to use a new standardized replaceable light source in headlamps, known as HB2, as an alternative to Types HB1, HB3, and HB4. Type HB2 is a modification of a European light source, known as H-4. Because their headlamps are not required to be mechanically aimable, motorcycles may use the H-4 bulb, and have done so for years. However, under newly adopted paragraph S5.1.1.29, the lenses of motorcycle headlamps equipped with a replaceable bulb other than a standardized replaceable light source (i.e., Types HB1, HB2, HB3, or HB4) are required to be marked "motorcycle", to prevent their inadvertent use on other types of motor vehicles. This requirement will apply to motorcycle headlamps equipped with H-4 bulbs.

BMW of North America, Inc., submitted a petition for reconsideration stating that an effective date of July 31, 1989, for paragraph S5.1.1.29 affords insufficient leadtime for compliance. It argued that such a short lead time renders compliance impracticable and unreasonable. The petitioner stated that an effective date of September 1, 1990, would afford "a normal leadtime for such hardware changes", which is reasonable "because the requirement is not needed immediately to solve a safety problem."

The agency has carefully considered BMW's petition. It has concluded that while overall the amendments of June 29 do relieve a restriction, the requirements of paragraph S5.1.1.29 impose a new obligation upon manufacturers. It appears that the agency made an overly inclusive finding of good cause for an effective date earlier than 180 days after issuance of the final rule. For this reason, and because of BMW's compliance difficulties, NHTSA grants BMW's petition. However, the agency has not followed BMW's preference for an effective date of September 1, 1990. That date is 14 months after issuance of the final rule and would itself require a finding that good cause had been shown for delaying the date more than a year beyond issuance. The agency does not agree with BMW's statement that "the requirement is not needed immediately to solve a safety problem" because headlamps using H-4 bulbs are interchangeable with those installed on four-wheeled motor vehicles, but do not meet all specifications set forth for multiple headlamp vehicles. Therefore, NHTSA is establishing a new effective date that slightly exceeds the specified 180-day minimum. It is issuing this final rule amending paragraph S5.1.1.29 immediately to specify that it becomes effective on January 1, 1990.

The change in the effective date made by this notice does not affect any of the conclusions in the June 29, 1989, final rule regarding the impacts of that final rule. For the same reasons stated in that June 29 notice, this final rule is not major within the meaning of Executive Order 12291, nor significant within the meaning of the Department's regulatory policies and procedures. I certify that it will not significantly affect a substantial number of small entities. Finally, after reviewing this final rule under Executive Order 12612, the agency has determined that it will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, motor vehicle safety, motor vehicles.

In consideration of the foregoing, 49 CFR 571.108 Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* is amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Paragraph S5.1.1.29 is revised to read as follows:

S5.1.1.29 Each replaceable bulb headlamp that is designed to meet the photometric requirements of SAE Recommended Practice J584, *Motorcycle Headlamps*, April 1964, that is equipped with a light source other than a standardized replaceable light source, and that is manufactured on or after January 1, 1990, shall have the word "motorcycle" permanently marked on the lens in characters not less than 0.114 inch (3 mm) in height.

Issued on July 28, 1989.

Jeffrey R. Miller,

Acting Administrator, National Highway Traffic Safety Administration.

[FR Doc. 89-18038 Filed 7-28-89; 12:14 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 90515-9115]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure and inseason adjustment.

SUMMARY: NOAA announces: (1) The closure of the recreational salmon fishery in the exclusive economic zone (EEZ) from the U.S.-Canada border to the Queets River, Washington, effective midnight, July 26, 1989, to ensure that the coho salmon quota is not exceeded; and (2) an inseason adjustment to the recreational salmon fishery from Cape Falcon to Orford Reef Red Buoy, Oregon, to shorten the fishing week to Sunday through Thursday, effective midnight, July 27, 1989. The Director, Northwest Region, NMFS (Regional Director), has determined that the closure is necessary to conform to the preseason announcement of 1989 management measures and the shortened recreational fishing week is desirable to extend the recreational season. These actions are intended to ensure conservation of coho salmon and allow maximum harvest of ocean salmon quotas established for the 1989 season.

EFFECTIVE DATES: Closure of the EEZ from the U.S.-Canada border to the Queets River, Washington, to recreational salmon fishing is effective at 2400 hours local time, July 26, 1989. Modification of the recreational fishing week to Sunday through Thursday in the EEZ from Cape Falcon to Orford Reef Rej Buoy, Oregon, is effective at 2400 hours local time, July 27, 1989. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard notice-to-mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). Any public comments on these actions must be received by August 14, 1989.

ADDRESS: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are published at 50 CFR Part 661. Management measures for 1989 were effective on May 1, 1989 (54 FR 19798, May 8, 1989). This notice announces inseason actions affecting the two ocean salmon fisheries below.

(1) *Recreational fishery from the U.S.-Canada border to the Queets River, Washington.* Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 66 .21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

The 1989 recreational fishery for all salmon species in the subarea from the U.S.-Canada border to the Queets River, Washington, commenced on July 2, 1989, and was scheduled to continue through the earliest of September 28, 1989 or the attainment of either a subarea quota of 22,500 coho salmon or an overall quota of 47,500 chinook salmon north of Cape Falcon, Oregon. Based on the best available information, the recreational fishery catch in the subarea is projected to reach the 22,500 coho salmon quota by midnight, July 26, 1989. Therefore, the fishery in this subarea is closed to further recreational fishing effective 2400 hours local time, July 26, 1989.

(2) *Recreational fishery from Cape Falcon to Orford Reef Red Buoy, Oregon.* The 1989 recreational fishery south of Cape Falcon, Oregon, is managed not to exceed 285,000 coho salmon. If the recreational coho quota is reached, the subarea between Cape Falcon and Orford Reef Red Buoy, Oregon, closes to recreational fishing for all salmon species, and the recreational salmon fishery south of Orford Reef Red Buoy, Oregon, remains open for all salmon species as regularly scheduled.

The entire area south of Cape Falcon currently is open to recreational fishing for all salmon species. According to the best available information through July 23, about 85,000 fish remain in the 285,000 recreational coho quota. At expected catch rates, the coho quota will be reached and the fishery in the subarea from Cape Falcon to Orford Reef Red Buoy will be closed well ahead of its scheduled ending date of September 15. A shortened recreational fishing week in this subarea is expected to dampen catch rates, provide additional opportunity to harvest coho and chinook salmon, and prolong the recreational fishery.

Regulations at § 661.21(b)(1)(iii) authorize inseason changes in the recreational fishing days per calendar week. Therefore, the fishing week for the recreational fishery in the subarea from Cape Falcon to Orford Reef Red Buoy, Oregon, is shortened to Sunday through Thursday only, effective 2400 hours local time, July 27, 1989.

In accordance with the revised inseason notice procedures of §§ 661.20, 661.21, and 661.23, actual notice to fishermen was given prior to (1) 2400 hours local time, July 26, 1989 for the recreational closure between the U.S.-Canada border and the Queets River, Washington, and (2) 2400 hours local time, July 27, 1989 for the shortened recreational fishing week between Cape Falcon and Orford Reef Red Buoy, Oregon, by telephone hotline number

(206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fisheries, Oregon Department of Fish and Wildlife, and California Department of Fish and Game regarding this action. The states of Washington and Oregon will manage the salmon fisheries in State waters adjacent to these areas of the EEZ in accordance with this federal action. This notice does not apply to other fisheries which may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through August 14, 1989.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 27, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-17982 Filed 7-28-89; 9:14 am]

BILLING CODE 3510-22-M

---

50 CFR Part 675

[Docket No. 81121-9010]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of the Aleutian Islands Sub-area to directed fishing for sablefish under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This action is necessary to prevent the total allowable catch (TAC) for sablefish in the Aleutian Islands Sub-area from being exceeded before the end of the fishing year. The intent of this action is to ensure optimum use of groundfish while conserving sablefish stocks.

DATES: This closure is effective from noon, Alaska Daylight Time (ADT), July 30, 1989, through December 31, 1989. Comments will be accepted through August 14, 1989.

ADDRESS: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker, Fishery Management Biologist, NMFS, 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council (Council) and implemented by rules appearing at 50 CFR 611.93 and Part 675.

The initial specifications of Domestic Annual Processing (DAP) for 1989 were based on the needs of the U.S. industry as projected by the Director, Alaska Region, NMFS (Regional Director). Certain species, including sablefish, are considered fully utilized by DAP. After 15 percent (510 mt) of the original TAC (3,400 mt) was placed in the non-specific reserve, as required at § 675.20(a)(3), the initial specification for the Aleutian Islands Sub-area sablefish DAP was determined to be 2,890 mt (54 FR 3606, January 25, 1989).

In the Aleutian Islands Sub-area, the estimated catch to date of sablefish for DAP is 2,243 mt. When the Aleutian Islands Subarea sablefish TAC is reached, current regulations require that all domestic vessels operating in that area discard sablefish in the same manner as prohibited species. The Regional Director estimates that at current and anticipated catch rates the entire Aleutian Islands Sub-area sablefish TAC (3,400 mt) will be reached by DAP fisheries by late August. Thus, sablefish taken in fisheries for other groundfish species and discarded as required by regulation would be wasted for the remainder of the year.

Notice of Closure to Directed Fishing

Under § 675.20(a)(8), when the Regional Director determines that the remaining amount of the TAC of any target species is necessary for bycatch in fisheries for other groundfish species the Secretary will publish a notice in the **Federal Register** prohibiting directed fishing for that species for the remainder of the fishing year.

The Regional Director has determined that the amount of sablefish TAC remaining on July 30, 510 mt, will be needed for bycatch in DAP fisheries catching other groundfish species in the Aleutian Islands Sub-area during the remainder of 1989. Therefore, in order to prevent wastage and encourage the full utilization of all sablefish harvested, directed fishing for sablefish by U.S. fishermen in the Aleutian Islands Sub-area must cease effective noon, ADT, July 30, 1989.

Following the closure of directed fishing for sablefish, operators of U.S. vessels may retain sablefish as bycatch provided that they comply with the definition of directed fishing as revised by the emergency rule currently in effect (see 54 FR 13191, March 31, 1989; 54 FR 27348, June 29, 1989). Under that rule, if directed fishing is prohibited, the operators may not retain on board a fishing vessel at any one time sablefish in an amount equal to or greater than (a) 1 percent or more of the total amount of fish and fish products, other than Pacific ocean perch and Greenland turbot, (as calculated in round weight equivalents), plus (b) 10 percent or more of the total amount of Pacific ocean perch and Greenland turbot (fish and fish products, as calculated in round weight equivalents).

Classification

The Assistant Administrator for Fisheries finds that the overfishing of sablefish, the underutilization of other fisheries, or the unnecessary wastage and underutilization of sablefish will result unless this notice takes effect promptly. NOAA finds for good cause that prior opportunity for comment on this notice is impracticable and contrary to the public interest and similarly finds good cause that the effective date should not be delayed. Public comments on this action are invited for a period of 15 days after the effective date of this notice. Public comments may be submitted to the Regional Director at the above address until August 14, 1989.

This action is taken under the authority of 50 CFR 675.20(b) and 675.20(a)(8) and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 28, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-18022 Filed 7-28-89; 12:01 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 147
Wednesday, August 2, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 911

[Docket No. FV-89-047]

Limes Grown in Florida; Proposed Increase in the 1989-90 Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes an increase in the authorized expenditures and the assessment rate for the 1989-90 fiscal year for the Florida Lime Administrative Committee (committee), established under Marketing Order No. 911. This proposal would increase authorized expenditures to $278,000 from $233,000, and the assessment rate to $0.18 from $0.15 per bushel (55 pounds) of assessable limes. This proposed action is needed by the committee to pay additional anticipated marketing order expenses and to collect additional assessments from handlers to pay those expenses. The proposed action would enable the committee to continue to perform its duties and the order to operate.

DATES: Comments must be received by August 14, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 911, both as amended (7 CFR Part 911), regulating the handling of limes grown in Florida. This agreement and order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 26 handlers subject to regulation under the marketing order for limes grown in Florida, and about 230 lime growers in Florida. Small agricultural growers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and growers may be classified as small entities.

The marketing order for Florida limes administered by the U.S. Department of Agriculture (Department) requires that the assessment rate for a particular fiscal year shall apply to all of the assessable commodity handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are handlers and growers of Florida limes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the expected shipments of limes in bushels (55 pounds). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The recommended budget and rate of assessment is usually acted upon by the committee shortly before a season starts, or during the season when changes are needed, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

The committee met April 12, 1989, and unanimously recommended increasing 1989-90 budgeted expenditures from $233,000 to $278,000, and the assessment rate from $0.15 to $0.18 per bushel (55 pounds) of assessable limes shipped. The proposed $45,000 expenditure increase is for additional market promotion. The "marketing" item in the 1989-90 budget is proposed to be increased to $70,000 from $25,000. The committee plans to develop and submit for approval its market promotion projects later in the season. The current expenditure level and assessment rate was authorized by a final rule signed April 12, 1989, and published in the **Federal Register** (54 FR 15168, April 17, 1989), based on a January 11, 1989, unanimous recommendation of the committee.

Based on shipments of 1,500,000 bushels of assessable limes and an $0.18 assessment rate, committee assessment income for 1989-90 is estimated at $270,000. Interest income continues to be estimated at $8,000.

The committee also unanimously recommended that excess 1988-89 assessments of about $12,000 be refunded to handlers, as provided in § 911.42, rather than be placed in its reserve as it recommended on January

11, 1989. The committee's reserve currently contains about $156,000, an amount well within the maximum authorized under the order.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to growers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A comment period of less than 30 days is deemed appropriate for this action. As mentioned earlier, committee expenses are incurred on a continuous basis. Hence, approval of the additional expenses and for collecting additional assessments must be expedited.

List of Subjects in 7 CFR Part 911

Marketing agreements and orders, limes, Florida.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 911 be amended as follows:

PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 911 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 911.228 is amended to read as follows:

§ 911.228 Expenses and assessment rate.

Expenses of $278,000 by the Florida Lime Administrative Committee are authorized, and an assessment rate of $0.18 per bushel (55 pounds) of assessable limes is established for the fiscal year ending March 31, 1990. Excess funds from the 1988–89 fiscal year may be refunded to handlers from whom collected.

Dated: July 27, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–18034 Filed 8–1–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 929

[FV–89–077PR]

Proposed Expenses and Assessment Rate for Cranberries Grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 929 for the 1989–90 fiscal year established under the cranberry marketing order. This action is needed for the Cranberry Marketing Committee (Committee), the agency responsible for the local administration of the order, to incur operating expenses during the 1989–90 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by August 14, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 929 [7 CFR Part 929], regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "nonmajor" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and approximately 950 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less that $3,500,000. The majority of cranberry handlers and producers may be classified as small entities.

The cranberry marketing order requires that an assessment rate for a particular fiscal year shall apply to all assessable cranberries handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of cranberries. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of cranberries. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses for the 1989–90 fiscal year which begins on September 1, 1989.

The Committee conducted a mail vote and recommended 1989–90 marketing order expenditures of $172,602 and an assessment rate of $0.037 per 100-pound barrel of cranberries shipped. In comparison, 1988–89 marketing year budgeted expenditures were $198,000, and the assessment rate was $0.055 per 100 pound barrel of cranberries shipped. Assessment income for 1989–90 is estimated at $148,555 based on a crop of 4,015,000 barrels of cranberries. Interest income expected to be received is estimated at $4,047, bringing total income to $152,602. Adequate reserve funds are available to meet the expected deficit in assessment income.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the forgoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for the program needs to be expedited. The Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Connecticut, Massachusetts, Michigan, Minnesota, New Jersey, Oregon, Rhode Island, Washington, and Wisconsin.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 929 be amended as follows:

PART 929—CRANBERRIES GROWN IN MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR Part 929 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section § 929.230 is added to read as follows:

§ 929.230 Expenses and assessment rate.

Expenses of $172,602 by the Cranberry Marketing Committee are authorized, and an assessment rate of $0.037 per 100 pound barrel of assessable cranberries is established for the fiscal year ending August 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: July 28, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–18032 Filed 8–1–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 967

[FV–89–062PR]

Proposed Handling Regulation for Celery Grown in Florida

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This action proposes establishing the quantity of Florida celery which handlers may ship to fresh markets during the 1989–90 marketing season at 6,789,738 crates or 100 percent of producers' base quantities. This proposal is intended to lend stability to the industry and thus, help to provide consumers with an adequate supply of the product. As in past marketing seasons, the limitation on the quantity of Florida celery handled for fresh shipment is not expected to restrict the quantity of Florida celery actually produced or shipped to fresh markets, since production and shipments are anticipated to be less than the allotment. This proposal was recommended by the Florida Celery Committee (Committee), the agency responsible for local administration of the order.

DATES: Comments must be received by August 14, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 967 [7 CFR Part 967], both as amended, regulating the handling of celery grown in Florida. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately seven handlers of celery grown in Florida subject to regulation under the celery marketing order, and approximately 13 producers of celery in the production area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of celery handlers and producers may be classified as small entities.

This proposal is based upon the recommendation and information submitted by the Committee and upon other available information. The Committee met on May 24, 1989, and recommended a marketable quantity of 6,789,738 crates of fresh celery for the 1989–90 marketing season beginning August 1, 1989. Additionally, a uniform percentage of 100 percent was recommended which would allow each producer registered pursuant to § 967.37(f) of the order to market 100 percent of such producer's base quantity. These recommendations were based on an appraisal of expected 1989–90 supplies and prospective demand.

As required by § 967.37(d)(1) of the order, a reserve of 6 percent (407,384 crates) of the 1988–89 total base quantities is authorized for new producers and for increases by existing producers.

The proposal would limit the quantity of Florida celery which handlers may purchase from producers and ship to fresh markets during the 1989–90 marketing season to 6,789,738 crates. This marketable quantity is identical to the 1988–89 marketable quantity and is about 20 percent more than the average number of crates marketed fresh during the 1982–83 through 1986–87 seasons. It is expected that the 6,789,738 crate marketable quantity will be above actual shipments for the 1989–90 season. Thus, the 6,789,738 crate marketable quantity is not expected to restrict the amount of Florida celery which growers produce or the amount of celery which handlers ship. For these reasons, the proposal should lend stability to the industry and thus, help to provide consumers with an adequate supply of the product.

Based on available information, the Administrator of the AMS has determined that issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

Interested persons are invited to submit their views and comments on this proposal. A 10-day comment period is deemed adequate because the proposal, if implemented, should be in effect for the new marketing season which begins on August 1.

List of Subjects in 7 CFR Part 967

Celery, Florida, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR Part 967 is proposed to be amended as follows:

PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 967 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. A new § 967.325 is added to read as follows:

§ 967.325 Handling regulation, marketable quantity, and uniform percentage for the 1989–90 season beginning August 1, 1989.

(a) The marketable quantity established under § 967.36(a) is 6,789,738 crates of celery.

(b) As provided in § 967.38(a), the uniform percentage shall be 100 percent.

(c) Pursuant to § 967.36(b), no handler shall handle any harvested celery unless it is within the marketable allotment of a producer who has a base quantity and such producer authorizes the first handler thereof to handle it.

(d) As required by § 967.37(d)(1), a reserve of six percent of the total base quantities is hereby authorized for: (1) New producers and (2) increases for existing base quantity holders.

(e) Terms used herein shall have the same meaning as when used in the said marketing agreement and order.

Dated: July 28, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–18033 Filed 8–1–89; 8:45 am]

BILLING CODE 3410–02–M

---

7 CFR Part 993

[FV–89–082PR]

Expenses and Assessment Rate for Dried Prunes Produced in California

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 993 for the 1989–90 fiscal year established under the marketing order for dried prunes produced in California. Funds to administer this program are derived from assessments on handlers. This action is needed in order for the marketing order committee to have sufficient funds to meet the expenses of operating the program. Expenses are incurred on a continuous basis.

DATES: Comments must be received by August 14, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 993 (7 CFR Part 993), regulating the handling of dried prunes produced in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 16 handlers of prunes produced in California subject to regulation under the California prune marketing order, and approximately 1,200 producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of prune handlers and producers may be classified as small entities.

The marketing order for California prunes requires that the assessment rate for a particular fiscal year shall apply to all assessable prunes handled from the beginning of such year. An annual budget of expenses is prepared by the Prune Marketing Committee (Committee) and submitted to the U.S. Department of Agriculture for approval. The members of the Committee are handlers and producers of regulated prunes. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are, therefore, in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of assessable prunes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and assessment rates are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on June 27, 1989, and unanimously recommended 1989–90 marketing order expenditures of $250,895 and an assessment rate of $1.39 per salable ton of prunes. In comparison, 1988–89 marketing year budgeted expenditures were $248,320 and the assessment rate was $1.60 per ton. Assessment income for 1989–90 is estimated at $250,895 based on a crop of 180,500 salable tons of prunes.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. Further, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The Committee must have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 993

California, Dried prunes, and Marketing agreements and orders.

For the reasons set forth in the preamble, it is proposed that a new § 993.340 be added to 7 CFR Chapter IX as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR Part 993 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 993.340 is added to read as follows:

§ 993.340 Expenses and assessment rate.

Expenses of $250,895 by the Prune Marketing Committee are authorized, and an assessment rate payable by each handler in accordance with § 993.81 is fixed at $1.39 per ton for salable dried prunes for the 1989–90 crop year ending July 31, 1990.

Dated: July 27, 1989.

William J. Doyle,

Acting Deputy Director Fruit and Vegetable Division.

[FR Doc. 89–17952 Filed 8–1–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–109–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9–15F, –32F, –33F, and –34F Series Airplanes, Including C–9A and C–9B (Military) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC–9 series airplanes, which currently requires certain inspections and modifications of the main cargo door assembly to prevent inadvertent opening of the main cargo door in flight. This condition, if not corrected, could result in loss of pressurization and control of the airplane. This action would require installation of a main cargo door hydraulic isolation valve; installation of an additional, and modification of the existing, door-open indicating system; installation of a main cargo door lock pin viewing window; installation of a main cargo door vent system; installation of a vent door-open indicating circuit; installation of a main cargo door hinge pin retainer; and modification to the main cargo door latch operating mechanism. This proposal is prompted by further review of the main cargo door design and operation by the FAA and constitutes terminating action for the existing AD.

DATE: Comments must be received no later than September 22, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–109–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California, Attention: Director of Publication, C1–L0O (54–60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Stacho, Aerospace Engineer, Systems and Equipment Branch, ANM–131L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California; telephone (213) 988–5335.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–109–AD." The post card will be date/time stamped and returned to the commenter.

Discussion: On May 4, 1989, the FAA issued AD 89–11–02, Amendment 39–6216 (54 FR 21416; May 18, 1989), to require inspection and modification of the main cargo door hydraulic control valve and control panel access door, visual inspection of the main cargo door to ensure the door is locked prior to each takeoff, inspection and

modification of the exterior markings on the main cargo door, and functional checks of the door-open indicating system. That action was prompted by an accident in which the main cargo door on a Model DC–9 series airplane opened in flight. This condition, if not corrected, could result in loss of pressurization and control of the airplane.

Since issuance of that AD, which was considered an interim action, the FAA further reviewed the Model DC–9 main cargo door, including the main cargo door design, prior incidents of inadvertent opening of the door in flight, maintenance of the door, operational aspects of the door, all available service information, and the need to provide terminating action for the initial and repetitive inspections/checks required by that AD. Based on this review, the FAA has determined that additional mandatory corrective actions are necessary to ensure that the Model DC–9 main cargo door will be properly closed, latched, and locked prior to takeoff and will not inadvertently open in flight.

McDonnell Douglas has developed additional safety features to prevent the door from opening in flight. The FAA has reviewed and approved the following related McDonnell Douglas service bulletins:

a. Service Bulletin 52–91, Revision 2, dated August 12, 1976, which describes installation of a main cargo door hydraulic isolation valve to shut off the hydraulic pressure to the control valve when the system is not in use;

b. Service Bulletin 52–92, Revision 2, dated November 21, 1985, which describes procedures for installation of a redundant (dual) door-open indicating system by installing a new door-open indicating circuit, modifying the existing door-open indicating system, and installing a main cargo door indicating system test circuit;

c. Service Bulletin 52–93, Revision 1, dated May 3, 1978, which describes installation of a viewing window in the exterior skin of the door for visual inspection of the lock pin position;

d. Service Bulletins 52–70, dated January 22, 1969, and 52–87 dated June 7, 1974, both of which describe a modification of the main cargo door latch operating mechanism to prevent the latches from closing prematurely during the door closing cycle; and

e. Service Bulletin 52–100, dated September 30, 1976, which describes installation of a vent door system to improve the positive lock feature of the cargo door latching and locking system and limit pressurization of the airplane.

In addition, McDonnell Douglas is currently developing a vent door-open indicating circuit which will alert the flight crew when the vent door is not properly closed and latched. The circuit will be part of the main cargo door-open indicating system. McDonnell Douglas plans to have a vent door-open indicating circuit available for installation on in-service Model DC–9 airplanes by December 1989.

McDonnell Douglas is also developing a cargo door hinge pin retainer to ensure that the hinge pin will be retained in the event of a failure of the hinge pin. McDonnell Douglas plans to have hinge pin retainers available for installation on in-service Model DC–9 airplanes by December 1989.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would revise AD 89–11–02 to require installation of a main cargo door hydraulic isolation valve, modification to the existing door-open indicating system, installation of an additional door-open indicating circuit, installation of a main cargo door indicating system test circuit, installation of a main cargo door lock pin viewing window, modification of the main cargo door latch operating mechanism, and installation of a main cargo door vent system, in accordance with the service bulletins previously described. In addition, this AD would require the installation of the aforementioned vent door-open indicating circuit which will signal the appropriate flight crew member when the vent door is not fully closed and latched; and would require the installation of a main cargo door hinge pin retainer to ensure retention of the hinge pin in the event of its failure. Installation of all the above described modifications would constitute terminating action for the repetitive inspections and checks proposed by this AD.

The degree of assurance necessary as to the adequacy of inspections needed to maintain the safety of the transport airplane fleet, coupled with a better understanding of the human factors associated with numerous repetitive inspections and special procedures, has caused the FAA to place less emphasis on repetitive inspections and more emphasis on design improvements and material replacement. Thus, in lieu of its previous position on continual inspection, the FAA has decided to require, whenever practicable, airplane modifications necessary to remove the source of the problem addressed. The proposed modification requirements of this action are in consonance with that policy decision.

There are approximately 86 Model DC–9 series airplanes of the affected design in the worldwide fleet. It is estimated that 75 airplanes of U.S. registry would be affected by this AD, that it would take approximately 160 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost for the required modification parts is estimated to be $80,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,540,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by revising AD 89–11–02, Amendment 39–6216 (54 FR 21416; May 18, 1989), as follows:

McDonnell Douglas: Applies to Model DC–9–15F, –32F, –33F, and –34F, including C–9A and C–9B (Military) series airplanes, as listed in McDonnell Douglas DC–9 Service Bulletin 52–70, dated January 22, 1969; Service Bulletin 52–87, dated June 7, 1974; Service Bulletin 52–91, Revision 2, dated August 12, 1976; Service Bulletin 52–92, Revision 2, dated November 21, 1985; Service Bulletin 52–93, Revision 1, dated May 3, 1978; and Service Bulletin 52–100, dated September 30, 1976; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inadvertent opening of the main cargo door in flight, a condition which could result in loss of pressurization and control of the aircraft, accomplish the following:

A. Within the next 14 days after May 30, 1989 (the effective date of Amendment 39–6216), ensure that the main cargo door is closed, latched, and locked prior to takeoff following each operation of the door, in accordance with the procedures specified below. The procedures required by this paragraph must be accomplished by qualified and trained personnel, and the training program must be approved by the FAA Principal Maintenance Inspector (PMI). The method for documentation of compliance must also be approved by the FAA PMI.

1. From the outside of the airplane perform a visual check of the exterior manual latch controls, to ensure that the latch actuating socket and the lock pin handle are in the LOCK position; or

2. Perform a visual check of the latches and lock pins, located on the inside of the main cargo door, to ensure that the latches are in the closed position and the lock pins are in the locked position.

3. Prior to taxi, communicate to the flight crew that the main cargo door has been closed, latched, locked, and checked.

B. Unless the modifications described in paragraph F.2. of this AD have previously been accomplished, within the next 30 days after May 30, 1989 (the effective date of Amendment 39–6216), and thereafter at intervals not to exceed 45 days, conduct a main cargo door-open indicating system functional check in accordance with Paragraph 1 of McDonnell Douglas All Operators Letter (AOL) 9–799, dated April 16, 1974. If the main cargo door-open indicating system functional check is not successfully accomplished, repair the main cargo door-open indicating system prior to further flight, in accordance with AOL 9–799.

C. Within the next 30 days after May 30, 1989 (the effective date of Amendment 39–6216), and thereafter at intervals not to exceed 45 days, inspect and modify the main cargo door control panel access door, spacer block, and "T" handle stowage clip, in accordance with McDonnell Douglas AOL 9–799A, dated January 22, 1975, and AOL 9–799, dated April 16, 1974, paragraph 2.A. In addition, inspect the control panel access door to ensure the door can be secured in the down and locked position. If the control panel access door cannot be secured in the down and locked position, repair prior to further flight.

D. Unless previously accomplished in accordance with paragraph (2) of AD 75–03–03, Amendment 39–2076, within the next 30 days after May 30, 1989 (the effective date of Amendment 39–6216), verify that the main cargo door hydraulic control valve shaft operates freely, without binding, between the operate neutral and neutral lock positions. This shall be accomplished by opening the main cargo door hydraulic control valve control panel access door; raising the "T" handle Douglas P/N 4777888–1, and pulling the "T" handle vertically upward to its maximum travel (operate neutral position). When the vertical force on the "T" handle is relieved, the main cargo door hydraulic control valve shaft should return to the neutral lock (down) position without binding. Replace the main cargo door hydraulic control valve, Douglas P/N 5919985–5001, prior to further flight, if the valve shaft does not return freely to the neutral lock position.

E. Within the next 30 days after May 30, 1989 (the effective date of Amendment 39–6216), inspect the main cargo door exterior lock pin handle and latch actuating socket markings in accordance with paragraph 4.C. of McDonnell Douglas AOL 9–799, dated April 16, 1974; and McDonnell Douglas Drawings 7910689, Revision P, dated November 29, 1973, item numbers 16 and 18 (DC–9–15F), or 7910690, Revision AK, dated January 21, 1977, item numbers 16 and 18 (DC–9–32F, –33F, and –34F). If the exterior markings are not correct, modify in accordance with the above specified McDonnell Douglas drawings prior to further flight.

F. Within the next six months after the effective date of this amendment, accomplish the following:

1. Install a main cargo door hydraulic isolation valve in accordance with McDonnell Douglas Service Bulletin 52–91, Revision 2, dated August 12, 1976; and

2. Install a new main cargo door-open indicating circuit, revise the existing main cargo door-open indicating circuit, and install a main cargo door-open indicating system test circuit in accordance with McDonnell Douglas Service Bulletin 52–92, Revision 2, dated November 21, 1985. Compliance with the requirements of paragraph B., above may be terminated upon the accomplishment of the requirements of this paragraph.

G. Within one year after the effective date of this amendment, accomplish the following:

1. Install a main cargo door lock pin viewing window in accordance with McDonnell Douglas Service Bulletin 52–93, Revision 1, dated May 3, 1978; and

2. Install a main cargo door vent system in accordance with McDonnell Douglas Service Bulletin 52–100, dated September 30, 1976; and

3. Modify the main cargo door latch operating mechanism in accordance with McDonnell Douglas Service Bulletins 52–70 dated January 22, 1969, and 52–87 dated June 7, 1974; and

4. Install a main cargo door hinge pin retainer on each end of the hinge, which is approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, that will retain the hinge pin in the event of a structural failure of the pin; and

5. Install a vent door-open indicating system, which is approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, that will signal the appropriate flight crew member when the main cargo door vent door is not fully closed and latched.

H. Compliance with the requirements of paragraphs F., G.1., G.2., G.3., and G.5., constitutes terminating action for the initial and repetitive inspections required by paragraphs A., B., and C., of this AD.

I. The checks and modifications specified in paragraphs A. through G. of this AD are not required on airplanes which have the main cargo door deactivated and secured in the closed and locked position, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, until that door is reactivated.

J. Compliance with the requirements of this AD constitutes terminating action for the requirements of AD 84–23–02 for Model DC–9 series airplanes only.

Note.—The requirements of AD 84–23–02 relating to Model DC–8 series airplanes are not affected by this AD.

K. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

L. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California. Attention: Director of Publications, C1–L00 (54–60). This information may be examined at FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on July 24, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–18574 Filed 8–1–89; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-27063; File No. S7-13-89]

Proprietary Trading Systems

AGENCY: Securities and Exchange Commission.

ACTION: Second extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending from July 19, 1989, to August 2, 1989, the date by which comments must be received on Securities Exchange Act Release No. 26708 (April 11, 1989), 54 FR 15429, concerning the regulation of proprietary securities trading systems. The Commission previously granted an initial extension of the comment period from June 19, 1989, to July 19, 1989 (Securities Exchange Act Release No. 26935 (June 25, 1989), 54 FR 26055). The Commission is now extending that period a second time in order to permit potential commentators to complete the drafting and review of their comments.

DATE: Comments should be received on or before August 2, 1989.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6-9, Washington, DC 20549. Comment letters received should refer to file No. S7-13-89. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Gordon K. Fuller, Special Counsel, (202) 272-2414; or Eugene A. Lopez, Attorney, (202) 272-2828, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5-1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In Securities Exchange Act Release No. 26708 (April 11, 1989), 54 FR 15429, the Commission published for public comment proposed Rule 15c2-10. The proposed Rule would provide for Commission review of proprietary securities trading systems that are not operated as facilities of a registered national securities exchange or association and are not subject to Commission regulation as national securities exchanges or associations pursuant to Section 6 or 15A of the Securities Exchange Act of 1934 ("Act"). In Securities Exchange Act Release No. 26935 (June 15, 1989), 54 FR 26055, the Commission granted an initial extension of the comment period on proposed Rule 15c2-10 from June 29, 1989, to July 19, 1989, in order to assist commentators in preparing complete and thorough responses to the questions raised in the release.

Since that time, the staff has been advised that, in light of the complex issues raised by the proposed Rule, certain commentators need additional time to complete their comments, while others are awaiting review of draft comments by key officials who have been on summer vacation. Accordingly, in order to ensure that Commission consideration of the proposed Rule is informed by as many views as possible, the Commission is granting a second extension of the comment period on Securities Exchange Act Release No. 26708 from July 19, 1989, to August 2, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: July 26, 1989.

[FR Doc. 89-17949 Filed 8-1-89; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Part 270

[Release No. IC-17064; International Series 110; File No. S7-20-89]

Purchases by Registered Investment Companies of the Securities of Foreign Banks and Foreign Insurance Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing a rule which would, under certain circumstances, ease restrictions on registered investment companies' acquisitions of the securities of foreign banks or foreign insurance companies. The Commission's rule proposal is designed to provide registered investment companies more flexibility in making such acquisitions. The proposal would have the effect of permitting registered investment companies to pursue a broader range of investment policies.

DATE: Comments must be received on or before October 2, 1989.

ADDRESS: Comment letters should refer to File No. S7-20-89 and be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. The Commission will make all comment letters available for public inspection and copying in its Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Ann M. Glickman, Special Counsel, (202) 272-3042, or Brian M. Kaplowitz, Assistant Director, (202) 272-2048, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is seeking public comment on proposed rule 12d1-1 under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (the "Act"). The rule would permit registered investment companies to hold securities of foreign banks and foreign insurance companies without regard to the limitations of section 12(d)(1)(A) of the Act (15 U.S.C. 80a-12(d)(1)(A)).

Executive Summary

Section 12(d)(1)(A) of the Act makes it unlawful for a registered investment company to acquire securities issued by any other investment company in excess of certain limitations. The broad definition of the term "investment company" in sections 3(a)(1) and 3(a)(3) of the Act (15 U.S.C. 80a-3(a)(1) and 15 U.S.C. 80a-3(a)(3)) may include not only those organizations typically regarded as investment companies, but also banks and insurance companies. Section 3(c)(3) of the Act (15 U.S.C. 80a3(c)(3)) specifically excludes "banks" and "insurance companies" from being deemed investment companies, but the definitions of these terms do not include foreign banks and foreign insurance companies. Proposed rule 12d1-1 would both define such foreign entities and except them from the definition of "investment company" for purposes of determining compliance with section 12(d)(1)(A). Thus, the proposed rule would give registered investment companies more flexibility to invest in the securities, of foreign banks and foreign insurance companies.

Proposed rule 12d1-1 would contain only two conditions. The first condition would require any securities acquired under the rule to be direct interests in the foreign bank or insurance company, rather than interests in some type of entity organized under the auspices of the bank or insurance company. The other condition would subject acquisitions of foreign insurance company voting securities made in reliance on the exemption provided by the rule to the same limitations that apply to acquisitions of voting securities of domestic insurance companies.

The release will first address the background and purpose of section 12(d)(1)(A) and the status of foreign banks and insurance companies under that provision and other provisions of the Act, and then discuss and request public comment on the provisions of the proposed new rule, including the costs and benefits associated with its adoption.

Background

A. Introduction

Section 12(d)(1)(A) of the Act imposes limitations on the amount of securities of investment companies which may be held by other investment companies registered under the Act.[1] Specifically, that section provides as follows:

> It shall be unlawful for any registered investment company (the "acquiring company") and any company or companies controlled by such acquiring company to purchase or otherwise acquire any security issued by any other investment company (the "acquired company"), and for any investment company (the "acquiring company") and any company or companies controlled by such acquiring company to purchase or otherwise acquire any security issued by any registered investment company (the "acquired company"), if the acquiring company and any company or companies controlled by it immediately after such purchase or acquisition own in the aggregate—
>
> (i) More than 3 per centum of the total outstanding voting stock of the acquired company;
>
> (ii) Securities issued by the acquired company having an aggregate value in excess of 5 per centum of the value of the total assets of the acquiring company; or
>
> (iii) Securities issued by the acquired company and all other investment companies (other than Treasury stock of the acquiring company) having an aggregate value in excess of 10 per centum of the value of the total assets of the acquiring company.

Section 12(d)(1)(A) does not restrict registered investment companies' holdings of securities of United States banks and insurance companies, primarily because section 3(c)(3) of the Act specifically excludes "any bank or insurance company" from the definition of "investment company." The definitions of the terms "bank" and "insurance company," however, do not include foreign entities.[2] Therefore, to the extent that foreign banks and insurance companies are involved in owning, holding, trading, investing or reinvesting in securities, they may be deemed to be investment companies within the definition of section 3(a) of the Act (15 U.S.C. 80a-3(a)) and as that term is used elsewhere in the Act.[3] Registered investment companies would then be restricted by section 12(d)(1)(A) in the amount of securities of these entities that such investment companies may acquire. Conversely, because the term "insurance company" does not include a foreign insurance company, the limitation imposed by section 12(d)(2) would not apply to foreign insurance companies.[4]

B. Legislative History of Section 12(d)(1)(A)

Section 12(d)(1)(A) was enacted as a part of the Investment Company Amendments Act of 1970,[5] replacing a less restrictive provision.[6] The Report of the House Committee on Interstate and Foreign Commerce [7] noted that the new provision was intended to address the Commission's concerns about fund holding companies, as set forth in the Commission's report *Public Policy Implications of Investment Company Growth* ("PPI" or the "Report").[8] The first concern was that the exercise of or potential for influence or control of a registered investment company by a fund holding company, or a group of related fund holding companies, could be disadvantageous to the other investors in the controlled company. In addition, the threat of redemption by the holding company or companies could cause the management of the acquired company to deviate from the investment program or policies that it would otherwise pursue. Management might also be required to maintain large cash balances in anticipation of large redemptions, or to sell off a large portion of its assets in the event of a redemption, to the disadvantage of the other investors in the fund.[9] Further, as was noted in the Report, "inherent in the fund holding company structure is a layering of costs including advisory fees, administrative expenses, sales loads, and brokerage fees, all of which serve to make a fund on funds a particularly expensive investment vehicle." [10]

The Report also dismissed the claim that the fund holding company structure provides investors with diversification, noting that investment in a single mutual fund offers diversification by spreading the investment over a number of companies in different industries. "Any

---

[1] The section also limits the amount of securities of registered investment companies that may be acquired by an investment company, whether registered or not.

[2] Section 2(a)(5) of the Act (15 U.S.C. 80a-2(a)(5)) defines "bank" as follows:

> "Bank" means (A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

Section 2(a)(17) of the Act (15 U.S.C. 80a-2(a)(17)) defines "insurance company" as follows:

> "Insurance company" means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State; or any receiver or similar official or any liquidating agent for such a company, in his capacity as such.

[3] An "investment company" is defined in section 3(a)(1) of the Act as any issuer which is, holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities.

An "investment company" is defined in section 3(a)(3) of the Act as any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of the issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

"Investment securities" are defined in section 3(a)(3) to include all securities except (A) Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority-owned subsidiaries of the owner which are not investment companies.

[4] Section 12(d)(2) of the Act (15 U.S.C. 80a-12(d)(2)) imposes certain limitations on registered investment companies' holdings of United States insurance company securities:

> It shall be unlawful for any registered investment company and any company or companies controlled by such registered investment company to purchase or otherwise acquire any security (except a security received as a dividend or as a result of a plan of reorganization of any company, other than a plan devised for the purpose of evading the provisions of this paragraph) issued by any insurance company of which such registered investment company and any company or companies controlled by such registered company do not, at the time of such purchase or acquisition, own in the aggregate at least 25 per centum of the total outstanding voting stock, if such registered company and any company or companies controlled by it own in the aggregate, or as a result of such purchase or acquisition will own in the aggregate, more than 10 per centum of the total outstanding voting stock of such insurance company.

Because the purpose of proposed rule 12d1-1 is to place foreign insurance companies on an equal footing with domestic insurance companies, proposed rule 12d1-1(a)(2) would apply the limitations of section 12(d)(2) to the purchase of foreign insurance company shares.

[5] Pub. L. 91-547, enacted December 14, 1970.

[6] Section 12(d)(1) of the Act formerly prohibited a registered investment company from purchasing more than five percent of the total outstanding voting stock of any other investment company which concentrates its investments in a particular industry or group of industries or more than three percent of the total outstanding voting stock of any other type of investment company. It did not place any limitation on the percentage of an investment company's assets which could be invested in other investment companies, however.

[7] H.R. Rep. No. 1382, 91st Cong., 2d Sess. (1970), at 10.

[8] H.R. Rep. No. 2337, 89th Cong., 2d Sess. (1966).

[9] PPI at 316-317.

[10] PPI at 318.

BEST COPY AVAILABLE

added value of diversification offered by a fund on funds," according to the Report, "is largely illusory." Although theoretically there may be a greater spreading of risk, as a practical matter, "diversification upon diversification does not result in greater safety in proportion to the number of layers imposed on the original investment," 11 In any event, any potential advantages of the fund holding company structure were found not significant enough to warrant duplication of fees and expenses.[12]

C. Status of Foreign Banks Under the Act

As was noted above, foreign banks may be deemed to be investment companies under the Act.[13] The Commission has not previously addressed the status of these entities under section 12(d)(1)(A) of the Act or the issue of whether registered investment companies may purchase securities issued by foreign banks. However, the Commission has long recognized in other contexts that most foreign banks are very much unlike domestic investment companies, and need not be regulated in the same manner.

Beginning in 1979, the Commission granted exemptions to a number of foreign banks under section 6(c) of the Act (15 U.S.C. 80a–6(c)),[14] permitting them to sell their debt securities, directly or through finance subsidiaries, within the United States without registering as investment companies under the Act.[15] More recently, the Division of Investment Management (the "Division"), by delegated authority, has granted foreign banks exemptions under section 6(c) to sell equity securities in the United States.[16]

In 1987, the Commission adopted rule 6c–9 under the Act (17 CFR 270.6c–9), permitting foreign banks and their finance subsidiaries to sell debt securities and non-voting preferred stock without registration under the Act.[17] The only conditions to the use of the rule are that the issuer register the securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (the "Securities Act") or sell the securities pursuant to an exemption from that Act's registration requirements; that any debt securities be direct obligations of the issuer and that any non-voting preferred stock be a direct interest in the issuer; and that a foreign issuer and, in the case of a finance subsidiary, its foreign bank parent, file Form N–6C9 (17 CFR 274.304) appointing a United States agent for service of process.

A foreign bank is defined by rule 6c–9 as a banking institution incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof, is engaged substantially in commercial banking activity, and is not operated for the purpose of evading the provisions of the Act.[18] "Engaged substantially in commercial banking activity" means "engaged regularly in, and deriving a substantial portion of its business from, extending commercial and other types of credit, and accepting demand and other types of deposits, that are customary for commercial banks in the country in which the head office of the banking institution is located." [19]

D. Status of Foreign Insurance Companies Under the Act

Foreign insurance companies, like foreign banks, have been accorded special treatment by the Commission, notwithstanding their possible status under the Act as investment companies. In this regard, the Commission has granted a number of exemptions from all provisions of the Act under section 6(c) in the case of applications contemplating both debt and equity offerings.[20] As has been the case with foreign bank exemptions, these exemptions have been requested by foreign insurance companies as issuers; they have not been concerned with registered investment company purchases of foreign insurance company securities or with section 12(d)(1)(A) of the Act.

The applications have generally included representations about the nature and extent of supervision and regulation of the applicants' business, as well specific representations about the contemplated offerings: That the offering would be made pursuant to an offering memorandum containing appropriate information about the securities and the issuer; that the offering would be registered under the Securities Act or made pursuant to a valid exemption from that Act's registration provisions; that in the case of debt securities, any public offering would receive an investment grade rating from a nationally recognized statistical rating organization; and that the foreign issuer would appoint a United States agent for service of process (and, in some cases, agree to submit itself to the jurisdiction of certain United States courts).[21]

E. Recent Developments

On February 15, 1989, the Division, in response to a request from the Investment Company Institute ("ICI"), issued a letter (the "ICI letter") stating that it would not recommend enforcement action to the Commission under section 12(d)(1)(A)(iii) in the event that a registered investment company invested more than ten percent of its assets in certain of the securities of entities that, because they were foreign banks, might be deemed to be investment companies. Section 12(d)(1)(A)(iii) prohibits an investment company from having in the aggregate more than ten percent of its assets invested in other investment companies.[22] The response went on to provide, however, that the ten percent limitation imposed by section 12(d)(1)(A)(iii) could be exceeded only if the excess was attributable to the value of debt securities and non-voting preferred stock issued by foreign banks as defined in rule 6c–9(b)(2) under the Act. The no-action response did not extend to investments in other foreign bank equity securities or to investments in foreign insurance company securities.

Prior to the issuance of the ICI letter, the Division had considered the limitations imposed by section 12(d)(1)(A)(iii) on purchases of securities of foreign banks and foreign insurance companies in its letter concerning Indosuez Asia Investment Services Ltd. (pub. avail. Mar. 21, 1988). In that letter, the Division indicated that a Hong Kong investment company (not registered with the Commission) could purchase securities of Asian banks and insurance companies in excess of the ten percent limitation imposed by section 12(d)(1)(A)(iii), provided that those entities were engaged in bona fide banking and insurance businesses.[23] In a footnote, the Division identified the critical elements for a determination that an entity was engaged in those businesses. To be engaged in a bona fide banking business, a foreign bank would have to meet the standards of rule 6c–9. To be engaged in a bona fide insurance business, a foreign insurance company would have to be regulated and licensed by the government of the country in which it was organized, or by an agency thereof, and be "engaged primarily and predominantly in the writing of bona fide insurance agreements of the types specified in Section 3(a)(8) of the Securities Act of 1933 (having substantially similar credit, insurance underwriting and investment risk characteristics as those sold in the United States) or the reinsurance of risks on such agreements underwritten by bona fide insurance companies." As discussed below, these standards provide the basis for the generic relief from section 12(d)(1) proposed in this release.

Discussion

The Commission's preliminary view is that, under appropriate conditions, the limitations imposed by section 12(d)(1)(A) need not apply to registered investment company purchases of foreign bank and foreign insurance company securities. Therefore, the Commission is proposing rule 12d1–1 for public comment. Proposed rule 12d1–1 would, in effect, exempt acquisitions of securities of foreign banks and foreign insurance companies from the limitations imposed by section 12(d)(1)(A) by stating that such entities are not to be regarded as investment companies for purposes of determining compliance with the limitations imposed by that section. Because the Commission sees no reason to distinguish between subparagraphs (i), (ii) and (iii) of section 12(d)(1)(A) [24] in the case of purchases of foreign bank and foreign insurance company securities, proposed rule 12d1–1 would provide an exemption from all three subparagraphs. Proposed rule 12d1–1 would apply to purchases of both debt and equity securities.

Paragraph (a) is the operative portion of the proposed rule. Subparagraph (a)(1) would make clear that the proposal would cover only direct obligations of or interests in foreign banks or insurance companies, rather than interests in any collective trusts, separate accounts, or other units organized by those entities that function effectively as investment companies. Subparagraph (a)(2) would subject acquisitions of foreign insurance company voting securities made in reliance on the exemption provided by the rule to the same limitations that section 12(d)(2) of the Act imposes upon acquisitions by registered investment companies of the voting securities of United States insurance companies. This condition is in keeping with the policy behind the rule proposal, which is to treat foreign and United States banks and insurance companies in an equivalent manner for purposes of section 12(d)(1).

Paragraphs (b) and (c) would define the terms "foreign bank" and "foreign insurance company" for purposes of the rule. The definition of "foreign bank" for these purposes is the same as the definition included in rule 6c–9 under the Act, as discussed above.[25] While no such precedent exists for the definition of "foreign insurance company," the two alternative versions of that definition being proposed for public comment have been drafted so that the securities that would be covered by the proposed rule include only those securities issued by institutions that are engaged in a bona fide insurance business and that do not function as investment companies. Thus, the proposed rule specifies that the insurance company must be engaged primarily and predominantly [26] in writing bona fide insurance agreements of the type specified in section 3(a)(8) of the Securities Act (15 U.S.C. 77c(a)(8)),[27] except for the substitution of supervision by foreign government insurance regulators for the state regulators referred to in that section. The version of paragraph (c) presented in Alternative I includes additional language designed to clarify the types of agreements that may constitute the primary business of the insurance company; the agreements are to have various characteristics similar to those sold in the United States. Thus, the exemption provided by Alternative I would not extend to contracts whose essential features had not actually been subject to section 3(a)(8) scrutiny in the United States. Alternative II does not include this additional language out of concern that the language might be confusing to investment companies or might make the appropriate section 3(a)(8) analysis unduly difficult. The Commission is specifically requesting comment as to whether the additional language included in Alternative I is necessary or helpful in characterizing the types of foreign insurance companies whose securities would be covered by the proposed rule. Paragraphs (b) and (c) also provide that the foreign entities must not be operated for the purpose of evading the provisions of the Act.

The proposed rule is intended to meet the wishes of registered investment companies for greater flexibility with respect to investments in foreign banking and insurance institutions, without compromising the protections afforded by section 12(d)(1)(A) to purchasers of shares in registered investment companies. As was noted above, section 12(d)(1)(A) was enacted to deal with the problems posed by the

---

[11] PPI at 320.

[12] PPI at 321. See section 12(d)(1)(F) of the Act (15 U.S.C. 80a–12(d)(1)(F)) for an exception to the limitations of section 12(d)(1) for securities purchased by a registered investment company with low sales loads and restrictions on its rights to redeem the securities purchased, among other provisions.

[13] *See supra* text accompanying notes 2 and 3.

[14] Section 6(c) provides the Commission broad exemptive powers, to be exercised through rulemaking upon its own motion, or by order upon application, to exempt conditionally or unconditionally any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act or any rule or regulation under the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

[15] *See, e.g.*, notices of application and orders for Banque Nationale de Paris, Credit Lyonnais, Kansallis-Osake-Pankki, Post-Och Kreditbanken, Skandinaviska Enskilda Banken, Societe Generale and Svenska Handelsbanken, Investment Company Act Rel. Nos. 10765 10771 (July 9, 1979) (44 FR 41365–41377, July 16, 1979) and 10813–10817 and 10820–10821 (August 7, 1979).

[16] *See, e.g.*, notices of application and orders for Westpac Banking Corporation, Investment Company Act Rel. Nos. 15181 (June 27, 1986) (51 FR 24774, July 8, 1986) and 15217 (July 23, 1986); Barclays PLC, Investment Company Act Rel. Nos. 15189 (July 2, 1986) (51 FR 24955, July 9, 1986) and 15228 (July 29, 1986); and National Westminster Bank PLC, Investment Company Act Rel. Nos. 15211 (July 18, 1986) (51 FR 26619, July 24, 1986) and 15248 (Aug. 12, 1986).

[17] Investment Company Act Rel. No. 16093 (October 29, 1987) (52 FR 42280, Nov. 4, 1987); the rule was proposed in Investment Company Act Rel. No. 15314 (Sept. 17, 1986) (51 FR 34221, Sept. 26, 1986).

[18] Rule 6c–9(b)(2).

[19] Rule 6c–9(b)(3).

[20] *See, e.g.*, notices of application and orders for Nationale-Nederlanden N.V. (debt), Investment Company Act Release Nos. 12019 (Nov. 2, 1981) (46 FR 55463, Nov. 9, 1981) and 12062 (Nov. 30, 1981); Societe Centrale de l'Union des Assurances de Paris (equity), Investment Company Act Release Nos. 16104 (Nov. 2, 1987) (52 FR 42753, Nov. 6, 1987) and 16145 (Nov. 24, 1987); more recently, Aegon, N.V., Investment Company Act Rel. Nos. 16799 (Feb. 7, 1989) (54 FR 6793, Feb. 14, 1989) and 16836 (Mar. 9, 1989); also Legal and General Group PLC, Investment Company Act Rel. Nos. 16785 (Jan. 30, 1989) (54 FR 5589, Feb. 3, 1989) and 16835 (Feb. 24, 1989).

[21] *See, e.g.*, Aegon N.V., *supra* note 20.

[22] The ICI had not requested no-action advice under section 12(d)(1)(A)(i), which prohibits the acquisition of more than three percent of the voting stock of another investment company, or section 12(d)(1)(A)(ii), which prohibits the acquisition of securities of any one investment company with an aggregate value exceeding five percent of the total assets of the acquiring company.

[23] The issue arose because the Hong Kong investment company also held securities of some registered investment companies. *See supra* note 1, and accompanying text.

[24] The subparagraphs are set forth in part A of the *Background* portion of this release.

[25] *See supra* text accompanying notes 17 to 19.

[26] This language derives from the definition of insurance company found in section 2(a)(17) of the Act. *See supra* note 2.

[27] Variable annuity contracts, for example, are not bona fide insurance agreements of the type included in section 3(a)(8) of the Securities Act. In S.E.C. v. Variable Annuity Life Ins. Co. of America, 359 U.S. 65 (1959), the Supreme Court concluded that such contracts were securities subject to federal securities regulation, and that the issuer of such contracts was an investment company and should be regulated as such. *See also* S.E.C. v. United Benefit Life Ins. Co., 387 U.S. 202 (1967).

control of investment companies by fund holding companies, as well as the layering of costs to investors inherent in the fund holding company structure. These problems should not arise in the case of an investment company investing in foreign bank or foreign insurance company securities. Securities issued by foreign banks and foreign insurance companies are generally not redeemable. In addition, to the Commission's knowledge, foreign banks and insurance companies, unlike investment companies, do not charge advisory fees and sales loads to purchasers of their securities.[28] Therefore, a shareholder in an investment company relying on the proposed rule would not incur an additional layer of costs associated with his investment in the investment company. Further, because banks and insurance companies are engaged in businesses that are not simply investment businesses, the purchase of securities of a number of different foreign banks and insurance companies may result in genuine diversification and spreading of risks.

Finally, because the proposed rule would cover acquisitions of foreign bank and foreign insurance company securities by registered investment companies, and deals only with issues related to section 12(d)(1)(A) of the Act, it does not include any restrictions as to type of security or conditions of the offering. Such restrictions might be appropriate in a rule or exemptive order relating to purchases of foreign bank and foreign insurance company securities by other investors.[29]

Cost/Benefit of Proposed Action

Proposed rule 12d1-1 would not impose any cost burden on registered investment companies desiring to utilize its provisions. As discussed above, the Commission does not expect that the proposed rule would increase costs to persons purchasing shares of registered investment companies. To the contrary, the rule should benefit investment companies and their shareholders by providing greater flexibility to them in their purchases of securities of foreign banks and foreign insurance companies.

The Commission specifically invites comments on its assessment of the costs and benefits associated with the proposal, including estimates of any costs and benefits perceived by commenters.

Summary of Initial Regulatory Flexibility Analysis

In accordance with 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis regarding proposed rule 12d1-1. The Analysis states that the proposed rule is designed to provide investment companies more flexibility in acquiring the securities of foreign banks and foreign insurance companies. It states that the Commission does not believe that the conditions to the use of the rule would be burdensome to investment companies, regardless of their size, and notes that investment companies may elect to use the rule or not, depending on their investment policies. The Analysis states that, in the absence of the rule, investment companies would need to file applications with the Commission in order to pursue certain investment policies which the proposed rule would permit, and that the costs of that process would fall most heavily on small entities. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Ann M. Glickman, Mail Stop 5-2, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended as shown.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

The authority citation for Part 270 is amended by adding the following citations:

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a-37, 80a-39; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 *et seq.*; unless otherwise noted. * * * § 270.12d1-1 is also issued under Secs. 6(c) (15 U.S.C. 80a-6(c)) and 38(a) (15 U.S.C. 80a-37(a)).

2. By adding § 270.12d1-1 to read in either one of the two following ways:

Alternative I

§ 270.12d1-1 Exemption from the limitation imposed by section 12(d)(1)(A) of the Act for acquisitions of securities of foreign banks and foreign insurance companies.

(a) For purposes of determining compliance with section 12(d)(1)(A) of the Act (15 U.S.C. 80a-12(d)(1)(A)), a foreign bank or foreign insurance company shall not be considered an investment company; *Provided however*,

(1) That this rule shall apply only to a purchase or other acquisition by a registered investment company of a direct interest in, or obligation of, a foreign bank or foreign insurance company; and

(2) That acquisitions by a registered investment company of the securities of a foreign insurance company shall not exceed the limitations imposed by section 12(d)(2) of the Act (15 U.S.C. 80a12(d)(2)) upon the acquisition by a registered investment company of securities of an insurance company as defined in section 2(a)(17) of the Act (15 U.S.C. 80a-2(a)(17)).

(b) For purposes of this section, "foreign bank" means a foreign bank within the meaning of rule 6c-9 under the Act (17 CFR 270.6c-9).

(c) "Foreign insurance company" means an insurance company incorporated or organized under the laws of a country other than the United States, or a political subdivision of a country other than the United States, that is:

(1) Regulated as such by that country's or subdivision's government or any agency thereof;

(2) Engaged primarily and predominantly in (i) the writing of bona fide insurance agreements of the type specified in section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)), except for the substitution of supervision by foreign government insurance regulators for the regulators referred to in that section, and having substantially similar credit, insurance underwriting and investment risk characteristics as those sold in the United States; or (ii) the reinsurance of risks on such agreements underwritten by bona fide insurance companies; and

(3) Not operated for the purpose of evading the provisions of the Act.

Alternative II

§ 270.12d1-1 Exemption from the limitation imposed by section 12(d)(1)(A) of the Act for acquisitions of securities of foreign banks and foreign insurance companies.

(a) For purposes of determining compliance with section 12(d)(1)(A) of the Act (15 U.S.C. 80a-12(d)(1)(A)), a foreign bank or foreign insurance company shall not be considered an investment company; *Provided however*,

(1) That this rule shall apply only to a purchase or other acquisition by a registered investment company of a direct interest in, or obligation of, a foreign bank or foreign insurance company; and

(2) That acquisitions by a registered investment company of the securities of a foreign insurance company shall not exceed the limitations imposed by section 12(d)(2) of the Act (15 U.S.C. 80a12(d)(2)) upon the acquisition by a registered investment company of securities of an insurance company as defined in section 2(a)(17) of the Act (15 U.S.C. 80a 2(a)(17)).

(b) For purposes of this section, "foreign bank" means a foreign bank within the meaning of rule 6c-9 under the Act (17 CFR 270.6c-9).

(c) "Foreign insurance company" means an insurance company incorporated or organized under the laws of a country other than the United States, or a political subdivision of a country other than the United States, that is:

(1) Regulated as such by that country's or subdivision's government or any agency thereof;

(2) Engaged primarily and predominantly in (i) the writing of bona fide insurance agreements of the type specified in section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)), except for the substitution of supervision by foreign government insurance regulators for the regulators referred to in that section; or (ii) the reinsurance of risks on such agreements underwritten by bona fide insurance companies; and

(3) Not operated for the purpose of evading the provisions of the Act.

By the Commission.

Jonathan G. Katz,

Secretary.

July 26, 1989.

[FR Doc. 89-17950 Filed 8-1-89; 8:45 am]

BILLING CODE 8010-01-M

[28] The Commission specifically requests comment on this matter.

[29] As was discussed above, the applications relating to sales in the United States of foreign bank and foreign insurance company securities did contain several conditions. *See supra* notes 14-21, and accompanying text.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Proposed Placement of N,N-Dimethylamphetamine into Schedule I

AGENCY: Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking is issued by the Administrator of the Drug Enforcement Administration (DEA) to place *N,N*-dimethylamphetamine into Schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). This proposed action is based on data gathered and reviewed by DEA. If finalized, this proposed action would impose the regulatory control mechanisms and criminal sanctions of Schedule I on the manufacture, distribution and possession of this substance.

DATE: Comments must be submitted on or before October 2, 1989.

ADDRESS: Comments and objections should be submitted to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: On August 3, 1988, the Administrator of DEA issued a final rule in the Federal Register (53 FR 29232) temporarily placing *N,N*-dimethylamphetamine into Schedule I using the temporary scheduling provisions of the CSA (21 U.S.C. 811(h)).

The final rule which became effective on August 3, 1988, was based on a finding by the Administrator that the emergency scheduling of the above-referenced substance was necessary to avoid an imminent hazard to the public safety. Section 201(h)(2) of the CSA (21 U.S.C. 811(h)(2)) requires that the emergency scheduling of a substance expires at the end of one year from the effective date of the order. However, if proceedings to schedule a substance pursuant to 21 U.S.C. 811(a)(1) have been initiated and are pending, the temporary scheduling of a substance may be extended for up to six months. Under this provision, the temporary scheduling of *N,N*-dimethylamphetamine which would expire on August 3, 1989, may be extended to February 3, 1990. This extension is being ordered by the DEA Administrator in a separate action.

DEA has gathered and reviewed the available information regarding the actual abuse and relative abuse potential of *N,N*-dimethylamphetamine. DEA, in conjunction with the National Institute on Drug Abuse (NIDA), has provided for the synthesis and biological testing of this substance. By letter, the Administrator has submitted data which DEA has gathered regarding *N,N*-dimethylamphetamine to the Assistant Secretary for Health, Department of Health and Human Services. In accordance with 21 U.S.C. 811(b), the DEA Administrator also requested a scientific and medical evaluation and a scheduling recommendation for *N,N*-dimethylamphetamine from the Assistant Secretary for Health.

The following is a summary of the available information submitted to the Assistant Secretary for Health. Chemically, *N,N*-dimethylamphetamine is *N,N* alpha-trimethylbenzeneethanamine or *N,N*,alpha-trimethylphenethylamine. It is a close structural analogue of amphetamine, methamphetamine and *N*-ethylamphetamine, all psychomotor stimulants with demonstrated high abuse potentials.

Data exist which show that *N,N*-dimethylamphetamine exhibits central nervous system stimulant properties in rodents qualitatively similar to those of methamphetamine. *N,N*-dimethylamphetamine is less potent than methamphetamine. It has discriminative stimulus properties which enable it to be recognized as cocaine by rodents trained to discriminate cocaine from saline. *N,N*-dimethylamphetamine is reported to be self-administered by monkeys trained to self-administer cocaine. It is about three times less potent than methamphetamine in its lethal effects and produces neurotoxic effects on dopaminergic nerve terminals. Sufficient data exists to support a finding that *N,N*-dimethylamphetamine, at the proper dose, is an amphetamine-like central nervous system stimulant with a high potential for abuse.

Since the summer of 1987 law enforcement agencies have seized at least 20 clandestine laboratories (18 in California, 1 each in Iowa and Georgia) which have produced *N,N*-dimethylamphetamine. Over 57 kg. of *N,N*-dimethylamphetamine and sufficient precursors to produce an additional 246 kg. were seized at these laboratories. Forensic laboratories have identified *N,N*-dimethylamphetamine in over 175 exhibits of drug evidence purchased or seized by law enforcement officials since the middle of 1987. It has been identified in evidence submissions from California, Iowa, Alabama, Missouri, Colorado, Utah, Arizona, Kansas, Florida and Idaho.

There have been no reports of deaths or injuries specifically attributed to the abuse of *N,N*-dimethylamphetamine, to date. It is likely that individuals abusing this substance do not know that they are taking *N,N*-dimethylamphetamine but think that they are taking methamphetamine. *N,N*-dimethylamphetamine has been sold and trafficked as methamphetamine or speed. Thus, any injuries or adverse effects associated with the use of *N,N*-dimethylamphetamine are likely to be

reported as methamphetamine or speed related incidents. *N,N*-dimethylamphetamine's pharmacological and toxicological profiles strongly suggest that abuse of this substance will lead to health and safety risks similar to those produced by amphetamine and methamphetamine. Since *N,N*-dimethylamphetamine is only manufactured in clandestine laboratories, there are additional risks associated with its abuse. The health and safety hazards associated with the abuse of amphetamine and methamphetamine are well established. According to national estimates of emergency room mentions from the Drug Abuse Warning Network (DAWN), there were over 40,000 emergency room mentions associated with the use of methamphetamine and speed during the period 1986–1988. Abuse of *N,N*-dimethylamphetamine is likely to cause similar types of emergency room episodes and may already have contributed to those attributed to methamphetamine or speed.

There are no commercial manufacturers or suppliers of *N,N*-dimethylamphetamine. The Food and Drug Administration has notified DEA that there are no exemptions or approvals in effect under section 505 of the Federal Food, Drug and Cosmetic Act for *N,N*-dimethylamphetamine. A search of the scientific and medical literature revealed no indications of current medical use of *N,N*-dimethylamphetamine.

The DEA Administrator, based on the information gathered and reviewed by his staff and after consideration of the factors in 21 U.S.C. 811(c), believes that sufficient data exists to propose that *N,N*-dimethylamphetamine be placed into Schedule I of the CSA pursuant to 21 U.S.C. 811(a). The specific findings required pursuant to 21 U.S.C. 811 and 812 for a substance to be placed into Schedule I are as follows:

(1) The drug or other substance has a high potential for abuse.

(2) The drug or other substance has no currently accepted medical use in treatment in the United States.

(3) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

Before issuing a final rule in this matter, the DEA Administrator will take into consideration the scientific and medical evaluations and scheduling recommendations of the Secretary of the Department of Health and Human Services in accordance with 21 U.S.C. 811(b). The recommendations of the Secretary regarding scientific and medical matters are binding on the Administrator and if the Secretary recommends that a substance should not be controlled, the DEA Administrator will not control it. The Administrator will also consider relevant comments from other concerned parties.

Interested persons are invited to submit their comments, objections or requests for a hearing in writing with regard to this proposal. Requests for a hearing should state with particularity the issues concerning which the person desires to be heard. All correspondence regarding this matter should be submitted to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative.

In the event that comments, objections or requests for a hearing raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the Federal Register, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to Title 5, United States Code, section 605(b), the Administrator certifies that the proposed placement of *N,N*-dimethylamphetamine in Schedule I of the CSA will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). The substance proposed for control in this notice has no legitimate use or manufacturer in the United States. In accordance with the provisions of Title 21, United States Code, Section 811(a), this proposal to place *N,N*-dimethylamphetamine into Schedule I is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193).

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice Regulations (28 CFR 0.100), the Administrator hereby proposes that 21 CFR Part 1308 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. Section 1308.11 is amended by adding paragraph (f)(3) to read as follows:

1308.11 Schedule I.

* * * * *

(f) * * *

(3) *N,N*-dimethylamphetamine (also known as *N,N*-trimethylbenzeneethanamine; *N,N*-alpha-trimethylphenethylamine), 1480.

3. Section 1308.11 is further amended by removing and reserving paragraph (g)(3).

Date: July 27, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-18029 Filed 8-1-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Chapter I

[Docket No. N-89-2011; FR-2665]

RIN 2501-AA85

Advance Notice of Intention To Develop and Publish Fair Housing Accessibility Guidelines

AGENCY: Department of Housing and Urban Development, Office of the Secretary.

ACTION: Advance Notice of Development of Fair Housing Accessibility Guidelines.

SUMMARY: In the final rule implementing the Fair Housing Amendments Act of 1988 (54 FR 3232, January 23, 1989), HUD announced its intention to publish "accessibility guidelines" to provide additional guidance to designers and developers of residential structures, and to the public, concerning the requirements of the amended Fair Housing Act as the Act relates to accessibility of dwellings for use by handicapped persons.

This document solicits early comment from the public concerning the content of the accessibility guidelines, and outlines the procedure that HUD intends to follow in developing the guidelines.

The purpose of this notice is to secure expert advice from the public on the appropriate content of the accessibility guidelines.

DATES: The Department is not providing in this notice for any closing date for public comment on the guidelines. It is HUD's intention to prepare and publish proposed accessibility guidelines at the earliest practicable time, and to provide a fixed period for comment. Public comment will be considered whether it is received before or after the publication of the proposed accessibility guidelines. To the extent practicable, consistent with HUD's plans for early publication of its proposal, advice from the public received in response to this notice will be considered in advance of the publication of the proposed accessibility guidelines.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication, whether by outside parties or HUD's own technical standards contractor, as well as any communication on this subject matter received by HUD before the publication of this notice, will be available for public inspection and copying from 7:30 a.m. to 5:30 p.m. on regular business days at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile [FAX] machine. The telephone number of the FAX receiver is (202) 755–2575. (This is not a toll-free number.) Only comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 755–7084.)

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Office of Multifamily Housing Programs, Room 6114, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. Telephone (202) 755–3287 (voice) or 755–6490 (TDD). (These are not toll-free numbers.)

SUPPLEMENTATARY INFORMATION: On September 13, 1988, the President approved Pub. L. 100–430, the Fair Housing Amendments Act of 1988. (Amendments Act) This statute amends the Fair Housing Act—title VIII of the Civil Rights Act of 1968—to add, among other changes, a new prohibition against discrimination on the basis of handicap.

HUD's final rule implementing section 6 of the Fair Housing Amendments Act (54 FR 3232, January 23, 1989) provides that covered multifamily dwellings for first occupancy after March 13, 1991 must be designed and constructed to have at least one accessible building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site. The rule, at § 100.205(c), further provides that all covered multifamily dwellings must be designed and constructed in such a manner that—

(1) The public use and common use areas are readily accessible to and usable by handicapped persons;

(2) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(3) All premises within covered multifamily dwellings contain the following features of adaptable design:

—An accessible route into and through the covered dwelling unit.

—Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

—Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat, where such facilities are provided; and

—Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

The statute provides that compliance with appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (ANSI A117.1) will satisfy the adaptive design requirements quoted in numbered paragraph (3), above. Further, the Department's regulation implementing the Fair Housing Amendments Act provides that compliance with the duly enacted law of a State or unit of general local government which includes the requirement that covered multifamily buildings have at least one accessible entrance on an accessible route and which includes all of the provisions of paragraphs (1), (2) and (3) above will satisfy the requirements of the Federal statute. (See 24 CFR 100.205(f).) Finally, in spite of the recognition of ANSI A117.1 and of State and local laws, the statute directs the Secretary of Housing and Urban Development to provide technical assistance to States, local governments and other persons in implementing all of these requirements. It is appropriate, therefore, that HUD develop specific guidelines representing an acceptable level of compliance with the requirements of the statute. These guidelines, if complied with, could be raised as a defense in a complaint filed with HUD under the Fair Housing Law based upon section 804(f)(3)(c).

Development of appropriate accessibility guidelines is a highly technical exercise and involves a balancing of interests. HUD must develop accessibility guidelines that will address all of the above-mentioned requirements and that will interpret such difficult concepts as what constitutes site impracticality, and what design standards will provide for dwelling unit spaces which allow for usability and maneuverability within and about the space by a person in a wheelchair. The accessibility guidelines will need to ensure that persons with disabilities are afforded the degree of accessibility provided for in the Amendments Act. At the same time, the Department must be mindful of the costs of providing accessibility and must seek to avoid requirements that would unnecessarily increase the costs of multifamily construction. The Department believes that departures from the design requirements of the ANSI may be feasible that will provide for accessibility at lower cost than would be incurred if following ANSI.

The Department is seeking comments from persons and organizations concerned with adequate accessibility and with cost-control, in order to assure that the accessibility guidelines strike the proper balance between these concerns. Accordingly, this notice solicits technical advice from the public concerning the form and content of its accessibility guidelines. To ensure that all interested parties are given the fullest possible access to any advice the Department has or will receive on this subject, including from its own contractor(s), a public docket has been opened for public inspection and copying of such material.

Comments received as a result of this notice, and those received after publication of the proposed guidelines in the Federal Register, all will be considered before the accessibility guidelines are published in their final form.

Dated: July 21, 1989.

Jack Kemp,

Secretary.

[FR Doc. 89-17938 Filed 8-1-89; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-304-89]

RIN 1545-AN11

Transition Rules for the Allocation and Apportionment of Interest Expense and Rules Concerning the Treatment of Financial Products that Alter Effective Cost of Borrowing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed Income Tax Regulations relating to transition rules for the allocation and apportionment of interest expense for purposes of the foreign tax credit rules and certain other international tax provisions. This document also provides rules concerning the treatment of financial products that alter effective interest expense. Changes to the transition rules were made by the Technical and Miscellaneous Revenue Act of 1988. These regulations are necessary to provide guidance needed by taxpayers engaging in international transactions in order to comply with these changes. In the rules and regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to these matters. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking. Certain additional regulations are also proposed by this document.

DATES: These regulations are proposed to be effective for taxable years beginning after December 31, 1986. These regulations would be applicable to the allocation and apportionment of interest expense for taxable years beginning after December 31, 1986, except for § 1.861-9T(b)(6), which is effective for transactions entered into after September 14, 1988. Comments and requests for a public hearing must be delivered or mailed before September 1, 1989.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:CORP:T:R (INTL-952-86), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Charles Plambeck 202-566-6284 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the rules and regulations portion of this issue of the **Federal Register** add new temporary regulations § 1.861-13T and a new paragraph (b)(6) to § 1.861-9T. For the text of the temporary regulations, see T.D. 8257 published in the rules and regulations portion of this issue of the **Federal Register**. Certain additional regulations are also proposed by this document.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) and the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is David Merrick of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from offices of the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects in 26 CFR 1.861-1 Through 1.997-1

Income taxes, Aliens, Exports, DISCs, Foreign investment in U.S., Foreign tax credit, FSC, Source of income, U.S. investments abroad.

Proposed Amendments to the Regulations

The temporary regulations, [T.D. 8257], published in the rules and regulations portion in this issue of the **Federal Register**, are hereby also proposed as final regulations under sections 861 and 864 of the Internal Revenue Code of 1986.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 89-17723 Filed 8-1-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-370]

RIN 1218-AB15

Occupational Exposure to Bloodborne Pathogens

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; notice of additional hearing site.

SUMMARY: On May 30, 1989, OSHA published a Notice of Proposed Rulemaking (NPRM) on Occupational Exposure to Bloodborne Pathogens in the **Federal Register** (54 FR 23042). Included in the Notice was the scheduling for public hearings.

The locations announced for the hearings were Washington, DC, Chicago, IL, and San Francisco, CA. The selection of these sites was based primarily on geographical considerations. The American Federation of State, County and Municipal Employees requested that a fourth hearing be held in New York City to facilitate the public participation of individuals in the New York City area. OSHA has agreed to this suggestion and is hereby announcing that a hearing will take place in New York City at the time and address indicated below. The other hearings will take place on the dates and at the locations announced in the May 30 NPRM. The hearings will be conducted in accordance with the procedures specified in that Notice at 54 FR 23133.

In order to allow interested parties adequate opportunity to decide to participate in the New York City hearing, OSHA is allowing additional time for the submission of Notices of Intention to Appear and of statements for that hearing.

DATES: Notices of Intention to Appear at the Washington, DC, Chicago, IL, and San Francisco, CA hearings must be postmarked on or before August 14, 1989. Notices of Intention to Appear at the New York City hearing must be postmarked on or before September 15, 1989. Statements and any documentary evidence to be presented at these hearings must be submitted by August 31, 1989, for the Washington, DC, hearing; September 29, 1989, for the Chicago, IL and San Francisco, CA hearings; and October 20, 1989, for the New York City, N.Y. hearing.

The hearings will begin at 10 a.m. The date and location where each will be held are as follows:

Date hearing begins	Location
1. September 12, 1989	The Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.
2. October 17, 1989	Parlor A, Palmer House, 17 East Monroe Street, Chicago, IL 60603.
3. October 24, 1989	The Crystal Ballroom, San Francisean Hotel, 1231 Market Street, San Francisco, CA 94103.
4. November 13, 1989	The Oval Room, Roosevelt Hotel, 45 E. 45th Street, New York, New York 10017.

ADDRESSES: Notices of Intention to Appear at the hearings, statements and documentary evidence should be submitted to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket H-370, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523-8615. A Notice of Intention to Appear also may be transmitted by facsimile to (202) 523-5046 or, for FTS, to 8-523-5046, provided the original and 4 copies of the Notice are sent to the above address thereafter.

Notices of Intention to Appear at the public hearings, as well as any other information gathered by the Agency during this rulemaking, will be available for inspection and copying at the OSHA Technical Data Center Docket Office, Room N-2625, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523-7894.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, U.S. Department of Labor, OSHA, Office of Public Affairs, Room N-3647, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523-8151.

Authority: Secs. 6(b), 8(c), and 8(g), Pub. L. 91-596, 84 Stat. 1593, 1599, 1600; 29 U.S.C. 655, 657; 29 CFR Part 1911; Secretary of Labor's Order No. 8-76 (41 FR 25059))

Signed at Washington, DC, this 27th day of July, 1989.

Alan C. McMillan,

Acting Assistant Secretary of Labor.

[FR Doc. 89-18044 Filed 8-1-89; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 89-08]

Special Local Regulations: Southern California Annual Marine Events

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule adds an additional marine event to Table 1 of Part 100.1101 of Title 33, Code of Federal Regulations. Table 1 lists current annual marine events held in Southern California. The annual marine event being added is Naval Station San Diego's "Base to Base Swim" held in San Diego Harbor during the month of July. This event has approximately 200 swimmers which could pose a hazard to navigation. The addition of this marine event is necessary to provide for the safety of life and property on navigable waters during this event.

DATES: Comments must be received on or before September 18, 1989.

ADDRESSES: Comments should be mailed or hand carried to Commander, Eleventh Coast Guard District (b), 400 Oceangate, Suite 914, Long Beach, California, 90822-5399. The comments and other materials referenced in this notice will be available for inspection and copying at Suite 914 at the above address. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: LTjg E.E. McLaughlin, Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822, Tel: (213) 499-5318.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD11 90-08) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentation will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTjg E.E. McLaughlin, project officer, Eleventh Coast Guard District Boating Affairs Office, and LCDR G. R. Wheatley, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulation

The Naval Station San Diego's "Base to Base Swim" is an annual event conducted in San Diego Harbor during the month of July. The swim commences in the vicinity of Pier 2 at Naval Station San Diego, California and proceeds southerly to the vicinity of the boat landing at Naval Amphibious Base, Coronado, California.

Approximately 200 swimmers are expected to participate in this event and could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area during this event may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

§ 100.1101 [Amended]

2. Section 100.1101 is amended by adding the following event to Table 1:

San Diego Naval Station Base to Base Swim

Sponsor: Naval Station San Diego.
Date: July.
Location: San Diego commencing in the vicinity of Pier 2, Naval Station San Diego, California and then proceeding southerly to the vicinity of the boat landing, at the Naval Amphibious Base, Coronado, California.

Dated: July 7, 1989.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 89-18050 Filed 8-1-89; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 100

[CGD11 89-09]

Special Local Regulations: Marine Events on the Colorado River, Between Davis Dam (Bullhead City, AZ) and Headgate Dam (Parker, AZ)

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule adds an additional annual marine event to Table 1 of Part 100.1102 of Title 33, Code of Federal Regulations. Table 1 lists current annual marine event held on the Colorado River between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona). The event being added is the "International Waterski Race" held on Lake Moorvalya on the Colorado River during the month of March. This event typically has 300 participants operating at high speeds which could pose a hazard to navigation. The addition of this marine event is necessary to provide for the safety of life and property on navigable waters during this event.

DATES: Comments must be received on or before September 18, 1989.

ADDRESSES: Comments should be mailed or hand carried to Commander, Eleventh Coast Guard District (b), 400 Oceangate, Suite 914, Long Beach, California, 90822-5399.

The comments and other materials referenced in this notice will be available for inspection and copying at Suite 914 at the above address. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: LTjg E.E. McLaughlin, Commander, Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822, Tel: (213) 499-5318.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD11 89-09) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentation will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTjg E.E. McLaughlin, project officer, Eleventh Coast Guard District Boating Affairs Office, and LCDR G.R. Wheatley, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulation

The Parker Area Chamber of Commerce's "International Waterski Race" is an annual event conducted during the month of March on Lake Moorvalya on the Colorado River.

The race runs from La Paz County Park, Road Runner Resort to ½ mile south of Bluewater Marina. Approximately 300 skiboats, 26 feet in length, operating at high speeds participate in this event and could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area during the event may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.)

§ 100.1102 [Amended]

2. Section 100.1102 is amended by adding the following event to Table 1:

International Waterski Race

Sponsor: Parker Area Chamber of Commerce.
Date: March.
Location: The Colorado River, commencing at La Paz County Park, thence proceeding southerly along the natural flow of the river to mile 170 of the river (approximately ½ mile south of Bluewater Marina).

Dated: July 7, 1989.

J.W. Kime,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 89-18049 Filed 8-1-89; 8:45 am]
BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[KY-052; FRL-3621-7]

Designation of Areas for Air Quality Planning Purposes; Redesignation of a Kentucky Carbon Monoxide Nonattainment Area

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA today proposes to approve the request by the Commonwealth of Kentucky that Jefferson County be redesignated from nonattainment to attainment for carbon monoxide (CO). The redesignation is based on eight quarters of ambient monitoring data that show no violations of the CO standards and on implementation of the EPA-approved CO control strategies.

DATE: The public is invited to submit written comments on this proposed action. To be considered, comments must reach us on or before September 1, 1989.

ADDRESSES: Written comments should be addressed to Kay Prince of the Region IV Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Kentucky may be examined during normal working hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.
Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.
Jefferson County Air Pollution Control District, 914 East Broadway, Louisville, Kentucky 40204.

FOR FURTHER INFORMATION CONTACT: Kay Prince, Air Programs Branch, EPA Region IV, at the above address and phone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: In the March 3, 1978, Federal Register (43 FR 8962) EPA designated Jefferson County, Kentucky as nonattainment for CO. The Commonwealth was therefore required to revise their State Implementation Plan (SIP) for CO. Through implementation of the control strategy contained in its 1982 Part D SIP revisions, Kentucky demonstrated attainment of the CO standard by December 31, 1987. EPA fully approved these revisions on October 9, 1984, Federal Register (49 FR 39547).

Kentucky has requested that EPA change the attainment status of Jefferson County from nonattainment to attainment for CO. In order to redesignate CO nonattainment area, EPA policy requires the most recent eight consecutive quarters of quality assured, representative ambient air quality data showing no violations plus evidence of an implemented control strategy that EPA had fully approved. In December 1985, the CO monitoring sites located at 2nd Street and 5th Street were shut down due to renovation activities in the downtown area of Louisville. During 1985, there was one exceedance of the eight-hour standard at the 2nd Street location. One of these monitors was relocated on W Muhammad Ali Boulevard and the other on Goldsmith Lane. Both sites were selected by EPA personnel. Kentucky has submitted ambient air quality data collected from the Muhammad Ali Boulevard and Goldsmith Lane sites as well as the site located at Fire Station #20. There were no exceedances of either the one-hour or eight-hour standards from March 1987 through April 1989 at either of the relocated sites. From 1985 through the first quarter of 1988, there was only one exceedance of the eight-hour standard at the Fire Station #20 location. Therefore, there were no violations of either the one-hour or the eight-hour standard during the most recent eight quarters.

Kentucky has also submitted evidence of implementation of the control strategies required by the SIP for Jefferson County. The required vehicle inspection and maintenance (I/M) program has been adopted and implemented in Jefferson County. The submittal included a copy of Regulation 8, Vehicle Exhaust Testing Requirements; the annual operating report for calendar years 1985, 1986 and 1987; a copy of a report of an EPA audit of Jefferson County's Vehicle Exhaust Testing (VET) Program showing that the program exceeds the RACT requirements; and an approved contract for continuation of the VET through June 30, 1991.

Kentucky also submitted information regarding the status of the 34 TCMs contained in the SIP. Twenty six of the TCMs have been completed, three are under construction at this time and nearing completion, and two have been fully funded with start of construction being imminent. On January 3, 1989, Evelyn L. Waldrop, Director, Physical and Environmental Services Cabinet, sent a letter to EPA Region IV stating that the funds for completion of these two TCMs would not be diverted to other projects. The remaining three TCMs have been cancelled due to the following reasons:

1. Hill Street—This TCM was included in the SIP erroneously. The project is related to safety rather than air quality. Traffic counts and a Volume 9 screening model and impact were submitted to support the calculation (see TSD).

2. KY 1631—This TCM has been cancelled due to the planned expansion of Standiford Field Airport. The intersection will be removed entirely as a result of the expansion.

3. Greenwood Road—This TCM was included in the SIP because an analysis indicated a hot spot would exist due to a proposal to locate a large Sears shopping center at the corner of Greenwood Road. However, zoning was not granted and the shopping center was never constructed. Traffic counts and a Volume 9 screening model input and output were submitted to support this cancellation (see TSD).

It is Region IV's opinion that cancellation of these TCMs is justifiable and will not adversely affect the continuing attainment of the CO standards.

Kentucky further submitted information regarding the implementation of the ridesharing commitments. Therefore, the requirements of the approved EPA control strategy have been fully implemented in Jefferson County.

For a more detailed discussion, please refer to the Technical Support Document which is available for inspection at the EPA Region IV office.

Proposed Action

EPA is today proposing to approve the redesignation of the Jefferson County CO nonattainment area to attainment on the basis of eight quarters of air quality data and on a fully implemented control strategy approved by EPA. The public is invited to participate in this rulemaking by submitting written comments on these proposed actions.

Under 5 U.S.C. 605(b), I certify that this request will not have significant impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 40 U.S.C. 7401-7642.

Dated: March 17, 1989.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 89-18059 Filed 8-1-89; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 620, 672 and 675

RIN 0648-AC72

Groundfish of the Gulf of Alaska and the Bering Sea/Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability amendments to fishery management plans and request for comments.

SUMMARY: NOAA issues this notice that the North Pacific Fishery Management Council has submitted Amendment 13 to the Fishery Management Plan for Groundfish of the Bering Sea/Aleutian Islands Area and Amendment 18 to the Fishery Management Plan for Groundfish of the Gulf of Alaska for Secretarial review and is requesting comments from the public. Copies of the

amendments may be obtained from the address below.

DATE: Comments on the amendments should be submitted on or before September 27, 1989.

ADDRESS: All comments should be sent to Steven Pennoyer, Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, AK 99802.

Copies of the amendments and the environmental assessment and the regulatory impact review/initial regulatory flexibility analysis are available upon request from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (NMFS, Alaska Region), 907-586-7230.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. This act also requires that the Secretary, upon reviewing the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or amendment.

If approved Amendment 13 will make the following changes to the Bering Sea/Aleutian Islands plan: (1) Allocate sablefish total allowable catch in the BSAI area between fixed and trawl gear; (2) establish a procedure to set fishing seasons on an annual basis by regulatory amendment; (3) create seasonal groundfish fishing closed zones around the Walrus Islands and Cape Pierce; (4) establish a new recordkeeping and data reporting system; (5) establish a new observer program on domestic fishing and/or processing vessels and at shore based processing plants; and (6) clarify the authority of the Secretary to split or combine species or species groups within the target species category.

If approved Amendment 18 will modify the Gulf of Alaska Groundfish plan and implementing regulations as described in items 2, 4, 5, and 6 above. In addition, it will: (7) Establish a Shelikof District in the Central Regulatory area of the Gulf of Alaska; (8) suspend the Gulf of Alaska halibut prohibited species catch framework for all of 1990, implement halibut prohibited species catch limits of 2000 metric tons for trawl gear and 750 metric tons for fixed gear for the calendar year 1990, and reinstitute the framework for 1991; and (9) implement and revise bottom trawl closures around Kodiak Island to protect crab stocks.

Regulations proposed by the North Pacific Fishery Management Council and based on these amendments are scheduled to be published within 15 days.

List of Subjects

50 CFR Part 611

Foreign fishing.

50 CFR Part 620

General provisions for domestic fisheries.

50 CFR Part 672

Groundfish of the Gulf of Alaska.

50 CFR Part 675

Groundfish of the Bering Sea/Aleutian Islands.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 28, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-18023 Filed 7-28-89; 12:00 pm]

BILLING CODE 3510-22-M

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 655

[Docket No. 90764-9164]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of preliminary initial specifications for 1990 and request for comments.

SUMMARY: NOAA issues this notice to propose preliminary initial specifications for the 1990 fishing year for Atlantic mackerel. Regulations governing this fishery require the Secretary of Commerce (Secretary) to propose for public comment preliminary initial specifications for the coming fishing year. This action provides information and requests comments on NOAA's determination of the initial specifications for the 1990 fishing year.

DATE: Comments must be received on or before September 1, 1989.

ADDRESS: Send comments to Kathi L. Rodrigues, Northeast Region, One Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope, "Comments—Atlantic Mackerel Annual Specifications."

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508-281-9324.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) (51 FR 10547, March 27, 1986) as amended, stipulate at 50 CFR 655.22(b) that the Secretary will publish a notice specifying the preliminary initial annual amounts of the initial optimum yield (IOY) as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. No reserves are permitted under the FMP for any of these species.

Procedures for determining the initial annual amounts are found in §§ 655.21 and 655.22 and, pursuant to those regulations, the Secretary is required to publish this notice on or about November 1 of each year and to provide a 30-day comment period on the preliminary specifications. U.S. businessmen involved in the mackerel industry have expressed dissatisfaction with strict adherence to this schedule because it does not afford sufficient time for formulating business plans, arranging contracts and other preparations necessary to engage in foreign joint ventures beginning on January 1. Therefore, both the New England and MidAtlantic Fishery Management Councils, and NOAA have agreed to publish the proposed specifications for Atlantic mackerel sooner than the deadline of November 1 identified at § 655.22(b). This action is consistent with the FMP and implementing regulations because the FMP identifies November 1 to be the latest date for the Secretary to publish Atlantic Mackerel initial specifications. Specifications for *Loligo* and *Illex* squids and butterfish will be determined and published at a later date and are in compliance with the FMP schedule.

These proposed specifications are based on recommendations submitted by the Mid-Atlantic Fishery Management Council (Council) the lead Council for the FMP, and the New England Fishery Management Council. The Council's recommendations and supporting analysis are available for inspection at the above address during the comment period.

The following table lists the preliminary initial specifications in metric tons for Atlantic mackerel. These initial specifications are the amounts that the Regional Director, Northeast Region, NMFS, is proposing for the 1990 fishing year beginning January 1.

PRELIMINARY INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL FOR THE 1990 FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 1990

[Metric tons]

ABC	[a] 368,000
IOY	83,000
DAH	[b] 59,000
DAP	20,000
JVP	9,000
TALFF	[c] 24,000

[a] IOY can rise to this amount, according to the FMP.

[b] Includes 15,000 mt projected recreational catch based on the formula contained in the regulations plus an additional 15,000 mt to promote recreational use.

[c] Foreign partner is required to purchase JVP and U.S. processed product in the ratio 8 mt TALFF to 3 mt JVP and 2 mt U.S. product. One-third of a venture's obligation to purchase U.S. processed product may be substituted by a purchase of JVP in the ratio of 3 to 1. The ratio may therefore be expressed as 8 to 0 and 3 or, 8 to 6 and 1 (8 to 9 and 0 is unacceptable). Export declaration forms are acceptable as proof of purchase.

The proposed 1990 Atlantic mackerel ABC, calculated according to the formula at § 655.21(b)(2)(i), is 368,000 mt. An Atlantic mackerel IOY is proposed at a level that allows for TALFF and JVP amounts of 24,000 mt and 9,000 mt, respectively. These amounts are lower than in 1989 and considerably lower than previous years. They reflect a commitment by the Council to take the necessary steps toward Americanization of the fishery and development of the U.S. industry.

The Council's recommendations for the mackerel IOY were made after reviewing the nine economic factors specified in the FMP and contained at § 655.21(b)(2)(ii) and after consideration of public testimony from industry members. The Council's policy for development of U.S. fisheries has been to stimulate growth and investment of the domestic industry with a concurrent phasing-out of foreign participation. The primary mechanism for this development has been to condition directed foreign fishing allocations on the purchase of U.S. over-the-side and shore-produced product. It should be understood that both of these products must originate in U.S. waters.

In proposing the IOY, the Regional Director has taken into consideration economic, resource, and social factors which include information concerning the recreational fishery, market analysis, the capacity and intent of domestic processors, investment in new equipment, etc. Indications are that expansion of U.S. harvesting and processing capacity is occurring, both on shore and in at-sea processing capability, sufficient to achieve the DAP portion of the proposed IOY. In addition, indications are that at least two states may report record recreational catches when survey results are complete. Although environmental factors are largely responsible, the high level of stock abundance may also be a contributing factor to good recreational catches. Many believe opportunities for U.S. processed mackerel will expand as world mackerel resources decline.

U.S. expansion efforts are currently being hampered by some trade barriers and the inability of the domestic harvesters and processors to achieve the economies of scale that would ensure competitiveness in the world marketplace. The Council believes that the industry is still in the stage of development at which some degree of foreign participation in the fishery is still needed. In fact, the Council continues to demonstrate its willingness to provide opportunities that can prove mutually beneficial to foreign and domestic joint ventures consonant with its policy goal to promote full domestic involvement in all aspects of the fishery.

The Regional Director also has considered the status of the resource in proposing the initial IOY. The current stock biomass estimate for the Northwestern Atlantic mackerel stock is in excess of one million metric tons. The stock is sufficiently large that density dependent factors are negatively impacting individual growth rates and sexual maturity. Northeast Fishery Center biologists and the Science and Statistical Committee of the Council have advised that 150,000 to 200,000 mt could be harvested without appreciably affecting the size of the spawning stock. This level of harvest could stabilize or reverse the negative trends associated with the high stock density.

The Council's policy has been, and continues to be, to develop the capacity of the U.S. industry to harvest, process, and market the optimum yield of the Atlantic mackerel resource. It is the Council's intent to accomplish this by conditioning TALFF allocations on purchases of U.S. harvested and processed product. This arrangement is intended to foster business relationships of mutual benefit between U.S. and foreign entities upon which domestic development relies. This strategy is meeting with slow but steady success as U.S. commercial catches have increased over the past several years.

This year, U.S. companies, having sold most of the available processed mackerel, provided the Regional Director with copies of contracts to supply foreign entities with processed or over-the-side product before the 1989 fishing year expires. This enabled foreign nations to receive additional releases of TALFF in 1989. The Council and the Regional Director fully expect both the U.S. and foreign entities to fulfill these obligations. If these obligations are met, several purposes will be served: 1) harvest from the Northwestern Atlantic stock may exceed 100,000 mt in 1989, alleviating density dependent effects (includes Canadian and recreational catch); 2) the U.S. industry will benefit directly from the sale of product; 3) TALFF allocation decisions, which are based upon the factors outlined in section 201(e)(1)(E) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), will be facilitated by compliance with the purchase conditions.

The Regional Director believes that the IOY level proposed for the 1990 fishing year will promote the continued growth of the domestic industry, thereby providing the greatest overall benefit to the United States. This level is proposed to encourage continued growth in both the harvesting (commercial and recreational) and processing sectors of the U.S. fishing industry in accordance with the purposes of the Magnuson Act. These proposed specifications were selected after meetings and discussions with the Council, considering information from industry groups and foreign national representatives, and reviewing the performance of U.S. fishermen, processors, projected domestic landings, stock assessments, and joint venture information.

Based on consideration of all of the above factors, the Regional Director believes that the proposed specifications recommended by the Council will stimulate the development of all sectors of the U.S. mackerel industry, leading to increased benefits to the Nation.

The Council has recommended that several conditions be placed on allocations of TALFF. These recommendations are intended to minimize harvesting conflicts among users and minimize impacts on other regional resources. The following are the recommended conditions that the Regional Director is proposing for the 1990 fishing year and on which he is seeking comment:

1. Directed foreign fishing for Atlantic mackerel should be prohibited south of 37°30' N. latitude. Joint ventures are allowed, but river herring bycatch south of that latitude may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; directed foreign fishing for Atlantic mackerel (allowed

north of 37°30' N. latitude and 20 miles seaward only) should be limited to a 1 percent river herring bycatch; river herring TALFF should be 100 mt with the possibility of an increase to 200 mt.

2. Purchase requirements for foreign allocations should be set at a ratio of 8 mt TALFF to 3 mt JVP and 2 mt U.S. processed product. One third of a foreign partner's obligation to purchase U.S. processed product may be substituted by a purchase of JVP in the ratio of 3 to 1. The ratio may be expressed as 8 to 0 and 3 or, 8 to 6 and 1 (8 to 9 and 0 is unacceptable).

3. Allocations should be distributed in increments in order to ensure compliance with the 8:3 and 2 ratio by the end of the fishing year.

4. The number of foreign permits should be limited to the vessels needed to harvest the particular allocation.

5. The Regional Director should do everything within his power to reduce impacts on marine mammals in the Atlantic mackerel fisheries.

6. Increases in IOY during the year should not exceed 200,000 mt.

7. TALFF should not exceed 24,000 mt.

8. Applications from a particular nation for joint ventures and directed foreign fishing for 1990 should not be considered until that nation's purchase obligations for 1989 have been fulfilled.

The Regional Director is specifically seeking additional information and comment on proposal seven because there is insufficient evidence to determine that this level of TALFF, and no more, would conform with § 655.21(b)(2)(v) which provides that IOY may be adjusted to produce maximum net benefits to the United States. The Council's recommendations, and all public comments on the annual specifications and conditions, will be considered in the final determination. A notice of final determination of the initial amounts and responses to public comments is expected to be published in the **Federal Register** on or about August 1, 1989.

Classification

This action is authorized by 50 CFR Part 655 and complies with Executive Order 12291.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Dated: July 27, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89-18024 Filed 8-1-89; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 147
Wednesday, August 2, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Submission of Information Collection to OMB (Under Paperwork Reduction Act and 5 CFR Part 1320)

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The information collection requirement described below has been submitted to OMB for emergency clearance under 5 CFR 1320.18. The agency solicits comments on subject submission. The action is necessary in order to comply with the Agricultural Credit Act of 1987 (Pub. L. 100-233) and the Consolidated Farm and Rural Development Act.

ADDRESSES: Interested persons are invited to submit comments regarding this submission. Comments should refer to the proposal by name and should be sent to: *Lisa Grove,* USDA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Edward R. Yaxley, Jr., FmHA Farmer Programs, USDA Room 5449-South USDA Building, 14th and Independence Avenue, SW., Washington, DC 20250—202-447-6293.

SUPPLEMENTARY INFORMATION: The agency has submitted the proposal for collection of information as described below, to OMB for clearance as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is requested that OMB approve this submission within seven days.

The supporting statement below explains the revision, and the need and justification for the revision of the Form FmHA 440-32, Request For Statement of Debts and Collateral.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507

Supporting Statement

Form FmHA 440-32, Statement of Debts and Collateral

(1) The Consolidated Farm and Rural Development Act authorizes the Secretary of Agriculture to make insured loans to eligible farmers and ranches for farm operating (7 CFR 1941-A) and emergency loans for operating purposes (7 CFR 1945-D). When loans are to be secured by chattel property, the property security instruments must be recorded within that particular State. The Uniform Commercial Code (UCC) was adopted by most states in 1965 and 1966. It dictates the process by which each state perfect security instruments. The UCC security and amount of debt(s) owed to other secured parties be obtained through a written request from the applicant or debtor. Form FmHA 440-32 is used for that purpose. It is also designated to obtain the necessary information when chattel debts are to be refinanced. The information requested on the form is necessary to determine if FmHA can obtain the desired lien(s) for the loan(s). This form has been in existence for many years, and has provided FmHA County Offices with the required information during the loan making process. Along with providing the above information, the form shows the balance, due date, delinquency, interest rate, and collateral on the debt(s) in question, assisting in the loan making decision.

The Agricultural Credit Act of 1987 (Pub. L. 100-233) enacted on January 6, 1988, provided for additional Loan Servicing and Preservation Program benefits for FmHA Farmer Programs borrowers. On September 14, 1988, FmHA published regulations in the **Federal Register** to implement these provisions of the Act. The provisions of the Act for restructuring an FmHA debt for a Farmer Programs borrower make it essential that FmHA have accurate data from a borrower's creditor for making the calculations for restructuring the borrower's debt, therefore, it was necessary to revise the form to expand its use so information could be collected from all creditors. Previously, some information was collected by the use of Form FmHA 410-8, Applicant Reference Letter. However, this form did not provide sufficient information regarding the amount of installments, interest rates and etc. Therefore, the revised Form FmHA 440-32 will eliminate the need for the use of Form FmHA 410-8 for Farmer Programs borrowers.

(2) The revisions to the form are as follows:

(a) The form will be sent to all of an applicant's creditors rather than just to creditors with UCC liens.

(b) The form requests information on any debt a borrower might have rather than just credit for a UCC lien.

(c) The form requests information on any lien a creditor might hold rather than just a UCC lien.

(d) A statement is added for a creditor to check a block to indicate the applicant's repayment record. The form is signed by any creditor the applicant is indebted to rather than just debts to UCC creditors.

Form FmHA 440-32 is partially completed by and signed by the applicant and forwarded to the respondent for completion. Respondents mainly consist of bankers, and small businessmen, such as feed, seed, and fertilizer companies. They list debts owed by the FmHA applicant. This assures that the Government can obtain proper security when making or servicing a loan. Without collection of this information, FmHA would not have verification as to their lien position and would not have exact balances on the debts in question.

(3) Many lenders have credit information available through computers, thus allowing quick and easy access to the requested data. The use of the revised form will eliminate the need to use the Form FmHA 410-8 for information from creditors without UCC liens.

(4) FmHA requests this information from respondents only at the time of application.

(5) There is no other means by which a secured party can furnish the information. There is no similar information that is available.

(6) There is little burden on the respondents to complete this form. Their records are easily accessible and all information can be quickly transferred to this form. The form is designed to minimize the burden. FmHA does not ask for more than is absolutely needed.

(7) The form is only completed when a farmer applies for FmHA assistance and has other creditors. This is keeping the collection of this information to the absolute minimum.

(8) The data collection is not inconsistent with the guidelines in 5 CFR 1320.6.

(9) The Agricultural Credit Act of 1987 (Pub. L. 100–233) enacted on January 6, 1988, requires FmHA to send notices to inform Farmer Programs borrowers that are 180 days or more delinquent about the Primary and Preservation Programs contained in the act. The credit information submitted on the Form FmHA 440–32 is essential in processing applications for these programs. A new group of borrowers will become 180 days delinquent on August 1, 1989. The revised form is essential for collecting accurate information on the borrower's debts from other creditors. The reason for the emergency clearance request is that the existing form is not presently adequate for this purpose as it only collects data from creditors that have uniform Commercial Code liens filed. The amount of debt a borrower has with other lenders is an important part in determining how much debt the Government will write down or write off for a borrower. Therefore, it is urgent that the revised form be available for use when the notices are sent out to delinquent borrowers in August. Immediate clearance is needed to do this. Therefore, persons outside the Agency were not contacted. However, when other lenders were contacted on the revisions of the form for October 1985, they indicated the form was self-explanatory and easy to complete. All those lenders stated the information requested on the form was easily accessible to them and took about ten minutes to complete. They understood the use of the form and the value of the information. The comments should still apply to the revised form as the revision mainly expands the use of the form from only UCC creditors to all creditors and the type of information requested is very similar.

(10) FmHA is the primary user of the information collected. Under the Freedom of Information Act, the general public can request most data requested of lenders and borrowers by FmHA. No assurance of confidentiality is provided to respondents.

(11) No questions of a sensitive nature are required by Form FmHA 440–32.

(12) The estimated annual cost to the Government for the use of this form is $268,867. This includes all the administrative and overhead costs. Based on the recent decline in loan applications and borrowers it is estimated that approximately 50,000 applications will be filed per year, with an average of five forms prepared by the respondents per application, for a total of 250,000 responses. The cost of the form as a burden to the public was computed on the basis of $7.50 per hour. This was arrived at by estimating the average salary for the respondents' secretary/bookkeeper and the applicant. The hourly cost was then multiplied by the burden hours. Therefore, the total public cost is estimated to be $468,750 per year.

(13) FmHA made a total of 37,731 insured and guaranteed Farmer Programs loans in fiscal year 1988. As of July 12, 1989, FmHA has made 33,592 insured and guaranteed Farmer Programs loans for fiscal year 1989. Based on the latest delinquency report, it is estimated that about 15,000 delinquent borrowers will request servicing assistance per year. Based on the above it is estimated that about 50,000 applicants will request FmHA loans or servicing assistance per year. An average of five forms per applicant for 50,000 applicants is a total of 250,000 creditor responses for the year.

Based on our long term experience for the use of the form, it takes the applicant about five minutes and the creditor about ten minutes to complete each form. With 250,000 responses the total annual burden would be 62,500 man-hours.

(14) There has been a recent decline in Farmer Program applications which is expected to continue. The provisions of the Agricultural Credit Act of 1987 substantially decreased the number of FmHA delinquent borrowers. The debt write-down provision of the Act should reduce the number of existing borrowers that will become delinquent in the future.

The applicant's time for handling the form and the use of the form for servicing was previously overlooked in calculating the burden. This has increased the respondent's time for completing the form. However, due to the decline in applicants, the total public burden is lessened. The elimination of the use of Form FmHA 410–8 has increased the use of the number of forms per applicant but overall has not greatly changed the number of total forms used for credit information.

(15) The information will not be published for statistical use.

Dated: July 27, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–17953 Filed 8–1–89; 8:45 am]

BILLING CODE 3410–07–M

Forest Service

Trail Plan for Sequoia National Forest, Fresno, Kern and Tulare Counties, California; Intention To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement to determine future management practices for the trail system on the Sequoia National Forest.

The Sequoia National Forest Land and Resource Management Plan has been prepared. Management Direction in the Management Plan calls for trail system planning to provide a comprehensive look at trails and identification of their specific uses.

A range of alternatives will be considered for the Trail Plan. One of these will be "no action". Other alternatives will provide a wide range of themes for managing use and development of the trail system on the Forest. Alternatives will consider what types of trail uses will be allowed in specific parts of the Forest, where users will be allowed or encouraged, what new facilities are needed or desired, and how to manage the selected combination of uses and facilities.

Federal, State, and local agencies; user groups; and other individuals or organizations who may be interested in or affected by the decision have been invited to participate in the scoping process. The scoping process began in November, 1988 and will continue during preparation of the draft environmental impact statement. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

The California Department of Fish and Game and the U.S. Fish and Wildlife Service will be invited to participate as cooperating agencies. Potential impacts on threatened and endangered species habitat will be evaluated.

The draft environmental impact statement (EIS) is expected to be filed with the Environmental Protection Agency (EPA) and available for public review and comment by February, 1990. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 90 days from the date of the EPA's published notice of availability. All persons interested in the proposed projects are urged to participate at that time. Comments on the draft EIS should be as specific as possible and may address the adequacy of the EIS or the merits of the alternatives considered. (See the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.) In addition, Federal court decisions have established that reviewers of a draft EIS must structure their participation in the environmental review of the proposal so it is meaningful and alerts an agency to the reviewers position and contentions, Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service in a timely manner so the agency can respond to them in the final EIS.

After the comment period ends on the draft EIS, comments will be analyzed and considered by the Forest Service in preparing the final (EIS). The final EIS is scheduled to be complete by October, 1990. In the final EIS, the Forest Service is required to respond to comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding these project proposals. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal.

James A. Crates, Forest Supervisor, Sequoia National Forest, Porterville, California, is the responsible official. Written comments and suggestions concerning the analysis should be sent to James A. Crates, Forest Supervisor, Sequoia National Forest, 900 West Grand Avenue, Porterville, California 93257.

Questions about the proposed action and environmental impact statement should be directed to James W. Whitfield, Trail Planner, at the above address, phone 209–784–1500.

Dated: July 25, 1989.

James Crates,

Forest Supervisor.

[FR Doc. 89–17994 Filed 8–1–89; 8:45 am]

BILLING CODE 3410–11–M

Special Uses Permit Holder Housing

AGENCY: Forest Service, USDA.

ACTION: Notice; reissuance of policy.

SUMMARY: The Forest Service gives notice that it is reissuing direction governing when permittee housing may be approved within a permit area on National Forest System land. This policy was previously issued as Interim Directive No. 42, April 24, 1985, to Forest Service Manual Chapter 2720. The interim directive has expired. The policy is being reissued as Amendment No. 108. While the text has been edited for clarity, there is no substantive change in the policy.

EFFECTIVE DATE: This policy is effective September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to John Shilling, Recreation Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 382–9428.

SUPPLEMENTARY INFORMATION: The Forest Service authorizes and administers under special use permit a number of large recreational complexes on National Forest System lands developed and operated through private enterprise. Examples include ski areas and year-round resorts. The large acreages, substantial investments in property and equipment, and remoteness of some of these developments may require the permittee or the permittee's employees to reside at the site. Forest Service policy is to allow such on-site housing where there is justification. The policy being issued as Amendment No. to Chapter 2340 continues direction to Forest Service personnel on when to approve such housing. The reissuance of this direction represents no substantive change in policy, although the language has been edited to improve clarity.

The text of the amendment as it is being issued in the Forest Service Manual is set out at the end of this notice.

Dated: July 20, 1989.

Larry D. Henson,

Associate Deputy Chief.

Forest Service Manual

Chapter 2340—Privately Provided Recreation Opportunities

Amendment No. 108; Effective September 1, 1989.

2341.5—Permittee Employee Housing. Some special recreation uses, such as ski areas and year-round resorts, may require on-site housing for the permittee and/or employees of the permittee to adequately protect property and provide for public safety. The authorized officer shall carefully evaluate the need and justification for permittee housing within a permit area and shall make the determination in compliance with the appropriate environmental analysis and documentation requirements set forth in FSM 1950 and FSH 1909.15.

An authorized officer may approve permittee housing within a permit area if the following conditions are met:

1. Provision of permittee housing is consistent with the management direction and guidelines of the forest land and resource management plan for the area.

2. There is a clear and convincing need for 24-hour, on-site property protection, round-the-clock public safety, and/or intermittent emergency service at other than normal operating hours and the commuting time between the permit area and the nearest private property available for permittee housing exceeds one hour.

Ownership of housing provided for the holder of the permit or employees of the holder must be vested in the holder.

[FR Doc. 89–18036 Filed 8–1–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Senior Executive Service; Membership of General and Limited Performance Review Boards

The purpose of the General Performance Review Board (GPRB) is to review performance agreements, appraisals, ratings, and recommended action pertaining to employees in the Senior Executive Service and to make appropriate recommendations to the Director of NIST concerning such matters in such a manner as will assure the fair and equitable treatment of senior executives. The GPRB performs its review functions for all NIST senior executives except those who are members of the NIST Executive Board and those who are members of the GPRB.

The Limited Performance Review Board (LPRB) performs its review functions for all NIST senior executives who are members of the NIST Executive Board (except the NIST Deputy Director) and those senior executives who are members of the NIST GPRB.

The individuals who have been newly appointed by the Acting Director of NIST to membership on the GPRB and

LPRB or have had their term of membership extended are listed below:

GPRB

Mr. E. Larry Heacock, Director, Office of Satellite Operations, National Environmental Satellite Data and Information Service, National Oceanic and Atmospheric Administration, Washington, DC 20233. Appointment expires: 12/31/90.

Dr. Donald J. Sullivan, Chief, Time and Frequency Division, National Measurement Laboratory, National Institute of Standards and Technology, Boulder, CO 80303. Appointment expires: 12/31/90.

Dr. Shelton Wiederhorn, Scientific Assistant to the Director, Institute for Materials Science and Engineering, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/90.

LPRB

Dr. Burton H. Colvin (Chair), Director, Office of Academic Affairs, Office of the Associate Director for International and Academic Affairs, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/90.

Mr. Thomas N. Pyke, Assistant Administrator for Satellite and Information Services, National Oceanic and Atmospheric Administration, Washington, DC 20233. Appointment expires: 12/31/90.

The full membership and expiration dates of the GPRB and LPRB are listed below:

GPRB

Dr. James E. Hill (Chair), Chief, Building Environment Division, National Engineering Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/89.

Mr. Allen L. Hankinson, Chief, Systems and Software Technology Division, National Computer Systems Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/89.

Mr. E. Larry Heacock, Director, Office of Satellite Operations, National Environmental Satellite Data and Information Service, National Oceanic and Atmospheric Administration, Washington, DC 20233. Appointment expires: 12/31/90

Dr. Willie E. May, Chief, Organic Analytical Research Division, National Measurement Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/89

Dr. Alvin H. Sher, Assistant Director for Management Information Technology, National Engineering Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/89

Dr. Donald J. Sullivan, Chief, Time and Frequency Division, National Measurement Laboratory, National Institute of Standards and Technology, Boulder, CO 80303. Appointment expires: 12/31/90

Dr. Sheldon Wiederhorn, Scientific Assistant to the Director, Institute for Materials Science and Engineering, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/90

LPRB

Dr. Burton H. Colvin, (Chair), Director, Office of Academic Affairs, Office of the Associate Director for International and Academic Affairs, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/90

Mr. Thomas N. Pyke, Assistant Administrator for Satellite and Information Services, National Oceanic and Atmospheric Administration, Washington, DC 20233, Appointment expires: 12/31/90

Dr. Jeffrey D. Rosendhal, Assistant Associate Administrator for Space Science and Applications (Science), National Aeronautics and Space Administration, Washington, DC 20546. Appointment expires: 12/31/89.

For further information contact Mrs. Elizabeth W. Stroud, Chief, Office of Personnel and Civil Rights, National Institute of Standards and Technology, Gaithersburg, MD, telephone 301–975–3000.

Date: July 27, 1989.

Raymond G. Kammer,

Acting Director

[FR Doc. 89–18002 Filed 8–1–89; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will hold a public meeting on August 10–11, 1989, at the Colonial Hilton Inn, Routes 128/95, Wakefield, MA. The Council will begin meeting on August 10 at 1 p.m. The meeting will reconvene on August 11 at 9 a.m., and will adjourn when the agenda items have been completed.

The first day, discussions will include reports from the Enforcement, Lobster and Scallop Oversight Committees. On the second morning, election of Council officers will take place, followed by reports of the Foreign Fishing, Habitat and Groundfish Committees. There will be brief presentations on government financial assistance programs and United States/Canada fisheries issues, and also an update from the Large Pelagics Committee.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231–0422.

Dated: July 27, 1989.

Richard H. Schaefer,

Director Office of Fisheries Conservation and Management National Marine Fisheries Service.

[FR Doc. 89–18025 Filed 8–1–89; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team (GMT) will hold a public meeting on August 10–11, 1989, at the National Marine Fisheries Service, Tiburon Laboratory, 3150 Paradise Drive, Tiburon, CA. The GMT will begin meeting at 8 a.m., on August 11. The proposed agenda will include review of draft stock assessment documents, projections of 1989 catch levels for groundfish species, analysis of proposed measures to extend the joint venture season for Pacific whiting, and long-term sablefish management. Other issues related to West Coast groundfish fisheries management may also be discussed.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: July 27, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–18026 Filed 8–1–89; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's groundfish fishery management plan (FMP) Rewrite Oversight Group (ROG) will hold a public meeting on August 15–16, 1989, at the Metro Center Building, 2000 SW. First Avenue, Portland, OR. On August 15 the ROG will begin meeting at 8 a.m., in room 145, and on August 16 will continue meeting in room 440. The ROG will review changes made to the Groundfish FMP Amendment #4 document subsequent to the past meeting, and will also develop reporting requirements for catcher/processor and floating processor vessels.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: July 27, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–18027 Filed 8–1–89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NOAA Fisheries), NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit No. 677.

SUMMARY: On May 10 and June 20, 1989, notice was published in the **Federal Register** (54 FR 20174; 54 FR 25891) that an application (P442) had been filed by Audrey Dianne Kopec, Romberg Tiburon Center for Environmental Studies, San Francisco State University, to capture, tag and release a maximum of 100 harbor seals (*Phoca vitulina richardsi*) annually in the San Francisco Bay area. An additional 120 seals may be harassed during tagging operations.

Notice is hereby given that on July 27, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended, (16 U.S.C. 1361–1407) and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the National Marine Fisheries Service issued a Permit for the above activities subject to the Special Conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Rm. 7330, Silver Spring, Maryland 20910; and

Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415.

Date: July 27, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–17981 Filed 8–1–89; 8:45 am]

BILLING CODE 3510-22-M

[P396B]

Marine Mammals; Permit Modification Request; John G. Shedd Aquarium

Notice is hereby given that the John G. Shedd Aquarium, 1200 South Lakeshore Drive, Chicago, Illinois 60605, has requested a modification to Permit No. 662, issued on April 28, 1989 (54 FR 19934), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

Permit No. 662 authorized the importation of six (6) false killer whales (*Pseudorca crassidens*) from Japan for the purpose of public display. The Holder is asking that the permit be modified to allow the option of importing animals from Japan or collecting animals from the waters in and around all main Hawaiian Islands.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this modification request to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, c/o Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this notice of modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115;

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: July 27, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–17980 Filed 8–1–89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extending an Import Restraint Period and Increasing a Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

July 28, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending a restraint period and increasing a limit.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–9481. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Memorandum of Understanding dated April 12, 1989.

The Governments of the United States and the United Mexican States agreed to extend the current designated consultation level for Category 239 through December 31, 1989 at an increased level.

The implementation of a specific limit under the Special Regime for Category 239 (see 54 FR 20627, published on May 12, 1989) with a sublimit for products not made of U.S. formed and cut fabrics, is being delayed until January 1, 1990 in order to give importers additional time to prepare the proper certification and documentation required for participation in the Special Regime Program.

Shipments of goods qualifying for entry under the Special Regime must be accompanied by a form ITA–370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in Mexico. Further requirements for participation in the Special Regime are available in **Federal Register** notices 53 FR 15724, published on May 3, 1988; and 53 FR 32421, published on August 25, 1988.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 52461, published on December 28, 1988.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

July 28, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on May 8, 1989 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns, among other things, imports of cotton and man-made fiber textile products in Category 239, produced or manufactured in Mexico and exported during the seven-month period which began on January 1, 1989 and extends through July 31, 1989.

Effective on August 1, 1989, the directive of May 8, 1989 is being amended to extend the restraint period for Category 239 through December 31, 1989 at an increased level of 550,000 kilograms.[1]

The May 8, 1989 directive is amended further to direct Customs to delay until January 1, 1990 the entry of shipments of U.S. formed and cut parts in Category 239 that are re-exported to the United States from Mexico under the provisions of the Special Regime.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–18110 Filed 7–31–89; 11:15 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1988.

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intention To Prepare a Draft Environmental Impact Statement for Navigation Channel Improvements at Coos Bay, OR

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: The proposed action is to determine the feasiblity of deepening and/or widening the existing deep-draft navigation channel in Coos Bay from the entrance to river mile 15. This investigation has been authorized by Congress pursuant to local appeals for navigation assistance. The existing navigation channel does not adequately and safely handle some of the larger vessels calling at the port. Prospective traffic and potential economies of scale are such that the Port of Coos Bay could more effectively compete for ocean shipments if it could provide safe access to larger vessels. Questions about the proposed action and DEIS can be answered by: Steven J. Stevens, telephone (503) 326–6096, U.S. Army Corps of Engineers, Portland District, Regulatory and Resources Branch, P.O. Box 2946, Portland, Oregon 97208–2946.

SUPPLEMENTARY INFORMATION: The proposed action, authorized under House Document 151, Ninety-First Congress, First Session, is to determine the feasibility for improvements to the Coos Bay Deep-Draft Navigation project. Alternatives identified thus far include:

(1) Channel deepening and widening;

(2) Channel deepening only;

(3) Addition of turning basins to (1) or (2); and

(4) No action.

Dredging actions would primarily include disposal at approved ocean disposal sites. However, upland disposal alternatives will also be investigated. The feasibility study and DEIS will also address the long term effects of additional channel maintenance activities. The scoping process will formally commence in August 1989 with the issuance of a scoping letter. Federal, state and local agencies, Indian tribes, and interested organizations and individuals will be asked to comment on the significant issues relating to the potential effects of the alternatives. Potentially significant issues to be addressed in the DEIS which are currently identified include: fisheries impacts; water quality impacts (upper bay); salinity impacts; ocean disposal site impacts; secondary impacts resulting from increased commerce developments. Other environmental review and consultation requirements which will be addressed in conjunction with the DEIS include:

(1) Clean Water Act of 1977;

(2) Fish and Wildlife Coordination Act;

(3) Coastal Zone Management Act of 1972, as amended;

(4) Endangered Species Act of 1973, as amended;

(5) Marine Protection, Research and Sanctuaries Act of 1972, as amended;

(6) Cultural Resources Acts;

(7) Executive Order 11988, Flood Plain Management, 24 May 1977;

(8) Executive Order 11990, Protection of Wetlands, 24 May 1977;

(9) Analysis of Impacts on Prime and Unique Farmlands.

A formal scoping meeting has not been scheduled. The need for a scoping meeting will be determined by the nature and extent of comments received in our scoping letter. As previously stated, the scoping letter will be issued in August 1989. The DEIS is scheduled to be made available to the public in September 1990.

Dated: July 20, 1989.

Charles E. Cowan,

Colonel, Corps of Engineers Commanding.

[FR Doc. 89–18051 Filed 8–1–89; 8:45 am]

BILLING CODE 3710-AR-M

DEPARTMENT OF ENERGY

Floodplain/Wetlands Involvement Notification for Proposed Remedial Action at the Grand Junction Projects Office Site, Grand Junction, CO

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of floodplain/wetlands involvement and opportunity for public comment.

SUMMARY: The U.S. Department of Energy (DOE) proposes to conduct remedial action in the Gunnison River Floodplain at the Grand Junction Projects Office Site where an Atomic Energy Commission pilot uranium mill was formerly located in Grand Junction, Colorado. Grand Junction is located in the west central portion of Colorado in the center of Mesa County. The site will be cleaned up in accordance with the requirements of the comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended. The proposed remedial action entails removing all contaminated material totaling 81,500 cubic yards, of which 33,400 cubic yards lie within the Gunnison River floodplain. These materials would be hauled to the State Repository at the former Climax Uranium Company Uranium Mill Site in Grand Junction. Contaminated material from the Climax Mill and the State Repository will be permanently stabilized at a disposal site selected by DOE under authority of the Uranium Mill Tailings Radiation Control Act. In accordance with DOE regulations for compliance with floodplain/wetlands environmental review requirements (10 CFR 1022), DOE will include a floodplain/wetlands assessment in the Final Remedial Investigation/Feasibility Study (RI/FS) being prepared for the proposed remedial action. The RI/FS will address disposal of the contaminated material at alternative offsite locations and compare these alternatives to onsite stabilization or performing no remedial action: This proposed action will result in no net loss of wetlands. Further information is available from the DOE at the address shown below.

Comments are due on or before August 18, 1989, and should be sent to the following address: U.S. Department of Energy, Office of Defense Waste and Transportation Management, DP–12, Washington, DC 20545.

All comments should refer to the project title,

Issued at Washington, DC, this 23 day of July 1989, for the United States Department of Energy.

John L. Meinhardt,

Acting Assistant Secretary for Defense Programs.

[FR Doc. 89–18053 Filed 8–1–89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 89–37–NG]

Vesgas Co.; Application To Import Natural Gas From Canada and To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for blanket authorizations to import natural gas from Canada and to export natural gas to Mexico

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 22, 1989, of an application filed by Vesgas Company (Vesgas) for blanket authorizations to import up to 36,500 MMcf of natural gas from Canada and to export up to 29,200 MMcf of natural gas to Mexico. The application requests that the authorizations be approved for separate two-year terms beginning on the dates that the first import and the first export commence. Vesgas intends to utilize existing pipeline facilities for transportation of the volumes to be imported and exported, and indicates it will submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, requests for additional procedures and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than September 1, 1989.

FOR FURTHER INFORMATION:

William C. Daroff, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9516

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Vesgas, a Colorado corporation, with its principal place of business in Denver, Colorado, proposes to import and export natural gas either for its own account or as a broker or agent on behalf of others. According to the application, the authority requested by Vesgas contemplates the importation of supplies of Canadian natural gas for consumption in U.S. markets, and the exportation of domestically produced natural gas for consumption in Mexican markets. Vesgas requests authority to import gas using existing facilities at any point on the international boundary of the United States and Canada. The applicant also requests authority to export gas at existing pipeline facilities in Texas and Arizona at the international boundary of the United States and Mexico.

According to Vesgas, the specific terms of each import and export transaction would be negotiated on an individual basis, including price and volumes, to reflect market conditions.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import and export authority. The applicant asserts that this import/export arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for

BEST COPY AVAILABLE

any decision on the application must, however, file a motion to intervene or notice of the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., e.d.t., September 1, 1989.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procesures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties under this notice, in accordance with 10 CFR Section 590.316.

A copy of the Vesgas application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 19, 1989.

Constance L. Buckley,

Acting Deputy Assistant Secretary for Fuels Programs, Fossil Energy.

[FR Doc. 89–18054 Filed 8–1–89; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. FE C&E 89–15; Certification Notice–41]

Filing Certification of Compliance; Coal Capability of New Electric Powerplant

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as to base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Two owners and operators of proposed new electric base load powerplants have filed self certifications in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following companies have filed self certifications:

Name	Date received	Type of facility	Megawatt capacity	Location
Cogen Energy Systems, Inc., Salt Lake City, UT	07–24–89	Combined Cycle Cogen	45	Sandy, UT.
Virginia Electric and Power Co., Glen Allen, VA	07–17–89	Simple Cycle	[1] 348	Surry County, VA.

[1] The four (4) turbines presently are rated at 85 megawatts each but will be uprated to 87 megawatts each.

Amendments to the FUA on May 21, 1987, (Public Law 100–42) altered the general prohibitions to include only new electric base load powerplants and to provide for self certification procedure.

Issued in Washington, DC on July 27, 1989.

Constance L. Buckley,

Acting Deputy Assistant Secretary for Fuels Programs Office of Fossil Energy.

[FR Doc. 89–18055 Filed 8–1–89; 8:45am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ST89–3742–000 through ST89–4076–000]

Transcontinental Gas Pipe Corp.; Self-Implementing Transactions

July 27, 1989.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to section 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a motion to intervene with the Secretary of the Commission on or before August 11, 1989.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.342 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

A "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines—pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's Regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines—pursuant to § 284.303 of the Commission's Regulations.

Lois D. Cashell,

Secretary.

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 Subpart	Expiration date [2]	Transportation rate (cents/MMBTU)
ST89–3742	Transcontinental Gas Pipe Line Corp	Tenngasco Corp	06–01–89	G–S		
ST89–3743	Transcontinental Gas Pipe Line Corp	PSI, Inc	06–01–89	G–S		
ST89–3744	Transcontinental Gas Pipe Line Corp	Citizens Gas Supply Corp	06–01–89	G–S		
ST89–3745	Transcontinental Gas Pipe Line Corp	Chevron U.S.A., Inc	06–01–89	G–S		
ST89–3746	Transcontinental Gas Pipe Line Corp	Public Service Electric and Gas Co	06–01–89	B		
ST89–3747	Transcontinental Gas Pipe Line Corp	Pentex Pipeline Co., Inc	06–01–89	B		
ST89–3748	El Paso Natural Gas Co	Northern States Power Co	06–01–89	B		
ST89–3749	United Gas Pipe Line Co	American Central Gas Ces., Inc	06–01–89	G–S		
ST89–3750	United Gas Pipe Line Co	Texaco Gas Marketing, Inc	06–01–89	G–S		
ST89–3751	United Gas Pipe Line Co	Seagull Marketing Services, Inc	06–01–89	G–S		
ST89–3752	Louisiana Resources Co	Florida Gas Transmission Co	06–01–89	C	10–29–89	26.43
ST89–3753	Questar Pipeline Co	Duncan Oil, Inc	06–02–89	G–S		
ST89–3754	Western Gas Supply Co	Northwest Pipeline Corp	06–02–89	C		
ST89–3755	Western Gas Supply Co	El Paso Natural Gas Co	06–02–89	C		
ST89–3756	Williams Natural Gas Co	American Central Gas Marketing Co	06–02–89	G–S		
ST89–3757	Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	06–02–89	B		
ST89–3758	ARKLA Energy Resources	Pontchartrain Natural Gas System	06–02–89	B		
ST89–3759	El Paso Natural Gas Co	B & A Pipeline Co	06–02–89	B		
ST89–3760	United Gas Pipe Line Co	Natural Gas Pipeline Co. of America	06–02–89	G		
ST89–3761	United Gas Pipe Line Co	Laser Marketing Co	06–02–89	G–S		
ST89–3762	Northwest Pipeline Corp	Columbia Aluminum Corp	06–02–89	G–S		
ST89–3763	Northwest Pipeline Corp	Northwest Natural Gas Co	06–02–89	G–S		
ST89–3764	Northwest Pipeline Corp	Koch Hydrocarbons Co	06–02–89	G–S		
ST89–3765	Enogex Inc	Phillips Gas Pipeline Co	06–02–89	C	10–30–89	43.57
ST89–3766	Natural Gas Pipeline Co. of America	Lear Gas Transmission Co	06–02–89	B		
ST89–3767	Natural Gas Pipeline Co. of America	Enron Industrial Natural Gas Co	06–02–89	B		
ST89–3768	Tennessee Gas Pipeline Co	Valley Resources, Inc	06–02–89	B		
ST89–3769	Texas Eastern Transmission Corp	FRM, Inc	06–02–89	B		
ST89–3770	Valero Transmission, L.P	El Paso Natural Gas Co	06–02–89	C		
ST89–3771	Valero Transmission, L.P	El Paso Natural Gas Co	06–02–89	C		
ST89–3772	Valero Transmission, L.P	Valero Interstate Transmission Co	06–02–89	C		
ST89–3773	Valero Transmission, L.P	Texas Eastern Transmission Corp	06–02–89	C		
ST89–3774	Valero Transmission, L.P	Transwestern Pipeline Co	06–02–89	C		
ST89–3775	Kentucky West Virginia Gas Co	Auxier Road Gas Co	06–05–89	B		
ST89–3776	Delhi Gas Pipeline Corp	Northern Indiana Public Service Co	06–05–89	C	11–02–89	61.70
ST89–3777	Gas Co. of NM (Div. Public Serv. Co. NM)	Southern California Gas Co	06–05–89	G–HS		
ST89–3778	United Gas Pipe Line Co	OXY U.S.A., Inc	06–05–89	G–S		
ST89–3779	United Gas Pipe Line Co	Ergon Refining Inc	06–05–89	G–S		
ST89–3780	Transcontinental Gas Pipe Line Corp	United Cities Gas Co., SC Div	06–05–89	B		
ST89–3781	Transcontinental Gas Pipe Line Corp	City of Union	06–05–89	B		
ST89–3782	Natural Gas Pipeline Co. of America	Phillips Petroleum Co	06–05–89	G–S		
ST89–3783	Panhandle Eastern Pipe Line Co	National Steel Corp	06–05–89	G–S		
ST89–3784	Panhandle Eastern Pipe Line Co	Anadarko Trading Co	06–05–89	G–S		
ST89–3785	Panhandle Eastern Pipe Line Co	Archer Daniels Midland Co	06–05–89	G–S		

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 Subpart	Expiration date [2]	Transportation rate (cents/MMBTU)
ST89-3786	Panhandle Eastern Pipe Line Co	Access Energy Pipeline Corp	06-05-89	B		
ST89-3787	Panhandle Eastern Pipe Line Co	Access Energy Pipeline Corp	06-05-89	B		
ST89-3788	Panhandle Eastern Pipe Line Co	Kansas Power and Light Co	06-05-89	B		
ST89-3789	Panhandle Eastern Pipe Line Co	Consumers Power Co	06-05-89	B		
ST89-3790	Texas Eastern Transmission Corp	East Ohio Gas Co	06-05-89	B		
ST89-3791	Texas Eastern Transmission Corp	Providence Gas Co	06-05-89	B		
ST89-3792	Texas Eastern Transmission Corp	Commonwealth Gas Services	06-05-89	B		
ST89-3793	Texas Eastern Transmission Corp	Boston Gas Co	06-05-89	B		
ST89-3794	Texas Eastern Transmission Corp	Corning Natural Gas Corp	06-05-89	B		
ST89-3795	Texas Eastern Transmission Corp	Steller Pipeline Co	06-05-89	B		
ST89-3796	Transcontinental Gas Pipe Line Corp	Southwestern Virginia Gas Co	06-05-89	B		
ST89-3797	Transcontinental Gas Pipe Line Corp	Blacksburg-Natural Gas System	06-05-89	B		
ST89-3798	Transcontinental Gas Pipe Line Corp	City of Greer	06-05-89	B		
ST89-3799	Transcontinental Gas Pipe Line Corp	City of Fountain Inn	06-05-89	B		
ST89-3800	Transcontinental Gas Pipe Line Corp	City of Kings Mountain	06-05-89	B		
ST89-3801	Texas Eastern Transmission Corp	ELF Aquitaine, Inc	06-06-89	G-S		
ST89-3802	Texas Eastern Transmission Corp	Catamount Natural Gas, Inc	06-06-89	G-S		
ST89-3803	ONG Transmission Co	Phillips Gas Pipeline Co	06-06-89	C	11-03-89	24.32
ST89-3804	Williams Natural Gas Co	Union Pacific Resources Co	06-06-89	G-S		
ST89-3805	ANR Pipeline Co	PSI, Inc	06-06-89	G-S		
ST89-3806	ANR Pipeline Co	Michigan Gas Utilities Co	06-06-89	B		
ST89-3807	ANR Pipeline Co	Trinity Pipeline Co	06-06-89	G-S		
ST89-3808	ANR Pipeline Co	Northern Illinois Gas Co	06-06-89	B		
ST89-3809	ANR Pipeline Co	Panhandle Trading Co	06-06-89	G-S		
ST89-3810	ANR Pipeline Co	Northern Indiana Public Service Co	06-06-89	B		
ST89-3811	ANR Pipeline Co	Michigan Consolidated Gas Co	06-06-89	B		
ST89-3812	ANR Pipeline Co	Access Energy Pipeline Co	06-06-89	B		
ST89-3813	ANR Pipeline Co	Access Energy Pipeline Co	06-06-89	B		
ST89-3814	ANR Pipeline Co	Michigan Gas Utilities Co	06-06-89	B		
ST89-3815	Northwest Pipeline Corp	Apache Corp	06-06-89	G-S		
ST89-3816	Tennessee Gas Pipeline Co	Delta Pipeline Co	06-07-89	G-S		
ST89-3817	Natural Gas Pipeline Co. of America	Monument Pipeline Co	06-07-89	B		
ST89-3818	ANR Pipeline Co	Northern Illinois Gas Co	06-07-89	B		
ST89-3819	Transcontinental Gas Pipe Line Corp	City of Covington	06-07-89	B		
ST89-3820	Northwest Pipeline Corp	Bonneville Fuels Corp	06-07-89	G-S		
ST89-3821	Transcontinental Gas Pipe Line Corp	City of Linden	06-07-89	B		
ST89-3822	Transcontinental Gas Pipe Line Corp	City of Lawrenceville	06-07-89	B		
ST89-3823	Transcontinental Gas Pipe Line Corp	East Central Alabama Gas District	06-07-89	B		
ST89-3824	Transcontinental Gas Pipe Line Corp	City of Hartwell	06-07-89	B		
ST89-3825	Transcontinental Gas Pipe Line Corp	City of Royston	06-07-89	B		
ST89-3826	Transcontinental Gas Pipe Line Corp	City of Madison	06-07-89	B		
ST89-3827	Transcontinental Gas Pipe Line Corp	City of Social Circle	06-07-89	B		
ST89-3828	Transcontinental Gas Pipe Line Corp	City of Sugar Hill	06-07-89	B		
ST89-3829	Transcontinental Gas Pipe Line Corp	City of Toccoa	06-07-89	B		
ST89-3830	Transcontinental Gas Pipe Line Corp	City of Elberton	06-07-89	B		
ST89-3831	Transcontinental Gas Pipe Line Corp	City of Monroe	06-07-89	B		
ST89-3832	Transcontinental Gas Pipe Line Corp	Tri-County Natural Gas Authority	06-07-89	B		
ST89-3833	Transcontinental Gas Pipe Line Corp	City of Bowman	06-07-89	B		
ST89-3834	Transcontinental Gas Pipe Line Corp	City of Buford	06-07-89	B		
ST89-3835	Transcontinental Gas Pipe Line Corp	City of Commerce	06-07-89	B		
ST89-3836	Transcontinental Gas Pipe Line Corp	City of Winder	06-07-89	B		
ST89-3837	Transcontinental Gas Pipe Line Corp	Public Service Co. of N. Carolina	06-07-89	B		
ST89-3838	Transcontinental Gas Pipe Line Corp	United Cities Gas Co	06-07-89	B		
ST89-3839	Transcontinental Gas Pipe Line Corp	Baltimore Gas and Electric Co	06-07-89	B		
ST89-3840	Transcontinental Gas Pipe Line Corp	Valero Transmission, L.P	06-07-89	B		
ST89-3841	Transcontinental Gas Pipe Line Corp	City of Rockford	06-07-89	B		
ST89-3842	Transcontinental Gas Pipe Line Corp	City of Alexander City	06-07-89	B		
ST89-3843	Northern Natural Gas Co	Superior Natural Gas Corp	06-07-89	G-S		
ST89-3844	ONG Transmission Co	ANR Pipeline Co	06-08-89	C	11-05-89	24.32
ST89-3845	Natural Gas Pipeline Co. of America	North Shore Gas Co	06-08-89	B		
ST89-3846	Natural Gas Pipeline Co. of America	AMOCO Production Co	06-08-89	G-S		
ST89-3847	Western Gas Supply Co	El Paso Natural Gas Co	06-08-89	C		
ST89-3848	BP Gas Transmission Co	ANR Pipeline Co., et al	06-09-89	C	11-06-89	13.70
ST89-3849	Colorado Interstate Gas Co	Grace Petroleum Corp	06-08-89	G-S		
ST89-3850	Colorado Interstate Gas Co	Williams Gas Marketing Co	06-08-89	G-S		
ST89-3851	Colorado Interstate Gas Co	NAGASCO Marketing, Inc	06-08-89	G-S		
ST89-3852	Texas Eastern Transmission Corp	Public Service Electric and Gas Co	06-08-89	B		
ST89-3853	Northern Natural Gas Co	Trinity Pipeline, Inc	06-08-89	G-S		
ST89-3854	Stingray Pipeline Co	Eagle Natural Gas Co	06-09-89	K-S		
ST89-3855	Natural Gas Pipeline Co. of America	Illinois Power Co	06-09-89	B		
ST89-3856	Natural Gas Pipeline Co. of America	Total Minatome Corp	06-09-89	G-S		
ST89-3857	Natural Gas Pipeline Co. of America	Delhi Gas Pipeline Corp	06-09-89	B		
ST89-3858	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	06-09-89	B		
ST89-3859	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	06-09-89	B		
ST89-3860	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	06-09-89	B		
ST89-3861	Natural Gas Pipeline Co. Of America	Iowa Electric Light & Power Co	06-09-89	B		
ST89-3862	Tennessee Gas Pipeline Co	Coronado Transmission Co	06-12-89	B		
ST89-3863	Tennessee Gas Pipeline Co	North Alabama Gas District	06-12-89	B		
ST89-3864	Seagull Interstate Corp	Enron Industrial Natural Gas Co	06-12-89	B		

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 Subpart	Expiration date [2]	Transportation rate (cents/MMBTU)
ST89-3865	El Paso Natural Gas Co	BP Gas Inc	06-12-89	G-S		
ST89-3866	Northwest Pipeline Corp	Phillips Gas Marketing Co	06-12-89	G-S		
ST89-3867	Natural Gas Pipeline Co. of America	Illinois Power Co	06-12-89	B		
ST89-3868	Natural Gas Pipeline Co. of America	Iowa Electric Light & Power Co	06-12-89	B		
ST89-3869	Natural Gas Pipeline Co. of America	Wisconsin Light & Power Co	06-12-89	B		
ST89-3870	Texas Eastern Transmission Corp	Hope Gas, Inc	06-12-89	B		
ST89-3871	Texas Eastern Transmission Corp	B & A Pipeline Co	06-12-89	B		
ST89-3872	Texas Eastern Transmission Corp	Valero Transmission, L.P	06-12-89	B		
ST89-3873	Texas Eastern Transmission Corp	Long Island Lighting Co	06-12-89	B		
ST89-3874	Texas Eastern Transmission Corp	Bay State Gas Co	06-12-89	B		
ST89-3875	Texas Eastern Transmission Corp	Providence Gas Co	06-12-89	B		
ST89-3876	Columbia Gulf Transmission Co	Tennessee Gas Pipeline Co., et al	06-12-89	G		
ST89-3877	ANR Pipeline Co	Southeastern Michigan Gas Co	06-12-89	B		
ST89-3878	ANR Pipeline Co	BP Gas Transmission Co	06-12-89	B		
ST89-3879	ANR Pipeline Co	Tymco Oil Co	06-12-89	G-S		
ST89-3880	ANR Pipeline Co	Llano, Inc	06-12-89	B		
ST89-3881	ANR Pipeline Co	BP Gas Transmission Co	06-12-89	B		
ST89-3882	Transwestern Pipeline Co	Dolphin Energy, Inc	06-13-89	G-S		
ST89-3883	Northern Natural Gas Co	City of Preston, et al	06-13-89	B		
ST89-3884	El Paso Natural Gas Co	Hadson Gas Systems, Inc	06-13-89	G-S		
ST89-3885	El Paso Natural Gas Co	V.H.C. Gas System, L.P	06-13-89	G-S		
ST89-3886	ONG Transmission Co	Ozark Gas Transmission System	06-14-89	C	11-11-89	24.32
ST89-3887	Panhandle Eastern Pipe Line Co	OXY U.S.A., Inc	06-14-89	G-S		
ST89-3888	Panhandle Eastern Pipe Line Co	Chrysler Motors Corp	06-14-89	G-S		
ST89-3889	Northwest Pipeline Corp	Williamette Industries, Inc	06-14-89	G-S		
ST89-3890	Northwest Pipeline Corp	Columbus Energy Corp	06-14-89	G-S		
ST89-3891	Panhandle Eastern Pipe Line Co	Southeastern Michigan Gas Co	06-14-89	B		
ST89-3892	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	06-15-89	B		
ST89-3893	Natural Gas Pipeline Co. of America	Brooklyn Interstate Natural Gas Corp	06-15-89	G-S		
ST89-3894	Natural Gas Pipeline Co. of America	Wisconsin Southern Gas Co., Inc	06-15-89	B		
ST89-3895	El Paso Natural Gas Co	Gas Co. of NM (Div. Public Serv. Co. NM)	06-15-89	B		
ST89-3896	El Paso Natural Gas Co	Independents Gas Services	06-15-89	G-S		
ST89-3897	Transcontinental Gas Pipe Line Corp	City of Bessemer City	06-15-89	B		
ST89-3898	United Gas Pipe Line Co	Texaco Gas Marketing, Inc	06-15-89	G-S		
ST89-3899	Northern Natural Gas Co	Tamarack Energy, Inc	06-15-89	G-S		
ST89-3900	Northern Natural Gas Co	Cabot Energy Marketing Corp	06-15-89	G-S		
ST89-3901	Northern Natural Gas Co	United Texas Transmission Co	06-15-89	B		
ST89-3902	Northern Natural Gas Co	West Texas Gas, Inc	06-15-89	B		
ST89-3903	Cavallo Pipeline Co	Enron Industrial Natural Gas Co	06-15-89	C		
ST89-3904	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co	06-15-89	B		
ST89-3905	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	06-15-89	B		
ST89-3906	Southern Natural Gas Co	Enron Gas Marketing, Inc	06-15-89	G-S		
ST89-3907	Southern Natural Gas Co	Texaco, Inc	06-15-89	G-S		
ST89-3908	Southern Natural Gas Co	South Georgia Natural Gas Co	06-15-89	G-S		
ST89-3909	K N Energy, Inc	Williams Gas Co	06-16-89	B		
ST89-3910	Transcontinental Gas Pipe Line Corp	City of Danville	06-16-89	B		
ST89-3911	Transcontinental Gas Pipe Line Corp	City of Laurens	06-16-89	B		
ST89-3912	Transcontinental Gas Pipe Line Corp	Pennsylvania Gas and Water Co	06-16-89	B		
ST89-3913	Texas Gas Transmission Corp	Western Kentucky Gas Co	06-16-89	B		
ST89-3914	Texas Gas Transmission Corp	Western Kentucky Gas Co	06-16-89	B		
ST89-3915	Texas Gas Transmission Corp	Enron Gas Marketing, Inc	06-16-89	G-S		
ST89-3916	Texas Gas Transmission Corp	City of Lafayette	06-16-89	B		
ST89-3917	Texas Gas Transmission Corp	CNG Transmission Corp	06-16-89	G		
ST89-3918	Texas Gas Transmission Corp	Enron Gas Marekting, Inc	06-16-89	G-S		
ST89-3919	Columbia Gulf Transmission Co	Niagara Mohawk Power Corp	06-16-89	B		
ST89-3920	Columbia Gulf Transmission Co	Virginia Natural Gas Co	06-16-89	B		
ST89-3921	Columbia Gulf Transmission Co	Exxon Corp	06-16-89	G-S		
ST89-3922	Columbia Gulf Transmission Co	Exxon Corp	06-16-89	G-S		
ST89-3923	Columbia Gulf Transmission Co	Hunt Oil Co	06-16-89	G-S		
ST89-3924	Columbia Gulf Transmission Co	New York State Electric and Gas Co	06-16-89	B		
ST89-3925	Columbia Gulf Transmission Co	Mobil Natural Gas, Inc	06-16-89	G-S		
ST89-3926	Texas Eastern Transmission Corp	Pennsylvania Gas and Water Co	06-16-89	B		
ST89-3927	Texas Eastern Transmission Corp	Baltimore Gas and Electric Co	06-16-89	B		
ST89-3928	Tennessee Gas Pipeline Co	Consolidated Gas Trans. Corp., et al	06-16-89	G		
ST89-3929	Tennessee Gas Pipeline Co	Meth Corp	06-16-89	G-S		
ST89-3930	Texas Gas Transmission Corp	Westvaco Corp	06-19-89	G-S		
ST89-3931	Texas Gas Transmission Corp	Texaco Gas Marketing, Inc	06-19-89	G-S		
ST89-3932	Texas Gas Transmission Corp	Pennzoil Products Co	06-19-89	G-S		
ST89-3933	Texas Gas Transmission Corp	Borden, Inc	06-19-89	G-S		
ST89-3934	Tennessee Gas Pipeline Co	City of Holyoke Gas and Electric Dept	06-19-89	B		
ST89-3935	Tennessee Gas Pipeline Co	Westfield Gas & Electric Light Dept	06-19-89	B		
ST89-3936	Valero Transmission, L.P	Natural Gas Pipeline Co. of America	06-19-89	C		
ST89-3937	Valero Interstate Transmission Co	Valero Transmission, L.P	06-19-89	B		
ST89-3938	Tennessee Gas Pipeline Co	CNG Transmission Corp	06-19-89	G		
ST89-3939	Transwestern Pipeline Co	V.H.C. Gas System, L.P	06-19-89	G-S		
ST89-3940	United Gas Pipe Line Co	Amalgamated Pipeline Co	06-19-89	B		
ST89-3941	El Paso Natural Gas Co	Meridian Oil Trading, Inc	06-19-89	G-S		
ST89-3942	El Paso Natural Gas Co	Cabot Energy Marketing Corp	06-19-89	G-S		
ST89-3943	El Paso Natural Gas Co	Union Oil Co. of CA	06-19-89	G-S		

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 Subpart	Expiration date[2]	Transportation rate (cents/MMBTU)
ST89-3944	Northern Natural Gas Co	NGP Pipeline Co	06-16-89	B		
ST89-3945	Northern Natural Gas Co	Centran Corp	06-19-89	G-S		
ST89-3946	Columbia Gulf Transmission Co	New Orleans Public Service, Inc	06-19-89	B		
ST89-3947	Columbia Gulf Transmission Co	Philbro Distributors Corp	06-19-89	G-S		
ST89-3948	Columbia Gulf Transmission Co	Bridgeline Gas Distribution Co	06-19-89	B		
ST89-3949	Enogex Inc	Peoples Natural Gas Co	06-19-89	C	11-16-89	43.57
ST89-3950	Louisiana Resources Co	Anrpipeline Co., et al	06-20-89	C	11-17-89	26.43
ST89-3951	Natural Gas Pipeline Co. of America	Midcon Marketing Corp	06-20-89	G-S		
ST89-3952	South Georgia Natural Gas Co	City of Jasper	06-20-89	B		
ST89-3953	ANR Pipeline Co	Consolidated Fuel Corp	06-20-89	G-S		
ST89-3954	United Gas Pipe Line Co	Excel Resources, Inc	06-20-89	B		
ST89-3955	United Gas Pipe Line Co	Tenngasco Corp	06-20-89	G-S		
ST89-3956	Williston Basin Interstate P/L Co	MGTC, Inc	06-20-89	B		
ST89-3957	Williston Basin Interstate P/L Co	Coastal States Gas Transmission Co	06-20-89	B		
ST89-3958	Williston Basin Interstate P/L Co	Quivira Gas Co	06-20-89	B		
ST89-3959	Williston Basin Interstate P/L Co	Associated Intrastate Pipeline Co	06-20-89	B		
ST89-3960	Williston Basin Interstate P/L Co	MGTC, Inc	06-20-89	B		
ST89-3961	Williston Basin Interstate P/L Co	Quivira Gas Co	06-20-89	B		
ST89-3962	Williston Basin Interstate P/L Co	Montana-Dakota Utilities Co	06-20-89	B		
ST89-3963	Williston Basin Interstate P/L Co	Wyoming Gas Co	06-20-89	B		
ST89-3964	Williston Basin Interstate P/L Co	Longhorn Pipeline Co	06-20-89	B		
ST89-3965	Algonquin Gas Transmission Co	Southern Connecticut Gas Co	06-21-89	B		
ST89-3966	ONG Transmission Co	Southern California Gas Co	06-21-89	C	11-18-89	24.32
ST89-3967	Natural Gas Pipeline Co. of America	Total Minatome Corp	06-21-89	G-S		
ST89-3968	Panhandle Eastern Pipe Line Co	Consolidated Fuel Corp	06-21-89	G-S		
ST89-3969	Panhandle Eastern Pipe Line Co	Hadson Gas Systems, Inc	06-21-89	G-S		
ST89-3970	Northern Natural Gas Co	Sonat Marketing Co	06-23-89	G-S		
ST89-3971	United Gas Pipe Line Co	Laser Marketing Co	06-23-89	G-S		
ST89-3972	United Gas Pipe Line Co	Gulf States Utilities	06-23-89	G-S		
ST89-3973	United Gas Pipe Line Co	Kogas Inc	06-23-89	G-S		
ST89-3974	United Gas Pipe Line Co	Neches Gas Distribution Co	06-23-89	B		
ST89-3975	Trunkline Gas Co	Consumers Gas Marketing, Inc	06-23-89	G-S		
ST89-3976	Trunkline Gas Co	Conoco, Inc	06-23-89	G-S		
ST89-3977	Trunkline Gas Co	Natural Gas Clearinghouse, Inc	06-23-89	G-S		
ST89-3978	Trunkline Gas Co	Natural Gas Clearinghouse, Inc	06-23-89	G-S		
ST89-3979	Trunkline Gas Co	Semco Energy Services, Inc	06-23-89	G-S		
ST89-3980	Trunkline Gas Co	Gastrak Corp	06-23-89	G-S		
ST89-3981	Trunkline Gas Co	Tejas Power Corp	06-23-89	G-S		
ST89-3982	Trunkline Gas Co	Union Electric Co	06-23-89	B		
ST89-3983	Arkla Energy Resources	Cornerstone Natural Gas Co	06-23-89	B		
ST89-3984	Arkla Energy Resources	Cabot Transmission Corp	06-23-89	B		
ST89-3985	ANR Pipeline Co	Stellar Pipeline Co	06-23-89	B		
ST89-3986	Panhandle Eastern Pipe Line Co	Union Gas Limited	06-23-89	B		
ST89-3987	Panhandle Eastern Pipe Line Co	Consumers Gas Marketing, Inc	06-23-89	G-S		
ST89-3988	Transcontinental Gas Pipe Line Corp	TPC Pipeline, Inc	06-23-89	B		
ST89-3989	ANR Pipeline Co	Wisconsin Gas Co	06-25-89	B		
ST89-3990	Arkansas Oklahoma Gas Corp	Arkla Energy Resources	06-26-89	G-HT		
ST89-3991	Monterey Pipeline Co	Southern Natural Gas Co	06-26-89	C	11-23-89	24.40
ST89-3992	Transcontinental Gas Pipe Line Corp	Consolidated Edison Co. of NY, Inc	06-27-89	B		
ST89-3993	Tennessee Gas Pipeline Co	Ultramar Oil and Gas Ltd	06-27-89	G-S		
ST89-3994	Colorado Interstate Gas Co	Southern California Gas Co	06-26-89	B		
ST89-3995	Columbia Gas Transmission Corp	Endevco Oil and Gas Co	06-22-89	G-S		
ST89-3996	Tennessee Gas Pipeline Co	Graham Energy Marketing Co	06-23-89	G-S		
ST89-3997	Tennessee Gas Pipeline Co	Yuma Gas Corp	06-26-89	G-S		
ST89-3998	Northern Natural Gas Co	General Atlantic Resources, Inc	06-26-89	G-S		
ST89-3999	Columbia Gulf Transmission Co	New Orleans Public Service, Inc	06-26-89	B		
ST89-4000	Columbia Gulf Transmission Co	Louisiana Resources Co	06-26-89	B		
ST89-4001	Transcontinental Gas Pipe Line Corp	Union Pacific Resources Co	06-26-89	G-S		
ST89-4002	Stingray Pipeline Co	Louisiana Gas Marketing Co	06-26-89	B		
ST89-4003	Stingray Pipeline Co	Eastex Gas Transmission Co	06-26-89	B		
ST89-4004	Stingray Pipeline Co	Gulf Ohio Corp	06-26-89	K-S		
ST89-4005	Stingray Pipeline Co	Koch Hydrocarbons	06-26-89	K-S		
ST89-4006	Stingray Pipeline Co	Superior Natural Gas Corp	06-26-89	K-S		
ST89-4007	United Gas Pipe Line Co	Ergon Refining, Inc	06-27-89	G-S		
ST89-4008	CNG Transmission Corp	Pennzoil Products Co	06-27-89	G-S		
ST89-4009	CNG Transmission Corp	Empire Natural Gas Corp	06-27-89	G-S		
ST89-4010	CNG Transmission Corp	Energy Buyers Service Corp	06-27-89	G-S		
ST89-4011	CNG Transmission Corp	Energy Buyers Service Corp	06-27-89	G-S		
ST89-4012	CNG Transmission Corp	Aluminum Co. of America	06-27-89	G-S		
ST89-4013	CNG Transmission Corp	Endevco Marketing Co	06-27-89	G-S		
ST89-4014	CNG Transmission Corp	Stone Resource & Energy Corp	06-27-89	G-S		
ST89-4015	CNG Transmission Corp	IESCO	06-27-89	G-S		
ST89-4016	Lone Star Gas Co	Northern Illinois Gas Co	06-28-89	C		
ST89-4017	Questar Pipeline Co	Stauffer Wyoming Pipeline Co	06-28-89	G-S		
ST89-4018	Tennessee Gas Pipeline Co	Philbro Distributors Corp	06-28-89	G-S		
ST89-4019	Natural Gas Pipeline Co. of America	Marathon Oil Co	06-28-89	G-S		
ST89-4020	Natural Gas Pipeline Co. of America	Enogex Service Corp	06-28-89	G-S		
ST89-4021	K N Energy, Inc	Illinois Power Co	06-28-89	B		
ST89-4022	K N Energy, Inc	Northwestern Public Service Co	06-28-89	B		

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284 Subpart	Expiration date[2]	Transportation rate (cents/MMBTU)
ST89-4023	K N Energy, Inc	Golden Gas Energies, Inc	06-28-89	B		
ST89-4024	K N Energy, Inc	Northern Illinois Gas Co	06-28-89	B		
ST89-4025	K N Energy, Inc	Associated Intrastate Pipeline Co	06-28-89	B		
ST89-4026	K N Energy, Inc	Peoples Natural Gas Co	06-28-89	B		
ST89-4027	K N Energy, Inc	Northern Intrastate Pipeline Co	06-28-89	B		
ST89-4028	K N Energy, Inc	Northwestern Public Service Co	06-28-89	B		
ST89-4029	Valley Gas Transmission, Inc	Gulf Energy Marketing Co	06-29-89	G-S		
ST89-4030	United Gas Pipe Line Co	Graham Energy Marketing Co	06-29-89	G-S		
ST89-4031	United Gas Pipe Line Co	Apache Transmission Corp	06-29-89	B		
ST89-4032	BP Gas Transmission Co	ANR Pipeline Co., et al	06-29-89	C	11-26-89	13.70
ST89-4033	Algonquin Gas Transmission Co	Providence Gas Co	06-29-89	B		
ST89-4034	Algonquin Gas Transmission Co	Providence Gas Co	06-29-89	B		
ST89-4035	Algonquin Gas Transmission Co	Providence Gas Co	06-29-89	B		
ST89-4036	Williams Natural Gas Co	Kansas Power and Light Co	06-29-89	G-S		
ST89-4037	Williams Natural Gas Co	Chevron U.S.A., Inc	06-29-89	G-S		
ST89-4038	Williams Natural Gas Co	Reliance Gas Marketing Co	06-29-89	B		
ST89-4039	Williams Natural Gas Co	PSI, Inc	06-29-89	G-S		
ST89-4040	Williams Natural Gas Co	Mountain Iron & Supply Co	06-29-89	G-S		
ST89-4041	Williams Natural Gas Co	Stone Container—Resources & Energy Div	06-29-89	G-S		
ST89-4042	Trunkline Gas Co	City of Greenup	06-29-89	B		
ST89-4043	Trunkline Gas Co	Union Gas Limited	06-29-89	B		
ST89-4044	Trunkline Gas Co	Consumers Gas Co	06-29-89	B		
ST89-4045	Trunkline Gas Co	Unifield Natural Gas Group, L.P	06-29-89	G-S		
ST89-4046	Valero Transmission, L.P	Northern Natural Gas Co	06-29-89	C		
ST89-4048	Natural Gas Pipeline Co. of America	Union Pacific Resources Co	06-29-89	G-S		
ST89-4049	Natural Gas Pipeline Co. of America	ONG Transmission Co	06-29-89	B		
ST89-4050	Panhandle Eastern Pipe Line Co	Union Texas Products Corp	06-29-89	G-S		
ST89-4051	Texas Gas Transmission Corp	United Cities Gas Co	06-29-89	B		
ST89-4052	Texas Gas Transmission Corp	United Cities Gas Co	06-29-89	B		
ST89-4053	Texas Gas Transmission Corp	PSI, Inc	06-29-89	G-S		
ST89-4054	Texas Gas Transmission Corp	Tejas Power Corp	06-29-89	G-S		
ST89-4055	Texas Gas Transmission Corp	TXG Gas Marketing Co	06-29-89	G-S		
ST89-4056	Texas Gas Transmission Corp	Enmark Gas Corp	06-29-89	G-S		
ST89-4057	Texas Gas Transmission Corp	Philbro Distributors Corp	06-29-89	G-S		
ST89-4058	Valero Transmission, L.P	United Gas Pipe Line Co	06-30-89	C		
ST89-4059	Valero Transmission, L.P	El Paso Natural Gas Co	06-30-89	C		
ST89-4060	BP Gas Transmission Co	ANR Pipeline Co., et al	06-30-89	C	11-27-89	13.70
ST89-4061	Natural Gas Pipeline Co. of America	Enron Gas Marketing, Inc	06-30-89	G-S		
ST89-4062	Natural Gas Pipeline Co. of America	Apache Corp	06-30-89	G-S		
ST89-4063	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	06-30-89	B		
ST89-4064	Texas Gas Transmission Corp	Conoco, In	06-30-89	G-S		
ST89-4065	Texas Gas Transmission Corp	Michigan Consolidated Gas Co	06-30-89	B		
ST89-4066	Texas Gas Transmission Corp	Manville Sales Corp	06-30-89	G-S		
ST89-4067	Trunkline Gas Co	Transtate Gas Service Co	06-30-89	G-S		
ST89-4068	Southern Natural Gas Co	City of Denham Springs	06-30-89	G-S		
ST89-4069	Louisiana Resources Co	Louisiana Gas Marketing Co	06-30-89	C	11-27-89	26.43
ST89-4070	Tennessee Gas Pipeline Co	Nashville Gas Co	06-30-89	B		
ST89-4071	Tennessee Gas Pipeline Co	Columbia Gulf Transmission Co	06-30-89	G		
ST89-4072	Gas Transport, Inc	Hope Gas, Inc	06-30-89	B		
ST89-4073	Black Marlin Pipeline Co	Shell Offshore Inc., et al	06-30-89	G-S		
ST89-4074	Tennessee Gas Pipeline Co	National Fuel Gas Supply Corp	06-30-89	G		
ST89-4075	United Gas Pipe Line Co	Arkla Energy Marketing Co	06-30-89	G-S		
ST89-4076	Tennessee Gas Pipeline Co	Equitable Resources Marketing Co	06-30-89	G-S		

[1] Notice of transactions does not constitute a determination that filings comply with Commission regulations in accordance with Order No. 436 (Final Rule and Notice Requesting Supplemental Comments, 50 FR 42,372, 10/18/85).

[2] The Intrastate Pipeline has sought Commission approval of its transportation rate pursuant to section 284.123(B)(2) of the Commission's regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 89-17985 Filed 8-1-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. TM89-14-20-000; TM89-13-20-001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 26, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on July 21, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective May 1, 1989

Second Revised Twenty-eighth Revised Sheet No. 204

Proposed to be effective June 1, 1989

Second Revised Twenty-ninth Revised Sheet No. 204

Proposed to be effective July 1, 1989

Substitute Thirtieth Revised Sheet No. 204

Proposed to be effective August 1, 1989

Alternate Twenty-seventh Revised Sheet No. 205

Seventeenth Revised Sheet No. 211

Algonquin states that pursuant to section 7 of Rate Schedule F-4, it is filing Alternate Twenty-seventh Revised Sheet No. 205 to concurrently track rate changes made by its pipeline supplier, Texas Eastern in the underlying service, as set forth in Texas Eastern's Quarterly PGA filing dated June 30, 1989. The rate changes represents an increase of 46.5 cents per MMBtu in the demand charge and a decrease of 1.20 cents per MMBtu in the commodity charge.

Algonquin states that in a filing dated June 30, 1989 in Docket No. RP89-49-000, Algonquin's pipeline supplier, National Fuel Gas Supply Corporation ("National") motioned to place into effect revised rates for the service

underlying Algonquin's Rate Schedule F–3. Additionally, National filed an Interim PGA also dated June 30, 1989 to revise lower its estimated cost of purchased gas. Algonquin states that it is filing Substitute Thirtieth Revised Sheet No. 204 to concurrently track the rate changes found in National's motion and Interim PGA filings. Substitute Thirtieth Revised Sheet No. 204 represents increases of 29.0 cents per MMBtu in the demand charge, 0.19 cents per MMBtu in the WRQ charge and a decrease of 16.24 cents per MMBtu in the commodity charge.

Furthermore, Algonquin states that it is filing Second Revised Twenty-eighth Revised Sheet No. 204 and Second Revised Twenty-ninth Revised Sheet No. 204 for the sole purpose of correcting a typographical error in the Commodity PSP–II charge which was incorrectly stated as $0.0086 in the original filing of such sheets. The appropriate Commodity PSP–II rate is $0.0080.

Algonquin notes that copies of this filing were served upon the affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–17961 Filed 8–1–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–47–006]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

July 26, 1989.

Take notice that on July 21, 1989, East Tennessee Natural Gas Company (East Tennessee) filed the following tariff sheets to amend Volume No. 1 of its FERC Gas Tariff, effective September 1, 1989:

Fifty-First Revised Sheet No. 4
Seventh Revised Sheet No. 119
Sixth Revised Sheet No. 120
Twelfth Revised Sheet No. 122
Fourth Revised Sheet No. 122A

East Tennessee states that the purpose of this filing is to comply with the directive in the April 5, 1989 letter order in Docket No. RP85–47 that East Tennessee file revised tariffs to reflect AOS rates that include demand charges at an imputed 100 percent load factor and make corresponding adjustments to its PGA clause.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before August 2, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; *Provided, however,* That any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–17962 Filed 8–1–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM89–2–2–001]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

July 26, 1989.

Take notice that on July 20, 1989, East Tennessee Natural Gas Company (East Tennessee) filed Substitute Original Sheet No. 5A to its FERC Gas Tariff to be effective July 1, 1989.

East Tennessee states that the purpose of this filing is to track the revised charges implemented by Tennessee Gas Pipeline Company in Docket No. RP88–191–010 filed July 14, 1989. East Tennessee is flowing these charges to its customers pursuant to Article 30 of its FERC gas tariff.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before August 2, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–17963 Filed 8–1–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM89–9–17–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Tariff

July 26, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 20, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Effective May 1, 1989

Third Substitute Thirteenth Revised Sheet No. 50

Effective June 1, 1989

Substitute Fourteenth Revised Sheet No. 50

Effective August 1, 1989

Second Substitute Fifteenth Revised Sheet No. 50

Texas Eastern states that these sheets are filed pursuant to Section 4.F of Texas Eastern's Rate Schedule SS–2 and Section 4.F of Texas Eastern's Rate Schedule SS–3 which provide for an automatic rate adjustment to flow through any changes in CNG Transmission Corporation's (CNG) Rate Schedule GSS rates which underlie Texas Eastern's Rate Schedule SS–2 and SS–3.

Texas Eastern states that on May 30, 1989 CNG filed tariff sheets revising Rate Schedule GSS rates to be effective May 1, 1989 and June 1, 1989. These tariff sheets were accepted by the Commission on July 17, 1989 in Docket No. RP89–124–002. The May 30 filing was made in compliance with an April 28, 1989 order from the Commission in Docket No. RP89–124. The April 28 order accepted tariff sheets filed by CNG on March 31, 1989, but also required CNG to refile tariff sheets to provide for the accrual of carrying charges beginning on May 1, 1989 associated with take-or-pay costs incurred by CNG. Pursuant to Rate Schedule SS–2 and SS–3 of Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1, any change in CNG's GSS rates are flowed through to Texas Eastern's SS–2 and SS–3 rates. CNG's May 30 filing results in a decrease of $0.0062 in the injection charge of Texas Eastern's SS–2 and SS–3 rates. The attached Schedule A of the filing reflects these calculations tracking the GSS rate changes through Texas Eastern's SS–2 and SS–3 rates effective May 1, 1989.

Texas Eastern states that section 4.F of its Rate Schedules SS–2 and SS–3 states that changes in Texas Eastern's rates which reflect changes in CNG's Rate Schedule GSS rates shall become effective without suspension coinciding with the effective date of the change in CNG's GSS rates. Texas Eastern respectfully requests that the Commission waive any of its rules and regulations necessary to permit the tariff sheets filed herein to become effective on the dates proposed, corresponding with the effective date of the changes in CNG's GSS rates as accepted by the Commission.

Texas Eastern has before the Commission for approval, tariff sheets filed May 22, 1989 in Docket Nos. RP85–177–061, RP88–67–012, and CP88–136–005 and filed June 30, 1989 in Docket No. TQ89–3–17–000. In the event the above listed tariff sheets are not approved or are altered in any way by the Commission's decision, Texas Eastern will refile the above listed tariff sheets to reflect the Commission's decision.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 2, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–17964 Filed 8–1–89; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3523–8]

Stratospheric Ozone Protection Advisory Committee and Request for Candidates

SUMMARY: The Environmental Protection Agency (EPA) is proposing to establish a new Advisory Committee under the Federal Advisory Committee Act (FACA). The committee's purpose would be to provide informed advice on policy and technical issues that relate to domestic and international aspects of the Montreal Protocol on Substances that Deplete the Ozone Layer. The Advisory Committee also will assist the Agency in serving the public interest during the transition to substitutes for ozone depleting chemicals.

At this time, EPA requests nominations of candidates for membership on the Advisory Committee. The membership of the committee will represent a balance of interested persons with diverse perspectives and professional qualifications and experience to contribute to the functions of the Advisory Committee. Members will be drawn from: Business and industry; educational and research institutions; government bodies; non-government and environmental groups; and international organizations.

DATE: Submit nominations of candidates no later than August 31, 1989. Any interested person or organization may submit the names of qualified persons. Suggestions for the list of candidates should be identified by name, occupation, organization, position, address, and telephone number. Candidates will be asked to submit a resume of their background, experience, qualifications and other relevant information as a part of the review process.

ADDRESS: Submit suggestions for the list of candidates to: David F. Lee, Advisory Committee Nominations, Global Change Division (ANR–445), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David F. Lee at the above address, or call 202–475–7497. The Agency will not formally acknowledge or respond to nominations.

SUPPLEMENTARY INFORMATION: The proposed purpose of the Stratospheric Ozone Protection Advisory Committee is to provide advice and counsel to the Assistant Administrator, Office of Air and Radiation, on issues that affect domestic and international activities relating to the Montreal Protocol. As reflected in the Protocol, the scientific evidence strongly supports reductions on a worldwide basis in the use of ozone-depleting chemicals. The Advisory Committee will be a part of EPA's efforts to serve the public interest and to address the global nature of the ozone layer problem. The Advisory Committee will assist the Agency in the consideration of specific technical, science, trade and policy issues.

Proposed Establishment

A Federal agency must comply with requirements of the Federal Advisory Committee Act (FACA) when it establishes or uses a group which includes non-federal members as a source of advice. Under FACA, a non-statutory advisory committee is established only after consultation with the General Services Administration. EPA has prepared a charter and has initiated the requisite consultation process.

Participants

The committee shall not exceed 25 participants; however, meetings will be open to all interested parties. Committee members shall serve two-year terms.

EPA has tentatively identified the following list of possible interests and parties: User and Producer Industries, Public Interest Groups, Federal Government, State Officials, Educational/Research Institutions.

The Advisory Committee shall meet at least twice a year, plus such meetings of subcommittees as the committee deems necessary. No honoraria or salaries are contemplated in association with membership on the Advisory Committee, but compensation for travel and nominal daily expense while attending meetings may be provided.

The Agency intends to hold the initial meeting of the Advisory Committee in early fall of 1989. Suggestions for the list of candidates should be submitted no later than August 31.

Dated: July 27, 1989.

Robert Axelrad,

Acting Director, Office of Atmospheric and Indoor Air Programs.

FR Doc. 89–19060 Filed 8–1–89; 8:45 am]

BILLING CODE 6560–50–M

[PP 4G3047 and PP 5G3217/T580; FRL-3622-9]

Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed temporary tolerances for residues of the herbicide pyridate in or on certain raw agricultural commodities. These renewals were requested by Agrolinz, Inc.

DATES: These temporary tolerances expire May 1, 1990.

FOR FURTHER INFORMATION CONTACT: By mail:

Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the Federal Register of July 27, 1988 (53 FR 28265), stating that temporary tolerances had been established for residues of the herbicide pyridate [0-(6-chloro-3-phenyl-4-pyridazinyl)-S-octylcarbonothioate] derived from its application in or on corn grain, corn silage, and corn fodder at 0.03 part per million (ppm) (PP 4G3047) and in or on peanut nutmeat, peanut hay, and peanut hulls at 0.03 ppm (PP 5G3127).

Agrolinz, Inc., 1755 N. Kirby Parkway, Suite 300, Memphis, TN 38119-4393, has requested a 1-year renewal of the temporary tolerances to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permits 42545-EUP-1 and 42545-EUP-2, which were issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used will not exceed the quantity authorized by the EUP.

2. Agrolinz, Inc., will immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company will also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of EPA or the Food and Drug Administration.

3. This temporary tolerance expires May 1, 1990. Residues remaining in or on the above raw agricultural commodities after expiration of this tolerance will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, provisions of the EUP/temporary tolerance. This temporary tolerance may be revoked if the EUP is revoked or if any scientific data or experience with this pesticide indicate such revocation is necessary to protect the public health.

Authority: 21 U.S.C. 346(j).

Dated: July 6, 1989.

Franklin D. Gee,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-17844 Filed 8-1-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50693; FRL-3623-4]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

239-EUP-115. Extension. Chevron/Valent Chemical Company, 15049 San Pablo Avenue, P.O. Box 4010, Richmond, CA 94804-0010. This experimental use permit allows the use of 240 pounds of the herbicide 1-(carboethoxy)ethyl 5-[2-chloro-4-(trifluoromethyl) phenoxy]-2-nitrobenzoate on 1,200 acres of cotton to evaluate the control of various weeds. The experimental use permit is authorized only in the States of Alabama, Arizona, Arkansas, California, Georgia, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. The experimental use permit is effective from June 2, 1989 to April 1, 1991. A temporary tolerance for residues of the active ingredient in or on cotton has been established. (Larry Schnaubelt, PM 23, Rm. 235, CM#2, (703-557-1830))

279-EUP-117. Issuance. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 3,500 pounds of the herbicide 2-(2-chlorophenyl)methyl-4,4dimethyl-3-isoxazolidinone on 3,500 acres of cotton to evaluate the control of broadleaf weeds. The permit is authorized only in the States of Alabama, Arizona, Arkansas, Florida, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. The experimental use permit is effective from June 12, 1989 to June 12, 1990. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

279-EUP-118. Issuance. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 900 pounds of the herbicide 2-(2-chlorophenyl)methyl-4,4dimethyl-3-isoxazolidinone on 1,800 acres of field corn to evaluate the control of broadleaf weeds. The program is authorized in the States of Alabama, Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and Wyoming. The experimental use permit is effective from June 12, 1989 to June 12, 1990. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

8340-EUP-10. Renewal. Hoechst Celanese Corporation, Route 202-206 North, Somerville, NJ 08876. This experimental use permit allows the use of 2,310 pounds of the herbicide monoammonium 2-amino-4-(hydroxymethylphosphinyl)butanoate on 1,540 acres of soybeans, tree and vine crops, and non-crop uses. The program is authorized in the States of Alabama, Arkansas, California, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, and West Virginia. The experimental use permit was previously effective from January 29, 1988 to January 12, 1989; the permit is now effective from June 5, 1989 to January 13, 1990. This permit is issued with the limitation that the labeling accepted on June 29, 1988, will be used for all shipments under the renewal of this EUP. (Larry Schnaubelt, PM 23, Rm. 235, CM#2, (703-557-1830))

264-EUP-74. Issuance. Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use of 1,136 pounds of the plant regulator ethephon on 4,544 acres of field and sweet corn to evaluate lodging. The program is authorized only in the States of Colorado, Illinois, Iowa, Kansas, Minnesota, Nebraska, New York, North Carolina, Oregon, Washington, and Wisconsin. The experimental use permit is effective from June 20, 1989 to June 20, 1991. A temporary tolerance for residues of the active ingredient in or on field and sweet corn has been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-2800))

612-EUP-1. Renewal. Unocal, Unocal Chemicals Division, 1414 Fenwick Lane, Silver Spring, MD 20910. This experimental use permit allows the use of 806,543 pounds of the nematicide sodium tetrathiocarbonate on 4,000 acres of grapefruit, grapes, oranges, and potatoes to evaluate the control of various nematodes and phylloxera. The program is authorized only in the States of Arizona, California, Florida, Oregon, and Washington. The experimental use permit was previously effective from March 15, 1987 to December 1, 1988; the permit is now effective from May 3, 1989 to November 15, 1989. Temporary tolerances for residues of the active ingredient in or on grapefruit, grapes, oranges, and potatoes have been established. (Susan Lewis, PM 21, Rm. 227, CM#2, (703-557-1900))

59639-EUP-1. Issuance. Valent U.S.A. Corporation, 1333 North California Boulevard, Walnut Creek, CA 94596-8025. This experimental use permit allows the use of 52 pounds of the herbicide (E)-2-[1-[[[3-chloro-2-propenyl]oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one on 104 acres of cotton to evaluate the control of weeds. The experimental use permit is authorized only in the States of Alabama, Arizona, Arkansas, California, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, and West Virginia. The experimental use permit was previously effective from January 29, 1988 to January 12, 1989; the permit is now effective from June 5, 1989 to January 13, 1990. This permit is issued with the limitation that the labeling accepted on June 29, 1988, will be used for all shipments under the renewal of this EUP. (Larry Schnaubelt, PM 23, Rm. 235, CM#2, (703-557-1830))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: July 14, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-17916 Filed 8-1-89; 8:45 am]

BILLING CODE 6560-50-M

[PF-522; FRL-3622-8]

Merck, Sharp & Dohme Research Laboratories; Amendment of Pesticide Petition and Food Additive Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the amendment of pesticide petition (PP) 7F3553 and food additive petition (FAP) 7H5541 for the fungicide thiabendazole by Merck, Sharp & Dohme Research Laboratories.

ADDRESS: By mail, submit written comments to:

Public Docket and Freedom of Information Section, Field Operations Division (H-7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Susan T. Lewis, Acting Product Manager (PM) 21, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

In person, bring comments to: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 25, 1987 (52 FR 45237), EPA issued a notice of filing of PP 7F3553 and FAP 7H5541 by Merck, Sharp & Dohme Research Laboratories, Hillsborough Rd., Three Bridges, NJ 08887, for the fungicide thiabendazole [2-(4-thiazolyl) benzimidazole]. PP 7F3553 proposed amending 40 CFR 180.242 by establishing a regulation to permit residues of the fungicide in or on corn grain at 20.0 parts per million (ppm) and revoking the present tolerance of 10 ppm on grapes. The proposed analytical method for determining residues was a spectrofluorometer. FAP 7H5541 proposed amending 21 CFR 561.380 (recodified as 40 CFR 180.5550 in the Federal Register of June 29, 1988 (53 FR 24667)), by establishing a regulation to permit the residues of the fungicide in or on corn bran at 125 ppm, corn fines at 40 ppm, corn germ at 30 ppm, and corn soapstock at 25 ppm and by revoking the present tolerance of 150 ppm on grape pomace (dry or wet).

Merck, Sharp & Dohme Research Laboratories has submitted to EPA revisions to the petitions. PP 7F3553 has been revised to propose the following tolerances: In 40 CFR 180.242(a), establishment of a tolerance for residues of thiabendazole in or on the raw agricultural commodity corn grain (post-H) at 25 ppm and the retention of the 10-ppm tolerance for the raw agricultural commodity grapes; and in 40 CFR 180.242(b) establishment of tolerances and amendment of existing tolerances for combined residues of thiabendazole and its metabolite 5-hydroxythiabendazole in the following raw agricultural commodities: Meat byproducts (except kidney) of poultry and meat byproducts (except liver and

kidney) of cattle, goats, hogs, horses, and sheep at 0.1 ppm; poultry kidney at 0.2 ppm; and kidney and liver of cattle, goats, hogs, horses, and sheep at 0.4 ppm.

FAP 7H5541 has been revised to propose in 40 CFR 185.5550 establishment of food additive tolerances for residues of thiabendazole in or on the following food commodities resulting from the postharvest application of thiabendazole to the raw agricultural commodity corn grain: Corn, milled fractions (except bran) (post-H) at 40 ppm and corn bran (post-H) at 145 ppm.

FAP 7H5541 has also been revised to propose in 40 CFR 186.5550 establishment of feed additive tolerances for residues of thiabendazole in or on the following processed feed commodities for animal feed resulting from the postharvest application of thiabendazole to the raw agricultural commodity corn grain: Corn, milled fractions (except bran and soapstock) (post-H) at 40 ppm, corn bran (post-H) at 145 ppm, and corn screenings (post-H) at 400 ppm. The feed additive tolerance of 150 ppm for grape pomace (wet or dry) is retained.

Authority: 21 U.S.C. 346a and 348.

Dated: July 6, 1989.

Franklin D. Gee,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-17842 Filed 8-1-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180816; FRL-3622-5]

Receipt of Application for Emergency Exemption To Use Triflumizole; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Florida Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") to use the pesticide triflumizole (CAS 68694-11-1) to treat 245 acres of nursery and greenhouse grown Spathiphyllum varieties to control Cylindrocladium root and petiole rot.

The Applicant proposes the use of a new chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATE: Comments must be received on or before August 17, 1989.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180816," should be submitted by mail to:

Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Susan Stanton, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-4360).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of Terraguard 50W on *Spathiphyllum* spp. to control Cylindrocladium root and petiole rot. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

The Applicant states that *Cylindrocladium spathiphylli* was introduced into Florida around 1977 by movement of infected plants from the tropics. Dissemination of this disease pathogen was easily accomplished by transfer of infected seedlings, and contaminated seeds and plants.

The Applicant states that research on efficacy has shown the registered alternatives to be less effective in controlling Cylindrocladium on Spathiphyllums than triflumizole. Benomyl provided the best control of the registered fungicides tested. However, benomyl applied at rates necessary to achieve control is phytotoxic to the plants and is not effective at rates low enough to avoid phytotoxicity.

The 1985 Florida foliage production was estimated to have a wholesale value of $272 million. Sales of Spathiphyllum are estimated to represent 10 percent of this value. Seventy-one percent of Spathiphyllum sold is produced by growers who are having problems controlling Cylindrocladium. Spathiphyllum losses to Cylindrocladium are estimated to be 8 percent of the total crop value (about $1.8 million). Available methods of control are not expected to provide economic control next season.

The Applicant plans to treat up to 245 acres using 14,700 pounds of product (7,350 pounds active ingredient). Applications are proposed for a period of one year from the date of approval. Applications of 4 to 8 ounces of Terraguard 50W in 100 gallons of water will be applied as a soil drench or through chemigation every two to four weeks or as needed to Spathiphyllum grown in greenhouse, interiorscapes, or commercial nurseries.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt: of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for the opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations. Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Florida Department of Agriculture and Consumer Services.

Dated: July 14, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-17843 Filed 8-1-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3623-6]

City Industries Site; proposed settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), The Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the City Industries Site, Winter Park, Florida, with The Agricultural Research Service of the United States Department of Agriculture (ARS). EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Mrs. Carolyn McCall, Investigation Support Assistant, Investigation and Cost Recovery Unit, Site Investigation and Support Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland St., NE., Atlanta, GA 30365, (404) 347-5059.

Written comments may be submitted to the person above by 30 days from date of publication.

Dated: July 24, 1989.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 89-18061 Filed 8-1-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

The Boston Bank of Commerce Employee Stock Ownership Trust, et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 18, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *The Boston Bank of Commerce Employee Stock Ownership Trust,* Boston, Massachusetts; to acquire 41.9 percent of the voting shares of The Boston Bank of Commerce, Boston, Massachusetts.

B. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Amsterdam-Rotterdam Bank, N.V., Amsterdam, The Netherlands,* Stichting Amro, Amsterdam, The Netherlands; to become a bank holding company by acquiring 43.18 percent of the voting shares of European American Bancorp, New York, New York, and thereby indirectly acquire European American Bank, New York, New York.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Amboy Bancopr,* Amboy, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Amboy, Amboy, Illinois.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Allegiant Bancopr, Inc.,* Kahoka, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Allegiant National Bank, formerly Commerce Bank of Kahoka, N.A., Kahoka, Missouri.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Las Cruces B.R.G., Inc.,* Las Cruces, New Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of the Rio Grande, N.A., Las Cruces, New Mexico.

Board of Governors of the Federal Reserve System, July 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-17965 Filed 8-1-89; 8:45 am]

BILLING CODE 6210-01-M

Huntington Bancshares Incorporated; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Huntington Bancshares Incorporated,* Columbus, Ohio; to retain 14.04 percent of the voting shares of Money Station, Inc., Columbus, Ohio,

and thereby engage in providing data processing, data transmission services, data base maintenance, and telecommunication services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-17866 Filed 8-1-89; 8:45 am]

BILLING CODE 6210-01-M

Lisco State Co.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y [12 CFR 225.14] for the Board's approval under section 3 of the Bank Holding Company Act [12 U.S.C. 1842] to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y [12 CFR 225.23(a)(2)] for the Board's approval under section 4(c)(8) of the Bank Holding Company Act [12 U.S.C. 1843(c)(8)] and § 225.21(a) of Regulation Y [12 CFR 225.21(a)] to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 16, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Lisco State Company*, Lisco, Nebraska; to acquire 28.33 percent of the voting shares of O&F Cattle Company, and thereby indirectly acquire Nebraska State Bank, Oshkosh, Nebraska.

In connection with this application, applicant also proposes to acquire O&F Insurance Agency, and thereby engage in general insurance agency activities from the community of Oshkosh, Nebraska and in Garden County, Nebraska, both of which have a total population of less than 5,000 pursuant to § 225.25(b)(8)[iii] of the Board's Regulation Y.

Applicant also proposes to indirectly engage in the direct lending activities now being conducted by O&F Cattle Company pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 27, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-17867 Filed 8-1-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act [12 U.S.C. 1817(j)(7)].

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 16, 1989.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mr. Alvin J. Siteman*, St. Louis, Missouri; to acquire an additional 2.2 percent of the voting shares of Mark Twain Bancshares, Inc., St. Louis, Missouri, for a total of 20 percent, and thereby indirectly acquire Mark Twain Bank, St. Louis, Missouri; Mark Twain Illinois Bank, St. Louis, Missouri; and Mark Twain Kansas City, Kansas City, Missouri.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Christopher James Dinsdale*, Sterling, Colorado; Thomas Stephen Dinsdale, Grand Island, Nebraska; Janet Lynn Dinsdale Barclay, Grand Island, Nebraska; Jane Dinsdale Rogers, Omaha, Nebraska; and John Sidney Dinsdale, Papillion, Nebraska; to each acquire an additional 3.06 percent of the voting shares of The Weld State Company, Central City, Nebraska, for a total of 18.03 percent, and thereby indirectly acquire First Security Bank of Craig, Craig, Colorado, and The First Security Bank, Fort Lupton, Colorado.

2. *Robert A. Green*, Chickasha, Oklahoma; to acquire an additional 18.43 percent for a total of 29.46 percent; Liberty Drug, Inc., Chickasha, Oklahoma (owned by Robert A. Green) to acquire 4.99 percent; and Elizabeth D. Green, Chickasha, Oklahoma (wife of Robert A. Green) to acquire 5.68 percent of the voting shares of First Alex Bancshares, Inc., Alex, Oklahoma, and thereby indirectly acquire First National Bank of Alex, Alex, Oklahoma.

Board of Governors of the Federal Reserve System, July 27, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-17988 Filed 8-1-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments must be received not later than August 15, 1989.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Georgia M. Wegman*, Seven Hills, Ohio; to acquire an additional 1.45 percent of the voting shares of The Citizens Savings Bank Company, Pemberville, Ohio.

Board of Governors of the Federal Reserve System, July 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-17869 Filed 8-1-89; 8:45 am]

BILLING CODE 6210-01-M

National City Corporation, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentaion would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 1989.

A. **Federal Reserve Bank of Cleveland**, John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *National City Corporation*, Cleveland, Ohio; to engage *de novo* through its subsidiary, Financial Communications Exchange, Inc., Cleveland, Ohio, in management consulting to depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Star Financial Group, Inc.*, Marion, Indiana; to engage *de novo* through its subsidiary, Star BandCard Services, Inc., Marion, Indiana, in credit card services as a bank card processing center for unaffiliated financial institutions pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve Ssytem, July 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-17990 Filed 8-1-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986). A similar notice listing all currently certified laboratories will be published bi-monthly, and updated to include laboratories which subsequently apply and complete the certification process. If any listed laboratory fails to maintain its certification, it will be omitted from updated lists until such time as it is restored to full certification undr the Guidelines.

FOR FURTHER INFORMATION CONTACT: Division of Applied Research (formerly the Office of Workplace Initiatives), National Institute on Drug Abuse, Room 10A-53, 5600 Fishers Lane, Rockville, Maryland 20857.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100-71. Subpart C of the Guideines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant labortory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections. In accordance with Subpart C of the Guidelines, the following laboratories meet the standards set forth in the Guidelines:

(Submitted for publication in the Federal Register on August 1, 1989)

American BioTest Laboratories, Inc., 3350 Scott Boulevard, Building 15, Santa Clara, CA 95054, 408-727-5525

American Medical Laboratories, 11091 Main Street, P.O. Box 188, Fairfax, VA 22030, 703-691-8100

Bio-Analytical Technologies, 2356 North Lincoln Ave., Chicago, IL 60614, 312-880-8900

Center For Human Toxicology, 417 Wakara Way, Rm. 290, University Research Park, Salt Lake City, UT 84108, 801-581-5117

Chem-Bio Corporation, 140 E. Ryan Road, Oak Creek, WI 53154, 800-365-3840

CompuChem Laboratories, Inc., Western Division, 600 West North Market Boulevard, Sacramento, CA 95834, 916-923-0840 (name changed: formerly ChemWest Analytical Laboratories, Inc.)

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919-549-8263

Doctors and Physicians Laboratory, 801 E. Dixie Ave., Lessburg, FL 32748, 904-787-9006

DrugScan, Inc., 1119 Mearns Road, P.O. Box 2969, Warminster, PA 18974, 215-674-9310

ElSohly Laboratories, Inc., 1215½ Jackson Avenue, Oxford, MS 38655, 601-236-2609

VOL 54 ISS 147 AG 2 1989 UMI

Environmental Health Research & Testing Inc., 1075 South 13th Street, Birmingham, AL 35205–9998, 205–934–0958
Harris Medical Laboratory, 1401 Pennsylvania Avenue, P.O. Box 2981, Forth Worth, TX 76104, 817–878–5600
Laboratory of Pathology of Seattle, Inc., 1229 Madison Street, Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672
Laboratory Specialists, Inc., 113 Jarrell Drive, P.O. Box 435, Belle Chasse, LA 70037, 504–392–7961
Med Arts/South Community Hospital, 1001 Southwest 44th Street, Oklahoma City, OK 73109, 405–636–7041
MedTox Laboratories, Inc., 402 West County Road D, St. Paul, MN 55112, 612–636–7466
MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 312–595–3888
MetPath, Inc., One Malcolm Ave., Teterboro, NJ 07608, 201–393–5000
National Center for Forensic Science, A Division of Maryland Medical Laboratory, Inc., 1901 Sulphur Spring Road, Baltimore, MD 21227, 301–247–9100 (name changed: formerly Maryland Medical Laboratories, Inc.)
National Psychopharmacology Lab, Inc., 9320 Park West Boulevard, Knoxville, TN 37923, 800–615–251–9492/615–690–5101
Nichols Institute, 7323 Engineer Road, San Diego, CA 92111, 619–278–5900
Northwest Toxicology, Inc., 1141 East 3900 South, Salt Lake City, UT 84124, 800–322–3361
POLA, Inc., 100 Corporate Court, South Plainfield, NJ 07080, 201–769–8500
PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 800–446–5177/415–328–6200
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600
Roche Biomedical Laboratories, 6370 Wilcox Road, Dublin, OH 43017, 614–889–1061
SmithKline Bio-Science Laboratories, 2201 W. Campbell Park Drive, Chicago, IL 60612, 312–885–2010 (name changed: formerly International Toxicology Laboratories, Inc.)
SmithKline Bio-Science Laboratories, 1777 Montreal Circle, Tucker, GA 30084, 404–934–9205
SmithKline Bio-Science Laboratories, 8000 Sovereign Row, Dallas, TX 75247 (name changed: formerly International Clinical Laboratories), 214–638–1301
SmithKline Bio-Science Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447
South Bend Medical Foundation, Inc., 530 North Lafayette Blvd., South Bend, IN 46601 219–234–4176
Southgate Medical Laboratory, Inc., 21100 Southgate Park Boulevard, Cleveland, OH 44137, 800–338–0166

Richard A. Millstein,

Deputy Director, National Institute on Drug Abuse.

[FR Doc. 89–18166 Filed 8–1–89; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Minneapolis District Office, chaired by John Feldman, District Director. The topics to be discussed are food safety issues and the tampon absorbency labeling proposal.

DATES: Thursday, August 10, 1989, 1 p.m. to 3 p.m.

ADDRESSES: 1421 Third Avenue SE., Conference Room C, Rochester, MN 55904.

FOR FURTHER INFORMATION CONTACT: Donald W. Aird, Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Avenue, Minneapolis, MN 55401, 612–334–4100.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: July 26, 1989.

Alan L. Hotting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–18004 Filed 8–1–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–89–2026]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Office, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: July 25, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: American Housing Survey—1990 Metropolitan Sample.

Office: Policy Development and Research.

Description of the Need for the Information and Its Proposed Use: The 1990 American Housing Survey—Metropolitan Sample is a longitudinal study that collects current information on the quality, availability, and cost of housing in 11 selected metropolitan areas. It also provides information on demographic and other characteristics of the occupants. The data collected will be used by Federal and local government agencies to evaluate housing issues.

Form Number: AHS–61, 62, 63, 66, 67, 68, 590.

Respondents: Individuals or Households.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Interviews:							
Occupied Units	39,270		1		0.62		24,217
Vacant Units	2,336		1		.33		770
Reinterviews	2,338		1		.16		390

Total Estimated Burden Hours: 25,386.

Status: Revision.

Contact: Duane T. McGough, HUD (202) 755–5060; Leonard J. Norry, Census, (301) 763–8550; John Allison, OMB, (202) 395–6880.

Date: July 25, 1989.

Proposal: Flexible Subsidy/Capital Improvement Loan Programs, 24 CFR Part 219 and Forms.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: These forms facilitate the analyses necessary to determine eligible project problems and dollar needs, to assure best use of funds, and to track completion of tasks and the flow of funds.

Form Number: HUD-9823A/B; 9824A; 9835/A/B.

Respondents: State of Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, Small Businesses or Organizations.

Frequency of Submission: Monthly, Quarterly, and Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
9823A	40		12		1		480
9823B	40		4		2		320
9824A	40		4		20		3,200
9835 (Flexible Subsidy)	40		1		4		160
Capitol Impr. (partial)	57		1		2		114
Capital Impr. (complete)	3		1		4		12
9835A (Flexible Subsidy)	40		1		4		160
Capital Improvement	3		1		4		12
9835B (Flexible Subsidy)	40		1		1		40
Capital Improvement	60		1		1		60

Total Estimated Burden Hours: 4,558.

Status: Reinstatement.

Contact: James Tahash, HUD (202) 426–3970; John Allison, OMB, (202) 395–6880.

Date: July 25, 1989.

Proposal: Monthly Reports for Establishing Net Income-Forms HUD 93479, 93480 and 93481.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Accounting reports submitted by selected owners and agents of Multifamily Projects will be used to monitor compliance with contractual agreements and to analyze cash flow trends as well as occupancy and rent collection levels. The reports will alert field staff of the need for remedial actions to correct deficiencies or the need for more aggressive servicing action.

Form Number: HUD-93479, 93480, 93481.

Respondents: Businesses of Other For-profit, Non-Profit Institutions.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Monthly Reports	4,000		12		3.5		168,000
Recordkeeping	4,000		1		1.0		4,000

Total Estimated Burden Hours: 172,000.

Status: Extension.

Contact: Gray Campbell, HUD (202) 426-3944; John Allison, OMB, (202) 395-5880.

Date: July 25, 1989.

[FR Doc. 89-17940 Filed 8-1-89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-930-09-4212-14; WYW 102169]

Conveyance and Opening Order; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of public land and conveyance and order providing for opening of public land in Lincoln County.

SUMMARY: This notice advises the public of the completion of an exchange of land between the United States, Bureau of Land Management, and Frank A. Mau, William P. Mau, and Kathryne Mau Smith. This order opens the land acquired by the United States to the operation of the public land laws.

EFFECTIVE DATE: At 9:30 a.m. on August 12, 1989, the land described in paragraph 2 shall be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. This action conforms to existing land use plans, and the land will be managed under the guidance provided by these plans. The land described in paragraph 1 was segregated from appropriation under the public land laws, including the mining laws, by Notice of Realty Action WYW 102169 published July 22, 1988, in the **Federal Register** (53 FR 27771). The segregative effect of that notice terminated upon issuance of the patent on February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Jon Johnson, BLM Wyoming State Office, 2515 Warren Avenue, Cheyenee, Wyoming 82001, (307) 772-2074.

SUPPLEMENTARY INFORMATION: 1. In accordance with the provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, the following Federal land, surface estate only, has been conveyed to Frank A. Mau, William P. Mau, and Kathryne Mau Smith, of Boerne, Texas; Mesa Del Sol, Arizona; and Rock Springs, Wyoming; respectively:

Sixth Principal Meridian

T. 19 N., R. 105 W.,
Sec. 22, lots 10-15;
Sec. 28, lots 2, 6, 7, 12.
The land described aggregates 401.91 acres.

All minerals in lots 10 and 15 of sec. 22, T. 19 N., R. 105 W., are outstanding of record in third parties.

2. In exchange for the above land, the United States acquired the following non-Federal land from Frank A. Mau, William P. Mau, and Kathryne Mau Smith:

Sixth Principal Meridian

T. 23 N., R. 118 W.,
Portion of lot 37;
Sec. 1: lots 2-7, SW¼NE¼, S½SW¼, W½SE¼;
Sec. 2: lots 1-5, S½NW¼, SW¼, S½SE¼;
Sec. 3: lots 1-2, SE¼NE¼, NE¼SE¼;
Sec. 11: N½NE¼, NE¼NW¼;
Sec. 12: W½NE¼, E½NW¼, NW¼NW¼, NE¼SW¼, NW¼SE¼.
T. 24 N., R. 118 W.,
Sec. 35, Portion of lot 2.
The land described aggregates 1,666.77 acres.

The lands are also described and recorded in Lincoln County as the Bowie Wheat Tracts 1-15, 20-45.

Dated: July 13, 1989.

F. William Eikenberry,

Associate State Director.

[FR Doc. 89-18001 Filed 8-1-89; 8:45 am]

BILLING CODE 4310-22-M

[UT-060-4410-08]

San Juan Resource Management Plan; Utah

AGENCY: Bureau of Land Management (BLM), Utah, Interior.

ACTION: Notice of protest period for the Proposed San Juan Resource Management Plan (RMP).

SUMMARY: The protest period for the San Juan RMP has been established as ending on August 30, 1989.

SUPPLEMENTARY INFORMATION: Notice of availability of the proposed resource management plan was published in the **Federal Register**, Vol. 54, No. 134, Friday, July 14, 1989. Due to confusion as to the close of the protest period, August 30, 1989, has been established as the official close of the protest period. Protests must be made in accordance with the provisions of 43 CFR 1610.5-2. Protests must be received by the Director of BLM, 18th and C Streets NW., Washington, DC 20240, by August 30, 1989.

FOR FURTHER INFORMATION CONTACT: Ed Scherick, San Juan Resource Area Manager, Bureau of Land Management, Box 7, Monticello, Utah 84535, (801) 587-2141.

Dated: July 27, 1989.

James M. Parker,

State Director.

[FR Doc. 89-18000 Filed 8-1-89; 8:45 am]

BILLING CODE 4310-DQ-M

DEPARTMENT OF THE INTERIOR

[AA-230-09-6310-02]

Deferral of Payments on High-Priced Timber Sales

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; adoption of final policy.

SUMMARY: The Bureau of Land Management hereby gives notice of adoption of a final policy on the modification of payment procedures for certain high-priced timber sales. Under this policy, the terms of payment on a qualifying timber sale may be modified to allow the purchaser to defer payments in an amount equal to the difference between the average current contract value and the value of sales at current average bid rates on that Bureau of Land Management District at time of modification plus $50 per thousand board feet (MBF). The deferred amount will be paid with interest over a 5-year period under the terms of a fully secured promissory note. The procedure is authorized only for high-priced sales bid prior to January 1, 1982. The 5-year deferral period will allow purchasers an opportunity to improve their cash flow by deferring large immediate payment obligations and to mix a portion of their high-priced sales with lower-priced sales in their portfolios and, thus, obtain a more economical operating base. The intended effect is to encourage purchasers to perform high-priced sales rather than to default them.

EFFECTIVE DATE: This policy is effective August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Lyndon Werner, Division of Forestry, Bureau of Land Management, Department of the Interior, 1800 'C' Street, NW., Washington, DC 20240, telephone (202) 653-8864.

SUPPLEMENTARY INFORMATION:

Background and Need for Policy

On August 2, 1988 [53 FR 31965], the Bureau of Land Management published an interim policy to allow holders of certain high-priced timber sales to defer payments to avoid sale defaults. Public comment was invited prior to adoption of the final policy on deferred payments. During the late 1970's, a combination of strong demand for timber, predicted price trends based on levels of inflation at that time, and predictions of a softwood timber supply shortage resulted in unprecedented prices for Federal timber sales particularly in California, Oregon, and Washington. Before this timber could be harvested, lumber prices fell dramatically in response to a collapse in the housing market precipitated by a general economic recession.

Recognizing the dilemma, the Department of the Interior granted grace period extensions beginning in November 1981; further extensions were granted in August 1983 on contacts bid period to January 1, 1982, under the President's 5-year extension program, which extended the currently uncompleted contracts to 1988 and 1989. And, the Timber Contract Payment Modification Act was passed in 1984 permitting the return to the Government of 274 Bureau of Land Management contracts totalling 1.28 billion board feet valued at $430 million. These actions and substantially improved forest products markets have all eased the financial burden of many timber purchasers and lessened the risk of default on remaining high-priced contracts.

However, some purchasers in Oregon still hold substantial volumes in high-priced sales bid prior to 1982. As of April 1989 there were about 270 million board feet of high-priced timber under contract in 87 sales. This volume remains under contract primarily because the amounts held by purchasers at the time of buy-out application exceeded the volume entitlement under the Federal Timber Contract Payment Modification Act. Purchasers have extended these sales under the extension authorizations. The majority of these remaining contracts are due to expire on December 31, 1989. A small number of contracts were further extended into 1991 through the purchase of extension-credit fire salvage sales. The Federal government's exposure to default on these sales will increase substantially if market conditions deteriorate. Seventy percent of the high-priced sale value is held by purchasers considered to be in a high-risk situation. The Government could lose $20 million if the high-priced sales in these portfolios are defaulted.

It is important that the agency have procedures in place to try to avoid significant default, because default-delayed harvest results in many adverse economic, resource management, and environmental effects. The economies of many communities particularly in the West are heavily dependent upon the employment generated by the harvest and manufacture of timber from the Bureau of Land Management's forest land. Timber sale defaults interrupt the flow of timber and, thereby, interrupt employment. Employment impacts of default affect not only loggers and mill workers, but also affect others dependent upon the income of timber workers. Defaults also reduce receipts to the Federal Treasury and, thus, the revenue sharing payments to local counties which are based on those receipts.

The liability for damages due the Government arising from default could result in a number of timber firms seeking bankruptcy. Under bankruptcy procedures, the United States would become an unsecured creditor. Usually few or no assets are available for payment after all the secured creditors are satisfied in the proceedings. Even if the firms do not declare bankruptcy, default collection activities are expensive and can result in small dollar returns compared to the amount of damage payments due the Government. In short, contract performance of these high-priced sales provides the best economic return to and protection for Federal, State, and local governments as well as to timber dependent communities. Accordingly, the Bureau of Land Management is implementing a procedure to encourage holders of high-priced pre-1982 volume to perform contracts rather than to default them.

An interim policy to allow deferral of payments on these high-priced sales was published in the **Federal Register** on August 22, 1988; the policy was implemented on September 1, 1988.

Response to Public Comments

The Bureau of Land Management received comments on the interim policy from 13 individuals and entities. Comments came from a Federal Agency Office, individual timber sale purchasers, a consulting forester, a timber sale purchaser association, attorneys, a surety representative, and local citizens of communities affected by the policy. Most of the responses came from the Pacific Northwest. Seven of the respondents supported the policy either in its entirety or with suggested modifications. Five of the respondents were not in favor of the policy. Most of those against the policy provided additional suggestions for consideration should the policy be finally adopted. Most of the comments against the policy rejected the idea that the Government should provide additional relief for purchasers who have not performed on the high-priced contracts.

The following summarizes the major comments and suggestions received and the agency's response to these in the final policy. The final policy reflects full consideration of all comments received. A number of minor changes were made to procedurally clarify the policy.

General Comments

A major issue raised by several respondents was whether the proposal provided additional contract relief. Those holding contracts and in need of additional time to amortize the high values were in support of the procedures. Others felt that the relief afforded to purchasers from the 1984 buy-out legislation and the agency's 5-year extension program was sufficient and that holders of the remaining high-priced contracts should be required to complete them fully in the current contract term or default them and suffer the consequences. Some respondents felt that any change in contract terms at this date would not be fair to purchasers who did perform their high-priced contracts and would reward irresponsible bidding practices and erode the concept that contracts must be performed as specified under their terms and conditions.

The Bureau of Land Management has given much consideration to whether this deferred payment policy rewards poor bidding practices or erodes the fundamental tenets of contracting. The agency is confident that the deferred payment policy does neither. Experience clearly demonstrates that default of sales leads to losses by the Government and economic disruption; avoiding default is clearly in the public interest. In summary, the Bureau of Land Management has decided that performance of the remaining high-priced sales provides the greatest benefit to the public. The policy requires purchasers to perform contracts removing the entire volume and paying the full contract price. There is no relief from payments due the United States granted under the policy. The policy changes only the schedule of when full payment will be received, requiring interest for any period the payment is delayed, and a fully secured promissory note.

Comments on Specific Features of the Policy

Promissory Note Procedures

The interim policy stated the deferred payment modification was to be authorized only after receipt of a properly prepared and executed promissory note, on a form provided by the Bureau of Land Management, for the total amount of the deferred stumpage value. The note must be fully secured by a form of security acceptable to the Bureau of Land Management and allow for unconditioned payment upon demand by the Bureau of Land Management. The note requires quarterly payments to amortize the amount of the note. Interest is assessed against the accrued amount of deferral or the remaining note balance, whichever is less. The interest rate is equal to the average market yield of outstanding treasury obligations with 5 years remaining to maturity. The note period is generally for 5 years.

The provision for selection of the Treasury rate of interest received the most comments of any feature of the interim policy. The respondents indicated that the rate was too low and, thereby, was a subsidy to qualifying purchasers. This was stated to be particularly unfair to purchasers who had performed contracts and to competitors who must pay the commercial rate of interest to borrow current working funds. Six respondents indicated that such a subsidy was not warranted and that rates for the program should be at the corporate borrowing rate, prime rate, or higher. The Bureau of Land Management has analyzed this issue and concurs that the interest rate should be increased. It was not the agency's intent to provide a low-cost borrowing alternative for firms that are capable of securing funds from commercial sources. The Bureau of Land Management utilized a Forest Service survey of the banks in the Pacific Northwest and the results of Forest Service discussions with Federal Reserve Bank representatives. Based on inputs received, the final policy raises the rate of interest charged under the promissory note to the prime rate of interest as determined by the Federal Reserve.

The prime rate of interest listed in the Federal Reserve Statistical Release H. 15, Selected Interest Rates, Instrument, Back Prime Loan will be used. The Selected Interest Rates (H.15) release for February, May, August, and November will be used as the basis for the promissory note quarterly interest charges. The rate used from the Selected Interest Rates sheet will be the average monthly rate listed respectively for the months of January, April, July, and October. This revised rate basis is determined to be at least equal to commercial bank rates for a fully secured loan. The prime rate requirement will be required as of the effective date of the final policy.

Two respondents indicated that the 10-year term for the promissory note was too long, that firms should be capable of amortizing the deferred amount in 5 years. There was further comment that the criteria for granting the additional term which was to be based on "compelling need" were not adequately specified. The Bureau of Land Management has established explicit criteria for the determination of compelling need. These criteria have been used since implementation of the interim policy and are being incorporated in the final policy.

The following information is needed to support the granting of additional promissory note term beyond 5 years: Purchaser must provide a financial projection for the deferral period beyond 5 years. The projection must be examined by an independent Certified Public Accountant (CPA), with an accompanying report. The CPA's examination and report must comply with professional pronouncements issued by the American Institute of Certified Public Accountants (AICPA)—Auditing Standards Board "Statement on Standards For Accountants' Services On Prospective Financial Information"—specifically the 1985 pronouncement entitled "Financial Forecasts and Projections" and the related "Forecast/Projections Guide" and "Forecast/Projection Statement." The CPA will produce all reports referred to in the pronouncement including the Statement of Financial Position, Results of Operations, Statement of Cash Flows (in accordance with FASB 95 the Projected Financial Statements will include a "Statement of Cash Flows" (direct method) in place of the Statement of Changes in Financial Position") and Summaries of Significant Assumptions and Accounting Policies. This projection must disclose projected cash flow and working capital balances for the period required. The deferral period beyond 5 years can only extend to the point where either the cumulative cash flow or working capital become positive, taking into account the deferral payments.

One respondent indicated that the Bureau of Land Management should allow use only of corporate sureties, irrevocable letters of credit, or securities of the United States as security for bonding on the promissory note. The respondent felt the use of assets as security for the note could leave the Government with an asset that is subject to depreciation or a loss in value due to a change in market.

The agency does not agree that forms of security should be limited. Accordingly, the final policy allows consideration of all forms of security specified in the Bureau of Land Management timber sale regulations. However, personal or other new forms of security would only be approved after full analysis of their value and determination of collection potential. The Bureau of Land Management is not going to accept "at risk" security, but believes it reasonable to retain the capability to consider alternative forms of security, if such forms meet the test of securing the government's interests.

One respondent was concerned that the Bureau of Land Management was requiring the purchasers to maintain the sale performance bond until final payment of the promissory note. The Bureau of Land Management has not changed the performance bond requirements; the bond may be reduced as currently prescribed in the contact based on payment of the non-deferred portion of the unpaid balance of the purchase price and the value of other contract requirements.

Four respondents wanted the Bureau of Land Management to permit the use of the performance bond as security for the payment obligation under the promissory note. This option is within the discretion of the Authorized Officer subject to the current contractual obligations against the performance bond and the requirement for full security for the promissory note.

Sales Eligible for Modification

Under the interim policy, to be eligible for payment deferral, timber sales must meet the following criteria: (1) The bid date must be prior to January 1, 1982; (2) the remaining stumpage must have an average value per MBF that exceeds the average bid value for the previous 6-calender months on the Bureau of Land Management District where the sale is located by at least $50; and the contract must have sufficient contract period remaining to allow for removal of remaining timber prior to expiration of the contract.

Some of the respondents objected to the procedure of allowing sales to be deferred on a categorical basis. They agreed that the pre-1982 sales were uneconomic to harvest but disagreed that all purchasers holding pre-1982 inventories should be granted a modification for deferred payments. One respondent indicated that purchasers who recently acquired sales through third party agreements (assignment) were aware of the potential losses resulting from the high-priced sales. The respondent stated that allowing a purchaser to defer payment on sales that were recently acquired would not be necessary because the liability of the high-priced timber was considered in the business transaction and compensated for in the price for the assumption of the contracts. Two respondents indicated that purchaser need, as well as sales criteria, should be considered in granting the deferral. These respondents felt that only purchasers that had a financial necessity for the deferral should be allowed to defer payment. It was suggested that a case-by-case approach that looks at the total financial condition of the applicant would be fairer and more equitable to the responsible firms of the industry that have completed their high-priced sales.

All of the programs to resolve the economic problems created by the high-priced bidding expectations of the late 1970's and early 1980's were categorical. The various extension procedures, the legislative initiative, and the Federal Timber Contract Payment Modification Act, were applied to selected sales; sales bid prior to January 1, 1982. All purchasers holding sales were allowed to participate. The Bureau of Land Management will continue to apply selection criteria in the same manner established for previous initiatives for resolving the high-priced sale situation. The primary reason the respondents requested additional purchaser selection criteria was to eliminate the perceived financial advantage afforded by the low cost borrowing rate in the interim policy. The decision to use the prime rate of interest in the promissory note for the final policy eliminates any financial advantage associated with borrowing funds at the lower Treasury obligations rate of interest. Therefore, there is no need for additional screening criteria for applicants. The final policy will continue to use only the categorical sales selection criteria.

Two respondents suggested that the determination of high-priced sales using the average District bid value plus $50 established a floor rate that was too low. There was concern that the prices currently paid for low-value salvage material would produce an average bid value that was too low and allow sales that were not actually high-priced to qualify for deferral. A review of the sales sold during the past 6 months reveals all fire salvage sales were previously sold. In addition, the past 6 months' sales contained a lower percentage of salvage volume than normally sold due to the reduced quantity of "old-growth" sales. Therefore, the use of the most recent 6-month average District bid plus $50 does not establish a floor rate that is too low relative to the quality of timber contained in the high-priced sales. The final policy will continue to use the 6-month average District bid plus $50 as the floor rate for qualification and for computing the value which may be deferred.

Three respondents indicated that purchasers should not be allowed to select individual sales for deferral but rather should be required to submit their entire high-priced portfolios for deferral. This suggestion was made to ensure that a purchaser did not elect for deferral on the more profitable sales and be allowed to default on the less profitable offerings. The Bureau of Land Management feels that the individual sale selection process should be allowed as indicated in the interim policy. Due to changing market demands, a purchaser has no way of determining whether sales can be logged in future markets. The decision to defer payment is market driven and is dependent on dollar margins resulting from prices received for lumber. It would be extremely difficult for a purchaser to make an aggregate decision affecting sales that will be logged in future years. Moreover, exposing sureties and banks to a purchaser's total liability for the entire high-priced sales portfolio would make it virtually impossible for a firm to get the needed security for the program.

Modification of Payments

Under the interim policy payment specifications for timber stumpage removed under the contract can be modified to allow payment deferral. The deferred payment rate per MBF is determined at the time of modification. The deferred value will be the difference between the average current contract value in MBF and the current average bid value of the District sales plus $50. The Authorized Officer determines the District sales average value using sales sold in the 6-calendar months immediately prior to the request for modification. Modification of the contract is contingent on the prior execution of a promissory note for the estimated amount of payment to be deferred.

The comments from respondents on the procedures for modification of payments suggested the Bureau of Land Management should consider a species pricing criterion for determining high-priced sales rather than average tract value. The Bureau of Land Management intends to use the average remaining value in MBF and average bid value in MBF as criteria for determining both qualifying sales and the amount of the deferral. The actual deferral is accomplished on an individual cutting area basis for those cutting areas that have average remaining value per MBF above the average District bid per MBF plus $50. Species bids on individual sales result from a variety of purchaser bidding strategies; a wide range in values and the lump-sum type of contract used make it very difficult to determine a meaningful average species price. The Bureau of Land Management feels that an average tract value determination is more representative for the high-priced value determination and computation of the deferral amount.

One respondent suggested that rather than being $50 per MBF in all cases, the additional value to be added to the District average bid value should be determined on a percentage basis. All but two of the remaining pre-1982 sales are in western Oregon. Review of the 6-month average bid rates for Oregon indicates that a 10 percent add-on would produce a floor rate of $233 per MBF. The floor rate calculated with the $50 increment gives an average of $262 per MBF. The high-priced sale definition used by the agency for Oregon sales previously was sale values in excess of $225 per MBF. However, since the effective date of the interim policy improving market conditions have raised the average bid by over $50 per MBF, thereby revising the definition to $250–$275 per MBF. This analysis indicates that the $50 add-on gives the better approximation of high-priced sales. Accordingly, the final policy retains the $50 add-on.

Modification of Payment Guarantee Requirements of the Contract

No comments were received from respondents on this section.

Limitation on Application on Deferred Payment Modifications

Under the interim policy, retroactive payment deferral is not allowed for previously harvested volumes. Moreover, the performance bond cannot be reduced under the deferred payment procedures.

The use of the term "harvested" in the interim policy prompted one respondent to suggest that the Bureau of Land Management should consider that all timber cut but not yet removed should be eligible for inclusion in the payment

BEST COPY AVAILABLE

deferral program. The respondent indicated that inclusion in the deferral program of as much eligible timber as possible can serve only to further the goal of encouraging contract performance. The final policy now specifies that payments cannot be retroactively modified for previously billed volumes. The deferred rates will be effective for all applicable volume removed during the initial billing period. All volume reported on the initial monthly cutting report for billing for the monthly period during which the modification becomes effective will be charged for under the deferred rate procedures.

Breach

No comments were received on this section. Therefore, these provisions of the interim policy are adopted in the final without change.

Further Comments

Four respondents provided suggestions that the Bureau of Land Management provide relief for high-priced timber sales contracts by adopting a "test case" proposal offered by one of the lumber firms in southwest Oregon. The Secretary of the Interior reviewed this proposal and decided that it should not be authorized. The proposal was declined on the basis of equity to those purchasers that have met their contractual obligations and the fair expectation of the Government to performance of valid contractual obligations.

Key Features of the Final Policy

Having considered the comments received, the Bureau of Land Management is adopting a final policy on modification of timber sale contracts to allow payment deferral on high-priced sales with the changes noted in the foregoing discussion of comments. The key features of the final policy are listed below:

Key Features of the Final Policy.

Sales Eligible for Modification.

To be eligible for payment deferral modifications, timber sale contracts must meet the following criteria:

1. The bid date must be prior to January 1, 1982;

2. The remaining stumpage must have an average value per thousand board feet (MBF) that exceeds the average bid value for the previous 6 calendar months for the Bureau of Land Management District in which the sale is located, plus $50 per MBF.

3. The contract must have sufficient contract period remaining to allow for removal of the timber remaining in cutting areas included in a payment deferral modification prior to expiration of the contract.

The January 1, 1982, date was selected because Congress has already in the Federal Timber Contract Payment Modification Act identified the period immediately prior to this date as a bidding period when cumulative market effects resulted in excessive bidding for Federal Timber.

Authorized officials of current holders of qualifying contracts must request payment deferral in writing. The current holder is the entity currently recognized by the Bureau of Land Management as being legally responsible for contract performance. The Bureau of Land Management is not limiting the procedure to companies who bid the sales.

For contracts having multiple cutting areas, one or more cutting areas may be included in a modification. However, the Bureau of Land Management will not approve modification requests where a default of cutting areas not included in a modification would result in a non-viable resale opportunity.

Requests for modification of a qualifying contract must be submitted prior to a billing date for timber covered by the modification. A deferred payment agreement, promissory note, and additional securities must be fully executed prior to the due date for payment of non-deferred amounts for covered timber.

Final Policy and Promissory Note Procedures

The final policy for existing high-priced sales will provide guidance to Authorized Officers in the exercise of their existing authorities to administer Bureau of Land Management timber sale contracts. Modification of specified high-priced sales to implement this deferred payment policy will be in the public interest. In accordance with the contract terms, the Government will receive full contract value. The current holder of a timber sale contract determined by the Bureau of Land Management to be a high-priced contract will pay for timber under that contract at the contract price. Under this policy, the terms of payment will be modified allowing the Government to defer an amount of payment equal to the difference between the current average bid value for the Bureau of Land Management District in which that sale is located at time of modification, plus $50, and the average current contract value per MBF. The difference between the average bid value, plus $50, and the current contract value (deferred payment) will be paid with interest, over a maximum of 10 years under the terms of a fully secured promissory note. In most cases note terms will be 5 years or less and may be approved by the Authorized Officer. Application for note terms from 6 to 10 years must show evidence of need based on compelling circumstances. Purchasers must provide the State Director with a financial projection to support the need for a promissory note term beyond 5 years. The projection must be examined by an independent CPA with an accompanying report.

The CPA examination and report must comply with professional pronouncements issued by the AICPA—Auditing Standards Board "Statement On Standards For Accountants' Services On Prospective Financial Information"—specifically the 1985 pronouncement entitled "Financial Forecasts and Projections" and the related "Forecast/Projections Guide" and "Forecast/Projection Statement". A CPA must produce all reports referred to in the pronouncement including the Statement of Financial Position, Results of Operations, Statement of Cash Flows [in accordance with FASB 95 the Projected Financial Statements will include a "Statement of Cash Flows" (direct method) in place of the Statement of Changes in Financial Position"] and Summaries of Significant Assumptions and Accounting Policies. This projection must disclose projected cash flow and working capital balances for the period requested. The deferral period beyond 5 years can only extend to the point where either the cumulative cash flow or working capital become positive, taking into account the deferral payments.

The State Director will coordinate the granting of the additional note term with the Regional Forester of the Forest Service if the purchaser has Forest Service sales that meet qualifications for deferral under the Forest Service policy for deferred payments.

Interest on accruing deferred value will be paid quarterly following the due date of non-deferred payment for the harvest of timber covered by a deferred payment agreement. The full amount of deferred payment, as estimated by the Bureau of Land Management, specified in the promissory note will require equal quarterly payments to amortize the amount of the note with payments to commence the first January 1 following the execution of the note. The other quarterly payment due dates will be April 1, July 1, and October 1. Prior to the completion of harvest, interest paid will be calculated on the total amount of accrued deferred value or the remaining balance of the note, whichever is less, and billed quarterly. Upon completion of harvest, interest paid will be calculated on the remaining balance of the note. Thus, only the contract terms necessary to change the timing of payment to the Government will be modified. The deferred payment modification will be authorized only after receipt of a properly prepared and executed promissory note, on a form approved by the Bureau of Land Management for the total amount of the deferred stumpage value. The note must be fully secured by a form of security acceptable to the Bureau of Land Management on a form approved by the Bureau of Land Management, and allow for the unconditioned payment upon demand by the Bureau of Land Management.

The security amount must be sufficient to cover the entire amount of the note. The contract holder or surety, where applicable, may make pre-payment of all or a portion of the outstanding remainder of the note on the date of any quarterly payment. The amount of the bond security may be reduced to reflect the current amount of the promissory note obligation during the note period. The note payments may be assumed by the surety if the principal is unable to make the quarterly payments.

The interest rate will be adjusted at each payment and will be equal to the prime rate of interest listed in the Federal Reserve Statistical Release H.15, Selected Interest Rates, Instrument, Bank Prime Loan. The Selected Interest Rates (H.15) release for February, May, August, and November will be used as the basis for the promissory note interest charges. The rate used from the Selected Interest Rates sheet will be the average monthly rate listed respectively for the months of January, April, July and October.

Modification of Payments

Under the policy, the payments for stumpage will be reduced by a deferred amount covered by a promissory note. The deferred payment rate per thousand board feet will be determined at the time of modification. The deferred value will be the difference between the current average bid value for the Bureau of Land Management District in which the sale is located, plus $50 per thousand board feet, and the average current contract value in thousand board feet.

The Authorized Officer will use the average for the 6 full calendar months immediately prior to the request for modification in determining the amount of the payment deferred. Only high-priced timber within individual cutting areas shown on the contract's Exhibit "B" having an average per thousand board feet bid value that is above the current 6 month average per thousand board feet bid value, plus $50 per thousand board feet, for the Bureau of Land Management District, will be eligible for payment deferral. The total deferred payment amount allocated to each of such areas will be directly proportional to the contract value of the areas. Amounts of deferred and non-deferred payments will be computed by the Bureau of Land Management at the time a purchaser requests a deferred payment modification. The determination of the amount subject to deferral will be calculated based on unhauled volumes as determined by the Bureau of Land Management to be on the contract area at the time of the most recent billing date for the contract.

More than one note per sale, executed annually, will be considered for sales expected to require more than one year for harvest. For the multiple note procedure, the amount of the note will be based on the volume scheduled for removal in an approved logging plan. A single note may be based upon nothing smaller than an individual cutting area or road right-of-way within a cutting area. The average current contract value for the estimated volume to be removed will be used to determine the amount of payment deferral for the multiple note procedure. This will allow the note and interest amount to reflect estimated seasonal removal volumes. This will preclude having to charge for principal and interest on large volumes that have to be scheduled for logging in successive years. For billing purposes, multiple notes can be consolidated.

The $2 per thousand board feet fee for administration of extended contracts will be paid in conjunction with payment of the non-deferred value.

Modification of the Payment Guarantee Requirements of the Contract

The requirements of the contract related to advance installments and payment guarantees in lieu of deposits will be satisfied by installments or payment guarantees equal to the revised current payment amounts as established under the formula for calculating deferred payments. The Government is protected as to the amount of the deferred payment by the fully secured promissory note. In the event of an overcut, advance cash installments or payment guarantee in lieu of installments must equal the total non-deferred and deferred value for cut timber specified in the deferred payment agreement but not covered by the promissory note. This requirement will assure that the value of the volume harvested above the estimated volumes is covered by payment guarantee. Full payment or revision of the promissory note must be made for the deferred value associated with the overcut.

Limitation on Application of Deferred Payment Modifications

Retroactive payment deferrals will not be allowed for previously billed volumes under the policy. The performance bond amount will not be reduced under the deferred payment procedures until the non-deferred value is paid in full at which time the contract provision for performance bond reduction will apply.

Breach

Failure to make a note payment is a breach of the provision for deferred payment and could result in suspension of operations. A defaulted note could result in contract cancellation.

Implementation of Final Policy

The key change between the interim and final policy is the use of the prime rate of interest for the promissory note interest requirement. To effect the transition between the interim policy and the final policy on interest rate requirements for promissory notes, the date of postmark of the purchaser's request for modification of a sale will be used to determine the interest rate basis to be used in the promissory note. Requests postmarked on or after the effective date of the final policy will be subject to promissory note charges at the prime rate of interest as provided in the final policy. Sales modifications requested under the interim policy will be subject to promissory note charges equal to the average market yield of outstanding Treasury obligations with 5 years remaining to maturity.

However, to receive notes with the interest rate provided in the interim policy, purchasers must execute the modifications requested under the interim policy and applicable promissory notes prior to December 31, 1989. All promissory notes executed after December 31, 1989, will require note interest charges at the prime rate of interest. These limitations are necessary to avoid negating the higher interest requirements of the final policy.

Regulatory Impact

This action has been reviewed under U.S. Department of the Interior policy and procedures as well as submitted to the Office of Management and Budget for review pursuant to Executive Order (E.O.) 12291. It has been determined that this policy does not have the effects of a major rule as defined in E.O. 12291. The

procedure implemented by this policy will not have an annual effect on the economy of $100 million or more, will not result in major increases in costs for consumers, individual industries, Federal, State, or local government agencies or geographic regions, and will not have significant adverse effects on the ability of United States-based industries to compete with foreign-based enterprises in domestic or export markets. It does not change the total amount a purchaser will pay for Bureau of Land Management timber, although it will affect the timing of when a purchaser will have to pay the full price for stumpage under a Bureau of Land Management contract. The deferred payment will be made under the terms of a fully secured promissory note. The note will require interest charges as consideration for payment deferral.

The timing of payments to the Government will be delayed but the note interest will compensate for the deferral. The risk of nonpayment will be avoided by requiring a fully secured promissory note. Counties that share in revenues generated from Bureau of Land Management timber sales will experience a short-term deferral in receipts. However, the short-term effects are likely to have far less adverse impact than if these sales were defaulted. Since purchasers will eventually pay the full contract value, the long term receipts to affected counties will be far greater than will be received if the sales are defaulted and the timber resold. The proposed procedures will contribute to the economic well-being of timber-dependent communities, and the orderly flow of timber to market and receipts to the Treasury will strengthen the orderly accomplishment of forest management objectives, and reduce administrative costs associated with collection of claims against defaulting purchasers.

It has also been determined that this policy will not have significant economic impact on a substantial number of small entities. The policy works to preserve the long range revenues to affected counties and to maintain employment in the area and, thus, reduces the certain adverse economic impacts these entities will certainly experience in the event of default and bankruptcy of purchasers of these high-priced sales.

Based on both past experience and environmental analysis, it has been determined that the final policy will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from analysis in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

Furthermore, utilization of this policy is at a qualifying purchaser's discretion and a written request is not required in any specified format. The policy would not result in additional procedures or paperwork as defined in the Paperwork Reduction Act and 5 CFR Part 1320.

Hillary A. Oden,

Acting Deputy Director.

[FR Doc. 89-17991 Filed 8-1-89; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 22, 1989. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by August 17, 1989.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Orange County

Hotel San Clemente, 114 Avenida Del Mar, San Clemente, 89001149

Ventura County

Women's Improvement Club of Hueneme, 239 E. Scott St., Port Hueneme, 89001150

ILLINOIS

Champaign County

Alpha Xi Delta Sorority Chapter House (Fraternity and Sorority Houses at the Urbana—Champaign Campus of the University of Illinois MPS), 715 W. Michigan Ave., Urbana, 89001110

Beta Theta Pi Fraternity House (Fraternity and Sorority Houses at the Urbana—Champaign Campus of the University of Illinois MPS), 202 E. Daniel St., Champaign, 89001108

Kappa Sigma Fraternity House (Fraternity and Sorority Houses at the Urbana—Champaign Campus of the University of Illinois MPS), 212 E. Daniel St., Champaign, 89001109

Cook County

Bohlander, Jacob, House, 316 N. 4th Ave., Maywood, 89001113

Kane County

Geneva Country Day School, 1258 South St., Geneva, 89001111

Knox County

Walnut Grove Farm, Knox Station Rd., 1 mi. S of Knoxville, Knoxville vicinity, 89001114

Lake County

Catlow Theatre, 112—116 W. Main St., Barrington, 89001112

KANSAS

Cherokee County

Schermerhorn, Edgar Bockus, House, 803 E. 5th St., Galena, 89001146

Montgomery County

Blakeslee Motor Company Building, 211 W. Myrtle, Independence, 89001145

KENTUCKY

Jefferson County

Warehouse A, Brown—Forman Corporation, 18th and Howard Sts., Louisville, 89001144

MASSACHUSETTS

Barnstable County

Provincetown Historic District, Roughly bounded by US 6, W end of Commercial St., Provincetown Harbor, and SE end of Commercial St., Provincetown, 89001148

Wellfleet Center Historic District, Roughly bounded by Cross St., Holbrook Ave., Maine, E. Main and School Sts., and Duck Creek, Wellfleet, 89001147

NEW YORK

Livingston County

Alverson—Copeland House (Lima MRA), 1612 Rochester St., Lima, 89001133

Barnard Cobblestone House (Lima MRA), 7192 W. Main St., Lima, 89001122

Bristol House (Lima MRA), 1950 Lake Ave., Lima, 89001135

Cargill House (Lima MRA), 1639 Rochester St., Lima, 89001136

Clark Farm Complex (Lima MRA), 7046 E. Main Rd., Lima, 89001125

Dayton House (Lima MRA), 7180 W. Main St., Lima, 89001131

DePuy, William, House (Lima MRA), 1625 Genesee St., Lima, 89001127

Draper House (Lima MRA), 1764 Rochester St., Lima, 89001140

Ganoung Cobblestone Farmhouse (Lima MRA), 2798 Popular Hill Rd., Lima, 89001120

Godfrey House and Barn Complex (Lima MRA), 1325 Rochester Rd., Lima, 89001134

Harden House (Lima MRA), 7343 E. Main St., Lima, 89001142

Harmon, William, House (Lima MRA), 1647 Genesee St., Lima, 89001130

Leech—Lloyd Farmhouse and Barn Complex (Lima MRA), 1569 and 1601 York St., Lima, 89001117

Leech—Parker Farmhouse (Lima MRA), 1537 York St., Lima, 89001118

Markham Cobblestone Farmhouse and Barn Complex (Lima MRA), 6857 Heath—Markham Rd., Lima, 89001119

Martin Farm Complex (Lima MRA), 1301 Bragg St., Lima, 89001126

Morgan Cobblestone Farmhouse (Lima MRA), 6670 W. Main Rd., Lima, 89001116

Moses, Ogilvie, Farmhouse (Lima MRA), 2150 Clay St., Lima, 89001123

Moses, Zebulon, Farm Complex (Lima MRA), 2770 Clay Rd., Lima, 89001132

Peck, J. Franklin, House (Lima MRA), 7347 E. Main St., Lima, 89001128

Peck, Thomas, Farmhouse (Lima MRA), 7955 E. Main Rd., Lima, 89001137

School No. 6 (Lima MRA), 6679 Jenks Rd., Lima, 89001121

Spencer House (Lima MRA), 7372 E. Main St., Lima, 89001124

Stanley House (Lima MRA), 7364 E. Main St., Lima, 89001129

Vary, William L., House (Lima MRA), 7378 E. Main St., Lima, 89001141

Warner, Asahel, House (Lima MRA), 7136 W. Main St., Lima, 89001139

Warner, Matthew, House (Lima MRA), 7449 E. Main St., Lima, 89001138

TEXAS

Washington County

Walker, James, Log House, Co. Rd. 80, Brenham vicinity, 89001143

Virginia

Charles City County

North Bend, VA 619, Weyanoke vicinity, 89001107

The following action is being considered for the following property:

Louisiana

Iberia Parish

Broussard, Amant, House, 1400 E. Main St., New Iberia 80001729, Proposed Move

[FR Doc. 89-17960 Filed 8-1-89; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-294]

Certain Carrier Materials Bearing Ink Compositions To Be Used in a Dry Adhersive-Free Thermal Transfer Process and Signfaces Made by Such a Process; Receipt of Initial Determination Terminating Respondents on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a consent order agreement: Respondents Signtech Inc., Acme Wiley Corp., Dualite Inc., Fairmont Sign Company, Graflex Inc., Harlan Law Corp., McHenry Industries, Persona Inc., and Superior Electrical Advertising.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary of the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any such person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-252-1805.

By order of the Commission.

Issued July 25, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-18040 Filed 8-1-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-301]

Certain Imported Artificial Breast Prostheses and the Manufacturing Processes Therefor; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 2, 1989, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Amoena Corporation, 2150 Newmarket Parkway, Suite 116, Marietta, Georgia 30067. Supplements to the complaint were filed on July 6 and 21, 1989. The complaint, as supplemented, alleges violations of subsection (a)(1)(B)(ii) of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain imported artificial breast prostheses, made abroad by a process covered by claim 1 of U.S. Letters Patent 4,249,975; and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

FOR FURTHER INFORMATION CONTACT: Cheri M. Taylor, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1568.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on July 27, 1989, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(ii) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain imported artificial breast prostheses, made abroad by a process allegedly covered by claim 1 of U.S.

Letters Patent 4,249,975, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Amoena Corporation, 2150 Newmarket Parkway, Suite 116, Marietta, Georgia 30067.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Otto Thaemert, Textil-und, Kunstoff Gesell.mit, Beschr. Haftung & Co. KG, Im. Steinkamp 12, 3006 Burgwedel, Federal Republic of Germany

Tertulin Eberl, Gesellschaft fuer, Orthopaed. produkte Gmbh, Nonnenwaldstr 25, 8122 Penzberg, Federal Republic of Germany

Prometel G.A.R.L., Z.i. des Bourguignons, APT. 84400 France

Tru Life Nocton Ltd., Unit 3, Cookstown Industrial Estate, Belgard Road, Tallaght, Co., Dublin, Ireland

Airway Division of Surgical Appliances, 3960 Rosslyn Drive, Cincinnati, Ohio 45209

Tri-Hawk, 849 South Broadway, Los Angeles, California 90014

Jobst Corporation, P.O. Box 653, 851–53 Miami Street, Toledo, Ohio 43694

Tru Life, Incorporated, 450 Portage Trail, Cuyahoga Falls, Ohio 44222

Hemispheres Marketing Company, Ltd., 8501 N.W. 36th Street, Miami, Florida 33166

Almost U, 1245 Park Street, Peekskill, New York 10566.

(c) Cheri M. Taylor, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401J, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the name respondents in accordance with sections 210.21 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057, 33063 (Aug. 29, 1988). Pursuant to § § 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 53 FR 33034, 33059 (Aug. 29, 1988)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued July 28, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-18041 Filed 8-1-89; 8:45 am]

BILLING CODE 7020-01-M

[Investigation No. 337-TA-284]

Certain Electric Power Tools, Battery Cartridges, and Battery Chargers; Not to Review Initial Determination; Schedule for Filing Written Submissions on Remedy, The Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice; request for briefs and written comments.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") issued by the presiding administrative law judge ("ALJ") concerning violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation. However, as discussed below, the Commission has adopted only those portions of the ID which pertain to the following issues: Jurisdiction over the parties and the subject matter of the investigation; complaints' right to use the alleged trademarks and whether they are *de jure* functional, inherently distinctive, and have acquired secondary meaning; likelihood of confusion; false representation; false advertising; passing off; and all the elements necessary for a section 337 violation based on registered trademark infringement. Those portions of the ID collectively have become the Commission's final determination concerning violation of section 337 in this investigation. Since those findings and conclusions are dispositive of the question of whether each respondent has or has not violated section 337, the Commission has taken no position on other issues adjudicated in the ID in connection with the alleged violation of section 337.

Since the ID holds that there has been a violation of section 337 by one respondent, the Commission directs the parties to submit briefs and requests written comments from other agencies, and interested persons on the issues of appropriate relief, the public interest, and bonding, as described below.

ADDRESSES: Copies of all nonconfidential documents filed in this investigation, including the ID, are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 500 E. Street SW., Room 112, Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1061. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–252–1810.

SUPPLEMENTARY INFORMATION: The subject investigation was instituted to determine whether there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337 (1982) and Supp. VI 1988) in the importation or sale of certain electric power tools, battery cartridges, and battery chargers from Taiwan. The complainants are Makita U.S., Inc. and its subsidiary Makita Corporation of America (collectively, "Makita" or "complainants"). The complaint alleged that each respondent has engaged in one or more of the following unfair acts in the importation or sale of accused merchandise: (1) Common-law trademark infringement; (2) registered trademark infringement; (3) false representation; (4) false advertising; or (5) passing off. The complaint also alleged that unfair acts (1) and (3)–(5) have a threat or effect of destroying or substantially injuring a domestic industry or preventing the establishment of such an industry. Makita's allegation covered more than 100 imported products and more than 50 domestic products. *See* 53 FR 31112 (Aug. 17, 1988) as amended by 53 FR 45787 (Nov. 23, 1988).

On June 2, 1989, the presiding ALJ issued an ID holding that there has been no violation of section 337 by any respondent except one who was found to have infringed complainants' registered trademark in the importation or sale of an accused Taiwanese product. Complainants and two groups of respondents filed petitions for review of the ID. Various parties filed responses opposing one or more of the petitions in whole or in part.

After considering the ID, the petitions, and the responses, the Commission determined not to review the ID, but to adopt only those portions that relate to the following matters: (1) Jurisdiction over the parties [1] and the subject matter of the investigation; (2) whether complainants have a right to use the designs and color claimed as common-law trademarks and whether those designs and color are *de jure* functional, are inherently distinctive, or have acquired secondary meaning; (3) whether there is a likelihood of confusion between complainants' products and respondents' imported products; (4) whether any respondent has engaged in passing off false representation, or false advertising in the importation or sale of accused merchandise; and (5) whether any respondent has engaged in registered trademark infringement in the importation or sale of accused products in violation of section 337(a)(1)(C) (within the meaning of section 337(a) (2), (3), and (4)). The aforesaid portions of the ID collectively have become the Commission's final determination concerning violation of section 337 in this investigation. *See* interim Commission rule 210.53(h) (53 FR 33043, Aug. 29, 1988) (to be codified at 19 CFR 210.53(h)).

The Commission takes no position on the ID's adjudication of other issues relating to the alleged violation of section 337.[2] This includes the issue of complainants' readiness to commence domestic production of certain products. The Commission accordingly vacates the order in the ID requiring complainants to submit verified progress reports on that subject on or before September 1, 1989. The Commission does adopt, however, the ID's disposition of various motions and ancillary matters not related to the alleged violation of section 337 (*e.g.*, the motions to strike and the *in camera* treatment of certain materials and information).

Since the Commission has found that a violation of section 337 has occurred, the Commission may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in the respondent in question being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of relief, if any, which should be ordered.

If the Commission concludes that relief is appropriate, it must also consider the effect of that relief upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submission concerning the effect, if any, that granting relief would have on the enumerated public interest factors.

If the Commission orders relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond which should be imposed.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues of remedy, the public interest, and bonding. Complainants and the Commission investigative attorney are also requested to submit a proposed remedial order(s) for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on August 7, 1989. Reply submissions on these issues must be filed no later than the close of business on August 14, 1989. No further submissions will be permitted unless otherwise ordered by the Commission.

Interested government agencies and members of the public also may file written submissions addressing the issues of remedy, the public interest, and bonding. Such submissions must be filed not later than the close of business on August 14, 1989.

COMMISSION HEARING: The Commission does not plan to hold a public hearing in connection with final disposition of this investigation.

ADDITIONAL INFORMATION: All parties, government agencies, and interested persons that file written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the investigation. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential submissions will be available for public inspection at the Secretary's Office.

The 18-month statutory deadline for completing this investigation is February 20, 1990. *See* 19 U.S.C. 1337(b)(1).

Dated: July 31, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-18154 Filed 8-1-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-300 (Preliminary) and 731-TA-438 (Preliminary)]

Limousines From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty and antidumping investigations Nos. 701–TA–300 (Preliminary) and 731–TA–438 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of limousines,[1]

---

[1] *Correction:* The ID erroneously states at pages 7, 10, and 252 that the Commission does not have *in personam* jurisdiction over respondent Mechanics Products, Inc., because that company was not served with copies of the complaint and notice of investigation. A signed, dated, certified mail return receipt on file in the Office of the Secretary indicates that Mechanics Products did in fact receive copies of the aforesaid documents on September 6, 1988. The Commission thus has *in personam* jurisdiction over respondent Mechanics Products.

[2] Chairman Brunsdale and Vice Chairman Cass adopted the entire ID as their final determination concerning the violation of section 337.

[1] For purposes of these investigations, limousines are defined as extended wheelbase and expanded seating capacity motor vehicles principally designed for the transport of persons, of a cylinder capacity exceeding 1,500 cubic centimeters, and having spark-ignition internal combustion reciprocating piston engines of six or more cylinders (gasoline-engine powered).

VOL 54 ISS 147 AUG 2 1989 UMI

provided for in subheadings 8703.23.00, 8703.24.00, and 9802.00.50 of the Harmonized Tariff Schedule of the United States (previously under items 692.10 and 806.20 of the Tariff Schedules of the United States), that are alleged to be subsidized by the Government of Canada and to be sold in the United States at less than fair value. As provided in sections 703(a) and 733(a), the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by September 7, 1989.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), as amended by 53 FR 33034 (August 29, 1988) and 54 FR 5220 (February 2, 1989), and part 201, subparts A through E (19 CFR Part 201), as amended by 54 FR 13672 (April 5, 1989).

EFFECTIVE DATE: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Trimble (202–252–1193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on July 24, 1989, by Southampton Coachworks, Ltd., Farmingdale, NY.

Participation in the investigation. Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), as amended by 53 FR 33039 (August 29, 1988) and 54 FR 5220 (February 2, 1989), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order. Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), as amended by 53 FR 33039 (August 29, 1988) and 54 FR 5220 (February 2, 1989), the Secretary will make available business proprietary information gathered in these preliminary investigations to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference. The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on August 15, 1989 at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Mary Trimble (202–252–1193) not later than August 11, 1989, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions. Any person may submit to the Commission on or before August 17, 1989, a written brief containing information and arguments pertinent to the subject matter of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of sections 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7), as amended by 54 FR 13672 (April 5, 1989) and 53 FR 33034 (August 29, 1988) and 54 FR 5220 (February 2, 1989).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), as amended by 53 FR 33034 (August 29, 1988) and 54 FR 5220 (February 2, 1989), may comment on such information in their written brief, and may also file additional written comments on such information no later than August 21, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: July 25, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–18042 Filed 8–1–89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–296]

Certain Phenylene Sulfide Polymers and Polymer Compounds, and Products Containing Same; Add Commission Investigative Attorney

Before Paul J. Luckern, Administrative Law Judge.

Notice is hereby given that, as of this date, George C. Summerfield, Esq. and John R. Kroeger, Esq., of the Office of Unfair Import Investigations will be the Commission investigative attorneys in the above-cited investigation instead of George C. Summerfield, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: July 27, 1989.

Respectfully submitted,

Lynn I. Levine,

Director, Office of Unfair Import Investigations, 500 E Street, SW., Washington, DC 20436

[FR Doc. 89–18043 Filed 8–1–89; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 2, 1989, Abbott Laboratories, Attn: D–297, Abbott Park, Abbott Park, Illinois 60064–3500, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance benzoylecgonine (9187).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than September 1, 1989.

Dated: July 20, 1989.

G.T. Gitchel,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89–17966 Filed 8–1–89; 8:45 am]

BILLING CODE 4410-09-M

James M. Esper, D.O.; Revocation of Registration

On May 10, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause proposing to revoke DEA Certificate of Registration, AE7182443, assigned to James M. Esper, D.O., Women's Health Care Centre, Ltd., Edinboro, Pennsylvania. The statutory predicate for the Order to Show Cause was that Dr. Esper's continued registration with DEA was inconsistent with the public interest based upon his issuing prescriptions for controlled substances in the names of patients and individuals who never received the controlled substances, and his plea of guilty, on February 11, 1989, in the Court of Common Pleas of Erie County, Pennsylvania to 21 controlled substance-related felonies and six misdemeanor counts of illegal dispensing of controlled substances.

A registered mail return receipt indicates that the Order to Show Cause was received at Dr. Esper's office on May 23, 1989. More than 30 days have passed since the Order to Show Cause was received, and no response or request for a hearing has been received by DEA. Therefore, the Administrator concludes that Dr. Esper has waived his opportunity for a hearing on the issues raised in the Order to Show Cause, and pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order based upon the investigative file.

The Administrator finds that Dr. Esper was the subject of an investigation by the Pennsylvania Bureau of Narcotics Investigations and Drug Control (BNIDC). The investigation was initiated when BNIDC Agents noted that Dr. Esper was writing numerous Schedule II prescriptions for his relatives and office employees. The pharmacists who filled these prescriptions indicated that the prescriptions were presented by Dr. Esper and two of his employees. Subsequent interviews of the individuals whose names appeared on the prescriptions revealed that several of the patients never received the controlled substances prescribed for them. Of the prescriptions collected from area pharmacies by BNIDC Agents which listed Dr. Esper as the prescribing physician, 12 were written in the name of Dr. Esper's nurse for Percodan, Dexedrine and Zydone, Schedule II and Schedule III controlled substances. In an interview with the nurse, she indicated that she received the drugs from three of the prescriptions; she gave the remainder of the controlled substances to Dr. Esper. She also identified 55 prescriptions for controlled substances written in various patients' names which she personally filled at the pharmacy and gave the controlled substances to Dr. Esper.

Dr. Esper was arrested by BNIDC Agents on May 25, 1988, and was charged with 26 felony counts and nine misdemeanor counts relating to illegal dispensing of controlled substances. On February 11, 1989, Dr. Esper pled guilty, in the Court of Common Pleas of Erie County, Pennsylvania, to six counts of furnishing false or fraudulent material information in records or other documents required to be kept by Pennsylvania's Controlled Substance Act, 15 counts of acquiring or obtaining possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge, and six counts of administering, dispensing or prescribing of controlled substances not in good faith, in the course of professional practice. On April 6, 1989, Dr. Esper was sentenced to confinement in the Erie County Jail for no less than 29 months and 29 days and no more than 59 months and 29 days, restitution to the State of Pennsylvania in the amount of $13,934.20, and 15 years probation. DEA was not aware of Dr. Esper's conviction at the time that the Order to Show Cause was issued. The felony conviction alone is a sufficient ground for revocation of a DEA registration.

The Administrator of DEA may revoke a DEA Certificate of Registration based solely upon the registrant's conviction of a felony relating to controlled substances. See: 21 U.S.C. 824(a)(2). Several United States Courts of Appeal have held that such a felony conviction is clearly sufficient to warrant revocation of a DEA registration. See: *Pearce* v. *U.S. Dept. of Justice, Drug Enforcement Admin.*, 867 F.2d 253 (6th Cir. 1988); *Fourth Street Pharmacy* v. U.S. Dept of Justice, 836 F.2d 1137 (8th Cir. 1988); and *Fitzhugh* v. *Drug Enforcement Admin.*, 813 F.2d 1248 (D.C. Cir. 1987).

The Administrator finds that Dr. Esper has been convicted of felony violations of Pennsylvania law relating to controlled substances. His prescribing of highly abused controlled substances with knowledge that they were not for a legitimate medical purpose, nor for the individuals whose names appeared on the prescriptions, clearly demonstrates that Dr. Esper should no longer be registered with DEA.

Accordingly, having concluded that there is a lawful basis for the revocation of Dr. Esper's DEA Certificate of Registration, AE7182443, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AE7182443, previously issued to James M. Esper, D.O., be, and it hereby is, revoked. Any pending applications for renewal of that registration are hereby denied.

This order is effective September 1, 1989.

Dated: July 20, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89-17987 Filed 8-1-89; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances; Registration

By Notice dated March 3, 1989, and published in the **Federal Register** on March 14, 1989, (54 FR 10598), McNeilab Inc., DBA First State Chemical Co., Inc., 803 East Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Raw opium (9600)	II
Concentrate of poppy straw (9670)	II

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1311.42, the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as an importer of the basic classes of controlled substances listed above is granted.

Dated: July 20, 1989.

G.T. Gitchel,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-17988 Filed 8-1-89; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated March 3, 1989, and published in the **Federal Register** on March 14, 1989, (54 FR 10597, McNeilab Inc., DBA First State Chemical Co., Inc., 803 East Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Morphine (9300)	II
Thebaine (9333)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 20, 1989.

G.T. Gitchel,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-17989 Filed 8-1-89; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated February 28, 1989, and published in the **Federal Register** on March 9, 1989 (54 FR 10057), Smithkline Chemicals, Division Smithkline Chemicals Beckman Co., 900 River Road, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
4-methoxyamphetamine (7411)	I
Amphetamine, its salts, optical isomers and salts of its optical isomers (1100)	II
Phenylacetone (8501)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 20, 1989.

G.T. Gitchel,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-17990 Filed 8-1-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-22, 466]

Alco Power, Inc., Auburn, NY; Negative Determination Regarding Application for Reconsideration

By an application dated June 20, 1989, the workers requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on April 19, 1989 and published in the **Federal Register** on May 23, 1989 (54 FR 22379).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances;

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers at Auburn were previously certified for adjustment assistance under TA-W-18,513 issued on January 7, 1987. That certification expired on January 7, 1989. The instant petition was filed to continue the adjustment assistance benefits.

The conditions necessary for certification are not the same now as they were in 1987. Certification TA-W-18,513 was based on the transfer of diesel engine production to Canada. The transfer of production to Canada was completed in 1987.

Currently the Auburn plant produces engine parts. The subject denial is based on the fact the increased import criterion of the Group Eligibility Requirements of the Trade Act of 1974 was not met. Since the expiration of TA-W-18,513, engine parts production has not been transferred from the Auburn plant to Canada or other foreign sources. Further, the Auburn plant did not import component parts similar to those produced at Auburn during the first quarter of 1989. Investigation findings also show that production and sales of engine parts increased in the first two months of 1989 compared to the same period in 1988.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 21st day of July 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-17997 Filed 8-1-89; 8:45am]

BILLING CODE 4510-30-M

[TA-W-22,725]

Dougherty Brothers Co., Buena, NJ; Negative Determination Regarding Application for Reconsideration

By an application dated June 23, 1989, the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on June 6, 1989 and published in the **Federal Register** on July 3, 1989 (54 FR 27955).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances;

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioners claim that tylenol containers and birth control trays were imported and contributed to a decline in sales and production at Buena. It is also claimed that that injection blow molding machines used in the production of plastic bottles and eye droppers were sent outside the U.S.

The workers produced plastic containers and eye droppers for the pharmaceutical industry. The Buena plant closed on January 31, 1989.

The Department's denial was based on the fact that the increased import criterion and the "contributed importantly" test of the Trade Act were not met. U.S. aggregate imports of plastic bottles were negligible in the 1986-1988 period. The "contributed importantly" test is generally demonstrated through a survey of the firm's customers. The Department's survey of the firm's major customers accounted for nearly all the subject firm's sales decline in 1988 compared to 1987. The survey revealed that none of the customers imported plastic containers or droppers while decreasing their purchases from Dougherty Brothers.

Investigation findings show that limited production of tylenol containers occurred in the period 1984-1985 as a test run and for training prior to transferring that production to Puerto Rico. Also birth control trays have not been purchased at Buena since 1987. The production of these items are outside the period relevant to the petition. The Department found that most of the production at Buena relevant to the period of the petition was transferred to other domestic locations including Puerto Rico. A domestic transfer of production would not provide a basis for certification. Also, the overseas transfer of machinery used in the production of plastic bottles and eye droppers would not, in itself, provide a basis for certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 21st day of July 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-17996 Filed 8-1-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,780]

Jaclyn, Inc., West New York, NJ; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 5, 1989 applicable to all workers of Jaclyn, Incorporated, West New York, New York. The certification was published in the **Federal Register** on July 3, 1989 (54 FR 27956).

The Department is amending the certification to show the correct location of the worker group as West New York, New Jersey. The notice, therefore is amended by deleting West New York, New York and inserting West New York, New Jersey.

The amended notice applicable to TA-W-22,780 is hereby issued as follows:

All workers of Jaclyn, Incorporated, West New York, New Jersey who became totally or partially separated from employment on or after July 1, 1988 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 21st day of July 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-17998 Filed 8-1-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,499; Riverton, WY et. al.]

Pathfinder Mines Corp.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 18, 1989 applicable to all workers of Pathfinder Mines Corporation, Riverton, Wyoming and St. George, Utah.

Based on new information from the company, workers at the San Francisco, California corporate office worked exclusively for the Pathfinder Mines Corporation's mines in Wyoming whose workers currently are under certification for adjustment assistance. The notice, therefore is amended by including the San Francisco, California corporate office which closed in October 1988.

The amended notice applicable to TA-W-22,499 and TA-W-22,500 is issued as follows:

All workers of Pathfinder Mines Corporation's corporate office in San Francisco, California (TA-W-22,449A) who became totally or partially separated from employment on or after January 27, 1988 and before November 30, 1988 and all workers of the Riverton, Wyoming office (TA-W-22,499) and St. George, Utah office (TA-W-22,500) who became totally or partially separated from employment on or after January 27, 1988 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 21st day of July 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-17999 Filed 8-1-89; 8:45 am]

BILLING CODE 4510-30-M

VOL 54 ISS 147 AG 2 1989 UMI

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-335 and 50-389]

Florida Power & Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR part 20, Appendix A, footnote d-2(c) to Florida Power & Light Company (the licensee), for the St. Lucie Plant, Unit Nos. 1 and 2 (the facility), located in St. Lucie County, Florida.

Environmental Assessment

Identification of Proposed Action

Footnote d-2(c) of Appendix A to 10 CFR part 20 states, "No allowance is to be made for use of sorbents against radioactive gases or vapor." The proposed exemption would allow the use of a radioiodine protection factor of 50 when using Scott Aviation 631-TEDA-H canisters at the facility. The proposed exemption is in response to the licensee's application dated February 3, 1988, as supplemented by letters dated May 5, 1988, June 23, 1988, May 4, 1989, and clarified by conference calls on October 4, 1988 and March 15, 1989.

The Need for the Proposed Action

The proposed exemption is needed to facilitate certain operations at the facility in areas where airborne radioiodine levels necessitate respiratory protection for workers. The requested exemption would allow utilization of air-purifying respirators in lieu of supplied-air or self-contained apparatuses. A supplied-air respirator can limit a worker's efficiency because the worker is restricted to the areas within the reach of his air-supply hose. A self-contained breathing apparatus is usually very heavy and cumbersome, and has a limited air supply. Therefore, a person using this type of apparatus is less mobile and less efficient in performing his duties. Air-purifying respirators, on the other hand, are lightweight, and their use would reduce the worker's physical work effort and time spent in the work area, and thereby result in less personal radiation exposure.

Environmental Impacts of the Proposed Action

The proposed exemption involves a change in the installation or use of the facility's components located entirely within the restricted area as defined in 10 CFR part 20. The staff has determined that the proposed exemption will result in a small increase in the amount of low-level solid waste due to the disposal of used sorbent canisters. However, the proposed exemption involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite. Because the use of air-purifying respirators will allow the plant workers to perform their jobs more efficiently than could be done using supplied-air or self-contained apparatuses, this exemption will most likely reduce the individual or cumulative occupational radiation exposure at the St. Lucie Plant by decreasing worker time spent in radiation areas. The exemption will not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since we have concluded there are no significant environmental impacts for the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. Such an action would not reduce environmental impacts of the plant operation.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement for the St. Lucie Plant, Unit 1, dated June 1973, or in the Final Environmental Statement for the St. Lucie Plant, Unit 2, dated May 1974.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult with any other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based on the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated February 3, 1988, as supplemented May 5, 1988, June 23, 1988, and May 4, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Dated at Rockville, Maryland this 26th day of July 1989.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II-2, Division of Reactor Projects--I-II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-18045 Filed 8-1-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Maintenance Practices and Procedures; Postponed

The ACRS Subcommittee on Maintenance Practices and Procedures scheduled for Tuesday, August 8, 1989 has been postponed indefinitely. This meeting was published in the Federal Register on Friday, July 21, 1989 (54 FR 30620).

Date: July 25, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89-17938 Filed 8-1-89; 8:45 am]

BILLING CODE 7590-01-M

Illinois Power Co., et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

[Docket No. 50-461]

The United States Nuclear Regulatory Commission [the Commission] is considering issuance of an amendment to Facility Operating License No. NPF-62 issued to the Illinois Power Company [1] (IP), and Soyland Power Cooperative, Inc. (Soyland) (the licensee), for operation of Clinton Power Station, Unit 1 (CPS) located in DeWitt County, Illinois.

The amendment consists of proposed changes to the CPS Technical Specifications to remove the cycle specific parameter limits. These limits will be maintained in a "Core Operating Limits Report". The Technical Specifications will be revised to reference this report. The Technical Specifications will also be revised to add administrative controls for the Core Operating Limits Report. These administrative controls will require that the values in the report be established using NRC approved methodologies, and that copies of the report be supplied to the NRC immediately after it is issued. This proposed change is in response to NRC Generic Letter 88-16.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By September 1, 1989, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Paul C. Shemanski: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Sheldon Zabel, Esquire; Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petition and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated September 6, 1988, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland this 28th day of July 1989.

For the Nuclear Regulatory Commission.

Paul C. Shemanski,

Acting Director, Project Directorate III-2, Division of Reactor Projects III, IV, V, and Special Projects.

[FR Doc. 89-18046 Filed 8-1-89; 8:45 am]

BILLING CODE 7590-01-M

[1] Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Proposed Wildlife Amendments to the Columbia River Basin Fish and Wildlife Program and the Northwest Conservation and Electric Power Plan; Hearings

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of proposed wildlife amendments to the Columbia River Basin Fish and Wildlife Program and the Northwest Conservation and Electric Power Plan, hearings and opportunity to comment.

SUMMARY: On November 15, 1982, pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (program). The program has been amended from time to time since then.

On July 13, 1989, the Council voted to initiate procedings pursuant to section 4(d)(1) of the Northwest Power Act to amend the program's wildlife measures. This notice contains a brief description of the proposed amendments, describes how to obtain a full copy of the proposed amendments and background information concerning them, and explains how to participate in the amendment process. Comments are solicited on the merits of the proposed amendments.

Public Comment: All written comments must be received in the Council's central office, 851 SW. Sixth Avenue, Suite 1100, Portland, Oregon 97204, by 5 p.m. Pacific time on September 30, 1989. Comments should be submitted to Dulcy Mahar, Director of Public Involvement, at this address. Comments should be clearly marked "Wildlife Comments."

After the close of written comment, and up to the time of the Council's final decision on the proposed amendments, the Council may hold consultations with interested parties to clarify points made in written comment.

Hearings: Public hearings will be held in Idaho, Montana, Oregon and Washington, beginning in September 1989. If you wish to obtain a schedule of the hearings, contact the Council's Public Involvement Division, 851 SW. Sixth Avenue, Suite 1100, Portland, Oregon 97204 or (503) 222–5161, toll free 1–800–222–3355 in Idaho, Montana, and Washington or 1–800–452–2324 in Oregon. To reserve a time period for presenting oral comments at a hearing, contact Ruth Curtis in the Public Involvement Division. Requests to reserve a time period for oral comments must be received no later than two work days before the hearing.

Final Action: The Council expects to take final action on the proposed wildlife amendments later this year. The actual date on which the Council will make its final decision will be announced in accordance with applicable law and the Council's practice of providing notice of its meeting agendas.

FOR FURTHER INFORMATION CONTACT: A fuller version of this notice, including a paper entitled "Northwest Power Planning Council Proposed Wildlife Amendments, Background and Text of Proposed Amendments," has been prepared that explains the reasons for the rulemaking, the process to date, summarizes the proposal itself, responds to certain issues raised in earlier comments, and sets out the text of the proposed amendments. In addition, the Council staff prepared an issue paper in October 1987, entitled "Wildlife Mitigation Planning," which discusses the background of this issue and identifies alternatives the Council has considered. Those wishing to receive a copy of either paper should contact the Council's Public Involvement Division at the address or telephone numbers listed above.

SUPPLEMENTARY INFORMATION: 1. *Reasons for the rulemaking:* Losses of wildlife and wildlife habitat have occurred in the Columbia River Basin as a result of hydroelectric development. The Northwest Power Act calls for the Council to adopt measures to protect, mitigate, and enhance wildlife and wildlife habitat adversely affected by this development. Until now, the Council's wildlife program has addressed only the effects of individual projects. As individual wildlife mitigation plans have been submitted to the Council, concerns have been expressed about the overall scope and cost of the wildlife program. The proposed amendments were prompted by these concerns.

2. *The process to date:* Since 1982, the Council, the region's fish and wildlife agencies and Indian tribes, and the Bonneville Power Administration have been studying the effects of hydropower development on wildlife, and developing mitigation plans. The Council approved mitigation plans for Libby and Hungry Horse dams in Montana in 1987. Mitigation plans also have been submitted to the Council for the Palisades, Black Canyon, Anderson Ranch, Grand Coulee, and Willamette Basin projects. More recently, a mitigation plan has been submitted for the Albeni Falls project in Idaho. In September 1988, the Council staff released an issue paper (Wildlife Mitigation Planning, 88–10, September 23, 1988) that sought comment on wildlife mitigation alternatives and policies to guide the wildlife program. The Council received written and oral comment over a 4½ month period, and held further oral consultations after the close of written comment. The Albeni Falls plan was submitted too late to be included in the issue paper. Copies of the Albeni Falls mitigation plan are available from the Council's Public Involvement Division at the address and telephone numbers given above.

3. *Proposed amendments:* Principal proposals are:

- To establish an interim, 10-year goal to protect, mitigate, and enhance up to one-half of the wildlife and wildlife habitat losses attributable to Federal hydropower facilities in the Columbia River Basin;
- To accept wildlife loss estimates developed by wildlife agencies and Indian tribes as a starting point for mitigation at the Palisades, Anderson Ranch, Black Canyon, Albeni Falls, Grand Coulee, and Willamette River Basin hydropower projects;
- To authorize use of wildlife mitigation plans as a starting point for the identification of wildlife priorities;
- To create a process and standards to establish priorities for and guide implementation of wildlife plans and projects for the Federal hydropower projects; and
- To adopt general guidelines for wildlife mitigation at non-Federal hydropower projects in the Columbia Basin.

Edward Sheets,

Executive Director.

[FR Doc. 89–17992 Filed 8–1–89; 8:45 am]

BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–27060; File No. SR–MSE–89–6]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Midwest Stock Exchange, Incorporated Relating to Various Pricing Changes

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 13, 1989, the Midwest Stock Exchange Inc., ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), the proposed Rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSE, pursuant to Rule 19b–4 of the Act, submitted a proposed rule change to implement various changes to its Transaction Fee Schedule. The text of the proposed fee changes is available for inspection and copying at the Commission's Public Reference Section and at the Exchange.[1]

[1] The Exchange proposes that in calculating the value charge, as set forth in the schedule, only the first 50,000 shares will be valued on non-cross trades executed after a firm has reached $250,000,000 of billable value during the month. In addition, with respect to credits and discounts for round lot orders entered through the MAX and MAX–OTC Systems, the Exchange proposes that the order entering member firm will receive a network utilization credit of $.20 per trade and that an accumulated yearly value charge discount will be applied against a firm's net transaction fees. After having reached a qualifying accumulated net billable value level, the firm will receive the scheduled discount throughout the remainder of the year, or until it reaches the next highest accumulated net billable value level. Discounts will be applied according to the following schedule:

Continued

Accumulated net billable value	Discount (percent)
5.0 to 7.5 Billion	5
7.5 to 10.0 Billion	10
10.0 to 15.0 Billion	15
15.0 Billion+	25

Monthly net transaction fee	Discount (percent)
$50,000 to $75,000	10
$75,000 to $100,000	20
$100,000+	25

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to restate MSE's Transaction Fee Schedule and to amend it to provide an incentive for customers to execute larger block size trades on the Exchange.

The proposed rule change is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of dues, fees and other charges among Exchange members and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSE does not believe that any burden will be placed on competition as a result of the proposed rule change.

In addition, a monthly discount will be applied against net transaction fees according to the following schedule:

The proposed rule change also will provide that in no event will any credit be applied to the extent that a firm's monthly Exchange bill will be less than zero.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC, 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR–MSE–89–6 and should be submitted by August 23, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 26, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–17951 Filed 8–1–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27062; File No. SR–NASD–88–19]

Self-Regulatory Organizations; Amended Proposed Rule Change by National Association of Securities Dealers, Inc. relating to the OTC Bulletin Board Display Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 20, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the amendment as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of The Proposed Rule Change

On June 9, 1988, the NASD submitted a proposed rule change (designated File No. SR–NASD–88–19), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder, to establish the OTC Bulletin Board Display Service ("Bulletin Board Service" or "Service"). The Service is an electronic quotation medium for securities traded over-the-counter ("OTC") that are not included in the NASDAQ System or listed on a national securities exchange (collectively referred to as "Bulletin Board Securities"). Basically, the Service will enable participating market makers to enter quotes or indications of trading interest in Bulletin Board Securities and to update their entries on a real-time basis. The principal operational features of the Service were fully described in File No. SR–NASD–88–19 under item 3, "Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change." [1] This Amendment does not effect a material change in that description nor does it alter the terms of Amendment Nos. 1 and 2, which are hereby incorporated by reference.[2]

[1] This description was also contained in the Commission's notice that solicited public comments on File No. SR–NASD–88–19. *See* Release No. 34–25948 (July 28, 1988); 53 FR 29006 (August 2, 1988).

[2] Amendment No. 1 was submitted on August 10 1988 and describes the unsolicited indicator that market makers could attach to a bid or offer being displayed on behalf of a retail customer. Amendment No. 2, submitted on February 2, 1989, incorporated various modifications that reflect a working agreement between the NASD and Commerce Clearing House, Inc./National Quotation Bureau, Inc. and the fees applicable to market makers opting to use the Service.

Amendment No. 3 to File No. SR–NASD–88–19 proposes a change in the manner in which market makers would be permitted to quote certain Bulletin Board Securities. This change solely affects the quotation of foreign securities/ADRs of issuers that are exempt from the Act's reporting requirements pursuant to Rule 12g3–2(b) (17 CFR 240.12g3–2(b)) thereunder (hereinafter referred to as "foreign exempt securities"). With respect to these securities, the NASD is amending its original proposal to permit only a static display of market makers' quotations or indications of interest, subject to updating once each morning and once each afternoon. More specifically, market makers will be permitted to update their individual quotes/indications in foreign exempt securities daily between 9 and 9:30 a.m. (ET) and between noon and 12:30 p.m. (ET).[3] Thus, each market maker in a foreign exempt security will be allowed a maximum of two updates per day in each of those securities. The NASD will enforce compliance with this operational requirement through an automated surveillance report. The new report will identify every instance in which a market maker updates his quote in a foreign exempt security outside the prescribed time periods or enters multiple update within those periods in a particular foreign exempt security. Such occurrences will be viewed as apparent violations of the Service's operational requirements and be forwarded to the NASD's Market Surveillance Committee for review and possible disciplinary action. Adjudication of such referrals may result in limitations upon or suspension of the market maker's quote update capability respecting participation in the Bulletin Board Service, and/or a disciplinary sanction pursuant to Article III, Section 1 of the NASD Rules of Fair Practice.[4]

Finally, the NASD proposes to uniquely identify each foreign exempt security displayed through the Service. This display feature will alert users to the static nature of quotation information available on such securities through the Bulletin Board Service. To identify the universe of foreign exempt securities covered by this Amendment, the NASD will rely on the Commission's most recent publication of issuers filing information to claim the Rule 12g3–2(b) exemption.[5]

II. Self-Regulatory Organization's Statement of The Purpose of, and Statutory Basis, for, The Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of an basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The principal purpose of this filing is to allay concerns, which were raised by the Commission staff and the New York and American Stock Exchanges,[6] that inclusion of foreign exempt securities in the Service would negate the issuers' current exemption from the Exchange Act's reporting and disclosure requirements. That exemption is provided by Rule 12g3–2(b) under the Act and is not available for foreign securities/ADRs quoted in an "automated inter-dealer quotation system." When Rule 12g3–2 was last amended in 1983, the foregoing phrase was added to eliminate the exemption's availability for foreign securities/ADRs admitted to the NASDAQ market after October 5, 1983.[7] However, "automated inter-dealer quotation system" is not defined in Rule 12g3–2 and could be interpreted to include electronic quotation media along the lines of the Bulletin Board Service. Although the Service lacks many of the NASDAQ market's operational characteristics (particularly affirmative action by an issuer to seek inclusion), the Commission staff believes that the Service's features are sufficiently similar to NASDAQ as to jeopardize maintenance of the Rule 12g3–2(b) exemption *vis-a-vis* issuers of foreign exempt securities quoted in the Service.

Amendment No. 3 to File No. SR–NASD–88–19 is designed to allow inclusion of foreign exempt securities in the Service without nullifying the issuers' continued exemption under Exchange Act Rule 12g3–2(b). This result is justified by the static nature of quotation information that will be available on foreign exempt securities under the terms of this amendment. Specifically, while market makers may update their quotes at any time in most Bulletin Board Securities, foreign exempt securities may only be updated twice daily. Consequently, market makers in these securities are most likely to insert non-firm quotes or unpriced indications of interest. By restricting market makers' update capabilities with respect to foreign exempt securities, the Service's capacity to display quotation information on such issues amounts to an electronic delivery of static information. In this regard, the Service resembles the National Quotation Bureau, Inc.'s ("NQB") delivery of static information on securities quoted in the Pink Sheets™ to vendors that market screen-based services for accessing such information. Given that NQB's Pink Sheets™ include several hundred foreign exempt securities, the Commission apparently views screen-based access to static quotes/indications on those securities as not constituting their quotation in an "automated inter-dealer quotation system" for purposes of the Rule 12g3–2(b) exemption. Accordingly, the NASD hereby requests comparable treatment of foreign exempt securities quoted in the Service, on a static basis, pursuant to the terms of this Amendment.

Statutory Bases

In its initial filing (dated June 9, 1988) to gain approval of the Bulletin Board Service, the NASD cited sections 11A(a)(1), 15A(b) (6) and (11) of the Act as providing the statutory bases for the Service. Further, the NASD explained how the Service's design and operational features would further the statutory intent of each provision. Because the instant Amendment does not materially modify the Service's operational features and only impacts a small subset of prospective Bulletin Board Securities, the NASD hereby reiterates its original statement on the statutory bases that could sustain the Commission's approval of the Service.

As noted above, Amendment No. 3 to File SR–NASD–88–19 would establish

[3] An update may consist of a market maker inserting a new priced quotation or substituting an unpriced indication for a priced entry. Market makers in foreign exempt securities (and in all other Bulletin Board Securities) will have the option of designating their priced entries as firm or non-firm quotations.

[4] Article III, section 1 requires NASD members to observe high standards of commercial honor and just and equitable principles of trade. During the Service's pilot period, the standard contract governing market maker participation will reference the limitations applicable to quotation of foreign exempt securities.

[5] *See, e.g.*, Release No. 34–25902 (July 13, 1988), 53 FR 27418–32 (July 20, 1988.

[6] *See*, respectively, letters to Jonathan G. Katz, Secretary, Securities and Exchange Commission, from James E. Buck, Senior Vice President and Secretary, New York Stock Exchange, Inc., dated October 13, 1988, and from Carrie E. Dwyer, Senior Vice President, and General Counsel, American Stock Exchange, Inc., dated October 14, 1988.

[7] Release No. 34–20264 (October 6, 1983).

certain restrictions on the manner in which market makers could quote foreign exempt securities via the Service. Section 15A(b)(11) of the Act empowers the NASD to regulate the form and content of quotations distributed on OTC securities. Such regulations, however, must be structured to produce fair and informative quotations and to promote orderly procedures for collecting, distributing, and publishing quotations. The NASD believes that its modified procedures for quotation of foreign exempt securities in the Service are consistent with the regulatory objectives in section 15A(b)(11) of the Act.

Finally, the NASD notes that sections 15A(b) (2) and (7) of the Act require the capacity to enforce members' compliance with NASD rules through systematic surveillance and appropriate self-regulatory action. In conjunction with implementation of the Service, as hereby amended, the NASD will have an automated capability for monitoring compliance with the unique requirements governing quotation of foreign exempt securities. Any failure to observe those requirements will be reviewed by the NASD's Market Surveillance Committee for appropriate regulation action including the possible imposition of a disciplinary sanction pursuant to Article III, Section 1 of the NASD Rules of Fair Practice.

In sum; the NASD believes that ample statutory bases exist for the Commission's approval of File No. SR–NASD–88–19 in this amended form.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amendment No. 3 to File No. SR–NASD–88–19 does not impose any burden on competition. The more restrictive procedures for quoting foreign exempt securities in the Service will apply with equal force to all market makers utilizing the Service to quote such securities. Likewise, market maker participation in the Service remains voluntary as to all Bulletin Board Securities. The principal effect of this Amendment is to assure equal treatment, in relation to application of the Rule 12g3–2(b) exemption, among providers of screen-based services displaying static quotation information on foreign exempt securities traded OTC.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NASD did not solicit or receive comments on Amendment No. 3 to File No. SR–NASD–88–19.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written date, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 23, 1989.

For the Commission, by the Division Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: July 26, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18017 Filed 8–1–89: 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27065; File No. SR–NASD–89–29]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to the Examination Specifications and Study Outline for the Direct Participation Programs Limited Representative ("Series 22") Examination

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 11, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD hereby submits amendments to the examination specifications and study outline for the Direct Participation Programs Limited Representative ("Series 22") qualifications examination. The amendments delete material pertaining to programs that are no longer generally offered, revise materials pertaining to taxation, and include new material pertaining to recently effective regulations affecting direct participation programs. The number of questions per examination and the examination time are unaffected by the amendments.

The above-described amendments do not result in any textual changes to the NASD By-Laws, Schedules to the By-Laws, Rules, practices or procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Pursuant to section 15A(g)(3) of the Act, the NASD is authorized to prescribe standards of training, experience, and competence for persons associated with NASD members. To this end, the NASD has developed examinations that it administers to establish that such persons have attained the requisite levels of knowledge and competence. The NASD periodically reviews the content of the examinations to determine whether

amendments are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

The proposed rule change is consistent with the provisions of section 15A(g)(3) of the Act, which authorizes the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the amendments to the Series 22 examination specifications and study outline impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 23, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: July 26, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-18018 Filed 8-1-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27066; File No. SR-NASD-89-25]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Amendments to the Examination Specifications and Study Outline for the Direct Participation Programs Limited Principal ("Series 39") Examination

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 11, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD hereby submits amendments to the examination specifications and study outline for the Direct Participation Programs Limited Principal ("Series 39") qualifications examination. The amendments add new questions to the section concerning financial responsibility rules, delete questions from the section pertaining to the structure of direct participation programs (which material is covered by the Series 22 examination), add questions concerning Commission Rules 15c2-4 and 10b-9, and update material concerning NASD and Commission rules. In addition, candidates will be required to obtain a score of 70% on both the entire examination and the section pertaining to financial responsibility. The number of questions per test and the testing time are unchanged.

The above-described amendments do not result in any textual changes to the NASD By-Laws, Schedules to the By-Laws, Rules, practices or procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Pursuant to section 15A(g)(3) of the Act, the NASD is authorized to prescribe standards of training, experience, and competence for persons associated with NASD members. To this end, NASD has developed examinations that it administers to establish that such persons have attained the requisite levels of knowledge and competence. The NASD periodically reviews the content of the examinations to determine whether amendments are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

The proposed rule change is consistent with the provisions of section 15A(g)(3) of the Act, which authorizes the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the amendments to the Series 39 examination specifications and study outline impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 23, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: July 26, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-18019 Filed 8-1-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27067; File No. SR-NASD-89-27]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Study Outline and Specifications for Series II Examination, Assistant Representative—Order Processing.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 11, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") hereby submits the examination specifications and study outline for the registration category of Assistant Representative—Order Processing. The examination will be designated Series II. These items do not involve any textual changes to the NASD's By-Laws, Schedules to the By-Laws, rules, practices or procedures. The amendment of Schedule C of the By-Laws setting forth the registration category has been filed separately (*see* SR-NASD-88-26) and approved by the Commission on June 12, 1989 (Securities Exchange Act Release No. 26920 (June 12, 1989), 54 FR 26289, (June 22, 1989).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

It is the NASD's responsibility under section 15A(g)(3) of the Securities Exchange Act of 1934 ("Act") to prescribe standards of training, experience, and competence for persons associated with NASD members. Pursuant to this statutory obligation, the NASD has developed examinations that are administered to establish that persons associated with NASD members have attained specified levels of competence and knowledge.

The Assistant Representative—Order Processing category will apply to those persons associated with a member who record and submit unsolicited orders from the member's existing customers in all products except municipal securities and direct participation programs. They will not be able to share in transaction-based compensation, open new accounts, or render investment advice, and must be under the direct supervision of a registered principal. Accordingly, the examination, as reflected in the specifications and study outline, will cover the fundamentals of securities products and markets, the documentation of customer accounts, providing price information, and order processing, as well as the basic industry structure and regulations concerning these functions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the new registration category or the study outline and specifications impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments regarding the study outline and specifications were neither solicited nor received. Comments regarding the Assistant Representative—Order Processing registration category were solicited and are discussed in SR-NASD-88-26 and the related approval order of the Commission.[1]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute procedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interest persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission,

[1] *See* Securities Exchange Act Release No. 26920, *Supra.*

450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 23, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: July 26, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-18020 Filed 8-1-89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-825]

Application and Opportunity for Hearing: GNLV, CORP.

July 27, 1989.

Notice is hereby given that GNLV, CORP. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from certain reporting requirements under section 15(d) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested person, not later than August 21, 1989, may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-18021 Filed 8-1-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2361; Amdt. #1]

Kentucky (And Contiguous Counties in the States of West Virginia, Virginia & Tennessee); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notices of Amendment to the President's declaration dated July 8, 12, and 13, 1989, to include the counties of Breathitt, Letcher, Hagoffin, Owsley, Pike, and Whitley, in the Commonwealth of Kentucky, as a result of damages from severe storms and flooding, and to establish the incident period as June 15 through and including July 6, 1989.

In addition, applications for economic injury from small businesses located in the contiguous counties of Lee, McCreary, Morgan, and Wolfe, in the Commonwealth of Kentucky; Mingo County in the State of West Virginia; Buchanan, Dickerson, and Wise Counties in the State of Virginia; and Campbell and Scott Counties in the State of Tennessee, may be filed until the specified date at the previously designated location.

The number assigned to the State of West Virginia for economic injury is 679100 and for the State of Virginia the economic injury number is 679200.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on August 29, 1989, and for economic injury until the close of business on March 30, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: July 24, 1989.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-17965 Filed 8-1-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2354; Amdt. #6]

Louisiana (and Contiguous Counties in the States of Texas, Arkansas & Mississippi); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated July 13, 1989, to include the parishes of Jackson and Webster, in the State of Louisiana, as a result of damages from severe storms and flooding which occurred May 4 through May 27, 1989.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

This notice is being issued for record purposes only, as the termination date for filing applications for physical damage closed on July 18, 1989. However, the termination date for filing applications for economic injury remains the close of business on February 20, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: July 25, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-17956 Filed 8-1-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2368; Amdt. #1]

Louisiana (and Contiguous Counties in the State of Arkansas); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated July 20, 1989, to include the parishes of Bienville, Bossier, Jefferson Davis, Lafayette, St. Landry, Vermilion, Vernon, and Webster, in the State of Louisiana, as a result of damages from Tropical Storm Allison beginning on June 25, 1989.

In addition, applications for economic injury from small businesses located in the contiguous parishes of Acadia, Caddo, Claiborne, and Lincoln, in the State of Louisiana, and Columbia, Lafayette, and Miller Counties, in the State of Arkansas, may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

The number assigned to the State of Arkansas for economic injury is 679900.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on September 16, 1989, and for economic injury until the close of business on April 18, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: July 25, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-17957 Filed 8-1-89; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 07/07-0094]

Midland Capital Corp.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company (SBIC) under the Provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by Midland Capital Corp. (Applicant), One Petticoat Lane, Suite 110, 1020 Walnut Street, Kansas City, Missouri 64106, with the Small Business Administration pursuant to 13 CFR 107.103 (1989).

The proposed Officers, Directors and Shareholders of the Applicant will be as follows:

Name	Title or position	Percent of ownership
Neil E. Sprague, 1216 West 73rd Street, Kansas City, MO 64114.	President and Manager.	
Ronald L. Blunt, 318 Huntington Road, Kansas City, MO 64113.	Vice President/ Director.	
Lee H. Greif, 8607 Cedar, Prairie Village, KS 66207.	Vice President/ Director.	
Kendnck T. Wallace 5845 Windsor Drive, Fairway, Kansas 66205.	Secretary	
Jeffery L Gibbs, 3601 Central Avenue, Kansas City, MO 64111.	Assistant Secretary.	
Midland Bank, One Petticoat Lane, Suite 110, 1020 Walnut Street, Kansas City, MO 64106.	Shareholder	60
College Boulevard National Bank, 4650 College Boulevard, Overland Park, KS 66211.	Shareholder	28
Tower Bank, 1314 North 38th Street, Kansas City, KS 66102.	Shareholder	12

The Applicant, a Missouri corporation, is expected to begin operations with $1,000,000 of private capital. The Applicant will conduct its activities in the States of Missouri and Kansas.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the existing company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice shall be published in a newspaper of general circulation in Kansas City, Missouri and Kansas City, Kansas.

(Catalog of Federal Domestic Assistance Program No 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: July 27, 1989.

[FR Doc. 89-17959 Filed 8-1-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 89-7-44; Dockets 46110 and 46111]

Applications of Flight International, Inc. for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Flight International, Inc., fit and awarding it certificates of public convenience and necessity to engage in domestic and foreign charter air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than August 11, 1989.

ADDRESSES: Objections and answers to objections should be filed in Dockets 46110 and 46111 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: July 26, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-17942 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-62-M

[Order 89-7-45] Order to show cause.

Fitness Determination of Central States Airlines, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination.

SUMMARY: The Department of Transportation is proposing to find Central States Airlines, Inc., fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., Room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: July 26, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-17943 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-62-M

BEST COPY AVAILABLE

VOL 54 ISS 147 AUG 2 1989 UMI

[Order 89-7-38; Dockets 46252 and 46271]

Applications of Pacific Interstate Airlines, Inc. for Certificate of Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not (1) find Pacific Interstate Airlines, Inc. (PIA) (and its corporate successor, Carnival Air Lines, Inc. (CAL)) fit, willing, and able to provide interstate, overseas, and foreign scheduled air transportation of passengers, property, and mail; and (2) approve the transfer of the certficate of public convenience and necessity currently held by PIA for interstate and overseas air transportation to CAL; and (3) issue a certificate of public convenience and necessity to CAL authorizing the carrier to provide foreign scheduled air transportation between the United States, on the one hand, and the Bahamas, on the other.

DATES: Persons wishing to file objections should do so no later than August 10, 1989.

ADDRESSES: Objections and answers to objections should be filed in Dockets 46252 and 46271 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 and should be served upon the parties listed in Atachment A to the order.

FOR FURTHER INFORMATION CONTACT: Delores King, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2343.

Dated: July 25, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-17941 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Parts Manufacturers Approval Program Evaluation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: The Parts Manufacturers Approval Evaluation, Phase 2 Report provides the results of the second phase of an independent study conducted for the FAA of parts manufacturer approval (PMA) procedures. The report also contains the independent study team's recommendations for standardization of the PMA procedures.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Kaplan, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Policy and Procedures Branch, AIR-110, 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267-9596.

SUPPLEMENTARY INFORMATION:

Background

Parts manufacturer approval (PMA) is a means by which the FAA approves production of replacement parts for aircraft and engines. The PMA replacement parts may be manufactured by someone other than the original equipment manufacturer (OEM).

Pursuant to Chapter 14 of the CFR Federal Aviation Regulations, part 21, § 21.303(c)(4), a PMA can be obtained by two methods: (1) Submitting "Test reports and computations necessary to show that the design of the part meets the airworthiness requirements of the Federal Aviation Regulations applicable to the product on which the part is to be installed," or; (2) Showing "that the design of the part is identical to the design of a part that is covered under a type certificate." This second method of approval, commonly known as "identicality," involves comparing the design data submitted by the PMA applicant to data which the OEM submitted to get the original design approval of the aircraft, engine, or propeller.

The FAA issued notices of proposed rulemaking (NPRM) in 1977 and 1981 intending to simplify and clarify the PMA process. The public comments and discourse in response to the NPRM revealed extensive confusion and controversy about PMA, and indicated that PMA procedures may not be uniform among FAA aircraft certification offices (ACO). PMA holders claimed that many of the provisions of the NPRM's were anticompetitive and a barrier to market entry for small businesses. OEM's claimed that FAA's data comparison procedure constitutes unauthorized and unfair use of their data, and some OEM's have denied FAA access to their data for PMA purposes.

In July of 1984, the FAA, commissioned an independent study team to evaluate the PMA process and to make recommendations aimed at alleviating the confusion and controversy over PMA rulemaking proceedings. The purpose of the study was to identify the key PMA issues; to identify current PMA policies and procedures; to develop alternatives to current PMA regulations, policies and procedures; and to prepare the required analyses to support selected alternatives. With the initiation of the study, the FAA withdrew the pending NPRM's and decided to delay any regulatory activity until the study was completed. Phase I of the study, which developed alternatives to current PMA regulations, policies, and procedures, was completed in December 1984.

The Phase 2 report, as a continuation of the Phase I report, evaluates those alternatives and several issues common to all the alternatives. The Phase 2 report concludes that there are procedural inconsistencies in PMA as currently practiced in the FAA, and recommends that the FAA standardize PMA procedures through revised advisory material and an employee training course. The report further recommends that the FAA: (1) Emphasize the marking of all PMA parts; (2) Not create a class of non-safety significant parts; (3) Provide procedures to allow PMA on replacement parts for TSO articles and; (4) Issue an advance notice of proposed rulemaking inviting public comment on the advisability of revising the regulations to include distributors, as well as manufacturers and installers, of aircraft replacement and modification parts.

How to Obtain Copies

Copies of the "Part Manufacturers Approval Program Evaluation, Phase 2 Report" may be obtained by mailing a check or money order in the amount of $20.00 per copy to COMSIS Corporation, 8737 Colesville Road, Suite 1100, Silver Spring, MD 20910.

Issued in Washington, DC, on July 26, 1989.

John K. McGrath,

Acting Assistant Director, Aircraft Certification Service.

[FR Doc. 89-18015 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Kent and Ottawa County, Michigan

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for proposed construction of M-6, the Grand Rapids South Beltline from I-196 to I-96 in Ottawa and Kent County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Kirchensteiner, District Engineer, Federal Highway Administration, 123 W. Allegan Street, Room 211, Lansing, Michigan 48933, Telephone: (FTS) 374-1851 or (Commercial) (517) 377-1851 or Mr. Andrew J. Zeigler, Resources Specialist, Project Services Section, Bureau of Transportation Planning, Michigan Department of Transportation, P.O. Box 30050, Lansing, Michigan 48909, Telephone: (517) 373-3251.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Michigan Department of Transportation, (MDOT), is preparing an Environmental Impact Statement (EIS) for a new State trunkline from I-196 to I-96 in Kent and Ottawa County, Michigan. The proposed project is approximately 20 miles in length and is needed to improve east-west travel service to a rapidly-developing area in southern Kent and Ottawa County, and function as a bypass around Grand Rapids, Michigan. The limits for the study extend between I-196 near 8th Avenue on the west and I-96 near Witneyville on the east. The alignment alternatives pass between 60th and 68th streets. Alternatives under consideration include (1) taking no action; (2) upgrading the existing road network; construction of a new facility either as (3) a boulevard (controlled access) having at-grade intersections with the local streets; or (4) a freeway (limited access) to be built as a divided highway with access at selected interchanges with major highways and separated by structures from other local roads; and (5) a transit alternative to assess the feasibility of expanding the existing bus system and reduce projected highway travel demand by 2 to 3 percent in the corridor.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interests in this proposal. The U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service and Michigan Department of Natural Resources are requested to be cooperating agencies on this project. A scoping document has been prepared identifying the alternatives and the potential social, economic, and environmental issues involved. This document has been provided to the above agencies and is available to all interested agencies, organizations, and individuals on request. Comments on the scoping document and issues identified are invited from the above agencies and other interested parties. Requests for a copy of the scoping document or any comments submitted should be addressed to the above contact persons, or in Michigan, by calling the toll-free information line for this project (1-800-255-4354). When calling from out-of-state, contact may be made by using (312) 668-3788. The closing date for comments is August 28, 1989. An extensive public involvement program will be conducted as part of the project. Opportunities to voice comments and concerns, and to be kept informed of key developments throughout this study will be provided by newsletters and comment forms, a toll-free information line, newspaper/radio/TV announcements and public information meetings.

A prestudy meeting was held on March 22, 1989, to provide the public with an overview of the project scope and schedule, public and agency involvement process, and an opportunity to discuss the proposed action. On May 2, 1989, a scoping meeting with Federal, State, and local agencies was conducted. On May 17, 1989, a meeting with coalition and advisory groups was held. Accordingly, no additional scoping meetings are planned at this time. The Draft EIS is scheduled for completion in November 1990, and will be made available for public and agency review and comment.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on July 25, 1989.

James A. Kirschensteiner,

District Engineer, Lansing, Michigan.

[FR Doc. 89-17946 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-22-M

Proposed Sierra Road Interchange (IR 15-4(65)197); Lewis and Clark County, MT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Lewis & Clark County, Montana.

FOR FURTHER INFORMATION CONTACT: Dale Paulson, Environmental and Project Development Engineer, Federal Highway Administration, 301 South Park Street, Drawer 10056, Helena, Montana 59626-0056, Telephone: (406) 449-5310; or Mr. Steve Kologi, Chief, Preconstruction Section, Montana Department of Highways, 2701 Prospect Street, Helena, Montana 59620, Telephone: (406) 444-6242.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Montana Department of Highways will develop a Federal-aid highway project on Interstate Highway 15 (I-15) in Lewis & Clark County north of Helena. The proposed project will consist of the construction of a new interchange to provide a new point of access onto I-15. There are currently two locations being studied for an interchange, Alternative A and Alternative B. The No-Action Alternative is also being analyzed.

Alternative A

Construct an interchange at the crossing of I-15 over Sierra Road, with reconstruction of a portion of Sierra Road and the frontage road east of I-15 to improve safety.

Alternative B

Construct an interchange at the intersection of Forestvale and I-15, with new construction of a one-half mile extension of Forestvale to I-15.

Alternative A is located approximately four miles north of the existing Cedar Street interchange in Helena. Alternative B is located approximately three and one-half miles north of the same interchange.

Incorporated into and studied with the various alternatives will be design variations of grade and alignment.

The purpose of this project is to provide an additional point of access onto I-15. This will allow more traffic to use I-15 which will reduce traffic on the heavily traveled North Montana Avenue and improve convenience and safety.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of formal scoping meetings will be held in the Helena area as well as a public hearing; no firm dates have been established. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified; comments and suggestions are invited from all interested parties.

Comments and/or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 25, 1989.

D.C. Lewis,

Assistant Division Administrator, Montana Division, Helena.

[FR Doc. 89-17993 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

On January 24, 1989, Ms. Elizabeth A. Dolan, of the Center for Auto Safety (CAS), petitioned NHTSA to conduct a Formal Defect Investigation leading to the recall of 1983 through 1988 Ford "F" model trucks and chassis cabs regarding an alleged defect involving fuel explusion and vehicle fires.

The petitioner alleges that high exhaust temperatures lead to high underbody and fuel tank temperatures in the subject "F" model vehicles. It is further alleged that these high temperatures lead to fuel boiling in the fuel tanks, fuel expulsion, and fires.

The subject vehicles are equipped with electric fuel pumps which circulate fuel through the carburetor, the unused fuel being returned to the fuel tank. In passing through the engine compartment, the fuel is heated and returned to the tank at a higher temperature. The larger engines in these vehicles are equipped with dual thermactor air pumps and conventional mufflers, and the smaller engines with single air pumps and catalysts in the exhaust system. Recirculating fuel and burning hydrocarbons in the exhaust system have led to high exhaust and fuel tank temperatures and safety recalls of Ford's "E" model vans and chassis. According to Ford, the forward location of the engine, the much larger engine compartment with better air flow, and the higher ground clearance have prevented the problem from affecting the "F" models.

For furnished the results of extreme service testing that it conducted with "F" series vehicles. The maximum tank pressures recorded during these tests would not pose a fuel expulsion problem.

All reports of fuel expulsion and fires which NHTSA received from CAS, Ford, and directly from owners were anlyzed and compared to complaint and fire rates for vehicles recalled for fuel expulsion and to the entire vehicle population. This analysis determined the rate of fuel expulsion and fires for the "F" model trucks to be very low.

Based on the low reported fire rate of the Ford "F" models there does not appear to be a reasonable possibility that an order concerning the notification and remedy of a safety-related defect in relation to the alleged fuel expulsion and fire potential would be issued at the conclusion of an investigation. Since no evidence of a safety-related defect trend was discovered, further commitment of resources to determine whether such a trend may exist does not appear to be warranted. Therefore, the petition is denied.

Authority: Sec. 124, Pub. L. 93-492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 27, 1989.

Robert Hellmuth,

Acting Associate Administrator for Enforcement.

[FR Doc. 89-17958 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP89-02, Notice 2]

Grant of Petition for Determination of Inconsequential Noncompliance; Fleetwood Enterprises Inc.

This notice grants the petition by Fleetwood Enterprises, Inc. (Fleetwood) of Riverside, California, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.120 Federal Motor Vehicle Safety Standard (FMVSS) No. 120 "Tire Selection and Rim for Motor Vehicles Other Than Passenger Cars." The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Paragraph S5.1.1 of FMVSS No. 120 requires that each vehicle equipped with pneumatic tires for highway service shall be equipped with tires that meet the requirements of FMVSS No. 119, and with rims that are listed by the manufacturer of the tires as suitable for use with those tires, in accordance with S5.1 of FMVSS No. 119. Fleetwood manufactured 74 travel trailers between July 1988 and October 1988 that failed to comply with S5.1.1 of FMVSS No. 120. Goodyear specified that P205/75R15 and ST205/75R15C tires be used in conjunction with 5½ inch or 6-inch wide rims. Fleetwood used these tires on the above mentioned travel trailers with 5-inch wide rims.

Fleetwood supported its petition for inconsequential noncompliance with the following:

(1) Fleetwood performed a subjective test of the overall handling of the noncomplaint tire and rim combination on similarly designed travel trailers, and found the trailers performed satisfactorily.

(2) Goodyear Tire and Rubber Company tested the noncomplaint tire and rim combination with the Department of Transportation's bead unseat, high speed and durability tests. In all cases, the tires passed the tests.

(3) Goodyear has petitioned the Tire and Rim Association for a change in listing, to approve the P205/75R15 and the ST205/75R15C for use with a 5-inch wide rim.

No comments were received on the petition.

The agency has learned that the Tire and Rim Association has granted Goodyear's petition, and that the 1990 Handbook will add the 5-inch wide rim to the list of those approved for use with the two types of 205/75R15 tires. This renders the existing noncompliance purely technical in nature. Further, both Fleetwood's subjective tests and Goodyear's objective tests to Federal performance requirements are represented as demonstrating that no safety problem exists.

In consideration of the foregoing, it is hereby found that the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety. Accordingly, its petition is granted.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: July 27, 1989.

Barry Felrice,

Associate Administrator for Research and Development.

[FR Doc. 89-17944 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-59-M

Federal Railroad Administration

[FRA Emergency Order No. 12]

Boston and Maine Corp., Berkshire Scenic Railway Museum, Inc.; Emergency Order Prohibiting Passenger Service

The Federal Railroad Administration (FRA), Department of Transportation, has determined that considerations of public safety necessitate the issuance of this Emergency Order prohibiting passenger service on a line of track between Lee and Lennox, Massachusetts (milepost 7.0 to milepost 10.5) (a segment of the "Canaan Branch") owned by the Boston and Maine Corporation.

FRA has reason to believe that the Berkshire Scenic Railway Museum, Inc., a "railroad" subject to its safety jurisdiction pursuant to the Federal Railroad Safety Act of 1970, 45 U.S.C. 421, 431(e), 438, as amended, intends to provide passenger service over a portion of the Canaan Branch as early as today.

On the basis of detailed inspections of this track by FRA's regional director and track safety specialist yesterday and today, FRA is convinced that operation of passenger trains over this line would pose an unacceptable threat to the safety of such passengers.

Under the FRA track safety regulations (49 CFR Part 213), it is the responsibility of the track owner to maintain its track so as to meet the maintenance standards prescribed in the regulation (see subparts B, C, D, and E) for one of six classes of track and to operate trains in accordance with the speed limitations applicable to the class of track to which a given line of track is maintained (see § 213.9). For example, the maximum allowable operating speed for freight trains on class 1 track is 10 miles per hour, and on class 6 track it is 110 miles per hour. However, under § 213.4, a track owner may designate a segment of track as "expected" track (*i.e.*, track not maintained to meet the standards set for class 1 track in subparts B, C, D, and E) so long as, among other things, no "revenue passenger train" is operated over that segment (§ 213.4(e)(2)).

Of course, whether passengers are transported for hire or not is irrelevant to FRA's larger responsibility for the safety of operations by any railroad subject to FRA's emergency order authority under the 1970 Safety Act. That is, while FRA believes the intended operations will be "revenue" passenger operations, their character as such is not relevant to FRA's exercise of its emergency authority over all railroad operations. Indeed, as FRA stated when it issued the excepted track provision: "the adoption of this section or any section in this part is not construed by FRA as precluding the use of FRA's statutory authority to abate a particular hazard." 47 FR 39398, 39399 (1982).

This segment of track clearly fails to meet class 1 standards, the lowest class of track over which passenger service is permitted by FRA regulation. However, the Boston and Maine Corporation has designated this track as excepted track. Accordingly, no maintenance requirements apply to this track with respect to roadbed, track geometry, or track structures. For example, there are no requirements relating to track gage, alinement, crossties, rail joints, track surface, ballast, rail end mismatch, rail fastenings, or tie plates.

On July 27, 1988, FRA carefully inspected the portion of the segment of track in question between mileposts 7.2 and 8.5. In that 1.3 mile segment, FRA found 171 defective conditions representing 171 individual failures to meet the standards of class 1 track. Inspection today of the two miles between mileposts 8.5 and 10.5 revealed an additional 304 defective conditions. Thus, on 3.3 of the 3.5 miles of track in question, FRA has found a total of 475 defects keeping this track from qualifying for classification at FRA's lowest class of track.

Many of these defects pose particularly serious threats to safety. For example, at four different locations, FRA found track gage to be between 58 and ¼ inches and 58 and ½ inches, presenting the distinct possibility of derailment at those points. Five center-cracked joint bars were found, any one of which could fail under the next train to pass over it. In one 39-foot segment of track, only three nondefective ties were found. Four significant crosslevel defects were noted. Many loose joint bars were recorded; these can lead to gage-side mismatch that can cause derailment.

FRA concludes that the transportation of passengers on this line would pose a significant and unacceptable threat to their safety. Accordingly, pursuant to the authority of section 203 of the Federal Railroad Safety Act of 1970 delegated to me by the Secretary of Transportation (49 CFR 1.49(m), it is ordered:

1. That the Boston and Maine Corporation shall not conduct or permit the operation of any passenger service of any kind over the line of track between Lee and Lennox, Massachusetts, (milepost 7.0 to milepost 10.5) unless and until that track is maintained to FRA class 1 standards as set forth in 49 CFR Part 213.

2. That the Berkshire Scenic Railway Museum, Inc., shall not conduct any passenger service of any kind over the line of track between Lee and Lennox, Massachusetts, (milepost 7.0 to milepost 10.5) unless and until that track is maintained to FRA class 1 standards as set forth in 49 CFR Part 213.

This Order shall remain in effect until this line of track is maintained to FRA class 1 standards.

Each violation of this Order, *i.e.*, each train movement in violation of this Order, shall subject the respondent committing such violation to a civil penalty of up to $20,000. 45 U.S.C. 432, 438, as amended.

Opportunity for formal review of this Emergency Order will be provided in accordance with section 203(b) of the Federal Railroad Safety Act of 1970, 45 U.S.C. 432(b), and section 554 of Title 5 of the United States Code.

Issued in Washington, DC. on July 28, 1988.

Susan M. Coughlin,

Acting Administrator.

[FR Doc. 89-18203 Filed 8-1-89; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John

Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

DATE: Comments on the information collection should be directed to the OMB Desk Officer on or before September 1, 1989.

Dated: July 25, 1989.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

New Collection

1. Veterans Benefits Administration.
2. Vocational Rehabilitation Satisfaction Survey.
3. VA Form 28–0561.
4. This form will be used to survey service-disabled veterans who have exited from the Vocational Rehabilitation and Counseling (VR&C) program. The survey forms will be tabulated and analyzed to identify areas of the VR&C program that need improvement.
5. On occasion.
6. Individuals or households.
7. 2,500 responses.
8. ¼ hour.
9. Not applicable.

[FR Doc. 89–17945 Filed 8–1–89; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 147
Wednesday, August 2, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, August 1, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–18103 Filed 7–31–89; 10:23 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, August 22, 1989.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Application for contract designation submitted by the New York Mercantile Exchange to trade Residual Fuel Oil futures.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–18104 Filed 7–31–89; 10:23 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, August 22, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–18105 Filed 7–31–89; 10:23 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:00 p.m., Wednesday, August 30, 1989.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Program Objectives, First Quarter, FY 1990.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–18106 Filed 7–31–89; 10:23 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:30 p.m., Wednesday, August 30, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–18107 Filed 7–31–89; 10:23 a.m.]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:45 p.m., Wednesday, August 30, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–18108 Filed 7–31–89; 10:23 a.m.]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 3:00 p.m., Wednesday, August 30, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–18109 Filed 7–31–89; 10:23 a.m.]

BILLING CODE 6351–01–M

FEDERAL MARITIME COMMISSION:

TIME AND DATE: 2:00 p.m.—August 7, 1989.

PLACE: Hearing Room One, 1100 L. Street, NW., Washington, DC 20573–0001.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portion Open to the public:

1. Docket No. 88–16—Service Contracts—Petition for Reconsideration.

Portion Closed to the public:

1. Docket No. 89–05—In the Matter of Agreement No. 102–008454—The Guam Rate Agreement—Review of the Order of Dismissal and Consideration of Motion to Modify Order of Investigation.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 89–18132 Filed 7–31–89; 12:07 pm]

BILLING CODE 6730–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, August 8, 1989.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue SW., Washington, DC 20594.

STATUS: The first three items are open to the public. The last two items are closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Safety Study: Crashworthiness of Small Poststandard School Buses.
2. Highway Accident Report: Greyhound Lines, Inc., Intercity Bus Loss of Control and Overturn, Nashville, Tennessee, November 19, 1988.
3. Recommendation to FAA: Restricting Part 135 Commuter Air Carriers from VFR Operations in Less-Than-Basic VFR Weather Minimums. (Calendared by Member Nall.)
4. Opinion and Order: Administrator v. Janka and Newman, Dockets SE–8144 and

SE-8159; disposition of the Administrator's appeal. (Calendared by Member Nall.)

5. Opinion and Order: Administrator v. Godwin, Docket SE-8397; disposition of respondent's appeal. (Calendared by Member Burnett.)

FOR MORE INFORMATION CONTACT: Bea Hardesty (202) 382-6525.

Dated: July 27, 1989.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 89-18129 Filed 7-31-89; 12:07 pm]

BILLING CODE 7533-01-M

federal register

Wednesday
August 2, 1989

Part II

Federal Emergency Management Agency

44 CFR Part 352

Commercial Nuclear Power Plants; Emergency Preparedness Planning; Final Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 352

[Docket No. 352F]

RIN No. 3067-AB39

Commercial Nuclear Power Plants; Emergency Preparedness Planning

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rulemaking adopts in final form Part 352 in Title 44 CFR Emergency Management and Assistance, Chapter 1, Federal Emergency Management Agency (FEMA), Subchapter E Preparedness. This Part concerns licensee certification and FEMA determinations, and provision of Federal assistance for offsite radiological emergency planning and preparedness for commercial nuclear power plants under Executive Order 12657. This Part responds to a requirement in Section 6(a) of the Order that FEMA issue directives and procedures to implement the Order. This Part is intended to ensure that plans and procedures are in place to respond to radiological emergencies at commercial nuclear power plants under construction or in operation.

EFFECTIVE DATE: This final rule is September 1, 1989, and will supersede the currently effective interim rule, on that date.

FOR FURTHER INFORMATION CONTACT: Craig S. Wingo, Chief, Technological Hazards Division, State and Local Programs and Support Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-3026.

SUPPLEMENTARY INFORMATION:

Background:

Part 352 consists of introductory material (Scope and Definitions) and two Subparts, A and B. This Part was published as an interim rule (effective March 30, 1989) on February 28, 1989, in 54 FR 8512.

Subpart A: Certifications and Determinations

This Subpart establishes policies and procedures for submission by a commercial nuclear power plant licensee of a certification for Federal assistance under Executive Order 12657. It contains policies and procedures for FEMA's determinations, with respect to a certification. It establishes a framework for providing Federal assistance to licensees. It also provides procedures for review and evaluation of the adequacy of licensee offsite radiological emergency planning and preparedness.

Subpart B: Federal Participation

This Subpart establishes policies and procedures for providing Federal assistance for offsite radiological emergency planning and preparedness in a situation when such assistance under E.O. 12657 has been requested. It describes the process for providing Federal facilities and resources to a nuclear power plant licensee after an affirmative determination on the licensee certification under Subpart A. It describes response functions which Federal agencies might provide and the process for allocating responsibilities among Federal agencies through the Federal Radiological Preparedness Coordinating Committee (FRPCC) and Regional Assistance Committees (RACs).

An integrated approach to the development of offsite radiological emergency planning, preparedness, and response involving licensees and State and local governments, voluntary organizations, and the Federal Government is the approach most likely to provide the best protection to the public. To carry out the foregoing, FEMA is engaged in a cooperative effort with licensees and State and local governments and other Federal agencies in the development of State and local plans and preparedness to cope with radiological emergencies at commercial nuclear power facilities. These activities are described in 44 CFR Part 350, "Review and Approval of State and Local Radiological Emergency Plans and Preparedness," and Part 351, "Radiological Emergency Planning and Preparedness," which sets out Federal agency roles and assigns tasks for assisting State and local governments.

In the event of an actual radiological emergency, the Federal Radiological Emergency Response Plan (FRERP) provides for the overall Federal support to State and local governments for all types of peacetime radiological incidents including those occurring at nuclear power plants. The FRERP was published in the Federal Register on November 8, 1985, (50 FR Part 46542).

Executive Order 12657 was issued to ensure that adequate offsite radiological emergency planning and pareparedness is in place at commercial nuclear power plants to satisfy the emergency planning requirements of the Nuclear Regulatory Commission (NRC) for the issuance and retention of operating licenses. The Order applies to those situations where State and local governments, either individually or together, decline or fail to prepare commercial nuclear power plant offsite radiological emergency preparedness plans that are sufficient to satisfy the NRC licensing requirements or to participate adequately in the preparation, demonstration, testing, exercise, or use of such plans.

This regulation supports the amendments made to NRC's rule, 10 CFR 50.47(c)(1) and 10 CFR Part 50, Appendix E, Section IV.F., effective December 13, 1987, (52 FR 42078) for those situations where State and local governments decline or fail to participate in radiological emergency planning and preparedness.

In connection with nuclear power plant licensing, FEMA has previously entered into a Memorandum of Understanding (MOU) on planning and preparedness (50 FR 15485, April 18, 1985) with the NRC, under which FEMA will furnish assessments, findings, and determinations as to whether offsite emergency plans and preparedness are adequate and continue to be capable of implementation (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualification, and equipment adequacy). These assessments, findings, and determinations will be used by the NRC in connection with its own licensing and regulatory responsibilities. FEMA will support these assessments, findings, and determinations in the NRC licensing process and related administrative and court proceedings (See 10 CFR Part 50).

The Executive Order makes provision for FEMA, to the extent permitted by law, to obtain full reimbursement either jointly or severally for services performed by FEMA or other Federal agencies pursuant to E.O. 12657 from any affected licensee and from any affected nonparticipating or inadequately participating State and local government. The policy and procedures for the reimbursement process will be covered in separate regulations published in the Federal Register.

Discussion of Comments on Interim Rule

As no proposed rule was published, FEMA requested that comments on the interim rule be submitted by May 1, 1989, with an indication that these comments would be reviewed and, as appropriate, amendments made.

Twenty-six written communications were received and have been placed in the Docket. Of these, 6 were from utility companies; 5 were from interest groups (e.g., citizen groups, environmental groups, and utility associations); 10 were from State governments, 2 were from local governments, 2 from Federal agencies, and 1 from a member of Congress. Eight supported the rule, 12 opposed issuance of the rule, and 6 commented on specific matters, some unfavorably, without indicating one way or the other an overall position on issuance of the rule.

A number of the comments were general in nature. These considered the basic validity or authority for promulgation of the regulation or at least a part thereof, and certain of the premises underlying the regulation such as the realism assumption and related issues, Federalism and "conflict of interest." There were also a number of comments directed to specific sections of the regulation. These specific comments will be related to the applicable section, discussed, and the Agency's response to the comments noted with supporting rationales.

As a general principle underlying FEMA's response to the comments on this regulation, it must be understood that FEMA is an independent establishment within the Executive Branch of the Government and, as such, is subject to the direction, control, and policy decisions of the President. FEMA's functions under this regulation derive from authority (Federal Civil Defense Act of 1950, as amended, and Disaster Relief and Emergency Assistance Act) which is vested in the President and delegated by him to the Director of FEMA.

A. General Comments

1. Role of FEMA in the Planning Process

Several commenters, some opposing and some supporting the interim rule, expressed concerns that the rule might be applied in ways that would disrupt the status quo, i.e., under Part 350 and NRC regulations, States are able to compensate for nonparticipation of local governments and utilities are able to submit offsite plans for FEMA review. Supporters of the interim rule were concerned that the rule might be applied in a way that would hinder a licensee's own effort to develop an adequate offsite emergency plan, such as at the Shoreham Nuclear Power Plant which was recently licensed by NRC under existing NRC and FEMA procedures. Critics suggested that FEMA might find existing State or local participation in offsite planning "inadequate" under the new rule without sufficient basis, thus subverting and replacing the existing 350 process. There was general concern on the part of commenters that the new rule which covers inadequacy might affect every nuclear power plant and foster the assumption that FEMA would take over all offsite planning, preparedness, and response functions.

Both existing FEMA and NRC regulations and the new rule apply to situations where State or local governments "decline or fail" to participate in preparing offsite emergency plans. In some cases, the States have compensated for the lack of participation by local governments and these plans have been reviewed by FEMA under 44 CFR Part 350 and found to be adequate. In two cases, those of Shoreham and Seabrook Nuclear Power Plants, the utilities have compensated for the lack of participation of State and local governments by preparing their own offsite plans, with some technical assistance from FEMA, and submitting them through the NRC to FEMA for review. Both plans have been reviewed by FEMA under 44 CFR Part 350 and the NRC–FEMA MOU on planning and preparedness and were found to be adequate. Thus, the new rule will have no adverse effect upon these findings of adequacy. Section 352.2(c) explicitly provides that the regulation in this part does not affect the validity of emergency preparedness developed by licensees independent of or prior to Executive Order 12657.

It is important to emphasize that FEMA continues to urge State and local governments to cooperate with NRC licensees in the development and implementation of offsite emergency plans. Similarly, the NRC continues to require its licensees to seek the cooperation of State and local governments to develop and implement these offsite plans. Both agencies have stated in many forums that they view State and local participation in the development and implementation of offsite emergency planning as the preferred approach.

Under the new rule, NRC licensees have another option when State or local governments decline or fail to participate in emergency planning. The new rule provides for FEMA technical assistance in the development of utility prepared offsite plans and for the utility plan to be supplemented with provisions for Federal facilities and resources under certain exceptional circumstances.

Under the new rule, the threshold for provision of Federal technical assistance in the development of offsite plans is a FEMA determination (under § 352.5(f)) after consultation with State and responsible local officials, that a "decline or fail" situation exists. Given FEMA's policy and belief that State and local participation in offsite planning is the preferred approach, this is a significant threshold. This threshold for the provision of Federal facilities and resources is a FEMA determination (under § 252.6(b)) that the licensee has made maximum feasible use of its own resources and it assumes that the State and local authorities would contribute their full resources under realism assumptions discussed in Section 4 hereafter. If the offsite plans are still deficient, the plans can be augmented with Federal technical assistance, facilities, and resources.

Finally, FEMA views the development of a utility offsite plan, under either existing regulations or the new rule, as a last resort that NRC licensees can use in their attempt to demonstrate under NRC's regulations that there is reasonable assurance that adequate protective measures can and will be taken in the event of an emergency.

2. Command and Control and Federalism Issues

A number of commenters, primarily those opposed to issuance of the rule itself, commented on these matters. These commenters also opposed issuance of Executive Order 12657 and challenged it for much the same reasons they challenged the rule. At least one commenter who supported the rule replied to these critics of the rule.

The issues raised are primarily Federalism and command and control. The former encompasses States rights and the Tenth Amendment to the U.S. Constitution. It also involves Sec. 5(c) and (d), of the Executive Order and § 352.27 of the rule which states that FEMA shall provide for initial Federal response activities including command and control of the off site response as may be needed. The challenge to statutory authority is basically of this function. The authority for most of the functions under the rule was not challenged.

The Federalism/States rights issue is, in effect, an argument over whether State and local governments rather than the Federal Government have the right to determine that a particular site for a nuclear power plant is unsafe, that workable emergency plans are impossible, and that the Federal Government should defer to State and local governments on this point. It is argued that the rule is in violation of Executive Order 10612 on Federalism—that in applying that Executive Order site selection is a purely local matter and the Federal Government should defer to States and localities.

These comments ignore the consideration that in the area of nuclear power plant radiological health and

safety matters, the Atomic Energy Act has preempted the field and that site selection is a Federal matter. In connection with the issuance of the interim rule FEMA prepared a Federalism assessment which certified that there was nothing in the regulation inconsistent with the principles, criteria and requirements stated in Executive Order 12612 and the regulation did not affect the States' ability to discharge traditional State governmental functions or other aspects of State sovereignty.

With respect to command and control, commenters shared a concern expressed in one comment that virtually the entire Federal Government apparatus is empowered to respond to a nuclear emergency at the behest of FEMA assuming "command and control" authorities without the State and local officials and even apparently over their objections. A commenter challenged the statutory authority for this function.

These comments focus on only a very limited segment of Federal function under the Order and rule, do not give proper cognizance to the realism assumption, and fail to recognize the built in protections in the rule itself.

For most functions which would be performed under the rule such as planning, notification and warning, communications and dissemination of information, there is adequate statutory authority in Sections 201 and 502 of the Federal Civil Defense Act.

On the basis of Section 2(b)(4) of Executive Orders 12657 and 10 CFR 50.47(c)(1)(iii) (part of the NRC Emergency Planning rule), FEMA's rule assumes that States and local government will be involved in a response to an actual radiological emergency to the maximum extent possible using their best efforts.

The Executive Order directs and the rule provides that FEMA will consult with State and local governments continually, especially when determining whether "a decline or fail" situation exists, (§ 352.4(d)) and mobilizing a response to an actual emergency (See § 352.27). Section 2(b)(2) of the Executive Order states explicitly that "[FEMA] shall take care not to supplant State and local resources. FEMA shall substitute its own resources for those of State and local governments only to the extent necessary to compensate for the nonparticipation or inadequate participation of those governments, and only as a last resort after appropriate consultation with the Governors and responsible local officials in the affected area regarding State and local participation." Section 5(b) of the Executive Order directs FEMA to coordinate (and turn over) the response function when State and local governments do exercise their authority.

The rule contemplates that FEMA or other Federal agencies acting at FEMA's request would assist the orderly activation of State and local government response functions. As an example, FEMA might be called on to marshal resources, such as reception centers, which cannot readily be made available without preplanning.

3. Standards and Criteria for FEMA Findings

A number of commenters pointed to the lack of standards and criteria for determinations on such matters as "decline or fail," "participate adequately," and the like.

The standards and criteria for a review and evaluation of a licensee plan and for an analysis of whether there is a decline or fail situation or whether a State or local government is participating adequately in the preparation, demonstration, testing, exercise or using such plans are those used in 10 CFR 50.47 Appendix E, and Part 70 and NUREG–0654/FEMA–REP–1 Rev. 1 (November 1980) and Suppl. 1 (September 1988). A brief version of these is set out at 44 CFR 350.5. This regulation states in § 352.7 [Review and evaluation] that FEMA will use Part 350 (44 CFR 352.7) in making findings. Requirements applicable to State and local government plans are applicable to licensee plans.

4. Realism Assumptions

Several comments challenged the appropriateness and factual validity of the realism assumptions, namely, that in the event of an actual radiological emergency, State and local officials will exercise their best efforts to protect the public, cooperate with the utility, and follow the utility offsite plan.

Section 2(b)(4) of Executive Order 12657 provides that in carrying out its responsibilities under that Order, FEMA shall assume that in the event of an actual emergency or disaster, State and local authorities would contribute their full resources and exercise their authorities in accordance with their duties to protect the public, and would act generally in conformity with the licensee's radiological emergency preparedness plan. These realism assumptions have been adopted by the NRC in 10 CFR 50.47 (c)(1)(iii). Their validity has been approved in a court decision (*Massachusetts v. United States of America, Nuclear Regulatory Commission*, 856 F. 2d 378, CA 1, 1988).

The FEMA regulation is based on the realism assumptions addressed in § 352.25(c), and with respect to making determinations or commitment of resources under § 352.6, the assumptions are explicitly adopted as § 352.6(c)(2).

5. Conflict of Interest

A number of commenters claimed that since the regulation provides that FEMA would both develop plans and review and evaluate them, this would be a "conflict of interest." FEMA is of the view that the term is neither accurate nor helpful in discussing the matter but, for lack of a better term, it will be used in discussion of this subject.

The FEMA role set out in the regulation is based squarely on the Executive Order. FEMA's role as evaluator derives from Section 4 of the Order. Its planning function derives from Section 3. In order to implement the Executive Order pursuant to Section 6, FEMA must assume both roles. As discussed elsewhere in this document, FEMA is an executive agency implementing functions vested in the President and delegated by him to the Director, FEMA. FEMA can mitigate any perceived conflicts by internal delegations within FEMA so that FEMA officials who develop the plans will not evaluate their own work.

Also, it should be noted that the plans developed pursuant to this Part are not FEMA's plans. FEMA assists licensees and State and local governments under the Executive Order only in those limited situations where a "decline or fail" situation necessitates remedial action. FEMA also provides planning assistance to State and local governments under the Part 350 process (44 CFR Part 350). This process is considered correctly to be a cooperative effort and not a conflict of interest. The process under Part 352 is no different. It should also be noted that under NRC rules, FEMA findings and determinations on the adequacy of plans are advisory in character and have the status of rebuttable presumptions. These findings and determinations are not binding on the NRC, which remains the sole judge as to the adequacy of planning and preparedness under NRC regulations.

This arrangement is not altered in any way by this rule. All FEMA findings on plans developed under this Part will receive the same careful scrutiny and be subject to the same independent NRC judgment as all other FEMA findings and determinations. Moreover, any FEMA findings and determinations, including those submitted to the NRC under this Part, can be challenged by any State or local government or members of the general public, as parties to controversies before the NRC, as outlined in NRC Rules of Practice.

6. Due Process

Commenters claimed that the interim rule did not provide procedures for commenting or objecting to FEMA actions in the certification process. The final regulation has been modified to provide for State and local government comment on licensee certification (See § 352.5(d)) and to provide for an appeal to the Director, FEMA, of determinations by the Associate Director (See § 352.29).

7. Administrative Procedures Act

One commenter noted that § 352.7 provides that, in the event of an inconsistency between E.O. 12657 and 44 CFR Part 350, the Executive Order prevailed. A claim was made that FEMA was amending 44 CFR Part 350 without going through the Administrative Procedure Act process for informal rulemaking 5 U.S.C. 553. FEMA has no intent to modify Part 350. The standards and criteria set out in § 350.5 are unchanged. In the unlikely event of an inconsistency between an Executive Order and a regulation, the Executive Order would prevail as it is the action of a higher authority; i.e., the President, while the regulation is the action of the Director of FEMA. Other commenters expressed concerns on the application of the Administrative Procedure Act to issuance of licenses by NRC, which is not pertinent to this rulemaking. The effect of Part 352 in NRC proceedings is governed by NRC rules.

Another commenter objected to issuance of an interim rule without the formality of a "proposed" rule. Section 6 of Executive Order 12657 states that FEMA shall issue interim and final directives and procedures implementing the Order as expeditiously as is feasible, and in any event, shall issue interim directives and procedures not more than 90 days following the effective date of this Order and shall issue final directives and procedures not more than 180 days following the effective date of this Order which is November 18, 1988.

FEMA continues to rely on its belief that meeting the Executive Order deadline did justify the departure from issuance of a proposed rule. As this rule is basically a procedural rule, the Administrative Procedure Act does not require FEMA to have issued a proposed rule. FEMA's own procedures which call for a proposed rule (44 CFR 1.12) allow for an exemption in this case. Issuance of the interim rule, with request for comment, has afforded adequate opportunity to the public for comment.

8. Other Comments

One commenter recommended that an on-site specific environmental impact statement be developed as part of the certification process. In individual cases, FEMA is of the view that certification acceptance would not be a major Federal action significantly affecting the quality of the human environment and that use of the National Environmental Policy Act (NEPA) process is not required under the NEPA statutes and regulation.

A commenter on the fee reimbursement provision challenged the regulatory flexibility analysis statement that the rule did not place burdens on local governments. Regulatory flexibility may be an issue in fee regulations, but since that subject is not specifically addressed in this regulation, there is no need to amend the preamble to the interim rule.

The assistance described in this Part is not Federal financial assistance described in 44 CFR Part 4 and, thus, does not require use of the intergovernmental review procedure described therein.

B. Section-Specific Comments

Sections 352.1 and 352.2 Definition and Scope, Purpose and Applicability

Comment: A commenter suggested that Subpart A begin with the Section on "Licensee certification" and that the first two sections be introductory.

Discussion: This would make it clearer that the scope and definitions sections apply to both Subparts A and B.

Response: Adopted as § 352.4 herein. Also, the Table of Contents has been amended by adding new §§ 352.3 (Purpose and scope) and 352.29 (Appeal process).

Section 352.1 Definitions

Comment: 352.1(g) Local government. There were a number of suggestions for additions to this listing such as public school districts and villages.

Discussion: The intent of the definition is to be as inclusive as possible as reflected in the term, "other jurisdictions," which encompasses other entities such as school districts and villages. This term is deemed to include all local political entities which might have a planning and response function.

Response: No change.

Section 352.1(h) Decline or Fail

Comment: A number of comments were made with respect to the definition of decline or fail, some to expand and some to contract the scope of the definition. Thus, suggestions were made to delete the references to State and local inadequacies, while another commenter would have added an example of inadequacies such as "lack of demonstrated timely action by State or local governments" or similar evidence of failure to perform properly.

Discussion: The Executive Order applies whenever State or local governments, either individually or together, "decline or fail" to prepare emergency preparedness plans or to "participate adequately" in the preparation, demonstration, testing, exercise, or use of such plans. The term, "decline or fail," as used in this regulation, is intended to cover all these circumstances. FEMA is of the view that the existing definition, slightly modified, is a fair reflection of the intent of the Order, and that further additions or contractions would not be more accurate or complete.

Response: The words, "in a timely manner," are added after "correct those inadequacies" to more clearly express the need for promptness in State and local actions.

Section 352.1(q) Command and Control

Comment: A suggestion was made that the term, "protective action recommendations," was more accurate and familiar to response organizations than "protective action decisions."

Discussion: It is believed that in the context of this regulation the word, "decisions," more accurately reflects the intent of the Executive Order. Therefore, no change is required.

Response: No change.

Section 352.2(a) Scope, Purpose and Applicability

Comment: As discussed heretofore in the general discussion a number of the commenters asked about the purported lack of criteria for determinations as to "decline or fail" and "participate adequately."

Discussion: In most cases, "decline" is more or less self evident. The criteria used in evaluating a fail situation or determining the adequacy of participation in planning and preparedness are the same criteria used in reviewing State and local plans under Part 350. That is NRC's Emergency Planning Rule (10 CFR Part 50.47, Appendix E and Part 70) and the joint FEMA–NRC criteria for preparation and Evaluation of Radiological Emergency Response plans and preparedness in support of Nuclear Power Plants. NUREG-0654/FEMA-REP–1, Rev. 1, (November 1980) and Suppl. 1 (September 1988). See 44 CFR 350.5(a). Section 352.6 states this. This is believed to be an adequate definition of criteria.

Response: No change

Section 352.2(c) Applicability

Comment: Two commenters wished clarification of paragraph (c) to make it clearer that the regulation should not be construed or applied to hinder a licensee's own efforts to develop response plans to the extent necessary to achieve adequate emergency preparedness.

Discussion: FEMA agrees that nothing in the regulation should be construed to hinder the licensee's efforts developed under this Part or any other Part such as 350. Thus, FEMA should not, as suggested, develop generic plans which can be used by licensees.

Response: We believe the existing language adequately expresses the concept that the licensee's effort independent of this Part remains in full force and effect, is not superseded, and that if any further assistance under this Part is furnished, it is supplemental.

Section 352.4 Licensee Certification

Comment: A number of commenters suggested that the regulation should indicate how long the certification applied and that there should be provisions to address changing situations. Other comments of an editorial nature were made such as what evidence the licensee should submit to support a finding of decline or fail, e.g., press releases or litigation positions. Also, a suggestion was made to add the words, "or designee," after "chief executive officer" in paragraph a. Additionally, a suggestion was made for the licensee to send copies of the certification to other places such as the NRC Regional Offices.

Discussion: It would not be feasible to set out more specific periods of time for certification as each case varies. Obviously, there is authority to amend or modify the certifications or other determinations at any time. While press releases or litigation positions are an indication of positions of State or local governments for a document such as the certification, FEMA is of the view there should be formality. Therefore, the documentation should show that there has been a written request to State or local officials, with response or a lack of response in a reasonable time, for participation in planning, commitment of resources, or timely correction of inadequacies. The host FEMA Regional Office distributes copies of the certification, and takes the official actions with respect thereto. It should control this dissemination of documents. Therefore, there is no need for the licensee to send the certification anywhere but the host FEMA Regional Office. The suggestion to add the words, "or designee," after "chief executive officer" is not adopted, as it is believed that a request of this magnitude should be made only at the highest level by the chief executive officer.

Response: No change.

Section 352.5 FEMA Action on Licensee Certification

Comment: A number of comments were made on this Section, particularly with respect to the time frame for actions. Some thought the period for FEMA review should be shortened or that actions or inactions should be dispositive of a FEMA decision, such as automatic approval if no final decision is made in 30 days. Some desired that a timeframe be established for FEMA consultation with State and local officials.

Discussion: Suggestions to shorten the time for FEMA to act in 10 days, or to assume if FEMA does not make a final decision within 60 days the certification is automatically accepted, are rejected. However, when a utility meets the requirements of the NRC emergency planning rule (See 10 CFR 50.47 (c)(1) (i) and (ii), FEMA will determine this to be dispositive.

Response: A number of modifications have been made in this Section to allow for comment by State and local governments and a new § 352.29 on appeals from interested parties, applicable to this and other Sections has been added.

The FEMA Associate Director will make a decision within 45 days of receipt of certification by the Regional Director. Action on an appeal will be completed within no more than 60 days after the date of the decision. However, during an appeal FEMA will provide technical assistance to a licensee.

Section 352.6 FEMA Determination on the Commitment of Federal Facilities and Resources

Comment: A suggestion was made that the realism doctrine, which is set out as an assumption upon which all resource determinations are made, should be reiterated in a number of places in Section 5 and elsewhere.

Discussion: FEMA is of the view that this duplication is unnecessary. (See §§ 352.6(c)(2) and 352.25(c).)

Response: No change.

Section 352.6(d) Commitment of Resources

Comment: FEMA should advise State and local authorities of the facilities and resources provided the licensee.

Discussion: FEMA believes that State and local governments should be kept fully informed of Federal Assistance provided to licensees.

Response: The phrase, "the States and affected local governments," is added to the third sentence of paragraph d.

Section 352.23 Functions of a Regional Assistance Committee (RAC)

Comment: A commenter noted that this section extended Part 351 assistance to licensees, and suggested that the RAC be able to provide assistance prior to certification. This has been done in Shoreham and Seabrook cases already under Parts 350 and 351. The commenter thought that § 352.23 prevented RAC assistance prior to such certification.

Discussion: FEMA is of the view that this is an incorrect interpretation of § 352.23, and that assistance can be furnished prior to a certification. Paragraph (b) quite explicitly allows consultation on the needs for facilities and resources. The present practice of RAC cooperation in absence of State or local cooperation is permissible and encouraged. Such cooperation is furnished under Parts 350 and 351 independent of the Executive Order and Part 352, and will continue to be so furnished. A suggestion was made that milestones be established in the regulation for Federal agency responses in § 352.23(d). These are inappropriate in a regulation but should be established as part of good management technique.

Response: No change.

Section 352.24 Provision of Technical Assistance and Federal Facilities and Resources

Comment: It was noted that technical assistance is referred to in §§ 352.23 and 352.24. The difference between these uses of technical assistance residues with the intent of such technical assistance. Following a determination under Subpart A, technical assistance is intended to be part of plan development and completion. Prior to a determination under Subpart A, technical assistance is intended to be provided to help evaluate the need for Federal assistance and Federal facilities and resources.

Response: An additional statement has been added allowing provision of technical assistance during pendency of an appeal.

Section 352.28 Reimbursement

Comment: Utilities commented that State and local governments whose non-participation in emergency planning gave rise to this situation, should bear financial burden. Licensees should not pay for this. Licensees should not be the conduit for collecting fees from State and local governments. Objections were made by State and localities to charging non-participating State and local governments for any costs, particularly costs of services or resources provided by FEMA or RACs. This was based on lack of legal authority and lack of a request for such assistance. Also, one commenter from a locality within the EPZ, but not receiving any services or tax benefits from a nuclear plant, objected to possible fees assessed against it.

Discussion: The issue of reimbursement is presently being considered in separate regulations on this subject, and will not be addressed in this regulation. FEMA has issued a proposed regulation based on 31 U.S.C. 9701 which is specific to FEMA, and not other agencies, which covers fees to be charged to utilities for FEMA services and resources under both Parts 350 and 352. 54 FR 27395, Section 352.28 restates the Executive Order and will not be revised.

Response: No change.

Section 352.29 Appeal Process

Comment: Commenters desire that there be a procedure for a State or local government or a licensee to appeal the decision made by the Associate Director concerning a certification request by a licensee or a request for resources.

Discussion: FEMA supports the rights of State and local governments or others to appeal FEMA decisions, a provision provided in Part 350.

Response: A new § 352.29 is added.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Director has certified that this rule will not have a significant economic impact upon a substantial number of small entities. The rule places obligations and burdens only on nuclear power plant licensees which are large electric utility companies. These licensees are not "small entities" as set forth in the Regulatory Flexibility Act and do not meet the small business size standards (set forth in Small Business Administration regulations in 13 CFR 121.0). A copy of the certification and attendant materials is available for inspection and copy in the Rules Docket.

Environmental Assessment and Finding of No Significant Environmental Impact

The Director has determined under the National Environmental Policy Act of 1969 and FEMA Regulation 44 CFR Part 10, "Environmental Considerations," that this rule is not a major Federal action significantly affecting the quality of the human environment. An environmental assessment has been prepared which is available for inspection and copying for a fee in the Rules Docket.

Regulatory Analysis

This rule is not a "Major Rule" as the term is used in Executive Order 12291 and implementing Office of Management and Budget (OMB) guidance. It will not have an annual effect on the economy of $100 milion or more, will not result in an increase in costs, and will not have a significant adverse impact on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Paper Work Reduction Act

This rule contains information requirements that are subject to the Paper Work Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and the OMB implementing regulation, 5 CFR Part 1320. These requirements have been submitted to and been approved by OMB. The OMB Number is 3067–0201 for §§ 352.4 and 352.24.

Federalism Executive Order

A Federalism assessment under E.O. 12612 has been prepared and a copy is available for inspection and copying for a fee in the Rules Docket.

List of Subjects in 44 CFR Part 352:

Nuclear Power Plants and Reactors, Radiation Protection, Intergovernmental Relations, and Federal Assistance.

Accordingly, 44 CFR Part 352 is revised to read as follows:

PART 352—COMMERCIAL NUCLEAR POWER PLANTS: EMERGENCY PREPAREDNESS PLANNING

Sec.
352.1 Definitions.
352.2 Scope, purpose and applicability.

Subpart A—Certifications and Determinations

352.3 Purpose and scope.
352.4 Licensee certification.
352.5 FEMA action on licensee certification.
352.6 FEMA determination on the commitment of Federal facilities and resources.
352.7 Review and evaluation.

Subpart B—Federal Participation

352.20 Purpose and scope.
352.21 Participating Federal agencies.
352.22 Functions of the Federal Radiological Preparedness Coordinating Committee (FRPCC).
352.23 Functions of a Regional Assistance Committee (RAC).
352.24 Provision of technical assistance and Federal facilities and resources.
352.25 Limitation on committing Federal facilities and resources for emergency preparedness.
352.26 Arrangements for Federal response in the licensee offsite emergency response plan.
352.27 Federal role in the emergency response.
352.28 Reimbursement.
352.29 Appeals process.

Authority: Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.); Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq.; 31 U.S.C. 9701; Executive Order 12657; Executive Order 12148; Executive Order 12127 and Executive Order 12241.

§ 352.1 Definitions.

As used in this part, the following terms and concepts are defined:

(a) *Associate Director* means the Associate Director, State and Local Programs and Support, FEMA or designee.

(b) *Director* means the Director, FEMA or designee.

(c) *EPZ* means Emergency Planning Zone.

(d) *FEMA* means the Federal Emergency Management Agency.

(e) *NRC* means the Nuclear Regulatory Commission.

(f) *Regional Director* means the Regional Director of FEMA or designee.

(g) *Local government* means boroughs, cities, counties, municipalities, parishes, towns, townships or other local jurisdictions within the plume and ingestion exposure pathway EPZs that have specific roles in emergency planning and preparedness.

(h) *Decline or fail* means a situation where State or local governments do not participate in preparing offsite emergency plans or have significant planning or preparedness inadequacies and have not demonstrated the commitment or capabilities to correct those inadequacies in a timely manner so as to satisfy NRC licensing requirements.

(i) *Governor* means the Governor of a State or his/her designee.

(j) *Certification* means the written justification by a licensee of the need for Federal compensatory assistance. This certification is required to activate the Federal assistance under this part.

(k) *Responsible local official* means the highest elected official of an appropriate local government.

(l) *Technical assistance* means services provided by FEMA and other Federal agencies to facilitate offsite radiological emergency planning and preparedness such as: Provision of support for the preparation of offsite radiological emergency response plans

and procedures; FEMA coordination of services from other Federal agencies; provision and interpretation of Federal guidance; provision of Federal and contract personnel to offer advice and recommendations for specific aspects of preparedness such as alert and notification and emergency public information.

(m) *Federal facilities and resources* means personnel, property (land, buildings, vehicles, equipment), and operational capabilities controlled by the Federal government related to establishing and maintaining radiological emergency response preparedness.

(n) *Licensee* means the utility which has applied for or has received a license from the NRC to operate a commercial nuclear power plant.

(o) *Reimbursement* means the payment to FEMA/Federal agencies, jointly or severally, by a licensee and State and local governments for assistance and services provided in processing certifications and implementing Federal compensatory assistance under this Part 352.

(p) *Host FEMA Regional Office* means the FEMA Regional Office that has primary jurisdiction by virtue of the nuclear power plant being located within its geographic boundaries.

(q) *Command and control* means making and issuing protective action decisions and directing offsite emergency response resources, agencies, and activities.

§ 352.2 Scope, purpose and applicability.

(a) This part applies whenever State or local governments, either individually or together, decline or fail to prepare commercial nuclear power plant offsite radiological emergency preparedness plans that are sufficient to satisfy NRC licensing requirements or to participate adequately in the preparation, demonstration, testing, exercise, or use of such plans. In order to request the assistance provided for in this part, an affected nuclear power plant applicant or licensee shall certify in writing to FEMA that the above situation exists.

(b) The purposes of this part are as follows: (1) To establish policies and procedures for the submission of a licensee certification for Federal assistance under Executive Order 12657; (2) set forth policies and procedures for FEMA's determination to accept, accept with modification, or reject the licensee certification; (3) establish a framework for providing Federal assistance to licensees; and (4) provide procedures for the review and evaluation of the adequacy of offsite radiological emergency planning and preparedness. Findings and determinations on offsite planning and preparedness made under this part are provided to the NRC for its use in the licensing process.

(c) This part applies only in instances where Executive Order 12657 is used by a licensee and its provisions do not affect the validity of the emergency preparedness developed by the licensee independent of or prior to Executive Order 12657.

Subpart A—Certifications and Determinations

§ 352.3 Purpose and scope.

This subpart establishes policies and procedures for submission by a commercial nuclear power plant licensee of a certification for Federal assistance under Executive Order 12657. It contains policies and procedures for FEMA's determinations, with respect to a certification. It establishes a framework for providing Federal assistance to licensees. It also provides procedures for review and evaluation of the adequacy of licensee offsite radiological emergency planning and preparedness.

§ 352.4 Licensee certification.

(a) A licensee which seeks Federal assistance under this part shall submit a certification to the host FEMA Region Director that a decline or fail situation exists. The certification shall be in the form of a letter from the chief executive officer of the licensee. The contents of this letter shall address the provisions set forth in paragraphs (b) and (c) of this section.

(b) The licensee certification shall delineate why such assistance is needed based on the criteria of decline or fail for the relevant State or local governments.

(c) The licensee certification shall document requests to and responses from the Governor(s) or responsible local official(s) with respect to the efforts taken by the licensee to secure their participation, cooperation, commitment of resources or timely correction of planning and preparedness failures.

(Approved by the Office of Management and Budget (OMB) under control number 3067-0201)

§ 352.5 FEMA action on licensee certification.

(a) Upon receiving a licensee certification, the host Regional Director shall immediately notify FEMA Headquarters of the licensee certification. Within 5 days the host Regional Director shall notify the Governor of an affected State and the chief executive officer of any local government that a certification has been received, and make a copy of the certification available to such persons. Within 10 days, the host Regional Director shall acknowledge in writing the receipt of the certification to the licensee.

(b) Within 15 days of receipt of the certification, the Regional Director shall publish a notice in the Federal Register that a certification from the licensee has been received, and that copies are available at the Regional Office for review and copying in accordance with 44 CFR 5.26.

(c) FEMA Headquarters shall notify the NRC of receipt of the certification and shall request advice from the NRC on whether a decline or fail situation exists.

(d) State and local governments may submit written statements to the host Regional Director outlining their position as to the facts stated in the letter of certification. Such statements shall be submitted to FEMA within 10 days of the date of notification provided to State and local government under § 352.5(a). Any such statements shall be a part of the record and will be considered in arriving at recommendations or determinations made under the provisions of this Part.

(e) The host FEMA Regional Office shall provide, after consulting with State and responsible local officials, a recommended determination on whether a decline or fail situation exists to the FEMA Associate Director within 30 days of receipt of the licensee certification.

(f) The FEMA Associate Director shall make a determination on whether a decline or fail situation exists within 45 days of receipt of the licensee certification and shall advise the licensee, NRC, and State and local officials.

(g) The times for actions set out above may be extended up to an aggregate of 30 days by the host Regional Director or Associate Director, as appropriate.

§ 352.6 FEMA determination on the commitment of Federal facilities and resources.

(a) A licensee request for Federal facilities and resources shall document the licensee's maximum feasible use of its resources and its efforts to secure the use of State and local government and volunteer resources.

(b) Upon a licensee request for Federal facilities and resources, FEMA headquarters shall notify NRC and request advice from the NRC as to whether the licensee has made maximum use of its resources and the extent to which the licensee has complied with 10 CFR 50.47(c)(1). The host FEMA Regional Director shall make a recommendation to the FEMA Associate Director on whether the provision of these facilities and resources is warranted. The FEMA Associate Director shall make a final determination as to whether Federal facilities and resources are needed.

(c) In making the determination under paragraph (b) of this section, FEMA:

(1) Shall work actively with the licensee, and before relying upon any Federal resources, shall make maximum feasible use of the licensee's own resources, which may include agreements with volunteer organizations and other government entities and agencies; and

(2) Shall assume that, in the event of an actual radiological emergency or disaster, State and local authorities would contribute their full resources and exercise their authorities in accordance with their duties to protect the public and would act generally in conformity with the licensee's radiological emergency preparedness plan.

(d) The FEMA Associate Director shall make a determination on the need for and commitment of Federal facilities and resources. The FEMA determination shall be made in consultation with affected Federal agencies and in accordance with 44 CFR 352.21. FEMA shall inform the licensee, the States and affected local governments in writing of the Federal support which will be provided. This information shall identify Federal agencies that are to provide Federal support, the extent and purpose of the support to be provided, the Federal facilities and resources to be committed and the limitations on their use. The provision of the identified Federal support shall be made under the policies and procedures of Subpart B of this Part.

§ 352.7 Review and evaluation.

FEMA shall conduct its activities and make findings under this Part in a manner consistent with 44 CFR Part 350 to the extent that those procedures are appropriate and not inconsistent with the intent and procedures required by E.O. 12657. This Order shall take precedence, and any inconsistencies shall be resolved under the procedures in the NRC/FEMA Memorandum of Understanding (MOU) on planning and preparedness. (50 FR 15485, April 18, 1985)

Subpart B—Federal Participation

§ 352.20 Purpose and scope.

This Subpart establishes policy and procedures for providing support for offsite radiological emergency planning and preparedness in a situation where Federal support under Excutive Order 12657 (E.O. 12657) has been requested. This subpart:

(a) Describes the process for providing Federal technical assistance to the licensee for developing its offsite emergency response plan after an affirmative determination on the licensee certification under Subpart A (44 CFR 352.5(f));

(b) Describes the process for providing Federal facilities and resources to the licensee after a determination under Subpart A (44 CFR 352.6(d)) that Federal resources are required;

(c) Describes the principal response functions which Federal agencies may be called upon to provide;

(d) Describes the process for allocating responsibilities among Federal agencies for planning site-specific emergency response functions; and

(e) Provides for the participation of Federal agencies, including the members of the FRPCC and the RACs.

§ 352.21 Participating Federal agencies.

(a) FEMA may call upon any Federal agency to participate in planning for the use of Federal facilities and resources in the licensee offsite emergency response plan.

(b) FEMA may call upon the following agencies, and others as needed, to provide Federal technical assistance and Federal facilities and resources:

(1) Department of Commerce;
(2) Department of Defense;
(3) Department of Energy;
(4) Department of Health and Human Services;
(5) Department of Housing and Urban Development;
(6) Department of the Interior;
(7) Department of Transportation;
(8) Environmental Protection Agency;
(9) Federal Communications Commission;
(10) General Services Administration;
(11) National Communications System;
(12) Nuclear Regulatory Commission;
(13) United States Department of Agriculture; and
(14) Department of Veterans Affairs.

(c) FEMA is the Federal agency primarily responsible for coordinating Federal assistance. FEMA may enter into Memorandums of Understanding (MOU) and other instruments with Federal agencies to provide technical assistance and to arrange for the commitment and utilization of Federal facilities and resources as necessary. FEMA also may use a MOU to delegate to another Federal agency, with the consent of that agency, any of the functions and duties assigned to FEMA. Following review and approval by OMB, FEMA will publish such documents in the Federal Register.

§ 352.22 Functions of the Federal Radiological Preparedness Coordinating Committee (FRPCC).

Under 44 CFR Part 351, the role of the FRPCC is to assist FEMA in providing policy direction for the program of technical assistance to State and local governments in their radiological emergency planning and preparedness activities. Under this Subpart, the role of the FRPCC is to provide advice to FEMA regarding Federal assistance and Federal facilities and resources for implementing Subparts A and B of this Part. This assistance activity is extended to licensees. The FRPCC will assist FEMA in revising the Federal Radiological Emergency Response Plan (FRERP).

§ 352.23 Functions of a Regional Assistance Committee (RAC)

(a) Under 44 CFR Part 351, the role of a RAC is to assist State and local government officials to develop their radiological emergency plans, to review the plans, and to observe exercises to evaluate the plans. Under Subparts A and B of this Part, these technical assistance activities are extended to the licensee.

(b) Prior to a determination under Subpart A (44 CFR 352.6(d)) that Federal facilities and resources are needed, the designated RAC for the specific site will assist the licensee, as necessary, in evaluating the need for Federal facilities and resources, in addition to providing technical assistance under § 352.23(a).

(c) In accomplishing the foregoing, the RAC will use the standards and evaluation criteria in NUREG-0654/FEMA-REP-1, Rev. 1 and Supp. 1.[1] or approved alternative approaches, and RAC members shall render such technical assistance as appropriate to their agency mission and expertise.

(d) Following determination under Subpart A (44 CFR 352.6(d)) that Federal facilities and resources are needed, the RAC will assist FEMA in identifying agencies and specifying the Federal facilities and resources which the agencies are to provide.

§ 352.24 Provision of technical assistance and Federal facilities and resources

(a) Under a determination under Subpart A (44 CFR 352.5(f) and 352.4(e))

[1] Copy available from FEMA Distribution Center, P.O. Box 70274 Washington, DC 20024

that a decline or fail situation exists, FEMA and other Federal agencies will provide technical assistance to the licensee. Such assistance may be provided during the pendency of an appeal under § 352.29.

(b) The applicable criteria for the use of Federal facilities and resources are set forth in Subpart A (44 CFR 352.6(c)(1)(2)). Upon a determination under Subpart A (44 CFR 352.6(d)) that Federal resources or facilities will be required, FEMA will consult with the FRPCC, the RAC, the individual Federal agencies, and the licensee, to determine the extent of Federal facilities and resources that the government could provide, and the most effective way to do so. After such consultation, FEMA will specifically request Federal agencies to provide those Federal facilities and resources. The Federal agencies, in turn, will respond to confirm the availability of such facilities and resources and provide estimates of their costs.

(c) FEMA will inform the licensee in writing of the Federal support which will be provided. This information will identify Federal agencies which are to be included in the plan, the extent and purpose of technical assistance to be provided and the Federal facilities and resources to be committed, and the limitations of their use. The information will also describe the requirements for reimbursement to the Federal Government for this support.

(d) FEMA will coordinate the Federal effort in implementing the determinations made under Subpart A (44 CFR 352.5(f) and 352.6(d)) so that each Federal agency maintains the committed technical assistance, facilities, and resources after the licensee offsite emergency response plan is completed. FEMA and other Federal agencies will participate in training, exercises, and drills, in support of the licensee offsite emergency response plan.

(e) In carrying out paragraphs (a) through (c) of this section, FEMA will keep affected State and local governments informed of actions taken.

(Approval by the OMB under control number 3067–0201)

§ 352.25 Limitation on committing Federal facilities and resources for emergency preparedness.

(a) The commitment of Federal facilities and resources will be made through the authority of the affected Federal agencies.

(b) In implementing a determination under Subpart A (44 CFR 352.6(d)), that Federal facilities and resources are necessary for emergency preparedness, FEMA shall take care not to supplant State and local resources. Federal facilities and resources shall be substituted for those of the State and local governments in the licensee offsite emergency response plan only to the extent necessary to compensate for the nonparticipation or inadequate participation of those governments, and only as a last resort after consultation with the Governor(s) and responsible local officials in the affected area(s) regarding State and local participation.

(c) All Federal planning activities described in this Subpart will be conducted under the assumption that, in the event of an actual radiological emergency or disaster, State and local authorities would contribute their full resources and exercise their authorities in accordance with their duties to protect the public from harm and would act, generally, in conformity with the licensee's offsite emergency response plan.

§ 352.26 Arrangements for Federal response in the licensee offsite emergency response plan.

Federal agencies may be called upon to assist the licensee in developing a licensee offsite emergency response plan in areas such as:

(a) Arrangements for use of Federal facilities and resources for response functions such as:

(1) Prompt notification of the emergency to the public;

(2) Assisting in any necessary evacuation;

(3) Providing reception centers or shelters and related facilities and services for evacuees;

(4) Providing emergency medical services at Federal hospitals; and

(5) Ensuring the creation and maintenance of channels of communication from commercial nuclear power plant licensees to State and local governments and to surrounding members of the public.

(b) Arrangements for transferring response functions to State and local governments during the response in an actual emergency; and

(c) Arrangements which may be necessary for FEMA coordination of the response of other Federal agencies.

§ 352.27 Federal role in the emergency response.

In addition to the Federal component of the licensee offsite emergency response plan described in Subpart B (§ 352.26), and after complying with E.O. 12657, Section 2(b)(2), which states that FEMA:

(2) Shall take care not to supplant State and local resources and that FEMA shall substitute its own resources for those of State and local governments only to the extent necessary to compensate for the nonparticipation or inadequate participation of those governments, and only as a last resort after appropriate consultation with the Governors and responsible local officials in the affected area regarding State and local participation;

FEMA shall provide for initial Federal response activities, including command and control of the offsite response, as may be needed. Any Federal response role, undertaken pursuant to this section, shall be transferred to State and local governments as soon as feasible after the onset of an actual emergency.

§ 352.28 Reimbursement.

In accordance with Executive Order 12657, Section 6(d), and to the extent permitted by law, FEMA will coordinate full reimbursement, either jointly or severally, to the agencies performing services or furnishing resources, from any affected licensee and from any affected nonparticipating or inadequately participating State or local government.

§ 352.29 Appeal process.

(a) Any interested party may appeal a determination made by the Associate Director, under §§ 352.5 and 352.6 of this part, by submitting to the Director, FEMA, a written notice of appeal, within 30 days after issuance. The appeal is to be addressed to the Director, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472. The appeal letter shall state the specific reasons for the appeal and include documentation to support appellant arguments. The appeal is limited to matters of record under §§ 352.5 and 352.6.

(b) Within 30 days of receipt of this letter, the FEMA Director or designee will review the record and make a final determination on the matter.

(c) Copies of this determination shall be furnished to the Appellant, the State(s), affected local governments, and the NRC.

(d) For purposes of this section, the term "interested party" means only a licensee, a State or a local government, as defined in § 352.1(g).

Dated: July 24, 1989.

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 89–18016 Filed 8–1–89; 8:45 am]

BILLING CODE 6718-20-M

federal register

Wednesday
August 2, 1989

Part III

The President

Proclamation 6003—Extending United States Copyright Protections to the Works of the Republic of Indonesia

Federal Register
Vol. 54, No. 147
Wednesday, August 2, 1989

Presidential Documents

Title 3—

The President

Proclamation 6003 of July 31, 1989

Extending United States Copyright Protections to the Works of the Republic of Indonesia

By the President of the United States of America

A Proclamation

Section 104(b)(5) of title 17 of the United States Code provides that when the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States of America or to works first published in the United States, copyright protection on substantially the same basis as that on which the foreign nation extends protection to works of its own nationals and domiciliaries and works first published in that nation, the President may by proclamation extend protection under that title to works of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation, or which are first published in that nation.

Satisfactory assurances have been received that as of the entry into force date, August 1, 1989, of the Agreement between the Government of the Republic of Indonesia and the Government of the United States of America on Copyright Protection (hereinafter the "Copyright Agreement"), Indonesia will grant to works of United States nationals and domiciliaries and works first published in the United States protection in the Republic of Indonesia on the same basis as works of Indonesian nationals and domiciliaries and works first published in Indonesia, and that such protection will also extend to works of United States nationals and domiciliaries and works first published in the United States, which are in the Indonesian public domain on the day immediately prior to the effective date of the Copyright Agreement, if such works still enjoy copyright protection in the United States.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by the authority vested in me by section 104 of title 17 of the United States Code, do declare and proclaim that the conditions specified in section 104(b)(5) of title 17 of the United States Code have been satisfied in the Republic of Indonesia with respect to works of which one or more of the authors is, on the date of first publication, a national or domiciliary of the United States of America, or which are first published in the United States, and as of August 1, 1989, works of Indonesian nationals and domiciliaries and works first published in Indonesia are entitled to protection under title 17 of the United States Code.

I hereby request the Secretary of State to notify the Government of Indonesia that the date on which works of Indonesian nationals and domiciliaries and works first published in the Republic of Indonesia are entitled to protection under title 17 of the United States Code is August 1, 1989, the date on which the Copyright Agreement enters into force.

BEST COPY AVAILABLE

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of July, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-18224
Filed 8-1-89; 10:38 am]
Billing code 3195-01-M

Reader Aids

Federal Register
Vol. 54, No. 147
Wednesday, August 2, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

31645-31796.....1
31797-31932.....2

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR
Proclamations:
6002.....31794
Executive Orders:
1685.....31796

7 CFR
29.....31797
58.....31646
945.....31798
1076.....31799
Proposed Rules:
911.....31843
929.....31844
967.....31845
993.....31846

9 CFR
92.....31800

10 CFR
7.....31646

12 CFR
207.....31646
220.....31646
221.....31646
224.....31646

14 CFR
39.....31649, 31651-31653, 31803-31809
71.....31654
73.....31,655
217.....31810
241.....31810
Proposed Rule:
39.....31693, 31694, 31847
71.....31696-31704
75.....31705

15 CFR
773.....31812

17 CFR
140.....31814
Proposed Rules:
240.....31850
270.....31850

19 CFR
Proposed rules:
37.....31706

20 CFR
416.....31656

21 CFR
1308.....31815
1310.....31657
1313.....31657
1316.....31669
Proposed Rule:
1308.....31855

22 CFR
60.....31815
61.....31815
62.....31815
63.....31815
64.....31815
65.....31815

24 CFR
570.....31670
Proposed Rule:
Ch. I.....31856

26 CFR
1.....31672, 31816
602.....31672
Proposed Rule:
1.....31708, 31858

29 CFR
1910.....31765
Proposed Rule:
1910.....31858

30 CFR
Proposed Rules:
250.....31768

32 CFR
706.....31825

33 CFR
100.....31826
117.....31827
Proposed Rules:
100.....31859, 31860

38 CFR
3.....31828
21.....31829

40 CFR
180.....31674, 31830-31836
185.....31836
186.....31832-31836
261.....31675
704.....31680
Proposed Rules:
81.....31860

44 CFR
80.....31681
83.....31681
352.....31920

47 CFR
73.....31685, 31686, 31838

80.....31839

40 CFR

571.....31687, 31840

50 CFR

661.....31841
663.....31688
675.....31842

Proposed Rules:

611.....31861
620.....31861
655.....31862
672.....31861
675.....31861

LIST OF PUBLIC LAWS

Last List: August 1, 1989

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

S.J. Res. 93 / Pub. L. 101-64

To designate October 1989 as "Polish American Heritage Month." (July 27, 1989; 103 Stat. 165; 1 page) Price: $1.00

S.J. Res. 129 / Pub. L. 101-65

To provide for the designation of September 15, 1989. as "National POW/MIA Recognition Day." (July 28, 1989; 103 Stat. 166; 1 page) Price: $1.00

S.J. Res. 142 / Pub. L. 101-66

Designation the week beginning July 23, 1989, as "Lyme Disease Awareness Week." (July 28, 1989; 103 Stat. 167; 1 page) Price: $1.00

OL
54
SS
1
4
7
AG
2
989
UMI

OL
4
SS
1
4
8
G
3
89
MI

8-3-89
Vol. 54 No. 148

federal register

Thursday
August 3, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 89 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

8-3-89
Vol. 54 No. 148
Pages 31933-32034

federal register

Thursday
August 3, 1989

BEST COPY AVAILABLE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 54, No. 148
Thursday, August 3, 1989

Agriculture Department
See also Animal and Plant Health Inspection Service; Forest Service
NOTICES
Agency information collection activities under OMB review, 31974

Air Force Department
NOTICES
Environmental statements; availability, etc.:
Advanced Launch System, 32004

Animal and Plant Health Inspection Service
NOTICES
Veterinary biological products; product and establishment licenses, 31974

Centers for Disease Control
NOTICES
Meetings:
Diabetes Translation and Community Control Programs Technical Advisory Committee, 32011

Commerce Department
See Export Administration Bureau; International Trade Administration; Minority Business Development Agency

Comptroller of the Currency
RULES
Disposition of unclaimed property recovered from national banks; CFR Part removed, 31935

Defense Department
See also Air Force Department
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 32004
Meetings:
Armed Forces Epidemiological Board, 32003 (2 documents)
Women in Services Advisory Committee, 32003

Energy Department
See also Federal Energy Regulatory Commission
NOTICES
Patent licenses, exclusive:
Geo-Temp Corp., 32004
Imdel Corp., 32005

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Tennessee, 31953
PROPOSED RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate, 31971
Fluvalinate, 31972

Executive Office of the President
See Presidential Documents

Export Administration Bureau
NOTICES
Meetings:
Semiconductor Technical Advisory Committee, 31977

Federal Aviation Administration
RULES
Airworthiness directives:
California Department of Forestry et al., 31935
Jet routes and compulsory reporting points, 31937
VOR Federal airways, 31936
VOR Federal airways and compulsory reporting points, 31937
PROPOSED RULES
Jet routes, 31967
VOR Federal airways, 31966

Federal Communications Commission
RULES
Radio stations; table of assignments:
Kentucky et al., 31960
Minnesota, 31960
New York, 31960
NOTICES
Rulemaking proceedings; petitions filed, granted, denied, etc., 32010

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 32023

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act:
Ceiling prices—
Maximum lawful prices and inflation adjustment factors, 31938
NOTICES
Natural gas companies:
Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend, 32005
Applications, hearings, determinations, etc.:
CNG Transmission Corp., 32005
Dynasty Gas Marketing, Inc., et al., 32005
Florida Gas Transmission Co., 32006
Inter-City Minnesota Pipelines Ltd., Inc., 32006
KN Energy, Inc., 32006
Midwestern Gas Transmission Co., 32007
Natural Gas Pipeline Co. of America, 32007
Northern Natural Gas Co., 32007
Shell Offshore Inc., 32008
Texas Eastern Transmission Corp., 32008
Texas Gas Transmission Corp., 32009
Texas Public Utility Commission, 32008
Transcontinental Gas Pipe Line Corp., 32009
United Gas Pipe Line Co., 32010

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Yellowstone County, MT, 32022

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 32033
Applications, hearings, determinations, etc.:
Haggard, M.L., Sr., et al., 32010
Hongkong & Shanghai Banking Corp. et al., 32011

Fish and Wildlife Service
NOTICES
Marine mammal permit applications, 32018

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Zeranol, 31949
NOTICES
Animal drugs, feeds, and related products:
Pitman-Moore, Inc.; approval withdrawn; correction, 32024

Forest Service
NOTICES
Environmental statements; availability, etc.:
Mendocino National Forest, CA, 31975
(3 documents)
Northern Region National Forests; proposed new minimum fee for special use authorizations, 31976

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 32004

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration; Human Development Services Office; Public Health Service

Health Resources and Services Administration
See also Public Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Health care for homeless individuals, 32011
Meetings; advisory committees:
August, 32013

Human Development Services Office
NOTICES
Meetings:
Child Abuse and Neglect Advisory Board, 32014

Immigration and Naturalization Service
PROPOSED RULES
Immigrations:
Special agricultural workers; adjustment to permanent resident status, 31966

Interior Department
See Fish and Wildlife Service; Land Management Bureau

International Trade Administration
NOTICES
Antidumping:
Iron construction castings from Brazil, 31977
New steel rail, except light rail, from Canada, 31984
Small business telephone systems and subassemblies from—
Japan, 31978
Korea, 31980
Taiwan, 31987
Countervailing duties:
New steel rail, except light rail, from Canada, 31991
Export trade certificates of review, 32001, 32002
(3 documents)

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Detroit & Mackinac Railway Co., 32018

Justice Department
See also Immigration and Naturalization Service; Prisons Bureau
NOTICES
Joint newspaper operating agreements; Manteca News and Manteca Bulletin, 32019
Pollution control; consent judgments:
Jay Printing Co., 32019

Labor Department
See Occupational Safety and Health Administration; Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Alaska Native claims selection:
Tanacross, Inc., 32014
Closure of public lands:
Colorado, 32015
Meetings:
Salmon District Advisory Council, 32015
Salmon District Grazing Advisory Board, 32015
Motor vehicles; off-road vehicle designations:
New Mexico, 32015
Realty actions; sales, leases, etc.:
Colorado; correction, 32016
Idaho, 32016
New Mexico, 32017
Survey plat filings:
Maine, 32018
New Mexico, 32018

Legal Services Corporation
RULES
Redistricting activities, 31954

Minority Business Development Agency
NOTICES
Business development center program applications:
New York, 32003

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 32004

National Institute for Occupational Safety and Health
See Centers for Disease Control

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Professional Service Industries, Inc., 32020
University of California, 32021

Occupational Safety and Health Administration
PROPOSED RULES
Safety and health standards:
Electrical power generation, transmission, and distribution; electrical protection equipment Correction, 31970

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; class exemptions:
Insurance company pooled separate accounts; prohibited transaction exemption amendments; correction, 32024

Presidential Documents
PROCLAMATIONS
Special observances:
Helsinki Human Rights Day (Proc. 6005), 32033
United States Customs Service 200th Anniversary Year (Proc. 6004), 31933

Prisons Bureau
RULES
Inmate control, custody, care, etc.:
Adult basic education (ABE) program, 32026
Good time and extra good time credit, 31937

Public Health Service
See also Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration
NOTICES
Organization, functions, and authority delegations:
Food and Drug Administration; Generic Drugs Office, 32014

Railroad Retirement Board
RULES
Railroad Retirement Act:
Claimant evidence required for payment, 31939
PROPOSED RULES
Railroad Unemployment Insurance Act:
Available for work, 31968
NOTICES
Agency information collection activities under OMB review, 32021

Transportation Department
See Federal Aviation Administration; Federal Highway Administration

Treasury Department
See Comptroller of the Currency

Veterans Affairs Department
RULES
Acquisition regulations:
Internal management changes, 31961
Vocational rehabilitation and education:
Veterans education—
Chronic alcoholism; disabling effects, 31950
Dependents' educational assistance eligibility, 31952

Separate Parts In This Issue

Part II
Department of Justice, Bureau of Prisons, 32026

Part III
The President, 32033

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6004 31933
6005 32033

8 CFR
Proposed Rules:
210 31966

12 CFR
33 31935

14 CFR
39 31935
71 (3 documents) 31936, 31937
75 31937
Proposed Rules:
71 31966
75 31967

18 CFR
271 31938

20 CFR
219 31939
Proposed Rules:
327 31968

21 CFR
522 31949
556 31949

28 CFR
523 32027
544 32026

29 CFR
Proposed Rules:
1910 31970

38 CFR
3 31950
21 (2 documents) 31950, 31952

40 CFR
52 31953
Proposed Rules:
180 (2 documents) 31971, 31972

45 CFR
1632 31954

47 CFR
73 (3 documents) 31960

48 CFR
801 31961

Federal Register
Vol. 54, No. 148
Thursday, August 3, 1989

Presidential Documents

Title 3—

The President

Proclamation 6004 of July 31, 1989

United States Customs Service 200th Anniversary Year, 1989

By the President of the United States of America

A Proclamation

July 31, 1989, marks the 200th anniversary of the United States Customs Service. On that day, 200 years ago, President George Washington signed legislation establishing the Customs Service as part of the Department of the Treasury.

The story of the U.S. Customs Service is, in part, the story of America itself. Throughout much of our Nation's history, customs duties accounted for the largest portion of the revenues needed to sustain and operate our national government. Customs revenues paid the Revolutionary War debt and played an important role in U.S. growth from 13 States along the Atlantic Coast to a Nation spanning the North American continent. The settling of the West, the building of the Transcontinental Railroad, the purchase of the Louisiana Territories and Alaska, the building of our military academies, and the creation of our national capital in Washington, D.C., were all financed by customs revenues.

For nearly 125 years, until passage of the Federal Income Tax Act of 1913, the Customs Service was virtually the only source of revenue for the U.S. Government. Today, despite greatly reduced rates of duty on imported goods, Customs contributes more than $16 billion per year to the national Treasury.

Beyond its contributions of revenue, the United States Customs Service has performed other important functions as well. During the past 200 years, it constructed more than 300 lighthouses, provided for the relief of sick and disabled seamen, patrolled America's shores with armed revenue cutters, and helped protect the interests of American manufacturing.

The list of prominent persons who have held key Customs posts reflects the proud history of this invaluable Federal agency: President Ulysses S. Grant; Herman Melville, author of *Moby Dick;* Pat Garrett, the sheriff who apprehended Billy the Kid; Matthew Henson, who accompanied Admiral Peary on his Arctic expedition in 1909; the poet Edwin Arlington Robinson; and the novelist Nathaniel Hawthorne. Each of these outstanding Americans was once an officer of the Customs Service.

Today, Customs continues to render vital service to our Nation by collecting revenue, protecting American companies and citizens from predatory trade practices and violation of intellectual property rights, and by detecting and preventing the entry into the United States of illegal drugs.

In recognition of the contributions of the Customs Service to our Nation, the Congress, by House Joint Resolution 363, has authorized and requested the President to issue a proclamation designating 1989 as "United States Customs Service 200th Anniversary Year."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby designate the year 1989 as United States Customs Service 200th Anniversary Year. I call upon Government officials and the people of the United States to observe this year with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of July, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-18301
Filed 8-1-89; 2:16 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 54, No. 148
Thursday, August 3, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 33

[Docket No. 89-8]

Disposition of Unclaimed Property Recovered From National Banks

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Remove and reserve.

SUMMARY: On June 29, 1983, a final rule was published in the Federal Register (48 FR 30006) adding 12 CFR Part 33 to govern the disposition of unclaimed property in the possession or custody of the OCC that was recovered from insolvent national banks and banks in the District of Columbia closed before and during the 1930's. This rule was enacted pursuant to section 408 of the Garn—St Germain Depository Institutions Act of 1982, 12 U.S.C. 216. Since all property has been distributed under the terms of section 408, 12 CFR Part 33 is no longer needed.

EFFECTIVE DATE: August 3, 1989.

FOR FURTHER INFORMATION CONTACT: Roger S. Williams, Management Analyst, Human Resources, (202) 447-1723, 490 L'Enfant Plaza East SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

List of Subjects in 12 CFR Part 33

National banks, Unclaimed property.

Authority and Issuance

Chapter I of Title 12 of the Code of Federal Regulations is amended as follows:

1. The authority citation for removal of 12 CFR Part 33 is 12 U.S.C. 93a.

PART 33—[REMOVED AND RESERVED]

2. Part 33 is removed and reserved.

Dated: July 26, 1989.
Robert L. Clarke,
Comptroller of the Currency.
[FR Doc. 89-18094 Filed 8-2-89; 8:45 am]
BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ASW-33, Amdt. 39-6251]

Airworthiness Directives; California Department of Forestry Model UH-1F; Garlick Helicopters Model UH-1B; Hawkins and Powers Aviation, Inc. Model UH-1B; Hercules Model UH-1E, UH-1L, TH-1L; International Helicopters, Inc. Model UH-1B; Oregon Helicopters Model UH-1E, UH-1L, TH-1L; Pilot Personnel International, Inc. Model UH-1B; Smith Helicopters Model UH-1E; Southern Aero Corporation Model UH-1A, UH-1B; and West Coast Fabrications Model UH-1E Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which establishes a mandatory fatigue retirement life limit on main rotor masts and trunnions used on certain UH-1 type helicopters. The AD is needed to prevent main rotor mast and trunnion fatigue failures which could result in a catastrophic failure of the main rotor system and subsequent loss of the helicopter.

DATES: Effective September 5, 1989.
Compliance: As indicated in the body of the AD.

FOR FURTHER INFORMATION CONTACT: Mr. Tyrone D. Millard, Rotorcraft Certification Office, ASW-170, Federal Aviation Administration, Fort Worth, Texas 76193-0170, telephone (817) 624-5177.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD which establishes a mandatory fatigue retirement life limit on main rotor masts and trunnions used on California Department of Forestry Model UH-1F; Garlick Helicopters Model UH-1B; Hawkins and Powers Aviation, Inc. Model UH-1B; Hercules Model UH-1E, UH-1L, TH-1L; International Helicopters, Inc. Model UH-1B; Oregon Helicopters Model UH-1E, UH-1L, and TH-1L; Pilot Personnel International, Inc. Model UH-1B; Smith Helicopters Model UH-1E; Southern Aero Corporation Model UH-1A, UH-1B; and West Coast Fabrications Model UH-1E helicopters was published in the Federal Register (53 FR 45911; November 15, 1988).

The proposal was prompted by results of the manufacturer's fatigue stress tests and fatigue analysis of the main rotor mast and trunnion under ground-air-ground (GAG) and repeated heavy lift (RHL) loading conditions. The FAA concluded from the tests and analysis that these components can no longer be operated with an unlimited service life and must be removed after a specified time in service.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted without change.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation involves 146 aircraft. It is anticipated that approximately 10 aircraft per year over the next 15 years will require replacement of the main rotor mast and trunnion at an annual cost of $102,500 for 10 aircraft. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—AIRWORTHINESS DIRECTIVES

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of 14 CFR Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

California Department of Forestry; Garlick Helicopters; Hawkins and Powers Aviation, Inc; Hercules; International Helicopters, Inc.; Oregon Helicopters; Pilot Personnel International, Inc.; Smith Helicopters; Southern Aero Corporation, and West Coast Fabrications (these helicopters were manufactured by Bell Helicopter Textron, Inc., under military contract): Applies to Model UH-1A, UH-1B, UH-1E, UH-1F, UH-1L, and TH-1L helicopters certificated in any category. (Airworthiness Docket No. 88-ASW-33)

Compliance required as indicated, unless already accomplished.

To prevent possible fatigue failure of the main rotor masts, part number (P/N) 204-011-450-001, -005, -007, -101, -105, -109, and -113, and main rotor trunnion, (P/N) 204-011-105-001, which could result in a catastrophic failure of the main rotor system and subsequent loss of the helicopter, accomplish the following:

(a) Within 10 days after the effective date of this AD, create a historical service record for the main rotor mast, (P/N) 204-011-450-001, -005, -007, -101, -105, -109, and -113, and main rotor trunnion, (P/N) 204-011-105-001, and record the hours' time in service accumulated on the main rotor mast and trunnion. If the time in service cannot be determined, enter 900 hours for each year from the date the mast and trunnion were installed.

(b) For masts and trunnions with more than 14,900 hours' time in service on the effective date of this AD, remove the masts and trunnions from service within the next 100 hours' time in service.

(c) For masts and trunnions with less than 14,900 hours' time in service on the effective date of this AD, remove the masts and trunnions from service at 15,000 hours' time in service.

(d) An alternate method of compliance which provides an equivalent level of safety with this AD may be used when approved by the Manager, Rotorcraft Certification Office, ASW-170, Federal Aviation Administration, Fort Worth, Texas 76193-0170.

This amendment becomes effective September 5, 1989.

Issued in Fort Worth, Texas, on June 14, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate Aircraft Certification Service.

[FR Doc. 89-18121 Filed 8-2-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 89-AEA-6]

Alteration of VOR Federal Airway V-162; WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Federal Airway V-162, located in the vicinity of Clarksburg, WV, by revoking that section of the airway between Clarksburg and the Derin, WV, intersection. This action removes an unnecessary segment from the system.

EFFECTIVE DATE: 0901 u.t.c., September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Jesse B. Bogan, Jr., Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On June 2, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V-162 located between Clarksburg, WV, and the Derin, WV, intersection (54 FR 23671). This segment of the airway has not been used by Washington Air Route Traffic Control Center (ARTCC) in over 5 years. Therefore, this segment of V-162 is being revoked. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the description of VOR Federal Airway V-162 located between Clarksburg, WV, and the Derin, WV, intersection. This segment of V-162 has not been used in over 5 years by Washington ARTCC. Therefore, the segment is being revoked

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-162 [Amended]

By removing the words "From INT Clarksburg, WV, 135° and Elkins, WV, 098° radials; Clarksburg."

Issued in Washington, DC, on July 27, 1989.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-18122 Filed 8-2-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-14]

Alteration of VOR Federal Airways and Compulsory Reporting Points

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of all Federal Airways located in the vicinity of Georgia and Florida that have been affected by the name changes of Toccoa, GA, very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) to Foothills, SC, VORTAC; Albany, GA, VORTAC to Pecan, GA, VORTAC; and Jacksonville, FL, VORTAC to Craig, FL, VORTAC. The Toccoa VORTAC is physically located in South Carolina. The actual site of the VORTAC is not being changed. Also, some Compulsory Reporting Points have been affected.

EFFECTIVE DATE: 0901 u.t.c. September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On May 18, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of all VOR Federal Airways and Compulsory Reporting Points that have been affected by the name changes of Toccoa, GA, VORTAC to Foothills, SC, VORTAC; Albany, GA, VORTAC to Pecan, GA, VORTAC; and Jacksonville, FL, VORTAC to Craig, FL, VORTAC (54 FR 21432). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.123 and 71.203 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of all VOR Federal Airways located in the vicinity of Georgia and Florida that have been affected by the name changes of Toccoa, GA, VORTAC to Foothills, SC, VORTAC; Albany, GA, VORTAC to Pecan GA, VORTAC; and Jacksonville, FL, VORTAC to Craig, FL, VORTAC. The Toccoa VORTAC is physically located in South Carolina. The actual VORTAC sites are not being changed. Also, this action changes some Compulsory Reporting Points to correspond to the name changes.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways, Compulsory reporting points.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-222, V-325, V-415, V-463 [Amended]

Wherever the word "Toccoa" appears, substitute the word "Foothills". Wherever the words "Toccoa, GA" appear, substitute the words "Foothills, SC".

V-5, V-35, V-97, V-159, V-321, V-578 [Amended]

Wherever the word "Albany" appears, substitute the word "Pecan".

V-1, V-37, V-51, V-198, V-243, V-257 [Amended]

Wherever the word "Jacksonville" appears, substitute the word "Craig".

§ 71.203 [Amended]

3. Section 71.203 is amended as follows:

Albany, GA [Removed]

Jacksonville, FL [Removed]

GRANT [Amended]

By removing the word "Albany" and substituting the word "Pecan".

Issued in Washington, DC, on July 27, 1989.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-18123 Filed 8-2-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Parts 71 and 75

[Airspace Docket No. 89-ASO-15]

Alteration of Jet Routes and Compulsory Reporting Points

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of all jet routes located in the vicinity of Georgia and Florida that have been affected by the name change of Toccoa, GA, very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) to Foothills, SC, and by the name change of Jacksonville, FL, VORTAC to Craig, FL, VORTAC. The Toccoa VORTAC is physically located in South Carolina. The actual site for the VORTAC has not being changed. Also, some Compulsory Reporting Points have been affected.

EFFECTIVE DATE: 0901 u.t.c. September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On May 18, 1989, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter the descriptions of several jet routes and compulsory reporting points that will be affected by the name changes of Toccoa, GA, VORTAC to Foothills, SC, VORTAC and by changing the name of Jacksonville, FL, VORTAC to Craig, FL, VORTAC (54 FR 21434). Interested parties were invited to participate in this rulemaking

proceeding by submitting written comments on the proposal to the FAA. One comment was received. The commenter stated that the name changes to the Toccoa and Jacksonville VORTAC's will confuse all pilots. FAA does not agree with that comment. The VORTAC's have not been moved and the name changes reflect the actual location of the VORTAC's. Except for editorial changes, these amendments are the same as those proposed in the notice. Sections 71.207, 71.209 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6E dated January 3, 1989.

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations alter the descriptions of several jet routes that have been affected by the name change of Toccoa, GA, VORTAC to Foothills, SC, VORTAC and by changing the name of Jacksonville, FL, VORTAC to Craig, FL, VORTAC. The Toccoa VORTAC is actually located in South Carolina. The actual VORTAC site is not being changed. Further, this action changes some Compulsory Reporting Points to correspond to the name changes.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, Jet routes, Compulsory reporting points.

Adoption of the amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) are amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.207 [Amended]

2. Section 71.207 is amended as follows:

Jacksonville, FL [Removed]

Craig, FL [New]

§ 71.209 [Amended]

3. Section 71.209 is amended as follows:

CARPS [Amended]

By removing the word "Jacksonville" and substituting the word "Craig"

QUID [Amended]

By removing the word "Jacksonville" and substituting the word "Craig"

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

4. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

5. Section 75.100 is amended as follows:

J-48, J-145, J-186 [Amended]

Wherever the words "Toccoa, GA" appear, substitute the words "Foothills, SC"

J-45, J-51, J-53, J-55, J-121, J-174 [Amended]

Wherever the word "Jacksonville" appears, substitute the word "Craig".

Issued in Washington, DC, on July 27, 1989.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-18124 Filed 8-2-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80-53]

Publication of Prescribed Maximum Lawful Prices Under the Natural Gas Policy Act of 1978

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order of the director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(c)(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under Title I of the Natural Gas Policy Act (NGPA) for the months of August, September, October, 1989. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT:
Garry L. Penix (202) 357-8666.

SUPPLEMENTARY INFORMATION:

Issued July 28, 1989.

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and inflation adjustments prescribed in Title I of the NGPA before the beginning of any month for which such figures apply.

Pursuant to this requirement and § 375.307(c)(1) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of August, September, October, 1989 are issued by the publication of the price tables for the applicable quarter. Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103(b)(1), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to August, 1989 are found in the tables in §§ 271.101 and 271.102.

List of Subjects in 18 CFR Part 271

Natural gas.

Kevin P. Madden,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

1. The authority citation for Part 271 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717-717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982).

§ 271.101 [Amended]

2. Section 271.101(a) is amended by adding the maximum lawful prices for August, September, October, 1989 in Tables I and II.

TABLE I—NATURAL GAS CEILING PRICES

[Other Than NGPA §§ 104 and 106(a)]

Subpart of Part 271	NGPA Section	Category of Gas	Maximum lawful price per MMBtu for deliveries in—		
			August 1989	September 1989	October 1989
B	102	New Natural Gas, Certain OCS Gas [1]	$5.381	$5.420	$5.459
C	103(b)(1)	New Onshore Production Wells [2]	3.460	3.474	3.488
E	105(b)(3)	Intrastate Existing Contracts	5.154	5.188	5.222
F	106(b) 1(B)	Alternative Maximum Lawful Price for Certain Intrastate Rollover Gas [3]	1.980	1.988	1.996
G	107(c)(5)	Gas Produced from Tight Formations	6.920	6.948	6.976
H	108	Stripper Gas	5.762	5.804	5.846
I	109	Not Otherwise Covered [4]	2.864	2.876	2.888

[1] Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) was deregulated. (See Part 272 of the Commission's regulations.)

[2] Commencing January 1, 1985, and July 1, 1987, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 was deregulated. (See Part 272 of the Commission's regulations.) Thus, for all months succeeding June 1987 publication of a maximum lawful price per MMBtu under NGPA section 103(b)(2) is discontinued.

[3] Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas was deregulated. (See Part 272 of the Commission's regulations.)

[4] The maximum lawful price for tight formation gas is the lesser of the negotiated contract price or 200% of the price specified in Subpart C of Part 271. The maximum lawful price for tight formation gas applies on or after July 16, 1979. (See § 271.703 and § 271.704.)

TABLE II—NATURAL GAS CEILING PRICES: NGPA §§ 104 AND 106(a)

[Subpart D, Part 271]

Category of Natural Gas and Type of Sale or Contract	Maximum lawful price per MMBtu for deliveries made in—		
	Aug 1989	Sept 1989	Oct 1989
Post-1974 gas [2]: All producers	$2.864	$2.876	$2.888
1973-1974 Biennium gas:			
Small producer	$2.418	$2.428	$2.438
Large producer	$1.851	$1.859	$1.867
Interstate rollover gas: All producers	$1.064	$1.068	$1.072
Replacement contract gas or recompletion gas:			
Small producer	$1.360	$1.366	$1.372
Large producer	$1.040	$1.044	$1.048
Flowing gas:			
Small producer	$0.686	$0.689	$0.692
Large producer	$0 579	$0.581	$0.583
Certain Permian Basin gas:			
Small producer	$0.811	$0.814	$0.817
Large producer	$0.715	$0.718	$0.721
Certain Rocky Mountain gas:			
Small producer	$0.811	$0.814	$0.817
Large producer	$0.686	$0.689	$0.692
Certain Appalachian Basin gas:			
North subarea contracts dated after 10-7-69	$0.652	$0.655	$0.658
Other contracts	$0.603	$0.606	$0.609
Minimum rate gas [1]: All producers	$0.356	$0.357	$0.358

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.

[2] This price may also be applicable to other categories of gas (see § 271.402 and 271.602).

§ 271.102 [Amended]

3. Section 271.102(c) is amended by adding the inflation adjustment for the month of August, September, October, 1989 in Table III.

Table III—*Inflation adjustment*

	Factor[1]
Month of Delivery, 1989—	
August	1.00415
September	1.00415
October	1.00415

[1] Facts by which price in preceding month is multiplied.

[FR Doc. 89-18078 Filed 8-2-89; 8:45 am]

BILLING CODE 6717-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 219

RIN 3220-AA14

Evidence Required for Payment

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby revises Part 219 of its regulations. Part 219 concerns the types of evidence that a claimant may provide in support of his or her application for benefits under the Railroad Retirement Act. The revised regulation contains provisions implementing legislation enacted in 1981 which added several new categories of beneficiaries to the Railroad Retirement Act. It adds references to these new categories of beneficiaries and also reflects recent changes in procedures whereby many applicants may use self-administered application forms and submit them by mail. Finally, this revision changes the rules on evidence to make them easier to use and understand.

EFFECTIVE DATE: August 3, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4929 (FTS 386-4929).

SUPPLEMENTARY INFORMATION: The Board's regulations concerning evidence required for payment of benefits, as set forth in Part 219, were issued in February 1982 and do not cover certain categories of beneficiaries, namely divorced spouses, surviving divorced spouses, remarried widows and widowers, added to the railroad retirement program by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, Title XI, Subtitle D. The revised regulation adds references to these beneficiaries (See, for example, § 219.3(a)).

The revised regulation removes family relationship definitions from Part 219 (§§ 219.15(a) - 219.18(a), 219.23(a), 219.24(a), and 219.30 of the regulations); these definitions will be transferred to a proposed Part 222. The sections in Part 219, Subpart A, General Evidence Requirements, have been reorganized and new §§ 219.6(b) and 219.9 have been added.

The revision transfers sections on marriage from Part 219 Subpart B to Part 219 Subpart C, changes the title of Subpart C to "Evidence of Relationship", transfers the section on "Evidence of relationship of a person other than a parent or child" from Subpart D to Subpart C, and transfers sections on school attendance from Subpart C to Subpart D. For easier reading and understanding, the Board divides a number of sections in Subparts

C and D into "When evidence * * * is required" and "Evidence to prove * * *" sections (in the revised regulations, see §§ 219.22 and 219.23, 219.30 and 219.31, 219.34 – 219.37, 219.42 and 219.43, 219.50 and 219.51, 219.52 and 219.53, 219.54 and 219.55, 219.56 and 219.57, 219.58 and 219.59, 219.60 and 219.61, 219.62 and 219.63, and 219.64 and 219.65). Section 219.64 and 219.65 are being added.

The Board changes the items listed in the "Types of evidence to prove age" section (§ 219.11 of the current regulation and § 219.21 of proposed Part 219) regarding the following evidence:

Hospital birth record or certificate;

Selective service registration record;

Census record; and

Marriage record.

The revision adds hospital birth record or certificate, World War II selective service registration record, and marriage record to the list and would give a census record a lower evidentiary value than the World War II selective service registration record. The types of evidence that are added to the list were previously considered when submitted, but the Board is giving them a higher value than they received when they were not listed in this section.

The Board published this part as a proposed rule on February 16, 1989 (54 FR 7045–7056), and invited comments by March 20, 1989. No comments were received.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. The information collections associated with this rule have been approved by the Office of Management and Budget.

In order to enable users to check the completeness, accuracy, and reasoning behind these proposed revisions to the regulations, Derivation and Distribution Tables follows:

Derivation Table

New section and name	Current section and name
Part 219—Evidence Required for Payment.	Part 219—Evidence Required for Payment.
Subpart A—General Evidence Requirements	
219.1 Introduction	219.1 Introduction.
219.2 Definitions	219.2 Definitions.
219.3 When evidence is required	219.5 Failure to furnish requested evidence.
(a) To prove initial eligibility	(a) Evidence to prove initial eligibility.
(b) To prove continued entitlement	(b) Evidence to prove continued entitlement.
219.4 Who is responsible for furnishing evidence	219.3 Who is responsible for furnishing evidence. First sentence, 219.3.
(a) Applicant or representative responsible	219.5(c) Failure to furnish requested evidence—What to do when required evidence will be delayed.
(b) What to do when required evidence will be delayed	
219.5 Where and how to provide evidence	219.4 When and where to furnish evidence.
(a) When Board office is accessible	219.4, second paragraph, third sentence and 219.3, second sentence.
(b) When Board office is not accessible	219.4, second paragraph, fourth and fifth sentences.
219.6 Original records or copies as evidence	219.6 Original records or copies as evidence.
(a) General	(a) General.
(b) Foreign language documents	219.3 Who is responsible for furnishing evidence.—third sentence.
(c) Certified copies of original records	219.6(b) Certified copies of original records.
219.7 How the Board decides what is convincing evidence	219.7 How the Board decides what is convincing evidence.
(a)	(a)
(b)	(b)
(c)	(c)
(d)	(d)
(e)	(e)
(f)	(f)
219.8 Preferred evidence and other evidence	219.8 Preferred evidence and other evidence. First two sentences. Next four sentences. Last sentence.
(a) Preferred evidence	
(b) Other evidence	
(c) Board decision	
219.9 Evidence, information, and records filed with the Board	219.3 Who is responsible for furnishing evidence.—fourth and fifth sentences only.
Subpart B—Evidence of Age and Death	
219.20 When evidence of age is required	219.10 When evidence of age is required.
219.21 Types of evidence to prove age	219.11 Types of evidence to prove age.
(a) Preferred evidence	(a) Preferred evidence.
(b) Other evidence of age.	(b) Other evidence of age—four items changed.
219.22 When evidence of death is required	219.12 Evidence to prove death.
(a) When evidence of employee's death is required	(a) When evidence of the employee's death is required.—first sentence.
(b) When evidence to prove death of other persons is required	(b) When evidence to prove death of other persons is required.
219.23 Evidence to prove death	219.12 Evidence to prove death.
(a) Preferred evidence	(a)(1) Preferred evidence of death.
(b) Other evidence of death	(a)(2) Other evidence of death.
219.24 Evidence of presumed death	219.13 Evidence of presumed death.
(a)	(a)
(b)	(b)
(c)	(c)
Subpart C—Evidence of Relationship	
219.30 When evidence of marriage is required	219.14 When evidence of marriage is required. First two sentences.
(a) When application filed for benefits	
(b) State law	Third sentence.
(c) Types of evidence	Fourth sentence.
219.31 Evidence of a valid ceremonial marriage	219.15 Evidence of valid ceremonial marriage.
(a) Preferred evidence	(b) Preferred evidence.
(b) Other evidence of a ceremonial marriage	(c) Other evidence of a ceremonial marriage.
219.32 Evidence of a common-law marriage	219.16 Evidence of a common-law marriage.
(a) Preferred evidence	(b) Preferred evidence.
(b) Other evidence of a common-law marriage	(c) Other evidence of a common-law marriage.
219.33 Evidence of a deemed valid marriage	219.17 Evidence of a deemed valid marriage.
(a) Preferred evidence	(b) Preferred evidence.
(b) Other evidence of a deemed valid marriage	(c) Other evidence of a deemed valid marriage.
219.34 When evidence that a marriage has ended is required	219.18(a) Evidence that a marriage has ended.—When evidence is required.
219.35 Evidence that a marriage has ended	219.18 Evidence that a marriage has ended.
(a) Preferred evidence	(b) Preferred evidence.
(b) Other evidence that a marriage has ended	(c) Other evidence that a marriage has ended.
219.36 When evidence of a parent or child relationship is required	219.20 When evidence of a parent or child relationship is required.
(a) When parent or child applies	First sentence.
(b) When spouse with child in care applies	Second sentence.
(c) Evidence required depends on relationship	Third sentence.
219.37 Evidence of natural parent or child relationship	219.21 Evidence of natural parent or child relationship.
(a) Preferred evidence	(a) Preferred evidence.
(b) Other evidence of parent or child relationship	(b) Other evidence of parent or child relationship.
219.38 Evidence of stepparent or stepchild relationship	219.22 Evidence of stepparent or stepchild relationship.
219.39 Evidence of relationship by legal adoption—parent or child	219.23 Evidence of relationship by legal adoption—parent or child.
(a) Preferred evidence	(b) Preferred evidence.
(b) Other evidence of legal adoption	(c) Other evidence of legal adoption.
219.40 Evidence of relationship by equitable adoption—child	219.24 Evidence of relationship by equitable adoption.
(a) Preferred evidence	(b) Preferred evidence.
(b) Other evidence	(c) Other evidence.
219.41 Evidence of relationship of grandchild or stepgrandchild	219.25 Evidence of relationship of grandchild or stepgrandchild.
(c)	(c)
Subpart C—Evidence of Relationship	
219.30 When evidence of marriage is required	219.14 When evidence of marriage is required. First two sentences.
(a) When application filed for benefits	
(b) State law	Third sentence.
(c) Types of evidence	Fourth sentence.
219.31 Evidence of a valid ceremonial marriage	219.15 Evidence of valid ceremonial marriage.
(a) Preferred evidence	(b) Preferred evidence.
(b) Other evidence of a ceremonial marriage	(c) Other evidence of a ceremonial marriage.
219.32 Evidence of a common-law marriage	219.16 Evidence of a common-law marriage.
(a) Preferred evidence	(b) Preferred evidence.
(b) Other evidence of a common-law marriage	(c) Other evidence of a common-law marriage.
219.33 Evidence of a deemed valid marriage	219.17 Evidence of a deemed valid marriage.
(a) Preferred evidence	(b) Preferred evidence.
(b) Other evidence of a deemed valid marriage	(c) Other evidence of a deemed valid marriage.
219.34 When evidence that a marriage has ended is required	219.18(a) Evidence that a marriage has ended.—When evidence is required.
219.35 Evidence that a marriage has ended	219.18 Evidence that a marriage has ended.
(a) Preferred evidence	(b) Preferred evidence.
(b) Other evidence that a marriage has ended	(c) Other evidence that a marriage has ended.
219.36 When evidence of a parent or child relationship is required	219.20 When evidence of a parent or child relationship is required.
(a) When parent or child applies	First sentence.
(b) When spouse with child in care applies	Second sentence.
(c) Evidence required depends on relationship	Third sentence.
219.37 Evidence of natural parent or child relationship	219.21 Evidence of natural parent or child relationship.
(a) Preferred evidence	(a) Preferred evidence.
(b) Other evidence of parent or child relationship	(b) Other evidence of parent or child relationship.
219.38 Evidence of stepparent or stepchild relationship	219.22 Evidence of stepparent or stepchild relationship.
219.39 Evidence of relationship by legal adoption—parent or child	219.23 Evidence of relationship by legal adoption—parent or child.
(a) Preferred evidence	(b) Preferred evidence.
(b) Other evidence of legal adoption	(c) Other evidence of legal adoption.
219.40 Evidence of relationship by equitable adoption—child	219.24 Evidence of relationship by equitable adoption.
(a) Preferred evidence	(b) Preferred evidence.
(b) Other evidence	(c) Other evidence.
219.41 Evidence of relationship of grandchild or stepgrandchild	219.25 Evidence of relationship of grandchild or stepgrandchild.
(c)	(c)

Derivation Table—Continued

New section and name	Current section and name
219.42 When evidence of child's dependency is required	219.26 Evidence of a child's dependency.—(a) When evidence of a child's dependency is required.
219.43 Evidence of child's dependency	219.26 Evidence of a child's dependency.
(a) When the dependency requirement must be met	(b) When the dependency requirement must be met.
(b) Natural or adopted	(c) Natural or adopted.
(c) Stepchild	(d) Stepchild.
(d) Grandchild or stepgrandchild	(e) Grandchild or stepgrandchild.
219.44 Evidence of relationship of a person other than a parent or child	219.35 Evidence of relationship of a person other than a parent or child.
(a) Claimants are relatives other than child or parent	First stentence.
(b) Evidence required depends on benefit and relationship	Second sentence.
(c) More than one eligible and claimants agree on relationship	Third sentence with added explanation.
Subpart D—Other Evidence Requirements	
219.50 When evidence of "living with" is required—New	
219.51 Evidence to prove "living with"	219.30 Evidence of "living with".
(a) (new)	
(b) (new)	
(c) (new)	
(d)	Second paragraph.
219.52 When evidence of having a child in care is required	219.33 Evidence of having a child in care.—(b) When evidence of having a child in care is required.
219.53 Evidence of having a child in care	219.33 Evidence of having a child in care.
(a) Preferred evidence of having a child in care	(c) Preferred evidence of having a child in care.
(b) Other evidence	(d) Other evidence.
219.54 When evidence of school attendance is required	219.27 Evidence of school attendance for child age 18 or older—first paragraph.
219.55 Evidence of school attendance for child age 18	219.27 Evidence of school attendance for child age 18 or older.
(a)	(a)
(b)	(b)
219.56 When evidence of parent's support is required	219.31 Evidence of a parent's support.
(a)	First sentence.
(b) New	
219.57 Evidence of a parent's support	219.31 Evidence of a parent's support.
(a)	(a)
(b)	(b)
(c)	(c)
219.58 When evidence regarding payment of burial expenses is required	219.34 Evidence of responsibility for or payment of burial expenses.—(a) When evidence of burial expenses is required.
219.59 Evidence of responsibility for or payment of burial expenses	219.34 Evidence of responsibility for or payment of burial expenses.—
	(b) Type of evidence required.
(a)	(1)
(b)	(2)
219.60 When evidence of the employee's permanent home is required	219.36 Evidence of where the employee had a permanent home.
	(a) When evidence of the employee's permanent home is required.
(a)	(1)
(b)	(2)
219.61 Evidence of where the employee had a permanent home	219.36 Evidence of where the employee had a permanent home.
	(b) What evidence is required.
(a)	(1)
(b)	(2)
219.62 When evidence of "good cause" is required	219.37 Evidence of "good cause".
(a)	First paragraph.
(b)	(a) When evidence of "good cause" is required.
219.63 What evidence is required to establish "good cause"	219.37 Evidence of "good cause".
	(b) What evidence is required to establish "good cause".
(a)	(1)
(b)	(2)
219.64 When evidence may be required for other reasons.—New	
219.65 Other types of evidence that may be required.—New	

Distribution Table

Current section and name	New section and name
219.1 Introduction—except "under Title XVIII of the Social Security Act".	219.1 Introduction.
219.2 Definitions—except in "Benefits", "benefits", and in "Eligible", "If an annuity, a lump sum or a benefit under Section 202 of the Social Security Act".	219.2 Definitions.
219.3 Who is responsible for furnishing evidence.	219.4 Who is responsible for furnishing evidence.
● First sentence	(a) Applicant or representative responsible.
● Second sentence	219.5 Where and how to provide evidence.
	(a) When Board office is accessible.

Distribution Table—Continued

Current section and name	New section and name
● Third sentence	219.6 Original records or copies as evidence.
	(b) Foreign—language documents.
● Fourth and fifth sentences, except "Section 13 of".	219.9 Evidence, information, and records filed with the Board.
219.4 When and where to furnish evidence.	219.3 When evidence is required.
First paragraph	(a) To prove initial eligibility.
Second paragraph, first sentence.	(b) To prove continued entitlement.
Second pararaph, second sentence.	Delete.
Second paragraph, third sentence, except "person".	219.5 Where and how to provide evidence.
	(a) When Board office is accessible.
Second paragraph, fourth sentence, except "Persons".	(b) When Board office is not accessible.
219.5 Failure to furnish requested evidence.	219.3 When evidence is required.
(a) Evidence to prove initial eligibility—except "benefits".	(a) To prove initial eligibility.
(b) Evidence to prove continued entitlement.	(b) To prove continued entitlement.
(c) What to do when required evidence will be delayed.	219.4 Who is responsible for furnishing evidence.
	(b) What to do when required evidence will be delayed.
219.6 Original records or copies as evidence.	219.6 Original records or copies as evidence.
(c) Uncertified copies or original records.	Deleted.
219.7 How the Board decides what is convincing evidence.	219.7 How the Board decides what is convincing evidence.
219.8 Preferred evidence and other evidence—except "§ 219.11(a), § 219.12(a)(1), § 219.15(b), § 219.16(b), § 219.17(b), § 219.18(b), § 219.21(a), § 219.23(b), § 219.24(b), or § 219.33(c)".	219.8 Preferred evidence and other evidence.
219.10 When evidence of age is required.	219.20 When evidence of age is required.
219.11 Types of evidence to prove age.	219.21 Types of evidence to prove age.
219.12 Evidence to prove death.	219.22 When evidence of death is required.
(a) When evidence of the employee's death is required.	(a) When evidence of the employee's death is required.
(1) Preferred evidence of death.	219.23 Evidence to prove death.
	(a) Preferred evidence.
(2) Other evidence of death.	(b) Other evidence of death.
(b) When evidence to prove death of other persons is required.	219.22 When evidence of death is required.
	(b) When evidence to prove death of other persons is required.
219.13 Evidence of presumed death.	219.24 Evidence of presumed death.
(d)	Deleted.

DISTRIBUTION TABLE—Continued

Current section and name	New section and name
219.14 When evidence of marriage is required.	219.30 When evidence of marriage is required.
219.15 Evidence of a valid ceremonial marriage.	219.31 Evidence of a valid ceremonial marriage.
(a) Definition of valid "ceremonial marriage".	(a) Preferred evidence.
(b) Preferred evidence	(b) Other evidence of a ceremonial marriage.
(c) Other evidence of a ceremonial marriage.	
219.16 Evidence of a common-law marriage.	219.32 Evidence of a common-law marriage.
(a) Definition of a "common-law marriage".	(a) Preferred evidence.
(b) Preferred evidence	(b) Other evidence of common-law marriage.
(c) Other evidence of common-law marriage.	
219.17 Evidence of a deemed valid marriage.	219.33 Evidence of a deemed valid marriage.
(a) Definition of "deemed valid marriage".	(a) Preferred evidence.
(b) Preferred evidence	(b) Other evidence of a deemed valid marriage.
(c) Other evidence of a deemed valid marriage.	
219.18 Evidence that a marriage has ended.	
(a) When evidence is required.	219.34 When evidence that a marriage has ended is required.
(b) Preferred evidence	219.35 Evidence that a marriage has ended.
	(a) Preferred evidence.
(c) Other evidence that a marriage has ended.	(b) Other evidence that a marriage has ended.
219.20 When evidence of a parent or child relationship is required.	219.36 When evidence of a parent or child relationship is required.
219.21 Evidence of a natural parent or child relationship.	219.37 Evidence of a natural parent or child relationship.
219.22 Evidence of stepparent or stepchild relationship.	219.38 Evidence of stepparent or stepchild relationship.
219.23 Evidence of relationship by legal adoption—parent or child.	
(a) Definition of legally adopted child.	222.33 Determination of relationship resulting from legal adoption.
(b) Preferred evidence	219.39 Evidence of relationship by legal adoption—parent or child.
	(a) Preferred evidence.
(c) Other evidence of legal adoption.	(b) Other evidence of legal adoption.
219.24 Evidence of relationship by equitable adoption.	
(a) Definition	222.34 Determination of relationship resulting through equitable adoption.

DISTRIBUTION TABLE—Continued

Current section and name	New section and name
(b) Preferred evidence	219.40 Evidence of relationship by equitable adoption—child.
	(a) Preferred evidence.
(c) Other evidence	(b) Other evidence.
219.25 Evidence of relationship of grandchild or stepgrandchild.	219.41 Evidence of relationship of grandchild or stepgrandchild.
219.26 Evidence of a child's dependency.	
(a) When evidence of a child's dependency is required.	219.42 When evidence of child's dependency is required.
(b) When the dependency requirement must be met.	219.43 Evidence of child's dependency.
	(a) When the dependency requirement must be met.
(c) Natural or adopted	(b) Natural or adopted.
(d) Stepchild	(c) Stepchild.
(e) Grandchild or stepgrandchild.	(d) Grandchild or stepgrandchild.
219.27 Evidence of school attendance for child age 18 or older.	
First paragraph, first two sentences, except "or older" and "(twice yearly)".	219.54 When evidence of school attendance is required.
First paragraph, third sentence and.	219.55 Evidence of school attendance for child age 18.
(a)	(a)
(b)	(b)
219.30 Evidence of "living with".	
(a) Definition of "living with"—except last paragraph.	222.15 When spouse is living with employee.
Final paragraph	219.51 Evidence to prove "living with."
219.31 Evidence of a parent's support.	219.56 When evidence of a parent's support is required.
First sentence	(a)
First paragraph, second and third sentences.	219.57 Evidence of a parent's support.
(a)	(a)
(b)	(1)
(c)	(2)
219.32 [Reserved]	(c)
219.33 Evidence of having a child in care.	Deleted.
(a) Definition	222.17 "Child in care" when child is living with the spouse or widow or widower.
(b) When evidence of having a child in care is required.	219.52 When evidence of having a child in care is required.
(c) Preferred evidence of having a child in care.	219.53 Evidence of having a child in care.
	(a) Preferred evidence of having a child in care.
(d) Other evidence	(b) Other evidence.
219.34 Evidence of responsibility for or payment of burial expenses.	219.58 When evidence regarding payment of burial expenses is required.
(a) When evidence of burial expenses is required.	

DISTRIBUTION TABLE—Continued

Current section and name	New section and name
(b) Types of evidence required.	219.59 Evidence of responsibility for or payment of burial expenses.
(1)	(a)
(2)	(b)
219.35 Evidence of relationship of a person other than a parent or child.	219.44 Evidence of relationship of a person other than a parent or child.
	(a)
	(b)
	(c) First sentence.
219.36 Evidence of where the employee had a permanent home.	219.60 When evidence of the employee's permanent home is required.
(a) When evidence of the employee's permanent home is required.	
(1)	(a)
(2)	(b)
(b) What evidence is required.	219.61 Evidence of where the employee had a permanent home.
(1)	(a)
(2)	(b)
219.37 Evidence of "good cause".	219.62 When evidence of "good cause" is required.
Introductory paragraph	(a)
(a) When evidence of "good cause" is required.	(b)
(b) What evidence is required to establish "good cause".	(1)
	219.63 What evidence is required to establish "good cause."
(1)	(a)
(2)	(b)

List of Subjects in 20 CFR Part 219

Railroad employees, Railroad retirement, Railroads.

1. Part 219 of Title 20 of the Code of Federal Regulations is revised to read as follows:

PART 219—EVIDENCE REQUIRED FOR PAYMENT

Subpart A—General Evidence Requirements

Sec.
219.1 Introduction.
219.2 Definitions.
219.3 When evidence is required.
219.4 Who is responsible for furnishing evidence.
219.5 Where and how to provide evidence.
219.6 Original records or copies as evidence.
219.7 How the Board decides what is convincing evidence.
219.8 Preferred evidence and other evidence.
219.9 Evidence, information, and records filed with the Board.

Subpart B—Evidence of Age and Death

219.20 When evidence of age is required.
219.21 Types of evidence to prove age.
219.22 When evidence of death is required.
219.23 Evidence to provide death.
219.24 Evidence of presumed death.

Subpart C—Evidence of Relationship

219.30 When evidence of Marriage is required.
219.31 Evidence of a valid ceremonial marriage.
219.32 Evidence of a common-law marriage.
219.33 Evidence of a deemed valid marriage.
219.34 When evidence that a marriage has ended is required.
219.35 Evidence that a marriage has ended.
219.36 When evidence of a parent or child relationship is required.
219.37 Evidence of natural parent or child relationship.
219.38 Evidence of stepparent or stepchild relationship.
219.39 Evidence of relationship by legal adoption—parent or child.
219.40 Evidence of relationship by equitable adoption—child.
219.41 Evidence of relationship of grandchild or stepgrandchild.
219.42 When evidence of child's dependency is required.
219.43 Evidence of child's dependency.
219.44 Evidence of relationship of a person other than a parent or child.

Subpart D—Other Evidence Requirements

219.50 When evidence of "living with" is required.
219.51 Evidence to prove "living with".
219.52 When evidence of having a child in care is required.
219.53 Evidence of having a child in care.
219.54 When evidence of school attendance is required.
219.55 Evidence of school attendance for child age 18.
219.56 When evidence of a parent's support is required.
219.57 Evidence of a parent's support.
219.58 When evidence regarding payment of burial expenses is required.
219.59 Evidence of responsibility for or payment of burial expenses.
219.60 When evidence of the employee's permanent home is required.
219.61 Evidence of where the employee had a permanent home.
219.62 When evidence of "good cause" is required.
219.63 What evidence is required to establish "good cause".
219.64 When evidence may be required for other reasons.
219.65 Other types of evidence that may be required.

Authority: 45 U.S.C 231f.

Subpart A—General Evidence Requirements

§ 219.1 Introduction.

As described in Parts 216 (Eligibility for an Annuity), 234 (Lump-Sum Payments), and 222 (Family Relationships), certain requirements must be met before benefits may be paid under the Railroad Retirement Act. This part contains the basic rules for evidence that is required to support a claimant's claim for monthly or lump-sum benefit payments under the Railroad Retirement Act. Part 219 describes when evidence is required and what types of documents can be used as evidence. Part 222 defines and explains family relationships for which evidence requirements are stated in Part 219. Special evidence requirements for disability annuities are found in Part 220 of this chapter.

§ 219.2 Definitions.

As used in this subpart—

"Annuity" means a recurring payment due an entitled person for a calendar month and made to him or her on the first day of the following month.

"Apply" means to sign a form or statement that the Board accepts as an application.

"Claimant" means the person who files an application for an annuity or lump-sum payment for himself, herself, or some other person.

"Benefit" means any employee annuity, spouse annuity, survivor annuity, or lump-sum payment under the Railroad Retirement Act.

"Convincing evidence" means one or more pieces of evidence that proves to the satisfaction of the Board that an individual meets a requirement for eligibility for benefits. See § 219.7 for guides the Board uses in deciding whether evidence is convincing.

"Eligible" means that a person meets all of the requirements for payment of benefits but has not yet applied therefor.

"Entitled" means that a person has applied for and has proved his or her right to payment of benefits.

"Evidence" means any record or document or testimony that helps to show whether a person is eligible for benefits. It may also be used to establish whether the person is still entitled to benefits.

"Representative" means a person who acts on behalf of a claimant in regard to his or her claim for benefits from the Board and in the presentation of evidence to support the claim.

§ 219.3 When evidence is required.

(a) *To prove initial eligibility.* The Board will ask for evidence to prove a claimant is eligible for benefits when he or she applies for benefits. Usually the Board will ask the claimant to furnish specific kinds of evidence or information by a certain date to prove initial eligibility for benefits. If evidence or information is not received by that date, the Board may decide that the claimant is not eligible for benefits and will deny his or her application.

(b) *To prove continued entitlement.* After a claimant establishes entitlement to an annuity, the Board may ask that annuitant to produce by a certain date information or evidence needed to decide whether he or she may continue to receive an annuity or whether the annuity should be reduced or stopped. If the information is not received by the date specified, the Board may decide that the person is no longer entitled to benefits or that his or her annuity should be stopped or reduced.

§ 219.4 Who is responsible for furnishing evidence.

(a) *Claimant or representative responsible.* When evidence is required to prove a person's eligibility for or right to continue to receive annuity or lump-sum payments, that claimant or his or her representative is responsible for obtaining and submitting the evidence to the Board.

(b) *What to do when required evidence will be delayed.* When the required evidence cannot be furnished within the specified time, the claimant or representative who was asked to furnish the evidence or information should notify the Board and explain why there will be a delay. If the delay is caused by illness, failure to receive the information from another source, or a similar situation, the claimant will be allowed a reasonable time to secure the evidence or information. If the information is not received within a reasonable time as determined by the Board, the claimant or representative who was asked to furnish the evidence or information will be notified of the effect that his or her failure to furnish the evidence or information will have on the claimant's eligibility to receive or continue to receive payments.

§ 219.5 Where and how to provide evidence.

(a) *When Board office is accessible.* A claimant or representative should give his or her evidence to an employee of the Railroad Retirement Board office where he or she files the application. An employee of the Board will tell the claimant or representative what is needed and how to get it.

(b) *When Board office is not accessible.* A claimant who lives in an area where there is no Board office or who is unable to travel to a Board office may send evidence to the Board office nearest to where the claimant lives. A claimant who lives outside the United States may take evidence to the American embassy or consulate or other

Foreign Service Office nearest to where he or she lives or send it to the headquarters of the Board.

§ 219.6 Original records or copies as evidence.

(a) *General.* A claimant or an annuitant may be asked to show an original document or record as evidence to prove eligibility for or continued entitlement to payments. Where possible, a Board employee will make a photocopy or transcript of these original documents or records and return the original documents to the person who furnished them. A person may also submit certified copies of original records and, in some cases, uncertified birth notifications. These types of records are described below in this section.

(b) *Foreign-language documents.* If the evidence submitted is a foreign-language record or document, the Board may require that the record be translated. An acceptable translation includes, but is not limited to, a translation certified by a United States consular official or employee of the Department of State authorized to certify evidence or by an employee of the Social Security Administration.

(c) *Certified copies of original records.* The Board will accept copies of original records or extracts from records if they are certified as true and exact copies of the original by—

(1) The official custodian of the record;

(2) A Veterans Administration employee, if the evidence was given to that agency to obtain veterans benefits;

(3) A Social Security Administration employee, if the evidence was given to that agency to obtain social security benefits;

(4) A United States Consular Officer, an employee of the Department of State, or an employee of the Immigration and Naturalization Service authorized to certify evidence received outside the United States; or

(5) An employee of a state agency or state welfare office authorized to certify copies of original records in the agency's or office's files.

§ 219.7 How the Board decides what is convincing evidence.

When the Board receives evidence, a Board representative examines it to see if it is convincing evidence. If it is, no other evidence is needed. In deciding whether the evidence is convincing, the Board representative decides whether—

(a) The information contained in the evidence was given by a person in a position to know the facts;

(b) There was any reason to give false information when the evidence was created;

(c) The information contained in the evidence was given under oath, or in the presence of witnesses, or with the knowledge that there was a penalty for giving false information;

(d) The evidence was created at the time the event took place or shortly after;

(e) The evidence has been altered or has any erasures on it; and

(f) The information contained in the evidence agrees with other available evidence, including existing Board records.

§ 219.8 Preferred evidence and other evidence.

(a) *Preferred evidence.* When a claimant submits the type of evidence shown as preferred in Subparts B and C of this part, the Board will generally find it is convincing evidence. This means that unless there is information in the Board's records that raises a doubt about the evidence, other evidence to prove the same fact will not be needed.

(b) *Other evidence.* If preferred evidence is not available, the Board will consider any other evidence a claimant furnishes. If the other evidence consists of several different records or documents which all show the same information, the Board may determine that it is convincing evidence even though it is not preferred evidence. If the other evidence is not convincing by itself, the claimant will be asked to submit additional evidence. If the additional evidence shows the same information all the evidence considered together may be convincing evidence.

(c) *Board decision.* When the Board has convincing evidence of the facts that must be proven, or when it is clear that the evidence provided does not prove the necessary facts, the Board will make a formal decision about the applicant's rights to benefits.

§ 219.9 Evidence, information, and records filed with the Board.

The Railroad Retirement Act provides criminal penalties for any persons who misrepresent the facts or make false statements to obtain payments for themselves or someone else. All evidence and documents given to the Board are kept confidential and are not disclosed to anyone but the person who submitted them, except under the rules described in Part 200 of this chapter.

Subpart B—Evidence of Age and Death

§ 219.20 When evidence of age is required.

(a) Evidence of age is required when an employee applies for an annuity under the Railroad Retirement Act or for Medicare coverage under Title XVIII of the Social Security Act.

(b) Evidence of age is also required from a person who applies for a spouse's or divorced spouse's, widow's, widower's, surviving divorced spouse's, parent's, or child's annuity under the Railroad Retirement Act, or for Medicare coverage under Title XVIII of the Social Security Act.

§ 219.21 Types of evidence to prove age.

(a) *Preferred evidence.* The best type of evidence to prove a claimant's age is—

(1) A birth certificate recorded before age 5;

(2) A church record of birth or baptism recorded before age 5; or

(3) Notification of registration of birth made before age 5.

(b) *Other evidence of age.* If an individual cannot obtain preferred evidence of age, he or she will be asked to submit other convincing evidence to prove age. The other evidence may be one or more of the following records, with the records of highest value listed first:

(1) Hospital birth record or certificate.

(2) Physician's or midwife's birth record.

(3) Bible or other family record.

(4) Naturalization record.

(5) Military record.

(6) Immigration record.

(7) Passport.

(8) Selective service registration record.

(9) Census record.

(10) School record.

(11) Vaccination record.

(12) Insurance record.

(13) Labor union or fraternal record.

(14) Employer's record.

(15) Marriage record.

(16) A statement signed by the individual giving the reason why he or she cannot obtain other convincing evidence of age and the sworn statements of two other persons who have personal knowledge of the age that the individual is trying to prove.

(Approved by the Office of Management and Budget under Control No. 3220–0106)

§ 219.22 When evidence of death is required.

(a) *When evidence of the employee's death is required.* Evidence to prove the employee's death is always required for payment of any type of survivor annuity or lump-sum payment based on the deceased employee's record. See Parts 216 and 234 for types of survivor payments.

(b) *When evidence to prove death of other persons is required.* Evidence to prove the death of persons other than the empoyee is required when—

(1) A claimant, who is eligible for survivor benefits, dies after the employee;

(2) A residual lump sum (see Part 234 of this chapter) is payable and a person whom the employee named to receive all or part of this payment dies before the employee, or such person dies after the employee but before receiving his or her share of the benefit; or

(3) There is reasonable doubt of the death of—

(i) Any person who, if alive, has priority over the applicant;

(ii) Any spouse whose death is alleged to have ended a previous marriage, if a later marriage in question cannot be presumed valid under state law; or

(iii) Any person the termination of whose entitlement would increase payments to other entitled persons.

§ 219.23 Evidence to prove death.

(a) *Preferred evidence of death.* The best evidence of a person's death is—

(1) A certified copy of or extract from the public record of death, or verdict of the coroner's jury of the state or community where death occurred; or a certificate or statement of death issued by a local registrar or public health official;

(2) A signed statement of the funeral director, attending physician, or official of an institution where death occurred;

(3) A certified copy of, or extract from, an official report or finding of death made by an agency or department of the United States or of a state; or

(4) If death occurred outside the United States, an official report of death by a United States Consul or other authorized employee of the State Department, or a certified copy of the public record of death in a foreign country.

(b) *Other evidence of death.* If the preferred evidence of death cannot be obtained, the individual who must furnish evidence of death will be asked to explain the reason therefor and to submit other convincing evidence, such as sworn statements of at least two persons who have personal knowledge of the death. These persons must be able to swear to the date, time, place, and cause of death.

(Approved by the Office of Management and Budget under Control No. 3220–0077)

§ 219.24 Evidence of presumed death.

When a person cannot be proven dead but evidence of death is needed, the Board may presume he or she died at a certain time if the Board receives the following evidence:

(a) A certified copy of, or extract from, an official report or finding by an agency or department of the United States that a missing person is presumed to be dead as stated in Federal law (5 U.S.C. 5565). Unless other evidence is submitted showing an actual date of death, the Board will use the date on which the person was reported missing as the date of death.

(b) Signed statements by those in a position to know that facts and other records which show that the person has been absent from his or her residence for no apparent reason and has not been heard from for at least 7 years. If there is no evidence available that that person continued in life after the date of disappearance, the Board will use as the date of death the date the person disappeared.

(c) When a person has been missing for less than 7 years but may be presumed dead due to drowning or common disaster (fire, accident, etc.), signed statements from the applicant and individuals who know the circumstances surrounding the occurrence leading to the person's disapperance. The best evidence is statements from individuals who witnessed the occurrence or saw the missing person at the scene of the occurrence shortly before it happened.

Subpart C—Evidence of Relationship

§ 219.30 When evidence of marriage is required.

(a) *When an application is filed for benefits.* Documentary evidence of marriage is required when an individual files for a monthly annuity, lump-sum death payment, residual lump sum, or Medicare coverage, as the wife, husband, widow, widower, divorced spouse or surviving divorced spouse, or stepparent of the employee. A claimant may also be required to submit evidence of another person's marriage when that person's marriage is necessary to determine the applicant's entitlement to benefits under the Railroad Retirement Act.

(b) *State law.* In deciding whether the marriage to the employee is valid or not, in a case where the employee is living, the Board will follow the law of the state where the employee had a permanent home when the applicant filed an application; in a case where the employee is dead, the Board will follow the law of the state where the employee had a permanent home when he or she died.

(c) *Types of evidence.* What evidence will be required depends on whether the employee's marriage was a ceremonial marriage, a common-law marriage, or a marriage that can be deemed to be valid.

§ 219.31 Evidence of a valid ceremonial marriage.

(a) *Preferred evidence.* Perferred evidence of a ceremonial marriage is—

(1) A copy of the public record of the marriage, certified by the custodian of the record or by a Board employee;

(2) A copy of a church record of the marriage certified by the custodian of the record or by a Board employee; or

(3) The original certificate of marriage.

(b) *Other vidence of a ceremonial marriage.* If preferred evidence of a ceremonial marriage cannot be obtained, the applicant must state the reason therefor in writing and submit either—

(1) A sworn statement of the clergyman or official who performed the marriage ceremony; or

(2) Other convincing evidence, such as the sworn statements of at least two persons who have direct knowledge of the marriage, preferably eyewitnesses to the marriage ceremony.

(Approved by the Office of Management and Budget under Control No. 3220–0140)

§ 219.32 Evidence of a common-law marriage.

(a) *Preferred evidence.* Evidence of a common-law marriage must give the reasons why the informant believes that a marriage exists. If the information described in this paragraph is not furnished on a form provided by the Board, it must be submitted in the form of a sworn statement. Preferred evidence of a common-law marriage is one of the following:

(1) If both the husband and wife are alive, each shall sign a statement and get signed statements from one blood relative of each. The statement of another individual may be submitted for each statement the husband or wide is unable to get from a relative. Each signed statement should show—

(i) That the husband and wife believed they were married;

(ii) The basis for this belief; and

(iii) That the husband and wife have presented themselves to the public as husband and wife.

(2) If either the husband or wife is dead, the surviving spouse shall furnish a signed statement and signed statements from two blood relatives of the dead spouse. The surviving spouse's

statement should show that he or she and the dead spouse believed themselves to be married, the basis for this belief, and that they presented themselves to the public as husband and wife. The statements from relatives of the dead spouse should support the surviving spouse's statement.

(3) If both husband and wife are dead, the applicant shall get a signed statement from one blood relative of each dead spouse. Each statement should show that the husband and wife believed themselves to be married, the basis for this belief, and that they presented themselves to the public as husband and wife.

(4) Statements by relatives and other individuals described in paragraphs (a) (1), (2) and (3) of this section are not required when—

(i) The husband and wife entered into a ceremonial marriage which was void because of a legal impediment to the marriage;

(ii) After the impediment was removed, the husband and wife continued to live together as man and wife until the employee filed an application or one of them died; and

(iii) A valid common-law marriage was established, under the law of the State in which they lived, by their continuing to live together as man and wife.

(b) *Other evidence of common-law marriage.* When preferred evidence of a common-law marriage cannot be obtained, the claimant will be asked to explain the reason therefor and to furnish other convincing evidence of the marriage.

(Approved by the Office of Management and Budget under Control No. 3220–0021)

§ 219.33 Evidence of a deemed valid marriage.

(a) *Preferred evidence.* Preferred evidence of a deemed valid marriage is—

(1) Evidence of a ceremonial marriage as described in § 219.31;

(2) If both the employee and spouse are alive, the spouse's signed statement that he or she went through the ceremony in good faith and his or her reasons for believing the marriage was valid; or if the employee is dead, the widow or widower's signed statement to that effect;

(3) If required to remove a reasonable doubt, the signed statements of other persons who have information about what the parties knew about any previous marriage or other facts showing whether the parties went through the marriage ceremony in good faith; and

(4) Evidence that the parties were living in the same household when the employee applied for payments; or, if the employee is dead, when he or she died. See § 219.51 for the evidence required to demonstrate living in the same household.

(b) *Other evidence of a deemed valid marriage.* If preferred evidence of a deemed valid marriage cannot be obtained, the claimant must explain the reason therefor and submit other convincing evidence of the marriage.

(Approved by the Office of Management and Budget under Control No. 3220–0140)

§ 219.34 When evidence that a marriage has ended is required.

Evidence of how a previous marriage ended may be required to determine whether a later marriage is valid. If a widow or widower remarried after the employee's death and that marriage was annulled, evidence of the annulment is required. If the claimant is a divorced spouse or surviving divorced spouse, evidence to prove a final or absolute divorce from the employee may be required.

§ 219.35 Evidence that a marriage has ended.

(a) *Preferred evidence.* Preferred evidence that a marriage has ended is—

(1) A certified copy of the decree of divorce or annulment; or

(2) Evidence of the death (See § 219.23) of a party to the marriage.

(b) *Other evidence that a marriage has ended.* If preferred evidence that the marriage has ended cannot be obtained, the claimant must explain the reason therefor and submit other convincing evidence that the marriage has ended.

(Approved by the Office of Management and Budget under Control Nos. 3220–0021 and 3220–0140)

§ 219.36 When evidence of a parent or child relationship is required.

(a) *When parent or child applies.* A person who applies for a parent's or child's annuity or for Medicare coverage is required to submit evidence of his or her relationship to the deceased employee.

(b) *When individual with child in care applies.* An individual who applies for an annuity because he or she has a child of the employee in care is required to submit evidence of the child's relationship to the employee.

(c) *Evidence required depends on relationship.* The evidence the Board will require depends on whether the person is the employee's natural child, adopted child, stepchild, grandchild, or stepgrandchild; or whether the person is the employee's natural parent or adopting parent.

§ 219.37 Evidence of natural parent or child relationship.

(a) *Preferred evidence.* If the claimant is the natural parent of the employee, preferred evidence of the ralationship is a copy of the employee's public or religious birth record. If the claimant is the natural child of the employee, preferred evidence of the relationship is a copy of the child's public or religious birth record.

(b) *Other evidence of parent or child relationship.* (1) When preferred evidence of a parent or child relationship cannot be obtained, the Board may ask the applicant for evidence of the employee's marriage or of the marriage of the employee's parents if that is needed to remove any reasonable doubt of the relationship.

(2) To show that a person is the child of the employee, the person may be asked for evidence that he or she would be able to inherit the employee's personal property under the law of the state where the employee died or had a permanent home.

(3) In some instances the Board may ask for a signed statement from the employee that a person is his or her natural child, or for a copy of a court order showing that the person has been declared to be the child of the employee, or for a copy of a court order requiring the employee to contribute to the person's support because the person is his or her child, or for any other supporting evidence which may be required in order to establish that the person is the child of the employee.

§ 219.38 Evidence of stepparent or stepchild relationship.

If the claimant is a stepparent or stepchild of the employee, the Board will ask for the evidence described in § 219.37 or § 219.39 which shows the person's natural or adoptive relationship to the employee's husband, wife, widow, or widower. The Board will also ask for evidence of the husband's, wife's, widow's or widower's marriage to the employee.

(See §§ 219.30–219.33)

§ 219.39 Evidence of relationship by legal adoption—parent or child.

(a) *Preferred evidence.* Preferred evidence of legal adoption is—

(1) A copy of the decree or order of adoption, certified by the custodian of the record;

(2) A photocopy of the decree or order of adoption; or

(3) If the widow or widower adopted the child after the employee's death, the evidence described in paragraph (a) (1) or (2) of this section; the widow's or widower's statement as to whether the child was living in the same household with the employee when the employee died (see §§ 219.50 and 219.51); what support, if any, the child was getting from another person or organization; and if the widow or widower had a deemed valid marriage with the employee, evidence of that marriage (see § 219.33).

(b) *Other evidence of legal adoption.* In some states the record of adoption proceedings is sealed and cannot be obtained without a court order. In this event, the Board will accept as proof of adoption an official notice received by the adopting parents at the time of adoption that the adoption has been completed or a birth certificate issued as a result of the adoption proceeding.

§ 219.40 Evidence of relationship by equitable adoption—child.

(a) *Preferred evidence.* If the claimant is a person who claims to be the equitably adopted child of the employee (or of the employee's wife, widow, widower, or husband), as defined in Part 222 of this chapter, the Board will ask for evidence of the agreement to adopt if it is in writing. The Board will also ask for written statements from the child's natural parents as well as adopting parents concerning the child's relationship to the adopting parents.

(b) *Other evidence.* If the agreement to adopt was not in writing, the Board will require other convincing evidence about the child's relationship to the adopting parents.

(Approved by the Office of Management and Budget under Control No. 3220–0040)

§ 219.41 Evidence of relationship of grandchild or stepgrandchild.

If the child is the grandchild or stepgrandchild of the employee, the Board will require the kind of evidence described in §§ 219.36–219.38 that shows that child's relationship to his or her parents and his or her parents' relationship to the employee.

§ 219.42 When evidence of child's dependency is required.

Evidence of a child's dependency on the employee is required when—

(a) The employee is receiving an annuity that can be increased under the social security overall minimum (see Part 229 of this chapter) by including a child, grandchild or a spouse who has a child in his or her care;

(b) A wife under age 65 applies for a full spouse annuity because she has a child or a grandchild of the employee in her care; or

(c) A child or someone in behalf of a child applies for a child's annuity based on the deceased employee's record.

§ 219.43 Evidence of child's dependency.

(a) *When the dependency requirement must be met.* Usually the dependency requirement must be met at one of the times shown in Part 222 of this chapter.

(b) *Natural or adopted.* If the child is the employee's natural or adopted child, the Board may ask for the following evidence:

(1) A signed statement by someone who knows the facts that confirms that the child is the natural or adopted child.

(2) If the child was adopted by someone else while the employee was alive but the adoption was annulled, the Board may require a certified copy of the annulment decree or other convincing evidence of the annulment.

(3) A signed statement by someone having personal knowledge of the circumstances showing when and where the child lived with the employee and when and why they may have lived apart; and showing what contributions the employee made to the child's support and how the contributions were made.

(c) *Stepchild.* If the child is the employee's stepchild, the Board may ask for the following evidence:

(1) A signed statement by someone having personal knowledge of the circumstances showing when and where the child lived with the employee and when and why they may have lived apart.

(2) A signed statement by someone having personal knowledge of the circumstances showing what contributions the employee made to the child's support, the child's ordinary living costs and the income and support the child received from any other source during the relevant time as required by § 222.55 of this chapter.

(d) *Grandchild or stepgrandchild.* If the child is the employee's grandchild or stepgrandchild, the Board will require the evidence described in paragraph (c) of this section. The Board will also require evidence of the employee's death or disability.

(Approved by the Office of Management and Budget under Control No. 3220–0099)

§ 219.44 Evidence of relationship of a person other than a parent or child.

(a) *Claimants other than child or parent.* When any person other than a child or parent applies for benefits due because of the employee's death or because of the death of a beneficiary, the Board may ask the claimant for evidence of relationship.

(b) *Evidence required.* The type of evidence required is dependent upon the amount payable and the claimant's relationship to the deceased employee or beneficiary.

(c) *More than one eligible and claimants agree on relationship.* If there is more than one person eligible for benefits, and all eligible persons agree on the relationship of each other eligible person, only one of the persons will be asked to furnish proof of relationship. For example, if brothers and sisters of a deceased employee file applications for the residual lump sum or annuity payments due but unpaid at death, only one of them need file proof of relationship if their applications indicate that there is no dispute as to who are the brothers and sisters of the employee.

Subpart D—Other Evidence Requirements

§ 219.50 When evidence of "living with" is required.

Evidence of "living with" (see Part 222 of this chapter on Family Relationships) is required when—

(a) The employee's spouse applies for a spouse's annuity as a deemed spouse; or

(b) The employee's legal widow or widower applies for a lump-sum death payment, annuity payments due the employee but unpaid at death, or a residual lump-sum death payment on the basis of that relationship, or the employee's deemed widow or widower applies for a widow's or widower's annuity.

§ 219.51 Evidence to prove "living with".

The following evidence may be required:

(a) If the employee is alive, both the employee and his or her spouse must sign a statement that they are living together in the same household when the spouse applies for a spouse's annuity as a deemed spouse.

(b) If the employee is dead, the widow or widower must sign a statement showing whether he or she was living together in the same household with the employee when the employee died.

(c) If the employee and spouse, widow or widower were temporarily living apart, a signed statement is required explaining where each was living, how long the separation lasted, and the reason for separation. If more evidence is required to remove any reasonable doubt about the temporary nature of the separation, the Board may ask for sworn statements of other persons having

BEST COPY AVAILABLE

personal knowledge of the facts or for other convincing evidence.

(d) If the employee and spouse, widow, or widower were not living in the same household, the Board may ask for evidence that the employee was contributing to or under court order to contribute to the support of his or her spouse, widow, or widower. Evidence of contributions or a certified copy of the order for support may be requested. The court order for support must be in effect on the day the spouse applies for a spouse's annuity or, if the employee is dead, the day of the employee's death. This type of evidence does not apply for purposes of establishing a deemed valid marriage. (See Part 222 of this chapter.) A deemed spouse, widow, or widower must furnish evidence as described in paragraphs (a) and (b) of this section.

(Approved by the Office of Management and Budget under Control No. 3220–0030)

§ 219.52 When evidence of having a child in care is required.

A person who applies for a spouse's, widow's or widower's, or surviving divorced spouse's annuity on the basis of caring for a child, or for an increase under the social security overall minimum guaranty provision based on caring for a child, is required to furnish evidence that he or she has in care an eligible child of the employee as described in Part 222 of this chapter. What evidence the Board will require depends upon whether the child is living with the applicant or with someone else.

§ 219.53 Evidence of having a child in care.

(a) *Preferred evidence of having a child in care.* Preferred evidence of having a child in care is—

(1) If the child is living with the applicant, the claimant's signed statement showing that the child is living with him or her.

(2) If the child is living with someone else—

(i) The claimant's signed statement showing with whom the child is living and why. The claimant must also show when the child last lived with him or her, how long the separation will last, and what care and contributions he or she provides for the child; and

(ii) The signed statement of the person with whom the child is living showing what care the claimant provides and the sources and amounts of support received by the child. If the child is in an institution, an official thereof should sign the statement. A copy of any court order or written agreement showing who has custody of the child should be provided to the Board.

(b) *Other evidence.* If the preferred evidence described in paragraph (a) of this section cannot be obtained, the Board will require other convincing evidence that the applicant has the child in care.

(Approved by the Office of Management and Budget under Control Nos. 3220–0030 and 3220–0042)

§ 219.54 When evidence of school attendance is required.

If a child age 18 applies for payments as a student, the Board will require evidence that the child is attending elementary or secondary school. After the child has started his or her school attendance, the Board may also ask for evidence that he or she is continuing to attend school full time. To be acceptable to the Board, the child must submit the evidence of school attendance within 90 days of the date the evidence is requested by the Board.

§ 219.55 Evidence of school attendance for child age 18.

The child will be asked to submit (on a form furnished by the Board or other form acceptable to the Board) the following evidence:

(a) A signed statement that he or she is attending school full-time and is not being paid by an employer to attend school; and

(b) A statement from an official of the school verifying that the child is attending school full-time. The Board may also accept as evidence a letter of acceptance from the school, receipted bill, or other evidence showing that the child has enrolled or been accepted at that school or is continuing in full-time attendance.

(Approved by the Office of Management and Budget under Control Nos. 3220–0030, 3220–0083, and 3220–0123)

§ 219.56 When evidence of a parent's support is required.

If a person applies for a parent's annuity, the Board will require evidence to show that the parent received at least one-half of his or her support from the employee in the one-year period before—

(a) The employee died; or

(b) The beginning of a period of disability if the employee had a period of disability which did not end before his or her death.

§ 219.57 Evidence of a parent's support.

(a) The Board will require the parent's signed statement showing his or her income, any other sources of support, the amount from each source and his or her expenses during the one-year period.

(b) The Board may also ask the parent for signed statements from other people who know the facts about his or her sources of support.

(c) If the statements described in paragraphs (a) and (b) of this section cannot be obtained, the Board will require other convincing evidence that the parent is receiving one-half of his or her support from the employee.

(Approved by the Office of Management and Budget under Control No. 3220–0099)

§ 219.58 When evidence regarding payment of burial expenses is required.

If a person applies for the lump-sum death payment because he or she is responsible for paying the funeral home or burial expenses of the employee or because he or she has paid some or all of these expenses, the Board will require evidence of such payment.

§ 219.59 Evidence of responsibility for or payment of burial expenses.

The Board will ask for the following evidence:

(a) The claimant's signed statement showing—

(1) That he or she accepted responsibility for the funeral home expenses or paid some or all of these expenses or other burial expenses; or the name and address of the person who accepted responsibility for or paid these expenses;

(2) Total funeral home expenses and, if necessary, the total of other burial expenses; and if someone else paid part of the expenses, that person's name, address, and the amount he or she paid;

(3) The amount of cash or property the applicant expects to receive as repayment for any burial expenses he or she paid; and whether anyone has applied for any burial allowance from the Veterans Administration or other governmental agency for these expenses; and

(4) If the claimant is an owner or official of a funeral home, a signed statement from anyone, other than employee of the home, who helped make the burial arrangements showing whether he or she accepted responsibility for paying the burial expenses.

(b) Unless the claimant is an owner or official of a funeral home, a signed statement from the owner or official of the funeral home which handled the deceased employee's funeral and, if necessary, from those who supplied other burial goods or services which shows—

(1) The name and address of everyone who accepted responsibility for or paid any part of the burial expenses; and

(2) Information which the owner or official of the funeral home and, if necessary, any other supplier has about the expenses and payments described in paragraphs (a)(2) and (a)(3) of this section.

(Approved by the Office of Management and Budget under Control No. 3220–0031)

§ 219.60 When evidence of the employee's permanent home is required.

The Board may ask for evidence to prove where the employee had a permanent home at the time of filing an application or, if earlier, at the time the employee died if—

(a) The claimant is applying for payments as the employee's wife, husband, widow, widower, parent, or child; and

(b) The claimant's relationship to the employee depends upon the laws of the state where the employee had his or her permanent home when his or her wife or husband applied for an annuity or when the employee died.

§ 219.61 Evidence of where the employee had a permanent home.

The Board will ask for the following evidence to establish the employee's permanent home:

(a) The claimant's signed statement showing what the employee considered to be his or her permanent home.

(b) If the statement in paragraph (a) of this section or other evidence raises a reasonable doubt in establishing the employee's permanent home, evidence of where the employee paid personal property taxes, real estate taxes, or income taxes; or evidence where the employee voted; or other convincing evidence.

§ 219.62 When evidence of "good cause" is required.

The principle of "good cause", as defined in Part 217 of this chapter, is applied by the Board in determining whether to allow an application which is submitted more than two years after the employee's death as acceptable for the lump-sum death payment or for an annuity unpaid at death, or to accept the proof of support required for entitlement to a parent's annuity if such proof is filed more than two years after the employee's death.

§ 219.63 What evidence is required to establish "good cause".

The Board will ask for the following evidence of "good cause":

(a) The claimant's signed statement explaining why he or she did not file the application for lump-sum death payment or annuity unpaid at death or the parent's proof of support within the specified two-year period.

(b) If the statement in paragraph (a) of this section or other evidence raises a reasonable doubt as to whether there was good cause, other convincing evidence to establish "good cause".

§ 219.64 When evidence may be required for other reasons.

(a) The Board will require evidence of the appointment of a legal representative when—

(1) The employee's estate is entitled to a lump-sum death payment, annuity unpaid at death, or residual lump sum, and an executor or administrator has been appointed for the estate; or

(2) A minor child or incompetent is entitled to an annuity or lump-sum payment and a guardian, trustee, committee, or conservator has been appointed to act in his or her behalf.

(b) The Board will require evidence of an annuitant's earnings when the information that he or she furnished the Board does not agree with the earnings data furnished by the Social Security Administration or secured from other sources, and the annuitant maintains that the earnings data from the Social Security Administration or from other sources is not correct.

(c) The Board will require evidence to establish the amounts paid as a public service pension, public disability benefit, or worker's compensation to an employee, spouse, widow, or widower when the pension, public disability benefit, or worker's compensation affects the amount of his or her annuity.

(Approved by the Office of Management and Budget under Control Nos. 3220–0002, 3220–0136, and 3220–0154)

(d) The Board will require evidence to reconcile discrepancies between the information furnished by the claimant and information already in the records of the Board, the Social Security Administration, or other public agencies. Such discrepancies may be differences in name, date or place of birth, periods of employment, or other identifying data.

§ 219.65 Other types of evidence that may be required.

(a) The Board may ask for a statement from an employer listing the annuitant's earnings by months and explaining any payments made to the annuitant when he or she was not working.

(b) The Board may ask for copies of award notices from a public agency showing the amounts of periodic payments and the period covered by each payment.

(c) The Board may ask for a statement from the applicant explaining discrepancies and may ask for sworn statements from persons who have personal knowledge of the facts or for any other convincing evidence.

(d) The Board may ask for proof of the court appointment of a legal representative, such as:

(1) Certified copy of letters of appointment;

(2) "Short" certificate;

(3) Certified copy of order of appointment; or

(4) Any official document issued by the clerk or other proper official of the appointing court.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89–18150 Filed 8–2–89; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

Animal Drugs, Feeds, and Related Products; Zeranol

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pitman-Moore, Inc. The supplement provides for the following actions concerning use in cattle of the growth promotant zeranol: (1) Removal of the 65-day preslaughter withholding period; and (2) removal of the requirement for a method to monitor for drug residues in cattle tissues.

EFFECTIVE DATE: August 3, 1989.

FOR FURTHER INFORMATION CONTACT: Robert J. Condon, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5247.

SUPPLEMENTARY INFORMATION: Pitman-Moore, Inc., Mundelein, IL 60060, is the sponsor of NADA 38–233 (53 FR 20842 at 20843; June 7, 1988), which provides for subcutaneous implantation of zeranol pellets in the ears of beef cattle as a growth promotant. The firm has submitted a supplemental NADA containing sufficient safety data to support removing the existing 65-day withholding period and granting a zero withholding period for use of the product in beef cattle at the currently approved dosage level of 36 milligrams per animal. Accordingly, the supplement is approved and 21 CFR 522.2680 is amended to reflect the approval.

Granting a zero withholding period eliminates the requirement for an analytical method to monitor for zeranol residues in cattle tissue. Therefore, the agency is also amending 21 CFR 556.760 to remove the aforementioned requirement.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 522.2580 [Amended]

2. Section 522.2580 Zeranol is amended in paragraph (f)(1)(iii) by removing "; do not implant animals within 65 days of slaughter", and by removing paragraph (f)(3)(iii).

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR Part 556 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

4. Section 556.760 is amended by removing the introductory text and by adding paragraphs (a) and (b) introductory text to read as follows:

§ 556.760 Zeranol.

(a) *Cattle.* A tolerance for total zeranol residues in uncooked edible tissues of cattle is not needed. The safe concentration for total zeranol residues in uncooked edible tissues of cattle is 150 parts per billion (ppb) in muscle, 300 ppb in liver, 450 ppb in kidney, and 600 ppb in fat. A tolerance refers to the concentration of marker residues in the target tissue used to monitor for total drug residues in the target animal. A safe concentration refers to the total residue concentration considered safe in edible tissues.

(b) *Sheep.* No residues of zeranol may be found in the uncooked edible tissues of sheep as determined by the following method of analysis:

* * * * *

Dated: July 28, 1989.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 89-18118 Filed 8-2-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3 and Part 21

RIN 2900-AE05

Veterans Education; Disabling Effects of Chronic Alcoholism

AGENCY: Department of Veterans Affairs.

ACTION: Interim Regulations with Request for Comments.

SUMMARY: The Veterans Benefits and Programs Improvement Act of 1988 provides among other things that for the purposes of any provision relating to the extension of a delimiting period under any education benefit or rehabilitation program administered by the Department of Veterans Affairs, the disabling effects of chronic alcoholism shall not be considered to be the result of willful misconduct. These interim regulations will inform the public of the way in which the Department of Veterans Affairs will implement this provision of law with respect to the Post-Korean Conflict GI Bill.

DATES: Comments must be received on or before September 5, 1989. Comments will be available for public inspection until September 12, 1989. The effective date of these regulations, like the effective date of the provision of law they interpret is November 18, 1988. They will be effective until January 1, 1990.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until September 12, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Zoeckler, Acting Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, (202) 233-2092.

SUPPLEMENTARY INFORMATION: In order to track the language of section 109 of Pub. L. 100-689, the Veterans Benefits and Programs Improvement Act of 1988, an amendment is made to § 21.1043 to state that for the purposes of extending the eligibility period for educational assistance under Chapter 34, Title 38, United States Code, based upon a period of disability, the Department of Veterans Affairs will no longer consider the disabling effects of chronic alcoholism to be the result of willful misconduct. It also defines what the Department of Veterans Affairs considers the disabling effects of alcoholism to be for this purpose. This amendment will have no effect on provisions of the regulations relating to the compensation and pension programs. Several minor amendments are made to other regulations which appear in 38 CFR Part 3 to bring them into agreement with the amended § 21.1043.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs certifies that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604. This certification can be made because the regulations effect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Department of Veterans Affairs is publishing the amended regulations as interim, immediately effective regulations without obtaining prior public comment. The Department of Veterans Affairs finds that good cause exists for dispensing with prior publication for public comment. As a result of the publicity surrounding the enactment of this law the Department of Veterans Affairs has already received many claims from potentially eligible Post-Korean Conflict veterans for an extension of the period of eligibility due to the alleged disabling effects of chronic alcoholism. Yet the law prohibits paying benefits to veterans eligible under the Post-Korean Conflict GI Bill for education or training completed after December 31, 1989. The usual procedure of first obtaining public comment would mean that it would be difficult to have final regulations before the 1989 deadline. This might have the effect of denying benefits to veterans who might otherwise be entitled to them. Consequently, a delay for prior public comment would be contrary to the public interest.

Moreover, these regulations constitute an interpretive rule defining the statutory term, "disabling effects of chronic alcoholism" for the purpose of an extension of the period of eligibility. This is necessary so that the Department of Veterans Affairs may act on the pending claims, since this new statutory term is not defined elsewhere.

However, because the Department of Veterans Affairs recognizes that reasonable persons may differ as to the interpretation of this term, we are inviting and will consider carefully comments on these interim regulations. Meanwhile, pending claims will be adjudicated on the basis of the interim regulation, so as not to delay an extension to those veterans who are clearly entitled to one.

Furthermore, the Secretary of Veterans Affairs has determined that good cause exists for making the effective date of these regulations retroactively effective on November 18, 1988. As noted above, to achieve the maximum benefit of the legislation for the affected individuals, it is necessary to implement this provision of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to it.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: July 7, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 3, Adjudication, is amended as follows:

PART 3—[AMENDED]

1. In § 3.301, paragraph (b), the introductory text of paragraph (c), paragraph (c)(2), and the cross reference at the end of the section are revised to read as follows:

§ 3.301 Line of duty and misconduct.

* * * * *

(b) *Willful misconduct.* Disability pension is not payable for any condition due to the veteran's own willful misconduct.

(Authority: 38 U.S.C. 521)

(c) *Specific applications.* For the purpose of determining entitlement to service-connected and nonservice-connected benefits the definitions in §§ 3.1(m) and (n) of this part apply except as modified within paragraphs (c)(1) through (c)(3) of this section. The provisions of paragraphs (c)(2) and (c)(3) of this section are subject to the provisions of § 3.302 of this part where applicable.

(Authority: 38 U.S.C. 210(c))

* * * * *

(2) The simple drinking of alcoholic beverage is not of itself willful misconduct. The deliberate drinking of a known poisonous substance or under conditions which would raise a presumption to that effect will be considered willful misconduct. If, in the drinking of a beverage to enjoy its intoxicating effects, intoxication results proximately and immediately in disability or death, the disability or death will be considered the result of the person's willful misconduct. Organic diseases and disabilities which are a secondary result of the chronic use of alcohol as a beverage, whether out of compulsion or otherwise, will not be considered of willful misconduct origin. (See §§ 21.1043, 21.5041, and 21.7051 of this title regarding the disabling effects of chronic alcoholism for the purpose of extending delimiting periods under education or rehabilitation programs.)

(Authority: 38 U.S.C. 210(c))

* * * * *

Cross References: In line of duty. See § 3.1(m). Willful misconduct. See § 3.1(n). Extended period of eligibility. See §§ 21.1043 and 21.7051. Periods of entitlement. See § 21.5041.

§ 3.302 [Amended]

2. Section 3.302 is amended as follows:

a. In § 3.302(a)(2) remove the words "of willful misconduct" and add, in their place, the words "or willful misconduct".

b. In § 3.302(b)(1) remove the word "he" and add, in its place, the words "he or she".

c. In § 3.302(b)(1) remove the word "his" and add, in its place, the words "his or her".

d. In § 3.302(b)(3) remove the word "man" and add, in its place, the word "person".

PART 21—[AMENDED]

38 CFR Part 21, Vocational Rehabilitation and Education, is amended as follows:

3. In § 21.1043, paragraphs (b), (c), and (d) are redesignated as paragraphs (c), (d), and (e) respectively; paragraph (a)(2) is revised, new paragraph (b) is added; new paragraphs (c)(2) and (c)(3) are redesignated as paragraphs (c)(3) and (c)(4) and new paragraph (c)(2) is added, so the revised and added text reads as follows:

§ 21.1043 Extended period of eligibility.

(a) * * *

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable delimiting period because of a physical or mental disability that did not result from the willful misconduct of the veteran. It must be clearly established by medical evidence that such a program of education was medically infeasible. A veteran who is disabled for a period of 30 days or less will not be considered as having been prevented from initiating or completing a chosen program, unless the evidence establishes that the veteran was prevented from enrolling or

reenrolling in the chosen program of education, or was forced to discontinue attendance, because of the short disability.

(i) For the purposes of the extension of the period of eligibility described in this section, the Department of Veterans Affairs will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct and will consider those disabling effects as physical or mental disabilities.

(ii) The provisions of paragraph (a)(2)(i) of the section will apply only when the last date of the time limit for filing a claim for the extension determined under § 21.1032(d) of this part occurs after November 17, 1988.

(Autority: 38 U.S.C. 1662; Pub. L. 100-689)

(b) *Disabling effects of chronic alcoholism.* (1) The term "disabling effects of chronic alcoholism" means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case,—

(i) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse, and

(ii) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(2) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(3) Injury sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 1662; Pub. L. 100-689)

(c) * * *

(2) Must be after November 17, 1988, if the veteran qualifies for the extended period of eligibility solely based on the disabling effects of chronic alcoholism, and

* * * * *

[FR Doc. 89-17975 Filed 8-2-89; 8:45 am]

BILLING CODE 8320-01-M

---

38 CFR Part 21

RIN 2900-AD67

Veterans Education; Eligibility for Dependents' Educational Assistance

AGENCY: Department of Veterans Affairs.

ACTION: Final Regulations.

SUMMARY: Occasionally, a veteran's child will become eligible for dependents' educational assistance after the child's eighteenth birthday. The pertinent provision of the Code of Federal Regulations which addresses this situation incompletely states the applicable statutory requirement for determining the child's effective date of eligiblity. This final regulation will bring the Code of Federal Regulations into agreement with the law.

EFFECTIVE DATE: September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Alan Zoeckler (225), Acting Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, D.C. 20420 (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 5945 and 5946 of the **Federal Register** of February 7, 1989, there was published a notice of intent to amend Part 21 to state more completely the method of determining a dependent child's effective date of eligibility for dependents' educational assistance. Interested people were given 30 days in which to submit comments, suggestions or objections. The Department of Veterans Affairs (VA) received no comments, suggestions or objections. Accordingly, VA is making the proposal final.

The Department of Veterans Affairs has determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that this amended regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: July 5, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 21 VOCATIONAL REHABILITATION AND EDUCATION is amended as set forth below:

§ 21.3041 [Amended]

1. In § 21.3041, paragraph (b)(2) is amended by removing the word "shall," and inserting in its place the word "may".

2. In § 21.3041, paragraphs (b)(2)(ii) and (b)(2)(iii) are redesignated as paragraphs (b)(2)(iii) and (b)(2)(iv), respectively.

3. In § 21.3041, paragraph (b)(2)(i) is revised, and paragraph (b)(2)(ii) is added, to read as follows:

§ 21.3041 Periods of eligibility; child.

* * * * *

(b) * * *

(2) * * *

(i) If the effective date of the permanent and total disability rating is before the child has reached 18 but the date of notification to the veteran from whom the child derives eligibility occurs after the child has reached 18, the beginning date of eligibility shall be the basic beginning date as determined in paragraph (a) of this section, or the date of notification to the veteran, whichever is more advantageous to the eligible child.

(ii) If the effective date of the permanent and total disability rating occurs after the child has reached 18 but before he or she has reached 26, the beginning date of eligibility will be the effective date of the rating or the date of notification to the veteran from whom the child derives eligibility, whichever is more advantageous to the eligible child.

(Authority: 38 U.S.C. 1712(a)(3), 1712(d))

* * * * *

[FR Doc. 89-17977 Filed 8-2-89; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN-047; FRL-3623-7]

Approval and Promulgation of Implementation Plans; Tennessee: Revisions to the Knox County Portion of the SIP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On July 7, 1986, October 7, 1986 and February 17, 1987, the State of Tennessee submitted the Knox County regulations (Board Orders 17-86, 27-86, and 2-87)) as revisions to the State Implementation Plan (SIP). The regulations for Knox County were originally approved by EPA in 1972 as an appendix to the SIP. Since that time the regulations have been revised several times and today EPA is approving the regulations that are approvable and disapproving the remainder.

DATES: This action will be effective on October 2, 1989 unless notice is received by September 5, 1989 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, GA 30365

Division of Air Pollution Control, Tennessee Department of Health and Environment, Customs House 4th Floor, 701 Broadway, Nashville, TN 37219

Knox County Air Pollution Control Department, City/County Building, 400 Main Avenue, Suite L222, Knoxville, TN 37902.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn D. Hughes, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On May 31, 1972 (37 FR 10842 at 10894), EPA approved the State Implementation Plan (SIP) for Tennessee, which recognized the Knox County Air Pollution Control Department (KCAPCD) as the local agency and included a control strategy demonstration based on the KCAPCD's activity. Since that time, the KCAPCD has revised its regulations to reflect the changes that have occurred at the national and state level.

The new regulations were submitted to EPA by the State of Tennessee as a SIP revision (Board Orders 17-86, 27-86, and 2-87) on July 7, 1986, October 7, 1986, and February 17, 1987. This SIP revision was not processed earlier because it was unclear which Knox County regulations had already been approved as part of the Tennessee SIP. Also, EPA had to determine if the previous control strategy demonstrations were adequate in protecting the National Ambient Air Quality Standards (NAAQS). Once the federally approved Knox portion of the Tennessee SIP was compiled and the previous control strategy demonstrations were deemed adequate, EPA decided to approve the Knox County regulations as a transfer of enforcement authority from the state to the local. The following conditions and conclusions were used to arrive at this decision:

1. The local regulations must be equal to the corresponding federally approved State regulation.

2. The local regulations cannot be treated as separable from the SIP, which the State submits and implements, but must be considered part of it.

3. Tennessee State law requires that the local regulations be equivalent to or not less stringent than the corresponding State regulations; therefore, Tennessee must certify to EPA that each regulation has been reviewed by the State and found to meet this requirement.

4. Tennessee must retain overall authority and responsibility for developing and implementing, including enforcing, the SIP.

For the most part, the Knox County regulations are the same today as they were in 1972. The following sections were approved in 1972:

Sec.
12.0 Introduction.
13.0 Definitions.
14.0 Ambient Air Quality Standards.
15.0 Prohibitions of Air Pollution.
16.0 Open Burning.
17.0 Regulation of Visible Emissions.
18.0 Regulation of Non-Process Emissions.
19.0 Regulation of Process Emissions.
20.0 Regulation of Incinerators.
22.0 Regulation of Fugitive Dust and Materials.
23.0 Regulation of Hydrocarbon Emissions.
24.0 Regulation of Airborne and Windborne Materials.
25.0 Permits.
26.0 Monitoring, Recording and Reporting.
27.0 Sampling and Testing Methods.
28.0 Variances.
29.0 Appeals.
30.0 Violations.
31.0 Right of Entry.
32.0 Use of Evidence.
33.0 Confidentiality and Accessibility of Records.
34.0 Malfunction of Equipment.
35.0 Regulation of Hazardous Air Contaminants.
36.0 Emergency Regulations.
37.0 Separation of Emissions.
38.0 Combination of Emissions.
39.0 Severability.

Since 1972, several sections have been added and/or revised. Sections 12.0, 22.0, 24.0-34.0, and 36.0-39.0 have not been revised since 1972; therefore, all portions of these above sections are reapprovable except for 25.2.B, which allows waivers for construction permits to be granted based on undue hardships. (This was inadvertently approved in 1972 and now EPA is correcting the error.) Section 21.0 was also part of the 1972 SIP, but this section regulates odor pollution. Since EPA does not regulate odors, no action will be taken on Section 21.0.

The revisions to Sections 13.0-20.0, 35.0 and 36.0 are equivalent to or more stringent than the federally approved State regulations and are approvable.

Section 40.0, Regulation for the Performance of New Stationary Sources, has been added to the Knox County regulations. It deals with the New Source Performance Standards which have been delegated to Knox County by EPA. This section is not part of the SIP and no action will be taken on it.

Sections 41.0, Regulation for the Review of New Sources, 42.0, Regulation of Bulk Gasoline Terminals, 43.0, Regulation of Standards for New VOC Sources, 44.0, Regulation of Cutback Asphalt, 46.0, Regulation of Volatile Organic Compounds, and 47.0, Good Engineering Practice Stack Height Regulation, are additions to the Knox County SIP. Sections 42.0, 43.0 and 44.0 were added as part of the rural ozone nonattainment plan (45 FR 8004). Later, those sections were combined into Section 46.0 and Sections 42.0, 43.0 and 44.0 were deleted.

Section 45.0, Regulation for the prevention of Significant Deterioration (PSD) is reserved. The State of Tennessee handled PSD review for Knox County.

Final Action: Since the Knox County regulations (Board Orders 17-86, 27-86, 27-86 and 2-87) are consistent with EPA policy and requirements, they are hereby approved except for 25.2.B which is disapproved.

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [60 days from date of publication]. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Regulatory Process: Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA must assess the impact of proposed rules on small entities. These rules are equivalent to the federally approved State regulations and maintain the status quo. Sources have not been adversely affected by the State regulations; therefore the conclusion can be drawn that small sources in Knox County will not be adversely affected by this decision.

The Office of Management and Budget (OMB) has waived review of this action, normally required under Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Tennessee was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: April 24, 1989.

Lee A. DeHihns III,

Acting Regional Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart RR—Tennessee

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2220 is amended by adding paragraph (c)(92) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(92) Revised Knox County regulations: Tennessee Air Pollution Control Board Order 17–86, submitted on July 7, 1986; Board Order 27–86, submitted on October 7, 1986; and Board Order 2–87, submitted on February 17, 1987.

(i) *Incorporation by reference.* (A) Tennessee Air Pollution Control Board Orders 17–86, and Knox County regulations 12.0–20.0, 22.0, 24.0, 25.0, except 25.2.B, 26.0–41.0, and 46.0, which became State effective June 18, 1986; 27–86, and Knox County regulation 35.3 and amendments to 41.1, which became State effective September 17, 1986; and 2–87 and Knox County regulation 47.0, which became State effective January 21, 1987.

(ii) *Additional material.* (A) Letters of July 7, 1986, October 7, 1986, and February 17, 1987, from the Tennessee Department of Health and Environment, submitting the Knox County SIP revisions.

3. Section 52.2229 is amended by adding paragraph (b) to read as follows:

§ 52.2229 Rules and regulations.

* * * * *

(b) Knox County Regulation 25.2.B, submitted July 7, 1986, is disapproved because it is inconsistent with EPA policy and requirements.

[FR Doc. 89–18074 Filed 8–2–89; 8:45 am]

BILLING CODE 6560–50–M

LEGAL SERVICES CORPORATION

45 CFR Part 1632

Redistricting

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation ("LSC" or "Corporation") has as its principal national goal the provision of basic day-to-day legal services to eligible poor individuals. As part of the implementation of this goal, this final rule prohibits any recipient involvement in redistricting activities, as defined in the rule, because basic day-to-day legal services to the poor are not advanced by redistricting activities and redistricting is intertwined with impermissible political activity. The rule is intended to ensure that recipients refrain from becoming involved in any redistricting activity, including anything intended to influence the timing or manner of the taking of a census, since such activity is not consistent with the Corporation's principal national goal for the provision of legal assistance.

EFFECTIVE DATE: September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Timothy B. Shea, General Counsel, Office of the General Counsel, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024–2751, (202) 863–1839.

SUPPLEMENTARY INFORMATION: On March 14, 1989, LSC published a proposed new rule prohibiting any redistricting activity by the Corporation or any LSC recipient with a deadline for comments of April 13, 1989. In response, a total of 75 comments were received. After considering written comments and hearing public comment on the proposed regulation at its meeting in Alexandria, Virginia, on April 13, 1989, the LSC Board of Directors' Committee on Operations and Regulations voted to recommend the proposed rule with clarifying amendments to the full Board. On April 14, 1989, the LSC Board adopted the Committee recommendations with clarifying amendments.

Briefly, the rule prohibits Corporation, recipient, or subrecipient involvement in any redistricting activities. "Involvement" means the use or contribution of LSC or private funds, personnel, or equipment in redistricting activities, and "redistricting" means any direct or indirect effort to participate in the revision or reapportionment of a legislative, judicial, or elective district at any level of government, including the timing or manner of the taking of a census. Amendments to the proposed rule adopted by the Board clarify that: (1) Voting Rights Act litigation is permissible as long as it does not involve redistricting; (2) the restrictions in the rule do not prevent recipients from using public or tribal funds for the purposes for which they were provided; (3) employees of recipients may be involved in redistricting activities as long as such involvement does not make use of program resources or time, does not involve identification with the program, and is outside the context of advice and representation; and (4) the rule does not prohibit activities permitted by 45 CFR Part 1604, LSC's regulation on outside practice of law.

The rule is intended to ensure that recipients refrain from becoming involved in rendering any legal services affecting redistricting, since such services are not consistent with the Corporation's principal national goal of the provision of basic day-to-day legal services to eligible poor individuals. Redistricting matters are not peculiar to the interests of the poor, nor have they been identified as a priority by LSC recipients. In addition, recipient funds can be better used elsewhere, since

alternative organizations are available to handle redistricting matters. Further, recipients would likely be competing with members of the private bar who handle matters such as these, since redistricting cases usually generate attorneys' fees. Finally, redistricting risks entanglement with political activities, which LSC recipients should assiduously avoid.

Generally, commenters opposed the new rule on the grounds that LSC lacks authority to restrict redistricting activities by its grantees, especially with regard to the use of private funds; that the proposed rule conflicts with other statutory authority that permits legal representation in such cases; that the definition of "redistricting" is too broad; that the Corporation's justifications for the need to restrict redistricting activities are faulty; and that the effect of the rule will be to deny poor persons access to legal assistance necessary to protect some of their most fundamental legal rights.

Authority to establish goals. Section 1007(a)(2)(C) of the Legal Services Corporation Act, Pub. L. 93–355, as amended, 42 U.S.C. 2996, *et seq.*, gives the Corporation authority not only to establish national goals, but also to determine that a specific activity may not be undertaken by LSC recipients where the activity does not advance Corporation goals. Under section 1007(a)(2)(C), 42 U.S.C. 2996f(a)(2)(C), the Corporation must ensure that recipients, "consistent with goals established by the Corporation, adopt procedures for determining and implementing priorities for the provision of such [legal] assistance." This statutory language gives the Corporation authority to establish goals that constrain the freedom of local programs to set service priorities, because it requires that recipients' priorities be in accord with the Corporation's goals. The fact that this rule is cast as a prohibition, therefore, does not detract from its effect of advancing a Corporation goal.

Certainly, this prohibition can hardly be called unduly intrusive, since it otherwise leaves programs free to determine which cases they will take. This new rule is simply a modest step in the direction of establishing the primacy of basic day-to-day service, and as such it advances the overall effective use of recipients' resources.

The legislative history supports the proposition that, while recipients may establish substantive law priorities, such priorities must comport with any goals established by the Corporation. When recipients were given the role of establishing local priorities by the 1977 amendments to the LSC Act, the House and Senate committee reports discussed the recipients' obligation in the context that such priorities must be consistent with LSC national goals. H. Rep. 310, 95th Cong., 1st Sess. 10–11 (1977); S. Rep. 172, 95th Cong., 1st Sess. 13 (1977). Thus, contrary to the tenor of certain comments, nothing in the legislative history undercuts the Act's clear grant of authority to the Corporation to determine that certain activities so marginally contribute to effective use of program resources that they fall outside the Corporation's goals. The restriction on redistricting activity sets out one perimeter limiting the provision of legal assistance on the grounds that such activity falls outside the goals of the Corporation.

Authority to promulgate legislative rules. To the extent this part constitutes a legislative rule,[1] the Corporation has ample authority to promulgate it. Review of the LSC Act as an integrated whole and consideration of its language, logic, and legislative history confirm that Congress delegated broad general legislative rulemaking authority to the Corporation. A legislative rule creates new law, rights, or duties, while an interpretive rule simply states what an agency thinks the statute means and reminds affected parties of existing duties, *Chrysler Corp.* v. *Brown*, 441 U.S. 281, 302 (1979); *General Motors Corp.* v. *Ruckelshaus*, 742 F.2d 1561, 1565 (D.C. Cir. 1984). Because the legislative power of the United States is vested in Congress, the exercise of quasi-legislative power by governmental entities must be rooted in a grant of such power by Congress, *Chrysler Corp.*, 441 U.S. at 302; *American Postal Workers Union, AFL–CIO* v. *United States Postal Service*, 707 F.2d 548, 558 (D.C. Cir. 1983); *Joseph* v. *United States Civil Service Commission*, 554 F.2d 1140, 1153 & n. 24 (D.C. Cir. 1977). In order to decide whether legislative rulemaking authority has been delegated by Congress, the language, logic, and legislative history of the enabling act should be probed, *Chrysler Corp.* 441 U.S. at 308, and the act should be read as an integrated whole, *National Petroleum Refiners Association* v. *F.T.C.*, 482 F.2d 672, 677–78 (D.C. Cir. 1973). Finally, the fact that Congress includes specific grants of legislative rulemaking authority does not eviscerate a grant of general legislative rulemaking authority. *In re Permanent Surface Mining Regulation Litigation* v. *Peabody Coal Company*, 653 F.2d 514, 523 (D.C. Cir. 1981), *cert. denied*, 454 U.S. 822 (1981).

LSC's general authority to promulgate legislative rules and its specific authority to legislate in regard to redistricting activities are rooted in sections 1006(a), 1006(b)(1)(A), and 1007(a)(2)(C) of the LSC Act. Section 1006(a) delegates to the Corporation to the extent consistent with the provisions of the Act all "the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act" except the power to dissolve itself. 42 U.S.C. 2996e(a). The Act intended the Corporation to be structured and financed in a way that would assure its substantial independence and freedom from both executive and legislative political interference. S. Rep. 495, 93d Cong., 1st Sess. 2–7 (1973). As a nonprofit corporation, LSC has broad discretion to make substantive, interpretive, and procedural policy and legal decisions that are legislative in nature, as long as they are reasonably related to the purposes of the enabling act. *See, e.g., National Clearinghouse* v. *Legal Services Corporation*, 674 F.Supp. 37, 41 (D.D.C. 1987); *aff'd*, 861 F.2d 303 (D.C. Cir. 1988) (one of the LSC Board's principal functions is to set funding policy).

The Act gives ample authority to the Corporation to express and implement its legislative decisions through the regulatory process. In conjunction with the authority delegated to LSC in section 1006(a), section 1006(b)(1)(A) gives the Corporation broad general oversight and rulemaking authority.[2] The legislative history of this provision evidences grant of legislative authority to the Corporation. When explaining the independent structure of the Corporation as envisioned in Senate bill, S. 2686, Senator Javits explained that the

[1] Comments have not identified those portions of the rule that are legislative. Generally, LSC considers the rule to be interpretive as it simply states LSC's interpretation of what the LSC Act means. LSC's goal is based on its policy to give primacy to the provision of basic day-to-day legal assistance to eligible poor persons. Section 1007(a)(2)(C) requires the Corporation to establish goals to ensure that recipients' priorities are in accordance with its policy goals. Although extension of this rule to private funds may arguably be legislative in nature, the Corporation reads section 1007(a)(2)(C), which mandates establishment of priorities by recipients, as extending priorities to private resources as well as LSC funds. See discussion *infra*.

[2] Section 1006(b)(1)(A) provides that:

The Corporation shall have the authority to insure the compliance of recipients and their employees with the provisions of this title and the rules, regulations, and guidelines promulgated pursuant to this title, and to terminate, after a hearing . . . financial support to a recipient which fails to comply.

42 U.S.C. 2996e(b)(1)(A).

Corporation was given "very strong authority" to enforce the provisions of the Act by promulgating regulations and ensuring the maintenance of the highest quality of service and professional standards. 119 Cong. Rec. S22413 (Dec. 10, 1973). He considered that Congress should not watch over or interfere with decisions made by the Corporation except in extreme cases. *Id.* at S22413–22414. A logical reading of the scope of authority and discretion envisioned in sections 1006(a) and 1006(b)(1)(A) requires the conclusion that LSC was intended to be more than an entity with only interpretive authority; it was expected to make substantive legal and policy decisions that would then be implemented through legislative rules.

One type of substantive decisionmaking authority given to LSC is the authority in section 1007(a)(2)(C) to establish national goals. If the Corporation has authority to establish such goals, then it necessarily must have authority to issue rules to implement these goals and to ensure that recipients' priorities are in accord with them, as contemplated by section 1006(b)(1)(A).

In summary, Congress clearly intended to create an independent organization with broad authority to make and implement legislative policy and legal decisions.

Relevant provisions in the LSC Act. There are no provisions in the LSC Act that expressly give LSC recipients authority to engage in redistricting activities. Contrary to assertions made by some commenters, the fact that Congress contemplated that some litigation could be brought under the Voting Rights Act pursuant to section 1007(a)(6) of the LSC Act does not support the contention that redistricting litigation was necessarily contemplated. Likewise, exceptions to prohibitions on types of legal assistance activities in the Act do not provide authority, as asserted by comments, for recipients to engage in certain types of redistricting activities.

A. Authority pursuant to section 1007(a)(6). LSC's authority to prohibit all redistricting activities does not conflict with activities allowed under exceptions to the prohibitions on political activity in section 1007(a)(6) of the LSC Act.[3]

Rather than granting recipients affirmative authority to engage in redistricting activities, the exceptions merely allow a narrow area of activity, *i.e.*, legal advice and representation for individuals seeking information on and access to the polls and to voter registration.

Commenters asserted that this provision, supported by its legislative history, contemplates legal assistance for eligible clients brought under the Voting Rights Act, 42 U.S.C. 1973, including redistricting litigation. This contention is not supported by the plain language of the statute or its legislative history.

The plain language of the section makes no reference to redistricting. Section 1007(a)(6) first establishes in clause (A) a blanket prohibition on involvement in political activities. In clauses (B) and (C), however, two narrow exceptions permit legal advice and representation for complaints relating to access to polls (*e.g.*, transportation to the polls or a similar activity) or any voter registration activity. Nothing in this language expressly contemplates involvement in redistricting litigation.

Nor is there any reference to redistricting in the legislative history of this provision. The extent of permissible and impermissible activities contemplated by section 1007(a)(6) was addressed in a colloquy on the Senate floor during consideration of amendments to delete the exceptions permitting legal advice and representation for voter access or registration activities. 120 Cong. Rec. S918–921 (January 31, 1974). Activities described as prohibited by the section included soliciting individuals or clients for a particular political cause and organizing carpools to take voters to the polls. *Id.* The types of activities intended to be permitted under the exceptions were legal advice and representation for eligible clients seeking access to the polls and voter registration and information on their right to participate in the electoral process. *Id.* at S918–S921. While Senator Taft made one reference to the fact that individuals should be able to get legal advice as to their rights under the Voting Rights Act, he made no mention of redistricting activities. *Id.*

This rule will not prevent advice and representation with respect to the types of voter access issues contemplated in the language of section 1007(a)(6), including most cases brought under the Voting Rights Act. However, although redistricting cases are often brought under the Voting Rights Act, the rule identifies redistricting as being so entangled with political considerations that it is more akin to the matters outside the scope of the exceptions than to issues of simple access.

B. Exceptions to prohibitions. The LSC enabling and appropriations acts provide ample authority for a blanket prohibition of all redistricting activities, even though certain exceptions in the acts would allow certain types of legal assistance activities that are prohibited in this part. For example, the LSC enabling and funding acts contain general prohibitions on lobbying activities but provide certain exceptions, such as one for legislative lobbying when such lobbying is carried out on behalf of an eligible client or upon the request of a legislator. *See* 42 U.S.C. 2996f(a)(5); and Pub. L. 100–459, 102 Stat. 2223–2224 (1988). Commenters assert that these exceptions provide authority to lobby on redistricting matters when the lobbying activity is done on behalf of an eligible client.

First, these provisions are cast as exceptions to prohibitions. Such exceptions, by their terms, do not constitute affirmative mandates to engage in the excepted activities; rather, they merely define those activities that are not prohibited as lobbying per se. Thus, these exceptions do not give affirmative authority for recipients to lobby in any substantive area, such as redistricting matters, when the lobbying is done on behalf of an eligible client.

Second, the LSC Act clearly differentiates between prohibitions on program involvement in certain substantive areas of law, such as criminal law, desertion from the military, and procurement of non-therapeutic abortions, and prohibitions on the types of legal assistance activities that can be carried out, *i.e.*, lobbying, training, community education, and organizing. As a general rule, if the LSC Act contains a prohibition against involvement in an area of law, then *all* types of legal assistance in that area are prohibited.[4] For example, the prohibition on representation in criminal cases precludes a recipient from using LSC funds to train attorneys in this area of law or to conduct community education. Accordingly, prohibitions on involvement in substantive areas of the law apply even where the eligible client

[3] Section 1007(a)(6) obligates the Corporation to insure that all recipient attorneys engaged in legal assistance activities refrain from:

(A) Any political activity, or (B) any activity to provide voters or prospective voters with transportation to the polls or provide similar assistance in connection with an election (other than legal advice or representation), or (C) any voter registration activity (other than legal advice and representation).

[4] 42 U.S.C. 2996f(a)(6).

[4] "Legal assistance" refers to all legal services provided by recipients under the Act, including training, community education, direct representation, and research.

exceptions might otherwise permit representation.

Finally, however, 45 CFR 1612.1(h) includes activity intended to influence the structure of government itself, such as reapportionment, within the meaning of legislative lobbying. Such lobbying is prohibited, and no exception is provided for eligible clients or requests of legislators. See 45 CFR 1612.4(b).

Thus, the determination to prohibit any redistricting even with an eligible client or a request of a legislator is well within existing precedent.

Private Funds. The Corporation has ample authority to apply this rule's prohibition to private funds. First, LSC's authority to restrict redistricting activities is rooted in a statutory mandate that is not dependent on what funds are used, or even whether or not any funds are used for the activity. The statutory requirement in section 1007(a)(2)(C) that the Corporation ensure that recipients establish priorities in accord with the Corporation's goals is not tied to the use of LSC funds. Rather, it is an affirmative requirement that attaches to the program regardless of whether LSC or private funds are used. For this reason, Part 1620, LSC's regulation implementing section 1007(a)(2) of the Act, applies to all of a recipient's resources. *See* 45 CFR 1620.2(a) and (b)(3) and 1620.5(b).

Likewise, the prohibitions on political activities in section 1007(a)(6) apply to the activities and are not limited by consideration of what funds are used. Of course, section 1007(a)(6) activities are already listed as being within the scope of section 1010(c) of the LSC Act, which prohibits the use of private funds for such activities. *See* 45 CFR Part 1610. However, a violation of this provision could occur regardless of whether any specific funds are used, since the prohibition is directed against the activity, not against the use of funds for such activity.

In summary, the prohibition of any redistricting activity regardless of the source of funds used is consistent with other prohibitions in the Act.

Policy Considerations Bearing on the Regulation of Redistricting. Substantial policy considerations warranted LSC's determination that redistricting activities are not consistent with the Corporation's principal national goal of providing basic day-to-day legal services to eligible poor individuals. Basic services include those that provide an immediate and discrete benefit to eligible clients with specific complaints such as child support, adoption, child abuse, and other family law matters; consumer complaints; and landlord tenant disputes, rather than services aimed at broad social and legal reform. The more esoteric cases, aimed at changing political and social structures with the hope that such changes will eventually benefit the poor, have evoked much public and Congressional criticism, because the benefits to the poor are often attenuated and entangled with social or political issues. Redistricting activity falls outside day-to-day legal services for the reasons set out below.

First, redistricting cases are not peculiar to the interests of the poor, since the relief sought would affect entire communities, which are composed of poor and non-poor individuals. Since the poor represent a minority, approximately 10 to 15 percent of the United States population, the group of eligible poor in most communities is relatively small. While it is possible to find localities in which a majority of citizens are eligible clients, as pointed out in some comments, in most localities less than 15 percent of the population is denominated as poor. In addition, since most redistricting cases are class actions and certainly affect large blocks of residents, the putative plaintiff class often may consist of a majority of non-eligible individuals. Similarly, the relief sought in redistricting cases often would go to the non-poor. Even in redistricting cases involving discrimination issues, the relief sought would not always go primarily to eligible poor individuals, as only part of the protected minority may be eligible. Consequently, the expenditure of recipients' funds on redistricting activities commonly would result in an allocation of resources for the benefit of non-eligible persons.

Second, redistricting cases generally have not been identified as a priority by LSC recipients. A compilation of the types of cases handled by LSC recipients in 1987 reveals that approximately 27 percent of the cases involved family matters, 21 percent involved housing matters, 16 percent involved income maintenance issues, and 12 percent were consumer-related cases. *See* Legal Services Corporation 1987/1988 Fact Book at 65. However, the need for this rule is supported by the fact that, regardless of redistricting's non-priority status in the past, LSC recipients have committed substantial resources to redistricting issues. Specifically, the Corporation estimates that at least 28,000 hours were devoted to handling redistricting cases from 1978 to 1984, years surrounding the 1980 census. Suggestions that redistricting might be included in a recipient's "other issues" category of priorities simply underlines this area as one lacking special concern to clients. Of the 73 comments submitted on the proposed rule, only two stated that their programs are presently involved in redistricting cases and only 10 cited previous involvement in such cases. Three recipients—Legal Aid Society of Central Texas, California Rural Legal Assistance, and Mississippi Legal Services Coalition—said that voting rights or redistricting cases are a priority for their programs.

Third, LSC has determined that recipient funds can be better used elsewhere, since alternative organizations and private attorneys are available to handle redistricting matters. Redistricting cases usually offer incentives to members of the private bar, since under the Voting Rights Act, 42 U.S.C. 1973, and the Civil Rights Attorneys' Fees Award Act of 1976, 42 U.S.C. 1981 and 1988, the right to recover attorneys' fees is specifically given to prevailing parties. Redistricting matters are also undertaken by numerous organizations, including the Mexican American Legal Defense Fund, the Southwest Voters Registration Project, Common Cause, the American Civil Liberties Union, the Native American Rights Fund, the NAACP, the Lawyers Committee for Civil Rights, the League of Women Voters, the Democratic National Committee, and the Republican National Committee. In comments to LSC's proposed rule, several of these organizations conceded that they are heavily involved in redistricting issues, but they claim, without evidence, that there is still a substantial unmet need for which alternative representation is unavailable. Referring to the upcoming 1990 census, one such commenter stated that massive efforts will be required to scrutinize "all of the plans" resulting from redistricting in thousands of jurisdictions nationwide. While it may be true that representation may be unavailable for all cases or in some geographic areas, such comments confirm LSC's assertion that many civil rights organizations already handle redistricting matters both on a national and local level. Comments that massive efforts will be required in the next decade for redistricting activities, including litigation that requires inordinate amounts of resources and time, reinforce the need to regulate in this area, since these activities would most certainly draw resources away from the provision of basic day-to-day legal services. It is simply not effective and economical to channel legal services funds into a massive effort that does not primarily affect the poor and that is already the object of

considerable attention from private attorneys and interest groups.

Fourth, in the past, involvement in redistricting activities by legal services recipients has been subject to abuse, because legal services recipients have linked redistricting activities to obtaining favorable Congressional support for their own parochial objectives. One LSC recipient's grant proposal addressed the need to become involved in State and local redistricting matters in order to develop powerful allies for its clients in what the recipient viewed as a battle over the direction of legal services programs. Influencing redistricting in State and local legislative bodies clearly affects the political character of those legislative bodies.

In response to requests made on April 11 and May 10, 1984, by the Senate Committee on Labor and Human Resources, LSC conducted a study of its grantees to determine their involvement in legislative redistricting activities arising out of the 1980 census. As a result of 2 separate monitorings and 34 responses to an LSC questionnaire that was mailed to all LSC programs, LSC estimates that at least 28,182 hours were spent handling legislative redistricting cases. Specifically, the LSC study found that LSC recipients, in spite of one recipient's assertion that clients rarely come to the office contending they have been "malapportioned," had sought resources for specialized computer equipment and a computer specialist to draw new election district boundaries to the recipients' satisfaction. In addition, recipients hired lobbyists to work on reapportionment issues, yet (in contravention of section 1007(a)(5) of the LSC Act, 42 U.S.C. 2996f(a)(5)) had no documented request from an eligible client or elected official to undertake this activity. Further, recipients also sought to orchestrate a State-wide effort of legal services programs to ensure elections of specific persons, who would in turn be used as powerful allies in anticipated battles over funding for legal services programs.

The LSC study also revealed that certain LSC recipients requested and received Federal funds from the Corporation to establish a Voting Rights Project center in connection with the 1980 census for the purpose of strengthening Mexican-American political power, yet had no request from an eligible client to do so. These recipients prepared a voting rights litigation manual that outlined how to solicit clients for a redistricting battle and how to locate such a client. Since these redistricting activities were obviously conducted by legal services attorneys in pursuit of general policy goals (or even in their own self-interest), rather than in the vindication of individual clients' rights, it is clear that involvement in redistricting activity is subject to abuse. Comments asserting that the reports of past abuse have been overstated were non-specific. Evidence of past abuse already before the Corporation, wherein legal services grantees have been linked to redistricting activities designed to obtain favorable Congressional support for the recipient's objectives, may legitimately be considered by the Corporation in deciding how best to ration legal services resources.

Finally, redistricting risks entanglement with political activities, *see Gaffney* v. *Cummings*, 412 U.S. 735, 753 (1973) ("Politics and political considerations are inseparable from redistricting and apportionment"), which should be avoided assiduously by LSC recipients. As noted in the discussion of the LSC study above, recipient involvement in redistricting too often was linked to obtaining Congressional support for recipients' political or self-interest objectives. The LSC Act declares that "to preserve its strength, the legal services program must be kept from the influence of or use by it of political pressures." 42 U.S.C. 2996. The LSC Act also specifically prohibits involvement in "any political activity." 42 U.S.C. 2996f(a)(6)(A).

In separate instances, LSC recipients were involved in reapportionment cases with counsel for the Democratic and Republican parties. *Upham* v. *Seamon*, 456 U.S. 37 (1982); *Thornburg* v. *Gingles*, 478 U.S. 30 (1986). Comments from attorneys involved in *Gingles* asserted that LSC recipient involvement was limited to filing *amicus* briefs and that actions taken by the Republican Party lawyers were totally separate and independent. While the Corporation makes no finding as to whether LSC recipients have aligned themselves with a particular political party, it believes that any such activity risks an impermissible political alignment under the Act.

Many of these same considerations warrant inclusion of "the timing or manner of taking of a census" in the definition of redistricting. Comments challenged the inclusion on the grounds that such activities are not intertwined with political activity, because the census is used for a wide variety of purposes other than drawing election districts. The United States Constitution mandates that a census be taken every ten years for purposes of reapportionment. U.S. Const. Art. 1, Sec. 2, Cl. 3. In essence, any participation by LSC recipients to influence the timing or manner of taking a census would affect the first step in the redistricting process. As such, involvement in census-taking properly may be prohibited, as it is a necessary antecedent to redistricting.

Additionally, ample alternative public and private entities are available to pursue census cases. Overwhelmingly, the cases challenging the census have been brought by State and local governments because they have a strong interest in the outcome of the census. *See generally, City of New York* v. *United States Dept. of Commerce*, No. 88 CV 3474 (E.D.N.Y. 1988); *Cuomo* v. *Baldrige*, 674 F.Supp. 1089 (S.D.N.Y. 1987); *City of Willacoochee, Ga.* v. *Baldrige*, 556 F.Supp. 551 (S.D.Ga. 1983); *Young* v. *Klutznick*, 497 F.Supp. 1318 (E.D. Mich. 1980), *rev'd on other grounds*, 652 F.2d 617 (6th Cir. 1981), *cert. denied*, 455 U.S. 939 (1982); *Carey* v. *Klutznick*, 637 F.2d 834 (2d Cir. 1980); *City of Philadelphia* v. *Klutznick*, 503 F.Supp. 663 (E.D. Pa. 1980). A review of this sampling of cases reveals the following named plaintiffs: States of New York and California; Cities of New York, Los Angeles, Chicago, Houston, Philadelphia and Detroit; Dade County, Florida; the United States Conference of Mayors; the National League of Cities; the League of United Latin American Citizens; the NAACP; and various mayors, governors and State and national legislators. This wide range of available representation would make any representation by LSC recipients unnecessary. Any undercount reduces the share of Federal revenue to which states and localities may be entitled—particularly for assistance programs for the poor—thus affecting their interest in the quality and quantity of social services they can offer their indigent citizens and their own financial status as governments. Local governments are also in a better financial position to make census challenges. Thus, any use of LSC funds for such purposes would clearly not be an economical or effective utilization of resource. *See* 42 U.S.C. 2996f(a)(3).

In summary, the Corporation has ample authority and policy grounds to prohibit redistricting activity by LSC recipients with LSC or private funds.

Clarifying amendments. Several clarifying amendments were adopted by the Board to delineate certain permissible activities that fall outside the scope of the rule's prohibition. Paragraph (a) of § 1632.4 provides that redistricting activity is the only type of Voting Rights Act litigation prohibited by this rule. Other suits brought under the act, such as the right to vote itself and physical access cases, are permitted.

Paragraph (b) makes clear that the public and tribal funds are not governed by this part. Thus, the prohibition in this part shall not prevent the use of public or tribal funds for redistricting as long as it is in accord with the purposes for which the funds were provided.

Paragraph (c) provides that employees of recipients may be involved in redistricting activities as long as their involvement does not make use of the program's resources or time, does not involve identification with the program, and is outside the context of advice and representation. This provision is intended to ensure that the prohibition in this part does not infringe upon the First Amendment rights of recipient employees.

Finally, paragraph (d) provides that this part does not prohibit any activities otherwise permitted by 45 CFR Part 1604, LSC's regulation on the outside practice of law. Generally, Part 1604 prohibits outside practice of law, except that newly employed attorneys may close cases from previous law practices, and uncompensated representation pursuant to a court order, for a close friend or family member, or for a religious, community, or charitable group may be permitted.[5]

Under Pub. L. 100-459, 102 Stat. 2226 (1988), the Corporation is required to give 15 days' notice to the appropriations committees of both Houses of Congress prior to promulgating new regulations. Notice letters duly were sent to the House and Senate Committees on Appropriations. No objection was voiced by the Senate committee. The Chairman of the House Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies responded on July 28, 1989, and his letter appears in Appendix A to this notice.

List of Subjects in 45 CFR Part 1632

Legal services.

For the reasons set out in the preamble, 45 CFR Chapter XVI is amended by adding Part 1632 as follows:

[5] The breadth of the exception in section 1604.4 with regard to legal services program attorneys being compensated in connection with an "outside" law practice has been criticized as going beyond the terms of the section of the LSC Act on which it is based, 42 U.S.C. 2996f(a)(4). *See Dubose* v. *Pierce*, 579 F. Supp. 937, 963 (D. Conn. 1984), *rev'd on other grounds*, 761 F.2d 913 (2d Cir. 1985); *Jordan* v. *City of Greenwood*, 806 F.2d 1714, 1718 (5th Cir. 1987), *cert. denied sub nom. Jordan* v. *North Mississippi Rural Legal Services, Inc.*, 108 S. Ct. 89 (1987).

PART 1632—REDISTRICTING

Sec.
1632.1 Purpose.
1632.2 Definitions.
1632.3 Prohibition.
1632.4 Permissible activity.

Authority: 42 U.S.C. 2996e(b)(1)(A), 2996f(a)(2)(C), 2996f(a)(3), 2996g(e).

§ 1632.1 Purpose.

This part is intended to ensure that funds available to recipients will be utilized to the maximum extent for the delivery of basic day-to-day legal services to eligible poor individuals. Involvement in redistricting activities does not constitute the provision of basic day-to-day legal services and is prohibited by this part.

§ 1632.2 Definitions.

As used in this part:

"Advocating or opposing any plan" means any effort, whether by request or otherwise, even if of a neutral nature, to revise a legislative, judicial, or elective district at any level of government.

"Recipient" means any grantee or contractor receiving funds made available by the Corporation under section 1006(a)(1) or 1006(a)(3) of the act. The term "recipient" includes subrecipient and employees of recipients and subrecipients.

"Redistricting" means any effort, directly or indirectly, to participate in the revision or reapportionment of a legislative, judicial, or elective district at any level of government, including influencing the timing or manner of the taking of a census.

§ 1632.3 Prohibition.

Neither the Corporation nor any recipient shall be involved in or contribute or make available any funds, personnel, or equipment for use in advocating or opposing any plan, proposal, or litigation intended to or having the effect of altering any redistricting at any level of government.

§ 1632.4 Permissible activity.

Nothing in this part shall prohibit:

(a) Any litigation brought by a recipient of the Legal Services Corporation under the Voting Rights Act of 1965, as amended, 42 U.S.C. 1971 *et seq.*, provided such litigation does not involve redistricting;

(b) The expenditure of public or tribal funds that are used in accordance with the purposes for which they were provided;

(c) Activities undertaken by employees of recipients without the use of program resources, including time, and without identification with the recipient and outside the context of advice and representation; or

(d) Activities otherwise permitted by 45 CFR Part 1604.

Timothy B. Shea,
General Counsel.

Editorial Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix A—Response From Chairman Neal Smith of House Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies

July 28, 1989.

Honorable Terrance J. Wear,
President, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024-2751

Dear Mr. Wear: This is in response to your letter of July 11, 1989 notifying the Committee of the Corporation's intent to promulgate 45 CFR Part 1632, the Corporation's new regulation on redistricting activity.

I note that the prohibition in this regulation is similar to that contained in section 6 of S. 2409, a bill to reauthorize the Legal Services Corporation, which was introduced by Senators Hatch and Rudman in 1988 and is not in conflict with the provisions further restricting the Corporation from adopting new regulations relating to fee generating cases and use of private funds which were included in the recent appropriations Supplemental (Pub. L. 101-45). I also have specifically noted your statement in the cover letter that the regulation was amended to make clear that "employees of legal services programs can be involved in redistricting activities, as long as the involvement does not make use of program resources or time, does not involve identification with the program, and is outside the context of advice and representation."

Conditioned upon the understanding that you agree with the above statements, the Committee has no objection to this regulation. We appreciate your keeping the Committee informed of changes within the Legal Services Corporation.

Sincerely,

Neal Smith,
Chairman, Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies.

[FR Doc. 89-18102 Filed 8-2-89; 8:45 am]
BILLING CODE 7050-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-215; RM-5742, RM-5791, RM-6017, RM-6176, RM-6294, RM-6557, RM-6558]

Radio Broadcasting Services; Campbellsville, Smiths Grove, Cave City, Liberty, Kentucky, and Donelson and Mt. Juliet, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 260A to Campbellsville, Kentucky, at the request of Michael Harding, Channel 264A to Horse Cave, Kentucky, in response to a counterproposal filed by Lee Stinson, Channel 254A to Liberty, Kentucky, in response to a petition filed by Carlos D. Wesley, and Channel 294A to Mt. Juliet, Tennessee, in response to a petition filed by Grady Lynn. *See* 53 FR 20659, June 6, 1988. Channel 260A can be allotted to Campbellsville in compliance with the Commission's minimum distance separation requirements. The coordinates are 37-20-36 and 85-20-24. Channel 264A, Horse Cave, Kentucky, requires a site restriction of 1.7 kilometers south. The restricted site coordinates are 37-09-49 and 85-54-00. Channel 254A, Liberty, Kentucky, requires a site restriction of 2.2 kilometers southwest. The restricted site coordinates are 37-18-22 and 84-55-02. Channel 294A, Mt. Juliet, Tennessee meets the minimum spacing requirements of the Commission's Rules at coordinates 36-16-33 and 86-35-31. Horse Cave, Kentucky, and Mt. Juliet, Tennessee, will both be provided with first local service. Proposals requesting the substitution of Channel 296C2 for Channel 296A at Smiths Grove, Kentucky, the substitution of Channel 279A for Channel 294A at Cave City, Kentucky, and the substitution of Channel 281A for Channel 280A at Campbellsville, Kentucky, will be the subject of a *Second Report and Order*.

DATES: Effective September 11, 1989; The window period for filing applications for Channel 260A at Campbellsville, Kentucky, Channel 264A at Horse Cave, Kentucky, and Channel 294A at Mt. Juliet, Tennessee, will open on September 12, 1989, and close on October 12, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-215, adopted July 10, 1989, and released July 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Campbellsville, Kentucky, Channel 260A; Horse Cave, Kentucky, Channel 264A; Mt. Juliet, Tennessee, Channel 294A; and by adding Channel 254A at Liberty, Kentucky and removing Channel 288A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-18168 Filed 8-2-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-39; RM-6611]

Radio Broadcasting Services; Alexandria, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 222C2 to Alexandria, Minnesota, and modifies the license for Station KXRA-FM, Channel 224A, to specify operation on Channel 222C2. This action is taken in response to a petition filed by Paradis Broadcasting of Alexandria, Inc., licensee of Station KXRA-FM. The coordinates for Channel 222C2 are 45-54-00 and 95-39-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-39, adopted July 13, 1989, and released July 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alexandria, Minnesota, is amended by removing Channel 224A and adding Channel 222C2.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-18169 Filed 8-2-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-543; RM-6457]

Radio Broadcasting Services; Essex, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Russell P. Kinsley, allots Channel 267A to Essex, New York, as the community's first local FM service. Channel 267A can be allotted to Essex in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.9 kilometers northwest to avoid a short-spacing to the proposed substitution of Channel 268A for Channel 270A at Brandon, Vermont. The coordinates for this allotment are North Latitude 44-19-30 and West Longitude 73-23-05. Canadian concurrence has been received since Essex is located within 320 kilometers of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective September 11, 1989. The window period for filing applications will open on September 12, 1989, and close on October 12, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-543, adopted July 13, 1989, and released July 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for New York is amended by adding the entry, Essex, Channel 267A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-18170 Filed 8-2-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Part 801

RIN 2900-AE07

VA Acquisition Regulation; Internal Management of the Department of Veterans Affairs Acquisition System

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending the VA Acquisition Regulation (VAAR) to make several changes in order to improve the management, control and reviews of contract actions. Thresholds for reviewing contract actions are revised, the process for obtaining final clearances prior to awarding major acquisitions is added, coverage for the ratification of unauthorized procurement actions is relocated to conform to FAR and is enhanced, relevant changes are made to the Contracting Officer Certification Program, and organization title changes are made throughout the regulation.

EFFECTIVE DATE: August 3, 1989.

FOR FURTHER INFORMATION CONTACT: Chris A. Figg, Acquisition Management Service (93), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC (202) 233-3054.

SUPPLEMENTARY INFORMATION:

I. Background

This regulation revises and adds internal administrative oversight of the VA acquisition program, relocates certain material in order to conform to the Federal Acquisition Regulation (FAR) format, adjusts requirements for the VA Contracting Officer Certification Program, and updates various VA organizational titles.

The VA Acquisition Management Service and the Office of General Counsel provide legal and technical review for proposed contract actions at specified thresholds. This regulation revises the thresholds in order to provide uniformity and it delegates legal/technical review for VA Marketing Center contracts. Additionally, the regulation provides for a technical review of certain proposed contracts just prior to contract execution. This regulation unifies all FAR/VAAR individual deviation authority into the Office of Acquisition and Materiel Management.

Coverage regarding the ratification of unauthorized commitments was recently codified in the FAR. VAAR 801.603-72, covering this subject, is removed and necessary supplementing and implementing guidance is relocated to 801.602-3 to conform to the FAR numbering system. VAAR 801.403 is revised to specify that the Director, Office of Acquisition and Materiel Management, is the official to approve individual FAR and VAAR deviations. This is prescribed in order to provide for a single office for such deviation approval.

The VAAR revised coverage for the VA Contracting Officer Certification Program includes several amendments intended to strengthen the program by clarifying the warranting process and clearly specifying that lack of progress in attaining requisite training requirements could result in loss of contracting authority.

VA finds good cause exists for making these regulations final without previous publication of a notice of proposed rulemaking. All the changes are internal VA management policies and public participation is therefore unnecessary (5 U.S.C. 553(d)(3)).

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this proposed rule is exempt from sections 3 and 4 of Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

Since a notice of proposed rulemaking is unnecessary and will not be published, these amendments do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), and are therefore not subject the requirements of the Act. Nevertheless, these amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612.

IV. Paperwork Reduction Act

These amendments do not impose any additional reporting or recordkeeping requirements on the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 801

Government procurement.

Approved: July 25, 1989.

Edward J. Derwinski,

Secretary.

In 48 CFR Chapter 8, Part 801 is amended as follows:

1. The authority citation for Parts 828 and 829 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

2. Part 801 is amended by revising the title to read as follows:

PART 801—VETERANS AFFAIRS ACQUISITION REGULATION SYSTEM

801.000 [Amended]

3. In 801.000 remove the word "Administration" and insert in its place, the word "Affairs".

801.102 [Amended]

4. In 801.102 remove the word "Administrator" and insert in its place, the word "Secretary".

801.104-1 [Amended]

5. In 801.104-1 remove the word "Administration" wherever it appears and insert in its place, the word "Affairs".

801.201 [Amended]

6. In 801.201 remove the words "Veterans' Administration's" and insert in their place, the word "Department of Veterans Affairs'".

801.201-1 [Amended]

7. In 801.201-1 remove the words "Procurement and Supply" and insert in

their place, the words "Acquisition and Materiel Management", and remove the words "Veterans' Administration and insert in their place, the words "Department of Veterans Affairs".

801.301 [Amended]

8. In 801.301(a) remove the word "Administrator" and insert in its place, the word "Secretary", and in 801.301(c), in the undesignated paragraph, remove the words "Director, Office of Procurement and Supply (91)" and insert in their place, the words "Deputy Assistant Secretary for Acquisition and Materiel Management (93)".

801.301-70 [Amended]

9. In 801.301-70(b)(2) remove the words "Director, Office of Procurement and Supply (91)" and insert in their place, the words "Deputy Assistant Secretary for Acquisition and Materiel Management (93)", and remove the words "Director, Office of Procurement and Supply" and insert in their place, the words "Deputy Assistant Secretary for Acquisition and Materiel Management".

801.303 [Amended]

10. In 801.303 remove the words "Director, Office of Procurement and Supply" and insert in their place, the words "Deputy Assistant Secretary for Acquisition and Materiel Management", and remove the words "Office of Procurement and Supply" and insert in their place, "Office of Acquisition and Materiel Management".

801.304 [Amended]

11. In 801.304 remove the words "Procurement and Supply" and insert in their place, the words "Acquisition and Materiel Management".

12. Section 801.403 is revised to read as follows:

801.403 Individual deviations.

(a) When contracting officers consider it necessary to deviate from the policies set forth in the FAR or VAAR, a request for authority to do so will be submitted to the Deputy Assistant Secretary for Acquisition and Materiel Management (93). The request will clearly set forth the circumstances warranting the deviation and nature of the deviation.

(b) When a deviation in an individual case is authorized by the Deputy Assistant Secretary for Acquisition and Materiel Management, the authorization will be filed in the purchase or contract file, whichever is appropriate. The Deputy Assistant Secretary for Acquisition and Materiel Management will review each deviation authorized and when considered necessary either prepare a change to the VAAR or recommend a change to the FAR through the CAA Council.

801.404 [Amended]

13. In 801.404, remove the words "Director, Office of Procurement and Supply" wherever they appear and insert in their place, the words "Deputy Assistant Secretary for Acquisition and Materiel Mangement", and remove the word "Administrator" and insert in its place, the word "Secretary".

801.470 [Amended]

14. In 801.470(b) remove the words "Veterans' Administration" and insert in their place, the words "Department of Veterans Affairs".

801.602 [Amended]

15. In 801.602(a) remove the word "Administrator" and insert in its place, the word "Secretary", and remove the words "Director, Office of Procurement and Supply" and insert in their place, the words "Deputy Assistant Secretary for Acquisition and Materiel Management".

16. In 801.602-2, paragraphs (a) and (b) are revised to read as follows:

801.602-2 Responsibilities.

(a) In the administration of a contract, many problems can and do arise that make the advice and assistance of the General Counsel either desirable or necessary. The final decision as to the action to be taken, however, must be made by the contracting officer in each instance. To reduce to the absolute minimum the possibility of litigation resulting from his/her decision, the contracting officer shall, except as provided in paragraph (c) of this section, submit the problem through channels in sufficient detail to the General Counsel for advice or assistance.

(b) While legal review and concurrence of the General Counsel is required prior to a default termination, in some cases where a quick response is necessary, this review can be expedited by express mailing or telefaxing the default letter and related documents which are required to make an evaluation directly to the General Counsel (025). The default termination letter should contain, at a minimum, the following:

(1) The proposed termination (FAR 49.102);

(2) An explanation of what necessitated the default, including the reasons why the contracting officer considers the contractor to be in default;

(3) A statement that the factors set forth in FAR 49.402-3(f) have been fully considered; and

(4) Final decision language and appeal rights.

17. Section 801.602-3 is added to read as follows:

801.602-3 Ratification of unauthorized commitments.

(a) Contracting officers shall not ratify contractual commitments made by other VA personnel without prior approval as prescribed below. Such unauthorized commitments include commitments made by other contracting officers which exceed their respective contracting authority as well as unauthorized commitments made by individuals lacking contracting authority.

(1) At field stations, for supplies, services and construction, the approving authority is the director of the field facility concerned.

(2) For central office contracting officers, for supplies, and services and construction, the approving authorities are the heads of the administrations and directors of the staff offices concerned, and the Deputy Assistant Secretary for Acquisition and Materiel Management.

(3) For acquisitions of leasehold interest in real property the approving authority is:

(i) The Deputy Assistant Secretary for Facilities, for 1-5,000 square feet, and for 1-100 parking spaces costing less than $50,000 per annum.

(ii) The Assistant Secretary for Acquisition and Facilities for 5,001-20,000 square feet, and for parking spaces exceeding 100 which cost less than $100,000 per annum.

(iii) The Deputy Secretary for 20,001 square feet and above, and for parking spaces exceeding 100 which cost more than $100,000 per annum.

(4) This approval authority shall not be redelegated.

(b) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority shall be processed as follows:

(1) The individual who made the unauthorized contractual commitment shall furnish the contracting officer all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to, a statement as to why the procurement office was not utilized, why the proposed contractor was selected and a list of other sources considered, description of work to be performed or products to be furnished, estimated or agreed contract price, citation of appropriation available, and a statement of whether the contractor has commenced performance.

(2) The contracting officer will review the file and forward it to the approving authority specified in paragraph (a) of this section with any comments or information which should be considered in evaluation of the request for ratification. If legal review is desirable, the approving authority will coordinate the request for ratification with the Office of General Counsel or the District Counsel, as appropriate.

(3) If ratification is authorized, the file will be returned to the contracting officer for issuance of a purchase order or contract, as appropriate.

(c) In the case of otherwise proper contract awards made by contracting officers in excess of the limits of their delegated authority, the need for ratification will be brought to the attention of the head of the contracting activity. That individual will take such action as may be indicated to preclude future instances of such awards.

18. In 801.602-70, paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3), (a)(4)(vi), (a)(4)(vii), (b)(2), (d), and (h)(1), and (h)(2)(i) are revised, and paragraph (j) is added, to read as follows:

801.602-70 Legal/technical review requirements to be met prior to contract execution.

(a) The following categories of proposed contracts and agreements will be reviewed and concurred in by the Office of Acquisition and Materiel Management prior to contract execution. (Additionally, the Office of Acquisition and Materiel Management may, when considered necessary, request preaward technical review regardless of dollar value). Office of General Counsel legal reviews of such proposed contracts and agreements will be performed when requested and determined necessary by the Office of Acquisition and Materiel Management. (Excluded from this requirement is the Marketing Center which will perform its own technical reviews at the thresholds herein prescribed. The Marketing Center will receive preaward legal review of solicitation from the General Counsel staff located in Hines, Illionis).

(1) All negotiated and sealed bid contracts (except as specified in (a)(2) and (a)(3)) exceeding $250,000 in either appropriated or nonappropriated funds. This includes indefinite quantity contracts when expenditures of $250,000 or more can reasonably be expected, and multiyear contracts in which $250,000 or more will be expended over the life of the contract. (Note also that multiyear contracts also require review any time the cancellation ceiling exceeds 20 percent of the contract amount (see 817.1)).

(2) All fixed price, sealed bid construction contracts involving $500,000 or more in either appropriated or unappropriated funds.

(3) All 8(a) contracts exceeding $500,000.

(4) * * *

(vi) Competitive contracts exceeding $50,000 and noncompetitive contracts exceeding $200,000, for scarce medical specialist services.

(vii) Competitive contracts exceeding $50,000 and noncompetitive contracts exceeding $200,000 for the mutual use, or exchange of use, of specialized medical resources.

* * * * *

(b) * * *

(2) Contract modifications granting a time extension of more than 20 days.

* * * * *

(d) Utility construction and connection contracts which are developed in the Office of Facilities and cost $50,000 or more will be be reviewed by General Counsel and the Deputy Assistant Secretary for Facilities.

(h) * * *

(1) Agreements, licenses, easements, or deeds dealing with management, sale, or lease of properties acquired by VA as a result of liquidation of guaranteed, direct, acquired or vendee loans.

(2) * * *

(i) If a change order (unilateral agreement) is essential for the logical process of the contract, the Office of Acquisition and Materiel Management (93D) shall be called prior to issuing the document. (This requirement does not apply to change orders issued by the Office of Facilities.)

(j) The following apparent low responsive and responsible bids/offers with the respective solicitations will be submitted for the review of the Deputy Assistant Secretary for Acquisition and Materiel Management (93D), prior to award:

(1) Negotiated contract actions in the Office of Facilities which exceed $2 million.

(2) Bids/offers for construction contracts to be awarded by VHS&RA facilities which exceed $5 million.

(3) Bids/offers for service contracts, including A/E, which exceed $2 million, and

(4) Bids/offers for supply contracts which exceed $5 million in total evaluated cost (excluding FSS contracts awarded by VA Marketing Center).

801.602-71 [Amended]

19. a. In 801.602-71(b) in the heading, remove the words "Department of Medicine and Surgery" and insert in their place, the words "Veterans Health Services and Research Administration (VHS&RA)", and remove the word "Stations", and insert in its place, the word "Facilities".

b. In 801.602-71(b)(1) remove the words "Director, Office of Procurement and Supply" wherever they appear, and insert in their place, the words "Deputy Assistant Secretary for Acquisition and Materiel Management".

c. In 801.602-71(b)(3) remove the words "Director, Office of Procurement and Supply (91)" and insert in their place, the words "Deputy Assistant Secretary for Acquisition and Materiel Management (93)", and remove the words "Office of Procurement and Supply" and insert in their place, the words "Office of Acquisition and Materiel Management".

d. In 801.602-71, paragraph (b)(4) is removed, and paragraphs (b)(5), (b)(6), and (b)(7) are redesignated as paragraphs (b)(4), (b)(5), and (b)(6), respectively.

e. In 801.602-71, in newly-designated paragraphs (b)(5) and (b)(6), remove the words "Director, Office of Procurement and Supply" wherever they appear and insert in their place, the words "Deputy Assistant Secretary for Acquisition and Materiel Management".

f. In 801.602-71, in paragraph (c)(1) remove the word "Counseling" wherever it appears and insert in its place, the word "Education", in paragraph (c)(2) remove the word "station" and insert in its place, the word "facility", and in paragraph (c)(2) remove the words "appropriate Regional Director" and insert in their place, the words "Chief Benefits Director for Field Operations (201)".

20. In 801.602-71, newly designated paragraph (b)(4) is revised, in paragraph (c) the heading is revised, paragraph (d) is revised, and paragraph (e) is added, to read as follows:

801.602-71 Processing contracts for legal/technical review.

* * * * *

(b) * * *

(4) Proposed facility-level modification specified in 801.607-70(b) will be forwarded by the contracting officer to General Counsel (025), through the Deputy Assistant Secretary for Acquisition and Materiel Management (93D).

* * * * *

(c) *Veterans Benefits Administration field facilities.*

* * * * *

(d) *Central office.* Any element of contracting prescribed for legal review

in 801.602–70 originating in central office, will be submitted for legal review by the contracting officer, or approving official in the case of agreements with other Government agencies through the Deputy Assistant Secretary for Acquisition and Materiel Management (93D). (Except that in the case of Office of Facilities contracts, a selected sample of contracts will be processed through the Office of Acquisition and Materiel Management (93D). All other Office of Facilities contract actions identified in 801.602–70 will be sumitted for legal review in accordance with Office of Facilities procedures).

(e) All bids/offers required to be reviewed prior to award in accordance with 801.602–70(j), will be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management (93D), with a cover letter identifying:

(1) The date in which the award is anticipated;

(2) Responsibility determination results or efforts ongoing;

(3) Determinations of price reasonableness;

(4) Explanation of proposed award to other than low responsible bidder/offeror.

21. In 801.602–72, paragraph (d) is revised and paragraph (e) is added, to read as follows:

801.602–72 Documents to be submitted for legal review.

* * * * *

(d) For contract modifications described in 801.602–70(b) and 801.602–71(b)(4) and (d):

* * * * *

(e) For bids/offers submitted as required by 801.602–70(j), the following documents will be provided:

(1) Request for contract action, including justification of need.

(2) The solicitation.

(3) Abstracts of bids/offers.

(4) Price negotiations memorandum, if applicable.

(5) Justification and approval (see 806.303), if applicable.

(6) Documents relevant to determination of contractor's responsibility.

(7) Documents relevant to price reasonableness.

801.603–71 [Amended]

22. In 801.603–71(b) remove the word "station" and insert in its place, the word "facility", in paragraph (c) remove the words "Veterans Administration" wherever they appear and insert in their place, the words "Department of Veterans Affairs", and in paragraph (d) remove the word "Administration" wherever it appears and insert in its place, the word "Affairs".

801.603–72 [Amended]

23. Section 801.603–72 is removed.

801.670 [Amended]

24. In 801.670 remove the word "Administrator" and insert in its place, the word "Secretary", and remove the word "Agency" and insert in its place, the word "Senior".

801.670–2 [Amended]

25. In 801.670–2(a)(3) remove the words "Procurement and Supply" and insert in their place, the words "Acquisition and Materiel Management".

801.670–3 [Amended]

26. In 801.670–3(a) remove the word "station" and insert in its place, the word "facility".

27. In 801.670–4, the heading, introductory text, paragraphs (a)(1) and (a)(2), and (b)(1) are revised, to read as follows:

801.670–4 National Cemetery System.

Authority for the National Cemetery System to procure supplies, equipment and nonpersonal services is delegated as follows:

(a) * * *

(1) Chief, Acquisition Division, Monument Service.

(2) Chief, Transportation Section, Monument Service and Freight Rate Specialist.

(b) * * *

(1) Director, National Cemetery System, and Deputy Director, National Cemetery System.

801.670–5 [Amended]

28. In 801.670–5(a) remove the word "837.270" and insert in its place, the word "837.2", in paragraph (a)(2) remove the words "Director, Office of Personnel and Labor Relations", and insert in their place, the words "Deputy Assistant Secretary for Personnel and Labor Relations", in paragraph (a)(6) remove the words "Director, Office of Procurement and Supply" and insert in their place, the words "Deputy Assistant Director for Acquisition and Materiel Management", in paragraph (a)(9) remove the word "837.270" and insert in its place, the word "837.2", and in paragraph (b) remove the words "Procurement and Supply" and insert in their place, the words "Acquisition and Materiel Management".

801.670–6 [Amended]

29. In 801.670–6 remove the words "VA Department of Medicine and Surgery" and insert in their place, the word "VHS&RA", and remove the words "open market prosthetic items or".

801.680 [Amended]

30. In 801.680(d) remove the word "Administrator's" and insert in its place, the word "Secretary's".

31. In 801.690–1, paragraphs (h) and (j) are revised to read as follows:

801.690–1 Definitions.

* * * * *

(h) "Certification" means an evaluation that the candidate has the experience, education and training to perform properly the duties of a contracting officer.

* * * * *

(j) "Termination" means the revocation of contracting authority of a contracting officer by the designating official. Termination provisions are identified in 801.690–6.

* * * * *

801.690–2 [Amended]

32. In 801.690–2(a) remove the words "Veterans Administration" and insert in their place, the words "Department of Veterans Affairs".

801.690–3 [Amended]

33. a. In 801.690–3(a) remove the words "Director, Office of Procurement and Supply (OP&S)" and insert in their place, the words "Deputy Assistant Secretary for Acquisition and Materiel Management (A&MM)", and remove the words "Director, OP&S" and insert in its place, the words "Deputy Assistant Secretary for A&MM".

b. In 801.690–3(c) remove the word "shall" and insert in its place, the word "may", and remove the word "OP&S" and insert in its place, the word "OA&MM".

c. In 801.690–3(c)(1) remove the word "(DM&S)" and insert in its place, the word "(VHS&RA)".

d. In 801.690–3(d) remove the word "OP&S" wherever it appears and insert in its place, the word "OA&MM", and remove the words, "Director, OP&S", and insert in their place, the words "Deputy Assistant Secretary for A&MM".

34. In 801.690–3, paragraph (b) is revised to read as follows:

801.690–3 Responsibility for administration of Contracting Officer Certification Program (COCP).

* * * * *

(b) *Heads of contracting activities (HCA).* The HCA is responsible for:

(1) Implementing and maintaining an effective and efficient program for the procurement of personal property and nonpersonal services assigned to the activity.

(2) Establishing adequate controls to ensure compliance with applicable laws and regulations.

(3) Appointing or terminating appointments of contracting officers at the Basic Level within their activity. Each HCA will establish procedures for the appointment or termination of appointment of contracting officers at the Basic Level to include maintenance of records on individual training and experience, as well as appointment and termination actions.

(4) Recommending to the designating official the appointment or termination of appointment of contracting officers at the Intermediate and Senior Levels of authority based on candidate qualifications, as well as a valid organizational need.

* * * * *

35. In 801.690–4, paragraphs (c)(1)(i), (c)(3)(i)(A), and (f) are revised, undesignated flush paragraphs are added in paragraphs (c)(2)(i)(C) and (c)(3)(i)(D), and paragraph (g) is added, to read as follows:

801.690–4 Selection.

* * * * *

(c) * * *

(1) * * *

(i) *Training*—Forty hours of basic acquisition or small purchase training that can be accomplished on the job in formalized courses of instruction. If on-the-job training is conducted, it must be documented for the record and include a brief description of the duties and responsibilities that comprised that training.

* * * * *

(2) * * *

(i) * * *

(C) * * *

ATP courses may include tests or other assessments to indicate what information has been learned by the student. An assessment will then be made to determine if additional formal or on-the-job training is needed.

* * * * *

(3) * * *

(i) * * *

(A) *ATP Level I*—Fundamentals of Acquisition.

* * * * *

(D) * * *

ATP courses may include tests or other assessments to indicate what information has been learned by the student. An assessment will then be made to determine if additional formal or on-the-job training is needed.

* * * * *

(f) Candidates who do not meet the minimum qualifications established in this section, may be granted interim appointments in accordance with 801.690–7.

(g) The Privacy Act of 1974 applies to the information collected during the selection and appointment of contracting officers.

801.690–5 [Amended]

36. In 801.690–5(a) remove the word "Director, OP&S" and insert in its place, the word "Deputy Assistant Secretary for A&MM".

37. 801.690–6 is revised to read as follows:

801.690–6 Termination.

(a) The designating official may revoke the appointment of a contracting officer at any time after evaluation of written recommendations by an HCA or other management officials based on:

(1) The fact that the need for the appointment no longer exists;

(2) Personnel actions such as resignation or retirement;

(3) Cause. (Cause covers such areas as, e.g., unsatisfactory performance, official misconduct pending criminal or administrative investigations, failure to meet training requirements.)

(b) Situations involving termination of contracting authority of contracting officers for cause should be discussed with the servicing Personnel Office to determine impact, if any, on the employee's continued employment.

38. In 801.690–7 a sentence is added at the end of paragraph (a), and paragraphs (b) and (d) are revised to read as follows:

801.690–7 Interim appointment provisions.

(a) * * * Failure to complete minimum training requirements within the time frame may result in the loss of the interim appointment.

(b) If training requirements are met during the interim appointment period through the ATP, a permanent warrant may be issued by the designating official upon satisfactory completion of all the required courses. Where equivalent courses have been completed, appropriate documentation (copies of course certificates) must be submitted before a permanent warrant can be issued.

* * * * *

(d) Interim appointments shall normally not exceed a 2-year period.

39. Section 801.690–8 is revised to read as follows:

801.690–8 Distribution of SF 1402, Certificate of Appointment

(a) The original SF 1402, Certificate of Appointment, shall be provided to the appointed contracting officer and displayed at the contracting officer's duty station.

(b) A copy of the certificate will be filed in the delegation of authority file and another copy will be furnished to the fiscal activity.

(c) Each certificate will be serially numbered.

[FR Doc. 89–17838 Filed 8–2–89; 8:45 am]
BILLING CODE 8320–01–M

Proposed Rules

Federal Register
Vol. 54, No. 148
Thursday, August 3, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 210

[INS No.: 1221-89]

Adjustment to Permanent Resident Status

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule amends procedures for the adjustment of status of applicants under section 210 of the Act from temporary resident status to permanent resident status. This rule will remove the burden on the alien for determining whether they have maintained temporary resident status.

DATE: Comments must be received on or before September 5, 1989.

ADDRESS: Written comments should be mailed in triplicate to the Deputy Assistant Commissioner, Special Agricultural Worker Programs, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, or delivered to Room 5250 at the same address.

FOR FURTHER INFORMATION CONTACT: Aaron Bodin, Deputy Assistant Commissioner, Special Agricultural Worker Program (SAW), 202-788-3658.

SUPPLEMENTARY INFORMATION: Pursuant to section 210(a)(2) of the Act, aliens are to be automatically adjusted from temporary resident status to permanent resident status.

Section 210.5(b)(2) is removed as the Service has determined that the procedures for determining maintenance of status are unduly burdensome on aliens and the Service and are not necessary because aliens who are found deportable are subject to deportation even after adjustment. Since the adjustment is automatic, an eligible alien will only be required to appear at a Service office for ADIT processing, i.e., preparation of Form I-551, Alien Registration Receipt Card.

Section 210.5(b)(3) is redesignated as (b)(2) and revised to indicate that an alien must also present proof of identity upon appearance for ADIT processing. The Service will attempt to contact aliens through a notice to appear advising them of the adjustment and necessity to appear at a Service office with proof of identity for the ADIT processing. Such contact may occur before or after the adjustment date.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

Lists of Subjects 8 CFR Part 210

Aliens, Permanent resident status.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 210—SPECIAL AGRICULTURAL WORKERS

1. The authority citation for Part 210 continues to read as follows:

Authority: 8 U.S.C. 1103, 1160, 8 CFR Part 2.

2. Section 210.5 is amended by revising the heading of paragraph (b), revising paragraph (b)(1), removing paragraph (b)(2) and redesignating paragraph (b)(3) as (b)(2) with revisions, to read as follows:

§ 210.5 Adjustment to permanent resident status.

* * * * *

(b) *ADIT processing*—(1) *General.* To obtain proof of permanent resident status an alien described in paragraph (a) of this section must appear at a legalization or Service office designated for this purpose for preparation of Form I-551, Alien Registration Receipt Card. Such appearance may be prior to the date of adjustment, but only upon invitation by the Service. Form I-551 shall be issued subsequent to the date of adjustment.

(2) Upon appearance at a Service office for preparation of Form I-551, an alien must present proof of identity, suitable ADIT photographs, and a fingerprint and signature must be obtained from the alien on Form I-89.

Date: July 14, 1989.

James A. Puleo,
Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89-18070 Filed 8-2-89; 8:45 am]
BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AWA-6]

Proposed Alteration and Revocation of Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of several Federal airways located in the states of North Dakota, South Dakota, Ohio, and Indiana by revoking some airway segments and renumbering other segments. This action supports FAA's agreement with the International Civil Aviation Organization (ICAO) to remove all alternate airway segments from the National Airspace System (NAS).

DATES: Comments must be received on or before September 21, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL-500, Docket No. 88-AWA-6, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9290.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AWA-6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V-15, V-462, V-26, V-412, V-148, V-80, V-78, and V-159 located in the states of North Dakota, South Dakota, Ohio, and Indiana, by removing all alternate airway designations. These airways are the final segments of alternate airways that must be removed from the NAS per our agreement with ICAO. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-15 [Amended]

By removing the words "Huron, SD, including a west alternate from Sioux Falls to Huron via Mitchell, SD, Aberdeen, SD, including a W alternate;".

V-462 [Revised]

From Fort Dodge, LA; Sioux Falls, SD; Mitchell, SD; Huron, SD; INT Huron 343° and Aberdeen, SD, 193° radials; to Aberdeen.

V-26 [Amended]

By removing the words "including a S alternate;".

V-412 [Revised]

From Huron, SD; INT Huron 105° and Redwood Falls, MN, 255° radials; Redwood Falls; INT Redwood Falls 067° and Flying Cloud, MN, 270° radials; to Flying Cloud.

V-148 [Amended]

By removing the words "including an S alternate;".

V-80 [Revised]

From Akron, CO; North Platte, NE; O'Neill, NE; Sioux Falls, SD; INT Sioux Falls 270° and Redwood Falls, MN, 221° radials; to Redwood Falls.

V-78 [Amended]

By removing the words "including a S alternate;".

V-159 [Amended]

Add to the end of the description "Huron, SD; INT Huron 072° and Watertown, SD, 223° radials; to Watertown.".

Issued in Washington, DC, on July 25, 1989.

Harold W. Becker,
Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-18125 Filed 8-2-89; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 89-AEA-8]

Proposed Alteration of Jet Route J-8

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Jet Route J-8 between Charleston, WV, and Casanova, VA. The realignment of J-8 would utilize the route more efficiently in conjunction with other jet routes in the vicinity. The realignment of J-8 would allow for more separation between air traffic traversing those routes.

DATES: Comments must be received on or before September 21, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AEA-500, Docket No. 89-AEA-8, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

BEST COPY AVAILABLE

FOR FURTHER INFORMATION CONTACT: Jesse B. Bogan, Jr., Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9253.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–AEA–8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing such substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the description of J–8 between Charleston, WV, and Casanova, VA. This change would allow for more separation between J–6 and J–8, thereby allowing for more separation between air traffic traversing those routes. This action would increase safety in the designated area. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69

§ 75.100 [Amended]

2. § 75.100 is amended as follows:

J–8 [Amended]

By removing the words "INT Charleston 085° and Casanova, VA, 262° radials;" and substituting the words "INT Charleston 902° T(095°M) and Casanova, VA, 253° T(259°M) radials;"

Issued in Washington, DC, on July 27, 1989.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–18126 Filed 8–2–89; 8:45 am]

BILLING CODE 4910–13–M

RAILROAD RETIREMENT BOARD

20 CFR Part 327

RIN 3220–AA65

Available for Work

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to amend Part 327 of its regulations under the Railroad Unemployment Insurance Act to clarify the meaning of the phrase "available for work" as used in section 1(k) of the Act (45 U.S.C. 351(k)).

DATE: Comments must be received on or before September 5, 1989.

ADDRESS: Office of Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611; (312) 751–4513 (FTS) 386–4513.

SUPPLEMENTARY INFORMATION: To receive unemployment benefits under the Railroad Unemployment Insurance Act (Act), an unemployed railroad employee must be available for work, that is, ready and willing to work. 45 U.S.C. 351(k). The Board proposes to amend Part 327 of its regulations to delineate certain conditions under which an unemployed employee will be considered as not available for work and thus not eligible for benefits.

Initially, the Board proposes to amend § 327.10(a) to take into consideration the revisions made to Part 325 of this chapter, which permits registration for unemployment benefits by mail. Under the mail-in procedure, upon receipt of a claim for unemployment benefits the Board will notify the claimant's base year employer. If, within a period of time prescribed by the Board, the employer presents no evidence regarding the claimant's availability for work, the claimant shall initially be considered to be available for work.

In addition, the Board proposes to add five new paragraphs to § 327.10 to further describe circumstances under which an employee would be considered not available for work.

Proposed new paragraph (d) provides that an employee who works fewer than five days a week but is continuously employed from week to week under a schedule that provides the equivalent of full-time work shall not be considered to be available for work on his or her days off. Under the Act an individual may be paid benefits for days of unemployment, not to exceed 10, within a 14-day registration period. Four days of unemployment within a 14-day registration period are considered normal rest days, which are not compensable under the Act. Individuals who work compressed work weeks may have more than four rest days within a 14-day registration period but yet are essentially employed full-time. Under this proposed rule such individuals will not be considered as available for work on these additional rest days and would not receive benefits for those days.

The new paragraph (e) proposed to be added to § 327.10 provides that an employee who voluntarily leaves work to attend school shall be presumed not available for work. It also proposes to provide guidance on determining availability for work in other cases where an employee is enrolled in a school or training course.

The proposed new paragraph (f) provides that an employee in train and engine service who does not work on a day or days because he or she expects to work the maximum mileage permitted in a month under a work agreement is not considered available for work on such day or days.

New paragraph (g) provides that an individual in prison or jail or otherwise confined by a governmental unit shall not be considered available for work and thus not eligible for unemployment benefits. This includes an individual who has been released from confinement under a furlough program. An individual would not be considered as unavailable for work solely because he or she is out on bail awaiting trial or because he or she is on parole or probation after conviction for a crime.

New paragraph (h) provides that a train and engine service employee assigned to pool service will not be considered available for work on any day on which he or she would have worked if he or she had not missed his or her turn in pool service employment.

Finally, the Board proposes to remove § 327.20, which provides that a claimant should not be considered unavailable for work simply because he or she was enrolled in training under the Manpower Development Training Act of 1962. Such training programs have expired and this section is thus obsolete.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 327

Railroad employees, Railroad unemployment benefits.

For the reasons set out in the preamble, Title 20, Chapter II, Part 327 of the Code of Federal Regulations is proposed to be amended as follows:

PART 327—[AMENDED]

1. The authority citation for Part 327 is revised to read as follows:

Authority: 45 U.S.C. 362(i), 362(l).

2. Section 327.1 is revised to read as follows:

§ 327.1 Introduction.

The Railroad Unemployment Insurance Act provides for the payment of unemployment benefits to qualified railroad employees for days of unemployment. Under section 1(k) of the Act, an unemployed employee must be "available for work" as a condition of eligibility for unemployment benefits for any day claimed as a day of unemployment. This part defines the phrase "available for work" and explains how the Board will apply that phrase to claims for unemployment benefits.

3. Section 327.10 is amended by revising paragraph (a) and by adding new paragraphs (d) through (h) as follows:

§ 327.10 Consideration of availability.

(a) *Initial proof.* A claimant who registers for unemployment benefits in accordance with the provisions of Part 325 of this chapter shall, absent any evidence to the contrary, initially be considered available for work. Evidence that a claimant may not be available for work shall include any evidence provided by the claimant's base year employer(s) pursuant to section 5(b) of the Railroad Unemployment Insurance Act.

* * * * *

(d) *Equivalent of full-time work.* (1) A claimant who is continuously employed from week to week under a work schedule that provides the equivalent of full-time employment shall not be considered available for work with respect to any rest day or other non-work day within a 14-day registration period.

(2) The application of this paragraph (d) may be illustrated by the following examples:

Example (1). A claimant's regular work schedule requires him or her to work five nine hour days one week followed by three nine hour days and one eight hour day in the next week. The claimant has five non-work days within this two-week period. The claimant is not considered available for work on those non-work days.

Example (2). On Monday an employee who has been working a shift which has Saturdays and Sundays off changes to a shift which normally has Wednesdays and Thursdays off. As a consequence, the employee has six non-work days within a 14-day period. The employee is not considered available for work with respect to any of the six non-work days.

Example (3). An employee regularly receives remuneration for 40 hours per week by working 10 hours on each of four days per week, thus giving him or her six rest days in a 14-day period. The employee will not be considered available for work on the rest days.

(e) *Attendance in school or training course.* (1) A claimant who has voluntarily left work to enroll as a student in an educational institution shall be presumed not to be available for work. For the purpose of this provision, leaving work is considered voluntary when the claimant on his or her own initiative left work that he or she could have continued to perform but for the claimant's decision to attend school. In all other cases, this presumption shall not apply, but eligibility shall instead be determined on the basis of the facts of each case. In each such case, the claimant shall be given an opportunity to establish that he or she remains ready and willing to engage in full-time employment for hire, notwithstanding his or her school attendance. If a claimant is enrolled in a vocational training program at a trade or technical school, he or she shall be considered available for work if his or her current prospects for work are poor and the vocational training can reasonably be expected to increase his or her prospects for obtaining new employment.

(2) *Examples.* The application of paragraph (e) may be illustrated by the following examples:

Example (1). An individual is laid off by his or her railroad employer. Instead of looking for other employment, the individual decides to enter college in order to become a teacher. He or she is enrolled as a full-time day student. The individual is not available for work.

Example (2). An employee is furloughed by his or her railroad employer and will not likely be able to return to railroad work. After making a reasonable effort to obtain

work and finding none, the individual enrolls in a six month course of training, which upon completion would permit him or her to obtain an entry level job in the data processing industry. The individual is considered available for work while training for the data processing job.

(f) *Failure to work in anticipation of maximum mileage.* (1) An employee in train and engine service who voluntarily lays off work in anticipation of reaching the maximum mileage or earnings permitted under an agreement with his or her employer shall not be considered available for work.

(2) *Example.* Halfway through the month an engineer has worked in train service covering 2000 miles. By agreement with his or her employer he or she may not operate a train in excess of 3000 miles per month. In order to allow engineers with less seniority to perform service, the engineer lays off work for five days. The engineer is not considered available for work on those days.

(g) *Confinement.* A claimant who is confined in a penal institution or is in the custody of a Federal, State or local governmental unit or official thereof shall not be considered available for work. An individual shall not be considered in the custody of a governmental unit or official thereof if he or she has been released on bail and is awaiting trial or he or she has been placed on probation or parole. However, an individual who has been released from custody by a governmental unit or official thereof under a program that permits leave from custody of a short duration, after which he or she must return to custody, shall not be considered available for work on those days on which he or she is on furlough from confinement.

(h) *Missed turns in pool service.* A train and engine service employee assigned to pool service shall not be considered as ready to work, within the meaning of § 327.5(c) of this part, with respect to any day on which such employee would have worked if he or she had not missed his or her turn in pool service employment.

§ 327.15 [Amended]

4. Section 327.15, Reasonable efforts to obtain work, is amended by substituting in paragraphs (a) thereof "§ 325.3" for "§ 325.13."

§ 327.20 [Removed]

5. Section 327.20, Training pursuant to Pub. L. 87–415, is hereby removed.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89–18151 Filed 8–2–89; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–015]

RIN 1218–AA59

Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment; Correction

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Proposed rule, notice of hearing; extension of written comment period; correction.

SUMMARY: This notice corrects two dates listed in the notice of hearing on the proposed standards on electric power generation, transmission, and distribution and on electrical protective equipment. The hearing notice, which was published on July 20, 1989 (54 FR 30401), had two different dates listed both for the hearing in Los Angeles, CA, and for the submission of testimony and evidence to be introduced at the hearing. The dates listed in this notice are the correct ones.

DATES: The hearing will begin in Washington, DC, on November 28, 1989, at 9:30 a.m., and may continue for more than one day based on the number of notices of intention to appear. Once all parties who wish to do so have testified in Washington, DC, the hearing will be recessed and reconvened in Los angeles, CA, on December 12, 1989, for the receipt of testimony of parties who prefer to testify at that location. Written comments on the proposed standards and notices of intention to appear must be postmarked by September 30, 1989. Testimony and evidence to be introduced into the record at the hearing must be postmarked by October 30, 1989.

ADDRESSES: The informal public hearing will begin in the Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210. The hearing will be reconvened at the Sheraton Plaza La Reina Hotel, 6101 West Century Boulevard, Los Angeles, CA 90045. (Telephone: 213–642–4867.)

Four copies of written comments must be sent to the Docket Office, Docket No. S–015, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2634, 200 Constitution Avenue, NW., Washington, DC 20210. (Telephone: 202–523–7894.)

Four copies of each notice of intention to appear and testimony and evidence that will be introduced into the hearing record must be sent to: Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210. (Telephone: 202–523–8615.)

FOR FURTHER INFORMATION CONTACT:

Hearing: Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210. (Telephone: 202–523–8615.) For information on how to submit notices of intention to appear, see the section of this notice entitled "Public Participation."

Proposal: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210 (Telephone: 202–523–8148.)

SUPPLEMENTARY INFORMATION: The following corrections are made to the hearing notice published in the **Federal Register** on July 20, 1989 (54 FR 30401):

Page	Column	Line	Correction
30404	1	4th from bottom.	Change "December 5" to "December 12".
30404	2	24th from bottom.	Change "September 30" to "October 30".

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

It is issued pursuant to Sec. 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655); Secretary of Labor's Order No. 9–83 (48 FR 35736); and 29 CFR Part 1911.

Signed at Washington, DC, this 27th day of July 1989.

Alan C. McMillan,

Acting Assistant Secretary of Labor.

[FR Doc. 89–18077 Filed 8–2–89; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6E3403/P483; FRL–3624–3]

Pesticide Tolerance for Ethyl 3-Methyl-4-(Methylthio)Phenyl (1-Methylethyl) Phosphoramidate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the nematicide ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate (also referred to in this document as fenamiphos) and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity strawberries. The proposed regulation to establish a maximum permissible level for residues of the nematicide in or on the commodity was requested in petitions submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number [PP 6E3403/P483], must be received on or before September 5, 1989.

ADDRESS: By mail, submit written comments to:

Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (H–7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 6E3403 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Stations of California, Florida, New Jersey, Maryland, and Washington.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the nematicide fenamiphos ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate and its cholinesterase inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl)phenyl (1-methylethyl) phosphoramidate and ethyl 3-methyl-4-(methylsulfonyl)phenyl (1-methylethyl) phosphoramidate in or on the raw agricultural commodity strawberries at 0.6 part per million (ppm).

The data submitted in the petitions and other relevant material have been evaluated. The pesticide is considered useful for the purposes for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 2-year dog feeding study with a no-observed-effect level (NOEL) for cholinesterase inhibition (ChE) at 1 ppm (equivalent to 0.025 milligram (mg)/kilogram (kg)/day) and no systemic effects at 10 ppm (the highest dose tested).

2. A 2-year feeding/oncogenicity study in rats with a NOEL for cholinesterase inhibition at less than 2.0 ppm (equivalent to 0.1 mg/kg/day) and no systemic effects at 10 ppm (equivalent to 0.5 mg/kg/day). The study was negative for oncogenic effects under the conditions of the study at all feeding levels.

3. An 18-month oncogenicity study in mice with feeding levels of 2, 10, and 50 ppm (equivalent to 0.3, 1.5, and 7.5 mg/kg/day) which was negative for oncogenic effects under the conditions of the study at all levels tested.

4. A three-generation reproduction study with no reproductive effects at 30 ppm (highest dose tested).

5. A teratology study in rabbits with developmental and maternal NOEL's at 0.5 mg/kg.

6. A neurotoxicity study in hens with no neurotoxicity damage at 12.5 mg/kg (highest dose tested).

7. In a metabolism study in rats, fenamiphos was metabolized to its sulfoxide and sulfone analogs with 50 percent excreted in the urine within 12 to 15 hours.

8. Genotoxicity studies including an Ames test (negative), a dominant-lethal test in mice (negative), an *in vitro* assay in Chinese hamster ovary cells (negative for non-activation assay at concentrations up to 130 micrograms/milliliter and for activation assay up to 230 micrograms/milliliter), and gene mutation using *Bacillus subtilis* (negative).

Data currently lacking include a teratology study in a second species. Data requirements for registration of fenamiphos are identified in a Registration Standard for the chemical, which was issued in June of 1987.

The acceptable daily intake (ADI), based on the 2-year feeding study in dogs with a NOEL for cholinesterase inhibition at 1.0 ppm (0.025 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.00025 mg/kg of body weight (bw)/day. The anticipated residue contribution (ARC) from existing tolerances is calculated to be 0.000094 mg/kg bw/day, which is equivalent to 37.8 percent of the ADI. The current action will contribute an additional 0.000021 mg/kg bw/day of residues to the human diet.

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography using a thermionic detector, is available in the Pesticide Analytical Manual, Vol. II (PAM II), for enforcement purposes. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.349 would protect the public health. No secondary residues in meat, milk, poultry, or livestock are expected since strawberries are not considered a livestock feed commodity. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section

408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 6E3403/P483]. All written comments filed in response to these petitions will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: July 20, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.349(a) is amended by adding and alphabetically inserting the raw agricultural commodity strawberries, to read as follows:

§ 180.349 Ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Strawberries	0.5
* * * * *	

[FR Doc. 89–18071 Filed 8–2–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 7E3493/P482; FRL–3624–2]

Pesticide Tolerance for Fluvalinate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the insecticide (alpha RS,2R)-fluvalinate [(RS)-alpha-cyano-3-phenoxybenzyl (R)-2-[2-chloro-4-(trifluoromethyl)anilino]-3-methylbutanoate] (referred to in this document as fluvalinate) in or on the raw agricultural commodity coffee. The proposed regulation to establish a maximum permissible level for residues of the pesticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number [PP 7E3493/P482], must be received on or before September 7, 1989.

ADDRESS: By mail, submit written comments to:

Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 7E3493 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Station of Hawaii.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the insecticide fluvalinate in or on the raw agricultural commodity coffee at 0.01 part per million (ppm).

This petition was later amended to propose that this use of the pesticide be limited to Hawaii based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought.

The toxicological data considered in support of the proposed tolerance include:

1. Ninety-day feeding studies in rats and mice with a no-observed-effect level (NOEL) of 3.0 milligrams(mg)/kilogram(kg)/day in both species.

2. A 6-month feeding study in dogs with a NOEL of 5.0 mg/kg/day.

3. A 2-year feeding/oncogenicity study in rats with a systemic NOEL of 1.0 mg/kg/day and no observed oncogenic effects under the conditions of the study.

4. A 2-year feeding/oncogenicity study in mice with a NOEL for systemic effects at 10 mg/kg/day and no oncogenic effects under the conditions of the study at dosage levels of 2, 10, and 20 mg/kg/day (equivalent to 14, 70, and 140 ppm).

5. Teratology studies in rats and rabbits with a NOEL of 50 mg/kg (highest dose tested) for teratogenic effects in rats and 125 mg/kg in rabbits

6. A two-generation rat reproduction study with a NOEL of 20 ppm (equivalent to 1.0 mg/kg/day).

7. The following mutagenicity studies: Ames' *Salmonella* microsome tests, sister chromatid exchange assay, mouse lymphoma, unscheduled DNA synthesis, cell transformation (all negative except the mouse lymphoma, which was positive with metabolic activation).

The acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of 1.0 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.01 mg/kg of body weight/ day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.000159 mg/kg of body weight/day; the current action will increase the TMRC by 0.000001 mg/kg of body weight/day (0.005 percent).

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography, is available for enforcement purposes from: By mail, Information Services Section (H7506C), Program Management Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 246, CM–2, 1921 Jefferson Davis Highway, Arlington VA 222022, (703)–557–3262.

There are currently no actions pending against the continued registration of this chemical. No secondary residues in meat, milk, or eggs are expected since the commodity is not considered a livestock feed commodity.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.427 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 7E3493/P482]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: July 20, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.427 is amended in the heading by adding the phrase "tolerances for residues," and by designating the current text and list of tolerances as paragraph (a), and by adding new paragraph (b), to read as follows:

§ 180.427 (Alpha RS,2R)-fluvalinate [(RS)-alpha-cyano-3-phenoxybenzyl (R)-2-[2-chloro-4-(trifluoromethyl)anilino]-3-methylbutanoate; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the insecticide (alpha RS,2R)-fluvalinate [(RS)-alpha-cyano-3-phenoxybenzyl (R)-2-[2-chloro-4-(trifluoromethyl)anilino]-3-methylbutanoate in or on the following commodities:

Commodities	Parts per million
Coffee	0.01

[FR Doc. 89–18072 Filed 8–2–89; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 54, No. 148
Thursday, August 3, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 28, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Emergency

• Agricultural Marketing Service
Regulations Governing the Fresh Apples Diversion Program for 1988 Crop Apples
FV–184–2
On occasion
Businesses or other for-profit; 1,050 responses; 70 hours; not applicable under 3504(h)
Donald A. Thibeault, (202) 447–6391

• Farmers Home Administration
Form FmHA 440–32, Request for Statement of Debts and Collateral FmHA 440–32
On occasion
Individuals or households; Businesses or other for-profit; Small businesses or organizations; 250,000 responses; 62,500 hours; not applicable under 3504(h)
Jack Holston, (202) 382–9736

Extension

• Agricultural Marketing Service
Celery Grown in Florida (Marketing Order No. 967)
None
Recordkeeping; On occasion; Annually
Farms; Businesses or other for-profit; Small businesses or organizations; 2,399 responses; 161 hours; not applicable under 3504(h)
Virginia M. Olson, (202) 475–3930

• Animal and Plant Health Inspection Service
Brucellosis Program (9 CFR Parts 51, 71, 78, and 78 Cooperative Agreements) VS 1–23, 1–68, 4–1, 4–1D, 4–6, 4–33D, 4–54D, 4–59, 4–108, A, B, C, 6–35
Recordkeeping; On occasion; Monthly
State or local governments; Farms; 22,133,270 responses; 110,871 hours; not applicable under 3504(h)
Grace A. Henry, (301) 436–8188

Donald E. Hulcher,
Acting Departmental Clearance Officer.
[FR Doc. 89–18127 Filed 8–2–89; 8:45 am]
BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket 89–124]

U.S. Veterinary Biological Product and Establishment Licenses Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The purpose of this notice is to advise the public of the issuance of veterinary biological product and establishment licenses by the Animal and Plant Health Inspection Service during the month of May 1989. These actions are taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act.

FOR FURTHER INFORMATION CONTACT: Joan Montgomery, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6332.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR Part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

Pursuant to these regulations, the Animal and Plant Health Inspection Service (APHIS) issued the following U.S. Veterinary Biological Product Licenses during the month of May 1989:

Product license code	Date issued	Product	Establishment	Establishment license No.
1095.20	05–18–89	Bovine Respiratory Syncytial Virus Vaccine, Killed Virus	Boehringer Ingelheim Animal Health, Inc	124
1288.43	05–09–89	Bursal Disease-Marek's Disease Vaccine, Live Virus, Live Chicken and Turkey Herpesvirus.	Select Laboratories, Inc	279
17A1.11	05–01–89	Newcastel-Bronchitis Vaccine, B_1 Type, B_1 Strain, Mass. and Ark. Types, Live Virus.	Intervet America, Inc	286
1881.10	05–26–89	Pigeon Pox Vaccine, Live Virus	Maine Biological Laboratories, Inc	240
1895.00	05–31–89	Pseudorabies Vaccine, Killed Virus	Bio Vac Laboratories, Inc	307
2657.00	05–16–89	Haemophilus, Pleuropneumoniae, Bacterin	Bio Vac Laboratories, Inc	307
7054.00	05–22–89	Bordetella, Bronchiseptica-Erysipelothrix, Rhusiopathiae-Pasteurella, Multocida Bacterin-Toxoid.	Beecham, Inc	225

Product license code	Date issued	Product	Establishment	Establishment license No.
A231.10	05–19–89	Bronchitis Virus, Mass. Type, Live Virus, For Further Manufacture.	Select Laboratories, Inc	279
G410.00	05–17–89	Clostridium, Chauvoei-Septicum-Novyi-Sordellii-Perfringens Types C & D, Bacterin-Toxoid, For Further Manufacture.	Beecham, Inc	225

Done in Washington, DC, this 31st day of July 1989.

Larry B. Slagle,
Acting Administrator, Animal and Plant Health Inspection Service.
[FR Doc. 89–18128 Filed 8–2–89; 8:45 am]
BILLING CODE 3410–34–M

Forest Service

Mendocino National Forest Mendocino County, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for a proposal to harvest blowdown salvage timber sales within the Howard Area which encompasses a portion of Wilderness Contiguous #05137, and the Armstrong Area which encompasses a portion of Thatcher #05141 released-roadless area on the Covelo Ranger District.

A range of alternatives for this area will be considered. One of these will be no road construction or timber harvest. Other alternatives will consider implementing intensive timber management activities (including harvest of timber and road construction) to low intensity timber management (minimal harvest with no road construction).

Federal and State, and local agencies; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the watershed.

Daniel K. Chisholm, Forest Supervisor, Mendocino National Forest, is the responsible official.

The analysis is expected to be completed by December 31, 1989. The draft environmental impact statement should be available for public review by February 1, 1990. The final environmental impact statement is scheduled for completion by April 15, 1990.

Written comments and suggestions concerning the analysis should be sent to Charles L. McFadin, District Ranger, Covelo Ranger District, Mendocino National Forest, 78150 Covelo Road, Covelo, California, 95428, by October 31, 1989.

Questions about the proposed action and environmental impact statement should be directed to Brooks Smith, Timber/Resource Officer, Covelo Ranger District, Mendocino National Forest, Covelo, California, 95428, phone 707–983–8116.

Dated: July 26, 1989.

Daniel K. Chisholm,
Forest Supervisor.
[FR Doc. 89–18133 Filed 8–2–89; 8:45 am]
BILLING CODE 3410–11–M

Mendocino National Forest Mendocino County, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for a proposal to implement commercial timber sales within the Black Butte River watershed area on the Covelo Ranger District; this EIS will encompass a portion of the Black Butte (#05269) released-roadless area.

A range of alternatives for this area will be considered. One of these will be no road construction or timber harvest. Other alternatives will consider implementing intensive timber management activities (including harvest of timber and road construction) to low intensity timber management (minimal harvest with no road construction).

Federal and State, and local agencies; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the watershed.

Daniel K. Chisholm, Forest Supervisor, Mendocino National Forest, is the responsible official.

The analysis is expected to be completed by December 31, 1989. The draft environmental impact statement should be available for public review by January 17, 1990. The final environmental impact statement is scheduled for completion by April 16, 1990.

Written comments and suggestions concerning the analysis should be sent to Charles L. McFadin, District Ranger, Covelo Ranger District, Mendocino National Forest, Covelo, California, 95428, by November 1, 1989.

Questions about the proposed action and environmental impact statement should be directed to Brooks Smith, Timber/Resource Officer, Covelo Ranger District, Mendocino National Forest, Covelo, California, 95428, phone 707–983–8116.

Dated: July 26, 1989.

Daniel K. Chisholm,
Forest Supervisor.
[FR Doc. 89–18134 Filed 8–2–89; 8:45 am]
BILLING CODE 3410–11–M

Mendocino National Forest Mendocino County, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for a proposal to harvest the Shields Timber Sale within the Jumpoff Creek watershed on the Covelo Ranger District. Initial scoping has shown that there are major public concerns; specifically, water quality and visuals. The decision has been made

that an EIS will be prepared rather than an environmental assessment.

A range of alternatives for this area will be considered. One of these will be no road construction or timber harvest. Other alternatives will consider implementing intensive timber management activities (including harvest of timber and road construction) to low intensity timber management (minimal harvest with no road construction).

Federal, State, local agencies, and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the area.

The analysis is expected to be completed by December 31, 1989. The draft environmental impact statement should be available for public review by February 1, 1990. The final environmental impact statement is scheduled for completion by April 15, 1990.

Written comments and suggestions concerning the analysis should be sent to Charles L. McFadin, District Ranger, Covelo Ranger District, Mendocino National Forest, 78150 Covelo Road, Covelo, California, 95428, by October 31, 1989.

Questions about the proposed action and environmental impact statement should be directed to Brooks Smith, Timber/Resource Officer, Covelo Ranger District, Mendocino National Forest, 78150 Covelo Road, Covelo, California, 95428, phone (707) 983-6118.

Dated: July 26, 1989.

Daniel K. Chisholm,

Forest Supervisor.

[FR Doc. 89-18135 Filed 8-2-89; 8:45 am]

BILLING CODE 3410-11-M

Proposed New Minimum Fee for Special Use Authorizations and Request for Public Review and Comment

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed new minimum fee.

SUMMARY: The Northern Region, administering those National Forests in the States of Montana, North Dakota, a portion of South Dakota, and northern Idaho, is revising minimum annual rental fees for special use authorizations. A minimum fee study has been prepared and is available for review and comment.

SUPPLEMENTARY INFORMATION: The Forest Service administers approximately 1,400 special use authorizations in the Northern Region that are subject to annual payment of a minimum rental fee. The current minimum rental fee of $25.00 was established in 1979.

The Office of Management and Budget (OMB) Circular No. A-25, as amended and supplemented, requires Agencies to establish user charges based on sound business management principles and to the extent feasible in accordance with comparable commercial practices. Charges need not be limited to the recovery of costs; they may produce net revenues to the Government.

In 1964, the Bureau of the Budget (Predecessor to OMB) issued further guidelines in the *Natural Resources User Charges Study*, which provided for the use of Federal land as follows:

"* * * the Government should recover the fair market value for the use of Federal land resources. Competitive bidding will be used to establish the fair market value in all instances where an identifiable competitive interest exists. Where a competitive interests does not exist, fees should be comparable to those charged for the use of similar private lands. Fees and charges for long-term use should be established in such a manner as will allow for periodic timely adjustment.

The 1976 passage of the Federal Land Policy and Management Act (Pub. L. 94-579, 90 Stat. § 2743 at 2745) reinforced long-standing Congressional support of fair market value as a basis for fees. Section 102(a) of the Act states that "* * * it is the policy of the United States that * * * the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute * * *". Title V provides specific direction that fees for right-of-way uses and grants should reflect fair market values.

In accordance with these Acts and OMB directives, the Forest Service's special use regulations at 36 CFR 251.57 provide that special-use authorizations shall require "* * * the payment in advance of an annual rental fee as determined by the authorized officer. The fee will be based upon the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management principles."

Special use authorizations for which a minimum fee is appropriate typically involve comparatively small areas or acreages of National Forest System lands. Generally, these uses provide benefits which are private and personal to the permit holder, rather than benefits to the general public. Examples include, but are not limited to, access roads, utility lines, domestic or irrigation water systems, signs, mailboxes, etc., which serve non-Federal lands. Some minimum fee uses do serve certain segments of the public, usually with an activity or event of short duration and without significant permanent improvements or facilities.

Fair market value may be determined by appraisal or other sound business management principles. The limited acreage and wide variation in the kinds of uses typical of minimum fee situations precludes use of individual appraisals due to inefficiency and high agency cost. Other appropriate methods for determining fees are administrative fee determinations by the agency, market analyses and studies, and adjustments based on widely accepted economic indexes.

The Northern Region, Forest Service, lacks sufficient data at this time to establish a minimum fee based on agency administrative costs, however this method may be employed in the future. In the past, minimum fee policies have provided no mechanism for periodic adjustment to reflect changes in economic conditions. The Forest Service believes that, in fairness to the public and permit holders and in response to Executive and Legislative direction, minimum fees need to be indexed for adjustment at not more than 5 year intervals. Similarly, there may be situations where a special minimum fee is appropriate due to the unique nature of a proposed use or availability of credible market information supporting a different fee basis. Though such cases are expected to be few in number, Forest Supervisors will be authorized to base minimum fees for unique kinds of uses on alternative methods, after consultation with and concurrence of the Regional Review Appraiser.

Proposed Minimum Fee

The Northern Region proposes a minimum fee of $45.00. This amount is developed by adjusting the current $25.00 minimum fee, established in 1979, through application of the cumulative change in the Implicit Price Deflator—Gross National Product (PD-GNP) index. This widely accepted index is published in the Survey of Current Business of the U.S. Department of Commerce, Bureau of Economic Analysis. The Forest Sevice and other agencies use this index in developing and adjusting a variety of other fees, such as linear rights-of-way and recreation residences.

In the future, the Forest Service proposes to review the Northern Region's general minimum fee at 5 year intervals beginning with 1995 (for implementation with Calendar Year 1996 fees), and update the fee by application of the percent of change in the IPD-GNP index as of June 30 of the review year.

Proposed Implementation

After review of public comments and publication of a final notice in the **Federal Register**, a new minimum fee will be implemented for new special use authorizations effective on the date of publication. Holders of outstanding special use authorizations will be notified that the new minimum fee will be effective with billings for calendar year 1991 fees. The procedure will provide approximately one year of advance notice to current permit holders.

Fee Exemption/Waivers

The proposed change in minimum special use fees has no effect on special use authorizations exempt from fees under law or regulation.

Secretary of Agriculture's Regulation 36 CFR 251.57(b) provides that fees may be waived under certain conditions. This proposal has no effect on these procedures for fee waiver. Authority for decisions on fee waiver applications remains with the authorized officer. However, no partially waived (reduced) fee shall be less than the established minimum fee.

Some outstanding special use authorizations were issued many years ago under certain authorities which provided for free use. These authorities are no longer available to the Forest Service as they are inconsistent with the Secretary of Agriculture's current Regulations and the intent of Congress that the United States receive fair market value for the use of its lands and facilities. Many of these special use authorizations fall within the kinds of uses and situations for which a minimum fee should be charged under current direction. As a part of implementing the new minimum fee, all existing free special use authorizations will be reviewed within 5 years of the effective date for determination as to whether a full fee is appropriate, or qualification for fee waiver might exist. All permit holders in this category will be provided advance notice of this review.

Copies of this notice are being mailed to holders of existing special use authorizations that are currently categorized as free permits under earlier authorities, or charged a minimum fee. Copies will also be sent to anyone requesting copies from the contacts listed in this notice. Copies of the minimum fee study are also available at the Regional Office and Forest Supervisors offices in Montana and Idaho.

DATE: Comments on the proposal must be received, in writing on or before September 18, 1989.

ADDRESS: Send comments on the proposal to John W. Mumma, Regional Forester, Northern Region, USDA Forest Service, Federal Building, P.O. Box 7669, Missoula, MT 59807.

FOR FURTHER INFORMATION CONTACT: Jim Schoenbaum (406-329-3601) or Jim Hathaway (406-329-3110).

Dated: July 27, 1989.

John W. Mumma,

Regional Forester.

[FR Doc. 89-18136 Filed 8-2-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Semiconductor Technical Advisory Committee; Closed Meeting

A meeting of the Semiconductor Technical Advisory Committee will be held August 31, 1989, at 9:00 a.m., in the Herbert C. Hoover Building, Room 1617-F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to semiconductors and related equipment or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information, call Ruth D. Fitts at 202-377-4959.

Dated: July 28, 1989.

Betty A. Ferrell,

Director, technical Advisory Committee Unit Office of Technology and Policy Analysis.

[FR Doc. 89-18076 Filed 8-2-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-351-503]

Certain Iron Construction Castings From Brazil; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests by a respondent and an importer, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain iron construction castings from Brazil. The review covers two manufacturers/exporters of this merchandise to the United States and the period October 21, 1985 through April 30, 1988. We preliminarily determined the dumping margins to be 3.40 percent to 16.55 percent during the periods of review.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 3, 1989.

FOR FURTHER INFORMATION CONTACT: Linnea Bucker or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On May 9, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 17220) an antidumping duty order on certain iron construction castings from Brazil. A respondent and an importer requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published notices of initiation of the antidumping duty administrative review on June 19, 1987 (52 FR 23330) and on June 29, 1988 (53 FR 24470). The Department has now conducted those administrative reviews in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of certain iron construction castings, limited to manhole covers, rings and frames, catch basins, grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems classifiable as heavy castings under Tariff Schedules of the United States Annotated ("TSUSA") item number 657.0950, and to valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters, classifiable as light castings under TSUSA item number 657.0990. These articles must be of cast iron, not alloyed, and not malleable. Heavy castings are currently classifiable under HTS items 7325.10.00.10 and 7325.10.00.50. Light castings are classifiable under HTS items 8306.29.00.00 and 8310.00.00. The written description remains dispositive.

The review covers two manufacturers/exporters of certain Brazilian iron construction castings and the period October 21, 1985 through April 30, 1988.

United States Price

In calculating United States price, the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed, FOB, FAS, or C&F prices to unrelated purchasers in the United States. Where applicable, we made adjustments for foreign inland freight, ocean freight, port consolidation and storage charges, and brokerage and handling charges. We made additions to United States price for countervailing duties. We accounted for taxes imposed in Brazil, but rebated or not collected by reason of the exportation of the merchandise to the United States, by multiplying the ex-factory price of the castings sold in the United States by the Brazilian tax rate and adding the result to the U.S. price.

Foreign Market Value

In calculating foreign market value, the Department used home market price when sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison. When there were insufficient home market sales for comparison, we used third-country sales, as defined in section 773 of the Tariff Act. Because the Federal Reserve Bank of New York did not have certified exchange rates for part of the review period, as best information available we used Brazilian Ministry of Finance rates as provided by the Embassy of Brazil.

Home market price was based on the packed FOB or delivered prices to unrelated purchasers in Brazil. Third-country sales were based on packed, CIF prices to unrelated purchasers in Canada.

For home market and third-country sales, we made adjustments, where applicable, for brokerage and handling, inland freight, ocean freight, marine insurance, shipping expenses (port consolidation and storage charges) and differences in packing, commissions to unrelated parties, credit costs, and bank charges. For home market sales, we made a circumstance-of-sale adjustment for tax differences.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the dumping margins to be:

Manufacturer/ Exporter	Period	Margin (percent)
Industria Viana, Ltda	10/21/85–04/30/87	3.67
COSIGUA (USIPA)	10/21/85–04/30/87	3.40
	05/01/87–04/30/88	16.55

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Prehearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice in the **Federal Register**. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any issues raised in such comments or a hearing.

The Department will determine, and the Customs Service will assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins will be required.

For any future entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipments occurred after April 30, 1988, and who is unrelated to any reviewed firm, a cash deposit of 16.55 percent shall be required.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's new regulations (54 FR 12742, March 28, 1989) (to be codified at 19 CFR 353.22).

Dated: July 25, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89–18069 Filed 8–2–89; 8:45 am]

BILLING CODE 3510-DS-M

[A–588–809]

Preliminary Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain small business telephone systems and subassemblies thereof (SBTS) from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of SBTS from Japan as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by October 10, 1989.

EFFECTIVE DATE: August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple, Michael Ready, or David Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–1769, (202) 377–2613, (202) 377–4136, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that SBTS from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation (54 FR 3516, January 24, 1989), the following events have occurred: On February 13, 1989, the ITC determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Japan of SBTS (USITC Pub. No. 2156, February 1989).

On February 3 and March 27, 1989, the Department's questionnaire was presented to the Toshiba Corp. (Toshiba) and Matsushita Electric Industrial Co., Ltd. (MEI), including its related companies Matsushita Communication Industrial Co., Ltd. (MCI) and Kyushu Matsushita Electric Co., Ltd. (KME) (hereinafter collectively referred to as "Matsushita"), which accounted for a substantial portion of exports of the subject merchandise to the United States during the period of investigation (POI).

We received replies to the questionnaire from Toshiba and Matsushita on February 17, March 3 and May 15, 1989.

On April 13, 1989, petitioners requested that the preliminary determination be postponed. On April 27, 1989, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination to July 26, 1989 (54 FR 19211, May 4, 1989).

We sent deficiency letters to both respondents during May, June and July, 1989. We received partial responses to them prior to July 10, 1989. On July 10, 1989, Toshiba and Matsushita each notified the Department that they were withdrawing from active participation in the investigation. Toshiba requested that we return certain confidential information and destroy the remainder of its confidential submissions. Matsushita requested that the Department return all confidential information submitted to the Department. Both companies requested the same treatment for copies provided to petitioners' counsel and consultants under Administrative Protective Order. Pursuant to these directions, we are complying with respondents' requests, and have instructed petitioners' counsel to do the same or certify to the destruction of the information.

Period of Investigation

The POI is July 1, 1988, through December 31, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date is now classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The products covered by this investigation are certain small business telephone systems and subassemblies thereof, currently classifiable under *Harmonized Tariff Schedule* item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015. Prior to January 1, 1989, such merchandise was classifiable under items 684.5710, 684.5720, 684.5730, 684.5805, 684.5810, 684.5815, 684.5825, 684.5830, 682.6051, and 682.6053 of the *Tariff Schedules of the United States Annotted* (TSUSA).

Certain small business telephone systems and subassemblies thereof are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between 2 and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without addition apparatus: housing; hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: connectors to accept circuit cards or modules; building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software used on external data processing equipment.

We note that a number of ambiguities existed in the scope language previously published in the Notice of Initiation with regard to the definition of subassemblies. We therefore have clarified the language describing the subassemblies under investigation.

In addition, the Department has received a number of inquiries regarding the inclusion of dual use subassemblies within the scope of this investigation. The Department defines dual use subassemblies as those subassemblies that function to their full capability when operated as part of a large business telephone system as well as a small system. Because dual use subassemblies by definition are not subassemblies "designed" for use in small business telephone systems, dual use subassemblies are excluded from the scope of the investigation.

Fair Value Comparisons

To determine whether sales of SBTS from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value. We used the best information available, as required by section 776(c) of the Act, because the respondents withdrew their confidential information from the administrative record of the investigation. As best information available, we took the highest margin contained in the petition for each such or similar category, and averaged these figures on a company-specific basis to determine the margins in this investigation. These categories are based on our "scope" definition and consist of a) control and switching equipment, b) circuit cards and modules, c) telephone sets and consoles, and d) complete small business telephone systems.

In its July 10 letter explaining its withdrawal from the investigation, Matsushita stated that burdensome and unreasonable reporting requirements were a major factor in its decision to withdraw. The Department regrets the decision of both respondents to withdraw from this investigation. We note, however, that our reporting requirements were clearly stated in our questionnaire and are based on consistent Departmental practice. Recognizing the reporting burden faced by respondents, we granted their deadline extension requests to the extent possible to provide a greater opportunity to meet our requirements. Where a party made a timely request to modify and simplify the reporting requirements, we gave full consideration to the request.

United States Price

United States price was based on the U.S. price information provided in the petition.

Foreign Market Value

Foreign market value was based on home market prices provided in the petition.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of SBTS from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Japan exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The averages of the highest margin for each such or similar category based on information provided in the petition are as follows:

Manufacturer/Producer/Exporter	Margin percentage
Toshiba Corp	136.77
Matsushita Electric Industrial Co. Ltd., Matsushita Communication Industrial Co., Ltd., Kyushu Matsushita Electric Co., Ltd	178.93
All others	157.85

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, if affirmative.

Public Comment

In accordance with 19 CFR 353.38, case briefs in at least ten copies must be submitted to the Assistant Secretary by September 1, 1989, and rebuttal briefs by September 8, 1989. In accordance with 19 CFR 353.38(b), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs at 10:00 a.m. on September 13, 1989, at the U.S. Department of Commerce, Room 3708, 14th Steet and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the arguments to be raised. In accordance with § 353.38(b) of the Department's regulations, presentations will be limited to issued raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

July 26, 1989.

[FR Doc. 89-18066 Filed 8-2-89; 8:45 am]

BILLING CODE 3510-05-M

[A-580-803]

Preliminary Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof From Korea

AGENCY: Import Administration, International Trade, Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain small business telephone systems and subassemblies thereof (SBTS) from Korea are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of SBTS from Korea as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by October 10, 1989.

EFFECTIVE DATE: August 2, 1989.

FOR FURTHER INFORMATION: Louis Apple or Nancy Saeed, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1769 or (202) 377-1777, respectively.

SUPPLEMENTAL INFORMATION:

Preliminary Determination

We preliminarily determine that SBTS from Korea are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the Notice of Initiation on January 24, 1989 (54 PR 3517), the following events have occurred. On February 13, 1989, the ITC determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Korea of SBTS (USITC Pub. No. 2158, February 1989).

On February 9, 1989, the Department's questionnaire was presented to Goldstar Telecommunications Co., Ltd. (Goldstar) and Samsung Electronics Co., Ltd (Samsung). These two manufacturers accounted for a substantial portion of exports of the subject merchandise to the United States during the period of investigation (POI).

On April 13, 1989, petitioner requested that the preliminary determination be postponed. On April 27, 1989, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination until July 26, 1989 (54 FR 19211).

On March 3 and May 15, 1989 we received replies to the questionnaire from Goldstar and Samsung.

A number of supplemental and deficiency questionnaires were issued subsequent to May 15, 1989. Supplemental and deficiency responses were received from the respondents prior to the date of this preliminary determination.

Period of Investigation

The POI is July 1, 1988, through December 31, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date is now classified solely according to the appropriate HTS item numbers. The HTS numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The products covered by this investigation are certain small business telephone systems and subassemblies thereof, currently classifiable under *Harmonized Tariff Schedule* item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.00.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015. Prior to January 1, 1989, such merchandise was classifiable under items 684.5710, 684.5720, 684.5730, 684.5805, 684.5810, 684.5815, 684.5825, 684.5830, 682.6051, and 682.6053 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Certain small business telephone systems and subassemblies thereof are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between 2 and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing; hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: connectors to accept circuit cards or modules; building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software used on external data processing equipment.

We note that a number of ambiguities existed in the scope language previously published in the Notice of Initiation with regard to the definition of subassemblies. We therefore have clarified the language describing the subassemblies under investigation.

In addition, the Department has received a number of inquiries regarding the inclusion of dual use subassemblies within the scope of this investigation. The Department defines dual use subassemblies as those subassemblies that function to their full capability when operated as part of a large business telephone system as well as a small system. Because dual use subassemblies by definition are not subassemblies "designed" for use in small business telephone systems, dual use subassemblies are excluded from the scope of the investigation.

Such or Similar Comparisons

For all respondent companies, pursuant to section 771(16)(C) of the Act, we established four categories of "such or similar" merchandise consisting of: a) control and switching equipment, b) circuit cards and modules, c) telephone sets and consoles, and d) complete small business telephone systems.

Product comparisons were made on the basis of the following criteria which are ranked in the order of importance. For control and switching equipment we used the following criteria: 1) port

capacity based on minimum operational configuration, 2) type of central microprocessor, and 3) read-only memory (ROM) size. For circuit card and modules we considered: 1) functions, and 2) physical appearance. For telephone sets and consoles we considered: 1) number of buttons (regardless of function) excluding dialpad, and 2) number of individual visual indicators. For complete telephone systems, we made comparisons on the basis of the similarity of the subassemblies, using the criteria described in the preceding sentences.

Where there were no sales of identical merchandise in the home or third country markets with which to compare merchandise sold in the United States, sales of the most similar merchandise were compared on the basis of the characteristics described above. We made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act. Consistent with our normal practice, when adjustments proved to be substantial, we used constructed value. In this case, we determined that an adjustment greater than twenty percent of the cost of manufacturing of the U.S. model is substantial.

In order to determine whether there were sufficient sales of SBTS in the home market to serve as the basis for calculating foreign market value (FMV), we compared the volume of home market sales within each such or similar category to the volume of third country sales within each respective such or similar category, in accordance with section 773(a)(1) of the Act.

Samsung had no sales of complete small business telephone systems in the United States during the POI. We determined that there were sufficient home market sales to unrelated customers for each of the other such or similar categories.

For Goldstar we determined that there were sufficient home market sales to unrelated customers for two such or similar categories: telephone sets and consoles; and control and switching equipment. For two such or similar categories, circuit cards and modules, and complete telephone systems, we determined that there were insufficient home market sales.

With respect to circuit cards and modules, we determined that sales to the Philippines, Cyprus, Canada, Italy, and Norway were the most appropriate basis for calculating FMV because the merchandise sold in these countries was the most comparable to that sold in the United States. With respect to complete small business telephone systems, Goldstar made no sales to third country markets during the POI. Therefore, we are comparing United States sales to constructed value for this such or similar category.

Fair Value Comparisons

To determine whether sales of SBTS from Korea to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For Samsung, we based the United States price on purchase price in accordance with section 772(b) of the Act because all sales were made directly to unrelated parties to importation into the United States. For Goldstar, we based the United States price on exporter's sales price, in accordance with section 772(c) of the Act, because in each case the sale to the first unrelated purchaser took place after importation into the United States.

We were unable to make comparisons for sales where further manufacturing was claimed because sufficient data which complied with the Department's requests for information was not submitted in time for consideration in our preliminary determination.

Samsung

For Samsung, we calculated purchase price based on packed f.o.b. Korean port prices. We made deductions, where appropriate, for inland freight, wharfage and container freight station fees, customs clearance fees, and postage fees. We added rebated duties and uncollected taxes pursuant to section 772(d)(1) (B) and (C) of the Act.

Goldstar

We calculated exporter's sales price based on packed, delivered prices in the United States. We made deductions from ESP, where appropriate, for cash discounts, brokerage, warfage, inland freight in Korea, stuffing charges, ocean freight, marine insurance, United States customs duty, customs brokerage fees, inland freight in the United States, inland insurance, rebates, warranty expenses, credit expenses, promotional material, cooperative advertising, commissions, and indirect expenses and inventory carrying expenses incurred in both Korea and the United States. We added uncollected duties, and uncollected or rebated taxes pursuant to section 772(d)(1) (B) and (C) of the Act.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated FMV based on home market sales, third country sales, or constructed value, as appropriate.

Samsung

For Samsung, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market.

We made deductions, where appropriate, for inland freight, inland insurance, rebates, and discounts. We deducted the home market packing costs from the foreign market value and added U.S. packing costs. We made circumstance of sale adjustments, where appropriate, for differences in credit terms, warranty expenses, and advertising expenses, pursuant to section 773(4)(B) of the Act. We did not consider technical services to be a direct selling expense for purposes of this preliminary determination because it was not clear that this expense was directly related to sales of the subject merchandise. We will look at this expense in more detail at verification.

We made an upward adjustment to tax-exclusive home market prices for the value-added tax we computed for the United States price.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with section 353.57 of the Department's regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR section 353.57).

For those products sold in the United States for which the difference in merchandise adjustment between the reported home market product and the U.S. product was substantial, we calculated foreign market value based on constructed value (CV), in accordance with section 773(e) of the Act. In this case, we determined that an adjustment greater than twenty percent is substantial. The calculation of constructed value is fully described in the "Constructed Value" section of this notice.

We used best information available for two U.S. products of circuit cards, for which both the difference in merchandise adjustment was greater than twenty percent and no constructed value was supplied on the computer tape. As best information available, we took the highest margin for Samsung contained in the petition for circuit cards and modules.

Goldstar

Where sales in the home market were used, we calculated foreign market value based on the packed, delivered or ex-works prices to unrelated customers. We made deductions, where appropriate, for inland freight, cash discounts, volume rebates, product rebates and exchange rebates. We deducted the home market packing costs from the foreign market value and added all U.S. packing costs. We made deductions, where appropriate, for differences in credit terms and advertising. We also deducted home market indirect selling expenses, including: warranty expenses, inventory carrying costs, and other indirect selling expenses. These expenses were capped by the amount of indirect selling expenses incurred in the U.S. market, in accordance with § 353.41 of the Department's regulations.

We made an upward adjustment to tax-exclusive home market prices for the value-added tax we computed for the United States price.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with § 353.57 of the Department's regulations.

We calculated foreign market value, in the third country markets, based on the packed, delivered or ex-works prices to unrelated customers. We made deductions, where appropriate, for wharfage, ocean freight, inland freight in the third countries, brokerage, stuffing and marine insurance. We deducted the home market packing costs from the foreign market value and added all U.S. packing costs. We made deductions, where appropriate, for differences in credit terms and commissions. We added duty rebates to the third country price. We also deducted third country indirect selling expenses, including: inventory carrying costs and other indirect selling expenses. These expenses were capped by the amount of indirect selling expenses incurred on sales in the U.S. market, in accordance with § 353.41 of the Department's regulations.

Where appropriate, we made further adjustments to the third country price to account for differences in the physical characteristics of the merchandise, in accordance with section 353.57 of the Department's regulations.

For those products sold in the United States for which the difference in merchandise adjustment between the reported home market or third country product and the U.S. product was substantial, we calculated foreign market value based on constructed value in accordance with section 773(e) of the Act. In this case, we determined that an adjustment greater than twenty percent is substantial.

Constructed Value

In the situations described above, we calculated foreign market value based on constructed value for Samsung and Goldstar, in accordance with section 773(e) of the Act. The constructed value included amounts for materials, fabrication costs, general expenses, profit and packing. The statutory minimum of eight percent profit was applied in the case of Samsung. For Goldstar, the actual profit rate submitted by the respondent was used since it exceeded the eight percent statutory minimum. In all cases the amounts for actual general expenses were used since these figures exceeded the statutory minimum of ten percent of the cost of materials and fabrication. Reported finance expenses were reduced to account for the interest portion included in the imputed credit and finished goods inventory carrying costs.

In general, the information submitted by respondents was relied upon in calculating constructed value, except in those instances where the costs were not appropriately quantified or valued. For Samsung, we adjusted several costs which were not appropriately quantified or valued. First, the Department used Samsung's corporate general and administrative (G&A) and finance expenses, as a percentage of the cost of sales, to develop a ratio in calculating the G&A and finance expenses for the subject merchandise. Samsung had reported these expenses using a ratio based primarily on the divisional G&A and finance expenses, instead of the corporate G&A and finance expenses. Also the constructed value information reported by Samsung did not contain gains and losses on the disposal of fixed assets, research and development (R&D) amortization expenses, special depreciation, miscellaneous and other losses incurred. Amounts for these losses were therefore allocated to the subject merchandise as non-specific operating expenses in the computed general expenses. We made circumstance of sale adjustments for credit, warranty, and advertising expenses.

For Goldstar, we adjusted the costs which were not appropriately quantified or valued as follows. The G&A and finance expenses of consolidated Goldstar Telecommunications as a percentage of the cost of sales for consolidated Goldstar Telecommunications were used by the Department to develop the factor used in calculating the G&A and finance expenses for the subject merchandise. Goldstar had used a ratio based on divisional G&A and finance expenses instead of corporate-wide G&A and finance expenses. We also made deductions from constructed value for home market selling expenses consisting of credit and advertising. We made an adjustment to constructed value for home market indirect selling expenses consisting of warranty expenses, inventory carrying costs, and other indirect selling expenses. These expenses were capped by the amount of indirect selling expenses incurred on sales in the U.S. market, in accordance with § 353.41 of the Department's regulations.

Currency Conversion

We used the official exchange rates in effect on the dates of sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank of New York in accordance with § 353.60 of the Department's regulations.

Verification

As provided in section 776(b) of the Act, we will verify all information used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of SBTS from Korea, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Korea exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Samsung Electronics Co., Ltd	9.33
Goldstar Telecommunications Co., Ltd	6.09

Manufacturer/Producer/Exporter	Weighted-average margin percentage
All others	7.79

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, if affirmative.

Public Comment

In accordance with § 353.38 of the Department's regulations, case briefs in at least ten copies must be submitted to the Assistant Secretary by September 21, 1989, and rebuttal briefs by September 28, 1989. In accordance with § 353.38(b) of the Department's regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs at 1 p.m. on September 29, 1989, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the arguments to be raised. In accordance with § 353.38(b) of the Department's regulations, oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Dated: July 26, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-18067 Filed 8-2-89; 8:45 am]

BILLING CODE 3510-05-M

[A-122-804]

Final Determination of Sales at Less Than Fair Value: New Steel Rail, Except Light Rail, From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We determine that new steel rail, except light rail, (hereinafter referred to as new steel rail) from Canada is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of new steel rail from Canada as described in the "Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: August 3, 1989.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5050 or (202) 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that new steel rail from Candada is being, or is likely to be, sold in the United States at less than fair value, as provided for in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average dumping margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

On March 6, 1989, we made an affirmative preliminary determination (54 FR 10393, March 13, 1989). The following events have occured since the publication of that notice.

On March 13, 1989, petitioner filed a request for alignment of the countervailing duty and antidumping duty final determinations. On March 16, 1989, respondent filed a request for postponement of the final determination for 60 days. Pursuant to section 705(a)(1) and section 735(a)(2)(A) of the Act, respectively, we aligned the countervailing duty and antidumping duty final determinations and postponed the final determinations to not later than July 26, 1989 (54 FR 14264, April 10, 1989).

The questionnaire responses from the Algoma Steel Corporation, Ltd. (Algoma) were verified in Canada between May 8 and May 17, 1989.

On June 28, 1989, the Department held a public hearing. Interested parties submitted comments for the record in their case briefs on June 19, 1989, and in their rebuttal briefs of June 26, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date is now classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The product covered by this investigation is new steel rail, whether of carbon, high carbon, alloy or other quality steel, and includes, but is not limited to, standard rails, all main line sections (at least 30 kg. per meter or 60 pounds per yard), heat-treated or head-hardened (premium) rails, transit rails, contact rail (or "third rail") and crane rails. Rails are used by the railroad industry, by rapid transit lines, by subways, in mines and in industrial applications.

Specifically excluded from this investigation are light rails (rails less than 30 kg. per meter or 60 pounds per yard). Also excluded are relay rails which are used rails taken up from a primary railroad track and relaid in a railroad yard or on a secondary track.

The product covered by this investigation is currently provided for under the following HTS subheadings: 7302.10.1020, 7302.10.1040, 7302.10.5000, 8548.00.0000. Prior to January 1, 1989, such merchandise was classifiable under items 610.2010, 610.2025, 610.2100 and 688.4280 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Period of Investigation

The period of investigation is April 1, 1988, through September 30, 1988.

Fair Value Comparisons

To determine whether sales of new steel rail from Canada to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified below.

United States Price

As provided in section 772(b) of the Act, we used the purchase price to represent the United States price for sales of new steel rail where sales were made to unrelated purchasers prior to importation of the product into the United States. We also used the purchase price to represent the United States price for sales of the subject merchandise where sales were made to an indirectly related purchaser, who was the end-user of the product, prior to importation of the product into the United States.

We calculated purchase price based on packed, f.o.b. prices. We made deductions, where appropriate, for inland freight, duty, and brokerage and handling.

Foreign Market Value

For the reasons cited below and in accordance with section 776(b) of the Act, we have determined that the use of best information available is appropriate for foreign market value. As best information available, we used the constructed values for certain types of new steel rail. These constructed values were developed from costs presented in the petitioner's allegations of sales below the cost of production (COP). We were not able to use all U.S. sales in our analysis because we did not have costs for all products. Furthermore, because we used best information available for foreign market value, we did not use any of the claimed home market adjustments in our calculations.

On January 19, 1989, petitioner alleged that Algoma's home market sales of new steel rail were made at prices below the COP. On March 3, 1989, we initiated a COP investigation and requested cost information from the respondent.

At verification we determined that the cost information submitted by the respondent was materially deficient and could not be verified. For further discussion of this issue see our response to Comment 1 under the "Interested Party Comments" section of this notice.

As respondent's costs could not be verified, we were unable to compare home market prices to the respondent's COP. Accordingly, we have assumed that all home market prices are below the COP. Therefore, as previously noted, as best information available for foreing market value, we based our calculation of constructed values on the cost information contained in the petitioner's COP allegation.

Petitioner calculated a COP for each of the four rail sizes with a particular hardness range. Each COP was developed separately for both the second and third quarters of 1988. Petitioner's costs were based on standard costs adjusted for variances, fixed costs, depreciation and general, selling, and administrative expenses (GS&A). Adjustments were also made for differences between steel production costs using electric furnace versus basis oxygen furnace technology and for other differences between U.S. and Canadian production costs, including materials, fabrication, and factory overhead.

We substracted U.S. taxes from petitioner's COP because a home market constructed value is net of taxes. We also added U.S. credit expenses to petitioner's COP because the U.S. price includes credit and petitioner's COP was net of any sales-specific credit expenses. We added the statutory eight percent profit, in accordance with section 773(e)(1)(B)(ii) of the Act, to obtain a constructed value for each rail size. Petitioner's COP included GS&A which exceeded the statutory minimum of 10 percent. We further adjusted the constructed values by adding U.S. packing, in accordance with section 773(e)(10)(C) of the Act. We also made a circumstance of sale adjustment for U.S. credit, in accordance with section 773(A)(4) of the Act.

Currency Conversion

We used the official exchange rates in effect on the dates of sale, in accordance with section 773(a)(1) of the Act. All currency conversions were made at the rates certified by the Federal Reserve Bank of New Nork in accordance with § 353.60 of the Commerce Department's regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.60).

Verification

Except where noted, used verified information in making our final determination in this investigation in accordance with section 776(b) of the Act. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by the respondent.

Interested Party Comments

Comment 1: Petitioner maintains that Algoma's cost of production information should not be used because it could not be verified. Petitioner, theefore, claims that "best information available" should be used and that such information should be the higher of the petitioner's information or the "actual costs" obtained during verification.

Respondent claims that the Department should use the submitted cost response, which Algoma considers reasonable, because its costs are based on the cost of sales, with subsequent adjustments made for the purposes of the investigation. Respondent contends that it misinterpreted the Department's cost questionnaire, and instead of providing the actual cost of production which it records in its normal course of business, it chose to submit product costs based on standards developed subsequent to the period of investigation. Respondent also maintains that it would be unfair to reject the response at this late date.

DOC Position: Because Algoma's cost respones could not be verified, we have not compared Algoma's home market prices to its COP. Instead, we have used the cost information submitted in petitioner's allegations of sales below COP to calculate constructed values. These constructed values were compared top respondent's verified U.S. sales information to calculate the less than fair value margins.

The Department did not accept the cost of production information provided in the response for the following reasons. The Department requested actual costs in its questionnaire. However, respondent developed information for the investigation based on the standard product costs used by the company, which were not part of the normal financial accounting system and which were for a period subsequent to the period of investigation. Moreover, the company had a cost system which investigation. Moreover, the company had a cost system which reported actual costs for each product but chose not to use this information for its response. The company also did not provide documentation to support the reported standard costs or to tie them to the company's financial records. In addition, the standard costs, as adjusted, submitted by respondent did not reconcile to the company's actual inventory costs and were developed based on data outside the period of investigation. These and other deficiencies are outlined in detail in the public version of our cost verification

report, which is on file in Room B-099 of the Main Commerce building.

Based on the respondent's failure to report actual costs and its inability to provide supporting documentation for the standard costs at verification, the Department determined that Algoma's cost response could not be relied upon for this final determination. Because we did not use the cost response, other comments by the petitioner and the respondent relating to cost of production methodologies are moot.

Comment 2: Petitioner argues that the Department's determination of "such or similar" merchandise should be based upon objective physical characteristics used in the marketplace, *i.e.*, size, hardness and length, in accordance with American Rail Engineering Association (AREA) standards. Petitioner argues that the Department placed disproportionate importance on rail hardness in the preliminary determination, thereby skewing the fair value comparison.

Respondent claims that rail hardness, as opposed to rail size, is the most important physical and commercial characteristic of steel rails. Respondent contends that railway specifications distinguish between small differences in rail hardness. Furthermore, respondent states that rails with different hardnesses have different metallurgical properties, and that both petitioner and respondent sell rails of the same hardness, but different sizes, at about the same prices and charge a premium price for rails with a higher hardness.

Respondent further argues that AREA specifications alone should not dictate how the Department makes its product comparisons because many railways specifically order rail with a hardness that deviates from AREA standards. Respondent claims that petitioner's own testimony and pricing practices conflict with its contention that rail size is the most important distinguishing factor between different types of rails. Respondent argues that the Department should use its preliminary product comparisons in the final determination.

DOC Position: As best information available, we used the costs alleged by petitioner to calculate a constructed value as the basis for foreign market value. We matched constructed values to particular U.S. sales using two criteria: Size (pounds per yard of rail) and hardness (as measured by the Brinnell hardness scale). U.S. sales were compared to the adjusted constructed values when the sizes were exactly the same and when the hardness was within the narrow hardness range of the costs developed by petitioner.

Using these two criteria, we also determined that there were no corresponding costs in the petition which could reasonably be compared to certain sales in the United States. Accordingly, these sales, representing a small percentage by value of all U.S. sales during the period of investigation, were not included in our calculation of the margins in this final determination.

Comment 3: Petitioner claims that what respondent terms "downgraded" rail is in fact standard rail and should be compared to other sales of standard rail. Petitioner also argues that sales of industrial rail should be included in the Department's calculations for the final determination.

Respondent contends that there is no basis for petitioner's argument disputing the existence of downgraded rail. Respondent further argues that the Department should disregard sales of downgraded and industrial rail in its analysis because these sales were made of obsolete and clearance merchandise and were made outside the ordinary course of trade.

DOC Position: Sales of industrial rail, downgraded rail and rail with a hardness outside the range used by petitioner in its COP allegation were not used in our calculations for this final determination because we did not have constructed values for these types of rails.

Comment 4: Petitioner contends that the Department's treatment of Canadian federal and provincial sales taxes in the preliminary determination was incorrect. Petitioner claims that it is improper for the Department to deduct home market taxes from the reported home market price and add back the amount of taxes imputed to the U.S. sale. Petitioner argues that the statute does not require this methodology and that this approach results in an undercollection of duties. There is no indication in the statute that the foreign market value should be adjusted, nor does this tax qualify as a circumstance of sale adjustment. Petitioner contends that the Department should add the estimated taxes to the U.S. price and then include the tax actually paid in the foreign market value. On the other hand, petitioner argues that the Department could instruct Customs on entry to adjust the U.S. price used to calculate the estimated duty deposit.

Respondent states that the Department's methodology in the preliminary determination is consistent with the statute and past practice. Respondent argues that the Department should use the methodology applied in the preliminary determination in its final determination.

DOC Position: This issue is moot because home market prices were not used to calculate foreign market value. Accordingly, no adjustments were made to foreign market value or U.S. price for Canadian federal and provincial taxes.

Comment 5: Petitioner argues that respondent's claim for duty drawback should be either partially or entirely rejected because verification did not establish that the allocation was reasonable. Petitioner contends that, at the least, the Department should include the duty drawback on rails to the extent that the increased cost of blooms is allocated to rails as well as structural shapes. Petitioner also claims that the Department only verified that imported materials were used in the production of steel as opposed to steel rails, and that respondent did not provide documentation showing that the steel tonnage on which the duty drawback claim was made included steel rails.

Respondent claims that it is entitled to a full adjustment for duty drawback. Respondent contends that petitioner does not define its "reasonableness test" nor cite statutory authority for its claim that the Department should only include the duty drawback on rails to the extent that the increased cost of blooms is allocated to rails as well as structural shapes. Respondent further argues that the information which the Department verified is sufficient to satisfy the meaning of section 772 of the Act.

DOC Position: It is unclear whether any duties are reflected in the costs submitted by petitioner which we used as the basis for foreign market value. As best information available, we have assumed that duties are not included and accordingly have not made an adjustment to U.S. price for duty drawback.

Comment 6: Petitioner claims that the Department should not assume that the U.S. credit period was equal to the average number of days on shipments for which no payments were received by April 30, 1989. This average is applied as the number of payment days in the very first transaction in the listing. Petitioner argues that if the shipment for a particular transaction took place during the second quarter of 1988, the payment period is much greater than the average payment days reported. Petitioner also argues that the supporting documentation submitted in respondent's rebuttal brief has not been verified and, therefore at the least, the Department should assume that all sales where no payment has been made prior to April 30, 1989, have a credit cost equal to the number of days between the date of shipment and May 1, 1989.

Respondent states that payment has now been made for U.S. observation 1 and the average days payment figure should be corrected.

DOC Position: This sale was not used in our analysis because we did not have a constructed value to compare to this U.S. sale.

Comment 7: Petitioner claims that duty charges on U.S. observations 5 and 6 are apparently incorrect.

Respondent states that the duty amount on U.S. observation 5 is incorrect due to a clerical error. Respondent argues that the duty charge on U.S. observation 6 was verified and is correct.

DOC Position: U.S. observation 5 was not used in our analysis because we did not have a constructed value to compare to this U.S. product. Although the rail in observation 6 is an alloy rail, the actual duty charged by respondent to its customer was based on the sale of a carbon rail (U.S. observation 2). We verified that the duty actually charged on the invoice for U.S. observation 6 was based on this carbon rate. We have therefore accepted respondent's figure for duty for U.S. observation 6.

Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation, under section 733(d) of the Act, of all entries of new steel rail from Canada, as defined in the "Scope of Investigation" section of this notice, that are entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Algoma Steel Corporation, Ltd.	38.79
All Others	38.79

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, pursuant to section 735(c)(1) of the Act, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on new steel rail from Canada entered or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act, 19 U.S.C. 1673(d).

Eric I. Garfinkel,

Assistant Secretary for Import Administration

July 26, 1989.

[FR Doc. 89-18064 Filed 8-2-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-806]

Preliminary Determination of Sales at Less Than Fair Value; Certain Small Business Telephone Systems and Subassemblies Thereof From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain small business telephone systems and subassemblies thereof (SBTS) from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of SBTS from Taiwan, except those produced by Sun Moon Star Inc., as described in the 'Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by October 10, 1989.

EFFECTIVE DATE: August 3, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Jim Terpstra, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769 or (202) 377-4103, respectively.

SUPPLEMENTAL INFORMATION:

Preliminary Determination

We preliminarily determine that SBTS from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on January 24, 1989 (54 FR 3516), the following events have occurred. On February 13, 1989, the ITC determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Taiwan of SBTS (USITC Pub. No. 2156, February 1989).

On February 9 and March 27, 1989, the Department's questionnaire was presented to Taiwan Nitsuko Co., Ltd. (Taiwan Nitsuko) and Sun Moon Star Inc. (Sun Moon Star). These two manufacturers account for a substantial portion of exports of the subject merchandise to the United States during the period of investigation (POI).

On April 13, 1989, petitioners requested the preliminary determination be postponed. On April 27, 1989, in accordance with section 733(c)(i)(A) of the Act, we postponed the preliminary determination until July 26, 1989 (54 FR 19211 May 4, 1989).

On February 17, March 6, May 16 and May 17, 1989 we received replies to the questionnaire from Taiwan Nitsuko. On March 3 and May 15, 1989 we received replies to the questionnaire from Sun Moon Star.

A number of supplemental and deficiency questionnaires were issued subsequent to May 15, 1989. Supplemental and deficiency responses were received from the respondents prior to this preliminary determination.

On July 7, 1989, the Department initiated an investigation of Taiwan Nitsuko under the special rule for certain multinational corporations, section 773(d) of the Act (the MNC

BEST COPY AVAILABLE

provision). This initiation was based on information provided by petitioners in several submissions. We presented sections B(a), B(b), B, and D of the Department's MNC questionnaire to Taiwan Nitsuko.

On July 11, 1989, Taiwan Nitsuko requested a one week extension to respond to section B(a) and B(b) of the Department's MNC questionnaire, which we granted.

On July 21, 1989, Taiwan Nitsuko submitted a letter declining to respond to sections B(a), B(b), B, and D of the Department's MNC questionnaire.

The MNC Provision

As noted above, the petitioners alleged that the MNC provision was applicable with respect to Taiwan Nitsuko. Similar to the Department's practice with regard to sales below cost investigations, the Department did not automatically request data relevant to the MNC provision. Instead, the Department required petitioners to present an adequate and timely allegation regarding the applicability of the MNC provision. An adequate allegation is one that gives the Department a basis for believing that the following criteria exist:

(1) Merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm or corporation which also owns or controls, directly or indirectly, other facilities for the production of such or similar merchandise which ae located in another country or countries.

(2) The sales of such or similar merchandise by the company concerned in the home market of the exporting country are nonexistent or inadequate as a basis for comparison with the sales of the merchandise to the United States.

(3) The foreign market value (FMV) of such or similar merchandise produced in one or more of the facilities outside the country of exportation is higher than the foreign market value of such or similar merchandise produced in the facilities located in the country of exportation.

(4) Because the Department bases its fair value comparisions on comparable merchandise, any observed differences in FMV are not solely attributable to physical differences in merchandise.

(5) Any observed differences in value between the FMV of products produced outside the country of exportation and the FMV of products produced in the country of exportation are not solely attributable to differences in costs of production, pursuant to the final paragraph of the MNC provision.

There are two stages in an MNC investigation. In the first stage, the Department must establish that the five criteria for applying the MNC provision are satisfied (the same criteria as for initiating an MNC investigation). In the second stage, assuming the five criteria are met, the Department must calculate FMV by reference to the FMV of such or similar merchandise produced in facilities outside the country of exportation. This FMV must be adjusted for differences in costs of production (including taxes, labor, materials, and overhead) between the country of exportation and the facilities outside the country of exportation.

As noted above, the threshold for initiating an MNC investigation was met by petitioners. Consequently, we issued a questionnaire to Taiwan Nitsuko seeking additional data relevant to the MNC provision. However, Taiwan Nitsuko declined to respond to this questionnaire. Therefore, as explained below, the Department is using best information available (BIA) for Taiwan Nitsuko in accordance with section 776(c) of the ACT.

Period of Investigation

The POI is July 1, 1988, through December 31, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et. seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date is now classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The products covered by this investigation are certain small business telephone systems and subassemblies thereof, currently classifiable under *Harmonized Tariff Schedule* item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015. Prior to January 1, 1989, such merchandise was classifiable under items 684.5710, 684.5720, 684.5730, 684.5805, 684.5810, 684.5815, 684.5825, 684.5830, 682.6051, and 682.6053 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Certain small business telephone systems and subassemblies thereof are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between 2 and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing; hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: connectors to accept circuit cards or modules; building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software used on external data processing equipment.

We note that a number of ambiguities existed in the scope language previously published in the Notice of Initiation with regard to the definition of subassemblies. We therefore have clarified the language describing the subassemblies under investigation.

In addition, the Department has received a number of inquiries regarding the inclusion of dual use subassemblies within the scope of this investigation. The Department defines dual use subassemblies as those subassemblies that function to their full capability when operated as part of a large business telephone system as well as a small system. Because dual use subassemblies by definition are not subassemblies "designed" for use in small business telephone systems, dual use subassemblies are excluded from the scope of the investigation.

Such or Similar Comparisons

For all respondent companies, pursuant to section 771(16)(C), we established four categories of "such or similar" merchandise consisting of: (a) control and switching equipment, (b) circuit cards and modules, (c) telephone sets and consoles, and (d) complete small business telephone systems.

Product comparisons were made using criteria which are ranked in order of importance. For control and switching equipment we used the following criteria:(1) port capacity based on minimum operational configuration, (2) type of central microprocessor, (3) read-only memory (ROM) size. For circuit cards and modules we considered: (1) functions, (?) physical appearance. For telephone sets and consoles we considered: (1) number of buttons (regardless of function) excluding dialpad, (2) number of individual visual indicators. For complete telephone systems, we made comparisons on the basis of the similarity of subassemblies, using the criteria described in the preceding sentences.

Where there was no identical product in the home or third country market with which to compare a product imported into the United States, the most similar product was compared on the basis of the characteristics described above. We made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act. Consistent with our normal practice, when adjustments proved to be substantial, we used constructed value. In this case, we determined that an adjustment greater than 20 percent is substantial.

In order to determine whether there were sufficient sales of SBTS in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales within each such or similar category to the volume of third country sales within each respective such or similar category, in accordance with section 773(a)(1) of the Act.

For Sun Moon Star, we determined that there were sufficient home market sales to unrelated customers for three such or similar categories. There were no sales of complete small business telephone systems in the United States during the POI.

Fair Value Comparisons

To determine whether sales of SBTS from Taiwan to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Since Taiwan Nitsuko declined to provide information essential to our investigation, we used the best information available as required by section 776(c) of the Act. As best information available, we took the highest margin contained in the petition for products manufactured by Nitsuko Japan for each such or similar category and averaged these figures to determine the margin for Taiwan Nitsuko in this investigation.

Taiwan Nitsuko declined to respond to the Department's MNC questionnaire. Because the MNC provision calls for the Department to calculate FMV with reference to merchandise produced in facilities outside the country of exportation, we attemtped to compare the FMV in the petition for merchandise produced and sold in Japan with actual United States prices reported by Taiwan Nitsuko, for products produced in Taiwan and sold in the United States, or Taiwan Nitsuko U.S. sales prices provided in the petition. Since there were no sales for Taiwan Nitsuko reported in the petition and we were unable to find comparable merchandise from Taiwan sold during the POI, we used the margins calculated in the petition based on a comparison of the FMV of merchandise produced and sold in Japan and the United States price of merchandise produced in Japan and sold in the United States. Petitioner supplied information indicating that Taiwan Nitsuko and Nitsuko Japan produce the same products for sale in the United States and that these products are sold at the same prices to the same single customer.

For Sun Moon Star Inc., we compared the United States price to the foreign market value, as described below.

United States Price

Because virtually all sales by Sun Moon Star were made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act. We calculated purchase price based on packed f.o.b. Taiwan port prices. Gross unit price was based on the contract price plus the exchange rate adjustment as calculated by Sun Moon Star. Sun Moon Star made a further upward adjustment to gross unit price to account for early payment on future sales. We made deductions where appropriate for inland freight and brokerage and handling. We added uncollected duties and value-added tax pursuant to § 353.41(d) (ii) and (iii) of the Department's regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR § 353.41).

For Taiwan Nitsuko, we used information contained in the petition for United States price.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value for Sun Moon Star based on home market sales, or constructed value, as appropriate. We calculated foreign market value based on the packed, delivered or ex-works prices to unrelated customers in the home market. We make deductions, where appropriate, for inland freight, discounts, advertising and rebates. We deducted the home market packing costs from the foreign market value and added all U.S. packing costs. We make circumstance of sale adjustments, where appropriate, for differences in credit terms and warranties. We made adjustments for indirect selling expenses and inventory carrying costs in the home market to offset commissions paid in the United States in accordance with § 353.56(b) of the Department's regulations.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with § 353.57 of the Department's regulations.

We made an upward adjustment to tax-exclusive home market prices for the value added tax we computed for the United States price.

For those products sold in the United States for which the difference in

merchandise adjustment between the reported home market product and the U.S. product was substantial, we calculated foreign market value based on constructed value in accordance with section 773(e) of the Act. In this case we determined that an adjustment greater than 20 percent is substantial.

For Taiwan Nitsuko, we used information contained in the petition for FMV.

Constructed Value

In the situations described above, we calculated the constructed value in accordance with section 773(e) of the Act. Except where noted below, the Department used the materials, fabrication, and general expenses based on the respondent's submissions. We added U.S. packing, as reported by the respondent.

The Department analyzed the cost submissions of Sun Moon Star to determine the sufficiency of such data for the purpose of calculating constructed value for the preliminary determination. The Department determined that the submission was substantially complete and sufficient and used the submission for the preliminary determination. However, adjustments to Sun Moon Star's data were made when it appeared from the explanation provided in the response that certain costs necessary for the production of the product under investigation were not included or were not appropriately quantified or valued.

For Sun Moon Star, constructed value was calculated on the basis of reported materials and fabrication costs plus general expenses, profit, and import duties. Material cost was adjusted to agree with the supporting detail provided by the respondent. General expenses exceeded the statutory minimum requirement of ten percent of materials and fabrication. General expenses were adjusted to reflect an allocation over cost of goods sold, which is in accordance with the Department's normal methodology. Financial expenses were adjusted to reflect the interest expenses of the entire Sun Moon Star Group. Interest income was not used to offset interest expense since the Department was unable to determine if the revenue was earned from short-term investments related to the current operations of the company. When imputed inventory and/or credit expenses are included in selling expenses, interest expenses reflected on the company's books is reduced for a portion of the expenses related to these activities in order to avoid double counting. The offset to interest expense for imputed credit and inventory carrying costs was calculated using the Sun Moon Star Group nonconsolidated financial statements. Since the respondent's profit calculation reflected less than eight percent, the statutory minimum of eight percent was used.

We made circumstance of sale adjustments, where appropriate, for differences in credit terms, warranties, and advertising. We made adjustments for commissions paid in the United States with indirect selling expenses and inventory carrying costs in the home market in accordance with § 353.56(a)(2) of the Department's regulations. For fair value comparisons, we made an upward adjustment to constructed value for the value-added tax we computed for the United States price.

Currency Conversion

We used the official exchange rates in effect on the dates of sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank of New York in accordance with § 353.60 of the Department's regulations.

Verification

As provided in section 776(b) of the Act, we will verify all information used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 773(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of SBTS from Taiwan, except those produced by Sun Moon Star, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Taiwan exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Taiwan Nitsuko Co., Ltd.	129.73
Sun Moon Star Inc.	00.00
All Others	129.73

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industries before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, if affirmative.

Public Comment

In accordance with § 353.38 of the Department's regulations, case briefs in at least ten copies must be submitted to the Assistant Secretary by September 11, 1989, and rebuttal briefs by September 15, 1989. In accordance with § 353.38(b) of the Department's regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs at 12:30 p.m. on September 20, 1989, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B099, at the above address within ten days of the publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the arguments to be raised. In accordance with § 353.38(b) of the Department's regulations, oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Eric I. Garfinkel,
Assistant Secretary for Import Administration.
July 26, 1989.

[FR Doc. 89-18088 Filed 8-01-89 8:45 am]
BILLING CODE 3510-DS-M

[C-122-805]

Final Affirmative Countervailing Duty Determination: New Steel Rail, Except Light Rail, From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers, manufacturers or exporters in Canada of new steel rail, except light rail ("steel rail"), as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 113.56 percent *ad valorem* for all manufacturers, producers or exporters in Canada of steel rail, except the Algoma Steel Corporation Ltd. (Algoma), which is excluded from this determination. The estimated net subsidy for Algoma is 0.24 percent *ad valorem*, which is *de minimis*. We have calculated a separate estimated net subsidy for Algoma because its rate differs significantly from the country-wide rate. (See the "Suspension of Liquidation" section of this notice.)

We have notified the United States International Trade Commission (ITC) of our determination. If the ITC determines that imports of steel rail materially injure, or threaten material injury to a U.S. industry, we will direct the U.S. Customs Service to resume suspension of liquidation of all entries of steel rail from Canada that are entered or withdrawn from warehouse, for consumption on or after the date of publication of our countervailing duty order and to require a cash deposit on entries of steel rail in an amount equal to the estimated net subsidy.

EFFECTIVE DATE: August 3, 1989.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose or Margot Paijmans, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5414 (Malmrose) or 377-1442 (Paijmans).

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers or exporters of steel rail in Canada. For purposes of this investigation, the following programs are found to confer subsidies:

Federal Programs

- Debenture Guarantees Provided to Sydney Steel Corporation (Sysco)
- Forgiven Wharf Loan
- Regional Development Incentives Program
- Certain Investment Tax Credits

Joint Federal-Provincial Programs

- General Development Agreements
- Economic and Regional Development Agreements
- Iron Ore Freight Subsidy to Algoma

Provincial Programs

- Grants for Payment of Principal and Interest on Debentures
- Operating Grants Provided to Sysco
- Long-Term Loan Guarantees Provided to Sysco
- Equity Infusions Provided to Sysco

We determine the estimated net subsidy to be 113.56 percent *ad valorem* for all manufacturers, producers or exporters in Canada of steel rail, except Algoma, which is excluded from this determination.

Case History

Since the last Federal Register publication pertaining to the substance of this investigation ("Preliminary Affirmative Countervailing Duty Determination: New Steel Rail, Except Light Rail, from Canada," (Preliminary Determination), 54 FR 8784, March 2, 1989, the following events have occurred.

On March 13, 1989, petitioner filed a request for alignment of the countervailing duty and antidumping duty final determinations. On March 16, 1989, respondents filed a request for postponement of the final determination for 60 days. Pursuant to section 705(a)(1) and section 735(a)(2)(A) of the Act, respectively, we aligned the countervailing duty and antidumping duty final determinations and postponed the final determinations to no later than July 26, 1989 (54 FR 14264, April 10, 1989).

On May 18, 1989, we delivered a supplemental/deficiency questionnaire to the Government of Canada (GOC). On May 25, 1989, we received responses to our questionnaire from Algoma, Sydney Steel Corporation (Sysco), Nortrack Ltd. (Nortrack), Grand Valley Steel Limited (Grand Valley) and Sessenwein Inc. (Sessenwein). On May 26, 1989, Sessenwein filed corrections to certain errors contained in its May 25, 1989, submission.

We conducted verification in Canada from May 29 through June 14, 1989, of the questionnaire responses from the GOC, the Provincial Government of Ontario, the Provincial Government of Nova Scotia (GONS), Sysco, Algoma, Grand Valley, Sessenwein, C.P. Rail and Nortrack.

On June 6, 1989, Nortrack submitted corrections to certain clerical errors reported during verification. Also on June 6, 1989, Sysco submitted clarifications to its responses. On June 29, 1989, Algoma submitted clarifications, corrections, and other supplemental information.

On July 6, 1989, in accordance with Article 5, paragraph 3 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), we notified U.S. Customs to terminate the suspension of liquidation in this investigation as of July 1, 1989.

On July 10, 1989, GOC submitted supplemental information on the tariff classification of contact or "third" rails. On July 12, 1989, GOC forwarded a report to the Department which was inadvertently omitted at verification.

On July 13, 1989, Algoma filed supplemental information that the Department had requested at verification. On July 14, 1989, Sysco submitted clarification of information on its debentures which the Department had requested at verification.

Petitioner and respondents requested a public hearing in this case on March 6, 1989, which was held on July 18, 1989. Petitioner and Sysco filed case briefs on July 13, 1989, and rebuttal briefs on July 17, 1989. Algoma did not file a case brief but filed a rebuttal brief on July 19, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date is now classified solely

according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The product covered by this investigation is new steel rail, whether of carbon, high carbon, alloy or other quality steel, includes but is not limited to, standard rails, all main line sections (at least 30 kg. per meter or 60 pounds per yard), heat-treated or head-hardened (premium) rails, transit rails, contact rail(or "third rail") and crane rails. Rails are used by the railroad industry, by rapid transit lines, by subways, in mines and in industrial applications.

Specifically excluded from this investigation are light rails (rails less than 30 kg. per meter or 60 pounds per yard). Also excluded are relay rails which are used rails taken up from primary railroad track and relaid in a railroad yard or on a secondary track.

The product covered by this investigation is currently provided for under the following HTS subheadings: 7302.10.1020, 7302.10.1040, 7302.10.5000 and 8548.00.0000. Prior to January 1, 1989, such merchandise was classifiable under items 610.2010, 610.2025, 610.2100 and 688.4280 of the "Tariff Schedules of the United States Annotated" (TSUSA).

Analysis of Programs

For purposes of this determination, the period for which we are measuring subsidies ("the review period") is calendar year 1987 for Algoma and April 1, 1987–March 31, 1988 for Sysco. These review periods correspond to the respective companies' fiscal years. Normally, we would select the calendar year as the review period for all companies if the companies under investigation had different fiscal years. We have chosen Sysco's fiscal year as that company's review period in order to measure more accurately the subsidies received over time, which have been reported to the Department on a fiscal year basis.

Petitioner alleged that Sysco is unequityworthy and uncreditworthy. We have consistently held that the government provision of equity does not *per se* confer a subsidy. Government equity purchases bestow countervailable benefits only when they occur on terms inconsistent with commercial considerations. When there is no market-determined price for equity, it is necessary to determine whether the company was a reasonable commercial investment or, in other words, whether the company was "equityworthy."

The GONS is the sole owner of Sysco, which it purchased in 1968. Sysco has never issued shares; therefore, we must determine whether Sysco was equityworthy in each instance when the GONS made an equity infusion. We do not reach the question of whether Sysco was equityworthy in 1968. The initial purchase of Sysco by the GONS occurred prior to the 15 year period in which we are examining all the financial assistance received by Sysco which may have benefited the company during the review period. We are using 15 years because it represents the average useful life of assets in the steel industry as determined by the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System. Use of the IRS tables is in accordance with past practice and is described in detail in the "Subsidies Appendix" attached to the "Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Cold-Rolled Carbon Steel and Flat-Rolled Products from Argentina," (Subsidies Appendix), 49 FR 18006, April 26, 1984.

Although Sysco's equityworthiness in 1968 and the GONS's equity infusion in 1968 will not be examined, the GONS made additional equity infusions into Sysco in the period 1974 through 1988. Therefore, we have reviewed Sysco's equityworthiness in each of the years in which it received equity capital from the GONS during that period.

A company is considered unequityworthy if it is deemed unable to generate a reasonable rate of return within a reasonable period of time. In making our equityworthiness determinations, we assess the company's current and past financial health, as reflected in various financial indicators taken from its financial statements. The indicators we examine include the following ratios: rate of return on total assets and net equity, profit margin on sales, operating loss to financial expense, the current and quick ratios and debt to equity and debt to total assets. We give great weight to the company's recent ability to earn a return on total assets and to generate a profit margin on sales as indications of the company's financial health and prospects. Based on the factors described above, we determine that Sysco was unequityworthy in each year in which it received an equity infusion in the period from 1973 through 1988.

Petitioner additionally alleged that Sysco is uncreditworthy. We consider a company creditworthy if it appears that it will have sufficient revenues or resources to meet its costs and fixed financial obligations, absent government intervention. Like our equityworthiness test, to determine the creditworthiness of a company we analyze the company's past operations, as reflected in various financial indicators calculated from its financial statements. We give great weight to the company's recent past ability to meet its financial cost obligations with its cash flow. Based on an analysis of the factors described above, we determine Sysco to be uncreditworthy for the period from 1973 through 1988.

We determine that Sysco is uncreditworthy despite the fact that it has received financing from private commercial sources. We are discounting the importance of such financing because we have determined that Sysco would not have received this financing but for the guarantees provided by the GOC and the GONS.

All of Sysco's debentures and loans are guaranteed by either the federal or the provincial government. (See sections I.A.1., I.C.3. and II.A.) With respect to the provincial loan guarantees, Sysco has argued that these guarantees are not countervailable. In support of their position, respondents cite § 355.44(c)(1) of the proposed Countervailing Duty regulations, published in the **Federal Register** on May 31, 1989 (54 FR 23366) (to be codified at 19 CFR Part 355) (proposed regulations), which states "[t]he explicit guarantee by a government of a loan to a firm shall not confer a countervailable benefit if the government is a principal owner or majority shareholder of the firm and it is a normal commercial practice in the country in question for owners or shareholders to provide loan guarantees on comparable terms to their firms."

The statement in the proposed regulations embodies the Department's general policy on loan guarantees as exhibited in previous cases. (*See*, "Final Affirmative Countervailing Duty Determination on Carbon Steel Wire Rod from Trinidad and Tobago," 49 FR 480, January 4, 1984.) However, we note that our past practice has been limited largely to government guarantees on commercial loans to equityworthy companies or to government guarantees on loans from government sources. When analyzing loan guarantees to companies that may not be reasonable commercial investments, we believe it is appropriate to use the same "reasonable investor" analysis as we would for an equity infusion. Just as a reasonable investor would not purchase stock in an unequityworthy firm, it would not guarantee a loan to a company in such poor financial straits that the guarantor would be bound to lose money. This analysis is consistent with prior cases in

which we considered the government guarantee to be "the action of a major shareholder contributing to its investment in a * * * project." *Id.* at 485. In such cases, we have evaluated the loan guarantees in terms of whether the investment was inconsistent with commercial considerations. *Id.* Based on our analysis of Sysco's financial position, as outlined earlier under our equityworthy analysis, we determine that the government's provision of loan guarantees to Sysco is not a reasonable commercial decision. Based on this analysis, and because these guarantees are limited to a specific industry, we determine that the government provision of loan guarantees to Sysco provides a potential countervailable benefit.

Our past practice, described in the "Subsidies Appendix", for measuring the benefit conferred by the provision of a government loan guarantee, is to first compare the cost of the government guarantee to the cost the firm would have paid for a comparable commercial guarantee. If no difference between government and commercial guarantee costs is evident, we then compare the terms of the guaranteed loan to the benchmark financing. We verified that loan guarantees cannot normally be purchased from commercial sources. Consequently, we cannot compare Sysco's treatment against normal commercial practices in Canada. Therefore, for all of Sysco's guaranteed financing we analyzed the extent to which the company received more favorable terms on its financing than the benchmark financing. (See sections I.A.1., I.C.3. and II.A.)

With respect to the calculations of benefits from grants and government debenture and loan guarantees received by Sysco, we used as the discount rate for allocating the benefits over time the benchmark interest rate calculated for purposes of valuing the subsidy provided on Sysco's debentures and loans which were guaranteed by either the federal or provincial government. (See sections I.A.1. and I.C.3.) We were unable to use Sysco's weighted cost of capital, which is our preferred method of deriving the discount rate, for the following reasons. In the years 1973–1976, we do not have information on the national average rate of return on equity. In the years 1977–1988, either Sysco's equity as a percent of total capitalization was negative or Sysco's capitalization in its entirety was negative. Consequently, we could not meaningfully employ our weighted cost of capital formula.

Sysco received grants and/or equity infusions, which we are treating as grants (see section I.C.4.), in every year during the period 1974–1988. In accordance with past practice (*see* "Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Canada", (*OCTG*), 51 FR 15037, April 22, 1986), for all the programs which provided non-recurring grants and for all the benefits received by Sysco which we treated as non-recurring grants, we first determined if the benefit amount received by Sysco, in each of the years in which the benefit was received, was more than 0.50 percent of the company's total sales for that year. In every year, the benefit amount exceeded the 0.50 percent rate; therefore, for all of the grants and equity infusions received by Sysco, we allocated the benefit over the average useful life of equipment in the steel industry, which is 15 years. Using the above methodology, we also allocated over 15 years, unless otherwise specified, the benefit from the grants received by Algoma.

As mentioned in the "Case History" section, we verified questionnaire responses from the two producers and four non-producer exporters. We verified that none of the non-producer exporters received any benefits from the programs under investigation with respect to steel rails exported to the United States. Therefore, the steel rail exports of each respondent non-producer exporter will be subject to the estimated net subsidy of the producer from which it purchased the steel rail. As the best information available, we are assigning the estimated net subsidy rate of Sysco to the one non-respondent non-producer exporter, Bernard Railtrack Export Inc.

Based upon our analysis of the petition, the responses to our questionnaires, verfication, and written comments filed by petitioner and respondents, we determine the following.

I. Programs Determined to Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers or exporters in Canada of steel rail under the following programs.

A. Federal Programs

1. Debenture Guarantees Provided to Sysco

Sysco issued its Series C debenture in 1973 and its Series D debenture in 1975. Series C was denominated in U.S. dollars, issued for 20 years and guaranteed by the GONS. The terms of Series C provided for semi-annual interest payments and annual principal repayments starting in 1979.

Series D was denominated in Canadian dollars, issued for 20 years and guaranteed by the Cape Breton Development Corporation (Devco), a crown corporation of the GOC. The terms of Series D provided for semi-annual interest payments and gradually increasing annual principal repayments. No fee was paid for the GONS or Devco guarantees.

These guarantees were provided to one company. Thus, we determined that their provision was limited to a specific enterprise. Based on the reasons explained in the "Analysis of Programs" section pertaining to the government provision of debenture and loan guarantees, Sysco's debenture guarantees are countervailable to the extent that the terms are more favorable than the benchmark financing.

As described in the "Analysis of Programs" section, we have determined that Sysco has been uncreditworthy throughout the period 1973–1988. In the case of uncreditworthy companies, we assume that private lenders either would not provide loans to such companies or would require a premium interest rate. (See the Subsidies Appendix.) In selecting an appropriate benchmark, we must formulate an approximation of the premium interest rate a commercial source of financing would charge an uncreditworthy company. The first step in the formulation of such an interest rate is to determine the highest long-term fixed interest rate a marginally creditworthy borrower would have to pay in order to receive a loan.

The next step is the calculation of a risk premium. This amount represents the difference in risk between a marginally creditworthy company and an uncreditworthy company. In previous cases (*See* "Certain Carbon Steel Products from Brazil: Final Results of Countervailing Duty Administrative Review", 52 FR 829, January 9, 1987), we have derived this risk premium by examining the difference between Moody's Aaa and Baa corporate bond rates and calculating the percentage this difference represents of the prime interest rate in the United States. We have found that the risk premium as calculated by this approach is 12 percent. If the financing is not in U.S. currency, this percentage is then applied to the prime interest rate in the country concerned to derive a comparable measure of the risk premium in the local economy. The final step in our calculation of the appropriate benchmark for an uncreditworthy

company is to add the risk premium to the highest long-term fixed interest rate commonly available to a marginally creditworthy company.

For the series D debenture denominated in Canadian dollars, we chose for the highest long-term fixed interest rate commonly available to a marginally creditworthy company the rate on BBB Canadian corporate bonds. To this we added the risk premium, calculated as 12 percent of the Canadian prime rate. We used the resulting interest rate as our benchmark for the debenture denominated in Canadian currency.

With respect to the series C debenture denominated in U.S. dollars, we followed the same general approach described above in constructing a benchmark. We used the rate on Baa U.S. corporate bonds as the highest long-term fixed interest rate commonly available to a marginally creditworthy company and 12 percent of the U.S. prime rate for the calculation of the risk premium. Based on this methodology, we derived a benchmark for the debenture denominated in U.S. dollars. In addition, we calculated an effective interest rate on this debenture to account for the difference in the face value of the issue and the actual amount received by Sysco for the issue.

We compared the two benchmarks formulated above to the interest rates received on the two series of debentures issued by Sysco and found that the interest rates on Sysco's debentures were lower than the respective benchmarks. Therefore, we determine that the guarantees provided to Sysco by the GOC and the GONS are countervailable.

To determine the benefit, we calculated the payment differential between the benchmark financing and the guaranteed debentures using our long-term loan methodology which is described in the "Subsidies Appendix" and has been described in numerous previous cases. (*See*, for example, "Final Affirmative Countervailing Duty Determination; Certain Granite Products from Spain", 53 FR 24340, June 28, 1988.) We allocated the benefit over 20 years using as the discount rate the benchmark interest rates described above. (We were not able to base the discount rate on Sysco's weighted cost of capital for the reasons discussed in the "Analysis of Programs" section.) We then divided the benefit attributable to the review period by Sysco's total sales and calculated an estimated net subsidy of 1.13 percent *ad valorem* for Sysco.

2. Forgiven Wharf Loan

In 1972, the federal government provided Sysco with a loan to construct a loading wharf, which was completed in June 1978. Beginning in June 1979, Sysco was to make twenty equal payments to pay off the total advances from the government consisting of principal and interest accrued during the construction of the wharf. The twenty equal payments did not include any additional interest charges beyond 1978. No payments on the loan were made. In May 1981, the federal government announced that the loan would be forgiven. In 1982, Sysco removed the outstanding principal and estimated accrued unpaid interest from its long-term liabilities as shown in its audited financial statement.

We determine that the benefit provided by the loan forgiveness is countervailable because it was provided to a specific enterprise. Furthermore, we determine that for the period 1979 through 1981, the year in which the loan was forgiven, the loan was interest-free. Therefore, we have added to the original balance the interest that would have been paid for the period 1979 through 1981 at the benchmark interest rate, described in the previous section. We treated this entire amount as a grant given in 1981. Using the declining balance methodology and the benchmark rate, we allocated the benefit over 15 years, for reasons explained in the "Analysis of Programs" section of this notice, and divided the benefit attributable to the review period by Sysco's total sales. The calculated estimated net subsidy rate is 2.36 percent *ad valorem* for Sysco.

3. Regional Development Incentives Program (RDIP)

The RDIP was administered by the Department of Regional Economic Expansion (DREE) until its replacement with the Industrial Regional Development Program (IRDP) in 1983. It was established in 1969 for the purpose of creating stable employment opportunities in certain regions of Canada where employment and economic opportunities are chronically low, particularly the Atlantic provinces. The DREE offered incentives based on a case-by-case evaluation of capital investment projects. Projects that could proceed without RDIP assistance were ineligible. Assistance was provided in the form of grants or loans guarantees.

Although the program was terminated in 1983, RDIP grants were provided to both Sysco and Algoma prior to its termination. We determine that the RDIP grants are countervailable because the benefits are limited to companies located within certain regions of Canada. (*See* also OCTG and "Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada" (Groundfish), 51 FR 10041, March 24, 1986.)

Algoma received two RDIP grants; Sysco received four RDIP grants. We verfied that one of the grants received by Algoma was specifically tied to the production of products not under investigation. Therefore, consistent with past practice (see OCTG), we did not include this grant in our calculations. Algoma's other grant was approved in 1972.

To calculate the benefit, we used the declining balance methodology. We used as the discount rate for Algoma the national average long-term interest rate in Canada in 1972. (We were unable to use our weighted cost of capital formula because we do not have information on the national average rate of return on equity in Canada in 1972.) We used as the discount rate for Sysco the interest rate benchmark discussed in section I.A.1. On this basis, we calculated the benefits attributable to the review period and allocated them to the respective total sales of Algoma and Sysco. We calculated the estimated net subsidy to be 0.03 percent *ad valorem* for Algoma and 1.10 percent *ad valorem* for Sysco.

4. Certain Investment Tax Credits (ITCs)

There are a number of categories of ITCs in Canada and varying tax credit percentage levels within some of the categories. Based on our previous examination of all the types of ITCs in Canada (See OCTG and Groundfish), we initiated an investigation on the following four types of ITCs: (1) Tax credits of three and 13 percent, above the basic seven percent rate which we have previously found non-specific, for investment in "qualified property" located in certain regions of Canada; (2) tax credits for investment in "certified property"; (3) tax credits for large companies of ten percent above the basic 20 percent for investment in capital equipment used for scientific research; and (4) tax credits for investment in transportation and construction equipment.

Canadian tax law provides that ITCs may be subtracted from taxes owed, but if no taxes are owed (either because a company is initially in a tax loss position or because only some of the ITCs have been used to satisfy all tax liability), those excess ITCs earned after April 19, 1983, have a refundable, one-time cash value equal to 20 percent of the initial, face value of the ITC (40 percent for small businesses).

We verified that Sysco, as a provincially-owned corporation, is not liable for federal tax. Because the company is not liable for federal taxes, it was not eligible for a refund of taxes under the ITC law.

We verified that Algoma benefited from the three percent tax credit, above the basic rate of seven percent, for investment in "qualified property" because it is located in northern Ontario, and that it did not use the other ITCs under investigation. Furthermore, we verified that Algoma did not owe taxes on the tax return filed in the review period, but that it received a refund under the procedures described above.

We determine that the three percent tax credit, above the basic rate of seven percent, for investment in "qualified property" is countervailable because it is limited to companies located in certain regions of Canada.

To calculate the benefit from the "qualified property" ITC, we followed our standard tax methodology. Under our tax methodology, we allocate an income tax benefit claimed on a tax return to the year in which that tax return was filed. Algoma received a refund on the tax return filed during the review period. Therefore, we consider the amount of the refund attributable to the three percent in excess of the basic rate of seven percent to be the benefit Algoma received during the review period. We divided this benefit amount by Algoma's total sales for the review period and calculated an estimated net subsidy of 0.02 percent *ad valorem*.

B. Joint Federal-Provincial Programs

1. General Development Agreements (GDA)

GDAs provided the legal basis for various departments of the federal and provincial governments to cooperate in the establishment of economic assistance programs. The GDAs were umbrella agreements which stated general economic development goals. Ten-year GDAs were signed with most provinces in 1974.

Subsidiary agreements were signed pursuant to the GDAs. Subsidiary agreements were generally between particular federal and provincial government departments and addressed certain economic development problems under the jurisdiction of the government agency signatories. These agreements established various individual types of economic development programs, delineated administrative procedures, and set out the relative funding commitments of the federal and provincial governments. Subsidiary agreements were typically directed at establishing traditional government economic assistance programs, developing infrastructure, providing for economic development assistance for certain regions within the province, and providing financial assistance to specific industries or enterprises.

Three such subsidiary agreements were signed between the federal government and the GONS. Two agreements were specifically established to provide assistance to Sysco. We determine that funds provided to Sysco under these agreements are countervailable in their entirety because they provided grants to a specific enterprise.

The third subsidiary agreement primarily provided funds for feasiblity and market studies and funds for the development of industrial parks. In our Preliminary Determination, we determined that only the GOC's portion of funds under this third subsidiary agreement was countervailable because it was limited to companies in a particular region of Canada (*i.e.*, the Province of Nova Scotia). We also stated that the GONS's portion of funding was not countervailable because the assistance was not limited to a specific enterprise or industry or group of enterprises or industries in Nova Scotia. However, we also noted in our Preliminary Determination that, although the agreement provided benefits to a wide range and number of industries, an amendment was made to the agreement, subsequent to its implementation, naming Sysco as the specific recipient of new funds not previously authorized under the agreement. Consequently, we stated that we would examine this amendment in detail to determine whether it constituted a discretionary governmental action which provided a benefit to a specific enterprise.

As noted above, the general purpose of the third subsidiary agreement was for general feasibility and market studies and the development of industrial parks. No specific companies were named in the original agreement. The amendment however specifically permitted the provision of funds to Sysco for capital repair. During verification, federal and provincial agreement officials were unable to provide any specific information concerning the circumstances surrounding this amendment. Therefore, we are assuming, as the best information available, that the amendment to the third subsidiary agreement constituted a discretionary governmental action which provided a benefit to a specific enterprise. Thus, we determine that funds provided to Sysco under the amendment to the third subsidiary agreement are countervailable in their entirety.

No assistance to Algoma was provided under the Canada/Ontario GDA or corresponding subsidiary agreements.

We calculated the benefit conferred by the grants using the discount rate for Sysco referred to above (see section I.A.1.) and our declining balance methodology. We divided the benefit attributable to the review period by Sysco's total sales and calculated an estimated net subsidy of 25.48 percent *ad valorem* for Sysco.

2. Economic and Regional Development Agreements (ERDA)

ERDAs are essentially a continuation of the GDAs. ERDAs were signed with every province and territory in the early 1980's. Similar to GDA subsidiary agreements, ERDA subsidiary agreements establish programs, delineate administrative procedures and set up the relative funding commitments of the federal and provincial governments.

Two subsidiary agreements were signed between the federal government and the province of Nova Scotia which related to Sysco. The first provided for grants to fund the modernization of Sysco's operations. The second provided for the funding of economic planning studies throughout the Province, including three feasibility studies which examined different modernization alternatives for Sysco.

We determine that funds provided to Sysco under the first subsidiary agreement are countervailable in their entirety because the agreement provides grants to a specific enterprise.

The monies under the second subsidiary agreement were used to conduct feasibility and market studies for various projects throughout the Province of Nova Scotia. We verified that these funds were provided for such diverse projects as the development and diffusion of communications and information, the identification of a site for a harness racing facility, the assessment of viability of a miniature theme park, and impact studies for rail line abandonment. Therefore, we determine that the portion of funds provided by the GONS is not countervailable because the assistance is not limited to a specific enterprise or industry or group of enterprises or industries. We determine that the portion of funds provided by the GOC

are countervailable because they are limited to companies in a particular region of Canada (*i.e.*, the Province of Nova Scotia).

The only indirect assistance received by Algoma under the Canada/Ontario ERDA is described in the next section.

To calculate the benefit we used the same methodology described in the "GDA" section. We calculated an estimated net subsidy of 6.70 percent *ad valorem* for Sysco.

3. Iron Ore Freight Subsidy to Algoma

Algoma ships sintered iron ore pellets from its mine in Wawa, Ontario to its steel mill at Sault Ste. Marie by rail on the Algoma Central Railway (ACR). The ACR also operates the Agawa Canyon Tour Train which is an important tourist attraction in Northern Ontario.

In 1966, Algoma reconsidered its use of Wawa iron ore because the delivered cost of Wawa ore was not competitive when compared to the delivered cost of ore from alternative sources. We verified that Algoma obtained and analyzed bids from a number of companies capable of trucking its iron ore from the Wawa mine. In order to make the delivered cost of Wawa ore competitive, Algoma sought a reduction in ACR's freight rates.

If ACR did not reduce its freight rate to a competitive level, Algoma was considering closing its Wawa mine. Such an action would have forced ACR to cease all operations, including its tour train operation. To preserve the continued operation of ACR, the federal and the Ontario governments provided grants to ACR. The grants were made under the "Canada-Ontario Subsidiary Agreement for Tourism Development" (COTDA), which is a subsidiary agreement under ERDA. As a result of these grants ACR was able to charge Algoma a lower freight rate.

Because the amount of the grants was calculated to permit ACR to charge the lower freight rate sought by Algoma, we determine that the COTDA grants provided an indirect benefit specifically to Algoma. Thus, we determine that this benefit was limited to a specific enterprise.To calculate the benefit to Algoma we compared the truck rate Algoma would have been charged to the reduced freight rate charged by ACR. We divided the difference by Algoma's total sales and found the estimated net subsidy rate to be 0.19 percent.

C. Provincial Programs—Province of Nova Scotia

1. Grants for Payment of Principal and Interest on Debentures

The GONS has provided Sysco with grants to cover principal payments and interest payments on its long-term debentures since 1982. Because these grants are limited to a specific enterprise they are countervailable.

Respondents have argued that we should treat these grants as recurring grants. In determining whether grants are recurring or non-recurring, we must consider the following factors: (1) Whether the program providing the benefit is exceptional; (2) whether the program is of longstanding nature; and (3) whether there is any reason to believe that the program will not continue into the future. (*See* "Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled and Frozen Pork Products from Canada," 50 FR 25,097, June 15, 1985, and Groundfish.)

In this case, we determine that these grants are non-recurring for the following reasons. First, the government action of providing these grants is exceptional because it is not under any particular established provincial program and because the provincial legislature must approve the funds each year. Moreover, if Sysco had turned a profit, it is unlikely the province would have continued to provide the grants. Second, although these grants have been provided for several years, presumably they will terminate when the debentures are paid off in the near future. Third, if Sysco does become profitable in the future, the grants will probably stop. Therefore, we determine that these grants are non-recurring grants.

To calculate the benefit, we used the same methodology described in the "GDA" section. The estimated net subsidy is 22.73 percent *ad valorem* for Sysco.

2. Operating Grants Provided to Sysco

The GONS has provided Sysco with operating grants to cover its general operating expenses and for capital expenditures. We determine that these operating grants are countervailable because they provide funds to a specific enterprise. We further determine that they are non-recurring because they are not provided under any particular provincial program and because they are provided according to the irregular financial needs of Sysco.

To calculate the benefit, we used the same methodology described in the "GDA" section. The estimated net subsidy is 19.34 percent *ad valorem* for Sysco.

3. Long-term Loan Guarantees Provided to Sysco

Sysco has a number of five-year loan agreements with several Canadian trust companies. The GONS guarantees all of these loans. Interest rates on these five-year loans are variable according to the prime or banker's acceptance (BA) rates. Interest is payable monthly. The trust companies have the option of demanding repayment, in full, of the outstanding principal with 30 days notice. Sysco also has the option of repaying, in full, the outstanding principal. None of these loans have ever been prepaid, nor have the trust companies ever demanded payment before maturity.

These guarantees were provided to one company. Thus, we determine that their provision was limited to a specific enterprise. For the reasons explained in the "Analysis of Programs" section pertaining to the government provision of debenture and loan guarantees, Sysco's loan guarantees are countervailable to the extent that the terms are more favorable than the benchmark financing.

As described in the "Analysis of Programs" section, we have determined that Sysco has been uncreditworthy throughout the period 1973–1988. In the case of uncreditworthy companies, we assume that private lenders either would not provide loans to such companies or would require a premium interest rate. (*See* the "Subsidies Appendix".) In selecting an appropriate benchmark, we must formulate an approximation of the premium interest rate a commercial source of financing would charge an uncreditworthy company. Our preferred benchmark for a long-term variable interest rate government guaranteed loan to an uncreditworthy company is the highest long-term variable interest rate commonly available to a marginally creditworthy company in the country in question, plus the risk premium described in section I.1.A. Statistical information concerning the highest long-term variable interest rate in Canada does not exist. Absent such a rate, we have determined that the best alternative benchmark is the highest long-term fixed interest rate commonly available to a marginally creditworthy company in the country in question. Although in prior cases we have used short-term financing as our benchmark, it is more appropriate to use a long-term benchmark when it is available. For long-term projects a company will typically require long-term financing. Therefore, a company seeking such financing will consider all long-term financing options before turning to short-term financing. And, in the absence of long-term variable rate financing, a company would rely on long-term fixed rate financing. For this reason, we determine that a long-term fixed interest rate is the best alternative benchmark when no variable rate benchmark is available. For this rate, we are using the interest rate on Canadian BBB bonds to which we have added the risk premium, as is our practice in dealing with uncreditworthy companies.

To determine the benefit, we calculated the payment differential between the interest that would have been paid at the benchmark interest rate and the actual interest paid on each of the guaranteed five-year loans during the review period. We then divided the benefit by Sysco's total sales and calculated an estimated net subsidy of 12.83 percent *ad valorem* for Sysco.

4. Equity Infusions Provided to Sysco

GONS has made a number of equity infusions into Sysco. As noted in the "Analysis of Programs" section, we find Sysco to be unequityworthy. Therefore, we determine the equity infusions made by the GONS to be countervailable.

We normally calculate the benefit conferred by government equity infusions inconsistent with commercial considerations by determining the difference between the national average rate of return on equity and the rate of return on equity of the company under investigation. However, Sysco's financial statements indicate that the entire amount of the GONS's equity capital has been consumed. Therefore, the calculation of any rate of return on equity for Sysco would not be a meaningful measure. Furthermore, we believe that even if we could somehow calculate a rate of return on equity for Sysco, the difference between Sysco's rate of return, presumably a negative value, and the national average rate of return would be so great that the "grant cap" would be exceeded. Therefore we treated all the equity infusions received by Sysco as grants.

We calculated the benefit from the equity infusions using the grant methodology described in previous sections (see, for example, section I.B.1.). We divided the benefit attributable to the review period by Sysco's total sales and calculated an estimated net subsidy of 21.89 percent *ad valorem* for Sysco.

II. Programs Determined Not To Confer Subsidies

We determine that the following programs do not confer subsidies:

A. Short-Term Loan Guarantees

The GONS guarantees all of the demand loans, or lines of credit, provided to Sysco by chartered banks. The guarantees on these demand loans were provided to a specific enterprise; however, they are only countervailable to the extent that the terms of the loans are more favorable than the benchmark financing. (See the "Analysis of Programs" section of this notice pertaining to the provision of loan guarantees.)

Our past practice has been to select as the short-term benchmark the interest rate on the predominant source of short-term financing in the country in question. (*See* "Final Affirmative Countervailing Duty Determination: Certain Electrical Conductor Aluminum Redraw Rod from Venezuela", (Redraw Rod), 53 FR 24, 763, June 30, 1988.) Although we obtained interes. rate information on BAs and corporate paper at verification, we established that together these forms of short-term financing only account for twenty percent of total short-term financing. Average interest rate information on the remaining 80 percent of short-term financing in Canada is not available. We did however, verify that Algoma also has short-term financing, which is comparable to Sysco's lines of credit. Therefore, we are using as the best information available in this investigation the interest rate charged Algoma on its short-term financing. We chose this rate primarily because of the close comparability between the two types of financing. When we compare Sysco's rate to this benchmark rate, we find that Sysco's short-term financing is not on terms more favorable than benchmark financing and, therefore, is not countervailable.

B. Research Grant Received by Algoma

At verification, we found that Algoma received a research grant from the GOC under the Industrial Energy Research & Development Program for a project to study sulfur reduction at Algoma's Wawa mine.

Research and development grants are considered to confer a countervailable benefit when they are provided to a specific enterprise or industry or group of enterprises or industries and the results of such research and development are not made available to the public.

An examination of the documentation related to this grant demonstrates that, as a condition of receiving the grant, Algoma was obligated to make the results of this study available to the public and had to show how the findings of the study would be beneficial to energy conservation efforts in Canada. Furthermore, we verified that the results of Algoma's study have been made public. Therefore, we find that the grants under this research program do not confer a countervailable benefit to Algoma.

III. Programs Determined Not To Be Used

We determine, based on verified information, that the following programs were not used by manufacturers, producers or exporters in Canada of steel rail during the review period. For a full description of these programs, see our Preliminary Determination.

A. Federal Programs

1. Defense Industry Productivity Program (DIPP)

Algoma received DIPP grants for the installation of hot metal desulphurization facilities in 1980 and 1981. We examined these grants in OCTG. Consistent with the "Subsidies Appendix", we divide the sum of all grants received in each year by the total sales of the company in the same year. Algoma received no other grants in 1980 and 1981. The calculated benefits in OCTG were *de minimis, i.e.*, less than 0.50 percent. Therefore, as in OCTG, we expensed them in the year of receipt. Because the DIPP grants received by Algoma were expensed prior to the review period and because no DIPP grants were received by Algoma during the review period, we determine that Algoma did not use this program.

2. Industrial and Regional Development Program

3. Loans under the Enterprise Development Program

4. Program for Export Market Development and Promotional Projects Program

5. Federal Expansion and Development/ Northern Ontario

6. Community-Based Industrial Adjustment Program Grants

7. Export Credit Financing

B. Joint Federal-Provincial Programs

Mineral Development Agreement Benefits to Algoma

C. Provincial Programs

1. Ontario Development Corporation Export Support Loans, Other Loans and Loan Guarantees

2. Provision of Electricity by Ontario Hydro to Algoma

3. Income Tax Exemption for Sysco

Comments

All written comments submitted by the interested parties in this investigation which have not previously been addressed in this notice are addressed below.

Comment 1: Sysco argues that the short-term interest rate benchmark should be the interest rate on BAs and commercial paper, which represent the normal type of short-term financing for large companies. Furthermore, Sysco quotes from the Proposed Regulations that a short-term benchmark should be based on an average of the predominant interest rate.

Petitioner contends that the short-term benchmark should be based on the predominant form of short-term financing and the highest short-term rate observable on that form of financing, which would be prime plus three percent. Petitioner maintains that corporate paper and BAs do not constitute the predominant forms of financing because, together, they only account for 20 percent of short-term financing in Canada. Petitioner also argues that there is no justification for a benchmark based on BAs and corporate paper because Sysco does not have the assets of a "large" company as defined by the GOC.

DOC Position

According to past practice, the short-term benchmark is based on the average interest rate on the predominant form of short-term financing. (See Redraw Rod.) Absent information on a single predominant form of short-term financing, we use as the short-term benchmark the weighted-average of the interest rates from two or more sources of short-term financing that together account for at least 50 percent of all short-term financing. We verified that BAs and corporate paper together account for only 20 percent of short-term financing in Canada. Average interest rate information on the remaining 80 percent of short-term financing is not available. Therefore, we chose as the best information available, for purposes of this investigation, the rate charged Algoma on its short-term financing.

Comment 2: Sysco contends that its five-year trust company loans should be considered short-term loans. Sysco's argument is based on the fact that each of the trust companies has the option to demand payment in full of the outstanding principal and interest with 30 days notice. In addition, as is characteristic of short-term loans, these five-year loans have variable interest rates.

Petitioner holds that Sysco's trust company loans should be considered long-term loans because on their face the loans have a term of five years. Furthermore, petitioner argues that Sysco has not demonstrated that the demand option has ever been used or that Sysco has ever prepaid any of these loans. Moreover, petitioner points out that Sysco rolled over several of these loans past their original terms.

DOC Position: We have determined that Sysco's five-year trust company loans should be treated as long-term loans because: (1) They are recorded as long-term loans in the audited financial statements of the company, (2) payment has never been demanded or made before maturity, (3) several of the loans have been rolled-over past their original term, and (4) Sysco has a grossly insufficient amount of liquid assets which could be used to pay these loans if they were demanded before maturity. This last point indicates that Sysco does not anticipate these loans being paid before maturity.

Comment 3: Sysco argues that its five-year trust company loans should be considered short-term loans because for all long-term loan benefits, and other benefits allocated over time, a "grant equivalent" can be calculated and that for a long-term loan with a variable interest rate a grant equivalent cannot be calculated because the total amount of any countervailable benefit is contingent upon future benchmarks. Therefore, according to Sysco, we must treat Sysco's five-year trust company loans as short-term.

DOC Position: It is true that a grant equivalent cannot be calculated for a variable rate loan. However, simply because a grant equivalent cannot be calculated does not prevent the Department from treating the loans in question as long-term for other purposes.

Comment 4: Petitioner argues that the benchmark for the long-term variable interest rate loans guaranteed by the GONS should be eight percent over prime, plus a risk premium.

Sysco argues that petitioner's suggested benchmark should not be used because it was a "guesstimate" by a Canadian banking official. Sysco also points out that the Department in Groundfish stated that there was "no comparable long-term variable or fixed interest rate commonly available to Canadian firms" and that, as a result, "a short-term benchmark interest rate was used to calculate the benefit from long-term variable rate loans."

DOC Position: We have explained our choice of a benchmark for Sysco's long-term variable rate loans in Section I.C.3. Petitioner's suggested benchmark is based on a statement made by a Canadian banking official, which we have determined to be too speculative for use. With respect to Sysco's comment, regarding Groundfish, in this investigation we were able to obtain information on a comparable long-term fixed interest rate; therefore, we did not use a short-term benchmark.

Comment 5: Sysco argues that if the debenture guarantees are considered countervailable, the benefit is equal to an annual fee of one percent which is charged under other government loan guarantee programs.

DOC Position: We have determined that the most appropriate method of measuring the benefit from a government loan guarantee is to compare the terms of the guaranteed financing to the benchmark financing. (See the "Analysis of Programs" section.)

Comment 6: Sysco argues that a "put" option on its debenture effectively lowered the risk on the debenture issue and, therefore, lowered the interest rate. Respondent refers to the "Final Affirmative Antidumping Determination: Generic Cephalexin Capsules from Canada" (Cephalexin), 54 FR 26,820, June 26, 1989, in which the Department made the following statement regarding the treatment of a stock convertibility option: "this option represents a real * * * cost to respondent over and above the cost of the interest payments to the debenture holders." Sysco also submitted with its case brief two debenture prospectuses, one with a "put" option and the other without, and calculated the value of the option at 1.375 percent.

Petitioner first points out that Sysco never provided information concerning the "put" option in its questionnaire responses. Petitioner further argues that Sysco has not adequately stated how the two debenture prospectuses submitted are comparable to Sysco's debentures. Moreover, petitioner states that Sysco mischaracterizes its option as one of convertibility rather than redemption and that Sysco omitted a key portion of the quote from Cephalexin, which reads in full "[t]his represents a real, though unquantifiable cost to respondent over and above the cost of the interest payments to the debenture holders."

DOC Position: This issue was not raised in any of the questionnaire responses of Sysco. It was first raised during verification. Thus, this information was submitted too late for the Department to analyze prior to verification and for the petitioner to meaningfully comment upon. (See § 353.31(a) of the Department's regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 353.31(a).)

Comment 7: Sysco argues that, because the interest rates on its debentures are at market rates, an appropriate benchmark for the U.S. dollar denominated debenture would be rates on comparable debentures issued in 1973. Respondents submitted prospectuses for two debenture issues for use as possible benchmarks.

Petitioner refutes respondent's suggested benchmarks by stating that they do not represent a national average, do not follow the hierarchy of benchmarks for long-term loans outlined in the Proposed Regulations and do not include the risk premium calculated for an uncreditworthy company.

DOC Position: According to our standard practice, our benchmark in the case of long-term fixed rate financing provided to an uncreditworthy company is the highest long-term fixed interest rate commercially available to a marginally creditworthy company plus the risk premium. (See the "Subsidies Appendix" and the "Analysis of Programs" section.) We are using the rate on U.S. Baa corporate bonds as the highest long-term fixed interest rate.

Comment 8: Respondent contends that for the final determination the effective interest rate on the Series C debenture should take into account exchange rate fluctuations between the Canadian and U.S. dollars. Respondent argues that the fluctuations between the Canadian and U.S. dollars have increased the effective interest rate to Sysco of its Series C financing.

Petitioner aruges that the Department's use of effective interest rates is to ensure that, when a potentially preferential interest rate is compared to a benchmark, both rates reflect the full cost of the loan to the borrower. Petitioner then lists other aspects of a loan, such as the prepayment of interest, which can change the actual cost to the borrower. Petitioner concludes by stating that the declining value of the Canadian dollar is irrelevant and that the only question is whether the debenture guarantee permitted Sysco to pay an interest rate lower than it would have otherwise.

DOC Position: The benefit from the debenture guarantee is one that arises from issuing the debenture on terms that were more favorable than those commercially available. The currency in which the company chooses to issue the debenture is immaterial; this represents a risk chosen by the company which is irrelevant to the terms and conditions of the issue.

Comment 9: Sysco states that the Department erred in applying the specificity test to the individual subsidiary agreements and not to the general agreements under the GDA and ERDA programs. Because GDA and ERDA agreements cover all areas of Canada, these programs do not meet the specificity test and, as such, are not countervailable. Finally, Sysco argues that any government assistance program if broken down into sufficiently small subparts can be found to meet the specificity test.

Petitioner argues that GDA and ERDA benefits are specific and, thus, are countervailable. Monies provided to Sysco were at the discretion of the governments and were provided to Sysco specifically. Lastly, petitioner states that under Sysco's analysis, governments could avoid the imposition of countervailing duties by lumping all of their subidy programs into a single overall program.

DOC Position: We have found in our past cases that GDAs and ERDAs do not actually establish any government programs but instead ar merely legal agreements which, dual or conflicting jurisdictions, provide a framework to permit departments of the federal and provincial governments to cooperate in establishing and administering traditional government assistance programs. The implementation, administration and funding of industry- and regional-specific programs occur exclusively through subsidiary agreements. Therefore, we have decided that in determining whether subsidiary agreement programs are limited to a specific enterprise or industry or group thereof, the proper level of analysis is the subsidiary agreement. (*See also* Groundfish and "Final Negative Countervailing Duty Determination: Certain Softwood Products from Canada," 48 FR 24,159, May 31, 1983.)

Comment 10: Petitioner states that the basic seven percent tax credit should be countervailed since it is provided only to specific investments, *i.e.*, to "qualified property." Petitioner also states that the Department erred in relying on past Department cases on this issue and not verifying the program in this investigation. Petitioner states that an amendment to the Act made by the Omnibus Trade and Competitiveness Act of 1988 now requires the Department to investigate whether a program is in fact provided to specific industries or groups of industries.

DOC Position: The 1988 Act provision referred to clarified that in all cases the Department must examine the availability and use of alleged subsidy programs on a *de facto* as well as a *de jure* basis. Our prior investigations of the basic seven percent tax credit have satisfied us that this credit is not limited to a specific enterprise or industry or group thereof on either a *de facto* or *de jure* basis. Because the seven percent tax credit ws previously found not countervailable, and petitioner did not provide the Department with a sufficient basis to reexamine it, we did not include the program in this investigation. (*See* OCTG and Groundfish.)

Comment 11: Sysco states that the Department erroneously treated grants for repayment of principal on its debentures as equity infusions. Petitioner states that the Department should countervail the equity infusions made by GONS and use the grant methodology as it did in the preliminary determination.

DOC Position: As noted in the "Analysis of Programs" section and section I.C.4., the Department was not able to use its standard method of calculating the benefit from an equity infusion but had to treat all equity infusions as grants. As such, this issue is moot.

Comment 12: Petitioner states that in analyzing the freight rate issue the Department should not consider Algoma's ability to transport iron ore by truck or buy iron ore from other sources. Petitioner argues that the proper test is whether the freight service was provided at a preferential rate. In support of its position, petitioner cites the "Final Negative Countervailing Duty Determination: Granite from Italy" (Granite), 43 FR 27,197, July 19, 1988. Petitioner states that the reductions in freight rates was a direct result of government action so that it constituted the provision of a service on preferential terms, within the meaning of the statue.

Algoma argues that the grants to ACR did not benefit Algoma because (1) the ACR freight rates were the result of arm's length negotiations and were not

set by government intervention, (2) the ACR tour grants were tied to ACR's tour operations, and (3) even if the tour grants resulted in lower freight rate to Algoma, they have provided no commerical benefits to the company and have had an insignificant impact on its cost of production.

DOC Position: We verified that the lowering of Algoma's freight rates was part of a four party arrangement, which included the federal and provincial governments, ACR and Algoma, the result of which was the reduction in the freight rate paid by Algoma. Therefore, we have determined that the provision of grants to ACR provided an indirect subsidy to Algoma in the form of reduced freight rates.

We calculated the benefit by comparing the difference between the lowered freight rates and the available trucking rates. This case is distinguishable from Granite because unlike Granite it does not involve a government-owned railway. Therefore, the issue is not the preferential provision of a good or service by a government.

Comment 13: Petitioner states that the Department erred in not initiating an investigation on the alleged special tax subsidy to Algoma. Petitioner alleges that Algoma has accumulated ITCs which it was unable to use because it was in a loss position. In an attempt to utilize these credits and complete construction of a seamless tube mill, Algoma formed a partnership with its parent, the Canadian Pacific Railroad (CP). According to petitioner, CP was able to reduce its tax liability by using the accrued ITCs of Algoma, which had been transferred to the partnership. Later, Algoma purchased CP's partnership units, thereby dissolving the partnership.

Algoma argues that petitioner did not allege in a timely manner facts sufficient to establish a prima facie case that warranted an investigation and that, even if petitioner did make a timely allegation, the ITCs are tied to the production of seamless tube mill and, thus, do not provide any benefit to Algoma's steel rail production.

DOC Position: Our position concerning the alleged special tax subsidy has not changed since the beginning of this investigation. As we have stated previously in two memoranda to the file, we did not include this program in the investigation because the alleged benefit received by Algoma is tied to a product not under investigation. All the information submitted by petitioner clearly indicates that the specific purpose of the Algoma/CP partnership, and the attendant tax and financial transactions, was to complete the construction of a seamless tube mill. Thus, any benefit is tied to a product other than the merchandise under investigation. Nothing in the information submitted by petitioner indicates that any of the alleged benefits can be tied to the production of the subject merchandise. Therefore, we did not include the alleged special tax subsidy in the investigation.

Comment 14: Sysco maintains that the treatment of the wharf loan should be the same as at the preliminary determination. Sysco argues that only the principal amount of $7,734,483, uncollectible as of June 1978 and forgiven in 1981, should be considered a grant and allocated over 20 years.

DOC Position: The wharf was completed in June 1978, and Sysco was to make payments beginning in June 1979. Sysco made no payments on the principal and interest outstanding. The total outstanding was effectively an interest-free loan for the period 1979 through 1981. Therefore, we have added to the total original balance of $7,734,483, the interest that would have been paid on the principal outstanding at the benchmark rate and treated this total amount as a grant given in 1981.

Comment 15: The GOC raises the issue of whether HTS item number 8548.00.0000 is properly included within the scope of this investigation.

DOC Position: The HTS item number referred to by the GOC includes contact rail or "third rail" and, therefore, is properly included within the scope.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. As mentioned previously, when we could not verify the information, we used the best information available. During verification, we followed standard verification procedures, including meeting with government and company officials; inspecting internal documents and ledgers; tracing information in the responses to source documents, accounting ledgers and financial statements; and collecting additional information that we deemed necessary for making our final determination.

Suspension of Liquidation

In accordance with our preliminary affirmative countervailing duty determination published on March 2, 1989, we directed the U.S. Customs Service to suspend liquidation on the products under investigation and to require that a cash deposit or bond be posted equal to the estimated bonding rate. The instant final countervailing duty determination was extended to coincide with the final antidumping duty determination on the same product from Canada, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act).

Under Article 5, paragraph 3 of the Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after July 1, 1989, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between March 2, 1989, and June 30, 1989. We will reinstate suspension of liquidation under section 703(d) of the Act, if the ITC issues a final affirmative injury determination, and will require a cash deposit on all entries of the subject merchandise from producer exporters, except entries by Algoma, in an amount equal to 113.56 percent *ad valorem*. Algoma is excluded from this final determination.

If we reinstate suspension of liquidation and require a cash deposit, entries of the subject merchandise by Grand Valley, Sessenwein, C.P. Rail and Nortrack (all of whom are non-producer exporters) will not be subject to suspension of liquidation and a cash deposit equal to the estimated net subsidy if it can be demonstrated to the U.S. Customs Service that the entries of the subject merchandise were produced by and purchased from Algoma.

Entries made by Bernard Railtrack Export Inc. and new non-producer exporters will be subject to suspension of liquidation and a cash deposit or bond equal to the estimated net subsidy shown of 113.56 percent *ad valorem*.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order directing Customs officers to assess countervailing duties on all entries of steel rail from Canada entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671(d)).

Dated: July 26, 1989.

Eric L Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-18065 Filed 8-2-89; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review; Application

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89-00013." A summary of the application follows.

Summary of the Application

Applicant: International Lumber Company (ILC), 401 East 10th Avenue, Suite 400, Eugene, Oregon 97401, Contact: Ward R. Eason, President, Telephone: (503) 687-1679.

Application No.: 89-00013

Date Deemed Submitted: July 20, 1989

Members (in addition to applicant):

None

Export Trade:

Products

Forest products, including all sizes of dimensional lumber, rough or surfaced; all types of panel products; and all types of timbers, from 4" plus dimensional timbers to a length of 85' in all softwood species; with an emphasis on kiln-dried products and fully sawn Douglas fir lumber.

Export Trade Facilitation Services (as They Relate to the Export of Products)

Consulting; international market research; marketing; legal assistance; transportation, including trade documentation and freight forwarding; communication and processing of foreign orders to and for domestic Suppliers; financing; export licensing; warehousing; shipping; foreign exchange; and taking title to goods.

Export Markets: The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation: ILC seeks to:

1. Enter into non-exclusive agreements with Suppliers to provide Export Trade Facilitation Services;

2. Enter into exclusive agreements with Suppliers to provide Export Trade Facilitation Services wherein:

a. ILC may agree not to represent any competitor of such Supplier for Products unless authorized by the Supplier, and/or

b. the Supplier may agree not to sell, directly or indirectly, through any other Export Intermediary into any Export Market in which ILC exclusively represents the Supplier as an Export Intermediary unless authorized by ILC; and/or

3. Respond, as they become aware of invitations to bid or of sales opportunities existing in the Export Markets, by:

a. contacting Suppliers of the Products listed in the invitation to bid,

b. inviting the Suppliers to provide independent price quotations for the Products, and/or

c. entering into agreements with Suppliers whereby ILC will submit a response to the bid invitation or request for quotation.

Definitions: 1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Products and Services to foreign buyers.

2. "Supplier" means a person who produces, provides, or sells Products and Services and/or provides Export Trade Facilitation Services.

Dated: July 31, 1989.

Douglas J. Aller,

Director, Office of Export Troding Company Affairs.

[FR Doc. 89-18162 Filed 8-2-89; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review; Application

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATON CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A

Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89-00012." A summary of the application follows:

Summary of the Application

Applicant: Kentucky World Trade Center, Lexington, Inc. ("KWTCL"), 410 West Vine Street, Suite 290, Lexington, Kentucky 40507, Contact: Kenneth A. Current, President, Telephone: 606/258-3138.

Application No.: 89-00012

Date Deemed Submitted: July 20, 1989

Members (in addition to the applicant): None.

Export Trade

1. *Products and Services.* All products and services.

2. *Export Trade Facilitation Services (as they relate to the export of Products and Services).* Export related services, including, but not limted to, market research, financing (including joint funding on research, technical and administrative costs), licensing, advertising, export documentation, transportation (including consolidation of shipments), and distribution services.

Export Markets: The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation: KWTCL seeks certification for the following activities:

1. To open its membership only to Kentucky businesses.

2. To form and/or encourage the formation of industry supplier groups for the purpose of exporting Products and Services to Export Markets.

3. On behalf of its member suppliers, KWTCL intends to:

a. Establish joint manufacturing plans to meet foreign buyer needs;

b. Establish joint export pricing structures for Products and Services; and

c. Establish exclusive distributorships with export intermediaries to supply Products and Services to Export Markets.

4. On behalf of Kentucky businesses, KWTCL may provide and/or arrange for the provision of Export Trade Facilitation Services.

Dated: July 27, 1989.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

[FR Doc.89-18164 Filed 8-2-89; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review; Application

ACTION: Notice of application for an amendment to an export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether the Certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89-A0005."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 89-00005, which was issued on May 26, 1989 (54 FR 24928, June 12, 1989).

Summary of Application

Applicant: CherreX Corporation ("CherreX"), 2220 University Park Drive, Suite 200, Okemos, Michigan 48846, Contact: Mr. C. Richard Johnston, Managing Director, Telephone: 517/347/0910.

Application No.: 89-A0005

Date Deemed Submitted: July 24, 1989

Request For Amended Conduct: CherreX seeks to amend its Certificate to:

1. Add each of the following companies as a "Member" of the Certificate: Chase Farms, Inc., Walkerville, MI; Larson-Seaquist Processing, Inc., Sister Bay, WI; Muir-Roberts Co., Inc., Salt Lake City, UT; Smeltzer Orchard Co., Frankfort, MI; and Utah Finer Fruits, Santaquin, UT.

2. Delete each of the following companies as a "Member" of the Certificate: Comstock/Michigan Fruit Division, a division of Curtice Burns Foods, and Great Lakes International Trading, Inc.

Dated: July 27, 1989.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 89-18165 Filed 8-2-89; 8:45 am]

BILLING CODE 3510-DR-M

MINORITY BUSINESS DEVELOPMENT AGENCY

Business Development Center Applications: Manhattan, NY

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period January 1, 1990 to December 31, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Manhattan, New York SMSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institution.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

Closing Date: The closing date for applications is September 8, 1989. Applications must be postmarked on or before September 8, 1989.

ADDRESS: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, Room 3720, New York, New York 10278, Area Code/Telephone Number (212) 264-3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, New York Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 minority Business Development (Catalog of Federal Domestic Assistance)

Date: July 24, 1989.

Gina A. Sanchez,

Regional Director, New York Regional Office.

[FR Doc. 89-17830 Filed 8-2-89; 8:45 am]

BILLING CODE 3510-21-M

DEPARTMENT OF DEFENSE

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: 28 September 1989.

Time: 0530-1700.

Place: Parson's Island, Chester, Maryland.

Proposed Agenda: Preventive Medicine officer reports, malaria vaccine update, HIV natural history, team spirit exercises, Streptococcus prophylaxis, malaria prophylaxis, hepatitis B recombinant vaccine report, update on Air Force food-borne outbreak.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041-3258.

Dated: 18 July 1989.

Robert A. Wells,

COL, USA, MSC, Executive Secretary.

[FR Doc. 89-17847 filed 8-2-89; 8:45 am]

BILLING CODE 3710-08-M

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: 29 September 1989.

Time: 0900-1100.

Place: Parson's Island, Chester, Maryland.

Proposed Agenda: Status, Medical Followup Agency, Pest Management Board Update and the Theater Army; Medical Management Information System (TAMMIS).

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041-3258.

Dated: 18 July 1989.

Robert A. Wells,

COL, USA, MSC, Executive Secretary.

[FR Doc. 89-17848 Filed 8-2-89; 8:45 am]

BILLING CODE 3710-08-M

Office of the Secretary

Defense Advisory Committee on Women in the Services; Meeting

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Executive Committee of the DACOWITS. The purpose of the meeting is to review the responses to the recommendations, requests for information, and continuing concerns made by the Committee at the 1989 DACOWITS Spring Conference; review the Subcommittee Issue Agenda; discuss current issues relevant to women in the Services; and finalize the program for the next DACOWITS semiannual conference scheduled for October 29–November 1, 1989. All meeting sessions will be open to the public.

DATE: August 28, 1989, 9:30 a.m.–4:30 p.m.

ADDRESS: SecDef Conference Room 3E869, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Mary C. Pruitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (202) 697–2122.

Dated: July 28, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–18075 Filed 8–2–89; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Notice of Intent (NOI) To Prepare a Programmatic Environmental Impact Statement for Development of the Proposed Advanced Launch System

AGENCY: Department of the Air Force, DOD.

ACTION: Notice; additional launch site to be evaluated.

On July 13, 1989, the Department of the Air Force published a notice of intent document in the **Federal Register** (54 FR 29600). Replace the last sentence of the first paragraph of that document with the following sentence.

Several existing and potential launch sites are being evaluated to support the ALS, including: Cape Canaveral Air Force Station/Kennedy Space Center, Florida; Vandenberg Air Force Base, California; and a currently undeveloped site on the island of Hawaii.

FOR FURTHER INFORMATION CONTACT: Captain Hector Malave, HQ Space Systems Division/DEV, P.O. Box 92960, Los Angeles, CA 90009–2960, telephone (213) 643–0935.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–18137 Filed 8–2–89; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection requirement concerning OMB Report Control Number 9000–0023, Balance of Payments Program Certificate.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy, (202) 523–3775.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* The offeror in submitting the Balance of Payments Program Certificate certifies that each end product or service, except the end products or services listed in the certificate is a domestic end product or service and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

Offers are evaluated by giving a certain preference to domestic end products or services over foreign end products or services in accordance with § 25.303(b) of the Federal Acquisition Regulation.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *1,243*, responses per respondent, *5*; total annual responses, *6,215*; preparation hours per response, *.167*; and total response burden hours, *1,038*.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0023, Balance of Payments Program Certificate.

Dated: July 26, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–18138 Filed 8–2–89; 8:45 am]

BILLING CODE 6820–JC–M

DEPARTMENT OF ENERGY

Office of General Counsel

Notice of Intent To Grant Exclusive Patent License

Notice is hereby given of an intent to grant to Geo-Temp Corporation, of San Leandro, California, an exclusive license to practice in the United States the invention described in U.S. Patent No. 4,005,289, entitled "Method For Identifying Anomalous Terrestrial Heat Flows." The patent is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and will be subject to a negotiated royalty provision. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in the United States, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC, on July 27, 1989.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 89–18155 Filed 8–2–89; 8:45 am]

BILLING CODE 6450–01–M

Intent To Grant Partially Exclusive Patent License

Notice is hereby given of an intent to grant to Imdel Corporation, of Crystal Lake, Illinois, a partially exclusive license to practice in the United States the invention described in U.S. Patent No. 4,572,864, entitled "Composite Materials For Thermal Energy Storage." The patent is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed license will be partially exclusive, i.e. exclusive, but limited to fields of use of heat storage materials for outdoor stadium seats and clothing, and food and beverage containers, and subject to a license and other rights retained by the U.S. Government. The license will further be subject to a negotiated royalty. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in the United States, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously in the fields of use of the proposed license.

The Department will review all written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC on July 27, 1989.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 89–18156 Filed 8–2–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CI89–477–000 et al.]

Trans Marketing Houston, Inc., et al.; Applications for Blanket Certificates With Pregranted Abandonment [1]

July 26, 1989.

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorization for an unlimited term, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before August 16, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
CI89–477–000	7–6–89	Trans Marketing Houston, Inc., 5200 Republican Center, 700 Louisiana Street, Houston, Texas 77002.
CI89–479–000	7–12–89	Western Gas Processors, Ltd., Suite 609, 10701 Melody Drive, Denver, Colorado 80234.

[FR Doc. 89–18079 Filed 8–2–89; 8:45 am]

BILLING CODE 6717–01–M

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Docket Nos. RP88–202–001, RP89–202–002]

CNG Transmission Corp.; Filing

July 27, 1989.

Take notice that on July 20 and 21, 1989, CNG Transmission Corporation (CNG) filed Fifth Revised Sheet No. 32 and Substitute Fifth Revised Sheet No. 32 to its FERC Gas Tariff, Original Volume No. 1, to be effective July 1, 1989.

CNG states that these tariff sheets correct errors found in its June 30 and July 20, 1989 filings in this proceeding. CNG requests that Substitute Fifth Revised Sheet No. 32 replace Fifth Revised Sheet No. 32.

CNG states that copies of these filings have been mailed to each of its Volume 1 customers and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before August 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–18081 Filed 8–2–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–174–002; RP89–195–003]

Dynasty Gas Marketing, Inc. v. Northern Border Pipeline Co. and Northern Border Pipeline Co.; Settlement

July 25, 1989.

Take notice that on June 30, 1989, Northern Border Pipeline Company and Dynasty Gas Marketing, Inc. (collectively referred to as sponsoring parties) filed a permanent settlement of the credit requirement issues identified in the Commission's order issued on November 3, 1988, Docket Nos. RP88–174–001 and RP88–195–002 (45 FERC ¶ 61,177). Copies of the settlement have been sent to all parties in the consolidated proceeding.

Under the terms of the settlement, previously effective credit provisions

applicable to Rate Schedule IT-1 are modified so that commencing October 1, 1989, any Rate Schedule IT-1 shipper who fails to meet Northern Border's standard for creditworthiness or who becomes insolvent may receive service under Rate Schedule IT-1 by providing, on a month-to-month basis, a standby letter of credit from a major U.S. or Canadian bank or a prepayment in an amount equal to the transportation charge for volumes shipper estimates will be transported by Northern Border. Such prepayment or standby letter of credit must be furnished to Northern Border no later than noon, Central Standard Time, on the third business day prior to the first day in which transportation service is desired during a billing month.

In addition, the shipper will be allowed, once during the month, to increase the prepayment or standby letter of credit to cover volumes in excess of the originally estimated volumes. Such one-time monthly adjustment may permit shipper to continue transportation for volumes in excess of the originally estimated volumes by providing by noon, Central Standard Time, on the third business day prior to the continuation of shipper's transportation for such month, an additional prepayment in U.S. federal funds, same day wire transfer, or an amendment to increase the standby letter of credit or an additional standby letter of credit equal to the adjustment amount for the balance of the month.

Initial comments on the settlement shall be filed on or before August 15, 1989. Reply comments shall be filed on or before August 29, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18082 Filed 8-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-210-000]

Florida Gas Transmission Co.; Petition for Limited Waiver

July 28, 1989.

Take notice that on July 24, 1989, Florida Gas Transmission Company (FGT) filed a petition for limited waiver of § 154.302(j) of the Commission's Regulations. FGT requests that the Commission renew for an additional one-year period its authorization granting FGT a limited waiver of §§ 154.302(j) and 157.202(b)(4) of the Commission's Regulations.

In addition, FGT requests that the Commission expand such waiver to permit FGT to include in its purchased gas adjustment filings the flow through of costs of liquified natural gas that FGT may purchase to maintain competitively-priced service on the FGT system.

FGT states that granting the requested waiver will enable its customers to benefit from the lower weighted average cost of gas and the accompanying benefits of maintaining a high load profile on the FGT system. At the same time, FGT states that it will not exacerbate its take-or-pay exposure. FGT states that granting the requested waiver is in the public interest.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commissions Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such motions or protests should be filed on or before August 4, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18083 Filed 8-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-45-001]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

July 27, 1989.

Take notice that on July 21, 1989, Inter-City Minnesota Pipelines, Ltd., Inc. ("Inter-City"), 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, tendered for filing a revised tariff sheet to Original Volume 1 of its FERC Gas Tariff to be effective August 1, 1989:

Original Volume No. 1

First Revised Thirty-Fourth Revised Sheet No. 4

Inter-City states that this revised tariff sheet is filed as Inter-City's quarterly PGA pursuant to Order Nos. 483 and 483-A.

Inter-City states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18084 Filed 8-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-209-000

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

July 27, 1989.

Take notice that K N Energy, Inc. ("K N"), on July 24, 1989 tendered for filing the following tariff sheets to revise its FERC Gas Tariff, Original Volume No. 1-B.

First Revised Sheet No. 1
Original Sheet No. 45
Original Sheet No. 46
Original Sheet No. 47
Original Sheet No. 48
Original Sheet No. 49

K N states that the above-referenced tariff sheets are being filed to implement the flow-through and recovery of Buyout-Buydown Obligations allocated to K N by Colorado Interstate Gas Company ("CIG") pursuant to CIG's filing in Docket No. RP89-98, Docket No. RP89-133 and Docket No. RP89-178. As a downstream pipeline, K N proposes to recover such obligation on an as-billed basis, pursuant to § 2.104(e) of the Commission's General Policy and Interpretations. For fixed costs billed to K N by CIG, K N will allocate such costs between its jurisdictional and nonjurisdictional firm sales customers utilizing the same purchase deficiency methodology, base period, and deficiency period as used by CIG in the above-mentioned Dockets.

K N has requested that the Commission accept this filing to become effective August 1, 1989.

K N states that copies of this filing are being served on all of its jurisdictional sales customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18085 Filed 8-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-140-005]

Midwestern Gas Transmission Co.; Filing

July 28, 1989.

Take notice that on July 24, 1989, Midwestern Gas Transmission Company (Midwestern) filed Substitute Fifth Revised Sheet No. 164, Substitute Second Revised Sheet No. 169C, and Substitute Second Revised Sheet No. 169D to its FERC Gas Tariff, Original Volume No. 1, to be effective June 1, 1989.

Midwestern states that these tariff sheets reflect typographical corrections requested by the Commission Staff during the review of the previous filings of April 29 and November 28, 1988.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules or Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before August 4, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18086 Filed 8-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-211-000]

Natural Gas Pipeline Co. of America; Change in FERC Gas Tariff

July 28, 1989.

Take notice that on July 25, 1989, Natural Gas Pipeline Company of America (Natural) submitted for filing the tariff sheets listed below as part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective September 1, 1989:

Seventh Revised Sheet Nos. 401 and 402; Eighth Revised Sheet No. 403; Sixth Revised Sheet No. 404; Seventh Revised Sheet No. 405; Eighth Revised Sheet No. 406; Original Sheet Nos. 406A, 406B and 406C.

Natural states that the purpose of the filing is to reflect the current maximum delivery volumes by delivery point under various sales and storage rate schedules in accordance with § 9.3 of the General Terms and Conditions of Natural's tariff.

Natural states that the delivery point volumes of its jurisdictional customers have been revised, where required, to reflect additions and deletions in sites and service changes. Mississippi River Transmission Corporation (MRT), a DMQ-1 customer, was deleted from Sheet No. 403 because MRT converted 100% of its sales contract to firm transportation service on October 1, 1988. Entex Corporation, a G-1 customer, was added to Sheet No. 401 because they had not previously been listed on the page. The above tariff sheets list Natural's forty-eight (48) jurisdictional customers.

A copy of the filing was mailed to Natural's jurisdictional customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed on or before August 4, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18087 Filed 8-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-207-000]

Northern Natural Gas Co., Filing

July 27, 1989.

Take Notice that on July 21, 1989, Northern Natural Gas Company, Division of Enron Corp., tendered for filing to become a part of Northern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet:

Fourth Revised Sheet No. 52f.3.

The proposed effective date is August 20, 1989. Norther proposed to delete from the presently effective tariff sheet the following sentence contained in section 5(b) of Rate Schedule FT-1:

For all requests other than priority requests, the effective date shall be the date of execution by Shipper of the FT-1 Firm Transporation Service Agreement.

Northern states that in response to the concerns of Shippers on Northern's system, Northern is proposing to change its policy to allow in a nondiscriminatory manner Shippers to execute firm Service Agreements prior to the proposed effective date thereof. Northern states that this will allow advance planning by prospective Shippers, provide assurance that the firm transportation service will be available when required without necessitating the payment of reservation fees before the service is actually required or can be utilized, and remove the restrictions on Shippers' options and increase competition in the transportation service business.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18088 Filed 8-2-89; 8:45 am]

BILLING CODE 6717-01-M

BEST COPY AVAILABLE

[Docket No. IR-089-024]

Public Utility Commission of Texas; Petition for Waiver

July 26, 1989.

Notice is hereby given that the Public Utility Commission of Texas (TPUC) has filed on July 12, 1989 pursuant to § 292.403 of the Commission's regulations for waiver of certain obligations imposed under § 292.303(a) and 292.303(b) of the Commission's regulations (18 CFR Part 292 Subpart C) which implement section 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"). The applicant has duly implemented the Commission's PURPA regulations by filing a PURPA implementation plan on November 16, 1981.

The TPUC indicates that the waiver, if granted, would allow South Texas Cooperative, Inc. (STEC) and its five members to reallocate among themselves certain QF-related purchase and sales responsibilities imposed upon them by operation of PURPA. Specifically, the TPUC states that the purpose of the requested waiver is to allow STEC to meet the goals set by the Commission when it adopted 18 CFR 292.303 (a) and (b) in a manner consistent with the organizational functions of STEC and its members. According to the TPUC, the waiver will accomplish this (i) by allowing STEC to purchase any energy and capacity which a QF may seek to sell to any of its members and (ii) by allowing the members to supply any retail energy and capacity otherwise required to be supplied by STEC to a QF under the Commission's regulations. To achieve this goal, the TPUC requests a waiver to STEC's obligations to sell retail capacity and energy to QFs and, correspondingly, a waiver of the members' obligations to buy capacity and energy directly from QFs.

Any person desiring to be heard or to protest any of the above filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed within thirty (30) days of publication of notice in the Federal Register, and should reference the applicable docket number. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18091 Filed 8-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1818-000]

Shell Offshore Inc.; Petition for Declaratory Order Disclaiming Jurisdiction

July 26, 1989.

Take notice that on July 17, 1989, Shell Offshore Inc. (Shell), One Shell Plaza, P.O. Box 2463, Houston, Texas 77252-2463, filed in Docket No. CP89-1818-000 a petition for an order disclaiming jurisdiction under section 1(b) of the Natural Gas Act over a natural gas gathering facility it proposes to construct in federal waters offshore Louisiana, all as more fully set forth in the petition on file with the Commission and open to public inspection.

Shell proposes to install a gathering line from the platform connecting the Prospect Monty well located in Eugene Island Block 30 (Block EI 30) to one of two alternatives. The first and primary alternative is to install a 12-inch 6-mile line to connect Block EI 30 to the United Gas Pipe Line Company's (United) jurisdictional 20-inch wet gas pipeline at United's pipeline junction platform located in Eugene Island Block 32 for transportation of wet gas and condensate to United's onshore separation facility and then to the Marathon Burns Point gas processing plant (Burns Point) located in St. Mary Parish, Louisiana, it is stated. Shell states that the condensate and free water would be removed at the United separation facility and the gas would be dehydrated and processed to merchantable quality at Burns Point.

The second alternative Shell proposes is to install a 12-inch 11-mile line from Block EI 30 to a subsea connection on American Natural Resource's (ANR) jurisdictional 20-inch wet gas pipeline in either Eugene Island Blocks 34, 40 or 42. Shell states the actual location of the subsea connection would be determined by pipeline crossovers, subsea obstructions or environmental concerns and shipping fairways. Wet gas and condensate from Block EI 30 would be transported through ANR's 20-inch pipeline to ANR's onshore separation facility and then to the Shell operated Calumet gas processing plant located in St. Mary Parish, Louisiana, it is stated. Shell states the condensate and free water would be removed at the separation facility and the gas would be dehydrated and processed to merchantable quality at the Calumet plant.

Shell states that it owns 100 percent of the working interest in the entire Block EI 30 lease block and in 1770 acres of the Eugene Island Block 31 lease block. Initially, it is stated only the Block EI 30 would be drilled and developed. Shell indicates that it plans to sell all the gas produced from Block EI 30 to Shell Gas Trading Company but would retain processing rights.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 16, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18080 Filed 8-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-5-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 27, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 20, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Seventh Revised Sheet No. 68
Seventh Revised Sheet No. 69
Seventh Revised Sheet No. 70
Seventh Revised Sheet No. 71

This filing is being made in compliance with the Commission's letter order on March 31, 1989 in Docket No. TM89-4-17-000 which order requires Texas Eastern to track modifications to Texas Gas Transmission Corporation's (Texas Gas) take-or-pay charges in Texas Gas's Docket Nos. RP88-230 and TM89-2-18.

On June 30, 1989 Texas Gas filed tariff sheets to be effective August 1, 1989 revising fixed take-or-pay costs pursuant to Texas Gas's Docket No. RP88-230 to recover take-or-pay costs to be billed through a demand surcharge by Tennessee Gas Pipeline Company (Tennessee). Tennessee's take-or-pay surcharge is effective for a six month period from July 1, 1989 through December 31, 1989 to recover costs incurred from December 1, 1988 through March 31, 1989, or known and measurable within nine months of that date. Texas Gas stated in its original filing in Docket No. RP88-230 on August 8, 1988 that it would file tariff sheets to be effective February 1 and August 1 corresponding with Tennessee's tariff sheets to be effective January 1 and July 1. Texas Eastern's portion of the total principal amount of Tennessee's take-or-pay charges billed by Texas Gas is $42,623 to be amortized over the six month period beginning August 1, 1989 in monthly payments of $7,154.

The tariff sheets proposed for filing herein are being filed solely to track modifications made by Texas Gas on June 30, 1989. Seventh Revised Sheet Nos. 68 through 71 set forth the monthly principal amount plus the allocation factors for carrying costs that each Texas Eastern customer will be required to pay in order to recover Texas Gas's take-or-pay charges billed to Texas Eastern pursuant to Texas Gas's filing on June 30, 1989. Workpapers setting forth Texas Eastern's determination of the allocation factor for the principal amount (which include a predetermined carrying charge) and a breakdown of the total and monthly principal amounts (which include a predetermined carrying charge) each Texas Eastern customer will be required to pay are set forth under Appendix A of the filing.

In tracking Texas Gas's methodology, Texas Eastern has given recognition to purchases by Texas Eastern's Rate Schedule SGS customers under Rate Schedule I in the determination of the base and deficiency periods to the extent these customers did not request Rate Schedule I gas in lieu of Rate Schedule SGS gas, but were given the benefit of the lower I rate. This methodology is consistent with the methodology used and approved by the Commission in Texas Eastern's previous filings.

The proposed effective date of the above tariff sheets is August 1, 1989.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18089 Filed 8-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-208-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 27, 1989.

Take notice that on July 21, 1989, Texas Gas Transmission Corporation (Texas Gas) tendered for filing changes to its FERC Gas Tariff, Original Volume No. 1, Original Volume No. 2-A, and Original Volume No. 3. The proposed tariff sheets, listed in Appendix A of the filing, are being filed in order to implement 75% recovery of an additional $2,024,096 in Take-or-Pay Settlement Payments under which the litigation exception pursuant to the procedures established in the Commission's Order No. 500 over a 33-month period. Specifically under those procedures, Texas Gas is proposing to absorb 25% (approximately $506,000) of the Take-or-Pay Settlement Payments, recover 25% (approximately $506,000) through a monthly fixed charge applicable to each of its current firm sales customers, and recover the remaining 50% (approximately $1 million) of such payments through a volumetric or commodity surcharge to be applicable to all of Texas Gas's throughput, including both sales and transportation volumes.

Texas Gas states that this filing is made without prejudice to any similar filing or filings which Texas Gas may make at a later date for the purpose of recovering additional Take-or-Pay Settlement Payments under the Commission's equitable sharing mechanism of additional costs resulting from contracts in litigation as of March 31, 1989. Texas Gas also reserves the right to revise the filing as necessary to reflect any modifications made by the Commission or as required by any appellate court.

Texas Gas requests an effective date of August 1, 1989, for the proposed tariff sheets. Texas Gas further states that it has served copies of this filing upon the company's sales and transportation customers and interested state commissions.

Finally, Texas Gas has filed detailed support for the costs included in the filing in a Second Supplement to the Confidential Binder A, for which it has requested privileged treatment, pursuant to the provisions of § 388.112 of the Commission Regulations.

Additionally, Texas Gas requests that the hearing established by the Commission's April 28, 1989 Suspension Order be expanded to include the prudence of the costs in the instant filing and that the protective order issued by the Presiding Administrative Law Judge on May 24, 1989, in Docket No. RP88-119-000 establish the conditions for review by the interested parties.

Texas Gas will maintain copies of the Second Supplement to Confidential Binder A at its Owensboro, Kentucky, offices and in the offices of Andrews & Kurth, in Washington, DC, for review by the appropriate parties, subject to the terms of the protective order.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing, exclusive of Confidential Binder A, are available for public inspection in the Public Reference Room. A copy of this filing, including Confidential Binder A, is in the non-public file with the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18090 Filed 8-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-4-29-003]

Transcontinental Gas Pipe Line Corp.; Filing

July 26, 1989.

Take notice that on July 21, 1989, Transcontinental Gas Pipe Line Corporation (Transco) filed a letter to request requisite authority to defer collection of the transition cost surcharge in this proceeding.

Transco requests that the Commission approve the proposed deferral of the surcharge and states its willingness to forgo collection of carrying charges during the deferral period. Transco

states that upon Commission approval, it will file conforming tariff sheets reflecting the suspension of collection of the special transition gas cost surcharge. Transco states that it will refund with interest at FERC rates, the surcharge collections during the interim period.

Transco states that it is serving copies of this letter to its customers, State Commissions, and interested parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before August 2, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18092 Filed 8-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1857-000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

July 27, 1989.

Take notice that on July 24, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1857-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Pennzoil Gas Marketing (Pennzoil), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport natural gas on behalf of Pennzoil from a point of receipt located in Vermilion Parish, Louisiana to points of delivery located in Ouachita and Rapides Parishes, Louisiana.

United further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Pennzoil would be 82,400 MMBtu equivalent, 82,400 MMBtu equivalent and 30,076,000 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89-4112, filed with the Commission on July 7, 1989, it reported that transportation service for Pennzoil had begun under the 120-day automatic authorization provisions of § 284.223(a).

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7(c) of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18093 Filed 8-2-89; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1788]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

July 31, 1989.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor International Transcription Service (202-857-3800). Oppositions to these petitions must be filed August 21, 1989. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Reorganization and Deregulation of Part 97 of the Rules Governing the Amateur Radio Services. (PR Docket No. 88-139). Number of petitions received: 3.

Subject: Amendment of the Commission's Rules to Improve the Quality of the AM Broadcast Service by Reducing Adjacent Channel Interference and by Eliminating Restrictions Pertaining to the Protected Daytime Contour. (MM Docket No. 88-376, RM's 5532 & 6174). Number of petitions received: 1.

Subject: Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License. (MM Docket No. 88-526, RM-6122). Number of petitions received: 3.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-18163 Filed 8-2-89; 8:45 am]

BILLING CODE 6712

FEDERAL RESERVE SYSTEM

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 17, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *M. L. Haggard, Sr.*, Waynesboro, Tennessee; to retain 28.19 percent of the voting shares of Wayne County Bancshares, Inc., Waynesboro, Tennessee, and thereby indirectly acquire Wayne County Bank, Waynesboro, Tennessee.

2. *Floyd C. Newton, Jr.*, Madison, Georgia; to acquire an additional 11.23 percent of the voting shares of Madison Bank Corporation, Madison, Georgia, for a total of 25 percent, and thereby indirectly acquire Bank of Madison, Madison, Georgia.

Board of Governors of the Federal Reserve System, July 28, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-18099 Filed 8-2-89; 8:45 am]

BILLING CODE 6210-01-M

The Hongkong and Shanghai Banking Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 24, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The HongKong and Shanghai Banking Corporation*, Hong Kong; HSBC Holdings, B.V., Amsterdam, The Netherlands; Kellett N.V., Curacao, Netherlands Antilles; and Marine Midland Banks, Incorporated, Buffalo, New York; to engage *de novo* through their subsidiary, Jaguar Leasing Corporation, Leonia, New Jersey, in permissible automotive lease finance activities pursuant to § 225.25(b)(5) of the Board's Regulation Y.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *The Plains Corporation*, Lubbock, Texas; to engage *de novo* through its subsidiary, Plains Financial Corporation, Lubbock, Texas, a *de novo* company, in originating loans for itself or for others of the type made by a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in West Texas.

Board of Governors of the Federal Reserve System, July 28, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-18100 Filed 8-2-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Technical Advisory Committee for Diabetes Translation and Community Control Programs; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following Committee meeting.

NAME: Technical Advisory Committee for Diabetes Translation and Community Control Programs.

TIME AND DATE: 9 a.m.—5 p.m., Tuesday, August 22, 1989.

PLACE: The Washington Room, Stouffer Madison Hotel, 515 Madison Street, Seattle, Washington 98104.

STATUS: Open to the public, limited only by the space available.

Purpose: This Committee is charged with advising the Director, CDC, regarding priorities and feasible goals for translation activities and community control programs designed to reduce morbidity and mortality from diabetes and its complications. The Committee advises regarding policies, strategies, goals and objectives, and priorities; identifies research advances and technologies ready for translation into widespread community practice; recommends public health strategies to be implemented through community interventions; advises on operational research and outcome evaluation methodologies; identifies research issues for further clinical investigation; and advises regarding the coordination of programs with Federal, voluntary and private resources involved in the provision of services to people with diabetes.

MATTERS TO BE DISCUSSED: The Committee will discuss future directions for diabetes control programs conducted by State health agencies and the conceptual content of a Request for (competing) Applications (RFA) to be issued by CDC in 1990. Current activities by the Division of Diabetes Translation (DDT) and the Center for Chronic Disease Prevention and Health Promotion (CCDPHP) will also be discussed.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Robert D. Moran, Public Health Advisor, DDT, CCDPHP CDC, 1600 Clifton Road, NE, Mailstop E08, Atlanta, Georgia 30333, telephones: FTS: 236-1855; Commercial: 404/639-1855.

Dated: July 28, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-18097 Filed 8-2-89; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Availability of Funds for Grants for Health Care for the Homeless

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of available funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that the President's budget for Fiscal Year 1990 includes $63.6 million for grants to provide primary health and substance abuse services to homeless individuals. Should funds be appropriated, the grants will be awarded under section 340 of the Public Health Service Act, as amended by the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, November 7, 1988, Pub. L. 100-628. This announcement is made prior to an appropriation of funds to allow new and competing continuation applicants sufficient time to establish active and broad-based community coalitions, to

prepare applications, and to enable timely award of the grants in consideration of the special needs of homeless individuals. While this solicitation of applications in advance of an appropriation is an extraordinary action, it will enable the award of appropriated grant funds in the most expeditious manner and allow prompt provision of services to homeless individuals. On the basis of the President's budget, it is anticipated that approximately 150 new and competing continuation grants will be awarded to serve homeless individuals in urban and rural areas. Applicants should understand, however, that final appropriation action will be necessary in order for HRSA to fund any applications.

DATES: To receive consideration, grant applications must be received by the appropriate Grants Management Officer by September 15, 1989. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee.

A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late and will be returned to the applicant.

ADDRESSES: Application kits (Form PHS 5161–1 with revised face sheet DHHS Form 424, as approved by the Office of Management and Budget under control number 0346–0006) may be obtained from, and completed applications should be mailed to the appropriate Regional Grants Management Officer (see Appendix). For further information on this program, please contact Ms. Joan Holloway, Director, Division of Special Populations Program Development, telephone (301) 443–8134.

SUPPLEMENTARY INFORMATION: Section 340(a) of the Public Health Service Act authorizes the Secretary, acting through the Administrator of HRSA, to award grants for the purpose of enabling grantees, directly or through contracts, to provide for the delivery of primary health services and substance abuse services to homeless individuals. Eligible applicants are nonprofit private organizations and public entities, including State and local governmental agencies. Grantees and other organizations with whom they may contract for services under this program must have an agreement with a State under its Medicaid program, title XIX of the Social Security Act (if they provide services that are covered under the title XIX plan for the State), and be qualified to receive payments under the agreement.

Preference will be given to qualified applicants that (1)(A) are experienced in the direct delivery of primary health services to homeless individuals or medically underserved populations or (B) are experienced in the treatment of substance abuse in homeless individuals or medically underserved populations; and (2) agree to provide for primary health and substance abuse services to homeless individuals through both public entities and private organizations.

For applicants not previously funded under section 340(a), the amount of Federal grant funds awarded may not exceed 75 percent of the costs of providing primary health and substance abuse services under the grant. Such newly funded applicants must make available non-Federal contributions equal to the remainder of the costs. For continuation applicants, the amount of Federal grant funds awarded may not exceed 66⅔ percent of the costs of providing primary health and substance abuse services under the grant. The continuation applicant, if funded, must make available non-Federal contributions equal to the remainder of the costs. Non-Federal contributions may be in cash or in-kind, fairly evaluated, including plant, equipment or services. Funds provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of the non-Federal contributions. Such determination may not include any cash or in-kind contributions that, prior to February 26, 1987, were made available by any public or private entity for the purpose of assisting homeless individuals (including assistance other than the provision of health services). The Secretary may waive the matching requirement if the grantee is a nonprofit private entity and the Secretary determines that it is not feasible for the grantee to comply with the requirement.

The grant may be used to continue to provide services listed below for up to 12 months to individuals who have obtained permanent housing if services were provided to these individuals when they were homeless. For the purpose of this program, the term "homeless individual" means an individual who lacks housing (without regard to whether the individual is a member of a family), including an individual whose primary residence during the night is a supervised public or private facility that provides temporary living accommodations, or an individual who is a resident in transitional housing.

Project Requirements

a. The following services must be provided, directly or through contract:

1. Primary health care and substance abuse services at locations accessible to homeless individuals;

2. 24-hour emergency primary health and substance abuse services to homeless individuals;

3. Referral of homeless individuals as appropriate to medical facilities for necessary hospital services;

4. Referral of homeless individuals who are mentally ill to entities that provide mental health services, unless the applicant will provide such services directly;

5. Outreach services to inform homeless individuals of the availability of primary health and substance abuse services; and

6. Aid to homeless individuals in establishing eligibility for assistance, and in obtaining services, under entitlement programs. Podiatry, dental (including dentures), and vision services are supplemental services and may be provided where medically necessary, to the extent that the level of delivery of the required services is not diminished.

b. Restrictions on the use of grant funds are as follows:

1. Grant funds may not be used to pay for inpatient services except for residential treatment for substance abuse provided in settings other than hospitals.

2. Grant funds may not be used to make cash payments to intended recipients of primary health and substance abuse services or mental health services.

3. Grant funds may not be used to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment. However, upon request by the applicant demonstrating that the purposes of the project cannot otherwise be carried out, the Secretary may waive these restrictions.

c. The grantee must, directly or through contract, provide primary health and substance abuse services without regard to ability to pay for the services. If a charge is imposed for the delivery of primary health and substance abuse services, such charge (1) will be made according to a schedule of charges that is made available to the public; (2) will not be imposed on any homeless individual with an income less than the official poverty level; and (3) will be adjusted to reflect the income and resources of the homeless individual involved.

d. The grantee may not expend more than 10 percent of the Federal grant for the purpose of administering the grant.

e. The grantee may, with respect to title I of the Protection and Advocacy for Mentally Ill Individuals Act of 1986, expend amounts received for the purpose of referring homeless individuals who are chronically mentally ill, and who are eligible under the Act, to systems that provide advocacy services under the Act.

f. The grantee may provide services through contracts with nonprofit self-help organizations that are established and managed by current and former recipients of mental health or substance abuse services, who have been homeless individuals; and that have an agreement with a State under its Medicaid program, title XIX of the Social Security Act (if they provide services that are covered under the title XIX plan for the State), and qualify to receive payments under the agreement.

Criteria for Evaluating Applications

An objective review of applications that are received in a timely manner will be conducted. In addition to the preferences in making grants described above, the review of applications for grant support will consider the following:

a. Experience of the applicant in providing primary health and substance abuse services;

b. Extent to which the applicant has identified the homeless population in the service area, including the social and demographic characteristics of the population and the extent to which their health needs are not being met;

c. The adequacy of the applicant's proposed outreach plan to serve the homeless population;

d. Extent to which primary health and substance abuse services are to be provided to homeless individuals in a linked and integrated manner;

e. Extent to which the applicant has the ability to involve appropriate community representatives to ensure that the program is culturally appropriate and accommodates the needs of homeless individuals in the service area;

f. The qualifications and experience of the proposed project staff; and

g. The adequacy of the proposed budget.

Grant awards will be made subject to the provisions of the Public Health Service Grants Policy Statement.

Other Award Information

The program is subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs and 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit will contain a listing of States which have chosen to set up a review system and will identify a point of contact in each State for the review. Since 60 days are allowed for this review, applicants are advised to discuss projects with, and provide copies of their applications to, contact points as early as possible. At the latest, an applicant should provide the application to the State for review at the same time it is submitted to the Regional Grants Management Officer.

The OMB Catalog of Federal Domestic Assistance number for this program is 13.151.

Dated: June 23, 1989.

John H. Kelso,

Acting Administrator.

DHHS Regional Offices

Region I (CT, ME, MA, NH, RI, VT)
Grants Management Officer, PHS Office of Grants Management, John F. Kennedy Federal Bldg. #1400, Boston, Massachusetts 02203, (617) 565–1482

Region II (NJ, NY, PR, VI)
Grants Management Officer, PHS Office of Grants Management, 26 Federal Plaza #3337, New York, New York, 10278, (212) 264–4496

Region III (DE, DC, MD, PA, VA, WV)
Grants Management Officer, PHS Office of Grants Management, 3535 Market Street #10–140, Philadelphia, Pennsylvania 19101, (215) 596–6653

Region IV (AL, FL, GA, KY, MS, NC, SC, TN)
Grants Management Officer, PHS Office of Grants Management, 101 Marietta Tower, Suite 1121, Atlanta, Georgia 30323, (404) 331–2597

Region V (IL, IN, MI, MN, OH, WI)
Grants Management Officer, PHS Office of Grants Management, 105 West Adams, 17th Floor, Chicago, Illinois 60603, (312) 353–6700

Region VI (AR, LA, NM, OK, TX)
Grants Management Officer, PHS Office of Grants Management, 1200 Main Tower Bldg. #1800, Dallas, Texas 75202, (214) 767–3885

Region VII (IA, KS, MO, NE)
Grants Management Officer, PHS Office of Grants Management, 601 East 12th Street #501, Kansas City, Missouri 64106, (816) 426–5841

Region VIII (CO, MT, ND, SD, UT, WY)
Grants Management Officer, PHS Office of Grants Management, 1961 Stout St., Fed. Bldg. #492, Denver, Colorado 80294, (303) 844–4461

Region IX (AS, AZ, CA, GU, HI, NV, TT)
Grants Management Officer, PHS Office of Grants Management, 50 United Nations Plaza #331, San Francisco, California 94102, (415) 556–2595

Region X (AK, ID, OR, WA)
Grants Management Officer, PHS Office of Grants Management, 2201 6th Avenue, #710, Seattle, Washington 98121, (206) 442–7997

[FR Doc. 89–18117 Filed 8–2–89; 8:45 am]

BILLING CODE 4160–15–M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of August 1989:

NAME: National Advisory Committee on Rural Health, Health Services Delivery Work Group.

DATE AND TIME: August 24, 1989, 1:00 p.m.

PLACE: Room 14–22 Parklawn Building, Office of Rural Health Policy, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

PURPOSE: The Work Group defines issues and makes recommendations on the priorities and strategies which should be considered regarding the delivery of health care services in rural areas.

AGENDA: This meeting will be conducted through a telephone conference call. The conference call will discuss issues and proposed recommendations for the Report to the Secretary.

Anyone requiring information regarding the subject Committee should contact Mr. Jeffrey Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Service Administration, Room 14–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835.

Persons interested in attending any portion of the meeting should contact Ms. Arlene Granderson, Program Analyst, Office of Rural Health Policy, Health Resources and Service Administration, Room 14–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835.

Agenda Items are subject to change as priorities dictate.

Dated: July 28, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-18073 Filed 8-2-89; 8:45 am]

BILLING CODE 4160-15-M

Office of Human Development Services

Meeting of the Advisory Board on Child Abuse and Neglect

Agency Holding the Meeting: Office of the Assistant Secretary for Human Development Services.

Times and Dates: 9:00 A.M. September 19, 1989 to 12:00 P.M. September 22, 1989.

Place: Ramada Renaissance Hotel-Techworld, 9th and K Streets, NW., Washington, DC.

Status: Advisory Board meetings are open for public observation.

Matters To Be Considered: At this meeting the Advisory Board will: review developments since the first meeting; study in detail the programs of the National Center on Child Abuse and Neglect; hear from leaders of key Congressional Committees; hear from representatives of legal, law enforcement, and judicial groups; begin work on the first set of Board reports; and explore connections between the work of the Board and corollary bodies.

Contact Person for More Information: Byron D. Metrikin-Gold, Executive Director, Advisory Board on Child Abuse and Neglect, Room 2412-B Switzer Building, Washington, DC 20201, (202) 245-0877.

Dated: July 27, 1989.

Byron D. Metrikin-Gold,

Executive Director, Advisory Board on Child Abuse and Neglect.

[FR Doc. 89-18120 Filed 8-2-89; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 54 FR 21129 on May 16, 1989) is amended to reflect the transfer of some functions in the Food and Drug Administration (FDA).

FDA proposes to transfer the functions related to the evaluation of abbreviated new drug applications (ANDAs) from the Office of Drug Standards to the newly established Office of Generic Drugs in the Center for Drug Evaluation and Research. FDA believes greater focus can be placed on the generic drug approval process if these activities are placed in a separate office.

Section HF-B Organization and Functions is amended as follows:

1. Delete subparagraph (n-3) Office of Drug Standards (HFNE) in its entirety and insert a new subparagraph (n-3) Office of Drug Standards (HFNE) reading as follows:

(n-3) *Office of Drug Standards* (HFNE). Oversees the development and implementation of standards for the safety and effectiveness of over-the-counter (OTC) drugs and drug advertising and labeling.

Coordinates the formulation and implementation of OTC drug monographs with other Agency components and assists in final monograph publication.

Monitors, evaluates, and develops policy for prescription drug promotion and labeling.

Initiates necessary actions to maintain industry compliance with prescription drug advertising and labeling regulations.

Participates in Agency sponsored consumer and professional educational programs on drug standards.

2. Insert a new subparagraph (n-8) Office of Generic Drugs (HFNM) reading as follows:

(n-8) *Office of Generic Drugs* (HFNM). Oversees the development and implementation of standards for the safety and effectiveness of generic drugs.

Reviews and evaluates abbreviated new drug applications (ANDAs), Antibiotic Forms 6, and their amendments or supplements and determines approvability based on medical and scientific data findings.

Establishes bioequivalency specifications for drug products, develops guidelines for bioequivalency reviews, and develops guidelines for industry protocols and studies.

Participates in Agency sponsored consumer and professional educational programs on generic drugs.

Dated: July 25, 1989.

Wilford J. Forbush,

Director, Office of Management, PHS.

[FR Doc. 89-18114 Filed 8-2-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-964-4230-15; F-14043-B]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(f), will be issued to Tanacross, Inc. for approximately 11,471 acres. The lands involved are in the vicinity of Tok, Alaska.

Copper River Meridian, Alaska

T. 18 N., R. 13 E.,

That portion of Tract A more particularly described as (protracted):

Sec. 1;
Sec. 2, excluding Native allotment applications F-14423, Parcel C, F-16422, Parcel B and U.S. Survey No. 7484;
Sec. 3;
Sec. 8 to 17, inclusive;
Sec. 21, S½;
Sec. 22, S½;
Sec. 23, N½N½, S½S½;
Sec. 24, N½N½, S½S½;
Sec. 25, excluding U.S. Survey No. 2547
Sec. 26;
Sec. 28;
Sec. 35 and 36, excluding U.S. Survey No. 2547.

Containing approximately 11,471 acres.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government of regional corporation, shall have until September 5, 1989 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Stanley H. Bronczyk,

Chief, Branch of Doyon Adjudication.

[FR Doc. 89-18095 Filed 8-2-89; 8:45 am]

BILLING CODE 4310-JB-M

[CO-016-09-4370-16]

Closure and Restriction to Entry and Use; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure.

SUMMARY: Notice is hereby given that pursuant to the authority of the Code of Federal Regulations, Title 43, Part 8300, subpart 8364, 8364.1 (Closure and Restriction Orders), which provides, in part for the authorized officer to close or restrict use of designated public lands, for the protection of persons, property, and public lands and resources and to reduce the inhumane treatment of wild horses as defined in 43 CFR subpart 4700.0-50, this order will be immediately in effect upon publication in the Federal Register.

To allow wild horses and big game animals the uninhibited use of critical watering sources, the following areas are closed and restricted from camping, construction of hunting blinds, or any other use that would disrupt normal watering periods or prevent animals from using the following water sources:

1. Coffee Pot Spring located in SE,NW, Sec. 22, T.11N., R.98W.

2. Sheepherder Spring located in SE,SE, Sec. 8, T.10N., R.98W.

3. Wild Horse Spring located in NE,SE, Sec. 26, T.10N., R.98W.

4. Two Bar Spring located in SE,SW, Sec. 35, T.9N., R.99W.

The actual areas restricted and closed include one mile distance in all directions from these water sources.

These water sources are all located within the Sand Wash Basin and more specifically within the boundary of the Sand Wash Wild Horse Herd Management Area.

The areas described above shall remain closed to the public uses mentioned, for the period August 15, 1989 through November 15, 1989.

This closure notice shall not preclude travel on public roads within the one-mile restricted area, nor administrative use by Bureau of Land Management personnel.

Any person failing to comply with this closure and restricted use order may be subject to the penalties provided in 8360.0-7, 4760.2g, and 4760.2p of Title 43 Code of Federal Regulations.

Questions may be directed to Bureau of Land Management, Little Snake Resource Area, 1280 Industrial Ave., Craig, CO 81625, Telephone (303) 824-4441.

Glen Secrist,

Area Manager, Little Snake Resource Area.

[FR Doc. 89-18139 Field 8-2-89; 8:45 am]

BILLING CODE 4310-JB-M

Salmon District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Advisory Council.

DATE: The meeting will be Tuesday, September 12, 1989 at 10:00 a.m.

ADDRESS: The meeting will be held at the Salmon District Office, Bureau of Land Management, Conference Room, South Highway 93, Salmon, Idaho 83467.

FOR FURTHER INFORMATION CONTACT: This meeting is held in accordance with Public Law 92-463 and 94-579. This agenda will include the following topics: (1) State land exchange; (2) Sanitary landfills; (3) District recreation overview; (4) Planning system briefing. Current Salmon District issues will also be discussed.

The meeting is open to the public. Interested persons may make oral statements to the Council between 10:30 a.m. and 11:00 a.m. or file written statements for the Council's consideration. Anyone wishing to make oral statement must notify the District Manager at the Salmon District Office by September 8, 1989.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to Roy Jackson, District Manager, Salmon District BLM, P.O. Box 430, Salmon, Idaho 83467.

Roy S. Jackson,

District Manager.

[FR Doc. 89-18140 Filed 8-2-89; 8:45 am]

BILLING CODE 4310-GG-M

[ID-040-4320-10]

Salmon District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Grazing Advisory Board.

DATE: The meeting will be Wednesday, September 20, 1989, at 10:00 a.m.

ADDRESS: The meeting will be held at the Salmon District Office, Bureau of Land Management, Conference Room, South Highway 93, Salmon, Idaho 83467.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92-463. The meeting is open to the public; public comments on agenda items will be accepted from 11:00 to 11:30 a.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467 by September 13, 1987.

The purpose of the meeting is to discuss allotment management plans for the Lemhi Resource Area. Other items on the agenda are status of FY 89 projects, project requests and any other issues dealing with grazing management in the Salmon District.

Summary minutes of the meeting will be kept in the District Office and will be available for public inspection and reproduction during business hours (7:45 a.m. to 4:15 p.m.) within 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Roy S. Jackson, District Manager, Bureau of Land Management, Salmon District Office, P.O. Box 430, Salmon, Idaho 83467, phone (208) 756-5400.

Dated: July 28, 1989.

Robert W. Heidemann,

Associate District Manager.

[FR Doc. 89-18141 Filed 8-2-89; 8:45 am]

BILLING CODE 4310-GG-M

[NM-030-08-4333-10]

Off-Road Vehicle Designations in the Caballo Resource Area in the Las Cruces District, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of off-road vehicle designations decisions.

SUMMARY: Notice is hereby given relating to the use of off-road vehicles (ORVs) on public land within the Caballo Resource Area (formerly White Sands Resource Area), New Mexico in accordance with the authority and requirement of Executive Orders 11644 and 11989, and regulations contained in 43 CFR part 8340. The following

described lands under administration of the Bureau of Land Management (BLM), Las Cruces District are designated as open, limited, or closed to off-road motorized vehicle use. The areas affected by the designations are within Otero and Sierra counties, New Mexico.

Open Designation

Areas which are designated open comprise approximately 2,11,082 acres. Open designation was determined to be appropriate for this public land since ORV use is an important recreational activity and is essential for the conduct of other authorized resource uses.

Limited Designation

Otero County, New Mexico

—Limit motorized vehicle use on 38,726 acres in the Cornudas Mountains to existing roads and trails.
—Limit motorized vehicle use on 7,162 acres in the area of Moccasin and Otto Draws southwest of Pinon to existing roads and trails.
—Limit motorized vehicle use on 10,742 acres in the area of unnamed watersheds east to Tularosa and south of the Tularosa River to existing roads and trails.
—Limit motorized vehicle use on 21,446 acres in the Three Rivers watershed north of Tularosa to existing roads and trails.
—Limit motorized vehicle use on 11,015 acres in the area east of Crow Flats to existing roads and trails.
—Limit motorized vehicle use on 960 acres at the Three Rivers Petroglyph Site and Picnic Area to existing roads and trails.
—Limit motorized vehicle use on 300 acres in the Lone Butte area to existing roads and trails.
—Limit motorized vehicle use on 3,640 acres of the Sacramento Escarpment to existing roads and trails.
—Limit motorized vehicle use on 31,606 in the Brokeoff Mountains to existing roads and trails.

Sierra County, New Mexico

—Limit motorized vehicle use on 6,160 acres in the Cuchillo Mountains to existing roads and trails.
—Limit motorized vehicle use along 280 acres of Percha Creek to existing roads and trails.

Closed Designations

Otero Country, New Mexico

—Designate the 885-acre Rattlesnake Hill Archeological District closed to off-road travel by vehicles.
—Designate the 790-acre Alamo Mountain Petroglyphs Area closed to off-road travel by vehicles.
—Designate 705 acres of the Jarilla Mountains closed to off-road travel by vehicles.

EFFECTIVE DATE: August 3, 1989.

FOR FURTHER INFORMATION CONTACT: P. Robert Alexander, Area Manager, Caballo Resource Area, 1800 Marquess, Las Cruces, New Mexico 88005 or at (505) 525-8228 (FTS 571-8312).

SUPPLEMENTARY INFORMATION: These designations are a result of resource management decisions made in the 1986 White Sands Resource Management Plan. Comments received from public meetings, workshops, and numerous written responses influenced the designation decisions. These designations are published as final. Under 43 CFR 4.21, an appeal may be filed within 30 days with the Interior Board of Land Appeals.

These areas are identified on maps and will be identified with signs at their locations within the Caballo Resource Area. These designations become effective upon publication in this **Federal Register** and will remain in effect until rescinded or modified by the authorized officer. An environmental assessment describing the impacts of these designations is available for inspection at the Caballo Resource Area Office.

Dated: July 28, 1989.

H. James Fox,

District Manager.

[FR Doc. 89-18143 Filed 8-2-89; 8:45 am]

BILLING CODE 4310-FB-M

[CO-932-09-4212-24; C-38487, C-44263, C-36589, C-46594]

Conveyance of Lands; Reconveyance of Lands; Opening of Reconveyed Lands; Eagle, Garfield, Grand and Jackson Counties, Colorado; Correction

July 27, 1989.

SUMMARY: The subject notice published on Friday, July 14, 1989, in **Federal Register** Volume 54, No. 134, pages 29786, 29787, is hereby corrected as follows:

On page 29787, column 1, 2a. under Sixth Principal Meridian, T. 7 S., R. 94 W., sec. 15, reading "SW¼SW¼" is hereby corrected to read "SW¼NW¼.".

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 89-18144 Filed 8-2-89; 8:45 am]

BILLING CODE 4310-JB-M

[ID-020-09-4212-12; I-27064]

Amendment to the Malad Hills Management Framework Plan; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent/notice of realty action.

SUMMARY: Notice is hereby given in accordance with 43 CFR 1610.2 (c) that the Burley District is proposing to amend the Malad Hills Management Framework Plan to allow the exchange of the following public and State of Idaho lands:

State of Idaho Lands

	Acres
T.16S., R.36E., Boise Meridian	
Section 30: NE¼SW¼	
Sub-Total	40.00
T.16S., R.35E., Boise Meridian	
Section 3: Lot 2 (33.75) NW¼SE¼	83.75
Section 8: SW¼SW¼	40.00
Section 11: NE¼SE¼	40.00
Section 12: S½NW¼, NW¼SW¼	120.00
Section 16: All	640.00
Section 17: NW¼NW¼	40.00
Sub-Total	963.75
T.16S., R.33E., Boise Meridian	
Section 16: All	640.00
T.15S., R.34E., Boise Meridian	
Section 36: All	640.00
T.15S., R.35E., Boise Meridian	
Section 16: N½, N½S½, SW¼SW¼	520.00
Section 33: W½NE¼, SE¼NW¼	120.00
Section 34: SW¼SE¼	40.00
Section 35: SW¼NW¼, NE¼SE¼	80.00
Section 36: All	640.00
Sub-Total	1400.00
T.14S., R.33E., Boise Meridian	
Section 36: All land N. of Highway #37	230.84
T.14S., R.34E., Boise Meridian	
Section 16: All	640.00
Section 36: All	640.00
Sub-Total	1280.00
T.13S., R.33E., Boise Meridian	
Section 36: All	640.00
T.13S., R.34E., Boise Meridian	
Section 16: All	640.00
Section 36: Lot 1 (37.03), Lot 2 (37.12), Lot 3 (37.21), Lot 4 (37.30), W½NE¼, W½, W½SE¼	628.66
Sub-Total	1268.66
T.10S., R.32E., Boise Meridian	
Section 20: S½S½	160.00
Section 21: S½SW¼, SE¼, SE¼NE¼	280.00
Sub-Total	440.00
Total acres for Idaho State lands	7543.25

Public Lands

	Acres
T. 9S., R.31E., Boise Meridian	
Section 23: NE¼NE¼, S½S½	200.00
Section 24: All	640.00
Section 25 NE¼, S½	480.00
Section 26: NE¼SW¼, SE¼	200.00
Section 35: N½NE¼, NE¼SE¼	120.00
Sub-Total	1640.00

	Acres
T. 9S., R.32E., Boise Meridian	
Section 19: Lot 1 (24.08), Lot 2 (24.26), Lot 3 (24.42), Lot 4 (24.60), E½, E½W½	577.36
Section 20: Lot 5 (41.18), Lot 6 (41.26), Lot 7 (41.64), Lot 8 (42.03), W½	486.11
Section 29: Lot 5 (42.38), Lot 6 (42.71), Lot 7 (43.03), Lot 8 (43.36), W½	491.46
Section 30: Lot 1 (24.74), Lot 2 (24.85), Lot 3 (24.97), Lot 4 (25.08), E½, E½W½	579.84
Section 31: Ne¼, E½NW¼	240.00
Section 32: Lot 5 (43.62), Lot 6 (43.47), Lot 7 (43.11), N½NW¼, SE¼NW¼, NE¼SW¼	290.20
Sub-Total	2664.79
T.10S., R.31E., Boise Meridian	
Section 1: Lot 1 (40.23), Lot 2 (40.47), Lot 3 (40.70), S½NE¼, SE¼	351.40
Section 12: NE¼, NW¼NE¼	120.00
Sub-Total	481.40
T.10S., R.32E., Boise Meridian	
Section 3: Lot 3 (19.59), Lot 4 (19.90), S½NW¼, SW¼	279.49
Section 10: W½	320.00
Section 15: NW¼, N½SW¼, SW¼SW¼	280.00
Section 5: SW¼SE¼, SE¼SW¼	80.00
Section 8: W½NE¼, E½NW¼, NE¼SW¼, NW¼SE¼	240.00
Section 16: Lot 3 (37.35)	37.35
Section 19: NE¼, E½NW¼, N½SE¼, NE¼SW¼	360.00
Sub-Total	1596.84
Total acres for public lands	6383.03

The scattered parcels of State land are located throughout the Deep Creek, Pleasantview, and Samaria mountains within Oneida and Power Counties. The public lands are located six miles east of Rockland, Idaho.

A Land Use Plan Amendment Document and Land Report will be prepared for the subject lands. The documents will be reviewed by the Bureau of Land Management Interdisciplinary Resource Specialists. Public participation will involve the publication of this notice in the Federal Register and local newspapers. The adjoining landowners, grazing permittees, County Commissioners, the Burley District Grazing Advisory Board members and Advisory Council members, and the Idaho Fish and Game Department will be asked for comments. As public controversy is anticipated to be low for proposed action, no public meetings hearing, or conferences are planned.

In accordance with 43 CFR 2201.1(b), publication of this Notice in the Federal Register will segregate the above described public lands from laws, including locations under the mining laws, except as to application under mineral leasing laws. The segregative effect of this Notice of Realty Action shall terminate upon issuance of patent or other document of conveyance, upon publication in the **Federal Register** of a termination of the segregation, or two years from the date of the publication, whichever occurs first.

The main issue that is anticipated for the exchange is whether it is in the public interest to exchange 6,383.03 acres of public land, for 7,543.25 acres of State land having value for livestock grazing, wildlife habitat, timber, and public access values.

The existing land use plan and maps are available for review at the Deep Creek Resource Area Office in Malad, Idaho.

The public may obtain additional information about this exchange proposal by contacting the Bureau of Land Management, Attn: John R. Christensen, Deep Creek Resource Area Office in Malad, Idaho, 83252, (208) 766-4766.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments on the segregative effect of this action to the District Manager, Bureau of Land Management, Route 3, Box 1, Burley, ID 83318. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action.

Dated: July 25, 1989.

Gerald L. Quinn,

District Manager.

[FR Doc. 89-18142 Filed 8-2-89; 8:45 am]

BILLING CODE 4310-GG-M

[NM-010-09-4212-13/GP9-0116]

Albuquerque District, NM; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action on proposed land exchange NM 68546.

SUMMARY: This notice is to advice that the following described public lands have been determined to be suitable for disposal through exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

New Mexico Principal Meridian

T. 17 N., R. 9 E.,
Sec. 17: Lot 5;
Sec. 20: Lots 1 thru 8.

The area described amounts to 196.58 acres.

In exchange for these lands, the United States will acquire the following described lands from the Rio Grande Land Partnership of Taos, New Mexico:

New Mexico Principal Meridian

	Acres
T. 28 N., R. 9 E., NMPM:	
Sec. 3: All	655.48
Sec. 11: NE4, E2NW4	240
T. 28 N., R. 10 E., NMPM:	
Sec. 5: All	643.88
Sec. 6: Lots 1, 2, 3	122.01
T. 29 N., R. 9 E., NMPM:	
Sec. 23: W2NW4, W2SW4, NE4SW4, E2SE4, NW4SE4	320
Sec. 26: W2NW4	80
Sec. 27: S2NE4	80
Sec. 34: NE4, S2	480.5
T. 29 N., R. 10 E., NMPM:	
Sec. 31: NE4NE4, S2NE4, SE4NW4, E2SW4, SE4, Lots 2, 3, 4	520.11
T. 30 N., R. 10 E., NMPM:	
Sec. 9: E2SW4, SW4SW4, SE4	280
Sec. 10: N2, W2SW4	400
The areas described amount to 3,821.98 acres.	

The public land identified for disposal is located about 4 miles northwest of the City of Santa Fe, New Mexico and has high potential for residential development. Due to small size and adjacent development, the public land receives little public use. Land is currently leased for grazing and permittee will be notified that grazing permit will be cancelled within two (2) years and will be reasonably compensated for range improvements. The private lands located about 20 miles west of Taos, New Mexico have high resource value in terms of wildlife habitat and public recreation including hunting and hiking.

This exchange proposal is consistent with recommendation L-7.3 in the Rio Grande Management Framework Plan (MFP) and also completed Resource Management Plan (RMP) for the Taos Resource Area. Exchange will not impact any local or Federal planning.

The value of the lands to be exchanged are approximately equal. Upon completion of the final appraisal, differences in value will be compensated for by acreage adjustments, the payment of money or by other arrangements that would be in the public interest. Lands to be transferred from the United States will be subject to the following reservations:

1. All mineral deposits shall be reserved to the United States along with the rights to prospect for, mine and remove such deposits under applicable law.

2. The right to construct ditches and canals across said lands under authority of the Act of August 30, 1890 (26 Stat. 391; U.S.C. 945).

Publication of this notice segregates the public land from the operation of all

the public land laws, including the mining laws but not the mineral leasing laws. This segregation shall terminate upon issuance of patent or 2 years from the date of this publication, whichever occurs first.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including environmental assessment and land reports, is available for review at the Taos Resource Area Office, 224 Montevideo Plaza, Cruz Alta Road, Taos, New Mexico 87571, phone (505) 758–8851.

For a period of 45 days from the date of this publication, interested parties may submit comments to the Albuquerque District Manager, 435 Montano NE., Albuquerque, New Mexico 87107.

Dated: July 25, 1989.

Robert Dale,

District Manager.

[FR Doc. 89–18145 Filed 8–2–89; 8:45 am]

BILLING CODE 4310–FB–M

[ES–940–09–4520–13; ES–041306, Group 9]

Filing of Plat of Dependent Resurvey and Resurvey of Camp Lots; Maine

July 27, 1989.

1. The plat, in two sheets, of the dependent resurvey and survey of the boundaries of the land held in trust for the Pass Maquoddy Tribe in Township 1, Range 8, West of Bingham's Kennebec Purchase (W.B.K.P.), Franklin County, Maine, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on September 11, 1989.

2. The dependent resurvey and survey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey and survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., September 11, 1989.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Joseph W. Beaudin

Acting Deputy State Director for Cadastral Survey.

[FR Doc. 89–18146 Filed 8–2–89; 8:45 am]

BILLING CODE 4310–GJ–M

[NM 940–09–4730–12]

Filing of Plat of Survey; New Mexico

July 26, 1989.

The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on September 20, 1989.

A survey representing the dependent resurvey of a portion of the east boundary of Small Holding Claim 2683, Tr. 3, and certain lot boundaries in section 32, and the survey of certain lot boundaries in section 32, Township 4 South, Range 1 East, NMPM, NM.

A survey representing the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, the subdivision of section 7, certain lot boundaries in sections 4 and 5, the adjusted record meanders of portions of the Rio Grande in sections 4 and 5, the corrective dependent resurvey of certain small holding claim boundaries, and the subdivision of a portion of section 5, the survey of the new meanders in section 4, certain lot boundaries in sections 4, 5, and 7, and a partition of accretion line in section 4, Township 5 South, Range 1 East, NMPM, NM.

These surveys were requested by the District Manager, Las Cruces District, Las Cruces, New Mexico.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

John P. Bennett,

Chief, Branch of Cadastral Survey.

[FR Doc. 89–18147 Filed 8–2–89; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Receipt of Application for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531 *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Part 17 and 18).

Applicant

Name: Envirosphere Company
File no.: PRT 740037
Address: 10900 NE 8th Street, Bellevue, Washington 98004
Type of Permit: Scientific Research
Name of Animals: Walrus (*Odobenus rosmarus*)—250,000
Summary of Activity to be Authorized: The applicant proposes to conduct aerial surveys and vessel observations of walruses in the Chukchi Sea to develop information for determining walrus abundance, distribution, and behavior relative to offshore oil/gas drilling and associated activities.
Source of Marine Mammals for Display: Chukchi Sea, east of the U.S.-Russia convention line of 1867 and north of 68 N latitude.
Period of Activity: June 1989 through November 1989 and June 1990 through November 1990.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), P.O. Box 3507, Arlington, VA 22203–3507, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) at 4401 N. Fairfax Drive, Room 430, Arlington, VA.

Dated: July 31, 1989.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 89–18119 Filed 8–2–89; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–293X]

Detroit & Mackinac Railway Co.; Abandonment Exemption in Cheboygan and Presque Isle Counties, MI

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 55.25-mile line of railroad in Cheboygan and Presque Isle Counties, MI: (1) In the Huron Subdivision, between milepost 151.5 at Hawks and milepost 192.0 at Cheboygan; and (2) in the Mackinaw Subdivision, between milepost 168.0 at Cheboygan and milepost 182.75 at Mackinaw City.

Applicant has certifed that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 2, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 14, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by August 23, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Kevin M. Sheys, Weiner, McCaffrey, Brodsky & Kaplan, 1350 New York Avenue NW., Suite 800, Washington, DC 20005.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 8, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 28, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–18005 Filed 8–2–89; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Joint Newspaper Operating Arrangement

Notice is hereby given that the Attorney General, by Order of July 24, 1989, has extended the period for public comment and the filing of the Antitrust Division's report concerning the application for a Joint Operating Arrangement between the *Manteca News* and the *Manteca Bulletin* filed pursuant to the Newspaper Preservation Act, 15 U.S.C. 1801 *et seq.*

The Order provides that the Antitrust Division's report shall be filed within 14 days after the Attorney General rules on the pending requests of the *Manteca News* to withhold certain materials from public disclosure. The times allowed for the filing of comments and request for a hearing are extended to the same timeframe as the filing of the Antitrust Division's report.

Comments should be filed by mailing or delivering five copies to the Assistant Attorney General, Justice Management Division, Department of Justice, Washington, DC 20530.

Dated: July 27, 1989.

Harry H. Flickinger,

Assistant Attorney General for Administration.

[FR Doc. 89–18149 Filed 8–2–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 26, 1989, a proposed Consent Decree in *United States* v. *Jay Printing Company*, Civil No. 88–0470–P, was lodged with the United States District Court for the District of Rhode Island. The proposed Consent Decree concerns the prevention of the discharge of volatile organic compounds ("VOCs") in violation of the Clean Air Act and the limits set forth in Regulation 19 of the Rhode Island State Implementation Plan. The proposed Consent Decree requires Jay Printing to maintain compliance with the Act and the applicable emission limits for VOCs; to monitor and report on their compliance and to pay a civil penalty of $82,342.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to Jay Printing, D.J. Ref. 90–5–2–1–1151.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Rhode Island, Westminster Square Building, 10th Floor, 10 Dorrance Street, Providence, Rhode Island and at the Region 1 Office of the Environmental Protection Agency, J.F.K. Federal Building, Boston, Massachusetts 02203. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.90 (10 cents per page reproduction

cost) made payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-18148 Filed 8-2-89; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030-11986; License No. 12-18941-01; EA 88-313]

Professional Service Industries, Inc., Lombard, IL; Order Imposing Civil Monetary Penalty

I

Professional Service Industries, Lombard, Illinois (licensee) is the holder of Materials License No. 13-18941-01 issued by the Nuclear Regulatory Commission on September 30, 1976 and renewed in its entirety on April 25, 1988. The licensee authorizes the licensee to possess and use licensed material for measuring the moisture and/or density of construction materials and for sample analysis.

II

A routine inspection of the licensee's activities on November 30 and December 7-8, 1988 disclosed that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated May 23, 1989. The Notice stated the nature of the violation, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violation. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty in two letters dated June 20, 1989. In its response, the licensee admitted the violation and requested 90 percent mitigation of the civil monetary penalty.

III

After consideration of the licensee's response and the statements of fact, explanation, and request for mitigation contained therein, the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered* that:

The licensee pay a civil penalty in the amount of Twenty Thousand Dollars ($20,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. A copy of the hearing request shall also be sent to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether, on the basis of the violation, this Order should be sustained.

Dated at Rockville, Maryland, this 24th day of July 1989.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix—Evaluations and Conclusions

On May 23, 1989, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for the violation identified during an NRC inspection. Professional Service Industries, Inc. (PSI) responded to the Notice on June 20, 1989. The licensee admitted the violation, described corrective steps taken to ensure compliance now and in the future, and requested that the civil penalty be mitigated from $20,000 to $2,000. The following includes a restatement of the violation, a summary of the licensee's response and the NRC staff's evaluation and conclusion regarding the licensee's request.

I. Restatement of Violation

10 CFR 20.207(b) requires that licensed materials in an unrestricted area and not in storage be tended under the constant surveillance and immediate control of the licensee.

Contrary to the above, on November 16, 1988, an unsecured Campbell-Pacific moisture-density gauge containing a nominal 10 millicurie cesium-137 sealed source and a 50 millicurie americium-241 sealed source was left by the licensee in the back of an open bed pickup truck in an unrestricted area and the licensed material was not in storage and was not under the constant surveillance and immediate control of the licensee.

This is a repeated violation.

This is a Severity Level E violation (Supplement IV). Civil Penalty—$20,000

II. Summary of Licensee's Request for Mitigation

The licensee argues that the penalty appears to be based upon PSI being categorized with industrial radiographers, nuclear pharmacies and other industrial users licensed to use material with a large potential for exposure and/or contamination hazard to personnel and the public, a category for which the base civil penalty is ten thousand dollars ($10,000). PSI is a licensed user of moisture density gauges, and the licensee further argues that it should be categorized along with users of these and similar devices, which are included in a civil penalty category for which the base civil penalty is one thousand dollars ($1,000).

III. NRC Evaluation of Licensee's Request for Mitigation

In developing this enforcement action, the NRC staff considered the general guidance in Paragraph 5, Section V.B of the Enforcement Policy which states, in part, that ". . . operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil penalties. . . . The deterrent effect of civil penalties is best served when the amount of such penalties takes into account a licensee's 'ability to pay'. . . . NRC will consider as necessary an increase or decrease on a case-by-case basis."

In a number of cases, civil penalties have been decreased based on the size of the program and "ability to pay." Conversely, there have been several cases involving materials licensees where the civil penalty has been increased, based, in part, on increased size of a program and "ability to pay" where the Enforcement Policy would not have provided a sufficient penalty absent such consideration.

Contrary to PSI's impression, the staff has not categorized PSI among "industrial users of materials" licensees (category f). Rather, as stated in the staff's May 23, 1989 letter, the base civil penalty for PSI's Severity Level E violation was $800. This amount is the amount that would be assessed against "Other material licensees" (category j). However, the staff in consultation with the Commission concluded that, based on the size of PSI, its activities, and ability to pay, a base penalty significantly larger than the $800 provided for in Category j of Table 1a of the Policy was warranted. Based on the factors stated above and Section V.B of the Enforcement Policy, a base civil penalty of $8,000 was determined to be appropriate in this case. After consideration of the adjustment factors in the Enforcement Policy, the staff determined that a civil penalty of $20,000 should be proposed. The staff believes that this penalty will provide the appropriate motivation by sending a clear message of its regulatory concern to not only PSI's corporate office but also PSI's individual branches.

IV. NRC Conclusion

The NRC staff has concluded that the licensee's request for 90 percent mitigation of the proposed civil penalty is not supported by the licensee's arguments in its June 20, 1989 responses. Consequently, the proposed civil penalty in the amount of $20,000 should be imposed.

[FR Doc. 89-18157 Filed 8-2-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-142]

The University of California, Los Angeles (UCLA Research Reactor); Order Authorizing Dismantling of Facility and Disposition of Component Parts

By application dated June 10, 1988, as supplemented on June 21, 1988, December 7, 1988, and March 31, 1989, the University of California at Los Angeles (UCLA) requested authorization to complete dismantling of the UCLA Argonaut Reactor Facility (Phase II), located on its campus in Los Angeles, California and to dispose of the component parts, in accordance with the plan submitted as part of the application. Based upon a prior application to dismantle and dispose of the component parts, a "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts of Terminating Facility License" was published in the **Federal Register** on September 24, 1984 at 49 FR 37484. Following hearings and stipulations by the parties involved, an Order was issued on November 8, 1985, by the Atomic Safety and Licensing Board that terminated UCLA License No. R-71 and authorized UCLA to possess but not operate the facility.

By application dated October 29, 1985, as supplemented, UCLA submitted a Phase I decommissioning plan. An Order authorizing Phase I dismantling of the facility and disposition of component parts was issued by the Nuclear Regulatory Commission (the Commission) on July 14, 1986. Phase I dismantlement and disposition of component parts has been completed except for the disposition of 5000 pounds of activated lead. This issue must be resolved for UCLA to be in compliance with the Phase I Order.

The Commission has reviewed the June 10, 1988 Phase II application in accordance with the provisions of the Commission's rules and regulations and has found that the dismantling and disposal of component parts in accordance with UCLA's Phase II dismantling plan will be in accordance with the regulations in 10 CFR Chapter I, and will not be inimical to the common defense and security or to the health and safety of the public. The basis of these findings is set forth in the concurrently issued Safety Evaluation by the Office of Nuclear Reactor Regulation.

The Commission has prepared an Environmental Assessment for the proposed action. Based on that Assessment, the Commission has determined that the proposed action will not result in any significant environmental impact and that an environmental impact statement need not be prepared.

Accordingly, UCLA is hereby ordered to dismantle the Argonaut Reactor Facility and dispose of the component parts in accordance with Phase II of its dismantling plan and the Commission's rules and regulations.

After completion of the dismantling and disposal, the licensee will submit a report on the radiation survey it has performed to confirm that radiation and surface contamination levels in the facility area satisfy the values specified in the dismantling plan and in the Commission's guidance.

Following an inspection by representatives of the Commission to verify compliance with the Phase I and Phase II Orders, consideration will be given to releasing the facility for unrestricted use.

For further details with respect to this action, see (1) the licensee's application for Phase II authorization to dismantle the facility and dispose of component parts, dated June 10, 1988, as supplemented, (2) the Commission's Safety Evaluation; and (3) the Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland this 28th day of July 1989.

For The Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-18158 Filed 8-2-89; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Statement Regarding Contributions and Support
(2) *Form(s) submitted:* G-134
(3) *OMB Number:* 3220-0099
(4) *Expiration date of current OMB clearance:* 9-30-89
(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
(6) *Frequency of response:* On occasion
(7) *Respondents:* Individuals or households
(8) *Estimated annual number of respondents:* 400
(9) *Total annual responses:* 400
(10) *Average time per response:* .292 hours
(11) *Total annual reporting hours:* 117
(12) *Collection description:* Dependency on the employee for one-half support at the time of the employee's death can be a condition affecting eligibility for a survivor annuity provided for under Section 2 of the Railroad Retirement Act.

Additional Information or Comments: Copies of the proposed forms and supporting documents can be obtained from Ronald Ritter, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Ronald Ritter, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202-395-7316), Office of Management and

Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Ronald Ritter,

Acting Director of Information Resources Management.

[FR Doc. 89-18152 Filed 8-2-89; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Yellowstone County, MT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Yellowstone County, Montana.

FOR FURTHER INFORMATION CONTACT: Dale Paulson, Environmental and Project Development Engineer, Federal Highway Administration, 301 South Park Street, Drawer 10056, Helena, Montana 59626-0056, Telephone: (406) 449-5310; or Mr. Steve Kologi, Chief, Preconstruction Section, Montana Department of Highways, 2701 Prospect Street, Helena, Montana 59620, Telephone (406) 444-6242.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Montana Department of Highways (MDOH) will prepare an Environmental Impact Statement (EIS) on a proposal to construct a new interchange providing access to Interstate 90. The proposed interchange would be located between Billings and Laurel, Montana in Yellowstone County. The proposed interchange is considered necessary to provide for existing and projected traffic demand for the expanding City of Billings.

Alternatives under consideration include: (1) Taking no action; (2) constructing an interchange at the Shiloh Road location; (3) constructing an interchange at the Duck Creek Road location; and (4) constructing an interchange at any feasible alternative between Shiloh Road and Duck Creek Road.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of formal scoping meetings will be held near Billings beginning between October and December, 1989. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified; comments and suggestions are invited from all interested parties. Comments and/or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on July 26, 1989.

D.C. Lewis,

Assistant Division Administrator, Montana Division, Helena.

[FR Doc. 89-18153 Filed 8-2-89; 8:45 am]

BILLING CODE 4910-22-M

Sunshine Act Meetings

Federal Register

Vol. 54, No. 148

Thursday, August 3, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER 89-17724

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, August 3, 1989, 10:00 a.m., Meeting Open to the Public.

The following items have been added to the agenda for the meeting of August 3, 1989:

Draft Advisory Opinion 1989-11:
Messrs. Mac Asbill, Jr. and Wright H. Andrews, Jr. one behalf of Satherland, Asbill & Brennan.

Explanation and Justification of the Affiliation and Earmarking Regulations (11 CFR 110.3-110.6).

DATE AND TIME: Tuesday, August 8, 1989, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, August 10, 19089, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory opinion 1989-13:
Mr. Roger M. Witten and Ms. Kristina L. Ament on behalf of International Business Machines Corporation.
Draft Advisory Opinion 1989-15:
Thomas Tew on behalf of Ileana Ros-Lehtinen
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 89-18273 Filed 8-1-89; 1:19 pm]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Tuesday, August 8, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank holding company applications scheduled for the meeting.

Dated: July 31, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-18204 Filed 7-31-89; 4:46 pm]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 54, No. 148
Thursday, August 3, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pitman-Moore, Inc.; Withdrawal of Approval of New Animal Drug Applications

Correction

In notice document 89-16851 beginning on page 30268 in the issue of Wednesday, July 19, 1989, make the following correction:

On page 30269, in the first column, in the last paragraph, in the fifth line, after "548.112b", insert "(section reserved)."

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-7551]

Proposed Amendments to Prohibited Transaction Exemption (PTE) 78-19 Involving Insurance Company Pooled Separate Accounts

Correction

In notice document 89-17450 beginning on page 31092 in the issue of Wednesday, July 26, 1989, make the following correction:

The portion of text beginning on page 31095 with **Written Comments and Hearing Request** and ending on page 31096 with the last line of designated paragraph (i), was printed in incorrect order and should read as set forth below.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a public hearing on the proposed amendments to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed amendments. Comments received will be available for public inspection with the referenced application at the above address.

Proposed Amendments

Under section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with ERISA Procedure 75–1, the Department proposes to amend PTE 78–19 as set forth below.

1. Section I(a) of the exemption is amended to read:

General exemption. Any transaction between a party in interest with respect to a plan and an insurance company pooled separate account in which the plan has an interest, or any acquisition or holding by the pooled separate account of employer securities or employer real property, if the party in interest is not the insurance company which holds the plan assets in its pooled separate account, any other separate account of the insurance company, or any affiliate of the insurance company, and if, at the time of the transaction, acquisition or holding, either

(1) The assets of the plan (together with the assets of any other plans maintained by the same employer or employee organization) in the pooled separate account do not exceed—

(i) 10 percent of the total of all assets in the pooled separate account, if the transaction occurs prior to February 20, 1979;

(ii) 5 percent of the total of all assets in the pooled separate account, if the transaction occurs on or after February 20, 1979, and on or before June 30, 1988; or

(iii) 10 percent of the total of all assets in the pooled separate account, if the transaction occurs on or after July 1, 1988, or

(2) On or after July 1, 1988, the pooled separate account is a specialized account that has a policy of investing, and invests, substantially all of its assets in short-term obligations (having a stated maturity date of one year or less or having a maturity date of one year or less from the date of acquisition by such specialized account), including but not necessarily limited to—

(i) Corporate or governmental obligations or related repurchase agreements;

(ii) Certificates of deposit;

(iii) Bankers acceptances; or

(iv) Variable amount notes of borrowers of prime credit.

2. Section II(a)(3) of the exemption is amended to read:

The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the pooled separate account with the same party in interest, or any affiliate thereof) does not exceed the greater of $25,000 or .5 percent of the fair market value of the assets of the pooled separate account on the most recent valuation date of the account prior to the transaction.

BILLING CODE 4510-29-M

BILLING CODE 1505-01-D

federal register

Thursday
August 3, 1989

Part II

Department of Justice

Bureau of Prisons

28 CFR Part 544
Adult Basic Education Program; Final Rule

28 CFR Part 523
Statutory and Extra Good Time; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates; Adult Basic Education (ABE) Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its final rule on the Adult Basic Education (ABE) program. The amendment requires a prior, verified high school diploma or GED certificate and academic performance at the 8.0 grade level for promotion to grade one positions in either a Federal Prison Industries, Inc. or performance pay assignment, or assignment to an incentive pay (piece rate) position. This amendment is made in recognition of the higher standards of literacy required in the workplace.

EFFECTIVE DATE: September 1, 1989.

ADDRESSES: Office of General Counsel, Bureau of Prisons, Room 760, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 724–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its final rule on the Adult Basic Education (ABE) program. A proposed amendment was published in the Federal Register March 17, 1989 (at 54 FR 11331) to require that an inmate possess either a prior, verified high school diploma or General Equivalency Degree (GED) and be functioning at the 8.0 academic grade level before that inmate could be assigned to a performance pay or Federal Prison Industries, Inc. (UNICOR) work position at the grade one level, or be assigned to an incentive pay (piece rate) position. The existing rule required that the inmate be able to demonstrate achievement of at least an 8.0 academic grade level before being assigned to either grade one, two, or three pay positions. Public comment was invited on this proposal. No public comment was received.

In this document, the Bureau of Prisons is finalizing its March 17, 1989 amendment, with one less restrictive change. For this reason, the Bureau finds good cause under 5 U.S.C. 553(d) to finalize this amendment without a thirty day delay in effective date. The Bureau is also making several other changes to the existing ABE rule. These changes are either less restrictive or a rewording or reorganization of the existing rules. For this reason, the Bureau finds good cause under 5 U.S.C. 533(d) to make these changes without notice of proposed rulemaking or opportunity for public comment, or delay in effective date. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered, but will receive no response in the Federal Register.

Revisions to the final rule include the following. In § 544.70 the attendance requirement is clarified to be the lesser of either 90 calendar days or until an 8.0 academic grade level is achieved. The existing § 544.71 is reorganized into two sections, and the following sections are renumbered accordingly. The reorganization of § 544.71 clarifies that the exemptions listed in existing § 544.71(a) (1) through (3) are limited to the educational area, while the exemptions listed in paragraphs (a) (4) through (6) apply to both the educational and pay compensation area. Section 544.71 is retitled "Applicability: Who must attend Adult Basic Education." The introductory text of existing § 544.71 is reworded, however, the intent is unchanged. In § 544.71, paragraphs (a)(4) and (a)(5) are removed because the number of inmates described in those paragraphs is now too few to need general mention in the rule. Nevertheless, it is the Bureau's policy to continue the exemption provided by those paragraphs for those inmates. Section 544.71(a)(6) is reworded and is included in new paragraph (a)(4) and § 544.72. Section 544.71(b) now requires that reasons for not requiring an inmate to attend the ABE program be placed both in the inmate central and education files.

Section 544.72 is now titled "Applicability: Who may be promoted." Section 544.72(a) introductory text specifies that inmates must achieve an 8.0 academic grade level to be promoted to grade 3 and 2 in a UNICOR or Inmate Performance Pay Assignment. This carries forward the intend of former § 544.71(a)(6). This change is consistent with the proposed ABE amendment published in the Federal Register March 17, 1989. Section 544.72(a) (1) and (2) identify exemptions to this rule. New § 544.72(a)(2) allows the Warden to make exemptions to the 8.0 academic grade requirements for good cause (e.g., a learning disability).

Section 544.72(b) introductory text restates language contained in the proposed amendment published in the Federal Register March 17, 1989, and requires an 8.0 academic grade level and a GED or high school diploma in order to be promoted to a grade one position. Section 544.72(b) (1) and (2) provide exceptions to this policy. For the convenience of the reader, paragraph (b)(1) includes the implementation date of this amendment. Section 544.72(b)(2) allows the Warden to make exemptions for good cause. Section 544.72(c) requires exemptions to be documented in the inmate's central file and education file. Existing § 544.72 becomes new § 544.73. In § 544.73(b) the requirement for the ABE coordinator to hold meetings with inmates involved in the ABE program is modified to allow a designated ABE teacher to hold such meetings. The final rule clarifies that the formal interview shall occur at least once every 30 days during the mandatory 90 day period. Documentation of these interviews is to be placed in the ABE Program Record. Section 544.73(c) is reworded, deleting the word "authorized" before "absences." The intent of this section, however, is unchanged. Proposed changes to existing § 544.73 were published in the Federal Register on March 17, 1989, and are now finalized in new § 544.74. This section is amended by inserting the word "non-graded" before "incentive pay" to identify clearly the scope of the amendment. Existing §§ 544.74 and 544.75 become new final §§ 544.75 and 544.76.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 544

Education, Libraries, Prisoners, Recreation.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), 28 CFR, Chapter V, Subchapter C is amended as set forth below.

Dated: July 28, 1989.

J. Michael Quinlan,

Director, Bureau of Prisons.

In 28 CFR Part 544, Subpart H is revised to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

Subpart H—Adult Basic Education (ABE) Program

Sec.

544.70 Purpose and scope.
544.71 Applicability: Who must attend Adult Basic Education.
544.72 Applicability: Who may be promoted.
544.73 Procedures.
544.74 Federal Prison Industries (UNICOR) and Inmate Performance Pay (IPP) assignments.
544.75 Incentives.
544.76 Disciplinary action.

Subpart H—Adult Basic Education (ABE) Program

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4081, 4082 (Repealed as to conduct occurring on or after November 1, 1987), 5006–5024 (repealed October 12, 1984, as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 544.70 Purpose and scope.

An inmate confined in a federal institution who cannot read, write, or do mathematics at the 8.0 academic grade level is required to attend an Adult Basic Education (ABE) program for a minimum of 90 calendar days or until an 8.0 academic grade level is achieved. The Warden shall establish incentives to encourage an inmate to complete the ABE program.

§ 544.71 Applicability: Who must attend Adult Basic Education.

(a) All inmates in federal institutions must attend the ABE program except:

(1) Pre-trial inmates;

(2) Inmates committed for purpose of study and observation under the provisions of 18 U.S.C. 4205(c) or, effective November 1, 1987, 18 U.S.C. 3552(b);

(3) Sentenced aliens with a deportation detainer;

(4) Other inmates who, for good cause, the Warden may excuse from attending ABE.

(b) Staff shall document in the inmate's education file and central file the specific reasons for not requiring the inmate to participate in the ABE program.

§ 544.72 Applicability: Who may be promoted.

(a) All inmates must achieve an 8.0 academic grade level in order to be promoted to grades 3 and 2 in UNICOR and Inmate Performance Pay assignments except:

(1) Inmates who during their present confinement completed the ABE program at the 6.0 academic grade level prior to the 8.0 academic grade level requirement.

(2) Other inmates who, for good cause, the Warden may determine are exempt from completing the academic requirements for promotion to grades 3 and 2.

(b) All inmates must achieve an 8.0 academic grade level and a GED or high school diploma in order to be promoted to grade 1 assignments except:

(1) Inmates already in UNICOR or Inmate Performance Pay (IPP) assignments in pay grade 1 at the time of implementation of this rule (September 1, 1989), who do not have their GED or a high school diploma or who may not presently function at the 8.0 academic grade level, but who were approved for promotion above grade 4.

(2) Other inmates who, for good cause, the Warden may determine are exempt from completing the academic requirements for promotions to grade 1.

(c) Staff shall document in the inmate's education file and central file the specific reasons for allowing pay promotion exemptions.

§ 544.73 Procedures.

(a) The Warden at each federal institution shall ensure that an inmate who is functioning below an 8.0 academic grade level in reading, writing or mathematics is enrolled in the ABE program.

(b) The Warden or designee shall assign to an education staff member the responsibility to coordinate the institution's ABE program. The ABE coordinator or an ABE teacher designated by the ABE coordinator shall meet initially with the inmate for the purpose of enrolling the inmate in the ABE program. Subsequently, the ABE coordinator or designated teacher shall formally interview each inmate involved in the ABE program at least once every 30 days during the mandatory 90 day period, to review and record the inmate's progress in this program. The ABE coordinator shall place documentation of these interviews in the ABE Program Record in the inmate's education file.

(c) At the end of 90 calendar days, excluding sick time, furloughs, or other absences from scheduled classes, the unit team shall meet with the inmate to encourage continued participation in the ABE program until the inmate reaches the 8.0 academic grade level. At this time, the inmate may elect not to continue in the ABE program, and no disciplinary action will be taken. The inmate may not discontinue this program where treatment is mandated by statute.

§ 544.74 Federal Prison Industries (UNICOR) and Inmate Performance Pay (IPP) assignments.

(a) Inmates who wish to secure a UNICOR or IPP work assignment in either grade 2 or grade 3 of compensation must be able to demonstrate achievement of at least an 8.0 academic grade level. Inmates who wish to secure a UNICOR or IPP work assignment in grade 1 or who wish to work in non-graded incentive pay (piece rate) positions must be able to demonstrate the prior obtainment of a GED or high school diploma and the achievement of at least an 8.0 academic grade level. The Warden may, for good cause, exempt inmates from this requirement.

(b) An inmate may be assigned to the fourth grade of compensation in a UNICOR or IPP work assignment contingent on the inmate's enrollment, and satisfactory participation, in the ABE program. Failure of an inmate to make adequate progress in the ABE program may be used as the basis to remove the inmate from the UNICOR or IPP work assignment.

§ 544.75 Incentives.

The Warden shall establish a system of incentives to encourage an inmate to obtain a minimum academic grade level of 8.0.

§ 544.76 Disciplinary action.

As with other mandatory programs, such as work assignments, staff may take disciplinary action against an inmate whose academic level is below the 8.0 grade level when that inmate refuses to enroll in, or to complete, the mandatory 90 calendar days ABE program.

[FR Doc. 89–18160 Filed 8–2–89; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF JUSTICE

28 CFR Part 523

Control, Custody, Care, Treatment, and Instruction of Inmates; Statutory and Extra Good Time

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its final rules on good time and on extra good time. The clarifying amendments include a defintion of statutory good time, and a new section formalizing the Bureau's policy on the handling of previously earned good time following an inmate's return to custody for a violation of the

BEST COPY AVAILABLE

charge on which the good time was first earned. The final amendments to the rule on extra good time are intended to update the current rule, and include provisions encompassing the Comprehensive Crime Control Act of 1984.

EFFECTIVE DATE: September 5, 1989.

ADDRESSES: Office of General Counsel, Bureau of Prisons, Room 767, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone 202/724-3062.

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons is amending its final rule on good time and on extra good time. Proposed amendments to this rule were published in the **Federal Register** October 31, 1986 (at 51 FR 39840 et seq.). Interested persons were invited to submit comments on the proposed changes. Members of the public may submit comments concerning the changes in the final rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register**. For ease of reading, the present document republishes the Bureau of Prisons complete rule on good time and extra good time.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Summary of Changes/Comments

A commenter to § 523.2 objects to the Bureau crediting an inmate's statutory good time in advance, erroneously believing such a calculation allows for a forfeiture of good time, for a disciplinary violation, prior to it being earned. The Bureau policy, as set forth in 28 CFR 541.13, clearly states that only earned good time may be considered for forfeiture where an inmate is found to have committed a disciplinary infraction. The Bureau does its advance calculation for administrative purposes, to help determine the inmate's release date in the event no such forfeiture occurs during the inmate's period of confinement.

In § 523.10(a), and throughout the remainder of the rule, the reference to "Institution Discipline Committee" is changed to "Discipline Hearing Officer" as this is the term now used in the discipline process. A similar change occurs in § 523.1 and throughout the remainder of the rule, with the phrase "Community Corrections Center" substituted for "Community Treatment Center."

Section 523.10(b) is new, and recognizes that inmates sentenced under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984 are not eligible for either statutory or extra good time consideration. These inmates may be considered, however, for good conduct time credit pursuant to 18 U.S.C. 3624. The provisions for good conduct time credit will be addressed in a separate Bureau rule.

A commenter urges the Bureau to clarify § 523.17(l) by making it mandatory that a pretrial detainee be recommended for good time credit. We do not not agree. The making of such recommendations for extra good time credit is not automatic, and should only be made based on the requirements of § 523.10. If a pre-trial detainee's performance is within these guidelines, a recommendation for good time is to be considered in the event that the pre-trial detainee is later sentenced on the crime for which he or she was in pre-trial status.

List of Subjects in 28 CFR Part 523

Prisoners.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), 28 CFR, Chapter V is amended as set forth below.

Dated: July 28, 1989.

J. Michael Quinlan,

Director, Bureau of Prisons.

In 28 CFR Subchapter B, Part 523 is revised to read as follows:

Subchapter B—Inmate Admission, Classification, and Transfer

PART 523—COMPUTATION OF SENTENCE

Subpart A—Good Time

Sec.

523.1 Definitions.
523.2 Good time credit for violators.

Subpart B—Extra Good Time

523.10 Purpose and scope.
523.11 Meritorious good time.
523.12 Work/Study release good time.
523.13 Community corrections center good time.
523.14 Industrial good time.
523.15 Camp or farm good time.
523.16 Lump sum awards.
523.17 Procedures.

Authority: 5 U.S.C. 301; U.S.C. 3568 (repealed November 1, 1987 as to conduct occurring on or after that date), 3821, 3622, 3624, 4001, 4042, 4081, 4082, 4161–4166 (repealed October 12, 1984 as to conduct occurring on or after November 1, 1987), 5006–5024 (repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart A—Good Time

§ 523.1 Definitions.

(a) "Statutory Good Time" means a credit to a sentence as authorized by 18 U.S.C. 4161. The total amount of statutory good time which an inmate is entitled to have deducted on any given sentence, or aggregate of sentences, is calculated and credited in advance, when the sentence is computed.

(b) "Extra Good Time" means a credit to a sentence as authorized by 18 U.S.C. 4162 for performing exceptionally meritorious service or for performing duties of outstanding importance in an institution or for employment in a Federal Prison Industry or Camp. "Extra Good Time" thus includes Meritorious Good Time, Work/Study Release Good Time, Community Corrections Center Good Time, Industrial Good Time, Camp or Farm Good Time, and Lump Sum Awards. Extra good time and seniority are inseparable with the exception of lump sum awards for which no seniority is earned.

(c) "Seniority" refers to the time accrued in an extra good time earning status. Twelve months of "seniority" automatically cause the earning rate to increase from three days per month to five days per month and seniority is then vested.

(d) "Earning Status" refers to the status of an inmate who is in an assignment or employment which accrues extra good time.

§ 523.2 Good time credit for violators.

(a) An inmate conditionally released from imprisonment either by parole or mandatory release can earn statutory good time, upon being returned to custody for violation of supervised release, based on the number of days remaining to be served on the sentence. The rate of statutory good time for the violator term is computed at the rate of the total sentence from which released.

(b) An inmate whose special parole term is revoked can earn statutory good time based on the number of days remaining to be served on the special parole violator term. The rate of statutory good time for the violator term is computed at the rate of the initial special parole term plus the total sentence that was served prior to the special parole term and to which the special parole term was attached.

(c) Once an inmate is conditionally released from imprisonment, either by parole, including special parole, or mandatory release, the good time earned (extra or statutory) during that period of imprisonment is of no further effect either to shorten the period of supervision or to shorten the period of imprisonment which the inmate may be required to serve for violation of parole or mandatory release.

Subpart B—Extra Good Time

§ 523.10 Purpose and scope.

(a) The Bureau of Prisons awards extra good time credit for performing exceptionally meritorious service, or for performing duties of outstanding importance or for employment in an industry or camp. An inmate may earn only one type of extra good time award at a time (e.g., an inmate earning industrial or camp good time is not eligible for meritorious good time), except that a lump sum award as provided in § 523.16 may be given in addition to another extra good time award. The Warden or the Discipline Hearing Officer may not forfeit or withhold extra good time. The Warden may disallow or terminate the awarding of any type of extra good time (except lump sum awards), but only in a nondisciplinary context and only upon recommendation of staff. The Discipline Hearing Officer may disallow or terminate the awarding of any type of extra good time (except lump sum awards), as a disciplinary sanction. Once an awarding of meritorious good time has been terminated, the Warden must approve a new staff recommendation in order for the award to recommence. A "disallowance" means that an inmate does not receive an extra good time award for only one calendar month. Unless other action is taken, the award resumes the following calendar month. A "disallowance" must be for the entire amount of extra good time for that calendar month. There may be no partial disallowance. A decision to disallow or terminate extra good time may not be suspended pending future consideration. A retroactive award of meritorious good time may not include a month in which extra good time has been disallowed or terminated.

(b) The provisions of this rule do not apply to inmates sentenced under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984. This means that inmates sentenced under the Sentencing Reform Act provisions for offenses committed on or after November 1, 1987 are not eligible for either statutory or extra good time, but may be considered for a maximum of 54 days of good conduct time credit per year (see 18 U.S.C. 3624(b)).

§ 523.11 Meritorious good time.

(a) Staff are responsible for recommending meritorious good time based upon work performance. Each recommendation must include a justification which clearly shows that the work being performed is of an exceptionally meritorious nature or is of outstanding importance in connection with institutional operations. Work performance and the importance of the work performed are the only criteria for awarding meritorious good time.

(b) A retroactive award of meritorious good time is ordinarily limited to three months, excluding the month in which the recommendation is made. A retroactive award in excess of three months requires the approval of the Warden or designee (may not be delegated below the level of Associate Warden). Staff are to include with any recommendation for an inmate to receive a retroactive award of meritorious good time, a written statement confirming the inmate's eligibility for the retroactive award.

(c) Meritorious good time continues uninterrupted regardless of work assignment changes unless the Warden or the Discipline Hearing Officer takes specific action to terminate or disallow the award.

§ 523.12 Work/study release good time.

Extra good time for an inmate in work or study release programs is awarded automatically, beginning on the date the inmate is assigned to the program and continuing without further approval as long as the inmate is participating in the program, unless the award is disallowed.

§ 523.13 Community corrections center good time.

Extra good time for an inmate in a Federal or contract Community Corrections Center is awarded automatically, beginning on arrival at the facility and continuing as long as the inmate is confined at the Center, unless the award is disallowed.

§ 523.14 Industrial good time.

Extra good time for an inmate employed in Federal Prison Industries, Inc., is automatically awarded, beginning on the first day of such employment, and continuing as long as the inmate is employed by Federal Prison Industries, unless the award is disallowed. An inmate on a waiting list for employment in Federal Prison Industries is not awarded industrial good time until actually employed.

§ 523.15 Camp or farm good time.

An inmate assigned to a farm or camp is automatically awarded extra good time, beginning on the date of commitment to the camp or farm, and continuing as long as the inmate is assigned to the farm or camp, unless the award is disallowed.

§ 523.16 Lump sum awards.

Any staff member may recommend to the Warden the approval of an inmate for a lump sum award of extra good time. Such recommendations must be for an exceptional act or service that is not part of a regularly assigned duty. The Warden may make lump sum awards of extra good time not to exceed thirty days. If the recommendation is for an award in excess of thirty days and the Warden concurs, the Warden shall refer the recommendation to the Regional Director who may approve the award. No award may be approved which would exceed the maximum number of days allowed under 18 U.S.C. § 4162. The actual length of time served on the sentence, to the date that the exceptional act or service terminated, is the basis on which the maximum amount possible to award is calculated. No seniority is accrued for such awards. Staff may recommend lump sum awards of extra good time for the following reasons:

(a) An act of heroism;

(b) Voluntary acceptance and satisfactory performance of an unusually hazardous assignment;

(c) An act which protects the lives of staff or inmates or the property of the United States; this is to be an act and not merely the providing of information in custodial or security matters;

(d) A suggestion which results in substantial improvement of a program or operation, or which results in significant savings; or

(e) Any other exceptional or outstanding service.

§ 523.17 Procedures.

(a) Extra good time is awarded at a rate of three days per month during the first twelve months of seniority in an earning status and at the rate of five days per month thereafter. The first twelve months of seniority need not be based on a continuous period of twelve months. If the beginning or termination date of an extra good time award occurs after the first day of a month, a partial award of days is made.

(b) An inmate may be awarded extra good time even though some or all of the inmate's statutory good time has been forfeited or withheld.

(c) Parole and mandatory release violators may earn extra good time the same as other inmates. Once an inmate is conditionally released from imprisonment, either by parole, including special parole, or mandatory release, the good time earned during that period of imprisonment is of no further effect either to shorten the period of supervision or to shorten the period of imprisonment which the inmate may be required to serve for violation of parole or mandatory release.

(d) Staff working in the community have the same extra good time authority as the Warden when approving the award of good time for an inmate confined in a non-federal facility and may approve meritorious good time or lump sum awards in accordance with this rule upon recommendations made by a responsible person employed by the non-federal facility. The appropriate staff in the Regional Office may review all such awards if the Regional Director requires the review.

(e) An inmate who is transferred remains in the earning status at time of transfer, unless the reason for transfer would otherwise have caused removal from an earning status, and provided the inmate's behavior is such while in transit that it does not justify removal. Where the receiving institution is a camp, farm, or community corrections center, the extra good time continues automatically upon the inmate's arrival. Where the receiving institution is other than a camp, farm, or community corrections center, the extra good time is terminated upon arrival, and staff at the receiving institution shall review each case to determine if the inmate should continue in meritorious good time earning status if not immediately employed in Federal Prison Industries or assigned to a work/study release program. If the inmate then is not continued in meritorious good time earning status, later awards must comply with procedures outlined in § 523.11.

(f) An inmate serving a life sentence may earn extra good time even though there is no mandatory release date from which to deduct the credit since the possibility exists that the sentence may be reduced or commuted to a definite term.

(g) Extra good time is not automatically discontinued while an inmate is hospitalized, on furlough, out of the institution on a writ of habeas corpus, or removed under the Interstate Agreement on Detainers. Extra good time may be terminated or disallowed during such absences if the Warden or the Discipline Hearing Officer finds that the inmate's behavior warrants such action.

(h) Extra good time earned by an inmate in a District of Columbia Department of Corrections facility is treated the same as if earned in a Bureau of Prisons institution, upon transfer to a Bureau institution.

(i) An inmate committed under the provisions of 18 U.S.C. 3651 (split sentence) may earn extra good time credits provided the sentence imposed is not under the provisions of 18 U.S.C. 5010 (b) or (c) (YCA). All extra good time and seniority earned is carried over to any subsequent probation violator sentence based on the original split sentence.

(j) An inmate committed under the provisions of 18 U.S.C. 4205(c) may earn extra good time credits towards the final sentence that may be imposed. Such extra good time credits do not reduce the three months allowed for study. An inmate committed under the provisions of 18 U.S.C. 4244, as amended effective October 12, 1984, may earn extra good time credits toward the final sentence that may be imposed. Such extra good time credits do not reduce the provisional sentence. Extra good time may continue during a commitment for examination of hospitalization and treatment under 18 U.S.C. 4245, as amended effective October 12, 1984.

(k) Inmates committed under the provisions of 18 U.S.C. 4244, 4246–47, 4252, 5010 (b), (c), (e), or 5037(c) as these sections were in effect prior to October 12, 1984, are not entitled to extra good time deductions. Inmates committed under the provisions of 18 U.S.C. 4241, 4242, 4243, or 4246 as these sections were amended effective October 12, 1984, are not entitled to extra good time deductions.

(l) A pretrial detainee may not earn good time while in pretrial status. A pretrial detainee, however, may be recommended for good time credit. This recommendation shall be considered in the event that the pretrial detainee is later sentenced on the crime for which he or she was in pretrial status.

(m) An inmate committed for civil contempt is not entitled to extra good time deductions while serving the civil contempt sentence.

(n) A military or Coast Guard inmate may earn extra good time. Extra good time earned in Federal Prison Industries in a military or Coast Guard installation is treated the same as if earned in Federal Prison Industries in the Bureau of Prisons. Other forms of military or Coast Guard extra good time, such as Army Abatement time, are fully credited, but no seniority is allowed.

(o) American citizens who are serving sentences in foreign countries and who are subsequently returned to this country under the provisions of 18 U.S.C. Chapter 306 (Pub. L. 95–144) may have earned work, labor, or program time credits in the foreign country similar to extra good time earned under 18 U.S.C. 4162. Such foreign "extra good time" credits shall be treated as if awarded under § 523.16, Lump Sum Awards, with any future lump sum award consideration in this country calculated on the basis of time served in custody of the Bureau of Prisons. After return to this country an inmate may earn extra good time at the three-day rate and advance to the five-day rate after one year of seniority is accrued. No seniority is accrued for foreign "extra good time" credits.

(p) An inmate in extra good time earning status may not waive or refuse extra good time credits.

(q) Once extra good time is awarded, it becomes vested and may not be forfeited or withheld, or retroactively terminated or disallowed.

[FR Doc. 89–18161 Filed 8–2–89; 8:45 am]
BILLING CODE 4410-05-M

federal register

Thursday
August 3, 1989

Part III

The President

Proclamation 6005—Helsinki Human Rights Day, 1989

Federal Register
Vol. 54, No. 148
Thursday, August 3, 1989

Presidential Documents

Title 3—

The President

Proclamation 6005 of August 1, 1989

Helsinki Human Rights Day, 1989

By the President of the United States of America

A Proclamation

Fourteen years ago, the United States and Canada joined 33 European countries in signing the Helsinki Final Act of the Conference on Security and Cooperation in Europe. That action not only marked the culmination of the remarkable, 2-year meeting of the Conference on Security and Cooperation in Europe (CSCE), but also signaled a milestone in European post-war history.

The Helsinki accords recognized the inherent relationship between respect for human rights and fundamental freedoms and the attainment of genuine peace and security. Following years of diligent effort, the Western nations won in these accords the stated commitment of the Soviet Union and Eastern Europe to one of the most far-reaching sets of human rights standards ever enunciated by governments. By signing the Helsinki Final Act, all participating States agreed to respect freedom of thought, freedom of conscience, as well as freedom of religion and belief. Signatories also agreed to facilitate the free movement of people, ideas, and information between nations. The work begun at Helsinki to eliminate the barriers that divide East and West and to advance our goals of freedom, openness, and security has continued throughout three follow-up meetings.

The ongoing CSCE process represents an invaluable avenue to work for change. As recent developments in some nations of Eastern Europe suggest, the Western countries' insistence upon full implementation of the human rights and humanitarian provisions of the Helsinki accords is contributing to fulfillment of my Administration's goal of "a Europe whole and free." The United States welcomes recent improvements in human rights practices in Poland, Hungary, and the Soviet Union. Nevertheless, we look for further reforms in these countries as well as institutionalization of the reforms already introduced.

Despite some positive signs of change in the U.S.S.R. and some countries in Eastern Europe, we are still far from achieving universal compliance with the Helsinki accords. The governments of Romania, Bulgaria, Czechoslovakia, and East Germany continue to systematically deny the fundamental rights of their citizens. Religious oppression, persecution of ethnic minorities, and restrictions on freedom of information and travel in these countries violate the letter and spirit of the Helsinki accords and impede the CSCE process. The United States will continue to condemn such human rights violations and call upon these countries to meet their commitments under the Helsinki Final Act.

Respect for individual liberty and fundamental human rights is not only the duty of legitimate government, but also the key to economic prosperity and lasting peace among nations. The United States thus remains firmly committed to securing full implementation of the human rights and humanitarian provisions of the Helsinki Final Act.

In recognition of the importance this Nation places on human rights and our continuing commitment to the CSCE process, the Congress, by Senate Joint Resolution 150, has designated August 1, 1989, as "Helsinki Human Rights Day" and has authorized and requested the President to issue a proclamation in its observance.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim August 1, 1989, as Helsinki Human Rights Day and reaffirm U.S. dedication to the principles of human dignity and freedom enshrined in the Helsinki Final Act. As we Americans observe this day with appropriate programs, ceremonies, and activities, let us call upon all signatories of the Final Act to fulfill their obligation to respect the fundamental rights and dignity of all their citizens.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of August, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-18357
Filed 8-3-89; 10:25 am]
Billing code 3195-01-M

Reader Aids

Federal Register
Vol. 54, No. 148
Thursday, August 3, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

31645-31796.....1
31797-31932.....2
31933-32034.....3

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR
Proclamations:
6002.....31794
6004.....31933
6005.....32033
Executive Orders:
1685.....31796

7 CFR
29.....31797
58.....31646
945.....31798
1076.....31799
Proposed Rules:
911.....31843
929.....31844
967.....31845
993.....31846

8 CFR
Proposed Rules:
210.....31966

9 CFR
92.....31800

10 CFR
7.....31646

12 CFR
33.....31935
207.....31646
220.....31646
221.....31646
224.....31646

14 CFR
39.....31649, 31651-31653, 31803-31809, 31935
71 (3 documents).....31654, 31936, 31937
75.....31937
73.....31,655
217.....31810
241.....31810
Proposed Rule:
39.....31693, 31694, 31847
71.....31696-31704, 31966
75.....31705, 31967

15 CFR
773.....31812

17 CFR
140.....31814
Proposed Rules:
240.....31850
270.....31850

18 CFR
271.....31938
Proposed rules:
37.....31706

20 CFR
219.....31939
416.....31656
Proposed Rules:
327.....31968

21 CFR
522.....31949
556.....31949
1308.....31815
1310.....31657
1313.....31657
1316.....31669
Proposed Rule:
1308.....31855

22 CFR
60.....31815
61.....31815
62.....31815
63.....31815
64.....31815
65.....31815

24 CFR
570.....31670
Proposed Rule:
Ch. I.....31856

26 CFR
1.....31672, 31816
602.....31672
Proposed Rule:
1.....31708

28 CFR
523.....32027
544.....32026

29 CFR
1910.....31765, 31970
Proposed Rule:
1910.....31858

30 CFR
Proposed Rules:
250.....31768

32 CFR
706.....31825

33 CFR
100.....31826
117.....31827
Proposed Rules:
100.....31859, 31860

38 CFR
3.....31828, 31950

21 (2 documents)..... 31829, 31950–31952

40 CFR

52..... 31953
180..... 31674, 31830–31836
185..... 31836
186..... 31832–31836
261..... 31675
704..... 31680
Proposed Rules:
81..... 31860, 31971, 31972
180 (2 documents)..... 31971, 31972

44 CFR

80..... 31681
83..... 31681
352..... 31920

45 CFR

1632..... 31954

47 CFR

73 (3 documents)..... 31685, 31686, 31838, 31960
80..... 31839

48 CFR

801..... 31961

49 CFR

571..... 31687

50 CFR

661..... 31841
663..... 31688
675..... 31842
Proposed Rules:
611..... 31861
620..... 31661
655..... 31862
672..... 31861
675..... 31861

LIST OF PUBLIC LAWS

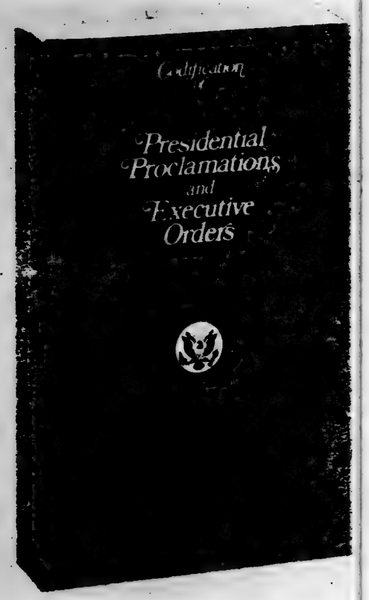
Last List: August 2, 1989

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.R. 1455 / Pub. L. 101–67

Apex Project, Nevada Land Transfer and Authorization Act of 1989 (July 31, 1989; 103 Stat. 168; 7 pages) Price: $1.00.

New edition .... Order now !



For those of you who must keep informed about **Presidential Proclamations and Executive Orders,** there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period April 13, 1945, through January 20, 1989, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1945–1989 period—along with any amendments—an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register,
National Archives and Records Administration

Order from Superintendent of Documents,
U.S. Government Printing Office,
Washington, DC 20402–9325

Order Processing Code:
*6661

Superintendent of Documents **Publications** Order Form

P3

Charge your order. It's easy!

To fax your orders and inquiries—(202) 275-0019

☐ **YES,** please send me the following indicated publication:

_____ copies of the CODIFICATION OF PRESIDENTIAL PROCLAMATIONS AND EXECUTIVE ORDERS.
S/N 069-000-00018-5 at $32.00 each.

The total cost of my order is $_____. (International customers please add 25%.) Prices include regular domestic postage and handling and are good through 1/90. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Credit card expiration date)

Thank you for your order!

(Signature)

7/89

Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325

L

S

G

9

I

OL
4
SS
1
4
9
G
4
89
MI

8-4-89
Vol. 54 No. 149

federal register

Friday
August 4, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 89 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

8-4-89
Vol. 54 No. 149
Pages 32035-32332

federal register

Friday
August 4, 1989

BEST COPY AVAILABLE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 54, No. 149
Friday, August 4, 1989

Agricultural Marketing Service
RULES
Lemons grown in California and Arizona, 32035

Agriculture Department
See Agricultural Marketing Service

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Meetings; advisory committees:
August; correction, 32125

Antitrust Division
NOTICES
National cooperative research notifications:
CAD Framework Initiative, Inc., 32141
OSI/Network Management Forum, 32141

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Census Bureau
NOTICES
1990 census; boundary changes; cutoff dates, 32102

Centers for Disease Control
NOTICES
Grants and cooperative agreements; availability, etc.:
Cervical cancer prevention and control program, 32125

Child Support Enforcement Office
RULES
Program operations standards:
State and local IV-D agencies; child support enforcement cases; processing standards and timeframes, 32284

Coast Guard
RULES
Regattas and marine parades:
Freeport Grand Prix, 32066

Commerce Department
See Census Bureau; Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list, 1989:
Additions and deletions, 32105, 32106
(2 documents)

Committee for the Implementation of Textile Agreements
NOTICES
Textile and apparel categories:
Correlation with U.S. Harmonized Tariff Schedule; correction, 32161

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Chicago Mercantile Exchange—
One-Month London InterBank Offered Rate, 32106

Defense Department
RULES
Acquisition regulations:
Regulatory and miscellaneous amendments
Correction, 32161
NOTICES
Meetings:
Retirement Board of Actuaries, 32107

Education Department
See also National Council on the Handicapped
NOTICES
Agency information collection activities under OMB review, 32107

Employment and Training Administration
NOTICES
Adjustment assistance:
ACME Associates et al., 32143
R.L.D. Dress Co., 32144

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 32144

Energy Department
See also Energy Information Administration; Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
University of Utah, 32107
Meetings:
National energy strategy development, 32108

Energy Information Administration
NOTICES
Agency information collection activities under OMB review, 32108

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Illinois, 32072
Illinois et al., 32073
Air quality planning purposes; designation of areas:
Illinois, 32076

PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Alabama, 32101
Hazardous waste:
Identification and listing—
Wastewater treatment sludges from chemical conversion coating of aluminum except from zirconium phosphating, etc., 32320
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 32115
Weekly receipts, 32116
Meetings:
National Drinking Water Advisory Council, 32116, 32117 (2 documents)
Toxic and hazardous substances control
Chemical testing—
Data receipt, 32117

Equal Employment Opportunity Commission
RULES
Headquarters office; address change and updated list of field offices, 32061

Family Support Administration
See also Child Support Enforcement Office
NOTICES
Agency information collection activities under OMB review, 32126

Federal Aviation Administration
NOTICES
Airport noise compatibility program:
Noise exposure map—
Colorado Springs Municipal Airport, CO, 32152
Runway protection zone; policy statement, 32152

Federal Communications Commission
NOTICES
Meetings; Sunshine Act, 32159

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities under OMB review, 32117

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Louisiana, 32118

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Boston Edison Co. et al., 32109
Green Mountain Power Corp. et al., 32111
Warner-Lambert Co., 32114
Natural gas companies:
Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend, 32114
Applications, hearings, determinations, etc.:
Transcontinental Gas Pipe Line Corp., 32114

Federal Maritime Commission
NOTICES
Agreements filed, etc., 32118 (2 documents)

Federal Reserve System
RULES
Availability of funds and collection of checks (Regulation CC):
Expedited Funds Availability Act; implementation, 32035
PROPOSED RULES
Truth in lending (Regulation Z):
Preemption determinations—
Wisconsin, 32089
NOTICES
Applications, hearings, determinations, etc.:
Northern Trust Corp., 32119
Ocean State Bancshares Corp. et al., 32119
Qualls, Albert P., Jr., 32119

Federal Trade Commission
NOTICES
Prohibited trade practices:
Societe Nationale Elf Aquitaine et al., 32120

Fish and Wildlife Service
RULES
Endangered and threatened species:
Desert Tortoise (Mojave population), 32326

Food and Drug Administration
RULES
Food for human consumption:
Bulk cheeses, identity standards; antimycotics use on exterior during curing and aging, etc., 32050
PROPOSED RULES
Food for human consumption:
Bulk cheeses, identity standards; antimycotics use on exterior during curing and aging, etc., 32091
NOTICES
Human drugs:
Patent extension; regulatory review period determinations—
Cook Bird's Nest Vena Cava Filter, 32125
Solid, oral, immediate release drug products; reformulations tracking, 32126

Foreign Assets Control Office
RULES
Foreign assets control:
Specially designated nationals; supplemental list—
North Korea and Vietnam, 32064

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Texas
Farah apparel processing plant, 32102

General Services Administration
NOTICES
Agency information collection activities under OMB review, 32124

Health and Human Services Department
See Alcohol, Drug Abuse, and Mental Health Administration; Centers for Disease Control; Child Support Enforcement Office; Family Support Administration; Food and Drug Administration; National Institutes of Health; Public Health Service; Social Security Administration

Health Resources and Services Administration
See Public Health Service

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Home equity conversion mortgage demonstration Correction, 32059
NOTICES
Agency information collection activities under OMB review, 32133
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 32134

Indian Affairs Bureau
NOTICES
Indian tribes, acknowledgement of existence determinations, etc.:
Paucatuck Eastern Pequot Indians of Connecticut; correction, 32161

Interior Department
See Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; National Park Service; Reclamation Bureau; Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Tax counseling for elderly program; application packages; correction, 32158

International Trade Administration
NOTICES
Antidumping:
Anhydrous sodium metasilicate from France, 32103
Ferrite cores (of type used in consumer electronic products) from Japan, 32103
Industrial belts and components and parts, cured or uncured, from—
Italy; correction, 32104
Japan; correction, 32104
Singapore; correction, 32104
West Germany; correction, 32104
Countervailing duties:
Wool from Argentina, 32105

Interstate Commerce Commission
NOTICES
Motor carriers:
Compensated intercorporate hauling operations, 32138
Declaratory order petitions—
Puerto Rico Maritime Shipping Authority et al., 32138
Railroad operation, acquisition, construction, etc.:
Atchison, Topeka & Santa Fe Railway Co., 32138
Canadian National Railway Co., 32139
Rio Grande Industries, Inc., 32239
Railroad services abandonment:
CSX Transportation, Inc., 32140

Justice Department
See Antitrust Division; Prisons Bureau

Labor Department
See also Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration
NOTICES
Agency information collection activities under OMB review, 32142
Organization, functions, and authority delegations:
Assistant Secretary for Pension and Welfare Benefits Administration, 32143

Land Management Bureau
NOTICES
Agency information collection activities under OMB review, 32134
Meetings:
Grand Junction District Grazing Advisory Board, 32134
Opening of public lands:
New Mexico, 32135
Realty actions; sales, leases, etc.:
Arizona, 32135
Montana, 32135
Nevada, 32136
Survey plat filings:
Idaho, 32136
Maine, 32136

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Consolidation Coal Co., 32145
Southern Ohio Coal Co., 32146

Minerals Management Service
PROPOSED RULES
Outer Continental Shelf; oil, gas, and sulphur operations:
Drilling and production operations; data and information availability to public, 32316
NOTICES
Meetings:
Atlantic OCS Region information transfer meeting, 32137

National Archives and Records Administration
RULES
Freedom of Information and Privacy Acts; implementation, 32067

National Council on the Handicapped
NOTICES
Meetings; Sunshine Act, 32159

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities under OMB review, 32146
Meetings:
Music Advisory Panel, 32147

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Lamps, reflective devices, and associated equipment—
Center high mounted stop lamps, 32153

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Institutes of Health
NOTICES
Meetings:
Destructive behaviors in persons with developmental disabilities; treatment; conference, 32127
Fogarty International Center Advisory Board, 32127
National Cancer Institute, 32127
National Heart, Lung, and Blood Institute, 32128
(2 documents)
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 32128
National Library of Medicine, 32129
NIH-ADAMHA-Industry Collaboration Forum, 32129

National Oceanic and Atmospheric Administration
RULES
Endangered and threatened species:
Winter-run chinook salmon, 32085
NOTICES
Fishery conservation and management:
Bering Sea and Aleutian Islands King and tanner crab; correction, 32105, 32161
(2 documents)
Meetings:
Pacific Fishery Management Council, 32105
South Atlantic Fishery Management Council, 32105

National Park Service
NOTICES
Concession contract negotiations:
Isle Royale Ferry Service, Inc., 32137

Nuclear Regulatory Commission
NOTICES
Export and import license applications for nuclear facilities or materials, 32147
Applications, hearings, determinations, etc.:
Power Authority of State of New York, 32147

Panama Canal Commission
PROPOSED RULES
Tolls for use of canal and measurement of vessels rules, 32099

Postal Service
RULES
Domestic Mail Manual:
"Plus" issues excluded from second-class mail, 32071
NOTICES
Domestic mail classification and rate schedules:
Second-class eligibility, 32149
Meetings; Sunshine Act, 32159

Prisons Bureau
NOTICES
Prison institutions; list modification, 32141

Public Health Service
See also Alcohol, Drug Abuse, and Mental Health Administration; Centers for Disease Control; Food and Drug Administration; National Institutes of Health
NOTICES
Agency information collection activities under OMB review, 32129
Meetings:
National Toxicology Program; Scientific Counselors Board; list of draft technical reports, 32130

Railroad Retirement Board
PROPOSED RULES
Railroad Retirement Act:
Disability determinations, 32164

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Ruedi Reservior, Fryingpan-Arkansas Project, CO, 32137

Securities and Exchange Commission
RULES
Investment advisers:
Accountants; forms for filing, 32048
PROPOSED RULES
Securities:
Multijurisdictional disclosure system; facilitation of cross-border offerings by specified Canadian issuers, 32226
NOTICES
Meetings; Sunshine Act, 32160
Self-regulatory organizations; proposed rule changes:
National Securities Clearing Corp., 32150
Self-regulatory organizations; unlisted trading privileges:
Philadelphia Stock Exchange, Inc., 32151
Applications, hearings, determinations, etc.:
Indianapolis Life Variable Account A, 32151

Social Security Administration
NOTICES
Agency information collection activities under OMB review, 32132
Social security; foreign insurance or pension systems:
Portugal, 32133

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
North Dakota, 32063
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Kentucky, 32093
Missouri, 32094
New Mexico, 32095, 32096
(2 documents)
Virginia, 32097, 32098
(2 documents)

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See also Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration
NOTICES
Aviation proceedings:
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 32152
Hearings, etc.—
Intra-Alaska bush mail rates, 32152

Treasury Department
See also Foreign Assets Control Office; Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 32153–32155

(4 documents)
Notes, Treasury:
AC–1991 series, 32155
Organization, functions, and authority delegations:
General Counsel, 32155
Secretary; order of succession, 32156

United States Information Agency
NOTICES
Art objects, importation for exhibition:
Frederic Edwin Church, 32158

Veterans Affairs Department
RULES
Vocational rehabilitation and education:
Initial evaluation authorization for veterans residing outside a State, 32070
NOTICES
Agency information collection activities under OMB review, 32158

Separate Parts In This Issue

Part II
Railroad Retirement Board, 32164

Part III
Securities and Exchange Commission, 32226

Part IV
Department of Health and Human Services, Child Support Enforcement Office, 32284

Part V
Department of the Interior, Minerals Management Service, 32316

Part VI
Environmental Protection Agency, 32320

Part VII
Department of the Interior, Fish and Wildlife Service, 32326

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
910.....32035

12 CFR
229.....32055

Proposed Rules
226.....32089

17 CFR
270.....32048
274.....32048
275.....32048
279.....32048

Proposed Rules:
230.....32226
239.....32226
240.....32226
249.....32226
260.....32226
269.....32226

20 CFR

Proposed Rules
208.....32163
220.....32163
230.....32163
260.....32163

21 CFR
133.....32050

Proposed Rules
133.....32091

24 CFR
200.....32059
206.....32059

29 CFR
1600.....32061
1601.....32061
1610.....32061
1611.....32061
1620.....32061
1626.....32061
1691.....32061

30 CFR
934.....32063

Proposed Rules
250.....32316
917.....32093
925.....32094
931 (2 documents).....32095, 32096
946 (2 documents).....32097, 32098

31 CFR
500.....32064

33 CFR
100.....32066

35 CFR

Proposed Rules
133.....32099
135.....32099

36 CFR
1202.....32067
1250.....32067
1254.....32067

38 CFR
21.....32070

39 CFR
111.....32071

40 CFR
52 (2 documents).....32072, 32073
81.....32078

Proposed Rules
52.....32101
261.....32320
302.....32322

45 CFR
232.....32284
301.....32284
302.....32284
303.....32284
304.....32284
306.....32284
307.....32284

48 CFR
203.....32161
208.....32161
209.....32161
212.....32161
213.....32161
214.....32161
215.....32161
216.....32161
217.....32161
219.....32161
222.....32161
223.....32161
226.....32161
242.....32161
245.....32161
252.....32161
253.....32161
271.....32161

50 CFR
17.....32326
226.....32085
227.....32085

Rules and Regulations

Federal Register
Vol. 54, No. 149
Friday, August 4, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 677]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 677 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 340,000 cartons during the period August 6 through August 12, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 677 (§ 910.977) is effective for the period August 6 through August 12, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910], regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989-90. The Committee met publicly on August 1, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.977 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.977 Lemon Regulation 677.

The quantity of lemons grown in California and Arizona which may be handled during the period August 6, 1989, through August 12, 1989, is established at 340,000 cartons.

Dated: August 2, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-18418 Filed 8-3-89; 8:45 am]
BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Reg. CC; Docket No. R-0648]

RIN 7100-AB01

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing amendments to its Regulation CC,

Availability of Funds and Collection of Checks (12 CFR Part 229). The rule changes will alleviate the operational difficulties and additional risks associated with the acceptance for deposit of bank payable through checks.

EFFECTIVE DATE: The effective date for the amendments to § 229.38 of the regulation and commentary is February 1, 1990. The effective date for the amendments to § 229.36 of the regulation and commentary is February 1, 1991.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452–3874), Gayle Thompson, Manager (202/452–3917), or Kathleen M. Connor, Senior Financial Services Analyst (202/452–3917), Division of Federal Reserve Bank Operations; Oliver Ireland, Associate General Counsel (202/452–3625), or Stephanie Martin, Attorney (202/452–3198), Legal Division; for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: The Board has adopted two amendments to Regulation CC, which: (1) Require bank payable through checks to be conspicuously labeled with the name, location, and first four digits of the routing number of the bank on which the check is written and the legend "payable through" followed by the name and location of the payable through bank; and (2) Place the risk of loss for return of bank payable through checks being returned by a nonlocal payable through bank on the bank on which such checks are written, to the extent that the return from the nonlocal payable through bank took longer than would have been required if the check had been returned expeditiously by the bank on which it is written. The test for expeditious return would be based on the two-day/four-day test in § 229.30(a)(1) of the regulation.

These amendments will become effective on February 1, 1991, and February 1, 1990, respectively.

Background

As adopted in May 1988, Regulation CC provided that checks written on an account at one bank[1] but payable through another bank were to be considered local or nonlocal under Regulation CC and the Expedited Funds Availability Act ("Act") based on the location of the bank designated as the payable through bank. This treatment of "bank payable through checks" was consistent with the scheme set forth in the Act to permit banks to place longer holds on checks that must be sent to nonlocal banks for collection because such checks generally take longer to collect and return than checks sent to local banks for collection and, therefore, could pose greater risks for depositary banks. In addition, treating the payable through bank as the paying bank would have facilitated the handling of these checks by depositary banks because it would have permitted them to use automated equipment to read the routing number of the payable through bank encoded on a check, which indicates the check processing region in which the payable through bank is located. Availability could have been assigned for the check automatically on the basis of that number. [1]

Shortly after the Board adopted Regulation CC defining the payable through bank as the paying bank and thus allowing bank payable through checks to be treated as local or nonlocal according to the location of the payable through bank, the Credit Union National Association ("CUNA") and one of its member credit unions brought suit asserting that this rule was contrary to the provisions of the Act. The suit asserted that such checks, in particular credit union share drafts, should be treated as local or nonlocal on the basis of the location of the bank on which they are written, rather than the location of the payable through bank. CUNA believed that the treatment of bank payable through checks adopted by the Board would have an adverse effect on the acceptability of these checks as a form of payment because most credit union payable through checks would be treated as nonlocal, even though they would generally be deposited in a bank local to the credit union. CUNA argued that if these checks were generally treated as nonlocal, a large number of credit unions that offer payable through share draft accounts would be disadvantaged.

On July 28, 1988, the U.S. District Court for the District of Columbia ruled that under the language of the Act, payable through checks should be treated as local or nonlocal on the basis of the location of the credit union on which they are written rather than the location of the payable through bank. On August 18, 1988, the Board adopted interim amendments to Regulation CC to implement the court's decision and requested comment on the interim rule pending consideration of a longer term response to the court's interpretation of the Act (53 FR 31290, August 18, 1988). The interim rule applied the court's decision to all bank payable through checks rather than only those written on credit unions.

One hundred fifty-five comments were received on the interim rule. The overwhelming majority of these commenters objected to the treatment of bank payable through checks as local or nonlocal based on the location of the bank on which they are written, asserting that the rule creates operational difficulties and increased risks for depositary banks. Many of the commenters suggested various means of addressing these operational problems and risks.

On November 2, 1988, the Board adopted the interim rule, with minor technical changes, as a final rule, and also published for comment proposed amendments to Regulation CC designed to alleviate the operational difficulties and increased risks resulting from the new rule. (53 FR 44324, 44335, November 2, 1988.) These proposed amendments were based on specific suggestions of the commenters on the interim rule and on subsequent discussions with industry representatives and the Industry Return Item Advisory Group, which includes representatives of commercial banks, savings and loan associations, and credit unions. The Board issued the proposals for comment to gain further information concerning whether the proposals were necessary to facilitate compliance with the revised regulation and to improve the check system by speeding the collection and return of payable through checks, and whether they would impose undue burdens on the banks on which bank payable through checks are written.

The four proposals for which the Board requested comment would:

(1) Require bank payable through checks to bear a routing number in the MICR (Magnetic Ink Character Recognition) line local to the bank on which the checks are written, and to be presentable locally;

(2) Require bank payable through checks to be conspicuously labeled with the name, location, and nine-digit routing number of the bank on which the check is written and the legend "payable through" followed by the name and location of the payable through bank;

(3) Authorize direct presentment to the bank on which the payable through check is written; and

(4) Place the risk of loss for return of bank payable through checks being returned by a nonlocal payable through bank on the bank on which such checks are written, to the extent that the return from the nonlocal payable through bank took longer than would have been required if the check had been returned expeditiously by the bank on which it is written.

Discussion

The Board received a total of 763 comments from the public on the proposed amendments to Regulation CC.[2] The following table shows the comments received by category of respondent:

Commercial banks and bank holding companies	264
Savings and loan associations	7
Credit unions	451
Trade associations	23
Corporations	5
Government Agencies	3
Members of Congress	10

Generally, commercial bank commenters supported all four proposals, but particularly stressed the need to require that bank payable through checks bear a routing number local to the bank on which such checks are written. Credit union commenters strongly opposed this proposal, as well as the proposal authorizing direct presentment to the banks on which payable through checks are written. Credit union commenters generally did not oppose implementation of the proposal to require bank payable through checks to be conspicuously labeled with specific information related to both the bank on which the check is written and the payable through bank and the proposal to shift the risk of loss to banks issuing payable through checks for return of such checks from nonlocal payable through banks, to the extent that the return of a payable through check from the nonlocal payable through bank took longer than would have been required if the check had been returned expeditiously by the bank on which the check is written. A summary discussion of the Board's analysis of each proposed amendment follows.

Require bank payable through checks to be conspicuously labeled with the name, location, and nine-digit routing number of the bank on which the check is written and the legend "payable through" followed by the name and location of the payable through bank.

In order for banks to be able to manually identify payable through checks from other check deposits and determine by visual inspection the appropriate hold, rather than rely on the routing number encoded on the check to determine availability, the Board proposed that certain information pertaining to the payable through bank and the bank on which the check is written must be included on the check.

Other than the routing number of the bank on which the payable through checks are written, the information specified in this proposal is currently required by either existing law or Federal Reserve operating circular.[3] This proposal would clarify that this information is required and would apply to all bank payable through checks, including those checks collected outside the Federal Reserve. It would also require that such labeling be conspicuous, setting a minimum type size standard. In addition, through inclusion in the regulation, liability for noncompliance would be established.

The Board specifically requested comment on the cost savings and operational benefits to depository banks and the costs to banks using payable through checks that would result from adoption of this proposal. Of the 295 comment letters addressing this issue, 214 commenters supported this proposal and 81 opposed it.

The commenters in support of the conspicuous labeling requirement stated that identification would aid in compliance with the availability requirements of Regulation CC. They noted that the additional information could facilitate manual handling of payable through checks, although it would not permit their identification on an automated basis. The Bank Administration Institute stated, "While this proposal would not appreciably reduce risk, it would aid in compliance with Regulation CC hold rules. According to a recent Bank Administration Institute study, over 80 percent of financial institutions have adopted 'case-by-case' hold policies. Under such a policy, the depository bank applies holds in selected cases, rather than as a general rule. Under a case-by-case policy, the employee placing the hold must be able to identify local and nonlocal checks accurately by visual inspection. Conspicuous labeling as described in this proposal would aid in this process. Full identification of the payable through bank by name and location would also assist in resolving exceptions in interbank check clearings, such as misrouted items." The Independent Bankers Association of America indicated that community bankers would gain immediate operational benefits from this proposal.

A small number of commenters noted that this proposal would prove helpful when processing damaged checks. Wells Fargo Bank, San Francisco, California, stated, "The alternative of printing identifying information on the face of the check helps when dealing with checks where the MICR line is damaged or destroyed * * *." For example, the name and location of the payable through bank may be needed in those cases where the routing number on the check cannot be properly read.

The majority of commenters that supported the conspicuous labeling proposal indicated that they preferred adoption of the proposal to require payable through checks to bear a routing number in the MICR line local to the bank on which the checks are written. Marine Midland Bank, New York, New York, commented, "This alternative is better than no change in the form in which payable through drafts are issued, but it does nothing to reduce the unreasonably high operational costs of identifying bank payable through checks."

Some credit union commenters stated that this proposal was not objectionable provided they would be given a reasonable period of time to handle the reprinting of their share drafts. The Credit Union National Association generally supported a revised version of this proposal. CUNA commented that "only the first four digits of the credit union's routing number should be required. The additional digits will not facilitate identification of items as local or nonlocal; in fact, they will only further clutter the drawee area and complicate identification by consumers and bank tellers. Inclusion of all nine digits will also promote direct presentment of payable through share drafts to credit unions * * *." The

---

[1] Regulation CC defines *bank* to include all depository institutions, including commercial banks, savings and loan associations, and credit unions. A *depositary bank* is defined as the first bank to which a check is transferred. A *paying bank* is the bank by which a check is payable for the purpose of determining whether a check is local or nonlocal for determining availability.

[2] This number does not include comment letters from Federal Reserve Banks and duplicate comment letters from the same bank.

[3] See U.C.C. § 3–120, *Engine Parts, Inc. v. Citizens Bank of Clovis*, 92 N.M. 37, 582 P.2d 808, 23 UCC Rep. Serv. 1248 (1978), and *Phelan v. University National Bank*, 85 Ill. App. 2d 56, 229 N.E.2d 374, 4 UCC Rep. Serv. 635 (1967). The Federal Reserve Operating Circular on the Collection of Cash Items and Returned Checks, as revised effective July 17, 1989, states that banks should not send to a Reserve Bank for forward collection a check that "does not set forth on its face the name of the paying bank and a city and state address of the bank that is located in (1) the same Reserve Bank check processing region as, and (2) a Reserve Bank availability zone that provides the same (or slower) availability than the address associated with the routing number in magnetic ink on the item."

Independent Bankers Association of America supported this proposal, but noted, "Most community bankers indicated that including another nine digit routing number on the face of the check could result in unnecessary confusion for the teller making the identification."

The Board had noted, in its request for comment on this proposal, that an ancillary benefit to requiring that the nine-digit routing number of the bank on which the check is written be printed on the face of the check is that it would provide information needed to establish arrangements for automated clearinghouse (ACH) transfers to or from an account—information that is generally obtained from a check of the customer requesting the ACH service. The Board believed that the identification on the face of the check of the routing number of the bank on which the check is written would facilitate sending ACH transfers to the account-holding bank rather than to the payable through bank, which generally rejects the transfer. A major payable through bank, however, indicated to Board staff that it handles ACH transfers for a number of credit unions for which it also performs payable through processing and that inclusion of the nine-digit routing number of the credit union could cause ACH transfers to be misdirected to the credit union.

Inclusion of only the first four digits of the routing number of the bank on which the payable through check is written would be sufficient to permit depositary bank personnel to assign local or nonlocal availability to these checks because these digits identify the check processing region in which the bank on which the check is written is located. This would eliminate the need to refer to a list of cities and towns in the depositary bank's check processing region to determine if the location of the bank on which the check is written is local for purposes of Regulation CC. The Board believes that requiring the identification of the entire nine-digit routing number, rather than only the first four digits, on the face of bank payable through checks would not provide any incremental significant benefits, and has modified the proposal to require inclusion of only the first four digits of the routing number of the bank on which the check is written on the face of the check.

CUNA also stated, "Because of the advantage to consumers, CUNA urges a requirement that the drawee area of all checks contain the first four digits of the drawee's routing number." The Board does not believe it is necessary that the requirement apply to all checks because tellers and consumers can determine local or nonlocal availability by referring to the first four digits of the routing number in the MICR line for all checks other than bank payable through checks.

A few commenters suggested that the Board should specify where the required information is to be placed on the face of the check. The Board has provided in the commentary to § 229.36 that the required information is deemed conspicuous if it is located in the title plate [4] on the check.

The Board proposed that the rule become effective one year after adoption. A small number of commenters discussed the appropriate effective date for this proposal. Bank commenters either supported the proposed one year implementation period or requested an effective date of less than one year. Credit union commenters generally stated that they would need additional time for their members to use existing check stock and reorder the new checks. The Credit Union National Association stated, "A more reasonable effective date of this proposal would be two years after adoption of the amendment to allow credit union members to use their current supply of share drafts." While on average customers reorder checks annually, additional time would allow for the check printers to make title plates and for credit union members to reorder checks. The Board believes that eighteen months will provide sufficient time for both the manufacture of new plates and check reorders.

The 81 commenters that opposed the conspicuous labeling proposal stated that it encourages manual handling. A number of commenters indicated that they opposed this proposal because they believed that the proposal requiring a local routing number in the MICR line is a better solution. First Virginia Banks, Inc., Falls Church, Virginia, stated, "First Virginia does not favor this proposal as it places the burden of recognizing payable through checks on the teller. This proposal invites human error and Regulation CC violations and will only act to delay item processing, because these checks will have to be handled as exception items."

Maryland National Bank, Baltimore, Maryland, stated that this proposal "does not permit the automated processing of payable through draft checks which is critical to maintaining the integrity of the payment system. This would create an indeterminate degradation of customer service at the branch level of financial institutions and a corresponding increase in expenses due to the visual inspection required which would be eventually passed on to the customer."

A small number of commenters discussed the costs of this proposal. These commenters indicated that without the concurrent adoption of the proposal requiring a local routing number in the MICR line, the costs to banks would be prohibitive because they would have to manually process the payable through checks. Bank One, Milwaukee, Wisconsin, stated, "* * * sight review would significantly increase a bank's processing costs because it would require adding employees to the teller proof or transit operation." Bank One estimated $225,000 per year as "the labor expense we would incur if we have to visually inspect all items deposited, and manually make float adjustments for share draft or payable through items."

A number of commenters expressed concern that the labeling requirement could have an adverse impact on the acceptance of payable through drafts. The Chicago Clearinghouse Association, Chicago, Illinois, commented, "This requirement would make obvious visual distinction between a regular check and a payable through check and would be detrimental to institutions using payable through checks. The distinction may create negotiability problems with merchants and consumers who may not understand the reasons for such obvious labels. Because of the label, some merchants may not honor payable through checks as cash items." The specified information is already required, however, except for the first four digits of the routing number, which is necessary for the depositary bank to determine availability. Consequently, the Board does not believe the labeling requirement will cause negotiability problems for payable through checks.

The requirement that specified information be printed on the face of the check does not address the potential risks of bank payable through checks becoming attractive vehicles for fraud because it does not accelerate the collection of payable through checks. Under this proposal, the bank on which the payable through checks are written or its customers would incur costs to reissue its checks. Given an eighteen month lead time, the cost of reissuance should be minimal. This proposal would not require any bank to move its payable through check processing to a different bank.

[4] The title plate appears in the lower left quadrant on the face of the check, below the amount line and above the memo line, and generally includes the name and location of the paying bank.

The Board is adopting an amendment to Regulation CC that would require bank payable through checks to be conspicuously labeled with the name, location, and first four digits of the routing number of the bank on which the check is written and the legend "payable through" followed by the name and location of the payable through bank. This rule becomes effective eighteen months after final adoption.

Place the risk of loss for return of bank payable through checks being returned by a nonlocal payable through bank on the bank on which such checks are written, to the extent that the return from the nonlocal payable through bank took longer than would have been required if the check had been returned expeditiously by the bank on which it is written. Commenters on the interim rule expressed concern regarding the potential risk of losses and increased exposure to fraud for depositary banks resulting from the revised rule. They indicated that checks considered local for determining availability should also be considered local for determining whether the checks are returned expeditiously so that the risks to depositary banks would not be increased by the revised rule. Two hundred eighty comment letters addressed this proposal. Two hundred twelve commenters supported this proposal and 68 commenters opposed the proposal.

The commenters in support of this proposal stated that it would assign risk in the payment system to the appropriate cause of that risk. The Alamo Savings & Loan Association, San Antonio, Texas, stated, "Even if none of the other proposed amendments are approved, this one must be, because it is inappropriate to allow issuers of 'payable through' checks to accrue the benefits of the definition of local checks from an availability standpoint, but not be responsible for liabilities inherent in the delayed return of unpaid checks from nonlocal 'payable through' banks." The Citizens and Southern Georgia Corporation, Atlanta, Georgia, commented, "It is reasonable and fair to place the risk of loss on the institution responsible for delaying the return process beyond the time normally required for local checks."

In an effort to determine the risks confronting a large regional bank due to the adoption of the rule establishing the bank on which a payable through check is written as the paying bank for determining funds availability, Sovran Financial Corporation, Norfolk, Virginia, conducted an extensive survey of payable through checks in June and July, 1988. Sovran explained, "From the survey, we determined that Sovran—in the states of Maryland, the District of Columbia, and Virginia would process nearly $1 billion a year of payable through items drawn on one of the two major national processors of such items. We projected the annual volume of these items to be 10.2 million. Visual inspection of these items disclosed that almost one half are issued by geographically local institutions. However, because the payable through bank—or the processing bank—has the opportunity to return the items to us in the Board's prescribed nonlocal time frame, the question of whether the issuing bank is geographically local is irrelevant. We applied the actual rate of dishonor for these items, which we had tracked over a two year period, to the dollar and volume data gathered. We determined that *at a minimum*, based on a one day delay (we make the funds available to the customer in three days, but we receive the return on the fourth day) our annual exposure from these items would be $9 million."

The majority of the bank commenters that supported the proposal shifting the risk of loss to the bank on which the payable through check is written recommended that this proposal should be adopted immediately as an interim measure until the proposal requiring a local routing number in the MICR line could be implemented. The Citywide Bank of Denver, Denver, Colorado, stated, "Until such time as (the proposal requiring a local routing number in the MICR line) can be fully implemented, our bank strongly recommends your (proposal shifting the risk of loss to the bank on which the payable through check is written) * * * be instituted for the protection of all depositary banks. There does not seem to be a time factor requirement to implement this approach and the cost factor on the norm, would be minimal."

Some bank commenters that supported this proposal expressed concern about the practice of claiming a loss under this proposal. The Chicago Clearinghouse Association commented, "We are in favor of assigning risk in the payment system to the appropriate cause of that risk, but are concerned about the practicality of claiming a loss under the current proposal. With so many schedules for availability and collection, proving responsibility for loss will be difficult. This makes it unlikely that any but large-dollar losses will be contested. We suggest that a method be developed within the normal return system for a depositary bank to claim a loss and receive compensation." Prime Bank, Grand Rapids, Michigan, stated, "The Federal Reserve should take measures to accommodate these banks who have suffered such liability and losses to easily recoup these losses from the payable bank."

Some credit unions expressed limited support for the proposal shifting the risk of loss to the bank on which a payable through check is written. The Family Community Credit Union, Charles City, Iowa, commented that this proposal "is also a proposal that could be workable for credit unions. Either one of these proposals (the conspicuous labeling proposal or the proposal shifting the risk of loss to the bank on which the payable through check is written) would not require the expense, equipment and staff that the other two would require."

The Chase Manhattan Corporation, New York, New York, a major payable through processor, stated, "Of the four approaches the Board has proposed, Chase prefers this approach because it would provide an effective means of protecting depositary banks from the risk of loss for return of bank payable through checks without dismantling the present efficient and cost effective payable through system."

Some commenters suggested that the proposal be modified to limit the risk that could be allocated to the bank on which the check is written. The Credit Union National Association generally supported a modified version of the proposal. CUNA commented, "Credit unions should only assume actual direct losses caused by a delayed return from a payable through bank; that is, only losses of amounts that exceed the $100 next-day availability rule and are under the $2,500 amount covered by the large-dollar item notice requirements of the Regulation."

Under the proposed rule to shift the risk of loss, the bank on which the check is written would only be responsible for losses that occurred between the time that the check would have been required to be returned if returned expeditiously by that bank and the actual time that it takes to return the check from the payable through bank. If the payable through bank complies with the current notice of nonpayment requirement for returned checks of $2,500 or more and the depositary bank takes action to minimize its risk upon receipt of the notice, no loss should occur that could be allocated to the bank on which the check is written. If the depositary bank takes no action upon receipt of the notice, it may be liable for losses incurred under the liability provisions of § 229.38(a). Thus, the Board does not believe it is necessary to modify the rule

to address CUNA's suggestion that liability should only apply to those checks that are less than $2,500 and thus not covered by the notice of nonpayment requirements.

CUNA also suggested that the allocation of liability be limited to only those amounts that exceed the $100 next-day availability rule. The Act and Regulation CC require depositary banks to provide next-day availability for the first $100 of the aggregate amount of a customer's check deposits made during a banking day. The proposed rule would only shift the risk of loss to the bank on which the check is written in cases where the loss would not have occurred if the check had been returned under the local time frame. If losses occurred because the depositary bank made funds available for withdrawal before it could learn of a local return, such losses would not be shifted to the bank on which the payable through check is written. In addition, because a customer's check deposit may include a mixture of payable through checks and other checks, the Board does not believe it would be appropriate to release the bank on which the payable through check is written from liability for the first $100 of a day's deposit.

The Board had specifically requested comment on what standard(s) should be applied to determine whether the return from a nonlocal payable through bank took longer than would have been required if the check had been returned expeditiously by the bank on which the check is written. Regulation CC requires banks to return checks expeditiously. It allows banks to utilize two tests to determine whether a check has been returned expeditiously. Under the two-day/four-day test, a check is returned expeditiously if a local check is received by the depositary bank on or before the second business day after the banking day on which the check was presented to the paying bank or if a nonlocal check is received by the depositary bank on or before the fourth business day after the banking day on which the check was presented to the paying bank. Under the forward collection test, a check is returned expeditiously if a paying bank sends the returned check in a manner that would ordinarily be used by a bank in the paying bank's community to collect a check drawn on the depositary bank. Generally, this test would be satisfied if a transportation method or collection path is used for returns that is comparable to that used for forward collection.

Several bank commenters indicated concern over the practicality of claiming a loss under the proposal, indicating that it would be particularly difficult to prove responsibility for loss under the forward collection test. Several credit union commenters, including CUNA, suggested that both tests be applicable. The Board believes that the two-day/four-day test provides a measurable standard to ascertain whether the return of the payable through check is expeditious. In contrast, the determination of whether return of a check is expeditious under the forward collection test is made based on the manner by which the paying bank returned the check, rather than the time within which the depositary bank received the return. Since a payable through bank nonlocal to the bank on which the check is written would not use the same manner of return as that used by the bank on which the check is written to collect checks, the forward collection test could not be used as a standard for expeditious return by the payable through bank.

Bank commenters opposed to the proposal shifting the risk of loss to the bank on which the payable through check is written stated that this proposal does not address the operational problem of identifying payable through checks. Eastover Bank for Savings, Jackson, Mississippi, stated, "Shifting the risk of loss is not enough. This will simply lead to many operational difficulties in identifying these checks and will not aid in reaching the goal of a more speedy check collection and return processing system." First Virginia Banks commented, "First Virginia does not favor this proposal, as it will only serve to increase Late Return Claims, litigation expenses, and does not allow for expedited processing of these items."

A number of credit union commenters that opposed the proposal expressed concern about its implementation. The Southern Nevada State Savings & Credit Union, Las Vegas, Nevada, described this proposal as complicated and unmanageable. It commented, "* * * strict time limits would have to be imposed on the receiving banks as well as a detailed record keeping, timed, system that would record the flow of the items. Otherwise, anytime there was A DISPUTE for a loss, we've never had one in 20 years, the receiving institution could simply claim a delayed processing schedule. A tracking mechanism would be required."

A small number of credit union commenters stated that they did not think this proposal was necessary. The Navy Federal Credit Union, Merrifield, Virginia, commented, "We are not aware of any evidence of actual losses which would justify the presumed need. Without further justifications, no change to the liability assignments is recommended." A few credit union commenters indicated that the payable through bank should be responsible for the loss instead of the credit union.

The Board is adopting the proposal shifting risk of loss to the bank on which the payable through check is written. The test for expeditious return under this final rule will be based on the two-day/four-day test under § 229.30(a)(1) of the regulation.

The Board also requested comment on the appropriate lead time for implementation of the proposal. Although CUNA indicated that a one-year lead time would allow credit unions that issue payable through drafts sufficient time to modify their insurance coverage to cover any increased risk of loss, CUNA commented that the risk of loss associated with bank payable through checks is virtually nonexistent. On the other hand, many bank commenters indicated that this proposal should be implemented immediately. The Board believes that insurance coverage can be obtained in less than one year. In any event, variations in the effective date of this proposal should have minimal effect on the banks on which payable through checks are written. Therefore, this proposal will become effective six months after adoption.

Require bank payable through checks to be presentable locally and bear a local routing number in the MICR line. Commenters on the interim rule expressed concern about the operational problems posed by the court ruling and interim amendments. They indicated that the Board should require credit unions to encode their own routing numbers on their checks or that of a local payable through bank.

The Board specifically requested comment on the cost savings to depositary banks and the costs to banks issuing payable through checks so that the benefits and costs of this proposal could be more fully assessed. Seven hundred twenty-two comment letters addressed this proposal. Two hundred eighty-two commenters supported this proposal and 440 commenters opposed this proposal.

The commenters in support of the proposal to require a local routing number in the MICR line, predominantly banks, described it as the only practical solution to their operational problems and risk concerns. Several supporters also noted that the proposal would reduce confusion for the consumer. The American Bankers Association stated, "Currently, there is no practical or comprehensible way to describe to a consumer how to distinguish between

local and nonlocal checks and payable through checks except to advise them generally to inquire when they deposit a payable through check. The proposal will allow consumers simply to refer to the MICR line to ascertain whether a deposit is subject to a local or nonlocal check hold."

Several commenters in support of this proposal discussed how it relates to the intent of Regulation CC. The Independent Bankers Association of America commented, "We believe that requiring a local payable through bank is most consistent with the Act's linkage between the availability of funds and the time it takes to collect and return a check." Great Western Financial Corporation, Beverly Hills, California, stated, "By requiring bank payable through checks to be presentable locally and bear a local routing number in the MICR line, Great Western believes that the problems associated with the acceptance for deposit of payable through checks will be addressed, the intent of Regulation CC will be upheld and the best interests of the consumer will be served."

Continental Bank, Chicago, Illinois, stated, "Any proposal that does not allow banks to rely on the MICR line will slow the automated check clearing process considerably and thus retard the goals set by EFAA. As the Board observes, payable through checks account for less than 3% of the processed check volume * * *. Any proposal that does not allow a bank to rely on the MICR line will slow down the processing of the 97% remainder of the checks which today are being efficiently processed. (This proposal) not only confirms the axiom, 'if it ain't broke, don't fix it,' it also encourages credit unions to process their items in a manner that will enhance the goals of EFAA. * * * (This proposal) thus places the cost of expeditiously processing payable through checks on the segment of the industry that enjoys the benefit, and in addition, encourages high speed automatic processing of checks consistent with the goals of EFAA."

Commenters explained that the primary benefit of this proposal would be to eliminate problems in determining proper availability by allowing banks to rely on the routing number encoded in the MICR line. The Bank Administration Institute stated that this proposal is "the most comprehensive solution to the problem. It reduces risk by providing a local clearing and return mechanism for checks that must be treated as local for check holds. It also simplifies compliance because depository institutions would be able to rely on the routing number to identify the local check processing region, either by visual inspection or automated means." First Virginia Banks stated, "First Virginia favors this proposal as it allows for automated processing and expedites the check collection. It will eliminate as much human intervention as possible and allows payable through checks to be handled in mainstream processing and not as exception items."

Without the ability to rely on the routing number to determine whether a check is local or nonlocal and thus determine the appropriate holds, a bank must develop alternative procedures to identify payable through checks and place the appropriate holds on such checks. These procedures include (1) having the teller identify and outsort payable through checks as they are deposited so that holds can be manually applied; and (2) identifying the routing numbers of nonlocal payable through banks [5] and assigning local availability on an automated basis to all checks destined to these routing numbers.

Bank commenters noted that requiring a local routing number in the MICR line was the only proposal that placed the time and expense of processing payable through checks on the bank on which the checks are written. Branch County Bank, Coldwater, Michigan, commented, "The requirement to make bank payable through checks bear a local routing number is the only one which places the time and expense of processing where it rightly belongs."

Bank commenters stated that it was difficult to estimate the operational cost savings that would result if this proposal were adopted. AmSouth Bank, Birmingham, Alabama, estimated that its annual dollar cost in teller staffing to implement a manual inspection approach to payable through checks would be $6,607,500. Bank One stated, "There is a cost avoidance (through requiring a local routing number in the MICR line) of about $225,000 per year. This is the labor expense we would incur if we have to visually inspect all items deposited, and manually make float adjustments for share draft or payable through items." Citicorp, New York, New York, stated, "As for the costs associated with the proposal, it is practically impossible to provide meaningfully accurate figures; it is not unreasonable, however, to project some figures based on the check collection process itself. For the banking industry nationwide (not including credit unions and the processors), Citicorp estimates that it would take a teller approximately two/three seconds to determine whether or not an item is payable through draft and whether or not it is local based on an examination of the check itself. * * * Factoring in the number of tellers employed, their hours, salary, other benefits and the approximate total number of items processed by all banks in the course of a year, we would project a cost figure of five hundred million dollars * * * for the banking community to comply with the regulation as amended as a result of the *CUNA* suit—absent adoption of the proposed amendments."

This estimate, however, assumes that all banks apply differential holds to deposits of local and nonlocal checks, as permitted in the regulation. According to a study conducted by the Bank Administration Institute, 83 percent of all banks provide immediate or next-day availability with the option to apply holds on a case-by-case or exception basis. The BAI study is corroborated by surveys conducted by trade associations in coordination with the Federal Reserve, which indicated that 75 percent of banks provide immediate or next-day availability with the option to apply holds on a case-by-case or exception basis. Applying case-by-case holds generally entails manual intervention to determine those checks on which holds should be imposed. Thus, the need for a method to apply automated holds appears to be limited to a minority (approximately 20 percent) of banks. Even though only a small number of banks place differential holds, these banks are often large and represent a greater proportion of all checks deposited.

By imposing differential holds for local and nonlocal checks, these banks have indicated a high level of concern about the risk of making funds available for withdrawal before learning whether a check has been returned. The Board recognizes that by not adopting the proposal requiring local routing numbers for payable through checks, a depositary bank electing to grant local availability for all checks drawn on the routing numbers of nonlocal payable through banks would increase this risk by granting local availability for checks that would not be subject to the local schedules under the regulation. In addition, banks applying differential holds are subject to litigation risk and could be liable for exceeding the maximum availability schedules if they do not grant local availability for a payable through check bearing a nonlocal routing number. Inaccurate assignment of availability could result when a teller makes errors in outsorting payable through checks or when the bank fails to accurately identify all nonlocal banks acting as payable

[5] A survey by Board staff identified 65 routing numbers that are used on bank payable through checks.

through banks for local banks. The Board believes that a depositary bank can control these risks through its diligent application of the process it chooses to use in applying holds to assure that it grants local availability for payable through checks issued by local banks.

Commenters in support of the proposal requiring local routing numbers also indicated that they would receive faster availability and incur lower collection costs for payable through checks drawn on local banks under this proposal than they can receive when sending the checks to the nonlocal payable through bank for collection. Suntrust Service Corporation, Orlando, Florida, stated, "Current volume from Suntrust Service Corporation Florida Operations to just the New York and Minneapolis share draft processors is approximately 6,500,000 items per year at a cost over $20,000.00 per year for transportation expenses."

Some bank commenters noted that this proposal would limit delayed disbursement. These commenters indicated that the credit unions using nonlocal payable through banks have an unfair float advantage over other banks. The Litchville State Bank, Litchville, North Dakota, commented, "For the credit unions to have special treatment is to give the banks and savings and loans unfair treatment. Please make the laws the same for all." The president of the Citizens Bank of Oviedo, Oviedo, Florida, commented, "* * * I think it should be illegal for any financial institution to carry its clearing account on the other side of the country so they can take advantage of float."

Payable through banks have indicated that many collecting banks receive availability for payable through checks drawn on a nonlocal payable through bank equivalent to that for checks collected locally by sending the checks directly to the nonlocal payable through bank. The payable through banks indicated that these "direct send" arrangements can only be cost effective for the collecting banks when sufficient volumes are being delivered to one presentment point and that maintenance of the payable through system is necessary to achieve these critical volume levels.

The majority of the banks commented that the potential risk of loss and increased exposure to fraud is also difficult to quantify. Bank of America stated, "The greatest potential savings, however, would not be operational. It would result from the reduced exposure to fraud losses * * *. While we have not attempted to estimate the fraud potential, as the processor of an estimated $850 million per year in payable through share drafts, our exposure is evident." Florida National Bank, Jacksonville, Florida, commented, "* * * this proposal would eliminate the likelihood that these checks would become vehicles for check fraud. It would reduce the collection time, reduce overall float, as well as reduce the risk for depository banks."

The 440 commenters that opposed the proposal, predominantly credit unions, indicated that requiring payable through checks to bear a local routing number in the MICR line was totally unacceptable and that its burden and high costs would far outweigh any benefits. Several commenters questioned the justification for the proposal. United States Senators Rudy Boschwitz and David Durenberger commented, "* * * the Federal Reserve has yet to demonstrate that a drastic step such as local MICR number is necessary in order to address perceived problems with the payable-through system. There are other solutions that should be explored before destroying a system that works well for credit unions." The Arizona Credit Union League, Inc., Phoenix, Arizona, stated, "* * * there is no evidence that the proposed changes are warranted. Indeed there are no cases of fraud or embezzlement on record that suggest problems with the payable through system to the degree suggested by the proposed regulations." CUNA commented that this proposal would "reduce efficiencies of the check collection system by creating thousands of additional endpoints."

Commenters expressed concern that this proposal could lead to the dismantlement of all national and regional payable through systems and thereby result in the loss of the efficiencies gained through economies of scale achieved from these systems. They explained that the payable through share draft program was initiated as a means for credit unions to provide a checking system to their members at a reasonable cost. Many credit unions stated that they are able to provide checking services only through the use of payable through processors, which provide efficient processing at a cost much lower than in-house processing. The Sherwin-Williams Employees Credit Union, Chicago, Illinois, stated, "Credit unions on a national or regional payable through program should not be forced to abandon their cost efficient, truncated system. This system has worked well for almost 15 years and has allowed thousands of credit unions to offer share drafts to millions of their members." The Alpena Alcona Area Credit Union, Alpena, Michigan, commented, "* * * the dismantlement of the payable through system would deprive members of a viable service, and at the same time increase the operational costs of the credit union—all without significant advantage." The Motorola Employees Credit Union, Schaumberg, Illinois, stressed that it chose Travelers Express as its payable through processor because the payable through program is both efficient and economical. It noted that it would be too costly to convert to in-house or local processing or to arrange for local intercept points.

Commenters expressed concern that local processors would not be able to provide the truncation services currently provided by the major payable through processors. They described the current truncation system as very cost efficient. H&E Telephone Federal Credit Union, Rochelle Park, New Jersey, noted that it previously used local banks to clear its checks but switched to a national processor that was superior. Problems with its local bank included: "(1) The return of actual checks to us which resulted in a mountain of paper and work to organize data; (2) poor reporting capabilities and longer time lags for information availability; and (3) more costly service charges."

Credit union commenters cited two costs of implementing the proposal requiring local routing numbers on payable through checks. First, credit unions and other banks issuing payable through checks would be required to either convert to in-house processing or establish a local presentment point for their payable through checks. They commented that these alternatives would be so costly that the continued share draft service would not be cost effective and would result in their imposing excessive fees on their members. Many commenters stated that an in-house system would not be economically feasible because of their small size and volume. The IBEW Federal Credit Union, Knoxville, Tennessee, commented that conforming "to the proposed amendments would be cost prohibitive due to increased processing costs, risk involved, and additional staff and data processing needs."

The City of Huntington Federal Credit Union, Huntington, West Virginia, indicated that a local bank estimated that it would charge approximately $30,000 per year to process the credit union's share drafts, compared to an annual charge of approximately $10,300 assessed by Chase Manhattan Bank to perform similar services. Another credit union estimated that current share draft account fees charged to credit union members would triple if the credit union closed and they were forced to use local banks. A third credit union with 850 share draft accounts indicated that its per account cost would increase an estimated $41.41 annually as a result of this proposal. A credit union that uses the Travelers Express payable through draft processing service stated that its average per item cost is $.06 and the time required to receive and post accounts is less than one hour per day. This credit union estimated that this proposed amendment would require the purchase of additional equipment costing approximately $20,000 and the addition of one staff person at approximately $15,000 per year.

Commenters also noted that a second type of cost associated with the proposal is the cost of reissuing checks to customers. In addition to the cost of reissuing check stock, a change in routing number requires the additional cost of dual processing during the transition period when the processor must process checks with both the old and new routing numbers. The cost associated with dual processing will vary based on the time required to replace check stock. The Board believes that banks can minimize this time through diligent instruction to its customers in reordering and using new checks. These costs would either be borne directly by the customer, who would have to pay for new check stock, or indirectly by the customer through increased service charges imposed by the bank that bore the cost of replacing the check stock.

In addition to the cost/benefit analysis, the Board considered the competitive implications of this proposal. This analysis included competitive factors vis-a-vis credit unions vs. commercial banks. Credit union commenters indicated that because this proposal has the effect of limiting a credit union's choice of payable through bank, its adoption could prompt local banks to raise their fees. In addition, many credit unions believe that local banks may not have the incentive to keep costs down for the credit union issuing payable through checks because many of these local banks are competing for the same customer accounts as those held by the credit union. The Redford Township Community Credit Union, Redford, Michigan, stated, "This proposal would eliminate most of the competition which is a healthy situation for cost control."

Some credit unions indicated that they had no local processing options. The Fort Harrison VAF Federal Credit Union, Fort Harrison, Montana, stated, "* * * there is no Montana-based processing point at this time and one could not be set up within the one year deadline." The Jackson USDA Federal Credit Union, Jackson, Mississippi, commented that "there are no banks in the state of Mississippi that we know of that will process share drafts for credit unions." The manager of the Jackson USDA FCU contacted two local banks about processing share drafts and was informed that their market studies indicated there would be insufficient credit union share draft volume to make the share draft processing profitable.

Other comments indicated that the competitive issues between commercial banks and credit unions are broader than the issues raised by these payable through check proposals. Bank commenters indicated that the credit unions' tax-free status and liberal common bond restrictions give the credit unions an unfair advantage in competing for customers, which is only exacerbated by the credit unions' ability to issue payable through checks.

Commenters also noted that this proposal would have an anti-competitive effect on consumers by limiting choice of bank. The majority of small credit unions that commented on this proposal indicated that they would have to discontinue their share draft programs if the proposal were adopted because they would be unable to finance the increased human and equipment resource requirements. They expressed concern that they would no longer be able to offer a low cost checking alternative to lower income customers. The Pennsylvania Mennonite Federal Credit Union, Scottdale, Pennsylvania, stated, "In this day when the U.S. Congress is considering 'lifeline banking' and providing basic financial services that ordinary people can afford, we find it incongruous for a major organization such as the Federal Reserve System to mandate regulations which will either increase the cost of these services to our members or result in their discontinuance altogether."

The Newark Aerospace Federal Credit Union, Heath, Ohio, commented, "A lifeline no service charge share draft account might no longer be available to many of our members because of increased cost. If we could not afford the necessary equipment, 2,200 members would lose their share draft accounts and be forced to open checking accounts at banks. Recent reports indicate the average checking account costs the consumer close to $200 annually." Congressmen Frank Annunzio and Bruce Vento stated, "We believe the Board has consistently failed to balance the adverse effects such a proposed amendment will have on the medium to small credit unions and their life-line services, such as share drafts. Instead the Board cited unsubstantiated allegations of fraud and operation difficulties as its basis for requiring such a proposed amendment to Regulation CC."

Credit unions and payable through processors noted that this proposal would have an anti-competitive impact by limiting processing choice. The Dearborn Federal Credit Union, Dearborn, Michigan, stated, "Dearborn Federal believes that every credit union should have the right to choose the most efficient and cost effective system available." The Chase Manhattan Corporation stated, "If this approach were implemented, the Federal Reserve System with its extensive processing facilities and resources in every check processing region would have a competitive advantage over private sector providers in offering a national truncation service."

The Board believes that provision of truncation services by the Federal Reserve Banks and other private sector providers should help facilitate the payable through system by expediting the delivery of check information to the payable through bank, thereby allowing the payable through bank to provide more efficient, cost-effective payment services to credit unions. The Federal Reserve encourages private sector participation in providing truncation services, and the Reserve Banks developed their truncation service in coordination with private sector truncation service providers through the National Association for Check Safekeeping, which has expressed an interest in supporting the payable through system by means of truncation.

A few commenters noted that this proposal could be difficult to enforce because some credit union members order their own drafts from printing companies and they would be individually responsible for ensuring that their drafts have the proper routing number in the MICR line. A small number of commenters identified as another potential problem that some members would be reluctant to throw away unused drafts even if new drafts were issued free of charge.

The National Association for Check Safekeeping (NACS) proposed an alternative to this proposal. NACS proposed use of the 8000 series of routing numbers to identify checks that are payable through a bank nor located in the same check processing region as the issuer of the check. NACS noted that

the only current use of the 8000 series is for travellers checks.

Under the NACS proposal, the first digit of the routing number would be the number 8, identifying the 8000 series. The second and third digits would identify the check processing region of the bank on which the check is drawn. These two digits could be the number 01 through 48, identifying one of the 48 Federal Reserve check processing regions. The fourth and fifth digits would identify the check processing region of the payable through bank. Again, the two digits could be 01 through 48 identifying a check processing region. The sixth, seventh, and eighth digits would identify the particular payable through bank(s) within each check processing region. The ninth digit would be the check digit.

NACS stated, "Depositary banks could easily examine the 8000 series number and determine two things. Banks can determine where to send the check for collection and the funds availability to assign. Only banks using payable through processors in another check processing region will be eligible for an 8000 series routing number." Use of the 8000 series of routing numbers would enable banks to use automated equipment to read the MICR line to assign funds availability. Several commenters urged the Board to first research the NACS proposal further if the Board planned to adopt the proposal to require that payable through checks bear a local routing number in the MICR line. If the NACS proposal was determined to be an effective alternative, the commenters urged the Board to issue the proposal for public comment to determine whether it could provide the same benefits to depositary banks as the local routing number proposal without disrupting the national payable through system.

Board staff discussed the NACS proposal with industry representatives, equipment vendors, and check processing staff at the Federal Reserve Banks. Equipment vendors indicated that use of the 8000 series would require equipment upgrades at collecting banks, and that purchase and installment could take up to two years. Federal Reserve Bank staff indicated that this proposal could impact sort patterns, memory capacity for look-up tables, and processing schedules.

Adoption of the NACS proposal would also require reissuance of all payable through checks. Because the Board is adopting the conspicuous labeling requirement at this time, later adoption of the NACS proposal would require banks issuing payable through checks to reissue their checks twice. Two reissuances would be costly and burdensome for these banks and their customers.

Adoption of the NACS proposal would only benefit the approximately 20 percent of banks with blanket hold policies. The proposal would not provide incremental benefits to the large majority of banks that generally offer same-day or next-day availability. The NACS proposal would, however, impact all collecting banks because they would have to upgrade equipment to process these checks. Since this proposal would only benefit the minority of banks with blanket hold policies and would be burdensome for credit unions and collecting banks, the Board believes there is not sufficient justification to issue the NACS proposal for public comment.

Sovran Financial Corporation also suggested an alternative to the proposal requiring payable through checks to bear a local routing number in the MICR line. Sovran recommended that the "Board consider setting a specific time limit—two years—by which all issuers of payable through items wishing to obtain better acceptability for their items in the local marketplace must convert to using a local paying agent for the items, and to ensure that the items bear the routing number of the local paying agent. Those institutions which believe the costs of increased acceptability outweigh the benefits will still have the opportunity to use a distantly located payable through bank, but collecting banks will also have the opportunity to grant nonlocal funds access to depositing customers for these items." The Act does not give the Board the authority to lengthen the availability schedules, which would be the result of this proposed alternative.

Travelers Express Company, Minneapolis, Minnesota, recommended two alternatives to the proposal requiring a local routing number in the MICR line. Travelers suggested using position 44 in the MICR line to identify whether payable through checks are local or nonlocal. The Board believes that, while it would be possible to use position 44 to identify whether or not a check is a payable through check, manual intervention would still be necessary to determine whether such check is local or nonlocal. Thus, this alternative would provide only marginal benefit to depositary banks and should not be pursued at this time.

A second suggestion by Travelers Express was to implement "a requirement that payable through banks notify their local Federal Reserve of every routing number that includes items that would be considered local. The Fed could then publish a directory of these numbers. This would permit automation for the vast majority of the items at issue." As previously indicated, Board staff developed a list of 65 routing numbers that are used on bank payable through checks. The Board believes that, because banks may begin to offer or discontinue payable through services at any time, maintaining the accuracy of such a list and disseminating updated information to all depositary banks would be difficult.

Some commenters discussed the appropriate lead time for implementation of the proposed requirement that bank payable through checks bear a local routing number in the MICR line. The majority of the commenters noted that the proposed one year implementation time period was too short. Oak Ridge Government Federal Credit Union, Oak Ridge, Tennessee, commented, "My only suggestion would be that the implementation date be extended from 12 to 24 months. Any credit union that has gone through the conversion process already will tell you that it is impossible to accomplish in 12 months, and that is *after* the decision is made. The decision whether to go with a local third party processor or in-house can take 3 to 6 months."

The Board did not find reason to believe that the benefits of implementing the proposal to require payable through checks to bear a local routing number in the MICR line outweigh the reported costs of implementation, and thus is not adopting this proposal.

Authorize direct presentment to the bank on which payable through checks are written. Currently, the law is unclear as to whether a bank payable through check can be presented directly to the bank on which it is written or whether such checks must be presented to the payable through bank. Expressly permitting such checks to be presented directly to the bank on which they are written would enable banks to have such checks collected and returned locally, and thus would avoid delays in collection and return that might occur when the depositary bank sends the checks to nonlocal payable through banks.

The Board specifically requested comment on the cost and operational burden of this proposal on banks that use payable through checks, the potential cost savings to depositary banks, and the appropriate lead time for implementation of this proposal if adopted. Six hundred thirty-seven comment letters addressed this proposal. One hundred seventy-two commenters supported the proposal and 465 commenters opposed it.

The commenters in support of this proposal commented that direct presentment would minimize the potential for fraud. National City Corporation, Cleveland, Ohio, commented, "To the extent that the proposal is employed, it would allow banks to determine the collectibility of checks/drafts in less time than otherwise would be the case, thereby reducing the risk of loss." The majority of the commenters that supported the direct presentment proposal indicated that they preferred the adoption of both the proposal requiring a local routing number in the MICR line and the direct presentment proposal.

A number of commenters indicated that they would like to have the option of direct presentment but did not indicate if they would actually present directly to the bank on which the checks are written, rather than to the payable through bank, if this proposal were adopted. The Chicago Clearinghouse Association stated, "The Association supports direct presentment of payable through items to the paying institution as an optional method of collecting such items * * *. In many cases, the option of direct presentment would be effective for speeding the forward collection process. However, we recognize that some collecting banks may not wish to exercise this option."

A small number of commenters suggested that the Federal Reserve should facilitate direct presentment. The United States League of Savings Institutions stated, "Having the Federal Reserve make direct presentments overcomes the cost prohibitiveness of having individual depositary banks making a presentment. Concentrating payable-through check volume at District Federal Reserve Banks makes this direct presentment alternative much more feasible." Continental Bank commented, "Our support for this option is also contingent on the Fed expanding its current fine-sort option to facilitate the direct presentment of payable through checks to the 'paying bank'. If this Fed expansion is not achieved, there would be no economical way to get the payable through checks presented directly to the individual credit unions."

Bank commenters noted that direct presentment would be used primarily by banks that have both the resources to perform this function and the volume to justify the expense. The Key State Bank, Owosso, Michigan, commented, "Allowing banks to present the items directly to a local credit union is only practical if sufficient volume allows a separate 'break out' of these items and ample capacity in the bank's equipment is available for a separate sort of these items."

Commenters noted that direct presentment would be useful in the case of large-dollar checks. The Bank Administration Institute commented, "Direct presentment does make sense, however, in the case of large dollar items. It is not uncommon for banks to single out large dollar checks for special handling. By presenting these items directly, a bank can often reduce float by accelerating the collection of funds. It also allows banks to determine the collectibility of items more quickly, reducing the risk of loss."

A small number of commenters noted that adoption of this proposal would simply clarify current law that provides that bank payable through checks can be presented directly to the credit union. The American Bankers Association stated, "Currently, old case law and Article 3 of the Uniform Commercial Code (UCC) might suggest that a 'drawee bank' (payor bank) may properly refuse to pay a check made payable through a particular bank when the check is not presented to the drawee by that bank. However, we believe that section 4–204(2) of the UCC * * * already authorizes collecting banks to send items directly to the payor bank. The Board should resolve this ambiguity by stating that banks may present directly to the bank on which the check is written."

The credit union commenters that opposed this proposal indicated that they did not have the operational capabilities to handle direct presentment. The Salt River Project Federal Credit Union, Phoenix, Arizona, commented, "Permitting depositary institutions to present a payable through share draft directly to credit unions for payment will create additional operational problems, especially for small credit unions. Many do not have the personnel nor the cash on hand to respond to direct presentment. They also do not own the equipment to handle direct presentment, and would be reduced to the equivalent of clearing all share drafts by hand! This was the reason the payable through system was set up in the first place, to allow credit unions to offer a transaction account, without the costly capital investment in personnel and equipment. The proposed changes would destroy their ability to offer transaction accounts by destroying the system that allowed them to offer those accounts in the first place."

The Credit Union National Association commented that this proposal would "dismantle the credit union payable through system, thereby eliminating share draft accounts for members of 1,500 to 2,000 small credit unions. Many small credit unions that could afford a local processing option would be put out of the share draft business because they simply cannot handle direct presentments. (Many of them are not capable of handling their own on-us items without depositing them in another financial institution.)"

A number of credit union commenters discussed the cost implications of direct presentment. The Billings Health Affiliated Federal Credit Union, Billings, Montana, stated, "I have 3 full time employee's (sic), including myself, who handle 2,500 members. We could not begin to do the direct presentments. Expenses involved would be a new safe which would run about $8,000 to $10,000.00. A new staff person at $12,000.00 per year and any expenses incurred through purchase of new electronic equipment. My net income YTD for 1988 is $20,699.04. I am sure you can see that to make the required staff increases and equipment purchases would just not be feasible. We would most definitely have to drop our program."

A few credit union commenters discussed the transportation costs of this proposal. The Missouri Credit Union League, St. Louis, Missouri, commented, "If this proposal is adopted, credit unions receiving a direct presentment from a depositary bank would have to arrange for timely delivery of these items to the payable through processor. Besides being a logistical problem it also creates an economic burden. At a minimum, checks would need to be sent by overnight courier service since timely delivery is a key issue. This would result in a minimum daily cost per credit union of approximately $14. The daily cost to Missouri credit unions would be $1,400 under this method. For large cash letters, credit unions would need to consider 'next flight out' arrangements. The daily cost for this type of courier service would be $1,000."

The majority of the credit union commenters stressed the same reasons for opposing the direct presentment proposal as they used in explaining their opposition to the proposal requiring a local routing number in the MICR line. These commenters cited the cost, lack of operational capability, and the potential dismantlement of the national payable through program if this proposal were adopted. These reasons are more fully articulated in the discussion of the proposal requiring bank payable through checks to bear a local routing number in the MICR line.

Bank commenters opposed to this proposal commented that this proposal does not facilitate the assignment of availability on an automated basis. The Maryland National Bank commented, "Although we conceptually support (the direct presentment proposal) * * * we could not support this option in terms of an actual implementation for the following reason: Again, this option would not permit the automated processing of the credit union drafts. We believe that any option which may require special nonautomated check handling will only weaken the check collection system." The Bank of Boston, Boston, Massachusetts, stated, "The Bank believes that this proposal is unworkable since it does not relieve depository institutions from the onerous task of manual identification of bank payable-through drafts."

Bank commenters also noted that direct presentment was only feasible for large organizations because the majority of banks would not receive enough share draft volume from one credit union in one day to make direct presentment worthwhile. The Alamo Savings Association of Texas commented, "This is not a practical alternative because of the transportation and settlement systems that would have to be developed to accommodate such direct presentment."

A small number of bank commenters discussed the cost implications of the direct presentment proposal. Provident National Bank, Philadelphia, Pennsylvania, commented, "It is also not a feasible alternative because of the large number of credit unions and the costs associated with direct presentment (transportation, cash letter processing and transaction costs). In addition to these costs are the costs associated with the manual outsorting of items and the manual intervention in those systems used to assign availability to customer deposits."

The Sovran Financial Corporation stated, "* * * to operationally effect direct presentment, we must manually sort through checks (in the case of one major payable through bank, some 30,000 items per day) to separate out those drawn on local institutions. To preserve some semblance of an audit trail, the items drawn on the distant payable through processor. would have to be rerun on our high speed check sorting equipment, and another cash letter created. The smaller groups of items drawn on individual local issuing institutions would similarly have to be rerun. Depending on the internal cost structures of individual banks, the incremental per-item cost to rerun these items could range from $0.005 to $0.012 cents per item pass. We estimate, given current annual volumes of payable through drafts cleared through one major national payable through processor, that reprocessing these items would cost us approximately $70,000 per year—excluding any forward presentment fees that we might also incur. Reconcilement and adjustment costs due to errors following from such a manually intensive endeavor would rise as well." Bank of America estimated that the cost of sorting the checks manually for direct presentment would be $800,000 per year.

Very few commenters commented on the appropriate lead time for implementation of this proposal. Suggested time frames ranged from immediately upon adoption of the amendment to three to four years after adoption.

The Board believes that there is not sufficient justification to clarify by regulation that a bank payable through check can be presented directly to the bank on which it is written. Therefore, the Board has not adopted this proposal.

Miscellaneous Recommendations. A number of commenters suggested alternatives other than the proposals issued by the Board. A small number of commenters noted that they disagreed with the Board's decision not to appeal the court ruling and urged the Board to appeal the ruling. First Pennsylvania Bank, Philadelphia, Pennsylvania, stated, "* * * we urge the Board to reconsider their previous position on this matter and to appeal the Federal court ruling concerning the treatment of payable through checks."

Some commenters recommended that the Board should seek amendments to the Act. The United BN Credit Union, St. Paul, Minnesota, stated, "Save the taxpayers money by sending your proposals for comment to all Congressmen and suggest they amend the law. They could amend the law to say checks drawn on local banks are local checks and checks drawn on nonlocal banks are nonlocal checks, PERIOD." The Board supports an amendment to the Act that would amend the definition of "originating depository institution" to mean the branch of a depository institution on which a check is drawn or through which a check is payable. If this amendment were enacted, the payable through bank would be defined as the paying bank in the regulation for the purpose of determining whether a payable through check is a local or nonlocal check.

A number of commenters requested the Board to require that bank payable through checks be deposited with a special deposit slip in order to receive local availability. Marine Midland Bank commented, "If the proposal to MICR encode a routing number which is local to the paying bank is not adopted by the Board, Marine would request the Board to consider permitting banks to require that bank payable through checks be deposited in person with a special deposit slip to a bank employee in order to get availability according to the schedule for local paying banks, if the paying bank is not in the same check processing region as the payable through bank." This would require an amendment to the Act because, under the Act, the Board does not have the authority to lengthen the availability schedules by requiring the use of special deposit slips as a condition for providing local availability to certain payable through checks.

A small number of commenters recommended that the Board should document the fraud, if any, caused by payable through checks and, if necessary, suspend the regulation for payable through checks. The Missouri Credit Union League commented, "Since the Fed has the authority to suspend the Regulation for certain classes of items, this appears to be more than adequate protection for the participants in the check collection system. Rather than be proactive without cause, a more prudent approach is to be reactive with cause."

The Independent Bankers Association of America recommended "that the Board adopt an amendment to Regulation CC requiring credit unions with payable through share draft programs to respond on a timely basis, to all inquiries from depositary banks on items over $500." A similar proposal was issued for public comment in December 1987, which would require banks issuing cashier's or teller's checks or certifying checks to respond to such inquiries. Several commenters on that proposal indicated that the provision would not protect depositary banks completely because many forgeries and counterfeits would go undetected. They also noted that depositary banks would not know where to direct the inquiry within the paying bank to obtain reliable information, or may not be able to contact or receive a response from the paying bank within a reasonable time. Therefore, the Board does not believe this proposal should be issued for public comment.

A number of credit union commenters requested that the Board delay consideration of these proposals to allow sufficient time to evaluate the effects of Regulation CC on the check collection system. CBI Oak Brook Federal Credit Union commented, "* * * give the new system a year to function and gather some facts and figures on nonlocal payable-through-bank returns. There might be better ways to solve this liability problem in the future (if it exists) than the proposals that have been made." A number of depositary banks have expressed concern about their ability to comply with the revised regulation, and the Board believes it is appropriate to adopt amendments at this time.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires an agency to publish a final regulatory flexibility analysis when it promulgates a final rule. Two of the requirements (5 U.S.C. 603(a) (1) and (2)) of a final regulatory flexibility analysis, (1) a succinct statement of the need for, and the objectives of, the rule and (2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments are contained in the supplementary material above.

A third requirement of a final regulatory flexibility analysis (5 U.S.C. 604(a)(3)) is a description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities which was considered by the agency, and a statement of the reasons why each one of such alternatives was rejected. As described in the above preamble, the Board included in its initial proposal several alternative rules, and requested and received comment on the cost and risk associated with each alternative for all affected entities, both large and small.

After considering the comments and the costs and benefits of the various alternatives on the affected entities, the Board adopted a final rule which it believes will have the minimum impact on small entities, generally credit unions, while still achieving the objectives of the rule. The reasons for the Board's final determinations are more fully described above. The Board did not, however, either propose or adopt an exemption from coverage for small institutions that use payable through checks. The purpose of the rules published today is to alleviate the operational difficulties and risk associated with the acceptance of payable through checks by depositary banks. This purpose would be defeated if the rules did not apply to small institutions that use payable through checks because the operational and risk problems for their checks would remain.

List of Subjects in 12 CFR Part 229

Banks, banking; Federal Reserve System.

For the reasons set out in the preamble, 12 CFR Part 229 is amended as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS

1. The authority citation for Part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100–86, 101 Stat. 552, 635, 12 U.S.C. 4001 et seq.

2. In § 229.36, the heading is revised and a new paragraph (e) is added to read as follows:

§ 229.36 Presentment and issuance of checks.

* * * * *

(e) *Issuance of payable through checks.* A bank that arranges for checks payable by it to be payable through another bank shall require that the following information be printed conspicuously on the face of each check:

(1) The name, location, and first four digits of the nine-digit routing number of the bank by which the check is payable; and

(2) The words "payable through" followed by the name and location of the payable through bank.

This provision shall be effective February 1, 1991, and after that date banks that use payable through arrangements must require their customers to use checks that meet the requirements of this provision.

3. In § 229.38, paragraph (d) is redesignated as paragraph (d)(1), a new heading is added to paragraph (d), and a new paragraph (d)(2) is added to read as follows:

§ 229.38 Liability.

* * * * *

(d) *Responsibility for certain aspects of checks*—(1) * * *

(2) *Responsibility for payable through checks.* In the case of a check that is payable by a bank and payable through a paying bank located in a different check processing region than the bank by which the check is payable, the bank by which the check is payable is responsible for damages under paragraph (a) of this section, to the extent that the check is not returned to the depositary bank through the payable through bank as quickly as the check would have been required to be returned under § 229.30(a) had the bank by which the check is payable—

(i) Received the check as paying bank on the day the payable through bank received the check; and

(ii) Returned the check as paying bank in accordance with § 229.30(a)(1).

Responsibility under this paragraph shall be treated as negligence of the bank by which the check is payable for purposes of paragraph (c) of this section.

* * * * *

4. Appendix E—Commentary to Part 229 is amended to read as follows:

a. Section 229.36 is amended by revising the heading and adding a new paragraph (e).

Appendix E—Commentary

* * * * *

Section 229.36 Presentment and issuance of checks

* * * * *

(e) Issuance of payable through checks. If a bank arranges for checks payable by it to be payable through another bank, it must require its customers to use checks that contain conspicuously on their face the name, location, and first four digits of the nine-digit routing number of the bank by which the check is payable and the legend "payable through" followed by the name and location of the payable through bank. The first four digits of the nine-digit routing number and the location of the bank by which the check is payable must be associated with the same check processing region. (This section does not affect § 229.36(b).) The required information is deemed conspicuous if it is printed in a type size not smaller than six-point type and if it is contained in the title plate, which is located in the lower left quadrant of the check. The required information may be conspicuous if it is located elsewhere on the check.

If a payable through check does not meet the requirements of this paragraph, the bank by which the check is payable may be liable to the depositary bank or others as provided in § 229.38. For example, a bank by which a payable through check is payable could be liable to a depositary bank that suffers a loss, such as lost interest or liability under Subpart B, that would not have occurred had the check met the requirements of this paragraph. The bank by which the check is payable may be liable for additional damages if it fails to act in good faith.

b. Section 229.38 is amended by redesignating the first three paragraphs of paragraph (d) as paragraph (d)(1); by adding a new heading to paragraph (d); by adding a new paragraph (d)(2) to follow newly redesignated paragraph (d)(1); and by revising the last paragraph of paragraph (d) to read as follows:

BEST COPY AVAILABLE

Section 229.38 Liability

* * * * *

(d) Responsibility for certain aspects of checks.—(1) * * *

(2) *Responsibility for payable through checks.* This paragraph provides that the bank by which a payable through check is payable is liable for damages under paragraph (a) of this section to the extent that the check is not returned through the payable through bank as quickly as would have been necessary to meet the requirements of § 229.30(a)(1) (the 2-day/4-day test) had the bank by which it is payable received the check as paying bank on the day the payable through bank received it. The location of the bank by which a check is payable for purposes of the 2-day/4-day test may be determined from the location or the first four digits of the routing number of the bank by which the check is payable. This information should be stated on the check. (See § 229.36(e) and accompanying Commentary.) Responsibility under paragraph (d)(2) does not include responsibility for the time required for the forward collection of a check to the payable through bank.

Generally, liability under paragraph (d)(2) will be limited in amount. Under § 229.33(a), a paying bank that returns the amount of $2,500 or more is not returned through the payable through bank as quickly as would have been required had the check been received by the bank by which it is payable, the depositary bank should not suffer damages unless it has not received timely notice of nonpayment. Thus, ordinarily the bank by which a payable through check is payable would be liable under paragraph (a) only for checks in amounts up to $2,500, and the paying bank would be responsible for notice of nonpayment for checks in the amount of $2,500 or more.

Responsibility under paragraphs (d)(1) and (d)(2) is treated as negligence for comparative negligence purposes, and the contribution to damages under paragraphs (d)(1) and (d)(2) is treated in the same way as the degree of negligence under paragraph (c) of this section.

By order of the Board of Governors of the Federal Reserve System, July 28, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-18096 Filed 8-3-89; 8:45 am]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270, 274, 275, and 279

[Release Nos. IC-17085; IA-1161; File No. S7-19-89]

RIN 3235-AD37

Forms for Filing by Accountants

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of forms and amendments to related rules.

SUMMARY: The Commission is adopting three new forms to be used by accountants when filing examination certificates required under the Investment Company Act of 1940 and the Investment Advisers Act of 1940. The forms will make the examination certificates more accessible for inspection by the Commission staff and the public and will facilitate verification of compliance with examination requirements.

EFFECTIVE DATE: September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Ernest P. Francis, Attorney, or Kenneth J. Berman, Special Counsel, (202) 272-2107, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5-2, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is adopting Forms N-17f-1, N-17f-2, and ADV-E to serve as cover pages for examination certificates filed by accountants under rules 17f-1, (17 CFR 270.17f-1) and 17f-2 (17 CFR 270.17f-2) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) and rule 206 (4)-2 (17 CFR 275.206 (4)-2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*). In addition, the Commission is adopting rule revisions to require the use of the proposed forms.

Discussion

On August 2, 1988 the Commission published for comment proposed forms N-17-f-1, N-17f-2, and ADV-E and proposed amendments to the rules requiring the filing of accountants certificates.[1] The Commission received one comment, from the Financial Planner/Investment Adviser Committee of the North American Securities Administrators Association, Inc. ("NASAA"), supporting the proposed forms and rule amendments.[2] Accordingly, the Commission is adopting the forms and rule amendments as proposed.

The forms being adopted today will serve as cover sheets for the examination certificates that Commission rules now require certain investment companies and investment advisers to have accountants file. Examination certificates are required after an accountant has verified by actual inspection (1) securities or similar investments of a management investment company that are placed in the custody of a member of a national securities exchange; [3] (2) securities and similar investments of a management investment company maintained in the custody of the company; [4] and (3) securities and funds of clients in the custody of an investment adviser.[5] The amendments to rules 17f-1, 17f-2, and 206(4)-2 being adopted today require that the appropriate form be attached as a cover sheet to all examination certificates filed with the Commission.

By providing an accurate means to identify the registrant on whose behalf a certificate is filed, the forms and rules will make the examination certificates more accessible for inspection by the staff and the public and will facilitate staff verification of compliance with examination requirements. Because the rules simply require the addition of a cover sheet to current required filings, they do not create any significant burden to investment companies, investment advisers, or their accountants.[6]

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission previously certified that the forms and amendments adopted today will not have a significant impact on a substantial number of small entities. No comments were received on that certification.

List of Subjects in 17 CFR Parts 270, 274, 275, and 279

Investment companies, Reporting and recordkeeping requirements, Securities, Investment advisers.

Text of Rule

Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

[1] Release Nos. IC-16511, IA-1133 (Aug. 2, 1988) (53 FR 29914 (Aug. 9, 1988)).

[2] The Board of Directors of NASAA endorsed the concept of these forms on April 30, 1989. The Commission anticipates that the forms will eventually be used for filings with both the Commission and state securities agencies.

[3] Rule 17f-1(b)(4) (17 CFR 270.17f-1(b)(4)).

[4] Rule 17f-2(f) (17 CFR 270.17f-2(f)).

[5] Rule 206(4)-2(a)(5) (17 CFR 275.206(4)-2(a)(5)).

[6] Less than one percent of investment companies are currently subject to the provisions of rule 17f-1, less than five percent of investment companies are subject to the provisions of rule 17f-2, and less than ten percent of all investment advisers are subject to the provisions of rule 206(4)-2.

Authority: Secs. 38, 40, 54 Stat. 841, 842, 15 U.S.C. 80a-37, 80a-39; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 *et seq.*, unless otherwise noted.

2. By revising paragraph (b)(4) of § 270.17f-1 to read as follows:

§ 270.17f-1 Custody of securities with members of national securities exchanges.

* * * * *

(b) * * *

(4) Such securities and investments shall be verified by actual examination at the end of each annual and semi-annual fiscal period by an independent public accountant retained by the investment company, and shall be examined by such accountant at least one other time, chosen by the accountant, during each fiscal year. A certificate of such accountant stating that an examination of such securities has been made, and describing the nature and extent of the examination, shall be attached to a completed Form N-17f-1 (17 CFR 274.219) and transmitted to the Commission promptly after each examination.

* * * * *

3. By revising paragraph (f) of § 270.17f-2 to read as follows:

§ 270.17f-2 Custody of investments by registered management investment company.

* * * * *

(f) Such securities and similar investments shall be verified by actual examination by an independent public accountant retained by the investment company at least three times during each fiscal year, at least two of which shall be chosen by such accountant without prior notice to such company. A certificate of such accountant stating that an examination of such securities and investments has been made, and describing the nature and extent of the examination, shall be attached to a completed Form N-17f-2 (17 CFR 274.220) and transmitted to the Commission promptly after each examination.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

4. The authority citation for Part 274 continues to read, in part, as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.*, unless otherwise noted.

5. By adding § 274.219 to read as follows:

§ 274.219 Form N-17f-1, cover page for each certificate of accounting of securities and similar investments of a management investment company in the custody of a member of a national securities exchange, filed pursuant to rule 17f-1.

Text of Form N-17F-1

See Appendix A. Form N-17f-1 will not be codified in the Code of Federal Regulations.

6. By adding § 274.220 to read as follows:

§ 274.220 Form N-17f-2, cover page for each certificate of accounting of securities and similar investments in the custody of a registered management investment company, filed pursuant to rule 17f-2.

Text of Form N-17F-2

See Appendix B. Form N-17f-2 will not be codified in the Code of Federal Regulations.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

7. The authority citation for Part 275 continues to read:

Authority: Secs. 203, 54 Stat. 850, as amended, 15 U.S.C. 80b-3; sec. 204, 54 Stat. 852, as amended, 17 U.S.C. 80b-4; sec. 206A, 84 Stat. 1433, as added, 15 U.S.C. 80b-6A; sec. 211, 54 Stat. 855, as amended, 15 U.S.C. 80b-11, unless otherwise noted.

8. By revising paragraph (a)(5) of § 275.206(4)-2 as follows:

§ 275.206(4)-2 Custody or possession of funds or securities of clients.

(a) * * *

(5) All such funds and securities of clients are verified by actual examination at least once during each calendar year by an independent public accountant at a time that shall be chosen by such accountant without prior notice to the investment adviser. A certificate of such accountant stating that an examination of such funds and securities has been made, and describing the nature and extent of the examination, shall be attached to a completed Form ADV-E (17 CFR 279.8) and transmitted to the Commission promptly after each examination.

* * * * *

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

9. The authority citation for Part 279 continues to read:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b-1, *et seq.*

10. By adding § 279.8 to read as follows:

§ 279.8 Form ADV-E, cover page for certificate of accounting of securities and funds in possession or custody of an investment adviser.

Text of Form ADV-E

See Appendix C. Form ADV-E will not be codified in the Code of Federal Regulations.

By the Commission.

Dated: July 28, 1989.

Jonathan G. Katz,

Secretary.

FORM M-17f-1

Certificate of Accounting of Securities and Similar Investments of a Management Investment Company in the Custody of Members of National Securities Exchanges

OMB APPROVAL

OMB Number: 3235-0359

Expires: July 31, 1991

Estimated average burden hours per response—0.05

Pursuant to Rule 17f-1 [17 CFR 270.17f-1]

Date examination completed:

1. Investment Company Act File Number:
2. State Identification Number:

AL	AK	AZ	AR	CA	CO
CT	DE	DC	FL	GA	HI
ID	IL	IN	IA	KS	KY
LA	ME	MD	MA	MI	MN
MS	MO	MT	NE	NV	NH
NJ	NM	NY	NC	ND	OH
OK	OR	PA	RI	SC	SD
TN	TX	UT	VT	VA	WA
WV	WI	WY	PR		
Other (specify):					

3. Exact name of investment company as specified in registration statement:
4. Address of principal executive office: (number, street, city, state, zip code)

Instructions

This Form must be completed by investment companies that place or maintain securities or similar investments in the custody of a company that is a member of a national securities exchange.

Investment company

1. All items must be completed by the investment company.

2. Give this Form to the independent public account who, in compliance with Rule 17f-1 under the Act and applicable state law, examines securities and similar investments in the custody of a company that is a member of a national securities exchange.

Accountant

3. Submit this Form to the Securities and Exchange Commission and appropriate state securities administrators when filing the certificate of accounting required by Rule 17f-1 under the Act and applicable state law.

File the original and one copy with the Securities and Exchange Commission's principal office in Washington, D.C., one copy with the regional office for the region in which the investment company's principal business operations are conducted, and one copy with the appropriate state administrator(s), if applicable.

This Form Must Be Given to Your Independent Public Accountant

Note: The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Form M-17f-2

Certificate of Accounting of Securities and Similar Investments in the Custody of Management Investment Companies

Appendix B

OMB Approval
OMB Number: 3235-0360
Expires: July 31, 1991
Estimated average burden hours per response: 0.05

Pursuant to Rule 17f-2 [17 CFR 270.17f-2]

Date examination completed:
1. Investment Company Act File Number: 811-
2. State Identification Number:

AL	AK	AZ	AR	CA	CO
CT	DE	DC	FL	GA	HI
ID	IL	IN	IA	KS	KY
LA	ME	MD	MA	MI	MN
MS	MO	MT	NE	NV	NH
NJ	NM	NY	NC	ND	OH
OK	OR	PA	RI	SC	SD
TN	TX	UT	VT	VA	WA
WV	WI	WY	PR		
Other (specify):					

3. Exact name of investment company as specified in registration statement:
4. Address of principal executive office: (number, street, city, state, zip code)

Instructions

This Form must be completed by investment companies that have custody of securities or similar investments.

Investment Company

1. All items must be completed by the investment company.

2. Give this Form to the independent public accountant who, in compliance with Rule 17f-2 under the Act and applicable state law, examines securities and similar investment in the custody of the investment company.

Accountant

3. Submit this Form to the Securities and Exchange Commission and appropriate state securities administrators when filing the certificate of accounting required by Rule 17f-2 under the Act and applicable state law. File the original and one copy with the Securities and Exchange Commission's principal office in Washington, D.C., one copy with the regional office for the region in which the investment company's principal business operations are conducted, and one copy with the appropriate state administrator(s), if applicable.

This Form Must be Given to Your Independent Public Accountant

Note: The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3208 New Executive Office Building, Washington, D.C. 20503.

Appendix C

Form ADV-E

Certificate of Accounting of Client Securities and Funds in the Possession or Custody of an Investment Adviser

OMB APPROVAL
OMB Number: 3235-0361
Expires: July 31, 1991
Estimated average burden hours per response: 0.05

Pursuant to Rule 206(4)-2 [17 CFR 275.206(4)-2]

Date examination completed:
1. Investment Adviser Act SEC File Number: 801-
2. State Identification Number:

AL	AK	AZ	AR	CA	CO
CT	DE	DC	FL	GA	HI
ID	IL	IN	IA	KS	KY
LA	ME	MD	MA	MI	MN
MS	MO	MT	NE	NV	NH
NJ	NM	NY	NC	ND	OH
OK	OR	PA	RI	SC	SD
TN	TX	UT	VT	VA	WA
WV	WI	WY	PR		
Other (specify):					

3. Full name of investment adviser: (if individual, state last, first, middle name):
4. Name under which business is conducted, if different from above:
5. Address of principal place of business (number, street, city, state, zip code):

Instructions

This Form must be completed by investment advisers who possess or have custody of client funds or securities. This Form may *not* be used to amend any information included in an investment adviser's registration statement (*e.g.* business address).

Investment Adviser

1. All items must be completed by the investment adviser.

2. Give this Form to the independent public accountant who, in compliance with Rule 206(4)-2(a)(5) under the Act and applicable state law, examines client funds and securities in the custody or possession of the investment adviser.

Accountant

3. Submit this Form to the Securities and Exchange Commission and appropriate state securities administrators when filing the certificate of accounting required by Rule 206(4)-2(a)(5) under the Act and applicable state law. File the original and one copy with the Securities and Exchange Commission's principal office in Washington, DC, one copy with the regional office for the region in which the investment adviser's principal business operations are conducted, and one copy with the appropriate state administrator(s), if applicable.

This Form Must Be Given to Your Independent Public Accountant

Note: The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3208 New Executive Office Building, Washington, DC 20503.

[FR Doc. 89-18182 Filed 8-3-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 85P-0584]

Cheeses; Amendment of Standards of Identity to Permit Use of Antimycotics on the Exterior of Bulk Cheeses During Curing and Aging and to Update the Formats of Several Standards

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending standards of identity for several cheeses to permit the use of antimycotics on the exterior of bulk cheeses during curing and aging and on the exterior of those cheeses for manufacturing. The agency is also amending several standards to update the format and language of the standards to make them consistent with the natural cheese standards that FDA revised in 1983, to provide for safe and suitable functional ingredient categories, and to provide for optional ingredient labeling requirements. This action, which responds to a citizen petition from the National Cheese Institute, will reduce waste in cheese manufacturing and will promote honesty and fair dealing in the interest of consumers. Elsewhere in this issue of the Federal Register, FDA is publishing a proposal to amend several additional cheese standards of identity to permit the use of antimycotics on the exterior of those cheeses.

DATES: Effective October 3, 1989; written objections and requests for a hearing by September 5, 1989.

ADDRESSES: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0110.

SUPPLEMENTARY INFORMATION:

I. The Proposal

In the Federal Register of September 21, 1987 (52 FR 35428), FDA published a proposal that was based on a petition submitted by the National Cheese Institute (NCI), a trade association representing U.S. cheese manufacturers. In that document, FDA proposed to amend the standards of identity for brick cheese (21 CFR 133.108), brick cheese for manufacturing (21 CFR 133.109), washed curd and soaked curd cheese (21 CFR 133.136), washed curd cheese for manufacturing (21 CFR 133.137), edam cheese (21 CFR 133.138), granular and stirred curd cheese (21 CFR 133.144), granular cheese for manufacturing (21 CFR 133.145), monterey cheese and monterey jack cheese (21 CFR 133.153), muenster and munster cheese (21 CFR 133.160), muenster and munster cheese for manufacturing (21 CFR 133.161), and, by cross-reference, gouda cheese (21 CFR 133.142) and high-moisture jack cheese (21 CFR 133.154) to permit the expanded use of safe and suitable antimycotics (currently permitted on cuts and slices in consumer-sized packages for a number of standardized cheeses) on the exterior of bulk cheeses during curing and aging and on the exterior of cheeses for manufacturing.

FDA also proposed, as requested by NCI, to amend the standards of identity for brick cheese (§ 133.108), washed curd and soaked curd cheese (§ 133.136), granular and stirred curd cheese (§ 133.144), monterey cheese and monterey jack cheese (§ 133.153), and muenster and munster cheese (§ 133.160) to make the format and language of those standards consistent with the format and language of the standards for nine natural cheeses that FDA revised to conform more closely to the Codex international standards for those foods (see 48 FR 2738; January 21, 1983). On its own initiative, FDA proposed to similarly update the format and language of the standards of identity for cook cheese, koch kaese (21 CFR 133.127), cream cheese (21 CFR 133.133), cream cheese with other foods (21 CFR 133.134), gammelost cheese (21 CFR 133.140), gorgonzola cheese (21 CFR 133.141), grated cheeses (21 CFR 133.146), neufchatel cheese (21 CFR 133.162), nuworld cheese (21 CFR 133.164), roquefort cheese, sheep's milk blue-mold, and blue-mold cheese from sheep's milk (21 CFR 133.184), sap sago cheese (21 CFR 133.186), spiced cheeses (21 CFR 133.190) and, by cross-reference, part-skim spiced cheeses (21 CFR 133.191).

The agency also proposed to revise the standard of identity for blue cheese (21 CFR 133.106) by removing § 133.106(a)(2). That provision, which established a maximum phenol equivalent value when unpasteurized dairy ingredients are used in the manufacture of the cheese, was erroneously included in the standard when it was revised in 1978 (see 43 FR 42127; September 19, 1978).

Interested persons were given until November 20, 1987, to submit comments.

II. Comments

Six letters, each containing one or more comments, were received from trade associations, industry, and a consumer in response to the proposal. Three of the letters were in favor of the proposed amendment.

Several comments suggested substantive amendments that require the promulgation of a separate proposal so that interested persons would have the opportunity to comment. One such comment noted that the agency had failed to list the amended version of two cheese standards (edam and gouda) in the proposed regulation, even though the preamble to the proposal clearly indicated that the agency intended to include these two standards among those being amended. Two other comments requested FDA to expand the proposal by permitting the use of antimycotics on swiss and emmentaler cheese and on swiss cheese for manufacturing. Elsewhere in this issue of the Federal Register, FDA is addressing all of these comments by proposing to amend the standards of identity for edam cheese (21 CFR 133.138) and, by cross-reference, gouda cheese (21 CFR 133.142), swiss and emmentaler cheese (21 CFR 133.195), and swiss cheese for manufacturing (21 CFR 133.196) to permit the use of antimycotics in the same manner as provided by the amendments set forth in this document.

One comment expressed concern about the expanded use of antimycotics. That comment stated that the public health might be affected by a regulation that permits the use of safe and suitable antimycotics without any qualitative and quantitative restrictions other than the restriction that the cumulative level of antimycotics not exceed current good manufacturing practices.

The agency does not believe that the concern expressed by the comment is warranted. The provision for "safe and suitable" ingredients governs the use of all optional ingredients in these cheeses, including antimycotics. Thus, any antimycotics used in or on these standardized cheeses must conform to the definition of "safe and suitable" in 21 CFR 130.3(d). That definition requires that the antimycotic: (1) Perform an appropriate function in the food; (2) be used at a level no higher than necessary to achieve its intended purpose; and (3) be generally recognized as safe (GRAS), prior sanctioned, or the subject of a food additive regulation. In light of these requirements, specific qualitative or quantitative restrictions on the use of antimycotics in these standardized cheeses is unnecessary. The agency also notes that label declaration is required for all optional ingredients, including antimycotics, so that consumers will have a means of avoiding these substances if they so choose.

The same comment raised the issues of economic impact related to health concerns and of environmental impact from increased use of antimycotics. As discussed in the previous paragraph, the agency does not believe that the "safe and suitable" use of antimycotics raises any health concerns and, accordingly, finds no basis for assuming there will be any increased costs as a result of health problems. The agency also notes that amendment of a food standard is categorically excluded from preparation of an environmental assessment (21 CFR 20.24(b)(1)).

Accordingly, after consideration of all comments, the agency is amending the standards of identity for brick cheese (§ 133.106), brick cheese for manufacturing (§ 133.109), washed curd and soaked curd cheese (§ 133.136), washed curd cheese for manufacturing (§ 133.137), granular and stirred curd cheese (§ 133.144), granular cheese for manufacturing (§ 133.145), monterey cheese and monterey jack cheese (§ 133.153), muenster and munster cheese (§ 133.160), muenster and munster cheese for manufacturing (§ 133.161), and, by cross-reference, high-moisture jack cheese (§ 133.154) to permit the use of safe and suitable antimycotics on the exterior of bulk cheeses during curing and aging, and on the exterior of those cheeses for manufacturing. The agency is also amending the standards of identity for brick cheese (§ 133.106), cook cheese, koch kaese (§ 133.127), cream cheese (§ 133.133), cream cheese with other foods (§ 133.134), washed curd and soaked curd cheese (§ 133.136), gammelost cheese (§ 133.140), gorgonzola cheese (§ 133.141), granular and stirred curd cheese (§ 133.144), grated cheeses (§ 133.146), monterey cheese and monterey jack cheese (§ 133.153), muenster and munster cheese (§ 133.60), neufchatel cheese (§ 133.162), nuworld cheese (§ 133.164), roquefort cheese, sheep's milk blue-mold, and blue-mold cheese from sheep's milk (§ 133.184), sap sago cheese (§ 133.186), spiced cheeses (§ 133.190) and, by cross-reference, part-skim spiced cheeses (§ 133.191) to update the formats and language of these standards, as set forth below. The agency is also amending the standard of identity for blue cheese (§ 133.106) by removing paragraph (a)(2) which established a maximum phenol equivalent value when unpasteurized dairy ingredients are used in the manufacture of the cheese.

III. Economic Impact

In the preamble to the proposal (52 FR 35428), the impact of the proposed amendment on small entities, including small businesses, was reviewed in accordance with the Regulatory Flexibility Act (Pub. L. 96-354) (5 U.S.C. 601). No comments were received on the review presented. FDA has concluded that this action will not result in a significant economic impact on a substantial number of small entities. Therefore, FDA certifies, in accordance with section 605b) of the Regulatory Flexibility Act, that no significant economic impact on a substantial number of small entities will derive from this action.

IV. Objections

Any person who will be adversely affected by this regulation may at any time on or before September 5, 1989 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 133

Cheese, Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 133 is amended as follows:

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

1. The authority citation for 21 CFR Part 133 continues to read as follows:

Authority: Secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)); 21 CFR 5.10 and 5.61

§ 133.106 [Amended]

2. Section 133.106 *Blue cheese* is amended in paragraph (a)(1) by removing "(a)(3)" and replacing it with "(a)(2)," by removing paragraph (a)(2), and by redesignating existing paragraph (a)(3) as paragraph (a)(2).

3. Section 133.108 is revised to read as follows:

§ 133.106 Brick cheese.

(a) *Description.* (1) Brick cheese is the food prepared from dairy ingredients and other ingredients specified in this section by the procedure set forth in paragraph (a)(3) of this section, or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 44 percent by weight, as determined by the methods described in § 133.5. If the dairy ingredients used are not pasteurized, the cheese is cured at a temperature of not less than 35 °F for at least 60 days.

(2) If pasteurized dairy ingredients are used, the phenol equivalent value of 0.25 gram of brick cheese is not more than 5 micrograms as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section is brought to a temperature of about 88 °F and subjected to the action of a lactic acid-producing bacterial culutre. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut into cubes with sides approximately ⅜ inch long, and stirred and heated so that the temperature rises slowly to about 96 °F. The stirring is continued until the curd is sufficiently firm. Part of the whey is then removed, and the mixture diluted with water or salt brine to control the acidity. The curd is transferred to forms, and drained. During drainage it is pressed and turned. After drainage the curd is salted, and the biological curing agents characteristic of brick cheese are applied to the surface. The cheese is then cured to develop the characteristics of brick cheese. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Coloring.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iv) Antimycotic agents, the cumulative level of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(c) *Nomenclature.* The name of the food is "brick cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropraite.

4. Section 133.109 is revised to read as follows:

§ 133.109 Brick cheese for manufacturing.

Brick cheese for manufacturing conforms to the definition and standard of identity for brick cheese prescribed by § 133.108, except that the dairy ingredients are not pasteurized and curing is not required.

5. Section 133.127 is revised to read as follows:

§ 133.127 Cook cheese, koch kaese.

(a) *Description.* (1) Cook cheese, koch kaese, is the food prepared by the procedure set forth in paragraph (a)(3) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The maximum moisture content is 60 percent by weight, as determined by the method described in § 133.5. The dairy ingredients used may be pasteurized.

(2) The phenol equivalent value of 0.25 gram of cook cheese is not more than 3 micrograms as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut, stirred, and heated with continued stirring, so as to separate the curd and whey. The whey is drained from the curd and the curd is cured for 2 or 3 days. It is then heated to a temperature of not less than 160 °F until the hot curd will drop from a ladle with a consistency like that of honey. The hot cheese is filled into packages and cooled. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Nonfat milk as defined in § 133.3.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(ii) Culture of white mold.

(iii) Pasteurized cream.

(iv) Caraway seed.

(v) Salt.

(c) *Nomenclature.* The name of the food is "cook cheese" or, alternatively, "koch kaese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101, except that enzymes of animal, plant, or microbial origin may be declared as "enzymes".

6. Section 133.133 is revised to read as follows:

§ 133.133 Cream cheese.

(a) *Description.* (1) Cream cheese is the soft, uncured cheese prepared by the procedure set forth in paragraph (a)(2) of this section, or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 33 percent by weight of the finished food, and the maximum moisture content is 55 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used are pasteurized.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be homogenized and is subjected to the action of lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to coagulate the dairy ingredients. The coagulated mass may be warmed and stirred and it is drained. The moisture content may be adjusted with one or more of the optional ingredients specified in paragraph (b)(3)(ii) of this section. The curd may be pressed, chilled, and worked and it may be heated until it becomes fluid. It may then be homogenized or otherwise mixed. One or more of the optional dairy ingredients specified in paragraph (b)(1) and the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Salt. (ii) Cheese whey, concentrated cheese whey, dried cheese whey, or reconstituted cheese whey prepared by addition of water to concentrated cheese whey or dried cheese whey.

(iii) Stabilizers, in a total amount not to exceed 0.5 percent of the weight of the finished food, with or without the addition of dioctyl sodium sulfosuccinate in a maximum amount of 0.5 percent of the weight of the stabilizer(s) used.

(c) *Nomenclature.* The name of the food is "cream cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial original may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

7. Section 133.134 is revised to read as follows:

§ 133.134 Cream cheese with other foods.

(a) *Description.* Cream cheese with other foods is the class of foods prepared by mixing, with or without the aid of heat, cream cheese with one or a mixture of two or more types of foods (except other cheeses) listed in paragraph (b)(1) of this section, in an amount sufficient to differentiate the mixture from cream cheese. One or more of the other optional ingredients in paragraph (b)(2) of this section may be used. The maximum moisture content of

the mixture is 60 percent by weight. The minimum milkfat is 33 percent by weight of the cream cheese and in no case less than 27 percent of the finished food. The moisture and fat contents will be determined by the methods described in § 133.5, except that the method for determination of fat content is not applicable when the added food contains fat.

(b) *Optional ingredients.* The following safe and suitable optional ingredients may be used:

(1) *Foods.* Properly prepared fresh, cooked, canned, or dried fruits or vegetables; cooked or canned meats, relishes, pickles, or other suitable foods.

(2) *Other optional ingredients.* (i) Stabilizers, in a total amount not to exceed 0.8 percent, with or without the addition of dioctyl sodium sulfosuccinate in a maximum amount of 0.5 percent of the weight of the stabilizer(s) used.

(ii) Coloring.

(c) *Nomenclature.* The name of the food is "cream cheese with _____" or, alternatively, "cream cheese and _____", the blank being filled in with the name of the foods used in order of predominance by weight.

(d) *Labeling.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

8. Section 133.136 is revised to read as follows:

§ 133.136 Washed curd and soaked curd cheese.

(a) *Description.* (1) Washed curd, soaked curd cheese is the food prepared by the procedure set forth in paragraph (a)(3) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 42 percent by weight, as determined by the methods described in § 133.5. If the dairy ingredients used are not pasteurized, the cheese is cured at a temperature of not less than 35 °F for at least 60 days.

(2) If pasteurized dairy ingredients are used, the phenol equivalent value of 0.25 gram of washed curd cheese is not more than 3 micrograms as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed, treated with hydrogen peroxide/catalase, and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is so cut, stirred, and heated with continued stirring, as to promote and regulate the separation of whey and curd. The whey is drained off, and the curd is matted into a cohesive mass. The mass is cut into slabs, which are so piled and handled as to promote the drainage of whey and the development of acidity. The slabs are then cut into pieces, cooled in water, and soaked therein until the whey is partly extracted and water is absorbed. The curd is drained, salted, stirred, and pressed into forms. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Coloring.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iv) Antimycotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(v) Hydrogen peroxide, followed by a sufficient quantity of catalase preparation to eliminate the hydrogen peroxide. The weight of the hydrogen peroxide shall not exceed 0.05 percent of the weight of the dairy ingredients and the weight of the catalase shall not exeed 20 parts per million of the weight of dairy ingredients treated.

(c) *Nomenclature.* The name of the food is "washed curd cheese" or, alternatively, "soaked curd cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

9. Section 133.137 is revised to read as follows:

§ 133.137 Washed curd cheese for manufacturing.

Washed curd cheese for manufacturing conforms to the definition and standard of identity prescribed for washed curd cheese by § 133.136, except that the dairy ingredients are not pasteurized and curing is not required.

10. Section 133.140 is revised to read as follows:

§ 133.140 Gammelost cheese.

(a) *Description.* (1) Gammelost cheese is the food prepared from nonfat milk, as defined in § 133.3, by the procedure set forth in paragraph (a)(2) of this section, or by any other procedure which produces a finished cheese having the same physical and chemical properties. The maximum moisture content is 52 percent by weight, as determined by the methods described in § 133.5.

(2) The dairy ingredients are subjected to the action of a lactic acid-producing bacterial culture. The development of acidity is continued until the dairy ingredients coagulate to a semisolid mass. The mass is stirred and heated until a temperature of about 145 °F is reached, and is held at that temperature for at least 30 minutes. The whey is drained off and the curd removed and placed in forms and pressed. The shaped curd is placed in whey and heated for 3 or 4 hours, and may again be pressed. It is then stored under conditions suitable for curing.

(b) *Nomenclature.* The name of the food is "gammelost cheese".

(c) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

11. Section 133.141 is revised to read as follows:

§ 133.141 Gorgonzola cheese.

(a) *Description.* (1) Gorgonzola cheese is the food prepared by the procedure set forth in paragraph (a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. It is characterized by the presence of bluish-green mold, *Penicillium roquefortii*, throughout the cheese. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 42 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used may be pasteurized. Gorgonzola cheese is at least 90 days old.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut into smaller portions and allowed to stand for a time. The mixed curd and whey is placed into forms permitting further drainage. While being placed in forms, spores of the mold *Penicillium roquefortii* are added. The forms are turned several times during drainage. When sufficiently drained, the shaped curd is removed from the forms and salted with dry salt or brine. Perforations are then made in the shaped curd and it is held at a temperature of approximately 50 °F at 90 to 95 percent relative humidity, until the characteristic mold growth has developed. During storage, the surface of the cheese may be scraped to remove surface growth of undesirable microorganisms. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, or corresponding products of goat origin, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Blue or green color in an amount to neutralize the natural yellow color of the curd.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iv) Antimycotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(v) Benzoyl peroxide, or a mixture of benzoyl peroxide with potassium alum, calcium sulfate, and magnesium carbonate used to bleach the dairy ingredients. The weight of the benzoyl peroxide is not more than 0.002 percent of the weight of the dairy ingredients being bleached, and the weight of the potassium alum, calcium sulfate, and magnesium carbonate, singly or combined, is not more than six times the weight of the benzoyl peroxide used. If the dairy ingredients are bleached in this manner, vitamin A is added to the curd in such quantity as to compensate for the vitamin A or its precursors destroyed in the bleaching process, and artificial coloring is not used.

(vi) Vegetable fats or oil which may be hydrogenated, used as a coating for the rind.

(c) *Nomenclature.* The name of the food is "gorgonzola cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate; "milkfat from goat's milk and nonfat goat's milk", etc.

Section 133.144 is revised to read as follows:

§ 133.144 Granular and stirred curd cheese.

(a) *Description.* (1) Granular cheese, stirred curd cheese is the food prepared by the procedure set forth in paragraph (a)(3) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 39 percent by weight as determined by the methods described in § 133.5. If the dairy ingredients used are not pasteurized, the cheese is cured at a temperature of not less than 35 °F for at least 60 days.

(2) If pasteurized dairy ingredients are used, the phenol equivalent value of 0.25 gram of granular cheese is not more than 3 micrograms as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed, treated with hydrogen peroxide/catalase, and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is so cut, stirred, and heated with continued stirring, as to promote and regulate the separation of whey and curd. A part of the whey is drained off. The curd is then alternately stirred and drained to prevent matting and to remove whey from curd. The curd is then salted, stirred, drained, and pressed into forms. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Coloring.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) by weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iv) Antimycotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(v) Hydrogen peroxide, followed by a sufficient quantity of catalase preparation to eliminate the hydrogen peroxide. The weight of the hydrogen peroxide shall not exceed 0.05 percent of the weight of the dairy ingredients and the weight of the catalase shall not exceed 20 parts per million of the weight of the dairy ingredients treated.

(c) *Nomenclature.* The name of the food is "granular cheese" or, alternatively, "stirred curd cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

13. Section 133.145 is revised to read as follows:

§ 133.145 Granular cheese for manufacturing.

Granular cheese for manufacturing conforms to the definition and standard of identity prescribed for granular cheese by § 133.144, except that the dairy ingredients are not pasteurized and curing is not required.

14. Section 133.146 is revised to read as follows:

§ 133.146 Grated cheeses.

(a) *Description.* Grated cheeses is the class of foods prepared by grinding, grating, shredding, or otherwise comminuting cheese of one variety or a mixture of two or more varieties. The cheese varieties that may be used are those for which there are definitions and standards of identity, except that cream cheese, neufchatel cheese, cottage cheese, creamed cottage cheese, cook cheese, and skim milk cheese for manufacturing may not be used. All cheese ingredients used are either made from pasteurized milk or held at a temperature of not less than 35 °F for at least 60 days. Moisture may be removed from the cheese ingredients in the manufacture of the finished food, but no moisture is added. One or more of the optional ingredients specified in paragraph (c) of this section may be used.

(b) *Composition.* (1) Each cheese ingredient used is present at a minimum level of 2 percent of the weight of the finished food.

(2) When one variety of cheese is used, the minimum milkfat content of the food is not more than 1 percent lower than the minimum prescribed by the standard of identity for that cheese.

(3) When two or more varieties of cheese are used, the minimum milkfat content is not more than 1 percent below the arithmetical average of the minimum fat content percentages prescribed by the standards of identity for the varieties of cheese used, and in no case is the milkfat content less than 31 percent.

(4) Milkfat and moisture contents are determined by the methods described in § 133.5.

(c) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Antimycotics.

(2) Anticaking agents.

(3) Spices.

(4) Flavorings other than those which, singly or in combination with other ingredients, simulate the flavor of cheese of any age or variety.

(d) *Nomenclature.* (1) The name of the food is "grated cheese" or "grated cheeses", as appropriate. The name of the food shall be accompanied by a declaration of the specific variety of cheese(s) used in the food and by a declaration indicating the presence of any added spice or flavoring.

(2) Any cheese varietal names used in the name of the food are those specified by applicable standards of identity, except that the designation "American cheese" may be used for cheddar, washed curd, colby, or granular cheese or for any mixture of these cheeses.

(3) The following terms may be used in place of the name of the food to describe specific types of grated cheese:

(i) If only one variety of cheese is used, the name of the food is "grated _____ cheese", the name of the cheese filling the blank.

(ii) If only parmesan and romano cheeses are used and each is present at a level of not less than 25 percent by weight of the finished food, the name of the food is "grated _____ and _____ cheese", the blanks being filled with the names "parmesan" and "romano" in order of predominance by weight. The name "reggiano" may be used for "parmesan".

(iii) If a mixture of cheese varieties (not including parmesan or romano) is used and each variety is present at a level of not less than 25 percent of the weight of the finished food, the name of the food is "grated _____ xx cheese", the blank being filled in with the names of the varieties in order of predominance by weight.

(iv) If a mixture of cheese varieties in which one or more varieties (not including parmesan or romano) are each present at a level of not less than 25 percent by weight of the finished food, and one or more other varieties (which may include parmesan and romano cheese) are each present at a level of not less than 2 percent but in the aggregate not more than 10 percent of the weight of the finished food, the name of the food is "grated _____ cheese with other grated cheese" or "grated _____ cheese with other grated cheeses", as appropriate, the blank being filled in with the name or names of those cheese varieties present at levels of not less than 25 percent by weight of the finished food in order of predominance, in letters not more than twice as high as the letters in the phrase "with other grated cheese(s)".

(4) The following terms may be used in place of "grated" to describe alternative forms of cheese:

(i) "Shredded", if the particles of cheese are in the form of cylinders, shreds, or strings."

(ii) "Chipped" or "chopped", if the particles of cheese are in the form of chips.

(e) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", "milkfat from goat's milk and nonfat goat's milk", "milkfat from sheep's milk and nonfat sheep's milk", etc., as appropriate.

15. Section 133.153 is revised to read as follows:

§ 133.153 Monterey cheese and monterey jack cheese.

(a) *Description.* (1) Monterey cheese, monterey jack cheese is the food prepared by the procedure set forth in paragraph (a)(3) of this section, or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids, and the maximum moisture content is 44 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used are pasteurized.

(2) The phenol equivalent of 0.25 gram of monterey cheese is not more than 3 micrograms, as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is so cut, stirred, and heated with continued stirring, as to promote and regulate the separation of whey and curd. Part of the whey is drained off, and water or salt brine may be added. The curd is drained and placed in a muslin or sheeting cloth, formed into a ball, and pressed; or the curd is placed in a cheese hoop and pressed. Later, the cloth bandage is removed, and the cheese may be covered with a suitable coating. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) by weight of the dairy ingredients, used as a coagulation aid.

(ii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iii) Salt.

(iv) Antimycotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(v) Vegetable oil, with or without rice flour sprinkled on the surface, used as a coating for the rind.

(c) *Nomenclature.* The name of the food is "monterey cheese" or alternatively, "monterey jack cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes", and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

16. Section 133.160 is revised to read as follows:

§ 133.160 Muenster and munster cheese

(a) *Description.* (1) Muenster cheese, munster cheese, is the food prepared by the procedure set forth in paragraph (a)(3) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 46 percent by weight, as determined by the methods decribed in § 133.5. The diary ingredients used are pasteurized.

(2) The phenol equivalent of 0.25 gram of muenster cheese is not more than 3 micrograms, as determined by the methods described in § 133.5.

(3) One of more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a harmless lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mess. After coagulation the mass is divided into small portions, stirred, and heated, with or without dilution with water or salt brine, so as to promote and regulate the separation of whey and curd. The curd is transferred to forms permitting drainage of the whey. During drainage the curd may be pressed and turned. After drainage the curd is removed from the forms and is salted. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Coloring.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin used in curing or flavor development.

(iv) Antimycotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(v) Vegetable oil, used as a coating for the rind.

(c) *Nomenclature.* The name of the food is "muenster cheese" or, alternatively, "munster cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

17. Section 133.161 is revised to read as follows:

§ 133.161 Muenster and munster cheese for manufacturing.

Muenster cheese for manufacturing conforms to the definition and standard of identity for muenster cheese prescribed by § 133.160, except that the dairy ingredients are not pasteurized.

18. Section 133.162 is revised to read as follows:

§ 133.162 Neufchatel cheese.

(a) *Description.* (1) Neufchatel cheese is the soft uncured cheese prepared by the procedure set forth in paragraph (a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The milkfat content is not less than 20 percent but less than 33 percent by weight of the finished food and the maximum moisture content is 65 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used are pasteurized.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section is subjected to the action of a harmless lactic acid-producing bacterial culture, with or without one or more of the clotting enzymes specified in paragraph (b)(2) of this section. The mixture is held until the dairy ingredients coagulate. The coagulated mass may be warmed and stirred and it is drained. The moisture content may be adjusted with one of the optional ingredients in paragraph (b)(3)(ii) of this section. The curd may be pressed, chilled, worked, and heated until it becomes fluid. It may then be homogenized or otherwise mixed. One or more of the dairy ingredients specified in paragraph (b)(1) of this section or the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Salt.

(ii) Cheese whey, concentrated cheese whey, dried cheese whey, or reconstituted cheese whey prepared by addition of water to concentrated cheese whey or dried cheese whey.

(iii) Stabilizers, in a total amount not to exceed 0.5 percent of the weight of the finished food, with or without the addition of dioctyl sodium sulfosuccinate in a maximum amount of 0.5 percent of the weight of the stabilizer(s) used.

(c) *Nomenclature.* The name of the food is "neufchatel cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

19. Section 133.164 is revised to read as follows:

§ 133.164 Nuworld cheese.

(a) *Description.* (1) Nuworld cheese is the food prepared by the procedure set forth in paragraph (a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. It is characterized by the presence of creamy-white mold, a white mutant of *Penicillium roquefortii,* throughout the cheese. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 46 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used may be pasteurized. Nuworld cheese is at least 60 days old.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut into smaller portions and allowed to stand for a time. The mixed curd and whey is placed into forms permitting further drainage. While being placed in forms, spores of a white mutant of the mold *Penicillium roquefortii* are added. The forms are turned several times during drainage. When sufficiently drained, the shaped curd is removed from the forms and salted with dry salt or brine. Perforations are then made in the shaped curd and it is held at a temperature of approximately 50 °F at 90 to 95 percent relative humidity, until the characteristic mold growth has developed. During storage, the surface of the cheese may be scraped to remove surface growth of undesirable microorganisms. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Blue or green color in an amount to neutralize the natural yellow color of the curd.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(c) *Nomenclature.* The name of the food is "nuworld cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

20. Section 133.184 is revised to read as follows:

§ 133.184 Roquefort cheese, sheep's milk blue-mold, and blue-mold cheese from sheep's milk.

(a) *Description.* (1) Roquefort cheese, sheep's milk blue-mold cheese, blue-mold cheese from sheep's milk, is the food prepared by the procedure set forth in paragraph (a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. It is characterized by the presence of bluish-green mold, *Penicillium roquefortii,* throughout the cheese. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 45 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used may be pasteurized. Roquefort cheese is at least 60 days old.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut into smaller portions and allowed to stand for a time. The mixed curd and whey is placed into forms permitting further drainage. While being placed in forms, spores of the mold *Penicillium roquefortii* are added. The forms are turned several times during drainage. When sufficiently drained, the shaped curd is removed from the forms and salted with dry salt or brine. Perforations are then made in the shaped curd and it is held at a temperature of approximately 50 °F at 90 to 95 percent relative humidity, until the characteristic mold growth has developed. During storage, the surface of the cheese may be scraped to remove surface growth of undesirable microorganisms. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Operational ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Forms of milk, nonfat milk, or cream, as defined in § 133.3, of sheep origin, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(c) *Nomenclature.* The name of the food is "roquefort cheese", or alternatively, "sheep's milk blue-mold cheese" or "blue-mold cheese from sheep's milk.

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat from sheep's milk and nonfat sheep's milk" or "nonfat sheep's milk and milkfat from sheep's milk", as appropriate.

21. Section 133.186 is revised to read as follows:

§ 133.186 Sap sago cheese.

(a) *Description.* (1) Sap sago cheese is the food prepared by the procedure set forth in paragraph (a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The cheese is pale green in color and has the shape of a truncated cone. The maximum moisture content is 38 percent by weight, as determined by the method described in § 133.5. Sap sago cheese is not less than 5 months old.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section is allowed to become sour, and is heated to boiling temperature, with stirring. Sufficient sour whey is added to precipitate the casein. The curd is removed, spread out in boxes, and pressed, and while under pressure is allowed to drain and ferment. It is ripened for not less than 5 weeks. The ripened curd is dried and ground; salt and dried clover of the species *Melilotus coerulea* are added. The mixture is shaped into truncated cones and ripened. The optional ingredient in paragraph (b)(2) of this section may be added during this procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Nonfat milk, as defined in § 133.3.

(2) *Other optional ingredients.* Buttermilk.

(c) *Nonmenclature.* The name of the food is "sap sago cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

22. Section 133.190 is revised to read as follows:

§ 133.190 Spiced cheeses.

(a) *Description.* (1) Spiced cheeses are cheeses for which specifically applicable definitions and standards of identity are not prescribed by other sections of this part. The food is prepared by the procedure set forth in paragraph (a)(3) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids, as determined by the method described in § 133.5. The food contains spices, in a minimum amount of 0.015 ounce per pound of cheese, and may contain spice oils. If the dairy ingredients are not pasteurized, the cheese is cured at a temperature of not less than 35 °F for at least 60 days.

(2) The phenol equivalent of 0.25 gram of spiced cheese is not more than 3 micrograms, as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a harmless lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is divided into smaller portions and so handled by stirring, heating, and diluting with water or salt brine as to promote and regulate the separation of whey and curd. The whey is drained off. The curd is removed and may be further drained. The curd is then shaped into forms, and may be pressed. At some time during the procedure, spices are added so as to be evenly distributed throughout the finished cheese. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, or corresponding products of goat or sheep origin, used alone or in combination.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Coloring.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Salt.

(iv) Spice oils which do not, alone or in combination with other ingredients, simulate the flavor of cheese of any age or variety.

(v) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(vi) Antimycotic agents, applied to the surface of slices or cuts in consumer-sized packages.

(c) *Nomenclature.* The name of the food is "spiced cheese". The following terms shall accompany the name of the food, as appropriate:

(1) The specific common or usual name of the spiced cheese, if any such name has become generally recognized; or

(2) An arbitrary or fanciful name that is not false or misleading in any particular.

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", or "milkfat from goat's milk and nonfat goat's milk", etc., as appropriate.

Dated: July 24, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-18225 Filed 8-3-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 200 and 206

[Docket No. R-89-1415; FR-2481]

RIN 2501-AA67

Home Equity Conversion Mortgage Insurance; Corrections

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; corrections.

SUMMARY: The purpose of this document is to make technical corrections to a recently published final rule that implemented section 417 of the Housing and Community Development Act of 1987 (Pub. L. 100-242) which added a new section 255 to the National Housing Act (Act). Section 255 authorized the Secretary to carry out a program for insuring mortgages on the homes of elderly homeowners, enabling the homeowners to convert the equity in their homes into cash.

FOR FURTHER INFORMATION CONTACT: Judith V. May, Office of Economic Affairs, Room 8218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On June 9, 1989 (54 FR 24822), the Department published a final rule that added a new part 206 to title 24, chapter II of the Code of Federal Regulations. Part 206 implemented section 417 of the Housing and Community Development Act of 1987 (Pub. L. 100-242), which added a new section 255 to the National Housing Act (Act). Section 255 authorizes the Secretary to carry out a program for insuring mortgages on the homes of elderly homeowners, enabling the homeowners to convert the equity in their homes to cash.

The purpose of this document is to make technical corrections and correct typographical errors to that final rule.

Three of the errors found in the rule would affect the substantive rights of borrowers, lenders, and HUD, if not changed before reverse mortgages begin to be insured. First, § 206.25(b)(1)(ii) did not include the reference to servicing charges that was included in the final

rule approved by the Secretary; second, § 206.113(a) stated that the late charge on monthly MIP is "* * * one percent of the amount paid." (Both the proposed rule and the final rule approved by the Secretary stated that the late charge actually is four percent); Third, § 206.205(b) as published did not include the servicing charge set aside in the calculation to determine if sufficient funds exist to pay taxes.

In addition, § 206.21(d) as published incorrectly stated that the lender must provide at least 25 days notice to the borrower before any adjustment to the "interest rate." The intent of the rule was correctly stated in the preamble, which provided that HUD would apply its regular ARM policy requiring 25-day notice of interest rate adjustments. The regular ARM policy at § 203.49(g) (see 54 FR 111, Jan. 4, 1989), provides that such notice be given 25 days before any adjustment to the borrower's "monthly Payments." In the reverse mortgage program, a borrower does not make monthly payments, and the payments he or she receives would not adjust as a result of the change in interest rate. However, a change in interest rate would affect the rate at which interest accrues on the outstanding mortgage balance. Therefore, under a reverse mortgage, the date that the new interest rate is applied to the outstanding balance is analogous to the date that the monthly payment adjusts under a forward mortgage. The date that the interest rate is applied to the balance is not the same as the date the interest rate changes. In order that the reverse mortgage rule actually apply the regular ARMs policy, the words "interest rate" at § 206.21(d) are being corrected to substitute the words "mortgage balance".

Accordingly, the following corrections are made in FR Doc. 89–13639, to 24 CFR parts 200 and 206, published in the **Federal Register** issue dated June 9, 1989 (54 FR 24822):

PART 200—[AMENDED]

§ 200.810 [Corrected]

1. In § 200.810(d), on page 24832, the second column, remove the comma in the parenthetical phrase, "(home equity conversion insurance)".

PART 206—[AMENDED]

2. On page 24832, in the table of contents for part 206, subpart B, and on page 24834 in the heading to subpart B, add a semicolon so that these headings read as follows: "Subpart B—Eligibility; Applications".

§ 206.3 [Corrected]

3. In § 206.3, on page 24833, in the definition of "Expected average mortgage interest rate", third column, top of page, correct "magin" to read "margin".

4. In § 206.3, on page 24833, in the definition of "Mortgage", third column, middle of page, in the third sentence, remove the word "both", and in the same definition, in the last sentence, insert the word "the" before "Secretary".

§ 206.9 [Corrected]

5. In § 206.9(a), on page 24834, first sentence, correct "made" to read "make".

§ 206.15 [Corrected]

6. In § 206.15(c), on page 24834, correct reference to "§ 206.27(e)" to read "§ 206.27(d)".

§ 206.21 [Corrected]

7. In § 206.21(b)(1), on page 24835, correct references to "§ 206.49(a), (c) and (e)" and "§ 203.43(e)(1)" to read "§ 203.49(a), (c) and (e)" and "§ 203.49(e)(1)", respectively.

8. In § 206.21(c)(2), on page 24835, omit the first portion of the sentence, and correct (c)(2) in its entirety to read as follows: "Compliance with 12 CFR part 226, as amended at 54 FR 24670 (June 9, 1989) pursuant to the Home Equity Loan Consumer Protection Act of 1988, shall constitute full compliance with paragraph (c)(1) of this section."

9. In § 206.21(d), on page 24835, correct by removing the words "interest rate" and inserting in their place, "mortgage balance".

§ 206.23 [Corrected]

10. In § 206.23(c), on page 24835, correct the first sentence by inserting "or the prepayment" after the word "property". Correct the second sentence by inserting "or prepayment" after the word "sale" both times that the word appears in the sentence.

11. In § 206.23(d), on page 24835, correct the word "mortgage" the last time it appears, to read "mortgage".

§ 206.25 [Corrected]

12. In § 206.25(b)(1)(i), on page 24836, correct "repairs, or property" to read "repairs, property".

13. In § 206.25(b)(1)(ii), on page 24836, correct the paragraph in its entirety to read, "(ii) The mortgage balance at the time of a change in payment option in accordance with § 206.26 plus any portion of the principal limit set aside for repairs, property charges or servicing charges under § 206.19(d) which remains unused; and".

§ 206.26 [Corrected]

14. In § 206.26(a), on page 24836, correct by removing the word "initial".

15. In § 206.26(c), on page 24836, correct by closing the parenthetical after "charges." in the first sentence.

§ 206.27 [Corrected]

16. In § 206.27(b)(8), on page 24837, correct the third sentence by removing the word "property" and inserting in its place, "mortgage".

§ 206.31 [Corrected]

17. In § 206.31(a)(1), on page 24837, correct by using a lower case "t" in the word "that" after the word "Provided".

§ 206.113 [Corrected]

18. In § 206.113(a), on page 24839, correct "one percent" to read "four percent".

§ 206.121 [Corrected]

19. In § 206.121(a), on page 24839, in the first sentence, correct "secretary" the first time it appears to read "Secretary".

20. In § 206.121(b), on page 24839, in the first sentence, correct, "demand, that" to read "demand that,". In the fourth sentence of the same paragraph, correct "mortgagee" to read "mortgagee".

§ 206.125 [Corrected]

21. In § 206.125(a)(2), on page 24840, in the second sentence, correct "mortgage" the first time it appears to read "mortgagee".

22. In § 206.125(e), on page 24840, correct by removing "the" the first time it appears, and inserting in its place "a".

23. In § 206.125(g)(1), on page 24840, correct by removing the phrase "to attempt".

§ 206.129 [Corrected]

24. In § 206.129(d)(1), on page 24841, correct by removing "have" the second time it appears, and inserting "has", to read "* * * any accrued interest which has not been added * * *".

25. In § 206.129(d)(3)(i), on page 24841, correct "§ 203.402" to read "§ 203.403".

§ 206.131 [Corrected]

26. In § 206.131(c)(3), on page 24842, correct "conditions" to read "condition".

27. In § 206.131(d), on page 24842, correct "involved" to read "insured".

§ 206.205 [Corrected]

28. In § 206.205(b), on page 24843, third sentence, correct by inserting the phrase "and servicing charges" after the word "repairs" and before the word "has".

29. In § 206.205(d), on page 24843, correct "§ 206.107(c)(1)" to read "§ 206.107(a)(1)", and correct "§ 206.121(b)" to read "§ 206.121(a)".

Dated: July 31, 1989.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 89–16252 Filed 8–3–89; 8:45 am]

BILLING CODE 4210-32-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Parts 1600, 1601, 1610, 1611, 1620, 1626, and 1691

Headquarters Office; Address Change and Updated List of Field Offices

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission is amending its regulations to reflect the change of its Headquarters office address from 2401 E Street NW., Washington, DC 20507 to 1801 L Street NW., Washington, DC 20507, and the change of its Washington, DC field office from the Washington Area Office to the Washington Field Office. Included in the amendments is an updated list of all the field offices, as found in 29 CFR 1610.4(c).

EFFECTIVE DATE: August 4, 1989.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Assistant Legal Counsel, or Wendy L. Adams, Staff Attorney, at (202) 663–4669.

For the Commission.

Clarence Thomas,

Chairman.

Accordingly, 29 CFR Parts 1600, 1601, 1610, 1611, 1620, 1626, and 1691 are amended as follows:

PART 1600—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. The authority citation for part 1600 continues to read:

Authority: E.O. 11222, 30 FR 6469, 3 CFR 1965 Supp.; 5 CFR 735.101 et seq.

§ 1600.735–401 [Amended]

2. Section 1600.735–401(b)(4) is amended as follows:

After "and Deputy Directors," insert "and the Washington Field Office Director,".

PART 1601—PROCEDURAL REGULATIONS

3. The authority citation for part 1601 continues to read:

Authority: 42 U.S.C. 2000e to 2000e–17.

4. Part 1601 is amended as follows:

Remove "Directors, Regional Programs" and insert "Directors, Field Management Programs" throughout this part, where it appears one or more times in each of the following sections:

Sec.
1601.5
1601.10
1601.14(b)
1601.16(a)(3)
1601.19(g)
1601.20(a)
1601.21(d)
1601.23 (a) and (b)
1601.24(b)
1601.25
1601.28 (a)(2), (a)(3), and (c)

§ 1601.3 [Amended]

5. Section 1601.3(a) is amended as follows:

After "designated representatives;" insert " "Washington Field Office" shall mean the Commission's primary non-Headquarters office serving the District of Columbia and surrounding Maryland and Virginia suburban counties and jurisdictions; the term "field office" shall mean any of the Commission's District Offices, Area Offices and Local Offices, and its Washington Field Office;".

§ 1601.5 [Amended]

6. Section 1601.5 is amended as follows:

After "in each district." insert "The term "Washington Field Office Director" shall refer to that person designated as the Commission's chief officer in the Washington Field Office. Any authority of, or delegation of authority to, District Directors shall be deemed to include the Director of the Washington Field Office."

After "Each district office" insert "and the Washington Field Office".

§ 1601.6 [Amended]

7. Section 1601.6(a) is amended as follows:

Remove "District Office" and insert "field office".

§ 1601.8 [Amended]

8. Section 1601.8 is amended as follows:

After "Washington, DC, or any of its" insert "field offices" and remove "district, area or local offices".

§ 1601.16 [Amended]

9. Section 1601.16(b)(1) is amended as follows:

After "Petitions to the General Counsel shall be mailed to" delete "2401 E Street NW., Washington, DC 20507" and insert "1801 L Street, NW., Washington, DC 20507".

§ 1601.19 [Amended]

10. Section 1601.19(a) is amended as follows:

After "Equal Employment Opportunity Commission," remove "2401 E Street NW., Washington, DC 20507" and insert "1801 L Street NW., Washington, DC 20507".

§ 1601.30 [Amended]

11. Section 1601.30(a) is amended as follows:

After "The Equal Employment Opportunity Commission," remove "2401 E Street NW., Washington, DC 20506" and insert "1801 L Street NW., Washington, DC 20507"

§ 1601.35 [Amended]

13. Section 1601.35 is amended as follows:

After "Equal Employment Opportunity Commission," remove "2401 E Street NW., Washington, DC 20506" and insert "1801 L Street NW., Washington, DC 20507".

§ 1601.75 [Amended]

14. Section 1601.75(b)(2) is amended as follows:

Remove "operations Evaluation Division, Office of Field Services" and insert "Systemic Investigations and Individual Compliance Programs, Office of Program Operations".

PART 1610—AVAILABILITY OF RECORDS

15. The authority citation for part 1610 continues to read:

Authority: Sec. 713(a); 78 Stat. 265, 42 U.S.C. 2000e–12(a), 5 U.S.C. 552, as amended by Pub. L. 93–502 and Pub. L. 99–570; for § 1610.15, nonsearch or copy portions are issued under 31 U.S.C. 483a.

§ 1610.4 [Amended]

16. Section 1610.4(a) is amended as follows:

After "Commission's library at" remove "2401 E Street NW., Washington, DC 20506" and insert "1801 L Street, NW., Washington, DC 20507".

17. Section 1610.4(b) is amended as follows:

After "Each" insert "of the Commission's field offices" and remove "district, area and local offices".

After "listed in paragraph (c) of this section" insert ", including the District Offices, the Washington Field Office, the Area Offices and the Local Offices,".

§ 1610.4 [Amended]

18. Section 1610.4(c) is amended as follows:

Insert "The addresses of the Commission field offices are:" and remove "The Commission's District, Area and Local Offices are:".

Insert the following list, and remove the existing list.

Albuquerque Area Office (Phoenix District), 505 Marquette, NW., Suite 1105, Albuquerque, NM 87102, 2189.
Atlanta District Office, 75 Piedmont Avenue, NE., Suite 1100, Atlanta, GA 30335.
Baltimore District Office, 109 Market Place, Suite 4000, Baltimore, MD 21202.
Birmingham District Office, 2121 Eighth Avenue, North, Suite 824, Birmingham, AL 35203.
Boston Area Office (New York District), JFK Federal Building, Room 409–B, Boston, MA 02203.
Buffalo Local Office (New York, District), 28 Church Street, Room 301, Buffalo, NY 14202.
Charlotte District Office, 5500 Central Avenue, Charlotte, NC 28212.
Chicago District Office, 536 South Clark Street, Room 930–A, Chicago, IL 60605.
Cincinnati Area Office (Cleveland District), 550 Main Street, Room 7015, Cincinnati, OH 45202.
Cleveland District Office, 1375 Euclid Avenue, Room 600, Cleveland, OH 44115.
Dallas District Office, 8303 Elmbrook Drive, Dallas, TX 75247.
Denver District Office, 1845 Sherman Street, 2nd Floor, Denver, CO 80203.
Detroit District Office, 477 Michigan Avenue, Room 1540, Detroit, MI 48226.
El Paso Area Office (San Antonio District), 700 East San Antonio Street, Room B–406, El Paso, TX 79901.
Fresno Local Office (San Francisco District), 1313 P Street, Suite 103, Fresno, CA 93721.
Greensboro Local Office (Charlotte District), 324 West Market Street, Room B–27, P.O. Box 3363, Greensboro, NC 27401.
Greenville Local Office (Charlotte District), 300 East Washington Street, Federal Building B–41, Greenville, SC 29601.
Honolulu Local Office (San Francisco District), 300 Ala Moana Boulevard, Room 3316–A, P.O. Box 50062, Honolulu, HI 96850.
Houston District Office, 1919 Smith Street, 7th Floor, Houston, TX 77002.
Indianapolis District Office, 46 East Ohio Street, Room 456, Indianapolis, IN 46204.
Jackson Area Office (Birmingham District), 100 West Capitol Street, Suite 721, Jackson, MI 39269.
Kansas City Area Office (St. Louis District), 911 Walnut, 10th Floor, Kansas City, MO 64106.
Little Rock Area Office (Memphis District), 320 West Capitol Avenue, Suite 621, Little Rock, AR 72201.
Los Angeles District Office, 3660 Wilshire Boulevard, 5th Floor, Los Angeles, CA 90010.
Louisville Area Office (Indianapolis District), 601 West Broadway, Room 613, Louisville, KY 40202.
Memphis District Office, 1407 Union Avenue, Suite 502, Memphis TN 38104.
Miami District Office, 1 Northeast First Street, 6th Floor, Miami, FL 33132.
Milwaukee District Office, 310 West Wisconsin Avenue, Suite 800, Milwaukee, WI 53203.
Minneapolis Local Office (Milwaukee District), 220 Second Street South, Room 108, Minneapolis, MN 55401–2141.
Nashville Area Office (Memphis District), 404 James Robertson Parkway, Suite 1100, Nashville, TN 37219–1388.
Newark Area Office (Philadelphia District), 60 Park Place, Room 301, Newark, NJ 07102.
New Orleans District Office, 701 Loyola Avenue, Suite 600, New Orleans, LA 70113.
New York District Office, 90 Church Street, Room 1501, New York, NY 10007.
Norfolk Area Office (Baltimore District), 200 Granby Mall, Room 412, Norfolk, VA 23510.
Oakland Local Office (San Francisco District), 1333 Broadway, Room 430, Oakland, CA 94612.
Oklahoma City Area Office (Dallas District), 200 N.W. 5th Street, Room 703, Oklahoma City, OK 73102.
Philadelphia District Office, 1421 Cherry Street, 10th Floor, Philadelphia, PA 19102.
Phoenix District Office, 4520 N. Central Avenue, Suite 300, Phoenix, AZ 85012–1848.
Pittsburgh Area Office (Philadelphia District), 1000 Liberty Avenue, Room 2038–A, Pittsburgh, PA 15222.
Raleigh Area Office (Charlotte District), 127 West Hargett Street, Suite 500, Raleigh, NC 27601.
Richmond Area Office (Baltimore District), 400 North 8th Street, Room 7026, Richmond, VA 23240.
San Antonio District Office, 5410 Fredericksburg Rd., Suite 200, San Antonio, TX 78229.
San Diego Local Office (Los Angeles District), 880 Front Street, Room 4S–21, San Diego, CA 92188.
San Francisco District Office, 901 Market Street, Suite 500, San Francisco, CA.
San Jose Local Office (San Francisco District), 280 South First Street, Room 4150, San Jose, CA 95113.
Savannah Local Office (Atlanta District), 10 Whitaker Street, Suite B, Savannah, GA 31410.
Seattle District Office, 1321 Second Avenue, 7th Floor, Seattle, WA 98101.
St. Louis District Office, 625 N. Euclid Street, 5th Floor, St. Louis, MO 63108.
Tampa Area Office (Miami District), 700 Twiggs Street, Room 302, Tampa, FL 33602.
Washington Field Office, 1400 L Street NW., Suite 200, Washington, DC 20005.

§ 1610.7 [Amended]

19. Section 1610.7(a) is amended as follows:

After "for the appropriate district, area or local" insert "office".

After "listed in § 1610.4(c)" insert ", or, in the case of the Washington Field Office, shall be submitted to the regional attorney in the Baltimore District Office, at the address listed in § 1610.4(c)"

20. Section 1610.7(a)(1) is amended as follows:

After "employees of the" insert "field office" and remove "district, area or local office".

21. Section 1610.7(a)(2) is amended as follows:

After "relating to the case processing of the" insert "field office" and remove "district, area or local office".

22. Section 1610.7(a)(3) is amended as follows:

After "under the jurisdiction of" insert "field office" and remove "district, area or local office".

23. Section 1610.7(a)(4) is amended as follows:

After "materials in" insert "field" and remove "district or area".

24. Section 1610.7(b) is amended as follows:

After "Equal Employment Opportunity Commission," remove "2401 E Street, NW., Washington, DC 20506" and insert "1801 L Street, NW., Washington, DC 20507".

25. Section 1610.7(d) is amended as follows:

After "actually received by the" insert "appropriate official" and remove "Deputy Legal Counsel or the appropriate regional attorney".

§ 1610.11 [Amended]

26. Section 1610.11(a) is amended as follows:

After "Equal Employment Opportunity Commission," remove "2401 E Street, NW., Washington, DC 20507" and insert "1801 L Street, NW., Washington, DC 20507".

27. Section 1610.14(b) is amended as follows:

After "District" insert "directors, the Washington Field Office Director,".

Before "area directors" remove "and".

After "area directors" insert ",".

After "in accordance with § 1610.4(b). District" insert "directors, the Washington Field Office Director,".

Before "area director" remove "and".

After "area director" insert ",".

PART 1611—PRIVACY ACT REGULATIONS

28. The authority citation for part 1611 continues to read:

Authority: 5 U.S.C. 552a.

§ 1611.3 [Amended]

29. Section 1611.3(b) is amended as follows:

After "Director, Personnel Management Services," remove "Washington, DC 20506" and insert "Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507".

After "Office of Legal Counsel," remove "EEOC, Washington, DC 20506" and insert "Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507".

30. Section 1611.3(b)(1) is amended as follows:

Remove paragraph (b)(1).

31. Section 1611.3(b)(2) is amended as follows:

Redesignate paragraph (b)(2) as (b)(1).

After "For all" remove "other".

After "Director, Personnel Management Services," remove "Washington, DC 20506" and insert "Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507".

32. Section 1611.3(b)(3) is amended as follows:

Redesignate paragraph (b)(3) as (b)(2).

§ 1611.5 [Amended]

33. Section 1611.5(c) is amended as follows:

After "Chairman" insert ",".

After "Equal Employment Opportunity Commission," remove "Washington, DC 20506" and insert "1801 L Street, NW., Washington, DC 20507".

§ 1611.9 [Amended]

34. Section 1611.9(a) is amended as follows:

After "Equal Employment Opportunity Commission," remove "Washington, DC 20506" and insert "1801 L Street, NW., Washington, DC 20507".

PART 1620—THE EQUAL PAY ACT

35. The authority citation for part 1620 continues to read:

Authority: Sec. 1–19, 52 Stat. 1060, as amended; sec. 10, 61 Stat. 84; Pub. L. 88–38, 77 Stat. 56 (29 U.S.C. 201 et seq.); sec. 1, Reorg. Plan No. 1 of 1978, 43 FR 19807; E.O. 12144, 44 FR 37193.

§ 1620.30 [Amended]

36. Section 1620.30(b) is amended as follows:

After "District Directors," insert "Washington Field Office Director,".

PART 1626—PROCEDURES—AGE DISCRIMINATION IN EMPLOYMENT ACT

37. The authority citation for Part 1626 continues to read:

Authority: Sec. 9, 81 Stat. 605, 29 U.S.C. 628; Sec. 2, Reorg. Plan No. 1 of 1978, 3 CFR 321 (1979).

§ 1626.5 [Amended]

38. Section 1626.5 is amended as follows:

After "local Offices of the Commission," insert "or to the Washington Field Office,".

§ 1626.15 [Amended]

39. Section 1626.15(e) is amended as follows:

After "The District Directors" insert ", the Washington Field Office Director,".

§ 1626.16 [Amended]

40. Section 1626.16(b) is amended as follows:

After "the District Directors," insert "the Washington Field Office Director,".

§ 1626.17 [Amended]

41. Section 1626.17(a) is amended as follows:

After "Equal Employment Opportunity Commission," remove "2401 E Street, NW., Washington, DC 20506" and insert "1801 L Street, NW., Washington, DC 20507".

PART 1691—PROCEDURES FOR COMPLAINTS OF EMPLOYMENT DISCRIMINATION FILED AGAINST RECIPIENTS OF FEDERAL FINANCIAL ASSISTANCE.

42. The authority citation for part 1691 continues to read:

Authority: E.O. 12250, 45 FR 72995 (November 4, 1980) and E.O. 12067, 43 FR 28967 (June 30, 1978).

§ 1691.13 [Amended]

43. Section 1691.13(d) is amended as follows:

After "any of its District Offices" insert "and its Washington Field Office".

[FR Doc. 89–18056 Filed 8–3–89; 8:45 am]
BILLING CODE 6570–06–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is announcing approval of a proposed amendment submitted by the State of North Dakota as a modification to its permanent regulatory program (hereinafter referred to as the North Dakota program approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to changes to the North Dakota Century Code (NDCC), Chapter 38–14.1 by revising the State program to remove the two-acre exemption, and improving operational efficiency of State law dealing with the appropriation of bond forfeiture funds.

EFFECTIVE DATE: August 4, 1989.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Director, Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Federal Building, 100 East B Street, Room 2128, Casper, Wyoming 82601–1918; Telephone (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program
II. Submission of Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. Information regarding the general background on the North Dakota program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the North Dakota program can be found in the December 15, 1980, **Federal Register** (45 FR 82246). Subsequent actions taken with regard to North Dakota's program and program amendments can be found at 30 CFR 934.12, 934.13, 934.14, 934.15, 934.16, and 934.30.

II. Submission of Amendment

On April 11, 1989 North Dakota submitted proposed Program Amendment XIII (Administrative Record No. NK–I–01) to OSMRE. The proposed amendment consists of revisions to NDCC Chapter 38–14.1 concerning repeal of the two-acre exemption, and a State initiated change ensuring automatic appropriation to the North Dakota Public Service Commission (the Commission) of bond forfeiture funds.

The Director announced receipt of the proposed amendment in the April 28, 1989, **Federal Register** (54 FR 18307), and in the same notice opened the public comment period and provided opportunity for a public hearing on the substantive adequacy of the proposed amendment (Administrative Record No. ND–I–05). The public comment period closed on May 30, 1989. The public hearing scheduled for May 23, 1989, was not held because no one requested an opportunity to testify.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the amendment submitted by North Dakota on April 11, 1989 meets the requirements of SMCRA and 30 CFR Chapter VII as discussed below.

Two-Acre Exemption

As originally codified, NDCC section 38-14.1-37 excluded coal extraction operations affecting two acres or less from regulation. Similarly, as originally enacted, section 528(2) of SMCRA, 30 U.S.C. Section 1278, exempted from the requirements of SMCRA, all coal extraction opertions affecting two acres or less. However, on May 7, 1987 the President signed Public Law (Pub. L.) 100-34, which repealed the section 528 (2) exemption and preempted any acreage-based exemptions included in State laws or regulations. The amendment under consideration in this rulemaking removes the language of NDCC section 38.14.1-37 preempted by Public Law 100-34. Therefore, the Director finds NDCC 38-14.1-37, as revised by this amendment, to be no less stringent than section 528 of SMCRA. Removal of the acreage exemption from the NDCC will avoid confusion on the part of the public which may not be aware of the Federal preemption.

Surface Mining and Reclamation Fund

North Dakota has revised NDCC 38-14.1-39 that addresses the appropriation of monies collected from performance bond forfeitures. Both before and after the statutory revision, NDCC 38-14.1-39 has required that all performance bond forfeitures be deposited in the State treasury and credited to a special account designated as the surface mining and reclamation fund. However, prior to the statutory revision, expenditures from the fund by the commission for the purpose of reclaiming land affected by surface coal mining were permitted only upon specific legislative appropriation. The statutory revision automatically appropriates monies in the surface mining and reclamation fund to the commission, thus removing the need for specific legislative appropriation of such funds. Additionally, based on information supplied to OSMRE by North Dakota, the Director notes that the statutory revision will obviate a past requirement to deposit back into the State's General Fund any monies appropriated but not spent during that biennium. Thus, bond forfeiture monies will be available over the life of the reclamation projects.

Section 509 of SMCRA, 30 U.S.C. 1259, establishes the need for performance bonds in order to conduct surface coal mining and reclamation operations. While it does not specifically discuss how bond monies are to be processed in the event of bond forfeiture, the Director finds that North Dakota's revisions to NDCC section 38-14.1-39 are not inconsistent with and are no less stringent than Section 509 of SMCRA.

IV. Summary and Disposition of Comments

As discussed in the section of this notice entitled "SUBMISSION OF AMENDMENT", the Director solicited public comments and provided opportunity for a public hearing on the proposed amendment. No substantive comments were received, and since no one requested an opportunity to testify at a public hearing, no hearing was held.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h), comments were also solicited from various Federal agencies with an actual or potential interest in the North Dakota program. No comments were received.

V. Director's Decision

Based on the above findings, the Director is approving proposed Program Amendment XIII as submitted by North Dakota on April 11, 1989. The Federal regulations at 30 CFR part 934 codifying decisions concerning the North Dakota program are being amended to implement this decision. However, the Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and OSMRE oversight of the North Dakota program. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Compliance With the National Environmental Policy Act

The Secretary of the Interior has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1291(d), no environmental impact statement need be prepared on this rulemaking.

Compliance With Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSMRE is exempt from regulatory review by OMB and the requirements to prepare a regulatory impact analysis.

The Department of the Interior has determined that this rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR 934

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: July 25, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 934—NORTH DAKOTA

1. The authority citation for Part 934 continues to read as follows:

Authority: 30 U.S.C. 1201, *et seq.*

2. In § 934.15, paragraph (l) is added to read as follows:

934.15 Approval of regulatory program amendments.

* * * * *

(l) The following amendment to the North Dakota Regulatory Program, as submitted to OSMRE on April 11, 1989, is approved effective August 4, 1989. Amendment XIII, which removes the two-acre exemption from NDCC section 38-14.1-37 and revised NDCC section 38-14.1-39 to strengthen the State statutes concerning appropriation of funds from performance bond forfeiture.

[FR Doc. 89-18250 Filed 8-3-89; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Supplemental List of Specially Designated Nationals (North Korea and Vietnam)

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice of additions to the list of specially designated nationals.

SUMMARY: This notice provides the names of firms that have been added to the list of Specially Designated Nationals under the Treasury Department's Foreign Assets Control Regulations (31 CFR part 500).

EFFECTIVE DATE: August 4, 1989.

ADDRESS: Copies of the list of Specially Designated Nationals are available upon request at the following location: Office of Foreign Assets Control, Department of the Treasury, 1331 G Street, NW., Room 300, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief, Enforcement Division, Office of Foreign Assets Control, Tel: (202) 376-0400.

SUPPLEMENTARY INFORMATION: Under the Foreign Assets Control Regulations, persons subject to the jurisdiction of the United States are prohibited from engaging, directly or indirectly, in transactions with any nationals or specially designated nationals of North Korea or Vietnam, or involving any property in which there exists an interest of any national or specially designated national of North Korea or Vietnam, except as authorized by the Treasury Department's Office of Foreign Assets Control by means of a general or specific license.

Section 500.302 of part 500 defines the term "national," in part, as: (a) A subject or citizen domiciled in a particular country, or (b) any partnership, association, corporation, or other organization owned or controlled by nationals of that country, or that is organized under the laws of, or that has had its principal place of business in that foreign country since the effective date (for North Vietnam, i.e., Vietnam north of the 17th parallel of north latitude: May 5, 1964; for South Vietnam, i.e., Vietnam south of the 17th parallel of north latitude: April 30, 1975, at 12:00 p.m. e.d.t.; for North Korea, i.e., Korea north of the 38th parallel of north latitude: December 17, 1950), or (c) any person that has directly or indirectly acted for the benefit or on behalf of any designated foreign country. Section 500.305 defines the term "designated national" as North Korea or Vietnam or any national thereof, including any person who is a specially designated national. Section 500.306 defines "specially designated national" as any person who has been designated as such by the Secretary of the Treasury; any person who, on or since the effective date, has either acted for or on behalf of the government of, or authorities exercising control over Vietnam or North Korea; or any partnership, association, corporation or other organization that, on or since the applicable effective date, has been owned or controlled directly or indirectly by such government or authorities, or by any specially designated national.

Section 500.201 prohibits any transaction, except as authorized by the Secretary of the Treasury, involving property in which there exists an interest of any national or specially designated national of North Korea or Vietnam. The list of Specially Designated Nationals is a partial one, since the Department of the Treasury may not be aware of all the persons located outside North Korea or Vietnam that might be acting as agents or front organizations for North Korea or Vietnam, thus qualifying as specially designated nationals of North Korea or Vietnam. Also, names may have been omitted because it seemed unlikely that those persons would engage in transactions with persons subject to the jurisdiction of the United States. Therefore, persons engaging in transactions with foreign nationals may not rely on the fact that any particular foreign national is not on the list as evidence that it is not a specially designated national.

The Treasury Department regards it as incumbent upon all U.S. persons engaging in transactions with foreign nationals to take reasonable steps to ascertain for themselves whether such foreign nationals are specially designated nationals of North Korea or Vietnam, or other designated countries (at present, Cambodia, Cuba and Libya; the designation of persons or entities acting for or on behalf of Libya pertains only to those persons or entities acting for or on behalf of the Government of Libya, not on behalf of private Libyan nationals). The list of Specially Designated Nationals was last published on December 10, 1986, in the **Federal Register** (51 FR 44459), and was amended on November 3, 1988 (53 FR 44397), January 24, 1989 (54 FR 3446) and April 10, 1989 (54 FR 14215).

Please take notice that section 16 of the Trading with the Enemy Act (the "Act"), as amended, provides in part that whoever willfully violates any provision of the Act or any license, rule or regulation issued thereunder:

"Shall, upon conviction, be fined not more than $50,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States."

In addition, persons convicted of an offense under the Act may be fined a greater amount or imprisoned for a longer period than set forth in the Act, as provided in 18 U.S.C. 3571 and 3581.

Authority: 50 U.S.C. App. 5(b) and 18 U.S.C. 3571 and 3581.

Specially Designated Nationals of North Korea

Chosunbohom (see Korea Foreign Insurance Company), Compania de Coalicion del Comercio de Corea, S.A., Panama

Korea Foreign Insurance Company (a.k.a. Chosunbohom),
123, rue des Tennerolles, 92210 Saint-Cloud, Paris, France
1080 Berlin Glinkastrasse 5, German Democratic Republic
Unt. Batterieweg 35, CH-4008 Basel, Switzerland

National General Insurance Co. Ltd., Salah Aldin Al Ayubi Street, Deira-Dubai, United Arab Emirates

Specially Designated Nationals of Vietnam

Canada Kwimex Corp., 713 Somerset Street, West, Ottawa, Ontario, KIR-6C8 Canada

Centre Communautaire de l'Union Generale des Vietnamiens au Canada, 1448 Beaudry Street, Montreal, H2L-3E5 Canada

Centre Communautaire Vietnamiens, 1448 Beaudry Street, Montreal, H2L-3E5 Canada

Indovina International Ltd., Hong Kong

Laser Express Inc., 1444A Beaudry Street, Montreal, H2L-3E5 Canada

Mediaveka Inc., 1448 Beaudry Street, Montreal, H2L-3E5 Canada

QTK Express Inc., 1700 Berri, Suite 29, Montreal, H2L-4E4 Canada

Quebec-Vietnam Cultural Association, 1700 Berri, Suite 27, Montreal, H2L-4E4 Canada

Que Viet Tours, 1700 Berri, Suite 27, Montreal, H2L-4E4 Canada

Seine River (Co.), 75 New Bridge Road, Singapore 0105

Services Communautaires Vietnamiens, 1448 Beaudry Street, Montreal, H2L-3E5 Canada

UGVG (see Union Generale des Vietnamiens au Canada)

Union des Vietnamiens (see Union Generale des Vietnamiens au Canada)

Union des Vietnamiens a Montreal (see Union Generale des Vietnamiens au Canada)

Union des Vietnamiens au Canada (see Union Generale des Vietnamiens au Canada)

Union des Vietnamiens du Canada (see Union Generale des Vietnamiens au Canada)
Union Generale des Vietnamiens (see Union Generale des Vietnamiens au Canada)
Union Generale des Vietnamiens au Canada, 1448 Beaudry Street, Montreal, H2L-3E5 Canada
Vietcan Import-Export, P.O. Box 1285, Station B, Montreal, H313-3K9 Canada
Vietimex Inc., 1450 Beaudry Street, Montreal, H2L-3E5 Canada
Vietsing Co., Hong Kong
Vinamedic Inc., 1444A-1450 Beaudry Street, Montreal, H2L-3E5 Canada

Dated: July 10, 1989.

R. Richard Newcomb,
Director, Office of Foreign Assets Control.
Approved: July 19, 1989.
Salvatore R. Martoche,
Assistant Secretary (Enforcement).
[FR Doc. 89-18438 Filed 8-2-89; 4:25 pm]
BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 89-025]

Freeport Grand Prix, Long Beach, NY

AGENCY: Coast Guard, DOT.
ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent regulations for the Freeport Grand Prix. The Freeport Grand Prix is a high performance powerboat race held each year on the coastal Atlantic waters south of Long Beach, Long Island, New York. The event is sponsored by Liberty Marine of Freeport, NY. Public notice of the exact dates of the regatta will be published each year in the Federal Register and in the Coast Guard Local Notice to Mariners.

EFFECTIVE DATE: These regulations are effective at 11:00 a.m. on August 5, 1989 and terminate at 3:00 p.m. on August 5, 1989 and will be in effect each year thereafter during the same time period on the first or second Sunday of August as published in the Federal Register and the Coast Guard Local Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: Captain Ronald L. Blake, (617) 223-8310.

SUPPLEMENTARY INFORMATION: On April 19, 1989, the Coast Guard published a notice of proposed rulemaking in the Federal Register (54 FR 15780) for this regulation. Interested parties were requested to submit comments and no comments were received. Accordingly, no changes are being made to the regulations as proposed.

Drafting Information

The drafters of this notice are LT L. Brown, project officer. First Coast Guard District Boating Safety Division, and LT J.B. Gately, project attorney, First Coast Guard District Legal Division.

Discussion of Regulations

The Freeport Grand Prix is a high performance Indy 500 type powerboat race around an eight (8) mile rectangular course situated approximately one and one quarter (1¼ miles south on Long Beach, Long Island, New York. There will be up to 50 vessels participating. The sponsoring organization will provide eight to 12 patrol boats along with turning and finishing mark boats. The regulation will close a portion of the coastal Atlantic waters south of Long Beach, Long Island, New York to all traffic except law enforcement vessels, regatta participants, and official regatta patrol vessels. No vessels other than race participants and patrol craft will be allowed to enter the regulated area which is describe below. The regulated area and immediately adjacent waters will be patrolled by several Coast Guard and Coast Guard Auxiliary vessels which will be assisted by local law enforcement authorities and the sponsor provided patrol boats.

Economic Assessment and Certification

These proposed regulations are considered to be nonmajor under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transporation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The event will draw a number of spectators and participants into the area which will aid the local economy. The primary commercial waterway, the Ambrose Channel, lies over three miles to the south of the regulated area and no adverse impact on commercial traffic is anticipated. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.106 is added to read as follows:

§ 100.106 Freeport Grand Prix, Long Beach, NY.

(a) *Regulated area.* The regulated area is a trapezoidal area on the coastal Atlantic waters of Long Island to the south of Long Beach, New York. The regulated area is one and one quarter (1¼) miles south of Long Beach and three and one quarter (3¼) miles north of the northern boundary of Ambrose Channel and is specifically bounded as follows:

(1) *Northeast Corner.* approximately one and one quarter miles southwest of Jones Inlet breakwater at coordinates 40-33-42 North; 073-35-43 West.

(2) *Southeast Corner.* southwest of Jones Inlet Approch Buoy (R "2"; Light List Number 685) at coordinates 40-31-45 North; 073-36-19 West.

(3) *Southwest Corner.* east of East Rockaway Approach Buoy (R "4"; Light List Number 690) at coordinates 40-31-31 North; 073-42-21 West.

(4) *Northwest Corner.* 40-33-30 North; 073-40-57 West.

(b) *Special local regulations.* Vessels not participating in, or operating as a safety/rescue patrol shall:

(1) Not operate within the regulated area.

(2) Immediately follow any specific instructions given by Coast Guard patrol craft.

(3) Exercise extreme caution when operating near the regulated area.

(c) *Effective Dates.* These regulations are effective at 11:00 a.m. on August 5, 1989 and terminate at 3:00 p.m. on August 5, 1989 and will be in effect each year thereafter during the same time period on the first or second Sunday of August as published in a Federal Register Notice and the Coast Guard Local Notice to Mariners.

Dated: July 19, 1989.

R.L Rybacki,
Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.
[FR Doc. 89-18237 Filed 8-3-89; 8:45 am]
BILLING CODE 4910-14-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1202, 1250, and 1254

RIN 3095-AA34

Freedom of Information Act and Privacy Act of 1974 Access Procedures

AGENCY: National Archives and Records Administration.
ACTION: Final rule.

SUMMARY: The National Archives and Records Administration (NARA) is amending its Freedom of Information Act (FOIA) access regulations for NARA administrative records and for records transferred to the custody of the Archivist of the United States. This implements the procedural requirements of Executive Order 12600 of June 23, 1987 (52 FR 23781) governing the disclosure to the public of information that may be of a commercially confidential nature.

NARA is further amending its FOIA and Privacy Act regulations governing access to records for which the NARA Inspector General is the responsible official or system manager. These amendments modify the procedures to direct requests relating to Inspector General records to the Inspector General.

EFFECTIVE DATE: August 4, 1989.

FOR FURTHER INFORMATION CONTACT: John A. Constance, telephone 202-523-3214.

SUPPLEMENTARY INFORMATION: On November 2, 1988, NARA published in the Federal Register (53 FR 44203) proposed regulations to bring its FOIA regulations governing access to NARA administrative records and records transferred to the custody of the Archivist of the United States into conformity with Executive Order 12600. Public comment on the proposed regulation was invited, with the comment period ending on December 2, 1988.

Analysis of Comments Received

One organization, The Reporters Committee for Freedom of the Press, submitted comments on NARA's proposed regulation. The commenter is concerned that: (1) The time proposed for processing requests is excessive and violates the provisions of the FOIA; and (2) that making requests for all information of a commercial nature, rather than only those for potentially confidential commercial information, subject to the rule will lead to bureaucratic delays in granting access.

NARA shares the commenter's concern for timeliness in responding to requests. NARA is threfore changing its proposed rule and will adopt the language of the Executive order and substitute a reasonable time as the time allowed for submitters to respond to notices of receipt of request and intent to disclose.

NARA does not agree that bureaucratic delays will result from applying the regulation to all requests for access to commercial information. The need to review all commercial information for possible exemption from release is inherent in the FOIA, explicitly stated in the Executive order, and always a part of the decision to grant or deny access. In fact, NARA does not consider this to be a change in policy; it represents only a formal recognition of the current review process.

Other Changes Made by This Regulation

As required by Public Law 100-504, NARA established an Inspector General unit on April 17, 1989. In keeping with the degree of independence required by Public Law 100-504, all requests made under the FOIA or the Privacy Act of 1974 for access to or to amend a record for records created or maintained by the Inspector General will henceforth be addressed to the Inspector General. Appeals of decisions issued by the Inspector General will be addressed to the Archivist of the United States. This amendment was not published as a part of the proposed rule. However, because an amendment of this nature does not require public comment, it is being incorporated at this time.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects

36 CFR Part 1202

Privacy.

36 CFR Part 1250

Freedom of information, confidential business information, archives and records.

36 CFR Part 1254

Freedom of information, confidential business information, archives and records.

For the reasons set forth in the preamble, Chapter XII of Title 36 of the Code of Federal Regulations is amended to read as follows:

PART 1202—REGULATIONS IMPLEMENTING THE PRIVACY ACT OF 1974

1. The authority citation for Part 1202 continues to read as follows:

Authority: 44 U.S.C. 2104(a); 5 U.S.C. 552a.

2. In part 1202, remove the words "Deputy Archivist" from wherever they appear and add, in their place, the words "NARA Privacy Act appeal official."

3. Section 1202.4 is amended by adding the following definition in alphabetical order:

§ 1202.4 Definitions.

* * * * *

"NARA Privacy Act appeal official" means the Deputy Archivist of the United States for appeals of denials of access to or amendment of records maintained in a system of records, except where the system manager is the Inspector General or the Archivist of the United States. The term means the Archivist of the United States for appeals of denial of access to or amendment of records in systems of records maintained by the Inspector General.

* * * * *

4. Section 1202.46 is amended by redesignating paragraph (d) as paragraph (e) and adding new paragraph (d) to read as follows:

§ 1202.46 Denials of access.

* * * * *

(d) If the system manager is the Inspector General, that person shall retain the responsibility for denying or granting the request.

* * * * *

5. Section 1202.48 is amended by revising paragraph (a) to read as follows:

§ 1202.48 Appeals of denial of access within NARA.

(a) Requesters denied access in whole or part to records pertaining to them, exclusive of those records for which the system manager is the Archivist of the United States, may file with NARA an appeal of that denial.

(1) Appeals involving records for which the Inspector General is the

BEST COPY AVAILABLE

system manager should be addressed to NARA Privacy Act Appeal Official (N), National Archives and Records Administration, Washington, DC 20408.

(2) All other appeals should be addressed to NARA Privacy Act Appeal Official (ND), National Archives and Records Administration, Washington, DC 20408.

* * * * *

6. Section 1202.66 is amended by revising paragraph (a) to read as follows:

§ 1202.66 Denial of requests to amend.

(a) Except where the system manager is the Inspector General, if the system manager determines that an amendment of a record is improper or that the record should be amended in a manner other than that requested by an individual, the request to amend and the system manager's determinations and recommendations shall be referred to the Assistant Archivist for Management and Administration. If the system manager is the Inspector General, that person shall retain the responsibility for granting or denying the request to amend.

* * * * *

7. Section 1202.68 is revised to read as follows:

§ 1202.68 Agreement to alternative amendments.

If the denial of a request to amend a record includes proposed alternative amendments, and if the requester agrees to accept them, the requester shall notify the NARA official who signed the denial letter. That official shall immediately instruct the system manager to make the necessary amendments in accordance with § 1202.64.

8. Section 1202.70 is amended by revising paragraph (a) to read as follows:

§ 1202.70 Appeal of denial of request to amend a record.

(a) A requester who disagrees with a denial of a request to amend a record may file an appeal of that denial.

(1) If the denial was signed by the Assistant Archivist for Management and Administration, the requester shall address the appeal to the NARA Privacy Act Appeal Official (ND), Washington, DC 20408.

(2) If the denial was signed by the Inspector General, the requester shall address the appeal to the NARA Privacy Act Appeal Official (N), Washington, DC 20408.

(3) If the requester is an employee of NARA and the denial to amend involves a record maintained in the employee's Official Personnel Folder, as described in Chapter 293 of the Federal Personnel Manual, the appeal should be addressed to the Assistant Director, Workforce Information Office, Compliance and Investigations Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

* * * * *

PART 1250—PUBLIC AVAILABILITY OF NARA ADMINISTRATIVE RECORDS AND INFORMATIONAL MATERIALS

9. The authority citation for Part 1250 is revised to read as follows:

Authority: 44 U.S.C. 2104(a); 5 U.S.C. 552; E.O. 12600.

10. Section 1250.58 is amended by removing in paragraphs (b) and (c) the words "Deputy Archivist" and adding in their place the words "NARA FOIA Appeal Official" and by revising paragraph (a) to read as follows:

§ 1250.58 Appeal within NARA.

(a) A requester who receives a denial in whole or in part of a request may appeal that decision within NARA to the appropriate NARA FOIA Appeal Official. If the denial was signed by the Assistant Archivist for Management and Administration, the appeal shall be addressed to the Deputy Archivist of the United States, National Archives (ND), Washington, DC 20408. If the denial was signed by the Inspector General, the appeal shall be addressed to the Archivist of the United States, National Archives (N), Washington, DC 20408.

* * * * *

§ 1250.60 [Amended]

11. Section 1250.60 is amended by removing the words "Assistant Archivist for Management and Administration" and adding in their place the words "NARA FOIA Appeal Official."

Subpart G—[Redesignated as Subpart H]

12. Subpart G, consisting of § 1250.80, is redesignated Subpart H. The section number is unchanged.

13. A new Subpart G—Predisclosure Notification Procedures for Commercial Information, consisting of § 1250.75, is added to read as follows:

Subpart G—Predisclosure Notification Procedures for Commercial Information.

§ 1250.75 Predisclosure notification procedures for commercial information.

(a) *General.* Commercial information provided to NARA shall not be disclosed to the public except in accordance with this subpart.

(b) *Definitions.*

"Potentially confidential commercial information" means records provided to NARA by a submitter that may contain material exempt from release under 5 U.S.C. 552(b)(4) because disclosure could reasonably be expected to cause the submitter substantial competitive harm.

"Submitter" means any person or entity providing potentially confidential commercial information to an agency. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

(c) *Designation of potentially confidential commercial information.* Submitters of commercial information may designate the information as commercially confidential. The designation must:

(1) Be made by the submitter when the information is submitted to NARA or within 30 workdays thereafter;

(2) Specify precisely which information is claimed as commercially confidential;

(3) Be made in good faith;

(4) Be supported by a certification by the submitter that the information has not been published or previously officially disclosed to the public.

(d) *Notice of receipt of a request to release information.* (1) NARA shall give the submitter prompt written notice of receipt of a FOIA request for the submitter's potentially confidential commercial information when:

(i) The submitter, in good faith, has designated the material as commercially confidential in accordance with paragraph (c) of this section; and

(ii) The FOIA request is received within 10 years of the date of submission.

(2) The written notice of receipt of an FOIA request shall either describe the potentially confidential commercial information requested, or provide copies of the records containing the information. The notice shall be mailed to the last known address of the submitter.

(3) When notice is given to a submitter pursuant to this section, NARA shall inform the requester that:

(i) The notice has been sent to the submitter;

(ii) That NARA's response to the request may be delayed beyond the limitations specified in 5 U.S.C. 552(a)(6)(A) and (B) to allow for time to notify the submitter, and to consider any response; and

(iii) That the delay may be considered a denial of access to records and the requester may seek judicial review. However, the requester shall be invited to agree to a voluntary extension of time so that NARA may consider any claims of confidentiality by the submitter.

(e) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (d) of this section, NARA shall afford a submitter a reasonable amount of time to provide NARA:

(i) A detailed statement of any objections to disclosure. The statement shall specify which information is claimed to be of a confidential commercial nature, and shall specify all grounds for withholding any of the information under the exemptions of the FOIA. If exemption (b)(4) of the FOIA is cited, the statement shall explain how the release of the information can be reasonably expected to cause substantial competitive harm to the submitter; and

(ii) Certification that the information has not been published or previously disclosed to the public.

(2) The statement provided pursuant to this subsection may itself be subject to disclosure under the FOIA

(f) *Notice of intent to disclose.* (1) NARA shall consider any good faith designations of commercial confidentiality made when the information was initially submitted to NARA, and the submitter's timely objections and specific grounds for nondisclosure received in response to the notice of receipt of a request prior to determining whether to disclose the information in question.

(2) When NARA decides to disclose commercial information over the objections of a submitter, whether in response to a request to release or as the result of an appeal of a denial of access, NARA shall provide the submitter a written notice which:

(i) States the reasons why the submitter's objections were not sustained;

(ii) Describes or contains a copy of the information to be disclosed; and

(iii) Specifies a disclosure date. NARA shall inform the submitter that disclosure will be made on the specified disclosure date, unless barred by court order.

(3) NARA shall inform the requester that such notice has been given to the submitter and of the proposed disclosure date.

(4) When NARA and the submitter are in agreement concerning disclosure, disclosure shall take place as soon as possible.

(5) The notice of receipt of a request shall serve as the notice of intent to disclose when the submitter fails to respond to the initial notice within a reasonable period of time.

(g) *Notice of lawsuit.* NARA will promptly inform the requester and the submitter of any law suit filed by the other concerning possible disclosure.

(h) *Exceptions to notice requirement.* The notice requirements of this section do not apply when:

(1) NARA determines that the information should not be disclosed in accordance with one or more FOIA exemptions;

(2) The information has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) NARA has no substantial reason to believe that disclosure would result in competitive harm.

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

14. The authority citation for Part 1254 is revised to read as follows:

Authority: 44 U.S.C. 2101–2118, 5 U.S.C. 552, and E.O. 12600.

15. Section 1254.30 is revised to read as follows:

§ 1254.30 Archives.

The use of archives is subject to the restrictions prescribed by statute or Executive order or by the restrictions specified in writting in accordance with 44 U.S.C. 2108 by the agency from which the records were transferred. NARA will make available any reasonably segregable portion of a record after the restricted portion has been deleted. The restrictions are published in the "Guide to the National Archives of the United States," and supplemented by restriction statements approved by the Archivist of the United States and set forth in Part 1256 of this chapter. The Guide is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The Guide may also be consulted at the NARA research facilities listed in part 1253 of this chapter.

16. A new § 1254.38 is added to read as follows:

§ 1254.38 Freedom of Information Act requests.

(a) *Applicability.* This section applies to Freedom of Information Act requests for unclassified and classified archives. This section does not apply to requests for FRC records or donated historical materials.

(b) *Definitions.*

"Potentially confidential commercial information" means records submitted to any agency by a submitter that may contain material exempt from release under 5 U.S.C. 552(b)(4) because disclosure could reasonably be expected to cause a submitter substantial competitive harm.

"Submitter" means any person or entity providing potentially confidential commercial information to an agency. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

(c) *Requirements.* Requests for access to archives under the FOIA shall reasonably describe the records requested, shall be made in writing to the director of the appropriate NARA depository listed in part 1253 of this chapter or to the Assistant Archivist for the National Archives, and shall clearly indicate that the request is being made under the Act.

(d) *Processing time.* NARA shall inform requesters of the availability of records within 10 workdays after receiving a request, except when precluded from doing so by conditions as described in 5 U.S.C. 552a(6)(B), or by the need to consult with a submitter, as set forth in § 1254.39.

(e) *Denial of access.* Denials under the FOIA of access to archives are made by the appropriate director of a Presidential library or the Assistant Archivist for the National Archives, who, within 10 workdays, shall notify the requester of the reasons for denial and of the procedures for appeal.

(f) *Appeals.* (1) A requester whose request is denied in whole or in part may appeal that decision within NARA. The requester should direct a written appeal to the Deputy Archivist of the United States (ND), Washington, DC 20408.

(2) The Deputy Archivist must receive an appeal no later than 35 calendar days after the date of the NARA letter of denial to be considered timely.

(3) The appeal letter shall include the words "Freedom of Information Act Appeal" on both the letter and the envelope, and the requester shall enclose with the appeal letter a copy of the initial request and the denial.

(4) In the appeal letter the requester shall briefly state the reasons why NARA should release the records.

(5) The Deputy Archivist shall consult with the agency specifying the restriction, when appropriate, and make a determination within 20 workdays after the date of receipt by the Deputy Archivist of the appeal. If an extension is required, the Deputy Archivist shall notify the requester within 20 workdays from receipt of the request. Time extensions shall not exceed 10 workdays in the aggregate: either solely

in the initial stage or solely in the appellate stage, or divided between them.

(6) If the determination is adverse in whole or in part, the Deputy Archivist shall notify the requester of the right to judicial review.

(7) Denials and appeals of denials of access to information under the FOIA exemption 552(b)(1), national security information, are processed in accordance with the provisions of § 1254.40.

17. A new § 1254.39 is added to read as follows:

§ 1254.39 Requests for commercial information.

(a) *Notice of receipt of request.* (1) Submitters of potentially confidential commercial information shall be given written notice and an opportunity to object to release when a request is received for information the submitter designated in accordance with the recipient agency's regulations as commercial confidential, and the request is received less than 10 years after submission of the information.

(2) When the request is for information from a single or small number of submitters, the notice shall be sent to the submitter's last known address.

(3) When the request is for information from a large number of submitters, notice shall be provided by publication of a notice in the **Federal Register.**

(4) The notice shall either describe the potentially commercially confidential information requested (if the notice is published in the **Federal Register**), or provide copies of the records containing the information.

(5) NARA shall inform the requester that:

(i) Notice of receipt of a request has been provided to the submitter;

(ii) The response to the request may be delayed beyond the limitations specified in 5 U.S.C. 552(a)(6) (A) and (B) to allow for time to provide notice to the submitter, and to consider any response;

(iii) The delay may be considered as a denial of access to records and that the requester may seek judicial review. However, the requester shall be invited to agree to a voluntary extension of time so that NARA may consider any claims of commercial confidentiality provided by the submitter.

(b) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (a)(1) of this section, NARA shall afford a submitter a reasonable period of time within which to provide NARA with a detailed statement of any objections to disclosure. A reasonable extension of the time limit for response may be granted when appropriate.

(2) The statement shall specify which information is claimed to be of a confidential commercial nature, and shall specify all grounds for withholding any of the information under the exemptions of the FOIA. If exemption (b)(4) of the FOIA is cited, the statement shall explain how the release of the information can be reasonably expected to cause substantial competitive harm to the submitter.

(3) The statement shall contain a certification that the information has not been published or officially released to the public.

(4) The statement provided pursuant to this subsection may itself be subject to disclosure under the FOIA under § 1250.75.

(c) *Notice of intent to disclose.* NARA shall carefully consider any good faith designations of commercial confidentiality made when the information was initially submitted to an agency, and any timely objections submitted in response to the NARA notice of receipt of a request to release. Except as provided for in paragraph (e) of this section, when NARA determines to disclose, whether in response to a request to release or as the result of an appeal of a denial of access, notice shall be sent to the submitter that:

(1) States why the initial designation or the objections were not sustained;

(2) Describes or encloses a copy of the information proposed for disclosed; and

(3) Specifies a date on which it is proposed to release the information unless barred by court order. The requester shall be simultaneously informed of the disclosure date.

(d) *Notice of law suit.* NARA will promptly inform the requester and submitter of any law suit filed by the other concerning possible disclosure.

(e) *Exception to notice requirements.* The notice requirements of this section do not apply when:

(1) NARA determines that the information should not be disclosed in accordance with one or more FOIA exemptions;

(2) The information has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or,

(4) More than 10 years have passed since the date of submission, regardless of any designation as commercially confidential made by the submitter in accordance with the recipient agency's regulations, and NARA has no substantitial reason to believe that disclosure would result in competitive harm.

(5) The submitter failed to respond to a notice of receipt of request, in which case this initial notice shall serve as the notice of intent to disclose.

§ 1254.44 [Amended]

18. Section 1254.44(a) is amended by removing "§ 1254.30(b)" and inserting in its place "§ 1254.38".

Dated: July 18, 1989.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 89-18290 Filed 8-3-89; 8:45 am]

BILLING CODE 7515-01

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AC46

Authorization of an Initial Evaluation Under the Vocational Rehabilitation Program for Veterans Not Residing in a State

AGENCY: Department of Veterans Affairs.

ACTION: Final regulatory amendment.

SUMMARY: The Department of Veterans Affairs (VA) is amending certain provisions in order to increase flexibility in arranging an initial evaluation for veterans requesting assistance under the vocational rehabilitation program when the veteran does not reside in a State. Under current provisions a veteran is required to travel to a VA regional office in a State to be provided an initial evaluation. This has created difficulties in arranging for and carrying out initial evaluations for veterans residing outside a State, particularly for veterans residing overseas. The intended effect of these changes is to provide initial evaluations more conveniently for veterans not residing in a State and effect cost savings in the payment of beneficiary travel.

EFFECTIVE DATES: These amendments are effective August 4, 1989.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, (226), 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2886.

SUPPLEMENTARY INFORMATION: VA is required to provide an initial evaluation for each service-disabled veteran requesting assistance under the vocational rehabilitation program. The purposes of the initial evaluation are to determine the veteran's eligibility and entitlement for assistance and to provide a basis for planning a rehabilitation program for those veterans found eligible and entitled to these services. The initial evaluation is provided by counseling psychologists located in the Vocational Rehabilitation and Counseling (VR&C) Division of the VA regional office. The veteran is expected to travel to the regional office in the area in which he or she resides to receive an intial evaluation and VA pays necessary travel costs.

The provisions of 38 CFR 21.100 require that counseling services needed to carry out an initial evaluation and other counseling services are applicable to both requests for assistance filed by veterans residing in a State and those not residing in a State. Therefore veterans not residing in a State who are requesting assistance under the vocational rehabilitation program are also required to report to a VA regional office in order to receive an initial evaluation. There are difficulties for both the veteran and the government in providing initial evaluations for veterans not residing in a State, particularly for veterans living overseas. VA, to protect the interest of both the veteran and the government, is proposing to amend the provisions of 38 CFR 21.100 to allow VA program management greater flexibility in selecting the method by which these services are provided for veterans not residing in a State.

VA finds that good cause exists for making the amended regulation final without prior publication for public notice and comment, and for making these amendments effective on the date of publication. The changes contained in these amendments concern internal VA management rules by which VA arranges for counseling services, and the method under which VA arranges to provide these services for veterans not residing in a State. These benefits and the type or level of services are not affected by these changes. The amendments should result in greater convenience for the veteran and savings to the government. Prior publication of this change for public participation is therefore considered unnecessary and not in the interest of either the veteran or the government.

The regulations contained herein will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented.

These amendments do not meet the criteria for major rules as contained in Executive Order 12291. The change will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effect on the economy.

Since a notice of proposed rulemaking is unnecessary and will not be published the Regulatory Flexibility Act (RFA) does not apply to this change. In any case, the Secretary of Veterans Affairs hereby certifies that these amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these amendments are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the changes simply concern the method by which VA arranges to provide counseling and evaluation services to a small number of veterans who do not reside in a State. Thus, no regulatory burdens are imposed on small entities by these changes.

(The Catalog of Federal Domestic Assistance Number is 64.116)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehaiblitation.

Approved: July 6, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 21, Vocational Rehabilitation and Education, is amended as follows:

PART 21—[AMENDED]

1. In § 21.100, paragraph (d) is revised and paragraph (e) is added to read as follows:

§ 21.100 Counseling.

* * * * *

(d) *Limitations.* (1) If a veteran resides within a State, counseling services necessary to carry out the initial evaluation and the development of a rehabilitation plan or a program of employment services will be furnished by counseling psychologists in the Vocational Rehabilitation and Counseling (VR&C) Division;

(2) If a veteran does not reside in a State the counseling services necessary to carry out an initial evaluation may be accomplished in the same manner as for a veteran residing in a State or through other arrangements when deemed appropriate by the VR&C Division. These alternative arrangements include, but are not limited to:

(i) Use of counseling centers or individual qualified professionals under contract to VA; and

(i) Professional staff of other Federal agencies located in the area in which the veteran resides.

(3) Alternative arrangements to provide counseling are subject to the following requirements:

(i) All arrangements must be consistent with the provisions of paragraph (c) of this section regarding utilization of professionally qualified persons to provide counseling services during the initial evaluation;

(ii) All determinations of eligibility, entitlement and the development of a rehabilitation plan will continue to be made by counseling psychologists in the VR&C Division.

(4) If VR&C determines that the evidence of record is insufficient to carry out an initial evaluation in a case in which alternative arrangements were used, VA staff may authorize the veteran to travel to a VA facility to complete the evaluation.

(Authority: 38 U.S.C. 1515)

(e) *Definition.* For the purposes of this section, the term "State" means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 38 U.S.C. 101)

[FR Doc. 89-18227 Filed 8-3-89; 8:45 am]

BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 111

Exclusion of "Plus" Issues from Second-Class Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This gives notice that, by operation of law, section 428.227 of the Domestic Mail Manual, dealing with certain "Plus" issues of second-class publications, became ineffective on July 23, 1989.

EFFECTIVE DATE: July 23, 1989.

FOR FURTHER INFORMATION CONTACT: Grayson M. Poats, (202) 268-2961.

SUPPLEMENTARY INFORMATION: On June 17, 1988, pursuant to 39 U.S.C. 3623, the United States Postal Service filed a request with the Postal Rate Commission for a change in section 200.0123 of the Domestic Mail Classification Schedule concerning the

mailing of "Plus" issues of second-class publications. Pursuant to 39 U.S.C. 3641(e), the Postal Service implemented the proposed classification change, on a temporary basis, on October 9, 1988. At the same time, after notice-and-comment rulemaking, the Postal Service added an implementing regulation to the Domestic Mail Manual. 53 FR 38006 (September 29, 1988). This implementing regulation, Domestic Mail Manual section 425.227, subsequently renumbered 428.227 incident to a complete revision of chapter 4 of the Domestic Mail Manual, 54 FR 9210 (March 6, 1989), reads as follows:

428.227 An "issue" of a newspaper or other periodical also will be deemed to be a separate publication, for postal purposes, and must independently meet the applicable second-class eligibility qualifications in 422.2 through 422.4 and 423, when the following conditions exist:

a. The issue is published on a day different from a regular issue of the same publication, but more frequently than once each month, and

b. At least 10 percent of the total number of copies of the issue is distributed on a regular basis, to recipients who do not subscribe to it or request it, and

c. The number of copies of the issue distributed to nonsubscribers or nonrequesters is more than twice the number of copies of any other regular issue distributed to nonsubscribers or nonrequesters during the same period.

Note: See 423.141, 427.11 for requirements for filing certification forms to establish eligibility of an issue under this section.

As noticed elsewhere in this issue, the temporary classification change became ineffective on July 23, 1989, by operation of law. Therefore, Domestic Mail Manual section 428.227 also became ineffective on that date.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89-18304 Filed 8-3-89; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3624-4]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: In a November 18, 1988, (53 FR 46093) notice of proposed rulemaking, USEPA proposed to disapprove a site-specific revision to the Illinois State Implementation Plan (SIP) for ozone. The revision would provide for an alternative compliance plan schedule (compliance data extension) for the Printpack, Incorporated (Printpack) paper coating operation, which is located in Elgin, Illinois.

In today's Final Rulemaking, USEPA is disapproving the SIP revision for Printpack because the requested compliance date extension is inconsistent with relevant portions of the Clean Air Act and USEPA's policy.

EFFECTIVE DATE: This final rulemaking becomes effective on September 5, 1989.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886-6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

A copy of today's revision to the Illinois SIP is available for inspection at: Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: On November 21, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to its ozone SIP for Printpack. This SIP revision is in the form of a February 5, 1981, Opinion and Order of the Illinois Pollution Control Board (IPCB) PCB 80-148. It grants a variance from the existing SIP requirements until December 31, 1985, and provides a legally enforceable compliance schedule.

I. Emission Limit

Under the existing federally approved SIP, Printpack's paper coating operation is subject to the 2.9 pounds of VOC per gallon emission limitation contained in the IPCB Rule 205(n)(1)(C) of Chapter 2: Air Pollution of the IPCB Rules and Regulations. Final compliance is required by December 31, 1982.

In lieu of the compliance data contained in the federally approved SIP, the State requested an extended compliance date of December 31, 1985 for Printpack. The request would allow Printpack additional time to reformulate to low-solvent adhesive for its adhesive laminating equipment. Printpack is located in Elgin, Kane County, Illinois.

II. SIP Deficiency—Kane County

In a May 26, 1988, SIP call letter, the USEPA notified the Governor of Illinois, that the ozone SIP is substantially inadequate to achieve the ozone national ambient air quality standards (NAAQS) in the Chicago-Gary-Lake County Consolidated Metropolitan Statistical Area, which includes Kane County. To date, the State of Illinois does not have an approved 1982 ozone SIP (See the October 17, 1988, **Federal Register** (53 FR 40415)) for Kane County.

III. Compliance Data Extension Policy

USEPA's August 7, 1986, memorandum, "Policy on SIP Revisions Requesting Compliance Date Extensions for VOC Sources", from J. Craig Potter, then Assistant Administrator for Air and Radiation, states that a compliance date extension must be as expeditious as practicable in order to be approved.

In addition, this policy requires the State to demonstrate that the extension will not interfere with the timely attainment and maintenance of the ozone standard and, where relevant, "Reasonable Further Progress" (RFP) towards timely attainment.

IV. Proposed SIP Revision

In a November 16, 1988, (53 FR 46093) notice of proposed rulemaking, USEPA proposed to disapprove the Printpack compliance date extension as a revision to the Illinois SIP for ozone. USEPA found that the State had not shown that the requested compliance date was as expeditious as practicable nor had the State adequately demonstrated that the extension would not interfere with timely attainment of the ozone standard and RFP in the interim. During the public comment period USEPA received no comments.

V. Conclusion

USEPA is disapproving this SIP revision for Printpack because its compliance date extension is inconsistent with relevant portions of the Clean Air Act and USEPA's policy.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 3, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Carbon monoxide, Hydrocarbon, Intergovernmental offices.

Dated: July 20, 1989.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 89-18275 Filed 8-3-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3624-5]

Approval and Promulgation of Implementation Plans; Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: USEPA is approving declarations by Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin that recent revisions to USEPA's stack height regulations do not necessitate revisions to the State Implementation Plans (SIPs) for certain sources in these States. Under section 406 of the Clean Air Act, each State was required to review its SIP for consistency with the stack height regulations within 9 months of final promulgation. The intent of this action is to formally document that these States have satisfied this obligation for certain sources. (For other sources, as listed in Tables 1 and 2 of this notice, the States are submitting new plans or the sources are affected by a court remand of three elements in the stack height rules. USEPA will rulemake on plans for these sources in future notices.)

This action will be effective in 60 days unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

DATE: This action is effective October 3, 1989 unless notice is received by September 5, 1989 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the States' submittals and other materials related to this rulemaking are available for inspection during normal business hours at the following addresses: (It is recommended that you telephone Robert Miller, at (312) 353-0396, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, IL 60604.

Illinois Environmental Protection Agency, Division of Air Pollution Control 2200 Churchill Road, Springfield, Il 62706.

Indiana Department of Environmental Management, Office of Air Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, IN 46206-6015.

Michigan Department of Natural Resources, Air Quality Division, 7150 Harris Drive, Lansing, MI 48909.

Minnesota Pollution Control Agency, Division of Air Quality, 520 Lafayette Road, St. Paul, MN 55155.

Ohio Environmental Protection Agency, Office of Air Pollution Control, P.O. Box 1049, 1800 Water Mark Drive, Columbus, OH 43266.

Wisconsin Department of Natural Resources, Bureau of Air Management, P.O. Box 7921, 101 South Webster, Madison, WI 53707.

Adverse or critical comments on this rule should be addressed to: (Please submit an original and three copies if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Robert Miller, (312) 353-0396.

SUPPLEMENTARY INFORMATION:

I. Background

On February 8, 1982 (47 FR 5864), USEPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by Section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*, 719 F.2d 436 (D.C. Cir. 1983). On October 11, 1983, the court issued its decision ordering USEPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a *writ of certiorari* with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 S.Ct. 3571), and on July 16, 1984, the Court of Appeals' mandate was formally issued, implementing the court's decision and requiring USEPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height.

The stack height regulations were challenged in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983 within-formula stack height increases from demonstration requirements [40 CFR 51.100 (kk)(2)];
2. Dispersion credit for sources orginally designed and constructed with merged or multiflue stacks [40 CFR 51.100(hh)(2)(ii)(A)]; and
3. Grandfathering pre-1979 use of the refined H + 1.5L formula [40 CFR 51.100(ii)(2)].

Pursuant to section 406(d)(2) of the Act, all States were required to (1) review and revise, as necessary, their State Implementation Plans (SIPs) to include provisions that limit stack height credits and dispersion techniques in accordance with the revised regulations, and (2) review all existing emission limitations to determine whether any of these limitations has been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, States were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to USEPA within nine months of promulgation, as required by section 406. Subsequently, USEPA issued detailed guidance on the performance of the required reviews.

This notice evaluates the reviews performed by Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin. The Illinois review was submitted on April 8, 1986, July 17, 1986, May 21, 1987, June 17, 1987, and October 27, 1987; the Indiana

review on April 3, 1986, May 27, 1986, September 30, 1986, January 26, 1987, and March 12, 1987; the Michigan review on April 11, 1986, January 23, 1987, April 22, 1987, and December 30, 1987; the Minnesota review on April 18, 1986, July 16, 1986, October 1, 1986, January 14, 1987, and September 25, 1987; the Ohio review on June 30, 1986, July 3, 1986, July 21, 1986, October 2, 1986, December 18, 1986, July 15, 1987, and December 28, 1987; and the Wisconsin review on November 6, 1985. Major pieces of documentation relied on by each State are as follows: Illinois (State files, and individual source submittals), Michigan (District field staff reports, and source permits), Indiana (State files, individual source submittals, and State reporting form) Minnesota (State survey form), Ohio (State Questionnaire, Federal Power Commission Form 67, State files, and individual source submittals). The notice first evaluates the extent to which each State has complied with the requirement to review its SIP for consistency with the new regulations. Then, the requirement to review emission limits is evaluated. (Sources affected by the recent Court remand will not be acted on here.)

II. SIP Review

Each State was required to review its existing SIP to ensure that State provisions limiting stack height credits and dispersion techniques are consistent with USEPA's revised regulations. The results of each review are described below.

• *Illinois*—On September 22, 1980 (45 FR 62806), USEPA approved a provision as part of Illinois' SIP entitled "Dispersion Enhancement Techniques." This provision is consistent with USEPA's stack height regulations; therefore, USEPA has determined that no additional revision to the SIP is necessary. In its April 8, 1986, and May 21, 1987, submittals, Illinois committed that all future sources which are subject to the Act's New Source Review (NSR) and Prevention of Significant Deterioration (PSD) provisions will comply with the provisions of USEPA's stack height regulations. These commitments apply to all new sources and modifications in Illinois as required in 40 CFR 51.164 as well as existing sources as required in 40 CFR 51.118. This means that these commitments apply to all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. USEPA has reviewed these commitments and has determined that they are consistent with USEPA's requirements for GEP stack height and dispersion techniques as revised on July 8, 1985. USEPA is approving these commitments.

• *Indiana*—Indiana has no federally approved stack height rules. However, on September 30, 1986, and on March 12, 1987, Indiana committed to review all NSR and PSD permit applications and revisions to the SIP to ensure conformance with USEPA's stack height regulations and implementation guidance. These commitments apply to all new sources and modifications in Indiana as required in 40 CFR 51.164 as well as existing sources as required in 40 CFR 51.118. This means that these commitments apply to all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. USEPA has reviewed these commitments and has determined that they are consistent with USEPA's requirements for GEP stack height and dispersion techniques as revised on July 8, 1985. USEPA is approving these commitments.

• *Michigan*—Michigan has no federally approved stack height rules. However, on April 11, 1986, Michigan stated its intention to develop and submit a stack height rule. This rule is not required, because the State also committed, in its April 11, 1986, submittal and a submittal of April 22, 1987, to comply with USEPA's stack height regulations in its review of sources subject to NSR and PSD. These commitments apply to all new sources and modifications in Michigan as required in 40 CFR 51.164 as well as existing sources as required in 40 CFR 51.118. This means that these commitments apply to all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. USEPA has reviewed these commitments and has determined that they are consistent with USEPA's requirements for GEP stack height and dispersion techniques as revised on July 8, 1985. USEPA is approving these commitments.

• *Minnesota*—Minnesota has no federally approved stack height rules. However, on October 1, 1986, and on January 14, 1987, Minnesota committed that it would conform with USEPA's stack height regulations in issuing permits for all new or modified sources. Furthermore, the State noted that it would rely on USEPA's interpretations in cases where the regulations are not clear. These commitments apply to all new sources and modifications in Minnesota as required in 40 CFR 51.164 as well as existing sources as required in 40 CFR 51.118. This means that these commitments apply to all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. USEPA has reviewed these commitments and has determined that they are consistent with USEPA's requirements for GEP stack height and dispersion techniques as revised on July 8, 1985. USEPA is approving these commitments.

• *Ohio*—On March 3, 1986, Ohio submitted a stack height regulation to USEPA. This regulation has been addressed in a separate rulemaking notice. (Note, on August 25, 1988, USEPA approved in final Ohio's rule—53 FR 32392.) On July 3, 1986, the State committed to review new sources subject to NSR and PSD to ensure compliance with USEPA's stack height regulations. This commitment applies to all new sources and modifications in Ohio as required in 40 CFR 51.164 as well as existing sources as required in 40 CFR 51.118. This means that this commitment applies to all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. USEPA has reviewed this commitment and has determined that it is consistent with USEPA's requirements for GEP stack height and dispersion techniques as revised on July 8, 1985. USEPA is approving this commitment.

• *Wisconsin*—Wisconsin has no federally approved stack height rules. However, on November 6, 1985, the State committed to conform with USEPA's stack height regulations in its review of new and modified sources subject to NSR and PSD. This commitment applies to all new sources and modifications in Wisconsin as required in 40 CFR 51.164 as well as existing sources as required in 40 CFR 51.118. This means that this commitment applies to all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. USEPA has reviewed this commitment and has determined that it is consistent with USEPA's requirements for GEP stack height and dispersion techniques as revised on July 8, 1985. USEPA is approving this commitment.

USEPA's approval of the State's stack height regulations/commitments is given with the understanding that, should USEPA promulgate revisions to the Stack Height Regulations, the States have agreed to modify their regulations/commitments accordingly.

III. Review of Emission Limitations

Each State was required to review existing SIP emission limitations to determine whether any of these limitations were affected by stack height credits above GEP or by any other dispersion technique. States were asked to develop an inventory of sources with stack heights greater than 65 meters (m), and sources whose allowable sulfur dioxide (SO_2) emissions exceed 5,000 tons per year (TPY). These cutpoints correspond to the *de minimis* stack height exemption and the *de minimis* SO_2 emissions exemption provided in USEPA's regulations. At a December 5, 1985, workshop, USEPA Region V provided to the States detailed guidance memoranda and a workshop notebook on performing this review. The notebook contained sample forms for documenting the review for each source. The results of USEPA's review of each State are described below.

It should be noted that the modeling techniques used by the States in the attainment demonstrations are based on the modeling guidelines in place at the time the analyses were performed (i.e., either the "Guideline on Air Quality Models", April 1978, and "Regional Workshops on Air Quality Modeling: A Summary Report", April 1981, or "Guideline on Air Quality Models (Revised)", July 1986). Since that time, USEPA has promulgated revisions to its modeling guidelines [i.e., July 1986 revision and July 1987 "Supplement A to the Guideline on Air Quality Models (Revised)"]. Because the modeling was completed and submitted to USEPA prior to the latest revisions, USEPA accepts the analyses for the purposes of today's rulemaking. Summaries of the modeling analyses are available for inspection at the regional office.

USEPA is not acting on the sources identified in Table 2 because they currently receive credit under one of the provisions remanded to the USEPA in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). The States and USEPA will review these sources for compliance with any revised requirements when the USEPA completes rulemaking to respond to the *NRDC* remand.

Illinois

The review of source emission limits showed that no limitations were affected by stack height credits above GEP or by any other dispersion techniques. Two sources (EEI–Joppa, Com Ed-Collins) are affected by the recent court remand. Documentation was submitted to support the State's finding and will be included in the SIP as additional material. Further details on the review are provided below:

Stack Height—Illinois identified 145 stacks greater than 65m. The State determined based on correspondence, field operations reports, memos, and company reports contained in the State permit files that 124 stacks were in existence before December 31, 1970, and are thus "grandfathered". Illinois also determined that:

(1) Nine stacks are less than, or equal to, the GEP formula height (i.e., H + 1.5L or, if the stack was in existence on or before January 12, 1979 and the source can show reliance, 2.5H). (Note, reliance on the 2.5H formula was shown for five stacks, given that the actual stack height does not exceed 2.5H.)

(2) One stack has an existing emission limit based on modeling assuming the grandfathered stack height (Kincaid).

(3) Four stacks were never modeled before (LTV–Chicago, CIPS–Meredosia, CWLP–Dallman 3, and Shell Oil-Wood River) [Note, per USEPA's guidance memo dated February 11, 1986, entitled "Clarification of Existing Guidance on Dispersion Modeling Requirements for Plants with 'Tall Stacks' and Other Prohibited Dispersion Techniques", only emission limits for sources which have been included in some type of dispersion analysis need to be reviewed now),

(4) Two stacks serve source(s) that do not emit SO_2. The remaining stacks (three at EEI Joppa and two at Com Ed-Collins) are affected by the recent Court remand [i.e., Joppa: grandfathering pre-1983 within formula stack height increases from demonstration requirements (40 CFR 51.100(ii)(2)), and Collins: original design and construction exemption (40 CFR 51.100(hh)(ii)(A) for merged stacks.]

Dispersion Techniques—Illinois identified 64 facilities with allowable SO_2 emissions greater than 5,000 TPY. The only dispersion technique identified by Illinois was stack merging (after 1970). Illinois determined that:

(1) Two facilities implemented stack merging prior to December 31, 1970 (CIPS Coffeen and CWLP Lakeside),

(2) One facility demonstrated that merging was not significantly motivated by an intent to gain emissions credit for greater dispersion (Com Ed-Kincaid),

(3) Four facilities were never modeled before (CIPS Meredosia, Shell Oil, Chanute Air Force Base, U.S. Industrial Chemicals),

(4) Forty-four facilities have no record of merged stacks since 1970 (i.e., sources and stacks or number of stacks per units were, in existence prior to 1971), and

(5) Eleven facilities have only one stack per unit. The remaining sources (Com Ed-Collins and EEI–Joppa) are affected by the recent Court remand, as noted above.

Action—USEPA approves Illinois' determination that no emission limitations need to be revised at this time. USEPA is approving the negative declarations, except for the sources shown in Table 2. USEPA is also hereby notifying the State that if the six facilities which were never modeled are included in any dispersion analysis in the future, it will be necessary to address the stack height issues at that time.

Indiana

On January 19, 1988, USEPA approved the Indiana SO_2 SIP for 77 counties. The State's review of source emission limits showed that no limitations were affected by stack height credits above GEP or any other dispersion techniques for sources in these 77 counties. Three sources (AE Staley, NIPSCo Schafer, and IMEC Rockport) are affected by the recent Court remand. (Note: USEPA has dealt with the stack height issues for sources in the remaining 15 counties (see Table 1) in separate rulemaking actions on the emission limits for these counties.) Documentation was submitted on forms suggested by USEPA. Further details on the review are provided below:

Stack Height—Indiana identified 22 stacks greater than 65m. The State determined based on information contained in the State construction permit log that 12 stacks were in existence before December 31, 1970, and are thus "grandfathered". Indiana also determined that two stacks are less than, or equal to, the applicable GEP formula height (i.e., H + 1.5L).

For one stack, Indiana performed a reference dispersion modeling analysis (New Energy Co. of Indiana) at the creditable GEP height. This analysis demonstrated attainment of the SO_2 NAAQS at the current emission limitation and creditable GEP height. The remaining seven stacks are affected by the recent Court remand (i.e., IMEC-Rockport, both grandfathering credit for the refined GEP formula height [40 CFR 51.100(ii)(2)], and the original design and construction exemption [40 CFR 51.100(hh)(2)(ii)(A)] for merged stacks; AE Staley, original design and construction exemption; and NIPSCo-Schahfer, original design and construction exemption).

Dispersion Techniques—Indiana identified 16 facilities with allowable SO_2 emissions greater than 5,000 TPY. The only dispersion technique discovered by Indiana was stack merging (after 1970). Indiana determined that:

(1) Six facilities have no record of merged stacks since 1970 (i.e., sources and stacks in existence prior to 1971),

(2) Seven facilities have only one stack per unit.

The remaining three sources are affected by the court remand as noted

above (i.e., IMEC Rockport, AE Staley, NIPSCo-Schahfer)

Action—USEPA approves Indiana's determination that no emission limitations in 77 counties need to be revised at this time. USEPA approves the negative declaration for these counties, except for those sources shown in Table 2.

Michigan

The review of source emission limits showed that no limitations were affected by stack height credits above GEP or any other dispersion techniques. Seven sources (Dow-Midland, CP-Cobb, UP Presque Isle, Marquette BWL-Shiras, LBWLP-Eckert/Moore's Park, Grand Haven-Sims, and National Gypsum-Cement Division) are affected by the recent Court remand. Further details on the review are provided below:

Stack Height—Michigan identified 59 stacks greater than 65m. The State determined based on District Field Staff Reports and Sources-specific Permits that 33 stacks were in existence before December 31, 1970, and are thus "grandfathered". Michigan also determined that eight stacks are less than, or equal to, the GEP formula height (i.e., H+1.5L or, if the stack was in existence on or before January 12, 1979 and the source can show reliance, 2.5H). (Note, reliance on the 2.5H formula was shown for seven stacks, given that the actual stack height does not exceed 2.5H.)

Michigan performed a reference dispersion modeling analysis for three stacks (one at Michigan State University, and two at Detroit Edison—Belle River) at the creditable GEP height. These analyses demonstrated attainment of the SO_2 NAAQS at the current emission limitation limitation and creditable GEP height.

The remaining 15 stacks are affected by the Court remand (i.e., National Gypsum-Cement Division, Grand Haven-Sims, CP-Cobb, Dow Midland, UP-Presque Isle, Marquette BWL-Shiras, LBWLP-Eckert/Moore's Park: grandfathering pre-1983 within a formula stack height increases from demonstration requirements [40 CFR 51.100(ii)(2)], and UP-Presque Isle: original design and construction exemption [40 CFR 51.100(hh)(2)(ii)(A)] for merged stacks.)

Dispersion Technique—Michigan identified 30 facilities with allowable SO_2 emissions greater than 5,000 TPY. The only dispersion technique discovered by Michigan was stack merging (after 1970). Michigan determined that:

(1) One facility implemented stack merging prior to December 31, 1970,

(2) Nineteen facilities have no record of merged stacks since 1970 (i.e., sources and stacks in existence prior to 1971), and

(3) Four facilities have only one stack per unit.

The remaining six facilities (National Gypsum-Cement Division, CP-Cobb, Dow-Midland, UP-Presque Isle, Marquette BLP-Shiras, and LBWLP-Eckert/Moore's Park) are affected by the Court remand, as noted above.

Action—USEPA approves Michigan's determination that no emission limitations need to be revised at this time. USEPA is approving the negative declarations, except for those sources shown in Table 2.

Minnesota

The review of source emission limits showed that no limitations (with the possible exception of two sources) were affected by stack height credits above GEP or by any other dispersion techniques. Four sources are affected by the recent Court remand. Documentation was submitted to support the State's findings and will be included in the SIP as additional material. Further details on the review are provided below:

Stack Height—Minnesota identified 37 stacks greater than 65m. (Four stacks at Koch and Ashland are not included in this notice, see Table 1.) The State determined based on its GEP survey form that 21 stacks were in existence before December 31, 1970; and are, thus, "grandfathered" (including the stack for Boiler 8 at NSP Riverside which was not in operation but for which NSP had made a contractual commitment).

Minnesota also determined that five stacks are less than, or equal to, the GEP formula height (i.e., H+1.5L or, if the stack was in existence on or before January 12, 1979, and the source can show reliance, 2.5H). (Note, reliance on the 2.5H formula was shown for one stack given that the actual stack height does not exceed 2.5H.)

Minnesota performed a reference dispersion modeling analysis for one stack (University of Minnesota-Southeast Steam Plant) at the creditable GEP height. These analyses demonstrated attainment of the SO_2 NAAQS at the current emission limitation and creditable GEP height. The remaining six stacks are affected by the Court remand (i.e., NSP-Black Dog, NSP-High Bridge, MP-Boswell: grandfathering pre-1983 within formula stack height increases from demonstration requirements [40 CFR 51.100(a)(2)] and NSP-Sherco: original design and construction exemption [40 CFR 51.100(hh)(ii)(A)] for merged stacks).

Dispersion Technique—Minnesota identified 35 facilities with allowable SO_2 emissions greater than 5,000 TPY. The only dispersion technique discovered by Minnesota was stack merging (after 1970). Minnesota determined that:

(1) One facility was never modeled before,

(2) Twenty five facilities have no record of merged stacks since 1970 (i.e., sources and stacks in existence prior to 1971), and

(3) Two facilities have only one stack per unit.

The State performed a reference dispersion modeling analysis for one facility (Waldorf Corporation) without merged stack credit. This analysis demonstrated attainment of the SO_2 NAAQS at the current emission limitation and creditable GEP height.

The remaining sources are either affected by the Court remand (MP-Clay Boswell, NSP-Sherco, NSP-Black Dog, and NSP-High Bridge) as noted above or not included in this notice (Koch and Ashland).

Action—USEPA approves Minnesota's determination that no emission limitations, with the possible exception of Koch and Ashland, need to be revised at this time. USEPA is approving the negative declarations, except for those sources shown in Table 1 and Table 2.

Ohio

The review of source emission limits showed that no limitation (with the possible exception of three sources) were affected by stack height credits above GEP or by any other dispersion techniques. Ten sources are affected by the recent Court remand (see Table 2). Documentation was submitted to support the State's findings and will be included in the SIP as additional material. Further details on the review are provided below:

Stack Height—Ohio identified 121 stacks greater than 65m. (The 13 stacks at CEI-Eastlake, CEI-Avon Lake, CSP-Conesville, and CGE Miami Fort are not included in this notice, see Table 1.) The State determined based on the State's Questionnaire, construction records, Federal Power Commission forms, photographs that 81 stacks were in existence before December 31, 1970, and are thus "grandfathered". Ohio also determined that:

(1) Five stacks (Cargill, Mead, University of Cincinnati, Ashland Petroleum boiler Armco) are less than, or equal to, the GEP formula height (i.e., H+1.5L or, if the stack was in existence on or before January 12, 1979, and the source can show reliance, 2.5H). (Note, reliance on the 2.5H formula was shown for eight stacks, given that the actual stack height does not exceed 2.5H, or the 2.5H height was used in the attainment demonstration),

(2) Three stacks have existing emission limits based on modeling assuming grandfathered height (OVEC-Kyger Creek, SouthPoint Ethanol, OE-Niles),

(3) One stack (Ashland Petroleum—a replacement unit) was never modeled before, and

(4) One stack serves boilers that recently shutdown (LTV-Massillon).

Ohio performed a reference dispersion modeling analysis for three stacks (LTV-Warren, Champion Papers, and Shelby Municipal) at the creditable GEP height. These analyses demonstrated attainment of the SO_2 NAAQS at the current emission limitation and creditable GEP height.

The remaining 18 stacks are at sources affected by the Court remand (i.e., grandfathering pre-1983 within-formula stack height increases from demonstration requirements [40 CFR 51.100(kk)(2)]: TE-BayShore, CSP-Poston, Elkem Metals, GMAD; original design and construction exemption for merged stacks [40 CFR 51.100(hh)(2)(ii)(A)]: CSP Conesville, Columbus Municipal, OP-Gavin, Sun Refining Toledo, GMAD; and grandfathering pre-1979 use of H+15L formula [40 CFR 51.100(ii)(2)]: DPL-Killen, OP-Gavin, and OP-Cardinal).

(Note, USEPA will publish a separate rulemaking action addressing the negative declaration for CEI-Eastlake and CEI-Avon Lake)

Dispersion Techniques—Ohio identified 89 facilities with allowable SO_2 emissions greater than 5,000 TPY. Five sources (ALCOA, CSP-Conesville, CEI-Eastlake, CEI-Avon Lake, and CGE-Miami Fort) are not included in this notice, see Table 1. The only dispersion technique discovered by Ohio was stack merging (after 1970). Ohio determined that:

(1) Seven facilities implemented stack merging prior to December 30, 1970 (including OP-Muskingum River and OE-Burger),

(2) Four facilities merged stacks in conjunction with the installation of emissions control equipment and there was no increase in the emission limitation (or, if no limit existing prior to merging, no increase in actual emissions—i.e., post-merging allowable does not exceed pre-merging actual) (WPSC-Yorkville, Dover Municipal, OVEC-Kyger Creek, Martin Marietta),

(3) One facility demonstrated that merging was not significantly motivated by an intent to gain emissions credit for greater dispersion (Goodyear Plant II),

(4) Four facilities have existing emission limits based on modeling assuming no credit for merged stacks (OE-Niles, Crown Zellerbach, South Point Ethanol, Orient Correctional),

(5) One facility has shown that merging was performed in conjunction with other plant modifications which resulted in no increase in final plume rise (Champion Papers),

(6) Twenty eight facilities have no record of merged stacks since 1970 (i.e., sources and stacks in existence prior to 1971),

(7) Eight facilities have only one stack per unit,

(8) One facility has merged stacks which do not emit SO_2 (Portsmouth Gaseous), and

(9) One facility recently shutdown (LTV-Massillon).

The State performed an up-to-date reference dispersion modeling analysis for one facility (Shelby Municipal) without merged stack credit. This analysis demonstrated attainment of the SO_2 NAAQS at the current emission limitation and creditable GEP height.

The remaining sources are affected by the remand (i.e., TE-Bay Shore, CSP-Poston, Elkem Metals, DPL-Killen, OP-Cardinal, OP-Gavin, Sun-Toledo, Columbus Municipal) as noted above.

Action—USEPA approves Ohio's determination that no emission limitation needs to be revised at this time, with the possible exception of Conesville, Miami Fort, and ALCOA. USEPA is approving the negative declarations, except for these sources shown in Table 1 and Table 2.

Wisconsin

The review of source emission limits will be discussed in a separate rulemaking notice.

IV. Technical Support and Additional Information

USEPA's detailed review and approval of the technical support submitted by each State is contained in a series of Technical Support Documents. These documents are available for public inspection at the USEPA Regional Office listed in the ADDRESSES section of this notice.

SUMMARY OF ACTION: USEPA is approving declarations by Illinois, Indiana, Michigan, Minnesota, and Ohio that recent revisions to USEPA's stack height regulations do not necessitate SIP revisions in those States, with the possible exception of those sources listed in Table 1, and Table 2.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on October 3, 1989. However, if we receive notice by September 5, 1989 that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action for the specific sources affected by the comment, and (2) a notice that begins a new rulemaking by proposing the action for those sources and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 3, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of EO 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental Protection, Intergovernmental relations, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642.

Dated: July 28, 1989.

Valdas V. Adamkus,

Regional Administrator.

TABLE 1.—SOURCES NOT INCLUDED IN THIS NEGATIVE DECLARATION

[Sources Addressed in Separate Rulemaking]

Illinois	Indiana (county)	Wisconsin	Michigan	Minnesota	Ohio
(none).....	Lake, Gibson, Porter, Dearborn, Vermillion, Posey, LaPorte, Marion, Vigo, Jefferson, Sullivan, Wayne, Floyd, Morgan, Warrick.	Entire State.	(none).....	Koch Refining, Ashland Petroleum...	CSP-Conesville, CG&E-Miami Fort, ALCOA, CEI-Eastlake, CEI-Avon Lake.

TABLE 2.—SOURCES NOT INCLUDED IN THIS NEGATIVE DECLARATION

[Sources Affected by Recent Court Remand]

State	Source
IL.....	EEI-Joppa, Com Ed-Collins.
IN.....	NIPSCo-Schahfer, IMEC-Rockport, AE Staley.
MI.....	CP-Cobb, National Gypsum-Cement Division, UP-Presque Isle, Marquette BWL-Shiras, LBWLP-Eckert/Moores Park, Dow-Midland, Grand Haven-Sims.
MN.....	NSP High Bridge, NSP Black Dog, MP Clay Boswell, NSP Sherco.
OH.....	CSP-Conesville, CSP-Poston, Columbus Municipal, DPL-Killen, OP-Gavin, Sun Refining-Toledo, GMAD, OP-Cardinal, Elkem Metals, TE-Bay Shore.

[FR Doc. 89-18274 Filed 8-3-89; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 81

[FRL-3525-6]

Designation of Areas for Air Quality Planning Purposes; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is denying the State of Illinois' request to redesignate Kane and DuPage Counties from nonattainment to attainment for ozone. The intent of this notice is (1) to discuss the results of USEPA's review of the State's redesignation request and the public comments received regarding USEPA's proposed action, (2) to respond to the public comments received, and (3) to announce final rulemaking denying this redesignation request.

EFFECTIVE DATE: This final rulemaking becomes effective on September 5, 1989.

ADDRESSES: Copies of the redesignation request, technical support documents supporting air quality data, and comments are available at the following address:

U.S. Environmental Protection Agency, Region V, Air Programs Branch (5AR-26), 230 S. Dearborn Street, Chicago, Illinois 60604.

Copies of the supporting material are also available at:

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano (5AR-26), (312) 886-6036.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Clean Air Act (Act) the Administrator of USEPA has promulgated the National Ambient Air Quality Standards (NAAQS) attainment status for each area of every State. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). Consistent with the applicable provisions of section 107(d), these area designations may be revised whenever the data warrant.

On January 27, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a request for Kane and DuPage Counties to be redesignated as attaining the ozone NAAQS. This request was based on a lack of monitored ozone standard violations. USEPA's June 12, 1984 (48 FR 46082), final rulemaking rejected the State's request to redesignate Kane and DuPage Counties. IEPA and the Illinois State Chamber of Commerce disagreed with USEPA's final rulemaking action and jointly petitioned for review of USEPA's action before the Seventh Circuit of the United States Court of Appeals. In its November 4, 1985, decision, *Illinois State Chamber of Commerce* v. *USEPA*, 775 F.2d 1141 (7th Cir. 1985), the Court remanded the rulemaking to USEPA, calling for a clarification of USEPA's ozone designation policy and the rationale for its application to the attainment status for Kane and DuPage Counties.

A May 23, 1986, technical support document (TSD) thoroughly reviewed USEPA's ozone redesignation policy memoranda and available studies supporting USEPA's views on ozone formation and transport and the assignment of ozone precursor source culpability for the purposes of ozone nonattainment designations. On December 29, 1988 (53 FR 52727), the USEPA proposed revised rulemaking on the redesignation request for Kane and DuPage Counties. This proposal summarized the discussions contained in the May 23, 1986, TSD and proposed to again disapprove the redesignation of Kane and DuPage Counties.

A number of public comments were received in response to USEPA's proposed denial of the State's redesignation request. These comments and USEPA's response are summarized below.

Public Comments

Comment No. 1. USEPA has failed to comply with its mandatory duty to respond to State-submitted redesignation requests within sixty (60) days of submittal.

Response. Section 107(d) of the Act does not impose a sixty (60) day time frame for responding to a redesignation request. The commentor apparently derives the 60-day time frame from section 107(d)(2). 42 U.S.C. 7407(d)(2). The time frame for USEPA action set forth in section 107(d)(2) applies only to the "list under paragraph 1 of this subsection." Id. The "paragraph 1" referred to deals only with the initial promulgation of attainment status designations for air quality control regions. The subsequent redesignation of those regions is addressed by section 107(d)(5), which is silent as to any deadline for USEPA action. Had Congress intended to impose the 60-day time frame on subsequent redesignations, it would have included the limit in subsection (d)(5).

This interpretation is consistent within the context of the 1977 amendments, which introduced the concept of nonattainment areas to the Act. See, generally, *Chevron U.S.A.* v. *Natural Resources Defense Council*, 467 U.S. 837, 847-848. Sections 107 (d)(1) and (d)(2) were part of an expeditious schedule designed by Congress to address the perceived failures of the pre-1977 Act. The States had 120 days to initially designate each air quality control region, and USEPA had 60 days to promulgate the States' list with whatever modifications USEPA deemed necessary. This tight time frame was essential if the States were to comply with the Act's new requirement that all nonattainment areas submit a revised State Implementation Plan (SIP) by January 1, 1979. (See 42 U.S.C. 7502.) Once this initial planning was

completed, the need for expedited action diminished.

In this context, USEPA does not have a duty to respond to a State's redesignation request within 60 days. Moreover, even if USEPA had such a duty, the passage of 60 days since submittal of the redesignation request would not have precluded USEPA from acting now on the request.

Comment No. 2. USEPA still has not developed any coherent rationale which addresses the Court's mandate. USEPA continues to rely on two separate theories which the court found internally inconsistent and concluded that "until USEPA has done one or the other, its action will appear to be arbitrary and rational review by this court will be impossible." See *Illinois State Chamber of Commerce* v. *USEPA*, 775 F.2d 1141, 1147 (7th Cir. 1985).

Response. In concluding that review was impossible, the Seventh Circuit concluded that USEPA had either changed its policy without giving a reasoned analysis to support the change or if no policy change were involved, USEPA had failed to explain how disapproval was consistent with past policy. In its proper context, the language quoted by the commentor was used by the court to require USEPA to explain either why the policy was changed or how current policy was consistent with past policy. The court stated:

> If it has changed its policy, it must explain how and why; if it has not, it must articulate an explanation that will account for both the earlier and most recent actions it has taken. Until it has done one or the other, its actions will appear arbitrary, and rational review in this court will be impossible.

Id. at 1147. In the December 29, 1988, **Federal Register** notice (53 FR 52727), USEPA explained in great detail how the proposed disapproval of the Kane and DuPage Counties redesignation request was consistent with past actions. Therefore, USEPA has complied with the Seventh Circuit's mandate.

Comment No. 3. USEPA relies upon two mutually inconsistent nonattainment designation theories. First, USEPA states that a nonattainment area must include all of the sources that contribute to pollution in that area. Second, the USEPA states that an urban ozone nonattainment area must include the entire urbanized area. USEPA must choose between one or the other theory.

USEPA's designation theory is internally inconsistent because no attempt was made to draw up the nonattainment boundaries for the Chicago area in such a way as to track the movement of the ozone away from the precursor sources (nor has this been done for New York, Los Angeles, Philadelphia, Detroit, San Francisco, Boston, or Washington, DC). Moreover the controls available to the USEPA from nonattainment designations could be applied to areas that suffer from but do not produce the pollution. The leverage from such controls should only be available where it will be useful.

USEPA's designation theory is also irrational because USEPA has not identified how the attainment status of an urban area is to be changed and where the monitoring for evaluating the attainment status will take place, nor has USEPA explained why it has chosen to use urban area as defined by the census.

Response. USEPA does not rely upon two mutually exclusive designation theories, but as articulated in the December 29, 1988 notice, relies upon a single, internally consistent, nonattainment designation theory. USEPA's approach is predicated upon the initial nonattainment designation decision being only the first step in the ozone control process; the important subsequent step is the implementation of planning and control obligations upon nonattainment areas in order to achieve attainment. Nevertheless, the nonattainment designation is crucial; it determines what sort of planning or control obligations an area will have. Obviously the control obligations implemented by the state for a nonattainment area will differ according to the area's ozone contribution. Thus, a nonattainment area emitting substantial ozone precursors would normally have more strict controls placed upon it than a nonattainment area emitting fewer precursors. The nonattainment designation is the threshold decision to control an area's ozone emissions in order to successfully achieve compliance with the standard.

As an initial starting point in the nonattainment designation process, all areas—urban or rural—experiencing ozone exceedances, are, by definition, nonattainment areas. If an area does not have clean air, then it probably needs controls to bring it into attainment or to prevent further violations downwind; thus, it should be labelled nonattainment.

If violations occur within an urbanized area (as defined by the Bureau of the Census), then the entire urbanized area is designated as "nonattainment." This is done because of the simple fact that an ozone exceedance cannot generally be attributed to any particular source, and instead results from emissions from numerous stationary, mobile, and area sources. USEPA will then examine the areas immediately surrounding the urbanized area experiencing the violations. If adjacent areas have significant ozone precursor sources because of population, growth potential, or significant existing stationary sources, then these "fringe" areas will also be designated as nonattainment because of their current and/or future contribution to the ozone problem in and near the urbanized areas experiencing the violations.

Rural areas may also experience ozone violations because they are downwind of an area emitting ozone precursors or they, themselves, have significant precursor emissions. If violations have occurred in an isolated rural area due either to the downwind drift of ozone from another area or locally generated ozone, then it too must be designated as nonattainment because controls may be necessary to reduce the ozone in this area or to prevent the propagation of ozone violations further downwind.

The manner in which the areas surrounding the violations of the ozone standard have been divided has been left to the individual States. Of course one State may not include another State's territory within its nonattainment areas. Many States, like Illinois, chose to identify the nonattainment and attainment areas on a county by county basis. Because USEPA did not draw the States' nonattainment boundaries, it could not draw them specifically to track the movement of ozone precursors. Nevertheless in designating the polluted and fringe areas as nonattainment, USEPA has identified those areas that are emitting ozone precursors or experiencing violations, and thus has performed the functional equivalent of defining the boundaries to track ozone precursors. USEPA has utilized the same designation theory for all areas across the country.

In this particular case, USEPA has continued to use its nonattainment designation approach in a consistent manner. Illinois chose to break the Chicago area into counties for ozone designation purposes. Since the Chicago urbanized area experiences ozone violations, the fringe areas surrounding Chicago must also be designated as nonattainment because of their contribution to the ozone problem. Because Kane and DuPage counties qualify as fringe areas,[1] they must retain

[1] Portions of DuPage County are within the Chicago and Aurora Urbanized Areas and portions

Continued

their nonattainment designation despite the lack of monitored ozone exceedances. The downwind areas in Wisconsin experiencing violations of the ozone standard have also been labelled nonattainment. Thus while it may make sense to group all of these areas together for planning purposes, the designation of these areas was performed on a State-by-State basis utilizing the articulated designation theory.

The concern that leverage be applied where it is needed is precisely the reason USEPA includes fringe areas of development within the designated nonattainment area. If USEPA designated the fringe areas as attainment, then these areas could not be required to control their ozone precursors as stringently as if they had been designated nonattainment and would continue to add to the nearby area's ozone problem. Similarly, as explained further in response to Comment Number 16, if downwind areas experiencing violations do not control their emissions, the ozone problems will be exacerbated and ozone will continue to move and form downwind. The concerns about sanctions placed upon an area, however, are planning and control, not designation, issues. The designation decision is based upon whether an area is violating the standard or contributing to ozone exceedances. Any USEPA decision on the adequacy of a State or Federal plan to solve an area's ozone problem would be subject to a public rulemaking process (and ultimately judicial review) to insure that the controls imposed are not arbitrary or capricious.

The comments directed at how the attainment status of an area is changed and why the USEPA uses the urbanized area are addressed elsewhere in the responses. Also, the comments on why USEPA has chosen to use urban areas as defined by the Bureau of the Census is addressed in the response to Comment No. 17.

Comment No. 4. USEPA's procedure in making the proposal available for public comment is objectionable. In particular, USEPA relied upon unpublished memoranda and used only selected references on the ozone transport issue. USEPA has failed to include in the record the unpublished memoranda and the references on ozone transport. The official "record" of the Chamber case listed some documents that USEPA did not list in the December 29, 1988 Notice of Proposed Rulemaking.

Response. USEPA is not required to publish all of its policy statements in the Federal Register, as this commentor apparently suggests. To do so is not only unnecessary under the Administrative Procedure Act, but would also impose a huge paperwork burden on the Agency and general public. Contrary to the commentor's contention, all of these memoranda are listed in the May 23, 1986, technical support document and are a part of the record of this rulemaking.

The commentor correctly notes that USEPA has not included every study of the ozone transport issue. The Agency has listed only those studies upon which it relied on in deciding to disapprove the Kane and DuPage redesignation request. The Agency is not obligated to include every scintilla of information regardless of whether or not the Agency relied upon it. During the public comment period, the public is free to submit additional information for the Agency's consideration. In this case, the commentor has submitted some additional information which the Agency has evaluated and is responding to elsewhere in this rulemaking.

Finally, the commentor contends that the certified record supporting the June 12, 1984, denial of redesignation refers to documents which are not included in the present record. USEPA believes that its May 23, 1986, TSD does include all relevant policy documents. Additionally, the TSD refers to all ozone transport studies which USEPA relied upon in the instant rulemaking. Assuming that there are discrepancies, the commentor has not explained why any such discrepancies are significant. Moreover, the Agency is not bound to the 1984 record.

Comment No. 5. Significant economic sanctions can be imposed by the USEPA on areas classified as nonattainment for an air quality standard. The growth sanctions included in the Clean Air Act are directed at stationary sources. Illinois, however, has already imposed reasonably available control technology requirements (RACT) on stationary facilities. The USEPA cannot assume that such sources are causing or contributing to exceedances of the ambient air quality standard.

Designating Kane and DuPage Counties as nonattainment for ozone will impose a ban on construction of new or modified VOC sources in these counties. This will either have an adverse effect upon the Chicago area in terms of impeding economic efficiency or by causing stationary sources to locate further to the west or to the south of the Chicago area. If the latter growth indeed occurs, it will increase vehicular traffic to allow workers to reach the new "greenfield" locations.

USEPA should consider the practical effect that can result from its decision as to what constitutes a "non attainment area." Improved highways may be necessary to avoid over-burdened highway systems in Kane and DuPage counties, and discouraging improved inland highway systems could have the effect of increasing traffic load in the central Chicago and Cook County area. Since the urban Chicago traffic source is most often the cause of the ozone exeedance, the USEPA's decision to keep Kane and DuPage counties as nonattainment may worsen the Chicago area's ozone problem.

Response. All of the comments made are planning and control concerns, not designation concerns. The nonattainment designation, as discussed earlier, is determined by an area's role in ozone exceedances. If an area is important in bringing ozone levels under control, then the area must be designated nonattainment. In this case Kane and DuPage counties are critical in addressing the Chicago area ozone problem, and, for this reason alone, Kane and DuPage counties are designated as nonattainment. In short, these control concerns are irrelevant to the designation determination. Notwithstanding their irrelevance, USEPA will address the commentor's concerns.

Although the State of Illinois has imposed RACT requirements on certain stationary sources in Kane and DuPage Counties (or elsewhere in the Chicago nonattainment area), these sources may still be emitting VOC's and contributing to downwind ozone impacts. The controls applied are not 100 percent effective at eliminating emissions. Therefore, the stationary sources, though under RACT requirements, might require additional controls, and these controls will further lower area VOC emissions.

Several points concerning the construction ban concern should be discussed. First, the effectiveness of a construction ban is irrelevant to its imposition. Congress has chosen to statutorily require a construction ban in nonattainment areas if the State has failed to produce an adequate plan.

of Kane County are within the Elgin and Aurora Urbanized Areas. Both counties contain significant populations (Kane County—299,000, DuPage County—716,000) and emissions (Kane County—97.5 tons of VOC per day (TPD), DuPage County—169.2 TPD). Emissions from both counties have an impact on or are within the Chicago area. (Population Source—1985 estimate, Bureau of the Census data, Emissions Source—Summary of VOC Emissions, 1988, Table 1–A, Appendix A, Emissions Inventory Documentation for Chicago Area Federal Implementation Plan (FIP)—Draft Report)

Therefore, the simple act of designating Kane and DuPage Counties as nonattainment for ozone does not automatically result in the imposition of a ban on the construction of new or modified sources of VOCs. The supposed economic effects of a construction ban are purely speculative on the part of the commentor.

With regard to the argument on the potential for increased vehicular traffic (and thus more ozone pollution), several points should be discussed. Ozone control plans must address the potential for the increase in emissions from all source categories including those from mobile sources. If a significant increase in mobile source emissions is expected, additional emission controls will have to be found for either mobile sources or stationary sources within the Chicago ozone demonstration area, which includes all of the Chicago ozone nonattainment area. Like the effectiveness of the construction ban; the asserted potential increase of mobile emissions due to a nonattainment designation is purely speculative.

Because USEPA has disapproved Illinois' 1982 ozone plan the existing ban on major new VOC source growth in Kane and DuPage Counties and other portions of the Chicago nonattainment area will continue in effect until the State submits an adequate ozone SIP for the entire area. However, the ban does not prohibit all growth. Rather, new major sources in a nonattainment area would need to meet more stringent emission requirements than in an attainment area. The new source growth ban is statutorily mandated in areas that have disapproved Part D SIPs and is intended to prevent unrestrained source growth and exacerbation of the present ozone nonattainment problem while the SIP is revised or a Federal Implementation Plan (FIP) is prepared (the USEPA is presently pursuing the latter as the result of a January 18, 1989, Court order issued in *State of Wisconsin* v. *United States Environmental Protection Agency*, No. 87–C–395, (E.D. Wisc.).

USEPA is aware of the potential for ozone impacts within a nonattainment area due to precursor emissions originating outside of the nonattainment area. Major sources locating in such areas must be addressed in new source reviews which must include an assessment of their air quality impacts on downwind areas, including the nonattainment area.[3]

[3] USEPA proposed on June 8, 1988 (53 FR 20722), to expand ozone nonattainment areas to include all of the areas within Metropolitan Statistical Areas (MSAs) or, where such exist, Consolidated Metropolitan Statistical Areas (CMSAs). If that rulemaking is finalized, as proposed, it would add Will, Kendall, Grundy, and McHenry Counties in Illinois and Kenosha County in Wisconsin to the Chicago urban nonattainment area. Under USEPA's proposed post–1987 ozone attainment policy, future ozone attainment demonstration analyses would include the emissions from major sources located within 25 miles of the MSAs or CMSAs. (Analyses of emissions for the Chicago area Federal Implementation Plan cover the Chicago CMSA and neighboring major sources.) These proposals reflect USEPA's growing concern (in part based on recent long range ozone transport studies) over the impacts of emissions occurring or expected outside of existing ozone nonattainment areas.

Comment No. 6. Air parcel trajectories performed for the year 1985 (air parcel trajectories for 1985 were included in the commentor's set of comments) confirm the observation that sources located in Western DuPage County and Kane County cannot be associated with any ozone standard exceedances.

Response. The referenced trajectory analysis for 1985 was reviewed. The analysis is apparently based on ground level wind data and/or pressure gradients for a single height (the documentation lacked specificity with regard to the actual nature and source(s) of the input data), and only considers horizontal transport. By failing to account for three dimensional pollutant/parcel transport and pollutant dispersion, the study's analysis has a significant shortcoming; thus its conclusions are incorrect.

Ozone concentrations are measured over 1 hour averaging periods. During such periods, air parcels covering a range of trajectories and representing varied histories of vertical and horizontal transport (the gusty nature of wind represents this variety of air parcel trajectories and transport histories) arrive at a given monitoring site. Single line trajectories (isolated straight-line trajectories), in the study of air pollution transport are of limited use and are misleading, particularly when pollutant transport occurs over longer time periods, as in the case of ozone formation and transport. If one were to account approximately for pollutant dispersion and varied air parcel trajectories in a backward trajectory analysis, one would predict an ever broadening source areas as one moves back through time. Over the period of time apparently involved in ozone formation in the Chicago area (because most exceedance peaks do not generally occur until early afternoon and can occur as late as the early evening hours, transport times of 6 or more hours are likely in the Chicago area), the source area would take on the dimensions of the urban area.

Even if one were to consider the single line trajectories submitted by the commentor, it should be noted that several of the straight line trajectories presented by the commentor pass near if not over Kane and DuPage Counties particularly prior to 8 a.m. Given the effects of varied air parcel trajectories and pollutant dispersion, emissions (and the resultant ozone) from Kane and DuPage Counties could arrive at the high ozone sites on the days discussed for 1985.

Comment No. 7. While the proposed rulemaking discusses general wind directions in many instances, USEPA does not actually attempt to correlate emissions from Kane or DuPage Counties with any exceedance of the ozone standard in the Chicago area. This lack of any causal connection made by USEPA between emissions from Kane and DuPage Counties and monitored exceedances is not surprising; trajectory analyses for 1985 as well as studies cited by USEPA, including those being relied upon by USEPA to deny the redesignation suggest that an inland source from Kane County will not become involved in the "lake breeze phenomenon" and, hence, will not contribute to ozone exceedances in the Chicago region. While the rationale in support of the proposed rulemaking relies upon wind direction, it does so only in the most generalized manner. No attempt is made to relate wind direction on days of ozone exceedances to Kane and DuPage emissions. Further, the notice mentions the "lake breeze" phenomenon, but does not relate that phenomenon to inland sources, such as VOCs emitted from Kane and DuPage Counties.

The lack of any such association is disturbing in light of the technical literature cited by USEPA. That literature shows a pronounced lake breeze effect, and boundaries of various lake breeze phenomenon. For example, Lyons and Cole (1976) reviewed air parcel trajectories. This paper indicated that an emission from an inland source, apparently in Kane County, could not enter into the lake breeze phenomenon and, therefore, could not be part of the urban Chicago area contributing to "high" ozone levels along the lake shore in Illinois or Wisconsin.

Response. A number of points are appropriate in response to this comment. First, a recent ozone standard violation at the DesPlaines monitor does imply that emissions from Kane and DuPage County may contribute to ozone standard violations in the Chicago area. The DesPlaines monitor, located in the northwestern portion of Cook County, is generally downwind of the sources in DuPage and Kane Counties. (DesPlaines

is located near the northeast corner of DuPage County.) The location of DesPlaines relative to these Counties is such that high ozone concentration impacts from Kane and DuPage emissions could be found here (the presence of local VOC and oxides of nitrogen emissions near DesPlaines would act to push peak ozone impacts even further downwind).

Second, none of the studies cited by USEPA suggests that Kane and DuPage County emissions cannot contribute to the ozone precursor concentrations carried in the "lake breeze" transport often found associated with high ozone concentrations observed near Lake Michigan downwind of Chicago. The very Lyons and Cole article cited by the commentor was reviewed as part of the May 23, 1986, TSD. This article presented possible two dimensional trajectories but made no attempt to present specific subarea culpability with respect to downwind ozone impacts. The article did not state that emissions from Kane and DuPage Counties could not contribute to high downwind ozone concentrations. In fact, the article stated that the Chicago urban area (which includes DuPage County) is the logical source for the high ozone concentrations observed in southeastern Wisconsin. The article did not differentiate the impacts from the various portions of the Chicago area.

Third, the Lyons and Cole article cited by the commenter, as well as other articles and publications, described mechanisms by which emissions from throughout the urban area, including emissions from Kane and DuPage Counties, can be included in the lake breeze transport process. The Lyons and Cole paper implies that prior to the onset of lake breeze fronts, which usually occurs between 8 a.m. and 9 a.m. or later, emissions from throughout the urban area can be advected in the surface mixing layer out over Lake Michigan. These pollutants above Lake Michigan may then participate in ozone formation in the lake breeze transport process. A second mechanism is shown in a paper by Lyons and Keen (Lyons, W.A. and Keen, C.S., 1976: "Lake/Land Breeze Circulations on the Western Shore of Lake Michigan", Journal of Applied Meteorology, 17(12), 1843–1855). In this mechanism, emissions from the urban area are transported above the subsidence inversion at the top of the lake breeze circulation cell. At the furthest offshore extent of the lake breeze cell, the pollutants transported above subsidence inversion can be entrained into the downward flow within the lake breeze cell and returned to the lake shore.

Fourth, the May 23, 1986, TSD document did reference and consider a prior study of resultant wind directions (effective wind directions vectorially added during the hours of peak ozone formation and transport) and high ozone days in the Chicago and southeastern Wisconsin areas. The study found that high downwind ozone concentrations were predominately associated with resultant winds ranging from east-southeast through west-southwest. Considering the time of the peak ozone concentrations (generally in the late afternoon in southeastern Wisconsin), one could conclude that emissions from most of the Chicago urban area were responsible for the observed high ozone concentrations.

Finally, even if the commenter were correct in the assertion that Kane County emissions were physically prevented from interacting with emissions from other portions of the Chicago urban area, it should be noted that the existing ozone monitoring system would not be well suited for detecting the peak ozone impacts of the emissions from Kane County. There are few "inland" monitors north or near-northeast of Kane County. Most downwind ozone monitors are concentrated near Lake Michigan. Past ozone formation and transport observations made by USEPA in other than urban areas would imply that significant, non-monitored ozone impacts could be occurring downwind of Kane County.

Comment No. 8. The proposal is not based on any modeling conducted for the area or on any trajectory analyses.

Response. It is true that USEPA has not relied on modeling for its proposed rulemaking. As noted in responses to other comments herein, however, the USEPA has based its proposed rulemaking on prior observations in the Chicago area and in other urban areas with high ozone concentrations. These observations indicate that emissions from throughout urban areas may contribute to high ozone concentrations observed downwind. The observations support a policy which requires that an entire urban area and its fringe areas of development and or significant precursor sources, at a minimum, be included in an urban ozone nonattainment area. DuPage County includes a portion of the Chicago urban area and fringe areas of development, and Kane County contains a significant fringe area of development.

Furthermore, none of the commentors has applied conclusive modeling data to prove that DuPage and Kane County emissions do not contribute to ozone standard violations in the Chicago area and its downwind environs.

Comment No. 9. USEPA's proposed rulemaking cannot be defended based on the language of the statute, which requires that the attainment status of an area be based upon monitoring.

Response. Section 171(2) of the Act defines the term "nonattainment area" as "* * * for any air pollutant an area which is shown by monitored data on which is calculated by air quality modeling (or other methods determined by the Administrator to be reliable) to exceed any national ambient air quality standard (NAAQS) for such pollutant." The Act, thus, explicitly authorizes the Administrator to use monitoring, modeling or other reliable methods in determining an area's attainment status. In this case, the Administrator relies on monitored exceedance within the Chicago urban area. USEPA believes that sections 107 and 171 provide it with the authority to deny the Kane and DuPage redesignation request, based upon monitored exceedances within the Chicago urban area, even though there were no monitored exceedances in Kane and DuPage Counties.

The Seventh Circuit did not rule out the designation of an area as nonattainment if the area produces but does not suffer from ozone pollution. *Illinois State Chamber of Commerce* v. *USEPA*, 775 F.2d 1141, 1150 (7th Cir. 1985). In addition two other Circuit Courts have explicitly endorsed such an approach. The Sixth Circuit stated that the Administrator may "deny redesignation with respect to a component of a nonattainment area which produces a substantial portion of the area's pollutant even though the air within that component tests at an acceptable level." *State of Ohio* v. *Ruckelshaus*, 776 F.2d 1333, 1340 (6th Cir. 1985). Likewise, the Administrator may designate downwind portions of an area as nonattainment even though the air within that portion satisfies the NAAQS. *Western Oil and Gas Association* v. *USEPA*, 767 F.2d 603 (9th Cir. 1985).

USEPA has based its denial of the Kane and DuPage redesignation request on (a) monitored exceedances in the Chicago urban area; (b) the observation of ozone formation and transport processes in a number of urban areas; (c) the desire to require ozone precursor emission controls in the areas where they will be most effective in reducing local and downwind ozone violations; and (d) the desire to prevent further propagation of ozone standard violations in locations other than the monitored sites. The ozone designation policy discussed in the proposed rulemaking (53 FR 51730), in the May 23, 1986, TSD, and in the policy memoranda discussed in the proposed rulemaking and TSD supports USEPA's denial of this redesignation request.

Comment No. 10. The proposed rulemaking is not based upon monitoring data taken from within Kane and DuPage Counties. While USEPA notes the DesPlaines ozone monitor which recorded a recent ozone standard violation is located in Cook County near the northeastern corner of DuPage County, it does not apply the same rationale to the Elgin monitor in Kane County. Application of USEPA's rationale to the Elgin monitor would indicate that Kane County is not associated with any monitored standard violations.

Response. The ozone standard violation at the DesPlaines monitor was discussed in USEPA's rationale to show that existing data imply that DuPage County might be experiencing a violation of the ozone standard. The DesPlaines monitor violation, however, is also significant because it supports USEPA's main argument for retaining the nonattainment designation for DuPage County. USEPA continues to assert that DuPage County should retain its nonattainment designation because it is reasonable to conclude that through its ozone precursor emissions, DuPage County, as both a portion of the Chicago Urbanized area and a fringe area adjacent to the Chicago urban area, contributes to the ozone standard violations monitored in the Chicago area and its downwind environs. The DesPlaines monitor violation substantiates the theory that the areas outside of the Chicago urbanized area have significant ozone precursors which are contributing to the entire area's ozone problem. The DesPlaines monitor violation is certainly not necessary to the logic of retaining Kane and DuPage Counties as nonattainment areas because if DesPlaines had no monitored violation, Kane and DuPage Counties would nevertheless be considered fringe areas of development (or a portion of the Chicago Urbanized Area) and subject to the nonattainment designation. Thus, USEPA is applying the same logic to both Kane and DuPage Counties with regard to the monitoring that is taking place at DesPlaines and Elgin.

Comment No. 11. Has silo dust been considered for its role in ozone formation?

Response. Silo dust is not considered to be a VOC and, therefore, has not been considered in the ozone formation process. Silo dust may be a source of nitrogen dioxide, but USEPA's current Illinois emission inventories do not include nitrogen dioxide emissions from this source category. This omission shows how insignificant this source category is of ozone precursor emissions relative to other source categories.

Comment No. 12. Is it possible to consider the impact of jet engine emissions at O'Hare International Airport in the study of the ozone problem in the Chicago area?

Response. VOC emissions from jet engines at the airports in the Chicago area have been considered in the ozone control plans for the Chicago area.

Comment No. 13. USEPA's criteria for determining air quality planning/nonattainment boundaries are neither rational nor internally consistent. The current criteria approach the arbitrary and capricious level by affording the USEPA too much discretion in drawing boundaries. The following are examples of the arbitrary manner in which USEPA can establish boundaries:

(a) USEPA can treat a downwind area experiencing monitored ozone standard violations as its own isolated area for the purpose of developing an attainment demonstration;

(b) USEPA can assign the downwind area to the upwind nonattainment area;

(c) USEPA can assign the downwind area to a different, neighboring urban nonattainment area; and

(d) USEPA can designate a nonattainment area to include the urbanized area and its adjacent fringe areas of development containing significant precursor sources.

USEPA has not adequately clarified the basis for selecting one of the above options for any given nonattainment area and, therefore, has not responded to the Order of the Court.

Response. For the purpose of emissions control strategy selection and ozone standard attainment demonstrations, USEPA's policy allows for various types of assignment of downwind monitored nonattainment areas to upwind, associated urban precursor source areas. The assignment is done on a case-by-case basis, based on such factors as the general wind direction on the days of the monitored ozone standard violations, the timing of the ozone standard exceedances, the distribution of precursor emissions (current and future), and USEPA's overall understanding of the ozone formation and transport process (based on data from many urban areas). For a downwind area experiencing ozone standard violations, USEPA could recommend or choose any one of options (a) through (c) above. Only one of the options would be selected for a given area. As long as the option selected is appropriate to the situation, it is not arbitrary or capricious. The fact that the selection process has multiple options is indicative of the complexity of the ozone formation/transport process and the selection of the most effective emissions control strategies, particularly in areas affected by multiple source areas and the assignment of precursor emission control requirements.

As discussed in USEPA's proposal, USEPA policy has long held that, regardless of the source area responsible for a monitored downwind violation, the area in which a violation is recorded should itself be designated as nonattainment for ozone. It is appropriate to apply some emission controls in this area to prevent propagation of the ozone problem further downwind. The decision among options (a) through (c) has no relevance to whether upwind areas contributing to the violations in the downwind area should themselves be designated nonattainment for the purpose of addressing that contribution. As discussed earlier, planning and control decisions are distinct and separate from the nonattainment designation decision.

It should be noted that the comment is not relevant to the case at hand. The USEPA has not argued that Kane and DuPage Counties are downwind of the Chicago source area, but rather are part of the source area.

Comment No. 14. The USEPA did not show in 1985 that emissions from Kane and DuPage Counties actually contributed to ozone problems in the urbanized Chicago area or downwind. The USEPA states that it has not conducted area specific modeling to determine the impacts of precursor emissions that impact these downwind areas.

Response. As documented in the May 23, 1986, TSD for the proposed rulemaking, the USEPA has reviewed a number of ozone monitoring studies in the vicinities of major urban areas and has developed a view of the ozone formation and transport process for major urban areas. The available data indicate that high ozone concentrations result from ozone precursor (VOC and oxides of nitrogen—NO_x) emissions from large source areas. It is difficult, if not impossible, to distinguish which subarea(s) are culpable for high ozone concentrations occurring hours later downwind. The use of photochemical dispersion models for a finite set of days at best provides a rudimentary and incomplete picture of subarea

culpability. Without considering all possible meteorological and input data scenarios (an approach which is technically infeasible), the use of photochemical models cannot provide a complete picture of high ozone concentration in an urban area. In light of this and the available ozone data, USEPA has adopted the policy that all of an urbanized area and its adjacent fringe areas of development (and hence significant precursor sources) should be considered to be nonattainment for ozone when ozone standard violations are monitored in or downwind of the area. Kane and DuPage Counties are part of the Chicago urbanized area and its adjacent areas of development. It should be noted that USEPA did evaluate surface level wind directions for high ozone days and found that the Chicago source area, which includes Kane and DuPage Counties, was generally upwind of the worst-case ozone monitoring sites on the high ozone days. The study concluded that the Chicago source area was the likely precursor source area for the high ozone concentrations observed in northeastern Illinois and in Kenosha and Racine Counties, Wisconsin.

As noted in the May 23, 1986, TSD, a monitor in DesPlaines, which is generally downwind of DuPage on high ozone days and is close to the DuPage County border, recorded a recent ozone standard violation. These monitoring data support the continued nonattainment designation for DuPage County.

Finally, the State of Illinois and commentors have not provided data (modeling or monitoring) to refute USEPA's view of the ozone formation and transport process for the Chicago area and the probable culpability of the Kane and DuPage County emissions in the formation of high downwind ozone concentrations. USEPA sees no reason to reverse its prior opinions on these issues.

Comment No. 15. The USEPA must stipulate how attainment status can be obtained at the same time USEPA rules on the boundaries for a nonattainment area. This policy specification was ordered by the court in the remand of the Kane and DuPage County redesignation rulemaking. USEPA has not stipulated which monitoring data will be decisive in determining the future attainment status.

Response. No part of this area, including Kane and DuPage Counties, could be redesignated to attainment until, at a minimum: (1) Illinois and Indiana have fully approved ozone plans for this area (so as to insure that any improvements in air quality in the area are the result of permanent, enforceable emission reductions and not temporary reductions), and (2) all ozone monitors in the area and its downwind environs show no violations of the ozone standard over the most current 3 years of available data.

It should be noted that the Administrator disapproved the Illinois ozone SIP for the Chicago area on October 17, 1988 (53 FR 40415), and the Indiana ozone SIP for Northwest Indiana (the Indiana portion of the Chicago area) on November 18, 1989 (53 FR 46606). Further, as a result of a suit filed by the State of Wisconsin in the United States District Court for the Eastern District of Wisconsin (*State of Wisconsin* v. *United States Environmental Protection Agency*, No. 87–C–0395 (E.D. Wisc.), the court ordered the Administrator, on January 15, 1989, to promulgate a Federal ozone implementation plan for the Chicago area (including Northwestern Indiana) within 14 months. The Federal ozone implementation plan is currently under development and has not been adopted as of yet.

Comment No. 16. USEPA proposes to treat some downwind areas as isolated nonattainment areas for the purpose of developing ozone attainment demonstrations. An isolated downwind area would have no authority to plan for and implement emission control measures in an upwind pollution-causing area. Therefore, the isolated downwind area would never be able to achieve attainment of the ozone standard through its own efforts. This isolated area could be sanctioned for failing to achieve the ozone standard despite the fact that it had no means to bring itself into attainment.

Response. The States containing the nonattainment areas will have the overall responsibility of adopting and implementing the emissions control strategy for their nonattainment areas. As part of this process, each State will have to establish the source emissions responsible for the observed ozone standard exceedances. Although under USEPA policy no attainment demonstration is required for isolated rural nonattainment areas, the State may demonstrate, based on wind direction, wind speed, times of peak ozone concentration, back trajectory calculations (including the consideration of pollutant dispersion), etc., that a separate upwind source area is responsible for the ozone standard violation in the isolated rural area. It will then be necessary for the State to adopt an emissions control strategy for the upwind source area which assures attainment of the ozone standard in the isolated downwind area. If the upwind area is located in a different State, the upwind State will be responsible for the necessary pollution controls. This does not eliminate the need for emission controls in the isolated area. Emission controls are needed there to assist in reducing the local ozone concentrations and to prevent the further propagation of the ozone nonattainment problem downwind. As discussed above, however, the degree of controls necessary in any isolated downwind area, and the planning area for which it is assigned, is irrelevant to the decision whether the upwind contributing areas being designated as nonattainment.

Comment No. 17. The proposed rulemaking has done nothing to support USEPA's use of the Census Bureau's defined urbanized area populations or urban area definitions as appropriate support for air quality considerations. The rulemaking purports to use city areas and populations of sample high-ozone areas as somehow being relevant to all of Kane County and all of its population. There is nothing in the record to show what makes Kane County and DuPage County a significant VOC source area.

Response. The population of an urban area is directly related to some significant area source VOC emissions, such as consumer solvent emissions, automobile refinishing, architectural surface coating, residential fuel combustion, etc., and indirectly to mobile source emissions. Therefore, the higher the population, the higher these emission contributions will be and the greater the potential for downwind ozone impacts. The May 23, 1986, TSD compared the populations and VOC emissions of Kane and DuPage Counties with those of smaller urban areas with observed ozone standard exceedances or significant downwind ozone concentration impacts. The populations and VOC emissions of Kane and DuPage Counties were shown to be similar to, or greater than, those of the comparison urban areas with observed significant ozone impacts. The combination of the Census Bureau's identification of certain areas in DuPage and Kane as "urbanized areas" adjacent to the Chicago urbanized area, and the high population of those counties and their proximity as fringe areas of development (and hence emissions) warrants the conclusion that they have a similarly significant impact on ozone formation in the Chicago area.

Although the USEPA has not conducted photochemical dispersion modeling to prove the culpability of Kane and DuPage County emissions, the weight of the data collected from other ozone emission studies indicate that emissions from Kane and DuPage Counties can contribute significantly to high ozone concentrations observed in the Chicago area and its downwind environs. It should be noted that the commentor has not provided photochemical dispersion modeling results or other adequate data to prove otherwise.

Comment No. 18. A commentor submitted comments previously filed with respect to USEPA's June 6, 1988 (53 FR 20722), nationwide ozone designation proposal. The commentor requested that these comments also be considered in the proposed rulemaking on Kane and DuPage Counties.

Response. Review of these comments shows that those relevant to Kane and DuPage Counties were addressed in response to other comments directed specifically at the December 29, 1988, proposed rulemaking. The other comments should be addressed when USEPA finalizes the rulemaking proposed on June 6, 1988.

Final Rulemaking Action

Review of public comments shows that USEPA's policy and technical basis for disapproving the redesignation of Kane and DuPage Counties to attainment for ozone are sound. Therefore, USEPA disapproves the State's request to redesignate Kane and DuPage Counties to attainment of the ozone NAAQS.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 3, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: July 31, 1989.

William K. Reilly,

Administrator.

[FR Doc. 89–18341 Filed 8–3–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 90778–9178]

50 CFR Part 226 and 227

Endangered and Threatened Species; Critical Habitat; Winter-run Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS) NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: NMFS is taking emergency action to list the winter-run chinook salmon as threatened under the Endangered Species Act (ESA) and to designate portions of the Sacramento River as critical habitat.

Since the fall of 1985, NMFS has been monitoring the status of the winter-run chinook salmon population in the Sacramento River, California, to determine if it qualified for addition to the list of threatened and endangered species under the provisions of the ESA. Between 1967 and 1985 the run declined from a 3-year (1967–1969) mean run size of nearly 84,000 fish to a 3-year (1983–1985) mean run size of 2,962 fish. However, the California Department of Fish and Game (CDFG) has estimated the 1989 return of winter-run chinook salmon to the Sacramento River at about 500 fish. This is a decline of over 75 percent below a consistent run size of 2,000 to 3,000 fish in recent years. NMFS believes this is a precariously low run size, and that the protection afforded by the Endangered Species Act, particularly the section 7 consultation process, is needed immediately to ensure that the spawning and rearing habitat is maintained to maximize production from the fish that spawn in 1989 and to ensure that Federal fishery management programs are providing protection to the population.

Also, NMFS is designating as critical habitat the portion of the Sacramento River from Red Bluff Diversion Dam, Tehama County (River Mile 243) to Keswick Dam, Shasta County (River Mile 302) including the adjacent riparian zones, the water in the river, and the river bottom for the winter-run. This section includes the portion of the river in which suitable conditions can be maintained for spawning, incubating eggs, and rearing juvenile fish.

During the 240 days this emergency rule is in effect, NMFS will publish a proposed and final rule (with comment periods) to add winter-run chinook salmon to the list of threatened species and designate critical habitat.

EFFECTIVE DATE: Winter-run chinook salmon in the Sacramento River are listed as threatened under the ESA and critical habitat is designated effective April 2, 1990.

FOR FURTHER INFORMATION CONTACT: James H. Lecky, NOAA Fisheries, Southwest Region, Protected Species Management Branch, 300 South Ferry Street, Los Angeles, CA 90731, 213–514–6664, or Margaret Lorenz, NMFS, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, 301–427–2322.

SUPPLEMENTARY INFORMATION:

Background

Winter-run chinook salmon are distinguishable from the other runs of chinook salmon in the Sacramento River based on the timing of their upstream migration and spawning season. They return to the river almost exclusively as 3-year-old fish, thus the population is composed of essentially 3-year classes which are monitored by the California Department of Fish and Game (CDFG) as they migrate through the fish ladders at Red Bluff Diversion Dam.

On November 7, 1985, NMFS received a petition from the American Fisheries Society (AFS) to list the winter-run of chinook salmon in the Sacramento River as a threatened species under the ESA. NMFS reviewed the petition and determined that it contained substantial information indicating that the petitioned action might be warranted. On February 13, 1986, NMFS announced (51 FR 5391) its intention to conduct a review of the status of the run to determine whether listing was appropriate.

The status review was based on a consideration of available information on the run relative to the five criteria specified in section 4(a)(1) of the ESA and a consideration of the conservation efforts of the State of California and Federal resource management agencies to restore the run, as required by section 4(b)(1)(A) of the ESA. Information was provided by the petitioner, the State, Federal agencies that affect the run or its habitat, and the public. The results of the status review, along with the Notice of Determination, were published on February 27, 1987 (52 FR 6041).

In the Notice of Determination, NMFS concluded that the Sacramento River winter-run chinook was a species in the context of the ESA, recognized that the run had declined over a period of less than two decades, and was approaching a level below which genetic diversity might diminish. The primary reasons for this decline were the construction and

operation of Red Bluff Diversion Dam and other human activities that had degraded spawning and rearing habitat in the Sacramento River to a point where productivity of the run declined.

Based on its assessment that restoration and conservation efforts being implemented or planned by State and Federal resource management agencies adequately provided for the rebuilding of the population, NOAA Fisheries decided not to list winter-run chinook in the Sacramento River as a threatened species. Subsequent to this determination, these restoration actions were incorporated in a Ten-point Winter-run Restoration Plan and implemented through a Cooperative Agreement signed by the CDFG, the Bureau of Reclamation (BR) in the Department of the Interior (DOI), the Fish and Wildlife Service (FWS) in DOI, and NMFS. The Restoration Plan is reviewed in NOAA Fisheries' original decision not to list the run (52 FR 6041) and again after a reconsideration of that decision (53 FR 49722).

The tasks expected to be of most immediate benefit to winter-run are raising the gates at Red Bluff Diversion Dam from December 1 through April 1 to allow free passage of winter-run to suitable spawning habitat and maintaining water temperatures at levels below lethal limits in the reach of river above Red Bluff Diversion Dam used for spawning.

In the spring of 1988, prevailing weather patterns indicated that the drought conditions that had developed in the spring and summer of 1987 would persist through 1988. These conditions caused concern among the resource agencies that the conservation measures in place to enhance the run might not be adequate to address the adverse effects of anticipated drought conditions. Specifically, water forecasts indicated that river temperatures might reach levels lethal to some developing winter-run eggs. Therefore, NMFS decided to reconsider its decision not to list the run and to re-evaluate the adequacy of the Restoration Plan for protecting the run during drought conditions. On June 2, 1988, NMFS announced this decision and requested comments to ensure that all information on the status of the run and factors affecting it was available for the reconsideration (53 FR 20155).

NMFS reviewed the available information and found that the status of the winter-run population had not changed since the original determination not to list the run as threatened. None of the comments received during the reconsideration provided substantial new information indicating listing was necessary. Also, the Ten Point Winter-run Restoration Plan was being implemented, and unprecedented actions were being carried out to minimize the adverse effects of the drought.

On December 9, 1988, NMFS published its determination that the actions of State and Federal agencies to restore the winter-run chinook salmon population and its habitat adequately addressed the threats to the population and that the population was not likely to become in danger of extinction throughout all or a significant portion of its range in the foreseeable future (53 FR 49722).

At the time of NMFS' review of the status of the winter-run population, the CDFG was conducting an independent review pursuant to a petition for listing the run under the State's Endangered Species Act. The CDFG concluded its review in February 1989, and recommended to the California Fish and Game Commission that the run not be listed because the restoration actions underway or planned for the future had a high probability of restoring the run.

For the water year beginning in October 1988, precipitation and runoff were again below normal, and, in February 1989, the Bureau of Reclamation (BR) announced cuts of up to 50 percent in water supply for central valley water contractors. However, heavy precipitation in March 1989 in the northern Sacramento River drainage basin restored Lake Shasta storage equal to the storage in October 1987. As a result of the heavy March rains, the BR was able to increase water supplies to contractors and maintain sufficient storage to manage water temperatures in the river. The BR was also able to leave the gates at Red Bluff Diversion Dam out of the water two weeks beyond the April 1 deadline agreed to in the Cooperative Agreement.

Although this provided an additional two weeks of unrestricted access to suitable spawning habitat, lower than expected returns of winter-run were in the river to benefit. For undetermined reasons, the 1989 run returned at much lower levels than expected. The CDFG estimated the size of the 1989 run at about 500 fish * * * roughly 75 percent below the expected run size. Since 1982, the run has varied at about a mean run size of 2,382 fish, and resource agencies expected the 1989 run to be near that level.

Reasons for Emergency Determination

Based on the low return of fish in 1989 and because the U.S. Fish and Wildlife Service's hatchery program (a task in the Ten-point Winter-run Restoration Plan) for augmenting natural production is developmental and not likely to produce substantial numbers of juvenile fish for several years, the CDFG reversed its position and recommended at the May 1989 meeting of the California Fish and Game Commission that the Commission list the winter-run as a threatened species under the California Endangered Species Act. After considering the recommendation of the CDFG, the Commission voted to list the run as endangered under State law. The State's administrative procedures for adding the run to the list will be completed in August 1989.

NMFS believes the 1989 run size is dangerously low since it has estimated that a run size between 400 and 1,000 fish is necessary to maintain genetic diversity in the winter-run population (52 FR 6041). If the returns for the remaining 2 year classes in the population are as low, NMFS believes the population will begin losing genetic diversity through genetic drift and inbreeding. Further, a small population is vulnerable to major losses from random environmental events such as droughts and other climatic episodes. However, because the 1987 and 1988 year classes, which are currently in the ocean, are expected to benefit from the Ten-point Winter-run Restoration Plan, NMFS does not believe that the winter-run currently is in danger of extinction. Nevertheless, the run is likely to become endangered if immediate action is not taken to ensure that conditions are maintained in the river for maximum production from the fish that successfully spawn in 1989. Therefore, NOAA Fisheries believes that it is necessary to take this emergency action to list winter-run chinook salmon in the Sacramento River as a threatened species.

Available Conservation Measures

Conservation measures provided to species that are listed as threatened under the ESA include recognition, recovery actions, implementation of certain protective measures, and designation and protection of critical habitat. One of the most useful protective measures is the section 7 consultation process which requires all Federal agencies to conduct conservation programs for threatened and endangered species and to consult with NMFS concerning the potential effects of their actions on species under NMFS' jurisdiction.

As soon as this rule becomes effective, NMFS will initiate section 7 consultations with the Federal agencies whose actions may affect the continued existence of the winter-run or adversely modify or destroy its critical habitat. Those agencies include the Bureau of Reclamation regarding temperature control measures throughout the rearing phase of this year's class of winter-run, the Army Corps of Engineers on the effects of gravel mining operations, and the Pacific Fishery Management Council on the effects of sport and commercial fishing.

Also, NMFS will continue to coordinate management of this run and its habitat with the State of California. The State's Endangered Species Act contains a provision for interagency consultation among State agencies similar to section 7 of the Federal ESA. The CDFG will review impacts of State actions on the winter-run to see if there are actions beyond the Ten-point Restoration Plan that can be taken, and they will review the State's water project for opportunities for improved water conservation. In addition, they will review their own sport and commercial fishing regulations to ensure that those fisheries do not jeopardize the continued existence of the winter-run.

NMFS will also participate in the State's review of sport and commercial fishing regulations. NMFS is charged with implementing the Magnuson Fisheries Conservation and Management Act (MFCMA) and publishes and administers regulations to implement fishery management plans developed by Regional Fishery Management Councils. Generally, inter-jurisdictional fisheries or fisheries that occur primarily in Federal waters are candidates for management under the MFCMA. The Pacific salmon fisheries are such fisheries. The Pacific Fishery Management Council manages salmon fisheries off the coasts of Washington, Oregon, and California. Generally, the Council strives to manage the fishery by consensus among the Federal and state fishery management agencies so that state regulations in state waters are consistent with Federal regulations in Federal waters.

NMFS expects consultations under the respective State and Federal laws to produce a State/Federal regulatory regime that will ensure the winter-run population is not adversely affected by sport or commercial fishing. Therefore, it is exempting fishermen, who incidentally take winter-run chinook salmon and who are fishing lawfully under State law or regulation or Federal regulations under the MFCMA, from the prohibition on taking winter-run chinook salmon. The incidental take of winter-run chinook in recreational and commercial fisheries is not believed to be a primary cause of their decline.

However, NMFS retains its right and responsibility to exert Federal authority in State waters in the event the State develops fishing regulations that are less protective than is commensurate with the designation as a threatened species under the Federal ESA.

Critical Habitat

Section 4(a)(3)(A) of the ESA includes the requirement that critical habitat be designated concurrently with the determination that a species is an endangered species or is a threatened species. Therefore, as part of this emergency rule, NOAA Fisheries is designating the portion of the Sacramento River between Red Bluff Diversion Dam, Tehama County (River Mile 243) and Keswick Dam, Shasta County (River Mile 302) including the adjacent riparian zones, the water in the river, and the river bottom as critical habitat for the winter-run of chinook salmon. This portion of the river contains almost all of the habitat in which winter-run can spawn successfully, if water management strategies for maintaining suitable temperatures are implemented, and habitat in which most juvenile winter-run will rear.

Section 4(b)(2) requires that economic impacts of specifying an area as critical habitat be considered in the process of designating critical habitat. NMFS is designating only that portion of the river that is necessary to ensure the survival and development of spawned eggs and successful rearing of juveniles during the 240 days the emergency rule is in effect. This is the minimum amount of habitat that is necessary to ensure the continued existence of the species. During the development of the proposed rule, other alternatives for critical habitat designation will be considered including habitat in which winter-run has spawned successfully during exceptionally good water years.

Only two Federal agencies, the Bureau of Reclamation and the Corps of Engineers, are expected to experience a direct economic impact from this 240-day emergency designation. However, individual customers of the BR may eventually be charged higher rates for power if water used to generate power is lost to maintain a certain water temperature in the area designated as critical habitat. During the time the emergency rule is in effect, the amount of water that can be made available for irrigation is not expected to be reduced. If additional water is needed to maintain a certain temperature in the critical habitat area, it will be recovered downstream.

Effects of Designating Critical Habitat

Federal agencies conducting, authorizing, or funding actions will incur additional administrative costs in evaluating the effects of their actions on critical habitat. This expense will be minimal since these agencies will be reviewing these same actions to assess their effects on the continued existence of the species.

The BR will be required to ensure that suitable water temperatures are maintained in the portion of the critical habitat where spawning, egg development, and growth of juvenile fish are expected to occur. During the 1987–1988 drought, the BR maintained, under the Cooperative Agreement, suitable water temperatures between Keswick Dam and Cottonwood Creek (approximately 14 river miles above Bend Bridge). Generally, about 80 percent of the run spawns above Cottonwood Creek. The major action implemented by the BR was using the low level outlet for releasing water from Shasta Lake. This was done for the first time in 1987 and again in 1988. Because the low level outlet is below the outlet that runs water to the powerhouse, it releases cold deep water during periods of the year when the powerhouse outlet is draining warmer water nearer the surface. While the low level outlet releases cold water to the benefit of the winter-run, the water bypasses the powerhouse, and power can not be generated from the release of that water. Between July 21 and September 17, 1988, the BR released almost 400,000 acre-feet of water through the low level outlet at the expense of $3.65 million in foregone power revenues. However, this cost should not be attributed to the designation of critical habitat because it would be incurred under the Ten-Point Winter-run Restoration Plan and the Conservation Agreement to which the BR has already agreed.

Since storage in Shasta Lake in March was equivalent to the level at the beginning of the 1988 water year, NMFS expects the Bureau to use the low level outlet again in 1989 to maintain suitable temperatures for development of eggs and fry throughout the stretch of the river designated as critical habitat. The 1988 cost provides an estimate of the expense that the BR will incur in 1989 as a result of foregone power revenues. However, this cost should not be attributed to the designation of critical habitat because it would be incurred under the Ten-point Winter-run Restoration Plan and the Cooperative Agreement which the Bureau of Reclamation has agreed to.

BEST COPY AVAILABLE

The BR is expected to raise the gates in the Red Bluff Diversion Dam on December 1, 1989, and keep them raised through April 1, 1990, consistent with past performance under the Cooperative Agreement implementing the Ten-point Winter-run Restoration Plan. This will facilitate passage of juvenile fish downstream in December and provide access for adults to critical habitat. Because this activity occurs during the non-irrigation season, it is not expected to affect agricultural operations that depend on water diverted at the Red Bluff Diversion Dam.

Because the BR has been cooperating in the conservation of habitat by raising the gates at Red Bluff Diversion Dam and by maintaining suitable temperatures and because failure to conduct these actions could adversely modify critical habitat, NMFS has determined that the economic impact of these actions to the BR does not outweigh the benefits to be derived from implementing measures to conserve the winter-run's spawning habitat during the 240 days the emergency rule is in effect.

Due to the emergency brought on by the low return of spawning adults in 1989, there has not been an opportunity to complete a more detailed economic analysis. Other Federal actions, such as consideration of the City of Redding's Federal Energy Commission applications, are not likely to progress to the point that resources will be irreversibly or irretrievably committed during the 240 days this emergency rule is in effect. Therefore, these actions were not considered in this brief economic assessment.

A complete economic analysis of the impact of designating critical habitat will be included in the proposed rule for listing this population as threatened.

Classification

Since the Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) has determined that the present situation poses a significant risk to the well-being of the Sacramento River winter-run chinook salmon, emergency regulations can be issued under 16 U.S.C. 1533(b)(7).

The Assistant Administrator finds that reasons justifying promulgation of this rule on an emergency basis make it impracticable and contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under section 553(b) and (d) of the Administrative Procedure Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the usual procedures of that order.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Regulatory Flexibility Act does not apply to this rule, because as an emergency rule, it is issued without opportunity for prior public comment. Since notice and opportunity for comment are not required to be given under section 553 of the Administrative Procedure Act, and since no other law requires that notice and opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act, no initial or final regulatory flexibility analysis has been or will be prepared.

National Environmental Policy Act

The National Oceanic and Atmospheric Administration (NOAA) has determined that certain categories of its activities do not normally have the potential for a significant effect on the human environment and are, therefore, exempt from the requirement for preparation of either an environmental assessment or an environmental impact statement (NOAA Directives Manual 02-10 5c(3)). Listing actions under section 4(a) of the ESA and designation of critical habitat are among those actions NOAA has determined are exempted (NOAA Directives Manual 02-10 5c(3)(h)). The main environmental impact from this emergency rule will be modification of water temperatures in the area designated as critical habitat for the benefit of incubating winter-run eggs and developing young. This is not expected to produce a significant impact to the human environment.

List of Subjects in 50 CFR Parts 226 and 227

Designated critical habitat and threatened fish and wildlife.

Dated: July 31, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

Accordingly, Parts 226 and 227 of Chapter II of Title 50 of the Code of Federal Regulations are amended as follows:

PART 226—[AMENDED]

1. The authority citation for Part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. The title of Subpart C under Part 226 is revised to read as follows:

Subpart C—Critical Habitat for Marine and Anadromous Fish

3. Section 226.21 is added to Subpart C to read as follows:

§ 226.21 Sacramento River winter-run chinook salmon (Oncorhynchus tshawytscha).

The Sacramento River, California, between Red Bluff Diversion Dam, Tehama County (River Mile 243) and Keswick Dam, Shasta County (River Mile 302) including the adjacent riparian zone, the water, and the river bottom.

PART 227—[AMENDED]

1. The authority citation for Part 227 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. Section 227.4 under Subpart A is amended by adding a new paragraph (e) to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(e) Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*).

3. The title of Subpart C under Part 227 is revised to read as follows:

Subpart C—Threatened Marine and Anadromous Fish

4. Section 227.21 is added to Subpart C to read as follows:

§ 227.21 Sacramento River winter-run chinook salmon.

(a) *Prohibitions.* The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to the Sacramento River winter-run chinook salmon for the 240-day period the emergency rule is in effect.

(b) *Exceptions.* Excepted from the prohibitions are any acts involving winter-run chinook salmon which were taken lawfully under a State of California fishing law or regulation, or which were taken lawfully under a fishing regulation under the Magnuson Fishery Conservation and Management Act. There will be a rebuttable presumption that the winter-run chinook involved in any acts are not entitled to the exemption contained in this subsection.

[FR Doc. 89-18302 Filed 8-3-89; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 149
Friday, August 4, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Doc. No. R-0672]

Truth in Lending; Intent To Make Determination of Effect on State Law; Wisconsin

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of intent to make preemption determination.

SUMMARY: The Board is publishing for comment a proposed determination that certain provisions in the law of Wisconsin dealing with disclosures and adjustment notices for variable-rate transactions are not inconsistent with the Truth in Lending Act and Regulation Z.

DATE: Comments must be received on or before October 11, 1989.

ADDRESSES: Comments should refer to Docket No. R-0672 and be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or delivered to the guard station in the Eccles Building Courtyard on 20th Street NW. (between Constitution Avenue and C Street NW.) any time. All comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office, Room B-1122 of the Eccles Building between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Sharon Bowman or Mary Jane Seebach, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 452-3667. For the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544. Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) General

The Board has received a request for a determination that certain provisions of Wisconsin law are inconsistent with the Truth in Lending Act or Regulation Z, and therefore preempted. Section 111(a)(1) of the Truth in Lending Act authorizes the Board to determine whether any inconsistency exists between chapters 1, 2, and 3 of the federal act or the implementing provisions of the regulation and any state law relating to the disclosure of information in connection with consumer credit transactions. These proposed preemption determinations are issued under authority delegated to the Director of the Division of Consumer and Community Affairs, as set forth in the Board's Rules Regarding Delegation of Authority (12 CFR 265.2(h)(3)).

The procedure for requesting a determination and the general procedures followed in making a determination are contained in Appendix A to 12 CFR Part 226.

Section 226.28(a)(1) of Regulation Z, which implements section 111(a)(1) of the Truth in Lending Act, provides that state requirements are inconsistent with, and therefore preempted by, the federal provisions if the state law requires a creditor to make disclosures or take actions that contradict the federal law. Under § 226.28(a)(10, a state law is contradictory, for example, if it requires the use of the same term for a different amount or a different meaning than the federal law, or if it requires the use of a different term than the federal law to describe the same item.

In previous preemption determinations (48 FR 4454, February 1, 1983) the Board developed principles to be applied in making preemption determinations. Such guiding principles require that preemption should occur only in those transactions in which an actual inconsistency exists between the state and federal law. In addition, a state law is not inconsistent merely because it requires more information than federal law or requires disclosure in transactions where federal law requires none.

Preemption determinations are generally limited to those provisions of state law identified in the request for a determination. At the Board's discretion, however, other state provisions that may be affected by the federal law will also be addressed.

(2) Discussion of Specific Request and Proposed Determination

The Board has been asked to determine whether specific provisions of the Wisconsin Statutes requiring disclosures and adjustment notices for certain variable-rate transactions are inconsistent with amendments to Regulation Z (12 CFR 226.18(f)(1), 226.19(b)(2), and 226.20(c)) which regulate disclosure of variable-rate transactions. The requesting party asks whether Wisconsin Statutes sections 138.056(4) and (6) requiring creditors to provide consumers with notice of a change in the interest rate and disclosures, respectively, in the case of certain variable-rate transactions are preempted by §§ 226.18(f)(1), 226.19(b) and 226.20(c). The requesting party also questions whether Wisconsin Statutes section 422.421(5), part of the Wisconsin Consumer Act, is preempted by § 226.20(c) of Regulation Z.

A preliminary issue is whether there is an inconsistency between the state and federal definitions of variable-rate transaction. There does not appear to be any substantive difference in the definitions. Furthermore, the term is relevant only with regard to coverage of the respective rules and is not itself a disclosed term. Therefore, there is no basis for preempting the state law definition.

Content of Disclosures Under Wisconsin Statutes Section 138.056(6) and Section 226.19(b) of Regulation Z

The requesting party asked for a determination as to possible inconsistency between the state and federal requirements for early disclosures of variable rate transactions. Section 226.19(b) of Regulation Z applies to transactions secured by the consumer's principal dwelling with a term greater than one year if the annual percentage rate may increase after consummation. Section 226.19(b) requires that specific disclosures be provided at the time an application form is provided or before the consumer pays a non-refundable fee. Wisconsin Statutes section 138.056 applied to variable rate loans secured by first-lien mortgages on principal residences and requires creditors to make certain disclosures before making a variable rate loan.

The state law requires a disclosure that the loan contains a variable interest rate provision; § 226.19(b)(2)(i) requires a disclosure that the interest rate, as well as the payment or term of the loan can change. The state disclosure does not contradict federal law since a creditor could comply with both the state and federal provisions.

The state law requires an identification of the index used in the loan contract as well as the current base of the index; § 226.19(b)(2)(ii) requires identification of the index or formula used, as well as a source of information about the index or formula. The state disclosure does not contradict federal law since a creditor could comply with both provisions. The state law requirement of additional or different information does not by itself make the provision inconsistent with federal law.

The state law requires disclosure of the borrower's prepayment rights on receiving notice of a change in the interest rate; § 226.19(b) has no counterpart. Again, a state law provision is not inconsistent merely because it requires more information than federal law.

The state law requires disclosure that a notice of any interest rate increase must be given to the borrower; § 226.19(b)(2)(xii) requires disclosure of the type of information that will be contained in adjustment notices (including information about the index, interest rate, payment amount, and loan balance) as well as the timing of such notices. The state disclosure does not contradict federal law since a creditor could comply with both provisions.

As there is no requirement that the disclosures required by § 226.19(b) be segregated, creditors could comply with both the state and federal requirements by combining the disclosures in one form. It should be noted, however, that Wisconsin Statutes section 138.056(6) does not specify a precise time for providing disclosures. If a creditor combines the state and federal disclosures, it must provide them at the time specified by § 226.19(b) of Regulation Z (that is, when an application is provided or before the consumer pays a non-refundable fee).

As the provisions of Wisconsin Statutes section 138.056(6) do not contradict federal law, the Board proposes to determine these provisions are not preempted.

Content of Disclosures Under Wisconsin Statutes Section 138.056(6) and Section 226.18(f)(1) of Regulation Z

The requesting party also questioned whether Wisconsin Statutes section 138.056(6) conflicts with § 226.18(f)(1) of Regulation Z, which applies to variable-rate transactions not secured by the principal dwelling with a term of one year or less. Section 226.18(f)(1) requires disclosures of (1) circumstances under which the rate may increase; (2) any limitations on the increase in rate; (3) the effect of a rate increase; and (4) an example of the payment terms that would result from an increase. Disclosures pursuant to § 226.18(f)(1) must be provided to the consumer with the other Truth in Lending disclosures before consummation of the transaction. As discussed above, state law requires disclosure of the variable rate feature, the index and its current value, prepayment rights, and that an adjustment notice must be given. These state disclosures do not contradict federal law since a creditor could comply with both provisions. Moreover, the state law requirement of additional or different information (for example, prepayment rights) does not by itself make the provision inconsistent with federal law. Creditors should note that the § 226.18(f)(1) disclosures (with the exception of the example in section 18(f)(1)(iv)) are required to be segregated from other information pursuant to § 226.17(a)(1). Therefore, a creditor could not combine the state disclosures with those required under § 226.18(f)(1) (i)–(iii). However, if the creditor chooses to place the example in § 226.18(f)(1)(iv) apart from the other segregated federal disclosures, it may be combined with the state disclosures.

The Board proposes to determine these state law provisions are not preempted by the federal law.

Content of Notices Under Wisconsin Statutes Section 138.056(4) and Section 226.20(c) of Regulation Z

The requesting party also asked the Board to determine if the content of the disclosures required under Wisconsin Statutes section 138.056(4) is inconsistent with that of § 226.20(c) of Regulation Z. Section 138.056(4) requires a notice to be sent to the borrower when a change in the interest rate occurs and affects the loan terms. Section 226.20(c) requires a creditor to provide disclosures where an adjustment to the interest rate is made in a variable-rate transaction subject to § 226.19(b). Section 226.20(c) has two timing rules depending on whether payment changes accompany interest rate changes.

State law requires a disclosure of the effective date of the rate change; § 226.20(c) has no counterpart. A state law provision is not inconsistent merely because it requires more information than federal law.

State law requires disclosure of the amount of the rate change. Section 226.20(c)(1) requires disclosure of the current interest rate, as well as prior interest rates. The state disclosure does not contradict federal law since a creditor could comply with both provisions.

State law requires disclosure of changes in the index that resulted in the rate change; § 226.20(c)(2) requires disclosure of the index values upon which both the current and prior rates are based. Again it appears that creditors can comply with both provisions.

State law requires disclosure of the amount of the monthly interest and principal changes resulting from the rate change; § 226.20(c)(4) requires a broader disclosure of the contractual effects of the adjustment, including the new payment due, any change in the term or maturity, and a statement of the loan balance. This state disclosure does not contradict federal law since a creditor could comply with both provisions.

State law requires a disclosure of the borrower's prepayment rights; federal law has no counterpart under § 226.20(c). A state law provision is not considered inconsistent for requiring more information than federal law.

As the provisions of Wisconsin Statutes section 138.056(4) do not contradict federal law, the Board proposes to determine these provisions are not preempted.

Timing Requirements for Notices Under Wisconsin Statutes Section 138.056(4) and Section 226.20(c) of Regulation Z

The requesting party asked the Board to determine whether the timing requirements for notices under Wisconsin Statutes section 138.056(4) make them inconsistent with federal law. Under state law, if the rate change results in an increase in the payments (other than the final payment), the notice must be delivered at least 30 days before the rate change. Notice of a rate change must also be given no later than 15 days after any other rate change not involving an increase in the payments. Section 226.20(c) of Regulation Z requires notice at least once a year if the interest rate has changed, and at least 25, but no more than 120 days, before a payment at a new level is due. This applies to both increases and decreases in the payment.

Although the state timing requirement differs from that in the federal law, it does not contradict it since a creditor could comply with both state and federal provisions. In addition, the state and federal notice requirements could, in most cases, be combined as there is no requirement for segregated disclosures, and both timing requirements could be met. However, since the federal notice is triggered by a change in payment (and specifies an outer time limit for notification of 120 days), and the state notice is triggered by a change in rate, there may be cases when a combined federal and state notice would not meet both timing requirments. For example, if the consumer makes payments only once a year on July 15th, it appears Wisconsin law would require disclosure by the middle of December (30 days before the rate went into effect). This would be more than 120 days before the new payment is due (July 15th) and thus would not comply with the requirements of § 226.20(c). In such a case, two notices would be required.

As the timing of the notice requirements of Wisconsin Statutes section 138.056(4) does not contradict federal law, the Board proposes to determine these provisions are not preempted.

Timing Requirements for Notices Under Wisconsin Statutes Section 422.421(5) and Section 226.20(c) of Regulation Z

The requesting party also asked the Board to determine whether the timing requirements for notices under Wisconsin Statutes section 422.421(5) make them inconsistent with federal law. This section of Wisconsin law applies to consumer transactions where the amount financed is $25,000 or less and the loan is not secured by a first-lien mortgage. The state law requires a notice of rate changes to be sent in certain circumstances.

Under state law, if the rate adjustment changes the amount of a payment (other than the final payment), notice must be sent to the consumer at least 15 days before the effective date of the rate adjustment. If the rate adjustment is not implemented through a payment change, the notice must be sent to the consumer not later than 30 days after the effective date of the rate adjustment.

This provision of Wisconsin law does not contradict federal law since a Wisconsin creditor could comply with both provisions. As discussed above in conjunction with timing requirements for section 138.056(4) of Wisconsin Statutes, the state and federal notices could, in most cases, be combined as there is no requirement of segregated disclosures, and both timing requirements could be met. However, since the federal notice is triggered by a change in payment (and specifies an outer time limit for notification of 120 days) and the state notice is triggered by a rate change, there may be cases when a combined federal and state notice would not meet both timing requirements. (See the example above.)

As the timing of the notice requirements under Wisconsin Statutes section 422.421(5) does not contradict federal law, the Board proposes to determine these provisions are not preempted.

(3) Comment requested

The Board requests comment on the consistency or inconsistency with the federal law of the provisions in the Wisconsin statutes discussed above. After the close of the comment period and analysis of the comments received, notice of final action on the proposal will be published in the **Federal Register.**

Lists of Subjects in 12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in lending.

Board of Governors of the Federal Reserve System, July 31, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-18213 Filed 8-3-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 88N-0437]

Cheeses; Amendment of Standards of Identity to Permit Use of Antimycotics on the Exterior of Bulk Cheeses During Curing and Aging and to Update the Formats of Several Standards

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the standards of identity for edam cheese (and by cross-reference, gouda cheese), swiss and emmentaler cheese, and swiss cheese for manufacturing to permit the use of antimycotics on the exterior of those bulk cheeses during curing and aging and on the exterior of the cheese for manufacturing. This action responds to a comment on a September 21, 1987, proposal to, among other things, permit similar use of antimycotics on a number of other standardized cheeses. The proposed amendment will reduce waste in cheese manufacturing and will promote honesty and fair dealing in the interest of consumers. Elsewhere in this issue of the **Federal Register,** FDA is amending the standards of identity for several other cheeses to: (1) Permit the use of antimycotics on the exterior of those bulk cheeses, (2) update the formats and language of the standards of identity to make them more consistent with the nine natural cheese standards that FDA revised in 1983 (48 FR 2736; January 21, 1983), (3) provide for safe and suitable functional ingredient categories, and (4) provide for optional ingredient labeling requirements.

DATES: Comments by October 3, 1989. The agency proposes that any final rule that may be issued based upon this proposal shall become effective 60 days after date of publication of the final rule in the **Federal Register.**

ADDRESSES: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James F. Lin, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0122.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 21, 1987 (52 FR 35428), FDA published a proposal that was based on a petition from the National Cheese Institute (NCI), a trade association representing U.S. cheese manufacturers. In that document, FDA proposed to amend the standards of identity for brick cheese (21 CFR 133.108), brick cheese for manufacturing (21 CFR 133.109), washed curd and soaked curd cheese (21 CFR 133.136), washed curd cheese for manufacturing (21 CFR 133.137), granular and stirred curd cheese (21 CFR 133.144), granular cheese for manufacturing (21 CFR 133.145), monterey cheese and monterey jack cheese (21 CFR 133.153), muenster and munster cheese (21 CFR 133.160), muenster and munster cheese for manufacturing (21 CFR 133.161), and high moisture jack cheese (21 CFR 133.154) to permit the expanded use of safe and suitable antimycotics (currently permitted on cuts and slices in consumer-sized packages for a number of standardized cheeses) on the exterior of bulk cheeses during curing and aging and on the exterior of cheeses for manufacturing.

FDA also proposed to amend several standards to update their format and language to make the standards more consistent with the nine natural cheese standards that FDA had revised to

conform more closely with the Codex international standards for these foods (48 FR 2736), to provide for functional group designations of safe and suitable optional ingredients, and to provide for optional ingredient labeling requirements. The final rule for the proposed amendments is published elsewhere in this issue of the Federal Register.

However, several comments responding to the September 21, 1987, proposal suggested substantive amendments which require the issuance of a separate proposal so that interested persons will have an opportunity to comment. This proposal is in response to those comments.

One comment noted that the agency had failed to list the amended version of the standard of identity for edam cheese in the proposed regulation even though its intended inclusion was clearly indicated in the preamble. Two other comments requested that FDA expand the proposal by permitting the use of antimycotics on swiss and emmentaler cheese and swiss cheese for manufacturing. The latter comments cited cheese losses of 1.5 percent which they attributed to mold growth during curing and aging.

The agency acknowledges that amendment of the standard of identity for edam cheese was inadvertently left out of the proposed regulation and proposes to correct that oversight in this document. FDA also agrees, for the reasons given in the September 21, 1987, proposal, that it is reasonable, and would be in the interest of consumers, to amend the standards of identity for swiss and emmentaler cheese and swiss cheese for manufacturing to permit the optional use of antimycotics. Accordingly, FDA is proposing to amend the standards of identity for edam cheese (21 CFR 133.138) (and by cross-reference, gouda cheese (21 CFR 133.142)), swiss and emmentaler cheese (21 CFR 133.195), and swiss cheese for manufacturing (21 CFR 133.196) to provide for the optional use of antimycotics on the exterior of the bulk cheeses. The agency notes that the provision for "safe and suitable" ingredients governs the use of all optional ingredients used in these cheeses, including antimycotics. Thus, any antimycotics to be used in or on these standardized cheeses must conform to the definition of safe and suitable in 21 CFR 130.3(d) which requires that the antimycotics: (1) Perform an appropriate function in the food, (2) be used at a level no higher than necessary to achieve its intended purpose, and (3) be generally recognized as safe (GRAS), prior sanctioned, or the subject of a food additive regulation.

The agency notes that label declaration is required for all optional ingredients used in these cheeses, including antimycotics, so that consumers will have a means of avoiding these substances if they so choose. Only one optional ingredient is exempted from label declaration and that is artificial coloring. It is specifically exempted by section 403(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(k)). In addition, the ingredient declaration requirement may not apply to salt in those cheeses for which the use of this ingredient is required by the standard of identity. However, the agency urges manufacturers to declare both the presence of artificial coloring, when used, and salt.

I. Economic Impact

In accordance with the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 601), FDA has reviewed this proposal to determine its impact on small businesses. This proposal will provide for the expanded use of antimycotics on the exterior of bulk cheeses, i.e., of edam cheese, gouda cheese, and swiss and emmentaler cheese during curing and aging and on the exterior of swiss cheese for manufacturing. The National Milk Producers Federation has stated that approximately 3.4 million pounds of the 223 million pounds (1.5 percent) of the total 1985 U.S. swiss cheese production was lost through spoilage caused by mold growth during aging. Such loss of swiss cheese is proportionately higher than that of other cheeses (0.83 percent of the 3.5 billion pounds of semihard and semisoft cheeses produced in the United States are lost through spoilage) because of the proportionately larger surface area that is the result of eye formation in the swiss cheese block. The expanded optional use of antimycotics is likely to reduce monetary losses caused by product spoilage.

Therefore, FDA has concluded that this action will not result in a significant economic impact on a substantial number of small entities. Therefore, FDA certifies, in accordance with section 605(b) of the Regulatory Flexibility Act, that no significant economic impact on a substantial number of small entities will derive from this proposed action.

II. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Comments

Interested persons may, on or before October 3, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 133

Cheese, Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that Part 133 be amended as follows:

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

1. The authority citation for 21 CFR Part 133 continues to read as follows:

Authority: Secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)); 21 CFR 5.10 and 5.61.

2. Section 133.138 is amended by revising paragraph (b)(3)(iv) to read as follows:

§ 133.138 Edam cheese.

* * * * *

(b) * * *

(3) * * *

(iv) Antimycotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

* * * * *

3. Section 133.195 is amended by revising paragraph (b)(3)(iv) to read as follows:

§ 133.195 Swiss and emmentaler cheese.

* * * * *

(b) * * *

(3) * * *

(iv) Antimycotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

* * * * *

4. Section 133.196 is revised to read as follows:

§ 133.196 Swiss cheese for manufacturing.

Swiss cheese for manufacturing conforms to the definition and standard of identity prescribed for swiss cheese by § 133.195, except that the holes, or eyes, have not developed throughout the entire cheese.

Dated: March 21, 1989.

Richard J. Ronk,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-18228 Filed 8-3-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Cultural and Historic Resources

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule, reopening of public comment period.

SUMMARY: OSMRE is announcing the receipt of a proposed program amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of regulations on cultural and historic resources and a Memorandum of Agreement between the State Historic Preservation Officer (SHPO) and the Natural Resources and Environmental Protection Cabinet (NREPC).

This notice sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on September 5, 1989. If requested, a public hearing on the proposed amendment will be held at 10:00 a.m. on August 29, 1989. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on August 21, 1989.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this notice will be available for review at the addresses listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSMRE's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-7327

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5131, Washington, DC 20240, Telephone: (202) 343-5492

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937-2828

Department for Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564-6940

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: W. Hord Tipton, Director, Lexington Field Office, Telephone (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, Federal Register (47 FR 21404-21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Discussion of Amendment

By letter dated June 9, 1987, OSMRE notified Kentucky of State regulations that must be amended to be consistent with revised Federal regulations. OSMRE's letter, pursuant to 30 CFR 732.17, identified 5 changes needed in the Kentucky regulatory program for cultural and historic resources.

In responses to the OSMRE letter Kentucky submitted on December 21, 1988, (Administrative Record No. KY-841) proposed program amendments to the cultural and historic resource regulations contained in the Kentucky program. On January 24, 1989, (54 FR 3493), OSMRE announced receipt of the proposed amendment and the procedures for public comment period and a public hearing. No public hearing was requested and none was held. On February 28, 1989, the comment period was closed.

By letter dated July 5, 1989, (Administrative Record No. KY-903), Kentucky re-submitted to OSMRE a proposed amendment on cultural and historic resources. This amendment supersedes the December 21, 1988, proposed amendment submittal.

The proposed amendments modify portions of the Kentucky Administrative Regulations (KAR) Title 405 Chapters 8 and 24. Specifically, the proposed amendments revise 405 KAR 8:010 by including information on the nature and location of archaeological resources on public and Indian lands as confidential information, and by adding a requirement for a new written findings by the Cabinet relating to properties listed or eligible for listing on the National Register of Historic Places. The proposed amendments revise 405 KAR 8:020 to require the inclusion of information on cultural, historic, and known archaeological resources in the narrative description of each exploration and reclamation operations plan. The proposed amendments revise the permits requirements at 405 KAR 8:030 and 405 KAR 8:040 to specify that Kentucky may require the applicant to identify and evaluate important historic and archaeological resources. In addition, the proposed regulations require that each plan contain a description of measures to be used to prevent adverse impacts to public parks or places listed on the National Register of Historic Places and allows the Cabinet to require the applicant to utilize appropriate mitigation and treatment measures. The proposed amendments also revise the Kentucky Regulations at 405 KAR 24:040 to permit the relocation of cemeteries if authorized by applicable State law or regulations. Also, the amendment contains pursuant to 30 CFR 731.14(g)(17) a Memorandum of Agreement (MOA) between the SHPO and NREPC. The MOA establishes procedures for consulting with the SHPO and for making decisions regarding cultural and historic resources.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendment proposed by Kentucky satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m. on August 21, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scehedulled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE, Lexington Field Office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

VI. Procedural Determinations

1. Compliance With the National Environmental Policy Act

The Secretary had determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act.

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE and exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subject in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: July 21, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89-18244 Filed 8-3-89; 8:45 am]

BILLING CODE 4310-05-M

---

30 CFR Part 925

Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: OSMRE is announcing receipt of additional explanatory information pertaining to a previously proposed amendment to the Missouri permanent regulatory program (hereinafter, the "Missouri program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This additional information pertains to coal waste disposal and bonding. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, and to incorporate the additional flexibility afforded by the revised Federal regulations.

This notice sets forth the times and locations that the Missouri program and proposed amendment to that program are available for public inspection, and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received on or before 4:00 p.m., c.d.t., August 21, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William J. Kovacic at the address listed below.

Copies of the Missouri program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Kansas City Field Office.

Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, MO 64106, Telephone: (816) 374-6405

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102, Telephone: (314) 751-4041

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

II. Proposed Amendment

By letter dated January 12, 1989, (Administrative Record No. MO-410) Missouri submitted a proposed amendment to its program pursuant to SMCRA. Missouri submitted the proposed revisions (1) in response to a June 11, 1986, and a January 30, 1986, letter that OSMRE sent in accordance with 30 CFR 732.17 (c), (2) to satisfy a required program amendment at 30 CFR 925.16(1)1, (3) to satisfy deficiencies noted in a July 18, 1988, letter from OSMRE, and (4) at its own initiative.

The regulations that Missouri proposes to amend are: 10 CSR 40-2.110(1)(B)3, Prime Farmland Applicability; 10 CSR 40-3.040(1)(B), (3)(G), (4)(B)3, (6)(B), (6)(H), (6)(T), (7), (10)(A), (10)(E), (10)(G), (10)(I), (10)(J), (13)(A)1, and (13)(B)1.C, and 40-3.200(1)(B), (3)(H), (4)(B)3, (6)(B), (6)(H), (6)(T), (7), (10)(A), (10)(E), (10)(G), (10)(I), (10)(J), (12)(A)1, and (12)(B)1.C, Surface and Underground Requirements for Protection of the Hydrologic Balance; 10 CSR 40-3.060(1)(B), (1)(F), (1)(H), and (1)(K), and 40-3.220(1)(B), (1)(F), (1)(H), and (1)(K), Surface and Underground Requirements for the Disposal of Excess Spoil; 10 CSR 40-3.080(1)(C), (2)(A), (4)(A), (4)(D)3, (10)(B), and (11)(D), and 40-3.230(1)(C), (2)(A), (4)(A), (4)(D)3, (10)(B), and (11)(D), Requirements for the Disposal of Coal Processing Waste; 10 CSR 40-3.100(2), Requirements for the Protection of Fish, Wildlife, and Related Environemntal Values and Protection Against Slides and Other Related Damage; 10 CSR 40-3.110(6), Regarding or Stabilizing Rills and Gullies; 10 CSR 40-3.120(6)(A), (6)(B)2, and (8)(D), and 40-3.270(6)(A) and (6)(B)2, Surface and Underground Revegetation Requirements; 10 CSR 40-3.280(1)(C), General Requirements for Subsidence Control; 10 CSR 40-5.010(2)(C), (2)(E), and (3)(B)2, Prohibitions and Limitations on Mining in Certain Areas; 10 CSR 40-5.020(4)(B)1, (4)(B)2, (4)(B)4, (4)(B)6, (4)(C)1, (4)(C)3, and (4)(C)5, State Designation of Areas Unsuitable for Mining; 10 CSR 40-6.060(4)(A)3, Prime Farmland Applicability; 10 CSR 40-7.011, Bond Requirements; 10 CSR 40-7.021, Duration and Release of Reclamation Liability; 10 CSR 40-7.031; Permit Suspension or Revocation, Bond Forfeiture, and Authorization to Expend Reclamation Fund Monies; 10 CSR 40-7.041, Form and Administration of the Coal Mine Land Reclamation Fund; and 10 CSR 40-8.010(1)(A)59 and (A)79, Definitions.

OSMRE published a notice in the February 10, 1989, **Federal Register** (54 FR 6423) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. MO-447). The public comment period ended March 13, 1989.

During its review of the amendment, OSMRE identified concerns relating to 10 CSR 40-3.040(4)(B)3 and 40-3.200(4)(B)3, Permanent and Temporary Impoundments; 10 CSR 40-3.040(6)(T) and 40-3.200(6)(T), Sedimentation Ponds; 10 CSR 40-3.040(10)(G) and 40-3.200(10)(G), Permanent and Temporary Impoundments; 10 CSR 40-3.040 (10)(I) and 40-3.200(10)(I), Permanent and Temporary Impoundments; 10 CSR 40-3.060(1)(H) and 40-3.220(1)(H), Disposal of Excess Spoil; 10 CSR 40-3.080(10)(B) and 40-3.230(10)(B), Disposal or coal Processing Waste; 10 CSR 40-3.100(2), Endangered and Threatened Species; 10 CSR 40-3.120(6)(B)2.A,B,C,D,E, and F and 40-3.270(6)(B)1.A,B,C,D,E, and F, Revegetation Requirements; 10 CSR 40-7.011(5)(D)2.D(I), Self-Bonding; 10 CSR 40-7.011(5)(D)5.A and B, Self-Bonding; 10 CSR 40-7.011(5)(D)8, Self-bonding; 10 CSR 40-7.021(2)(A), Criteria and Schedule for Release of Reclamation Liability; 10 CSR 40-7.021(2)(B)4 and (C), Criteria and Schedule for Release of Reclamation Liability; 10 CSR 40-7, Bonding. OSMRE notified Missouri of the concerns by letter dated June 5, 1989 (Administrative Record No. MO-441). Missouri responded in a letter dated July 19, 1989, (Administrative Record No. MO-448) and at a meeting with OSMRE on July 25, 1989, (Administrative Record No. MO-449) by submitting additional explanatory information.

III. Public Comment Procedures

OSMRE is reopening the comment period on the proposed Missouri program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Missouri program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 925

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: July 27, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-18245 Filed 8-3-89; 8:45 am]

BILLING CODE 4310-05-M

---

30 CFR Part 931

New Mexico Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSMRE is announcing the receipt of a proposed amendment to the New Mexico permanent regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to water treatment facilities, siltation structures, and impoundments. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the New Mexico program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., m.d.t. September 5, 1989. If requested, a public hearing on the proposed amendment will be held on August 29, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on August 21, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Robert H. Hagen at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Albuquerque Field Office.

Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW.,

Suite 310, Albuquerque, New Mexico 87102, Telephone: (505) 766-1486
New Mexico Energy and Minerals Department, Mining and Minerals Division, 525 Camino de los Marquez, Santa Fe, NM 87503, Telephone: (505) 827-5970

FOR FURTHER INFORMATION CONTACT:
Mr. Robert H. Hagen, Director, Albuquerque Field Office, (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.12, 931.13, 931.15, 931.16 and 931.30.

II. Proposed Amendment

By letter dated July 12, 1989 (Administrative Record No. NM-521), New Mexico submitted a proposed amendment to its program pursuant to SMCRA. New Mexico submitted the proposed amendment in response to an August 14, 1986, letter that OSMRE sent in accordance with 30 CFR 732.17(c). New Mexico proposes to amend the following sections to the Coal Surface Mining Commission (CSMC) Rules:

CSMC Rule 80-1-1-5

New Mexico proposes to add a new definition for water treatment facilities.

CSMC Rule 80-1-20-41

New Mexico proposes to add a new subsection (f) addressing other treatment facilities (sediment control measures).

CSMC Rule 80-1-20-46

New Mexico proposes to revise the entire section concerning sedimentation ponds (siltation structures).

CSMC Rule 80-1-20-49

New Mexico proposes to revise the entire section concerning permanent and temporary impoundments.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4:00 p.m., m.d.t. on August 21, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: July 25, 1989.
Raymond L. Lowrie,
Assistant Director, Western Field Operations.
[FR Doc. 89-18246 Filed 8-3-89; 8:45 am]
BILLING CODE 4310-05-M

30 CFR Part 931

New Mexico Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: OSMRE is announcing the withdrawal of a proposed amendment to the New Mexico Permanent Regulatory Program. The proposed amendment consisted of inspection and enforcement, experimental practices, the use of explosives, prime farmland, backfilling and grading, stream buffer zones and fish and wildlife, excess spoil, revegetation, coal exploration, areas unsuitable for mining, hydrology, coal mine waste, permitting, operation plans, coal processing plants, and topsoil. New Mexico is withdrawing this amendment because it intends to revise it and submit another formal amendment at a future date.

DATE: This withdrawal is effective August 4, 1989.

FOR FURTHER INFORMATION CONTACT:
Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, New Mexico 87102; Telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION: By letter dated May 18, 1989 (Administrative Record No. NM-497), New Mexico submitted the proposed amendment to its program pursuant to SMCRA. The proposed amendment consisted of modifications to New Mexico's regulations governing inspection and enforcement, experimental practices, the use of explosives, prime farmland, backfilling and grading, stream buffer zones and fish and wildlife, excess spoil, revegetation, coal exploration, areas unsuitable for mining, hydrology, coal mine waste, permitting, operation plans, coals processing plants, and topsoil. On June 16, 1989, OSMRE announced receipt and solicited public comment on the program amendment (54 FR 25589). The comment period closed on July 17, 1989. By letter dated July 18, 1989 (Administrative Record No. NM-522), New Mexico notified OSMRE that the proposed program amendment is withdrawn. Therefore, the proposed amendment announced in the June 16, 1989, **Federal Register** is withdrawn, and Part 931 Title 30 of the Code of Federal Regulations is not amended.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: July 26, 1989.
Raymond L. Lowrie,
Assistant Director, Western Field Operations.
[FR Doc. 89-18247 Filed 8-3-89; 8:45 am]
BILLING CODE 4310-05-M

30 CFR Part 946

Virginia Regulatory Program; Bonding

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing receipt of a proposed amendment to the Virginia permanent regulatory program (hereinafter, the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to changes in Virginia's Coal Surface Mining Reclamation Fund (hereinafter, Pool Bond Fund). The amendment is intended to strengthen the Pool Bond Fund.

This notice sets forth the times and locations that the Virginia program and proposed amendment to the program are available for public inspection, the comment period during which interested parties may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 pm on September 5, 1989. If requested, a public hearing on the proposed amendment will be held on August 29, 1989; requests to present testimony in the hearing must be received on or before 4:00 pm August 21, 1989.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Mr. W. Russell Campbell, Acting Director, Big Stone Gap Field Office at the first address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Virginia program, proposed amendment and all written comments received in response to this notice will be available for review at the locations listed below during normal business hours Monday through Friday, excluding holidays.

Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone (703) 523-4303.
Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5315, 1100 L Street NW., Washington, DC 20240, Telephone (202) 343-5492.
Virginia Division of Mined Land Reclamation, P.O. Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone (703) 523-2925.

FOR FURTHER INFORMATION CONTACT:
Mr. W. Russell Campbell, Acting Director, Big Stone Gap Field Office, Telephone (703) 523-4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085-61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of Proposed Amendment

By letter dated July 5, 1989, (Administrative Record No. VA-729) Virginia submitted a proposed amendment to its program pursuant to SMCRA. The intent of the amendment is to strengthen the Pool Bond Fund's assets and reduce the Fund's liabilities. Virginia has already adopted the required changes at section 45.1-270.2 and 270.3 of the Code of Virginia. The effective date of the State legislation was July 1, 1989. OSMRE does not recognize these changes as part of the approved program until the proposed amendment is processed by OSMRE and a decision is rendered approving or disapproving the amendment. The proposed changes are discussed below.

a. Article 5, section 45.1-270.2(A) of The Code of Virginia will require all Fund applicants to demonstrate at least a consecutive three year history of compliance with the Virginia Act, with other comparable State Acts, or with the Federal Surface Mining Control and Reclamation Act (PL 95-87) in order to participate in the Pool Bond program.

b. Article 5, section 45.1-270.2(C) of The Code of Virginia will place distance limits on cumulative highwall lengths and backfilling of coal pits for surface mining operations. A cumulative limit of 1,500 linear feet has been set for all exposed highwalls. The width of an unbackfilled coal pit is limited to 500 feet or two mining cuts, whichever is less.

c. Article 5, section 45.1-270.2(D) of The Code of Virgina will provide exceptions outlined in subsection 45.1-270.2(C) above. Applicants with seven year histories of compliance with the requirements of Public Law 95-87 are exempt from the distance limits in subsection 45.1-270.2(C). Any qualified Fund participant with less than a seven year history of compliance may exceed the distance requirements of subsection C only by providing an additional bond for the areas exceeding the distance limits. The additional bond amount must be equal to the ratio of the extended distance to the standard distance prescribed in section 45.1-270.2(C) times an approved cost estimate of reclamation for the permit.

d. Article 5, section 45.1-270.3(A) of The Code of Virginia will require an entrance fee for admission into the Fund of $5,000 whenever the total Fund balance drops below $1,750,000 and will remain at that rate until the Fund balance again exceeds $2,000,000. The amount of entrance fees will return to $1,000 when the Fund balance exceeds $2,000,000. This subsection also requires a Fund renewal fee of $1,000.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendment proposed by Virginia satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Big Stone Gap Field Office will not necessarily be

considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by close of business on August 21, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held.

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the Big Stone Gap Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT". All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "ADDRESSES". A written summary of each public meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: July 21, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89-18248 Filed 8-3-89; 8:45]

BILLING CODE 4310-05-M

---

30 CFR Part 946

Virginia Regulatory Program; Revisions, Clarifications, and Corrections

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing receipt and requesting public comments on proposed amendments to the Virginia permanent regulatory program (hereinafter, the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments pertain to certification of maps and plans, review of permit applications ("previously mined area" definition and fishing), fish and wildlife resources, individual civil penalties, subsidence control, two-acre exemption, designating areas unsuitable for mining, abandoned sites, mountaintop removal mining, and bond release notification. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, and to clarify and correct inconsistencies in Virginia's rules.

This notice sets forth the times and locations that the Virginia program and proposed amendment to the program are available for public inspection, the comment period during which interested parties may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 pm on September 5, 1989. If requested, a public hearing on the proposed amendment will be held on August 29, 1989; requests to present testimony in the hearing must be received on or before 4:00 pm August 21, 1989.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Mr. W. Russell Campbell, Acting Director, Big Stone Gap Field Office at the first address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Virginia program, proposed amendments and all written comments received in response to this notice will be available for review at the locations listed below during normal business hours Monday through Friday, excluding holidays.

Each requestor may receive, free of charge, one single copy of the proposed amendments by contacting the OSMRE Big Stone Gap Field Office:

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone (703) 523-4303

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5315, 1100 L Street NW., Washington, DC 20240, Telephone (202) 343-5492

Virginia Division of Mined Land Reclamation, P.O. Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone (703) 523-2925.

FOR FURTHER INFORMATION CONTACT: Mr. W. Russell Campbell, Acting Director, Big Stone Gap Field Office, Telephone (703) 523-4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085-61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of Proposed Amendments

By letter dated June 30, 1989, (Administrative Record No. VA-728) Virginia submitted a proposed amendment to its program pursuant to SMCRA. Part of the proposed amendment was submitted in response to an October 28, 1988, letter from OSMRE (Administrative Record No. VA-711) in accordance with 30 CFR Part 732 requiring certain provisions of the State program to be updated for consistency with the Federal regulations promulgated through June 15, 1988. Additionally, Virginia has included as part of the proposed amendment clarifications to existing rules where difficulties have been experienced in their application. A brief description of the proposed changes are outlined below.

Virginia proposes to amend: Section 480-03-19.780.14(c), Operation Plan: Maps and Plans; section 480-03-19.773.15(c)(12), Review of Permit Applications; sections 480-03-19.779.19(b) and 783.19(b), Vegetation Information; sections 480-03-19.779.20(a), (b), (c)(1-3) and 783.20(a), (b), (c)(1-3), Fish and Wildlife Resources Information; Part 480-03-19.780.16 (entirety) and 784.21 (entirety), Fish and Wildlife Information; sections 480-03-19.816.97(b), (e)(4) and 817.97(b), (e)(4), Protection of Fish, Wildlife, and Related Environmental Values; Part 480-03-19.846, Individual Civil Penalties; section 480-03-19.846.2, Definitions; Sections 480-03-19.846.12(a), (b), When an Individual Civil Penalty May Be Assessed; sections 480-03.19.846.14(a)(1-3) and (b), Amount of Individual Civil Penalty; sections 480-03-19.846.17(a) and (b)(1-3), Assessment of an Individual Civil Penalty; sections 480-03-19.846.18(a), (b) and (c)(1-2), Penalty Payment; sections 480-03-19.784.20(b) and (d-h), Subsidence Control Plan; Sections 480-03-19.700.11(b) and (c), Applicability; sections 480-03-19.764.15(a)(1), (b)(2) and (b)(3), Initial Processing, Recordkeeping, and Notification Requirements; sections 480-03-19.840.11(g)(1-4) and (h)(1-2), Inspections by the Division, section 480-03-19.843.22, Enforcement Actions at Abandoned Sites; sections 480-03-19.785.14(c)(1)(iii)(G) and (c)(1)(iv), Mountaintop Removal Mining, and section 480-03-19.801.17(d)(4)(i), Bond Release Notification.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by close of business on August 21, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than public hearing, may be held.

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the Big Stone Gap Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT". All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "ADDRESSES". A written summary of each public meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: July 19, 1989.

Ronald C. Recker,

Acting Assistant Director, Eastern Field Operations.

[FR Doc. 89-18249 Filed 8-3-89; 8:45 am]

BILLING CODE 4310-05-M

PANAMA CANAL COMMISSION

35 CFR Parts 133 and 135

RIN 3207-AA04

Tolls for Use of Canal and Rules for Measurement of Vessels

AGENCY: Panama Canal Commission.

ACTION: Proposed rule; recommendation to the President.

SUMMARY: The Panama Canal Commission proposes an increase of approximately 9.8% in the rates of tolls to become effective October 1, 1989. The Commission anticipates that in fiscal year 1990 it will experience a significant deficit created by a trend of traffic growth revenue inadequate to absorb cost increases due to inflation and other factors. The proposed increase is necessary to comply with the requirements that tolls be set to produce revenues sufficient to cover all costs of maintenance and operation of the Panama Canal, including capital for plant replacement, expansion and improvements. In addition, certain revisions to the rules of measurement of vessels for use of the Panama Canal are also proposed in order to simplify the Commission's measurement procedures and bring them in line with industry standards. These revisions will have a minimal impact on the amount of tolls collected.

DATES: Proposed effective date: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Rhode, Jr., Assistant to the Chairman and Secretary, Panama Canal Commission, 2000 L Street, NW., Suite 550, Washington, DC 20036-4990. Telephone: (202) 634-6441.

SUPPLEMENTARY INFORMATION: Section 1602(b) of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3792(b), requires that Canal tolls be prescribed at rates calculated to produce revenues to cover, as nearly as practicable, all costs of maintaining and operating the Panama Canal and the facilities and appurtenances related thereto, and capital for plant replacement, expansion, and improvements. The rates of tolls for use of the Panama Canal were last increased on March 12, 1983 by 9.8%. The rates placed in effect at that time have proven adequate to provide, in the aggregate, sufficient revenues to cover all operating and capital costs of the Canal through 1988, but the Commission has recorded minor deficits in the last two fiscal years.

While the deficits have been minor, they point to a trend of traffic growth revenues inadequate to absorb cost increases due to inflation and other factors. Commission projections indicate that this trend will continue and, in fact, worsen despite management efforts to reduce costs and increase productivity to the maximum extent possible. This growing imbalance between inflation and traffic growth underlies the more serious loss projected for this year and the clear need for placing a toll rate increase in effect in fiscal year 1990.

In addition to the toll rate increase, certain revisions are recommended to the "Rules of Measurement of Vessels for the Panama Canal." These proposed changes are designed to simplify the Commission's measurement procedures and bring them in line with industry standards. These amendments would have a minimal impact on the amount of tolls collected.

The proposed changes would amend 35 CFR Parts 133 and 135 as follows:

(a) Amend § 135.285 to increase the size limitation from thirty to thirty-four inches on manholes serving water ballast spaces.

(b) Amend § 133.34 to eliminate the requirement that fuel carried not exceed 125% of the engine room for obtaining the ballast rate.

(c) Amend § 135.352 to eliminate the requirement to separately measure the

portion of engine room space dedicated to propulsion power for purposes of calculating the 125% factor above.

Section 1604 of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3794, establishes the procedures that the Panama Canal Commission must follow in proposing a toll rate increase or changes in the rules for measurement of vessels. Those procedures have been supplemented by regulations in 35 CFR Part 70, which in addition, provide interested parties with instructions for participating in the process governing changes in the rates of tolls or rules of measurement.

Pursuant to the statute and regulations, on June 1, 1989, an advance notice of proposed rulemaking was published in the **Federal Register** (54 FR 23493) recommending changes in the rules of measurement and a 9.8% increase in the rates of Canal tolls, to become effective October 1, 1989. At that time, a written analysis showing the basis and justification for the proposed toll increase was made available to interested parties. The analysis stated that the increase was necessary because, by October 1, 1989, the Canal Commission would experience a significant deficit created by a trend of traffic growth revenue inadequate to absorb cost increases due to inflation and other factors.

Written comments were solicited and received from interested parties, and a public hearing was held in Washington, DC on July 6, 1989. The views presented by the interested parties, as well as other relevant information, were considered by the Supervisory Board of the Commission at its quarterly meeting of July 1989. On July 28, 1989, the Board voted to recommend to the President that the measurement changes and the proposed 9.8% increase be implemented on October 1, 1989. A complete record of the proceedings since initiation of the proposals, including the data, views and arguments submitted by interested parties, will be forwarded to the President with the Commission's recommendation. In considering the proposal, the President may approve, disapprove or modify the recommendation of the Commission. The final rule, approved and published by the President, will be effective no earlier than thirty days from the date of publication in the **Federal Register**.

This proposed rulemaking does not constitute a "major rule" as defined in section 1(b) of Executive Order 12291, dated February 17, 1981. Analysis of the proposed toll increase and of the measurement changes indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

A review of the environmental effect of the proposed increase in the rates of tolls and the proposed measurement rule changes concludes that the proposals are not major Federal actions which will have a significant effect on the quality of the environment; therefore, pursuant to Executive Order 12114, dated January 4, 1979, an environmental analysis is not required. Furthermore, the Regulatory Flexibility Act is inapplicable, since this regulation is one relating to "rates" or "practices relating" thereto (5 U.S.C. 601 (2)).

List of Subjects in 35 CFR Parts 133 and 135

Panama Canal, Vessels.

Accordingly, it is proposed that 35 CFR Parts 133 and 135 be amended to read as follows.

PART 133—TOLLS FOR USE OF CANAL

1. The authority citation for Part 133 continues to to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3791; E.O. 12215, 45 FR 36043.

2. Section 133.1 is revised to read as follows:

§ 133.1 Rates of toll.

The following rates of toll shall be paid by vessels using the Panama Canal:

(a) On merchant vessels, yachts, army and navy transports, colliers, hospital ships, and supply ships, when carrying passengers of cargo, $2.01 per net vessel ton of 100 cubic feet each of actual earning capacity—that is, the net tonnage determined in accordance with Part 135 of this chapter.

(b) On vessels in ballast without passengers or cargo, $1.60 per net vessel ton.

(c) On other floating craft including warships, other than transports, colliers, hospital ships, and supply ships, $1.12 per ton of displacement.

3. Section 133.34 is revised to read as follows:

§ 133.34 Tolls for vessels in ballast.

In order for a vessel to secure the reduced rate of toll for vessels in ballast, it may not be carrying any passengers or cargo nor any fuel for its own consumption in a quantity which exceeds the spaces on the vessel which are available for the carriage of fuel (i.e., the actual volume of tanks or fixed compartments, including settling tanks, used for the storage of lubricating oil or fuel, which spaces cannot be used to stow cargo or stores and which have been certified by official marking to be spaces for the vessel's own fuel).

PART 135—RULES FOR MEASUREMENT OF VESSELS

4. The authority citation for Part 135 is revised to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3791; E.O. 12215; 45 FR 36043.

5. Section 135.285 is revised to read as follows:

§ 135.285 Water ballast spaces, deducted.

(a) Water ballast spaces, other than spaces in the vessel's double bottom, shall be deducted if they are adapted and used only for water ballast, have for entrance only ordinary circular or oval manholes whose greatest diameter does not exceed thirty-four inches (864 mm), and are not available for the carriage of cargo, stores, or fuel. Spaces that would otherwise qualify as water ballast except that they are also sued for fuel for the vessel's own use shall be regarded as part of the vessel's fuel space as defined in § 135.390 of this part.

(b) Tonnage of tanks may be obtained by using liquid capacity times the conversion factor with one-sixth off for frames in case of peak tanks and one-twelfth off in case of wings or deep tanks when they cannot be readily measured.

6. Section 135.352 is revised to read as follows:

§ 135.352 Definition of phrase "space occupied by engine rooms".

The space occupied by engine rooms is defined as that occupied by the engine room itself and the boiler room, together with the spaces strictly required for the working of the engines and boilers. In addition to those, included are the spaces taken up by the shaft trunks in vessels with screw propellers, the spaces which enclose the funnels, and the casings necessary for the admission of light and air into the engine room to the extent that such spaces are located below the upper deck (as defined in §§ 135.61 through 135.63 of this part) or below a deck with openings. These are usually designated as tonnage openings, which may be so closed as to permit the carriage of cargo or stores under the deck or a portion thereof. This definition also covers donkey-engine and boiler spaces when the donkey-engine and boiler are situated within the boundary of the main engine room, or of the light and air casing above it and when they are used in connection with the main machinery for propelling the vessel. When the shafts of screw propellers pass through open spaces not enclosed within tunnels, the spaces allowed in lieu of tunnels must be of reasonable dimensions suitable for the vessel in question. When a portion of the space within the boundary of the engine or boiler room is occupied by a tank or tanks for the storage of fresh water, lubricating oil, or fuel, including settling tanks, the space considered to be within the engine room shall be reduced by the space taken up by such tanks. Installations not strictly required for the working of the engines or boilers but that would otherwise qualify as a deduction under §§ 135.271 through 135.285 of this part may be left in and included in the engine room measurement.

Dated: July 27, 1989.

Michael Rhode, Jr.,

Assistant to the Chairman and Secretary.

[FR Doc. 89-18212 Filed 8-3-89; 8:45 am]

BILLING CODE 3640-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL-025; FRL-3624-5]

Approval and Promulgation of Implementation Plans; Alabama State Regulation For Prevention of Significant Deterioration (PSD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing disapproval of a revision to the Alabama State Implementation Plan (SIP) which was submitted to EPA on June 29, 1988. Alabama's revision deletes part (2) of the definition of "Significant" in § 16.4.2(w) of Chapter 16. This deletion makes the definition inconsistent with the federal definition contained in 40 CFR 51.166(b)(23)(ii). Since such significance provisions are still contained in the Federal requirements, the deletion of § 16.4.2(w)(2) is not acceptable. Therefore, EPA is proposing to disapprove it.

DATES: To be considered, comments must reach us on or before September 5, 1989.

ADDRESSES: Written comments should be addressed to Rosalyn D. Hughes of EPA Region IV's Air Programs Branch (see EPA region IV address below). Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

EPA Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Alabama Department of Environmental Management, 1751 Congressman William L. Dickinson Drive, Montgomery, Alabama 36130.

FOR FURTHER INFORMATION CONTACT: Rosalyn D. Hughes, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On December 5, 1974, EPA published regulations for the prevention of significant deterioration of air quality (PSD) under the 1970 version of the Clean Air Act. These regulations established a program for protecting areas with air quality better than the National Ambient Air Quality Standards (NAAQS). The Clean Air Act Amendments of 1977 changed the 1970 Act and EPA's regulations in many respects, particularly with regard to PSD. In addition to mandating certain changes to EPA's PSD regulations immediately, the new Clean Air Act, in sections 160-169, contained comprehensive new PSD requirements. These new requirements were to be incorporated by states into their implementation plans.

On June 19, 1978 (43 FR 26380), and August 7, 1980 (45 FR 52676), EPA promulgated guidance to assist states in preparing State Implementation Plan (SIP) revisions meeting the new requirements. Alabama submitted such revisions on January 29, 1981, and EPA approved them on November 10, 1981 (46 FR 55517).

On June 29, 1988, the State of Alabama submitted to EPA a revision to its EPA-approved PSD regulations which was the subject of a public hearing on March 21, 1988. EPA had commented on the revision and found it to be deficient for the following reason:

Chapter 16, Rule 16.4.2(w)—EPA cannot allow the deletion of part (2) of the definition of "significant" in rule 16.4.2(w). Such deletion makes the definition inconsistent with the Federal definition contained in 40 CFR 51.166(b)(23)(ii). Since part (2) is intended to include other emission rates "subject to regulation under the Clean Air Act" that are "not listed in subparagraph (w)(1), "the deletion of part (2) would exclude these emission rates, making the definition incomplete.

Proposed Action: EPA has concluded that the revision to Alabama's regulation for prevention of significant deterioration does not meet the requirements of 40 CFR 51.166(b)(23)(ii). Therefore, EPA is proposing disapproval of the Alabama revision.

Under 5 U.S.C. Section 605(b), I certify that this disapproval action will not have a significant economic impact on a substantial number of small entities because it serves merely to make the State's PSD regulations consistent with existing federal requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations.

Dated: July 7, 1989.

Lee A. DeHihns III,

Acting Regional Administrator.

[FR Doc. 89-18257 Filed 8-3-89; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 54, No. 149
Friday, August 4, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of the Census

1990 Census; Cutoff Dates for Recognition of Boundary Changes

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice.

SUMMARY: On July 8, 1986, the Bureau of the Census, U.S. Department of Commerce, published in the Federal Register, Vol. 51, No. 130, cutoff dates for recognition of boundary changes received as a result of the 1990 Boundary and Annexation Survey. These dates reflect the timing of the 1990 Census of Population and Housing. In order to increase public awareness of these cutoff dates, the Bureau of the Census wishes to restate, without change, this information. The Bureau of the Census compiles information about the boundaries for American Indian and Alaska Native areas in other programs. It uses the same effective and reporting dates for these boundaries.

FOR FURTHER INFORMATION CONTACT: Robert W. Marx, Chief, Geography Division, Bureau of the Census, (301) 763–5636.

SUPPLEMENTARY INFORMATION: For the tabulation and publication of data from the 1990 Census of Population and Housing, the Bureau of the Census will recognize only those boundaries legally in effect on January 1, 1990 that have been reported officially to the Bureau of the Census no later than March 1, 1990. The Bureau of the Census enumerates respondents on the date of the decennial census as residing within the legal limits of municipalities, county subdivisions, counties, states, and equivalent areas as those limits exist on January 1, 1990.

For the purposes of the Boundary and Annexation Survey, the Bureau of the Census defines "municipalities" and "county subdivisions" to include the areas identified as incorporated places (such as cities and villages) and minor civil divisions (such as townships and magisterial districts). A more complete description appears on pages A1 and A2 of 1980 Census of Population, Volume 1, Chapter A.

The Bureau of the Census will not recognize changes in boundaries that become effective after January 1, 1990 in taking the 1990 Decennial Census; the Bureau of the Census will enumerate the residents of any area that are transferred to another jurisdiction after that date and report them for the 1990 census as residents of the area in which they resided on January 1, 1990. The Bureau of the Census will not recognize in the data tabulations prepared for the 1990 census changes occurring on or before January 1, 1990, but not submitted officially to the Bureau of the Census until after March 1, 1990 except as necessary to conduct decennial census operations.

(Sections 70.1, 70.2 and 70.3 of the Cutoff for Recognition of Boundary Changes for the 1990 Census (13 U.S.C. 4; 32 FR 15154); and Department of Commerce Organizational Order 35–2A (40 FR 42765).

Dated: August 1, 1989.

C. L. Kincannon,

Deputy Director, Bureau of the Census.

[FR Doc. 89–18272 Filed 8–3–89; 8:45 am]

BILLING CODE 3510–07–M

Foreign Trade Zones Board

[Docket 13–89]

Foreign-Trade Zone 68—El Paso, TX; Application for Subzone; Farah Apparel Plant

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of El Paso, Texas, grantee of FTZ 68, requesting special-purpose subzone status for the apparel processing plant of Farah Incorporated (Farah) located in El Paso, Texas, within the El Paso Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 21, 1989.

The Farah facility (25 acres) is located at 889 Gateway West within a 43-acre industrial park complex at Interstate 10 and Hawkins Boulevard in the City of El Paso. The plant employs some 200 persons and is used to design and cut mostly domestic fabric, and to receive and distribute foreign wearing apparel. The majority of the pieces cut at the plant are shipped to factories (twin-plants) in Mexico or Costa Rica to be sewn into finished garments. Upon return to the United States, the garments are subject to applicable duties and quotas.

The application indicates that Farah would only use zone procedures for the storage of finished apparel. Farah would make Customs entry for consumption on any foreign textiles or textile products prior to processing that would result in a transformation in the zone. This would preclude the cutting of foreign cloth under zone procedures.

Zone procedures would allow Farah to defer duty payments on foreign finished wearing apparel while the items are stored at the plant. Subzone status will also allow the company to take advantage of an exemption from state/local inventory tax. The application indicates that zone savings will improve the plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, 5850 San Felipe Street, Houston, Texas 77057–3012; and, Lt. Colonel Steven M. Dougan, District Engineer, U.S. Army Engineer District Albuquerque, P.O. Box 1580, Albuquerque, New Mexico 87103–1580.

Comments concerning the proposed subzone are invited in writing from interested parties. They shall be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 22, 1989.

A copy of the application is available for public inspection at each of following locations:

Office of the District Director, U.S. Customs Service, P.O. Box 9516, El Paso, TX 79985.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

Dated: July 28, 1989.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 89–18186 Filed 8–3–89; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–427–098]

Anhydrous Sodium Metasilicate From France Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by the respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. The review covers one exporter of this merchandise to the United States, Rhone Poulenc Chimie de Base ("Rhone Poulenc"), and the period January 1, 1988 through December 31, 1988. There were no known shipments of this merchandise to the United States by Rhone Poulenc during the period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 4, 1989.

FOR FURTHER INFORMATION CONTACT: Marquita Steadman or Chip Hayes, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 1988, the Department of Commerce ("the Department") published in the Federal Register (53 FR 43251) the final results of its last administrative review of the antidumping duty order on anhydrous sodium metasilicate from France (46 FR 1667, January 7, 1981). The respondent, Rhone Poulenc Chimie de Base, requested in accordance with § 353.53a(a) of the Commerce Regualtions (1988) that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on March 8, 1989. The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of anhydrous sodium metasilicate, a crystalline silicate (Na_2SiO_3) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. During the review period such merchandise was classified under item number 421.3400 of the *Tariff Schedules of the United States Annotated*. This merchandise is currently classified under HTS item numbers 2839.11.00 and 2839.19.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one exporter of French anhydrous sodium metasilicate, Rhone Poulenc, and the period January 1, 1988 through December 31, 1988. There were no known shipments of this merchandise by Rhone Poulenc to the United States during the period and there are no known unliquidated entries.

Preliminary Results of the Review

Because there were no shipments during this review, we based our margin determination on the last margin found for Rhone Poulenc in this proceeding which was also the margin calculated in the less than fair value investigation, and we preliminarily determine that the following margin exists:

Manufacturer/exporter	Time period	Margin (percent)
Rhone Poulenc	1/88–12/88	[1] 60

[1] No shipments during the period.

Interested parties may request disclosure within 5 days of the date of publication of this notice, and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Prehearing briefs and/or written comments may be submitted not later than 30 days after the date of publication. Rebuttal briefs or rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

As provided for by § 353.22(c)(10) of the Commerce Regulations published in the Federal Register on March 28, 1989 (54 FR 12742) to be codified at 19 CFR 353.22(c)(10), the Department shall require a cash deposit of estimated antidumping duties of 60 percent for Rhone Poulenc. For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after December 31, 1988 and who is unrelated to the reviewed firm, a cash deposit of 60 percent shall be required. These deposit requirements are effective for all shipments of French anhydrous sodium metasilicate entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Regulations.

Dated: July 27, 1989.

Eric L. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89–18187 Filed 8–3–89; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–016]

Ferrite Cores (of the Type Used in Consumer Electronic Products) From Japan; Termination of Antidumping Duty Administrative Review

AGENCY: International Trade Administrative/Import Administration, Commerce.

ACTION: Notice of Termination of Antidumping Duty Administrative Review.

SUMMARY: On April 28, 1989, the Department of Commerce initiated an administrative review of the antidumping finding on ferrite cores (of the type used in consumer electronic

products) from Japan. The Department is now terminating that review.

Background: On April 28, 1989 the Department of Commerce published a notice of initiation of administrative review of the antidumping finding on ferrite cores (of the type used in consumer electronic products) form Japan (54 FR 18320). That notice stated that we would review Taiyo Yuden Co., Ltd. for the period March 1, 1988 through February 28, 1989.

Taiyo Yuden subsequently withdrew its request for review on June 27, 1989. As a result, the Department is terminating the review.

EFFECTIVE DATE: August 4, 1989.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Laurie A. Lucksinger, Office of Antidumping Duty Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC; telephone: (202) 377–5222/5253.

SUPPLEMENTARY INFORMATION: This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675 (a)(1)) and § 353.22 of the Commerce Department's regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.22).

Dated: July 27, 1989

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89–18188 Filed 8–3–89; 8:45 am]

BILLING CODE 3510-DS-M

[A–475–802]

Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Italy; Antidumping Duty Order of Sales at Less Than Fair Value; Correction

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of antidumping duty order of sales at less than fair value; correction.

On June 14, 1989, the Department of Commerce (the "Department") published in the **Federal Register** (54 FR 25313) the Antidumping Duty Order on industrial belts and components and parts thereof, whether cured or uncured, from Italy.

On page 23514, in the first column, at the end of the first complete paragraph, the following sentence was inadvertently excluded: "This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks."

EFFECTIVE DATE: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Mark Wells, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1769, or 377–3798.

Dated: July 27, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89–18189 Filed 8–3–89; 8:45 am]

BILLING CODE 3510-DS-M

[A–588–807]

Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan; Antidumping Duty Order of Sales at Less Than Fair Value; Correction

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of antidumping duty order of sales at less than fair value; correction.

On June 14, 1989, the Department of Commerce (the "Department") published in the **Federal Register** (54 FR 25314) the Antidumping Duty Order on industrial belts and components and parts thereof, whether cured or uncured, from Japan.

On page 25315, in the first column, at the end of the first complete paragraph, the following sentence was inadvertently excluded: "This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks."

EFFECTIVE DATE: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Mark Wells, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–1769, or 377–3798.

Dated: July 27, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89–18190 Filed 8–3–89; 8:45 am]

BILLING CODE 3510-DS-M

[A–559–802]

Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Singapore; Antidumping Duty Order of Sales at Less Than Fair Value; Correction

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of antidumping duty order of sales at less than fair value; correction.

On June 14, 1989, the Department of Commerce (the "Department") published inthe **Federal Register** (54 FR 25315) the Antidumping Duty Order on industrial belts and components and parts thereof, whether cured or uncured, from Singapore.

On page 25315, in the third column, at the end of the second paragraph under the heading Supplemental Information, the following sentence was inadvertently excluded: "This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks."

EFFECTIVE DATE: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Mark Wells, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1769, or 377–3798.

Dated: July 27, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration

[FR Doc. 89–18191 Filed 8–3–89; 8:45 am]

BILLING CODE 3510-DS-M

[A–428–802]

Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From the Federal Republic of Germany; Antidumpiag Duty Order of Sales at Less Than Fair Value; Correction

AGENCY: Import Administration/ International Trade Administration Commerce.

ACTION: Notice of antidumping duty order of sales at less than fair value; correction.

On June 14, 1989, the Department of Commerce (the "Department") published in the **Federal Register** (54 FR 25316) the Antidumping Duty Order on industrial belts and components and parts thereof, whether cured or uncured, from the Federal Republic of Germany.

On page 25316, in the third column, at the end of the second paragraph under the heading Supplemental Information, the following sentence was inadvertently excluded: "This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks."

EFFECTIVE DATE: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Mark Wells, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1769, or 377–3798.

Dated: July 27, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89–18192 Filed 8–3–89; 8:45 am]

BILLING CODE 3510-DS-M

[C–357–002]

Wool from Argentina; Termination of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Termination of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce has terminated the countervailing duty administrative review of wool from Argentina initiated on May 24, 1989.

EFFECTIVE DATE: August 4, 1989.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Ilene Hersher, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–4161.

SUPPLEMENTARY INFORMATION: On April 26, 1989, Hart, Incorporated, a wool importer and an interested party, requested a countervailing duty administrative review of wool from Argentina for the period January 1, 1988 through December 31, 1988. No other interested party requested the review.

On May 24, 1989, the Department of Commerce initiated the administrative review for that period (54 FR 22465). Hart, Incorporated withdrew its request for review on July 17, 1989. As a result, the Department has determined to terminate the review.

This notice is published in accordance with section 355.22(a)(3) of the Commerce Regulations published in the **Federal Register** on December 27, 1988 (53 FR 52354) (to be codified at 19 CFR 355.22).

Dated: July 28, 1989.

Richard W. Moreland,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 89–18193 Filed 8–3–89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Anchovy Plan Development Team will hold a public meeting on August 25, 1989, at 10 a.m., at the National Marine Fisheries Service, Southwest Fisheries Center, 8604 La Jolla Shores Drive, La Jolla, CA. The Team will begin developing a plan amendment to the Council's anchovy fishery management plan, which would provide for small reduction fishery under special conditions when it otherwise would be precluded by the plan.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: July 31, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–18238 Filed 8–3–89; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will hold a public meeting of the Snapper/Grouper Advisory Panel at the Council's headquarters (address below), beginning on August 21, 1989, at 1 p.m., and concluding on August 22, at noon. The advisory panel will be requested to offer input on items for inclusion in Amendment #2 to the fishery management plan for the snapper/ grouper fishery of the South Atlantic region. Topics for discussion include use of fish traps, species to be examined, status of the resource, Special Management Zones, and potential management measures such as size limits, bag limits and quotas. A detailed agenda will be available to the public on or about August 4, 1989.

For more information contact Carrie R.F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, one Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Dated: July 31, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–18239 Filed 8–3–89; 8:45 am]

BILLING CODE 3510-22-M

[Docket No. 90643–9143]

RIN 0648–AC34

King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of approval of a fishery management plan; correction.

SUMMARY: This document corrects an error in the notice of approval of the Fishery Management Plan for the King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands published July 11, 1989 (54 FR 29080).

EFFECTIVE DATE: June 2, 1989.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin, 907–586–7229.

In rule document 89–10236 beginning on page 29080 in the issue of July 11, 1989, make the following correction:

On page 29081, third column, third complete paragraph beginning with the word "Restricting", line 2, "Council" should read "State".

Dated: July 28, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89–18179 Filed 8–3–89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1989 a commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: September 5, 1989.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On April 4, June 2 and 16, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 14130, 23684 and 25601) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the services procured by the Government.

Accordingly, the following commodity and services are hereby added to Procurement List 1989:

Commodity

Pole, Folding Cot Insect Bar 7210–00–287–5641

Services

Janitorial/Custodial
Federal Supply Service Depot, 4100 West 76th Street, Chicago, Illinois.

Janitorial/Custodial
Building 691, Logistics Systems Operations Center, Hill Air Force Base, Utah.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–18270 Filed 8–3–89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1989 Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 services to be provided by workshops for the blind or other severely handicapped.

Comments must be received on or before: September 5, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Commissary Shelf Stocking, U.S. Naval Academy, Annapolis, Maryland.

Janitorial/Custodial, Naval Propulsion Training Unit Complex (NPTU), Naval Weapons Station, Charleston, South Carolina.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–18271 Filed 8–3–89; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Mercantile Exchange ("CME") has applied for designation as a contract market in futures on One-Month LIBOR (London InterBank Offered Rate). The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before September 5, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

References should be made to the CME's proposed One-Month LIBOR futures contract.

FOR FURTHER INFORMATION CONTACT: Stephen Sherrod, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7227.

SUPPLEMENTARY INFORMATION: Most of the terms and conditions of the proposed contract are comparable to the CME's Three-Month Eurodollar futures contract. Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and condition of the proposed futures contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC on July 31, 1989.

Steven Manaster,

Director, Division of Economic Analysis.

[FR Doc. 89–18303 Filed 8–3–89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Retirement Board of Actuaries

AGENCY: Department of Defense Retirement Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Retirement Board has been scheduled to implement the provisions of chapter 74, title 10, United States Code (10 U.S.C. 1461 et. seq.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the military retirement system. Persons desiring to attend the DoD Retirement Board of Actuaries meeting must notify Ms. Dorothy Hemby at 696–6336 by August 24, 1989. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: August 29, 1989, 11:00 a.m.–1:00 p.m.

ADDRESS: Room 3E732, the Pentagon.

FOR FURTHER INFORMATION CONTACT: Benjamin Gottlieb, Executive Secretary, DoD Office of the Actuary, 4th Floor, 1600 Wilson Boulevard, Arlington, Virginia 22209–2593, (202) 696–5869.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 31, 1989.

[FR Doc. 89–18206 Filed 8–3–89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 5, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: July 31, 1989.

Carlos U. Rice,

Director, for Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Extension
Title: Perkins Loan Program
Frequency: On Occasion
Reporting Burden:
Responses: 1
Burden Hours: 68,502
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 11,929
Abstract: The records are maintained by institutions that administer the Perkins Loan Program. The recordkeeping and disclosure requirements are necessary to ensure that institutions have followed the prescribed regulatory procedures in administering the program and to increase the effectiveness of loan collection efforts.

[FR Doc. 89–18181 Filed 8–3–89; 8:45 am]

BILLING CODE 4000-1-M

DEPARTMENT OF ENERGY

Award of a Cooperative Agreement; Noncompetitive Financial Assistance; University of Utah Nuclear Engineering Department

AGENCY: Department of Energy (DOE), Nevada Operations Office.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: DOE announces that pursuant to the DOE Financial Assistance Rule, 10 CFR 600.14(e)(1), it intends to award a noncompetitive financial assistance cooperative agreement for the training of community monitoring station managers by the Nuclear Engineering Department of the University of Utah.

Since 1981, the Nevada Operations Office of the DOE has funded and supervised the Community Monitoring Program to improve public awareness of radiological-related activities at the Nevada Test Site. In 18 communities, special monitoring stations have been set up to monitor and record environmental radioactivity. Local residents, preferably science teachers, operate the stations. DOE provides training semiannually for these station managers and their alternates by utilizing the expertise of the University of Utah Nuclear Engineering Department. These station managers, in turn, provide the interface with these communities and DOE that enables rapid dissemination of information and feedback of public concerns regarding Nevada Test Site activities.

Description of activities To Be Supported: The University of Utah will prepare and present training sessions for the Community Radiation Monitoring Program station managers and alternate station managers. There will be two training sessions each year, one for five days and one for two days, during the period of this cooperative agreement at a time and location mutually acceptable to the University of Utah and the DOE.

BEST COPY AVAILABLE

The University of Utah will operate and maintain the radiation monitoring station in Salt Lake City, by daily assuring the proper operation of the equipment and sending environmental samples to Las Vegas, Nevada, for analysis. They will also attend and participate in community meetings within the State of Utah for the purpose of responding to questions regarding the technical aspects of the community monitoring program.

Eligibility for the award of this cooperative agreement is being limited to the University of Utah because of its radiological and nuclear engineering programs with personnel who are well qualified for this training purpose, its proximity to the Nevada Test Site, and the special concern of the people of Utah regarding the effects of nuclear testing in Nevada on the health and safety of Utah residents. The University of Utah has established a credibility with the community monitoring station managers over the eight years they have participated in the program and are in sufficiently close proximity to be able to participate in community meetings without excessive travel costs. They will also continue operating the community monitoring station in Salt Lake City.

The term of this cooperative agreement is for five years and will commence October 1, 1989, and will end September 30, 1994. The total estimated cost of this award is $150,000.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Nevada Operations Office, ATTN: JoAnne C. Burrows, P.O. Box 98518, Las Vegas, NV 89193–8518.

Issued in Las Vegas, Nevada, on July 18, 1989.

Nick C. Aquilina,

Manager.

[FR Doc. 89–18296 Filed 8–3–89; 8:45 am]

BILLING CODE 6450–01–M

Office of the Secretary

Public Hearings To Solicit Views From Public Officials and the General Public on the Development of a National Energy Strategy

AGENCY: Office of the Secretary, DOE.

ACTION: Notice of meetings to invite public officials and the general public to provide comments on the development of a National Energy Strategy.

SUMMARY: This is the second in a series of public hearings being conducted throughout the country by the Department of Energy soliciting comments from interested parties on a wide range of energy issues and recommended solutions.

DATES AND PROCEDURES: The public hearing is scheduled for August 8, 1989, from 10:00 a.m. to 12:00 Noon and 1:00 p.m. to 5:00 p.m., at the Aaronson Auditorium, Tulsa City-County Library, 400 Civic Center, (located at the corner of Fourth Street and Denver Avenue), Tulsa Oklahoma 74103. Persons wishing to submit testimony to DOE in conjunction with this hearing should forward written comments to Ruth L. Burns, Office of Policy, Planning and Analysis, Department of Energy, Forrestal Building, Room 7H–034, 1000 Independence Avenue, SW, Washington, DC 20585. Persons unable to testify may submit their comments for the record. All testimony received will be compiled and made available to the public.

Individuals interested in testifying at this hearing should contact Ruth L. Burns, Office of Policy, Planning and Analysis, Department of Energy at (202) 586–4767 no later than 4:00 p.m., Friday, August 4, 1989. The third hearing in this series has been scheduled for August 23, 1989, in Boise, Idaho. Additional hearings have been scheduled for Seattle, Washington on August 28, 1989, and Louisville, Kentucky on September 8, 1989. As soon as information is available regarding specific locations and times, it will be announced.

FURTHER INFORMATION CONTACT: For further information, please write or call Ruth L. Burns, Office of Policy, Planning and Analysis, Department of Energy, Forrestal Building, Room 7H–034, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4767.

Linda G. Stuntz,

Deputy Under Secretary, Office of Policy, Planning and Analysis, U.S. Department of Energy.

[FR Doc. 89–18449 Filed 8–2–89; 4:59 pm]

BILLING CODE: 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 et seq.).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, or management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before September 5, 1989.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–73), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–2171.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed above.)

The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–590
3. 1902–0147
4. Wellhead Pricing: Pricing Investigations
5. Extension
6. On occasion
7. Mandatory
8. Businesses or other for-profit
30 respondents
10. 500 responses
11. 1 hour per response
12. 500 hours (total)
13. The FERC–590, Wellhead Pricing: Pricing Investigation, is a field audit/investigation of jurisdictional natural gas companies with sales or purchases of natural gas in any of eight general pricing categories of the NGPA.

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–542A
3. 1902–0129
4. Gas Pipeline Rates: Tracking and Recovery of Alaska Natural Gas Transportation System (ANGTS) Charges
5. Extension
6. On occasion
7. Mandatory
8. Businesses or other for-profit
9. 1 respondent
10. 1 response
11. 1 hour per response (standby status)
12. 1 hour (total)
13. Pursuant to section 9 of the ANGTA and sections 4, 5, and 16 of the NGA, the Commission requires these data to determine if the ANGTS' rates and charges complies with the requirements.

Authority: Sections 5(a), 5(b), 13(b), and 52, Public Law 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, July 28, 1989.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 89–18297 Filed 8–3–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER84–705–010, et al.]

Boston Edison Co., et al.; Electric rate, Small power production, and Interlocking Directorate Filings

July 31, 1989.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. ER84–705–010]

Take notice that on July 19, 1989, Boston Edison Company tendered for filing its refund report in compliance with the Commission's orders issued on April 7, 1989, and June 5, 1989.

Comment date: August 15, 1989, in accordance with Standard paragraph E at the end of this notice.

2. Fort Howard Corporation

[Docket No. QF86–608–002]

On July 20, 1989, Fort Howard Corporation (Applicant), of 1919 South Broadway, Green Bay, Wisconsin 54304 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations.

The topping-cycle cogeneration facility is located at Applicant Fort Howard's Savannah River Mill paper manufacturing plant, in Effingham County, Georgia. The facility when completed will consist of two coal-fired circulating fluidized bed boilers, two 45 MW extraction/condensing steam turbine generators, two 25 MW gas/oil-fired combustion turbine generators, and two waste-heat recovery boilers. Thermal energy recovered from the facility will be used for process and space heating and cooling. The maximum electric power production capacity of the facility will be 113 MW. The primary energy source will be coal and natural gas or oil.

The original application was filed by Fort Howard Paper Company on March 18, 1986, and certification was granted on June 26, 1986, 35 FERC ¶ 62,556 (1986). The recertification is requested due to: 1) change in Applicant's name; 2) inclusion of a subsection located at the plant site; 3) decrease in the net electric power production capacity from 125.49 MW to 113 MW (the 31 MW extraction/non condensing turbine generator as proposed in the original applicaiton will not be installed).

Comment date: Thirty days from publication in the **Federal Register**? in accordance with Standard Paragraph E at the end of this notice.

3. Ocean State Power

[Docket No. ER89–564–000]

Take notice that on Ocean State Power (Ocean State I), on July 1, 1989, tendered for filing the following amendments to its rate schedules with the Federal Energy Regulatory Commission:

Supplement No. 9 to Rate Schedule FERC No. 1
Supplement No. 6 to Rate Schedule FERC No. 2
Supplement No. 4 to Rate Schedule FERC No. 3
Supplement No. 6 to Rate Schedule FERC No. 4

The supplements are amendments (Amendments) to the unit power agreements between Ocean State I and Boston Edison Company, New England Power Company, Montaup Electric Company, and Newport Electric Corporation. The Amendments are necessitated, for the most part, by the separation of ownership of the two units of the Ocean State Power Project. The Amendments do not constitute a rate increase.

Copies of the filing were served upon Boston Edison Company, New England Power Company, Montaup Electric Company, Newport Electric Corporation, the Massachusetts Department of Public Utilities, the Rhode Island Public Utilities Commission and TransCanada Pipelines Limited.

Comment date: August 15, 1989, in accordance with Standard paragraph E at the end of this notice.

4. U.S. Department of Energy, Bonneville Power Administration

[Docket Nos. EF89–2011–000 and EF 89–2021–000]

Take notice that the Bonneville Power Administration (BPA) on July 25, 1989, tendered for filing proposed rate extensions for its wholesale power and transmission rates pursuant to section 7(a)[2) of the Northwest Power Act, 16 U.S.C. 300.21, BPA seeks final confirmation of the proposed rates, effective October 1, 1989. In the alternative, BPA seeks interim approval effective October 1, 1989, pursuant to Commission regulation 300.20. Exceptions to these approval dates are hereafter noted.

BPA proposes to extend its 1987 wholesale power and transmission rates through fiscal year (1991) by readopting its 1987 rate schedules, with the exception of a modification to the Cost Recovery Adjustment Clause (CRAC). The Administrator has reviewed BPA's current wholesale power and transmission rate schedules and has determined that current rates will produce sufficient revenue for BPA to meet its statutory requirements.

The proposed 1989 rate schedule contain a Cost Recovery Adjustment Clause which differs from that contained in BPA's 1987 rate schedules. BPA proposes the change as enabling BPA to better assure cost recovery and realization of the BPA Administrator's financial goals. The modified CRAC will trigger if BPA net revenue (the difference between actual revenues and actual expenses) falls below zero. The amount recovered will equal the amount that the net revenue falls below zero up

to a maximum of $127.0 million in 1990 nine-month adjustment period and $138.4 million in a 1991 nine-month adjustment period. Each adjustment period is based on a 12-month evaluation period. Net revenue will be measured in FY 1989 and, if less than zero, CRAC may be implemented in the last 9 months of 1990. Similarly, net revenue will be measured in FY 1990, and if less than zero, CRAC may be implemented in the last 9 months of 1991. There will be no downward adjustment of rates if net revenue is greater than $0.

BPA requests approval effective October 1, 1989 through September 30, 1991 for the following proposed wholesale power rates and their associated General Rate Schedule Provisions: PF–89 Priority Firm Power Rate; IP–89 Industrial Firm Power Rate; SI–89 Special Industrial Firm Power Rate; CF–89 Firm Capacity Rate; CE–89 Emergency Capacity Rate; NR–89 New Resource Firm Power Rate; NF–89 Nonfirm Energy Rate; SS–89 Share-the-savings Energy Rate; RP–89 Reserve Power Rate. BPA requests approval of its proposed SP–89 Short Term Surplus Firm Power Rate (SP–89) effective October 1, 1989 through September 30, 1994.

BPA requests approval effective October 1, 1989 through September 30, 1991 for the following proposed transmission rate schedules and their associated general transmission rate schedule provisions: FPT–89.1 formula Power Transmission; IR–89 Integration of Resources; IS–89 Southern Intertie Transmission; IN–89 Northern Intertie Transmission; IE–89 Eastern Intertie Transmission; ET–89 Energy Transmission; MT–89 Market Transmission. BPA requests approval of the TGT–1 Townsend-Garrison Transmission and UFT–83 Use-of-Facilities Transmission schedules effective July 1, 1990 through September 30, 1991. Approval of the FPT–87.3 Formula Power Transmission schedule (to be renamed the FPT–89.3 on October 1, 1989) is requested for a one year period from October 1, 1990.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Ocean State Power II

[Docket No. ER89–563–000]

Take notice that on July 21, 1989, Ocean State Power II (Ocean State II) tendered for filing with the Federal Energy Regulatory Commission four initial rate schedules. The rate schedules consist of unit power agreements between Ocean State Power II and Boston Edison Company, New England Power Company, Montaup Electric Company and Newport Electric Corporation, respectively. The unit power agreements provide for the sale of the capacity and corresponding energy of a combined cycle unit to be constructed in Burrillville, Rhode Island and owned by Ocean State II.

Ocean State II has requested a waiver of notice requirements to permit filing of the rate schedule more than 120 days prior to its proposed effective date. Copies of the filing were served upon Boston Edison Company, New England Power Company, Montaup Electric Company, Newport Electric Corporation, the Massachusetts Department of Public Utilities and the Rhode Island Public Utilities Commission.

Comment date: August 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER89–556–000]

Take notice that New England Power Company (NEP), on July 18, 1989, tendered for filing a Letter Agreement between NEP and Boston Edison Company (BECO) that provides for the sale by NEP of twenty megawatts of capacity and related energy from NEP's purchase from New York State Electric and Gas Corporation for the period June 1, 1989 through June 30, 1989.

NEP requests an effective date of June 1, 1989 and waiver of the Commission's notice provision pursuant to § 35.11.

Comment date: August 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. John Nelson

[Docket No. ID–2353–001]

Take notice that on July 21, 1989, John Nelson (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director—Ohio Edison Company
Director—The Lamson & Sessions Co.

Comment date: August 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Company

[Docket No. ER89–454–001]

Take notice that on July 20, 1989, Southern California Edison Company (Edison) tendered for filing the withdrawal of Amendment No. 2 to the Edison-Azusa Interruptible Transmission Service Agreement (Amendment) designated Rate Schedule FERC No. 160, Docket No. ER89–454, which was filed with the Commission on May 23, 1989.

Withdrawal of Amendment No. 2 to the Edison-Azusa Interruptible Transmission Service Agreement.

It has come to our attention through discussions with the FERC staff that Edison's filing was not necessary.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Azusa.

Comment date: August 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Green Mountain Power Corporation

[Docket No. ER89–569–000]

Take notice that on July 25, 1989, Green Mountain Power Corporation (GMP) tendered for filing a proposed Electric Service Agreement for wholesale electric service by GMP to the Northfield Electric Department, Town of Northfield, Vermont pursuant to Green Mountain's FERC Electric Tariff Power Rate W. GMP has requested waiver of the 60-day notice requirement set forth in Section 35.3 of the Commission's regulations in order to permit service under the Electric Service Agreement to commence on September 1, 1989.

Comment date: August 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Idaho Power Company

[Docket No. ER89–567–000]

Take notice that on July 24, 1989, Idaho Power Company (IPC) tendered for filing, pursuant to Section 205 of the Federal Power Act, a Transmission Services Agreement executed on June 6, 1989 between the United States Department of Energy acting by and through the BPA and Idaho Power Company. The term of the Agreement is from June 6, 1989 to December 31, 2002.

Comment date: August 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of Oklahoma

[Docket No. ER89–568–000]

Take notice that on July 24, 1989, Public Service Company of Oklahoma (PSO) tendered for filing an Interconnection and Interchange Agreement (the Agreement) betweeen Mid-Continent Power Company, Inc. (MCPC) and PSO. PSO proposes that the Agreement be made effective as of July 21, 1989 and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing have been sent to the Oklahoma Corporation Commission and to MCPC.

Comment date: August 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power & Light Company

[Docket No. ER89–566–000]

Take notice that Florida Power & Light Company (FPL), on July 24, 1989, tendered for filing the following documents: Amendment Number Two to Agreement for Full Requirements Electric Service by Florida Power & Light Company (Company) and Seminole Electric Cooperative, Inc. (Rate Schedule FR–2): Amendment Number Two to Aggregate Billing Partial Requirements Service Agreement between Florida Power and Light Company and Seminole Electric Cooperative, Inc. (Rate Schedule FERC No. 77) and Revised Sheet No. 24 of the Company's FERC Electric Tariff, Second revised Volume No. 1.

FPL states that under the above Amendments, FPL will terminate service under the Agreement for Full Requirement Electric Service for Brighton distribution delivery point; and initiate service to Brighton distribution delivery point under the Aggregate Billing Partial Requirements Service Agreement effective 12.01 AM on July 29, 1989.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment be made effective immediately.

FPL states that copies of the filing were served upon Seminole Electric Cooperative, Inc.

Comment date: August 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. Montana Power Company

[Docket No. ER89–565–000]

Take notice that on July 24, 1989, the Montana Power Company (MPC) tendered for filing pursuant to section 205 of the Federal Power Act an agreement effective May 27, 1988 for the transmission of electrical power for the Bonneville Power Administration.

MPC has requested waiver of the notice provisions of § 35.3 of the Commission's regulations in order to permit the agreement to become effective on the date indicated above in accordance with its terms.

Comment date: August 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

14. Commonwealth Edison Company

[Docket No. ER89–557–000]

Take notice that July 18, 1989, Commonwealth Edison Company (Edison) tendered for filing a Letter Agreement dated June 14, 1989, between Edison and Madison Gas and Electric Company (MG&E) and a Letter Agreement dated June 19, 1989, between Edison and Wisconsin Public Service Corporation (Wisconsin). The Edison-MG&E Letter Agreement provides for the sale of Short Term Power and General Purpose Energy to each other whenever mutually agreed upon. The Edison-Wisconsin Letter Agreement provides for the sale of Short Term Power and General Purpose Energy by Edison to Wisconsin whenever mutually agreed upon.

Edison requests expedited consideration of the filing and an effective date for each Letter Agreement coincident with the Commission's order accepting the rate schedules for filing. Accordingly, Edison requests waiver of the Commission's notice requirements, to the extent necessary.

Copies of this filing were served upon MG&E, Wisconsin, the Illinois Commerce Commission, and the Public Service Commission of Wisconsin.

Comment date: August 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant as parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89–18194 Filed 8–3–89; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. ER89–465–000, et al.]

Green Mountain Power Corporation, et al.; Electric rate, Small Power Production, and Interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

1. Green Mountain Power Corporation

[Docket No. ER89–465–000]

July 26, 1989.

Take notice that on July 21, 1989, Green Mountain Power Corporation (Green Mountain) tendered for filing, in response to a deficiency letter from the Commission, information concerning the value adjustment provision in the proposed Electric Service Agreement for wholesale electric service to the Hardwick Electric Department, Town of Hardwick, Vermont, filed by Green mountain on May 26, 1989.

Comment date: August 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Sunnyside Cogeneration Associates

[Docket No. QF86–556–001]

July 26, 1989.

On July 17, 1989, Sunnyside Cogeneration Associates (Applicant) of 2920 North Academy Boulevard, Suite 201, Colorado Springs, Colorado 80903 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Carbon County, Utah. The facility will consist of two circulating fluidized bed combustion boilers, two extraction steam turbine generators, and related auxiliary equipment. The net electric power production capacity will be 45 megawatts. The primary energy source will be bituminous coal refuse. Construction of the facility is expected to begin in September 1989.

The original application was filed on March 5, 1986 and certification was granted on April 20, 1987 (39 FERC ¶62,091). The recertification is requested due to a change in the use of thermal energy output from the facility. In the original application the thermal energy was proposed to be used by an affiliated entity in a coal drying operation. The Applicant now proposes to sell the thermal output to an unaffiliated entity for greenhouse space heating.

Comment date: Thirty days from publication in the **Federal Register** in

accordance with Standard Paragraph E at the end of this notice.

3. Entergy Services, Inc.

[Docket No. ER89-531-000]

July 26, 1989.

Take notice that on June 30, 1989, Entergy Services, Inc. submitted a letter for filing advising the Commission that effective May 22, 1989, MSU System Services, Inc., a subsidiary of Entergy Corporation (formerly Middle South Utilities, Inc.) changed its corporate name to Entergy Services, Inc. Entergy states that the purpose for changing the corporate name was primarily to be in parallel with the name of the parent company which became Entergy Corporation on May 19, 1989.

Comment date: August 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Pennsylvania Power & Light Company

[Docket No. ER89-452-000]

July 26, 1989.

Take notice that Pennsylvania Power & Light Company (PP&L) on July 10, 1989 tendered for filing, as a supplement to its Rate Schedule FERC No. 84, the Fourth Supplement to the Capacity and Energy Sales Agreement, dated as of June 28, 1989, between PP&L and Jersey Central Power & Light Company (JC).

The Fourth Supplement to the Capacity and Energy Sales Agreement specifies the updated cost of decommissioning the Susquehanna Steam Electric Station determined using the annuity method.

PP&L requests waiver of the notice requirements of Section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the Fourth Supplement to the Capacity and Energy Sales Agreement can be made effective as of December 1, 1988.

PP&L States that a copy of its filing was served on JC, the Pennsylvania Public Utility Commission, and the New Jersey Board of Public Utilities.

Comment date: August 9, 1989, in accordance with Standard Paragraph end of this notice.

5. Green Mountain Power Corporation

[Docket No. ER89-425-000]

July 26, 1989.

Take notice that on July 3, 1989, Green Mountain Power Corporation (GMP) tendered for filing additional information, at the Commission's request, concerning the rate impact on GMP's wholesale customers of the Agreement for Purchase of Power between GMP and Fitchburg Gas and Electric Company.

Comment date: August 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Arizona Public Service Company

[Dockt No. ER89-561-000]

July 26, 1989.

Take notice that on July 19, 1989, Arizona Public Service Company (APS) tendered for filing a notice of cancellation of an agreement for firm power between Arizona Electric Power Cooperative, Inc. (AEPCO) (FPC Rate Schedule No. 57).

APS requests waiver of 18 CFR 35.15 of the Commission's rules to allow cancellation of the Agreement to become effect March 9, 1989.

Comment date: August 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Michigan Power Company

[Docket No. ER88-142-003]

July 26, 1989.

Take notice that on July 21, 1989, Michigan Power Company (Michigan Power) tendered for filing, in compliance with the Commission's order of June 7, 1989 in Docket No. ER88-142-002, proposed changes in its electric resale rate schedules presently on file with the Commission which are applicable to the City of Dowagiac, Michigan and the Village of Paw Paw, Michigan. The proposed change in resale rates will decrease Michigan Power's annual revenues from the City of Dowagiac by $86,199 and from the Village of Paw Paw by $67,543 for the period commencing December 22, 1987 and ending December 31, 1988 and will decrease Michigan Power's annual revenues from the City of Dowagiac by $117,649 and from the Village of Paw Paw by $88,624 for the period commencing January 1, 1989, based on a twelve month test period ended December 31, 1988 from rates in effect prior to December 22, 1987. The purpose of the present rate decrease filing is to reflect in Michigan Power's rates for the sale of power to the City of Dowagiac and the Village of Paw Paw reductions, approved by the Commission in Docket No. ER88-30-000, in the wholesale electric rates paid by Michigan Power to Indiana Michigan Power Company and an allocated portion of a one-time refund paid by I&M to Michigan Power as part of a settlement in Docket No. ER88-30-000.

Michigan Power requests that these rate changes be made effective as of December 22, 1987 and January 1, 1989.

Copies of the filing were served upon the City of Dowagiac, the Village of Paw Paw and the Michigan Public Service Commission.

Comment date: August 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. American Electric Power Service Corporation

[Docket No. ER89-548-000]

July 26, 1989.

Take notice that on July 3, 1989, American Electric Power Service Corporation (AEP) submitted for informational purposes, on behalf of Ohio Power Company (OPCO) Supplemental Schedules VII and IX, dated May 1, 1989 to the Agreement, dated as of April 1, 1974) between American Muncipal Power-Ohio, Inc. (AMP-Ohio) and OPCO. Also submitted on behalf of Columbus Southern Company (CSP) was Supplemental Schedule I, dated June 1, 1989, to the Interconnection Agreement, dated January 1, 1968 between City of Columbus and CSP.

Comment date: August 9, 1989, in accordance with Standard Paragraph end of this notice.

9. Northeast Utilities Service Company

[Docket No. ER89-555-000]

July 27, 1989.

Take notice that on July 17, 1989, Northeast Utilities Service Company (NUSCO) tendered for filing proposed rate schedules pertaining to:

I. Letter Agreement (Re: Capacity Sales), dated May 17, 1989, between NUSCO, as Agent for The Connecticut Light and Power Company (CL&P) and Western Massachusetts Electric Company (WMECO), and Commonwealth Electric Company (Commonwealth);

II. Letter Agreement (Re: Capacity Sales), dated November 4, 1988, between NUSCO, as Agent for CL&P, and Montaup Electric Company (Montaup); and

III. Sales Agreement with respect to Millstone 3 and Gas Turbines, dated June 1, 1988, between NUSCO, as Agent for CL&P and WMECO, and Newport Electric Company (Newport) (Agreements).

NUSCO requests that the Commission waive its notice and filing regulations to the extent necessary to permit the Agreements (I) to commence effective June 1, 1988 and to terminate effective August 31, 1988; (II) to commence effective July 1, 1988 and to terminate effective October 31, 1989; and (III) to commence effective June 1, 1988, respectively.

NUSCO states that copies of the rate schedules have been mailed or delivered to CL&P and WMECO, and to Commonwealth, Montaup and Newport.

NUSCO further states that the filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: August 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Nevada Power Company

[Docket No. ER89-560-000]

July 27, 1989.

Take notice that on July 20, 1989, Nevada Power Company (Nevada) tendered for filing an agreement entitled Short Term Power Agreement between Overton Power District No. 5 (Overton) and Nevada Power Company hereinafter "the Agreement". The purpose of the agreement is to establish the terms and conditions for the sale by Nevada to Overton of up to 15 MW per hour of capacity and energy during June, July, August and September, 1989.

Nevada requests an effective date of June 1, 1989 and therefore requests waiver of the Commission's notice requirements.

Nevada states that copies of the filing were serviced upon Overton.

Comment date: August 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Nevada Power Company

[Docket No. ER89-559-000]

July 27, 1989.

Take notice that on July 20, 1989, Nevada Power Company (Nevada) tendered for filing an agreement entitled Short Term Power Agreement between City of Boulder City (Boulder) and Nevada Power Company hereinafter "the Agreement." The purpose of the Agreement is to establish the terms and conditions for the sale by Nevada to Boulder of up to 10 MW per hour of capacity and energy during June, July, August and September, 1989.

Nevada requests an effective date of June 1, 1989 and therefore requests waiver of the Commission's notice requirements.

Nevada states that copies of the filing were served upon Boulder.

Comment date: August 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Oklahoma Gas and Electric Company

[Docket No. EC89-16-000]

July 27, 1989.

Take notice that on July 20, 1989, Oklahoma Gas and Electric Company (Applicant), an Oklahoma Corporation with its principal office at 321 N. Harvey, P.O. Box 321, Oklahoma City, Oklahoma, 73101, filed an application pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's Regulations thereunder, for authorization to sell certain electrical substation facilities to Oklahoma Municipal Power Authority.

The Company states it is engaged primarily in the generation, transmission, distribution and sales of electric energy in Oklahoma and western Arkansas. The facilities being sold and purchased will be devoted to supplying service to OMPA Participants only.

Comment date: August 16, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. Nevada Power Company

[Docket No. ER89-558-000]

July 27, 1989.

Take notice that on July 20, 1989, Nevada Power Company (Nevada) tendered for filing an agreement entitled Interconnection Agreement between Nevada Power Company and Valley Electric Association (Valley) hereinafter "the Agreement." The primary purpose of the Agreement is to establish the terms and conditions for the interchange of economy, emergency, and banked energy and for other power transactions that may be possible through the Parties' interconnected systems or through the systems of third Parties.

Nevada states that copies of the filing were served upon Valley.

Comment date: August 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

14. Central Vermont Public Service Corporation

[Docket Nos. ER88-456-002 and ER88-629-002]

July 27, 1989.

Take notice that on July 21, 1989, Central Vermont Public Service Corporation ("the Company") tendered for filing a report in compliance with a Commission order in the captioned dockets. The report includes cost reports which reflect the provisions of the settlement agreement among the parties which was approved by the Commission in the order. The report also shows monthly billing determinants, revenue receipts dates, and revenues under prior, present and settlement rates, the monthly revenue refund, and the monthly interest computed, together with a summary of such information for the total refund period.

Central Vermont states that this filing has been posted as required by the Commission's regulations and that it has served copies of this filing upon the affected wholesale customers, the New Hampshire Public Utilities Commission, and the Vermont Public Service Board.

Comment date: August 14, 1989, in accordance with Standard Paragraph E at the end of this notice

15. Pacific Gas and Electric Company

[Docket No. ER89-475-000]

July 28, 1989.

Take notice that on July 21, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing replacement pages for the Interconnection Rate Schedule filed by PG&E for the Sacramento Municipal Utility District in the above referenced docket.

PG&E states that the revised pages reflect the following changes:

(1) Exhibit D2-1: At former lines 2, 7 and 9, to clarify that losses under the separate SMUD EHV Contract (FERC Rate Schedule No. 37) are not changed by the IRS;

(2) Section C.4: At former lines 21 and 22, in addition to a change to Section A.15; and

(3) Section A.15: At former lines 28 (pages A-3) and 1 (page A-4), together with change to Section C.4 these changes should clarify the applicability of Ten-Minute Emergency Power Service to SMUD's purchases of firm power from Third Parties (including SMUD's proposed purchase from Edison).

Comment date: August 11, 1989, in accordance with Standard Paragraph E at the end of this notice

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18195 Filed 8-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF89-233-000]

Warner-Lambert Company, Parke-Davis Research Division; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

July 26, 1989.

On July 5, 1989, Warner-Lambert Company, Parke-Davis Research Division (Applicant), of 2800 Plymouth Road, Ann Arbor, Michigan 48105, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Ann Arbor, Michigan. The facility will consist of a combustion turbine generator and a heat recovery boiler. Thermal energy recovered from the facility will be used for space heating and cooling, hot water production and steam sterilization. The net electric power production capacity will be 2,826 KW. The primary energy source will be natural gas. The completion of the facility is scheduled for July, 1989.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18198 Filed 8-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI89-469-000]

Equitrans, Inc. v. Joseph H. Hager; Application for Abandonment and, in the Alternative, Complaint

July 28, 1989.

On June 29, 1989, as corrected on July 13, 1989, Equitrans, Inc. (Equitrans) filed an application under section 7(b) of the Natural Gas Act (NGA) for abandonment of natural gas sold to Equitrans by Joseph H. Hager (Hager) and, in the alternative, a complaint seeking reformation of the price terms of the contracts between Equitrans and Hager under section 5 of the NGA.

Equitrans states that Hager is the owner of natural gas wells located in West Virginia and sells the gas to Equitrans pursuant to gas purchase agreements [1] between Hager and Equitable Gas Company (Equitable), Equitrans' affiliate and predecessor-in-interest, which require Equitrans to purchase gas during the six month winter period from November 1 to May 1 of each year and provide for the shut-in of such gas from May 1 to November 1, unless such gas is needed by Equitrans. Equitrans further states that the contracts were altered pursuant to a settlement agreement between Hager and Equitrans dated November 1, 1982 (1982 settlement), and approved by the Commission by letter order issued February 17, 1983, in *Independent Oil and Gas Association of West Virginia* (IOGA), Docket Nos. RI74-188 and RI75-21, to provide that for all gas delivered after November 1, 1982, Equitrans shall pay the Natural Gas Policy Act of 1978 (NGPA) section 103 ceiling price, except for gas which qualifies under NGPA sections 102, 107, or 108, in which case Equitrans is obligated to pay the section 102 ceiling price and adjustments permitted by the NGPA and Commission regulations relating to taxes and other production-related allowances.

Equitrans asserts that in the fall of 1985, Equitrans (through Equitable) and Hager agreed to renegotiate the contracts to provide that from November 18, 1985 until January 21, 1988, Hager would sell gas to Equitrans at a price of $3.30 per Mcf and that Hager would pay all taxes and related charges and thereafter the purchase price would be set at the prevailing field purchase price, and Equitrans agreed to purchase gas from Hager during the entire year. Equitrans further asserts that it drafted such an agreement and operated under its terms from November 1985 through January 2, 1988, by refraining from shutting in Hager's production. Equitrans contends that Hager never executed the agreement, and on February 22, 1988, filed a claim against Equitrans in the United States District Court for the Northern District of West Virginia seeking enforcement of the original contracts, as modified by the 1982 settlement. Equitrans states that Hager has delivered and continues to deliver to Equitrans gas which qualifies for NGPA section 108 and therefore, is charging Equitrans the section 102 price.

Equitrans submits that abandonment is in the public interest. Equitrans contends the indefinite price escalation provided for in the contracts as modified by the 1982 settlement and the shutting in of production for six months every year is contrary to the public interest. Equitrans further contends that its willingness to purchase the gas all year at marketable prices clearly serves the public interest. Equitrans also argues that the contracts are unenforceable under West Virginia law. In the alternature, Equitrans requests reformation of the price terms of the underlying contracts to the prevailing field purchase price.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's rules of practice and procedure. All such motions or protests should be filed within 30 days following publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Hager's answer to the complaint is also due within 30 days following **Federal Register** publication.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18197 Filed 8-3-89; 8:45 am]

BILLING CODE 6717-01-M

[1] Equitrans states that the contracts are dated March 9, 1971, December 16, 1974, and two are dated August 15, 1975.

[Docket Nos. RP89-212-000 and CP89-759-001]

Transcontinental Gas Pipe Line Corporation; Proposed Waiver and Tariff Filing

July 31, 1989.

Take notice that on July 28, 1989, Transcontinental Gas Pipe Line Corporation (Transco) filed to request that the Commission take such action as may be necessary to permit Transco to temporarily waive restrictions in its existing FERC Gas Tariff and to submit certain tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff. The proposed effective date of the tariff sheets is August 1, 1989.

Transco states that on April 3, 1989 Transco filed with the Commission a Stipulation and Agreement ("April 3 Settlement") which would have settled various issues and proceedings related to, among other things, the Commission's Order Nos. 436 and 500 and the implementation of such Orders on Transco's system. Included in the April 3 Settlement were proposed revisions to Transco's Rate Schedule GSS, LSS and LGA ("Eastern Storage Rate Schedules") to remove certain restrictions in such rate schedules on the injection of gas purchased by its customers from parties other than Transco. In general terms, these tariff provisions limit the injection of such third-party gas, both on a daily and total quantity basis, to a percentage based upon the amount of each customer's daily firm purchase entitlement from Transco which has been permanently converted to firm transportation service. Pursuant to the terms of the April 3 Settlement, on April 3, 1989 Transco also filed a request for a temporary waiver of the *daily* restrictions on the injection of third-party gas under its affected storage rate schedules pending Commission approval of the April 3 Settlement. By letter order issued May 3, 1989, the Commission granted such temporary waiver. Subsequently, however, by order issued July 19, 1989 the Commission rejected the April 3 Settlement, without prejudice to resubmittal in a modified form.

Transco states that subsequent to the issuance of the July 19, 1989 order, Transco, its customers and other parties have been engaged in discussions regarding the terms of a revised settlement proposal to resolve the same issues that were addressed in the April 3 Settlement, including the removal of the limitations on the injection of third-party gas into storage under the Eastern Storage Rate Schedules. Transco anticipates that a revised settlement will be filed in the near future. However, four of the seven months which comprise the 1989 storage injection season have lapsed. Furthermore, due to the restrictions on the injection of third-party gas into such facilities, many of Transco's customers are behing their normal operational schedules for filling their storage balances. As a temporary resolution of this matter, Transco is willing to waive all restrictions on the injection of third-pary gas into storage under the Eastern Storage Rate Schedules during the month of August, 1989. Therefore, Transco requests that the Commission promptly take such actions as may be necessary to permit such waiver of tariff restrictions by Transco commencing August 1, 1989.

Transco states that with regard to a related matter, the requested waiver by Transco during August of the restrictions on the injection of third-party gas into storage under the Eastern Storage Rate Schedules would result in Transco having virtually no sales under its CD, G or OG Rate Schedules during such month since Transco's currently effective sales rate is substantially above the spot market prices for gas which its customers can purchase to fill their storage balances in the absence of such storage injection restrictions. However, Transco has obligations to certain of its producers to purchase approximately 250 MMcf per day of "must-take" gas supplies consisting mostly of casinghead gas. Transco states that its ability to grant a limited term waiver of the storage restrictions is dependent on its ability to dispose of "must take" gas during such period. If the storage tariff waiver requested herein is granted, Transco states that it intends to continue to purchase such "must-take" gas supplies and to the extent necessary under operating conditions, resell such gas supplies under its Rate Schedule IS which was approved by Commission order issued March 24, 1989 in Docket CP89-759-000. However, Transco does not have on file with the Commission currently effective Rate Schedule IS tariff sheets. In that regard, Transco submits in the instant filing certain original tariff sheets to Second Revised Volume No. 1 of Transco's FERC Gas Tariff, which comprise Rate Schedule IS and the form of Service agreement to be used under such Rate Schedule.

Transco states that copies of the instant filing are being mailed to its jurisdictional customers, State Commissions and interested parties. In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before 8/7/89. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18196 Filed 8-3-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3625-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 17, 1989 through July 21, 1989 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D-AFS-E65038-NC, Rating LO, Grassy Gap and Wesser Timber Sales Management Plan, Implementation, Nantahala National Forest, Graham and Swain Counties, NC.

Summary: EPA does not object to the selection of Alternative D as the preferred alternative.

ERP No. DS-FHW-H40137-NB, Rating LO, Van Dorn Street Connection, NV-2/9th and 10th Street to US-77/West Bypass, Additional Alternatives Analysis, Funding, City of Lincoln, Lancaster County, NB.

Summary: EPA has no objection to the additional alignment addressed in the Supplemental EIS.

ERP No. D-FHW-K40167-CA, Rating EO2, CA-237 Upgrading to Freeway Standards, Mathilda Avenue to I-880, Funding and 404 Permit, Santa Clara County, CA.

Summary: EPA expressed environmental objections because the project would eliminate 20.5 acres of seasonal wetlands and riparian habitat and lacks sufficient information about acreage determination, specific

proposed mitigation and whether other less-damaging, practicable alternatives exist. EPA recommended that the FEIS contain more detailed information on wetland impacts and mitigation and air quality impacts, particularly as they pertain to carbon monoxide and ozone.

EPA No. D–FHW–K40168–CA, Rating EO2, I–5 Widening and Interchange Improvements, I–5 at Genesee Avenue, I–805 at Mira Mesa Boulevard and I–5 at Del Mar Heights Road, Funding, 404 and Bridge Permits, City and County of San Diego County, CA.

Summary: EPA expressed environmental objections because the Build Alternatives would require the placement of fill material in approximately 13–15 acres of wetlands and could not determine whether the proposed project was consistent with section 404 requirements. EPA encourages the development of an alternative that includes high occupancy vehicle and light rail transit features in order to prevent air quality violations or any futher deterioration. EPA recommended the preparation of a supplemental EIS.

FINAL EISs

ERP No. F–COE–H36091–IA, Mississippi River Flood Damage Reduction Facilities, Construction, Coon Rapids Dam to Ohio River, Muscatine and Louisa Counties, IA.

Summary: EPA's concerns have been addressed as long as the recommendations in the Final Fish and Wildlife Service Coordination Act Report, dated March 26, 1986 are implemented.

ERP No. FS–FHW–D40050–MD, MD–32 Relocation and Upgrade of Related Facilities, MD–108 to Pindell School Road, Funding and 404 Permit, Howard County, MD. SUMMARY: EPA has no objections to the project as described in the suplemental final EIS.

ERP No. F–FHW–D40231–MD, US 50/Salisbury Bypass Construction, US 50 East of Rockawalkin Road to the US 50 and US 13 Bypass Interchange, Funding and 404 Permit, Wicomico County, MD.

Summary: EPA is concerned about the lack of additional information on the elimination of Alternative 5, the potential for contamination of groundwater resources and the increased acreage of wetlands impacted.

ERP No. F–FHW–E40572–AL, Corridor X Highway Construction, Walker/Jefferson County Line to US 31, Funding and Possible 404 Permit, Birmingham Metropolitan Area, Jefferson County, AL.

Summary: EPA had minor concerns over impacts to do with residential noise levels and riparian wetlands.

Dated: August 1, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–18295 Filed 8–3–89; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–36249]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075. Availability of Environmental Impact Statements. Filed July 24, 1989 Through July 28, 1989. Pursuant to 40 CFR 1506.9.

EIS No. 890206, Draft, AFS, UT, Seven Peaks All Season Ski Resort, Development and Management, Special Use Permit, Provo Peak Basin Area, Uinta National Forest, Utah County, UT, Due: September 18, 1989, Contact: Larry Call (801) 377–5780.

EIS No. 890207, Final, BOP, IL, Greenville Federal Correctional Institution, Construction and Operation, Bond County, IL, Due: September 5, 1989, Contact: William Patrick (202) 272–6871.

EIS No. 890208, Final, USN, NC, Mid-Atlantic Electronic Warfare Range (MAEWR) Within Restricted Airspace R–5306A Establishment, Beaufort, Carteret, Craven, Hyde and Pamlico Counties, NC, Due: September 5, 1989, Contact: Charles H. Maguire (804) 445–2307.

EIS No. 890209, FSuppl, UMT, CA, Los Angeles Metro Rail Rapid Transit Project, Updated Information and Impacts of the New Locally Preferred Alternative, Funding, Los Angeles County, CA, Due: September 5, 1989, Contact: Carmen Clark (415) 974–7317.

EIS No. 890210, Final, BOP, PR, Guaynabo Metropolitan Detention Center, Construction and Operation, Implementation, PR, Due: September 5, 1989, Contact: William Patrick (202) 272–6871.

Dated: August 1, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–18294 Filed 8–3–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3624–7

National Drinking Water Advisory Council; Open Meeting

Under section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300F *et seq.*), will be held on August 20, 1989 from 1:00 p.m. until 3:00 p.m. in the EPA Auditorium, U.S. Environmental Protection Agency (EPA) Headquarters, 401 M Street SW., Washington, DC. Council members will be participating by Conference Call.

The purpose of the meeting is to prepare recommendations for the Administrator of EPA on the final regulatory structure (e.g. maximum contaminant level or treatment technique) for the National Primary Drinking Water Regulation for Lead and Copper and on whether lead service line replacement should be a component of the final regulation.

The meeting will be open to the public. The Council encourages the hearing of outside statements and will allocate the first hour of their conference call for this purpose. Oral statement will be limited to five minutes and it is preferred that only one person present the statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 2285 before August 28, 1989. Due to time constraints, oral statements will be reserved on a first come, first served basis. When one hour block is filled, no more time will be available.

The Council encourages written statements that may be sent to them prior to the meeting. Anyone wishing to provide a written statement, must do so before August 21, 1989. These statements should be sent to: Charlene E. Shaw, Designated Federal Official, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Drinking Water (WH–550A), 401 M Street, SW., Washington, DC 20460. Written statements will be recognized at the Council meeting and will become part of the permanent meeting record.

Any member of the public that would like to attend the Council meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw at the address listed above, or call (202) 382–2285.

Dated: July 28, 1989.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 89–18258 Filed 8–3–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3624–6]

National Drinking Water Advisory Council; Open Meeting

Under section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300F *et seq.*), will be held on August 16, 1989 from 1:00 p.m. until 3:00 p.m. in Room #2, South Conference Center, U.S. Environmental Protection Agency (EPA) Headquarters, 401 M Street SW., Washington, DC. Council members will be participating by Conference Call.

The purpose of the meeting is to prepare recommendations for the Administrator of EPA on the proposed National Primary and Secondary Drinking Water Regulations for 30 synthetic organic chemicals (SOCs) and 8 inorganic chemicals (Phase 2).

The meeting will be open to the public. The Council encourages the hearing of outside statements and will allocate the first hour of their conference call for this purpose. Oral statements will be limited to five minutes and it is preferred that only one person present the statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 382–2285 before August 16, 1989. Due to time constraints, oral statements will be reserved on a first come, first served basis. When the one hour block is filled, no more time will be available.

The Council encourages written statements that may be sent to them prior to the meeting. Anyone wishing to provide a written statement, must do so before August 11, 1989. These statements should be sent to: Charlene E. Shaw, Designated Federal Official, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Drinking Water (WH–550A), 401 M Street, SW., Washington, DC 20460. Written statements will be recognized at the Council meeting and will become part of the permanent meeting record.

Any member of the public that would like to attend the Council meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw at the address listed above, or call (202) 382–2285.

Dated: July 28, 1989.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 89–18259 Filed 8–3–89; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–44534; FRL–3625–3]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on commercial hexane (CAS Nos. 96–37–7 and 110–54–3) and diethylene glycol butyl ether (DGBE) (CAS No. 112–34–5), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). This notice also announces the receipt of test data on aniline (CAS No. 62–53–3) and methyl tert-butyl ether (MTBE) (CAS No. 1634–04–4), submitted pursuant to a consent order under TSCA. Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for commercial hexane was submitted by the American Petroleum Institute pursuant to a test rule at 40 CFR 799.2155. It was received by EPA on July 17, 1989. The submission describes salmonella/mammalian-microsome mutagenicity assay of the vapor phase of commercial hexane using the desiccator methodology. Mutagenicity testing is required by this test rule.

Test data for (DGBE) was submitted by the Chemical Manufacturers Association, on behalf of Union Carbide Corporation, pursuant to a test rule at 40 CFR 799.1560. It was received by EPA on July 13, 1989. The submission describes a 90-day dermal toxicity study with a subgroup to evaluate fertility in rats with DGBE. Subchronic toxicity testing is required by this test rule.

Test data for aniline was submitted by the Synthetic Organic Chemical Manufacturers Association, Inc., pursuant to a consent order at 40 CFR 799.5000. It was received by EPA on July 14, 1989. The submission describes a mouse bone marrow micronucleus assay of aniline. In vivo mammalian bone marrow cytogenetics tests: Micronucleus assay are required by this consent order.

Test data for MTBE was submitted by the Methyl Tertiary Butyl Ether Committee (MTBE Health Effects Testing Task Force) on behalf of: Amoco Corporation, ARCO Chemical Company, Exxon Chemical Company—a division of Exxon Corporation, Sun Refining and Marketing Company and Texaco Chemical Company, pursuant to a consent order at 40 CFR 799.5000. It was received by EPA on July 12, 1989. The submission describes an inhalation developmental toxicity study in rabbits for MTBE. Developmental toxicity testing is required by this consent order.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of these submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS–44534). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: July 31, 1989.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89–18280 Filed 8–3–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to the Office of Management and Budget for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Extension of expiration date without any change in substance or method of collection.

Title: Application for a Merger or Other Transaction Pursuant to section 8(c) of the Federal Deposit Insurance Act (Phantom or Corporate Reorganization).

Form Number: FDIC 6220/07.

OMB Number: 3064–0015.

Expiration Date of Current OMB Clearance: October 31, 1989.

Frequency of Response: On occasion.

Respondents: Insured nonmember banks who apply for FDIC approval to effect a merger transaction for the principal purpose of corporate reorganization.

Number of Respondents: 200.

Number of Responses per Respondent: 1.

Total Annual Responses: 200.

Average Number of Hours per Response: 20.

Total Annual Burden Hours: 4,000.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contact: John Keiper, (202) 898–3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before October 3, 1989.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC contact would also be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to extend the use of application form FDIC 6220/07 which is used by FDIC-supervised banks who apply for FDIC approval to effect a merger transaction under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)). This type of transaction involves a phantom bank merger or other merger transaction for the principal purpose of corporate reorganization. The application form requires the applicant to furnish information concerning the terms and conditions of the merger, structure of the transaction, and a statement of condition of recent date for the applicant and the other institution. The information collected on the form is used by the FDIC as a basis for evaluating certain factors as required by section 18(c) of the FDIC Act before approving the application.

Dated: July 28, 1989.

Robert E. Feldman,

Deputy Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 89–18276 Filed 8–3–89; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–835–DR]

Louisiana; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–835–DR), dated July 18, 1989, and related determinations.

DATED: July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective July 21, 1989.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89–18263 Filed 8–3–89; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200272.

Title: South Carolina State Ports Authority Terminal Agreement.

Parties:

South Carolina State Ports Authority (Authority)

Harmony Cruise Lines, Ltd. (HCL)

Synopsis: The Agreement provides for a nonexclusive license to HCL to use the Authority's passenger terminal facility at the south end of Union Pier Terminal for HCL's day excursion cruise service.

By Order of the Federal Maritime Commission.

Dated: July 31, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–18201 Filed 8–3–89; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–010286–020.

Title: South Europe/U.S.A. Pool Agreement.

Parties:

Compania Trasatlantica Espanola, S.A.

Costa Container Line (A Division of Contship Containerlines Limited)

Evergreen Marine Corporation (Taiwan) Ltd.

Farrell Lines, Inc.

'Italia' di Navigazione, S.p.A.

Jugolinija

Lykes Lines (Lykes Bros. Steamship Co., Inc.)

A.P. Moller-Maersk Line

Nedlloyd Lines (Nedlloyd Lijnen B.V.)

P & O Containers (TFL) Ltd.

Zim Israel Navigation Company, Ltd.

Synopsis: The proposed modification would extend the existing Pool Period from July 31, 1989, until September 30, 1989.

By Order of the Federal Maritime Commission.

Dated: July 31, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–18202 Filed 8–3–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Northern Trust Corp.; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 21, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northern Trust Corporation,* Chicago, Illinois; to engage *de novo* through Northern Trust Brokerage, Inc., Chicago, Illinois, in combining investment advice with its existing brokerage services activities to institutional and retail customers, pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 31, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–18214 Filed 8–3–89; 8:45 am]

BILLING CODE 6210–01–M

Ocean State Bancshares Corp., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicted. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 28, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Ocean State Bancshares Corporation,* Middletown, Rhode Island; to become a bank holding company by acquiring 100 percent of the voting shares of Ocean State National Bank, Middletown, Rhode Island.

B. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *West Jersey Bancshares, Inc.,* Fairfield, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of West Jersey Community Bank, Fairfield, New Jersey.

C. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Citizens Bancshares, Inc.,* Salineville, Ohio; to acquire 97 percent of the voting shares of First National Bank of Chester, Chester, West Virginia.

D. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *First Security Corporation,* Norcross, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First Security National Bank, Norcross, Georgia.

E. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South La Salle Street, Chicago, Illinois 60690:

1. *Overton Bank Shares, Inc.,* Mondamin, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Mondamin Savings Bank, Mondamin, Iowa.

F. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Bancook Corporation,* Cook, Nebraska; to acquire 87.5 percent of the voting shares of Farmers Bank, Prairie Home, Nebraska.

2. *Tulsa National Bancshares, Inc.,* Tulsa, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares to Tulsa National Bank, Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, July 31, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–18215 Filed 8–3–89; 8:45 am]

BILLING CODE 6210–01–M

Albert P. Qualls, Jr.; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies.

The notificant listed below has applied under the Change in Bank Control. Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reseve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 28, 1989.

A. Federal Reserve Bank of Atlanta (Robert E., Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Albert P. Qualls,Jr.*, Fort Walton Beach, Florida; to acquire 68.05 percent of the voting shares of American National Financial Corporation, Panama City, Florida, and thereby indirectly acquire American National Bank, Panama City, Florida.

Board of Governors of the Federal Reserve System, July 31, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-18216 Filed 8-3-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[File No. 891-0069]

Societe Nationale Elf Aquitaine, et al; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, Societe Nationale Elf Aquitaine, a corporation based in Paris, to divest a chemical plant in New Jersey, and to "hold separate" the entire fluorocarbon division to eliminate antitrust concerns that would be created by its acquisition of Pennwalt Corp..

DATE: Comments must be received on or before October 3, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pennsylvania Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Edward F. Glynn, Jr., FTC/S-2627, Washington, DC 20580, (202) 326-2955. off.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement(s) containing a consent order(s) to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has(ve) been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order; Societe Nationale Elf Aquitaine et al.

In the matter of Societe Nationale Elf Aquitaine, a Corporation, Atochem S.A., a Corporation, Elf Aquitaine, Inc., a Corporation, Atochem Inc., a Corporation, Atochem North America, Inc., a Corporation, and Pennwalt Corporation, a Corporation.

The Federal Trade Commission (the "Commission"), having initiated an investigation of the proposed acquisition of the voting securities of Pennwalt Corporation ("Pennwalt") by Societe Nationale Elf Aquitaine ("SNEA") (SNEA, Atochem S.A., Elf Aquitaine, Inc., Atochem, Inc., Atochem North America, Inc., and Pennwalt collectively the "Proposed Respondents"), and it now appearing that Proposed Respondents are willing to enter into an agreement containing an order to divest certain assets and providing for other relief,

It is hereby agreed by and between Proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent SNEA is a French corporation with its principal executive offices located at Tour Elf, Paris La Defense, France.

2. Proposed Respondent Pennwalt is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its principal executive offices located at Three Parkway, Philadelphia, Pennsylvania 19102, USA.

3. Proposed Respondent Atochem S.A. is a French corporation with its principal executive offices located at 4 cour Michelet, Paris La Defense, France.

4. Proposed Respondent Elf Aquitaine, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal executive offices located at High Ridge Park, Stamford, Connecticut 06904, USA.

5. Proposed Respondent Atochem North America, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal executive offices located at 266 Harristown Road, Glen Rock, New Jersey 07452, USA.

6. Proposed Respondent Atochem Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal executive offices located at 266 Harristown Road, Glen Rock, New Jersey 07452, USA.

7. Proposed Respondents SNEA and Atochem S.A. submit to the jurisdiction of the Commission for the purpose of the entry and enforcement of the Order contained in this Agreement, and to the jurisdiction of the courts of the United States for the purpose of enforcing the Order.

8. Proposed Respondents Atochem Inc., Elf Aquitaine, Inc., Atochem North America, Inc. and Pennwalt admit all the jurisdictional facts set forth in the draft of complaint here attached.

9. Proposed Respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

10. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

11. This agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft of complaint here attached.

12. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to divest certain assets and providing for other relief in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to Proposed Respondents or to their American counsel's addresses as stated in this Agreement shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

13. Proposed Respondents have read the proposed complaint and Order contemplated hereby. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I.

As used in this Order, the following definitions shall apply:

a. "Acquisition" means SNEA's acquisition of any or all voting securities of Pennwalt.

b. "SNEA" means Société Nationale Elf Aquitaine, a French corporation, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates that Société Nationale Elf Aquitaine controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

c. "Pennwalt" means Pennwalt Corporation, a Pennsylvania corporation, as it was constituted prior to the acquisition, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates Pennwalt controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

d. "Atochem" means Atochem S.A., a French corporation, a directly wholly-owned subsidiary of SNEA, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates Atochem S.A. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

e. "EAI" means Elf Aquitaine, Inc., a Delaware corporation and a directly wholly-owned subsidiary of SNEA, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates Elf Aquitaine, Inc. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

f. "Atochem Inc." means Atochem Inc., a Delaware corporation and an indirectly wholly-owned subsidiary of SNEA, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates Atochem Inc. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

g. "ANA" means Atochem North America, Inc., a Delaware corporation and an indirectly wholly-owned subsidiary of SNEA, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates Atochem North America, Inc. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

h. "Respondents" means SNEA, Atochem S.A., Elf Aquitaine, Inc., Atochem Inc., Atochem North America, Inc. and Pennwalt.

i. "PVDF" means polyvinylidene fluoride homopolymers and copolymers.

j. "VF_2" means vinylidene fluoride monomer.

k. "Thorofare Plant" means the manufacturing facility currently owned and operated by Pennwalt located at Thorofare, New Jersey, and all of its assets, title, properties, interests, rights and privileges, of whatever nature, tangible and intangible, including without limitation all buildings, machinery, equipment, customer lists, and other property of whatever description, and including the right to use in the United States on a nonexclusive basis (under a license, lease, contract or similar arrangement) Pennwalt's current technology and know-how employed to produce HCFC-142b and VF_2 at such plant and all Pennwalt's commercial grades of PVDF whether or not produced at such plant.

l. "Acquirer" shall have the meaning given to the term in Section II.

m. "Commission" means the Federal Trade Commission.

II

It is ordered, That Respondents shall divest, absolutely and in good faith, to an acquirer that receives the prior approval of the Commission (the "Acquirer"), within twelve (12) months after the date this Order becomes final, the Thorofare Plant.

III

It is further ordered, That:

A. If Respondents have not divested the Thorofare Plant as contemplated by Section II within the twelve-month period provided for in Section II, Respondents shall consent to the appointment of a trustee empowered to divest the Thorofare Plant. In the event that the Commission brings an action pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action. The appointment of a trustee shall not preclude the Commission from seeking civil penalties or any other relief available to it for any failure by Respondents to comply with this Order.

B. The trustee shall also be empowered to include in the assets to be divested a commitment from Respondents to provide the Acquirer for a period of at least one (1) year from the date of divestiture with technical assistance required by said Acquirer to operate the Thorofare Plant using the proprietary technology and know-how licensed as part of the divestiture of the Thorofare Plant. If the commitment to provide technical assistance to the Acquirer is included in the assets that the trustee is empowered to divest and if the Commission determines that Respondents have not complied with its commitment, the Commission may extend the period of the commitment in addition to any other remedies available to the Commission.

C. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each

contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest at no minimum price. The trustee shall make the divestitures contemplated by this Section III only to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission.

D. If a trustee (the "Trustee") is appointed by the Commission or a court in order to discharge Respondents' obligations under Section III of this Order, the following terms and conditions shall apply to the Trustee's duties and responsibilities:

(1) The Commission shall select the Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Trustee shall be a person with experience and expertise in acquisitions and divestitures.

(2) The Trustee shall have the power and authority to accomplish the divestiture contemplated by Section III of this Order. The Trustee shall have twelve (12) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission and, if the Trustee is appointed by a court, subject also to the prior approval of the court. If, however, at the end of such twelve-month period the Trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or by the court for a court-appointed trustee; *Provided, however,* That the Commission or court may only extend the divestiture period two (2) times.

(3) Respondents shall make available in the United States to the Trustee and the Trustee shall have full and complete access to the personnel, books, records and facilities of any businesses that the Trustee has the duty to divest. Respondents shall develop such financial or other information as the Trustee may reasonably request and shall cooperate with the Trustee. Respondents shall take no action to interfere with or impede the Trustee's accomplishment of the divestiture.

(4) The Trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest at no minimum price.

(5) The Trustee shall serve at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Trustee shall have authority to employ such consultants, accountants, attorneys or other persons reasonably necessary to carry out the Trustee's duties and responsibilities and Respondents shall bear the expense for such services. The Trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Trustee, by the court, of the account of the Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondents and the Trustee's power shall be terminated. The Trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the Trustee's accomplishing the divestiture of the Thorofare Plant.

(6) Within sixty (60) days after appointment of the Trustee, and subject to the prior approval of the Commission, and, in the case of a court-appointed Trustee, of the court, the Respondents shall execute a trust agreement that transfers to the Trustee all rights and powers necessary to permit the Trustee to effect the divestiture for which the Trustee is responsible.

(7) If the Trustee ceases to act or fails to act diligently, one or more substitute Trustees shall be appointed in the same manner as provided in this Section III of the Order.

(8) The Trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning each Trustee's efforts to accomplish the divestiture.

IV

It is further ordered, That:

A. The Agreement to Hold Separate shall continue in effect until Respondents' divestiture obligations under Sections II and III of the Order are satisfied, or until such other time as the Agreement to Hold Separate provides, and the Respondents shall comply with all terms of said Agreement.

B. The divestiture required by the Order shall be made only to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture required by this Order is to ensure the continuation of an ongoing viable enterprise and to remedy the lessening of competition charged in the Commission's complaint.

C. Respondents shall take such action as is necessary to maintain the viability and marketability of the Thorofate Plant, and to prevent the destruction, removal or impairment of any assets subject to possible divestiture pursuant to this Order except in the ordinary course of business and except for ordinary wear and tear.

V

It is further ordered, That within sixty (60) days after the date of this Order becomes final and every sixty (60) days thereafter until Respondents have fully satisfied the divestiture obligation of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying or have complied with the Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestiture required by this Order, including the identity of all parties contacted. Respondents also shall include in their compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports, and recommendations concerning the required divestiture.

VI

It is further ordered, That for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Respondents made to their principal offices, Respondents shall make available to any duly authorized representatives of the Commission:

A. All books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Respondents relating to any matters contained in this Order, for inspection and copying in the United States during office hours and in the presence of counsel; and

B. Upon five (5) days' notice to Respondents, and without restraint or interference from Respondents, for interview in the United States, officers or employees of Respondents, who may have counsel present, regarding such matters.

VII

It is further ordered, That Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in any Respondent, such as dissolution, assignment or sale resulting in the emergency of a successor, or the creation or dissolution of subsidiaries or any other change that may affect compliance with this Order.

VIII

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, each Respondent shall cease and desist from acquiring, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, assets used or previously used in (and still suitable for use in), or the whole or any part of the stock or share capital of, or interest in, any company engaged in, the manufacture or sale of PVDF or VF_2 in the United States. One year from the date this Order becomes final and annually thereafter for nine (9) more years, Respondents shall file with the Commission a verified written report of their compliance with this paragraph.

Agreement To Hold Separate

This Agreement to Hold Separate (the "Agreement") is by and between Société Nationale Elf Aquitaine, a French limited company ("SNEA"), Atochem S.A., a French limited company, Atochem North America, Inc., a Delaware corporation, Elf Aquitaine, Inc., a Delaware corporation, Atochem Inc., a Delaware corporation, Pennwalt Corporation, a Pennsylvania corporation (collectively the "Respondents"), and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41 *et seq.* (Respondents and the Commission collectively, the "Parties")

Premises

Whereas, Elf Aquitaine, Inc. ("EAI"), a direct wholly-owned subsidiary of SNEA, and AC Development, Inc. ("AC"), an indirect wholly-owned subsidiary of SNEA, commenced a tender offer on March 23, 1989, as amended, for all outstanding shares of Pennwalt Corporation ("Pennwalt"), with the intent of effecting a merger of AC into Pennwalt, pursuant to which Pennwalt would become a wholly-owned subsidiary of SNEA (the "Acquisition"), all as contemplated by and provided for in that certain Agreement and Plan of Merger dated as of March 20, 1989, among SNEA, EAI, AC and Pennwalt; and

Whereas, the Commission has reason to believe that the Acquisition would violate the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order (the "Consent Order"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commmission is concerned that if an understanding is not reached to preserve the status quo ante and to hold separate the assets and businesses of the Fluorochemicals Division of Pennwalt (the "Division") until the divestiture contemplated by the Consent Order has been made, divestiture resulting from any proceeding challenging the legality of the acquisition might not be possible or might be less than an effective remedy; and

Whereas, the purpose of this Agreement and the Consent Order is to preserve the assets to be divested as a viable business pending divestiture, and to preserve the Commission's ability to require the divestiture of properties described in the Consent Order and to remedy any anticompetitive aspects of the Acquisition; and

Whereas, Respondents' entering into this Agreement shall in no way be construed as an admission by Respondents that the Acquisition is unlawful; and

Whereas, Respondents understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, Therefore, the Parties agree, upon the understanding that the Commission has determined that the Acquisition would be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from Respondents with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, as follows:

1. Respondents agree to execute and be bound by the attached Consent Order.

2. Respondents agree that, until the first to occur of (i) three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of § 2.34 of the Commisison's Rules; or (ii) if the Commission issues the Consent Order finally, until the date the divestiture required by the Consent Order is accomplished, Respondents shall hold the Divison separate and apart on the following terms and conditions:

a. All of the Division's assets and businesses shall be operated independently of Respondents.

b. Except as is necessary to assure compliance with this Agreement and the Consent Order, Respondents shall not exercise direction or control over, or influence directly or indirectly, the Division.

c. Respondents shall not change the composition of the management of the Division, except that they may replace the head of the Division for cause.

d. Respondents shall not cause or permit the wasting or deterioration of the Division assets in any manner that impairs the marketability of such assets and operations or that impairs in any manner the viability of the assets and operations as a going concern until such time as the divestiture to a Commission-approved acquirer, as required by the Consent Order, has been accomplished.

e. Respondents shall maintain separate financial and operating books and records, shall prepare separate financial statements for the Division assets and shall, within ten (10) days after they become available, provide the Commission's Bureau of Competition with quarterly and annual financial statements for the Division assets, which annual financial statements shall be audited and certified by independent certified public accountants.

f. Except as required by law, and except to the extent that necessary information is exchanged in the course of defending investigations or litigation, or to comply with any of Respondent's obligations under this Agreement or the Consent Order, Respondents shall not receive or have access to, or the use of, any "material confidential information" relating to the Division not in the public domain, except as such information would be available in the normal course of business if the Acquisition had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purposes set out in this subparagraph. "Material confidential information", as used herein, means competitively sensitive or proprietary information, including but not limited to customer lists, price information, marketing methods, patents, technologies, processes, and sales of individual products and product lines, but shall not include information in the public domain, information which would be available to Respondents in the normal course of business if the Acquisition had not taken place, information independently known to Respondents from sources other than Pennwalt, and information on Division-wide sales and profits. Respondents shall not disclose to any third person or use to obtain any advantage for itself any material

confidential information which it may be permitted to receive under this Agreement.

g. Nothing herein shall prevent Respondents requiring their prior approval of the following actions concerning the Division: (i) Capital expenditures in excess of $1,500,000; (ii) sale of any capital assets for more than $1,500,000; and (iii) actions reasonably necessary to assure that the Parties comply with their obligations under the Consent Order.

h. Notwithstanding paragraphs a through g above Respondents may engage in joint research and development activities with the Division with respect to chlorofluorocarbons ("CFCs") substitutes.

3. Should the Commission seek in any proceeding to compel Respondents to divest itself of the shares of Pennwalt stock that SNEA may acquire, or to compel Respondents to divest any assets or businesses Respondents may hold, or to seek any other injunctive or equitable relief, Respondents shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted Pennwalt stock to be acquired. Respondents also waive all rights to contest the validity of this Agreement.

4. In the event the Commission has not finally approved and issued the Consent Order within one hundred twenty (120) days of its publication in the **Federal Register**, Respondents may, at their option, terminate this Agreement to Hold Separate by delivering written notice of termination to the Commission, which termination shall be effective ten (10) days after the Commission's receipt of such notice, and this Agreement shall thereafter be of no further force and effect. If this Agreement is so terminated, the Commission may take such action as it deems appropriate, including but not limited to an action pursuant to section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b). Termination of this Agreement to Hold Separate shall in no way operate to terminate the Agreement Containing Consent Order that Respondents have entered into in this matter.

5. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request and on reasonable notice to Respondents made to their principal offices, Respondents shall make available to any duly authorized representatives of the Commission:

a. All books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Respondents relating to any matters contained in this Agreement, for inspection and copying in the United States during office hours and in the presence of counsel; and

b. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents for interview in the United States, officers or employees of Respondents, who may have counsel present, regarding such matters.

Any information or documents obtained by the Commission from Respondents shall be accorded such confidential treatment as is available under sections 6(f) and 21 of the Federal Trade Commission Act, 15 U.S.C. 46(f) and 57b–2.

6. This Agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, from Societe Nationale Elf Aquitaine ("SNEA"); Atochem S.A.; Elf Aquitaine, Inc.; Atochem North America, Inc.; Atochem, Inc. (collectively "Elf"); and the Pennwalt Corporation ("Pennwalt"), an Agreement Containing Consent Order. The Commission is placing the agreement on the public record for sixty (60) days for reception of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's investigation of this matter concerned a proposed acquisition by Elf of Pennwalt. Pennwalt is a specialty chemical manufacturer. SNEA, which is a French corporation, is 54% owned by the French Government and is principally engaged in the petroleum industry. Through its Atochem S.A. and Atochem, Inc. subsidiaries, SNEA also manufacturers and sells commodity and specialty chemicals.

The Commission has reason to believe that Elf's acquisition of Pennwalt would substantially lessen competition in two markets: vinylidene fluoride ("VF_2") and polyvinylidene fluoride ("PVDF"), worldwide, in violation of section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act.

The Agreement Containing Consent Order ("Order") would, if issued by the Commission, settle the complaint that alleges anticompetitive effects in the VF_2 and PVDF markets.

Under the terms of the proposed Order, Elf must divest Pennwalt's Thorofare, New Jersey plant, which produces VF_2 and PVDF, to a Commission approved purchaser. If Elf fails to complete the required divestiture within a twelve-month period, the Commission may authorize a trustee to divest the plant. The Thorofare plant is one of two plants that Pennwalt currently owns which produces VF_2 and PVDF, the other being at Calvert City, Kentucky. Elf produces VF_2 and PVDF in France.

The Order also requires that, until the divestiture required by the Order is approved by the Commission, Elf must hold Pennwalt's Fluorochemicals Division separate and apart from other entities owned by Elf.

For a period of ten (10) years from its effective date, the proposed Order also prohibits Elf from making acquisitions, without prior Commission approval, of assets or businesses that produce or sell VF_2 or PVDF in the United States.

It is anticipated that the proposed Order would resolve the competitive problems alleged in the Complaint. The purpose of this analysis is to invite public comment concerning the Order, in order to aid the Commission in its determination of whether it should make final the Order contained in the agreement.

This analysis is not intended to constitute an official interpretation of the agreement and proposed Order, nor is it intended to modify the terms of the agreement and proposed Order in any way.

Donald S. Clark,

Secretary.

[FR Doc. 89–18300 Filed 8–3–89; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Agency Information Collections Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0010, New Item Application, GSA Form 1171. This information is necessary to determine the merits of new or improved products for possible introduction into the Federal Supply System.

AGENCY: Cataloging and Requisition Management Division (FCR), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th NW., Washington, DC 20405.

Annual Reporting Burden: Firms responding, 720; responses, 1 per year; average hours per response, .50; burden hours, 360.

FOR FURTHER INFORMATION CONTACT: Barbara Ellison, 703–557–7510.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202–535–7691.

Dated: July 28, 1989.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 89–18286 Filed 8–3–89; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings in August; Correction

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Correction of meeting notice.

SUMMARY: Public notice was given in the **Federal Register** on July 7, 1989, Volume 54, No. 129, on page 28721 that the Mental Health AIDS Research Review Committee would meet at the Holiday Inn Crowne Plaza, Rockville, MD on August 18. The meeting has been changed to August 24–25, and will meet at the Canterbury Hotel, 1733 N Street, NW., Washington, DC 20036. The status of the meeting has changed to: Open—August 24: 8:30–9:00 a.m., Closed—Otherwise.

Dated: July 31, 1989.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89–18222 Filed 8–3–89; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

Amendment to Cervical Cancer Prevention and Control Program Announcement and Notice of Availability of Funds for Fiscal Year 1986

A notice announcing the availability of funds for Fiscal Year 1986 for cooperative agreements for the Cervical Cancer Prevention and Control Program was published in the **Federal Register** on Tuesday, June 17, 1986 (51 FR 21980). The notice is amended as follows:

On page 21980, first column, the heading "Authority," is revised as follows: This cooperative agreement is authorized by section 301(a) (42 U.S.C. 241(a)) and section 317(k)(3) (42 U.S.C. 247(b)) of the Public Health Service Act, as amended.

Dated: July 31, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89–18210 Filed 8–3–89; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 89E–0200]

Determination of Regulatory Review Period for Purposes of Patent Extension; Cook Bird's Nest Vena Cava Filter

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for the Cook Bird's Nest Vena Cava Filter and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: L. David Wolfson, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 158(g)(3)(B).

FDA recently approved for marketing the medical device known as the Cook Bird's Nest Vena Cava Filter which is intended for percutaneous insertion into the inferior vena cavity to filter emboli from blood circulating through the vena cava. Subsequent to approval, the Patent and Trademark Office received a patent term restoration application for U.S. Patent No. 4,494,531 from Cook Incorporated. The Patent and Trademark Office requested FDA's assistance in determining the product's eligibility for patent term restoration, and in a letter dated June 27, 1989, FDA advised the Patent and Trademark Office that the medical device had undergone a regulatory review period and that the medical device represented the first permitted commercial marketing or use. This **Federal Register** notice now represents FDA's determination of the product's regulatory review period.

FDA has determined that the applicable regulatory review period for the Cook Bird's Nest Vena Cava Filter is 1,913 days. Of this time, 1,560 days occurred during the testing phase of the regulatory review period, while 353 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun:* February 1, 1984. The applicant claims that the investigational device exemption for this device was conditionally approved on February 15, 1984, which was the date on which clinical trials on humans involving this device began. However, FDA records indicate that the investigational device exemption was determined substantially complete for clinical studies to have begun on February 1, 1984.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act:* May 9, 1988. FDA has verified the applicant's claim that the premarket approval application (P850049) was submitted on May 9, 1988.

3. *The date the application was approved:* April 26, 1989. FDA has verified the applicant's claim that the premarket approval application (P850049) was approved on April 26, 1989.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 459 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 3, 1989, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 31, 1990, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 28, 1989.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 89–18173 Filed 8–3–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89N–0066]

Tracking of NDA and ANDA Reformulations for Solid, Oral, Immediate Release Drug Products

AGENCY: Food and Drug Administration.

ACTION: Extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to October 11, 1989, the comment period for the notice published on April 12, 1989, in the **Federal Register** because of the delayed availability of the draft guidance referred to in the notice.

DATES: Written comments by October 11, 1989.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Adele S. Seifried, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8046.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 12, 1989 (54 FR 14686), FDA published a notice announcing the implementation of a system to improve its monitoring of the bioequivalence of drug products approved under new drug applications (NDA's) and abbreviated new drug applications (ANDA's). The notice solicited comments on distinctions between "major" and "minor" reformulations, and announced the availability of a draft guidance entitled "Waiver Policy for Change in Formulation and Proportionality of Formulation." The notice also solicited the submission of data on bioavailability problems associated with reformulating products.

The agency has received a large number of requests for copies of the draft guidance, which has been revised and retitled "Draft Guidance on Waiver Policy." Because of the delayed availability of copies of the guidance document, and in response to written and oral requests for an extension of the comment period, the agency is extending the comment period to October 11, 1989. Copies of the guidance document can be obtained from the Division of Bioequivalence (HFD–250), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or by calling 301–443–0181.

Persons interested in commenting on reformulations or tracking of NDA and ANDA reformulations for solid, oral, immediate release drug products may, on or before October 11, 1989, submit to the Dockets Management Branch (address above) written comments to this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. These comments will be considered in determining whether further agency action is appropriate. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 27, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–18223 Filed 8–1–89; 11:06 am]

BILLING CODE 4160–01–M

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). Following is the **Federal Register** submission for FSA:

Target Group Expenditure Report—FSA–302–NEW—The information collected is needed to determine the appropriate Federal Financial Participation Rate for the Job Opportunities and Basic Skills Training (JOBS) Program in each State. *Respondents:* State or local governments; *Number of Respondents:* 51; *Frequency of Response:* Annually; Average *Burden per response:* 22 hours; Estimated Annual *Burden:* 1,122 hours.

OMB Desk Clearance Officer: Justin Kopca.

Consideration will be given to comments and suggestions received within 60 days of publication. Written Comments and recommendations for the proposed information should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 1725 17th Street, NW., Washington, DC 20503.

Dated: July 27, 1989.

Naomi B. Marr,

Associate Administrator, Office of Management and Information Systems.

[FR Doc. 89–18101 Filed 8–3–89; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Consensus Development Conference on Treatment of Destructive Behaviors in Persons With Developmental Disabilities

Notice is hereby given of the NIH Consensus Development Conference on "Treatment of Destructive Behaviors in Persons with Developmental Disabilities" sponsored by the National Institute of Child Health and Human Development of the NIH; the National Institute of Mental Health of the Alcohol and Drug Abuse and Mental Health Administration; the Bureau of Maternal and Child Health of the Health Resources and Services Administration; and by the NIH Office of Medical Applications of Research. The conference will be held September 11–13, 1989 in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland, 20892.

There are some six million people in the U.S. with developmental disabilities, including autism and mental retardation. Some of these individuals engage in destructive behaviors that are injurious to themselves or to others. Some treatments designed to eliminate or modify these behaviors in persons with developmental disabilities are controversial and their effectiveness has been questioned.

The purpose of this conference is to provide a forum to examine the evidence regarding the effectiveness of the various approaches to treatment and to make recommendations that take into account: (1) The specific behavior; (2) the diagnosis of the individual; (3) the possible effects on the individuals, the family and the community; and (4) the treatment setting.

For several months, a panel has been working to examine the evidence regarding effectiveness and effect of various treatment approaches. The panel will write a draft consensus statement and report concerning the safety and effectiveness of the procedures being evaluated. The statement and report will be circulated widely to the medical profession, the public, the lay media, and medical publications. The panel will present its draft statement and report during the first two days of the conference. The schedule permits time for statements, comments, and discussion from the audience.

The panel's statement and report will respond to the following key questions:

- What are the nature, extent, and consequences of destructive behaviors in persons with developmental disabilities?
- What are the approaches to prevent, treat, and manage these behaviors?
- What is the evidence that these approaches, alone or in combination, eliminate or reduce destructive behaviors?
- What are the risks and benefits associated with the use of these approaches for the individual, family, and community?
- Based on the answers to the above questions, and taking into account (a) the behavior; (b) the diagnosis and functional level of the individual; (c) possible effects on the individual, family, and community; (d) the treatment setting; (e) other factors, what recommendations can be made at present regarding the use of the different approaches?
- What research is needed on approaches for preventing, treating, and managing destructive behaviors in persons with developmental disabilities?

On the third day of the conference, following deliberation of new findings or evidence that might have been presented during the meeting, the panel will present its final consensus statement.

Information on the program may be obtained from: Susan Wallace, Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 468–8555.

Dated: July 27, 1989.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 89–18277 Filed 8–3–89; 8:45 am]

BILLING CODE 4140–01–M

Meeting of the Fogarty International Center Advisory Board

Pursuant to Pub. L. 92–463, notice is hereby given of the thirteenth meeting of the Fogarty International Center (FIC) Advisory Board, September 28, 1989, in the Stone House (Building 16), at the National Institute of Health.

The meeting will be open to the public from 8:30 a.m. to 3:00 p.m. The morning agenda will include a report by the Director of the FIC; an overview of the Vth International AIDS Meeting, the status of NIH and FIC AIDS programs, and FIC opportunities for future international activities in AIDS; and a report on recent international meetings regarding international research in nursing.

The afternoon agenda will include reports on FIC's planning activities; FIC's Latin American Initiative; a discussion of the nominations process of the Scholar-in-Residence Program; and the status of implementation of the international study in oral health.

In accordance with the provisions of sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 3:15 p.m. to adjournment for the review, discussion, and evalution of research fellowship applications. The closed session will also review Scholar-in-Residence nominations, and Scholars' conference proposals, and proposals for international studies. These materials contain information of a proprietary nature, including detailed research protocols, designs, and other technical information; and personal information about individuals associated with the applications.

Myra Halem, Committee Management Officer, Fogarty International Center, Building 38A, Room 609, National Institutes of Health, Bethesda, Maryland 20892 (301–496–1491), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Coralie Farlee, Assistant Director for Planning and Evaluation, Fogarty International Center (Executive Secretary), Building 38A, Room 609, telephone 301–496–1491, will provide substantive program information.

Dated: July 26, 1989

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–18279 Filed 8–3–89; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Cancer Biology-Immunology Contracts Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Biology-Immunology Contracts Review Committee, National Cancer Institute, National Institutes of Health, August 28, 1989, Building 31C,

BEST COPY AVAILABLE

Conference Room 6, Bethesda, Maryland 20892.

This meeting will be open to the public on August 28 from 9 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on August 28 from 9:30 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Wilna A. Woods, Executive Secretary, Cancer Biology-Immunology Contracts Review Committee, 5333 Westbard Avenue, Room 807, Bethesda, Maryland 20892 (301/496-7153) will furnish substantive program information.

Dated: July 26, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-18280 Filed 8-3-89; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of the Research Manpower Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Research Manpower Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on September 24-26, 1989, at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

This meeting will be open to the public on September 24, from 7 p.m. to approximately 9:30 p.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on September 25, from approximately 8 a.m. until adjournment on September 26, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Kathryn Ballard, Executive Secretary, NHLBI, Westwood Building, Room 550, Bethesda, Maryland 20892, (301) 496-7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: July 26, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-18281 Filed 8-3-89; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of the National Heart, Lung, and Blood Advisory Council

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, September 14-15, 1989, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892.

The Council meeting will be open to the public on September 14 from 9 a.m. to approximately 3:30 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., 10(d) of Pub. L. 92-463, the Council meeting will be closed to the public from approximately 3:30 p.m. on September 14 to adjournment on September 15 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Council members.

Ms. Arlene Zimmerman, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Westwood Building, Room 7A-15, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-7548, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: July 26, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-18282 Filed 8-3-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Institute of Arthritis and Musculoskeletal and Skin Diseases on September 27 and 28, 1989, Conference Room 8, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public September 27 from 8:30 a.m. to 12 noon to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

The meeting on the Advisory Council will be closed to the public on September 27 from 1 p.m. to adjournment and again on September 28 from 8:30 a.m. to adjournment at approximately 12 noon in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Steven J. Hausman, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Westwood Building, Room 403, Bethesda, Maryland 20892, (301) 496-7495.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIAMS, Building 31, Room 4C32, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-0803.

(Catalog of Federal Domestic Assistance Program No. 13.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated: July 26, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-18283 Filed 8-3-89; 8:45 am]

BILLING CODE 4140-01-M

NIH-ADAMHA-Industry Collaboration Forum

The Federal Technology Transfer Act of 1986 has provided new incentives to both scientists and industrial companies to participate in Cooperative Research and Development Agreements (CRADAs), and thus facilitate the transfer of technology from the Federal laboratory into public use by product commercialization. Industrial companies can receive assurance to obtain exclusive licenses to patented inventions developed under a CRADA, paticularly in view of the resources contributed to the CRADA by the company.

As part of a government-wide effort to implement the FTTA, the National Institutes of Health (NIH) and the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) will sponsor the second annual NIH-ADAMHA-Industry Collaboration Forum to be held on Tuesday, October 3, 1989 at the National Institutes of Health in Bethesda, Maryland. Although eligibility for registration is unrestricted, the forum will be most useful to those for-profit organizations with interest, capabilities and resources to conduct research having biomedical or behavioral applications.

The Forum will begin at 8:00 a.m. with a plenary session consisting of two panels followed by a poster session displaying the goals and research capabilities of various NIH and ADAMHA laboratories. Due to space avaiability, registration by September 25, 1989 is strongly encouraged. To obtain registration information, call (301) 986-4886 or write to: Ms. Judy Gale, Social and Scientific Systems, 7101 Wisconsin Avenue, Suite 610, Bethesda, MD 20814-4805, FAX (301) 652-1749.

Dated: July 3, 1988.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 89-18278 Filed 8-3-89; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Meeting of the Literature Selection Technical Review Committee

Pursuant to Pub. L. 92-463. notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on September 14-15, 1989, convening at 9:00 a.m. on September 14 and at 8:30 a.m. on September 15 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on September 14 will be open to the public from 9:00 a.m. to 12:30 p.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(9)(B), Title 5, U.S.C., Pub. L. 92-463, the meeting will be closed on September 14 from approximately 12:30 to 5:00 p.m. and on September 15 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Executive Secretary of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301-496-6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: July 26, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-18284 Filed 8-3-89; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on Friday, July 28, 1989.

Call Reports Clearance Officer on 202-245-2100 for copies of package.

1. Current Good Manufacturing Practice for Type A Medicated Articles—21 CFR part 226—Recordkeeping Requirements—0910-0154—Businesses marketing Type A Medicated Articles (medicated premixes) must maintain product records in accordance with current good manufacturing practices in order to assure that the premix will be safe and effective when used in the manufacture of a medicated feed. *Respondents:* Businesses or other for-profit, small businesses or organizations; *Number of Respondents:* 600; *Number of Responses per Respondent:* 1; Average Burden per *Response:* 570 hours; *Estimated Annual Burden:* 342,000 hours.

2. Health Hazard Evaluation of Shoprite Supermarkets—NEW—The National Institute for Occupational Safety and Health received a request from the United Food and Commercial Workers Union to evaluate the occurrence of cumulative trauma disorders (CTDs) among grocery checkers at the Shoprite Supermarket chain in New Jersey and New York. The management of Shoprite has agreed to have NIOSH conduct this evaluation. *Respondents:* Individuals or households; *Number of Respondents:* 1,480; *Number of Responses per Respondent:* 1.5; *Averge Burden per Response:* .29 hours; *Estimated Annual Burden:* 647 hours.

3. Hepatitis Requirements to Permit Shipment Before Completion of Hepatitis B Surface Antigen Testing—0910-0168—This testing requirement is intended to minimize the danger of transmitting hepatitis in blood-based therapy and to assure the production of blood and blood components of uniform quality throughout the nation. The affected public are manufacturers and distributors of biological products. *Respondents:* Businesses or other for-profit, small businesses or organizations; *Number of Respondents:* 10; *Number of*

Responses per Respondent: 1; Average Burden per *Response:* 6 hours; *Estimated Annual Burden:* 60 hours.

4. Menstrual Function and Long-term Disease Risk—NEW—NIEHS is committed to exploring markers of reproductive function that may serve as screening tools in populations exposed to environmental toxins. This study will evaluate the effect of menstrual function on long-term disease risk using a cohort of 1,100 U.S. women who contributed prospective menstrual cycle data over their entire reproductive lives, beginning in 1935. *Respondents:* Individuals or households; *Number of Respondents:* 1,300; *Number of Responses per Respondent:* 1; Average Burden per *Response:* .572 hours; *Estimated Annual Burden:* 744 hours.

5. General Notice—Federally Assisted Health Professions and Nurse Teaching Facilities; Federal Right of Recovery and Calculation of Recovery Amount and Interest Charges—0915-0106—This submission will reinstate approval for the Department's policy regarding written notification to the Secretary when a health professions or nurse training facility assisted under Title VII or Title VIII of the PHS Act undergoes a change in status or use; recovery of Federal funds, interest charges and waiver of the right of recovery. *Respondents:* Businesses or other for-profit, non-profit institutions; *Number of Respondents:* 5; *Number of Responses per Respondent:* 1; Average Burden per *Response:* 10 hours; *Estimated Annual Burden:* 50 hours.

6. Pulmonary Function Testing Course Approval Application—0920-0138—The National Institute for Occupational Safety and Health (NIOSH) maintains a pulmonary function testing course approval program for certifying courses for training technicians in pulmonary functions testing. Course sponsors must apply to NIOSH for course approval. *Respondents:* State or local government, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations; *Number of Respondents:* 71; *Number of Responses per Respondent:* 1.3; Average Burden per *Response:* .52 hours; *Estimated Annual Burden:* 48 hours.

7. Foreign Language Disclosure Labeling (21 CFR 101.15 (c)(2) and (3)—0910-0235—This label/labeling requirement is directed at manufacturers who wish to label their food products for foreign speaking consumers. These provisions assure that the food is labeled with complete information in both English and the foreign language. *Respondents:* Businesses or other for-profit, small businesses or organizations; *Number of Respondents:* 150; *Number of Responses per Respondent:* 2; *Average Burden per Response:* 1 hour; *Estimated Annual Burden:* 300 hours.

8. Readership Evaluation of the FDA Drug Bulletin—NEW—Current readership perceptions about the FDA Drug Bulletin will be assessed to focus articles, format and editorial policy. Physicians and pharmacists are surveyed as the major information sources. A postcard survey examines hospital administrator, nurse and dentist perceptions. Data include perceived usefulness, topics desired, duplicative sources and willingness to pay. *Respondents:* Businesses or other for-profit; small businesses or organizations; *Number of Respondents:* 2,740; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .044 hours; Estimated *Annual Burden:* 121 hours.

9. Health Professions Student Loan (HPSL) and Nursing Student Loan (NSL) Program-Forms—0915-0044—The application form provides the Terms of Agreement. The deferment and postponement forms allow the school to suspend loan payments. The school grants partial cancellation of a loan when it receives the completed cancellation of a loan when it receives the completed cancellation form. The Department uses the Annual Operating Report to monitor the financial activities of the school. *Respndents:* Individuals or households; State or local governments, non-profit institutions.

	No. of respondents	No. of hours per response	No. of responses per respondent
Application			
HRSA-514	1,300	.50 hrs.	1
Deferment Form			
HRSA-519	10,375	.17 hrs.	1
HPSL Cancellation			
HRSA-707	5	.08 hrs.	1
HRSA-708	5	.08 hrs.	1
NSL Cancellation			
HRSA-518	1,100	.08 hrs.	1
HRSA-520	1,100	.25 hrs.	1
Annual Operating Report			
HRSA-501	2,000	5.0 hrs.	1

Estimated Annual Burden: 12,747 hours.

10. International Collaborative Study of Oral Health Outcomes: USA Replication—0925-0306—This study is to conduct the U.S. portion of an international collaborative study of oral health, designed to provide critical information on contrasting and comparing the effectiveness and efficacy of various national strategies for enhancing oral health. Clinical and social survey data will be collected from consumers, providers, and administrators involved in oral health delivery systems. *Respondents:* Individuals or households, State or local governments, Federal agencies or employees, small businesses or organizations.

	No. of respondents	No. of hours per response	No. of responses per respondent
Individuals/ households.	11,841	.25 hrs.	1.42
Administrators	162	.88 hrs.	1.0
Providers	220	.33 hrs.	1.83

Estimated Annual Burden: 4,480 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: July 31, 1989.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc.89-18229 Filed 8-3-89; 8:45 am]

BILLING CODE 4160-17-M

National Toxicology Program Board of Scientific Counselors Meetings; Announcement of Draft Technical Reports Projected for Public Peer Review From November 1989 Through November 1990

To earlier inform the public and allow interested parties to comment or obtain information on long-term toxicology and carcinogenesis studies and short-term toxicity studies prior to public peer review, the National Toxicology Program (NTP) again publishes in the **Federal Register** a current listing of draft Technical Reports projected for evaluation by the Peer Review Panel during their next four meetings from November 1989 through November 1990. The listing will continue to be updated with announcements in the **Federal Register** approximately twice a year. The meeting date for 1989 is: November 20-21. Specific dates for the 1990 meetings will be established at a later time.

The attachment gives draft Technical Reports of studies on chemicals listed alphabetically within known or estimated dates of reviews and includes Chemical Abstracts Service registry numbers, responsible staff scientists with telephone numbers. NTP report numbers (if assigned), primary use(s), species, route of administration, and exposure levels used in the chronic studies.

Those interested in having more information about any of the studies listed in this announcement, or wanting to provide input, should contact the particular NTP staff scientist as early as possible by telephone or by mail to: NIEHS, P.O. Box 12233, Research Triangle Park (RTP) North Carolina 27709. The staff scientists would welcome receiving toxicology and carcinogenesis data from completed, ongoing or planned studies by others as well as current production data, human exposure information, and use and use patterns.

The Executive Secretary, Dr. Larry G. Hart, NTP, P.O. Box 12233, RTP, NORTH Carolina 27709, telephone (919-541-3971), FTS (629-3971), will furnish final agendas, and other program information prior to a meeting, and summary minutes subsequent to a meeting.

Dated: July 24, 1989.

David P. Rall,

Director, National Toxicology Program.

TOXICOLOGY AND CARCINOGENESIS STUDIES, CHEMICALS, PROJECTED FOR PEER REVIEW

Chemical name/cas No.	Use	Study scientist	Route	Species	Exposure levels	NTP TR No.
Chemicals Tentatively Scheduled For Peer Review 11/20-21/89						
Long-Term Studies:						
DL-Amphetamine sulfate, 60-13-9	PHAR	J. Dunnick, 919-541-4811	FEED	RM	0, 20, 100 ppm	
2-Chloroacetophenone (CN), 532-27-4	MLTR	R. Melnick, 919-541-4142	INHAL	RM	R: 0, 1, 2, M: 0, 2, 4 mg/m3	379
O-Chlorobenzalmalononitrile (CS), 2698-41-1.	MLTR	K. Abdo, 919-541-7819	INHAL	RM	R: 0, .075, .25, .75, M: 0, .75, 1.5 mg/m3	377
3,3'-Dimethylbenzidine Dihydrochloride, 612-82-8.	DYE	D. Morgan, 919-541-2264	WATER	R	R: 0, 30, 0, 150 ppm	
Epinephrine hydrochloride, 55-31-2	PHAR	D. Dietz, 919-541-2272	INHAL	RM	R: 0, 1.5, 5.0, M: 0, 1.5, 3.0 mg/m3	380
Ethylene thiourea (ETU), 96-45-7	PEST	R. Chhabra, 919-541-3386	FEED	RM	R: 0, 25, 83, 250, M: 0, 100, 333, 1000 ppm	
Furfural, 98-01-1	INTR	R. Irwin, 919-541-3340	GAV	RM	R: 0, 30, 60, M: 0, 50, 100, 175 mg/kg	382
Methyl bromide, 74-83-9	FUME	R. Yang, 919-541-2947	INHAL	M	Mice only: 0, 10, 33, 100 ppm	
Tetranitromethane, 509-14-8	FUEL	J. Bucher, 919-541-4532	INHAL	RM	R: 0, 2, 5, M: 0, 0.5, 2 ppm	386
Vinyl toluene, 25013-15-4	SOLV	G. Boorman, 919-541-3440	INHAL	RM	R: 0, 100, 300, M: 0, 10, 25 ppm	375
Short Term Toxicity Studies:						
D&C Yellow No. 11, 8003-22-3	DYE	W. Eastin, 919-541-7941	FEED	RM	R, M: 0, 500, 1700, 5000, 17000, 50000 ppm.	
Pentachlorobenzene, 608-93-5	PEST	R. Yang, 919-541-2947	FEED	RM	R&M: 0, 33, 100, 330, 1000, 2000 ppm	06
1,2,4,5-Tetrachlorobenzene, 95-94-3	HERB	R. Yang, 919-541-2947	FEED	RM	R&M: 0, 30, 100, 300, 1000, 2000 ppm	07
Chemicals Tentatively Scheduled for Peer Review 02/90						
Long-Term Studies:						
4-Hydroxyacetanilide, 103-90-2	PHAR	J. Bucher, 919-541-4532	FEED	RM	R&M: 0, .06, .3, .6%	
Probenecid, 57-66-9	PHAR	D.Dixon, 919-541-3814	GAV	RM	R&M: 0, 100, 400 mg/kg	
Sodium azide, 26628-22-8	PHAR	K. Abdo, 919-541-7819	GAV	R	Rats only: 0, 5, 10 mg/kg	
Tris(2-chloroethyl) phosphate, 115-96-8	FLAM	H. Matthews, 919-541-3252	GAV	RM	R: 0, 44, 88; M: 0, 175, 350 mg/kg	
Short-Term Toxicity Studies:						
2-Chloro-1-Propanol + 1-chloro-2-propanol (75% Mixture).	INTR	R. Yang, 919-541-2947	Water	RM	R&R: 0, 100, 330, 1000, 3300, 10000 ppm	
Cresol (Mixed isomers), 1319-77-3	GERM	D. Dietz, 919-541-2272	FEED	RM	R&M: 0,. 03, .1, .3, 1.0, 3.0%	
O-Cresol, 95-48-7	GERM	D. Dietz, 919-541-2272	FEED	RM,	R&M: 0, .03, .1, .3, 1.0, 3.0%	
Diethanolamine, 111-42-2	TEXL	R. Melnick 919-541-4142	SP	RM	R&M: 0, 37.5, 75, 300, 600 mg/ml	
Diethanolamine, 111-42-2	TEXL	R. Melnick, 919-541-4142	WATER	RM	MR: 0, .32, 63, 1.25, 2.5, 5.0 mg/ml, FR: 0, .16, .32, .63, 1.25, 2.5 mg/ml, Mice: 0, .63, 1.25, 2.5, 5.0, 10.0 mg/ml.	
Ethylbenzene, 100-41-4	RUBR	R. Yang, 919-541-2947	INHAL	RM	R&M: 0, 100, 250, 500, 750, 1000 ppm	
2-Mercaptobenzimidazole 583-39-1	RUBR	K. Abdo, 919-541-7819	INHAL	RM	R&M: 0, 3.13, 6.25, 12.5, 25, 50 mg/m3	
Chemicals Tentatively Scheduled for Peer Review 06/90						
Long-Term Studies:						
C.I. Acid red 114, 6459-94-5	DYE	D. Morgan, 919-541-2264	WATER	R	MR: 0, 70, 150, 300, FR: 0, 150, 300, 600 ppm.	
C.I. Direct Blue 15, 2429-74-5	DYE	D. Morgan, 919-541-2264	WATER	R	R: 0, 630, 1250, 2500 ppm	
2,3-Dibromo-1-propanol, 96-13-9	FLAM	R. Melnick, 919-541-4142	SP	RM	R: 0, 188, 375, M: 0, 88, 177 mg/kg	
Diphenylhydantoin (phenytoin), 57-41-0	PHAR	R. Chhabra, 919-541-3386	FEED	RM	R: 0, 240, 600, 2400, MM: 0, 30, 100, 300, FM: 0, 60, 200, 600 ppm.	
Resorcinol, 108-46-3	PHAR	R. Irwin, 919-541-3340	GAV	RM	MR&M: 0, 112, 225 FR: 0, 50, 100, 150 mg/kg.	
Titanocene dichloride, 1271-19-6	LABC	M. Dieter, 919-541-3368	GAV	R	Rats only: 0, 25, 50 mg/kg	
Short-Term Toxicity Studies:						
Castor oil, 8001-79-4	PHAR	R. Irwin, 919-541-3340	FEED	RM	R, M: 0, .62, 1.25, 2.5, 5.0, 10.0%	
Glyphosate, 1071-83-6	HERB	P. Chan, 919-541-7561	FEED	RM	R&M: 0, 3125, 6250, 12500, 25000, 50000 ppm.	
1,6-Hexanediamine, dihydrochloride, 6055-52-3.	INTR	J. French, 919-541-7790	INHAL	RM	R&M: 0, 1.6, 5, 16, 50, 160 mg/m3	
1,6-Hexanediamine, dihydrochloride, 6055-52-3.	INTR	J. French, 919-541-7790	WATER	RM	MR: 0, 0.75, 1.5, 3.0, 4.5, 6.0; FR: 0, 0.83, 1.7, 3.3, 5.0, 6.7; M: 0, 0.2, 0.4, 0.8, 1.5, 3.0 mg/ml.	
2-Hydroxy-4-methoxybenzophenone, 131-57-7.	PHAR	J. French, 919-541-7790	FEED	RM	R&M: 0, 3125, 6250, 12500, 25000, 50000 ppm.	

TOXICOLOGY AND CARCINOGENESIS STUDIES, CHEMICALS, PROJECTED FOR PEER REVIEW—Continued

Chemical name/cas No.	Use	Study scientist	Route	Species	Exposure levels	NTP TR No.
2-Hydroxy-4-methoxybenzophenone, 131-57-7.	PHAR	J. French, 919-541-7790	SP	RM	R: 0, 12.5, 25, 50, 100, 200: M:0, 22.75, 45.5, 91, 182, 364 mg/kg.	
Riddelliine, 23246-96-0	PHAR	P. Chan, 919-541-7561	GAV	RM	R&M: 0, 0.33, 1.0, 3.3, 10.0, 25.0 mg/kg	
Sodium Xylenesulfonate, 1300-72-7	DTRG	R. Irwin, 919-541-3340	SP	RM	R&M: 120.0, 39.9, 13.2, 4.5, 1.5, 0 mg/kg	
2,4,7-Trinitro-fluoren-9-one, 129-79-3	INTR	F. Kari, 919-541-2926	FEED	RM	R: 0, 1000, 2000, 4000, 8000, 16000; M: 0, 3212, 6250, 12500, 25000, 55000 ppm.	
Chemicals Tentatively Scheduled For Peer Review 10/90						
Long-Term Studies:						
Gamma/Butyrolactone, 96-48-0	INTR	R. Irwin, 919-541-3340	GAV	RM	MR. 0, 112, 225, FR: 0, 225, 450, M: 0, 262, 525 mg/kg.	
2,4-Diaminophenol dihydrochloride, 137-09-7.	PHOT	R. Irwin, 919-541-3340	GAV	RM	R: 0, 12.5, 25, M: 0, 19, 38 mg/kg	
Furan, 110-00-9	INTR	R. Irwin, 919-541-3340	GAV	RM	R: 0, 2, 4, 8, M: 0, 8, 15 mg/kg	
Monochloroacetic acid, 79-11-8	DYE	F. Kari, 919-541-2926	GAV	RM	R: 0, 15, 30 mg/kg	
Polybrominated biphenyl mixture (Firemaster FF-1), 67774-32-7.	FLAM	R. Chhabra, 919-541-3386	FEED	RM	0, 1, 3, 10, 30 ppm	
Short-Term Toxicity Studies:						
Black newsprint ink, BLACKNWSNK	DYE	W. Eastin, 919-541-7941	SP	RM	R&M: Untreated controls & meat application with USP mineral oil, printing ink mineral oil, letter press ink, & offset ink.	
Methyleugenol, 93-15-2	FOOD	D. Bristol, 919-541-2756	GAV	RM	0, 10, 30, 100, 300, 1000 mg/kg plus sham gavage group.	
Nitromethane, 75-52-5	FUEL	J. Roycroft, 919-541-3627	INHAL	RM	R&M: 0, 94.186, 375, 750, 1500 ppm	
Tetrachlorophthalic anhydride, 117-08-8	FLAM	F. Kari, 919-541-2926	GAV	RM	0, 94, 187, 375, 750, 1500 mg/kg	

Abbreviations used:
USE Primary Use Category:
DTRG Detergents and Cleansers.
DYE As or in Dyes, Inks, and Pigments.
FLAM Flame Retardants.
FOOD Food and Food Additives.
FUEL As or in Fuel or Oil Products.
FUME Fumigants.
GERM Germicides, Disinfectants, Antiseptics.
HERB Herbicide(s).
INTR Chemical Intermediate or Catalyst.
LABC Unspecified Chemical Uses not Fitting in.
MLTR Military or Policing Purposes.
PEST Pesticides, General or Unclassified.
PHAR Pharmaceuticals or Intermediates.
PHOT Photography or related purposes.
RUBR Rubber Chemical.
SOLV Vehicles and Solvents.
TEXL In Manufacture of Textiles.
ROUTE Route of Administration:
FEED Oral in Feed.
GAV Oral, Gavage.
INHAL Inhalation.
SP Skin Paint.
WATER Oral with Water.
SPEC Species:
R = Rats.
M = Mice.

[FR Doc. 89-18262 Filed 8-3-89; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Pub. L. 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on July 14, 1989.

Social Security Administration

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

1. Report of Continuing Disability Interview—0960-0072—The information collected on the form SSA-454 is used by the Social Security Administration to determine if a disability insurance beneficiary continues to be eligible for those benefits. The respondents are disability insurance beneficiaries who are selected for this review.

Number of Respondents: 300,000
Frequency of Response: 1
Average Burden Per Response: ⅓ hour
Estimated Annual Burden: 150,000 hours

2. 800 Service Evaluation Caller Recontact Survey—0960-0465—The information collected on the form SSA-4305 will be used by the Social Security Administration (SSA) to evaluate the new toll-free 800 service number. The respondents will consist of selected individuals who have recently contacted SSA using this number.

Number of Respondents: 4,000
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 667 hours

3. Enumeration Interview Guide—NEW—The information collected on the form SSA-3172 will be used by the Social Security Administration to determine if its current enumeration document verification policy is sufficient. The respondents will consist of selected individuals who were recently issued Social Security numbers and who agree to participate in this effort.

Number of Respondents: 2,000
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 1,000 hours

OMB Desk Officer: Justin Kopca.

4. Reconsideration Disability Report—0960-0144—The information collected on the form SSA-3441 is used by the Social Security Administration to determine if the medical or vocational situation of a claimant has changed subsequent to a denial of the claimant's disability claim. The SSA-3441 also elicits additional sources of medical and vocational evidence which were not considered in the initial determination.

Number of Respondents: 400,000
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 200,000 hours

5. Direct Deposit Mass Change Listing—0960-0297—The information collected on the form SSA-4907 is used by the Social Security Administration to update direct deposit data contained in SSA records. The respondents are financial institutions.

Number of Respondents: 60
Frequency of Response: 1
Average Burden Per Response: 1 hour
Estimated Annual Burden: 60 hours

OMB Desk Officer: Justin Kopca

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: July 28, 1989.

Ron Compston,
Social Security Administration, Reports Clearance Officer.

[FR Doc. 89-18176 Filed 8-3-89; 8:45 am]

BILLING CODE 4190-11-M

Agreement on Social Security Between the United States and Portugal; Entry Into Force

The Commissioner of Social Security gives notice that an agreement coordinating the United States (U.S.) and Portuguese social security programs entered into force on August 1, 1989. The agreement with Portugal, which was signed on March 30, 1988, is similar to U.S. social security agreements already in force with ten other countries—Belgium, Canada, the Federal Republic of Germany, France, Italy, Norway, Spain, Sweden, Switzerland, and the United Kingdom. Agreements of this type are authorized by section 233 of the Social Security Act.

Like the other agreements, the U.S.-Portuguese agreement eliminates dual social security coverage—the situation that exists when a worker from one country works in the other country and is covered under the social security systems of both countries for the same work. When dual coverage occurs, the worker or the worker's employer or both may be required to pay social security contributions to the two countries simultaneously. Under the U.S.-Portuguese agreement, a worker who is sent by an employer in the U.S. to work in Portugal for 5 years or less remains covered only by the U.S. system. The agreement includes additional rules that eliminate dual U.S. and Portuguese coverage in other work situations.

The agreement also helps eliminate situations where workers suffer a loss of benefit rights because they have divided their careers between the two countries. Under the agreement, workers may qualify for partial U.S. or partial Portuguese benefits based on combined (totalized) work credits from both countries.

Persons who wish to obtain copies of the agreement or want more information about its provisions may write to the Social Security Administration, Office of International Policy, Room 1104, West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235.

Dated: July 25, 1989.

Dorcas R. Hardy,
Commissioner of Social Security.

[FR Doc. 89-18177 Filed 8-3-89; 8:45am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-2027]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) which members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 31, 1989.

John T. Murphy,
Director, Information Policy and Management Division.

Proposal: Schedule of Buydown Escrow Accounts.

Office: GNMA.

Description of the Need for the Information and Its Proposed Use: The document provides GNMA with a listing of the name, address and account number of each interest escrow account relating to the mortgages comprising the mortgage-backed securities issuance. The information is necessary to protect

GNMA's interest in the event of a default by the issuer.

Form Number: HUD–11744.

Respondents: Businesses or Other For-Profit.

Frequency of submission: On Occasion.

Reporting Burden:

	Number of Respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Schedule of Buydown Escrow Account (Form 11744)	12		2		.25		6

Total Estimated Burden Hours: 6.

Status: Revision.

Contact: Charles Clark, HUD, (202) 755–5535, John Allison, OMB, (202) 395–6880.

Dated: July 31, 1989.

[FR Doc. 89–18251 Filed 8–3–89; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–89–1917; FR–2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

DATE: August 4, 1989.

ADDRESS: For further information, contact Morris Bourne, Department of Housing and Urban Development, Room 9140, 451 Seventh Street SW., Washington, DC 20401; telephone (202) 755–9075; TDD number for the hearing- and speech-impaired (202) 426–0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: July 31, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89–18285 Filed 8–3–89; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–610–09–4112–02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Office at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget Paperwork Reduction Project (1004–0134), Washington, DC 20503, telephone 202–395–7340.

Title: 43 CFR Part 3160—Onshore Oil and Gas Operations, Non-form Items.

OMB Approval Number: (1004–0134).

Abstract: Federal and Indian (except Osage) oil and gas operators and operating rights owners are required to retain and/or provide data so that proposed operations may be approved or compliance with granted approvals may be monitored.

Bureau Form Numbers: None.

Frequency: Nonrecurring.

Description of Respondents: Operators and operating rights owners of Federal and Indian (except Osage) oil and gas leases.

Estimate Completion Time: ½ hour.

Annual Responses: 191,755.

Annual Burden Hours: 92,760.

Bureau Clearance Officer: (Alternate) Richard Iovaine, 202–653–8853.

Dated: June 2, 1989.

George F. Brown,

Deputy Assistant Director, Energy and Mineral Resources.

[FR Doc. 89–18287 Filed 8–3–89; 8:45 am]

BILLING CODE 4310–84–M

[CO–070–09–4320–10–2410]

Grand Junction District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of Grand Junction District Advisory Board.

SUMMARY: Notice is hereby given that a meeting of the Grand Junction District Grazing Advisory Board will be held on Thursday, September 14, 1989. The meeting will convene in the conference room at the Bureau of Land Management Office, 50629 Highway 6 and 24, Glenwood Springs, Colorado at 9 a.m.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include: (1) Introductions; (2) Minutes of the previous meeting; (3) Glenwood Springs Resource Area Rangeland Program Summary Update and Colorado Cattlemen/Colorado Woolgrowers field tour summary; (4) Drought status report; (5) Status of current project work; (6) Range Betterment Fund project proposals; (7) Advisory Board project proposals; (8) Public presentation; and (9) Arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3 and 3:30 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506 by September 12, 1989. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the Board meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) after thirty (30) days following the meeting.

Further information on the meeting may be obtained at the above address, or by calling 303 243–6552, or 303 945–2341.

Bruce Conrad,

District Manager, Grand Junction District.

[FR Doc. 89–18232 Filed 8–3–89; 8:45 am]

BILLING CODE 4310–JB–M

[NM–060–4340–90]

Opening of Public Lands; New Mexico

Recreation and Public Purposes (R&PP) Lease NM 14964 was issued May 22, 1972, to the City of Carlsbad, New Mexico. The City of Carlsbad has requested relinquishment of the lease located in Eddy County, New Mexico:

T. 21 S., R. 27 E., NMPM;
Sec. 5: S½SW¼, SE¼SE¼;
Sec. 8: N½N½.

The land described above contains 280 acres.

Effective the day of publication of this notice, the above described land shall be open to the operation of the public land laws generally, subject to valid existing rights, and the requirements of applicable law.

Inquiries concerning the land should be addressed to District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, NM 88201.

David L. Mari,

Associate District Manager.

[FR Doc. 89–18233 Filed 8–3–89; 8:45 am]

BILLING CODE 4310–FB–M

[AZ 020–09–4212–12; AZA 20346–W]

Realty Action; Exchange of Public Land, Maricopa County, Arizona

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

The following public land is being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 4 N., R. 1 E.,
Sec. 3, lots 16 to 18, incl;
Sec. 12, W½W½SW¼NW¼;
Sec. 23, W½NW¼NW¼SE¼, N½SW¼NW¼SE¼.
T. 5 N., R. 1 E.,
Sec. 23, N½N½NE¼;
Sec. 24, E½NW¼, NW¼NW¼, E½W½SW¼NW¼, E½SW¼NW¼;
Sec. 27, S½NE¼NE¼SW¼, W½NE¼SW¼, SE¼NE¼SW¼, W½SW¼, SE¼SW¼;
Sec. 28, SW¼NE¼;
Sec. 29, E½E½;
Sec. 30, S½NE¼NE¼, SE¼NE¼.
T. 5 N., R. 1 W.,
Sec. 14, lots 1 to 10, incl., NW¼NE¼, N½NW¼, NE¼SW¼, S½NW¼;
Sec. 15, lots 1 to 10, incl., N½NE¼, NW¼, N½SW¼;
Sec. 22, N½N½, SW¼NW¼.

Containing 1,814.74 acres, more or less.

This notice supersedes Notices of Realty Action A 22792–A and A 23254, as they affect the land in this notice.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this notice will segregate the affected public lands from appropriation under the public land laws and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register** interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: July 28,1989.

Charles R. Frost,

Acting District Manager.

[FR Doc. 89–18234 Filed 8–3–89; 8:45 am]

BILLING CODE 4310–32–M

[MT–070–09–4050–91–47 H: M–68142]

Realty Action Sale; Montana

AGENCY: Bureau of Land Management, Butte District, Interior.

SUMMARY: The following described public land has been found to be suitable for disposal by sale pursuant to section 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719) at not less than the appraised fair market value.

Principal Meridian, Montana

T. 9 N., R. 3 W.
Section 14, Lot 2
Containing 8.64 acres.

This land is being offered on a non-competitive basis to Mary Wildish, whose family has resided on the tract under a Small Tract Act lease for 30 years. Surrounding public lands are under application for a Recreation and Public Purposes Act patent to Jefferson County.

This sale is consistent with the Headwaters Resource Management Plan. The land will soon be a small isolated tract which would be difficult to manage. The land is not required for any federal purposes. The sale of this parcel would be in the public interest. The lands will not be offered for sale for at least 60 days after the publication of this notice in the **Federal Register**.

It has been determined that the subject parcel contains no known mineral interests; therefore, conveyance of the mineral estate can occur simultaneously with the sale of the land. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests.

The land described is hereby segregated from appropriations under the public land laws, including the mining laws, pending completion of the sale or 270 days from the date of publication of the notice, whichever occurs first. The patent, when issued, will contain the following reservation to the United States:

A right-of-way thereon for ditches and canals constructed by authority of the United States, in accordance with the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

This notice terminates Small Tract Classification No. 503 under which the following described lands are classified for lease under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682 (a)).

Prime Meridian Montana

T. 9 N., R. 3 W.
Section 14, SE1/4NW1/4SE1/4SE1/4, S1/2NE1/4SE1/4SE1/4

Containing 7.5 acres.

The above described lands are hereby fully opened to the operation of the public land laws, including the mining laws, subject only to the segregative effort of this notice on the sale parcel. Said opening will take effect 60 days after the date of publication of this notice in the **Federal Register**.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the sale, including the environmental assessment/land report is available for review at the Butte District Office, P.O. Box 3388, 106 North Parkmont, Butte, Montana 59702.

Dated: July 26, 1989.

J. A. Moorhouse,

District Manager.

[FR Doc. 89-18235 Filed 8-3-89; 8:45 am]

BILLING CODE 4310-DN-M

[NV-930-09-4212-14; N-50100]

Realty Action; Direct Sale of Public Lands in Elko County Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following land has been examined and identified as suitable for disposal by direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than fair market value:

Mount Diablo Meridian

T. 47 N., R. 64 E.,
sec. 1, Lot 18

The above-described land comprising .62 acres, is being offered as a direct sale to Al Huber, Juanita Huber and Mildred Standfield, joint adjoining landowners. All but .15 acres of the parcel are encumbered by highway rights-of-way held by the Nevada Department of Transportation (NDOT). The proponents requested the sale as a result of action taken by NDOT to reduce the width of the right-of-way for U.S. Highway 93. Prior to the reduction, the sale proponent's parcel was contiguous to the highway right-of-way. As a result of the right-of-way width reduction, a small parcel of unencumbered public land was created between the highway right-of-way and the sale proponent's property.

The sale is consistent with the Bureau's planning system. The land is not needed for any resource program and is not suitable for management by the Bureau of any other Federal department or agency. Sale of the tract would eliminate from Federal ownership lands that have a high potential for unauthorized use and are difficult and uneconomic to manage. The public lands are being offered by direct sale to assure land use compatibility with adjoining private lands. Topography and configuration of the lands suitable for improvement within the parcel would preclude any development of the parcel by anyone other than the sale proponents who are the adjoining landowners to the east.

The locatable and salable mineral estates have been determined to have no known value. The land is prospectively valuable for geothermal and oil and gas. Therefore, the mineral interest excluding geothermal resources and oil and gas will be conveyed simultaneously with the sale of the parcel. Acceptance of the direct sale ofter will constitute an application to purchase the mineral estate having no known mineral value. A nonrefundable fee of $50.00 will be required with the purchase money. Failure to submit the purchase money and the nonrefundable filing fee for the mineral estate within the timeframe specified by the authorized officer will result in cancellation of the sale.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. Oil and gas, and geothermal resources.

And will be subject to:

Those rights for highway purposes which have been granted to the Nevada Highway Department, its sucessors or assigns by Permit Nos. CC-023091, Nev-06440, and Nev-042807, under the Act of November 9, 1921, 42 Stat. 212-216, 23 U.S.C., Sec. 18).

Upon publication of the Notice of Realty Action in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the mining laws but not the mineral leasing laws. This segregation shall terminate upon issuance of patent or other document of conveyance, upon publication in the **Federal Register** of a termination of segregation or 270 days from publication, whichever occurs first.

The land will not be offered for sale any sooner than 60 days after the publication of this Notice in the **Federal Register**. For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Elko District Office, Bureau of Land Management, P.O. Box 831, Elko, Nevada, 89801. Any adverse comments will be reviewed by the Nevada State Director, who may sustain, vacate or modify this realty action. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

Dated: July 24, 1989.

Merle Good,

Acting District Manager.

[FR Doc. 89-18180 Filed 8-3-89; 8:45 am]

BILLING CODE 4310-HC-M

[ID-942-09-4730-12]

Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., July 27, 1989.

The plat representing the dependent resurvey of portions of the subdivisional lines and meanders of the right bank of the Snake River, and the subdivision of section 15, T. 6 S., R. 11 E., Boise Meridian, Idaho, Group No. 706, was accepted July 26, 1989.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: July 27, 1989.

Jerrold E. Knight,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 89-18238 Filed 8-3-89; 8:45 am]

BILLING CODE 4310-GG-M

[ES-940-09-4520-13; ES-041307, Group 8]

Maine; Filing of Plat of Dependent Resurvey and Survey

July 27, 1989.

1. The plat of the dependent resurvey and survey of the boundaries of the land held in trust for the Passamaquoddy Tribe in Township 6, Range 1, North of Bingham's Kennebec Purchase (N.B.K.P.), Somerset County, Maine, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on September 11, 1989.

2. The dependent resurvey and survey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protest concerning the technical aspects of the dependent resurvey and survey must be sent to the Deputy State Director for Cadastral Survey, Eastern State Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., September 11, 1989.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Joseph W. Beaudin,

Acting Deputy State Director for Cadastral Survey.

[FR Doc. 89-18200 Filed 8-3-89; 8:45 am]

BILLING CODE 4310-GJ-M

Minerals Management Service

Atlantic Outer Continental Shelf Region

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Third Atlantic Outer Continental Shelf (OCS) Region Information Transfer Meeting (ITM).

SUMMARY: The Atlantic OCS Region has scheduled its Third ITM. The meeting is designed to improve the accessibility, use, and exchange of data and information gathered by the Environmental Studies Program, other State and Federal Government Agencies, academia, and industry consultants.

DATES: September 12-13, 1989.

ADDRESS: Each day, the meeting will begin at 8 a.m. at the Sheraton International Conference Center, 11810 Sunrise Valley Drive, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Judy Wilson, Contracting Officer's Technical Representative, Atlantic OCS Region, (703) 787-1075.

SUPPLEMENTARY INFORMATION: The ITM includes a review of active and recently completed studies in biological sciences, physical oceanography and meteorology; presentations by invited scientists showcasing their research relevant to the Environmental Studies Program objectives; and presentations related to Canadian OCS Environmental Studies, Atlantic OCS resource assessments, hard minerals projects, and geological research by State Geological Surveys. In addition, there will be presentations by State representatives from Virginia, North Carolina, South Carolina, Georgia, and Florida on potential impacts of OCS activities. The State presentations will be followed by a panel discussion on how issues can be resolved more effectively.

Dated: July 31, 1989.

Bruce G. Weetman,

Regional Director, Atlantic OCS Region.

[FR Doc. 89-18231 Filed 8-3-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Concession Contract Negotiations; Isle Royale Ferry Service, Inc.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Isle Royale Ferry Service, Inc. authorizing it to continue to provide boat transportation facilities and services for the public at Isle Royale National Park, Michigan for a period of five (5) years from January 1, 1990, through December 31, 1994.

EFFECTIVE DATE: October 3, 1989.

ADDRESSES: Interested parties should contact the Regional Director, Midwest Region, 1709 Jackson St., Omaha, NE 68102, for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed it's obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: July 19, 1989.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 89-18230 Filed 8-3-89; 8:45 am]

BILLING CODE 4310-70-M

[FES 89-19]

Bureau of Reclamation

Ruedi Reservoir, Colorado, Round II Water Marketing Program, Fryingpan-Arkansas Project, Colorado; Final Supplemental Environmental Statement

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of final supplemental environmental statement (FSES); INT-FES-89-19.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation) has prepared a FSES for the Fryingpan-Arkansas Project, Colorado. The FSES addresses the impacts of water marketing alternatives from Ruedi Reservoir.

ADDRESSES: Single copies of the FSES may be obtained on request to the Regional Director or the Eastern Colorado Projects Office at the addresses below.

Copies of the FSES are available for inspection at the following locations:

Bureau of Reclamation, Environment and Planning Branch, U.S. Department of the Interior, Room 7455, 18th and C Streets, NW., Washington, DC 20240; Telephone: (202) 343-4662

Bureau of Reclamation, Denver Office Library, Denver Federal Center, Building 67, room 167, Denver, CO 80225; Telephone: (303) 236-6963

Regional Director, Bureau of Reclamation, Great Plains Regional Office, P.O. Box 36900, Billings, MT; Telephone: (406) 657-6558

Eastern Colorado Projects Office, Bureau of Reclamation, 995 Wilson Avenue, P.O. Box 449, Loveland, Colorado; Telephone: (303) 667-4410

Libraries:

Colorado State University Library, Colorado State University, Fort Collins, CO 80521

University of Colorado Libraries, Boulder Campus, Boulder, CO 80302

Basalt Regional Library, P.O. Box BB, Basalt, CO 81621

Pitkin County Library, 120 East Main, Aspen, CO 81611

Glenwood Springs Library, 413 Ninth Street, Glenwood Springs, CO 81601

Mesa County Public Library, P.O. Box 20000-5019, Grand Junction, CO 81502

FOR FURTHER INFORMATION CONTACT: Mr. Robert Schroeder (Regional Environmental Affairs Officer), (406) 657-6558; or Dr. Wayne O. Deason (Manager, Environmental Services Staff, Denver Federal Center), (303) 236-9336.

SUPPLEMENTARY INFORMATION: The proposed alternative is for Reclamation to make available through long-term contracts, 51,500 acre-feet of Ruedi Reservoir water for municipal and industrial use. Ruedi Reservoir is on the Fryingpan River in Pitkin and Eagle Counties, Colorado. All individual water contracts issued under the proposed

water marketing program will require site-specific environmental impact analysis and documentation.

The FSES presents the Preferred Alternative, the Preferred Alternative with Conservation Measures, and the No-Action Alternative. The no-action alternative presents the baseline against which the other two alternatives for water sale are analyzed. It is anticipated that the Preferred Alternative with Conservation Measures will be the action recommended for implementation. The FSES also presents comments received on the 1983 Draft Environmental Statement and the 1988 Addendum and documents Reclamation's responses.

Dated: August 1, 1989.

D.W. Webber,

Assistant Commissioner-Engineering and Research.

[FR Doc. 89-18239 Filed 8-3-89; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Intention To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Electrohome Limited, 809 Wellington Street North, Kitchener, Ontario, Canada N2G 4J6

2. Wholly-owned subsidiaries which will participate in the operations, and State of incorporation:

Name	State of incorporation
(i) Electrohome (U.S.A.) Inc.	New York.
(ii) Brinkley Motor Products Company.	Illinois.
(iii) Trans-S-Elect Transportation Ltd.	Ontario, Canada.

Noreta R. McGee,

Secretary

[FR Doc. 89-18218 Filed 8-3-89; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-C-30168]

Puerto Rico Maritime Shipping Authority and PRMMI Trucking, Inc.; Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of institution of proceeding.

SUMMARY: The Commission is granting the request by Puerto Rico Maritime Shipping Authority and PRMMI Trucking, Inc. (petitioners) for institution of a declaratory order proceeding. Petitioners seek a determination that the ICC, not the Federal Maritime Commission, has primary and exclusive jurisdiction to interpret tariffs filed with it and, therefore, that a challenge to an ICC-filed tariff may only be brought at the ICC. They also ask the Commission to determine that the transportation they provide under ICC Tariff PRMU 205, between their marine terminals in the United States and in Puerto Rico, is a through intermodal service subject to ICC jurisdiction.

DATES: Persons interested in participating in this proceeding should so advise the Commission in writing by August 21, 1989. A list of interested parties will then be compiled and served. Petitioners will have 10 days after the service date of that list to serve each party on the list and the Commission with a copy of its petition and any additional information. Other parties will then have 35 days after the service date of the service list to submit their comments to the Commission and to all parties. Parties will have 50 days after the service date of the service list to reply.

ADDRESSES: Send written notice of intent to participate, and an original and, if possible, 10 copies of comments referring to No. MC-C-30168 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Jasneth C. Metz, (202) 275-7974, or Richard B. Felder, (202) 275-7691. [TDD for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: July 28, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-18219 Filed 8-3-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-52 (Sub 60X)]

The Atchison, Topeka & Santa Fe Railway Co.; Abandonment Exemption in Sedgwick County, KS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by The Atchison, Topeka and Santa Fe Railway Company of 12.72 miles of rail line in Sedgwick County, KS, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 5, 1989. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by August 14, 1989, petitions to stay must be filed by August 21, 1989, and petitions for reconsideration must be filed by August 31, 1989. Requests for a public use condition must be filed by August 14, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB-52 (Sub-No. 60X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
and
(2) Petitioner's representative: Michael W. Blaszak, 80 E. Jackson Blvd., Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: July 28, 1989.

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440-48446).

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-18221 Filed 8-3-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31477 (Sub 2)]

Canadian National Railway Co.; Trackage Rights Exemption From Consolidated Rail Corp.

Consolidated Rail Corporation (Conrail) has agreed to grant local and overhead trackage rights to Canadian National Railway Company (CN) over a 22.2-mile line of railroad, known as the Massena Subdivision, between Massena, NY (CN's milepost 0.0 and Conrail's milepost 160.8) and the U.S.-Canadian border (CN's milepost 22.2). The trackage rights will allow CN to conduct bridge operations, to serve all present shippers and their successors, and to interchange with Conrail and The Massena Terminal R.R. Company at Massena, NY. The trackage rights will become effective upon the consummation of the sale of this line of railroad from CN to Conrail, which is being considered by the Commission in Finance Docket No. 31477, Consolidated Rail Corporation—Acquisition Exemption—Canadian National Railway Company. Both CN and Conrail presently operate over the Massena line, and no change in operations by either carrier is contemplated as a result of these transactions.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Pleadings must be filed with the Commission and served on:

Jonathan M. Broder, Consolidated Rail Corporation, 1138 Six Penn Center Plaza, Philadelphia, PA 19103-2959.

Robert P. vom Eigen, Hopkins, Sutter, Hamel & Park, 888 16th Street NW., Washington, DC 20006.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Decided: July 28, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-18130 Filed 8-3-89; 8:45 am]

BILLING CODE 7035-01-M

[Decision No. 2; Finance Docket No. 31505]

Rio Grande Industries, Inc., et al.; Purchase and Related Trackage Rights To Acquire Soo Line Railroad Co. Line Between Kansas City, MO and Chicago, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of prefiling notification and request for comments.

SUMMARY: Pursuant to 49 CFR 1180.4(b), applicants have notified the Commission of their intent to file an application seeking authority for Rio Grande Industries, Inc., to acquire Soo Line Railroad Company's line between Kansas City, MO and Chicago, IL. The applicants also intend to seek authority for a series of related transactions involving stock interests and trackage and haulage rights. The Commission finds this to be a significant transaction as defined in 49 CFR part 1180. Applicants have proposed an accelerated procedural schedule, and the Commission invites interested parties to comment on it.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than August 21, 1989. Applicants' reply is due 10 days thereafter.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 [TDD for hearing impaired: (202) 275-1721].

ADDRESSES: An original and 15 copies of all documents must refer to Finance Docket No. 31505 and be sent to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31505, Interstate Commerce Commission, Washington, DC 20423.

In addition, one copy of all documents in this proceeding must be sent to each of applicants' representatives:

Terence M. Hynes, Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006.

E. Barrett Prettyman, Jr., Hogan & Hartson, 555 Thirteenth Street NW., Washington, DC 20004-1109.

SUPPLEMENTARY INFORMATION: On July 3, 1989, Rio Grande Industries, Inc. (RGI), Southern Pacific Transportation Company (SPT), The Denver and Rio Grande Western Railroad Company (DRGW), St. Louis Southwestern Railway Company (SSW), and SKCC Acquisition Corporation (SKCC) (collectively referred to as the RGI applicants), and Soo Line Railroad Company (Soo) (RGI applicants and Soo are referred to collectively as applicants), filed a notice of intent indicating they will file an application seeking Commission approval and authorization under 49 U.S.C. 11341-11345 and 11103 for the following transactions:

(1) Acquisition by SKCC of Soo's line between Kansas City, MO and Chicago, IL, and appurtenant branch lines to Janesville, WI, Albany, IL, and Eldridge, IA. Under the proposal, SSW will operate the line.

(2) Acquisition by SKCC of trackage rights (and associated haulage rights) over Soo's lines between Chicago and Milwaukee, WI, and between Sabula Junction, IA and Dubuque, IA (including related terminal, gathering, and distribution services in the Milwaukee and Dubuque terminal areas).

(3) Acquisition by SKCC of: (a) The 50 percent common stock ownership interest of Soo in the Davenport, Rock Island and North Western Railroad (DRI), and (b) one-half of the 49 percent common stock ownership interest of Soo in the Indiana Harbor Belt Railroad.

(4) Acquisition by the RGI applicants of operating rights over certain properties owned in whole or in part by third parties and over which Soo currently conducts operations under trackage rights and joint facility agreements with such third parties. Those third parties are the Burlington Northern Railroad Company (BN), the Chicago and North Western Transportation Company (CNW), DRI, and Kansas City Southern Railway Company (KCS). Applicants seek Commission authorization and approval for voluntary agreements to be entered with these third parties, or if such party or parties decline to consent to such proposed use, applicants will seek terminal trackage rights pursuant to 49 U.S.C. 11103 with respect to the subject properties or will seek other relief to effect such proposed use.

(5) Acquisition by SKCC of trackage rights through appointment by Soo (with Soo continuing to operate under these same rights) over those lines owned and operated by the Commuter Rail Division of the Regional Transportation Authority (METRA) as to which Soo has trackage rights, including the METRA lines: (a) Between Madison Street, Chicago, and Fox Lake, IL; and (b) between Tower A-5 (Chicago) and Almora, IL.

(6) Acquisition by SKCC of section 11103 terminal trackage rights over a

short segment of KCS trackage which intersects the Kansas City-Chicago line between Air Line Junction and KCS Junction in the Kansas City terminal area, to create a continuous route between the lines to be acquired by SKCC and DRGW's trackage rights over the lines of the Union Pacific Railroad Company via Osawatomie.

(7) A grant by SKCC to Soo of trackage rights (and associated haulage rights, including the provision of gathering and distribution services) over the lines acquired by SKCC from Soo pursuant to subparagraph (1) above.

(8) Acquisition by SKCC from Soo of certain terminal, gathering, and distribution services and trackage rights in the Chicago terminal district.

(9) Acquisition by Soo from SSW of certain terminal, gathering, and distribution services in the Kansas City terminal district.

Applicants will use the year 1988 for purposes of their impact analyses to be filed in the application.[1] They intend to file their applications on or about September 1, 1989.

The Commission finds that this is a significant transaction, as defined at 49 CFR 1180.2(b). It involves two Class I railroads and a major market extension. Because of the size and nature of the Chicago rail market, and its importance to the North-Central region of the United States, the proposed transaction is found to be of regional and national transportation significance as defined in 49 U.S.C. 11345.

The application must conform to the regulations set forth at 49 CFR part 1180, *et seq.*, and must contain all information required there for significant transactions, except as modified by advance waiver.

On July 11, 1989, applicants filed a petition for waiver or clarification of our consolidation procedures. The Commission will address this petition in a separate decision. The Commission is, however, seeking comments now on applicants' proposed procedural schedule, as discussed below.

In its waiver petition, applicants have requested that the Commission adopt an expedited schedule in this proceeding. Applicants' proposed procedural schedule is as follows:

Proposed Procedural Schedule

Day 1, Application filed.
D+15, Notice of the application published in the Federal Register.
D+20, Discovery conference on application held.
D+45, Initial list of protective conditions and description of anticipated inconsistent applications due.
D+60, Comments and protests due on the application; requested conditions and inconsistent applications due.
D+70, Discovery conference on comments, protests, conditions and inconsistent applications held; Commission issues list of parties to proceeding.
D+90, Response to comments, protests, conditions and rebuttal in support of primary application due.
D+110, Rebuttal in support of comments, protests, conditions, and inconsistent applications due.
D+125, Opening Briefs due, all parties.
D+140, Reply Briefs due, all parties.
D+150, Oral Argument.
D+160, Commission Voting Conference.
D+180, Target Date for service of decision.[2]

Under that schedule, the Commission would have 15 days to decide whether to accept the primary application. Any initial lists of protective conditions would be filed within 30 days of acceptance of the primary application, and responsive applications, comments, and protests would be due 45 days after such acceptance. Completion of the evidentiary phase would occur 135 days following acceptance. Finally, applicants request that a final decision be issued 30 days after conclusion of the evidentiary phase.

Applicants' proposed schedule contains substantially shorter time periods than those provided in the Commission's rules at 49 CFR 1180.4 (a)–(e). Under these provisions, the Commission has 30 days to accept or reject the primary application. Following acceptance, the rules provide, among other things, the following time periods: (1) Written comments and initial lists of protective conditions must be filed within 30 days of that acceptance; (2) Responsive applications and second lists of requested protective conditions must be filed within 60 days of acceptance; (3) the evidentiary proceeding must be completed within 180 days of acceptance; and (4) a final decision must be issued 90 days after conclusion of the evidentiary phase.

Applicants assert that the 6-month schedule they propose fairly balances their right to obtain timely Commission action on the proposed transactions with the right of third parties to be heard regarding the proposals. However, we invite interested parties to submit written comment on the proposed schedule. Comments must be filed within 15 days of publication of this notice in the Federal Register. Applicants may reply within 10 days thereafter.

Decided: July 31, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,
Secretary.

[FR Doc. 89-18220 Filed 8-3-89; 8:45 am]
BILLING CODE 7035-01-M

[1] Applicants initially indicated in their notice filed July 3, 1989, that, with one exception, they would use 1988 data for their impact analyses. Because 1988 waybill data were not yet available, they desired to rely on 1987 figures for waybill-related data. By letter dated July 24, 1989, applicants state that they have recently learned that 1988 waybill sample data are currently available and, therefore, withdraw their request to use 1987 waybill data.

[2] Applicants doubt that hearings for purposes of cross-examination would be required, and propose that any necessary cross-examination should be conducted by deposition. Nonetheless, the proposed schedule would accommodate any limited hearing which might be deemed appropriate. In recognition of the accelerated nature of the proposed schedule, applicants will be prepared to afford prompt, informal discovery to interested parties.

[Docket No. AB-55 (Sub. 281X)]

CSX Transportation, Inc.; Abandonment Exemption of Line in Newport News, VA

Applicant has filed a notice of exemption under 49 CFR Part 1152, subpart F—Exempt Abandonments to abandon its approximately 2 miles of rail line between milepost 0.00, near 19th Street, and the end of Pier No. 14 and Pier No. 15 in Newport News, VA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 3, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 14, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by August 24, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 9, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 31, 1989.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See* Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 89-18131 Filed 8-3-89; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; CAD Framework Initiative, Inc.; Correction

In notice document 89-14802 concerning CAD Framework Initiative, Inc. appearing in the issue of Thursday, June 22, 1989 at 54 FR 26265, make the following correction: in the list of Corporate Member delete "Apollo Bell Laboratories;" and "Apollo Computer, Inc." and "AT&T Bell Laboratories."

John W. Clark,
Deputy Director of Operations, Antitrust Division.

[FR Doc. 89-18288 Filed 8-3-89; 8:45 am]
BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; OSI/Network Management Forum

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the OSI/Network Management Forum, (the "Forum") on July 3, 1989 filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On October 21, 1988, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on December 8, 1988, 53 FR 49615. On December 23, 1988 and March 23, 1989, the Forum filed additional written notifications pursuant to section 6(a) of the Act. The Department of Justice published notices in the Federal Register pursuant to section 6(b) on January 26, 1989, 54 FR 3870 and on April 25, 1989, 54 FR 17834.

The identities of the additional parties to the venture are given below:

McDonnell Douglas Network Systems Company, 2560 North First Street, P.O. Box 49019 M/S F-36, San Jose, CA 95161-9019.
Stratus Computer, Inc., 55 Fairbanks Boulevard, Marlboro, MA 01752.
Teknekron Communications Systems, Inc., 2121 Allston Way, Berkeley, CA 94704.
Ungermann-Bass, Incorporated, 3900 Freedom Circle, Santa Clara, CA 95052.
Applied Computering Devices, Inc., 100 North Campus Drive, Aleph Park, Terre Haute, IN 47802.
France Telecom, Direction Generale—DACT/STP, 36, rue du Commandant Mouchotte, Paris, CEDEX 14 75675, FRANCE.
Gandalf Data Ltd., 130 Colonnade Road S. Nepean, Ontario K2E 7M4, CANADA.
General Datacomm, Inc., 1579 Straits Turnpike, Middlebury, CT 06762-1299.
Netlabs, 11693 San Vicente Boulevard, Suite 348, Los Angeles, CA 90049.
Tandem Computers, Inc., 10501 N. Tantau Avenue, Cupertino, CA 95014.
Televerket, Marketing Department, FFu, S-123 86, FARSTA, SWEDEN.

John W. Clark,
Deputy Director of Operations, Antitrust Division.

[FR Doc. 89-18289 Filed 8-3-89; 8:45 am]
BILLING CODE 4410-01-M

Bureau of Prisons

Modification to List of Bureau of Prisons Institutions

AGENCY: Bureau of Prisons, Justice.
ACTION: Notice.

SUMMARY: Attorney General Order No. 646-76 (41 FR 14805), as amended, classifies and lists the various Bureau of Prisons institutions. Attorney General Order No. 960-81, Reorganization Regulations, published in the Federal Register October 27, 1981 (at 46 FR 52339 et seq.) delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(r), the authority to establish and designate Bureau of Prisons institutions. In this present document, the Bureau is publishing a consolidated listing of its institutions, and is designating a new Federal Prison Camp at Bryan, Texas. This camp recently became operational. In addition, the Bureau of Prisons is redesignating the Federal Reformatory for Women from a Federal Correctional Institution to a Federal Prison Camp. This change is made in recognition of the mission of that facility. The Bureau of Prisons is also designating new Federal Correctional Institutions in McKean, Pennsylvania; Fairton, New

Jersey; and Sheridan, Oregon. These facilities are scheduled to become operational later this year.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, 320 First Street NW., Washington, DC 20534 (202–724–3062).

SUPPLEMENTARY INFORMATION: This notice is not a rule within the meaning of the Administrative Procedure Act, 5 U.S.C. 551(4), the Regulatory Flexibility Act, 5 U.S.C. 601(2), or Executive Order No. 12291, sec. 1(a).

By virtue of the authority vested in the Attorney General in 18 U.S.C. 3621, 4001, 4003, 4042, 4061, and 4082 (repealed in part October 12, 1984) and delegated to the Director, Bureau of Prisons by 28 CFR 0.96(r), it is hereby ordered as follows:

The following institutions are established and designated as places of confinement for the detention of persons held under authority of any Act of Congress, and for persons charged with or convicted of offenses against the United States or otherwise placed in the custody of the Attorney General of the United States.

A. The Bureau of Prisons institutions at the following locations are designated as U.S. Penitentiaries:

(1) Atlanta, Georgia;
(2) Leavenworth, Kansas;
(3) Lewisburg, Pennsylvania;
(4) Lompoc, California;
(5) Marion, Illinois; and
(6) Terre Haute, Indiana.

B. The Bureau of Prisons institutions at the following locations are designated as Federal Correctional Institutions:

(1) Ashland, Kentucky;
(2) Bastrop, Texas;
(3) Butner, North Carolina;
(4) Danbury, Connecticut;
(5) El Reno, Oklahoma;
(6) Englewood, Colorado;
(7) Fairton, New Jersey;
(8) Fort Worth, Texas;
(9) La Tuna, Texas;
(10) Lexington, Kentucky;
(11) Lorretto, Pennsylvania;
(12) Marianna, Florida;
(13) McKean, Pennsylvania;
(14) Memphis, Tennessee;
(15) Milan, Michigan;
(16) Morgantown, West Virginia;
(17) Otisville, New York;
(18) Oxford, Wisconsin;
(19) Petersburg, Virginia;
(20) Phoenix, Arizona;
(21) Pleasanton, California;
(22) Ray Brook, New York;
(23) Safford, Arizona;
(24) Sandstone, Minnesota;
(25) Seagoville, Texas;
(26) Sheridan, Oregon;
(27) Talladega, Alabama;
(28) Tallahassee, Florida;
(29) Terminal Island, California;
(30) Texarkana, Texas; and
(31) Tucson, Arizona.

C. The Bureau of Prisons institutions at the following locations are designated as Federal Prison Camps:

(1) Alderson, West Virginia;
(2) Allenwood, Pennsylvania;
(3) Big Spring, Texas;
(4) Boron, California;
(5) Bryan, Texas;
(6) Duluth, Minnesota;
(7) Eglin Air Force Base, Florida;
(8) Ft. Bliss, El Paso, Texas;
(9) Homestead Air Force Base, Homestead, Florida;
(10) Lompoc, California;
(11) Maxwell Air Force Base/Gunter Air Force Station, Montgomery, Alabama;
(12) Nellis Air Force Base, Las Vegas, Nevada;
(13) Saufley Field, Pensacola, Florida;
(14) Seymour-Johnson Air Force Base, North Carolina;
(15) Tyndall Air Force Base, Panama City, Florida; and
(16) Yankton, South Dakota.

D. The Bureau of Prisons institutions at the following locations are designated as Metropolitan Correctional Centers:

(1) Chicago, Illinois;
(2) Miami, Florida;
(3) New York, New York; and
(4) San Diego, California.

E. The Bureau of Prisons institution at Springfield, Missouri is designated as the U.S. Medical Center for Federal Prisoners.

F. The Bureau of Prisons institution at Rochester, Minnesota is designated as the Federal Medical Center.

G. The Bureau of Prisons institution at Oakdale, Louisiana is designated as the Federal Detention Center.

H. The Bureau of Prisons institution at Los Angeles, California is designated as the Metropolitan Detention Center.

Dated: July 31, 1989.

J. Michael Quinlan,

Director, Federal Bureau of Prisons.

[FR Doc. 89–18298 Filed 8–3–89; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extensions

Mine Safety and Health Administration
Records of Fire Drills and Programs to Instruct and Train Miners in the Location and Use of Firefighting Equipment
1219–0054
On occasion; quarterly
Program: 200 respondents; 30 minutes per response; 100 total burden hours
Fire drills: 2,328 respondents; 20 minutes per response; 40,320 total burden hours
Underground coal mine operators are required to have a plan approved by MSHA for the instruction of miners in firefighting and evacuation procedures to be followed in event of an emergency. To implement the plan, fire drills are required to be conducted on a quarterly basis, and a record is required to be kept of the fire drills.

Mine Safety and Health Administration
Mine Rescue Equipment Test and Inspection Records
1219–0093
Monthly
Businesses or other for profit; small businesses or organizations
800 respondents; 12½ minutes per response; 24,000 total burden hours
Breathing apparatus at mine rescue stations are required to be inspected and tested once each month. Records of the results of the inspections and tests are required to be maintained at the mine rescue stations. The information is used to ensure that the breathing apparatus is operable in case of an emergency.

Employment Standards Administration
29 CFR Part 516, Records to be Kept by Employers
1215–0017; WH–1261
Recordkeeping
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations
3,600,000 recordkeepers; 762,194 total hours

Mine Safety and Health Administration
Records of Results of Examinations of Self-Rescuers
1219–0044
Quarterly
Businesses or other for profit; small businesses or organizations
2,328 respondents; 1 hour and 4 minutes per response; 9,871 total burden hours
Requires underground coal mine operators to keep records of the results of required examinations of self-rescue devices. The information is used to ensure that the devices are in operable and usable condition in case of an emergency.

Signed at Washington, DC this 31st day of July, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89–18267 Filed 8–3–89; 8:45 am]

BILLING CODE 4510–43–M

Delegation of Authority and Assignment of Responsibility; Pension and Welfare Benefits Administration

Effective June 27, 1989, I hereby delegated authority to Ms. Ann L. Combs, Deputy Assistant Secretary for Pension and Welfare Benefits, and have assigned to her responsibility for performing all of the duties and functions previously assigned to the Assistant Secretary for Pension and Welfare Benefits.

This delegation will remain in effect until a duly appointed Assistant Secretary for Pension and Welfare Benefits takes office.

Signed at Washington, DC this 31st day of July, 1989.

Elizabeth Dole,

Secretary of Labor

[FR Doc. 89–18268 Filed 8–3–89; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 211(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 14, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 14, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 24th day of July 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
ACME Associates (Workers)	New York, NY	7/24/89	7/6/89	23,171	Sliders for Zippers.
Alside Div. (USWA)	Cuyahoga Falls, OH	7/24/89	7/6/89	23,172	Aluminum & Steel Siding.
Blakely Construction (Workers)	Odessa, TX	7/24/89	7/11/89	23,173	Oil & Gas.
Boyd Exploration Co. (Company)	Casper, WY	7/24/89	7/13/89	23,174	Oil & Gas.
Dover Weaver Corp. (AIW)	Paris, KY	7/24/89	7/6/89	23,175	Lifts for Cars, Trucks, Etc.
Eaton Corp.—Controls (Workers)	Freemont, OH	7/24/89	6/29/89	23,176	Automotive & Appliance Controls.
Fox Testing Co., Inc. (Workers)	Dodge City, KS	7/24/89	7/6/89	23,177	Drillstem Testing.
Glenn Russel, Inc. (LGAPNWU)	New York, NY	7/24/89	7/5/89	23,178	Handbags.
Jackson Drilling, Co. (Workers)	Conroe, TX	7/24/89	6/29/89	23,179	Oil & Gas.
Knox Corder Drilling, Co. (Workers)	Devine, TX	7/24/89	7/10/89	23,180	Oil & Gas.
Laird & Co. (Workers)	Scobeyville, NJ	7/24/89	7/10/89	23,181	Packaging of Liquor & Brandy.
Mercury Mfg. Corp. (Workers)	Hancock, MI	7/24/89	7/1/89	23,182	Auto Parts.
Momentum Mfg. Corp. (Company)	Herkimer, NY	7/24/89	7/7/89	23,183	Circuit Boards.
Paterson Shade (IBT)	Paterson, NJ	7/24/89	7/6/89	23,184	Lamp Shades.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Pecten International (Workers)	Houston, TX	7/24/89	7/5/89	23,185	Oil & Gas.
Peter Stewart, Inc. (Workers)	Pleasantville, NJ	7/24/89	6/24/89	23,186	Steel.
Petroleum Management, Inc. (PMI) (Workers)	Corpus Christi, TX	7/24/89	6/30/89	23,187	Oil & Gas.
Petrorentas Internacionales, Inc.	McAllen, TX	7/24/89	7/3/89	23,188	Oil & Gas.
Phillips Mfg. Tech. Center (IUE)	S. Plainfield, NJ	7/24/89	7/10/89	23,189	Machine Parts.
Shell Offshore, Inc. (Workers)	New Orleans, LA	7/24/89	7/5/89	23,190	Oil & Gas.
Shell Oil Co. (Workers)	Houston, TX	7/24/89	7/5/89	23,191	Oil & Gas.
Shell Western E&P, (Workers)	Houston, TX	7/24/89	7/5/89	23,192	Oil & Gas.
Trasco, Inc. (Workers)	South Paris, ME	7/24/89	7/6/89	23,193	Women's Shoes & Boots.
United Auto Workers, Local 558 (UAW)	Willow Springs, IL	7/24/89	7/12/89	23,194	Sheet Metal Stamings.
Wyckoff Steel, Inc. (USWA)	Plymouth, MI	7/24/89	7/7/89	23,195	Bar & Coil Steel.

[FR Doc. 89-18286 Filed 8-3-89; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-22,790]

R.L.D. Dress Co.; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at R.L.D. Dress Company, Cadillac, Michigan. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-22, 790; R.L.D. Dress Company, Cadillac, Michigan (July 28, 1989)

Signed at Washington, DC this 26th day of July 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-18289 Filed 8-3-89; 8:45 am]
BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statues as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Connecticut:
CT89-1 (Jan. 6, 1989) ..... p.61, p.62-64,69.
Maryland:
MD89-15 (Jan. 6, 1989) ..... p.449, p.450.
New Jersey:
NJ89-4 (Jan. 6, 1989) ..... p.657, pp.660-664, pp.666.
New York:
NY89-3 (Jan. 6, 1989) ..... p.701, pp.702-708.
NY89-5 (Jan. 6, 1989) ..... p.717, pp.718-726.
NY89-6 (Jan. 6, 1989) ..... p.727, pp.728-736.

Volume II:

Iowa:
IA89-5 (Jan. 6, 1989) ..... p.41, pp.45.
Illinois:
IL89-13 (Jan. 6, 1989) ..... p.179, pp.182, 187, pp.190.
Minnesota:
MN89-5 (Jan. 6, 1989) ..... p.557, pp.558-561.
Missouri:
MO89-5 (Jan. 6, 1989) ..... p.669, p.670.

Volume III:

Colorado:
CO89-2 (Jan. 6, 1989) ..... p.115, p.116.
Colorado:
CO89-4 (Jan. 6, 1989) ..... p.123, p.124.
Washington:
WA89-2 (Jan. 6, 1989) ..... p.389, pp.391,393.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 28th day of July 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

General Wage Determinations Issued Under the Davis-Bacon and Related Acts

Volume I

Transmittal #30—August 4, 1989

This transmittal contains changes to Volume I, including modifications or supersedeas decisions to General Wage Determinations as published in the **Federal Register** on August 4, 1989. The changes are listed by state, decision number(s), and page number(s). The page(s) listed should be removed and the new page(s) attached should be inserted as replacements.

Connecticut:
CT89-1 ..... p. 61, 62-64, 69.
Maryland:
MD89-15 ..... p. 449, p.450.
New Jersey:
NJ89-4 ..... p. 657, 660, 664, 666.
New York:
NY89-3 ..... p. 701, 702-708.
New York:
NY89-5 ..... p. 717, 718-726.
New York:
NY89-6 ..... p.727, pp. 728-736.

Correction: Transmittal #28 (July 7, 1989) Listed General Wage Determination No. MD89-19, but did not contain a copy of that determination. The missing copy is included in this transmittal.

Volume II

Transmittal #30—August 4, 1989

This transmittal contains changes to Volume II, including modifications or supersedeas decisions to General Wage Determinations as published in the **Federal Register** on August 4, 1989. The changes are listed by state, decision number(s), and page number(s). The page(s) listed should be removed and the new page(s) attached should be inserted as replacements.

Iowa:
IA89-5 ..... p.41, p.45.
Illinois:
IL89-13 ..... p.179, pp.182-187, pp.190.
Minnesota:
MN89-5 ..... p.557, pp.558-561.
Missouri:
MO89-5 ..... p.669, p.670.

Volume III

Transmittal #30—August 4, 1989

This transmittal contains changes to Volume III, including modifications or supersedeas decisions to General Wage Determinations as published in the **Federal Register** on August 4, 1989. The changes are listed by state, decision number(s), and page number(s). The page(s) listed should be removed and the new page(s) attached should be inserted as replacements.

Colorado:
CO89-2 ..... p.115, p.116.
Colorado:
CO89-4 ..... p.123 p.124.
Washington:
WA89-2 ..... p.389, pp.391, 393.

[FR Doc. 89-18096 Filed 8-3-89; 8:45 am]
BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-89-105-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 77.213 (draw-off tunnel escapeways) to its Georgetown Preparation Plant (I.D. No. 33-00958) located in Harrison County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that when it is necessary for a tunnel to be closed at one end, an escapeway not less than 30 inches in diameter (or of the equivalent, if the escapeway does not have a circular cross section) is required to be installed which extends from the closed end of the tunnel to a safe location on the surface; and, if the escapeway is inclined more than 30 degrees from the horizontal, it is required to be equipped with a ladder which runs the full length of the inclined portion of the escapeway.

2. The Trenton Channel Dump Feeder consists of a small hopper and feeder beneath a truck bridge which accommodates the bottom-dump trucks. The feeder discharges the raw coal onto a 48-inch belt conveyor directly under the feeder. The enclosed portion of the feeder and belt conveyor is approximately 45 feet in length. The center height of the belt conveyor enclosure is 11 feet, 10 inches. The walkway clearance width in this area on either side of the belt conveyor is 3 feet, 9½ inches.

3. The drive system for the belt conveyor is located external to the conveyor enclosure and would be operated remotely from the Trenton Channel Tripple.

4. The belt conveyor has pull cords provided on both sides within the enclosed portion. In addition, the belt

conveyor is provided with a belt slippage shutdown switch as well as misalignment run-off switches. The conveyor enclosure slopes towards the opening to allow for sufficient drainage when necessary.

5. As an alternate method, petitioner proposes the following procedures.

(a) The tunnel would be inspected for fire or smoke prior to entry;

(b) Methane gas levels would be checked by a flame safety lamp or methane detector;

(c) A self-contained self-rescue device (SCSR) would be provided and maintained at the feeder area of the tunnel;

(d) Proper instruction for SCSR use would be provided to all tunnel maintenance personnel;

(e) A 20-pound capacity fire extinguisher would be placed at the feeder area of the tunnel;

(f) No one would be permitted inside the tunnel during the time coal is being dumped into the feeder;

(g) A sign would be placed at the tunnel entrance stating DO NOT ENTER DURING DUMPING OPERATIONS;

(h) A "Jog" switch would be installed to operate the belt during tunnel cleanup;

(i) The tunnel would be cleaned of all combustible material and the area dusted with rock dust or hydrated lime prior to any welding or burning operations; and

(j) For the purpose of maintenance or cleanup, two-way communication would be provided within the feeder area of the tunnel to a person on duty outside the tunnel area.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 5, 1989. Copies of the petition are available for inspection at that address.

Date: July 28, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-18264 Filed 8-3-89; 8:45 am]

BILLING CODE 4510-13

[Docket No. M-89-104-C]

Southern Ohio Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Southern Ohio Coal Company, P.O. Box 552, Fairmont, West Virginia 26555-0552 has filed a petition to modify the application of 30 CFR 49.6(a)(1) (equipment and maintenance requirements) to its Martinka No. 1 Mine (I.D. No. 46-03805) located in Marion County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that each mine rescue station be provided with at least twelve self-contained oxygen breathing apparatus, each with a minimum of 2 hours capacity, and any necessary equipment for testing such breathing apparatus.

2. As an alternate method, petitioner proposes the following:

(a) The mine would be equipped with ten self-contained oxygen breathing apparatus, each with a minimum 2 hours capacity;

(b) The mine would have 9 fully trained mine rescue personnel;

(c) The mine rescue team would not be permitted to perform rescue and recovery work during a mine emergency until the second team, serving as back-up, is present at the mine;

(d) The mine rescue station is of sufficient size to facilitate at least 2 fully equipped mine rescue teams;

(e) The mine has a written reciprocating agreement with its sister mining operation; and

(f) The sister mining operation, which consists of a fully equipped mine rescue team, is within 2 hours travel time to the mine.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or befoe September 5, 1989. Copies of the petition are available for inspection at that address.

Dated: July 26, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-18265 Filed 8-3-89; 8:45 am]

BILLING CODE 4510-43

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by September 5, 1989.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Music Fellowships Application Guidelines for FY 1991.

Frequency of Collection: One-time.

Respondents: Individuals or households.

Use: Guideline instructions and applications elicit relevant information from individual artists that apply for funding under specific Music Fellowships Program categories. This information is necessary for the accurate, thorough, and fair consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 820.

Average Burden Hours per Response: 40.

Total Estimated Burden: 32,800.

Anne C. Doyle,

Administrative Services Division, National Endowment for the Arts.

[FR Doc. 89-18199 Filed 8-3-89; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. (92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Multi-Music Presenters Section) to the National Council on the Arts will be held on August 23-24, 1989, from 9:00 a.m.-6:00 p.m., August 25, 1989, from 9:00 a.m.-4:00 p.m. in Room M14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 25, 1989, from 2:00 p.m.-4:00 p.m. The topic for discussion will be guidelines and policy issues.

The remaining portion of this meeting on August 23-24, 1989, from 9:00 a.m.-6:00 p.m., August 25, 1989, from 9:00 a.m.-2:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: July 31, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-18291 Filed 8-3-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses to Export Nuclear Material; Nissho Iwai Corp.

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source materials, noticed herein, the Commissioin does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The information concerning these applications follows.

NRC EXPORT LICENSE APPLICATIONS

Name of applicant, date of appl., date received, application No.	Material type	Material in total element	Kilograms total isotope	End use	Country of destination
Nissho Iwai Corp., 6/29/89, 7/10/89, XSNM02467	45.0% Enriched Uranium.	85.56	38.50	Fuel for JMTR Research Reactor.	Japan.
Nissho Iwai Corp., 6/29/89, 7/10/89, XSNM02468	45.0% Enriched Uranium.	25.07	11.18	Fuel for JRR-2 Research Reactor.	Japan.

Dated this 28th day of July 1989 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Marvin R. Peterson,

Assistant Director for International Security, Exports and Materials Safety, International Programs, Office of Governmental and Public Affairs.

[FR Doc. 89-18174 Filed 8-3-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-286]

Power Authority of the State of New York; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards; Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-64, issued to Power Authority of the State of New York (the licensee) for operation of Indian Point Nuclear Generating Unit No. 3 located in Westchester County, New York.

The proposed amendment would revise the Technical Specifications to authorize operation of the plant with Hudson River (ultimate heat sink) water temperatures of up to a maximum of 95 °F and with containment air

BEST COPY AVAILABLE

temperatures of up to a maximum of 130 °F when the reactor is operating. The licensee's application for this amendment is contained in its submittal of July 24, 1989.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following analysis of the proposed changes:

In accordance with the requirements of 10 CFR 50.92, the application is judged to involve no significant hazards based upon the following information:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response

Operation of Indian Point Unit 3 with a 95 °F ultimate heat sink temperature does not involve a significant increase in the probability or consequences of an accident previously evaluated.

As discussed in section 5.1.2 of WCAP–12313, operation of Indian Point Unit 3 with a Service Water inlet temperature of 95 °F will not increase the probability of the sudden failure of SWS or CCWS cooled equipment, whose sudden failure could cause an accident evaluated in the FSAR, (i.e. loss of reactor coolant flow due to the sudden failure of a RCP, or reactor coolant system failures due to inadequate reactor vessel support cooling).

Section 5.1.3 of WCAP–12313, states that adequate cooling is provided to safety-related equipment to support operability following design basis accidents. In addition, adequate cooling is provided to the emergency core cooling and containment cooling systems to mitigate design basis accidents and maintain plant safety parameters below safety limits.

The Authority has analyzed the effect of a 95 °F ultimate heat sink temperature on peak containment accident pressure in WCAP–12269. In addition to the 95 °F service water inlet temperature, other key assumptions include a containment ambient temperature of 130 °F, a six (6) second Safety Injection (SI) pure time delay (during a main steam line break accident) and zero (0) ppm boron concentration in the Boron Injection Tank. The results of the analysis show that the calculated peak containment accident pressure for a main steam line break accident, which is the worst case, is 42.42 psig, which is below the containment design pressure of 47 psig. It should also be noted, the new peak containment accident temperature (257 °F) is less than that previously analyzed for Equipment Qualification (EQ).

2. Does the proposed license amendment create the possibility of a new or different kind of accident?

Response

Operation of Indian Point Unit 3 with a 95 °F ultimate heat sink temperature and a 130 °F maximum allowable containment temperature does not create the possibility of a new or different kind of accident than any previously evaluated.

Operation of Indian Point Unit 3 with a 95 °F ultimate heat sink temperature and a 130 °F maximum allowable containment temperature does not create new equipment failure modes from those already evaluated in the Final Safety Analysis Report (FSAR). The failure of nonsafety-related equipment either does not cause a new or different accident or does not cause an accident not already evaluated. Adequate cooling is provided to safety-related equipment to ensure that they operate as intended. Therefore, no new or different kind of accident is created by increasing the allowable ultimate heat sink temperature to 95 °F or increasing the containment maximum temperature to 130 °F.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response

Operation of Indian Point Unit 3 with a 95 °F ultimate heat sink temperature does not involve a significant reduction in a margin of safety.

As discussed in § 5.1 of WCAP–12313, adequate cooling is provided to support operation of safety-related equipment during normal operation, abnormal operations, and following design basis accident. In addition, adequate cooling is provided to ensure that safety-related equipment performance is sufficient to maintain safety parameters below safety limits. With a 95 °F ultimate heat sink, post-loss of coolant accident emergency core cooling functions are supported to ensure long term core cooling. Peak containment accident pressure (42.42 psig) will not exceed the design pressure of 47 psig. The peak containment accident temperature (247 °F) is less than previously analyzed for EQ. Therefore, since all applicable safety limits are met, there is no reduction in any margin of safety.

The Authority considers that the proposed changes can be classified as not likely to involve significant hazards consideration since with a 95° F ultimate heat sink adequate cooling is provided to support all necessary equipment during normal operation, abnormal operation and following design basis accidents.

The staff agrees with the licensee's analysis. Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene are discussed below.

By August 31, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition shuld also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing on a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325–6000 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Capra: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20444, and to Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 24, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Local Public Document Room located at White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 31st day of July 1989.

For The Nuclear Regulatory Commission.

Donald S. Brinkman,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–18254 Filed 8–3–89; 8:45 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

Expiration of the Temporary Domestic Mail Classification Schedule Provision Regarding Second-Class Mail

AGENCY: Postal Service.

ACTION: Notice of expiration of a temporary change in the Domestic Mail Classification Schedule.

SUMMARY: This gives notice of the expiration of the temporary amendment of the Domestic Mail Classification Schedule, adopted on October 9, 1989, to provide specifically that "Plus" issues of second-class publications, whether or not published on the same day as another regular issue of the publication, are separate publications for purposes of qualifying for entry as second-class mail.

EFFECTIVE DATE: July 23, 1989.

FOR FURTHER INFORMATION CONTACT: Grayson M. Poats, (202) 268–2961.

SUPPLEMENTARY INFORMATION: On June 17, 1988, the United States Postal Service, pursuant to 39 U.S.C. 3623, filed a request with the Postal Rate Commission for a change in the mail classification schedule to make clear its authority to prevent the abuse of second-class mail through the mailing of "Plus" issues of publications. The Commission assigned the case Docket No. MC88–2 and published a notice in the **Federal Register** on June 28, 1988 (53 FR 24388) describing the request and offering interested parties an opportunity to intervene.

The Postal Service requested a change in § 200.0123 of the Domestic Mail Classification Schedule to read as follows:

§ 200.0123 For purposes of determining second-class eligibility and postage under Classification Schedule 200, an "issue" of a newspaper or other periodical shall be deemed to be a separate publication if:

a. It is published at a regular frequency, either on the same day as another regular issue of the same publication, or at such other frequency as prescribed by the Postal Service by regulation, and

b. It is distributed to more than (i) 10 percent nonsubscribers, or (ii) twice as many nonsubscribers as the other issue on that same day, or, if no other issue that day, any

other issue distributed at the same frequency, whichever is greater.

Such separate publications must independently meet the qualifications in section 200.0101 through 200.0109, or 200.0110.

Pursuant to 39 U.S.C. 3641(e), the Postal Service implemented the proposed classification change, on a temporary basis, on October 9, 1988. The Commission issued an Opinion and Recommended Decision in Docket No. MC88–2 on June 23, 1989. Pursuant to 39 U.S.C. 3641(e), the temporary classification change became ineffective on July 23, 1989, 30 days after the Commission's Opinion and Recommended Decision was issued.

An implementing regulation (section 428.227 of the Domestic Mail Manual) also became ineffective on July 23, as noticed elsewhere in this issue.

Fred Eggleston

Assistant General Counsel, Legislative Division.

[FR Doc. 89–18305 Filed 8–3–89; 8:45 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[34–27066; NSCC–89–7]

Self-Regulatory Organization; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Automated Confirmation Transaction System

July 27, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 9, 1989, NSCC filed with the Securities Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change for interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend NSCC's Rules and Procedures concerning the reporting of locked-in trade data.[1]

[1] The term "locked-in trade" refers to a trade in an automated system. Under the locked-in comparison method, the entity (*e.g.*, the exchange) that operates the system becomes the contra-side to each half of the trade.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) The purpose of the proposed rule change is to allow NSCC to accommodate the National Association of Securities Dealers' ("NASD's") Automated Confirmation Transaction System ("Act").[2] Act is an automated comparison system which locks in over-the-counter ("OTC") equities transactions as close as possible to the point of execution. ACT will serve as a conduit for the transfer of trade information to NSCC on behalf of the parties to the transaction. The trades will be reported to NSCC as locked-in trades. By reporting previously negotiated two party OTC transactions to NSCC as locked in trades, ACT will relieve the contra parties of this reporting requirement.

Currently, NSCC receives locked-in trade data from the NASD in connection with: (1) The Small Order Execution System ("SOES"), (2) the Order Confirmation Transaction System ("OCT"), (3) the Intermarket Trading System ("ITS"), and (4) the automated execution systems of Qualified Special Representatives. Trades executed via these four systems result in locked in trades and reported to NSCC on the evening of trade date ("T"). In order to accommodate ACT, NSCC also will accept locked-in trade data from self-regulatory organizations ("SRO"),[3] including NASD, on trade date ("T") and on the day after trade date. ("T+1"). NSCC will report ACT transactions received on T+1 on a T+1 Locked-in Contract available on the morning of T+2. The totals for these locked in trades (and all other trades compared by T+1) are carried forward to the Supplemental Contracts List produced on T+3.

(2) The proposed rule change promotes the prompt and accurate clearance of securities transactions and fosters cooperation and coordination with persons engaged in the clearance and settlement of Securities transactions. Therefore, it is consistent with the requirements of the 1934 Act and the rules and regulations thereunder applicable to a clearing agency.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not perceive that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3)(a) of the Securities Exchange Act of 1934. At anytime within sixty days of the filing of such a proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary to appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the pruposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change that are filed with Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5. U.S.C. 552, will be available for inspection and

[2] Filed with the Commission May 31, 1989. File no. SR–NASD–89–25.

[3] For definition of the term "SRO", are section 3(a)(26) of the offset.

copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number SR–NSCC–89–07 and should be submitted by August 25, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18183 Filed 8–3–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

July 27, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Eljer Industries, Inc.
Common Stock, $1 Par Value (File No. 7–4728)
Schwitzer, Inc.
Common Stock, $0.10 Par Value (File No. 7–4729)
Scotsman Industries, Inc.
Common Stock, $0.10 Par Value (File No. 7–4730)
IDEX Corporation
Common Stock, $.01 Par Value (File No. 7–4731)
Smith's Food & Drug Centers, Inc.
Class B Common Stock, $.01 Par Value (File No. 7–4732)
AMP Incorporated
Common Stock, No Par Value (File No. 7–4733)
Banc One Corporation
Common Stock, No Par Value (File No. 7–4734)
Global Marine Inc.
Common Stock, $.10 Par Value (File No. 7–4735)
Global Marine Inc.
Warrants to Purchase Common Stock (File No. 7–4736)
Western Company of North America
Common Stock, No Par Value (File No. 7–4737)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 17, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18184 Filed 8–3–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–17069; File No. 811–4671]

Indianapolis Life Variable Account A

July 26, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicant: Indianapolis Life Variable Account A.

Relevant 1940 Act Section: Order requested under section 8(f).

Summary of Application: Applicant requests an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on May 10, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on August 21, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC along with proof of service by affidavit, or for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicant, 2960 N. Meridian Street, P.O. Box 1230, Indianapolis, Indiana 46206.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney, (202) 272–3046 or Clifford E. Kirsch, Acting Assistant Director, (202) 272–2061 (Office of Insurance Products and Legal Compliance, Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3282 (Maryland (301) 253–4300).

Applicant's Representations

1. The Applicant was organized as a separate account of Indianapolis Life Insurance Company pursuant to the insurance laws of Indiana on September 13, 1984. The Applicant is registered under the 1940 Act as a unit investment trust. On May 14, 1986, the Applicant filed a Registration Statement on Form S–6 under the Securities Act of 1933 and Form N–8B–2 under the Investment Company Act of 1940 for an indefinite amount of Flexible Premium Variable Life Insurance Policies. The Registration Statement on Forms S–6 never became effective. Consequently, there are no Policies outstanding.

2. The Applicant has no assets or liabilities. Because it has no independent existence under state law, it will cease to exist once the deregistration order is issued and the appropriate action is taken by the officers of Indianapolis Life Insurance Company.

3. The Applicant has not within the last 18 months transferred any of its assets to a separate trust, and is not a party to any litigation or administrative proceeding. The Applicant is not now engaged, nor does it propose to engage in any business activities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan D. Katz,

Secretary.

[FR Doc. 89–18185 Filed 8–3–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week ended July 28, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 46416.

Date Filed: July 24, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 21, 1989.

Description: Application of Transcarga, S.A., pursuant to section 402 of the Act and Subpart Q of the Regulations, request a foreign air carrier permit to provide (1) scheduled and non-scheduled foreign air transportation of property and mail between San Jose, Costa Rica and Miami, Florida with intermediate points Belize City, Belize and San Salvador, El Salvador, and (2) charter foreign air transportation of property and mail between points in Costa Rica and points in the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-18171 Filed 8-3-89; 8:45 am]

BILLING CODE 4910-62-M

[Order 89-7-51]

Intra-Alaska Bush Service Mail Rates

AGENCY: Department of Transportation.

ACTION: Notice of order tentatively setting bush mail rates.

SUMMARY: The Department of Transportation is directing all parties to show cause why the Intra-Alaska bush mail rates set in Order 89-7-51 should not become final, effective April 13, 1988. The order also establishes temporary rates for application on the issue date of the order.

DATES: Notice of Objection: 15 days after service of this order. Written Objection: 40 days after service of this order.

FOR FURTHER INFORMATION CONTACT: William A. Bingham, Jr., Office of Aviation Analysis, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, 202-366-1040.

Dated: July 31, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-18172 Filed 8-3-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Extension of Comment Period on Noise Exposure Maps and Noise Compatibility Program for Colorado Springs, CO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces an extension of the comment period on the Colorado Springs Municipal Airport noise exposure maps and associated noise compatibility program to August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Dennis Ossenkop, FAA, Airports Division, ANM-611, 17900 Pacific Hwy S., C-68966, Seattle, WA 98168.

Comments on the noise exposure maps and proposed noise compatibility program should be submitted to the above office.

SUPPLEMENTARY INFORMATION: The noise exposure maps and proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Independence Avenue SW., Room 615, Washington, DC

Federal Aviation Administration, Airports Division, ANM-600, 17900 Pacific Hwy S., C-68966, Seattle, Washington 98168

Colorado Springs Municipal Airport, Colorado Springs.

Issued in Seattle, Washington, July 27, 1989.

Cecil C. Wagner,

Acting Manager, Airports Division.

[FR Doc. 89-18208 Filed 8-3-89; 8:45 am]

BILLING CODE 4910-13-M

Runway Protection Zone Policy Statement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of agency policy statement.

SUMMARY: The FAA conducts several airport safety and construction programs under which the agency studies existing and proposed objects and activities, both on and off airports. This notice confirms the policy of the FAA that, to protect the public's investment in the national airport system, the FAA will resist or oppose objects or activities in the vicinity of an airport that conflict with an airport planning or design standard or recommendation.

FOR FURTHER INFORMATION CONTACT: Luigi Iori, Manager, Design Standards Group, Office of Airport Safety and Standards (AAS-110), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591: Telephone (202) 267-3664.

SUPPLEMENTARY INFORMATION: Air travel is the major mode of interstate transportation in the United States. As air travel has increased, the frequency of airplane operations and the size of airplanes have likewise increased. At the same time, the public has not seen a corresponding expansion of the airport system. Therefore, handling the increases has challenged the government as well as the aviation industry to maintain a safe and efficient airports-airspace environment.

In meeting this challenge, the FAA conducts several airport safety and construction programs. Under these programs, the FAA studies existing and proposed objects and activities, both on and off airports. These objects and activities are not limited to obstructions to air navigation, as defined in 14 CFR part 77, Objects Affecting Navigable Airspace. The studies also focus on the efficient use of airports and the safety of persons and property on the ground. As the result of a study, the FAA may recommend against the presence of any off-airport object or activity. To protect the public's investment in the national airport system, the FAA will resist or oppose objects or activities in the vicinity of an airport that conflicts with an airports planning or design or recommendation.

Issued in Washington, DC on July 31, 1989.

Leonard E. Mudd,

Director, Office of Airport Safety and Standards.

[FR Doc. 89-18209 Filed 8-3-89; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 81-02; Notice 8]

Evaluation Report on Center High Mounted Stop Lamps; Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment; Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice announces the publication by NHTSA of an Evaluation Report concerning Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment.* This staff report evaluates safety effectiveness, benefits, and cost of center high mounted stop lamps. The report was developed in response to Executive Order 12291, which provides for Government-wide review of existing major Federal regulations. The agency seeks public review and comment on this evaluation. Comments received will be used to complete the review required by Executive Order 12291.

DATE: Comments must be received no later than November 2, 1989.

ADDRESSES: Interested persons may obtain a copy of the report free of charge by sending a self-addressed mailing label to Ms. Glorious Harris (NAD-51), National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC, 20590. All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC, 20590. [Docket hours, 8:00 a.m.-4:00 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT: Mr. Frank G. Ephraim, Director, Office of Standards Evaluation, Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street SW., Washington, DC, 20590 (202-366-1574).

SUPPLEMENTARY INFORMATION: Standard No. 108 (49 CFR 571.108) regulates the lamps, reflectors and associated equipment for cars, trucks, trailers, buses, multipurpose passenger vehicles and motorcycles. The standard was amended, effective September 1, 1985, to require that new passenger cars be equipped with a center high mounted stop lamp (CHMSL). A CHMSL is a small red stop lamp mounted on the centerline of the rear of the automobile within specified ranges of vertical locations and brightness. The vertical location is specified with the intent of positioning the lamp higher than conventional stop lamps. The lamp is actuated only by braking. Accident reduction, specifically in the group of accidents in which braking by the struck vehicle is a critical factor, is the purpose of the CHMSL.

Pursuant to Executive Order 12291, NHTSA is conducting an evaluation of CHMSL to determine the effectiveness of the CHMSL performance standard in reducing crashes and their associated damages and casualties and to determine the benefits and costs of the standard to consumers. Under the Executive order, agencies are to review existing regulations to determine whether the regulations are achieving the Order's policy goals, i.e., achieving legislative goals effectively and efficiently and without imposing any unnecessary burdens on those affected. This report is the agency's second analysis of the effectiveness of CHMSL in preventing rear impact crashes. This report evaluates the effectiveness, benefits and costs of CHMSL based on their on-the-road experience during calendar year 1987, when approximately ¼ of the passenger car fleet in the United States was CHMSL equipped. The effectiveness analysis is based on police reported accident files from 11 States. Cost estimates are based on detailed engineering analyses of production CHMSL assemblies.

The involvement rate in "CHMSL relevant" rear impacts for model year 1986 and 1987 cars (all CHMSL equipped) is compared to the rate for 1980-85 cars without the lamps. CHMSL relevant collisions are those in which the back of the car is damaged and the stop lamps were actuated prior to impact. "CHMSL effectiveness" is the reduction of CHMSL relevant collisions for CHMSL equipped cars relative to pre-CHMSL cars.

The principal findings and conclusions of this study are the following:

- CHMSL equipped cars were 17 percent less likely to be struck in the rear while braking than the cars without CHMSL (confidence bounds: 13 to 21 percent).
- CHMSL are especially effective in preventing chain collisions involving three or more vehicles.
- When all cars on the road have CHMSL, they will prevent 126,000 police reported accidents, 80,000 nonfatal injuries and $910,000,000 in property damage per year.
- CHMSL add $10.48 (in 1987 dollars) to the lifetime cost of owning and operating a car.
- At the effectiveness levels observed in the 1987 data, the CHMSL is a very cost effective safety device.

NHTSA welcomes public review of the evaluation report and invites the public to submit comments.

It is requested but not required that 10 copies of comments be submitted.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50 and 501.8)

Issued on: July 31, 1989.

Adele Derby,

Associate Administrator for Plans and Policy.

[FR Doc. 89-18211 Filed 8-3-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 28, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvnia Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0770.

Form Number: None.

Type of Review: Extension.

Title: Transfers of Securities Under Certain Agreements.

Description: Section 1058 of the Internal Revenue Code provides tax-free treatment for security lending transactions. A written agreement is necessary to verify the existence of such lending agreement. Lenders of securities are affected.

Respondents: Individuals or households, Busineses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1 hour.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–18240 Filed 8–3–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 28, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0221.
Form Number: ATF F 5640.1.
Type of Review: Extension.
Title: Offer in Compromise of Liability Incurred Under the Internal Revenue Code.
Description: ATF F 5640.1 is used by persons who wish to compromise criminal and/or civil penalties for violations of the Internal Revenue Code. If accepted the offer in compromise is a settlement between the Government and the party in violation in lieu of legal proceedings or prosecution. It also identifies the person making the offer, violations, amount of offer and circumstances concerning the violation.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 40.
Estimated Burden Hours Per Response: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 80 hours.

OMB Number: 1512–0247.
Form Number: ATF REC 5000/2.
Type of Review: Extension.
Title: Manufacture of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed of.
Description: These records are used by ATF in criminal investigations and compliance inspections in fulfilling the Bureau's mission to enforce the Gun Control Law.
Responents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Recordkeepers: 50.
Estimated Burden Hours Per Recordkeeper: 6 hours, 30 minutes.
Frequency of Response: Other.
Estimated Total Recordkeeping/ Reporting Burden: 35 hours.

OMB Number: 1512–0354.
Form Number: ARF REC 5170/3.
Type of Reeview: Extension.
Title: Retail Liquor Dealers Records of Receipts of Alcoholic Beverages and Commercial Invoices.
Description: Information contained in this collection is used by ATF to verify and account for alcoholic beverage transactions between wholesale and retail dealers to ascertain the taxpaid status supportive of complete tax collections.
Respondents: State or local governments, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Recordkeepers: 360,412.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 360,412 hours.

OMB Number: 1512–0399.
Form Number: ARF F 5400.21.
Type of Review: Extension.
Title: Application Permit for User Limited Special Fireworks (18 U.S.C. Chapter 40, Explosives).
Description: This form is used to verify the eligibility of and grant permission to the holder to buy or transport explosives in interstate commerce on a one-time basis.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 1,800.
Estimated Burden Hours Per Recordkeeper: 18 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 540 hours.

OMB Number: 1512–0488.
Form Number: ATF REC 5210/12.
Type of Review: Extension.
Title: Tobacco Products Manufacturers—Notice for Tobacco Products.
Description: ARF requires that tobacco products be identified by staements of information on packages or cases. ATF uses this information to validate the receipts of excise tax revenue and for verification of claims.
Respondents: Businesses or other for-profit.
Estimated Number of Recordkeepers: 120.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Frequency of Response: Other.
Estimated Total Recordkeeping/ Reporting Burden: 1 hour.

Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–18241 Filed 8–3–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 31, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0070
Form Number: FFIEC 004.
Type of Review: Extension.
Title: Extensions of Credit to National Bank Insiders (12 CFR part 31).
Description: 12 CFR part 31 and FFIEC 004 implement statutes that require national bank insiders to report indebtedness and national banks to disclose the indebtedness of executive officers and principal stockholders to the bank or its correspondent banks.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 53,360.
Estimated Burden Hours Per Response/Recordkeeper: 7 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 13,766 hours.

Clearance Officer: John Ference (202) 447–1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–18242 Filed 8–3–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 31, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0123.
Form Number: IRS Form 1120.
Type of Review: Revision.
Title: U.S. Corporation Income Tax Return, Capital Gains and Losses, Computation of U.S. Personal Holding Company Tax.
Description: Form 1120 is used by corporations to compute their taxable income and tax liability. Schedule D (Form 1120) is used by corporations to report gains and losses from the sale of capital assets. Schedule PH (Form 1120) is used by personal holding companies to compute their tax liability. The IRS uses these forms to determine whether corporations have correctly computed their tax liability.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 2,462,931.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping 68 hrs., 38 min.
Learning about the form 39 hrs., 10 min.
Preparing the form 69 hrs., 55 min.
Copying, assembling, and sending the form to IRS 8 hrs., 2 min.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 465,485,523 hours.

OMB Number: 1545–0890.
Form Number: IRS Form 1120–A, Schedule D (Form 1120), and Schedule PH (Form 1120).
Type of Review: Revision.
Title: U.S. Corporation Short-Form Income Tax Return.
Description: Form 1120–A is used by small corporations, those with less than $500,000 of income and assets, to compute their taxable income and tax liability. The IRS uses Form 1120–A to determine whether corporations have correctly computed their tax liability.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

	1120–A	Schedule D	Schedule PH
Recordkeeping	43 hrs., 17 min.	6 hrs., 28 min.	15 hrs., 47 min.
Learning about the form	23 hrs., 43 min.	9 hrs., 20 min.	7 hrs., 11 min.
Preparing the form	42 hrs., 13 min.	6 hrs., 32 min.	9 hrs., 38 min.
Copying, assembling, and sending the form to IRS.	4 hrs., 50 min.	48 min.	32 min.

Estimated Number of Respondents/ Recordkeepers: 285,777.
Estimated Burden Hours Per Response:
Frequency of Response: Annually.
Estimated Total Reporting Burden: 32,590,009 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–18243 Filed 8–3–89; 8:45 am]

BILLING CODE 4810–25–M

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 20–89]

Treasury Notes, Series AC–1991

Washington, July 27, 1989.

The Secretary announced on July 26, 1989, that the interest rate on the notes designated Series AC–1991, described in Department Circular—Public Debt Series—No. 20–89 dated July 20, 1989, will be 7¾ percent. Interest on the notes will be payable at the rate of 7¾ percent per annum.

Gerald Murphy

Fiscal Assistant Secretary.

[FR Doc. 89–18217 Filed 8–3–89; 8:45 am]

BILLING CODE 4810–01–M

[Number: 107–04]

The General Counsel

Date: July 25, 1989

By virtue of the authority vested in me as Secretary of the Treasury, including authority vested in me by 31 U.S.C. 321(b), it is ordered that:

1. The Department has a General Counsel, who, pursuant to 31 U.S.C. 301(f)(1), is the chief law officer of the Department. The General Counsel is the final legal authority within the Department and, as such, has the authority to participate in and decide any legal matter within the Department. The General Counsel is the head of and supervises the Legal Division, which constitutes the consolidated legal staff of the Department. All attorneys whose duties include providing legal advice to

officials in any office or bureau of the Department shall be part of the Legal Division under the supervision of the General Counsel.

2. The General Counsel provides legal advice to the Secretary of the Treasury, the Deputy Secretary, the Under Secretaries, the Assistant Secretaries and to all offices and bureaus of the Department on any matter that may arise within the Department. The following are also included in the functions of the General Counsel:

a. Considers the legal problems relating to Department management, government financial operations, the public debt, the revenue and customs laws, international and domestic economic, monetary and financial affairs, and law enforcement activities;

b. Coordinates the Department's position in litigation;

c. Reviews the Department's regulations for legal sufficiency;

d. Operates the Department's ethics program and counsels the Department's officers and employees on conflicts of interest and ethics matters;

e. Coordinates and assists in the preparation of certain legislative reports to the Congress and the Office of Management and Budget, and the Department's annual legislative program;

f. Considers appeals to the Secretary in administrative matters where so designated; and

g. Performs such other tasks as the Secretary may direct.

3. In performing these functions and services, the General Counsel operates principally through and supervises a Deputy General Counsel, the Assistant General Counsel (including the Assistant General Counsel who is the Chief Counsel of the Internal Revenue Service), the Counselor to the General Counsel, the Tax Legislative Counsel, the International Tax Counsel, the Chief Counsel of the Office of the Comptroller of the Currency, and the Counsel to the Inspector General. Each of the officials listed in this paragraph shall be responsible for referring to the General Counsel any matter on which action would appropriately be taken by the General Counsel.

4. The General Counsel is hereby delegated authority to determine the structural and functional organization of the Legal Division and to establish the policies, procedures and standards governing its functioning.

5. The Legal Division shall continue to be a bureau within the Department for purposes of appointment and administration of personnel, the labor management relations program, and the ethics program. The General Counsel, with the concurrence of the Assistant Secretary of the Treasury (Management), may determine that the Legal Division shall operate with other authorities and responsibilities of a bureau.

Nicholas F. Brady,

Secretary of the Treasury.

[FR Doc. 89-18293 Filed 8-3-89; 8:45 am]

BILLING CODE 4810-25-M

[Number 101-05]

Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession

Date: July 25, 1989.

By virtue of the authority vested in me as Secretary of the Treasury, including the authority vested in me by 31 U.S.C. 321(b), it is ordered that:

1. The Deputy Secretary shall report directly to the Secretary.

2. The Assistant Secretary (Policy Management) and Counselor to the Secretary shall report directly to the Secretary, except that with respect to supervision of the Executive Secretariat, the Assistant Secretary (Policy Management) and Counselor to the Secretary shall report through the Deputy Secretary to the Secretary.

3. The following officials shall report through the Deputy Secretary to the Secretary and shall exercise supervision over those officers and organizational entities set forth on the attached organizational chart:

Under Secretary (International Affairs)
Under Secretary (Finance)
General Counsel
Assistant Secretary (Enforcement)
Assistant Secretary (Legislative Affairs)
Assistant Secretary (Management)
Assistant Secretary (Public Affairs and Public Liaison)
Assistant Secretary (Tax Policy)
Inspector General
Treasurer of the United States
Comptroller of the Currency
Commissioner of Internal Revenue

4. The Tax Legislative Counsel and International Tax Counsel provide counsel directly to the Assistant Secretary (Tax Policy), but are supervised by the General Counsel as part of the Department's Legal Division.

5. The Deputy Secretary is authorized, in that official's own capacity and that official's own title, to perform any functions the Secretary is authorized to perform and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary.

6. The Under Secretaries, the General Counsel, and the Assistant Secretaries are authorized to perform any functions the Secretary is authorized to perform. Each of these officials will ordinarily perform under this authority only functions which arise out of, relate to, or concern the activities or functions of, or the laws administered by or relating to, the bureaus, offices, or other organizational units over which the incumbent has supervision. Each of these officials shall perform under this authority in their own capacity and their own title and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary. Any action heretofore taken by the Deputy Secretary or any of these officials in the incumbent's own title is hereby affirmed and ratified as the action of the Secretary.

7. The following officials shall, in the order of succession indicated, act as Secretary of the Treasury in case of the death, resignation, absence or sickness of the Secretary and other officers succeeding the incumbent, until a successor is appointed, or until the absence or sickness shall cease:

a. Deputy Secretary;

b. Under Secretary (International Affairs);

c. Under Secretary (Finance);

d. Assistant Secretary (Policy Management) and Counselor to the Secretary;

e. General Counsel; and

f. Assistant Secretaries, appointed by the President with Senate confirmation, in the order designated by the Secretary.

8. Treasury Order 101-05, "Supervision of Offices and Bureaus, Delegation of Certain authority, and Order of Succession in the Department of the Treasury," dated February 17, 1987, is superseded as of this date. To the extent that any provision of any other Order of the Department is inconsistent with any provision of this Order, the provisions of this Order shall govern.

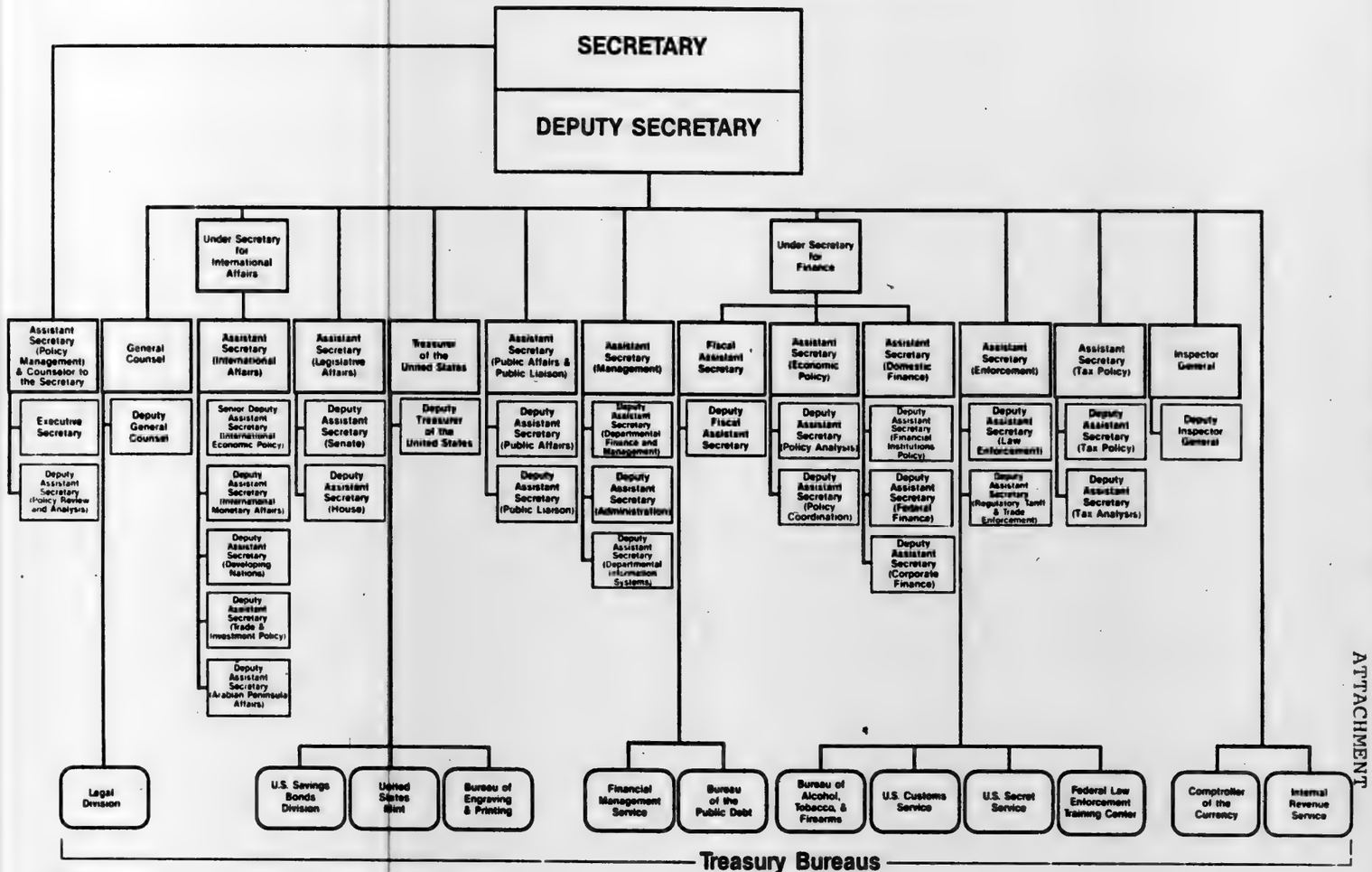
Nicholas F. Brady,

Secretary of the Treasury.

BILLING CODE 4810-25-M

ATTACHMENT

THE DEPARTMENT OF THE TREASURY



July 25, 1989

[FR Doc. 89-18292 Filed 8-3-89; 8:45 am]
BILLING CODE 4810-25-C

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program; Correction to Application Packages

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to TCE application packages.

SUMMARY: This document provides notice of a correction to the Application Packages for the 1990 Tax Counseling for the Elderly (TCE) Program

Correction: Representatives of organizations who requested Application Packages for the 1990 Tax Counseling for the Elderly (TCE) Program from the Internal Revenue Service, are hereby notified that the following correction should be made to the packages that they receive from the IRS. Under Program Requirements, Subpart 120(s), Page 3, the text should read: "(s) Non-profit organization. An organization which meets the criteria of an exempt organization under section 501 of the Internal Revenue Code (and which is not otherwise prohibited from being a sponsor by these program guidelines)." The deadline for submitting an application package to the IRS for the 1990 Tax Counseling for the Elderly (TCE) Program remains September 1, 1989.

ADDRESSES: Application Packages may be requested by contacting: Program Manager, Tax Counseling for the Elderly Program, Internal Revenue Service, Volunteer and Education Programs Branch (T:T:VE), 1111 Constitution Avenue NW., Room 7215, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Mr. Roy Johnson, Volunteer and Education Programs Branch, (T:T:VE), Room 7215, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224.

The non-toll-free telephone number is: (202) 566–4904.

Neil Patton,

Chief, Volunteer and Education Programs Branch.

[FR Doc. 89–18175 Filed 8–3–89; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Frederic Edwin Church" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art in Washington, DC, beginning on or about October 8, 1989, to on or about January 28, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 28, 1989.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 89–18207 Filed 8–3–89; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under Office of Management and Budget Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/485–7979, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: July 28, 1989.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Veterans Benefits Administration
2. Income-Net Worth and Employment Statement (In Support of Claim for Total Disability Benefits)
3. VA Form 21–527
4. This form is used to obtain income, net worth and employment information if the information of record is incomplete, obsolete, inaccurate, or insufficiently detailed. This information is used to determine eligibility and benefit rates for veterans' disability pension benefits.
5. On occasion
6. Individuals or households
7. 104,440 responses.
8. one hour
9. Not applicable

1. Veterans Benefits Administration
2. Request for Details of Expenses
3. VA Form 21–8049
4. This form is used to obtain information concerning a claimant's deductible expenses and/or commercial life insurance proceeds received in order to determine entitlement to benefits.
5. On occasion
6. Individuals or households
7. 22,800 responses.
8. ¼ hour
9. Not applicable

[FR Doc. 89–18228 Filed 8–3–89; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 149
Friday, August 4, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From August 2nd Open Meeting

August 1, 1989.

The following items have been deleted from the list of agenda items scheduled for consideration at the August 2, 1989, Open Meeting and previously listed in the Commission's Notice of July 26, 1989.

Agenda, Item No., and Subject

General—2—Title: Further Studies on the Availability of Spectrum Advanced Television. Summary: The Commission will consider an interim report describing further studies conducted by the Office of Engineering and Technology on the availability of spectrum for advanced television.

Mass Media—1—Title: Advanced Television Systems and Their impact on the Existing Television Broadcast Service; Review of technical and Operational Requirements of Part 73–E Reevaluation of the UHF Television Channel and Distant Separation Requirements of part 73 of the Commission's Rules. Summary: The Commission will consider a Policy Statement and second Further Notice of Inquiry concerning the policy, economic, legal and technical issues related to the introduction of advanced television technologies.

Additional information concerning these items may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632–5050.

Issued: August 1, 1989.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–18356 Filed 8–2–89; 10:26 am]

BILLING CODE 6712–0–M

NATIONAL COUNCIL ON THE HANDICAPPED

Quarterly Meeting

AGENCY: National Council on Disability.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Council on Disability. This notice also describes the functions of the Council. Notice of this meeting is required under section 522(b)(10) of the "Government in Sunshine Act" (Public Law 94–409).

DATES:

Aug. 7, 1989, 9:00 a.m. to 5:00 p.m.
Aug. 8, 1989, 9:00 a.m. to 5:00 p.m
Aug. 9, 1989, 9:00 a.m. to 5:00 p.m.
Aug. 10, 1989, 9:00 a.m. to 5:00 p.m.
Aug. 11, 1989, 9:00 a.m. to 5:00 p.m.

LOCATION: Omni Hotel, San Diego, California.

FOR FURTHER INFORMATION CONTACT: National Council on Disability, 800 Independence Avenue, SW., Suite 814, Washington, DC 20591, (202) 267–3846, TDD: (202) 267–3232.

The National Council on Disability is an independent Federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Public Law No. 95–602 in 1978), the Council was initially an advisory board within the Department of Education. In 1984, however, the Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Public Law No. 98–221).

The Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting disabled individuals and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research (NIDRR).

The meeting of the Council shall be open to the Public. The proposed agenda includes:

Report from the Chairperson and Executive Committee
Update on Education Study

Committee Meetings

Education
Personal Assistance
Communications
NIDRR
Employment
Family Conference

NCD Planning Session
Committee Reports
Update on Prevention Initiative
Unfinished Business
New Business
Announcements
National Conference for Families of Persons With Disabilities: A Family Affair—August 9–12, 1989

Records shall be kept of all Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed at Washington, DC on July 31, 1989.

Ethel D. Briggs,

Deputy Director.

[FR Doc. 89–18407 Filed 8–2–89; 1:24 pm]

BILLING CODE 8820–BB–M

POSTAL SERVICE BOARD OF GOVERNORS

Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, August 15, 1989, in San Francisco, California. The meeting is open to the public and will be held in the Elizabethan Room, C and D, at the Westin St. Francis Hotel, Union Square, 335 Powell Street. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, August 14, 1989, but it is not open to the public. It will consist entirely of briefings, the agenda item on capital investment noted in 54 FR 30972, July 25, 1989, having been deleted.

Agenda

Tuesday Session (St. Francis Hotel)
August 15—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, July 10–11, 1989.
2. Remarks of the Postmaster General.
3. Western Region Overview. (Joseph R. Caraveo, Regional Postmaster General, Western Region)
4. Quarterly Report on Financial Performance. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group)
5. Quarterly Report on Service Performance. (Ann McK. Robinson, Consumer Advocate)
6. Report on EEO/Affirmative Action Programs in the San Francisco Division. (Dallas W. Keck, Field Division Manager/Postmaster, San Francisco Division)
7. Tentative Agenda for September 11–12, 1989, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 89–18427 Filed 8–2–89; 1:59 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunchine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of August 7, 1989.

A closed meeting will be held on Tuesday, August 8, 1989, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 8, 1989, at 2:30 p.m., will be:

Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Formal order of investigation.
Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Barabara Green at (202) 272–2000.

Dated: August 1, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18435 Filed 8–2–89; 3:08 pm]

BILLING CODE 8010–01–17

Corrections

Federal Register
Vol. 54, No. 149
Friday, August 4, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 90643-9143]

RIN 0648-AC34

King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands

Correction

In notice document 89-10236 beginning on page 29080 in the issue of Tuesday, July 11, 1989, make the following corrections:

1. On page 29080, in the third column, in the first complete paragraph, in the third line from the bottom, "(AD&G)" should read "(ADF&G)".

2. On the same page, in the third column, in the second complete paragraph, in the first line "minimum" should read "maximum".

3. On page 29082, in the second column, the second "Comment" should be removed.

4. On page 29084, in the third column, in the first complete paragraph, in the third line, "not" should read "nor".

BILLING CODE 1505-01-D

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Textile and Apparel Categories With Harmonized Tariff Schedule of the United States Annotated; Changes to the 1989 Correlation

Correction

In notice document 89-15581 beginning on page 27924 in the issue of Monday, July 3, 1989, make the following corrections:

1. On page 27925, in the table, under "Changes to the 1989 correlation," the third entry in Category 359 should read "Add 6203.42.2005-men's or boys' bib and brace overalls, insulated for cold weather protection".

2. On page 27926, in the table, under "Changes to the 1989 correlation," in the last entry in Category 631, "6116.00.3025" should read "6216.00.3025".

3. On the same page, in the table, under the same heading, in the last entry in Category 633, "6103" should read "6203".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Parts 203, 206, 209, 212, 213, 214, 215, 216, 217, 219, 222, 223, 236, 242, 245, 252, 253, and 271

[Defense Acquisition Circular (DAC) 88-10]

Department of Defense, Federal Acquisition Regulation Supplement; Regulatory and Miscellaneous Amendments

Correction

In rule document 89-17183 beginning on page 30738 in the issue of Monday, July 24, 1989, make the following correction:

On page 30738, in the third column, the heading directly above the fifth full paragraph should read "*DAC 88-10, Item VI*".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

Correction

In notice document 89-16994 beginning on page 30474 in the issue of Thursday, July 20, 1989, make the following correction:

On the same page, in the 1st column, in the 2nd paragraph, in the 11th line, "July" should read "June".

BILLING CODE 1505-01-D

federal register

Friday
August 4, 1989

Part II

Railroad Retirement Board

20 CFR Parts 208, 220, 230, and 260
Determining Disability; Proposed Rule

RAILROAD RETIREMENT BOARD

20 CFR Parts 208, 220, 230, and 260

RIN 3320-AA01

Determining Disability

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to amend its regulations covering determinations of disability as provided for in the Railroad Retirement Act of 1974 (Act). This part will replace Part 208 and §§ 230.3 and 230.4 of chapter II, and amend § 260.1 of chapter II. The Board's present regulations concerning disability determinations were promulgated under the Railroad Retirement Act of 1937, and no longer adequately describe the process by which the Board makes disability determinations as provided for in the Act. Consequently, these regulations have been totally revised.

DATE: Comments must be received by the Secretary to the Board on or before October 3, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Grace Koester, Director of Hearings and Appeals, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, telephone 312-751-4790.

SUPPLEMENTARY INFORMATION: These proposed regulations provide rules for the three types of disability decisions made by the Board; namely, occupational disability, disability for any regular employment and disability as defined in the Social Security Act. In general, the proposed regulations provide for a sequential method of evaluating disability which initially takes into consideration all medical evidence and then proceeds to consider such vocational factors as age, education and work experience. In this regard many of the proposed regulations parallel the regulations of the Social Security Administration found in Subpart P, Part 404, of Title 20 (Determining Disability and Blindness). This is because courts have held that "regular employment" as that term is used in the Act has the same meaning as the term "substantial gainful activity" as that term is used in the Social Security Act. See, for example, *Peppers* v. *Railroad Retirement Board*, 728 F. 2d 404 (7th Cir., 1984). The proposed regulations also include the requirements set forth in the recent proposed regulations of the Social Security Administration dealing with consultative examinations. See 52 FR 13014-13031. These proposed regulations also provide for trial work periods during which disabled individuals may attempt to work without jeopardizing loss of any disability benefits. Finally, the proposed rules provide a procedure which must be followed before disability benefits may be terminated. Proposed Part 220 is divided into 15 Subparts, A through O.

Subpart A, General (§§ 220.1 through 220.3), is introductory in nature and sets forth the three types of disability decisions, described above, made by the Board.

Subpart B, General Definition of Terms Used in This Part (§ 220.5), defines certain terms used throughout Part 220.

Subpart C, Disability Under the Railroad Retirement Act for Work in Regular Occupation (§§ 220.10 through 220.21), sets forth the requirements which an employee must meet to receive a disability annuity because of his or her inability to work in his or her regular occupation. Proposed § 220.10 provides that in order to receive this annuity an employee must be unable to engage in his or her regular occupation (defined in § 220.11) because of a permanent physical or mental condition. Proposed § 220.13 describes the process by which the Board evaluates claims for this type of disability annuity. Generally speaking, if an employer does not allow an employee to continue working for medical reasons he or she will be found disabled for his or her occupation. However, the Board may find the employee disabled or not disabled regardless of the employer's findings by evaluating his or her impairments against the requirements of his or her job.

Subpart D, Disability Under the Railroad Retirement Act for Any Regular Employment (§§ 220.25 through 220.30), sets forth the requirements which an employee, child, widow(er) must meet in order to receive an annuity because he or she is disabled for any regular employment. Proposed § 220.28 provides that in order to receive such an annuity the claimant must show that he or she is unable to engage in any substantial gainful activity because of a permanent physical or mental condition.

Subpart E, Disability Determination Governed by the Regulations of the Social Security Administration (§§ 220.35 through 220.39), describes when the Board has authority to determine when someone is disabled as that term is defined in the Social Security Act. Such determinations are made by the Board where they may increase an individual's annuity under the Act or provide for Medicare coverage prior to the age of 65. In addition, in order to pay a disability annuity to a surviving divorced spouse or remarried widow(er) he or she must be found disabled under the Social Security Act (proposed § 220.39). This subpart emphasizes that in making the determinations described therein the Board follows Subpart P, Part 404, of Title 20 of the Code of Federal Regulations and not the regulations in this part.

Subpart F, Evidence of Disability (§§ 220.45 through 220.48), describes what type of evidence the Board considers in making disability determinations.

Subpart G, Consultative Examinations (§§ 220.50 through 220.64), describes the process the Board follows for developing medical evidence in a disability claim. The proposed regulations make clear that the Board will request and make every reasonable effort to obtain medical evidence from the claimant's treating sources. The proposed regulations also describe when the Board will require a claimant to take a medical examination at the Board's expense in order to assist the Board in making the disability determination.

Subpart H, Evaluation of Disability (§§ 220.100 through 220.105), describes the process which the Board proposes to use in determining whether one is unable to engage in any regular employment because of a disability. In general, the proposed process parallels that as provided for in the Social Security Administration Regulations: Subpart P of Part 404 of Title 20. Under this process if a claimant's impairments are not severe enough to merit a rating of disability on the medical evidence alone, the Board will look to see if the claimant can do his or her past relevant work. If he or she cannot, then the Board will determine whether the individual can do any other work. Proposed § 220.101 also describes the additional considerations the Board will use when evaluating any mental impairment(s) a claimant may have.

Subpart I, Medical Considerations (§§ 220.110 through 220.115), describes a listing of medical impairments which are found at Appendix 1 of the proposed regulations. If a claimant has an impairment which, based upon medical findings, is identical or medically equivalent to one listed in Appendix 1, he or she is considered to be unable to engage in any regular employment unless he or she is actually working. Proposed § 220.113 describes medical findings as consisting of symptoms, signs and laboratory findings. Proposed § 220.114 provides that an individual will not be found to be disabled based upon his or her own description of his or her symptoms unless medical signs or laboratory findings show an impairment that could reasonably be expected to produce those symptoms. Proposed § 220.115 describes when the Board will deny an application for a disability annuity or stop paying a disability annuity because the claimant fails to follow prescribed treatment.

Subpart J, Residual Functional Capacity (§§ 220.120 through 220.121), describes how the Board determines what an individual can do despite limitations because of physical or mental impairments. When an individual cannot be found disabled, either occupationally or for any regular employment, based upon medical consideration alone, the residual functional capacity determination is a threshold step in determining what, if any, other type of work the claimant can do. This determination will include a consideration of what the claimant's treating physicians have stated the claimant can do.

Subpart K, Vocational Considerations (§§ 220.125 through 220.134), applies only to claimants who claim they are disabled for any regular employment. When the Board cannot decide whether such a claimant is disabled based upon medical evidence alone, it then makes a residual functional capacity determination as provided in Subpart J. If based upon this determination it is found that a claimant cannot do work similar to that which he has done in the past, then the Board applies the vocational considerations in this subpart to determine whether an individual can do any other type of work which exists in the national economy. Proposed § 220.129 describes the effect of an individual's educational background on this type of disability determination. Proposed § 220.130 describes the impact of an individual's past work experience upon this type of disability determination. Proposed § 220.131 defines work which exists in the national economy and how the Board determines the existence of such work. Proposed § 220.133 describes how in evaluating an individual's past work it is categorized as unskilled, semi-skilled or skilled with or without skills transferable. Proposed § 220.134 describes the listing of medical-vocational guidelines found in Appendix 2 of this proposed part. These rules set forth combinations of residual functional capacity, described in terms of physical exertion (proposed § 220.132), age, education and previous work experience. After each combination there is an indicated decision of disabled or not disabled. Thus, for example, rule § 201.01 provides that an individual who has the residual functional capacity to do sedentary work (proposed § 220.132(a)) who is of advanced age (proposed § 220.128(d)), and whose previous work experience is unskilled (proposed § 220.133(b)) is found disabled. However, if the same individual has transferable skills (proposed § 220.133(e)) he or she would be found *not* disabled under rule 201.03. These rules only apply if all the findings of fact about the claimant's vocational factors and the residual functional capacity meet the profile set forth in the rule. If the rule applies, the decision as to whether one is disabled or not is governed by the rule (proposed § 220.134(c)).

Subpart L, Substantial Gainful Activity (§§ 220.140 through 220.145), defines substantial gainful activity. Under proposed § 220.141 substantial gainful activity is work which involves significant physical or mental activity and which an individual does for pay or profit. As noted in proposed Subpart D, an individual must be found unable to do substantial gainful activity in order to receive an annuity based upon his or her inability to engage in any regular employment. Proposed § 220.143 describes how the amount of an individual's earnings may create a presumption as to whether or not such person is engaging in substantial gainful activity. Proposed § 220.144 describes how the Board evaluates a self-employed individual to determine if he or she is engaging in substantial gainful activity. Proposed § 220.145 describes how the Board takes into consideration impairment-related work expenses, such as wheel chairs, prosthetic devices, braille typewriters, in determining an individual's earnings when applying § 220.143.

Subpart M, Disability Annuity Earnings Restrictions (§§ 220.160 through 220.164), describes the effect of earnings upon an employee receiving a disability annuity, whether occupational or due to inability to engage in any regular employment. An employee annuity is suspended in any month in which an employee earns $400 or more in employment or self-employment (proposed § 220.161(b)). However, if the employee's earnings are less than $5000 a year all annuities withheld are paid back at the end of the year. The earnings limitations in this subpart are not to be confused with the earnings tests found in proposed § 220.143 of proposed Subpart L. As noted earlier these tests are used to determine whether an individual is engaged in substantial gainful activity. Suffering a deduction in one's annuity under this subpart because of earnings of more than $5000 a year does not necessarily mean the employee is engaging in substantial gainful activity. Proposed § 220.162 explains the reporting requirements with regard to earnings that disability annuitants must follow, and proposed § 220.163 explains the penalties for failure to report earnings.

Subpart N, Trial Work Period and Reentitlement Period for Annuitants Disabled for Any Regular Employment (§§ 220.170 through 220.171), describes the trial work period for annuitants who are unable to engage in any regular employment. This is a period of nine months in which the individual may work and the Board will not consider that work as showing that the annuitant's disability has ended. Proposed § 220.171 describes the reentitlement period which follows the trial work period. During this period an individual may have his or her annuity terminated because he or she engages in substantial gainful activity but should substantial gainful activity cease, he or she may begin to receive the disability annuity again without a new application or a new determination of disability.

Subpart O, Continuing or Stopping Disability Due to Substantial Gainful Activity or Medical Improvement (§§ 220.175 through 220.184), describes the process under which the Board would determine whether an individual continues to be disabled for purposes of receiving an annuity based upon his or her inability to engage in regular employment. Generally, unless the annuitant has demonstrated his or her ability to engage in substantial gainful activity, for example, by the amount of his or her earnings (proposed Subpart L), in order to terminate an annuity the Board must determine if there has been any medical improvement in the annuitant's impairment and, if so, whether this medical improvement is related to the annuitant's ability to work (proposed § 220.178). If the Board finds that there is no medical improvement, then it must determine whether one of the exceptions to the medical improvement rule exists. These exceptions are found in proposed § 220.179. If medical improvement related to ability to work has not occurred and no exception applies, the disability annuity will continue. However, even where medical improvement related to ability to work has occurred or an exception to medical

improvement applies, the Board must also show that the annuitant is currently able to engage in any substantial gainful activity before it can terminate the annuity (proposed § 220.180). Proposed § 220.183 provides that no disability annuity will be terminated without advanced written notice to the annuitant and without an opportunity being provided to the annuitant to show that he or she is still disabled.

The Board will perform continuing disability review at the same intervals as required in regulations of the Social Security Administration. Although not included in this notice, the Board will incorporate provisions identical to those found in 20 CFR 404.1590 (dealing with how often disability reviews are conducted by the Social Security Administration) into this regulation before promulgating it as a final rule.

The Board has determined that this is not a major rule under Executive Order No. 12291; therefore, no regulatory impact analysis is required. The information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The public reporting burden for the collection of information at 20 CFR 220.36(b)(6) (OMB No. 3220–0002), 220.45 (OMB No. 3220–0002, 3220–0030, 3220–0106, 3220–0141), 220.46 (OMB No. 3220–0038), and 220.50 (OMB No. 3220–0124) is estimated to average 28, 28, 22, 10, 30, 24, and 60 minutes per response respectively, including the time for reviewing the completed form. If you wish, send comments regarding the accuracy of our estimates or any other aspects of these information collections, including suggestions for reducing completion time, to the Director of Information Resources Management, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611 and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

A distribution table is provided to show the disposition of the old Part 208 and portions of Part 230.

DISTRIBUTION TABLE

Current section and name	New section and name
208.9 Regular occupation defined.	220.11 Regular occupation defined.
208.10 Permanent physical or mental condition.	220.12 Permanent physical or mental condition.
	220.28 How long the impairment must last.

DISTRIBUTION TABLE—Continued

Current section and name	New section and name
208.11 Establishment of permanent disability for work in the applicant's "regular occupation".	220.13 Establishment of permanent disability for work in the regular occupation.
208.17 Establishment of permanent disability for work in any regular employment.	220.26 Disability for any regular employment, defined.
	220.110 Listing of impairments in Appendix 1.
	220.141 Substantial gainful activity, defined.
208.25 Proof of continuance of disability.	220.176 When disability continues or ends.
208.27 Disability annuitant to notify of recovery from disability and of employment or self-employment.	220.162 Earnings report.
208.29 Cessation of eligibility for disability annuities.	220.46 If the claimant fails to submit medical or other evidence.
	220.52 Failure to appear at a consultative examination.
	220.181 The month in which the Board will find that the annuitant is no longer disabled.
208.31 Cessation of disability annuity not prejudicial to further eligibility.	Obsolete.
230.3 Loss of disability annuity because of earnings and penalties.	220.162 Earnings report.
	220.163 Employee penalty deductions.
230.4 Limit of loss of disability annuity because of earnings and penalty.	220.164 Employee end-of-the-year adjustment.

List of Subjects

20 CFR Parts 208 and 220

Disability benefits.

20 CFR Parts 230 and 260

Railroad employees.

For the reasons set out in the preamble, chapter II of title 20 of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 220, Determining Disability, is added to read as follows:

PART 220—DETERMINING DISABILITY

Subpart A—General

Sec.
220.1 Introduction of part.
220.2 The basis for the Board's disability decisions.
220.3 Determinations by other organizations and agencies.

Subpart B—General Definitions of Terms Used in This Part

220.5 Definitions as used in this part.

Subpart C—Disability Under the Railroad Retirement Act for Work in the Regular Occupation

220.10 Disability for work in the regular occupation.
220.11 Regular occupation, defined.
220.12 Permanent physical or mental impairment, defined.
220.13 Establishment of permanent disability for work in the regular occupation.
220.14 Evidence considered.
220.15 Effects of work on occupational disability.
220.16 Responsibility to notify the Board of events which affect disability.
220.17 Recovery from disability for work in the regular occupation.
220.18 The reentitlement period.
220.19 Payment of the disability annuity during the trial work period and the reentitlement period.
220.20 Notice that an annuitant is no longer disabled.
220.21 Initial evaluation of a previous occupational disability.

Subpart D—Disability Under the Railroad Retirement Act for Any Regular Employment

220.25 General.
220.26 Disability for any regular employment, defined.
220.27 What is needed to show an impairment.
220.28 How long the impairment must last.
220.29 Work that is considered substantial gainful activity.
220.30 Special period required for eligibility of widow(er)s.

Subpart E—Disability Determinations Governed by the Regulations of the Social Security Administration

220.35 Introduction.
220.36 Period of disability.
220.37 When a child's disability determination is governed by the regulations of the Social Security Administration.
220.38 When a widow(er)'s disability determination is governed by the regulations of the Social Security Administration.
220.39 Disability determination for a surviving divorced spouse or remarried widow(er).

Subpart F—Evidence of Disability

220.45 Providing evidence of disability.
220.46 Medical evidence.
220.47 Purchase of existing medical evidence.
220.48 If the claimant fails to submit medical or other evidence.

Subpart G—Consultative Examinations

220.50 Consultative examination at the Board's expense.
220.51 Notice of the examination.
220.52 Failure to appear at a consultative examination.

Sec.
220.53 When the Board will purchase a consultative examination and how it will be used.
220.54 When the Board will not purchase a consultative examination.
220.55 Purchase of consultative examinations at the reconsideration level.
220.56 Securing medical evidence at the appeals referee hearing level.
220.57 Type of purchased examinations and selection of source.
220.58 Objections to the designated physician or psychologist.
220.59 Requesting examination by a specific physician, psychologist or institution—appeals referee hearing level.
220.60 Diagnostic surgical procedures.
220.61 Informing the examining physician or psychologist of examination scheduling, report content and signature requirements.
220.62 Reviewing reports of consultative examinations.
220.63 Conflict of interest.
220.64 Program integrity.

Subpart H—Evaluation of Disability

220.100 Evaluation of disability for any regular employment.
220.101 Evaluation of mental impairments.
220.102 Non-severe impairment(s), defined.
220.103 Two or more unrelated impairments—initial claims.
220.104 Multiple impairments.
220.105 Initial evaluation of a previous disability.

Subpart I—Medical Considerations

220.110 Listing of impairments in Appendix 1 of this Part.
220.111 Medical equivalence.
220.112 Conclusions by physicians concerning the claimant's disability.
220.113 Symptoms, signs, and laboratory findings.
220.114 Evaluation of symptoms, including pain
220.115 Need to follow prescribed treatment.

Subpart J—Residual Functional Capacity

220.120 Residual functional capacity, defined.
220.121 Responsibility for assessing and determining residual functional capacity.

Subpart K—Vocational Considerations

220.125 When vocational background is considered.
220.126 Relationship of ability to do work and residual functional capacity.
220.127 When the only work experience is arduous unskilled physical labor.
220.128 Age as a vocational factor.
220.129 Education as a vocational factor.
220.130 Work experience as a vocational factor.
220.131 Work which exist in the national economy.
220.132 Physical exertion requirements.
220.133 Skill requirements.
220.134 Medical Vocational Guidelines in Appendix 2 of this Part.

Subpart L—Substantial Gainful Activity

220.140 General.
220.141 Substantial gainful activity, defined.
220.142 General information about work activity.
220.143 Evaluation guides for an employed claimant.
220.144 Evaluation guides for a self-employed claimant.
220.145 Impairment-related work expenses.

Subpart M—Disability Annuity Earnings Restrictions

220.160 How work for a railroad employer affects a disability annuity.
220.161 How work affects an employee disability annuity
220.162 Earnings report.
220.163 Employee penalty deductions.
220.164 Employee end-of-year adjustment.

Subpart N—Trial Work Period and Reentitlement Period for Annuitants Disabled for Any Regular Employment

220.170 The trail work period.
220.171 The reentitlement period.

Subpart O—Continuing or Stopping Disability Due to Subtantial Gainful Activity or Medical Improvement

220.175 Responsibility to notify the Board of events which affect disability.
220.176 When disability continues or ends.
220.177 Terms and definitions.
220.178 Determining medical improvement and its relationship to the annuitant's ability to do work.
220.179 Exceptions to medical improvement.
220.180 Determining continuation or cessation of disability.
220.181 The month in which the Board will find that the annuitant is no longer disabled.
220.182 Before a disability annuity is stopped.
220.183 Notice that the annuitant is not disabled.
220.184 If the annuitant becomes disabled by another impairment(s).

Appendix 1—Listing of Impairments
Appendix 2—Medical-Vocational Guidelines.

Authority: 45 U.S.C. 231a, 45 U.S.C. 231f.

Subpart A—General

§ 220.1 Introduction of part.

(a) This part explains how disability determinations are made by the Railroad Retirement Board. In some determinations of disability entitlement, as described below, the Board makes the decision of disability under the Railroad Retirement Act based on the regulations set out in this part. However, in certain other determinations of disability entitlement (as also described below) the Board has the authority to decide whether the claimant is disabled as that term is defined in the Social Security Act and the regulations of the Social Security Administration.

(b) In order for a claimant to become entitled to a railroad retirement annuity based on disability for his or her regular railroad occupation, or to become entitled to a railroad retirement annuity based on disability for any regular employment as an employee, widow(er), or child, he or she must be disabled as those terms are defined in the Railroad Retirement Act. In order for a claimant to become entitled to a period of disability, to early Medicare coverage based on disability, to benefits under the social security overall minimum, or to a disability annuity as a surviving divorced spouse or remarried widow(er) the claimant must be found disabled as that term is defined in the Social Security Act.

§ 220.2 The basis for the Board's disability decisions.

(a) The Board makes disability decisions for claims of disability under the Railroad Retirement Act. These decisions are based either on the rules contained in the Board's regulations in this part or the rules contained in the regulations of the Social Security Administration, whichever is controlling.

(b) A disability decision is made only if the claimant meets other basic eligibility requirements for the specific disability benefit for which he is applying. For example, a claimant for an occupational disability annuity must first meet the eligibility requirements for that annuity, as explained in Part 216 of this chapter, in order for the Board to make a disability decision.

§ 220.3 Determinations by other organizations and agencies.

Determinations of the Social Security Administration or any other governmental or non-governmental agency about whether or not a claimant is disabled under the laws, regulations or standards administered by that agency shall be considered by the Board but are not binding on the Board.

Subpart B—General Definitions of Terms Used in This Part

§ 220.5 Definitions as used in this part.

"Act" means the Railroad Retirement Act of 1974.

"Application" refers only to a form described in Part 217 of this chapter.

"Board" means the Railroad Retirement Board Agency.

"Claimant" means the person for whom an application for an annuity, period of disability or Medicare coverage is filed.

"Eligible" means that a person would meet all the requirements for payment of an annuity but has not yet applied.

"Employee" is defined in Part 203 of this title.

"Entitled" means that a person has applied and has proven his or her right

BEST COPY AVAILABLE

to have the annuity, period of disability, or Medicare coverage to begin.

"Medical Source" refers to both a treating source and a source of record.

"Review physician"—a medical doctor either employed by or under contract to the Board who upon request reviews medical evidence and provides medical advice.

"Social Security Overall Minimum" refers to the provision of the Railroad Retirement Act which guarantees that the total monthly annuities payable to an employee and his or her family will not be less than the total monthly amount which would be payable under the Social Security Act if the employee's railroad service were credited as employment under the Social Security Act.

"Source of Record" means a hospital, clinic or other source that has provided a claimant with medical treatment or evaluation, as well as a physician or psychologist who has treated or evaluated a claimant but does not have an ongoing relationship with him or her.

"Treating Source" means the claimant's own physician or psychologist who has provided the claimant with medical treatment or evaluation and who has an ongoing treatment relationship with him or her.

Subpart C—Disability Under the Railroad Retirment Act for Work in the Regular Occupation

§ 220.10 Disability for work in the regular occupation.

In order to receive an occupational disability annuity, an eligible employee must be found by the Board to be disabled for work in his or her regular occupation because of a permanent physical or mental impairment.

§ 220.11 Regular occupation, defined.

(a) For the purpose of this Part, an employee's "regular occupation" shall be his or her occupation in the railroad industry in which—

(1) He or she has been engaged in service for hire in more calendar months than the calendar months in which he or she has been engaged in service for hire in any other occupation during the last preceding five calendar years, whether or not consecutive; or

(2) He or she has engaged in service for hire in not less than one-half of all of the months in which he or she has been engaged in service for hire during the last preceding 15 consecutive calendar years.

(b) If an employee last worked as an officer or employee of a railway labor organization and if continuance in such employment is no longer available to him or her, the "regular occupation" shall be the position to which the employee holds seniority rights or the position which he or she left to work for a railway labor organization.

§ 220.12 Permanent physical or mental impairment, defined.

For the purposes of this Part, the term "permanent physical or mental impairment" means a physical or mental impairment or combination of impairments that can be expected to result in death or has lasted, or can be expected to last, for a continuous period of not less than 12 months.

§ 220.13 Establishment of permanent disability for work in the regular occupation.

The Board usually considers an employee disabled for work in his or her regular occupation if the employer does not allow the employee to continue working in that occupation for a medically documented reason and the Board has evidence that supports the conclusion that the employee is unable to perform the duties of his or her regular occupation because of a permanent physical or mental impairment. (See § 220.21 if the claimant is not currently disabled but was previously occupationally disabled for a specified period of time in the past.) The Board uses the following evaluation process in determining disability for work in the regular occupation:

(a) The Board evaluates the employee's medically documented physical and mental impairment(s) to determine if the employee has an impairment which is listed in the Listing of Impairments in Appendix 1 of this part. That Listing describes impairments which are considered severe enough to prevent a person from doing any substantial gainful activity. If the Board finds that an employee has an impairment which is listed or is equal to one which is listed, it will find the employee disabled for work in his or her regular occupation without considering the duties of his or her regular occupation.

(b) If the Board finds that the employee does not have an impairment described in (a) above, it will—

(1) Review the occupations which the employee has held in the last 5–15 calendar years in which he or she was employed, to determine his or her regular occupation (see § 220.11); and

(2) Determine what the physical and mental demands of the employee's regular occupation are. In making this determination, the Board will consider the employee's own description of his or her regular occupation and all information obtained from his or her employer(s). The Board may also take administrative notice of reliable job information available from various governmental and other publications; and

(3) Evaluate the employee's physical and mental impairments to determine what limitations these impairments cause. The Board will consider the effect of all of the employee's medically documented impairments to determine whether he or she retains the capacity to meet the physical and mental demands of his or her regular occupation.

§ 220.14 Evidence considered.

The regulations explaining the employee's responsibility to provide evidence of disability, the kind of evidence, what medical evidence consists of, and the consequences of refusing or failing to provide evidence or to have a medical examination are found in § 220.45 through § 220.48. The regulations explaining when the employee may be requested to report for a consultative examination are found in § 220.50 and § 220.51. The regulations explaining how the Board evaluates conclusions by physicians concerning the employee's disability, how the Board evaluates the employee's symptoms, what medical findings consist of, and the need to follow prescribed treatment are found in § 220.112 through § 220.115.

§ 220.15 Effects of work on occupational disability.

(a) *Disability onset when the employee works despite impairment.* An employee who has stopped work in his or her regular occupation due to a permanent physical or mental impairment(s) may make an effort to return to work in his or her regular occupation. If the employee is subsequently forced to stop that work after a short time because of his or her impairment(s), the Board will generally consider that work as an unsuccessful work attempt. In this situation, the Board may determine that the employee became disabled for work in his or her regular occupation before the last date the employee worked in his or her regular occupation. No annuity will be payable, however, until after the last date worked.

(b) *Occupational disability annuitant work restrictions.* The restrictions which apply to an annuitant who is disabled for work in his or her regular occupation are found in §§ 220.160 through 220.164.

§ 220.16 Responsibility to notify the Board of events which affect disability.

If the annuitant is entitled to a disability annuity because he or she is disabled for work in his or her regular occupation, the annuitant should promptly tell the Board if—

(a) His or her impairment(s) improves;

(b) He or she returns to any type of work;

(c) He or she increases the amount of work; or

(d) His or her earnings increase.

§ 220.17 Recovery from disability for work in the regular occupation.

(a) *General.* Disability for work in the regular occupation will end if—

(1) There is medical improvement in the annuitant's impairment(s) to the extent that the annuitant is able to perform the duties of his or her regular occupation; or

(2) The annuitant demonstrates the ability to perform the duties of his or her regular occupation. The Board provides a trial work period before terminating a disability annuity because of the annuitant's return to work.

(b) *Definition of the trial work period.* The trial work period is a period during which the annuitant may test his or her ability to work and still be considered occupationally disabled. It begins and ends as described in paragraph (e) of this section. During this period, the annuitant may perform "services" (see paragraph (c) of this section) in as many as nine months, but these months do not have to be consecutive. The Board will not consider those services as showing that the annuitant's occupational disability has ended until the annuitant has performed services in at least nine months. However, after the trial work period has ended, the Board will consider the work the annuitant did during the trial work period in determining whether the annuitant's occupational disability has ended at any time after the trail work period.

(c) *What the Board means by services in an occupational disability case.* When used in this section, "services" means any activity which, even though it may not be substantial gainful activity as defined in § 220.141, is—

(1) Done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit; and

(2) The activity is a return to the same duties of the annuitant's regular occupation or the activity so closely approximates the duties of the regular occupation as to demonstrate the ability to perform those duties.

(d) *Limitations on the number of trial work periods.* The annuitant may have only one trial work period during each period in which he or she is occupationally disabled.

(e) *When the trial work period begins and ends.* (1) The trial work period begins with whichever of the following calendar months is the latest—

(i) The month disability begins;

(ii) The month after the end of the appropriate waiting period; or

(iii) The month the application for disability is filed.

(2) The trial work period ends with the close of whichever of the following calendar months is the earlier—

(i) The ninth month (whether or not the months have been consecutive) in which the annuitant performed services; or

(ii) The month in which new evidence, other than evidence relating to any work the annuitant did during the trial work period, shows that the annuitant is not disabled, even though the annuitant has not worked a full nine months. The Board may find that the annuitant's disability has ended at any time during the trial work period if the medical or other evidence shows that the annuitant is no longer disabled.

§ 220.18 The reentitlement period.

(a) *General.* The reentitlement period is an additional period after the nine months of trial work during which the annuitant may continue to test his or her ability to work if the annuitant has a disabling impairment.

(b) *When the reentitlement period begins and ends.* The reentitlement period begins with the first month following completion of nine months of trial work but cannot begin earlier than December 1, 1980. It ends with whichever is earlier—

(1) The month before the first month in which the annuitant's impairment(s) no longer exists or is not medically disabling; or

(2) The last day of the fifteenth month following the end of the annuitant's trial work period.

(c) *When the annuitant is not entitled to reentitlement period.* The annuitant is not entitled to a reentitlement period if—

(1) The annuitant is not entitled to a trial work period; or

(2) The annuitant's disability ended before the annuitant completed nine months of trial work in that period in which he or she was disabled.

§ 220.19 Payment of the disability annuity during the trial work period and the reentitlement period.

(a) The employee who is entitled to an occupational disability annuity will not be paid an annuity for each month in the trial period or reentitlement period in which he or she—

(1) Works for an employer covered by the Railroad Retirement Act (see § 220.160); or

(2) Earns more than $400 (after deduction of impairment related work expenses) in employment or self-employment (see §§ 220.161 and 220.164). See § 220.145 for the definition of impairment related work expenses.

(b) If the employee's occupational disability annuity is stopped because of work during the trial work period or reentitlement period, and the employee discontinues that work before the end of either period, the disability annuity may be started again without a new application and a new determination of disability.

§ 220.20 Notice that an annuitant is no longer disabled.

The regulation explaining the Board's responsibilities in notifying the annuitant, and the annuitant's rights when the disability annuity is stopped is found in § 220.183.

§ 220.21 Initial evaluation of a previous occupational disability.

(a) In some cases, the Board may determine that a claimant is not currently disabled for work in his or her regular occupation but was previously disabled for a specified period of time in the past. This can occur when—

(1) The disability application was filed before the claimant's occupational disability ended, but the Board did not make the initial determination of occupational disability until after the claimant's disability ended; or

(2) The disability application was filed after the claimant's occupational disability ended but no later than the 12th month after the month the disability ended.

(b) When evaluating a claim for a previous occupational disability, the Board follows the steps in § 220.13 to determine whether an occupational disability existed, and follows the steps in §§ 220.16 and 220.17 to determine when the occupational disability ended.

Example 1: The claimant sustained multiple fractures to his left leg in an automobile accident which occurred on June 16, 1982. For a period of 18 months following the accident the claimant underwent 2 surgical procedures which restored the functional use of his leg. After a recovery period following the last surgery, the claimant returned to his regular railroad job on February 1, 1984. The claimant, although fully recovered medically and regularly employed, filed an application on December 3, 1984 for a determination of occupational disability for the period June 16, 1982 through January 31, 1984. The Board reviewed his claim in January 1985 and determined that he was occupationally disabled for the period which began on June

16, 1982 and continued through January 31, 1984. A disability annuity is payable to the employee only for the period December 1, 1983 through January 31, 1984. An annuity may not begin any earlier than the 1st day of the 12th month before the month in which the application was filed. (See Part 218 of this chapter for the rules on when an annuity may begin).

Example 2: The claimant is occupationally disabled using the same medical facts disclosed above, beginning June 16, 1982 (the date of the automobile accident). The claimant files an application for an occupational disability annuity, dated December 1, 1983. However, as of February 1, 1984, and before the Board makes a disability determination, the claimant returns to his regular railroad job and is no longer considered occupationally disabled. The Board reviews the claimant's application in May of 1984 and finds him occupationally disabled for the period June 16, 1982 through January 31, 1984. A disability annuity is payable to the employee from December 1, 1982 through January 31, 1984. (See Part 218 of this chapter for the rules on when an annuity may begin).

Subpart D—Disability Under the Railroad Retirement Act for Any Regular Employment

§ 220.25 General.

The definition and discussion of disability for any regular employment are found in §§ 220.26 through 220.184.

§ 220.26 Disability for any regular employment, defined.

An employee, widow(er), or child is disabled for any regular employment if he or she is unable to do any substantial gainful activity because of a medically determinable physical or mental impairment which meets the duration requirement defined in § 220.28. In the case of a widow(er), the permanent physical or mental impairment must have prevented work in any regular employment before the end of a specific period (see § 220.30). In the case of a child, the permanent physical or mental impairment must have prevented work in any regular employment since before age 22. To meet this definition of disability, a claimant must have a severe impairment, which makes him or her unable to do any previous work or other substantial gainful activity which exists in the national economy. To determine whether a claimant is able to do any other work, the Board considers a claimant's residual functional capacity, age, education and work experience. See § 220.100 for the process by which the Board evaluates disability for any regular employment. This process applies to employees, widow(er)s, or children who apply for annuities based on disability for any regular employment. This process does not apply to surviving divorced spouses or remarried widow(er)s who apply for annuities based on disability.

§ 220.27 What is needed to show an impairment.

A physical or mental impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only by the claimant's statement of symptoms. (See § 220.113 for further information about what is meant by symptoms, signs, and laboratory findings.) (See also § 220.112 for the effect of a medical opinion about whether or not a claimant is disabled.)

§ 220.28 How long the impairment must last.

Unless the claimant's impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. This is known as the duration requirement.

§ 220.29 Work that is considered substantial gainful activity.

Work is considered to be substantial gainful activity if it—

(a) Involves doing significant and productive physical or mental duties; and

(b) Is done or is intended to be done for pay or profit. (See § 220.141 for a detailed explanation of what is substantial gainful activity.)

§ 220.30 Special period required for eligibility of widow(er)s.

In order to be found disabled for any regular employment, a widow(er) must have a permanent physical or mental impairment which prevented work in any regular employment since before the end of a specific period as defined in Part 216 of this chapter.

Subpart E—Disability Determinations Governed by the Regulations of the Social Security Administration

§ 220.35 Introduction.

In addition to its authority to decide whether a claimant is disabled under the Railroad Retirement Act, the Board has authority in certain instances to decide whether a claimant is disabled as that term is defined in the Social Security Act. In making these decisions the Board must apply the regulations of the Social Security Administration in the same manner as does the Secretary of Health and Human Services in making disability decisions under the Social Security Act. Regulations of the Social Security Administration concerning disability are found at Part 404, Subpart P of this title.

§ 220.36 Period of disability.

(a) *General.* In order to receive an annuity based upon a disability, an employee must be found disabled under the Railroad Retirement Act. If an employee is found disabled under the Railroad Retirement Act, the Board will determine whether he is disabled under the Social Security Act to qualify for a period of disability as defined in that Act.

(b) *Period of disability.*—(1) *Definition and effect.* A period of disability is a continuous period of time during which an employee is disabled as that term is defined in § 404.1505 of this title. A period of disability established by the Board—

(i) Preserves the disabled employee's earnings record as it is when the period begins;

(ii) Protects the insured status required for entitlement to Social Security overall minimum;

(iii) May cause an increase in the rate of an employee, spouse, or survivor annuity; or

(iv) May permit a disabled employee to receive Medicare benefits in addition to an annuity under the Railroad Retirement Act.

(2) *Effect on benefits.* The establishment of a period of disability for the employee will never cause a denial or reduction in benefits under the Railroad Retirement Act or Social Security Act, but it will always be used to establish Medicare entitlement before age 65.

(3) *Who may establish a period of disability.* The Railroad Retirement Board or the Social Security Administration may establish a period of disability. However, the decision of one agency is not binding upon the other agency.

(4) *When the Board may establish a period of disability.* The Board has independent authority to decide whether or not to establish a period of disability for any employee who was awarded an annuity under the Railroad Retirement Act, or who—

(i) Has applied for a disability annuity; and

(ii) Has at least 10 years of railroad service.

(5) *When an employee is entitled to a period of disability.* An employee is entitled to a period of disability if he or she meets the following requirements:

(i) The employee is disabled under the Social Security Act, as described in § 404.1505 of this title.

(ii) The employee is insured for a period of disability under § 404.130 of this title based on combined railroad and social security earnings.

(iii) The employee files an application as shown in subparagraph (b)(6) of this section.

(iv) At least five consecutive months elapse from the month in which the period of disability begins and before the month in which it would end.

(6) *Application for a period of disability.* (i) An application for an employee disability annuity under the Railroad Retirement Act or an employee disability benefit under the Social Security Act is also an application for a period of disability.

(ii) An employee who is receiving an age annuity or who was previously denied a period of disability must file a separate application for a period of disability.

(iii) In order to be entitled to a period of disability, an employee must apply while he or she is disabled or not later than 12 months after the month in which the period of disability ends.

(iv) An employee who is unable to apply within the 12 month period after the period of disability ends because his or her physical condition limited his or her activities to the extent that he or she could not complete and sign an application or because he or she was mentally incompetent, may apply no later than 36 months after the period of disability ends.

(v) A period of disability can also be established on the basis of an application filed within three months after the month a disabled employee died.

(c) *Social Security overall minimum.* The Social Security overall minimum provision of the Railroad Retirement Act guarantees that the total monthly annuities payable to an employee and his or her family will not be less than the total monthly benefit which would be payable under the Social Security Act if the employee's railroad service were credited as employment under the Social Security Act.

[The information collection requirements contained in paragraph (b)(6) were approved by the Office of Management and Budget under control number 3220–0002.]

§ 220.37 When a child's disability determination is governed by the regulations of the Social Security Administration.

(a) In order to receive an annuity based upon disability, a child of a deceased employee must be found disabled under the Railroad Retirement Act. However, in addition to this determination, the child must be found disabled under the Social Security Act in order to quality for Medicare based upon disability.

(b) Although the child of a living employee may not receive an annuity under the Railroad Retirement Act, he or she, if found disabled under the Social Security Act, may qualify for the following:

(1) Inclusion as a disabled child in the employee's annuity rate under the Social Security overall minimum.

(2) Entitlement to Medicare based upon disability.

§ 220.38 When a widow(er)'s disability determination is governed by the regulations of the Social Security Administration.

In order to receive an annuity based upon disability, a widow(er) must be found disabled under the Railroad Retirement Act. However, in addition to this determination, the widow(er) must be found disabled under the Social Security Act in order to qualify for early Medicare based upon disability.

§ 220.39 Disability determination for a surviving divorced spouse or remarried widow(er).

A surviving divorced spouse or a remarried widow(er) must be found disabled under the Social Security Act in order to qualify for both an annuity under the Railroad Retirement Act and early Medicare based upon disability.

Subpart F—Evidence of Disability

§ 220.45 Providing evidence of disability.

(a) *General.* The claimant for a disability annuity is responsible for providing evidence of the claimed disability and the effect of the disability on the ability to work. The Board will assist the claimant, when necessary, in obtaining the required evidence. At its discretion, the Board will arrange for an examination by a consultant at the expense of the Board as explained in §§ 220.50 and 220.51.

(b) *Kind of evidence.* The claimant must provide medical evidence showing that he or she has an impairment(s) and how severe it is during the time the claimant claims to be disabled. The Board will consider only impairment(s) the claimant claims to have or about which the Board receives evidence. Before deciding that the claimant is not disabled, the Board will develop a complete medical history (i.e., evidence from the records of the claimant's medical sources) covering at least the preceding 12 months, unless the claimant says that his or her disability began less than 12 months before he or she filed an application. The Board will make every reasonable effort to help the claimant in getting medical reports from his or her own medical sources when the claimant gives the Board permission to request them. Every reasonable effort means that the Board will make an initial request and, after 20 days, one followup request to the claimant's medical source to obtain the medical evidence necessary to make a determination before the Board evaluates medical evidence obtained from another source on a consultative basis. The medical source will have 10 days from the followup request to reply (unless experience indicates that a longer period is advisable in a particular case). In order to expedite processing the Board may order a consultative exam from a non-treating source while awaiting receipt of medical source evidence. If the Board ask the claimant to do so, he or she must contact the medical sources to help us get the medical reports. The Board may also ask the claimant to provide evidence about his or her—

(1) Age;

(2) Education and training;

(3) Work experience;

(4) Daily activities both before and after the date the claimant says that he or she became disabled;

(5) Efforts to work; and

(6) Any other evidence showing how the claimant's impairment(s) affects his or her ability to work. (In §§ 220.125 through 220.134, we discuss in more detail the evidence the Board needs when it considers vocational factors.)

(Approved by the Office of Management and Budget under control numbers 3220–0002, 3220–0030, 3220–0108 and 3220–0141)

§ 220.46 Medical evidence.

(a) *Acceptable sources.* The Board needs reports about the claimant's impairment(s) from acceptable medical sources. Acceptable medical sources are—

(1) Licensed physicians;

(2) Licensed osteopaths;

(3) Licensed or certified psychologists;

(4) Licensed optometrists for the measurement of visual acuity and visual fields (a report from a physician may be needed to determine other aspects of eye diseases); and

(5) Persons authorized to furnish a copy or summary of the records of a medical facility. Generally, the copy or summary should be certified as accurate by the custodian or by any authorized employee of the Railroad Retirement Board, Social Security Administration,

Veterans Administration, or State agency.

(b) *Medical reports.* Medical reports should include—

(1) Medical history;

(2) Clinical findings (such as the results of physical or mental status examinations);

(3) Laboratory findings (such as blood pressure, x-rays);

(4) Diagnosis (statement of disease or injury based on its signs and symptoms);

(5) Treatment prescribed, with response to treatment and prognosis; and

(6) (i) Statements about what the claimant can still do despite his or her impairment(s) based on the medical source's findings on the factors under paragraphs (b) (1) through (5) of this section (except in disability claims for remarried widow's and surviving divorced spouses). (See § 220.112).

(ii) Statements about what the claimant can still do (based on the medical source's findings on the factors under paragraphs (b) (1) through (5) of this section) should describe—

(A) The medical source's opinion about the claimant's ability, despite his or her impairment(s), to do work-related activities such as sitting, standing, moving about, lifting, carrying, handling objects, hearing, speaking, and traveling; and

(B) In cases of mental impairment(s), the medical source's opinion about the claimant's ability to reason or make occupational, personal, or social adjustments. (See § 220.112.)

(c) *Completeness.* The medical evidence, including the clinical and laboratory findings, must be complete and detailed enough to allow the Board to make a determination about whether or not the claimant is disabled. It must allow the Board to determine—

(1) The nature and limiting effects of the claimant's impairment(s) for any period in question;

(2) The probable duration of the claimant's impairment(s); and

(3) The claimant's residual functional capacity to do work-related physical and mental activities.

(d) *Evidence from physicians.* A statement by or the opinion of the claimant's treating physician will not determine whether the claimant is disabled. However, the medical evidence provided by a treating physician will be considered by the Board in making a disability decision. A treating physician is a doctor to whom the claimant has been going for treatment on a continuing basis. The claimant may have more than one treating physician. The Board may use consulting physicians or other medical consultants for specialized examinations or tests, to obtain more complete evidence, and to resolve any conflicts. A consulting physician is a doctor (often a specialist) to whom the claimant is referred for an examination once or on a limited basis. (See § 220.50 for an explanation of when the Board may request a consultative examination.)

(e) *Information from other sources.* Information from other sources may also help the Board understand how an impairment affects the claimant's ability to work. Other sources include—

(1) Public and private social welfare agencies;

(2) Observations by non-medical sources;

(3) Other practitioners (for example, naturopaths, chiropractors, audiologists, etc.); and

(4) Railroad and non-railroad employers.

(Approved by the Office of Management and Budget under control number 3220–0038)

§ 220.47 Purchase of existing medical evidence.

The Board needs specific medical evidence to determine whether a claimant is disabled. The claimant is responsible for providing that evidence. However, at its discretion, the Board will pay the reasonable cost to obtain medical evidence that it needs and requests from physicians not employed by the Federal government and other non-Federal providers of medical services.

§ 220.48 If the claimant fails to submit medical or other evidence.

The Board may request a claimant to submit medical or other evidence. If the claimant does not submit that evidence, the Board will make a decision on other evidence which is either already available in the claimant's case or which the Board may develop from other sources, including reports of consultative examinations.

Subpart G—Consultative Examinations

§ 220.50 Consultative examinations at the Board's expense.

A consultative examination is a physical or mental examination or test purchased for a claimant at the Board's request and expense. If the claimant's medical sources cannot provide sufficient medical evidence about the claimant's impairment(s) in order to enable the Board to determine whether the claimant is disabled, the Board may ask the claimant to have one or more consultative examinations or tests. The decision to purchase a consultative examination will be made on an individual case basis in accordance with the provisions of § 220.53 through § 220.56. Selection of the source for the examination will be consistent with the provisions of § 220.64. (Program Integrity)

(Approved by the Office of Management and Budget under control number 3220–0124)

§ 220.51 Notice of the examination.

If the Board arranges for an examination or test, the claimant will be provided with reasonable notice of the date, time and place of the examination or test and the name of the person who will do it. The Board will also give the examiner any necessary background information about the claimant's impairment(s).

§ 220.52 Failure to appear at a consultative examination.

(a) *General.* The Board may find that the claimant is not disabled if he or she does not have good reason for failing or refusing to take part in a consultative examination or test which was arranged by the Board. If the individual is already receiving an annuity and does not have a good reason for failing or refusing to take part in a consultative examination or test which the Board arranged, the Board may determine that the individual's disability has stopped because of his or her failure or refusal. The claimant for whom an examination or test has been scheduled should notify the Board as soon as possible before the scheduled date of the examination or test if he or she has any reason why he or she cannot go to the examination or test. If the Board finds that the claimant has a good reason for failure to appear, another examination or test will be scheduled.

(b) *Examples of good reasons for failure to appear.* Some examples of good reasons for not going to a scheduled examination or test include—

(1) Illness on the date of the scheduled examination or test;

(2) Failure to receive notice or timely notice of an examination or test;

(3) Receipt of incorrect or incomplete information about the examination or test; or

(4) A death or serious illness in the claimant's immediate family.

(c) *Objections by a claimant's physician.* The Board should be notified immediately if the claimant is advised by his or her treating physician not to take an examination or test. In some cases, the Board may be able to secure the information which is needed in another way or the treating physician may agree to another type of examination for the same purpose.

§ 220.53 When the Board will purchase a consultative examination and how it will be used.

(a)(1) *General.* The decision to purchase a consultative examination for a claimant will be made after full consideration is given to whether the additional information needed (e.g., clinical findings, laboratory tests, diagnosis, and prognosis, etc.) is readily available from the records of the claimant's medical sources. Upon filing an application for a disability annuity a claimant will be required to obtain from his or her medical source(s) information regarding the claimed impairments. The Board will seek clarification from a medical source who has provided a report when that report contains a conflict or ambiguity, or does not contain all necessary information or when the information supplied is not based on objective evidence. The Board will not, however, seek clarification from a medical source when it is clear that the source either cannot or will not provide the necessary findings, or cannot reconcile a conflict or ambiguity in the findings provided from the source's records. Therefore, before purchasing a consultative examination, the Board will consider not only existing medical reports, but also the background report containing the claimant's allegations and information about the claimant's vocational background, as well as other pertinent evidence in his or her file.

(2) When the Board purchases a consultative examination, we will use the report from the consultative examination to try to resolve a conflict or ambiguity if one exists. The Board will do this by comparing the persuasiveness and value of the evidence. The Board will also use a consultative examination to secure needed medical evidence the file does not contain such as clinical findings, laboratory tests, a diagnosis or prognosis necessary for decision.

(b) *Situations requiring a consultative examination.* A consultative examination may be purchased when the evidence as a whole, both medical and non-medical, is not sufficient to support a decision on the claim. In addition, other situations, such as one or more of the following, will normally require a consultative examination (these situations are not all-inclusive):

(1) The specific additional evidence needed for adjudication has been pinpointed and high probability exists for obtaining it through purchase.

(2) The additional evidence needed is not contained in the records of the claimant's treating sources.

(3) Evidence that may be needed from the claimant's treating or other medical sources cannot be obtained for reasons beyond his or her control, such as death or noncooperation of the medical source.

(4) Highly technical or specialized medical evidence which is needed is not available from the claimant's treating sources.

(5) A conflict, inconsistency, ambiguity or insufficiency in the evidence must be resolved.

(6) There is an indication of a change in the claimant's condition that is likely to affect his or her ability to function, but current severity is not documented.

(7) Information provided by any source appears not to be supported by objective evidence.

§ 220.54 When the Board will not purchase a consultative examination.

A consultative examination will not be purchased in the following situations (these situations are not all-inclusive):

(a) In disabled widow(er) benefit claims, when the alleged month of disability is after the end of the 7-year period specified in § 216.38 and there is no possibility of establishing an earlier onset, or when the 7-year period expired in the past and all the medical evidence in the claimant's file establishes that he or she was not disabled on or before the expiration date.

(b) When any issues about the actual performance of substantial gainful activity have not been resolved.

(c) In childhood disability claims, when it is determined that the claimant's alleged childhood disability did not begin before the month of attainment of age 22. In this situation, the claimant could not be entitled to benefits as a disabled child unless found disabled before age 22.

(d) When, on the basis of the claimant's allegations and all available medical reports in his or her case file, it is apparent that he or she does not have an impairment which will have more than a minimal effect on his or her capacity to work.

(e) Childhood disability claims filed concurrently with the employee's claim and entitlement cannot be established for the employee.

(f) Survivors childhood disability claims where entitlement is precluded based on non-disability factors.

§ 220.55 Purchase of consultative examinations at the reconsideration level.

(a) When a claimant requests a review of the Board's initial determination at the reconsideration level of review, consultative medical examinations will be obtained when needed, but not routinely. A consultative examination will not, if possible, be performed by the same physician or psychologist used in the initial claim.

(b) Where the evidence tends to substantiate an affirmation of the initial denial but the claimant states that the treating physician or psychologist considers him or her to be disabled, the Board will assist the claimant in securing medical reports or records from the treating physician.

§ 220.56 Securing medical evidence at the appeals referee hearing level.

(a) Where there is a conflict in the medical evidence at the hearing level of review before an appeals referee, the referee will try to resolve it by comparing the persuasiveness and value of the conflicting evidence. The referee's reasoning will be explained in the decision rationale. Where such resolution is not possible, the referee will secure additional medical evidence (e.g., clinical findings, laboratory test, diagnosis, prognosis, etc.) to resolve the conflict. Even in the absence of a conflict, the referee will also secure additional medical evidence when the file does not contain clinical findings, laboratory tests, a diagnosis, or a prognosis necessary for a decision.

(b) Before requesting a consultative examimination, the referee will ascertain whether the information is available as a result of a recent examination by any of the claimant's medical sources. If it is, the referee will request the evidence from that medical practitioner. If contact with the medical source is not productive for any reason, or if there is no recent examination by a medical source, the referee will obtain a consultative examination.

§ 220.57 Type of purchased examinations and selection of source.

(a) *Additional evidence needed for disability determination.* The types of examinations and tests the Board will purchase depends upon the additional evidence needed for the disability determination. The Board will purchase only the specific evidence needed. For example, if special tests (such as X-rays, blood studies, or EKG) will furnish the additional evidence needed for the disability determination, a more comprehensive medical examination will not be authorized.

(b) *The physician or psychologist selected to do the examination or test must be qualified.* The physician's or psychologist's qualifications must indicate that the physician or psychologist is currently licensed in the State and has the training and experience to perform the type of

examination or test requested. The physician or psychologist may use support staff to help perform the examination. Any such support staff must meet appropriate licensing or certification requirements of the State. See also § 220.64.

§ 220.58 Objections to the designated physician or psychologist.

A claimant or his or her representative may object to his or her being examined by a designated physician or psychologist. If there is a good reason for the objection, the Board will schedule the examination with another physician or psychologist. A good reason may be where the consultative examination physician or psychologist had previously represented an interest adverse to the claimant. For example, the physician or psychologist may have represented the claimant's employer in a worker's compensation case or may have been involved in an insurance claim or legal action adverse to the claimant. Other things the Board will consider are: language barrier, office location of consultative examination physician or psychologist (2nd floor, no elevator, etc.), travel restrictions, and examination by the physician or psychologist in connection with a previous unfavorable determination. If the objection is because a physician or psychologist allegedly "lacks objectivity" (in general, but not in relation to the claimant personally) the Board will review the allegations. To avoid a delay in processing the claimant's claim, the consultative examination in such a case will be changed to another physician or psychologist while a review is being conducted. Any objection to use of the substitute physician or psychologist will be handled in the same manner. However, if the Board or the Social Security Administration had previously conducted such a review and found that the reports of the consultative physician or psychologist in question conform to the Board's guidelines, then the Board will not change the claimant's examination.

§ 220.59 Requesting examination by a specific physician, psychologist or institution—appeals referee hearing level.

In an unusual case, an appeals referee may have reason to request an examination by a particular physician, psychologist or institution. Some examples include the following:

(a) Conflicts in the existing medical evidence require resolution by a recognized authority in a particular specialty;

(b) The impairment requires hospitalization for diagnostic purposes; or

(c) The claimant's treating physician or psychologist is in the best position to submit a meaningful report.

§ 220.60 Diagnostic surgical procedures.

The Board will not order diagnostic surgical procedures such as myelograms and arteriograms for the evaluation of disability under the Board's disability program. In addition, the Board will not order procedures such as cardiac catheterization and surgical biopsy. However, if any of these procedures have been performed as part of a workup by the claimant's treating physician or other medical source, the results may be secured and used to help evaluate an impairment(s)'s severity.

§ 220.61 Informing the examining physician or psychologist of examination scheduling, report content and signature requirements.

Consulting physicians or psychologists will be fully informed at the time the Board contacts them of the following obligations:

(a) *General.* In scheduling full consultative examinations, sufficient time should be allowed to permit the examining physician to take a case history and perform the examination (including any needed tests).

(b) *Report content.* The reported results of the claimant's medical history, examination pertinent requested laboratory findings, discussions and conclusions must conform to accepted professional standards and practices in the medical field for a complete and competent examination. The facts in a particular case and the information and findings already reported in the medical and other evidence of record will dictate the extent of detail needed in the consultative examination report for that case. Thus, the detail and format for reporting the results of a purchased examination will vary depending upon the type of examination or testing requested. The reporting of information will differ from one type of examination to another when the requested examination relates to the performance of tests such as ventilatory function tests, treadmill exercise tests, or audiological tests. The medical report must be complete enough to help the Board determine the nature, severity, duration of the impairment and residual functional capacity. Pertinent points in the claimant's medical history, such as a description of chest pain, will reflect the claimant's statements of his or her symptoms, not simply the physician's or psychologist's statements or conclusions. The examining physician's or psychologist's report of the consultative examination will include the objective medical facts.

(c) *Elements of a complete examination.* A complete examination is one which involves all the elements of a standard examination in the applicable medical specialty. When a complete examination is involved, the report will include the following elements:

(1) The claimant's major or chief complaint(s).

(2) A detailed description, within the area of specialty of the examination, of the history of the claimant's major complaint(s).

(3) A description, and disposition, of pertinent "positive," as well as "negative," detailed findings based on the history, examination and laboratory test related to the major complaint(s) and any other abnormalities reported or found during examination or laboratory testing.

(4) The results of laboratory and other tests (e.g., x-rays) performed according to the requirements stated in the Listing of Impairments (see Appendix 1 of this Part I).

(5) The diagnosis and prognosis for the claimant's impairment(s).

(6) A statement as to what the claimant can still do despite his or her impairment(s) (except in disability claims for remarried widows and widowers, and surviving divorced spouses). This statement must describe the consultative physician's or psychologist's opinion concerning the claimant's ability, despite his or her impairment(s), to do basic work activities such as sitting, standing, lifting, carrying, handling objects, hearing, speaking, and traveling; and, in cases of mental impairment(s), the consultative physician's or psychologist's opinion as to the claimant's ability to reason or make occupational, personal, or social adjustments.

(7) When less than a complete examination is required (for example, a specific test or study is needed), not every element is required.

(d) *Signature requirements.* All consultative examination reports will be personally reviewed and signed by the physician or psychologist who actually performed the examination. This attests to the fact that the physician or psychologist doing the examination or testing is solely responsible for the report contents and for the conclusions explanations or comments provide with report to the history, examination and evaluation of laboratory test results.

§ 220.62 Reviewing reports of consultative examinations.

(a) The Board will review the report of the consultative examination to determine whether the specific information requested has been furnished. The Board will consider these factors in reviewing the report:

(1) Whether the report provides evidence which serves as an adequate basis for decisionmaking in terms of the impairment it assesses.

(2) Whether the report is internally consistent. Whether all the diseases, impairments and complaints described in the history are adequately assessed and reported in the physical findings. Whether the conclusions correlate the findings from the claimant's medical history, physical examination and laboratory tests and explain all abnormalities.

(3) Whether the report is consistent with the other information available to the Board within the specialty of the examination requested. Whether the report fails to mention an important or relevant complaint within the speciality that is noted on other evidence in the file (e.g., blindness in one eye, amputations, flail limbs or claw hands, etc.).

(4) Whether the report is properly signed.

(b) If the report is inadequate or incomplete, the Board will contact the examining consultative physician or psychologist, give an explanation of the Board's evidentiary needs, and ask that the physician or psychologist furnish the missing information or prepare a revised report.

(c) Where the examination discloses new diagnostic information or test results which are significant to the claimant's treatment, the Board will consider referral of the consultative examination report to the claimant's treating physician or psychologist.

(d) The Board will take steps to ensure that consultative examinations are scheduled only with medical sources who have the equipment required to provide an adequate assessment and record of the level of severity of the claimant's alleged impairments.

§ 220.63 Conflict of interest.

All implications of possible conflict of interest between Board medical consultants and their medical practices will be avoided. Board review physicians and psychologists will not perform consultative examinations for the Board's disability programs without prior approval. In addition, they will not acquire or maintain, directly or indirectly, including any member of their families, any financial interest in a medical partnership or similar relationship in which consultative examinations are provided. Sometimes one of the Board's review physicians or psychologists will have prior knowledge of a case (e.g., the claimant was a patient). Where this is so, the physician or psychologist will not participate in the review or determination of the case. This does not preclude the physician or psychologist from submitting medical evidence based on prior treatment or examination of the claimant.

§ 220.64 Program integrity.

The Board will not use in its program any individual or entity who is excluded, suspended, or otherwise barred from participation in the Medicare or Medicaid programs, or any other Federal or Federally-assisted program; who has been convicted, under Federal or State law, in connection with the delivery of health care services, of fraud, theft, embezzlement, breach of fiduciary responsibility or financial abuse; who has been convicted under Federal or State law of unlawful manufacture, distribution, prescription, or dispensing of a controlled substance; whose license to provide health care services is revoked or suspended by any State licensing authority for reasons bearing on professional competence, professional conduct, or financial integrity; who has surrendered such a license while formal disciplinary proceedings involving professional conduct were pending; or who has had a civil monetary assessment or penalty imposed on such individual or entity for any activity described in this section or as a result of formal disciplinary proceedings. Also see §§ 220.53 and 220.57(b).

Subpart H—Evaluation of Disability

§ 220.100 Evaluation of disability for any regular employment.

(a) *General.* The Board uses a set evaluation process, explained in paragraph (b) of this section, to determine whether a claimant is disabled for any regular employment. This evaluation process applies to employees, widow(er)s, and children who have applied for annuities under the Railroad Retirement Act based on disability for any regular employment. Regular employment means substantial gainful activity as that term is defined in § 220.141.

(b) *Steps in evaluating disability.* A set order is followed to determine whether disability exists. The duration requirement, as described in § 220.28, must be met for a claimant to be found disabled. The Board reviews any current work activity, the severity of the claimant's impairment(s), the claimant's impairment(s), the claimant's residual functional capacity, and the claimant's age, education, and work experience. If the Board finds that the claimant is disabled or is not disabled at any step in the process, the Board does not review further. (See § 220.105 if the claimant is not currently disabled but was previously disabled for a specified period of time in the past.) The steps are as follows:

(1) *Claimant is working.* If the claimant is working, and the work is substantial gainful activity, the Board will find that he or she is not disabled regardless of his or her impairments, age, education, or work experience. If the claimant is not performing substantial gainful activity, the Board will follow paragraph (b)(2) of this section.

(2) *Impairment(s) not severe.* If the claimant does not have an impairment or combination of impairments which significantly limit his or her physical or mental ability to do basic work activities, the Board will find that the claimant is not disabled without consideration of age, education, or work experience. If the claimant has an impairment or combination of impairments which significantly limit his or her ability to do basic work activities, the Board will follow paragraph (b)(3) of this section. (See § 220.102(b) for a definition of basic work activities.)

(3) *Impairment(s) meets or equals one in the Listing of Impairments.* If the claimant has an impairment or combination of impairments which meets the duration requirement and such impairment is listed or is medically equal to one which is listed in the Listing of Impairments, the Board will find the claimant disabled without considering his or her age, education or work experience. (The Listing of Impairments is contained in Appendix 1 of this part.) If the claimant's impairment or combination of impairments is not listed or is not medically equal to one which is listed in the Listing of Impairments, the Board will follow paragraph (b)(4) of this section. (Medical equivalence is discussed in § 220.111).

(4) *Impairment(s) must prevent past relevant work.* If the claimant's impairment or combination of impairments is not listed or is not medically equal to one which is listed in the Listing of Impairments, the Board will then review the claimant's residual functional capacity (see § 220.120) and the physical and mental demands of past relevant work (see § 220.130). If the

Board determines that the claimant is still able to do his or her past relevant work, the Board will find that he or she is not disabled. If the claimant is unable to do his or her past relevant work, the Board will follow paragraph (b)(5) of this section.

(5) *Impairment(s) must prevent any other work.* (i) If the claimant is unable to do his or her past relevant work because of his or her impairment or combination of impairments, the Board will review the claimant's residual functional capacity and his or her age, education and work experience to determine if the claimant is able to do any other work. If the claimant cannot do other work, the Board will find him or her disabled. If the claimant can do other work, the Board will find the claimant not disabled.

(ii) If the claimant has only a marginal education (see § 220.129) and long work experience (i.e., 35 years or more) in which he or she only did arduous unskilled physical labor, and the claimant can no longer do this kind of work, the Board will use a different rule (see § 220.127) to determine disability.

(c) Once a claimant has been found eligible to receive a disability annuity, the Board follows a somewhat different order of evaluation to determine whether the claimant's eligibility continues as explained in § 220.180.

§ 220.101 Evaluation of mental impairments.

(a) *General.* The steps outlined in § 220.100 apply to the evaluation of physical and mental impairments. In addition, in evaluating the severity of a mental impairment(s), the Board will follow a special procedure at each administrative level of review. Following this procedure will assist the Board in—

(1) Identifying additional evidence necessary for the determination of impairment severity;

(2) Considering and evaluating aspects of the mental impairment(s) relevant to the claimant's ability to work; and

(3) Organizing and presenting the findings in a clear, concise, and consistent manner.

(b) *Use of the procedure to record pertinent findings and rate the degree of functional loss.* (1) This procedure requires the Board to record the pertinent signs, symptoms, findings, functional limitations, and effects of treatment contained in the claimant's case record. This will assist the Board in determining if a mental impairment(s) exists. Whether or not a mental impairment(s) exists is decided in the same way the question of a physical impairment is decided, i.e., the evidence must be carefully reviewed and conclusions supported by it. The mental status examination and psychiatric history will ordinarily provide the needed information. (See § 220.27 for further information about what is needed to show an impairment.)

(2) If the Board determines that a mental impairment(s) exists, this procedure then requires the Board to indicate whether certain medical findings which have been found especially relevant to the ability to work are present or absent.

(3) The procedure then requires the Board to rate the degree of functional loss resulting from the impairment(s). Four areas of function considered by the Board as essential to work have been identified, and the degree of functional loss in those areas must be rated on a scale that ranges from no limitation to a level of severity which is incompatible with the ability to perform those work-related functions. For the first two areas (activities of daily living and social functioning), the rating is done based upon the following five point scale: none, slight, moderate, marked, and extreme. For the third area (concentration, persistence, or pace), the following five point scale is used: Never, seldom, often, frequent, and constant. For the fourth area (deterioration or decompensation in work or work-like settings), the following four point scale is used: never, once or twice, repeated (three or more), and continual. The last two points for each of these scales represent a degree of limitation which is incompatible with the ability to perform the work-related function.

(c) *Use of the procedure to evaluate mental impairments.* Following the rating of the degree of functional loss resulting from the impairment(s), the Board then determines the severity of the mental impairment(s).

(1) If the four areas considered by the Board as essential to work have been rated to indicate a degree of limitation as "none" or "slight" in the first and second area, "never" or "seldom" in the third area, and "never" in the fourth area, the Board can generally conclude that the impairment(s) is not severe, unless the evidence otherwise indicates that there is significant limitation of the claimant's mental ability to do basic work activities (see § 220.102).

(2) If the claimant's mental impairment(s) is severe, the Board must then determine if it meets or equals a listed mental impairment. This is done by comparing the Board's prior conclusions based on this procedure (i.e., the presence of certain medical findings considered by the Board as especially relevant to a claimant's ability to work and the Board's rating of functional loss resulting from the mental impairment(s)) against the criteria of the appropriate listed mental disorder(s).

(3) If the claimant has a severe impairment(s), but the impairment(s) neither meets nor equals the Listings, the Board will then do a residual functional capacity assessment for those claimants (employees, widow(er)s, and children) whose applications are based on disability for any regular employment under the Railroad Retirement Act.

(4) At all adjudicative levels, the Board will, in each case, incorporate the pertinent findings and conclusions based on this procedure in its decision rationale. The Board's rationale must show the significant history, including examination, laboratory findings, and functional limitations that the Board considered in reaching conclusions about the severity of the mental impairment(s).

§ 220.102 Non-severe impairment(s), defined.

(a) *Non-severe impairment(s).* An impairment or combination of impairments is not severe if it does not significantly limit the claimant's physical or mental ability to do basic work activities.

(b) *Basic work activities.* Basic work activities means the ability and aptitudes necessary to do most jobs. Examples of these include—

(1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

(2) Capacities for seeing, hearing, and speaking;

(3) Understanding, carrying out, and remembering simple instructions;

(4) Use of judgment;

(5) Responding appropriately to supervision, co-workers and usual work situations; and

(6) Dealing with changes in a routine work setting.

§ 220.103 Two or more unrelated impairments—initial claims.

(a) *Unrelated severe impairments.* Two or more unrelated severe impairments cannot be combined to meet the 12-month duration test. If the claimant has a severe impairment(s) and then develops another unrelated severe impairment(s) but neither one is expected to last for 12 months, he or she cannot be found disabled even though the two impairments in combination last for 12 months.

(b) *Concurrent Impairments.* If the claimant has two or more concurrent impairments which, when considered in combination, are severe, the Board must also determine whether the combined effect of the impairments can be expected to continue to be severe for 12 months. If one or more of the claimant's impairments improves or is expected to improve within 12 months, so that the combined effect of the claimant's impairments is no longer severe, he or she will be found to not meet the 12-month duration test.

§ 220.104 Multiple impairments.

To determine whether the claimant's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under the law, the combined effect of all of the claimant's impairments are considered regardless of whether any such impairment, if considered separately, would be of sufficient severity. If a medically severe combination of impairments is found, it will be considered throughout the disability evaluation process. If a medically severe combination of impairments is not found, the claimant will be determined to be not disabled.

§ 220.105 Initial evaluation of a previous disability.

(a) In some cases, the Board may determine that a claimant is not currently disabled but was previously disabled for a specified period of time in the past. This can occur when—

(1) The disability application was filed before the claimant's disability ended but the Board did not make the initial determination of disability until after the claimant's disability ended; or

(2) The disability application was filed after the claimant's disability ended but no later than the 12th month after the month the disability ended.

(b) When evaluating a claim for a previous disability, the Board follows the steps in § 220.100 to determine whether a disability existed, and follows the steps in § 220.180 to determine when the disability ended.

Example 1: The claimant sustained multiple fractures to his left leg in an automobile accident which occurred on June 16, 1982. For a period of 18 months following the accident the claimant underwent 2 surgical procedures which restored the functional use of his leg. After a recovery period following the last surgery, the claimant returned to work on February 1, 1984.

The claimant, although fully recovered medically and regularly employed, filed an application on December 3, 1984 for a determination of disability for the period June 16, 1982 through January 31, 1984. The Board reviewed his claim in January 1985 and determined that he was disabled for the prior period which began on June 16, 1982 and continued through January 31, 1984. A disability annuity is payable to the employee only for the period December 1, 1983 through January 31, 1984.

An annuity may not begin any earlier than the 1st of the 12th month before the month in which the application was filed (See Part 218 of this chapter for the rules on when an annuity may begin).

Example 2: The claimant is disabled using the same medical facts disclosed above, beginning June 16, 1982 (the date of the automobile accident). The claimant files an application for a disability annuity, dated December 1, 1983. However, as of February 1, 1984 and before the Board makes a disability determination, the claimant returns to full-time work and is no longer considered disabled. The Board reviews the claimant's application in May of 1984 and finds him disabled for the period June 16, 1982 through January 31, 1984. A disability annuity is payable to the employee from December 1, 1982 through January 31, 1984. (See Part 218 of this chapter for the rules on when an annuity may begin).

Subpart 1—Medical Considerations

§ 220.110 Listing of impairments in Appendix I of this part.

(a) *Purpose of the Listing of Impairments.* The Listing of Impairments describes, for each of the major body systems, impairments which are considered severe enough to prevent a person from doing any substantial gainful activity. Most of the listed impairments are permanent or expected to result in death, or a specific statement of duration is made. For all others, the evidence must show that the impairment has lasted or is expected to last for a continuous period of at least twelve months.

(b) *Adult and Childhood Listings.* The Listing of Impairments consists of two parts:

(1) *Part A* contains medical criteria that apply to claimants age 18 and over. The medical criteria in Part A may also be applied in evaluating impairments in claimants under age 18 if the disease processes have a similar effect on adults and younger persons.

(2) *Part B* contains additional medical criteria that apply only to the evaluation of impairments of disabled children who are between the ages of 16 and 18. Certain criteria in Part A do not give appropriate consideration to the particular effects of the disease processes in childhood: i.e., when the disease process is generally found only in children or when the disease process differs in its effect on children than on adults. Additional criteria are included in Part B, and the impairment categories are, to the extent possible, numbered to maintain a relationship with their counterparts in Part A. In evaluating disability for a child between 16 and 18, Part B will be used first. If the medical criteria in Part B do not apply, then the medical criteria in Part A will be used.

(c) *How to use the Listing of Impairments.* Each section of the Listing of Impairments has a general introduction containing definitions of key concepts used in that section. Certain specific medical findings, some of which are required in establishing a diagnosis or in confirming the existence of the impairment for the purpose of this Listing, are also given in the narrative introduction. If the medical findings needed to support a diagnosis are not given in the introduction or elsewhere in the Listing, the diagnosis must still be established on the basis of medically acceptable clinical and laboratory techniques. Following the introduction in each section, the required level of severity of impairment is shown under "Category of Impairments" by one or more sets of medical findings. The medical findings consist of symptoms, signs, and laboratory findings.

(d) *Diagnosis of Impairments.* The Board will not consider the claimant's impairment to be one listed in Appendix I of this part solely because it has the diagnosis of a listed impairment. It must also have the findings shown in the Listing of that impairment.

§ 220.111 Medical equivalence.

(a) *How medical equivalence is determined.* The Board will decide that the claimant's impairment(s) is medically equivalent to a listed impairment in Appendix I of this part if the medical findings are at least equal in severity and duration to the listed findings. The Board compares the symptoms, signs, and laboratory findings about the claimant's impairment(s), as shown in the medical evidence in his or her claim, with the medical criteria shown with the listed impairment. If the claimant's impairment is not listed, the Board will consider the listed impairment most like the claimant's impairment to decide whether his or her impairment is medically equal. If the claimant has more than one impairment, and none of them meets or equals a listed impairment, the Board will review the symptoms, signs, and laboratory findings about the claimant's impairments to determine whether the combination of his or her impairments is medically equal to any listed impairment.

(b) *Medical equivalence must be based on medical findings.* The Board will base its decision about whether the claimant's impairment(s) is medically equal to a listed impairment on medical

evidence only. Any medical findings in the evidence must be supported by medically acceptable clinical and laboratory diagnostic techniques. The Board will also consider the medical opinion given by one or more physicians employed or engaged by the Board or the Social Security Administration to make medical judgments.

§ 220.112 Conclusions by physicians concerning the claimant's disability.

(a) *General.* Under the statute, the Board is responsible for making the decision about whether a claimant meets the statutory definition of disability. A claimant can only be found disabled if he or she is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. (See §220.28). A claimant's impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. (See § 220.27). Except in cases of remarried widows, widowers, and surviving divorced spouses, the decision as to whether a claimant is disabled may involve more than medical considerations and the Board may have to consider such factors as age, education, and past work experience. Such vocational factors are not within the expertise of medical sources.

(b) *Medical opinions that are conclusive.* A medical opinion by a treating source will be conclusive as to the medical issues of the nature and severity of a claimant's impairment(s) where the Board finds that (1) it is fully supported by medically acceptable clinical and laboratory diagnostic techniques and (2) it is not inconsistent with the other substantial medical evidence of record. A medical opinion that is not fully supported will not be conclusive.

(c) *Medical opinions that are not fully supported.* If an opinion by a treating source(s) is not fully supported, the Board will make every reasonable effort (i.e., an initial request and, after 20 days, one followup request) to obtain from the claimant's treating source(s) the relevant evidence that supports the medical opinion(s) before the Board makes a determination as to whether a claimant is disabled.

Example: In a case involving an organic mental disorder caused by trauma to the head a consultative physician upon interview with the claimant found only mild disorientation as to time and place. The claimant's treating physician reports that the claimant as the result of his impairment has severe disorientation as to time and place. The treating physician supplies office notes which follow the course of claimant's illness from date of injury to present. These notes indicate that the claimant's condition is such that he has some "good days" on which he appears to be unimpaired but generally support the treating physician's opinion that claimant is severely impaired. In this case the treating physician's opinion will be given some weight over that of the consultative physician.

(d) *Inconsistent medical opinions.* Where the Board finds that the opinion of a treating source regarding medical issues is inconsistent with the evidence of record including opinions of other sources that are supported by medically acceptable clinical and laboratory diagnostic techniques, the Board must resolve the inconsistency. If necessary to resolve the inconsistency, the Board will secure additional independent evidence and/or further interpretation or explanation from the treating source(s) and/or the consultative physician or psychologist. The Board's determination will be based on all the evidence in the case record, including the opinions of the medical sources. In resolving an inconsistency, the Board will give some extra weight to the treating source's supported opinion(s) which interprets the medical findings about the nature and severity of the impairment(s).

Example: In a case involving arthritis of the shoulder, where the X-rays confirm bony destruction, the examinations indicate minimal swelling and inflammation, but the treating source supplies evidence of greater restriction in the range of motion than found by the consultative physician, the Board will ask the treating source for further interpretation of the range of motion studies. If the treating source supplies a reasonable explanation, e.g., that the individual's condition is subject to periods of aggravation, the treating source's explanation will be given some extra weight over that of the consultative physician.

(e) *Medical opinions that will not be considered conclusive nor given extra weight.* The Board will not consider as conclusive nor give extra weight to medical opinions which are not in accord with the statutory or regulatory standards for establishing disability. Thus, opinions that the individual's impairments meet the Listing of Impairments in Appendix 1 of this part, where the medical findings which are the basis for that conclusion would not meet the specific criteria applicable to the particular impairment as set out in the Listing, will not be conclusive nor given extra weight. Likewise, an opinion(s) as to the individual's residual functional capacity which is not in accord with regulatory requirements set forth in §§ 220.120 and 220.121 will not be conclusive nor given extra weight.

Example 1: A medical opinion that an impairment meets listing 2.02, but the medical findings show that the individual's visual acuity in the better eye after best correction is 20/100, would not be conclusive nor would it be given extra weight since listing 2.02 requires that the remaining vision in the better eye after best correction be 20/200 or less.

Example 2: A medical opinion that the individual is limited to light work when the evidence shows that he or she can lift a maximum of 50 pounds and lift 25 pounds frequently will not be considered as conclusive nor given extra weight. This is because the individual's exertional capacity exceeds the criteria set forth in the regulations for light work.

§ 220.113 Symptoms, signs, and laboratory findings.

Medical findings consist of symptoms, signs, and laboratory findings:

(a) *Symptoms* are the claimant's own description of his or her physical or mental impairment(s). The claimant's statements alone are not enough to establish that there is a physical or mental impairment(s).

(b) *Signs* are anatomical, physiological, or psychological abnormalities which can be observed, apart from the claimant's own statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific abnormalities of behavior, affect, thought, memory, orientation and contact with reality. They must also be shown by obseevable facts that can be medically described and evaluated.

(c) *Laboratory findings* are anatomical, physiological, or psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.) x-rays, and psychological tests.

§ 220.114 Evaluation of symptoms, including pain.

The Board considers all of the claimant's symptoms, including pain, and the extent to which signs and laboratory findings confirm these symptoms. The Board will not find the claimant disabled based on his or her symptoms unless medical signs or findings show a medical impairment that could be reasonably expected to produce those symptoms.

§ 220.115 Need to follow prescribed treatment.

(a) *What treatment the claimant must follow.* In order to get a disability annuity, the claimant must follow treatment prescribed by his or her physician if this treatment can restore the claimant's ability to work.

(b) *When the claimant does not follow the prescribed treatment.* If the claimant does not follow prescribed treatment without a good reason, the Board will find him or her not disabled or, if the claimant is already receiving a disability annuity, the Board will stop paying the annuity.

(c) *Acceptable reasons for failure to follow prescribed treatment.* The following are examples of a good reason for not following treatment:

(1) The specific medical treatment is contrary to the established teaching and tenets of the claimant's religion.

(2) The prescribed treatment would be cataract surgery for one eye, when there is an impairment of the other eye resulting in a severe loss of vision and is not subject to improvement through surgery.

(3) Surgery was previously performed with unsuccessful results and the same surgery is again being recommended for the same impairment.

(4) The treatment because of its magnitude (e.g., open heart surgery), unusual nature (e.g., organ transplant), or other reason is very risky for the claimant.

(5) The treatment involves amputation of an extremity, or a major part of an extremity.

Subpart J—Residual Functional Capacity

§ 220.120 Residual functional capacity, defined.

(a) *General.* (1) The claimant's impairment(s) may cause physical and mental limitations that affect what the claimant can do in a work setting. Residual functional capacity is what the claimant can do despite his or her limitations. If the claimant has more than one impairment, the Board will consider all of his or her impairments of which the Board is aware. The Board considers the claimant's capacity for various functions as described in the following paragraphs: (b) physical abilities, (c) mental impairments, and (d) other impairments. Residual functional capacity is a medical assessment. However, it may include descriptions (even the claimant's) of the limitations that go beyond the symptoms that are important to diagnosis and treatment of the claimant's medical impairment(s) and may include observations of the claimant's work limitations in addition to those usually made during formal medical examinations.

(2) The descriptions and observations of the limitations, when used, must be considered along with the rest of the claimant's medical records to enable the Board to decide to what extent the claimant's impairment(s) keep him or her from performing particular work activities.

(3) The assessment of the claimant's residual functional capacity for work is not a decision on whether the claimant is disabled, but is used as the basis for determining the particular types of work the claimant may be able to do despite his or her impairment(s). A claimant's vocational background (see §§ 220.125 through 220.134) is considered along with his or her residual functional capacity in arriving at a disability decision.

(4) In deciding whether disability continues or ends, the residual functional capacity assessment may also be used to determine whether any medical improvement the claimant's ability to work as discussed in § 220.180.

(b) *Physical abilities.* When the Board assesses the claimant's physical abilities, the Board assesses the severity of his or her impairment(s) and determines his or her residual functional capacity for work activity on a regular and continuing basis. The Board considers the claimant's ability to do physical activities such as walking, standing, lifting, carrying, pushing, pulling, reaching, handling, and the evaluation of other physical functions. A limited ability to do these things may reduce the claimant's ability to do work.

(c) *Mental impairments.* When the Board assesses a claimant's mental impairment(s), the Board considers the factors, such as—

(1) His or her ability to understand, to carry out, and remember instructions; and

(2) His or her ability to respond appropriately to supervision, co-workers, and work pressures in a work setting.

(d) *Other impairments.* Some medically determinable impairments, such as skin impairments, epilepsy, and impairments of vision, hearing, or other senses, postural and manipulative limitations, and environmental restrictions do not limit physical exertion. If the claimant has this type of impairment, in addition to one that affects physical exertion, the Board considers both in deciding his or her residual functional capacity

§ 220.121 Responsibility for assessing and determining residual functional capacity.

(a) For cases at the initial or reconsideration level, the responsibility for determining residual functional capacity rests with the bureau of retirement claims. This assessment is based on all the evidence the Board has, including any statements regarding what the claimant can still do that have been provided by treating or examining physicians, consultative physicians, or any other physican designated by the Board. In any case where there is evidence which indicates the existence of a mental impairment, the bureau of retirement claims will not make a residual functional capacity determination without making every reasonable effort to ensure that a qualified psychiatrist or psychologist has provided a medical review of the case.

(b) For cases at the hearing level or the three-member-Board review level, the responsibility for deciding residual functional capacity rests with the appeals referee or the three-member-Board, respectively.

Subpart K—Vocational Considerations

§ 220.125 When vocational background is considered.

(a) *General.* The Board will consider vocational factors when the claimant is applying for—

(1) An employee annuity based on disability for any regular employment (See § 220.45(b));

(2) Widow(er) disability annuity; or

(3) Child's disability annuity based on disability before age 22.

(b) *Disability determinations in which vocational factors must be considered along with medical evidence.* When the Board cannot decide whether the claimant is disabled on medical evidence alone, the Board must use other evidence.

(1) The Board will use information from the claimant about his or her age, education, and work experience.

(2) The Board will consider the doctors' reports, and hospital records, as well as the claimant's own statements and other evidence to determine a claimant's residual functional capacity and how it affects the work the claimant can do. Sometimes, to do this, the Board will need to ask the claimant to have special examinations or tests. (See § 220.50.)

(3) If the Board finds that the claimant can no longer do the work he or she has done in the past, the Board will determine whether the claimant can do other work (jobs) which exist in

significant numbers in the national economy.

§ 220.125 Relationship of ability to do work and residual functional capacity.

(a) If the claimant can do his or her previous work (his or her usual work or other applicable past work), the Board will determine he or she is not disabled.

(b) If the residual functional capacity is not enough for the claimant to do any of his or her previous work, the Board must still decide if the claimant can do any other work. To determine whether the claimant can do other work, the Board will consider the claimant's residual functional capacity, and has or her age, education, and work experience. Any work (jobs) that the claimant can do must exist in significant numbers in the national economy (either in the region where he or she lives or in several regions of the country).

§ 220.127 When the only work experience is arduous unskilled physical labor.

(a) *Arduous work.* Arduous work is primarily physical work requiring a high level of strength or endurance. The Board will consider the claimant unable to do lighter work and therefore, disabled if he or she has—

(1) A marginal education (see § 220.129);

(2) Work experience of 35 years or more during which he or she did arduous unskilled physical labor; and

(3) A severe impairment which no longer allows him or her to do arduous unskilled physical labor.

(b) *Exceptions.* The Board may consider the claimant not disabled if—

(1) The claimant is working or has worked despite his or her impairment(s) (except where work is sporadic or not medically advisable); or

(2) Evidence shows that the claimant has training or past work experience which enables him or her to do substantial gainful activity in another occupation with his or her impairment, either full-time or on reasonably regular part-time basis.

Example: B is a 60-year-old miner with a fourth grade education who has a life-long history of arduous physical labor. B says that he is disabled because of arthritis of the spine, hips, and knees, and other impairments. Medical evidence shows a combination of impairments and establishes that these impairments prevent B from performing his usual work or any other type of arduous physical labor. His vocational background does not show that he has skills or capabilities needed to do lighter work which would be readily transferable to another work setting. Under these circumstances, the Board will find that B is disabled.

§ 220.128 Age as a vocational factor.

(a) *General.* (1) "Age" refers to how old the claimant is (chronological age) and the extent to which his or her age affects his or her ability to—

(i) Adapt to a new work situation; and

(ii) Do work in competition with others.

(2) In determining disability, the Board does not consider age alone. The Board must also consider the claimant's residual functional capacity, education, and work experience. If the claimant is unemployed because of his or her age and can still do a significant number of jobs which exist in the national economy, the Board will find that he or she is not disabled. Appendix 2 of this part explains in detail how the Board considers age as a vocational factor. However, the Board does not apply these age categories mechanically in a borderline situation.

(b) *Younger person.* If the claimant is under age 50, the Board generally does not consider that his or her age will seriously affect the ability to adapt to a new work situation. In some circumstances, the Board considers age 45 a handicap in adapting to a new work setting (see Rule 201.17 in Appendix 2 of this Part.)

(c) *Person approaching advanced age.* If the claimant is closely approaching advanced age (50–54), the Board considers that the claimant's age, along with a severe impairment and limited work experience, may seriously affect the claimant's ability to adjust to a significant number of jobs in the national economy.

(d) *Person of advanced age.* The Board considers that advanced age (55 or over) is the point at which age significantly affects the claimant's ability to do substantial gainful activity.

(1) If the claimant is severely impaired and of advanced age, and he or she cannot do medium work (see § 220.132), the claimant may not be able to work unless he or she has skills that can be used in less demanding jobs which exist in significant numbers in the national economy.

(2) If the claimant is close to retirement age (60–64) and has a severe impairment, the Board will not consider him or her able to adjust to sedentary or light work unless the claimant has skills which are highly marketable.

§ 220.129 Education as a vocational factor.

(a) *General.* "Education" is primarily used to mean formal schooling or other training which contributes to the claimant's ability to meet vocational requirements, for example, reasoning ability, communication skills, and arithmetical ability. If the claimant does not have formal schooling, this does not necessarily mean that the claimant is uneducated or lacks these abilities. Past work experience and the kinds of responsibilities the claimant had when he or she was working may show that he or she has intellectual abilities, although the claimant may have little formal education. A claimant's daily activities, hobbies, or the results of testing may also show that the claimant has significant intellectual ability that can be used to work.

(b) *How the Board evaluates the claimant's education.* (1) The importance of the claimant's educational background may depend upon how much time has passed between the completion of the claimant's formal education and the beginning of the claimant's physical or mental impairment(s) and what the claimant has done with his or her education in a work or other setting. Formal education completed many years before the claimant's impairment(s) began, or unused skills and knowledge that were a part of the claimant's formal education, may no longer be useful or meaningful in terms of ability to work. Therefore, the numerical grade level that the claimant completed in school may not represent his or her actual educational abilities. These educational abilities may be higher or lower than the numerical grade level that the claimant completed. However, if there is no other evidence to contradict it, the Board uses the claimant's numerical grade level to determine the claimant's educational abilities. The term "education" also includes how well the claimant is able to communicate in English since this ability is often acquired or improved by education. In evaluating the claimant's educational level, the Board uses the following categories:

(1) *Illiteracy.* Illiteracy means the inability to read or write. The Board will consider the claimant illiterate if he or she cannot read or write a simple message such as instructions or inventory lists even though the claimant can sign his or her name. Generally, the illiterate claimant has had little or no formal schooling.

(2) *Marginal education.* Marginal education means ability in reasoning, arithmetic, and language skills which are needed to do simple, unskilled types of jobs. Generally, this means a 6th grade or less level of education.

(3) *Limited education.* Limited education means ability in reasoning, arithmetic, and language skills, but not enough to allow a person with these educational qualifications to do most of the more complex duties needed in semi-skilled or skilled jobs. Generally, a limited education is a 7th grade through 11th grade level of education.

(4) *High school education and above.* High school and above means abilities in reasoning, arithmetic, and language skills acquired through formal schooling at a 12th grade level or above. The claimant with this level of education is generally considered able to do semi-skilled through skilled work.

(5) *Inability to communicate in English.* Since the ability to speak, read, and understand English is generally learned or increased at school, the Board may consider this an educational factor. Because English is the dominant language of the country, it may be difficult for the claimant who does not speak and understand English to do a job, regardless of the amount of education he or she may have in another language. The claimant's ability to speak, read and understand English will be considered when the Board evaluates what work, if any, he or she can do.

(6) *Information about the claimant's education.* The Board will ask the claimant how long he or she attended school and whether he or she can speak, understand, read and write in English, and do at least simple calculations in arithmetic. The Board will also consider information about how much formal or informal education the claimant received from his or her previous work, community projects, hobbies and any other activities which might help him or her to work.

§ 220.130 Work experience as a vocational factor.

(a) *General.* "Work experience" means skills and abilities the claimant has acquired through work he or she has done which show the type of work he or she may be expected to do. Work the claimant has already been able to do shows the kind of work that he or she may be expected to do. The Board considers that the claimant's work experience is relevant and applies when it was done within the last 15 years, lasted long enough for him or her to learn to do it, and was substantial gainful activity. This work experience is called "past relevant work." The Board does not usually consider that work the claimant did 15 years or more before the time the Board is deciding whether he or she is disabled (or when the disability insured status requirement was last met, if earlier) applies. A gradual change occurs in most jobs so that after 15 years, it is no longer realistic to expect that skills and abilities acquired in a job done then continue to apply. The 15-year guide is intended to insure that remote work experience is not currently applied. If the claimant has no work experience or worked only "off-and-on" or for brief periods of time during the 15-year period, the Board generally considers that these do not apply. If the claimant has acquired skills through his or her past work, the Board considers the claimant to have these work skills unless he or she cannot use them in other skilled or semi-skilled work that he or she can do. If the claimant cannot use his or her skills in other skilled or semi-skilled work, the Board will consider his or her work background the same as unskilled. However, even if the claimant has no work experience, the Board may consider that the claimant is able to do unskilled work because it requires little or no judgment and can be learned in a short period of time.

(b) *Information about the claimant's work.* (1) Sometimes the Board will need information about the claimant's past work to make a disability determination. The Board may request work information from—

(i) The claimant; and

(ii) The claimant's employer or other person who knows about the claimant's work (member of family or co-worker) with the claimant's permission.

(2) The Board will ask for the following information about all the jobs the claimant has had in the last 15 years:

(i) The dates the claimant worked.

(ii) All the duties the claimant did.

(iii) Any tools, machinery, and equipment the claimant used.

(iv) The amount of walking, standing, sitting, lifting and carrying the claimant did during the work day, as well as any other physical and mental duties of the job.

(3) If all the claimant's work in the past 15 years has been arduous and unskilled, and the claimant has very little education, the Board will ask the claimant to tell about all of his or her work from the time he or she first began working. (See § 220.45(b).)

§ 220.131 Work which exists in the national economy.

(a) *General.* The Board considers that work exists in the national economy when it exists in significant numbers either in the region where the claimant lives or in several other regions of the country. It does not matter whether—

(1) Work exists in the immediate area in which the claimant lives,

(2) A specific job vacancy exists for the claimant; or

(3) The claimant would be hired if the claimant applied for work.

(b) *How the Board determines the existence of work.* Work exists in the national economy when there is a significant number of jobs (in one or more occupations) having requirements which the claimant is able to meet with his or her physical or mental ability and vocational qualifications. Isolated jobs that exist in very limited numbers in relatively few locations outside the region where the claimant lives are not considered "work which exists in the national economy." The Board will not deny the claimant a disability annuity on the basis of the existence of these kinds of jobs. The Board will determine that the claimant is disabled if the work he or she can do does not exist in the national economy. If the work the claimant can do does exist in the national economy, the Board will determine that the claimant is not disabled.

(c) *Inability to obtain work.* The Board will determine that the claimant is not disabled if he or she has the residual functional capacity and vocational abilities to do work which exists in the national economy but the claimant remains unemployed because of—

(1) His or her inability to get work;

(2) Lack of work in his or her local area;

(3) The hiring practices of employers;

(4) Technological changes in the industry in which the claimant has worked;

(5) Cyclical economic conditions;

(6) No job openings for the claimant;

(7) The claimant not actually being hired to do work he or she could otherwise do; or

(8) The claimant not wishing to do a particular type of work.

(d) *Administrative notice of job data.* The following sources are used when the Board determines that unskilled, sedentary, light and medium jobs exist in the national economy:

(1) *Dictionary of Occupational Titles,* published by the Department of Labor.

(2) *County Business Patterns,* published by the Bureau of the Census.

(3) *Census Reports,* also published by the Bureau of the Census.

(4) *Occupational Analyses,* prepared for the Social Security Administration by various State employment agencies.

(5) *Occupational Outlook Handbook,* published by the Bureau of Labor Statistics.

(e) *Use of vocational experts and other specialists.* If the issue in determining whether the claimant is disabled is whether his or her work skills can be used in other work and the specific occupations in which they can be used, or there is a similarly complex issue, the Board may use the services of

a vocational expert or other specialist. The Board will decide whether to use a vocational expert or other specialist.

§ 220.132 Physical exertion requirements.

To determine the physical exertion requirements of work in the national economy, jobs are classified as "sedentary", "light", "medium", "heavy", and "very heavy." These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. In making disability determinations the Board uses the following definitions:

(a) *Sedentary work.* Sedentary work involves lifting no more than 10 pounds at a time and occastionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and the other sedentary criteria are met.

(b) *Light work.* Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, the claimant must have the ability to do substantially all of these activities. If the claimant can do light work, the Board determines that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

(c) *Medium work.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If the claimant can do medium work, the Board determines that he or she can also do sedentary and light work.

(d) *Heavy work.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If the claimant can do heavy work, the Board determines that he or she can also do medium, light, and sedentary work.

(e) *Very heavy work.* Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If the claimant can do very heavy work, the Board determines that he or she can also do heavy, medium, light and sedentary work.

§ 220.133 Skill requirements.

(a) *General.* To evaluate skills and to help determine the existence in the national economy of work the claimant is able to do, occupations are classified as unskilled, semi-skilled, and skilled. In classifying these occupations, the Board uses materials published by the Department of Labor.

(b) *Unskilled work.* Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time (30 days). The job may or may not require considerable strength. A job is considered unskilled if the claiment can usually learn to do the job in 30 days, and little job training and judgment are needed. The claimant does not gain work skills by doing unskilled jobs. For example, jobs are considered unskilled if primary work duties are—

(1) Handling;

(2) Feeding;

(3) Offbearing (placing or removing materials from machines which are automatic or operated by others; or

(4) Machine tending.

(c) *Semi-skilled work.* Semi-skilled work is work which needs some skills but does not require doing the more complex work duties. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hand or feet must be moved quickly to do repetitive tasks. Semi-skilled jobs may require—

(1) Alertness and close attention to watching machine processes;

(2) Inspecting, testing, or otherwise looking for irregularities;

(3) Tending or guarding equipment, property, materials, or persons against loss, damage, or injury; or

(4) Other types of activities which are similarly less complex than skilled work but more complex than unskilled work.

(d) *Skilled work.* Skilled work requires qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled jobs may require—

(1) Laying out work;

(2) Estimating quality;

(3) Determining suitability and needed quantities of materials;

(4) Making precise measurements;

(5) Reading blueprints or other specifications;

(6) Making necessary computations or mechanical adjustments to control or regulate work; or

(7) Dealing with people, facts, figures or abstract ideas at a high level of complexity.

(e) *Skills that can be used in other work (transferability)*—(1) *What the Board means by transferable skills.* The Board considers the claimant to have skills that can be used in other jobs, when the skilled or semi-skilled work activities the claimant did in past work can be used to meet the requirements of skilled or semi-skilled work activities of other jobs or kinds of work. This depends largely on the similarity of occupationally significant work activities among different jobs.

(2) *How the Board determines skills that can be transferred to other jobs.* Transferability is most probable and meaningful among jobs in which—

(i) The same or a lesser degree of skill is required;

(ii) The same or similar tools and machines are used; and

(iii) The same or similar raw materials, products, processes, or services are involved.

(3) *Degrees of transferability.* There are degrees of transferability of skills ranging from very close similarities to remote and incidental similarities among jobs. A complete similarity of all three factors is not necessary for transferability. However, when skills are so specialized or have been acquired in such an isolated vocational setting (like many jobs in mining, agriculture, or fishing) that they are not readily usable in other industries, jobs, and work settings, they are considered not transferable.

§ 220.134 Medical Vocational Guidelines in Appendix 2 of this part.

(a) The Dictionary of Occupational Titles includes information about jobs (classified by their exertional and skill requirements) that exist in the national economy. Appendix 2 of this part provides rules using this data reflecting major functional and vocational patterns.

(b) The Board applies the rules in appendix 2 of this part in cases where a claimant is not doing substantial gainful activity and is prevented by a severe impairment(s) from doing vocationally relevant past work.

(c) The rules in Appendix 2 of this part do not cover all possible variations of factors. The Board does not apply these rules if one of the findings of fact about the claimant's vocational factors and residual functional capacity is not the same as the corresponding criterion of a rule. In these instances, the Board gives full consideration to all relevant facts in accordance with the definitions and discussions under vocational considerations. However, if the findings of fact made about all factors are the same as the rule, the Board uses that rule to decide whether that claimant is disabled.

Subpart L—Substantial Gainful Activity

§ 220.140 General.

The work that a claimant has done during any period in which the claimant believes he or she is disabled may show that the claimant is able to do work at the substantial gainful activity level. If the claimant is able to engage in substantial gainful activity, the Board will find that the claimant is not disabled for any regular employment under the Railroad Retirement Act. Even if the work the claimant has done was not substantial gainful activity, it may show that the claimant is able to do more work than he or she actually did. The Board will consider all of the medical and vocational evidence in the claimant's file to decide whether or not the claimant has the ability to enagage in substantial gainful activity.

§ 220.141 Substantial gainful activity, defined.

Substantial gainful activity is work activity that is both substantial and gainful.

(a) *Substantial work activity.* Substantial work activity is work activity that involves doing significant physical or mental activities. The claimant's work may be substantial even if it is done on a part-time basis or if the claimant does less, gets paid less, or has less responsibility than when the claimant worked before.

(b) *Gainful work activity.* Gainful work activity is work activity that the claimant does for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized

(c) *Some other activities.* Generally, the Board does not consider activities like taking care of one's self, household tasks, hobbies, therapy, school attendance, club activities, or social programs to be substantial gainful activity.

§ 220.142 General information about work activity.

(a) *The nature of the claimant's work.* If the claimant's duties require use of the claimant's experience, skills, supervision and responsibilities, or contribute substantially to the operation of a business, this tends to show that the claimant has the ability to work at the substantial gainful activity level.

(b) *How well the claimant performs.* The Board considers how well the claimant does his or her work when the Board determines whether or not the claimant is doing substantial gainful activity. If the claimant does his or her work satisfactorily, this may show that the claimant is working at the substantial gainful activity level. If the claimant is unable, because of his or her impairments, to do ordinary or simple tasks satisfactorily without more supervision or assistance than is usually given other people doing similar work, this may show that the claimant is not working at the substantial gainful activity level. If the claimant is doing work that involves minimal duties that make little or no demands on the claimant and that are of little or no use to the claimant's railroad or non-railroad employer, or to the operation of a business if the claimant is self-employed, this does not show that the claimant is working at the substantial gainful activity level.

(c) *If the claimant's work is done under special conditions.* Even though the work the claimant is doing takes into account his or her impairment, such as work done in a sheltered workshop or as a patient in a hospital, it may still show that the claimant has the necessary skills and ability to work at the substantial gainful activity level.

(d) *If the claimant is self-employed.* Supervisory, managerial, advisory or other significant personal services that the claimant performs as a self-employed person may show that the claimant is able to do substantial gainful activity.

(e) *Time spent in work.* While the time the claimant spends in work is important, the Board will not decide whether or not the claimant is doing substantial gainful activity only on that basis. The Board will still evaluate the work to decide whether it is substantial and gainful regardless of whether the claimant spends more time or less time at the job than workers who are not impaired and who are doing similar work as a regular means of their livelihood.

§ 220.143 Evaluation guides for an employed claimant.

(a) *General.* The Board uses several guides to decide whether the work the claimant has done shows that he or she is able to do substantial gainful activity.

(1) *The claimant's earnings may show the claimant has done substantial gainful activity.* The amount of the claimant's earnings from work the claimant has done may show that he or she has engaged in substantial gainful activity. Generally, if the claimant worked for substantial earnings, this will show that he or she is able to do substantial gainful activity. On the other hand, the fact that the claimant's earnings are not substantial will not necessarily show that the claimant is not able to do substantial gainful activity. The Board will generally consider work that the claimant is forced to stop after a short time because of his or her impairment(s) as an unsuccessful work attempt and the claimant's earnings from that work will not show that the claimant is able to do substantial gainful activity.

(2) *The Board considers only the amounts the claimant earns.* The Board does not consider any income not directly related to the claimant's productivity when the Board decides whether the claimant has done substantial gainful activity. If the claimant's earnings are subsidized, the amount of the subsidy is not counted when the Board determines whether or not the claimant's work is substantial gainful activity. Thus, where work is done under special conditions, the Board only considers the part of the claimant's pay which the claimant actually "earns." For example, where a handicapped person does simple tasks under close and continuous supervision, the Board would not determine that the person worked at the substantial gainful activity level only on the basis of the amount of pay. A railroad or non-railroad employer may set a specific amount as a subsidy after figuring the reasonable value of the employee's services. If the claimant's work is subsidized and the claimant's railroad and non-railroad employer does not set the amount of the subsidy or does not adequately explain how the subsidy was figured, the Board will investigate to see how much the claimant's work is worth.

(3) *If the claimant is working in a sheltered or special environment.* If the claimant is working in a sheltered workshop, the claimant may or may not be earning the amounts he or she is being paid. The fact that the sheltered workshop or similar facility is operating at a loss or is receiving some charitable contributions or governmental aid does not establish that the claimant is not earning all he or she is being paid. Since persons in military service being treated for a severe impairment usually continue to receive full pay, the Board evaluates work activity in a therapy program or while on limited duty by comparing it with similar work in the civilian work force or on the basis of reasonable worth of the work, rather than on the actual amount of the earnings.

(b) *Earnings guidelines*—(1) *General.* If the claimant is employed, the Board first considers the criteria in paragraph (a) of this section and § 220.145, and

then the guides in paragraphs (b) (2), (3), (4), (5), and (6) of this section.

(2) *Earnings that will ordinarily show that the claimant has engaged in substantial gainful activity.* The Board will consider that the earnings from the employed claimant's work activities show that the claimant has engaged in substantial gainful activity if—

(i) The claimant's earnings averaged more than $200 a month in calendar years prior to 1976;

(ii) The claimant's earnings averaged more than $230 a month in calendar years prior to 1976;

(iii) The claimant's earnings averaged more than $240 a month in calendar year 1977;

(iv) The claimant's earnings averaged more than $260 a month in calendar year 1978;

(v) The claimant's earnings averaged more than $280 a month in calendar year 1979; or

(vi) The claimant's earnings averaged more than $300 a month in calendar years after 1979.

(3) *Earnings that will ordinarily show that the claimant has not engaged in substantial gainful activity.* The Board will generally consider that the earnings from the employed claimant's work will show that the claimant has not engaged in substantial gainful activity if—

(i) The claimant's earnings averaged less than $130 a month in calendar year before 1976;

(ii) The claimant's earnings averaged less than $150 a month in calendar year 1976;

(iii) The claimant's earnings averaged less than $160 a month in calendar year 1977;

(iv) The claimant's earnings averaged less than $170 a month in calendar year 1978;

(v) The claimant's earnings averaged less than $180 a month in calendar year 1979; or

(vi) The claimant's earnings averaged less than $190 a month in calendar years after 1979.

(4) *If the claimant works in a sheltered workshop.* If the claimant is working in a sheltered workshop or a comparable facility especially set up for severely impaired persons, the claimant's earnings and activities will ordinarily establish that the claimant has not done substantial gainful activity if—

(i) The claimant's average earnings are not greater than $200 a month in calendar years prior to 1976;

(ii) The claimant's average earnings are not greater than $230 a month in calendar year 1976;

(iii) The claimant's average earnings are not greater than $240 a month in calendar year 1977;

(iv) The claimant's average earnings are not greater than $260 a month in calendar year 1978;

(v) The claimant's average earnings are not greater than $280 a month in calendar year 1979; or

(vi) The claimant's average earnings are not greater than $300 a month in calendar year after 1979.

(5) *If there is evidence showing that the claimant may have done substantial gainful activity.* If there is evidence showing that the claimant may have done substantial gainful activity, the Board will apply the criteria in paragraph (b)(6) of this section regarding comparability and value of services.

(6) *Earnings that are not high or low enough to show whether the claimant engaged in substantial gainful activity.* If the claimant's earnings, on the average, are between the amounts shown in paragraphs (b) (2) and (3) of this section, the Board will generally consider other information in addition to the claimant's earnings, such as whether—

(i) The claimant's work is comparable to that of unimpaired persons in the claimant's community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work; or

(ii) The claimant's work, although significantly less than that done by unimpaired persons, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in the claimant's community.

§ 220.144 Evaluation guides for a self-employed claimant.

(a) *If the claimant is a self-employed claimant.* The Board will consider the claimant's activities and their value to the claimant's business to decide whether the claimant has engaged in substantial gainful activity if the claimant is self-employed. The Board will not consider the claimant's income alone since the amount of income the claimant actually receives may depend upon a number of different factors like capital investment, profit sharing agreements, etc. The Board will generally consider work that the claimant is forced to stop after a short time because of his or her impairment(s) as an unsuccessful work attempt and the claimant's income from that work will not show that the claimant is able to do substantial gainful activity. The Board will evaluate the claimant's work activity on the value to the business of the claimant's services regardless of whether the claimant receives an immediate income for his or her services. The Board considers that the claimant has engaged in substantial gainful activity if—

(1) The claimant's work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired persons in the claimant's community who are in the same or similar businesses as their means of livelihood;

(2) The claimant's work activity, although not comparable to that of unimpaired persons, is clearly worth the amount shown in § 220.143 (b)(2) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employed person to do the work the claimant is doing; or

(3) The claimant renders services that are significant to the operation of the business and receives a substantial income from the business.

(b) *What the Board means by significant services*—(1) *Claimants who are not farm landlords.* If the claimant is not a farm landlord and the claimant operates a business entirely by himself or herself, any services that the claimant renders are significant to the business. If the claimant's business involves the services of more than one person, the Board will consider the claimant to be rendering significant services if he or she contributes more than half the total time required for the management of the business or he or she renders management services for more than 45 hours a month regardless of the total management time required by the business.

(2) *Claimants who are farm landlords*— (i) *General.* If the claimant is a farm landlord, that is, the claimant rents farm land to another, the Board will consider the claimant to be rendering significant services if the claimant materially participates in the production or the management of the production of the things raised on the rented farm. If the claimant was given social security earnings credits because he or she materially participated in the activities of the farm and he or she continues these same activities, the Board will consider the claimant to be rendering significant services.

(ii) *Material participation.* (A) The claimant will have established that he or she is materially participating if he or she—

(*1*) Furnishes a large portion of the machinery, tools, and livestock used in the production of the things raised on the rented farm; or

(*2*) Furnishes or advances monies or assumes financial responsibility for a substantial part of the expense involved in the production of the things raised on the rented farm.

(B) The claimant will have presented strong evidence that he or she is materially participating if he or she periodically—

(*1*) Advises or consults with the other person, who under the rental agreement produces the things raised on the rented farm; and

(*2*) Inspects the production activities on the land.

(iii) *Production.* The term "production" refers to the physical work performed and the expenses incurred in producing the things raised on the farm. It includes activities like the actual work of planting, cultivating, and harvesting of crops, and the furnishing of machinery, implements, seed, and livestock.

(iv) *Management of the production.* The term "management of the production" refers to services performed in making managerial decisions about the production of the crop, such as when to plant, cultivate, dust, spray or harvest. It includes advising and consulting, making inspections, and making decisions on matters, such as rotation of crops, the type of crops to be grown, the type of livestock to be raised, and the type of machinery and implements to be furnished.

(c) *What the Board means by substantial income.* After the claimant's normal business expenses are deducted from the claimant's gross income to determine net income, the Board will deduct the reasonable value of any unpaid help, any soil bank payments that were included as farm income, and impairment-related work expenses described in § 220.145 that have not been deducted in determining the claimant's net earnings from self-employment. The Board will consider the resulting amount of income from the business to be substantial if—

(1) It averages more than the amounts described in § 220.143(b)(2); or

(2) It averages less than the amounts described in § 220.143(b)(2) but the livelihood which the claimant gets from the business is either comparable to what it was before the claimant became severely impaired or is comparable to that of unimpaired self-employed persons in the claimant's community who are in the same or similar businesses as their means of livelihood.

§ 220.145 Impairment-related work expenses.

(a) *General.* When the Board figures the claimant's earnings in deciding if the claimant has done substantial gainful activity, the Board will subtract the reasonable costs to the claimant of certain items and services which, because of his or her impairment(s), the claimant needs and uses to enable him or her to work. The costs are deductible even though the claimant also needs or uses the items and services to carry out daily living functions unrelated to his or her work. Paragraph (b) of this section explains the conditions for deducting work expenses. Paragraph (c) of this section describes the expenses the Board will deduct. Paragraph (d) of this section explains when expenses may be deducted. Paragraph (e) of this section describes how expenses may be allocated. Paragraph (f) of this section explains the limitations on deducting expenses. Paragraph (g) of this section explains the Board's verification procedures.

(b) *Conditions for deducting impairment-related work expenses.* The Board will deduct impariment-related work expenses if—

(1) The claimant is otherwise disabled as defined in § 220.26;

(2) The severity of the claimant's impairment(s) requires the claimant to purchase (or rent) certain items and services in order to work;

(3) The claimant pays the cost of the item or service. No deduction will be allowed to the extent that payment has been or will be made by another source. No deduction will be allowed to the extent that the claimant has been, could be, or will be reimbursed for such cost by any other source (such as through a private insurance plan, Medicare or Medicaid, or other plan or agency). For example, if the claimant purchases crutches for $80 but the claimant was, could be, or will be reimbursed $64 by some agency, plan, or program, the Board will deduct only $16;

(4) The claimant pays for the item or service in a month he or she is working (in accordance with paragraph (d) of this section); and

(5) The claimant's payment is in cash (including checks or other forms of money). Payment in kind is not deductible.

(c) *What expenses may be deducted*— (1) *Payments for attendant care services.* (i) If because of the claimant's impairment(s) the claimant needs assistance in travelling to and from work, or while at work the claimant needs assistance with personal functions (e.g., eating, toileting) or with work-related functions (e.g., reading, communicating), the payments the claimant makes for those services may be deducted.

(ii) If because of the claimant's impairment(s) the claimant needs assistance with personal functions (e.g., dressing, administering medications) at home in preparation for going to and assistance in returning from work, the payments the claimant makes for those services may be deducted.

(iii) (A) The Board will deduct payments the claimant makes to a family member for attendant care services only if such person, in order to perform the services, suffers an economic loss by terminating his or her employment or by reducing the number of hours he or she worked.

(B) The Board considers a family member to be anyone who is related to the claimant by blood, marriage or adoption, whether or not that person lives with the claimant.

(iv) If only part of the claimant's payment to a person is for services that come under the provisions of paragraph (c)(1) of this section, the Board will only deduct that part of the payment which is attributable to those services. For example, an attendant gets the claimant ready for work and helps the claimant in returning from work, which takes about 2 hours a day. The rest of the attendant's 8 hour day is spent cleaning the claimant's house and doing the claimant's laundry, etc. The Board would only deduct one-fourth of the attendant's daily wages as an impairment-related work expense.

(2) *Payment for medical devices.* If the claimant's impairment(s) requires that the claimant utilize medical devices in order to work, the payments the claimant makes for those devices may be deducted. As used in this subparagraph, medical devices include durable medical equipment which can withstand repeated use, is customarily used for medical purposes, and is generally not useful to a person in the absence of an illness or injury. Examples of durable medical equipment are wheelchairs, hemodialysis equipment, canes, crutches, inhalators and pacemakers.

(3) *Payments for prosthetic devices.* If the claimant's impairment(s) requires that the claimant utilize a prosthetic device in order to work, the payments the claimant makes for that device can be deducted. A prosthetic device is that which replaces an internal body organ or external body part. Examples of prosthetic devices are artificial replacements of arms, legs and other parts of the body.

(4) *Payments for equipment*—(i) *Work-related equipment.* If the claimant's impairment(s) requires that the claimant utilize special equipment in

order to do his or her job, the payments the claimant makes for that equipment may be deducted. Examples of work-related equipment are one-hand typewriters, vision aids, sensory aids for the blind, telecommunication devices for the deaf and tools specifically designed to accommodate a person's impairment(s).

(ii) *Residential modifications.* If the claimant's impairment(s) requires that the claimant make modifications to his or her residence, the location of the claimant's place of work will determine if the cost of these modifications will be deducted. If the claimant is employed away from home, only the cost of changes made outside of the claimant's home to permit the claimant to get to his or her means of transportation (e.g., the installation of an exterior ramp for a wheelchair confined person or special exterior railings or pathways for someone who requires crutches) will be deducted. Costs relating to modifications of the inside of the claimant's home will not be deducted. If the claimant works at home, the costs of modifying the inside of the claimant's home in order to create a working space to accommodate the claimant's impairment(s) will be deducted to the extent that the changes pertain specifically to the space in which the claimant works. Examples of such changes are the enlargement of a doorway leading into the workspace or modification of the workspace to accommodate problems in dexterity. However, if the claimant is self-employed at home, any cost deducted as a business expense cannot be deducted as an impairment-related work expense.

(iii) *Non-medical appliances and equipment.* Expenses for appliances and equipment which the claimant does not ordinarily use for medical purposes are generally not deductible. Examples of these items are portable room heaters, air conditioners, humidifiers, dehumidifiers, and electric air cleaners. However, expenses for such items may be deductible when unusual circumstances clearly establish an impairment-related and medically verified need for such an item because it is for the control of the claimant's disabling impairment(s), thus enabling the claimant to work. To be considered essential, the item must be of such a nature that if it were not available to the claimant there would be an immediate adverse impact on the claimant's ability to function in his or her work activity. In this situation, the expense is deductible whether the item is used at home or in the working place. An example would be the need for an electric air cleaner by a person with severe respiratory disease who cannot function in a non-purified air environment. An item such as an exercycle is not deductible if used for general physical fitness. If an exercycle is prescribed and used as necessary treatment to enable the claimant to work, the Board will deduct payments the claimant makes toward its cost.

(5) *Payments for drugs and medical services.* (i) If the claimant must use drugs or medical services (including diagnostic procedures) to control his or her impairment(s) the payments the claimant makes for them may be deducted. The drugs or services must be prescribed (or utilized) to reduce or eliminate symptoms of the claimant's impairment(s) or to slow down its progression. The diagnostic procedures must be performed to ascertain how the impairment(s) is progressing or to determine what type of treatment should be provided for the impairment(s).

(ii) Examples of deductible drugs and medical services are anticonvulsant drugs to control epilepsy or anticonvulsant blood level monitoring; antidepressant medication for mental impairments; medication used to allay the side effects of certain treatments; radiation treatment or chemotherapy for cancer patients; corrective surgery for spinal impairments; electroencephalograms and brain scans related to a disabling epileptic impairment; tests to determine the efficacy of medication on a diabetic condition; and immunosuppresive medications that kidney transplant patients regularly take to protect against graft rejection.

(iii) The Board will only deduct the costs of drugs or services that are directly related to the claimant's impairment(s). Examples of non-deductible items are routine annual physical examinations, optician services (unrelated to a disabling visual impairment) and dental examinations.

(6) *Payments for similar items and services*—(i) *General.* If the claimant is required to utilize items and services not specified in paragraphs (c)(1) through (5) of this section, but which are directly related to his or her impairment(s) and which the claimant needs to work, their costs are deductible. Examples of such items and services are medical supplies and services not discussed above, the purchase and maintenance of a dog guide which the claimant needs to work, and transportation.

(ii) *Medical supplies and services not described above.* The Board will deduct payments the claimant makes for expendable medical supplies, such as incontinence pads, catheters, bandages, elastic stockings, face masks, irrigating kits, and disposable sheets and bags. The Board will also deduct payments the claimant makes for physical therapy which the claimant requires because of his or her impairment(s) and which the claimant needs in order to work.

(iii) *Payments for transportation costs.* The Board will deduct transportation costs in these situations:

(A) The claimant's impairment(s) requires that in order to get to work the claimant needs a vehicle that has structural or operational modifications. The modifications must be critical to the claimant's operation or use of the vehicle and directly related to the claimant's impairment(s). The Board will deduct the cost of the modifications, but not the cost of the vehicle. The Board will also deduct a mileage allowance for the trip to and from work. The allowance will be based on data compiled by the Federal Highway Administration relating to vehicle operating costs.

(B) The claimant's impairment(s) requires the claimant to use driver assistance, taxicabs or other hired vehicles in order to work. The Board will deduct amounts paid to the driver and, if the claimant's own vehicle is used, the Board will also deduct a mileage allowance, as provided in paragraph (c)(6)(iii)(A) of this section, for the trip to and from work.

(C) The claimant's impairment(s) prevents the claimant from taking available public transportation to and from work and the claimant must drive his or her (unmodified) vehicle to work. If the Board can verify through the claimant's physician or other sources that the need to drive is caused by the claimant's impairment(s) (and not due to the unavailability of public transportation), the Board will deduct a mileage allowance, as provided in paragraph (c)(6)(iii)(A) of this section, for the trip to and from work.

(7) *Payments for installing, maintaining, and repairing deductible items.* If the device, equipment, appliance, etc., that the claimant utilizes qualifies as a deductible item as described in paragraphs (c)(2), (3), (4) and (6) of this section, the costs directly related to installing, maintaining and repairing these items are also deductible. (The costs which are associated with modifications to a vehicle are deductible. Except for a mileage allowance, as provided for in paragraph (c)(6)(iii)(A) of this section, the costs which are associated with the vehicle itself are not deductible.)

(d) *When expenses may be deducted*—(1) *Effective date.* To be deductible, an expense must be incurred after November 30, 1980. An expense may be considered incurred after that date if it is paid thereafter even though pursuant to a contract or other arrangement entered into before December 1, 1980.

(2) *Payments for services.* A payment the claimant makes for services may be deducted if the services are received while the claimant is working and the payment is made in a month the claimant is working. The Board considers the claimant to be working even though he or she must leave work temporarily to receive the services.

(3) *Payments for items.* A payment the claimant makes toward the cost of a deductible item (regardless of when it is acquired) may be deducted if payment is made in a month the claimant is working. See paragraph (e)(4) of this section when purchases are made in anticipation of work.

(e) *How expenses are allocated*—(1) *Recurring expenses.* The claimant may pay for services on a regular periodic basis, or the claimant may purchase an item on credit and pay for it in regular periodic installments or the claimant may rent an item. If so, each payment the claimant makes for the services and each payment the claimant makes toward the purchase or rental (including interest) is deductible in the month it is made.

Example: B starts work in October 1981 at which time she purchases a medical device at a cost of $4,800 plus interest charges of $720. Her monthly payments begin in October. She earns and receives $400 a month. The term of the installment contract is 48 months. No downpayment is made. The monthly allowable deduction for the item would be $115 ($5,520 divided by 48) for each month of work during the 48 months.

(2) *Non-recurring expenses.* Part or all of the claimant's expenses may not be recurring. For example, the claimant may make a one-time payment in full for an item or service or make a downpayment. If the claimant is working when he or she makes the payment, the Board will either deduct the entire amount in the month the claimant pays it or allocate the amount over a 12 consecutive month period beginning with the month of payment, whichever the claimant selects.

Example: A begins working in October 1981 and earns $525 a month. In the same month, he purchases and pays for a deductible item at a cost of $250. In this situation the Board could allow a $250 deduction for October 1981, reducing A's earnings below the substantial gainful activity level for that month.

If A's earnings had been $15 above the substantial gainful activity earnings amount, A probably would select the option of projecting the $250 payment over the 12-month period, October 1981–September 1982, giving A an allowable deduction of $20.83 a month for each month of work during that period. This deduction would reduce A's earnings below the substantial gainful activity level for 12 months.

(3) *Allocating downpayments.* If the claimant makes a downpayment, the Board will, if the claimant chooses, make a separate calculation for the downpayment in order to provide for uniform monthly deductions. In these situations the Board will determine the total payment that the claimant will make over a 12 consecutive month period beginning with the month of the downpayment and allocate that amount over the 12 months. Beginning with the 13th month, the regular monthly payment will be deductible. This allocation process will be for a shorter period if the claimant's regular monthly payments will extend over a period of less than 12 months.

Example 1: C starts working in October 1981, at which time he purchases special equipment at a cost of $4,800, paying $1,200 down. The balance of $3,600, plus interest of $540, is to be repaid in 36 installments of $115 a month beginning November 1981. C earns $500 a month. He chooses to have the downpayment allocated. In this situation the Board would allow a deduction of $205.42 a month for each month of work during the period October 1981 through September 1982. After September 1982, the deduction amount would be the regular monthly payment of $115 for each month of work during the remaining installment period.

Explanation:

Downpayment in October 1981	$1,200	
Monthly payments: November 1981 through September 1982	1,265	
	$2,465	12 = 205.42

Example 2. D, while working, buys a deductible item in July 1981, paying $1,450 down. However, his first monthly payment of $125 is not due until September 1981. D chooses to have the downpayment allocated. In this situation, the Board would allow a deduction of $225 a month for each month of work during the period July 1981 through June 1982. After June 1982, the deduction amount would be the regular monthly payment of $125 for each month of work.

Explanation:

Downpayment in July 1981	$1,450	
Monthly payments: September 1981 through June 1982	1,250	
	$2,700	12 = $225

(4) *Payments made in anticipation of work.* A payment made toward the cost of a deductible item that the claimant made in any of the 11 months preceding the month he or she started working will be taken into account in determining the claimant's impairment-related work expenses. When an item is paid for in full during the 11 months preceding the month the claimant started working, the payment will be allocated over the 12 consecutive month period beginning with the month of the payment. However, the only portion of the payment which may be deductible is the portion allocated to the month work begins and the following months. For example, if an item is purchased 3 months before the month work began and is paid for with a one-time payment of $600, the deductible amount would be $450 ($600 divided by 12, multiplied by 9). Installment payments (including a downpayment) that the claimant made for a particular item during the 11 months preceding the month he or she started working will be totalled and considered to have been made in the month of the claimant's first payment for that item within this 11 month period. The sum of these payments will be allocated over the 12 consecutive month period beginning with the month of the claimant's first payment (but never earlier than 11 months before the month work began). However, the only portion of the total which may be deductible is the portion allocated to the month work begins and the following months. For example, if an item is purchased three months before the month work began and is paid for in three monthly installments of $200 each, the total payment of $600 will be considered to have been made in the month of the first payment, that is, three months before the month work began. The deductible amount would be $450 ($600 divided by 12, multiplied by 9). The amount, as determined by these formulas, will then be considered to have been paid in the first month of work. The Board will deduct either this entire amount in the first month of work or allocate it over a 12 consecutive month period, beginning with the first month of work, whichever the claimant selects. In the above examples, the claimant would have the choice of having the entire $450 deducted in the first month of work or having $37.50 a month ($450 divided by 12) deducted for each month that he or she works over a 12 consecutive month period, beginning with the first month of work. To be deductible, the payments must be for durable items such as medical devices, prostheses, work-related equipment, residential

BEST COPY AVAILABLE

modifications, non-medical appliances and vehicle modifications. Payments for services and expendable items such as drugs, oxygen, diagnostic procedures, medical supplies and vehicle operating costs are not deductible for the purpose of this paragraph.

(f) *Limits on deductions.* (1) The Board will deduct the actual amounts the claimant pays towards his or her impairment-related work expenses unless the amounts are unreasonable. With respect to durable medical equipment, prosthetic devices, medical services, and similar medically-related items and services, the Board will apply the prevailing charges under Medicare (Part B of title XVIII, Health Insurance for the Aged and Disabled) to the extent that this information is readily available. Where the Medicare guides are used, the Board will consider the amount that the claimant pays to be reasonable if it is no more than the prevailing charge for the same item or service under the Medicare guidelines. If the amount the claimant actually pays is more than the prevailing charge for the same item under the Medicare guidelines, the Board will deduct from the claimant's earnings the amount the claimant paid to the extent he or she establishes that the amount is consistent with the standard or normal charge for the same or similar item or service in his or her community. For items and services that are not listed in the Medicare guidelines, and for items and services that are listed in the Medicare guidelines but for which such guides cannot be used because the information is not readily available, the Board will consider the amount the claimant pays to be reasonable if it does not exceed the standard or normal charge for the same or similar item or service in the claimant's community.

(2) Impairment-related work expenses are not deducted in computing the claimant's earnings for purposes of determining whether the claimant's work was "services" as described in § 220.170.

(3) The decision as to whether the claimant performed substantial gainful activity in a case involving impairment-related work expenses for items or services necessary for the claimant to work generally will be based upon the claimant's "earnings" and not on the value of "services" the claimant rendered. (See § 220.143(b)(6) (i) and (ii), and § 220.144(a)). This is not necessarily so, however, if the claimant is in a position to control or manipulate his or her earnings.

(4) No deduction will be allowed to the extent that any other source has paid or will pay for an item or service. No deduction will be allowed to the extent that the claimant has been, could be, or will be reimbursed for payments he or she made. (See paragraph (b)(3) of this section.)

(5) The provisions described in the foregoing paragraphs of this section are effective with respect to expenses incurred on or after December 1, 1980, although expenses incurred after November 1980, as a result of contractual or other arrangements entered into before December 1980, are deductible. For months before December 1980, the Board will deduct impairment-related work expenses from the claimant's earnings only to the extent they exceeded the normal work-related expenses the claimant would have had if the claimant did not have his or her impairment(s). The Board will not deduct expenses, however, for those things which the claimant needed even when he or she was not working.

(g) *Verification.* The Board will verify the claimant's need for items or services for which deductions are claimed, and the amount of the charges for those items or services. The claimant will also be asked to provide proof that he or she paid for the items or services.

Subpart M—Disability Annuity Earnings Restrictions

§ 220.160 How work for a railroad employer affects a disability annuity.

A disability annuity is not payable and the annuity must be returned for any month in which the disabled annuitant works for an employer as defined in Part 202 of this chapter.

§ 220.161 How work affects an employee disability annuity.

In addition to the condition in § 220.160, the employee's disability annuity is not payable and the employee must return the annuity payment for any month in which the employee earns more than $400 (after deduction of impairment related work expenses) in employment or self-employment of any kind. Any annuity amounts withheld because the annuitant earned over $400 in a month may be paid after the end of the year, as shown in § 220.164. The $400 monthly limit no longer applies when the employee becomes 65 years old and the disability annuity is converted to an age annuity. See § 220.145 for the definition of impairment related work expenses.

§ 220.162 Earnings report.

(a) *General.* Any annuitant receiving an annuity based on disability must report to the Board any work and earnings as described in §§ 220.160 and 220.161. The report may be a written or oral statement by the annuitant, or a person acting for the annuitant made or sent to a representative of the Board. The report should include the name and address of the railroad or non-railroad employer, a description of the work and the amount of gross wages (before deductions) or the net income from self-employment (earnings after deducting business expenses).

(b) *Employee reports.* In addition to the requirement described in (a), a report of earnings over $400 a month must be made before the employee accepts a disability annuity (the annuity payment is issued and not returned) for the second month after the first month in which earnings are over $400. Along with the report, the employee must return the annuity payment for any month in which he or she earns over $400.

§ 220.163 Employee penalty deductions.

If the employee earns over $400 in a month and does not report it within the time limit shown in § 220.162(b), a penalty is imposed. The penalty deduction for the first failure to report equals the annuity amount for the first month in which the employee earned over $400. The deduction for a second or later failure to report equals the annuity amount for each month in which the employee earned over $400 and failed to report it on time.

§ 220.164 Employee end-of-year adjustment.

(a) *General.* After the end of a year, the employee whose annuity was withheld for earnings over $400 in a month receives a form on which to report his or her earnings for the year.

(b) *Earnings are less than $5,000.* If the employee's yearly earnings are less then $5,000, all annuity payments and penalties withheld during the year because of earnings over $4,800 are paid.

(c) *Earnings are $5,000 or more.* (a) If the employee's yearly earnings are $5,000 or more, the annuity payments are adjusted so that the employee does not have more than one regular deduction for every $400 of earnings over $4,800. The last $200 or more of earnings over $4,800 is treated as if it were $400. If the annuity rate changes during the year, any annuities due at the end of the year are paid first for months in which the annuity rate is higher. Penalty deductions may also apply as described in paragraph (c)(2) of this section.

(2) If the employee's yearly earnings are $5,000 or more and the employee failed to report monthly earnings over $400 within the time limit described in § 220.162(b), penalty deductions will also apply. If it is the employee's first failure to report, the penalty deduction is equal to one month's annuity. If it is the employee's second or later failure to report, the penalty deduction equals the annuity amount for each month in which the employee earned over $400 and failed to report it on time.

(d) This section is illustrated by the following examples:

Example 1: Employee is awarded a disability annuity based upon his inability to engage in his regular railroad occupation effective January 1, 1989. During that year, he works April through October, for which he receives $785 per month. He does not report these earnings to the Board until January of the following year. The employee is considered to have earned $5,600 (7×$785 = $5,495, which is rounded up to the nearest $400). He forfeits three months of annuities:

$$\frac{(\$5600-\$4800}{\$400} = \text{2 plus 1 month annuity penalty for failure to report).}$$

Example 2: The same employee in the following year also works April through October, for which he receives $785 per month. This time he reports the earnings on October 31. This year he forfeits 6 months of annuity payments, 2 due to earnings, computed as above, and 4 more due to penalty deductions for failure to report earnings over $400 for the months April through July. There are no penalty deductions with respect to the months August, September, and October, since the employee reported these earnings prior to accepting an annuity for the second month after the month of earnings in excess of $400.

Subpart N—Trial Work Period and Reentitlement Period for Annuitants Disabled for Any Regular Employment

§ 220.170 The trial work period.

(a) *Definition of the trial work period.* The trial work period is a period during which the annuitant may test his or her ability to work and still be considered disabled. The trial work period begins and ends as described in paragraph (e) of this section. During this period, the annuitant may perform "services" (see paragraph (b) of this section) in as many as nine months, but these months do not have to be consecutive. The Board will not consider those services as showing that the annuitant's disability has ended until the annuitant has performed services in at least nine months. However, after the trial work period has ended, the Board will consider the work the annuitant did during the trial work period in determining whether the annuitant's disability has ended at any time after the trial work period.

(b) *What the Board means by services.* When used in this section, "services" means any activity, even though it is not substantial gainful activity, which is done by the annuitant in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. If the annuitant is employed, the Board will consider his or her work to be "services" if in any calendar year after 1978 the annuitant earns more than $75 a month ($50 a month is the figure for earnings in any calendar year before 1979). If the annuitant is self-employed, the Board will consider his or her activities "services" if in any calendar year after 1978 the annuitant's net earnings are more than $75 a month, ($50 a month is the figure for earnings in any calendar year before 1979), or the annuitant works more than 15 hours a month in the business. The Board generally does not consider work to be "services" when it is done without remuneration or merely as therapy or training, or when it is work usually done in a daily routine around the house, or in self-care.

(c) *Limitations on the number of trial work periods.* The annuitant may have only one trial period during each period in which he or she is disabled for any regular employment as defined in § 220.26.

(d) *Who is and is not entitled to a trial work period.* (1) Generally, the annuitant is entitled to a trial work period if he or she is entitled to an annuity based on disability.

(2) An annuitant is not entitled to a trial work period if he or she is in a second period of disability for which he or she did not have to complete a waiting period before qualifying for a disability annuity.

(e) *Payment of the disability annuity during the trial work period.* (1) The disability annuity of an employee, child, or widow(er) who is disabled for any regular employment will not be paid for any month in the trial work period in which the annuitant works for an employer covered by the Railroad Retirement Act (see § 220.160).

(2) The disability annuity of an employee who is disabled for any regular employment will not be paid for any month in this period in which the employee annuitant earns more than $400 in employment or self-employment (see §§ 220.161 and 220.164).

(3) If the disability annuity for an employee, child, or widow(er) who is disabled for any regular employment is stopped because of work during the trial work period, and the disability annuitant discontinues that work before the end of the trial work period, the disability annuity may be started again without a new application and a new determination of disability.

(f) *When the work period begins and ends.* (1) The trial work period begins with whichever of the following calendar months is the later—

(i) The month disability begins;

(ii) The month after the end of the appropriate waiting period; or

(iii) The month the application for disability is filed.

(2) The trial work period ends with the close of whichever of the following calendar months is the earlier—

(i) The ninth month (whether or not the months have been consecutive) in which the annuitant performed services; or

(ii) The month in which new evidence, other than evidence relating to any work the annuitant did during the trial work period, shows that the annuitant is not disabled, even through he or she has not worked a full nine months. The Board may find that the annuitant's disability has ended at any time during the trial work period if the medical or other evidence shows that the annuitant is no longer disabled.

§ 220.171 The reentitlement period.

(a) *General.* (1) The reentitlement period is an additional period after the nine months of trial work during which the annuitant may continue to test his or her ability to work if he or she has a disabling impairment(s).

(2) The disability annuity of an employee, child, or widow(er) who is disabled for any regular employment will not be paid for—

(i) Any month, after the third month, in this period in which the annuitant does substantial gainful activity; or

(ii) Any month in this period in which the annuitant works for an employer covered by the Railroad Retirement Act (see § 220.160).

(3) The disability annuity of an employee who is disabled for any regular employment will not be paid for any month in this period in which the employee annuitant earns more than $400 in employment or self-employment (see §§ 220.161 and 220.164).

(4) If the disability annuity of an employee, child or widow(er) who is disabled for any regular employment is stopped because of work during the trial work period or reentitlement period, and the disability annuitant discontinues that work before the end of either period, the disability annuity may be started again without a new application or a new determination of disability.

(b) *When the reentitlement period begins and ends.* The reentitlement period begins with the first month following completion of nine months of trial work but cannot begin earlier than December 1, 1980. It ends with whichever is earlier—

(i) The month before the first month in which the annuitant's impairment(s) no longer exists or is not medically disabling; or

(2) The last day of the fifteenth month following the end of the annuitant's trial work period.

(c) *When the annuitant is not entitled to a reentitlement period.* The annuitant is not entitled to a reentitlement period if—

(1) He or she is not entitled to a trial work period; or

(2) His or her disability ended before the annuitant completed nine months of trial work in that period in which he or she was disabled.

Subpart O—Continuing or Stopping Disability Due to Substantial Gainful Activity or Medical Improvement

§ 220.175 Responsibility to notify the Board of events which affect disability.

If the annuitant is entitled to a disability annuity because he or she is disabled for any regular employment, the annuitant should promptly tell the Board if—

(a) His or her impairment(s) improves;

(b) He or she returns to work;

(c) He or she increases the amount of work; or

(d) His or her earnings increase.

§ 220.176 When disability continues or ends.

There is a statutory requirement that, if an annuitant is entitled to a disability annuity, the annuitant's continued entitlement to such an annuity must be reviewed periodically until the employee or child annuitant reaches age 65 and the widowe(er) annuitant reaches age 60. When the annuitant is entitled to a disability annuity as a disabled employee, disabled widow(er) or as a person disabled since childhood, there are a number of factors to be considered in deciding whether his or her disability continues. The Board must first consider whether the annuitant has worked and, by doing so, demonstrated the ability to engage in substantial gainful activity. If so, the disability will end. If the annuitant has not demonstrated the ability to engage in substantial gainful activity, then the Board must determine if there has been any medical improvement in the annuitant's impairment(s) and, if so, whether this medical improvement is related to the annuitant's ability to work. If an impairment(s) has not medically improved, the Board must consider whether one or more of the exceptions to medical improvement applies. If medical improvement related to ability to work has not occurred and no exception applies, the disability will continue. Even where medical improvement related to ability to work has occurred or an exception applies (see § 220.179 for exceptions), in most cases the Board must also show that the annuitant is currently able to engage in substantial gainful activity before it can find that the annuitant is no longer disabled.

§ 220.177 Terms and definitions.

There are several terms and definitions which are important to know in order to understand how the Board reviews whether a disability for any regular employment continues:

(a) *Medical improvement.* Medical improvement is any decrease in the medical severity of an impairment(s) which was present at the time of the most recent favorable medical decision that the annuitant was disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on a comparison of prior and current medical evidence showing changes (improvement) in the symptoms, signs or laboratory findings associated with the impairment(s).

Example 1: The claimant was awarded a disability annuity due to a herniated disc. At the time of the Board's prior decision granting the claimant an annuity he had had a laminectomy. Postoperatively, a myelogram still shows evidence of a persistent deficit in his lumbar spine. He had pain in his back, and pain and a burning sensation in his right foot and leg. There were no muscle weakness or neurological changes and a modest decrease in motion in his back and leg. When the Board reviewed the annuitant's claim to determine whether his disability should be continued, his treating physician reported that he had seen the annuitant regularly every 2 to 3 months for the past 2 years. No further myelograms had been done, complaints of pain in the back and right leg continued especially on sitting or standing for more than a short period of time. The annuitant's doctor further reported a moderately decreased range of motion in the annuitant's back and right leg, but again no muscle atrophy or neurological changes were reported. Medical improvement has *not* occurred because there has been no decrease in the severity of the annuitant's back impairment as shown by changes in symptoms, signs or laboratory findings.

Example 2: The claimant was awarded a disability annuity due to a rheumatoid arthritis. At the time, laboratory findings were positive for this impairment. The claimant's doctor reported persistent swelling and tenderness of the claimant's fingers and wrists and that he complained of joint pain. Current medical evidence shows that while laboratory tests are still positive for rheumatoid arthritis, the annuitant's impairment has responded favorably to therapy so that for the last year his fingers and wrists have not been significantly swollen or painful. Medical improvement has occurred because there has been a decrease in the severity of the annuitant's impairment as documented by the current symptoms and signs reported by his physician. Although the annuitant's impairment is subject to temporary remission and exacerbations, the improvement that has occurred has been sustained long enough to permit a finding of medical improvement. The Board would then determine if this medical improvement is related to the annuitant's ability to work.

(b) *Medical improvement not related to ability to do work.* Medical improvement is not related to the annuitant's ability to work if there has been a decrease in the severity of the impairment(s) (as defined in paragraph (a) of this section) present at the time of the most recent favorable medical decision, but *no* increase in that annuitant's functional capacity to do basic work activities as defined in paragraph (d) of this section. If there has been any medical improvement in an annuitant's impairment(s), but it is not related to the annuitant's ability to do work and none of the exceptions applies, the annuity will be continued.

Example: An annuitant was 65 inches tall and weighed 246 pounds at the time his disability was established. He had venous insufficiency and persistent edema in his legs. At the time, the annuitant's ability to do basic work activities was affected because he was able to sit for 6 hours, but was able to stand or walk only occasionally. At the time of the Board's continuing disability review, the annuitant had undergone a vein stripping operation. He now weighed 220 pounds and had intermittent edema. He is still able to sit for 6 hours at a time and to stand or walk only occassionally although he reports less discomfort on walking. Medical improvement has occurred because there has been a decrease in the severity of the existing impairment as shown by his weight loss and the improvement in his edema. This medical improvement is not related to his ability to work, however, because his functional capacity to do basic work activities (i.e., the ability to sit, stand and walk) has not increased.

(c) *Medical improvement that is related to ability to do work.* Medical improvement is related to an annuitant's ability to work if there has been a decrease in the severity (as defined in paragraph (a) of this section) of the impairment(s) present at the time of the most recent favorable medical decision *and* an increase in the annuitant's functional capacity to do basic work activities as discussed in paragraph (d) of this section. A determination that medical improvement related to an annuitant's ability to do work has occurred does not, necessarily, mean that such annuitant's disability will be found to have ended unless it is also shown that the annuitant is currently able to engage in substantial gainful activity as discussed in paragraph (e) of this section.

Example 1: The annuitant has a back impairment and has had a laminectomy to relieve the nerve root impingement and weakness in his left leg. At the time of the Board's prior decision, basic work activities were affected because he was able to stand less than 6 hours, and sit no more than ½ hour at a time. The annuitant had a successful fusion operation on his back about 1 year before the Board's review of his entitlement.

At the time of the Board's review, the weakness in his leg decreased. The annuitant's functional capacity to perform basic work activities now is unimpaired because he now has no limitation on his ability to sit, walk, or stand. Medical improvement has occurred because there has been a decrease in the severity of his impairment as demonstrated by the decreased weakness in his leg. This medical improvement is related to his ability to work because there has been also an increase in his functional capacity to perform basic work activities (or residual functional capacity) as shown by the absence of limitation on his ability to sit, walk, or stand. Whether or not his disability is found to have ended, however, will depend on the Board's determination as to whether he can currently engage in substantial gainful actitity.

Example 2: The annuitant was injured in an automobile accident receiving a compound fracture to his right femur and a fractured pelvis. When he applied for disability annuity 10 months after the accident his doctor reported that neither fracture had yet achieved solid union based on his clinical examination. X-rays supported this finding. The annuitant's doctor estimated that solid union and a subsequent return to full weight bearing would not occur for at least 3 months. At the time of the Board's reviw 6 months later, solid union had occurred and the annuitant had been returned to full weight-bearing for over a month. His doctor reported this and the fact that his prior fracture no longer placed any limitation on his ability to walk, stand, and lift, and, that in fact, he could return to full-time work if he so desired.

Medical improvement has occurred because there has been a decrease in the severity of the annuitant's impairments as shown by x-ray and clinical evidence of solid union and his return to full weight-bearing. This medical improvement is related to his ability to work because he no longer meets the same listed impairment in Appendix 1 of this part (see § 220.178(c)(1)). Whether or not the annuitant's disability is found to have ended will depend on the Board's determination as to whether he can currently engage in substantial gainful activity.

(d) *Functional capacity to do basic work activities.* (1) Under the law, disability is defined, in part, as the inability to do any regular employment by reason of a physical or mental impairment(s). "Regular employment" is defined in this part as "substantial gainful activity." In determining whether the annuitant is disabled under the law, the Board will measure, therefore, how and to what extent the annuitant's impairment(s) has affected his or her ability to do work. The Board does this by looking at how the annuitant's functional capacity for doing basic work activities has been affected. Basic work activities means the abilities and aptitudes necessary to do most jobs. Included are exertional abilities such as walking, standing, pushing, pulling, reaching and carrying, and nonexertional abilities and aptitudes such as seeing, hearing, speaking, remembering, using judgment, dealing with changes in a work setting and dealing with both supervisors and fellow workers. The annuitant who has no impairment(s) would be able to do all basic work activities at normal levels; he or she would have an unlimited functional capacity to do basic work activities. Depending on its nature and severity, an impairment(s) will result in some limitation to the functional capacity to do one or more of these basic work activities. Diabetes, for example, can result in circulatory problems which could limit the length of time the annuitant could stand or walk and can result in damage to his or her eyes as well, so that the annuitant also has limited vision. What the annuitant can still do, despite his or her impairment(s), is called his or her residual functional capacity. How the residual functional capacity is assessed is discussed in more detail in § 220.120. Unless an impairment is so severe that it is deemed to prevent the annuitant from doing substantial gainful activity (i.e., the impairment(s)) meets or equals the severity of a listed impairment in Appendix 1 of this part), it is this residual functional capacity that is used to determine whether the annuitant can still do his or her past work or, in conjunction with his or her age, education and work experience, do any other work.

(2) A decrease in the severity of an impairment as measured by changes (improvement) in symptoms, signs or laboratory findings can, if great enough, result in an increase in the functional capacity to do work activities. Vascular surgery (e.g., femaropopliteal bypass) may sometimes reduce the severity of the circulatory complications of diabetes so that better circulation results and the annuitant can stand or walk for longer periods. When new evidence showing a change in medical findings establishes that both medical improvement has occurred and the annuitant's functional capacity to perform basic work activities, or residual functional capacity, has increased, the Board will find that medical improvement which is related to the annuitant's ability to do work has occurred. A residual functional capacity assessment is also used to determine whether an annuitant can engage in substantial gainful activity and, thus, whether he or she continues to be disabled (see paragraph (e) of this section).

(3) Many impairment-related factors must be considered in assessing an annuitant's functional capacity for basic work activities. Age is one key factor. Medical literature shows that there is a gradual decrease in organ function with age; that major losses and deficits become irreversible over time and that maximum exercise performance diminishes with age. Other changes related to sustained periods of inactivity and the aging process include muscle atrophy, degenerative joint changes, decrease in range of motion, and changes in the cardiac and respiratory systems which limit the exertional range.

(4) Studies has also shown that the longer the annuitant is away from the workplace and is inactive, the more difficult it becomes to return to ongoing gainful employment. In addition, a gradual change occurs in most jobs so that after about 15 years, it is no longer realistic to expect that skills and abilities acquired in these jobs will continue to apply to the current workplace. Thus, if the annuitant is age 50 or over and has been receiving a disability annuity for a considerable period of time, the Board will consider this factor along with his or her age in assessing the residual functional capacity. This will ensure that the

disadvantages resulting from inactivity and the aging process during a longer period of disability will be considered. In some instances where available evidence does not resolve what the annuitant can or cannot do on a sustained basis, the Board may provide special work evaluations or other appropriate testing.

(e) *Ability to engage in substantial gainful activity.* In most instances, the Board must show that the annuitant is able to engage in substantial gainful activity before stopping his or her annuity. When doing this, the Board will consider all of the annuitant's current impairments not just that impairment(s) present at the time of the most recent favorable determination. If the Board cannot determine that the annuitant is still disabled based on medical considerations alone (as discussed in §§ 220.110 through 220.115), it will use the new symptoms, signs and laboratory findings to make an objective assessment of functional capacity to do basic work activities (or residual functional capacity) and will consider vocational factors. See §§ 220.120 through 220.134.

(f) *Evidence and basis for the Board's decision.* The Board's decisions under this section will be made on a neutral basis without any initial inference as to the presence or absence of disability being drawn from the fact that the annuitant had previously been determined to be disabled. The Board will consider all of the evidence the annuitant submits. An annuitant must give the Board reports from his or her physician, psychologist, or others who have treated or evaluated him or her, as well as any other evidence that will help the Board determine if he or she is still disabled (see § 220.45). The annuitant must have a good reason for not giving the Board this information or the Board may find that his or her disability has ended (see § 220.178(b)(2)). If the Board asks the annuitant, he or she must contact his or her medical sources to help the Board get the medical reports. The Board will make every reasonable effort to help the annuitant in getting medical reports when he or she gives the Board permission to request them from his or her physician, psychologist, or other medical sources. Every reasonable effort means that the Board will make an initial request and, after 20 days, one followup request to the annuitant medical source to obtain the medical evidence necessary to make a determination before the Board evaluates medical evidence obtained from another source on a consultative basis. The medical source will have 10 days from the followup to reply (unless experience indicates that a longer period is advisable in a particular case). In some instances the Board may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that an annuitant's disability had ended, the Board will develop a complete medical history covering at least the preceding 12 months (See § 220.45(b)). A consultative examination may be purchased when the Board needs additional evidence to determine whether or not an annuitant's disability continues. As a result, the Board may ask the annuitant, upon the Board request and reasonable notice, to undergo consultative examinations and tests to help the Board determine if the annuitant is still disabled (see § 220.50). The Board will decide whether or not to purchase a consultative examination in accordance with the standards in §§ 220.53 through 220.54.

(g) *Point of comparison.* For purposes of determining whether medical improvement has occurred, the Board will compare the current medical severity of that impairment(s), which was present at the time of the most recent favorable medical decision that the annuitant was disabled or continued to be disabled, to the medical severity of that impairment(s) at that time. If medical improvement has occurred, the Board will compare the annuitant's current functional capacity to do basic work activities (i.e., his or her residual functional capacity) based on this previously existing impairment(s) with the annuitant's prior residual functional capacity in order to determine whether the medical improvement is related to his or her ability to do work. The most recent favorable medical decision is the latest decision involving a consideration of the medical evidence and the issue of whether the annuitant was disabled or continued to be disabled which became final.

§ 220.178 Determining medical improvement and its relationship to the annuitant's ability to do work.

(a) *General.* Paragraphs (a), (b), and (c) of § 220.177 discuss what is meant by medical improvement, medical improvement not related to the ability to work and medical improvement that is related to the ability to work. How the Board will arrive at the decision that medical improvement has occurred and its relationship to the ability to do work, is discussed in paragraphs (b) and (c) of this section.

(b) *Determining if medical improvement is related to ability to work.* If there is a decrease in medical severity as shown by the symptoms, signs and laboratory findings, the Board then must determine if it is related to the annuitant's ability to do work. In § 220.177(d) the relationship between medical severity and limitation on functional capacity to do basic work activities (or residual functional capacity) and how changes in medical severity can affect the annuitant's residual functional capacity is explained. In determining whether medical improvement that has occurred is related to the annuitant's ability to do work, the Board will assess the annuitant's residual functional capacity (in accordance with § 220.177(d)) based on the current severity of the impairment(s) which was present at that annuitant's last favorable medical decision. The annuitant's new residual functional capacity will then be compared to the annuitant's residual functional capacity at the time of the Board's most recent favorable medical decision. Unless an increase in the current residual functional capacity is based on changes in the signs, symptoms, or laboratory findings, any medical improvement that has occurred will not be considered to be related to the annuitant's ability to do work.

(c) *Additional factors and considerations.* The Board will also apply the following in its determinations of medical improvement and its relationship to the annuitant's ability to do work:

(1) *Previous impairment met or equaled listings.* If the Board's most recent favorable decision was based on the fact that the annuitant's impairment(s) at the time met or equaled the severity contemplated by the Listing of Impairments in Appendix I of this Part, an assessment of his or her residual functional capacity would not have been made. If medical improvement has occurred and the severity of the prior impairment(s) no longer meets or equals the same listing, the Board will find that the medical improvement was related to the annuitant's ability to work. Appendix I of this Part describes impairments which, if severe enough, affect the annuitant's ability to work. If the Listing level of severity is met or equaled, the annuitant is deemed, in the absence of evidence to the contrary, to be unable to engage in substantial gainful activity. If there has been medical improvement to the degree that the requirement of the listing is no longer met or equaled, then the medical improvement is related to the annuitant's ability to work. The Board must, of course, also establish that the annuitant can currently engage in gainful activity before finding that his or her disability has ended.

(2) *Prior residual functional capacity assessment made.* The residual functional capacity assessment used in making the most recent favorable medical decision will be compared to the residual functional capacity assessment based on current evidence in order to determine if an annuitant's functional capacity for basic work activities has increased. There will be no attempt made to reassess the prior residual functional capacity.

(3) *Prior residual functional capacity assessment should have been made, but was not.* If the most recent favorable medical decision should have contained an assessment of the annuitant's residual functional capacity (i.e., his or her impairment(s) did not meet or equal the level of severity contemplated by the Listing of Impairments in Appendix I of this Part) but does not, either because this assessment is missing from the annuitant's file or because it was not done, the Board will reconstruct the residual functional capacity. This reconstructed residual functional capacity will accurately and objectively assess the annuitant's functional capacity to do basic work activities. The Board will assign the maximum functional capacity consistent with an allowance.

Example: The annuitant was previously found to be disabled on the basis that while his impairment did not meet or equal a listing, it did prevent him from doing his past or any other work. The prior adjudicator did not, however, include a residual functional capacity assessment in the rationale of that decision and a review of the prior evidence does not show that such an assessment was ever made. If a decrease in medical severity, i.e., medical improvement, has occurred, the residual functional capacity based on the current level of severity of the annuitant's impairment will have to be compared with his residual functional capacity based on its prior severity in order to determine if the medical improvement is related to his ability to do work. In order to make this comparison, the Board will review the prior evidence and make an objective assessment of the annuitant's residual functional capacity at the time of its most recent favorable medical determination, based on the symptoms, signs and laboratory findings as they then existed.

(4) *Impairment subject to temporary remission.* In some cases the evidence shows that the annuitant's impairment(s) are subject to temporary remission. In assessing whether medical improvement has occurred in annuitants with this type of impairment(s), the Board will be careful to consider the longitudinal history of the impairment(s), including the occurrence of prior remission, and prospects for future worsenings. Improvement in such impairment(s) that is only temporary, i.e., less than 1 year, will not warrant a finding of medical improvement.

(5) *Prior file cannot be located.* If the prior file cannot be located, the Board will first determine whether the annuitant is able to now engage in substantial gainful activity based on all of his or her current impairments. (In this way, the Board will be able to determine that his or her disability continues at the earliest point without addressing the often lengthy process of reconstructing prior evidence.) If the annuitant cannot engage in substantial gainful activity currently, his or her disability will continue unless one of the second group of exceptions applies (see § 220.179(b)).

§ 220.179 Exceptions to medical improvement.

(a) *First group of exceptions to medical improvement.* The law provides for certain limited situations when the annuitant's disability can be found to have ended even though medical improvement has not occurred, if he or she can engage in substantial gainful activity. These exceptions to medical improvement are intended to provide a way of finding that the annuitant is no longer disabled in those limited situations where, even though there has been no decrease in severity of the impairment(s), evidence shows that the annuitant should no longer be considered disabled or never should have been considered disabled. If one of these exceptions applies, the Board must also show that, taking all of the annuitant's current impairment(s) into account, not just those that existed at the time of the Board's most recent favorable medical decision, the annuitant is now able to engage in substantial gainful activity before his or her disability can be found to have ended. As part of the review process, the annuitant will be asked about any medical or vocational therapy that he or she has received or is receiving. Those answers and the evidence gathered as a result as well as all other evidence, will serve as the basis for the finding that an exception applies.

(1) *Substantial evidence shows that the annuitant is the beneficiary of advances in medical or vocational therapy or technology (related to his or her ability to work).* Advances in medical or vocational therapy or technology are improvements in treatment or rehabilitative methods which have increased the annuitant's ability to do basic work activities. The Board will apply this exception when substantial evidence shows that the annuitant has been the beneficiary of services which reflect these advances and they have favorably affected the severity of his or her impairment(s) or ability to do basic work activities. This decision will be based on new medical evidence and a new residual functional capacity assessment. In many instances, an advanced medical therapy or technology will result in a decrease in severity as shown by symptoms, signs and laboratory findings which will meet the definition of medical improvement. This exception will, therefore, see very limited application.

(2) *Substantial evidence shows that the annuitant has undergone vocational therapy (related to his or her ability to work).* Vocational therapy (related to the annuitant's ability to work) may include, but is not limited to, additional education, training, or work experience that improves his or her ability to meet the vocational requirements of more jobs. This decision will be based on substantial evidence which includes new medical evidence and a new residual functional capacity assessment. If, at the time of the Board's review the annuitant has not completed vocational therapy which could affect the continuance of his or her disability, the Board will review such annuitant's claim upon completion of the therapy.

Example 1: The annuitant was found to be disabled because the limitations imposed on him by his impairment(s) allowed him to only do work that was at a sedentary level of exertion. The annuitant's prior work experience was work that required a medium level of exertion with no acquired skills that could be transferred to sedentary work. His age, education, and past work experience at the time did not qualify him for work that was below this medium level of exertion. The annuitant enrolled in and completed a specialized training course which qualifies him for a job in data processing as a computer programmer in the period since he was awarded a disability annuity. On review of his claim, current evidence shows that there is no medical improvement and that he can still do only sedentary work. As the work of a computer programmer is sedentary in nature, he is now able to engage in substantial gainful activity when his new skills are considered.

Example 2: The annuitant was previously entitled to a disability annuity because the medical evidence and assessment of his residual functional capacity showed he could only do light work. His prior work was considered to be of a heavy exertional level with no acquired skills that could be transferred to light work. His age, education, and past work experience did not qualify him for work that was below the heavy level of exertion. The current evidence and residual functional capacity show there has been no medical improvement and that he can still do only light work. Since he was originally

entitled to a disability annuity, his vocational rehabilitation agency enrolled him in and he successfully completed a trade school course so that he is now qualified to do small appliance repair. This work is light in nature, so when his new skills are considered, he is now able to engage in substantial gainful activity even though there has been no change in his residual functional capacity.

(3) *Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the annuitant's impairment(s) is not as disabling as it was considered to be at the time of the most recent favorable decision.* Changing methodologies and advances in medical and other diagnostic or evaluative techniques have given, and will continue to give, rise to improved methods for measuring and documenting the effect of various impairments on the ability to do work. Where, by such new or improved methods, substantial evidence shows that the annuitant's impairment(s) is not as severe as was determined at the time of the Board's most recent favorable medical decision, such evidence may serve as a basis for finding that the annuitant can engage in substantial gainful activity and is no longer disabled. In order to be used under this exception, however, the new or improved techniques must have become generally available after the date of the Board's most recent favorable medical decision.

(i) *How the Board will determine which methods are new or improved techniques and when they become generally available.* New or improved diagnostic techniques or evaluations will come to the Board's attention by several methods. In reviewing cases, the Board often becomes aware of new techniques when their results are presented as evidence. Such techniques and evaluations are also discussed and acknowledged in medical literature by medical professional groups and other governmental entities. Through these sources, the Board develops listings of new techniques and when they become generally available.

(ii) *How the annuitant will know which methods are new or improved techniques and when they become generally available.* The Board will let annuitants know which methods it considers to be new or improved techniques and when they become available. Some of the future changes in the Listing of Impairments in Appendix 1 of this part will be based on new or improved diagnostic or evaluative techniques. Such listings changes will clearly state this fact as they are published as Notices of Proposed Rulemaking and the new or improved techniques will be considered generally available as of the date of the final publication of that particular listing in the Federal Register.

Example: The electrocardiographic exercise test has replaced the Master's 2-step test as a measurement of heart function since the time of the annuitant's last favorable medical decision. Current evidence shows that the annuitant's impairment, which was previously evaluated based on the Master's 2-step test, is not now as disabling as was previously thought. If, taking all his current impairments into account, the annuitant is now able to engage in substantial gainful activity, this exception would be used to find that he is no longer disabled even if medical improvement has not occurred.

(4) *Substantial evidence demonstrates that any prior disability decision was in error.* The Board will apply the exception to medical improvement based on error if substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to an annuity based on disability was made, or newly obtained evidence which relates to that determination) demonstrates that a prior determination was in error. A prior determination will be found in error only if:

(i) Substantial evidence shows on its face that the decision in question should not have been made (e.g., the evidence in file such as pulmonary function study values was misread or an adjudicative standard such as a listing in Appendix 1 of this part or a medical/vocational rule in Appendix 2 of this part was misapplied).

Example 1: The annuitant was granted a disability annuity when it was determined that his epilepsy met Listing 11.02. This listing calls for a finding of major motor seizures more frequently than once a month as documented by EEG evidence and by a detailed description of a typical seizure pattern. A history of either diurnal episodes or nocturnal episodes with residuals interfering with daily activities is also required. On review, it is found that a history of the frequency of his seizures showed that they occurred only once or twice a year. The prior decision would be found to be in error, and whether the annuitant was still considered to be disabled would be based on whether he could currently engage in substantial gainful activity.

Example 2: The annuitant's prior award of a disability annuity was based on vocational rule 201.14 in Appendix 2 of this part. This rule applies to a person age 50–54 who has at least a high school education, whose previous work was entirely at semiskilled level, and who can do only sedentary work. On review it is found that at the time of the prior determination the annuitant was actually only age 48 and vocational rule 201.21 should have been used. This rule would have called for a denial of his claim and the prior decision is found to have been in error. Continuation of his disability would depend on a finding of his current inability to engage in substantial gainful activity.

(ii) At the time of the prior evaluation, required and material evidence of the severity of the annuitant's impairment(s) was missing. That evidence becomes available upon review, and substantial evidence demonstrates that had such evidence been present at the time of the prior determination, disability would not have been found.

Example: The annuitant was found disabled on the basis of chronic obstructive pulmonary disease. The severity of his impairment was documented primarily by pulmonary function testing results. The evidence showed that he could do only light work. Spirometric tracings of this testing, although required, were not obtained. however. On review, the original report is resubmitted by the consultative examining physician along with the corresponding spirometric tracings. A review of the tracings shows that the test was invalid. Current pulmonary function testing supported by spirometric tracings reveals that the annuitant's impairment does not limit his ability to perform basic work activities in any way. Error is found based on the fact that required material evidence, which was originally missing, now becomes available and shows that if it had been available at the time of the prior determination, disability would not have been found.

(iii) Substantial evidence which is new evidence relating to the prior determination (of allowance or continuance) refutes the conclusions that were based upon the prior evidence (e.g., a tumor thought to be malignant was later shown to have actually been benign). Substantial evidence must show that had the new evidence (which relates to the prior determination) been considered at the time of the prior decision, the disability would not have been allowed or continued. A substitution of current judgment for that used in the prior favorable decision will not be the basis for applying this exception.

Example: The annuitant was previously found entitled to a disability annuity on the basis of diabetes mellitus which the prior adjudicator believed was equivalent to the level of severity contemplated in the Listing of Impairments. The prior record shows that the annuitant has "brittle" diabetes for which he was taking insulin. The annuitant's urine was 3+ for sugar, and he alleged occasional hypoglycemic attacks caused by exertion. His doctor felt the diabetes was never really controlled because he was not following his diet or taking his medication regularly. On review, symptoms, signs and laboratory findings are unchanged. The current adjudicator feels, however, that the annuitant's impairment clearly does not equal the severity contemplated by the listings. Error *cannot* be found because it would represent a substitution of current judgment for that of the prior adjudicator that the annuitant's impairment equaled a listing. The exception for error will not be applied retroactively under the conditions set out above unless the conditions for reopening the prior decision are met.

(5) *The annuitant is currently engaging in substantial gainful activity.* If the annuitant is currently engaging in substantial gainful activity, before the Board determines whether he or she is no longer disabled because of his or her work activity, the Board will consider whether he or she is entitled to a trial work period as set out in § 220.170. The Board will find that the annuitant's disability has ended in the month in which he or she demonstrated the ability to engage in substantial gainful activity (following completion of a trial work period, where it applies). This exception does not apply in determining whether the annuitant continues to have a disabling impairment(s) for purposes of deciding his or her eligibility for a reentitlement period.

(b) *Second group of exceptions to medical improvement.* In addition to the first group of exceptions to medical improvement, the following exceptions may result in a determination that the annuitant is no longer disabled. In these situations the decision will be made without a determination that the annuitant has medically improved or can engage in substantial gainful activity.

(1) *A prior determination was fraudulently obtained.* If the Board finds that any prior favorable determination was obtained by fraud, it may find that the annuitant is not disabled. In addition, the Board may reopen the claim.

(2) *Failure to cooperate with the Board.* If there is a question about whether the annuitant continues to be disabled and the Board requests that he or she submit medical or other evidence or go for a physical or mental examination by a certain date, the Board will find that the annuitant's disability has ended if he or she fails (without good cause) to do what is requested. The month in which the annuitant's disability ends will be the first month in which he or she failed to do what was requested.

(3) *Inability of the Board to locate the annuitant.* If there is a question about whether the annuitant continues to be disabled and the Board is unable to find him or her to resolve the question, the Board will suspend annuity payments. If, after a suitable investigation, the Board is still unable to locate the annuitant, the Board will determine that the annuitant's disability has ended. The month such annuitant's disability ends will be the first month in which the question arose and the annuitant could not be found.

(4) *Failure of the annuitant to follow prescribed treatment which would be expected to restore the ability to engage in substantial gainful activity.* If treatment has been prescribed for the annuitant which would be expected to restore his or her ability to work, he or she must follow that treatment in order to be paid a disability annuity. If the annuitant is not following that treatment and he or she does not have good cause for failing to follow the treatment, the Board will find that his or her disability has ended. The month such annuitant's disability ends will be the first month in which he or she failed to follow the prescribed treatment.

§ 220.180 Determining continuation or cessation of disability.

Evaluation steps. To assure that disability reviews are carried out in a uniform manner, that decisions of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop a disability annuity are made objectively, neutrally and are fully documented, the Board will follow specific steps in reviewing the question of whether an annuitant's disability continues. The Board's review may cease and the disability may be continued at any point if the Board determines that there is sufficient evidence to find that the annuitant is still unable to engage in substantial gainful activity. The steps are—

(a) Is the annuitant engaging in substantial gainful activity? If he or she is (and any applicable trial work period has been completed), the Board will find disability to have ended (see § 220.179(a)(5));

(b) If the annuitant is not engaging in substantial gainful activity, does he or she have an impairment or combination of impairments which meets or equals the severity of an impairment listed in Appendix I of this part. If the annuitant's impairment(s) does meet or equal the level of severity of an impairment listed in Appendix I of this part, his or her disability will be found to continue;

(c) If the annuitant's impairment(s) does not meet or equal the level of severity of an impairment listed in Appendix I of this part, has there been medical improvement as defined in § 220.177(a)? If there has been medical improvement as shown by a decrease in medical severity, see step (d). If there has been no decrease in medical severity, then there has been no medical improvement (See step (e));

(d) If there has been medical improvement, the Board must determine whether it is related to the annuitant's ability to do work in accordance with paragraphs (a) through (d) of § 220.177 (i.e., whether or not there has been an increase in the residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination). If medical improvement is *not* related to the annuitant's ability to do work, see step (e). If medical improvement *is* related to the annuitant's ability to do work, see step (f);

(e) If the Board found at step (c) that there has been no medical improvment or if it found at step (d) that the medical improvement is not related to the annuitant's ability to work, the Board considers whether any of the exceptions in § 220.178 apply. If none of them apply, disability will be found to continue. If one of the first group of exceptions to medical improvement applies, see step (f). If an exception from the second group of exceptions to medical improvement applies, disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process;

(f) If medical improvement is shown to be related to the annuitant's ability to do work or if one of the first group of exceptions to medical improvement applies, the Board will determine whether all of the annuitant's current impairments in combination are severe. This determination will consider all current impairments and the impact of the combination of those impairments on the ability to function. If the residual functional capacity assessment in step (d) above shows significant limitation of ability to do basic work activities, see step (g). When the evidence shows that all current impairments in combination do not significantly limit physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature, and the annuitant will no longer be considered to be disabled;

(g) If the annuitant's impairment(s) is severe, the Board will assess his or her current ability to engage in substantial gainful activity. That is, the Board will assess the annuitant's residual functional capacity based on all of his or her current impairments and consider whether he or she can still do work that was done in the past. If he or she can do such work, disability will be found to have ended; and

(h) If the annuitant is not able to do work he or she has done in the past, the

Board will consider one final step. Given the residual functional capacity assessment and considering the annuitant's age, education and past work experience, can he or she do other work? If the annuitant can do other work, disability will be found to have ended. If he or she cannot do other work, disability will be found to continue.

§ 220.181 The month in which the Board will find that the annuitant is no longer disabled.

If the evidence shows that the annuitant is no longer disabled, the Board will find that his or her disability ended in the earliest of the following months—

(a) The month the Board mails the annuitant a notice saying that the Board finds that he or she is no longer disabled based on evidence showing:

(1) there has been medical improvement in the annuitant's impairments related to the ability to work and the annuitant has the capacity to engage in substantial gainful work under the rules set out in §§ 220.177 and 220.178; or

(2) there has been no medical improvement in the annuitant's impairments related to the ability to work but the annuitant has the capacity to engage in substantial gainful work and one of the exceptions to medical improvement set out in § 220.179(a)(1), (2), (3) or (4) applies.

(b) The month in which the annuitant demonstrated his or her ability to engage in substantial gainful activity (following completion of a trial work period);

(c) The month in which the annuitant actually does substantial gainful activity where such annuitant is not entitled to a trial work period;

(d) The month in which the annuitant returns to full-time work, with no significant medical restrictions and acknowledges that medical improvement has occurred, and the Board expected the annuitant's impairment(s) to improve;

(e) The first month in which the annuitant failed without good cause to do what the Board asked, when the rule set out in paragraph (b)(2) of § 220.179 applies;

(f) The first month in which the question of continuing disability arose and the Board could not locate the annuitant after a suitable investigation (see § 220.179(b)(3));

(g) The first month in which the annuitant failed without good cause to follow prescribed treatment, when the rule set out in paragraph (b)(4) of § 220.179 applies; or

(h) The first month the annuitant was told by his or her physician that he or she could return to work provided there is no substantial conflict between that physician's and the annuitant's statements regarding that annuitant's awareness of his or her capacity for work and the earlier date is supported by the medical evidence.

(i) The month the evidence shows that the annuitant is no longer disabled under the rules set out in §§ 220.177 through 220.180, and he or she was disabled only for a specified period of time in the past as discussed in § 220.21 or § 220.105;

§ 220.182 Before a disability annuity is stopped.

Before the Board stops a disability annuity, it will give the annuitant a chance to explain why it should not do so.

§ 220.183 Notice that the annuitant is not disabled.

(a) *General.* If the Board determines that the annuitant does not meet the disability requirements of the law, the disability annuity will generally stop. Except in the circumstance described in paragraph (d) of this section, the Board will give the annuitant advance written notice when the Board has determined that he or she is not now disabled.

(b) *What the advance written notice will tell the annuitant.* The advance written notice will provide—

(1) A summary of the information the Board has and an explanation of why the Board believes the annuitant is no longer disabled. If it is because of medical reasons, the notice will tell the annuitant what the medical information in his or her file shows. If it is because of the annuitant's work activity, the notice will tell the annuitant what information the Board has about the work he or she is doing or has done, and why this work shows that he or she is not disabled. If it is because of the annuitant's failure to give the Board information the Board needs or failure to do what the Board asks, the notice will tell the annuitant what information the Board needs and why, or what the annuitant has to do and why;

(2) The date the disability annuity will stop;

(3) An opportunity for the annuitant to submit evidence within a specified period to support continuance of disability before the decision becomes final; and

(4) An explanation of the annuitant's rights to reconsideration and appeal after the decision becomes final.

(c) *What the annuitant should do if he or she receives an advance written notice.* If the annuitant agrees with the advance written notice, he or she does not need to take any action. If the annuitant desires further information or disagrees with what the Board has told him or her, the annuitant should immediately write or visit a Board office. If the annuitant believes he or she is now disabled, the annuitant should tell the Board why. The annuitant may give the Board any additional or new information, including reports from doctors, hospitals, railroad or non-railroad employers, or others that he or she believes the Board should have. The annuitant should send these as soon as possible to a Board office.

(d) *When the Board will not give the annuitant advance written notice.* The Board will not give the annuitant advance written notice when the Board determines that he or she is not now disabled if the Board recently told the annuitant that—

(1) The information the Board has shows that he or she is not disabled;

(2) The Board was gathering more information; and

(3) The disability annuity would stop.

§ 220.184 If the annuitant becomes disabled by another impairment(s).

If a new severe impairment(s) begins in or before the month in which the last impairment(s) ends, the Board will find that disability is continuing. The impairment(s) need not be expected to last 12 months or to result in death, but it must be severe enough to keep the annuitant from doing substantial gainful activity, or severe enough so that he or she is still disabled.

Appendix 1—Listing of Impairments

In the Listing of Impairments, the listings under each separate body system in both Part A and Part B will be effective for periods ranging from 4 to 8 years unless extended or revised and promulgated again. Specifically, the body system listings in the Listing of Impairments will be subject to the following termination dates:

Musculoskeletal system (1.00) within 5 years. Consequently, the listings in this body system will no longer be effective on December 6, 1990.

Respiratory system (3.00) within 6 years. Consequently, the listings in this body system will no longer be effective on December 6, 1991.

Cardiovascular system (4.00) within 4 years. Consequently, the listings in this body system will no longer be effective on December 6, 1989.

The listings under the other body systems in Part A and Part B will expire in 8 years. Consequently, the listing in these body systems will no longer be effective on December 6, 1993. The mental disorders listings in Part A will no longer be effective

on August 28, 1990, unless extended by the Secretary or revised and promulgated again.

Part A

Criteria applicable to individuals age 18 and over and to children under age 18 where criteria are appropriate.

Sec.

1.00 Musculoskeletal System.
2.00 Special Senses and Speech.
3.00 Respiratory System.
4.00 Cardiovascular System.
5.00 Digestive System.
6.00 Genito-Urinary System.
7.00 Hemic and Lymphatic System.
8.00 Skin.
9.00 Endocrine System.
10.00 Multiple Body Systems.
11.00 Neurological.
12.00 Mental Disorders.
13.00 Neoplastic Diseases, Malignant.

1.00 Musculoskeletal System

A. *Loss of function* may be due to amputation or deformity. Pain may be an important factor in causing functional loss, but it must be associated with relevant abnormal signs or laboratory findings. Evaluations of musculoskeletal impairments should be supported where applicable by detailed descriptions of the joints, including ranges of motion, condition of the musculature, sensory or reflex changes, circulatory deficits, and X-ray abnormalities.

B. *Disorders of the spine,* associated with vertebrogenic disorders as in 1.05C, result in impairment because of distortion of the bony and ligamentous architecture of the spine or impingement of a herniated nucleus pulposus or bulging annulus on a nerve root. Impairment caused by such abnormalities usually improves with time or responds to treatment. Appropriate abnormal physical findings must be shown to persist on repeated examinations despite therapy for a reasonable presumption to be made that severe impairment will last for a continuous period of 12 months. This may occur in cases with unsuccessful prior surgical treatment.

Evaluation of the impairment caused by disorders of the spine requires that a clinical diagnosis of the entity to be evaluated first must be established on the basis of adequate history, physical examination, and roentgenograms. The specific findings stated in 1.05C represent the level required for that impairment; these findings, by themselves, are not intended to represent the basis for establishing the clinical diagnosis. Furthermore, while neurological examination findings are required, they are not to be interpreted as a basis for evaluating the magnitude of any neurological impairment. Neurological impairments are to be evaluated under 11.00–11.19.

The history must include a detailed description of the character, location, and radiation of pain; mechanical factors which incite and relieve pain; prescribed treatment, including type, dose, and frequency of analgesic; and typical daily activities. Care must be taken to ascertain that the reported examination findings are consistent with the individual's daily activities.

There must be a detailed description of the orthopedic and neurologic examination findings. The findings should include a description of gait, limitation of movement of the spine given quantitatively in degrees from the vertical position, motor and sensory abnormalities, muscle spasm, and deep tendon reflexes. Observations of the individual during the examination should be reported; e.g., how he or she gets on and off the examining table. Inability to walk on heels or toes, to squat, or to arise from a squatting position, where appropriate, may be considered evidence of significant motor loss. However, a report of atrophy is not acceptable as evidence of significant motor loss without circumferential measurements of both thighs and lower legs (or upper or lower arms) at a stated point above and below the knee or elbow given in inches or centimeters. A specific description of atrophy of hand muscles is acceptable without measurements of atrophy but should include measurements of grip strength.

These physical examination findings must be determined on the basis of objective observations during the examination and not simply a report of the individual's allegation, e.g., he says his leg is weak, numb, etc. Alternative testing methods should be used to verify the objectivity of the abnormal findings, e.g., a seated straight-leg raising test in addition to a supine straight-leg raising test. Since abnormal findings may be intermittent, their continuous presence over a period of time must be established by a record of ongoing treatment. Neurological abnormalities may not completely subside after surgical or nonsurgical treatment, or with the passage of time. Residual neurological abnormalities, which persist after it has been determined clinically or by direct surgical or other observation that the ongoing or progressive condition is no longer present, cannot be considered to satisfy the required findings in 1.05C.

Where surgical procedures have been performed, documentation should include a copy of the operative note and available pathology reports.

Electrodiagnostic procedures and myelography may be useful in establishing the clinical diagnosis, but do not constitute alternative criteria to the requirements in 1.05C.

C. *After maximum benefit from surgical therapy* has been achieved in situations involving fractures of an upper extremity (see 1.12) or soft tissue injuries of a lower or upper extremity (see 1.13), i.e., there have been no significant changes in physical findings or X-ray findings for any 6-month period after the last definitive surgical procedure, evaluation should be made on the basis of demonstrable residuals.

D. *Major joints* as used herein refer to hip, knee, ankle, shoulder, elbow, or wrist and hand. (Wrist and hand are considered together as one major joint.)

E. *The measurements of joint motion are* based on the techniques described in the "Joint Motion Method of Measuring and Recording," published by the American Academy of Orthopedic Surgeons in 1965, or the "Guides to the Evaluation of Permanent Impairment—The Extremities and Back" (Chapter I); American Medical Association, 1971.

1.01 Category of Impairments, Musculoskeletal

1.02 *Active rheumatoid arthritis and other inflammatory arthritis.*

With both A and B.

A. History of persistent joint pain, swelling, and tenderness involving multiple major joints (see 1.00D) and with signs of joint inflammation (swelling and tenderness) on current physical examination despite prescribed therapy for at least 3 months, resulting in significant restriction of function of the affected joints, and clinical activity expected to last at least 12 months; and

B. Corroboration of diagnosis at some point in time by either.

1. Positive serologic test for rheumatoid factor; or

2. Antinuclear antibodies; or

3. Elevated sedimentation rate; or

4. Characteristic histologic changes in biopsy of synovial membrane or subcutaneous nodule (obtained independent of Social Security disability evaluation).

1.03 *Arthritis of a major weight-bearing joint (due to any cause):*

With history of persistent joint pain and stiffness with signs of marked limitation of motion or abnormal motion of the affected joint on current physical examination. With:

A. Gross anatomical deformity of hip or knee (e.g. subluxation, contracture, bony or fibrous ankylosis, instability) supported by X-ray evidence of either significant joint space narrowing or significant bony destruction and markedly limiting ability to walk and stand; or

B. Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint and return to full weight-bearing status did not occur, or is not expected to occur, within 12 months of onset.

1.04 *Arthritis of one major joint in each of the upper extremities (due to any cause):*

With history of persistent joint pain and stiffness, signs of marked limitation of motion of the affected joints on current physical examination, and X-ray evidence of either significant joint space narrowing or significant bony destruction. With:

A. Abduction and forward flexion (elevation) of both arms at the shoulders, including scapular motion, restricted to less than 90 degrees; or

B. Gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability, ulnar deviation) and enlargement or effusion of the affected joints.

1.05 *Disorders of the spine:*

A. Arthritis manifested by ankylosis or fixation of the cervical or dorsolumbar spine at 30° or more of flexion measured from the neutral postion, with X-ray evidence of:

1. Calcification of the anterior and lateral ligaments; or

2. Bilateral ankylosis of the sacroiliac joints with abnormal apophyseal articulations; or

B. Osteoporosis, generalized (established by X-ray) manifested by pain and limitation of back motion and paravertebral muscle spasm with X-ray evidence of either:

1. Compression fracture of a vertebral body with loss of at least 50 percent of the estimated height of the vertebral body prior

to the compression fracture, with no intervening direct traumatic episode; or

2. Multiple fractures of vertebrae with no intervening direct traumatic episode; or

C. Other vertebrogenic disorders (e.g., herniated nucleus pulposus, spinal stenosis) with the following persisting for at least 3 months despite prescribed therapy and expected to last 12 months. With both 1 and 2:

1. Pain, muscle spasm, and significant limitation of motion in the spine; and

2. Appropriate radicular distribution of significant motor loss with muscle weakness and sensory and reflex loss.

1.08 *Osteomyelitis or septic arthritis (established by X-ray):*

A. Located in the pelvis, vertebra, femur, tibia, or a major joint of an upper or lower extremity, with persistent activity or occurrence of at least two episodes of acute activity within a 5-month period prior to adjudication, manifested by local inflammatory, and systemic signs and laboratory findings (e.g., heat, redness, swelling, leucocytosis, or increased sedimentation rate) and expected to last at least 12 months despite prescribed therapy; or

B. Multiple localizations and systemic manifestations as in A above.

1.09 *Amputation or anatomical deformity of (i.e., loss of major function due to degenerative changes associated with vascular or neurological deficits, traumatic loss of muscle mass or tendons and X-ray evidence of bony ankylosis at an unfavorable angle, joint subluxation or instability):*

A. Both hands; or

B. Both feet; or

C. One hand and one foot.

1.10 *Amputation of one lower extremity (at or above the tarsal region):*

A. Hemipelvectomy or hip disarticulation; or

B. Amputation at or above the tarsal region due to peripheral vascular disease or diabetes mellitus; or

C. Inability to use a prosthesis effectively, without obligatory assistive devices, due to one of the following:

1. Vascular disease; or

2. Neurological complications (e.g., loss of position sense); or

3. Stump too short or stump complications persistent, or are expected to persist, for at least 12 months from onset; or

4. Disorder of contralateral lower extremity which markedly limits ability to walk and stand.

1.11 *Fracture of the femur, tibia, tarsal bone of pelvis* with solid union not evident on X-ray and not clinically solid, when such determination is feasible, and return to full weight-bearing status did not occur or is not expected to occur within 12 months of onset.

1.12 *Fractures of an upper extremity* with non-union of a fracture of the shaft of the humerus, radius, or ulna under continuing surgical management directed toward restoration of functional use of the extremity and such function was not restored or expected to be restored within 12 months after onset.

1.13 *Soft tissue injuries of an upper or lower extremity* requiring a series of staged surgical procedures within 12 months after onset for salvage and/or restoration of major function of the extremity, and such major function was not restored or expected to be restored within 12 months after onset.

2.00 Special Senses and Speech

A. *Ophthalmology*

1. *Causes of impairment.* Diseases or injury of the eyes may produce loss of central or peripheral vision. Loss of central vision results in inability to distinguish detail and prevents reading and fine work. Loss of peripheral vision restricts the ability of an individual to move about freely. The extent of impairment of sight should be determined by visual testing.

2. *Central visual acuity.* A loss of central visual acuity may be caused by impaired distant and/or near vision. However, for an individual to meet the level of severity described in 2.02 and 2.04, only the remaining central visual acuity for distance of the better eye with best correction based on the Snellen test chart measurement may be used. Correction obtained by special visual aids (e.g., contact lenses) will be considered if the individual has the ability to wear such aids.

3. *Field of vision.* Impairment of peripheral vision may result if there is contraction of the visual fields. The contraction may be either symmetrical or irregular. The extent of the remaining peripheral visual field will be determined by usual perimetric methods at a distance of 330 mm. under illumination of not less than 7-foot candles. For the phakic eye (the eye with a lens), a 3 mm. white disc target will be used, and for the aphakic eye (the eye without the lens), a 6 mm. white disc target will be used. In neither instance should corrective spectacle lenses be worn during the examination but if they have been used, this fact must be stated.

Measurements obtained on comparable perimetric devices may be used; this does not include the use of tangent screen measurements. For measurements obtained using the Goldmann perimeter, the object size designation III and the illumination designation 4 should be used for the phakic eye, and the object size designation IV and illumination designation 4 for the aphakic eye.

Field measurements must be accompanied by notated field charts, a description of the type and size of the target and the test distance. Tangent screen visual fields are not acceptable as a measurement of peripheral field loss.

Where the loss is predominantly in the lower visual fields, a system such as the weighted grid scale for perimetric fields described by B. Esterman (see Grid for Scoring Visual Fields, II. Perimeter, *Archives of Ophthalmology*, 79:400, 1968) may be used for determining whether the visual field loss is comparable to that described in Table 2.

4. *Muscle function.* Paralysis of the third cranial nerve producing ptosis, paralysis of accommodation, and dilation and immobility of the pupil may cause significant visual impairment. When all the muscle of the eye are paralyzed including the iris and ciliary body (total ophthalmoplegia), the condition is considered a severe impairment provided it is bilateral. A finding of severe impairment based primarily on impaired muscle function must be supported by a report of an actual measurement of ocular motility.

5. *Visual efficiency.* Loss of visual efficiency may be caused by disease or injury resulting in a reduction of central visual acuity or visual field. The visual efficiency of one eye is the product of the percentage of central visual efficiency and the percentage of visual field efficiency. (See Tables No. 1 and 2, following 2.09.)

6. *Special situations.* Aphakia represents a visual handicap in addition to the loss of central visual acuity. The term monocular aphakia would apply to an individual who has had the lens removed from one eye, and who still retains the lens in his other eye, or to an individual who has only one eye which is aphakic. The term binocular aphakia would apply to an individual who has had both lenses removed. In cases of binocular aphakia, the central efficiency of the better eye will be accepted as 75 percent of its value. In cases of monocular aphakia, where the better eye is aphakic, the central visual efficiency will be accepted as 50 percent of the value. (If an individual has binocular aphakia, and the central visual acuity in the poorer eye can be corrected only to 20/200, or less, the central visual efficiency of the better eye will be accepted as 50 percent of its value.)

Ocular symptoms of systemic disease may or may not produce a disabling visual impairement. These manifestations should be evaluated as part of the underlying disease entity by reference to the particular body system involved.

7. *Statutory blindness.* The term "statutory blindness" refers to the degree of visual impairment which defines the term "blindness" in the Social Security Act. Both 2.02 and 2.03 A and B denote statutory blindness.

B. *Otolaryngology*

1. *Hearing impairment.* Hearing ability should be evaluated in terms of the person's ability to hear and distinguish speech.

Loss of hearing can be quantitatively determined by an audiometer which meets the standards of the American National Standards Institute (ANSI) for air and bone conducted stimuli (i.e., ANSI S 3.6–1969 and ANSI S 3.13–1972, or subsequent comparable revisions) and performing all hearing measurements in an environment which meets the ANSI standard for maximal permissible background sound (ANSI S 3.1–1977).

Speech discrimination should be determined using a standardized measure of speech discrimination ability in quiet at a test presentation level sufficient to ascertain maximum discrimination ability. The speech discrimination measure (test) used, and the level at which testing was done, must be reported.

Hearing tests should be preceded by an otolaryngologic examination and should be performed by or under the supervision of an otolaryngologist or audiologist qualified to perform such tests.

In order to establish an independent medical judgment as to the level of impairment in a claimant alleging deafness, the following examinations should be reported: Otolaryngologic examination, pure tone air and bone audiometry, speech reception threshold (SRT), and speech discrimination testing. A copy of reports of medical examination and audiologic evaluations must be submitted.

Cases of alleged "deaf mutism" should be documented by a hearing evaluation. Records obtained from a speech and hearing rehabilitation center or a special school for the deaf may be acceptable, but if these reports are not available, or are found to be inadequate, a current hearing evaluation should be submitted as outlined in the preceding paragraph.

2. *Vertigo associated with disturbances of labyrinthine-vestibular function, including Meniere's disease.* These disturbances of balance are characterized by an hallucination of motion or loss of position sense and a sensation of dizziness which may be constant or may occur in paroxysmal attacks. Nausea, vomiting, ataxia, and incapacitation are frequently observed, particularly during the acute attack. It is important to differentiate the report of rotary vertigo from that of "dizziness" which is described as lightheadedness, unsteadiness, confusion, or syncope.

Meniere's disease is characterized by paroxysmal attacks of vertigo, tinnitus, and fluctuating hearing loss. Remissions are unpredictable and irregular, but may be longlasting; hence, the severity of impairment is best determined after prolonged observation and serial reexaminations.

The diagnosis of a vestibular disorder requires a comprehensive neuro-otolaryngologic examination with a detailed description of the vertiginous episodes, including notation of frequency, severity, and duration of the attacks. Pure tone and speech audiometry with the appropriate special examinations, such as Bekesy audiometry, are necessary. Vestibular functions is assessed by positional and caloric testing, preferably by electronystagmography. When polytograms, contrast radiography, or other special tests have been performed, copies of the reports of these tests should be obtained in addition to reports of skull and temporal bone X-rays.

3. *Organic loss of speech.* Glossectomy or larynegectomy or cicatricial laryngeal stenosis due to injury or infection results in loss of voice production by normal means. In evaluating organic loss of speech (see 2.09), ability to produce speech by any means includes the use of mechanical or electronic devices. Impairment of speech due to neurologic disorders should be evaluated under 11.00–11.19.

2.01 Category of Impairments, Special Senses and Speech

2.02 *Impairment of central visual acuity.* Remaining vision in the better eye after best correction is 20/200 or less.

2.03 *Contraction of peripheral visual fields in the better eye.*

A. To 10° or less from the point of fixation; or

B. So the widest diameter subtends an angle no greater than 20°; or

C. To 20 percent or less visual field efficiency.

2.04 *Loss of visual efficiency.* Visual efficiency of better eye after best correction 20 percent or less. (The percent of remaining visual efficiency = the product of the percent of remaining central visual efficiency and the percent of remaining visual field efficiency.)

2.05 *Complete homonymous hemianopsia* (with or without macular sparing). Evaluate under 2.04.

2.06 *Total bilateral ophthalmoplegia.*

2.07 *Disturbance of labyrinthine-vestibular function (including Meniere's disease),* characterized by a history of frequent attacks of balance disturbance, tinnitus, and progressive loss of hearing. With both A and B:

A. Disturbed function of vestibular labyrinth demonstrated by caloric or other vestibular tests; and

B. Hearing loss established by audiometry.

2.08 *Hearing impairments* (hearing not restorable by a hearing aid) manifested by:

A. Average hearing threshold sensitivity for air conduction of 90 decibels or greater and for bone conduction to corresponding maximal levels, in the better ear, determined by the simple average of hearing threshold levels at 500, 1000 and 2000 hz. (see 2.00B1); or

B. Speech discrimination scores of 40 percent or less in the better ear;

2.09 *Organic loss of speech* due to any cause with inability to produce by any means speech which can be heard understood and sustained.

TABLE NO. 1—PERCENTAGE OF CENTRAL VISUAL EFFICIENCY CORRESPONDING TO CENTRAL VISUAL ACUITY NOTATIONS FOR DISTANCE IN THE PHAKIC AND APHAKIC EYE (BETTER EYE)

Snellen		Percent central visual efficiency		
English	Metric	Phakic [1]	Aphakic monocular [2]	Aphakic binocular [3]
20/16	6/5	100	50	75
20/20	6/6	100	50	75
20/25	6/7.5	95	47	71
20/32	6/10	90	45	67
20/40	6/12	85	42	64
20/50	6/15	75	37	56
20/64	6/20	65	32	49
20/80	6/24	60	30	45
20/100	6/30	50	25	37
20/125	6/38	40	20	30
20/160	6/48	30	.....	22
20/200	6/60	20	.....	.....

Column and Use.

[1] Phakic.—1. A lens is present in both eyes. 2. A lens is present in the better eye and absent in the poorer eye. 3. A lens is present in one eye and the other eye is enucleated.

[2] Monocular.—1. A lens in absent in the better eye and present in the poorer eye. 2. The lenses are absent in both eyes; however, the central visual acuity in the poorer eye after best correction in 20/200 or less. 3. A lens is absent from one eye and the other eye is enucleated.

[3] Binocular.—1. The lenses are absent from both eyes and the central visual acuity in the poorer eye after best correction is greater than 20/200.

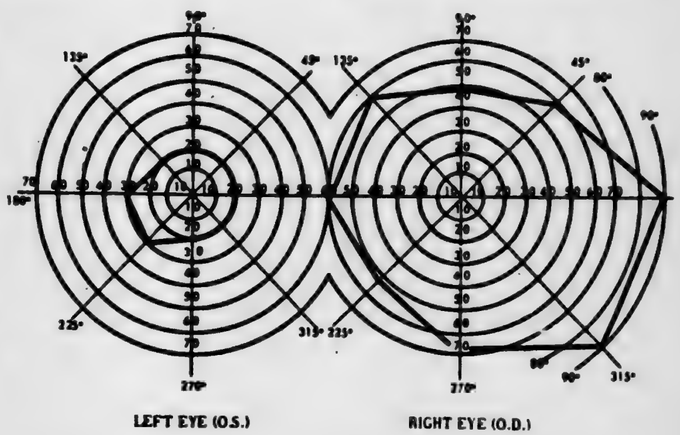


Table No. 2—Chart of Visual Field Showing Extent of Normal Field and Method of Computing Percent of Visual Field Efficiency

1. Diagram of right eye illustrates extent of normal visual field as tested on standard perimeter at 3/330 (3 mm. white disc at a distance of 330 mm.) under 7 foot-candles illumination. The sum of the eight principal meridians of this field total 500°.

2. The percent of visual field efficiency is obtained by adding the number of degrees of the eight principal meridians of the contracted field and dividing by 500. Diagram of left eye illustrates visual field contracted to 30° in the temporal and down and out meridians and to 20° in the remaining six meridians. The percent of visual field

efficiency of this field is: 6×20+2×30 =180÷500=0.36 or 36 percent remaining visual field efficiency, or 64 percent loss.

3.00 Respiratory System

A. *Introduction:* Impairments caused by the chronic disorder of the respiratory system generally result from irreversible loss of pulmonary functional capacity (ventilatory impairment, gas exchange impairment, or a combination of both). The most common symptom attributable to these disorders is dyspnea on exertion. Cough, wheezing, sputum production, hemoptysis, and chest pain may also occur, but need not be present. However, since these symptoms are common to many other diseases, evaluation of impairments of the respiratory system requires a history, physical examination, and chest roentgenogram to establish the diagnosis of a chronic respiratory disorder. Pulmonary function testing is required to provide a basis for assessing the impairment, once the diagnosis is established by appropriate clinical findings.

Alteration of ventilatory function may be due primarily to chronic obstructive pulmonary disease (emphysema, chronic bronchitis, chronic asthmatic bronchitis) or restrictive disorders with primary loss of lung volume (pulmonary resection, thoracoplasty, chest cage deformity as seen in kyphoscoliosis), or infiltrative interstitial disorders (diffuse fibrosis). Impairment of gas exchange without significant airway obstruction may be produced by interstitial disorders (diffuse fibrosis). Primary disease of pulmonary circulation may produce pulmonary vascular hypertension and, eventually, heart failure. Whatever the mechanism, any chronic progressive pulmonary disorder may result in cor pulmonale or heart failure. Chronic infection caused, most frequently by mycobacterial or mycotic organisms, may produce extensive lung destruction resulting in marked loss of pulmonary functional capacity. Some disorders such as bronchiectasis and asthma may be characterized by acute, intermittent illnesses of such frequency and intensity that they produce a marked impairment apart from intercurrent functional loss, which may be mild.

Most chronic pulmonary disorders may be adequately evaluated on the basis of history, physical examination, chest roentgenogram, and ventilatory function tests. Direct assessment of gas exchange by exercise arterial blood gas determination or diffusing capacity is required only in specific relatively rare circumstances, depending on the clinical features and specific diagnosis.

B. *Mycobacterial and mycotic infections of the lung will be evaluated* on the basis of the resulting impairment to pulmonary function. Evidence of infectious or active mycobacterial or mycotic infection, such as positive cultures, increasing lesions, or cavitation, is not, by itself, a basis for determining that the individual has a severe impairment which is expected to last 12 months. However, if these factors are abnormally persistent, they should not be ignored. For example, in those unusual cases where there is evidence of persistent pulmonary infection caused by mycobacterial or mycotic organisms for a period closely approaching 12 consecutive months, the clinical findings, complications, treatment considerations, and prognosis must be carefully assessed to determine whether, despite the absence of impairment of pulmonary function, the individual has a severe impairment that can be expected to last for 12 consecutive months.

C. *When a respiratory impairment is episodic in nature,* as may occur in complications of bronchiectasis and asthmatic bronchitis, the frequency of severe episodes despite prescribed treatment is the criterion for determining the level of impairment. Documentation for episodic asthma should include the hospital or emergency room records indicating the dates of treatment, clinical findings on presentation, what treatment was given and for what period of time, and the clinical response. Severe attacks of episodic asthma, as listed in section 3.03B, are defined as prolonged episodes lasting at least several hours, requiring intensive treatment such as intravenous drug administration or inhalation therapy in a hospital or emergency room.

D. *Documentation of ventilatory function tests.* The results of ventilatory function studies for evaluation under tables I and II should be expressed in liters or liters per minute (BTPS). The reported one second forced expiratory volume (FEV_1) should represent the largest of at least three attempts. One satisfactory maximum voluntary ventilation (MVV) is sufficient. The MVV should represent the observed value and should not be calculated from FEV_1. These studies should be repeated after administration of a nebulized bronchodilator unless the prebronchodilator values are 80 percent or more of predicted normal values or the use of bronchodilators is contraindicated. The values in tables I and II assume that the ventilatory function studies were not performed in the presence of wheezing or other evidence of bronchospasm or, if these were present at the time of the examination, that the studies were repeated after administration of a bronchodilator. Ventilatory function studies performed in the presence of bronchospasm, without use of bronchodilators, cannot be found to meet the requisite level of severity in tables I and II.

The appropriately labeled spirometric tracing, showing distance per second on the abscissa and the distance per liter on the ordinate, must be incorporated in the file. The manufacturer and model number of the device used to measure and record the ventilatory function should be stated. If the spirogram was generated other than by direct pen linkage to a mechanical displacement-type spirometer, the spirometric tracing must show the calibration of volume units through mechanical means such as would be obtained using a giant syringe. The FEV_1 must be recorded at a speed of at least 20 mm. per second. Calculation of the FEV_1 from a flow volume loop is not acceptable. The recording device must provide a volume excursions of at least 10 mm. per liter. The MVV should be represented by the tidal excursions measured over a 10- to 15-second interval. Tracings showing only cumulative volume for the MVV are not acceptable. The ventilatory function tables are based on measurement of the height of the individual without shoes. Studies should not be performed during or soon after an acute respiratory illness. A statement should be made as to the individual's ability to understand the directions and cooperate in performing the test.

E. *Documentation of chronic impairment of gas exchange—Arterial blood gases and exercise tests.*

1. *Introduction:* Exercise tests with measurement of arterial blood gases at rest and during exercise should be purchased when not available as evidence of record in cases in which there is documentation of chronic pulmonary disease, but the existing evidence, including properly performed ventilatory function tests, is not adequate to evaluate the level of the impairment. Before purchasing arterial blood gas tests, medical history, physical examination, report of chest roentgenogram, ventilatory function tests, electrocardiographic tracing, and hematocrit must be obtained and should be evaluated by a physician competent in pulmonary medicine. Arterial blood gas tests should not be purchased where full development short of such purchase reveals that the impairment meets or equals any other listing or when the claim can be adjudicated on some other basis. Capillary blood analysis for PO_2 or PCO_2 is not acceptable. Asalysis of arterial blood gases obtained after exercise is stopped is not acceptable.

Generally individuals with an FEV_1 greater than 2.5 liters or an MVV greater than 100 liters per minute would not be considered for blood gas studies unless diffuse interstitial pulmonary fibrosis was noted on chest X-ray or documented by tissue diagnosis. The exercise test facility should be provided with the clinical reports, report of chest roentgenogram, and spirometry results obtained by the DDS. The testing facility should determine whether exercise testing is clinically contraindicated. If an exercise test is clinically contraindicated, the reason for exclusion from the test should be stated in the report of the exercise test facility.

2. *Methodology.* Individuals considered for exercise testing first should have resting PaO_2, $PaCO_2$, and pH determinations by the testing facility. The samples should be obtained in the sitting or standing position. The individual should be exercised under steady state conditions, preferably on a treadmill for a period of 6 minutes at a speed and grade providing a workload of approximately 17 ml. O_2/kg./min. If a bicycle ergometer is used, an exercise equivalent of 450 kgm./min., or 75 watts, should be used. At the option of the facility, a warm-up period of treadmill walking may be performed to acquaint the applicant with the procedure. If, during the warm-up period, the individual cannot exercise at the designated level, a lower speed and/or grade may be selected in keeping with the exercise capacity estimate. The individual should be monitored by electrocardiogram throughout the exercise and representative strips taken to provide heart rate in each minute of exercise. During the 5th or 6th minute of exercise, an arterial blood gas sample should be drawn and analyzed for PO_2, PCO_2, and pH. If the facility has the capability, and at the option of the DDS and the facility, minute ventilation (BTPS) and oxygen consumption per minute (STPD) and CO_2 production (STPD) should be measured during the 5th or 6th minute of exercise. If the individual fails to complete 6 minutes of exercise, the facility should comment on the reason.

The report should contain representative strips of electrocardiograms taken during the exercise, hematocrit, resting and exercise arterial blood gas value, speed and grade of the treadmill or bicycle ergometer exercise level in watts or kgm./min., and duration of exercise. The altitude of the test site, barometric pressure, and normal range of blood gas values for that facility should also be reported.

3. *Evaluation.* Three tables are provided in Listing 3.02C1 for evaluation of arterial blood gas determinations at rest and during exercise. The blood gas levels in Listing 3.02C1, Table III–A, are applicable at test sites situated at less than 3,000 feet above sea level. The blood gas levels in Listing 3.02C1, Table III–B, are applicable at test sites situated at 3,000 through 6,000 feet above sea level. The blood gas levels in Listing 3.02C1, Table III–C, are applicable for test sites over 6,000 feet above sea level. Tables III–B and C, take into account the lower blood PaO_2 normally found in individuals tested at the higher altitude. When the barometric pressure is unusually high for the altitude at the time of testing, consideration should be given to those cases in which the PaO_2 falls slightly above the requirements of Table III–A, III–B, or III–C, whichever is appropriate for the altitude at which testing was performed.

3.01 Category of Impairments, Respiratory

3.02 *Chronic Pulmonary Insufficiency.*

With:

A. Chronic obstructive pulmonary disease (due to any cause). With: Both FEV_1 and MVV equal to or less than values specified in Table I corresponding to the person's height without shoes.

TABLE I

Height without shoes (inches)	FEV_1 and MVV	
	Equal to or less than (L, BTPS)	(MBC) equal to or less than (L/min., BTPS)
60 or less	1.0	40
61–63	1.1	44
64–65	1.2	48
66–67	1.3	52
68–69	1.4	56
70–71	1.5	60
72 or more	1.6	64

or

B. *Chronic restrictive ventilatory disorders.* With: Total vital capacity equal to or less than values specified in Table II corresponding to the person's height without shoes. In severe kyphoscoliosis, the measured span between the fingertips when the upper extremities are abducted 90 degrees should be substituted for height.

TABLE II

Height without shoes (inches)	VC equal to or less than (L, BTPS)
60 or less	1.2
61–63	1.3
64–65	1.4
66–67	1.5
68–69	1.6
70–71	1.7
72–or more	1.8

or

C. Chronic impairment of gas exchange (due to any cause). With:

1. Steady-state exercise blood gases demonstrating values of PaO_2 and simultaneously determined $PaCO_2$, measured at a workload of approximately 17 ml. O_2/kg./min. or less of exercise, equal to or less than the values specified in Table III–A or III–B or III–C.

TABLE III—A

[Applicable at test sites less than, 3,000 feet above sea level]

Arterial PCO_2 (mm. Hg)	Arterial PO_2 and equal to or less than (mm. Hg)
30 or below	65
31	64
32	63
33	62
34	61
35	60
36	59
37	58
38	57
39	56
40 or above	55

TABLE III—B

[Applicable at test sites 3,000 through 6,000 feet above sea level]

Arterial PCO_2 (mm. Hg)	Arterial PO_2 and equal to or less than (mm. Hg)
30 or below	60
31	59
32	58
33	57
34	56
35	55
36	54
37	53
38	52
39	51
40 or above	50

TABLE III—C

[Applicable at test sites over 6,000 feet above sea level]

Arterial PCO_2 (mm. Hg) and	Arterial PO_2 equal to or less than (mm. Hg)
30 or below	56
31	54
32	53
33	52
34	51
35	50
36	49
37	48
38	47
39	46
40 or above	45

or

2. Diffusing capacity for the lungs for carbon monoxide less than 6 ml./mm. Hg/min. (steady-state methods) or less than 9 ml./mm. Hg/min. (single breath method) or less than 30 percent of predicted normal. (All method, actual values, and predicted normal values for the methods used should be reported.): or

D. Mixed obstructive ventilatory and gas exchange impairment. Evaluate under the criteria in 3.02A, B, and C.

3.03 *Asthma.* With:

A Chronic asthmatic bronchitis. Evaluate under the criteria for chronic obstructive ventilatory impairment in 3.02A, or

B. Episodes of severe attacks (See 3.00C), in spite of prescribed treatment, occurring at least once every 2 months or on an average of at lest 6 times a year, and prolonged expiration with wheezing or rhonchi on physical examination between attacks.

3.06 *Pneumoconiosis (demonstrated by roentgenographic evidence).* Evaluate under criteria in 3.02.

3.07 *Bronchiectasis (demonstrated by radio-opaque material).* With:

A. Episodes of acute bronchitis or pneumonia or hemoptysis (more than blood-streaked sputum) occurring at least every 2 months; or

B. Impairment of pulmonary function due to extensive disease should be evaluated under the applicable criteria in 3.02.

3.08 *Mycobacterial infection of the lung.* Impairment of pulmonary function due to extensive disease should be evaluated under appropriate criteria in 3.02.

3.09 *Mycotic infection of the lung.* Impairment of pulmonary function due to extensive disease should be evaluated under the appropriate criteria in 3.02.

3.11 *Cor pulmonale, or pulomonary vascular hypertension.* Evaluate under the criteria in 4.02D.

4.00 Cardiovascular System

A. *Severe cardiac impairment* results from one or more of three consequences of heart disease: (1) congestive heart failure; (2) ischemia (with or without necrosis) of heart muscle; (3) conduction disturbances and/or arrhythmias resulting in cardiac syncope.

With diseases of arteries and veins, severe impairment may result from disorders of the vasculature in the central nervous system, eyes, kidneys, extremities, and other organs.

The criteria for evaluating impairment resulting from heart diseases or diseases of the blood vessels are based on symptoms, physical signs and pertinent laboratory findings.

B. *Congestive heart failure* is considered in the Listing under one category whatever the etiology (i.e., arteriosclerotic, hypertensive, rheumatic, pulmonary, congenital, or other organic heart diseases). Congestive heart failure is not considered to have been established for the purpose of 4.02 unless there is evidence of vascular congestion such as hepatomegaly or peripheral or pulmonary edema which is consistent with clinical diagnosis. (Radiological description of vascular congestion, unless supported by appropriate clinical evidence, should not be construed as pulmonary edema.) The findings of vascular congestion need not be present at the time of adjudication (except for 4.02A), but must be casually related to the current episode of marked impairment. The findings other than vascular congestion must be persistent.

Other congestive, ischemic, or restrictive (obstructive) heart diseases such as caused by cardiomyopathy or aortic stenosis may result in significant impairment dues to congestive heart failure, rhythm disturbances, or ventricular outflow obstruction in the absence of left ventricular enlargement as described in 4.02B1. However, the ECG criteria as defined in 4.02B2 should be fulfilled. Clinical findings such as symptions of dyspnea, fatigue, rhythm disturbances, etc., should be documented and the diagnosis confirmed by echocardiography or at cardiac catheterization.

C. *Hypertensive vascular diseases* does not result in severe impairment unless it causes severe damage to one or more of four end organs: heart, brain, kidneys, or eyes. (retinae). The presence of such damage must be established by appropriate abnormal physical signs and laboratory findings as specified in 4.02 or 4.04, or for the body system involved.

D. *Ischemic heart diseases* may result in a marked impairment due to chest pain. Description of the pain must contain the clinical characteristics as discussed under 4.00E. In addition, the clinical impression of chest pain of cardiac origin must be supported by objective evidence as described under 4.00 F.G. or H.

E. *Chest pain of cardic origin* is considered to be pain which is precipitated by effort and promptly relieved by sublingual nitroglycerin or rapid-acting nitrates or rest. The character of the pain is classically described as crushing squeezing, burning, or oppressive pain located in the chest. Excluded is sharp, sticking or rhythmic pain. Pain occurring on exercise should be described specifically as to usual inciting factors (kind and degree), character, location, radiation, duration, and responses to nitroglycerin or rest.

So-called "anginal equivalent" locations manifested by pain in the throat, arms, or hands have the same validity as the chest pain described above. Status angineous and variant angina of the Prinzmetal type (e.g., rest angina with transitory ST elevation on electrocardiogram) will be considered to have the same validity as classical angina pectoris as described above. Shortness of breath as an isolated finding should not be considered as an anginal equivalent.

Chest pain that appears to be of cardiac origin may be caused by noncoronary conditions. Evidence for the latter should be actively considered in determining whether the chest pain is of cardiac origin. Among the more common conditions which may masquerade as angina are gastrointestinal tract lesions such as biliary tract disease, esophagitis, hiatal hernia, peptic ulcer, and pancreatitis; and musculoskeletal lesions such as costochondritis and cervical arthritis.

F. *Documentation of electrocardiography.*

1. *Electrocardiograms obtained at rest* must be submitted in the original or a legible copy of a 12-lead tracing appropriately labeled, with the standardization inscribed on the tracing. Alteration in standardization of specific leads (such as to accommodate large ORS amplitudes) must be shown on those leads.

The effect of drugs, electrolyte imbalance, etc., should be considered as possible noncoronary causes of ECG abnormalities, especially those involving the ST segment. If needed and available, pre-drug (especially predigitalis) tracing should be obtained.

The term "ischemic" is used in 4.04 to describe a pathologic ST deviation. Nonspecific repolarization changes should not be confused with ischemic configurations or a current of injury.

Detailed descriptions or computer interpretations without the original or legible copies of the ECG are not acceptable.

2. *Electrocardiograms obtained in conjunction with exercise tests* must include the original tracings or a legible copy of appropriate leads obtained before, during, and after exercise. Test control tracings, taken before exercise in the upright position, must be obtained. An ECG after 20 seconds of vigorous hyperventilation should be obtained. A posthyperventilation tracing may be essential for the proper evaluation of an "abnormal" test in certain circumstances, such as in women with evidence of mitral valve prolapse. A tracing should be taken at approximately 5 METs of exercise and at the time the ECG becomes abnormal according to the criteria in 4.04A. The time of onset of these abnormal changes must be noted, and the ECG tracing taken at the time should be obtained. Exercise histograms without the original tracings or legible copies are not acceptable.

Whenever electrocardiographically documented stress test data are submitted, irrespective of the type, the standardization must be inscribed on the tracings and the strips must be labeled appropriately, indicating the times recorded. The degree of exercise achieved, the blood pressure levels during the test, and any reason for terminating the test must be included in the report.

G. *Exercise testing.*

1. *When to purchase.* Since the results of a treadmill exercise test are the primary basis for adjudicating claims under 4.04, they should be included in the file whenever they have been performed. There are also circumstances under which it will be appropriate to purchase exercise tests. Generally, these are limited to claims involving chest pain which is considered to be of cardiac origin but without corroborating ECG or other evidence of ischemic heart disease.

Exercise test should not be purchased in the absence of alleged chest pain of cardiac origin. Even in the presence of an allegation of chest pain of cardiac origin, an exercise test should not be purchased where full development short of such a purchase reveals that the impairment meets or equals any Listing or the claim can be adjudicated on some other basis.

2. *Methodology.* When an exercise test is purchased, it should be a treadmill type using a continuous progressive multistage regimen. The targeted heart rate should be not less than 85 percent of the maximum predicted heart rate unless it becomes hazardous to exercise to the heart rate or becomes unnecessary because the ECG meets the criteria in 4.04A at a lower heart rate (see also 4.00F.2). Beyond these requirements, it is prudent to accept the methodology of a qualified, competent test facility. In any case, a precise description of the protocol that was followed must be provided.

3. *Limitations of exercise testing.* Exercise testing should not be purchased for individuals who have the following: unstable progressive angina pectoris; recent onset (approximately 2 months) of angina; congestive heart failure; uncontrolled serious arrhythmias (including uncontrolled auricular fibrillation); second or third degree heart block; Wolff-Parkinson-White syndrome; uncontrolled marked hypertension; marked aortic stenosis; marked pulmonary hypertension; dissecting or ventricular aneurysms; acute illness; limiting neurological or musculoskeletal impairments; or for individuals on medication where performance of stress testing may constitute a significant risk.

The presence of noncoronary or nonischemic factors which may influence the ECG response to exercise include hypokalemia, hyperventilation, vasoregulatory asthenia, significant anemia, left bundle branch block, and other heart disease, particularly valvular.

Digitalis may cause ST segment abnormalities at rest, during, and after exercise. Digitalis-related ST depression, present at rest, may become accentuated and result in false interpretations of the ECG taken during or after exercise test.

4. *Evaluation.* Where the evidence includes the results of a treadmill exercise test, this evidence is the primary basis for adjudicating claims under 4.04. For purposes of this Social Security disability program, treadmill exercise testing will be evaluated on the basis of the level at which the test becomes positive in accordance with the ECG criteria in 4.04A. However, the significance of findings of a treadmill exercise test must be considered in light of the clinical course of the disease which may have occurred subsequent to performance of the exercise test. The criteria in 4.04B are not applicable if there is documentation of an acceptable treadmill exercise test, it there is no evidence of a treadmill exercise test or if the test is not acceptable, the criteria in 4.04B should be used. The level of exercise is considered in terms of multiples of MET's (metabolic equivalent units). One MET is the basal O_2 requirement of the body in an inactive state, sitting quiely. It is considered by most authorities to be approximately 3.5 ml. O_2/kg./min.

H. *Angiographic evidence.*

1. *Coronary arteriography.* This procedure is not to be purchased by the Social Security Administration. Should the results of such testing be available, the report should be considered as to the quality and kind of data provided and its applicability to the requirements of the Listing of Impairments. A copy of the report of the catheterization and ancillary studies should be obtained. The report should provide information as to the technique used, the method of assessing coronary lumen diameter, and the nature and location of any obstructive lesions.

It is helpful to know the method used, the number of projections, and whether selective engagement of each coronary vessel was satisfactorily accomplished. It is also important to know whether the injected vessel was entirely and uniformly opacified, thus avoiding the artifactual appearance of narrowing or an obstruction.

Coronary artery spasm induced by intracoronary catheterization is not to be considered as evidence of ischemic heart disease.

Estimation of the functional significance of an obstructive lesion may also be aided by description of how well the distal part of the vessel is visualized. Some patients with significant proximal coronary atherosclerosis have well-developed large collateral blood supply to the distal vessels without evidence of myocardial damage or ischemia, even under conditions of severe stress.

2. *Left ventriculography.* The report should describe the local contractility of the myocardium as may be evident from areas of hypokinesia, dyskinesia, or akinesia; and the overall contractility of the myocardium as measured by the ejection fraction.

3. *Proximal coronary arteries* (see 4.04B7) will be considered as the:

a. Right coronary artery proximal to the acute marginal branch; or

b. Left anterior descending coronary artery proximal to the first septal perforator; or

c. Left circumflex coronary artery proximal to the first obtuse marginal branch.

I. *Results of other tests.* Information from adequate reports of other tests such as radionuclide studies or echocardiography should be considered where that information is comparable to the requirements in the listing. An ejection fraction measured by echocardiography is not determinative, but may be given consideration in the context of associated findings.

J. *Major surgical procedures.* The amount of function restored and the time required to effect improvement after heart or vascular surgery vary with the nature and extent of the disorder, the type of surgery, and other individual factors. If the criteria described for heart or vascular disease are met, proposed heart or vascular surgery (coronary artery bypass procedure, valve replacement, major arterial grafts, etc.) does not militate against a finding of disability with subsequent assessment postoperatively.

The usual time after surgery for adequate assessment of the results of surgery is considered to be approximately 3 months. Assessment of the magnitude of the impairment following surgery requires adequate documentation of the pertinent evaluations and tests performed following surgery, such as an interval history and physical examination, with emphasis on those signs and symptoms which might have changed postoperatively, as well as X-rays and electrocardiograms. Where treadmill exercise tests or angiography have been performed following the surgical procedure, the results of these tests should be obtained.

Documentation of the preoperative evaluation and a description of the surgical procedure are also required. The evidence should be documented from hospital records (catheterization reports, coronary arteriographic reports, etc.) and the operative note.

Implantation of a cardiac pacemaker is not considered a major surgical procedure for purposes of this section.

K. *Evaluation of peripheral arterial disease.* The evaluation of peripheral arterial disease is based on medically acceptable clinical findings providing adequate history and physical examination findings describing the impairment, and on documentation of the appropriate laboratory techniques. The specific findings stated in Listing 4.13 represent the level of severity of that impairment; these findings, by themselves, are not intended to represent the basis for establishing the clinical diagnosis. The level of the impairment is based on the symptomatology, physical findings, Doppler studies before and after a standard exercise test, and/or angiographic findings.

The requirements for evaluation of peripheral arterial disease in Listing 4.13B are based on the ratio of systolic blood pressure at the ankle, determined by Doppler study, to the systolic blood pressure at the brachial artery determined at the same time. Results of plethysmographic studies, or other techniques providing systolic blood pressure determinations at the ankle, should be considered where the information is comparable to the requirements in the listing.

Listing 4.13B.1 provides for determining that the listing is met when the resting ankle/brachial systolic blood pressure ratio is less than 0.50. Listing 4.13B.2 provides additional criteria for evaluating peripheral arterial impairment on the basis of exercise studies when the resting ankle/brachial systolic blood pressure ratio is 0.50 or above. The results of exercise studies should describe the level of exercise (e.g., speed and grade of the treadmill settings), the duration of exercise, symptoms during exercise, the reasons for stopping exercise if the expected level of exercise was not attained, blood pressures at the ankle and other pertinent levels measured after exercise, and the time required to return the systolic blood pressure toward or to, the preexercise level. When exercise Doppler studies are purchased by the Social Security Administration, it is suggested that the requested exercise be on a treadmill at 2 mph. on a 12 percent grade for 5 minutes. Exercise studies should not be performed on individuals for whom exercise is contraindicated. The methodology of a qualified, competent facility should be accepted. In any case, a precise description of the protocol that was followed must be provided.

It must be recognized that application of the criteria in Listing 4.13B may be limited in individuals who have severe calcific (Monckeberg's) sclerosis of the peripheral arteries or severe small vessel disease in individuals with diabetes mellitus.

4.01 Category of Impairments, Cardiovascular System

4.02 *Congestive heart failure (manifested by evidence of vascular congestion such as hepatomegaly, peripheral or pulmonary edema).* With:

A. Persistent congestive heart failure on clinical examination despite prescribed therapy; or

B. Persistent left ventricular enlargement and hypertrophy documented by both:

1. Extension of the cardiac shadow (left ventricle) to the vertebral column on a left lateral chest roentgenogram; and

2. ECG showing QRS duration less than 0.12 second with S_{v_1} plus R_{v_6} (or R_{v_5}) of 35 mm. or greater *and* ST segment depressed more than 0.5 mm. *and* low, diphasic or inverted T waves in leads with tall R waves: or

C. Persistent "mitral" type heart involvement documented by left atrial enlargement shown by double shadow on PA chest roentgenogram (or characteristic distortion of barium-filled esophagus) and either:

1. ECG showing QRS duration less than 0.12 second with S_{v_1} plus R_{v_6} (or R_{v_5}) of 35 mm. or greater *and* ST segment depressed more than 0.5 mm. *and* low, diphasic or inverted T wavers in leads with tall R waves, or

2. ECG evidence of right ventricular hypertrophy with R wave of 5.0 mm. or greater in lead V_1 *and* progressive decrease in R/S amplitude from lead V_1 to V_5 or V_6; or

D. Cor pulmonale (non-acute) documented by both:

1. Right ventricular enlargement (or prominence of the right out-flow tract) on chest roentgenogram or fluoroscopy; and

2. ECG evidence of right ventricular hypertrophy with R wave of 5.0 mm. or greater in lead V_1 *and* progressive decrease in R/S amplitude from lead V_1 to V_5 or V_6

4.03 *Hypertensive vascular disease.* Evaluate under 4.02 04 4.04 or under the criteria for the affected body system.

4.04 *Ischemic heart disease with chest pain or cardiac origin as described in 4.00E* With:

A. Treadmill exercise test (see 4.00 F and (G) demonstrating one of the following at an exercise level of 5 METs or less:

1. Horizontal or downsloping depression (from the standing control) of the ST segment to 1.0 mm. or greater, lasting for at least 0.08 second after the J junction, and clearly

discernible in at least two consecutive complexes which are on a level baseline in any lead; or

2. Junctional depression occurring during exercise, remaining depressed (from the standing control) to 2.0 mm. or greater for at least 0.08 second after the J junction (the so-called slow upsloping ST segment), and clearly discernible in at least two consecutive complexes which are on a level baseline in any lead; or

3. Premature ventricular systoles which are multiform or bidirectional or are sequentially inscribed (3 or more); or

4. ST segment elevation (from the standing control) to 1 mm. or greater; or

5. Development of second or third degree heart block; or

B. In the absence of a report of an acceptable treadmill exercise test (see 4.00G), one of the following:

1. Transmural myocardial infarction exhibiting a QS pattern or a Q wave with amplitude at least ¼rd of R wave and with a duration of 0.04 second or more. (If these are present in leads III and a VF only, the requisite Q wave findings must be shown, by labelled tracing, to persist on deep inspiration); or

2. Resting ECG findings showing ischemic-type (see 4.00F1) depression of ST segment to more than 0.5 mm. in either (a) leads I and a VL and V_6 or (b) leads II and III and a VF or (c) leads V_3 through V_6; or

3. Resting ECG findings showing an ischemic configuration or current of injury (see 4.00F1) with ST segment elevation to 2 mm. or more in either (a) leads I and a VL and V_6 or (b) leads II and III and a VF or (c) leads V_3 through V_6; or

4. Resting ECG findings showing symmetrical inversion of T waves to 5.0 mm. or more in any two leads except leads III or aVR or V_1 or V_2; or

5. Inversion of T wave to 1.0 mm. or more in any of leads I, II, aVL, V_3 to V_6 *and* R wave of 5.0 mm. or more in lead aVL *and* R wave greater than S wave in lead aVF; or

6. "Double" Master Two-Step test demonstrating one of the following:

a. Ischemic depression of ST segment to more than 0.5 mm. lasting for at least 0.08 second beyond the J junction and clearly discernible in at least two consecutive complexes which are on a level baseline in any lead; or

b. Development of a second or third degree heart block; or

7. Angiographic evidence (see 4.00H) (obtained independent of Social Security disability evaluation) showing one of the following:

a. 50 percent or more narrowing of the left main coronary artery; or

b. 70 percent or more narrowing of a *proximal* coronary artery (see 4.00H3) (excluding the left main coronary artery); or

c. 50 percent or more narrowing involving a long (greater than 1 cm.) segment of a proximal coronary artery or multiple proximal coronary arteries; or

8. Akinetic or hypokinetic myocardial wall or septal motion with left ventricular ejection fraction of 30 percent of less measured by contrast or radio-isotopic ventriculographic methods; or

C. Resting ECG findings showing left bundle branch block as evidenced by QRS duration of 0.12 second or more in leads I, II, or III *and* R peak duration of 0.06 second or more in leads I, aVL, V_5, or V_6, unless there is a coronary angiogram of record which is negative (see criteria in 4.04B7).

4.05 *Recurrent arrhythmias* (not due to digitalis toxicity) resulting in uncontrolled repeated episodes of cardiac syncope and documented by resting or ambulatory (Holter) electrocardiography.

4.09 *Myocardiopathies, rheumatic or syphilitic heart disease.* Evaluate under the criteria in 4.02, 4.04, 4.05, or 11.04.

4.11 *Aneurysm of aorta or major branches* (demonstrated by roentgenographic evidence). With:

A. Acute or chronic dissection not controlled by prescribed medical or surgical treatment; or

B. Congestive heart failure as described under the criteria in 4.02; or

C. Renal failure as described under the criteria in 6.02; or

D. Repeated syncopal episodes.

4.12 *Chronic venous insufficiency* of the lower extremity with incompetency or obstruction of the deep venous return, associated with superficial varicosities, extensive brawny edema, stasis dermatitis, and recurrent or persistent ulceration which has not healed following at least 3 months of prescribed medical or surgical therapy.

4.13 *Peripheral arterial disease.* With:

A. Intermittent claudication with failure to visualize (on arteriogram obtained independent of Social Security disability evaluation) the common femoral or deep femoral artery in one extremity; or

B. Intermittent claudication with marked impairment of peripheral arterial circulation as determined by Doppler studies showing:

1. Resting ankle/brachial systolic blood pressure ratio of less than 0.50; or

2. Decrease in systolic blood pressure at ankle or exercise (see 4.00K) to 50 percent or more of preexercise level *and* requiring 10 minutes or more to return to prexercise level; or

C. Amputation at or above the tarsal region due to peripheral arterial disease.

5.00 Digestive System

A. *Disorders of the digestive system* which result in a marked impairment usually do so because of interference with nutrition, multiple recurrent inflammatory lesions, or complications of disease, such as fistulae, abscesses, or recurrent obstruction. Such complications usually respond to treatment. These complications must be shown to persist on repeated examinations despite therapy for a reasonable presumption to be made that a marked impairment will last for a continuous period of at least 12 months.

B. *Malnutrition or weight loss from gastrointestinal disorders.* When the primary disorder of the digestive tract has been established (e.g. enterocolitis, chronic pancreatitis, postgastrointestinal resection, or esophageal stricture, stenosis, or obstruction), the resultant interference with nutrition will be considered under the criteria in 5.06. This will apply whether the weight loss is due to primary or secondary disorders of malabsorption, malassimilation or obstruction. However, weight loss not due to diseases of the digestive tract, but associated with psychiatric or primary endocrine or other disorders, should be evaluated under the appropriate criteria for the underlying disorder.

C. *Surgical diversion of the intestinal tract,* including colostomy or ileostomy, are not listed since they do not represent impairments which preclude all work activity if the individual is able to maintain adequate nutrition and function of the stoma. Dumping syndrome which may follow gastric resection rarely represents a marked impairment which would continue for 12 months. Peptic ulcer disease with recurrent ulceration after definitive surgery ordinarily responds to treatment. A recurrent ulcer after definitive surgery must be demonstrated on repeated upper gastrointestinal roentgenograms or gastroscopic examinations despite therapy to be considered a severe impairment which will last for at least 12 months. Definitive surgical procedures are those designed to control the ulcer disease process (i.e., vagotomy and pyloroplasty, subtotal gastrectomy, etc.). Simple closure of a perforated ulcer does not constitute definitive surgical therapy for peptic ulcer disease.

5.01 Category of Impairments, Digestive System

5.02 *Recurrent upper gastrointestinal hemorrhage from undetermined cause* with anemia manifested by hematocrit of 30 percent or less on repeated examinations.

5.03 *Stricture, stenosis, or obstruction of the esophagus (demonstrated by X-ray or endoscopy)* with weight loss as described under 5.06.

5.04 *Peptic ulcer disease (demonstrated by X-ray or endoscopy).* With:

A. Recurrent ulceration after definitive surgery persistent despite therapy; or

B. Inoperable fistula formation; or

C. Recurrent obstruction demonstrated by X-ray or endoscopy. or

D. Weight loss as described under 5.06.

5.05 *Chronic liver disease (e.g., portal, postnecrotic, or biliary cirrhosis; chronic active hepatitis; Wilson's disease).* With:

A. Esophageal varices (demonstrated by X-ray or endoscopy) with a documented history of massive hemorrhage attributable to these varices. Consider under a disability for 3 years following the last massive hemorrhage; thereafter, evaluate the residual impairment; or

B. Performance of a shunt operation for esophageal varices. Consider under a disability for 3 years following surgery; thereafter, evaluate the residual impairment; or

C. Serum bilirubin of 2.5 mg. per deciliter (100 ml.) or greater persisting on repeated examinations for at least 5 months; or

D. Ascites, not attributable to other causes, recurrent or persisting for at least 5 months, demonstrated by abdominal paracentesis or associated with persistent hypoalbuminemia of 3.0 gm. per deciliter (100 ml.) or less; or

E. Hepatic encephalopathy. Evaluate under the criteria in listing 12.02; or

F. Confirmation of chronic liver disease by liver biopsy (obtained independent of Social Security disability evaluation) and one of the following:

1. Ascites not attributable to other causes, recurrent or persisting for at least 3 months, demonstrated by abdominal paracentesis or associated with persistent hypoalbuminemia of 3.0 gm. per deciliter (100 ml.) or less; or

2. Serum bilirubin of 2.5 mg. per deciliter (100 ml) or greater on repeated examinations for at least 3 months; or

3. Hepatic cell necrosis or inflammation, persisting for at least 3 months, documented by repeated abnormalities of prothrombin time and enzymes indicative of hepatic dysfunction.

5.06 *Chronic ulcerative or granulomatous colitis (demonstrated by endoscopy, barium enema, biopsy, or operative findings).* With:

A. Recurrent bloody stools documented on repeated examinations and anemia manifested by hematocrit of 30 percent or less on repeated examinations; or

B. Persistent or recurrent systemic manifestations, such as arthritis, iritis, fever, or liver dysfunction, not attributable to other causes; or

C. Intermittent obstruction due to intractable abscess, fistula formation, or stenosis; or

D. Recurrence of findings of A, B, or C above after total colectomy; or

E. Weight loss as described under 5.06.

5.07 *Regional enteritis (demonstrated by operative findings, barium studies, biopsy, or endoscopy).* With:

A. Persistent or recurrent intestinal obstruction evidenced by abdominal pain, distention, nausea, and vomiting and accompanied by stenotic areas of small bowel with proximal intestinal dilation; or

B. Persistent or recurrent systemic manifestations such as arthritis, iritis, fever, or liver dysfunction, not attributable to other causes; or

C. Intermittent obstruction due to intractable abscess or fistula formation; or

D. Weight loss as described under 5.06.

5.08 *Weight loss due to any persisting gastrointestinal disorder.* (The following weights are to be demonstrated to have persisted for at least 3 months despite prescribed therapy and expected to persist at this level for at least 12 months.) With:

A. Weight equal to or less than the values specified in Table I or II; or

B. Weight equal to or less than the values specified in Table III or IV and one of the following abnormal findings on repeated examinations:

1. Serum albumin of 3.0 gm. per deciliter (100 ml.) or less; or

2. Hematocrit of 30 percent or less; or

3. Serum calcium of 8.0 mg. per deciliter (100 ml.) (4.0 mEq./L) or less; or

4 Uncontrolled diabetes mellitus due to pancreatic dysfunction with repeated hyperglycemia, hypoglycemia, or ketosis; or

5. Fat in stool of 7 gm. or greater per 24-hour stool specimen; or

6. Nitrogen in stool of 3 gm. or greater per 24-hour specimen; or

7. Persistent or recurrent ascites or edema not attributable to other causes.

Tables of weight reflecting malnutrition scaled according to height and sex—To be used only in connection with 5.06.

TABLE I—MEN

Height (inches) [1]	Weight (pounds)
61	90
62	92
63	94
64	97
65	99
66	102
67	106
68	109
69	112
70	115
71	118
72	122
73	125
74	128
75	131
76	134

[1] Height measured without shoes.

TABLE II—WOMEN

Height (inches) [1]	Weight (pounds)
58	77
59	79
60	82
61	84
62	86
63	89
64	91
65	94
66	98
67	101
68	104
69	107
70	110
71	114
72	117
73	120

[1] Height measured without shoes.

TABLE III—MEN

Height (inches) [1]	Weight (pounds)
61	95
62	98
63	100
64	103
65	106
66	109
67	112
68	116
69	119
70	122
71	126
72	129
73	133
74	136
75	139
76	143

[1] Height measured without shoes.

TABLE IV—WOMEN

Height (inches) [1]	Weight (pounds)
58	82
59	84
60	87
61	89

TABLE IV—WOMEN—Continued

Height (inches) [1]	Weight (pounds)
62	92
63	94
64	97
65	100
66	104
67	107
68	111
69	114
70	117
71	121
72	124
73	128

[1] Height measured without shoes.

6.00 Genito-Urinary System

A. *Determination of the presence of chronic renal disease will be based upon* (1) a history, physical examination, and laboratory evidence of renal disease, and (2) indications of its progressive nature or laboratory evidence of deterioration of renal function.

B. *Nephrotic Syndrome.* The medical evidence establishing the clinical diagnosis must include the description of extent of tissue edema, including pretibial, periorbital, or presacral edema. The presence of ascites, pleural effusion, pericardial effusion, and hydroarthrosis should be described if present. Results of pertinent laboratory tests must be provided. If a renal biopsy has been performed, the evidence should include a copy of the report of microscopic examination of the specimen. Complications such as severe orthostatic hypotension, recurrent infections or venous thromboses should be evaluated on the basis of resultant impairment.

C. *Hemodialysis, peritioneal dialysis, and kidney transplantation.* When an individual is undergoing periodic dialysis because of chronic renal disease, severity of impairment is reflected by the renal function prior to the institution of dialysis.

The amount of function restored and the time required to effect improvement in an individual treated by renal transplant depend upon various factors, including adequacy of post transplant renal function, incidence and severity of renal infection, occurrence of rejection crisis, the presence of systemic complications (anemia, neunropathy, etc.) and side effects of corticosteroids or immuno-suppressive agents. A convalesent period of at least 12 months is required before it can be reasonably determined whether the individual has reached a point of stable medical improvement.

D. *Evaluate associated disorders and complications* according to the appropriate body system Listing.

6.01 Category of Impairments, Genito-Urinary System

6.02 Impairment of renal function, due to any chronic renal disease expected to last 12 months (e.g., hypertensive vascular disease, chronic nephritis, nephrolithiasis, polycystic disease, bilateral hydronephrosis, etc.) With:

A. Chronic hemodialysis or peritoneal dialysis necessitated by irreversible renal failure; or

B. Kidney transplant. Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment (see 6.00C); or

C. Persistent elevation of serum creatine in to 4 mg. per deciliter (100 ml.) or greater or reduction of creatinine clearance to 20 ml. per minute (29 liters/24 hours) or less, over at least 3 months, with one of the following:

1. Renal osteodystrophy manifested by severe bone pain and appropriate radiographic abnormalities (e.g., osteitis fibrosa, marked osteoporosis, pathologic fractures); or

2. A clinical episode of pericarditis; or

3. Persistent motor or sensory neuropathy; or

4. Intractable pruritus; or

5. Persistent fluid overload syndrome resulting in diastolic hypertension (110 mm. or above) or signs of vascular congestion; or

6. Persistent anorexia with recent weight loss and current weight meeting the values in 5.06, Table III or IV; or

7. Persistent hematocrits of 30 percent or less.

6.08 *Nephrotic syndrome, with significant anasarca, persistent for at least 3 months despite prescribed therapy.* With:

A. Serum albumin of 3.0 gm. per deciler (100 ml.) or less *and* protenuria of 3.5 gm. per 24 hours or greater; or

B. Proteinuria of 10.0 gm. per 24 hours or greater.

7.00 Hemic and Lymphatic System

A. *Impairment caused by anemia* should be evaluated according to the ability of the individual to adjust to the reduced oxygen carrying capacity of the blood. A gradual reduction in red cell mass, even to very low values, is often well tolerated in individuals with a healthy cardiovascular system.

B. *Chronicity is indicated by* persistence of the condition for at least 3 months. The laboratory findings cited must reflect the values reported on more than one examination over that 3-month period.

C. *Sickle cell disease* refers to a chronic hemolytic anemia associated with sickle cell hemoglobin, either homozygous or in combination with thalassemia or with another abnormal hemoglobin (such as C or F).

Appropriate hematologic evidence for sickle cell disease, such as hemoglobin electrophoresis, must be included. Vasoocclusive or aplastic episodes should be documented by description of severity, frequency, and duration.

Major visceral episodes include meningitis, osteomyelitis, pulmonary infections or infarctions, cerebrovascular accidents, congestive heart failure, genito-urinary involvement, etc.

D. *Coagulation defects.* Chronic inherited coagulation disorders must be documented by appropriate laboratory evidence. Prophylactic therapy such as with antihemophilic globulin (AHG) concentrate does not in itself imply severity.

E. *Acute leukemia.* Initial diagnosis of acute leukemia must be based upon definitive bone marrow pathologic evidence. Recurrent disease may be documented by peripheral blood, bone marrow, or cerebrospinal fluid examination. The pathology report must be included.

The acute phase of chronic myelocytic (granulocytic) leukemia should be considered under the requirements for acute leukemia.

The criteria in 7.11 contain the designated duration of disability implicit in the finding of a listed impairment. Following the designated time period, a documented diagnosis itself is no longer sufficient to establish a marked impairment. The level of any remaining impairment must be evaluated on the basis of the medical evidence.

7.01 Category of Impairments, Hemic and Lymphatic System

7.02 *Chronic anemia (hematocrit persisting at 30 percent or less due to any cause).* With:

A. Requirement of one or more blood transfusions on an average of at least once every 2 months; or

B. Evaluation of the resulting impairment under criteria for the affected body system.

7.05 *Sickle cell disease, or one of its variants.* With:

A. Documented painful (thrombotic) crises occurring at least three times during the 5 months prior to adjudication; or

B. Requiring extended hospitalization (beyond emergency care) at least three times during the 12 months prior to adjudication; or

C. Chronic, severe anemia with persistence of hematocrit of 26 percent or less; or

D. Evaluate the resulting impairment under the criteria for the affected body system.

7.06 *Chronic thrombocytopenia (due to any cause)* with platelet counts repeatedly below 40,000/cubic millimeter. With:

A. At least one spontaneous hemorrhage, requiring transfusion, within 5 months prior to adjudication; or

B. Intracranial bleeding within 12 months prior to adjudication.

7.07 *Hereditary telangiectasia* with hemorrhage requiring transfusion at least three times during the 5 months prior to adjudication.

7.08 *Coagulation defects (hemophilia or a similar disorder)* with spontaneous hemorrhage requiring transfusion at least three times during the 5 months prior to adjudication.

7.09 *Polycythemia vera (with erythrocytosis, splenomegaly, and leukocytosis or thrombocytosis).* Evaluate the resulting impairment under the criteria for the affected body system.

7.10 *Myelofibrosis (myeloproliferative syndrome).* With:

A. Chronic anemia. Evaluate according to the criteria of § 7.02; or

B. Documented recurrent systemic bacterial infections occurring at least 3 times during the 5 months prior to adjudication; or

C. Intractable bone pain with radiologic evidence of osteosclerosis.

7.11 *Acute leukemia.* Consider under a disability for 2½ years from the time of initial diagnosis.

7.12 *Chronic leukemia.* Evaluate according to the criteria of 7.02, 7.06, 7.10B, 7.11, 7.17, or 13.06A.

7.13 *Lymphomas.* Evaluate under the criteria in 13.06A.

7.14 *Macroglobulinemia or heavy chain disease,* confirmed by serum or urine protein electrophoresis or immunoelectrophoresias. Evaluate impairment under criteria for affected body system or under 7.02, 7.06, or 7.08.

7.15 *Chronic granulocytopenia (due to any cause).* With both A and B:

A. Absolute neutrophil counts repeatedly below 1,000 cells/cubic millimeter; and

B. Documented recurrent systemic bacterial infections occurring at least 3 times during the 5 months prior to adjudication.

7.16 *Myeloma (confirmed by appropriate serum or urine protein electrophoresis and bone marrow findings).* With:

A. Radiologic evidence of bony involvement with intractable bone pain; or

B. Evidence of renal impairment as described in 6.02; or

C. Hypercalcemia with serum calcium levels persistently greater than 11 mg. per deciliter (100 ml.) for at least 1 month despite prescribed therapy; or

D. Plasma cells (100 or more cells/cubic millimeter) in the peripheral blood.

7.17 *Aplastic anemias or hematologic malignancies (excluding acute leukemia):* With bone marrow transplantation. Consider under a disability for 12 months following transplantation; thereafter, evaluate according to the primary characteristics of the residual impairment.

8.00 Skin

A. *Skin lesions* may result in a marked, long-lasting impairment if they involve extensive body areas or critical areas such as the hands or feet and become resistant to treatment. These lesions must be shown to have persisted for a sufficient period of time despite therapy for a reasonable presumption to be made that a marked impairment will last for a continuous period of at least 12 months. The treatment for some of the skin diseases listed in this section may require the use of high dosage of drugs with possible serious side effects; these side effects should be considered in the overall evaluation of impairment.

B. *When skin lesions are associated with systemic disease* and where that is the predominant problems, evaluation should occur according to the criteria in the appropriate section. Disseminated (systemic) lupus erythematosus and scleroderma usually involve more than one body system and should be evaluated under 10.04 and 10.05. Neoplastic skin lesions should be evaluated under 13.00ff. When skin lesions (including burns) are associated with contractures or limitation of joint motion, that impairment should be evaluated under 1.00ff.

8.01 Category of Impairments, Skin

8.02 *Exfoliative dermatitis, ichthyosis, ichthyosiform erythroderma.* With extensive lesions not responding to prescribed treatment.

8.03 *Pemphigus, erythema multiforme bullosum, bullous pemphigoid, dermatitis herpetiformis.* With extensive lesions not responding to prescribed treatment.

8.04 *Deep mycotic infections. With extensive fungating, ulcerating lesions not responding to prescribed treatment.*

8.05 *Psoriasis, atopic dermatitis, dyshidrosis.* With extensive lesions, including involvement of the hands or feet which impose a marked limitation of function and which are not responding to prescribed treatment.

8.06 *Hydradenitis suppurative, acne conglobata.* With extensive lesions involving the axillae or perineum not responding to prescribed medical treatment and not amendable to surgical treatment.

9.00 Endocrine System

Cause of impairment. Impairment is caused by overproduction or underproduction of hormones, resulting in structural or functional changes in the body. Where involvement of other organ systems has occurred as a result of a primary endocrine disorder, these impairments should be evaluated according to the criteria under the appropriate sections.

9.01 Category of Impairments, Endocrine

9.02 *Thyroid Disorders.* With:

A. Progressive exophthalmos as measured by exophthalmometry; or

B. Evaluate the resulting impairment under the criteria for the affected body system.

9.03 *Hyperparathyroidism.* With:

A. Generalized decalcification of bone on X-ray study and elevation of plasma calcium to 11 mg. per deciliter (100 ml.) or greater; or

B. A resulting impairment. Evaluate according to the criteria in the affected body system.

9.04 *Hypoparathyroidism.* With:

A. Severe recurrent tetany; or

B. Recurrent generalized convulsions; or

C. Lenticular cataracts. Evaluate under the criteria in 2.00ff.

9.05 *Neurohypophyseal insufficiency (diabetes insipidus).* With urine specific gravity of 1.005 or below, persistent for at least 3 months and recurrent dehydration.

9.06 *Hyperfunction of the adrenal cortex.* Evaluate the resulting impairment under the criteria for the affected body system.

9.08 *Diabetes mellitus.* With:

A. Neuropathy demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C); or

B. Acidosis occurring at least on the average of once every 2 months documented by appropriate blood chemical tests (pH or pCO2 or bicarbonate levels); or

C. Amputation at, or above, the tarsal region due to diabetic necrosis or peripheral arterial disease; or

D. Retinitis proliferans; evaluate the visual impairment under the criteria in 2.02, 2.03, or 2.04.

10.00 Multiple Body Systems

A. The impairments included in this section usually involve more than a single body system.

B. Long-term obesity will usually be associated with disorders in the musculoskeletal, cardiovascular, peripheral vascular, and pulmonary systems, and the advent of such disorders is the major cause of impairment. Extreme obesity results in restrictions imposed by body weight and the additional restrictions imposed by disturbances in other body systems.

10.01 Category of Impairments, Multiple Body Systems

10.02 *Hansen's disease (leprosy).* As active disease or consider as "under a disability" while hospitalized.

10.03 *Polyarteritis or periarteritis nodosa (established by biopsy).* With signs of generalized arterial involvement.

10.04 *Disseminated lupus erythematosus (established by a positive LE preparation or biopsy or positive ANA test).* With frequent exacerbations demonstrating involvement of renal or cardiac or pulmonary or gastrointestinal or central nervous systems.

10.05 *Scleroderma or progressive systemic sclerosis (the diffuse or generalized form).* With:

A. Advanced limitation of use of hands due to sclerodactylia or limitation in other joints; or

B. Significant visceral manifestations of digestive, cardiac, or pulmonary impairment.

10.10 *Obesity.* Weight equal to or greater than the values specified in Table I for males, Table II for females (100 percent above desired level) and one of the following:

A. History of pain and limitation of motion in any weight bearing joint or spine (on physical examination) associated with X-ray evidence of arthritis in a weight bearing joint or spine; or

B. Hypertension with diastolic blood pressure persistently in excess of 100 mm. Hg measured with appropriate size cuff; or

C. History of congestive heart failure manifested by past evidence of vascular congestion such as hepatomegaly, peripheral or pulmonary edema; or

D. Chronic venous insufficiency with superficial varicosities in a lower extremity with pain on weight bearing and persistent edema; or

E. Respiratory disease with total forced vital capacity equal to or less than 2.0 L or a level of hypoxemia at rest equal to or less than the values specified in Table III–A or III–B or III–C.

TABLE I—MEN

Height without shoes (inches)	Weight (pounds)
60	246
61	252
62	258
63	264
64	270
65	278
66	284
67	294
68	302
69	310
70	318
71	328
72	336
73	346
74	356
75	364
76	374

TABLE II—WOMEN

Height without shoes (inches)	Weight (pounds)
56	206
57	212
58	218
59	224
60	230
61	236
62	242
63	250
64	258
65	266
66	274
67	282
68	290
69	298
70	306
71	314
72	322

TABLE III—A

[Applicable at test sites less than 3,000 feet above sea level]

Arterial PCO_2 (mm. Hg) and	Arterial PO_2 equal to or less than (mm. Hg)
30 or below	65
31	64
32	63
33	62
34	61
35	60
36	59
37	58
38	57
39	56
40 or above	55

TABLE III—B

[Applicable at test sites 3,000 through 6,000 feet above sea level]

Arterial PCO_2 (mm. Hg) and	Arterial PO_2 equal to or less than (mm. Hg)
30 or below	60
31	59
32	58
33	57
34	56
35	55
36	54
37	53
38	52
39	51
40 or above	50

BEST COPY AVAILABLE

TABLE III—C

[Applicable at test sites over 6,000 feet above sea level]

Arterial PCO_2 (mm. Hg) and	Arterial PO_2 equal to or less than (mm. Hg)
30 or below	55
31	54
32	53
33	52
34	51
35	50
36	49
37	48
38	47
39	46
40 or above	45

11.00 Neurological

A. *Convulsive disorders.* In convulsive disorders, regardless of etiology degree of impairment will be determined according to type, frequency, duration, and sequelae of seizures. At least one detailed description of a typical seizure is required. Such descripiton includes the presence or absence of aura, tongue bites, sphincter control, injuries associated with the attack, and postictal phenomena. The reporting physician should indicate the extent to which description of seizures reflects his own observations and the source of ancillary information. Testimony of persons other than the claimant is essential for description of type and frequency of seizures if professional observation is not available.

Documentation of epilepsy should include at least one electronencephalogram (EEG).

Under 11.02 and 11.03, the criteria can be applied only if the impairment persists despite the fact that the individual is following prescribed anticonvulsive treatment. Adherence to prescribed anticonvulsive therapy can ordinarily be determined from objective clinical findings in the report of the physician currently providing treatment for epilepay. Determination of blood levels of phenytoin sodium or other anticonvulsive drugs may serve to indicate whether the prescribed medication is being taken. When seizures are occurring at the frequency stated in 11.02 or 11.03, evalution of the severity of the impairment must include consideration of the serum drug levels. Should serum drug levels appear therapeutically inadequate, consideration should be given as to whether this is caused by individual idiosyncrasy in absorption of metabolism of the drug. Blood drug levels should be evaluated in conjunction with all the other evidence to determine the extent of compliance. When the reported blood drug levels are low, therefore, the information obtained from the treating source should include the physician's statement as to why the levels are low and the results of any relevant diagnostic studies concerning the blood levels. Where adequate seizure control is obtained only with unusually large doses, the possibility of impairment resulting from the side effects of this medication must be also assessed. Where documentation shows that use of alcohol or drugs affects adherence to prescribed therapy or may play a part in the precipitation of seizures, this must also be considered in the overall assessment of impairment level.

B. *Brain tumors.* The diagnosis of malignant brain tumors must be established, and the persistence of the tumor should be evaluated, under the criteria described in 13.00B and C for neoplastic disease.

In histologically malignant tumors, the pathological diagnosis alone will be the decisive criterion for severity and expected duration (see 11.05A). For other tumors of the brain, the severity and duration of the impairment will be determined on the basis of symptoms, signs, and pertinent laboratory findings (11.05B).

C. *Persistent disorganization of motor function* in the form of paresis or paralysis, tremor or other involuntary movements, ataxia and sensory distrubances (any or all of which may be due to cerebral cerbellar, brain stem, spinal cord, or peripheral nerve dysfunction) which occur singly or in various combination, frequently provides the sole or partial basis for decision in cases of neurological impairment. The assessment of impairment depends on the degree of interference with locomotion and/or interference with the use of fingers, hands, and arms.

D. *In conditions which are episodic in character,* such as multiple sclerosis or myasthenia gravis, consideration should be given to frequency and duration of exacerbations, length of remissions, and permanent residuals.

E. *Multiple sclerosis.* The major criteria for evaluating impairment caused by multiple sclerosis are discussed in listing 11.09. Paragraph A provides criteria for evaluating disorganization of motor function and gives reference to 11.04B (11.04B then refers to 11.00C). Paragraph B provides references to other listings for evaluating visual or mental impairments caused by multiple sclerosis. Paragraph C provides criteria for evaluating the impairment of individuals who do not have muscle weakness or other significant disorganization of motor function at rest, but who do develop muscle weakness on activity as a result of fatigue.

Use of the criteria in 11.09C is dependent upon (1) documenting a diagnosis of multiple sclerosis, (2) obtaining a description of fatigue considered to be characteristic of multiple sclerosis, and (3) obtaining evidence that the system has actually become fatigued. The evaluation of the magnitude of the impairment must consider the degree of exercise and the severity of the resulting muscle weakness.

The criteria in 11.09C deals with motor abnormalities which occur on activity. If the disorganization of motor function is present at rest, paragraph A must be used, taking into account any further increase in muscle weakness resulting from activity.

Sensory abnormalities may occur, particularly involving central visual acuity. The decrease in visual acuity may occur after brief attempts at activity involving near vision, such as reading. This decrease in visual acuity may not persist when the specific activity is terminated, as with rest, but is predictably reproduced with resumption of the activity. The impairment of central visual acuity in these cases should be evaluated under the criteria in listing 2.02, taking into account the fact that the decrease in visual acuity will wax and wane.

Clarification of the evidence regarding central nervous system dysfunction responsible for the symptoms may require supporting technical evidence of functional impairment such as evoked response tests during exercise.

11.01 Category of Impairments, Neurological

11.02 *Epilepsy—major motor seizures, (grand mal or psychomotor), documented by EEG and by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once a month, in spite of at least 3 months of prescribed treatment.* With:

A. Daytime episodes (loss of consciousness and convulsive seizures) or

B. Nocturnal episodes manifesting residuals which interfere significantly with activity during the day.

11.03 *Epilepsy—Minor motor seizures (petit mal, psychomotor, or focal), documented by EEG and by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once weekly in spite of at least 3 months of prescribed treatment.* With alteration of awareness or loss of consciousness and transient postictal manifestations of unconventional behavior or significant interference with activity during the day.

11.04 *Central nervous system vascular accident.* With one of the following more than 3 months post-vascular accident:

A. Sensory or motor aphasia resulting in ineffective speech or communication; or

B. Significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C).

11.05 *Brain tumors.*

A. Malignant gliomas (astrocytoma—grades III and IV, glioblastoma multiforme), medulloblastoma, ependymoblastoma, or primary sarcoma; or

B. Astrocytoma (grades I and II), meningioma, pituitary tumors, oligodendroglioma, ependymoma, clivus chordoma, and benign tumors. Evaluate under 11.02, 11.03, 11.04 A, or B, or 12.02.

11.06 *Parkinsonian syndrome* with the following signs: Significant rigidity, brady kinesia, or tremor in two extremities, which, singly or in combination, result in sustained disturbance of gross and dexterous movements, or gait and station.

11.07 *Cerebral palsy.* With:

A. IQ of 69 or less; or

B. Abnormal behavior patterns, such as destructiveness or emotional instability; or

C. Significant interference in communication due to speech, hearing, or visual defect; or

D. Disorganization of motor function as described in 11.04B.

11.08 *Spinal cord or nerve root lesions, due to any cause* with disorganization of motor function as described in 11.04B.

11.09 *Multiple sclerosis.* With:

A. Disorganization of motor function as described in 11.04B; or

B. Visual or mental impairment as described under the criteria in 2.02, 2.03, 2.04, or 12.02; or

C. Significant, reproducible fatigue of motor function with substantial muscle weakness on repetitive activity, demonstrated on physical examination, resulting from neurological dysfunction in areas of the central nervous system known to be pathologically involved by the multiple sclerosis process.

11.10 *Amyotrophic lateral sclerosis. With:*

A. Significant bulbar signs; or

B. Disorganization of motor function as described in 11.04B.

11.11 *Anterior poliomyelitis.* With:

A. Persistent difficulty with swallowing or breathing; or

B. Unintelligible speech; or

C. Disorganization of motor function as described in 11.04B.

11.12 *Myasthenia gravis.* With:

A. Significant difficulty with speaking, swallowing, or breathing while on prescribed therapy; or

B. Significant motor weakness of muscles of extremities on repetitive activity against resistance while on prescribed therapy.

11.13 *Muscular dystrophy* with disorganization of motor function as described in 11.04B.

11.14 *Peripheral neuropathies.* With disorganization of motor function as described in 11.04B, in spite of prescribed treatment.

11.15 *Tabes dorsalis.* With:

A. Tabetic crises occurring more frequently than once monthly; or

B. Unsteady, broad-based or ataxic gait causing significant restriction of mobility substantiated by appropriate posterior column signs.

11.16 *Subacute combined cord degeneration (pernicious anemia) with disorganization of motor function as decribed in 11.04B or 11.15B, not significantly improved by prescribed treatment.*

11.17 *Degenerative disease not elsewhere such as Huntington's chorea, Friedreich's ataxia, and spino-cerebellar degeneration.* With:

A. Disorganization of motor function as described in 11.04B or 11.15B; or

B. Chronic brain syndrome. Evaluate under 12.02.

11.18 *Cerebral trauma:* Evaluate under the provisions of 11.02, 11.03, 11.04 and 12.02, as applicable.

11.19 *Syringomyelia.* With:

A. Significant bulbar signs; or

B. Disorganization of motor function as described in 11.04B.

12.00 Mental Disorders

The mental disorders listings in 12.00 of the Listing of Impairments will no longer be effective on August 28, 1990 unless extended by the Secretary or revised and promulgated again.

A. *Introduction:* The evaluation of disability on the basis of mental disorders requires the documentation of a medically determinable impairment(s) as well as consideration of the degree of limitation such impairment(s) may impose on the individual's ability to work and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. The listings for mental disorders are arranged in eight diagnostic categories: organic mental disorders (12.02); schizophrenic, paranoid and other psychotic disorders (12.03); affective disorders (12.04); mental retardation and autism (12.05); anxiety related disorders (12.06); somatoform disorders (12.07); personality disorders (12.08); and substance addiction disorders (12.09). Each diagnostic group, except listings 12.05 and 12.09, consists of a set of clinical findings (paragraph A criteria), one or more of which must be met, and which, if met, lead to a test of functional restrictions (paragraph B criteria), two or three of which must also be met. There are additional considerations (paragraph C criteria) in listings 12.03 and 12.06, discussed therein.

The purpose of including the criteria in paragraph A of the listings for mental disorders is to medically substantiate the presence of a mental disorder. Specific signs and symptoms under any of the listings 12.02 through 12.09 cannot be considered in isolation from the description of the mental disorder contained at the beginning of each listing category. Impairments should be analyzed or reviewed under the mental category(ies) which is supported by the individual's clinical findings.

The purpose of including the criteria in paragraphs B and C of the listings for mental disorders is to describe those functional limitations associated with mental disorders which are incompatible with the ability to work. The restrictions listed in paragraphs B and C must be the result of the mental disorder which is manifested by the clinical findings outlined in paragraph A. The criteria included in paragraphs B and C of the listings for mental disorders have been chosen because they represent functional areas deemed essential to work. An individual who is severely limited in these areas as the result of an impairment identified in paragraph A is presumed to be unable to work.

The structure of the listing for substance addiction disorders, listing 12.09, is different from that for the other mental disorder listings. Listing 12.09 is structured as a reference listing; that is, it will only serve to indicate which of the other listed mental or physical impairments must be used to evaluate the behavioral or physical changes resulting from regular use of addictive substances.

The listings for mental disorders are so constructed that an individual meeting or equaling the criteria could not reasonably be expected to engage in gainful work activity.

Individuals who have an impairment with a level of severity which does not meet the criteria of the listings for mental disorders may or may not have the residual functional capacity (RFC) which would enable them to engage in substantial gainful work activity. The determination of mental RFC is crucial to the evaluation of an individual's capacity to engage in substantial gainful work activity when the criteria of the listings for mental disorders are not met or equaled but the impairment is nevertheless severe.

RFC may be defined as a multidimensional description of the work-related abilities which an individual retains in spite of medical impairments. RFC complements the criteria in paragraphs B and C of the listings for mental disorders by requiring consideration of an expanded list of work-related capacities which may be impaired by mental disorder when the impairment is severe but does not meet or equal a listed mental disorder. (While RFC may be applicable in most claims, the law specifies that it does not apply to the following special claims categories: disabled title XVI children below age 18, widows, widowers and surviving divorced wives. The impairment(s) of these categories must meet or equal a listed impairment for the individual to be eligible for benefits based on disability.)

B. *Need for Medical Evidence:* The existence of a medically determinable impairment of the required duration must be established by medical evidence consisting of clinical signs, symptoms and/or laboratory or psychological test findings. These findings may be intermittent or persistent depending on the nature of the disorder. Clinical signs are medically demonstrable phenomena which reflect specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality. These signs are typically assessed by a psychiatrist or psychologist and/or documented by psychological tests. Symptoms are complaints presented by the individual. Signs and symptoms generally cluster together to constitute recognizable clinical syndromes (mental disorders). Both symptoms and signs which are part of any diagnosed mental disorder must be considered in evaluating severity.

C. *Assessment of Severity:* For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph B of the listings for mental disorders (descriptions of restrictions of activities of daily living; social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work). Where "marked" is used as a standard for measuring the degree of limitation, it means more than moderate, but less than extreme. A marked limitation may arise when several activities or functions are impaired or even when only one is impaired, so long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately and effectively. Four areas are considered.

1. *Activities of daily living* include adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. In the

context of the individual's overall situation, the quality of these activities is judged by their independence, appropriateness and effectiveness. It is necessary to define the extent to which the individual is capable of initiating and participating in activities independent of supervision or direction.

"Marked" is not the number of activities which are restricted but the overall degree of restriction or combination of restrictions which must be judged. For example, a person who is able to cook and clean might still have marked restrictions of daily activities if the person were too fearful to leave the immediate environment of home and neighborhood, hampering the person's ability to obtain treatment or to travel away from the immediate living environment.

2. *Social functioning* refers to an individual's capacity to interact appropriately and communicate effectively with other individuals. Social functioning includes the ability to get along with others, e.g., family members, friends, neighbors, grocery clerks, landlords, bus drivers, etc. Impaired social functioning may be demonstrated by a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, social isolation, etc. Strength in social functioning may be documented by an individual's ability to initiate social contacts with others, communicate clearly with others, interact and actively participate in group activities, etc. Cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity also need to be considered. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority, e.g., supervisors, or cooperative behaviors involving coworkers.

"Marked" is not the number of areas in which social functioning is impaired, but the overall degree of interference in a particular area or combination of areas of functioning. For example, a person who is highly antagonistic, uncooperative or hostile but is tolerated by local storekeepers may nevertheless have marked restrictions in social functioning because that behavior is not acceptable in other social contexts.

3. *Concentration, persistence and pace* refer to the ability to sustain focused attention sufficiently long to permit the timely completion of tasks commonly found in work settings. In activities of daily living, concentration may be reflected in terms of ability to complete tasks in everyday household routines. Deficiencies in concentration, persistence and pace are best observed in work and work-like settings. Major impairment in this area can often be assessed through direct psychiatric examination and/or psychological testing, although mental status examination or psychological test data alone should not be used to accurately describe concentration and sustained ability to adequately perform work-like tasks. On mental status examinations, concentration is assessed by tasks such as having the individual subtract serial sevens from 100. In psychological tests of intelligence or memory, concentration is assessed through tasks requiring short-term memory or through tasks that must be completed within established time limits. In work evaluations, concentration, persistence, and pace are assessed through such tasks as filing index cards, locating telephone numbers, or disassembling and reassembling objects. Strengths and weaknesses in areas of concentration can be discussed in terms of frequency of errors, time it takes to complete the task, and extent to which assistance is required to complete the task.

4. *Deterioration or decompensation in work or work-like settings* refers to repeated failure to adapt to stressful circumstances which cause the individual either to withdraw from that situation or to experience exacerbation of signs and symptoms (i.e., decompensation) with an accompanying difficulty in maintaining activities of daily living, social relationships, and/or maintaining concentration, persistence, or pace (i.e., deterioration which may include deterioration of adaptive behaviors). Stresses common to the work environment include decisions, attendance, schedules, completing tasks, interactions with supervisors, interactions with peers, etc.

D. *Documentation:* The presence of a mental disorder should be documented primarily on the basis of reports from individual providers, such as psychiatrists and psychologists, and facilities such as hospitals and clinics. Adequate descriptions of functional limitations must be obtained from these or other sources which may include programs and facilities where the individual has been observed over a considerable period of time.

Information from both medical and nonmedical sources may be used to obtain detailed descriptions of the individual's activities of daily living; social functioning; concentration, persistence and pace; or ability to tolerate increased mental demands (stress). This information can be provided by programs such as community mental health centers, day care centers, sheltered workshops, etc. It can also be provided by others, including family members, who have knowledge of the individual's functioning. In some cases descriptions of activities of daily living or social functioning given by individuals or treating sources may be insufficiently detailed and/or may be in conflict with the clinical picture otherwise observed or described in the examinations or reports. It is necessary to resolve any inconsistencies or gaps that may exist in order to obtain a proper understanding of the individual's functional restrictions.

An individual's level of functioning may vary considerably over time. The level of functioning at a specific time may seem relatively adequate or, conversely, rather poor. Proper evaluation of the impairment must take any variations in level of functioning into account in arriving at a determination of impairment severity over time. Thus, it is vital to obtain evidence from relevant sources over a sufficiently long period prior to the date of adjudication in order to establish the individual's impairment severity. This evidence should include treatment notes, hospital discharge summaries, and work evaluation or rehabilitation progress notes if these are available.

Some individuals may have attempted to work or may actually have worked during the period of time pertinent to the determination of disability. This may have been an independent attempt at work, or it may have been in conjunction with a community mental health or other sheltered program which may have been of either short or long duration. Information concerning the individual's behavior during any attempt to work and the circumstances surrounding termination of the work effort are particularly useful in determining the individual's ability or inability to function in a work setting.

The results of well-standardized psychological tests such as the Wechsler Adult Intelligence Scale (WAIS), the Minnesota Multiphasic Personality Inventory (MMPI), the Rorschach, and the Thematic Apperception Test (TAT), may be useful in establishing the existence of a mental disorder. For example, the WAIS is useful in establishing mental retardation, and the MMPI, Rorschach, and TAT may provide data supporting several other diagnoses. Broad-based neuropsychological assessments using, for example, the Halstead-Reitan or the Luria-Nebraska batteries may be useful in determining brain function deficiencies, particularly in cases involving subtle findings such as may be seen in traumatic brain injury. In addition, the process of taking a standardized test requires concentration, persistence and pace; performance on such tests may provide useful data. Test results should, therefore, include both the objective data and a narrative description of clinical findings. Narrative reports of intellectual assessment should include a discussion of whether or not obtained IQ scores are considered valid and consistent with the individual's developmental history and degree of functional restriction.

In cases involving impaired intellectual functioning, a standardized intelligence test, e.g., the WAIS, should be administered and interpreted by a psychologist or psychiatrist qualified by training and experience to perform such an evaluation. In special circumstances, nonverbal measures, such as the Raven Progressive Matrices, the Leiter international scale, or the Arthur adaptation of the Leiter may be substituted.

Identical IQ scores obtained from different tests do not always reflect a similar degree of intellectual functioning. In this connection, it must be noted that on the WAIS, for example, IQs of 69 and below are characteristic of approximately the lowest 2 percent of the general population. In instances where other tests are administered, it would be necessary to convert the IQ to the corresponding percentile rank in the general population in order to determine the actual degree of impairment reflected by those IQ scores.

In cases where more than one IQ is customarily derived from the test administered, i.e., where verbal, performance, and full-scale IQs are provided as on the WAIS, the lowest of these is used in conjunction with listing 12.05.

In cases where the nature of the individual's intellectual impairment is such that standard intelligence tests, as described above, are precluded, medical reports specifically describing the level of intellectual, social, and physical function should be obtained. Actual observations by Social Security Administration or State agency personnel, reports from educational institutions and information furnished by public welfare agencies or other reliable objective sources should be considered as additional evidence.

E. *Chronic Mental Impairments:* Particular problems are often involved in evaluating mental impairments in individuals who have long histories of repeated hospitalizations or prolonged outpatient care with supportive therapy and medication. Individuals with chronic psychotic disorders commonly have their lives structured in such a way as to minimize stress and reduce their signs and symptoms. Such individuals may be much more impaired for work than their signs and symptoms would indicate. The results of a single examination may not adequately describe these individuals' sustained ability to function. It is, therefore, vital to review all pertinent information relative to the individual's condition, especially at times of increased stress. It is mandatory to attempt to obtain adequate descriptive information from all sources which have treated the individual either currently or in the time period relevant to the decision.

F. *Effects of Structured Settings:* Particularly in cases involving chronic mental disorders, overt symptomatology may be controlled or attenuated by psychosocial factors such as placement in a hospital, board and care facility, or other environment that provides similar structure. Highly structured and supportive settings may greatly reduce the mental demands placed on an individual. With lowered mental demands, overt signs and symptoms of the underlying mental disorder may be minimized. At the same time, however, the individual's ability to function outside of such a structured and/or supportive setting may not have changed. An evaluation of individuals whose symptomatology is controlled or attenuated by psychosocial factors must consider the ability of the individual to function outside of such highly structured settings. (For these reasons the paragraph C criteria were added to Listings 12.03 and 12.06.)

G. *Effects of Medication:* Attention must be given to the effect of medication on the individual's signs, symptoms and ability to function. While psychotropic medications may control certain primary manifestations of a mental disorder, e.g., hallucinations, such treatment may or may not affect the functional limitations imposed by the mental disorder. In cases where overt symptomatology is attenuated by the psychotropic medications, particular attention must be focused on the functional restrictions which may persist. These functional restrictions are also to be used as the measure of impairment severity. (See the paragraph C criteria in Listings 12.03 and 12.06.)

Neuroleptics, the medicines used in the treatment of some mental illnesses, may cause drowsiness, blunted affect, or other side effects involving other body systems. Such side effects must be considered in evaluating overall impairment severity. Where adverse effects of medications contribute to the impairment severity and the impairment does not meet or equal the listings but is nonetheless severe, such adverse effects must be considered in the assessment of the mental residual functional capacity.

H. *Effect of Treatment:* It must be remembered that with adequate treatment some individuals suffering with chronic mental disorders not only have their symptoms and signs ameliorated but also return to a level of function close to that of their premorbid status. Our discussion here in 12.00H has been designed to reflect the fact that present day treatment of a mentally impaired individual may or may not assist in the achievement of an adequate level of adaptation required in the work place. (See the paragraph C criteria in Listings 12.03 and 12.06.)

I. *Technique for Reviewing the Evidence in Mental Disorders Claims to Determine Level of Impairment Severity:* A special technique has been developed to ensure that all evidence needed for the evaluation of impairment severity in claims involving mental impairment is obtained, considered and properly evaluated. This technique, which is used in connection with the sequential evaluation process, is explained in § 404.1520a and § 416.920a.

12.01 Category of Impairments-Mental

12.02 *Organic Mental Disorders:* Psychological or behavioral abnormalities associated with a dysfunction of the brain. History and physical examination or laboratory tests demonstrate the presence of a specific organic factor judged to be etiologically related to the abnormal mental state and loss of previously acquired functional abilities.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Demonstration of a loss of specific cognitive abilities or affective changes and the medically documented persistence of at least one of the following:

1. Disorientation to time and place; or

2. Memory impairment, either short-term (inability to learn new information), intermediate, or long-term (inability to remember information that was known sometime in the past); or

3. Perceptual or thinking disturbances (e.g., hallucinations, delusions); or

4. Change in personality; or

5. Disturbance in mood; or

6. Emotional lability (e.g., explosive temper outbursts, sudden crying, etc.) and impairment in impulse control; or

7. Loss of measured intellectual ability of at least 15 I.Q. points from premorbid levels or overall impairment index clearly within the severely impaired range on neuropsychological testing, e.g., the Luria-Nebraska, Halstead-Reitan, etc.;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

12.03 *Schizophrenic, Paranoid and Other Psychotic Disorders:* Characterized by the onset of psychotic features with deterioration from a previous level of functioning.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one or more of the following:

1. Delusions or hallucinations; or

2. Catatonic or other grossly disorganized behavior; or

3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:

a. Blunt affect; or

b. Flat affect; or

c. Inappropriate affect;

or

4. Emotional withdrawal and/or isolation;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors);

OR

C. Medically documented history of one or more episodes of acute symptoms, signs and functional limitations which at the time met the requirements in A and B of this listing, although these symptoms or signs are currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of deterioration or decompensation in situations which cause the individual to withdraw from that situation or to experience exacerbation of signs or symptoms (which may include deterioration of adaptive behaviors); or

2. Documented current history of two or more years of inability to function outside of a highly supportive living situation.

12.04 *Affective Disorders:* Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

a. Anhedonia or pervasive loss of interest in almost all activites; or

b. Appetite disturbance with change in weight; or

c. Sleep disturbance; or

d. Psychomotor agitation or retardation; or

e. Decreased energy; or

f. Feelings of guilt or worthlessness; or

g. Difficulty concentrating or thinking; or

h. Thoughts of suicide; or

i. Hallucinations, delusions or paranoid thinking; or

2. Manic syndrome characterized by at least three of the following:

a. Hyperactivity; or

b. Pressure of speech; or

c. Flight of ideas; or

d. Inflated self-esteem; or

e. Decreased need for sleep; or

f. Easy distractability; or

g. Involvement in activities that have a high probability of painful consequences which are not recognized; or

h. Hallucinations, delusions or paranoid thinking;

or

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

12.05 *Mental Retardation and Autism:* Mental retardation refers to a significantly subaverage general intellectual functioning with deficits in adaptive behavior initially manifested during the developmental period (before age 22). (Note: The scores specified below refer to those obtained on the WAIS, and are used only for reference purposes. Scores obtained on other standardized and individually administered tests are acceptable, but the numerical values obtained must indicate a similar level of intellectual functioning.) Autism is a pervasive developmental disorder characterized by social and significant communication deficits originating in the developmental period.

The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

A. Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded;

OR

B. A valid verbal, performance, or full scale IQ of 59 or less;

OR

C. A valid verbal, performance, or full scale IQ of 60 to 69 inclusive and a physical or other mental impairment imposing additional and significant work-related limitation of function;

OR

D. A valid verbal, performance, or full scale IQ of 60 to 69 inclusive or in the case of autism gross deficits of social and communicative skills with two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

12.06 *Anxiety Related Disorders:* In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:

a. Motor tension; or

b. Autonomic hyperactivity; or

c. Apprehensive expectation; or

d. Vigilance and scanning;

or

2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or

3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or

4. Recurrent obsessions or compulsions which are a source of marked distress; or

5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors);

OR

C. Resulting in complete inability to function independently outside the area of one's home.

12.07 *Somatoform Disorders:* Physical symptoms for which there are no demonstrable organic findings or known physiological mechanisms.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented by evidence of one of the following:

1. A history of multiple physical symptoms of several years duration, beginning before age 30, that have caused the individual to take medicine frequently, see a physician often and alter life patterns significantly; or

2. Persistent nonorganic disturbance of one of the following:

a. Vision; or

b. Speech; or

c. Hearing; or

d. Use of a limb; or

e. Movement and its control (e.g., coordination disturbance, psychogenic seizures, akinesia, dyskinesia; or

f. Sensation (e.g., diminished or heightened).

3. Unrealistic interpretation of physical signs or sensations associated with the preoccupation or belief that one has a serious disease or injury;

AND

B. Resulting in three of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behavior).

12.08 *Personality Disorders:* A personality disorder exists when personality traits are inflexible and maladaptive and cause either significant impairment in social or occupational functioning or subjective distress. Characteristic features are typical of the individual's long-term functioning and are not limited to discrete episodes of illness.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Deeply ingrained, maladaptive patterns of behavior associated with one of the following:

1. Seclusiveness or autistic thinking; or

2. Pathologically inappropriate suspiciousness or hostility; or

3. Oddities of thought, perception, speech and behavior; or

4. Persistent disturbances of mood or affect; or

5. Pathological dependence, passivity, or aggressivity; or

6. Intense and unstable interpersonal relationships and impulsive and damaging behavior;

AND

B. Resulting in three of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

12.09 *Substance Addiction Disorders:* Behavioral changes or physical changes associated with the regular use of substances that affect the central nervous system.

The required level of severity for these disorders is met when the requirements in any of the following (A through I) are satisfied.

A. Organic mental disorders. Evaluate under 12.02.

B. Depressive syndrome. Evaluate under 12.04.

C. Anxiety disorders. Evaluate under 12.06.

D. Personality disorders. Evaluate under 12.08.

E. Peripheral neuropathies. Evaluate under 11.14.

F. Liver damage. Evaluate under 5.05.

G. Gastritis. Evaluate under 5.04.

H. Pancreatitis. Evaluate under 5.08.

I. Seizures. Evaluate under 11.02 or 11.03.

13.00 Neoplastic Diseases, Malignant

A. *Introduction:* The determination of the level of impairment resulting from malignant tumors is made from a consideration of the site of the lesion, the histogenesis of the tumor, the extent of involvement, the apparent adequacy and response to therapy (surgery, irradiation, hormones, chemotherapy, etc.), and the magnitude of the post therapeutic residuals.

B. *Documentation:* The diagnosis of malignant tumors should be established on the basis of symptoms, signs, and laboratory findings. The site of the primary, recurrent, and metastatic lesion must be specified in all cases of malignant neoplastic diseases. If an operative procedure has been performed, the evidence should include a copy of the operative note and the report of the gross and microscopic examination of the surgical specimen. If these documents are not obtainable, then the summary of hospitalization or a report from the treating physician must include details of the findings at surgery and the results of the pathologist's gross and microscopic examination of the tissues.

For those cases in which a disabling impairment was not established when therapy was begun but progression of the disease is likely, current medical evidence should include a report of a recent examination directed especially at local or regional recurrence, soft part or skeletal metastases, and significant posttherapeutic residuals.

C. *Evaluation.* Usually, when the malignant tumor consists of a local lesion with metastases to the regional lymph nodes which apparently has been completely excised, imminent recurrence or metastases is not anticipated. A number of exceptions are noted in the specific Listings. For adjudicative purposes, "distant metastases" or "metastases beyond the regional lymph nodes" refers to metastasis beyond the lines of the usual radical en bloc resection.

Local or regional recurrence after radical surgery or pathological evidence of incomplete excision by radical surgery is to be equated with unresectable lesions (except for carcinoma of the breast, 13.09C) and, for the purposes of our program, may be evaluated as "inoperable."

Local or regional recurrence after incomplete excision of a localized and still completely resectable tumor is not to be equated with recurrence after radical surgery. In the evaluation of lymphomas, the tissue type and site of involvement are not necessarily indicators of the degree of impairment.

When a malignant tumor has metastasized beyond the regional lymph nodes, the impairment will usually be found to meet the requirements of a specific listing. Exceptions are hormone-dependent tumors, isotope-sensitive metastases, and metastases from seminoma of the testicles which are controlled by definitive therapy.

When the original tumor and any metastases have apparently disappeared and have not been evident for 3 or more years, the impairment does not meet the criteria under this body system.

D. *Effects of therapy.* Significant posttherapeutic residuals, not specifically included in the category of impairments for malignant neoplasms, should be evaluated according to the affected body system.

Where the impairment is not listed in the Listing of Impairments and is not medically equivalent to a listed impairment, the impact of any residual impairment including that caused by therapy must be considered. The therapeutic regimen and consequent adverse response to therapy may vary widely; therefore, each case must be considered on an individual basis. It is essential to obtain a specific description of the therapeutic regimen, including the drugs given, dosage, frequency of drug administration, and plans for continued drug administration. It is necessary to obtain a description of the complications or any other adverse response to therapy such as nausea, vomiting, diarrhea, weakness, dermatologic disorders, or reactive mental disorders. Since the severity of the adverse effects of anticancer chemotherapy may change during the period of drug administration, the decision regarding the impact of drug therapy should be based on a sufficient period of therapy to permit proper consideration.

E. *Onset.* To establish onset of disability prior to the time a malignancy is first demonstrated to be inoperable or beyond control by other modes of therapy (and prior evidence is nonexistent) requires medical judgment based on medically reported symptoms, the type of the specific malignancy, its location, and extent of involvement when first demonstrated.

13.01 Category of Impairments, Neoplastic Diseases—Malignant

13.02 *Head and neck* (except salivary glands—13.07, thyroid gland—13.08, and mandible, maxilla, orbit, or temporal fossa—13.11):

A. Inoperable; or

B. Not controlled by prescribed therapy; or

C. Recurrent after radical surgery or irradiation; or

D. With distant metastases; or

E. Epidermoid carcinoma occurring in the pyriform sinus or posterior third of the tongue.

13.03 *Sarcoma of skin:*

A. Angiosarcoma with metastases to regional lymph nodes or beyond; or

B. Mycosis fungoides with metastases to regional lymph nodes, or with visceral involvement.

13.04 *Sarcoma of soft parts:* Not controlled by prescribed therapy.

13.05 *Malignant melanoma:*

A. Recurrent after wide excision; or

B. With metastases to adjacent skin (satellite lesions) or elsewhere.

13.06 *Lymph nodes:*

A. Hodgkin's disease or non-Hodgkin's lymphoma with progressive disease not controlled by prescribed therapy; or

B. Metastatic carcinoma in a lymph node (except for epidermoid carcinoma in a lymph node in the neck) where the primary site is not determined after adequate search; or

C. Epidermoid carcinoma in a lymph node in the neck not responding to prescribed therapy.

13.07 *Salivary glands*—carcinoma or sarcoma with metastases beyond the regional lymph nodes.

13.08 *Thyroid gland*—carcinoma with metastases beyond the regional lymph nodes, not controlled by prescribed therapy.

13.09 *Breast:*

A. Inoperable carcinoma; or

B. Inflammatory carcinoma; or

C. Recurrent carcinoma, except local recurrence controlled by prescribed therapy; or

D. Distant metastases from breast carcinoma (bilateral breast carcinoma, synchronous or metachronous is usually primary in each breast); or

E. Sarcoma with metastases anywhere.

13.10 *Skeletal system* (exclusive of the jaw):

A. Malignant primary tumors with evidence of metastases and not controlled by prescribed therapy; or

B. Metastatic carcinoma to bone where the primary site is not determined after adequate search.

13.11 *Mandible, maxilla, orbit, or temporal fossa:*

A. Sarcoma of any type with metastases; or

B. Carcinoma of the antrum with extension into the orbit or ethmoid or sphenoid sinus, or with regional or distant metastases; or

C. Orbital tumors with intracranial extension; or

D. Tumors of the temporal fossa with perforation of skull and meningeal involvement; or

E. Adamantinoma with orbital or intracranial infiltration; or

F. Tumors of Rathke's pouch with infiltration of the base of the skull or metastases.

13.12 *Brain or spinal cord:*

A. Metastatic carcinoma to brain or spinal cord.

B. Evaluate other tumors under the criteria described in 11.05 and 11.06.

13.13 *Lungs.*

A. Unresectable or with incomplete excision; or

B. Recurrence or metastases after resection; or

C. Oat cell (small cell) carcinoma; or

D. Squamous cell carcinoma, with metastases beyond the hilar lymph nodes; or

E. Other histologic types of carcinoma, including undifferentiated and mixed-cell types (but excluding oat cell carcinoma, 13.13C, and squamous cell carcinoma, 13.13D), with metastases to the hilar lymph nodes.

13.14 *Pleura or mediastinum:*

A. Malignant mesothelioma of pleura; or

B. Malignant tumors, metastatic to pleura; or

C. Malignant primary tumor of the mediastinum not controlled by prescribed therapy.

13.15 *Abdomen:*

A. Generalized carcinomatosis; or

B. Retroperitoneal cellular sarcoma not controlled by prescribed therapy; or

C. Ascites with demonstrated malignant cells.

13.16 *Esophagus or stomach:*

A. Carcinoma or sarcoma of the esophagus; or

B. Carcinoma of the stomach with metastases to the regional lymph nodes or extension to surrounding structure; or

C. Sarcoma of stomach not controlled by prescribed therapy; or

D. Inoperable carcinoma; or

E. Recurrence or metastases after resection.

13.17 *Small intestine:*

A. Carcinoma, sarcoma, or carcinoid tumor with metastases beyond the regional lymph nodes; or

B. Recurrence of carcinoma, sarcoma, or carcinoid tumor after resection; or

C. Sarcoma, not controlled by prescribed therapy.

13.18 *Large intestine* (from ileocecal valve to and including anal canal)—carcinoma or sarcoma.

A. Unresectable; or

B. Metastases beyond the regional lymph nodes; or

C. Recurrence or metastases after resection.

13.19 *Liver or gallbladder:*

A. Primary or metastatic malignant tumors of the liver; or

B. Carcinoma of the gallbladder; or

C. Carcinoma of the bile ducts.

13.20 *Pancreas:*

A. Carcinoma except islet cell carcinoma; or

B. Islet cell carcinoma which is unresectable and physiologically active.

13.21 *Kidneys, adrenal glands, or ureters—carcinoma:*

A. Unresectable; or

B. With hematogenous spread to distant sites; or

C. With metastases to regional lymph nodes.

13.22 *Urinary bladder—carcinoma.* With:

A. Infiltration beyond the bladder wall; or

B. Metastases to regional lymph nodes; or

C. Unresectable; or

D. Recurrence after total cystectomy; or

E. Evaluate renal impairment after total cystectomy under the criteria in 6.02.

13.23 *Prostate gland*—carcinoma not controlled by prescribed therapy.

13.24 *Testicles:*

A. Choriocarcinoma; or

B. Other malignant primary tumors with progressive disease not controlled by prescribed therapy.

13.25 *Uterus*—carcinoma or sarcoma (corpus or cervix).

A. Inoperable and not controlled by prescribed therapy; or

B. Recurrent after total hysterectomy; or

C. Total pelvic exenteration

13.26 *Ovaries*—all malignant, primary or recurrent tumors. With:

A. Ascites with demonstrated malignant cells; or

B. Unresectable infiltration; or

C. Unresectable metastases to omentum or elsewhere in the peritoneal cavity; or

D. Distant metastases.

13.27 *Leukemia:* Evaluate under the criteria of 7.00ff, Hemic and Lymphatic Sytem.

13.28 *Uterine (Fallopian) tubes—carcinoma or sarcoma:*

A. Unresectable, or

B. Metastases to regional lymph nodes.

13.29 *Penis—carcinoma with metastases to regional lymph nodes.*

13.30 *Vulva—carcinoma, with distant metastases.*

Part B

Medical criteria for the evaluation of impairments of children under age 18 (where criteria in Part A do not give appropriate consideration to the particular disease process in childhood).

Sec.

100.00 Growth Impairment.
101.00 Musculoskeletal System.
102.00 Special Senses and Speech.
103.00 Respiratory System.
104.00 Cardiovascular System.
105.00 Digestive System.
106.00 Genito-Urinary System.
107.00 Hemic and Lymphatic System.
108.00 [Reserved]
109.00 Endocrine System.
110.00 Multiple Body Systems.
111.00 Neurological.
112.00 Mental and Emotional Disorders.
113.00 Neoplastic Diseases, Malignant.

100.00 Growth Impairment

A. *Impairment of growth* may be disabling in itself or it may be an indicator of the severity of the impairment due to a specific disease process.

Determinations of growth impairment should be based upon the comparison of current height with at least three previous determinations, including length at birth, if available. Heights (or lengths) should be plotted on a standard growth chart, such as derived from the National Center for Health Statistics: NCHS Growth Charts. Height should be measured without shoes. Body weight corresponding to the ages represented by the heights should be furnished. The adult heights of the child's natural parents and the heights and ages of siblings should also be furnished. This will provide a basis upon which to identify those children whose short stature represents a familial characteristic rather than a result of disease. This is particularly true for adjudication under 100.02B.

B. *Bone age determinations* should include a full descriptive report of roentgenograms specifically obtained to determine bone age and must cite the standardization method used. Where roentgenograms must be obtained currently as a basis for adjudication under 100.03, views of the left hand and wrist should be ordered. In addition, roentgenograms of the knee and ankle should be obtained when cessation of growth is being evaluated in an older child at, or past, puberty.

C. The criteria in this section are applicable until closure of the major epiphyses. The cessation of significant increase in height at that point would prevent the application of these criteria.

100.01 Category of Impairments, Growth

100.02 *Growth impairment*, considered to be related to an additional specific medically determinable impairment, and one of the following:

A. Fall of greater than 15 percentiles in height which is sustained; or

B. Fall to, or persistence of, height below the third percentile.

100.03 *Growth impairment*, not identified as being related to an additional, specific medically determinable impairment. With:

A. Fall of greater than 25 percentiles in height which is sustained; and

B. Bone age greater than two standard deviations (2 SD) below the mean for chronological age (see 100.00B).

101.00 Musculoskeletal System

A. *Rheumatoid arthritis.* Documentation of the diagnosis of juvenile rheumatoid arthritis should be made according to an established protocol, such as that published by the Arthritis Foundation, *Bulletin on the Rheumatic Diseases.* Vol. 23, 1972–1973 Series, p 712. Inflammatory signs include persistent pain, tenderness, erythema, swelling, and increased local temperature of a joint.

B. *The measurements of joint motion* are based on the technique for measurements described in the "Joint Method of Measuring and Recording," published by the American Academy of Orthopedic Surgeons in 1965, or "The Extremities and Back" in *Guides to the Evaluation of Permanent Impairment*, Chicago, American Medical Association, 1971, Chapter 1, pp. 1–48.

C. *Degenerative arthritis* may be the end stage of many skeletal diseases and conditions, such as traumatic arthritis, collagen disorders septic arthritis, congenital dislocation of the hip, aseptic necrosis of the hip, slipped capital femoral epiphyses, skeletal dysplasias, etc.

101.01 Category of Impairments, Musculoskeletal

101.02 *Juvenile rheumatoid arthritis.* With:

A. Persistence or recurrence of joint inflammation despite three months of medical treatment and one of the following:

1. Limitation of motion of two major joints of 50 percent or greater; or

2. Fixed deformity of two major weight-bearing joints of 30 degrees or more; or

3. Radiographic changes of joint narrowing, erosion, or subluxation; or

4. Persistent or recurrent systemic involvement such as iridocyclitis or pericarditis; or

B. Steroid dependence.

101.03 *Deficit of musculoskeletal function* due to deformity or musculoskeletal disease and one of the following:

A. Walking is markedly reduced in speed or distance despite orthotic or prosthetic devices; or

B. Ambulation is possible only with obligatory bilateral upper limb assistance (e.g., with walker, crutches); or

C. Inability to perform age-related personal self-care activities involving feeding, dressing, and personal hygiene.

101.05 *Disorders of the spine.*

A. Fracture of vertebra with cord involvement (substantiated by appropriate sensory and motor loss); or

B. Scoliosis (congenital idiopathic or neuromyopathic). With:

1. Major spinal curve measuring 60 degrees or greater; or

2. Spinal fusion of six or more levels. Consider under a disability for one year from the time of surgery; thereafter evaluate the residual impairment; or

3. FEV (vital capacity) of 50 percent or less of predicted normal values for the individual's measured (actual) height; or

C. Kyphosis or lordosis measuring 90 degrees or greater.

101.08 *Chronic osteomyelitis* with persistence or recurrence of inflammatory signs or drainage for at least 6 months despite prescribed therapy and consistent radiographic findings.

102.00 Special Senses and Speech

A. *Visual impairments in children.* Impairment of central visual acuity should be determined with use of the standard Snellen test chart. Where this cannot be used, as in very young children, a complete description should be provided of the findings using other appropriate methods of examination, including a description of the techniques used for determining the central visual acuity for distance.

The accommodative reflex is generally not present in children under 6 months of age. In premature infants, it may not be present until 6 months plus the number of months the child is premature. Therefore absence of accommodative reflex will be considered as indicating a visual impairment only in children above this age (6 months).

Documentation of a visual disorder must include description of the ocular pathology.

B. *Hearing impairments in children.* The criteria for hearing impairments in children take into account that a lesser impairment in hearing which occurs at an early age may result in a severe speech and language disorder.

Improvement by a hearing aid, as predicted by the testing procedure, must be demonstrated to be feasible in that child, since younger children may be unable to use a hearing aid effectively.

The type of audiometric testing performed must be described and a copy of the results must be included. The pure tone air conduction hearing levels in 102.06 are based on American National Standard Institute Specifications for Audiometers, S3.6–1969 (ANSI–1969). The report should indicate the specifications used to calibrate the audiometer.

The finding of a severe impairment will be based on the average hearing levels at 500, 1000, 2000, and 3000 Hertz (Hz) in the better ear, and on speech discrimination, as specified in 102.06.

102.01 Category of Impairments, Special Sense Organs

102.02 *Impairments of central visual acuity.*

A. Remaining vision in the better eye after best correction is 20/200 or less; or

B. For children below 3 years of age at time of adjudication:

1. Absence of accommodative reflex (see 102.00A for exclusion of children under 6 months of age); or

2. Retrolental fibroplasia with macular scarring or neovascularization; or

3. Bilateral congenital cataracts with visualization of retinal red reflex only or when associated with other ocular pathology.

102.06 *Hearing impairments.*

A. For children below 5 years of age at time of adjudication, inability to hear air conduction thresholds at an average of 40 decibels (db) hearing level or greater in the better ear; or

B. For children 5 years of age and above at time of adjudication:

1. Inability to hear air conduction thresholds at an average of 70 decibels (db) or greater in the better ear; or

2. Speech discrimination scores at 40 percent or less in the better ear; or

3. Inability to hear air conduction thresholds at an average of 40 decibels (db) or greater in the better ear, and a speech and language disorder which significantly affects the clarity and content of the speech and is attributable to the hearing impairment.

103.00 Respiratory System

A. *Documentation of pulmonary insufficiency.* The reports of spirometric studies for evaluation under Table I must be expressed in liters (BTPS). The reported FEV_1 should represent the largest of at least three satisfactory attempts. The appropriately labeled spirometric tracing of three FEV maneuvers must be submitted with the report, showing distance per second on the abscissa and distance per liter on the ordinate. The unit distance for volume on the tracing should be at least 15 mm. per liter and the paper speed at least 20 mm. per second. The height of the individual without shoes must be recorded.

The ventilatory function studies should not be performed during or soon after an acute episode or exacerbation of a respiratory illness. In the presence of acute bronchospasm, or where the FEV_1 is less than that stated in Table I, the studies should be repeated after the administration of a nebulized bronchodilator. If a bronchodilator was not used in such instances, the reason should be stated in the report.

A statement should be made as to the child's ability to understand directions and to cooperate in performance of the test, and should include an evaluation of the child's effort. When tests cannot be performed or completed, the reason (such as a child's young age) should be stated in the report.

B. *Cystic fibrosis.* This section discusses only the pulmonary manifestations of cystic fibrosis. Other manifestations, complications, or associated disease must be evaluated under the appropriate section.

The diagnosis of cystic fibrosis will be based upon appropriate history, physical examination, and pertinent laboratory findings. Confirmation based upon elevated concentration of sodium or chloride in the sweat should be included, with indication of the technique used for collection and analysis.

103.01 Category of Impairments, Respiratory

103.03 *Bronchial asthma.* With evidence of progression of the disease despite therapy and documented by one of the following:

A. Recent, recurrent intense asthmatic attacks requiring parenteral medication; or

B. Persistent prolonged expiration with wheezing between acute attacks and radiographic findings of peribronchial disease.

103.13 *Pulmonary manifestations of cystic fibrosis.* With:

A. FEV_1 equal to or less than the values specified in Table I (see § 103.00A for requirements of ventilatory function testing); or

B. For children where ventilatory function testing cannot be performed:

1. History of dyspnea on mild exertion or chronic frequent productive cough; and

2. Persistent or recurrent abnormal breath sounds, bilateral rales or rhonchi; and

3. Radiographic findings of extensive disease with hyperaeration and bilateral peribronchial infiltration.

TABLE I

Height (in centimeters)	FEV_1 equal to or less than (L, BTPS)
110 or less	0.6
120	0.7

TABLE I—Continued

Height (in centimeters)	FEV1 equal to or less than (L, BTPS)
130	0.9
140	1.1
150	1.3
160	1.5
170 or more	1.6

104.00 **Cardiovascular System**

A. *General.* Evaluation should be based upon history, physical findings, and appropriate laboratory data. Reported abnormalities should be consistent with the pathologic diagnosis. The actual electrocardiographic tracing, or an adequate marked photocopy, must be included. Reports of other pertinent studies necessary to substantiate the diagnosis or describe the severity of the impairment must also be included:

B. *Evaluation of cardiovascular impairment in children* requires two steps:

1. The delineation of a specific cardiovascular disturbance, either congenital or or acquired. This may include arterial or venous disease, rhythm disturbance, or disease involving the valves, septa, myocardium or pericardium; and

2. Documentation of the severity of the impairment, with medically determinable and consistent cardiovascular signs, symptoms, and laboratory data. In cases where impairment characteristics are questionably secondary to the cardiovascular disturbance, additional documentation of the severity of the impairment (e.g., catheterization data, if performed) will be necessary.

C. *Chest roentgenogram* (6 ft. PA film) will be considered indicative of cardiomegaly if:

1. The cardiothoracic ratio is over 60 percent at age one year or less, or 55 percent at more than one year of age; or

2. The cardiac size is increased over 15 percent from any prior chest roentgenograms; or

3. Specific chamber or vessel enlargement is documented in accordance with established criteria.

D. *Tables I, II, and III* below are designed for case adjudication and not for diagnostic purposes. The adult criteria may be useful for older children and should be used when applicable.

E. *Rheumatic fever,* as used in this section assumes diagnosis made according to the revised Jones Criteria.

104.01 **Category of Impairments, Cardiovascular**

104.02 *Chronic congestive failure.* With two or more of the following signs:

A. Tachycardia (see Table I).

B. Tachypnea (see Table II).

C. Cardiomegaly on chest roentgenogram (see 104.00C).

D. Hepatomegaly (more than 2 cm. below the right costal margin in the right midclavicular line).

E. Evidence of pulmonary edema, such as rales or orthopnea.

F. Dependent edema.

G. Exercise intolerance manifested as labored respiration on mild exertion (e.g., in an infant, feeding).

TABLE I—TACHYCARDIA AT REST

Age	Apical Heart (beats per minute)
Under 1 yr	150
1 through 3 yrs	130
4 through 9 yrs	120
10 through 15 yrs	110
Over 15 yr	100

TABLE II—TACHYPNEA AT REST

Age	Respiratory rate over (per minute)
Under 1 yr	40
1 through 5 yrs	35
6 through 9 yrs	30
Over 9 yrs	25

104.03 *Hypertensive cardiovascular disease.* With persistently elevated blood pressure for age (see Table III) and one of the following:

A. Impaired renal function as described under the criteria in 106.02; or

B. Cerebrovascular damage as described under the criteria in 111.06; or

C. Congestive heart failure as described under the criteria in 104.02.

TABLE III—ELEVATED BLOOD PRESSURE

Age	S (over) mm.	Diastolic (over) in mm.
Under 6 mo	95	60
6 mo. to 1 yr	110	70
1 through 8 yrs	115	80
9 through 11 yrs	120	80
12 through 15 yrs	130	80
Over 15 yrs	140	80

104.04 *Cyanotic congenital heart disease.* With one of the following:

A. Surgery is limited to palliative measures; or

B. Characteristic squatting, hemoptysis, syncope, or hypercyanotic spells; or

C. Chronic hematocrit of 55 percent or greater or arterial O_2 saturation of less than 90 percent at rest, or arterial oxygen tension of less than 60 Torr at rest.

104.05 *Cardiac arrhythmia, such as persistent or recurrent heart block or A-V dissociation (with or without therapy).* And one of the following:

A. Cardiac syncope; or

B. Congestive heart failure as described under the criteria in 104.02; or

C. Exercise intolerance with labored respirations on mild exertion (e.g., in infants, feeding).

104.07 *Cardiac syncope* with at least one documented syncopal episode characteristic of specific cardiac disease (e.g., aortic stenosis).

104.08 *Recurrent hemoptysis.* Associated with either pulmonary hypertension or extensive bronchial collaterals due to documented chronic cardiovascular disease.

104.09 *Chronic rheumatic fever or rheumatic heart disease.* With:

A. Persistence of rheumatic fever activity for 6 months or more, with significant murmur(s), cardiomegaly (see 104.00C), and other abnormal laboratory findings (such as elevated sedimentation rate or electrocardiographic findings); or

B. Congestive heart failure as described under the criteria in 104.02.

105.00 **Digestive System**

A. *Disorders of the digestive system* which result in disability usually do so because of interference with nutrition and growth, multiple recurrent inflammatory lesions, or other complications of the disease. Such lesions or complications usually respond to treatment. To constitute a listed impairment, these must be shown to have persisted or be expected to persist despite prescribed therapy for a continuous period of at least 12 months.

B. *Documentation of gastrointestinal impairments* should include pertinent operative findings, radiographic studies, endoscopy, and biopsy reports. Where a liver biopsy has been performed in chronic liver disease, documentation should include the report of the biopsy.

C. *Growth retardation and malnutrition.* When the primary disorder of the digestive tract has been documented, evaluate resultant malnutrition under the criteria described in 105.08. Evaluate resultant growth impairment under the criteria described in 100.03. Intestinal disorders, including surgical diversions and potentially correctable congenital lesions, do not represent a severe impairment if the individual is able to maintain adequate nutrition growth and development.

D. *Multiple congenital anomalies.* See related criteria, and consider as a combination of impairments.

105.01 Category of Impairments, Digestive

105.03 *Esophageal obstruction, caused by atresia, stricture, or stenosis* with malnutrition as described under the criteria in 105.08.

105.05 *Chronic liver disease.* With one of the following:

A. Inoperable billiary atresia demonstrated by X-ray or surgery; or

B. Intractable ascites not attributable to other causes, with serum albumin of 3.0 gm./100 ml. or less; or

C. Esophageal varices (demonstrated by angiography, barium swallow, or endoscopy or by prior performance of a specific shunt or plication procedure); or

D. Hepatic coma, documentated by findings from hospital records; or

E. Hepatic encephalopathy. Evaluate under the criteria in 112.02; or

F. Chronic active inflammation or necrosis documented by SGOT persistently more than 100 units or serum bilirubin of 2.5 mg. percent or greater.

105.07 *Chronic inflammatory bowel disease (such as ulcerative colitis, regional enteritis), as documented in 105.00.* With one of the following:

A. Intestinal manifestations or complications, such as obstruction, abscess, or fistula formation which has lasted or is expected to last 12 months; or

B. Malnutrition as described under the criteria in 105.08; or

C. Growth impairment as described under the criteria in 100.03.

105.08 *Malnutrition, due to demonstrable gastrointestinal disease causing either a fall of 15 percentiles of weight which persists or the persistence of weight which is less than the third percentile (on standard growth charts).* And one of the following:

A. Stool fat excretion per 24 hours:

1. More than 15 percent in infants less than 6 months.

2. More than 10 percent in infants 6–18 months.

3. More than 6 percent in children more than 18 months; or

B. Persistent hematocrit of 30 percent or less despite prescribed therapy; or

C. Serum carotene of 40 mcg./100 ml. or less; or

D. Serum albumin of 3.0 gm./100 ml. or less.

106.00 **Genito-Urinary System**

A. *Determination of the presence of chronic renal disease* will be based upon the following factors:

1. History, physical examination, and laboratory evidence of renal disease.

2. Indications of its progressive nature or laboratory evidence of deterioration of renal function.

B. *Renal transplant.* The amount of function restored and the time required to effect improvement depend upon various factors including adequacy of post transplant renal function, incidence of renal infection, occurrence of rejection crisis, presence of systemic complications (anemia, neuropathy, etc.) and side effects of corticosteroid or immuno-suppressive agents. A period of at least 12 months is required for the individual to reach a point of stable medical improvement.

C. Evaluate associated disorders and complications according to the appropriate body system listing.

106.01 Category of Impairments, Genito-Urinary

106.02 *Chronic renal disease.* With:

A. Persistent elevation of serum creatinine to 3 mg. per deciliter (100 ml.) or greater over at least 3 months; or

B. Reduction of creatinine clearance to 30 ml. per minute (43 liters/24 hours) per 1.73 m^2 of body surface area over at least 3 months; or

C. Chronic renal dialysis program for irreversible renal failure; or

D. Renal transplant. Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment (see 106.00B).

106.06 Nephrotic syndrome, with edema not controlled by prescribed therapy. And:

A. Serum albumin less than 2 gm./100 ml.; or

B. Proteinuria more than 2.5 gm./1.73m^2/day.

107.00 **Hemic and Lymphatic System**

A. *Sickle cell disease* refers to a chronic hemolytic anemia associated with sickle cell hemoglobin, either homozygous or in combination with thalassemia or with another abnormal hemoglobin (such as C or F).

Appropriate hematologic evidence for sickle cell disease, such as hemoglobin electrophoresis must be included. Vaso-occlusive, hemolytic, or aplastic episodes should be documented by description of severity, frequency, and duration.

Disability due to sickle cell disease may be solely the result of a severe, persistent anemia or may be due to the combination of chronic progressive or episodic manifestations in the presence of a less severe anemia.

Major visceral episodes causing disability include meningitis, osteomyelitis, pulmonary infections or infarctions, cerebrovascular accidents, congestive heart failure, genitourinary involvement, etc.

B. *Coagulation defects.* Chronic inherited coagulation disorders must be documented by appropriate laboratory evidence such as abnormal thromboplastin generation, coagulation time, or factor assay.

C. *Acute leukemia.* Initial diagnosis of acute leukemia must be based upon definitive bone marrow pathologic evidence. Recurrent disease may be documented by peripheral blood, bone marrow, or cerebrospinal fluid examination. The pathology report must be included.

The designated duration of disability implicit in the finding of a listed impairment is contained in 107.11. Following the designated time period, a documented diagnosis itself is no longer sufficient to establish a severe impairment. The severity of any remaining impairment must be evaluated on the basis of the medical evidence.

107.01 Category of Impairments, Hemic and Lymphatic

107.03 *Hemolytic anemia (due to any cause).* Manifested by persistence of hematocrit of 26 percent or less despite prescribed therapy, and reticulocyte count of 4 percent or greater.

107.05 *Sickle cell disease:* With:

A. Recent, recurrent, severe vaso-occlusive crises (musculoskeletal, vertebral, abdominal); or

B. A major visceral complication in the 12 months prior to application; or

C. A hyperhemolytic or aplastic crisis within 12 months prior to application; or

D. Chronic, severe anemia with persistence of hematocrit of 26 percent or less; or

E. Congestive heart failure, cerebrovascular damage, or emotional disorder as described under the criteria in 104.02, 111.00ff, or 112.00ff.

107.06 *Chronic idiopathic thrombocytopenic purpura of childhood* with purpura and thrombocytopenia of 40,000 platelets/cu. mm. or less despite prescribed therapy or recurrent upon withdrawal of treatment.

107.08 *Inherited coagulation disorder.* With:

A. Repeated spontaneous or inappropriate bleeding; or

B. Hemarthrosis with joint deformity.

107.11 *Acute leukemia.* Consider under a disability:

A. For 2½ years from the time of initial diagnosis; or

B. For 2½ years from the time of recurrence of active disease.

108.00 **[Reserved]**

109.00 **Endocrine System**

A. *Cause of disability.* Disability is caused by a disturbance in the regulation of the secretion or metabolism of one or more hormones which are not adequately controlled by therapy. Such disturbances or abnormalities usually respond to treatment. To constitute a listed impairment these must be shown to have persisted or be expected to persist despite prescribed therapy for a continuous period of at least 12 months.

B. *Growth.* Normal growth is usually a sensitive indicator of health as well as of adequate therapy in children. Impairment of growth may be disabling in itself or may be an indicator of a severe disorder involving the endocrine system or other body systems. Where involvement of other organ systems has occurred as a result of a primary endocrine disorder, these impairments should be evaluated according to the criteria under the appropriate sections.

C. *Documentation.* Description of characteristic history, physical findings, and diagnostic laboratory data must be included. Results of laboratory tests will be considered abnormal if outside the normal range or greater than two standard deviations from the mean of the testing laboratory. Reports in the file should contain the information provided by the testing laboratory as to their normal values for that test.

D. *Hyperfunction of the adrenal cortex.* Evidence of growth retardation must be documented as described in 100.00. Elevated blood or urinary free cortisol levels are not acceptable in lieu of urinary 17-hydroxycorticosteroid excretion for the diagnosis of adrenal cortical hyperfunction.

E. *Adrenal cortical insufficiency.* Documentation must include persistent low plasma cortisol or low urinary 17-hydroxycorticosteroids or 17-ketogenic steroids and evidence of unresponsiveness to ACTH stimulation.

109.01 Category of Impairments, Endrocrine

109.02 *Thyroid Disorders.*

A. *Hyperthyroidism (as documented in 109.00C).* With clinical manifestations despite prescribed therapy, and one of the following:

1. Elevated serum thyroxine (T_4) and either elevated free T_4 or resin T_3 uptake; or

2. Elevated thyroid uptake of radioiodine; or

3. Elevated serum triiodothyronine (T_3).

B. *Hypothyroidism.* With one of the following, despite prescribed therapy:

1. IQ of 69 or less; or

2. Growth impairment as described under the criteria in 100.02 A and B; or

3. Precocious puberty.

109.03 *Hyperparathyroidism (as documented in 109.00C).* With:

A. Repeated elevated total or ionized serum calcium; or

B. Elevated serum parathyroid hormone.

109.06 *Hypoparathyroidism or Pseudohypoparathyroidism.* With:

A. Severe recurrent tetany or convulsions which are unresponsive to prescribed therapy; or

B. Growth retardation as described under criteria in 100.02 A and B.

109.08 *Diabetes insipidus, documented by pathologic hypertonic saline or water deprivation test.* And one of the following:

A. Intracranial space-occupying lesion, before or after surgery; or

B. Unresponsiveness to Pitressin; or

C. Growth retardation as described under the criteria in 100.02 A and B; or

D. Unresponsive hypothalmic thirst center, with chronic or recurrent hypernatremia; or

E. Decreased visual fields attributable to a pituitary lesion.

109.08 *Hyperfunction of the adrenal cortex (Primary or secondary).* With:

A. Elevated urinary 17-hyroxycorticosteroids (or 17-ketogenic steroids) as documented in 108.00 C and D; and

B. Unresponsiveness to low-dose dexamethasone suppression.

109.07 *Adrenal cortical insufficiency (as documented in 108.00 C and E)* with recent, recurrent episodes of circulatory collapse.

109.08 *Juvenile diabetes mellitus (as documented in 109.00C) requiring parenteral insulin.* And one of the following, despite prescribed therapy:

A. Recent, recurrent hospitalizations with acidosis; or

B. Recent, recurrent episodes of hypoglycemia; or

C. Growth retardation as described under the criteria in 100.02 A or B; or

D. Impaired renal function as described under the criteria in 106.00ff.

109.09 *Iatrogenic hypercorticoid state.* With chronic glucocorticoid therapy resulting in one of the following:

A. Osteoporosis; or

B. Growth retardation as described under the criteria in 100.02 A or B; or

C. Diabetes mellitus as described under the criteria in 109.08; or

D. Myopathy as described under the criteria in 111.06; or

E. Emotional disorder as described under the criteria in 112.00ff.

109.10 *Pituitary dwarfism (with documented growth hormone deficiency).* And growth impairment as described under the criteria in 100.02B.

109.11 *Adrenogenital syndrome.* With:

A. Recent, recurrent self-losing episodes despite prescribed therapy; or

B. Inadequate replacement therapy manifested by accelerated bone age and virilization, or

C. Growth impairment as described under the criteria in 100.02 A or B.

109.12 *Hypoglycemia (as documented in 108.00C).* With recent, recurrent hypoglycemic episodes producing convulsion or coma.

109.13 *Gonodal Dysgenesis (Turner's Syndrome), chromosomally proven.* Evaluate the resulting impairment under the criteria for the appropriate body system.

110.00 **Multiple Body Systems**

A. *Catastrophic congenital abnormalities or disease.* This section refers only to very serious congenital disorders, diagnosed in the newborn or infant child.

B. *Immune deficiency diseases.* Documentation of immune deficiency disease must be submitted, and may include quantitative immunoglobulins, skin tests for delayed hypersensitivity, lymphocyte stimulative tests, and measurements of cellular immunity mediators.

110.01 Category of Impairments, Multiple Body Systems

110.08 *Catastrophic congenital abnormalities or disease.* With:

A. A positive diagnosis (such as anencephaly, trisomy D or E, cyclopia, etc.), generally regarded as being incompatible with extrauterine life; or

B. A positive diagnosis (such as cri du chat, Tay-Sachs Disease) wherein attainment of the growth and development level of 2 years is not expected to occur.

110.09 *Immune deficiency disease.*

A. *Hypogammaglobulinemia or dysgammaglobulinemia.* With:

1. Recent, recurrent severe infections; or

2. A complication such as growth retardation, chronic lung disease, collagen disorder, or tumors.

B. *Thymic dysplastic syndromes* (such as Swiss, diGeorge).

111.00 **Neurological**

A. *Seizure disorder* must be substantiated by at least one detailed description of a typical seizure. Report of recent documentation should include an electroencephalogram and neurological examination. Sleep EEG is preferable, especially with temporal lobe seizures. Frequency of attacks and any associated phenomena should also be substantiated.

Young children may have convulsions in association with febrile illnesses. Proper use of 111.02 and 111.03 requires that a seizure disorder be established. Although this does not exclude consideration of seizures occurring during febrile illnesses, it does require documentation of seizures during nonfebrile periods.

There is an expected delay in control of seizures when treatment is started, particularly when changes in the treatment regimen are necessary. Therefore, a seizure disorder should not be considered to meet the requirements of 111.02 or 111.03 unless it is shown that seizures have persisted more than three months after prescribed therapy began.

B. *Minor motor seizures.* Classical petit mal seizures must be documented by characteristic EEG pattern, plus information as to age at onset and frequency of clinical seizures. Myoclonic seizures, whether of the typical infantile or Lennox-gastaut variety after infancy, must also be documented by the characteristic EEG pattern plus information as to age at onset and frequency of seizures.

C. *Motor dysfunction.* As described in 111.06, motor dysfunction may be due to any neurological disorder. It may be due to static or progressive conditions involving any area of the nervous system and producing any type of neurological impairment. This may include weakness, spasticity, lack of coordination, ataxia, tremor, athetosis, or sensory loss. Documentation of motor dysfunction must include neurologic findings and description of type of neurologic abnormality (e.g., spasticity, weakness), as well as a description of the child's functional impairment (i.e., what the child is unable to do because of the abnormality). Where a diagnosis has been made, evidence should be included for substantiation of the diagnosis (e.g., blood chemistries and muscle biopsy reports), wherever applicable.

D. *Impairment of communication.* The documentation should include a description of a recent comprehensive evaluation, including all areas of affective and effective communication, performed by a qualified professional.

111.01 Category of Impairment, Neurological

111.02 *Major motor seizure disorder.*

A. *Major motor seizures.* In a child with an established seizure disorder, the occurrence of more than one major motor seizure per month despite at least three months of prescribed treatment. With:

1. Daytime episodes (loss of consciousness and convulsive seizures); or

2. Nocturnal episodes manifesting residuals which interfere with activity during the day.

B. *Major motor seizures.* In a child with an established seizure disorder, the occurrence of a least one major motor seizure in the year prior to application despite at least three months of prescribed treatment. And one of the following:

1. IQ of 69 or less; or

2. Significant interference with communication due to speech, hearing, or visual defect; or

3. Significant emotional disorder; or

4. Where significant adverse effects of medication interfere with major daily activities.

111.03 *Minor motor seizure disorder.* In a child with an established seizure disorder, the occurrence of more than one minor motor seizure per week, with alteration of awareness or loss of consciousness, despite at least three months of prescribed treatment.

111.05 *Brain tumors. A. Malignant* gliomas (astrocytoma—Grades III and IV, glioblastoma multiforme), medulloblastoma, ependymoblastoma, primary sarcoma or brain stem gliomas; or

B. Evaluate other brain tumors under the criteria for the resulting neurological impairment.

111.06 *Motor dysfunction (due to any neurological disorder).* Persistent disorganization or deficit of motor function for age involving two extremities, which (despite prescribed therapy) interferes with age-appropriate major daily activities and results in disruption of:

A. Fine and gross movements; or

B. Gait and station.

111.07 *Cerebral palsy.* With:

A. Motor dysfunction meeting the requirements of 111.06 or 101.03; or

B. Less severe motor dysfunction (but more than slight) and one of the following:

1. IQ of 69 or less; or

2. Seizure disorder, with at least one major motor seizure in the year prior to application; or

3. Significant interference with communication due to speech, hearing or visual defect; or

4. Significant emotional disorder.

111.08 *Meningomyelocele (and related disorders).* With one of the following despite prescribed treatment:

A. Motor dysfunction meeting the requirements of 101.03 or 111.06; or

B. Less severe motor dysfunction (but more than slight), and:

1. Urinary or fecal incontinence when inappropriate for age; or

2. IQ of 69 or less; or

C. Four extremity involvement; or

D. Noncompensated hydrocephalus producing interference with mental or motor developmental progression.

111.09 *Communication impairment, associated with documented neurological disorder.* And one of the following:

A. Documented speech deficit which significantly affects the clarity and content of the speech; or

B. Documented comprehension deficit resulting in ineffective verbal communication for age; or

C. Impairment of hearing as described under the criteria in 102.08.

112.00 **Mental and Emotional Disorders**

A. *Introduction.* This section is intended primarily to describe mental and emotional disorders of young children. The criteria describing medically determinable impairments in adults should be used where they clearly appear to be more appropriate.

B. *Mental retardation. General.* As with any other impairment, the necessary evidence consists of symptoms, signs, and laboratory findings which provide medically demonstrable evidence of impairment severity. Standardized intelligence test results are essential to the adjudication of all cases of mental retardation that are not clearly covered under the provisions of 112.05A. Developmental milestone criteria may be the sole basis for adjudication only in cases where the child's young age and/or condition preclude formal standardized testing by a psychologist or psychiatrist experienced in testing children.

Measures of intellectual functioning. Standardized intelligence tests, such as the Wechsler Preschool and Primary Scale of Intelligence (WPPSI), the Wechsler Intelligence Scale for Children—Revised (WISC–R), the Revised Stanford-Binet Scale, and the McCarthey Scales of Children's Abilities, should be used wherever possible. Key data such as subtest scores should also be included in the report. Tests should be administered by a qualified and experienced psychologist or psychiatrist, and any discrepancies between formal tests results and the child's customary behavior and daily activities should be duly noted and resolved.

Developmental milestone criteria. In the event that a child's young age and/or condition preclude formal testing by a psychologist or psychiatrist experienced in testing children, a comprehensive evaluation covering the full range of developmental activities should be performed. This should consist of a detailed account of the child's daily activities together with direct observations by a professional person; the latter should include indices or manifestations of social, intellectual, adaptive, verbal, motor (posture, locomotion, manipulation), language, emotional, and self-care development for age. The above should then be related by the evaluating or treating physician to established developmental norms of the kind found in any widely used standard pediatrics text.

c. *Profound combined mental-neurological-musculoskeletal impairments.* There are children with profound and irreversible brain damage resulting in total incapacitation. Such children may meet criteria in either neurological, musculoskeletal, and/or mental sections; they should be adjudicated under the criteria most completey substantiated by the medical evidence submitted. Frequently, the most appropriate criteria will be found under the mental impairment section.

112.01 Category of Impairments, Mental and Emotional

112.02 *Chronic brain syndrome.* With arrest of developmental progression for at least six months or loss of previously acquired abilities.

112.03 *Psychosis of infancy and childhood.* Documented by psychiatric evaluation and supported, if necessary, by the results of appropriate standardized psychological tests and manifested by marked restriction in the performance of daily age-appropriate activities; constriction of age-appropriate interests; deficiency of age-approrpiate self-care skills; and impaired ability to relate to others; together with persistence of one (or more) of the following:

A. Significant withdrawal or detachment; or

B. Impaired sense of reality; or

C. Bizarre behavior patterns; or

D. Strong need for maintenance of sameness, with intense anxiety, fear, or anger when change is introduced; or

E. Panic at threat of separation from parent.

112.04 *Functional nonpsychotic disorders.* Documented by psychiatric evaluation and supported, if necessary, by the results of appropriate standardized psychological tests and manifested by marked restriction in the performance of daily age-appropriate activities; constriction of age-appropriate interests; deficiency of age-appropriate self-care skills; and impaired ability to relate to others; together with persistence of one (or more) of the following:

A. Psychophysiological disorder (e.g., diarrhea, asthma); or

B. Anxiety; or

C. Depression; or

D. Phobic, obsessive, or compulsive behavior; or

E. Hypochondriasis; or

F. Hysteria; or

G. Asocial or antisocial behavior.

112.05 *Mental retardation.*

A. Achievement of only those developmental milestones generally acquired by children no more than one-half the child's chronological age; or

B. IQ of 59 or less; or

C. IQ of 60–69, inclusive, and a physical or other mental impairment imposing additional and significant restriction of function or developmental progression.

113.00 **Neoplastic Diseases, Malignant**

A. *Introduction.* Determination of disability in the growing and developing child with a malignant neoplastic disease is based upon the combined effects of:

1. The pathophysiology, histology, and natural history of the tumor; and

2. The effects of the currently employed aggressive multimodal therapeutic regimens.

Combinations of surgery, radiation, and chemotherapy or prolonged therapeutic schedules impart significant additional morbidity to the child during the period of greatest risk from the tumor itself. This period of highest risk and greatest therapeutically-induced morbidity defines the limits of disability for most of childhood neoplastic disease.

B. *Documentation.* The diagnosis of neoplasm should be established on the basis of symptoms, signs, and laboratory findings. The site of the primary, recurrent, and metastatic lesion must be specified in all cases of malignant neoplastic diseases. If an operative procedure has been performed, the evidence should include a copy of the operative note and the report of the gross and microscopic examination of the surgical specimen, along with all pertinent laboratory and X-ray reports. The evidence should also include a recent report directed especially at describing whether there is evidence of local or regional recurrence, soft part or skeletal metastases, and significant post therapeutic residuals.

C. *Malignant solid tumors,* as listed under 113.03, include the histiocytosis syndromes except for solitary eosinophilic granuloma. Thus, 113.03 should not be used for evaluating brain tumors (see 111.05) or thyroid tumors, which must be evaluated on the basis of whether they are controlled by prescribed therapy.

D. *Duration of disability* from malignant neoplastic tumors is included in 113.02 and 113.03. Following the time periods designated in these sections, a documented diagnosis itself is no longer sufficient to establish a severe impairment. The severity of a remaining impairment must be evaluated on the basis of the medical evidence.

113.01 Category of Impairments, Neoplastic Diseases—Malignant

113.02 *Lymphoreticular malignant neoplasms.*

A. Hodgkin's disease with progressive disease not controlled by prescribed therapy; or

B. Non-Hodgkin's lymphoma. Consider under a disability:

1. For 2½ years from time of initial diagnosis; or

2. For 2½ years from time of recurrence of active disease.

113.03 *Malignant solid tumors.* Consider under a disability:

A. For 2 years from the time of initial diagnosis; or

B. For 2 years from the time of recurrence of active disease.

113.04 *Neuroblastoma.* With one of the following:
A. Extension across the midline; or
B. Distant metastases; or
C. Recurrence; or
D. Onset at age 1 year or older.

113.05 *Retinoblastoma.* With one of the following:
A. Bilateral involvement; or
B. Metastases; or
C. Extension beyond the orbit; or
D. Recurrence.

Appendix 2—Medical-Vocational Guidelines

Sec.
200.00 Introduction.
201.00 Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).
202.00 Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).
203.00 Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).
204.00 Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severe medically determinable impairment(s).

200.00 *Introduction.* (a) The following rules reflect the major functional and vocational patterns which are encountered in cases which cannot be evaluated on medical considerations alone, where an individual with a severe medically determinable physical or mental impairment(s) is not engaging in substantial gainful activity and the individual's impairment(s) prevents the performance of his or her vocationally relevant past work. They also reflect the analysis of the various vocational factors (i.e., age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in substantial gainful activity in other than his or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a conclusion as to whether the individual is or is not disabled. However, each of these findings of fact is subject to rebuttal and the individual may present evidence to refute such findings. Where any one of the findings of fact does not coincide with the corresponding criterion of a rule, the rule does not apply in that particular case and, accordingly, does not direct a conclusion of disabled or not disabled. In any instance where a rule does not apply, full consideration must be given to all of the relevant facts of the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations.

(b) The existence of jobs in the national economy is reflected in the "Decisions" shown in the rules; i.e., in promulgating the rules, administrative notice has been taken of the numbers of unskilled jobs that exist throughout the national economy at the various functional levels (sedentary, light, medium, heavy, and very heavy) as supported by the "Dictionary of Occupational Titles" and the "Occupational Outlook Handbook," published by the Department of Labor; the "County Business Patterns" and "Census Surveys" published by the Bureau of the Census; and occupational surveys of light and sedentary jobs prepared for the Social Security Administration by various State employment agencies. Thus, when all factors coincide with the criteria of a rule, the existence of such jobs is established. However, the existence of such jobs for individuals whose remaining functional capacity or other factors do not coincide with the criteria of a rule must be further considered in terms of what kinds of jobs or types of work may be either additionally indicated or precluded.

(c) In the application of the rules, the individual's residual functional capacity (i.e., the maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of jobs), age, education, and work experience must first be determined.

(d) The correct disability decision (i.e., on the issue of ability to engage in substantial gainful activity) is found by then locating the individual's specific vocational profile. If an individual's specific profile is not listed within this Appendix 2, a conclusion of disabled or not disabled is not directed. Thus, for example, an individual's ability to engage in substantial gainful work where his or her residual functional capacity falls between the ranges of work indicated in the rules (e.g., the individual who can perform more than light but less than medium work), is decided on the basis of the principles and definitions in the regulations, giving consideration to the rules for specific case situations in this Appendix 2. These rules represent various combinations of exertional capabilities, age, education and work experience and also provide an overall structure for evaluation of those cases in which the judgments as to each factor do not coincide with those of any specific rule. Thus, when the necessary judgments have been made as to each factor and it is found that no specific rule applies, the rules still provide guidance for decisionmaking, such as in cases involving combinations of impairments. For example, if strength limitations resulting from an individual's impairment(s) considered with the judgments made as to the individual's age, education and work experience correspond to (or closely approximate) the factors of a particular rule, the adjudicator then has a frame of reference for considering the jobs or types of work precluded by other, nonexertional impairments in terms of numbers of jobs remaining for a particular individual.

(e) Since the rules are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. In addition, some impairments may result solely in postural and manipulative limitations or environmental restrictions. Environmental restrictions are those restrictions which result in inability to tolerate some physical feature(s) of work settings that occur in certain industries or types of work, e.g., an inability to tolerate dust or fumes.

(1) In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in this Appendix 2. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments.

(2) However, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules in this subpart are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone and, if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations. Also, in these combinations of nonexertional and exertional limitations which cannot be wholly determined under the rules in this Appendix 2, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations, which will provide insight into the adjudicative weight to be accorded each factor.

201.00 *Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).* (a) Most sedentary occupations fall within the skilled, semi-skilled, professional, administrative, technical, clerical, and benchwork classifications. Approximately 200 separate unskilled sedentary occupations can be identified, each representing numerous jobs in the national economy. Approximately 85 percent of these jobs are in the machine trades and benchwork occupational categories. These jobs (unskilled sedentary occupations) may be performed after a short demonstration or within 30 days.

(b) These unskilled sedentary occupations are standard within the industries in which they exist. While sedentary work represents a significantly restricted range of work, this range in itself is not so prohibitively restricted as to negate work capability for substantial gainful activity.

(c) Vocational adjustment to sedentary work may be expected where the individual has special skills or experience relevant to sedentary work or where age and basic educational competences provide sufficient occupational mobility to adapt to the major segment of unskilled sedentary work. Inability to engage in substantial gainful activity would be indicated where an individual who is restricted to sedentary work because of a severe medically determinable impairment lacks special skills or experience relevant to sedentary work, lacks educational qualifications relevant to most sedentary work (e.g., has a limited education or less) and the individual's age, though not necessarily advanced, is a factor which significantly limits vocational adaptability.

(d) The adversity of functional restrictions to sedentary work at advanced age (55 and over) for individuals with no relevant past work or who can no longer perform vocationally relevant past work and have no transferable skills, warrants a finding of disabled in the the absence of the rare situation where the individual has recently completed education which provides a basis for direct entry into skilled sedentary work. Advanced age and a history of unskilled work or no work experience would ordinarily offset any vocational advantages that might accrue by reason of any remote past education, whether it is more or less than limited education.

(e) The presence of acquired skills that are readily transferable to a significant range of skilled work within an individual's residual functional capacity would ordinarily warrant a finding of ability to engage in substantial gainful activity regardless of the adversity of age, or whether the individual's formal education is commensurate with his or her demonstrated skill level. The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual's formal educational attainments.

(f) In order to find transferability of skills to skilled sedentary work for individuals who are of advanced age (55 and over), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) Individuals approaching advanced age (age 50–54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. When such individuals have no past work experience or can no longer perform vocationally relevant past work and have no transferable skills, a finding of disabled ordinarily obtains. However, recently completed education which provides for direct entry into sedentary work will preclude such a finding. For this age group, even a high school education or more (ordinarily completed in the remote past) would have little impact for effecting a vocational adjustment unless relevant work experience reflects use of such education.

(h) The term "younger individual" is used to denote an individual age 18 through 49. For those within this group who are age 45–49, age is a less positive factor than for those who are age 18–44. Accordingly, for such individuals; (1) who are restricted to sedentary work, (2) who are unskilled or have no transferable skills, (3) who have no relevant past work or who can no longer perform vocationally relevant past work, and (4) who are either illiterate or unable to communicate in the English language, a finding of disabled is warranted. On the other hand, age is a more positive factor for those who are under age 45 and is usually not a significant factor in limiting such an individual's ability to make a vocational adjustment, even an adjustment to unskilled sedentary work, and even where the individual is illiterate or unable to communicate in English. However, a finding of disabled is not precluded for those individuals under age 45 who do not meet all of the criteria of a specific rule and who do not have the ability to perform a full range of sedentary work. The following examples are illustrative: Example 1: An individual under age 45 with a high school education can no longer do past work and is restricted to unskilled sedentary jobs because of a severe medically determinable cardiovascular impairment (which does not meet or equal the listings in Appendix 1). A permanent injury of the right hand limits the individual to sedentary jobs which do not require bilateral manual dexterity. None of the rules in Appendix 2 are applicable to this particular set of facts, because this individual cannot perform the full range of work defined as sedentary. Since the inability to perform jobs requiring bilateral manual dexterity significantly compromises the only range of work for which the individual is otherwise qualified (i.e., sedentary), a finding of disabled would be appropriate. Example 2: An illiterate 41 year old individual with mild mental retardation (IQ of 78) is restricted to unskilled sedentary work and cannot perform vocationally relevant past work, which had consisted of unskilled agricultural field work; his or her particular characteristics do not specifically meet any of the rules in Appendix 2, because this individual cannot perform the full range of work defined as sedentary. In light of the adverse factors which further narrow the range of sedentary work for which this individual is qualified, a finding of disabled is appropriate.

(i) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. Thus, the functional capability for a full range of sedentary work represents sufficient numbers of jobs to indicate substantial vocational scope for those individuals age 18–44 even if they are illiterate or unable to communicate in English.

TABLE NO. 1—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO SEDENTARY WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)

Rule	Age	Education	Previous work experience	Decision
201.01	Advanced age	Limited or less	Unskilled or none	Disabled.
201.02	do	do	Skilled or semiskilled—skills not transferable [1].	Do.
201.03	do	do	Skilled or semiskilled—skills transferable [1]	Not disabled.
201.04	do	High school graduate or more—does not provide for direct entry into skilled work [2].	Unskilled or none	Disabled.
201.05	do	High school graduate or more—provides for direct entry into skilled work [2].	do	Not disabled.
201.06	do	High school graduate or more—does not provide for direct entry into skilled work [2].	Skilled or semiskilled—skills not transferable [1].	Disabled.
201.07	do	do	Skilled or semiskilled—skills transferable [1]	Not disabled.
201.08	do	High school graduate or more—provides for direct entry into skilled work [2].	Skilled or semiskilled—skills not transferable [2].	Do.
201.09	Closely approaching advanced age	Limited or less	Unskilled or none	Disabled.
201.10	do	do	Skilled or semiskilled—skills not transferable	Do.
201.11	do	do	Skilled or semiskilled—skills transferable	Not disabled.
201.12	do	High school graduate or more—does not provide for direct entry into skilled work [2].	Unskilled or none	Disabled.
201.13	do	High school graduate or more—provides for direct entry into skilled work [2].	do	Not disabled.
201.14	do	High school graduate or more—does not provide for direct entry into skilled work [2].	Skilled or semiskilled—skills not transferable	Disabled.
201.15	do	do	Skilled or semiskilled—skills transferable	Not disabled.

TABLE NO. 1—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO SEDENTARY WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)—Continued

Rule	Age	Education	Previous work experience	Decision
201.16	....do	High school graduate or more—provides for direct entry into skilled work [2].	Skilled or semiskilled—skills not transferable	Do.
201.17	Younger individual age 45–49	Illiterate or unable to communicate in English.	Unskilled or none	Disabled.
201.18	....do	Limited or less—at least literate and able to communicate in English.	....do	Not disabled.
201.19	....do	Limited or less	Skilled or semiskilled—skills not transferable	Do.
201.20	....do	....do	Skilled or semiskilled—skills transferable	Do.
201.21	....do	High school graduate or more	Skilled or semiskilled—skills not transferable	Do.
201.22	....do	....do	Skilled or semiskilled—skills transferable	Do.
201.23	Younger individual age 18–44	Illiterate or unable to communicate in English.	Unskilled or none	Do. [4]
201.24	....do	Limited or less—at least literate and able to communicate in English.	....do	Do. [4]
201.25	....do	Limited or less	Skilled or semiskilled—skills not transferable	Do. [4]
201.26	....do	....do	Skilled or semiskilled—skills transferable	Do. [4]
201.27	....do	High school graduate or more	Unskilled or none	Do. [4]
201.28	....do	....do	Skilled or semiskilled—skills not transferable	Do. [4]
201.29	....do	....do	Skilled or semiskilled—skills transferable	Do. [4]

[1] See 201.00(f).
[2] See 201.00(d).
[3] See 201.00(g).
[4] See 201.00(h).

202.00 *Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).* (a) The functional capacity to perform a full range of light work includes the functional capacity to perform sedentary as well as light work. Approximately 1,600 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short demonstration or within 30 days, and do not require special skills or experience.

(b) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility even for severely impaired individuals who are not of advanced age and have sufficient educational competences for unskilled work.

(c) However, for individuals of advanced age who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who have only skills that are not readily transferable to a significant range of semi-skilled or skilled work that is within the individual's functional capacity, or who have no work experience, the limitations in vocational adaptability represented by functional restriction to light work warrant a finding of disabled. Ordinarily, even a high school education or more which was completed in the remote past will have little positive impact on effecting a vocational adjustment unless relevant work experience reflects use of such education.

(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (i.e., closely approaching advanced age, 50–54) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.

(e) The presence of acquired skills that are readily transferable to a significant range of semi-skilled or skilled work within an individual's residual functional capacity would ordinarily warrant a finding of not disabled regardless of the adversity of age, or whether the individual's formal education is commensurate with his or her demonstrated skill level. The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual's formal educational attainments.

(f) For a finding of transferability of skills to light work for individuals of advanced age who are closely approaching retirement age (age 60–64), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly, the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. The capability for light work, which includes the ability to do sedentary work, represents the capability for substantial numbers of such jobs. This, in turn, represents substantial vocational scope for younger individuals (age 18–49) even if illiterate or unable to communicate in English.

TABLE NO. 2—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO LIGHT WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)

Rule	Age	Education	Previous work experience	Decision
202.01	Advanced age	Limited or less	Unskilled or none	Disabled.
202.02	....do	....do	Skilled or semiskilled—skills not transferable	Do.
202.03	....do	....do	Skilled or semiskilled—skills transferable [1]	Not disabled.
202.04	....do	High school graduate or more—does not provide for direct entry into skilled work [2].	Unskilled or none	Disabled.
202.05	....do	High school graduate or more—provides for direct entry into skilled work [2].	....do	Not disabled.
202.06	....do	High school graduate or more—does not provide for direct entry into skilled work [2].	Skilled or semiskilled—skills not transferable	Disabled.
202.07	....do	....do	Skilled or semiskilled—skills transferable [2]	Not disabled.

TABLE NO. 2—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO LIGHT WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)—Continued

Rule	Age	Education	Previous work experience	Decision
202.08	....do	High school graduate or more—provides for direct entry into skilled work [2].	Skilled or semiskilled—skills not transferable	Do.
202.09	Closely approaching advanced age	Illiterate or unable to communicate in English.	Unskilled or none	Disabled.
202.10	....do	Limited or less—At least literate and able to communicate in English.	....do	Not disabled.
202.11	....do	Limited or less	Skilled or semiskilled—skills not transferable	Do.
202.12	....do	....do	Skilled or semiskilled—skills transferable	Do.
202.13	....do	High school graduate or more	Unskilled or none	Do.
202.14	....do	....do	Skilled or semiskilled—skills not transferable	Do.
202.15	....do	....do	Skilled or semiskilled—skills transferable	Do.
202.16	Younger individual	Illiterate or unable to communicate in English.	Unskilled or none	Do.
202.17	....do	Limited or less—At least literate and able to communicate in English.	....do	Do.
202.18	....do	Limited or less	Skilled or semiskilled—skills not transferable	Do.
202.19	....do	....do	Skilled or semiskilled—skills transferable	Do.
202.20	....do	High school graduate or more	Unskilled or none	Do.
202.21	....do	....do	Skilled or semiskilled—skills not transferable	Do.
202.22	....do	....do	Skilled or semiskilled—skills transferable	Do.

[1] See 202.00(f).
[2] See 202.00(c).

203.00 *Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).* (a) The functional capacity to perform medium work includes the functional capacity to perform sedentary, light, and medium work. Approximately 2,500 separate sedentary, light, and medium occupations can be identified, each occupation representing numerous jobs in the national economy which do not require skills or previous experience and which can be performed after a short demonstration or within 30 days.

(b) The functional capacity to perform medium work represents such substantial work capability at even the unskilled level that a finding of disabled is ordinarily not warranted in cases where a severely impaired individual retains the functional capacity to perform medium work. Even the adversity of advanced age (55 or over) and a work history of unskilled work may be offset by the substantial work capability represented by the functional capacity to perform medium work. However, an individual with a marginal education and long work experience (i.e., 35 years or more) limited to the performance of arduous unskilled labor, who is not working and is no longer able to perform this labor because of a severe impairment(s), may still be found disabled even though the individual is able to do medium work.

(c) However, the absence of any relevant work experience becomes a more significant adversity for individuals of advanced age (55 and over). Accordingly, this factor, in combination with a limited education or less, militates against making a vocational adjustment to even this substantial range of work and a finding of disabled is appropriate. Further, for individuals closely approaching retirement age (60–64) with a work history of unskilled work and with marginal education or less, a finding of disabled is appropriate.

TABLE NO. 3—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO MEDIUM WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)

Rule	Age	Education	Previous work experience	Decision
203.01	Closely approaching retirement age	Marginal or none	Unskilled or none	Disabled.
203.02	....do	Limited or less	None	Do.
203.03	....do	Limited	Unskilled	Not disabled.
203.04	....do	Limited or less	Skilled or semiskilled—skills not transferable	Do.
203.05	....do	....do	Skilled or semiskilled—skills transferable	Do.
203.06	....do	High school graduate or more	Unskilled or none	Do.
203.07	....do	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable	Do.
203.08	....do	....do	Skilled or semiskilled—skills transferable	Do.
203.09	....do	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable	Do.
203.10	Advanced age	Limited or less	None	Disabled.
203.11	....do	....do	Unskilled	Not disabled.
203.12	....do	....do	Skilled or semiskilled—skills not transferable	Do.
203.13	....do	....do	Skilled or semiskilled—skills transferable	Do.
203.14	....do	High school graduate or more	Unskilled or none	Do.
203.15	....do	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable	Do.
203.16	....do	....do	Skilled or semiskilled—skills transferable	Do.
203.17	....do	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable	Do.
203.18	Closely approaching advanced age	Limited or less	Unskilled or none	Do.
203.19	....do	....do	Skilled or semiskilled—skills not transferable	Do.
203.20	....do	....do	Skilled or semiskilled—skills transferable	Do.
203.21	....do	High school graduate or more	Unskilled or none	Do.
203.22	....do	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable	Do.
203.23	....do	....do	Skilled or semiskilled—skills transferable	Do.

TABLE NO. 3—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO MEDIUM WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)—Continued

Rule	Age	Education	Previous work experience	Decision
203.24	do	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable	Do.
203.25	Younger individual	Limited or less	Unskilled or none	Do.
203.26	do	do	Skilled or semiskilled—skills not transferable	Do.
203.27	do	do	Skilled or semiskilled—skills transferable	Do.
203.28	do	High school graduate or more	Unskilled or none	Do.
203.29	do	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable	Do.
203.30	do	do	Skilled or semiskilled—skills transferable	Do.
203.31	do	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable	Do.

204.00 *Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severe medically determinable impairment(s).* The residual functional capacity to perform heavy work or very heavy work includes the functional capability for work at the lesser functional levels as well, and represents substantial work capability for jobs in the national economy at all skill and physical demand levels. Individuals who retain the functional capacity to perform heavy work (or very heavy work) ordinarily will not have a severe impairment or will be able to do their past work—either of which would have already provided a basis for a decision of "not disabled". Environmental restrictions ordinarily would not significantly affect the range of work existing in the national economy for individuals with the physical capability for heavy work (or very heavy work). Thus an impairment which does not preclude heavy work (or very heavy work) would not ordinarily be the primary reason for unemployment, and generally is sufficient for a finding of not disabled, even though age, education, and skill level of prior work experience may be considered adverse.

PART 208—DISABILITY [REMOVED]

2. Part 208—Disability consisting of §§ 208.9 through 208.11, § 208.17, § 208.25, § 208.27, § 208.29 and § 208.31 is removed.

PART 230—MONTHS ANNUITIES NOT PAYABLE BY REASON OF WORK

3. Part 230 is amended as follows:

A. The authority citation for Part 230 is revised to read as follows:

Authority: 45 U.S.C. 231f.

§§ 230.3 and 230.4 [Removed]

B. Part 230 is amended by removing §§ 230.3 and 230.4.

PART 260—REQUESTS FOR RECONSIDERATION AND APPEALS WITHIN THE BOARD FROM DECISIONS ISSUED BY THE BUREAU OF RETIREMENT CLAIMS AND THE BUREAU OF COMPENSATION AND CERTIFICATION

4. Part 260 is amended as follows:

A. The authority citation for Part 260 is revised to read as follows:

Authority: 45 U.S.C. 231f, 45 U.S.C. 231g, 45 U.S.C. 355.

B. Section 260.1 is amended by revising paragraphs (d)(3) introductory text, (d)(3)(iii) and (d)(3)(iv) as follows:

§ 260.1 Initial decisions by the Bureau of Retirement Claims.

(d) * * *

(3) When an initial decision is made that an annuitant's entitlement to a disability has ended, written notice of that decision shall be mailed to the annuitant or payee of an annuity at the annuitant's or payee's last known address. Such notice shall inform the annuitant or payee of an annuity:

* * * * *

(iii) That entitlement to the annuity ends on the last day of the second month after the month in which disability ends as described in § 220.181;

(iv) That the Board will stop payment of the annuitant's disability annuity with the last day of the second month following the month in which disability ends as described in § 220.181, or the last day of the first month following the month in which the notice provided by this paragraph is sent by the Board, whichever date is later;

* * * * *

Dated: July 17, 1989.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-17622 Filed 8-3-89; 8:45 am]

BILLING CODE 7905-01-M

federal register

Friday
August 4, 1989

Part III

Securities and Exchange Commission

17 CFR Part 230 et al.

Multijurisdictional Disclosure; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 240, 249, 260 and 269

[Release No. 33-6841; 34-27056; 39-2217; International Series—109; File No. S7-19-89]

RIN 3235-AC84

Multijurisdictional Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission (the "Commission") is publishing for comment proposed Rules, Forms and Schedules intended to facilitate cross-border offerings of securities by specified Canadian issuers. The Rules, Forms and Schedules will provide a foundation for a multijurisdictional disclosure system (the "system") that can be expanded to encompass a wider class of issuers and be extended to additional jurisdictions.

As currently proposed, the multijurisdictional disclosure system would permit Canadian issuers that, depending on the nature of the offering, meet market value, public float and Canadian reporting history tests to register securities in the United States using disclosure documents prepared according to the requirements of Canadian regulatory authorities. Issuers meeting tests of market value and public float also would be able to use such documents to meet U.S. periodic disclosure requirements. Companies subject to U.S. proxy requirements could use their Canadian documents for certain solicitations. In addition, insiders of companies subject to Section 16 of the Securities Exchange Act could meet the reporting requirements by filing Canadian forms.

The multijurisdictional disclosure system further would permit third-party and issuer exchange and cash tender offers for securities issued by a Canadian company to be made in compliance with the provisions of applicable Canadian tender offer regulation where less than 20 percent of the class of securities subject to the offer were held of record by U.S. residents.

Concurrently with the publication of this Release, the Ontario Securities Commission and the Commission des valeurs mobilieres du Quebec are issuing for comment proposals that would provide for the implemention of the multijurisdictional disclosure system in Canada and would permit U.S. issuers to make public offerings and tender offers in Canada using disclosure documents prepared in accordance with Commission requirements. Such proposals are published as an appendix to this Release.

DATE: Comments should be received on or before October 31, 1989.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-19-89. All comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Sara Hanks or William B. Haseltine, Office of International Corporate Finance, Division of Corporation Finance at (202) 272-3246; David Sirignano, Office of Tender Offers, Division of Corporation Finance at (202) 272-3097; Catherine Dixon, Office of Chief Counsel, Division of Corporation Finance at (202) 272-2573; Robert Bayless, Office of the Chief Accountant, Division of Corporation Finance at (202) 272-2553; Nancy J. Sanow, Elizabeth Jacobs or Mark L. Berman, Office of Trading Practices, Division of Market Regulation at (202) 272-2848, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment new Forms F-7, F-8, F-9, F-10 and F-X under the Securities Act of 1933; new Form 40-F, new Schedules 14D-1F, 14D-9F and 13E-4F and new Form F-X (also proposed under the Securities Act) under the Securities Exchange Act of 1934; and new Form T-5 under the Trust Indenture Act of 1939. The Commission further is proposing new Rule 467 and changes to Rules 174(a) and 477(b) under the Securities Act; new Rules 3a12-3(c), 13e-4(h), 14a-6(m), 14a-8(f), 14d-1(b), 14e-2(c), 15d-4, 15d-5(c), and 16a-12, and changes to Rule 12g3-2(b), under the Exchange Act; and new Rules 4d-1 through 4d-6 under the Trust Indenture Act.

I. Executive Summary

Securities markets around the world are changing as foreign issuers expand their use of U.S. capital markets, domestic issuers increase their access to foreign markets, and both debt and equity offerings are made multinationally. As a result of these offerings, the lines of demarcation between domestic and international capital markets are beginning to blur and domestic markets are facing serious competition from a largely unregulated, transnational financial market.

Foreign issuers that consider direct access to the U.S. capital markets through registered public offerings frequently are dissuaded by the substantial differences in disclosure standards, particularly with respect to accounting standards. Because registration under the Securities Act of 1933 (the "Securities Act") [1] brings with it a periodic reporting requirement under the Securities Exchange Act of 1934 (the "Exchange Act"),[2] a foreign issuer deciding whether to register securities also must consider the cost of incurring a continuing reporting obligation.

The Commission's challenge is to remove unnecessary impediments to transnational capital formation without unduly disadvantaging U.S. issuers in the U.S. markets, while ensuring that those buying securities in the U.S. capital markets are afforded the protections intended by the Securities Act and the Exchange Act. One such impediment is the fact that issuers making securities offerings across national boundaries may have to comply with the disclosure requirements of two or more jurisdictions.[3] Attempting to comply with the requirements of multiple jurisdictions is expensive not only because of the cost of retaining local accountants and lawyers, but also because of the additional time needed, since conditions advantageous to the issuer may prevail in the capital markets only for a limited period. Rather than comply with the requirements of regulators in more than one country, issuers may choose to exclude certain jurisdictions from their offerings, thus excluding investors in that jurisdiction from investment opportunities.

As an initial step towards addressing these issues, the Commission in 1985 issued a Concept Release [4] requesting comments on two alternative methods of facilitating multijurisdictional offerings: The "common prospectus approach" and the "reciprocal prospectus approach." The common prospectus approach would require that participating jurisdictions agree upon a set of disclosure requirements that would be the same in each jurisdiction, with the result that a prospectus prepared pursuant to the requirements

[1] 15 U.S.C. 77a et seq.

[2] 15 U.S.C. 78a et seq.

[3] The Commission has already made a number of accommodations to foreign issuers in its disclosure standards. See section II.C.

[4] Securities Act Release No. 6568, "Facilitation of Multinational Securities Offerings" (Feb. 28, 1985) (50 FR 9281) (the "Concept Release").

of one participating jurisdiction automatically would comply with the requirements of all other participating jurisdictions. The reciprocal prospectus approach, on the other hand, would enable an issuer to prepare a disclosure document according to the requirements of its home jurisdiction, and to have that document accepted for securities offerings in every other participating jurisdiction.

A majority of commenters were of the opinion that although the common prospectus approach might be ideal, the more workable system was represented by the reciprocal prospectus approach. The staff of the Commission thereafter began discussions with the staffs of the Ontario and Quebec securities commissions with a view toward establishing a multijurisdictional disclosure system. The system proposed today is a hybrid between the reciprocal approach and the common prospectus approach.

Development of a multijurisdictional disclosure system between the United States and the Canadian provinces of Ontario and Quebec was a logical first step in meeting the needs of transnational securities transactions. Canada has mature capital markets with a strong regulatory tradition. The United States and Canada have the common goal of investor protection through refined and developed disclosure systems for both the primary and secondary markets. Of particular significance is the extensive cooperation in enforcement matters provided by the 1988 Memorandum of Understanding ("MOU") with British Columbia, Ontario and Quebec. The MOU covers virtually the entire spectrum of cases which could arise under the federal securities laws, and provides a full range of assistance, including use of subpoena power to compel the production of documents in furtherance of administrative investigations.

While each jurisdiction's requirements may differ in detail, they share the common purpose of ensuring that investors are given information adequate to permit them to make an informed investment decision, and an historical reliance on disclosure as the principal protection of investors. Key to any system of disclosure is the application of accounting and auditing standards, and Canada, like the United States, has highly developed accounting and auditing standards.

The system proposed today would permit single-jurisdiction [5] regulation of certain securities offerings and continuous reporting obligations, so that cross-border securities offerings could be made more efficiently and at less expense. The disclosure document for an offering would be prepared in accordance with the requirements of the issuer's home jurisdiction and the regulatory authorities of the home jurisdiction would be responsible for establishing the applicable disclosure standards. Review of the disclosure document would be that customary in the issuer's home jurisdiction. Issuers using the system would, however, continue to be subject to provisions imposing civil or criminal liability for fraud in each jurisdiction where the securities were offered, if the offer was made through a material misrepresentation or omission in the disclosure document or there was fraud or manipulation in connection with the offering. Issuers would be subject to the authority of each such jurisdiction to halt the offering in the public interest and for the protection of investors.

The system would cover registration of offerings by "substantial" Canadian issuers, all of which are eligible to use the Canadian integrated disclosure system, the Prompt Offering Prospectus system. As an initial step, the multijurisdictional disclosure system would be limited to "substantial issuers" that could be assumed to have a large market following and the prices for whose securities reflect all available public information. Multijurisdictional registration also would be made available for certain rights and exchange offers, although more because of concerns for domestic investors' interests than for encouraging cross-border public offers. Foreign issuers making a rights or exchange offer frequently do not extend offers to U.S. holders because these issuers are unwilling to register securities with the Commission, thereby denying U.S. holders the opportunity to realize significant value on their investment. Therefore, it appears in the interest of domestic investors to facilitate the registration of rights and exchange offers to encourage foreign issuers to extend such offers to U.S. investors. Reliance on home jurisdiction disclosure appears particularly appropriate where U.S. investors do not own a substantial percentage of the foreign securities.[6]

In the case of offerings by substantial issuers of securities other than non-convertible investment grade debt or non-convertible investment grade preferred stock, reconciliation of financial statements to U.S. generally accepted accounting principles ("GAAP") would be required. No reconciliation would be required for investment grade securities, or in connection with rights or exchange offers. Qualification under the Trust Indenture Act of 1939 (the "Trust Indenture Act") [7] of indentures relating to debt offerings would continue to be required, but under rules proposed today use of Canadian trustees would be permitted under specified conditions.

Transactions made in the United States pursuant to the multijurisdictional disclosure system may raise issues under certain anti-manipulation and other rules under the Exchange Act.[8] The Commission's staff is proposing to take no-action positions under Rules 10b-6 and 10b-13 [9] to permit specified purchases of securities outside the offer as permitted by Canadian law during tender and exchange offers made pursuant to the system. Moreover, the staff will consider the extent to which relief from these provisions is appropriate in connection with other transactions pursuant to the multijurisdictional disclosure system.

The multijurisdictional disclosure system also would extend to Williams Act regulations applicable to third-party and issuer exchange and cash tender offers made for the securities of Canadian issuers in compliance with Canadian tender offer regulations, where less than 20 percent of the shares involved were held of record by U.S. residents. In the case of exchange offers, Canadian bidders would be permitted to use Canadian disclosure in the required registration statement if they met a (CN) $75 million market capitalization test and less than 20 percent of the shares subject to the offer were held of record by U.S. residents. U.S. bidders in an exchange offer would continue to register the exchange offer on the standard U.S. forms (e.g., Form S-1 or S-4).

The multijurisdictional disclosure system additionally would permit use of home jurisdiction periodic reporting forms to meet the reporting requirements of the Exchange Act, where (a) such requirements arose solely by reason of offerings registered on the forms proposed today, or (b) the issuer of the securities met tests of market value and reporting history. With respect to all Canadian issuers subject to Section 16

[5] Public offerings in the United States are regulated at both the federal and the state level. See section V.

[6] The tests for eligibility to use the system are discussed more fully in section IV.C.

[7] 15 U.S.C. 77aaa-77bbbb.

[8] See Exchange Act Release No. 21958 (April 18, 1985) (50 FR 18302, 18308-09) ("Global Trading Release").

[9] 17 CFR 240.10b-6 and 240.10b-13.

BEST COPY AVAILABLE

of the Exchange Act,[10] insider reports filed under Canadian law would suffice for Exchange Act purposes. In addition, Canadian issuers subject to U.S. proxy regulations could rely on Canadian regulations and Canadian documents to meet U.S. requirements in certain limited circumstances.

The multijurisdictional system would not be available with respect to offers and sales of securities issued by investment companies required to register under the Investment Company Act of 1940.[11]

Concurrently with the publication of today's Release by the Commission, the Ontario Securities Commission ("OSC") and the Commission des valeurs mobilieres du Quebec ("CVMQ") are publishing for comment proposals that would provide for the implementation of a multijurisdictional disclosure system in Canada and permit U.S. issuers to make public offerings and tender offers in Canada using disclosure documents prepared according to Commission requirements. Such proposals are published as an appendix to this Release.

II. Background

A. Developments in International Securities Markets

In recent years, there has been substantial growth [12] in both U.S. investors' purchases of foreign securities and offerings by U.S. issuers outside the United States. In 1988, gross transactions by U.S investors in foreign corporate stocks totalled over $151 billion, representing almost nine times the total of such transactions in 1980.[13] Gross U.S. transactions in foreign debt securities totalled $445 billion in 1988, reflecting a more than twelve-fold increase since 1980. There are 150 foreign securities traded on U.S. securities exchanges, and 291 quoted in NASDAQ (99 in the National Market System). Many others are traded over-the-counter. In all, the securities of over 2000 foreign issuers are traded in the United States.[14]

Part of the growth in cross-border securities transactions has consisted of an increase in the number of offerings made simultaneously in two or more countries, one of which may be the country of the issuer. Such offerings typically are made when the size of the offering is such that it cannot be absorbed by the issuer's domestic market (for example, in the case of large issuers from the comparatively small Scandinavian markets, or the recent British and French government privatizations), when the issuer desires to expand the geographic base of its security holders, when the issuer wishes to increase the market for its securities internationally, or when strategic reasons exist (for example, to protect against takeover attempts). The issues raised by transnational capital formation became most apparent in the course of such multinational offerings, and were the impetus for the Concept Release.

The number of multinational offerings including a U.S. public tranche has increased significantly in recent years, due in large part to the increase in privatization offerings.[15] The first such major offering was by British Petroleum Company PLC in 1977. Since then, major public multinational offerings have increased significantly, especially in connection with privatizations of various foreign industries.[16] The significance of the privatization offerings lies not only in their increasing frequency and international impact, but also in their enormous size.[17]

In the past few years non-governmental companies also have made multinational offerings involving a public U.S. tranche.[18] Although these offerings usually are substantial in size, to date they have not been as large as the industry privatizations.[19] They can be expected to continue to increase in size and number, especially in view of developments such as the creation of a single market in Europe in 1992.[20]

With increasing U.S. interest in and holding of foreign securities, the impact of registration obligations and tender offer regulation on the willingness of foreign issuers to extend rights and exchange offers or cash tender offers to U.S. shareholders has become increasingly significant. Frequently, U.S. investors are denied participation in such offers, or cashed out, because foreign issuers decide not to subject themselves to U.S. registration and continuous reporting requirements. Consequently, while rights offers are very common in Europe [21] and exchange offers are not uncommon in non-U.S. markets, rights and exchange offers by foreign companies into the United States are rare,[22] while cash tender offers are much more frequent.[23]

B. Canadian Issuers in the United States Market

Canadian companies are frequent issuers in the U.S. capital markets. In 1987 and 1988, Canadian issuers made a total of 124 public offerings in the United States, registering approximately $10 billion of securities, of which $8 billion was equity.[24] Large Canadian multinational offerings have included, for example, an offering in July 1987 by Gulf Canada Resources Limited. This offering, which was part of a major reorganization of Gulf Canada Corp., involved a Canadian tranche of 7.8 million shares for (CN) $175.5 million, a U.S. tranche of 6.6 million shares for (US) $111.3 million, and an international tranche of 5.6 million shares for (US) $94.5 million. Canadian companies also have made use of the U.S. shelf registration system. Over $1.7 billion in debt securities have been registered by Canadian issuers for sale under Rule 415 in the last three years.[25]

Of the 516 foreign issuers filing periodic reports with the Commission under the Exchange Act, more than half are Canadian.[26] As of June 30, 1989, there were 21 Canadian issuers listed on the New York Stock Exchange, 38 on the American Stock Exchange and 146 quoted in NASDAQ.

C. Accommodations Made to Foreign Issuers; Issues Raised by Multijurisdictional Offerings

1. Disclosure Issues

The Commission traditionally has accommodated various foreign disclosure policies and business practices, recognizing the differences in foreign disclosure and reporting requirements, and making available special forms for use by foreign issuers.[27]

In 1977, the Commission adopted a new form, Form 20–F, for registration statements and annual reports filed under the Exchange Act.[28] This form may be used by non-Canadian foreign private issuers and Canadian issuers that are not listed on a U.S. securities exchange and have not offered their securities publicly in the United States. Although the form requires substantial disclosure by foreign private issuers, it makes several concessions based on a recognition of foreign disclosure practices. The form permits preparation of financial statements in accordance with GAAP in the registrant's home country, with reconciliation to U.S. GAAP attached thereto.[29] The form also calls for less detail regarding related-party transactions than is required for domestic registrants,[30] and management remuneration may be presented on an aggregate basis.[31] Additionally, the time frame for filing annual reports on Form 20–F is designed to accommodate foreign issuers.[32]

Quarterly reports are not required to be filed by foreign private issuers. Rather, current information that is made public or required to be filed in the home country of a foreign issuer must be provided to the Commission on Form 6–K.[33]

Until 1982, foreign issuers making a public offering in the United States were required to use the same forms as domestic issuers. The system was revised that year with the adoption of the foreign integrated disclosure system.[34] This system parallels the integrated disclosure system for domestic issuers,[35] but extends the accommodations made to foreign issuers in Form 20–F to registration statements under the Securities Act.

Foreign issuers with fewer than 300 U.S. shareholders are exempt from the reporting requirements of Section 12(g) of the Exchange Act [36] pursuant to Rule 12g3–2(a) thereunder.[37] Additionally, foreign private issuers not listed on an exchange or quoted in NASDAQ or subject to reporting requirements under Section 15(d) of the Exchange Act [38] may qualify for the "information supplying-exemption" provided by Rule 12g3–2(b). Under this rule, foreign issuers that furnish the Commission with current information required in their home jurisdiction are exempt from the reporting requirements of Section 12(g).

Foreign governmental issuers and foreign private issuers eligible to use Form 20–F are exempt from the proxy and short-swing profit regulations of

---

[10] 15 U.S.C. 78p.

[11] 15 U.S.C. 80a–1–80a–52.

[12] Eurobond offerings totalled $177.2 billion in 1988, $140.5 billion in 1987, and $187.7 billion in 1986. Source: OECD Financial Statistics Monthly (various issues). The value of international offerings of common and preferred stocks in 1988 was $7.4 billion, down from the record total in 1987 of $20.3 billion, but representing an increase over the total in 1983 of $200 million. Source: Euromoney Bondware. International secondary markets are strong, too, with a total of 406 companies whose shares are actively traded in one or more foreign markets. "The Corporate List," Euromoney (May 1989).

[13] Source: U.S. Treasury Bulletin (various issues). In 1987, a record total of over $189 billion was invested in foreign corporate stocks by U.S. investors.

[14] This figure represents the 516 issuers that file periodic reports with the Commission under the Exchange Act and the 1488 issuers that have established and are currently in compliance with the exemption from such reporting provided by Rule 12g3–2(b) under the Exchange Act (17 CFR 240.12g3–2(b)). The securities of other foreign issuers are traded occasionally in the United States.

[15] Problems associated with multinational offerings that involve a public tranche in more than one country are discussed *infra* section II.C.

[16] British Telecommunications PLC conducted a $279 million public offering in the United States in December 1984, simultaneously issuing securities in the United Kingdom, Canada and Japan. In December 1986, British Gas PLC conducted a multinational offering of nearly 4 billion ordinary shares, of which nearly 187 million were offered as American Depositary Shares in the United States. British Airways PLC offered 720 million shares publicly in the United Kingdom, the United States and Canada simultaneously with private offerings in Switzerland and Japan in February 1987. The latest British privatization involved the sale by British Steel PLC of 2 billion shares in simultaneous public offerings in the United Kingdom, the United States, Canada, Japan and Europe in December 1988. Also in December 1988, Hong Kong Telecommunications Limited offered over 877 million shares simultaneously in Hong Kong, the United States and an international offering.

[17] The portions of these offerings allocated to the United States tranches have been larger than those allocated to other countries. The U.S. tranches, however, have often amounted to a relatively small fraction of the domestic offerings in recent British and Hong Kong privatizations: British Telecom, United States tranche equalled 6.93 percent of the domestic offering of 2,597,000,000 shares; British Gas, 4.75 percent of 3,505,386,339 shares; British Airways, 10.82 percent of 582,516,707 shares; British Petroleum, 49.11 percent of 1,030,000,000 shares; British Steel, 11.98 percent of 1,502,000,000 shares; and Hong Kong Telecom, 29.75 percent of 607,500,000 shares. Nevertheless, the United States tranches of these offerings were valued at $278,928,000 in British Telecom, $319,608,807 in British Gas, $120,141,000 in British Airways, $2,549,853,500 in British Petroleum, $420,840,000 in British Steel and $105,433,678 in Hong Kong Telecom.

[18] *E.g.*, Reuters Holdings PLC and Louis Vuitton S.A. in June 1984; Wellcome PLC in January 1986; Philips N.V. in May 1987; Banco Central, S.A. and Banco de Santander, S.A. de Crédito in July 1987; Racal Telecom PLC in October 1988; and Pacific Dunlop Limited in May 1989.

[19] The following amounts were involved in the U.S. tranches of the above mentioned offerings: Reuters, $107,250,000; Louis Vuitton, $15,469,260; Wellcome, $72,332,000; Philips, $120,000,000; Banco Central, $152,000,000; Banco de Santander, $105,500,000; Racal Telecom, $129,489,300; and Pacific Dunlop, $128,000,000.

[20] *See, e.g.*, "Europe Falls Behind in the Securities Race," *Financial Times*, section 1, p. 27 (Jan. 25, 1989). The size of European companies is likely to grow to meet the challenge of 1992. *See, e.g.*, "Statute For the European Company," Commission Memorandum to Parliament (June 8, 1988).

[21] The existence of statutory preemptive rights for shareholders in many countries, primarily in Europe, dictates that this method is the most common avenue for raising equity capital in those countries. *See, e.g.*, Companies Act 1985, sections 89(1), 90(6) (United Kingdom); Aktiengesetz (Stock Corporation Act), sections 179–221 (Federal Republic of Germany); Law No. 73–1196 of 27 December 1973, sections 178–180 (France).

Continued

[22] Foreign issuers have registered only 13 rights offerings in the United States in the last three years. Foreign issuers (the majority of which were Canadian) also registered only 13 exchange offers in the United States during the same period.

[23] While extensive information about the offeror is required where a foreign bidder issues securities, cash tender offers require less disclosure about the offeror since the public is not being offered a security issued by that entity. However, substantial information is required regarding the identity and plans of the offeror, recent transactions in the target securities and the transaction contemplated. *See* Exchange Act 14(d) (15 U.S.C. 78n(d)); Rule 13e–4 (17 CFR 240.13e–4); Schedule 13E–4 (17 CFR 240.13E–101); Schedule 14D–1 (17 CFR 240.14d–100). In the period from 1987 through 1988, there were 99 tender offers commenced by foreign bidders for shares in United States companies, of which 22 were hostile, 4 were neutral and 73 were friendly.

[24] Convertible debt is included in equity figures. These figures do not include offerings by Canadian governmental issuers. The figures include securities registered for "flowback," (*i.e.*, not targeted to the United States, but where a substantial U.S. market interest in the issuer's securities indicates that securities are likely to be sold in the United States shortly after issue).

[25] 17 CFR 230.415. Canadian governmental entities also use the shelf registration system. In the last three years, 13 filings have been made by such entities for approximately $10.6 billion.

[26] The next most numerous groups of reporting issuers are from the United Kingdom (45) and Israel (27).

[27] *See, e.g.*, former Form 20, adopted July 15, 1935 (Securities Act Release No. 324 (Class A)); Form 20–K, adopted Dec. 23, 1935 (Securities Act Release No. 445 (Class A)).

[28] 17 CFR 249.220f. Exchange Act Release No. 16371 (Nov. 28, 1977) (42 FR 58864).

[29] *See* Items 17 and 18 of Form 20–F. Items 17 and 18 both allow presentation of financial statements in accordance with the accounting principles of a foreign country so long as, *inter alia*, a discussion of material variances from U.S. principles is included, and quantified reconciliation is made as to material variances between net income as presented and net income under U.S. principles. Item 18 differs from Item 17 in that it further calls for all other information required by U.S. GAAP, including segment information. Item 18(c)(3). Segment reporting generally is not required in foreign countries, although it should be noted that it is required by Canadian GAAP.

While Item 17 disclosure may be used for annual reports and registration under the Exchange Act, Item 18 disclosure is required on an historic basis in Forms F–1, F–2, F–3 and F–4 (17 CFR 239.31, 239.32, 239.33, 239.34) in connection with the public offering of securities in the United States.

It should be noted that the Commission generally has made no accommodation for foreign auditing practices.

[30] *See* General Instruction 1 to Item 13 of Form 20–F, incorporated by reference into Forms F–1, F–2, and F–3. Compare Item 404 of Regulation S–K (17 CFR 229.404). Item 404 is incorporated by reference into, *inter alia*, Forms S–1, S–2, and S–3 (17 CFR 239.11, 239.12, 239.13).

[31] *See* Item 11(a) of Form 20–F, incorporated by reference into Forms F–1, F–2 and F–3. *Compare* Item 402 of Regulation S–K (17 CFR 229.402).

[32] An annual report on Form 20–F may be filed within six months after the end of the fiscal year covered by the report. General Instruction A.(c) to Form 20–F. By contrast, annual reports on Form 10–K (17 CFR 249.310) must be filed within 90 days of the relevant fiscal year-end. General Instruction A to Form 10–K.

[33] 17 CFR 249.306. Forms 6–K are not deemed to be filed for purposes of liability under Section 18 of the Exchange Act (15 U.S.C. 78r). *See* General Instruction B to Form 6–K.

[34] Securities Act Release No. 6437 (Nov. 19, 1982). Pursuant to this release, Forms F–1, F–2 and F–3 were adopted. Form F–4 was adopted in 1985. Securities Act Release No. 6578 (April 23, 1985).

[35] Adopted in Securities Act Release No. 6383 (March 16, 1982) (47 FR 54764).

[36] 15 U.S.C. 77*l*(g).

[37] 17 CFR 240.12g3–2(a). *See* Exchange Act Release No. 8066 (April 28, 1967) (32 FR 7946).

[38] 15 U.S.C. 77*o*(d).

Sections 14 [39] and 16 of the Exchange Act.[40]

Notwithstanding the accommodations made to foreign issuers, U.S. requirements reportedly continue to deter foreign companies from entering the U.S. markets.[41] When a multinational offering includes a public U.S. tranche, the disclosure requirements established by the Commission usually dictate the addition of information to selling documents prepared in accordance with another jurisdiction's rules.[42]

2. Distribution Issues

Problems of timing also often arise in multijurisdictional offerings as a result of different offering practices and regulatory schemes.[43] This has been a significant issue in recent offerings that included public tranches in the United States and the United Kingdom,[44] because the price is set at different times in relation to the offering in the two jurisdictions. Timing problems also arise from the different regulatory clearances required in multijurisdictional offers. While Canadian offerings have not involved the first difficulty, they have involved the second.[45]

In light of the different distribution techniques used by U.S. and foreign underwriters,[46] the application of Rules 10b-6,[47] 10b-7,[48] and 10b-8 [49] under the Exchange Act also affects the process of bringing a multinational offering to market.[50]

In an increasing number of contexts, the Commission has crafted relief from these and other applicable Exchange Act provisions in order to accommodate the structure and regulatory pattern of foreign jurisdictions, and to permit non-U.S. distribution participants to continue certain customary activities in foreign markets.[51]

---

[39] 15 U.S.C. 78n.

[40] Rule 3e12-3 (17 CFR 240.3e12-3). *See* Exchange Act Release No. 16371, *supra* n. 26.

[41] For example, a working party established by the International Organization of Securities Commissions ("IOSCO") identified coordination of prospectus requirements and underwriting arrangements as the areas causing the most problems in multijurisdictional equity offerings. IOSCO Working Paper No. 1, Progress Report prepared for the Annual Meeting of IOSCO 16-19 (November 1988).

[42] Although separate prospectuses often are used for the United States and for other parts of the world where the offering is conducted, such prospectuses usually are distinguishable only in the descriptions of the offering procedures, the underwriting syndicates and the offering amounts, rather than in substantive content. Although less disclosure may be required in other countries, the potential liability created by disclosing information in one market but not in another dictates that issuers tend to provide the same disclosure in each market.

[43] *See* generally S. Wolfram & B. Bennett, "Multinational Offerings: A United States Perspective After British Telecom, British Gas and British Airways", 1987 Col. Bus. Rev. 339 ("Wolfram").

[44] For example, in offerings by British Petroleum PLC, Reuters PLC and British Telecom PLC, the different underwriting procedures necessary under the respective regulatory systems led to timing problems. In the United Kingdom, the price of the issue is set on "Impact Day," followed immediately by publication of the prospectus and commencement of the offering period. After the offering period, allotments are made according to subscriptions received during the offering period ("Allotment Day"). In the United States, the offering period occurs prior to pricing pursuant to a preliminary prospectus. Thus a choice must be made by the underwriters and the issuer: Either the U.K. offering must proceed without a U.S. underwriting commitment in place, or the U.S. syndicate must commit itself to the deal far in advance of being able to set a public offering price or being able actually to sell the securities.

[45] Canadian underwriting and marketing procedures do not differ significantly from those in the United States. Such problems may be relevant, however, to the foreseen future extension of the principles contained herein to other jurisdictions. *See* Wolfram, *supra* n.43, at 343. *See also* W. Plapinger and R. Morrissey, "U.S. and U.K. Underwriting Mechanics: A Comparison", 2 Insights 3 (April 1988) ("Plapinger").

[46] *See* Staff of the U.S. Securities and Exchange Commission, "Report to the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Energy and Commerce on the Internationalization of the Securities Markets" V-77 (1987). *See also* Plapinger *supra* n.45; Wolfram, *supra* n.43, at 342-348.

[47] Rule 10b-6 is designed to protect the integrity of the securities trading market as an independent pricing mechanism during a distribution of securities and thereby enhance investor confidence in the marketplace. *See* Exchange Act Release No. 24003 (Jan. 16, 1987) (52 FR 2994). The rule prohibits distribution participants from bidding for or purchasing, or inducing other persons to bid for or purchase, the securities that are the subject of the distribution (or any security of the same class and series as those securities, or any right to purchase any security) until they have completed their participation in the distribution.

Distribution participants include any person who participates in the distribution of securities, including the issuer, underwriters, and selling securityholders. *See* Rule 10b-6(a)(1)-(4). The rule also applies to "affiliated purchasers" of distribution participants. *See* Rule 10b-6(c)(6).

"Distribution" with respect to this provision of the Exchange Act means an offering of securities, whether or not registered under the Securities Act, "that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods." Rule 10b-6(c)(5). A distribution in this context also may include private placements. *See* Letter regarding Electro Funds Corporation (Nov. 17, 1986), [1987 Decisions] Fed. Sec. L. Rep. (CCH) ¶78,445, at 77,464.

The rule contains certain exceptions to its general prohibition which are designed to facilitate an orderly distribution or limit disruption of the trading market for the securities being distributed.

[48] 17 CFR 240.10b-7. Rule 10b-7 makes it unlawful for any person who stabilizes the price of a security to facilitate an offering to conduct stabilizing activities in violation of the provisions of the rule. Stabilizing is defined as the "placing of any bid, or the effecting of any purchase, for the purpose of pegging, fixing or stabilizing the price of any security * * * *" Rule 10b-7(b)(3). For example, the rule prohibits bids or purchases not necessary for the purpose of preventing or retarding a decline in the open market price of the security, and stabilizing at a price resulting from unlawful activity.

[49] 17 CFR 240.10b-8. Rule 10b-8 applies to the distribution of securities offered through rights. The rule makes it unlawful for any person participating in the offering to sell the underlying security or to bid for or purchase the rights being offered in contravention of the provisions of the rule. The rule aims to prevent fraud and manipulation in rights offerings by controlling the price of sales of the underlying security, as well as the prices and conditions of purchases of rights by any person participating in such offerings.

[50] Where the activities of non-U.S. persons may have an impact on the U.S. securities markets, the Commission has taken the position that the antifraud and antimanipulation provisions of the Exchange Act may have extraterritorial effect. *See, e.g.*, Global Trading Release, *supra* n.8 (50 FR at 16308-09); Brief for Securities and Exchange Commission as *amicus curiae*, *Consolidated Gold Fields PLC* v. *Minorco, S.A.*, 871 F.2d 252 (2d Cir. 1989); "Letter Regarding The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited" (Sept. 29, 1987), [1987-1988 Decisions] Fed. Sec. L. Rep. [CCH] ¶ 78,713, at 78,031 ("ISE Letter"). *See also Schoenbaum* v. *Firstbrook*, 405 F.2d 200 (2d Cir.), rev'd in part on other grounds, 405 F.2d 215 (2d Cir. 1968) (en banc), *cert denied sub nom. Manley* v. *Schoenbaum*, 395 U.S. 906 (1969). *See also* "Letter Regarding Barclays PLC" (April 29, 1988), [Current Binder] Fed. Sec. L. Rep. (CCH) ¶ 78,821, at 78,192; "Letter Regarding Tokio Marine and Fire Insurance Company" (Sept. 30, 1987), [1987-1988 Decisions] Fed. Sec. L. Rep. (CCH) ¶ 78,519, at 77,812. Of course, such activities also may raise issues under the general antifraud provisions of the securities laws *e.g.*, Section 17(a) of the Securities Act (15 U.S.C. 77q(a)) and Rule 10b-5 under the Exchange Act (17 CFR 240.10b-5).

[51] For example, the ISE Letter contained exemptions from Rules 10b-6 and 10b-7 to permit ISE member broker-dealers to engage in "passive market making" on the ISE, where ISE member firms participated in a multinational distribution of securities of certain U.K. issuers partially being offered in the U.S., or where such firms were affiliated with U.S. broker-dealers participating in a distribution of such securities in the U.S. Under Rule 10b-6, such ISE firms would have had to cease market-making activities during specified periods during the distribution. *See* Rule 10b-6(a)(4)(xi). *See also supra* n. 47. In permitting "passive market making" as described in the ISE Letter, U.K. firms could provide depth and liquidity to the U.K. market while minimizing any potential manipulative impact on the U.S. markets. The exemptive relief recognized the highly developed regulatory structure of the ISE and was subject to several conditions and specifically designed to avoid a manipulative impact on the U.S. market.

Similar exemption letters have been issued in other contexts. *See, e.g.*, "Letter Regarding Banco de Santander, S.A." (July 28, 1987), [1987 Decisions] Fed. Sec. L. Rep. (CCH) ¶78,523, at 77,684 and [1987-1988 Decisions] Fed. Sec. L. Rep. (CCH) ¶78,532, at 77,733 (October 23, 1987) (Spain); "Letter Regarding Rhone-Poulenc, S.A." (March 13, 1987), [1987 Decisions] Fed. Sec. L. Rep. [CCH] ¶78,444, at 77,455 (France).

The multijurisdictional disclosure system was designed to mitigate the problems posed by multinational offerings. Canada is the first partner for the United States in this effort because of the sophistication of its markets, and the similarities between U.S. and Canadian securities laws, in terms of both their investor protection mandate and the structure of the regulatory scheme established to effect that mandate.

D. Mutual Recognition and Harmonization

Efficiency of the capital-raising process would be enhanced greatly by permitting an issuer to prepare one disclosure document for use in each jurisdiction in which it chooses to sell securities. There are two primary approaches to achieve this goal: Harmonization of disclosure standards worldwide and mutual recognition of disclosure standards established in other countries. The multijurisdictional registration system proposed today includes aspects of both of these approaches.

Under a harmonization approach, participating jurisdictions would agree upon a set of disclosure requirements that would be the same in each jurisdiction, with the result that a prospectus prepared pursuant to the requirements of one participating jurisdiction would comply automatically with the requirements of all other participating jurisdictions. In addition to reducing costs, a prime benefit of such a system would be providing comparability of information from issuer to issuer and country to country.[52]

Mutual recognition, on the other hand, would enable an issuer to prepare a disclosure document according to the requirements of its home jurisdiction, and to have that document accepted for securities offerings in every other participating jurisdiction.[53] Mutual recognition may sacrifice comparability in order to facilitate the offering process.

As proposed, the multijurisdictional disclosure system is a hybrid of the two approaches. While it is based on the concept of mutual recognition, the participants will be those jurisdictions whose disclosure systems, while different in detail, provide investors with information to make an informed investment decision and financial statements of relevance and reliability. The existence of a well-developed, sophisticated and reliable system for administering these requirements is also critical, as the Commission will rely on foreign definitions and application of disclosure standards, and day-to-day enforcement of those standards.

The Commission recognizes that the success of the multijurisdictional approach is contingent upon the ability of the relevant regulators to enforce effectively their securities laws as applied to cross-border securities offerings. As a result, in the Commission's view, Memoranda of Understanding,[54] which provide mechanisms for comprehensive cooperation and enforcement assistance among regulators, are a key component of this approach. The SEC's MOU with British Columbia, Ontario and Quebec exemplifies such a comprehensive mechanism.

III. Canadian Securities Regulation

Canadian securities law has two distinct, yet related purposes: (1) To ensure full and fair disclosure to the capital markets through the registration of securities and continuous reporting of all material information necessary for informed investment decision making; and (2) to maintain fairness and equality of treatment of investors in these markets through the promulgation and enforcement of substantive rules.[55]

Like the United States, Canada requires the registration of securities intended to be offered to the public, [56] the provision of information adequate to enable investors to make informed investment decisions, and continuous disclosure by issuers of publicly sold securities.

---

[52] The European Community has taken steps toward harmonization of securities disclosure and accounting requirements among its member countries. The first step toward harmonization is the adoption of basic standards of disclosure to be adopted by all member countries. While member states may add additional requirements for domestic issuers, they must recognize and accept the compliance of other member states' issuers with their home country requirements. *See*, for example, Preamble to Council Directive of March 17, 1980 (80/390/EEC) (relating to listing particulars). ("[w]hereas (disclosure) differences should be eliminated by coordinating the rules and regulations without necessarily making them completely uniform, in order to achieve an adequate degree of equivalence in the safeguards required in each Member State to ensure the provision of information which is sufficient and as objective as possible for actual or potential security holders * * *").

See also Proposed Directive on the Requirements for Prospectuses (COM (80) 895) (relating to prospectuses for public offers), which would require mutual acceptance of prospectuses by member countries.

See generally, on the subject of reciprocity and mutual recognition in the European Community, "Completing the Internal Market", White Paper from the Commission to the European Council (June 28-29, 1985), articles 101-104; and Third Report from the Commission to the Council and the European Parliament (March 21, 1988), article 46.

[53] *See, e.g.*, Memorandum of Understanding between the Government of Australia and the Government of New Zealand on Harmonization of Business Law, July 1, 1988. This Memorandum noted the establishment of a program to examine, *inter alia*, harmonization of regulatory practices and cross-recognition of prospectuses.

[54] Memoranda of Understanding ("MOUs") are formal understandings between the Commission and foreign governments or foreign securities authorities which provide for the sharing of information in Commission and foreign agency investigations and litigation. Although MOUs are not binding agreements under international law, they serve as statements of intent between like-minded regulators to provide mutual assistance and cooperation in a variety of matters. MOUs formalize methods for requesting and providing information in connection with Commission and foreign agency efforts to administer and enforce their respective securities laws, and provide the Commission with direct access to information held or obtained by a counterpart in a foreign country.

For example, on January 7, 1988, the Commission signed a Memorandum of Understanding (the "Canadian MOU") with the British Columbia Securities Commission, the OSC, and the CVMQ, concerning mutual cooperation in matters relating to the administration and enforcement of U.S. and Canadian securities laws. The Canadian MOU contemplates that the United States and Canadian regulators will provide comprehensive assistance to each other in order to facilitate the administration and enforcement of the full range of laws, regulations and regulatory policies of the United States and Canada concerning securities matters, including specifically disclosure obligations relating to the issuance of securities. Such assistance includes providing access to information in the files of each securities authority and obtaining compulsory testimony and production of documents. The Canadian MOU recognizes that, at the time it was signed, a signatory may not have had the authority to provide such assistance, and the signatories undertook to seek to obtain that authorization if necessary.

Section 21(a)(2) of the Exchange Act (15 U.S.C. 78u(a)(2)), which was added on November 19, 1988, pursuant to the Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100-704, provides the necessary authority for the Commission to implement fully the provisions of the Canadian MOU. This section allows the Commission to provide assistance to foreign securities authorities to determine whether violations of a foreign country's securities laws have occurred, are occurring, or are about to occur. The Commission can provide this assistance regardless of whether the matter under investigation in the foreign country also would be a violation of U.S. law.

The Provinces of British Columbia and Quebec also have passed legislation providing the necessary authority for their respective securities authorities to implement fully the provisions of the Canadian MOU, and it is the staff's understanding that the OSC soon will submit similar legislation in Ontario.

[55] *See* National Policy Statement No. 1 (Dec. 1, 1987), reprinted in 3 Cdn. Sec. L. Rep. (CCH) ¶ 470-001; 2 "Doing Business in Canada" section 21.01[1] (1988 ed.) ("Doing Business"); Weinstein, "Securities Law in Canada: Quebec: A Case Study", 21 Int'l L. 169, 170 (1987) ("Weinstein").

[56] Although in Canada the registration process is referred to as the "qualification" of securities for sale, the term "registration" often is used in this Release to facilitate discussion. Quebec and Ontario require that both public and non-exempt private offerings of securities be registered. *See* 2 "Doing Business", *supra* n.55, section 21.02[2]. *See also* 1 "International Securities Regulation: Canada—Commentary" 9-11 (1988 ed.).

A. Canada's Regulatory System

Within the framework of Canada's federal system, securities regulation falls primarily under the legislative authority of that country's ten provinces and two territories.[57] Each provincial legislature has enacted its own securities laws and regulations applicable to all nonexempt securities transactions occurring within the borders of the particular province, which typically are administered and enforced by a commission empowered to license brokers and securities dealers and to compel full disclosure to the investing public.[58] Due in major part to the location of Canada's principal stock exchanges in Toronto and Montreal, the OSC and the CVMQ are very influential in the regulation of securities markets.[59]

While there is neither a federal securities commission nor a comprehensive federal statute governing the Canadian capital markets, the national Parliament has enacted a body of corporate law, known as the Canada Business Corporations Act ("CBCA"), which is administered by the Department of Consumer and Corporate Affairs (the "Department").[60] Many of Canada's largest reporting companies are incorporated under the CBCA, and therefore are subject to regulation by the Department.[61] Because these companies must comply with securities laws of all provinces in which their securities are distributed or traded, provincial jurisdiction also exists over transactions in such securities.[62]

B. The Registration Process

Subject to statutory exemptions,[63] any distribution of securities [64] in Canada must be registered through the filing of a prospectus with the appropriate securities commission.[65] An identical prospectus, which meets the most stringent provincial disclosure requirements, must be filed with the securities commissions of any province in which securities will be distributed.[66] Virtually all distributions by major issuers are regulated by the OSC and CVMQ, given that most securities offerings include residents of Ontario and Quebec.

As in the United States, a waiting period triggered by the filing of registration documents precedes the effective date of the offering, or the date on which the securities may be sold.[67] During this period, such documents are reviewed by every provincial commission with jurisdiction over the offering. Pursuant to a system of coordinated review in which all provincial securities administrators participate, a Canadian issuer planning to offer and sell securities in several provinces may designate one province, typically Ontario or Quebec, as its principal jurisdiction for review purposes.[68] Substantive review and comments of all interested administrators concerning identical preliminary prospectuses filed in their jurisdictions [69] are gathered and issued by the principal jurisdiction.[70] Securities commission staff of that jurisdiction generally advise the issuer orally and through comment letters of material deficiencies in the offering materials, and permit the issuer to provide additional information and make corrective disclosure.[71] By contrast with the Commission's review, which focuses exclusively on the adequacy of disclosure, a Canadian provincial commission also evaluates the merits of the transaction. Approval of the offering may be withheld in a province if, in the opinion of the securities regulator in that jurisdiction, the offering will not be conducted with integrity or in the public interest.[72]

Once the securities are qualified for sale, an offering may commence.[73] Prospectuses must accompany or precede all written confirmations of sale throughout the offering period.[74] The final prospectus must provide full, true and plain disclosure of all material facts pertaining to the securities to be offered as prescribed by line-item requirements, comply with all other provisions of the relevant statutes and rules, and contain the issuer's audited financial statements and other prescribed materials.[75]

As in the United States, a final prospectus in Canada must describe the issuer's capital structure as well as its property and business, including development of business, acquisitions and operating results; discuss officer and director compensation, indebtedness to the issuer and interests in material transactions; describe the security to be offered; outline use of proceeds and the underwriters' obligations, plan of distribution, and distribution spread; and identify material risks and risk factors.[76] Along with five years' financial statements, documents to be filed with the final prospectus include the auditor's report; any expert's report or appraisal relied upon in preparing the prospectus; a certified copy of a resolution of the board of directors approving the prospectus and financial statements and authorizing the execution of the prospectus by the chief executive and financial officers and any two other directors; and a resolution or other evidence of review by the board's audit committee of the issuer's financial statements.[77]

Canadian underwriting and marketing procedures do not differ significantly from those used in the United States. Under Canadian law, however, investors have a statutory right to withdraw from purchases of distribution securities if they so notify in writing the dealer from whom they purchased not later than midnight on the second business day after receipt of the latest prospectus.[78] Also, pursuant to the system for filing short-form prospectuses, known as the "Prompt Offering Qualification" system, Canadian underwriters can solicit non-binding expressions of interest prior to the filing of any preliminary short-form prospectus so long as they commit to file a prospectus within 48 hours of signing an underwriting agreement.[79]

Canadian law imposes liability on registrants for use of a prospectus containing misstatements or omissions of material fact.[80] Accordingly, the prospectus must be updated throughout the distribution as material events or changes arise or as information originally believed correct is discovered to be inadequate.[81] If an event leading to the filing of an amendment concerns the issuance of additional securities or affects the value or market price of the securities being distributed, any provincial commission with jurisdiction over the offering must review and approve the amendment.[82] Although not required by statute or rule, amendments relating to any other matter likewise are reviewed by commission staff.[83]

---

[57] *See* 2 "Doing Business", *supra* n.55, at section 21.01[1]; 2 B. Laskin, "Canadian Constitutional Law" 712–14 (5th ed. 1986) ("Laskin").

[58] *Id.* Commissions administer the securities laws in seven provinces (Ontario, Quebec, Alberta, British Columbia, Manitoba, Nova Scotia and Saskatchewan). In the remaining provinces and the Northwest and Yukon territories, commissions have not been established and the securities laws are administered by designated officials.

[59] *See* 2 "Doing Business", *supra* n.55, section 21.01[1]. The Toronto Stock Exchange ("TSE"), which is one of the world's largest in terms of both capitalization and trading volume, currently accounts for more than 75 percent of the total value, and close to 80 percent of the total volume, of securities traded in Canada. *See* Toronto Stock Exchange, 1988 Fact Book 1. As of 1987, the Montreal Exchange ("ME") accounted for approximately 17 percent of the value and almost 14 percent of the volume of the Canadian securities market. Montreal Exchange, Market Information: 1987 Statistics 5 (1988).

[60] CBCA sections 1 *et seq. See* 2 "Doing Business", *supra* n.55, section 21.01(2)(c). The CBCA contains provisions regulating takeover bids (CBCA sections 194–206 and Reg. sections 58–73) for, and proxy solicitations (CBCA sections 147–154 and Reg. sections 32–43) involving, the securities of all companies incorporated thereunder. As the agency charged with administering the CBCA, the Department requires that most documents filed with provincial securities commissions in respect of CBCA-incorporated companies be filed with it contemporaneously. *See, e.g.*, CBCA sections 193 (prospectus, statement of material facts, registration statement and securities exchange takeover bid circular or similar document relating to the issuer's distribution of securities to the public); 150(2) (form of proxy); 127(1) (insider reports).

[61] One of the purposes of the CBCA is to enable companies incorporated thereunder to conduct business throughout Canada, although provincially incorporated companies may conduct inter-provincial business. CBCA companies may not engage in the businesses of banks and insurance, trust and loan companies, all of which entities are regulated by other federal or provincial statutes. *See* CBCA sections 3(2), (4). Nor does the CBCA apply to non-profit or Special Act corporations covered by its predecessor statute, the Canadian Corporations Act. CBCA section 3(3).

[62] *See* "Multiple Access Ltd. v. McCutcheon", (1983) 138 D.L.R. (3rd) 1 (S.C.C.) (decision by the Supreme Court of Canada upholding the constitutionality of Ontario's insider trading legislation as applied to a federally incorporated company with headquarters in Toronto and securities listed on the TSE). Canada's Constitution does not include a supremacy clause like that of the U.S. Constitution, but has been construed to embody the "paramountcy" doctrine, a narrower version of the U.S. preemption doctrine, providing that federal law must prevail in the face of a direct conflict with provincial or territorial law. *See* section 94 of the Constitution Act of 1867; "Doing Business", *supra* n.55, sections 2.04[3]–2.04[5].

[63] Both Ontario and Quebec exempt from prospectus requirements an issuer's distribution to shareholders of subscription rights as well as the securities issued upon exercise of such rights. *See* Ontario Securities Act ("OSA") section 71(h); Quebec Securities Act ("QSA") section 52(1). The exemption may not be invoked with respect to major financings or offerings that would result in an increase of more than 25 percent in the number of outstanding securities of the class subject to the offering. *See* OSC Policy Statement 6.2 (Dec. 24, 1982) (as amended), *reprinted in* 3 Cdn. Sec. L. Rep. (CCH) ¶ 471–602; QSA Reg. section 70.2. Any issuer relying upon the exemption must provide the appropriate securities commission with written notice of the proposed offering and substantial information concerning the issuer, which materials may be disseminated to shareholders in the form of a rights circular within 10 days of such submission, thereby instituting the offering, if the commission raises no written objection. *See id.*; QSA section 53; Uniform Policy No. 3–06 (April 1971) (as amended), reprinted in 3 Cdn. Sec. L. Rep. (CCH) ¶¶ 470–205, 471–602; 1 V. Alboini, "Securities Law and Practice", section 16.9.1, at 36 (1984 ed. and 1988 Supp.) ("Alboini"). Once the offering documents are filed, any amendment thereto is subject to review and comment by the commission. Discussion with OSC staff.

[64] In Canada, such distributions include initial and repeat public offerings, certain private offerings, exchange offers and secondary trades that materially affect control of the issuer. *See* OSA sections 1(1)(11), 71(4)–(7); QSA section 5.

[65] *See* OSA section 52; QSA section 11; compare section 5 of the Securities Act (15 U.S.C. 77(e)).

[66] Provincial law, rather than the CBCA applicable to all companies incorporated thereunder, governs the regulation of securities offerings in Canada. *See* 2 "Doing Business", *supra* n.55, section 21.01[1]; 2 Laskin, *supra* n.57, at 712–14.

[67] Securities may be offered, but not sold, during this period. Compare OSA section 64 and QSA sections 19, 21 with section 5(c) of the Securities Act. Only the following limited items of information may be disseminated after filing of the prospectus to solicit interest in the prospective offering: (a) Identification of the security to be offered; (b) offering price; (c) name and address of persons from whom purchases may be made, or the managing underwriters; and (d) solicitations of expression of interest from potential buyers. Compare OSA sections 52(1), 64(2) and OSC Notice No. 24 (May 15, 1987) (as amended), reprinted in 3 Cdn. Sec. L. Rep. (CCH) ¶ 473–048 with sections 2(10), 5 and 10 of the Securities Act (77 U.S.C. 77b(10), 77e and 77j) *and* Rules 134 and 135 (17 CFR 230.134 and 230.135). *See* QSA sections 21, 22, 99–100; Uniform Act Policy No. 2–13 (May 30, 1980), reprinted in 3 Cdn. Sec. L. Rep. ¶ 470–213; Weinstein, *supra* n.55, at 178–79.

[68] National Policy No. 1, *supra* n.55. *See* 2 "Doing Business", *supra* n.55, section 21.02[4]; M. Connelly, "Multinational Securities Offerings: A Canadian Perspective", 50 Law & Cont. Probs. 251, 256 (1987) ("Connelly"). In general, the issuer deals exclusively with the principal jurisdiction during the comment process. If a dispute between the issuer and a secondary jurisdiction cannot be resolved through this process, the issuer must seek permission from the principal jurisdiction to engage in direct discussions with that secondary jurisdiction. Connelly, *supra*, at 256.

[69] As in the United States (section 10 of the Securities Act (15 U.S.C. 77j) and Rule 430 of

Continued

Regulation C (17 CFR 230.430)), a preliminary prospectus filed in Canada must comply substantially with the requirements of applicable statutes and rules prescribing the form and content of a prospectus. OSA section 53; QSA section 20 and Reg. sections 15–16. At a minimum, the prospectus must contain the financial statements of the issuer (Schedule A, Items 25–27 (15 U.S.C. 77aa); Items 11 and 16 of Forms S–1 and S–2, and Item 12 of Form S–3; Regulation S–X (17 CFR 210.1–01 *et seq.*); OSA Reg. sections 41(1)–(6), 42; QSA Reg. section 13), and the "red herring" statement identifying the document as a preliminary prospectus subject to completion by amendment, and stating that securities may not be sold or offers to buy accepted prior to the effective date in the United States (sections 5(b) and 10(b) of the Securities Act and Rule 430 thereunder), Item 501(c)(8) of Regulation S–K (17 CFR 229.501(c)(8))), and in Canada, of the issuance by the appropriate provincial commission of a receipt for the final prospectus (*see* OSA Reg. sections 37–39; QSA Reg. section 74; National Policy No. 32 (Oct. 21, 1981) (as amended), reprinted in 3 Cdn. Sec. L. Rep. (CCH) ¶ 470–032).

[70] *See* 1 Alboini, *supra* n.63, section 14.4.4.

[71] Compare id. at section 14.4.3 with 2 A. Sommer, "Securities Law Techniques" sections 22.05, 22.06 (1988) ("Sommer").

[72] OSA section 60; QSA section 15.8.

[73] *See* OSA sections 52, 60; QSA section 14.

[74] Compare OSA section 70 and QSA section 29 with Sections 2(10) and 5(b) of the Securities Act. Both Canada and the United States require delivery of the prospectus throughout the offering period. Compare OSA section 70 and QSA section 29 with section 5(b) of the Securities Act. Participating underwriters in Canadian offerings must deliver the prospectus during the entire offering period (OSA section 70), whereas in the United States participating underwriters, members of the selling group and all dealers, whether or not participating, must do so (a) in the case of an unregistered offering, prior to the expiration of 40 days after the first *bona fide* offer to the public, (b) in the case of a registered public offering, 40 days (90 days for initial public offerings) after the later of the first *bona fide* offer to the public or the effectiveness of the registration statement, or (c) in any event, in any sale of an unsold allotment of securities received as a participant in the distribution. *See* Section 4(3) of the Securities Act (15 U.S.C. 77d(3)). The Commission in Rule 174 (17 CFR 230.174) has modified these requirements in connection with registered offerings by reporting companies, shelf offerings, and registered offerings by non-reporting companies which, as of the effective date, are listed on a national securities exchange or authorized for inclusion in NASDAQ. *See also* Rule 15c2–8(d) (17 CFR 240.15c2–8(d)).

[75] Compare OSA section 55 and Reg. sections 26–32, 34–37, 41–50, 59–65, and Form 12 and QSA section 13 and Reg. sections 17, 29–31 and Schedule I with Schedule A, Items 25 and 26 and Forms S–1, S–2, and S–3.

[76] Compare OSA Form 12 and QSA Schedule I with Schedule A, Items 501–512 of Regulation S–K (17 CFR 229.501–229.512) and Forms S–1, S–2 and S–3.

[77] Compare OSA Reg. sections 52, 53(3), Uniform Act Policy 2–03 (April 1971), reprinted in 3 Cdn. Sec. L. Rep. (CCH) ¶ 470–203 and QSA Reg. sections 32, 84–87 with Schedule A, Items 25–27, Rule 2–02 of Regulation S–X (17 CFR 210.2–02), Items 509 and 601(5)–(8), (24) of Regulation S–K (17 CFR 229.509, 601(5)–(8), (24)), and Items 11(e) and 16 of Forms S–1 and S–2 and Item 12 of Form S–3. On the subject of comparability of U.S. and Canadian prospectus requirements, *see* generally Connelly, *supra* n.68, at 253.

[78] *See* OSA section 70(2); QSA sections 29–32. The staff understands that this withdrawal right is used rarely.

[79] *See* OSC Policy Statement No. 5.8 (Dec. 24, 1982) (as amended), reprinted in 3 Cdn. Sec. L. Rep. (CCH) ¶ 471–508.

[80] *Compare* OSA section 126 *and* OSA sections 217–218 with sections 11, 12(2) and 17(a) of the Securities Act (15 U.S.C. 77k,77l(2), 77q(a)), and Section 10(b) of the Exchange Act.

[81] *See* OSA section 56(1); QSA section 25. A duty to update the prospectus frequently arises under U.S. securities law in the context of a continuous or delayed offering (*see* Rules 415 and 424(c) of Regulation C (17 CFR 230.415, 230.424(c))) and, in Canada, where the distribution has extended beyond the six weeks typical of a firm-commitment underwriting, or the minimum 60-day period of a best-efforts underwriting. *See* OSA Reg. sections 27(1)(5), (7); QSA Reg. sections 22(1), (3). Canadian law prohibits, absent leave from a securities commission, the continuation of a distribution beyond 12 months from the later of the date of the particular commission's issuance of a receipt for the preliminary prospectus, or the date of the last prospectus refiled with leave of the commission upon expiration of the 12-month period. *See* OSA section 61(1); QSA section 33.

[82] *See* OSA section 56; QSA section 25. Compare Rule 413 of Regulation C (17 CFR 230.413) (new registration statement must be filed if additional securities issued). Provided its financial statements did not lapse prior to the issuance of a receipt for the final prospectus, a Canadian registrant need not amend the prospectus to update the financial statements within the maximum 12-month offering period unless a material event affecting the accuracy of the information in such financial statements has occurred. Discussions with OSC staff; *see* OSA section 58. Compare section 10(a)(3) of the Securities Act; Rule 3–12 of Regulation S–X (17 CFR 210.3–12).

[83] Discussions with OSC and CVMQ staff.

Ontario and Quebec have adopted a system for filing a short-form prospectus for eligible senior reporting issuers similar to the Commission's Forms S–3 and F–3, which is known as the Prompt Offering Qualification system.[84] As with Forms F–3 or S–3, this short form prospectus contains virtually all information called for in a long-form prospectus, in part by incorporating by reference other filings (including future filings), such as the Annual Information Form that must be filed annually with the proper securities commission. To qualify to use a short form prospectus in a province, a reporting company must have filed periodic reports with that commission for a fixed period,[85] and must incorporate such reports by reference in this prospectus.[86] Moreover, the issuer may not be in default of financial obligations or violation of applicable securities statutes and rules at the time the preliminary short-form prospectus is filed,[87] and must have securities listed on a stock exchange and held by nonaffiliated shareholders of an aggregate market value of (CN) $75 million.[88]

Quebec has adopted a procedure permitting the use of a simplified prospectus, referred to as a "shelf" prospectus, that is subject to abbreviated CVMQ review and thus, like the Commission's Rule 415,[89] "allows the frequent issuer (of securities) easier and quicker access to the market" over the maximum one-year period of distribution.[90] Reporting issuers with permanent information records that fulfill certain conditions are eligible to use this prospectus.[91] As with a short-form prospectus under the Prompt Offering Qualification system, the shelf prospectus is accompanied by an annual information form, incorporates by reference all mandatory periodic reports, and discloses a limited amount of information relating to the issuer and the securities to be offered.[92] Shortly before the issuer is prepared to commence an offering pursuant to a shelf prospectus, a supplement thereto must be filed with the CVMQ that, with the prospectus, constitutes the final prospectus.[93] If an issuer using a shelf prospectus does not make a distribution of securities at least once a year, a new shelf prospectus must be filed at the same time the required annual information form is updated.[94]

Every issuer that registers an offering of securities in Canada becomes subject to periodic disclosure requirements.[95] Registrants must file audited annual[96] and unaudited quarterly financial statements[97] and reports of any material change or other events,[98] and are subject to proxy solicitation requirements.[99] Registrants under the Prompt Offering Qualification system must file Annual Information Forms similar to annual reports on Form 10–K filed with the Commission.[100]

C. Accounting; Auditing

Canada's public accountants (primarily designated as chartered accountants) are licensed to practice by provincial statute. Authoritative accounting and auditing standards, which are uniform across Canada, are developed by a national body, the Canadian Institute of Chartered Accountants ("CICA"). Separate provincial institutes establish rules pertaining to professional conduct and ethics.

Although promulgated auditing standards in Canada differ from U.S. standards in some respects, generally accepted practice in Canada routinely encompasses all significant auditing procedures required by U.S. standards. Further, CICA periodically evaluates new auditing standards adopted by the American Institute of Certified Public Accountants ("AICPA"), CICA's U.S. counterpart, to determine whether similar guidelines may be appropriate for Canadian auditors.

CICA reporting standards comply with the reporting requirements specified by Article 2 of Regulation S–X,[101] but differ from the AICPA's reporting standards. While AICPA standards require U.S. auditors to include an explanatory paragraph in their report if substantial doubts exist about an entity's continued existence or there are other material uncertainties, the Canadian auditor is prohibited from including such a reference in the audit report if the matter is disclosed adequately in a note to the financial statements. However, CICA has published a guideline intended to apply where the report is to be included in a filing with the Commission. The guideline indicates that the auditor should add comments for U.S. readers explaining the conflict in reporting standards and providing a cross-reference to the relevant uncertainty or other consideration disclosed in the financial statements. Compliance with this guidance would be required specifically in filings made pursuant to the multijurisdictional system.

Canadian GAAP are similar to their U.S. counterparts, although there are differences in measurement and disclosure. Some of the most significant differences include the methods of accounting for business combinations (Canadian GAAP require the purchase method of accounting in most situations that call for the pooling-of-interests method in the United States);[102] development costs (U.S. GAAP requires expensing of certain costs that may be capitalized under Canadian GAAP);[103] foreign currency gains and losses (U.S. GAAP require current recognition in some cases where Canadian GAAP permits deferral and amortization);[104] pension accounting (differences in measurement methodology);[105] employee stock compensation plans (an expense must be recognized in some circumstances under U.S. GAAP);[106] income taxes (Canadian GAAP more closely follow the method that was acceptable in the U.S. prior to the recent adoption of the new balance-sheet approach, and measures deferred taxes based on rates existing when timing differences originate rather than at current tax rates);[107] earnings per share (Canadian GAAP do not consider the effect of common stock equivalents);[108] extraordinary items (more restrictively defined under U.S. GAAP);[109] and consolidation (Canadian GAAP do not require consolidation of nonhomogeneous subsidiaries).[110] Also, differences may be significant with respect to particular industries, such as the specialized accounting practices of insurance companies.[111] Additionally, U.S. standards typically include more implementation guidance, and address some areas that have not been considered formally by Canadian standards.

As is true of the AICPA's independence rules, the rules on ethics and independence adopted by the provincial institutes differ from the Commission's rules on auditor independence. The Commission's rules more extensively address such areas as non-audit services and financial interests associated with the client.[112] Canadian regulatory bodies have not developed independence rules similar to those of the Commission.

D. Exchange and Tender Offer Regulation

In contrast with offers and sales of securities to the public (which are regulated principally at the provincial level), the acquisition of shares in Canadian companies through a takeover bid or exchange offer is regulated at both the federal and the provincial levels. A bidder must comply with the securities acts of each province in which one or more target shareholders resides [113] and with the federal [114] or provincial corporate statute under which the target company is incorporated. As is true of the registration process, Ontario and Quebec laws apply to most takeovers and exchange offers conducted in Canada due to the concentration of shareholdings in these provinces.

A takeover bid is defined by provincial securities laws as a nonexempt offer [115] to acquire shares that, if combined with shares already beneficially owned or controlled, directly or indirectly, on the date of the bid by the bidder or its affiliates, or by any co-bidder or person acting in concert with the bidder, equal or exceed in the aggregate 20 percent of the outstanding voting or equity securities of a class of a target issuer.[116] Acquisition of ten percent or more of the outstanding voting shares of a federally incorporated company will trigger the application of federal takeover law, as set forth in the CBCA.[117]

Canada's federal and provincial takeover laws impose on third-party bidders and target management detailed disclosure requirements that closely resemble those prescribed by the Williams Act. Once the bidder exceeds the ten or 20 percent threshold for companies incorporated under the CBCA or provincial law, respectively, it must file with the appropriate authority a copy of the bid itself and a takeover bid circular, similar in all material respects to a Schedule 14D–1 under the Exchange Act filed with the Commission,[118] and deliver that

---

[84] *See* OSA section 62; OSC Policy Statement No. 5.6, *supra* n.79; QSA sections 18–19.

[85] OSC Policy Statement No. 5.6, *supra* n.79 (36 calendar months); QSA section 18 (1 year); *compare* Form S–3, General Instruction I.A.3 (36 calendar months in United States).

[86] These reports include Annual Information Forms (which are filed by Prompt Offering Prospectus registrants only), or, in some jurisdictions, SEC Forms 10–K or 20–F that have been accepted by the Commission for filing, regular prospectuses approved by a provincial commission within the preceding 12 months, takeover bid circulars, and any other equivalent documents that contain information required by the POP policy. OSC Policy Statement No. 5.6, *supra* n.79; QSA section 59.1. Other documents that must be incorporated by reference in a short form prospectus are material change reports (Canada's counterpart to Form 8–K (17 CFR 249.308)), interim financial statements, financial statements for the issuer's last completed financial year, and information circulars (proxy materials) filed since the commencement of the issuer's financial year in which its latest annual information report was filed. *See id.*; 1 Alboini, *supra* n.63, section 14.12.2.

[87] Compare General Instruction I.A.3 to Form F–3; General Instruction I.A.4 to Form S–3.

[88] OSC Policy Statement No. 5.5, *supra* n. 79; QSA section 59–60; CVMQ Policy No. Q–1 (April 8, 1983) (as amended), reprinted in 4 Can. Sec. L. Rep. (CCH) ¶ 570–001.

[89] 17 CFR 230.415 (use limited to issuers eligible to use Forms S–3 and F–3).

[90] Weinstein, *supra* n.55, at 178. *See* QSA sections 24.1–24.2, sections 62.1–62.10; National Policy Statement No. 1, *supra* n.55; CVMQ Policy Statement No. Q–1, *supra* n.86. *Compare* 2 Sommer, *supra* n.71, at § 23.01.

[91] QSA Reg. section 62.1. These conditions vary according to the type of security to be issued: (a) When common shares are issued, a three-year disclosure requirement must have been met, and the total value of all outstanding common shares met, and the total value of all outstanding common shares must exceed (CN) $150 million (QSA Reg. section 160; CVMQ Policy Statement No. Q–1, *supra* n.86); and (b) where debt or nonconvertible preferred securities are issued: (i) The issuer must have a three-year reporting history and all such outstanding securities issued and to be issued must be rated by a recognized evaluation agency (QSA Reg. section 161); or (ii) the securities to be issued are "provisionally classified" by such an agency (QSA Reg. section 162).

[92] *See* QSA Reg. section 62.3.

[93] QSA section 24.1. The supplement must present any information omitted in the prospectus and update a required statement listing documents incorporated by reference. QSA Reg. sections 62.9, 59.1. *Compare* Rule 415 (after registration of amounts to be issued, the registrant must update the registration statement through an effective post-effective amendment on specified events (*see* Item 512 of Regulation S–K), or through a supplement to the prospectus, to be filed with the Commission and disseminated with the core prospectus to investors during periods securities are offered and sold).

[94] QSA Reg. sections 62.8; Weinstein, *supra* n.55, at 178.

[95] *See* CBCA section 160; OSA section 1(1)38; QSA section 68; 1 Alboini, *supra* n.63, section 17.00. Once an issuer becomes subject to Canadian continuous reporting requirements by virtue of the filing of a registration statement, it continues to be bound by such requirements absent the commission's grant of an application to cease public filings. *See, e.g.*, OSA section 82 (application for order relieving reporting issuer with fewer than 15 shareholders in Ontario of obligation to report).

[96] *See* CBCA sections 155, 190; OSA section 77; QSA section 75. Compare Form 10–K and Form 20–F (annual reports including financial statements).

[97] *See* CBCA section 160(4); OSA section 76; QSA section 75. Compare Form 10–Q (17 CFR 240.308a).

[98] *See* OSA section 74; QSA section 73. Material changes mandating the filing in Canada of a material change report are defined as any "change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any securities of the issuer and includes a decision to implement such a change made by the board of directors of the issuer or by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable." OSA section 1(1)(21). Accord QSA section 73. Compare Form 8–K.

[99] *See* CBCA sections 147–154 and Reg. sections 32–43; OSA sections 83–87; QSA section 73. Compare Regulations 14A–14C (17 CFR 240.14a–1 to 240.14c–101).

[100] *See* OSC Policy Statement No. 5.6, *supra* n.79; CVMQ Policy Statement No. Q–1, *supra* n.86.

[101] 17 CFR 210.2–01 through 210.2–05.

[102] *See* Canadian Institute of Charted Accountants Handbook ("CICA") section 1580. *Compare* Statement of Financial Accounting Standards ("SFAS") No. 16.

[103] *See* CICA section 3450. Compare SFAS No. 2.

[104] *See* CICA section 1650. Compare SFAS No. 52.

[105] *See* CICA section 3460. Compare SFAS No. 87.

[106] *See* Accounting Principles Board Opinion ("APB") No. 25.

[107] *See* CICA sections 3470, 3471. Compare SFAS No. 96, which superceded APB No. 11.

[108] *See* CICA section 3500. Compare APB No. 15.

[109] *See* CICA section 3480. Compare APB No. 30.

[110] *See* CICA section 1600. Compare SFAS No. 94.

[111] *See* CICA section 4210. Compare SFAS No. 60 and SFAS No. 97.

[112] *See* Rule 2–01 of Regulation S–X (17 CFR 210.2–01); Financial Reporting Codification Sections 601–602.

[113] *See, e.g.*, OSA section 88; QSA section 113.

[114] *See* CBCA sections 3, 194.

[115] Canadian law exempts certain transactions from rules requiring formal takeover bids upon reaching the prescribed acquisition threshold. Purchases of ten percent or more (CBCA) or 20 percent or more (provincial law) of a company's equity securities will be exempt if such purchases are executed through the facilities of and in compliance with the rules of a stock exchange (CBCA section 194 and Reg. section 56(b); OSA section 92(1)(a); QSA section 119). Acquisitions also are exempt if they (a) do not exceed five percent of the outstanding shares of the specific class and the consideration is less than or equal to the market price at the date of purchase (OSA section 92(1)(b); QSA section 128; 2 Alboini, *supra* n.63, section 19.6.5); (b) are consummated by private agreement at not more than a 15 percent premium over market price with five or fewer persons or companies (OSA section 92(1)(c) and Reg. section 165; QSA section 123; *see* CBCA section 194 (offers to purchase made to fewer than 15 shareholders by way of separate agreements)); or (c) involve the securities of a privately held company (OSA section 92(1)(d)).

[116] OSA sections 88–90; QSA sections 110, 111. Under provincial definitions, an offer to acquire voting or equity shares will not constitute a takeover bid unless made to at least one shareholder either situated, or whose last address on the target's books is, in the particular province. *See* OSA section 88; QSA section 113.

[117] CBCA section 194. By contrast with Canadian law, the Williams Act does not define the term "tender offer," thus leaving that task to the courts. *See, e.g., Field v. Trump*, 850 F.2d 938, 943 (2d Cir. 1988), *cert. denied*, 57 U.S.L.W. 3533 (1989).

[118] Canadian line-item requirements for bidders, as set forth in federal and provincial regulations and forms, are substantially similar to their U.S. counterparts as prescribed by Commission rules and schedules under the Williams Act. A Canadian takeover bid circular, like a Schedule 14D–1, must include (a) the terms, conditions, withdrawal date, and purpose of the bid, as well as the time and method of payment; (b) plans for post-acquisition disposition of target assets and change of directors and/or management, or of the target's organization, affairs or capitalization; (c) holdings and recent trading in target securities by the bidder and any of its directors, senior officers and principal shareholders; and (d) agreements or arrangements either regarding target securities (*e.g.*, lock-up agreements), or between the bidder and target officers and directors (*e.g.*, compensation for post-takeover loss of office). Compare CBCA Reg. section 59, OSA Form 32 *and* QSA Schedule XI with Schedule 14D–1. In the case of exchange offers in both countries, the bidder in addition must provide prospectus disclosure. Compare CBCA Reg. section 60, OSA section 71(1)(k) and Form 32 *and* QSA Reg. section 187 with Form S–4 (17 CFR 239.25).

document to the target and target shareholders.[119] Within 10 days of the commencement of the bid, the Canadian target's board of directors must file and disseminate to shareholders a board of directors' circular that, much like a Schedule 14D–9 under the Exchange Act filed with the Commission, contains the target's response to the offer and other disclosures.[120]

If the bidders' securities are offered in whole or in part pursuant to an exchange offer, the offering materials also must satisfy standards applicable to prospectus disclosure.[121] The requisite prospectus disclosures are incorporated directly in the takeover bid circular.[122] The exchange offer is deemed to commence, or "go effective," immediately upon dissemination by mail to shareholders of the circular and any accompanying offering materials,[123] which generally is effected contemporaneously with the filing of offering documents with the appropriate commissions.

All cash and exchange offer documents are reviewed by the CVMQ after such documents are filed and transmitted to shareholders.[124] Neither the OSC nor the Department has established a formal system for review of tender offer materials, even in the case of an exchange offer mandating prospectus disclosures in the bid circular. In response to complaints from target counsel or any other person, however, the OSC will undertake scrutiny of tender offer materials.[125]

Substantive protections analogous to those provided in the United States by the Williams Act and the Commission's rules thereunder are available under the CBCA and provincial takeover statutes. A bid must be made to all holders of the same class of target shares residing in a province with jurisdiction over the bid,[126] and must remain open for acceptance by such holders for a minimum period (21 days) that may be extended (by ten days) upon any material change in the information contained in the offering materials or any variation in the terms of the bid.[127] If more target shares are deposited than the bidder is willing to purchase under a partial bid, the bidder must accept on a *pro rata* basis all tenders made throughout the offering period.[128] Target shares deposited generally may be withdrawn during the offering period and any extension thereof and, if the shares have not been taken up and paid for, after a 45- or 60-day period (under the provincial statutes and the CBCA, respectively) from the date of the bid.[129]

All holders of the same class of securities must be offered the same consideration.[130] Both Canadian and U.S. law provide that, if various forms of consideration are offered, all target shareholders must be given the opportunity to elect which form they will receive.[131] In contrast to the Williams Act, however, Canadian law prohibits any decrease in consideration during the offering period.[132] Moreover, under Canadian law, unlike U.S. law, a bidder must offer the highest identical consideration for the largest block of shares in a Canadian target purchased in any solicited transaction entered into within a period of 90 days prior to the bid.[133]

Finally, unlike the United States,[134] Canadian law provides that all purchases of a class of securities within a 20-day period after the termination of a tender offer must be made on the same terms available to target shareholders in the offering, even if the tender offer is not completed.[135]

A takeover bid made by an insider of a Canadian target issuer,[136] or by an associate or affiliate of such an insider, is regulated principally by third-party takeover bid requirements,[137] much like

[119] *See* CBCA section 196; OSA sections 97, 99 and Form 32; QSA section 128 and Schedule XI.

[120] Compare CBCA Reg. section 66, OSA Form 34 *and* QSA Schedule XII with Schedule 14D–9 (17 CFR 240.14d–101). Individual directors and officers also may file such a circular. *See* OSA Form 35; QSA Schedule XIII.

[121] *See* CBCA Reg. section 60; OSA section 71(1)(k) and Form 32, Item 15; QSA Reg. section 187.

[122] 2 Alboini, *supra* n.83, section 19.1.8. *See* CBCA section 200 and Reg. sections 58–60; OSA section 71(1), Reg. section 31a and Form 32, Item 15; QSA section 50 and Reg. section 187. Quebec may require a valuation by an independent appraiser of either or both the exchange offeror and offeree, which valuation must be filed with the CVMQ and summarized in the bid circular. QSA Reg. section 183. Ontario and Quebec mandate the filing of a valuation and summary disclosure thereof in the circular where any tender offer will be followed by a going-private transaction whereby the interests of minority shareholders in the subject company will be terminated without their consent. *See* OSA Reg. section 163(1); OSC Policy Statement No. 9.1 (Dec. 24, 1982) (as amended), reprinted in 3 Cdn. Sec. L. Rep. (CCH) ¶ 471–601; Ontario Business Corporation Act ("OBCA") sections 187–189; QSA Reg. section 183; *infra* n.139 and accompanying text.

[123] *See* OSA sections 88, 94; QSA sections 113, 128. *Compare* Rule 14d–2, which provides that a tender offer subject to the registration provisions of the Securities Act generally does not commence until the registration statement becomes effective and a definitive prospectus is disseminated.

[124] Discussions with CVMQ staff. Securities and Exchange Commission staff members generally conduct pre-effective review of registration statements covering exchange offers and post-commencement review of all tender offer materials.

[125] Discussions with OSC staff.

[126] Compare OSA section 94(1) and QSA section 145 with Rule 14d–10(a).

[127] Compare CBCA section 197(b); OSA sections 94(2), 97(5); and QSA sections 147.3, 147.8 (21 calendar-day offering period; ten-day extension after delivery to shareholders of notice of material change or variation in terms of bid) with Rule 14e–1(a) (17 CFR 240.14e–1(a)) (offering period of 20 business days); Rule 14e–1(b) (at least 10 business days must remain in offering period if material change involves an increase of more than two percent or any decrease in the percentage of the class of securities sought or an increase or decrease in either the consideration being offered or the dealers soliciting fee); Rule 14e–1(d) (17 CFR 240.14e–1(d)) (bidder must give notice of extension to target shareholders); and Exchange Act Release No. 23421 (July 17, 1986) (51 FR 25873) (material change requires a five- to ten-day extension of offering period, citing Rule 14d–4(c) (17 CFR 240.14d–4(c))). Partial bids for companies incorporated or organized under the CBCA may not continue beyond 35 days from the date of commencement of the offer. CBCA section 196(1)(b). No extension of the offering period may or need be made under Canadian law where (a) a material change was outside the bidders' control, unless related to the bidder securities to be issued in an exchange offer (OSA sections 97(3), 97(5)); or (b) where a variation in the terms of the bid consists solely of the waiver of a term or condition in an all cash-offer (OSA section 97(5); QSA § 147.8).

[128] Compare CBCA section 196(1)(c), OSA section 94(7) and QSA section 147(2) with Section 14(d)(6) of the Exchange Act (15 U.S.C. 78n(d)(6)).

[129] Compare CBCA section 195(a) (if the bid is for all shares, right to withdraw, if shares are not taken up, after 60 days following the date of the bid) and OSA section 94(4) and QSA section 147.5 (right to withdraw tendered securities during offering period and any ten-day extension thereof, and at any time after 45 days from the date of the bid) with Section 14(d)(5) of the Exchange Act (15 U.S.C. 78n(d)(5)) and Rule 14d–7(a) (17 CFR 240.14d–7(a)) (right to withdraw tendered securities during offering period and any extension thereof, and at any time after 60 days from the date of the tender offer). There is no right of withdrawal under Canadian law where (a) a change in the terms of the bid is attributable to an increase in the consideration offered and the time for deposit is not extended beyond 10 days (OSA section 94(5)(ii); QSA section 147.5(2)(1)); (b) the securities have been taken up by the bidder when it receives a holder's notice of withdrawal (OSA section 94(5)(i)); or (c) a change in the terms of the bid consists only of a waiver of a condition of an all-cash bid (OSA section 94(5)(iii); QSA section 147.5(2)(2)).

[130] Compare CBCA § 197(d), OSA section 98 and QSA sections 145, 146 with Rule 14d–10(a)(2) and Rule 13e–4(f)(8)(ii) (17 CFR 240.13e–4(f)(8)(ii)).

[131] Compare OSA section 96(3) with Exchange Act Release No. 23421, *supra* n.127 (51 FR at 25877). *See* CBCA section 197(d); QSA sections 145, 146.

[132] Discussions with OSC and CVMQ staff; compare with Rule 14e–1(b) and Exchange Act Release No. 23421, *supra* n.127 (51 FR at 25877).

[133] OSA section 93(5)(a); QSA section 142.1. Where a variation in the terms of the bid increases the value of the consideration offered, all shareholders must receive such increase. *See* OSA section 96(3); QSA section 146; compare Rule 14d–10(a)(2).

[134] *See Hanson Trust PLC* v. *MLSCM Corp.*, 774 F.2d 47 (2d Cir. 1985).

[135] *See* OSA sections 93(6), (7); QSA section 144.

[136] Every director and senior officer of the target or of a company that is itself an insider by virtue of stock ownership, any person or company who beneficially owns or controls, directly or indirectly, more than ten percent of the voting rights attached to the target's voting securities, and an issuer that has purchased, redeemed or otherwise acquired any of its own stock, will be deemed an insider. *See* OSA Reg. section 163(1).

[137] *See* CBCA Reg. section 62 (if federally incorporated); OSC Policy Statement No. 9.1.IV.B, *supra* n.122; Discussion with CVMQ staff.

affiliate bids subject to the Williams Act.[138] Ontario and Quebec further require that a valuation of the target be performed by an independent appraiser within 120 days of the bid, and filed with the takeover bid circular in which the results of the valuation must be summarized for shareholders.[139] Insiders also must make certain disclosures in the takeover bid circular derived from the standard-form issuer bid circular.[140] As with any third-party bid, the target's board of directors must file with the proper securities commission(s) and disseminate to shareholders its response to the bid.

An issuer bid or self-tender is defined as an issuer's nonexempt offer [141] to acquire or redeem any percentage of its own equity or convertible debt securities and, like third-party tender offers, is within the regulatory jurisdiction of securities authorities of all provinces in which solicited shareholders reside.[142] If the target is federally incorporated, the Director charged with administering the CBCA likewise has jurisdiction over the transaction.[143] Most of the substantive protections, disclosure requirements and agency review procedures applicable to issuer cash and exchange offers governed by Canadian securities law are virtually identical to those relating to third-party takeover bids.[144]

IV. The Proposed System

A. Overview; Purpose

The multijurisdictional disclosure system proposed today would permit public offers to be made in the United States on the basis of disclosure documents prepared in accordance with Canadian law. The system would cover multijurisdictional and cross-border offerings by Canadian issuers that met specified size tests, in order to encourage cross-border public offers and facilitate the free flow of capital. The system also would cover specified rights and exchange offers in order to encourage Canadian issuers to extend such offers to U.S. shareholders.

The multijurisdictional disclosure system also would permit tender offers that are primarily Canadian in character to comply with the provisions of the Williams Act by complying with the applicable Canadian tender offer regulations, again to encourage such offers to be made to U.S. investors. Given the extensive Canadian regulatory provisions, the United States does not have an overriding investor protection interest in insisting on compliance with the specific regulatory provisions of Regulations 14D and 14E.

The multijurisdictional disclosure system likewise would extend to continuous reporting, in light of Canada's continuous reporting requirements providing investor protection comparable to that provided by the similar U.S. requirements, as discussed above, and the likelihood that facilitation of the registration process without extension to the reporting process would render the system of little utility.

Under the multijurisdictional disclosure system as it would operate in Canada, U.S. issuers would be able to make public offerings of securities in all provinces of Canada on the basis of prospectuses prepared in accordance with U.S. law. Such prospectus disclosure would be updated in accordance with U.S. requirements, and U.S. documents would be used to comply with continuous reporting requirements. Although Ontario currently does not have a concept of shelf registration, procedures will be proposed by the OSC staff to accommodate U.S. issuers making shelf offerings. Tender offers that are primarily U.S. in character would be deemed to comply with applicable Canadian regulations if they were conducted in accordance with the provisions of the Williams Act.

In proposing adoption of the system, the Commission and Canadian securities authorities are taking a conservative first step rather than providing for multijurisdictional registration and disclosure in all cases. The first phase of the system will enable the Commission and the Canadian authorities to monitor use of the system and to address potential problems. At a later date, a wider variety of transactions and a greater number of issuers may be added.

To be eligible to participate in the multijurisdictional system, an issuer would be required to have a three-year reporting history with either the OSC or the CVMQ,[145] and to be in compliance with the reporting requirements of such authorities at the time of filing. Issuers also would be required, except in the case of rights offerings, to meet tests of minimum market value or public float. The system further would permit compliance with Canadian law to suffice for compliance with the Williams Act in the case of tender offers made for the securities of Canadian issuers, a limited percentage of which is held by U.S. residents.

[138] Unless made by a wholly owned subsidiary of the target, an affiliate bid subject to the Williams Act is treated as a third-party tender offer as to which a Schedule 14D–1 must be filed.

[139] *See* OSA Reg. section 163; OSC Policy Statement No. 9.1, *supra* n.122; QSA Reg. sections 183–186; 2 Alboini, *supra* n. 83, section 19.12.1.

[140] Under Ontario law, the insider must disclose the following information called for by OSC Form 33, the issuer bid circular: (a) Reasons for bid; (b) issuer's purchases and sales over the 12-month period preceding the bid; (c) dividend policy; and (d) tax consequences of the bid. OSC Policy Statement No. 9.1.IV.B.2., *supra* n. 122. Item 20 of OSA Form 32, the third-party takeover bid circular, requests the insider's discussion of recent legal developments, if any, relating to the type of transaction or proposed transaction. An insider of a CBCA-incorporated target must include in the takeover bid circular information from the directors' circular not already set forth in the takeover bid circular, and a statement indicating whether and how the remuneration of the directors of both the bidder and target will be affected by a successful bid. CBCA Reg. section 62.

[141] As in the United States, an issuer bid is exempt from Canada's takeover regulation if the securities are purchased or redeemed to meet contract sinking fund requirements or to comply with the terms and conditions creating the class of securities or the statute pursuant to which the issuer was organized, incorporated or continued. Compare OSA sections 92(3)(a)–(c) and QSA section 147.21(1) with Rules 13e–4(g)(1)–(3) (17 CFR 240.13e–4(g)(1)–(3)). Also exempt from Canadian takeover law are acquisitions by the issuer of (a) employee stock; (b) less than five percent of the issuer's shares within 12 months; (c) its own shares on a stock exchange in accordance with exchange rules; and (d) stock held by less than 50 shareholders, where the bid originated in a recognized jurisdiction and thus is governed by that jurisdiction's takeover rules. OSA sections 92(3)–(d) (i); *see* QSA section 147.21(2) and Reg. section 186.9; 2 Alboini, *supra* n.83, sections 19.1.13, 19.1.14.

[142] *See* OSA sections 89(1), (3); QSA section 147.19.

[143] *See* CBCA Reg. section 63.

[144] *See* QSA section 147.20; 2 Alboini, *supra* n.83, section 19.1.16; 2 "Doing Business", *supra* n.55, section 21.06(5); 2 R. Kingston, "Canada Corporation Manual" 14–114 (1988 rev'd ed.). Additional disclosures that must be made in an issuer bid circular include (a) any benefits to insiders resulting from the bid (OSA Form 33, Items 15 and 17; QSA Schedule XIV, Item 14 and 16; *see* CBCA Reg. section 66(1)(h); compare Schedule 13E–4, Item 8(a)); (b) issuer's purchases and sales of its own stock over the preceding 12 months (CBCA Reg. section 63(1)(f); OSA Form 33, Item 16; QSA Schedule XIV, Item 18; compare Schedule 13E–4, Item 4); (c) financial statements, or provision thereof at shareholder's request (CBCA Reg. section 62(1)(j); OSA Form 33, Item 20; QSA Schedule XIV, Item 19; compare Schedule 13E–4, Item 7 (mandatory only if material)); and (d) any distribution of issuer securities over the past five years (CBCA Reg. section 66(1)(a); OSA Form 33, Item 24; QSA Schedule XIV, Item 22).

[145] Issuers of rights and exchange offers would be required to have listed securities on the ME or TSE for the three years prior to the offering. Pursuant to OSC and CVMQ rules, they thus would have been reporting to the OSC for that period. *See* OSA section 1(1)(38); QSA § 66. The forms require substantial issuers to have a three-year reporting history with any Canadian authority, but the size tests for use of Forms F–9 and F–10 are such that eligible issuers most likely would be reporting to the OSC or CVMQ.

Audits conducted in accordance with generally accepted auditing standards in Canada would be accepted in the United States pursuant to the multijurisdictional system. Auditor independence requirements would not be affected by the multijurisdictional process and accountants therefore must continue to meet the independence requirements of the jurisdiction in which an offer is made. Moreover, Canadian auditors would be required specifically to follow the existing Canadian professional guidelines[146] regarding additional comments for U.S. readers that may be appropriate with respect to contingencies and going-concern considerations.

1. Offerings by Substantial Issuers

The purpose of the "substantial" designation is to single out issuers whose size is such that the market operates efficiently for them.[147] Such issuers generally have a wide market following and the marketplace can be expected to have set a price for their securities based on all publicly available information. As in the case of determining the availability of Form S-3 or F-3, the Commission has distinguished between investment grade and other securities in determining whether to rely completely on Canadian disclosure, although a size test would be applied to investment grade debt offerings (which is not the case for offerings on Forms F-3 or S-3). In the context of investment grade debt and preferred stock, a "substantial" issuer is defined as one that has a market value of at least (CN) $160 million, as opposed to the (CN) $360 million required in the case of other securities.

The Commission is proposing to rely entirely on Canadian disclosures in the case of investment grade debt and preferred stock. These securities generally trade on the basis of the yield on such securities and assessments of their creditworthiness. The financial information pertaining to liquidity and capital resources is most relevant to this investment decision, and the differences between U.S. and Canadian GAAP usually are not of such magnitude as to affect materially an assessment of this information with respect to the ability to repay principal and interest when due.

In the case of offerings by substantial issuers of securities other than investment grade debt and preferred stock, reconciliation to U.S. GAAP would be required. While the financial statements prepared in accordance with Canadian GAAP are relevant and reliable, financial statement reconciliation would increase comparability of financial information, which is of greater importance to investment decisions with respect to equity and other non-investment grade securities.

The Commission specifically requests comment as to whether the differences between U.S. and Canadian accounting standards are sufficient to warrant continued reconciliation requirements, or whether Canadian financial statements would provide investors with adequate information for comparative analysis purposes in some or all cases. If reconciliation is not necessary in all cases, should it be required only for specific regulated industries (for example, insurance companies, where specialized industry guidance in both countries may result in very different balance sheets) or specific transactions? The Commission also requests comment as to whether domestic issuers would be disadvantaged unduly if Canadian issuers were to be permitted to sell noninvestment grade debt or equity in the United States without reconciliation. Depending on the responses received to these questions, the Commission may reconsider the need to require reconciliation, and could eliminate or modify that requirement in Form F-10.

In the case of banks registering securities on proposed Form F-10, supplemental disclosure of specified portions of the information prescribed by Securities Act Industry Guide 3, discussed below, also would be required. Review by Commission staff of applicable Canadian law indicated that equivalent disclosure currently is not required in Canada.

2. Rights and Exchange Offers

The multijurisdictional registration process also would be extended to certain rights and exchange offers, primarily because of concerns for domestic investors' interests. Rights and exchange offers made in the United States generally must be registered with the Commission.[148] As noted above, foreign issuers making a rights or exchange offer frequently do not extend offers to U.S. holders because they are unwilling to bear the costs and other burdens of registering securities in the United States.[149] U.S. holders of securities that are the subject of a rights offering are typically "cashed out" and thereby may be denied the opportunity to realize significant value on their investments.[150] In the case of exchange offers, investors are relegated either to selling into the market at less than the full tender offer consideration and incurring transactional costs not imposed in the tender offer or remaining minority shareholders, subject to the risk of being cashed out in a subsequent merger or arrangement subject to Canadian corporate law.[151]

[146] *See* CICA Auditing Guideline, "Canada-United States reporting conflict with respect to contingencies and going concern considerations" [December 1988].

[147] *Compare* Securities Act Release No. 6331 [August 6, 1981], adopting Form S-3 ("Because these registrants are widely followed, the disclosure set forth in the prospectus may appropriately be limited, without the loss of investor protection, to information concerning the offering and material facts which have not been disclosed previously.").

[148] Rights offers generally are not required to be registered under state law. *See* section 402(14), Uniform Securities Act (1985), Official Code Comment, n.14.

[149] To avoid filing a registration statement in the United States, Canadian exchange offerors may restrict U.S. shareholders to receiving cash. *See, e.g., Alberta Energy Ltd.* (avail. July 19, 1982); *Jamaica National Investment Co. Ltd.* (avail. Nov. 29, 1979).

[150] *See* letter to the Commission from the College Retirement Equity Fund, April 22, 1988.

[151] In adopting the All Holders, Best Price Rule requiring that tender offers be made to all holders of the class of securities subject to a tender offer and on identical terms (Rule 14d-10(a); Rule 13e-4(f)(8)), the Commission stated that the new rules would not require foreign bidders to extend offers to target shareholders residing in the United States. Exchange Act Release No. 28421, *supra* n.127. If a foreign offeror uses the jurisdictional means of the United States (*see, e.g., Consolidated Gold Fields PLC* v. *Minorco S.A.*, 871 F.2d 252 (2d Cir. 1989)), however, the offer must be made to U.S. shareholders on the same terms as other target shareholders. Rather than create a specific exception to the Rule's requirement that all alternative forms of consideration be offered to all shareholders when (a) a foreign bidder makes an exchange offer to non-U.S. shareholders but wishes to offer only cash to U.S. shareholders (*see supra* n.149), or (b) a U.S. bidder wishes to make an exchange offer to U.S. shareholders and a cash-only offer to nonresident foreign shareholders, the Commission indicated in the adopting release that it would consider applications for exemptive relief under Rules 14d-10(e) or 13e-4(g)(7) [17 CFR 240.13e-4(g)(7)] on a case-by-case basis. Pursuant to delegated authority, the Commission's Division of Corporation Finance has granted exemptive relief to a Canadian bidder that excluded U.S. shareholders of the Canadian target due to a Canadian law prohibiting foreign ownership. *Alberta Energy Co. Ltd.* (June 19, 1989). In addition, the Division has granted exemptive relief to a U.S. company that excluded Canadian shareholders of the U.S. target because U.S. law prohibited foreign ownership of domestic oil and gas leases. *Freeport-McMoran Energy Partners, Ltd.* (June 19, 1989). Exemptive relief was denied in connection with a tender offer by a Canadian corporation for 78 percent of the common stock of a Canadian affiliate of a U.S. company, where the bidder proposed to offer cash only to U.S. target shareholders, and the choice of cash or stock to Canadian target shareholders, but did not argue that Canadian law foreclosed U.S. ownership of target stock. *Imperial Oil Ltd.* (June 19, 1989).

It therefore would appear to be in the interests of domestic investors to facilitate the registration of such offerings to encourage foreign issuers to include domestic shareholders. Particularly when U.S. holdings are small, Canadian issuers currently find that the costs of extending these offers into the United States outweigh the benefits of such entry. The proposed system should alter the costbenefit analysis made by Canadian issuers in favor of extending offers to relatively small numbers of securities holders in the United States.

Additionally, imposing a duplicative cost on issuers seems particularly inappropriate where the effect on the United States is incidental to a transaction. For this reason, where less than 20 percent of the class of securities to which the rights or exchange offer related is held of record by U.S. residents, offers could be made in the United States pursuant to the system. The percentage of record holders would be determined as of the end of the issuer's last quarter or, if such quarter ended within 60 days prior to the date of filing, as of the end of the preceding quarter. Comment is requested as to whether the percentage should be determined as of a different date.

Rights offerings to U.S. investors that already own the securities of the issuer are particularly appropriate for multijurisdictional registration. Investors already holding the securities can be expected reasonably to make a further investment based on the same type of information on which they relied when they bought the securities in the secondary market. Consistent with this theory, multijurisdictional registration for rights offerings would be made available to a larger class of issuers than those designated "substantial." For the same reason, however, the rights so registered could not be transferred to investors in the United States who were not already shareholders.

Comment is requested as to whether rights offers should be permitted to be made pursuant to the system in the event more than 20 percent of the subject securities were held of record by U.S. residents. For example, should the limit be 30, 40 or 50 percent or should there be no limit at all?

In the case of exchange offers, it similarly seems appropriate to facilitate registration so that domestic investors are not denied rights of value that are offered to all other holders of the same class of securities. On the other hand, in non-issuer exchange offers, unlike rights offerings, the investor has not made a prior investment decision with respect to the bidder whose securities are being offered in the exchange. Due to this difference, eligibility standards for exchange offers would be higher than those applicable to rights offerings, and a narrower class of exchange offers could be made through the multijurisdictional system. While issuers of both rights and exchange offers would have to have three-year reporting histories, only in exchange offers would issuers be required to have a public float of (CN) $75 million.[152]

In the case of exchange offers, a decision to extend offers to U.S. investors depends not only on the application of U.S. disclosure requirements, but also on U.S. tender offer regulation. Foreign issuers conducting tender offers for the shares of Canadian target companies often are deterred from extending both exchange and cash offers to target shareholders residing in the United States by costs attendant to compliance with this country's applicable tender offer regulations,[153] and thus exclude U.S. investors from their tender offers. In some cases, although purporting to exclude U.S. shareholders from the offer, the bidder in fact may have intended that U.S. holders sell into the market so that the shares could be purchased on the open market by the bidder, as permitted under Canadian law,[154] or tendered by Canadians who purchased such shares in the market. Rather than protecting U.S. investors, the application of tender offer rules under the U.S. regulatory scheme to predominantly Canadian tender offers can operate to deny these investors the full benefit of participation in such transactions.

In sum, the multijurisdictional system should reduce disincentives to the inclusion of U.S. shareholders in predominantly Canadian cash or exchange offers where less than 20 percent of the subject class was held of record by U.S. residents. More importantly, because the substantive protections and disclosure obligations established by Canada's tender offer regulations are comparable to those prescribed by the Williams Act and the Commission's rules thereunder, holders of shares in Canadian companies residing in the United States would not be disadvantaged unduly by comparison with U.S. shareholders in domestic companies. To minimize any potential regulatory inequality, the nationality of a bidder in a cash tender offer would not determine availability of the system. Thus U.S. and Canadian bidders for a Canadian target would be governed by the same tender offer regulation.

B. The Mechanics of the Multijurisdictional Disclosure System

An issuer using the multijurisdictional disclosure system would prepare a disclosure document according to the requirements of its home jurisdiction and use that document for securities or cash offerings in the United States. Review of the disclosure document generally would be that customary in Canada, and the Canadian regulatory authorities would be responsible for applying disclosure standards. Thus, except in the unusual case where the Commission staff had reason to believe there was a problem with the filing or the offering, the documents generally would be given a "no review" status. Although Canadian issuers offering securities pursuant to the system would not be required to comply with U.S. disclosure requirements, they nonetheless would be liable under U.S civil liability and antifraud provisions [155] and, with respect to securities offerings, subject to the authority of the Commission to stop the offering in the public interest and for the protection of investors.[156]

The system would distinguish between the disclosure document required to be given to each investor and the documents to be filed with the Commission. Participating Canadian issuers could provide investors in the United States with the same information delivered to investors in Canada. Information incorporated by reference in the prospectus would not be required to be distributed to investors, but would be filed with the Commission.[157] Investors

[152] This requirement is derived from the requirements of Canada's Prompt Offering Qualification system. *See supra* Section III.B.

[153] A particular deterrent arises from differences in the minimum offering period. Canadian law requires that tender offers remain open only for 21 calendar days, whereas the Williams Act prescribes a minimum offering period of 20 business days. *See supra* section III.D. Participation of U.S. shareholders likewise may not be sought due to cost considerations involved in making tender offer filings under U.S. law, including reconciliation of financial statements to U.S. GAAP. *See supra* section II.C.

[154] *See infra* nn. 206-208.

[155] Sections 11, 12(2) and 17(a) of the Securities Act, sections 10(b), 14(e) and 18 of the Exchange Act, and Rules 10b-5, 13e-4(b)(1) and 14e-3 under this Act. In essence, the Commission is proposing the adoption of the disclosure provisions of the Canadian forms, and omission of information otherwise generally included in Commission forms would not violate U.S. disclosure requirements. However, an antifraud action could be brought alleging that the document was misleading because information had been omitted.

[156] *See* section 8 of the Securities Act (15 U.S.C. 77h).

[157] Such documents would be part of the prospectus and subject to liability under section 12(2) of the Securities Act for any misleading statement.

would be able to obtain such information from the Commission or, upon request, from the issuer.

All exhibits to the Canadian prospectus, takeover bid circular or other document, including those incorporated by reference, would be required to be filed with the Commission as part of the registration statement or schedule.

Documents already filed with the Commission would not be required to be filed again. Experts' consents filed with the Commission as a part of a registration statement would be required to indicate clearly that the consent to use the experts' statements and consents extends to all the documents being filed with the Commission which attribute a report or opinion to the expert.[155] Thus, all the documents would be subject to Section 11 liability and all other provisions of the U.S. securities laws applicable to a registration statement filed under the Securities Act, as well as (in the case of tender offers) the antifraud provisions of the Exchange Act. Moreover, such documents would be in the Commission's public files, available for public review.

Participating issuers could use a brief "wraparound" form or schedule to register their offerings with, or otherwise provide disclosure to, the Commission. This form or schedule would give the issuer's name and address, and that of its agent for service in the United States, include the prospectus or offering circular, and list the exhibits filed, including documents incorporated by reference, with the Commission. Each form and schedule proposed today contains a requirement that the Commission be advised of any change to the name or address of an agent.[156] All the forms and schedules proposed also expressly require that the issuer add to the prospectus or circular legends warning investors that the investment may have tax consequences in the issuer's jurisdiction, that investors may have to pursue remedies for any securities law violation against persons and assets located in the issuer's jurisdiction, and that any financial statements are prepared in accordance with Canadian accounting standards.

The forms and schedules would be accompanied by a Form F–X, which includes not only a consent to service of process and appointment of a U.S. person as agent for process, but also a consent to service of an administrative subpoena and an undertaking to assist the Commission with administrative investigations.[160]

Where debt securities were registered, issuers would be required to comply with the Trust Indenture Act, and would file as exhibits to the registration statement a copy of the trust indenture [161] and the statement of eligibility on Form T–1.[162] In the event that the registrant intended to use a non-U.S. trustee, it also would have to provide information regarding that trustee or incorporate by reference the application form previously used to obtain a waiver of the U.S. trustee requirement. The procedure for application for waiver is discussed in detail below.[163] If any exchange or tender offer for debt securities were registered on Form F–8, pursuant to section 306(c) of the Trust Indenture Act, offers could not be made until an indenture (including the related statement(s) of eligibility and qualification of the trustee or trustees) had been filed for qualification with the Commission.

Registration statements on the proposed forms must be filed with the Commission on the same day as the filing of a prospectus or other document with the securities authorities of the jurisdiction identified by the registrant on the cover of the form as the principal jurisdiction regulating the offering. Any amendment to the document filed with that jurisdiction similarly must be filed on the same day with the Commission under cover of a post-effective amendment. Because the provincial securities commission must review and approve all prospectuses and related documents prior to effectiveness except those incorporated in exchange offer filings,[164] these registration statements and amendments would be deemed effective on the date the securities could legally be sold in the principal Canadian jurisdiction.[165] With respect to exchange offers, which may commence immediately in Canada upon dissemination of offering documents to target company shareholders, filings on Form F–8 would become effective upon filing with the Commission.[166] Post-effective amendments to proposed Forms F–7 through F–10 also would become effective on the date on which the securities legally may be sold in the principal Canadian jurisdiction.[167]

In the case of a U.S.-only offering on Forms F–9 and F–10, the registration statement would be made effective on the date specified by the registrant, but in no event less than seven days after the registration statement was filed with the Commission.[168] This seven-day period corresponds to the average time that is required for a registration statement to be reviewed in Canada. It would provide adequate time for Canadian authorities to advise the Commission of any regulatory concerns and would minimize any potential for the proposed system to encourage Canadian issuers to forego qualification in Canada. The Commission specifically requests comment as to whether the procedures outlined in this Release are likely to result in Canadian issuers that would otherwise have offered securities in Canada choosing to offer only in the United States.

In the case of a debt offering, the trust indenture relating to the securities would be qualified when the registration statement became effective. The registration statement would not be deemed effective, however, in any case where either all the provisions of the Trust Indenture Act had not been complied with, or an appropriate exemption had not been obtained from those provisions with which the registrant had not complied.

Registrants on the multijurisdictional forms would be able to make a delayed or continuous offering to the same extent foreign private issuers currently may make such offerings pursuant to Rule 415. However, prospectus updating would be accomplished in compliance with Canadian law.[169] Any updated prospectus would be filed with the Commission as a post-effective amendment and would be declared effective on the date on which the securities legally may be sold in the principal Canadian jurisdiction. A registration statement for a delayed or continuous offering could be filed with the Commission if the documents contained in the registration statement included the documents required in Canada and complied with all Canadian requirements. In the case of offerings made in both Canada and the United States, the registrant would comply with Canadian law regarding prospectus updating, and no special undertaking would be required in the registration statement.[170] In the event there was no contemporaneous offering in Canada, the registrant would be required to enter into an undertaking regarding prospectus updating.

C. Application of the System to Specific Transactions

Discussed in detail below are the procedures whereby Canadian issuers could offer securities or any offerors could make a cash tender offer in the United States under the multijurisdictional disclosure system. Equivalent procedures are being proposed by the OSC and the CVMQ for use by U.S. issuers in Canada.

1. Offerings by Substantial Issuers

(a) *Offerings of Investment Grade Debt and Preferred Stock (Form F–9).* Multijurisdictional registration would be permitted for offerings by substantial issuers of non-convertible debt securities [171] or non-convertible preferred stock that are investment grade, as defined in the United States.[172] Securities that are not convertible for one year from the date of effectiveness of the registration statement would be treated as non-convertible. Comment is requested as to the treatment of convertible securities. Should the period of non-convertibility be longer (*e.g.*, for two or three years)?

Eligible offerings of investment grade securities would be registered with the Commission on proposed Form F–9. To be eligible to use that form, an issuer would be required to be incorporated or organized under the laws of Canada or any Canadian province or territory, with a total market value for its common stock of at least (CN) $180 million and a public float [173] of (CN) $75 million. The (CN) $180 million requirement parallels one of the eligibility standards for use of Form S–3,[174] which permits use of a short-form prospectus in the United States by U.S. issuers. The public float requirement is derived from the Canadian test for eligibility for the Prompt Offering Qualification system, discussed above,[175] and is based on the Canadian, rather than the U.S. definition of affiliates in determining the amount of securities publicly held. These requirements are expressed in terms of Canadian, rather than U.S., currency so that fluctuations in exchange rates would not affect an issuer's eligibility to use the Form.

Comment is requested as to whether the requirements set forth provide adequate indication of an issuer's market following. Should the market value and public float tests be set at different levels, and if so, should they be higher (for example, market value of (CN) $300 or $500 million, or float of (CN) $100 or $300 million) or lower (for example, market value of (CN) $75 or $100 million or float of (CN) $25 or $50 million)?

(b) *Other Offerings (Form F–10).* Offerings by substantial issuers of securities other than investment grade debt or preferred stock would be registered on proposed Form F–10. In this context, "substantial issuers" would be those with a common stock market value of at least (CN) $360 million (to approximate the Commission's requirement that equity issuers eligible to use the Form F–3 short form prospectus have a market value of voting securities of (U.S.) $300 million [176]), and a public float of (CN) $75 million. As with Form F–9, comment is solicited as to the appropriateness of the tests for eligibility for Form F–10. Should the market value and public float tests be set at different levels, and if so, should they be higher (for example, market value of (CN) $500 or $700 million, or float of (CN) $100 or $300 million) or lower (for example, market value of (CN) $100 or $200 million or float of (CN) $25 or $50 million)?

As discussed above, Form F–10 would require reconciliation of financial statements to U.S. GAAP as specified in Item 18 of Commission Form 20–F. Item 18 requires the full disclosure of all information required by Regulation S–X and U.S. GAAP, including segment information and supplemental oil and gas data. Comment is solicited as to whether, if reconciliation is to be required, Item 17 reconciliation should suffice.[177]

In the United States, registration statements are subject to certain industry-specific requirements relating to an issuer's business and operations. Foreign issuers generally are held to the same level of disclosure as domestic issuers. Given Canadian comprehensive disclosure requirements and practices, the Commission proposes to require additional industry-specific information only from issuers engaged in banking. Canadian banks using Form F–10 would be required to disclose the information set out under Item III.C., "Risk Elements," and Item IV., "Summary of Loan Loss Experience" of Industry Guide 3 under the Securities Act.[178] Both the reconciliation and the supplemental Guide 3 information are required to be included in both the prospectus delivered to investors and the registration statement.

2. Rights and Exchange Offers

(a) *Rights Offers (Form F–7).* Form F–7 is proposed for use by Canadian issuers making rights offerings in the United States. To be eligible, the issuer would have to (1) be incorporated in Canada, and (2) have had, for the 36 months immediately preceding the offering, a class of securities listed on The Toronto Stock Exchange or the Montreal Exchange.[179] Form F–7 would not require that registrants meet any test related to market value of shares or public float. Comment is requested as to whether the eligibility tests proposed for use of Form F–7 are appropriate, or whether the (CN) $75 million (or $10 million, $25 million or $50 million) market value requirement imposed by Form F–8 be extended to Form F–7.

Since it is intended that Form F–7 would exclude offerings that are major financings, so that an issuer that did not meet the tests for use of Form F–10 would not be eligible to take advantage of the system by characterizing an offer as a rights offering, an eligible offer could not increase the capital of the class of securities offered by more than 25 percent. The 25 percent test is derived from Canadian requirements, which use the 25 percent threshold to identify

---

[155] *See* Securities Act Rules 436–439 (17 CFR 230.436–439).

[156] This would codify staff interpretations to the effect that such notification is necessary.

[160] Proposed Form F–X.

[161] 17 CFR 229.601(b)(4)(i) and (iv).

[162] 17 CFR 229.601(b)(25).

[163] *See infra* section IV.G.

[164] *See supra* section III.B.

[165] Proposed Rule 467(a).

[166] *Id. See supra* n. 123 and accompanying text.

[167] *Id.*

[168] Proposed Rule 467(b).

[169] Canadian law requires a prospectus to be amended to reflect any material change in the information contained therein. See discussion in text accompanying nn. 80–88, *supra*.

[170] *See* Item 512(a) of Regulation S–K.

[171] It should be noted that where debt securities are to be offered pursuant to the system, a trust indenture relating to such securities must be qualified under the Trust Indenture Act. *See infra* section IV.G.

[172] Securities would be "investment grade" if, at the time of effectiveness of the registration statement, at least one nationally recognized statistical rating organization (as that term is used in rule 15c–1(c)(2)(vi)(F) under the Exchange Act) has rated the security in one of its generic rating categories that signifies investment grade; typically the four highest rating categories (within which there may be subcategories indicating relative standing) signify investment grade.

[173] "Public float" is the monetary value of all outstanding equity securities owned by non-affiliates, and would be determined according to Canadian practice. In the multijurisdictional system, Canadian (but not U.S.) issuers would include non-voting common stock in the calculation of public float.

[174] Instruction I.B.1. (market value of securities of issuer to be (US) $150 million).

[175] *See* text accompanying nn. 84–88, *supra*.

[176] Instruction I.A.4.

[177] *See supra* n.29. Item 17 requires reconciliation only in measurement items (the income statements and balance sheet amounts).

[178] Both Canadian banks and bank holding companies (not common in Canada) would be covered by this requirement.

[179] Pursuant to the securities laws of Ontario or Quebec, such issuers thus would have three-year reporting histories with the OSC or CVMQ. *See* OSA section 1(1)(38); QSA section 66.

rights offerings subject to additional regulatory requirements.[180]

U.S. residents must hold of record [181] less than 20 percent of the class of securities to which the rights offering related. To preclude a public offering being made indirectly by an issuer not eligible to make such an offering, the rights could not be transferable by U.S. residents. The underlying securities, however, could be so transferable. Consistent with Canadian regulations, a further condition of Form F-7 is that the exercise period of the rights must not exceed 90 days.

The securities to be registered on Form F-7 would be those issuable upon the exercise of rights. The rights themselves, whether issued to shareholders by means of warrants or otherwise, generally are not registrable on a "no-sale" theory.[182] If the rights were required to be registered, the issuer would be permitted to register them on Form F-7.

(b) *Exchange Offers (Form F-8)*—(i) *Registration Issues.* Proposed Form F-8 would be used to register exchange offers that are primarily Canadian in character, in which all or a portion of the consideration offered is the securities of the bidder, and less than 20 percent of the securities of the target class is held of record by U.S. residents. The aggregate market value of the registrant's common stock must equal or exceed (CN) $75 million.[183] As with rights offerings registered on Form F-7, registrants would be required to have had their securities listed on The Toronto Stock Exchange or the Montreal Exchange for the 36 months immediately preceding the offering. Comment is requested as to the appropriateness of these tests. Given the application of Canadian tender offer regulation to the exchange offer and the interdependence of tender offer and exchange registration disclosure, should the offer be permitted to be registered using Canadian disclosure, without regard to the market capitalization? Should a public float test be imposed, as in the case of offerings by substantial issuers? If so, should the same requirements as apply to either Form F-9 or F-10 be applied, or should a different public float be required, for example, (CN) $25 million or $50 million? Should the market value of the registrant's securities be set at a higher level (for example, (CN) $100 million or $200 million) or a lower level (for example, (CN) $25 million or $50 million)?

The target of the bid would be required to be incorporated or organized under the laws of Canada or any Canadian province or territory. The bidder would be required to offer its securities upon identical terms and conditions to both U.S. and Canadian shareholders of the target, consistent with Canada's all-holders and best-price policies.[184] Adherence to these policies, which as discussed are similar to the Commission's All-Holders, Best Price Rule,[185] would prevent discrimination among holders of the class of securities that is the subject of the offer.

Contemporaneously with the filing with Canadian authorities and mailing to target shareholders of the required documents, a Canadian offeror making an offer pursuant to the system would file these documents, under cover of Form F-8 and accompanied by Form F-X, with the Commission. The offer and takeover bid circular would be distributed by mail in accordance with Canadian law [186] to shareholders in both countries. In the United States an exchange offer cannot commence until a registration statement has become effective,[187] thereby delaying the commencement date of the offer pending acceleration of the effective date.[188] An exchange offer commences under Canadian law, however, immediately upon the mailing to target shareholders of the takeover bid circular containing the required prospectus disclosure.[189] Since Form F-8 and any amendments thereto would become effective for purposes of the Securities Act at the time the securities legally may be sold in the principal jurisdiction, such filings could become effective immediately.[190] Exchange offers registered on Form F-8 under the system thus would commence in the United States simultaneously with dissemination to shareholders of the integrated circular.[191]

(ii) *Tender Offer Regulation for Exchange Offers.* Exchange offers also raise the question of the need for compliance with each jurisdiction's exchange offer regulatory scheme relating to tender offers. When a Canadian bidder is eligible to use Form F-8, the tender offer regulations applicable in Canada would govern under the system, and compliance with such regulations would be sufficient under the Williams Act. U.S. and other non-Canadian offerors not eligible to use Form F-8 similarly could make exchange offers for the securities of Canadian issuers (where less than 20 percent of the holders of record of the subject securities were U.S. residents) pursuant to Canadian tender offer regulations. Such non-Canadian issuers, however, would have to comply with U.S. disclosure requirements, as set forth on any available Commission registration form. The application of tender offer regulation under the proposed system is discussed in Section 3 hereof.

(iii) *Proxy Regulation.* Any solicitation of U.S. shareholders involved in the offer and sale of securities registered on Form F-8 (for example, if, in connection with a tender offer, the issuer proposed to increase its authorized share capital) would be exempt from Exchange Act proxy information and filing requirements pursuant to a proposed new rule.[192]

3. *Tender Offers Pursuant to the System*

Pursuant to amendments to be proposed to the Commission's tender offer rules, third-party or issuer tender offer filings in connection with offers in both jurisdictions for a class of shares of a Canadian issuer, less than 20 percent of which is held of record by U.S. residents, would be permitted to proceed in the United States in compliance with the law of Canada, provided the tender offer is extended to all holders of the class of securities in the United States [193] and that the transaction is covered by and not exempted from substantive provisions of Canadian law regulating the terms and conditions of the offer. In these instances, compliance with Canadian law would suffice for compliance with the Williams Act.[194] Where a bid not covered by such Canadian regulation [195] was extended to U.S. shareholders, the Williams Act and the rules thereunder would govern the conduct of the offer in the United States even if the bid otherwise would qualify for inclusion in the multijurisdictional system. The schedules would require that the bidder comply with the laws, regulations and policies of any Canadian federal and/or provincial or territorial regulatory agency applicable to the particular offer. If the offeror failed to comply with Canadian law, it would be in violation of both Canadian and U.S. law.

Under the proposal, documents containing tender offer and prospectus disclosures mailed to target shareholders and filed with Canadian securities authorities would be filed simultaneously with the Commission, together with the appropriate "wraparound" forms or schedules (F-8 or other Securities Act registration form for exchange offers, Schedule 14D-1F for third-party and affiliate tender offers, Schedule 14D-9F for the target's response and Schedule 13E-4F for issuer tender offers [196]) and an executed Form F-X consenting to service of process. Information would be disseminated to all U.S. and Canadian shareholders in accordance with Canadian law.[197] U.S. shareholders would receive a Canadian offering document bearing additional informational legends prescribed by the Commission. Where an exchange offer was being made pursuant to the system by an offeror not eligible to use Form F-8, U.S. shareholders would receive Commission-mandated disclosure in addition to the information required to be disseminated under Canadian law.

While the eligibility of a bidder to use Form F-8 would depend upon whether the bidder met the specified nationality, size, market value and float tests, there would be no such eligibility standards for bidders making cash tender offers. Under either circumstance, however, the subject issuer must be a Canadian reporting company, less than 20 percent of the subject securities of which is held of record by U.S. residents.[198]

It should be emphasized that bidders using Schedule 14D-1F would not be relieved of any obligation to file a Schedule 13D [199] that may arise, should their beneficial ownership of the target's equity securities subject to the offer exceed five percent.[200]

Neither an F-8 eligible registrant,[201] an all-cash bidder nor the issuer [202] would be exempt, by virtue of the proposed rule amendments, from the civil liability and antifraud provisions of Sections 10(b), 13(e), 14(e) and 18 and Rules 10b-5, 13e-4(b)(1) and 14e-3 under the Exchange Act nor, in the case of an exchange offer, from the provisions of Sections 11, 22(2) and 17(a) of the Securities Act.

In cases of tender offers ineligible for multijurisdictional treatment in the United States because 20 percent or more of the subject shares were held by U.S. residents, the rules and regulations of the United States generally would apply. In the Commission's view, the requisite use of the jurisdictional means can be established, notwithstanding the absence of an affirmative act of the bidder, where it is reasonably foreseeable that U.S. shareholders of a foreign issuer that have been excluded from an offshore offer will sell their shares into the market in response to that offer.[203] Further, as a policy matter, the Commission, the Canadian federal government, the OSC and the CVMQ believe that tender offers should be extended to all holders of the class of securities in Canada and the United States, and that efforts to avoid compliance with the other jurisdiction's regulation by attempting to exclude certain shareholders from the offer are consistent neither with the purposes of either country's laws nor with the public interest.[204] The United States and Canada mutually recognize this principle of equal treatment of target shareholders in the tender offer context. Traditional precepts of comity do not call for exclusion of either country's shareholders from a tender offer, but rather for the offer to be made on an equal basis to all shareholders.

D. Exchange Act Provisions Affecting the Activities of Participants in Tender and Exchange Offers

Rule 10b-6 generally prohibits a distribution participant from, directly or indirectly, bidding for or purchasing, or attempting to induce others to purchase, the securities in distribution or any security of the same class and series or any right to purchase such security ("related securities"), until the participant's role in the distribution has terminated.[205] Rule 10b-13 prohibits a

---

[180] *See* OSA Policy Statement No. 6.2, *supra* n.83.

[181] *See* Rule 12g5-1 (17 CFR 240.12g5-1). Subject to several explanations and qualifications set forth in that Rule, securities are deemed to be "held of record" by each person identified as the owner of such securities in the records maintained by or on behalf of the issuer of such securities.

[182] Securities Act Release No. 929 (July 29, 1936).

[183] The securities also could be registered on Form F-9 or F-10 if the offeror was eligible to use such forms, without regard to the number of shares held by U.S. residents.

[184] *See supra* nn. 126, 130-133 and accompanying text.

[185] *See supra* n. 151 and accompanying text.

[186] *See* Proposed Rule 467(a); CBCA section 198; OSA sections 97, 99; QSA section 128 and Schedule XI.

[187] *See* Section 8 of the Securities Act; Rule 459 (17 CFR 230.459).

[188] *See supra* n. 123, citing Rule 14d-2.

[189] *See id.*, citing Canadian authorities; *see also supra* nn. 164-166 and accompanying text.

[190] *See* General Instruction I.E. to proposed Form F-8.

[191] *See id.*; *see also* proposed Rule 467.

[192] Proposed Rule 3a12-3(c).

[193] Consistent with the Commission's All Holders and Best Price Rules (Rules 14d-10(b)(2), and 13e-4(f)(9)(ii), a Canadian bidder or issuer eligible to invoke the multijurisdictional system would not be prohibited from excluding from a tender offer U.S. shareholders residing in a particular state if administrative or judicial action taken pursuant to a statute enacted by that state barred extension of the offer to state residents.

[194] Proposed Rule 14d-1(b) for third-party and affiliate tender offers, proposed Rule 14e-2(c) for the target company's response thereto and proposed Rule 13e-4(h) for issuer tender offers.

[195] For example, Canada's federal and provincial securities laws expressly exempt from tender offer regulation any takeover or issuer bid conducted on a recognized Canadian stock exchange such as the TSE or ME. CBCA section 194 and Reg. section 58(b); OSA section 92(1)(a); QSA section 119.

[196] Canadian law permits target officers and directors to file and transmit to shareholders a recommendation regarding the offer accompanied by his or her individual circular. *See* OSA section 98(3) (officers and directors); QSA section 137 (senior executives). Schedule 14D-9F could be used to file such responses with the Commission.

[197] *See supra* n. 123 and accompanying text (mail delivery). Any amendment to a document made in accordance with the laws of Canada and/or any of its provinces or territories, would be filed with the Commission under cover of an amended wraparound form and transmitted to shareholders of the subject company residing in the United States in compliance with applicable Canadian law.

[198] In order to fall within the subject matter jurisdiction of the Williams Act's tender offer provisions and, accordingly, the provisions of proposed Rule 14d-1(b), the securities sought to be acquired must be equity securities registered under Section 12 of the Exchange Act. With respect to issuer tender offers, however, the securities of any issuer filing periodic reports with the Commission pursuant to Section 15(d) of the Exchange Act, or that has any class of equity security registered pursuant to Section 12 of the Exchange Act, also may be subject to Rule 13e-4.

[199] 17 CFR 240-13d 101.

[200] *See* General Instruction I.D. of proposed Schedule 14D-1F.

[201] Part III.B. of proposed Form F-8.

[202] General Instruction III.B. of proposed Schedule 14D-1F; General Instruction III.B. of proposed Schedule 14D-9F; General Instruction III.B. of proposed Schedule 13E-4F.

[203] *See Schmuck* v. *United States*, 109 S. Ct. 1443 (1989); *Carpenter* v. *United States*, 484 U.S. 19 (1987).

[204] The terms of an exchange offer for certain, otherwise qualified Canadian issuers may conflict with restrictions on foreign ownership imposed by Canadian and United States law. Such provisions, for example, effectively would prohibit the acquisition by Canadian shareholders of stock in U.S. entities holding oil and gas leases (*see* 30 U.S.C. 181, 184, 188), or by U.S. shareholders of stock in a Canadian energy company (*see* Section 7 of the Alberta Energy Act, R.S.A. 1980 C.A. 17 s.7). Under circumstances where national policy concerns may militate against application of the principles of equality underlying the multijurisdictional system, the Commission may determine to exercise its exemptive authority under Rules 14d-10(e) or 13e-4(g)(7) (All Holders) to permit a Canadian bidder to issue cash consideration in lieu of securities in connection with an exchange offer concurrently made to Canadian holders of the target. Relief thus may be sought from this "all holders" policy that otherwise would mandate the extension of an exchange offer to U.S. shareholders of the Canadian target on the identical terms and conditions offered to Canadian shareholders.

[205] During an exchange offer, the bidder's securities would be in distribution and the distribution participants would be prohibited from bidding for or purchasing those securities or any related securities until the exchange offer ended. *See also* QSA Section 252.1; OSC Policy Statement 9.3(C) (Dec. 24, 1982) (as amended), *reprinted in* 3 Cdn. Sec. L. Rep. (CCH) ¶ 471-903 (concerning stock exchange bids). The target's securities in an exchange offer are considered "rights to purchase" the securities in distribution; accordingly, distribution participants also would be prohibited from purchasing those securities during the exchange offer. *See* Exchange Act Release No. 19565 (March 4, 1983) (48 FR 10628, 10636 n.58). To a degree, Rule 10b-13 (17 CFR 240.10b 13) contains a similar prohibition on the purchase of target securities. *See Piper* v. *Chris Craft Industries, Inc.*, 430 U.S. 1, 43 n.30 (1977).

person who is making a cash tender offer or exchange offer for any equity security from, directly or indirectly, purchasing or making any arrangement to purchase such security (or any other security which is immediately convertible into or exchangeable for such security) otherwise than pursuant to the tender offer or exchange offer, from the time of announcement of the offer until its expiration, including any extensions thereof. The rule is designed to "protect shareholders in the tender offer from the harmful effects of purchases or arrangements made outside, and on terms or conditions different from, the tender offer, and to protect the integrity of the tender offer process by proscribing side deals that could render the tender offer a sham." [206]

Canadian procedures permit participants in transactions contemplated by proposed Form F–8 and Schedules 14D–1F and 13E–4F to engage in certain activities that are prohibited by Rules 10b–6 and 10b–23. For example, Canadian provisions permit, in limited circumstances, purchases by an offeror during a third-party bid, or by an issuer during an issuer bid, otherwise than pursuant to a tender offer conducted by circular bid.[207] Such purchases are permitted from the third business day following the date of the bid until its termination. Purchases are conditioned upon limiting the amount of securities acquired to five percent of the outstanding securities as of the date of the bid, disclosing the intention to make such purchases in the third-party or issuer bid circular, and issuing and filing a press release with the relevant exchange or regulatory commission at the close of each day on which securities have been purchased.[208] The press release is required to disclose the purchaser, the number of shares purchased, the highest price paid on that day, the average price paid for the securities that were purchased by the purchaser through the facilities of the stock exchange during the bid, and the total number of securities owned by the purchaser as of the close of business of the stock exchange on that day.[209]

In connection with the proposed multijurisdictional disclosure system, the Commission is considering publication of no-action positions with respect to Rules 10b–6 and 10b–13. The contemplated no-action positions would apply solely to tender and exchange offers on Form F–8 and Schedules 14D–1F and 13E–4F, and would permit securities purchases in Canada that are not made for the purposes of creating actual or apparent trading activity in or of raising the price of such securities. The no-action positions would permit: (1) With respect to cash tender offers, purchases of the securities which are the subject of the offer and any other security that is a right to purchase such security or is immediately convertible into or exchangeable for such security ("target securities"); and (2) with respect to exchange offers, purchases of target securities and bids for and purchases of the securities offered by the bidder or issuer ("offered securities"), and any security of the same class and series or any right to purchase any such offered securities (collectively, "subject securities").[210] The proposed no-action positions would be available to issuers and bidders that: (1) Disclose in the Form F–8 and Schedules 13E–4F and 14D–1F the possibilty of, or the intent to make, purchases of subject securities as permitted by applicable Canadian regulations; and (2) submit an undertaking to disclose in the U.S. information regarding purchases of subject securities on the same basis as it is required to be disclosed or otherwise is disclosed pursuant to Canadian statutory and regulatory requirements.[211]

The Commission believes that the proposed no-action positions with respect to Rules 10b–6 and 10b–13 are consistent with the philosophy underlying the proposed multijurisdictional disclosure system, and represent an appropriate accommodation that recognizes that Canadian procedures applicable to tender and exchange offers afford a large measure of the protections provided by Rules 10b–6 and 10b–13. The contemplated no-action positions would be announced in the release if and when proposed Form F–8 and Schedules 13E–4F and 14D–1F are adopted, announced in a companion release, or incorporated into Form F–8 and Schedules 13E–4F and 14D–1F. Commenters are invited to address the scope and content of the proposed no-action positions, as well as the means by which the requisite undertaking is made.

E. Proxy and Insider Reports

Canadian issuers that currently are eligible to use Form 20–F are not subject to U.S. proxy regulation.[212] All other Canadian issuers, however, must comply with both Canadian and U.S. proxy regulations when they solicit U.S. residents. In connection with the implementation of the system, the Commission proposes to amend certain of the proxy rules to allow compliance by Canadian issuers with Canadian proxy rules to suffice for U.S. purposes.

The Commission's proxy rules provide that, if an issuer is soliciting proxies for an annual meeting at which the only matters being voted upon include such routine items as the election of directors or/and ratification or approval of accountants, only definitive proxy statements must be filed with the Commission.[213] Thus, no filing of preliminary materials is required. If a Canadian issuer falls within the provisions of this rule so that only definitive material is required to be filed, the amendments to Rule 14a–6 proposed today would provide that the proxy material need only be prepared in accordance with Canadian requirements.[214] If, however, the matters to be voted on would require the filing of preliminary proxy materials in the United States, then a Canadian issuer subject to U.S. proxy rules would be required to prepare the proxy statement in accordance with U.S. rules.

[206] Brief of the Securities and Exchange Commission, *Amicus Curiae* at 2, *Texaco Inc.* v. *Pennzoil Co.*, No. C–6432 (Sup. Ct. Tex., July 1987).

[207] *See* CBCA section 197(f); OSA sections 93(3)–(7); QSA sections 120, 142. Note, however, that various other provisions of Canadian law proscribe transactions before and after the tender offer period and afford protections similar to those contained in Rule 10b–13. *See, e.g.*, OSA section 93(5) (integrating pre-bid private transactions by an offeror with formal bid purchases and requiring the offeror, *inter alia*, to offer consideration for securities deposited under the bid at least equal to the highest consideration paid on a per security basis in any such prior transaction); OSA section 93(6) (proscribing purchases by an offeror of the securities that were the subject of the bid for a period of 20 days after the expiration of the bid on terms not generally available to holders of that class of securities). The restrictions of OSA sections 93 (5) and (6) do not apply to trades effected in the normal course on a published market, subject to certain conditions. *See also* OSC Policy Statement 9.3, *supra* n.204.

[208] OSA section 93(3) and Reg. section 169; QSA section 142.

[209] *See* QSA section 142; OSA Reg. section 169.

[210] All exceptions, exemptions, and no-action positions with respect to Rules 10b–6 and 10b–13 are premised upon the condition that none of the transactions thereby permitted is engaged in for a manipulative purpose. *See* Rule 10b–6(a)(4); *Jaffee & Co.* v. *SEC*, 446 F.2d 391 (2d Cir. 1977); *Bruns, Nordeman & Co.*, 40 S.E.C. 652, 660 (1961).

[211] Canadian regulatory officials and broker-dealers have advised the staff that it would not be a significant burden to provide this additional disclosure.

[212] Rule 3a12–3.

[213] Rule 14a–6(a) (17 CFR 240.14a–6(a)) sets forth the circumstances under which any issuer must file only definitive proxy materials.

[214] *Id. See* proposed Rule 14a–6(m). Canadian issuers whose proxy materials describe a meeting the subject matter of which would require filing of only definitive materials will be required only to file definitive materials with the Commission.

An additional area affected by the proposed rule changes would be that of shareholder proposals. An amendment to Rule 14a–8 under the Exchange Act [215] would provide that any Canadian issuer subject to U.S. proxy rules that complied with applicable Canadian shareholder proposal rules would be deemed to have complied with the requirements of Rule 14a–8.

Directors, officers and principal stockholders of Canadian and other foreign private issuers eligible to use Form 20–F are not subject [216] to Section 16 of the Exchange Act.[217] In a situation somewhat analogous to the case of proxy regulation, Canadian persons that are in certain relationships with a Canadian foreign private issuer must comply with both Canadian and U.S. reporting requirements. The Commission today is proposing a new rule [218] that would provide that only persons required to report their securities holdings in Canada would be required to report to the Commission, and the reporting obligations with the Commission could be met by furnishing the report filed with the Canadian authorities.

F. Continuous Disclosure

Issuers that make a registered offering of securities in the United States, or that acquire a certain number of shareholders of record resident in the United States, are subject to reporting requirements under the Exchange Act.

Section 15(d) of the Exchange Act,[219] as supplemented by Regulation 15D,[220] requires each issuer that has filed a registration statement that has become effective pursuant to the Securities Act to file periodic reports thereafter.[221] Section 13(a) of the Exchange Act also requires each issuer that has securities registered under Section 12 of that Act to file periodic reports.[222] Securities may be registered under Section 12 for two reasons. Section 12(b) of the Exchange Act requires registration of any class of securities, whether debt or equity, that is listed on a national securities exchange.[223] Section 12(g) requires issuers to register any class of equity securities held of record by 500 or more persons if certain asset tests are met.[224] Foreign private issuers are exempt from the requirements of Section 12(g) if they have fewer than 300 U.S. holders. Rule 12g3–2(b) provides a further exemption from Section 12(g).[225]

Any Section 15(d) obligation resulting solely from use of the forms proposed today could be met by filing with the Commission under cover of proposed Form 40–F the periodic disclosure documents required in Canada. These would include Annual Information Forms (for Prompt Offering Qualification issuers), annual and interim financial statements and material change reports.[226] Documents would be filed with the Commission at the same time as they were filed with the appropriate Canadian agency. No reconciliation of financial statements would be required. All Canadian disclosure documents filed with the Commission, as discussed above, would be subject to antifraud and Section 18 liability.[227]

Canadian issuers that incurred registration or reporting obligations under Section 12(g) generally would be required to fulfill those obligations by filing regular SEC continuous disclosure forms.[228] The proposed system, however, would permit Canadian issuers that met the tests for eligibility for use of Form F–10 (*i.e.*, that had an aggregate market value for their securities of (CN) $360 million and a public float of (CN) $75 million), regardless of whether they had made offerings pursuant to the system ("F–10 issuers"), to comply with Section 12(g) continuous disclosure requirements by filing the equivalent Canadian documents under cover of Form 40–F. Reconciliation of financial statements would be required, but (as in annual reports on Form 20–F) this reconciliation would be to Item 17 of Form 20–F rather than to Item 18. The Commission will consider comments received in response to its questions concerning the need for reconciliation for offerings on Form F–10 in determining whether to require reconciliation for continuous reporting purposes. The Commission requests comment as to whether there are distinct reasons not to require reconciliation for Exchange Act reporting purposes.

As is the case with F–10 issuers, Canadian issuers that met the test for eligibility for use of Form F–9 (*i.e.*, that had an aggregate market value for the securities of (CN) $160 million and a public float of (CN) $75 million), even if they had not made an offering pursuant to the system ("F–9 issuers"), could comply with Section 12(g) continuous disclosure requirements that arose in connection with nonconvertible investment grade preferred stock [229] by filing Canadian periodic reporting documents under cover of Form 40–F. Reconciliation of financial statements would not be required.

The exemption from Section 12(g) provided by Rule 12g3–2(b) would continue to exist and would be unaffected by adoption of the multijurisdictional system. A Canadian issuer currently furnishing Canadian disclosure documents to the Commission pursuant to Rule 12g3–2(b) that extended a public offer into the United States registered on the proposed forms would become subject to the periodic reporting requirements of Section 15(d). It could meet this obligation by filing with the Commission the same documents as it presently furnishes under Rule 12g3–2(b), except that documents would be filed under cover of Form 40–F. Further, Section 18

[215] 17 CFR 240.14a–8. *See* proposed Rule 14a–8(f).

[216] Rule 3a12–3.

[217] The reporting obligations of Section 16 are implemented by Rules 16a–1 through 16a–11 (17 CFR 240.16a–1 through 240.16a–11). The current forms used for filing reports subject to Section 16(a) are Form 3 for initial statements and Form 4 for subsequent changes in beneficial ownership.

[218] Proposed Rule 16a–12.

[219] 15 U.S.C. 78o(d).

[220] 17 CFR 240.15d–1 through 240.15d–21.

[221] This requirement applies in the first year after making a Securities Act registration and any subsequent year in which the class of securities registered are held by 300 or more persons. Section 15(d) filing requirements are suspended so long as the issuer has a class of securities registered under Section 12, discussed *infra*.

[222] 15 U.S.C. 78m(a). The Commission has implemented the requirements of this section through Regulation 13A (17 CFR 240.13a–1 through 240.13a–17).

[223] 15 U.S.C. 78l(b).

[224] 15 U.S.C. 78l(g), as supplemented by Rule 12g–1 thereunder (17 CFR 240.12g–1). Registration of a class of securities under Section 12(g) is made by all foreign private issuers on Form 20–F, and by Canadian foreign private issuers who meet the requirements of that form. *See* General Instruction A. Form 20–F is also the form used for annual reports by non-Canadian foreign issuers and eligible Canadian issuers. However, since it is not available for annual reports by issuers that have a reporting obligation under Sections 12(b) or 15(d), most Canadian issuers currently file annual reports on Form 10–K, quarterly reports on Form 10–Q and current reports on Form 8–K. General Instruction A.(b) to Form 20–F.

[225] Rule 12g3–2(b) exempts from Section 12(g) issuers that furnish to the Commission the documents that they either are required to or actually do make public, file with their home regulatory agency, or distribute to their security holders. Rule 12g3–2(b) is not available to issuers quoted on NASDAQ. When the Commission adopted this position regarding issuers quoted on NASDAQ, it "grandfathered" certain issuers already relying on this exemption that were so quoted. The grandfathered period has expired with respect to all Canadian issuers. Securities Act Release No. 6469 (Oct. 6, 1983).

[226] *See* discussion of reporting requirements in Section III.B., *supra*.

[227] *See supra* nn. 96–100 and accompanying text.

[228] Form 20–F would be used to register and report, and Form 8–K would be used to report, by Canadian issuers that had not registered an offering under the Securities Act (*e.g.*, pursuant to the proposed system). Canadian issuers that had registered securities pursuant to the proposed system would have to register on Form 10 and report on Forms 10–K, 8–K and 10–Q. See General Instruction A(b) to Form 20–F.

[229] Section 12(g) does not apply to debt securities.

liability under the Exchange Act now would attach to those filings.[220]

Section 12(b) registration [221] and reporting obligations would be treated similarly under the system to obligations arising under Section 12(g). Canadian issuers that had a class of securities listed on an exchange would have to file SEC continuous disclosure documents. F–10 issuers, and F–9 issuers of non-convertible investment grade debt or non-convertible investment grade preferred stock, however, would be able to comply with their Section 12(b) reporting obligations by filing the appropriate Canadian forms under cover of proposed Form 40–F. If the class of securities listed was non-convertible investment grade debt or preferred stock, no reconciliation of financial statements would be required, while if other securities were listed, Item 17 reconciliation would be required. Comment is requested as to whether, when non-convertible investment grade debt or preferred stock is listed, the issuer thereof should be permitted to meet Section 12(b) reporting obligations by filing Canadian documents, whether or not it met any size test.[222]

The Commission recognizes the potential anomalies of permitting use of the system to meet continuous disclosure requirements under Section 15(d), but only permitting its use to meet similar continuous disclosure requirements under other sections of the Exchange Act by specified, larger issuers. For example, a relatively small Canadian issuer of debt securities trading over-the-counter in the United States would not be subject to reporting requirements. If it listed those securities in the United States, it would become subject to Section 12(b) reporting obligations, and would have to file U.S. documents with the Commission. If later it met the size requirements for Form F–9, it could file Canadian documents with the Commission. Similarly, issuers making exchange offers (but not meeting the tests for eligibility for Form F–9 or F–10) are likely to encounter Section 12(g) continuous reporting requirements immediately upon consummation of the offer.

The Commission therefore requests comment as to whether the system should be extended to permit its use for continuous disclosure purposes by a larger number of issuers. Should the system be extended to encompass all Canadian issuers having a reporting obligation under Section 12(b), to all issuers having a reporting obligation under Section 12(g), or to both, and if not to both groups of issuers, upon what grounds should they be distinguished? Should all issuers to which the system is extended meet the requirements for inclusion in the Prompt Offering Qualification systems? Should issuers be permitted to use Canadian disclosure documents for particular classes of securities, for example, for all investment grade securities or for all investment grade debt securities, in all circumstances? Should Forms S–3 and F–3 be amended to permit the incorporation by reference of information filed on proposed Form 40–F?

Canadian issuers currently filing SEC continuous disclosure forms could change to filing Canadian forms on the same basis as issuers filing registration statements on the proposed forms, *i.e.*, they would have to meet the same size tests and reconcile their financial statements as described above. Canadian issuers that had not made an offering pursuant to the multijurisdictional system, and thus did not have a Form F–X on file with the Commission, would be required to file a Form F–X if they wished to comply with the Commission's periodic reporting requirements by filing Canadian documents under cover of Form 40–F.

G. Use of Foreign Trustees in Trust Indentures

1. Background

The Trust Indenture Act applies generally to the offer and sale of debt securities and participation interests in debt securities if the means of U.S. interstate commerce are used. In such cases, the securities must be issued under an indenture that has been qualified under the Act, unless an exemption is available. The Trust Indenture Act imposes standards of conduct on the indenture trustee, requires the furnishing of reports and notices by the obligor and the trustee, regulates impairments of holders' rights to sue for principal and interest on the indenture securities and establishes eligibility requirements for the indenture trustee.

Section 310(a)(1) of the Trust Indenture Act establishes the eligibility requirements for trustees to serve under a qualified indenture.[223] The indenture must require that there at all times shall be one or more trustees serving under the indenture, at least one of whom at all times shall be a corporation organized and doing business under the laws of the United States or of any state or territory or the District of Columbia.[224] The trustee also must be authorized under such laws to exercise corporate trust powers, and be subject to supervision or examination by Federal, State, territorial or District of Columbia authority. Absent an exemption,[225] a Canadian issuer selling securities in the United States [226] pursuant to the multijurisdictional registration system would be obligated to comply with the requirement to have a U.S. trustee.

The U.S. trustee requirement of Section 310(a)(1) could create an impediment to the efficient use of the multijurisdictional system by Canadian issuers. In practice, trust indentures in Canada invariably provide for all trustees to be Canadian registered trust companies; [227] thus, the U.S. trustee requirement would disrupt established Canadian business practices.

Under the Trust Indenture Act, the Commission may exercise authority in accordance with Section 304(d) to exempt from one or more provisions of the Trust Indenture Act any security issued or proposed to be issued by a foreign person. Such authority may be exercised upon application by a foreign issuer, and after opportunity for a hearing, if the Commission finds that compliance is not necessary "in the public interest and for the protection of investors." Since Section 304(d) requires that the Commission make a finding after opportunity for a hearing, thus contemplating case-by-case determinations, exemptions under this Section may not be granted pursuant to

[220] Information supplied to the Commission under Rule 12g3–2(b) is not "filed" with the Commission and therefore is not subject to Section 18 liability.

[221] Form S–A could be used to register listed securities in conjunction with the Forms proposed today in the same way as it is presently used with standard Commission forms.

[222] *Compare* General Instruction I.A.4. to Form F–3; General Instruction I.B.2. to Form S–3 (no size requirements to use such forms if investment grade debt, and investment grade preferred stock in the case of Form S–3, is offered).

[223] 15 U.S.C. 77jjj(a)(1).

[224] *Id.*

[225] *E.g.*, Section 304(a)(6) of the Trust Indenture Act (15 U.S.C. 77ddd) (exemption for securities issued or guaranteed by a foreign government or subdivision, agency or instrumentality thereof).

[226] The staff has granted numerous no-action letters involving offers and sales of securities otherwise than under a qualified indenture, where the securities were being offered and sold outside the United States in reliance upon Securities Act Release No. 4708 (July 9, 1964) [29 FR 9828]. *E.g.*, *Goldman, Sachs & Co.* (Oct. 3, 1985). The Commission has expressed its intention to continue this position if Proposed Regulation S is adopted. Securities Act Release No. 6779 (June 10, 1988) (53 FR 22661).

[227] *See generally* Waters, *Law of Trusts in Canada* 100–103 (2d ed. 1984).

a rule promulgated by the Commission.[228]

The Commission has proposed the Trust Indenture Reform Act of 1989 ("Bill"), which was introduced this legislative session into both houses of the Congress.[229] This Bill is designed to refine provisions of the Trust Indenture Act to accommodate new developments in the types of debt instruments and distribution techniques. If enacted, the Commission's proposal would conditionally permit foreign persons to act as sole trustees under qualified indentures.[230] Pending passage of the Bill, the Commission today is proposing the establishment of a process for application for exemption from the relevant provisions of the Trust Indenture Act.

2. Exemptive Relief Under Section 304(d)

The Commission is proposing two alternative methods of applying for waiver of the U.S. trustee requirement in offerings made pursuant to the multijurisdictional system. One method would permit application for waiver to be made on the proposed registration forms themselves. The other would provide for application prior to making any filing pursuant to the multijurisdictional system. Under the prior application system, a waiver, if granted, would be effective for a year. Prior application would be particularly useful in the case where there were already security holders under the indenture proposed to be used and the requirement discussed below to provide notice to such holders would delay an anticipated offering.

Proposed Rules 4d–1 to 4d–6 would implement Section 304(d) of the Trust Indenture Act by establishing a procedure under which Canadian issuers could apply for an exemption from the U.S. trustee requirement of Section 310(a) of the Act.[231] As required under Section 304(d), applications would continue to be decided on a case-by-case basis.

a. *Application for Waiver at Time of Offering*

The first method of applying under Section 304(d)[232] and Rule 4d–1 for a waiver of U.S. trustee requirements of Section 310(a)(I) would permit application to be made on the form used to register the offering. An issuer applying for a waiver would so indicate on the cover page of the form, and would provide the information regarding the trustee requested by the form (which is the same as the substantive information that would be provided on Form T–5). It also would indicate whether there were any securities already outstanding under the indenture. Under the proposal, an application for an exemption from the requirements of Section 310(a)(1) of the Act could be filed pursuant to Section 304(d) and Rule 4d–1 if three conditions were met. First, the application must relate to securities registered or to be registered on Form F–7, F–8, F–9, or F–10 under the Securities Act. Second, the application must relate to securities that have been issued or that the applicant reasonably expects to issue within one year from the date of application.[233] Third, the application must relate to securities that have been or will be issued under an indenture that (i) is or will be qualified under the Act, and (ii) requires there to be at all times one or more trustees thereunder, at least one of whom is a corporation or other person organized and doing business under the laws of Canada or any province thereof (referred to as the institutional trustee), and is (A) authorized under such laws to exercise corporate trust powers, and (B) subject to supervision or examination by governmental authority.

Proposed Rule 4d–4 provides that if an applicant files an application relating to securities issued or issuable under an indenture under which any other securities are outstanding, the applicant must send concurrently, by first class mail or other equally prompt means, notice of such application to all holders of record of outstanding securities under such indenture.[234] The proposal requires the notice to advise holders of the filing of the application.[235] Any request by a holder for a hearing must be filed within 20 days of the application date set forth on such notice. A subsequent notice must be sent to such holders if any hearing on the application is to be held by the Commission.[236] Commenters should address whether, as an alternative, notice should be given whether or not there are outstanding securities under the indenture and whether that notice should be required to be by publication in the **Federal Register** or otherwise, instead of or in addition to the procedure described above.

Proposed Rule 4d–5 gives an applicant the opportunity to waive a hearing and request the Commission to decide the application without a formal hearing on the basis of the application and other information and documents that the Commission designates as part of the record. However, under the proposal, a hearing may be called upon order of the Commission notwithstanding that the applicant shall have filed a waiver and request whenever, in the judgment of the Commission, such a hearing is necessary or appropriate in the public interest. The proposal requires the applicant, at the request of the Commission, to furnish such additional information or documents as the Commission may deem necessary to decide the application.

If no hearing were held, the Commission would issue an order

[228] The Commission has not, to date, promulgated any rules or forms under Section 304(d). *Compare* Rule 4c–4 (17 CFR 260.4c–4) (applications under Section 304(c)(1)); Rule 4c–5 (17 CFR 260.4c–5) (applications under Section 304(c)(2)); Form T–4 (17 CFR 269.4) (form for applications for exemption pursuant to Section 304(c)). Applications currently are made by the issuer—formally, but without any specific form—and decided on a case-by-case basis by the Commission or staff. *E.g.*, *Allgemeine Elektricitata-Gesellschaft*, Release 39–81 (1955); *The Mexican Light and Power Company Limited*, Release No. 39–48 (1940). The exemptive authority under Section 304(d) has been delegated to the Director of the Division of Corporation Finance. 17 CFR 200.30–1(e)(2).

[229] S. 651, 101st Cong., 1st Sess., 135 Cong. Rec. 3034, 3064 (1989). H.R. 1786, 101st Cong., 1st Sess., 135 Cong. Rec. 1028, 1141 and 1154 (1989). On June 1, 1989, the Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce of the House of Representatives held hearings on the bill.

[230] The bill would automatically incorporate the mandatory provisions of the Trust Indenture Act into each qualified indenture; confer more general exemptive authority upon the Commission, enabling it to adapt the Trust Indenture Act to market conditions; change the time at which a trustee having a proscribed conflict of interest must resign to 90 days after an event of default (excluding notice and/or grace periods), rather than within 90 days after the trustee ascertains that it has such proscribed conflict of interest; include creditor status as a proscribed conflict of interest; and effect technical changes intended to modernize requirements under the Act that do not compromise indenture security holder protection.

[231] Applications for exemption from other provisions of the Act (if necessary) or by foreign issuers not using the multijurisdictional forms still could be made pursuant to the statutory exemptive process of Section 304(d).

[232] Section 304(d) provides that the Commission may exempt securities issued or "proposed to be issued." *Compare* Section 6 of the Securities Act (registration statement deemed effective only as to securities "proposed to be offered"). Rule 415 under the Securities Act permits securities specified in Rule 415(a)(1)(viii) through (x) to be registered only in an amount which, at the time the registration statement becomes effective, is reasonably expected to be offered and sold within two years from the initial effective date of registration.

[233] See discussion of application for waiver prior to offering, *infra*.

[234] A copy of such notice shall also be filed with the Commission as part of the application.

[235] The notice also must set forth the date on which the application was filed with the Commission and state that any interested person may request in writing, within 30 days of the date of filing of the application, that a hearing be held. Such request shall state the nature of the interested person's interest and the reason for such request.

[236] Notice of hearing must include the time, place and nature of the hearing, the legal authority and jurisdiction under which the hearing is being held, and the matters of fact and law at issue.

BEST COPY AVAILABLE

granting the exemption on the twentieth day following the filing of the application. If there were no securities already outstanding under the relevant indenture, the Commission could grant the exemption at any time after the filing.

Applications pursuant to Proposed Rule 4d–1 would be considered and decided on a case-by-case basis. In deciding whether to grant applications, the Commission would consider all the relevant facts and circumstances, including comparability of regulation with respect to supervision and examination by governmental authority of the foreign trustee.

One factor to be considered in deciding applications is the extent to which the foreign trustee is subject to supervision or examination substantially equivalent to that applicable to U.S. institutional trustees. Although applications would be decided under the proposal on a case-by-case basis, the Commission's staff has preliminarily reviewed regulation of trust companies under the laws of Canada and Ontario. In order to be licensed under the federal statute to operate as a trust company, a corporation must file an application, satisfy capital and other requirements, and comply with inspection and recordkeeping requirements.[247] Similarly, in order to be licensed under the Ontario Trust Company Act, a corporation must file an application, satisfy minimum capital requirements, demonstrate fitness of insiders, and demonstrate that the proposed plan of operations is feasible. The Ontario statute also establishes recordkeeping requirements and accounting rules, and requires the filing of an annual return.[248]

b. *Application for Waiver Prior to Offering.* Another method of applying for a waiver of U.S. trustee requirements would permit application to be made in advance. This provision would allow issuers to file applications pursuant to Rule 4d–1 in advance of filing a registration statement on a multijurisdictional form, if the issuer reasonably expected to issue the securities within one year from the date of application. Comment is requested as to whether this provision is appropriate. Specifically, should the period of applicability for the waiver be longer than one year, for example, two or three years?

Applications for waiver prior to an offering would be filed on Form T–5. The applicant would be required to describe, as part of the application, the securities that are the subject of the application and to identify the indenture or indentures under which the securities are issued or to be issued. Form T–5 only would require, however, such information as would indicate the type and general character of the securities. Thus, the applicant might provide a non-specific description of the securities, such as "unsecured debentures or notes." Under Rule 4d–1 and Form T–5, as proposed, the application could relate, moreover, to different types or classes of securities issued or to be issued under different indentures, but appropriate description would be required to be given in the Form T–5, such as: "unsecured debentures to be issued under an indenture between the applicant and trustee x," and "mortgage bonds to be issued under an indenture and deed of trust between the applicant and trustee y."[249]

As is the case with applications made at the time of offering, waivers would be granted on a case-by-case basis, and the same factors would be taken into account in granting a waiver. Again, as is the case with applications made prior to the offering, the Commission would issue an order granting the exemption on the twentieth day of the application if no hearing were held. If there were no securities already outstanding under the relevant indenture, the Commission could grant the exemption at any time after the filing. Comment is requested as to whether notice of the application should be given in all cases, whether or not there are securities outstanding under the indenture and whether that notice should be required to be by publication in the Federal Register or otherwise, instead of or in addition to the applicant's mailing of notice to security holders.

V. State Securities Regulation

In addition to complying with the federal securities laws, issuers selling their securities in the United States are subject to the securities laws of the 50 states, the District of Columbia and Puerto Rico. Generally, these laws require state registration of offerings made to persons in the state.

In most jurisdictions, the registration statement filed with the Commission will also satisfy the state filing requirements. The filings are subject to review by each of the states, as to the adequacy of the disclosure and, in many states, for compliance with additional substantive standards. For example, a state may have the authority to deny registration if the offering involves excessive "cheap stock" to promoters, excessive options or warrants, unreasonable underwriters' compensation, or excessive dilution, or if a class of common stock lacks voting rights.

Various exemptions from registration under state law are available; the two most relevant to the multijurisdictional disclosure process are that for rights offerings and that for securities traded in specified marketplaces. The former exemption is usually limited to rights which are either nontransferable or exercisable for only a limited period of time. The marketplace exemptions generally apply to securities listed on the New York and American Stock Exchanges, and in some instances on specified regional exchanges, or designated as National Market System securities and quoted on NASDAQ. Securities of the same issuer which are senior to securities included in an exempt marketplace are also exempt.

Two factors have operated to produce considerable uniformity among the states. First, the securities laws of most states are modeled after the Uniform Securities Act. Second, the North American Securities Administrators Association ("NASAA")[250] proposes uniform guidelines and procedures which are frequently adopted by many of its member states. Notwithstanding these factors, the specific requirements for offering and selling securities in any state will be governed by that jurisdiction's statute, rules and policies.

In April 1989, NASAA adopted a Statement on Internationalization of the Securities Markets, in which it urged securities regulators to "encourage legitimate capital raising activities across national borders," subject to "minimum rules to ensure investor protection." Consistent with that Statement, NASAA has formed a special task force to work with the Commission and the provinces of Ontario and Quebec to determine what accommodations would be appropriate at the state level to facilitate use of the multijurisdictional disclosure process.

[247] Trust Companies Act, R.S.C. 1970, Chap. T–16, as amended.

[248] Loan and Trust Corporation Act, S.O. 1987, c. 33.

[249] It should be noted, however, that nothing in the proposed rules or forms would change current policies and practices concerning the qualification of "open-ended" indentures. An "open-ended" indenture frequently provides only a general description of securities. Under staff policies and procedures, however, an "open-ended" indenture cannot pertain to both secured and unsecured, or subordinated and unsubordinated, securities.

[250] NASAA is an association of state and provincial securities regulators in the United States and Canada.

VI. Request for Comments

Any interested person wishing to submit written comments on any aspect of the Forms and Rules proposed today, or the multijurisdictional disclosure system as a whole, is requested to do so.

VII. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with the proposed multijurisdictional disclosure system, the Commission requests commenters to provide views and data as to the costs and benefits associated with multijurisdictional offerings and tender offers under current law as compared to such costs and benefits under the proposed system. The Commission is not aware of any additional costs that would result from the proposed system, as issuers would be able to avoid expenses associated with the preparation of more than one disclosure document.

VIII. Statutory Basis of Rule Proposals and Form Changes

These revisions are being proposed pursuant to Section 19 of the Securities Act,[251] sections 12, 13, 14, 15, 16, and 23 of the Exchange Act,[252] and section 304 of the Trust Indenture Act.[253]

List of Subjects in 17 CFR Parts 230, 239, 240, 249, 260 and 269.

Reporting and recordkeeping requirements, securities.

IX. Text of Rule Proposals and Form Changes

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 is amended by adding the following citations:

Authority: Sec. 19 of the Securities Act of 1933, as amended, 48 Stat. 85 (15 U.S.C. 77s), unless otherwise noted.

2. By adding § 230.467 to read as follows:

§ 230.467 Effectiveness of registration statements and post-effective amendments thereto made on Forms F–7, F–8, F–9, and F–10.

(a) A registration statement on Forms F–7, F–8, F–9 or F–10 (§§ 239.37, 239.38, 239.39 or 239.40 of this chapter), or a post-effective amendment thereto, filed in connection with a contemporaneous offering of securities in the registrant's home jurisdiction shall become effective on the date on which such securities legally may be sold in the jurisdiction identified on such Form as the principal jurisdiction regulating such offering (the "principal jurisdiction").

(b) If there is no contemporaneous offering in the registrant's home jurisdiction, a registration statement that is filed on Form F–9 or F–10, or a post-effective amendment thereto, may designate on the facing page a date and time for such filing to become effective, and such registration statement or post-effective amendment shall become effective in accordance with such designation; *provided, however,* That such registration statement shall not become effective until seven calender days or more after it is filed.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, no registration statement relating to the issue of debt securities shall become effective until the provisions of the Trust Indenture Act of 1939 (15 U.S.C. 78aaa *et seq.*) have been satisfied or an exemption from any provisions of that Act that have not been satisfied has been granted pursuant to section 304(d) (15 U.S.C. 78ddd(d)) or Rule 4d–5 under that Act (17 CFR 240.4d–5).

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

3. The authority citation for Part 239 continues to read as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, unless otherwise noted.

4. By adding §§ 239.37, 239.38, 239.39, 239.40 and 239.41 to read as follows:

Note: See appendix for text of Forms. The Forms do not appear in the Code of Federal Regulations.

§ 239.37 Form F–7, for registration under the Securities Act of 1933 of securities of certain Canadian issuers offered for cash upon the exercise of rights granted to existing security holders.

(a) Form F–7 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of securities offered for cash upon the exercise of rights granted to existing security holders of the registrant.

(b) Form F–7 is available to any registrant incorporated or organized under the laws of Canada, or any Canadian province or territory, that, for the 36 calendar months immediately preceding the filing of a registration statement on this Form, has had any class of securities listed on the Montreal Exchange or The Toronto Stock Exchange and that currently is in compliance with the obligations arising from such listing. The rights granted to security holders that are resident in the United States shall be granted upon the same terms and conditions as those granted to such holders resident in the registrant's jurisdiction of incorporation or organization, *provided,* That the securities offered upon exercise of such rights may not be registered on this Form if such rights are transferable to U.S. residents and *further provided,* That the exercise period for the rights granted to security holders shall be 90 days or less.

(c) Less than 20 percent of the class of securities with respect to which the rights are granted shall be held of record by U.S. residents. For purposes of this instruction, "held of record" shall be construed in accordance with Rule 12g5–1 under the Securities Exchange Act of 1934 (the "Exchange Act").

Instruction. For purposes of this Form, the term "U.S. resident," as applied to security holders, shall mean any person whose address appears on the records of the issuer of the security or its share transfer agent as being located in the United States. The calculation of record holders shall be as of the end of the issuer's last quarter or, if such quarter ended within 60 days prior to the date of filing, then as of the end of the preceding quarter.

(d) Any transaction in which securities registered on this Form are offered shall not increase the registrant's issued and outstanding capital by more than 25 percent.

(e) This Form shall not be used if the registrant is an investment company, as defined in Section 3 of the Investment Company Act of 1940.

(f) A registration statement on this Form should be filed with the Commission simultaneously with the filing of the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction"). Pre-effective amendments to this Form should be filed simultaneously with the filing of additional or changed documents in the principal jurisdiction. In accordance with Rule 467, this registration statement shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

(1) Any amendment to such home jurisdiction document(s) after the effective date of this registration statement shall be filed with the Commission as a post-effective

[251] 15 U.S.C. 77s.

[252] 15 U.S.C. 78*l*, 78m, 78n, 78o, 78p, and 78w.

[253] 15 U.S.C. 77ddd(d).

amendment to this Form simultaneously with the filing of such document(s) with the principal jurisdiction. Such post-effective amendment shall be deemed effective for purposes of the Securities Act at such time as the amendment to the home jurisdiction document(s) legally may be used under the applicable law of such jurisdiction, in accordance with Rule 467.

(2) Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

(3) If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of the registration statement that increases the number of securities that may be sold thereunder, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "This combined prospectus relates to registration statement[s] 33-[insert file numbers of previous registration statements]."

§ 239.38 Form F–8, for registration under the Securities Act of 1933 of securities of certain Canadian issuers to be issued in exchange offers.

(a) Form F–8 may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued in an exchange offer. Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer, or are offered in conjunction with cash.

(b) Form F–8 is available to any registrant incorporated or organized under the laws of Canada, or any Canadian province or territory, that, for the 36 calendar months immediately preceding the filing of the registration statement on this Form, has had any class of securities listed on the Montreal Exchange or The Toronto Stock Exchange and that currently is in compliance with the obligations arising from such listing, if the aggregate market value of the common stock (including non-voting common stock) of such registrant held by non-affiliates is (CN) $75 million or more, *provided,* That for the purposes of this instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Instruction. The market value of the registrant's outstanding common stock shall be the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

(c) The issuer of the securities to be exchanged (the "subject securities") for securities of the registrant shall be incorporated or organized under the laws of Canada or any Canadian province or territory, and less than 20 percent of the class of subject securities shall be held of record by U.S. residents. For purposes of this instruction, "held of record" shall be construed in accordance with Rule 12g5–1 under the Securities Exchange Act of 1934 (the "Exchange Act").

Instruction. For the purpose of this Form, the term "U.S. resident," as applied to security holders, shall mean any person whose address appears on the records of the subject issuer or its share transfer agent as being located in the United States. The calculation of record holders shall be as of the end of the issuer's last quarter or, if such quarter ended within 60 days prior to the date of filing, then as of the end of the preceding quarter.

(d) The securities to be registered on Form F–8 shall be offered to U.S. residents upon the same terms and conditions as they are required to be offered to residents of Canada.

(e) This Form shall not be used if the registrant is an investment company, as defined in section 3 of the Investment Company Act of 1940.

(f) A registration statement on this Form should be filed with the Commission simultaneously with the filing of the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction"). Pre-effective amendments to this Form should be filed simultaneously with the filing of additional or changed documents in the principal jurisdiction. In accordance with Rule 467, this registration statement shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

(1) Any amendment to such home jurisdiction document(s) after the effective date of this registration statement shall be filed with the Commission as a post-effective amendment to this Form simultaneously with the filing of such document(s) with the principal jurisdiction. Such post-effective amendment shall be deemed effective for purposes of the Securities Act at such time as the amendment to the home jurisdiction document(s) legally may be used under the applicable law of such jurisdiction, in accordance with Rule 467.

(2) Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

(3) If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of the registration statement that increases the number of securities that may be sold thereunder, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "This combined prospectus relates to registration statement[s] 33—[insert file numbers of previous registration statements]."

§ 239.39 Form F–9, for registration under the Securities Act of 1933 of investment grade non-convertible debt or preferred securities of certain Canadian issuers.

(a) This Form F–9 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of investment grade non-convertible debt or preferred securities.

Instructions

1. Securities shall be "investment grade" if, at the time of effectiveness of the registration statement, at least one nationally recognized statistical rating organization (as that term is used in relation to Rule 15c3–1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (the "Exchange Act") (§ 240.15c3–1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade.

2. Securities shall be "non-convertible" if they may not be converted for a period of at least one year from the date of effectiveness of the registration statement.

(b) Form F–9 is available to any registrant incorporated or organized under the laws of Canada, or any Canadian province or territory, that has been subject to the periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of the registration statement on this Form, and that is currently in compliance with such obligations, if (1) the aggregate market value of the common stock (including nonvoting common stock) of such registrant is (CN) $180 million or more; and (2) the aggregate market value of such common stock held by non-affiliates is (CN) $75 million or more, *provided,* That for the purposes of this Instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Instruction. The market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

(c) This Form shall not be used if the registrant is an investment company, as defined in section 3 of the Investment Company Act of 1940.

(d) A registration statement on this Form should be filed with the Commission simultaneously with the filing of the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction"). Pre-effective amendments to this Form should be filed simultaneously with the filing of additional or changed documents in the principal jurisdiction. In accordance with Rule 467, this registration statement shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

(1) Any amendment to such home jurisdiction document(s) after the effective date of this registration statement shall be filed with the Commission as a post-effective amendment to this Form simultaneously with the filing of such document(s) with the principal jurisdiction. Such post-effective amendment shall be deemed effective for purposes of the Securities Act at such time as the amendment to the home jurisdiction document(s) legally may be used under the applicable law of such jurisdiction, in accordance with Rule 467.

(2) Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

(3) If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of the registration statement that increases the number of securities that may be sold thereunder, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "This combined prospectus relates to registration statement[s] 33—[insert file numbers of previous registration statements]."

(4) If the registration statement relates to an offering that is not a contemporaneous offering, it shall become effective in accordance with Rule 467(b).

§ 239.40 Form F–10, for registration under the Securities Act of securities of certain Canadian issuers.

(a) This Form F–10 may be used for the registration of securities under the Securities Act of 1933 (the "Securities Act").

(b) Form F–10 is available to any registrant incorporated or organized under the laws of Canada, or any Canadian province or territory, that has been subject to the periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of the registration statement on this Form, and that is currently in compliance with such obligations, if (1) the aggregate market value of the common stock (including non-voting common stock) of such registrant is (CN) $360 million or more; and (2) the aggregate market value of such common stock held by non-affiliates is (CN) $75 million or more, *provided,* That for the purposes of this Instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Instruction. The market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

(c) This Form shall not be used if the registrant is an investment company, as defined in section 3 of the Investment Company Act of 1940.

(d) A registration statement on this Form should be filed with the Commission simultaneously with the filing of the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction"). Pre-effective amendments to this Form should be filed simultaneously with the filing of additional or changed documents in the principal jurisdiction. In accordance with Rule 467, this registration statement shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

(1) Any amendment to such home jurisdiction document(s) after the effective date of this registration statement shall be filed with the Commission as a post-effective amendment to this Form simultaneously with the filing of such document(s) with the principal jurisdiction. Such post-effective amendment shall be deemed effective for purposes of the Securities Act at such time as the amendment to the home jurisdiction document(s) legally may be used under the applicable law of such jurisdiction, in accordance with Rule 467.

(2) Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

(3) If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of the registration statement that increases the number of securities that may be sold thereunder, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "This combined prospectus relates to registration statement[s] 33—[insert file numbers of previous registration statements]."

(4) If the registration statement relates to an offering that is not a contemporaneous offering, it shall become effective in accordance with Rule 467(b).

§ 239.41 Form F–X, for appointment of agent for service of process by foreign issuers registering securities on Forms F–7, F–8, F–9 or F–10 (§§ 239.37, 239.38, 239.39 or 239.40 of this chapter), or registering securities or filing periodic reports on Form 40–F (§ 249.240f of this chapter), or by any person filing tender offer documents on Schedule 13E–4F, 14d–1F or 14D–9F (§§ 240.13e–102, 240.14d–102 or 240.14d–103 of this chapter).

Form F–X shall be filed with the Commission:

(a) By any issuer registering securities on Forms F–7, F–8, F–9 or F–10 under the Securities Act of 1933;

(b) By any issuer registering securities or filing periodic reports on Form 40–F under the Securities Exchange Act of 1934 if it has not previously filed a Form F–X in connection with the class of securities registered or in relation to which a report is filed on Form 40–F; and

(c) By any issuer or other person filing tender offer documents on Schedules 13E–4F, 14D–1F or 14D–9F.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23 of the Securities Exchange Act of 1934, as amended, 48 Stat. 901 (15 U.S.C. 78w), unless otherwise noted.

6. By adding paragraph (c) to § 240.3a12–3 to read as follows:

§ 240.3a12–3 Exemptions from Sections 14(a), 14(b), 14(c), 14(f) and 16 for securities of certain foreign issuers.

* * * * *

(c) An issuer otherwise subject to the provisions of sections 14(a), 14(b), 14(c), or 14(f) of the Act, that is soliciting proxies in order to vote upon a matter being considered in order that an exchange offer to be registered on Form F–8 (§ 239.38 of this chapter) may be made, will not be subject to such provisions with regard to such solicitation.

7. By revising paragraphs (a) and (b) to § 240.12g–3 to read as follows:

§ 240.12g–3 Registration of securities of successor issuers.

(a) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of an issuer, not previously registered pursuant to section 12 of the Act, are issued to the holders of any class of equity securities of another issuer which is registered pursuant to section 12 of the Act, the class of securities so issued shall be deemed to be registered under section 12 of the Act unless upon consummation of the succession such class is exempt from such registration other than by Rule 12g3–2 (§ 240.12g3–2 of this chapter) or all securities of such class are held of record by less than 300 persons (or the securities issued in connection with the succession were registered on Form F–8 (§ 239.38 of this chapter) and following the succession the successor would not be required to register such class of securities under section 12 but for this section).

(b) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of an issuer, which are not registered pursuant to section 12 of the Act, are issued to the holders of any class of equity securities of another issuer which is required to file a registration statement pursuant to section 12 but has not yet done so, the duty to file such statement shall be deemed to have been assumed by the issuer of the class of securities so issued and such issuer shall file a registration statement pursuant to section 12 of the Act with respect to such class within the period of time the predecessor issuer would have been required to file such a statement unless upon consummation of the succession such class is exempt from such registration other than by Rule 12g3–2 (or all securities of such class are held of record by less than 300 persons or the securities issued in connection with the succession were registered on Form F–8 and following the succession the successor would not be required to register such class of securities under section 12 but for this section).

* * * * *

8. By revising paragraph (d)(2) of § 240.12g3–2 to read as follows:

§ 240.12g3–2 Exemption for American Depositary receipts and certain foreign securities.

* * * * *

(d) * * *

(2) Securities of a foreign private issuer issued in a transaction ((other than a transaction registered on Form F–8)) to acquire by merger, consolidation, exchange of securities or acquisition of assets, another issuer that had securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act.

* * * * *

9. By adding § 240.13a–3 to read as follows:

§ 240.13a–3 Reporting by Form 40–F registrant.

A registrant that is eligible to use Form 40–F and files reports thereon shall not be subject to the requirements of Regulation 13A (§§ 240.13a–1 through 240.13a–17).

10. By adding paragraph (h) to § 240.13e–4(h) to read as follows:

§ 240.13e–4 Tender offers by issuers.

* * * * *

(h) The requirements of section 13(e)(1) of the Act and Rule 13e–4 and Schedule 13E–4 thereunder shall be deemed satisfied with respect to any issuer tender offer, including any exchange offer, where the issuer is incorporated or organized under the laws of Canada or any Canadian province or territory, and is not an investment company as defined in section 3 of the Investment Company Act of 1940, if less than 20 percent of the class of securities that is the subject of the tender offer is held of record by U.S. residents and the tender offer is subject to (and not entitled to an exemption from), and the issuer complies with, the laws, regulations and policies of Canada and/or any of its provinces or territories governing the conduct of the offer, *provided* That:

(1) Where the consideration for an issuer tender offer subject to this paragraph consists solely of cash, the entire disclosure document or documents required to be furnished to holders of the class of securities to be acquired shall be filed with the Commission on Schedule 13E–4F (17 CFR 240.13e–102) and disseminated to shareholders residing in the United States in accordance with such Canadian laws, regulations and policies; or

(2) Where the consideration for an issuer tender offer subject to this paragraph includes securities to be issued pursuant to the offer, any registration statement and/or prospectus relating thereto shall be filed with the Commission along with the Schedule 13E–4F referred to in paragraph (h)(1) of this section, and shall be disseminated, together with the home jurisdiction document(s) accompanying such Schedule, to shareholders of the issuer residing in the United States in accordance with such Canadian laws, regulations and policies.

11. By adding § 240.13e–102 to read as follows:

§ 240.13e–102 Tender offer statement pursuant to section 13(e)(1) of the Securities Exchange Act of 1934 and § 240.13e–4 thereunder.

Schedule 13E–4F

U.S. Securities and Exchange Commission,
Washington, DC 20549
OMB Approval
OMB Number: 3235–0[]
Expires: Approval Pending
Estimated average burden hours per response—2.0

Issuer Tender Offer Statement Pursuant to Section 13(e)(1) of the Securities Exchange Act of 1934 Amendment No. _____

(Exact name of Issuer as specified in its charter)

(Translation of Issuer's Name into English)

(Jurisdiction of Issuer's Incorporation or Organization)

(Name of Person(s) Filing Statement)

(Title of Class of Securities)

(CUSIP Number of Class of Securities) (if applicable))

(Name, address, including zip code, and telephone number, including area code, of person authorized to receive notices and communications on behalf of the person(s) filing statement)

(Date tender offer first published, sent or given to security holders)

Calculation of Filing Fee

Transaction Valuation
Amount of Filing Fee

General Instructions

I. Eligibility Requirements for Use of Schedule 13E–4F

A. Schedule 13E–4F may be used by any issuer incorporated or organized under the laws of Canada or any province or territory thereof making a tender offer for the issuer's own securities, where less than 20 percent of the class of such issuer's securities that is the subject of the tender offer is held of record by U.S. residents.

Instruction For the purpose of this Schedule, the term "U.S. resident," as applied to security holders, shall mean any person whose address appears on the records of the subject issuer or its share transfer agent as being located in the United States. The calculation of record holders shall be as of the end of the issuer's last quarter, or if such quarter ended within 30 days prior to the date the tender offer is first published, sent or given to security holders, then as of the end of the preceding quarter.

B. Any issuer using this Schedule must extend the tender offer to holders of the class of securities subject to the offer residing in the United States upon the same terms and conditions as such securities are required to be offered to security holders residing in Canada, and must comply with the requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offer.

C. This Schedule shall not be used if the issuer is an investment company as defined in section 3 of the Investment Company Act of 1940.

II. Filing Instructions and Fees

A. Eight copies of this Schedule and any amendment thereto (see Part I, Item 1(b)), including all exhibits and any other paper or document filed as part of the Schedule, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the Schedule and any amendment thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

B. The original and at least one copy of this Schedule and any amendments thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

C. At the time this Schedule is filed with the Commission, the issuer shall pay to the Commission, by a U.S. postal money order, certified check, bank cashier's check or bank money order, a fee of one-fiftieth of one percent of the aggregate of the cash or of the value of the securities or other non-cash consideration offered by the issuer to shareholders residing in the United States.

(1) Where the issuer is offering securities or other non-cash consideration for some or all of the securities to be acquired, whether or not in combination with a cash payment for the same securities, the value of the consideration shall be based on the market value of the securities to be acquired by the issuer as established by paragraph 3 of this section.

(2) If there is no market for the securities to be acquired by the issuer, the book value of such securities computed as of the latest practicable date prior to the date of filing the Schedule shall be used, unless the issuer is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) When the fee is based upon the market value of the securities, such market value shall be calculated upon the basis of either the average of the high and low prices reported on the consolidated reporting system (for exchange-traded securities and last sale reported over-the-counter securities) or the average of the bid and asked price (for other over-the-counter securities) as of a specified date within 5 business days prior to the date of filing the Schedule.

D. If at any time after the initial payment of the fee the aggregate consideration offered is increased, an additional filing fee based upon such increase shall be paid with the required amended filing.

E. Subject to the requirements of Item 1, if any part of this Schedule, or any exhibit or other paper or document filed as part of the schedule, is in a foreign language, it shall be accompanied by a summary, version or translation in the English language.

F. The manually signed original of the Schedule or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

G. Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the registrant.

III. Compliance with the Exchange Act

A. Pursuant to Rule 13e–4(h) under the Securities Exchange Act of 1934 (the "Exchange Act"), the issuer shall be deemed to comply with the requirements of section 13(e)(1) of the Exchange Act and Rule 13e–4 and Schedule 13E–4 thereunder in connection with a tender offer for securities that may be made pursuant to this Schedule; *provided that*, if no substantive requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the tender offer apply, or if an exemption from such requirements is applicable, the issuer shall comply with the provisions of section 13(e)(1) and Rule 13e–4 and Schedule 13E–4 thereunder.

B. Any tender offer made pursuant to this Schedule is not exempt from the antifraud provisions of section 10(b) of the Exchange Act and Rule 10b–5 thereunder, section 13e–1 of the Exchange Act and Rule 13e–4(b)(1) thereunder, and section 14(e) of the Exchange Act and Rule 14e–3 thereunder, and shall be deemed "filed" for purposes of section 18 of the Exchange Act.

C. The issuer's attention is directed to Rule 10b–6 under the Exchange Act, in the case of an issuer exchange offer, and Rule 10b–13 under the Exchange Act, in the case of an issuer cash tender offer or issuer exchange offer. [See Note following Part III, 1. for an explanation of the no-action positions taken under Rules 10b–6 and 10b–13.]

Part I—Information Required To Be Sent to Shareholders

Item 1. Home Jurisdiction Documents

(a) This Schedule shall be accompanied by the entire disclosure document or documents required to be delivered to holders of securities to be acquired by the issuer in the proposed transaction pursuant to the laws, regulations or policies of the Canadian jurisdiction in which the issuer is incorporated or organized, and any other Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offer. The Schedule need not include any documents incorporated by reference into such disclosure document(s) and not distributed to offerees pursuant to any such law, regulation or policy. If any part of the document or documents to be sent to shareholders is in a

language other than English, it shall be accompanied by a translation in English.

(b) Any amendment made by the issuer to a home jurisdiction document or documents shall be filed with the Commission under cover of this Schedule, which must indicate on the cover page the number of the amendment.

(c) In an exchange offer where securities of the issuer have been or are to be offered or cancelled in the transaction: (i) such securities shall be registered under the laws of the issuer's jurisdiction on the Commission's Form F–8, and (ii) the home jurisdiction prospectus shall be included in this registration statement.

Item 2. Informational Legends

The following legend shall appear on the outside front cover page of the home jurisdiction document(s) in bold-face roman type at least as high as a ten-point modern type and at least two-points leaded:

"This tender offer is made by a foreign issuer for its own securities, and while the offer is subject to disclosure requirements of the country in which the issuer is incorporated or organized, prospective investors should be aware that these requirements are different from those of the United States generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the issuer is located in a foreign country, and that some or all of its officers and directors are residents of a foreign country.

"Prospective investors should be aware that the issuer or its affiliates, directly or indirectly, may bid or or make purchases of the securities of the issuer subject to the offer, or of its related securities, during the period of the issuer tender offer, as permitted by applicable Canadian laws or provincial laws or regulations."

Part II—Information Not Required To Be Sent to Shareholders

The exhibits specified below shall be filed as part of the Schedule, but are not required to be sent to shareholders unless so required pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories. Exhibits shall be lettered or numbered appropriately for convenient reference.

(1) File any reports or information that, in accordance with the requirements of the home jurisdiction(s), must be made publicly available by the issuer in connection with the transaction, but need not be disseminated to shareholders.

(2) File copies of any documents incorporated by reference into the home jurisdiction document(s).

(3) If any name is signed to the Schedule pursuant to power of attorney, manually signed copies of any such power of attorney shall be filed. If the name of any officer signing on behalf of the issuer is signed pursuant to a power of attorney, certified copies of a resolution of the issuer's board of directors authorizing such signature also shall be filed.

Part III—Undertaking and Consent to Service of Process

1. Undertaking

This issuer undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to this Schedule or to transactions in said securities.

The issuer also undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to applicable Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise discloses, information regarding purchases of the issuer's securities during the issuer tender offer.

Note: No-action position taken under Rule 10b–13 in the case of an issuer cash tender offer:

The staff of the Division of Market Regulation has taken a no-action position under Rule 10b–13 under the Exchange Act to allow certain purchases by the issuer of the issuer's securities in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, during the period of an issuer tender offer filed on Schedule 13E–4F. With respect to an issuer cash tender offer filed on Schedule 13E–4F, the staff will not recommend that the Commission take enforcement action under Rule 10b–13 for purchases by the issuer in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, of the security that is the subject of the offer (or any security which is immediately convertible into or exchangeable for such security), subject to the conditions that: (i) The issuer discloses on Schedule 13E–4F the possibility of, or the intent to make, such purchases; and (ii) the issuer submits an undertaking to disclose in the United States information regarding such purchases on the same basis as it is required to be disclosed in Canada pursuant to Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise is disclosed.

Note: No-action position taken under Rules 10b–6 and 10b–13 in the case of an issuer exchange offer:

The staff of the Division of Market Regulation has taken no-action positions under Rules 10b–6 and 10b–13 under the Exchange Act to allow certain purchases by the issuer of the issuer's securities in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, during the period of an issuer exchange offer filed on Schedule 13E–4F. With respect to an issuer exchange offer filed on Schedule 13E–4F, the staff will not recommend that the Commission take enforcement action under Rules 10b–6 and 10b–13 for bids and purchases by the issuer in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, of the security being distributed (or any security of the same class and series, or any right to purchase any such security), or of the security that is the subject of the offer (or any security which is immediately convertible into or exchangeable for such security), subject to the conditions that: (i) Such purchases are not made for the purpose of creating actual, or apparent, active trading in or raising the price of such securities; (ii) the issuer discloses on Schedule 13E–4F the possibility of, or the intent to make, such purchases; and (iii) the issuer submits an undertaking to disclose in the United States information regarding such purchases on the same basis as it is required to be disclosed in Canada pursuant to Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise is disclosed.

2. Consent to Service of Process

The issuer shall, at the time of filing this Schedule, furnish to the Commission, on Form F–X, a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in

(1) Any investigation or administrative proceeding conducted by the Commission; and

(2) Any civil suit or civil action brought against the issuer or to which the issuer has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States,

where the investigation, proceeding or cause of action arises out of or relates to or concerns any issuer tender offer made or purported to be made using this Schedule, or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service or process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service or process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

Part IV

A. Signatures

The Schedule shall be signed by each person on whose behalf the Schedule is filed or its authorized representative. If the Schedule is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the company), evidence of the representative's authority shall be filed with the Schedule.

B. The name of each person who signs the Schedule shall be typed or printed beneath his signature.

C. By signing this Schedule, the person(s) filing the Schedule consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or related to or concerns any offering made or purported to be made in connection with the filing on Schedule 13E–4F or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature) _____

(Name and Title) _____

(Date) _____

12. By adding paragraph (m) to § 240.14a–6 to read as follows:

§ 240.14a–6 Filing requirements.

* * * * *

(m) A Canadian foreign private issuer that is furnishing soliciting material to shareholders in connection with an annual meeting described in paragraphs (a) (1) through (5) of this section, and which therefore must file with the Commission only definitive proxy materials, may file definitive proxy materials that meet the applicable Canadian federal and provincial proxy regulations. Such an issuer shall be deemed to have complied with Rules 14a–1 through 14a–7 (§§ 240.14a–1 through 240.14a–7) if it complies with applicable Canadian federal and provincial proxy regulations.

13. By adding paragraph (f) to § 240.14a–8 to read as follows:

§ 240.14a–8 Proposals of security holders.

* * * * *

(f) A Canadian foreign private issuer shall be deemed to have complied with the requirements of this section if it complies with all applicable Canadian federal and provincial requirements relating to shareholder proposals.

14. By amending § 240.14d–1 by redesignating paragraph (b) as (c) and adding a new paragraph (b) to read as follows:

§ 240.14d–1 Scope of and definitions applicable to Regulations 14D and 14E.

* * * * *

(b) The requirements imposed by sections 14(d)(1) through 14(d)(7) of the Act, Regulation 14D and Schedules 14D–1 and 14D–9 thereunder, and Rule 14e–1 of Regulation 14E under the Act, shall be deemed satisfied with the respect to any tender offer, including any exchange offer, for the securities of an issuer incorporated or organized under the laws of Canada or any Canadian province or territory, and is not an investment company as defined in section 3 of the Investment Company Act, if less than 20 percent of the class of securities that is the subject of the tender offer is held of record by U.S. residents and the tender offer is subject to (and not entitled to an exemption from), and the bidder complies with, the laws, regulations and policies of Canada and/or any of its provinces or territories governing the conduct of the offer, *Provided That:*

(1) Where the consideration for a tender offer subject to this section consists solely of cash, the entire disclosure document or documents required to be furnished to holders of the class of securities to be acquired shall be filed with the Commission on Schedule 14D–1F (17 CFR 240.14d–102) and disseminated to shareholders of the subject company residing in the United States in accordance with such Canadian laws, regulations and policies; or

(2) Where the consideration for a tender offer subject to this section includes securities of the bidder to be issued pursuant to the offer, any registration statement and/or prospectus relating thereto shall be filed with the Commission along with the Schedule 14D–1F referred to in paragraph (b)(1) of this section, and shall be disseminated, together with the home jurisdiction document(s) accompanying such Schedule, to shareholders of the subject company residing in the United States in accordance with such Canadian laws, regulations and policies.

* * * * *

15. By adding § 240.14d–102 to read as follows:

§ 240.14d–102 Tender offer statement pursuant to section 14(d)(1) of the Securities Exchange Act of 1934.

Schedule 14D–1F

U.S. Securities and Exchange Commission,
Washington, DC 20549

OMB Approval
OMB Number: 3235–040M
Expires: Approval Pending
Estimated average burden hours per response—2.0

Tender Offer Statement Pursuant to Section 14(d)(1) of the Securities Exchange Act of 1934 (Amendment No. _____)

(Name of Subject Company [Issuer])

(Translation of Subject Company's [Issuer's] name into English)

(Jurisdiction of Subject Company's Incorporation or Organization)

(Bidder)

(Title of Class of Securities)

(CUSIP Number of Class of Securities (if applicable))

(Name, address, including zip code, and telephone number, including area code, of persons authorized to receive notices and communications on behalf of subject company)

(Date tender offer first published, sent or given to security holders)

Calculation of Filing Fee [1]

Transaction Valuation
Amount of Filing Fee

General Instructions

I. Eligibility Requirements for Use of Schedule 14D–1F

A. Schedule 14D–1F may be used by any person making a tender offer (the "bidder") for securities of any issuer incorporated or organized under the laws of Canada, or any Canadian province or territory, where less than 20 percent of the class of such issuer's securities that is the subject of the tender offer is held of record by U.S. residents.

Instruction. For the purpose of this Schedule, the term "U.S. resident," as applied to security holders, shall mean any person whose address appears on the records of the subject issuer or its share transfer agent as being located in the United States.

B. Any bidder using this Schedule must extend the tender offer to U.S. residents of the subject issuer upon the same terms and conditions as they are required to be offered to security holders residing in Canada, and must comply with the requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offer.

C. This Schedule shall not be used if the subject company is an investment company as defined in Section 3 of the Investment Company Act of 1940.

D. This Schedule shall not be used to comply with the reporting requirements of Section 13(d) of the Securities Exchange Act of 1934 (the "Exchange Act"). Issuers using this Schedule are reminded of their obligation to file or update a Schedule 13D where required by section 13(d)(1) of the Exchange Act and the Commission's rules and regulations thereunder.

II. Filing Instructions and Fee

A. Eight copies of this Schedule and any amendment thereto (see Part I, Item 1(b)), including all exhibits and any other paper or document filed as part of the Schedule, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the Schedule and any amendment thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

B. The original and at least one copy of this Schedule and any amendments thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

C. At the time this Schedule is filed with the Commission, the bidder shall pay to the

[1] Set forth the amount on which the filing fee is calculated and state how it was determined. See General Instruction II.C.—for rules governing the calculation of the filing fee.

Commission, by a U.S. postal money order, certified check, bank cashier's check or bank money order, a fee of one-fiftieth of one percent of the aggregate of the cash or of the value of the securities or other non-cash consideration offered by the bidder to shareholders of the subject company residing in the United States.

(1) Where the bidder is offering securities or other non-cash consideration of some or all of the securities to be acquired, whether or not in combination with a cash payment for the same securities, the value of the consideration shall be based on the market value of the securities to be received by the bidder as established by paragraph 3 of this section.

(2) If there is no market for the securities to be acquired by the bidder, the book value of such securities computed as of the latest practicable date prior to the date of filing the Schedule shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) When the fee is based upon the market value of the securities, such market value shall be calculated upon the basis of either the average of the high and low prices reported in the consolidated reporting system (for exchange traded securities and last sale reported for over-the-counter securities) or the average of the bid and asked price (for other over-the-counter securities) as of a specified date within five business days prior to the date of filing the Schedule.

D. If at any time after the initial payment of the fee the aggregate consideration offered is increased, an additional filing fee based upon such increase shall be paid with the required amended filing.

E. Subject to the requirements of Item 1, if any part of this Schedule, or any exhibit or other paper or document filed as part of the Schedule, is in a language other than English, it shall be accompanied by a summary, version or translation in the English language.

F. The manually signed original of the Schedule or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

G. Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the registrant.

III. Compliance with the Exchange Act

A. Pursuant to Rule 14d–1(b) under the Exchange Act, the bidder shall be deemed to comply with the requirements of sections 14(d)(1) through 14(d)(7) of the Exchange Act, Regulation 14D of the Exchange Act and Schedule 14D–1 thereunder, and Rule 14e–1 under Regulation 14E of the Exchange Act, in connection with a tender offer for securities that may be made pursuant to this Schedule; *provided that,* if no substantive requirement of any Canadian federal, provincial or territorial law, regulation or policy relating to the terms and conditions of the tender offer applies, or if an exemption from any such requirement is applicable, the bidder shall comply with the provisions of sections 14(d)(1) through 14(d)(7), Regulation 14D and Schedule 14D–1 thereunder, Rule 14e–1 of Regulation 14E, and any other applicable U.S. statute or rule.

B. Any tender offer made pursuant to this Schedule is not exempt from the antifraud provisions of section 10(b) of the Exchange Act and Rule 10b–5 thereunder, and section 14(e) of the Exchange Act and Rule 14e–3 thereunder, and shall be deemed "filed" for purposes of section 18 of the Exchange Act.

C. The bidder's attention is directed to Rule 10b–6 under the Exchange Act in the case of an exchange offer, and to Rule 10b–13 under the Exchange Act for any exchange or cash tender offer. [See Note following Part III, 1. for an explanation of the no-action positions taken under Rules 10b–6 and 10b–13.]

PART I—INFORMATION REQUIRED TO BE SENT TO SHAREHOLDERS

Item 1. Home Jurisdiction Documents

(a) This Schedule shall be accompanied by the entire disclosure document or documents required to be delivered to holders of securities to be acquired in the proposed transaction by the bidder pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories governing the conduct of the tender offer. It shall not include any documents incorporated by reference into such disclosure document(s) and not distributed to offerees pursuant to any such law, regulation or policy. If any part of the document or documents to be sent to shareholders is in a foreign language, it shall be accompanied by a translation in English.

(b) Any amendment made by the bidder to a home jurisdiction document or documents shall be filed with the Commission under cover of this Schedule, which must indicate on the cover page the number of the amendment.

(c) In an exchange offer where securities of the bidder have been or are to be offered or cancelled in the transaction, such securities shall be registered on forms promulgated by the Commission under the Securities Act of 1933 including, where available, the Commission's Form F–8 providing for inclusion in that registration statement of the home jurisdiction prospectus.

Item 2. Informational Legends

The following legends shall appear on the outside front cover page of the home-jurisdiction document(s) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This tender offer is made for the securities of a foreign issuer and while the offer is subject to disclosure requirements of the country in which subject company is incorporated or organized, prospective investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have not been prepared in accordance with United States generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the subject company is located in a foreign country, and that some or all of its officers and directors are residents of a foreign country.

"Prospective investors should be aware that the bidder or its affiliates, directly or indirectly, may bid for or make purchases of the issuer's securities subject to the offer, or of the issuer's related securities, during the period of the tender offer, as permitted by applicable Canadian laws or provincial laws or regulations."

In the case of an exchange offer:

"Prospective investors should be aware that the bidder or its affiliates, directly or indirectly, may bid for or make purchases of the issuer's securities subject to the offer or of the issuer's related securities, or of the bidder's securities to be distributed or of the bidder's related securities, during the period of the tender offer, as permitted by applicable Canadian laws or provincial laws or regulations."

PART II—INFORMATION NOT REQUIRED TO BE SENT TO SHAREHOLDERS

The exhibits specified below shall be filed as part of the Schedule, but are not required to be sent to shareholders unless so required pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) File any reports or information that, in accordance with the requirements of the home jurisdiction(s), must be made publicly available by the bidder in connection with the transaction but need not be disseminated to shareholders.

(2) File copies of any documents incorporated by reference into the home jurisdiction document(s).

(3) If any name is signed to this Schedule pursuant to power of attorney, manually signed copies of any such power of attorney shall be filed. If the name of any officer signing in behalf of the bidder is signed pursuant to a power of attorney, certifed copies of the bidder's board of directors authorizing such signature also shall be filed.

PART III—UNDERTAKING AND CONSENT TO SERVICE OF PROCESS

1. Undertaking

a. The bidder undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to this Schedule or to transactions in said securities.

b. The bidder undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to applicable Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise discloses, information regarding purchases of the issuer's securities during the tender offer.

In the case of an exchange offer:

The bidder undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to any applicable Canadian federal and/or provincial or territorial law, regulation or policy, or otherwise discloses, information regarding purchases of the issuer's or bidder's securities during the tender offer.

Note: No-action position taken under Rule 10b–13 in the case of a third party or affiliate cash tender offer:

The staff of the Division of Market Regulation has taken no-action position under Rule 10b–13 under the Exchange Act to allow certain purchases by the bidder of the issuer's securities in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, during the period of a tender offer filed on Schedule 14D–1F. With respect to a cash tender offer filed on Schedule 14D–1F, the staff will not recommend that the Commission take enforcement action under Rule 10b–13 for purchases by the bidder in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, of the security that is the subject of the offer (or any security which is immediately convertible into or exchangeable for such security), subject to the conditions that: (i) The bidder discloses on Schedule 14D–1F the possibility of, or the intent to make, such purchases; and (ii) the bidder submits an undertaking to disclose in the United States information regarding such purchases on the same basis as it is required to be disclosed in Canada pursuant to Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise is disclosed.

No-action positions taken under Rules 10b–6 and 10b–13 in the case of a third party or affiliate exchange offer:

The staff of the Division of Market Regulation has taken no-action positions under 10b–6 and 10b–13 under the Exchange Act to allow certain purchases by the bidder of the issuer's or bidder's securities in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, during the period of an exchange offer filed on Schedule 14D–1F. With respect to an exchange offer filed on Schedule 14D–1F, the staff will not recommend that the Commission take enforcement action under Rules 10b–6 and 10b–13 for bids and purchases by the bidder in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, of the security being distributed (or any security of the same class and series, or any right to purchase any such security), or of the security that is the subject of the offer (or any security which is immediately convertible into or exchangeable for such security), subject to the conditions that: (i) Such purchases are not made for the purpose of creating actual, or apparent, active trading in or raising the price of such securities; (ii) the bidder discloses on Schedule 14D–1F the possibility of, or the intent to make, such purchases; and (iii) the bidder submits an undertaking to disclose in the United States information regarding such purchases on the same basis as it is required to be disclosed in Canada pursuant to Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise is disclosed.

2. Consent to Service of Process

The bidder shall, at the time of filing this Schedule, furnish to the Commission, on Form F–X, a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in

(1) Any investigation or administrative proceeding conducted by the Commission; and

(2) Any civil suit or action brought against the bidder or to which the bidder has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States,

where the investigation, proceeding or cause of action arises out of or relates to or concerns any tender offer made or purported to be made using this Schedule, or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

PART IV

A. *Signatures*

The Schedule shall be signed by each person on whose behalf the Schedule is filed or its authorized representative. If the Schedule is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the bidder), evidence of the representative's authority shall be filed with the Schedule.

B. The name and any title of each person who signs the Schedule shall be typed or printed beneath his signature.

C. By signing this Schedule, the bidder consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the filing on Schedule 14D–1F or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature) _____

(Name and Title) _____

(Date) _____

16. By adding § 240.14d–103 to read as follows:

§ 240.14d–103 Schedule 14D–9F.

Schedule 14D–9F (Amendment No. _____)

U.S. Securities and Exchange Commission,
Washington, DC 20549

OMB APPROVAL

OMB Number: 3235–040N
Expires: Approval Pending
Estimated average burden hours per response—2.0

Recommendation of the Subject Issuer's Board of Directors, Director or Officer

(Name of Subject Company [Issuer])

(Translation of Issuer's Name into English)

(Jurisdiction of Issuer's Incorporation or Organization)

(Name of Person(s) Filing Statement)

(Title of Class of Securities)

(CUSIP Number of Class of Securities (if applicable))

(Name, address, including zip code, and telephone number, including area code, of person authorized to receive notices and communications on behalf of the person(s) filing statement)

General Instructions

I. Eligibility Requirements for Use of Schedule 14D–9F

A. Schedule 14D–9F is used by any issuer incorporated or organized under the Laws of Canada or any Canadian province or territory (the "subject company"), or by any director or officer of such issuer, where the issuer is the subject of a tender offer for a class of its securities filed on Schedule 14D–1F.

B. Any person(s) using this Schedule must comply with the requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to a recommendation by the subject issuer's board of directors, or any director or officer thereof, with respect to the offer.

C. This Schedule shall not be used if the subject company is an investment company as defined in Section 3 of the Investment Company Act of 1940.

II. Filing Instructions

A. Eight copies of this Schedule and any amendment thereto (see Part I, Item 1(b)), including all exhibits and any other paper or document filed as part of the Schedule, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the Schedule and any amendment thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

B. The original and at least one copy of this Schedule and any amendments thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

C. Subject to the requirements of Item 1, if any part of this Schedule, or any exhibit or other paper or document filed as part of the schedule, is in a language other than English, it shall be accompanied by a summary, version or translation in the English language.

D. The manually signed original of the Schedule or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

E. Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the registrant.

III. Compliance with the exchange Act

A. Pursuant to Rule 14e-2(c) under the Securities Exchange Act of 1934 (the "Exchange Act"), this schedule shall be filed by an issuer, a class of the securities of which is the subject of a tender offer filed on Schedule 14D-1F, and may be filed by any director or officer of such issuer.

B. Any recommendation with respect to a tender offer for a class of securities of the subject company made pursuant to this Schedule is not exempt from the antifraud provisions of section 10(b) of the Exchange Act and Rule 10b-5 thereunder and section 14(e) of the Exchange Act and Rule 14e-3 thereunder, and shall be deemed "filed" with the Commission for purposes of section 18 of the Exchange Act.

PART I—INFORMATION REQUIRED TO BE SENT TO SHAREHOLDERS

Item 1. Home jurisdiction Documents

(a) This Schedule shall be accompanied by the entire disclosure document or documents required to be delivered to holders of securities to be acquired in the proposed transaction pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories governing the conduct of the offer. It shall not include any documents incorporated by reference into such disclosure document(s) and not distributed to offerees pursuant to any such law, regulation or policy. If any part of the document or documents to be sent to shareholders is in a language other than English, it shall be accompanied by a translation in English.

(b) Any amendment made to a home jurisdiction document or documents shall be filed with the Commission under cover of this Schedule, which must indicate on the cover page the number of the amendment.

Item 2. Informational Legends

The following legends shall appear on the outside front cover page of the home jurisdiction document(s) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This tender offer is made for the securities of a foreign issuer and while the offer is subject to disclosure requirements of the country in which subject issuer is incorporated or organized, prospective investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have not been prepared in accordance with United States generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the issuer is located in a foreign country, and that some or all of its officers and directors are residents of a foreign country."

PART II—INFORMATION NOT REQUIRED TO BE SENT TO SHAREHOLDERS

The exhibits specified below shall be filed as part of the Schedule, but are not required to be sent to shareholders unless so required pursuant to the laws, or regulations or policies of Canada and/or any of its provinces or territories. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) File any reports or information that, in accordance with the requirements of the home jurisdictions(s), must be made publicly available by the person(s) filing this Schedule in connection with the transaction, but need not be disseminated to shareholders.

(2) File copies of any documents incorporated by reference into the home jurisdiction document(s).

(3) If any name is signed to the Schedule pursuant to power of attorney, manually signed copies of any such power of attorney shall be filed. If the name of any officer signing on behalf of the issuer is signed pursuant to a power of attorney, certified copies of a resolution of the issuer's board of directors authorizing such signature also shall be filed.

PART III—UNDERTAKING AND CONSENT TO SERVICE OF PROCESS

1. Undertaking

The person(s) filing this Schedule undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to this Schedule or to transactions in said securities.

2. Consent to Service of Process

The person(s) so filing shall, at the time of filing this Schedule, furnish to the Commission, on Form F-X, a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) any civil suit or action brought against such person(s) or to which such person(s) has or have been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States.

where the investigation, proceeding or cause of action arises out of or relates to or concerns any tender offer made or purported to be made for the securities of the subject issuer, or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

PART IV

A. *Signatures*

The Schedule shall be signed by each person on whose behalf the Schedule is filed or its authorized representative. If the Schedule is signed on behalf of a peson by his authorized representative (other than an executive officer or general partner of the subject company), evidence of the representative's authority shall be filed with the Schedule.

B. The name and any title of each person who signs the Schedule shall be type or printed beneath his signature.

C. By signing this Schedule, the subject company consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with filing on this Schedule 14D-9F or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature) _____

(Name and Title) _____

(Date) _____

17. By adding paragraph (c) to § 240.14e-2 to read as follows:

§ 240.14e-2 Position of a subject company with respect to a tender offer.

* * * * *

(c) Any issuer, a class of the securities of which is the subject of a tender offer filed with the Commission on Schedule 14D-1F and conducted in reliance upon and in conformity with Rule 14d-1(b) under the Act, and any director or officer of such issuer where so required by the laws, regulations and policies of Canada and/or any of its provinces or territories, in lieu of the statements called for by paragraph (a) of this section and Rule 14d-9 under the Act, shall file with the Commission on Schedule 14D-9F the entire disclosure

document(s) required to be furnished to holders of securities of the subject issuer by the laws, regulations and policies of Canada and/or any of its provinces or territories governing the conduct of the tender offer, and shall disseminate such document(s) in accordance with such laws, regulations and policies.

18. By adding § 240.15d-4 to read as follows:

§ 240.15d-4 Reporting by Form 40-F Registrant.

A registrant that is eligible to use Form 40-F and files reports thereon shall not be subject to the requirements of Regulation 15D (§§ 240.15d-1 though 240.15d-21).

19. By adding paragraph (c) to § 240.15d-5 to read as follows:

§ 240.15d-5 Reporting by successor issuers.

* * * * *

(c) The provisions of paragraph (a) of this section shall not apply to an issuer of securities in connection with a succession that was registered on Form F-8 (§ 239.36 of this chapter).

20. By adding § 240.16a-12 to read as follows:

§ 240.16a-12 Reporting by directors, officers and principal shareholders of canadian foreign private issuers.

In lieu of the provisions of section 16(a) of the Act, the equivalent law of Canada, or the law of any Canadian province or territory, shall govern the U.S. reporting requirements for directors, officers, and principal shareholders of Canadian foreign private issuers. Every person that otherwise would have a reporting obligation pursuant to section 16(a) of the Act as a result of any relationship to a Canadian foreign private issuer shall be deemed to comply with the requirements of section 16(a) if such person files, under cover of Form 3 or 4, the forms that are required to be filed under the applicable law of Canada, or the law of any Canadian province or territory, by that person. Such forms shall be filed with the Commission under the appropriate cover at the time they are required to be filed pursuant to the law of Canada, or the law of any Canadian province or territory.

PART 249—FORMS PRESCRIBED UNDER THE SECURITIES EXCHANGE ACT OF 1934

21. The authority citation for Part 249 continues to read as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a, unless otherwise noted.

22. By adding §§ 249.240f and 249.250 to read as follows:

Note. See appendix for text of Forms. The Forms do not appear in the Code of Federal Regulations.

§ 249.240f Form 40-F, for registration of securities of certain Canadian issuers pursuant to section 12 (b) or (g) and for reports pursuant to section 15(d) and Rule 15d-4 (§ 240.15d-4 of this chapter).

(a) Form 40-F may be used to file reports with the Commission pursuant to section 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 15d-4 (17 CFR 240.15d-4) thereunder by registrants that are subject to the reporting requirements of that section solely by reason of their having filed a registration statement on Form F-7, F-8, F-9 or F-10 under the Securities Act of 1933.

(b) Form 40-F also may be used to register securities with the Commission pursuant to section 22 (b) or (g) of the Exchange Act, and to file reports with the Commission pursuant to section 13(a) of the Exchange Act and Rule 13a-3 (17 CFR 240.13a-3) thereunder. Registrants eligible to use this form for such purposes shall have been incorporated or organized under the laws of Canada, or any Canadian province or territory, been subject to the periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this form and be currently in compliance with such obligations. The market value of the common stock (including non-voting common stock) of such registrant shall be

(1) (CN) $180 million or more if a report or registration statement filed on this Form relates to debt or preferred stock that is investment grade; or

(2) (CN) $360 million or more in the case of all other reporting requirements. The aggregate market value of such common stock held by non-affiliates shall be (CN) $75 million or more, *provided,* That for the purposes of this Instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Instructions

1. A security is "investment grade" if at the time of filing this form, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act (§ 240.15c3-1(c)(2)(vi)(F) of this chapter)) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade.

2. The market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

(c) A report on this Form shall be filed at the same time the information included herein is filed with the securities commission or equivalent regulatory authority of the jurisdiction of incorporation of the registrant.

(d) Registrants not previously having filed a Form F-X (§ 249.250) in relation to the class of securities registered on this Form or with regard to which this report is filed shall file a Form F-X with the Commission together with their first filing on this form.

(e) Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the registrant.

§ 249.250 Form F-X, for appointment of agent for service of process by foreign issuers registering securities on Forms F-7, F-8, F-9 or F-10 (§§ 239.37, 239.38, 239.39 or 239.40 of this chapter), or registering securities or filing periodic reports on Form 40-F (§ 249.240f of this chapter), or by any person filing tender offer documents on Schedule 13E-4F, 14D-1F or 14D-9F (§§ 240.13e-102, 240.14d-102 or 240.14d-103 of this chapter).

Form F-X shall be filed with the Commission:

(a) By any issuer registering securities on Forms F-7, F-8, F-9 or F-10 under the Securities Act of 1933;

(b) By any issuer registering securities or filing periodic reports on Form 40-F under the Securities Exchange Act of 1934 if it has not previously filed a Form F-X in connection with the class of securities registered or in relation to which a report is filed on Form 40-F; and

(c) By any issuer or other person filing tender offer documents on Schedules 13E-4F, 14D-1F or 14D-9F.

23. By revising the introductory text of §§ 249.103 and 249.104; adding new paragraph (c) to General Instruction 1 to Form 3 in § 249.103; and redesignating the existing paragraph under General Instruction 1 as (a) and adding a new paragraph (b) to Form 4 in § 249.104 to read as follows:

§ 249.103 Form 3, initial statement of beneficial ownership of securities.

This form shall be filed pursuant to Rule 16a–1(a) (17 CFR 240.16a–1(a)) (or Rule 16a–12 (17 CFR 240.16a–12)) * * *.

* * * * *

Form 3

General Instructions

1. When Statements Are To Be Filed.

* * * * *

(c) Pursuant to Rule 16a–12, reporting persons of Canadian foreign private issuers may file the equivalent Canadian form under the cover of this Form. Canadian reporting persons should complete Items 1 through 7 of Form 3. Tables I and II of Form 3 may be left blank, replaced by the required Canadian forms, which should be attached to this Form.

§ 249.104 Form 4, statement of changes in beneficial ownership of securities.

This form shall be filed pursuant to Rule 16a–1(a) (17 CFR 240.16a 1(a)) (or Rule 16a–12 (17 CFR 240.16a–12)) * * *.

* * * * *

Form 4

General Instructions

1. When Statements Are To Be Filed.

* * * * *

(b) Pursuant to Rule 16a–12, reporting persons of Canadian foreign private issuers may file the equivalent Canadian form under the cover of this Form. Canadian reporting persons should complete Items 1 through 8 of Form 4. Tables I and II of Form 4 may be left blank, replaced by the required Canadian forms, which should be attached to this Form.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

24. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 305, 307, 314, 319, 53 Stat. 1154, 1156, 1167, 1173; 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, unless otherwise noted.

25. By adding § 260.4d–1 to read as follows:

§ 260.4d–1 Application for exemption from Section 310(a)(1) of the Trust Indenture Act.

An application for an exemption from the requirements of section 310(a)(1) of the Act may be filed pursuant to section 304(d) of the Act and this section, provided the application relates to:

(a) Securities registered or to be registered on Forms F–7, F–8, F–9, or F–10 (§§ 239.37, 239.38, 239.39 or § 239.40 of this chapter);

(b) Securities that have been issued or that the applicant reasonably expects to issue within one year from the date of application; and

(c) Securities that have been or will be issued under an indenture:

(1) That has been qualified under the Act, and

(2) That requires there to be at all times one or more trustees thereunder, at least one of whom is a corporation or other person that is:

(i) Organized and doing business under the laws of Canada or any province thereof (referred to as the institutional trustee), and

(ii) Is authorized under such laws to exercise corporate trust powers, and

(iii) Is subject to supervision or examination by governmental authority.

26. By adding § 260.4d–2 to read as follows:

§ 260.4d–2 Application for appointment of a foreign trustee.

(a) Form T–5 shall be used for applications for exemption pursuant to Rule 4d–1 (§ 260.4d–1 of this chapter), except as provided in paragraph (b) of this section.

(b) Application may be made pursuant to Rule 4d–1 by filing a registration statement under the Securities Act on Form F–7, F–8, F–9 or F–10 (§§ 239.37, 239.38, 239.39 or § 239.40 of this chapter), indicating on the facing page of the registration statement that such application is being made, and responding to the applicable Item of Part II of such form.

27. By adding § 260.4d–3 to read as follows:

§ 260.4d–3 General requirements as to form and content of applications.

Rule 4c–3 (§ 260.4c–3) and Rules 7a–15 through 7a–37 (§§ 260.7a–15 through 7a–37) shall be applicable to applications on Form T–5.

28. By adding § 260.4d–4 to read as follows:

§ 260.4d–4 Notice of application under Rule 4d–1.

If an applicant under Rule 4d–1 (§ 260.4d–1) files an application relating to securities issued or issuable under an indenture under which any other securities are outstanding, the applicant shall at the time of such filing send, by first class mail or other equally prompt means, notice of such application to all holders of record of outstanding securities under such indenture. A copy of such notice also shall be filed with the Commission as part of the application. The notice shall advise holders of the filing of the application and the date of such filing, and shall further advise that any interested person may, by written request filed with the Commission within 20 days of the application date set forth on such notice, request that a hearing be held on such matter. Such request shall also indicate the nature of such person's interest and the reason for such request. A subsequent notice shall be sent to such holders if any hearing on the application is to be held by the Commission. Such subsequent notice shall set forth the time, place and nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held, and the matters of fact and law asserted to.

29. By adding § 260.4d–5 to read as follows:

§ 260.4d–5 Waiver of hearing; Designation of record.

(a) An applicant under § 260.4d–1 may, if it so desires, waive a hearing and request the Commission to decide the application without a formal hearing on the basis of the application and such other information and documents as the Commission shall designate as part of the record. However, a hearing may be called upon order of the Commission notwithstanding that the applicant shall have filed such a waiver and request whenever, in the judgement of the Commission, such a hearing is necessary or appropriate in the public interest.

(b) The applicant shall, at the request of the Commission, furnish such additional information or documents as the Commission may deem necessary to decide the application. The Commission may make a part of the record any pertinent information or documents filed with the Commission by the applicant or by any other person. The Commission shall, in its order deciding the application, designate and describe the information and documents comprising the record on which the decision is based.

30. By adding § 260.4d–6 to read as follows:

§ 260.4d–6 Consent of trustee to service of process.

The applicant shall, at the time of filing an application pursuant to § 260.4d–1, furnish to the Commission in a form prescribed by or acceptable to it, a written irrevocable consent of the trustee and power of attorney, which designates an agent upon whom may be served any process, pleadings, or other papers in any civil suit or action brought against the trustee or to which the trustee has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States, where

the cause of action arises out of any offering made or purported to be made in connection with the securities that are the subject of the application pursuant to § 260.4d–1, or any purchase or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action may be commenced by the service of process upon said agent for service for process, and that the service as aforesaid shall be taken and held in all courts to be as valid and binding as if due personal service thereof had been made.

PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

31. By adding § 269.8 to read as follows:

§ 269.8 Form T–5, application for exemption pursuant to Rule 4d–1.

Form T–5 shall be used for applications for exemption filed pursuant to Rule 4d–1 under the Trust Indenture Act of 1939 (the "Act") (17 CFR 260.4d–1), except those filed pursuant to subparagraph (b) of Rule 4d–2 (17 CFR 260.4d–2).

By the Commission.

Dated: July 24, 1989.

Jonathan G. Katz,

Secretary.

Appendix A—Proposed Forms Under the Securities Act of 1933 and the Securities Exchange Act of 1934, and Amendments to Forms Under the Securities Exchange Act of 1934

Form F–7
Form F–8
Form F–9
Form F–10
Form 40–F
Form F–X
Form T–5

Form F–7

U.S. Securities and Exchange Commission,
Washington, DC 20549
OMB Approval
OMB Number: 3235–040G
Expires: Approval Pending
Estimated average burden hours per response—2.0

Registration Statement Under the Securities Act of 1933

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English)

(Province or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number (if applicable))

(I.R.S. Employer Identification Number (if applicable))

(Address and telephone number of Registrant's principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale of the securities to the public

(Principal jurisdiction regulating this offering)

This registration statement and any post-effective amendment thereto shall be deemed effective at the time the securities covered hereby legally may be sold in the principal jurisdiction in accordance with Rule 467.

Check if appropriate:

[ ] This filing constitutes an application for exemption under section 304(d) of the Trust Indenture Act of 1939 from section 310 of that Act.

[ ] There are existing security holders under the indenture to which such application relates.

Calculation of Registration Fee *

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed Maximum aggregate offering price	Amount of registration fee

* See general instruction II.D for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this transaction.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said section 8(a), may determine.

General Instructions

I. Eligibility Requirements for Use of Form F–7

A. Form F–7 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of securities offered for cash upon the exercise of rights granted to existing security holders of the registrant.

B. Form F–7 is available to any registrant incorporated or organized under the Laws of Canada, or any Canadian province or territory, that, for the 36 calendar months immediately preceding the filing of a registration statement on this Form, has had any class of securities listed on the Montreal Exchange or The Toronto Stock Exchange and that currently is in compliance with the obligations arising from such listing. The rights granted to security holders that are resident in the United States shall be granted upon the same terms and conditions as those granted to such holders resident in the registrant's jurisdiction of incorporation or organization, *provided*, That the securities offered upon exercise of such rights may not be registered on this Form if such rights are transferable to U.S. residents and *further provided*, That the exercise period for the rights granted to security holders shall be 90 days or less.

C. Less than 20 percent of the class of securities with respect to which the rights are granted shall be held of record by U.S. residents. For purposes of this instruction, "held of record" shall be construed in accordance with Rule 12g5–1 under the Securities Exchange Act of 1934 (the "Exchange Act").

Instruction. For purposes of this Form, the term "U.S. resident," as applied to security holders, shall mean any person whose address appears on the records of the issuer of the security or its share transfer agent as being located in the United States. The calculation of record holders shall be as of the end of the issuer's last quarter or if such quarter ended within 60 days prior to the date of filing, then as of at end of the preceding quarter.

D. Any transaction in which securities registered on this Form are offered shall not increase the registrant's issued and outstanding capital by more than 25 percent.

E. This Form shall not be used if the registrant is an investment company, as defined in section 3 of the Investment Company Act of 1940.

F. A registration statement on this Form should be filed with the Commission simultaneously with the filing of the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction"). Pre-effective amendments to this Form should be filed simultaneously with the filing of additional or changed documents in the principal jurisdiction. In accordance with Rule 467, this registration statement shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

Any amendment to such home jurisdiction document(s) after the effective date of this

registration statement shall be filed with the Commission as a post-effective amendment to this Form simultaneously with the filing of such document(s) with the principal jurisdiction. Such post-effective amendment shall be deemed effective for purposes of the Securities Act at such time as the amendment to the home jurisdiction document(s) legally may be used under the applicable law of such jurisdiction, in accordance with Rule 467.

Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of the registration statement that increases the number of securities that may be sold thereunder, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "This combined prospectus relates to registration statement[s] 33-[insert file numbers of previous registration statements]."

II. Application of General Rules and Regulations

A. The only Securities Act rules and regulations that apply to filings on this Form are those rules and regulations specifically referred to in the Form and Rule 408, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

B. Three copies of the complete registration statement and any post-effective amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or post-effective amendment thereto, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stiching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any post-effective amendments thereto, similarly bound, also shall be filed. No other exhibits are required to accompany such additional copies.

C. At least one copy of every registration statement and any post-effective amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

D. At the time of filing this registration statement, the applicant shall pay to the Commission, by United States postal money order, certified check, bank cashier's check or bank money order, a fee of one-fiftieth of one per centum of the maximum aggregate price at which the securities registered on this form are proposed to be offered in the United States, but in no case shall such fee be less than $100.

The registration fee is to be calculated at the price at which the rights may be exercised if known at the time of filing the registration statement, or, if not known, at the market value of securities of the same class included in the registration statement. If the fee is to be calculated upon the basis of the price at which the rights may be exercised and they are exercisable over a period of time at progressively higher prices, the fee shall be calculated on the basis of the highest price at which they may be exercised.

Instruction. The market value of the registrant's outstanding common stock shall be the average of the bid and asked price of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

E. Subject to the requirements of Item 1 of Part I, if any part of the registration statement or post-effective amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or a post-effective amendment, is in a foreign language, it shall be accompanied by a summary, version or translation in the English language.

F. The manually signed original of the registration statement or any post-effective amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

G. Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the registrant.

III. Compliance with Exchange Act, Trust Indenture Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 15d-4 under the exchange Act, reporting obligations under section 15(d) of the Exchange Act arising solely from an offering of securities registered on this Form may be met by filing with the Commission, under cover of Form 40-F, documents that are filed with the securities commission or equivalent regulatory authority of the registrant's jurisdiction of incorporation. Registrants' attention is directed, however, towards other provisions of the Exchange Act that may be applicable, and specifically to the provisions of sections 12(b) and 12(g) of the Exchange Act and Rules 10b-6, 10b-7 and 10b-8 under the Exchange Act.

B. Pursuant to Rule 4d-2(b) under the Trust Indenture Act of 1939 (the "Trust Indenture Act"), a registrant registering debt securities on this Form may apply for exemption from the U.S. trustee provisions of section 310(a) of that Act by so indicating on the facing page of this Form and including the information specified by Item (6) of Part II thereof. Pursuant to Rule 4d-5 under the Trust Indenture Act, the application will be deemed to be granted unless, within seven days after such filing, the Commission orders a hearing thereon. Registrants' attention is directed to other provisions of the Trust Indenture Act that may be applicable.

C. The Commission's rules on auditor independence as codified in Section 600 of the Codification of Financial Reporting Policies apply to all financial statements that are included in this registration statement.

D. Independent accountants reporting on financial statements included in the registration statement should consider Canadian auditing guidelines pertaining to the Canada-U.S. reporting conflict with respect to contingencies and going concern considerations. If additional comments for U.S. readers are appropriate under those guidelines but are not included in the prospectus itself, those comments should be included with the legends required by Item 2 of Part I herein. In addition, the accountant's consent specifically should refer to any additional comments provided for U.S. readers.

Part I—Information Required to be Sent to Shareholders

Item 1. Home Jurisdiction Document

The prospectus shall consist of the entire disclosure document or documents required to be delivered to holders of the securities with respect to which rights are distributed pursuant to the laws of the jurisdiction in which the registrant is incorporated or organized or, where applicable, pursuant to the rules of any stock exchange upon which the issuer has any class of securities listed or has applied for such listing. It need not include any documents incorporated by reference into such disclosure documents and not distributed to security holders pursuant to the laws of such jurisdiction. If any part of the document or documents to be sent to shareholders is in a foreign language, it shall be accompanied by a translation in English.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This offering is made by a foreign issuer, and while the issuer is subject to disclosure requirements in its own country, prospective investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have not been prepared in accordance with United States generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

"Prospective investors should be aware that the acquisition of the securities described herein may have tax consequences both in the United States and in the country of the registrant. Such consequences for investors who are resident in, or citizens of, the United States may not be described fully herein.

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the registrant is located in a foreign country, that some or all of its officers and directors are residents of a foreign country, that some or all of the underwriters or experts named in the registration statement are residents of a foreign country and that all or a substantial portion of the assets of the registrant and said persons are located outside the United States."

Item 3. List of Documents Filed with Commission

There shall be attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

Part II—Information Not Required to be Sent to Shareholders

The exhibits specified below shall be field as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) File any reports or information that in accordance with the requirements of the jurisdiction of the registrant must be made publicly available in connection with the transaction.

(2) File copies of any documents incorporated by reference into, or filed with any other regulatory authority concurrently with, the prospectus.

(3) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the offering document, or is named as having prepared or certified a report or valuation for use in connection with the offering document, the written consent of such person shall be filed.

If any such person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person also shall be filed unless the Commission dispenses with such filing as impracticable or as involving undue hardship in accordance with Rule 437.

Any other consent required by Rules 436 or 438 also shall be filed. Every amendment relating to a certified financial statement shall include the consent of the certifying accountant to the use of his certificate in connection with the amended financial statements in the registration statement or prospectus and to being named as having certified such financial statements.

Note: The consents required by this item shall specifically indicate consent regarding use of the report or valuation in the registration statement filed in the United States.

(4) If any name is signed to the registration statement or report pursuant to a power of attorney, manually signed copies of such power of attorney shall be filed. If the name of any officer signing on behalf of the registrant is signed pursuant to a power of attorney, certified copies of a resolution of the registrant's board of directors authorizing such signature also shall be filed.

(5) File a copy of any indenture relating to the registered securities. If such indenture is to be qualified under the Trust Indenture Act, it should include or be accompanied by (1) a cross-reference sheet to the location in the indenture of information included pursuant to sections 310-318(a) of the Trust Indenture Act and (2) a table of contents. If any such indenture is to be qualified under the Trust Indenture Act, also file the statement of eligibility of the trustee on Form T-1 and, if applicable, for individual trustee(s) on Form T-2.

(6) If debt securities are to be registered and an exemption from the U.S. trustee provisions of section 310(a) of the Trust Indenture Act is sought pursuant to General Instruction III.B. or has been sought with respect to the securities to be registered, the registrant shall file as an exhibit the information specified in Items 4, 5, 6, 7, 8, 9 (if applicable), and 10 of Form T-5, or shall file as an exhibit copies or incorporate by reference any Form T-5 filed with the Commission not more than one year prior to the date of this filing.

Part III—Undertakings and Consent to Service of Process

1. Undertakings

Registrant undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to the securities registered pursuant to Form F-7 or to transactions in said securities.

2. Consent to Service of Process

The registrant shall, at the time of filing Form F-7, furnish to the Commission, on Form F-X, a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in

(1) Any investigation or administrative proceeding conducted by the Commission; and

(2) Any civil suit or action brought against the registrant or to which the registrant has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States,

where the investigation, proceeding or cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F-7 or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

Signatures

Pursuant to the requirements of the Securities Act, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F-7 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State (Province or Territory) of _____, on _____, 19____

Registrant _____
By (Signature and Title) _____

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____
(Name and Title) _____
(Date) _____

Instructions

A. The registration statement shall be signed by the registrant, its principal executive officer or officers, its principal financial officer, its comptroller or principal accounting officer, at least a majority of the board of directors or persons performing similar functions and its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which the registration statement is signed.

C. By signing this form, the registrant consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F-7 or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

Form F-8—Registration Statement Under the Securities Act of 1933

U.S. Securities and Exchange Commission,
Washington, DC 20549
OMB Approval
OMB Number: 3235-040H
Expires: Approval Pending
Estimated average burden hours per response: 2.0

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English)

(Province or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number (if applicable))

(I.R.S. Employer Identification Number (if applicable))

(Address and telephone number of Registrant's principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale of the securities to the public

(Principal jurisdiction regulating this offering)

This registration statement and any post-effective amendment thereto shall be deemed effective at the time the securities covered hereby legally may be sold in the principal jurisdiction in accordance with Rule 467.

Check if appropriate:

[ ] This filing constitutes an application for exemption under section 304(d) of the Trust Indenture Act of 1939 from section 310 of that Act.

[ ] There are existing security holders under the indenture to which such application relates.

CALCULATION OF REGISTRATION FEE*

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

*See general instruction II.D for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this transaction.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said section 8(a), may determine.

General Instructions

I. Eligibility Requirements for Use F–8

A. Form F–8 may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued in an exchange offer. Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer, or are offered in conjunction with cash.

B. Form F–8 is available to any registrant incorporated or organized under the laws of Canada, or any Canadian province or territory, that, for the 36 calendar months immediately preceding the filing of the registration statement on this Form, has had any class of securities listed on the Montreal Exchange or The Toronto Stock Exchange and that currently is in compliance with the obligations arising from such listing, if the aggregate market value of the common stock (including non-voting common stock) of such registrant held by non-affiliates is (CN) $75 million or more, *provided*, That for the purposes of this instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Instruction. The market value of the registrant's outstanding common stock shall be the average of the bid and asked prices of such stock, in the principal market for such as of a date within 30 days prior to the date of filing.

C. The issuer of the securities to be exchanged (the "subject securities") for securities of the registrant shall be incorporated or organized under the laws of Canada or any Canadian province or territory, and less than 20 percent of class of subject securities shall be held or record by U.S. residents. For purposes of this instruction, "held of record" shall be construed in accordance with Rule 12g5–1 under the Securities Exchange Act of 1934 (the "Exchange Act").

Instruction. For the purpose of this Form, the term "U.S. resident," as applied to security holders, shall mean any persons whose address appears on the records of the subject issuer or its share transfer agent as being located in the United States. The calculation of record holders shall be as of the end of the issuer's last quarter or if such quarter ended within 60 days prior to the date of filing, then as of the preceding quarter.

D. The securities to be registered on Form F–8 shall be offered to U.S. residents upon the same terms and conditions as they are required to be offered to residents of Canada.

E. This Form shall not be used if the registrant is an investment company, as defined in section 3 of the investment Company Act of 1940.

F. A registration statement on this Form should be filed with the Commission simultaneously with the filing of the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction"). Preeffective amendments to this Form should be filed simultaneously with the filing of additional or changed documents in the principal jurisdiction. In accordance with Rule 467, this registration statement shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

Any amendment to such home jurisdiction document(s) after the effective date of this registration statement shall be filed with the Commission as a post-effective amendment to this Form simultaneously with the filing of such document(s) with the principal jurisdiction. Such post-effective amendment shall be deemed effective for purposes of the Securities Act at such time as the amendment to the home jurisdiction document(s) legally may be used under the applicable law of such jurisdiction, in accordance with Rule 467.

Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdication document(s) is filed after effectiveness of the registration statement that increases the number of securities that may be sold thereunder, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "This combined prospectus relates to registration statement[s] 33-[insert file numbers of previous registration statements]."

II. Application of General Rules and Regulations

A. The only Securities Act rules and regulations that apply to filings on this Form are those rules and regulations specifically referred to in the Form and Rule 408, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading. A registration statement or amendment thereto shall be deemed to be filed on the proper form unless objection to the form is made by the Commission prior to the effective date.

B. Three copies of the complete registration statement and any post-effective amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or post-effective amendment, shall be filed with the Commission at its principal office. Each copy

shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any post-effective amendments thereto, similarly bound, shall also be filed. No exhibits are required to accompany such additional copies.

C. At least one copy of every registration statement and any post-effective amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

D. At the time of filing this registration statement, the applicant shall pay to the Commission, by a United States postal money order, certified check, bank cashier's check or bank money order, a fee of one fiftieth of one per centurm of the maximum aggregate price at which the securities are proposed to be offered in the United States, but in no case shall such fee be less than $100.

The registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the securities that may be received by the registrant or cancelled in the exchange offer from United States residents as established by the price of securities of the same class, as determined in accordance with paragraph (4) of this section.

(2) If there is no market for the securities to be received by the registrant or cancelled in the exchange offer, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used unless the issuer of such securities is in bankruptcy of receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the registrant from United States residents in connection with the exchange offer, the amount thereof shall be added to the value of the securities to be received by the registrant or cancelled as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid by the registrant in connection with the exchange offer, the amount thereof shall be deducted from the value of the securities to be received by the registrant in exchange as computed in accordance with paragraph (1) or (2) of this section.

(4) The market value of the registrant's outstanding common stock shall be the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

E. Subject to the requirements of Item 1 of Part I, if any part of the registration statement or a post-effective amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or post-effective amendment, is in a foreign language, it shall be accompanied by a summary, version or translation in the English language.

F. The manually signed original of the registration statement or any post-effective amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachements thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

G. Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the registrant.

III. Compliance with Exchange Act, Trust, Indenture Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 3a12–3(c) under the Exchange Act, if the issuer registering securities on Form F–8 is required to obtain the vote of its security holders to approve an action which must be taken to enable the issuer to make the exchange offer (such as approving an increase in authorized securities), the U.S. proxy regulations will not apply to such solicitations.

B. Pursuant to Rule 13e–4(h) under the Exchange Act, the provisions of Rule 13e–4 are not applicable, and pursuant to Rule 14d–1(b) under the Exchange Act, the provisions of Sections 14(d)(1) through 14(d)(7) of the Exchange Act, Regulation 14D under the Exchange Act and Schedule 14D–1 thereunder, and Rule 14e–1 under Regulation 14E, are not applicable to a transaction involving offerings of securities that may be registered on this Form; *Provided*, that if no substantive requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offering apply, or if an exemption from such requirements is applicable, the registrant shall comply with such provisions of the Exchange Act. Such transaction is not exempt from the antifraud provisions of sections 10(b), 13e–4(b)(1) or 14(e) of the Exchange Act or Rules 10b–5, 13e–4(b)(1) or 14e–3 thereunder, if the transaction otherwise is subject to those sections.

C. Pursuant to Rule 15d–4 under the Exchange Act, reporting obligations under section 15(d) of the Exchange Act arising solely from an offering of securities registered on this Form may be met by filing with the Commission, under cover of Form 40–F, documents that are filed with the securities commission or equivalent regulatory authority in the registrant's jurisdiction of incoporation. Registrants' attention is directed, however, towards other provisions of the Exchange Act that may be applicable, and specifically to the provisions of sections 12(b) and 12(g) of the Exchange Act and rules 10b–6, 10b–7 and 10b–13 under the Exchange Act. [See Note following Part III, 1. For an explanation of the no-action positions taken under Rules 10b–6 and 10b–13.]

D. Pursuant to Rule 4d–2(b) under the Trust Indenture Act of 1939 (the "Trust Indenture Act"), a registrant registering debt securities on this Form may apply for exemption from the U.S. trustee provisions of section 310(a) of that act by so indicating on the facing page of this Form and including the information specified by Item (7) of Part II thereof. Pursuant to Rule 4d–5 under the Trust Indenture Act, the application will be deemed to be granted unless, within seven days after such filing, the Commission orders a hearing thereon. Registrants' attention is directed to other provisions of the Trust Indenture Act that may be applicable.

E. The Commission's rules on auditor independence as codified in section 600 of the Codification of Financial Reporting Policies apply to all financial statements which are included in this registration statement.

F. Independent accountants reporting on financial statements included in the registration statement should consider Canadian auditing guidelines pertaining to the Canada-U.S. reporting conflict with respect to contingencies and going concern considerations. If additional comments for U.S. readers are appropriate under those guidelines but are not included in the prospectus itself, those comments should be included with the legends required by Item 2 of Part I herein. In addition, the accountant's consent specifically should refer to any additional comments provided for U.S. readers.

Part I—Information Required to be Sent to Shareholders

Item 1. Home Jurisdiction Document

The prospectus shall consist of the entire disclosure document or documents required to be delivered to holders of securities to be acquired in the proposed transaction by the registrant pursuant to the laws of the jurisdiction in which the registrant is incorporated or organized and/or, where applicable, pursuant to the rules of any stock exchange upon which the registrant has any class of securities listed, or has applied for such listing. It need not include any documents incorporated by reference into such disclosure document and not distributed to offerees pursuant to the laws of such jurisdiction. If any part of the document or documents to be sent to shareholders is in a foreign language, it shall be accompanied by a translation in English.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This offering is made by a foreign issuer, and while the issuer is subject to disclosure requirements in its own country, prospective investors should be aware that these requirements are different from those of the United States. The financial statements have not been prepared in accordance with United States generally accepted accounting principles and, thus, may not be comparable to financial statements of United States companies.

"Prospective investors should be aware that the acquisition of the securities described herein may have tax consequences both in the United States and in the country of the registrant. Such consequences for investors who are resident in, or citizens of,

the United States may not be described fully herein.

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the registrant is located in a foreign country, that some or all of its officers and directors are residents of a foreign country, that some or all of the underwriters or experts named in the registration statement are residents of a foreign country and that all or a substantial portion of the assets of the registrant and said persons are located outside the United States.

"Prospective investors should be aware that, during the period of the exchange offer, the registrant or its affiliates, directly or indirectly, may bid for or make purchases of the securities to be distributed, certain related securities of the registrant, the securities to be exchanged or certain related securities of the issuer, as permitted by applicable Canadian laws or provincial laws or regulations."

Item 3. List of Documents Filed with Commission

There shall be attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

Part II—Information not Required to be Sent to Shareholders

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) File any reports or information that, in accordance with the requirements of the jurisdiction of the subject issuer, must be made publicly available by the registrant in connection with the transaction.

(2) File a copy of the acquisition agreement.

(3) File copies of any documents incorporated by reference into, or filed with any other regulatory authority concurrently with, the prospectus.

(4) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the offering document, or is named as having prepared or certified a report or valuation for use in connection with the offering document, the written consent of such person shall be filed.

If any such person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person also shall be filed unless the Commission dispenses with such filing as impracticable or as involving undue hardship in accordance with Rule 437.

Any other consent required by Rules 436 or 438 also shall be filed. Every amendment relating to a certified financial statement shall include the consent of the certifying accountant to the use of his certificate in connection with the amended financial statements in the registration statement or prospectus and to being named as having certified such financial statements.

Note: The consents required by this item shall specifically indicate consent regarding use of the report or valuation in the registration statement filed in the United States.

(5) If any name is signed to the registration statement or report pursuant to power of attorney, manually signed copies of such power of attorney shall be filed. If the name of any officer signing on behalf of the registrant is signed pursuant to a power of attorney, certified copies of a resolution of the registrant's board of directors authorizing such signature shall also be filed.

(6) File a copy of any indenture relating to the registered securities. If such indenture is to be qualified under the Trust Indenture Act, it should include or be accompanied by (1) a cross-reference sheet to the location in the indenture of sections 310–318(a) of the Trust Indenture Act and (2) a table of contents. If any such indenture is to be qualified under the Trust Indenture Act, also file the statement of eligibility of the trustee on Form T–1 and, if applicable, for individual trustee(s) on Form T–5.

(7) If debt securities are to be registered and an exemption from the U.S. trustee provisions of section 310(a) of the Trust Indenture Act is sought pursuant to General Instruction III.C. or has been sought with respect to the securities to be registered, the registrant shall file as an exhibit the information specified in Items 4, 5, 6, 7, 8, 9 (if applicable), and 10 of Form T–5, or shall file as an exhibit or incorporate by reference any Form T–5 filed with the Commission not more than one year prior to the date of this filing.

Part III—Undertaking and Consent to Service of Process

1. Undertakings

a. Registrant undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to the securities registered pursuant to Form F–8 or to transactions in said securities.

b. Registrant further undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to any applicable Canadian federal and/or provincial or territorial law, regulation or policy, information regarding purchase of the registrant's securities or of the issuer's securities during the exchange offer.

Note: No-action positions taken under Rules 10b–6 and 10b–13:

The staff of the Division of Market Regulation has taken no-action positions under Rules 10b–6 and 10b–13 under the Exchange Act to allow the registrant to make certain purchases of securities in Canada, as permitted by Canadian federal, provincial or territorial laws, regulations or policies, during the period of an exchange offer registered on Form F–8.

With respect to an exchange offer registered on Form F–8, the staff will not recommend that the Commission take enforcement action under Rules 10b–6 and 10b–13 for bids and purchases by the registrant in Canada, as permitted by Canadian federal, provincial or territorial laws, regulations, or policies, of the security being distributed (or any security of the same class and series, or any right to purchase any such security), or of the security that is the subject of the offer (or any security which is immediately convertible into or exchangeable for such security), subject to the conditions that: (i) such bids or purchases are not made for the purpose of creating actual, or apparent, active trading in or raising the price of such securities; (ii) the registrant discloses on Form F–8 the possibility of, or the intent to make, such purchases; and (iii) the registrant submits an undertaking to disclose in the United States information regarding such purchases on the same basis as it is required to be disclosed in Canada pursuant to Canadian federal, provincial or territorial laws, regulations or policies, or otherwise is disclosed.

2. Consent to Service of Process

The registrant shall, at the time of filing Form F–8, furnish to the Commission, on Form F–X, a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in

(1) Any investigation or administrative proceeding conducted by the Commission; and

(2) Any civil suit or action brought against the registrant or to which the registrant has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States,

where the investigation, proceeding or cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F–8 or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

Signatures

Pursuant to the requirements of the Securities Act, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F–8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State (Province or Territory) of _____ on _____, 19____.

Registrant _____

By (Signature and Title) _____

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Name and Title) _____

(Date) _____

Instructions

A. The registration statement shall be signed by the registrant, its principal executive officer or officers, its principal financial officer, its controller, or principal accounting officer, at least a majority of the board of directors or persons performing similar functions and its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which the registration statement is signed.

C. If the securities to be offered are those of a corporation not yet in existence at the time the registration statement is filed and which will be a party to a consolidation involving two or more existing corporations, then each such existing corporation shall be deemed a registrant and shall be so designated on the cover page of this Form, and the registration statement shall be signed by each such existing corporation and by the officers and directors of each such existing corporation as if each such existing corporation were the sole registrant.

D. By signing this form, the registrant consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made, in connection with the securities registered pursuant to Form F–8 or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

Form F–8—Registration Statement Under the Securities Act of 1933

U.S. Securities and Exchange Commission,
Washington, DC 20549
OMB Approval
OMB Number: #3235–0401
Expires: Approval Pending
Estimated average burden hours per response—2.0

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English)

(Province or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number (If applicable))

(I.R.S. Employer Identification Number (If applicable))

(Address and telephone number of Registrant's principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale of the securities to the public ——

(Principal jurisdiction regulating this offering)

It is proposed that this filing will become effective (check appropriate box)

[ ] pursuant to Rule 467(a) on the date on which the securities legally may be offered and sold in the registrant's principal jurisdiction

[ ] pursuant to Rule 467(b) on (date) at (time) (but not sooner than 7 days after filing)

Check if appropriate:

[ ] This filing constitutes an application for exemption under section 304(d) of the Trust Indenture Act of 1939 from Section 310 of that Act.

[ ] There are existing security holders under the Indenture to which such application relates.

CALCULATION OF REGISTRATION FEE*

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

*See general instruction II.D for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this transaction.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said section 8(a), may determine.

General Instructions

I. Eligibility Requirements for Use of Form F–9

A. This Form F–9 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of investment grade non-convertible debt or preferred securities.

Instructions

1. Securities shall be "investment grade" if, at the time of effectiveness of the registration statement, at least one nationally recognized statistical rating organization (as that term is used in relation to Rule 15c3–1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (the "Exchange Act") (§ 240.15c3–1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade.

2. Securities shall be "non-convertible" if they may not be converted for a period of at least one year from the date of effectiveness of the registration statement.

B. Form F–9 is available to any registrant incorporated or organized under the laws of Canada, or any Canadian province or territory, that has been subject to the periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of the registration statement on this Form, and that is currently in compliance with such obligations, if (1) the aggregate market value of the common stock (including non-voting common stock) of such registrant was, as of the end of the registrant's previous fiscal year, (CN) $180 million or more; and (2) the aggregate market value of such common stock held by non-affiliates is (CN) $75 million or more, *provided*, That for the purposes of this Instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Instruction. The market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

C. This Form shall not be used if the registrant is an investment company, as defined in Section 3 of the Investment Company Act of 1940.

D. A registration statement on this Form should be filed with the Commission simultaneously with the filing of the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction"). Pre-effective amendments to this Form should be filed simultaneously with the filing of additional or changed documents in the principal jurisdiction. In accordance

BEST COPY AVAILABLE

with Rule 467, this registration statement shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

Any amendment to such home jurisdiction document(s) after the effective date of this registration statement shall be filed with the Commission as a post-effective amendment to this Form simultaneously with the filing of such document(s) with the principal jurisdiction. *See infra* Part III.1.b. Such post-effective amendment shall be deemed effective for purposes of the Securities Act at such time as the amendment to the home jurisdiction document(s) legally may be used under the applicable law of such jurisdiction, in accordance with Rule 467.

Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of the registration statement that increases the number of securities that may be sold thereunder, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "This combined prospectus relates to registration statement[s] 33-[insert file numbers of previous registration statements]."

If the registration statement or any post-effective amendment thereto relates to an offering that is not a contemporaneous offering, it shall become effective in accordance with Rule 467(b).

II. Application of General Rules and Regulations

A. The only Securities Act rules and regulations that apply to filings on this Form are those rules and regulations specifically referred to in the Form and Rule 408, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading. A registration statement or amendment thereto shall be deemed to be filed on the proper form unless objection to the form is made by the Commission prior to the effective date.

B. Three copies of the complete registration statement and any amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or post-effective amendment, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any post-effective amendments thereto, similarly bound, also shall be filed. No other exhibits are required to accompany such additional copies.

C. At least one copy of every registration statement and any post-effective amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

D. At the time of filing this registration statement, the applicant shall pay to the Commission, by a United States postal money order, certified check, bank cashier's check or bank money order, a fee of one fiftieth of one per centum of the maximum aggregate price at which the securities are proposed to be offered in the United States, but in no case shall such fee be less than $100.

E. Subject to the requirements of Item 1 of Part I, if any part of the registration statement or a post-effective amendment thereto, or any exhibit or other paper or document filed as part of the registration statement is in a foreign language, it shall be accompanied by a summary, version or translation in the English language.

F. The manually signed original of the registration statement or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

G. Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the registrant.

III. Compliance with Exchange Act, Trust Indenture Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 15d-4 under the Exchange Act, reporting obligations under section 15(d) of the Exchange Act arising solely from an offering of securities registered on this form may be met by filing with the Commission, under cover of Form 40-F, documents that are filed with the securities commission or equivalent regulatory authority in the registrant's jurisdiction of incorporation. Registrant's attention is directed, however, towards other provisions of the Exchange Act that may be applicable, and specifically to the provisions of sections (12(b) and 12(g) of the Exchange Act and Rules 10b-6 and 10b-7 under the Exchange Act.

B. Pursuant to Rule 4d-2(b) under the Trust Indenture Act of 1939 (the "Trust Indenture Act") a registrant registering debt securities on this Form may apply for exemption from the U.S. trustee provisions of section 310(a) of that Act by so indicating on the facing page of this Form and including the information specified by Item (6) of Part II thereto. Pursuant to Rule 4d-5 under the Trust Indenture Act, the application will be deemed to be granted unless, within seven days after such filing, the Commission orders a hearing thereon. Registrants' attention is directed towards other provisions of the Trust Indenture Act that may be applicable.

C. The Commission's rules on auditor independence as codified in Section 600 of the Codification of Financial Reporting Policies apply to all financial statements that are included in this registration statement.

D. Independent accountants reporting on financial statements included in the registration statement should consider Canadian auditing guidelines pertaining to the Canada-U.S. reporting conflict with respect to contingencies and going concern considerations. If additional comments for U.S. readers are appropriate under these guidelines but are not included in the prospectus itself, those comments should be included with the legends required by Item 2 of Part I herein. In addition, the accountant's consent specifically should refer to any additional comments provided for U.S. readers.

Part I—Information Required To Be Sent to Shareholders

Item 1. Home Jurisdiction Document

The prospectus shall consist of the entire disclosure document or documents required to be delivered by the registrant in connection with the transaction pursuant to the laws of the jurisdiction in which the registrant is incorporated or organized or, where applicable, pursuant to the rules of any stock exchange upon which the issuer has any class of securities listed, or has applied for such listing. It need not include any documents incorporated by reference into such disclosure documents and not distributed to offerees pursuant to the laws of such jurisdiction. If any part of the document or documents to be sent to shareholders is in a foreign language, it shall be accomplished by a translation in English.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This offering is made by a foreign issuer, and while the issuer is subject to disclosure requirements in its own country, prospective investors should be aware that these requirements are different from those of the United States. The financial statements have not been prepared in accordance with United States generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

"Prospective investors should be aware that the acquisition of the securities described herein may have tax consequences both in the United States and in the country of the registrant. Such consequences for investors who are residents in, or citizens of, the United States may not be described fully herein.

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the registrant is located in a foreign country, that some or all of its officers and directors are residents of a foreign country, that some or all of the underwriters or experts named in the registration statement are residents of a foreign country and that all or a substantial portion of the assets of the registrant and said persons are located outside the United States."

Item 3. List of Documents Filed with Commission

There shall be attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

Part II—Information Not Required To Be Sent to Shareholders

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) File any reports or information that in accordance with the requirements of the jurisdiction of the registrant must be made publicly available in connection with the transaction.

(2) File copies of any documents incorporated by reference into, or filed with any other regulatory authority concurrently with, the prospectus.

(3) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the offering document, or is named as having prepared or certified a report or valuation for use in connection with the offering document, the written consent of such person shall be filed.

If any such person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person shall also be filed unless the Commission dispenses with such filing as impracticable or as involving undue hardship in accordance with Rule 437.

Any other consent required by Rules 436 or 438 also shall be filed. Every amendment relating to a certified financial statement shall include the consent of the certifying accountant to the use of his certificate in connection with the amended financial statements in the registration statement or prospectus and to being named as having certified such financial statements.

Note: The consents required by this item shall specifically indicate consent regarding the use of the report or valuation in the registration statement filed in the United States.

(4) If any name is signed to the registration statement or report pursuant to power of attorney, manually signed copies of such power of attorney shall be filed. If the name of any officer signing on behalf of the registrant is signed pursuant to a power of attorney, certified copies of a resolution of the registrant's board of directors authorizing such signature also shall be filed.

(5) File a copy of any indenture relating to the registered securities. If such indenture is to be qualified under the Trust Indenture Act, it should include or be accompanied by (1) a cross-reference sheet to the location in the indenture of Sections 310–318(a) of the Trust Indenture Act and (2) as table of contents. If any such indenture is to be qualified under the Trust Indenture Act, also file the statement of eligibility of the trustee on Form T–1 and, if applicable, for individual trustee(s) on Form T–5.

(6) If debt securities are to be registered and an exemption from the U.S. trustee provisions of Section 310(a) of the Trust Indenture Act is sought pursuant to General Instruction III.B. or has been sought with respect to the securities to be registered, the registrant shall file as an exhibit the information specified in Items 4, 5, 6, 7, 8, 9 (if applicable), and 10 of Form T–5, or shall file as an exhibit or incorporate by reference any Form T–5 filed with the Commission not more than one year prior to the date of this filing.

Part III—Undertakings and Consent to Service of Process

1. Undertakings

a. Registrant undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to the securities registered pursuant to Form F–9 or to transactions in said securities.

b. If the offering registered on this Form is not being made simultaneously in Canada, and will continue for a period in excess of 30 days from the date of initial effectiveness of this registration statement, the registrant undertakes to file as a post-effective amendment to this registration statement, during any period in which offers or sales are being made, any amendment to the home jurisdiction document(s) accompanying this Form that would be required by Canadian law had the offering been made contemporaneously in Canada.

2. Consent to Service of Process

The registrant shall, at the time of filing Form F–9, furnish to the Commission, on Form F–X, a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in

(1) Any investigation or administrative proceeding conducted by the Commission; and

(2) Any civil suit or action brought against the registrant or to which the registrant has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States,

where the investigation, proceeding or cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F–9 or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

Signatures

Pursuant to the requirements of the Securities Act, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F–9 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State (Province or Territory) of _____, on _____, 19____

Registrant _____

By (Signature and Title) _____

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Name and Title) _____

Instructions

(Date) _____

A. The registration statement shall be signed by the registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, at least a majority of the board of directors or persons performing similar functions and its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement.

C. By signing this form, the registrant consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F–9 or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

Form F–10—Registration Statement Under the Securities Act of 1933

U.S. Securities and Exchange Commission
Washington, DC 20549

OMB Approval
OMB Number: 3235–0401
Expires: Approval Pending

Estimated average burden hours per response—2.0

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English)

(Province or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number (if applicable))

(I.R.S. Employer Identification Number (if applicable))

(Address and telephone number of Registrant's principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale of the securities to the public ——

(Principal jurisdiction regulating this offering)

It is proposed that this filing will become effective (check appropriate box)

[ ] pursuant to Rule 467(a) on the date on which the securities legally may be offered and sold in the registrant's principal jurisdiction

[ ] pursuant to Rule 467(b) on (date) at (time) (but not sooner than 7 days after filing)

Check if appropriate:

[ ] This filing constitutes an application for exemption under section 304(d) of the Trust Indenture Act of 1939 from Section 310 of that Act.

[ ] There are existing security holders under the indenture to which such application relates.

CALCULATION OF REGISTRATION FEE*

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

*See general instruction II.D for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this transaction.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said section 8(a), may determine.

General Instructions

I. Eligibility Requirements for Use of Form F–10

A. This Form F–10 may be used for the registration of securities under the Securities Act of 1933 (the "Securities Act").

B. Form F–10 is available to any registrant incorporated or organized under the laws of Canada, or any Canadian province or territory, that has been subject to the periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of the registration statement on this Form, and that is currently in compliance with such obligations, if (1) the aggregate market value of the common stock (including nonvoting common stock) of such registrant is (CN) $360 million or more; and (2) the aggregate market value of such common stock held by non-affiliates was, as of the end of the registrant's most recent fiscal year, (CN) $75 million or more, *provided,* That for the purposes of this Instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Instruction. The market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

C. This Form shall not be used if the registrant is an investment company, as defined in Section 3 of the Investment Company Act of 1940.

D. A registration statement on this Form should be filed with the Commission simultaneously with the filing of the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction"). Pre-effective amendments to this Form should be filed simultaneously with the filing of additional or changed documents in the principal jurisdiction. In accordance with Rule 467, this registration statement shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

Any amendment to such home jurisdiction document(s) after the effective date of this registration statement shall be filed with the Commission as a post-effective amendment to this Form simultaneously with the filing of such document(s) with the principal jurisdiction. Such post-effective amendment shall be deemed effective for purposes of the Securities Act at such time as the amendment to the home jurisdiction document(s) legally may be used under the applicable law of such jurisdiction, in accordance with Rule 467.

Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of the registration statement that increases the number of securities that may be sold thereunder, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "This combined prospectus relates to registration statement[s] 33-[insert file numbers of previous registration statements]."

If the registration statement or any post-effective amendment thereto relates to an offering that is not a contemporaneous offering, it shall become effective in accordance with Rule 467(b).

II. Application of General Rules and Regulations

A. The only Securities Act rules and regulations that apply to filings on this Form are those rules and regulations specifically referred to in the Form and Rule 408, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading. A registration statement or amendment thereto shall be deemed to be filed on the proper form unless objection to the form is made by the Commission prior to the effective date.

B. Three copies of the complete registration statement and any amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or any post-effective amendment thereto, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any post-effective amendments thereto, similarly bound, also shall be filed. No other exhibits are required to accompany such additional copies.

C. At least one copy of every registration statement and any amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

D. At the time of filing this registration statement, the applicant shall pay to the Commission, by a United States postal money order, certified check, bank cashier's check or bank money order, a fee of one fiftieth of one per centum of the maximum aggregate price at which the securities are proposed to be offered in the United States, but in no case shall such fee be less than $100.

E. Subject to the requirements of Item 1 of Part I, if any part of the registration statement or a post-effective amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or post-effective amendment, is in a foreign language, it shall be accompanied by a summary, version or translation in the English language.

F. The manually signed original of the registration statement or any post-effective amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

G. Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the registrant.

III. Compliance with Exchange Act, Trust Indenture Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 15d–4 under the Exchange Act, reporting obligations under section 15(d) of the Exchange Act arising solely from an offering of securities registered on this Form may be met by filing with the Commission, under cover of Form 40–F, documents that are filed with the securities commission or equivalent regulatory authority in the registrant's jurisdiction of incorporation. Registrants' attention is directed, however, towards other provisions of the Exchange Act that may be applicable, and specifically to the provisions of sections 12(b) and 12(g) of the Exchange and Rules 10b–6 and 10b–7 under the Exchange Act.

B. Pursuant to Rule 4d–2(b) under the Trust Indenture Act of 1939 (the "Trust Indenture Act"), a registrant registering debt securities on this Form may apply for exemption from the U.S. trustee provisions of section 310(a) of that Act by so indicating on the facing page of this Form and including the information specified by Item (6) of Part II thereof. Pursuant to Rule 4d–5 under the Trust Indenture Act, the application will be deemed to be granted unless, within seven days after such filing, the Commission orders a hearing thereon. Registrants' attention is directed towards other provisions of the Trust Indenture Act that may be applicable.

C. The Commission's rules on auditor independence as codified in section 600 of the Codification of Financial Reporting Policies apply to all financial statements that are included in this registration statement.

D. Independent accountants reporting on financial statements included in the registration statement should consider Canadian auditing guidelines pertaining to the Canada-U.S. reporting conflict with respect to contingencies and going concern considerations. If additional comments for U.S. readers are appropriate under those guidelines but are not included in the prospectus itself, those comments should be included with the legends required by Item 2 of Part I herein. In addition, the accountant's consent specifically should refer to any additional comments provided for U.S. readers.

Part I—Information Required To Be Sent to Shareholders

Item 1. Home Jurisdiction Document

The prospectus shall include the entire disclosure document or documents required to be delivered by the registrant in connection with the transaction pursuant to the laws of the jurisdiction in which the registrant is incorporated or organized or, where applicable, pursuant to the rules of any stock exchange upon which the issuer has any class of securities listed, or has applied for such listing. It need not include any documents incorporated by reference into such disclosure documents and not distributed to offerees pursuant to the laws of such jurisdiction. If any part of the document or documents to be sent to shareholders is in a foreign language, it shall be accompanied by a translation in English.

Item 2. Additional Information

The following information shall also be provided to offerees as part of the prospectus:

(a) Financial Statements.

Financial statements included in the home jurisdiction document should be supplemented to the extent necessary to satisfy the requirements of Item 18 of Form 20–F under the Exchange Act.

(b) Description of Business.

Registrants that are banks shall disclose the information set out under Item III.C., "Risk Elements," and Item IV., "Summary of Loan Loss Experience," of Industry Guide 3 under the Securities Act.

Item 3. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This offering is made by a foreign issuer, and while the issuer is subject to disclosure requirements in its own country, prospective investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have not been prepared in accordance with United States generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

"Prospective investors should be aware that the acquisition of the securities described herein may have tax consequences both in the United States and in the country of the registrant. Such consequences for investors who are resident in, or citizens of, the United States may not be described fully herein.

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the registrant is located in a foreign country, that some or all of its officers and directors are residents of a foreign country, that some or all of the underwriters or experts named in the registration statement are residents of a foreign country and that all or a substantial portion of the assets of the registrant and said persons are located outside the United States."

Item 4. List of Documents Filed with Commission

There shall be attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

Part II—Information Not Required To Be Sent to Shareholders

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) File any reports or information that in accordance with the requirements of the jurisdiction of the registrant must be made publicly available in connection with the transaction.

(2) File copies of any documents incorporated by reference into, or filed with any other regulatory authority concurrently with, the prospectus.

(3) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the offering document, or is named as having prepared or certified a report or valuation for use in connection with the offering document, the written consent of such person shall be filed.

If any such person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person also shall be filed unless the Commission dispenses with such filing as impracticable or as involving undue hardship in accordance with Rule 437.

Any other consent required by Rules 436 or 438 also shall be filed. Every amendment relating to a certified financial statement shall include the consent of the certifying accountant to the use of his certificate in connection with the amended financial statements in the registration statement or prospectus and to being named as having certified such financial statements.

Note: The consents required by this item shall specifically indicate consent regarding use of the report or valuation in the

registration statement filed in the United States.

(4) If any name is signed to the registration statement or report pursuant to power of attorney, manually signed copies of such power of attorney shall be filed. If the name of any officer signing on behalf of the registrant is signed pursuant to a power of attorney, certified copies of a resolution of the registrant's board of directors authorizing such signature also shall be filed.

(5) File a copy of any indenture relating to the registered securities. If such indenture is to be qualified under the Trust Indenture Act, it should include or be accompanied by (1) a cross-reference sheet to the location in the indenture of information included pursuant to sections 310–318(a) of the Trust Indenture Act and (2) a table of contents. If any such indenture is to be qualified under the Trust Indenture Act, also file the statement of eligibility of the trustee on Form T–1 and, if applicable, for individual trustee(s) on Form T–5.

(6) If debt securities are to be registered and an exemption from the U.S. trustee provisions of Section 310(a) of the Trust Indenture Act is sought pursuant to General Instruction III.B. or has been sought with respect to the securities to be registered, the registrant shall file as an exhibit the information specified in Items 4, 5, 6, 7, 8, 9 (if applicable), and 10 of Form T–6, or shall file as an exhibit or incorporate by reference any Form T–6 filed with the Commission not more than one year prior to the date of this filing.

Part III—Undertakings and Consent to Service of Process

1. Undertakings

a. Registrant undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to the securities registered pursuant to Form F–10 or to transactions in said securities.

b. If the offering registered on this Form is not being made simultaneously in Canada, and will continue for a period in excess of 30 days from the date of initial effectiveness of this registration statement, the registrant undertakes to file as a post-effective amendment to this registration statement, during any period in which offers or sales are being made, any amendment to the home jurisdiction document(s) accompanying this Form that would be required by Canadian law had the offering been made contemporaneously in Canada.

2. Consent to Service of Process

The registrant shall, at the time of filing Form F–10, furnish to the Commission, on Form F–X, a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in

(1) Any investigation or administrative proceeding conducted by the Commission; and

(2) Any civil suit or action brought against the registrant or to which the registrant has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States.

where the investigation, proceeding or cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F–10 or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

Signatures

Pursuant to the requirements of the Securities Act, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F–10 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State (Province or Territory) of _____, on _____, 19 ____.

Registrant _____
By (Signature and Title) _____

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____
(Name and Title) _____
(Date) _____

Instructions

A. The registration statement shall be signed by the registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, at least a majority of the board of directors or persons performing similar functions and its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which the registration statement is signed.

C. By signing this form, the registrant consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F–10 or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

Form 40–F

U.S. Securities and Exchange Commission,
Washington, DC 20549
OMB Approval
OMB Number: 3235–0406
Expires: Approval Pending
Estimated average burden hours per response—2.0
[Check one]
[ ] Registration Statement Pursuant to Section 12 of the Securities Exchange Act of 1934 or
[ ] Annual Report Pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 or
[ ] Current Report Pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934
For the fiscal year ended _____
Commission File Number _____
(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English)

(Province or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number (if applicable))

(I.R.S. Employer Identification Number (if applicable))

(Address and telephone number of Registrant's principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

General Instructions

A. Rules As To Use of Form 40–F

(1) Form 40–F may be used to file reports with the Commission pursuant to section 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 15d–4 (17 CFR 240.15d–4) thereunder by registrants that are subject to the reporting requirements of that section solely by reason of their having filed a registration statement on Form F–7, F–8, F–9 or F–10 under the Securities Act of 1933.

(2) Form 40–F also may be used to register securities with the Commission pursuant to section 12 (b) or (g) of the Exchange Act, and to file reports with the Commission pursuant to section 13(a) of the Exchange Act and Rule 13a–3 (17 CFR 240.13a–3) thereunder. Registrants eligible to use this form for such purposes shall have been incorporated or organized under the laws of Canada, or any Canadian province or territory, been subject to the periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this form and be currently in compliance with such obligations. The market value of the common stock (including non-voting common stock) of such registrant shall be (i) (CN) $180 million or more if a report or registration statement filed on this Form relates to debt or preferred stock that is investment grade; or (ii) (CN) $360 million or more in the case of all other reporting requirements. The aggregate market value of such common stock held by non-affiliates shall be (CN) $75 million or more, *provided*, That for the purposes of this Instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Instructions

1. A security is "investment grade" if at the time of filing this form, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3–1(c)(2)(vi)(F) under the Exchange Act (§ 240.15c3–1(c)(2)(vi)(F) of this chapter)) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade.

2. The market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

(3) A report on this Form shall be filed at the same time the information included herein is filed with the securities commission or equivalent regulatory authority of the jurisdiction of incorporation of the registrant.

(4) Registrants not previously having filed a Form F–X (§§ 239.41 and 249.50 of this chapter) in relation to the class of securities registered on this Form or with regard to which this report is filed shall file a Form F–X with the Commission together with their first filing on this form.

(5) Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the registrant.

B. Information To Be Filed on this Form

(1) Registrants shall file with the Commission on this Form all information specified in the Instruction to this paragraph that the registrant (i) makes or is required to make public pursuant to the law of the jurisdiction of its domicile or in which it is incorporated or organized, (ii) files or is required to file with a stock exchange on which its securities are traded and which was made public by such exchange, or (iii) distributes or is required to distribute to its security holders.

Instruction: The information required to be filed under paragraph (1) of this section is information material to an investment decision such as: the financial condition or results of operations; changes in business; acquisitions or dispositions of assets; issuance, redemption or acquisitions of securities; changes in management or control; the granting of options or the payment of other compensation to directors or officers; and transactions with directors, officers or principal security holders.

(2) Registrants reporting on this Form pursuant to the provisions of section 13(a) or 15(d) of the Exchange Act shall, when filing with the Commission any annual report required by any Canadian federal and/or provincial or territorial securities commission or equivalent agency, additionally furnish financial statements in the form required by Item 17 of Form 20–F under the Exchange Act (§ 249.220f of this chapter) unless this Form is filed with respect to non-convertible investment grade debt or preferred stock in which case no such financial statements are required, or unless this Form is filed with respect to a reporting obligation under section 15(d) that arose solely as a result of a filing made on Form F–7, F–8, F–9 or F–10, in which case no such financial statements are required.

Signatures

Pursuant to the requirements of the Exchange Act, the registrant certifies that it meets all of the requirements for filing on Form 40–F and has duly caused this report to be signed on its behalf by the undersigned, thereto duly authorized.

Registrant _____
By (Signature and Title)* _____
Date _____

Form F–X—Appointment of Agent for Service of Process by Foreign Issuers Registering Securities on Forms F–7, F–8, F–9 or F–10, or Registering or Filing Periodic Reports on Form 40–F, or by any Person Filing Tender Offer Documents on Schedules 13E–4F, 14D–1F or 14D–9F

U.S. Securities and Exchange Commission,
Washington, D.C. 20549
OMB APPROVAL
OMB Number: 3235–040K
Expires: Approval Pending
Estimated average burden hours per response—2.0

General Instructions

I. Form F–X shall be filed with the Commission: (a) By any issuer registering securities on Forms F–7, F–8, F–9 or F–10 under the Securities Act of 1933; (b) by any issuer registering securities or filing periodic reports on Form 40–F under the Securities Exchange Act of 1934 if it has not previously filed a Form F–X in connection with the class of securities registered or in relation to which a report is filed on Form 40–F; and (c) by any issuer or other person filing tender offer documents on Schedules 13E–4F, 14D–1F or 14D–9F under the Securities Exchange Act of 1934.

II. Form F–X shall be filed in duplicate original.

1. Name of issuer or person: _____
2. This is (select one)
[ ] an original filing for the above issuer or person
[ ] an amended filing for the above issuer or person
3. The issuer or person is incorporated or organized under the laws of (Name of the jurisdiction under whose laws the issuer is organized or incorporated) _____ and has its principal place of business at (Address in full) _____

4. The issuer or person designates and appoints, for as long as any of its securities referred to below are outstanding, (Name of United States person serving as agent) _____ ("Agent") located at (Address in full in the United States) _____

as the agent of the issuer or person upon whom may be served any process, pleadings, subpoenas, or other papers in

(1) Any investigation or administrative proceeding conducted by the Commission; and

(2) Any civil suit or action brought against the issuer or person or to which the issuer or person has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States,

where the investigation, proceeding or cause of action arises out of or relates to or concerns (a) any offering made or purported to be made in connection with the securities registered by the issuer on Form (Name of Form _____ on (Date) _____ or any purchases or sales of any security in connection therewith; or (b) any tender offer for the securities of a Canadian issuer with respect to which filings are made with the Commission on Schedules 13E–4F, 14D–1F or 14D–9F. The issuer or person stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, such agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

5. The issuer or person stipulates and agrees, for as long as any of the securities described above are outstanding, to appoint a successor agent for service of process and file an amended Form F–X if the issuer or person discharges the Agent or the Agent is unwilling or unable to continue to accept service on behalf of the issuer. The issuer or person further undertakes to advise the Commission promptly in writing of any change to the Agent's name or address.

The issuer or person certifies that it has duly caused this power of attorney, consent, stipulation and agreement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of _____ Province (or State of) _____ this ____ day of _____ 19____ A.D. _____

Issuer or Person:

By (Signature and Title)

This statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____
(Title) _____
(Date) _____

Instructions

1. The power of attorney, consent, stipulation and agreement shall be signed by any person filing this Form, and, if such person is an issuer, by the Issuer, its principal executive officer or officers, at least a majority of the board of dirctors or persons performing similar functions, and its

*Print the name and title of the signing officer under this signature.

authorized Agent in the United States. Where the issuer or person is a limited partnership, the power of attorney, consent, stipulation and agreement shall be signed by a majority of the board of directors of any corporate general partner signing the power of attorney, consent, stipulation and agreement.

2. The name of each person who signed Form F–X shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs Form F–X. Each copy shall be manually signed by the persons specified in Instruction 1. Where any name is signed pursuant to a board resolution, a certified copy of the resolution shall be filed with each copy of this Form. If any name is signed pursuant to a power of attorney, a manually signed copy of each power of attorney shall be filed with each copy of the Form.

NOTE: The persons executing this power of attorney, consent, stipulation and agreement should appear before a person authorized to administer acknowledgements in the jurisdiction in which it is executed and acknowledge that they executed it on behalf of the issuer or person as its free and voluntary act. The acknowledgement should be in the form prescribed by the law of the jurisdiction in which it is executed. The form of acknowledgement suggested below should be used only if consistent with the requirements of the law of such jurisdiction.

The failure of any acknowledgement to meet applicable requirements shall not affect the validity or effect of the foregoing power of attorney, consent, stipulation and agreement.

Province (or State) of _____
County of _____

I (Name)_____, a (Official position of person administering acknowledgement) _____, in and for (said County in) the Province (or State) aforesaid, certify that the foregoing named persons personally appeared before me this day, stated that they are the same persons named in this instrument, that they serve in the capacity stated in this instrument, that they are authorized to execute this instrument for the Issuer or person, and that they signed and sealed this instrument for and on behalf of the Issuer or person as its free and voluntary act for the uses and purposes set forth.

Given under my hand and seal this ____ day of _____, 19____ A.D. (Seal)

Signature of official: _____
Official position: _____
My Commission (or Office) expires:
(Date)_____

Application for Exemption Pursuant to Rule 4d–3 Under the Trust Indenture Act of 1939

U.S. Securities and Exchange Commission,
Washington, DC 20549

Form T–6

OMB APPROVAL
OMB Number: 3235–0050
Expires: Approval Pending
Estimated average burden hours per response—2.0

_____
(Name of applicant)

_____
(Jurisdiction of incorporation)

_____
(Address and telephone number of Applicant's principal executive offices)

_____
(Name, address and telephone number of agent for service)

_____
(Exact name of trustee as specified in its charter)

_____
(Jurisdiction of incorporation)

_____
(Address and telephone number of principal executive offices)

_____
(Name, address and telephone number of agent for service)

General Instructions

1. Rule as to use of Form T–6. Form T–6 shall be used for applications for exemption filed pursuant to Rule 4d–1 under the Trust Indenture Act of 1939 (the "Act") [17 CFR 260.4d–1], except those filed pursuant to subparagraph (b) of Rule 4d–2 [17 CFR 260.4d–2].

2. General Rules and Regulations. The General Rules and Regulations under the Act contain provisions governing applications on this Form. Attention is particularly directed to Rules 4d–1 through 4d–6 under section 304(d) of the Act [17 CFR 260.4d–1 through 260.4d–6].

3. Incorporation by Reference. Attention is directed to Rules 7a–28 through 7a–32 [17 CFR 260.7a–28 through 260.7a–32], inclusive, regarding incorporation by reference. In addition to matters which may be incorporated by reference pursuant to Rules 7a–28 [17 CFR 260.7a–28] and 7a–29 [17 CFR 260.7a–29], the applicant may incorporate by reference, by answer to any item of the form, any item or items of a registration statement, or application for qualification of an indenture, filed with the Commission.

4. Change of Agent's Name or Address. The applicant should promptly inform the Commission in writing of any change to the name or address of the applicant's agent for service.

Item 1: Specify which of Forms F–7, F–8, F–9 or F–10 the applicant is eligible to use.

Item 2: State whether the applicant expects to issue the securities that are the subject of this application within one year from the date of the application, and the basis for such expectation.

Instruction. If the securities that are the subject of this application are outstanding, a statement to that effect shall be made.

Item 3: Describe the securities that are the subject of the application and identify the indenture under which issued or to be issued.

Instructions

1. There shall be given such information as will indicate the type and general character of the securities. The applicant may provide a non-specific description of the securities, such as "unsecured debentures or notes."

2. The application may relate to different types or classes of securities issued or to be issued under different indentures, but appropriate description should be given, such as: "unsecured debentures to be issued under an indenture between the applicant and trustee x," and "mortgage bonds to be issued under an indenture and deed of trust between the applicant and trustee y."

3. To the extent known at the time of application, indicate the date of maturity or, if the issue matures serially, a brief indication of the serial maturities, such as "maturing serially from 1990 to 1995;" if the payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of issue and, if convertible or callable, a statement to that effect. If the securities are or will be secured by the mortgage or pledge of property, to the extent known, identify the property and indicate its general location.

Item 4: Give the maximum aggregate principal amount of the securities proposed to be issued under the indenture or indentures to which reference is made in response to Item 3. Give the maximum aggregate principal amount of the securities that are the subject of the application.

Instruction. If the securities that are the subject of the application have been or will be issued under more than one indenture, appropriate details shall be given.

Item 5: Indicate whether this appplication relates to securities issued or issuable under an indenture under which any other securities are outstanding. If any securities are outstanding under the indenture, appropriate details shall be given as to compliance with Rule 4d–4 [17 CFR 260.4d–4].

Item 6: File the following information as to each trustee who proposes to serve as trustee with respect to the securities specified in the application:

(a) The name of the trustee and the address of its principal executive offices.

(b) The form and date of organization.

(c) The name and address of each examining or supervising authority to which it is subject.

(d) Whether it is authorized to exercise corporate trust powers.

(e) The amount of the combined capital and surplus of the trustee as of the end of its most recent fiscal year.

Item 7: Give a brief description of the nature and extent of supervision and examination of the trustee by regulatory authorities in the jurisdiction in which the trustee is organized and doing business.

Item 8: If the applicant does not desire an opportunity for a hearing it may include in the application the waiver and request provided for in Rule 4d–5 [17 CFR 260.4d–5].

Item 9: Listing of Exhibits. List below all exhibits filed as a part of this application.

Signature

The applicant, _____, a _____ organized and existing under the laws of _____, has duly caused this application to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of _____ and State (Province or Territory) of _____, on the _____ day of _____, 19_____

(Applicant) _____
(Name and Title) By: _____

Instruction as to Signature. The name of each person signing the application shall be typed or printed beneath the signature.

Exhibits

Subject to rules permitting incorporation of exhibits by reference, the following exhibits are to be filed as part of the application. Such exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may be referred to by the designation given in the previous filing. Where the exhibits are incorporated by reference, the reference shall be made in the list of exhibits called for under Item 9.

1. A copy of the articles of association of the trustee is now in effect.

2. A copy of the certificate of authority of the trustee to commence business, if not contained in the articles of association.

3. A copy of the authorization of the trustee to exercise corporate trust powers, if such authorization is not contained in the documents specified in paragraph (1) or (2) above.

4. A copy of the existing bylaws of the trustee, or instructions corresponding thereto.

5. A copy of each indenture to which reference is made in Item 3, if available at the time of application.

6. A copy of the latest report of condition, if any, of the trustee published pursuant to law or the requirements of its supervising or examining authority.

7. The consent of the trustee and power of attorney required by Rule 4d–6 [17 CFR 260.4d–6].

Appendix B—Multijurisdictional Disclosure System; Canada

The Ontario Securities Commission (the "OSC") and the Commission des valeurs mobilieres du Quebec (the "CVMQ") (collectively, the "Commissions") are publishing for comment an outline of a multijurisdictional disclosure system that would permit United States issuers that, depending on the nature of the offering, meet market value, public float and U.S. reporting history tests to distribute securities in Canada using disclosure documents prepared according to the requirements of U.S. regulatory authorities. Simultaneously with the publication of this release, the Securities and Exchange Commission (the "SEC") is publishing for comment a multijurisdictional disclosure release and proposed Rules, Forms and Schedules that would permit Canadian issuers that, depending on the offering, meet market value, public float and Canadian reporting history tests to register securities in the U.S. using disclosure documents prepared according to the requirements of Canadian regulatory authorities. Canadian issuers meeting tests of market value and public float also would be able to use Canadian documents to meet U.S. periodic disclosure requirements. In addition, Canadian issuers would be able to use Canadian documents to meet proxy requirements for certain solicitations and to meet insider reporting requirements.

The multijurisdictional disclosure system further would permit third party and issuer share exchange and cash take-over bids/tender offers to be made in compliance with the provisions of applicable take-over bid regulations in the target's home jurisdiction where less than 20 percent of the class of securities subject to the offer were held of record by residents of the other jurisdiction, whether Canada or the U.S.

SEC Release: Copies of the SEC Multijurisdictional Disclosure System Release are available upon request from the Secretary of the OSC and of the CVMQ.

Date for Submission of Comments: October 31, 1989

Reference:

Pamela Hughes, Deputy Director, Legal, Corporate Finance Branch, Ontario Securities Commission, (416) 593–3653.
Rosetta Gagliardi, Direction de l'information, Commission des valeurs mobilieres du Quebec, (514) 873–5326.

I. Introduction

A. Summary

Developments in the international securities markets and an increase in the number of securities offerings made across national boundaries have emphasized the problems caused to issuers by compliance with the securities laws of multiple jurisdictions. Attempting to comply with the disclosure provisions of securities regulators in multiple countries adds expense and additional time. The additional time may substantially increase cost, since conditions advantageous to the issuer may prevail in the capital markets only for a limited period. Rather than comply with the requirements of regulators in more than one country, issuers may choose to exclude certain jurisdictions from their offerings, thus excluding investors in that jurisdiction from investment opportunities.

In 1985, the Securities and Exchange Commission ("SEC") issued Securities Act Release No. 6568 "Facilitation of Multinational Securities Offerings" requesting comments on two alternative methods of dealing with multijurisdictional offerings: "the common prospectus approach" and the "reciprocal prospectus approach".

A majority of commenters favoured the reciprocal approach. The OSC and the CVMQ in consultation with the other securities regulatory authorities in Canada commenced discussions with the SEC in 1987 with a view toward establishing a system of multijurisdictional disclosure based on the reciprocal approach. The system as proposed is a hybrid between the reciprocal approach and the common prospectus approach.

The system would permit single-jurisdiction regulation of certain multiple-jurisdiction securities offerings and continuous reporting obligations so that such offers may be made more efficiently and at less expense. The disclosure document for an offering would be prepared in accordance with the requirements of the issuer's home jurisdiction. The regulatory authorities of the home jurisdiction would be solely responsible for establishing the disclosure standards for both offering documents and continuous reporting. Regulatory review of the offering disclosure document would be that customary in that issuer's home jurisdiction and the document generally would be given a no-review status in the other jurisdiction (the "receiving jurisdiction") in which the securities are being distributed. The system would also facilitate crossjurisdictional debt and equity offerings in which the disclosure document for an offering would be prepared in accordance with the requirements of the issuer's home jurisdiction and filed solely in the receiving jurisdiction. Issuers would continue to be subject in each jurisdiction where the offer was made to provisions imposing civil or criminal liability for any material misrepresentation or omission in the disclosure document or fraud or manipulation in connection with the offering and would be subject to the authority of each securities commission to halt the offering in the public interest and for the protection of investors.

The multijurisdictional system represents an initial step towards recognition of home jurisdiction disclosure requirements by the receiving jurisdiction and would cover debt and equity offerings by "substantial" issuers and a larger class of rights and exchange offerings, where less than 20 percent of the class of securities involved are held of record by residents of the receiving jurisdiction.

The multijurisdictional system also extends to regulations applicable to third-party and issuer exchange and cash tender offers made for the securities of U.S. issuers in compliance with U.S. tender offer regulations, where less than 20 percent of the shares involved are held of record by Canadian residents and to exchange and cash take-over bids and issuer bids made for the securities of Canadian issuers in compliance with Canadian take-over bid and issuer bid rules, where less than 20 percent of the shares involved are held of record by U.S. residents.

OSC Policy Statement 7.1 *Application of Requirements of the Securities Act to Certain Reporting Issuers* and the CVMQ permit issuers other than those incorporated, organized or continued under the laws of Canada or a province or territory of Canada, which are subject to the reporting obligations of the SEC under the Securities Exchange Act of 1934 (the "Exchange Act"), to file with the OSC and CVMQ the continuous disclosure materials filed with the SEC in lieu of materials required by the Securities Act (Ontario) (the "Ontario Act") and the Securities Act (Quebec) (the "Quebec Act"). The multijurisdictional system would permit use of Canadian periodic reporting to meet the reporting requirements of the Exchange Act where (a) such requirements arose solely by reason of offerings registered on the multijurisdictional forms, or (b) the issuer of the securities met tests of market value and reporting history. This would include Annual Information Forms, Annual Reports, Management Discussion and Analysis, annual and interim financial statements, material change reports, insider reporting and proxy materials for routine annual meeting matters.

At approximately the same time as this proposal is published for comment, the SEC is issuing a release setting forth changes that would permit the implementation of a multijurisdictional disclosure system to enable issuers to make public offerings and take-over bids in the receiving jurisdiction using disclosure documents prepared according to home jurisdiction requirements.

The multijurisdictional system would not be available with respect to distributions of securities or continuous reporting by mutual

funds in Canada or investment companies required to register under the U.S. Investment Company Act of 1940.

B. Canadian Issuers in the United States Market

Canadian companies are frequent issuers in the U.S. capital markets. In 1987 and 1988, Canadian issuers made a total of 124 public offerings in the United States for an approximate total of $10,084,287,000 of which $8,095,023,000 was equity. Canadian companies also have made use of the U.S. shelf registration system. Over $1,761,622,000 of debt securities have been registered by Canadian issuers for sale under SEC Rule 415 in the last three years. As of June 30, 1989, there were 21 Canadian equities listed on the New York Stock Exchange, 38 on the American Stock Exchange and 146 on the National Association of Securities Dealers' Automated Quotation system ("NASDAQ").

C. Mutual Recognition and Harmonization

Efficiency of the capital-raising process would be enhanced greatly by permitting an issuer to prepare one disclosure document for use in each jurisdiction in which it chooses to sell securities. There are two primary approaches to achieve this goal: harmonization of disclosure standards and mutual recognition of disclosure standards established in other jurisdictions.

Under a harmonization approach, participating jurisdictions would agree upon a set of disclosure requirements that would be the same in each jurisdiction, with the result that a disclosure document prepared pursuant to the requirements of one participating jurisdiction would comply automatically with the requirements of all other participating jurisdictions. In addition to reducing costs, a prime benefit of such a system would be to provide comparability of information from issuer to issuer and country to country.

Mutual recognition, on the other hand, would enable an issuer to prepare a disclosure document according to the requirements of its home jurisdiction, and to have that document accepted for securities offerings in every other participating jurisdiction. Mutual recognition does not necessarily ensure comparability from issuer to issuer and country to country.

As proposed, the multijurisdictional disclosure system is a hybrid of the two approaches. While it is based on the concept of mutual recognition, the participants will be those jurisdictions whose disclosure systems, while different in detail, in substance provide investors with information to make an informed investment decision and financial statements of relevance and reliability. The existence of a well-developed, sophisticated and reliable system for administering these requirements is also critical, as the Commission will rely primarily on foreign disclosure requirements, application of disclosure standards and day-to-day enforcement of those standards.

II. The Proposed System

A. Overview and Purpose

In proposing adoption of the system, the Commissions are taking a first step rather than providing for multijurisdictional registration and disclosure in all cases. Limiting the first phase of the system to a relatively limited number of transactions and issuers will enable the regulators to monitor use of the system and to address potential problems. At a later date, a wider variety of transactions, a greater number of issuers and other jurisdictions may be added.

The system as presently proposed would extend to debt and equity offerings by "substantial" issuers, and to specified rights and exchange offers. All issuers making such offers in Ontario or Quebec pursuant to the system would be required to have three-year reporting histories with the SEC and to be in compliance with the reporting requirements of the SEC at the time of filing. Issuers would also be required, except in the case of rights offerings, to meet tests of minimum market value or public float. The system also would permit compliance with the Exchange Act to suffice for compliance with the Ontario Act and Quebec Act in the case of takeover bids and issuer bids made to Ontario residents for the securities of U.S. issuers, a limited percentage of which are held by Canadian residents.

The purpose of the "substantial" designation is to single out issuers whose size is such to suggest that the market operates efficiently in respect of their securities. Such issuers generally have a wide market following and the marketplace is in a position to set a price on their securities based on all available information. The Commissions have distinguished between investment grade debt and preferred shares, and other securities in determining the availability of total reliance on U.S. disclosure. A "substantial" issuer is defined as one that has a market value of at least U.S. $150 million in the context of investment grade debt and preferred shares, and U.S. $300 million in the case of other securities.

The Commissions are proposing to rely completely on U.S. disclosures in the case of investment grade debt and preferred shares. Investment grade debt and preferred shares would be defined as in Paragraph C.1 and the schedule to O.S.C. Policy Statement 5.6 and under Quebec rules with the exception that convertible debt or convertible preferred shares that are non-convertible for at least one year from the date of issue would be included within debt or preferred shares. Major factors affecting the trading price of such securities would be the yield on such securities and the rating that they carry. Financial information pertaining to liquidity and capital resources is most relevant to this investment decision and both U.S. and Canadian GAAP usually provide an adequate basis for an assessment of this information with respect to the ability to repay principal and interest when due.

In the case of offerings by substantial issuers of securities other than investment grade debt and preferred shares, the Commissions propose to continue to require financial statement reconciliation, based on the premise that comparability of financial information, particularly net income and shareholders' equity, as a whole and on a per share basis, is of greater importance to investment decisions in these securities.

The Commissions specifically request comment as to whether the differences in accounting principles are sufficient to warrant reconciliation requirements, or whether Canadian investors would be in an adequate position to make an informed decision on the basis of information contained in U.S. financial statements. The Commissions also request comment as to whether domestic issuers would be unduly disadvantaged by permitting U.S. issuers to distribute equity in Ontario and Quebec without reconciliation.

The multijurisdictional registration process also would be extended to certain rights offers and securities exchange take-over bids ("exchange offers"), primarily because of concerns for domestic investors' interests. Rights and exchange offers made in Ontario or Quebec must be filed with the respective Commission. Foreign issuers making an exchange offer may not extend the offer to Canadian holders because they are unwilling to bear the costs and other burdens of complying with Canadian take-over laws. Investors are relegated either to selling into the market at less than the full tender offer consideration and incurring transaction costs not imposed in the tender offer, or remaining minority shareholders, subject to the risk of being cashed out in a subsequent merger or arrangement.

It therefore would appear to be in the interests of domestic investors to facilitate the qualification of such offerings to encourage U.S. issuers to extend such offers to domestic shareholders. Additionally, imposing a duplicative cost on issuers would seem particularly inappropriate where the effect on Canada is incidental to a transaction. Where less than 20% of the class of securities to which the rights or exchange offer related are held of record by Canadian residents, offers could be made in Ontario or Quebec pursuant to the system. The percentage of record holders would be determined as of the end of the issuer's last quarter or, if such quarter ended within 60 days prior to the date of filing, as of the end of the preceding quarter.

Rights offerings to Ontario and Quebec investors that already own the securities of the issuer are particularly appropriate for multijurisdictional registration. Investors reasonably could be expected to proceed to make a further investment based on the same type of information that they relied upon when they bought the securities in the secondary market. Consistent with this theory, multijurisdictional registration for rights offerings could be made available to a larger class of issuers than those designated "substantial". Comment is requested as to whether rights offers should be permitted to be made pursuant to the system in the event that more than 20 percent of the subject securities were held of record by Canadian residents. For example, should the limit be 30, 40 or 50 percent or should there be no limit at all?

In the case of exchange offers, it similarly seems appropriate to facilitate distribution of securities in Ontario and Quebec so that domestic investors are not denied rights of value that are offered to all other holders of the same class of securities. On the other hand, in non-issuer exchange offers, unlike

rights offerings, the investor has not already made an investment decision with respect to the bidder whose securities are being offered in the exchange. Due to this difference, the multijurisdictional registration system is proposed to extend to exchange offers with higher eligibility standards than those applicable to rights offerings. As with rights offerings, multijurisdictional registration would be available where the receiving country's investors do not own more than 20% of the outstanding shares of the targeted class. U.S. participants making exchange offers ("bidders") would be required to have a public float of (U.S.) $75 million and have a three-year reporting history with the SEC.

In the case of exchange offers, a decision to extend offers to Ontario and Quebec investors depends not only on the application of Ontario and Quebec disclosure requirements but also Ontario and Quebec take-over bid regulation. U.S. issuers conducting tender offers for the shares of U.S. target companies may be deterred from extending both exchange and cash offers to target shareholders residing in Ontario and Quebec by costs attendant to compliance with Ontario's and Quebec's applicable take-over bid rules and thus exclude Ontario, Quebec and other Canadian investors from their tender offers.

Rather than protecting Ontario and Quebec investors, the application of Ontario and Quebec take-over bid rules to predominantly U.S. tender offers thus can operate to deny these investors the opportunity to participate in such transactions.

The proposed system would work as follows: when (1) Ontario and/or Quebec constitutes the primary jurisdiction for a bid; and (2) less than 20% of the securities of the target corporation are held of record by U.S. residents, then, pursuant to proposed requirements of the SEC under the system, the bid must be extended to all U.S. shareholders on the same terms as made to Ontario and/or Quebec shareholders. The bid must be made in compliance with Ontario and/or Quebec law.

Similarly, when (1) the U.S. constitutes the primary jurisdiction for the tender offer; and (2) less than 20% of the securities of the target corporation are held of record by Canadian residents, then, pursuant to proposed requirements of the Commissions under the system, the U.S. tender offer must be extended to Ontario and/or Quebec shareholders on the same terms as made to U.S. shareholders. The tender offer must be made in conformity with the Exchange Act.

The multi-jurisdictional system should reduce disincentives to the inclusion of Canadian shareholders in predominantly U.S. cash or exchange offers where less than 20 percent of the subject class was held of record by Canadian residents. More importantly, because the substantive protection and disclosure obligations established by the U.S. tender offer regulations are generally comparable in most respects to those prescribed by the Ontario Act and the Quebec Act, the regulation made thereunder and the Commissions' policy statements, holders of shares in U.S. companies residing in Ontario or Quebec will not be unduly disadvantaged by comparison with Ontario or Quebec shareholders in domestic companies. To minimize any potential regulatory inequality, the nationality of a bidder in a cash tender offer would not determine availability of the system. Thus, Canadian and U.S. bidders for a U.S. target would be governed by the same tender offer regulation.

B. The Mechanics of the Multijurisdictional Disclosure System

The aim of the multijurisdictional disclosure system is to enable an issuer to prepare a disclosure document according to the requirements of its home jurisdiction, and to use that document for a securities offering in the receiving jurisdiction, either in conjunction with an offering in the home jurisdiction or solely as an offering in the receiving jurisdiction.

In the case of securities offerings made pursuant to the system in Canada by U.S. issuers, U.S. regulatory authorities would be responsible for establishing and applying disclosure standards. For offerings made by U.S. issuers both in the U.S. and Canada, regulatory review of the disclosure document would be that customary in the U.S. Thus, except in the unusual case where the Commission staff had reason to believe there was a problem with the filing or the offering, the documents generally would be given a "no review" status in Ontario and Quebec. Unless the principal jurisdiction specified by the issuer pursuant to National Policy Statement No. 1 had received notification from another jurisdiction in Canada in which the securities were being distributed that it was not prepared to issue a receipt, the principal jurisdiction would issue the receipt for the final prospectus upon notification that the registration statement had been declared effective by the SEC. Although U.S. issuers offering securities pursuant to the system would not be required to comply with Ontario and Quebec disclosure requirements, they nonetheless would be liable under Ontario and Quebec civil liability provisions for any misrepresentation in the disclosure document. They would have to comply with requirements concerning the language of disclosure documents if the offering is made in Quebec. They would also be subject to the authority of the Commissions to stop the offering in the public interest and for the protection of investors.

The system would distinguish between the disclosure document required to be given to each investor and the documents to be filed with the Commissions. Participating U.S. issuers would be required to provide Ontario and Quebec investors with the same information as investors in the home jurisdiction receive. Information incorporated by reference in the prospectus would not be required to be distributed to investors, but would be deemed part of the prospectus. Investors would be able to obtain such information from the Commissions or, upon request, from the issuer.

The document delivered to investors, together with all the information incorporated into that document by reference or filed with the appropriate U.S. regulatory authority or authorities at the same time the disclosure document is filed would be required to be filed with the Commissions. In addition, documents filed and subsequently incorporated by reference into the prospectus must also be filed with the Commissions contemporaneously with the filing with the SEC. Thus, the prospectus would be subject to section 70 and section 128 liability under the Ontario Act and all other provisions of the securities laws applicable to a prospectus filed under the Ontario and Quebec Acts. Moreover, the prospectus would be in the public files, available for public review.

The issuer would be required to add to the prospectus legends warning investors that the investment may have tax consequences in the issuer's jurisdiction, that investors may have to pursue remedies for any securities law violation against persons and assets located in the issuer's jurisdiction, and that any financial statements are prepared in accordance with U.S. accounting standards. The issuer would also be required to add a description of purchasers' statutory rights of rescission and damages and issuer's and underwriters' certificates prepared in accordance with Ontario and Quebec requirements.

The prospectus would be accompanied by a consent to service of process and appointment of an Ontario and a Quebec person as agent for process.

Where debt securities are to be distributed by a U.S. issuer, issuers would be required to comply with the trust indenture provisions of the Business Corporations Act, 1982 ("OBCA"). The Commission intends to issue a blanket ruling pursuant to ss. 46(4) of the OBCA to permit U.S. issuers of debt pursuant to the system to use solely a U.S. trustee.

Prospectuses on the proposed forms must be filed with the Commissions on the same day as the filing of the registration statement with the SEC. Any post-effective amendment similarly must be filed on the same day with the Commissions as an amendment.

A prospectus prepared in connection with a contemporaneous offering in the issuer's home jurisdiction and the receiving jurisdiction would be issued a final receipt on the date the securities legally could be sold in the home jurisdiction. A prospectus filed in connection with an investment grade debt, preferred share or equity offering solely in the receiving jurisdiction would be issued a final receipt in Canada or declared effective in the U.S. seven days after the date of filing of the prospectus in the receiving jurisdiction. A Canadian issuer making an offering solely in the U.S. would file the registration statement filed with the SEC contemporaneously with the Commissions pursuant to the issuer's continuous disclosure obligations. The Commissions specifically request comment as to whether the procedures outlined are likely to result in Canadian issuers that would otherwise have offered securities in Canada choosing to offer only in the United States. Registrants making a delayed or continuous debt or equity offering in the U.S. pursuant to SEC Rule 415 (the shelf registration system) would be able to make a contemporaneous offering in Canada pursuant to the multijurisdictional system.

Whenever a U.S. issuer is subject to a requirement pursuant to Item 512(a) of

Regulation S–K to file a post-effective amendment, the amendment would be filed under subsection 56(1) of the Ontario Act and section 25 of the Quebec Act. The amendment would become effective simultaneously in the U.S., Ontario and Quebec. A post-effective amendment or supplement describing the attributes of specific securities to be taken from the "shelf" and distributed would not constitute an amendment "for the purpose of distributing securities in addition to the securities previously disclosed in the prospectus" for the purposes of subsection 56(2) of the Ontario Act and pursuant to sections 62.6 and 62.9 of the Regulations under the Quebec Act.

The requirement that an amendment to the prospectus be filed does not apply to a Form S–3 where the required updating is included in periodic reports that are incorporated by reference into the shelf prospectus.

A prospectus supplement or "sticker" reflecting material changes, not comprising fundamental changes under Item 512(a) of Regulation S–K, such as changes in interest rates, redemption prices or maturities where a shelf prospectus relates to a series of debt offerings or the selection of the final method of distribution or of any one or more of the underwriters named would be filed with the Commissions on the same day as filed with the SEC.

All shelf prospectuses filed pursuant to the multijurisdictional system must be accompanied by an undertaking of the issuer to the Commissions to file with the Commissions an amendment or supplement whenever required by the rules of the SEC. In addition, when a shelf prospectus contains no set plan of distribution or generally states that securities may be sold pursuant to one of several distribution methods and does not include an underwriters' certificate, an amendment to the prospectus must be filed, disclosing the material aspects of the plan of distribution including a certificate of the underwriters, prior to the distribution of securities under the prospectus.

C. Application of the System to Specific Transactions by Canadian Issuers

The following is a detailed discussion of how Canadian issuers could offer securities or any offerors could make a cash tender offer in the United States under the multijurisdictional disclosure system. These procedures are equivalent to those proposed by the OSC and the CVMQ for use by U.S. issuers in Canada.

1. *Offerings by Substantial Issuers*—(a) *Offerings of Investment Grade Debt and Preferred Stock (SEC Form F–9).* Multijurisdictional registration would be permitted for offerings by substantial issuers of non-convertible debt securities or non-convertible preferred stock that are investment grade, as defined in the United States. Securities that are not convertible for one year from the date of effectiveness of the registration statement would be treated as non-convertible. Comment is requested as to the treatment of convertible securities. Should the period of non-convertibility be longer (e.g. two or three years)?

Offerings of such investment grade securities would be registered with the SEC on proposed Form F–9. Form F–9 would be a cover page setting out registration details, including certain prospectus legends and wraparound the Canadian prospectus. To be eligible to use that form, an issuer would be required to be incorporated anywhere in Canada, with a total market value for its securities of (CDN.) $180 million and a public float of (CDN.) $75 million. "Public float" is the monetary value of all outstanding equity securities owned by non-affiliates, and would be determined according to Canadian practice. Non-voting common stock would be included in the calculation of public float. The (CDN.) $180 million requirement parallels one of the eligibility standards for use of Form S–3, which permits use of a short-form prospectus in the United States by U.S. issuers. The public float requirement is derived from the Canadian test for eligibility for the prompt offering qualification system and is based on the Canadian definition of affiliates in determining the amount of securities publicly held. These requirements are expressed in terms of Canadian rather than U.S. currency so that fluctuations in exchange rates would not affect an issuer's eligibility to use the Form. The date as of which the issuer must meet the market value and float tests would be a date within the 30 day period prior to the filing of the registration statement. Form F–9 would not require reconciliation of financial statements from Canadian GAAP to U.S. GAAP. Comment is requested as to whether the requirements set forth provide adequate indication of an issuer's market following. Should the market value and public float tests be set at different levels, and if so, should they be higher (for example, market value of (CDN.) $300 or $500 million, or float of (CDN.) $100 or $300 million) or lower (for example, market value of (CDN.) $100 or $75 million or float of (CDN.) $50 or $25 million?

(b) *Other Offerings (SEC Form F–10).* Offerings by substantial issuers of securities other than investment grade debt or preferred stock would be registered on proposed Form F–10. In this context, "substantial issuers" would be those with a market value of (CDN.) $360 million (to approximate the SEC's requirement that equity issuers eligible to use the Form F–3 short form prospectus have a market value of securities of (U.S.) $300 million), and a public float of (CDN.) $75 million. Eligibility would be determined as of a date within the 30 day period prior to the filing of the registration statement. As with Form F–9, comment is requested as to the appropriateness of the tests for eligibility for Form F–10.

Form F–10 would require reconciliation of financial statements to U.S. GAAP. The reconciliation required would be that specified in Item 18 of SEC Form 20–F. Item 18 requires the full disclosure of all information required by Regulation S–X and U.S. GAAP, including segment information and supplemental oil and gas data. Comment is solicited as to whether, if reconciliation is to be required, Item 17 reconciliation should suffice. Should reconciliation of shareholders' equity and net income, as a whole and on a per share basis, suffice?

Items 17 and 18 of Form 20–F each permit the use of financial statements which are in accordance with accounting principles other than those of the United States if the items include a discussion of the material variations from United States accounting principles and Regulation S–X and if a quantified reconciliation is made as to material variations in net income as presented and net income under United States accounting principles and as to balance sheet line items and earnings per share. Item 18 calls for a greater amount of detail than does Item 17 as Item 18 asks for all other information required by the generally accepted accounting principles of the United States while Item 17 contains no such provision. Item 17 disclosure may be used for annual reports and registration under the Exchange Act, while Item 18 disclosure generally is required in Forms F–1, F–2 and F–3 in connection with the public offering of securities in the United States.

In the United States, registration statements are subject to certain industry specific requirements relating to an issuer's business and operations. Foreign issuers generally are held to the same level of disclosure as U.S. domestic issuers. Given Canadian disclosure requirements and practices, the SEC proposes to require only additional industry-specific information from issuers engaged in banking. Canadian banks using Form F–10 would be required to disclose information substantially equivalent to the information set out under Item III.C., "Risk Elements," and Item IV., "Summary of Loan Loss Experience" of Industry Guide 3 under the Securities Act of 1933. Comment is solicited as to whether this requirement is appropriate. Disclosure would be more extensive than the information proposed in Item 3(1)(l) of the Annual Information Form forming part of the Annual Information Form and Management Discussion and Analysis requirements released for comment in the OSC Bulletin of June 9, 1989 and in the CVMQ Bulletin of June 23, 1989. Both the reconciliation and the supplemental Industry Guide 3 information are required to be included in both the prospectus delivered to investors and the registration statement.

2. *Rights Offers & Securities Exchange Take-over Bids (Exchange Offers)*— (a) *Rights Offers (SEC Form F–7).* Form F–7 is proposed for use by Canadian issuers making rights offerings in the United States. To be eligible, the issuer would have to (1) be incorporated in Canada, and (2) have had for the 36 months immediately preceding the offering, a class of securities listed on The Toronto Stock Exchange or the Montreal Exchange. Form F–7 would not require that registrants meet any test of market value of shares or public float. Comment is requested as to whether the eligibility tests proposed for use of Form F–7 are appropriate or whether the $75 million market value requirement imposed by Form F–8 should be extended to Form F–7.

Either a rights offering circular filed in Ontario pursuant to paragraph 71(1)(h)(i) of the Ontario Act and in Quebec pursuant to section 52(1) of the Quebec Act or a rights offering prospectus may be filed under Form F–7. Since is it intended that Form F–7 would exclude offerings that are major financings, an eligible offer, if completely subscribed, could not increase the capital of the class of securities offered by more than 25 percent in number (or, in the case of debt, the principal amount). The 25 percent test is derived from OSC Policy Statement 6.2 which uses the 25 percent threshold to identify rights offerings subject to prospectus filing requirements.

U.S. residents must hold of record less than 20 percent of the class of securities to which the rights offering is related. The rights could not be transferable to U.S. residents. The underlying securities, however, could be so transferable. The exercise period of the rights must not exceed 90 days.

The securities to be registered on Form F–7 would be those issuable upon the exercise of rights. The rights themselves generally are not registrable in the U.S. on a "no-sale" theory. If they were required to be registered, the issuer could register them on Form F–7.

(b) *Exchange Offers (SEC Form F–8)*— (i) *Prospectus Issues.* Proposed Form F–8 would be used to register exchange offers that are primarily Canadian in character, in which all or a portion of the consideration offered is the securities of the bidder, and less than 20 percent of the securities of the target class are held of record by U.S. residents. The target of the bid would be required to be incorporated or organized under the laws of Canada or any province or territory. The aggregate market value of the registrant's common shares must equal or exceed (CDN) $75 million. Registrants would be required to have had their securities listed on The Toronto Stock Exchange or the Montreal Exchange for the 36 months immediately preceding the offering. Comment is requested as to whether these eligibility tests are appropriate.

The bidder must offer its securities upon identical terms and conditions to both U.S. and Canadian shareholders of the target. Adherence to this requirement would prevent discrimination among holders of the class of securities that is the subject of the offer.

The multi-jurisdictional registration system would enable a qualified Canadian reporting issuer planning to commence a non-exempt exchange offer to file its take-over bid circular with the SEC.

Contemporaneously with the filing of the take-over bid circular with the OSC and the CVMQ, a Canadian offeror making an offer pursuant to the system would file the circular, accompanied by Forms F–8 and F–X, with the SEC. The circular would be distributed by mail to shareholders in both countries. As in Ontario and Quebec an exchange offer is deemed to commence upon mailing, it also would commence upon mailing in the United States.

(ii) *Tender Offer Regulation.* Exchange offers also raise the question of the need for compliance with each jurisdiction's regulatory scheme relating to take-over bids/tender offers. The multijurisdictional system would provide that, when a Canadian bidder is eligible to use the system for an exchange offer, the take-over bid rules of its home jurisdiction would govern, and compliance with the home jurisdiction rules would be sufficient under the Exchange Act. U.S. and other non-Canadian offerors not eligible to use Form F–8 similarly could make exchange offers for the securities of Canadian issuers (where, less than 20 percent of the holders of record of the subject securities were U.S. residents) pursuant to Canadian tender offer regulations. Such non-Canadian issuers, however, would have to comply with U.S. registration disclosure requirements.

(iii) *Proxy Regulation.* Any solicitation of U.S. shareholders involved in the offer and sale of securities registered on Form F–8 would be exempt from Exchange Act proxy information and filing requirements pursuant to the proposed amendment to Rule 3a12–3(c).

3. *Tender Offers Pursuant to the System.* Pursuant to amendments to be proposed to the SEC's tender offer rules, third-party or issuer tender offer filings in connection with offers in both jurisdictions for a class of shares of a Canadian issuer, less than 20 percent of which is held of record by U.S. residents, would be permitted to proceed in the United States in compliance with the laws of Ontario and/or Quebec, provided the tender offer is extended to all holders of the class of securities in the United States, and that the transaction is covered by substantive provisions of Canadian law regulating the terms and conditions of the offer. In these instances, compliance with Canadian law would suffice for compliance with the Exchange Act. Where a bid not covered by such Canadian regulation, for example a stock exchange bid exempt under the Ontario Act and the Quebec Act, was extended to U.S. shareholders, the Exchange Act and the rules thereunder would govern the conduct of the offer in the United States even if the bid otherwise would qualify for inclusion in the multijurisdictional system. The schedules would require that the bidder comply with the laws, regulations and policies of any Canadian federal and/or provincial or territorial regulatory agency applicable to the particular offer. If the offeror failed to comply with Canadian law, it would be in violation of both Canadian and U.S. law.

The take-over bid circular filed with the OSC and the CVMQ would be filed simultaneously with the SEC, together with the appropriate "wraparound" forms (F–8 or other Securities Act registration form for exchange offers, Schedule 14D–1F for third party and affiliate tender offers, Schedule 14D–9F for the target's response and Schedule 13E–4F for issuer tender offers), and disseminated to all U.S., Ontario and Quebec shareholders. Where an exchange offer was being made pursuant to the system by an offeror not eligible to use Form F–8, U.S. shareholders would receive SEC-mandated disclosure in addition to the information required to be disseminated under Canadian law.

As discussed, only Canadian companies reporting to Canadian securities regulatory authorities would be eligible to register on Form F–8 securities issued in connection with an exchange offer. The bidder in an all-cash offer need not meet the nationality, reporting status and size requirements that would be imposed on participating exchange offerors. The target must be a Canadian reporting company, less than 20 percent of the subject securities of which is held by U.S. residents.

The process for conducting an all-cash tender offer under the proposed system, whether the offer is made by a third party, the issuer itself or its affiliate, is virtually identical to that outlined above for exchange offers. When filing its take-over bid circular or issuer bid circular with home jurisdiction authorities in Canada, a bidder would file that document or documents, and any amendments thereto, with the SEC under cover of proposed wraparound forms Schedule 14D–1F (third party or affiliate or insider bids) or Schedule 13E–4F (issuer bids) together with an executed Form F–X. Home country filings, including any amendments, would be disseminated to shareholders in Canada and the United States pursuant to applicable Canadian law, with U.S. shareholders also receiving the appropriate Schedule.

In response to unaffiliated third-party and insider bids, the target issuer would file with the SEC the document or documents prescribed by Canadian law, including any amendments thereto, coupled with Schedule 14D–9F and Form F–X. Again, this Schedule and the underlying Canadian documents, and any amendments, would be sent, in the manner prescribed by Canadian law, to U.S. shareholders and, without the Schedule, to Canadian shareholders.

In cases of tender offers ineligible for multijurisdictional treatment in the United States because 20 percent or more of the subject shares is held by U.S. residents, the rules and regulations of the United States generally would apply. Further, as a policy matter, the OSC, the CVMQ and the SEC believe it is in the public interest that take-over bids/tender offers be extended to all holders of the class of securities in Canada and the United States, and that efforts to avoid compliance with the other jurisdictions' regulation by attempting to exclude certain shareholders from the offer are consistent neither with the purposes of either country's laws nor with the public interest. However, the terms of an exchange offer for certain, otherwise qualified issuers may conflict with restrictions on foreign ownership imposed by Canadian and United States law. Under circumstances where national policy concerns may militate against application of the broad principles of equality underlying the multijurisdictional system, the SEC may determine to exercise its exemptive authority to permit a Canadian bidder to issue cash consideration in lieu of securities in connection with a concurrent exchange offer made to Canadian holders of the target. Relief thus may be sought from this "all holders" policy that otherwise would mandate the extension of an exchange offer to U.S. shareholders of the Canadian target on the identical terms and conditions offered to Canadian shareholders.

D. Exchange Act Provisions Affecting the Activities of Participants in Tender and Exchange Offers

SEC Rule 10b–6 generally prohibits a distribution participant from, directly or indirectly, bidding for or purchasing, or attempting to induce others to purchase, the securities in distribution or any security of the same class and series or any right to purchase such security ("related securities"),

until the participant's role in the distribution has terminated.

SEC Rule 10b–13 prohibits a person who is making a cash tender offer or exchange offer for any equity security from, directly or indirectly, purchasing or making any arrangement to purchase such security (or any other security which is immediately convertible into or exchangeable for such security) otherwise than pursuant to the tender offer or exchange offer, from the time of announcement of the offer until its expiration, including any extensions thereof. The rule is designed to "protect shareholders in the tender offer from the harmful effects of purchases or arrangements made outside, and on terms or conditions different from, the tender offer, and to protect the integrity of the tender offer process by proscribing side deals that could render the tender offer a sham."

Canadian rules permit participants in transactions contemplated by proposed Form F–8 and Schedules 14D–1F and 13E–4F to engage in certain activities that are prohibited by Rules 10b–6 and 10b–13. For example, Canadian rules permit, in limited circumstances, purchases by an offeror during a take-over bid, or by an issuer during an issuer bid otherwise than pursuant to a circular bid. Such purchases are permitted from the third business day following the date of the bid until its termination. Purchases are conditioned upon limiting the amount of securities acquired to five percent of the outstanding securities as of the date of the bid, disclosing the intention to make such purchases in the third party or issuer bid circular, and issuing and filing a press release with the relevant exchange or regulatory commission at the close of each day on which securities have been purchased (subsection 93(3) of the Act and Regulation 169 and section 142 of the Quebec Act). The press release is required to disclose the purchaser, the number of shares purchased, the highest price paid on that day, the average price paid for the securities that were purchased by the purchaser through the facilities of the stock exchange during the bid, and the total number of securities owned by the purchaser as of the close of business of the stock exchange on that day.

In connection with the proposed multijurisdictional disclosure system, the SEC is considering publication of no-action positions with respect to Rules 10b–6 and 10b–13. The contemplated no-action positions would apply solely to tender and exchange offers on Form F–8 and Schedules 14D–1F and 13E–4F, and would permit securities purchases that are permitted in Canada and that are not made for the purposes of creating actual or apparent trading activity in or of raising the price of such securities. The no-action positions would apply to: (1) With respect to cash tender offers, purchases of the securities which are the subject of the offer and any other security that is a right to purchase such security or is immediately convertible into or exchangeable for such security ("target securities"); and (2) with respect to exchange offers, the purchases of target securities and bids for and purchases of the securities offered by the bidder or issuer ("offered securities"), and any security of the same class and series or any right to purchase any such offered securities (collectively, "subject securities"). The proposed no-action positions would be available to issuers and bidders that: (1) Disclose in the Form F–8 and Schedules 13E–4F and 14D–1F the possibility of, or the intent to make, purchases of subject securities outside the offer as permitted by applicable Canadian regulations; and (2) submit an undertaking to disclose in the U.S. information regarding purchases of subject securities on the same basis as it is required to be disclosed or otherwise is disclosed pursuant to Canadian statutory and regulatory requirements.

E. Proxy and Insider Reports

Canadian issuers that currently are eligible to use Form 20–F are not subject to U.S. proxy regulation. All other Canadian issuers, however, must comply with both Canadian and U.S. proxy regulations when they solicit U.S. residents. In connection with the implementation of the system, the SEC proposes to amend certain of the proxy rules to allow compliance by Canadian issuers with Canadian proxy rules to suffice for U.S. purposes.

The SEC's proxy rules provide that, if an issuer is soliciting proxies for an annual meeting at which the only matters being voted upon include such routine items as the election of directors or/and ratification or approval of accountants, only definitive proxy statements must be filed with the SEC. Thus, no filing of preliminary materials is required. If a Canadian issuer falls within the provisions of this rule so that only definitive material is required to be filed, the amendments to SEC Rule 14a–6 would provide that the proxy material need only be prepared in accordance with Canadian requirements. If, however, the matters to be voted on would require the filing of preliminary proxy materials in the United States, then a Canadian issuer subject to U.S. proxy rules would be required to prepare the proxy statement in accordance with U.S. rules.

An additional area affected by the proposed rule changes would be that of shareholder proposals. An amendment to Rule 14a–8 under the Exchange Act would provide that any Canadian issuer subject to U.S. proxy rules that complied with applicable Canadian shareholder proposal rules would be deemed to have complied with the requirements of Rule 14a–8.

Directors, officers and principal stockholders of Canadian and other foreign private issuers eligible to use Form 20–F are not subject to Section 16 of the Exchange Act. In a situation somewhat analogous to the case of proxy regulation, Canadian persons that are in certain relationships with a Canadian foreign private issuer must comply with both Canadian and U.S. reporting requirements. The SEC is proposing a new Rule 16a–12 that would provide that only persons required to report their securities holdings in Canada would be required to report to the SEC, and the reporting obligations with the SEC could be met by furnishing the report filed with the Canadian authorities.

F. Continuous Disclosure

Issuers that make a registered offering of securities in the United States, or that have a certain number of shareholders in the United States, are subject to reporting requirements under the Exchange Act.

Section 15(d) of the Exchange Act, as supplemented by Regulation 15D, requires each issuer that has filed a registration statement that has become effective under the Securities Act to file periodic reports thereafter. Section 13(a) of the Exchange Act requires each issuer that has securities registered under Section 12 of that Act to file periodic reports. Securities may be registered under Section 12 for two reasons. Section 12(b) of the Exchange Act requires registration of any class of securities, whether debt or equity, that is listed on a national securities exchange. Section 12(g) requires issuers to register any class of equity securities held of record by 500 or more persons if certain tests are met. Foreign private issuers are exempt from the requirements of Section 12(g) if they have fewer than 300 U.S. holders. Rule 12g3–2(b) provides a further exemption from section 12(g).

Non-Canadian issuers both register their securities with the SEC and file annual reports on Form 20–F, and furnish current reports on Form 6–K. Form 20–F is available to Canadian issuers for the initial registration of securities under section 12(g), and for the annual reports of issuers so registered. However, since it is not available for annual reports by issuers that have a reporting obligation under sections 12(b) or 15(d), most Canadian issuers currently file annual reports on Form 10–K, quarterly reports on Form 10–Q and current reports on Form 8–K.

Any section 15(d) obligation resulting from use of the proposed forms for any of the transactions covered by the proposed forms could be met by filing with the SEC under cover of proposed Form 40–F, the periodic disclosure documents required in Canada. These would include Annual Information Forms, Annual Reports, Management Discussion and Analysis, annual and interim financial statements and material change reports. Documents would be filed with the SEC at the same time as they were filed with the OSC and the CVMQ. No reconciliation of financial statements would be required. All Canadian disclosure documents filed with the SEC would be subject to antifraud liability.

Canadian issuers that incur registration or reporting obligations under section 12(g) generally would be required to fulfill those obligations by filing regular SEC continuous disclosure forms. The proposed system would, however, permit issuers that met the tests for eligibility for use of Form F–10 (i.e., that had an aggregate market value for their securities of $360 million and a public float of $75 million), regardless of whether they had made offerings pursuant to the system ("F–10 issuers"), to comply with section 12(g) continuous disclosure requirements by filing the equivalent Canadian documents under cover of Form 40–F. Reconciliation of financial statements would be required, but (as in annual reports on Form 20–F) this reconciliation would be to Item 17 of Form 20–F rather than to Item 18. The Commissions request comment as to whether there are distinct reasons not to require reconciliation for Exchange Act reporting purposes. The Commissions also request comment as to whether the multijurisdictional disclosure system and use of Form 40–F should be extended to all Canadian issuers reporting under section 12(g).

As is the case with F–10 issuers, Canadian issuers that met the test for eligibility for use of Form F–9 (i.e., that had an aggregate market value for the securities of $180 million and a public float of $75 million), even if they had not made an offering pursuant to the system ("F–9 issuers"), could comply with section 12(g) continuous disclosure requirements that arose in connection with non-convertible investment grade preferred stock by filing Canadian periodic reporting documents under cover of Form 40–F. Reconciliation of financial statements would not be required.

The exemption from section 12(g) provided by Rule 12g3–2(b) would continue to exist and would be unaffected by adoption of the multijurisdictional system. When a Canadian issuer currently furnishing Canadian disclosure documents to the SEC pursuant to Rule 12g3–2(b) extended an offer into the United States, it would become subject to the periodic reporting requirements of Section 15(d), which it would meet by filing with the SEC the same documents as it presently furnishes under Rule 12g3–2(b). However, civil liability under the Exchange Act would now attach to those filings, where no such liability existed before.

Section 12(b) registration and reporting obligations would be treated similarly under the system to obligations arising under section 12(g). Canadian issuers that have a class of securities listed on an exchange would have to file SEC continuous disclosure documents. F–10 issuers and F–9 issuers of non-convertible investment grade debt or non-convertible investment grade preferred stock, however, would be able to comply with their section 12(b) reporting obligations by filing the appropriate Canadian forms. If the class of securities listed were investment grade debt or preferred shares, no reconciliation of financial statements would be required, while if equity securities were listed, Item 17 reconciliation would be required.

G. State Securities Regulation

In addition to complying with the federal securities laws, issuers selling their securities in the United States are subject to the securities laws of the 50 states, the District of Columbia and Puerto Rico. Generally, these laws require state registration of offerings made to persons in the state.

In most jurisdictions, the registration statement filed with the SEC will also satisfy the state filing requirements. The filings are subject to review by each of the states, as to the adequacy of the disclosure and, in many states, for compliance with additional substantive standards. For example, a state may have the authority to deny registration if the offering involves excessive "cheap stock" to promoters, excessive options or warrants, unreasonable underwriters' compensation, or excessive dilution, or if a class of common stock lacks voting rights.

Various exemptions from registration under state law are available; the two most relevant to the multijurisdictional disclosure process are that for rights offerings and that for securities traded in specified marketplaces. The former exemption is usually limited to rights which are either nontransferable or exercisable for only a limited period of time. The marketplace exemptions generally apply to securities listed on the New York and American Stock Exchanges, and in some instances on specified regional exchanges, or designated as National Market System securities and quoted on NASDAQ. Securities of the same issuer which are senior to securities included in an exempt marketplace are also exempt.

Two factors have operated to produce considerable uniformity among the states. First, the securities laws of most states are modeled after the Uniform Securities Act. Second, the North American Securities Administrators Association ("NASAA") proposes uniform guidelines and procedures which are frequently adopted by many of its member states. Notwithstanding these factors, the specific requirements for offering and selling securities in any state will be governed by that jurisdiction's statute, rules and policies.

In April 1989, NASAA adopted a Statement on Internationalization of the Securities Markets, in which it urged securities regulators to "encourage legitimate capital raising activities across national borders," subject to "minimum rules to ensure investor protection." Consistent with that Statement, NASAA has formed a special task force to work with the Commission, the CVMQ and the SEC to determine what accommodations would be appropriate at the state level to facilitate use of the multijurisdictional disclosure process.

III. Request for Comments

Any interested person wishing to submit written comments on any aspect of the multijurisdictional disclosure system is requested to do so. Canadian issuers, underwriters, counsel and auditors are also encouraged to submit written comments on the SEC companion release to the SEC.

IV. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with the proposed multijurisdictional registration system, the Commissions request issuers, underwriters and their counsel and auditors to provide views and data as to the costs and benefits associated with multijurisdictional offerings under current law as compared to such costs and benefits under the proposed system.

[FR Doc. 89–17857 Filed 8–3–89; 8:45am]

BILLING CODE 8010–01–M

federal register

Friday
August 4, 1989

Part IV

Department of Health and Human Services

Office of Child Support Enforcement

45 CFR Part 232, 301 Through 304, 306 and 307

Standards for Program Operations; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Parts 232, 301, 302, 303, 304, 306, and 307

RIN 0970-AA16

Standards for Program Operations

AGENCY: Office of Child Support Enforcement (OCSE)/FSA/HHS.

ACTION: Final rule.

SUMMARY: This final regulation implements the requirements of sections 121 and 122 of the Family Support Act of 1988 (Pub. L. 100-485) by revising current regulations to specify standards for processing child support enforcement cases and timeframes for distributing child support collections under title IV-D of the Social Security Act (the Act). By imposing requirements and timeframes for taking appropriate actions and clarifying or updating existing or vague timeframes and requirements, the regulation would ensure that child support services are effectively and expeditiously provided and that children receive the services they need and the support to which they are entitled. States are required to meet these standards by October 1, 1990.

In addition, this regulation implements sections 103(e)(3) and 127 of the Family Support Act of 1988 by revising regulations to exclude certain costs from administrative costs when computing incentive payments.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Joyce Allred, Policy and Planning Division, OCSE (202) 252-5369.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Public reporting burden for the collections of information requirements at 45 CFR 302.32(b), 303.2(b), 303.2(c), 303.4(e), 303.5(c), 303.6(c)(3), 303.6(c)(4), 303.11(c) and 303.11(d) is estimated to average 5, 5, 5, 5, 5, 5, 5, 5, and 5 minutes respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Child Support Enforcement, Family Support Administration, 370 L'Enfant Promenade, SW., Washington, DC 20447; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

Since the inception of the Child Support Enforcement (IV-D) program in 1975, States have been required to locate absent parents, establish paternity, obtain support orders and collect support payments. However, despite Federal and State efforts in the 13 years since the inception of the IV-D program, the child support problem continues to grow. On October 13, 1988, the Family Support Act of 1988 (Pub. L. 100-485) was signed into law. This new law addresses the injustice of parents failing to assume responsibility for their children's support. Section 121 of Public Law 100-485 requires the Secretary of Health and Human Services (HHS) to establish time limits within which States must accept and respond to requests for assistance in establishing and enforcing support orders, including requests to locate absent parents, establish paternity and initiate proceedings to establish and collect support awards. Section 121(b) requires the establishment of an advisory committee with which the Secretary must consult prior to issuing any regulations establishing standards. Section 122 of Public Law 100-485 requires the Secretary of HHS to establish time limits governing the period within which a State must distribute amounts collected as child support.

Based on the analysis of Federal program audit and program review results, input from State IV-D agencies, early discussions with experts in child support enforcement case processing and program operations and recommendations of the advisory committee mandated by section 121, we developed standards set forth in this regulation which should ensure appropriate and expeditious processing of IV-D cases. States must meet the standards for case processing contained in this final rule as one facet of the determination of whether they are in substantial compliance with the requirements of Title IV-D of the Act. We believe the standards are realistic and focused in areas where increased effectiveness and efficiency are necessary for an enhanced IV-D program.

Statutory Authority

This regulation is published under the authority of sections 452 (a)(1) and (a)(2), (h) and (i), 454(13), 458(d) and 1102 of the Act.

Sections 452(a) (1) and (2) require the Secretary to establish such standards for State programs for locating absent parents, establishing paternity, and obtaining child support as he determines to be necessary to assure that such programs will be effective, and to establish minimal organizational and staffing requirements for State units engaged in carrying out such programs. Section 452(h) of the Act, added by section 121 of Public Law 100-485, requires the Secretary to establish time limits governing the period or periods within which a State must accept and respond to requests for assistance in establishing and enforcing support orders, including requests to locate absent parents, establish paternity, and initiate proceedings to establish and collect child support awards. Section 452(i) of the Act, added by section 122 of Public Law 100-485, requires the Secretary to establish time limits governing the period or periods within which a State must distribute amounts collected as child support. Section 454(13) of the Act requires States to comply with such requirements and standards as the Secretary of HHS determines to be necessary for the establishment of an effective IV-D program. Section 458(d) of the Act, as amended by section 127 of Public Law 100-485, requires States to exclude for purposes of computing incentives, the amounts expended by the State in carrying out a special project assisted under section 455(e) of the Act. Section 1102 of the Act requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

Regulatory Provisions

This regulation prescribes standards for program operations which the IV-D agency must meet, including minimal organizational and staffing requirements, and requirements governing: maintenance of case records; location of absent parents; establishment of support obligations; establishment of paternity; service of process; enforcement of support obligations; conditions under which cases may be closed; distribution of support payments; and incentive payments. In addition, this regulation makes technical changes and adds new sections for clarity and consistency with the above-mentioned changes to parts 302 and 303. States are required to meet these standards by October 1, 1990.

Changes with respect to excluding costs of interstate grants when computing incentives would be effective January 1, 1990, and changes with respect to excluding costs of demonstration projects on model

procedures for reviewing child support awards are effective when the costs are incurred.

Treatment of Child Support Collections Made in the Child Support Enforcement Program as Income and Resources in the Title IV-A Program—Section 232.20

Section 232.20(d) requires that the Aid to Families with Dependent Children (IV-A) agency, on behalf of the IV-D agency, must pay to the family the sum disregarded under § 302.51(b)(1) within 20 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 of support is collected in a month, within 20 calendar days of the end of the month in which the support is collected.

Collection and Distribution of Support Payments by the IV-D Agency—Section 302.32

Section 302.32 is revised to reduce the time within which IV-D agencies must report collections to IV-A agencies and to add specific timeframes for distribution of collections in both AFDC and non-AFDC cases to help ensure that child support collections reach the intended recipients as expeditiously as possible.

Section 302.32(b)—Informing the IV-A Agency of Collections

Section 302.32(b) requires that the IV-D agency inform the State's IV-A agency of the amount of the collection which represents payment on the required support obligation for the month, as determined in § 302.51(a), within 10 working days of the end of the month in which the support is received by the agency responsible for final distribution.

Section 302.32(f)—Timeframes for Distribution of Amounts Collected

1. *Section 302.32(f)(1)—Timeframes for distribution of amounts collected in interstate IV-D cases.* Paragraph § 302.32(f)(1) requires that in interstate IV-D cases, amounts collected by the responding State on behalf of the initiating State must be forwarded to the initiating State within 15 calendar days of the initial point of receipt in the responding State, in accordance with § 303.7(c)(7)(iv).

2. *Section 302.32(f)(2)—Timeframes for distribution of collections.* Paragraph (f)(2)(i) requires that, if the IV-D agency sends payments to the AFDC family under § 302.51(b)(1), payments must be sent to the family within 15 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support was collected. When the IV-A agency sends payments to the family under § 302.51(b)(1), the IV-D agency must forward any amount due the family under § 302.51(b)(1) to the IV-A agency within 15 calendar days of the date of initial receipt in the State of the first $50 collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support was collected.

Paragraph (f)(2)(ii) requires that, except as specified under paragraph (f)(2)(iv), collections for the month after the month the family receives its last assistance payment and collections distributed under § 302.51(b) (3) and (5) of this part must be sent to the family within 25 calendar days of initial receipt in the State of a collection for the first month of ineligibility.

Paragraph (f)(2)(iii) requires that except as specified in paragraph (f)(2)(iv) of this section, collections in title IV-E foster care cases under § 302.52(b) (2) and (4) of this part must be distributed within 15 calendar days of the date of initial receipt in the State.

Paragraph (f)(2)(iv) requires that collections as a result of Federal or State income tax refund offset paid to the family under § 302.51(b)(5) of this part or distributed in title IV-E foster care cases under § 302.52(b)(4) of this part, must be sent to the AFDC family or IV-E agency, as appropriate, within 30 calendar days of the date of initial receipt by the IV-D agency, unless State law requires a post-offset appeal process. In this instance, if an appeal is filed timely, the IV-D agency must send any payment to the AFDC family or IV-E agency within 15 calendar days of the date the appeal is resolved.

3. *Section 302.32(f)(3)—Timeframes for distribution of amounts collected on behalf of non-AFDC individuals.* To ensure timely distribution of amounts collected on behalf of individuals receiving services under § 302.33, section 302.32(f)(3) sets forth timeframes within which States must distribute collections on behalf of non-AFDC families.

Under § 302.32(f)(3)(i), amounts collected which represent payment on the current support obligation must be paid to the family within 15 calendar days of the date of initial receipt in the State.

Paragraph (f)(3)(ii) adds a timeframe to current policy by requiring that, except as specified in paragraph (f)(3)(iii), if the amount collected is more than the amount required to be distributed in paragraph (f)(3)(i) discussed above, the State may, at its discretion, either opt to send such amounts to the family to satisfy non-AFDC past-due support within 15 calendar days of the date of initial receipt in the State or retain such amounts as have been assigned to satisfy past assistance paid to the family which has not been reimbursed.

Paragraph (f)(3)(iii) requires that collections due the family under § 302.51(b)(5) as a result of Federal or State income tax refund offset be sent to the family within 30 calendar days of the date of receipt in the IV-D agency, except: if State law requires a post-offset appeal process and an appeal is filed timely, in which case the IV-D agency must send any payment to the family within 15 calendar days of the date the appeal is resolved; or as provided in § 303.72(h) (5) of this chapter.

Since timeframes for distribution of all IV-D collections, regardless of the collection mechanism, (e.g., Federal or State income tax refund offset, wage withholding, etc.) are governed by § 302.32(f), reference to timeliness of distribution in other regulations is unnecessary. Accordingly, § 302.51 is amended by deleting in paragraph (a) the last sentence that reads "In any case in which collections are received by an entity other than the agency responsible for final distribution under this section, the entity must transmit the collections within 10 days of receipt" and by deleting in paragraphs (b)(3) and (5) the sentence that reads "This payment shall be made in the month following the month in which the amount of the collection was used to redetermine eligibility for an assistance payment under the State's title IV-A plan". Similarly, § 303.100(e)(2) is amended to delete reference to distributing "promptly" amounts collected through wage or income withholding. Finally, we are deleting from regulations governing distribution of State tax refund offset collections the words "Within a reasonable time period in accordance with State law" in § 303.102(g)(1).

Establishment of Cases and Maintenance of Case Records—Section 303.2

1. *Application Process.* Section 303.2(a)(1) requires that the IV-D agency must make applications for child support services readily accessible to the public.

Section 303.2(a)(2) requires that when an individual requests an application or IV-D services, the IV-D agency must provide applications on the day an individual makes a request in person, or send an application to the individual

within no more than 5 working days of a written or telephone request for services. In addition, information describing available services, the individual's rights and responsibilities and the State's fees, cost recovery and distribution policies must accompany all applications for services and must be provided to AFDC, Medicaid and title IV–E foster care applicants or recipients within no more than 5 working days of referral to the IV–D agency.

Paragraph (a)(3) requires that the IV–D agency must accept an application as filed on the day it and the application fee are received. An application is a written document provided by the State which indicates that the individual is applying for child support enforcement services under the State's title IV–D program and is signed by the individual applying for IV–D services.

2. *Opening cases.* Section 303.2(b) requires that, for all cases referred to the IV–D agency or applying for IV–D services under § 302.33, the IV–D agency must, within no more than 20 calendar days of receipt of referral of a case or filing an application for services, open a case by establishing a case record, and based on an assessment of the case to determine necessary action: solicit necessary and relevant information from the custodial parent and other relevant sources and initiate verification of information, if appropriate; and, if there is inadequate location information to proceed with a case, request additional information or refer the case for further location attempts as specified in § 303.3.

Location of Absent Parents—Section 303.3

1. *Definition.* Section 303.3(a) defines "location" as information concerning the physical whereabouts of the absent parent or the absent parent's employer(s), other sources of income, or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

2. *Location sources.* Section 303.3(b)(1) requires the IV–D agency to use appropriate Federal, interstate and local location sources and to use appropriate State agencies and departments as authorized by State law.

Paragraph (b)(2) requires that States establish working relationships with all appropriate agencies in order to utilize locate resources effectively.

3. *Actions required within 75 calendar days.* Paragraph (b)(3) requires that the IV–D agency, within no more than 75 calendar days of determining that location is necessary, access all appropriate location sources, including the Federal PLS, and ensure that location information is sufficient to take the next appropriate action on a case.

Paragraph (b)(4) requires that the IV–D agency refer appropriate cases to the IV–D agency of any other State, in accordance with the requirements of § 303.7 of this part. To correspond with this requirement, § 303.7(b)(2) requires that the initiating State refer any interstate case to the responding State's central registry for action within 20 calendar days of determining the absent parent or putative father is in another State. The IV–D agency of the other State must follow the procedures in paragraphs (b) (1) through (5) for such cases, as necessary, except that the responding State is not required to access the Federal PLS under paragraph (b)(3).

4. *Continued location attempts.* Paragraph (b)(5) requires that the IV–D agency periodically repeat location attempts in cases in which previous attempts to locate absent parents or sources of income and/or assets have failed, but adequate identifying and other information exists to meet requirements for submittal for location. Attempts must be repeated quarterly, or immediately upon receipt of new information which may aid in location, whichever occurs sooner. Quarterly attempts may be limited to automated sources but must include accessing State employment security files. Repeated attempts because of new information must meet the requirements in paragraph (b)(3).

Paragraph (b)(6) requires that at least annually, States must submit to the Federal PLS cases in which location is needed and previous attempts to locate have failed and which meet the requirements for submittal to the Federal PLS.

Paragraph (c) requires that the State must establish guidelines defining diligent efforts to serve process. These guidelines must include periodically repeating service of process attempts in cases in which previous attempts to serve process have failed, but adequate identifying and other information exists to attempt service of process.

Establishment of Support Obligations—Section 303.4

Section 303.4(d) requires the IV–D agency, within 90 calendar days of locating the absent parent or of establishing paternity, to establish an order for support, or complete service of process necessary to establish a support order (or document unsuccessful attempts to serve process, in accordance with the State's guidelines defining diligent efforts under § 303.3(c)). To correspond with the requirement in paragraph (d), § 303.101(b)(2) states that actions to establish or enforce support obligations in IV–D cases must be completed from the time of successful service of process to the time of disposition with the required timeframes.

Section 303.4(e) requires that in situations where a support order is dismissed without prejudice, the IV–D agency must, at the time of the dismissal, examine the reasons for dismissal and determine when it would be appropriate to seek an order in the future, and seek a support order at that time.

Establishment of Paternity—Section 303.5

1. *Paternity establishment process timeframe.* Section 303.5(a)(1) requires that the IV–D agency, within no more than 90 calendar days of locating the alleged father, file for paternity establishment or complete service of process to establish paternity (or document unsuccessful attempts to serve process in accordance with the State's guidelines defining diligent efforts under § 303.3(c)), whichever occurs later in accordance with the State's procedures for paternity establishment. Under paragraph (a)(2), paternity must be established or the alleged father excluded as a result of genetic tests and/or legal process within one year of the later of: (i) Successful service of process; or, (ii) the child reaching 6 months of age.

Paragraph (a)(3) requires that, in any case where an alleged father is excluded but more than one alleged father has been identified, the IV–D agency must meet the requirements set forth in paragraphs (a) (1) and (2) for each alleged father identified.

2. *Use of laboratories which perform genetic testing at competitive rates.* Paragraph (c) requires that the IV–D agency identify and use through competitive procurement laboratories which perform, at reasonable cost, legally and medically acceptable genetic tests which tend to identify the father or exclude the alleged father. The IV–D agency must make available a list of such laboratories to appropriate courts and law enforcement officials, and to the public upon request.

To correspond with these changes, § 304.20(b)(2) is revised by changing the reference to blood tests to genetic tests and the reference to § 303.5(b) to § 303.5(c).

Enforcement of Support Obligations—Section 303.6

This final regulation revises § 303.6 by deleting the enforcement techniques listed in paragraphs (a) through (f) and adding monitoring and enforcement requirements in new paragraphs (a) through (c).

1. *Monitoring compliance with orders and identifying delinquencies.* Section § 303.6(a) requires that the IV–D agency maintain and use an effective system for monitoring compliance with the support obligation. This monitoring includes monitoring of all provisions of support orders, including health insurance for the child(ren).

Additionally, paragraph (b) requires that the IV–D agency maintain and use an effective system for identifying those cases in which there is a failure to comply with the support obligation on the date the parent fails to make payments in an amount equal to the support payable for one month or earlier in accordance with State law.

2. *Enforcement actions.* Paragraph (c)(1) requires that the State initiate wage withholding in accordance with the requirements of § 303.100. Paragraph (c)(2) requires that the State take any appropriate enforcement action (except income withholding, and Federal and State income tax refund offset) unless service of process is necessary, within no more than 30 calendar days of identifying a delinquency or other support-related non-compliance with the order, or location of the absent parent, whichever occurs later. If service of process is necessary prior to taking an enforcement action, the IV–D agency must complete such service (or document unsuccessful attempts to serve process in accordance with the State's guidelines defining diligent efforts under § 303.3(c)) and take the enforcement action, if process is served, within no more than 60 calendar days of identifying a delinquency or other support-related non-compliance with the order, or location of the absent parent, whichever occurs later.

This requirement includes taking appropriate enforcement action within the above timeframes upon notification of non-compliance with an order requiring health insurance coverage. In accordance with current medical support requirements, States must attempt to enforce a requirement in a support order that an absent parent obtain health insurance in cases of non-compliance with such an order.

With regard to Federal and State income tax refund offset, paragraph (c)(3) requires that States submit all cases which meet the certification requirements for State tax refund offset once a year, in accordance with § 303.102 and State guidelines developed under § 302.70(b), and for Federal tax refund offset in accordance with § 303.72.

Paragraph (c)(4) requires that in cases in which enforcement attempts have been unsuccessful, the State must, at the time an attempt to enforce fails, examine the reason the enforcement attempt failed and determine when it would be appropriate to take an enforcement action in the future, and take an enforcement action at that time.

Because of the changes discussed above, we deleted the list of enforcement techniques in former § 303.6 (a) through (f). There is no reason to list some enforcement actions or to try to list all techniques since States are required to take whatever enforcement action is warranted in a particular case.

Procedures for Case Assessment and Prioritization—Section 303.10

Section 303.10(a) requires that, if a State adopts a case assessment and prioritization system, the IV–D agency must continue to meet the timeframes and case processing standards contained in part 303.

Section 303.10(b)(5) requires a State, in implementing a case assessment and prioritization system, to prioritize cases after reviewing all intake information for accuracy and completeness and, if review indicates that additional information is needed, prioritize only after attempting to verify or secure the information. A cross reference to § 303.2 is added to § 303.10(b)(5) to ensure that cases are prioritized only after the requirements for establishment of cases and maintenance of case records in § 303.2 are met.

Finally, we are tying the case processing requirements in part 303 to the requirement for periodic review of low priority cases contained in § 303.10(b)(6). Paragraph (b)(6) is amended to require that periodic review of low priority cases must be in accordance with the standards set forth in part 303, such as quarterly location attempts and diligent efforts to effect service of process.

Case Closure Criteria—Section 303.11

Section 303.11 establishes criteria States must use to determine whether child support cases may be closed. If a case does not meet at least one of the following criteria, it must be kept open and worked. However, because current regulations at § 303.10 allow States to establish procedures for case prioritization, States may distinguish between those cases with current success potential and those which do not now, but may in the future, have potential for success. This latter group could include the cases which do not meet the criteria for closure but in which the next required case processing step cannot as yet be taken. Requirements for periodic review in § 303.10 governing case prioritization systems, and elsewhere in part 303, would apply in these cases.

Section 303.11 is entitled "Case closure criteria." Paragraph (a) requires States to establish a system for case closure. Paragraph (b) establishes the criteria for case closure eligibility.

Paragraph (b)(1) allows closure of a case where the child has reached the age of majority, there is no longer a current support order, and either no arrearages are owed or arrearages are under $500 or unenforceable under State law.

Paragraph (b)(2) allows case closure where the child has not reached the age of majority, arrearages are less than $500 or unenforceable under State law, and there is no longer a current support order.

Paragraph (b)(3) allows a State to close a case upon the death of the absent parent, or putative father, if no further action, including a levy against the estate, can be taken.

Paragraph (b)(4) states that the IV–D agency may close cases in which, either the child is at least 18 years old and the action is berred by a statute of limitations which meets the requirements of § 302.70(a)(5), or a genetic test or court or administrative process has excluded the putative father and no other putative father can be identified. In addition, paragraph (b)(4) specifies that, in accordance with § 303.5(b), the IV–D agency need not attempt to establish paternity in any case involving incest or forcible rape, or in any case where legal proceedings for adoption are pending, if, in the opinion of the IV–D agency, it would not be in the best interests of the child to establish paternity.

Paragraph (b)(5) allows case closure where the IV–D agency has been unable to locate an absent parent despite having made repeated location efforts using multiple sources, including those listed under § 303.3, over a three-year period.

Paragraph (b)(6) allows case closure if the absent parent cannot pay support for the duration of the child's minority because the parent has been institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically-verified total and permanent disability with no

BEST COPY AVAILABLE

evidence of support potential. The State must also determine that no income or assets are available to the absent parent which could be levied or attached for support.

Paragraph (b)(7) allows a case to be closed when the absent parent is a citizen of, and lives in, a foreign country, does not work for the United States government or a company which has its headquarters or offices in the U.S., and has no reachable domestic income or assets; and the State has been unable to establish reciprocity with the country.

Paragraph (b)(8) allows a case to be closed if the resident parent, legal guardian, attorney, or agent of a child only requested the State parent locator service (PLS) to submit a request to the Federal PLS under the provisions of § 302.35(c)(3) and the location services have been completed.

Paragraph (b)(9) allows case closure in a non-AFDC case or in a former AFDC, Medicaid or foster care (title IV-E) case when the custodial parent requests that the case be closed and there are no arrearages assigned to the State.

Paragraph (b)(10) allows the IV-D agency to close a case when it has been notified by the IV-A or IV-E agency, in accordance with § 302.31(c), that there has been a finding of good cause for the recipient's failure to cooperate in obtaining support and the IV-A or IV-E agency has determined that paternity establishment or support establishment and enforcement may not proceed without risk or harm to the child or caretaker relative.

Paragraph (b)(11) allows case closure in non-AFDC cases if the IV-D agency is unable to contact the custodial parent over at least a 30-calendar day period despite attempts to contact the parent by both phone and letter, including at least one registered letter.

Paragraph (b)(12) allows case closure due to non-cooperation of the custodial parent when the State documents both the circumstances of the non-cooperation and that an action by the custodial parent is essential for the next step in providing support enforcement services.

Paragraph (c) requires the State, 60 calendar days prior to any case closure because of criteria in paragraphs (b)(1) through (7) and (11) and (12), to notify the custodial parent in writing of the State's intent to close the case. The case must be left open if the custodial parent supplies information in response to the notice which could lead to the establishment of paternity or a support order or enforcement of an order or re-establishes contact with the agency in the case of paragraph (b)(11). If a case is closed, the custodial parent may request at a later date that the case be reopened if there is a change in circumstances which could lead to the establishment of paternity or a support order, or enforcement of an order.

Paragraph (d) requires the IV-D agency to retain all records for cases closed pursuant to this section for a minimum of three years, in accordance with 45 CFR part 74, subpart D.

Minimal Organizational and Staffing Requirements—Section 303.20

Section 303.20(c), Minimal organizational and staffing requirements, requires that there must be an organizational structure and sufficient resources at the State or local level to meet the performance and time standards contained in Part 303 and to provide for the administration or supervision of support enforcement functions listed in paragraphs (c)(1) through (6).

Paragraph (c)(7) is revised to state that the activities to enforce collection of support must include wage withholding and other available enforcement techniques.

To further ensure effective child support programs, a new paragraph (g) is added which states that, if it is determined as a result of an audit under Part 305 that a State is not in substantial compliance with title IV-D of the Act, the Secretary will evaluate whether inadequate resources was a major contributing factor and, if necessary, may set resource standards for the State.

Incentive Payments to States and Political Subdivisions—Section 303.52 and Proposed Section 304.12

Because regulations for incentive payments, for the most part, govern a financial aspect of the program and do not therefore properly belong in Part 303, which establishes program standards, § 303.52(a), (b) and (c) are transferred to 45 CFR Part 304, Federal Financial Participation. Accordingly, current 45 CFR 303.52(d) is being redesignated as § 303.52. Furthermore, the section title, Incentive payments to States and political subdivisions, is changed to Pass-through of incentives to political subdivisions, since this is the only requirement remaining in this section.

To implement the provisions of sections 102(e) and 127 of Pub. L. 100-485, regulations governing incentive payments are amended in two ways. First, to implement section 127, which amends section 458(d) of the Act to exclude the costs of interstate grants when computing incentive payments, paragraph (b)(4)(v) is revised to state that, effective January 1, 1990, in calculating the amount of incentive payments, amounts expended by the State in carrying out a special project under section 455(e) of the Act shall not be included in the State's total IV-D administrative costs. In addition, to implement section 103(e) of Pub. L. 100-485, a new paragraph (vi) is added which states that the costs of demonstration projects for evaluating model procedures for reviewing child support awards under section 103(e) of Pub. L. 100-485 shall not be included in a State's total IV-D administrative costs for purposes of computing incentives.

For consistency with the redesignation of most of § 303.52 as § 304.12, all references to § 302.52(a) through (c) in other regulations are changed to refer to § 304.12.

Medical Support Enforcement—Part 306

Previously, Part 306 was divided into two Subparts. Subpart A contained requirements governing optional cooperative agreements and Subpart B contained required IV-D medical support activities. The requirements under current Subpart B (§ 306.50, Securing medical support information, and § 306.51, Securing medical support obligations) are moved to Part 303, redesignated as §§ 303.30 and 303.31, respectively. The regulations under current Subpart A remain as Part 306 without the heading of Subpart A.

For consistency with the changes and redesignations within Part 306, all references in program regulations to regulations in current Part 306 are changed to reflect the transfer of the contents of Subpart B to Part 303 and the redesignation of Subpart A of Part 306 as Part 306.

Response to Comments

We received comments on the notice of proposed rulemaking from over 150 commenters representing national organizations, State and local IV-D agencies, child advocacy groups, and private citizens. Comments and our responses are as follows.

Effective Date of Requirements and Corresponding Audit Standards

1. *Comment:* We received many comments on the proposed effective date of these requirements. The preponderance of commenters indicated that they could not meet the timeframes without Statewide and comprehensive automated information management systems. These commenters urged that the effective date for timeframes be tied to such a level of automation. Some suggested that the timeframes not be effective until October 1, 1995, when States are required by the Family Support Act of 1988 to have operational automated child support enforcement systems in place, or even until one or two years after that date. One State with an automated support enforcement system requested, for example, that timeframes be phased in as part of a State's responsibilities to have automated systems in place by 1995, arguing that in their own situation, modification of State law and regulations as well as change to current system processing methods would be necessary. Others asked that implementation be delayed until two or three years after publication of the final rules, as opposed to the October 1, 1990 date set forth in the proposed rule.

Some commenters suggested a phase-in of timeframes between October of 1990 and October of 1995. One suggestion was that new IV-D cases be subject to the timeframes in 1991 and existing IV-D cases become subject to the timeframes in 1996. Others suggested that more liberal requirements be effective in 1992 (suggesting double the proposed timeframes for each action) and the proposed timeframes be effective in 1993. Still others suggested implementing timeframes one at a time or letting State IV-D agencies set their own timeframes.

A number of commenters asked that States not be subject to a determination of substantial compliance with the program standards as a result of an audit until there has been a period of evaluation of State performance with respect to the proposed standards. One commenter requested 100 percent Federal funding of the cost of implementation for a period of time prior to the effective date of the requirements and evaluation of the results achieved before such date. Some State agencies asked for technical assistance in meeting the timeframes established.

Response: The Congress, in requiring the Secretary to publish, within 10 months of the effective date of the Family Support Act of 1988, final regulations requiring States to provide IV-D services, including prompt distribution of collections to families, did not intend that the effective date of those regulations be inordinately delayed. Several commenters noted that many of the requirements set forth in the proposed rule reflected good management and were achievable in a well-run child support operation today.

Therefore, while we are sympathetic to the demands placed upon States by the new requirements, we believe that the approach most consistent with Congressional intent with respect to implementation of the timeframes and with the pressing need for performance improvement is to retain the October 1, 1990, effective date. We have, however, extended or revised many of the proposed timeframes to take into consideration the concerns of commenters and believe the revised timeframes to be indicative of alternative timeframes suggested by many States. We intend to consider concerns about how to assess compliance in developing audit requirements for these standards (see response to next comment).

2. *Comment:* Commenters requested that we change the current audit standard of 75 percent compliance with program requirements to begin with a lower percentage and increase the percentage of cases which must be processed in accordance with the timeframes between 1991 and 1995. One example given was 50 percent compliance in FY 1991, increasing by 5 percent a year until 75 percent compliance would be required in FY 1996. Alternatively, 40 percent compliance initially was suggested with an increase of 10 percent a year until a 75 percent compliance rate was reached in a later year. Other commenters, by the same token, requested a more stringent compliance standard (for services other than paternity establishment), suggesting between 90 and 98 percent rather than 75 percent, depending on the services needed in the case.

Response: Given the impact of these regulations, we are convinced by the commenters that the best way to ensure that States work all cases and provide all necessary services in accordance with the new program standards and timeframes would be to assess State compliance over a period of time. We are in the process of revising the audit regulations to address the new program standards and intend to publish a proposed audit regulation as soon as possible after publication of this regulation. Final revised audit regulations are scheduled to be published before the October 1, 1990, effective date for program standards. Specific suggestions for assessing State compliance with the new requirements will be considered in revising the audit regulation.

3. *Comment:* We solicited comments on what steps we should take to reflect improvements in case processing over time. Options presented in the preamble to the proposed rule were: (1) Wait to decide whether and how to change timeframes; (2) write into the final regulation a date by which the regulations must be reviewed and updated; and (3) write into the regulations shorter timeframes for years after 1990. We received preferences for each of the three options by those who responded. The majority of those who commented indicated that we should wait until after the standards are effective and State compliance has been evaluated before making any decisions with respect to revisions. States and localities wondered how we could plan to change standards before we have any experience with their impact. Some commenters preferred the regulations to include a date by which standards will be reviewed and revised. Suggestions for the timing of reviews ranged from 18 months to 4 years. It was suggested that revised standards be submitted to the Congress and that IV-D agencies and the courts have an opportunity to comment on the proposed standards.

Response: As a result of these comments, we have decided to wait until there is some base of experience with full implementation of the timeframes before we determine how or whether to revise them. However, we plan to look at operational experience with the timeframes and institute any necessary changes or other action within no more than 4 years of the effective date of October 1, 1990.

4. *Comment:* Several States stressed the need for clear and precise program standards which are not subject to interpretation by the auditors. They indicated that regulations are sometimes interpreted differently by auditors and any discretion on their part should be removed. They requested that changes to the audit regulations and audit guides to evaluate State compliance with the time standards be issued at the same time as the final regulations. A number of commenters were concerned about the need for, and how to, document compliance with each of the standards. They requested that documentation to prove compliance with case processing requirements be explicitly stated in regulations. States were concerned that documentation of each timeframe would be time consuming and take time which could otherwise be spent working cases. Commenters were concerned about documentation as the only way to prove action had been taken on a case.

Response: We have revised the proposed regulations to attempt to remove any ambiguity which might be subject to varying interpretation. In addition, as discussed previously, we are currently revising audit regulations to address the requirements of this regulation. Those regulations will be

published for comment as soon as possible after publication of these regulations in final form. With respect to concerns about documentation, States have always been, and will continue to be, responsible for proof, for purposes of an audit, that they are meeting program requirements or have met them with respect to a particular case. Necessary documentation is not specified in regulations because to do so would be overly prescriptive and it would be impossible to specify every type of documentation which would indicate compliance with each regulatory requirement. Elimination of an auditor's professional judgment is neither possible nor desirable, but a variety of internal quality controls ensures national consistency in the conduct of the audit function. Finally, we believe that the revisions to the proposed rule to eliminate unnecessary interim timeframes are responsive to States' concerns that documentation will be too time-consuming.

Overall Alternative Approaches

1. *Comment:* We received a number of alternatives to our approach to ensuring prompt response to requests for IV–D services. One State suggested that we recommend, rather than require, specific timeframes for case processing, and establish audit requirements based on end results, such as those in place for expedited processes for establishing and enforcing support orders. Specifically, the State recommended that actions taken to open cases, initiate absent parent or putative father locations, and where location of the parent is known, file petitions for paternity and/or support be required to be completed in 60 percent of the cases within three months, 70 percent within six months, and 75 percent within one year. Another alternative was to establish standards similar to the paternity establishment standard established by the Family Support Act, under which a State's performance is evaluated based on the percentage of actions taken out of the total actions needed to be taken, with a specific improvement in performance required each year. Finally, a commenter suggested that we mandate timeframes for major functions of the IV–D program, not each step of the process.

Response: We believe that changes made to the proposed rule to eliminate certain specific timeframes are consistent with the broader approach requested by some States. We disagree with the suggestion that we implement expedited processes-type timeframes for processing cases. We received a number of comments requesting that individual timeframes be imposed to control specific actions taken by different entities administering one or more facets of a State's overall IV–D program. Given the extent of comments about how many different entities are involved in the IV–D process, lack of adequate case management processes in many IV–D programs and delays in providing services, we believe that setting specific timeframes for each step of the process will ensure States provide necessary services on a timely basis. Finally, a standard based on the percentage of actions taken out of the total actions needed to be taken is not a measure of prompt response to requests for services.

2. *Comment:* A number of commenters suggested that we convert proposed timeframes so that all timeframes of over 9 days are calendar day timeframes and all timeframes of 9 or fewer days are work days.

Response: While we believe that looking back at case records and determining work days for audit purposes will necessitate additional effort, a State could be seriously disadvantaged in trying to meet calendar day timeframes of less than 10 days because of intervening weekends. Therefore, we have changed proposed timeframes by clarifying that those between 1 and 10 days are working days and timeframes of 11 days and above are calendar days. Furthermore, we have converted proposed timeframes of between 11 and 30 workdays to an approximate equivalent number of calendar days, for example, 15 workdays becomes 20 calendar days and 30 workdays becomes 40 calendar days.

3. *Comment:* We received many comments on each of the timeframes requiring IV–D agencies to, within 2 working days of completing one action, initiate the next necessary action or service. For example, when there is adequate location information to proceed with the case, the State must initiate an appropriate service within 2 working days of determination of the next appropriate action or service. Commenters were concerned that the requirement was too vague; they wanted us to define "initiate," "appropriate," and "determination." They were also concerned that 2 working days is not adequate to prepare all the documents necessary to take an action, for example, request service of process or prepare a petition for paternity establishment. They requested the timeframe be extended to anywhere from 5 to 45 working days. Commenters were unsure about whether the requirement was to start to take an action or to finish it. They indicated that the 2-day timeframes are unrealistic and don't account for illness, vacation, training or loss of staff. A number of commenters suggested that we eliminate these interim timeframes and include the actions required under an overall timeframe.

Response: In response to these comments we have removed the proposed requirements to initiate the next appropriate action or service under proposed §§ 303.2(c)(3) and 303.3(b)(6). Our intent is that cases move forward to the next step in case processing just as soon as an action is completed. However, we believe that since each timeframe begins with the accomplishment of the previous task, i.e., the timeframe for support order establishment begins with location of the absent parent or paternity establishment, there is no need for these work-initiation timeframes. Commenters convinced us that they are too burdensome to document, too vague to ensure consistent application or interpretation with respect to compliance, and truly unnecessary given the encompassing structure of other timeframes.

4. *Comment:* A number of commenters indicated that, if these timeframes are effective before 1995 when States must have operational automated systems, modifications to current automated systems will be necessary and Federal funding should be available for those modifications.

Response: Federal funding under the IV–D program is available for modifications to automated systems necessary to ensure compliance with these requirements.

Suggestions Beyond the Scope of These Regulations

1. *Comment:* Commenters requested that the incentive funding structure be changed to remove the cap on incentives paid on non-AFDC collections because it acts as a disincentive to providing services in non-AFDC cases. Commenters also were concerned that Congress not adopt a minimum cost to collections ratio for States to qualify for incentive payments. They argue that necessary changes to comply with new requirements will be costly and States should not be penalized by the fact that cost to collection ratios slip.

Response: The incentive funding structure is specified in the statute and changes to it are, therefore, beyond the scope of this regulation. States which implement effective case management procedures and aggressively use available enforcement techniques can and do operate a cost effective IV–D program.

2. *Comment:* A number of States also requested that the $50 disregard and pass-through provisions of the statute be repealed and alternatively AFDC grants be increased across the board. Commenters argued that the $50 pass-through provision is cumbersome to administer, discriminates against children whose absent parents cannot be made to pay support, and doesn't result in greater cooperation from the custodial parent or compliance by the absent parent, as intended by the Congress.

Response: As the commenters recognized, any change in the $50 disregard and pass-through provisions would require a change in the statute governing the IV–A and IV–D programs.

3. *Comment:* Some commenters requested specific changes to the regulations governing the IV–A program. Specifically, they asked that IV–A agencies be required to determine AFDC eligibility within 2 rather than 47 days and to notify the IV–D agency within 2 days of application for AFDC, as opposed to the current requirement of notice within 2 days of determination of eligibility. Similarly, commenters requested a 2-day timeframe for notice by the IV–A agency to the IV–D agency of AFDC ineligibility or termination. Another commenter requested that standards be established for referral and processing of cases within the IV–A system and that applicants for AFDC be required to provide minimal information elements as a prerequisite to AFDC eligibility.

Response: The requested changes to AFDC program regulations are beyond the scope of these regulations, which is to establish standards for prompt response to requests for services under the IV–D program, including prompt distribution of collections to families. However, the Family Support Administration is committed to considering ways to strengthen those IV–A program requirements governing AFDC applicant and recipient cooperation so as to improve the quality and timeliness of information transfer between the IV–A and IV–D programs.

Support Payment to the IV–D Agency—Section 302.32

Title of Section

1. *Comment:* One commenter suggested that since § 302.32 now contains requirements for distribution of collections, the title of the section should be changed to reflect this additional content.

Response: We agree and have changed the title to "Collection and Distribution of Support Payments by the IV–D Agency."

Section 302.32(b)—Informing the IV–A Agency of Collections

1. *Comment:* We received a number of comments on the proposed requirement that IV–D agencies report the amount of any support collection to the IV–A agency within 10 working days of the collection. Commenters indicated that daily notice serves no practical purpose and would unnecessarily complicate the recordkeeping process because nothing can be done to redetermine AFDC eligibility until all collections for a month have been received. Alternatives suggested included keeping the current requirement that IV–D agencies report the amount of the collection "as soon as possible but not later than 30 days after the end of a month," or requiring notice to the IV–A agency within 10 days of the end of the month or 10 calendar days from the date of initial receipt in the State. The alternative suggested by the most commenters was 10 working days from the end of the month of collection.

Response: In retrospect and in light of the comments received, we agree that requiring notice to the IV–A agency within 10 calendar days of initial receipt in the State would be unduly stringent. We have revised § 302.32(b) as suggested by many commenters, to require the IV–D agency to inform the IV–A agency of the amount of the collection which represents payment on the required support obligation for the month within 10 working days of the end of the month in which the support is received by the IV–D agency responsible for final distribution of the collection.

2. *Comment:* One commenter asked if notice to the IV–A agency included notice of collection of past-due support or just notice of current support collected.

Response: Under § 302.32(b), the 10-working day reporting requirement applies only to the amount of collection which represents payment on the required support obligation for the month.

3. *Comment:* A number of commenters asked whether direct, on-line access by IV–A agencies to IV–D collection data meets the requirements for notice to the IV–A agency required under § 302.32(b).

Response: Direct, on-line access to IV–D collection data meets the requirement for notice under § 302.32(b).

4. *Comment:* One commenter asked why the proposal for reporting collections to the IV–A agency was inconsistent with the requirement for AFDC recipients to report collections within the first and fifth of each month.

Response: We believe the commenter is referring to the requirement at 45 CFR 233.20 for AFDC recipients to report earned income monthly to the IV–A agency. There is no Federal requirement to report income within 1 to 5 days of the end of the month. Because the timeframe for the IV–D agency to report collections to the IV–A agency is now linked to a full calendar month, it is consistent with the requirement for AFDC recipients to report earned income.

Section 302.32(f)—Timeframes for Distribution of Collections

General Comments

1. *Comment:* A few commenters questioned use of the term "distribution," and whether it was being confused with disbursement. They defined distribution as a process to identify the elements of a payment and to allocate the payment among those elements, i.e., $50 pass-through, current AFDC reimbursement, current support payment to family, past AFDC reimbursement, arrearages payment to family. They view disbursement as the sending of the payment itself and suggested that we either establish timeframes for disbursement of payments to families or establish one timeframe for the entire distribution process.

Response: While we agree with the commenter's characterization of disbursement versus distribution, because Congress referred, in the Family Support Act, to "distribution" of collections to families, "distribution" is generally used in these regulations. We have, however, in response to comments addressed later, revised the proposed requirements to establish timeframes for sending (disbursing) collections to families. We are not establishing one timeframe for the entire distribution process in AFDC cases because, while distribution to families of amounts in excess of the $50 pass-through payment depends on whether or not the family continues to be eligible for AFDC, the $50 pass-through payment itself does not, and may be sent to the family without waiting for eligibility redetermination.

2. *Comment:* We received a number of comments on the start date of timeframes for distribution of collections. One commenter wanted us to clarify "initial receipt in the State."

Response: We clarified the meaning of initial receipt in the State in response to comments on the final regulation on the

$50 pass-through in AFDC cases published June 9, 1988 (53 FR 21643). "Initial receipt in the State" for distribution purposes means when a collection is received by the first entity or agency of the State, whether or not the agency or entity is under cooperative or other agreement with the IV–D agency. This includes a clerk of the court, an employment security agency in cases of unemployment compensation withholding, or a bank handling collection responsibilities under contract with a government agency.

3. *Comment:* One commenter wanted the distribution timeframes to start with the date a payment is identified because, when payments are received without identifying information, it takes time to determine for whom the payment is intended.

Response: We believe that unidentified payments can be identified within the required timeframes for distribution. For example, we received comments from a State which indicated that even if a payment lacked identifying information, the State could determine to whom it was owed within the timeframe. In any event, if a payment is made without information which links it to a specific IV–D case and the State documents that it is unable to determine to whom the payment is owed, the State would not be penalized for failing to meet the timeframe for distribution in that case.

4. *Comment:* A number of States, especially those which do not have cooperative agreements with the courts which receive and/or distribute collections, requested that we start the timeframe for distribution of collections from the date of receipt in the IV–D agency. They argue that they have no control over the courts and cannot make them meet the timeframes. Some States which have State-supervised, county-administered IV–D programs indicated that they could not meet the 15 working day timeframes for distribution because of the structure of their programs. Some of those States, as well as States in which the courts collect support, urged us to retain the requirement that collections must be forwarded within 10 days of receipt by any agency not responsible for final distribution of the collection. They argued that the 10-day requirement is the only leverage they have to ensure collections are forwarded timely. Another commenter urged that we require any entity other than the agency responsible for final distribution to transmit the collection within 5 working days of receipt. Still another suggested 3 working days was sufficient.

Response: Congress expressed its concern about the delays in forwarding collections to families who are in need of them by requiring the Secretary to publish timeframes for prompt distribution of those collections. They indicated the urgency of establishing timeframes by requiring publication of final regulations within 10 months of enactment of the Family Support Act. State IV–D agencies are responsible for sending collections to families in IV–D cases, regardless of whether or not they have cooperative agreements with the courts that collect support obligations. State-supervised, county-administered IV–D programs are no less responsible for timely distribution of collections to families than State-run IV–D programs. Families should not suffer delays in receiving the support they need because of the structure of IV–D programs.

Federal funding of States' IV–A and IV–D programs depends on compliance with Federal IV–D requirements, regardless of whether or not there are cooperative agreements between courts and IV–D agencies or whether the program is State-supervised and county administered. The designated single State IV–D agency is responsible for ensuring that all program requirements are carried out within the State; to this end, it can certainly apportion appropriate segments of the overall timeframe for distribution among the entities involved in program administration.

In keeping with our response to comments requesting that we not impose excessively detailed timeframes for each step of the process and because States need flexibility commensurate with their responsibility for ensuring compliance with title IV–D requirements, we have not added the 10-day timeframe within which each entity other than the agency responsible for final distribution must forward the collection.

5. *Comment:* Some commenters asked that we require States to establish a grievance process to resolve disputes with respect to timely and accurate distribution of collections. Several commenters requested that the process be extended to resolve disputes over adequate provision of all services to ensure that the program standards requirements are followed by States. They suggested that States be required to establish toll-free numbers for custodial parents to call for information or to discuss how collections were distributed. In addition, they requested that States be required to pay custodial parents any interest earned on collections.

Response: There is nothing to preclude a State from setting up such a system to resolve disputes. However, there is no evidence that such a system is warranted in all States. Furthermore, State compliance with program requirements, such as these performance standards, is measured by program audits and other less formal reviews conducted by Federal staff. We believe that most States are distributing collections accurately and that grievance procedures are unnecessary. Finally, States are permitted to pay interest earned on non-AFDC collections paid to families to those families.

Section 302.32(f)(1)—Interstate Collections

Comment: Commenters requested that the timeframe for forwarding interstate collections, like other distribution timeframes, be reduced from 10 working to 10 calendar days. Alternatively, several State and local agency commenters requested that the timeframe for forwarding collections in interstate cases be changed to 15 working days to avoid any distinction between distribution timeframes for interstate and intrastate cases.

Response: We agree that there should be consistent interstate and intrastate distribution timeframes and have changed the proposed 10 working day timeframe for the responding State IV–D agency to forward collections to 15 calendar days from the date of initial receipt in the responding State. This is consistent with the requirement in § 302.32(f)(3)(i) to send collections to non-AFDC families within 15 calendar days of the date of initial receipt in the State. However, reducing the timeframe to 10 calendar days would be unduly restrictive at this time.

Section 302.32(f)(2)—AFDC Collections

a. $50 Pass Through Payments to Families

1. *Comment:* Almost every comment we received from a State or local IV–D agency objected to the proposal that payments to the AFDC family under § 302.51(b)(1) be made within 15 working days of the date of initial receipt in the State. Commenters strongly urged that IV–D agencies not be required to pay multiple pass-through payments until $50 is collected in cases in which payments are made weekly. Commenters suggested the timeframe for sending the $50 pass-through to families be tied to the end of the month of collection or the date at least $50 is collected. In addition, commenters indicated that, if finalized, the proposal would require daily distribution of collections which has proven in at least one State to be confusing to AFDC recipients and difficult to administer.

Response: It was never our intention that States make multiple incremental payments of less than $50 to the AFDC family until the $50 limit on the pass-through of child support is reached. Recognizing that support may be paid weekly or bi-weekly, we have revised § 302.32(f)(2)(i) to make clear that one payment per month of up to $50 be passed through to AFDC families under § 302.51(b)(1) within 15 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support is collected. The only instance where multiple pass-through payments are required would be when timely payments were made but not received by the agency responsible for final distribution until a later month in accordance with § 302.51 of this part.

2. *Comment:* Almost every commenter suggested alternative timeframes for passing through the first $50 of support collected in a month. Suggestions included 5, 7, 10, 15, 21 working days, or 15, 17, 21, 60 calendar days after the end of the month of collection. Others suggested keeping the current requirement at § 302.51(b) (3) and (5) for distribution by the end of the month following the month in which the amount of the collection is used to redetermine AFDC eligibility. Another alternative was to pay the $50 pass-through to the family within 15 working days after the total monthly obligation is collected or a minimum of $50 is collected, or when the next AFDC benefit check is mailed. A State IV–D agency argued that tying payment to the family to the next benefit check was unacceptable because the next month's check is produced at the end of the previous month (the month of collection) to allow mailing on the last working day of the previous month.

Many State and local agencies based their argument for longer timeframes on the need for enhanced automation or the need to assure that checks cleared before paying the family. One commenter argued that the date of receipt should be changed to the date the check clear because out-of-State checks take 25 days to clears and in-State checks take 3 working days, or 15 working days if resubmitted, to clear.

In response to anticipated State comments that checks have to clear before payments may go to the family, other commenters referenced Federal banking requirements which require in-State checks to be cleared within 4 working days and out-of-State checks to be cleared in 7 working days. These commenters argued that States, not custodial parents, should run the risk of checks not clearing because that is the purpose of the IV–D program.

Commenters requesting stricter timeframes suggested the proposed timeframe was much too long and 2 working days should be sufficient for any automated system. Other commenters argued that 15 calendar days from the end of the month of collection was adequate in automated States but 30 to 45 working days was more reasonable in States which are not fully automated. Still other commenters argued that, while 15 days for the first or last payment to be made to the family is understandable given the need to redirect payments in new or recently terminated AFDC cases, 2 to 3 working days should be adequate to pay collections to the family in regularly paying cases.

Finally, a number of commenters urged that the timeframe for payment of the $50 pass-through to AFDC families be required in regulations governing IV–A agencies because the IV–A agency frequently is responsible for making the $50 pass-through payment for the IV–D agency.

Response: Given the many comments we received on this provision of the proposed regulations, we have carefully reconsidered our proposed requirement. We agree with advocates who argue that Federal banking requirements prohibit financial institutions from holding checks for extended periods to ensure clearance. In response to comments, we are revising regulations governing the IV–A program at § 232.20(d) to require the IV–A agency to pay to the family the sum disregarded under § 302.51(b)(1) within 20 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 20 calendar days of the end of the month in which the support is collected. Some State IV–A agencies enter into agreements under which the IV–D agency sends the $50 payment to AFDC families. In those States, the IV–D agency must send the pass-through payment to the family within the 15-calendar day requirement in § 302.32(f)(2)(i) because there is no need to transfer the collection from the IV–D to the IV–A agency. In the majority of States in which the IV–A agency sends the pass-through payment to the family, § 302.32(f)(2)(i) requires that the IV–D agency forward the collection to the IV–A agency within 15 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support was collected.

We believe that these timeframes are adequate for any State, whether fully automated or not, to distribute the $50 pass-through payment to AFDC families.

b. *AFDC collections in excess of the first $50*—1. *Comment:* We received comments on our proposal to require the IV–D agency to distribute collections in excess of the $50 pass-through payment under § 302.52(b)(1) to the IV–A agency with 15 working days of notice of AFDC eligibility redetermination. Commenters argued that there was no need to regulate prompt distribution of amounts to be retained by the State and Federal governments, either in AFDC or title IV–E foster care cases as proposed in § 302.32(f)(2) (ii) and (iii), because it would be administratively complex and costly and would serve no practical benefit to do so. They argued that the Congress, in Pub. L. 100–485, only instructed the Secretary to regulate prompt distribution of collections due to families, not to be retained by States.

Response: Section 122 of Pub. L. 100–485 requires the Secretary to establish time limits for distributing child support collections, and the Conference Report (H. Rep. 100–998) on page 99 requires time limits within which child support payments must be distributed "to the families to whom they are owed." Because we agree that the intent of Congress was expeditious distribution of collections owed to families, rather than those collections assigned to, and retained by, the State in AFDC cases, we have revised § 302.32(f)(2)(ii) to require distribution only of collections in excess of the $50 pass-through which are paid to families in AFDC cases. We have made similar revisions with respect to collections in title IV–E foster care cases to ensure timely payment to the agency responsible for the child's needs of any collections to be used to serve the child's best interests.

2. *Comment:* A number of commenters expressed concern about delays of up to five months in forwarding payments to families after AFDC eligibility terminates. They stressed that such delays are untenable because the former AFDC family must rely on the support collection as a substitute, or partial substitute, for the amount the family previously received under the AFDC program. Alternatives to the proposed 15-working day timeframe ranged from 10 calendar days of notice of eligibility

redetermination to 20 days from the end of the month of collection. Other commenters requested that the support collection be paid to the family no later than the date the family would have received the next AFDC check. Other commenters pointed out that IV–A agencies are not required to notify IV–D agencies of a family's continued AFDC eligibility; they are only required to notify the IV–D agency of the effective date of the family's ineligibility.

Response: In response to comments, and because we are imposing timeframes only for distribution of amounts paid to families, we have revised § 302.32(f)(2)(ii) to require that, with the exception of Federal and State income tax refund offset collections which are dealt with separately, collections for the month following the month in which the family receives its last assistance payment and any collections paid to the family under § 302.51(b) (3) and (5) must be sent to the family within 15 calendar days of initial receipt in the State of a collection for the first month of ineligibility. We are not requiring States to send payments to the family by the date that the family would have received their next AFDC benefit check had benefits not been terminated, because that date may occur too soon to allow the IV–D agency adequate time to meet the timeframe. However, we strongly urge States to attempt to forward collections to the family as close to that date as possible.

c. *Non-AFDC collections*—1. *Comment:* We received many comments on the timeframe for distribution of collections in non-AFDC cases. Suggested alternatives ranged from 5 calendar days to 35 days from initial receipt in the State. Commenters also suggested a separate timeframe of 2 working days for non-AFDC cases in which no AFDC arrearages are owed, as well as 10 days initially, to be shortened when States are automated and upon reassessment of the timeframe in 2 years. A number of commenters indicated that 15 working days was sufficient if mailing the payment to the last known address of the custodial parent meets the requirement. Some commenters wanted a longer timeframe to account for unusual circumstances which may preclude timely distribution while others urged that we not establish a standard based on time necessary to distribute support in difficult cases.

Response: In response to concerns for prompt payment of collections to families in non-AFDC cases, we revised the proposed 15-working day timeframe to require IV–D agencies to send current support payments to non-AFDC families within 15 calendar days from the date of initial receipt in the State. We do not believe a standard should be set based on the time it takes to distribute collections in difficult cases which are the exception and not the rule. Mailing the payment to the last known address of the custodial parent would meet the requirement. If such payments are returned, however, States should attempt to promptly determine a new address for the custodial parent. We did not establish separate 2-day timeframes for distribution in non-AFDC cases in which there are no AFDC arrearages because we do not want to make distribution, complicated by its very nature, unduly so by requiring a myriad of different timeframes for each type of case.

2. *Comment:* We also received a number of comments on proposed § 302.32(f)(3)(ii) which would allow States to determine whether to pay arrearage collections to the family first or reimburse itself for unreimbursed past assistance paid to the family. Commenters were divided between wanting us to require payment to the family first or to require that State's retain amounts to reimburse unreimbursed past assistance first. Those in favor of paying the family first argued the family should receive arrearage payments to help them remain self-sufficient. One commenter urged that at least those arrearages which accrue after the family leaves the AFDC rolls should be paid to the family before the State retains its share of what it is owed. Those in favor of reimbursing the government for unreimbursed assistance paid to the family first argued that paying the family first violates section 457(b)(4) of the Act and § 302.51(f).

Response: Section 457(b) sets forth the distribution scheme for AFDC cases; section 457(c) governs services to former AFDC recipients and requires State IV–D agencies to continue to provide IV–D services to former AFDC cases subject to the same conditions and on the same basis as in the case of non-AFDC cases receiving services under 454(6) of the Act. Since section 454(6) is silent regarding the distribution of amounts collected in non AFDC cases, our longstanding policy has been to allow States flexibility regarding distribution of amounts collected in excess of current support in non-AFDC cases when there are both arrearages owed to the State and arrearages owed to the family. While § 302.51(f) requires States to attempt to collect any unpaid support after the family leaves the AFDC roles to reimburse the State and Federal government for unreimbursed assistance paid to the family, we agree that paying arrearages to a non-AFDC family before reimbursing unreimbursed assistance may impact positively on the family's ability to remain self-sufficient. We are in the process of clarifying distribution requirements in a separate rulemaking effort and will address this issue in more detail in that document. Since this final rule is establishing timeframes for distribution rather than distribution requirements themselves, we retained State flexibility in the final rule under paragraph (f)(3)(ii) but changed the proposed requirement to require IV–D agencies which send amounts to the non-AFDC family to satisfy past-due support to do so within the 15 calendar days, for consistency with paragraph (f)(3)(i).

d. *Federal and State income tax refund offset collections*—1. *Comment:* Most States requested a longer period of time within which to distribute collections made through offset of Federal and State income tax refunds. Suggested alternatives ranged from distribution within 15 days of receipt by the agency responsible for final distribution to distribution within 180 days of receipt. Most commenters, however, suggested collections be distributed within approximately 30 to 45 calendar days of receipt or within 15 days of expiration of any post-offset appeal or review process required by State law. States requested that the timeframe commence with receipt by the IV–D agency to avoid including receipt by the State Revenue Agency which is responsible for the State income tax refund offset process.

Response: We are convinced by commenters that additional time is needed to distribute these collections because of their volume. Therefore, we require in § 302.32(f)(2)(iv) that IV–D agencies send to the AFDC family or IV–E agency, as appropriate, within 30 calendar days of receipt by the IV–D agency amounts offset in AFDC cases and paid to the family under § 302.51(b)(5) and amounts offset in title IV–E foster care cases and distributed under § 302.52(b)(4), unless State law requires a post-offset appeal process and an appeal is filed, in which case the IV–D agency must send any payment to the AFDC family or IV–E agency within 15 calendar days of the date the appeal is resolved. We also revised § 302.32(f)(3)(iii) to require the IV–D agency to send amounts offset in non-AFDC cases to the family within 30 calendar days of receipt by the IV–D agency, with two exceptions. First, if State law requires a post-offset appeal process and an appeal is filed, the IV–D agency must send the payment to the family within 15 calendar days of the date the appeal is resolved. Second, in accordance With § 303.72(h)(5), if the Secretary of the Treasury, through OCSE, notifies the State that an offset is being made to satisfy non-AFDC past-due support from a refund based on a joint return, the State may delay distribution until notified that the unobligated spouse's proper share of the refund has been paid or for a period not to exceed six months from notification of offset, whichever is earlier. We want to stress, however, that States may not routinely hold tax offset collections in non-AFDC cases for up to 6 months. The IV–D agency must receive a notice that a joint refund is involved before distribution may be delayed in such cases.

4. *Comment:* A number of commenters asked that we clarify that § 302.32(f)(3)(iii) requires State, as well as Federal, income tax refund offset collections to be distributed in non-AFDC cases within the specified timeframe.

Response: We inadvertently omitted reference in § 302.32(f)(3)(iii) to State tax refund offset distribution in non-AFDC cases. Distribution of such amounts is required within the same timeframe as distribution for Federal income tax refund offset collections in non-AFDC cases.

3. *Comment:* A commenter indicated that offset collections can be distributed only after both the collections and the tape specifying from whom the collections were made are received.

Response: The 30-calendar day timeframe should allow adequate time to receive both the collections and the magnetic tape and to distribute the collections.

Establishment of Cases/Maintenance of Case Records—Section 303.2

Application Process—Section 303.2(a)

1. *Comment:* Commenters requested that IV–A agencies be required to refer AFDC cases immediately or within two working days to the IV–D agency because families applying for AFDC are in immediate need of child support payments.

Response: Section 235.70 requires referral of AFDC cases to the IV–D agency within 2 days of eligibility determination and allows referral earlier at State discretion. Some States refer cases immediately upon application for AFDC or have co-located IV–A and IV–D offices so that IV–D services are provided prior to AFDC eligibility being determined and within the timeframe allowed for the eligibility determination process. Because some families are subsequently determined to be ineligible for AFDC and may not want to apply for IV-D services, we do not believe immediate referral should be mandatory at this time.

An earlier response noted the Family Support Administration's commitment to strengthen interaction between the IV–A and IV-D programs.

2. *Comment:* We received many comments on the requirement to provide applications on the day an individual requests an application for services. Commenters asked that we allow a State between 2 and 10 working days to respond to a request for an application to allow for unpredictable personnel events and requests received late in the day. We were asked to require that applications be given to individuals who come into the IV–D agency to request services on the day they come in and that applications be mailed to individuals within 2 to 5 working days of a telephone or written request. Some commenters requested that States be required, if applications are filed in the wrong office, to refer them to the correct office immediately and to inform custodial parents that written applications are necessary.

Response: We revised the requirement in § 303.2(a)(2) to require IV–D agencies to provide an application to an individual who requests an application or services in person on the date of the request and to send applications to individuals within no more than 5 working days of a written or telephone request. We did not require IV–D agencies to forward applications to the correct IV–D office because an application may be filed at any IV–D office.

Although written applications are necessary, we did not add a requirement that States inform custodial parents of that fact because we believe it is obvious. States may include such a statement in information publicizing the availability of services under the IV–D program.

3. *Comment:* Commenters requested that States be required to explain the rights and responsibilities and distribution policies of the IV–D program to AFDC as well as non-AFDC families because AFDC recipients have a right to, and need to know, this information.

Response: We agree that States should explain the IV–D program and its procedures, as well as the rights and responsibilities of those who receive IV–D services, to any individual receiving IV–D services. Therefore, we have revised § 303.2(a)(2) to require the IV–D agency to provide that information to AFDC, Medicaid, and title IV–E foster care applicants or recipients within no more than 5 working days of referral to the IV–D agency.

4. *Comment:* A number of commenters requested that IV–D agencies be required to accept an application as filed on the day it is filed and the application fee is paid.

Response: We have revised § 303.2(a)(3) to require the IV–D agency to accept as filed an application signed by the individual applying for IV–D services on the day it and the application fee are received. An application should be accepted as filed if it is completed to the best of the individual's ability, signed, and submitted to the IV–D agency.

5. *Comment:* Commenters asked that we not require IV–D agencies to accept applications until relevant information is provided which is necessary to determine whether IV–D services are available to the individual. They argued that States must be able to require certain minimal data to determine if a case should be opened, e.g., the name and address of the custodial parent, age of the children, and residence of the custodial parent. States argued that services are only available if there is a minor child or the custodial parent is a resident of the State. With respect to providing services to non-minor children, a commenter urged that States only be required to provide services in cases in which application is received when the child is a minor. Finally, commenters requested that the IV–D agency not be required to accept applications until an intake interview is conducted.

Response: Accepting applications should not involve any action by the IV–D agency other than recording the date of filing on the application. There are no conditions for receipt of IV–D services other than the requirement to file a written application requesting child support enforcement services under the IV–D program. Anyone may apply for IV–D services who needs help with securing child support; availability of services is not limited to minors or to those who are residents of the State. While States argue that they should not be required to provide IV–D services in cases in which the child is no longer a minor, to limit availability of services to minor children would encourage absent parents to avoid their support obligations until the child reaches the age of majority. States may not work cases in anticipation of being able to close those cases once the child reaches the age of majority.

6. *Comment:* A commenter requested that we define more specifically what an application for IV–D services is and asked if an endorsed check, a petition for establishment of paternity or support establishment or enforcement, or application by operation of State law meet the regulatory requirements.

Response: In order to comply with Federal requirements of filing an application, the application must be in writing, be signed by the individual, and clearly state that the individual is applying for child support enforcement services under the State's IV–D program. We revised the definition in paragraph (a)(3) slightly to specifically refer to child support enforcement services under the State's IV–D program. A petition with the court or administrative authority responsible for establishing paternity and/or establishing and enforcing support obligations may be considered an application if the petition is signed by the individual requesting services and clearly states that the individual is requesting child support enforcement services under the State's title IV–D program. An endorsement on the back of a support check does not meet requirements for an application for services. Application deemed by operation of State law does not meet the requirement for application for IV–D services because it does not allow the individual the option to choose whether or not to apply for IV–D services provided under section 454(6) of the Act.

Case Opening and Actions Required Within 20 Calendar Days of Receipt of Referral or Application—Section 303.2 (b) and (c)

1. *Comment:* A number of commenters asked if the 2-day timeframe for case opening is intended to include action by the central registry in interstate cases. Otherwise, commenters generally asked that the 2-day timeframe be expanded to between 5 and 10 working days or, alternatively, be eliminated and the required actions be included under the 15-working day timeframe in proposed § 303.2(c). Other commenters wanted clarification that a case is considered "opened" if a record of the application or referral has been created and an identification number has been assigned. Another commenter indicated that she could not meet the 2-day timeframe for opening a case because of her ethical duty under State law to determine whether an applicant has a legally defensible case and a case that she can legally pursue.

Response: The case opening requirement in § 303.2 applies to the initial opening of a IV–D case upon referral or application for services; it does not include taking action upon receipt of an interstate referral. The requirements in § 303.7 for central registries apply to interstate cases.

We did not intend that any substantive action or decision must be made on a case within the 2-day timeframe for case opening. However, we are convinced by States' arguments that we should not impose timeframes for each specific action required but establish timeframes governing broader necessary actions. Therefore, we have deleted the separate 2-day timeframe for opening a case and revised § 303.2(b) to require the IV–D agency to open a case by establishing a case record within the 15-working day timeframe (which has been converted to 20 calendar days) for taking specific actions to solicit action and refer a case for further location attempts, if necessary.

2. *Comment:* We were asked to clarify that a case record may be automated, on paper, or a combination thereof.

Response: We moved from proposed § 303.2(b) to § 303.2(c) the requirement that a case record must be supplemented with all information and documents pertaining to the case, as well as all relevant facts, dates, actions taken, contacts made and results in a case. Records of contacts, communications, and other actions in a case may be maintained in a physical or electronic record. Case records, therefore, may be automated, on paper, or a combination thereof.

3. *Comment:* We received comments which indicated that if necessary forms for case processing are not complete when received by the IV–D agency, the IV–D agency should be allowed to return the forms to the IV–A agency or non-AFDC applicant for completion before opening a case.

Response: As required under § 303.2(b), the IV–D agency must open a case and solicit necessary and relevant information from the custodial parent and other relevant sources within the 20-calendar day timeframe.

4. *Comment:* We received a number of comments in response to the solicitation of views about the possibility of requiring State IV–D agencies to have agreements in place to ensure that all cases are referred within a specified number of working days of an application or determination of eligibility for AFDC, Foster Care or Medicaid benefits. Although a few commenters supported such a requirement, the majority strongly objected to placing an additional burden on the IV–D agency to ensure compliance by IV–A agencies with IV–A requirements. The commenters said that regulations governing the IV–A, IV–E and XIX programs should require those program agencies to promptly refer cases to the IV–D agency.

Response: While we agree that requiring agreements to ensure that IV–D agencies receive referrals is an indirect, inappropriate method of ensuring prompt referral, we are not addressing prompt referral by other agencies because these issues are beyond the scope of this regulation which governs IV–D agency activities.

5. *Comment:* A number of commenters requested that we extend to 30 days the proposed 15-working day timeframe for soliciting additional information to allow rescheduling of interviews and to allow group interviews. Others asked that States be required to develop a plan of service within the proposed 15-day timeframe. Some commenters requested that the timeframe be reduced to 15 calendar days while others asked that IV–D agencies only be required to initiate action to solicit information, verification or access to automated location sources within the proposed 15-day timeframe.

Response: We believe that 20 calendar days, as required in § 303.2(b) to solicit additional information, including to schedule, and reschedule interviews, if necessary, is adequate in the vast majority of cases. While we have not imposed an explicit requirement that IV–D agencies develop a plan of service within this initial assessment period, actions required within the 20 calendar day timeframe must be based on an assessment of the case to determine necessary action. In addition, while we believe reducing the timeframe to 15 calendar days would be excessive at this time, requiring IV–D agencies only to initiate the required actions during the 20 calendar day timeframe would not ensure the case will be worked promptly.

6. *Comment:* We received a number of comments expressing confusion about the two separate timeframes for accessing automated versus all other location sources. Commenters asked that we not establish a separate timeframe for accessing automated location sources.

Response: In response to these comments and to avoid confusion, we have deleted the proposed requirement that IV–D agencies access all appropriate State and local automated sources within the proposed 15-day timeframe from receipt of referral or application. Section 303.3 now contains all location requirements. Therefore, § 303.2(b) now requires IV–D agencies, within no more than 20 calendar days of

receipt of referral of a case or filing of an application for services, to open a case by establishing a case record and, based on an assessment of the case to determine necessary action, to: (1) Solicit necessary and relevant information from the custodial parent and other relevant sources and initiate verification of information, if necessary; and (2) If there is inadequate location information to proceed with the case, refer the case for further location attempts, as specified in § 303.2.

Location of Absent Parents—Section 303.3

Section 303.3(a)—Definition

1. *Comment:* With respect to the proposed definition of location, the majority of the commenters requested clarification of the word "confirmed." Some commenters requested that we not require confirmation of a location if there is every indication that the information is current. Commenters generally agreed that finding an address should not be considered locating the absent parent unless the agency can take necessary action or effect service of process on the individual based on the address. Finally, commenters requested clarification regarding the inclusion of the absent parent's employer, assets and/or income in the definition of location.

Response: As stated in the preamble to the proposed rule, the advisory committee stressed that the location function can only be considered complete or successful when the address received is sufficient and necessary to take the next appropriate action in a case. The definition of location is important because many of the timeframes in the regulation begin with location. While a sufficient address is a prerequisite to effective service of process, to define location as successful service of process would require service of process within the location function, which is not necessarily appropriate in every case. States should determine whether an address is sufficient to proceed with necessary action, which could include service of process. Verification of an address would not be necessary in a situation where the State knows the address is sufficient to take the next appropriate action. At such time as it is determined that service of process cannot be effected because the information is not sufficient to take the next appropriate action, the case would be referred for additional location attempts.

With respect to the request for clarification of why employer and asset information is included in the definition of location, we want to clarify that States must locate the absent parent, the absent parent's employer, income and assets, depending on what information is necessary to proceed with appropriate action on a case. Section 303.3(a) is revised to remove the word "confirmed" and define location as information concerning the physical whereabouts of the absent parent, or the absent parent's employer, sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in the case.

Section 303.3(b)(1)—Location Sources

1. *Comment:* We received several comments regarding the list of appropriate State agencies and departments States must use to locate absent parents in proposed paragraph (b)(3). The commenters were concerned about the existing requirement to use departments which maintain records of criminal records. The commenters stated that some States would require legislative changes to access these records. Some commenters suggested that we eliminate the list in this section and require States to develop guidelines determining sources to be used in the State so that States will have the flexibility to use sources allowable under State law and the ability to add new sources to the list which can be accessed in one State but not another (e.g., utility account information, financial institution records, etc.).

Response: The proposed regulation only added wages and employment records to the existing list of State sources; access to criminal records was included in existing regulations. We did not delete specific reference to locate sources and require States to issue guidelines to determine appropriate location sources because we want to ensure States access all appropriate sources. However, because we combined all location sources, the State sources listed in proposed (b)(3), as well as the Federal Parent Locator Service (PLS) and interstate location networks, are included under paragraph (b)(1). States should access any appropriate location source, whether in or out-of-State, including the Federal PLS. However, because some States may not have access to certain sources because of restrictions in State law, paragraph (b)(1) requires States to use State location sources such as those listed as permitted under State law.

2. *Comment:* In response to our request regarding whether States should be required or encouraged to use private automated data sources such as credit reporting agencies and the Postal Service contractor's recent mover data base, those who responded favored requiring the use of credit reporting agencies but pointed out that some States may need legislative changes to access this source. Commenters were opposed to requiring use of the Postal Service contractor's recent mover data base unless it could be accessed via the Federal PLS. The majority of the commenters urged a demonstration project to assess the cost-effectiveness of this source.

Response: In response to comments, we are not requiring use of these private data sources at this time. However, States should assess the availability of these sources and use them, if available and appropriate. Federal financial participation is available for the cost of using these sources. OCSE will further explore both sources as part of continuing assessment and enhancement of the Federal PLS.

Sections 303.3(b)(3)—Timeframe for Location

1. *Comment:* The majority of the commenters requested that proposed paragraph (b)(4) require that "appropriate location sources" include the Federal PLS. These commenters were opposed to the exclusion of the Federal PLS from a timeframe, as proposed, and requested that regulations require that States submit requests to the Federal PLS simultaneously with submittal to State and local sources. In addition, several commenters stated that regulations should require a timeframe within which the Federal PLS must respond.

Response: Since State and local sources often provide more recent and accurate location information, requests to the Federal PLS may not be appropriate in many cases. However, we agree that cases should be transmitted to the Federal PLS in a timely manner if and when a State determines that the Federal PLS is an appropriate source. Accordingly, we have deleted proposed paragraph (b)(5) and revised proposed paragraph (b)(4), which is redesignated as paragraph (b)(3), to require referral to the Federal PLS within the timeframe for accessing appropriate location sources. Cases may be submitted to the Federal PLS and other location sources simultaneously, or to the Federal PLS after accessing State and local sources is unsuccessful, whichever is appropriate given the case information. However, all appropriate sources must be used within the required timeframe.

We did not include a timeframe within which the Federal PLS will respond to requests for location because

Federal regulations for the IV–D program apply to States, not the Federal government. However, depending on the source checked, the Federal PLS responds in one, two or three weeks from request for location from a State or local PLS.

2. *Comment:* The majority of the commenters requested clarification of the term "access" in proposed paragraph (b)(3). These commenters requested that regulations require that States query sources within the timeframe, rather than require receipt of information from sources within the timeframe, because State agencies often have no control over the time it takes to get a response from sources. One commenter suggested that, rather than require the return of information within a stringent timeframe, States should be encouraged to work with sources to improve turn-around time and be required only to query sources within a timeframe and follow-up within a certain period of time if the IV–D agency has not received a response from the source.

Commenters were also concerned about the 30-working day timeframe. Several commenters requested that we retain the current 60-calendar day timeframe because a 30-working day timeframe would force States to send simultaneous location requests to sources which may have a fast response time but may not have information pertaining to the case. Several commenters stated that 30 working days is not long enough to receive and evaluate responses from non-automated sources. Suggested alternate timeframes were 30, 40 and 45 calendar days.

Response: We believe it is crucial for States to determine which sources are most likely to provide information concerning the absent parent's or alleged father's whereabouts and to access these sources simultaneously, rather than one at a time. With regard to response time, we recognize that States do not have direct control over the response time of some sources. However, many sources respond in a timely manner. As stated in the preamble to the proposed rule, the 60-day timeframe was reduced to 30 working days based on the fact that the 60-day timeframe was set in 1978, prior to automated access. However, as pointed out by commenters, all States do not yet have automated capabilities. While only requiring States to access (i.e., query or request location information), as opposed to receive responses from, location sources would not ensure continuing responsibility for case processing, we realize that even the most diligent efforts may not result in accessing and evaluating location information within a 30-working day timeframe. The majority of the commenters believed that 60 calendar days would be adequate to request and receive responses from sources. However, because some States do not yet have automated access to location sources, Federal PLS access is included in the timeframe, and States must ensure that the location information is sufficient, we have revised the proposed paragraph (b)(4) (redesignated as paragraph (b)(3)) to extend 30 working days to 75 calendar days. Within this timeframe, States must access all appropriate locations sources, including the Federal PLS, and ensure the sufficiency of the information received.

3. *Comment:* One commenter requested clarification of the location requirements with regard to situations in which a State receives information which indicates that an absent parent may be in one of several States.

Response: With regard to these situations, a State may request several States to attempt to locate an absent parent or putative father. However, because the case is not yet an interstate case, the requesting State must take this action within its own timeframe (i.e., the requesting State must request and receive location information from any other States within the 75-day timeframe). Since the States providing location information are not subject to the timeframe, access should be limited to automated sources to ensure a quick response to the request.

4. *Comment:* A number of commenters were concerned that, if, as proposed, States are required to initiate the next appropriate action within 2 working days of location, they would have insufficient time to complete the necessary forms in interstate cases.

Response: Because we deleted the 2-day timeframe for initiation of the next appropriate action in proposed paragraph (b)(6), we revised § 303.7(b)(2), which requires initiating states to "promptly" refer any interstate IV–D case to the responding State's interstate central registry for action, to require referral within 20 calendar days of determining that the absent parent or putative father is in another State. Under this requirement, the initiating State would prepare the appropriate standard interstate form(s) and forward the case to the responding State's central registry. For example, if the State determines an absent parent or putative father is in another State and the next appropriate step is establishment of an order, the initiating State would prepare the necessary forms and forward the case to the responding State within 20 calendar days from determining that the absent parent is in another State. Upon receipt of the case in the responding State's central registry, the requirements in § 303.7(a) apply. Once the case is forwarded for necessary action by the central registry within the 20-working day requirement, the timeframes for taking each necessary action, in this case establishment of a support order, must be met by the responding State. We also corrected references in proposed paragraph (b)(7) (redesignated as paragraph (b)(4)) because of other changes to § 303.3.

Section 303.3(b)(5)—Repeated Location Attempts

1. *Comment:* We received a number of comments on the requirement in proposed paragraph (b)(6) that States must repeat location attempts quarterly in appropriate cases in which previous attempts to locate absent parents, or sources of income and/or assets have failed but adequate information exists to meet requirements for submittal for location, in conjunction with quarterly updates of State employment security files. The majority of the commenters requested that this requirement only apply if the State receives new information on a case since the last request for location. Several commenters requested that regulations clarify that this requirement only applies to automated sources and to cases where there is a known Social Security number. One commenter requested clarification regarding the statement that it must be "in conjunction with quarterly updates of State employment security files." Finally, several commenters requested that resubmittal only be required semiannually because not all sources are updated quarterly.

Response: It is essential that cases be resubmitted for location even if the State IV–D agency does not receive new information on the case. Often, the agency would not be aware of the fact that an absent parent has gotten a job or a driver's license. However, we agree that subsequent attempts will not be helpful unless there is sufficient identifying information on the absent parent. We required in the proposed rule that the State repeat location attempts quarterly "in conjunction with quarterly updates to State employment files" to ensure that States re-check this invaluable source after it is updated. Moreover, limiting cases to those with social security numbers (SSNs) is inappropriate because social security numbers are obtainable through the Federal PLS.

For the reasons mentioned above, we have revised proposed paragraph (b)(6) (which is redesignated as paragraph (b)(5)) in several ways. We revised the requirement so that States must repeat location attempts in cases in which previous attempts to locate have failed but adequate identifying and other information exists to meet requirements for submittal for location, either quarterly or upon receipt of new information which would aid in location, whichever occurs sooner. Quarterly attempts may be limited to automated location sources but must include accessing State employment security files. Repeated attempts upon receipt of new information which may aid in location must meet the requirements at § 303.3(b)(3), i.e., the State must access all appropriate sources within the 75-calendar day timeframe.

2. *Comment:* In response to our request for comments on requiring annual submittal of unlocated cases to the Federal PLS, the majority of the commenters requested that, rather than require annual submittal to the Federal PLS, regulations should require that the FPLS retain cases and check them periodically without the need for resubmittal.

Response: If the Federal PLS were to check cases periodically as suggested without resubmittal, there would be no way to keep the data up-to-date. For example, the Federal PLS would have no way of knowing if information provided to the State was successful in locating the absent parent or if the absent parent had been located using other location sources. The list of cases, would, therefore, continue to grow from year to year.

Since, however, the Federal PLS is such a valuable location source, we believe mandatory annual submittal to the Federal PLS of unlocated cases in which adequate information exists to access the Federal PLS is warranted. Therefore, we have added such a requirement at paragraph (b)(6).

Section 303.3(b)(7)—Referral for Location When Location Becomes Unknown

1. *Comment:* The majority of the commenters stated that 5 working days is too short a period of time to refer for location services when location becomes unknown. In addition, several commenters requested clarification of this requirement because it could be interpreted that a State would have to locate the absent parent's assets or income if unknown even if the case is in payment status.

Response: Because we have eliminated all interim timeframes and because the timeframe for the location requirement starts upon determining that location is necessary, we have deleted this section.

Establishment of Support Obligations—Section 303.4

1. *Comment:* The majority of the commenters were opposed to the 30-working day timeframe to establish a support order or file a petition for establishment of a support order with the court or administrative authority responsible for establishment of obligations. Most stated that 60 calendar days would be more reasonable to allow the State sufficient time to request that the absent parent come in for an interview, attempt settlement, prepare a complete petition and refer the case to the attorney if settlement is not reached. Many commenters pointed out that the 30-day timeframe would force States to file cases without attempting consent.

In addition, many commenters requested clarification regarding the proposed standard and timeframe as it relates to service of process and expedited processes timeframes. Some States indicated their procedures require that legal actions must be filed prior to any negotiations or settlement discussions being taken in the State. Alternatively, some States attempt to obtain consent orders prior to filing a case. Commenters stated that because of differing State procedures, the proposed requirement to establish an order or file a petition for establishment of a support order with the court or administrative authority within 30 days of locating the absent parent should be revised and/or clarified. Some commenters suggested a separate timeframe for consent processes, to encompass the period of time prior to when a case must be filed in the State. Other commenters suggested that the timeframe for filing a case be shortened and that another timeframe be added for the establishment of an order and/or initiation of establishment of an order. Most commenters indicated that filing a case does not bring the absent parent under the jurisdiction of the expedited process system. Rather, it is service of process that must be accomplished to ensure that the absent parent is under the jurisdiction of the State's expedited process system.

With regard to service of process, the majority of the commenters were opposed to the requirements in proposed § 303.9. With regard to proposed § 303.9(b), commenters stated that 2 working days is not adequate time to prepare documents for service and to refer documents to the process server. With regard to the requirement that service of process must be completed within 10 working days of the request, commenters were most concerned with the fact that even service of process by certified mail takes longer than 10 days. In addition, the majority of commenters were concerned with the assumption in the preamble to the proposed rule that the percentage of cases where process could not be served would be accounted for in the 25% margin for error in a 75% audit criteria. Commenters pointed out that despite diligent efforts, absent parents successfully avoid service in a sufficiently large percentage of cases to warrant this fact to be taken into consideration in developing a standard. Commenters requested that regulations state that States attempt service within a timeframe and document attempts to show what efforts were taken if an absent parent is not successfully served. Many commenters requested that the 10-day timeframe be extended to allow for due process requirements which may require service by mail to be followed by personal service if necessary. Suggested timeframes included 15, 20, 30 and 45 calendar days. Finally, commenters requested that service of process timeframes be outside of the overall timeframes for action. Rather, these commenters believed that service of process timeframes should be in addition to overall timeframes, and that expedited processes requirements should be revised accordingly.

Response: As required in § 303.101, States must have and use expedited processes to establish and enforce support obligations. Those expedited processes and the timeframes in § 303.101 only apply to cases once they are under administrative or judicial jurisdiction. As stated in the preamble to the proposed rule, the proposed case processing timeframes for establishment of support obligations were intended to encompass all necessary actions up to the point where the expedited processes timeframes begin (i.e., the date a case is filed or the date of successful service of process, depending on which date the State chooses for purposes of computing expedited processes timeframes.) However, as a result of comments, we realize that many States must file a document with the court or administrative process before any action can be taken to establish a support obligation and that cases are not under administrative or judicial jurisdiction until the absent parent has been served with notice. To respond to the commenters' concerns, we believe it

is necessary to revise both §§ 303.4 and 303.101.

Section 303.101(b)(2) is revised by replacing reference to the time of filing as the starting point for the expedited processing timeframe so that, under expedited processes, actions to establish and enforce support obligations must be completed from the date of successful service of process to the time of disposition within the required timeframes. In conjunction with this revision, § 303.4(d) is revised to encompass the period of time from location of the absent parent or establishment of paternity through establishment of an order, successful service of process, or documented attempts to serve process in accordance with State guidelines defining diligent efforts to effect service of process. To ensure States make diligent efforts to serve process, we added a requirement at § 303.3(c) to require that the State develop guidelines defining diligent efforts for service of process and that the guidelines must include periodically repeating service of process attempts in cases in which previous attempts to serve process have failed, but adequate identifying and other information exists to attempt service of process. Therefore, within the timeframe to be discussed below, States must serve process or document attempts to serve process. In situations where process could not be served because the absent parent is no longer at the address, the State must document this as the reason and the case must be resubmitted for location.

Because State procedures differ with respect to the order in which actions are taken to establish an order for support, rather than attempt to establish sequential timeframes for each step a State must take, we have extended the timeframe sufficiently to allow a State to attempt to establish an order by consent, or file an action and serve the absent parent in accordance with its procedures. As indicated above, the majority of the commenters stated that 60 calendar days would be adequate for a State to attempt to establish an order by consent or refer the case to an attorney, prepare a complete petition and file the case. In addition, the majority of the commenters indicated that 30 calendar days would be a reasonable period of time in which to accomplish both service by mail and personal service, if necessary. Accordingly, § 303.4(d) requires that IV–D agencies must establish an order for support or serve process necessary to commence proceedings to establish an order or document unsuccessful attempts to serve process within 90 calendar days of location or of establishment of paternity. Therefore, given the 20-day timeframe for case opening, the 75-day timeframe for location and the 90-day timeframe discussed above, support orders must be established or cases must enter the expedited processes system within 185 calendar days of application or referral. We want to point out that this approach allows establishing an order by consent at any time in case processing, whether before or after a case is filed with the court or administrative authority. With respect to interstate cases, the timeframes in § 303.4 apply upon receipt by the agency in the responding State responsible for the establishment of support obligations.

2. *Comment:* Many commenters requested that regulations allow States to determine whether cases should be pursued. Examples included: the absent parent is receiving public assistance or SSI; the absent parent is incarcerated or institutionalized without income or assets; and the absent parent's income level is below the minimum set by State law.

Response: While some discretion is necessary, States must have standards for pursuing cases. Those situations mentioned in the comments as set forth above would be accounted for by applying the State's guidelines for setting support awards.

3. *Comment:* The majority of the commenters requested that regulations specify when and how often States must review dismissals without prejudice as well as what documentation is necessary.

Response: In this situation, we believe States are in a better position to determine when to refile a previously dismissed case or when to seek a support order on a case-by-case basis. However, we have clarified that States must, at the time of dismissal, determine when it would be appropriate to pursue an order in the future. Notations in the case record are sufficient documentation. If a case is dismissed because of unemployment or insufficient income, the State should return the case to the "locate" function for quarterly and annual checks on changes in income and assets.

Establishment of Paternity—Section 303.5

1. *Comment:* In response to our request for comments regarding whether there should be separate timeframes and requirements for uncontested paternity cases, commenters stated that this would not be practical because often it is difficult to differentiate between contested and uncontested paternity cases. Commenters pointed out that uncontested cases could become contested and vice versa at various points in case processing. Most commenters believed that separate timeframes would only complicate the process or increase court actions to establish paternity if the deadline for establishment by consent was missed.

Response: While we have not required separate timeframes for uncontested cases, we strongly urge States to attempt to establish paternity by voluntary acknowledgement immediately upon location of the alleged father.

2. *Comment:* Many commenters were concerned with the statement in the preamble that cases which are difficult or impossible to complete within one year would easily be accounted for within the 25 percent margin allowed as part of the 75 percent substantial compliance audit standard. Commenters requested that regulations allow States to exercise prosecutorial discretion or, at the very least, list categories of cases which should be excluded from the timeframe. Commenters also described unavoidable delays which cause proceedings to extend beyond the one-year timeframe despite diligent efforts on behalf of the IV–D agency (e.g., extensive pre-trial discovery, interlocutory appeals and post-judgment appeals, etc.). Finally, commenters questioned our legal authority to establish an outside limit for completion of paternity establishment since the Congress allowed States to exclude paternity establishment from their expedited processes.

Response: We believe that Congress allowed States to exclude paternity establishment from their expedited processes to ensure that jurisdictions that wanted to have judges hear paternity cases were able to do so. We also believe that setting standards for paternity establishment is well within the Secretary's rulemaking authority.

In response to commenters' concerns, however, we have revised the proposed timeframe to take into consideration the more difficult paternity establishment case and to allow for differences in State procedures with regard to paternity establishment. Rather than outline step-by-step standards and timeframes for when in the process a State must file a petition with the court for paternity establishment, attempt to establish paternity by consent and serve the alleged father, we have revised the regulations to ensure that all actions necessary to initiate and complete legal proceedings to establish paternity are accomplished in a timely manner.

Section 303.5(a)(1) is revised to require, under paragraph (1), that, within 90 calendar days of locating the alleged father, the IV–D agency must file a petition for paternity establishment or complete service of process necessary to establish paternity (or document unsuccessful attempts to serve process in accordance with the State's guidelines defining diligent efforts under § 303.3(c)), whichever occurs later in accordance with State procedures for paternity establishment. Paragraph (a)(2) requires that paternity must be established (or the alleged father excluded by genetic tests and/or legal process) within one year of the later of: (i) Successful service of process; or, (ii) the child reaching 6 months of age. Under this requirement, States may establish paternity by acknowledgment or consent and, according to State procedures, a support obligation, at any time during the processing of the case. This expanded timeframe allows States 3 months to serve process or file a petition for paternity establishment and one year to establish paternity from successful service, unless the child is under 6 months old and therefore too young for bloodtesting when process is served, in which case the State has one year from the child's 6-month birthday to establish paternity.

We believe the extension of the paternity establishment timeframe addresses commenters' concerns about those contested cases which cannot be completed within one year of locating the putative father. One year from successful service of process or the child being 6 months old is a reasonable amount of time to allow for completion of the great preponderance of paternity cases.

3. *Comment:* The majority of commenters requested that regulations take into consideration the fact that despite the alleged father being located prior to or immediately after the birth of the child, blood cannot be drawn from infants for certain tests until a child is at least six months old.

Response: In response to comments, we have revised paragraph (a) to state that the one-year timeframe for paternity establishment begins with successful service of process or of the child being six months old, whichever occurs later. This will allow States to serve process on the putative father as soon as possible after the child is born when the putative father is more likely to be responsive because the timeframe for paternity establishment will not begin until the child is old enough for a blood test. However, in the future we intend to reexamine the use of DNA testing which does not require the child to be six months old.

4. *Comment:* The majority of the commenters were opposed to the proposed requirement that alleged fathers may only be excluded as a result of genetic tests. Commenters pointed out that in many States genetic tests alone are not sufficient to establish or refute paternity. In addition, evidence or lack of evidence may exclude the alleged father without the need for or despite genetic tests.

Response: We recognize that a putative father may be excluded as a result of either genetic tests or court action and we have revised paragraph (a)(1) (redesignated as paragraph (a)(2)) to state that within the timeframe, the State must establish paternity or exclude the alleged father as a result of genetic tests and/or legal process.

5. *Comment:* Several commenters requested clarification of the term "genetic tests."

Response: We replaced "blood tests" with "genetic tests" to more accurately reflect the advancements in, and increased refinement of, testing methods to determine paternity. We want to point out, however, that "genetic" tests include any blood or tissue testing processes used to confirm or exclude parentage.

6. *Comment:* The majority of commenters were opposed to the requirement in proposed paragraph (a)(2) that, in any case in which an alleged father is excluded but more than one alleged father is identified, the IV–D agency must meet the requirements for each alleged father identified. Commenters were concerned because of evidentiary problems with cases involving more than one alleged father. Some States indicated that they are prohibited by State law from bringing action against a second alleged father when the custodial parent has filed a paternity establishment action naming another man. In addition, commenters believed that States should be required to pursue the most "likely" alleged father in order to protect the custodial parent's credibility as a witness.

Response: We have retained the requirement in proposed paragraph (a)(2), which has been redesignated as paragraph (a)(3), because all children are entitled to have their paternity established. It is imperative that States establish procedures which permit paternity establishment even if the custodial parent names more than one possible alleged father. Blood tests prior to filing the action, or petitions alleging intercourse with each possible father and naming two or more defendants may minimize the evidentiary programs identified. We also want to clarify that when there is more than one alleged father named, if one alleged father is excluded, the timeframes for paternity establishment would apply for the next alleged father once he is located and served.

7. *Comment:* We received several comments with regard to the requirement in proposed paragraph (c) that IV–D agencies must identify and use through competitive procurement laboratories which perform, at reasonable cost, tests which tend to identify the father or exclude the alleged father. Commenters requested clarification regarding whether States may contract with more than one laboratory for different tests. In addition, commenters requested that regulations allow States to take into consideration accessibility and timeliness of results in choosing a lab.

Response: As stated in the preamble to the proposed rule, we want to avoid situations where States use laboratories at exorbitant cost when there may be a laboratory available which performs comparable testing at more reasonable cost. Within those parameters, States may evaluate services provided by laboratories, and choose one or more laboratories which provide necessary services at reasonable cost. Accessibility and timeliness may be considered in determining choice of laboratory but not to the degree that costs become exorbitant in comparison to other laboratories.

Enforcement of Support Obligations—Section 303.6

1. *Comment:* The majority of the commenters were opposed to the requirement that States must identify on the date the parent fails to make payments in an amount equal to the support payable for one month, or an earlier date in accordance with State law, those cases in which there is a failure to comply with the support obligation. Commenters believe that this requirement is too stringent because it entails daily monitoring.

Response: Effective and timely monitoring of compliance is essential in order to trigger income withholding in accordance with statutory requirements and to ensure timely use of other enforcement techniques as appropriate. Because section 466(b)(3) of the Act requires that an absent parent become subject to withholding and that advance notice be sent to the absent parent on the date on which the parent fails to make payments in an amount equal to the support payable for one month,

States must identify delinquencies immediately in all cases. Therefore, we have not revised this requirement.

2. *Comment:* We specifically requested comments on whether the requirement for sending notice to a delinquent absent parent should be amended from "the State must take steps * * * to send notice on the day" to "send the advance notice on the day the delinquency reaches one month's support." The majority of commenters were opposed to tightening this requirement. In fact, many commenters suggested that the requirement be revised to require that States send the notice within a longer timeframe. Suggestions included 3 days, 5 days and 1 week.

Response: As previously stated, section 466(b)(3) of the Act requires that advance notice of the withholding be sent to the absent parent on the date on which the parent fails to make payments in an amount equal to the support payable for one month. Therefore, we cannot extend this timeframe. However, providing notice on the date the absent parent is delinquent may be impossible in all cases. Therefore, we are retaining the current requirement to take steps to send the notice on that date.

3. *Comment:* In response to our request for comments, the majority of the commenters believed that regulations should not require that States process uncontested wage withholding cases more quickly than contested cases.

Response: Current requirements at §-303.100(d)(2) require notice to the employer to be sent immediately if the absent parent fails to contact the State within the period specified in the advance notice. Because we are establishing specific timeframes for taking actions in IV–D cases, we replaced "immediately" with "within 5 working days" in § 303.100(d)(2).

4. *Comment:* In response to our request for comment regarding whether wage withholding notices to employers should inform the employer when enrollment in employment-based medical insurance has been required by the support order, whether the IV–D agency should request the employer to alert the IV–D agency if the absent parent has not enrolled the child(ren), and whether the IV–D agency should request the employer to enroll the child(ren) if the absent parent has not, the majority of commenters indicated that none of the above suggestions are appropriate or within the scope of State laws. Commenters also pointed out that requiring these actions could potentially harm working relationships with employers at precisely the time when cooperation is necessary for effective wage withholding procedures.

Response: Because of possible conflicts with State law, we have not added these requirements. We want to clarify, however, that the requirement in § 303.6 to take appropriate enforcement action includes situations where there is noncompliance with an order requiring health insurance coverage. In accordance with § 303.31(b)(7) (formerly § 306.51(b)(7)), if health insurance is available to the absent parent at reasonable cost and has not been obtained at the time the order is entered, the State must take steps to enforce the health insurance coverage required by the support order.

5. *Comment:* Commenters stated that the requirement that States must initiate any other enforcement techniques as appropriate within 30 working days of identifying a delinquency would not allow sufficient time to verify an address for service of process, gather enough information to refer the case to an attorney, prepare the case for trial and prepare interrogatories. In addition, commenters requested clarification of "initiate" for purposes of meeting the timeframe when the State uses administrative procedures, such as debt collection agencies and telephone collection techniques. These commenters were concerned that this requirement implies that States must file a petition for enforcement because there would not be sufficient time to allow for calling the absent parent in or using other techniques not included in the mandatory techniques specified in § 302.70(a).

Response: Because States must have and use expedited processes for the enforcement of child support obligations, we believe it is necessary to revise § 303.6 for consistency with the changes to the expedited processes timeframe starting date discussed previously. It is essential that cases enter expedited processes as soon as the State obtains necessary jurisdiction over the absent parent to allow enforcement of the support obligation. However, we believe it is also necessary to account for situations in which States attempt to enforce obligations by consent or using other administrative enforcement techniques before filing a petition for enforcement of a support obligation. Section 303.6(c)(2) is revised to require that the State take any appropriate enforcement action (except income withholding and Federal and State income tax refund offset) unless service of process is necessary, within no later than 30 calendar days of identifying a delinquency or other support-related noncompliance with the order or location of the absent parent, whichever occurs later. When service of process is necessary prior to taking an enforcement action, service must be completed (or unsuccessful attempts to serve process must be documented in accordance with the State's guidelines under § 303.3(c)) and enforcement action taken, if process is served, within no later than 60 calendar days of identifying a delinquency or other support related noncompliance with the order or location of the absent parent, whichever occurs later. Therefore, within this timeframe, States may enforce support obligations by consent, use of administrative procedures such as debt collection, telephone contact, demand letters, or publication of names, for example, and/or file a petition to enforce by legal action. Accomplishing enforcement by consent would be allowable at any time. The date of successful service of process would then be the date when expedited timeframes commence. We want to point out that States are not required to use a specific enforcement technique if that technique is determined to be inappropriate in accordance with the guidelines allowed in § 302.70(b).

6. *Comment:* With regard to the requirement that States must submit once a year, all cases which meet the certification requirements for State and/or Federal income tax refund offset, commenters were most concerned about complying with this requirement before States are fully automated. Commenters pointed out that often collections from prior years would not be all received or applied before it would be time to certify again. In addition, commenters were concerned that requiring certification does not give the custodial parent an opportunity to object to the action. Finally, commenters also requested that we clarify which State, in an interstate case, is required to submit past-due support for Federal income tax refund offset.

Response: In response to State concerns that amounts offset from prior years may not be received or applied by the date States are required to submit amounts for Federal income tax refund offset, past-due support submitted for offset must meet the certification requirements for Federal income tax refund offset, under which the State must verify the amount of past-due support. If the State cannot assure that the past-due support is the correct amount owed, submittal is not required. However, given the timeframe for transmission of offset collection information from OCSE to the States and the schedule for submission of the next round of certifications from the States to OCSE, such situations should be the exception rather than the rule. With respect to custodial parents' right to refuse to have past-due support submitted for offset, we reiterate our longstanding position that, when an individual receives IV–D services, they may not dictate which services they receive. Tax refund offset has proven to be a very successful enforcement technique and its use is essential to ensure children receive the support they deserve.

With respect to the question about which State in an interstate, non-AFDC case may submit past-due support for Federal income tax refund offset, in accordance with § 303.72(a)(4), the State in which an application for IV–D services has been filed pursuant to § 302.33, (i.e., the initiating State), must submit the past-due support for offset. This is consistent with the requirement that past-due support owed in AFDC cases must be submitted by the State in which there is an assignment of support rights to the State under § 232.11, (in interstate cases, generally the initiating State). It is necessary to specify which State must submit past-due support owed in non-AFDC cases for Federal tax refund offset to avoid both States submitting the same arrearages. The initiating State is in the best position to pay the custodial parent any amount offset quickly and to handle any necessary adjustments to the amount of offset based on an amended tax return.

7. *Comment:* The majority of the commenters requested clarification regarding the requirement in proposed paragraph (c)(4) that in cases where previous enforcement attempts have been unsuccessful, the State must examine the factors quarterly and initiate appropriate enforcement techniques as appropriate.

Response: As stated in the preamble to the proposed rule, this requirement was added to ensure that States keep abreast of case circumstances so that when the potential for resumed enforcement efforts occurs, States would initiate appropriate enforcement techniques. We do not intend that State re-exercise enforcement techniques which are inappropriate given case circumstances or attempt enforcement when circumstances which caused initially unproductive enforcement attempts have not changed. For clarity, we have revised paragraph (c)(4) to require that, in cases in which enforcement attempts have been unsuccessful, the State must, at the time an attempt to enforce fails, examine the reason the enforcement attempt failed and determine when it would be appropriate to take an enforcement action in the future, and take an enforcement action at that time. When a case cannot be enforced because of unemployment or insufficient income, the State should return the case to the "locate" function for quarterly and annual checks on changes in income and assets.

Procedures for Case Assessment—Section 303.10

Comment: We received a number of comments arguing that, because cases must be processed within the required timeframes, States may not prioritize cases.

Response: We disagree with these comments. States may establish a case assessment system which meets the requirements of § 303.10 and which allows the State to prioritize which cases to work first, within the timeframes for case processing. Case prioritization is not a system to determine which workable cases not to work; case closure criteria in § 303.11 allow States to close cases which have little or no potential for success either currently or in the future.

Case Closure Criteria—Section 303.11

Section 303.11(b)—Criteria for Case Closure

a. *General*—1. *Comment:* Some commenters asked whether a case must be closed if the case met one or more of the criteria enumerated in paragraph (b), or whether States could exercise discretion in opting not to close some cases which qualified for closure.

Response: A State may opt to continue to work a case that otherwise qualifies for closure under paragraph (b) if it believes that there is potential for success. A State may also elect to establish criteria for closure which make it harder to close a case than those established in paragraph (b).

2. *Comment:* Other commenters proposed that we add a provision under which States may close a case which does not fit any criterion established in paragraph (b), but in which the State has determined closure is appropriate.

Response: We have not included this proposal in the regulation because it is open-ended and contrary to the purpose of establishing clear and concise standards which preclude premature or inappropriate closing of cases. However we have, elsewhere in this section, modified or expanded the criteria in response to comments which identified specific areas in addition to those proposed where closure is appropriate.

3. *Comment:* Several commenters asked if a support order or arrearages which accrued under that order are affected when a IV–D case is closed.

Response: Case closure does not affect the support order or arrearages which have accrued under the order; it only means that services under the IV–D program will no longer be provided. Although the IV–D agency closes a case, the support order remains in effect and arrearages continue to accrue for the life of the order. In accordance with the requirements of section 466(a)(9) of the Act and § 303.106, these arrearages are judgments by operation of law and are subject to enforcement.

4. *Comment:* Several commenters felt that additional time should be allowed for IV–D agencies to establish a case closure system, review existing cases to determine if closure is appropriate, and close cases which meet one or more of the criteria, since case closure was not previously addressed in regulations.

Response: We believe that States can comply with this requirement by October 1, 1990, since States are not required to close all cases which meet the criteria.

5. *Comment:* One State asked that, for audit purposes, any open case meeting at least one of the closure criteria be considered closed and not affect the State's performance with regard to substantial compliance. In a related comment on the audit, the State questioned whether the IV–D agency must properly close all cases which meet closure criteria, or that all cases closed must meet the criteria.

Response: The establishment of case closure criteria is designed to limit cases the State may close to those in which there is no reasonable expectation of establishing paternity, obtaining a support order, or collecting child or spousal support, either now or in the future. Any case which meets the criteria for case closure, as demonstrated by the State during the course of the audit, would be considered unworkable and would not count against the State for purposes of the audit. For purposes of auditing case closure requirements, the auditors will review cases which have been closed to determine if the IV–D agency properly applied the criteria for closure.

6. *Comment:* Commenters also suggested that the regulations establish a special category of "inactive cases" in order to minimize the administrative costs associated with the closing and subsequent reopening of certain cases.

Response: Since States are not required to close all cases meeting case closure criteria and will not be subject

to audit penalties for those in which no action is currently possible, a "de facto" inactive file can be created since the State is not penalized for its failure to work these cases.

7. *Comment:* One commenter recommended that the regulations require States to submit their proposed criteria to OCSE for approval prior to implementation.

Response: States are responsible for meeting requirements in Federal regulations. While States may work with OCSE Regional Offices in developing case closure systems, we see no necessity for requiring prior approval of case closure systems.

b. *No Current Order—§ 303.11(b) (1) and (2)*—1. *Comment:* We received many comments which were critical of proposed paragraphs (b) (1) and (2) establishing a $150 ceiling of arrearages below which the IV–D agency could close a case when there was no longer a current support order for cases involving both minor children and children who had reached the age of majority. A number of commenters argued that continued enforcement in arrears-only cases for arrearages of $150 or more was in most instances fruitless and not cost-effective. Several of these commenters recommended an increase in the level below which States could close all cases. Other commenters suggested that a separate $500 limit be applied to arrearages owed to non-minor children. In addition, we also received comments which recommended that closure be allowed in non-AFDC arrearage-only cases involving non-minor children where the arrearages accrued when the child was a minor and before application for IV–D services was made.

Response: Title IV–D of the Act does not limit application for, or availability of, IV–D services to minor children. Therefore, we cannot permit States to close non-AFDC arrearage-only cases involving non-minor children where the arrearages accrued when the child was a minor and before application for IV–D service was made. However, in response to comments, we raised the limit on arrearages to $500 in paragraphs (b) (1) and (2). Therefore, paragraph (b)(1) now allows case closure if a child has reached the age of majority, there is no current support order and arrearages are under $500 or unenforceable under State law. Paragraph (b)(2) now allows case closure if a child has not reached the age of majority, there is no longer a current support order and arrearages are under $500 or unenforceable under State law.

2. *Comment:* Other commenters maintained that, by not allowing closure of arrearage-only cases for non-minors when arrears were above a certain level, we were mandating a service in these cases when regulations at § 303.1 give the State an option of whether or not to provide services in cases in which there are no minor children.

Response: Section 466(e) of the Act and § 303.1 provide States the option of whether or not to collect overdue support using the mandatory practices in § 302.70 (wage withholding, State income tax offset, etc.) for children who are not minors. These provisions do not allow States to choose not to provide any services in cases in which there are no minor children. As discussed above, the State may not refuse to enforce past-due court or administratively-ordered support owed to emancipated children in non-AFDC IV–D cases, unless there is no current support order and arrearages are under $500 or unenforceable under State law, as discussed above.

3. *Comment:* One commenter suggested that arrearages under paragraphs (b) (1) and (2) be expanded to include outstanding medical bills for which the absent parent is responsible.

Response: IV–D agencies are required to collect medical support only if a specific dollar amount for medical support is designated in the order. Past-due cash amounts for medical support would be part of the arrearages accruing under a support order.

4. *Comment:* One State recommended that we include the death of the child for whom support was owed as an additional criterion for closing.

Response: The death of a child would constitute grounds for the termination of an order for current support. The IV–D agency would then either close the case under § 303.11(b)(1) or (2) if no arrearages were owed, or the arrears were below the established ceiling, or continue enforcement until such arrearages are reduced below the established ceiling. If the arrearages accrued pursuant to an order when the child was alive, the absent parent's obligation under that order for past-due support does not necessarily end with the death of the child.

5. *Comment:* We also received a suggestion that we include reconciliation of the custodial and absent parent with no arrearages owed the State as grounds for case closure.

Response: As stated in the preamble of the proposed rules, reconciliation is a valid reason for closure under paragraph (b)(2).

6. *Comment:* Another commenter asked that the regulation address cases in which the fact that there is no current order is a temporary condition (i.e., absent parent has no current income) where circumstances may change in the future.

Response: These cases may not be closed under paragraphs (b) (1) or (2), but should be addressed as part of a State's case prioritization system and reviewed periodically for a change in status. If the absent parent attempts to have the order vacated under these circumstances by the court or administrative authority which issued the order, the IV–D agency should argue that the order remain in effect and current payments be held in abeyance or tolled during the period the absent parent is unable to pay.

c. *Death of Absent Parent and No Resources Available—§ 303.11(b)(3)*—1. *Comment:* Several commenters proposed that cases should be closed if there were no arrearages owed by the deceased parent which had been assigned to the State.

Response: We believe that this approach would not ensure that appropriate services are available to the many non-AFDC cases in the IV–D system where there is no assignment to the State. As we noted in the preamble to the proposed rules, delinquent absent parents may have assets which he or she has protected from collection procedures, and the parent's death may release these assets for collection by the IV–D agency.

2. *Comment:* One commenter indicated that the law in their State provides that probate can be filed within three years, and the IV–D agency would have to wait that length of time to ascertain that assets were or were not available. Another commenter pointed out that it is difficult in these circumstances for the State to prove a negative proposition (i.e., that assets are not available).

Response: We agree with these comments and have changed the final rule to allow closure if the State has made documented attempts and failed to identify any assets which could be levied. However, if the IV–D agency has identified assets through its search, or the custodial parent has presented information regarding assets which can be verified, the State must keep the case open if it is possible that the assets can be reached for collection.

d. *Unable To Establish Paternity—§ 303.11(b)(4)*—1. *Comment:* We received many comments on this issue. Several commenters objected to proposed paragraph (4)(ii) which allows closure if a court or administrative process has excluded the putative father and no other putative father can be identified. Some commenters pointed out that if a genetic test excludes the putative father it would be foolhardy and a waste of public resources to try such cases in court or before an administrative hearing.

Response: We agree with this position and have inserted the phrase "A genetic test or" at the beginning of paragraph (4)(ii).

2. *Comment:* Another commenter requested that this criterion for closure include test results which do not exclude the putative father but indicate a "low probability" of paternity, since some courts will not determine paternity unless there is more compelling evidence to support the claim.

Response: While such cases are problematic, we do not believe that it is appropriate to use such a subjective standard for closure. These cases should be pursued unless a genetic test or a court or administrative process excludes the putative father and no other putative father can be identified.

3. *Comment:* Several other commenters pointed out that paragraph (4)(iii), which allows closure when it is in the best interest of the child, only references § 303.5(b) which involves paternity cases involving incest, forcible rape, or where legal adoption proceedings are pending. These commenters pointed out that this definition was inconsistent with the provisions of § 232.42 which defined good cause for AFDC cases as physical or emotional harm to the child, custodial parent or caretaker relative.

Response: Cases which may be closed as a result of a good cause finding under the AFDC program are addressed in § 303.11(b)(10). Section 303.5 includes, for IV–D purposes, a separate definition with respect to paternity establishment cases.

e. *Unable To Locate For Three Years—§ 303.11(b)(5)—Comment:* We specifically requested comments on this provision which would allow a case to be closed when the absent parent's location is unknown, and the State has made regular attempts over a three-year period, all of which have been unsuccessful. Several commenters asked that no time limit be placed in this criterion for closure, and were concerned that the custodial parent would never be able to prove a change in circumstance to reopen a case. Other commenters recommended that the three-year requirement did not allow enough time for location attempts. Another commenter requested that this criterion be deleted and that the regulation mandate that these cases be maintained in a suspense file with annual locate submissions. We received a parallel number of comments that the three-year requirement was too long, and that the IV–D agency would be able to determine if location was futile after one to two years of regular locate attempts. Other commenters supported the three-year requirement if quarterly locate attempts are made.

Response: We have retained the three-year requirement because we believe that if adequate information exists to meet the requirements for submittal for location, quarterly locate attempts, including those listed under § 303.3, over a three-year period are sufficient. Again, States may choose to keep cases open and continue location attempts for more than 3 years.

f. *Absent Parent Institutionalized or Incarcerated—§ 303.11(b)(6)—Comment:* Several commenters maintained that the criterion for closure should include parents who, although not institutionalized or incarcerated, are unable to pay currently or in the foreseeable future because of total and permanent disability. In addition, many commenters felt that the five-year limit for institutionalization and the 12-year limit for incarceration without parole were excessive, maintaining that many cases which were unworkable with extremely low chances for any future collections would be kept open with a resulting negative impact on the best use of the State's resources. Some felt that the time limits were irrelevant, and that the only test should be that the absent parent cannot pay for the duration of the child's minority.

Response: In response to these comments, we are dropping the five- and 12-year time limits and have added a category where the absent parent has a medically verified permanent and total disability with no evidence of support potential. The revised language now reads: The absent parent cannot pay for the duration of the child's minority because the parent has been institutionalized in a psychiatric facility, is incarcerated with no chance of parole, or has a medically verified total and permanent disability with no evidence of support potential. We have retained the second sentence regarding income and assets which may be available.

g. *Absent Parent Citizen of and Lives in a Foreign Country—§ 303.11(b)(7)*—1. *Comment:* Two States recommended that the criterion that refers to an absent parent who is a citizen of a foreign country include residents and members of American Indian tribes living on reservations. These commenters pointed out that in most cases States do not have legal jurisdiction to establish or enforce child support orders on tribal lands, and for all intents and purposes these cases jurisdictionally resemble a sovereign foreign nation.

Response: While we realize the difficulty of providing services in these cases, we believe that American Indians should not be included in this category. Indians are American citizens and therefore subject to certain legal procedures both on and off the reservation. Federal income tax refund offset is available, and income withholding is required if tribal members work outside of the reservation. We also encourage States to enter into cooperative agreements or other arrangements with Tribal entities which would establish jurisdiction for child support matters by the State, or the Tribe acting for the State. In addition, States are not penalized for these open cases by auditors, where the Indian absent parent is a resident of and works on a reservation and no means exist to obtain jurisdiction over the absent parent to obtain or enforce a support order.

2. *Comment:* Other commenters felt that if a State was unable to assert personal jurisdiction over the absent parent or the absent parent had no reachable domestic income, the case should be closed.

Response: We believe these cases can still be worked where reciprocity between a State and a foreign jurisdiction has been established.

h. *Locate Only Cases—§ 303.11(b)(8)*—1. *Comment:* One commenter suggested that cases in which a locate only application has been made be closed only when location services have been "successfully" completed.

Response: There is no guarantee that location attempts will be successful.

Suggested New Criteria

i. *Unable To Locate Custodial Parent—§ 303.11(b)(11)*—1. *Comment:* We received the greatest number of comments from States who pointed out that they cannot work many cases where the custodial parent who applied for non-AFDC services can no longer be locatcd despite repeated attempts to contact the client by the IV–D agency.

Response: We believe that this is a reasonable criterion for closure, but we are also concerned that such a criterion take into account periodic absences of custodial parents who may be unavailable due to vacations, business travel or family emergencies. Consequently, we are adding a new paragraph (b)(11) which would allow closure in non-AFDC cases if the IV–D agency is unable to contact the custodial parent over a 30 calendar day period despite attempts to contact the parent by both phone and letter, including at

least one registered letter. The 60-day notice of case closure required by paragraph (c) will also allow those parents who want continuing services to avoid closure by contacting the IV–D agency.

j. *Failure To Cooperate by the Non-AFDC Custodial Parent (new) 303.11(b)(12)*—1. *Comment:* We received many comments by States and other organizations who requested that non-cooperation by the custodial parent (failure to attend hearings, refusal to sign forms, etc.) in non-AFDC cases be addressed.

Response: In response to these comments, we are establishing a new paragraph (b)(12) which allows closure for non-cooperation in non-AFDC cases, but only when the case file documents the circumstances of the non-cooperation and that an action by the custodial parent is essential for the next step in providing services. We would also point out that the custodial parent may avoid closure by responding with the necessary cooperation during the 60-day notice period required under paragraph (c).

k. *Custodial Parent Moves out of State—Comment:* A number of States requested that case closure be allowed when the custodial parent moves to another State.

Response: This is not an appropriate justification for closing a case. There is no residency requirement for provision of IV–D services in either the Federal statutes or regulations. More specifically, section 454(6) of the Act and § 302.33 require that States must provide child support collection or paternity determination services to any individual not otherwise eligible for such services upon an application filed by that individual. A IV–D agency may close a case in which the custodial parent moves from the State only if the case meets one of the criteria enumerated in paragraph (b) of this section, or when the State is aware that the custodial parent has applied for services in another State.

1. *60-Day Notice of Closing To Custodial Parent—§ 303.11(c)—Comment:* We received a number of comments on this provision. Some commenters felt that such a provision would mean that custodial parents would be entitled to a hearing during the 60-day period to contest the closure. Other commenters wondered why such a 60-day notice was given unless the custodial parent had a chance to contest. Other commenters felt the 60-day period was too long when compared to the case processing timeframes the State must meet.

Response: We have retained the 60-day notice requirement, but added that the custodial parent may, during that time, request that the case be kept open upon the presentation of new information which constitutes changed circumstances or when contact with the custodial parent has been reestablished in certain non-AFDC cases. We believe that hearings would not be justified in these cases because the criteria clearly limits the circumstances qualifying for closure, and the custodial parent's opportunity to provide new information will ensure that all cases with potential will be worked. Conversely, there is no absolute right to IV–D services where basic information is lacking.

m. *Retention of Records for Three Years*—1. *Comment:* One State asked if, instead of destroying case files after one year it could archive such records, and an organization suggested that files be retained indefinitely on microfiche and not destroyed.

Response: As stated earlier, none of the case closure criteria requires the States to take any action if a State decides, under its own criteria, to work or archive cases. The requirement for retaining all records for cases closed for a period of three years is a Federal provision at 45 CFR Part 74, Subpart D. This is a minimum requirement and States may choose to retain records for a longer period, as discussed above. States may want to consider maintaining some type of minimal case record file beyond the 3-year requirement when the IV–D agency closes an active AFDC case.

Minimal Organizational and Staffing Requirements—Section 303.20

a. Organizational Structure and Sufficient Resources—§ 303.20(c)

1. *Comment:* Several commenters felt that this requirement was a critical provision which could be used by State and local jurisdictions to allocate resources and review priorities in a manner which could be most beneficial to the child support enforcement program. Other commenters, while supportive of the overall intention of this provision, felt that OCSE should either establish standards for staffing and resources just as it did for State performance standards, or provide specific guidance on how States and localities should allocate resources.

Response: We believe that States and localities should establish specific resource or staffing standards. As we emphasized in the preamble to the proposed regulations, this requirement has never been quantified as a national standard. Therefore, while we believe that it is highly beneficial for IV–D programs to establish such standards, OCSE is not establishing universal standards in this regulation because there are factors which are unique to each State or locality. OCSE will, however, continue to provide technical assistance and disseminate relevant information pertaining to resource or staffing standards.

2. *Comment:* Several commenters recommended that OCSE commission a new study which would take into consideration the increased staffing requirements which States would need to meet in complying with the timeframes established in the standards for program operations.

Response: OCSE believes that a study of this type is not relevant to the issues at hand. Any study would, by necessity, be focused on a national base which would not be relevant to specific State and local circumstances and organizational differences. Moreover, simply focusing on staffing requirements ignores the need, attested to by program reviews and program audits, to carefully reassess organizational structures, work process flows, policies and procedures, priorities and other facets of program management that go well beyond just the number of employees assigned to a task.

3. *Comment:* Several States felt that this requirement signaled a shift in Federal priorities by emphasizing procedural and organizational standards to the detriment of results-oriented policies previously established through incentive payments and emphasis on cost/benefit ratios. Some commenters suggested that OCSE revise its incentive formulas to take into account that performance as measured by increased collections is no longer a priority. One locality complained that the Federal requirement would force the doubling of staff providing IV–D services.

Response: The requirements of this section are designed, in part, to correct problems in State and local operations identified by both the previously cited GAO report and OCSE program reviews and audits. One of the conclusions which can be drawn from these reports is that many States and localities were not effective in either establishing paternity or establishing and enforcing support orders.

The requirements at issue do not signal a shift in priority; from its inception in 1975, the focus of the Child Support Enforcement program has been to establish paternity and to collect support. When States are not in substantial compliance with standards for program operations, it is incumbent upon the Federal government to stimulate effective and prompt remedial action. To do otherwise is to ignore both the pressing need for vigorous child support enforcement and allow a perpetuation of the operational deficiencies found in examinations of State and local program performance.

Executive Order 12291

Comment: We received several comments with regard to the statement in the preamble that this rule does not constitute a "major" rule. Commenters believed that it is a major rule because it is likely to result in a major increase in costs for State government agencies. Many commenters were opposed to the statement that States should reallocate existing resources to concentrate efforts on child support enforcement because a transfer of funds would cripple the losing program and be in conflict with employees' union contracts. Commenters requested that we submit the regulation for review under Executive Order 12291.

Response: Given the fact that we have extended the timeframes for action in the final rule, we do not believe that implementation of this regulation would require a sufficient increase in staff to necessitate the transfer of resources from other programs to IV–D programs unless a State or local jurisdiction, on its own initiative, decided to proceed in this manner. Moreover, the financing structure of the IV–D program itself makes it a very profitable enterprise for State and local government, with great potential to expand upon the direct payoff to government and the cost avoidance value of the program even if an infusion of resources is required to enhance operational performance. We believe that the revised standards and timeframes are within the grasp of any well-managed IV–D agency. However, recognizing that substantial resources will be needed to implement these new standards, we have prepared a Regulatory Impact Analysis (see section below).

Economic Impact

The Child Support Enforcement program was established under title IV–D of the Act by the Social Services Amendments of 1974, for the purposes of enforcing the support obligations owed by absent parents to their children, locating absent parents, establishing paternity and obtaining child support. The IV–D program collected some $4.7 billion in FY 1988—over $1.5 billion on behalf of children receiving AFDC and the remainder on behalf of children not receiving AFDC. State and local expenditures amounted to $1.2 billion. Collections for AFDC families, after a $50 disregard, are used to offset the costs of assistance payments made to such families. The intent of this final regulation is to improve the efficiency and effectiveness of IV–D programs. Because this final rule strengthens and clarifies existing program operations regulations, it is expected that State performance will improve and cases will be worked more effectively. It is expected that any increase in administrative costs will be more than offset by an increase in collections. The principal impact of the regulation will be on State operations. State expenditures may increase initially; however, we believe that the increase will be more than offset by the increase in collections and by the avoidance of governmental assistance costs that would otherwise be incurred and therefore, a net savings to State governments will result.

Executive Order 12291

In accordance with Executive Order 12291, we are required to prepare a Regulatory Impact Analysis for any "major" rule. A major rule is one that is likely to result in:

(1) An annual effect on the economy of $100 million or more:

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule meets none of these criteria with the possible exception of an annual effect on the economy of $100 million or more. Although the fiscal effects of this rule cannot be predicted with precision, and depend on individual State implementation decisions, it is possible that administrative costs will rise by $100 million or more within the five-year period that we use for analyzing impacts, and likely that AFDC collections will rise by several hundred million dollars annually. Therefore, although the net effect of the rule on both States and society will be positive, we have prepared the following analysis which, together with the remainder of this preamble, meets the requirements of E.O. 12291.

The rule establishes performance standards for processing child support cases. Most of these standards contribute directly or indirectly to increasing the speed or likelihood of payment of child support. Most of them do not inherently require additional resources to administer, either because they affect the timing rather than the amount of work, or because the deadlines involved require changes rather than increases in resource use (e.g., change internal State procedures for accessing records to provide more timely response). And some can reduce administrative costs, depending on how implemented.

Nonetheless, these standards will increase the number of cases successfully resulting in payment of support obligations, and therefore will necessarily entail additional costs for the work performed on cases which would not otherwise have been successfully handled. In particular, we do not expect that a State with large numbers of cases per caseworker will be able to comply with these rules without an increase in caseworker staff.

The real challenge this rule presents most States is the need to review and in many cases radically change existing bureaucratic procedures. For example, a State which relies on sequential, totally manual, multi-agency transfer and review procedures for tracking payments and issuing checks will have difficulty meeting the 15-day deadline for payments to families even if it adds substantial clerical resources to each stage of the process. Substantial changes in handling distribution of collections, service of process, access of data bases used for location of absent parents, and other cross-agency functions and procedures may be needed in many States.

As discussed in detail elsewhere in this preamble, we considered numerous alternatives and made substantial changes in these standards form those originally proposed. In reaching decisions on the final standards we sought to maximize State flexibility wherever possible. For example, we decided to replace a number of more detailed location standards with an "umbrella" standard requiring accessing all appropriate location sources within 75 calendar days. In devising each standard we considered all comments and other information on feasibility and in every case imposed a standard which was clearly implementable at reasonable cost in a well-managed program. Any reasonable standards would necessarily require most States to review and revise procedures.

Of course, nothing in this rule dictates the precise methods by which States achieve these standards. To the contrary, we are well aware that each State has unique administrative structures and implementation procedures now, and expect that future solutions will be almost equally diverse.

BEST COPY AVAILABLE

We have sought to provide maximum flexibility for each State to devise whatever changes it finds most cost-effective.

A final issue concerns timing. As discussed elsewhere in this preamble, we believe Congress did not intend the effective date of this regulation to be inordinately delayed. However, while the effective date of these requirements is October 1, 1990, we extended or revised many of the proposed timeframes to take into consideration the concerns and alternative timeframes suggested by many States. Regardless, States have known for many years that reforms were needed, have known for almost a year that changes would have to be made under the Family Support Act requirements, and have more than a year to initiate actions to meet the specific requirements of this final rule. While the requirements are effective on October 1, 1990, in reality, States have time after that date to fine–tune State processes and avoid paying fiscal penalties. A State would not pay a penalty for failing to substantially comply with the new requirements until, at the earliest, the beginning of FY 1993. If however, the State took corrective action in accordance with Federal requirements within a year of notification of non-compliance, the State would pay no penalty at all.

We suggested in the preamble to the NPRM, purely as an example, that transfers of staff from other functions and agencies was one approach that some States might consider to expedite augmenting child support functions (other options include recruitment of new staff, use of contract assistance to clear up backlogs, etc.). To the extent that long lead times are needed (e.g., to plan and implement ADP systems) States can also consider systems which can be implemented more rapidly and leave more ambitious systems for future years. In this regard, this Department commits itself to reviewing required ADP plans with the greatest possible speed, taking into account the deadlines these standards impose.

The case closure criteria contained in § 303.9 should result in improved performance of State IV–D agencies because they will ensure that available resources are focused on IV–D cases in which there is a potential for paternity establishment and support order establishment and enforcement. They will allow States to close unworkable cases and improve the management of their caseloads. Increased efforts focused on workable cases should result in increased collections, greater avoidance of governmental assistance costs and commensurate savings to the State and Federal governments.

In summary, whatever the unavoidable effect of this rule on administrative processes, an effect which each State has maximum flexibility to determine, it has a net beneficial impact on State budgets. Like the overall program, which returns States in excess of $380 million annually (through reductions in AFDC payments, Federal matching of administrative costs, and Federal incentive matching) in excess of administrative costs, the increase of child support payments made is likely to return through AFDC collections alone more than double the amount spent on processing cases. States will retain most of this increment. Therefore, the net effects of this rule will not only be financially beneficial to States, but will simultaneously improve the operation of child support enforcement from every perspective, including especially that of beneficiaries of increased and more timely child support payments.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments and individuals, which are not considered small entities under the Act.

Lists of Subjects

45 CFR Part 232

Aid to families with dependent children, Child support, Grant programs—social programs.

45 CFR Parts 301, 303 and 304

Child support, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Unemployment compensation.

45 CFR Part 302

Child support, Grant programs—social programs, Reporting and recordkeeping requirements, Unemployment compensation.

45 CFR Part 308

Child support, Grant programs—social programs, Medicaid, Reporting and recordkeeping requirements.

45 CFR Part 307

Child support, Grant programs—social programs, Computer technology, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program.)

Dated: July 14, 1989.

Catherine Bertini,

Acting Director, Office of Child Support Enforcement.

Approved: July 26, 1989.

Louis W. Sullivan,

Secretary.

For the reasons set forth in the preamble, 45 CFR Parts 232, 301 through 304, 306 and 307 are amended as set forth below.

PART 232—[AMENDED]

1. The authority citation for Part 232 continues to read as follows:

Authority: 42 U.S.C. 1302.

2. Section 232.20(d) is revised to read as follows:

§ 232.20 Treatment of child support collections made in the Child Support Enforcement Program as income and resources in the Title IV–A Program.

* * * * *

(d) The State plan must provide that the IV–A agency, on behalf of the IV–D agency, will send to the family the sum disregarded under § 302.51(b)(1) within 20 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 20 calendar days of the end of the month in which the support was collected.

PART 301—[AMENDED]

1. The authority citation for part 301 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396k.

§ 301.1 [Amended]

2. Section 301.1 is amended by removing the paragraph designations; by moving the definitions of "Medicaid agency" and "Medicaid" which are currently in § 306.1(b) and (c); by moving the definition of "Political subdivision" which is currently in § 303.52(a); and placing the definitions in alphabetical order.

PART 302—[AMENDED]

1. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

2. Section 302.32 is amended by the revising the title and first sentence of paragraph (b) and adding paragraph (f) to read as follows:

§ 302.32 Collection and distribution of support payments by the IV–D agency.

* * * * *

(b) The IV–D agency must inform the State's IV–A agency of the amount of the collection which represents payment on the required support obligation for the month as determined in § 302.51(a) within 10 working days of the end of the month in which the support is received by the IV–D agency responsible for final distribution. * * *

* * * * *

(f) *Timeframes for distribution of support payments.* (1) In interstate IV–D cases, amounts collected by the responding State on behalf of the initiating State must be forwarded to the initiating State within 15 calendar days of the initial point of receipt in the responding State, in accordance with § 303.7(c)(7)(iv).

(2) Amounts collected by the IV–D agency on behalf of recipients of aid under the State's title IV–A or IV–E plan for whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective shall be distributed as follows:

(i) when the IV–D agency sends payments to the family under § 302.51(b)(1) of this part, payments to the family must be sent to the family within 15 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support was collected. When the IV–A agency sends payments to the family under § 302.51(b)(1) of this part, the IV–D agency must forward any amount due the family under § 302.51(b)(1) to the IV–A agency within 15 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support was collected.

(ii) Except as specified under paragraph (f)(2)(iv) of this section, collections for the month after the month the family receives its last assistance payment and collections distributed under § 302.51(b)(3) and (5) of this part must be sent to the family within 15 calendar days of the date of initial receipt in the State of a collection for the first month of ineligibility.

(iii) Except as specified in paragraph (f)(2)(iv) of this section, collections in IV–E foster care cases under §§ 302.52(b)(2) and (4) of this part must be distributed within 15 calendar days of the date of initial receipt in the State.

(iv) Collections as a result of Federal or State income tax refund offset paid to the family under § 302.51(b)(5) of this part, or distributed in title IV–E foster care cases under § 302.52(b)(4) of this part, must be sent to the AFDC family or IV–E agency, as appropriate, within 30 calendar days of the date of initial receipt by the IV–D agency, unless State law requires a post-offset appeal process and an appeal is filed timely, in which case the IV–D agency must send any payment to the AFDC family or IV–E agency within 15 calendar days of the date the appeal is resolved.

(3) Amounts collected on behalf of individuals receiving services under § 302.33 of this part shall be distributed as follows:

(i) Amounts collected which represent payment on the current support obligation shall be sent to the family within 15 calendar days of the date of initial receipt in the State.

(ii) Except as specified in paragraph (f)(3)(iii) of this section, if the amount collected is more than the amount required to be distributed in paragraph (f)(3)(i) of this section, the State may at its discretion either send such amounts to the family to satisfy past-due support within 15 calendar days of the date of initial receipt in the State or retain such amounts as have been assigned to satisfy assistance paid to the family which has not been reimbursed.

(iii) Collections due the family under § 302.51(b)(5) as a result of Federal or State income tax refund offset must be sent to the family within 30 calendar days of the date of receipt in the IV–D agency, except:

(A) If State law requires a post-offset appeal process and an appeal is timely filed, in which case the IV–D agency must send any payment to the family within 15 calendar days of the date the appeal is resolved; or

(B) As provided in § 303.72(h)(5) of this chapter.

§ 302.51 [Amended]

3. Section 302.51 is amended by changing all references to "§ 303.52" to "§ 304.12"; by removing the last sentence "In any case in which collections are received by an entity other than the agency responsible for final distribution under this section, the entity must transmit the collection within 10 days of receipt." in paragraph (a); and by removing the sentence "This payment shall be made in the month following the month in which the amount of the collection was used to redetermine eligibility for an assistance payment under the State's title IV–A plan." in paragraphs (b)(3) and (5).

§ 302.55 [Amended]

4. Section 302.55 is amended by changing reference to "§ 303.52" to "§ 304.12" and the reference to "§ 303.52(d)" to "§ 303.52."

§ 302.80 [Amended]

5. Section 302.80 is amended by removing the words "Subpart A of" in paragraph (a) and replacing the words "Subpart B of Part 308" in paragraph (b) with the words "§§ 303.30 and 303.31".

PART 303—[AMENDED]

1. The authority citation for Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. Part 303 is amended as follows:

§ 303.0 [Amended]

a. Section 303.0 is amended by removing the words "effective July 1, 1975;" in paragraph (a).

b. Section 303.2 is revised to read as follows:

§ 303.2 Establishment of cases and maintenance of case records.

(a) The IV–D agency must:

(1) Make applications for child support services readily accessible to the public;

(2) When an individual requests an application or IV–D services, provide an application to the individual on the day the individual makes a request in person or send an application to the individual within no more than 5 working days of a written or telephone request. Information describing available services, the individual's rights and responsibilities, and the State's fees, cost recovery and distribution policies must accompany all applications for services and must be provided to AFDC, Medicaid and title IV–E foster care applicants or recipients within no more than 5 working days of referral to the IV–D agency; and

(3) Accept an application as filed on the day it and the application fee are received. An application is a written document provided by the State which indicates that the individual is applying for child support enforcement services under the State's title IV–D program and is signed by the individual applying for IV–D services.

(b) For all cases referred to the IV–D agency or applying for services under § 302.33 of this chapter, the IV–D agency must, within no more than 20 calendar days of receipt of referral of a case or filing of an application for services under § 302.33, open a case by

establishing a case record and, based on an assessment of the case to determine necessary action:

(1) Solicit necessary and relevant information from the custodial parent and other relevant sources and initiate verification of information, if appropriate; and

(2) If there is inadequate location information to proceed with the case, request additional information or refer the case for further location attempts, as specified in § 303.3.

(c) The case record must be supplemented with all information and documents pertaining to the case, as well as all relevant facts, dates, actions taken, contacts made and results in a case.

c. Section 303.3 is revised to read as follows:

§ 303.3 Location of absent parents.

(a) *Definition.* "Location" means information concerning the physical whereabouts of the absent parent, or the absent parent's employer(s), other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

(b) For all cases referred to the IV–D agency or applying for services under § 302.33 of this chapter, the IV–D agency must attempt to locate all absent parents or sources of income and/or assets when location is necessary to take necessary action. Under this standard, the IV–D agency must:

(1) Use appropriate location sources such as the Federal PLS; interstate location networks; local officials and employees administering public assistance, general assistance, medical assistance, food stamps and social services (whether such individuals are employed by the State or a political subdivision); relatives and friends of the absent parent; current or past employers; the local telephone company; the U.S. Postal Service; financial references; unions; fraternal organizations; and police, parole, and probation records if appropriate; and State agencies and departments, as authorized by State law, including those departments which maintain records of public assistance, wages and employment, unemployment insurance, income taxation, driver's licenses, vehicle registration, and criminal records;

(2) Establish working relationships with all appropriate agencies in order to utilize locate resources effectively;

(3) Within no more than 75 calendar days of determining that location is necessary, access all appropriate location sources, including transmitting appropriate cases to the Federal PLS, and ensure that location information is sufficient to take the next appropriate action in a case;

(4) Refer appropriate cases to the IV–D agency of any other State, in accordance with the requirements of § 303.7 of this Part. The IV–D agency of such other State shall follow the procedures in paragraphs (b)(1) through (5) of this section for such cases, as necessary, except that the responding State is not required to access the Federal PLS under paragraph (b)(3) of this section;

(5) Repeat location attempts in cases in which previous attempts to locate absent parents or sources of income and/or assets have failed, but adequate identifying and other information exists to meet requirements for submittal for location, either quarterly or immediately upon receipt of new information which may aid in location, whichever occurs sooner. Quarterly attempts may be limited to automated sources but must include accessing State employment security files. Repeated attempts because of new information which may aid in location must meet the requirements of paragraph (b)(3) of this section; and

(6) Submit to the Federal PLS at least annually cases in which location is needed and previous attempts to locate have failed and which meet the requirements for submittal.

(c) The State must establish guidelines defining diligent efforts to serve process. These guidelines must include periodically repeating service of process attempts in cases in which previous attempts to serve process have failed, but adequate identifying and other information exists to attempt service of process.

d. The introductory text of § 303.4 is republished and the section is amended by adding new paragraphs (d) and (e) to read as follows:

§ 303.4 Establishment of support obligations.

For all cases referred to the IV–D agency or applying for services under § 302.33 of this chapter, the IV–D agency must:

* * * * *

(d) Within 90 calendar days of locating an absent parent or of establishing paternity, establish an order for support, or complete service of process necessary to commence proceedings to establish a support order (or document unsuccessful attempts to serve process, in accordance with the State's guidelines defining diligent efforts under § 303.3(c)).

(e) If the court or administrative authority dismisses a petition for a support order without prejudice, the IV–D agency must, at the time of dismissal, examine the reasons for dismissal and determine when it would be appropriate to seek an order in the future, and seek a support order at that time.

e. Section 303.5 is amended by revising paragraphs (a) and (c) to read as follows:

§ 303.5 Establishment of paternity.

(a) For all cases referred to the IV–D agency or applying for services under § 302.33 of this chapter in which paternity has not yet been established:

(1) The IV–D agency must, within no more than 90 calendar days of locating the alleged father, file for paternity establishment or complete service of process to establish paternity (or document unsuccessful attempts to serve process, in accordance with the State's guidelines defining diligent efforts under § 303.3(c)), whichever occurs later in accordance with State procedures for paternity establishment.

(2) Paternity must be established or the alleged father excluded as a result of genetic tests and/or legal process within one year of the later of:

(i) Successful service of process; or,

(ii) The child reaching 6 months of age.

(3) In any case where an alleged father is excluded but more than one alleged father has been identified, the IV–D agency must meet the requirements set forth in paragraph (a)(1) and (2) of this section for each alleged father identified.

* * * * *

(c) The IV–D agency must identify and use through competitive procurement laboratories which perform, at reasonable cost, legally and medically acceptable genetic tests which tend to identify the father or exclude the alleged father. The IV–D agency must make available a list of such laboratories to appropriate courts and law enforcement officials, and to the public upon request.

f. Section 303.6 is revised to read as follows:

§ 303.6 Enforcement of support obligations.

For all cases referred to the IV–D agency or applying for services under § 302.33 in which the obligation to support and the amount of the obligation have been established, the IV–D agency must maintain and use an effective system for:

(a) Monitoring compliance with the support obligation;

(b) Identifying on the date the parent fails to make payments in an amount equal to the support payable for one month, or on an earlier date in accordance with State law, those cases in which there is a failure to comply with the support obligation; and

(c) Enforcing the obligation by:

(1) Initiating income withholding, in accordance with § 303.100; or

(2) Taking any appropriate enforcement action (except income withholding and Federal and State income tax refund offset) unless service of process is necessary, within no more than 30 calendar days of identifying a delinquency or other support-related non-compliance with the order or the location of the absent parent, whichever occurs later. If service of process is necessary prior to taking an enforcement action, service must be completed (or unsuccessful attempts to serve process must be documented in accordance with the State's guidelines defining diligent efforts under § 303.3(c)), and enforcement action taken if process is served, within no later than 60 calendar days of identifying a delinquency or other support-related non-compliance with the order, or the location of the absent parent, whichever occurs later;

(3) Submitting once a year all cases which meet the certification requirements under § 303.102 of this part and State guidelines developed under § 302.70(b) of this title for State income tax refund offset, and which meet the certification requirements under § 303.72 of this part for Federal income tax refund offset; and

(4) In cases in which enforcement attempts have been unsuccessful, at the time an attempt to enforce fails, examining the reason the enforcement attempt failed and determining when it would be appropriate to take an enforcement action in the future, and taking an enforcement action in accordance with the requirements of this section at that time.

§ 303.7 [Amended]

g. Section 303.7 is amended by adding the word "working" between the words "10" and "days" in paragraphs (a)(2), (b)(5), and (c)(5), (6) and (9); replacing the word "promptly" with the words "within 20 calendar days of determining that the absent parent is in another State" in paragraph (b)(2); adding the word "calendar" between the words "30" and "days" in paragraph (b)(4); and replacing the word "60" with the words "90 calendar" in paragraph (c)(4); adding the word "calendar" between the words "90" and "days" in paragraph (b)(6).

h. The introductory text of § 303.10(b) is republished and § 303.10 is amended by revising paragraphs (a), (b)(5) and (b)(6) to read as follows:

§ 303.10 Procedures for case assessment and prioritization.

(a) The IV–D agency may implement a case assessment and prioritization system Statewide or in a particular political subdivision of the State to manage its caseload. If a IV–D agency implements a case assessment and prioritization system, the IV–D agency must continue to meet the timeframes and case processing standards contained in this Part.

(b) In implementing a case assessment and prioritization system, the IV–D agency must:

* * * * *

(5) Prioritize cases after reviewing all intake information for accuracy and completeness and, if review indicates that additional information is needed, prioritize only after attempting to verify or secure the information in accordance with § 303.2.

(6) Establish a mechanism for the periodic review of low priority cases in accordance with the standards set forth in part 303, and for notifying the custodial parent in these cases that new information may result in a higher priority for the case.

i. A new § 303.11 entitled "Case closure criteria" is added to read as follows:

§ 303.11 Case closure criteria.

(a) The IV–D agency shall establish a system for case closure.

(b) In order to be eligible for closure, the case must meet at least one of the following criteria:

(1) In the case of a child who has reached the age of majority, there is no longer a current support order and arrearages are under $500 or unenforceable under State law;

(2) In the case of a child who has not reached the age of majority, there is no longer a current support order and arrearages are under $500 or unenforceable under State law;

(3) The absent parent or putative father is deceased and no further action, including a levy against the estate, can be taken;

(4) Paternity cannot be established because:

(i) The child is at least 18 years old and action to establish paternity is barred by a statute of limitations which meets the requirements of § 302.70(a)(5) of this chapter;

(ii) A genetic test or a court or administrative process has excluded the putative father and no other putative father can be identified; or

(iii) In accordance with § 303.5(b) of this part, the IV–D agency has determined that it would not be in the best interests of the child to establish paternity in a case involving incest or forcible rape, or in any case where legal proceedings for adoption are pending;

(5) The absent parent's location is unknown, and the State has made regular attempts using multiple sources to locate the absent parent over a three-year period, all of which have been unsuccessful;

(6) The absent parent cannot pay support for the duration of the child's minority because the parent has been institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically-verified total and permanent disability with no evidence of support potential. The State must also determine that no income or assets are available to the absent parent which could be levied or attached for support;

(7) The absent parent is a citizen of, and lives in, a foreign country, does not work for the Federal government or a company with headquarters or offices in the United States, and has no reachable domestic income or assets; and the State has been unable to establish reciprocity with the country;

(8) The IV–D agency has provided location-only services as requested under § 302.35(c)(3) of this chapter;

(9) The non-AFDC custodial parent requests closure of a case and there is no assignment to the State of arrearages which accrued under a support order;

(10) There has been a finding of good cause as set forth at §§ 302.31(c) and 232.40 through 232.49 of this chapter and the State or local IV–A or IV–E agency has determined that support enforcement may not proceed without risk or harm to the child or caretaker relative;

(11) In a non-AFDC case, the IV–D agency is unable to contact the custodial parent within a 30 calendar day period despite attempts by both phone and at least one registered letter; or

(12) In a non-AFDC case, the IV–D agency documents the circumstances of the custodial parent's noncooperation and an action by the custodial parent is essential for the next step in providing IV–D services.

(c) In cases meeting the criteria in paragraphs (b) (1) through (7) and (11) and (12) of this section, the State must notify the custodial parent in writing 60 calendar days prior to closure of the case of the State's intent to close the case. The case must be kept open if the

custodial parent supplies information in response to the notice which could lead to the establishment of paternity or a support order or enforcement of an order or, in the instance of paragraph (b)(11) of this section, if contact is reestablished with the custodial parent. If the case is closed, the custodial parent may request at a later date that the case be reopened if there is a change in circumstances which could lead to the establishment of paternity or a support order or enforcement of an order.

(d) The IV–D agency must retain all records for cases closed pursuant to this section for a minimum of three years, in accordance with 45 CFR Part 74, Subpart D.

j. Section 303.20 is amended by revising the introductory language in paragraph (c) and paragraph (c)(7) and adding new paragraph (g) to read as follows:

§ 303.20 Minimum organizational and staffing requirements.

* * * * *

(c) There is an organizational structure and sufficient resources at the State and local level to meet the performance and time standards contained in this part and to provide for the administration or supervision of the following support enforcement functions:

* * * * *

(7) *Enforcement.* Activities to enforce collection of support, including income withholding and other available enforcement techniques.

* * * * *

(g) If it is determined as a result of an audit conducted under Part 305 of this chapter that a State is not in substantial compliance with the requirements of title IV–D of the Act, the Secretary will evaluate whether inadequate resources was a major contributing factor and, if necessary, may set resource standards for the State.

§§ 303.30 and 303.31 [Redesignated from §§ 306.50 and 306.51 respectively]

k. Section 306.50 is redesignated as a new § 303.30 and § 306.51 is redesignated as a new § 303.31.

l. In § 303.52, the definition of "Political subdivision" is moved from paragraph (a) to § 301.1 and § 303.52 is revised to read as follows:

§ 303.52 Pass-through of incentives to political subdivisions.

The State must calculate and promptly pay incentives to political subdivisions as follows:

(a) The State IV–D agency must develop a standard methodology for passing through an appropriate share of its incentive payment to those political subdivisions of the State that participate in the costs of the program, taking into account the efficiency and effectiveness of the activities carried out under the State plan by those political subdivisions. In order to reward efficiency and effectiveness, the methodology also may provide for payment of incentives to other political subdivisions of the State that administer the program.

(b) To ensure that the standard methodology developed by the State reflects local participation, the State IV–D agency must submit a draft methodology to participating political subdivisions for review and comment or use the rulemaking process available under State law to receive local input.

§ 303.72 [Amended]

m. Section 303.72(g)(8) is amended by changing the reference to "§ 303.52" to "§ 304.12".

§ 303.73 [Amended]

n. Section 303.73(a)(1) is amended by changing the reference to "§ 303.7(a)(3)" to "§ 303.7".

§ 303.100 [Amended]

o. Section 303.100 is amended by replacing the word "immediately" with the words "within 5 working days" in paragraph (d)(2) and by removing the word "promptly" after the word "distributed" in paragraph (e)(2).

§ 303.101 [Amended]

p. Section 303.101(b)(2) is amended by replacing the words "from the time of filing" with "from the time of successful service of process".

§ 303.102 [Amended]

q. Section 303.102(g)(1) is amended by removing the words "Within a reasonable time period in accordance with State law," and capitalizing the word "a" before the word "State".

PART 304—[AMENDED]

1. The authority citation in Part 304, continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

2. Part 304 is amended as follows:

a. A new § 304.12 is added to read as follows:

§ 304.12 Incentive payments.

(a) *Definitions.* For the purposes of this section: "AFDC collections" means support collections satisfying an assigned support obligation under § 232.11 of this title or section 471(a)(17) of the Act, including collections treated in accordance with paragraph (b)(4)(ii) of this section.

"Non-AFDC Collections" means support collections, on behalf of individuals receiving services under this title, satisfying a support obligation which has not been assigned under § 232.11 of this title or section 471(a)(17) of the Act, including collections treated in accordance with paragraph (b)(4)(ii) of this section and collections made under §§ 302.51(e) of this chapter.

"Total IV–D administrative costs" means total IV–D administrative expenditures claimed by a State in a specified fiscal year adjusted in accordance with paragraphs (b)(4)(iii), (b)(4)(iv) and (b)(4)(v) of this section.

(b) *Incentive payments to States.* Effective October 1, 1985, the Office shall compute incentive payments for States for a fiscal year in recognition of AFDC collections and of non-AFDC collections.

(1) A portion of a State's incentive payment shall be computed as a percentage of the State's AFDC collections, and a portion of the incentive payment shall be computed as a percentage of its non-AFDC collections. The percentages are determined separately for AFDC and non-AFDC portions of the incentive. The percentages are based on the ratio of the State's AFDC collections to the State's total administrative costs and the State's non-AFDC collections to the State's total administrative costs in accordance with the following schedule:

Ratio of collections to total IV–D administrative costs	Percent of collection paid as an incentive
Less than 1.4	6.0
At least 1.4	6.5
At least 1.6	7.0
At least 1.8	7.5
At least 2.0	8.0
At least 2.2	8.5
At least 2.4	9.0
At least 2.6	9.5
At least 2.8	10.0

(2) The ratios of the State's AFDC and non-AFDC collections to total IV–D administrative costs will be truncated at one decimal place.

(3) The portion of the incentive payment paid to a State for a fiscal year in recognition of its non-AFDC collections is limited to the percentage of the portion of the incentive payment paid for that fiscal year in recognition of its AFDC collections, as follows:

(i) 100 percent in fiscal years 1986 and 1987;

(ii) 105 percent in fiscal year 1988;

(iii) 110 percent in fiscal year 1989; and

(iv) 115 percent in fiscal year 1990 and thereafter.

(4) In calculating the amount of incentive payments, the following conditions apply:

(i) Only those AFDC and non-AFDC collections distributed and expenditures claimed by the State in the fiscal year shall be used to determine the incentive payment payable for that fiscal year;

(ii) Support collected by one State on behalf of individuals receiving IV–D services in another State shall be treated as having been collected in full by each State;

(iii) Fees paid by individuals, recovered costs, and program income such as interest earned on collections shall be deducted from total IV–D administrative costs;

(iv) At the option of the State, laboratory costs incurred in determining paternity may be excluded from total IV–D administrative costs; and

(v) Effective January 1, 1990, amounts expended by the State in carrying out a special project under section 455(e) of the Act shall not be included in the State's total IV–D administrative costs.

(vi) Costs of demonstration projects for evaluating model procedures for reviewing child support awards under section 103(e) of Public Law 100–485 shall not be included in the State's total IV–D administrative costs.

(c) *Payment of incentives.* (1) The Office will estimate the total incentive payment that each State will receive for the upcoming fiscal year.

(2) Each State will include one-quarter of the estimated total payment in its quarterly collection report which will reduce the amount that would otherwise be paid to the Federal government to reimburse its share of assistance payments under §§ 302.51 and 302.52 of this chapter.

(3) Following the end of a fiscal year, the Office will calculate the actual incentive payment the State should have received based on the reports submitted for that fiscal year. If adjustments to the estimate made under paragraph (c)(1) of this section are necessary, the State's IV–A grant award will be reduced or increased because of over- or under-estimates for prior quarters and for other adjustments.

(4) For FY 1985, the Office will calculate a State's incentive payment based on AFDC collections retained by the State and paid to the family under § 302.51(b)(1) of this chapter.

(5) For FY 1986 and 1987, a State will receive the higher of the amount due it under the incentive system and Federal matching rate in effect as of FY 1986 or 80 percent of what it would have received under the incentive system and Federal matching rate in effect during FY 1985.

§ 304.20 [Amended]

b. Section 304.20(b)(2) is amended by substituting the word "genetic" for the word "blood" wherever it appears and changing the reference to "§ 303.5(b)" to "§ 303.5(c)".

§ 304.23 [Amended]

c. Section 304.23(g) is amended by removing the words ", Subpart A," after the words "Part 306".

§ 304.26 [Amended]

d. Section 304.26(b) is amended by changing the reference to "§ 303.52" to "§ 304.12".

Part 306 is amended by removing the heading of Subpart A, transferring the definitions of "Medicaid agency" and "Medicaid" from § 306.1 to § 301.1, transferring the contents of Subpart B—Required IV–D Activities, which consists of §§ 306.50 and 306.51, to Part 303 and redesignating them as new §§ 303.30 and 303.31, respectively, and the part is revised to read as follows:

PART 306—OPTIONAL COOPERATIVE AGREEMENTS FOR MEDICAL SUPPORT ENFORCEMENT

Sec.

306.0 Scope of this part.
306.2 Cooperative agreement.
306.10 Functions to be performed under a cooperative agreement.
306.11 Administrative requirements of cooperative agreements.
306.20 Prior approval of cooperative agreements.
306.21 Subsidiary cooperative agreements with courts and law enforcement officials.
306.22 Purchase of service agreements.
306.30 Source of funds.

Authority: 42 U.S.C. 652, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

§ 306.0 Scope of this part.

This part defines the requirements for an optional cooperative agreement between the IV–D agency and the Medicaid agency for the purpose of enforcing medical support obligations under section 1912 of the Act.

§ 306.2 Cooperative agreement.

The cooperative agreement between the IV–D agency and the Medicaid agency shall be a written agreement for the IV–D agency to assist the Medicaid agency by securing and enforcing the medical support obligation of an absent parent to a child for whom an assignment of medical support rights has been executed under 42 CFR 433.146.

The functions that the IV–D agency may perform under the cooperative agreement are set forth in § 306.10. The administrative requirements are set forth at § 306.11.

§ 306.10 Functions to be performed under a cooperative agreement.

The functions that the IV–D agency may perform under a cooperative agreement with the Medicaid agency are limited to one or any combination of the following activities. The agency may:

(a) Receive referrals from the Medicaid agency.

(b) Locate the absent parent, using the State Parent Locator Service and the Federal Parent Locator Service, as needed.

(c) Establish paternity if necessary.

(d) Determine whether the parent has a health insurance policy or plan that covers the child.

(e) Obtain sufficient information about the health insurance policy or plan to permit the filing of a claim with the insurer.

(f) File a claim with the insurer; or transmit the necessary information to the Medicaid agency, or to the appropriate State agency or fiscal agent for the filing of the claim; or require the absent parent to file a claim.

(g) Secure health insurance coverage through court or administrative order.

(h) Take direct action against the absent parent to recover amounts necessary to reimburse medical assistance payments when the absent parent does not have health insurance and the amounts collected will not reduce the absent parent's ability to pay child support.

(i) Receive medical support collections.

(j) Distribute the collections as required by 42 CFR 433.154 including calculation and payment of the incentives provided for by 42 CFR 433.153.

(k) Perform other functions as may be specified by instructions issued by the Office of Child Support Enforcement.

§ 306.11 Administrative requirements of cooperative agreements.

(a) *Organizational structure.* The cooperative agreement must:

(1) Describe the organizational structure of the unit or units within the IV–D agency that are responsible for medical support enforcement activities.

(2) List the medical support enforcement functions that are to be performed outside of the IV–D agency with the name of the organization responsible for performance.

(3) Provide that the IV–D agency shall have responsibility for securing compliance with the requirements of the cooperative agreement by individuals or agencies outside the IV–D agency performing medical support enforcement functions.

(b) *Maintenance of records.* The cooperative agreement must specify that the IV–D agency will establish and maintain case records of medical support enforcement activities in accordance with the provisions of § 302.15 of this chapter.

(c) *Safeguarding information.* The cooperative agreement must provide that the use or disclosure of information concerning applicants for, or recipients of, medical support enforcement services is subject to the limitations in § 303.21 of this chapter.

(d) *Fiscal policies and accountability.* (1) The cooperative agreement must provide that the IV–D agency will maintain an accounting system and supporting fiscal records adequate to assure that claims for reimbursement from the Medicaid agency are in accordance with applicable Federal requirements in 45 CFR Part 74.

(2) The cooperative agreements must provide for the establishment of a method for properly allocating those costs that cannot be directly charged to the medical support enforcement effort.

§ 306.20 Prior approval of cooperative agreements.

(a) Prior to implementation, the IV–D agency must submit two copies of any cooperative agreement entered into under this part to the Regional Representative for approval.

(b) The Regional Representative will review the cooperative agreement for conformity with the requirements of this part and 42 CFR 433.152.

(c) The Regional Representative will promptly notify the State of approval or disapproval. The State may consider the agreement approved if notification is not received within 60 days after the agreement is received by the Regional Representative.

§ 306.21 Subsidiary cooperative agreements with courts and law enforcement officials.

The IV–D agency will enter into subsidiary written cooperative agreements with appropriate courts and law enforcement officials to the extent necessary to perform those functions specified in the cooperative agreement between the IV–D agency and the Medicaid agency. These agreements must be made in accordance with the requirements of § 302.34 (Cooperative agreements).

§ 306.22 Purchase of service agreements.

The IV–D agency will enter into written purchase of service agreements to the extent necessary to fulfill the requirements of its cooperative agreement with the Medicaid agency.

§ 306.30 Source of funds.

The cooperative agreement must specify that the IV–D agency will receive full reimbursement from the Medicaid agency for all medical support enforcement activities performed under the agreement. (See § 306.11(d) for requirements on fiscal policies and accountability.)

PART 307—[AMENDED]

1. The authority citation for Part 307 continues to read as follows:

Authority: 42 U.S.C. 652 through 658, 664, 666, 667 and 1302.

§ 307.10 [Amended]

2. Section 307.10 is amended by changing the reference in paragraph (a)(2)(xiii) to "45 CFR part 306" to "§§ 303.30 and 303.31".

[FR Doc. 89–18178 Filed 8–1–89; 12:50 pm]
BILLING CODE 4150–04–M

federal register

Friday
August 4, 1989

Part V

Department of the Interior

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Information To Be Made Available to the Public; Notice of Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010-AE34

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Information to be Made Available to the Public

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Minerals Management Service's (MMS) regulations governing oil, gas, and sulphur operations in the Outer Continental Shelf (OCS) include provisions for making data and information available to the public. The MMS believes that the rules need clarification to assure that the items of data and information submitted on Forms MMS–1866, Request for Reservoir Maximum Efficient Rate; MMS–1867, Request for Well Maximum Production Rate; MMS–1868, Well Potential Test Report; MMS–1869, Quarterly Oil Well Test Report; and MMS–1870, Semiannual Gas Well Test Report that are made available for public inspection are clearly identified in the regulations. This notice proposes to amend 30 CFR 250.18 to clarify which data and information submitted in association with the regulation of drilling and production operations in the OCS will be available to the public.

DATE: Comments must be postmarked or hand delivered by October 3, 1989.

ADDRESS: Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service; Mail Stop 646; 381 Elden Street; Herndon, Virginia 22070; Attention: Gerald D. Rhodes.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella; Offshore Rules and Operations Division; Branch of Rules, Orders, and Standards; Telephone: (703) 787–1600 or FTS 393–1600.

SUPPLEMENTARY INFORMATION: The rules at 30 CFR Part 250 governing offshore oil and gas and sulphur operations, which were published in the Federal Register on April 1, 1988, included provisions in § 250.18 governing the release of data and information to the public. Section 250.18 specifies periods of time that certain geological and geophysical data and information will be protected from disclosure to the public. Section 250.18(d) identifies specific items of data and information on Forms MMS–330, MMS–331, and MMS–331C which are to be protected from disclosure for the specified time periods. The release dates for data and information on other MMS reporting forms are not mentioned in 30 CFR part 250. This apparent inconsistency makes it necessary to determine whether data and information submitted on Forms MMS–1866, MMS–1867, MMS–1868, MMS–1869, or MMS–1870 should be available for public inspection when similar data or information is protected from disclosure for specified periods of time under § 250.18 when submitted on Forms MMS–330, MMS–331, or MMS–331C.

Under OCS Order No. 12, Public Inspection of Records, which was rescinded by the Federal Register Notice published April 1, 1988 (53 FR 10596), lessees were advised regarding the release of specific data and information and the specified time periods that certain data and information would be protected from disclosure. The provisions of § 250.18 are not as inclusive and specific as OCS Order No. 12.

Under revised Part 250, the Gulf of Mexico OCS Region issued further guidance in the form of a Notice to Lessees and Operators (NTL). The NTL 88–03 was issued on June 29, 1988, and provided an interpretation on the release of data and information which is to be made available to the public. The MMS is considering the need for additional specificity in the regulations which became effective May 31, 1988. Revision of the governing regulations would ensure that data and information are made available to the public on a uniform basis in all OCS Regions. Use of the rulemaking process to propose a revision of the governing rule will provide the public an opportunity to provide comments concerning the release of data and information to the public.

This proposed rule would amend § 250.18 to identify specific items of data and information which are submitted on MMS reporting Forms MMS–1866 and MMS–1868 and the specific timetables for the release of that data and information to the public. The proposed rule also provides that all data and information submitted on Forms MMS–1867, MMS–1869, and MMS–1870 would be available for public inspection. The treatment and timetables for release of protected data and information under the proposed rule are generally consistent with the treatment of similar data and information under the regulations in effect prior to May 31, 1988, as interpreted by OCS Order No. 12. Under OCS Order No. 12, information (other than that which was clearly geological) submitted on Forms MMS–330, MMS–331, and MMS–331C was made available to the public after the well went on production. Under the current rule, the release of data and information is not triggered by the commencement of production. The proposed rule does not change this situation.

The proposed rule would allow release of data and information submitted on production Forms MMS–1869 and 1870 upon receipt, while similar information submitted on operating Form MMS–330 would be protected from disclosure until the applicable time period for protection expired. Comments are specifically requested on this aspect of the rule.

Interested persons wishing to comment on the proposed rule should forward written comments to the address specified above.

The Department of the Interior (DOI) has determined that this rule proposes to codify existing practices and will not have any effect on the economy and is not a major rule.

The DOI has determined that this rule will not have a significant economic effect on small entities since offshore activities are complex undertakings generally engaged in by enterprises that are not considered small entities.

The DOI certifies that the rule does not represent a Government action capable of interference with constitutionally protected property rights. Thus, a Taking Implication Assessment has not been prepared pursuant to Executive Order 12630, Government Action and Interference with Constitutionally Protected Property Rights.

This proposed rule does not affect any information collection which requires approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Author: This document was prepared by John V. Mirabella, Offshore Rules and Operations Division, MMS.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: June 14, 1989.

Barry A. Williamson,

Director, Minerals Management Service.

For the reasons set forth above, 30 CFR Part 250 is proposed to be amended as follows:

PART 250—[AMENDED]

1. The authority citation for Part 250 continues to read as follows:

Authority: Sec. 204 Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

2. Section 250.18 is proposed to be amended by republishing the introductory text of (d) and by adding new paragraphs (d)(4), (d)(5), (d)(6), (d)(7), and (d)(8) as follows:

§ 250.18 Data and information to be made available to the public.

* * * * *

(d) Data and information identified below shall not be available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (b) of this section:

* * * * *

(4) On Form MMS–1866, Request for Reservoir Maximum Efficient Rate:

(i) Item 1, Cut offs ϕ Upper Lower, k Upper lower—md,

(ii) Item 2, G/O Interface,

(iii) Item 3, W/O Interface,

(iv) Item 4, Area @ G/O,

(v) Item 5, Area used to determine Rock Volume,

(vi) Item 6, V_o Oil Zone Rock Volume,

(vii) Item 7, V_g Gas Zone Rock Volume,

(viii) Item 8, H_o, h_o,

(ix) Item 9, H_g, h_g,

(x) Item 10, ϕ,

(xi) Item 11, Sw,

(xii) Item 12, Sg,

(xiii) Item 13, So,

(xiv) Item 14, Boi, Bgi,

(xv) Item 15, N, G,

(xvi) Item 16, Ri,

(xvii) Item 17, RiN, RiG,

(xviii) Item 18, Np/N, G_p/G,

(xix) Item 19, Average Well Depth,

(xx) Item 20, Kh,

(xxi) Item 21, Kv,

(xxii) Item 22, °API @ 60°F,

(xxiii) Item 23, SG,

(xxiv) Item 24, Rsi,

(xxv) Item 25, μ_{oi},

(xxvi) Item 26, μ_w,

(xxvii) Item 27, Tavg,

(xxviii) Item 28, Pi,

(xxix) Item 29, Pws,

(xxx) Item 30, Pb,

(xxxi) Item 31, Datum Depth,

(xxxii) Item 32, GOR,

(xxxiii) Item 33, WOR.

(5) On Form MMS–1867, Request for Maximum Production Rate, all items of data and information are available for public inspection.

(6) On Form MMS–1868, Well Potential Test Report (this form does not use item numbers):

(i) Type well,

(ii) Perforation interval,

(iii) Choke size (for pretest),

(iv) Number of hours tested (for production test),

(v) Choke size (for production test),

(vi) Production during test period:

(A) Oil,

(B) Gas,

(C) Water,

(D) GOR,

(E) Water cut,

(F) Flowing tubing pressure.

(vii) Calculated 24-hr. rate:

(A) Oil,

(B) Gas,

(C) Water,

(D) Oil gravity,

(E) Specific gravity of gas.

(viii) Static bottom hole pressure, and

(ix) Cumulative production during entire testing period:

(A) Oil,

(B) Gas,

(C) Water.

(7) On Form MMS–1869, Quarterly Oil Well Test Report, all items of data and information are available for public inspection.

(8) On Form MMS–1870, Semiannual Gas Well Test Report, all items of data and information are available for public inspection.

* * * * *

[FR Doc. 89–18253 Filed 8–3–89; 8:45 am]

BILLING CODE 4310–MR–M

federal register

Friday
August 4, 1989

Part VI

Environmental Protection Agency

40 CFR Parts 261 and 302
Hazardous Waste Management Systems; Identification and Listing of Hazardous Waste; Reportable Quantity Adjustment; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 302

[FRL-3545-3; EPA/OSW-FR-89-012]

RIN 2050-AC78

Hazardous Waste Management Systems; Identification and Listing of Hazardous Waste; Reportable Quantity Adjustment

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection agency (EPA) is today proposing to modify the scope of the EPA Hazardous Waste No. F019 contained in the list of hazardous wastes from non-specific sources. See Subpart D of Part 261. The Agency is proposing to amend the F019 listing to exclude wastewater treatment sludges from the zirconium phosphating step when such phosphating is an exclusive process in the aluminum can washing process because the Agency believes that such sludges do not pose a substantial hazard to human health or the environment and should not be regulated as a listed hazardous waste. The Agency also is proposing to remove these zirconium phosphating sludges from the list of hazardous substances under § 302.4. This modification to the F019 listing would not affect any other wastewater treatment sludges from the chemical conversion coating of aluminum. EPA does not solicit any comments regarding any other aspect of the F019 listing and will not respond to any such comments that are received.

DATES: EPA will accept comments on this proposed rule until September, 5, 1989.

Any person may request a public hearing on this proposed amendment by filing a written request with EPA, to be received no later than August 21, 1989.

ADDRESSES: Comments on the RCRA portions of the proposal should be sent in triplicate to: EPA RCRA Docket Clerk (OS-332), U.S. Environmental Protection Agency, 401 M Street SW., Room SE-2427, Washington, DC 20460. All comments must be marked "Docket Number [F-89-F19P-FFFFF]."

Comments on the CERCLA portions of the proposal should be sent in triplicate to: Emergency Response Division, Docket Clerk, ATTN.: Docket No. RQ, Room LG-100, U.S. EPA, 401 M Street SW., Washington, DC 20460.

Copies of materials relevant to this proposed rulemaking are located at U.S. EPA, 401 M Street SW., Washington, DC 20460. The RCRA portions are located in the Room SE 2427; the public must make an appointment in order to review them by calling (202) 475-8327. The CERCLA portions are contained in Room LG-100; for an appointment call (202) 382-3046. Both dockets are available for inspection from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. The public may copy 100 pages from the docket at no charge; additional copies are $0.15 per page.

Requests for a public hearing should be addressed to Mr. Devereaux Barnes, Director, Characterization and Assessment Division (OS-300), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The RCRA/CERCLA Hotline at (800) 424-9346 or, in the Washington, DC area, (202) 382-3000. For technical information on the RCRA portions of the proposal, contact Ms. Denise A. Wright, Listing Section, Office of Solid Waste (OS-333) at (202) 245-3519. For technical information on the CERCLA portion of the proposal, contact Ms. Ivette Vega, Response Standards and Criteria Branch, Emergency Response Division (OS-210) at (202) 475-7369. Both are available at U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

The contents of today's preamble are listed in the following outline:

I. Background
II. Reasons and Basis for Today's Proposed Rule
III. Relationship to Other Regulatory Authorities
IV. State Authority
A. Applicability of Rules in Authorized States
B. Effect on State Authorities
V. Effective Date
VI. Regulatory Impact
VII. Regulatory Flexibility Act
VIII. Paperwork Reduction Act

I. Background

On May 19, 1989, EPA published an interim final rule listing "wastewater treatment sludges from electroplating operations" as EPA Hazardous Waste No. F006. See 40 CFR 261.31 (45 FR 33112). The hazardous constituents for which this waste was listed are cadmium, chromium, nickel, and complexed cyanide. In response to comments on this regulation, the listing was modified on November 12, 1989 (45 FR 74884) to read as follows: "wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum palting on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.[1]

Additionally, in response to other comments, EPA separated "wastewater treatment sludges from the chemical conversion coating of aluminum" from the F006 listing and listed them as F019. Commenters had argued that these sludges should not be listed as F006 because they did not contain all four of the constituents for which F006 was listed. That is, they contended that these wastes do not typically contain cadmium and nickel. The Agency agreed that these wastes do not typically contain cadmium and nickel but maintained that, since the wastes contain hexavalent chromium and complexed cyanides, they should nevertheless be regulation. The Agency therefore listed them as hazardous waste, F019, and only listed hexavalent chromium and complexed cyanides as constituents of concern in Appendix VII of part 261.

On December 2, 1988 (51 FR 43350), the Agency issued an interpretive rule stating that it had re-evaluated its previous interpretations of the scope of application of F006 and had determined that those interpretations were overly broad. As a result, the Agency stated that the following processes were not included in the F006 listing: chemical conversion coating, electroless plating, and printed circuit board manufacturing.[2] The Agency further clarified that the F006 listing includes wastewater treatment sludges from: (1) Common and precious metals electroplating, except tin, zinc (segregated basis),[3] aluminum and zinc palting on carbon steel; (2) anodizing, except sulfuric acid anodizing of aluminum; (3) chemical etching and milling, except when performed on aluminum; and (4) cleaning and stripping, except when associated with tin, zinc, and aluminum plating on

[1] The Agency also indicated that hexavalent chromium rather than total chromium would be listed as a constituent of concern in Appendix VII of part 261.

[2] Wastewater treatment sludges from printed circuit board manufacturing operations that include processes which are within the scope of the F006 listing (e.g., chemical etching) continue to be regulated as F006.

[3] "Zinc plating (segregated basis)" refers to non-cyanidic zinc plating processes (i.e., where no cyanides are used). Where both cyanidic and non-cyanidic plating baths are used, the sludges from non-cyanidic are excluded provided they are segregated from sludges resulting from cyanidic plating processes.

carbon steel. While this interpretation removed chemical conversion coating from the scope of F006, it did not affect the F019 listing. That is, wastewater treatment sludges from chemical conversion coating of aluminum continued to be regulated as F019.

II. Reasons and Basis for Today's Proposed Rule

In the Listing Background document for electroplating wastes, the Agency agreed with commenters that the hazardous constituents used in the chemical conversion coating of aluminum were different from those use in electroplating (i.e., F006), but still contained complexed cyanides and chromium. In describing the hazards associated with these wastes, the Agency noted that sodium chromate or potassium dichromate is used in common oxide-conversion coating solutions, potassium dichromate is used in phosphate-conversion coatings solution, and sodium dichromate is used in chromate-conversion coating solutions. Additionally, the Agency indicated that cyanides are known to be used in the coloring of anodized aluminum. Thus, EPA believed that chemical conversion coating processes on aluminum typically resulted in hazardous sludges.

The Agency has since learned that one of the chemical conversion coating operations—zirconium phosphating performed during the washing of aluminum cans—is not expected to result in a hazardous wastewater treatment sludge. This process uses only one hazardous constituent (hydrofluoric acid) which is chemically changed into a non-hazardous salt as described below. Additionally, no hazardous constituents are formed during the process. EPA is therefore proposing today to amend the F019 listing to exclude the wastewater treatment sludges from the zirconium phosphating step of the aluminum can washing process.

In the alumnium can making process, cans are rinsed with water in a multi-step can washing process. After forming, the cans are cleaned in a dilute sulfuric acid/hydrofluoric acid solution containing surfactants. This operation is performed to remove excess lubricants and aluminum fines. The acid treatment exposes the aluminum metal which then reacts with air to form an aluminum oxide, Al_2O_3, film. The can is next rinsed with water to remove any excess acid. This step causes the Al_2O_3 to become hydroxylated to form a continuous layer of Al_2O_3—AlO(OH). This layer is formed as a result of the reaction $Al_2O_3 + H_2O \rightarrow 2AlO(OH)$. The aluminum hydroxide AlO(OH) will further react with water, if unhindered, to form a porous colloidal aluminum hydroxide, $Al(OH)_3$, through the reaction $AlO(OH) + H_2O \rightarrow Al(OH)_3$. Light reflecting reflecting through this $Al(OH)_3$ film causes discoloration of the can. This porous colloidal aluminum hydroxide does not provide as good a base for organic finishes as compared to the former Al_2O_3–AlO(OH) layer. Thus, a zirconium phosphate solution is used to prevent the conversion of the desirable AlO(OH) to $Al(OH)_3$. The zirconium phosphating step allows an ion exchange between the monovalent hydrogen on the hydroxide group with tetravalent zirconium resulting in an inert and nonporous aluminum oxide-zirconium species on the can surface.

Based on the process chemistry, the Agency believes that, although the sludge currently meets the F019 listing description, this sludge should not have been included in the F019 listing because it is not hazardous. In particular, in reviewing the solutions that are used in the zirconium phosphating process, no hazardous constitutents (listed in Appendix VIII of 40 CFR 261) are contained or used in this conversion coating step, except for hydrofluoric acid. The zirconium phosphate solution typically used includes fluorozirconic acid (as a source of zirconium), nitric and hydrofluoric acids, and phosphoric acid. The hydrofluoric acid, which is present in the can washing wastewater in low concentrations that are readily treated, is chemically converted in the wastewater treatment process into calcium fluoride or calcium aluminum fluoride, which is non-hazardous. Thus, the slightly alkaline sludge would not be expected to contain any hazardous constituents, nor exhibit any of the characteristics of hazardous waste. The Agency has also evaluated analytical data on these wastewater treatment sludges. These data, which are available in the RCRA docket supporting this proposed rule, do not indicate the presence of significant concentrations of Appendix VIII constituents. Additionally, the data shows that these sludges do not exhibit any hazardous waste characteristics. The Agency is, therefore, proposing to modify the F019 listing to exclude the wastewater treatment sludges from the zirconium phosphating step of the aluminum can washing process.

The proposed exclusion applies only to sludges from processes that exclusively use zirconium phosphating solutions that do not contain hexavalent chromium and cannot produce complexed cyanides. Further, these processes are not associated with electroplating or conversion coating steps where hazardous constituents are used. For example, if a can maker employs a chromating step, separately or in conjunction with such zirconium phosphating, the wastewater treatment sludges would meet the F019 listing and would not be excluded under this rulemaking.

Other wastewater treatment sludges from conversion coating processes falling within the scope of the F019 listing may not in fact contain or produce hazardous constituents. At this time, the Agency is not excluding these sludges from the scope of the F019 listing, is not soliciting comments regarding these sludges or processes, and will not respond to any such comments received. Prior to proposing today's action the Agency had received data from industry on this zirconium phosphating process and the composition of the wastewater treatment sludge on which to base this proposed exclusion. Because such data are not currently in the Agency's possession for other processes that may not use hazardous constituents, the Agency will not at this time consider excluding them from the scope of the F019 listing.

III. Relationship to Other Regulatory Authorities

All hazardous wastes listed pursuant to 40 CFR 261.31 through 261.33, as well as any solid waste that meets one or more of the characteristics of a RCRA hazardous waste (as defined in 40 CFR 261.21 through 261.24), are hazardous substances as defined at section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. The CERCLA hazardous substances are listed at 40 CFR 302.4 along with their reportable quantities (RQs). CERCLA section 103(a) requires that persons in charge of vessels or facilities from which a hazardous substance has been released in a quantity that is equal to or greater than its RQ shall immediately notify the National Response Center of the release. In addition, section 304 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires the owner or operator of a facility to report the release of a hazardous substance or an extremely hazardous substance to the appropriate state emergency response commission (SERC) and to the local emergency planning committee (LEPC) when the amount released equals or exceeds the RQ for the substance, or one pound when no RQ has been set.

When this rulemaking becomes effective, the description of hazardous

waste stream F019 in Table 302.4 will change to exclude wastewater treatment sludges from the zirconium phosphating step of aluminum can washing process. These zirconium phosphating sludges will no longer be listed hazardous substances under CERCLA Section 101(14) and 102(a). Reporting of releases of sludge from the zirconium phosphating of aluminum cans process will no longer be required under either section 103 of CERCLA or section 304 of SARA. Although the Agency has no reason to believe that releases of zirconium phosphating sludges will contain hazardous constituents subject to reporting under section 103 of CERCLA or section 304 of SARA, the Agency reminds the regulated community that reporting of releases of such sludges is required if a RQ or more of a hazardous substance (which is contained as a constituent of the sludge) is released to the environment. Reporting also is required when the wastewater treatment sludge meets one or more of the characteristics of unlisted hazardous waste for ignitability, corrosivity, reactivity, or EP Toxicity and 100 pounds or more is released to the environment (50 FR 13456, April 4, 1985).

The existing 10-pound RQ of waste stream F019 will not be affected by this rule, except for the exclusion of sludges from processes that use only zirconium phosphating. Releases of wastewater treatment sludges from the chemical conversion coating of aluminum (other than from exclusive zirconium phosphating) remain subject to the reporting requirements of section 103 of CERCLA and section 304 of SARA when a RQ or more is released to the environment. EPA is not soliciting comments on the existing applicable RQ for F019, and will not respond to any such comments received.

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains inspection authority under section 3007 and enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized States at the same time that they take effect in non-authorized States. The rulemaking proposed today, however, would not be imposed pursuant to HSWA.

B. Effect on State Authorizations

Today's proposed rule will not be effective in authorized States since the regulations are not being imposed pursuant to HSWA. Thus, the regulation will be applicable only in those States that do not have interim or final authorization. In authorized States, the regulations will not be applicable until the State revises its program to adopt equivalent regulations under State law.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to include equivalent regulations within a year of promulgation of these regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal regulations that are more stringent or broader in scope than the existing Federal regulations. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. This is a result of section 3009 of RCRA, which allows States to impose regulations in addition to those in the Federal program. The regulations proposed today at § 261.31 are considered to be less stringent or to reduce the scope of the existing Federal regulations. Therefore, authorized States will not be required to modify their programs to adopt regulations equivalent or substantially equivalent to the provisions listed above.

V. Effective Date

This rule will be effective immediately upon promulgation. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six month period to come into compliance. This is the case here since this rule will reduce, rather than increase, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the regulated community by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, this rule will be effective immediately upon promulgation. Once effective, this modification to the listing will be applied retroactively to the above described previously generated zirconium wastes, because these particular wastes should not have been included within the scope of the 1980 listing. Thus, where this rule applies, EPA will not consider such wastes, whenever they were generated, to be F019. EPA's decision does not effect authorized State regulation of such waste if a State is more stringent or broader in scope.

VI. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed rule reduces the regulatory requirements applicable to the regulated community. It is not major because it would not result in an effect on the economy of $100 million or more, nor would it result in a major increase in costs or prices to individual industries, consumers, Federal, State or local government agencies, or geographic regions. Finally, there would be no adverse impact on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, this proposed amendment is not a major regulation, and no Regulatory Impact Analysis has been conducted.

This proposed amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

VII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking, for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This proposed amendment will not have a significant economic impact on small entities since it reduces regulatory requirements. Accordingly, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects

40 CFR Part 261

Hazardous wastes, Recycling.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Recycling, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

Dated: July 27, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, (42 U.S.C. 6905, 6912(a), 6921 and 6922).

2. Section 261.31 is amended by revising the hazardous waste entry "F019" to read as follows:

§ 261.31 Hazardous waste from non-specific sources.

• • • • •

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
•	•	•
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.	(T)
•	•	•

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

3. The authority citation for part 302 continues to read as follows:

Authority: Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9602; sections 311 and 501(a) of the Federal Water Pollution Control Act, 33 U.S.C. 1321 and 1361.

§ 302.4 [Amended]

4. Table 302.4 of § 302.4 is amended by revising the first column containing the description of Hazardous waste stream F019.

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[see footnotes at end of Table 302.4]

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code	Statutory RCRA waste No.	Final RQ Category	Final RQ Pounds (kg)
•	•	•	•	•	•		
F019 Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.							
•	•	•	•	•			

[FR Doc. 89–18256 Filed 8–3–89; 8:45 am]

BILLING CODE 6560–50–M

federal register

Friday
August 4, 1989

Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Emergency Determination of Endangered Status for the Mojave Population of the Desert Tortoise; Emergency Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB35

Endangered and Threatened Wildlife and Plants; Emergency Determination of Endangered Status for the Mojave Population of the Desert Tortoise

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) exercises its emergency authority to determine the Mojave population of the desert tortoise (*Gopherus agassizii*) to be an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). An emergency situation, in the form of a recently documented outbreak of a virulent desert tortoise upper respiratory disease syndrome (Respiratory Disease Syndrome), has been identified and has caused significant declines to certain tortoise subpopulations and threatens to become pandemic in subpopulations already stressed as a result of habitat degradation, predation, and other factors. Because of the need to make Federal funding, protection, and other measures immediately available to combat the Respiratory Disease Syndrome, the Service finds that good cause exists to make this emergency rule effective upon publication. The emergency rule will implement Federal protection for 240 days.

The status of the Beaver Dam Slope desert tortoises, which were listed as threatened with critical habitat in 1980, will not change. The Service does not expect additional benefits would accrue to this subpopulation by changing its listing to endangered at this time. A proposed rule to list the Mojave population of the desert tortoise will be published shortly to provide for public comment, and hearings (if requested). The Service will accept comments on the status of the species at any time.

EFFECTIVE DATES: This emergency rule is effective on August 4, 1989 and expires on April 2, 1990.

ADDRESSES: The complete file for this rule is available for inspection during normal business hours at the U.S. Fish and Wildlife Service, Regional Office, Division of Endangered Species and Habitat Conservation, 1002 NE Holladay Street, Portland, Oregon 97232-4181.

FOR FURTHER INFORMATION CONTACT: Mr. Robert P. Smith—Assistant Regional Director for Fish and Wildlife Enhancement, at the above address (telephone (503) 231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The desert tortoise is one of three species in the genus *Gopherus* found in the United States. The Berlandier's tortoise (*G. berlandieri*) is found in northeastern Mexico and southern Texas. The gopher tortoise (*G. polyphemus*) is found in the hot, humid portions of southeastern United States. *G. agassizii* is relatively large, with adults measuring up to 15 inches in shell length and inhabits the Mojave, Colorado, and Sonoran deserts in the southwestern United States and adjacent Mexico.

Recent studies based on shell shape and variations in genetic composition indicate that the species has two distinct populations, one of which is divided into two subpopulations (Spang et al. 1988). A summary of this information is as follows:

The two populations are the Mojave and the Sonoran. These are separated in the U.S. and Mexico by the Colorado River, with the former populations being found to the west and north of the river and the latter being found to the east and south. The Mojave population is further divided into two subpopulations.

The western Mojave subpopulation includes parts of the west Mojave, east Mojave, and Colorado Deserts in California and extreme southern Nevada. Tortoises occur in creosote bush, alkali sink, and tree yucca habitats in valleys, on alluvial fans, and in low rolling hills at elevations generally ranging from 2,000 to 4,000 feet above sea level. Study plot data from eight sites indicate that populations have declined at rates of 10 percent or more per year for the last six to eight years. Vandalism, collections, raven predation, and disease are a few of the many causes for population declines. Habitat is deteriorating and being lost from urban, energy, and mineral development, vehicle-oriented recreation, grazing, and other uses.

The eastern Mojave subpopulation includes tortoises in eastern California, southern Nevada, and the Beaver Dam Slope and the Virgin River Basin of southwestern Utah and extreme northwestern Arizona (north of the Grand Canyon). For the purposes of this rule, the status of Beaver Dam slope tortoises will remain unchanged. Eastern Mojave tortoises occur in creosote bush-burro bush or creosote bush-tree yucca vegetation types. Downward trends in this subpopulation and its habitat are believed to be a result of urban development, long-term livestock grazing, mining, large-scale water development, off-road vehicle use, collecting, and many other human-related uses.

The Sonoran population is found in Arizona, south and east of the Colorado River, and in Mexico. Tortoises in this area are found on steep, rocky slopes of mountain ranges, primarily in Arizona upland vegetation dominated by palo verde and saguaro cactus. The distribution of the present population and habitat is disjunct. Some habitat has been lost to expansion of urban areas. Grazing, mining, and fire have adversely affected some areas of tortoise habitat.

The Beaver Dam Slope population of desert tortoises in Utah was listed as threatened with critical habitat on August 20, 1980 (45 FR 55654). The Service received a petition on September 14, 1984, from the Environmental Defense Fund, Natural Resources Defense Council, and Defenders of Wildlife to list the desert tortoise in Arizona, California, and Nevada as endangered under the Endangered Species Act. The Service determined in September 1985 that the proposed listing of the tortoise within the three petitioned States was warranted but precluded by other listing actions of higher priority under authority of section 4(b)(3)(iii) of the Act. Annual findings of warranted but precluded have been made in each subsequent year since 1985 under authority of section 4(b)(3)(C) of the Act.

For the purpose of this rule, the Mojave population of the desert tortoise includes all desert tortoises north and west of the Colorado River, including desert tortoises in the Colorado and Mojave Deserts of California, southern Nevada, southwestern Utah, and northwestern Arizona, other than the Beaver Dam Slope population of desert tortoises, which is already listed as a threatened species under the Act.

Data collected on the Mojave population in recent months indicate that many local tortoise populations throughout the range of the species have declined precipitously. The rapid spread of Respiratory Disease Syndrome, rarely seen before in wild tortoises, has been identified as a significant contributing factor in the current high level of tortoise losses.

On May 31, 1989, the same three environmental organizations that petitioned the Service in 1984 petitioned the Service to list the desert tortoise as an endangered species throughout its United States range under the expedited

emergency provisions of the Act. This petition was received on June 2, 1989. In response to this petition, the Service conducted an extensive review of existing information on the Respiratory Disease Syndrome, other reported diseases in Arizona, and tortoise status. As a result of this and other information, the Service determines the Mojave population of the desert tortoise to be an endangered species. The Service will not take emergency action to reclassify the Beaver Dam Slope population in Utah to endangered because it is already protected by the Act. The Service does not concur with the requested action under the petition to emergency list the Sonoran population of desert tortoises. The rationale leading to this decision is as follows:

1. Historically, desert tortoises in the Sonoran population occur in numerous small groups, more or less patchy or disjunct, inhabiting steep-sided canyons.

2. The very patchiness of the distribution in the Sonoran population leads the Service to believe that the Respiratory Disease Syndrome affecting other subpopulations will not likely reach the epidemic proportions that it has in locations like the Desert Tortoise Natural Area in California. Although a few instances of a respiratory disease have been documented in the Sonoran population and are of concern to the Service, it appears that respiratory disease is: (a) Usually present in tortoise populations to varying degrees, (b) has not shown any evidence of becoming pandemic, (c) has not been shown to be Respiratory Disease Syndrome, and (d) is currently being addressed by the Service and the Arizona Game and Fish Department, who will continue to gather and evaluate data. A report on the results of these studies will be available after two field seasons.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Mojave population of the desert tortoise should be classified as endangered. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Mojave population of desert tortoise are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

As indicated above, habitat is deteriorating and has been lost due to an accelerating rate of urban, energy, and mineral development, military activities, vehicle-oriented recreational activities, grazing, and land exchanges.

Changes in perennial vegetation, essentially the reduction in cover of small and large shrubs and perennial grasses, are believed to be the result of cattle and sheep grazing pressures. These changes have created openings and barren areas in desert landscape and have deteriorated the quality of habitat for the tortoise. Losses of plant cover may contribute to the excessive raven predation on small tortoises being recorded. Changes in annual vegetation have also affected food supplies for tortoises. Weedy plant species that have been introduced for grazing can germinate, flower, and fruit before the native plants. Native plant species are essential to meet the nutritional needs of the tortoise and are their favored forage. The exotic weedy species are outcompeting many native plant species (Berry 1988). Additional potential adverse impacts to the tortoise from cattle and sheep grazing include: damage to shrubs used for tortoise shelter, crushing of burrows and nests, and trampling of young tortoises. Cattle grazing has contributed to declines in many tortoise populations. The degree and nature of impacts from cattle grazing is dependent upon habitat, grazing history, seasons of use, stocking rates, and density of the tortoise population (Sievers et al. 1988).

The following discussions are summarized from Alden Sievers and the California Desert Tortoise Workgroup's 1988 Recommendations for Management of the Desert Tortoise in the California Desert, submitted to the Bureau of Land Management (BLM), Riverside, California, and to the California Department of Fish and Game, Long Beach, California (Sievers et al. 1988):

Vehicle free-play in tortoise habitat results in cumulative adverse impact to tortoise habitat. Impacts vary from minor habitat alteration and vehicle route proliferation to total denudation of extensive areas created by intensive vehicle play, parking, and camping. Concentrated vehicle play areas may eliminate all but the most hardy shrubs. Other impacts include soil compaction and erosion. Tortoises suffer from loss of forage, loss of vegetative cover, and loss of burrow sites and then become subject to increased mortality from crushing, collection, and vandalism.

Competitive off-highway vehicle racing events adversely impact tortoise habitat. They usually involve several hundred race participants and thousands of spectators. The camping and race start and finish areas receive intensive vehicle use and become devoid of vegetation. Tortoises are eliminated from these areas entirely due to the loss of food, cover, and burrow sites. Affected areas become enlarged with continued use.

Vehicle route proliferation has occurred in many areas and can result in a significant cumulative loss of habitat. Human access increases the incidence of tortoise mortality from collection, gunshot, and crushing by vehicles. Soil compaction results in loss of vegetation and increases in erosion.

Large surface disturbances (e.g., power plants, mining, agricultural developments, military activities, and urbanization) cause longterm, permanent loss of habitat. Both large and small developmental activities often induce further surface disturbing activities with resulting habitat loss and tortoise population reduction. Increased human activity results in increased vehicle kills, vandalism, and collecting of tortoises.

Land exchanges may result in habitat loss and increased fragmentation of populations. Even where tortoise habitat is exchanged by the Bureau of Land Management for other tortoise habitat, there is an increased likelihood of development, resulting in loss of habitat, on the new private holdings.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Desert tortoises have long been a popular pet in the Southwest. It is not currently known to what extent collecting has impacted wild populations. It is estimated that 100,000 desert tortoises exist in captivity. Many tortoises held in captivity, however, are known to exhibit signs of contagious Respiratory Disease Syndrome. The release of diseased captive tortoises is considered by the BLM to be the source of introduction of the currently identified Respiratory Disease Syndrome found in wild populations. The release of captive tortoises to the wild population following listing as Endangered could be considered to constitute harm to the wild population.

C. Disease of Predation

Predation of young tortoises by ravens is a growing threat to the species. Common raven populations in the southwestern deserts have increased significantly since the early 1940's, presumably in response to expanding human use of the desert. Sewage ponds, landfills, power lines, roads, and other uses have increased available foraging, roosting, and nesting opportunities for ravens. In recent years, raven predation

BEST COPY AVAILABLE

on juvenile desert tortoises has increased to a point where recruitment of young tortoises into the adult population has been significantly reduced or eliminated in certain localities. Ravens are highly adaptable as to their feeding patterns, and concentrate on easily available seasonal food sources such as juvenile tortoises, including live, healthy animals. In the Desert Tortoise Natural Area, a protected area of 21,320 acres in the western Mojave Desert, even though tortoise eggs are still being laid and hatched, as shown by the presence of very small tortoises, raven predation appears to have prevented the recruitment of the young into the adult population [BLM 1989].

The BLM's 1989 Environmental Assessment (BLM 1989) for the Selected Control of the Common Raven to Reduce Desert Tortoise Predation in the Mojave Desert, California, further summarizes the annual trend (percent annual change) and the change (percent) of raven numbers in the last 20 years for the following deserts:

In the Mojave Desert, raven populations have increased 15-fold between 1966 and 1986, at a rate of nearly 15 percent per year.

A new threat to certain desert tortoise populations has recently been identified. A fatal disease, currently referred to as Desert Tortoise Respiratory Disease Syndrome, is spreading and appears to target the mature, reproductively active segment of the population.

The disease has been known for some time in captive tortoises throughout the world (Shipes et al. 1980), although the exact cause, or etiological agent, has not been clearly identified. The disease is probably the result of multiple factors working in concert. It is known that the disease may be readily transmitted from an infected tortoise to a non-infected tortoise (Rosskopf 1988). A virus (herpes-like) has been observed by electron microscopic studies in other species of turtles with respiratory tract infections (Jacobson et al. 1986). A paramyxovirus is also considered as a primary pathogen capable of initiating the disease (Jacobson, personal communication, in Rosskopf 1988). Infected animals may not necessarily exhibit obvious signs of the disease.

Once the disease is initiated, bacteria may invade and become the primary pathological agent. *Pasturella testudinatus* was recently isolated from a series of sick tortoises collected for disease study from the Desert Tortoise Natural Area in California. Species of *Pasturella* Bacteria are commonly associated with disease syndromes initiated or enhanced by other predisposing factors, including poor nutrition, stress, and immune system compromise.

The disease appears to be spread via contact between infected and non-infected animals (Rosskopf 1988). Adult male tortoises may contact many females in a single breeding season and, thus, the occurrence of the disease in the adult breeding population would reinforce the conclusion that direct nose contact during courtship activities could spread the pathogen to susceptible tortoises. Once the disease is contracted, there appears to be little chance of full recovery and the affected individual eventually becomes debilitated and dies. Even individuals given extensive treatment in captivity usually succumb to the disease eventually. Furthermore, if an individual appears to overcome the disease, relapse may occur under stress conditions (Rosskopf 1988).

Although the transmittance of an infectious agent from one tortoise to another occurs by contact, the actual infection of the newly inoculated individual may be associated with other factors that increase its susceptibility. Some of the original information published about this disease suggested a nutritional and/or stress-related cause with a secondary bacterial infection of debilitated animals (Fowler 1977). The combination of an infectious agent along with lowered resistance is typical of these types of disease syndromes in many other animals.

Based on current knowledge of the incidence, morbidity, and the mortality rates, the disease appears to be escalating in surveyed populations in the western Mojave Desert. The disease was first recognized as a major problem in wild populations in the spring of 1988 (Fauna West Wildlife Consultants 1989). Signs of the disease were observed in up to 46 percent of adult tortoises examined during surveys of the Desert Tortoise Natural Area in the western Mojave Desert in southern California in the spring of 1988. In one portion of this range, the infection rate went from 9 percent in a 1988 survey to 52 percent of all tortoises in a 1989 survey. A loss of about 20 percent of the marked tortoise population with disease signs occurred in one year in this plot.

While not all populations surveyed have such high mortality rates, these figures demonstrate the potential impact the disease can have on any given area. Infection rates in multiple grid areas in the southern California study area range from 7 to 50 percent. The disease symptoms have also been observed in individual tortoises from a variety of populations (Berry 1989) including the Fremont Valley (50 percent infection rate), Saguaro National Monument in Arizona (2 of 12 radio tagged infected, and died), and Beaver Dam Slope, Utah-Arizona (10 to 20 percent infection rate with high mortality in radio tagged animals). Interviews of personnel at veterinary hospitals in the Las Vegas, Nevada area by Service personnel have revealed that most cases of Respiratory Disease Syndrome are found in captive tortoises, but that wild tortoises have been brought in with symptoms of respiratory disease. The potential exists for the Respiratory Disease Syndrome to reach epidemic proportions throughout the Mojave population. There appear to be no natural barriers that would prevent transfer of infectious agents from California subpopulations to Nevada, Utah, and Arizona subpopulations in the Mojave desert. In addition to the identified respiratory disease in the Beaver Dam Slope population, an apparent nutritional disease causing osteoporosis of the bones has been identified [Jarchow 1988].

D. The Inadequacy of Existing Regulatory Mechanisms

All four involved States have laws that provide varying levels of protection for the desert tortoise.

State of Nevada laws concerning fish, game, and watercraft, as amended in 1987, afford limited protection in the desert tortoise. Nevada Revised Statutes (NRS), Section 501.110.1(d) sets forth that reptiles must be classified as either protected or unprotected. NRS Section 501.110.2 states that protected wildlife may be further classified as either sensitive, threatened, or endangered. The Nevada Administrative Code (NAC), Section 503.080.1(a) classifies the desert tortoise as protected and rare outside the urban areas of Clark County (Las Vegas). NRS Section 503.597, states that it is unlawful, unless with written consent of the Nevada Department of Wildlife, to transport a desert tortoise from one portion to another portion of the State or across State lines.

The California Fish and Game Commission adopted a regulation change on June 22, 1989, to amend the California Code of Regulations, Section 670.5(b)(4) of Title 14, to add the desert tortoise as a State threatened species. Under the Fish and Game Code, Article 3, Section 2080 prohibits the import or export of endangered or threatened species. This section also indicates that no person shall take, possess, purchase, or sell within the State, any listed species, or any part or product thereof, except as otherwise provided in State

law or regulation. Violations of these provisions relating to endangered species may result in both fines (up to $5,000.) and/or imprisonment (up to one year).

The California Fish and Game Code, Article 4, Section 2090 requires that each State agency shall consult with the California Department of Fish and Game to ensure that any action authorized, funded, or carried out by that State lead agency is not likely to jeopardize the continued existence of any State listed species.

In Arizona, the collecting season has been closed on the desert tortoise since January 1, 1988, under Arizona Game and Fish Commission Order 43: Reptiles. Under Arizona Administrative Code, Title 12, Chapter 4, Article 319.3, the desert tortoise is considered "prohibited wildlife" and may not be imported, exported, possessed, transported, propagated, purchased, bartered, sold, leased, or offered for sale except as expressly authorized by State law.

In Utah, the status of the desert tortoise is considered by the State to be endangered (Utah Division of Wildlife Resources 1987). The desert tortoise is also considered a "prohibited reptile" under Utah Rule, Collection, Importation, Transportation and Subsequent Possession of Zoological Animals (R608-3). In Utah, the desert tortoise is prohibited from collection, importation, transportation, possession, sale, transfer, or release.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Vandalism, including shooting and crushing of tortoises under vehicles, has been documented by the Bureau of Land Management (Bureau) and is considered a factor in reducing the number of tortoises in their natural habitat. Bureau studies on 11 permanent study plots showed 14.3 percent of the carcasses with evidence of gunshot. The highest incidence of gunshot is found in the western Mojave Desert. At one plot, the highest frequency of carcasses with evidence of gunshot was 28.9 percent (Sievers et al. 1988).

Status of Feral Tortoises and Tortoises Currently Held in Captivity

Feral desert tortoises, which have been released inside the native habitat of the desert tortoise, are classified endangered species in the area north and west of the Colorado River and are protected under the Act. Tortoises found released outside of the known Mojave population range will be considered as captive animals.

Under section 9(b)(1) of the Act, prohibitions applicable to the Mojave population will not apply to tortoises that were held in captivity or in a controlled environment on the date of the publication of this notice, provided, that such holding and any subsequent holding or use of the tortoise was not in the course of a commercial activity.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that critical habitat for this population is not determinable.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing.

Such increased recognition and an active recovery program would provide a means to ensure survival for the desert tortoise. Available funding would be used on research to determine the causes of and possible treatments for the disease currently infecting tortoise populations and to determine whether the disease can be passed on to hatchlings by infected females. Available funding would also be used for, but would not necessarily be limited to, the identification of and isolation of healthy populations, carrying out raven control to reduce loss of immature tortoises, and public education to discourage further releases of diseased captive tortoises.

The protection required of Federal agencies and the applicable prohibitions are discussed, in part, below:

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Over 83 percent of occupied desert tortoise habitat is managed by the BLM. Other Federal Managers of tortoise habitat include the Department of Defense, National Park Service, Fish and Wildlife Service, and lands managed by Indian tribes. All current and proposed actions and plans for management of the habitat will require considerations for the protection of the tortoise, as required by the Act. Such activities may include, but may not be limited to, grazing, off-highway-vehicle use, mining, construction of developments and rights-of-way, and activities in tortoise habitat that kill tortoises and fragment their habitat.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale any desert tortoise in interstate or foreign commerce. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been illegally taken. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing such permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

All *Gopherus* tortoises, including the desert tortoise, were listed on July 1, 1975, as Appendix II species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The only exception within the genus is *G. flavomarginatus*, which was listed as an Appendix I species.

Emergency Determination

Under section 4(b)(7) of the Act and 50 CFR 424.20, the Secretary may

determine a species to be endangered or threatened by an emergency rule that shall cease 240 days following publication in the Federal Register. The reasons for taking this action with respect to the desert tortoise are discussed below. If at any time after this rule has been issued, the Secretary determines that substantial evidence does not exist to warrant such a rule, it shall be withdrawn.

As noted above, an emergency posing a significant risk to the well-being of the desert tortoise exists as a result of the outbreak and rampant spread of a contagious disease that is often, and may always be, fatal and for which no known cure currently exists. Even before the recent outbreak of a virulent respiratory disease, the desert tortoise was in serious peril for the many reasons already noted.

In 1985, when the Service found that the listing of the remaining populations of the desert tortoise as endangered was warranted, disease was not known to be a major factor affecting the species' survival. Today, however, a highly contagious and often fatal Respiratory Disease Syndrome is known to exist in tortoise populations in California, Utah, Arizona, and Nevada. Tortoises in some of these areas have experienced extraordinary population collapses within the very recent past and infection rates of surviving animals often exceed 50 percent. The outbreak of this disease syndrome, particularly when viewed against the background of the many other serious factors detrimentally affecting wild tortoise populations, poses a significant risk to the immediate well-being and survival of the species.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with listing species under the Endangered Species Act of 1973, as amended.

References Cited

Berry, K.H. 1988. A brief outline of the effects of sheep grazing on desert tortoise. Paper presented at meeting of desert tortoise-sheep grazing technical review team, Mojave, CA, September 22, 1988. 7 pp.

Berry, K.H. 1989. Revised meeting notes for the May 4, 1989, meeting, Respiratory disease in desert tortoises at the Desert Tortoise Natural Area.

Fauna West Wildlife Consultants. 1989. Unpublished data. Boulder, Montana.

Fowler, M.A. 1977. Respiratory disease in desert tortoises. Annual Proceedings of the American Assoc. of Zoo Animal Veterinarians. pp. 79–99.

Jacobson, E.R., J.M. Gaskin, M. Roelke, E.C. Greinen, and J. Allen. 1986. Conjunctivitis, tracheitis, and pneumonia associated with herpes virus infection in green sea turtles. J. Am. Vet. Med. Assoc. 189:1020–1023.

Jarchow, J. 1988. Report on investigation of desert tortoise mortality on Beaver Dam Slope, Arizona and Utah (Abstract). 13th Annual Meeting and Symposium, Desert Tortoise Council, March 26–27, 1988.

Rosskopf, W.J. 1988. Protocol for treating diseased tortoises (respiratory disease) at the Desert Tortoise Natural Area. Prepared for the U.S. Bureau of Land Management, Riverside, CA. 22 pp.

Shipes, K.P., E.L. Biberstein, and M.E. Fowler. 1980. A *Pasteurella* sp. associated with respiratory disease in captive desert tortoises. J. Am. Vet. Med. Assoc. 177:504–507.

Sievers, A., J.B. Aardahl, K.H. Berry, B.L. Burge, L.D. Foreman, G.E. Monesko, and J.A. St. Amant. 1988. Recommendations for management of the desert tortoise in the California desert. Submitted to the U.S. Bureau of Land Management, Riverside, CA. 54 pp.

Spang, E.F., G.W. Lamb, F. Rowley, W.H. Radtkey, R.R. Olendorf, E.A. Dahlem, and S. Slone. 1988. Desert tortoise habitat management of the public lands: a rangewide plan. Bureau of Land Management, Riverside, CA. 23 pp.

Utah Division of Wildlife. 1987. Native Utah wildlife species of special concern. Salt Lake City.

U.S. Department of the Interior, Bureau of Land Management (BLM). 1989. Environmental Assessment for selected control of the common raven to reduce desert tortoise predation in the Mojave Desert, California. Riverside, CA. 33 pp.

Author

The primary author of this emergency rule is Miss Jackie Campbell, Division of Endangered Species and Habitat Conservation, Regional Office, U.S. Fish and Wildlife Service, 1002 NE Holladay Street, Portland, Oregon 97232–4181, (503) 231–6131 or FTS 429–6131.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, until April 2, 1990, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3835 (16 U.S.C. 1531 *et seq.*), Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by revising the entry of the "Tortoise, desert * * *" under REPTILES to read as follows:

§ 17.11 Endangered and Threatened Wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
REPTILES							
Tortoise, desert	*Gopherus* (=*Xerobates*, =*Scaptochelys*) *agassizii*.	U.S.A. (AZ, CA, NV, UT), Mexico.	Entire, except AZ south and east of Colorado R., Mexico, and where listed as threatened below.	E	357E	NA	NA
Do	do	do	Beaver Dam Slope, UT.	T	103, 357E	17.95(c)	NA

Dated: August 2, 1989.

Susan Recce Lamoco,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–18459 Filed 8–3–89; 9:07 am]

BILLING CODE 4310–55–M

Reader Aids

Federal Register
Vol. 54, No. 149
Friday, August 4, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

31645-31796.....1
31797-31932.....2
31933-32034.....3
32035-32332.....4

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6002.....31794
6003.....31931
6004.....31933
6005.....32033

Executive Orders:
12685.....31796

7 CFR

29.....31797
58.....31646
910.....32035
945.....31798
1076.....31799

Proposed Rules:
911.....31843
929.....31844
967.....31845
993.....31846

8 CFR

Proposed Rules:
210.....31966

9 CFR

92.....31800

10 CFR

7.....31646

12 CFR

33.....31935
207.....31646
220.....31646
221.....31646
224.....31646
229.....32035

Proposed Rules:
226.....32089

14 CFR

39.....31649, 31651-31653, 31803-31809, 31935
71.....31654, 31936, 31937
75.....31937
73.....31,655
217.....31810
241.....31810

Proposed Rule:
39.....31693, 31694, 31847
71.....31696-31704, 31966
75.....31705, 31967

15 CFR

773.....31812

17 CFR

140.....31814
270.....31850, 32048
274.....32048
275.....32048
279.....32048

Proposed Rules:
230.....32226
239.....32226
240.....31850, 32229
249.....32226
260.....32226
269.....32226

18 CFR

271.....31938

Proposed rules:
37.....31706

20 CFR

Proposed Rules:
208.....32163
219.....31939
220.....32163
230.....32163
260.....32163
416.....31656

Proposed Rules:
327.....31968

21 CFR

133.....32050

Proposed Rules:
133.....32091
522.....31949
556.....31949
1308.....31815
1310.....31657
1313.....31657
1316.....31669

Proposed Rule:
1308.....31655

22 CFR

60.....31815
61.....31815
62.....31815
63.....31815
64.....31815
65.....31815

24 CFR

200.....32059
206.....32059
570.....31670

Proposed Rule:
Ch. I.....31856

26 CFR

1.....31672, 31816
602.....31672

Proposed Rule:
1.....31708

28 CFR

523.....32027

544.....32026

29 CFR

1600.....32061
1601.....32061
1610.....32061
1611.....32061
1620.....32061
1626.....32061
1691.....32061
1910.....31765, 31970

Proposed Rule:

1910.....31858

30 CFR

934.....32063

Proposed Rules:

250.....31768, 32316
917.....32093
925.....32094
931.....32095, 32096
946.....32097, 32098

31 CFR

500.....32064

32 CFR

706.....31825

33 CFR

100.....31826, 32066
117.....31827

Proposed Rules:

100.....31859, 31860

35 CFR

Proposed Rules:

133.....32099
135.....32099

36 CFR

1202.....32067
1250.....32067
1254.....32067

38 CFR

3.....31828, 31950
21.....31829, 31950–31952, 32070

39 CFR

111.....32071

40 CFR

52.....31953, 32072, 32073
180.....31674, 31830–31836
81.....32078

Proposed Rules

52.....32101
185.....31836
186.....31832–31836
261.....31675, 32320
302.....32320
704.....31680

Proposed Rules:

81.....31860, 31971, 31972
180.....31971, 31972

44 CFR

80.....31681
83.....31681
352.....31920

45 CFR

232.....32284
302.....32284
303.....32284
304.....32284
306.....32284
307.....32284
1632.....31954

47 CFR

73.....31685, 31686, 31838, 31960
80.....31839

48 CFR

203.....32161
208.....32161
209.....32161
212.....32161
213.....32161
214.....32161
215.....32161
216.....32161
217.....32161
219.....32161
222.....32161
223.....32161
226.....32161
242.....32161
245.....32161
252.....32161
253.....32161
273.....32161
801.....31961

49 CFR

571.....31687

50 CFR

17.....32326
226.....32085
227.....32085
661.....31841
663.....31688
675.....31842

Proposed Rules:

611.....31861
620.....31861
655.....31862
672.....31861
675.....31861

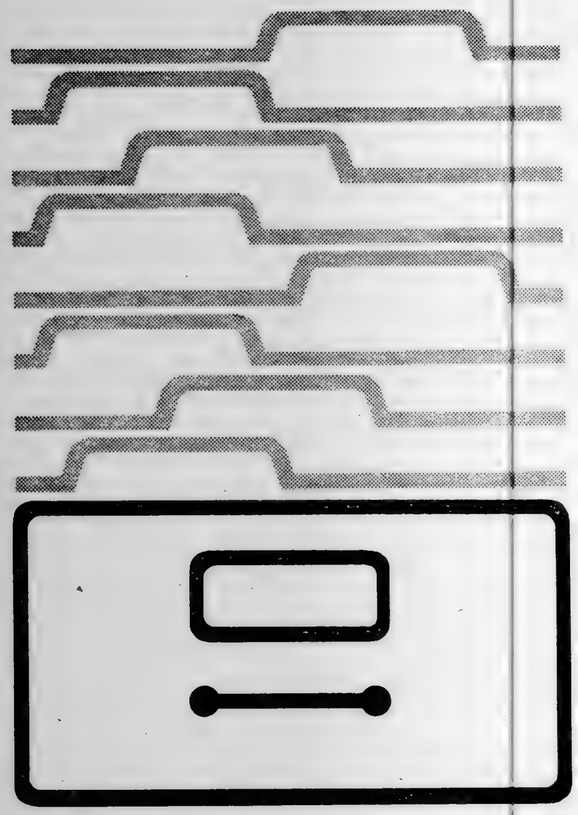
LIST OF PUBLIC LAWS

Last List: August 3, 1989

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.R. 310 / Pub. L. 101–68

To remove a restriction from a parcel of land in Roanoke Virginia, in order for that land to be conveyed to the state of Virginia for use as a veterans nursing home. (August 1, 1989; 103 Stat. 175; 2 pages) Price: $1.00



Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

Revised January 1, 1989

The GUIDE to record retention requirements is a useful reference tool, compiled from agency regulations, designed to assist anyone with Federal record-keeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9325.

Superintendent of Documents Publication Order Form

Order Processing Code: ***6660**

Charge your order. It's easy! VISA

To fax your orders and inquiries. 202-275-0019

☐ **YES,** please send me the following indicated publication:

_____copies of the 1989 GUIDE TO RECORD RETENTION REQUIREMENTS IN THE CFR
S/N 069-000-00020-7 at $12.00 each.

1. The total cost of my order is $_____ (International customers please add 25%). All prices include regular domestic postage and handling and are good through 1/90. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

7/90

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325

8-7-89
Vol. 54 No. 150

federal register

Monday
August 7, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 89 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

8-7-89
Vol. 54 No. 150
Pages 32333-32432

federal register

Monday
August 7, 1989

BEST COPY AVAILABLE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 54, No. 150
Monday, August 7, 1989

Agricultural Marketing Service
PROPOSED RULES
Pineapples; grade standards
Correction, 32419

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Soil Conservation Service

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 32369

Animal and Plant Health Inspection Service
NOTICES
Genetically-engineered organisms for release into environment; permit applications; correction, 32419

Architectural and Transportation Barriers Compliance Board
RULES
Organization, functions, and authority delegations, 32337

Census Bureau
NOTICES
Map production software:
TIGER System, 32364

Coast Guard
RULES
Anchorage regulations:
Virginia; correction, 32419

Commerce Department
See Census Bureau; International Trade Administration; National Oceanic and Atmospheric Administration

Commission of Fine Arts
NOTICES
Meetings, 32369

Conservation and Renewable Energy Office
PROPOSED RULES
Consumer products:
Energy conservation standards—
Air conditioners; portable, windowless, single-package type, 32349
NOTICES
Consumer product test procedures; waiver petitions:
Carrier Corp., 32372

Defense Department
See also Air Force Department
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Contractors authorized to use Government-provided passenger carriers, 32424
Subcontract consent requirement clarification, 32422
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 32369, 32370
(2 documents)
Meetings:
Electron Devices Advisory Group, 32369

Employment and Training Administration
NOTICES
Federal-State unemployment compensation program:
Unemployment insurance benefits quality control annual reports; availability, 32398

Energy Department
See also Conservation and Renewable Energy Office; Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
Hi-Z Technology, Inc., 32370
SRI International, 32370
Radiological conditions, certification:
New York, 32371

Environmental Protection Agency
PROPOSED RULES
Water pollution control:
Ocean dumping; site designations—
Gulf of Mexico; Port Isabel, TX, 32351
Gulf of Mexico; Port Mansfield, TX, 32354
Gulf of Mexico; Port O'Connor, TX, 32356
NOTICES
Agency information collection activities under OMB review, 32389, 32390
(3 documents)
Toxic and hazardous substances control:
Asbestos; EPA information submission requirements, 32430

Federal Communications Commission
RULES
Communications equipment:
Radio frequency devices—
Non-licensed operation; correction, 32339
Radio stations; table of assignments:
Florida, 32340, 32341
(2 documents)
Maryland, 32342
Minnesota, 32341
Texas, 32341
PROPOSED RULES
Radio services, special:
Private operations-fixed microwave service—
Channeling plan; 2450-2483.5 MHz band, 32362
Radio stations; table of assignments:
Mississippi, 32361
Texas, 32362

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 32418

Federal Election Commission
NOTICES
Meetings:
Clearinghouse Advisory Panel, 32391

Federal Emergency Management Agency
PROPOSED RULES
Preparedness:
Essential resources and facilities protection, 32359
NOTICES
Agency information collection activities under OMB review, 32391

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.
AES Barbers Point, Inc., 32376
Des Moines Integrated Community Area, 32376
Natural gas certificate filings:
Texas Gas Transmission Corp. et al, 32377
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 32388
Colorado Interstate Gas Co., 32388
Great Lakes Gas Transmission Co., 32388
Pacific Interstate Offshore Co., 32388
Point Arguello Natural Gas Line Co., 32389

Federal Home Loan Bank Board
NOTICES
Conservator appointments:
Capital Federal Savings & Loan Association, 32391
Gibraltar Savings & Loan Association, 32391
Home Federal Savings & Loan Association, 32392
New Guaranty Federal Savings & Loan Association, 32391
North American Federal Savings Association, 32392
Platte Valley Savings, 32391
Receiver appointments:
Capital Savings & Loan Association, 32392
Gibraltar Federal Savings & Loan Association, 32392
Guaranty Federal Savings Bank, 32392
North American Savings Association, 32392
Platte Valley Federal Savings & Loan Association, 32392
San Antonio Savings Association, 32392

Federal Maritime Commission
NOTICES
Agency information collection activities under OMB review, 32392
Freight forwarder licenses:
C. Kramer & Associates, Inc., et al., 32393

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
Burlington Northern Railroad et al., 32415

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Bank of Tokyo, Ltd.; correction, 32394
Harmonia Bancorp, Inc.; correction, 32394
Hoosier Bancorp; correction, 32394
Integra Financial Corp., 32393

Fine Arts Commission
See Commission of Fine Arts

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Carnidazole tablets, 32336
Ivermectin tablets and chewable cubes, 32336
Food for human consumption:
Irradiation in food production, processing, and handling, 32335
NOTICES
Animal drugs, feeds, and related products:
Ormont Drug & Chemical Co., Inc.; approval withdrawn, 32394
Food additive petitions:
Union Carbide Corp., 32395
Food for human consumption:
Adulterated foods reconditioning; compliance policy guide availability, 32395

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Contractors authorized to use Government-provided passenger carriers, 32424
Subcontract consent requirement clarification, 32422
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 32369, 32370
(2 documents)

Harry S. Truman Scholarship Foundation
NOTICES
Meetings; Sunshine Act, 32418

Health and Human Services Department
See Food and Drug Administration; Health Care Financing Administration; Health Resources and Services Administration

Health Care Financing Administration
NOTICES
Agency information collection activities under OMB review, 32395

Health Resources and Services Administration
NOTICES
Meetings; advisory committees:
September, 32396

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Special projects—
Public housing sites; youth sports clubs to combat drugs, 32426

Interior Department
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping:
Iron construction castings from—
Canada, 32365
India, 32366
Antidumping and countervailing duties:
Administrative review requests, 32364

Justice Department
NOTICES
Pollution control; consent judgments:
Browning-Ferris Industries Chemical Services, Inc., 32397
Maytag Corp., Norge Admiral Division, 32397

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
California, 32396
Resource management plans, etc.:
Yuma Resource Area, AZ; correction, 32419
Survey plat filings:
North Carolina, 32397
Withdrawal and reservation of lands:
Wyoming, 32432

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Contractors authorized to use Government-provided passenger carriers, 32424
Subcontract consent requirement clarification, 32422
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 32369, 32370
(2 documents)

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Occupant crash protection—
Rear seat lap/shoulder belts, 32345

National Oceanic and Atmospheric Administration
RULES
Marine mammals:
North Pacific fur seals—
Subsistence taking, 32346
PROPOSED RULES
Fishery products, etc.:
Fish fillets; grade standards, 32362
NOTICES
Permits:
Marine mammals, 32368

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 32418

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Commonwealth Edison Co., 32399
Meetings:
Reactor Safeguards Advisory Committee, 32400
(3 documents)
Petitions; Director's decisions:
Texas Utilities Electric Co. et al., 32401
Applications, hearings, determinations, etc.:
Consolidated Edison Co. of New York, Inc., 32402

Personnel Management Office
NOTICES
Meetings:
Federal Prevailing Rate Advisory Committee, 32402

Postal Rate Commission
NOTICES
Meetings; Sunshine Act, 32418

Public Health Service
See Food and Drug Administration; Health Resources and Services Administration

Railroad Retirement Board
NOTICES
Agency information collection activities under OMB review, 32402

Research and Special Programs Administration
RULES
Pipeline safety:
Gas and hazardous liquid pipelines and liquefied natural gas facilities; unsafe conditions reporting; conditions discovery by smart pigs, policy statement; and enforcement rules, 32342
Iron and copper pipe, etc.; referenced standards deletion; correction; and steel line pipe specification update, 32344

Securities and Exchange Commission
RULES
Accounting bulletins, staff:
Computation of earnings per share and registrant reporting responsibilities, 32333
Sales of stock by subsidiary; changes in parent's ownership percentage in subsidiary, 32334
NOTICES
Agency information collection activities under OMB review, 32403
Self-regulatory organizations:
Clearing agency registration applications—
Clearing Corp. for Options and Securities, 32410
MBS Clearing Corp., 32412
Self-regulatory organizations; proposed rule changes:
Boston Stock Exchange, Inc., 32403
Chicago Board Options Exchange, Inc., 32409
National Association of Securities Dealers, Inc., 32404
National Securities Clearing Corp., 32405
New York Stock Exchange, Inc., 32407
Pacific Stock Exchange, Inc., 32408

Small Business Administration
NOTICES
Agency information collection activities under OMB review, 32412
Disaster loan areas:
Colorado, 32413
Intergovernmental review of agency programs and activities, 32413
Meetings; regional advisory councils:
Connecticut, 32415
Missouri, 32415

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
South Edisto, SC, 32364

Transportation Department
See Coast Guard; Federal Railroad Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration

Treasury Department
NOTICES
Agency information collection activities under OMB review, 32417

Truman, Harry S., Scholarship Foundation
See Harry S. Truman Scholarship Foundation

Separate Parts In This Issue

Part II
Department of Defense; General Services Administration; National Aeronautics and Space Administration, 32422

Part III
Department of Defense; General Services Administration; National Aeronautics and Space Administration, 32424

Part IV
Department of Housing and Urban Development, 32426

Part V
Environmental Protection Agency, 32430

Part VI
Department of the Interior, Bureau of Land Management, 32432

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
Proposed Rules:
51 32419

10 CFR
Proposed Rules:
430 32439

17 CFR
211 (2 documents) 32333, 32334

21 CFR
179 32335
520 (2 documents) 32336

33 CFR
110 32419
162 32419
165 32419

36 CFR
1153 32337–32342
1155 32337–32342

40 CFR
Proposed Rules:
228 (3 documents) 32351–32356

44 CFR
Proposed Rules:
335 32359

47 CFR
2 32339
15 32339
73 (5 documents) 32340
Proposed Rules:
73 (2 documents) 32361, 32362
94 32362

48 CFR
Proposed Rules:
44 32422
45 32424
51 32424
52 32424

49 CFR
190 32342
191 32342
192 32344
195 (2 documents) 32342, 32344
571 32345

50 CFR
215 32346
Proposed Rules:
263 32362
267 32362

Rules and Regulations

Federal Register
Vol. 54, No. 150
Monday, August 7, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB–83]

Staff Accounting Bulletin No. 83

Date: July 31, 1989.

AGENCY: Securities and Exchange Commission.

ACTION: Publication of staff accounting bulletin.

SUMMARY: This staff accounting bulletin revises the staff's existing guidance set forth in Topic 4–D regarding the computation of earnings per share and expresses the staff's position regarding the responsibility of the registrant to determine whether compensation expense must be recognized when common stock or other dilutive securities are issued during the period covered by income statements included in a registration statement or in subsequent periods prior to the filing of the registration statement for an initial public offering. This bulletin amends Topic 4–D based upon the experience of the staff in addressing registrant matters during the review process.

FOR FURTHER INFORMATION CONTACT: John W. Albert, Office of the Chief Accountant (202–272–2130) or Robert A. Bayless, Division of Corporation Finance (202–272–2553), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Jonathan G. Katz,
Secretary.

PART 211—[AMENDED]

Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 83 to the table found in Subpart B.

Staff Accounting Bulletin No. 83

The staff herein amends section D of Topic 4 of the Staff Accounting Bulletin series. Topic 4–D discusses the staff's position regarding the computation of earnings per share and the responsibility of the registrant to determine whether compensation expense must be recognized when common stock or other dilutive securities are issued during the period covered by income statements included in a registration statement or in subsequent periods prior to the filing of the registration statement for an initial public offering.

Topic 4: Equity Accounts

* * * * *

D. Earnings per Share Computations in an Initial Public Offering

Facts: A registration statement is filed in connection with an initial public offering ("IPO") of common stock. During the periods covered by income statements that are included in the registration statement or in subsequent periods prior to the filing of the registration statement, the registrant issued common stock for consideration below the IPO price or issued common stock warrants, options, or other potentially dilutive instruments with exercise prices below the IPO price (referred to collectively hereafter as "stock and warrants").

Question 1: In computing earnings per share (EPS) for the periods covered by income statements included in the registration statement and in subsequent filings with the SEC, what treatment is appropriate for such stock and warrants?

Interpretive Response: The staff believes that stock and warrants issued within a one year period prior to the initial filing of the registration statement relating to the IPO [1] should be treated as outstanding for all reported periods, in the same manner as shares issued in a stock split or a recapitalization effected contemporaneously with an IPO. However, in measuring the dilutive effect of such issuances, the staff will not object to use of a treasury stock approach in determining the dilutive effect of the issuances. This approach considers the actual proceeds (or in the case of warrants, the proceeds that would have been received) and the number of shares that could have been repurchased using the estimated IPO price as the repurchase price for all periods presented.[2] The staff believes that this method should be applied in the computation of EPS for all prior periods, including loss years where the impact of the incremental shares is anti-dilutive.

Question 2: Does reflecting stock and warrants as outstanding for all historical periods in the computation of earnings per share alter the registrant's responsibility to determine whether compensation expense must be recognized on issuances of the stock and warrants to employees?

Interpretive Response: No. Under generally accepted accounting principles, registrants must recognize compensation expense for any issuances of stock and warrants to employees for less than fair value.[3] Reflecting stock and warrants as outstanding for all historical periods in the computation of earnings per share does not alter that existing responsibility under GAAP.

[FR Doc. 89–18396 Filed 8–4–89; 8:45 am]

BILLING CODE 8010–01–M

[1] The staff will not ordinarily raise a question about issuances of stock or warrants beyond one year prior to the initial filing of the registration statement relating to the IPO unless it appears that such issuances were issued in contemplation of the IPO.

[2] For example, if the estimated IPO price was $15 and 300 shares of stock were sold 6 months prior at a price of $10 per share, in computing EPS for periods prior to actual issuance of the shares, registrants may compute the incremental number of shares as follows: Total assumed proceeds = $10 × 300 shares = $3,000. Shares assumed to be repurchased = $3,000/$15 per share = 200 shares. Incremental shares = 300 shares sold less 200 shares assumed to be repurchased for a net increase of 100 shares assumed to be outstanding in computing EPS.

[3] As prescribed by APB Opinion 25, Accounting for Stock Issued to Employees, and related interpretations.

17 CFR Part 211

[Release No. SAB-84]

Staff Accounting Bulletin No. 84

Date: July 31, 1989.

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: Staff Accounting Bulletin No. 51, released March 29, 1983, expresses the staff's views regarding accounting in consolidation for issuances of a subsidiary's stock that cause changes in the parent's ownership percentage in the subsidiary. The purpose of this staff accounting bulletin is to address a number of issues that have arisen regarding the application of that SAB.

FOR FURTHER INFORMATION CONTACT: John M. Riley, Office of the Chief Accountant (202–272–2130), or Robert A. Bayless, Division of Corporation Finance (202–272–2553), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal Securities laws.

Jonathan G. Katz,

Secretary.

PART 211—[AMENDED]

Part 211 of Title 17 of the Code of Federal Regulations is hereby amended by adding Staff Accounting Bulletin No. 84 to the table found in Subpart B.

Staff Accounting Bulletin No. 84

The staff hereby adds questions 2 through 6 to section H of Topic 5 of the Staff Accounting Bulletin Series and deletes the last paragraph of the Interpretive Response to existing Question 1, the substance of which is now included in Question 6. Section H discusses accounting for sales of stock by a subsidiary. The Facts, Question and remaining portion of the Interpretive Response presently appearing as Topic 5–H are reprinted herein for reference purposes.

* * * * *

Topic 5: Miscellaneous Accounting

* * * * *

H. Accounting for Sales of Stock by a Subsidiary

Facts: The registrant owns 95% of its subsidiary's stock. The subsidiary sells its unissued shares in a public offering, which decreases the registrant's ownership of the subsidiary from 95% to 90%. The offering price per share exceeds the registrant's carrying amount per share of subsidiary stock.

Question 1: When an offering takes the form of a subsidiary's direct sale of its unissued shares, will the staff permit the amount in excess of the parent's carrying value to be reflected as a gain in the consolidated income statement of the parent?

Interpretive Response: Yes, in some circumstances. Although the staff has previously insisted that such transactions be accounted for as capital transactions in the consolidated financial statements, it has recently reconsidered its views on this matter with respect to certain of these transactions where the sale of such shares by a subsidiary is not a part of a broader corporate reorganization contemplated or planned by the registrant. In situations where no other such capital transactions are contemplated, the staff has determined that it will accept accounting treatment for such transactions that is in accordance with the Advisory Conclusions in paragraph 30 of the June 3, 1980 Issues Paper, "Accounting in Consolidation for Issuances of a Subsidiary's Stock," prepared by the Accounting Standards Executive Committee of the AICPA. The staff believes that this issues paper should provide appropriate interim guidance on this matter until the FASB addresses this issue as a part of its project on Accounting for the Reporting Entity, including Consolidations, the Equity Method, and Related Matters.

Question 2: What is meant by the phrase "broader corporate reorganization contemplated or planned by the registrant" and are there other situations where the staff has objected to gain recognition?

Interpretive Response: The staff believes that gain recognition is not appropriate in situations where subsequent capital transactions are contemplated that raise concerns about the likelihood of the registrant realizing that gain, such as where the registrant intends to spin-off its subsidiary to shareholders or where reacquisition of shares is contemplated at the time of issuance. The staff will presume that repurchases were contemplated at the date of issuance in those situations where shares are repurchased within one year of issuance or where a specific plan existed to repurchase shares at the time shares were issued. In addition, the staff believes that realization is not assured where the subsidiary is a newly-formed, non-operating entity; a research and development, start-up or development stage company; an entity whose ability to continue in existence is in question; or other similar circumstances. In those situations, the staff believes that the change in the parent company's proportionate share of subsidiary equity resulting from the additional equity raised by the subsidiary should be accounted for as an equity transaction in consolidation. Gain deferral is not appropriate.

Question 3: In the staff's opinion, may gain be recognized for issuances of subsidiary stock in situations other than sales of unissued shares in a public offering?

Interpretive Response: Yes. The staff believes that gain recognition is acceptable in situations other than sales of unissued shares in a public offering as long as the value of the proceeds can be objectively determined. With respect to issuances of stock options, warrants, and convertible and other similar securities, gain should not be recognized before exercise or conversion into common stock, and then only provided that realization of the gain is reasonably assured (see Question 2 above) at the time of such exercise or conversion.

Question 4: Will repurchasing shares of a subsidiary's stock affect the potential for gain recognition by the registrant in consolidation for subsequent issuances of that subsidiary's stock? [1]

Interpretive Response: Yes. Where previous gains have been recognized in consolidation on issuances of a subsidiary's stock and shares of the subsidiary are subsequently repurchased by the subsidiary, its parent or any member of the consolidated group, gain recognition should not occur on issuances subsequent to the date of a repurchase until such time as shares have been issued in an amount equivalent to the number of repurchased shares. The staff views such transactions as analogous to treasury stock transactions from the standpoint of the consolidated entity that should not result in recognition of gains or losses.

Question 5: May registrants selectively apply the guidance in the SAB by recognizing the impact of certain issuances by a subsidiary in the income statement and other issuances as equity transactions?

Interpretive Response: No. The staff believes that income statement treatment in consolidation for issuances of stock by a subsidiary represents a choice among alternative accounting methods and, therefore, must be applied consistently to all stock transactions that meet the conditions for income statement treatment set forth herein for any subsidiary. If a registrant recognizes gains on issuances of stock by a subsidiary, thus adopting income statement recognition as its accounting policy, then it must also recognize losses for stock issuances by that or any other subsidiary that result in decreases in its proportionate share of the dollar amount of the subsidiary's equity. Regardless of the method of accounting selected, when a subsidiary issues securities at prices less than the parent's carrying value per share, the registrant must assess whether the investment has been impaired, in which case a provision should be reflected in the income statement.

Question 6: How should the registrant disclose the accounting for issuances of a subsidiary's stock in the consolidated financial statements?

Interpretive Response: The staff believes that gains (or losses) arising from issuances by a subsidiary of its own stock, if recorded in income by the parent, should be presented as a separate line item in the consolidated income statement without regard to materiality and clearly be designated as non-operating income. An appropriate description of the transaction should be included in the notes to the financial statements, as further described below.

The accounting method adopted by the registrant for issuances of a subsidiary's stock should be disclosed in its accounting policy footnote and consistently applied (See Question 5). The staff believes that the registrant also should include a separate footnote that describes issuances of subsidiary stock that have occurred during all periods presented. This footnote should clearly describe the transaction, the identification of the subsidiary and nature of its operations, the number of shares issued, the price per share and the total dollar amount and nature of consideration received, and the percentage ownership of the parent both before and after the transaction. Additionally, the registrant should clearly state whether deferred income taxes have been provided on gains recognized and, if no provision has been recorded, a clear explanation of the reasons. Finally, the staff expects registrants to include disclosure in their Management Discussion and Analysis of the impact of specific transactions that have occurred and the likelihood of similar transactions occurring in future years.

[1] This question and interpretive response assume that the repurchases were not contemplated at the time of earlier gain recognition. See Question 2.

[FR Doc. 89–18397 Filed 8–4–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. 81N–0004]

Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration.

ACTION: Final rule; response to objections and confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is responding to four submissions that it received during the period for objections to the modification it made to the final rule on irradiation in the production, processing, and handling of food (53 FR 53176; December 30, 1988). The modification amended the description in 21 CFR 179.26 of aromatic vegetable substances that may be irradiated. Only two of the submissions can be considered to be objections to the modification. These objections requested that the regulation be further modified to permit the irradiation of onion pieces when used solely as a seasoning to impart flavor. FDA concludes that the objections have not provided evidence that would justify amending the regulation as requested. Therefore, the effective date of the modification is confirmed.

EFFECTIVE DATE: December 30, 1988.

FOR FURTHER INFORMATION CONTACT: Clyde A. Takeguchi, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 30, 1988 (53 FR 53176), FDA denied requests that it had received for a hearing on the final rules that amended FDA's food additive regulations to authorize the use of gamma radiation for the treatment of pork to control *Trichinella spiralis* and for the treatment of certain other foods. In that document, FDA responded to objections and modified the listing regulation (21 CFR 179.26(b)) by adding the phrase "when used as ingredients in small amounts solely for flavoring or aroma" after the term "dry or dehydrated aromatic vegetable substances." In addition, FDA recognized that many dry vegetable substances are used for purposes other than seasoning, such as for appearance or texture. To distinguish such uses, FDA modified the regulation so that dry vegetable substances that are "either represented as, or appear to be, vegetables eaten for their own sake," cannot be considered as "vegetable seasonings" that are permitted to be irradiated by this regulation. Four submissions were received during the time allowed or objections to this modification. None of the submissions requested a hearing.

Analysis of Objections

1. One letter requested a 90-day extension of time to respond to FDA's denial of requests for a hearing and responses to the earlier objections.

The Federal Food, Drug, and Cosmetic Act (the act) does not provide an opportunity for rebuttal of the agency's responses to objections or to requests for a hearing. Under section 409(g) of the act (21 U.S.C. 348(g)), the recourse of a person whose objections are rejected by the agency is through the courts. Because this letter did not mention the clarifying modification, this letter is not an objection to the modification of § 179.26. Therefore, no further response to this letter is necessary.

2. One letter supported the modification and requires no response.

3. One objector, a trade organization, stated:

> * * * that onion flakes are used as both a seasoning and a vegetable. To avoid confusion in interpretation and administration of the final regulation, we request that clarifying language is added stating that onion flakes used as a "vegetable seasoning" may be irradiated, onion flakes used as a "vegetable" may not.

(Objection No. 669 in Docket No. 81N–0004).

A second objector, a manufacturer of dried onion and garlic products, stated:

> We believe that the blanket prohibition on irradiation of onion pieces is not in the best interest of the food industry * * *. Onion pieces like Bay, Basil, Oregano and Rosemary are used to season food either in the piece form, chopped leaves, or in the ground form, powder or granulated. In either case, they are used to season foods * * *. For example, chopped onion in spaghetti sauce is not used as a "vegetable for its own sake," but to impart flavor. Onion powder could be used to get the same end flavor result, but the chopped provides an added dimension of eye appeal. The same is true for salad dressings, sauces, gravies and seasoning blends. Many of these applications require dried onion

pieces with a low microbiological level. Unlike spices, the only available system which can effectively lower the microbiological level in dried onion is irradiation. Ethylene Oxide merely reduces the microbiological load by 50 to 60%. The low kill ratio is caused by the onions less than 5% moisture content.

There are very few applications where onions are used as a "vegetable for its own sake". To name a few, onion soup, Chinese dishes, toppings for hamburgers, hot dogs, pizza, and chili. In these applications, we agree * * * that irradiation is not necessary. (Objection No. 670 in Docket No. 81N-0004).

FDA concludes that § 179.26 should not be modified as requested by these objections. The first objection misapprehends the regulation. It is not only the intended use of the vegetable substance that determines whether it may be irradiated. The substance must not only be used solely for flavoring or aroma, but it must also not be represented as, or appear to be, a vegetable that is eaten for its own sake. An onion flake that may be used as a seasoning and as a vegetable obviously "appears to be" a vegetable that can be eaten for its own sake and thus may not be irradiated under § 179.26.

The second objection has not provided any data to show that the use of irradiated dry vegetable substances that would have eye appeal would not result in a level of exposure to radiolytic products above that considered by the agency at the time it approved the use of irradiation on aromatic vegetable substances. As stated in the document of December 30, 1988 (53 FR 53176), the agency's decision that certain aromatic vegetable substances can be safely irradiated at a dose of up to 30 kiloGray was based on two rather limited factors.

First, the agency determined that the aromatic vegetable substances allowed are not sources of nutrients. Second, FDA found that these substances are minor ingredients that are consumed at such low levels that the amount of radiolytic products that could be consumed would be of no toxicological concern. In the absence of any data on the other uses of onion pieces, FDA is unable to determine whether the safety of these other uses is also established by these factors.

If the second objector believes that irradiation of onion pieces is in the best interest of the food industry, or if the first objector thinks that irradiated onion flakes can be safely used as a seasoning, they should petition the agency to amend the regulations and include such data as is necessary to permit the agency to make an appropriate determination.

Conclusion

The agency has reviewed and analyzed the submissions received during the objection period and finds that the objectors have not provided evidence that would justify any additional changes in § 179.26. The agency, therefore, confirms December 30, 1988, as the effective date of the modification.

Dated: July 31, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-18358 Filed 8-4-89; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Carnidazole Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Wildlife Laboratories, Inc. The NADA provides for safe and effective use of carnidazole tablets to treat trichomoniasis (canker) in ornamental and homing pigeons.

EFFECTIVE DATE: August 7, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Wildlife Laboratories, Inc., 1401 Duff Dr., Suite 600, Fort Collins, CO 80524, filed NADA 139-879 providing for the use of Spartrix® (carnidazole) tablets for treatment of trichomoniasis (canker) in ornamental and homing pigeons. The NADA is approved and the regulations are amended by adding new 21 CFR 520.312 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Part 520 is amended by adding a new § 520.312 to read as follows:

§ 520.312 Carnidazole tablets.

(a) *Specifications.* Each tablet contains 10 milligrams of carnidazole.

(b) *Sponsor.* See 053923 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Adult pigeons: 1 tablet (10 milligrams); newly weaned pigeons: ½ tablet (5 milligrams).

(2) *Indications for use.* For treating trichomoniasis (canker) in ornamental and homing pigeons.

(3) *Limitations.* Not for use in pigeons intended for human food. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism or when severely ill birds do not respond to treatment.

Dated: July 31, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-18359 Filed 8-4-89; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Part 520

Oral Dosage From New Animal Drugs Not Subject to Certification; Ivermectin Tablets and Chewable Cubes

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Merck Sharp & Dohme Research Laboratories, providing for safe and effective use of Heartgard 30® (ivermectin) Chewables for dogs to prevent canine heartworm disease.

EFFECTIVE DATE: August 4, 1989.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Merck Sharp & Dohme Research Laboratories, Division of Merck and Co., Inc., P.O. Box 2000, Rahway, NJ 07065-0914, filed NADA 140-886 which provides for use in dogs of Heartgard 30® (ivermectin) Chewables. This drug product is a chewable cube indicated for prevention of canine heartworm disease. It is pharmacologically equivalent to the firm's currently approved Heartgard 30® (ivermectin) Tablets. The available dosage strengths and conditions of use for the two products are the same.

The NADA is approved and 21 CFR 520.1193 is amended to reflect the approval by revising the section heading and paragraph (a). The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FROM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 520.1193 is amended by revising the section heading and paragraph (a) to read as follows:

§ 520.1193 Ivermectin tablets and chewable cubes.

(a) *Specifications.* Each tablet and cube contains 68, 136, or 272 micrograms of ivermectin.

* * * * *

Dated: July 31, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-18310 Filed 8-4-89; 8:45 am]

BILLING CODE 4160-01-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1153 and 1155

Authorities and Delegations and Statement of Organization and Procedures

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board at its May 10, 1989 meeting adopted amendments to its Statement of Organization and Procedures and Authorities and Delegations, which set forth the procedures for the Board and Board/committee meetings. The amendments to the Statement of Organization and Procedures and Authorities and Delegations were adopted to improve the orderly function of the office of the Architectural and Transportation Barriers Compliance Board as well as Board and committee operations.

The amendments to the Statement of Organization and the amendments to the Authorities and Delegations are being published so that all affected persons will be fully informed about procedures governing the meetings and to implement the act.

EFFECTIVE DATE: May 10, 1989.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Stewart, Senior Attorney, Architectural and Transportation Barriers Compliance Board, 1111 18th St. NW., Suite 5501, Washington, DC, (202) 653-7834 (voice or TDD).

SUPPLEMENTARY INFORMATION: Pursuant to section 502 of the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 391, as amended, the ATBCB adopted its Authorities and Delegations on July 12, 1983. The Authorities and Delegations were published at 48 FR 53974 (1983) and codified at 36 CFR part 1153. The ATBCB adopted amendments to the Authorities and Delegations on September 11, 1985; March 9, 1988 and May 10, 1989. The major changes in the revised Authorities and Delegations passed by the ATBCB at its May 10, 1989 meeting are:

(1) Previously, the Chair of the Board had the responsibility to hire and fire staff at the GM-14 level and above, and approve promotions to the GM-14 level and above, with the consent of the Executive Committee. The Executive Director had the authority to detail, assign, hire and fire staff at the GM-13 level and below and to make recommendations to the Chair concerning staff at the GM-14 level and above. The amendments give the authority to the Executive Director to manage all staff at all levels and not limit authority to the GM-13 level and below with the exception of the General Counsel who shall continue to be confirmed by the Board.

(2) Previously the Chair had the authority to appoint division directors, with the consent of the Executive Committee. The amendments give the authority to appoint division directors to the Executive Director.

(3) The amendments provide that the Chair nominate the candidate for the position of Executive Director with the Board confirming.

(4) The amendments delete "sustained" from the phrase [the Executive Director is delegated the authority] "to provide sustained administrative leadership, * * *"

(5) The amendments provide that the Executive Director, not the committee chairs, will provide an evaluation of the staff liaison's performance after each meeting.

Pursuant to section 502 of the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 391, as amended, the Architectural and Transportation Barriers Compliance Board (hereinafter ATBCB or the Board) adopted a Statement of Organization and Procedures on September 16, 1975. The Statement was published at 50 FR 1032 (1975) and codified at 36 CFR part 1155. The Statement was amended by the Board on May 9, 1977; March 14, 1978; March 11, 1980; May 10, 1983, May 12,

1986; September 16, 1987; March 9, 1988 and May 10, 1989. Some of the major changes in the revised Statement of Organization and Procedures passed by the ATBCB at its May 10, 1989 meeting are:

(1) The Executive Committee may authorize the request for legal advise from the Office of Legal Counsel, DOJ. Previously, a Board vote was required to seek advice from the Office of Legal Counsel.

(2) Changes the title of "Veterans Administration" to "Department of Veterans Affairs".

(3) Deletes the reference to the planned length of a Board meeting.

(4) Provides that proposed amendments to Board minutes may be made orally at the Board meeting.

(5) Increases the quorum for the Executive Committee to four from two.

List of Subjects in 36 CFR Parts 1153 and 1155

Authority delegations (Government agencies), Handicapped, Organizations and functions (Government agencies).

For the reasons stated in the preamble, chapter XI of title 36, Code of Federal Regulations, is amended by amending parts 1153 and 1155 as follows:

PART 1153—[AMENDED]

1. The Authority Citation for 36 CFR part 1153 continues to read as follows:

Authority: 29 U.S.C. 792, as amended.

2. In § 1153.2, paragraph (a) introductory text is republished for the convenience of the reader and paragraph (a) is amended by removing paragraph (10) in its entirety and by redesignating paragraph (11) as paragraph (10). Newly designated paragraph (10) is revised to read as follows:

§ 1153.2 Chair.

* * * * *

(a) To coordinate and organize the work of the Board in such a manner as to promote the prompt and efficient disposition of all matters within the jurisdiction of the Board. In carrying out these responsibilities, the Chair is delegated the authority to:

* * * * *

(10) Nominate the General Counsel and Executive Director, who are to be confirmed by the Board.

* * * * *

3. Section 1153.4 is amended by removing paragraph (d)(1)(ii) in its entirety; by redesignating paragraphs (d)(1)(iii) through (d)(1)(vi) as paragraphs (d)(1)(ii) through (d)(1)(v); and by revising the introductory text of § 1153.4, the introductory text of paragraph (d)(1), paragraph (d)(1)(i), and paragraph (i) to read as follows:

§ 1153.4 Executive Director.

The Executive Director is nominated by the Chair and confirmed by the Board and is responsible to the Board under the supervision of the Chair. He or she has the following duties and responsibilities:

* * * * *

(d)(1) To provide administrative leadership, and supervision and management of staff activities in carrying out the policies and decisions of the Board under the direction and supervision of the Chair. Supervision of staff includes:

(i) Authority to detail, reassign and train all staff, hire, fire and promote staff except as prescribed in § 1153.2(a)(10) herein.

* * * * *

(i) To propose and implement changes in the functional organization of the Board staff offices, following a written notification to the Board of the nature and reasons for the proposed changes. Personnel actions necessary to implement such changes shall not be approved until there has been a meeting of the Board, following the Board's written notification of the changes.

* * * * *

§ 1153.6 [Amended]

4. Section 1153.6 is amended by removing paragraph (a)(2) in its entirety and by redesignating paragraph (a)(3) as (a)(2).

PART 1155—[AMENDED]

5. The Authority Citation for 36 CFR part 1155 continues to read as follows:

Authority: 29 U.S.C. 792, as amended.

6. Section 1155.1(d)(11) is revised to read as follows:

§ 1155.1 Organization and membership.

* * * * *

(d) * * *

(11) Department of Veterans Affairs.

* * * * *

7. Section 1155.2 is amended by revising the introductory text and paragraph (a)(3) and (h); by removing paragraph (j) in its entirety; by redesignating paragraph (k) as paragraph (j) and revising newly designated paragraph (j)(1) to read as follows:

§ 1155.2 Board meetings.

Regular meetings of the Board shall ordinarily be held on the Wednesday following the second Tuesday of every other month, except as otherwise provided in paragraphs (a) (2) and (4) of this section. Whenever possible, all business shall be transacted at the regular meeting. The Board may elect to convene in executive sessions.

* * * * *

(a) * * *

(3) Special meetings of the Board shall be called by the Chair to deal with important matters arising between regular meetings which require urgent action by the Board prior to the next regular meeting. Voting and discussion shall be limited to the subject matter which necessitated the call of the special meeting. All Board members shall be notified of the time, place, and exact purpose of the special meeting a reasonable time in advance.

* * * * *

(h) *Agenda.* The Chair, with the approval of the Executive Committee, places items of business on the Board agenda. A written notice of ten (10) work days to the full Board is required for an item to become part of the Board's agenda. The ten (10) days notice requirement may be waived upon a two-thirds vote by the Board to suspend the rules of order.

* * * * *

(j) *Corrections, additions, or approval of Board minutes.* (1) The Executive Director shall send draft minutes of the previous meeting to each Board member within fifty (50) days following the meeting. Any corrections shall be submitted orally or in writing at or before the next Board meeting.

* * * * *

8. Section 1155.3 is amended by revising paragraph (a)(2) and by adding paragraph (a)(4) to read as follows:

§ 1155.3 [Amended]

* * * * *

(a) * * *

(2) *Quorum.* A quorum in the Executive Committee shall be four members, present in person. In the absence of a quorum, a meeting can be held only for the purpose of discussion and no vote may be taken.

* * * * *

(4) *Request for legal opinion from the Department of Justice.* The Executive Committee may, by a majority vote, seek legal advice on any matter from the Office of Legal Counsel, United States Department of Justice. The Board shall not be bound by the opinion of the Office of Legal Counsel.

* * * * *

Stanley W. Smith,

Chair, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 89-18205 Filed 8-4-89; 8:45 am]

BILLING CODE 8820-BP-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[GEN Docket No. 87-389]

Operation of Radio Frequency Devices Without an Individual License

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: FCC is correcting errors in the text and regulations contained in the First Report and Order in GEN Docket No. 87-389, as published in the **Federal Register** on April 25, 1989 (54 FR 17710) and in the full text of the decision released April 18, 1989 (FCC 89-103).

EFFECTIVE DATE: June 23, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John A. Reed, Technical Standards Branch, Office of Engineering and Technology, (202) 653-7313.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 2

Communications equipment, Imports, Radio, Reporting and recordkeeping requirements, Television.

47 CFR Part 15

Communications equipment, Computer technology, Labeling, Radio, Reporting and recordkeeping requirements, Security measures, Telephone, Wiretapping and electronic surveillance.

1. In § 2.1043, paragraphs (b) and (b)(3) are republished and paragraphs (b)(1) and (b)(2) are added to read as follows:

§ 2.1043 Changes in certificated equipment.

* * * * *

(b) Two classes of permissive changes may be made in certificated equipment without requiring a new application for and grant of certification. Neither class of change shall result in a change in identification.

(1) A Class I permissive change includes those modifications in the equipment which do not degrade the characteristics reported by the manufacturer and accepted by the Commission when certification is granted. No filing with the Commission is required for a Class I permissive change.

(2) A Class II permissive change includes those modifications which degrade the performance characteristics as reported to the Commission at the time of the initial certification. Such degraded performance must still meet the minimum requirements of the applicable rules. When a Class II permissive change is made by the grantee, he shall supply the Commission with complete information and the results of tests of the characteristics affected by such change. The modified equipment shall not be marketed under the existing grant of certification prior to acknowledgement by the Commission that the change is acceptable.

(3) Permissive changes, as detailed above, shall be made only by the holder of the grant of certification. Changes by any party other than the grantee require a new application for and grant of certification.

* * * * *

2. Section 15.37 is corrected to read as follows:

§ 15.37 Transition provisions for compliance with the rules.

Equipment may be authorized, manufactured and imported under the rules in effect prior to June 23, 1989, in accordance with the following schedules:

(a) *For all intentional and unintentional radiators, except for receivers:* Radio frequency equipment verified by the responsible party or for which an application for a grant of equipment authorization is submitted to the Commission on or after June 23, 1992, shall comply with the regulations specified in this part. Radio frequency equipment that is manufactured or imported on or after June 23, 1994, shall comply with the regulations specified in this part.

(b) *For receivers:* Receivers subject to the regulations in this part that are manufactured or imported on or after June 23, 1999, shall comply with the regulations specified in this part. However, if a receiver is associated with a transmitter that could not have been authorized under the regulations in effect prior to June 23, 1989, e.g., a transmitter operating under the provisions of §§ 15.209 or 15.249 (below 960 MHz), the transition provisions in this section do not apply. Such receivers must comply with the regulations in this part.

(c) There are no restrictions on the operation or marketing of equipment complying with the regulations in effect prior to June 23, 1989.

3. Section 15.113, paragraph (f), is corrected to read as follows:

§ 15.113 Power line carrier systems.

* * * * *

(f) The provisions of this Section apply only to systems operated by a power utility for general supervision of the power system and do not permit operation on electric lines which connect the distribution substation to the customer or house wiring. Such operation can be conducted under the other provisions of this part.

4. Section 15.115 is corrected by adding the following note at the end of paragraph (b)(3), to read as follows:

§ 15.115 TV interface devices, including cable system terminal devices.

* * * * *

(b) * * *

(3) * * *

Note: Cable-ready video cassette recorders continue to be subject to the provisions for general TV interface devices pending further action by the Commission.

* * * * *

5. Section 15.209, paragraph (a), is corrected to read as follows:

§ 15.209 Radiated emission limits; general requirements.

(a) Except as provided elsewhere in this subpart, the emissions from an intentional radiator shall not exceed the field strength levels specified in the following table:

Frequency (MHz)	Field strength (microvolts/meter)	Measurement distance (meters)
0.009–0.490	2400/F(kHz)	300
0.490–1.705	24000/F(kHz)	30
1.705–30.0	30	30
30–88	100 **	3
88–216	150 **	3
216–960	200 **	3
Above 960	500	3

** Except as provided in paragraph (g), fundamental emissions from intentional radiators operating under this Section shall not be located in the frequency bands 54–72 MHz, 76–88 MHz, 174–216 MHz or 470–806 MHz. However, operation within these frequency bands is permitted under other sections of this part, e.g., §§ 15.231 and 15.241.

* * * * *

6. Section 15.231, paragraphs (b)(2) and (b)(3), is corrected to read as follows:

§ 15.231 Periodic operation in the band 40.66—40.70 MHz and above 70 MHz.

* * * * *

(b) * * *

(2) Intentional radiators operating under the provisions of this Section shall demonstrate compliance with the limits on the field strength of emissions, as shown in the above table, based on the average value of the measured emissions. As an alternative, compliance with the limits in the above table may be based on the use of measurement instrumentation with a CISPR quasi-peak detector. The specific method of measurement employed shall be specified in the application for equipment authorization. If average emission measurements are employed, the provisions in § 15.35 for averaging pulsed emissions and for limiting peak emissions apply. Further, compliance with the provisions of § 15.205 shall be demonstrated using the measurement instrumentation specified in that section.

(3) The limits on the field strength of the spurious emissions in the above table are based on the fundamental frequency of the intentional radiator. Spurious emissions shall be attenuated to the average (or, alternatively, CISPR quasi-peak) limits shown in this table or to the general limits shown in § 15.209, whichever limit permits a higher field strength.

* * * * *

7. Section 15.233, paragraphs (b), (d) and (e), is corrected to read as follows:

§ 15.233 Operation within the bands 46.60—46.96 MHz and 49.66—50.0 MHz.

* * * * *

(b) An intentional radiator used as part of a cordless telephone system shall operate on any frequency within 10 kHz of one or more of the following frequency pairs:

Channel	Base transmitter (MHz)	Handset transmitter (MHz)
1	46.610	49.670
2	46.630	49.845
3	46.670	49.860
4	46.710	49.770
5	46.730	49.875
6	46.770	49.830
7	46.830	49.890
8	46.870	49.930
9	46.930	49.990
10	46.970	49.970

* * * * *

(d) The fundamental emission shall be confined within a 20 kHz band centered on the frequencies listed in paragraph (b) of this section, as adjusted by the frequency tolerance of the transmitter at the time testing is performed. Modulation products outside of this 20 kHz band shall be attenuated at least 26 dB below the level of the unmodulated carrier or to the general limits in § 15.209, whichever permits the higher emission levels. Emissions on any frequency more than 10 kHz removed from this 20 kHz band shall consist solely of unwanted emissions and shall not exceed the general radiated emission limits in § 15.209. Tests to determine compliance with these requirements shall be performed using an appropriate input signal as prescribed in § 2.989 of this chapter.

(e) All emissions exceeding 20 microvolts/meter at 3 meters are to be reported in the application for certification.

* * * * *

8. Section 15.239, paragraph (d), is corrected to read as follows:

§ 15.239 Operation in the band 88—108 MHz.

* * * * *

(d) A custom built telemetry intentional radiator operating in the frequency band 88–108 MHz and used for experimentation by an educational institute need not be certified provided the device complies with the standards in this Part and the educational institution notifies the Engineer in Charge of the local FCC office, in writing, in advance of operation, providing the following information:

* * * * *

9. Section 15.251, paragraph (f), is corrected to read as follows:

§ 15.251 Operation within the bands 2.9—3.26 GHz, 3.267—3.332 GHz, 3.339—3.3458 GHz, and 3.358—3.6 GHz.

* * * * *

(f) In addition to the labelling requirements in § 15.19(a), the label attached to the AVIS transmitter shall contain a third statement regarding operational conditions, as follows:

* * * and, (3) during use this device (the antenna) may not be pointed within ± ** degrees of the horizontal plane.

The double asterisks in condition three (**) shall be replaced by the responsible party with the angular pointing restriction necessary to meet the horizontal emission limit specified in paragraph (b).

* * * * *

10. All of the above corrections, except for §§ 15.115 and 15.233, resolve editorial errors that occurred during publication or provide additional clarity. The correction to § 15.115 incorporates the provisions contained in the Memorandum, Opinion and Order in Gen. Docket No. 85–301 (adopted October 13, 1988, FCC 88–331, 53 FR 46615, November 18, 1988). The correction to § 15.233 incorporates the provisions contained in the Order adopted by the Commission on November 17, 1987 (FCC 87–355, 53 FR 1781, January 22, 1988). Those provisions were omitted by error.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–18354 Filed 8–4–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–217, RM–6169, RM–6465]

Radio Broadcasting Services; Jensen Beach, Melbourne, Port St. Lucie and Vero Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document at the request of St. Lucie Radio Corporation, *See*, 53 FR 19964, June 1, 1988, allots Channel 267A to Port St. Lucia, Florida, as the community's first local FM service. Channel 267A can be allotted to Port St. Lucie in compliance with the Commission's minimum distance separation requirements, provided the transmitter site is restricted to 9.3 kilometers (5.8 miles) southeast of the city in order to avoid short-spacing to Station WSTF (FM), Cocoa Beach, Florida, Channel 266C. The coordinates for this allotment are North Latitude 27–13–11 and West Longitude 80–18–25. With this action, this proceeding is terminated.

DATES: Effective September 15, 1989; The window period for filing applications will open on September 18, 1989, and close on October 18, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–217, adopted July 11 , 1989, and released August 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Port St. Lucie, Florida, Channel 267A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–18315 Filed 8–4–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–384; RM–6102]

Radio Broadcasting Services; Fort Myers Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Justice Broadcasting-Fort Myers Beach, Inc., [*See* 53 FR 33155, August 30, 1988], substitutes Channel 257C2 for Channel 257A at Fort Myers Beach, Florida, and modifies its license for Station WQEZ–FM to specify operation on the higher powered channel. Channel 257C2 can be allotted to Fort Myers Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 13 kilometers (8.1 miles) west to avoid a short-spacing to a pending application for Station WEDR(FM), Channel 256C, Miami, Florida, and to a pending application for Station WQYK(FM), Channel 258C1, St. Petersburg, Florida. The restricted site coordinates for this allotment are 26–25–30 and 82–04–30. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 15, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–384, adopted July 11, 1989, and released August 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended for Fort Myers Beach, Florida, by removing Channel 257A and adding Channel 257C2.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–18314 Filed 8–4–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–37; RM–6590]

Radio Broadcasting Services; Two Harbors, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 282C2 to Two Harbors, Minnesota, and modifies the construction permit for Channel 282A, to specify operation on Channel 282C2. This action is taken in response to a petition filed by Twin Ports Broadcasting, Inc. Canadian Concurrence has been obtained for the allotment of Channel 282C2 at Two Harbors. The coordinates for Channel 282C2 are 46–59–51 and 91–50–13. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 15, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–37, adopted July 11, 1989, and released August 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota is amended by revising the entry for Two Harbors, by removing Channel 282A and adding Channel 282C2.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–18313 Filed 8–4–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–419; RM–6358, RM–6622]

Radio Broadcasting Services; Amarillo and Claude, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 289A to Amarillo, Texas, as that community's eighth local FM service, at the request of John A. Gay, Jr. *See* 53 FR 34560, September 7, 1988. In addition, this document allots Channel 239A to Claude, Texas, as that community's first local FM service at the request of Leonard S. Martinez. The channel allotments can be made in compliance with the § 73.207 of the Commission's Rules, at the communities' reference coordinates. The coordinates are 35–12–30 and 101–51–00 at Amarillo and 35–06–30 and 101–21–54 at Claude. With this action, this proceeding is terminated.

DATES: Effective September 11, 1989; The window period for filing applications will open on September 12, 1989, and close on October 12, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–419, adopted July 13, 1989, and released July 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Texas, by adding Amarillo, Channel 289A and Claude, Channel 239A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-18328 Filed 8-4-89; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 88-619; RM-6477 and RM-6728]

Radio Broadcasting Services; Ridge, Maryland and White Stone, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 261A to White Stone, Virginia, in response to a counterproposal filed by Radio El Barco Blanco. The coordinates for Channel 261A are 37-38-00 and 76-17-45, which include a site restriction 8.5 kilometers east of the community. The original petition, filed by Keith A. Mayo and Chih Ping Mayo, requested the allotment of Channel 261A to Ridge, Maryland. The petition was withdrawn by the Mayos on March 24, 1989. With this action, this proceeding is terminated.

DATES: Effective September 15, 1989; The window period for filing applications for Channel 261A at White Stone, Virginia will open on September 18, 1989, and close on October 18, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-619, adopted July 11, 1989, and released August 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Virginia to add White Stone, Channel 261A.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-18312 Filed 8-4-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190, 191, and 195

[Docket No. PS-109; Amdt. No. 190-2, 191-7, and 195-42]

RIN 2137-AB70

Transportation of Gas and Hazardous Liquids by Pipeline; Reporting Safety-Related Conditions; Discovery of Conditions by Smart Pigs; Enforcement Rules

AGENCY: Research and Special Programs Administration (RSPA).

ACTION: Final rule.

SUMMARY: This final rule document makes clarifying changes (without imposing new burdens) to recently established reporting requirements regarding safety-related conditions, and states agency policy regarding discovery of those conditions by smart pigs. In addition, the pipeline safety enforcement procedures are modified to reflect statutory changes authorizing increased civil penalties for violations and specific criminal penalties for destruction of signs or markers.

EFFECTIVE DATE: This final rule with respect to Parts 191 and 195 takes effect August 7, 1989. The changes to Part 190 are effective as of of October 31, 1988.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow, (202) 366-2392.

SUPPLEMENTARY INFORMATION:

Reporting Safety-Related Conditions: Rule Changes

In accordance with section 3 of Pub. L. 99-516, RSPA issued regulations requiring operators of gas and hazardous liquid pipeline facilities subject to 49 CFR Parts 192, 193, and 195 to (1) report to RSPA and State agencies the existence of certain safety-related conditions on pipelines in service, and (2) add to their operating and maintenance procedures instructions that enable personnel to recognize potentially reportable conditions. (53 FR 24942; July 1, 1988). The regulations require operators to file written reports of the conditions "within 5 working days * * * after the day a representative of the operator first determines that the condition exists, but not later than 10 working days after the day a representative of the operator discovers the condition." (§§ 191.25(a) and 195.56(a)).

Since publication of the reporting regulations, RSPA has acquired additional telefacsimile, or fax, equipment to receive copies of printed material transmitted by telephone. Many operators wish to file their written safety-related condition reports by telefacsimile. RSPA believes that this filing method could reduce the reporting burden in view of the brief periods allowed for reporting. Therefore, RSPA has dedicated fax equipment to the receipt of safety-related condition reports on a 24-hour basis. The telephone number for use of the fax equipment has been added to §§ 191.25(a) and 195.56(a).

The regulations require operators to describe the precise location of the condition being reported. Of the reports received thus far, some have provided such detail as the milepost, but have not indicated in which State and city, town, or county the condition exists. Therefore, §§ 191.25(b)(6) and 195.56(b)(6) are revised to assure that these critical factors in describing location are provided.

The regulations also require operators to provide a general description of the safety-related condition being reported. This description should include the name of the commodity transported or stored to indicate the nature of the hazard involved. However, many operators have not included this information in their reports. Therefore, the name of the commodity has been specifically included in the description required by §§ 191.25(b)(7) and 195.56(b)(7). In the case of a hazardous liquid pipeline that currently carries more than one commodity, the name of each commodity is required.

Interpretation and Statement of Policy Regarding Discovery of Safety-Related Conditions by Smart Pigs and Instructions to Personnel

Because the 10-day time period for reporting begins to run when an operator's representative "discovers" a potentially reportable condition, several operators have asked RSPA to explain when discovery occurs in connection with the use of internal inspection devices, or smart pigs. Following a pig run, one or more parts of the pipeline that correspond to anomalies in the data collected are excavated and physically examined to calibrate the data. This calibration provides a basis for evaluating any remaining anomalies. The operators want to know at what step in this process RSPA considers discovery of a potentially reportable condition to occur. Does discovery occur upon initial detection of an anomaly, upon evaluation of an anomaly after calibration, or when the part of the pipeline that corresponds to a calibrated anomaly is physically examined?

Discovery of a potentially reportable condition occurs when an operator's representative has adequate information from which to conclude the probable existence of a reportable condition. An operator would have adequate information for each anomaly that is physically examined. Absent physical examination, discovery may occur after the data are calibrated if the "adequate information" test is met. However, the adequacy of the information that pig data provide about anomalous conditions is contingent on a concurrent indication from a number of factors from which an operator could conclude the probable existence of a reportable condition. Among these are the sophistication of the pig being used, the reliability of the data, the accuracy of data interpretation, and any other factors known by the operator relative to the condition of the pipeline.

Operators using smart pigs must consider these factors in developing the instructions that are included in their operating and maintenance procedures under §§ 192.605(f) and 195.402(f). These instructions are to enable personnel to recognize potentially reportable conditions, including, when appropriate, recognizing conditions from pig data.

Because pig performance and operating conditions vary, RSPA cannot precisely predict the circumstances under which discovery will occur solely by analysis of calibrated data before excavation of the suspected part of the pipeline. However, RSPA and State agency enforcement personnel will look carefully at operators' instructions regarding data produced by the smart pigs in service in conjunction with other available data to see whether the instructions are consistent with reasonable conclusions that can be drawn from that data.

Change in Penalties

Sections 106 and 205 of the Pipeline Safety Reauthorization Act of 1988 (Pub. L. 100-561, October 31, 1988) increases the maximum amounts of civil penalties assessable under the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1671 *et seq.*) ("NGPSA") and the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2001 *et seq.*) ("HLPSA"). The maximum penalties, which apply to violations of the NGPSA and the HLPSA and any regulation (including those in 49 CFR Parts 191, 192, 193, 195, and 199) or order issued under those statutes, were increased from $1,000 to $10,000 per violation for each day the violation persists, and from $200,000 to $500,000 for any related series of violations. Therefore, RSPA is amending its regulations in Part 190 governing the assessment of civil penalties to reflect these statutory changes. The regulations are amended further to clarify that the violations to which the civil penalties apply are those determined by the agency.

In addition, sections 107 and 206 of Pub. L. 100-561 make identical amendments to the NGPSA and the HLPSA, establishing specific criminal penalties for any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign or right-of-way marker required by Federal law or regulation. Line markers for gas and hazardous liquid pipelines are required under 49 CFR Parts 192 and 195. Therefore, RSPA is amending its regulations in Part 190 that specify applicable criminal penalties to include the new penalties regarding destruction of signs or markers.

Paperwork Reduction Act

The existing reporting requirements of §§ 191.23, 191.25, 195.55, and 195.56 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (OMB approval number 2137-0578). The reporting burden estimate submitted to OMB that provided a basis for that approval is not materially affected by this final rule. Therefore, RSPA has not submitted additional information to OMB for further approval under the Act.

Notice Not Required

This final rule facilitates reporting of safety-related conditions by telefacsimile, and clarifies existing generalized requests for information (§ 191.25(b)(6) and (7) and § 195.56(b)(6) and (7)). These rule changes do not add new burdens to the existing regulations or otherwise substantially modify those requirements. For these reasons, notice and opportunity to comment on these changes are unnecessary, and the rule changes are final, effective upon publication. Additionally, the two changes to part 190 modify agency rules of practice and procedure. The Administrative Procedure Act does not require prior notice of such modifications. Because these changes reflect statutory amendments already in effect, they are effective as of the date of enactment of the statute.

Impact Assessment

This final rule is considered nonmajor under E.O. 12291, and it is not significant under DOT procedures. The economic impact of this final rule is not large enough to warrant production of a detailed economic evaluation.

Federalism

This final rule has been analyzed under E.O. 12612, and RSPA has determined it does not warrant preparation of a Federalism Assessment.

List of Subjects

49 CFR Part 190

Pipeline safety, Penalty, Enforcement procedures.

49 CFR Part 191

Pipeline safety, Gas, Reporting and recordkeeping requirements.

49 CFR Part 195

Pipeline safety, Hazardous liquids, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends 49 CFR Parts 190, 191, and 195 as follows:

PART 190—[AMENDED]

1. The authority citation for Part 190 is revised to read as follows:

Authority: 49 App. U.S.C. 1672, 1677, 1679a, 1679b, 1680, 1681, 1804, 2002, 2006, 2007, 2008, 2009, and 2010; 49 CFR 1.53.

2. Section 190.223(a) is revised to read as follows:

§ 190.223 Maximum penalties.

(a) Any person who is determined to have violated a provision of the NGPSA or the HLPSA or any regulation or order issued under either of those Acts, is subject to a civil penalty not to exceed $10,000 for each violation for each day the violation continues except that the maximum civil penalty may not exceed $500,000 for any related series of violations.

* * * * *

3. Section 190.229 is amended by redesignating paragraph (d) as (e) and adding a new paragraph (d) to read as follows:

§ 190.229 Criminal penalties generally.

* * * * *

(d) Any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign or right-of-way marker required by the NGPSA, the HLPSA, or the HMTA, or any regulation or order issued thereunder shall, upon conviction, be subject, for each offense, to a fine of not more than $5,000, imprisonment for a term not to exceed 1 year, or both.

* * * * *

PART 191—[AMENDED]

4. The authority citation for Part 191 continues to read as follows:

Authority: 49 App. U.S.C. 1681(b) and 1808(b); §§ 191.23 and 191.25 also issued under 49 App. U.S.C. 1672(a); and 49 CFR 1.53.

5. Section 191.25(a) is amended by adding the following as the last sentence: "To file a report by telefacsimile (fax), dial (202) 472–1666."

6. In § 191.25(b), paragraphs (b) (6) and (7) are revised to read as follows:

§ 191.25 Filing safety-related condition reports.

* * * * *

(b) * * *

(6) Location of condition, with reference to the State (and town, city, or county) or offshore site, and as appropriate, nearest street address, offshore platform, survey station number, milepost, landmark, or name of pipeline.

(7) Description of the condition, including circumstances leading to its discovery, any significant effects of the condition on safety, and the name of the commodity transported or stored.

* * * * *

PART 195—[AMENDED]

7. The authority citation for Part 195 continues to read as follows:

Authority: 49 App. U.S.C. 2002; and 49 CFR 1.53.

8. Section 195.56(a) is amended by adding the following as the last sentence: "To file a report by telefacsimile (fax), dial (202) 472–1666."

9. In § 195.56(b), paragraphs (b) (6) and (7) are revised to read as follows:

§ 195.56 Filing safety-related condition reports.

* * * * *

(b) * * *

(6) Location of condition, with reference to the State (and town, city, or county) or offshore site, and as appropriate nearest street address, offshore platform, survey station number, milepost, landmark, or name of pipeline.

(7) Description of the condition, including circumstances leading to its discovery, any significant effects of the condition on safety, and the name of the commodity transported or stored.

* * * * *

Issued in Washington, DC on July 28, 1989.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 89–18113 Filed 8–4–89; 8:45 am]

BILLING CODE 4910–60–M

49 CFR Parts 192 and 195

[Docket No. PS–110; Amdt. 192–65 and 195–43; Docket No. PS–95; Amdt. 192–62 Correction]

RIN 2137–AB 69 and 2137–AB 24

Pipeline Safety; Steel Pipe

AGENCY: Research and Special Programs Administration (RSPA).

ACTION: Final rule and correction.

SUMMARY: This document updates to the 1988 edition the existing incorporation by reference in the gas and hazardous liquid pipeline safety standards of the American Petroleum Institute (API) Specification 5L, "Specification for Line Pipe." The purpose of this updating is to permit operators to use steel pipe made in accordance with API's latest technical requirements. This document also corrects an amendment to section II of Appendix A to Part 192 included in a final rule document published February 6, 1989 (Amdt. 192–62; 54 FR 5625), by removing certain CFR units that were reserved unintentionally.

EFFECTIVE DATE: This final rule takes effect September 6, 1989. The correction to Appendix A to Part 192 is effective August 7, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Albert C. Garnett, (202) 366–2036, regarding the content of this document; or the Dockets Unit, (202) 366–5046, for copies of this material in the docket.

SUPPLEMENTARY INFORMATION: API Specification 5L, "Specification for Line Pipe," is the principal specification used by pipeline operators for the procurement of high strength steel pipe used in gas and hazardous liquid pipelines in the United States. RSPA's safety standards for pipelines transporting gas or hazardous liquids (49 CFR parts 192 and 195) incorporate by reference certain requirements of the 1985 edition of API Specification 5L. Under § 192.55 (a) and (b), steel pipe qualifies for use in gas pipelines if it was manufactured in accordance with a "listed specification," which includes API 5L (see section I of Appendix B to part 192). Additionally, for gas pipelines, § 192.55(e) requires that new steel pipe that has been cold expanded must comply with the mandatory provisions of API 5L. For hazardous liquid pipelines, API 5L is referenced in the table in § 195.106(e), which denotes allowable seam joint factors for the internal design pressure formula for steel pipe. For both gas and hazardous liquid pipelines, the tensile tests of API 5L are prescribed for determining yield strength required in the internal design pressure formula when specified minimum yield strength is unknown (§§ 192.107(b) and 195.106(b)). The listings of referenced documents in Appendixes A and B to Part 192 and in § 195.3 indicate that the 1985 edition is the currently applicable edition of API 5L.

The Bethlehem Steel Corporation petitioned RSPA to adopt the 1988 edition of API 5L (Petition No. P–33), and then met with RSPA staff on April 19, 1989, to provide additional information concerning the petition. A summary of the meeting is filed in the docket with the petition.

RSPA has reviewed the 1988 edition of API 5L and found it to be satisfactory to achieve the purposes for which API 5L is incorporated by reference in parts 192 and 195. This review disclosed differences between the 1988 and 1985 editions, the more significant of which are discussed below. RSPA believes these differences would not add significantly to the burden of compliance if the 1988 edition were incorporated by reference instead of the 1985 edition. Also, incorporation by reference of the 1988 edition will contribute to pipeline safety by permitting operators to use steel pipe manufactured according to API's most recent technical requirements. Moreover, because pipe manufacturers commonly use the most recently published edition of API 5L, updating references to the 1988 edition should eliminate any difficulty operators may now have in procuring steel pipe that meets Parts 192 or 195 requirements. Accordingly, by this amendment, RSPA is updating to the 1988 edition the references to API 5L in parts 192 and 195.

Significant Differences Between the 1988 and 1985 Editions That Affect References in Parts 192 and 195

Section 3, Chemical Properties and Tests. A change in this section permits columbium, titanium, and vanadium to be used in Grade B pipe.

Section 4, Mechanical Properties and Tests. This section was changed by deletion of the higher minimum-ultimate-tensile-strength values for pipe in grades X52—X65 that is 20-inch outside diameter and larger, with wall thickness 0.375 inch and less. Now only a single minimum-ultimate-strength value is prescribed for each of these grades of pipe. The change permits pipe manufacturers to optimize the composition of steel to improve fracture toughness and weldability across the full range of line pipe sizes and wall thicknesses.

Section 5, Hydrostatic Tests. Supplementary Requirement 14 is referenced in this section and added to Appendix E. It is intended to prevent distortion when hydrostatically testing pipe at pressures equivalent to stresses in excess of 90 percent of specified minimum yield strength.

Section 10, Workmanship, Visual Inspection, and Repair of Defects. This section was reorganized without significant change of intent.

Appendix B, Repair-Welding Procedure and Welder Performance Tests. A change eliminates reference to conditions for weld repairs made at temperatures below 50 °F. The same conditions now apply to all weld repairs.

Appendix E, Supplementary Requirements. The contents of former Supplementary Requirements 5 and 8 have been combined into Supplementary Requirement 5, Fracture Toughness Testing (Charpy). The principal changes follow:

—The test specimen size for determining absorbed energy and fracture appearance was standardized, so the same specimen may be used for both determinations

—The range of pipe diameters subject to charpy impact testing was extended to a minimum of 4½-inch outside diameter

—When it is not possible to obtain full size specimens, sub-size specimens may be used

—The specified test temperature is changed to 50 °F or lower

—The description of the frequency of testing is modified and the frequency of tests for small lots is clarified.

Impact

RSPA believes that incorporation by reference of the 1988 edition of API 5L will contribute to pipeline safety by permitting the use of API's latest technical requirements for the manufacture of steel pipe. Because updating existing references to API 5L to the 1988 edition will not add significantly to the burden of compliance with parts 192 and 195, and may relieve the difficulty of procuring pipe under the outmoded 1985 edition, RSPA believes that prior notice and an opportunity for public comment are unnecessary. Therefore, in accordance with 5 U.S.C. 553, this amendment is final.

Also, the amendment will have an effect on the economy of less than $100 million a year, will not result in a major increase in costs for consumers and industry, and will have no significant adverse effects. Hence, this action is not considered "major" under Executive Order 12291 or "significant" under DOT procedures. Since this amendment merely updates existing references to API 5L without significantly affecting compliance or enforcement burdens, the economic impact of this action is minimal and the preparation of an evaluation of costs and benefits is not warranted.

RSPA has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient Federalism implications to warrant preparing a Federalism Assessment.

List of Subjects

49 CFR Part 192

Pipeline safety, Steel pipe, Gas.

49 CFR Part 195

Pipeline safety, Steel pipe, Hazardous liquid.

In consideration of the foregoing, RSPA makes the following correction and amends 49 CFR parts 192 and 195 as follows:

Appendix A to Part 192—[Corrected]

1. *Correction.*

In the final rule document 89–2542 on page 5628 in the issue of Monday, February 6, 1989, change item 16 under Part 192—Amended by removing the words "and reserving."

2. The authority citation for Part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

Appendix A to Part 192—[Amended]

3. In section II.A.(2) of Appendix A to Part 192, the parenthetic expression "(1985)" is removed and "(1988)" is added in its place.

4. In the listing for API 5L in section I of Appendix B to Part 192, the parenthetic expression "(1985)" is removed and "(1988)" is added in its place.

5. The authority citation of Part 195 continues to read as follows:

Authority: 49 App. U.S.C. 2002; and 49 CFR 1.53.

§ 195.3 [Amended]

6. In § 195.3(c)(1)(iii), the parenthetic expression "(1985)" is removed and "(1988)" is added in its place.

Issued in Washington, DC on July 28, 1989.

Travis P. Dungan,

Administrator, Research & Special Programs, Administration.

[FR Doc. 89–18111 Filed 8–4–89; 8:45 am]

BILLING CODE 4910–60–M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87–06; Notice 4]

RIN 2127–AB91

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Technical amendment.

SUMMARY: Lap/shoulder safety belts are required to be installed at all forward-facing rear outboard seating positions in passenger cars (other than convertibles) manufactured on or after December 11, 1989. Although NHTSA typically includes language in its regulations when necessary in order to permit manufacturers the option to begin complying with new requirements on vehicles manufactured before the date those new requirements take effect, the agency inadvertently omitted such language from the new rear seat lap/shoulder belt requirements. This notice adds language that will correct this oversight and clarify the new requirement for rear seat lap/shoulder belts in passenger cars other than convertibles.

DATE: The amendment made by this notice takes effect August 7, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Chief, Crashworthiness Division, NRM–12, Room 5320, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202–366–2264).

SUPPLEMENTARY INFORMATION: On June 14, 1989, NHTSA published a final rule amending Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208). This amendment established a new requirement for lap/shoulder safety belts to be installed at all forward-facing rear outboard seating positions in passenger cars (other than convertibles) manufactured on or after December 11, 1989. In a letter dated June 28, 1989, Ford Motor Company (Ford) asked the agency whether it could begin installing lap/shoulder safety belts that comply with the requirements that take effect on December 11, 1989 in vehicles manufactured before that date.

In its rules establishing new requirements, NHTSA routinely discusses the issue of whether vehicles or equipment manufactured before the date the new requirements take effect may comply with those new requirements in lieu of complying with the existing requirements. However, the rear seat lap/shoulder belt rule inadvertently omitted any such discussion. To correct this oversight, this notice adds language to the newly established requirements to make clear that vehicles may comply with the requirements that take effect on December 11, 1989 in advance of that date without violating any other provisions in Standard No. 208.

This notice does not impose any additional responsibilities on any vehicle manufacturers. Instead, this notice corrects an oversight in the June 14, 1989 rule. This notice merely permits those manufacturers that wish to do so to install rear seat lap/shoulder belts that comply with the requirements for vehicles manufactured on or after December 11, 1989 in vehicles manufactured before that date. Accordingly, NHTSA finds for good cause that notice and opportunity for comment on this amendment are unnecessary and that this rule should be effective upon publication.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety Motor vehicles.

In consideration of the foregoing, 49 CFR 571.208 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. Section S4.1.4.2(a) of Standard No. 208 in § 571.208, is revised to read as follows:

S4.1.4.2(a) Each passenger car, other than a convertible, manufactured before December 11, 1989 may be equipped with, and each passenger car, other than a convertible, manufactured on or after December 11, 1989 and before September 1, 1990 shall be equipped with a Type 2 seat belt assembly at every forward-facing rear outboard designated seating position. Type 2 seat belt assemblies installed pursuant to this provision shall comply with Standard No. 209 (49 CFR 571.209) and with S7.1.1 of this standard.

* * * * *

Issued on August 1, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89–18337 Filed 8–4–89; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

[Docket No. 90411–9171]

Subsistence Taking of North Pacific Fur Seals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Final notice of harvest levels.

SUMMARY: Regulations on subsistence taking of North Pacific fur seals require the National Marine Fisheries Service (NOAA Fisheries) to publish a summary of the previous year's fur seal harvest and a discussion of the number of seals expected to be taken in the current year to meet the subsistence needs of the Aleut residents of the Pribilof Islands. NOAA Fisheries published this notice on May 31, 1989. Following a 30-day public comment period, NOAA Fisheries is publishing a final notice of the expected harvest levels for 1989, as follows:
St. George Island: 533–600
St. Paul Island: 1,600–1,800

EFFECTIVE DATE: June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Steven Zimmerman, 907–586–7233 or Georgia Cranmore, 301–427–2289.

SUPPLEMENTARY INFORMATION:

I. Background

The subsistence harvest of North Pacific fur seals (*Callorhinus ursinus*) on the Pribilof Islands, Alaska, is governed by regulations found in 50 CFR part 215 Subpart D—Taking for Subsistence Purposes. These regulations were published under the authority of the Fur Seal Act, 16 U.S.C. 1151 *et seq.*, and the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.* (see 51 FR 24828, July 9, 1986). The purpose of these regulations is to limit the take of fur seals to a level providing for the legitimate subsistence needs of the Pribilovians using humane harvesting methods, and to restrict taking by sex, age, and season for herd management purposes.

The following subsistence harvest levels have been recorded on the Pribilof Islands since 1985:

	St. Paul Island	St. George Island	Total
1985	3,384	329	3,713
1986	1,299	124	1,423
1987	1,710	92	1,802
1988	1,145	113	1,258

NOAA Fisheries published a proposed notice summarizing the 1988 harvest and, based on previous harvest data, proposed an estimated 1989 harvest range of 1,600–1,800 on St. Paul Island, and 533–600 on St. George Island (54 FR 23233, May 31, 1989).

II. Response to Public Comments

During the public review period, the following groups provided written comments on harvest levels:
Aleut Community Council, St. Paul Island
Pribilof Island Aleut Community of St. George Island
Humane Society of the United States
Greenpeace USA
Friends of Animals

In the proposed notice, we noted our intention to propose an amendment to 50 CFR part 215 Subpart D deleting the option of extending the harvest season beyond August 8. As discussed in the 1986 preamble to the final rule on subsistence taking (51 FR 24838, July 9, 1986) and in the 1987 and 1988 final notices of harvest levels (52 FR 26481, July 15, 1987; 53 FR 28886, August 1, 1988), NOAA Fisheries added the harvest extension option at the request of the Pribilof Aleuts to accommodate a "family-style" harvest that would take fewer seals per day over a longer period of time. On St. Paul Island, however, harvesting has been confined to weekdays between July 14 and August 8 during the 1986 and 1987 harvest seasons; and a total of 12 harvest days occurred between July 18 and August 8 in 1988, although harvesting was authorized for each day starting on June 30. On St. George Island, harvests occurred on 4 days in 1986, 2 in 1987, and 4 days in 1988. After the first week of August on the Pribilof Islands, the rigid segregation of seals by age and sex begins to break down and young female seals commingle with the harvestable subadult males. Females can be mistaken for males and harvested accidentally. Any taking of female seals must be considered significant to the long term recovery of this depleted population. When harvest season extensions were granted in 1986 and 1987, the harvest had to be terminated on the first day of the extension because of excessive taking of female seals.

NOAA Fisheries decided to propose the amendment on harvest extensions because of the demonstrated risk of taking female seals after August 8, the observed inability of harvesters to distinguish young males from females, and the absence of a "family-style" harvest strategy on the Pribilof Islands. However, two commenters requested the preparation of a subsistence evaluation under section 810 of the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96–487, as amended, before taking any action on the proposed amendment.

Section 810 of ANILCA is titled "Subsistence and land use decisions." The purpose of this section is to ensure that the effect on subsistence uses is evaluated when a Federal agency is determining whether to "withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands * * *." NOAA is not making such a land disposition determination at this time. The subsistence and land use decisions regarding the Pribilof Island were the subject of other legislation, namely the Alaska Native Claims Act, 33 U.S.C. 1601 *et seq.* The Federal action in question concerns the regulation and management of wildlife, not the disposition or use of real property. Thus, NOAA Fisheries disagrees with the request to prepare a subsistence evaluation under this Act.

One commenter complained about the timing of the publication of the proposed notice and the absence of a public hearing. Unfortunately, the publication of the proposed notice was delayed, in part, because of unusually heavy workloads associated with implementation of amendments to the MMPA. However, delay in publication did not reduce the time available for public review of the proposed harvest levels, nor did it preclude "meaningful consideration of public comments," as this commenter alleges. This commenter also stated that an oral request was made to NOAA Fisheries for an informal meeting to discuss the 1988 harvest and the 1989 estimates of subsistence need. No such request was received by NOAA Fisheries, and this matter was not brought to our attention until the close of the comment period. We regret this misunderstanding and suggest that, in the future, written communication be used for such requests.

One commenter questioned the use of the term "subsistence harvest" to describe the "annual slaughter" of fur seals on the Pribilof Islands and stated that the subsistence need for fur seals does not exist. Another commenter criticized the efficiency of the seal harvest and questioned the meaning of the decline in the weight of meat recovered per seal. This commenter believes that NOAA Fisheries should require greater than 43.5 percent-use of each seal carcass (the average amount recorded in 1988). The maximum possible percent-use for food is approximately 53.3 based on data collected in 1987. This includes everything (including bone) except the pelt, blubber, skull, neck, internal organs other than heart and liver, and body fluids. NOAA Fisheries considers a percent-use of 43.5 to comply with standards for "substantial use" of seal carcasses. We encourage subsistence-users to maintain or, if possible, increase their percent-use of each fur seal taken for subsistence purposes.

The reason the average amount of meat taken per seal has declined since 1985 appears to be the result of a selection for smaller, younger seals by subsistence-users. The estimated mean weight of meat taken per seal was 12.5 kg in 1985, 11.1 kg in 1986, 10.4 kg in 1987, and 10.5 kg in 1988. One commenter recommends a lower estimate of subsistence needs for seal meat on St. Paul Island (1,192 seals) based on calculations of meat consumed using an assumed percent-use of 53.3.

NOAA Fisheries disagrees with this argument for lowering the 1989 subsistence needs estimate. A requirement to consume virtually all edible parts of the seal (i.e., 53.3 percent of the carcass by weight) appears to be unreasonably burdensome. The approximately 44 percent-use recorded during the preceding 3 years represents substantial use of seals for food as required by the MMPA and the Fur Seal Act. Based on a review of all pertinent data and comments, NOAA Fisheries has concluded that the harvest levels proposed in the May 31 notice are reasonable and fair estimates of subsistence needs for fur seal meat in 1989.

Two commenters recommend that NOAA Fisheries act promptly to amend the subsistence regulations to eliminate the extension option. As noted above in discussions of the comments from Pribilof Island Aleut groups, NOAA Fisheries intends to make this proposal and offers the following tentative timetable for implementation:
September 30, 1989—Publication of the proposed rule
November 15, 1989—Close of the public comment period
January 15, 1990—Publication of a final rule

Three commenters are concerned about the retention of bacula ("seal sticks") from the 1988 harvest by the St. Paul Island subsistence-users as reported in the proposed notice. One commenter encourages us to "continue monitoring the retention of parts, investigate the transport and marketing of the product, and pursue enforcement actions against individuals found violating the law." In an effort to control possible commercial use of a subsistence harvest byproduct, another commenter proposes that NOAA Fisheries collect a baculum from the harvesters for each seal killed. The baculum would be a "ticket" to allow the harvester to leave the killing field.

NOAA Fisheries is also concerned about the retention of bacula from the 1988 harvest, since bacula have no known use or value as handicrafts. Bacula are used in Asian countries for aphrodisiacs. The latter commenter's proposal to address this potential problem, however, is not supported by NOAA Fisheries. It would constitute an unreasonable interference with the subsistence harvest and appears to be excessively punitive. NOAA Fisheries has informed the Pribilovians of the regulations on use of subsistence harvest byproducts and no illegal use of the bacula from the 1988 harvest has been documented.

On June 1, 1989, the U.S. Fish and Wildlife Service accepted and forwarded, to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), a proposal by NOAA Fisheries to add North Pacific fur seals to Appendix II of CITES. Listing under CITES will assist us in enforcing domestic subsistence laws and facilitate legitimate trade in seal parts taken

BEST COPY AVAILABLE

during the commercial harvests before 1985. Pribilof Aleuts and others seeking to legally export seal parts and products, through the CITES permit process, would be able to obtain documentation attesting to the legality of their shipments for presentation to customs officers and other officials.

Dated: August 2, 1989.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89-18415 Filed 8-4-89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 54, No. 150

Monday, August 7, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CE-RM-89-101]

Energy Conservation Program for Consumer Products; Inquiry Concerning a Petition for Rulemaking Regarding Portable, Windowless, Single-Package Type Air Conditioners

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of Inquiry.

SUMMARY: The Energy Policy and Conservation Act (EPCA), as amended by the National Energy Conservation Policy Act (NECPA), the National Appliance Energy Conservation Act of 1987 (NAECA), and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988) requires the Department of Energy (DOE) to administer an energy conservation program for certain major household appliances. Among other program elements, the legislation requires that standard methods of testing be prescribed for covered products.

On March 20, 1989, DeLonghi America Inc. (DeLonghi) submitted a petition for rulemaking requesting that the Department's appliance program be expanded to include portable, windowless, single-package type air conditioners and that a test procedure for determining efficiency and capacity be established for these products. The purpose of today's notice is to publish the DeLonghi petition and gather data, comment and information from interested parties concerning the DeLonghi petition. Due to the length of the DeLonghi proposed test procedure (Attachment A) it is not published in this notice but is available upon request from DOE.

DATE: DOE will accept comments, data and information not later than October 6, 1989.

ADDRESS: Written comments and requests for the proposed test procedure shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets, CE-43.1, Docket No. CE-RM-89-101, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9320.

FOR FURTHER INFORMATION CONTACT:

Douglass S. Abramson, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station, CE-132, 1000 Independence Avenue, SW., Washington, DC 20595, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station, GC-12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including room air conditioners. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, Subpart B and include both room and central air conditioners.

On March 20, 1989, DeLonghi America Inc. (DeLonghi) submitted a petition for rulemaking to the Department of Energy requesting that the Secretary create a new covered product for portable, windowless, single-package type air conditioners (PWAC) and establish test procedures for this product. DeLonghi, in its petition, proposed a test procedure which it feels will provide accurate and fair ratings for comparison with other air conditioning products.

A portable, windowless air conditioner is a unit that includes an evaporator, a condenser, and a compressor which is assembled in a cabinet that can be moved from room to room. In this unit, the condenser is located indoors within the cabinet. The condenser has no contact with outdoor air as in a window-type room air conditioner. Water is used to cool the condenser in this appliance. Within the cabinet there is a water tank which must be refilled at intervals depending upon temperature setting, ambient temperature, humidity level, and timer setting, among other factors.

The water tank is located in a water basin and a water pump provides water circulation over the hot coils of the condenser. The water cooling the condenser evaporates into steam and a ventilator fan discharges this steam through an exhaust hose outside the conditioned room. The exhaust hose is generally fitted into either a window bracket, or an opening may be placed thorugh a wall. It is also possible to place the hose outside of the area or room being cooled but still within the building structure.

DOE has defined a room air conditioner as a product designed for "mounting in a window or through-the-wall for the purpose of providing delivery of conditioned air to an enclosed space." Since a PWAC is for application in a room and is not designed for through-the-wall or window installation, a PWAC does not fall within the definition for a room air conditioner.

EPCA, as amended, defines a central air conditioner as "a product, other than a packaged terminal air conditioner, which (A) is powered by single phase electric current, (B) is air cooled * * *." Because the DeLonghi unit is water cooled it does not fall within the definition for a central air conditioner.

Therefore, DOE has determined that a PWAC is neither a room nor central air conditioner for the purpose of the Department's energy conservation program for consumer products.

DeLonghi in its petition requests that a new covered product be created in category 14 in accordance with section 322(b) of the Act.

Section 322(b) states that the Secretary "may classify a type of consumer product if he determines that

(A) classifying products of such type as covered products is necessary to carry out the purpose of this Act, and

(B) average annual per household energy use by products of such type is likely to exceed 100 kilowatt-hours (or its BTU equivalent) per year."

DeLonghi has not provided sufficient information to enable the Secretary of Energy to determine what the average annual per household energy use of the product is and how this product fulfills the purpose of this Act.

In addition, DOE must determine whether the product is a consumer product as defined by section 321(a)(1) of the Act. DeLonghi has not shown that its product is distributed in commerce or has the potential to be distributed in commerce for personal use or consumption by individuals.

DeLonghi has proposed a test procedure in its petition for rulemaking on which DOE invites comment. The test procedure submitted provides definitions relevant to the PWAC, rating conditions, classification methods, testing and rating requirements, performance requirements (at specific test conditions), cooling capacity calculations, and safety requirements.

DOE requests that comments on the DeLonghi petition address the following:

- Whether it is necessary to add this product to the program;
- Whether this is a covered product, i.e. whether the product should be considered either a room air conditioner or a central air conditioner;
- Whether the product is distributed in commerce to a significant extent for personal use;
- What is the product's annual household energy consumption; and
- Whether the recommended test procedure is appropriate for use in rating the product's annual energy consumption and efficiency.

Copies of the DeLonghi proposed test procedure are available by contacting DOE at (202) 586-9127, or by writing to the Department at the address given earlier.

List of Subjects in 10 CFR Part 430

Administrative practice and procedures, Energy Conservation, Household appliances.

Issued in Washington, DC, July 31, 1989.

John R. Berg,

Assistant Secretary, Conservation and Renewable Energy.

March 20, 1989.

Mr. Michael J. McCabe

Supervisory Engineer, Office of Conservation and Renewable Energy, United States Department of Energy, Room 5H048, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Re: *Petition for Rulemaking for Proposed Test Procedure for Determining Cooling Capacity of Movable, Windowless, Single-Package Type Air-Conditioners*

Dear Mr. McCabe: DeLonghi America, Inc. is submitting under cover of this letter a petition for rulemaking to develop a test procedure for rating the cooling capacity of movable, windowless, single-package type air-conditioners ("portable, windowless air conditioners").

DeLonghi produces and markets the "Pinguino" portable windowless air conditioner. Incorporated into the petition for rulemaking is a standard developed by DeLonghi (Attachment A) which it believes is reasonably designed to produce test results which measure the cooling capacity of the product during a representative use and which should not be unduly burdensome to conduct, consistent with the requirements of 42 USC 6293(b)(3).

As you know, DeLonghi recently obtained opinions from the DOE and the Federal Trade Commission that, because of its design and use, this product is not a room air conditioner, as defined by DOE and FTC requirements, and that, therefore, the Pinguino is not a covered product under DOE's conservation program for consumer products or the FTC appliance labeling rules.

In addition to requesting this interpretation of the law, DeLonghi explained that as a technical matter the existing test procedure for room air conditioners (Appendix F to Subpart B of 10 CFR, Part 430) is inapplicable to this type of product. Further, DeLonghi committed to develop an appropriate test procedure to be considered by DOE, and in the longer term to propose an appropriate energy labeling requirement so that in the future consumers of this product will benefit from the FTC energy information and labeling program. The attached proposal which we wish DOE to consider is DeLonghi's first step in fulfilling this commitment.

If, before it publishes a proposed rule and initiates a rulemaking on DeLonghi's proposal, DOE has questions regarding the proposed test procedures or requires further data or revisions to the test procedure, DeLonghi would be happy to provide any further data or information. If a meeting with DOE staff, including a demonstration of a Pinguino model, would be helpful, we would be happy to make appropriate arrangements at your convenience. If you believe that revisions are necessary to the petition for rulemaking or the proposed test procedure before it is published in the **Federal Register**, or that it has any significant deficiencies impeding a rulemaking, we would appreciate it if you would contact us before taking any official action.

We recognize that the process of developing a suitable test procedure for this product will require input from many sources, and we will be happy to discuss this issue and exchange views and information with any interested party. Although we believe that the Pinguino may be the only product of this type presently sold in the United States, it is our expectation that similar models will be sold in the United States in the future. Therefore, it is consistent with the purposes of the energy conservation program to develop a DOE test procedure for this product type.

Sincerely yours,

James K. McCusker

Petition for Rulemaking

I. Introduction.

Pursuant to 5 U.S.C. 553(e), DeLonghi America Inc., 625 Washington Avenue, Carlstadt, New Jersey 07072, on behalf of itself and its parent company, DeLonghi S.P.A. of Italy, a consumer and appliance products manufacturer (both entities hereinafter referred to collectively as "DeLonghi"), respectfully files this petition seeking initiation of a rulemaking. In the rulemaking, DeLonghi requests that DOE: (1) establish and define as a separate covered consumer product the "movable, windowless, single-package type air-conditioner," pursuant to 42 U.S.C. 6292(a) and (b), and (2) prescribe a new test procedure for determining the cooling capacity in Btu's per hour which can be used to determine and express the energy efficiency ratio for this product, pursuant to 42 U.S.C. 6293(b).

In section 3.0 of the proposed test procedure, which is Attachment A [1] to this petition, DeLonghi provides a proposed definition for this product which if adopted, would be added to the definitions in 10 CFR 430.2. The proposed test procedure, if adopted, would be added as an Appendix to Subpart B of 10 CFR Part 430.

II. Description of the Movable, Windowless, Single-Package Type Air-Conditioner (Hereinafter "portable, windowless air conditioner").

DeLonghi produces and markets the "Pinguino," a portable, windowless air conditioner meeting the description in section 3.0 of the attached proposed test procedure. Although DeLonghi believes that the Pinguino is presently the only product of this type sold in the United States, similar products are manufactured and sold elsewhere in the world by other firms, and DeLonghi believes that some of these products will be sold in the United States in the future.

Attachment B to this petition are technical descriptions of the Pinguino as an example of this product type. In brief, the portable windowless air conditioner is a unit which includes an evaporator, a compressor, and a condenser. These components are assembled in a portable cabinet which can be moved from room to room. Unlike the window-type room air conditioner in which the condenser is outdoors (exterior to the structure), in this unit the condenser is indoors within the cabinet. The condenser has no contact with outdoor air and therefore is not cooled by contact with outdoor air as is a window-type room air conditioner. Water is used to cool the condenser in this appliance. Within the cabinet there is a water tank which must be refilled at intervals depending upon the temperature setting, ambient temperature, humidity level, and timer setting, among other factors.

The water tank is located in a water basin and a water pump provides water circulation over the hot coils of the condenser. The water cooling the condenser evaporates into steam and a ventilator fan discharges this steam through an exhaust hose outside the conditioned room. The exhaust hose is generally fitted into either a window bracket, or an opening may be placed through the wall. It is also possible to place the hose outside of the area or room being cooled but still within the building structure.

There are a variety of potential uses for the portable, windowless air conditioner, some of which functionally fall between common uses of window room air conditioners and uses of so-called spot air conditioners which are commonly used in industrial applications. A partial listing of applications for this product include:

—Spot air conditioning for computer hardware and communications equipment rooms

—Air conditioning medical offices or other similar rooms where window units are impractical or are considered to take up too much light and/or may be considered to be too noisy

—Air conditioning rooms in apartments or other dwellings having windows not conducive for installation of window room air conditioners or where such installation is not desirable

—Office and commercial space needing air conditioning in off hours where central air conditioning may not be operating or would be uneconomically employed, such as during weekends.

III. Need For A Separate Test Procedure For Portable, Windowless Air Conditioners.

DeLonghi requested on September 29, 1988 an interpretation from DOE and the Federal Trade Commission ("FTC") essentially that the Pinguino is not a "room air conditioner" or "covered product" as defined by DOE and FTC regulations, respectively. On October 14, 1988, DOE provided an opinion that the Pinguino is not a "room air conditioner" as defined by DOE or a covered product under the Department's Energy Conservation Program for Consumer Products. In particular, DOE noted that it "defines a room air conditioner as 'an encased assembly designed as a unit for mounting in a window or through the wall.' The 'Pinguino' is not designed for this manner of installation; therefore, it is not a room air conditioner as defined by the DOE."

The FTC staff followed on November 22, 1988 with an opinion that the Pinguino is not a "covered product" under the Commission's labeling rule because it does not meet the definition of a room air conditioner in § 305.3(e) of the rule (16 CFR part 305). Staff also stated that the Pinguino is not a consumer appliance product under § 305.2(n) of the rule because, as indicated by DOE, there is no final test procedure for the Pinguino.

Although these opinions clarified the Pinguino's federal regulatory status, DeLonghi stated then and reiterates now that it would be desirable for consumers if the Pinguino and similar products had an applicable test procedure for measuring energy consumption and were subject to energy labeling requirements similar to those now imposed on room air conditioners. However, in order to achieve those goals it will be necessary to develop a separate test procedure for portable, windowless air conditioners.

The existing room air conditioner test procedure cannot simply be extended to the Pinguino through a revision in the definition of room air conditioner. The Pinguino type of product is designed such that the existing test procedure fails to measure its energy consumption characteristics accurately. The ventilating (condenser) fan which discharges steam from the exhaust hose must draw air from the conditioned room, unlike conventional room air conditioners where the condenser is mounted in a manner so that condenser fan draws air from the outside. A ventilating or condenser fan discharges steam from the exhaust hose which runs from the unit to either the exterior or outside the conditioned area. This discharge of air from the room being cooled results in replacement air coming into the room from somewhere else, and that must necessarily be either from some other interior room or area or possibly from the outside of the building depending on air leakage conditions.

The existing test procedure treats the exhaust air as being totally replaced by 95° ambient ventilating air from the outside because it provides for venting to maintain air pressure between the inside cooling area and the outside 95° air. This treatment is technically incorrect and inappropriate for this kind of air conditioner because most of the "replacement" air is introduced from other rooms or areas adjacent to the conditioned room with far less negative impact on the BTU/hr. rating (and thus the EER) than would occur if "replacement" air came entirely from the higher temperature exterior area.

This statement of the deficiency or limits in the DOE test procedure is not intended to be derogatory of the significant value of that test procedure for the types of units for which it was designed. It simply points out the need for a new, separate procedure for a functionally different unit. As DeLonghi committed at the time of its interpretational request to DOE, it has developed and presents as Attachment A a test procedure designed to accurately determine the cooling capacities of "movable, windowless, single-package type air conditioners."

DeLonghi believes that this test procedure complies with the requirements of 42 U.S.C. 6293(b)(3). It welcomes, however, the views of DOE and the technical community as consideration of its petition proceeds.

[1] Attachment A is available upon request from DOE.

[FR Doc. 89-18422 Filed 8-4-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 220

[FRL-3625-3]

Ocean Dumping; Proposed Designation of Site; Gulf of Mexico Offshore of Port Isabel, TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate a dredged material disposal site located in the Gulf of Mexico offshore of Port Isabel, Texas for the continued disposal of material dredged from the Brazos Island Harbor Entrance Channel. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This proposed site designation is for an indefinite period of time, but the site is subject to monitoring

to insure that unacceptable adverse environmental impacts do not occur.

DATE: Comments must be received on or before September 21, 1989.

ADDRESSES: Send comments to: Norm Thomas, Chief, Federal Activities Branch (6E–F), U.S. E.P.A.,1445 Ross Avenue, Dallas, Texas 75202–2733.

Information supporting this proposed designation is available for public inspection at the following locations:

EPA, Region 6, 1445 Ross Avenue, 9th Floor, Dallas, Texas 75202–2733.

Corps of Engineers, Galveston District, 444 Barracuda Avenue, Galveston, Texas 77550.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655–2260 or FTS/255–2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This proposed site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established the Brazos Island Harbor site as an interim site for the disposal of material dredged from the entrance channel. In January 1980, the interim status of the site was extended indefinitely. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the EPA Region 6 address given above.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with its ocean dumping site designations (30 FR 16186, May 7, 1974).

EPA has prepared a Draft Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Brazos Island Harbor Ocean Dredged Material Disposal Site Designation." On July 14, 1989, a notice of availability of the Draft EIS for public review and comment was published in the **Federal Register**. The public comment period on this Draft EIS closes on August 28, 1989. Limited copies of the Draft EIS are available from the EPA address given above.

The proposed action discussed in the EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis.

The EIS discusses the need for the action and examines ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS prepared by the Corps of Engineers (COE) and the analysis was updated in this Draft EIS. The nearest available land disposal area is 82 acres in size and is located 3 miles away from the seaward end of the project. Because of the high costs of transport as well as the limited capacity of the area, this alternative is not feasible. Also since the surrounding land areas are wetlands or shallow bay habitats, development and use of a suitably sized replacement area would result in a significant loss of quality wetlands or bay bottoms. A land-based alternative would therefore offer no environmental benefit to ocean disposal.

Four ocean disposal alternatives—two nearshore sites (including the proposed site), a mid-shelf site and a deepwater site—were evaluated. Both the mid-shelf and deepwater sites were eliminated due to limited feasibility for monitoring, increased transportation costs and increased safety risks. In addition, the material to be dredged is of a different sediment type than that found further offshore, which could impact the biological community composition at these areas.

Portions of the interim-designated site are within two biologically sensitive area buffer zones. One of these buffer zones is associated with a fish haven and the other buffer zone with the migratory route for estuarine dependent species. Therefore, the interim-designated site is not being proposed for designation in its entirety. The proposed disposal site includes much of the area of historical impact of the interim site but excludes the two buffer zones referenced above.

EPA is coordinating with the National Marine Fisheries Service in accordance with the requirements of section 7 of the Endangered Species Act. EPA is also coordinating, as a part of the NEPA/EIS process, with the State of Texas regarding any requirements under the Coastal Zone Management Act.

C. Proposed Site Designation

The proposed site is located approximately 1.6 miles from the coast at its closest point. The water depth at the proposed site ranges from 55 to 65 feet. The coordinates of the rectangular-shaped site are as follows: 28°04'32"N, 97°07'28"W; 28°04'32"N, 97°06'30"W; 28°04'02"N, 97°06'30"W; 28°04'02"N, 97°07'28"W.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met. The characteristics of the proposed site are reviewed below in terms of the eleven factors.

1. Geographical Position, Depth of Water, Bottom Topography and Distance From Coast (40 CFR 228.6(a)(1))

Geographical position, average water depth, and distance from the coast for the disposal site are given above. Bottom topograph is flat with no unique features or relief.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2))

Living resources' breeding, spawning, nursery and passage areas in the project area were identified as excluded areas during the siting feasibility process and eliminated from consideration. To the north of the proposed site, there is a fish haven which is excluded, as are the jetties, including one-mile buffer zones. The jetties provide a migratory passage for white shrimp, brown shrimp, blue crab, drum, sheepshead and southern flounder. Also excluded are non-submerged shipwrecks which improve fishing.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3))

The proposed site is approximately 1.5 miles from any beach or other amenity area; e.g., Brazos Island State Recreation Area.

4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Wastes, if Any (40 CFR 228.6(a)(4))

Only maintenance material from the Brazos Island Harbor Entrance Channel will be disposed. Historically, an average of 350,000 cy/yr has been dredged from the channel at roughly 12-month intervals. This material has historically been transported by hopper dredges but could be tranported by pipeline. Based on chemical analyses and biological toxicity studies of past maintenance material, it was concluded that no special location or precautions would be necessary for the disposal of the dredged materials.

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))

The proposed site is amenable to surveillance and monitoring. A monitoring and surveillance program, consisting of water, sediment and elutriate chemistry; bioassays; bioaccumulation studies; and benthic infaunal analyses, is proposed for the Brazos Island Harbor site.

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if Any (40 CFR 228.6(a)(6))

Physical oceanographic parameters including dispersal, horizontal transport and vertical mixing characteristics were used: (1) to develop the necessary buffer zones for the siting feasibility analysis; and (2) to determine the minimum size of the proposed site. Predominant longshore currents, and thus predominant longshore transport, is to the north. Long-term mounding has not historically occurred. Therefore, steady longshore transport and occasional storms, including hurricanes, remove the disposed material from the site.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7))

Based on the results of chemical and bioassay testing of past maintenance material and material from the existing disposal site plus chemical analyses of water from the area, there are no indications of water or sediment quality problems. Testing of past maintenance material indicated that it was acceptable for ocean disposal under 40 CFR 227. Studies at the interim-designated site and nearby areas, however, have indicated that grain size and composition of the benthos at and south of the interim-designated site is significantly different from that north and further offshore. The proposed disposal site, which encompasses much of the interim-designated site, was placed as near shore as possible to take advantage of the fact that the nearshore substrate is sandier than that further offshore.

8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8))

Impacts to shipping, mineral extraction, commercial and recreational fishing, recreational areas and historic sites have been evaluated for the Brazos Island Harbor site designation. The proposed site will not interfere with these or other legitimate uses of the ocean because the siting feasibility process was designed to reduce the possibility of a site which would interfere. Disposal operations in the past have not interfered with other uses.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9))

Monitoring studies have shown only short-term water-column perturbations of turbidity, and perhaps increased chemical oxygen demand (COD), which resulted from disposal operations. No short-term sediment quality perturbation has been directly related to disposal operations. In general, the water and sediment quality is good throughout the disposal area and there have been no long-term adverse impacts on water and sediment quality from disposal operations. However, there has been a long-term impact on the grain size, and thus, on the composition of the benthos at the interim-designated site.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site. (40 CFR 228.6(a)(10)).

With a disturbance to any benthic community, initial recolonization will be by opportunistic species. However, these species are not nuisance species in the sense that they would interfere with other legitimate uses of the ocean or that they are human pathogens. Continued disposal of maintenance material at the proposed site should not attract nor promote the development or recruitment of nuisance species.

11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance. (40 CFR 228.6(a)(11)).

Areas and features of historical importance were evaluated during the siting feasibility process. The nearest site of historical importance is located near the jetties and is well within the buffer zone surrounding the jetties. Use of the proposed site would not impact any known historical or cultural sites. This determination is being coordinated with the Texas Historical Commission.

E. Proposed Action

Based on the Draft EIS, EPA proposes to designate the Brazos Island Harbor site for continued use for the ocean disposal of dredged material. The site is compatible with the five general criteria and eleven specific factors used for site evaluation.

Before ocean dumping of dredged material at the site may occur, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping. While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regualtory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to the Office of Mangement and Budget review under the paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Date: July 28, 1989.

Joseph D. Winkle,

Acting Regional Administrator of Region 6.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Brazos Island Harbor and adding paragraph (b)(78) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites

* * * * *

(b) * * *

(78) Brazos Island Harbor, Texas—Region 6

Location: 26° 04' 32" N., 97° 07' 26"W.; 26° 04' 32" N., 97° 06' 30" W.; 26° 04' 02" N., 97° 06' 30" W.; 26° 04' 02" N., 97° 07' 26" W.

Size: 0.42 square nautical miles.

Depth: Ranges from 55–65 feet.

Primary Use: Dredged material.

Period of Use: Indefinite period of time.

Restriction: Disposal shall be limited to dredged material from the Brazos Island Harbor Entrance Channel, Texas.

[FR Doc. 89-18387 Filed 8-4-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 228

[FRL-3525-7]

Ocean Dumping; Proposed Designation of Site; Gulf of Mexico Offshore of Port Mansfield, TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate a dredged material disposal site located in the Gulf of Mexico offshore of Port Mansfield, Texas for the continued disposal of material dredged from the Port Mansfield Entrance Channel. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This proposed site designation is for an indefinite period of time, but the site is subject to monitoring to ensure that unacceptable adverse environmental impacts do not occur.

DATE: Comments must be received on or before September 21, 1989.

ADDRESSES: Send comments to: Norm Thomas, Chief, Federal Activities Branch (6E–F), U.S. E.P.A., 1445 Ross Avenue, Dallas, Texas 75202–2733.

Information supporting this proposed designation is available for public inspection at the following locations: EPA, Region 6, 1445 Ross Avenue, 9th Floor, Dallas, Texas 75202–2733; Corps of Engineers, Galveston District, 444 Barracuda Avenue, Galveston, Texas 77550.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655–2260 or FTS/255–2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This proposed site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established a site off Port Mansfield, Texas as an interim site for the disposal of material dredged from the entrance channel. In January 1980, the interim status of the site was extended indefinitely. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the EPA Region 6 address given above.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with its ocean dumping site designations (30 FR 16186, May 7, 1974).

EPA has prepared a Draft Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Port Mansfield Ocean Dredged Material Disposal Site Designation." On July 14, 1989, a notice of availability of the Draft EIS for public review and comment was published in the **Federal Register**. The public comment period on this Draft EIS closes on August 28, 1989. Limited copies of the Draft EIS are available from the EPA address given above.

The proposed action discussed in the EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis.

The EIS discusses the need for the action and examines ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS prepared by the Corps of Engineers (COE) and the analysis was updated in this Draft EIS. The COE concluded that there was no nearby land area suitable for use as a disposal site and that the costs of transport to any suitable upland area were uneconomical. This would require the acquisition of new areas. Since the surrounding land areas are wetlands or shallow bay habitats, development and use of a suitably sized replacement area would result in a significant loss of quality wetlands or bay bottoms. A land-based alternative would therefore offer no environmental benefit to ocean disposal.

Four ocean disposal alternatives—two nearshore sites (i.e., the interim-designated site and the proposed site), a mid-shelf site and a deepwater site—

were evaluated. Both the mid-shelf and deepwater sites were eliminated due to limited feasibility for monitoring, increased transportation costs and increased safety risks. In addition, the material to be dredged is of a different sediment type than that found further offshore, which could impact the biological community composition at these areas.

Portions of the interim-designated site are within the beach buffer zone and all of the site is within the jetty buffer zone. Therefore, the interim-designated site is not being proposed for designation. The proposed disposal site was selected to comply with areas of biological sensitivity and the beach and jetty buffer zones and to keep the disposal site in the nearshore sand habitat, as close to the channel as possible.

EPA is coordinating with the National Marine Fisheries Service in accordance with the requirements of Section 7 of the Endangered Species Act. EPA is also coordinating, as a part of the NEPA/EIS process, with the State of Texas regarding any requirements under the Coastal Zone Management Act.

C. Proposed Site Designation

The proposed site is located approximately 1.1 miles from the coast at its closest point. The water depth at the proposed site ranges from 35 to 50 feet. The coordinates of the rectangular-shaped site are as follows: 26°34'24" N., 97°15'15" W.; 26°34'26" N., 97°14'17" W.; 26°33'57" N., 97°14'17" W.; 26°33'55" N., 97°15'15" W.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impact outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met. The characteristics of the proposed site are reviewed below in terms of the eleven factors.

1. Geographical Position, Depth of Water, Bottom Topography and Distance From Coast (40 CFR 228.6(a)(1).)

Geographical position, average water depth, and distance from the coast for the disposal site are given above. Bottom topography is flat with no unique features or relief.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2).)

Living resources' breeding, spawning, nursery and passage areas in the project area were identified as excluded areas during the siting feasibility process and eliminated from consideration. There is an area of snapper banks and sports fishing which is excluded, including a one-mile buffer zone. The jetties, including a one-mile buffer zone, are excluded as a fishing area and as a migratory pathway. Also excluded are lighted platforms and non-submerged shipwrecks which improve fishing.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3).)

The proposed site is located more than 0.8 miles from any beach or other amenity area.

4. Types and Quantities of Wastes Proposed to Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Wastes, if Any (40 CFR 228.6(a)(4).)

Only maintenance material from the Port Mansfield Entrance Channel will be disposed. Historically, an average of 170,000 cy/yr has been dredged from the channel at roughly 15-month intervals. This material has historically been transported by hopper dredges but could be transported by pipeline. Based on chemical analyses and biological toxicity studies of past maintenance material, it was concluded that no special location or precautions would be necessary for the disposal of the dredged materials.

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5).)

The proposed site is amenable to surveillance and monitoring. A monitoring and surveillance program, consisting of water, sediment and elutriate chemistry; bioassays; bioaccumulation studies; and benthic infaunal analyses, is proposed for the Port Mansfield site.

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if Any (40 CFR 228.6(a)(6).)

Physical oceanographic parameters including dispersal, horizontal transport and vertical mixing characteristics were used: (1) To develop the necessary buffer zones for the siting feasibility analysis; and (2) to determine the minimum size of the proposed site. Predominant longshore currents, and thus predominant longshore transport, is to the north. Long-term mounding has not historically occurred. Therefore, steady longshore transport and occasional storms, including hurricanes, remove the disposed material from the site.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7).)

Based on the results of chemical and bioassay testing of past maintenance material and material from the existing disposal site plus chemical analyses of water from the area, there are no indications of water or sediment quality problems. Testing of past maintenance material indicated that it was acceptable for ocean disposal under 40 CFR 227. Studies of the benthos at the interim-designated site and nearby areas have not indicated any significant decrease or change in composition of the benthos at the disposal site.

8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean. (40 CFR 228.6(a)(8))

Impacts to shipping, mineral extraction, commercial and recreational fishing, recreational areas and historic sites have been evaluated for the Port Mansfield site designation. Use of the proposed site should not interfere with these or other legitimate uses of the ocean because the siting feasibility process was designed to reduce the possibility of a site which would interfere. Disposal operations in the past have not interfered with other uses.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys. (40 CFR 228.6(a)(9).)

Monitoring studies have shown only short-term water-column perturbations of turbidity, and perhaps increased chemical oxygen demand (COD), which resulted from disposal operations. No

short-term sediment quality perturbation has been directly related to disposal operations. In general, the water and sediment quality is good throughout the disposal area and there have been no long-term adverse impacts on water and sediment quality from disposal operations. In addition there has been no long-term impacts on the benthos at the interim-designated site.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site. (40 CFR 228.6(a)(10).)

With a disturbance to any benthic community, initial recolonization will be by opportunistic species. However, these species are not nuisance species in the sense that they would interfere with other legitimate uses of the ocean or that they are human pathogens. Continued disposal of maintenance material at the proposed site should not attract nor promote the development or recruitment of nuisance species.

11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance. (40 CFR 228.6(a)(11).)

Areas and features of historical importance were evaluated during the siting feasibility process. The nearest site of historical importance is located near the jetties, approximately 0.85 miles from the closest edge of the proposed disposal site. Use of the site would not impact any known historical or cultural sites. This determination is being coordinated with the Texas Historical Commission.

E. Proposed Action

Based on the Draft EIS, EPA proposes to designate the Port Mansfield site for continued use for the ocean disposal of dredged material. The site is compatible with the five general criteria and eleven specific factors used for site evaluation.

Before ocean dumping of dredged material at the site may occur, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping. While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: July 26, 1989.

Joseph D. Winkle,

Acting Regional Administrator of Region 6.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entries for Port Mansfield Channel and adding paragraph (b)(80) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(80) Port Mansfield, Texas—Region 6

Location: 26°34'24" N, 97°15'15" W; 26°34'28" N, 97°14'17" W; 26°33'57" N, 97°14'17" W; 26°33'55" N, 97°15'15" W.

Size: 0.42 square nautical miles.

Depth: Ranges from 35–50 feet.

Primary Use: Dredged material.

Period of Use: Indefinite period of time.

Restriction: Disposal shall be limited to dredged material from the Port Mansfield Entrance Channel, Texas.

[FR Doc. 89–18385 Filed 8–4–89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 228

[FRL-3525-6]

Ocean Dumping; Proposed Designation of Site; Gulf of Mexico Offshore of Port O'Connor, TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate a dredged material disposal site located in the Gulf of Mexico offshore of Port O'Connor, Texas for the continued disposal of material dredged from the Matagorda Ship Channel. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This proposed site designation is for an indefinite period of time, but the site is subject to monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATE: Comments must be received on or before September 21, 1989.

ADDRESSES: Send comments to: Norm Thomas, Chief, Federal Activities Branch (6E–F), U.S. E.P.A., 1445 Ross Avenue, Dallas, Texas 75202–2733.

Information supporting this proposed designation is available for public inspection at the following locations:

EPA, Region 6, 1445 Ross Avenue, 9th Floor, Dallas, Texas 75202–2733.

Corps of Engineers, Galveston District, 444 Barracuda Avenue, Galveston, Texas 77550.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655–2260 or FTS/255–2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This proposed site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established the Matagorda Ship Channel site as an interim site for the disposal of material dredged from the entrance channel. In January 1980, the interim status of the site was extended indefinitely. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the EPA Region 6 address given above.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with its ocean dumping site designations (30 FR 16186, May 7, 1974).

EPA has prepared a Draft Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Matagorda Ship Channel Ocean Dredged Material Disposal Site Designation." On July 14, 1989, a notice of availability of the Draft EIS for public review and comment was published in the **Federal Register**. The public comment period on this Draft EIS closes on August 28, 1989. Limited copies of the Draft EIS are available from the EPA address given above.

The proposed action discussed in the EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis.

The EIS discusses the need for the action and examines ocean disposal sites and alternatives, including taking no action. Land based disposal alternatives were examined in a previously published EIS prepared by the Corps of Engineers and the analysis was updated in this Draft EIS. The nearest available land disposal area is 100 acres in size and is located 3 miles away from the seaward end of the project. Because of the high costs of transport as well as the limited capacity of the area, this alternative is not feasible. Also since the surrounding land areas are wetlands or shallow bay habitats, development and use of a suitably sized replacement area would result in a significant loss of quality wetlands or bay bottoms. A land-based alternative would therefore offer no environmental benefit to ocean disposal.

Four ocean disposal alternatives—two nearshore sites (i.e., the interim-designated site and the proposed site), a mid-shelf site and a deepwater site—were evaluated. Both the mid-shelf and deepwater sites were eliminated due to limited feasibility for monitoring, increased transportation costs and increased safety risks. In addition the material to be dredged is of a different sediment type than that found further offshore, which could impact the biological community composition at these areas.

Portions of the interim-designated site are within the jetty buffer zone and the beach buffer zone. Therefore, the interim-designated site is not being proposed for designation in its entirety. The proposed disposal site includes much of the area of historical impact of the interim site but excludes the two buffer zones referenced above.

EPA is coordinating with the National Marine Fisheries Service in accordance with the requirements of section 7 of the Endangered Species Act. EPA is also coordinating, as a part of the NEPA/EIS process, with the State of Texas regarding any requirements under the Coastal Zone Management Act.

C. Proposed Site Designation

The proposed site is located approximately 1.5 miles from the coast at its closest point. The water depth at the proposed site ranges from 25 to 40 feet. The coordinates of the rectangular-shaped site are as follows: 28°24'10" N., 96°18'23" W.; 28°23'33" N., 96°17'45" W.; 28°23'05" N., 96°18'15" W.; 28°23'43" N., 96°18'54" W.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met. The characteristics of the proposed site are reviewed below in terms of the eleven factors.

1. Geographical Position, Depth of Water, Bottom Topography and Distance From Coast (40 CFR 228.6(a)(1))

Geographical position, average water depth, and distance from the coast for the disposal site are given above. Bottom topography is flat with no unique features or relief.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2))

Breeding, spawning, nursery and passage areas in the project area were identified during the siting feasibility process and eliminated from consideration. Also excluded were lighted platforms and non-submerged shipwrecks which improve fishing.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3))

The proposed site is approximately 1.5 miles from beaches and other amenity areas such as the Matagorda Island National Seashore.

4. Types and Quantities of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Wastes, if Any (40 CFR 228.6(a)(4))

Only maintenance material from the Matagorda Ship Channel will be disposed. Historically, an average of 795,000 cy/yr has been dredged from the channel at roughly 12-month intervals. This material has historically been transported by hopper dredges but could be transported by pipeline. Based on chemical analyses and biological toxicity studies of past maintenance material, it was concluded that no special location or precautions would be necessary for the disposal of the dredged materials.

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5)1)

The proposed site is amenable to surveillance and monitoring. A monitoring and surveillance program, consisting of water, sediment and elutriate chemistry; bioassays; bioaccumulation studies; and benthic infaunal analyses, is proposed for the Matagorda Ship Channel site.

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if Any (40 CFR 228.6(a)(6))

Physical oceanographic parameters including dispersal, horizontal transport

and vertical mixing characteristics were used: (1) to develop the necessary buffer zones for the siting feasibility analysis; and (2) to determine the minimum size of the proposed site. Predominant longshore currents, and thus predominant longshore transport, is to the southwest. Long-term mounding has not historically occurred. Therefore, steady longshore transport and occasional storms, including hurricanes, remove the disposed material from the site.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7))

Based on the results of chemical and bioassay testing of past maintenance material and material from the existing disposal site plus chemical analyses of water from the area, there are no indications of water or sediment quality problems. Testing of past maintenance material indicated that it was acceptable for ocean disposal under 40 CFR Part 227. Studies of the benthos at the interim-designated site and nearby areas have indicated that the composition of the benthos is different from that in nearby "natural bottom" areas. This difference in benthos composition is due primarily to the fact that the substrate at the interim-designated site is much coarser than the "natural bottom". Therefore, the proposed disposal site is located to take advantage of the fact that the nearshore substrate is coarser than that further offshore and to include as much of the interim-designated site as possible.

8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8))

Impacts to shipping, mineral extraction, commercial and recreational fishing, recreational areas and historic sites have been evaluated for the Matagorda Ship Channel site designation. The proposed site should not interfere with these and other legitimate uses of the ocean because the siting feasibility process was designed to reduce the possibility of a site which would interfere. Also, disposal operations in the past have not interfered with other uses.

9. The Existing Water Quality and Ecology of the Site as Determined by Available data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9))

Monitoring studies have shown only short-term water-column perturbations of turbidity, and perhaps increased chemical oxygen demand (COD), which resulted from disposal operations. No short-term sediment quality perturbation, except grain size, have been directly related to disposal operations. In general, the water and sediment quality is good throughout the disposal area and there have been no long-term adverse impacts on water and sediment quality from disposal operations. However, there has been a long-term impact on the grain size, and thus, on the benthos at the interim-designated site.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))

With disturbance to a benthic community, initial recolonization will be by opportunistic species. However, these species are not nuisance species in the sense that they would interfere with other legitimate uses of the ocean or that they are human pathogens. Continued disposal of maintenance material at the proposed site should not attract nor promote the development or recruitment of nuisance species.

11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance (40 CFR 228.6(a)(11))

Areas and features of historical importance were evaluated during the siting feasibility process. The nearest site of historical importance is located northeast of the channel or up-current of the proposed site. Therefore, use of the proposed site would not adversely impact any known site of historical importance. This determination is being coordinated with the Texas Historical Commission.

E. Proposed Action

Based on the Draft EIS, EPA proposes to designate the Matagorda Ship Channel site for continued use for the ocean disposal of dredged material. The site is compatible with the five general criteria and eleven specific factors used for site evaluation.

Before ocean dumping of dredged material at the site may occur, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping. While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Date: July 26, 1989.

Joseph D. Winkle,

Acting Regional Administrator of Region 6.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Matagorda Ship Channel and adding paragraph (b)(79) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(79) Matagorda Ship Channel, Texas—Region 6

Location: 28°24'10" N., 96°18'23" W.; 28°23'33" N., 96°17'45" W.; 28°23'05" N., 96°18'15" W.; 28°23'43" N., 96°17'54" W.

Size: 0.56 square nautical miles.

Depth: Ranges from 25–40 feet.

Primary Use: Dredged material.

Period of Use: Indefinite period of time.

Restriction: Disposal shall be limited to dredged material from the Matagorda Ship Channel, Texas.

[FR Doc. 89-16386 Filed 8-4-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 335

RIN 3067-AB46

Protection of Essential Resources and Facilities

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This rulemaking proposes to add a new part 335 in Title 44 Code of Federal Regulations, Protection of Essential Resources and Facilities Guidance, Chapter I, Federal Emergency Management Agency, Subchapter E Preparedness. New part 335 responds to part 1 of Executive Order 12656 of November 18, 1988, which provides that the Director, FEMA, assists the National Security Council in the implementation of national security emergency preparedness policy and which delegates to the Director the lead responsibility for coordinating and supporting the initiation, development, and implementation of national security emergency preparedness programs and plans among the Federal departments and agencies. This Part provides for the protection of essential resources and facilities which is part of the national security emergency preparedness policy and provides guidance to the Federal departments and agencies in the implementation of this policy.

DATES: Comments are requested and should be submitted in writing to the address listed below no later than October 6, 1989.

ADDRESSES: Submit written comments, in duplicate, on the proposed guidance, to the Rules Docket Clerk, Federal Emergency Management Agency, Room 840, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Henry M. Hyatt, Senior Physical Scientist, Office of Mobilization Preparedness, Federal Emergency Management Agency, Room 619, 500 C Street SW., Washington, DC 20472, Telephone (202) 646-3567.

SUPPLEMENTARY INFORMATION: This proposed guidance is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. It will not have an annual effect on the economy of $100 million or more; will not result in a major increase in costs or prices to consumers, individual industries, Federal, State or local agencies, or geographic regions; and will not have a significant adverse impact on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

This Part applies to Federal Government agencies. In accordance with the Regulatory Flexibility Act of 1980, it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This rule does not contain information requirements that are subject to the Paper Work Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and OMB implementing regulations 5 CFR part 1320.

The regulation in this Part provides guidance to Federal agencies which may or may not take an action which could be subject to environmental documentation requirements. The guidance has no environmental consequences and it is determined, under FEMA's regulation published in 44 CFR 10.8, that it is not necessary to prepare either an environmental assessment or an environmental impact statement.

In promulgating these rules, FEMA has considered the President's Executive Order on Federalism issued on October 26, 1987 (E.O. 12612, 52 FR 41685). The purpose of the order is to assure the appropriate division of governmental responsibilities between national government and the States. Among other provisions, this rule implements the requirements that agency rules be in accordance with the so-called common rule, adopted by FEMA at 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and local Governments. The problem dealt with in this Part is national in scope. In view of the joint Federal-State responsibility for civil defense, and FEMA's role under the Federal Civil Defense Act of 1950, as amended, the regulation in this Part is determined to conform FEMA assistance to Executive Order 12612.

List of Subjects in 44 CFR Part 335

National defense, National security emergency, Protection of essential resources and facilities.

Accordingly, Subchapter E, Chapter I, Title 44, Code of Federal Regulations, is proposed to be amended by adding a new part 335 as follows:

PART 335—PROTECTION OF ESSENTIAL RESOURCES AND FACILITIES

Sec.

335.1 Purpose.
335.2 Scope and applicability.
335.3 Definitions.
335.4 Policy.
335.5 Responsibilities.
335.6 Criteria.
335.7 Implementation.
335.8 Reporting.

Authority: National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 *et seq.*; Federal Civil Defense Act of 1950, as amended, 50 U.S.C. App. 2251 *et seq.*; E.O. 12148 of July 20, 1979, 3 CFR 1979 Comp., p. 412; E.O. 10480 of August 14, 1953, 3 CFR 1949–53 Comp., p. 962; and E.O. 12656 of November 18, 1988, 53 FR 47491.

§ 335.1 Purpose.

This part:

(a) Provides policy guidance pursuant to the cited authority including the Defense Production Act of 1950, as amended; section 1–103 of Executive Order (E.O.) 12148, as amended, which includes functions that were vested under E.O. 11051; sections 104(f) and 204 of E.O. 12656, in the identification of facilities and resources, both government and private, essential to the national defense and national welfare.

(b) Provides criteria guidance for the Federal departments and agencies to assess on a priority basis the vulnerabilities of essential facilities and resources that would impact on the needs of national defense.

(c) Provides planning guidance for the Federal departments and agencies to develop strategies, plans, and programs to provide for the security of essential facilities and resources on a priority basis, and to avoid or minimize disruptions of essential services during any national security emergency.

§ 335.2 Scope and applicability.

(a) This order covers the protection of resources and facilities, both government and private, essential to the national defense and national welfare, and provides for the assessment of their vulnerability. The order also provides guidance for the development of strategies, plans, and programs to provide for the security of such facilities and resources, and to avoid or minimize disruptions of essential services during any national security emergency.

(b) This order applies to essential facilities and resources in the assigned areas of responsibility of Federal departments and agencies.

§ 335.3 Definitions.

(a) *Essential facilities.* Any factory, plant, building or structure used for manufacturing, production, processing, repairing, assembling, storing or distributing a product or components deemed essential to national security and a Federal agency mission, including any industrial asset nominated for inclusion in the Department of Defense Key Assets List in accordance with the selection criteria set forth in DOD Directive 5160.54 of 26 June 1989 (copy available from Records & Reference Branch, DOD/WHS, Room 3A948 The Pentagon, Washington, DC 20301); any communication or computer facility or system; any energy source or distribution system; any air, rail, road or water transportation asset; any other infrastructure facility that is required to support an industrial asset listed in the DOD Key Assets list or a military facility; or to otherwise support DOD mobilization, deployment or sustainment.

(b) *Essential resources* are natural resources, construction, industrial production, human resources (including health resources, housing, public information, training and education), economic resources (fiscal and monetary systems) and infrastructure systems (transportation, energy communications, data processing, water and agricultural production).

(c) *Essential facilities and resources protection* is the process used for the protection of essential resources and facilities from disruption by an event in a full spectrum of threats ranging from natural disasters to sabotage by groups or individuals whose actions are hostile to national security.

(d) *Facilities/Structures* means those Government-owned and/or privately-owned plants, mines, buildings (including buildings occupied in whole or in part by any Federal agency), materials, products, and processes, and those Government-provided and privately-provided services, which are of importance to defense mobilization, defense production, or the essential civilian economy and are located or provided in the United States or in the territories or possessions of the United States. This definition shall not extend to federally owned military posts, camps, stations, arsenals or other comparable facilities under the military command of the Department of Defense.

(e) *Mobilization* is the process of marshalling resources, both civil and military, to respond to and manage a national security emergency.

(f) *National security emergency* is any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or threatens the national security of the United States.

(g) *Physical security* means security against sabotage, espionage, and other hostile activity and other destructive acts and omissions, but excludes security attributable to operations of military defense or combat and excludes activities with respect to the dispersal and post-attack rehabilitation of facilities.

§ 335.4 Policy.

(a) It is the policy of the United States to have an emergency mobilization preparedness capability that shall ensure that Government at all levels, in partnership with the private sector and the American people, can respond decisively and effectively to any national security emergency with defense of the United States as the first priority.

(b) It is the national security emergency preparedness policy to develop and promote the security and protection of essential facilities and resources within the United States and in U.S. territories and possessions essential to the national defense by providing to the owners or managers of such assets appropriate advice, guidance, and planning assistance concerning the application of physical security and emergency preparedness measures. The purpose of such assistance is to encourage owners and civil law enforcement agencies to protect facilities and resources from sabotage, espionage, and other hostile or destructive acts, and to minimize the effect of attack damage.

(c) Physical security of facilities and resources is an inherent responsibility of ownership. The primary responsibility for the physical security of any privately-owned assets, federally-owned assets under the control of any Federal department or agency or of any contractor, or assets owned by any state or political subdivision of any State is with that entity. The primary responsibility for interdiction is with Federal, state and local law enforcement authorities.

(d) The Federal Government does not have the primary responsibility for the physical security of privately-owned facilities or of facilities owned by any State or political subdivision of any State, or any inter-governmental body.

(e) It is the policy of the United States to identify those essential facilities and resources the partial or complete loss of which would have an immediate and severe impact on the national defense; to assess the vulnerability of these facilities and resources; and to provide for their protection on a priority basis in the most cost effective and systematic manner possible.

§ 335.5 Responsibilities.

(a) *Departments and Agencies.* The head of each Federal department and agency shall:

(1) Identify facilities and resources on a priority basis, both private and government, essential to the national defense and national welfare, and assess their vulnerabilities and develop strategies, plans, and programs to provide for the security of such facilities and resources, and to avoid or minimize disruptions of essential services during any national emergency;

(2) Participate in interagency activities to assess the relative importance of various facilities and resources to essential military and civilian needs and to integrate preparedness and response strategies and procedures;

(3) Maintain a capability to assess promptly the effect of attack and other disruptions during national security emergencies;

(4) Where appropriate, furnish advice, through developed and operational communication channels, to the management or owner of a subject facility or resource with respect to developing and administering the physical security programs;

(5) In consultation with the management or owner of a facility or resource, or in cooperation with other qualified technical agencies and established advisory committees, assist in the development of standard security criteria for facilities or resources; and

(6) Supervise, when appropriate, the application of physical security measures and appraise the adequacy and efficiency of the measures taken.

(b) The Department of Justice shall support the heads of Federal departments and agencies, State and local governments, and the private sector in the development of plans and programs to physically protect essential resources and facilities. This responsibility has been delegated to the Federal Bureau of Investigation for implementation under Executive Order 12656.

(c) The Federal Emergency Management Agency (FEMA) shall:

(1) Coordinate and support the initiation, development, and implementation of plans for the protection of essential facilities and resources within the assigned areas of responsibility of Federal departments and agencies as part of the national security emergency preparedness policy;

(2) Assist the Department of Justice and other Federal departments and agencies in the interagency activity of identifying and assessing the relative importance of various facilities and resources to military and essential civilian needs and to integrate preparedness and response strategies and procedures; and

(3) As coordinator for national security emergency preparedness policy, report to the President and the National Security Council concerning the status of the essential facilities and resource protection programs of the Federal departments and agencies and furnish such recommendations as may be appropriate.

§ 335.6 Criteria.

(a) The significance of essential facilities and resources to Federal departments and agencies or to the owners of such facilities or resources, is determined by applying the following criteria:

(1) An asset whose loss would halt or unacceptably delay mobilization deployment and sustainability efforts; and

(2) An asset that produces critical items whose loss would halt or delay unacceptably, mobilization, deployment or sustainment efforts.

(b) These criteria in turn depend upon the following factors:

(1) The importance of the service or product it provides or produces;

(2) The dependence of the population or industry on the product;

(3) The cost of replacement;

(4) The replacement time; and

(5) The availability of substitutes.

(c) Priority selection categories. An essential facility or resource shall be assigned to one of the following categories:

(1) *Category one.* An essential facility or resource which has no replacement, substitute, or alternative. The partial or complete loss of such facility or resource, would have an immediate and adverse impact on the national defense.

(2) *Category two.* An essential facility or resource for which alternatives are available, but such alternatives are required to meet other needs of a national security emergency.

§ 335.7 Implementation.

(a) Federal departments and agencies with the support of the Department of Justice and the owners of the facilities and resources will provide the actual identification of potential or actively disruptive vulnerabilities, and conduct analyses of their respective facilities and resources.

(b) Federal departments and agencies, within their assigned areas of responsibility, shall:

(1) Identify facilities and resources, both government and private, essential to the national defense and national welfare, and assess their vulnerabilities and develop strategies, plans, and programs to provide for the security of such facilities and resources on a priority basis, and to avoid or minimize disruptions of essential services during any national security emergency;

(2) Participate in interagency activities to assess the relative importance of various facilities and resources essential to military and civilian needs and to integrate preparedness and response strategies and procedures;

(3) Maintain a capability to assess promptly the effect of attack and other disruptions during national security emergencies. (Reference: Section 204; E.O. 12656);

(4) Use their essential facilities and resource plans to choose their individual responses and strategies appropriate to the crisis or emergency situation.

(5) Develop strategies, as appropriate, to aid decision makers in the implementation of their essential facilities and resources protection programs.

(c) Plans and strategies will be coordinated with FEMA by the Federal departments and agencies under the aegis of the National Security Council, to assist them in developing Federal Standards for categorizing their essential facilities and resources; prioritizing their protection; and in understanding the need to assure the availability of essential facilities and resources in a national security emergency.

§ 335.8 Reporting.

In carrying out its responsibility of periodically reporting to the President and the National Security Council on the implementation of the national security emergency preparedness policy, the departments and agencies shall cooperate with FEMA to the extent appropriate, in compiling, evaluating, and exchanging data on the essential facilities and resources protection programs.

Dated: July 28, 1989.

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 89-18395 Filed 8-4-89; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-324, RM-6774]

Radio Broadcasting Services; Ebenezer, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by JimBar Enterprises, proposing the allotment of FM Channel 280A to Ebenezer, Mississippi, as that community's first FM broadcast service. The coordinates for Channel 280A are 32-54-13 and 90-10-18 which include a site restriction 10.6 kilometers (6.6 miles) southwest of the community. The notice instructs the petitioner to present the Commission with sufficient information to demonstrate Ebenezer has the social, economic or cultural indicia to qualify it as a community for allotment purposes.

DATES: Comments must be filed on or before September 22, 1989, and reply comments on or before October 10, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Frank R. Jazzo, Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW, Suite 400, Washington, DC 20036 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-324, adopted, July 13, 1989, and released August 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037. Provisions of the Regulatory Flexibility Act of 1908 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings,

such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-18318 Filed 8-4-89; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 89-318, RM-6692]

Radio Broadcasting Services; Windcrest and Hondo, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Jewel R. Morris proposing the allotment of Channel 253A to Windcrest, Texas, as that community's first local FM service. In order to accomplish the channel allotment at Windcrest, Channel 254A must be substituted for vacant but applied for Channel 253A at Hondo, Texas. Since both communities are located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government must be obtained for the proposal. Channel 253A can be allotted to Windcrest at a site restriction of 5.1 kilometers (3.2 miles) north of the city, at coordinates 29-33-35 and 98-22-01.

DATES: Comments must be filed on or before September 22, 1989, and reply comments on or before October 10, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Jewel R. Morris, 8619 Sagebrush Lane, San Antonio, TX 78217 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-318, adopted July 7, 1989, and released August 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The Complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-18317 Filed 8-4-89; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 94

[PR Docket No. 89-113]

Private Operational-Fixed Microwave Service; Channeling Plan; 2450-2483.5 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Order Extending Reply Comment Period.

SUMMARY: The Acting Chief, Private Radio Bureau has adopted an Order extending the deadline in which to file reply comments to the Notice of Proposed Rule Making in this proceeding. The new date is August 14, 1989. This action is taken to provide interested parties a sufficient period of time to prepare reply comments.

DATES: Reply Comments due August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Lewis, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: The summary of the Notice of Proposed Rule Making in this proceeding was printed in the **Federal Register** on June 5, 1989 at 54 FR 24006.

Federal Communications Commission.

Richard J. Shiben,

Acting Chief, Private Radio Bureau.

[FR Doc. 89-18316 Filed 8-4-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 263 and 267

[Docket No. 50340-8274]

RIN 0648-AC12

United States Standards for Grades of Fish Fillets

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of extension of comment period.

SUMMARY: NOAA issues this notice to extend for 30 days the period during which the public may comment on the proposed amendment to six U.S. Standards for Grades of Fishery Products to allow a bone-in style for fish fillets. Copies of the proposed amendment may be obtained from the address below.

DATES: Comments on the amendment should be submitted in writing on or before September 6, 1989.

ADDRESSES: All comments on the proposed amendment should be submitted to Thomas J. Moreau, Director, Technical Services Unit, Inspection Service Division, F/TS45, NMFS, NOAA, U.S. Department of Commerce, One Blackburn Drive, Gloucester, MA 01930.

Copies of the U.S. Standards for Grades, the proposed amendment and supporting documentation are available from the Standards & Specifications Branch, Technical Services Unit, NMFS, NOAA, U.S. Department of Commerce, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Earl C. Johnston, Chief, Standards & Specifications Branch (508-281-9219).

SUPPLEMENTARY INFORMATION: The proposed rule to amend six U.S. Standards for Grades to include a bone-in style for fish fillets was published in the **Federal Register** on May 31, 1989 (54 FR 23235). The proposed rule was developed as a result of comments received from a request for comments published previously in the **Federal Register** (50 FR 12591, March 29, 1985) on the desirability of amending four existing U.S. Standards for Grades. The

proposed rule published on May 31, 1989 specified a comment period extending through July 31, 1989. During the comment period, the National Fisheries Institute (NFI), the largest nonprofit trade organization in the U.S. seafood industry, with more than 1,100 members, requested an extension to the comment period in order for its membership to be advised of the proposed amendment. Because NOAA believes that additional comments from the affected industry are in the best interest of the public, an additional 30 days for comment are established by this notice. The Secretary of Commerce will consider the public comments in determining whether to modify approve the amendment.

Authority: 7 U.S.C. 1621-1630.

Dated: August 2, 1989.

Thomas J. Billy,

Acting Director, Office of Trade & Industry, National Marine Fisheries Service.

[FR Doc. 89-18416 Filed 8-4-89; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 150
Monday, August 7, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Environmental Impact Statement; South Edisto, SC

AGENCY: Soil Conservation Service, USDA

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 65), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the South Edisto River Watershed, Bamberg and Barnwell Counties, South Carolina.

FOR FURTHER INFORMATION CONTACT: Billy Abercrombie, State Conservationist, Soil Conservation Service, 1835 Assembly Street, Room 950, Columbia, South Carolina 29201, Telephone (803) 765–5681.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicated that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Billy Abercrombie, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include accelerated technical and financial assistance to apply land treatment measures on 12,925 acres of cropland.

A copy of the Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Billy Abercrombie.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: July 18, 1989.

Billy Abercrombie,

State Conservationist.

[FR Doc. 89–18367 Filed 8–4–89; 8:45am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Map Production Software for the TIGER System

ACTION: Notice.

SUMMARY: The Census Bureau announces the availability of FORTRAN source code for routines used on the Census Bureau's Unisys mainframe computers to produce 1990 census maps from the TIGER File. The FORTRAN source code is on one reel of magnetic tape. The Census Bureau also includes written documentation of the TIGER File data structure used on the Census Bureau's mainframe computers. No additional written documentation exists. The source code for these routines is provided "as is," without support and without certification as to usability on any other computer system. The tape and TIGER documentation are available as a package for $600.

ADDRESS: Persons wishing to order this product or obtain additional information should write to: Customer Services Branch, Data User Services Division, Bureau of the Census, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Write to the above address or telephone (301) 763–4100.

Dated: August 1, 1989.

C.L. Kincannon,

Deputy Director, Bureau of the Census.

[FR Doc. 89–18362 Filed 8–4–89; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation, Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 or § 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than August 31, 1989, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

Antidumping Duty Proceeding

	Period
Belgium: Industrial phosphoric acid (A–423–602)	08/01/88–07/31/89
France: Industrial nitrocellulose (A–427–009)	08/01/88–07/31/89
Israel: Industrial phosphoric acid (A–508–604)	08/01/88–07/31/89
Italy: Granular polytetrafluoroethylene resin (A–475–703)	04/20/88–07/31/89
Italy: Tapered roller bearings, and parts thereof finished and unfinished (A–475–603)	08/01/88–07/31/89
Japan: Acrylic sheet (A–588–055)	08/01/88–07/31/89
Japan: Brass sheet and strip (A–588–704)	08/01/88–07/31/89
Japan: Cadmium (A–588–035)	08/01/88–07/31/89
Japan: Certain high-capacity pagers (A–588–707)	08/01/88–07/31/89
Japan: Granular polytetrafluoroethylene resin (A–588–707)	04/20/88–07/31/89
Japan: Tapered roller bearings four inches or less in outside diameter and components thereof (A–588–054)	08/01/88–07/31/89
Netherlands: Brass sheet and strip (A–421–701)	02/08/88–07/31/89
Taiwan: Clear sheet glass (A–583–023)	08/01/88–07/31/89
Thailand: Malleable cast iron pipe fittings (A–549–601)	08/01/88–07/31/89
The People's Republic of China: Petroleum wax candles (A–570–504)	08/01/88–07/31/89
Turkey: Acetylsalicylic acid (aspirin) (A–489–802)	08/01/88–07/31/89
Union of Soviet Socialist Republics: Titanium sponge (A–461–008)	08/01/88–07/31/89
Venezuela: Certain electrical conductor aluminum redraw rods (A–307–701)	02/08/88–07/31/89
Yugoslavia: Tapered roller bearings, and parts thereof finished or unfinished (A–479–601)	08/01/88–07/31/89

Countervailing Duty Proceeding

	Period
Canada: Live swine (C–122–404)	04/01/88–03/31/89
Israel: Industrial phosphoric acid (C–508–605)	01/01/88–12/31/88
New Zealand: Low-fuming brazing copper rod and wire (C–614–501)	08/01/88–07/31/89
Thailand: Pipes and tubes (C–549–501)	01/01/88–12/31/88
Turkey: Acetylsalicylic acid (C–489–603)	01/01/88–12/31/88
Venezuela: Certain electrical conductor aluminum redraw rod (C–307–702)	08/17/88–12/31/88
Zimbabwe: Carbon steel wire rod (C–796–601)	01/01/88–12/31/88

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by August 31, 1989.

If the Department does not receive by August 31, 1989 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: August 1, 1989.

Richard W. Moreland,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 89–18426 Filed 8–4–89; 8:45 am]

BILLING CODE 3510-DS-M

[A–122–503]

Certain Iron Construction Castings From Canada; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by Bibby Ste. Croix Foundries, Inc., ("Bibby"), a respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain iron construction castings from Canada. The review covers one manufacturer/exporter of this merchandise to the United States and the period March 1, 1987 through February 29, 1988.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 7, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Kelleher or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 17220) an antidumping duty order on certain iron construction castings from Canada.

The respondent requested in accordance with § 353.53a(a) of the Commerce Regulations (19 CFR 353.53a(a) (1988)) that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on April 27, 1988 (53 FR 15083). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of certain iron construction castings, limited to manhole covers, rings and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems, classifiable as heavy castings under item number 657.0950 of the Tariff Schedules of the United States (TSUSA); and to valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters, classifiable as light castings under TSUSA item number 657.0990. These articles must be of cast iron, not alloyed, and not malleable. Heavy castings are currently classifiable under HTS items 7325.10.00.10 and 7325.10.00.50. Light castings are classifiable under HTS items 8306.29.00.00 and 8310.00.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of certain Canadian iron construction castings and the period March 1, 1987 through February 29, 1988.

United States Price

In calculating United States price, the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed FOB or CIF prices to unrelated purchasers in the United States. Where applicable, we made adjustments for foreign inland freight, ocean freight, and brokerage and handling charges. We also made deductions, where appropriate, for sales discounts.

Foreign Market Value

In calculating foreign market value, the Department used home market prices, as defined in section 773 of the

Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison. We made comparisons of "such or similar" merchandise based on a consideration of the shape, weight, and size of the castings.

Home market prices were based on packed FOB or delivered prices to unrelated purchasers in Canada, with appropriate deductions for freight, early payment discounts and rebates. We also made adjustments, where applicable, for differences in packing and credit expenses. We made further adjustments for U.S. commissions, and for home market commissions or for indirect selling expenses to offset U.S. commissions, as appropriate, in accordance with § 353.56(b) of the Commerce Department's regulations published in the Federal Register on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.56(b)).

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margin exists:

Manufacturer/ Exporter	Period	Margin (percent)
Bibby Ste. Croix Foundries, Inc.....	03/01/87-02/29/88	24.78

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Prehearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any written or oral comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may differ from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin shall be required. For any shipments from the remaining known manufacturers and exporters not covered by this review, the cash deposit will continue to be at the rate for each of those firms published in the antidumping duty order (51 FR 17220; March 5, 1986).

For any future entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipments occurred after February 29, 1988, and who is unrelated to any reviewed firm, a cash deposit of 24.78 percent shall be required.

These deposit requirements are effective for all shipments of certain Canadian iron construction castings entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.15 of the Department's regulations.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Dated: July 31, 1989.

[FR Doc. 89-18424 Filed 8-4-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-533-501]

Certain Iron Construction Castings From India; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioners, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain iron construction castings from India. The review covers eleven manufacturers/exporters of this merchandise to the United States, and the period October 28, 1985 through April 30, 1987. The review indicates the existence of dumping margins for certain firms during the period. As a result, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 7, 1989.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On May 9, 1986, the Department of Commerce ("the Department") published in the Federal Register (51 FR 17221) an antidumping duty order on certain iron construction castings from India. The petitioners, the Municipal Castings Fair Trade Council and its individually-named members, requested in accordance with § 353.53a(a) of the Commerce Regulations (19 CFR 353.53a(a) (1988)) that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on June 19, 1987 (52 FR 23330). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of certain heavy and light iron construction castings. Heavy castings are limited to manhole covers, rings and frames, catch basin grates and frames, and cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems. During the review period, heavy castings were classifiable under items 657.0950 and 657.0990 of the Tariff Schedules of the United States Annotated ("TSUSA"). This merchandise is currently classifiable under HTS items 7325.10.00.9 and 7325.10.00.50.0. Light castings are limited to valve boxes, service boxes and meter boxes which are placed below ground to encase water valves, gas valves, and other valves, or water and gas meters. During the review period, light castings were classifiable under TSUSA item 657.0990. This merchandise is currently classifiable under HTS item 7325.10.00.50.0. The HTS item numbers

are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers 11 manufacturers/exporters of certain Indian iron construction castings and the period October 28, 1985 through April 30, 1987. East Coast Co., Victory Iron Works, Paharimata Iron Works, Kamala Iron Foundry, Shree Laxmi Metal and S.K. Iron Foundry and Engineering failed to respond to the Department's antidumping duty questionnaire. For these six firms, we used the highest rate for responding firms, as best information available for assessment and cash deposit purposes.

On June 28, 1988, Neenaa Foundry Pvt. Ltd. ("Neenaa") and Overseas Foundry Pvt. Ltd. ("Overseas") requested that we consider merchandise exported by Neenaa and Overseas to be excluded from the antidumping duty order. Their request is based on the exclusion of Kajaria Castings from the scope of the order. In our final affirmative antidumping duty determination, we excluded Kajaria Castings because we found it had a *de minimis* dumping margin (51 FR 9486, March 19, 1986). At the time of the final determination, Neenaa and Overseas were castings producers related to Kajaria, which exported castings directly to the United States. Neenaa and Overseas did not export castings to the United States during the period of investigation. Therefore, we used Kajaria's prices to unrelated customers in the United States for purposes of establishing U.S. price. Since that time, Kajaria has changed its name to Select Steels and no longer exports castings. Further, Neenaa and Overseas now export castings directly. Since our exclusion covers only mechandise exported by Kajaria Castings, we consider merchandise exported by Neenaa and Overseas to be subject to the antidumping duty order.

On May 4, 1988, the petitioners alleged that third-country sales from R.B. Agarwalla & Co., Carnation Enterprises, Pvt. Ltd. ("Carnations") and Govind Steel Co., and home market sales from Uma Iron & Steel Co./Commex Corporation were at prices below the cost of producing the merchandise. The Department determined that there was a reasonable basis to initiate a cost of production investigation for all four firms. We requested that cost of production data be submitted on a quarterly basis. Super Castings provided cost of production on a quarterly basis. All other companies reported cost of production on an annual basis. For these companies, as best information available, we made adjustments to their annual costs based upon Super Castings' quarterly cost of production. We calculated an annual cost of production figure for Super Castings based on a weighted-average of its quarterly costs. We then compared its quarterly cost figure to its annual cost figure. For each quarter that Super Castings' quarterly costs exceeded its annual cost figure, we adjusted the annual cost figures for the other companies by the same percentage. For Super Castings, we used their quarterly cost figures.

We compared the home market and third-country selling prices, net of all applicable movement expenses, to the cost of production. Based on our analysis, we found all home market sales and all third-country sales, with the exception of R.B. Agarwalla, to be at or above the cost of producing the merchandise. For R.B. Agarwalla, we found that a significant percentage of third country sales was below cost of production. For this company, we used only the third country sales above the cost of production as our foreign market value.

On May 1, 1989, we amended the final determination and antidumping duty order to exclude Serampore Industries Pvt. Ltd. ("Serampore") from the scope of the antidumping duty order in accordance with the court decision upon remand (54 FR 18562). We instructed the Customs Service to terminate the suspension of liquidation and refund any cash deposits for subject merchandise produced by Serampore. Therefore, we are not reviewing Serampore's sales in our preliminary results of review.

United States Price

In calculating United States price, the Department used purchase price, as defined in section 772 of the Tariff Act, since all sales were made to unrelated purchasers in the United States prior to the date of importation. Purchase price was based on the packed, f.o.b. or delivered prices to unrelated purchasers in the United States. Where applicable, we made deductions for foreign inland freight, ocean freight, insurance, inspection charges, and brokerage and handling charges. When comparing purchase price to home market or third-country sales, we added the Cash Compensatory Support ("CCS") rebate of indirect taxes. The CCS is designed to rebate indirect taxes and is paid as a percentage of f.o.b. price. When comparing purchase price to home market or third country sales, we added the excise duty drawback, which rebates a fixed amount per metric ton of castings exports. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, the Department used home market price when sufficient quantities of such or similar merchandise were sold in the home market. When there were insufficient home market sales for comparison, we used third-country sales. When there were no third country sales, we used constructed value, as defined in section 773 of the Tariff Act.

Home market price was based on the packed f.o.b. price to unrelated customers in the home market. Where applicable, where adjusted for differences in packing and credit expenses and the International Price Reimbursement Scheme ("IPRS") rebate. IPRS rebates are designed to offset the differences between the domestic and ostensible world market prices for pig iron. When commissions were paid on U.S. sales, but not on home market sales, we adjusted by adding U.S. commissions to foreign market value and deducting home market indirect selling expenses, not exceeding U.S. commissions, from foreign market value. No other adjustments were claimed or allowed.

Third-country price was based on the packed f.o.b., c. & f. or c.i.f. price to unrelated customers in third countries. We made adjustments, where applicable, for inland freight, ocean freight, brokerage and handling, inspection charges, discounts and differences in packing and credit expenses. When commissions were paid on third-country sales, but not U.S. sales, we adjusted by deducting third-country commissions and adding U.S. indirect selling expenses not exceeding third-country commissions to foreign market value. We added third-country CCS rebates and the excise duty drawback to foreign market value. We made a difference in merchandise adjustment for a extra fittings for Carnations. No other adjustments were claimed or allowed.

We calculated constructed value as the sum of materials, fabrication costs, general expenses, profit, and the cost of packing. We requested quarterly constructed value data from respondents. Super Castings provided constructed value data on a quarterly basis. All other companies reported constructed value figures on an annual basis. For these companies, we made adjustments to their annual costs based upon Super Castings' quarterly constructed value figures. We calculated an annual constructed value for Super Castings based on a weighted-average

BEST COPY AVAILABLE

of its quarterly costs. We then compared its quarterly cost figures to its annual cost figure. For each quarter that Super Castings' quarterly costs exceeded its annual cost figure, we adjusted the annual cost figures for the other companies by the same percentage. For Super Castings, we used their quarterly cost figures.

Raw material costs did not include indirect tax rebates through the CCS program, the excise duty drawback and the IPRS rebate. When actual general expenses were greater than ten percent of the sum of materials and fabrication costs, we used the actual general expenses. When actual general expenses were less than ten percent of the sum of materials and fabrication costs, we used the statutory minimum of ten percent of the sum of materials and fabrication costs, as provided by section 773 of the Tariff Act. Since the profit rate was less than eight percent of the sum of materials costs, fabrication costs, and general expenses, we used the eight percent statutory minimum, as provided by section 773 of the Tarrif Act.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period October 28, 1985 through April 30, 1987:

Manufacturer/Exporter	Margin (percent)
R.B. Agarwalla & Co	4.33
Carnation Enterprises, Pvt. Ltd	0
Govind Steel Co	0
Super Castings (India)	0.42
Uma Iron & Steel Co./Commex Corporation	8.43
East Coast Co	8.43
Victory Iron Works	8.43
Paharimata Iron Works	8.43
Kamala Iron Foundry	8.43
Shree Laxmi Metal	8.43
S.K. Iron Foundry & Engineering	8.43

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with § 353.38(e) of the new Commerce Regulations (published at 54 FR 12785, March 28, 1989) (to be codified at 19 CFR 353.38(e)). The Department will publish the final results of the administrative review, including the results of its analysis of any such written comments or oral argument.

Representatives of interested parties may request disclosure of proprietary information under administrative protective order within 10 days of the date that the interested party becomes a party to the proceeding but in no event later than the date case briefs are due.

The Department will determine, and the Customs Service will assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[no] product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Tariff Act which provides that "the purchase price and the exporter's sales price shall be adjusted by being increased by * * * the amount of any countervailing duty imposed on the merchandise under subtitle A of this title or section 303 of this Act to offset an export subsidy." The amount of countervailing duty to be imposed on each customs entry will not be known until outstanding administrative reviews of the countervailing duty order are completed. Therefore, we will implement this section of the Tariff Act by requiring the U.S. Customs Service to add the unit amounts of any assessed countervailing duty for export subsidies, to the extent that they have not already been accounted for in the dumping calculations, to the purchase prices contained in our liquidation instructions implementing the final results of this review.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins will be required. Since the margin for Super Castings is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of antidumping duties on entries from this firm. For any future entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipments occurred after April 30, 1989, and who is unrelated to any reviewed firm, a cash deposit of 8.43 percent shall be required.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the new Commerce Regulations (to be codified at 19 CFR 353.22).

Dated: July 31, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-18425 Filed 8-4-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Dr. Bruce R. Mate (P129H)

On May 9, 1989, notice was published in the **Federal Register** (54 FR 19933) that an application had been filed by Dr. Bruce R. Mate, School of Oceanography, Oregon State University, Newport, Oregon 97365-5296 tag with satellite-monitored radio tags right whales (*Eubalaena glacialis*) for scientific research purposes.

Notice is hereby given that on July 28, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on a finding that the Permit; (1) was applied for in good faith; (2) does not operate to the disadvantage of the endangered species which is the subject of this Permit; (3) and is consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973.

This Permit was issued in accordance with and is subject to parts 220-222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

Documents submitted in connection with this permit are available for review in the following offices:

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Hwy., Suite 7324, Silver Spring, Maryland 20910; and

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930.

Dated: August 1, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-18417 Filed 8-4-89; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next scheduled meeting is Thursday, 21 September 1989 at 10:00 a.m. at the Commission's offices at 708 Jackson Place NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566-1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC 31 July 1989.

Charles H. Atherton,

Secretary.

[FR Doc. 89-18406 Filed 8-4-89; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Advisory Group on Electron Devices; Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday, 23 August 1989.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Harold Summer, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: August 1, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-18326 Filed 8-4-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 2, 1989.

The USAF Scientific Advisory Board Logistics Cross-Matrix Panel will meet on 24 Aug 89, from 8:00 a.m. to 5:00 p.m., at HQ AFLC, Wright-Patterson AFB, OH.

The purpose of this meeting will be to present the findings of the panel's review of the Damage Tolerance Analysis/Certification Program. The meeting at HQ AFLC will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-18414 Filed 8-4-89; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection requirement concerning OMB Report Control Number 9000-0021, Clean Air and Water Certification.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy, (202) 523-3775.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* It is the Government's policy to improve environmental quality. Accordingly, Executive Agencies must conduct their acquisition activities in a manner that will result in effective enforcement of the Clean Air Act (42 U.S.C. 7401, et seq.) and the Clean Water Act (33 U.S.C. 1251, et seq.) The information required by the Clean Air and Water Certification is used to determine a contractor's compliance with these laws. A determination of noncompliance by the contracting officer requires notifying the agency head or designee who, in turn notifies the Environmental Protection Agency (EPA) Administrator or a designee in writing. Government contracting offices use the information to determine a firm's eligibility for award of a contract and to provide information to the EPA.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 83,400; responses per respondent, 20; total annual responses, 1,668,000; preparation hours per response, .01666; and total response burden hours, 27,800.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041,

Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0021, Clean Air and Water Certification.

Dated: July 31, 1989.

Margaret A. Willis,
FAR Secretariat.

[FR Doc. 89–18350 Filed 8–4–89; 8:45 am]
BILLING CODE 6820–JC–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning OMB Report Control Number 9000–0027, Value Engineering Requirements.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy, (202) 523–3775.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* Value engineering is the technique by which contractors (1) voluntarily suggest methods for performing more economically and share in any resulting savings or (2) are required to establish a program to identify and submit to the Government methods for performing more economically. These recommendations are submitted to the Government as value engineering change proposals (VECP's) and they must include specific information. This information is needed to enable the Government to evaluate the VECP and, if accepted to arrange for an equitable sharing plan.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 400; responses per respondent, 4; total annual responses, 1,600; preparation hours per response, 30; and total response burden hours, 48,000.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0027, Value Engineering Requirements.

Dated: July 31, 1989.

Margaret A. Willis,
FAR Secretariat.

[FR Doc. 89–18351 Filed 8–4–89; 8:45 am]
BILLING CODE 6820–JC–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Hi-Z Technology, Inc.

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1) under Grant Number DE–FC01–89CE15455 to Hi-Z Technology, Inc., to complete a proof-of-principle test of a thermoelectric generator for generating current from waste heat in the exhaust of a diesel engine.

Scope: This Grant will aid in providing funding for Hi-Z Technology, Inc., for the following: (1) The design, analysis, fabrication and assembly of the test section of the thermoelectric generator, including instrumentation, (2) the formulation of the test procedures, (3) testing of the thermoelectric generator on a diesel engine at the test site, recording all instrument data and conducting inspections of the generator following the completion of operations, and (4) data reduction and preparation of a final report.

The purpose of this project will be to design, build, and test a prototype thermoelectric generator connected to the exhaust stream of a diesel engine.

Eligibility: Based on receipt of an unsolicited application eligibility for this award is being limited to Hi-Z Technology, Inc., a private corporation with high qualifications in a specialized field of technology. The applicant has spent years in the development of thermoelectric modules with the objective of reducing costs. John C. Bass, the principal investigator, has had experience in design of direct conversion devices from 1959 to the present. It has been determined that this project has high technical merit, representing an innovative and novel idea which has a strong possibility of allowing for future reductions in the Nation's energy consumption.

The term of this grant shall be twelve months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Rose Mason, MA–453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,
Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89–18419 Filed 8–4–89; 8:45 am]
BILLING CODE 6450–01–M

Financial Assistance Award; SRI International

AGENCY: Department of Energy.

ACTION: Intent to negotiate with and award a cooperative agreement to SRI International.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office, intends to negotiate with SRI International, 333 Ravenswood Ave., Menlo Park, CA 94025, on a noncompetitive basis for award of a cooperative agreement. In response to a Notice of Program Interest published by the DOE in the Commerce Business Daily on June 16, 1988 and entitled "Research and Development to Overcome Fouling of Membranes," SRI submitted an unsolicited proposal. The work proposed consists of research to develop and demonstrate the properties of unique polyelectric ultrafiltration membranes reducing the tendencies of such membranes to foul. SRI will develop two prototype ultrafiltration membranes with a high probability of achieving piezoelectric (PE) properties and perform flow tests on the PE membranes to determine their fouling properties relative to conventional membranes. SRI's unsolicited proposal has been evaluated and accepted for support pursuant to the DOE Financial Assistance Rules 10 CFR Part 600.14 in that the activity to be funded is an innovative approach relevant to a public purpose and is meritorious considering the resources and techniques proposed to achieve the project's objectives.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Elizabeth M. Bowhan, Contract Specialist (208) 526–1229.

Issued this 18th day of July, at Idaho Falls, Idaho.

Dated: July 19, 1989.

J. Roger Gonzales,
Director, Contracts Management Division.

[FR Doc. 89–18420 Filed 8–4–89; 8:45 am]
BILLING CODE 6450–01–M

Certification of the Radiological Condition of Thirty-Five Private Properties Located in Colonie and Albany, NY

AGENCY: Office of Remedial Action and Waste Technology, Office of Nuclear Energy, DOE.

ACTION: Notice of certification.

SUMMARY: The Department of Energy has completed radiological surveys and taken remedial action to decontaminate 35 properties in Colonie and Albany, New York. The properties were found to contain quantities of radioactive material from uranium processing activities conducted at the former National Lead (NL) Industries Plant.

FOR FURTHER INFORMATION CONTACT: J.J. Fiore, Director, Division of Facility and Site Decommissioning Projects, Office of Remedial Action and Waste Technology, U.S. Department of Energy, Washington, DC 20545, (301) 353–5272.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE), Office of Nuclear Energy, Office of Remedial Action and Waste Technology, Division of Facility and Site Decommissioning Projects, has implemented a remedial action project in the Albany and Colonie, New York, area as part of a specially authorized research and development project (The Energy and Water Appropriations Act for FY 1984). The ultimate objective of the program is to ensure that any properties contaminated as a result of activities at the former National Lead (NL) Industries can be certified to be within applicable decontamination criteria and standards established for the project and consistent with current radiological guidelines for protection of the general public.

The Colonie Interim Storage Site (CISS) is a U.S. DOE FUSRAP site located in the Town of Colonie, New York, at 1130 Central Avenue. It is approximately 4 miles northwest of downtown Albany and about 3 miles southeast of the Village of Colonie. Central Avenue runs along the northeastern side of the CISS property; the Conrail main line and a railroad siding border it on the southern side. Residential properties lie beyond the railroad. Most of the 11.2-acre CISS was occupied by the former NL Industries, Inc. property and buildings formerly used by NL to manufacture a variety of products from depleted uranium. The remaining 2 acres of the site, donated to DOE by the Niagara Mohawk Electric Company in 1985, lie to the west of the original property. Land use in the vicinity of the CISS is primarily industrial and residential.

During the 1950s, NL Industries began manufacturing uranium products at the Colonie plant, operating under a license issued by the Atomic Energy Commission (AEC), predecessor of DOE. Between 1958 and 1968, NL Industries held numerous AEC contracts for fabricating slightly enriched (in the uranium-235 isotope) uranium fuel elements and chemical processing of nonirradiated, slightly enriched uranium scrap.

After termination of the AEC contracts, work at the NL plant was limited to fabrication of shielding components, ballast weights, and projectiles from depleted uranium.

On February 15, 1980, the New York State Supreme Court issued an order temporarily restraining NL Industries from operating its Colonie facility on the basis that the facility emitted contaminants as airborne releases of uranium compounds. The temporary restraining order was amended on May 12, 1980, to allow NL Industries to continue operating on a limited basis. The amended order also required the company to initiate an independent investigation to assess all adverse environmental conditions in soils and on properties in the vicinity of the facility that may have been caused by the airborne discharge of radioactive particulates from the plant. Operations at the plant were halted in the spring of 1984. Although the contamination at the Colonie properties did not result from the atomic energy program, they were included as part of the FUSRAP by the DOE after Congress gave responsibility for the site to DOE under the 1984 Energy and Water Appropriations Act, which authorized DOE to conduct a decontamination research and development project at four sites, including the site of the former NL Industries plant and its vicinity properties.

Following plant closure, the DOE took possession of the plant to begin the cleanup process. Most of the radioactive contamination on the vicinity properties is from airborne releases of uranium from the processing operations at the plant. FUSRAP is currently being managed by DOE's Oak Ridge Operations Office. Bechtel National, Inc. (BNI) is the Project Management Contractor (PMC) and acts as DOE's representative in the planning, management, and implementation of FUSRAP. BNI acting as the PMC has responsibility for conducting remedial action at the CISS as well as at the off-site or vicinity properties.

Teledyne Isotopes surveyed the neighborhood surrounding the NL plant for radioactivity in 1980 and determined that uranium released into the air through the emission stacks had deposited on residential and commercial properties and structures. Teledyne's findings also showed that the majority of the contamination was in the direction of the area's prevailing winds.

In October 1983, more detailed radiological surveys of the individual properties surrounding the NL plant (including private residences) were performed by the Oak Ridge National Laboratory (ORNL). These surveys were designed to locate all properties on which uranium contamination exceeded DOE guidelines. The DOE guidelines for these properties were established by the DOE in conjunction with the State of New York.

DOE developed a remedial action plan to remove the contamination in these areas. The first priority for the remedial action was to remove contaminated materials from residential properties, and then from commercial properties. These materials were to be stored at the Colonie Interim Storage Site.

In 1984, 11 residential/commercial properties were decontaminated, and in 1985, 24 residential/commercial properties were decontaminated. Post-remedial action surveys have demonstrated and DOE has certified that radiological conditions on the affected properties are consistent with applicable criteria and standards, and the use of the 35 properties presents no radiolgical hazard to the general public or to site occupants. These findings are supported by the DOE Certification Docket for the Remedial Action Performed at the Colonie Interim Storage Site Vicinity Properties in Colonie and Albany, New York, in 1984 and 1985. Accordingly, these properties are released from the Formerly Utilized Sites Remedial Action Program.

The certification docket will be available for review between 9:00 a.m. and 4:00 p.m., Monday through Friday (except Federal holidays), in the U.S. Department of Energy Public Reading Room located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue SW., Washington, DC. Copies will also be available in the Public Document Room, U.S. Department of Energy, Oak Ridge Operations Office, Oak Ridge, Tennessee, and the Colonie

Library, 629 Albany-Shaker Road, Loudonville, New York 12210.

The Department of Energy, through the Oak Ridge Operations Office, Technical Services Division, has issued the following statement:

Statement of Certification: Thirty-Five Properties Associated With the Former National Lead Industries

The Oak Ridge Operations Office, Technical Services Division, has reviewed the radiological data obtained following remedial action at the 35 subject properties. Based on this review, DOE has certified that the properties listed below are in compliance with applicable decontamination criteria and standards established for the project. This certification of compliance provides assurance that future use of the properties will result in no radiological exposure above DOE criteria and standards established to protect members of the general public or site occupants.

The properties are listed by their addresses, as identified in the radiological characterization survey reports prepared by ORNL. The eleven properties which are included in the 1984 remedial action are listed first, followed by the 24 properties included in the 1985 remedial action. Accordingly, the following properties are released from the Formerly Utilized Sites Remedial Action Program:

Parcel 1 located on 27/29 Yardboro Avenue, City of Albany, identified as Block 1, Lot 36 (per tax map; no identification per access agreement).

Parcel 2 located on 52 Yardboro Avenue, City of Albany, identified as Block 1, Lot 13 (per tax map); as Block 1, Lots 11, 12, and 13 (per access agreement).

Parcel 3 located on 68 Yardboro Avenue, City of Albany, identified as Block 1, Lots 4, 5, and 6 (per tax map); as Block 1, Lots 4, 5, 6, 7, and 8 (per access agreement).

Parcel 4 located on 74 Yardboro Avenue, City of Albany, identified as Block 1, Lot 3 (per tax map); as Block 1, 3 (per access agreement).

Parcel 5 located on 78 Yardboro Avenue, City of Albany, identified as Block 1, Lot 2 (per tax map); as Block 1, Lot 2 (per access agreement).

Parcel 6 located on 80 Yardboro Avenue, City of Albany, identified as Block 1, Lot 1 (per tax map); as Block 1, Lot 1 (per access agreement).

Parcel 7 located on 33 Palmer Avenue, City of Albany, identified as Block 1, Lot 37 (per tax map); as Block 1, Lot 37 (per access agreement).

Parcel 8 located on 1114 Central Avenue, Town of Colonie, identified as Block 0806 (per tax map; no identification per access agreement).

Parcel 9 located on 1144 Central Avenue, Town of Colonie, identified as Block 0805 (per tax map; no identification per access agreement).

Parcel 10 located on 1144A Central Avenue, Town of Colonie, identified as Block 0805 (per tax map; no identification per access agreement).

Parcel 11 located on 1159 Central Avenue, Town of Colonie, identified as Block 0805 (per tax map; no identification per access agreement).

Parcel 12 located on 5 Yardboro Avenue, City of Albany, identified as Block 1, Lot 26 (per tax map; no identification per access agreement).

Parcel 13 located on 24 Yardboro Avenue, City of Albany, identified as Block 1, Lot 17 (per tax map; no identification per access agreement).

Parcel 14 located on 25/27 Yardboro Avenue, City of Albany, identified as Block 1, Lot 36 (per tax map; no identification per access agreement).

Parcel 15 located on 50 Yardboro Avenue, City of Albany, identified as Block 1, Lot 14 (per tax map); as Block 1, Lots 18, 19, 20, 21, 22, and 23 (per access agreement).

Parcel 16 located on 1100 Central Avenue, City of Albany, identified as Block 1, Lot 24 (per tax map; no identification per access agreement).

Parcel 17 located on 1104 Central Avenue, City of Albany, identified as Block 0806 (per tax map; no identification per access agreement).

Parcel 18 located on 1118 Central Avenue, Town of Colonie, identified as Block 0806 (per tax map; no identification per access agreement).

Parcel 19 located on 1129 Central Avenue, Town of Colonie, identified as Block 0905 (per tax map; no identification per access agreement).

Parcel 20 located on 1146 Central Avenue, Town of Colonie, identified as Block 0805 (per tax map; no identification per access agreement).

Parcel 21 located on 1147 Central Avenue, Town of Colonie, identified as Block 0905 (per tax map; no identification per access agreement).

Parcel 22 located on 1148 Central Avenue, Town of Colonie, identified as Block 0805 (per tax map; no identification per access agreement).

Parcel 23 located on 1150 Central Avenue, Town of Colonie, identified as Block 0805 (per tax map; no identification per access agreement).

Parcel 24 located on 1152 Central Avenue, Town of Colonie, identified as Block 0805 (per tax map; no identification per access agreement).

Parcel 25 located on 1160 Central Avenue, Town of Colonie, identified as Block 0805 (per tax map; no identification per access agreement).

Parcel 26 located on 1160/62 Central Avenue, Town of Colonie, identified as Block 0805 (per tax map; no identification per access agreement).

Parcel 27 located on 1161/63 Central Avenue, Town of Colonie, identified as Block 0905 (per tax map; no identification per access agreement).

Parcel 28 located on 1166 Central Avenue, Town of Colonie, identified as Block 0805 (per tax map; no identification per access agreement).

Parcel 29 located on 1167 Central Avenue, Town of Colonie, identified as Block 0905 (per tax map; no identification per access agreement).

Parcel 30 located on 1168 Central Avenue, Town of Colonie, identified as Block 0805 (per tax map; no identification per access agreement).

Parcel 31 located on 1170 Central Avenue, Town of Colonie, identified as Block 0805 (per tax map; no identification per access agreement).

Parcel 32 located on 1185 Central Avenue, Town of Colonie, identified as Block 0905 (per tax map; no identification per access agreement).

Parcel 33 located on 1195 Central Avenue, Town of Colonie, identified as Block 0805 (per tax map; no identification per access agreement).

Parcel 34 located on 7 Palmer Avenue, City of Albany, identified as Block 1, Lot 35 (per tax map; no identification per access agreement).

Parcel 35 located on 10 Garden Lane, Town of Colonie, identified as Block 0805 (per tax map; no identification per access agreement).

Dated: July 13, 1989.

J.E. Baublitz,

Acting Director, Office of Remedial Action and Waste Technology, Office of Nuclear Energy, U.S. Department of Energy.

[FR Doc. 89-18421 Filed 8-4-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Petition for Waiver and Application for Interim Waiver of Central Air Conditioner and Heat Pump Test Procedures From Carrier Corporation (CAC-005)

AGENCY: Office of Conservation and Renewable Energy Office, DOE.

SUMMARY: Today's notice publishes a "Petition for Waiver" from the Carrier Corporation (Carrier), of Syracuse, New York, requesting a waiver from the existing Department of Energy (DOE) test procedure for central air conditioners and central air conditioning heat pumps. In addition, today's notice publishes a letter denying Carrier's Application for an Interim Waiver. Carrier manufactures residential central air conditioners and central air conditioning heat pumps. Carrier requests that the Department grant relief from the DOE test procedure relating to testing of its split system HydroTech 2000 model heat pump. Carrier requests this relief because, in addition to providing space heating and cooling, the HydroTech 2000 also provides domestic water heating. Carrier claims that while the HydroTech 2000 is capable of being tested in accordance with the DOE central air conditioner test procedure for space heating and cooling efficiency, the test procedure does not give a true representation of the energy consumption of the HydroTech 2000 heat pump. DOE is soliciting comments, data and information respecting the petition.

DATE: DOE will accept comments, data and information not later than September 6, 1989.

ADDRESS: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. CAC-005, Mail Stop CE-132, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Douglass S. Abramson, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-132, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), (Pub. L. 94-163), 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), (Pub. L. 95-619), 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), (Pub. L. 100-12), and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), (Pub. L. 100-357).[1] The Act requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including central air conditioners and central air conditioning heat pumps. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE has amended the prescribed test procedures on September 26, 1980, by adding 10 CFR 430.27 creating the waiver process. 45 FR 64108. DOE further amended the Department's appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986. The waiver process allows the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of a waiver.

The interim waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an interim waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the petition for waiver will be granted and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver.

Carrier seeks a waiver from the DOE test provisions for central air conditioners and central air conditioning heat pumps for its HydroTech 2000 model heat pump. Carrier requests this relief because, in addition to providing space heating and cooling, the HydroTech 2000 also provides domestic water heating. Carrier claims that while the HydroTech 2000 is capable of being tested in accordance with the DOE central air conditioner test procedure for Seasonal Energy Efficiency Ratio (SEER) and Heating Seasonal Performance Factor (HSPF), the test procedure does not give a true representation of the engry consumption of the HydroTech 2000 heat pump. The HydroTech 2000 heat pump provides domestic water heating during the space cooling mode with the heat rejected from the house. The excess heating capacity of the heat pump provides supplementary water heating during the space heating mode. When space conditioning is not required, the unit operates in a water heating only mode. This results in reduced energy consumption for water heating, as compared to a standard two-element electric resistance water heater. Carrier requests that the water heating energy savings, compared to a conventional water heater, should be applied to the HydroTech 2000's space cooling and heating performance. Carrier requests the allowance to test and rate the HydroTech 2000 with an equivalent SEER and an equivalent HSPF. The test procedure proposed by Carrier is based on the Department's test procedure for central air conditioning heat pumps and would credit the unit's SEER and HSPF with the reduced energy use for water heating.

Carrier also request an Interim Waiver from the central air conditioner test procedure for the HydroTech 2000 heat pump. Carrier, in the Application for Interim Waiver, states that its Petition for Waiver will likely be granted since it includes a feature, water heating, that is not included in the existing central air conditioner and central air conditioning heat pump test procedure. Furthermore, Carrier claims that it is in the national interest for a waiver to be granted, since without a waiver, Carrier will not be able to claim the electric energy savings capabilities of the HydroTech 2000, and as a result, will lose sales which, in turn, will result in increased national energy consumption and the corresponding release of greenhouse gases. Finally, Carrier claims that it will experience economic hardship if the Application is denied since, Carrier estimates, it will lose approximately $7 million in gross margin in the next three years.

DOE has reviewed Carrier's Petition for Waiver and agrees that the extant test procedures for central air conditioners and central air conditioning heat pumps evalutes the Carrier HydoTech 2000 heat pump in a manner unrepresentative of its true energy consumption since it does not consider the energy usage due to water heating. However, the Department believes that the remedy proposed by Carrier, adjusted SEER and HSPF, are also not representative of the unit's true energy efficiency. SEER, HSPF, and Energy Factor (EF) are measures of efficiency that result from ratios of energy outputs and inputs for well-defined and separate space cooling, space heating and domestic water heating processes. If it were possible to allocate the input energy separately to the space heating, space cooling and domestic water heating functions, then EF, SEER and HSPF could be calculated for this unit. However, DOE believes this is not possible when two processes occur simultaneously. Therefore, DOE believes that to subtract an energy savings quantity for water heating from the denominator of an output/input ratio that applies to space heating or cooling artificially inflates SEER and AFUE and would not represent the efficiency of the HydroTech 2000 in either mode.

[1] Part B of Title III of EPCA, as amended, is referred to in this notice as the "Act." Part B of Title III is codified at 42 U.S.C. 6291 et seq.

If, based on the evidence included in Carrier's Appliance for Interim Waiver, DOE were to grant Carrier relief from the central air conditioner test procedure, it would be to waive the test procedure entirely. Doe believes that this is contrary to Carrier's intent since Carrier requested the waiver in order to make SEER and HSPF representations. Carrier claims that not being able to make representations of equivalent SEER and equivalent HSPF makes it difficult for consumers to "have a clear understanding of this product's energy-saving capability." Similarly, DOE believes that granting outright relief from the test procedure would cause further hardships for Carrier since it would be unable to make either SEER or HSPF representations.

Therefore, based on the above, Carrier's Application for an Interim Waiver is denied. This is not a determination, however, on Carrier's Petition for Waiver, which is being published today for comment.

Carrier proposes a test method based on, to a significant extent, the existing central air conditioning and central air conditioning heat pump test procedures. For water heating, Carrier proposes two simulated use tests with an outdoor temperature of 17°F and 67°F with four water draws to simulate household water usage. For combined space cooling/domestic water heating, Carrier proposes two tests, 67°F at low compressor speed and 95°F at high compressor speed. For combined space heating/domestic water heating, Carrier proposes that one cyclic test and one steady-state test be performed at 17°F. These tests are presented in detail in Carrier's Petition for Waiver and its proposed alternate test procedure.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver." Due to its length, Carrier's proposed alternate test procedure (of 28 pages) (Attachment A), is not being published in the **Federal Register**. It is, however, available upon request at the address provided at the beginning of today's notice. DOE solicits comments, data, and information respecting the petition.

In addition, pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations, the following letter denying the Application for Interim Waiver was issued to Carrier Corporation.

Issued in Washington, DC, July 1, 1989.

John R. Berg,

Assistant Secretary, Conservation and Renewable Energy.

May 30, 1989.

Assistant Secretary,

Office of Conservation and Renewable Energy, U.S. Department of Energy, Mail Station CE–132, Room GF–217, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585

Gentlemen:

Re: Petition for Waiver of D.O.E. Test Procedures for Central Air Conditioners (Including Heat Pumps) as They Apply to the Carrier HydroTech 2000 Series Heat Pumps

Carrier's new HydroTech 2000 heat pump is an innovative unit that has a unique ability to enhance residential energy conservation. The unit is the product of six years of research and development by Carrier and the Electric Power Research Institute (EPRI). The unit was developed and designed with one principal objective: significant energy conservation.

Our objective in this petition for waiver is to seek a modification to the procedure for testing central air conditioners (including heat pumps). Because this product is a heat pump that provides domestic water heating in addition to space heating and cooling, a new and different procedure is required to rate this product accurately and in terms the consumer can understand. We recognize that we can test for the Seasonal Energy Efficiency Ratio (SEER) and Heating Seasonal Performance Factor (HSPF) of this unit under existing test procedures, and the unit can be rated accordingly.

However, these procedures do not describe to consumers this heat pump's true measure of efficiency or give credit for the water heating feature. Our recommended procedure, which is compatible with current Department of Energy test procedures for heat pumps and water heaters, is included in the attached documents with supporting technical information. The procedure we are proposing can be used to test any central air conditioner or heat pump that also heats domestic hot water, such as units which include desuperheaters.

The procedure being proposed is similar but not identical to one drafted by NIST at the request of DOE and EPRI. This similarity is in the data gathering sections of each procedure, not in the way that data are applied to establishing systems efficiency ratings.

Specifically, the Carrier procedures take less time, and thus are less costly, yet are felt to provide sufficient data to develop *realistic* system efficiency ratings. The detailed differences between these two procedures are provided as Attachment A.[1]

Specifically, we request a waiver of test procedures to allow the HydroTech 2000 system to be tested and rated with an equivalent Seasonal Energy Efficiency Ratio (SEER) and an equivalent Heating Seasonal Performance Factor (HSPF) so that consumers will have a clear understanding of this product's energy-saving capability.

The Energy Policy and Conservation Act was passed to conserve energy. This product is a quantum leap toward the goals set forth in that legislation. Energy conservation is now even more important as the issue of global warming becomes a matter of national and international concern.

The recent history of heat pump development in the United States reflects a steady progression toward more energy-efficient equipment. The year 1974 brought widespread acknowledgement and acceptance of the single-speed heat pump's energy-conserving abilities.

Two-speed heat pumps in 1978 and variable-speed units in 1988 increased energy conservation further.

Carrier's new unit, the HydroTech 2000 system, now provides the step beyond the energy-saving capability of variable speed. By integrating domestic water heating, which accounts for as much as *one-third* of the energy used in a home, energy-savings can be extended as much as 20% beyond today's variable speed heat pumps.

Consumers will be able to recoup their higher initial investment in HydroTech 2000 quickly through reduced energy bills. But again, they must be able to evaluate this new unit's energy-saving abilities in terms they understand.

The HydroTech 2000 heat pump is a natural progression in the trend toward more energy-efficient equipment. However, we must be able to present this new system's energy efficiency in a way that is familiar and understood by consumers so they can make rational comparisons. Therefore, we are requesting a waiver and the ability to present this unit's efficiency in terms of equivalent SEER and HSPF, which are measurements and comparisons that consumers understand.

Our recommended approach to rating this new system is as follows. Because the HydroTech 2000 unit provides virtually free water heating during the cooling mode, and reduced energy consumption for water heating during the space heating mode and water heating only modes, the resulting energy-use reduction from that of conventional electric resistance heat water heaters should be applied to the unit's space cooling and heating performance.

This is illustrated in Attachment B. In (1) the energy consumption of the HydroTech 2000 and its HSPF and SEER are shown when tested as a heat pump only without its water heating function included. The energy-use values shown for DHW are based on the consumption of a typical household electric resistance water heater. In (2) is shown total annual energy consumption for comfort heating and cooling and water heating when tested as an integrated appliance. Here the reduction in the system's energy consumption (in kWh) is applied to water heating. Therefore, the HSPF and SEER remain the same (9.0 and 14.0 respectively).

In (3), however, the reduction in total energy consumption is applied to heating and cooling and not to water heating. (Note that the KWH of energy consumption for domestic hot water is identical in scenarios 1 and 3.) Therefore, the unit's HSPF becomes 11.0 and its SEER becomes 20.4. These are the numbers that Carrier Corporation believes represent the system's true efficiencies and are appropriate to present to the consumer.

It has been suggested that dollars (annual operating cost) be used as a comparative. No listing showing combined costs of heat pumps and water heaters exists against which the operating cost of the HydroTech 2000 could be compared. Furnace fact sheets have not been effective in comparing total gas and electric operating costs of gas-fired furnaces. AFUE is the generic comparative used to make gas furnace purchase decisions just as SEER and HSPF are the descriptors used to judge comparative efficiency of heat pumps.

As a nation, the United States is becoming increasingly concerned with energy conservation, the burning of fossil fuels, and the greenhouse effect. The nation has also been concerned that American corporations are taking the short-term approach to the future and are not investing for the long term.

Carrier Corporation, through its new HydroTech 2000 unit, is addressing both of these major issues: energy conservation and long-term investment. We request that the Department of Energy recognizes this investment, and therefore we respectfully request a waiver from current DOE test procedures.

A waiver will enable Carrier to present the true energy-saving capability of this new system to the consumer. Without the waiver, consumers will not be afforded the opportunity to understand the actual energy-saving potential of this unit and will be disadvantaged when making their equipment-buying decisions. They will not have useful comparative information to help them make an informed purchasing decision.

Respectfully submitted,

Edward A. Baily,

Vice President, Government & Industry Relations, North American Operations.

Attachment A—Comparison With NIST Draft Report

The testing and rating procedure recommended by Carrier Corporation are similar to those recommended in a recent NIST project which addresses the same type of equipment.

The results of the NIST study have been compiled into a draft report by Brian Dougherty entitled "A Proposed Methodology for Rating Air-Source, Integrated Heat Pump/Water Heating Appliances having Combined and Dedicated Water Heating", which will be published in the near future as a NISTIR report. Although NIST project was done independently, the results are similar to those in the Carrier proposal.

Differences between the two proposals exist in two areas: (1) The type and number of tests, and (2) the methodology for deriving the rating descriptors. The principal differences can be summarized as follows:

1. *Test Points.* NIST, like Carrier, proposes two simulated use tests (dynamic draw tests). NIST proposes tests at ourdoor temperatures of 47F and 82F; Carrier proposes 17F and 67F because we feel that these better cover the wide range of water heating capacities. NIST proposes a single draw, Carrier proposes a more complex 4-draw schedule which is more representative of typical households. For the combined space cooling/DHW mode, Carrier proposes 2 tests which cover the range of operation in this mode, 67F with low compressor speed and 95F with high compressor speed, with a simple interpolation between these two points. NIST added two more intermediate points at 62F in order to cover the shift between desuperheating and full condensing water heating. Although these extra points would better describe the system performance, we do not believe that the net effects would justify the added testing and analysis burden. For the combined space heat/DHW mode, Carrier proposes that one cyclic test and one steady state test be performed at 17F representing system performance at a lower DHW capacity is low (It is higher in all other tests). NIST had proposed these tests at 47F only.

2. *Methodology.* Both proposals use temperature bin type procedures. NIST averages the daily DHW load (converted to BTUs) evenly over a 24 hour period, resulting in a low load (less than 2000 BTU/hour). We feel that this will over-estimate the capabilities of an integrated DHW unit, especially low-capacity, desuperheating-only types, since DHW loads are normally discrete and require quick responses with capacities comparable to 4.5 kW (15356 BTU/hr) tank heater elements. If heat pump equipment has lower capacities, the auxiliary elements will be used. If the load is always low, the use of auxiliary elements will be under-estimated. Carrier proposes splitting the typical day into two parts—an active draw period (all draws, high BTU/hr loads) and a standby period (no draws, low BTU/hr loads).

Concerning rating and reporting descriptors. Carrier proposes the use of equivalent SEER and HSPF factors, which combine the system energy savings accrued in all operating modes, into factors (SEER and HSPF) which are universally accepted and understood by both manufacturers and purchasers of heat pump equipment. By using SEER and HSPF factors, the benefits of the advanced heat pump system are related to the operating modes (space cooling and heating) which account for the major energy costs to the consumer and to which he would be most responsive. The use of overall system efficiency factors (including space heating and cooling and DHW), as proposed by NIST would not effectively signal the true energy savings potential of advanced heat pumps to the consumer because (1) the numbers would be lower than the standard air-to-air SEER and HSPF values for conventional heat pumps, and (2) the use of a completely new efficiency term would confuse both sales persons and consumers to the point that they may be ignored.

ATTACHMENT B.—VARIABLE-SPEED HEAT PUMP SYSTEM ANNUAL PERFORMANCE REPORTING OPTIONS

[DOE Heating Region 4]

	Annual energy use, KWH		HSPF	SEER
	Heating	Cooling		
1. Separate DHW: Space:				
HP	5796	2861	9.0	14.0
StHt	1135			
*DHW	3233	1787		
Total	10164	4648		
2. Fully-Integrated—Option A: Space:				
HP	5796	2861	9.0	14.0
StHt	1135			
*DHW	1960	891		
Total	8891	3752		
3. Fully-Integrated—Option B: Space:				
HP	4523	1965	11.0	20.4
StHt	1135			
*DHW	3233	1787		
Total	8891	3752		

*Based on domestic hot water tank Energy Factor of 0.87, daily hot water usage of 64.3 gallons, 77 F hot water temperature rise (58 to 135 F).

July 31, 1989.

Mr. Edward A. Baily,

Vice President, Government and Industry Operations, North American Operations, Carrier Corporation, P.O. Box 4808, Carrier Parkway, Syracuse, NY 13221

Dear Mr. Baily: This is in response to your May 30, 1989, Application for Interim Waiver, from the Department of Energy (DOE) test procedures for central air conditioners when testing Carrier's HydroTech 2000 model split system central air conditioning heat pumps.

Pursuant to the Energy Policy and Conservation Act, as amended, the Department has prescribed test procedures to measure the energy consumption of certain major household appliances, including central air conditioners. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear in the Code of Federal Regulations at 10 CFR Part 430, Subpart B.

DOE amended the test procedure regulations on September 26, 1980 (45 FR 64108) and November 26, 1986 (51 FR 42823). These provisions allow the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inadequate comparative data. The 1986 amendments provide that an interim waiver from test procedure requirements will be granted by the Assistant Secretary for Conservation and

ATTACHMENT B.—VARIABLE-SPEED HEAT PUMP SYSTEM ANNUAL PERFORMANCE REPORTING OPTIONS

[DOE Heating Region 4]

	Annual energy use, KWH		HSPF	SEER
	Heating	Cooling		
1. Separate DHW: Space:				
HP	5796	2861	9.0	14.0

[1] Attachment A is available upon request from DOE.

Renewable Energy if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. Paragraph 430.27.

Carrier seeks a waiver from the DOE test provisions for central air conditioners and central air conditioning heat pumps for its HydroTech 2000 model heat pump. Carrier requests this relief because, in addition to providing space heating and cooling, the HydroTech 2000 also provides domestic water heating. Carrier claims that while HydroTech 2000 is capable of being tested in accordance with the DOE central air conditioner test procedure for Seasonal Energy Efficiency Ratio (SEER) and Heating Seasonal Performance Factor (HSPF), the test procedure does not give a true representation of the energy consumption of the HydroTech 2000 heat pump. The HydroTech 2000 heat pump provides domestic water heating during the space cooling mode with the heat rejected from the house, which results in reduced energy consumption for water heating, as compared to electric resistance water heating, during the space heating mode and water heating mode. Carrier requests that the water heating energy savings, compared to a conventional water heater, should be applied to the HydroTech 2000's space cooling and heating performance. Carrier requests the allowance to test and rate the HydroTech 2000 with an equivalent SEER and an equivalent HSPF. The test procedure proposed by Carrier is based on the Department's test procedure for central air conditioning heat pumps and would credit the units SEER and HSPF with the reduced energy use for water heating.

DOE has reviewed Carrier's Application for Interim Waiver and agrees that the extant test procedures for central air conditioners and central air conditioning heat pumps evaluates the Carrier HydroTech 2000 heat pump in a manner unrepresentative of its true energy consumption since it does not consider the energy usage due to water heating. However, the Department believes that the remedy proposed by Carrier, adjusted SEER and HSPF, are also not representative of the unit's true energy efficiency. SEER, HSPF, and Energy Factor (EF) are measures of efficiency that result from ratios of energy outputs and inputs for well-defined and separate space cooling, space heating and domestic water heating processes. If it were possible to allocate the input energy separately to the space heating, space cooling and domestic water heating functions, then EF, SEER and HSPF could be calculated for this unit. However, DOE believes this is not possible when two processes occur simultaneously. Therefore, DOE believes that to subtract an energy savings quantity for water heating from the denominator of an output/input ratio that applies to space heating or cooling artificially inflates SEER and AFUE and would not represent the efficiency of the HydroTech 2000 in either mode.

If, based on the evidence included in Carrier's Application for Interim Waiver, DOE were to grant Carrier relief from the central air conditioner test procedure, it would be to waive the test procedure entirely. DOE Believes that this is contrary to Carrier's intent since Carrier requested the waiver to be able to make SEER and HSPF representations. Carrier claims that not being able to make representations of equivalent SEER and equivalent HSPF would "limit their ability to attract consumers." Similarly, DOE believes that granting outright relief from the test procedure would cause further hardships for Carrier since it would be unable to make either SEER or HSPF representations.

Therefore Carrier's Application for Interim Waiver requesting relief from the DOE test procedures for its HydroTech 2000 heat pump is denied.

This determination does not prejudice Carrier's Petition for Waiver on this issue.

Yours truly,

Dr. John R. Berg,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 89-18423 Filed 8-4-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF87-483-002]

AES Barbers Point, Inc.; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

July 31, 1989.

On July 24, 1989, AES Barbers Point, Inc. (Applicant), c/o Paul T. Hanrahan of 1001 North 19th Street, Arlington, Virginia 22209 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Oahu, Hawaii. The facility will consist of two circulating fluidized bed boilers and one extraction/condensing steam turbine-generator. Thermal energy recovered from the facility will be used for heating oil tanks at the Chevron U.S. Inc. refinery. The primary energy source will be coal. Construction of the facility is expected to begin on or about October 1, 1989.

The original application was filed on July 15, 1988, and certification was granted on October 3, 1988 (45 FERC ¶62,002). The recertification is requested due to a change in the net electric power production capacity from 161 megawatts to 189 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18330 Filed 8-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF89-226-000]

The Des Moines Integrated Community Area; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

July 31, 1989.

On July 24, 1989, The Des Moines Integrated Community Area (Applicant), of City Hall, East First and Locust, Des Moines, Iowa 50307 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Des Moines, Iowa. The facility will consist of three gas-fired engine-generators. Thermal energy recovered from the facility will be used for sludge heating for the anaerobic digestion system and building space heating. The primary energy source will be digester gas. The electric power production capacity of the facility will be 1,800, kW.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18331 Filed 8-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1834-000 et al.]

Texas Gas Transmission Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Texas Gas Transmission Corporation

[Docket No. CP89-1834-000]

July 26, 1989.

Take notice that on July 19, 1989, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP89-1834-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon transportation services on behalf of various shippers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas states that the transportation services are proposed for abandonment because the terms set forth in the transportation agreements have expired or have been terminated by mutual agreement or because they were certificated with pregranted abandonment. It is asserted that Texas Gas is able to continue any of the transportation services required under its Order No. 500 blanket certificate. It is stated that the majority of the transportation services were performed on an interruptible basis. It is stated that the shippers involved include Amoco Inc., General Electric Company, Transcontinental Gas Pipe Line Corporation, Stand Energy Corporation, Texaco Inc., Lawrenceburg Gas Transmission Corporation, and CSX Oil and Gas Corporation.

Coment date: August 16, 1989, in accordance with Standard Paragraph F at the end of this notice.

2. Lone Star Gas Company, a Division of ENSERCH Corporation

[Docket No. CP89-1742-000]

July 26, 1989

Take notice that on July 7, 1989, Lone Star Gas Company, a Division of ENSERCH CORPORATION (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP89-1742-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities for the transportation of natural gas in interstate commerce for use on an intrastate basis, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Lone Star states that its facilities proposed to be abandoned (See Appendix) from interstate commerce will subsequently be used by Lone Star Gas Company on an intrastate basis, subject to later partial abandonment from service of certain portions of Lone Star's present Texas intrastate facilities. Lone Star further states that no sales of gas dedicated to interstate commerce under the Natural Gas Act are made into the facilities proposed to be abandoned from interstate commerce, and that the only construction which will be necessary to implement the proposed realignment will be the relocation of the two metering facilities, which will be performed pursuant to a request under the Blanket Authorization to be filed after the issuance of the requested abandonment authorization.

Lone Star states that upon issuance by the Commission of the requested authorization, the gas produced from the Texas sources will be totally consumed by customers of Lone Star Gas Company in Texas and customers of Lone Star Gas Company in Oklahoma will be served with gas from Oklahoma. It is stated that a portion of Lone Star's interstate Oklahoma gas will be transported to Lone Star's customers in Southwest Oklahoma by Lone Star Gas Company (intrastate) pursuant to NGPA section 311(a)(2) authorization. In addition, Lone Star's interstate Oklahoma gas may be transported by Lone Star Gas Company (intrastate) pursuant to NGPA section 311(a)(2) for delivery to Texas markets other than Lone Star's distribution systems.

Lone Star states that upon the issuance of the requested authorization, the interstate pipeline facilities to be abandoned fro interstate commerce under the proposed realignment will function as intrastate pipeline facilities, as ninety-five percent by volume of the gas which will move through the facilities to be abandoned will be intrastate in character, produced from sources located in Texas and consumed by customers located in Texas, and will at no time be carried across a state boundary line. Any interstate gas to be carried in the future by the facilities to be abandoned will be transported pursuant to NGPA section 311(a)(2).

It is further stated that upon issuance by the Commission of the requested authorization, the jurisdictional points of demarcation to be established between Lone Star's intrastate facilities and Lone Star's interstate facilities will be used as points of interconnection where gas can be metered into or out of Lone Star's interstate and intrastate facilities so that proper reports can be filed by each transporter under part 284 of the Commission's Regulations, in accordance with the Commission's expectation as expressed on page 8 of the Order Granting Petition for Declaratory Order issued to Lone Star Gas Company on December 28, 1984, 29 FERC ¶ 61,340 (1984). Lone Star states that issuance by the Commission of authorization for the realignment as proposed in this Application will facilitate the transportation of gas by Lone Star both North and South across the Texas-Oklahoma State Line as the market demand and gas load shifts and will ultimately allow Lone Star to better fulfill the need of its transportation customers.

Lone Star further states that implementation of the proposed realignment will allow Lone Star to abandon and retire from service 33.8 miles of pipeline and its Benjamin compressor station on the present intrastate portion of its facilities. Retirement of these facilities will allow Lone Star to save $5,054,000 in net avoided replacement cost in the next two years, and to avoid $117,000 in repair and maintenance expense and $730,000 in operating and routine maintenance expense (including compressor fuel cost) during a ten year time period. Lone Star also states that after implementation of the proposed realignment, its New York storage facility will be used to one hundred percent capacity for augmenting gas supplies on peak days to the Dallas/Ft. Worth metroplex and through Lines 71 and 72 in the Texas Panhandle area, increasing system reliability and reducing curtailment on the intrastate portion of Lone Star's facilities.

Comment date: August 16, 1989, in accordance with Standard Paragraph F at the end of this notice.

3. Trunkline Gas Company

[Docket No. CP89-1845-000]

July 26, 1989.

Take notice that on July 20, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1845-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an L..terruptible transportation service for TranState Gas

Service Company (TranState), a marketer, under the blanket certificate issued in Docket No. CP88–686–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated May 4, 1989, under its Rate Schedule PT, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for TransState. Trunkline states that it would transport the gas from multiple receipt points as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less fuel and unaccounted for line loss, to Panhandle Eastern Pipe Line Company in Douglas County, Illinois.

Trunkline advises that service under § 284.223(A) commenced June 1, 1989, as reported in Docket No. ST89–4067–000. Trunkline further advises that it would transport 50,000 dt on an average day and 18,250,000 dt annually.

Comment date: September 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. El Paso Natural Gas Company

[Docket No. CP89–1836–000]

July 26, 1989.

Take notice that on July 19, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978 filed in Docket No. CP89–1836–000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Cabot Energy Marketing Corporation (Shipper) under the blanket certificate issued in Docket No. CP88–433–000, all as more fully set forth with the Commission and open to public inspection.

El Paso states that it proposes to transport up to 52,750 MMbtu of natural gas per day for Shipper from any point in El Paso's system to various delivery points in the State of Arizona and on the borderline between Arizona and California. El Paso also states that the estimated daily and annual quantities would be 15,825 MMbtu and 5,776,125 MMbtu, respectively.

El Paso further states it commenced service on June 7, 1989, as reported in Docket No. ST89–3942–000.

Comment date: September 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Gas Transmission Corporation

[Docket No. CP89–1758–000]

July 26, 1989.

Take notice that on June 11, 1989, Texas Gas Transmission Corporation (TGT), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–1758–000 a request pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authority to provide interruptible transportation service for Borden, Inc. (Borden), under Texas Gas' blanket transportation certificate issued by the Commission on September 15, 1988, in Docket No. CP88–686–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

TGT states it will receive the gas principally from various sources in the offshore areas of Texas and Louisiana and the states of Texas, Louisiana, Illinois, Kentucky, Tennessee and Ohio for delivery for the account of Borden in Warren County, Ohio.

TGT proposes to transport on an interruptible basis up to 1,000 MMBtu of gas on a peak day, approximately 300 MMBtu of gas on an average day and an estimated 109,500 MMBtu of gas annually. TGT states the transportation service commenced under the 120-day automatic authorization of § 284.223 (a) of the Commission's Regulations on June 7, 1989, pursuant to a transportation agreement dated December 22, 1988. TGT notified the Commission of the commencement of the transportation service in Docket No. ST89–3933–000.

Comment date: September 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Colorado Interstate Company

[Docket No. CP89–1846–000]

July 26, 1989.

Take notice that on July 20, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado, 80944, filed in Docket No. CP89–1846–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Helmerich & Payne, Inc. (H&P), a producer of natural gas, under CIG's blanket certificate issued in Docket No. CP86–589, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to transport, on an interruptible basis, up to 20,000 Mcf of natural gas per day for H&P pursuant to a transportation agreement dated February 1, 1989, between CIG and H&P. CIG would receive gas from an existing point of receipt on its system in Kearny County, Kansas and redeliver equivalent volumes of gas, less fuel gas and lost and unaccounted-for gas, for the account of H&P in Moore County, Texas.

CIG further states that the estimated average daily and annual quantities would be 10,000 Mcf and 3,650,000 Mcf, respectively. Service under § 284.223 (a) commenced on June 1, 1989, as reported in Docket No. ST89–4117–000, it is stated.

Comment date: September 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Southern Natural Gas Company

[Docket No. CP89–1847–000]

July 26, 1989.

Take notice that on July 20, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP89–1847–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Enron Gas Marketing, Inc. (Enron), a marketer of natural gas, under Southern's blanket certificate issued in Docket No. CP88–316–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport up to 50,000 MMBtu on a peak day, 50,000 MMBtu on an average day, and 18,250,000 MMBtu on an annual basis for Enron, pursuant to a service agreement dated April 28, 1989, under Southern's rate schedule IT. Southern states that it will receive gas at various receipt points in offshore Texas, offshore Louisiana, Texas, Louisiana, Mississippi, and Alabama for delivery to pipeline interconnections in Refugio County, Texas. It is further stated that transportation of natural gas for Enron commenced on May 24, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88–3906.

Comment date: September 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Panhandle Eastern Pipe Line Company

[Docket No. CP89–1820–000]

July 26, 1989.

Take notice that on July 17, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1820–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of V.H.C. Gas Systems, L.P. (V.H.C.), under Panhandle's blanket certificate issued in Docket No. CP86–585–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle requests authorization to transport, on an interruptible basis, up to a maximum of 200,000 dekatherms of natural gas per day for V.H.C. from receipt points located in Colorado, Kansas, Oklahoma and Texas to a delivery point located in Reno County, Kansas. Panhandle anticipates transporting 100,000 dekatherms on an average day and an annual volume of 36,500,000 dekatherms.

Panhandle states that the transportation of natural gas for V.H.C. commenced June 16, 1989, as reported in Docket No. ST89–4135–000, for a 120–day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Panhandle in Docket No. CP86–585–000.

Comment date: September 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Northern Natural Gas Company

[Docket No. CP89–1842–000]

July 26, 1989.

Take notice that on July 19, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77251, filed in Docket No. CP89–1821–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to increase the capacity of its existing Grundy Center, Iowa, town border station delivery point for service to Peoples Natural Gas Company, Division of Utilicorp United Inc. (Peoples), under its blanket authorization issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to increase the capacity of the Grundy Center delivery point by 60 Mcf of natural gas per hour in order to serve the expanded grain drying operations of Lynks Hybrid, Inc., Peoples' resale customer. Northern proposes to deliver up to 1,132 Mcf on a peak day and 45,785 Mcf on an annual basis to Peoples. Northern also states that its deliveries to Peoples would be within the firm entitlements authorized for Peoples on April 7, 1989, in Docket No. CP89–677–000.

Comment date: September 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Transwestern Pipeline Company

[Docket No. CP89–1801–000]

July 26, 1989.

Take notice that on July 12, 1989, Transwestern Pipeline Company (Transwestern), P.O. 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–1801–000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for V.H.C. Gas Systems, L.P. (V.H.C.), a marketer, under Transwestern's blanket certificate issued in Docket No. CP88–133–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transwestern states that pursuant to a transportation agreement dated May 19, 1989, it proposes to receive up to 300,000 dt equivalent of natural gas per day from V.H.C. at specified points located in the states of Texas, Oklahoma, New Mexico, and Arizona and redeliver the gas at other specified points in the same four states. Transwestern estimates that the peak day volumes, average day volumes, and annual volumes would be 300,000 dt equivalent of natural gas, 225,000 dt equivalent of natural gas, and 109,500,000 dt equivalent of natural gas, respectively. It is stated that on June 2, 1989, Transwestern commenced a 120–day transportation service for V.H.C. under § 284.223(a) as reported in Docket No. ST89–3939–000.

Transwestern further states that no facilities need be constructed to implement the service. Transwestern states that the agreement provides for a primary term of six years and would continue on a month-to-month basis unless terminated at any time subsequent to the primary term by either party upon thirty days written notice to the other party. Transwestern proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS–1.

Comment date: September 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Lone Star Gas Company a Division of ENSERCH Corporation

[Docket No. CP89–1743–000]

July 26, 1989.

Take notice that on July 7, 1989, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP89–1743–000 a request under section 7(b) of the Natural Gas Act for permission and approval to partially abandon a transportation service authorized by the Commission in Docket No. CP87–190–000, as amended, all as more fully set forth in the application on file with the Commission and open to public inspection.

Lone Star states that it is concurrently filing an application for permission and approval to abandon certain facilities from interstate commerce for continued use on an intrastate basis. Lone Star states that facilities proposed to be abandoned in this related application include portions of Lone Star's Lines T and A in Texas, through which it transports gas for Coastal States Gas Transmission Company (Coastal) as authorized in Docket No. CP87–190–000, as amended. Lone Star states that upon issuance of the authorization to abandon facilities in the related application, transportation by Lone Star for Coastal through Lone Star's Lines T and A would be performed on an intrastate basis pursuant to NGPA section 311(a)(2).

Comment date: August 16, 1989, in accordance with Standard Paragraph F at the end of this notice.

12. Northwest Pipeline Corporation

[Docket No. CP89–1740–000]

July 26, 1989.

Take notice that on July 7, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–1740–000, pursuant to sections 7(b) and 7(c) of the Natural Gas Act for an order granting: (1) A certificate of public convenience and necessity authorizing revisions in its firm sales services for certain of its existing Rate Schedule ODL–1 and DS–1 sales customers; and (2) permission and approval to partially abandon its existing firm sales service to Greeley Gas Company; all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states that it presently is authorized to provide firm jurisdictional gas sales service for fifteen customers pursuant to Rate Schedule ODL–1 and DS–1 service agreements which

terminate effective October 31, 1989. Northwest states that as a result of negotiations for replacement firm sales agreements, in conjunction with an additional sales to transportation conversion opportunity, those customers not electing to convert 100 percent to firm transportation have entered, or indicated an intent to enter, into new long-term ODL–1 or DS–1 sales service agreements with Northwest which are intended to supercede the currently effective firm sales service agreements as of October 1, 1989.

Northwest states that the contract demands to be effective October 1, 1989 under Northwest's firm sales service agreements with its ODL and DS sales customers and under corresponding new or existing firm transportation service agreements with those same customers as follows:

Customer name	Sales contract demand	Transportation contract demand
ODL–1 Customers:		
Cascade Natural Gas Corporation	52,000	154,123
CP National Corporation	0	30,871
Intermountain Gas Company	100	112,924
Northwest Natural Gas Company	6,000	280,044
Southwest Gas Corporation	0	126,563
Washington Natural Gas Company	150,000	156,733
Washington Water Power Company	30,000	103,270
DS–1 Customers:		
City of Buckley	1,900	569
City of Ellensburg	900	5,100
City of Enumclaw	1,350	1,222
Greeley Gas Company	2,000	—
Rocky Mountain Gas Company	0	893
Utah Gas Company	1,267	5,146
Western Gas Supply Company	3,645	—
Wyoming Industrial Gas Company	750	2,000
Total	249,932	979,458

Northwest avers that besides the contract demand levels, there are six substantive differences between the old and new sales service agreements with respect to the service provisions thereunder; namely (1) extension of the term of service, (2) addition of a renegotiation provision, (3) clarification that Maximum Daily Quantity (MDDQ) applies to the sum of firm sales and transportation volumes, (4) consolidation of the delivery point exhibits into one exhibit per agreement and, in some cases, reallocation of MDDQ among delivery points, (5) establishment of a transportation service within contract demand service and (6) establishment of a Gas Inventory Charge (GIC) mechanism.

Northwest states that the transportation within contract demand provision incorporated in Article I of the new service agreements grants the customer the right to utilize the difference between its sales contract demand and its daily sales nomination under the new service agreement for firm transportation. Northwest explains that subject to availability of capacity, this firm transportation within contract demand service is available from any transportation receipt point on Northwest's system to the delivery points listed on the new sales service agreement. It is explained that although this firm transportation within contract demand service is to be provided under the new sales service agreement instead of under a separate TF–1 transportation service agreement, it still will be subject to the Rate Schedule TF–1 terms and conditions to the extent such terms and conditions are not superceded or modified by the new sales service agreement. It is further explained that to comply with the provisions in Rate Schedule TF–1 concerning receipt point flexibility, Northwest will require its sales customers to forecast by the twenty-fifth of each month which receipt points and volumes are anticipated for nomination as transportation within contract demand during the following month. Upon evaluating the availability of firm capacity at the forcasted points, Northwest would provide any required notice to the customer and affected interruptible shippers, it is explained, Northwest states that it does not propose to accept nominations for transportation within contract demand service that exceed the monthly forecasts. Northwest asserts that the most significant Rate Schedule TF–1 terms and conditions which are overridden by the new sales service agreement are the rate provisions. Northwest further asserts the new sale service agreements specify that firm transportation within sales contract demand service will be subject to a rate equal to the commodity charge for transportation under Northwest's Rate Schedule TI–1.

Northwest further states that the new service agreements specifically address the GIC issue by establishing a mutually agreeable GIC procedure as an integral part of the service agreements. Exhibit B to each new service agreement presently incorporates the terms and conditions of the GIC which Northwest proposed in Docket No. CP86–578 and Article V of the service agreements provides for the implementation of a GIC under either of two potential scenarios depending upon the results of Northwest's pending GIC proceeding in Docket No. CP86–578. Namely: (a) If the Commission approves a GIC in Docket No. CP86–578 by October 1, 1989 which is acceptable to both Northwest and its sales customers, then Exhibit B to the new service agreements will be revised to incorporate the terms and conditions of such GIC and the GIC will be implemented under the service agreement in accordance with the Commission's approval in Docket No. CP86–578; or (b) if the Commission either does not approve a GIC in Docket No. CP86–578 by October 1, 1989 or else approves a GIC which is not acceptable to either Northwest or its customers, then the GIC provisions set forth in Exhibit B to the service agreements will be revised to reflect a minimum annual exemption level based upon 58%, instead of 60% of the customer's contract demand and to impose a minimum annual take requirement under each service agreement. Northwest states that such revised GIC would be implemented under the individual service agreements in accordance with Exhibit B and the Commission's approval in this proceeding. The mutually agreed upon minimum annual take requirement under the service agreement in this case is based upon Northwest's minimum annual purchase obligations from its suppliers and initially would require each customer to purchase gas at an annual load factor based upon 26% of the customer's daily contract demand, but such load factor would be reduced commensurately with any future reductions in Northwest's minimum annual take obligations, it is explained.

Northwest requests the Commission to grant a certificate of public convenience and necessity authorizing it to provide a charge for all the services covered by its new ODL–1 and DS–1 sales service agreements effective October 1, 1989. Such services include:

(1) Continuation of firm sales up to the contract demand levels under the respective service agreements, with such sales to be made at the delivery points and subject to the reallocated delivery point MDDQ's as set forth on the new Exhibit A to the respective service agreements.

(2) Firm transportation within contract demand for each customer up to a volume equal to the difference between the customer's respective sales contract demand and daily sales nomination, subject to capacity availability.

(3) Maintaining gas supply inventory at a level sufficient to enable Northwest to reliably serve its customers at contract demand sales levels subject to the GIC provisions referenced in the new sales service agreements.

Northwest states that the rates which it proposes to apply to services under the new sales service agreements will be set forth on Sheet No. 10 of Volume No. 1 of Northwest's FERC Gas Tariff. Northwest states that the Rate Schedule ODL–1 and DS–1 rates will include the Demand-1, Demand-2 and commodity charges which historically have been applicable to such sales services. Northwest further states that in addition, the ODL–1 and DS–1 rates now will include a GIC component to be applied to deficiency sales volumes; i.e. the difference between actual gas purchases and the customer's minimum annual exemption level. It is explained that the initial GIC rate is proposed to be 30.12 cents per MMBtu. Finally, Northwest explains that the ODL–1 rates also now will include a firm transportation within contract demand charge, equivalent to Northwest's Rate Schedule TI–1 rate, which will be applied to firm transportation volumes which are nominated by the customer and delivered by Northwest as transportation within sales contract demand. Northwest explains that the initial rate for this service component would be 21.03 cents per MMBtu, assuming timely Commission approval of the TI–1 rate reflected in the offer of settlement filed by Northwest in Docket No. RP88–47 on March 31, 1989.

Northwest also requests the issuance of an order permitting and approving the partial abandonment of firm Rate Schedule ODL–1 sales service to Greeley in the amount of 3,323 Dt per day of firm sales contract demand, effective October 1, 1989, which represents the portion of Greeley's existing contract demand which it declined to convert to firm transportation.

Northwest avers that it and its customers have freely negotiated the subject new sales service agreements which provide for the future levels of sales service desired by Northwest's customers subject to mutually acceptable terms and conditions. Northwest further avers that establishing these continuing commitments for specific quantities of its system supply gas will allow Northwest to complete the realignment of its gas supplies to most efficiently match its obligations to serve the needs of it customers. In particular, Northwest now will be able to complete its negotiations for an appropriate gas purchase contract with its Canadian supplier to replace the existing contract which expires October 31, 1989.

Further, Northwest avers that the firm transportation within contract demand provision of Northwest's new firm sales service agreements ensures customer flexibility to swing between sales gas and transportation gas to meet requirements. Northwest states that basically, the customers will be free to make gas purchase decisions based upon the comparative prices of gas; i.e. the purchase price of transportation gas plus Northwest's firm transportation within contract demand charge versus Northwest's ODL–1 commodity sales rate which includes both a purchased gas cost component and a system transmission cost component.

Finally, Northwest avers that the GIC provisions incorporated in its new sales service agreements have been freely negotiated and agreed upon by Northwest and its affected customers as a settlement of the basis upon which Northwest can continue to provide a merchant service and should be deemed to be in the public interest since they are consistent both with the Commission's Notice of Proposed Policy Statement in Docket No. PL89–1–000 and the principles elucidated in 18 CFR 2.105. Northwest states that implementation of the GIC provisions will both encourage customer behavior conducive to minimizing take-or-pay incurrence by Northwest and provide an equitable mechanism for Northeast to be compensated for take-or-pay charges it may incur as a result of fulfilling its obligations to maintain sufficient gas supply to sell gas at contract demand levels while its customers have the flexibility to eschew sales gas, to a great extent, for transportation gas.

Comment date: August 16, 1989, in accordance with Standard Paragraph F at the end of this notice.

13. Tennessee Gas Pipeline Company

[Docket No., CP89–1741–000]

July 26, 1989.

Take notice that on July 7, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–1741–000 an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon certain gas supply facilities, located in West Cameron Block 69, offshore Louisiana, and that the Commission waive § 157.216(a)(1) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.216(a)(1), to allow Tennessee to utilize its blanket certificate to permit future automatic abandonment of unspecified gas supply facilities for any wells that have been plugged and abanonded as documented by reports filed with the Department of Interior or state commissions, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that the facilities it proposes to abandon in West Cameron Block 69 originally were required and installed pursuant to a certificate issued in Docket No. CP76–151 for the measurement and connection of gas purchased by Tennessee from various producers at the wellhead. Tennessee further states that the subject facilities are presently idle, since they are still connected to wells that have been plugged and abandoned. Tennessee indicates that although the producers have ceased the production and sale of gas to Tennessee at each of the wells, the producers have not received, or even requested Commission authorization permitting the abandonment of their sale to Tennessee. Tennessee further indicates that without evidence of Commision approved abandonment issued to the producer, Tennessee is unable to utilize its blanket certificate, issued in Docket No. CP82–413–000, and § 157.216(a)(1) of the Regulations to abandon and remove the facilities.

Tennessee submits that the Commission can accept the respective Department of Interior reports or the states' plugging and abandonment reports as an appropriate basis for Tennessee to abandon the idled gas supply facilities in the future.

Comment date: August 16, 1989, in accordance with Standard Paragraph F at the end of this notice.

14. Texas Eastern Transmission Corporation

[Docket No. CP89–1817–000]

July 26, 1989.

Take notice that on July 14, 1989, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252–2521, filed in Docket No. CP89–1817–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon by transfer to Texas Eastern Oil Company (TEOC), certain production properties and jurisdictional services (Properties), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern requests authority to abandon by transfer to TEOC certain Properties located in Texas, Virginia, and West Virginia in which Texas Eastern owns a working interest and

takes the gas for use as system supply. Texas Eastern alleges that current net production from such Properties is less than 2 MMcf per day. Texas Eastern proposes to assign its interest in the Properties to TEOC upon receipt of the required regulatory approval. It states that Texas Eastern and TEOC have entered into contracts for the purchase and sale of natural gas produced from the Properties. TEOC proposes to eventually sell the bulk of these Properties to an entity or entities whose primary business is the exploration and production of oil and gas.

It is alleged that Texas Eastern also intends to offer for sale certain interests in oil and gas leases properties located in Arkansas, New Mexico, Texas, Louisiana, Oklahoma, and Federal offshore areas, in which Texas Eastern has royalty interests. It is averred that if the Commission believes abandonment authorization is necessary prior to sale of these interests, Texas Eastern requests such authorization. Texas Eastern also proposes to offer for sale certain unencumbered mineral estates and/or surface estates located in Louisiana, Pennsylvania, and Texas. There are no reserves, production or revenue associated with these properties; therefore Texas Eastern believes abandonment authorization is not necessary. If however, the Commission believes abandonment authorization is necessary, prior to the sale of these properties, Texas Eastern requests such authorization in this filing.

Texas Eastern alleges that it's jurisdictional customers would not be adversely affected by the proposal. It is claimed that the proposed abandonment would not result in any interruption, reduction or termination of gas service currently provided to Texas Eastern's customers. The same service that Texas Eastern has provided with respect to the Properties would be provided by TEOC. It is asserted that even eventual sale of the Properties, subject to any necessary abandonment authorization, would not adversely effect Texas Eastern's customers. The Properties would be sold subject to existing gas purchase contracts that dedicate the gas to Texas Eastern under the terms of each contract. The remaining net deliverability and reserves on these Properties are very small, estimated at January 1, 1989, to be approximately 1.7 MMcf per day and 3.1 Bcf in total. It is asserted that these Properties account for less than one tenth of one percent of Texas Eastern's jurisdictional reserves.

Comment date: August 16, 1989, in accordance with Standard Paragraph F at the end of this notice.

15. Arkla Energy Resources, Division of Arkla, Inc.

[Docket No. CP89-1753-000]

July 26, 1989.

Take notice that on July 10, 1989, Arkla Energy Resources (AER), a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP89-1753-000, an application pursuant to section 7(b) of the Regulations and Rule 207 of the Commission's Rules of Practice and Procedure, for abandonment authority to convey to R. Lacy, Inc. (Lacy) or its designee certain existing compression and pipeline facilities and appurtenances in the Beckville Field in Panola County, Texas, and for a declaratory order confirming that Lacy's ownership will not be subject to the Commission's jurisdiction, all as more fully set forth in the request on file with the Commission and open to public inspection.

AER proposes to abandon and transfer to Lacy the following facilities:

(a) AER's Line ST-12 from milepost 0.04 to 6.88
(b) AER's Beckville Compressor Station, including one 1,300 h.p. and two 700 h.p. compressors
(c) eleven gathering lines
(d) three field compressors
(e) all appurtenances thereto.

AER states that the abandonment will not impair any services originally performed from the transfer facilities, as Lacy would continue the gathering and delivery of the Beckville Field gas committed to AER.

AER also states that its customers would benefit from the reduction in AER's rate base, and that Lacy would be able to integrate its operations with the inclusion of the additional facilities.

AER further requests that the Commission declare Lacy's ownership and operation of the acquired facilities non-jurisdictional, as the size, configuration and the proposed use of the acquired facilities would be the gathering of natural gas.

Comment date: August 16, 1989, in accordance with Standard Paragraph F at the end of this notice.

16. Columbia Gulf Transmission Company

[Docket No. CP89-1606-000]

July 26, 1989.

Take notice that on July 13, 1989, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP89-1606-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon partially a transportation service for Northern Natural Gas Company, division of Enron (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gulf states that it was authorized in Docket No. CP77-8 to transport, on a firm basis, up to 2,000 Mcf of natural gas per day from Northern's Eugene Island, offshore Louisiana, Block 332 volumes to a delivery point in Acadia Parish, Louisiana. It is asserted that Northern has informed Columbia Gulf that Northern no longer has sufficient volumes in its Eugene Island gas supply to meet the contract demand. It is further asserted that Northern wants to terminate the present agreement effective January 1, 1990, and replace it with a short-term contract for a daily transportation volume of 1,000 Mcf. Columbia Gulf requests in Docket No. CP89-1606-000 that it be authorized to abandon the transportation of 1,000 Mcf of gas per day for Northern. It is explained that Columbia Gulf was also authorized in Docket No. CP77-8 to transport gas from Northern's West Cameron, offshore Louisiana, supply, and that this portion of the transportation service would not be affected.

Comment date: August 16, 1989, in accordance with Standard Paragraph F at the end of this notice.

17. Steuben Gas Storage Company

[Docket No. CP89-1684-000]

July 26, 1989.

Take notice that on June 26, 1989, Steuben Gas Storate Company (Applicant) 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1684-000, pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, and § 157.6 of the Federal Energy Regulatory Commission's Regulations thereunder an application for a certificate of public convenience and necessity authorizing Applicant to develop, construct, and operate an underground gas storage field and related facilities and to render firm gas storage service to certain distribution companies located in the states of Massachusetts, New Jersey, and South Carolina, all as more fully set forth in the applciation which is on file with the Commission and open to public inspection.

Applicant requests, among other things, authority to provide a total of 6,200 MMcf annually of natural gas storage service to Elizabethtown Gas Company, Commonwealth Gas Company, City of Union, New Jersey Natural Gas Company, and Public Service Electric and Gas Company (Customers), all of which have signed Gas Storage Agreements with Steuben, according to Steuben. Applicant proposes to provide two types of firm storage service, 90-day and 110-day service. The quantity and type of natural gas storage service proposed, is as follows:

Customers	Maximum storage volume (MMcf)	Maximum daily withdrawal quantity (Mcf)	Maximum daily injection quantity (Mcf)
90-Day Service:			
Elizabethtown Gas Company	500	5,556	3,571
New Jersey Natural Gas Company	1,000	11,111	7,143
City of Union	45	500	321
Sub-Total	1,545	17,167	11,035
110-Day Service:			
Public Service Electric and Gas Company	3,405	30,955	24,321
Commonwealth Gas Company	1,250	11,364	8,929
Sub-Total	4,655	42,319	33,250
Total	6,200	59,486	44,285

Applicant states that it has entered into storage agreements with Customers which provide that during the Summer Period (April 1-October 31), Customers will cause CNG Transmission Corporation (CNG) to deliver to Applicant for storage a volume of natural gas no greater than the Maximum Injection Quantity, plus a volume of gas for compressor fuel usage equal to 1.5% of the volumes delivered, at the proposed interconnection of the facilities of Applicant and CNG to be constructed in the Town of Woodhull, Steuben County, New York (Woodhull). The storage agreements further provide that during each Winter Period (November 1-March 31), Applicant will redeliver to CNG at Woodhull such daily volumes as Customers may request, up to the Maximum Daily Withdrawal Quantity, less a volume of gas for compressor fuel usage equal to 0.6% of the volumes requested to be withdrawn. For all customers except Commonwealth Gas Company (Com Gas), CNG will redeliver equivalent volumes to Transcontinental Gas Pipe Line Corporation (Transco) near Leidy, Pennsylvania for ultimate delivery to the respective customers. Additionally, CNG will redeliver equivalent volumes of gas on behalf of Com Gas to Tennessee Gas Pipeline Company (Tennessee) near Morrisville, New York for ultimate redelivery to Com Gas.

The Applicant states that the primary term of the storage agreement between Applicant and Customer is twenty (20) years, commencing April 1, 1991, or on such later date when Applicant shall notify Customers that its storage facilities are ready to accept deliveries of gas for storage.

Applicant states that in the event that during any Winter Period it was unable to tender for redelivery volumes of gas which a Customer requested within the Customer's contract entitlements; unless Customer, Applicant and transporters are able to agree upon and effect make-up of such deficiency during the balance of such Winter Period, then Customer would be entitled to a credit against future monthly charges. Applicant states that this credit would be equal to the sum of all such day's deficiencies which are not made up, multiplied by a rate per Mcf equivalent to the total of the Deliverability Rate and the Storage Capacity Rate.

According to Applicant, the storage agreements also allow for delivery and redelivery of volumes of gas in excess of a Customer's Maximum Storage Volume during any contract year and for the delivery and redelivery of excess daily injection and withdrawal volumes if Applicant has sufficient capacity to provide such overrun service. In addition, Applicant states, the storage agreements provide the option to inject gas during the Winter Period, and to withdraw gas during the Summer Period.

The Applicant states that as necessary, CNG and Transco would file separate applications with the FERC for authority to construct and operate any additional facilities required to interconnect with Applicant, and for authority to provide firm transportation service on behalf of any Customer requesting firm transportation service. Among the Customers, Com Gas, according to Applicant, currently intends to have its storage injection gas delivered to CNG, and its storage withdrawal gas received from CNG and redelivered to Com Gas by means of interruptible transportation service provided by Tennessee under Tennessee's "open access" interruptible transportation rate schedule. Applicant states also that Tennessee may, at some point in the future file an application with the FERC to obtain authorization to construct and operate the facilities necessary to provide the storage transportation services for Com Gas on a firm basis.

In order to provide the storage services proposed herein, Applicant proposes to acquire the property rights and interests necessary to develop and operate the Adrian Gas Field located in the Town of Canisteo, Steuben County, New York as an underground natural gas storage field with a working storage capacity of 6,200 MMcf. The storage services proposed herein will necessitate the construction of certain new facilities at a total estimated cost of $27,873,000. Accordingly, Applicant proposes to convert the one existing well to an injection/withdrawal well, drill and complete 8 new injection/withdrawal wells and one new observation well, install the necessary gathering system, construct a 2,700 horsepower class compressor station with all ancillary facilities and, install approximately 13.9 miles of 12' diameter pipeline to connect the storage field to the existing transmission pipeline of CNG. To provide base gas to operate the storage field, Applicant states it will purchase the remaining native gas in the field and inject an additional 1,658 MMcf of gas, 50% of which would be acquired from CNG at a price equal to its Rate Schedule SCQ.

As consideration for providing these natural gas storage services, Customers will pay Applicant the monthly charges set forth in section 8.1 of Article VIII of the storage agreements. Such charges include a monthly Deliverability Rate of $4.6146 per Mcf of Storage Demand Withdrawal Quantity, a Monthly Capacity Rate of $.0443 per Mcf of

Maximum Storage Volume, and injection rate of $.0032 per Mcf and a withdrawal rate of $.0032 per Mcf. These are the initial rates proposed by Storage Company. Furthermore, Storage Company has agreed to limit its ability to change these proposed initial rates by limiting the amount of an increase for which it may file should certain construction costs increase over the construction costs projected in this application.

Applicant submits that the storage service proposed to be provided herein is and will be required by the present and future public convenience and necessity. As demonstrated by their executing storage agreements with Applicant, the customers need additional storage service to meet their various peak day and winter period requirements during the 1991–1992, and subsequent, heating seasons. The storage services proposed by this application would permit Applicant's customers to serve growing, high priority markets, in the future and potentially replace more expensive alternative fuels. Moreover, the storage services proposed will give Applicant's customers added flexibility to enable them to manage the acquisition of natural gas supplies to take advantage of newly available options for the purchase of natural gas resulting from the Commission's current policies.

Comment date: August 16, 1989, in accordance with Standard Paragraph F at the end of this notice.

18. Transwestern Pipeline Company

[Docket No. CP89–1852–000]

July 27, 1989.

Take notice that on July 24, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–1852–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Cabot Energy Marketing Corporation (Cabot), a marketer, under the blanket certificate issued in Docket No. CP88–133–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transwestern states that pursuant to a transportation service agreement dated September 12, 1988, under its Rate Schedule ITS–1, it proposes to transport up to 300,000 MMBtu per day equivalent of natural gas for Cabot. Transwestern states that it would transport the gas from various receipt points in Oklahoma, New Mexico and Texas, as shown in Exhibit "A" of the transportation agreement, and would delivery the gas to delivery points specified in Exhibit "B" of the agreement.

Transwestern advises that service under § 284.223(a) commenced May 24, 1989, as reported in Docket No. ST89–4177–000 (filed July 13, 1989). Transwestern further advises that it would transport 225,000 MMBtu on an average day and 109,500,000 MMBtu annually.

Comment date: September 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Columbia Gas Transmission Company

[Docket No. CP89–1840–000]

July 27, 1989

Take notice that on July 19, 1989, Columbia Gas Transmission Company, (Columbia) Post Office Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP89–1840–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to change the location of a delivery point to Orwell Natural Gas Company (Orwell), under its blanket authorization issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection

Columbia requests authority to change the location of a delivery point authorized in Docket No. CP88–154–000, 46 FERC ¶61,340, to Orwell from west of Mesopotamina in Trumbull County, Ohio, to an existing pipeline purchased by Orwell near the town of West Farmington and interconnecting with Columbia's Line FV–341 in Trumbull County, Ohio. It is stated that Orwell has recently completed negotiations to purchase an existing 6.9 mile of 4-inch pipeline in Trumbull County, Ohio, and the currently authorized interconnection is no longer required. It is alleged that the purchase by Orwell requires that Columbia relocated its authorized interconnection with Orwell.

It is averred that as a result of Orwell's purchase of the existing pipeline, Orwell has constructed approximately one and one-half miles of pipeline instead of 6.9 miles, thus resulting in less environmental disturbance by Orwell. It is further averred that the relocated delivery point of Columbia would require similar material and installation costs as originally authorized in Docket No. CP88–154–000.

Columbia asserts that it would not construct its interconnecting facilities for the project until such time as Columbia obtains all clearances from the necessary regulatory agencies that its facilities would be constructed in compliance with the environmental requirements of § 157.206(d) of the Commission's regulations.

It is alleged that the quantity of natural gas to be provided through the new delivery point location is within Columbia's currently authorized level of service and within existing peak day and annual proposed seasonal entitlements as stated in Docket No. CP88–154–000. The sales to be made through the proposed point of delivery would be under Columbia's currently effective service agreement under Rate Schedule SGS.

Columbia asserts that there would be no impact on it's existing peak day and annual obligations to customers as a result of the construction and operation of the proposed change in location for a delivery point to Orwell.

Comment date: September 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Texas Gas Transmission Corporation

[Docket No. CP89–1861–000]

July 27, 1989.

Take notice that on July 25, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–1861–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for EnMark Gas Corporation (EnMark), under Texas Gas' blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to the public inspection.

Texas Gas proposes to transport, on an interruptible basis, up to 50,000 MMBtu equivalent of natural gas on a peak day, 25,000 MMBtu equivalent on an average day and 9,125,000 MMBtu equivalent on an annual basis for EnMark. It is indicated that Texas Gas would receive the gas for EnMark's account at designated points on Texas Gas' system in various states and offshore Texas and Louisiana and would deliver equivalent volumes at designated points on its system in Warren County, Ohio.

It is explained that the service commenced June 15, 1989, under the automatic authorization provisions of Section 284.223 of the Commission's Regulations, as reported in Docket No. ST89–4056. Texas Gas indicates that no new facilities would be necessary to provide the subject service.

Comment date: September 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

21. CNG Transmission Corporation

[Docket No. CP89–1864–000]

July 27, 1989.

Take notice that on July 25, 1989, CNG Transmision Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP89–1864–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to replace an existing gas supply facility, CNG's Line No. TL–294, by constructing in the same ditch and operating a replacement Line No. TL–294, under CNG's blanket certificate issued in Docket No. CP82–537–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully described in the request which is on file with the Commission and open to public inspection.

CNG states that Line No. TL–2194, located in Doddridge and Lewis Counties, West Virginia, is an integral part of CNG's gas supply facilities in the Appalachian supply area of West Virginia and, because of physical deterioration along the entire length of the line, CNG had to take TL–294 out of service which created a force majeure situation for Appalachian producers in West Virginia.

CNG proposed to replace the 18.6 miles of physically deteriorated 16-inch Line No. TL–294 with 20-inch pipeline because 16-inch pipeline appears to be an obsolete size in the natural gas transmission industry. CNG asserts that a 20-inch replacement line will provide additional flexibility for TL–294 and the gas supply facilities TL–294 interconnects with in central West Virginia. CNG estimates the total cost to replace TL–294 to be $9,725,000.

Comment date: September 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. Tennessee Gas Pipeline Company

[Docket No. CP89–1809–000]

July 27, 1989.

Take notice that on July 14, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–1809–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Entrade Corporation (Entrade), a marketer, under Tennessee's blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all or more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that it would transport the natural gas for Entrade from various receipt points located offshore Louisiana, offshore Texas, and the states of Texas, Louisiana, Mississippi, Pennsylvania, Kentucky, New York and Alabama. Tennessee further states that the natural gas would be redelivered to various interconnections between Tennessee and certain local distribution companies and pipelines in the states of New Hampshire, Vermont, Massachusetts, New York, Connecticut, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Illinois, Kentucky Tennessee, Wisconsin, North Carolina, South Carolina, Missouri, Michigan, Mississippi, Alabama and Georgia.

Tennessee states that this transportation service would replace terminated services for Entrade which were authorized under section 311 of the NGPA. Tennessee further states that the maximum daily quantity that would be transported for Entrade would be 1,310,000 dekatherms per day equivalent of natural gas.

Tennessee indicates that service under § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)) commenced on May 22, 1989, as reported in Docket No. ST89–4153.

Comment date: September 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. Tennessee Gas Pipeline Company

[Docket No. CP89–1838–000]

July 27, 1989.

Take notice that on July 19, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed with the Commission in Docket No. CP89–1838–000 an application pursuant to section 7(b) of the Natural Gas Act, requesting permission and approval to abandon an interruptible transportation service performed by Tennessee for, *inter alia*, United Gas Pipe Line Company (United), all as more fully set forth in the application which is open to public inspection.

Tennessee states that the Commission order issued January 21, 1980, in Docket No. CP79–477 (10 FERC ¶ 61,068) authorized it to transport up to 30,000 Mcf of natural gas per day produced in West Cameron Block 222, offshore Louisiana, through Tennessee's existing facilities commencing at West Cameron Block 192 to various delivery points for Northern Natural Gas Company, a Division of InterNorth, Inc.; Texas Eastern Transmission Corporation; Transcontinental Gas Pipe Line Corporation; and United Gas Pipe Line Company (United). Tennessee received authorization to transport up to 7,500 Mcf of natural gas per day for each of the four shippers.

Tennessee further states that the Commission order issued September 18, 1985, in Docket No. CP79–477–002 (32 FERC ¶ 61,392) amended Tennessee's transportation authorization, *inter alia*, to reduce the daily natural gas volumes it transports for United from 7,500 Mcf to 2,000 Mcf. It is explained that United notified Tennessee by letter on February 15, 1989, of its intent to terminate their August 31, 1979, transportation agreement (filed as Tennessee's FERC Rate Schedule T–101). It is stated that Tennessee agreed by letter on June 22, 1989, to terminate its transportation service for United, effective upon receiving permission and approval from the Commission.

Comment date: August 17, 1989 in accordance with Standard Paragraph F at the end of the notice.

24. Texas Eastern Transmission Corporation

[Docket No. CP–89–1855–000]

July 27, 1989.

Take notice that on July 24, 1989, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP89–1855–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Elf Aquitaine Operating, Inc. (Elf Aquitaine), a producer, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89–95–000, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern states that pursuant to a transportation agreement dated May 1, 1989, under its Rate Schedule IT–1, it proposes to transport up to 50,000 MMBtu per day equivalent of natural gas for Elf Aquitaine. Texas Eastern

states that it would transport the gas from an existing receipt point on its system in West Cameron Block 522, offshore Louisiana, and would deliver the gas, less applicable shrinkage, to Natural Gas Pipeline Company of America for the account of Elf Aquitaine at an existing delivery point on its system in West Cameron Block 543, offshore Louisiana.

Texas Eastern advises that service under § 284.223(a) commenced May 16, 1989, as reported in Docket No. ST89–3801–000. Texas Eastern further advises that it would transport 50,000 MMBtu on an average day and 18,250,000 MMBtu annually.

Comment date: September 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

25. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–1856–000]

July 27, 1989.

Take notice that on July 24, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89–1856–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Transco Energy Marketing Company (Temco), under Transco's blanket certificate issued in Docket No. CP88–328–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco requests authorization to transport, on an interruptible basis, up to a maximum of 200,000 dekatherms of natural gas per day for Temco from receipt points located in Louisiana, Offshore Louisiana, Texas, Offshore Texas, Alabama, Georgia, Pennsylvania and New Jersey to a delivery point located in Louisiana. Transco anticipates transporting 100,000 dekatherms of natural gas on an average day and an annual volume of 36,500,000 dekatherms.

Transco states that transportation of natural gas for Temco commenced May 26, 1989, as reported in Docket No. ST89–4100–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Transco in Docket No. CP88–328–000.

Comment date: September 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

26. Colorado Interstate Gas Company

[Docket No. CP89–1850–000]

July 27, 1989.

Take notice that on July 21, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89–1850–000 a request pursuant to Sections 157.205 and 284.223 of the Commission Regulations under the Natural Gas Act and the Natural Gas Policy Act for authorization to transport natural gas for Marathon Oil Company (Marathon), a producer, under CIG's blanket certificate issued in Docket No. CP88–589–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG proposes to transport up to 60,000 Mcf per day, on an interruptible basis, for Marathon pursuant to a transportation service agreement dated January 1, 1989, between CIG and Marathon. CIG would receive gas from various existing points of receipt on its system in Colorado, Kansas, Oklahoma, Texas and Wyoming, and redeliver the subject gas, less fuel gas and lost and unaccounted-for gas, for the account of Marathon in Beaver County, Oklahoma.

CIG further states that the estimated average daily and annual quantities would be 40,000 Mcf and 14.6 Bcf, respectively. CIG states that service under § 284.223(a) commenced on June 1, 1989 as reported in Docket No. ST89–4114–000.

Comment date: September 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

27. United Gas Pipe Line Company

[Docket No. CP89–1858–000]

July 27, 1989.

Take notice that on July 24, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed with the Commission in Docket No. CP89–1858–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Ergon Refining, Inc. (Ergon), a natural gas end-user, under United's blanket certificate issued in Docket No. 88–6–00 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is open to public inspection.

United proposes to transport for Ergon, on an interruptible basis, up to 8,240 MMBtu per peak day. United further proposes to transport 8,240 MMBtu on an average day and 3,007,600 MMBtu on an annual basis. United states that existing facilities would be used to implement its proposed transportation service for Ergon.

United proposes to receive Ergon's natural gas volumes at various receipt points in Alabama, Louisiana, Mississippi, and Texas, and delivery the gas for Ergon's account at delivery points in Louisiana and Mississippi.

United advises that service under § 284.223(a) commenced June 1, 1989, as reported in Docket No. ST89–4007.

Comment date: September 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

28. Chattanooga Gas Company

[Docket No. CP89–1866–000]

July 27, 1989.

Take notice that on July 25, 1989, Chattanooga Gas Company (Chattanooga), 811 Broad Street, Chattanooga, Tennessee 37402, filed an application in Docket No. CP89–1866–000 pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a liquefied natural gas (LNG) service for East Tennessee Natural Gas Company (East Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Chattanooga states that by order issued on July 6, 1977, in Docket No. CP73–329 the Commission authorized Chattanooga to perform a firm liquefaction service for East Tennessee of 500,000 Mcf of total volumes with daily withdrawal quantities of 23,000 Mcf per day. It is indicated that Chattanooga used temporary authorization issued in that docket to provide the 1973–74 and 1974–75 winter seasons, firm storage service for East Tennessee by liquefying, storing, and redelivering by displacement certain quantities of natural gas delivered to Chattanooga by East Tennessee. It is also indicated that during the 1975–76 winter season, Chattanooga provided a firm liquefaction service for East Tennessee by receiving, liquefying and redelivering, into trucks provided by East Tennessee, certain volumes of natural gas. Chattanooga states that it provided these services so that East Tennessee could provide supplemental winter service pending the completion of its own LNG facilities. Chattanooga indicates it has not provided any LNG service for East Tennessee since the 1975–76 winter heating season. Chattanooga now seeks to abandon this service.

Chattanooga states that on June 16, 1989, it filed in Docket No. CP73–329–014 to amend its certificate to provide a limited term firm and interruptible LNG service for East Tennessee for the period November 1, 1989, through March 1990. It is stated that the new service would provide for different volumes of firm service and a new interruptible service. Chattanooga states that it believes it would be administratively more convenient to abandon its existing certificate and to seek a new certificate to perform the requested firm and interruptible service. Chattanooga requests that the abandonment authorization be conditioned upon the Commission's approval of Chattanooga's application for a new certificate to provide service for the 1989–90 winter season.

Chattanooga states that the proposed abandonment of service would not involve the abandonment of any facilities.

Comment date: August 17, 1989, in accordance with Standard Paragraph F at the end of this notice.

29. El Paso Natural Gas Company

[Docket No. CP89–1835–000]

July 26, 1989.

Take notice that on July 19, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request for authorization at Docket No. CP89–1835–000, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations Under the Natural Gas Act, to provide interruptible transportation service for Meridian Oil Trading Inc. (Shipper), under its blanket certificate issued at Docket No. CP88–433–000, all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

El Paso requests authority to transport up to 105,500 MMBtu of natural gas per day for Shipper from any point of receipt on El Paso's system to a point of delivery in the States of New Mexico, Oklahoma and Texas. El Paso states that the estimated daily and annual quantities would be 31,650 MMBtu and 11,552,250 MMBtu, respectively. El Paso further states that transportation service under § 284.223(a) commenced on June 1, 1989, as reported at Docket No. ST89–3941–000.

Comment date: September 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

30. Texas Gas Transmission Corporation

[Docket No. CP89–1860–000]

July 31, 1989.

Take notice that on July 25, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Tejas Power Corporation (Tejas) under Texas Gas' blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a Gas Transportation Agreement dated December 7, 1988, between Texas Gas and Tejas (Agreement), it would transport on a peak day up to 100,000 MMBtu of natural gas for Tejas, with an estimated average daily quantity of 20,000 MMBtu. Texas Gas further states that on an annual basis, Tejas estimates a volume of 36,500,000 MMBtu.

APPENDIX A—REALIGNMENT OF CD–1 ENTITLEMENT BY AFFECTED COMMUNITY FOR PEOPLES NATURAL GAS

[Volumes in Mcf]

Community, State	Existing CD	Proposed CD	Increase (decrease)
Council Bluffs, Iowa	19,507	19,632	125
Fort Crook, Nebraska	5,116	2,703	(2,413)
Spencer, Iowa	2,744	2,844	100
Fredricksburg, Iowa	555	655	100
New Hampton, Iowa	2,015	2,003	(12)
Eagan, Minnesota	5,041	5,146	105
Rosemount, Minnesota	3,851	4,901	1,050
Austin, Minnesota	119	64	(55)
Erie Mining and Hibbing, Minnesota	0	1,000	1,000
Total Realignment	38,948	38,948	0

Comment date: September 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the

BEST COPY AVAILABLE

Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18329 Filed 8-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-193-001]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

July 31, 1989.

Take notice that ANR Pipeline Company ("ANR") on July 24, 1989 tendered for filing as part of its FERC Gas Tariff those tariff sheets listed on Appendices A and B, attached to the filing.

ANR states that a Commission Order issued on July 7, 1989 in Docket No. RP89-193-000 directed ANR to refile tariff sheets reflecting the removal of carrying costs accrued on funds not dispersed as of July 1, 1989, and the elimination of certain discounting authorization related to the proposed surcharges.

ANR submits the tariff sheets in Appendix A, ordered to become effective as of July 10, 1989. ANR also submits Substitute Second Revised Twenty-First Revised Sheet No. 18, as set forth in Appendix B, and requests an effective date of August 1, 1989.

Any person desiring to protest said filing should file a protest with the Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Such protests or motions must be filed by August 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18334 Filed 8-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-175-002]

Colorado Interstate Gas Co.; Compliance Filing

July 31, 1989.

Take notice that Colorado Interstate Gas Company ("CIG"), on July 26, 1989, tendered for filing the following tariff sheet to revise its FERC Gas Tariff, Original Volume No. 1, to be effective August 1, 1989:

Second Revised Sheet No. 61G12-B

CIG states that the above-referenced tariff sheet is being filed in compliance with the Commission's Order issued in this docket and that the filing constitutes an adjustment filing as defined by CIG's FERC Gas Tariff. Specifically, the filing reflects adjustments to the take-or-pay Buyout-Buydown Surcharges by which the Buyout-Buydown costs billed to CIG by Northwest Pipeline Corporation ("Northwest") pursuant to Northwest's Docket No. RP89-137 are recovered, interest on unamortized costs, and the related billing options elected by CIG's customers.

CIG states that copies of the filing were served upon all of the parties to this proceeding and affected state commissions as well as all of CIG's firm sales customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 7, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18335 Filed 8-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-11-51-001]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

July 31, 1989.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on July 25, 1989 tendered for filing Substitute Twenty-Third Revised Sheet Nos. 57(i) and 57(ii) and Substitute Tenth Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

The subject tariff sheets were filed to revise the current PGA adjustment rates reflected in Great Lakes' filing of June 30, 1989 at Docket No. TQ89-11-51-000, for its quarterly PGA to be effective August 1, 1989. The referenced tariff sheets reflected no change in the cumulative rates from those filed in Docket No. TQ89-11-51-000.

Great Lakes requested waiver of the notice requirements of § 154.308 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective August 1, 1989.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before August 7, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18336 Filed 8-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-144-002]

Pacific Interstate Offshore Co., Compliance Filing

July 31, 1989.

Take notice that on July 24, 1989, Pacific Interstate Offshore Company (PIOC) filed Original Sheet Nos. 7, 7-A, and 15 to its FERC Gas Tariff, Original Volume No. 1, to be effective April 1, 1989.

PIOC states that this filing is made pursuant to the Commission's letter order of July 7, 1989.

PIOC states that copies of this filing are being mailed to its jurisdictional customers, the California Public Utilities Commission and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before August 7, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18332 Filed 8-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-205-001]

Point Arguello Natural Gas Line Co., Amendment to Filing of Rate Schedules

July 31, 1989.

Take notice that on July 26, 1989 Point Arguello Natural Gas Line Company (PANGL) submitted an amendment to its July 17, 1989 rate filing, which included the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective Aug. 11, 1989:

Substitute First Revised Sheet No. 4
First Revised Sheet No. 11 from Rate Schedule T-1
Original Sheet No. 11a from Rate Schedule T-1
Substitute Original Sheet No. 21
Substitute Original Sheet No. 32

In addition, a revised schedule showing the development of firm and interruptible rates were submitted.

The above revised tariff sheets reflect the following changes:

(1) The use of first year's estimated volumes to include a projection for open access shippers;

(2) The development of firm and interruptible rates for Rate Schedules FT and IT based on the projected volumes in (1) above;

(3) The establishment of a minimum credit to its Rate Schedule T-1 attributable to revenue received under Rate Schedule FT and IT;

(4) The deletion of the "ceiling rate" provisions in Rate Schedules FT and IT.

PANGL states that the impact of these changes is a change in rates for firm and interruptible transportation. These changes in rates would eliminate any discrimination in treatment between existing shippers under Rate Schedule T-1 and open access shippers under Rate Schedules FT and IT and complies with the Commission's objectives in Section 284.7 of the Commission's Regulations and with the Commission's Order issued on May 2, 1989 in the POPCO rate case in Docket No. RP89-143-000.

Copies of this filing are being served on affected jurisdictional customers and intervenors.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such protests should be filed on or before Aug. 7, 1989.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18333 Filed 8-4-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3526-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before September 6, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Notification of Chemical Exports, TSCA section 12(b) (EPA ICR # 0795.03; OMB # 2070-0030).

Abstract: Under section 12(b) of the Toxic Substances Control Act (TSCA), exporters of chemicals subject to regulatory action under certain provisions of TSCA must notify EPA of the first annual shipment to a foreign country. In turn, EPA uses this information to inform recipient countries about the chemical shipment.

Burden Statement: The public reporting burden for this collection of information is estimated to average 32 minutes per response. This estimate includes the time for generating a list of chemicals subject to section 12(b) and completing and reviewing the notice of export activity.

Respondents: Chemical exporters.

Estimated no. of respondents: 114.

Estimated total annual burden on respondents: 4100 hours.

Frequency of collection: Annually, at the time of the first shipment of each chemical export.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460,

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20530.

OMB Responses to Agency PRA Clearance Requests

EPA ICR # 0783.08; Motor Vehicle Emission Certification and Fuel Economy Labeling Program (Trading and Banking Proposal); was approved 06/29/89; OMB # 2060-0104; expires 08/31/91.

EPA ICR # 0661.03; NSPS for Asphalt Processing and Asphalt Roofing MFG Information Requirements; was approved 06/29/89; OMB # 2060-0002; expires 06/30/92.

EPA ICR # 1501.01; Request for Mineral Processing Waste Characterization Information; was approved 07/11/89; OMB # 2050-0104; expires 12/31/89.

EPA ICR # 1426.02; EPA Worker Protection Standards for Hazardous Waste Operations and Emergency

Response; was approved 07/11/89; OMB # 2050–0105; expires 06/30/92.

EPA ICR # 1499.01; National User Charge Rate Survey; was approved 07/07/89; OMB # 2040–0129; expires 07/31/90.

EPA ICR # 1497.01; Control Strategy for Combined Sewer Overflow (CSOS); was approved 07/10/89; OMB # 2040–0130; expires 07/31/90.

EPA ICR # 0154.03: Recordkeeping and Reporting Requirements for Pesticide Dealers and Applicators; was approved 07/14/89; OMB # 2070–0025; expires 07/31/91.

EPA ICR # 1292.02; Interim Enforcement Policy Regarding the Sale and Use of Aftermarket Catalytic; was approved 06/29/89; OMB # 2060–0135; expires 06/30/92.

EPA ICR # 0318.03; Estimate of Municipal Wastewater Treatment Facility Requirements for the Needs Survey; was approved 06/28/89; OMB # 2040–0050; expires 02/29/91.

Paul Lapsley,

Information and Regulatory Systems Division.

[FR Doc. 89–18388 Filed 8–4–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3526–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before September 6, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382–2740).

SUPPLEMENTARY INFORMATION:

Office of Administration

Title: Hazardous Substance Response Fund Contractor-Cost Report. (EPA ICR # 788.03, OMB # 2030–0019). This is a renewal of a previously approved collection.

Abstract: This report will document costs incurred by contractors responding to hazardous substance releases. EPA will use the data to help control contractor costs and to support contractor's reimbursement claims by verifying the vouchers that they submit.

Burden Statement: The annual public recordkeeping and reporting burden for this collection of information is estimated to range between 0.7 and 30 hours per response, with an average of 300 responses per respondent. This estimate includes time for reviewing instructions, searching existing data sources, gathering the data, and completing and reviewing the form.

Respondents: Contractors responding to hazardous substance releases.

Estimated no. of respondents: 47.

Estimated total annual burden on respondents: 14,100.

Frequency of collection: As needed per release.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to both of the following addresses:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street, SW., Washington, DC 20460,

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503.

OMB Responses to Agency PRA Clearance Requests

EPA ICR #1434.02; Request for Information on CFC/Halon Substitutes; was approved 6/19/89; OMB #2060–0158; expires 09/30/89.

Dated: July 28, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89–18389 Filed 8–4–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3525–9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before September 6, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Reporting and Recordkeeping Requirements for Asbestos Ban and Phase-out Rule (EPA ICR #1276.02; OMB #2070–0082). This ICR requests reinstatement of a previously approved collection.

Abstract: Manufacturers, importers, and processors of asbestos products subject to the asbestos ban must: label their products with the date the products are banned from distribution in commerce; inventory their stock of banned products; and keep records of product sales. Persons seeking exemptions from the ban or its associated requirements must justify the request; respondents must also substantiate any claims that information submitted is confidential business information.

Burden Statement: The estimated annual public reporting burden for this collection of information is 132 hours per respondent.

Respondents: Manufacturers, Importers and Processors of Banned Asbestos Products.

Estimated No. of Respondents: 6.

Estimated Total Annual Burden on Respondents: 790 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street, SW., Washington, DC 20460,

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395–3084.

Dated: July 27, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89–18390 Filed 8–4–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL ELECTION COMMISSION

Clearinghouse Advisory Panel; Meeting

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I) and Office of Management and Budget Circular A–63, as revised, the Federal Election Commission announces the following Advisory Panel meeting:

Name: Federal Election Commission Clearinghouse Advisory Panel.

Date: 24–25 August 1989.

Place: Hotel Washington 15th and Pennsylvania Ave., NW., Washington, DC.

Time: 0900–1200; 1330–1700 on 24 August 1989; 0900–1200; 1330–1700 on 25 August 1989.

Proposed Agenda

Discussion session addressing Status of Legislation introduced in the 101st Congress; Recap of 1988 Election; 1988 Polling Place Accessibility Report; Voter Participation; Clearinghouse Projects, Case Law, Contested Elections and Ballot Access; Detection and Prosecution of Election Crimes; U.S. Postal Service's National Change of Address; Voting System Standards; and related implementation topics.

Purpose of the Meeting

The Panel will discuss the agenda items, present their views on problems in the administration of Federal elections, and formulate recommendations to the Federal Election Commission Clearinghouse for its future program development.

The Advisory Panel meeting is open to the public, dependent on available space. Any member of the public may file a written statement with the Panel before, during, or after the meeting. To the extent that time permits, the Panel Chairman may allow public presentation or oral statements at the meeting.

All communications regarding this Advisory Panel should be addressed to Penelope Bonsall, Clearinghouse on Election Administration, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

Dated: August 1, 1989.

Marjorie W. Emmons,

Secretary to the Commission.

[FR Doc. 89–18309 Filed 8–4–89; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0048.

Title: Insurance Commitment.

Abstract: An assurance to obtain appropriate levels of insurance against future damage or loss must be tendered upon application for disaster assistance funds, in compliance with Public Law 93–288 (As Ammended).

Type of Respondents: State or Local Governments, Non-Profit Institutions.

Estimate of total annual reporting and recordkeeping burden: 225.

Number of respondents: 10.

Estimated average burden hours per response: 2.

Frequency of response: On occasion, after a disaster declaration.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Pamela Barr, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: July 19, 1989.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 89–18394 Filed 8–4–89; 8:45]

BILLING CODE 6718–01–M

FEDERAL HOME LOAN BANK BOARD

Capital Federal Savings & Loan Association; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Capital Federal Savings & Loan Association, Little Rock, Arkansas on July 26, 1989.

Dated: August 1, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–18368 Filed 8–4–89; 8:45 am]

BILLING CODE 6720–01–M

Gibraltar Savings and Loan Association, F.A.; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Gibraltar Savings and Loan Association, F.A., Annapolis, Maryland on July 13, 1989.

Dated: August 1, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–18369 Filed 8–4–89; 8:45 am]

BILLING CODE 6720–01–M

New Guaranty Federal Savings and Loan Association; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for New Guaranty Federal Savings and Loan Association, Taylor, Michigan on July 27, 1989.

Dated: August 1, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–18370 Filed 8–4–89; 8:45 am]

BILLING CODE 6720–01–M

Platte Valley Savings, a Federal Savings and Loan Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Platte Valley Savings, a Federal Savings and Loan Association, Gering, Nebraska, on July 13, 1989.

Dated: August 1, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–18371 Filed 8–4–89; 8:45 am]

BILLING CODE 6720–01–M

Home Federal Savings and Loan Association; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2) (1982), as amended, the Federal Home Loan Bank Board was duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Home Federal Savings and Loan Association, Memphis, Tennessee, on July 19, 1989.

Dated: August 1, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-18372 Filed 8-4-89; 8:45 am]

BILLING CODE 6720-01-M

North American Federal Savings Association; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for North American Federal Savings Association, San Antonio, Texas, on July 27, 1989.

Dated: August 1, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-18373 Filed 8-4-89; 8:45 am]

BILLING CODE 6720-01-M

Capital Savings & Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(1) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Capital Savings & Loan Association, West Helena, Arkansas on July 26, 1989.

Dated: August 1, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-18370 Filed 8-4-89; 8:45 am]

BILLING CODE 6720-01-M

Guaranty Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation ("FSLIC") as sole receiver ("Receiver") for Guaranty Federal Savings Bank, Taylor, Michigan ("Association") July 27, 1989.

Dated: August 1, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-18380 Filed 8-4-89; 8:45 am]

BILLING CODE 6720-01-M

Gibraltar Federal Savings and Loan Association, F.S.B.; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for Gibraltar Federal Savings and Loan Association, Annapolis, Maryland ("Association") with the FSLIC as sole receiver for the Association on July 11, 1989.

Dated: August 1, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-18375 Filed 8-4-89; 8:45 am]

BILLING CODE 6720-01-M

Platte Valley Federal Savings and Loan Association; Replacement of Conservator with Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for Platte Valley Federal Savings and Loan Association, Gering, Nebraska ("Association") with the FSLIC as sole Receiver for the Association on July 13, 1989.

Dated: August 1, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-18376 Filed 8-4-89; 8:45 am]

BILLING CODE 6720-01-M

San Antonio Savings Association; Replacement of Conservator with Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for San Antonio Savings Association, San Antonio, Texas ("Association") with the FSLIC as sole receiver for the Association on July 13, 1989.

Dated: August 1, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-18377 Filed 8-4-89; 8:45 am]

BILLING CODE 6720-01-M

North American Savings Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(1) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for North American Savings Association, San Antonio, Texas, on July 27, 1989.

Dated: August 1, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-18378 Filed 8-4-89; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Items Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following items have been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U S.C. 3601, et. seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., Room 12211, Washington, DC 20573, telephone number (202) 523-5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Items Submitted for OMB Review

46 CFR Part 510 and Form FMC-18

FMC requests an extension of clearance for this part which sets forth regulations providing for the licensing of ocean freight forwarders in the U.S. foreign export commerce. The Commission estimates that approximately 2600 respondents are annually affected at an estimated cost of $421,000. The annual manhour burden has been estimated as follows: 46 CFR part 510—24,000 manhours recordkeeping and 1,095 manhours for the rest of the regulation; Form FMC-18-5070 manhours. The estimated annual cost to the Federal Government is $209,500.

Form FMC-12—Application for Admission to Practice Before the Federal Maritime Commission

FMC requests an extension of clearance for this form which implements the provisions of 46 CFR 502.27. That section requires persons who are not attorneys at law to be admitted to practice before the Commission if they are U.S citizens and file proof to the Commission's satisfaction that: (1) They have the necessary legal, technical, or other qualifications to enable them to render a valuable service before the Commission, and (2) are otherwise competent to advise and assist in the presentation of matters before the Commission. The Commission estimates approximately 15 annual respondents will incur a manhour burden of 15 manhours, with an estimated cost of $650. The approximate cost to the Federal Government is estimated at $550.

46 CFR Part 582—Certification of Company Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States

FMC requests a continuing clearance for 46 CFR 582 which requires that the Chief Executive Officer of every common carrier and ocean freight forwarder in the U.S. foreign commerce file a written certification with the Commission attesting to the company's prohibition against receiving or paying rebates by December 31 of each year. Ocean common carriers and ocean freight forwarders, respectively, will also have to file a certification with their initial tariff or license application. The Commission estimates that approximately 1600 NVOCCs, 400 VOCCs, and 1600 freight forwarders will have to file initial and annual anti-rebate certifications for an estimated annual 5400 manhour burden. Total estimated annual cost to the Federal Government, including overhead, is $33,000; total estimated cost to respondents, including overhead is $71,500.

Joseph C. Polking,

Secretary.

[FR Doc. 89-18320 Filed 8-4-89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants; C. Kramer & Associates, Inc. et al.

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

C. Kramer & Associates, Inc., 500 A So. Douglas Street, El Segundo, CA 90245. Officers: Cynthia S. Kramer, President, Robert E. Kramer, Vice President

Transworld Freight Systems Corp., 7270 NW. 12th St., Suite 545, Miami, FL 33126. Officer: Arturo Ferreira, President

IMEXSYS, Inc., 147-40 184th St., Jamaica, NY 11413. Officers: Rolf F. Gratzer, President, Ruediger Albrecht, Vice President, Barbara Gratzer, Secretary, Wiebke Albrecht, Treasurer

J.S. International Shipping Corp. dba JSI Shipping, 25 Ingold Road, Burlingame, CA 94010. Officer: James Cullen, President

J.C. Underdahl & Co., Inc., 9920 LaCienega Blvd., Suite 508, Inglewood, CA 90301. Officers: John C. Underdahl, President, Homer Rudolph Dinkel, Secre./Treas., Marcela S. Freerks, Vice President

Integrated Traffic Systems Inc., One Pierce Place, Suite 135C, Itasca, IL 60143. Officers: Clayton W. Dabbert, President, Christine Hodge, Vice President/Secr., Dale T. Gomez, Chairman of the Board

Jacky Maeder Ltd., 150-22 132nd Ave., Jamaica, NY 11434. Officers: Rudy Merz, Director, Rolf Gasser, Director, Thomas Heinz, Director, Joseph A. Garofalo, President, Peter Triebel, Corporate Secretary, Benno Bartholdi, Vice President, Roger O. Stoffler, Vice President

K-C International Freight Forwarders, 3526 Geary Blvd., San Francisco, CA 94118. Officer: Ki Tai Chang, Sole Proprietor

RamCorp, Inc., 1428 W. Collins Avenue, Orange, CA 92667. Officers: Shari L. Amiot, President/Director, Brooks Amiot, Stockholder, Robert J. Amiot, Director/Secretary

Kil Moon Chang, 17224 Betty Place, Cerritos, CA 90701. Officer: Kil Moon Chang, Sole Proprietor

Hol-Mar International, Inc., 5300 Memorial Drive, #1050, Houston, TX 77007. Officer: Alice D. Gardner, President & Secretary

Chemical Leaman Tank Lines dba Chemical Leaman International Services, 102 Pickering Way, Exton, PA 19341-0200. Officers: S.F. Niness, Jr., Chairman, David R. Hamilton, Pres./Chief Exec. Officer, Charles E. Fernald, Jr., Sen. V. Pres./Finance & Treasurer, Eugene C. Parkerson, Exec. V. President, William J. O'Kane, Secretary

By the Federal Maritime Commission.

Dated: August 1, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-18342 Filed 8-4-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Integra Financial Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise

noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 30, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Integra Financial Corporation,* Pittsburgh, Pennsylvania, to engage *de novo* in the making, acquiring, or servicing of loans or other extensions of credit for the company's account or the account of others, such as would be made by a credit card company pursuant to § 225.24(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 1, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-18345 Filed 8-4-89; 8:45 am]

BILLING CODE 6210-01-M

Harmonia Bancorp Inc.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89-17324) published at page 30941 of the issue for Tuesday, July 25, 1989.

Under the Federal Reserve Bank of New York, the entry for Harmonia Bancorp., Inc., is amended to read as follows:

1. *Harmonia Bankcorp. Inc.,* Elizabeth, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Harmonia Savings Bank, Elizabeth, New Jersey, which engages through a subsidiary in certain insurance activities that will be divested in accordance with the requirements of section 3(f) of the Bank Holding Company Act.

Comments on this application must be received by August 21, 1989.

Board of Governors of the Federal Reserve System, August 1, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-18346 Filed 8-4-89; 8:45 am]

BILLING CODE 6210-01-M

Hoosier Bancorp; Acquisitions of Companies Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89-17322) published at page 30940 of the issue for Tuesday, July 25, 1989.

Under the Federal Reserve Bank of Chicago, the entry for Hoosier Bancorp is amended to read as follows:

1. *Hoosier Bancorp,* Rushville, Indiana (formerly Financial Dominion of Indiana Corporation); to engage *de novo* through its subsidiary, Hoosier Insurance, Ltd., Grand Turk, Turks & Caicos Island, British West Indies, in underwriting credit life insurance and credit life accident and health insurance pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Comments on this application must be received by August 21, 1989.

Board of Governors of the Federal Reserve System, August 1, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-18347 Filed 8-4-89; 8:45 am]

BILLING CODE 6210-01-M

Bank of Tokyo, Ltd.; Applications to Engage de novo in Permissible Nonbanking Activities; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89-17326) published at page 30942 of the issue for Tuesday, July 25, 1989.

Under the Federal Reserve Bank of San Francisco, the entry for the Bank of Tokyo, Ltd. is amended to read as follows:

1. *Bank of Tokyo Ltd.,* Tokyo, Japan; to engage *de novo* through BOT (Latin America), Inc., New York, New York, in making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others pursuant to § 225.25(b)(1); and acting as investment or financial advisor to third parties with respect to such loans and other extensions of credit pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Comments on this application must be received by August 21, 1989.

Board of Governors of the Federal Reserve System, August 1, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-18348 Filed 8-4-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N-0075]

Ormont Drug and Chemical Co., Inc.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Parlam Division, Ormont Drug and Chemical Co., Inc. The NADA provides for the use of 25 percent squalene in mineral oil for removal of earwax in dogs and cats. The NADA was the subject of a notice of opportunity for a hearing (NOOH) on a proposed withdrawal of approval (WOA) published in the **Federal Register** of April 19, 1989 (54 FR 15810). The NOOH provided an opportunity to request a hearing by May 19, 1989, and for filing information supporting that request by June 19, 1989. Neither the sponsor nor any other interested party responded to the NOOH. Therefore, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: August 17, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 19, 1989 (54 FR 15810), FDA published an NOOH proposing to withdraw approval of NADA 12-232. The NADA, held by Parlam Division, Ormont Drug and Chemical Co., Inc., 520 South Dean St., Englewood, NJ 07631, provides for the use of 25 percent squalene in mineral oil as a cerumenolytic agent for removal of earwax in dogs and cats. The NOOH provided opportunity for the applicant or other interested parties to request a hearing by May 19, 1989, and to submit data and analysis in support of the request for a hearing by June 19, 1989. FDA has not received any requests for a hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 Withdrawal of approval of applications (21 CFR 514.115), notice is given that approval of NADA 12-232 and all supplements thereto is hereby withdrawn, effective August 17, 1989.

Dated: August 1, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-18362 Filed 8-4-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89F-0215]

Union Carbide, Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Union Carbide, Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *α*-butyl-*omega*-hydroxypoly(oxypropylene), minimum molecular weight 1000, as a surface lubricant in the manufacture of metallic articles that contact food.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1785-1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4151) has been filed by Union Carbide, Corp., Tarrytown Technical Center, Tarrytown, NY 10591, proposing that § 178.3910 Surface lubricants used in the manufacture of metallic articles (21 CFR 178.3910) be amended to provide for the safe use of *α*-butyl-*omega*-hydroxypoly(oxypropylene), minimum molecular weight 1000, as a surface lubricant in the manufacture of metallic articles that contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 26, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-18361 Filed 8-4-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89D-0216]

Reconditioning of Adulterated Foods; Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revised Compliance Policy Guide (CPG) 7153.04 "Reconditioning of Foods Adulterated Under Section 402(a)(4)". CPG 7153.04 has been revised to express the agency's current policy regarding reconditioning of food adulterated under section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(4)).

ADDRESSES: CPG 7153.04 "Reconditioning of Foods Adulterated Under Section 402(a)(4)" may be ordered from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS order number PB 89-217606 and include payment of $10.95 for each copy of the document. Payment may be made by check, money order, charge card (American Express, Visa, or Mastercard), or billing arrangements made with NTIS. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703-487-4650. CPG 7153.04 "Reconditioning of Foods Adulterated Under Section 402(a)(4)" is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Alvin Gottlieb, Division of Compliance Policy (HFC-230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1500.

SUPPLEMENTARY INFORMATION: FDA is announcing its policy for consideration of proposals to recondition food that has been seized or to voluntarily recondition food that has been prepared, packed, or held under unsanitary conditions whereby the food may have become contaminated with filth or rendered injurious to health. FDA will accept reconditioning proposals that include provisions for determining: (1) Whether the food has become physically contaminated, (2) the extent and type of contamination, and (3) procedures that will eliminate such contamination. In addition, the proposal must provide for eliminating the environmental conditions that caused the product to become adulterated. If facility conditions are not corrected, moving the food to a sanitary facility will be necessary before reconditioning can begin. Sampling and testing of the food may also be required during and after the reconditioning process.

This notice is issued under 21 CFR 10.85.

Dated: July 21, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-18360 Filed 8-4-89; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Department of Health and Human Services (HHS) previously published a list of information collection packages is submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (Pub. L. 96-511). The Health Care Financing Administration (HCFA), a component of HHS, now publishes its own notices as the information collection requirements are submitted to OMB. The HCFA has submitted the following requirements to OMB since the last HCFA list was published.

1. *Type of Request:* Revision; *Title of Information Collection:* Medicaid State Agency Third Party Liability Inventory Form; *Form Number:* HCFA-484; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 56; *Average Hours per Response:* 8; *Total Estimated Burden Hours:* 448.

2. *Type of Request:* Revision; *Title of Information Collection:* Information Collection Requirements in 42 CFR 447.31(b)(c)(d), Withholding Medicare Payments to Recover Medicaid Overpayments; *Form Number:* HCFA-R-21; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 27; *Average Hours per Response:* 3; *Total Estimated Burden Hours:* 81.

3. *Type of Request:* New; *Title of Information Collection:* Preclearance of Proposed Information Collection on Home Care Quality Studies; *Form Number:* HCFA-P-13; *Frequency:* One time; *Respondents:* Individuals/households and businesses/other for profit; *Estimated Number of Responses:* 1; *Average Hours per Response:* 1; *Total Estimated Burden Hours:* 1.

Additional Information or Comments: Call the Reports Clearance Officer on 301-966-2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: July 31, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-18319 Filed 8-4-89; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1989:

Name: National Advisory Council on Migrant Health.

Date and Time: September 13-14, 1989 8:30 a.m.

Place: The Sea View Hotel, 9909 Collins Avenue, Bal Harbour, Miami Beach, Florida 33154.

The meeting is open to the public. Transportation will not be provided to visitors and observers for the site visit.

Purpose: The Council is charged with advising, consulting with, and making recommendations to the Secretary and the Administrator, Health Resources and Services Administration, concerning the organization, operation, selection, and funding of Migrant Health Centers and other entities under grants and contracts under section 329 of the Public Health Service Act.

Agenda: The members of the Council will consider the following: (1) Review the Council's recommendations from Previous meeting; (2) Farming and farmworkers trends; (3) Discussion on farmworkers housing (4) Occupational Health & Safety Issues: (5) AIDS, Interagency Coordination; (6) Review of Migrant Health Program Activities; (7) Consideration of outreach, self-help, environmental and nutrition strategies; (8) Site visit to a migrant health homestead center; (9) Review of perinatal programs.

Anyone requiring information regarding the subject Council should contact Mrs. Sonia M. Leon Reig, Executive Secretary, National Advisory Council on Migrant Health, Room 7A-30, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-1153.

Agenda items are subject to change as priorities dictate.

Dated: August 1, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-18311 Filed 8-4-89; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-940-09-4212-13; CACA 19645]

California; Realty Action; Exchange of Public and Private Lands in Fresno, Monterey, and San Benito Counties and Order Providing for Opening of Public Land

July 25, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document and opening order.

SUMMARY: The purpose of this exchange was to acquire the non-Federal lands to provide access to isolated Federal lands and enhance their management.

ADDRESS: Inquiries concerning the land should be addressed to: Chief, Branch of Adjudication and Records, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E-2845), Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, California State Office, (916) 978-4820.

1. The United States issued a land exchange conveyance document to John W. Eade on June 2, 1988, pursuant to the authority of section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), for the following described public land.

Mount Diablo Meridian, California

T. 15 S., R. 5 E.,
Sec. 12, lots 1, 2, 3, 6, 7, and 8;
Sec. 13, lots 1, 2, 7, and 8.
T. 15 S., R. 6 E.,
Sec. 18, NW¼NE¼ and SW¼NW¼.
T. 17 S., R. 10 E.,
Sec. 15, N½N½ and SW¼NW¼.
T. 18 S., R. 10 E.,
Sec. 13, NE¼SW¼.
T. 18 S., R. 11 E.,
Sec. 35, S½NE¼.
T. 19 S., R. 10 E.,
Sec. 3, lot 4; Sec. 10, lots 1 and 2.
T. 19 S., R. 11 E.,
Sec. 1, S½SE¼; Sec. 12, NE¼.
T. 19 S., R. 12 E.,
Sec. 6, lot 7;
Sec. 7, lots 1 and 2;
Sec. 8, SW¼.
T. 22 S., R. 8 E.,
Sec. 12, NE¼NE¼ and N½SE¼NE¼.
T. 22 S., R. 9 E.,
Sec. 6, lot 7 and SE¼SW¼;
Sec. 7, lots 1 and 15.

2. In exchange for the land described in paragraph 1, on June 2, 1988, the United States accepted title to the following described private land from John W. Eade:

Mount Diablo Meridian, California

T. 18 S., R. 10 E.,
Sec. 13, W½SW¼.
T. 18 S., R. 11 E.,
Sec. 16, E½NE¼.
T. 18 S., R. 12 E.,
Secs. 29 and 20, those patented lode mining claims known as the Tirado No. 1, Tirado No. 2, Tirado No. 3, Tirado No. 4 and Tirado No. 5 lode mining claims designated by the Surveyor General as Survey No. 5191.
T. 21 S., R. 14 E.,
Sec. 17 SE¼SE¼, excepting therefrom that portion described by metes and bounds, in deed granted to the State of California for public highway purposes, recorded January 28, 1943, Document No. 2922.

The areas described contain ±285 acres in Fresno and San Benito Counties.

3. The above described lands contain exceptions too numerous to list here. A precise description of the exception is available in case file CACA 19645 in the California State Office.

4. The value of the private lands was greater than the value of the Federal lands. The exchange parties waived receipt of the cash equalization payment from the United States.

5. At 10:00 a.m. on August 25, 1989, the lands acquired in the exchange shall be open to applications and offers under the public land laws, the mineral leasing laws, and the United States mining laws subject to valid existing rights and applicable law. All mineral locators assume the responsibility for assuring that the minerals being located were actually acquired by the United States.

Appropriation of any of the land described in this order under the general mining laws prior to the date and time of opening is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Robert C. Nauert,

Chief, Branch of Adjudication and Records.

[FR Doc. 89-18361 Filed 8-4-89; 8:45 am]

BILLING CODE 4310-40-M

[ES-940-09-4520-13, ES-041308, Group 14]

North Carolina; Filing of Plat of Dependent Resurvey

July 31, 1989.

1. The plat of the dependent resurvey of a portion of the boundary between the National Park Service (Blue Ridge Parkway) and the Cherokee Indian Land, on a portion of the Qualla Indian Boundary from the "Initial Point" to the 2 mile corner in Haywood and Jackson Counties, North Carolina, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on September 14, 1989.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., September 14, 1989.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Joseph W. Beaudin,

Acting Deputy State Director for Cadastral Survey.

[FR Doc. 89-18409 Filed 8-4-89; 8:45 am]

BILLING CODE 4310-GJ-M

DEPARTMENT OF JUSTICE

Lodging of a Consent Decree; Browning-Ferris Industries Chemical Services, Inc.

In accordance with section 122 of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622 and Departmental policy, 28 CFR 50.7, notice is hereby given that on July 28, 1989, a proposed consent decree in *United States* v. *Browning-Ferris Industries Chemical Services, Inc.*, was lodged with the United States District Court for the Middle District of Louisiana in Civil Action No. 89-566A. The decree resolves claims of the United States against Browning-Ferris Industries (BFI) under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, in connection with the Bayou Sorrel Superfund Site in Iberville Parish, Louisiana, about twenty miles southwest of Baton Rouge, Louisiana.

Under this Consent Decree, BFI agrees to pay $185,000 to reimburse the United States for a portion of its remaining response costs incurred at the Bayou Sorrel Site. BFI also agrees to voluntarily dismiss its challenge of the prior global settlement, *United States* vs. *Allied Corporation, et. al.; Browning-Ferris Industries Chemical Services, Inc., Movant-Appellant,* CA-88-237"A" (M.D.La.), appealed docketed, No. 88-3640 (5th Cir. 1988). In return, BFI receives a de minimis covenant not to sue under section 122(g) of CERCLA, 42 U.S.C. 9622(g) for its present and future liability for cleanup costs, unless new information is discovered which affects the calculation of BFI's liability.

The proposed decree may be examined at the office of the United States Attorney for the Middle District of Louisiana, 352 Florida Street, Second Floor, Baton Rouge, Louisiana 70801 (contact: John Gaupp (504) 389-0443); at the Region 6, Office of Regional Counsel, Environmental Protection Agency, 1445 Ross Avenue, 12th Floor, Dallas, TX 75202 (contact: Jim Costello (214) 655-2120); and at the Environmental Enforcement Section, Land and Natural Resources Division of the United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. In requesting copies, please enclose a check in the amount of $2.10 (10 cents per page reproduction charge) payable to the Treasurer of the United States. The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Browning-Ferris Industries Chemical Services, Inc.* (M.D. La.), D.J. Reference No. 90-11-2-179A.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-18410 Filed 8-4-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; Maytag Corp; Norge Admiral Division

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States of America* v. *Maytag Corporation, Norge Admiral Division,* Civil Action No. 87-4222 (S.D. Ill.), between the United States, on behalf of the United States Environmental Protection Agency, and Maytag Corporation, Norge Division, has been lodged with the United States District Court for the Southern District of Illinois. The complaint in this action alleged violations by defendant Maytag Corporation of Clean Water Act requirements at its plant in Herrin, Illinois. The proposed Consent Decree requires defendant to achieve and maintain compliance with all Clean Water Act requirements. It also provides for a civil penalty of $300,000.

The Department of Justice will receive comments relating to the Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America* v. *Maytag Corporation, Norge Admiral Division,* D.J. Ref. No. 90-5-2-1-1031. The proposed Consent Decree may be examined at the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1748, Tenth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $3.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division

[FR Doc. 89-18411 Filed 8-4-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program; Availability of Benefits Quality Control Annual Report Results

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of unemployment insurance benefits quality control annual reports for calendar year 1988.

SUMMARY: The purpose of this notice is to announce the availability of calendar year 1988 Quality Control (QC) Annual Reports of each State's Unemployment Insurance (UI) Program.

ADDRESSES: The Federal digest will be available after July 31, 1989. Copies may be obtained by writing to Mary Ann Wyrsch, Director, Unemployment Insurance Service, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210. The appendix contains a list of the names and addresses of persons in each State who will provide the State report and clarifications upon request.

SUPPLEMENTARY INFORMATION: Each week, staff in each State's Employment Security Agency investigate random samples of UI benefit payments and record information based on personal interviews with claimants, employers and third parties to determine whether State law, policy, and procedure were followed correctly in processing the sampled payment.

The Department of Labor is publishing results from the investigations in a digest which includes information from the 52 jurisdictions participating in the UI QC program. Five items are reported for each State: Total UI benefit dollars paid to the population of claimants, size of the QC samples, and the percentages of proper payments, overpayments, and underpayments determined for the QC investigations. Ninety-five percent confidence intervals have been computed for each of the three percentages presented (proper payments, overpayments, and underpayments). States have been encouraged to provide narratives to further clarify the meaning of the data based on their specific situations.

In addition, each State has published its Annual Report separately. Persons interested in specific State reports are encouraged to request copies from the individual States using the attached mailing list.

They should also request clarifications of the data from the States since law, policies, and procedures in each State vary considerably. The data cannot be used to draw comparisons among States.

Signed at Washington, DC, on July 28, 1989.

Roberts T. Jones,

Assistant Secretary of Labor for Employment and Training.

Appendix—State Contact Persons Release of QC Data for 1988

Alabama: Mr. Harris Cornett, Public Information Officer, 649 Monroe Street, Montogmery, AL 36130, (205) 261–5407

Alaska: Karen Van Dusseldorp, QC Data Analyst, P.O. Box 3–7000, Juneau, AK 99811, (907) 465–3000

Arizona: Dave Berggren, UI Technical Support Section, Site Code, Department of Economic Security, P.O. Box 6123, Phoenix, AZ 85005, (602) 542–3771

Arkansas: Robert K. Morgan, Director Unemployment Insurance, Employment Security Division, P.O. Box 2981, Little Rock, AR 72203, (501) 682–3200

California: Ms. Valerie J. Reynoso, Deputy Director, Communications Office, MIC 85, Employment Development Department, P.O. Box 942880, Sacramento, CA 94280–0001, (916) 445–1952

Colorado: Tara Singh, CO Dept. of Labor & Employment, Quality Control Unit, UI Staff Services, 251 East 12th Avenue, 3rd Floor, Denver, CO 80203, (303) 620–4578

Connecticut: Richard Ficks, Director of Communications, Employment Security Division, Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, CT 06109, (203) 566–4374

Delaware: W. Thomas MacPherson, Director, Division of Unemployment Insurance, P.O. Box 9029, Newark, DE 19711, (302) 368–6730

District of Columbia: Roberta Bauer, Asst. Director, Compliance & Ind. Monitoring Staff, DC Department of Emp. Services, 500 "C" St., NW., Room 511, Washington, DC 20001, (202) 639–1206

Flordia: Barbara K. Griffin, FL Dept. of Labor & Emp. Security, Caldwell Building, Room 106, Tallahassee, FL 32399–0209, (904) 487–3448

Georgia: Joe D. Tanner, Commissioner, Georgia Department of Labor, 148 International Blvd., NE., Suite 600, Atlanta, GA 30303, (404) 656–3011

Hawaii: Douglas Odo, UI Administrator, Dept. of Labor and Ind. Relations, 830 Punchbowl Street, Honolulu, Hawaii 96813, (808) 548–6951

Idaho: Jane Barber, QC Supervisor, Idaho Dept. of Employment, 317 Main Street, Boise, ID 83735, (208) 334–6285

Illinois: Joseph Wojcik, Department of Employment Security, One Congress Center, QC Unit, 3rd Floor, 3–N, 401 South State Street, Chicago, IL 60605, (312) 793–1185

Indiana: G.W. Connelley, Director, Div. of Employment Compensation, Dept. of Emp. & Training Services, 10 North Senator Avenue, Indianapolis, IN 46204, (317) 232–7680

Iowa: Larry Venenga, QC Supervisor, 1000 East Grand Avenue, Des Moines, IA 50319, (515) 281–8398

Kansas: Joseph Ybarra, QC Supervisor, 401 S.W. Topeka Blvd., Topeka, KS 66603, (913) 296–4077

Kentucky: Joe Anderson, Director, Unemployment Insurance, Cabinet for Human Resources, CHR Bldg., Second Floor West, 275 E. Main Street, Frankfort, KY 40621, (502) 564–2900

Louisiana: Bernard J. Francis, Assistant Secretary of Labor, Louisiana Dept. of Labor, P.O. Box 94094, Baton Rouge, LA 70804–9094, (504) 342–3013

Maine: Gail Thayer, Unemployment Insurance Director, Bureau of Employment Security, 20 Union Street, Augusta, ME 04330, (207) 289–2316

Maryland: Thomas Wendel, Executive Director, Unemployment Insurance Division, Dept. of Econ. & Emp. Development, 1100 Norh Eutaw Street, Baltimore, MD 21201, (301) 333–5306

Massachusetts: Rena Kottcamp, Director of Research, Division of Employment Security, Charles F. Hurley ES Building, Government Center, Boston, MA 02114, (617) 727–6556

Michigan: Carol Haupt, Bureau of Unemployment Insurance, Employment Security Commission, 7310 Woodward Avenue, Detroit, MI 48202, (313) 876–5465

Minnesota: Bob Dockendorf, Minnesota Dept. of Jobs & Training, 390 North Roberts Street, Room 201, St. Paul, MN 55101, (612) 297–3456

Mississippi: Liston L. Thomasson, MS Employment Security Commission, 1520 W. Capitol St., Jackson, MS 39205, (601) 961–7700

Missouri: Tom Deuschle, Director, MO Division of Employment Security, P.O. Box 59, Jefferson City, MO 65104, (314) 751–3976

Montana: Chuck Hunter, Administrator, Unemployment Insurance Division, P.O. Box 1728, Helena, MT 59624, (406) 444–2723

Nebraska: Allan Amsberry, UI Director, or Don Gammill, QC Administrator, P.O. Box 94600, Lincoln, NE 68509–4600, (402) 471–9000

Nevada: Bob Bydalek, Public Information Officer, Employment Security Department, 500 Third Street, Carson City, NV 89713, (702) 885–4620

New Hampshire: Robert Dorsch, Assistant to the Commissioner, Department of Employment Security, 32 South Main Street, Concord, NH 03301, (603) 224–3311

New Jersey: James A. Ware, Assistant Commissioner for Income Security, NJ Department of Labor and Industry, John Fitch Plaza, Trenton, NJ 08625, (609) 984–5666

New Mexico: Betty Boyden-Cambell, QC Supervisor, New Mexico Department of Labor, 401 Broadway NE., P.O. Box 1928, Albuquerque, NM 87103, (505) 841–8435

New York: Dominic M. Rotondi, UI Director, New York State Department of Labor, Unemployment Insurance Division, State Office Campus—Building #12, Albany, NY 12240, (518) 457–2878

North Carolina: Preston L. Johnson, UI Director, Employment Security Comm. of NC, P.O. Box 25903, Raleigh, NC 27611, (919) 733–3121

North Dakota: Lyle Holverson, Job Service North Dakota, P.O. Box 1537, Bismarck, ND 58502, (701) 224–2825

Ohio: Paul Kay, Unemployment Compensation Division, Bureau of Employment Services, 145 South Front Street, Columbus, OH 43215, (614) 466–6967

Oklahoma: Terry McHale, Program Chief, OK Employment Security Commission, Will Rogers Memorial Office Bldg., Oklahoma City, OK 73105, (405) 557–7206

Oregon: Sylvia Rose, Communications Manager, 875 Union St NE, Room 310–311, Salem, OR 97311, (503) 378–3216

Pennsylvania: Richard Puerzer, Director, Bureau of Unemployment Compensation, Benefits and Allowances Division, Department of Labor & Industry, 415 Labor & Industry Building, Harrisburg, PA 17121, (717) 787–3547

Puerto Rico: Oscar Pagan, Assistant Secretary of Labor, PR Dept. of Labor & Human Resources, 505 Munoz Rivera Avenue, Hato Rey, PR 00918, (809) 754–2131

Rhode Island: Marvin Perry, Deputy Director, Department of Employment Security, 24 Mason Street, Providence, RI 02903, (401) 277–3648

South Carolina: R. Michael Baker, Deputy Executive Director, UI, SC Employment Security Commission, P.O. Box 995, Columbia, SC 29202, (803) 737–2400

South Dakota: Don Kattke, Director, Unemployment Insurance Division, Department of Labor, P.O. Box 4730, Aberdeen, SD 57402–4730, (605) 662–2452

Tennessee: Bernard Donlon, Tennessee Dept. of Emp. Security, Volunteer Plaza, Tenth Floor, 500 James Robertson Parkway, Nashville, IN 37219, (615) 741–3190

Texas: William D. Grossenbacher, Administrator, Texas Employment Commission, TEC Building, Room 638, Austin, TX 78778 (512) 463–2652 or Harold Bishop, Texas Employment Commission, TEC Building, Room 504DT, Austin, TX 78778, (512) 463–2394

Utah: Terry Burns, Director, Unemployment Insurance, Department of Employment Security, 174 Social Hall Avenue, P.O. Box 11249, Salt Lake City, UT 84147, (801) 533–2201

Vermont: Robert G. Herbst, Quality Control Chief, Dept. of Employment and Training, P.O. Box 488, Montpelier, VT 05602, (802) 229–0311

Virginia: F. W. Tucker IV, Chief of Benefits, Unemployment Insurance, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23211, (804) 786–3032

West Virginia: Andrew N. Richardson, Commission, Department of Employment Security, State Office Building, Charleston, WV 25305, (304) 348–2630

Washington: Mary Pat Frederick, Deputy Assistant Commissioner, UI, Employment Security Dept., 212 Maple Park, Olympia, WA 98504, (206) 753–5120

Wisconsin: Chet Frederick, Dept. of Industry, Labor, and Human Relations, Quality Control Unit, P.O. Box 7905, Madison, WI 53707, (608) 266–8280

Wyoming: Beth Nelson, Administrator, Unemployment Insurance Admin., Employment Security Commission, P.O. Box 2760, Casper, WY 82602, (307) 235–3254

[FR Doc. 89–18364 Filed 8–4–89; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237 and 50–249]

Commonwealth Edison Co.; Dresden Nuclear Power Station, Unit Nos. 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of Appendix R to 10 CFR part 50 to the Commonwealth Edison Company (the licensee), for Dresden Nuclear Power Station, Unit Nos. 2 and 3, located in Grundy County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant exemptions from certain requirements of section III.G of Appendix R to 10 CFR part 50, which relate to fire protection features for ensuring that systems and associated circuits used to achieve and maintain safe shutdown are free to fire damage. The exemptions are technical since the licensee must demonstrate that fire protection configurations meet the specific requirements of section III.G or that alternate configurations can be justified by an acceptable analysis.

The Need for the Proposed Action

The proposed exemptions are needed because the features described in the licensee's exemption request regarding the existing and proposed fire protection at the plant would result in a net benefit to the public health and safety.

Environmental Impact of the Proposed Action

The proposed exemptions will provide a degree of fire protection such that there is no increase in the risk of fires at the Dresden Unit Nos. 2 and 3. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor do the proposed exemptions otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemptions.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR part 20. These exemptions would not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

Alternatives to the Proposed Action

It has been concluded that there is not measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement of the proposed exemptions.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's letters dated August 10, 1984, October 16, 1985, September 18, 1985 and May 30, 1986 which contained the exemption requests, and letters dated March 12 and March 20, 1986 which provided supplemental information. These letters are available for public inspection at the Commissioners Public Document Room, 2120 L Street NW., Washington, DC and at Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Dated at Rockville, Maryland, this 28th day of July 1989.

Byron L. Siegel,

Project Manager, Project Directorate III–2, Division of Reactor Projects III, IV, V, and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–18302 Filed 8–4–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Regional Programs; Meeting

The ACRS Subcommittee on Regional Programs will hold a meeting on August 29 and 30, 1989, at the NRC Region I Office, 475 Allendale Road, King of Prussia, PA.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Tuesday, August 29, 1989—8:30 a.m. until the conclusion of business Wednesday, August 30, 1989—8:30 a.m. until the conclusion of business The Subcommittee will review the activities under the purview of the NRC Region I Office.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 301/492–8558) between 7:15 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: July 28, 1989.

Richard P. Savio,

Deputy Executive Director, ACRS.

[FR Doc. 89–18306 Filed 8–4–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Seabrook; Meeting

The ACRS Subcommittee on Seabrook will hold a meeting on August 17, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Thursday, August 17, 1989—8:30 a.m. until the conclusion of business.

The Subcommittee will review emergency plans for full power operation of the Seabrook Nuclear Power Plant.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 301/492–8192) between 7:15 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: July 28, 1989.

Richard P. Savio,

Deputy Executive Director, ACRS.

[FR Doc. 89–18307 Filed 8–4–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Revised Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on August 10–12, 1989 in Room P–110, 7920 Norfolk Avenue, Bethesda, Md. Notice of this meeting was published in the **Federal Register** on June 20, 1989. This revised notice reflects changes in the agenda.

Thursday, August 10, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–8:45 a.m.: Comments by ACRS Chairman—The ACRS Chairman will report on items of current interest.

8:45 a.m.–10:00 a.m.: Nuclear Power Plant Technical Specifications (Open)—The Committee will have a briefing and discussion of NRC and industry efforts to improve technical specifications for nuclear power plants.

10:15 a.m.–11:30 a.m.: Nuclear Power Plant Operating Experience (Open)

The Committee will hear and discuss a report (NUREG–1275, Vol. 5) regarding progress in scram reduction in commercial power reactors.

11:30 a.m.–12:30 p.m.: Premeeting Discussion for Meeting with NRC Commissioners (Open)—The Committee will review topics to be discussed with NRC Commissioners including NRC human factors program and initiatives, electrical power reliability at nuclear plants, occupational radiation exposure from hot particles, BWR core power stability, and reliability and diversity.

2:00 p.m.–3:30 p.m.: Meeting with NRC Commissioners—One White Flint North, Rockville, Md. (Open)—The Committee will discuss with the NRC Commissioners the items noted above.

4:30 p.m.–5:00 p.m.: Generic Issue-79, Unanalyzed Reactor Vessel (PWR) Thermal Stress During Natural Convection Cooldown (Open)—Review and report on proposed NRC resolution of this generic issue.

5:00 p.m.–5:45 p.m.: Future ACRS Activities (Open)—Discuss anticipated subcommittee activity and items proposed for consideration by the Committee.

Friday, August 11, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–9:45 a.m.: Meeting with Director, Office of Nuclear Materials Safety and Safeguards (NMSS) (Open/Closed)—A briefing and discussion will be held regarding topics of mutual interest including the scope and nature of NMSS activities, security provisions at nuclear plants, and anticipated review of uranium enrichment plant.

Portions of this session will be closed as necessary to discuss information related to security provisions at nuclear facilities.

9:45 a.m.–12:00 Noon and 1:00 p.m.–3:00 p.m.: GE Advanced Boiling Water Reactor (Open/Closed).

The Committee will conduct an initial session regarding its review of the application for design certification of this standardized nuclear plant.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this facility.

3:15 p.m.–4:30 p.m.: NUMARC Activities (Open)—The Committee will hear a briefing by a NUMARC representative on their activities regarding the regulatory process, the NRC-industry interface, and other items of mutual interest.

4:30 p.m.–5:00 p.m.: Appointment of ACRS Members (Open/Closed)—The Committee will discuss qualifications of candidates proposed for consideration as nominees for appointment to the ACRS.

Portions of this session will be closed as appropriate to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

5:00 a.m.–6:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to matters being considered.

Saturday, August 12, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–12:00 Noon: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to matters being considered.

1:00 p.m.–2:30 p.m.: Subcommittee Activities (Open)—The Committee will discuss the status of assigned ACRS subcommittee activities in designated areas including proposed integration of the regulatory process, and reliability of check valves in nuclear power plants.

2.30 p.m.–3:30 p.m.: Miscellaneous (Open)—The Committee will complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 27, 1988 (53 FR 43487). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)), Proprietary Information applicable to the matters being discussed (5 U.S.C. 552b(c)(4)), and Safeguards/Security Information applicable to specific nuclear facilities (5 U.S.C. 552b(c)(3)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 8:15 a.m. and 5:00 p.m.

Dated: August 1, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–18308 Filed 8–4–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–445A, 50–446A]

Texas Utilities Electric Co., et al.; Receipt of Petition for Director's Decision

Notice is hereby given that by petition dated May 12, 1989, Cap Rock Electric Cooperative, Inc. (Cap Rock) has requested, pursuant to 10 CFR 2.206, the Director, Office of Nuclear Reactor Regulation to issue an order enforcing the Comanche Peak antitrust license conditions. The petition requests that Texas Utilities Electric Company (TUEC) be required to make available to Cap Rock, under reasonable rates, terms, and conditions, the partial requirements, coordination, and other electric power services provided by these license conditions. The petition also requests that an antitrust hearing be initiated to modify the license conditions in order to prevent TUEC from further abusing its monopoly power. The petition asserts, as grounds for these requests, that TUEC is currently refusing to provide Cap Rock with the "essential" services that would enable Cap Rock to purchase generating capacity and economy energy from other bulk power supply sources. As provided for in 10 CFR 2.206, appropriate action will be taken on this request within a reasonable time. A

copy of the petition is available for inspection in the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and the Local Public Document Room located at the Somerville County Public Library on the Square, P.O. Box 1417, Glen Rose, TX, 76043.

Dated at Rockville, Maryland this 14th day of June, 1989.

For The Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 89-18361 Filed 8-4-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-247]

Consolidated Edison Co. of New York, Inc., Indian Point Nuclear Generating Unit No. 2; Partial Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Consolidated Edison Company of New York, Inc. (the licensee) to withdraw part of its June 12, 1987 application, as supplemented on August 3, 1987 and modified on May 10, 1988, for a proposed amendment to Facility Operating License No. DPR-26 for the Indian Point Nuclear Generating Unit No. 2, located in Westchester County, New York.

The proposed amendment would have (1) revised the operability requirements for the containment fan cooler units, (2) deleted the requirements for the containment fan cooler HEPA filters, charcoal adsorbers and associated fire protection and detection equipment, and (3) revised the allowable out-of-service time for one inoperable containment spray pump.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on December 16, 1987 (52 FR 47782). However, by letters dated May 10, 1988 and July 7, 1989, the licensee withdrew the proposed changes concerning a revision of operability requirements for the containment fan cooler units and the requirements for the containment fan cooler HEPA filters, charcoal adsorbers and associated fire protection and detection equipment. License Amendment No. 132, issued on June 29, 1988 (53 FR 29536) approved a revision to allowable out-of-service time for one inoperable containment spray pump.

For further details with respect to this action, see the application for amendment dated June 12, 1987, as supplemented on August 3, 1987, and the licensee's letters dated May 10, 1988 and July 7, 1989, which withdrew portions of the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 26th day of July 1989.

For the Nuclear Regulatory Commission.

Donald S. Brinkman,

Senior Project Manager, Project Directorate I-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-18363 Filed 8-4-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—Wednesday, August 16, 1989, Wednesday, August 23, 1989, Wednesday, September 6, 1989, Wednesday, September 20, 1989, Wednesday, September 27, 1989, Wednesday, October 4, 1989, Wednesday, October 11, 1989, Wednesday, October 18, 1989, Wednesday, October 25, 1989.

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street NW., Washington, DC 20415 (202) 632-9710.

Dated: July 19, 1989.

Thomas E. Anfinson,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 89-18349 Filed 8-4-89; 8:45 am]

BILLING CODE 6325-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for Office of Management and Budget Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget (OMB) for review and approval.

Summary of Proposal(s):

(1) *Collection title:* Public Service Pension Questionnaire.

(2) *Form(s) submitted:* G-208.

(3) *OMB Number:* 3220-0136.

(4) *Expiration date of current OMB clearance:* 09-30-89.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 7,000.

(9) *Total annual responses:* 7,000.

(10) *Average time per response:* .1667 hours.

(11) *Total annual reporting hours:* 1,167.

(12) *Collection description:* A spouse or survivor annuity under the RR Act may be subjected to a reduction for a public service pension. The questionnaire obtains the information needed to determine if the reduction applies and the amount of such reduction.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents can be obtained from Ronald J. Hodapp, the agency clearance officer (312-751-3682). Comments regarding the information collection should be addressed to Roanald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Ronald J. Hodapp,

Director of Information Resources Management.

[FR Doc. 89-18353 Filed 8-4-89; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities & Exchange Commission, Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-1002.

Extension

Rules 15a-4; File No. 270-7
Rules 15b1-4; File No. 270-9
Rules 15b1-2; File No. 270-12
Rules 17Ad-7; File No. 270-126
Rules 17Ad-6; File No. 270-291
Rules 19d-1(b); File No. 270-342

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for OMB clearance:

Rule 15a-4 which permits a natural person member of a securities exchange who terminates his association with a registered broker-dealer to continue to do business on the exchange while the Commission reviews his application for registration as a broker-dealer if the exchange files a statement indicating that there does not appear to be grounds for disapproving the application. Twenty respondents incur an estimated average of eight hours to comply with the rule;

Rule 15b1-4 which requires the filing of a statement with the Commission by a qualified fiduciary who succeeds to the business of a registered broker-dealer. Five respondents incur an estimated average of five hours to comply with the rule;

Rule 15b1-2 which requires the filing of certain financial statements when a broker or dealer registers with the Commission. Three thousand respondents incur an estimated average of three hours to comply with the rule;

Rule 17Ad-7 which requires registered transfer agents to retain certain records necessary to permit the appropriate regulatory agency to examine registered transfer agents for compliance with applicable Commission rules. Two thousand five-hundred respondents incur and estimated average of one hundred twenty-five hours to comply with the rule;

Rule 17Ad-6 which requires registered transfer agents to maintain certain records necessary to permit the appropriate regulatory agency to examine registered transfer agents for compliance with applicable Commission rules. Two thousand five hundred respondents each incur an estimated average of four hundred eighty burden hours for compliance with this rule; and

Rule 19d-1(b) which prescribes the form and content of notices required to be filed with the Commission by self-regulatory organizations for which the Commission is the appropriate regulatory agency concerning final disciplinary actions, denials of memberships, and participations or associations with a member. Twenty four respondents incur an estimated average of one hundred and two hours to comply with the rule.

The estimated average burden hours are made solely for the purpose of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the cost of SEC rules.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 31, 1989.

Jonathan Katz,

Secretary.

[FR Doc. 89-18401 Filed 8-4-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27080; File No. SR-BSE-89-1]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by Boston Stock Exchange, Inc. Relating to Rule for Linkage With a Foreign Securities Exchange

On March 6, 1989, the Boston Stock Exchange, Inc. ["BSE" or "Exchange"] submitted for Securities and Exchange Commission ["Commission"] consideration pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change that would adopt a "Linkage Rule" that would enable the BSE to link with a foreign securities exchange pursuant to a "Linkage Plan".[3] The Exchange has stated that the proposed rule would be applicable to any linkage agreement the BSE may ultimately enter into with a foreign securities exchange. The BSE is currently linked with the Montreal Stock Exchange ("ME") and the proposed rule would provide the framework within which the link could be enhanced.[4]

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] Notice of the proposed BSE rule change was given in Securities Exchange Act Release No. 26666, April 5, 1989, 54 FR 14607. No comments were received by the Commission on the proposed rule change.

[4] The BSE-ME linkage was approved by the Commission in two phases. The initial phase of the linkage permitted ME members to direct to the BSE marketable limit orders in approximately 40 U.S.-listed Canadian national stocks available for trading on the Intermarket Trading System ("ITS"). *See* Securities Exchange Act Release No. 21449, November 1, 1984 49 FR 44575. Phase two of the linkage permitted the BSE to expand the list of securities eligible to be traded on the link to include most ITS securities traded on the BSE. *See* Securities Exchange Act Release No. 24926, April 8, 1988, 50 FR 14488.

Under the proposed BSE rule, a separate Linkage Plan would provide the specific details of the terms and conditions for the operation of a proposed linkage between the BSE and a foreign securities exchange. The Linkage Plan would set forth criteria relating to, among other things, the types of orders that may be transmitted through each linkage, clearance and settlement, and compliance with the provisions of the Linkage Plan and with the Exchange rules. Such a Linkage Plan would have to be submitted to, and approved by, the Commission as a separate proposed rule change before the specific linkage could be effected.[6]

The proposed BSE Linkage Rule is a generic rule that would be applicable to any linkage agreement the BSE may ultimately enter into with a foreign securities exchange.[6] The Exchange anticipates that the proposed rule would be used as the basis for drafting a proposed plan for enhancing the current BSE–ME link to permit the northbound routing of orders from the BSE to the ME over BEACON, the BSE's automated order routing and execution system.[7] The current BSE–ME link, which does not have access to BEACON, permits market and marketable limit orders to be routed southbound from the ME to the BSE.[8]

The BSE believes that the proposed rule will enhance the national market system by increasing the ability of Boston specialists to attract order flow and thereby make more competitive and more liquid markets in securities in which they are registered.

[5] *See* letter from Howard Kramer, Assistant Director, Division of Market Regulation, to Joseph Carmichael, Vice President, BSE, dated March 27, 1989; and letter from Joseph Carmichael, Vice President, BSE, to Howard Kramer, Assistant Director, dated June 2, 1989.

[6] BSE has characterized the proposed rule as an "enabling rule."

[7] The term "BEACON" is an acronym for Boston Exchange Automated Communications Order-routing Network. The BSE noted in its proposed rule change that the Linkage Rule will have an impact on the application of its rules relating to the operation of BEACON. The BSE's BEACON rule states that "BEACON * * * is available to foreign exchanges with which a trading link has been established * * *" In its order approving a BEACON pilot, the Commission, in footnote 4, noted the existence of the link between the BSE and the ME and the fact that the BSE, at that time, had no plans to make BEACON available for transactions over the linkage. (*See* Release No. 34–26029 (August 25, 1988), 53 FR 27584). The Commission stated, however:

"Should the BSE * * * decide that it wants to make access to BEACON available over the Montreal linkage, a proposed rule change would have to be submitted to the Commission * * *"

Under the Linkage Rule, the BSE will be able to propose that BSE be allowed to route order flow between the BSE and ME via BEACON.

[8] *See* note 4, *supra*.

The Commission has closely reviewed the provisions of the proposed BSE rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with sections 6(b)(5) and 11A(a)(1)(D) of the Act.[9] The Commission believes that the proposal to establish a Linkage Rule may enhance the national market system by increasing the ability of BSE specialists to attract order flow, thereby resulting in more competitive and more liquid markets in the securities in which they are registered. The Commission believes that investors and the public may benefit, as a result, from improved executions of their transactions in securities.

The Commission generally views agreements between U.S. and foreign securities exchanges as positive developments in the increasing internationalization of the world's securities markets. Such linkages serve to facilitate the flow of capital and financial services across borders. The BSE's proposed rule change is consistent with this view. Before approving these trading links, however, the Commission must be satisfied that adequate safeguards and procedures have been established and implemented to protect investors and detect fraudulent or manipulative acts or practices. To this end, any specific linkage plan proposed under the BSE rules would have to be approved by the Commission.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Dated: July 31, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18402 Filed 8–4–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27073; File No. SR–NASD–89–32]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 12, 1989 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[9] 15 U.S.C. 78f(b) and 78k–1 (1982).

[10] 17 CFR 200.30–3(a)(12) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD" or the "Association") hereby submits amendments to the examination specifications and study outline for the General Securities Principal ("Series 24") qualifications examination. The amendments consist of general revisions to update the rules presently covered by the examination, new material pertaining to recently adopted SEC and NASD Rules, updated material concerning retirement plans, and certain New York Stock Exchange and North American Securities Administrators Association regulations. The number of questions and the testing time are unchanged, but the number of test selection categories was modified.

The above-described amendments do not result in any textual changes to the NASD By-Laws, Schedules to the By-Laws, Rules, practices or procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Pursuant to section 15A(g)(3) of the Securities Exchange Act of 1934 (the "Act"), the NASD is authorized to prescribe standards of training, experience, and competence for persons associated with NASD members. To this end, the NASD has developed examinations that it administers to establish that such persons have attained the requisite levels of knowledge and competence. The NASD periodically reviews the content of the examinations to determine whether amendments are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

The proposed rule change is consistent with the provisions of section 15A(g)(3) of the Securities Exchange Act of 1934, which authorizes the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the amendments to the Series 24 examination specifications and study outline impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 28, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 220.30–3(a)(12).

Dated: July 28, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18403 Filed 8–4–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27074; File No. SR–NSCC–89–04]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change

On March 31, 1989, the National Securities Clearing Corporation ("NSCC") filed a proposed rule change with the Commission pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] As discussed in detail below, the proposal provides for accelerated comparison of securities transactions. Notice of the proposal was published in the **Federal Register** on April 26, 1989.[2] No comments were received.[3] This order approves the proposal.

I. Description of the Proposal

The proposed rule change consists of modifications to Section I (captioned "Trade Input and Comparsion") of NSCC's Procedures.[4] The main purpose of the proposal is to redesign NSCC's Listed Equity Comparison System in order to accelerate the trade comparison process. This proposal is being made in conjunction with companion rule proposals by the American ("Amex") and New York Stock Exchanges ("NYSE") that mandate: (1) Automated trade correction systems, and (2) the comparison or close out of transactions on the day after the trade date (*i.e.*, "T+1").[5]

In general, NSCC's proposal would shorten the comparison cycle for all Amex and NYSE regular-way,[6] systematized and non-systematized equity trades.[7] It would implement an initial match routine on the night of trade date and move up the trade resolution process by one day. NSCC states in its filing that the proposal would apply only to NYSE and Amex transactions in equity securities (*i.e.*, stocks, rights, and warrants).[8]

Specifically, the proposal provides that NSCC clearing members must submit all transactions to NSCC no later than 2:00 a.m. on the day after the trade date (*i.e.*, on "T+1"), which is a proposed acceleration of 11 hours (from 1:00 p.m. on T+1).[9] Clearing members

[1] 15 U.S.C. Sect. 78s(b).

[2] *See* Securities Exchange Act Release No. 26742 (April 18, 1989), 54 FR 18062.

[3] In addition, NSCC's Important Notice No. A3039, dated August 19, 1988, described the proposal, and NSCC received no comments.

[4] Trade comparison, or the matching of the buy and sell sides of a securities transaction, is the process after a trade has been executed by which broker-dealers or their agents confirm with each other the trade's terms (*e.g.*, security, number of units, and price) and the existence of a contract. This process results in a compared trade. Comparison is the first of the three basic steps in processing a securities transaction (the other two being clearance and settlement). *See* Division of Market Regulation, The October 1987 Market Break, 10–2 to 10–4, ("Division Report"); NSCC Procedures, Sect. II.A.

[5] The NYSE and Amex proposals call for phasing in these T+1 comparison programs over a period of about 14 more months (together with certain companion programs, some of which are now being implemented) and the gradual elimination of the comparable existing manual programs. NYSE and Amex expect to have the main elements of their T+1 programs phased in and operating by December 31, 1989 and to have the T+1 programs completely phased in by September 1990. *See* NYSE Rule 130, Order Approving Proposed Rule Change, Securities Exchange Act Release No. 26627 (March 14, 1989), 54 FR 11470 [File No. SR–NYSE–88–36]; Order Approving Proposed Rule Change, Release No. 26773 (May 1, 1989), 54 FR 20227 [File No. SR–NYSE–89–03]; Proposed Amex Rule 719, Notice of Proposed Rule Change, Release No. 26741 (April 18, 1989), 54 FR 18058 [File No. SR–Amex–89–05].

[6] A "regular-way" transaction means settlement on T+5, the ordinary time-frame for settlement of transactions in stocks, rights, and warrants, and certain other securities. *See, e.g.*, NYSE Rule 64(b).

[7] A "systematized" or "locked-in" trade refers to a trade in an automated system. Under the locked-in comparison method, the entity (*e.g.*, the exchange) that operates the system or its specialists become the contra-side to each half of the trade. A "non-systematized" trade refers to traditional two-sided comparison where trade input data come from the buying and selling brokers to the clearing agency. *See* Division Report, 10–3.

[8] The Commission notes that NSCC's use of the term "equity securities" to mean stocks, rights, and warrants is for the purposes of this rule proposal only and does not constitute a comprehensive definition of the term. *See* section 3(a)(11) of the Act.

The proposal, with technical variations, also would apply to regular way trades in equity securities listed on NYSE and Amex that occur over-the-counter ("OTC") or on the other exchanges. *See* proposed NSCC Procedures, Sect. II.C.

The Commission notes that by a previous rule filing, NSCC received authorization for similar accelerated comparison procedures that are applicable to non-systematized equity transactions executed in the OTC market and on securities exchanges other than NYSE and Amex. *See* Securities Exchange Act Release No. 26783 (May 4, 1989), 54 FR 20221.

[9] All times in the proposal refer to New York time.

could delete, through NSCC, uncompared trades only until 2:00 a.m., a proposed acceleration of 13 hours (from 3:00 p.m. on T+1). As information is received, NSCC will perform a series of matches, the results of which will be reflected on regular-way contract lists by 4:00 a.m. on T+1 for automated output and by 7:00 a.m. for printed output.[10]

NSCC will route the results of the comparison process to the exchanges where resolution of uncompared trades will occur. NYSE and Amex will transmit the results of their adjustment processing to NSCC by 5:00 p.m. on T+1.[11] These results will be reflected by NSCC on adjustment contracts that will be available to NSCC members by 8:00 p.m. on T+1.

II. Rationale

NSCC states in its filing that the proposal, by shortening the comparison cycle, would: (1) Increase the efficiency of the post trade comparison process, and (2) shorten the length of time that investors and NSCC clearing members are exposed to the risk of market fluctuations on uncompared trades. The NSCC states that, consequently, as required in section 17A(b)(3)(F) of the Act, the proposal would protect investors and the public interest.

III. Discussion

The Commission believes that this proposal is consistent with the Act. The proposal, by shortening the comparison cycle for NYSE and Amex equity trades, would reduce the risk exposure to investors and to NSCC clearing members as well as contribute to the prompt and efficient clearance and settlement of securities transactions. NSCC's proposal, together with its companion filing,[12] marks the first major overhaul to its comparison system since the 1970s.

The Commission notes, as a general matter, that the goal of prompt and efficient clearance and settlement of securities transactions (including the comparison of securities transactions) and the use of automated systems in pursuit of this goal are expressly contemplated in section 17A(a)(1) of the Act. Congress stated in that provision that inefficient procedures for the clearance and settlement of securities transactions impose unnecessary risks and costs on investors and that prompt and accurate clearance and settlement are necessary for investor protection.

Congress further stated in sections 6(b)(5) and 17A(b)(3)(F) that the rules of exchanges and clearing agencies, respectively, should be designed to promote the prompt and accurate clearance and settlement of securities transactions. Moreover, in section 17A(a)(2) of the Act, Congress directed the Commission to use its authority to facilitate a national system for the prompt and accurate clearance and settlement of securities transactions.

The risks posed by uncompared trades came under intense scrutiny following the Market Break of October 1987.[13] During the Market Break, uncompared trades on all securities markets (including the primary exchanges) increased substantially and, for several reasons, became a major stress point in the clearance and settlement process. First, uncompared trades required special labor-intensive treatment ("exception processing") under working conditions already rendered chaotic by record trading volume.[14] Second, the rate of uncompared trades did not remain at its usual percentage of trading volume, but as trading volume increased to 2½ times normal levels during the week of October 19–23, uncompared trades doubled as a percentage of total trades.[15] And, third, the record market volatility (primarily downward) threatened to impose financial penalties on those firms that could not resolve trade comparison errors quickly, or at any rate before settlement with their customers on T+5.[16]

Based on the experience of October 1987, with its unprecedented trading volume and price volatility, the Commission concluded that, among other things, effecient markets will require same-day, floor-derived trade comparison.[17] Thus, NSCC'S proposal (which will shrink the comparision cycle from T+2 to T+1), while it does not meet the Commission's final objective of same-day comparison, is consistent with the Commission's desire to shorten the comparision cycle. NSCC's proposal also furthers the recommendations of the Working Group Report, which concluded that the development of on-line trade matching systems would enhance the capacity of market participants to monitor their exposure.[18] The proposal, moreover, is consistent with the intermarket clearing and credit mechanisms espoused by the Brady Report to reduce market exposure to clearing corporations.[19] The Commission favors the efforts of this proposal to reduce the length of the comparison cycle. The Commission also expects that NSCC will consider its proposed comparision system not to be a final goal but only a near-term phase in its efforts toward the development and implementation of a same-day comparison system. In this regard, the Commission notes that clearing members rely on NSCC's two sided comparison system to process the

[10] NSCC's "clearing member reports" (also known as "contract sheets" and "contract lists") list compared trades, uncompared trades, and advisory trades. Uncompared trades are trades by a clearing member that have not been matched. Advisory trades are trades submitted by the contra-side, against the member, that have not been matched. *See* NSCC Procedures, Sect. II.B; Division Report, 10–3.

[11] As part of this and related rule changes, the exchanges have developed their own automated trade correction systems that will eliminate the need for adjustment processing as currently performed by NSCC. *See, supra*, note 5 and accompanying text.

[12] *See, supra*, note 8.

[13] *See, e.g.*, Division Report, 10–5 to 10–13; Report of the Presidential Task Force on Market Mechanisms 51–52, Study VI at 48–49 (January 8, 1988) ("Brady Report"); Interim Report of the Working Group on Financial Markets, Appendix D at 6 (May 1988) ("Working Group Report").

[14] *See* Division Report, 10–5. During the Market Break, the exchanges and NSCC took unusual steps to resolve uncompared trades. During the week of October 19, 1987, NYSE required its member organizations and specialists to meet in the morning before trading opened, in the evening after trading closed, and on weekends to resolve uncompared trades. NYSE and Amex closed trading two hours early on Friday, October 23 through Friday, October 30 to allow firms to catch up with the their back office work. NSCC extended its 6:00 p.m. deadline to as late as 1:00 a.m. for its clearing members to report the resolution of uncompared trades, and NSCC was open on Saturday, October 23 to receive reports of compared trades for processing on the following Monday. *See id.* 10–6.

[15] For NYSE executions during the week of October 19, 1987, T+2 uncompared trades processed by two-sided comparison increased from an average rate of 4.6% to 8.7%. *See* Division Report, 10–7.

For NYSE executions on October 19 and 20 (the peak volume days with 604 million shares and 608 million shares, respectively), T+2 uncompared trades for two-sided input increased from an average of 4.6% to 12.8% and 19.2%, respectively. In arithmetic terms, however, uncompared trades on T+2 increased from a daily average of 8,000 to 56,626 and 49,413 for executions on October 19 and October 20, respectively. *See id.*, Table 10–1 at 10–59. *See also* Berady Report, Study IV at 46.

[16] *See* Division Report, 10–8 to 10–9. In terms of price volatility, on Monday, October 19, 1987, the Dow Jones Industrial Average ("DJIA") closing value had declined a record 508.32 points (22.6%, also a record) from its previous close, *i.e.*, from 2246.74 to 1738.41. After two more daily reversals of over 100 points, the DJIA closed out the week on Friday, October 23, 1987, at 1950.76 a net 5-day decline (from Friday, October 16)) of 259.98 points (13.2%). *See id.*, Appendix D at Tables 2 and 3.

[17] *See* Securities and Exchange Commission Recommendations regarding the October 1987 Market Break, contained in Testimony delivered by David S. Ruder, Chairman, SEC, before the Senate Committee on Banking, Housing and Urban Affairs, 23–24 (February 3, 1988). *See also* Division Report, 10–12; Working Group Report, Appendix D at 6.

[18] The Working Group Report called for same-day, floor-derived comparison of securities transactions. *See* Working Group Report, Appendix D at 6.

[19] *See* Brady Report at 64–65.

majority of their listed trades in corporate equity securities.

To summarize, the proposed rule change, by shortening the NSCC's comparison cycle, would make NSCC's comparison procedures: (1) safer with regard to the risks of market price volatility, and (2) more efficient in terms of the time and expense involved in trade processing. Further, the proposal would help protect investors and other persons that safeguard investors' funds and facilitate their transactions. Moreover, the Commission believes that the proposal is consistent with the Act, particularly sections 6(b)(5) and 17A of the Act, and that it warrants approval.

IV. Conclusion

For the reasons discussed in this order, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b) of the Act, that the above-mentioned proposed rule change (File No. SR–NSCC–89–04) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 28, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89–18404 Filed 8–4–89; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–27077; File No. SR–NYSE–89–15]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to Amendments to the Exchange's Voting Rights Listing Standards

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], notice is hereby given that on July 7, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE, pursuant to Rule 19b–4 of the Act [2], has proposed amendments to the Exchange's voting rights listing standards for domestic companies, as set forth in section 313.00 of the New York Stock Exchange Listed Company Manual, and has proposed amendments necessary to conform related sections 308.00 (the Exchange's policies relative to defensive tactics) and 103.00 (concerning listing standards for non-U.S. companies). The proposed rule change will (1) establish Rule 19c–4 ("Rule") under the Act as the foundation of the Exchange's voting rights standard; (2) permit the listing of non-voting common stock with certain safeguards for the holders of such stock; (3) allow a non-U.S. company to issue securities or take other corporate action that is consistent with Rule 19c–4 or which is not prohibited by the laws of its home country; (4) eliminate existing text concerning defensive tactics which are primarily addressed by Rule 19c–4; and (5) delete certain outdated and redundant information concerning non-U.S. companies.

The text of the proposed rule change, as set forth in Exhibits A, B & C of the Exchange's filing, is available at the principal office of the NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspect of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

On July 7, 1988, the Securities and Exchange Commission promulgated Rule 19c–4, under the Act, regarding shareholder voting rights.[3] The Rule prohibits national securities exchanges and associations from listing or quoting the common stock or other equity securities of a domestic company that has issued a class of securities or taken other corporate action that has the effect of nullifying, restricting or disparately reducing the per share voting rights of holders of an outstanding class of common stock.

The Rule specifically enumerates certain actions presumed to be prohibited. However, whether or not a particular action violates the Rule often depends on the particular facts and circumstances involved.

On July 6, 1989, the Exchange's Board of Directors voted to modify the existing voting rights policy so as to establish Rule 19c–4 as the foundation of the Exchange's voting rights standard, and to include the substantive provisions of Rule 19c–4, without change of language, in a rule of the Exchange.[4]

The Exchange's voting rights policies have been further amended to permit the listing of the voting common stock of a company which also has outstanding a non-voting common stock as well as the listing of non-voting common stock. However, certain safeguards must be provided to holders of a listed non-voting common stock.[5]

Finally, the Exchange will accept the voting rights structure of a non-U.S. company which is in compliance with the Exchange's requirements for domestic companies or which is not prohibited by the home country laws.[6]

(2) Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act. This section, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the

[2] 17 CFR 240.19b–4 (1988).

[3] *See* Securities Exchange Act Release No. 34–25801 (July 7, 1988), 53 FR 28376.

[4] *See* proposed section 313.00(A) of the Exchange Listed Company Manual.

[5] *See* proposed section 313.00(B) of the Exchange's Listed Company Manual. These safeguards require among other things, that such issuances must meet NYSE requirements for original listing and that holders of non-voting common stock must receive annual reports and other communications, including proxy materials.

[6] *See* proposed section 313.00(D) of the Exchange's Listed Company Manual. Conforming changes to the Exchange's Listed Company Manual would delete, among other things, provisions concerning restrictions on voting rights through voting trusts, creation of senior issues, increase in authorized amount or creation of a pari passu issue, and requirements for altering the terms of preferred stock.

BEST COPY AVAILABLE

mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purpose of this title or the administration of the Exchange. Furthermore, the proposed rule change is consistent with section 11(A)(a)(1)(c)(ii) of the Act in that it will tend to assure fair competition among exchange markets and between exchange markets and markets other than exchange markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

(C) Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-89-16 and should be submitted by August 28, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 28, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-18405 Filed 8-4-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27076; File No. SR-PSE-89-13]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Verification of Compared Trades and Reconciliation of Uncompared Trades

On May 22, 1989, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to extend the minimum amount of time that members or their representatives must be available after the close of trading for the settlement of uncompared options trades.

The proposed rule change was published for comment in Securities Exchange Act Release No. 26902 (June 2, 1989), 54 FR 25521 (June 15, 1989). No comments were received on the proposed rule change.

The Exchange requires all members who execute options trades to be available for the settlement of uncompared trades throughout the trading day and for a period of time following the close of trading. The members must be available either in person or through a designated representative that is empowered to negotiate the settlement of any dispute in the member's name and for its account. For a given trading day, the time period after the close that members or their representatives must be present normally depends upon the number of options transactions that occurred during the day. Currently, for example, if less than 6,000 transactions occurred on the floor, the minimum time that members must remain on the floor after the close is only 15 minutes. Under the current proposal, however, the Exchange proposes to increase to 45 minutes the minimum amount of time that the members or their representatives must be present after the close. In addition, the Exchange proposes to require members or their representatives to be available for one hour and 15 minutes if greater than 8,000 options transactions occur on any trading day. Currently, members are required to be on the floor for only one hour after the close if more than 8,900 transactions occur.

The Exchange also proposes to delete Options Floor Procedure Advice G-3 ("OFPA"), which currently contains the above-mentioned procedures regarding the reconciliation of uncompared trades, and redesignate it as Commentary .01 to PSE Rule VI, section 23. This change in format is part of the Exchange's initiative to replace the OFPAs with commentaries to the appropriate rule sections.[3]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the national securities exchange, and in particular, the requirements of Section 6.[4] Specifically, by extending the minimum time period that persons must be present to reconcile uncompared options trades, the Commission finds that the proposed rule change is consistent with section 6(b)(5) in that it will foster cooperation and coordination among persons engaged in the clearing, settling and processing of securities transactions. In addition, the Commission believes that placing PSE member obligations regarding the reconciliation of uncompared trades in an Exchange Rule commentary, as opposed to an OFPA, will make such obligations more clear to members.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: July 28, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-18406 Filed 8-4-89; 8:45 am]

BILLING CODE 8010-01-M

---

[1] 15 U.S.C. 78s(b)(1) (1984).

[2] 17 CFR 240.19b-4 (1988).

[3] The proposed rule commentary does not include the portion of the OFPA that relates to disciplinary action because such provisions would be redundant as the disciplinary procedures already are covered in PSE Rule XX.

[4] 15 U.S.C. 78F (1982).

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1988).

[Release No. 34-27075; File No. SR-CBOE-89-14]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc; Filing and Order Granting Accelerated Approval to Proposed Rule Change Relating to Margin Requirements for Equity and Index Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 24, 1989, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change is described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to extend the current margin requirements for equity and index options until such time as the Commission approves a subsequent proposed rule change filed by the Exchange pursuant to section 19 of the Act in accordance with a joint options SRO margin monitoring program which is expected to be implemented in the future.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Items IV below. The SRO has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On May 17, 1988, the Commission approved proposals by the CBOE and the other options SROs to amend their rules to increase customer margin requirements for equity and index options.[1] Specifically, the current customer margin requirements are as follows. For broad-based index options, the margin requirement is 100% of the option premium plus 15% of the underlying aggregate index value, less any out-of-the-money amount, with a minimum requirement of the option premium plus 10% of the underlying aggregate index value. For equity options and narrow-based index options, the requirement is 100% of the option premium plus 20% of the underlying product value, less any out-of-the-money amount, with a minimum requirement of the option premium plus 10% of the underlying product value.

The CBOE, however, notes that, based on an analysis of the historical price changes in the underlying instruments, it believes both equity and index options currently are overmargined. Nevertheless, the CBOE proposes to extend the current margin requirements for equity and index options until a routine margin monitoring program expected to be instituted by the options SROs is implemented.[2] The CBOE believes that the proposed rule change is consistent with section 6(b)(5) of the Act because extending the current margin requirements until a routine margin monitoring program is implemented should assure both firms and investors reasonable financial protection, even if market volatility increases during this period.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

The CBOE does not believe the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The CBOE has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act so that the current margin levels can continue uninterrupted.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder.[3] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) because extending the current margin requirements until a routine margin monitoring program is implemented will assure the financial protection of both firms and investors, even if market volatility increases during this period, thereby protecting investors and the public interest.[4]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the Federal Register so that the increased margin requirements can continue uninterrupted. The Commission previously has solicited comments on the proposed margin levels on three separate occasions and has not received any negative comments. Moreover, the proposal extends margin levels that have been in place for over one year and prevents the margins from reverting back to levels that may be inconsistent with the routine margin monitoring program that is being developed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

---

[1] Securities Exchange Act Release No. 25701 (May 17, 1988), 53 FR 20708, approving the margin increases for a six-month period. In Securities Exchange Act Release No. 26381 (December 21, 1988), 53 FR 52541, the CBOE's margin requirements were extended for an additional three-month period, and in Securities Exchange Act Release No. 26686 (April 4, 1989), 53 FR 14403, the margin requirements were extended until July 17, 1989.

[2] The CBOE also has requested that this approval order be applied retroactively to July 17, 1988, to avoid any lapse in the applicability of the higher margin requirements.

[3] 15 U.S.C. 78f(b)(5) (1982).

[4] The Commission also approves the rule change retroactively to July 17, 1988 to avoid any lapse in the applicability of the increased margin requirements.

All submissions should refer to the file numbers in the caption above and should be submitted by August 28, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (CBOE–89–14) is approved, nunc pro tunc as of July 17, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: July 28, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18399 Filed 8–4–89; 8:45 am]

BILLING CODE 8010–01–M

[54–27063 600–26]

Self-Regulatory Organizations; Filing of Amendments to the Application for Registration as a Clearing Agency by Clearing Corporation for Options and Securities, and Request for Comments

August 1, 1989.

On October 14, 1988, the Clearing Corporation for Options and Securities ("CCOS") filed with the Commission an application for temporary registration as a clearing agency under Section 17A of the Securities Exchange Act of 1934, ("Act") [1] and Rule 17Ab2–1 thereunder.[2] On November 23, 1988, the Commission published notice of the application in the **Federal Register**, requesting comment within 30 days on various issues, including: (1) Whether CCOS's application should be denied in favor of "common clearing"; (2) nine specific questions regarding the integration of multiple options clearing systems; and (3) the effect of CCOS's application on relationships among markets for derivative products.[3] At the request of one potential commentator,[4] the comment period was extended an additional 39 days on December 20, 1988.[5] Fifty letters of comment were received.[6]

During the last month, CCOS has filed amendments to its application. Those amendments include: (1) A letter describing a proposed CCOS-Options Clearing Corporation ("OCC") interface and discussing the mechanics of such interface; [7] (2) an amendment to CCOS's By-laws and rules; [8] and (3) a letter addressing issues raised by the Division of Market Regulation ("Division") staff.[9] The Commission invites comment on CCOS's application in light of these amendments and correspondence. As explained at the conclusion of this release, comments are requested by September 21, 1989. The following discussion briefly outlines the amendments and correspondence, which are available from the Commission.

I. The Interface Letter

In the Interface Letter, CCOS emphasizes that it intends to clear cash settled index options issued by OCC. CCOS further notes that a firm could choose to clear index options at either CCOS or OCC (*i.e.*, the firm would not be required to maintain index option accounts at both clearing agencies) and, therefore, would not incur additional cost if it chose not to clear options with CCOS.

CCOS begins its discussion of interface mechanics by proposing methods of trade data submission by CCOS members to the Chicago Board Options Exchange ("CBOE"). CCOS members could submit trade data to CBOE through terminals used by BOTCC members or via their current data submission procedures. CCOS members who are not BOTCC members would be provided terminals for trade data submission upon request.[10]

CCOS proposes several alternatives for the transmission of matched trade data to CCOS. First, CBOE could transmit to CCOS matched trades CBOE submitted to OCC, and CCOS could extract those trades relevant to its members. Second, CBOE could extract CCOS member trades and submit only that data to CCOS, at, according to CCOS, *de minimis* cost. Third, OCC could transmit to CCOS either all trades it received from CBOE or extracted trades relevant to CCOS members. CCOS believes transmission of data between OCC and CCOS would be inexpensive and present no burdens.[11]

CCOS also proposes procedures for maintaining member positions. CCOS would maintain each member's positions in its records and create an offsetting, balancing position for OCC. OCC would maintain a balancing position in its records for CCOS. CCOS would clear member positions and provide all reports for on-line viewing or remote printing in member offices. CCOS represents that it would provide all relevant clearance and settlement information to members within a few hours of receipt from CBOE (*e.g.*, if relevant information is received from CBOE at 10:00 p.m., trade registers and clearance and settlement information generally would be available to members by 1:00 a.m.) and could transmit that information to any bookkeeping service, firm, or individual in the United States ("U.S.") or worldwide.

CCOS proposes procedures regarding margin collection, funds transfer, and member defaults. CCOS would make "margin calls" at approximately 10:00 a.m. daily, simultaneous with OCC.[12] Intra-day margin calls would be coordinated with OCC and would be made by displaying relevant margin information directly on computer terminals maintained in member offices.[13] Funds would transfer between OCC and CCOS on a daily basis representing options premium payments. CCOS proposes that OCC and CCOS post appropriate surety to enable each entity to assume related funds transfer risks. According to CCOS, a default by a CCOS member regarding its obligations to either CCOS or OCC would be cured by prompt coordination between CCOS and OCC to ensure orderly liquidation or transfer of positions. Such coordination would occur regardless of whether the member defauited to one entity or both.[14]

With respect to exercises and assignments, CCOS assumes OCC, as options issuer, would assign notices for all exercised options. CCOS would receive, via computer transmission, exercises from its members and transmit those exercises in aggregate to OCC. OCC would assign applicable exercise notices to CCOS, who would assign, in turn, those exercises to CCOS members using a random assignment system.

CCOS concludes its discussion of interface mechanics by discussing potential cost. CCOS believes that costs associated with the proposed interface described above, in view of today's technology, would be minimal. CCOS details, based on costs BOTCC incurs in maintaining interfaces with other commodities clearinghouses, potential costs associated with data transmission between CCOS and OCC and the development of computer programs to format that data. CCOS anticipates that most costs associated with a proposed interface would be borne by CCOS.

In addition to defining the scope of CCOS activities and mechanics of a proposed CCOS–OCC interface, CCOS discusses other items relevant to its applicant. First, CCOS notes that it would have access to a sophisticated system to analyze and monitor member portfolio risk. CCOS also notes that BOTCC is preparing to develop a real-time risk analysis system that would enable CCOS to provide members with an analysis of their risk exposure as new trades enter the system. Second, CCOS describes BOTCC computer facilities and related safeguards applicable to CCOS operations pursuant to a CCOS/BOTCC facilities management agreement. Third, CCOS notes that BOTCC has the operational capacity to perform its obligations under the facilities management agreement without adversely impacting services provided by either entity. Fourth, CCOS notes that its margin system and clearing fund would be patterned after corresponding OCC systems, would be subject to full Commission oversight and review, and would protect CCOS clearing members. CCOS represents that it will not compete by establishing lower margin or clearing fund levels. Fifth, CCOS states that it will develop a cross-margining system, with Commission approval, if CCOS or other clearing organizations deem such appropriate. Finally, CCOS notes that it will admit as members all entities enumerated in section 17A(b)(3)(B) of the Act,[15] if they meet CCOS admission criteria.

II. The By-law/Rule Amendments

These amendments alter CCOS By-laws concerning the composition of CCOS's Board of Directors ("Board"). Originally, Article III, section 2 of the By-laws provided that CCOS's Board shall consist of three directors, with the initial Board comprised of individuals named in CCOS's certificate of incorporation. Under these amendments, CCOS's Board, commencing with its 1989 annual meeting of shareholders, shall consist of five directors, three to be selected from members of the Executive Committee of BOTCC's Board of Governors and two to be selected from CCOS officers.

These amendments also alter CCOS By-laws and rules regarding the composition of certain committees of the CCOS Board. Originally, Article III, section 12 of CCOS's By-laws permitted only CCOS directors to serve on Board committees. These amendments permit CCOS clearing members to serve on such committees. Originally, CCOS Rule 302 provided that the membership committee to CCOS's Board shall consist of three CCOS directors. Under the amendments, that committee shall consist of at least one CCOS clearing member and two CCOS directors. Originally, CCOS Rule 1103 provided that the margin committee to CCOS's Board shall consist of all CCOS directors. Under the amendments, that committee shall consist of at least one CCOS clearing member and two CCOS directors.

These amendments also add to CCOS Rule 1104 (*i.e.*, acceptable forms of margin) standards for the acceptance of a bank or trust company as a letter of credit issuer. Under those standards, U.S. institutions must: (1) Be organized under the laws of the U.S. or a state thereof and be regulated and examined by federal or state regulators; and (2) at the time of approval and continuously thereafter, have shareholders' equity of $100 million or more. Non-U.S. institutions must: (1) Be organized under the laws of a non-U.S. country with a federal or state branch or agency in the U.S.; and (2) at the time of approval and continuously thereafter, have shareholders' equity exceeding $200 million (U.S.). As described more fully in the amendments, a non-U.S. institution also must meet certain rating standards established by U.S. rating organizations. Furthermore, no more than 50% of a clearing member's deposited margin may include letters of credit issued by non-U.S institutions in the aggregate and no more than 20% may include letters of credit issued by any one non-U.S. institution. Any letter of credit issued by a non-U.S. institution must be issued and payable at a federal or state branch or agency located in Chicago, Illinois.

Certain letter of credit criteria must be met by both U.S. and non-U.S. institutions. First, the total amount of letters of credit used for the account of any one clearing member by any institution may not exceed 10% of that institution's shareholders' equity. Second, each institution must provide CCOS, initially and on an ongoing basis, with annual reports an quarterly financial statements. Third, each entity must provide, in a form satisfactory to CCOS, appropriate documentation regarding individual authority to sign letters of credit and the institution's authority to issue letters of credit. Fourth, CCOS will not accept a letter of credit issued for the account of a clearing member if the issuing institution, a parent, or an affiliate has an equity interest of 20% or more of that member's total capacity. Finally, CCOS reserves the right to refuse or revoke approval of any institution as a letter of credit issuer at any time.

These amendments also alter that portion of CCOS's CA–1 providing information on CCOS directors. Specifically, the amendments contain information on three new CCOS directors: John Gilmore, Jr., Thomas E. Neal, and Ralph I. Goldenberg.

III. The Response Letter

In the Response Letter, CCOS and BOTCC make several representations to the Commission. First, CCOS represents that it will be capitalized initially at $1 million by BOTCC. CCOS estimates this figure is three times the capital devoted by OCC to clearing 15% of CBOE index options, the percentage of CBOE index option volume CCOS estimates it will clear initially.[16] CCOS also represents

---

[1] 15 U.S.C. 78s(b)(2) (1982).

[2] 17 CFR 200.30–3(a)(12) (1988).

[3] 15 U.S.C. 78q–1.

[4] 17 CFR 240.17Ab2–1 (1989).

[5] *See* Securities Exchange Act Release No. 26288 (November 18, 1988), 53 FR 47597.

[6] *See* letter from Burton R. Rissman, Schiff, Hardin & Waite to Jonathan G. Katz, Secretary, Commission, dated December 3, 1988. CCOS responded to the request and generally opposed the requested extension. *See* letter from Alan B. Cohen, Cleary, Gottlieb, Steen & Hamilton, to Jonathan Kallman, Assistant Director, Division of Market Regulation, dated December 20, 1988.

[5] *See* Securities Exchange Act Release No. 26380 (December 20, 1988), 53 FR 52282.

[6] *See* File No. 600–26.

[7] *See* letter from Roger D. Rutz, President & Chief Executive Officer, Board of Trade Clearing Corporation ("BOTCC"), to Jonathan G. Katz, Secretary, Commission, dated June 6, 1989 ("Interface Letter").

[8] *See* letter from Alan B. Cohen, Cleary, Gottlieb, Steen & Hamilton, to Jonathan Kallman, Assistant Director, Division of Market Regualtion, dated June 23, 1989 ("By-law/Rule Amendments").

[9] Letter from Dennis A. Dutterer, Senior Vice President and General Counsel, CCOS and BOTCC, to Richard G. Ketchum, Director, Division of Market Regulation, dated July 19, 1989 ("Response Letter"). *See*, letter from Richard G. Ketchum, Director, Division of Market Regulation, to Dennis A. Dutterer, Senior Vice President and General Counsel, CCOS and BOTCC, dated June 7, 1989, in which the Division raised issues addressed in the Response Letter.

[10] CCOS notes that this "one-terminal-submission concept" is the same procedure BOTCC uses to collect and provide trade data to the Chicago Mercantile Exchange ("CME").

[11] CCOS notes that BOTCC currently has an active computer-to-computer link with OCC for the transmission of data between the Intermarket Clearing Corporation and BOTCC. CCOS proposes to use this link to transmit data as well as exercise and assignment notices between CCOS and OCC.

[12] CCOS represents that it would consider making margin calls earlier than 10:00 a.m., if members common to CCOS and OCC are satisfying margin calls to other clearinghouses.

[13] CCOS notes that margin information also could be directly transmitted to relevant banks or other organizations.

[14] CCOS proposes a CCOS/OCC agreement to provide for structured flow of funds between the two entities in the event of member default. According to CCOS, such an agreement could be similar to the OCC–CME agreement relating to defaults that may occur in the OCC–CME cross-margining program.

[15] Under Section 17A(b)(3)(B), a clearing agency must admit as members any: (1) Registered broker or dealer, (2) other registered clearing agency, (3) registered investment company, (4) bank, (5) insurance company, or (6) other person or class of persons as the Commission, by rule, may from time to time designate as appropriate.

[16] The Division suggested that, because the initial composition of CCOS's membership is unknown

Continued

that it will conduct a monthly review of its capitalization. If CCOS clearing activity increases above the 15% benchmark, it will review with the Commission the amount of additional capital necessary and make appropriate adjustments in its capital, either through additional contributions by BOTCC or through the contribution of retained earnings.[17]

Second, CCOS represents that it is prepared to share member position information with other registered clearing agencies, such as OCC. CCOS proposes a CCOS/OCC agreement providing for a mutual exchange of position information on joint clearing members, to be effected via an existng communication link between OCC and BOTCC.

Third, CCOS and BOTCC represent that they will not treat CCOS positions differently than OCC positions for purposes of margin offset. CCOS and BOTCC further represent that any cross-lien arrangement between themselves will be offered on equal terms to other registered clearing agencies, such as OCC.

Fourth, CCOS represents that BOTCC will make its facilities, books, and records applicable to CCOS operations available to Commission staff for inspection and other regulatory purposes. Further, CCOS represents that BOTCC has the operational capability to handle instances of extreme market volume and volatility.

IV. Request for Comments

Commentators are invited to submit written data, views, and arguments concerning the amendments described above within 45 days of the date of publication of this notice in the **Federal Register**. Such written data, views, and arguments will be considered by the Commission in reviewing CCOS's application. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. 600–26.

Copies of the application and of all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18400 Filed 8–4–89; 8:45 am]

BILLING CODE 8010–01–M

---

and may not immediately reflect a wide range of market participants, it would be prudent to maintain capital at a level exceeding that which would be appropriate for OCC on a relative basis. If CCOS members become representative of all participants in the index options market, CCOS represents that it will seek Commission approval to eliminate any surplus capital resulting from the initial tripling of estimated capital relative to OCC capitalization and subsequent additional capital contributions. *See* Response Letter.

[17] CCOS also represents that BOTCC will ensure that no obligations relating to operational expenses will constitute an obligation of CCOS such that it effects CCOS's ability to fulfill obligations to its members. According to CCOS, BOTCC claims always will be subordinate to claims against CCOS by CCOS members. *See* Response Letter.

[34–27079 600–22]

Self-Regulatory Organization; MBS Clearing Corporation; Order Extending Registration as a Clearing Agency

July 31, 1989.

On February 2, 1987, the Securities and Exchange Commission granted the application of MBS Clearing Corporation ("MBSCC") for registration as a clearing agency, pursuant to sections 17A and 19(a) of the Securities Exchange Act of 1934 ("Act"), and Rule 17Ab2–1(c) thereunder, for a period of 18 months.[1] At that time, the Commission granted MBSCC an exemption from compliance with section 17A(b)(3)(C) of the Act.[2] On August 2, 1988, the Commission extended MBSCC's registration as a clearing agency and the exemption from compliance with section 17A(b)(3)(C) of the Act until August 2, 1989.[3]

The order granting MBSCC's application contemplated that on or before August 2, 1989, the Commission would consider whether to grant MBSCC registration as a clearing agency without exemptions from statutory standards or consider whether to grant MBSCC such exemption from statutory standards, as MBSCC may request, as appropriate under the Act. By letter dated July 18, 1989, MBSCC has consented to an extension of the time for action on its application for registration and has withdrawn its request for an exemption from compliance with section 17A(b)(3)(C).

It is therefore ordered, That MBSCC's registration as a clearing agency be, and hereby is, extended until September 28, 1990.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18398 Filed 8–4–89; 8:45 am]

BILLING CODE 8010–01–M

---

[1] Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218.

[2] Section 17A(b)(3)(C) requires that MBSCC's rules assure fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs.

[3] Securities Exchange Act Release No. 25957 (August 2, 1988), 53 FR 29537.

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before September 6, 1989. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653–8538.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395–7340.

Title: Disaster Business Loan Application.

Form Nos.: SBA Forms 5, 739A, 1368, 1632.

Frequency: On occasion.

Description of respondents: Small Businesses attempting to attain a business loan as a result of a disaster.

Annual Responses: 12,000

Annual Burden Hours: 51,336

Title: Executive Qualifications Questionnaire.

Form No.: 2014A.

Frequency: On occasion.

Description of respondents: Small businesses wishing to participate in overseas export promotion events.

Annual Responses: 60

Annual Burden Hours: 120

Title: Personal Financial Statement.

Form No.: SBA Form 413.

Frequency: On occasion.

Descriptions of Respondents: Applicants for an SBA loan.

Annual Responses: 76,500

Annual Burden Hours: 76,500

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 89–18322 Filed 8–4–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2372]

Declaration of Disaster Loan Area; Colorado

Boulder County and the contiguous counties of Adams, Gilpin, Grand, Jefferson, Larimer, and Weld, in the State of Colorado, constitute a disaster area as a result of damages from a wildfire which occurred between July 9 and July 14, 1989. Applications for loans for physical damage may be filed until the close of business on September 28, 1989 and for economic injury until the close of business on April 30, 1990 at the address listed below: Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95825 or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Businesses and non-profit organizations (EIDL) without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125

The number assigned to this disaster for physical damage is 237205 and for economic injury the number is 680600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 28, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89–18325 Filed 8–4–89; 8:45 am]

BILLING CODE 8025–01–M

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of action subject to intergovernmental review under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund twenty-nine presently existent Small Business Development Centers (SBDCs) on January 1, 1990. Currently, there are 54 SBDCs operating in the SBDC program. The following SBDCs are intended to be refunded, subject to the availability of funds: Arizona, Arkansas, Colorado, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Maine, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Washington and Wisconsin. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDCs to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR part 135.

EFFECTIVE DATE: November 6, 1989.

ADDRESS: Comments should be addressed to Ms. Janice E. Wolfe, Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application of twenty-nine presently existent Small Business Development Centers (SBDCs) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published at least three months in advance of the expected date of refunding these SBDCs. Relevant information identifying these SBDCs and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Ms. Janice E. Wolfe, Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street NW., Washington, DC 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 90 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 90 day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commenter prior to refunding the SBDC.

Description of the SBDC Program

The SBDC operates under the general management and oversight of SBA, but with recognition that a partnership exists between the Agency and the SBDC for the delivery of assistance to the small business community. SBDC services shall be provided pursuant to a negotiated Cooperative Agreement with full participation of both parties. SBDCs operate on the basis of a State plan to provide assistance within a State or designated geographical area. The initial plan must have the written approval of the Governor. As a condition to any financial award made to an applicant, non-Federal funds must be provided from sources other than the Federal Government. SBDCs operate under the provisions of Pub. L. 96–302, as amended by Pub. L. 98–395, a Notice of Award (Cooperative Agreement) issued by SBA, and the provisions of this Program Announcement.

Purpose and Scope

The SBDC Program is designed to provide quality assistance to small businesses in order to promote growth, expansion, innovation, increased productivity and management improvement. To accomplish these

objectives, SBDCs link resources of the Federal, State, and local governments with the resources of the educational system and the private sector to meet the specialized and complex needs of the small business community. SBDCs also coordinate with other SBA programs of business development and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State, academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources;

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDCs are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In States where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a full-time Director. SBDCs must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDCs provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDCs emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association), exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State. The SBDC shall also ensure that a full range of business development and technical assistance services are made available to small businesses located in rural areas.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs. SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDCs should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDCs should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform, but not be limited to, the following activities:

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small businesses that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

The Lead SBDC and all SBDC subcenters shall operate on a forty (40) hour week basis, or during the normal business hours of the State or Host Organization, throughout the calendar year. The amount of time allowed the Lead SBDC and subcenters for staff vacations and holidays shall conform to the policy of the Host organization.

Dated: July 27, 1989.

Susan Engeleiter,

Administrator.

Addresses of Relevant SBDC Directors

Mr. Dave Smith, State Director, Gateway Community College, 108 North 40th Street, Phoenix, Arizona 85034, (602) 392–5224

Mr. Paul McGinnis, State Director, University of Arkansas, 100 South Main, Suite 401, Little Rock, Arkansas 72201, (501) 371–5381

Dr. Richard E. Wilson, State Director, Colorado Community College, 600 Grant Street, Suite 505, Denver, Colorado 80203, (308) 894–2422

Ms. Nancy Flake, State Director, Howard University, 6th and Fairmount St., NW., Room 128, Washington, DC 20059, (202) 636–5150

Mr. Jerry Cartwright, State Director, University of West Florida, Building 38, Pensacola, Florida 32514, (904) 474–3016

Ms. Jennifer Horton, University of Georgia, Chicopee Complex, Athens, Georgia 30602, (404) 542–5760

Mr. Ronald Hall, State Director, Boise State University, 1910 University Drive, Boise, Idaho 83725, (208) 385–1640

Mr. Jeff Mitchell, State Director, Dept. of Commerce & Community Affairs, 620 East Adams Street, Springfield, Illinois 62701, (217) 524–5856

Mr. Steve Thrash, State Director, Indiana Economic Development Council, One North Capitol, Suite 200, Indianapolis, Indiana 46204, (317) 634–7690

Mr. Tom Hull, State Director, Wichita State University, Campus Box 148, 021 Clinton Hall, Wichita, Kansas 67208, (316) 689–3193

Mr. Robert Hird, State Director, University of Southern Maine, 246 Deering Avenue, Portland, Maine 04102, (207) 780–4420

Mr. Mike Miles, Acting State Director, Greater Minnesota Corporation, 1250 International Centre, 900 Second Avenue, South Minneapolis, Minnesota 55402, (612) 338–6656

Mr. Rodney Jorgensen, Acting State Director, Montana Department of Commerce, 1424 Ninth Avenue, Helena, Montana 59620, (406) 444–4780

Mr. Robert Bernier, State Director, University of Nebraska/Omaha, Peter Kiewit Center, Omaha, Nebraska 68182, (402) 554–2521

Mr. Samuel Males, State Director, University of Nevada/Reno, College of Business Admin., Reno, Nevada 89557–0016, (702) 784–1717

Mr. James Bean, State Director, University of New Hampshire, 400 Commercial St., Room 311, Manchester, NH 03101, (603) 625–4522

Ms. Janet Holloway, State Director, Rutgers University, Ackerson Hall, 3rd Floor, 180 University Street, Newark, New Jersey 07102, (201) 648–5950

Mr. Scott Daugherty, State Director, University of North Carolina, 820 Clay Street, Raleigh, North Carolina 27605, (919) 733–4643

Dr. Grady Pennington, State Director, SE Oklahoma State University, Station A, Box 4198, Durant, Oklahoma 74701, (405) 924–0277

Mr. Sandy Cutler, State Director, Lane Community College, 99 West 10th Avenue, Suite 216, Eugene, Oregon 97401, (503) 726–2250

Mr. Gregory Higgins, State Director, University of Pennsylvania, The Wharton School, 3201 Steinberg-Dietrich Hall/CC, Philadelphia, PA 19104, (215) 898–1219

Mr. Douglas Jobling, State Director, Bryant College, Smithfield, RI 02917, (401) 232–6111

Mr. William Littlejohn, State Director, University of South Carolina, College of Business Admin., Columbia, South Carolina 29208, (803) 777–4907

Mr. Donald Greenfield, State Director, University of South Dakota, 414 East Clark, Vermillion, SD 57069, (605) 677–5272

Dr. Leonard Rosser, State Director, Memphis State University, Memphis, Tennessee 38152, (901) 678–2500

Mr. Kumen Davis, State Director, University of Utah, 660 South 200 East, Suite 418, Salt Lake City, Utah 84111, (801) 581–7905

Mr. Lyle Anderson, State Director, Washington State University, College of Business and Economics, Pullman, Washington 99164, (509) 335–1576

Mr. William Pinkovitz, State Director, University of Wisconsin, 602 State Street, Second Floor, Madison, Wisconsin 53703, (608) 263–7794

Mr. Randy Grissom, State Director, Santa Fe Community College, P.O. Box 4187, Santa Fe, New Mexico 87502–4187

[FR Doc. 89–18821 Filed 8–4–89; 8:45 am]

BILLING CODE 8025–01–M

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, will hold a public meeting at 8:00 a.m. on Monday, August 14, 1989, at the Days Inn, 900 East Main Street, Meriden, Connecticut, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Henry A. Povinelli, District Director, U.S. Small Business Administration, 330 Main Street, 2nd Floor Hartford, Connecticut 06106, phone (203) 240–4670.

Dated: August 1, 1989

R. William Crovella II,

Acting Director, Office of Advisory Councils.

[FR Doc. 89–18323 Filed 8–4–89; 8:45 am]

BILLING CODE 8025–01–M

Region VII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Kansas City, will hold a public meeting from 10:00 a.m. to 12:00 p.m. on Wednesday, August 30, 1989, at the Federal Reserve Bank Community Room, 10th and Grand, Kansas City, Missouri, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Glenn Davis, District Director, U.S. Small Business Administration, 1103 Grand Avenue, 6th Floor, Kansas City, Missouri, 64106, phone (816) 374–6760.

Dated: July 28, 1989.

R. William Crovella II,

Acting Director, Office of Advisory Councils.

[FR Doc. 89–18324 Filed 8–4–89; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance; Burlington Northern Railroad and Long Island Rail Road

In accordance with 49 CFR 211.9 and 211.41 and 45 U.S.C. 1–18 and 1013, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for waivers of compliance with certain requirements of the federal railroad safety laws and regulations. The individual petitions are described below, including the parties seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Burlington Northern Railroad

Waiver Petition Docket Numbers PB–89–4 and SA–89–5

The Burlington Northern Railroad (BN) seeks waivers of compliance to permit the operation of railroad/highway vehicles which are designated as "RoadRailer" units. The railroad proposes to operate RoadRailer units commingled in trains behind double-stack container cars. A double-stack container car is a deep-well articulated car comprised of five units permanently coupled together, on each unit of which two or more cargo containers are stacked on top of each other (a double-stack configuration). The RoadRailers are almost identical to the standard semi-trailer presently used to haul cargo over the highway, the only difference being that they are equipped with a special drawbar, railroad running wheels and a special railroad brake system. The RoadRailer model Mark IV has the railroad wheels mounted on a single axle between the tandem highway wheels of the semi-trailer, and the RoadRailer model Mark V semi-trailer is supported on a standard 70-ton freight car truck. The RoadRailer vehicles, by design, cannot be subjected to traditional switching procedures that are conducted in railroad classification yards. The coupler assembly will only couple to another RoadRailer vehicle or to a specially designed adapter car between the locomotive and a RoadRailer train, and the drawbar height is nonstandard.

Several railroads have conditional waivers that permits them to operate trains consisting wholly of RoadRailers. The conditional waivers permit noncompliance with all the provisions of the Safety Appliance Standards (49 CFR part 231). These regulatory standards include provisions for the number, location and dimensional specifications for the handholds, ladders, sill steps and hand brakes that are required for each railroad freight car. The waivers also permit noncompliance with a provision of the Railroad Power Brakes and Drawbars Regulations (49 CFR part 232), § 232.2, which sets the requirements for the height of drawbars in cars used in freight service. The waivers granted to the several railroads generally include the following conditions:

(1) That the RoadRailer units may not be interchanged with any other railroads;

(2) That train length is restricted to 75 units maximum;

(3) That RoadRailer units may not be commingled with conventional railroad rolling equipment [Note: For the purpose of this waiver "not be commingled" means that RoadRailer units may only be operated in trains consisting exclusively of RoadRailer units, adaptor car and locomotives];

(4) That an adaptor unit must be used between the hauling locomotive and the first car in the RoadRailer train;

(5) That FRA will permit the hauling of hazardous materials in RoadRailer vehicles provided: (1) That the particular commodities are limited to those listed in Table 2 of 49 CFR 172.504; and (2) that the shipment of such hazardous materials complies with the other relevant provisions of the hazardous materials regulations. Additionally, the FRA will permit the operation of the RoadRailers under the placarding provisions of 49 CFR 172.504(c) during rail movement of these vehicles;

(6) That the railroad shall issue operating rules and safety rules for its employees which warn them that they must not attempt to mount or dismount RoadRailer semi-trailers because they are not equipped with safety appliances;

(7) When brake cylinder piston travel is in excess of 1⅛ inches on the Mark IV RoadRailers, the air brake cannot be considered in effective operating condition; and

(8) All Federal safety regulations except those exemptions listed in this waiver must be complied with.

BN Waiver Petition Docket No. SA–89–8 seeks a waiver of compliance with the Safety Appliance Standards (49 CFR part 231) to the extent that the RoadRailers may be operated without handholds, ladders, sill steps and hand brakes that are required for each railroad freight car. BN Waiver Petition Docket No. PB–89–4 seeks a waiver of compliance with a provision of the Railroad Power Brakes and Drawbar Regulations, 232.2, to the extent that the RoadRailers may be operated with coupler heights that exceed the regulatory maximum of 34½ inches above the top of the rail, having a height of approximately 49½ inches to achieve compatibility between highway and rail operation.

The waivers granted by FRA to the railroads operating the RoadRailers prohibit the commingling of the vehicles in trains with any other freight cars, and it is this condition that the BN wishes to have eliminated. The BN's justification that it be permitted to operate RoadRailers behind double-stack cars is based upon the findings of tests performed at the Transportation Test Center (TTC) in Pueblo, Colorado in the fall of 1988. These tests, which were patterned after the Association of American Railroads (AAR) Chapter XI certification for new and untried cars, included high speed stability, stop distance, curving, and tests over perturbed track, such as rock and roll, pitch and bounce, yaw and sway, and bunched spiral. Additional tests, not required by the AAR but considered necessary by the BN, included longitudinal train forces, crossovers, turnouts, grade braking simulations, and braking in curves and crossovers. To accommodate the coupling of the RoadRailer unit to the doublestack car, a newly designed connector on the double-stack car was utilized and tested at the same time. In pitch and bounce tests, the last double-stack truck springs consistently bottomed out at high speed during the bounce test when connected to a loaded Mark IV RoadRailer, and it was concluded that an upgraded spring group was needed for the double-stack car to prevent this from occurring.

The carrier states that, "Based upon the findings of these tests, the BN has recommended the following criteria for integrated operation:

1. Trains will be limited to three (3) six-axle locomotives, up to five (5) double-stack cars (25 units) followed by up to forty (40) RoadRailer units.

2. Empty RoadRailer units will be blocked together behind loaded RoadRailer units at the rear of the train. Double-stack and RoadRailer units will not be interspersed.

3. New double-stack cars will be used in captive service and equipped with a connector at both ends, a second brake pipe and fully automatic, modified brake equipment (load/empty device).

4. The connector will require design refinements that are to be overseen by Trailer Train for production model versions.

5. Double-stack cars used in captive, integrated service will have the end 70-ton trucks equipped with fully rated spring groups."

Long Island Railroad

Waiver Petition Docket Number PB–89–5

The Long Island Rail Road (LI), on behalf of the New York Cross Harbor Railroad Terminal Corporation (NYCH) and Intermodal Concepts, Inc. (ICI), requests that the Federal Railroad Administration (FRA) grant a permanent waiver of compliance with FRA's coupler height regulation (49 CFR 232.2) to permit the bogie equipment manufactured by ICI to be operated and scheduled as often as traffic dictates. The LI petition is based upon the assertion that the bogies have passed all tests in the FRA-approved test program, Docket Number H–88–1, without interference or difficulty under the most stringent conditions. See description of proposed test program in Federal Register, Vol. 53, p. 10581 (April 1, 1988).

The ICI System vehicle is a bogie 22 feet, 4 inches in length between end sills, with two axles and 28-inch diameter wheels. The carless system uses a bogie with both a depressed deck that holds the rear tandem wheels of one semi-trailer and a hitch that connects with the kingpin of the adjacent semi-trailer. This system utilizes the semi-trailer vehicle as the structure through which longitudinal train forces are transmitted. Sluing of the bogie under the semi-trailers is accomplished by a swivel support under the tandem wheels allowing 7.5 degrees maximum rotation and rotation between the semi-trailer kingpin and the bogie hitch.

The current model of the bogie is in compliance with the requirements of the Safety Appliance Standards (49 CFR part 231). The bogie is equipped with AB type air brake valves. The brake pipe or train line is a ¾-inch hose connected between the bogies. These flexible hoses are retained in a retractable reel located on each bogie, which allows for variations in length of the semi-trailers being hauled, and also for moving only the bogies coupled together.

A train comprised of bogies and semi-trailers will have automatic couplers at the hauling locomotive and at the rear end of the train of a standard height as required by 49 CFR 232.2 (center line of knuckle 31⅛ to 34½ inches above the top of the rail); however, the intermediate automatic couplers are not in compliance, and the center line of the knuckles is 27 inches above the top of the rail. This coupler arrangement was designed to be only 27 inches above the top of the rail to guard against the bogies being interspersed with any other type of freight car equipment. The bogies with 27-inch coupler heights are stenciled, "Nonstandard Coupler Height."

The ICI bogie train began operations on December 22, 1988, between Greenville Yard, Jersey City, New Jersey, and Farmingdale, New York. Semi-trailers are loaded on the bogies in Greenville Yard with a gantry-type loader. NYCH places the bogie/semi-trailers on a car float barge at Greenville Yard for movement across New York Harbor to Brooklyn, New York. The bogies are interchanged to the LI for delivery to Farmingdale, a distance of approximately 35 miles. The speed of the operation does not exceed 30 mph.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number PB–89–4) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before September 20, 1989 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m. to 5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on July 31, 1989.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89–18338 Filed 8–4–89; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 28, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2409, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices

OMB Number: New

Form Number: FPI–1 (formerly TD F 90–19.1) and FPI–2 (formerly TD F 90–19.2)

Type of Review: New Collection

Title: Foreign Portfolio Investment Survey Forms and Instructions

Description: The purpose of the survey is to determine the magnitude and aggregate value of portfolio investment, form of investments, types of investors, nationality of investors and recorded residence of foreign private holders, diversification of holdings by economic sector, and holders of record. Affected public consists of issuers and holders of record of securities.

Respondents: Businesses or other for-profit, Federal agencies or employees

Estimated Number of Respondents/Recordkeepers: 1,950

Estimated Burden Hours Per Response/Recordkeeping:

Form FPI–1—30 hours

Form FPI–2—100 hours

Recordkeeping—10 hours

Frequency of Response: Other (Reports collected once every five years)

Estimated Total Reporting Burden: 88,500 hours

Clearance Officer: Dale A. Morgan (202) 566–2820, Departmental Offices, Room 2409, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89–18327 Filed 8–4–89; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 150
Monday, August 7, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:37 a.m. on Tuesday, August 1, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider: (1) Administrative enforcement proceedings; (2) matters relating to the possible closing of certain insured banks; (3) matters concerning the Corporation's corporate activities; and (4) matters relating to assistance agreements pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director C. C. Hope, Jr. (Appointive), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: August 2, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR. Doc. 89-18491 Filed 8-3-89; 11:11 am]

BILLING CODE 6714-01-M

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

TIME AND DATE: 10:30 am Monday, September 25, 1989.

PLACE: The Army and Navy Club, 901 17th Street, NW., Washington, DC 20006.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

1. Call meeting to order.
2. Adoption of proposed agenda.
3. Approval of minutes of April 17, 1989 meeting.
4. Report of the Chairman.
   a. Discussion of any proposed changes in 1990 scholarship program. Possible impact of Gramm-Rudman in 1991.
   b. Discussion of the Public Service Conference, Lexington, VA, on October 20-21, 1989.
   c. Report on Awards Ceremony, Independence, MO on May 6, 1990.
   d. Suggestions for future Awards Ceremony speakers.
   e. Retirement of Executive Secretary.
5. Report of Executive Secretary.
   a. Status of Trust Fund.
   b. Regional Review Panel update.
   c. Comments on 1989 Faculty Representatives.
   d. Outlook for 1989-90 nominations.
6. Resolution to empower the Chairman/Executive Secretary to enter/renew contracts, conclude agreements, and conduct other Foundation business.
7. New Business.
8. Discuss and set date, time and place of Spring Board Meeting, April, 1990.
9. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Malcolm C. McCormack, Executive Secretary, Telephone (202) 395-4831.

Malcolm C. McCormack,

Executive Secretary.

[FR Doc. 89-18525 Filed 8-3-89; 2:40 pm]

BILLING CODE 9500-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

A majority of the Board determined by recorded vote that the business of the Board required holding this meeting on less-than-normal notice and that no earlier announcement was possible.

TIME AND DATE: 9:00 a.m. Thursday, August 3, 1989.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. NTSB Statement on Confidentiality of CVR Tapes.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: August 2, 1989.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 89-18540 Filed 8-3-89; 1:33 pm]

BILLING CODE 7533-01-M

POSTAL RATE COMMISSION

Meeting

TIME AND DATE: 10:30 a.m., Thursday, August 10, 1989.

PLACE: Hearing Room, 1333 H Street, NW., Suite 300, Washington, DC 20268.

STATUS: Open.

MATTERS TO BE CONSIDERED: To discuss a final rule in Docket No. RM88-2, Express Mail Rulemaking.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,

Secretary.

[FR Doc. 89-18541 Filed 8-3-89; 1:33 pm]

BILLING CODE 7710-FW-M

Corrections

Federal Register
Vol. 54, No. 150
Monday, August 7, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-89-200]

Pineapples; Grade Standards

Correction

In proposed rule document 89-17411 beginning on page 31338 in the issue of Friday, July 28, 1989, make the following corrections:

1. On page 31338, in the third column, under "Changes in Definition of Terms", in the second paragraph, in the third line, "straight" was misspelled.

2. On page 31342, in Table 1 footnote 2, "All" should read "AL".

3. On page 31343, in Table 2 footnote 1, "designation" should read "destination".

§ 51.1494 [Corrected]

4. On the same page, in § 51.1494, in the third line, "extent" should read "extend".

§ 51.1495 [Corrected]

5. On the same page, in § 51.1495, in the fourth line, "noticeable" should read "noticeably".

§ 51.1510 [Corrected]

6. On page 31344, in § 51.1510, in the table, under "Injury", in the 13th line, "inches" should read "inch"; in the 18th line "or" should be removed; and in the 22nd line, insert "slightly detracts from" after "than".

7. On the same page, in the same section, in the table, under "Damage", in the second line, "inches" should read "inch", and "when bruise" should read "when a bruise".

8. On the same page, in the same section, in the table, under "Serious damage", in the 16th line, "brow-black" should read "brown-black".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-126]

Receipt of a Permit Application for Release into the Environment of Genetically Engineered Organisms

Correction

In notice document 89-17272, appearing on page 30913 in the issue of Tuesday, July 25, 1989, make the following correction:

On page 30913, in the table, in the fifth column, insert the entry "New York".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-050-4333-12]

Arizona: Resource Management Planning; Yuma District Resource Management Plan

Correction

In notice document 89-16786, beginning on page 30113 in the issue of Tuesday, July 18, 1989, make the following correction:

1. On page 30113, in the 3rd column, under **SUPPLEMENTARY INFORMATION**, in designated paragraph 1, in the 15th line, after "section", add "(Issue #4) and Recreation section".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110, 162, and 165

[CGD 05-89-17]

Special Anchorage Areas, Anchorage Grounds, and Regulated Navigation Area, Hampton Roads, VA

Correction

In rule document 89-347 beginning on page 604 in the issue of Monday, January 9, 1989, make the following correction:

§ 110.168 [Corrected]

On page 606, in the second column, in § 110.168(a)(4)(i), the second paragraph designated "(A)" should be designated "(B)".

BILLING CODE 1505-01-D

federal register

Monday
August 7, 1989

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 44
Federal Acquisition Regulation (FAR); Subcontract Consent Requirement Clarification; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 44

Federal Acquisition Regulation (FAR); Subcontract Consent Requirement Clarification

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to clarify contracting officer responsibilities with respect to consent to subcontract actions in the event a prime contract designates performance of certain work elements by specific subcontractors. In these cases, unless consent requirements contained in the clauses at 52.244–1, 52.244–2, or 52.244–3 are satisfied at the time of contract award and so stated in the prime contracts, the Administrative Contracting Officer is responsible for ensuring consent to subcontract actions are completed when prime contracts are assigned for contract administration.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before October 6, 1989 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 89–59 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755. Please cite FAR Case 89–59.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entites within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the proposed change does not impose any new requirements on contractors, large or small, and serves only to clarify existing regulations. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 89–610 (FAR Case 89–59) in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et. seq.

List of Subjects in 48 CFR Part 44

Government procurement.

Dated: August 1, 1989.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, 48 CFR Part 44 is amended as set forth below:

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

1. The authority citation for 48 CFR Part 44 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; And 42 U.S.C. 2473(c).

2. Section 44.202–1 is amended by adding paragraph (c) to read as follows:

44.202–1 Responsibilities.

* * * * *

(c) Designation of a specific subcontractor by the Government or evaluation of subcontracts during contract negotiations does not in itself satisfy the requirements for advance notification or consent pursuant to the clauses at 52.244–1, 52.244–2, 52.244–3. However, if, in the opinion of the contracting officer, the advance notification or consent requirements were satisfied for certain subcontracts evaluated during negotiations, the contracting officer shall include a statement in the contract that those requirements have been satisfied. The statement shall identify the specific subcontracts and contain appropriate information concerning the extent to which such requirements are satisfied and/or limited with respect to future changes or revisions in work statement, specifications, or other applicable aspects of the contract that may be subject to change. For fixed-price contracts see 44.204(a)(3).

[FR Doc. 89–18343 Filed 8–4–89; 8:45 am]

BILLING CODE 6820–JC–M

federal register

Monday
August 7, 1989

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 45, 51, and 52
Federal Acquisition Regulation (FAR); Contractors Authorized To Use Government-Provided Passenger Carriers; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 45, 51, and 52

Federal Acquisition Regulation (FAR); Contractors Authorized To Use Government-Provided Passenger Carriers

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to the Federal Acquisition Regulation (FAR) in 45.304, 51.103(d)(2), 51.200, 51.204, and the clause at 52.251-2 concerning contractors' use of Government-owned-or-leased vehicles.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before October 6, 1989 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 89-58 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAR Case 89-58.

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration, which has the responsibility of promulgating regulations governing the use of Government vehicles, requested revisions to the Federal Acquisition Regulation to be consistent with the Federal Property Management Regulations (FPMR). Revisions to Part 45, Government Property, are necessary to provide further guidance to agencies that provide contractors with Government-owned-or-leased motor vehicles. Revisions to Part 51, Use of Government Sources by Contractors, are necessary to provide clarifications for the use of these resources. Related changes are proposed in Part 52, Solicitation Provisions and Contract Clauses.

B. Regulatory Flexibility Act

Analysis of the proposed revisions indicates that this proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule merely implements in the FAR the rule in 41 CFR 101-38.301-1 pertaining to contractors' use of Government motor vehicles. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 89-610 (FAR Case 89-58) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et. seq.

List of Subjects in 48 CFR Parts 45, 51, and 52

Government procurement.

Dated: August 1, 1989.

Harry S. Rosinski

Acting Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR Parts 45, 51, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 45, 51, and 52 continue to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 45—GOVERNMENT PROPERTY

2. Section 45.304 is amended by redesignating the introductory text as paragraph (a); by redesignating paragraphs (a), (b), (c), (d), and (e) as paragraphs (a) (1), (2), (3), (4), and (5); and by adding paragraph (b) to read as follows:

45.304 Providing motor vehicles.

* * * * *

(b) Agencies that provide contractors with Government-owned-or-leased motor vehicles are responsible for ensuring that such vehicles are used only for the performance of the contract. Contractors are prohibited from using such vehicles for home-to-work transportation, consistent with Pub. L. 99-550 amending 31 U.S.C. 1344. (See Subpart 51.2, Contractor Use of Interagency Fleet Management System (IFMS) Vehicles.)

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

3. Section 51.103 is amended by revising paragraph (d)(2) to read as follows:

51.103 Ordering from Government supply sources.

* * * * *

(d) * * *

(2) Use only the Government activity address code obtained by the contracting officer in accordance with 51.102(e), along with the contractor's assigned access code, when ordering from GSA Customer Supply Centers.

51.200 [Amended]

4. Section 51.200 is amended by adding at the end of the paragraph following " 'subcontracts' " the words "(see 45.304)".

5. Section 51.204 is revised to read as follows:

51.204 Use of interagency fleet management system vehicles and related sources.

Contractors authorized to use interagency fleet management vehicles and related services shall comply with the requirements of 41 CFR 101-39 and 41 CFR 101-38.301-1, and the operator's packet furnished with each vehicle.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.251-2 [Amended]

6. Section 52.251-2 is amended by adding at the end of the clause following "41 CFR 101-39", the words "and 41 CFR 101-38.301-1".

[FR Doc. 89-18344 Filed 8-4-89; 8:45 am]

BILLING CODE 6820-JC-M

federal register

Monday
August 7, 1989

Part IV

Department of Housing and Urban Development

Office of the Secretary

Youth Sports Clubs To Combat Drugs at Public Housing Sites; Notice of Fund Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-89-1993; FR-2661]

Youth Sports Clubs To Combat Drugs at Public Housing Sites

AGENCY: Office of the Secretary, HUD.
ACTION: Notice of fund availability.

SUMMARY: Special Projects grants will be made available from the Secretary's Discretionary Fund to aid in establishing or enhancing youth sport clubs at public housing sites with identified severe drug problems. Each approved project, selected on a competitive basis, will be funded at a Federal funding level of up to a maximum of $25,000, with a required 100 percent cash match of local CDBG or private funds.

Eligible Applicants: Applicants eligible for funding under this NOFA are States and units of general local government.

Application Deadline: Applications are to be submitted by 3:00 p.m. October 16, 1989.

FOR FURTHER INFORMATION CONTACT: Leroy P. Gonnella, Director, Secretary's Fund Division, Office of Program Policy Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6092. (This is not a toll-free number.) Application packages (Request for Grant Assistance) may be obtained at the same address 7 days after publication of this notice. Additional program requirements applicable to the receipt and use of Special Projects grants will be set forth in the application package.

DATE: This notice is effective August 7, 1989.

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980, and have been assigned OMB control number 2506-0108. Public reporting burden for this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the documents making up the collection of information. Information on the estimated public reporting burden is provided elsewhere in this document. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

As part of the Department's effort to promote a drug-free environment in public housing, the Secretary will make a minimum of $950,000 available to aid public housing youths in areas affected by drug problems. The funds are to be used in conjunction with local CDBG and other public or private funds to establish positive youth programs, with sports, cultural or other activities as alternatives to the drug environment. Applicants for these funds must be planning or undertaking vigorous efforts to rid public housing areas of the drug problem. Each applicant will be given discretion to design a youth sports club program that best addresses its local situation and most effectively leverages local resources. It is expected that each application will include the involvement of local sports organizations or major sports figures.

This document: (a) Notifies the public of the availability of funds for aiding in the establishment or enhancement of youth sports clubs to combat drugs at Public Housing Authority (PHA) sites; (b) identifies the objective of the program; (c) indicates the amount of funds available and matching requirements; (d) sets forth eligible activities; (e) sets forth application requirements for the funds; (f) identifies the evaluation criteria for the award of funds; and (g) specifies notification procedures.

Program Objective

The objective of this program is to aid public housing youths in areas affected by severe drug problems, by providing positive youth programs, with sports, cultural or other activities, as alternatives to the drug environment. Such programs will be developed in conjunction with vigorous efforts by State and local governments, local housing authorities, resident management associations, neighborhood organizations or others interested in making public housing developments drug free.

Eligible Activities

All activities eligible under the Community Development Block Grant (CDBG) Program, 24 CFR part 570, subpart C. These include the acquisition, construction or rehabilitation of community centers, parks and playgrounds to be used by the youth sports clubs. Eligible activities also include redesigning and modifying public spaces in assisted housing projects to permit increased utilization of the areas by the youth sports clubs. Public service activities [including salaries and expenses for staff for the youth sports clubs, cultural activities, educational programs related to drug abuse, the purchase of sports equipment, etc.), are also eligible, subject to the limitation that no more than 15 percent of the Special Projects grant may be for public services. The entire local match can be used for public services except that any portion thereof comprised of local CDBG funds is subject to the 15 percent limitation. (The 15 percent limitation and other information about the eligibility of public services is found at 24 CFR 570.201(e) of the CDBG entitlement regulations.)

Grantees will be subject to the requirements of 24 CFR 570.400, General (which sets out requirements associated with grants from the Secretary's Fund), and 24 CFR 570.410, Special Projects Program.

Prospective grantees should note that the Department is promulgating a rule change designed to ease regulatory limitations found in 24 CFR 570.201(e)(2), so that local governments will have the option of using a larger amount of the funds received under this program for public service activities. A final rule on this subject was published on August 1, 1989. (54 FR 31670.)

Section 105(a)(8) of the Housing and Community Development Act of 1974 provides that "not more than 15 per centum of the amount of any assistance to a unit of general local government under this title may be used for [public service] activities." HUD's regulation at 24 CFR 570.201(e)(2) implements this provision by applying the 15% limitation to each grant.

The Department believes that the statute can be interpreted to apply either to each grant or to the aggregate of grants received by a unit of general local government under Title I of the Act. Therefore, the Department is amending the Special Projects Program regulations to give local governments the option of calculating the amount of special projects grants funds that may be used for public services based upon 15 percent of either the special projects grant, or 15 percent of the aggregate of the special projects grant plus the local government's grant received in the same federal fiscal year under the Community Development Block Grant (CDBG) Entitlement or State Program.

This rule change will become effective on October 3, 1989, so grantees

responding to this Notice will enjoy the benefit of the above-described option.

Program administration and planning activities may not exceed 20 percent of the grant funds.

Amount of Funds Available: Not less than $950,000, with a maximum funding level not to exceed a total of $2,500,000.

Amount of Awards: A maximum of $25,000 per grant, with a required 100 percent cash match of local CDBG or other local public or private funds. This is a one time only grant.

Application Requirements: The application must include the following elements:

1. A Standard Form 424 signed by the chief executive officer of the State or unit of local government;

2. A description of how the youth sports club is or will be organized, the nature of the services to be provided, the number of youth involved, the extent to which local sports organizations or major sports figures are involved, the facilities to be utilized, plans to continue the youth sports club in the future, and other facets of the program;

3. Narrative statements as described in the application package that specifically address the evaluation criteria;

4. A work plan which describes the planned schedule and the financial and other resources committed to each task or activity; and

5. A budget showing the HUD share of the costs and other sources of funds, including the required 100 percent cash match of local CDBG or other local public or private funds supported by letters of commitment.

Information Collection: Burden-hour estimates for the collection of information requirements associated with the above-described application process are set out below:

Description of information collection	Number of respondents	Responses per respondent	Hours per response	Total
Application submission	175	1	40	7000

Evaluation Criteria: Each application will be reviewed against the following evaluation factors:

Total 100 Points

1. Unique or innovative methods, approaches or ideas originated or assembled by the applicant; (10 points)

2. Overall technical merits of the application; (5 points)

3. The qualifications, capabilities, and experience of the proposed key personnel who are critical to achieving the application objectives; (15 points)

4. The applicant's and any proposed subrecipient's capabilities, related experience, facilities, techniques, potential for continuing the youth sports club activities in the future, or unique combinations of these which are integral factors, for achieving the application objectives; (10 points)

5. The severity of the drug problem at the local public housing site or sites, and the extent of the planned or actual efforts to rid the site or sites of the drug problem; (20 points)

6. The extent to which local sports organizations or major sports figures are involved; (10 points)

7. The extent of the PHA's support of the project, coordination of proposed activities with local resident management groups or associations where such groups exist, and coordination of proposed activities with ongoing programs of the applicant which further the aims of this NOFA; (20 points)

8. The extent of private sector contributions which exceed the required 100 percent match of local CDBG or other local funds. (10 points)

The Department reserves the right to select application out of rank order to ensure an equitable geographical distribution.

Where to Apply: Submit an original and two copies of your application to: Department of Housing and Urban Development, Office of Community Planning and Development, Secretary's Fund Division, Room 7144, 451 7th Street, SW., Washington, DC 20410, Attention: Mr. Leroy P. Gonnella.

Notification: The applicant will be noified whether the project application will be funded or rejected.

Catalog of Federal Domestic Assistance (CFDA) No. 14.232.

Authority: Section 107(b)(4), Housing and Community Development Act of 1974, as amended, and 24 CFR 570.410, Special Projects Program Regulations, Subpart E, Secretary's Fund.

Dated: July 31, 1989.

Jack Kemp,

Secretary.

[FR Doc. 89-18363 Filed 8-4-89; 8:45 am]

BILLING CODE 4210-01-M

BEST COPY AVAILABLE

federal register

Monday
August 7, 1989

Part V

Environmental Protection Agency

Asbestos; Requirement to Submit Information to EPA; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-62073A; FRL-3626-6]

Asbestos; Requirement To Submit Information to EPA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA published requirements for the submission of information under the Asbestos Information Act of 1988, Pub. L. 100-577, in the Federal Register of April 18, 1989. These requirements did not become effective until the Agency's information collection requirements were approved by the Office of Management and Budget (OMB). This notice establishes an effective date for the information collection requirements contained in the Federal Register notice of April 18, 1989.

DATES: The effective date for the information collection requirements contained in the Federal Register notice of April 18, 1989 is August 7, 1989. The deadline for former and current manufacturers and processors of certain asbestos products to submit information identifying their products to EPA is October 6, 1989.

ADDRESSES: Send all submissions, identified by the docket control number (OPTS-62073), in triplicate to: ATLIS Federal Services Inc., ATTN: EPA/AIA Clearinghouse, 6011 Executive Blvd., Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M St., SW., Washington, DC 20460, (202) 382-3790, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 18, 1989 (54 FR 15622), EPA published a notice which explained how, when, and where former and current manufacturers and processors of certain asbestos products are to submit information identifying their products to EPA. The information collection requirements in the notice were mandated by the Asbestos Information Act of 1988, Pub. L. 100-577.

The Federal Register notice of April 18, 1989, stated that the information collection requirements contained in the notice had not been approved by the Office of Management and Budget (OMB) and would not be effective until OMB approved them. On May 25, 1989, OMB approved the information collection requirements. In light of OMB approval, this notice establishes an effective date for the information collection requirements in the **DATES** section above.

Dated: July 21, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89-18384 Filed 8-4-89; 8:45 am]

BILLING CODE 6560-50-M

federal register

Monday
August 7, 1989

Part VI

Department of the Interior

Bureau of Land Management

Proposed Withdrawal and Opportunity for Public Hearing; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-930-09-4214-10; WYW 116382]

Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed an application to withdraw 9,538.99 acres of National Forest System lands for protection of the Clark's Fork Canyon Area proposed in a recommendation for inclusion in the National Wild and Scenic River System. This withdrawal would provide protection until Congress acts upon this recommendation.

DATE: Comments and requests for meeting should be received on or before November 6, 1989.

ADDRESS: Comments and meeting requests should be sent to the Wyoming State Director, BLM, 2515 Warren Avenue, Cheyenne, Wyoming 82001.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, 307-772-2072.

SUPPLEMENTARY INFORMATION: On July 5, 1989, the U.S. Department of Agriculture filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Sixth Principal Meridian

Shoshone National Forest

T. 55 N., R. 104 W.,
Sec. 3, N½ lot 3, lot 4;
Sec. 4, lot 1, N½ lot 2.
T. 56 N., R. 104 W.,
Sec. 12, S½SW¼SW¼, SE¼SW¼, S½N½SE¼, S½SE¼;
Sec. 13, N½NE¼, SW¼NE¼, NW¼, N½SW¼, SW¼SW¼, W½SE¼SW¼;
Sec. 14, E½NE¼NE¼, SE¼NE¼, SE¼;
Sec. 19, W½NW¼, SE¼NW¼, SW¼, SW¼NE¼SE¼, W½SE¼, SE¼SE¼;
Sec. 20, SW¼SW¼SE¼;
Sec. 23, NE¼, E½E½NW¼, E½NE¼SW¼, SE¼SW¼, SE¼;
Sec. 24, NW¼NW¼, W½SW¼NW¼;
Sec. 26, N½NE¼, SW¼NE¼, W½SE¼NE¼, E½NW¼, E½SW¼NW¼, SW¼NW¼SE¼, W½SW¼SE¼;
Sec. 27, E½NE¼SE¼, SE¼SE¼;
Sec. 29, SW¼SW¼NE¼, SW¼NE¼NW¼, W½NW¼, SE¼NW¼, SW¼, W½NW¼SE¼, SE¼NW¼SE¼, SW¼SE¼, W½SE¼SE¼, SE¼SE¼SE¼;
Sec. 30, NE¼, NE¼NW¼, NE¼SE¼;
Sec. 32, NE¼, NE¼NW¼, N½NW¼NW¼, N½SE¼NW¼, NE¼SE¼, N½NW¼SE¼;
Sec. 33, SW¼NE¼, S½SE¼NE¼, S½N½NW¼, S½NW¼, N½SW¼, N½SW¼SW¼, SE¼SW¼, SE¼;
Sec. 34, NE¼NE¼, S½NW¼NE¼, S½NE¼, S½NE¼, S½SW¼NW¼, SE¼NW¼, SW¼, N½SE¼, SW¼SE¼, N½SE¼SE¼;
Sec. 35, W½NE¼NW¼, W½NW¼, W½SE¼NW¼, N½NW¼SW¼.
T. 56 N., R. 105 W.,
Sec. 3, S½NW¼NW¼, S½N½NW¼NW¼, S½NW¼, SW¼, W½NE¼SE¼, NW¼SE¼, S½SE¼;
Sec. 4, NE¼, N½NW¼, N½SW¼NW¼, SE¼NW¼, NE¼SE¼, N½SE¼SE¼;
Sec. 5, N½NE¼, SW¼NE¼, N½SE¼NE¼, NW¼, N½NW¼SW¼;
Sec. 6, NE¼NE¼, S½NW¼NE¼, S½N½NW¼NE¼, S½NW¼, N½S¼, N½SW¼SW¼, SW¼SW¼SW¼, W½SE¼SW¼SW¼, N½SW¼SE¼, except that portion within HES 49;
Sec. 10, NE¼, NE¼NW¼, N½NW¼NW¼, NE¼SE¼;
Sec. 11, W½SW¼NE¼, NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 12, SW¼–Sw¼;
Sec. 13, W½NE¼NW¼, W½NW¼, SE¼NW¼, SW¼, SW¼NE¼SE¼, W½SE¼, SE¼SE¼;
Sec. 14, N½NE¼, E½SW¼NE¼, SE¼NE¼, NE¼NW¼, E½NW¼NW¼, NE¼SE¼, N½SE¼SE¼;
Sec. 24, NE¼, N½NW¼, SE¼NW¼, N½SE¼, SE¼SE¼.
T. 56 N., R. 106 W.,
Sec. 1, S½SW¼NE¼, SE¼NE¼, S½ except that portion within HES 49;
Sec. 2, S½;
Sec. 3, lots 3–7, 9–12, NE¼SW¼, SE¼;
Sec. 4, lots 1–2, 7–10, except those portions of HES 40 and HES 177;
Sec. 10, N½NE¼NE¼;
Sec. 11, N½NE¼, NE¼NW¼, N½NW¼NW¼;
Sec. 12, N½N½N½.
T. 57 N., R. 105 W.,
Sec. 34, S½SE¼;
Sec. 35, S½SW¼.

The areas described contain 9,538.99 acres in Park County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that a public meeting will be held in connection with the proposed withdrawal. A notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are those uses within the statutory authorities pertinent to National Forest System lands and subject to discretionary approval.

The temporary segregation of the lands in connection with this withdrawal application shall not affect the administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the Department of Agriculture.

Dated: July 24, 1989.

F. William Eikenberry,

Associate State Director.

[FR Doc. 89-18576 Filed 8-4-89; 11:05 am]

BILLING CODE 4310-22-M

Reader Aids

Federal Register
Vol. 54, No. 150
Monday, August 7, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

31645-31796.....1
31797-31932.....2
31933-32034.....3
32035-32332.....4
32333-32432.....7

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6002.....31794
6003.....31931
6004.....31933
6005.....32033
Executive Orders:
12685.....31796

7 CFR

29.....31797
58.....31646
910.....32035
945.....31798
1076.....31799
Proposed Rules:
51.....32419
911.....31843
929.....31844
967.....31845
993.....31846

8 CFR

Proposed Rules:
210.....31966

9 CFR

92.....31800

10 CFR

7.....31646
Proposed Rules:
430.....32349

12 CFR

33.....31935
207.....31648
220.....31646
221.....31646
224.....31648
229.....32035
Proposed Rules:
226.....32089

14 CFR

39.....31649, 31651-31653, 31803-31809, 31935
71.....31654, 31936, 31937
73.....31655
75.....31937
217.....31810
241.....31810
Proposed Rule:
39.....31693, 31694, 31847
71.....31696-31704, 31966
75.....31705, 31967

15 CFR

773.....31812

17 CFR

140.....31814
211.....32333, 32334
270.....31850, 32048
274.....32048
275.....32048
279.....32048
Proposed Rules:
230.....32226
239.....32226
240.....31850, 32226
249.....32226
260.....32226
269.....32226

18 CFR

271.....31938
Proposed rules:
37.....31706

20 CFR

Proposed Rules:
208.....32163
219.....31939
220.....32163
230.....32163
260.....32163
416.....31656
Proposed Rules:
327.....31966

21 CFR

133.....32050
179.....32335
520.....32336
Proposed Rules:
133.....32091
522.....31949
556.....31949
1308.....31815
1310.....31657
1313.....31657
1316.....31669
Proposed Rule:
1308.....31855

22 CFR

60.....31815
61.....31815
62.....31815
63.....31815
64.....31815
65.....31815

24 CFR

200.....32059
206.....32059
570.....31670
Proposed Rule:
Ch. I.....31856

26 CFR

1.....31672, 31818

602.....31672
Proposed Rule:
1.....31706

28 CFR
523.....32027
544.....32026

29 CFR
1600.....32061
1601.....32061
1610.....32061
1611.....32061
1620.....32061
1628.....32061
1691.....32061
1910.....31765, 31970
Proposed Rule:
1910.....31858

30 CFR
934.....32063
Proposed Rules:
250.....31768, 32316
917.....32093
925.....32094
931.....32095, 32096
946.....32097, 32098

31 CFR
500.....32064

32 CFR
706.....31825

33 CFR
100.....31826, 32066
110.....32419
117.....31827
162.....32419
165.....32419
Proposed Rules:
100.....31859, 31860

35 CFR
Proposed Rules:
133.....32099
135.....32099

36 CFR
1153.....32337-32342
1155.....32337-32342
1202.....32067
1250.....32067
1254.....32067

38 CFR
3.....31828, 31950
21.....31829, 31950-31952, 32070

39 CFR
111.....32071

40 CFR
52.....31953, 32072, 32073
81.....32078
180.....31674, 31830-31836
Proposed Rules
52.....32101
185.....31836
186.....31832-31836
226.....32351-32356
261.....31675, 32320
302.....32320
704.....31680
Proposed Rules:
81.....31880, 31971, 31972
180.....31971, 31972

44 CFR
80.....31681
83.....31681
352.....31920
Proposed Rules:
335.....32359

45 CFR
232.....32284
302.....32284
303.....32284
304.....32284
306.....32284
307.....32284
1632.....31954

47 CFR
2.....32339
15.....32339
73.....31685, 31686, 31838, 31960, 32340
80.....31839
Proposed Rules:
73.....32361, 32362
94.....32362

48 CFR
203.....32161
206.....32161
209.....32161
212.....32161
213.....32161
214.....32161
215.....32161
216.....32161
217.....32161
219.....32161
222.....32161
223.....32161
226.....32161
242.....32161
245.....32161
252.....32161
253.....32161
273.....32161
801.....31961
Proposed Rules:
44.....32422
45.....32424
51.....32424
52.....32424

49 CFR
190.....32342
191.....32342
192.....32344
195.....32342, 32344
571.....31687, 32345

50 CFR
17.....32326
215.....32346
226.....32085
227.....32085
661.....31841
663.....31688
675.....31842
Proposed Rules:
263.....32362
267.....32362
611.....31861
620.....31861
655.....31862
672.....31861
675.....31861

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List: August 4, 1989

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Jan. 1, 1988
3 (1988 Compilation and Parts 100 and 101)	21.00	[1] Jan. 1, 1989
4	15.00	Jan. 1, 1989
5 Parts:		
1-699	14.00	Jan. 1, 1988
700-1199	15.00	Jan. 1, 1988
1200-End, 6 (6 Reserved)	13.00	Jan. 1, 1989
7 Parts:		
0-26	15.00	Jan. 1, 1989
27-45	12.00	Jan. 1, 1989
46-51	17.00	Jan. 1, 1989
52	23.00	[2] Jan. 1, 1988
53-209	18.00	Jan. 1, 1989
210-299	22.00	Jan. 1, 1988
300-399	12.00	Jan. 1, 1989
400-699	17.00	Jan. 1, 1988
700-899	22.00	Jan. 1, 1988
900-999	26.00	Jan. 1, 1988
*1000-1059	16.00	Jan. 1, 1989
1060-1119	13.00	Jan. 1, 1989
1120-1199	11.00	Jan. 1, 1989
1200-1499	17.00	Jan. 1, 1988
1500-1899	10.00	Jan. 1, 1989
1900-1939	11.00	Jan. 1, 1989
1940-1949	21.00	Jan. 1, 1988
1950-1999	18.00	Jan. 1, 1988
*2000-End	9.00	Jan. 1, 1989
8	11.00	Jan. 1, 1988
9 Parts:		
1-199	20.00	Jan. 1, 1989
200-End	17.00	Jan. 1, 1988
10 Parts:		
*0-50	19.00	Jan. 1, 1989
51-199	14.00	Jan. 1, 1988
200-399	13.00	[3] Jan. 1, 1987
400-499	14.00	Jan. 1, 1989
500-End	28.00	Jan. 1, 1989
11	10.00	[3] Jan. 1, 1988
12 Parts:		
1-199	12.00	Jan. 1, 1989
200-219	10.00	Jan. 1, 1988
220-299	14.00	Jan. 1, 1988
300-499	15.00	Jan. 1, 1989
500-599	18.00	Jan. 1, 1988
600-End	12.00	Jan. 1, 1988
*13	22.00	Jan. 1, 1989
14 Parts:		
1-59	21.00	Jan. 1, 1988
60-139	19.00	Jan. 1, 1988
140-199	10.00	Jan. 1, 1989
*200-1199	21.00	Jan. 1, 1989
1200-End	12.00	Jan. 1, 1988
15 Parts:		
0-299	12.00	Jan. 1, 1989
300-399	20.00	Jan. 1, 1988
800-End	14.00	Jan. 1, 1989
16 Parts:		
0-149	12.00	Jan. 1, 1989
150-999	14.00	Jan. 1, 1989
1000-End	19.00	Jan. 1, 1989
17 Parts:		
1-199	14.00	Apr. 1, 1988
200-239	14.00	Apr. 1, 1988
240-End	21.00	Apr. 1, 1988
18 Parts:		
1-149	15.00	Apr. 1, 1988
150-279	12.00	Apr. 1, 1988
280-399	13.00	Apr. 1, 1988
400-End	9.00	Apr. 1, 1988
19 Parts:		
1-199	27.00	Apr. 1, 1988
200-End	5.50	Apr. 1, 1988
20 Parts:		
1-399	12.00	Apr. 1, 1988
400-499	23.00	Apr. 1, 1988
500-End	25.00	Apr. 1, 1988
21 Parts:		
1-99	12.00	Apr. 1, 1988
100-169	14.00	Apr. 1, 1988
170-199	16.00	Apr. 1, 1988
200-299	5.00	Apr. 1, 1988
300-499	26.00	Apr. 1, 1988
500-599	20.00	Apr. 1, 1988
600-799	7.50	Apr. 1, 1988
800-1299	16.00	Apr. 1, 1988
1300-End	6.00	Apr. 1, 1988
22 Parts:		
1-299	20.00	Apr. 1, 1988
300-End	13.00	Apr. 1, 1988
23	16.00	Apr. 1, 1988
24 Parts:		
0-199	15.00	Apr. 1, 1988
200-499	26.00	Apr. 1, 1988
500-699	9.50	Apr. 1, 1988
700-1699	19.00	Apr. 1, 1988
1700-End	15.00	Apr. 1, 1988
25	24.00	Apr. 1, 1988
26 Parts:		
§§ 1.0-1-1.60	13.00	Apr. 1, 1988
§§ 1.61-1.169	23.00	Apr. 1, 1988
§§ 1.170-1.300	17.00	Apr. 1, 1988
§§ 1.301-1.400	14.00	Apr. 1, 1988
§§ 1.401-1.500	24.00	Apr. 1, 1988
§§ 1.501-1.640	15.00	Apr. 1, 1988
§§ 1.641-1.850	17.00	Apr. 1, 1988
§§ 1.851-1.1000	28.00	Apr. 1, 1988
§§ 1.1001-1.1400	16.00	Apr. 1, 1988
§§ 1.1401-End	21.00	Apr. 1, 1988
2-29	19.00	Apr. 1, 1988
30-39	14.00	Apr. 1, 1988
40-49	13.00	Apr. 1, 1988
50-299	15.00	Apr. 1, 1988
300-499	15.00	Apr. 1, 1988
500-599	8.00	[4] Apr. 1, 1980
600-End	6.00	Apr. 1, 1988
27 Parts:		
1-199	23.00	Apr. 1, 1988
200-End	13.00	Apr. 1, 1988
28	25.00	July 1, 1988

Title	Price	Revision Date
29 Parts:		
0–99	17.00	July 1, 1988
100–499	6.50	July 1, 1988
500–899	24.00	July 1, 1988
900–1899	11.00	July 1, 1988
1900–1910	29.00	July 1, 1988
1911–1925	8.50	July 1, 1988
1926	10.00	July 1, 1988
1927–End	24.00	July 1, 1988
30 Parts:		
0–199	20.00	July 1, 1988
200–699	12.00	July 1, 1988
700–End	18.00	July 1, 1988
31 Parts:		
0–199	13.00	July 1, 1988
200–End	17.00	July 1, 1988
32 Parts:		
1–39, Vol. I	15.00	[5] July 1, 1984
1–39, Vol. II	19.00	[5] July 1, 1984
1–39, Vol. III	18.00	[5] July 1, 1984
1–189	21.00	July 1, 1988
190–399	27.00	July 1, 1988
400–629	21.00	July 1, 1988
630–699	13.00	[6] July 1, 1988
700–799	15.00	July 1, 1988
800–End	16.00	July 1, 1988
33 Parts:		
1–199	27.00	July 1, 1988
200–End	19.00	July 1, 1988
34 Parts:		
1–299	22.00	July 1, 1988
300–399	12.00	July 1, 1988
400–End	26.00	July 1, 1988
35	9.50	July 1, 1988
36 Parts:		
1–199	12.00	July 1, 1988
200–End	20.00	July 1, 1988
37	13.00	July 1, 1988
38 Parts:		
0–17	21.00	July 1, 1988
18–End	19.00	July 1, 1988
39	13.00	July 1, 1988
40 Parts:		
1–51	23.00	July 1, 1988
52	27.00	July 1, 1988
53–60	28.00	July 1, 1988
61–80	12.00	July 1, 1988
81–99	25.00	July 1, 1988
100–149	25.00	July 1, 1988
150–189	24.00	July 1, 1988
190–299	24.00	July 1, 1988
300–399	8.50	July 1, 1988
400–424	21.00	July 1, 1988
425–699	21.00	July 1, 1988
700–End	31.00	July 1, 1988
41 Chapters:		
1, 1–1 to 1–10	13.00	[7] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[7] July 1, 1984
3–6	14.00	[7] July 1, 1984
7	6.00	[7] July 1, 1984
8	4.50	[7] July 1, 1984
9	13.00	[7] July 1, 1984
10–17	9.50	[7] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[7] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[7] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[7] July 1, 1984
19–100	13.00	[7] July 1, 1984
1–100	10.00	July 1, 1988
101	23.00	July 1, 1988
102–200	12.00	July 1, 1988
201–End	8.50	July 1, 1988

Title	Price	Revision Date
42 Parts:		
1–60	16.00	Oct. 1, 1988
61–399	5.50	Oct. 1, 1988
400–429	22.00	Oct. 1, 1988
430–End	22.00	Oct. 1, 1988
43 Parts:		
1–999	16.00	Oct. 1, 1988
1000–3999	26.00	Oct. 1, 1988
4000–End	11.00	Oct. 1, 1988
44	20.00	Oct. 1, 1988
45 Parts:		
1–199	17.00	Oct. 1, 1988
200–499	9.00	Oct. 1, 1988
500–1199	24.00	Oct. 1, 1988
1200–End	19.00	Oct. 1, 1988
46 Parts:		
1–40	14.00	Oct. 1, 1988
41–69	14.00	Oct. 1, 1988
70–89	7.50	Oct. 1, 1988
90–139	12.00	Oct. 1, 1988
140–155	12.00	Oct. 1, 1988
156–165	13.00	Oct. 1, 1988
166–199	14.00	Oct. 1, 1988
200–499	26.00	Oct. 1, 1988
500–End	10.00	Oct. 1, 1988
47 Parts:		
0–19	18.00	Oct. 1, 1988
20–39	18.00	Oct. 1, 1988
40–69	9.00	Oct. 1, 1988
70–79	18.00	Oct. 1, 1988
80–End	19.00	Oct. 1, 1988
48 Chapters:		
1 (Parts 1–51)	28.00	Oct. 1, 1988
1 (Parts 52–99)	18.00	Oct. 1, 1988
2 (Parts 201–251)	18.00	Oct. 1, 1988
2 (Parts 252–299)	18.00	Oct. 1, 1988
3–6	20.00	Oct. 1, 1988
7–14	25.00	Oct. 1, 1988
15–End	28.00	Oct. 1, 1988
49 Parts:		
1–99	13.00	Oct. 1, 1988
100–177	24.00	Oct. 1, 1988
178–199	20.00	Oct. 1, 1988
200–399	19.00	Oct. 1, 1988
400–999	26.00	Oct. 1, 1988
1000–1199	18.00	Oct. 1, 1988
1200–End	19.00	Oct. 1, 1988
50 Parts:		
1–199	17.00	Oct. 1, 1988
200–599	13.00	Oct. 1, 1988
600–End	13.00	Oct. 1, 1988
CFR Index and Findings Aids	29.00	Jan. 1, 1989
Complete 1989 CFR set	620.00	1989
Microfiche CFR Edition:		
Complete set (one-time mailing)	125.00	1989
Complete set (one-time mailing)	115.00	1988
Subscription (mailed as issued)	185.00	1989
Subscription (mailed as issued)	185.00	1988
Subscription (mailed as issued)	190.00	1989

Title	Price	Revision Date
Individual copies	2.00	1989

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan.1, 1988 to Dec.31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

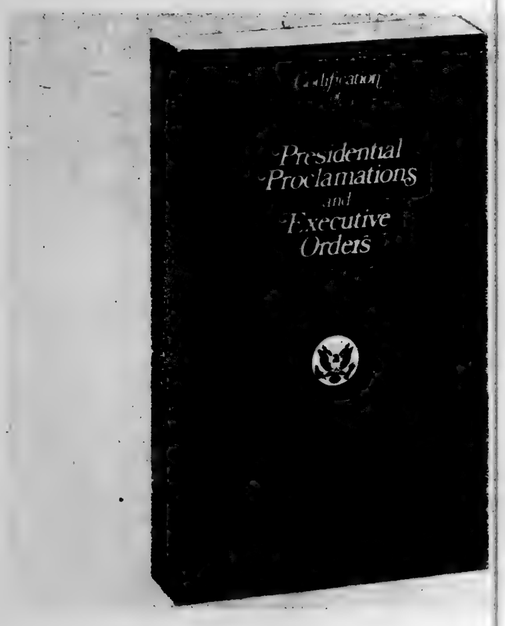
[4] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

New edition .... Order now !



For those of you who must keep informed about **Presidential Proclamations and Executive Orders,** there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period April 13, 1945, through January 20, 1989, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1945–1989 period—along with any amendments—an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325

Order Processing Code: *6661

Superintendent of Documents **Publications** Order Form

Charge your order. It's easy!

To fax your orders and inquiries—(202) 275-0019

☐ **YES,** please send me the following indicated publication:

_____ copies of the CODIFICATION OF PRESIDENTIAL PROCLAMATIONS AND EXECUTIVE ORDERS. S/N 069-000-00018-5 at $32.00 each.

The total cost of my order is $_____. (International customers please add 25%.) Prices include regular domestic postage and handling and are good through 1/90. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

_____
(Company or personal name) (Please type or print)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature) 7/89

Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325

L

S

G

9

I

OL
4
SS
1
5
1
G
3
89
MI

8-8-89
Vol. 54 No. 151

federal register

Tuesday
August 8, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 89 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

8-7-89
Vol. 54 No. 151
Pages 32433-32628

federal register

Tuesday
August 8, 1989

BEST COPY AVAILABLE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37.500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 54, No. 151
Tuesday, August 8, 1989

Agricultural Marketing Service
RULES
Potatoes (Irish) grown in—
Oregon and California, 32433
NOTICES
Agency information collection activities under OMB review, 32466

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Forest Service

Animal and Plant Health Inspection Service
RULES
Livestock and poultry disease control:
Brucellosis, 32434

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Coast Guard
RULES
Ports and waterways safety:
Willamette River, Portland, OR; safety zone, 32443
(2 documents)
Regattas and marine parades:
Barnegat Bay Classic, 32441
(2 documents)
U.S. Marine Corps Insertion/Extraction Demonstration, 32442
PROPOSED RULES
Regattas and marine parades:
Trump Castle World Championships, 32453

Commerce Department
See National Institute of Standards and Technology

Defense Department
NOTICES
Meetings:
Electron Devices Advisory Group, 32469

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Western Fher Laboratories, Inc., 32503

Education Department
NOTICES
Agency information collection activities under OMB review, 32469
Grantback arrangements; award of funds:
Indiana, 32470
Grants and cooperative agreements; availability, etc.:
State educational agency desegregation program, 32471
Meetings:
National Commission on Drug-Free Schools, 32471

Employment and Training Administration
NOTICES
Adjustment assistance:
American Stratigraphic Co. et al., 32533
Imprimis Technology, Inc., 32534

Energy Department
See also Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department
NOTICES
Grant and cooperative agreement awards:
Allied-Signal, Inc., 32472
American Wind Energy Association, 32472
Texas A&M University, 32473
Natural gas exportation and importation:
Cascade Natural Gas Corp., 32475
Panhandle Trading Co., 32476

Environmental Protection Agency
RULES
Air pollution control; new motor vehicles and engines:
Emission control system performance warranty and voluntary aftermarket part certification program, 32566
Air programs; State authority delegations:
Arkansas et al., 32444
PROPOSED RULES
Air pollution control; new motor vehicles and engines:
Emission control system performance warranty and voluntary aftermarket part certification program; alternative short test procedure, 32598
NOTICES
Grants, State and local assistance:
Municipal wastewater treatment works construction programs—
Waivers; correction, 32478

Equal Employment Opportunity Commission
NOTICES
Organization, functions, and authority delegations:
Immigration-Related Unfair Employment Practices, Special Counsel; agreement with DOJ, 32499

Federal Aviation Administration
RULES
Airworthiness directives:
Bell, 32435
CFM International, 32436
Textron Lycoming, 32437
Terminal control areas and radar service areas, 32804
Transition areas, 32439, 32440
(3 documents)
PROPOSED RULES
Repair station rules, repairmen certification rules, etc.; regulatory review; meetings
Correction, 32563
Transition areas, 32452
NOTICES
Exemption petitions; summary and disposition, 32556

Federal Election Commission
NOTICES
Computerized voting equipment; voluntary standards, 32479

Federal Energy Regulatory Commission
NOTICES
Natural gas certificate filings:
Tennessee Gas Pipeline Co. et al., 32473

Federal Maritime Commission
NOTICES
Senior Executive Service:
Performance Review Board; membership, 32480

Federal Mine Safety and Health Review Commission
NOTICES
Meetings: Sunshine Act, 32561

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
Napa Valley Railroad Co., 32557

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 32561
Applications, hearings, determinations, etc.:
JSB Bancorp et al., 32480
Karandjeff, Ernest Andrew et al., 32481
Oesterreichische Laenderbank Aktiengesellschaft, 32481
Teton Bancshares, Inc.; correction, 32481
WB&T Bankshares, Inc., et al., 32481

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Acstar Insurance Co., 32559

Fish and Wildlife Service
NOTICES
Endangered and threatened species:
Black Warrior River system, AL; flattened musk turtle draft recovery plan, 32496
Jesup's milk-vetch; draft recovery plan, 32496
Marine mammal permit applications, 32497

Food and Drug Administration
PROPOSED RULES
Food labeling, 32610

Forest Service
NOTICES
Environmental statements; availability, etc.:
Bridge-Teton National Forest, WY, 32468

General Services Administration
RULES
Federal property management:
Surplus Federal real property disposal, 32445

Health and Human Services Department
See Food and Drug Administration; Health Care Financing Administration; Public Health Service; Social Security Administration

Health Care Financing Administration
NOTICES
Meetings:
Social Security Advisory Council, 32482
Privacy Act:
Systems of records, 32482

Health Resources and Services Administration
See Public Health Service

Hearings and Appeals Office, Energy Department
NOTICES
Special refund procedures; implementation, 32477

Housing and Urban Development Department
NOTICES
Agency information collection activities under OMB review, 32492
Privacy Act:
Systems of records, 32491

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
PROPOSED RULES
Income taxes:
Passive activity losses and credits, limmitations; activity definition
Hearing, 32453
Pension, profit-sharing and stock bonus plans; minimum participation standards, 32453

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Mid Michigan Railroad Co., Inc., 32499
Ogeechee Railway Co., 32499

Justice Department
See also Drug Enforcement Administration; Juvenile Justice and Delinquency Prevention Office
NOTICES
Organization, functions, and authority delegations:
Immigration-Related Unfair Employment Practices, Special Counsel; agreement with EEOC, 32499
Pollution control; consent judgments:
Empire Plating Co., Inc., et al., 32502
Plymouth Water and Sewer District et al., 32502

Juvenile Justice and Delinquency Prevention Office
RULES
Formula grants; revision, 32618

Labor Department
See also Employment and Training Administration; Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities under OMB review, 32503, 32517
(2 documents)

Land Management Bureau
NOTICES
Classification of public lands:
Montana; correction, 32563
Meetings:
Helicopters and motorized vehicles use in gathering wild horses and burros, 32493
Salt Lake District Grazing Advisory Board, 32493

Vale District Multiple Use Advisory Council, 32493
Mineral interest applications:
Arizona, 32493
(2 documents)
Realty actions; sales, leases, etc.:
Oklahoma, 32494
Oregon, 32495
Survey plat filings:
Colorado, 32495

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

Minerals Management Service
PROPOSED RULES
Outer Continental Shelf; oil, gas, and sulphur operations:
Personnel engaged in drilling, production, well-completion, and well-workover operations; training requirements—
Correction, 32563

Mississippi River Commission
NOTICES
Meetings; Sunshine Act, 32562
(4 documents)

National Archives and Records Administration
PROPOSED RULES
National Historical Publications and Records Commission:
Grant program procedures, 32455

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 32561

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Dance Advisory Panel, 32544

National Highway Traffic Safety Administration
NOTICES
Highway safety program; breath alcohol testing devices:
Evidential devices; model specifications and conforming products list, 32558
Highway safety programs; breath alcohol testing devices:
Calibrating units; model specifications and conforming products list, 32558

National Institute of Standards and Technology
NOTICES
Meetings:
Computer System Security and Privacy Advisory Board, 32468

National Park Service
NOTICES
Environmental statements; availability, etc.:
Big Cypress National Preserve, FL, 32497
National Register of Historic Places:
Pending nominations, 32497

National Science Foundation
NOTICES
Meetings:
Astronomical Sciences Advisory Committee, 32544
Meetings; Sunshine Act, 32561

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 32561
Applications, hearings, determinations, etc.:
Florida Power & Light Co., 32545
Southern California Edison Co. et al., 32548

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Advest Group, Inc., et al., 32534
Westchester Teamsters Pension Fund et al., 32539

Public Health Service
See also Food and Drug Administration
RULES
Grants:
Misconduct in science; awardee and applicant institutions responsibilities, 32446
PROPOSED RULES
Health manpower shortage areas; designation criteria, 32549
NOTICES
Organization, functions, and authority delegations:
Assistant Secretary for Health, 32488

Securities and Exchange Commission
RULES
Investment advisers:
Cash referral fees; correction, 32441
NOTICES
Agency information collection activities under OMB review, 32548
Self-regulatory organizations; proposed rule changes:
MBS Clearing Corp., 32549
Philadelphia Stock Exchange, Inc., 32550
Self-regulatory organizations; unlisted trading privileges:
Midwest Stock Exchange, Inc., 32551
Philadelphia Stock Exchange, Inc., 32552

Small Business Administration
NOTICES
Applications, hearings, determinations, etc.:
Southern Berkshire Investment Corp., 32553

Social Security Administration
NOTICES
Privacy Act:
Systems of records, 32488

State Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Man and biosphere program, 32554
Meetings:
International Telegraph and Telephone Consultative Committee, 32553
Shipping Coordinating Committee, 32553
Organization, functions, and authority delegations:
Under Secretary of State for Management, 32553

Surface Mining Reclamation and Enforcement Office
Environmental statements; availability, etc.:
Black Mesa-Kayenta Mine, AZ, 32627

Transportation Department
See also Coast Guard; Federal Aviation Administration; Federal Railroad Administration; National Highway Traffic Safety Administration

NOTICES
Aviation proceedings:
Standard foreign fare level—
Index adjustment factors, 32556

Treasury Department
See Fiscal Service; Internal Revenue Service

United States Information Agency
NOTICES
Art objects, importation for exhibition:
Canaletto, 32559
Czech Modernism: 1900-1945, 32560
Velazquez Exhibition, 32560
Grants and cooperative agreements; availability, etc.:
Private non-profit organizations in support of international educational and cultural activities, 32560

Separate Parts in This Issue

Part II
Environmental Protection Agency, 32566

Part III
Environmental Protection Agency, 32598

Part IV
Department of Transportation, Federal Aviation Administration, 32604

Part V
Department of Health and Human Services, Food and Drug Administration, 32610

Part VI
Department of Justice, Justice and Delinquency Prevention Office, 32618

Part VII
Department of the Interior, Surface Mining Reclamation and Enforcement Office, 32627

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
947.....32433

9 CFR
51.....32434

14 CFR
39 (3 documents).....32435–32437
71 (4 documents).....32439, 32440, 32603
Proposed Rules:
43.....32563
65.....32563
71.....32452
145.....32563

17 CFR
275.....32441

21 CFR
Proposed Rules:
Ch. I.....32610

26 CFR
Proposed Rules:
1 (2 documents).....32453

28 CFR
31.....32618

30 CFR
Proposed Rules:
250.....32563

33 CFR
100 (3 documents).....32441–32442
165 (2 documents.....32443
Proposed Rules:
100.....32453

36 CFR
Proposed Rules:
1206.....32455

40 CFR
60.....32444
61.....32444
85.....32566
Proposed Rules:
85.....32598

41 CFR
101–47.....32445

42 CFR
50.....32446
Proposed Rules:
5.....32459

Rules and Regulations

Federal Register
Vol. 54, No. 151
Tuesday, August 8, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV-89-072]

Oregon-California Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 947 for the 1989–90 fiscal period. Authorization of this budget will allow the Oregon-California Potato Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1989, through June 30, 1990.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 114 and Marketing Order No. 947 (7 CFR Part 947) regulating the handling of Irish potatoes grown in designated counties in Oregon and California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Oregon-California potatoes under this marketing order, and approximately 470 potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989–90 fiscal year was prepared by the Oregon-California Potato Committee (committee), the agency responsible for local administration of the order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of Oregon-California potatoes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of potatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on June 9, 1989, and unanimously recommended a 1989–90 budget of $37,950 and an assessment rate of $0.004 per hundredweight, the same assessment rate as last year's. This year's budget is $775 more than last year's due to increases in expenditures for committee expenses and for preparation of the annual report. The recommended assessment rate, when applied to anticipated fresh market potato shipments of 8,100,000 hundredweight, would yield $32,400 in assessment revenue which, when added to $5,550 from reserve funds, will be adequate to cover budgeted expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the Federal Register on July 12, 1989 [54 FR 29341]. That document contained a proposal to add § 947.242 to authorize expenses and establish an assessment rate for the Oregon-California Potato Committee. That rule provided that interested persons could file comments through July 24, 1989. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses. The 1989–90 fiscal period began July 1, 1989, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (54 U.S.C. 553).

List of Subjects in 7 CFR Part 947

Marketing agreements and orders, potatoes, Oregon and California.

For the reasons set forth in the preamble, 7 CFR Part 947 is amended as follows:

PART 947—POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR Part 947 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new section 947.242 is added to read as follows:

Note: This section prescribes the annual expenses and assessment rate and will not be published in the code of Federal Regulations.

§ 947.242 Expenses and assessment rate.

Expenses of $37,950 by the Oregon-California Potato Committee are authorized, and an assessment rate of $0.004 per hundredweight of potatoes is established for the fiscal period ending June 30, 1990. Unexpended funds may be carried over as a reserve.

Dated: August 3, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–18492 Filed 8–7–89; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

[Docket No. 88–172]

9 CFR Part 51

Animals Destroyed Because of Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the brucellosis regulations by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing certain references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." These changes are warranted so the regulations will accurately reflect that the Administrator of the agency holds the primary authority and responsibility for various decisions under the regulations.

EFFECTIVE DATE: August 8, 1989.

FOR FURTHER INFORMATION CONTACT: Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301–436–8682.

SUPPLEMENTARY INFORMATION: Brucellosis, also called Bang's disease, is a contagious bacterial disease affecting cattle, bison, and other animals. It can cause sterility, slow breeding, abortion, and loss of milk production. The regulations in 9 CFR Part 51 concern the destruction of animals because of brucellosis and the compensation of their owners. Prior to the effective date of this document, these regulations indicated that the Deputy Administrator of the Animal and Plant Health Inspection Service (APHIS) for Veterinary Services was the official responsible for various decisions under these regulations. We are revising 9 CFR Part 51 to indicate that the primary authority and responsibility for various decisions under these regulations belongs to the Administrator of the agency. We are making similar revisions in all other APHIS regulations. These revisions will be published in separate **Federal Register** documents.

To clarify the regulations with respect to the Administrator's authority and responsibility, we are making nonsubstantive changes in the regulations. We are removing all references to "Deputy Administrator" and replacing them with references to "Administrator," and removing references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." We are also adding definitions of "Administrator," "Animal and Plant Health Inspection Service," and "APHIS representative" and deleting the definitions of "Deputy Administrator," "Veterinary Services," and "Veterinary Services representative." We are also revising the definition of "Accredited veterinarian" to make it consistent with other parts contained in 9 CFR.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Public Law 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

These programs/activities under 9 CFR Part 51 are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. [See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 51

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Brucellosis.

Accordingly, we are amending 9 CFR Part 51 as follows:

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

1. The authority citation for Part 51 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

§ 51.1 [Amended]

2. In § 51.1 the definitions of "Deputy Administrator", "Veterinary Services", and "Veterinary Services representative" are removed and the definition of "Accredited veterinarian" is revised to read as follows:

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of Part 161 of this title to perform functions specified in Parts 1, 2, 3, and 11 of Subchapter A, and Subchapters B, C, and D of this chapter, and to perform functions required by cooperative state-federal disease control and eradication programs.

* * * * *

3. In § 51.1, definitions of "Administrator", "Animal and Plant Health Inspection Service", and "APHIS representative" are added, in alphabetical order, to read as follows:

* * * * *

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS or Service).

APHIS representative. An individual employed by APHIS who is authorized to perform the function involved.

* * * * *

4. In Section 51.1, definition of "Veterinarian in Charge", remove the words "Veterinary Services," and add the word "the" in their place.

§ 51.4 [Amended]

5. In Section 51.4, remove the words "Veterinary Services" and add, in their place, the words "an APHIS".

§§ 51.1, 51.5, and 51.7 [Amended]

6. In addition to the amendments set forth above, in 9 CFR Part 51, remove the words "a Veterinary Services", and add, in their place, the words "an APHIS" in the following places:

(a) Section 51.1, definitions of "Condemn" and "Permit".

(b) Section 51.5, paragraph (b), first and second sentences.

(c) Section 51.7, paragraph (a), third, fourth, and sixth sentences.

§§ 51.3, 51.7, 51.8 and 51.9 [Amended]

7. In addition to the amendments set forth above, in 9 CFR Part 51, remove the words "Veterinary Services" and add, in their place, the word "APHIS" in the following places:

(a) Section 51.3, footnote 2 of paragraph (a)(1).

(b) Section 51.7, paragraph (a), first, second, third, fourth, fifth, and sixth sentences.

(c) Section 51.8, first and second sentences.

(d) Section 51.9, paragraphs (b), (c), and (e).

§§ 51.1, 51.2, 51.3, 51.5, 51.6, 51.7, 51.8 [Amended]

8. In addition to the amendments set forth above, in 9 CFR Part 51, remove the word "Deputy" in the following places:

(a) Section 51.1, definition of "Veterinarian in Charge",

(b) Section 51.2.

(c) Section 51.3, paragraphs (a) and (a)(1) and footnote 1 to paragraph (a)(1), first sentences; paragraph (a)(2), first and third sentences; paragraph (a)(3), first and third sentences; paragraph (b)(1), first sentence; paragraphs (b)(2) and (b)(3), first and third sentences.

(d) Section 51.5, paragraphs (a) and (c).

(e) Section 5.6, paragraphs (b) and (c), footnote 2 to paragraph (c), and paragraph (d).

(f) Section 51.7, paragraphs (a) and (b).

(g) Section 51.8.

Done at Washington, DC, this 3rd day of August 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–18494 Filed 8–7–89; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–ASW–16, Amdt. 39–6276]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 222, 222B, and 222U Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection of the horizontal stabilizer assembly on the Bell Helicopter Textron, Inc. (BHTI) Model 222, 222B, and 222U helicopters The AD is prompted by two reports of fatigue failure of the horizontal stabilizer. Failure of the horizontal stabilizer, in flight, could result in loss of flight control and possible loss of the helicopter.

EFFECTIVE DATE: August 28, 1989.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 28, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable technical bulletins may be obtained from Bell Helicopter, Textron, Inc., or may be examined at the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Roach, Rotorcraft Certification Office, Federal Aviation Administration, Fort Worth, Texas 76193–0170, telephone (817) 624–5179.

SUPPLEMENTARY INFORMATION: There have been two reports of fatigue failure of the horizontal stabilizer. In both instances the fatigue cracking occurred in the rear spar inside the horizontal stabilizer. This area cannot be visually inspected. Since this condition is likely to exist or develop on other helicopters of the same type design, an AD is being issued which requires a repetitive X-ray inspection of the horizontal stabilizer assembly on the BHTI Model 222, 222B, and 222U helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2 Section 39.13 is amended by adding the following new AD:

§ 39.13 [Amended]

Bell Helicopter Textron, Inc.: Applies to Model 222, 222B, and 222U helicopters, certificated in any category, with horizontal stabilizer assembly, Part Number (P/N) 222–035–250–101, –103, or

-105, installed. (Docket No 89-ASW-16)

Compliance is required within the next 50 hours' time in service for horizontal stabilizer assemblies with more than 2,100 hours' time in service; compliance for horizontal stabilizers with less than 2,100 hours' time in service is required prior to the accumulation of 2,150 hours' time in service; and both thereafter at intervals not to exceed 300 hours' time in service.

To prevent failure of the horizontal stabilizer assembly, which could result in loss of the helicopter, accomplish the following:

(a) Perform the Part "A" of the "Accomplishment Instructions" of BHTI Alert Service Bulletin (ASB) No. 222-89-53, dated March 20, 1989, for the Model 222 and 222B; or ASB No. 222U-89-27, dated March 20, 1989, for the Model 222U.

(b) If a crack is detected, remove and replace with a serviceable horizontal stabilizer assembly prior to further flight.

(c) The requirements of this AD do not apply if horizontal stabilizer assembly P/N 222-035-250-107 is installed for the Model 222 or P/N 222-035-250-109 is installed for the Models 222B and 222U.

(d) An alternate method of compliance which provides an equivalent level of safety, may be approved by the Manager, Rotorcraft Certification Office, Southwest Region, Federal Aviation Administration, Fort Worth, Texas 76193-0170.

The inspection procedures shall be done in accordance with part "A" of the "Accomplishment Instructions" of BHTI Alert Service Bulletin (ASB) No 222-89-53, dated March 20, 1989, for the Model 222 and 222B; or ASB No. 222U-89-27, dated March 20, 1989, for the Model 222U. This incorporation by reference of ASB No. 222-89-53 and ASB No. 222U-89-27, both dated March 20, 1989, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. Copies may be inspected at the Office of the Assistant Chief Counsel, Southwest Region, 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, Texas, between 8 a.m. and 4 p.m., weekdays, except Federal holidays or at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC.

This amendment becomes effective August 28, 1989.

Issued in Fort Worth, Texas, on July 13, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89-18464 Filed 8-7-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-ANE-05; Amdt. 39-6196]

Airworthiness Directives; CFM International (CFMI) CFM56-2/3/3B/3C Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which establishes a repetitive inspection and removal from service program for certain No. 3B bearings installed in CFM56-2/3/3B/3C series turbofan engines. The AD is needed to prevent failure of the No. 3B bearing, and subsequent engine inflight shutdown.

DATES: *Effective:* August 14, 1989. Comments for inclusion in the docket must be received on or before September 15, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: Comments on the amendment may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-ANE-05, 12 New England Executive Park, Burlington, Massachusetts 01803 or delivered in duplicate to Room 311, at the above address.

Comments delivered must be marked: Docket No. 89-ANE-05.

Comments may be inspected at the above location, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable manufacturer's service bulletins (SB's) and maintenance manuals may be obtained from the General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7085.

SUPPLEMENTARY INFORMATION: The FAA has determined that certain No. 3B bearings installed in CFM56-2/3/3B/3C series engines have a high rate of failure in service. Investigations have identified a suspect group of No. 3B bearings, Serial Number series FAFDxxxx and FAFExxxx, as having a higher risk of failure than other No. 3B bearings in the total population. There have been a total of 22 failures of the No. 3B bearings in service. Nine of the 22 failures have occurred in the suspect group of which seven have resulted in an inflight shutdown. Although the investigations have not revealed a definitive cause for all failures, approximately half of the failures could be attributed to contamination (phosphorus and aluminum oxide). Since this condition is likely to exist or develop on other engines of the same type design, an AD is being issued which requires repetitive inspection of the forward sump magnetic plug chip detectors for engines equipped with suspect No. 3B bearings, and also requires affected bearings to be removed from service at next inlet gearbox exposure.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above.

All communications received on or before the closing date for comments will be considered by the Agency. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available both before and after the closing date for comments in Room 311, at the Office of Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803, for examination by interested persons. A report summarizing each FAA-public contact concerning the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this amendment must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 89-ANE-05. The postcard will be date/time stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, and Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

General Electric: Applies to CFM International (CFMI) CFM56-2/3/3B/3C series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent failure of No. 3B bearings, accomplish the following:

(a) For CFM56-3/3B/3C series engines equipped with No. 3B bearing, Part Number (P/N) 9732M10P12, Serial Number (S/N) series FAFDxxxx and FAFExxxx, accomplish the following:

(1) Inspect the forward sump magnetic plug chip detector in accordance with the instructions of Appendix I, Paragraph 5, within the next 50 hours time in service (TIS) after the effective date of this AD. Thereafter, reinspect the forward sump magnetic plug chip detector at intervals not to exceed 50 hours TIS since last inspection (SLI) in accordance with the instructions of Appendix I until accomplishment of paragraph (a)(2) below. Remove from service, prior to further flight, engines which exhibit magnetic plug chip detector metallic debris defined as not serviceable in accordance with the instructions of Appendix I.

(2) Remove from service affected No. 3B bearings in accordance with CFMI CFM56-3/3B/3C Service Bulletin (SB) 72-445, dated February 7, 1989, at the next shop visit, or on or before October 1, 1991, whichever occurs first.

Note: Shop visit is defined as exposure of the inlet gearbox.

(b) For CFM56-2 series engines equipped with No. 3B bearings, P/N 9732M10P12, S/N series FAFDxxxx and FAFExxxx, accomplish the following:

(1) Inspect the forward sump magnetic plug chip detector in accordance with the instructions of Appendix II, Paragraph 6, within the next 50 hours TIS after the effective date of this AD. Thereafter, reinspect the forward sump magnetic plug chip detector at intervals not to exceed 50 hours TIS SLI in accordance with the instructions of Appendix II until accomplishment of paragraph (b)(2) below. Remove from service, prior to further flight, engines which exhibit magnetic plug chip detector metallic debris defined as not serviceable in accordance with the instructions of Appendix II.

(2) Remove from service affected No. 3B bearings in accordance with CFMI CFM56-2 SB 72-578, dated February 7, 1989, at the next shop visit, or on or before October 1, 1991, whichever occurs first.

Note: Shop visit is defined as exposure of the inlet gearbox.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD may be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternative method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD, may be approved by the Manager, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

The repetitive inspection and removal from service program shall be accomplished in accordance with the instructions in Appendix I; CFMI SB 72-445, dated February 7, 1989; and CFMI SB 72-578, dated February 7, 1989, as applicable. Copies may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. Copies may be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays, or at the office of the Federal Register, 1100 L Street Room 8301, Washington, DC 20591.

This amendment becomes effective on August 14, 1989.

Issued in Burlington, Massachusetts, on April 5, 1989.

Jack A. Sain,

Manager Engine and Propeller Directorate Aircraft Certification Service.

See the "Addressess" section for information on obtaining copies of the material described in Appendixes I and II.

Appendix I

Note: Boeing CFM 737-300/400 Maintenance Manual, Document No. D6-37588-388, dated November 15, 1988, pertain to these inspections.

Appendix II

Note: CFMI CFM56-2 Maintenance Manual, dated February 28, 1989, pertain to these inspections.

[FR Doc. 89-17904 Filed 8-7-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-ANE-48; Amdt. 39-6293]

Airworthiness Directives; Textron Lycoming

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires inspection for, and rework or replacement of, defective rocker arm assemblies on certain serial numbers of specified Lycoming engine models. The amendment is needed to revise serial numbers on certain engine models affected by the AD and provide instructions for correctly conducting the required inspection which determines the serviceability of the installed rocker arm assemblies. The AD is necessary to prevent rocker arm failure and consequent loss of engine power.

DATES: Effective September 1, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from Textron Lycoming, 652 Oliver Street, Williamsport, Pennsylvania 17701, Attention: Customer Support, or may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Raymond J. O'Neill, Propulsion Branch, ANE-174, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-7421.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-5604 (52 FR 17749; May 12, 1987), AD-87-10-06, which currently requires inspection, and rework or replacement, of defective rocker arm assemblies. After issuing Amendment 39-5604, the FAA determined that additional model and serial number engines are subject to failure of their rocker arm assemblies. Also, the following engines have been found not to be subject to rocker arm failure and are removed from the applicability list: model number IO-540-C4D5D: serial numbers L-22921-48A and L-22922-48A. It was also reported that certain critical dimensions required in the AD are difficult to measure and are not being measured accurately. Additional instructions to improve detection of defective rocker arms are considered necessary. Therefore, the FAA is amending Amendment 39-5604 by revising engine models and serial numbers, and incorporating instructions to assist in detecting defective rocker arm assemblies. Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, and Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by amending Amendment 39-5604, (52 FR 17749; May 12, 1987), Airworthiness Directive (AD) 87-10-06, as follows:

§ 39.13 [Amended]

(a) Revise the entire applicability statement, up to the compliance schedule paragraph, to read as follows:

"Textron Lycoming: Applies to Textron Lycoming (formerly AVCO Lycoming Textron) reciprocating engine series having model and serial numbers as listed herein.

O-320-A & E Series engines with serial numbers L-50154-27A through L-50175-27A, L-50177-27 through L-50188-27A.

O-320-B & D Series engines with serial numbers L-13971-39A, L-13972-39A, L-13975-39A, L-13976-39A, L-13980-39A, L-13983-39A through L-14235-39A, L-14242-39A, L-14243-39A, L-14249-39A through L-14415-39A, L-14421-39A, L-14428-39A.

IO-320 Series engines with serial numbers L-5890-55A through L-5897-55A.

O-360 Series engines with serial numbers L-31144-36A through L-31146-36A, L-31150-36A through L-31357-36A, L-31363-36A through L-31507-36A.

IO-360-B Series engines with serial numbers L-24152-51A, L-24163-51A, L-24170-51A, L-24248-51A, L-24337-51A through L-24344-51A, L-24352-51A.

AEIO-360-B Series engines with serial numbers L-24168-51A, L-24196-51A, L-24337-51A through L-24344-51A, L-24357-51A.

"The O-540 serial numbers that follow may or may not have the letter "A" as part of the suffix of the serial number on the engine dataplate.

O-540 Series engines with serial numbers L-23946-40A, L-23949-40A through L-24059-40A, L-24061-40A.

IO-540-C4B5 engines with serial numbers L-22974-48A, L-22975-48A, L-23010-48A through L-23016-48A, L-23038-48A, L-23039-48A, L-23050-48A through L-23052-48A, L-23118-48A, L-23138-48A, L-23193-48A, L-23195-48A, L-23196-48A, L-23328-48A, L-23331-48A, L-23348-48A, L-23349-48A, L-23352-48A, L-23353-48A, L-23372-48A, L-23375-48A, L-23376-48A.

IO-540-C4D5D engines with serial numbers L-22920-48A, L-22923-48A, L-22924-48A, L-22958-48A through L-22963-48A, L-23022-48A through L-23027-48A, L-23079-48A through L-23082-48A, L-23088-48A, L-23095-48A through L-23099-48A, L-23148-48A through L-23153-48A, L-23185-48A through L-23180-48A, L-23237-48A through L-23239-48A, L-23284-48A through L-23273-48A, L-23307-48A through L-23316-48A, L-23358-48A, L-23359-48A.

IO-540-D4A5 engine with serial number L-23089-48.

IO-540-V4A5D engines with serial numbers L-22943-48A through L-22945-48A, L-22953-48A through L-22957-48A, L-23061-48A through L-23063-48A.

IO-540-W1A5D engines with serial numbers L-22964-48A, L-22965-48A, L-22976-48A through L-22979-48A, L-23020-48A, L-23021-48A, L-23033-48A, L-23034-48A, L-23036-48A, L-23040-48A through L-23042-48A, L-23056-48A, L-23057-48A, L-23067-48A, L-23074-48A, L-23080-48A through L-23094-48A, L-23139-48A, L-23154-48A, L-23181-48A, L-23192-48A, L-23197-48A through L-23199-48A, L-23223-48A, L-23325-48A, L-23327-48A, L-23346-48A, L-23347-48A.

IO-540-W3A5D engines with serial numbers L-22918-48A, L-22966-48A, L-22967-48A, L-23350-48A, L-23351-48A.

AEIO-540-D Series engines with serial numbers L-22927-48A, L-22994-48A, L-22995-48A, L-23035-48A, L-23037-48A, L-23043-48A, L-23044-48A, L-23065-48A, L-23066-48A, L-23075-48A through L-23077-48A, L-23100-48A, L-23101-48A, L-23108-48A through L-23110-48A, L-23114-48A, L-23127-48A, L-23135-48A, L-23143-48A through L-23147-48A, L-23159-48A through L-23164-48A, L-23189-48A through L-23191-48A, L-23200-48A, L-23201-48A, L-23232-48A, L-23233-48A, L-23245-48A, L-23259-48A, L-23260-48A, L-23274-48A through L-23294-48A, L-23329-48A, L-23330-48A, L-23343-48A, L-23344-48A, L-23368-48A, L-23369-48A, L-23373-48A.

TIO-540-AA1AD engines with serial numbers L-8753-61A, L-8782-61A, L-8783-61A, L-8837-61A, L-8845-61A.

TIO-540-AB1AD engines with serial numbers L-8751-61A, L-8752-61A, L-8758-61A, L-8763-61A through L-8765-61A, L-8777-61A through L-8779-61A, L-8784-61A, L-8785-61A, L-8788-61A through L-8790-61A, L-8798-61A through L-8800-61A, L 8803-61A through L-8806-61A, L-8813-61A through L-8816-61A, L-8821-61A through L-8824-61A, L-8833-61A through L-8836-61A.

"Also applies to any of the following parallel valve-type engines regardless of serial number that were remanufactured or overhauled between July 1, 1985, and October 8, 1988, inclusive, or that have had a P/N LW-18790 rocker arm assembly installed (if the assembly was shipped from Lycoming Textron, Williamsport Division) during this same time period:

Engine Models: O-320 Series except O-320-H; IO-320 Series; AIO-320 Series; AEIO-320 Series; LIO-320 Series; O-340 Series; O-360 Series except O-360-E; IO-360-B, -E, -F Series; AEIO-360-B, -H Series; HO-360 Series; HIO-360-B Series; VO-360 Series; IVO-360 Series; O-540 Series; IO-540-C, -D, -J, -N, -R, -T, -V, -W Series; AEIO-540-D Series; TIO-540 C, -E, -G, -H, -K, -AA, -AB Series, LTIO-540-K."

(b) Add, immediately after the existing paragraph requiring inspection and rework or replacement of the rocker arm assembly and prior to the paragraph permitting aircraft to be ferried, the following new paragraph:

Measure and deburr the rocker arm as follows:

(1) Measure the wall thickness at the specified thinnest point (outer edge) within the indicated circumferential limits using a ball-type micrometer, measuring microscope, or other instrument capable of providing equivalent accuracy.

(2) Deburr the oil drip hole to obtain .030 inch radius at rocker arm wall surface.

(3) If it is not possible to determine the wall thickness or the oil drip hole radius within sufficient accuracy to assure compliance with SB 477A requirements, replace rocker arm with a new or serviceable rocker arm.

Note: Textron Lycoming SB No. 477A, Supplement No. 1, dated October 12, 1988, changes the affected models in accordance with changes in this amendment, but does not change the inspection or rework procedures.

This amendment amends Amendment 39-5604 (52 FR 17749; May 12, 1987), AD 87-10-06, and becomes effective on September 1, 1989.

Issued in Burlington, Massachusetts, on July 28, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89-18460 Filed 8-7-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-20]

Establishment of Transition Area, Fayette, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes the Fayette, AL, transition area to provide additional controlled airspace for protection of instrument flight rules (IFR) operations at the Richard Arthur Field Airport. This action lowers the base of controlled airspace from 1,200 feet to 700 feet above the surface in the vicinity of the airport. A nondirectional radio beacon (NDB) standard instrument approach procedure (SIAP) has been developed to serve Richard Arthur Field. Concurrent with publication of the SIAP, the operating status of the airport will change from visual flight rules (VFR) to IFR.

EFFECTIVE DATE: 0901 u.t.c., September 21, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On June 13, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Fayette, AL, transition area (54 FR 25129). The proposed transition area will provide additional airspace required for protection of IFR aircraft executing a new standard instrument approach procedure (SIAP) to the Richard Arthur Field Airport. The base of controlled airspace will be lowered from 1,200 to 700 feet above the surface in the vicinity of the airport. Concurrent with publication of the SIAP, the operating status of the airport will change from VFR to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes the Fayette, AL, transition area. The base of controlled airspace will be lowered from 1,200 to 700 feet above the surface in the vicinity of the airport to provide additional controlled airspace for aircraft executing a new SIAP to Richard Arthur Field.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Fayette, AL (New)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Richard Arthur Field Airport (latitude 33°43'00" N, longitude 87°48'30" W); within 3.5 miles each side of the 343° bearing of the Fayette NDB (latitude 33°43'05" N, longitude 87°48'40" W), extending from the 6.5-mile radius area to 11.5 miles north of the NDB.

Issued in East Point, Georgia, on July 20, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-18462 Filed 8-7-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket Number 89-ACE-23]

Alteration of Transition Area—Fulton, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the transition area description at Fulton, Missouri, as reflected in Order 7400.6E, Compilation of Regulations. The Hallsville, Missouri, VORTAC 154° radial should be listed as the 160° radial. The correct radial is indicated on the charts. Accordingly, the transition area description as reflected in Order 7400.6E is being altered to reflect the correct radial.

EFFECTIVE DATE: 0901 u.t.c., November 16, 1989.

FOR FURTHER INFORMATION CONTACT:
Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

The Rule

The purpose of this amendment to subpart G of part 71 of the Federal Aviation Regulations (14 CFR 71.161) is to alter the transition area description at Fulton, Missouri, as reflected in Order 7400.6E, Compilation of Regulations. The Hallsville, Missouri, VORTAC 154° radial should be listed as the 160° radial. The correct radial is indicated on the charts. This action does not change the size or shape of the transition area, nor does it require a charting change. Since the amendment will only change the transition area description in Handbook 7400.6E and not the design, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary, because this action is a minor technical amendment in which the public would not be particularly interested.

Section 71.161 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to this authority delegated to me, part 71 of the FAR (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.161 [Amended]

2. By amending § 71.161 as follows:

Fulton, MO (Revised)

That airspace extending upward from 700 ft. above the surface within a 5-mile radius of the Fulton Municipal Airport (lat., 38°50'22" N., long. 92°00'17" W.), and within 2 miles each side of the Hallsville, Missouri, VORTAC, 160° radial; extending from the 5-mile radius area to 6 miles northwest of the Fulton Municipal Airport, and within 3 miles each side of the Guthrie, Missouri, NDB (lat. 38°50'34" N., long. 92°08'16" W.), 229° bearing; extending from the 5-mile radius area to 8.5 miles southwest of the NDB, and within 3 miles each side of the NDB facility 065° bearing; extending from the 5-mile radius area to 8.5 miles northeast of the NDB; excluding that portion which overlies the Columbia, Missouri, 700 ft. transition area.

This amendment becomes effective at 0901 u.t.c. November 16, 1989.

Issued in Kansas City, Missouri, on July 24, 1989.

Clarence E. Newbern,
Manager, Air Traffic Division.

[FR Doc. 89-18461 Filed 8-7-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-13]

Revision to Transition Area, Albemarle, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Albemarle, NC, transition area. A nondirectional radio beacon (NDB) standard instrument approach procedure (SIAP) has been developed for Runway 22 at the Stanly County Airport. This revision adds an arrival area extension to the existing transition area for protection of instrument flight rules (IFR) aircraft executing the new SIAP. Additionally, a correction has been made to the geographic position coordinates of the Stanly County Airport.

EFFECTIVE DATE: 0901 u.t.c., September 21, 1989.

FOR FURTHER INFORMATION CONTACT:
James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On June 7, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Albemarle, NC, transition area (54 FR 24356). This action will add an arrival area extension for protection of IFR aircraft executing a new SIAP to Runway 22 at the Stanly County Airport. Also, a correction will be made to the geographic position coordinates of the airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Albemarle, NC, transition area by adding an arrival area extension to provide additional controlled airspace for protection of IFR aircraft executing a new SIAP to Runway 22 at the Stanly County Airport. Also, a correction has been made to the geographic position coordinates of the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal

Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Albemarle, NC [Revised]

That airspace extending upward from 700 feet above the surface within a seven-mile radius of Stanley County Airport (latitude 35°24'54" N, longitude 80°09'06" W); within three miles each side of the 206° and 041° bearings from the Stanly County NDB (latitude 35°24'42" N, longitude 80°09'23" W), extending from the seven-mile radius area to 8.5 miles southwest and northeast of the NDB.

Issued in East Point, Georgia, on July 20, 1989.

Don Cass,
Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-18463 Filed 8-7-89; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA-698A]

Requirements Governing Payments of Cash Referral Fees By Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Correction.

SUMMARY: On July 12, 1979 the Commission issued a release adopting amendments to rule 206(4)-3 (§ 275.206(4)-3). This document corrects typographical errors in two referenced cites in the rule published at 44 FR 42126 (July 18, 1979).

FOR FURTHER INFORMATION CONTACT:
Robert Plaze, Office of Disclosure and Investment Adviser Regulation (272-2107).

SUPPLEMENTARY INFORMATION: In § 275.206(4)-3 "Cash payments for client solicitations" the referenced section in the note after paragraph (a)(1)(iii) should read "§ 275.204-2(a)(10)." The referenced section in the note after paragraph (a)(2)(iii)(B) should read "§ 275.204-2(a)(15)."

Dated: August 2, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-18439 Filed 8-7-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-89-76]

Special Local Regulations for Marine Events; Barnegat Bay Classic; Toms River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.502.

SUMMARY: This notice implements 33 CFR 100.502 for the Barnegat Bay Classic, an annual event to be held on August 26, 1989 in Barnegat Bay, between Island Beach and the mainland. These special local regulations are needed to provide for the safety of the participants and spectators on navigable waters during this event. The effect will be to restrict general navigation in the regulated area.

EFFECTIVE DATES: The regulations in 33 CFR 100.502 are effective from 9:00 a.m. to 5:00 p.m., August 26, 1989. In case of inclement weather causing the event to be postponed, the regulation will be effective from 9:00 a.m. to 5:00 p.m., August 27, 1989.

FOR FURTHER INFORMATION CONTACT:
Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION:
Drafting Information: The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations: The Barnegat Bay Powerboat Racing Association, Toms River, New Jersey, submitted an application on March 7, 1989 to hold the Barnegat Bay Classic in Barnegat Bay between Island Beach and the mainland. The event will consist of approximately 50 powerboats, ranging from 20 to 36 feet in length, racing on a designated course within the regulated area. Because this event is of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. Waterborne traffic should not be severely disrupted at any given time, because closure of the Intracoastal Waterway is not anticipated.

These regulations are implemented by publication of this notice in the Federal Register and in the Fifth District Local Notice to Mariners.

Dated: July 28, 1989.

P.A. Welling,
Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89-18445 Filed 8-7-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-89-13]

Special Local Regulations for Marine Events; Barnegat Bay Classic; Toms River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Special Local Regulations 33 CFR 100.502 for the Barnegat Bay Classic have been amended by changing the size of the regulated area and by reformatting the regulations to conform to other permanent special local regulations for areas within the Fifth Coast Guard District.

The Coast Guard is removing the regulations in 33 CFR 100.503, which essentially duplicate the regulations in 33 CFR 100.502. The regulations in 33 CFR 100.502 are needed to provide for the safety of participants and spectators on the navigable waters during this annual event. They will restrict general navigation in the regulated area.

EFFECTIVE DATE: This rule becomes effective August 8, 1989.

FOR FURTHER INFORMATION CONTACT:
Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of proposed rulemaking concerning these regulations in the Federal Register on May 2, 1989 (54 FR 18668). Interested persons were requested to submit comments. No comments were received. Nevertheless an error was discovered in § 100.502(b)(2)(ii). The requirement stated in this paragraph should have

been limited to persons on board vessels displaying the Coast Guard ensign, as in § 100.502(b)(2)(i). A small editorial change has been made to § 100.502(a)(2).

Drafting Information: The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Comments and Final Regulations: No comments were received in response to the notice of proposed rulemaking. The annual Barnegat Bay Classic is sponsored by the Barnegat Bay Powerboat Racing Association. The location, name, and effective period of the regulations have not been changed, but the Coast Guard is amending 33 CFR 100.502 by changing the regulated area, and by reformatting the regulations to conform to the other permanent special local regulations for areas within the Fifth Coast Guard District.

Because the present regulated area is unnecessarily large, making it more difficult to regulate, the Coast Guard is establishing a smaller regulated area encompassing the race course and a 500-yard buffer zone around it. This change will provide the Coast Guard Patrol Commander with a more easily controlled regulated area, will permit waterborne traffic to transit the Intracoastal Waterway without needing the permission of the Patrol Commander, and will allow spectators to anchor closer to the race course while still remaining outside the regulated area. The amended regulations will apply to the Barnegat Bay Classic scheduled from 10:00 a.m. to 4:00 p.m., August 26, 1989. Marine traffic should not be inconvenienced because closure of the marked waterway is not anticipated.

Economic Assessment and Certification: These proposed regulations are not considered major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment: This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact: A Categorical Exclusion Determination statement was approved in 1087 for the Barnegat Bay Classic and is part of the Barnegat Bay Classic file.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

§ 100.502 Barnegat Bay Classic, Barnegat Bay, Toms River, New Jersey.

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.502 is amended by revising it to read as follows:

PART 100—[AMENDED].

(a) *Definitions.* (1) Regulated Area. The waters of Barnegat Bay bounded by a line connecting the following points:

Latitude	*Longitude*
39°49'18.0" N.	74°06'43.0" W.
39°49'18.0" N.	74°06'10.0" W.
39°53'15.0" N.	74°06'10.0" W.
39°53'15.0" N.	74°07'19.0" W.
39°50'50.0" N.	74°07'19.0" W.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Group Cape May.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of these regulations but may not block a navigable channel.

(c) *Effective Period.* The Commander, Fifth Coast Guard District will publish a notice in the **Federal Register** and in the Fifth Coast Guard District Local Notice to Mariners announcing the times and dates that this section is in effect.

§ 100.503 [Removed].

3. Section 100.503 is removed.

Dated: July 28, 1989.

P.A. Welling,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 89-18447 Filed 8-7-89; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 100

[CGD 05-89-75]

Special Local Regulations for Marine Events; U.S. Marine Corps Insertion/Extraction Demonstration; Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.511.

SUMMARY: This notice implements 33 CFR 100.511 for the U.S. Marine Corps Insertion/Extraction Demonstration, an annual event to be held August 11, 1989 on the Severn River, Annapolis Maryland. These special local regulations are needed to provide for the safety of the participants and spectators on navigable waters during this event. They will restrict general navigation in the regulated area.

EFFECTIVE DATES: The regulations in 33 CFR 100.511 are effective from 8:30 to 1:00 p.m., August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information: The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Katz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations: The U.S. Naval Academy, Annapolis, Maryland, submitted an application on June 12, 1989 to hold the U.S. Marine Corps Insertion/Extraction Demonstration. The demonstration will be held in that portion of the Severn River bounded on the south by Dungan Basin and to the north by the State Route 450 Bascule Bridge. It will consist of four marines parachuting from one H-46 Helicopter at various altitudes ranging from 2,500 to 10,000 feet. The marines will be lifted from the water by small craft and helicopter. Since this event is of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. Commercial traffic should not be severely disrupted.

These regulations are implemented by publication of this notice in the **Federal Register** and in the Fifth District Local Notice to Mariners.

Dated: July 28, 1989.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89-18448 Filed 8-7-89; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 165

[COTP Portland, Oregon, Regulation 89-05]

Safety Zone Regulations; Willamette River, Portland, OR

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone for all waters of the Willamette River within 500 yards of both the old and new spans of the Burlington Northern Railroad Bridge 5.1 at River Mile 6.9 of the Willamette River while these spans are in transit to and from the bridge site. This zone is needed to protect vessels from the hazards associated with moving such large structures with limited maneuverability. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 0800 on 8 August 1989. It terminates at 0800 on 11 August 1989, unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: CDR W. L. Loveland, (503) 240-9300.

SUPPLEMENTARY INFORMATION: In accordance with 5 USC 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than thirty (30) days after **Federal Register** publication. The request from Riedel/Tokola for the Coast Guard to establish this safety zone was not made until 29 June 1989, and the requested dates of the closure were not established until 7 July 1989, only thirty-one (31) days prior to the scheduled closure. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent the danger and hazard to navigation to both commercial and pleasure craft posed by the movement of the existing swing span of the Burlington Northern Railroad Bridge 5.1 to a temporary storage location and the subsequent movement of the new lift span from its present location at Riedel International facilities to the bridge site. However, the Coast Guard has notified and solicited comments from the local maritime industry and the boating public by letters, phone calls and press releases.

Drafting Information: The drafters of this regulation are CDR W. L. Loveland, project officer for the Captain of the Port, and LT Deborah K. Schram, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Regulation: The circumstances requiring this regulation will begin at 0800 on 8 August 1989 and conclude by 0800 on 11 August 1989. During this period, a contractor will be replacing the swing span of the Burlington Northern Railroad Bridge 5.1 at River Mile 6.9 of the Willamette River with a lift span which is intended to enhance river navigation. The replacement of the span will require the location of barges, anchors, anchor cables and other construction equipment across much of the river. The existing swing span is to be removed and towed to a temporary storage location. The new lift span will be towed from its present location at the Riedel facilities and lifted into position. No wake can be tolerated during either transit phase of the operation and the hazards associated with the movement of these structures would pose a danger to both commercial and pleasure craft. Therefore, since such a situation would pose a danger and hazard to navigation to all vessels, the area within 500 yards of either span will be closed to all traffic during their respective transits.

This regulation is issued pursuant to 33 USC 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5, 49 CFR 1.46.

2. A new 165.T1305 is added to read as follows:

§ 165.T1305 Moving Safety Zone: In the vicinity of Willamette River Mile 6.9.

(a) *Location.* The following areas are safety zones:

(1) All waters of the Willamette River within 500 yards of the old swing span of the Burlington Northern Railroad Bridge 5.1 while it is in transit to its temporary storage site at Willamette River Mile 7.5.

(2) All waters of the Willamette River within 500 yards of the new lift span of the Burlington Northern Railroad Bridge 5.1 while it is in transit from the Riedel International facilities at River Mile 7.5 to the bridge site.

(b) *Regulations:* In accordance with the general regulations in Sec. 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(c) *Effective date.* This regulation becomes effective at 0800, 8 August 1989. It terminates at 0800, 11 August 1989, unless terminated sooner by the Captain of the Port.

Dated: July 24, 1989.

J.W. Calhoun,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 89-18443 Filed 8-7-89; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 165

[COTP Portland, OR, Regulation 89-04]

Safety Zone Regulations; Willamette River, Portland, OR

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the vicinity of the Burlington Northern Railroad Bridge 5.1 at River Mile 6.9 of the Willamette River. This zone is needed to allow a contractor, Riedel/Tokola, to replace the swing span of the bridge with a lift span. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 0800 on 8 August 1989. It terminates at 0800 on 11 August 1989, unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: CDR W. L. Loveland, (503) 240-9300.

SUPPLEMENTARY INFORMATION: In accordance with 5 USC 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than thirty (30) days after **Federal Register** publication. The request from Riedel/

Tokola for the Coast Guard to establish this safety zone was not made until 29 June 1989, and the requested dates of the closure were not established until 7 July 1989, only thirty-one (31) days prior to the scheduled closure. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent the danger and hazard to navigation to both commercial and pleasure craft posed by the location of barges, anchors, anchor cables and other construction equipment across much of the river during the replacement of the bridge span. However, the Coast Guard has notified and solicited comments from the local maritime industry and the boating public by letters, phone calls and press releases. Also, no wake can be tolerated during certain phases of the installation.

Drafting Information. The drafters of this regulation are CDR W. L. Loveland, project officer for the Captain of the Port, and LT Deborah K. Schram, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Regulation. The circumstances requiring this regulation will begin at 0800 on 8 August 1989 and conclude by 0800 on 11 August 1989. During this period, a contractor will be replacing the swing span of the Burlington Northern Railroad Bridge 5.1 at River Mile 6.9 of the Willamette River with a lift span which is intended to enhance river navigation. The replacement of the span will require the location of barges, anchors, anchor cables and other construction equipment across much of the river. The existing swing span is to be removed and towed to a temporary storage location. The new lift span will be towed from its present location at the Riedel facilities and lifted into position. No wake can be tolerated during certain phases of the installation. Therefore, since such equipment would pose a danger and hazard to navigation to both commercial and pleasure craft, and traffic would interfere with the span installation, the river will be closed to all traffic at mile 6.9 for some or all of the 72-hour period.

This regulation is issued pursuant to 33 USC 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5, 49 CFR 1.46

2. A new § 165.T1304 is added to read as follows:

§ 165.T1304 Safety Zone: Willamette River Mile 6.9.

(a) *Location.* The following area is a safety zone: The Willamette River in the vicinity of River Mile 6.9 from a position 200 yards downstream of the Burlington Northern Railroad Bridge 5.1 to a position 200 yards upstream of the Burlington Northern Railroad Bridge 5.1.

(b) *Regulations.* In accordance with the general regulations in Sec. 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(c) *Effective date.* This regulation becomes effective at 0800, 8 August 1989. It terminates at 0800, 11 August 1989, unless terminated sooner by the Captain of the Port.

Dated: July 24, 1989.

J.W. Calhoun,

Captain, U. S. Coast Guard, Captain of the Port.

[FR Doc. 89–18444 Filed 8–7–89; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL–3526–9]

Addenda to Delegation Agreements for New Source Performance Standards (NSPS) Program; the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice announces addition of certain addenda to the delegation agreements of the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas for implementation and enforcement of New Source Performance Standards (NSPS). The addenda explain that these States do not have delegated authority to implement and enforce Subpart AAA—Standards of Performance for New Residential Wood Heaters, even though they have otherwise received automatic authority (either full or partial) with respect to the NSPS program. The Environmental Protection Agency (EPA) also revises 40 CFR Part 60, § 60.4 and 40 CFR Part 61, § 61.04 to reflect the correct addresses for the EPA Region 6 Office and the State and local agencies named above.

EFFECTIVE DATE: July 27, 1989.

ADDRESSES: The related materials in support of this action may be requested by writing to the following address: Chief, SIP New Source Section (6T–AN), Air Programs Branch, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E. SIP New Source Section, Air Programs Branch, United States Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655–7214.

SUPPLEMENTARY INFORMATION: Under section 111(c)(1) of the Clean Air Act, any state may develop and submit to the Administrator a procedure for implementing and enforcing standards of performance for new sources located in such state. If the Administrator determines that the procedures for implementing and enforcing the standards are adequate, the Federal authority may be delegated to the State. To facilitate this process, the EPA Region 6 Office has entered into agreements with certain states for "automatic" delegation of authority for new subparts of the NSPS. The automatic delegation mechanism allows the States to assume the responsibility for the NSPS without a written request and further qualification approval from the EPA.

The EPA promulgated Subpart AAA—Standards of Performance for New Residential Wood Heaters on February 26, 1988 (53 FR 5860). Under this rulemaking, the EPA decided that a centralized program operated by EPA's staff in Washington, D.C., and Research Triangle Park, North Carolina, is the most efficient and effective way to meet the Agency's responsibilities for certifying wood heater testing laboratories, conducting emission audit testing, and making applicability determinations. However, this rulemaking indicated that the EPA is amenable to delegate to the State and local agencies the authority to conduct inspections at retail outlets to verify that appliances affected by this regulation are in compliance. This includes, but not necessarily is limited to, inspections to ensure that the labeling requirements have been met and that all wood heaters in a given model line conform to the dimensions (for specified parameters within stated tolerances) and materials of the wood heater submitted for certification testing as required in § 60.533(k).

The Region 6 States have notified the Regional Office that they do not wish to receive delegated authority for implementation and enforcement of the applicable portion of Subpart AAA as discussed above. After reviewing the States' requests, the EPA has decided to exclude NSPS Subpart AAA from the States' delegation agreements. Therefore, this notice notifies the public that the States located in Region 6 do not have authority (either partial or full) to implement and enforce Subpart AAA—Standards of Performance for New Residential Wood Heaters. The affected States are Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. The EPA has retained authority for implementation and enforcement of this subpart.

This notice also advises the public that the EPA is amending 40 CFR Part 60, § 60.4 and 40 CFR Part 61, § 61.04. These amendments are necessary to correct and update the mailing addresses for the EPA Region 6 Office and the State and local agencies named in this notice.

Any inquiries or questions concerning implementation and enforcement of NSPS Subpart AAA for the sources located in the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas should be directed to the EPA Region 6 Office, 1445 Ross Avenue, Dallas, Texas 75202. The telephone inquiries should be directed to (214) 655–7220 for technical and enforcement questions, and (214) 655–7214 for delegation of authority issues.

The Office of Management and Budget has exempted this information notice from the requirements of section 3 of Executive Order 12291.

This delegation addendum is issued under the authority of section 111(c) of the Clean Air Act, as amended [42 U.S.C. 7411(c)].

List of Subjects in 40 CFR Parts 60 and 61

Air pollution control, Carbon monoxides, Particulate matter and sulfur dioxides.

Dated: July 27, 1989.

Joseph D. Winkle,

Acting Regional Administrator.

PART 60—[AMENDED]

Title 40, Parts 60 and 61 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7601.

2. Section 60.4 is amended by revising the Region VI address in paragraph (a), by revising paragraphs (b)(E), (b)(T), (b)(GG) and (b)(LL)(i) to read as follows:

§ 60.4 Address.

(a) * * *

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas): Director; Air, Pesticides, and Toxics Division; U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

* * * * *

(b) * * *

(E) State of Arkansas: Chief, Division of Air Pollution Control, Arkansas Department of Pollution Control and Ecology, 8001 National Drive, P.O. Box 9583, Little Rock, Arkansas 72209.

* * * * *

(T) State of Louisiana: Program Administrator, Air Quality Division, Louisiana Department of Environmental Quality, P.O. Box 44096, Baton Rouge, Louisiana 70804.

* * * * *

(GG) State of New Mexico: Director, New Mexico Environmental Improvement Division, Health and Environment Department, 1190 St. Francis Drive, Santa Fe, New Mexico 87503.

* * * * *

(LL) * * *

(i) Oklahoma City and County: Director, Oklahoma City-County Health Department, 921 Northeast 23rd Street, Oklahoma City, Oklahoma 73105.

* * * * *

PART 61—[AMENDED]

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7601.

2. Section 61.04 is amended by revising the Region VI address in paragraph (a),and by revising paragraphs (b)(E), (b)(T), (b)(GG), and (b)(LL)(i) to read as follows:

§ 61.04 Address.

(a) * * *

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas): Director; Air, Pesticides, and Toxics Division; U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

* * * * *

(b) * * *

(E) State of Arkansas: Chief, Division of Air Pollution Control, Arkansas Department of Pollution Control and Ecology, 8001 National Drive, P.O. Box 9583, Little Rock, Arkansas 72209.

* * * * *

(T) State of Louisiana: Program Administrator, Air Quality Division, Louisiana Department of Environmental Quality, P.O. Box 44096, Baton Rouge, Louisiana 70804.

* * * * *

(GG) State of New Mexico: Director, New Mexico Environmental Improvement Division, Health and Environment Department, 1190 St. Francis Drive, Santa Fe, New Mexico 87503.

* * * * *

(LL) * * *

(i) Oklahoma City and County: Director, Oklahoma City-County Health Department, 921 Northeast 23rd Street, Oklahoma City, Oklahoma 73105.

* * * * *

[FR Doc. 89–18496 Filed 8–7–89; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–47

Disposal of Surplus Federal Real Property

AGENCY: Federal Property Resources Service, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration is amending the illustration referenced in § 101–47.4911 of the regulations concerning the disposal of surplus Federal real property to incorporate the provisions of Pub. L. 100–77 as amended by Pub. L. 100–628, with regard to congressional oversight of negotiated sales. Public Sales 100–77, as amended by Pub. L. 100–628, amends the Federal Property and Administrative Services Act of 1949, as amended.

EFFECTIVE DATE: August 8, 1989.

FOR FURTHER INFORMATION CONTACT: Majorie L. Lomax, Director, Policy and Planning Division, Office of Real Estate Policy and Sales, Federal Property Resources Service, CSA, (202) 535–7052.

Authority: (Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c))

Dated: July 28, 1989.

Earl E. Jones,

Commissioner, Federal Property Resources Service.

[FR Doc. 89–18501 Filed 8–7–89; 8:45 am]

BILLING CODE 6820–23–M

BEST COPY AVAILABLE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 50

RIN 0905-AB91

Responsibilities of Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science

AGENCY: Public Health Service, DHHS.

ACTION: Final rule.

SUMMARY: To implement section 493 of the Public Health Service (PHS) Act (and also section 501(f) of the PHS Act as amended by section 2058(a)(2)(C) of the Anti-Drug Abuse Act of 1988), this Final Rule adds a new Subpart A to 42 CFR part 50. The new Subpart A sets forth the responsibilities of PHS awardee and applicant institutions for dealing with and reporting alleged or suspected misconduct in science involving research, research training, applications for support of research or research training, or related activities for which PHS funds have been provided or requested.

EFFECTIVE DATE: November 8, 1989.

FOR FURTHER INFORMATION CONTACT: Brian Kimes, PhD, Acting Director, Office of Scientific Integrity, Bldg. 31-Room BI-C34, National Institutes of Health, Bethesda, Maryland 20892—telephone (301) 496-2824. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Reported instances of scientific misconduct appear to represent only a small fraction of the total number of research and research training awards funded by the PHS. Nevertheless, even a small number of instances of scientific misconduct is unacceptable and could threaten the continued public confidence in the integrity of the scientific process and in the stewardship of Federal funds. The PHS has adopted interim policies to provide guidance for dealing with allegations and investigations, based on experience with a number of cases. These interim policies were published for the information of the public in the July 16, 1986, issue of the "NIH Guide for Grants and Contracts" and became part of the PHS Grants Administration Manual on September 1, 1988.

The PHS also recently established two new offices for dealing with scientific misconduct (see 54 FR 11080, March 16, 1989). The Office of Scientific Integrity Review (OSIR), established in the Office of the Assistant Secretary for Health, is responsible for establishing overall PHS policies and procedures for dealing with misconduct in science, overseeing the activities of PHS research agencies to ensure that these policies and procedures are implemented, and reviewing all final reports of investigations to assure that any findings and recommendations are sufficiently documented. The OSIR also makes final recommendations to the Assistant Secretary for Health on whether any sanctions should be imposed and, if so, what they should be in any case where scientific misconduct has been established. When necessary, OSIR may conduct independent investigations.

In addition, the Office of Scientific Integrity (OSI), established in the Office of the Director, National Institutes of Health (NIH), oversees the implementation of all PHS policies and procedures related to scientific misconduct; monitors the individual investigations into alleged or suspected scientific misconduct conducted by institutions that receive PHS funds for biomedical or behavioral research projects or programs; and conducts investigations as necessary.

The PHS Grants Administration Manual will be revised to accommodate the establishment of the these offices.

The PHS Act directs the Secretary to establish procedures requiring that entities receiving funds from the PHS for the conduct of biomedical and behavioral research submit assurances on an annual basis that:

(1) These entities have established (based upon regulations prescribed by the Secretary) an administrative process to review reports of scientific misconduct in biomedical or behavioral research, and (2) they will report to the Secretary any investigation of alleged scientific misconduct that appears substantial. The Secretary also has authority to respond to information received with respect to possible scientific misconduct involving projects under the PHS Act and to take appropriate action in response to such misconduct.

The provisions of section 493 of the PHS Act contemplate that there will be a close working relationship between the awardee institutions and the Department in resolving allegations of scientific misconduct. Section 493 envisions that the awardee institutions will have the primary responsibility for preventing, detecting, investigating, reporting and resolving allegations of scientific misconduct. The Department, however, retains the ultimate responsibility and authority for monitoring such investigations and becoming involved in those investigations if appropriate or necessary.

In order to carry out his formal responsibilities under section 493, the Secretary published a Notice of Proposed Rule making on September 19, 1988 (53 FR 36347). That document set forth for public comment proposed responsibilities of applicant and awardee institutions, including requirements that they establish policies and procedures for investigating and reporting allegations of scientific misconduct involving research, research training, or related activities for which PHS funds have been awarded or requested. Proposed § 50.104 specified an appropriate time and method for notifying the PHS of instances of possible misconduct. Proposed § 103 specified that, if there is a reasonable indication of a criminal violation, the Department's Office of Inspector General would be notified within 24 hours.

This final rule applies only to institutions applying for or receiving financial assistance from the PHS. A separate proposed rule amending 48 CFR part 3 will be published in the **Federal Register** to cover entities applying for contracts.

Institutions are urged to develop, as soon as possible, policies and procedures for dealing with and reporting possible misconduct in science within their institution. After the effective date of this Rule, each institution must have in place an assurance for dealing with scientific misconduct, as outlined by this rule. Updated information with respect to assurances will be due each year, on a date to be specified by OSI. Assurances should be submitted for approval to the Director, Office of Scientific Integrity, at the above-cited address.

As stated, this final rule implements section 493 requiring the Department to issue regulations concerning investigation and reporting of "scientific fraud". (See subsequent text in this preamble regarding use of the terms "fraud" and "misconduct" in this context.) Consequently, the rule does not contain specific measures to foster scientific integrity. Other issues remain to be addressed, including: retention of laboratory data, authorship practices, the role of grantee institutions and funding agencies in the performance of audits or studies to prevent the occurrence of scientific misconduct, and the consistency of such policies across federal agencies. HHS will continue to monitor institutions' responses and propose policies as may be necessary in the future. Such action may be based in

part on the advance notice of proposed rulemaking published in the **Federal Register** on September 19, 1988 (53 FR 36344). In addition, consistency of policies in this area across Federal agencies will be monitored by the Office of Management and Budget in cooperation with the Office of Science and Technology Policy.

Summary of Comments

As noted, the Secretary published a proposed rule in the **Federal Register** on September 19, 1988 (53 FR 36347) for public comment. The comment period was open through November 18, 1988. One hundred thirty-nine responses were received that addressed a wide spectrum of issues concerning the proposed rule and scientific misconduct in general. The respondents included 60 institutional representatives, 37 individual staff or faculty members, 20 representatives of professional associations, 16 representatives of research institutes or faculty groups, three individuals from Federal offices, two private citizens, and one representative of a scientific journal. The responses were generally supportive of the PHS's efforts and of the proposed rule. Most respondents emphasized that the main responsibility for investigating or preventing cases of scientific misconduct should remain with the institution.

The following is a summary of other main points contained in the comments on the proposed rule, and the Departmental responses.

Applicability and Definition of "Misconduct in Science."

The proposed rule defined "misconduct in science" to mean (1) fabrication, falsification, plagiarism, deception or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research; or (2) material failure to comply with federal requirements that uniquely relate to the conduct of research." The comments and suggestions received were particularly helpful in refining this proposed definition. A number of respondents pointed out that, to the extent the second clause in the definition was largely intended to deal with violations of human and animal experimentation requirements, these areas are already covered by existing regulations and policies. Other commenters requested that honest error be excluded from the definition. Still others urged omission of the word "deception" inasmuch as deception can be an acceptable component of specific types of research. Some commenters disagreed with the section of the definition that addressed "other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research" and proposed that this portion of the definition be deleted. On the other hand, some commenters suggested expanding the definition to include duplicate publication and intellectual piracy. Some commenters preferred the term "fraud" rather than "misconduct."

Response. The definition has been modified considerably in light of the comments. The term "deception" has been deleted. The second clause, referring to material failure to comply with federal requirements that uniquely relate to the conduct of research, has also been deleted in order to avoid duplicative reporting of violations of human and animal experimentation requirements. Further, a sentence has been added to make it clear that the definition does not include "honest error or honest differences in interpretations or judgments of data." At the same time, the language "other practices that seriously deviate" has been retained to assure coverage of any serious misconduct that might not technically be considered "fabrication, falsification, or plagiarism." With regard to the comments preferring "fraud" over "misconduct," the word "misconduct" is coming into increasing use because it avoids confusion with common law fraud, which contains certain unique characteristics that have no applicability to what has commonly come to be known as scientific misconduct. For this reason, the term "misconduct" is being retained.

Assurances. The notice of proposed rulemaking stated that an institution applying for or receiving PHS support must have an assurance satisfactory to the Secretary regarding procedures for dealing with misconduct in science. Most respondents agreed with the assurance mechanism. This final rule, in § 50.103, specifies that the assurance, on a form prescribed by the Secretary, must be submitted to the OSI as soon as possible after November 8, 1989, and no later than January 1, 1990, and be updated thereafter on an annual basis. This will enable PHS to ensure that institutions are establishing procedures that are consistent with the requirements of 42 CFR part 50. The assurance will consist of a series of affirmative statements, to be provided on the form prescribed by the Secretary. The OSI will also review annually a sample of institutions, policies and procedures.

Investigations and Reporting. Most of the respondents agreed with the overall proposed timing for completion of the inquiry and investigation phases. However, the need for flexibility was stressed in recognition of the complex and heterogeneous nature of individual cases. Five respondents said the proposed time schedule was too short, and three others suggested following the National Science Foundation's timetable. The need to request formally an extension was questioned, and there were two suggestions to include "Inquiries" in the title of this section.

Response. After considering all the comments, the PHS believes the proposed timetable for conducting inquiries and investigations is reasonable. The PHS agrees that a certain degree of flexibility also is appropriate but disagrees with the contention that institutions should not be required to request an extension if the investigation cannot be completed within the specified time period. Therefore, the proposed language for this purpose in § 50.104(a) is retained.

PHS expects that as institutions refine and enhance their policies and procedures and gain collective experience in conducting investigations, the quality and timeliness of such investigations will improve. Where institutions fail to carry out their responsibilities as specified in the rule, the Department will use whatever remedies may be available under the circumstances. If problems persist, PHS will consider rulemaking to establish additional sanctions, such as restrictions on or reductions in indirect-cost funding going to an institution, or charges for the costs of investigations that have to be performed by the OSI.

The term "Inquiries" has been added to the title of this section, since the rule includes a specified time period for this activity. This section also has been expanded to give more specific guidance regarding the scope of inquiries, investigations, and reports.

Reporting Requirements. Most of the concerns expressed by respondents with respect to the reporting requirements were related to the issue of confidentiality and to possible damage to the reputations of innocent individuals. They were concerned about the treatment of both the accused and accuser, although eight respondents specifically called for the identification of the accuser. Twenty-one respondents were concerned about the due process rights of the accused during an institutional inquiry and/or investigation, as well as the responsibilities of the PHS to protect

individuals' privacy and the need to maintain information confidential. Many respondents stated that a report should be made to the PHS only if substantial evidence is found, and some respondents stated that only essential information should be reported.

Response. After considering the comments received regarding the reporting requirements, the PHS has concluded that these requirements should be retained as originally proposed, with the addition that the reports be made part of the assurance review process. The PHS understands, and agrees with, the need for the confidential handling of information relevant to investigations. The PHS accepts and pursues anonymous allegations, so long as sufficient information is provided to be able to initiate an inquiry. No information, other than that which ordinarily is available, for example under the Freedom of Information Act, is released by the Department while an investigation is under way, except to Department personnel on a need-to-know basis.

The reporting requirements also have been changed to reflect the establishment of the OSI, which now is the focal point for all of the PHS for dealing with allegations of scientific misconduct involving research, research training, or related activities supported under the PHS Act. All reports shall be sent to the OSI, rather than to PHS as was stated in the Proposed Rule.

The PHS strongly encourages institutions to adopt procedures that will provide due process to the accused. Section 50.104 sets forth basic due process procedures to be followed during the investigation, such as assuring that the accused is interviewed and has an opportunity to comment on the findings of the investigation.

The PHS believes the reporting requirements are not unduly burdensome and that they are necessary in order for the Department to carry out its responsibility under the statute for the stewardship of Federal funds. As recipient institutions gain experience in the conduct of investigations and the preparation of the reports of those investigations, the PHS will continue to evaluate its monitoring function. However, at this initial stage of implementation, the PHS believes that an active monitoring role is important and that the reports required under the regulation are essential to that role.

Impact Analyses

Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects.

The PHS does not believe that this regulation will have an annual economic impact of $100 million or more or the other effects listed in the Order. For this reason, the PHS has determined that this regulation is not a major rule within the meaning of the Order.

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

The Secretary certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and record-keeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Responsibilities of PHS Awardee and Applicant Institutions for Dealing with and Reporting Possible Misconduct in Science.

Description: As required by the PHS Act, the Secretary shall require that applicant and awardee institutions receiving PHS funding investigate and report any allegations of misconduct in science.

Description of Respondents: Non-profit institutions, small businesses or organizations, for-profit organizations.

ESTIMATED ANNUAL REPORTING AND RECORD-KEEPING BURDEN

Applicable section of policy	No. of respondents	Hours per response	Total hours
Reporting:			
103(b)(1)	2,500	7	17,500
103(b)(2)	(2,500)	3.5	8,750
103(c)(4)/(d)(4)	(20)	0.2	4
103(d)(5)	(2)	0.5	1
103(d)(12)	(20)	0.5	10
Total			17,534
Record-Keeping:			
103(d)(1)	(40)	4	160
(103(d)(5)	(40)	0.5	20
103(d)(7)	(20)	40	800
103(d)(10)	(20)	0.2	4
Total			984
Disclosure:			
103(c)(2)	2,500	1.0	2,500
103(d)(1)	(40)	0.5	20
103(d)(7)	(20)	0.5	10
Total			2,530
Total burden			21,048

As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department will submit for review by the Office of Management and Budget (OMB) the above-cited information collection requirements. As OMB control numbers are assigned, we will publish a Notice in the Federal Register announcing them. Organizations and individuals desiring to submit comments on the information-collection requirements should direct such comments to the above-cited information address, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington DC 20503 (ATTN: Richard A. Eisinger).

Catalog of Federal Domestic Assistance

This rule affects a great many PHS research programs. It would be wasteful and cumbersome to include a multi-page listing of them all here. Questions about this rule should be directed to the information address above where individual programs listed in the Catalog of Federal Domestic Assistance are affected.

List of Subjects in 42 CFR Part 50

Administration practice and procedure, American Samoa, Drugs, Family Planning, Grant programs in health, Guam, Northern Mariana Island, Pacific Islands Territory, Virgin Islands.

Dated: March 22, 1989.

Ralph R. Reed,

Acting Assistant Secretary for Health.

Approved: April 3, 1989.

Louis W. Sullivan,

Secretary.

For the reasons set out in the preamble, Title 42, Subchapter D, of the Code of Federal Regulations is amended to add Subpart A to part 50, consisting of §§ 50.101 through 50.105 to read as set forth below.

PART 50—POLICIES OF GENERAL APPLICABILITY

Subpart A—Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science

Sec.

50.101 Applicability.
50.102 Definitions.
50.103 Assurance—Responsibilities of PHS Awardee and Applicant Institutions.
50.104 Reporting to the OSI.
50.105 Institutional compliance.

Subpart A—Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science

Authority: Sec. 493, Public Health Service Act, as amended, 99 Stat. 874–875 (42 U.S.C. 289b); Sec. 501(f), Public Health Service Act, as amended, 102 Stat. 4213 (42 U.S.C. 290aa(f)).

§ 50.101 Applicability.

This subpart applies to each entity which applies for a research, research-training, or research-related grant or cooperative agreement under the Public Health Service (PHS) Act. It requires each such entity to establish uniform policies and procedures for investigating and reporting instances of alleged or apparent misconduct involving research or research training, applications for support of research or research training, or related research activities that are supported with funds made available under the PHS Act. This subpart does not supersede and is not intended to set up an alternative to established procedures for resolving fiscal improprieties, issues concerning the ethical treatment of human or animal subjects, or criminal matters.

§ 50.102. Definitions.

As used in this subpart:

"Act" means the Public Health Service Act, as amended, (42 U.S.C. 201 *et seq.*).

"Inquiry" means information gathering and initial factfinding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

"Institution" means the public or private entity or organization (including federal, state, and other agencies) that is applying for financial assistance from the PHS, e.g., grant or cooperative agreements, including continuation awards, whether competing or noncompeting. The organization assumes legal and financial accountability for the awarded funds and for the performance of the supported activities.

"Investigation" means the formal examination and evaluation of all relevant facts to determine if misconduct has occurred.

"Misconduct" or "Misconduct in Science" means fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research. It does not include honest error or honest differences in interpretations or judgments of data.

"OSI" means the Office of Scientific Integrity, a component of the Office of the Director of the National Institutes for Health (NIH), which oversees the implementation of all PHS policies and procedures related to scientific misconduct; monitors the individual investigations into alleged or suspected scientific misconduct conducted by institutions that receive PHS funds for biomedical or behavioral research projects or programs; and conducts investigations as necessary.

"OSIR" means the Office of Scientific Integrity Review, a component of the Office of the Assistant Secretary for Health, which is responsible for establishing overall PHS policies and procedures for dealing with misconduct in science, overseeing the activities of PHS research agencies to ensure that these policies and procedures are implemented, and reviewing all final reports of investigations to assure that any findings and recommendations are sufficiently documented. The OSIR also makes final recommendations to the Assistant Secretary for Health on whether any sanctions should be imposed and, if so, what they should be in any case where scientific misconduct has been established.

"PHS" means the Public Health Service, an operating division of the Department of Health and Human Services (HHS). References to PHS include organizational units within the PHS that have delegated authority to award financial assistance to support scientific activities, e.g., Bureaus, Institutes, Divisions, Centers or Offices.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved may be delegated.

§ 50.103 Assurance—Responsibilities of PHS awardee and applicant institutions.

(a) *Assurances.* Each institution that applies for or receives assistance under the Act for any project or program which involves the conduct of biomedical or behavioral research must have an assurance satisfactory to the Secretary that the applicant:

(1) Has established an administrative process, that meets the requirements of this Subpart, for reviewing, investigating, and reporting allegations of misconduct in science in connection with PHS-sponsored biomedical and behavioral research conducted at the applicant institution or sponsored by the applicant; and

(2) Will comply with its own administrative process and the requirements of this Subpart.

(b) *Annual Submission.* An applicant or recipient institution shall make an annual submission to the OSI as follows:

(1) The institution's assurance shall be submitted to the OSI, on a form prescribed by the Secretary, as soon as possible after November 8, 1989, but no later than January 1, 1990, and updated annually therefter on a date specified by OSI. Copies of the form may be requested through the Director, OSI.

(2) An institution shall submit, along with its annual assurance, such aggregate information on allegations, inquiries, and investigations as the Secretary may prescribe.

(c) *General Criteria.* In general, an applicant institution will be considered to be in compliance with its assurance if it:

(1) Establishes, keeps current, and upon request provides the OSIR, the OSI, and other authorized Departmental officials the policies and procedures required by this subpart.

(2) Informs its scientific and administrative staff of the policies and procedures and the importance of compliance with those policies and procedures.

(3) Takes immediate and appropriate action as soon as misconduct on the part of employees or persons within the organization's control is suspected or alleged.

(4) Informs, in accordance with this Subpart, and cooperates with the OSI with regard to each investigation of possible misconduct.

(d) *Inquiries, Investigations, and Reporting—Specific Requirements.* Each

applicant's policies and procedures must provide for:

(1) Inquiring immediately into an allegation or other evidence of possible misconduct. An inquiry must be completed within 60 calendar days of its initiation unless circumstances clearly warrant a longer period. A written report shall be prepared that states what evidence was reviewed, summarizes relevant interviews, and includes the conclusions of the inquiry. The individual(s) against whom the allegation was made shall be given a copy of the report of inquiry. If they comment on that report, their comments may be made part of the record. If the inquiry takes longer than 60 days to complete, the record of the inquiry shall include documentation of the reasons for exceeding the 60-day period.

(2) Protecting, to the maximum extent possible, the privacy of those who in good faith report apparent misconduct.

(3) Affording the affected individual(s) confidential treatment to the maximum extent possible, a prompt and thorough investigation, and an opportunity to comment on allegations and findings of the inquiry and/or the investigation.

(4) Notifying the Director, OSI, in accordance with § 50.104(a) when, on the basis of the initial inquiry, the institution determines that an investigation is warranted, or prior to the decision to initiate an investigation if the conditions listed in § 50.104(b) exist.

(5) Notifying the OSI within 24 hours of obtaining any reasonable indication of possible criminal violations, so that the OSI may then immediately notify the Department's Office of Inspector General.

(6) Maintaining sufficiently detailed documentation of inquiries to permit a later assessment of the reasons for determining that an investigation was not warranted, if necessary. Such records shall be maintained in a secure manner for a period of at least three years after the termination of the inquiry, and shall, upon request, be provided to authorized HHS personnel.

(7) Undertaking an investigation within 30 days of the completion of the inquiry, if findings from that inquiry provide sufficient basis for conducting an investigation. The investigation normally will include examination of all documentation, including but not necessarily limited to relevant research data and proposals, publications, correspondence, and memoranda of telephone calls. Whenever possible, interviews should be conducted of all individuals involved either in making the allegation or against whom the allegation is made, as well as other individuals who might have information regarding key aspects of the allegations; complete summaries of these interviews should be prepared, provided to the interviewed party for comment or revision, and included as part of the investigatory file.

(8) Securing necessary and appropriate expertise to carry out a thorough and authoritative evaluation of the relevant evidence in any inquiry or investigation.

(9) Taking precautions against real or apparent conflicts of interest on the part of those involved in the inquiry or investigation.

(10) Preparing and maintaining the documentation to substantiate the investigation's findings. This documentation is to be made available to the Director, OSI, who will decide whether that Office will either proceed with its own investigation or will act on the institution's findings.

(11) Taking interim administrative actions, as appropriate, to protect Federal funds and insure that the purposes of the Federal financial assistance are carried out.

(12) Keeping the OSI apprised of any developments during the course of the investigation which disclose facts that may affect current or potential Department of Health and Human Services funding for the individual(s) under investigation or that the PHS needs to know to ensure appropriate use of Federal funds and otherwise protect the public interest.

(13) Undertaking diligent efforts, as appropriate, to restore the reputations of persons alleged to have engaged in misconduct when allegations are not confirmed, and also undertaking diligent efforts to protect the positions and reputations of those persons who, in good faith, make allegations.

(14) Imposing appropriate sanctions on individuals when the allegation of misconduct has been substantiated.

(15) Notifying the OSI of the final outcome of the investigation.

§ 50.104 Reporting to the OSI.

(a)(1) An institution's decision to initiate an investigation must be reported in writing to the Director, OSI, on or before the date the investigation begins. At a minimum, the notification should include the name of the person(s) against whom the allegations have been made, the general nature of the allegation, and the PHS application or grant number(s) involved. Information provided through the notification will be held in confidence to the extent permitted by law, will not be disclosed as part of the peer review and Advisory Committee review processes, but may be used by the Secretary in making decisions about the award or continuation of funding.

(2) An investigation should ordinarily be completed within 120 days of its initiation. This includes conducting the investigation, preparing the report of findings, making that report available for comment by the subjects of the investigation, and submitting the report to the OSI. If they can be identified, the person(s) who raised the allegation should be provided with those portions of the report that address their role and opinions in the investigation.

(3) Institutions are expected to carry their investigations through to completion, and to pursue diligently all significant issues. If an institution plans to terminate an inquiry or investigation for any reason without completing all relevant requirements under § 50.103(d), a report of such planned termination, including a description of the reasons for such termination, shall be made to OSI, which will then decide whether further investigation should be undertaken.

(4) The final report submitted to the OSI must describe the policies and procedures under which the investigation was conducted, how and from whom information was obtained relevant to the investigation, the findings, and the basis for the findings, and include the actual text or an accurate summary of the views of any individual(s) found to have engaged in misconduct, as well as a description of any sanctions taken by the institution.

(5) If the institution determines that it will not be able to complete the investigation in 120 days, it must submit to the OSI a written request for an extension and an explanation for the delay that includes an interim report on the progress to date and an estimate for the date of completion of the report and other necessary steps. Any consideration for an extension must balance the need for a thorough and rigorous examination of the facts versus the interests of the subject(s) of the investigation and the PHS in a timely resolution of the matter. If the request is granted, the institution must file periodic progress reports as requested by the OSI. If satisfactory progress is not made in the institution's investigation, the OSI may undertake an investigation of its own.

(6) Upon receipt of the final report of investigation and supporting materials, the OSI will review the information in order to determine whether the investigation has been performed in a timely manner and with sufficient objectivity, thoroughness and

competence. The OSI may then request clarification or additional information and, if necessary, perform its own investigation. While primary responsibility for the conduct of investigations and inquiries lies with the institution, the Department reserves the right to perform its own investigation at any time prior to, during, or following an institution's investigation.

(7) In addition to sanctions that the institution may decide to impose, the Department also may impose sanctions of its own upon investigators or institutions based upon authorities it possesses or may possess, if such action seems appropriate.

(b) The institution is responsible for notifying the OSI if it ascertains at any stage of the inquiry or investigation, that any of the following conditions exist:

(1) There is an immediate health hazard involved;

(2) There is an immediate need to protect Federal funds or equipment;

(3) There is an immediate need to protect the interests of the person(s) making the allegations or of the individual(s) who is the subject of the allegations as well as his/her co-investigators and associates, if any;

(4) It is probable that the alleged incident is going to be reported publicly.

(5) There is a reasonable indication of possible criminal violation. In that instance, the institution must inform OSI within 24 hours of obtaining that information. OSI will immediately notify the Office of the Inspector General.

§ 50.105 Institutional compliance.

Institutions shall foster a research environment that discourages misconduct in all research and that deals forthrightly with possible misconduct associated with research for which PHS funds have been provided or requested. An institution's failure to comply with its assurance and the requirements of this subpart may result in enforcement action against the institution, including loss of funding, and may lead to the OSI's conducting its own investigation.

[FR Doc. 89-18437 Filed 8-7-89; 8:45 am]
BILLING CODE 4160-17-M

Proposed Rules

Federal Register
Vol. 54, No. 151
Tuesday, August 8, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASO-32]

Proposed Designation of Transition Area, Booneville, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate the Booneville, MS, transition area to accommodate instrument flight rules (IFR) operations at the Booneville-Baldwyn Airport. This action will lower the base of controlled airspace from 1,200 feet to 700 feet above the surface in the vicinity of the airport. A standard instrument approach procedure (SIAP) is being developed to serve the airport and the controlled airspace is required for protection of IFR operations. Concurrent with publication of the SIAP, the operating status of the airport will change from visual flight rules (VFR) to IFR.

DATES: Comments must be received on or before: September 11, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-32, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-32." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to designate the Booneville, MS, transtion area. This action will provide controlled airspace for aircraft executing a new SIAP to the Booneville-Baldwyn Airport. If the proposed designation of the transition area is found acceptable, the operating status of the airport will be changed to IFR. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition Areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Booneville, MS [New]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Booneville-Baldwyn Airport (latitude 34°35'32" N, longitude 88°38'50" W).

Issued in East Point, Georgia, on July 20, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-18465 Filed 8-7-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-001-89]

RIN 1545-AM68

Limitations on Passive Activity Losses and Credits—Definition of Activity

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the definition of "activity" for purposes of applying the limitations on passive activity losses and passive activity credits.

DATES: The public hearing will be held on Tuesday, November 28, 1989, and continuing, if necessary, at the same time on Wednesday, November 29, 1989, beginning at 10:00 a.m. Outlines of oral comments must be delivered by Tuesday, November 7, 1989.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (PS-001-89) Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Angela Wilburn telephone (202) 566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations appearing in the Federal Register for Friday, May 12, 1989, (54 FR 20606).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Tuesday, November 7, 1989, an outine of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers thereto.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89-18431 Filed 8-7-89; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[EE-44-87]

RIN 1545-AK46

Minimum Participation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to minimum participation standards under section 401(a)(26) of the Internal Revenue Code of 1986.

DATES: The public hearing will be held on Monday, October 30, 1989, and continuing, if necessary, at the same time on Tuesday, October 31, 1989, beginning at 10:00 a.m. Outlines of oral comments must be delivered by Friday, October 6, 1989.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (EE-44-87) Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Angela Wilburn, telephone (202) 566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations appearing in the Federal Register for Tuesday, February 14, 1989 (54 FR 6710).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Friday, October 6, 1989, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers thereto.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89-18430 Filed 8-7-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-89-49]

Special Local Regulations for Marine Events; Trump Castle World Championships; Atlantic Ocean, off Atlantic City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing special local regulations for the Trump Castle World Championships to be held off the southern New Jersey coast between Margate City at Great Egg Harbor Inlet and Brigantine Shoal on October 17, 19 and 21, 1989. These special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

DATES: Comments must be received on or before September 22, 1989.

ADDRESSES: Comments should be mailed or hand carried to Commander (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments will be available for inspection and copying at Room 209 of this address. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 05–89–49) and the specific section of the proposal to which their comments apply. Reasons should be given for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

Drafting Information: The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Proposed Regulations: The New York Offshore Powerboat Racing Association will sponsor this year's Trump Castle World Championships. The race will consist of between 100 to 150 powerboats, from 24 to 50 feet in length, racing approximately 150 nautical miles over a 30 nautical mile course. This year's event will be a three-day event instead of the one-day event held last year. Race headquarters will be located in Trump Castle, Atlantic City, New Jersey. Coast Guard patrol vessels will be positioned at both inlets to direct vessels to temporary spectator anchorages and to instruct transiting vessels on how to proceed safely around the race course.

The sponsor will provide committee boats to lead the race vessels in a procession to and from the race course. The sponsor also will provide more than 70 vessels to assist the Coast Guard and local government agencies in patrolling this event.

The race course has been altered slightly from the one used in 1988. It still remains a flattened, elongated triangle, but the course has been moved 200 yards farther seaward at the end nearest Great Egg Harbor Inlet. The change was made in order to relocate the Great Egg Harbor Inlet Spectator Anchorage Area between the shoreline at Ventnor City and the inshore leg of the race course.

Generally, the race course is the same as last year, extending along the New Jersey coastline from Great Egg Harbor Inlet to Brigantine Shoal Inner Buoy 4BS (LL 40), thence three nautical miles east, thence southwestward to Great Egg Harbor Inlet. The regulated area includes the waters of the Atlantic Ocean from the shoreline at Great Egg Harbor Inlet to the tank at Brigantine, New Jersey, and extends approximately 1000 yards beyond the outer leg of the race course, except where the course exceeds the three-mile territorial sea limit. The portion of the race course that exceeds the three-mile is not regulated by the Coast Guard. Nevertheless, vessel operators are advised to remain clear of the advisory area designated in Section 2.(a)(2) of this rule. To provide for the safety of participants, spectators, and vessels transiting the area, the Coast Guard will restrict vessel movement in the regulated area and has established two temporary spectator anchorages (at Great Egg Harbor Inlet and Absecon Inlet) for what is expected to be a large spectator fleet.

In order to publicize these regulations, the Coast Guard will publish details in the Local Notice to Mariners and the Federal Register, and members of the Coast Guard Auxiliary will be present in the vicinity of the race site to inform vessel operators of these regulations and other applicable laws.

Economic Assessment and Certification: These proposed regulations are not considered major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment: This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact: This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–0549 is added to read as follows:

§ 100.35–0549 Atlantic Ocean, New Jersey Seacoast, Off Atlantic City, New Jersey.

(a) *Definitions:* (1) *Regulated area.* The waters of the Atlantic Ocean bounded by the shoreline and a line drawn across the outermost points of land on either side of Absecon Inlet, and by a line drawn from the shoreline at Longport, New Jersey, at latitude 39°18.20' North, longitude 74°32.30' West; thence to latitude 39°17.80' N., longitude 74°31.65' W.; thence northeastward to latitude 39°21.25' N., longitude 74°20.50' W.; thence along the three-mile territorial sea limit to latitude 39°24.30' North, longitude 74°13.80' West; and thence to the shoreline at latitude 39°25.8' North, longitude 74°21.5' West.

(2) *Advisory area.* The waters of the Atlantic Ocean enclosed by lines connecting the following points:

Latitude	Longitude
39°21.25' N.	74°20.50' W.
39°23.30' N.	74°13.80' W.
39°24.15' N.	74°13.80' W.
39°24.35' N.	74°16.65' W.

(3) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Cape May.

(4) *Spectator Anchorage Areas.* (i) *Absecon Inlet Spectator Area.* The waters off the New Jersey seacoast bounded by a line connecting the following points:

Latitude	Longitude
39°22'24.0" N.	74°24'00.0" W.
39°22'00.0" N.	74°23'43.0" W.
39°22'25.0" N.	74°22'54.0" W.
39°22'48.0" N.	74°23'12.0" W.

(ii) *Great Egg Inlet Spectator Area.* The waters off the New Jersey seacoast bounded by a line connecting the following points:

Latitude	Longitude
39°18'48.0" N.	74°31'18.0" W.
39°18'42.0" N.	74°31'12.0" W.
39°21'00.0" N.	74°26'24.0" W.
39°21'06.0" N.	74°26'30.0" W.

(b) *Special Local Regulations.* (1) Except for participants in the Trump, Castle World Championships and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Spectator vessels may anchor in the spectator anchorage areas specified in paragraphs (a)(4)(i) and (a)(4)(ii) of these regulations.

(4) The Coast Guard Patrol Commander may allow vessels to transit the regulated area whenever a race heat is not being run.

(5) Vessel operators are advised to remain clear of the advisory area during the effective periods of this regulation.

(c) *Effective periods:* The regulations are effective for the following periods: 8:00 a.m. to 3:30 p.m., October 17, 1989. 6:30 a.m. to 3:30 p.m., October 19, 1989. 6:30 a.m. to 3:30 p.m., October 21, 1989.

Dated: July 28, 1989.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89–18445 Filed 8–7–89; 8:45 am]

BILLING CODE 4910–14–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1206

RIN 3095–AA43

National Historical Publications and Records Commission; Grant Program Procedures

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Archives and Records Administration (NARA) proposes to revise its regulations in 36 CFR Part 1206 relating to the National Historical Publications and Records Commission (NHPRC) grant programs to ensure greater clarity, as well as conformance with the new common rules governing administrative procedures and suspension and debarment procedures, 36 CFR Parts 1207 and 1209 respectively. The rule will affect NHPRC applicants and grantees.

NARA also proposes in this rule to require applicants to submit a NARA-developed budget form in place of Standard Form 424A, Budget Information—Non-Construction Programs. The proposed collection of information requirements have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. Public comments on this proposed collection of information should be directed to OMB at the address listed in the ADDRESSES section of the preamble.

DATES: Comments must be received by October 10, 1989.

ADDRESSES: Comments on the proposed rule and the collection of information should be sent to Director, Policy and Program Analysis Division (NAA), National Archives and Records Administration, Washington, DC 20408.

Comments on the collection of information also should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Constance or Nancy Allard at 202–523–3214 (FTS 523–3214).

SUPPLEMENTARY INFORMATION:

Background

The purpose of the National Historical Publications and Records Commission (NHPRC) is to promote the preservation, conservation and use of historically significant documents. The Archivist of the United States awards grants recommended by the NHPRC. The publications program grants are made for the preparation (compiling, edition and publishing) of printed and microfilm publications. Subvention program grants are made to nonprofit presses to help support publication costs of sponsored editions. The records program grants are made for the preservation, arrangement and description of historical records. Education programs sponsored by NHPRC include an institute to train scholars in documentary editing and fellowships in the fields of documentary editing and archival administration.

Collection of Information

NARA is proposing that applicants for NHPRC grants submit a NARA-developed form, NA Form 17001, Budget Form, instead of the Standard Form 424A, Budget Information—Non-Construction Programs, used in many other Federal grant programs. The form is completed once at the time of submission of the grant application. Use of the NARA form will allow NARA to evaluate competing applications equitably.

NARA estimates that approximately 200 NHPRC grant applicants each year would submit the form. The public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NARA at the address indicated in the ADDRESSES section of the preamble and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NARA, Washington, DC 20503.

Provisions of the Proposed Rule

The proposed rule updates, clarifies and reorganizes the procedures governing the operations of the programs of the NHPRC. Some of the procedures formerly covered in 36 CFR part 1206 are now contained in 36 CFR parts 1207 and 1209 which over the common rules governing uniform administrative procedures and

suspension and debarment procedures. In addition stylistic changes have been made throughout. Following is a discussion of significant changes made by the proposed rule.

Definitions of "State projects," "regional projects," and "national projects" have been added to § 1206.2, and the definition of "State" has been clarified.

Section 1206.4 reflects two changes in NHPRC grant authority made by Pub. L. 100-365: Federal agencies are deleted and individuals added as a category of grantees.

Reference to adivsory committees have been deleted in §§ 1206.14 and 1206.34. Authorization to appoint committees is given in 44 U.S.C. 2505 and is superfluous in this Part.

Section 1206.16 has been changed to include the provisions of publication projects of papers and documents as well as microform.

Section 1206.18 has been rewritten and the amount of subvention has been changed from $10,000 to $12,000 per volume.

In § 1206.36, a procedure is added for designating and/or continuing the term of the State historical records coordinator when the governor has not made a timely appointment. A new § 1206.37 is added to authorize the designation of a deputy State historical records coordinator to assist in carrying out the coordinator's responsibilities.

Experience in administration of government records has been added to § 1206.38 in order to broaden State historical records advisory board membership to include custodians of government records and government records managers. A reference is also added to establish procedures for continuation of State board members' terms and other membership matters. Commission policy on appointment of state boards has changed in § 1206.54. Governors appoint board members with no requirement for NHPRC approval of nominations.

Section 1206.56 has been modified to include the frequency with which the NHPRC meets to consider grant applications and to note that some State historical advisory boards have established pre-submission review deadlines for proposals under the records program.

Section 1206.58, "How to apply," gives some specific NHPRC guidelines to potential applicants for the publication and records programs. These include contact with NHPRC staff, application forms, assurances and certifications, and lists the program guideline pamphlets.

Section 1206.66, "Review and evaluation of grant proposals," is now divided into records grant proposals, publications grant proposals and subvention grant applications. The new format allows each type of grant request to be discussed in more specific terms.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1206

Grant programs--Archives and records, Grant administration.

For the reasons set forth in the preamble, NARA proposes to amend Part 1206 of Title 36 of the Code of Federal Regulations as follows:

PART 1206—NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

1. The authority citation for part 1206 continues to read as follows:

Authority: 44 U.S.C. 2104(a); 44 U.S.C. 2501-2506.

2. Subparts A, B, and C are redesignated as subparts B, C, and D, and existing §§ 1206.1 through 1206.6 are designated "Subpart A—General." The table of contents is revised to read as follows:

Subpart A—General

Sec.
1206.1 Scope of part.
1206.2 Definitions.
1206.4 Purpose of the Commission.
1206.6 Programs of the Commission.

Subpart B—Publications Program

1206.10 General.
1206.12 Scope and purpose.
1206.14 Organization.
1206.16 Publication projects.
1206.18 Subsidies for printing costs.
1206.20 Microform publication standards.

Subpart C—Records Program

1206.30 General.
1206.32 Scope and purpose.
1206.34 Organization.
1206.36 State historical records coordinator.
1206.37 Deputy State historical records coordinator.
1206.38 State historical records advisory board.

Subpart D—Grant Procedures

1206.50 Types of grants.
1206.52 Grant limitations.
1206.54 Who may apply.
1206.56 When to apply.
1206.58 How to apply.
1206.66 Review and evaluation of grant proposals.
1206.66 Grant administration responsibilities.
1206.70 Grant instrument.
1206.78 Grant reports.
1206.80 Safety precautions.
1206.82 Acknowledgement.
1206.94 Compliance with Governmentwide requirements.

3. Section 1206.2 is amended by revising paragraphs (b) and (c) and adding paragraphs (d) through (f) to read as follows:

§ 1206.2 Definitions.

* * * * *

(b) The term "historical records" means record material having permanent or enduring value regardless of physical form or characteristics, including but not limited to manuscripts, personal papers, official records, maps, and audiovisual materials.

(c) In §§ 1206.36 and 1206.38, the term "State" means all 50 States of the Union, plus the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Northern Mariana Islands, and the Trust Territories of the Pacific.

(d) The term "State projects" means records program projects directed by organizations operating within and involving records or activities within one State. Records or activities of such projects will typically be under the administrative control of the organization applying for the grant. The records or activities need not relate to the history of the State.

(e) The term "regional projects" means records program projects involving records or activities in more than one State in a region. Regional projects include those undertaken by regional archival groups of consortia.

(f) The term "national projects" means records program projects involving records or activities in several regions or in widely separated States. In general, the location of the records and/or the site of grant-funded activities will determine the category of submission.

4. Section 1206.4 is revised to read as follows:

§ 1206.4 Purpose of the Commission

The National Historical Publications and Records Commisson makes plans, estimates, and recommendations regarding the preservation and use of historical records that may be important for an understanding and appreciation of the history of the United States. It also cooperates with and encourages appropriate Federal, State, and local agencies and nongovernmental institutions in collecting and preserving and, when it considers it desirable, in

editing and publishing the records of outstanding citizens, groups, or institutions and other important documents. On recommendation of the Commission, the Archivist of the United States makes grants to State and local agencies and to non-profit organizations and institutions and to individuals in support of these programs.

5. Section 1206.6 is revised to read as follows:

§ 1206.6 Programs of the Commission

The Commission operates primarily through a publications program (subpart B) and a records program (subpart C).

6. Redesignated Subpart B is revised to consist of §§ 1206.10 through 1206.20 and to read as follows:

Subpart B—Publications Program

§ 1206.10 General.

This subpart describes the scope, purpose, and organization of the publications program and prescribes requirements applicable to book and microform publication projects. Grant application and administration procedures are given in subpart D of this part.

§ 1206.12 Scope and purpose.

The publications program is intended to ensure the dissemination and accessibility of documentary source material important to the study and understanding of U.S. history. Projects should therefore be based upon material of widespread interest among scholars, students, and informed citizens. Documents shoud have historical value and interest that transcend local and State boundaries.

§ 1206.14 Organization.

The Executive Director, the Director of the Publications Program, and the staff of the Commission administer the program under the guidance of the Commission and the immediate administrative direction of its chairman, the Archivist of the United States.

§ 1206.16 Publication projects.

(a) Each publication project shall include either the papers of a U.S. leader in a significant phase of life in the United States or documents relating to some outstanding event or to some topic or theme of national significance in U.S. history. These projects shall consist of collecting, compiling, editing, and publishing, either selectively or comprehensively, the papers or documents. Publication may be in the form of book or microform. One copy of each book publication should be deposited with the National Historical Publications and Records Commission (NP), Washington, DC 20408.

(b) For microform projects, the grantee shall make positive prints and all finding aids available to institutions, scholars, or students through interlibrary loan and for purchase. Ten complimentary copies of guides and indexes produced by the projects shall be sent to the Commission.

§ 1206.18 Subsidies for printing costs

(a) The Commission will consider grant applications from university and other nonprofit presses for the subvention of part of the costs of manufacturing and disseminating volumes that have been formally endorsed by the Commission. Grants not exceeding $12,000 per volume are awarded by NARA upon recommendation of the Commission to promote the widest possible use of Commission-sponsored documentary editions.

(b) The granting of a subvention shall be used to encourage the highest standards in the production of volumes, particularly the quality of paper and ink.

(c) The Commission shall receive 15 complimentary copies of each published volume for which a subvention grant is made.

§ 1206.20 Microform publication standards.

Technical standards for NHPRC-sponsored microform projects are stated in the brochure "National Historical Publications and Records Commission: Microform Guidelines (1986), which will be supplied to applicants upon request and to grantee institutions at the time a grant is made for a microform project. The Commission may, from time to time, revise these standards, but any changes to the standards will not apply to microform projects already in progress at the time revision is issued.

7. Redesignated subpart C consisting of §§ 1206.30 through 1206.38 is revised to read as follows:

Subpart C—Records Program

§ 1206.30 General

This subpart describes the scope, purpose, and organization of the records program. Grant application and administration procedures are given in subpart D of this part.

§ 1206.32 Scope and purpose.

Through its records programs, the National Historical Publications and Records Commission encourages a greater effort at all levels of government and by private organizations to preserve and make available for use those records, generated in every facet of life, that further an understanding and appreciation of U.S. history. In the public sector, these historical records document significant activities of State, county, municipal, and other units of government. In the private sector, historical records include manuscripts, personal papers, and family or corporate archives that are maintained by a variety of general repositories as well as materials in special collections relating to particular fields of study, including the arts, business, education, ethnic and minority groups, immigration, labor, politics, professional services, religion, science, urban affairs, and women. In addition to supporting projects relating directly to a body of records, the Commission may also support projects to advance the state of the art, to promote cooperative efforts among institutions and organizations, and to improve the knowledge, performance, and professional skills of those who work with historical records.

§ 1206.34 Organization.

The Executive Director, Director of the Records Program, and the staff of the Commission administer the records program under the guidance of the Commission and the immediate administrative direction of its chairman, the Archivist of the United States.

§ 1206.36 State historical records coordinator.

(a) The governor of each State desiring to participate in the program shall appoint a State historical records coordinator (coordinator), who shall be the full-time professional official in charge of either the State archival agency or the State-funded historical agency. If the State has both agencies, the official in charge who is not appointed coordinator shall be a member of the State historical records advisory board. The coordinator is appointed to a four year term with the possibility of renewal. The coordinator shall serve as chairman of the State historical records advisory board and shall be the central coordinating officer for the historical records grant program in the State. The person appointed will not be deemed to be an official or employee of the Federal Government and will receive no Federal compensation for such service. The pamphlet " Guidelines for State Historical Records Coordinators and State Historical Records Advisory Boards", which is available from the Commission and from State historical records coordinators, provides further

S-031999 0006(00)(07-AUG-89-11:03:54)

information on the role of the coordinator.

(b) In the absence of instructions of the contrary, the NHPRC may continue to recognize the coordinator for a period of six months beyond the expiration of his/her term. After six months, if the governor has not made an appointment, the NHPRC shall recognize an acting coordinator selected by the State board until the governor appoints a coordinator. In the event of the resignation of the coordinator or other inability to serve, a deputy coordinator, if one has been designated, will serve as acting State coordinator until the governor makes an appointment or for six months, whichever is shorter. After six months or in the absence of a deputy coordinator, the NHPRC will recognize an acting coordinator in order to conduct the necessary business of the board.

§ 1206.37 Deputy State historical records coordinator.

A deputy State historical records coordinator may be designated to assist in carrying out the duties and responsibilities of the coordinator and to serve as an acting coordinator at the coordinator's direction or upon the coordinator's resignation or other inability to serve.

§ 1206.38 State historical records advisory board

(a) The governor of each State desiring to participate in the program shall appoint a State historical records advisory board (board) consisting of at least seven members, including the State historical records coordinator, who chairs the board. A majority of the members shall have recognized experience in the administration of government records, historical records, or archives. The board should be as broadly representative as possible of the public and private archives, records offices, and research institutions and organizations in the State. Board members will not be deemed to be officials or employees of the Federal Government and will receive no Federal compensation for their service on the board. They are appointed for three years with the possibility of renewal; terms are staggered so that one-third of the board is newly appointed or reappointed each year. If the board is not established in State law, members' terms continue until replacements are appointed. The board may adopt standards for attendance and may declare membership positions open if those standards are not met.

(b) The board is the central advisory body for historical records planning and for projects developed and carried out within the State. Specifically, the board may perform such duties as sponsoring and publishing surveys of the conditions and needs of historical records in the State; soliciting or developing proposals for projects to be carried out in the State with NHPRC grants; reviewing records proposals by institutions in the State and making recommendations about these to the Commission; developing, revising, and submitting to the Commission State priorities for historical records projects following guidelines developed by the Commission; and reviewing, through reports and otherwise, the operation and progress or records projects in the State financed by NHPRC grants.

7. Redesignated subpart D consisting of §§ 1206.50 through 1206.94 is revised to read as follows:

Subpart D—Grant Procedures

§ 1206.50 Types of grants.

(a) *General.* The Archivist of the United States, after considering the advice and recommendations of the Commission, may make three types of NHPRC grants: Outright grants, matching grants, and combined grants.

(b) *Outright grants.* An application for an outright grant requests an NHPRC grant for the entire cost of a project, minus the share of the cost borne by the applicant. The maximum possible cost sharing is encouraged in every proposal, and the level of cost sharing will be an important factor in the Commission's recommendation of most types of proposals.

(c) *Matching grants.* An application for a matching grant should be made when an applicant has prospects of securing financial support from a third party or, in the case of a State or local government agency, new funds from the institution's own appropriation source are provided expressly for the project proposed in the application. Upon NARA approval of a matching grant request, the applicant shall present written documentation certifying that matching funds have been provided for the project by the non-Federal source. In the case of a State or local government agency, the matching requirement may also be met through matching funds from the State or local government provided that it can be demonstrated to the Commission's satisfaction that the matching amount has been provided above and beyond funds previously allocated or planned for the agency's budget and that the funds are set aside exclusively to support the project proposed for an NHPRC grant. Applicants need not, however, have money in hand to make a matching grant request; they need only assure the Commission that they have reasonable prospects of obtaining the needed amounts. Federal matching funds may be released only after the proposal is recommended by the Commission and approved by NARA and after documentation has been submitted to the Commission demonstrating that the matching funds have been obtained from the non-Federal source.

(d) *Combined grants.* A combined grant comprises both outright funds and matching funds. When the funds an applicant can raise plus the equivalent amount of an NHPRC grant do not equal the required budget, the difference is requested in outright funds. For example, if the applicant needs $75,000 and is able to raise $25,000 in gifts or in a new appropriation for the project, a combined grant of $25,000 outright and $25,000 in matching funds for a total of $50,000 should be requested from the Commision. Rules governing the release of matching funds in matching grants also govern the release of matching funds in combined grants.

§ 1206.52 Grant limitations

Grant limitations are described in publications and records program guidelines pamphlets available on request from the Commission.

§ 1206.54 Who may apply

The Commission will consider applications from State and local government agencies, nonprofit organizations and institutions, and, under certain conditions, from individuals. Proposals under the records program for State projects will be accepted only from applicants in States in which a State historical records coordinator and a State historical records advisory board have been appointed. This requirement does not apply to regional or national projects.

§ 1206.56 When to apply

Grant proposals are considered during Commission meetings held three times during the year. For current applications deadlines contact the staff of the appropriate Commission program or State historical records coordinators (for records grant proposals). Some State boards have established pre-submission review deadlines for proposals under the records program; further information is available from State coordinators.

§ 1206.58 How to apply.

(a) *Contact with NHPRC staff.* The Commission encourages applicants to discuss proposals through correspondence, by phone, or in person with Commission staff and/or, in the case of records proposals, with the appropriate State historical records coordinator before the proposal is submitted and at all stages of development of the proposal.

(b) *Application forms.* Applicants for NHPRC grants shall use Standard Form 424, Application for Federal Assistance, and NA Form 17001, Budget Form (OMB Control Number xxxx-xxxx). Both forms are available from the Commission. Project proposals and related correspondence should be sent to the National Historical Publications and Records Commission (NP), Washington, DC 20406.

(c) *Assurances and certifications.* All grant applications to the Commission must include the following assurances and certifications signed by an authorized certifying official of the applicant: Standard Form 424B, Assurance: Non-Construction Programs; the Certification Regarding Suspension, Debarment, and Other Responsibility Matters specified in part 1209, appendix B; and the Certification Regarding Drug-free Workplace Requirements specified in part 1209, appendix C, of this chpater. Assurance and certification language is included in the program pamphlets.

(d) *Program guidelines pamphlets.* Supplementary information for applicants is contained in the pamphlets, "Records Program Guidelines and Procedures: Applications and Grants," and "Publications Program Guidelines and Procedures: Applications and Grants," which are available from the Commission upon request. The records program guidelines pamphlet is also available from State historical records coordinators. These pamphlets include copies of the application form and certifications, guidelines on the preparation of project budgets and program narrative statements, and other guidance on applying for and administering NHPRC grants.

§ 1206.66 Review and evaluation of grant proposals

(a) *Records grant proposals.* For records grant proposals, State historical records advisory boards review and evaluate proposals for State projects and forward recommendations for action to the Commission. Boards may decide that certain proposals are incomplete or require further development; in these instances proposals may be returned to the applicant by the board with a recommendation for revision and resubmission in a future funding cycle. The Commission staff shall be informed of the recommendations. All records grant proposals for which recommendations for Commission action are received from State boards and regional, national, and State board-sponsored proposals received directly by the Commission are reviewed by the Commission staff for completeness, conformity with application requirements and relevance to the objectives of the grant program. Regional and national proposals and proposals submitted by boards on their own behalf may also be referred by the Commission staff to selected State historical records coordinators, members of boards, or others for appropriate review and evaluation of the projects. Following review and evaluation, proposals are referred to the Commission at regular meetings.

(b) *Publications grant proposals.* The Commission staff reviews publication grant proposals for completeness, conformity with application requirements, and relevance to the objectives of the grant program. Proposals are sent to specialists in American history for review and recommendations. The recommendations are considered by the full Commission at regular meetings.

(c) *Subvention grant applications.* Applications for subvention grants are reviewed by a panel of persons knowlegeable in the publishing field, which reports to the Commission its findings and recommendations.

§ 1206.68 Grant administration responsibilities.

Primary responsibility for the administration of grants is shared by the grantee institution and the project director designated by the institution. Grants shall be administered in conformance with the regulations in Parts 1207 and 1209 of this chapter.

§ 1206.70 Grant instrument.

The grant award instrument is a letter from the Archivist of the United States to the grantee. The letter and attachments specify terms of the grant.

§ 1206.78 Grant reports.

Financial status reports and narrative progress reports are required for all grants. Standard Form 269 or 269A, Financial Status Report, shall be used for all financial reports. Reports are due 30 days after the end of each six-month period. Final reports are due within 90 days after the expiration or termination of the grant period. Grants with a duration of six months or less require a final report only. Grant projects that have been funded continuously for three years or more shall report annually. All other grant projects shall report semiannually. Additional rules on financial and performance reports are found in § 1207.40 and § 1207.41 of this chapter.

§ 1206.80 Safety precautions.

NARA and the Commission cannot assume any liability for accidents, illnesses, or claims arising out of any work undertaken with the assistance of the grant.

§ 1206.82 Acknowledgment.

Grantee institutions, grant directors, or grant staff personnel may publish results of any work supported by an NHPRC grant without review by the Commission. Publications or other products resulting from the project, shall, however, acknowledge the assistance of the NHPRC grant.

§ 1206.84 Compliance with Governmentwide requirements.

In addition to the grant application and grant administration requirements outlined in this Part 1206, grantees are responsible for complying with applicable Governmentwide requirements contained in Parts 1207 and 1209 of this chapter.

Dated: July 10, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89-18352 Filed 8-7-89; 8:45 am]

BILLING CODE 7515-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 5

RIN 0905-AC68

Criteria for Designation of Health Manpower Shortage Areas

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes an amendment to the existing regulations governing the criteria for designation of health manpower shortage areas (HMSAs) under section 332 of the Public Health Service Act (the Act). Specifically, this amendment would revise the existing criteria for designation of HMSAs having shortages of psychiatric manpower, transforming them into criteria for designation of HMSAs having shortages of mental health manpower, to take into account not only psychiatrists but also "core" mental health service providers other than psychiatrists, defined to include clinical or health-service-provider

psychologists, clinical social workers, and psychiatric nurse specialists. It would also create a new minimum size-of-shortage criterion for primary care, dental and mental health HMSAs.

DATE: Comments must be received no later than October 10, 1989.

ADDRESS: Written comments may be addressed to Mr. William H. Aspden, Jr., Acting Director, Bureau of Health Care Delivery and Assistance (BHCDA), Health Resources and Services Administration, Room 7–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. All comments received will be available for public inspection and copying at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Richard C. Lee, Director, Office of Shortage Analysis, Bureau of Community Health Delivery and Assistance (BHCDA), Health Resources and Services Administration, Room 8–57, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857 (telephone: 301–443–6932).

SUPPLEMENTARY INFORMATION: Section 332 of the Public Health Service Act, as amended by Pub. L. 94–484, the Health Professions Educational Assistance Act of 1976, requires the Secretary to establish, by regulation, criteria for the designation of Health Manpower Shortage Areas (HMSAs). The regulations setting forth these criteria are codified at 42 CFR Part 5. This notice proposes changes to Appendix C of the existing regulations, now entitled "Criteria for Designation of Areas having Shortages of Psychiatric Manpower", which is organized in three parts: Part I—Geographic Areas, Part II—Population Groups, and Part III—Facilities. This notice would revise these criteria to include clinical (or "health-service-provider") psychologists, clinical social workers and psychiatric nurse specialists, as well as psychiatrists, in the designation of mental health manpower shortage areas. The proposed changes are discussed below.

Background

When the original (interim-final) regulations for HMSA designation were published in 1978, the inclusion of other-than-psychiatrist providers of mental health services in defining mental health manpower shortage areas was considered. However, neither sufficient data nor an acceptable methodology for including such providers was then available. Therefore, the mental health component of the HMSA criteria, as finalized in 1980, was based solely on the services of psychiatrists; the presence or absence of other practitioners providing mental health services was not taken into account.

However, various developments since then have increased the focus on other-than-psychiatrist mental health service providers. Their numbers have increased; certification and licensure of these professionals has increased, as well as the number of States requiring licensure and/or certification; and many have achieved direct reimbursement status. Increasing emphasis on cost containment has resulted in higher utilization of these other mental health service providers. Managed care facilities such as health maintenance organizations and outpatient clinics have increasingly used psychologists, clinical social workers and/or psychiatric nurse specialists in the provision of mental health services, including both diagnosis and treatment. In addition, more data on the various mental health service providers are available now than when the original HMSA criteria were developed, together with the results of additional studies of the mental health service system.

Since 1981, the Department's Health Resources and Services Administration (HRSA) has conducted and/or reviewed the results of various relevant surveys and research studies in order to develop a methodology for designation of mental health manpower shortage areas. These included a national survey of psychologists, research on the relative roles of psychiatrists and primary care physicians, a series of research and development studies of possible mental health manpower shortage criteria (conducted by Mathematica Policy Research, Inc.), review of other relevant research literature and extensive in-house analysis. In these efforts, HRSA worked closely with the Department's Alcohol, Drug Abuse and Mental Health Administration, and particularly its National Institute of Mental Health; with the associations representing members of the four core provider disciplines involved, namely the American Psychiatric Association, the American Psychological Association, the National Association of Social Workers, and the American Nursing Association; and with consultants from all four disciplines.

Definitions of Mental Health Service Providers

The Department is proposing to use the following definitions of "core" mental health service providers, consistent with the definitions of the most highly-trained mental health service providers as recognized by the various associations involved:

(1) "Core mental health service providers" includes those psychiatrists, clinical (or health-service-provider) psychologists, clinical social workers and psychiatric nurse specialists who meet the definitions below.

(2) "Psychiatrist" means a doctor of medicine (M.D.) or doctor of osteopathy (D.O.) who (a) is certified as a psychiatrist or child psychiatrist by the American Medical Specialties Board of Psychiatry and Neurology or by the American Osteopathic Board of Neurology and Psychiatry, or, if not certified, is "board-eligible", i.e. has successfully completed an accredited program of graduate medical or osteopathic education in psychiatry or child psychiatry, and (b) practices patient care psychiatry or child psychiatry and is licensed to do so, if required by the State of practice.

(3) "Clinical (or health-service-provider) psychologist" means an individual (normally with a doctorate in psychology) who is practicing as a clinical or counseling psychologist and is licensed (or certified) to do so by the State of practice; or, if licensure (or certification) is not required in the State of practice, an individual with a doctorate in psychology and two years of supervised clinical or counseling experience. (School psychologists are not included here because they are not available directly to the general population.)

(4) "Clinical social worker" means an individual who (a) has a master's degree in social work and two years of supervised clinical experience (including those individuals certified as a clinical social worker by the American Board of Examiners in Clinical Social Work and/or listed on the National Association of Social Workers' Clinical Register), and (b) is licensed to practice as a social worker, if required by the State of practice.

(5) "Psychiatric nurse specialist" means a registered nurse (R.N.) who (a) has a master's degree in nursing with a specialization in psychiatric/mental health and two years of supervised clinical experience (including those certified by the American Nurses Association as a "psychiatric and mental health clinical nurse specialist"), and (b) is licensed to practice, if required by the State of practice.

Less data are available on the numbers and functions of psychiatric nurse specialists than for the other core mental health service providers. However, this lack of data does not pose a major problem because of their relatively small numbers, particularly in relation to geographic designations.

Substantial portions of master's level psychiatric nurses work in State and county mental hospitals, or in teaching or administrative positions which are excluded by the criteria.

With regard to master's degree psychologists, there are little or no national data comparing their detailed activities with those of doctorate clinical psychologists and the other providers. The data on the number of master's psychologists are also more limited than those for the other provider groups, which would make it difficult to develop and apply a numerical standard which specifically includes them. Master's psychologists also have less standardized training and practicum than those in the other disciplines. Thus, while many master's psychologists are undoubtedly well qualified, many others have had more limited training than the other disciplines. Requiring licensing as a criterion to identify qualified master's psychologists partially remedies this problem, but providers in institutional settings often do not need to be licensed.

Primary care physicians, a group which clearly provides some mental health services, were omitted for several reasons. First, the mental health work of primary care physicians is only a small part of their diverse functions. They typically see less severely afflicted patients and see them for shorter and less numerous visits than do the mental health specialists. The "core" mental health providers identified above provide approximately two-thirds of all mental health visits. Moreover, needs for primary care physicians are already addressed by the primary care HMSA criteria, based on the entire spectrum of activities of primary care physicians.

Methodology

Ideally, mental health needs would be determined by combining measures of the prevalence of specific mental disorders in diverse types of geographic areas or population groups with information on the mental health manpower mix required to treat these disorders and its availability in the geographic areas involved. This could probably best be done using the so-called "modular" approach. In this approach, various "modules" or functional groupings of mental health service needs would be computed from prevalence measures applied to population data for the area involved. Recognizing that certain types of services can be supplied by only one discipline (or by fewer than all four), or are more commonly supplied by one or more disciplines, while others can be provided by any of the four, it then would develop estimated requirements ranges for each type of provider based on the needs modules for the area. Gaps as compared with the existing supply of mental health providers in the area would then be computed.

Unfortunately, sufficiently accurate small-area epidemiological data is not available to calculate the needs modules for the diverse types of areas which comprise the potential mental health manpower shortage areas. Data on the exact degree of functional overlap among the various mental health provider types is also not available; results of HRSA-sponsored studies mentioned above, which recommended the "modular" approach, also indicated that additional surveys of sample populations drawn from all four provider types would be necessary to define the relevant matrices for determination of the manpower ranges for the different provider types required to meet the different modular needs of different areas and populations.

However, the research reviewed by HRSA also indicates that, despite their significant differences, the four core mental health service provider types often perform similar roles, especially in the provision of verbal psychotherapy and the treatment of less severe conditions. The research results available also suggest that the different disciplines make similar diagnoses and have similar therapeutic results. Published reports on mental health indicate that the degree of functional similarity among the core mental health service providers is generally greater in less well-served rural areas and outside of State and county mental hospitals (where severe cases predominate).

At the same time, psychiatrists are the only mental health professionals who can prescribe medication. (Although other core mental health service providers also deal to some extent with patients on psychotropic medication prescribed by physicians with whom they are linked.) Psychiatrists also have more patients with schizophrenia and major affective disorders, more cases of higher severity, and more patients on major psychotropic medication than do the other core mental health service providers. Thus, it is important that a mental health service area should have some psychiatrist coverage, at least a portion of a full-time-equivalent.

In the criteria used until now for designation of HMSAs having shortages of psychiatric manpower, as in the criteria for other HMSA types, population-to-practitioner ratios have been the major variable. Despite their shortcomings, population-to-practitioner ratios have been selected for continued use as the primary measure of health manpower shortage, consistent with the recommendations of HRSA's 1983 "Report to Congress on the Evaluation of Health Manpower Shortage Area Criteria." The use of population-to-practitioner ratios also has the advantage of placing less burden on applicants than more complex methods.

In order to consider at the same time both the unique services performed by psychiatrists and the partial interchangeability of the four core mental health service providers in performing many functions, joint criteria have been developed which use both the population-to-psychiatrist ratio and the population-to-all-core-mental-health-service-provider ratio. To determine shortages, threshold ratios were chosen based on data on the total number of patient care providers in the various core mental health service professions. The following table shows the latest available national data on numbers of U.S. non-Federal patient care full-time-equivalent (FTE) core mental health providers, together with the "adequate" and "shortage" ratios they suggest.

LATEST ESTIMATES FOR TOTAL U.S. FULL-TIME-EQUIVALENT (FTE) NON-FEDERAL CORE MENTAL HEALTH SERVICE PROFESSIONALS IN PATIENT CARE AND FOR POPULATION-TO-CORE-PROVIDER RATIOS

1988

Discipline	U.S. total estimated number of FTEs	Mean U.S. population-to-FTE provider ratio	Suggested "adequate" pop-to-FTE ratio	Suggested "shortage" ratio criterion
Psychiatrists[1]	26,099	[5]9,326:1	10,000:1	15–20,000:1
Clinical Psychologists[2]	29,100			
Clinical Social Workers[3]	31,800			
Psych/MH Nurse Specialists[4]	1,320			

LATEST ESTIMATES FOR TOTAL U.S. FULL-TIME-EQUIVALENT (FTE) NON-FEDERAL CORE MENTAL HEALTH SERVICE PROFESSIONALS IN PATIENT CARE AND FOR POPULATION-TO-CORE-PROVIDER RATIOS—Continued

1988

Discipline	U.S. total estimated number of FTEs	Mean U.S. population-to-FTE provider ratio	Suggested "adequate" pop-to-FTE ratio	Suggested "shortage" ratio criterion
1+2+3+4 (all)	88,319	[5]2,756:1	3,000:1	4,500–6,000:1

[1] 31,070 (1987 American Medical Association data for non-Federal patient care psychiatrists plus child psychiatrists) x .84 (representing 48 hours per week x 70% of time in direct patient care)".
[2] 48,500 (1985 estimate of Stapp et. al. updated with unpublished May 1988 growth estimate from the American Psychological Association) x .60 (42 hours per week x 57% of time in direct patient care)".
[3] 60,000 (1988 National Association of Social Workers unpublished estimate) x .53 (37 hours per week x 57% of time in direct patient care)".
[4] 1500 (1988 NIMH unpublished estimate) x .88 (35 hours per week, according to the 1984 Survey of Nurses).
[5] 243,400,000 (June 1987 U.S. Bureau of the Census provisional estimate for the U.S. Population) divided by previous column.
"Professional hours per week and percent time in direct patient care from Knesper et al., "Similarities and Differences Across Mental Health Services Providers and Practice Settings in the United States," in "American Psychologist", December 1985, p. 1356.

As the last column of the preceding table indicates, the "adequate" ratio chosen by rounding up from the national mean would be 10,000:1 if psychiatrists were considered alone, and 3,000:1 if all core mental health providers were counted. These are the levels which the proposed new criteria use for measuring overutilization in contiguous areas—i.e., contiguous areas with ratios above these levels cannot be considered to have excess capacity usable by residents of the area requested for shortage designation.

For purposes of HMSA designation, an area is generally considered to have a shortage when its population-to-provider ratio is 1.5 to 2.0 times the national mean. Thus the basic shortage threshold ratios proposed here are 15–20,000:1 for psychiatrists alone and 4,500–6,000:1 for all core mental health providers. The lower levels would be used in the criteria for areas with unusually high needs indicated; the higher levels for areas without unusually high needs.

Degree-of-Shortage Groups. A table has been constructed (see below) which illustrates how the two ratio variables can be used together in the determination of shortage. Areas with no core mental health service providers are considered to have the greatest shortage and are therefore shown in Group 1. Second are those areas having some core providers, but no psychiatrists, and a core provider ratio worse than the basic core provider shortage criterion. Third would be all those areas which meet both the basic core provider shortage criterion and the basic psychiatric shortage criterion.

The fourth and last group would consist of all other areas which meet a more stringent criterion (2–3 times the national mean) on either one ratio or the other. The threshold levels proposed for this group are 20–30,000:1 for psychiatry alone (the same as the previous psychiatric shortage criterion) and 6–9,000:1 for all core providers.

The following table summarizes the degree-of-shortage groups, in terms of the ratio (R_C) of population to number of FTE core-mental-health-service providers (FTE_C), the ratio (R_p) of population to number of FTE psychiatrists (FTE_p), and the presence or absence of high needs.

DEGREE-OF-SHORTAGE GROUPS FOR MENTAL HEALTH MANPOWER SHORTAGE

High Needs Not Indicated			
Group 1	$FTE_C=0$	and	$FTE_p=0$.
Group 2	R_C gte* 6,000:1	and	$FTE_p=0$.
Group 3	R_C gte 6,000:1	and	R_p gte 20,000.
Group 4(a)	For psychiatrists placements only: Regardless of R_C, all other areas with $FTE_p=0$ or R_p gte 30,000		
Group 4(b)	For other mental health service practitioner placements only: All other areas with R_C gte 9,000:1 regardless of R_p		
High Needs Indicated			
Group 1	$FTE_C=0$	and	$FTE_p=0$.
Group 2	R_C gte 4,500:1	and	$FTE_p=0$.
Group 3	R_C gte 4,500:1	and	R_p gte 15,000.
Group 4(a)	For psychiatrists placements only: Regardless of R_C, all other areas with $FTE_p=0$ or R_p gte 20,000		
Group 4(b)	For other mental health service practitioner placements only: All other areas with R_C gte 6,000:1 regardless of R_p		

*NOTE: In the above, "gte" means "greater than or equal to".

Rational Service Areas. The geographic areas to be considered for designation are the mental health service or catchment areas recognized in current State mental health systems and plans. In most cases, these are derived from the mental health catchment areas developed in the 1970's by the States in conjunction with the National Institute of Mental Health. As before, in some cases a portion of a catchment area or a county which includes more than one catchment area can be considered.

Determination of Unusually High Need for Mental Health Services. In the criteria for psychiatric shortage areas, special consideration (i.e., lower shortage threshold ratios and higher degree-of-shortage groupings) has been given to areas of unusually high need for mental health services. Such areas were identified as those with two or more of the following "high need" indicators: poverty, high proportion of elderly or youth, or high prevalence of alcoholism. In the amended criteria, we propose to use only poverty. The poor obviously have financial barriers to service and often transportation barriers as well. The age-related indicators are being dropped because more recent data (from the NIMH Epidemiological Catchment Areas study) do not support the proposition that either youths or elderly persons have a higher relative prevalence of mental illness or use of mental health services. We also propose to drop the use of alcoholism as a high need indicator, since the alcoholism index originally referenced in the criteria is no longer maintained nationally, nor is any other national alcohol index readily available, making it difficult for applicants to provide comparable data. Other demographic and social environmental indicators are being explored in mental health needs assessment studies, but specific ones for which data are now available have not yet been identified.

Population Groups. The criteria for designation and population groups with mental health service shortages (within geographic areas where the general population is adequately served) would also be revised to consider all four core mental health services providers; the numerical threshold levels and degree-of-shortage groups proposed are the same as those discussed above for high-need geographic areas. (The population groups which may be considered here are the same as those defined in the "Guidelines on Designation of Population Groups with Health Manpower Shortages" published in the **Federal Register** on November 5, 1982.)

Facilities. This notice also proposes to revise the methodology for determining a facility's capacity to meet the psychiatric needs of the population it serves by allowing for consideration of visits to all core mental health service providers, not just to psychiatrists. Community mental health centers and other public or nonprofit private facilities will thus be considered to have insufficient capacity to meet the psychiatric needs of the designated area or population group it serves if there are more than 1,000 patient visits per year per FTE core mental health service provider on staff of the facility, or more than 3,000 patient visits per year per FTE psychiatrist, or if no psychiatrists are on the staff and this is the only facility providing (or responsible for providing) services to the designated area or population.

In addition to the above proposed changes, this notice would replace the term "psychiatric" with the term "mental health" throughout Appendix C, where appropriate, along with other changes of a clarifying and technical nature.

Minimum Size of Shortage. One problem with the methodology used up until now for primary care, dental and psychiatric HMSA designations was that it resulted in designation of areas which meet minimum ratio requirements but would require placement of less than one full-time practitioner to remove the area from the list. This result is appropriate for those "frontier" and other remote rural areas having no practitioners and small populations but needing some coverage; but it also resulted in the inclusion of areas and population groups which already had at least one practitioner and really did not need additional ones. This is even more of a problem given the declining numbers of practitioners now available for placement through the National Health Service Corps; areas which have some practitioners and require less than one additional should not be competing with those areas which have none and/or need at least one additional practitioner.

Therefore, a minimum computed need for at least 1.0 additional FTE core mental health service providers (and a minimum computed need for at least 1.0 psychiatrists in the case of psychiatrist placements), has been added as a shortage criterion for those otherwise designatable areas (and population groups) which already have at least 0.2 FTE core providers available to them.

For consistency, the analogous change has also been made to the primary care and dental HMSA criteria; i.e., a minimum computed need for at least 1.0 additional FTE primary care physician (or dental practitioner) in those otherwise designatable primary care (or dental) HMSAs which already have at least 0.2 FTE primary care physicians (or dental practitioners) available to them.

Regulatory Flexibility Act and Executive Order 12291

The Secretary certifies that this amendment to the regulations does not have a significant economic impact on a substantial number of small entities. Most areas designatable under the previous criteria will also be designatable under the revised criteria, although their degree-of-shortage group may change. Some previously-designated primary care and dental HMSAs will no longer be designatable as a result of the new minimum size-of-shortage criterion; however, these will generally be former HMSAs which had very low priorities for placement and thus were not likely to receive NHSC personnel. When both psychiatrists and other core mental health service providers are considered, some new mental health HMSAs will be designatable. However, since the number of National Health Service Corps (NHSC) obligated psychiatrists (or other core mental health service providers) available for placement in mental health HMSAs is limited, only a few placements will occur in newly-designated areas. The data on designated mental health HMSAs and information on changes to existing HMSA designations resulting from this amendment will be available to the States for their use in carrying out State loan repayment programs. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Further, this rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that the rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

There are no information collection requirements in this regulation.

List of Subjects in 42 CFR Part 5

Mental health, Health, Health professions, Psychiatrists, Clinical psychologists, Clinical social workers, Psychiatric nurses, Primary care physicians, Dentists.

Accordingly, 42 CFR Part 5 is proposed to be amended as set forth below:

Dated: February 23, 1989.
Robert E. Windom,
Assistant Secretary for Health.
Approved: April 10, 1989.
Louis W. Sullivan,
Secretary.

PART 5—DESIGNATION OF HEALTH MANPOWER SHORTAGE AREAS

1. The authority citation for 42 CFR part 5 continues to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); sec. 332 of the Public Health Service Act, 90 Stat. 2270–2272 (42 U.S.C. 254e).

2. The heading for Appendix C of part 5 is revised to read as follows:

Appendix C—Criteria for Designation of Areas Having Shortages of Mental Health Manpower

3. Part I.A of Appendix C is revised to read as follows:

Part I—Geographic Areas

A. Criteria A geographic area will be designated as having a shortage of mental health manpower if the following four criteria are met:

1. The area is a rational area for the delivery of mental health services.
2. One of the following conditions prevails within the area:
(a) The area has (i) a population-to-core-mental-health-service-provider ratio greater than or equal to 6,000:1 and a population-to-psychiatrist ratio greater than or equal to 20,000:1; or
(ii) a population-to-core-provider ratio greater than or equal to 9,000:1; or
(iii) a population-to-psychiatrist ratio greater than or equal to 30,000:1.
(b) The area has usually high needs for mental health services and has:
(i) a population-to-core-mental-health-service-provider ratio greater than or equal to 4,500:1 and a population-to-psychiatrist ratio greater than or equal to 15,000:1; or
(ii) a population-to-core-provider ratio greater than or equal to 6,000:1; or
(iii) a population-to-psychiatrist ratio greater than or equal to 20,000:1.
3. Mental health manpower in contiguous area are overutilized, excessively distant or inaccessible to residents of the area under consideration.
4. If the area already has 0.2 or more full-time-equivalent (FTE) core mental health service providers, it must also have a computed core provider shortage

of at least 1.0 FTE core providers; and, for psychiatrist placement, must have a computed psychiatrist shortage of at least 1.0 FTE psychiatrists.

4. In Part I.B, *Methodology*, the term "psychiatric" in the heading of paragraph 1 and the text of paragraph 1(a) and 1(a)(ii) is changed to "mental health". Paragraphs 3, 4, and 5 are revised to read as follows, and a new paragraph 6 is added:

3. *Counting of Mental Health Service Providers.* (a) All non-Federal core mental health service providers (as defined below) providing mental health patient care (direct or other, including consultation and supervision) in ambulatory or other short-term care settings to residents of the area will be counted. Data on each type of core provider should be presented separately, in terms of the number of full-time-equivalent (FTE) practitioners of each provider type represented. (b) Definitions of provider categories:

(i) "Core mental health service providers" or "core providers" includes those psychiatrists, clinical psychologists, clinical social workers and psychiatric nurse specialists who meet the definitions below.

(ii) "Psychiatrist" means a doctor of medicine (M.D.) or doctor of osteopathy (D.O.) who (a) is certified as a psychiatrist or child psychiatrist by the American Medical Specialties Board of Psychiatry and Neurology or by the American Osteopathic Board of Neurology and Psychiatry, or, if not certified, is "board-eligible", i.e. has successfully completed an accredited program of graduate medical or osteopathic education in psychiatry or child psychiatry, and (b) practices patient care psychiatry or child psychiatry and is licensed to do so, if required by the State of practice.

(iii) "Clinical psychologist" means an individual (normally with a doctorate in psychology) who is practicing as a clinical or counseling psychologist and is licensed or certified to do so by the State of practice; or, if licensure or certification is not required in the State of practice, an individual with a doctorate in psychology and two years of supervised clinical or counseling experience. (School psychologists are not included.)

(iv) "Clinical social worker" means an individual who (a) is certified as a clinical social worker by the American Board of Examiners in Clinical Social Work, or is listed on the National Association of Social Workers' Clinical Register, or has a master's degree in social work and two years of supervised clinical experience, and (b) is licensed to practice as a social worker, if required by the State of practice.

(v) "Psychiatric nurse specialist" means a registered nurse (R.N.) who (a) is certified by the American Nurses Association as a psychiatric and mental health clinical nurse specialist, or has a master's degree in nursing with a specialization in psychiatric/mental health and two years of supervised clinical experience, and (b) is licensed to practice, if required by the State of practice.

(c) Practitioners who provide patient care to the population of an area only on a part-time basis (whether because they maintain another office elsewhere, spend some of their time providing services in a facility, are semi-retired, or operate a reduced practice for other reasons), will be counted on a partial basis through the use of full-time-equivalency calculations based on a 40-hour work week. Every 4 hours (or ½ day) spent providing patient care services in ambulatory or inpatient settings will be counted as 0.1 FTE, and each practitioner providing patient care 40 or more hours a week as 1.0 FTE. Hours spent on research, teaching, vocational or educational counseling, and social services unrelated to mental health will be excluded; if a provider is located wholly or partially outside the service area, only those services actually provided within the area are to be counted.

(d) In some cases, providers located within an area may not be accessible to the general population of the area under consideration. Providers working in restricted facilities will be included on an FTE basis based on time spent outside the facility. Examples of restricted facilities include correctional institutions, youth detention facilities, residential treatment centers for emotionally disturbed or mentally retarded children, school systems, and inpatient units of State or county mental hospitals.

(e) In cases where there are mental health facilities or institutions providing both inpatient and outpatient services, only those FTEs providing mental health services in outpatient units or other short-term care units will be counted.

(f) Adjustments for the following factors will also be made in computing the number of FTE providers:

(i) Practitioners in residency programs will be counted as 0.5 FTE.

(ii) Graduates of foreign schools who are not citizens or lawful permanent residents of the United States will be excluded from counts.

(iii) Those graduates of foreign schools who are citizens or lawful permanent residents of the United States, and practice in certain settings, but do not have unrestricted licenses to practice, will be counted on a full-time-equivalency basis up to a maximum of 0.5 FTE.

(g) Providers suspended for a period of 18 months or more under provisions of the Medicare-Medicaid Anti-Fraud and Abuse Act will not be counted.

4. *Determination of Unusually High Need for Mental Health Services.* Area with a high proportion of poverty have been shown to have restricted access to mental health services. Thus, an area will be considered to have unusually high need for psychiatric services if 20 percent of the population (or of all households) have incomes below the poverty level.

5. *Contiguous Area Considerations.* Mental health service providers in area contiguous to an area being considered for designation will be considered excessively distant, overutilized or inaccessible to the population of the area under consideration if one of the following conditions prevails in each contiguous area:

(a) Core mental health service providers in the contiguous area are more than 40 minutes travel time from the closest population center of the area being considered for designation (measured in accordance with paragraph B.1(b) of this part).

(b) The population-to-core-mental-health-service-provider ratio in the contiguous area is in excess of 3,000:1 and the population-to-psychiatrist ratio there is in excess of 10,000:1, indicating that core mental health service providers in the contiguous areas are overutilized and cannot be expected to help alleviate the shortage situation in the area for which designation is being considered. (If data on core mental health providers other than psychiatrists are not available for the contiguous area, a population-to-psychiatrist ratio there in excess of 20,000:1 may be used to demonstrate overutilization.)

(c) Mental health manpower in contiguous areas are inaccessible to the population of the requested area due to geographic, cultural, language or other barriers or because of residency restrictions of programs or facilities providing such manpower.

6. *Determination of Size of Shortage.* Size of Shortage (in number of FTE providers needed) will be computed using the following formulas:

(a) For areas without unusally high need:
Core provider shortage=area population/6,000−number of FTE core providers.
Psychiatrist shortage=area population/20,000−number of FTE psychiatrists.

(b) For areas with unusually high need:
Core provider shortage-area population/4,500−number of FTE core providers.
Psychiatrist shortage/area population/15,000−number of FTE psychiatrists.

5. Part I.C is revised to read as follows:

C. Determination of Degree of Shortage

Designated areas will be assigned to degree-of-shortage groups accordings to the following table, depending on the ratio (R_C) of population to number of FTE core-mental-health-service providers (FTE_C); the ratio (R_p) of population to number of FTE psychiatrists (FTE_p); and the presence or absence of high needs:

High Needs Not Indicated

Group 1: $FTE_C = 0$ and $FTE_p = 0$.
Group 2: R_C gte* 6,000:1 and $FTE_p = 0$.
Group 3: R_C gte 6,000:1 and R_p gte 20,000.
Group 4(a): For psychiatrist placements only:
Regardless of R_C, all other areas with $FTE_p = 0$ or R_p gte 30,000.
Group 4(b): For other mental health service practitioner placements only:
All other areas with R_C gte 9,000:1, regardless of R_p.

High Needs Indicated

Group 1: $FTE_C = 0$ and $FTE_p = 0$.
Group 2: R_C gte 4,500:1 and $FTE_p = 0$.
Group 3: R_C gte 4,500:1 and R_p gte 15,000.
Group 4(a): For psychiatrist placements only:
Regardless of R_C, all other areas with $FTE_p = 0$ or R_p gte 20,000
Group 4(b): For other mental health service practitioner placements only:

*Note: in the above, "gte" means "greater than or equal to".

All other areas with R_C gte 6,000:1, regardless of R_p.

6. Part II is revised to read as follows:

Part II—Population Groups

A. Criteria

Population groups within particular rational mental health service areas will be designated as having a mental health manpower shortage if the following three criteria are met:

1. Access barriers prevent the population group from using the core mental health service providers which are present in the area.

2. One of the following conditions prevails:

(a) the ratio of the numbers of persons in the population group to the number of FTE core mental health service providers serving the population group is greater than or equal to 4,500:1 and the ratio of the number of person in the population group to the number of FTE psychiatrists serving the population group is greater than or equal to 15,000:1; or,

(b) the ratio of the number of persons in the population group to the number of FTE core mental health service providers serving the population group is greater than or equal to 6,000:1; or,

(c) the ratio of the number of persons in the population group to the number of FTE psychiatrists serving the population group is greater than or equal to 20,000:1.

3. If the population group is already served by 0.2 or more FTE core mental health service providers, it must also have a computed core provider shortage of at least 1.0 FTE core providers; and, for psychiatrist placement, must have a computed psychiatrist shortage of at least 1.0 FTE psychiatrists.

B. Determination of Degree of Shortage

Designated population groups will be assigned to the same degree-of-shortage groups defined in Part I.C. of this Appendix for areas with unusually high needs for mental health services, using the computed ratio (R_C) of the number of persons in the population group to the number of FTE core mental health service providers (FTE_C) serving the population group, and the ratio (R_p) of the number of persons in the population group to the number of FTE psychiatrists (FTE_p) serving the population group.

C. Determination of Size of Shortage

Size of shortage will be computed as follows:

Core provider shortage = number of person in population group/4,500 − number of FTE core providers.

Psychiatrist shortage = number of persons in population group/15,000 − number of FTE psychiatrists.

7. Part III, section C, *Community Mental Health Facilities and Other Public or Nonprofit Private Facilities*, is amended by changing "psychiatric shortage" to "mental health manpower shortage" in paragraph 2.(a)(ii) and "psychiatric" to "mental health" wherever else it occurs, by revising paragraphs 2.(c) (i) and (ii) to read as follows, and by adding a new paragraph 2.(c)(iii):

(c) *Insufficient Capacity to meet Mental Health Service Needs*

A facility will be considered to have insufficient capacity to meet the mental health service needs of the area or population it serves if:

(i) there are more than 1,000 patient visits per year per FTE core mental health service provider on staff of the facility, or

(ii) there are more than 3,000 patient visits per year per FTE psychiatrist on staff of the facility, or

(iii) no psychiatrists are on the staff and this facility is the only facility providing (or responsible for providing) services to the designated area or population.

8. Appendix A, Criteria for Designation of Areas Having Shortages of Primary Care Manpower, Part I.A, *Criteria*, is revised by changing "three criteria" to "four criteria" and adding a new paragraph 4, as follows:

4. If the area already has 0.2 or more full-time-equivalent (FTE) primary care physicians, it must also have a computed primary care physician shortage of at least 1.0 FTE primary care physicians.

9. Appendix A, Part I.B, *Methodology*, is revised by adding new paragraph 6, as follows:

6. *Determination of Size of Primary Care Physician Shortage*

Size of Shortage (in number of FTE primary care physicians needed) will be computed using the following formulas:

(a) For areas without unusually high need: Primary care physician shortage = area population/3,500 − number of FTE primary care physicians.

(b) For areas with unusually high need: Primary care physician shortage = area population/3,000 − number of FTE primary care physicians.

10. Appendix A, Part II, *Population Groups*, is revised by changing "three criteria" to "four criteria" and adding new paragraphs A.3 and C, as follows:

A.3. If the population group is already served by 0.2 or more FTE primary care physicians, it must also have a computed primary care physician shortage of at least 1.0 FTE primary care physicians.

C. *Determination of Size of Primary Care Physician Shortage*

Size of shortage (in number of primary care physicians needed) will be computed as follows: Primary care physician shortage = number of persons in population group/3,000 − number of FTE primary care physicians.

11. Appendix B, Criteria for Designation of Areas Having Shortages of Dental Manpower, Part I.A, *Criteria*, is revised by changing "three criteria" to "four criteria" and ading a new paragraph 4, as follows:

4. If the area already has 0.2 or more full-time-equivalent (FTE) dental practitioners, it must also have a computed dental shortage of at least 1.0 FTE dental practitioners.

12. Appendix B, Part I.B, *Methodology*, is revised by adding new paragraph 6, as follows:

6. *Determination of Size of Dental Shortage.*

Size of Dental Shortage (in number of FTE dental practitioners needed) will be computed using the following formulas:

(a) For areas without unusually high need: Dental shortage = area population/5,000 − number of FTE dental practitioners.

(b) For areas with unusually high need: Dental shortage = area population/4,000 − number of FTE dental practitioners.

13. Appendix B, Part II, *Population Groups*, is revised by changing "three criteria" to "four criteria" and adding new paragraphs A.3 and C, as follows:

A.3. If the population group is already served by 0.2 or more FTE dental practitioners, it must also have a computed dental shortage of at least 1.0 FTE dental practitioners.

C. *Determination of size of Dental Shortage*

Size of dental shortage will be computed as follows: Dental shortage = number of persons in population group/4,000 − number of FTE dental practitioners.

[FR Doc. 89-18436 Filed 8-7-89; 8:45 am]
BILLING CODE 4160-16-M

BEST COPY AVAILABLE

Notices

Federal Register
Vol. 54, No. 151
Tuesday, August 8, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV-89-093]

Emergency Request for OMB Approval of Information Collection on Ballots Relating to Continuance Referendum for Almonds Grown in California

AGENCY: Agricultural Marketing Service, USDA

ACTION: Notice.

SUMMARY: Notice is hereby given that the Agricultural Marketing Service (AMS) has requested emergency review and approval of an information collection request from the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB). The requirement is needed in order to conduct a continuance referendum for the marketing order which regulates almonds grown in California.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: A continuance referendum is scheduled to be conducted August 7–21 to determine producer support for the marketing order and agreement for almonds grown in California. The Almond Board of California (Board), the agency responsible for local administration of the order, is considering possible amendments to the marketing order. However, before an amendatory hearing is requested, the Board would like to determine the level of grower support for the marketing order. Therefore, the Board unanimously voted at its May 11, 1989, meeting to request the Secretary to conduct a continuance referendum.

In order to conduct the continuance referendum, OMB approval of information collection on the official producer ballot must be obtained. The referendum will be conducted during the period from August 7 through August 21, 1989. The representative production period for the purpose of establishing grower eligibility to vote in the referendum is from July 1, 1988, through June 30, 1989.

Following is a copy of APHIS Form 71 reflecting the burdens which will be imposed during this process:

BILLING CODE 3410-02-M

INSTRUCTIONS: Use this form when a single information collection document involves multiple reporting and recordkeeping requirements. The totals of the figures in cols. (D), (F), (H), (I) and (K) should be entered in items 17 & 18 of SF 83. For cols. (E), (G), and (J), the averages of the totals shall be computed, as follows, and then entered on the SF 83:

(F) Total / (D) Total = (E) Average; (H) Total / (F) Total = (G) Average; (K) Total / (I) Total = (J) Average

TITLE OF INFORMATION COLLECTION DOCUMENT: Continuance Referendum for Marketing Order and Agreement for Almonds Grown in California, Marketing Order 981

OMB NO.: 0581- 0071

DATE PREPARED: July 1989

PAGE: 1 of 1

IDENTIFICATION OF REPORTING OR RECORDKEEPING REQUIREMENT			ANNUAL BURDEN							
			REPORTS					RECORDS		
SECTION OF REGS. (a)	DESCRIPTION (b)	FORM NO(S). (If "none" so state) (c)	NO. OF RESPONDENTS (D)	NO. OF RESPONSES PER RESPONDENT (E)	TOTAL ANNUAL RESPONSES (Col. D x E) (F)	HOURS PER RESPONSE (G)	TOTAL HOURS (Col. F x G) (H)	NO. OF RECORDKEEPERS (I)	ANNUAL HOURS PER RECORDKEEPER (J)	TOTAL RECORDKEEPING HOURS (Col. I x J) (K)
7 U.S.C. et. seq. 8(c)(19)	Official Producer Ballot	None	Approx. 7,500	1	7,500	.17	1,275			

The 1937 Agricultural Marketing Agreement Act authorizes a producer continuance referendum to determine industry support for the proposed order. Termination of the order would be considered if less than two-thirds of the growers of almonds voting in the referendum and growers of less than two-thirds of the volume represented in the referendum favor continuance.

APHIS FORM 71 (AUG 83) SUMMARY OF INFORMATION COLLECTIONS USDA-APHIS

BILLING CODE 3410-02-C

Authority: Secs. 1–19, 48 Stat. 31 as amended; 7 U.S.C. 601–674.

Dated: August 3, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–18493 Filed 8–7–89; 8:45 am]

BILLING CODE 3410-02-M

Forest Service

Teton Village Land Exchange, Bridger-Teton National Forest, Teton County, WY

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement on a proposal to exchange National Forest land on the Jackson Ranger District for private land. The federal tract is located in Teton County, Wyoming described as: T42N. R117W, Sixth P.M., section 24, Lot 1 (40.42 acres), Lot 2 (40.31 acres). All or a part of the above described land may be included in the proposed exchange.

DATE: Comments concerning the scope of the analysis should be received in writing by September 1, 1989.

ADDRESSES: Send written comments to Forest Superivsor, Bridger-Teton National Forest, P.O.Box 1888, Jackson, WY 83001.

FOR FURTHER INFORMATION CONTACT: Al Koschmann, Engineering Staff Officer, 307–733–2752.

SUPPLEMENTARY INFORMATION: The proposal is described as whether or not to exchange the federal 80.78 acres which is located at the base of the Jackson Hole Ski Area at Teton Village, Wyoming for one of seven tracts of offered private land.

The federal lands to be exchanged are encumbered with Special Use Permits authorizing occupancy for various purposes associated with the operation of the Jackson Hole Ski Resort. These include a maintenence shed, gun ammo and explosives buildings, electrical substation, cemetery and corrals. Two permits dated 11/02/83 are 30-year permits. The proposal must recognize the continuance of the Special Use Permits or provide evidence that the permittee has agreed to relinquish the Special Use Permit.

The tracts of private land were submitted as bids on the federal land and the determination must now be made as to which tract of private land best meets the needs of the public and natural resource needs.

Preliminary issues which have been expressed include: 1. Potential development that might occur on the 80.78 acre tract; 2. Possible scenic quality impacts; 3. The federal tract should remain in federal ownership because of obligations to special use permittee; 4. Possible exchange of only part of the 80.78 acres of federal land.

The analysis is expected to take about 3 months. The draft environmental impact statement should be available for public review by November 1, 1989. The final environmental impact statement is scheduled to be completed by January 31, 1990.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: August 1, 1989.

Bian E. Stout,

Forest Supervisor, Bridger-Teton National Forest.

[FR Doc. 89–18524 Filed 8–7–89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer Systems Security and Privacy Advisory Board will meet Wednesday, September 13 and Thursday, September 14, 1989 from 8:30 a.m. to 5:00 p.m. This is the third meeting of the Advisory Board which was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. Two sessions will be closed to discuss out-year budget matters, including NIST and other agency computer security budgets. These closed sessions are tentatively scheduled to be held from 9:00 a.m. to 10:30 a.m. on September 13 and from 8:30 a.m. to 9:30 a.m. on September 14, 1989. All other sessions will be open to the public.

DATES: The meeting will be held on September 13 and 14, 1989, from 8:30 a.m. to 5:00 p.m. Closed sessions will be held from 9:00 a.m. to 10:30 a.m. on September 13, 1989 and from 8:30 a.m. to 9:30 a.m. on September 14, 1989.

ADDRESS: The meeting will take place at the Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, Virginia.

Agenda:

1. Introduction and Review of Board Progress
2. Review of Selected Agency Computer Projects
3. Review of NIST Computer Security Strategic Plan
4. Discussion of Federal Government Computer Security Issues
5. Pending Board Matters and Public Participation

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer Systems Security and Privacy Advisory Board, National Computer Systems Laboratory, Building 225, Room B–154, National Institute of Standards and Technology, Gaithersburg, Maryland, 20899. It would be appreciated if fifteen copies of written material could be submitted for distribution to the Board.

Approximately fifteen seats will be available for the public, including three seats reserved for the media. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security and Advisory Board Secretary, National Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, Room B–154, Gaithersburg, Maryland 20899, telephone: (301) 975–3240.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on May 15, 1989, that the portion of this meeting which involves examination of out-year computer security budgets may be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended by Section 5(c) of the Government in Sunshine Act, Pub. L. 94–409. Those portions of the meeting, which involve discussions of future budget requests, may be closed to the public in accordance with Section 552(b)(9)(B) of Title 5, United States Code, since those portions of the meeting are likely to divulge matters that may significantly frustrate implementation of proposed agency action. All other portions of the meeting will be open to the public.

Dated: August 1, 1989.

Raymond G. Kammer,

Acting Director.

[FR Doc. 89–18485 Filed 8–7–89; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices Advisory Committee Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wesnesday, 23 August 1989.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Harold Summer, AGED Secretariat, 201 Varick Street, New York 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: August 1, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–18510 Filed 8–7–89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposd information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before September 7, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: August 3, 1989.

Carlos U. Rice,

Director, for Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Extension
Title: Applicaton for the Comprehensive Program of the Fund for the Improvement of Postsecondary Education (New Grant Awards, and Continuations)
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions; Small business or organizations
Reporting Burden:
Responses: 2,265
Burden Hours: 27,300
Recordkeeping Burden:
Recordkeepers: 0

Burden Hours: 0
Abstract: This form will be used by postsecondary educational institutions and agencies to apply for funding under the fund for Improvement of Postsecondary Education. The Department uses the information to make grant awards.

Office of Postsecondary Education

Type of Review: Revision
Title: Student Aid Report
Frequency: Annually
Affected Public: Individuals or households; Businesses or other for-profit
Reporting Burden:
Responses: 11,457,272
Burden Hours: 1,582,249
Recordkeeping Burden:
Recordkeepers: 7,300
Burden Hours: 483,494
Abstract: The Student Aid Report (SAR) is used to notify applicants of their eligibility to receive Federal financial aid. The form is submitted by eligible students to the participating institution of their choice. The institution submits part 3 of the SAR to the Department to receive funds for the applicant.

[FR Doc. 89-18511 Filed 8-7-89; 8:45 am]
BILLING CODE 4000-01-M

Office of Educational Research and Improvement

Library Services and Construction Act; Intent to Repay Funds Recovered as a Result of a Final Audit Determination to the Indiana State Library

AGENCY: Department of Education.
ACTION: Notice of intent to award grantback funds.

SUMMARY: Pursuant to Section 456 of the General Education Provisions Act, as amended (GEPA) (20 U.S.C. 1234e), the Secretary intends to repay to the Indiana State Library Agency (State Agency), under a grantback arrangement, an amount equal to 75 percent of funds recovered by the Department of Education (Department). The recovery of funds follows an audit debt payment wherein the State Agency remitted a total of $80,568.75 ($79,637 plus interest) to the Department. The audit debt originally arose as a result of a final audit determination issued by the Assistant Secretary for Educational Research and Improvement (Assistant Secretary) on July 31, 1986, regarding the use of $79,637 in Federal funds awarded under Title I of the Library Services and Construction Act, as amended (LSCA) (20 U.S.C. 351 et seq.). This notice describes the State Agency's plans for the use of the funds that the Secretary intends to repay and the terms and conditions under which the Secretary intends to make these funds available to the State Agency.

DATE: All written comments should be received by the Department of Education on or before September 7, 1989.

ADDRESS: All written comments should be submitted to Mr. Robert Klassen, Director, Public Library Support Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW. (Suite 402), Washington, DC 20208-5571.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Klassen at (202) 357-6303.

SUPPLEMENTARY INFORMATION:

A. Background

In an audit report dated January 21, 1986, the Office of Inspector General of the U.S. Department of Education issued the results of an audit of the State Agency's obligation and expenditure of LSCA Titles I and III funds. The audit covered the period July 1, 1983, through June 30, 1985. The purpose of the audit was to express an opinion on the financial statements of the Indiana State Library. The auditors found that the State Library had failed to keep time and attendance records to support $79,637 in charges to the LSCA Title I grant, for salaries and related fringe benefits of two employees of the Indiana State Library. In a final audit determination letter dated July 31, 1986, the Assistant Secretary determined that the full amount of $79,737 was owed to the Department, and requested the payment of this amount by the State of Indiana. The State appealed the determination to the Department's Education Appeal Board. The Education Appeal Board's Initial Decision supported the Assistant Secretary's Determination, and on December 19, 1987, the Education Appeal Board's Initial Decision became the Department's Final Decision due to the fact that the Secretary neither modified nor reversed the Initial Decision within the 60 days allotted by Section 452(d) of GEPA. The State Agency remitted to the Department two checks (one for $80,101.52 on March 9, 1988, and another for $467.23 on May 3, 1988) totalling $80,568.75 ($79,637 plus interest) in payment of its audit debt.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA (20 U.S.C. 1234e) amendments to section 456, which went into effect on October 25, 1988, do not apply to this audit or to this grantback provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for that program and may arrange to repay to the State Agency affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that:

(1) The practices or procedures of the State Agency that resulted in the audit determination have been corrected, and that the State Agency is, in all other respects, in compliance with requirements of the program;

(2) The State Agency has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the program, and to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) The use of funds to be awarded under the grantback arrangement in accordance with the State Agency's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

In accordance with Section 456(a)(2) of GEPA, in its March 28, 1988, request for a grantback, the State Agency submitted a plan for the proposed use of the requested funds. The State proposes to use the grantback funds to extend public library services to populations in the State with access to less than adequate public library services through projects that would:

(1) Support the improvement of inadequate public library services through strengthening the State Library Agency;

(2) Provide training opportunities for librarians and Library trustees and additional resources for the consultant staff; and

(3) Provide grants to public libraries to initiate services to the hearing impaired and illiterate.

D. The Secretary's Determination

The Secretary has carefully reviewed the State Agency's request for the repayment of funds, the State Agency's plan, and other information submitted by the State Agency. Based upon that review, the Secretary has determined that the conditions contained in section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least thirty days prior to entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made. In accordance with the requirement of section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Indiana State Library Agency under a grantback arrangement, as authorized by section 456. The grantback award will be in the amount of $59,728. This amount is 75 percent—the maximum percentage authorized by section 456—of the amount of the audit debt principal recovered by the Department. The Secretary's intention to award the maximum amount of grantback funds possible under section 456 is based upon the determinations outlined in section D of this notice.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Will be Made

Section 456(b) of GEPA provides that any payments made under a grantback arrangement shall be subject to terms and conditions which the Secretary deems necessary to accomplish the purposes of the affected programs, including the submission of periodic reports on the use of the repaid funds and evidence that the State Agency has consulted with parents or representatives of the population that benefits from the grantback award.

The State Agency agrees to comply with the following terms and conditions under which payments under a grantback arrangement will be made:

(1) The State Agency will expend the funds awarded under the grantback in accordance with:

(a) All applicable statutory and regulatory requirements, including those relating to the sole purposes for which LSCA Title I funds (i.e., for the sole benefit of public libraries and public library clientele) may be used;

(b) The plan that was submitted in conjunction with the March 28, 1988, request for grantback which has been approved by the Secretary.

(2) Pursuant to section 456(c) of GEPA, all funds received under this grantback must be obligated not later than September 30, 1991 which is three fiscal years following the fiscal year in which the Department's Final Decision on the audit appeal was rendered (in this case, Fiscal Year 1988).

(3) The State Agency must, not later than January 1, 1992 submit a report to the Secretary that—

(a) Indicates how the funds awarded under the grantback have been used;

(b) Shows that the funds awarded under the grantback have been liquidated;

(c) Describes the results and effectiveness of the project for which the funds were spent; and

(d) Describes the consultation with parents or representatives of the population that will benefit from the grantback payments.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(Catalog of Federal Domestic Assistance Number (CFDA) 84.034 (Library Services))

Dated: July 13, 1989.

Lauro F. Cavazos,
Secretary of Education.

[FR Doc. 89-18441 Filed 8-7-89; 8:45 am]
BILLING CODE 4000-01-M

[CFDA NO.: 84.004C]

Invitation of Applications for New Awards Under Desegregation of Public Education; State Educational Agency Desegregation Program for Fiscal Year 1990

PURPOSE OF PROGRAM: Provides grants to State Educational Agencies (SEAs) to enable them to provide technical assistance (including training) at the request of school boards and other responsible governmental agencies, in the preparation, adoption, and implementation of plans for the desegregation of public schools and in the development of effective methods of coping with special educational problems occasioned by desegregation.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: October 16, 1989

DEADLINE FOR INTERGOVERNMENTAL REVIEW: December 18, 1989

APPLICATIONS AVAILABLE: September 8, 1989

AVAILABLE FUNDS: The Administration has requested $23,443,000 for this program in FY 1990, of which $15,243,000 would be for grants to SEAs. However, the actual level of funding is contingent upon final congressional action.

ESTIMATED RANGE OF AWARDS: $100,000 to $750,000

ESTIMATED AVERAGE SIZE OF AWARDS: $287,604

ESTIMATED NUMBER OF AWARDS: 53

PROJECT PERIOD: 12 Months

Note: The Department is not bound by any estimates in this notice.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations, 34 CFR parts 75, 77, 79, 80, 81, and 85, except that 34 CFR 75.200 through 75.217 (relating to the evaluation and competitive review of grants) do not apply to grants awarded under 34 CFR Part 271; and (b) The regulations for this program in 34 CFR Parts 270 and 271.

FOR APPLICATIONS OR INFORMATION, CONTACT: Sylvia Wright, U.S. Department of Education, 400 Maryland Avenue SW., Room 2067, Washington, DC 20202-6440. Telephone: (202) 732-4358.

PROGRAM AUTHORITY: U.S.C. 2000c-2000c-2; 2000c-5.

Dated: August 1, 1989.

Daniel F. Bonner,
Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 89-18440 Filed 8-7-89; 8:45 am]
BILLING CODE 4000-01-M

National Commission on Drug-Free Schools; Meeting

AGENCY: National Commission on Drug-Free Schools.
ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Commission on Drug-Free Schools (Commission). This notice also describes the functions of the Commission. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE: August 24, 1989.

ADDRESS: Room 562, Dirksen Senate Office Building, Washington D.C.

FOR FURTHER INFORMATION CONTACT: William Modzeleski, Acting Executive Director, National Commission on Drug-Free Schools, 400 Maryland Ave. SW., Washington DC 20202. (202) 732-3599.

SUPPLEMENTARY INFORMATION: The National Commission on Drug-Free Schools is established under section 5051 of the Anti-Drug Abuse Act of 1986 (Pub. L. 100-690; 20 U.S.C. 3172 note). The Commission was established to advise on drug prevention in schools

and to recommend strategies and criteria for achieving drug-free schools. Under the provision of 20 U.S.C. 3172 (f) the Commission is to: develop recommendations of criteria for identifying drug-free schools and campuses; develop recommendations for identifying model programs to meet such criteria; make such other findings, recommendations and proposals as the Commission deems necessary to carry out the provisions of the 20 U.S.C. 3172; and prepare and submit a final report in accordance with the provisions of subsection (i) of 20 U.S.C. 3172.

The Commission will meet in Washington DC in open session from 9:00 a.m. to approximately 12:00 p.m. and from approximately 12:30 p.m. until the conclusion of the meeting at approximately 1:00 p.m. The proposed agenda for the open sessions of the Commission meeting include:

—Swearing in of Commission members.
—Comments of the CoChairs.
—Discussion of Commission workplan.
—Discussion of the operation of the Commission.
—Discussion of administrative issues related to the operation of the Commission.
—Discussion of Commission member salaries.
—Comments of the Commission members.

A portion of the meeting will be closed to the public. From approximately 12:00 p.m. until 12:30 p.m., the meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix I) and under exemption (6) of Section 552b(c) of the Government in the Sunshine Act [Pub. L. 94–409; 5 U.S.C. 552b (c)(6)]. During the closed portion of the meeting the Commission will discuss a candidate for the position of Executive Director. Such discussion relates to the internal personnel rules and practices of the agency and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session and is protected by exemption (6) of section 552b(c) of Title 5 U.S.C.

A summary of the activities of the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Records are kept of all Commission proceedings, and are available for public inspection at the office of the Commission, 400 Maryland Ave, SW., Washington DC from the hours of 9:00 a.m. to 5:00 p.m.

Dated: August 1, 1989.

Ted Sanders,

Under Secretary.

[FR Doc. 89–18413 Filed 8–7–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Cooperative Agreement Award; Allied Signal, Inc.

AGENCY: Department of Energy.

ACTION: Intent to negotiate with and award a cooperative agreement to Allied-Signal, Inc.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office, intends to negotiate with Allied-Signal, Inc., Engineered Materials Research Center, 50 East Algonquin Road, Des Plaines, IL 60017–5016, on a noncompetitive basis for award of a cooperative agreement. In response to DOE Notice of Program Interest No. NPI 88–34630, published in the Commerce Business Daily on June 16, 1988 and entitled "Research and Development to Overcome Fouling of Membranes", Allied-Signal submitted an unsolicited proposal entitled "Fouling Control in Membranes". The work proposed consists of research to investigate surface fluorination of ultrafiltration membranes in order to reduce the tendencies of such membranes to foul. Allied-Signal will perform initial screening of candidate membrane materials and fluorination processes, perform fouling evaluations of the screened candidate membranes in a flow test facility, run pilot plant tests on the most promising membranes and evaluate the economics and energy saving potential of the concept. The Allied-Signal proposal has been evaluated and accepted for support pursuant to the DOE Financial Assistance Rules 10 CFR Part 600.14 in that: (a) the proposal is considered meritorious based on an evaluation against published general criteria, and (b) the proposed project represents an innovative approach for which a competitive solicitation has been deemed inappropriate.

The project period of the proposed award will be about 18 months at an estimated cost of $220,000. The financial support of the project will be shared 80% DOE and 20% Allied-Signal.

Contact: U.S. Department on Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Elizabeth M. Bowhan, Contract Specialist (208) 526–1229.

Issued this 13th day of July at Idaho Falls, Idaho.

Dated: July 11, 1989

J. Roger Gonzales,

Director, Contracts Management Division.

[FR Doc. 89–18451 Filed 8–7–89; 8:45 am]

BILLING CODE 6450–01–M

Award on a Noncompetitive Basis to American Wind Energy Association

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Chicago Operations Office through its SERI Area Office (SAO), announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7 (b)(2), it intends to award a grant renewal on a noncompetitive basis to the American Wind Energy Association (AWEA). The objective of the work to be supported by this grant is to support the export efforts of the US wind energy industry.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen L. Sargent, U.S. Department of Energy, SERI Area Office, 1617 Cole Boulevard, Golden, CO 80401, (303) 231–1366.

SUPPLEMENTARY INFORMATION: The AWEA is composed primarily of companies in the wind energy business. For some time, AWEA has been actively promoting the export of equipment manufactured by the U.S. wind energy industry. AWEA is the only organization known to DOE that is engaged in this specific export promotion activity. Therefore, the grant renewal application is being accepted by DOE because it knows of no other organization which is conducting or planning to conduct this type of activity. Under this grant extension, AWEA will conduct two main activities: A second Wind Energy Applications and Training Symposium, and a Trade Mission. The overall objective of the symposium is to organize and conduct the second Wind Energy Applications and Training Workshop for energy policy planners and decision-makers from developing countries. The Workshop will further the objective of the Committee on Renewable Energy Commerce and Trade (CORECT) to increase export sales by the U.S. renewable energy industry. The Trade Mission effort will include planning, organizing, and carrying out a trade mission during 1989 to a country as yet to be identified by AWEA in conjunction with the CORECT. AWEA's role will be: to develop the mission agenda, to select and invite industry participants, to solicit co-sponsors, and to coordinate logistics for mission participants.

The project period for the cooperative agreement renewal is two years, expected to begin in July, 1989, with two one-year budget periods. DOE plans to provide the first year's funding in the amount of $49,874.

Issued in Chicago, Illinois, on July 18, 1989.

Edwin H. Hendricks,

Deputy Assistant Manager for Administration.

[FR Doc. 89–18450 Filed 8–7–89; 8:45 am]

BILLING CODE 6450–01–M

Bartlesville Project Office; Grant With the State of Texas

AGENCY: Department of Energy, Bartlesville Project Office.

ACTION: Notice of intent to negotiate a grant with the State of Texas (Annex IV).

SUMMARY: "Oil recovery Enhancement from Fractured, Low Permeability Reservoirs." The U.S. Department of Energy (DOE), Bartleville Project Office, through the DOE, Idaho Operations Office, intends to negotiate on a noncompetitive basis an cost-share grant with the State of Texas. All technical and scientific aspects will be conducted by Texas A&M University, Petroleum Engineering Department, through a subgrant. The action is prompted by the consummation of Annex IV to the Memorandum of Understanding between the DOE and the State of Texas which defines the research proposal and the participants, and specifies cost sharing. The grant will be utilized by Texas A&M University, Petroleum Engineering Department, to develop and advance new concepts and technology to enhance and increase oil and possibly gas recovery from an essentially underdeveloped resource base. The participant shall, (1) use and amalgamate the geophysics, geology and petroleum engineering disciplines to provide adequate criteria for developing multi-faceted and comprehensive reservoir description methods, (2) perform laboratory and mathematical studies to develop and establish a new enhanced oil recovery (EOR) method to increase recovery from dual porosity, low matrix permeability oil reservoirs, (3) use mathematical modeling studies to identify the effects of vertical as opposed to horizontal drilling through fault zones, (4) identify industrial sponsors to work in a cooperative manner with the university to field test these applications, (5) perform field tests to determine the usefulness of the carbonated water imbibition, EOR method, (6) perform field carbonated water imbitition, EOR method, (6) perform field tests to determine the relative merits of vertical versus horizonal well producing methods, and (7) transfer the learned technologies to oil operators through publications and workshops. Texas A&M University, Petroleum Engineering Department, will make available to this research project the state well records, geological data archives, well samples, and computer resources. The authority and justification for determination of noncompetitive financial assistance (DNCFA) is DOE Financial Assistance Rules 10 CFR § 600.7(b)(2)(i), (B) (C) and (D). The activities proposed in Annex IV to the agreement between the U.S. Department of Energy and the State of Texas are in support of a public purpose and are as directed by the Agreement. This activity would be conducted by the State of Texas using their own resources, however, DOE support of the activity would enhance public benefits to be derived by allowing further interpretation of reservoir architecture. DOE knows of no other entity which is conducting or planning to conduct such an activity. The applicant is a unit of Government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity. The Sate of Texas, through its subgrantee, Texas A&M University, has exclusive domestic capability to perform the activity successfully based on unique equipment, proprietary data, technical expertise or other such unique qualifications. The applicant has access to data relative to the proposed activities that will be identified and structured and made available to developers, decision-makers, and researchers. The grant term is for three years at an estimated value of $1,450,000 which will be cost shared equally by DOE and the State of Texas. Public response may be addressed to the contract specialist stated below.

CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Trudy A. Thorne, Contract Specialist (208) 526–9519.

Dated: July 20, 1989.

J. Roger Gonzales,

Director, Contracts Management Division.

[FR Doc. 89–18536 Filed 8–7–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP89–1871–000, et al.]

Tennessee Gas Pipeline Company, et al.; Natural Gas Certificate Filings

August 1, 1989.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP89–1871–000]

Take notice that on July 27, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–1871–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Kerr McGee Corporation (Kerr McGee), a producer of natural gas, under Tennessee's blanket certificate issued in Docket No. CP87–115, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated June 22, 1989, it proposes to transport natural gas for Kerr McGee from points of receipt located Offshore Texas, Offshore Louisianna, and in the state of Louisianna to Kerr McGee Chemical Plant in Monroe County, Mississippi. Tennessee further states that the volumes to be delivered are 50,000 dt equivalent on a peak day, 50,000 dt equivalent on an average day, and 16,250,000 dt equivalent on an annual basis, and that service under § 284.223 (a) commenced July 1, 1989, as reported in Docket No. ST89–4284 (filed July 24, 1989).

Comment date: September 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

Panhandle Eastern Pipe Line Company

[Docket No. CP89–1843–000]

Take notice that on July 20, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1843–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a storage service provided to Kohomo Gas and Fuel Company (Kokomo), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Panhandle states that Kokomo, an existing jurisdictional gas sales customer of Panhandle, is served

pursuant to Panhandle's Rate Schedule TS-3 and a gas storage and transportation agreement (storage agreement) dated May 29, 1984. It is stated that pursuant to a cancellation agreement dated June 1, 1989, Kokomo and Panhandle have mutually agreed to terminate this service effective March 31, 1989. It is indicated that as a result of changes on the Panhandle and Kokomo systems, off-site storage is no longer useful or necessary, and also no longer possible for Kokomo to justify the expense to their State Commission. It is further indicated that on March 31, 1989, all of Kokomo's gas in storage had been removed and redelivered to Kokomo. Panhandle states that it would use the storage capacity made available by the termination of this storage agreement to facilitate its own operations.

Comment date: August 22, 1989 in accordance with Standard Paragraph F at the end of the notice.

3. Williams Natural Gas Company

[Docket No. CP89-1854-000]

Take notice that on July 24, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-1854-000 a request pursuant to § 157.205 of the Commission's Regulations for permission and approval to abandon in place and by reclaim cetain pipeline facilities located in Barton and Rice Counties, Kansas and Nowata County, Oklahoma and the transportation of gas through these facilities under Williams' blanket certificate issued in Docket No. CP82-479-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to abandon by reclaim regulating, measuring and appurtenant facilities serving (1) Riverside Petroleum Company's (Riverside), formerly National Cooperative Refinery Association, Langfield lease operation in Barton County, Kansas; (2) Jayhawk Pipeline Corporation's (Jayhawk), formerly Mobil Pipe Line Company, Chase pump station in Rice County, Kansas; and (3) abandon by reclaim and in place approximately 0.3 miles of 4-inch lateral pipeline in Nowata County, Oklahoma originally installed to serve the Sinclair refinery.

Williams states that Riverside and Jayhawk have requested that their facilities be reclaimed and that the customers currently being served by the 4-inch pipeline in Nowata County have agreed to service by KPL Gas Service Company. Williams further states that the estimated cost of the abandonment of these facilities is approximately $8,090 with an estimated salvage value of $1,581.

Comment date: September 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP89-1859-000]

Take notice that on July 24, 1989, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1859-000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide a transportation service for Equitable Resources Marketing Company (Equitable), a marketer, under Applicant's blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set out in the request on file with the Commission and open to public inspection.

Applicant further states that pursuant to a transportation agreement dated May 19, 1989, it proposes to transport natural gas for Equitable, from points of receipt located offshore Lousiana, offshore Texas, and the states of Louisiana, Mississippi, Texas, and Alabama for redelivery to various delivery points off Tennessee's system located in multiple states.

The applicant further states that the maximum daily quantity is 307,500 dekatherms under the contract. Service under § 284.223(a) commenced June 1, 1989, as reported in Docket No. ST89-4076 (filed June 30, 1989).

Comment date: September 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Trancontinental Gas Pipe Line

[Docket No. CP89-1870-000]

Take notice that on July 27, 1989, Transcontinental Gas Pipe Line Corporation (Transco) Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1870-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Texaco Gas Marketing, Inc. (TGMI), under its blanket authorization issued in Docket No. CP88-328-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco would perform the proposed interruptible transportation service for TGMI, pursuant to an interruptible transportation service agreement dated May 15, 1989. The term of the transportation agreement is from the date of the contract and shall continue for a primary term ending June 14, 1989, and thereafter until terminated by thirty days prior notice by either party. Transco proposes to transport on a peak day up to 107,200 Dekatherms (dt) per day; on an average day 10,000 dt; and on an annual basis 3,650,000 dt of natural gas for TGMI. Transco farther states that consistent with its Rate Schedule IT, Transco may agree to accept for transportation additional quantities of gas. Transco proposes to receive the subject gas at Brazos Block A 133A and will deliver the gas at existing delivery points located in Brazos Blocks A 76 and 538. Transco avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Transco commenced such self-implementing service on June 1, 1989, as reported in Docket No. ST89-4222-000.

Comment date: September 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1865-000]

Take notice that on July 25, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251, filed in Docket No. CP89-1865-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon sales service to United Cities Gas Company (United), formerly Great River Gas Company (Great River), an existing jurisdictional sales customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that Panhandle and Great River entered into a sales agreement dated October 1, 1988, providing for a reduction of sales contract demand (CD) level corresponding to volumes converted to firm transportation service. Panhandle explains that United has elected under § 284.10 of the Commission's regulations to convert a portion of its (Great River's) daily contract demand to firm transportation. Panhandle states that the firm transportation service is being rendered under the terms and conditions of its Rate Schedule PT-Firm.

Accordingly, Panhandle proposes to reduce United's current sales contract demand quantity, to be effective October 1, 1988, by the daily amount in Column No. 2, as shown below.

Month	Current CD Mcf/d (1)	Reduction Mcf/d (2)	Resulting CD Mcf/d (3)
January	22,801	1,329	21,472
February	22,801	1,329	21,472
March	22,801	1,329	21,472
April	15,671	1,329	14,342
May	10,111	1,329	8,782
June	6,511	1,329	5,182
July	4,951	1,329	3,622
August	4,951	1,329	3,622
September	8,671	1,329	7,342
October	13,351	1,329	12,022
November	22,801	1,329	21,472
December	22,801	1,329	21,472

Panhandle further states that the proposed abandonment would reduce the annualized total CD from 5,402,825 Mcf to 4,917,740 Mcf.

Commend date: August 22, 1989, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18442 Filed 8-7-89; 8:45 am]

BILLING CODE 6717-01-M

[FE Docket No. 89-17-NG]

Cascade Natural Gas Corp.; Application To Amend Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application to amend blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 3, 1989, of an application filed by Cascade Natural Gas Corporation (Cascade) to amend DOE/FE Opinion and Order No. 316 (Order 316) granting blanket authorization to import up to 56 Bcf of natural gas from Canada over a two-year period. Under the original proposal, the imported gas would enter the U.S. at Sumas, Washington, and be transported from that point via the existing pipeline facilities of Northwest Pipeline Corporation. Cascade requests that Order 316 be amended to add the existing interconnection facilities on the international border at Kingsgate, British Columbia (Kingsgate), as an additional point of entry for the imported volumes.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notice of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than September 7, 1989.

FOR FURTHER INFORMATION:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION: The decision reached in Order 316 Cascade blanket authority to import over a two-year term through facilities at Sumas was made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served was the primary consideration in determining whether it was in the public interest (49 FR 6684, February 22, 1984). No party opposed that requested import authority. In this proceeding, Cascade requests only that the FE amend Order 316 to add an additional point of import for the authorized volumes at Kingsgate which is an interconnection point with the facilities of Pacific Gas Transmission Company. The FE does not expect the requested amendment to affect the public interest findings made in Order 316. Comments, especially by parties that may oppose this amendment, should be limited to the impact of the proposed additional, existing import point on the consistency of Cascade's import with DOE policy guidelines.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register**, (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion

in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t., September 7, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Cascade's application for amendment is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-56 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 28, 1989.

Constance L. Buckley,

Acting Deputy Assistant Secretary for Fuels Programs, Fossil Energy.

[FR Doc. 89-18539 Filed 8-7-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 89-42-NG]

Panhandle Trading Co.; Application To Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Application for Blanket Authorizations To Import Natural Gas From and Export Natural Gas to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 11, 1989, of an application filed by Panhandle Trading Company (PCT) for blanket authorizations to import up to 100 Bcf of Canadian natural gas and export up to 100 Bcf of domestic natural gas to Canada. The applications requests that the authorizations be approved for separate two-year terms beginning on the dates that the first import and the first export commence. PTC intends to utilize existing pipeline facilities for transportation of the volumes to be imported and exported, and indicates it will submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, requests for additional procedures and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than September 7, 1989.

FOR FURTHER INFORMATION CONTACT:

William C. Daroff, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9516

Diane J. Stubbs, natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION: PTC. a Delaware corporation, with its principal place of business in Houston, Texas, proposes to import and export natural gas, either for its own account or as an agent for the account of others, for short-term, spot sales to either United States or Canadian customers, including, but not limited to, gas distribution companies, pipelines, and commercial and industrial end-users. According to the application, the authority requested by PTC contemplates the importation of supplies of Canadian natural gas for consumption in U.S. markets, and the exportation of domestically produced natural gas for consumption in Canadian markets. According to PTC, the specific terms of each import and export transaction would be negotiated on an individual basis to reflect market conditions. PTC requests authority to import and export gas using existing facilities at any point on the international boundary of the United States and Canada.

In support of its application, PTC asserts that no present national need for the gas to be exported exists and that the short term nature of the authorization ensures that the gas would be available should the current conditions change. In addition, the applicant states that the proposed exports would reduce the current U.S. trade deficit. PTC also asserts that the proposed imports would be consistent with the public interest because it would allow consumers expanded access to competitively priced Canadian gas.

PTC requests that an authorization be granted on an expedited basis. A decision on PTC's request for expedited treatment will not be made until all responses to this notice are received and evaluated.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 CFR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import and export authority. The applicant asserts that this import/export arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m., e.d.t., September 7, 1989.

It is intended that a decisonal record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties under this notice, in accordance with 10 CFR 590.316.

A copy of PTC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 27, 1989.

Constance L. Buckley,

Acting Deputy Assistant Secretary for Fuels Programs Fossil Energy.

[FR Doc. 89-18452 Filed 8-7-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Change in Filing Deadline in Special Refund Proceeding No. KEF-0044 Involving Crown Central Petroleum Corp.

AGENCY: Office of Hearings and Appeals Department of Energy.

ACTION: Notice of change of Final Deadline for Filing Applications for Refund in Special Refund Proceeding KEF-0044, Crown Central Petroleum Corporation.

SUMMARY: The Office of Hearings and Appeals of the Deparment of Energy hereby announces a change and re-sets the final deadline for filing Applications for Refund from the Crown Central Petroleum Corporation escrow account. That account was established pursuant to a consent order between the Department of Energy and the Crown Central Petroleum Corporation, *Special Refund Proceeding No.* KEF-0044. The final deadline is extended from July 31, 1989 to November 15, 1989.

FOR FURTHER INFORMATION CONTACT: Gary Comstock, Staff Attorney, Department of Energy, Office of Hearings and Appeals, HG-30, 1000 Independence Avenue SW., Washington, DC 20024, (202) 586-6602.

SUPPLEMENTARY INFORMATION: On December 5, 1988, the Office of Hearings and Appeals of the Department of Energy issued a Decision and Order setting forth final refund procedures to distribute the monies in the escrow account established in accordance with the terms of a Consent Order entered into by the Department of Energy and the Crown Central Petroleum Corporation. *See Crown Central Petroleum Corporation*, 18 DOE ¶ 85,326, 53 FR 49915 (December 12, 1988). That Decision established July 31, 1989 as the filing deadline for the submission of refund applications for direct restitution by purchasers of Crown Central's refined petroleum products. 18 DOE at 88,530, 53 FR at 49919.

As the filing deadline date approaches, we have noted that fewer applications have been filed in this proceeding than expected. We believe that expanding the application period by three and one-half months will give eligible applicants ample opportunity to file their claim for refund. We have

therefore determined to extend the time for filing a refund application in the *Crown Central* proceeding to November 15, 1989. In accordance with our usual practice, applications postmarked after that date are subject to summary dismissal. Any unclaimed funds remaining after all pending claims are resolved will be made available for indirect restitution pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501.

Dated: July 28, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-18453 Filed 8-7-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OA-FRL-3526-3]

Grants, State and Local Assistance; Municipal Wastewater Treatment Works Construction Programs; Correction

AGENCY: Environmental Protection Agency.

ACTION: Waiver of section 109, Pub. L. 100-202, for Wayne County Department of Public Works, Wayne County, Michigan, wastewater treatment construction grant, C-262391-10; and for the City and County of San Francisco, wastewater treatment construction grant, C-061253-710; correction.

SUMMARY: This notice publishes the waiver memorandum for Wayne County Department of Public Works referred to in the April 20, 1989, Federal Register (54 FR 15991); and the waiver memorandum for the City and County of San Francisco referred to in the April 24, 1989, Federal Register (54 FR 16403). In order to fully comply with the requirements of section 109, EPA is publishing the waiver memoranda and republishing the notices of waiver for both of these recipients. The waiver memorandum was inadvertently omitted in the April 20 and April 24 Federal Registers. The waiver request for Wayne County, Michigan, allows EPA to participate in the cost of a construction contract awarded by the Wayne County Department of Public Works to a joint venture firm which includes a Japanese firm. The waiver request for San Francisco allows EPA to participate in the cost of three Japanese made steel beams.

Dated: August 8, 1989.

Charles L. Grizzle,

Assistant Administrator for Administration and Management.

April 7, 1989.

Memorandum

Subject: Waiver of section 109, Public Law 100-202 (Brooks-Murkowski Amendment), for Wayne County Department of Public Works, Michigan, Project Number C262391-10

To: Valdas K. Adamkus Regional Administrator, Region V

I am responding to Mr. Todd Cayer's request for a waiver of the Brooks-Murkowski amendment requirements of section 109, Public Law 100-202, for Wayne County Department of Public Works, Michigan, project number C262391-10. Section 109 prohibited the use of Federal funds for certain public works contracts awarded under grants made in FY 1988 to firms of countries which deny fair and equitable market opportunities for United States products and services in major foreign construction projects. The only country affected by the Brooks-Murkowski amendment is Japan.

Section 109 allows me to waive this provision if I determine that it is in the public interest to do so.

Action

Based on the circumstances in this case, I have determined it is in the public interest to waive the provisions of Section 109 to allow EPA to participate in the cost of the construction contract that the Wayne County Department of Public Works, Wayne County, Michigan anticipates making to C.J. Rogers/Kajima joint venture.

Background

When the grantee prepared the bid specifications, they were told by the delegated State agency administering the project that the Brooks-Murkowski amendment did not apply to this procurement action because the contracts were to be awarded after September 30, 1988. The State was relying on EPA's interpretation of the Brooks-Murkowski amendment. On January 25, 1989, the Office of Management and Budget (OMB) informed the Federal agencies that the Brooks-Murkowski amendment continues to apply to all contracts awarded under grants or contracts using funds obligated in FY 1988, regardless of when the contracts are awarded.

The grantee opened bids on January 10, 1989, and the low bid—C.J. Rogers/Kajima joint venture—was $9,591,000 and the next low bid was $11,430,390, a difference of about $1.8 million. The low bidder also intends to use innovative, state of the art technology for tunneling in unstable soil conditions. The grantee stated that this innovative technique is the basis for the low bid.

In addition, the grantee is under a State Consent Order to award contracts by April 1, 1989. Failure to award the contract based on the bids received will delay the start of construction.

In this case, I have determined that it is appropriate to approve a waiver for the following reasons:

- The bidding process was initiated and completed before OMB issued its decision that the Brooks-Murkowski amendment continues to apply to all contracts using grant funds obligated in FY 1988, regardless of when the contract is awarded.
- An award to the low bid will result in a cost savings of approximately $1.8 million.
- Not allowing the bids will place the grantee in a position of potentially violating their Consent Order and will require the grantee to rebid the job, both of which will result in project delays and higher costs.

If you have any questions, please call Harvey Pippen, Director, Grants Administration Division, on FTS 382-5240.

Sincerely,

William K. Reilly

April 13, 1989.

Memorandum

Subject: Waiver of Section 109, Pub. L. 100-202 (Brooks Murkowski Amendment), for the City and County of San Francisco, California, Project Number C-061253-710

To: Daniel L. McGovern, Regional Administrator, Region IX

I am responding to your request for a waiver of the "Brooks-Murkowski amendment" requirements of Section 109, Pub. L. 100-202. Section 109 generally prohibited the use of Federal funds for public works contracts awarded during Federal fiscal year 1988 to firms of countries which denied fair and equitable market opportunities for U.S. products and services in major foreign construction projects. The only such country identified was Japan.

Section 109 allows me to waive this provision if I determine that it is in the public interest to do so.

Action

On March 17, 1988, the Office of Management and Budget issued guidance on the Brooks-Murkowski amendment, including factors to consider in determining when waivers may be appropriate. Based on that guidance and the circumstances in this case, I have determined it is in the public interest to waive the provisions of Section 109 for the City and County of San Francisco's contract to Monterey Mechanical Company, under wastewater treatment construction grant C-061253-710.

The waiver will allow EPA to participate in the cost of three Japanese made steel beams ($6,733.08) bought under the contract with the Monterey Mechanical Company.

Background

The City and County of San Francisco advertised for bids for constructing the project on September 10, 1987, and opened bids on October 28, 1987. The grantee awarded the contract on March 29, 1988. The contractor initiated construction on April 4, 1988, and the steel beams have already been installed.

The State of California notified Region IX that the contractor had attempted to buy

American-made steel beams and that he then tried to have the beams manufactured by American mills. The contractor's supplier could not find any available American steel beams and was told by several American steel mills that:

(1) This would require a special order.

(2) The minimum special order quantity is 40,000 lbs.

(3) It would take 6 months for delivery.

The amount of the order required for the project was 17,000 lbs. and the Japanese-made product was in stock and could be delivered in two days.

The estimated cost of the contract is $2,747,222, the subcontract is $25,000 and the amount of the order for the three Japanese-made steel beams is $6,733.08.

The OMB guidance provides that factors for approval of waivers include whether—

- The contract was awarded before guidance implementing the provision was issued;
- Products are of limited availability from other than Japanese sources; and
- Costs will significantly exceed the costs of cancelling the contract and awarding another for similar products or services.

In this case, I have determined that it is appropriate to approve a waiver for the following reasons:

- The contractor's supplier found that American steel beams were of limited availability.
- The installation of the beams was on the project's critical path (first step for the sludge Control Building Modification), and waiting until American-made steel beams could be purchased would have caused a six-month delay in the project.
- The cost of cancelling the contract and ordering 40,000 lbs. of beams would significantly exceed the cost of the contract for 17,000 lbs. of beams.

If you have any questions, please call Harvey Rippen on 8-382-5240.

William K. Reilly.

[FR Doc. 89-18498 Filed 8-7-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL ELECTION COMMISSION

[Notice 1989-12]

Voluntary Standards for Computerized Voting Systems

AGENCY: Federal Election Commission.

ACTION: Notice of proposed voluntary standards for computerized voting equipment.

SUMMARY: The Federal Election Commission (the "FEC") requests comments on the proposed voluntary standards for computerized voting systems and three associated plans: One for states implementing the standards; another for the escrow of related voting system software documentation and other proprietary information; and the third for the evaluation of the independent test authorities that will examine voting systems for compliance with the standards.

Please note that these draft standards and three companion plans do not represent a final decision by the Commission. The FEC will publish another notice in the Federal Register when the final model standards and three plans are available, following consideration of comments received. The text of the final documents will not become part of the Code of Federal Regulations because they are intended only as guidelines for states and voting system vendors. States may mandate the specifications and procedures through their own statutes, regulations, or administrative rules. Voting system vendors may voluntarily adhere to the standards to ensure the reliability, accuracy, and integrity of their products. Further information is provided in the supplementary information that follows.

DATE: Comments must be received on or before September 7, 1989.

ADDRESSES: Copies of the standards, implementation plan, escrow plan, and test authority evaluation plan may be received by contacting: National Clearinghouse on Election Administration, Federal Election Commission, 999 E Street NW., Washington, DC 20463.

Comments on these documents must be made in writing and addressed to Ms. Penelope S. Bonsall, Director; National Clearinghouse on Election Administration; Federal Election Commission; 999 E Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Penelope S. Bonsall, Director, (202) 376-5670 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The objective of the standards project is to help ensure the accurate and reliable functioning of computerized ballot tabulation systems. The model standards do not cover mechanical lever or paper ballot systems. The standards also do not incorporate specifications for mainframe computer hardware, since it is assumed that other engineering and performance criteria already govern their operation. Recommended requirements for ballot tally software installed on mainframes, however, are included.

The Commission initiated the development of model standards for computerized systems in September 1984. This action followed the submission to Congress in 1983 of a statutorily mandated report entitled "Voting System Standards: A Report of the Feasibility of Developing Voluntary Standards for Voting Equipment". The feasibility report detailed the desirability of developing engineering and procedural performance standards to provide guidance to election officials in their testing and certification of voting systems. Congress subsequently appropriated funds for the Commission that permitted the agency to contract for the development of engineering standards.

The task of developing standards for the targeted systems was divided into three phases. The initial phase focused on developing hardware standards for punchcard and marksense voting methods, the most widely used systems. The FEC began this phase in 1984, ultimately incorporating hardware test requirements to assess compliance with the proposed standards. In 1986, the Commission initiated the second phase to develop software standards and related test requirements for these systems. The third phase, begun in 1987, involved the concomitant development of hardware and software standards and test requirements for direct recording electronic systems, the newest voting systems on the market.

The FEC then integrated the products of these three phases into one document combining the functional, hardware, and software standards and related qualification and acceptance test requirements for the three systems. This document, entitled "Performance and Test Standards for Punchcard, Marksense, and Direct Recording Electronic Voting Systems", includes performance standards and test requirements deemed necessary to help ensure the accuracy, integrity, and reliability of computerized voting systems. They are intended as a model for states invoking their own standards for voting systems used by local election administrators. They are also a guide for developers and manufacturers of voting systems in ensuring their products meet the demands of accurate, safe, and secure elections.

As the standards project progressed, both vendors and election officials indicated a need for guidance in several areas related to the implementation of the standards. They requested that options and considerations attendant with the states, adoption of the standards be addressed. They needed a description of the escrow plan that was suggested as a method of protecting the voting system vendors, proprietary information, while ensuring that state or local election officials have access when necessary. They also requested that procedures be established to ensure the independence and proficiency of test authorities evaluating voting systems. The Commission, therefore, drafted "A

Plan for Implementing the FEC Voting Systems Standards", the "System Escrow Plan", and "A Process for Evaluating Independent Test Authorities".

The first companion document, "A Plan for Implementing the FEC Voting Systems Standards", offers information and advice to states on the process of adopting and applying the FEC standards. The second document, the "System Escrow Plan", proposes a means of controlling access to voting system software documentation and other proprietary information. Vendors are inclined to protect this information, which includes trade secrets, but state and local election officials may need occasional access to it for system maintenance or in cases of alleged computer tampering. The third companion document, entitled "A Process for Evaluating Independent Test Authorities", outlines a plan for assessing the expertise of the potential test authorities that will examine voting systems for compliance with the standards. This was needed partly to reassure states that the test results were likely to be reliable, and that the tests would not have to be repeated prior to state approval. The FEC developed this plan in consultation with the National Voluntary Laboratory Accreditation Program of the National Institute of Standards and Technology, which will assist in its implementation.

Over the course of the project, the FEC circulated drafts of the standards and the three supporting documents to affected vendors, computer consultants, programmers, state and local election officials, and any other persons who indicated an interest in the subject. The FEC's National Clearinghouse on Election Administration convened several public meetings between August 1985 and December 1988 to present the latest drafts, receive comments, and discuss various matters related to the implementation of the standards. The Commission reviewed and, where appropriate, incorporated verbal and written comments received from all interested persons.

The Federal Election Commission is now making the latest drafts of the standards, the implementation plan, the escrow plan, and the test authority evaluation plan available for final comment. The Commission will evaluate all comments received to determine if any revisions to the documents are warranted. Following this process, a notice will be published in the **Federal Register** announcing the availability of the final documents.

Dated: August 2, 1989.

Danny Lee McDonald,

Chairman, Federal Election Commission.

[FR Doc. 89-18433 Filed 8-7-89; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

Performance Review Board; Membership

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: William J. Herron, Jr., Director of Personnel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Francis J. Ivancie,

Commissioner.

The members of the Performance Review Board are:

1. Francis J. Ivancie, Commissioner
2. Edward J. Philbin, Commissioner
3. Charles E. Morgan, Chief Administrative Law Judge
4. Norman D. Kline, Administrative Law Judge
5. Joseph N. Ingolia, Administrative Law Judge
6. Edward P. Walsh, Managing Director
7. Robert D. Bourgoin, General Counsel
8. John Robert Ewers, Director, Bureau of Administration
9. Wm. Jarrel Smith, Jr., Director, Bureau of Investigations
10. Robert A. Ellsworth, Director, Bureau of Economic Analysis
11. Seymour Glanzer, Director, Bureau of Hearing Counsel
12. Robert G. Drew, Director, Bureau of Domestic Regulation
13. Joseph C. Polking, Secretary
14. Bruce A. Dombrowski, Deputy Managing Director
15. Austin L. Schmitt, Director, Bureau of Trade Monitoring.

[FR Doc. 89-18434 Filed 8-7-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

JSB Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considerd in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 25, 1989.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *JSB Bancorp*, Jasper, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Jasper State Bank, Jasper, Indiana.

2. *Rodgers Family Bancshares, Inc.*, Waldron, Arkansas; to become bank holding company by acquiring at least 80 percent of the voting shares of Bank of Waldron, Waldron, Arkansas, which engages in the sale, as agent, of credit related insurance sold in connection with extensions of credit made by the bank in Waldron, Arkansas, a town with a population that does not exceed 5,000.

Board of Governors of the Federal Reserve System, August 2, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-18471 Filed 8-7-89; 8:45 am]

BILLING CODE 6210-01-M

Ernest Andrew Karandjeff; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 22, 1989.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Ernest Andrew Karandjeff*, Clayton, Missouri; to acquire an additional 16.56 percent of the voting shares of Central Banc System, Inc., Fairview Heights, Illinois, and thereby indirectly acquire Central Bank—Fairview Heights, Fairview Heights, Illinois, and Farmers and Merchants Bank of Carlinville, Carlinville, Illinois.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Roderick Matthew Nugent*, Carthage, Texas; to acquire 7.32 percent of the voting shares of Carthage Bancshares Inc., Carthage, Texas, and thereby indirectly acquire The First National Bank of Carthage, Carthage, Texas.

Board of Governors of the Federal Reserve System, August 2, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-18470 Filed 8-7-89; 8:45 am]

BILLING CODE 6210-01-M

Oesterreichische Laenderbank Aktiengesellschaft; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 30, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Oesterreichische Laenderbank Aktiengesellschaft*, Vienna, Austria; to acquire LB Financial Corporation, successor to Wells Fargo Leasing Corp., San Francisco, California, and thereby engage in leasing personal or real property or acting as agent, broker or adviser in leasing such property, pursuant to § 225.25(b)(5); making, acquiring or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts), for LB Financial's account or for the account of others, such as would be made, for example, by companies engaged in consumer finance, credit card, mortgage, commercial finance and factoring, pursuant to § 225.25(b)(1); and providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation, or operating personnel), data bases, or access to such services, facilities, or data bases by any technological means pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 2, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-18473 Filed 8-7-89; 8:45 am]

BILLING CODE 6210-01-M

Teton Bancshares, Inc.; Fairfield, MT; Acquisition of Voting Shares of Choteau Bancorporation, Inc.; Choteau, MT; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89-13880), published at page 24749 of the issue for Friday, June 9, 1989.

Under the Federal Reserve Bank of Minneapolis, the entry for Teton Bancshares, Inc. is amended to read as follows:

A. **Teton Bancshares, Inc.**, Fairfield, Montana; to acquire 99.7 percent of the voting shares of Choteau Bancorporation, Inc., Choteau, Montana, and thereby indirectly acquire The Citizens State Bank of Choteau, Choteau, Montana.

Comments regarding this application must be received at the Federal Reserve Bank of Minneapolis or the offices of the Board of Governors not later than August 21, 1989.

Board of Governors of the Federal Reserve System, August 1, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-18469 Filed 8-7-89; 8:45 am]

BILLING CODE 6210-01-M

WB&T Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding

company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, indentifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW, Atlanta, Georgia 30303:

1. *WB&T Bankshares, Inc.*, Waycross, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Waycross Bank & Trust, Waycross, Georgia.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Commercial Financial Corp.*, Storm Lake, Iowa; to become a bank holding company by acquiring at least 84.13 percent of the voting shares of The Commercial Trust & Savings Bank, Storm Lake, Iowa.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Union Planters Corporation*, Memphis, Tennessee; to acquire 100 percent of the voting shares of Steiner Bank, Birmingham, Alabama.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Investors Financial Corporation*, Sedalia, Missouri; to become a bank holding company by acquiring 98.41 percent of the voting shares of Community Bank of Pettis County, Sedalia, Missouri.

2. *Livingston Southwest Corporation*, Chicago, Illinois, and Livingston & Company Southwest, L.P., Chicago, Illinois; to acquire up to 76.62 percent of the voting shares of First National Bank of North County, Carlsbad, California, which engages in credit-related life and disability insurance activities.

Board of Governors of the Federal Reserve System, August 2, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-18472 Filed 8-7-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[IOA-20-N]

Medicare and Medicaid Programs; Meeting

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the 1989 Advisory Council on Social Security.

This meeting is being held at the earliest possible date to allow for a quorum of Council members, and to complete organizational tasks and expedite the business of the Council.

DATE: The meeting will be held on August 10, 1989, from 8 a.m. to 4 p.m., and on August 11, 1989, from 9 a.m. to 2 p.m. The meeting will be open to the public.

ADDRESS: The meeting will be held in the Hubert H. Humphrey Building, Room 800, 200 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Deborah Chollet, Executive Director, Advisory Council on Social Security, (202) 245-0217.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act, the Secretary of Health and Human Services appoints an Advisory Council on Social Security every four years. The Advisory Council examines issues affecting the Social Security retirement, disability and survivors insurance programs, as well as the Medicare and Medicaid programs, which were created under the Social Security Act.

In addition, Secretary Sullivan has asked the 1989 Advisory Council specifically to address the following:

—The adequacy of the Medicare program to meet the health and long-term care needs of our aged and disabled populations, the impact on Medicaid of the current financing structure for long-term care, and to make recommendations for more stable health care financing for the aged, the disabled, the poor, and the uninsured;

—Major Old-Age, Survivors, and Disability Insurance (OASDI) financing issues, including the long-range financial status of the program, relationship of OASDI income and outgo to budget-deficit reduction efforts under the Balanced Budget and Emergency Deficit Control Act of 1985, and projected buildups in the OASDI trust funds; and

—Broad policy issues on Social Security, such as the role of Social Security in overall U.S. retirement income policy.

The Council is composed of 12 members: John T. Dunlop, Phillip Briggs, Paul O'Neill, James R. Jones, John J. Sweeney, Robert M. Ball, Theodore Cooper, Lonnie R. Bristow, Don C. Wegmiller, G. Lawrence Atkins, A.L. "Pete" Singleton, and Karen Ignani; and the Chair, Deborah Steelman. The Council is to report to the Secretary and Congress by January 1, 1991.

II. Agenda

Agenda items for the meeting will include the presentation of background information and general discussion related to health care financing for the elderly and nonelderly populations, including Medicare benfits and financing, employer-sponsored health insurance benefits, and Medicaid eligibility and benefits.

Agenda items are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Program Nos. 13.714 Medical Assistance Program; 13.733 Medicare—Hospital Insurance; 13.774 Medicare—Supplementary Medical Insurance)

Dated: August 3, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-18603 Filed 8-4-89; 2:17 pm]

BILLING CODE 4120-01-M

Privacy Act of 1974; System of Records

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of proposed modification of routine use for the Quality and Effectiveness of Care MEDPAR (QC/MEDPAR) File for the existing system of records.

SUMMARY: The Health Care Financing Administration (HCFA) is proposing to revise the system notice for the Medicare Bill File (Statistics), System No. 09-70-0005.

EFFECTIVE DATES: The proposed modification of the routine use for the QC/MEDPAR File shall take effect without further notice September 7, 1989 unless comments received on or before that date would warrant changes.

ADDRESS: Please address comments to Mr. Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, Room G-M-1 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. We will make comments received available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Mrs. Rose Ellen Connerton, Office of Statistics and Data Management, Bureau of Data Management and Strategy, HCFA, Room 1-F-2 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone (301) 966-8067.

SUPPLEMENTARY INFORMATION: The Medicare Bill File (Statistics), System No. 09-70-0005, contains records on bills for services furnished to persons enrolled in Part A (hospital insurance) and/or Part B (supplementary medical insurance) of the Medicare program. The systems notice for this system was most recently published at 53 FR 52792; December 29, 1988. Data in this system are used primarily for statistical and research purposes related to evaluating the operation and effectiveness of the Medicare program. A principal subfile in the system is the Medicare Provider Analysis and Review (MEDPAR) File. The MEDPAR File contains data from hospital bills of Medicare beneficiaries discharged from hospitals participating in the Medicare program, including data on beneficiary demographics, medical diagnosis and surgery, and utilization of hospital resources. HCFA developed the Quality and Effectiveness of Care MEDPAR (QC/MEDPAR) File from the MEDPAR File to increase the amount of data available for quality and effectiveness of care research and development and application of improved measures for determining the quality and effectiveness of care furnished in hospitals participating in the Medicare program. To this end, HCFA prepared and published a new routine use permitting the release of the QC/MEDPAR File for qualified research. This routine use was published May 3, 1988 in the **Federal Register** and became effective June 2, 1988. Since publication of the QC/MEDPAR routine use, HCFA has received suggestions from the health care industry that use of the data should be broadened to include releases for evaluation of the quality and effectiveness of care in hospitals. Many research projects also include an evaluation of care component, but many worthwhile evaluations of care projects could not be considered research. Evaluations may include or be limited to monitoring and feedback on a continuing basis. QC/MEDPAR data will be available for such monitoring and feedback under the proposed modifications for approved projects. Research and evaluation of health care must be encouraged because of the expected improvement in the quality and effectiveness of care that would result from application of the process itself apart from new findings.

HCFA is committed to the improvement of the quality of health care of Medicare beneficiaries and the general public. We believe that making the QC/MEDPAR File available for quality and effectiveness of health care evaluations, as well as research, will assist in this effort and is compatible with the purpose for which the data in the File were collected. Disclosure of data such as that in the QC/MEDPAR File can be made under a routine use only when justified by a substantial public interest (*Andrews* v. *Veterans Administration of the United States*, 613 F. Supp. 1404, (D.C. Wyo. 1985)). We believe that the criteria and conditions under which disclosure of the QC/MEDPAR File for research or evaluation would be made provide assurance that substantial public interest will be involved with each disclosure.

Research and evaluation plans submitted under section c.(1) of the routine use (as modified) for the QC/MEDPAR File should be in sufficient detail to permit HCFA to make a determination that the purposes cited in the plan are likely to be accomplished and that the public interest would be served in a substantial way. This does not require, however, the development and submission of a detailed work plan with a discussion of all of the technical components. This requirement can be met by a statement of the goals of the project; methods for achieving those goals, principal investigators; overview of analyses to be undertaken; and any other relevant components of the project such as feedback of information to providers (if applicable).

HCFA usually will require that a recipient of the File submit a copy of its plans for publication of any data (or aggregation of data) from the File prior to publication. A copy of each proposed statistical table shall be submitted, but HCFA will not need to see each completed table with all of the numbers in place. The purpose of requiring review before publication is to determine whether or not a beneficiary's identity could be deduced from detailed information in the proposed table and sensitive information revealed. For example, publication of information by individual zip code could be a problem since there are many zip codes in which there is only one Medicare beneficiary. Usually, examination of publication plans with table shells will permit a determination of whether or not beneficiary privacy would be at risk. In other cases, a statement of the data elements in the File that would be deleted would be sufficient to determine that the proposed publication would pose no risk to beneficiary privacy.

We are proposing that the routine use for the QC/MEDPAR File (routine use number (7) in the system notice for the Medicare Bill File (Statistics), System No. 09-70-0005), be modified to read as follows:

(7) With respect to the QC/MEDPAR File, to entities with a legitimate need for data for the purpose of conducting research or evaluation on the quality and effectiveness of care provided in hospitals. Research or evaluation under this routine use must focus on the improvement of health care or measures for determining, validating, and monitoring the quality and effectiveness of hospital care in such areas as access to care, outcomes of care, and effectiveness of care in improving, restoring, or maintaining the independence and functioning of Medicare beneficiaries. Information disclosed under this routine use will be limited to the data elements described in Appendix A.

The QC/MEDPAR File may be released to an entity in HCFA determines:

a. That the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained.

b. That the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in the detailed form described in Appendix A:

(2) Is reasonably likely to be accomplished in view of the capabilities of the requesting entity and other factors; and

(3) Is of sufficient importance to warrant the possible effect on the privacy of the individual that the disclosure of the data might bring.

c. In order for HCFA to determine that the requirements in section (b) are met, the entity must submit and HCFA must approve:

(1) A research or evaluation plan specifying the objectives of the research or evaluation, the manner in which the data will be used, the financial support for the plan, and the date the research or evaluation will be completed.
Evaluation plans designed to assist specific providers must be supported by letters of commitment to the evaluation by the providers. Values or differences in values that would trigger provider action must be addressed in the evaluation plan as well as the action the provider intends to take; and

(2) A copy of any report by a panel of recognized experts reviewing the research or evaluation plan (when such review has been performed).

(d) The entity and its contractors, if any, must sign a statement acknowledging that section 1106(a) of the Social Security Act, which prohibits the disclosure of confidential information and imposes criminal penalties, may apply. They must also agree to the following:

(1) Not to link the data to other beneficiary-specific records nor to use the data to identify individual beneficiaries;

(2) Not to use the data for purposes that are not related to HCFA-approved research or evaluation of the quality and effectiveness of hospital inpatient care. Prohibited uses include but are not limited to: marketing (for example, identification and targeting of under or over-served health service markets primarily for the purposes of commercial benefit), insurance (for example, redlining areas deemed to offer bad health insurance or underwriting risks), and adverse selection (for example, identifying patients with high-risk diagnoses). The data must not be made available by the entity or its contractor for an activity not approved by HCFA, even if carried on within the entity or its contractor;

(3) Not to disclose the data to any persons or organizations unless the data are in aggregated form as described in paragraph 5. The data may be disclosed to a contractor for data processing if:

(a) The entity has specified in the research plan submitted to HCFA that the contractor would receive the data for that purpose, or the entity has obtained written authorization from HCFA to make the disclosure to the contractor, and

(b) The contractor has signed a confidentiality statement with HFA:

(4) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level where no data cells have ten or fewer beneficiaries);

(5) To submit a copy of its plans for any aggregation of the data intended for publication to HCFA for approval prior to publication;

(6) To establish appropriate administrative, technical, procedural and physical safeguards to protect the confidentiality of the data and to prevent unauthorized access to it;

(7) To return all files to HCFA, and destroy any copies that may have been made, at the completion of the research or evaluation plan.

This modification of the routine use for the QC/MEDPAR File is consistent with the Privacy Act, 5 U.S.C. 552a(a)(7), since, as previously noted, it is compatible with the purpose for which the information is collected. Because this modification of the routine use will not change the purposes for which the information is to be used or otherwise significantly alter the system, we are not preparing a report of altered system of records under 5 U.S.C. 552a(o). We are publishing the notice in its entirety below for the convenience of the reader.

Date: July 31, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

09-70-0005

SYSTEM NAME:

Medicare Bill File (Statistics) HHS, HCFA, BDMS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

HCFA DATA CENTER, Lyon Building, 7131 Rutherford Road, Baltimore, Maryland 21207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons enrolled in hospital insurance or supplemental medical benefits parts of the Medicare program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Bill data, demographic data on the beneficiary; diagnosis and surgery codes; provider characteristics and identifying number (including physicians).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1875 of the Social Security Act (42 U.S.C. 13950).

PURPOSE(S):

To study the operation and effectiveness of the Medicare program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made: (1) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(2) To the Bureau of Census for use in processing research and statistical data directly related to the administration of Social Security programs.

(3) To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components.
is party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(4) To an individual or organization for a research evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained:

b. Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished;

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project unless the recipient presents an adequate justification of a research or health nature of retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit or

(d) When required by law:

d. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

(5) To entities with a legitimate need for data for statistical analyses bearing on Medicare payment policies for inpatient hospital services. Information disclosed for this purpose will not include a beneficiary's health insurance claim number, race, or Medicare status code; the beneficiary's age will be identified only by age intervals; the beneficiary's residence will be identified only to the extent of stating whether he or she resides in the same State as the provider, the admission and discharge dates will be identified only by calendar quarter; and the date of surgery will be identified only as the number of days after admission.

Each of the Medicare Provider Analysis and Review (MEDPAR) file—short-stay hospital services file, long-term hospital services file, skilled nursing facility services file, and other provider services file—will be modified in accordance with the foregoing provisions for release. The entity must agree:

(a) Not to try to identify individual beneficiaries.

(b) Not to disclose raw data to any persons except contractors for data processing and storage (and it must agree to require any such contractor not to release any data and not to retain any data after performing the contract).

(c) Not to link this information to other beneficiary-specific records.

(d) Not to publish or otherwise disclose data in a form raising unacceptable possibilities that beneficiaries could be identified, and

(e) To safeguard the confidentiality of the data and to try to prevent unauthorized access to it.

(6) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications systems containing or supporting records in the system.

(7) With respect to the QC/MEDPAR File, to entities with a legitimate need for data for the purpose of conducting research or evaluation on the quality and effectiveness of care provided in hospitals. Research or evaluation under this routine use must focus on the improvement of health care or measures for determining, validating, and monitoring the quality and effectiveness of hospital care in such areas as access to care, outcomes of care, and effectiveness of care in improving, restoring, or maintaining the independence and functioning of Medicare beneficiaries. Information disclosed under this routine use will be limited to the data elements described in Appendix A.

The QC/MEDPAR File may be released to an entity if HCFA determines:

a. That the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained.

b. That the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in the detailed form described in Appendix A:

(2) Is reasonably likely to be accomplished in view of the capabilities of the requesting entity and other factors; and

(3) Is of sufficient importance to warrant the possible effect on the privacy of the individual that the disclosure of the data might bring.

c. In order for HCFA to determine that the requirements in section (b) are met, the entity must submit and HCFA must approve:

(1) A research or evaluation plan specifying the objectives of the research or evaluation, the manner in which the data will be used, the financial support for the plan, and the date the research or evaluation will be completed.
Evaluation plans designed to assist specific providers must be supported by letters of commitment to the evaluation by the providers. Values or differences in values that would trigger provider action must be addressed in the evaluation plan as well as the action the provider intends to take; and

(2) A copy of any report by a panel of recognized experts reviewing the research or evaluation plan (when such review has been performed).

(d) The entity and its contractors, if any, must sign a statement acknowledging that section 1106(a) of the Social Security Act, which prohibits the disclosure of confidential information and imposes criminal penalties, may apply. They must also agree to the following:

(1) Not to link the data to other beneficiary-specific records nor to use the data to identify individual beneficiaries;

(2) Not to use the data for purposes that are not related to HCFA-approved research or evaluation of the quality and effectiveness of hospital inpatient care. Prohibited uses include but are not limited to: marketing (for example, identification and targeting of under or over-served health service markets primarily for the purposes of commercial benefit), insurance (for example, redlining areas deemed to offer bad health insurance or underwriting risks), and adverse selection (for example, identifying patients with high-risk diagnoses). The data must not be made available by the entity or its contractor for an activity not approved by HCFA, even if carried on within the entity or its contractor.;

(3) Not to disclose the data to any persons or organizations unless the data are in aggregated form as described in paragraph 5. The data may be disclosed to a contractor for data processing if:

(a) The entity has specified in the research plan submitted to HCFA that the contractor would receive the data for that purpose, or the entity has obtained written authorization from HCFA to make the disclosure to the contractor, and

(b) The contractor has signed a confidentiality statement with HCFA:

(4) Not to publish or otherwise disclose the data in the form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level where no data cells have ten or fewer beneficiaries);

(5) To submit a copy of its plans for any aggregation of the data intended for publication to HCFA for approval prior to publication;

BEST COPY AVAILABLE

(6) To establish appropriate administrative, technical, procedural and physical safeguards to protect the confidentiality of the data and to prevent unauthorized access to it;

(7) To return all files to HCFA, and destory any copies that may have been made, at the completion of the research or evaluation plan.

(8) To an agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring, and;

(3) There is a reasonable probability that the objective for the use would be accomplished; and

d. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except;

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of and willingness to abide by these provisions. The recipient must agree to the following:

(1) Not to use the data for purposes that are not related to the evaluation of cost, quality, and effectiveness of care;

(2) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level when no data cells have ten or fewer beneficiaries); and

(3) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic tape.

RETRIEVABILITY:

All records are indexed by health insurance claim number and by hospital provider number.

SAFEGUARDS:

For computerized records, safeguards established in accordance with Department standards and National Bureau of Standards guidelines (e.g., security codes) will be used, limiting access to authorized personnel.

RETENTION AND DISPOSAL:

Records are maintained with identifiers as long as needed for program research.

SYSTEM MANAGERS AND ADDRESS:

Director, Bureau of Data Management and Strategy, Room 1–A–11, Security Office Park, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

For purpose of access, write the systems manager, who will require name of system, health insurance claim number and for verification purposes, name (women's maiden name, if applicable), social security number, address, date of birth and sex; and to ascertain whether the individual's record is in the system, utilization and date of utilization under Part A or Part B of Medicare services, home health agency, hospital (inpatient), hospital (outpatient) or skilled nursing facility.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought (These access procedures are in accordance with the Department Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

Medicare enrollment records: Medicare bill records: Medicare provider records for a sample of persons treated as hospital patients (inpatient and outpatient) and skilled nursing facility patients.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

APPENDIX A.—DATA ELEMENTS CONTAINED IN THE QUALITY OF CARE MEDPAR FILE

Data element	Description	Function
1. HI Claim Number	Encrypted to protect the identity of the beneficiary	To determine the number of stays for a beneficiary.
2. Day of Admission	1—Sunday 2—Monday 3—Tuesday 4—Wednesday 5—Thursday 6—Friday 7—Saturday	To facilitate analysis of admission patterns.

APPENDIX A.—DATA ELEMENTS CONTAINED IN THE QUALITY OF CARE MEDPAR FILE—Continued

Data element	Description	Function
3. Sex	—male —female —unknown	To measure sex-based differences.
4. Medicare Status Code	Code to show reason for beneficiary's entitlement —aged without ESRD —aged with ESRD —disabled without ESRD —disabled with ESRD —ESRD only	To examine effectiveness of care for different categories of Medicare beneficiaries.
5. Discharge Destination	—To home, self care —To short-term hospital —To SNF —To other type facility —To home health service —Left against medical advice —Died —Still a patient	To group stays into Diagnois Related Groups (DRGs).
6. Medicare Provider Number	Identification number of hospital	To allow for review of care on an institution-specific basis.
7. Date of Admission	Date, plus/minus 1 to 20 days*	To measure intervals between hospital episodes.
8. Date of Discharge	Date, plus/minus 1 to 20 days*	To measure intervals between hospital episodes.
9. Length of Stay	Numer of days in hospital stay	To examine days of care.
10. Intensive Care and Coronary Care Days	Days in special care units of hospitals	To measure outcomes in and use of special care units.
11. Total Charges	All charge fields (fields 11–21) are in whole dollars	Charge fields 11–21 are included to measure relative resource use across cases.
12. Routine Accommodation Charges 13. Intensive Care and Coronary Care Charges 14. Total Departmental (Anciliary) Charges 15. Operating Room Charges 16. Pharmacy Charges 17. Laboratory Charges 18. Radiology Charges 19. Supplies Charges 20. Anesthesia Charges 21. Inhalation Therapy Charges		
22. Principal and Other Diagnosis Codes	Five ICD–9–CM Codes	Fields 22–23 are included to identify diagnostic/surgical information and to group stays into DRGs.
23. Surgical Codes	Three ICD–9CM Volume 3 codes	
24. Date of Surgery	Date plus/minus 1 to 20 days*	To measure intervals between admission/discharge and surgery.
25. Blood Furnished	Number of points	To measure outcomes.
26. Diagnosis Related Group	DRG1–DRG475	To define diagnostic groups used in the Prospective Payment System.
27. Date of death	Date, plus/minus 1 to 20 days*	To determine mortality rates.
28. Urban/rural residence	1=urban 2=rural	To examine variations in care in urban and rural areas.
29. Zip-Code	5 digit zip	To examine variations in care in small areas.
30. Special Unit Code	S—Psychiatric Unit T—Rehabilitation Unit U—Swing-bed Hospital V—Alcohol/Drug Unit Blank	Distinguishes PPS-exempt unit records.
31. Beneficiary State of Residence	Two-position SSA numeric code	To facilitate seasonal migration studies.
32. Source of Admission	Admission Type 1, 2, or 3: 1—Physician Referral 2—Clinic Referral 3—HMO Referral 4—Transfer from Hospital 5—Transfer from SNF 6—Transfer from Another Health Care Facility 7—Emergency Room 8—Court/Law Enforcement 9—Unknown Admission Type 4: 1—Normal Delivery 2—Premature Delivery 3—Sick Baby 4—Extramural 5—Unkown	To allow analysis of admissions and episodes of care.
33. Type of Admission	1—Emergency 2—Urgent 3—Elective 4—Newborn 9—Urknown	To allow analysis of admissions and episodes of care.
34. Number of Diagnosis Codes	1 through 5	Enable search of diagnosis fields.
35. Number of Surgical Codes	1 through 3	Enable search of surgical procedures fields.
36. Actual Age	Three-position age of beneficiary based on the date of admission.	To measure age-based differences.

*The *same* random number will be added to all dates in every discharge record occurring for a beneficiary during the year. The random number will range from ±1 through 20.

The following subsets will be available (no combinations): one to five States; one to five DRGs; one to five ICD–9–CM codes; and standardized subsamples (5, 10, or 20 percent).

[FR Doc. 89–18500 Filed 8–7–89; 8:45 am]
BILLING CODE 4120–03

Public Health Service

Office of the Assistant Secretary for Health; Title XXIII of the Public Health Service Act; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on January 27, 1989, by the Secretary for Health and Human Services, the Assistant Secretary for Health has delegated all of the authorities under Sections 2320(d) and 2341(b) of the Public Health Service Act, as amended hereafter. The delegation excludes the authorities to promulgate regulations and submit reports to Congress.

Redelegation

These authorities may be redelegated.

Effective Date

This delegation became effective on July 28, 1989. In addition, the Assistant Secretary for Health ratified and affirmed any actions taken by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, or subordinates which involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: July 28, 1989.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 89–18498 Filed 8–7–89; 8:45 am]
BILLING CODE 4160–60–M

Social Security Administration

Privacy Act of 1974; Report of New Routine Use

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: New routine use.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), we are issuing public notice of our intent to establish a new routine use of information in the system of records 09–60–0059—Earnings Recording and Self-Employment Income System (Earnings Record), HHS/SSA/OSR. The proposed routine use will permit SSA to disclose information to the Office of Personnel Management (OPM) for the purpose of administering the Civil Service and Federal Employee's Retirement System.

We invite public comments on this publication.

DATES: The proposed routine use will become effective as proposed without further notice on September 7, 1989, unless we receive comments on or before that date which would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this proposal by writing to the SSA Privacy Officer, 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Anita Cohen, Social Insurance Systems Specialist, Office of Pre-Claims Requirements, Office of Systems Requirements, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301–965–7145.

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Background of the Proposed Routine Use

SSA maintains information pertaining to the amount of wages or self-employment income earned by individuals. This information constitutes tax return information subject to the Internal Revenue Code (IRC) and is maintained in the Earnings Record system or records. The IRC (26 U.S.C. 6103(e)(11) requires the Commissioner of Social Security, upon written request, to disclose tax return information to OPM for the purpose of administering the Civil Service and Federal Employees' Retirement Systems in accordance with Chapters 83 and 84 of Title 5, U.S.C. To meet the requirements of the Privacy Act before disclosing any information to OPM, we are establishing a routine use. The routine use provides for the following disclosure:

Disclosure of tax return information will be made to OPM, upon OPM's written request, for the purpose of administering the Civil Service and Federal Employees' Retirement Systems in accordance with Chapters 83 and 84 of Title 5, United States Code.

B. Compatibility of the Proposed Routine Use

We are proposing the routine use in accordance with the Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulation (20 CFR Part 401). Section 401.310 of the regulation permits us to disclose information for a routine use where the information will be used for a purpose which is compatible with the purpose of which we collected the information. We consider a disclosure required by Federal law as a disclosure for a compatible purpose. Since 26 U.S.C. 6103(e)(11) requires the Commissioner of Social Security to disclose the information to OPM, the above statement of routine use is appropriate.

C. Effect of the Proposed Routine Use on Individuals

We will disclose information under the proposed routine use to OPM for the purpose of administering the Civil Service and Federal Employees' Retirement Systems as authorized by the IRC. Thus, we do not anticipate that the disclosures to OPM would have any unwarranted adverse effect on the rights of individuals.

II. Minor Revisions to the Earnings Record Notice

Section	Change
System location	In each instance where "Maryland" is mentioned the accepted abbreviation, "MD" is substituted. Delete "Office of Central Operations".
Categories of individuals covered by the system.	Add "(SSN)" following "Social Security number".
Categories of records in the system.	Delete "Social Security number" and substitute "SSN".
Purpose(s)	Delete "Social Security number" and substitute "SSN". Add "Department of Health and Human Services" and place parentheses around the acronym "HHS". Add "the Social Security Administration" and place parentheses around the acronym "SSA".
Routine uses of records maintained in the system, including categories of users and the purpose of such uses.	Add "(DOJ)" in item 4. Delete "the Social Security Administration" and substitute "SSA" in item 5. Delete "Social Security number" and substitute "SSNs" in item 16. Add "(OPM)" in item 21. Substitute "DOJ" for full title in item 22. Substitute "OPM" for full title in item 24.
Storage Safeguards, Retention and Disposal.	Change spelling of "disks" to "discs".
Retrievability	Substitute "SSN" for full title.
System manager(s) and address.	Add "Social Security Administration". Delete "Maryland" and substitute "MD".
Notification procedures.	Substitute "SSN" for full title.
Record Access procedures.	Delete second "also".
Record source categories.	Substitute "DOJ" for full title.

Dated: July 31, 1989.

Dorcas R. Hardy,

Commissioner of Social Security.

09–60–0059

SYSTEM NAME:

Earnings Recording and Self-Employment Income System, HHS/SSA/OSR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Systems, 6401 Security Boulevard Baltimore, MD 21235.

Social Security Administration, Office of System Requirements, 6401 Security Boulevard, Baltimore, MD 21235.

Social Security Administration, Office of Central Records Operations, Metro West Building, 300 North Greene Street, Baltimore, MD 21201.

Records also may be located at contractor sites (contact the system manager at the address below for contractor addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who has been issued a Social Security number (SSN) and who may or may not have earnings under Social Security or self-employment income; or any person requesting, reporting, changing, and/or inquiring about earnings information; or any person having a vested interest in a private pension fund.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records of every SSN holder, his/her name, date of birth, sex, and race and a summary of his/her yearly earnings and quarters of coverage; special employment codes (i.e., self-employment, military, agriculture, and railroad); benefit status information; employer identification (i.e., employer identification numbers and pension plan numbers); minister waiver forms (i.e., forms filed by the clergy for the election or waiver of coverage under the Social Security Act); correspondence received from individuals pertaining to the above-mentioned items; the replies to such correspondence; and pension plan information (i.e., nature, form, and amount of vested benefits).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a) and 205(c)(2) of the Social Security Act, the Federal Records Act of 1950 (64 Stat. 583), and the Employee Retirement Income Security Act of 1974 (Pub. L. 93–406).

PURPOSE(S)

This system is used for the following purposes:

- As a primary working record file of all SSN holders;
- As a quarterly record detail file to provide full data in wage investigation cases;
- To provide information for determining amount of benefits;
- To record all incorrect or incomplete earnings items;
- To reinstate incorrectly or incompletely reported earnings items;
- To record the lastest employer of a wage earner;
- For statistical studies;
- For identification of possible overpayments of benefits;
- For identification of individuals entitled to additional benefits;
- To provide information to employers/former employers for correcting or reconstructing records and for Social Security tax purposes;
- To provide workers and self/employed individuals with earning statements or quarters of coverage statements;
- To provide information to the Department of Health and Human Services (HHS) Audit Agency for auditing benfit payments under Social Security programs;
- To provide information to the National Institute for Occupational Safety and Health for epidemiological research studies required by the Occupational Health and Safety Act of 1974;
- To assist the Social Security Administration (SSA) in responding to general inquiries about Social Security, including earnings or adjustments to earnings, and in preparing responses to subsequent inquiries; and
- To sort minister waivers, thus preventing erroneous payment of Social Security benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure my be made for routine uses as indicated below:

1. To employers or former employers, including State Social Security Administratiors, for correcting and reconstructing State employee earnings records and for Social Security purposes.

2. To the Department of the Treasury for:

(a) Investigating the alleged forgery, or unlawful negotiation of Socal Security checks; and

(b) Tax administration as defined in 26 U.S.C. 6103 of the Internal Revenue Code.

3. To the Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment.

4. To the Department of Justice (DOJ) (Federal Bureau of Investigation and United States Attorneys) for investigating and prosecuting violations of the Social Security Act.

5. To a contractor for the purpose of collating, evaluating, analyzing, aggregating SSA or otherwise refining records when SSA contracts with a private firm. (The contractor shall be required to maintain Privacy Act safeguards with respect to such records.)

6. To the Department of Energy for their study of low-level radiation exposure.

7. To a congressional office in response to an inquiry from the congressional office made at the request of the subject of a record.

8. To the Department of State for administering the Social Security Act in foreign countries through services and facilities of that agency.

9. To the American Institute on Taiwan for administering the Social Security Act on Taiwan through services and facilities of that agency.

10. To the Veterans Administration, Philippines Regional Office, for administering the Social Seciurty Act in the Philippines through services and facilities of that agency.

11. To the Department of Interior for administering the Social Security Act in the Trust Territory of the Pacific Islands through services and facilities of that agency.

12. To State Audit agencies for auditing State supplementation payments and Medicaid eligibility considerations.

13. To DOJ, a court or other tribunal, or another party before such tribunal when:

(a) The SSA, any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components,

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court, or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

14. In response to legal process or interrogatories relating to the enforcement of an individual's child support or alimony obligations, as required by sections 459 and 461 of the Social Security Act.

15. Information necessary to adjudicate claims filed under an international Social Security agreement that the United States has entered into pursuant to section 233 of the Social Security Act may be disclosed to a foreign country which is a party to that agreement.

16. To Federal, State, or local agencies (or agents on their behalf) for the purpose of validating SSNs used in administering cash or noncash income-maintenance programs or health-maintenance programs (including programs under the Social Security Act).

17. Information pertaining to wages and self-employment income may be disclosed in response to requests from State welfare agencies under sections 402(a)(29) and 411 of the Social Security Act for determining an individual's eligiblity for aid or services under State plans for Aid to Families with Dependent Children and the amount of such aid or services.

18. Tax return information (e.g., information with respect to net earnings from self-employment, wages, payments of retirement income which have been disclosed to SSA and business and employment addresses) may be disclosed, upon request, to officers and employees of the Department of Agriculture for purposes of, and to the extent necessary in determining

(a) An individual's eligibility for benefits, or

(b) The amount of benefits under the food stamp program established under the Food Stamp Act of 1977.

19. Tax return information (e.g., information with respect to net earnings from self-employment, wages, payments of retirement income which have been disclosed to SSA and business and employment addresses) may be disclosed, upon written request, to officers and employees of a State food stamp agency for purposes of, and to the extent necessary in determining

(a) An individual's eligibility for benefits, or

(b) The amount of benefits under the food stamp program established under the Food Stamp Act of 1977.

20. Tax return information (e.g., information with respect to net earnings from self-employment, wages, payments of retirement income which have been disclosed to SSA and business and employment addresses) may be disclosed, upon written request, to appropriate officers and employees of a State or local child support enforcement agency for purposes of, and to the extent necessary in

(a) Establishing and collecting child support obligations from individuals who owe such obligations, and

(b) Locating those individuals

Under a program established under title IV–D of the Social Security Act (42 U.S.C. 651ff).

21. The fact that a veteran is or is not eligible for Retirement Insurance benefits under the Social Security program may be disclosed to the Office of Personnel Management (OPM) for its use in determining that veteran's eligibility for a civil service retirement annuity and the amount of such annuity.

22. Employee and employer name and address information may be disclosed to DOJ (Immigration and Naturalization Service) for the purpose of informing that agency of the identities and locations of aliens who appear to be illegally employed.

23. Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

24. Information derived from this system may be disclosed to OPM for the purpose of computing civil service annuity offsets of civil service annuitants with military service or the survivors of such individuals pursuant to provisions of section 307 of Public Law 97–253.

25. Nontax return information which is not restricted from disclosure by Federal law maybe disclosed to the General Services Administration and the National Archives and Records Administration for the purpose of conducting records management studies with respect to their duties and repsonsibilities under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984.

26. Disclosure of tax return information will be made to OPM, upon OPM's written request, for the purpose of administering the Civil Service and Federal Employees with Chapters 83 and 84 of Title 5, United States Code.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this sytem are maintained as paper forms, correspondence in manila folders on open shelving, paper lists, punchcards, microfilm, magnetic tapes, and discs with on-line access files.

RETRIEVABILITY:

Records in this system are indexed by SSN, name, and employer identification number.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the HHS Automated Data Processing Manual, "Part 6, ADP System Security." This includes maintaining the magnetic tapes and discs within an enclosure attended by security guards. Anyone entering or leaving this enclosure must have a special badge issued only to authorized personnel.

For computerized records electronically transmitted between Central Office and field office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. All microfilm and paper files are accessible only by authorized personnel who have a need for the information in the performance of their official duties.

Expansion and improvement of SSA's telecommunications sytsems has resulted in the acquisition of terminals equipped with physical key locks. The terminals also are fitted with adapters to permit the future installation of data encryption devices and devices to permit theidentification of terminal users. (See Appendix J in this publication for additional information relating to safeguards SSA employs to protect personal information.)

RETENTION AND DISPOSAL:

All paper forms and cards are retained until they are filmed or are entered on tape and their accuracy is verified. Then they are destroyed by shredding. All tapes, discs, and microfilm files are updated periodically. The out-of-date magnetic tapes and discs are erased. The out-of-date microfilm is shredded.

SSA retains correspondence 1 year when it concerns documents returned to an individual, denials of confidential information, release of confidential information to an authorized third party, and undeliverable material; for 4 years when it concerns information and evidence pertaining to coverage, wage, and self-employment determinations, or when the statute of limitations is involved; and permanently when it affects future claims development especially coverage, wage, and self-employment determinations. Correspondence is destroyed, when appropriate, by shredding.

SYSTEM MANAGER(S) AND ADDRESSES:

Director, Office of Pre-Claims Requirements, Social Security Administrator, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this sytem contains a record pertaining to him or her by providing his/her name, signature, and SSN or, if the SSN is not known, name, signature, date and place of birth, mother's maiden name, and father's name to the address shown under system manager and referring to this system. (Furnishing the SSN is voluntary, but it will make searching for an individual's record easier and avoid delay.) (See Appendix K to this publication for documentation individuals may be required to furnish to establish their identity when requesting information pertaining to themselves from SSA.) These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Also, requesters should reasonably specify the record contents they are seeking. These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Also, requesters should reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification. These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

RECORD SOURCE CATEGORIES:

SSN applicants, employers and self-employed individuals; DOJ (Immigration and Naturalization Service); the Department of Treasury (Internal Revenue Service); an existing system of records maintained by SSA, the Master Beneficiary Record (09–60–0090); correspondence, replies to correspondence, and earnings modifications resulting from SSA internal processes.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 89–18490 Filed 8–7–89; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–89–2028]

Privacy Act of 1974; Proposed Amendment to a System of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notification of a proposed amendment to an existing system of records.

SUMMARY: The Department is given notice that it intends to amend the following Privacy Act system of records: HUD/DEPT–71 Employee Identification File.

EFFECTIVE DATE: This amendment shall become effective without further notice in 30 calendar days (September 7, 1989) unless comments are received on or before that date which would result in a contrary determination.

ADDRESS: Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: John T. Murphy, Acting Departmental Privacy Act Officer, Telephone (202) 755–6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HUD/DEPT–71 is a system which consists of identification cards for employees currently employed with the Department of Housing and Urban Development (HUD) and former employees who have been separated for 3 months or less. The information contained in the system included employee photograph, name and signature, Social Security Number, identification card issuance date, type of appointment, date of birth, sex, height, weight, color of hair, color of eyes, and may include requisition for employee identification card.

The Department intends to provide HUD retirees with identification cards. These identification cards will vary slightly in appearance from current employees' cards. This new procedure will expand the categories of individuals covered by the system to include former employees who have retired from HUD. The categories of records will be expanded to include the date the employee separated as a retiree from the Department and the expiration date of the card. These revisions will provide HUD retirees with a viable form of identification, as well as make their access to the HUD building easier.

The amended portion of the system notice is set forth below. Previously, the system and a prefatory statement containing the general routine uses applicable to all of the Department's systems of records were published in the "Federal Register Privacy Act Issuances, 1987 Compilation, Volume II."

Authority: 5 U.S.C. 552a, 88 Stat. 1896: Section 7(d) Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, DC, July 20, 19089.

Donald J. Keuch, Jr.,

Deputy Assitant Secretary for Administration.

HUD/DEPT–71

SYSTEM NAME:

Employee Identification File.

CATEGORIES OF INDIVIDUAL COVERED BY THE SYSTEM:

Current Departmental employees, former employees who have retired from the Department, and other employees who have been separated for three months or less.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in the system include employee photograph, name and signature, Social Security Number, identification card issuance date, identification card expiration date and

separation date for retirees, type of appointment, date of birth, sex, height, weight, color of hair, color of eyes, and may include requisition for employee identification card.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel and Training, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

[FR Doc. 89-18467 Filed 8-7-89; 8:45 am]

BILLING CODE 4210-01-M

Office of Administration

[Docket No. N-89-2029]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 2, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Mortgagee's Application For Insurance Benefits (Multifamily Mortgage).

Office: Administration.

Description of the Need for the Information and its Proposed Use: This report collects data required for cancellation of insurance contracts and payments of mortgage insurance premiums. It affects any lenders (mortgagees) filing a claim for Multifamily insurance benefits.

Form Number: HUD-2747.

Respondents: State or Local Governments, Businesses or Other For-Profit, and Federal Agencies or Employers.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	433		1		.08		38

Total Estimated Burden Hours: 36.

Status: Extension.

Contact: Monroe Herndon, HUD, (202) 755-6449; John Allison, OMB, (202) 395-6880.

Date: August 2, 1989.

Proposal: Requirement for Repurchase Agreements for Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs).

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: This information collection requests that Public Housing Agencies/Indian Housing Authorities(PHAs/IHAs) provide written certification to HUD on repurchase agreements. PHAs/IHAs are permitted to invest funds or deposit in the General Fund in repurchase agreements.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	30		1		2		60

Total Estimated Burden Hours: 60.

Status: Extension.

Contact: Stephanie Avery-Boyd, HUD, (202) 755-7920; John Allison, OMB, (202) 395-6880.

Date: August 2, 1989.

[FR Doc. 89-18466 Filed 8-7-89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-010-09-4322]

Meeting; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Boise District will hold a public meeting to discuss the proposed Wild Horse Gathering in the Cascade, Jarbidge, and Owyhee Resource Areas. The meeting will take place Tuesday, August 22, 1989, beginning at 1:00 p.m., in the Boise District Conference Room.

FOR FURTHER INFORMATION CONTACT: Fred Schley, BLM Boise District Office, 3948 Development Avenue, Boise, Idaho, 83705, 208-334-9303.

Rodger E. Schmitt,

Associate District Manager.

[FR Doc. 89-18480 Filed 8-7-89; 8:45 am]

BILLING CODE 4310-GG-M

[UT-020-4320-02; 1784]

Salt Lake District; Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 that the Salt Lake District Grazing Advisory Board will be meeting on September 19, 1989.

The Board will meet at 9:00 a.m. at the Salt Lake District Bureau of Land Management office, at 2370 South 2300 West, Salt Lake City, Utah. The purpose of the meeting will be to: (1) Review the status of range improvement projects constructed in FY-89, and (2) review range improvement projects proposed for construction in FY-90 and FY-91.

The meeting is open to the public and interested persons may make oral statements to the Board between 9:30 and 10:00 a.m., or file a written statement for the Board's consideration. Persons wishing to make statements to the Board are requested to contact Glade Anderson at (801) 524-5348 prior to September 15 so that adequate time can be included on the agenda.

FOR FURTHER INFORMATION CONTACT: Glade Anderson, Range Conservationist, Bureau of Land Management, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119, (801) 524-5348.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 89-18489 Filed 8-7-89; 8:45 am]

BILLING CODE 4310-DQ-M

[OR-030-09-4320-02: GP9-296]

Vale District Multiple-Use Advisory Council; Meeting

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given in accordance with Public Law 92-463 that a meeting of the Vale District Multiple-Use Advisory Council will be held September 7-8, 1989.

The agenda for the meeting will incldue: The Vale district's noxious weed control program, an update on activities and allotment management planning in the Trout Creek Mountains, activities and plans related to the National Historic Oregon Trail Interpretive Center and other portions of the Oregon National Historic Trail in the Vale District, management and planning activities related to the Wild and Scenic River designations on river segments in the Vale District, an update on activites in wilderness study areas and status of the wilderness EIS, and mining issues on public lands in Malheur County, Oregon.

The meeting is open to the public. Interested persons may make oral statements to the Board or may file written statements for the Board's consideration. Anyone wishing to make oral statements may do so at 2:30 p.m. on September 7 in the portion of the meeting held in the Vale District office.

Summary minutes of the Board's meeting will be maintained in the district office and will be available during regular business hours for public inspection, or personal copies may be purchased for the cost of duplication, within 30 days following the meeting.

DATES: The in-office meeting will begin at 1:00 p.m. September 7, 1989. The meeting will resume at 8:00 a.m., September 8, as a field trip to the Love Reservoir and Grassy Mountain areas to observe mineral exploration.

ADDRESSES: The meeting will be held in the conference room of the District Office, 100 Oregon Street, Vale, OR 97918. The field trip the following day will originate from the Vale District office.

FOR FURTHER INFORMATION CONTACT: Gerard Hubbard, Bureau of Land Management, Vale District, P.O. Box 700, Vale, OR 97918. (Telephone 503 473-3144.)

William C. Calkins,

District Manager.

[FR Doc. 89-18527 Filed 8-7-89; 8:45 am]

BILLING CODE 4310-33-M

[AZ 020-41-5410-10-ZAGD; AZA-23906]

Receipt of Conveyance of Mineral Interest Application

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Yavapai Hills, Inc., has applied for conveyance of the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 14 N., R. 1 W.,
Sec. 21, E½SE¼SW¼SE¼, W½SW¼SE¼SE¼SE¼.

Containing approximately 10 acres.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, June 23, 1989, whichever occurs first.

Charles R. Frost,

Associate District Manager.

Dated: July 26, 1989.

[FR Doc. 89-18478 Filed 8-7-89; 8:45 am]

BILLING CODE 4310-32-M

[AZ 020-41-5410-10-ZAFK; AZA-23415]

Receipt of Conveyance of Mineral Interest Application

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Carrow Company, Inc. has applied for conveyance of the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 20 S., R. 9 E.,
Sec. 25, N½NE¼, SE¼NE¼.

T. 20 S., R. 10 E.
Sec. 13, W½;
Sec. 14, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 15, NE¼, N½NW¼;
Sec. 23, N½, W½SW¼, SE¼SW¼, SE¼;
Sec. 26, N½NW¼, S½SW¼;
Sec. 28, SW¼SW¼;
Sec. 29, all;
Sec. 30, lots 1, 2, 3, 4, 10, 11, E½;
Sec. 32, all;
Sec. 36, E½.

Containing 4,219.98 acres, more or less.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Dear Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the Federal Register, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, July 21, 1988, whichever occurs first.

Charles R. Pool,
Associate District Manager.
Dated: July 28, 1989.
[FR Doc. 89-18478 Filed 8-7-89; 8:45 am]
BILLING CODE 4310-33-M

[NM-040-89-4212-11]

Public Land Sale in Blaine, Caddo, Canadian, Cleveland, Grady, Lincoln, Oklahoma, Pottawatomie, and Texas Counties

August 2, 1989.

AGENCY: Bureau of Land Management.

Realty Action: Sale of Public Lands in Oklahoma.

ACTION: Notice of Realty Action, Sale of Public Lands in Blaine, Caddo, Canadian, Cleveland, Grady, Lincoln, Oklahoma, Pottawatomie, and Texas Counties.

SUMMARY: The Bureau of Land Management (BLM) has determined that the lands described below are suitable for public sale under the authority of section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at no less than the appraised fair market value as shown below. Any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land for sale if the sale would not be consistent with FLPMA or other applicable law, or if in the opinion of the Authorized Officer, consummation of the sale would not be in the best interest of the United States.

INDIAN MERIDIAN, OKLAHOMA

[Parcels]

Tract	Legal description	Acres	Value
Blaine County (BL)			
BL-2	T. 13N., R. 11W., Sec. 36: lot 7.	0.15	$10.00
BL-4	T. 13N., R. 13W., Sec. 3: lot 1.	0.25	25.00
BL-7	T. 14N., R. 13W., Sec. 21: lots 6 & 7.	18.74	3,750.00
Caddo County (CD)			
CD-1	T. 7N., R. 10W., Sec. 15: lot 9.	0.67	10.00
CD-2	T. 7N., R. 11W., Sec. 15: lot 5.	1.46	50.00
Cleveland County (CL)			
CL-9	T. 8N., R. 3W., Sec. 11: lot 7.	0.08	50.00
Canadian County (CN)			
CN-2	T. 10N., R. 7W., Sec. 11: lot 8.	14.72	2,950.00
CN-9	T. 12N., R. 7W., Sec. 2: lot 23.	0.22	25.00
Grady County (GR)			
GR-1	T. 6N., R. 6W., Sec. 17: Tract in NE¼SW¼.	8.91	2,675.00
GR-2	T. 6N., R. 6W., Sec. 18: Tract in N½ SE¼SE¼.	2.07	620.00
Lincoln County (LC)			
LC-3	T. 14N., R. 3E., Sec. 13: lot 8.	0.21	10.00
LC-6	T. 14N., R. 2E., Sec. 14: lot 4.	0.15	10.00
Oklahoma County (OK)			
OK-11	T. 14N., R. 1E., Sec. 22: lot 12.	1.23	50.00
OK-16	T. 14N., R. 1E., Sec. 30: lot 20.	1.47	150.00
OK-17	T. 14N., R. 1E., Sec. 30: lot 21.	0.30	25.00
OK-18	T. 14N., R. 1E., Sec. 30: lot 22.	2.11	50.00
OK-20	T. 12N., R. 3W., Sec. 31: lot 30.	0.18	25.00

INDIAN MERIDIAN, OKLAHOMA—Continued

[Parcels]

Tract	Legal description	Acres	Value
Pottawatomie County (PO)			
PO-1	T. 6N., R. 3E., Sec. 35: lot 13.	11.80	2,350.00
PO-2	T. 6N., R. 3E., Sec. 35: lot 5.	15.00	3,000.00

CIMARRON MERIDIAN, OKLAHOMA

Tract	Legal description	Acres	Value
Texas County (TX)			
TX-50	T. 1S., R. 12E., Sec. 5: Blk. 4, lots 6 &7.	.161	5200.00
TX-51	Blk. 4, Lot 27	.057	100.00
TX-52	Blk. 9, lot 13 and N. 7.8 feet of lot 14.	.106	125.00
TX-53	Blk. 11, lot 13 and N. 9 feet of lot 14.	.109	125.00

The subject lands are part of the remaining public land holdings in Oklahoma scattered throughout the state. The lands are being offered for sale since the Bureau of Land Management (BLM) can not economically or feasibly manage the subject lands. No other federal agency or department was interested in managing these lands. Area residents favor the transfer of the lands into private ownership. The sale is consistent with the Bureau planning for the lands involved and has been discussed with governmental units and local officials. The public interest would be served by offering the lands for sale.

The lands, when patented, will be subject to the following terms, reservations and restrictions:

1. A reservation to the United States for ditches and canals for tracts TX-50, TX-51, TX-52, and TX-53.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation which will be incorporated in the patent document, is available for review at this BLM office.

3. Title will be issued by a patent subject to all prior valid existing rights.

4. Title will be issued by a patent with restrictions under Executive Orders 11990 and 11988 for the protection and management of wetlands and floodplain on tracts BL-2, BL-4, BL-7, CD-1, CD-2, CL-9 CN-2, CN-9, GR-1, GR-2, LC-3, LC-6, OK-1, OK-16, OK-17, OK-18, OK-20, PO-1, and PO-2.

The sale will be conducted by sealed bidding. The minimum acceptable bid is listed above. Bids must be received by the Oklahoma Resource Area Headquarters, 200 NW. Fifth Street, Room 548, Oklahoma City, Oklahoma, 73102, by 10:00 a.m. October 11, 1989. Federal law requires that bidders be United States citizens or, in the case of a corporation, subject to the laws of any state of the United States. Proof of citizenship shall accompany the bid. Bids sent by mail must be in sealed envelopes accompanied by a certified check, postal money order, bank draft, or cashiers check for not less than twenty percent of the amount bid, made payable to the Department of Interior-BLM. A separate written bid must be submitted for each tract desired. The sealed bid envelopes must be marked on the front lower left hand corner (Example, "October 1989, Land Sale, Tract Number BL-2"). All sealed bids will be opened at 10:00 a.m. October 11, 1989. If two or more qualified sealed bids for the same amount are received, then the apparent successful bidder will be determined by drawing. The successful high bidder will be required to submit the remainder of the payment by cash, certified check, bank draft, money order, or combination thereof, within 180 days after receipt of the decision accepting the highest bid. Failure to pay the full bid price within 180 days shall result in the cancellation of the sale of the tract, and the deposit shall be forfeited and disposed of as other receipts of sale.

If no acceptable bids are received on or before the date of sale, the lands will be offered for sale on an over the counter basis at the Oklahoma Resource Area Headquarters until May 4, 1990.

Publication of this notice will segregate the land from all appropriation under the public land laws, including the mining laws, for 270 days, or until issuance of patent, whichever occurs first.

DATE: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of Interior.

ADDRESS: Comments and suggestions should be sent to: District Manager, Bureau of Land Management, Tulsa District Office, 9522H E. 47th Place, Tulsa, Oklahoma 74145.

FOR FURTHER INFORMATION: Contact Jacqueline Gratton, (405) 231-5491.

Jim Sims,
District Manager.
[FR Doc. 89-18512 Filed 8-7-89; 8:45 am]
BILLING CODE 4310-FB-M

[OR-943-09-4214-10; GP9-297; OR-32978]

Conveyance of Public Land; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 7,309.94 acres of public lands out of Federal ownership. This action will also open approximately 2,320.78 acres of reconveyed lands to surface entry, mining and mineral leasing.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION:

Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 7,309.94 acres of lands in Harney County, Oregon, from Federal to private ownership.

In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 30 S. R. 32 E.,
sec. 4, lots 2 and 3, SE¼NW¼, SW¼NE¼, W½SE¼, and E½SW¼.
T. 30 S. R. 34 E.,
sec. 1, lot 3, SW¼, SE¼NW¼, and SW¼SE¼;
sec. 12, W½, W½E½, and NE¼NE¼;
sec. 13, E½W½, W½E½ and E½NE¼;
sec. 24, NE¼.
T. 30 S., R. 35 E.,
sec. 5, S½SW½;
sec. 6, lot 7 and SE¼SE¼;
sec. 7, lot 1, E½NW¼, NE¼, NE¼SW¼, and NW¼SE¼;
sec. 8, N½NW¼, and SW¼NW¼.

The areas described aggregate approximately 2,320.78 acres in Harney County.

At 8:30 a.m., on September 11, 1989, the above described lands will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on September 11, 1989, will be considered as simultaneously filed at that time. These received thereafter will be considered in the order of filing.

At 8:30 a.m., on September 11, 1989, the above described lands will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federl law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on September 11, 1989, the above described lands will be open to applications and offers under the mining leasing laws.

Catherine H. Crawford,
Acting Chief, Branch of Lands and Minerals Operations.

Dated: July 28, 1989.
[FR Doc. 89-18479 Filed 8-7-89; 8:45 am]
BILLING CODE 4310-33-M

[CO-942-09-4520-12]

Colorado: Filing of Plats of Survey

July 31, 1989.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., July 31, 1989.

The supplemental plat creating new lot 1 in the SE¼SW¼ of section 34, T. 14 S., R. 87 W., Sixth Principal Meridian, Colorado was accepted July 17, 1989.

The plat representing the dependent resurvey of the east boundary of section 36 and the metes-and-bounds survey of Tract 37, T. 41 N., R. 5 W., New Mexico Principal Meridian, Colorado, Group No. 890, was accepted July 17, 1989.

These surveys were executed to meet certain administrative needs of the Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850

Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 89-18477 Filed 8-7-89; 8:45 am]

BILLING CODE 4310-JB-M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Jesup's Milk-Vetch for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a Draft Recovery Plan for the Jesup's Milk-Vetch. The plant occurs on private lands along the Connecticut River in New Hampshire and Vermont. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be reviewed on or before September 20, 1989 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Susi von Oettingen, USFWS, 22 Bridge St., Concord, NH 03301, (603)225-1411 or FTS 834-4411. Written comments and materials regarding the plan should be addressed to Susi von Oettingen. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Susi von Oettingen, (See Addresses).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The document for review is the draft recovery plan for the Jesup's milk-vetch (*Astragalus robbinsii* var. *jesupi*), and is submitted for a combined technical and agency review. The Jesup's milk-vetch, a member of the pea family, has been recognized as one of the rarest plants in New England, known from only three locations along the Connecticut River in New Hampshire and Vermont. The primary objective for recovery of the Jesup's milk-vetch is to prevent extinction of the species by protecting and maintaining the known populations and their essential habitat. Protection and maintenance would be established through: conservation easements; management rights and/or acquisition of the known populations; ensuring the continuation of present-day dynamics of the Connecticut River system; information and education activities; location of additional suitable habitat for possible future establishment of populations; and studies on the life history, habitat requirements and the relationship of river ecosystem to plant populations.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 1, 1989.

Robert E. Lambertson,

Regional Director.

[FR Doc. 89-18526 Filed 8-7-89; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Recovery Plan for the Flattened Musk Turtle for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the Flattened Musk Turtle. It occurs in the Black Warrior River system, Alabama, upstream from Bankhead Dam. The Service solicits review and comment from the public on this draft plan.

DATE: Comments on the draft recovery plan must be received on or before October 10, 1989 to receive consideration by the Service.

ADDRESSES: Written comments and materials regarding the plan should be addressed to Complex Field Supervisor, U.S. Fish and Wildlife Service, Jackson Mall Office Center, 300 Woodrow Wilson Avenue, Suite 316, Jackson, Mississippi 39213 (601/965-4900). The plan is available for public inspection, by appointment, during normal business hours at the above address and at the Ecological Services Field Office, Daphne East Office Plaza on Highway 98, Daphne, Alabama 36526 (205/690-2181). Persons wishing to purchase the draft recovery plan may do so from the Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814 (301/492-6403 or 1-800/582-3421).

FOR FURTHER INFORMATION CONTACT: Complex Field Supervisor, Jackson Field Office or Sandy Tucker, Daphne Ecological Services Field Office (see Addresses above).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comments be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The objective of this agency draft recovery plan is to delist the flattened musk turtle (Sternotherus depressus) when there is evidence of stable or increasing populations compared to past surveys. The major threats to the flattened musk turtle are water pollution, collecting, disease, and hybridization. These threats should be alleviated by monitoring the populations to determine the significance of these threats, establishing a work group to address the water quality problem, and implementing any protective measures that are warranted. The area of emphasis for recovery actions is the upper Black Warrior River system, upstream from Bankhead Dam where suitable habitat occurs.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 31, 1989.

Robert G. Bowker,

Complex Field Supervisor.

[FR Doc. 89-18475 Filed 8-7-89; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR Part 18).

Applicant: Alaska Fish & Wildlife Research Center, File no. PRT-740507, 1011 E. Tudor Road, Anchorage, AK 99503.

Principal Investigator: Anthony R. DeGange, Project Leader.

Type of Permit: Scientific Research.

Name and Number of Animals: 650 Alaska sea otters (*Enhydra lutris*).

Summary of Activity to be Authorized: The applicant proposes to take these animals for the purpose of evaluating the long-term effects of the Exxon Valdez oil spill on sea otter movements, dispersal, survival and reproduction. Up to 650 animals may be captured, drugged, tagged, blood sampled and injected with subcutaneous transponder chip. Up to 275 of these may be surgically implanted with a radio transmitter, and a biopsy of visceral fat will be taken for toxicity analysis. Instrumented animals will be monitored year-around.

Source of Marine Mammals: Southcentral Alaska, principally the Prince William Sound.

Period of Activity: At least 2 years.

Concurrent with the publication of this notice in the Federal Register, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, P.O. Box 3507, Arlington, VA 22203-3507, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in the office of Management Authority, Room 432, 4401 N. Fairfax Drive, Arlington, VA.

Dated: August 2, 1989.

Susan M. Lawrence,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 89-18458 Filed 8-7-89; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Environmental Impact Statements; Availability; Big Cypress National Preserve, Florida

AGENCY: National Park Service.

ACTION: Availability of draft Environmental Impact Statement/General Management Plan/Minerals Management Plan (EIS/GMP/MMP) for Big Cypress National Preserve, Florida.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service, U.S. Department of the Interior, has prepared a Draft Environmental Impact Statement on the General Management Plan/Minerals Management Plan for Big Cypress National Preserve. The GMP/MMP presents a basic management philosophy that meets the legislative requirements for resource protection and for public use and enjoyment of the preserve, it guides the National Park Service in addressing issues and achieving management objectives over a 10- to 15-year period.

DATES: Comments on the Draft EIS/GMP/MMP will be accepted for a period of 90 days after publication of this notice.

ADDRESSES: Comments should be sent to the Regional Director, Southeast Region, National Park Service, 75 Spring Street, SW, Atlanta, Georgia 30303. Copies of the EIS/GMP/MMP are available for review at the following locations:

National Park Service, Southeast Regional Office, 75 Spring Street, SW., Atlanta, Georgia

Broward County Public Library, 1301 West Companys Road, Fort Lauderdale, Florida

Homestead Public Library, 700 North Homestead, Homestead, Florida

Miami-Dade Public Library, 101 West Flagler Street, Miami, Florida

Collier County Public Library, 650 Central Avenue, Naples, Florida

Everglades National Park Headquarters, Homestead, Florida

Big Cypress National Preserve, Headquarters and Oasis Ranger Station, Ochopee, Florida

Big Cypress Land Acquisition Office, 201 8th Street, South, Naples, Florida

FOR FURTHER INFORMATION CONTACT: Fred Fagergren, Superintendent, Big Cypress National Preserve, Star Route Box 110, Ochopee, Florida 33943, Telephone (813) 695-2000.

Robert M. Baker,

Regional Director, Southeast Region.

[FR Doc. 89-18535 Filed 8-7-89; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 29, 1989. Pursuant to § 60.13 of the 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park

Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by August 23, 1989.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Orange County

Huntington Beach Municipal Pier, Main St. and Ocean Ave., Huntington Beach, 89001203

GEORGIA

Bulloch County

Brannen, James Alonzo, House (Downtown Statesboro MPS), 112 S. Main St./US 301, Statesboro, 89001154

East Main Street Commercial Historic District (Downtown Statesboro MPS), Roughly E. Main St./US 301 between Siebald and Oak Sts., Statesboro, 89001155

East Vine Street Warehouse and Depot District (Downtown Statesboro MPS), Roughly bounded by E. Vine St., Central of Georgia Railroad tracks, and Cherry St., Statesboro, 89001156

Holland, Dr. Madison Monroe, House (Downtown Statesboro MPS), 27 S. Main St./US 301, Statesboro, 89001157

North College Street Residential Historic District (Downtown Statesboro MPS), Roughly N. College St. from Northside Dr. to Elm St., Statesboro, 89001158

North Main Street Commercial Historic District (Downtown Statesboro MPS), Roughly N. Main St. between Courtland and W. Main Sts., Statesboro, 89001159

South Main Street Historic District (Downtown Statesboro MPS), Roughly S. Main St. between W. Main and Vine Sts., Statesboro, 89001160

Statesboro City Hall and Fire Station (Downtown Statesboro MPS), Sieblad and Courtland Sts., Statesboro, 89001162

US Post Office—Statesboro (Downtown Statesboro MPS), 27 S. Main St./US 301, Statesboro, 89001163

West Main Street Commercial Historic District (Downtown Statesboro MPS), Roughly W. Main St. between Walnut and N. and S. Main Sts., Statesboro, 89001164

Warren County

South Main Street Residential Historic District (Downtown Statesboro MPS), Roughly College Ln., Southern Railway right-of-way, Walnut, Mikell, and S. Main Sts., Statesboro, 89001161

Illinois

Cook County

YMCA Hotel, 820-828 S. Wabash Ave., Chicago, 89001202

KENTUCKY

Breckenridge County

Mattingly Petroglyphs (15BC128) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Mattingly vicinity, 89001172

North Fork Rough River Petroglyph (15BC130) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Roff vicinity, 89001174

Tar Springs Petroglyphs (15BC129) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Cloverport vicinity, 89001173

Butler County

Baby Track Rock Petroglyphs (15BT40) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Morgantown vicinity, 89001175

Reedyville Petroglyphs (15BT65) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Reedyvill vicinity, 89001176

Turkey Rock Petroglyphs (15BT84) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Morgantown vicinity, 89001177

Carter County

Carter Caves Pictograph (15CR60) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Olive Hill vicinity, 89001178

Christian County

Pilot Rock Petroglyphs (15CH200) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Hopkinsville vicinity, 89001179

Clay County

Fish Trap Rock Petroglyphs (15CY53) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Eriline vicinity, 89001181

Red Bird River Petroglyphs (15CY51) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Eriline vicinity, 89001182

Red Bird River Shelter Petroglyphs (15CY52) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Eriline vicinity, 89001183

Edmonson County

Asphalt Rock Pictographs (15ED24) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Asphalt vicinity 89001185

Dismal Rock Shelter Petroglyphs (15ED15) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Sweeden vicinity 89001184

Estill County

Ashley Petroglyphs (15ES27) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Furnace vicinity 89001186

Sparks Indian Rock House Petroglyphs (15ES28) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Lexington vicinity 89001187

Grayson County

Crow Hollow Petroglyphs (15GY65) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Clarkson vicinity 89001188

Saltsman Branch Petroglyphs (15GY66) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Moutardier vicinity 89001189

Saltsman Branch Shelter Petroglyphs (15GY67) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Moutardier vicinity 89001190

Hancock County

Jeffry Cliff Petroglyphs (15HA114) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Indian Lake vicinity 89001191

Henderson County

Alves Historic District, Roughly bounded by Green, Center, S. Alvasia, Powell, S. Adams and Washington Sts., Henderson, 89001151

Jackson County

Daugherty Bear Track Petroglyphs (15JA160) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, McKee vicinity 89001192

Kenton County

Beechwood Historic District (Fort Mitchell MPS), Roughly bounded by Beechwood Rd., Dixie Hwy., and Woodlawn Ave., Fort Mitchell, 89001168

Fort Mitchell Heights Historic District (Fort Mitchell MPS), Roughly bounded by Park Rd., Barrington Rd., Dixie Hwy., and Fortside Dr., Fort Mitchell, 89001169

Kruempelman Farmhouse (Fort Mitchell MPS), 24 Ridge Rd., Fort Mitchell, 89001171

Old Fort Mitchell Historic District (Fort Mitchell MPS), Roughly bounded by Saint Johns Rd., Dixie Hwy., E. Maple Ave., and Edgewood Rd., Fort Mitchell, 89001170

Lee County

Bear Track Petroglyphs (15LE112) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Mount Olive vicinity 89001194

Old Landing Petroglyphs (15LE113) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Old Landing vicinity 89001195

Perdue Petroglyphs (15LE111) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Fixer vicinity 89001193

Meade County

Payneville Petroglyphs (15MD308) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Payneville vicinity 89001196

Menifee County

Spatt's Petroglyphs (15MF353) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Frenchburg vicinity 89001197

Powell County

Branham Ridge Petroglyphs (15PO158) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Vaughn's Mill vicinity 89001198

High Rock Petroglyphs (15PO25) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Nada vicinity 89001201

McKinney Bluff Petroglyphs (15PO107) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Nada vicinity 89001199

State Rock Petroglyphs (15PO106) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Furnace vicinity 89001200

Maryland

Baltimore Independent City

Senator Theatre, 5904-5906 York Rd., Baltimore (Independent City), 89001153

Rhode Island

Providence County

Sons of Jacob Synagogue, 24 Douglas Ave., Providence, 89001152

Wyoming

Platte County

Patten Creek Site (48PL68) (Aboriginal Lithic Source Areas in Wyoming MPS), Address Restricted, Hartville vicinity 89001204

[FR Doc. 89-18508 Filed 8-7-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31482]

Mid Michigan Railroad Co., Inc., Purchase Exemption, the St. Joseph & Grand Island Railroad Co. Line Between St. Joseph, Mo and Upland, KS.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, Mid Michigan Railroad Company, Inc.'s acquisition and operation of a line of The St. Joseph & Grand Island Railroad Company, known as the "St. Joseph Branch." The line runs between milespost 0.4 at St. Joseph, MO, and milepost 107.7 at Upland, KS, a distance of approximately 107.3 miles. The exemption is subject to employee protective conditions. Pursuant to 49 CFR 1180.2(d) (7), the decision reflects the class exemption for the trackage rights between Mid Michigan and Union Pacific Railroad Company, also subject to employee protective conditions.

DATES: This exemption is effective on September 11, 1989. Petitions for stay must be filed by August 23, 1989 and petitions for reconsideration must be filed by September 5, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31482 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representatives:

Frank J. Pergolizzi, 1224 Seventeenth Street, NW, Washington, DC 20036, and

Joseph D. Anthofer, 432 East Grove, Greenville, MI 48838

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721.]

SUMMARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, writer to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: July 31, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-18506 Filed 8-7-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31490]

Ogeechee Railway Co.; Lease and Operation Exemption, Southern Railway Co.

AGENCY: Interstate Commerce Commission

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 11343-11345 the lease and operation by Ogeechee Railway Company of 24.39 miles of rail lines in Crawford, Peach, Bleckley, and Pulaski Counties, GA, owned by the Southern Railway Company, subject to standard labor protective conditions.

DATES: The exemption will be effective on August 11, 1989. Petitions for reconsideration must be filed by August 21, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31490 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioners' representatives:

John M. Robinson (Ogeechee), 9616 Old Spring Road, Kensington, MD 20895

F. Blair Wimbush, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-2191.

FOR FURTHER INFORMATION CONTACT: Jospeh H. Dettmar, (202) 275-7245 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289-4357/4359. (Assistance for hearing impaired is available through TDD service at (202) 275-1721.)

Decided: July 24, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-18507 Filed 8-7-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of Special Counsel for Immigration Related Unfair Employment Practices

Equal Employment Opportunity Commission

Organization, Functions and Authority Delegations and Coordination; Special Counsel for Immigration Related Unfair Employment Practices and Equal Employment Opportunity Commission

AGENCY: Office of Special Counsel for Immigration Related Unfair Employment Practices, DOJ; Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given to the final agreement between the Equal Employment Opportunity Commission and the Office of Special Counsel for Immigration Related Unfair Employment Practices replacing the interim agreement published at 53 FR 15904 (May 4, 1988). The agreement makes each agency the agent of the other for the sole purpose of receiving discrimination charges under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*) and section 102 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1324b), and provides for interagency coordination of charge processing activities. The purpose of this agreement is to promote efficiency in the administration and enforcement of the two statutes, and to prevent any loss of rights arising from the operation of a filing deadline against an individual or entity who has mistakenly filed a charge with the wrong agency.

FOR FURTHER INFORMATION CONTACT: Daniel Echavarren, Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, P.O. Box 65490, Washington, DC 20035-5490; (800) 255-7688 (toll free)

or (202) 653–8280 (Voice); or (800) 237–2515 (toll free TDD) or (202) 296–0168 (TDD). At the Equal Employment Opportunity Commission (EEOC), contact Irene L. Hill, Assistant Legal Counsel for Coordination, Office of the Legal Counsel, EEOC, 1801 "L" Street, NW., Washington, DC 20507, (202) 663–4689 (Voice) or 663–7026 (TDD).

Andrew M. Strojny,

Acting Special Counsel for Immigration Related Unfair Employment Practices.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

Memorandum of Understanding between The Equal Employment Opportunity Commission and The Office of Special Counsel for Immigration Realted Unfair Employment Practices

The Equal Employment Opportunity Commission (EEOC), under Title VII of the Civil Rights Act of 1964, as amended (hereinafter, "Title VII"), has jurisdiction to process certain charges of employment discrimination on the basis of national origin. The Office of the Special Counsel for Immigration Related Unfair Employment Practices (hereinafter, "Special Counsel") of the Department of Justice, under section 102 of the Immigration Reform and Control Act of 1986, has jurisdiction to process certain other charges of employment discrimination on the bases of national origin or citizenship status. The purpose of this Memorandum of Understanding between the EEOC and the Special Counsel is to prevent any overlap in the filing of charges of discrimination under these statues and to promote efficiency in their administration and enforcement.

The parties to this Memorandum agree as follows:

I. Exchange of Information

The EEOC and the Special Counsel shall make available for inspection and copying to officials from the other agency any information in their records pertaining to a charge or complaint being processed by the requesting agency. Such request shall be made by the Chairman of the EEOC or his or her designee, or the Special Counsel or his or her designee.

II. Confidentiality

When the Special Counsel receives information obtained by the EEOC which is subject to the confidentiality requirements of sections 706(b) and 709(e) of Title VII, the Special Counsel shall observe those requirements as would the EEOC, except in cases where the Special Counsel receives the same information from a source independent of the EEOC.

III. Referral of Charges

When, during the processing of a charge by either agency, it becomes apparent to the agency processing the charge that the charge or any aspect of the charge falls outside its jurisdiction, but may be within the jurisdiction of the other agency, the agency processing the charge will immediately dismiss as much of the charge as may fall within the jurisdiction of the other agency, refer the dismissed aspects of the charge to the other agency and notify the charging party and the respondent of the referral. In determining whether to refer such a charge or such aspect of a charge to the other agency, the agency processing the charge shall be guided by the attached Guidelines.

IV. Appointment of Respective Agents

By this Memorandum of Understanding, the agencies hereby appoint each other to act as their respective agents for the sole purpose of allowing charging parties to file charges to satisfy the statutory time limits. To ensure that filing deadlines are satisfied, each agency will accurately record the date of receipt of charges and notify the other agency of the date of receipt when referring a charge.

Dated: July 24, 1989.

Approved and Accepted for the Equal Employment Opportunity Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

Dated: June 29, 1989.

Approved and Accepted for the Office of Special Counsel for Immigration Related Unfair Employment Practices.

Andrew M. Strojny,

Acting Special Counsel For Immigration Related Unfair Employment Practices.

Guidelines for EEOC Staff

I. National Origin Charges

A. Referral to the Special Counsel

Charges or aspects of charges alleging discrimination on the basis of national origin should be referred to the Special Counsel when *all* of the following conditions are met:

(1) The charge alleges discrimination against the complainant with respect to his or her hiring, discharge or recruitment or referral for a fee;

(2) The charge is outside the jurisdiction of the EEOC in that the employer (a) has fewer than the 15 employees required for coverage under Title VII and/or (b) is an employer that is expressly excluded from coverage under Title VII, such as the Congress, a private club or an Indian tribe;

(3) The employer may have had at least 4 employees, including both full-time and part-time employees, on the date of the alleged discriminatory occurrence as required by the Special Counsel's regulations at 28 CFR Part 44;

(4) The complainant is a United States citizen or national, or an alien who may be authorized to work in the United States.

B. Allegations of Retaliation

(1) Any charge or aspect of a charge that alleges that an employer retaliated against the complainant because he or she filed a claim of national origin discrimination that is being or has been referred to the Special Counsel, or that is otherwise being or has been processed by the Special Counsel, should be referred to the Special Counsel.

(2) Any charge or aspect of a charge that alleges that an employer retaliated against the complainant because he or she participated in proceedings concerning a claim of national origin discrimination that has been or is being referred to the Special Counsel, or that is otherwise being or has been processed by the Special Counsel, should be referred to the Special Counsel.

II. Citizenship Status Charges

A. Referral to the Special Counsel

Charges or aspects of charges alleging discrimination on the basis of citizenship status should be referred to the Special Counsel when *all* of the following conditions are met:

(1) The charge alleges discrimination against the complainant with respect to is or her hiring, discharge, or recruitment or referral for a fee;

(2) The complainant is a United States citizen or national, or is an alien who may be an "intending citizen" in that he or she has filed or appears eligible to file, a "Declaration of Intention" or "Declaration of Intending Citizen" form;

(3) The employer may have had at least 4 employees, including both full-time and part-time employees, on the date of the alleged discriminatory occurrence as required by the Special Counsel's regulations at 28 CFR Part 44.

B. Special Procedures

(1) A charge or aspect of a charge of citizenship status discrimination that cannot be referred to the Special Counsel because (a) the complainant does not appear to be a citizen, national or "intending citizen" and/or (b) the charge or aspect of the charge alleges discrimination with respect to terms or conditions of employment should, to the extent possible, be construed as alleging national origin discrimination and processed in accordance with Title VII.

(2) A charge or aspect of a charge that alleges that a citizenship requirement or preference has the purpose or effect of discriminating on the basis of national origin, and is otherwise within the jurisdiction of the EEOC, should be processed in accordance with Title VII. *See* 29 CFR Part 1606 and *Espinoza* v. *Farah Mfg. Co., Inc.*, 414 U.S. 86 (1973). In addition, if this charge or aspect of a charge satisfies the conditions, described in section II A above, for referral to the Special Counsel, it should be so referred.

C. Allegations of Retaliation

(1) Any charge or aspect of a charge that alleges that an employer retaliated against the complainant because he or she filed a claim of citizenship status discrimination that is being or has been referred to the Special Counsel, or that is otherwise being or has been processed by the Special Counsel, should be referred to the Special Counsel.

(2) Any charge or aspect of a charge that alleges that an employer retaliated against the complainant because he or she participated in proceedings concerning a claim of citizenship status discrimination that has been or is being referred to the Special Counsel, or that is otherwise being or has been processed by the Special Counsel, should be referred to the Special Counsel.

III. Procedures for Referral

A. General Provisions

(1) Any charge or aspect of a charge alleging discrimination on the basis of national origin and/or citizenship status that satisfies all of the conditions for referral to the Special Counsel should be forwarded by EEOC staff, with the appropriate file, to the Office of Special Counsel for Immigration Related Unfair Employment Practices, P.O. Box 65490, Washington, DC 20035–5490.

(2) When forwarding a charge or aspect of a charge to the Special Counsel EEOC staff should follow any instructions issued by the Commission regarding this procedure, including instructions relevant to providing notice of the referral to the parties.

B. Additional Procedures Where the Commission Retains Jurisdiction

(1) Where the Commission retains jurisdiction over a charge or any portion of a charge that is being referred, in whole or in part, to the Special Counsel in accordance with Section IIIA above, the EEOC field office, when making the referral, will inform the Special Counsel of the retained jurisdiction. This notice to the Special Counsel will specify the allegation(s) over which the Commission retains jurisdiction. The notice will also state that the processing EEOC field office will consult with the Special Counsel to coordinate, to the extent possible, the investigative activities of both agencies and assure that duplication of effort in processing the charge is minimized.

(2) After confirming that the Special Counsel has received the referred charge or aspect of the charge, the EEOC field office should attempt consultations with the Special Counsel to coordinate, to the extent possible, the investigative activities of both agencies and assure that duplication of effort in processing the charge is minimized.

C. Special Procedures Regarding 706 Agencies

Where permissible and not contrary to an existing work sharing agreement, EEOC staff should not defer to a 706 Agency any charge or portion of a charge, if the charge or any aspect of the charge satisfies all of the conditions for referral to the Special Counsel. Charges or portions of charges not deferred pursuant to this provision should be processed according to the procedures described in sections III A and B).

IV. Procedures Regarding Referrals From the Special Counsel

Upon receipt of a charge or aspect of a charge referred from the Special Counsel, the processing EEOC field office should confirm that the charge or aspect of a charge is within the jurisdiction of the Commission. The field office should then notify the Special Counsel of its receipt of the charge or aspect of a charge.

If the Special Counsel has retained jurisdiction over the charge or any portion of the charge that has, in whole or in part, been referred to the EEOC, the field office should attempt to coordinate with the Special Counsel, to the extent possible, the investigative activities of both agencies. If the Special Counsel has not retained jurisdiction over the charge or any portion of the charge that has, in whole or in part, been referred to the EEOC, the field office should process the referred charge or aspect of the charge as it would any other charge of discrimination.

Guidelines for Attorneys in the Office of Special Counsel

I. National Origin Charges

A. Referral to the EEOC

Charges or aspects of charges alleging discrimination on the basis of national origin should be referred to the EEOC when *all* of the following conditions are met:

(1) The charge is outside the jurisdiction of the Office of the Counsel;

(2) The charge alleges discrimination against the charging party with respect to his or her hiring, discharge, compensation, terms, conditions or privileges of employment; and

(3) The employer may have had fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

B. Allegations of Retaliation

(1) Any charge or aspect of a charge that alleges that an employer retaliated against the charging party because he or she filed a claim of national origin discrimination that is being or has been referred to the EEOC, or that is otherwise being or has been processed by the EEOC, should be referred to the EEOC.

(2) Any charge or aspect of a charge that alleges that an employer retaliated against the charging party because he or she participated in proceedings concerning a claim of national origin discrimination that has been or is being referred to the EEOC, or that is otherwise being or has been processed by the EEOC, should be referred to the EEOC.

II. Citizenship Status Charges

A. Referral to the EEOC

Charges or aspects of charges alleging discrimination on the basis of citizenship status should be referred to the EEOC when *all* of the following conditions are met:

(1) The charge is outside the jurisdiction of the Office of Special Counsel;

(2) The charge alleges discrimination against the charging party with respect to his or her hiring, discharge, compensation, terms, conditions or privileges of employment;

(3) The employer may have had fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year; and

(4) The alleged discriminatory practice may have the purpose or effect

of discriminating on the basis of national origin.

B. Allegations of Retaliation

(1) Any charge or aspect of a charge that alleges that an employer retaliated against the charging party because he or she filed a claim of citizenship status discrimination that is being or has been referred to the EEOC, or that is otherwise being or has been processed by the EEOC, should be referred to the EEOC.

(2) Any charge or aspect of a charge that alleges that an employer retaliated against the charging party because he or she participated in proceedings concerning a claim of citizenship status discrimination that has been or is being referred to the EEOC, or that is otherwise being or has been processed by the EEOC, should be referred to the EEOC.

III. Procedures for Referral

A. General Provisions

Any charge or aspect of a charge alleging discrimination on the basis of national origin and/or citizenship status that satisfies all of the conditions for referral to the EEOC should be forwarded to the appropriated EEOC District Office.

B. Additional Procedures Where the Office of Special Counsel Retains Jurisdiction

Where the Office of Special Counsel retains jurisdiction over a charge or any portion of a charge that is being referred, in whole or in part, to the EEOC in accordance with section III–A, above, the attorney making the referral will inform the EEOC of the retained jurisdiction. This notice to the EEOC will specify the claim(s) over which the Office of Special Counsel retains jurisdiction. The attorney should attempt to coordinate with the EEOC, to the extent possible, the investigative activities of both agencies.

IV. Procedures Regarding Referrals from the EEOC

Upon receipt of a charge or aspect of a charge referred from the EEOC, the Office of Special Counsel should confirm that the charge or aspect of a charge is within the jurisdiction of the Office of Special Counsel.

If the EEOC has retained jurisdiction over the charge or any portion of the charge that has, in whole or in part, been referred to the Office of Special Counsel, the attorney handling the charge for the Office of Special Counsel should attempt to coordinate, to the extent possible, the investigative activities of both agencies. If the EEOC has not retained jurisdiction over the charge or any portion of the charge that has, in whole or in part, been referred to the Office of Special Counsel, the attorney should process the charge or aspect of the charge as he or she would any other charge of discrimination.

[FR Doc. 89–18495 Filed 8–7–89; 8:45 am]

BILLING CODE 4410–01–M & 6750–06–M

Lodging of Consent Decree Under Clean Water Act

In accordance with Departmental policy, notice is hereby given that on July 25, 1989, a proposed Consent Decree in *United States* v. *Empire Plating Company, Inc., et al.*, Case No. C85–1580, was lodged with the United States District Court for the Northern District of Ohio. The proposed Consent Decree resolves the litigation concerning the defendants' failure to make payments as set forth in the Consent Decree entered in the District Court for the Northern District of Ohio on September 11, 1987 and provides for Empire Plating Company, Inc. and Empire Industries Inc. to pay to the United States a civil penalty in the amount of $90,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Empire Plating Company, Inc., et al.*, D.J. reference #90–5–1–1–2261B.

The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of Ohio, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114, the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $5.80 (6 pages at 10 cents per page) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–18528 Filed 8–7–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Plymouth Water and Sewer District and the State of New Hampshire* was lodged with the United States District Court for the District of New Hampshire on July 28, 1989. The consent decree addresses alleged violations by the Plymouth Village Water and Sewer District, Plymouth, New Hampshire of the Clean Water Act in regard to its sewage system.

The proposed Consent Decree requires the Plymouth Village Water and Sewer District to construct wastewater treatment facilities designed to provide secondary treatment by May 15, 1991 and to achieve compliance with the effluent limitations of its NPDES permit. In addition, the Consent Decree requires the payment of a civil penalty of $10,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Plymouth Village Water and Sewer District and the State of New Hampshire*, D.J. Ref. 90–5–1–1–3166.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of New Hampshire, 55 Pleasant Street, James Cleveland Federal Building and Courthouse, Concord, New Hampshire 03301, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Room 2203, Boston, Massachusetts 02203. Copies of the Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please refer to the referenced case name and D.J. Ref. number and enclose a check in the amount of $2.10 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–18529 Filed 8–7–89; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice published in the Federal Register (53 FR 17988), Western Fher Laboratories, Inc., Carretera 132, KM. 25.3, P.O. Box 7468, Ponce, Puerto Rico 00732, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of phenmetrazine (1631), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: July 26, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89–18432 Filed 8–7–89; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Annual Survey of Occupational Injuries and Illnesses and Prenotification of Recordkeeping Requirements for Participation in the Survey

AGENCY: Office of the Secretary, Labor.

ACTION: Expedited review under the Paperwork Reduction Act.

SUMMARY: The Bureau of Labor Statistics, Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C., Chapter 35, 5 CFR Part 1320 (53 FR 16618 to 16632, May 10, 1988)), is submitting an annual survey of occupational injuries and illnesses to the Office of Management and Budget for that Agency's approval. The information is to be collected under the authority of section 24(a) of the Occupational Safety and Health Act of 1970.

DATE: BLS has requested an expedited review of this submission under the Paperwork Reduction Act, to be completed within 20 days of the date of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the survey should be directed to Paul E. Larson, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210 (telephone (202) 523–6331).

Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, Office of Management and Budget, Room 3208, Washington, DC (telephone (202) 392–5880).

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

SUPPLEMENTAL INFORMATION: As part of a survey on occupational injuries and illnesses BLS plans to conduct a survey of randomly selected establishments to obtain information about the change in the overall rate of occurrence of work injuries and illnesses (by industry), i.e., the total recordable cases rate. The agency estimates that approximately 280,000 respondents will be contacted and the burden will be 15 minutes per response for a total of 70,000 burden hours. The information collected through this survey will be used to develop safety and health policies and procedures; statistics on the appropriate subclassifications of work injury and illness cases (serious and disabling cases, work illnesses, and work fatalities); data essential for targeting industries for inspection and in evaluating the effectiveness of Federal and State programs in improving the workplace safety and health of workers. The survey results will be included in a Report of the President to Congress, bulletin, and press release. Survey results will be available, upon request, to other government agencies, academia, and the public for specific industries or subclassifications. The following submission for approval of the survey has been submitted to OMB with a request for expedited approval under the Paperwork Reduction Act.

Signed at Washington, DC, this 27th day of July 1988.

Paul E. Larson,

Departmental Clearance Officer.

BILLING CODE 4510–24–M

Standard Form 83 (Rev. September 1983)

Request for OMB Review

Important

Read instructions before completing form. Do not use the same SF 83 to request both an Executive Order, 12291 review and approval under the Paperwork Reduction Act.

Answer all questions in Part I. If this request is for review under E.O. 12291, complete Part II and sign the regulatory certification. If this request is for approval under the Paperwork Reduction Act and 5 CFR 1320, skip Part II, complete Part III and sign the paperwork certification.

Send three copies of this form, the material to be reviewed, and for paperwork—three copies of the supporting statement, to

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Docket Library, Room 3201
Washington, DC 20503

PART I.—Complete This Part for All Requests.

1. Department/agency and Bureau/office originating request:
U.S. Department of Labor
Bureau of Labor Statistics
Office of Safety, Health and Working Conditions

2. Agency code: 1220

3. Name of person who can best answer questions regarding this request: William M. Eisenberg
Telephone number: (202) 272-3467

4. Title of information collection or rulemaking:
Annual Survey of Occupational Injuries and Illnesses

5. Legal authority for information collection or rule (*cite United States Code, Public Law, or Executive Order*):
29 USC 651 or PL 91-596

6. Affected public (*check all that apply*)
1 ☐ Individuals or households
2 ☒ State or local governments
3 ☒ Farms
4 ☒ Businesses or other for-profit
5 ☐ Federal agencies or employees
6 ☒ Non-profit institutions
7 ☒ Small businesses or organizations

PART II.—Complete This Part Only if the Request is for OMB Review Under Executive Order 12291

7. Regulation Identifier Number (RIN)
_____. or. None assigned ☐

8. Type of submission (*check one in each category*)

Classification	Stage of development	Type of review requested
1 ☐ Major	1 ☐ Proposed or draft	1 ☐ Standard
2 ☐ Nonmajor	2 ☐ Final or interim final, with prior proposal	2 ☐ Pending
	3 ☐ Final or interim final, without prior proposal	3 ☐ Emergency
		4 ☐ Statutory or judicial deadline

9. CFR section affected
_____ CFR _____

10. Does this regulation contain reporting or recordkeeping requirements that require OMB approval under the Paperwork Reduction Act and 5 CFR 1320? ☐ Yes ☐ No

11. If a major rule, is there a regulatory impact analysis attached? 1 ☐ Yes 2 ☐ No
If "No," did OMB waive the analysis? 3 ☐ Yes 4 ☐ No

Certification for Regulatory Submissions

In submitting this request for OMB review, the authorized regulatory contact and the program official certify that the requirements of E.O. 12291 and any applicable policy directives have been complied with.

Signature of program official — Date

Signature of authorized regulatory contact — Date

12. *(OMB use only)*

Previous editions obsolete
NSN 7540-00-634-4034

83-108

Standard Form 83 (Rev. 9-83)
Prescribed by OMB
5 CFR 1320 and E.O. 12291

PART III.—Complete This Part Only If the Request Is for Approval of a Collection of Information Under the Paperwork Reduction Act and 5 CFR 1320.

13. Abstract—Describe needs, uses and affected public in 50 words or less: 'Occupational Safety, Occupational Health/Safety Programs' The Occupational Safety and Health Act and 29 CFR Part 1904 prescribes that certain employers maintain, and report when requested, records of job-related injuries and illnesses. These data are needed by BLS and OSHA to report on, and carry out enforcement or standards to guarantee workers' safety and health on the job.

14. Type of information collection (*check only one*)
Information collections not contained in rules
1 ☒ Regular submission
2 ☐ Emergency submission (*certification attached*)
Information collections contained in rules
3 ☐ Existing regulation (*no change proposed*)
4 ☐ Notice of proposed rulemaking (NPRM)
5 ☐ Final, NPRM was previously published
6 Final or interim final without prior NPRM
A ☐ Regular submission
B ☐ Emergency submission (*certification attached*)
7. Enter date of expected or actual Federal Register publication at this stage of rulemaking (*month, day, year*): _____

15. Type of review requested (*check only one*)
1 ☐ New collection
2 ☐ Revision of a currently approved collection
3 ☒ Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
4 ☐ Reinstatement of a previously approved collection for which approval has expired
5 ☐ Existing collection in use without an OMB control number

16. Agency report form number(s) (*include standard/optional form number(s)*)
OSHA 200S, BLS 13

17. Annual reporting or disclosure burden

1 Number of respondents	280,000
2 Number of responses per respondent	1
3 Total annual responses (*line 1 times line 2*)	280,000
4 Hours per response	15 mins.
5 Total hours (*line 3 times line 4*)	70,000

18. Annual recordkeeping burden

1 Number of recordkeepers	
2 Annual hours per recordkeeper	
3 Total recordkeeping hours (*line 1 times line 2*)	
4 Recordkeeping retention period	years

19. Total annual burden

1 Requested (*line 17-5 plus line 18-3*)	70,000
2 In current OMB inventory	72,500
3 Difference (*line 1 less line 2*)	- 2,500
Explanation of difference	
4 Program change	- 2,500
5 Adjustment	0

20. Current (*most recent*) OMB control number or comment number
1220-0045

21. Requested expiration date
September 30, 1991

22. Purpose of information collection (*check as many as apply*)
1 ☐ Application for benefits
2 ☒ Program evaluation
3 ☒ General purpose statistics
4 ☒ Regulatory or compliance
5 ☒ Program planning or management
6 ☒ Research
7 ☐ Audit

23. Frequency of recordkeeping or reporting (*check all that apply*)
1 ☐ Recordkeeping
Reporting
2 ☐ On occasion
3 ☐ Weekly
4 ☐ Monthly
5 ☐ Quarterly
6 ☐ Semi-annually
7 ☒ Annually
8 ☐ Biennially
9 ☐ Other (*describe*): _____

24. Respondents' obligation to comply (*check the strongest obligation that applies*)
1 ☐ Voluntary
2 ☐ Required to obtain or retain a benefit
3 ☒ Mandatory

25. Are the respondents primarily educational agencies or institutions or is the primary purpose of the collection related to Federal education programs? ☐ Yes ☒ No

26. Does the agency use sampling to select respondents or does the agency recommend or prescribe the use of sampling or statistical analysis by respondents? ☒ Yes ☐ No

27. Regulatory authority for the information collection
29 CFR 1904 ; or _____ FR _____ ; or, Other (*specify*): _____

Paperwork Certification

In submitting this request for OMB approval, the agency head, the senior official or an authorized representative, certifies that the requirements of 5 CFR 1320, the Privacy Act, statistical standards or directives, and any other applicable information policy directives have been complied with.

Signature of program official — Date
Wesley L. Schaible, Associate Commissioner for Research and Evaluation — 7/17/89

Signature of agency head, the senior official or an authorized representative — Date
Paul E. Larson, Department Clearance Officer (OASAM) — 27 JUL 89

BILLING CODE 4510-24-C

BEST COPY AVAILABLE

SUPPORTING STATEMENT

Annual Survey of Occupational Injuries and Illnesses and Prenotification of Recordkeeping Requirements for Participation in the Survey.

A. Justification

1. *Background.* Section 24(a) of the Occupational Safety and Health Act of 1970 (29 USC 651) requires the Secretary of Labor—in consultation with the Secretary of Health and Human Services—to develop and maintain an effective program of collection, compilation, and analysis of statistics on occupational injuries and illnesses. Section 24 also encourages the Federal government to enlist the aid of States in developing and conducting statistical programs to meet the data needs of the States as well as its own. Sections 8(c)(1), (2), 8(g)(2), 24(a), and 24(e) of the Act specifically require the Secretary of Labor to design and implement a system requiring employers covered by the Act to maintain records of occupational injuries and illnesses and to submit periodic reports to the Secretary of Labor upon request.

In Secretary's Order No. 12–71, the Secretary of Labor delegated to the Commissioner of the Bureau of Labor Statistics (BLS) the responsibility for "Furthering the purpose of the Occupational Safety and Health Act by developing and maintaining an effective program of collection, compilation, analysis and publication of occupational safety and health statistics." The Secretary further directed the Commissioner to coordinate the above functions with the Assistant Secretary for Occupational Safety and Health Administration (OSHA). The regulations concerning recordkeeping, reporting and access to records, developed in cooperation with OSHA, are contained in 29 CFR Part 1904.

Copies of the appropriate sections of the OSH Act, 29 CFR Part 1904, and the annual survey form, OSHA No. 200–S, are included in appendices to this package. Recordkeeping forms and recordkeeping guidelines promulgated under 29 CFR Part 1904 are currently awaiting OMB approval (1220–0029) with an expected expiration date of December 31, 1990. Recordkeeping burden for employers prenotified for the annual survey is included in the OMB No. 1220–0029 inventory.

2. *Reasons for survey.* The purpose of the Act, as stated in Section 2(b), is to assure, as far as possible, every working man and woman in the Nation safe and healthful working conditions. The primary national measure of the progress toward achieving this purpose is the change in the overall rate of occurrence of work injuries and illnesses (by industry), i.e., the Total Recorded Cases (TRC) rate. To determine the change in the rate, it is necessary to annually determine the number of work injury and illness cases and the level of workers' exposure. Additionally, the Act places special emphasis on serious and disabling cases, work illnesses and work fatalities. To measure the progress in these areas, it is necessary for the survey to provide accurate statistics on the appropriate subclassifications of work injury and illness cases.

The annual OSH survey, conducted by BLS and cooperating State agencies, provides data which not only meet all the requirements of the Act but also are used in virtually every area of OSHA's program. Data from the survey are used to prioritize OSHA's scarce resources. Data are essential to target industries for inspection and in evaluating the effectiveness of Federal and State programs in improving workplace safety and health of workers. For these reasons, it is necessary to provide estimates separately for non-18(b) States and for 18(b) States. To evaluate the effectiveness of the Federal and State programs over time, the industry detail produced by the survey must be at the same industry level and with the same reliability as in previous surveys.

Further, the data also play an important part in the administrative procedures mandated by the Supreme Court that allow OSHA to obtain search warrants. Others using the survey data include NIOSH, local government agencies, academia, various corporations in the private sector and the general public.

Efforts to fulfill the Congressional mandate that the Federal government protect employees from safety and health dangers on the job would be severely hampered by incomplete, inconsistent, and inaccurate data. Therefore, the annual OSH survey should be maintained at its current level due to the widespread use of the information it produces and the absence of superior substitute sources of such information.

3. *Use of technology to reduce employer burden.* During 1978 and 1979, the recordkeeping survey collection form was modified which resulted in an estimated 75 percent reduction in time spent by employers to complete the survey form. The changes initiated resulted from modification of the basic records employers are required to maintain.

Basic records are also permitted to be maintained in facsimile on data processing equipment, subject to restrictions in 29 CFR Part 1904.2. Use of such technology, including the advantages of centralization, has reduced employers' burden.

BLS has also implemented a special subsampling procedure for large multi-establishment companies. Some companies felt overly burdened by survey requests covering a number of establishments normally clustered in the Unemployment Insurance (U.I.) sampling frame. Lists of individual establishments of multi-establishment companies are not normally available for use by BLS for sampling for the survey. If mutual benefits may result from the procedure, the company was asked to voluntarily supply BLS with establishment detail including address, employment, identifying information (company store number, etc.), Standard Industrial Classification (SIC) code or equivalent information, and State U.I. account number. This information was then coded by the Bureau and the resulting file used for sampling for the annual OSH survey. Approximately 5,700 of the 280,000 respondents to the annual survey are selected from this file.

Currently 230 companies with 58,258 establishments are included in this special subsampling procedure. As a result the vast majority of their burden complaints regarding the mandatory OSH survey have been satisfactorily resolved.

By using improved statistical and sampling techniques, the BLS has been able to reduce the survey sample size from 650,000 in 1972 to 240,000 private sector establishments and 40,000 government agencies in 1988 (Appendix D). Recordkeeping exemptions have reduced the number of establishments regularly keeping records from over 3 million in 1972 to about 975,000 in 1988.

4. *Efforts to identify duplication.* As nearly all employers are covered by the Act, the survey is able by itself to produce statistics for almost all industries. However, to provide comprehensive, private sector estimates, it is necessary to secure data from other Federal agencies having statutory authority affecting the safety and health of employees in coal, metal, and other nonmetal mining; on railroads; and in nuclear energy facilities. Since passage of the Act in 1970, BLS has explored with agencies which had safety and health mandates the feasibility of adopting the OSHA recordkeeping definitions. In this way, all employers would be maintaining equivalent records and thus would facilitate the collection of uniform statistics for compilation of national private sector estimates.

Data conforming to OSHA recordkeeping definitions are provided by the Mine Safety and Health Administration, U.S. Department of Labor, for mining employers and by the Federal Railroad Administration, U.S. Department of Transportation, for railroad employers. Participation in the BLS annual survey by contractors who operate nuclear energy facilities became a requirement of the Energy Research and Development Administration (ERDA) in 1971. To satisfy ERDA requirements, these contractors furnish ERDA with a duplicate copy of the completed survey form.

In addition, sampling files are checked manually and mechanically by BLS and State staff for duplication.

5. *Availability of data from existing sources.* The work injury and illness data to be collected in the survey are not available from any other source. The only existing large body of work injury and illness information is located in workers' compensation programs; however, many States do not include all the specific kinds of work-related cases which the Act requires employers to record and report.

Additionally, coverage and reporting differences among States and lack of uniformly complete records prevent the workers' compensation programs from providing statistically accurate data for national estimates. Therefore, data from State workers' compensation programs cannot serve as a replacement for the annual survey.

6. *Minimizing small employer burden.* Since the small employers have lesser impact on the estimates than the larger employers, BLS minimizes the burden upon small employers by using a highly efficient stratified random sampling plan. Under this sampling plan, the larger employment units within an industry have a higher probability of selection than the smaller employment units. As can be determined from the attached tables (Appendix E), on average small employers (1–10 employees) are sampled successfully at the rate of 1.9 percent, while the large employers (500 employees and above) are sampled at the rate of 64.5 percent. Thus, chances of sample selection for small employers is fairly minimal.

The recordkeeping regulations in 29 CFR Part 1904 exempt small employers (those with less than 11 employees) in all industries from routinely keeping OSHA records. Their participation is only required if they are prenotified in advance that they are required to participate in the survey for a given year.

In addition, the Labor–HHS appropriation limits OSHA's activities concerning small farm employers. In essence, farm employers with 10 or fewer employees are totally exempt from any OSHA regulation or activity involving Federal funds and are, therefore, omitted from the survey sample. Pending any permanent change in the regulations, OSHA will continue to exempt this group of farm employers.

7. *Consequence of less frequent collection.* Operational and budgetary issues make collecting survey data annually essential. The annual survey is a cooperative program with State agencies which are partially funded by the Federal government to collect and process the survey data, and share the data with the BLS for generating national estimates. Since the State grant agencies must finance half the costs by appropriation requests to their own State legislatures, many of which convene and appropriate funds over a cycle which may be different from the Federal budget cycle, it is likely that many States would drop out of the program rather than participate in a program of less frequent scheduling. If States do drop out, the Federal government would need to assume the collection of the data at an increased cost.

At a joint meeting of the Occupational Safety and Health Statistics Committee of the Labor Research Advisory Council and the Business Research Advisory Council on August 4, 1977, a resolution was adopted opposing a change in the frequency of the annual survey. The resolution asserted that a less frequent survey would be "less responsive to the needs and considerations of the profession, Congress, and the public if carried out at less frequent periods."

8. *Inconsistencies with 5 CFR Part 1320.6 guidelines.* The forms and guidelines are in accordance with 5 CFR 1320.6.

9. *Consultations.* Semiannually, BLS meets with program committees of the Business Research Advisory Council and the Labor Research Advisory Council to review programs and to solicit advice and recommendations for program enhancement. Following are the names of the committee chairmen:

Committee on Occupational Safety and Health, Business Research Advisory Council, Chairman, Raymond C. Ellis, Jr., American Hotel and Motel Association, 202–289–3100;

Committee on Occupational Safety and Health, Labor Research Advisory Council, Chairman, Eric Frumin, Amalgamated Clothing and Textile Workers Union, 212–242–0700.

Annually, BLS holds a conference with the State agencies which receive grants or contracts to conduct the annual survey, and meets periodically with OSHA and NIOSH representatives. A list of State agency representatives is available on request. Following are the names of the OSHA and NIOSH representatives:

Frank Frodyma, Acting Director, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, 202–523–8021;

Thomas Bender, M.D., Director, Division of Safety Research, National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, FTS–291–4505;

Todd Frazier, Chief, Surveillance Branch, National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, FTS–684–4304.

All recommendations or issues suggested by the State agencies have been initiated or resolved. Periodically BLS consults with OMB and receives OMB approval of the annual survey package. The current OMB contact is Milo Sunderhauf.

10. *Confidentiality.* Commissioner's Order No. 2–80 outlines BLS policy regarding the confidentiality of records. The State agencies are bound to this policy. The policy states: "In conformance with existing law and Department regulations, it is the policy of the Bureau of Labor Statistics that data collected or maintained by, or under the auspices of the Bureau under a pledge of confidentiality shall be treated in a manner that will assure that individually identifiable data will be accessible only to authorized persons and will be used only for statistical purposes or for other purposes made known in advance to the respondent."

The reporting form, OSHA No. 200–S, carries the statement: "The information collected on this form will be used for statistical purposes only by the BLS, OSHA and the cooperating State agencies."

11. *Sensitive questions.* None are asked.

12. *Cost to the Federal government.* The total cost for collecting and processing the annual survey data will be approximately $5.3 million. Further information will be furnished on request. Respondent cost is estimated at $760,000 based on a wage of $10 an hour plus postage.

13. *Estimation of respondent burden.* Based on experience with the current survey form which has been used since

the 1978 survey, each of the 280,000 sample units will spend an average of 15 minutes to complete the form. The total burden is therefore 70,000 hours. A reporting burden statement is included in the instructions for completion of the OSHA No. 200–S.

All employers in the sample are required by 29 CFR Parts 1904.2(a), (b), 1904.15(b), and 1904.16(a) (by prenotification) to have maintained a Log and Summary of Occupational Injuries and Illnesses (OSHA No. 200). Completion of the injury and illness summary (section VI) of form OSHA No. 200–S requires copying the data from the TOTAL line of Form OSHA No. 200. For the question on the description of the cause of the fatality, from previous surveys it is estimated that less than 1 percent of the survey respondents will need to provide this information. Data for the questions on average employment and hours worked are directly available or easily estimated from records required by other State or Federal government programs.

Estimation of recordkeeping burden for the prenotified employers covered under 29 CFR 1904.15(b) and 16(a) is incorporated in OMB No. 1220–0029.

14. *Change in burden hours.* Total burden hours have been reduced by 2,500, from 72,500 to 70,000 hours. The change is due to the elimination of the burden, on companies which are selected from the sampling frame of large multi-establishment companies, to update their company files. The multi-establishment sampling procedure will be dropped in calendar year 1991 due to the planned improvements to the U.I. sampling frame.

15. *Tabulation/publication timetable.* Results from the survey are published in a press release and in a bulletin. Data are also published in the President's Report on Occupational Safety and Health, an annual report to the U.S. Congress.

Listed below is a summary timetable which identifies the major collection phases and tentative dates for publishing the data.

December—Prenotification mailing.
January—Initial mailing of OSHA No. 200–S forms to sample units.
February—Second request mailing to nonrespondents.
May—Key nonrespondents identified and follow-up initiated.
May—Certified mailing to key nonrespondents completed.
July—Active collection of data closed.
November—Results issued in news release.
May—Detailed results issued in a bulletin.

B. Collection of information employing statistical methods

1. Description of universe and sample

Universe. The potential number of respondents (establishments) covered by the scope of the survey is 5 million, although less than 1 million employers keep records on a routine basis due to recordkeeping exemptions for employers in low hazard industries and employers with less than 11 employees, or having no recordable cases. The occupational injury and illness data reported through the annual survey are based on records which employers in the following industries maintain under the Occupational Safety and Health Act: Agriculture, forestry, and fishing, SIC 01–09; oil and gas extraction, SIC 13; construction, SIC 15–17; manufacturing, SIC 20–39; transportation and public utilities, SIC 41–42 and 44–49; wholesale trade, SIC 50–51; and selected prenotified units in retail trade, SIC 52–59; finance, insurance, and real estate, SIC 60–67; and services, SIC 70–87 and 89. Excluded from the national survey collection are self-employed individuals; farmers with fewer than 11 employees; employers regulated by other Federal safety and health laws; and Federal, State, and local government agencies. Some participating States collect data from State and local government agencies for use in their State estimates.

Sample. A stratified probability sampling design is used for the survey, and the sample is selected by using a systematic sampling procedure with a random start for each strata. Based on the survey's design criteria, a sample of 280,000 private and government respondents from a potential universe of 5 million establishments is required. The units on the frame are stratified based on geography, industry, and employment. Since the survey is a Federal-State cooperative effort, the first characteristic used to stratify the units is the State; this is to enable all the State grantees participating in the survey to produce estimates at the State level. The units are further stratified by SIC code and employment size class. Hence, the total number of possible stratification cells is approximately 234,000 (i.e., $ST \times SIC \times SZC = 52 \times 500 \times 9$). A condensed summary of the sampling frame and the sample at the national level by major industry divisions is provided in the attached table (Appendix E). Additional detailed tables are available upon request.

Response rate. The survey is a mandatory survey with an overall useable response rate of about 94 percent based on the 1987 survey data (latest survey for which data are tabulated). The response rate for future surveys is expected to be about the same.

2. Statistical methodology.

Survey design. The annual survey is fully based on probability survey design theory and methodology at both the national and State design levels. This methodology provides:

- A statistical foundation for drawing inference to the full universe being studied.
- A basis for developing a required sample size to satisfy survey reliability requirements.

While there were many characteristics upon which the national design could have been based, BLS elected to use the TRC rate. This was considered by BLS to be one of the most important characteristics and, importantly, the least variable therefore requiring the smallest sample size.

Additionally, to fulfill the needs of users of the survey statistics, the sample is to provide industry estimates. A list of the industries for which estimates are required is compiled by BLS after consultation with the principal Federal users. The sample is designed to generate data at the 2-digit SIC industry level in agriculture, forestry, and fishing; the 3-digit level in oil and gas extraction, construction, and transportation and public utilities; the 4-digit level in manufacturing; and the 2-digit level in SIC's 50–89, except for some 3- and 4-digit estimates for high rate industries in this range of SIC's as required by OSHA.

Sample procedure. The principal features of the OSH probability sample design are its use of stratified random sampling with a Neyman allocation. The characteristics used to stratify the units are the State, SIC code, and employment size class. Since these characteristics are highly correlated with the characteristics that the survey is to measure, stratified sampling provides a gain in precision and thus results in a smaller sample size. The Neyman allocation procedure produces the minimum sample size required to achieve the desired level of reliability for an estimate. For larger employment size classes, the allocation procedures place virtually all of the establishments of the frame in the sample; as employment decreases, smaller and smaller proportions of establishments are included in the sample.

As mentioned before, a probability sample is selected by using a systematic sampling procedure with a random start for each strata.

The survey will be conducted by mail questionnarie through BLS-Washington and the State statistical grant agencies and State contract agencies receiving Federal funds to participate in the survey.

Estimation procedure. The survey's estimates of the population total are first based on the Horvitz-Thompson estimator which is an unbiased estimator. The precision of the estimates is further improved, hence a reduction in sample size, by using the ratio estimator which utilizes available auxiliary information that is correlated with the characteristics which are to be measured. The estimates of the incidence rates are calculated as: $N/EH \times 200{,}000$, where:

N = number of injuries and illnesses or lost workdays
EH = total hours worked by all employees during a calendar year
200,000 = base for 100 full-time equivalent workers (working 40 hours per week, 50 weeks per year).

Required accuracy. For the national all industry estimate of the TRC rate, the sample size is set to insure that a year-to-year difference of .10 or more will be statistically significant at the 95 percent confidence level. A target relative sampling error for year-to-year changes in the TRC rate is also set for each industry estimate requried by OSHA. These targets vary from 8 percent to 37 percent at the 95 percent confidence level with the average being 15 percent.

All State statistical grant agencies participating in the survey produce industry estimates at the State level. To enable these States to produce reliable estimates, their samples are supplemented with additional units. In the recent annual surveys (1978–87), these supplemental units have also been used in the national estimates.

Unusual problems. The primary sampling source for the annual OSH survey is each State's Unemployment Insurance Account address file. Depending on the State, address records may be at the establishment level, a country-wide level, or even a State-wide level. In the case of large multiple-establishment companies, a record may cover a large number of establishments requiring the consolidation of each establishment's OSHA records into a single survey report. Some companies have perceived these survey reports as overly burdensome.

In response, the Bureau devised a special subsampling procedure based on establishment lists *voluntarily* provided by companies in past years. Currently 230 companies with 58,258 establishments have provided establishment lists. Sample units are selected from this file using the same statistical methodology as the regular sample. Duplication of reports between files is eliminated using a mechanical method utilizing Unemployment Insurance Account numbers and manually reviewing sample units.

3. Statistical reliability

Response rates and nonresponse adjustment. The survey is a mandatory survey which achieves an overall usable response rate of about 94 percent. The following techniques are employed to help maximize survey response:

- A follow-up mailing to nonrespondents in February.
- A certified mailing/or telephone follow-up of key nonrespondents in May.

This high level of response greatly aids in protecting the survey estimates from nonresponse bias. The data for the remaining 6 percent, that is the nonrespondents, are imputed from the respondent data using a weighting cell adjustment technique.

Survey sampling errors. The survey utilizes a full probability survey design which makes it possible to determine the required sample size needed to satisfy the specified level of reliability for survey estimates. In addition, it permits the calculation of the *achieved* level of reliability (i.e., the sampling error) for each survey estimate.

The survey in its design and implementation controls on the required level of reliability for the survey estimates and produces the required survey estimates along with the corresponding estimates of sampling error at the national level. Based on past surveys (1972–87), the estimates of the sampling errors obtained from the survey are very close to the required (target) levels. As in the past, it is expected that the OSH survey data will yield the required level of reliability for the national TRC rate, for the industry and State detail required by OSHA, and for the industry detail required by the States.

4. *Testing procedures.* the survey was first undertaken in 1972 with a sample size of approximately 650,000. Since then BLS has made significant progress toward reducing respondent burden by employing various statistical survey design techniques; the present sample size is about 280,000. BLS is continually researching for methods that will reduce the respondent burden without jeopardizing the reliability of the estimates. At the present time, BLS has underway several pilot surveys to test alternative data collection forms and procedures. Present plans anticipate implementation of a revised recordkeeping system in calendar year 1991. Currently, BLS also utilizes quality control techniques to maintain the current system's high level of reliability.

5. *Statistical responsibility.* The Statistical Methods Group, Chief, Phil Gilliland is responsible for the sample design which includes selection and estimation. His telephone number is 202—523–5922. The sample design of the survey conforms to professional statistical standards and to OMB Circular No. A46.

Survey responsibility. The Federal-State Periodic Surveys Project Office, Chief, Elaine Chen-Nash, is responsible for standardizing the data collection procedures and data editing methodology. Her telephone number is 202—727–5448. The survey is conducted by this office, and those State statistical grant agencies and State contract agencies receiving Federal funds to participate in the survey. The names and addresses of these agencies are available upon request.

Analysis and publication responsibilities. The Office of Safety, Health and Working Conditions, Assistant Commissioner, William M. Eisenberg, is responsible for these functions. His telephone number is 202—272–3467.

BILLING CODE 4510-24-M

APPENDIX C

1989 OSHA No. 200-S
Annual Occupational Injuries and Illnesses Survey Covering Calendar Year 1989

U.S. Department of Labor
Bureau of Labor Statistics for the Occupational Safety and Health Administration

The information collected on this form will be used for statistical purposes only by the BLS, OSHA, and the cooperating State Agencies.

THIS REPORT IS MANDATORY UNDER PUBLIC LAW 91-596. FAILURE TO REPORT CAN RESULT IN THE ISSUANCE OF CITATIONS AND ASSESSMENT OF PENALTIES.

O.M.B. No. 1220-0045
Approval Exp.

Burden Statement Located in instructions

St Sch No Ck Sul

SIC
EDIT

Complete this report whether or not there were recordable occupational injuries or illnesses.
PLEASE READ THE ENCLOSED INSTRUCTIONS

Complete and return ONLY THIS FORM within 3 weeks

I. ANNUAL AVERAGE EMPLOYMENT IN 1989

Enter the average number of employees who worked during calendar year 1989 in the establishment(s) covered by this report. Include all classes of employees: full-time, part-time, seasonal, temporary, etc. See the instructions for an example of an annual average employment calculation. *(Round to the nearest whole number.)*

II. TOTAL HOURS WORKED IN 1989

Enter the total number of hours actually worked during 1989 by all employees covered by this report. DO NOT include any non-work time even though paid such as vacations, sick leave, etc. If employees worked few hours in 1989 due to layoffs, strikes, fires, etc., explain under Comments (section VII). *(Round to the nearest whole number.)*

III. NATURE OF BUSINESS IN 1989

A. Check the box which best describes the general type of activity performed by the establishment(s) included in this report.

- ☐ Agriculture
- ☐ Forestry
- ☐ Fishing
- ☐ Mining
- ☐ Construction
- ☐ Manufacturing
- ☐ Transportation
- ☐ Communication
- ☐ Public Utilities
- ☐ Wholesale Trade
- ☐ Retail Trade
- ☐ Finance
- ☐ Insurance
- ☐ Real Estate
- ☐ Services
- ☐ Public Administration

B. Enter in order of importance the principal products, lines of trade, services or other activities. For each entry also include the approximate percent of total 1989 annual value of production, sales or receipts.

_____ %
_____ %
_____ %

C. If this report includes any establishment(s) which perform services for other units of your company, indicate the primary type of service or support provided. *(Check as many as apply.)*

1. ☐ Central administration
2. ☐ Research, development and testing
3. ☐ Storage (warehouse)
4. ☐ Other (specify) _____

IV. MONTH OF OSHA INSPECTION

If the establishment(s) covered by this report had either a Federal or State OSHA compliance inspection during calendar year 1989, please enter the name of the month in which the *first* inspection occurred.

_____

(Leave this box blank.) ☐

V. RECORDABLE INJURIES AND ILLNESSES

Did the establishment(s) have any recordable injuries or illnesses during calendar year 1989?

1. ☐ No (Please complete section VII.)
2. ☐ Yes (Please complete sections VI and VII.)

SEE REVERSE ➔

REPORT LOCATION AND IDENTIFICATION

Complete this report for the establishment(s) covered by the description below:

Please indicate any address changes below.

RETURN REPORT TO:

For Information Call:

OSHA No. 200-S (Revised December 1989)

VI. OCCUPATIONAL INJURY AND ILLNESS SUMMARY (Covering Calendar Year 1989)

- *Complete this section by copying totals from the annual summary of your 1989 OSHA No. 200.*
- Remember to reverse the carbon insert before completing this side
- Leave section VI blank if there were no OSHA recordable injuries or illnesses during 1989
- *Note: First aid for injuries even when administered by a doctor or nurse is not recordable.*
- Please check your figures to be certain that the sum of entries in columns (7a) + (7b) + (7c) + (7d) + (7e) + (7f) + (7g) = the sum of entries in columns (8) + (9) + (13)
- If you listed fatalities in columns (1) and/or (8), please give a brief description of the object or event which caused each fatality in the "Comments" section

OCCUPATIONAL INJURY CASES

INJURY RELATED FATALITIES** (DEATHS)	INJURIES WITH LOST WORKDAYS				INJURIES WITHOUT LOST WORKDAYS*
	Injury cases with days away from work and/or restricted workdays	Injury cases with days away from work	Total days away from work	Total days of restricted activity	
Number of DEATHS in col 1 of the log (OSHA No 200) (1)	Number of CHECKS in col 2 of the log (OSHA No 200) (2)	Number of CHECKS in col 3 of the log (OSHA No 200) (3)	Sum of the DAYS in col 4 of the log (OSHA No 200) (4)	Sum of the DAYS in col 5 of the log (OSHA No 200) (5)	Number of CHECKS in col 6 of the log (OSHA No 200) (6)
DEATHS					

OCCUPATIONAL ILLNESS CASES

TYPE OF ILLNESS Enter the number of checks from the appropriate columns of the log (OSHA No. 200).							
Occupational skin diseases or disorders	Dust diseases of the lungs	Respiratory conditions due to toxic agents	Poisoning (systemic effects of toxic materials)	Disorders due to physical agents	Disorders associated with repeated trauma	All other occupational illnesses	
(7)							
(a)	(b)	(c)	(d)	(e)	(f)	(g)	

ILLNESS RELATED FATALITIES** (DEATHS)	ILLNESSES WITH LOST WORKDAYS				ILLNESSES WITHOUT LOST WORKDAYS*
	Illness cases with days away from work and/or restricted workdays	Illness cases with days away from work	Total days away from work	Total days of restricted activity	
Number of DEATHS in col. 8 of the log (OSHA No 200) (8)	Number of CHECKS in col 9 of the log (OSHA No. 200) (9)	Number of CHECKS in col 10 of the log (OSHA No 200) (10)	Sum of the DAYS in col 11 of the log (OSHA No. 200) (11)	Sum of the DAYS in col 12 of the log (OSHA No 200) (12)	Number of CHECKS in col. 13 of the log (OSHA No 200). (13)
DEATHS					

VII. REPORT PREPARED BY (Please type or print)

NAME _____

TITLE _____

SIGNATURE _____

AREA CODE _____ PHONE _____

DATE _____

COMMENTS _____

1989 OSHA No 200-S
Annual Occupational Injuries and Illnesses Survey Covering Calendar Year 1989

U.S. Department of Labor
Bureau of Labor Statistics for the Occupational Safety and Health Administration

The information collected on this form will be used for statistical purposes only by the BLS, OSHA, and the cooperating State Agencies.

THIS REPORT IS MANDATORY UNDER PUBLIC LAW 91-596. FAILURE TO REPORT CAN RESULT IN THE ISSUANCE OF CITATIONS AND ASSESSMENT OF PENALTIES.

O.M.B. No. 1220-0045
Approval Exp.

St Sch No Ck Suf

SIC
EDIT

Complete this report whether or not there were recordable occupational injuries or illnesses.

PLEASE READ THE ENCLOSED INSTRUCTIONS

EMPLOYER'S COPY DO NOT RETURN

I. ANNUAL AVERAGE EMPLOYMENT IN 1989

Enter the average number of employees who worked during calendar year 1989 in the establishment(s) covered by this report. Include all classes of employees: full-time, part-time, seasonal, temporary, etc. See the instructions for an example of an annual average employment calculation. ***(Round to the nearest whole number.)***

II. TOTAL HOURS WORKED IN 1989

Enter the total number of hours actually worked during 1989 by all employees covered by this report. DO NOT include any non-work time even though paid such as vacations, sick leave, etc. If employees worked few hours in 1989 due to layoffs, strikes, fires, etc., explain under Comments (section VII). ***(Round to the nearest whole number.)***

III. NATURE OF BUSINESS IN 1989

A. Check the box which best describes the general type of activity performed by the establishment(s) included in this report.

- ☐ Agriculture
- ☐ Forestry
- ☐ Fishing
- ☐ Mining
- ☐ Construction
- ☐ Manufacturing
- ☐ Transportation
- ☐ Communication
- ☐ Public Utilities
- ☐ Wholesale Trade
- ☐ Retail Trade
- ☐ Finance
- ☐ Insurance
- ☐ Real Estate
- ☐ Services
- ☐ Public Administration

B. Enter in order of importance the principal products, lines of trade, services or other activities. For each entry also include the approximate percent of total 1989 annual value of production, sales or receipts.

_____ %
_____ %
_____ %

C. If this report includes any establishment(s) which perform services for other units of your company, indicate the primary type of service or support provided. ***(Check as many as apply.)***

1. ☐ Central administration
2. ☐ Research, development and testing
3. ☐ Storage (warehouse)
4. ☐ Other (specify)

_____

IV. MONTH OF OSHA INSPECTION

If the establishment(s) covered by this report had either a Federal or State OSHA compliance inspection during calendar year 1989, please enter the name of the month in which the *first* inspection occurred.

_____

(Leave this box blank.)

V. RECORDABLE INJURIES AND ILLNESSES

Did the establishment(s) have any recordable injuries or illnesses during calendar year 1989?

1. ☐ No (Please complete section VII.)
2. ☐ Yes (Please complete sections VI and VII.)

SEE REVERSE ➔

REPORT LOCATION AND IDENTIFICATION

Complete this report for the establishment(s) covered by the description below:

Please indicate any address changes below.

For Information Call:

VI. OCCUPATIONAL INJURY AND ILLNESS SUMMARY (Covering Calendar Year 1989)

- *Complete this section by copying totals from the annual summary of your 1989 OSHA No. 200.*
- Remember to reverse the carbon insert before completing this side
- Leave section VI blank if there were no OSHA recordable injuries or illnesses during 1989
- *Note: First aid for injuries even when administered by a doctor or nurse is not recordable.*
- Please check your figures to be certain that the sum of entries in columns (7a) + (7b) + (7c) + (7d) + (7e) + (7f) + (7g) = the sum of entries in columns (8) + (9) + (13)
- If you listed fatalities in columns (1) and/or (8), please give a brief description of the object or event which caused each fatality in the "Comments" section

OCCUPATIONAL INJURY CASES

INJURY RELATED FATALITIES** (DEATHS)	INJURIES WITH LOST WORKDAYS				INJURIES WITHOUT LOST WORKDAYS*
	Injury cases with days away from work and/or restricted workdays	Injury cases with days away from work	Total days away from work	Total days of restricted activity	
Number of DEATHS in col 1 of the log (OSHA No 200) (1)	Number of CHECKS in col 2 of the log (OSHA No 200) (2)	Number of CHECKS in col 3 of the log (OSHA No 200) (3)	Sum of the DAYS in col 4 of the log (OSHA No 200) (4)	Sum of the DAYS in col 5 of the log (OSHA No 200) (5)	Number of CHECKS in col 6 of the log (OSHA No 200) (6)
DEATHS					

OCCUPATIONAL ILLNESS CASES

TYPE OF ILLNESS Enter the number of checks from the appropriate columns of the log (OSHA No. 200).							ILLNESS RELATED FATALITIES** (DEATHS)	ILLNESSES WITH LOST WORKDAYS				ILLNESSES WITHOUT LOST WORKDAYS*
Occupational skin diseases or disorders	Dust diseases of the lungs	Respiratory conditions due to toxic agents	Poisoning (systemic effects of toxic materials)	Disorders due to physical agents	Disorders associated with repeated trauma	All other occupational illnesses		Illness cases with days away from work and/or restricted workdays	Illness cases with days away from work	Total days away from work	Total days of restricted activity	
(7)												
(a)	(b)	(c)	(d)	(e)	(f)	(g)	Number of DEATHS in col 8 of the log (OSHA No. 200) (8)	Number of CHECKS in col 9 of the log (OSHA No 200) (9)	Number of CHECKS in col 10 of the log (OSHA No. 200) (10)	Sum of the DAYS in col 11 of the log (OSHA No. 200) (11)	Sum of the DAYS in col 12 of the log (OSHA No. 200) (12)	Number of CHECKS in col 13 of the log (OSHA No 200) (13)
							DEATHS					

VII. REPORT PREPARED BY (Please type or print)

NAME _____

TITLE _____

SIGNATURE _____

AREA CODE _____ PHONE _____

DATE _____

COMMENTS _____

SURVEY REPORTING REGULATIONS

Title 29, Part 1904 20-22 of the Code of Federal Regulations requires that: each employer shall return the completed survey form, OSHA No 200-S, within 3 weeks of receipt in accordance with the instructions shown below

We estimate that it will take an average of 10 30 minutes to complete this form, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing this information If you have any comments regarding these estimates or any other aspect of this survey, send them to the Bureau of Labor Statistics, Division of Management Systems (1220-0045), 441 G St NW, Washington, DC 20212, and to the Office of Management and Budget, Paperwork Reduction Project (1220-0045), Washington, DC 20503

INSTRUCTIONS FOR COMPLETING THE OSHA NO. 200-S FORM 1989 OCCUPATIONAL INJURIES AND ILLNESSES SURVEY (Covering Calendar Year 1989)

Change of Ownership—When there has been a change of ownership during the report period, only the records of the current owner are to be entered in the report Explain fully under Comments (Section VII), and include the date of the ownership change and the time period this report covers

Partial-Year Reporting—For any establishment(s) which was not in existence for the entire report year, the report should cover the portion of the period during which the establishment(s) was in existence. Explain fully under Comments (Section VII), including the time period this report covers

ESTABLISHMENTS INCLUDED IN THE REPORT

This report should include only those establishments located in, or identified by, the Report Location and Identification designation which appears next to your mailing address This designation may be a geographical area, usually a county or city, or it could be a brief description of your operation within a geographical area If you have any questions concerning the coverage of this report, please contact the agency identified on the OSHA No 200-S report form

DEFINITION OF ESTABLISHMENT

An ESTABLISHMENT is defined as a single physical location where business is conducted or where services or industrial operations are performed (For example: a factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office)

For firms engaged in activities such as construction, transportation, communication, or electric, gas and sanitary services, which may be physically dispersed, reports should cover the place to which employees normally report each day

Reports for personnel who do not primarily report or work at a single establishment, such as traveling salespersons, technicians, engineers, etc should cover the location from which they are paid or the base from which personnel operate to carry out their activities

SECTION I. ANNUAL AVERAGE EMPLOYMENT IN 1989

Enter in Section I the average (not the total) number of full and part-time employees who worked during calendar year 1989 in the establishment(s) included in this report. If more than one establishment is included in this report, add together the annual average employment for each establishment and enter the sum Include all classes of employees—seasonal, temporary, administrative, supervisory, clerical, professional, technical, sales, delivery, installation, construction and service personnel, as well as operators and related workers.

Annual Average employment should be computed by summing the employment from all pay periods during 1989 and then dividing that sum by the total number of such pay periods throughout the entire year, including periods with no employment. For example, if you had the following monthly employment—Jan -10; Feb -10; Mar -10, Apr -5; May-5; June-5, July-5; Aug -0; Sept -0; Oct -0; Nov -5; Dec -5—you would sum the number of employees for each monthly pay period (in this case, 60) and then divide that total by 12 (the number of pay periods during the year) to derive an annual average employment of 5.

SECTION II. TOTAL HOURS WORKED IN 1989

Enter in Section II the total number of hours actually worked by all classes of employees during 1989. Be sure to include only time on duty DO NOT include any non-work time even though paid, such as vacations, sick leave, holidays, etc. The hours worked figure should be obtained from payroll or other time records wherever possible; if hours worked are not maintained separately from hours paid, please enter your best estimate If actual hours worked are not available for employees paid on commission, salary, by the mile, etc , hours worked may be estimated on the basis of scheduled hours or 8 hours per workday

For example, if a group of 10 salaried employees worked an average of 8 hours per day, 5 days a week, for 50 weeks of the report period, the total hours worked for this group would be 10 x 8 x 5 x 50 = 20,000 hours for the report period

SECTION III. NATURE OF BUSINESS IN 1989

In order to verify the nature of business code, we must have information about the specific economic activity carried on by the establishment(s) included in your report during calendar year 1989

Complete Parts A, B and C as indicated in Section III on the OSHA No 200-S form. Complete Part C only if supporting services are provided to other establishments of your company. Leave Part C blank if a) supporting services are not the primary function of any establishment(s) included in this report or b) supporting services are provided but only on a contract or fee basis for the general public or for other business firms. (Instructions continued on page 2.)

NOTE: If more than one establishment is included, information in Section III should reflect the combined activities of all such establishments. One code will be assigned which best indicates the nature of business of the group of establishments as a whole.

SECTION IV. MONTH OF OSHA INSPECTION

Enter the name of the first month in 1989 during which your establishment(s) had an OSHA compliance inspection. Include inspections under the Federal or State equivalents of the Occupational Safety and Health Act by Federal or State inspectors and other inspections which may result in penalties for violations of safety and health standards. Do not include inspections limited to elevators, boilers, fire safety or those which are consultative in nature.

SECTION V. RECORDABLE INJURIES AND ILLNESSES

Check the appropriate box. If you checked "Yes," complete Sections VI and VII on the back of the form. If you checked "No" complete only Section VII.

SECTION VI. OCCUPATIONAL INJURY AND ILLNESS SUMMARY

This section can be completed easily by copying the totals from the annual summary of your 1989 OSHA No. 200 form (Log and Summary of Occupational Injuries and Illnesses). Please note that if this report covers more than one establishment, the final totals on the "Log" for each must be added and the sums entered in Section VI.

Leave Section VI blank if the employees covered in this report experienced no recordable injuries or illnesses during 1989.

If there were recordable injuries or illnesses during the year, please review your OSHA No. 200 form for each establishment to be included in this report to make sure that all entries are correct and complete before completing Section VI. Each recordable case should be included on the "Log" in only one of the six main categories of injuries or illnesses:

1. INJURY—related deaths (Log column 1)
2. INJURIES with days away from work and/or restricted days (Log column 2)
3. INJURIES without lost workdays (Log column 6)
4. ILLNESS—related deaths (Log column 8)
5. ILLNESSES with days away from work and/or restricted days (Log column 9)
6. ILLNESSES without lost workdays (Log column 13)

[redacted]

Also review each case to ensure that the appropriate entries have been made for the other columns if applicable. For example, if the case is an Injury with Lost Workdays, be sure that the check for an injury involving days away from work (Log column 3) is entered if necessary. Also verify that the correct number of days away from work (Log column 4) and/or days of restricted work activity (Log column 5) are recorded. A similar review should be made for a case which is an Illness with Lost Workdays (including Log columns 10, 11 and 12). Please remember that if your employees' loss of workdays is still continuing at the time the annual summary for the year is completed, you should estimate the number of future workdays they will lose and add this estimate to the actual workdays already lost. Each partial day away from work, other than the day of the occurrence of the injury or onset of illness, should be entered as one full restricted workday.

Also, for each case which is an illness, make sure that the appropriate column indicating Type of Illness (Log columns 7a-7g) is checked.

After completing your review of the individual case entries on the "Log," please make sure that the "Totals" line has been completed by summarizing Columns 1 through 13 according to the instructions on the back of the "Log" form. Then, copy these "Totals" onto Section VI of the OSHA No. 200-S form. If you entered fatalities in columns (1) and/or (8), please include in the "Comments" section a brief description of the object or event which caused each fatality.

FIRST AID

Finally, please remember that all injuries which, in your judgement, required only First Aid Treatment, even when administered by a doctor or nurse, should not be included in this report. First Aid Treatment is defined as one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters, etc., which do not ordinarily require medical care.

SECTION VII. COMMENTS AND IDENTIFICATION

Please complete all parts including your area code and telephone number. Then return the OSHA No. 200-S form in the pre-addressed envelope. KEEP your file copy.

Dear Employer:

The Occupational Safety and Health Act of 1970 requires the Secretary of Labor to collect, compile, and analyze statistics on occupational injuries and illnesses. This is accomplished through a joint Federal/State survey program with States that have received Federal grants for collecting and compiling statistics. Establishments are selected for this survey on a sample basis with varying probabilities depending upon size. Certain establishments may be included in each year's sample because of their importance to the statistics for their industry.

You have been selected to participate in the nationwide Occupational Injuries and Illnesses Survey for 1989. Under the Occupational Safety and Health Act, your report is mandatory.

The following items are enclosed for your use: (1) Instructions for completing the form; (2) The OSHA No. 200-S form and a copy for your files; and (3) An addressed return envelope. Please complete the OSHA No. 200-S form and return it within three weeks in the envelope provided.

If you have any questions about this survey, contact the survey collection agency indicated on the OSHA No. 200-S form.

Thank you for your cooperation with this important survey.

Sincerely,

JOHN A. PENDERGRASS
Assistant Secretary for
Occupational Safety and Health

BILLING CODE 4510-24-C

APPENDIX D.—OSH ANNUAL SURVEY OF OCCUPATIONAL INJURIES AND ILLNESSES

Survey year	Number of 50/50 cooperating States	Number of 100 percent funded States	Number of BLS conducted States	Number of sample members
1972	52	0	2	650,000
1973	53	0	2	650,000
1974	50	2	3	650,000
1975	49	3	3	650,000
1976	49	4	2	415,000
1977	48	4	5	320,000
1978	44	6	5	280,000

APPENDIX D.—OSH ANNUAL SURVEY OF OCCUPATIONAL INJURIES AND ILLNESSES—Continued

Survey year	Number of 50/50 cooperating States	Number of 100 percent funded States	Number of BLS conducted States	Number of sample members
1979	42	7	6	280,000
1980	41	7	7	280,000
1981	39	7	9	280,000
1982	38	9	8	280,000
1983	39	9	7	280,000

APPENDIX D.—OSH ANNUAL SURVEY OF OCCUPATIONAL INJURIES AND ILLNESSES—Continued

Survey year	Number of 50/50 cooperating States	Number of 100 percent funded States	Number of BLS conducted States	Number of sample members
1984	40	8	7	280,000
1985	40	8	7	280,000
1986	40	8	7	280,000
1987	40	8	7	280,000

APPENDIX E.—OSH ANNUAL SURVEY, NATIONAL USABLE SAMPLE SIZE AND ADJUSTED RESPONSE RATE

[Summary of national usable sample size by major industry division]

Industry division	Total units	1–3	4–10	11–19	Employment size class			250–499	500–999	1000+
					20–49	50–99	100–249			
Agriculture	9854	1513	2402	1951	2159	911	642	206	60	10
SIC 13 and 1477	2646	174	422	569	833	462	235	86	32	33
Construction	46194	7562	10420	8813	11507	4975	2240	416	114	47
Manufacturing	53719	2208	4748	5507	10565	9425	11435	5331	2602	1898
Transportation	14963	1263	2195	1938	3533	2371	2179	796	329	359
Wholesale Trade	17926	1257	3246	3157	4991	2896	1911	467	130	71
Retail Trade	39174	3195	7502	5399	8972	5453	4911	1623	657	462
F.I.R.E.	10743	2201	2943	1308	1603	951	859	355	229	294
Services	40042	5784	8987	5376	6365	4514	4561	2027	954	1494
Total	235461	25157	42845	34118	50528	32758	28973	11307	5107	4668
Response rate	94%	92%	93%	93%	93%	94%	96%	97%	98%	98%

Data from the 1987 OSH Annual Survey's Table 87–1. 2/21/89 SMG.

OSH ANNUAL SURVEY, NATIONAL SAMPLING FRAME UNITS

[Counts of national sampling frame units by major industry division]

Industry division	Total units	1–3	4–10	11–19	Employment size class			250–499	500–999	1000+
					20–49	50–99	100–249			
Agriculture	110594	51208	37084	11554	7308	2080	1024	249	75	12
SIC 13 and 1477	23552	11171	6287	2572	2240	730	352	117	50	33
Construction	480563	226543	156462	49173	34586	9328	3608	572	144	47
Manufacturing	342047	80314	91076	49552	56705	26443	22335	8103	3554	1965
Transportation	195518	77663	56823	23564	22178	8137	4707	1357	614	455
Wholesale Trade	477027	213944	142378	56405	44568	12796	5452	1096	285	102
Retail Trade	1130832	415126	394680	139120	116822	40383	18241	4044	1484	732
F.I.R.E.	412699	226738	104959	32345	28538	10724	6340	1794	772	489
Services	1525630	762056	471899	130419	92520	35359	22873	6189	2605	1730
Total	4698462	2064763	1461848	494704	405565	147961	84932	23511	9583	5575

Unit counts from Universe Maintenance System File for the first quarter of 1987. 2/21/89 SMG.

[FR Doc. 89–17995 Filed 8–7–89; 8:45 am]
BILLING CODE 4510–24–M

December 1989 Receipt of Pension Benefits Supplement to the Current Population Survey

AGENCY: Office of the Secretary, Labor.

ACTION: Expedited review under the Paperwork Reduction Act.

SUMMARY: The Pension and Welfare Benefits Administration, Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR Part 1320 (53 FR 16618, May 10, 1988)) is submitting a proposed one-time survey on pension benefit amounts received by retirees. A shift in the provision of retirement benefits from defined benefit pensions to defined contribution plans has signaled a need to measure the total amount of pension benefits received under all types of deferred compensation plans and the adequacy of those benefits. The survey will provide analysis data for public policy issues.

DATE: The Pension and Welfare Benefits Administration has requested an expedited review of this submission under the Paperwork Reduction Act; this OMB review is requested to be completed by September 6, 1989.

FOR FURTHER INFORMATION CONTACT: Comments and suggestions regarding the survey on pension benefit amounts should be directed to Paul E. Larson, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210, 202/523–6331. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for PWBA, Office of Management and

Budget, Room 3001, Washington, DC 20503 202/395-6880.

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Minutes per response: 3 minutes per response.

Frequency of response: On occasion.

Number of respondents: 57,000.

Annual burden hours: 2,850.

Affected public: Approximately 566,000 households across the U.S.

Respondents obligation to reply: Voluntary.

Signed at Washington, DC, this 2nd day of August, 1989.

Paul E. Larson,

Departmental Clearance Officer.

Appendix

BILLING CODE 4510-28-M

Standard Form 83 (Rev. September 1983)

Request for OMB Review

Important

Read instructions before completing form. Do not use the same SF 83 to request both an Executive Order 12291 review and approval under the Paperwork Reduction Act.

Answer all questions in Part I. If this request is for review under E.O. 12291, complete Part II and sign the regulatory certification. If this request is for approval under the Paperwork Reduction Act and 5 CFR 1320, skip Part II, complete Part III and sign the paperwork certification.

Send three copies of this form, the material to be reviewed, and for paperwork—three copies of the supporting statement, to:

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Docket Library, Room 3201
Washington, DC 20503

PART I.—Complete This Part for All Requests.

1. Department/agency and Bureau/office originating request

Department of Labor/Pension and Welfare Benefits Administration

2. Agency code: 1210

3. Name of person who can best answer questions regarding this request

Ronald Tucker (Survey Operations)/ Dan Beller (Content)

Telephone number (301) 763-2773 (202) 523-9505

4. Title of information collection or rulemaking

December 1989 Receipt of Pension Benefits Supplement to CPS

5. Legal authority for information collection or rule *(cite United States Code, Public Law, or Executive Order)*

Title 13 USC Section 182 or Public Law 93-406, Section 513

6. Affected public *(check all that apply)*

1 ☒ Individuals or households
2 ☐ State or local governments
3 ☐ Farms
4 ☐ Businesses or other for-profit
5 ☐ Federal agencies or employees
6 ☐ Non-profit institutions
7 ☐ Small businesses or organizations

PART II.—Complete This Part Only if the Request Is for OMB Review Under Executive Order 12291

7. Regulation Identifier Number (RIN)

___ ___ ___ ___ ___ ___ ___ ___ ___ ___, or, None assigned ☐

8. Type of submission *(check one in each category)*

Classification	*Stage of development*	*Type of review requested*
1 ☐ Major	1 ☐ Proposed or draft	1 ☐ Standard
2 ☐ Nonmajor	2 ☐ Final or interim final, with prior proposal	2 ☐ Pending
	3 ☐ Final or interim final, without prior proposal	3 ☐ Emergency
		4 ☐ Statutory or judicial deadline

9. CFR section affected

_____CFR _____

10. Does this regulation contain reporting or recordkeeping requirements that require OMB approval under the Paperwork Reduction Act and 5 CFR 1320? ☐ Yes ☐ No

11. If a major rule, is there a regulatory impact analysis attached? 1 ☐ Yes 2 ☐ No

If "No," did OMB waive the analysis? 3 ☐ Yes 4 ☐ No

Certification for Regulatory Submissions

In submitting this request for OMB review, the authorized regulatory contact and the program official certify that the requirements of E.O. 12291 and any applicable policy directives have been complied with.

Signature of program official — Date

Signature of authorized regulatory contact — Date

12. *(OMB use only)*

Previous editions obsolete
NSN 7540-00-634-4034

83-108

Standard Form 83 (Rev. 9-83)
Prescribed by OMB
5 CFR 1320 and E.O. 12291

PART III.—Complete This Part Only If the Request is for Approval of a Collection of Information Under the Paperwork Reduction Act and 5 CFR 1320.

13. Abstract—Describe needs, uses and affected public in 50 words or less

'Retirement benefits, surveys'

The survey will evaluate how retiree pension benefits have fared under a changing climate resulting from Federal legislation and trends towards defined contribution plans.

14. Type of information collection *(check only one)*

Information collections not contained in rules

1 [X] Regular submission
2 [ ] Emergency submission *(certification attached)*

Information collections contained in rules

3 [ ] Existing regulation *(no change proposed)*
4 [ ] Notice of proposed rulemaking (NPRM)
5 [ ] Final, NPRM was previously published
6 Final or interim final without prior NPRM
A [ ] Regular submission
B [ ] Emergency submission *(certification attached)*
7. Enter date of expected or actual Federal Register publication at this stage of rulemaking *(month, day, year)*: _____

15. Type of review requested *(check only one)*

1 [X] New collection
2 [ ] Revision of a currently approved collection
3 [ ] Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
4 [ ] Reinstatement of a previously approved collection for which approval has expired
5 [ ] Existing collection in use without an OMB control number

16. Agency report form number(s) *(include standard/optional form number(s))*

CPS-1, CPS-260

17. Annual reporting or disclosure burden

1 Number of respondents	57,000
2 Number of responses per respondent	1
3 Total annual responses *(line 1 times line 2)*	57,000
4 Hours per response	.05
5 Total hours *(line 3 times line 4)*	2850

18. Annual recordkeeping burden

1 Number of recordkeepers	
2 Annual hours per recordkeeper	
3 Total recordkeeping hours *(line 1 times line 2)*	
4 Recordkeeping retention period	years

19. Total annual burden

1 Requested *(line 17-5 plus line 18-3)*	2850
2 In current OMB inventory	0
3 Difference *(line 1 less line 2)*	2850
Explanation of difference	
4 Program change	2850
5 Adjustment	

22. Purpose of information collection *(check as many as apply)*

1 [ ] Application for benefits
2 [ ] Program evaluation
3 [X] General purpose statistics
4 [ ] Regulatory or compliance
5 [ ] Program planning or management
6 [ ] Research
7 [ ] Audit

23. Frequency of recordkeeping or reporting *(check all that apply)*

1 [ ] Recordkeeping

Reporting

2 [X] On occasion
3 [ ] Weekly
4 [ ] Monthly
5 [ ] Quarterly
6 [ ] Semi-annually
7 [ ] Annually
8 [ ] Biennially
9 [ ] Other *(describe)*: _____

20. Current *(most recent)* OMB control number or comment number

_____

21. Requested expiration date

February 1990

24. Respondents' obligation to comply *(check the strongest obligation that applies)*

1 [X] Voluntary
2 [ ] Required to obtain or retain a benefit
3 [ ] Mandatory

25. Are the respondents primarily educational agencies or institutions or is the primary purpose of the collection related to Federal education programs? [ ] Yes [X] No

26. Does the agency use sampling to select respondents or does the agency recommend or prescribe the use of sampling or statistical analysis by respondents? [X] Yes [ ] No

27. Regulatory authority for the information collection

_____ CFR _____ ; or _____ FR _____ ; or, Other *(specify)*: Title 13 USC, Sec. 182 or Public Law 93-406, Sec. 513

Paperwork Certification

In submitting this request for OMB approval, the agency head, the senior official or an authorized representative, certifies that the requirements of 5 CFR 1320, the Privacy Act, statistical standards or directives, and any other applicable information policy directives have been complied with.

Signature of program official
GERALD B. LINDREW
Assistant Director, OPLA
Date: July 26 1989

Signature of agency head, the senior official or an authorized representative
PAUL E. LARSON
Department Clearance Officer
Date: 2 AUG 89

BILLING CODE 4510-29-C

*U.S. Government Printing Office: 1985—479-685/20252

4

Supporting Statement

A. Justification

1. Supplementary questions concerning receipt of pension benefits, shown in Attachment A, are proposed for the December 1989 Current Population Survey (CPS). This survey is requested by the Pension and Welfare Benefits Administration (PWBA) of the Department of Labor. The purpose of this survey is to provide comprehensive information on monthly benefits and lump sum distributions received under all types of deferred compensation plans by persons 40 years of age or older, with special emphasis on retirees. Data collected on year of initial benefit receipt will enable evaluation of changes in types and amounts of benefits received by workers retiring during different periods.

The private pension system, spurred in part by Federal legislation, has undergone a major shift in recent years in the types of plans established to provide retirement income, from the more traditional defined benefit plan to the defined contribution plan. (Defined benefit plans are usually financed entirely by the employer. At retirement, the employee generally receives an annuity, the value of which is determined by a formula based on years of service times either a percentage of pay or a flat dollar amount. Some defined benefit plans periodically provide post retirement increases in benefits, either on a regular or ad hoc basis. Under a defined contribution plan, the employee is often required to contribute. At retirement, the employee generally receives all retirement money in the form of a single lump sum payment. The value of this payment is directly related to the amount of money contributed by the employer, the employee, and investment earnings.)

In 1975, only 13 percent of all covered workers received basic coverage under defined contribution plans, with the remaining 87 percent covered under defined benefit plans. By 1987, the use of various types of defined contribution plans to provide basic coverage had increased to an estimated 30 percent of all covered workers. In addition, the use of defined contribution plans to provide supplemental coverage has increased from 21 percent of all covered workers in 1975 to an estimated 40 percent in 1987. Overall, more active participants are now enrolled in defined contribution plans than in defined benefit plans.

Benefit levels provided under defined contribution plans are less certain than those provided under defined benefit plans, with a greater burden and responsibility placed on workers to provide for their retirement income. For example, the now common use of 401(k) plans as retirement vehicles bases the ultimate amount of benefits payable at retirement on the employee's voluntary contributions and often on how employees decided to invest their accounts. Defined contribution plans are also much more likely than defined benefit plans to provide benefits in the form of a lump sum payment. Moreover, if a retiree with a defined contribution plan requests an annuity, the value of the retiree's account is used to purchase an insured annuity with no possibility of post-retirement benefit increases. Because of this fundamental shift occurring in the method of providing retirement coverage and benefits, a survey is needed to measure the total amount of pension benefits received under all types of deferred compensation plans and the adequacy of those benefits. The oversight of private pension plans falls within the jurisdiction of the PWBA under the Employee Retirement Income Security Act of 1974 (ERISA). The collection of this information is authorized by Section 513 of ERISA.

2. Beginning with the passage of ERISA in 1974, there have been 14 major Federal legislative Acts designed to increase the soundness of the pension system. The overall intent of this survey is to assess the experience of retirees covered under pension plans during their working career and to evaluate how retiree pension benefits have fared in recent years under the changing climate resulting from Federal legislation and trends toward defined contribution plans. This survey will provide analysis data for public policy issues including: Identification of the demographic characteristics of retirees with and without pension income, the amounts of pension benefits received, the wage replacement rates provided by pensions, the extent to which post-retirement increases cover increases in the consumer price index (CPI), the rate at which married retirees are electing a joint and survivor option, and the rate at which retirees are receiving monthly annuities versus lump sum distributions. In addition, the data will determine how benefit levels and forms of benefits have changed over time. Accurate data on these subjects are absolutely necessary to evaluate the current private pension system and to develop policies to correct any inadequacies.

Following is a discussion of the proposed supplement:

Questions 1 through 3: Defining the Supplement Universe

Questions 1 through 3 identify persons eligible for the supplement. Question 1 establishes the age criteria; only persons aged 40 and over are likely to receive pension benefits. Question 2, the employment check-item, identifies persons currently employed and directs them to the receipt of pension questions, beginning with question 4. For these people, receipt of pension information will be collected only with respect to a possible former employer. Information on pension coverage provided by a current employer, for those employed, was collected in the May 1988 CPS supplement. Data collected from this proposed supplement on receipt of pension benefits, along with the May 1988 data, will provide PWBA with invaluable information that they need to evaluate the current private pension system.

Those identified as not working per check-item 2 will skip to item 3, which determines the likelihood of receipt of retirement benefits based on total years of service at all employers. Those working less than 5 years are unlikely to qualify for pension benefits. If they qualify, their benefit will likely be small and have little effect on the survey results.

Question 4: Pension Coverage

This question identifies persons who were covered under a pension plan at a former employer. A response of "yes" to this item qualifies a person to respond to additional questions that will determine the type of plan, if any, the person receives retirement payments from.

Question 5: Receipt of Benefit

This question determines if respondents are receiving benefits from any type of deferred compensation plan with a lifetime annuity.

Questions 6 and 7: Receipt of Dual Pension Benefits

Approximately 40 percent of all active participants are covered under two or more plans (generally both a defined benefit and defined contribution plan). Identification of dual pension recipients will enable comparison of the total benefits received by dual recipients with benefits received by those with only one plan. It will also enable measurement of post-retirement benefit increases received by dual recipients from their plan providing the largest benefit.

Question 8: Amount of Pension Benefit Received Each Month From All Annuities.

This question collects income amounts on the total monthly pension benefits being received under all plans that have a lifetime annuity. The number of such plans was determined by the response to question 6.

Questions 9 and 10: Joint and Survivor Option

Concern for widows dependent on the income of a spouse that dies is reflected in both the 1974 ERISA legislation and the Retirement Equity Act of 1984. Both legislative acts require private pension plans to include survivor options in varying degrees. Questions 9 and 10 will determine the percentage of married pension recipients electing a joint and survival option and allow PWBA to study the impact of these laws.

Question 11: Dual Annuity Benefit Check Item

For dual annuity benefit recipients, information on change in benefit amount and identification of whether the benefit is from a defined benefit plan will be asked with respect to the annuity providing the largest benefit.

Question 12: Amount of Pension Benefit Received Each Month from the Largest Annuity

This question collects the current monthly amount of pension benefits being received under the annuity plan that provides the largest benefit.

Question 13: Type of Plan

A response of "yes" to this question will indicate that the largest annuity payment is coming from a defined benefit plan.

Question 14 and 15: Post-Retirement Benefit Changes

Responses to these questions will allow PWBA to determine the number of retirees who receive cost of living adjustments either on a regular or ad hoc basis and the extent to which post retirement increases match increases in the CPI.

Question 16: Age When Benefits Began

For retirees receiving post-retirement benefit changes, comparison of respondents current age (from basic CPS) with age when benefits began will permit comparison of any post-retirement benefit changes with CPI changes over the same period. For all retirees, comparison of average benefit levels by year of initial receipt can be made.

Question 17: Number of Years of Benefit Accrual

This question will enable comparisons of benefit amounts by average number of years of benefit accrual.

Question 18: Receipt of Lump Sum Distribution

This question will indicate the extent to which retirees receive a lump sum or fixed payment benefit distribution, both for those receiving a lifetime annuity and for those covered under a plan but not receiving a lifetime annuity. By comparing the amount of benefits received from these two types of plans, the PWBA can measure the adequacy of the private pension system to provide income security for the retired.

Question 19: Amount of Lump Sum Payment(s)

This question, combined with the question on monthly receipt of lifetime annuities, will indicate total private pension benefits received by retirees.

Question 20: Age When Lump Sum or First Fixed Payment was Received

The response to this question will identify the actual value of the lump sum or first fixed payment, at the time it was received, after adjusting for inflation.

Question 21: Type of Plan

A response of "no" to this question will indicate that the lump sum or first fixed payment received came from a defined contribution plan.

Question 22: Additional Pension Benefits

This question targets respondents in their late 50s and early 60s. Its purpose is to determine the number of persons retired and vested but unable to receive benefits until they reach the retirement age specified by the plan for benefits to begin.

Questions 23 and 24: Amount of Social Security Benefits

These questions on Social Security benefits combined with earlier questions on private pension benefits will determine retiree's overall economic security provided by pensions.

Questions 25: Pension Coverage Check Item

This item directs the interviewer to the appropriate lead-in to ask respondents about the characteristics of the job which provided coverage or the characteristics of the longest job for those never covered.

Question 26: Years Worked for Employer

This question will enable examination of the relationship between length of employment, coverage status, and benefit status.

Question 27: Year Employment Ended

For those receiving benefits, this question will determine whether benefit payments began at retirement or if there was a waiting period.

Question 28: Full Versus Part-Time Employment

This question will indicate the relationship between full versus part time employment and the likelihood of having pension coverage, receiving benefits, and the amount of any benefits received.

Question 29: Union Status

This question will indicate the relationship between membership in a collective bargaining unit while employed and coverage status, receipt of benefit, amount of benefit, and extent of post-retirement benefit changes.

Questions 30A–30E: Employer Classification

These questions collect information on the former job that provides pension coverage or, for those not covered, information on the job worked at the longest. They will enable measurement and comparison of pension benefit status and benefit amounts by industry, occupation, and class of worker.

Question 31: Pre-retirement Earnings

This question will enable examination of the relationship between earnings and coverage status. Collection of earnings data together with amount of initial pension benefit (Question 15) will also enable computation of wage replacement rates for those receiving pension benefits.

Question 32: Firm Size

This question allows measurement of pension benefit eligibility and pension amounts by firm size. Together with industry, occupation, and collective bargaining status data, it will identify characteristics of firms by average amounts of pension benefits provided and likelihood of providing post-retirement benefit increases.

Questions 33–36: Receipt of Spousal Benefit

These questions will identify the extent and amounts of benefits received by widows and widowers from the pension plan of a deceased spouse. This information combined with the joint survivor information (questions 9 and 10) will indicate the adequacy of the current private pension system to secure the income needs of widows and widowers whose deceased spouse received pension benefits.

3. The Bureau of the Census is using the most improved method of data collection available to reduce burden. The CPS sample was redesigned based on results from the 1980 Decennial Census. This sample produces data of greater reliability, though the sample sizes of the new and old samples are almost identical.

The supplemental questions are designed to obtain the required information with minimal respondent burden. The proposed questions are the result of numerous consultations between the Bureau of the Census and the Pension and Welfare Benefits Administration. The questions represent the maximum amount of information, as required by the sponsors, that can be collected within the constraints of the CPS and the limitation of respondent burden.

4. Currently two ongoing surveys, the March CPS income supplement and the Survey of Income and Program Participation (SIPP), routinely collect data on pension income. However, neither of these surveys collects the in-depth information needed to provide a comprehensive profile of total pension income from all sources and to measure the adequacy of post-retirement increases in pension benefits.

Specifically, the March CPS inquires about the amount of pension income received the previous year. It does not collect data on lump sum distributions or on the extent of cost-of-living increases, nor does it characterize past work experience and the employer from which such benefits were established. The SIPP does not collect information on lump sum payments received from deferred retirement plans, the magnitude of any cost-of-living benefit increases since first receipt of benefits, or the amount of any survivor pension income. In addition, the SIPP interviews a substantially smaller number of households so that the cell sizes for retirees in different age groups become too small to permit statistically valid analysis. Neither SIPP nor the March CPS allows for comparison between the retired population that receives benefits and those that do not.

The PWBA is currently developing an analytical file for pension recipients using the SIPP data base. This file will combine relevant SIPP panels on employee and retiree income and benefits. The file will be used to examine total worker and retiree income from all sources and the compensation package of benefits provided by employers. The data available from SIPP on total income received over a relatively short period of time will complement the data collected under this CPS supplement on total pension income received by retirees and workers during their lifetime. In addition, the SIPP will be used to analyze job mobility, changes in type of pension coverage for the same workers and other behavioral analysis for which the CPS is not appropriate.

Two periodically conducted surveys, the Survey of Consumer Finances (SCF) and the New Beneficiary Survey (NBS), also collect pension income data. These surveys, however, collect only limited components of pension income. Moreover, their sample populations are not designed to obtain accurate cross-sectional estimates by age group.

The SCF does not contain questions on post-retirement benefit changes. It requests information on lump sum payments only from the last job held. It cannot be determined whether lump sum payments include only return of employee contributions. Analysis of available data on retireee pension income is also limited by the small sample size of only 5,000 households.

The NBS survey asks if benefits have increased since retirement but data on the magnitude of any increases are not collected. The NBS also interviews only a limited portion of the relevant population. It does not include individuals until they reach Social Security beneficiary status. Thus no data are collected on early retirees receiving private pensions or on individuals age 62 or over receiving private pensions but working and deferring receipt of Social Security benefits.

The May 1988 CPS supplement collected information on retirement coverage provided to those currently employed by their current employer, not on benefits received from a former employer.

5. Past surveys that have included questions on pension income have been geared toward collecting data on retirement income provided under traditional pensions plans. The proliferation of new types of deferred compensation plans in recent years as both primary and supplemental retirement vehicles has resulted in potentially major changes in the form and amount of pension income. The format of the questions contained in surveys which routinely collect data on pension income is also inadequate to provide a comprehensive profile to total income received by individuals under all types of deferred compensation plans.

Specifically, these surveys generally collect data on current but not past pension income and usually define benefits as pension or retirement income. The surveys miss substantial payments made in the form of lump sum distributions and require respondents to make a judgement as to whether income received from a profit sharing, savings, or employee stock ownership plan should be categorized as pension income. Moreover, there is no current data set to provide the comprehensive data needed to perform the analysis described in (A.2) above.

6. The collection of the CPS and its supplemental questions does not involve small businesses or other small entities.

7. This is the first time this information will be collected in conjunction with the CPS. Therefore, the effect of less frequent collection is to not collect the information. The consequences to Federal program or policy activity of not collecting the information are dscribed in (A.2) above.

8. These data will be collected in a manner consistent with the guidelines in 5 CFR 1302.6.

9. The following persons have been consulted concerning the development of the December Supplement questions:
Department of Labor (PWBA) Gary Hendricks (202) 523–9505 John Turner (202) 523–9421 Daniel Beller (202) 523–9751
General Accounting Office Cindy Maher (202) 275–5067
Pension Benefit GuarantyCorp. Emerson Beier (202) 778–8851
Employee Benefit Research Inst. Emily Andrews (202) 659–0670
Mathematica Policy Research William Borden (609) 275–2321
Dartmouth College Alan Gustman (603) 646–2641
Cornell University Olivia Mitchell (607) 255–2743
West Virginia University Stuart Dorsey (304) 293–5721
Bureau of Labor Statistics Jordan Pfuntner (202) 523–9444
Social Security Administration Susan Grad (202) 673–6308 John Woods (202) 673–3904
Federal Reserve Board Arthur Kennickell (202) 452–2247
N. Carolina State University Robert Clark (919) 737–3886
Pension Rights Center Karen Ferguson (202) 296–3776
Texas Tech University Thomas Steinmeir (806) 742–2201
Vanderbilt University Richard Burkhauser (615) 322–2192

Bureau of the Census (DSD) Ronald Tucker (301) 763–2773

10. The supplement data will be collected in compliance with the Privacy Act of 1974 and OMB Circular A–130. Approximately 1 week before the start of interviewing, each new or returning sample household receives an advance letter. This letter includes the information required by the Privacy Act of 1974, informs each respondent of the voluntary nature of the survey, and states the estimated time required for participating in the survey. Additionally, interviews must ask each respondent if he/she received the adavance letter and, if not, must provide a copy of the letter to each respondent and allow sufficent time for him/her to read its contents. Also, interviewers now provide households with the "How the Census Bureau Keeps Your Information Strictly Confidential" pamphlet, which further states the confidentiality assurances associated with this data collection efforts and the Census Bureau's past performance in assuring confidentiality.

All information given by respondents to Census Bureau employees is held in strict confidence by Title 13, United States Code, Section 9. Each Census employee has taken an oath to that effect and is subjed to a jail penalty and substantial fine if he/she discloses any information.

11. The December CPS supplement does not contain any questions of a sensitive nature.

12. The cost to the Government of the CPS program to which this form relates is expected to be $27 million in fiscal year 1990. The costs are to be borne by the Bureau of the Census, the Department of Labor and other Government agencies, if involved. The total estimated cost to the Federal Government for this supplement is $260,000; this cost is borne by the PWBA.

13. The estimated respondent burden is 2,850 hours for fiscal year 1990. Based on professional judgement. the estimated average length of each supplement interview is 3.0 minutes for each sample household. The actual interview time for a household will depend on the size of the household and the characteristics of its occupants.

14. This survey was projected in the FY89 ICB for 3,000 burden hours. This does not exceed that amount. It does represent a program increase of 2,850 hours.

15. Supplement data will be collected by the Census Bureau during the period of December 10–16. A final data file will be available to the sponsors by April 1990 and to the public by June 1990 when the sponsors expect to publish the results.

B. Collection of Information Employing Statistical Methods

1. The December supplement is conducted in conjunction with the basic CPS for which the universe is 93 million households. From this universe, a sample of approximately 71,000 households is selected each month, and interviews are obtained from approximately 57,000 households or 117,000 persons 14 years old or older. We will ask supplement questions in all of the eight rotations. Everyone aged 40 years or older will be asked the supplement questions, and we expect to obtain interviews from about 90 percent of the eligible respondents. The proposed questions will be asked of the sample person, either at the time of the CPS interview or during a telephone or personnel callback.

2. This survey is a supplemental survey associated with the December CPS. Attachment B contains an overview of the CPS sample design and weighting methodology. Attachment C contains a statement of the estimates from a CPS supplement conducted in August 1988, since the actual December statement will not be written until after the data are collected. Although the subject matter is different, the August statement approximates the sampling error common to most CPS supplements.

3. Response rates and data accuracy for the CPS are maintained at high levels through clerical edits, interviewer instructions and training, and close monitoring of these data. (Refer to paragraph 5 of Attachment B for a discussion of CPS nonresponse.)

4. The CPS is currently undergoing the latest phase in a series of methodological and questionnaire tests; this is described in paragraph 6 of Attachment B.

5. The following individuals have been consulted on the statistical data collection and analysis operations:
Lawrence Cahoon Statistical Methods Division Bureau of the Census
Ronald R. Tucker Demographic Surveys Division Bureau of the Census

ATTACHMENT A.—REMINDER: ASK LABOR FORCE QUESTIONS FOR ALL HOUSEHOLD MEMBERS BEFORE ASKING SUPPLEMENT

Supplement questions

1. Interviewer Check Item Age (C.C. Item 18) is:
Under 40 years O (End Questions)
40 Years or Over O (Read Lead-in)
Lead-in: The next few questions concern pension coverage.
2. Interviewer Check Item Entry or NA in item 20A or 21B O (Skip to 4)
All others O (Ask 3)
3. Did . . . ever work at a paid job(s) for *5 years* or more?
O Yes
O No—(Skip to 33)
4. Was . . . ever covered under a pension, profit sharing, savings, or employer stock plan provided by a former employer?
O Yes
O No—(Skip to 23)
O DK—(Skip to 23)
5. Other than Social Security, is . . . currently receiving a retirement benefit *payable for life* from a pension, profit sharing, savings, or employer stock plan?
O Yes
O No—(Skip to 18)
6. Other than Social Security, how many different plans does . . . currently receive *lifetime* pension benefits from?
O One plan—(Skip to 8)
O Two plans
O Three or more plans
7. Are these plans all provided by the same employer or union?
O Yes
O No
O DK
8. Other than Social Security, what is the *total* amount of pension benefits . . . receives *each month?*
DK O [ ] 0000 1111 2222 3333 4444 5555 6666 7777 8888 9999
9. Interviewer Check Item Marital status (C.C. Item 19) is:
Married or Separated O (Ask 10)
All Others O (Skip to 11)
10. Other than Social Security, would some portion of . . .'s pension benefit continue to be paid to his/her spouse if . . . died?
O Yes
O No
O DK
11. Check Item—Item 6 marked:
One plan O (Ask 13)
Two or more O (Read Lead-In)
Lead-in: Please answer the following questions about the plan from which . . . receives the largest benefit.
12. How much does . . . currently receive *each month* from this plan?
DK O [ ] 0000 1111 2222 3333 4444 5555 6666 7777 8888 9999
13. Is the retirement benefit from this plan determined by a formula based on years of service and/or the amount of pay received?
O Yes
O No
O DK
14. Has the amount of . . .'s monthly pension benefit ever increased or decreased?
O Inc. or Dec.—(Skip to 15)
O Both Inc. & Dec.—(Skip to 15)
O NO Change—(Skip to 16)
O DK—(Skip to 16)
15. How much did . . . receive *each month* from this plan when he/she first began receiving the regular benefit?
DK O [ ] 0000 1111 2222 3333 4444 5555 6666 7777 8888 9999
16. How old was . . . when he/she began receiving this pension benefit?
3 4 5 6 7 8 9
0 1 2 3 4 5 6 7 8 9
17. How *many years of service* did . . . have under that plan?
0 1 2 3 4 5 6
0 1 2 3 4 5 6 7 8 9
18. Did . . . ever receive a *lump sum* payment or a *fixed number* of payments from a plan after leaving a former employer?
O Yes
O No—(Skip to 22)
O DK—(Skip to 22)
19. How much has *or* will . . . have received from all such payments?
DK O [ ] 000000 111111 222222 333333 444444 55555 66666 77777 88888 99999
20. In what year did . . . receive his/her lump sum payment or first fixed payment? 19—
3 4 5 6 7 8
0 1 2 3 4 5 6 7 8 9

Supplement questions

21. Is the retirement benefit from this plan determined by a formula based on years of service and/or the amount of pay received?
O Yes
O No
O DK
22. Does . . . expect to receive pension benefits from any (other) plan based on a *former* employer?
O Yes
O No
O DK
23. Does . . . receive any Social Security Retirement payments from the U.S. Government?
O Yes
O No
O DK
24. What is the amount of the Social Security payment . . . receives *each month?* (Amount should be before the medicare deduction.)
DK O 0000 1111 2222 3333 4444 555 666 777 888 999
25. Check Item—Item 4 marked:
Yes O (Read lead-in #1 in 26)
All Others O (Read lead-in #2 in 26)
26. Lead-in #1—The following questions refer to the employer who provides or provided . . . 's (largest) pension coverage.
Lead-in #2—The following questions refer to employer for whom . . . worked the longest.
How many years did . . . work for that employer?
0 1 2 3 4 5
0 1 2 3 4 5 6 7 8 9
27. In what year did . . . leave? 19—
3 4 5 6 7 8
0 1 2 3 4 5 6 7 8 9
28. How many hours per week did . . . usually work for that employer?
0 1 2 3 4 5 6 7
0 1 2 3 4 5 6 7 8 9
29. At that employer, was . . . covered by a union or employee association contract?
O Yes
O No
O DK
30A. For whom did . . . work? O Same as (CPS) 23A–E.
30B. What kind of business or industry was this?
30C. What kind of work was . . . doing?
30D. What were . . . 's most important activities or duties at this job?
30E. Was . . . employed by:
O PRIVATE
O FEDERAL
O STATE Govt.
O LOCAL
O SELF-EMPL, INC.
O SELF-EMPL, NOT Inc.
I&O Code FOSDIC Circles
31. When . . . left that job, how much did . . . USUALLY earn *per week* before deductions? Include any overtime pay, commissions, or tips usually received
DK O[ ] 0000 1111 222 333 444 555 666 777 888 999
32. About how many people were employed by (read name of employer in 30A) at all locations?
O Under 10
O 10–19
O 20–99
O 100–499
O 500+
O DK
33. Interviewer Check Item Marital Status (C.C. Item 19) is:
Widowed O (Ask 35)
Never married O (Fill 37)
All Others O (Ask 34)
34. Has . . . ever been widowed?
O Yes—(Ask 35)
O No—(Fill 37)
35. Does . . . receive benefits based on a pension earned by a deceased spouse?
O Yes—(Ask 36)
O No—(Fill 37)
O DK—(Fill 37)
36. What is the *monthly* amount of this benefit?
DK O [ ] 0000 1111 2222 3333 4444 5555 6666 7777 8888 9999
37. Interviewer Check Item Supplement interview with:
Eligible person O—(End Questions)
Proxy O—(End Questions)

Attachment B—Overview of CPS Sample Design and Methodology

1. CPS Sample Design and Selection

The Current Population Survey (CPS) is a monthly survey conducted in approximately 56,000 occupied households throughout the United States.

The CPS is a probability sample based on a stratified sampling scheme. In general, the CPS sample is selected from

BEST COPY AVAILABLE

lists of addresses obtained from the most recent decennial census and updated for new construction.

a. State-Based Design

In the first stage of sampling, primary sampling units (PSUs) are selected. These PSUs consist of counties or groups of counties in the United States, and are grouped into strata. The CPS is a state-based design. Therefore, all strata are defined within state boundaries and the sample is allocated among the states to produce state and national estimates with the required reliability, while keeping total sample size to a minimum. Each stratum consists of one or more PSUs. Within each stratum, a single PSU is chosen for the sample, with probability proportional to its population as of the most recent decennial census. This PSU represents the entire stratum from which it was selected. In the case of strata consisting of only one PSU, the PSU is termed "self-representing." A sample of addresses within the sample PSUs is obtained in a second step. Most of the sample addresses are selected from census lists in a single stage of sampling within the selected PSU; for a relatively small proportion, an additional stage of selection within the PSU is necessary.

This two-step process is roughly equivalent to the simple plan of dividing each state into ultimate sampling units (USUs), each containing about four neighboring housing units, and selecting clustered samples of these USUs for interview.

b. Stratification

The variables chosen for grouping PSUs in each state into strata reflect the primary interest of the CPS in maximizing the reliability of estimates of labor force characteristics. Basically, the same set of stratification variables are used for each state: employment and unemployment statistics by male, female, and total population; employment statistics by occupation; change in population since 1970 and other variables. If a significant proportion of a state's 1980 census population (0+) is Black or of Hispanic origin, a few additional variables are included.

c. Rotation System

Each sample is divided into eight approximately equal rotation groups. A rotation group is interviewed for 4 consecutive months, temporarily leaves the sample for 8 months and then returns for 4 more consecutive months before retiring permanently from the CPS (after a total of eight interviews). This rotation scheme has been in use since July 1953. The end result of this rotation pattern is an improvement in the reliability of estimates of month-to-month change as well as estimates of year-to-year change.

d. Phase-in of New Design

Since the creation of the CPS in 1940, the sample has been redesigned several times to upgrade the quality of the survey, improve the reliability of the data, and meet the changing needs for the data. Most recently, the 1970 design was phased out and replaced by the design described in this paper. The introduction of the revised design involved several changes that began in April 1984 and were completed in July 1985.

At the time it was put into place, the 1970 design was intended to provide reliable national estimates of labor force characteristics. Strata were defined within four regions of the United States, with many strata crossing state boundaries. Beginning in the mid 1970's, more accurate estimates of state labor force data were needed. This led to the implementation of a revised design based on state geography.

The phase-in of the new design occurred in two waves. The first involved "continuing" areas: areas selected in both the old and new design. This part of the phase-in consisted of updating the sampling frame in these areas beginning in April 1984 and continuing through July 1985. Ninety percent of the entire sample was in "continuing" areas.

The second wave involved changing the geographic areas selected to be sampled. From November 1984 through June 1985, geographic areas selected in the new design that were not in the old design ("new" areas) gradually replaced geographic areas selected in the old design but not in the new design (outgoing areas). Sample households selected from address lists obtained from the 1980 census and new construction permits issued after 1980 replaced households selected from the 1970 census lists and permits for new construction issued since 1970.

In total, the redesigned sample includes 729 geographic areas from a total of 1,973 geographic areas in the United States. In the 1970 design, 629 areas were chosen to represent the 1,924 geographic areas into which the country was divided. The areas used in the 1970 and 1980 designs are not completely comparable becaue many of the sample areas were redefined for 1980. This redefinition was carried out for a number of reasons. Primary among these was the shift from a national sample design to one designed to produce both state and national estimates. In addition, some sampling areas were redefined to correspond to the new metropolitan area definitions, and others were redefined to improve efficiency in field operations.

2. CPS Estimation Procedure

Under the estimating methods used in the CPS, all of the results for a given month become available simultaneously and are based on returns for the entire panel of respondents. The CPS estimation procedure involves weighting the data from each sample person. The unbiased weight, which is the inverse of the probability of the person being in the sample, is a rough measure of the number of actual persons that the sample person represents. In the 1980 design, almost all sample persons within the same state will have the same unbiased weight. The unbiased weights are then adjusted for noninterview, and the ratio estimation procedure is applied.

a. Noninterview Adjustment

The weights for all interviewed households are adjusted to account for occupied sample households for which no information was obtained. Reasons for a noninterviewed household include absence, impassable roads, refusals, or unavailability for other reasons. This adjustment is performed by noninterview cluster. Noninterview clusters are classified as either MSA or non-MSA. PSUs classified as MSA are assigned to MSA clusters. Likewise, non-MSA PSUs are assigned to non-MSA clusters. MSAs of the same or similar size are grouped in the same noninterview cluster. All non-MSA areas in a state are grouped within the same noninterview cluster. There are two cells within a noninterview cluster. Within MSA clusters, the cells are central city and balance of the MSA. Within non-MSA clusters, the cells are urban and rural.

b. Ratio Estimates

The distribution of the population selected in the sample may differ somewhat, by chance, from that of the population as a whole, in such characteristics as age, race, and sex. Since these characteristics are correlated closely with labor force participation and other principal measurements made from the sample, the latter estimates can be improved substantially when weighted appropriately by the known distribution of these population characteristics. This is accomplished through two stages of ratio estimates as follows:

(1) *First-stage ratio estimate.* In the CPS, a portion of the sample areas is chosen to represent both itelf and other areas not in the sample; the remainder of the sample areas represent only themselves. The first-stage ratio estimation procedure was designed to reduce that portion of the variance resulting from requiring sample areas to represent nonsample areas. Therefore, this procedure is applied only to sample areas the represent other areas and is done by black/nonblack cells at a state level.

(2) *Second-stage ratio level.* The second-stage ratio estimate adjusts sample estimates of the population by rotation group (month-in-sample) in a number of age-sex-race-ethnicity groups to independently derived census estimates of the population in each of these groups. This adjustment reduces mean square error of sample estimates by reducing bias due to differential coverage of the sampling frame. The second-stage is carried out in three steps and each set of three steps is referred to as a "rake". There will be six cycles of raking.

In the first step, the sample estimates are adjusted for each state and the District of Columbia by month-in-sample to an independent control for the civilian noninstitutional population (16+) for the state. The second step of the adjustment is done at the national level by Hispanic ethnicity and month-in-sample. Hispanic and not Hispanic each have nine age/sex cells, which are adjusted to nationwide independent control counts (14+). The final step of the second-stage is performed by Black, White and Other race categories. The cell division is by age/race/sex and month-in-sample. Each of these cells is adjusted to nationwide independent control counts (14+) as in the previous step. The entire second-stage ratio estimation procedure is iterated through six rakes. This iteration ensures that the sample estimates both of state population and of national age-sex-race-ethnic categories will be virtually equal to the independent population estimates.

E. Specialized Sampling

An unusual problem occurs in the CPS sample that requires specialized sampling procedures. This problem occurs in rural areas in the state of Alaska because of its sparse population. Special methods of defining segments are used in these areas of the Alaskan sample.

4. Periodic Data Collection Cycle

Collection of CPS data on a monthly basis is mandated in Paragraph 2 of Title 29, United States Code. Less frequent collection would place the Bureau of Labor Statistics, which is the cosponsor of the CPS, in violation of this code.

5. Nonresponse in CPS

If a respondent is reluctant to participate in CPS, the interviewer immediately informs the regional office staff. The region office sends a follow-up letter to the household explaining CPS in greater detail and urging cooperation. The interviewer then recontacts the household and attempts the interview again. If this procedure fails, a Supervisory Field Representative then contacts the household in an attempt to convert the reluctant respondent. Methods used to interview reluctant households include conducting telephone or personal interviews with the household, if so requested, and interviewing a designated individual within the household. The CPS estimation procedure adjusts for nonresponse in its noninterview adjustment section. This procedure is detailed in Paragraph 2.a. above. Individual item nonresponse is allocated using a procedure in which the mission data are assigned from individuals whose data are complete and have similar characteristics. The CPS noninterview rates range between 4–5 percent monthly.

Accuracy of the CPS data is maintained through interviewer training and monthly home studies, monitoring of error and noninterview rates, and systematic reinterviewing of CPS households. Each month one-sixth of all CPS enumerators have a third of their assignments reinterviewed. Errors uncovered during the reinterview are discussed with the original interviewer and remedial action taken.

6. Methodological Testing

The basic CPS program is not used as a vehicle for testing procedures or methods. There is, however, an extensive program of testing already conducted and currently underway on CPS methods, procedures, and content. This program, the Methods Development Survey (MDS), and its predecessor, the Methods Test Panel (MTP), has been underway since May 1978 and is continuing at this time.

Currently, the MDS is testing the use of Computer Assisted Telephone Interviewing (CATI). There have been two distinct phases thus far. The first was designed to identify and resolve operational problems associated with the use of CATI. The second, which is ongoing, will measure differences in labor force estimates produced by the regular CPS methodology and the CATI procedures, and will measure differences in data quality between these two methodologies.

7. CPS Statistical Contacts

Individuals consulted on the statistical aspects of CPS are Messrs. Preston J. Waite (763–2872), Gary Shapiro (763–2874), Larry Cahoon (763–5855), and Paul Bettin (763–2851), of the Statistical Methods Division, Bureau of the Census. Messrs. Thomas Walsh (763–2776), Gregory Russell (763–2782), and Ms. Kathleen Creighton (763–2773), Demographic Surveys Division, Bureau of the Census, have responsibility for data collection and processing. Messrs. Thomas Plewes (523–1180) and John Bregger (523–1944), Bureau of Labor Statistics, are responsible for data analysis.

Attachment C—Source and Reliability of the August 1988 CPS Supplement on Health Insurance Coverage

Source of Data

The estimates for this survey come from the August 1988 Current Population Survey (CPS) and from supplementary questions to the CPS. The monthly CPS, conducted by the Bureau of the Census, deals mainly with labor force data for the civilian noninstitutional population. Census Bureau interviewers ask questions relating to labor force particiaption about each member in every sample household. In addition, in August 1988, the interviewers asked additional questions about health insurance coverage for persons 40 years old and older.

CPS Design. The CPS sample, selected from the 1980 Decennial Census, represents all 50 states and the District of Columbia. The Census Bureau continually updates the sample to reflect new construction. The sample households are in 729 sample areas which include 1973 counties and equivalent areas. About 56,100 occupied households were eligible for interview. For about 2,500 of these households, interviewers did not obtain interviews because they were unable to find the occupants at home after repeated calls or for some other reason.

CPS Estimation Procedure. The procedure to calculate estimates for this survey involves the inflation of the weighted sample results to independent estimates of the total civilian noninstitutional population of the United States by age, race, sex and Hispanic/non-Hispanic categories. These independent estimates are based on statistics from the decennial censuses of population; statistics on births, deaths,

immigration and emigration; and statistics on the size of the Armed Forces.

Supplement Estimation Procedure. In addition to the CPS estimation procedure, the health insurance coverage supplement requires two additional weighting steps. First, the weights for all interviewed households are adjusted to account for occupied sample households that responded to the CPS, but not to the supplement questionnaire. Second, ratio estimation brings labor force estimates from the supplement into agreement as closely as possible with the August labor force estimates from the basic CPS.

Reliability of the Estimates

Since CPS estimates come from a sample, they may differ somewhat from figures from a complete census using the same questionnaires, instructions, and enumerators. Two types of errors are possible in an estimate based on a sample survey, sampling and nonsampling. The accuracy of a survey result depends on both types. Exercise particular care in the interpretation of figures based on a relatively small number of cases or on small differences between estimates, because the full extent of the nonsampling error is unknown.

Nonsampling Variability. Nonsampling errors can be attributed to many sources, e.g., inability to obtain information about all cases in the sample, definitional difficulties, differences in the interpretation of questions, inability or unwillingness on the part of respondents to provide correct information, inability to recall information, errors made in data collection such as in recording or coding the data, errors made in processing the data, errors made in estimating values for mising data, and failure to represent all units with the sample (undercoverage).

CPS undercoverage results from missed housing units and missed persons within sample households. Overall undercoverage, compared to the level of the 1980 Decennial Census, is about 7 percent. CPS undecoverage varies with age, sex, and race. Generally, undercoverage is larger for males than for females and larger for Black and other races combined than for Whites. Ratio estimation to independent population controls, as described previously, partially corrects for the bias due to survey undercoverage. However, biases exist in the estimates to the extent that missed persons in missed households or missed persons in interviewed households have different characteristics from those of interviewed persons in the same age-sex-race-Hispanic group. Furthermore, the Census Bureau does not adjust the independent population controls for undecoverage in the 1980 census.

For additional information on nonsampling error including the possible impact on CPS data when known, refer to Statistical Policy Working Paper 3, *An Error Profile: Employment as Measured by the Current Population Survey*, Office of Federal Statistical Policy and Standards, U.S. Department of Commerce, 1978 and Technical Paper 40, *The Current Population Survey: Design and Methodology*, Bureau of the Census, U.S. Department of Commerce.

Sampling Variability. Sampling variability is variation that occurred by chance because a sample rather than the entire population was surveyed. The standard errors given in the following tables are measures of sampling variability.

Although standard errors are the accepted measure of sampling variability, these standard errors also include the effect of some nonsampling errors in responses and enumeration but do not meaure any systematic biases in the data. (Bias is the difference, averaged over all possible samples, between the estimate and the desired value.)

BILLING CODE 4510-29-M

Standard errors are used to determine the reliability of survey estimates and to evaluate the statistical validity of conclusions made about the data.

Confidence interval estimation and hypothesis testing are both procedures that use standard errors to test for statistical validity. The confidence interval is a range about the sample estimate constructed so that, if the survey were to be repeated a large number of times under the same general conditions, the confidence intervals would include the average result of all possible samples with a known probability. For example, if one were to construct an interval from 1.6 standard errors below the estimate to 1.6 standard errors above the estimate, about 90 percent of these intervals would include the average result of all possible samples. Although a particular interval computed for an actual estimate may not contain the average result, one can reason with 90 percent confidence that it does contain the average result.

Hypothesis testing is a procedure for distinguishing between population parameters using sample estimates. One common type of hypothesis is that population parameters are different.

Tests may be performed at various levels of significance, where the level of significance is the probability of concluding that the parameters are different when, in fact, they are the same. To conclude that two parameters are different at the 10 percent level of significance, for example, the absolute value of the difference must be greater than 1.6 times the standard error of the difference. Of course, sometimes this conclusion will be wrong. When the characteristics are, in fact, the same, there is a 10 percent chance of concluding that they are different. The Census Bureau uses as standard statistical testing criteria 90 percent confidence intervals and 10 percent significance level hypothesis tests. Consult standard statistical textbooks for alternative criteria.

Note When Using Small Estimates. **Because of the large standard errors involved, there is little chance that summary measures (such as medians and percentage distributions) would reveal useful information when computed on a base smaller than 75,000.**

Also, even a small amount of nonsampling error can distort a seemingly valid hypothesis test of a borderline difference. Exercise caution in the interpretation of such small differences.

Standard Errors and Their Use. **To derive, at a moderate cost, standard errors that would apply to many estimates, a number of approximations were required. Generalized sets**

of standard errors are provided for various types of characteristics in the tables. The sets of standard errors give an indication of the order of magnitude of the standard error of an estimate rather than the precise standard error. The figures presented in Tables A-2 thru A-4 are approximations to the standard errors of various estimates for persons. Use linear interpolation to obtain standard errors for intermediate values not shown in the tables.

Two parameters, a and b, are used to calculate standard errors for each type of characteristic. These parameters, shown in Table A-1, were used to calculate the standard errors in Tables A-2 thru A-4. They may also be used directly to calculate the standard errors for estimated numbers and percentages.

Standard Errors of Estimated Numbers. There are two methods for obtaining the approximate standard error, s_x, of an estimated number. The first method involves interpolation of the standard errors in Table A-2. The second method uses formula (1) from which the standard errors in Table A-2 were calculated. This formula gives more accurate standard errors than those found in Table A-1.

$$s_x = \sqrt{ax^2 + bx} \qquad (1)$$

Here x is the size of the estimate and a and b are the parameters in Table A-1 associated with the particular characteristic.

Illustration of the Computation of the Standard Error of an Estimated Number. Suppose of the Black population who were 40 years old or older in August of 1988, 6,780,000 were covered by insurance other than Medicaid. From Table A-1 the appropriate parameters are a = 0.000234 and b = 2,397. Using formula (1), the approximate standard error of an estimate of 6,780,000 is

$$s_x = \sqrt{0.000234\ (6{,}780{,}000)^2 + 2{,}397\ (6{,}780{,}000)}$$

$$= 164{,}000 \text{ (rounded to the nearest thousand).}$$

Alternatively, by linear interpolation in Table A-2, the standard error on 6,780,000 is 164,000.

Using the 164,000 estimate of standard error, the 90 percent confidence interval as shown by the data is from 6,518,000 to 7,042,000, i.e. 6,780,000 ± (1.6)(164,000). Therefore, a conclusion that the average estimate derived from all possible samples lies within a range computed in this way would be correct for roughly 90 percent of all possible samples.

Standard Errors of Estimated Percentages. The reliability of an estimated percentage, computed using sample data for both numerator and denominator, depends upon the size of the percentage and the size its base. Estimated percentages are relatively more reliable than the corresponding estimates of the numerators of the percentages, particularly if the percentages are 50 percent or more. When the numerator and denominator of the percentage are in different categories, use the factors or parameters from Table A-1 for the numerator.

One method of obtaining the approximate standard error, $s_{x,p}$, of an estimated percentage is by interpolation in Table A-3 and Table A-4.

An alternate method uses the following formula from which the standard errors in Table A-3 and Table A-4 were calculated. This formula will give more accurate standard errors than those in Table A-3 and Table A-4.

$$s_{x,p} = \sqrt{bp(100 - p)/x} \qquad (2)$$

Here x is the size of the population which is the base of the percentage, p is the percentage ($0 \leq p \leq 100$), and b is the parameter in Table A-1 associated with the particular type of characteristic in the numerator of the percentage.

Illustration of the Computation of the Standard Error of a Percentage. Suppose of the 10,997,000 Blacks who were 40 years old or older in August of 1988, 6,780,000 or 61.7 percent were covered by insurance other than Medicaid. From Table A-1, the appropriate b parameter is 2397. Using formula (2), the approximate standard error on 61.7 percent is

$$s_{x,p} = \sqrt{\frac{2{,}397}{10{,}997{,}000}(61.7)(38.3)} = 0.7$$

Alternately, by interpolation in Table A-3, the standard error on 61.7 percent is 0.7 percent. Therefore, the 90 percent confidence interval of the percentage of the Black population who were covered by insurance other than Medicaid is from 60.6 percent to 62.8 percent, i.e. 61.7 ± (1.6)(0.7).

Standard Error of a Difference. For a difference between two sample estimates, the standard error is approximately equal to

$$s_{x-y} = \sqrt{s_x^2 + s_y^2} \qquad (3)$$

where s_x and s_y are the standard errors of the estimates x and y. The estimates can be of numbers, percentages, ratios, etc. This will represent the actual standard error quite accurately for the difference between two estimates of the same characteristic in two different areas or for the

6

difference between separate and uncorrelated characteristics in the same area. If, however, there is a high positive (negative) correlation between the two characteristics, the formula will overestimate (underestimate) the true standard error.

Illustration of the Computation of the Standard Error of a Difference. Suppose that of the 10,997,000 Blacks who were 40 years old or older in August of 1988, 6,780,000 or 61.7 percent were covered by insurance other than Medicaid, and of the 79,326,000 people who are non-Black and 40 years old or older, 66,558,000 or 83.9 percent were covered by insurance other than Medicaid. Using formula (2), the standard error on 61.7 percent is 0.7 percent. Similarly, the standard error on 83.9 percent is 0.2 percent. The apparent difference between 61.7 and 83.9 percent is 22.2 percent. Using formula (3), the standard on the estimated difference of 22.2 percent is approximately

$$s_{x-y} = \sqrt{0.7^2 + 0.2^2} = 0.7$$

This means that the 90 percent confidence interval around the difference is from 21.1 to 23.3, i.e. 22.2 ± (1.6)(0.7). Since this interval does not include zero, we can conclude with 90 percent confidence that the percentage of the non-Black population who were 40 years old or older in August of 1988 that were covered by insurance other than Medicaid is greater than that of the Black population.

BILLING CODE 4510-29-C

TABLE A-1.—PARAMETERS FOR CALCULATING STANDARD ERRORS OF ESTIMATED NUMBERS AND PERCENTAGES FOR HEALTH INSURANCE COVERAGE

Characteristic	a	b
Total or White	0.000024	2,217
Black	000234	2,397
Hispanic Origin	000234	2,397

TABLE A-2.—STANDARD ERRORS OF ESTIMATED NUMBERS FOR HEALTH INSURANCE COVERAGE

[Number in thousands]

Size of estimate	Standard error	
	Total or white	Black or hispanic orgin
10	5	5
25	7	8
50	11	11
100	15	16
250	24	25
500	33	35
1,000	47	51
2,500	75	88
5,000	108	134
7,500	134	176

TABLE A-2.—STANDARD ERRORS OF ESTIMATED NUMBERS FOR HEALTH INSURANCE COVERAGE—Continued

[Number in thousands]

Size of estimate	Standard error	
	Total or white	Black or hispanic orgin
10,000	157	218
15,000	197	298
20,000	232	(X)
30,000	297	(X)
40,000	356	(X)
50,000	413	(X)
70,000	522	(X)
100,000	679	(X)

(X) Not Applicable.

TABLE A-3.—STANDARD ERRORS OF ESTIMATED PERCENTAGES FOR HEALTH INSURANCE COVERAGE

[Total or white]

Base of estimated percentage (thousands)	Estimated percentage						
	1 or 99	2 or 98	5 or 95	10 or 90	20 or 80	25 or 75	50
75	1.7	2.4	3.7	5.2	6.9	7.4	8.6
100	1.5	2.1	3.2	4.5	6.0	6.4	7.4
250	.9	1.3	2.1	2.8	3.8	4.1	4.7
500	.7	.9	1.5	2.0	2.7	2.9	3.3
1,000	.5	.7	1.0	1.4	1.9	2.0	2.4
2,500	.3	.4	.6	.9	1.2	1.3	1.5
5,000	.2	.3	.5	.6	.8	.9	1.1
7,500	.2	.2	.4	.5	.7	.7	.9
10,000	.1	.2	.3	.4	.6	.6	.7
25,000	.09	.1	.2	.3	.4	.4	.5
50,000	.07	.09	.1	.2	.3	.3	.3
100,000	.05	.07	.1	.1	.2	.2	.2

TABLE A-4.—STANDARD ERRORS OF ESTIMATED PERCENTAGES FOR HEALTH INSURANCE COVERAGE

[Black and Hispanic origin]

Base of estimated percentage (thousands)	Estimated percentage						
	1 or 99	2 or 98	5 or 95	10 or 90	20 or 80	25 or 75	50
75	1.8	2.5	3.9	5.4	7.2	7.7	8.9
100	1.5	2.2	3.4	4.6	6.2	6.7	7.7
250	1.0	1.4	2.1	2.9	3.9	4.2	4.9
500	.7	1.0	1.5	2.1	2.8	3.0	3.5
1,000	.5	.7	1.1	1.5	2.0	2.1	2.4
2,500	.3	.4	.7	.9	1.2	1.3	1.5
5,000	.2	.3	.5	.7	.9	.9	1.1
7,500	.2	.2	.4	.5	.7	.8	.9
10,000	.2	.2	.3	.5	.6	.7	.8
15,000	.1	.2	.3	.4	.5	.5	.6

[FR Doc. 89-18365 Filed 8-7-89; 8:45 am]
BILLING CODE 4510-29-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later that August 18, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to

the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 18, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 31st Day of July 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date Received	Date of Petition	Petition Number	Articles Produced
American Stratigraphic Co. (Workers)	Denver, CO	7/31/89	7/5/89	23,196	Oil & Gas.
BPS Industries (Workers)	New York, NY	7/31/89	7/14/89	23,197	Ladies' Jackets & Coats.
Baker Hughes Vetco (Workers)	Casper, WY	7/31/89	7/10/89	23,198	Oil & Gas.
Beatreme Foods, Inc. (Workers)	Beloit, WI	7/31/89	7/13/89	23,199	Foods.
C.N. Burman, Co. (Company)	Paterson, NJ	7/31/89	7/8/89	23,200	Lamps & Lighting Fixtures.
Cherco Compressors, Inc. (Company)	Longview, TX	7/31/89	7/11/89	23,201	Gas Compressors.
Control Data Corp., Grey Fox	St. Paul, MN	7/31/89	7/10/89	23,202	Integrated Circuits.
Crane Plumbing, Inc. (USA)	Alliance, OH	7/31/89	7/14/89	23,203	Plumbing Fixtures.
Depoister Drilling Co., Inc. (Workers)	Effingham, IL	7/31/89	6/26/89	23,204	Oil & Gas.
Murphy/Henenssee	Owensboro, KY	7/31/89	5/1/89	23,205	Typewriters, Etc.
Newman Crosby Steel, Inc. (USWA)	Pawtucket, RI	7/31/89	7/11/89	23,206	Steel.
Okonite Corp. (URW/IAM)	Passaic, NJ	7/31/89	7/13/89	23,207	Wire and Cable.
Robert B. Britton Oil Properties (Workers).	Olney, IL	7/31/89	7/12/89	23,208	Oil & Gas.
S&J Operating Co. (Workers)	Wichita Falls, TX	7/31/89	7/12/89	23,209	Oil & Gas.
Shadyside Stamping Corp. (Company)	Shadyside, OH	7/31/89	7/13/89	23,210	Sheet Metal Stamping.
Wrangler (Workers)	Tishomingo, MI	7/31/89	7/14/89	23,211	Jeans.

[FR Doc. 89-18503 Filed 8-7-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,630]

Imprimis Technology, Inc., Bloomington, MN; Negative Determination Regarding Application for Reconsideration

A former worker requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance. The initial petition was filed by workers on behalf of workers at Thin Film Head Machining Department at Imprimis Technology, Inc., Bloomington, Minnesota. The denial notice was signed on May 12, 1989 and published in the **Federal Register** on June 23, 1989 (54 FR 26444).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers at Bloomington produce disc drives and their components. The Department's negative determination did not address the issue of the components for disc drives.

The former worker is appealing the Department's negative determination on the basis that the Thin Film Head Machining Department is an appropriate subdivision at Bloomington. It is also stated that the opening of a Malaysian thin film head plant in October, 1988 and an agreement with China to assemble and test thin film heads was the basis for worker applications.

Investigation findings show that thin film heads were not marketed as a single product but were incorporated into the production of the new Sabre drive. Thin film head production at Bloomington increased in quantity and value in 1988 compared to 1987 and in 1989 compared to 1988. Investigation findings also show that the Malaysian thin film head production was primarily for the Oriental market. The Bloomington plant did not import thin film heads during the applicable period of the investigation.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, August 1, 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-18504 Filed 8-7-89; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 89-60; Exemption Application No. D-7947 et al.]

Grant of Individual Exemptions; Advest Group, Inc. Incentive Savings Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Advest Group, Inc. Incentive Savings Plan (the Plan) Located in Hartford, CT

[Prohibited Transaction Exemption 89-60; Exemption Application No. D-7947]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the proposed purchase or sale of zero-coupon obligations based on Treasury securities (STRIPS)[1] between individually-directed accounts in the Plan and Advest, Inc. (AI), the trustee, Plan administrator and sponsor of the Plan, provided the following conditions are met: (a) the purchase or sale of the STRIPS will be on terms at least as favorable as those offered in the ordinary course of business to unrelated customers of AI; (b) purchases or sales will be made only upon the written direction of a Plan participant; and (c) purchases or sales directed by a participant will be only for the participant's individual account.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 14, 1989 at 54 FR 25363.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Dalton Foundries, Inc. Employee Stock Ownership Plan (the Plan) Located in Fort Wayne, Indiana

[Prohibited Transaction Exemption 89-61; Exemption Application No. D-7757]

Exemption

The restrictions of section 406(a) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the sale for cash by the Plan of certain units in a limited investment partnership (the Partnership Units) to the Dalton Foundries, Inc. Pension Plan (the Pension Plan), a party in interest with respect to the Plan by reason of the Plan's ownership of more than 50 percent of Dalton Foundries, Inc., sponsor of the Pension Plan, provided that the price paid is the fair market value of the Partnership Units on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 14, 1989 at 54 FR 25360.

Written Comment: The Department received one written comment regarding the notice of proposed exemption in which the commentator expressed approval of the proposed exemption.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Marlin D. Grant Individual Retirement Account (the IRA) Located in Bloomington, Minnesota

[Prohibited Transaction Exemption 89-62; Exemption Application No. D-7865]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed purchase by the IRA of a contract for deed from Marvin H. Anderson Construction Company, a disqualified person with respect to the IRA, provided that the IRA pays the lesser of $64,412.00 or the fair market value of the Contract at the time of the sale.[2]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 22, 1989 at 54 FR 26272.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

International Chemical Workers Union Employees Retirement Plan (the Plan) Located in Akron, Ohio

[Prohibited Transaction Exemption 89-63; Exemption Application No. D-7733]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan of $500,000 (the Loan) by the Plan to the International Chemical Workers Union (ICWU), the Plan sponsor, and to the ICWU Building Corporation (ICWUBC), a non-profit corporation wholly owned by ICWU, under the terms and conditions described in the notice of proposed exemption, provided that such terms and conditions are not less favorable to the Plan than those obtainable by the Plan in an arm's-length transaction with an unrelated party.

Written comment: The Department received one comment from a participant of the Plan, in which the participant questioned what would happen to the Plan if the ICWU and ICWUBC defaulted on the Loan. The applicant responded that the Loan is secured by a first mortgage on real property appraised at $3,500,000 which is greatly in excess of the amount of the Loan. The applicant represents that the real property adequately secures the Loan. In addition, the applicant notes that National Associates, Inc., in its capacity as independent fiduciary of the Plan, has been granted full authority to take whatever action is necessary, including foreclosure of the real estate, in order to enforce the Loan obligation.

[1] The STRIPS program was announced by the Department of the Treasury on February 15, 1985, to facilitate Separate Trading of Registered Interest and Principal Securities.

[2] Because the IRA meets the conditions described in 29 CFR 2510.3-2(d), there is no jurisdiction under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

After consideration of the entire record, the Department has determined to grant the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 24, 1989 at 54 FR 22501.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Mark K. Kim, P.A. Restated Retirement Income Plan and Trust and Mark K. Kim. P.A. Restated Money Purchase Pension Plan and Trust (MP Plan; Collectively, the Plans) Located in Excelsior, Minnesota

[Prohibited Transaction Exemption 89-64; Exemption Application Nos. D-7531 and D-7532]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale to the MP Plan of up to 720 acres of real property (the Acreage) by the Kim Farms Partnership (the Partnership), a party in interest with respect to the MP Plan; provided that the terms and conditions of the transaction are no less favorable to the MP Plan than those obtainable in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption (the Notice) published on January 19, 1989 at 54 FR 2241.

Written comments. The Department received one comment from the applicant and no requests for a hearing. The applicant initially requested exemptive relief for the Plans' purchase of 920 acres of farm land (the Property) from the Partnership. Ownership of the Property was to be allocated to each Plan in direct proportion to the amount of each Plan's assets, provided that neither plan expend more than 25 percent of its assets to purchase the Property.

The applicant has requested the following modifications to the original exemption request as published in the Notice: (1) The exemption be limited solely to the MP Plan; and (2) the MP Plan be allowed to purchase for a cash price of $246,400 for up to only 720 acres of the Property from the Partnership, provided the purchase price does not exceed 25% of the applicant's separate account therein. The purchase price for the acreage is based on an appraisal performed on May 5, 1989 by Mr. Jack E. Maxwell, SRPA, of Maxwell Appraisal Company.

After consideration of the entire record, including the fact that only the applicant's assets in the MP Plan will be affected by the proposed transaction, the Department has determined to grant the exemption subject to the above modifications.

FOR FURTHER INFORMATION CONTACT: Mrs. B.S. Scott of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Joseph K. Newsom, M.D., P.A. Money Purchase Pension Plan and Trust (the Plan) Located in Cheraw, South Carolina

[Prohibited Transaction Exemption 89-65; Exemption Application No. D-7844]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting for the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of a parcel of real property (the Property) from the Plan to Joseph K. Newsom, a party in interest with respect to the Plan, provided the Plan receives no less than the greater of $203,000 or fair market value for the Property at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 26, 1989, at 54 FR 18045.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Pan American World Airways, Inc. Cooperative Retirement Income Plan; Pan American World Airways, Inc. Defined Benefit Plan for Flight Engineers; Pan American World Airways, Inc. Non-Contract Employees' Pension Plan; Pan American World Airways, Inc. Mechanical Stores and Related Employees' Pension Plan; and Pan American World Airways, Inc. Clerical, Office, and Station Employees' Pension Plan (collectively, the Plans) Located in New York, New York

[Prohibited Transaction Exemption 89-66; Exemption Application Nos. D-7433 and D-7444 through D-7447]

Exemption

The restrictions of section 406(a) and 406(b) (1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, to: (1) The purchase by the Plans from Pan American World Airways, Inc. (Airways) of a portion of a leasehold interest (the Leasehold) in the "Worldport" airline passenger terminal (the Terminal) and the land underlying the Terminal located at John F. Kennedy International Airport (JFK); (2) the contribution in kind to the Plans by Airways of the remaining balance of the interest in the Leasehold after reduction for that portion of the Leasehold sold to the Plans by Airways; and (3) the sublease (the Sublease) of the Leasehold by the Plans to Airways for the duration of the remaining term of the Leasehold at a monthly rental rate; provided that the terms of the transactions are not less favorable to the Plans than those negotiated at arm's length in similar circumstances between unrelated third parties; and provided further that an independent fiduciary, among other things, reviews, monitors, and approves the transactions.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 9, 1989, at 54 FR 707 (the Notice of Pendency).

Procedural Background and Comments

In the Notice of Pendency, the Department invited interested persons to submit written comments and any requests for a hearing on the exemption within forty-five (45) days of the date of publication in the **Federal Register**. Airways represented that a written copy of the Notice of Pendency was mailed to all interested persons within fifteen (15) days after the publication of the proposed exemption in the Federal Register. The Department received 276 letters from interested persons commenting on the transactions. A number of the comments received by the Department supported adoption of the exemption. Other commentators opposed the exemption and raised questions and concerns regarding the proposed transactions. The specific concerns expressed related to, among other things: (a) The lack of diversification and liquidity of the assets of the Plans; (b) the valuation of the Leasehold; (c) the effect of the transactions on the Plans in the event that Airways files for bankruptcy; (d) the proposed sale by Airways of a portion of the Leasehold to the Plans in return for cash; and (e) the adequacy of the proposed safeguards which are intended to protect the Plans' interests.

In addition to the above comments received from interested persons, Airways pointed out a number of technical corrections to the Notice of Pendency and changes in facts since its publication. The Department also received a letter from Bear Stearns Fiduciary Services, Inc. (Fiduciary Services), the independent fiduciary with respect to the Plans, clarifying certain representations which were attributed to Fiduciary Services in the Notice of Pendency. The attached Appendix delineates certain comments and clarifications received from Airways and Fiduciary Services. Their remaining comments, as well as all other comments received by the Department, are contained in the public record of the exemption applications.

In response to requests from interested persons that a hearing be held on the proposed exemption, the Department published a Notice of Hearing (54 FR 11307) on March 17, 1989. In this regard, Airways represented that no later than March 31, 1989, it provided notice to interested persons of the hearing. The hearing on the proposed exemption was held on May 1, and May 2, 1989, in Washington, DC. Those testifying at the hearing included Airways, Fiduciary Services, current and former employees from Certified Engineering and Testing Company, representatives from four international unions and several local unions, two associations of retirees, and a number of individuals.[3]

Hearing Testimony

At the hearing, representatives of Airways testified, among other things, that the transactions will create a source of cash income for the Plans at a high rate of return. In addition, the unfunded benefit liability for the Plans is projected to be lower throughout the term of the Leasehold if the transactions are completed. Airways' representatives also stated that the magnitude of the required minimum funding obligation for the plan years 1988 and 1988 exceeds its current cash balances and that absent the granting of the exemption Airways would be unable to make the required cash contributions for either of those years.[4]

Fiduciary Services testified that its approval of the transactions was based, in part, upon the pre-funding element of approximately $53 million, as of May 1, 1989, the date of the hearing, that the Plans will receive sooner than if the transactions were not consummated. In addition, Fiduciary Services stated that the transactions are protective of the rights of the Plans' participants and beneficiaries because: (a) The Sublease is a triple net lease under which all costs of care and maintenance, repair, taxes, insurance, and rent will be borne by the sublessee, Airways; (b) the transactions have been approved and will be effected and monitored by an independent trustee, Mellon Bank, and by Fiduciary Services, acting on behalf of the Plans, as independent fiduciary; (c) the Leasehold has been valued, as of June 15, 1989, at $167.9 million by an independent appraiser using all three major valuation techniques; and (d) such appraisal has been reviewed and analyzed by Fiduciary Services.

Further, Fiduciary Services represented that one of its tasks as fiduciary would be a determination at the time of closing on the transactions of an appropriate discount rate for valuing the Leasehold and for arriving at a base monthly rental. Such a discount rate would represent the rate of return to the Plans and would be composed of the applicable risk-free rate and a premium above that rate to compensate the Plans for, among other things: (a) The risk of a possible determination by a bankruptcy court, in the event of the failure of Airways, that the transactions are deemed to be a secured financing; (b) the risk associated with Airways' financial condition; (c) possible lost or delayed revenues; and (d) the reduced marketability and diversification of the assets of the Plans. As of the date of the hearing and assuming a closing of June 15, 1989, Fiduciary Services represented that the appropriate discount rate for the transactions was 14.5%. This discount rate represented a combination of the risk-free rate of 9% (i.e. the rate on government bonds of similar maturity to the Leasehold), and a premium to the Plans of 5.5%.[5] The discount rate used for valuing the Leasehold and for arriving at a base monthly rental will not fluctuate after the transaction closes, but will remain fixed for the entire remaining term.

Fiduciary Services also stated that the rate premium, the cash flow pattern of the investment, the ability to re-let in the event of an Airways' default, the ongoing involvement of an independent fiduciary, and the risk to the Plans if the transactions were not effected, were all taken into consideration in its analysis. In summary, Fiduciary Services' conclusion was that the transactions are in the interest of the Plans and their participants and beneficiaries, protective of the rights of the Plans, and administratively feasible.

On June 20, 1989, the Department requested information from the Port Authority of New York and New Jersey (the Port Authority) regarding the Port Authority's role with respect to the transactions, the impact of the JFK 2000 Redevelopment Project on the Leasehold, and the Port Authority's views regarding the future viability of the Leasehold. In a letter to the Department, dated June 27, 1989, a representative of the Port Authority indicated that the Port Authority's actions involving any leasehold interest in the airport, including actions taken with respect to the Leasehold, would be guided by the Port Authority's responsibility to act in the public interest in the management of a very important transportation resource. The Port Authority also noted that in view of current demands for space at JFK by airlines, it would be in the public interest that the Port Authority make every effort to see that all existing facilities be utilized to the fullest extent possible. In addition, the Port Authority noted that it would do everything practical to assist Airways in remaining a viable provider of airline service.

Findings and Analysis

Central to the Department's deliberation regarding this exemption has been the uncertainty regarding the future of Airways and the affect on the Plans of an Airways failure if the transactions were consummated. As a result, the Department has carefully analyzed the exemption record, including the record of the public hearing, the written comments submitted by interested persons, and the analysis conducted by the independent fiduciary. In this regard, because of the concerns raised in written comments and at the hearing, Airways has agreed to an added condition of the grant of the exemption which was not contained in

---

[3] At the conclusion of the hearing, the Department announced that the record would remain open until the close of business on the tenth working day following the receipt from the applicant of the revised sublease agreement. The revised sublease agreement was received on May 17, 1989, and the ten day period closed on June 1, 1989.

[4] Airways informed the Department by letter, dated May 31, 1989, that the required minimum funding obligation for the 1987 plan year was met by a cash contribution of some $36.1 million and the reopening of the 1983 funding waiver in the amount of $29.5 million. This $65.6 million figure represents the maximum purchase price to be paid by the Plans for the proposed Leasehold interest.

[5] By letter dated July 27, 1989, Fiduciary Services is of the opinion that, assuming the transactions close in the near future, a premium of less than 5.5% would not be fair and reasonable.

the Notice of Pendency. Under this new condition, Airways, throughout the term of the Leasehold, would pay rent two months in advance such that in any month the Plans would be in receipt of the rent for the current month, plus the present value of the rent for the next succeeding two months.[6] The Department believes that such a rental advance will, in addition to the proposed safeguards and conditions already in place, serve as an additional protection of the financial interests of the Plans.

Finally, the Department has, in transactions of this nature, placed emphasis on the need for an independent fiduciary and on such independent fiduciary's considered and objective evaluation of the proposed transactions. In its deliberations, including its analysis of all aspects of risk associated with the transactions, Fiduciary Services has consistently represented for the record that the proposed transactions are in the interest of the Plans.

Accordingly, after careful consideration of the exemption applications, the record of the public hearing, the comments submitted by interested persons, and a review of the analysis of the transactions by Fiduciary Services, the Department has decided to grant the proposed exemption.

The complete application files, including all supplemental submissions received by the Department, were made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5507, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Appendix

The following represent certain comments and clarifications submitted to the Department by Airways and Fiduciary Services subsequent to the publication of the Notice of Pendency:

(1) The entire Leasehold, not just the Terminal, will be the subject of the Sublease between Airways and the Plans. The remaining balance of the interest in the Leasehold after reduction for that portion of the Leasehold sold to the Plans, rather than the value of the Leasehold, will be contributed in kind to the Plans;

(2) The security interest which the Pension Benefit Guaranty Corporation held on behalf of the Plans in the stock of Pan Am World Services, Inc., was released on May 31, 1989, to permit the sale of that stock to an unrelated purchaser. Substitute security interests were granted in certain aircraft and jet engines owned by Airways and the stock of Pan Am Express, Inc., a wholly owned subsidiary of Airways' parent, which together have a value in excess of the unamortized balance of the 1986 plan year funding waiver;

(3) To the extent the value of the Leasehold exceeds Airways' 1986 and 1987 plan year funding obligations, any overage will either be contributed for the 1988 plan year due by September 15, 1989, or applied first to quarterly installments of the 1989 plan year with any balance then applied in satisfaction of the 1988 plan year funding obligation;

(4) At the closing on the transactions, the Port Authority will not execute the Assignment of the Leasehold, as that document evidences a transaction between Airways and the Plans. The Port Authority will, instead, manifest its approval of the transactions by executing the Acknowledgment and Consent to Assignment and Sublease (the Consent);

(5) The books and records associated with the interests of the Plans in the Leasehold and the income stream flowing therefrom will be maintained by the trustee of the Plans;

(6) Under the Use or Lose Provisions of the Consent, Airways or its successor may be required to enter into a sub-sublease, but it is the Port Authority that has the obligation to find sub-subtenants for the Leasehold; and

(7) Fiduciary Services submits that applicable law is not definitive in certain respects as to the requirements for properly recording the transactional documents, however, it will take all steps which, based on extensive legal analysis, are deemed reasonable to properly record such documents in accordance with state and local law.

All comments and corrections submitted to the Department by Airways and Fiduciary Services are included as part of the public record of the exemption applications, which is available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5507, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department telephone (202) 523–8883. (This is not a toll-free number.)

Pennfield Precision, Inc., Profit Sharing Plan (the Plan) Located in Sellersville, PA

[Prohibited Transaction Exemption 89–67; Exemption Application No. D–7917]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan of certain unimproved real property (the Property), for the total cash consideration of $70,000, to the John F. Matczak and Carl F. Tate General Partnership (the Partnership), a party in interest with respect to the Plan, provided the amount paid by the Partnership for the Property is not less than fair market value at the time transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 26, 1989 at 54 FR 18049.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Service Employees Retirement and Pension Fund, Local 32E, AFL–CIO (the Plan) Located in New York, New York

[Prohibited Transaction Exemption 89–68; Exemption Application No. D–7849]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan to the N.Y.C. Building Maintenance Institute, Inc.—Bronx Center (BMI) of a school building (the Building) for $500,000 in cash, and the proposed sale of an adjacent parking lot (the Parking Lot) by the Plan to BMI for $56,685.67 in cash, provided such amounts are not less than the fair market values of the Building and the Parking Lot on the date of the sales.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 24, 1989 at 54 FR 22501.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Southern California Floor Covering Pension Trust Fund (the Plan) Located in Pasadena, California

[Prohibited Transaction Exemption 89–69; Exemption Application No. D–7738]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of a parcel of improved real property (the Property) by the Plan to Sanwa Bank California, a party in interest with respect to the Plan, provided the Plan recieves the greater of $660,000 or the fair market value for the Property at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 20, 1989, at 54 FR 16021.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed At Washington, DC, this 3rd day of August, 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89–18522 Filed 8–7–89; 8:45 am]

BILLING CODE 4510–29–M

[6] Fiduciary Services, as independent fiduciary, is responsible for setting the appropriate discount rate to reflect the one-month and two-month prepayments of fixed dollars obligations. In this regard, Fiduciary Services has determined to use as the discount rate for calculating the present value of each advance rental payment the coupon equivalent on 13-week treasury bills, as established at the most recent applicable auction, as determined and re-adjusted on a quarterly basis.

[Application No. D–7931] et al.

Proposed Exemptions; Westchester Teamsters Pension Fund, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested person are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Westchester Teamsters Pension Fund (the Plan) Located in Elmsford, New York

[Application No. D–7931]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1, (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the proposed purchase by the Plan from Local 456 Holding Corp. (the Corp.), a corporation owned by members of Teamsters and Chauffeurs Local 456 (the Local), of approximately three acres of undeveloped land (the Land), provided the purchase price is not more than the fair market value of the Land on the date of the purchase, and (2) the extension of credit by the

Corp. to the Plan for up to 90 days after the closing date of the purchase pursuant to a non-interest bearing note in the amount of half of the purchase price, provided the terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a multiemployer defined-benefit pension plan with approximately 1700 active and 800 retired participants and total assets of approximately $84 million as of December 31, 1988. The Plan was established and has operated under a series of collective bargaining agreements negotiated between the Local, which is affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the Construction Industry Council together with its component associations (the Association). The Association is composed primarily of road and heavy construction companies located and operating in Westchester and Putnam Counties, New York. Employees of other companies having collective bargaining agreements with the Local requiring contributions to the Plan are also covered by the Plan. The Local represents primarily drivers, warehousemen, and servicemen of contributing employers.

2. The Plan has eight trustees: four were appointed by the Local; three, by the Association; and one, by the Grand Union Company, a contributing employer. The Plan's assets are under the management of a professional money manager and the Connecticut General Life Insurance Company (CIGNA). The Plan's assets are invested in cash, corporate and government bonds, preferred and common stock of publicly held corporations, and a CIGNA group annuity contract providing a guaranteed interest rate and covering pensioners who participated in the Plan before it became self insured. The Plan has no real estate investment assets at the present time. It is represented that the Plan trustees have extensive background in real estate development in Westchester and Putnam Counties, New York, that they have determined that the Plan should diversify its assets and have, accordingly, authorized the investment of no more than 10% of the Plan's assets in real estate development.

3. The Corp. is a non-profit New York corporation owned by the members of the Local. It serves as the Local's property holding entity and is comprised of the members of the Local. Corp. officers are the same Local officers elected by the Local membership. The stock of the Corp. has no par value and is not issued. The membership of the Local manifests its control of the Corp. through the election of Corp. officers.

4. The firm of Howard Lieberman, Consulting Engineer, has agreed to serve as an independent fiduciary to the Plan with respect to the proposed transaction. Mr. Howard S. Lieberman (Mr. Lieberman) is a licensed professional engineeer in the States of New York, New Jersey, Connecticut, Massachusetts, and the District of Columbia. He represents that he has been engaged in the business of engineering since 1954, including, since 1959, private practice in civil and structural engineering with emphasis on matters relating to design and construction of buildings and subdivision improvements (roads, sewers, septic systems, storm drains, individual water systems, extension of public water supply) including preparation of design drawings, specifications, and budgets for new construction, alterations and additions, construction supervision, review of bids and payment requests, and building and construction inspections. He was named Engineer of the Year in 1987 by the National Society of Professional Engineers, and he served as president of the Westchester County chapter of that Society from 1984–5.

Mr. Lieberman states that he and his firm are not involved at present and have not been involved in the past with any individual or organization that is a party in interest to the Plan, including but not limited to the Corp., the Local, the Association, or any employer of Plan participants except for six employers (the Six Employers), namely, Conlin Supply Company, Village of Dobbs Ferry, Nelstad Materials, Village of Scarsdale, Vernon Hills Landscaping, and Yonkers Municipal Housing Authority. The applicant represents that three of the Six Employers, namely—Village of Dobbs Ferry, Village of Scarsdale, and Yonkers Municipal Housing Authority (collectively, the Municipal Employers), are municipal employers which are not parties in interest with respect to the Plan and that Mr. Lieberman's representation to the contrary is incorrect. The applicant explains that the Municipal Employers do employ members of the Local but that these members do not participate in the Plan; accordingly, the Municipal Employers do not contribute to the Plan but maintain their own employee pension plans. The other three of the Six Employers, namely—Conlin Supply Company, Nelstead Materials Corporation, and Vernon Hills Landscaping, contributed $4,353.60, $40,297.73, and $4,790.40, respectively, to the Plan for 1988, representing .1277%, 1.1823%, and .1405%, respectively, of the $3,408,386.94 contributed to the Plan by all employers of Plan participants for 1988. The applicant represents that none of the Six Employers have any interest in purchasing or leasing any of the buildings or building space to be constructed on the Land (see item 8, below).

5. The Land, a three-acre parcel of unimproved land, is located behind the Local building at 160 S. Central Avenue, Elmsford, New York, on Route 9A and is zoned for commercial use. The Plan trustees have commissioned an appraisal of the Land by the Albert Appraisal Company Inc., and independent company with no relationship to the Plan or any party in interest to the Plan, according to the applicant. The appraisers, Eugene Albert, MAI, SREA, CMI, and William Ceccolini, Staff Appraiser, certify that they have no present or prospective interest in the Land and no personal interest or bias with respect to the parties involved, and that their analyses, opinions, and conclusions regarding the appraisal of the Land were developed and reported in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the American Institute of Real Estate Appraisers. Mr. Albert, a member of said Institute, has over 35 years experience as a real estate analyst, appraiser, and consultant and, from 1972–82, served as Adjunct Associate Professor of Real Estate at Pace University. Mr. Ceccolini, a licensed real estate broker in New York State, a member of the New York State Society of Real Estate Appraisers, and a candidate for membership in the American Institute of Real Estate Appraisers, has over 15 years experience in the real estate business, including commercial real estate appraising in Westchester County, New York.

6. The above-mentioned appraisal concludes that the market value of the land was $600,000 as of September 1, 1988, and states that even though there is an oversupply of available office space in Westchester County, from an investor's standpoint the Land could either be sold or used to construct additional office rental space. The appraised value of the Land is less than 1% of the Plan's total assets.

7. The Plan trustees wish to purchase the Land from the Corp. for a price not to exceed its fair market value as of the purchase date, said value to be determined by Mr. Lieberman. The Plan will pay the purchase price in cash: half on the closing date of the purchase and half pursuant to a non-interest bearing note payable to the Corp. within 90 days after the closing date. The Corp. will pay all closing costs and fees related to the purchase and will insure a full fee simple title to the Plan as free and clear of encumbrances.

8. Subsequent to the purchase, the Plan trustees plan to develop a series of three separate, but connecting, commercial buildings of approximately 20,000 square feet, each consisting of one floor of warehousing space and three above floors of commercial office space. The applicant states that development plans have not been finalized and will be subject to competitive bidding. Similarly, final plans have not been made regarding rental and sale of the buildings to be constructed. The applicant states that parties in interest to the Plan will not be excluded either from bidding on the development or from renting and purchasing the buildings to be constructed. subject to competitive pricing.[1] However, the applicant represents that the Local has no interest in purchasing or leasing any of the proposed buildings or building space as the Local already maintains an office building. Similarly, as mentioned above (see item 4), none of the Six Employers has any interest in purchasing or leasing any of such buildings or building space.

9. Mr. Lieberman represents that he has reviewed the above-mentioned appraisal by the Albert Appraisal Company, that he has visited the Land, and that he believes said appraisal was carefully prepared and is based on generally accepted procedures. He notes that public utilities, including water, sewer, gas, and electric are readily available to the Land, that there are no indications of any difficult or unusual drainage problems, and that the Land is located well above the elevation of the Saw Mill River and is not within the flood hazard area, as defined by the U.S. Department of Housing and Urban Development maps. Mr. Lieberman opines that the highest and best use of the Land is as the site of an office building. He advises that the zoning regulations of the Village of Elmsford permit construction of a 65,000 square foot building on a three-acre site, resulting in a land value of $9.25 per square foot of building floor area.

10. Mr. Lieberman's professional opinion is that the land should be developed utilizing three buildings each containing four stories for a total of approximately 65,000 square feet. He suggests that the buildings be constructed one at a time so that the additional office space can be absorbed into the market and so as to minimize the disturbance and inconvenience at the site. He estimates the construction cost of this development at $6 million, including approximately $2.5 million for the first building and utilities and site work serving all three buildings. Mr. Lieberman states further that based on his review of the above-mentioned appraisal, inspection of the Land, and familiarity with current conditions in Westchester County, it is his professional opinion that the construction of three additional office buildings on the Land is viable and would be profitable for the owner.

11. For the reasons stated in the two preceding paragraphs, Mr. Lieberman states that he believes that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries since it will lead to a broadening of the Plan's investment base in real estate, which has proven very successul in Westchester County, New York. He represents that the terms of the proposed transaction are no different than those of similar transactions in Westchester County between unrelated parties.

12. Mr. Lieberman explains that before forming his opinion regarding the proposed transaction, he examined the Plan's overall investment portfolio, showing that the Plan's self-insured assets are wholly invested in cash, fixed income investments, and other securities. In undertaking this examination, he examined the Plan's annual report (Form 5500) for the year ending December 31, 1987, the Plan's asset statement for the year ending December 31, 1988, and the Plan's accountant's preliminary report of the Plan's financial statements for the year ending December 31, 1988. Mr. Lieberman states that he has reviewed the Plan's liquidity reports, examined the diversification of the Plan's assets in light of the proposed transaction, and has determined that the proposed transaction complies with the Plan's investment objectives and policies to diversify Plan investments so that up to 10% of the Plan's total assets are invested in real estate development.

13. Mr. Lieberman agrees to monitor the proposed transaction throughout its duration on behalf of the Plan and to take all appropriate actions necessary to safeguard the interests of the Plan and its participants and beneficiaries. The applicant has submitted the Plan trustees' agreement naming Mr. Lieberman as a fiduciary of the Plan and expressly empowering him to direct them regarding the proposed transaction, provided that such directions are consistent with the terms of the Plan and the conditions of the Act. Mr. Lieberman states that although he has limited experience with the Act, he has consulted with counsel experienced with the Act regarding the duties, responsibilities, and liability imposed by the Act on plan fiduciaries and that he understands and acknowledges such duties, responsibilities, and liabilities in acting as a fiduciary with respect to the Plan.

14. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) An indepenent fiduciary to the Plan, Mr. Lieberman, has determined that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries; (b) said independent fiduciary will monitor the proposed transaction on behalf of the Plan and will take all appropriate actions necessary to safeguard the interests of the Plan and its participants and beneficiaries; (c) the purchase price will not exceed the Land's fair market value as of the purchase date, said value to be determined by Mr. Lieberman, the independent fiduciary; (d) Mr. Lieberman has determined that the terms of the proposed transaction are no different than those of similar transactions in Westchester County between unrelated parties; and (e) the proposed transaction will involve less than one percent of the Plan's total assets as of December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund, of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

[1] The proposed exemption provides no relief either for the development of the Land by any party in interest with respect to the Plan or for the rental or sale of the buildings to be constructed to any party in interest with respect to the Plan. Further, the Department is expressing no opinion herein as to the applicability of the exemptions provided under either section 408(b)(2) of the Act and section 4975(d)(2) of the Code to such development, or under Prohibited Transaction Exemptions 76–1 and 77–10 to such rental or sale. Similarly, the Department is expressing no opinion herein as to whether or not the proposed development of the Land or the proposed rental or sale of the buildings to be constructed thereon satisfies the fiduciary duties provided under section 404 of the Act.

Jen Productions, Inc. Restated Money Purchase Pension Plan and Trust Agreement (the Plan) Located in Nashville, Tennessee

[Application No. D-7043]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of unimproved real property (Lot 45) to Edward James Norman (Mr. Norman) and Kimberly Norman (collectively, the Normans), disqualified persons with respect to the Plan, provided that the Plan receives the greater of $165,000 or the fair market value at the time of the sale.[2]

Summary of Facts and Representations

1. The Plan, established on September 1, 1979, is a restated money purchase plan. The Plan's sole participant is Mr. Norman. As of August 31, 1988, the Plan had $333,598 in assets. The current Trustees of the Plan are the Normans (the Trustees). The sponsor of the Plan is Jen Productions, Inc., a California corporation engaged in the business of producing records. Lot 45 is a vacant unimproved property measuring one acre located in Northumberland, Davidson County, Nashville, Tennessee. It was acquired by the Plan on January 9, 1987 for $155,000 for investment purposes from Northumberland Realty Co., an unrelated party. Since its acquisition by the Plan, Lot 45 has remained unimproved and vacant and it has not produced any income. At the time of the purchase, it was anticipated that Lot 45 could be sold at a future date for a substantial profit. The applicant represents that the area is developing very slowly with no anticipation of appreciation in the value of property for some time. The Trustees are thus seeking to invest Plan's assets in instruments with a higher return.

2. The applicant proposes to sell Lot 45 to the Normans. An appraisal, dated April 17, 1989, was prepared by William R. Manier III, an independent and qualified appraiser with the William R. Manier III and Associates, real estate appraisers and consultants (the Appraisal). The Appraisal uses the direct sales comparison approach and esitmates the value of the Lot 45 to be $165,000. Also, the applicant represents that the Normans own a lot that is adjacent to Lot 45. An update to the Appraisal was done by James F. Hagan, an appraiser with William R. Manier III and Associates (the Hagan update). The Hagan update concludes that Mr. Norman's ownership of an adjacent Lot 48 does not merit a premium on the fair market value of Lot 45. The Hagan update states that the current estimate of $165,000 remains the fair market value for Lot 45.

3. The applicant represents that the transaction will be a one-time cash sale. Furthermore, the Plan will bear no costs associated with the sale. The transaction will enable the Plan to acquire liquidity for reinvestment. The fair market value of Lot 45 has been determined by a qualified, independent appraiser. The applicant will pay the greater of $165,000 or the fair market value at the time of the sale.

4. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because:

(A) The proposed sale will be a one-time cash transaction;

(B) The price paid to the Plan will be $165,000 or the fair market value at the time of the sale, whichever is greater;

(C) The Plan will pay no costs associated with the sale;

(D) The sale will provide the Plan with more liquidity for reinvestment; and

(E) Mr. Norman is the sole participant of the Plan to be affected by the transaction, and he desires that the transaction be consummated.

Notice to interested persons: Because Mr. Norman is the sole participant in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are done 30 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan at (202) 523-8194 of the Department. (This is not a toll-free number.)

Jon A. Harding, D.M.D., P.S., Employees' Amended and Restated Money Purchase Pension Plan and Trust (the Plan) Located in Spokane, Washington

[Exemption Application No. D-8030]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale for cash by the Plan of certain real property (the Real Property) to Helen M. Harding (Mrs. Harding), a party in interest with respect to the Plan, provided that the price paid be no less than the fair market value of the Real Property on the date of sale, as established by an independent and qualified appraiser of real estate.

Summary of Facts and Representations

1. The Plan is a money purchase pension plan sponsored by Jon A. Harding, D.M.D., P.S., which is engaged in the practice of dental medicine in Spokane, Washington. The trustee and administrator of the Plan is Jon A. Harding, D.M.D. (Dr. Harding). As of April 11, 1989 the Plan had five participants. As of October 31, 1988, the Plan had assets of $298,781.

2. In 1981 the Plan acquired the Real Property from unrelated parties for $17,500. The Real Property is a parcel of 1.8 acres of unimproved land on Alberta Lane in Spokane, Washington. The Plan acquired the Real Property in the hope of realizing an appreciation in the value of the Real Property.

3. Since 1981 the Real Property has remained unimproved. The Plan derives no current benefit from its ownership of the Real Property and moreover must pay property taxes on the Real Property. The applicant represents that the Spokane real estate market is depressed and that it would be difficult for the Plan to sell the Real Property at its appraised value in the near future.

4. On March 20, 1989, Kim Hemphill, ASREA, of Appraisals Unlimited, a real estate appraisal firm in Spokane, Washington, a qualified and independent appraiser, stated that the fair market value of the Real Property was $25,000.

5. Accordingly, the Plan proposes to sell the Real Property for cash at its fair market value, as established by a qualified and independent real estate appraiser, to Mrs. Harding, Dr. Harding's former wife, a party in interest with respect to the Plan.[3] The Plan will not incur any fees, taxes or transfer costs in connection with the sale of the Real Property. The applicant represents that the proposed sale of the Real Property to Mrs. Harding is unrelated to the divorce settlement between Dr. and Mrs. Harding.

6. In summary, the applicant represents that the proposed transaction will meet the statutory criteria of section 408(a) of the Act because: (a) The Real Property will be sold at its fair market value as of the date of sale as established by an independent and qualified appraiser; (b) the proposed sale represents a one-time transaction for cash, which can be readily verified; (c) the proposed sale will not involve the payment by the Plan of any fees, taxes or transfer costs; (d) the proposed sale will enable the Plan to realize a cash purchase price in the full amount of the current appraised value of the Real Property; and (e) the Plan trustee has determined that the proposed transaction would be in the best interests and protective of the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

A.C. Products Co. Defined Benefit Pension Plan (the Plan) Located in Wooster, Ohio

[Application No. D-8090]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of a parcel of improved real property (the Property) to Wayne Mullet (Mr. Mullet), a party in interest with respect to the Plan; provided that the terms of the sale are not less favorable to the Plan than similar terms negotiated at arm's length between unrelated third parties; and provided further that the sales price is not less than the fair market value of the Property on the date of the sale.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with eighteen (18) participants, as of June 1, 1989, the date the application was filed. The assets of the Plan totaled approximately $705,265 on October 31, 1988. It is represented that notice of intent to terminate the Plan was distributed to each participant of the Plan on November 10, 1988, and the Plan was terminated on January 9, 1989. The applications for approval of the termination and the proposed distribution of assets are currently being assembled for submission to the Internal Revenue Service and the Pension Benefit Guaranty Corporation.

2. Mr. Mullet serves as the trustee and administrator of the Plan and was the president of A.C. Products Co. (the Employer), the sponsor of the Plan. It is represented that Mr. Mullet owned 100 percent of the Employer either directly or through family attribution. On November 4, 1988, the Employer was liquidated through a sale of assets.

3. The Plan purchased the Property June 15, 1987, for $145,000 from Vernon M. and Ada Miller, unrelated parties with respect to the Plan. During the Plan's ownership the Property was leased to Levi D.L. Miller, also an unrelated party, for a rental amount of $4,000 annually. It is represented that rent for similar real estate in the same geographic area ranges from $40 to $60 per acre per year. The Property constitutes approximately 21 percent of the assets of the Plan.

4. The Property consists of an 82.82-acre farm, located at 5798 South Applecreek Road, Applecreek, East Union Township, Wayne County, Ohio. It is represented that Wayne County is predominately agricultural with many farms. The Property is described as irregular in shape and having frontage on the northeastern corner of Applecreek and Buss Roads. The Property includes, among other things, a farm house, consisting of 2,848 square feet and containing five bedrooms and two baths.

5. Mr. Mullet proposed to purchase the Property for the greater of $153,000 or the fair market value of the Property, as appraised by a qualified independent appraiser on the date of the sale. It is represented that the Plan will pay no expenses associated with the sale and that Mr. Mullet will pay for deed preparation, title expenses, auditors conveyance fee, recording of the deed, and any other expenses. Mr. Mullet states that neither the income generated from the Property as a working farm nor the potential appreciation in value are sufficient to make the Property a suitable investment for the Plan. In addition, Mr. Mullet represents that maintenance, costs, and taxes are depleting the assets of the Plan. By his purchasing the Property for cash, Mr. Mullet intends for the Plan to: (1) Avoid delay in locating a qualified buyer in the Wayne County area which has a slow sales activity; (2) avoid delay inherent in consummation of a sale contract which is conditioned on the buyer's securing financing; and (3) avoid unnecessary sales commissions and expenses. Further, Mr. Mullet argues that a cash sale will create a market for a non-liquid asset, increase proceeds available for distribution to all participants, and expedite the winding up of the Plan's affairs.

6. William J. Lemmon (Mr. W.J. Lemmon), MAI, with the assistance of Scott W. Lemmon (Mr. S.W. Lemmon), of William J. Lemmon and Associates, Inc., located in North Canton, Ohio, appraised the Property, as of April 13, 1989. Mr. W.J. Lemmon valued the 82.82 acres at $1,850 per acre for a total of $153,000. Mr. W.J. Lemmon did not employ the cost approach in reaching this valuation due to the age of the buildings on the Property and the difficulty in measuring the accrued depreciation. Mr. W.J. Lemmon represents that he is independent of any personal association or bias with respect to the parties involved and has no present or prospective interest in the Property. Mr. W.J. Lemmon's qualifications include 27 years experience in appraising residential, commercial, industrial, farm, and special purpose properties throughout Ohio and seven (7) other states. Mr. W.J. Lemmon is a member of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers and the National Association of Realtors. Mr. S.W. Lemmon has two (2) years of experience appraising residential properties, has successfully completed two real estate appraisers courses, and is a candidate for RM designation from the American Institute of Real Estate Appraisers.

7. In summary, Mr. Mullett represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale of the Property will be a one time transaction for cash; (b) the Plan will incur no expenses on the sale; (c) the sales price is based on the fair market appraisal prepared by a qualified independent appraiser; and (d) participants will receive timely distribution of their benefits from the cash proceeds of the sale of the Property.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523-8883 (This is not a toll-free number).

[2] Because Mr. Norman is the only participant in the Plan and the employer is wholly owned by Mr. Norman, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[3] The applicant represents that Mrs. Harding is a party in interest to the plan pursuant to section 3(14)(I) of the Act.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 3rd day of August 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-18523 Filed 8-7-89; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (General Services to the Field Section) to the National Council on the Arts will be held on August 29, 1989, from 9:00 a.m.-10:00 p.m. and August 30, 1989, from 9:00 a.m.-6:00 p.m. in Room M07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 30, 1989, from 4:00 p.m.-6:00 p.m. if time permits. The topic for discussion will be policy issues.

The remaining portion of this meeting on August 29, 1989, from 9:00 a.m.-10:00 p.m. and August 30, 1989, from 9:00 a.m.-4:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-18481 Filed 8-7-89; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences Subcommittee on Optical Infrared Astronomy Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committe for Astronomical Sciences Subcommittee on Optional/Infrared Astronomy.

Date & Time: August 29 and 30, 1989, 9:00 a.m.-5:00 p.m.

Place: The Coeur d'Alene Hotel, Cabins 1-2-3, Coeur D'Alene, Idaho.

Type of Meeting: August 29 and 30, 1989, Open.

Contact Person: Dr. G. Wayne van Citters, Jr., Program Director, Astronomical Instrumentation and Development, Division of Astronomical Sciences, Room 618, National Science Foundation, Washington, DC 20550 (202/357-9793).

Summary Minutes: May be obtained from the contact person at the above address.

Purpose of Committee: To provide advice and recommendations concerning research programs, proposals, and projects in NSF-funded astronomy with the objective of achieving the highest quality forefront research for the funds allocted. To provide advice and recommendations concerning short-range and long-range plans in astronomy, including a recommendation of relative priorities.

August 29 and 30

Agenda: Discussion of the scientific areas that show the greatest promise with regard to new breakthroughs in discovery and understanding using ground-based optical/infrared astronomy techniques.

Discussion of activities and initiatives which are needed to address the scientific problems identified above.

Dated: August 3, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-18484 Filed 8-7-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-335 and 50-389]

Florida Power and Light Co. (St. Lucie Plant, Units 1 and 2), Exemption

I.

Florida Power & Light Company (the licensee) is the holder of Facility Operating License No. DPR-67, issued March 1, 1976, which authorizes operation of the St. Lucie Plant, Unit 1, and Facility Operating License No. NPF-16, issued April 6, 1983, which authorizes operation of the St. Lucie Plant, Unit 2. These licenses provide, among other things, that the facilities are subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect. The facilities are pressurized water reactors located in St. Lucie County, Florida.

II.

Appendix A of 10 CFR Part 20 defines protection factors for respirators. Footnote d-2(c) of the appendix states, "No allowance is to be made for the use of sorbents against radioactive gases or vapors."

By their submittal dated February 3, 1988, Florida Power & Light Company (FPL) requested an exemption to 10 CFR Part 20, Appendix A, footnote d-2(c). The licensee submitted this request in accordance with 10 CFR Part 20.103(e). The exemption would allow the use of a radioiodine protection factor of 50 for Scott Aviation (SCOTT) 631-TEDA-H chin canisters to be used at the St. Lucie nuclear power plant.

Respiratory protection for radioiodine at St. Lucie has normally been provided by use of either an air-supplied or a self-contained breathing apparatus. The use of these appliances is cumbersome and contributes to worker fatigue and lost efficiency. The net result is increased person-rem exposure and a reduction in personnel safety margin. The use of the air-purifying respirators (utilizing the SCOTT 631-TEDA-H canister) can enhance worker comfort and allow greater mobility than the other appliances. FPL estimates that air-purifying respirators would enable a 25-50% reduction in the time required to conduct certain tasks requiring respiratory protection. This correlates to a 25-50% reduction in person-rem exposure for these tasks.

Criteria and background information used for the evaluation includes 10 CFR 20.103; 10 CFR 19.12; Regulatory Guide 8.15, "Acceptable Programs for Respiratory Protection"; Regulatory Guide 8.20, "Applications of Bioassay for I-125 and I-131"; NUREG/CR-3403, "Criteria and Test Methods for Certifying Air-Purifying Respirator Cartridges and Canisters Against Radioiodine"; and Regulatory Guide 8.8, "Information Relevant to Ensuring That Occupational Radiation Exposures at Nuclear Power Stations Will Be As Low As Is Reasonably Achievable."

In addition to the information provided in their February 3, 1988 application, FPL provided additional information on May 5, 1988, June 23, 1988, and May 4, 1989 in response to staff requests for additional information in a March 16, 1988 letter and in conference calls on October 4, 1988 and March 15, 1989. Clarifications of the FPL submittals were obtained in telephone discussions with FPL representatives on June 2 and June 7, 1989.

III.

Since a NIOSH/MSHA testing and certification schedule for sorbents for use for protection against radioiodine gases and vapors has not been developed, the NRC staff has evaluated the licensee's request and verified, as required by 10 CFR 20.103(e), that the licensee has demonstrated by testing, or by reliable test data and adequate quality assurance measures, that the material and performance characteristics of the SCOTT 631-TEDA-H canister can provide the proposed degree of protection (i.e., a protection factor of 50), under the anticipated conditions of use, for a maximum of 8 hours. The main considerations of the staff's technical evaluation were canister efficiency and service life, including the effects of temperature, poisons, relative humidity, challenge concentration, and breathing rates on canister efficiency and service life. The staff's programmatic evaluation considered quality control/quality assurance (QC/QA) measures employed to ensure canister performance, and radiation protection/ALARA measures, such as reduction of radioiodine levels using system cleanup, engineering controls, radiological surveillance, and radiological training.

The licensee has provided reliable test information which verifies that the sorbent canister selected (SCOTT 631-TEDA-H) will provide a protection factor of 50 for a period of 8 hours or more of continuous use, provided that the total challenge concentration of radioactive and non-radioactive iodine and other halogenated compounds does not exceed 1 ppm, and temperature does not exceed 120°F at 100% relative humidity. The data provided by SCOTT shows that use of the 631-TEDA-H canister in saturated air (100% relative humidity) at 120°F should provide a nominal 12 hour duration to a 1% methyl iodine penetration.

Testing has been conducted under acceptable conditions of pulsed flow, and under worst case conditions for those environmental factors affecting service life: temperature, relative humidity, and challenge concentration of CH_3I (methyl iodine), which is the most penetrating of the challenge forms. SCOTT data provided by the licensee indicates that the 631-TEDA-H canisters perform adequately under the accepted test conditions. These conditions, the criteria and test methods, are consistent with those recommended in NUREG/CR-3403 and are acceptable.

The licensee has provided commitments that the SCOTT canisters will meet standards for quality assurance and quality control that are recognized by NIOSH, compatible with NRC staff positions, and are, therefore, acceptable. This includes a commitment by SCOTT to establish an MIL-STD-414, Level II, 1% AQL (Acceptable Quality Limit) in a 10 ppm challenge concentration of CH_3I, 90% relative humidity, 120°F, 64 L/min pulsed flow, for a test duration of 8 hours for maximum penetrations equal to 1% of the challenge concentration. Test data provided by the licensee has demonstrated that performance (i.e., service life) of canisters at 100% relative humidity is acceptable.

Coupled with the use of a full facepiece with the capability of providing a minimum fit factor of 500, the protection factor of 50 is conservative under these conditions. Canister efficiency will be retained for the radioiodine gas or vapors of interest (CH_3I, I_2, HOI) for this time period (i.e., 8 hours). Additionally, the licensee has provided data which shows the breakthrough point to be well beyond 8 hours. To preclude aging, a maximum of 8 hours will be stipulated. This service life will be calculated from the time the canister is unsealed, including periods of non-use.

Canisters will be sealed at time of manufacture with an essentially hermetic seal which inhibits water vapor transmission through the seals. The canisters will be stored in air-conditioned rooms and will be discarded after the use period of 8 hours or less to prevent reuse. The shelf-life of the canisters, under the conditions of storage at St. Lucie, is estimated by the licensee to be 3 years.

Through usage restrictions, provided by a chemical control program, the licensee will preclude the unauthorized

BEST COPY AVAILABLE

and indiscriminate use of organic solvents and chemicals (such as paints, paint solvents, methyl alcohol, ethanol, isopropyl alcohol and acetone) which could cause aging, poisoning, or desorption of the sorbed radioiodines. The chemical controls will not prohibit the use of these organic solvent vapors and chemicals, but the protection factor will be reduced from a value of 50 to a value of 1 when the SCOTT canister is used in their presence. The licensee will modify their health physics and respiratory protection procedures regarding the proper use and limitations of SCOTT 631–TEDA–H canisters prior to use for radioiodine protection. FPL will have an active program to recognize chemical contaminants that may affect the canister. Relevant helath physics procedures will be modified to include requirements to evaluate the potential effects to the canister from work involving chemicals.

The 631–TEDA–H canister contains activated carbon impregnated with 5% by weight triethylenediamine (TEDA). This compound has a normal boiling point of 174°C but is known to sublime readily at room temperatures. The volatility of the pure crystals has raised the questions of (1) the volatility of the TEDA impregnated in activated carbon and (2) the possible toxicity of TEDA volatilized from a canister and inhaled. Studies have been performed on the desorption characteristics of TEDA from impregnated activated carbons. It has been found that the desorption vapor concentration of TEDA is not a function of the linear flow rate or sorbent bed depth within the canister. However, the logarithm of the desorption vapor concentration has been found to be linearly related to the reciprocal of the absolute temperature (°K). The maximum TEDA desorption vapor concentration at 48.9°C (120°F) has been found, by extrapolation from published measurements at higher temperatures [G.O. Wood, *Am. Ind. Hyg. Assoc. J. 45* (9):622–625(1984)], to be approximately 2 mg/m^3. There are no toxicological data available for TEDA; however, TEDA belongs to a class of organic aliphatic amines many of which have been shown to be toxic. Threshold limit values for similar amines are as follows:

	(mg/m^3)	(ppm)
Ethylamine	18	10
Diethylamine	30	10
Triethylamine	40	10
Ethylenediamine	25	10
Diethylenetriamine	4	1

The 2 mg/m^3 desorption value at 48.9°C is below the lowest threshold limit value for similar type substances and therefore the licensee does not expect desorbed TEDA to present a toxic hazard to the user.

Certain limitations and precautions based on the sorbent canister manufacturer's recommendations and NUREG/CR–3403 guidance are necessary for effective utilization of the sorbent canisters. The staff agrees with the following such limitations and usage restrictions as proposed by the licensee:

1. Protection factor equal to 50 as a maximum value.

2. Maximum service life of 8 hours (time from unsealing to discarding, including periods of non-exposure).

3. Canisters are not to be used in the presence of organic solvent vapors.

4. Canisters are to be stored in sealed, humidity barrier packaging in an air-conditioned (office-type) environment.

5. Canisters are to be used with a full facepiece respirator for which the canister has been certified by NIOSH/MSHA (approval number TC–14G–118). These respirators with 631–TEDA–H canisters are to be capable of providing fit factors greater than 500 for each potential user of the respirator as determined by fit testing with a challenge atmosphere. FPL will verify that each individual has, prior to the initial use of the canister, received a respirator fitting with the type of full-face respirator to be used with the canister and has achieved as a minimum a fit factor of 500 (10 times greater than the protection factor of 50). The relevant health physics procedure will be modified to incorporate the minimum required fit factor of 500 for full-face respirators to be used with the SCOTT 631 TEDA–H canisters.

6. Canisters are not to be used in environments where the temperature exceeds 120 °F.

7. Canisters are not to be used in challenge atmosphere concentrations of total organic iodines and other halogenated compounds (including nonradioactive compounds) greater than 1.0 ppm.

In addition to the limitations and usage restrictions noted above, the licensee will utilize the following additional administrative and procedural controls:

1. Health physics procedures for maximum permissible concentration hour accountability, bioassay, and respiratory protection will be modified to reflect the additional efforts that will be necessary to verify the effectiveness of the SCOTT canister program.

2. FPL will perform weekly whole body/thyroid counts for individuals using the SCOTT canister for protection against radioiodines. Relevant health physics procedures will be modified to reflect the need for whole body counting on a weekly basis for those individuals using the canister for protection from radioiodines.

3. In the initial implementation of SCOTT canister use, the following program verification measures will be used:

a. All personnel who exceed 10 maximum permissible concentration (MPC) hours in seven (7) consecutive days will receive a whole body/thyroid count prior to re-entering a radioiodine atmosphere.

b. Personnel that have a thyroid burden of 70 nCi or greater as determined by whole body/thyroid count will be restricted from further exposure to radioiodine atmospheres until the reason for the thyroid burden has been evaluated by Health Physics and until the individual is authorized by the Health Physics Department Head to re-enter atmospheres containing radioiodines.

c. A database of whole body/thyroid count results and maximum permissible concentration hour data will be established to assist in the evaluation of the program's effectiveness.

4. The St. Lucie Plant's chemical control program precludes the unauthorized and indiscriminate use of organic solvents and chemicals. Some organic solvent vapors of concern to the SCOTT cartridges are paints, paint solvents, methyl alcohol, ethanol, isopropyl alcohol and acetone.

The St. Lucie Plant will establish procedural controls over the use of the SCOTT canister in the presence of these chemicals. The controls will not prohibit the use of the SCOTT canister in the presence of these organic solvent vapors and chemicals, but the protection factor of the canister will be reduced from 50 to 1. FPL will have an active program to recognize chemical contaminants that may affect the canister. Relevant health physics procedures will be modified to include requirements to evaluate the potential effects to the canister from work involving chemicals.

5. A quality control (Q.C.) lot acceptance plan will be employed by SCOTT Aviation on each manufacturing lot of 631–TEDA–H canisters produced. Therefore, all canisters consumed by FPL will have been tested per the requirements of the Q.C. plan.

6. MIL–STD–414, level II, AQL 1% will be used to determine the number of criteria based on canister performance results. The canister test conditions will be as follows:

Air Temperature, % Relative Humidity: 120 °F /90% R.H.
Airflow rate conditions: 192 L/min for 0.82 seconds; O L/min for 1.64 seconds
Contaminant/Concentration: CH_3I/10 ppm
Test Duration: 8 hours
Performance Criteria: 1% maximum penetration

FPL will accept only those canisters that have been certified by SCOTT as meeting the acceptance criteria of the MIL–STD–414 acceptance plan. FPL will perform a receipt inspection of each shipment of the canisters to verify lot number, expiration data of the canisters and physical integrity of the canisters. SCOTT will be required to provide to FPL the results of the acceptance testing for each lot of the canisters that FPL purchases from SCOTT.

7. FPL does not plan to reuse the canisters after initial use. All canisters will be removed after use and discarded to prevent any further use. The canisters will not be used when the radionuclide concentrations of radioiodines, particulates or a combination of each exceed 50 times the applicable limit for the radionuclides in question in 10 CFR Part 20 Appendix B, Table I Column 1 as described in 10 CFR 20.103(c)(1).

8. Existing respiratory protection program requirements and restrictions (e.g., physicals, fit tests, Part 20 requirements, Appendices A and B) still apply. The licensee will modify respiratory protection procedures to include specific aspects of issue and use of SCOTT canisters.

FPL experience has indicated that the use of air-purifying respirators with the SCOTT 631–TEDA–H canister can result in significant savings in collective (person-rem) dose to workers. In 1985 the St. Lucie Unit 1 steam generator channel heads were shielded to reduce exposure during a nozzle dam modification. During mock-up training, time trials were performed using airline respirators vs. air-purifying respirators with iodine canisters. It took 26 minutes of jump time to install the shielding in one channel head using airline respirators vs. 18 minutes using air-purifying respirators. This 31% reduction in time would have resulted in a reduction of 2.4 man-rem (300 mrem/min) per channel head and a total of 9.6 man-rem for all four channel heads. Nozzle dam installation/removal has been identified as a task where significant man-rem reductions could be realized using air-purifying respirators. In 1987, forty-two (42) man-rem were received for this job, whereas 12.6 man-rem would have been avoided if air-purifying respirators had been used. In 1984, the Farley Plant provided a task analysis showing that the use of similar (Mine Safety Appliances Co. Model GMR–1) canisters at Farley would result in significant dose savings and would be an effective ALARA measure.

Reduction of radioiodine levels at St. Lucie is primarily conducted through system cleanup. Shutdown boron concentrations for refueling operations are reached early in a unit cooldown to create crud burst and allow for maximum cleanup time with the reactor coolant pumps available. To prevent radioiodine from remaining in the stagnant loops, the reactor coolant pumps are run concurrent with shutdown purification operations until the reactor coolant system iodine levels appear to be stable or decreasing to approximately 0.1 mCi/cc. The pressurizer steam space is vented to the volume control tank and the reactor coolant system degasification is accomplished by following Operating Procedure 1–0030127, entitled "Reactor Plant Cooldown—Hot Standby to Cold Shutdown." The containment purge system and airborne activity removal fans are used to reduce radioiodine concentrations in the containment building. Temporary charcoal filters have also been placed at the inlet side of the containment coolers for additional iodine removal. Portable HEPA units (negative pressure ventilation blowers) are used at the steam generator manway openings and the reactor head during and after the breach of the reactor coolant system. Decontamination of work areas is accomplished throughout an outage. Previous major system decontamination efforts include the steam generator channel head and the refueling pool cavities. If practical, time is allowed for contamination reduction by decay; however, the main emphasis is on system and area cleanup. During normal operation, attempts are made to minimize power transients in order to reduce radioiodine levels. Long-term efforts include QA/QC programs for fuel quality. Also, the benefits of the fuel reconstitution process are being evaluated by FPL for consideration in subsequent refueling outages. With respect to fuel design improvement, several areas are being evaluated and/or implemented in order to reduce the fretting of fuel pins, therefore reducing the likelihood of fuel pin failures. Additionally, following outages of certain duration, slow power ramp rates are used to precondition the fuel which could result in a lower incidence of fuel failure.

The licensee has developed and is implementing an ALARA program consistent with the staff's position in Regulatory Guide 8.8 and the licensee's efforts to keep radiation exposures ALARA are acceptable to the staff.

In summary, the licensee is required to use process or other engineering controls, to the extent practicable, to limit concentrations of radioactive materials in air to levels below those which delimit an airborne radioactivity area as defined in 10 CFR 20.203(d)(1)(ii). When it is impracticable to apply process or other engineering controls to achieve these concentrations of radioactive material in air, the licensee is required to use other precautionary procedures, such as increased surveillance, limitation of working times, or provision of respiratory protective equipment to maintain worker intake of radioactive material as far below the limits of 10 CFR Part 20 as is reasonably achievable. The licensee has been providing respiratory protection for radioiodine by use of air-supplied or self-contained breathing apparatus. However, the use of these apparatuses is cumbersome and contributes to worker fatigue and lost efficiency. The net result is increased exposure of workers to radiation (increased person-rem). The use of air-purifying respirators can enhance worker comfort and allow greater mobility than the air-supplied or self-contained breathing apparatus. However, 10 CFR Part 20, Appendix A, Footnote d–2(c) stipulates that no allowance is to be made for the use of sorbents against radioactive gases or vapors in assigning protection factors for respirators. Also, 10 CFR 20.103(e) provides that where equipment of a particular type has not been tested and certified, or had certification extended by NIOSH/MSHA, or where there is no existing schedule for test and certification of certain equipment, the licensee shall not make allowance for this equipment without specific authorization by the Commission. An application for this authorization must include a demonstration by testing, or on the basis of reliable test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use.

Therefore, the licensee has applied for an exemption, in accordance with the provisions of 10 CFR 20.103(e), to allow the use of a radioiodine protection factor in estimating worker exposure from radioiodine gases and vapors when an air-purifying respirator with a sorbent canister is used to provide this protection. The staff's review of the

licensee's proposal indicates that the actions proposed by the licensee can result in significant dose savings over alternative methods while still providing effective protection. The licensee has provided usage restrictions and controls which can assure an effective radioiodine protection program. The proposed criteria and test methods for verifying the effectiveness and quality of SCOTT 631–TEDA–H canisters are consistent with the staff's criteria. The licensee's proposed exemption, with the controls and limitations, is consistent with the staff's position in granting similar exemptions, is consistent with the qualification process recommended in NUREG/CR–3403, is consistent with the staff's position in Regulatory Guide 8.8, and is acceptable.

The actions proposed by the licensee are consistent with the requirements of 10 CFR Part 20.103(e), and form an acceptable basis to authorize the granting of an exemption in accordance with the provisions of 10 CFR Part 20.103(e).

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 20.501, an exemption is authorized by law and will not result in undue hazard to life and property. The Commission hereby grants an exemption from the requirements of footnote d–2(c) of Appendix A of 10 CFR Part 20 to permit the use of Scott Aviation 631–TEDA–H canisters at the St. Lucie Plant, Units 1 and 2.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will have no significant effect on the quality of the human environment (54 FR 31902, August 2, 1989).

For further details with respect to this action, see the licensee's request dated February 3, 1988, as supplemented by letters dated May 5, 1988, June 23, 1988, and May 4, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 2nd day of August 1989.

[FR Doc. 89–18513 Filed 8–7–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–361 and 50–362]

Southern California Edison Co., et al., Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 75 to Facility Operating License No. NPF–10 and Amendment No. 63 to Facility Operating License No. NPF–15, issued to Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and the City of Anaheim, California (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County California.

The amendments were effective as of the date of issuance.

These amendments revise the following Technical Specifications (TS) to increase the interval for the 18 month surveillance tests to at least once per refueling interval, which is defined as 24 months: TS 3/4.3.1, "Reactor Protective Instrumentation"; TS 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation"; TS 3/4.3.3.3, "Seismic Instrumentation", and TS 3/4.8.1.1, "AC Sources."

The applications for amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notices of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action were published in the **Federal Register** on February 21, 1989 (54 FR 7493) and February 24, 1989 (54 FR 8033 and 8035). No request for a hearing or petition for leave to intervene was filed following these notices.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to the action and has determined that an environmental impact statement need not be prepared and that issuance of the amendments will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the applications for amendments dated April 26, October 11, October 24, November 7, and December 16, 1988, and January 16, January 20, and March 28, 1989; (2) Amendment No. 75 to License No. NPF–10 and Amendment No. 63 to License No. NPF–15; (3) the Commission's related Safety Evaluation dated July, 1989; and (4) the Commission's Environmental Assessment dated July 24, 1989 (54 FR 31394). All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 28th day of July 1989.

For the Nuclear Regulatory Commission.

Donald E. Hickman,

Project Manager Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–18514 Filed 8–7–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Revisions: Form N–2, File No. 270–21, Family of Rules under Section 8(b) of the Investment Company Act of 1940, File No. 270–135.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance of OMB amendments to Form N–2 and the Family of Rules under Section 8(b) of the Investment Company Act of 1940, specifically Rule 8b–16.

Form N–2 is used by closed-end investment companies to register under both the Investment Company Act of 1940 and the Securities Act of 1933. Rule 8b–16 requires all registered management investment companies except small business investment companies, to update their registration statement of Form N–2 annually with the Commission. Under the proposed revision, each of the approximately 90 respondents would spend approximately 1630 hours, annually, fulfilling the requirements of the form and the rule, an estimated reduction of 470 burden hours per respondent.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative survey or study of the cost of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street, NW., Washington, DC 20549–6004, and Gary Waxman, Clearance Officer, Office of Management and Budget, Paperwork Reduction Project (3235–00722 for Form N–2, and 3235–0176 for Rule 8b–16) Room 3208 New Executive Office Building, Washington, DC 20543.

July 28, 1989.

Jonathan G. Katz.

Secretary.

[FR Doc. 89–18517 Filed 8–7–89; 8:45 am]

BILLING CODE 8010–01–M

[34–27084; MBS–88–17]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving Proposed Rule Change Amending By-Laws

August 1, 1989.

On November 16, 1988, MBS Clearing Corporation ("MBSCC") filed a proposed rule change (File No. SR–MBS–88–17) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposal will amend MBSCC's By-Laws to create a nominating committee for the selection of directors to MBSCC's Board of Directors ("Board"). On January 25, 1989, the Commission published notice of the proposed rule change in the **Federal Register.**[2] No comments were received. This Order approves the proposal for the reasons stated below.

I. Description

The proposed rule change will amend MBSCC's By-Laws to create a nominating committee for the election of directors at the annual shareholders meeting. The proposal requires the nominating committee to select candidates with a view toward providing fair representation for the interests of a cross-section of participants. The proposal also provides a mechanism for participants to make nominations directly and makes conforming modifications to the By-Laws where appropriate.

The nominating committee will be composed of three individuals, who will be elected at the annual shareholder's meeting for a one-year term. Individuals eligible to serve on the nominating committee must be general partners and officers of participants who do not hold any other MBSCC office. Nominating committee vacancies that arise between annual meetings will be filled by the remaining committee members from among persons who would have been eligible for participation on the nominating committee at the last annual meeting. Committee members will not be eligible for any other MBSCC office or position and cannot serve as a member for two consecutive years.

No later than 60 days prior to the shareholder's annual meeting, the nominating committee will nominate directors to fill the positions of directors with expiring terms and any vacancies in positions with unexpired terms.[3] These nominations must be made with a view toward providing fair representation for the interests of a cross-section of MBSCC's participants. The committee will report its nominations to MBSCC's secretary, who will, within five days thereafter, mail a list of nominations to each participant.

MBSCC participants can nominate their own candidates by filing a nominating petition with MBSCC's secretary, at least 30 days before the annual meeting. The petition must be signed by at least five participants. No participant can nominate by petition in the aggregate more than five individuals.

Under the proposal, if no nominating petitions are filed as described above, the sole shareholder [Midwest Stock Exchange ("Midwest")] will appoint as directors the individuals nominated by the nominating committee. If an individual declines the appointment, the vacancy will be filled by a majority vote of directors then in office (or by a sole remaining director) and such director(s) shall finish out the term of the vacancy. If one or more nominating petitions are filed, Midwest will elect directors from among the individuals nominated either by nominating committee or petition, with a view toward providing fair representation of the interests of a cross-section of MBSCC participants.

II. MBSCC's Rationale

MBSCC states that the purpose of the proposed rule change is to assure participants fair representation in the selection of directors and administration of MBSCC's affairs. The Commission, in granting MBSCC temporary registration as a clearing agency,[4] stated that it expected MBSCC, as a condition to permanent registration, to file proposed rule changes designed to satisfy the requirement of section 17A(b)(3)(C) that a clearing agency's rules assure fair representation to its participants in the selection of its directors and administration of its affairs. MBSCC states that the proposal is intended to satisfy that requirement.

III. Discussion

Section 17A(b)(3)(C) of the Act requires the rules of a clearing agency assure a fair representation of its shareholders and participants in the selection of its directors and administration of its affairs. For the reasons discussed below, the Commission believes that the proposal is consistent with the Act, and in particular section 17A(b)(3)(C).

Section 17A(b)(3)(C) does not define fair representation or establish particular standards of representation. Instead the Act provides that the Commission must determine whether the rules of the clearing agency regarding the manner in which decisions are made give fair voice to participants as well as to shareholders in the selection of directors and the administration of its affairs. With respect to providing participants with a meaningful opportunity to be represented in the selection of the board of directors and the administration of the clearing agency's affairs, the Division's Standards [5] counsel that each clearing agency's procedures be evaluated on a case-by-case basis. The Standards state that a number of methods can comply with the fair representation standard, including the selection of candidates for election to the board of directors by a nominating committee which would be composed of,

---

[1] 15 U.S.C. 78(b)(1) (1988).

[2] Securities Exchange Act Release No. 26470 (January 18, 1989), 54 FR 3703.

[3] In addition, the nominating committee must nominate three members to act as committee members in connection with the next annual meeting.

[4] *See* Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218.

[5] The Division of Market Regulation ("Division") has published standards that its uses in evaluating clearing agency registration applications and proposed rule changes ("Standards"). The Standards provide additional information concerning the Division's interpretation of subparagraphs (A) thorugh (I) of the section 17A(b)(3). *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 ("Standards Release").

and selected by, the participants or representatives of the participants.[6]

Since MBSCC's initial registration in February 1987, the composition of the MBSCC Board has adjusted to fairly represent MBSCC participants. Originally, MBSCC's 13 member Board included both dealer and bank participant directors, reflecting MBSCC's participant composition, and a Midwest representative. During preparations for the sale of the Depository Division in 1988 and early 1989 to the Participants Trust Company ("PTC"), MBSCC increased the size of its Board from 13 to 15 directors to accommodate two Midwest representatives who assisted the Board with the sale negotiations.[7] After the sale, MBSCC reduced the number of directors to 11 and adjusted the composition of the Board to reflect that only dealers remained as participants.[8] Currently, the Board consists of one Midwest representative and ten participant representatives.

The proposal provides for participant involvement in the selection of all directors, either directly or indirectly. First, Midwest will appoint the Board members from a pool of nominees selected by MBSCC participants or their representatives. The nominees will consist of candidates chosen by the nominating committee, which will consist of participant representatives and candidates nominated by individual participants through the petition process. Second, vacancies on the Board that occur between elections or if an individual declines appointment will be filled by a majority vote of the remaining directors (which are nominated by MBSCC participants). Finally, vacancies on the nominating committee will be filled by the remaining members from among representatives of participants who would have been eligible for nominee committee participation at the last annual meeting.

The Commission believes the proposal is designed to provide fair representation for all MBSSC participants, even those with differing views. The proposal contains a number of safeguards to assure that the views of minority groups of participants are considered in the selection of directors. First, the proposal states that the nominating committee must make its nominations with a view toward providing fair representation for interests of a cross-section of participants. Second, participants that believe that the nominated candidates represent them may nominate their own candidates through the petition process. Finally, the proposal requires Midwest to appoint directors with a view toward providing fair representation of a cross-section of participants.

IV. Conclusion

On the basis of the foregoing, the Commission finds that MBSCC's proposed rule change is consistent with the Act and, in particular, with the section 17A(b)(3)(C) of the Act.

Accordingly, *It is therefore ordered*, under the section 19(b)(2) of the Act, that the proposal (File No. SR–MBS–88–17) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18518 Filed 8–7–89; 8:45 am]

BILLING CODE 8010–01–M

[6] The Midwest Clearing Corporation ("MCC", a subsidiary of Midwest) complies with the fair representation standard through the use of a nominating committee. MCC's procedures provide for a nominating committee composed of participant representatives and charged with nominating director candidates with a view toward providing fair representation for a cross-section of MCC participants and additional nomination by participant petition.

The Standards describe other methods by which a clearing agency can comply with the fair representation standard including direct selection of a number of the directors by, and from among, the users, direct participation of participants in the election of directors through the allocation of voting stock to all participants based on their usage of the clearing agency and selection by participants of a slate of nominees for which stockholders of the clearing agency would be required to vote their shares. *See* Standards Release, *supra* note 5, 45 FR at 41923.

[7] *See* Securities Exchange Act Release No. 25384 (February 23, 1988), 53 FR 6045.

[8] *See* Securities Exchange Act Release No. 26729 (April 4, 1989), 54 FR 18438G. Bank participants used only Depository Division services and became participants in PTC when the buyout occurred.

[Release No. 34–27072; File No. SR–Phlx–89–41]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Filing and Immediate Effectiveness of Proposed Rule Change Relating to Floor Decorum.

Pursuant to section 19(b)(1), 15 U.S.C. 78s(b)(1), of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, 17 CFR 240.19b–4, notice is hereby given that on July 10, 1989, the Philadelphia Stock Exchange, Inc. ("PHLX" of "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Rule 19b–4 under the Act, the PHLX proposes to codify the following rules of order and decorum as Exchange procedure advices, designed as Options Floor Procedure Advice f–8 and Equity Floor Procedure Advice EM–2: [1]

Regulation 1—Smoking

Smoking is prohibited on the trading floor and the lower level areas adjacent to the trading floor except for those areas specifically designated for smoking.
1st Occurrence: Official Warning
2nd Occurrence: $250.00
3rd Occurrence: $500.00
4th and thereafter: Sanction
Discretionary with Business Conduct Committee

Regulation 2—Food, Liquids and Beverages

Food, liquids and beverages are prohibited on the trading floor and the lower level areas adjacent to the trading floor except for lunch rooms.
1st Occurrence: Official Warning
2nd Occurrence: $100.00
3rd Occurrence: $200.00
4th and thereafter: Sanction
Discretionary with Business Conduct Committee

Regulation 3—Identification Badges/ Access Cards

(i) Identification badges must be worn chest high in full view and must accurately reflect the respective person's associations and dual affiliations.
1st Occurrence: Official Warning
2nd Occurrence: $100.00
3rd Occurrence: $200.00
4th and thereafter: Sanction
Discretionary with Business Conduct Committee
(ii) Use of another person's Identification Badge or Access card will carry a fine of $250.00 for the first occurrence and $500.00 for each subsequent occurrence. The fine may be assessed against both the user and the person who allowed such use.

Regulation 4—Order

No member/participant or employee of a member/participant shall conduct himself or herself in a disorderly manner on the trading floor.
1st Occurrence: Official Warning
2nd Occurrence: $100.00
3rd Occurrence: $250.00
4th Occurrence: $500.00
5th and thereafter: Sanction
Discretionary with Business Conduct Committee
In the case of FIGHTING or any other form of physical abuse each and every occurrence will carry a fine of $1,000.00.
Firearms and prohibited on the trading floor and each and every occurrence will carry a fne of $1,000.00.

Regulation 5—Guests

Non-member guests will be permitted on the trading floor at the discretion of the respective floor committee (Options, FCO or Floor Procedures). All guests must be signed in by a member or Exchange official and accompanied at all times by a member, associated person of a member or Exchange official.
1st Occurrence: Official Warning
2nd Occurrence: $50.00
3rd Occurrence: $100.00
4th Occurrence: $200.00
5th and thereafter: Sanction
Discretionary with Business Conduct Committee

[1] The rules are an implementation of Phlx Rule 60, which provides a Floor Official or exchange official may impose on members and member organizations assessments not to exceed $1,000.00 per occurrence for breaches by members or their employees of regulations which relate to administration of, and order, decorum, health, safety and welfare on the exchange or two Floor officials may refer the matter to the Business Conduct Committee where it shall proceed in accordance with Rules 960.1–960.12 and higher fines and sanctions may be imposed.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In order to maintain the proper transaction of business on the Exchange's trading floors, and to preserve the safety of members and Exchange personnel on the floors, it is necessary to impose rules of order and decorum. This prospect is especially urgent in the case of smoking in an environment in which a great amount of paper is left on the floor, and in which exists a great deal of electrical equipment.

Accordingly, the Phlx believes that it would be beneficial to codify, with the approval of the Commission, its rules of order and decorum as procedural advices. Additionally, the Phlx proposes to increase the amounts of fines imposed for violation of said rules, in order to account for inflation. These measures are proposed in order to provide greater significance and impact to the rules of order and decorum.

The proposed rule change is consistent with section 6(b)(6) of the Act, in that members of the Exchange shall be appropriately disciplined for violation of the rules of the Exchange. Additionally, the proposed rule change is consistent with, and is an implementation of, Phlx Rule 60.[2] Assessments shall not exceed $1,000 per occurrence for breaches by members or their employees of regulations which relate to the administration of order, decorum, health, safety and welfare on the Exchange, and higher fines and santions may be imposed only by the Phlx Business Conduct Committee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the PHLX, it has become effective pursuant to section 19(b)(3) of Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule if its appears to the Commission that such action is necessary or appropriate in the public interest, or otherwise in furtherance of the purposes of the Act.

[2] *See* note 1, *supra*.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commision, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 29, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Dated: July 28, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18519 Filed 8–7–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

August 2, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Lifetime Corp.
Common Stock, $.01 Par Value (File No. 7–4764)
DQU, Inc.
Common Stock, $1 Par Value (File No. 7–4765)
Idaho Power Co.
Common Stock, $2.50 Par Value (File No. 7–4766)
Pacific Western Bancshares
Common Stock, No Par Value (File

[3] *See* 17 CFR 200.30–3.

No. 7–4767)
Tredegar Industries, Inc.
Common Stock, No Par Value (File No. 7–4768)
Cash America Investments, Inc.
Common Stock, $.10 Par Value (File No. 7–4769)
Catalina Lighting Co.
Common Stock, $.01 Par Value (File No. 7–4770)
P.H. Glatfelter Co.
Common Stock, $.01 Par Value (File No. 7–4771)
James Madison, Ltd.
Class A Common Stock, $1.00 Par Value (File No. 7–4772)
Smiths Food & Drug Centers, Inc.
Class B Common Stock, $.01 Par Value (File No. 7–4773)
Apex Municipal Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–4774)
MFS Charter Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7–4775)
Chili's Inc.
Common Stock, $.10 Par Value (File No. 7–4776)
Smith Corona Corporation
Common Stock, $.01 Par Value (File No. 7–4777)

These securities are listed and registered on one or more other national securities exchange and are expected in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 23, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintanance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89–18520 Filed 8–7–89; 8:45 am]
BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

August 2, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Berry Petroleum Co.
Class A Common Stock, $0.01 Par Value (File No. 7–4738)
First Interstate Bancorp
Class A Common Stock, $0.01 Par Value (File No. 7–4739)
WCI Holdings Corporation
15½% Cumulative Exchangeable Redeemable Preferred Stock, $.01 Par Value (File No. 7–4740)
The Liberty Corporation
Common Stock, $1 Par Value (File No. 7–4741)
Thermedics Inc.
Common Stock, $0.10 Par Value (File No. 7–4742)
Waban, Inc.
Common Stock, $.01 Par Value (File No. 7–4743)
Mott's Holdings, Inc.
Common Stock, $1 Par Value (File No. 7–4744)
Storage Technology Corporation
Common Stock, $10 Par Value (File No. 7–4745)
Citytrust Bancorp, Inc.
Common Stock, $2.50 Par Value (File No. 7–4746)
MFS Charter Income Trust
Shares of Beneficial Interest (File No. 7–4747)
Rayonier Timberlands, L.P.
Class A Depositary Units (File No. 7–4748)
Ford Motor Credit Company
Currency Exchange Warrants Expiring 7/15/91 (File No. 7–4749)
Ford Motor Credit Company
Currency Exchange Warrants Expiring 2/1/93 (File No. 7–4750)
J.P. Morgan & Co., Inc.
Currency Exchange Warrants Expiring 7/1/91 (File No. 7–4751)
Student Loan Marketing Association
Currency Exchange Warrants Expiring 7/15/92 (File No. 7–4752)
Student Loan Marketing Association
Currency Exchange Warrants Expiring 3/1/93 (File No. 7–4753)
Student Loan Marketing Association
Foreign Exchange Warrants Expiring 2/11/93 (File No. 7–4754)
Citcorp
Foreign Exchange Warrants Expiring 7/15/92 (File No. 7–4755)
Citicorp
Currency Exchange Warrants Expiring 7/25/93 (File No. 7–4756)
CDI Corp.
Common Stock, $0.10 Par Value (File No. 7–4757)
Chili's Inc.
Common Stock, $.10 Par Value (File No. 7–4758)
HAL, Inc.
Common Stock, $3 Par Value (File No. 7–4759)
Heritage Media Corp.
Class A Common Stock, $0.01 Par Value (File No. 7–4760)
Smith Corona Corp.
Common Stock, $0.01 Par Value (File No. 7–4761)
Affiliated Publications, Inc.
Series A Common Stock, $0.01 Par Value (File No. 7–4762)
Coast Savings Financial Inc.
Common Stock, $.01 Par Value (File No. 7–4763)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 23, 1989, written data, views and arguments concerning the above-reference application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89–18521 Filed 8–7–89; 8:45 am]
BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Application Number: 01/01–0248]

Southern Berkshire Investment Corp.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661, *et seq.*) has been filed by Southern Berkshire Investment Corporation (SBIC) with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1988).

The officers, directors, and major shareholders of the Applicant are as follows:

Name and Address	Title	Percent of Ownership of Common Stock
Henry H.M. Thornton, P.O. Box 669, Sheffield, MA 01257.	President and Director.	14.0
Deborah B. Thornton, P.O. Box 669, Sheffield, MA 01257.	Director	14.0
Richard A. Flintoft, 215 East 73rd Street, New York, NY 10021.	Director	
Peter W. Flexner, P.O. Box 248, Millerton, NY 12546.	Director	

The Applicant, SBIC, a Massachusetts corporation, will begin operations with $1,051,000 paid-in capital and paid-in surplus. The Applicant will conduct its activities principally in the States of Massachusetts and New York, but will consider investments in other areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Pittsfield, Massachusetts.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 1, 1989.

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

[FR Doc 89–18488 Filed 8–7–89; 8:45 am]
BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice CM–8/1295]

The U.S. Organization for the International Telegraph & Telephone Consultative Committee (CCITT) Study Group C; Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet August 30, 1989 at 9:30 a.m. at the Marriott Hotel (201–623 0008) at Newark Airport.

The meeting will be to discuss contributions dealing with Study Group XV work on fiber optics. The meeting is in preparation for the working party meetings of Study Group XV to be held in November.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Henry Marchese (201) 234 4047.

Dated: July 27, 1989.

Earl S. Barbely,
Director, Office of Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.

[FR Doc. 89–18531 Filed 8–7–89; 8:45 am]
BILLING CODE 4710–07–M

[Public Notice CM–8/1296]

Shipping Coordinating Committee; Meeting; Subcommittee on Safety of Life at Sea Working Group on Bulk Chemicals

The Working Group on Bulk Chemicals of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on August 29, 1989 at 9:30 a.m. in Room 4315 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of this meeting will be a general review of all agenda items for the nineteenth session of the International Maritime Organization (IMO) Subcommittee on Bulk Chemicals scheduled for September 11–15, 1989.

The agenda for this meeting includes the following items:

—Evaluation of chemicals shipped in bulk
—Interpretations of the IMO codes for carriage of bulk liquids and gases
—Guidelines for ships engaged in the collection and transport of chemical slops
—Review of solvent washing and recycling for chemical tankers
—Vapor emission control systems

Members of the public may attend up to the seating capacity of the room.

For further information, contact Mr. Thomas J. Felleisen, U.S. Coast Guard Headquarters (G–MTH–1), 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–1217.

Dated: July 28, 1989.

Thomas J. Wajda,
Chairman, Shipping Coordinating Committee.

[FR Doc. 89–18532 Filed 8–7–89; 8:45 am]
BILLING CODE 4710–07–M

Office of the Secretary

[Public Notice 1121; Delegation of Authority No. 189]

Under Secretary of State for Management Payment of Rewards Under 22 U.S.C. 2708

By virtue of the authority vested in me as Secretary of State, including section 4 of the Act of May 26, 1949 (63 Stat. 111, 22 U.S.C. 2658), I hereby delegate to the Under Secretary of State for Management the functions vested in the Secretary of State by section 36 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2708), with respect to the payment of rewards of less than $100,000 under the authority provided by section 102 of the 1984 Act to Combat International Terrorism (98 Stat. 2708, Pub. L. 98–533) and section 502 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (110 Stat. 869, Pub. L. 99–399), subject to the concurrence of the Under Secretary of State for Political Affairs as to each proposed payment.

Unless otherwise directed, the Under Secretary of State for Management may not redelegate this authority.

Dated: July 23, 1989.

James A. Baker, III,
Secretary of State.

[FR Doc. 89–18533 Filed 8–7–89; 8:45 am]
BILLING CODE 4710–06–M

Bureau of Oceans and International Environmental Affairs

[Public Notice 1122]

U.S. National Committee for Man and the Biosphere; Request for Proposals Fiscal Year 1990

Roger E. Soles,
Executive Director, U.S. Man and the Biosphere Program.

The mission of the United States Man and the Biosphere Program (U.S. MAB) is to foster harmonious relationships between humans and the biosphere through an international program of policy-relevant research which integrates social, physical and biological sciences to address actual problems. These activities—broadly interpreted—include catalytic conferences and meetings, education and training, and the establishment and use of biosphere reserves as research and monitoring sites.

The U.S. National Committee for U.S. MAB hereby announces its priorities and criteria for the selection of original research proposals and projects to receive U.S. MAB support in fiscal year 1990, contingent upon the availability of funds.

Scientists are encouraged to collaborate in developing new interdisciplinary proposals and to seek complementary funds from other sources. Proposed research and projects, such as symposia, workshops or other activities which further the U.S. MAB objectives, may be spread over several years. Proposed workshop activities must be especially innovative to merit consideration.

Interested scientists should write to the U.S. MAB Secretariat to receive copies of the U.S. MAB Directorate Mission Statements on:

- High Latitude Ecosystems;
- Human Dominated Systems;
- Marine and Coastal Ecosystems;
- Temperate Ecosystems; and
- Tropical Ecosystems.

Abstracts of these Mission Statements will be published in the August 1989 issue of the *U.S. MAB Bulletin* and in the **Federal Register**.

Proposals must first be submitted as a prospectus with a maximum length of two pages.

U.S. MAB will not pay overhead fees on grants.

Consideration will only be given to proposals which are inter or transdisciplinary and concentrate on at least one of the following:

- biological diversity,
- global climate and ecological change,
- sustainable/integrated development.

Preference will be given to proposals which:

- request $50,000 or less;
- when international, involve scientists from the host country; and
- deal with environmental policy issues, especially those relevant to agencies which support U.S. MAB.

Prospectuses may not exceed two pages and must be accompanied by a summary biographic sketch of the potential principal(s) which include exceptional qualifications and lists any relevant publications. The bibliographic sketch of each principal may not exceed two (2) pages. The prospectuses must also be accompanied by a cover sheet clearly indicating how the potential proposal meets the above stated requisite criteria.

Mail prospectuses to: U.S. MAB Secretariat, OES/ENR/MAB, U.S. Department of State, Washington, DC 20520.

No prospectus will be accepted after November 6, 1989. Prospectuses will be subject to an administrative review for adherence to the requirements listed and will be returned without review if deficiencies are found.

The U.S. MAB Secretariat will distribute prospectuses to the appropriate U.S. MAB Directorate. Individual Directorates will review the prospectuses based on responsiveness to this call, relevancy of the proposed activity to their mission statements, and the performance competence of the proposed principal(s) as evidenced by the summary biographic sketch. Directorates will review all prospectuses by December 15, 1989.

Prospectuses favorably reviewed by a Directorate will be forwarded to the U.S. National Committee for MAB for further review at the January 1990 National Committee meeting. The National Committee will review the prospectuses for their relevance to the U.S. MAB program priorities. The National Committee will then determine which principals will be invited to submit a full proposal. The U.S. National Committee at its own initiative may request that additional proposals on specific subjects be submitted for review and consideration.

Complete project and research proposals must be received by the U.S. MAB Secretariat by close of business May 1, 1990. Proposal texts may not exceed 25 pages, double-spaced, including a two page executive summary describing the objective of the proposed effort and the method of approach.

If proposed project activities are international in scope, the proposal must provide written evidence that host country permissions have already been obtained to carry out the project.

All proposals must contain: (1) Clearly defined objectives; (2) a feasible work plan to achieve those objectives within the time frame and resources of the grant; and (3) specified products which will result from the grant.

Proposals must identify one individual for contract purposes and specify one institution to receive and sub-allocate funds for the proposed activities.

Proposals will be subject to an administrative review for adherence to listed requirements and if deficiencies are found, will be returned without further consideration.

Appropriate U.S. MAB Directorate and peer reviewers, including discipline specialists in the areas of the proposals, will be selected by U.S. MAB to evaluate and rate the proposals on the basis of their intrinsic scientific merit and intellectual focus, and on their potential to increase scientific understanding and provide the basis for policy development by U.S MAB's supporting agencies. Directorates and peer reviewers will also consider, in their overall assessments of the proposals, the performance competence of the principals and the adequacy of the requested resources to accomplish the stated objectives.

A final ranking of the proposals received will be made by the U.S. National Committee for the Man in the Biosphere Program based on all of the above factors and their assessment of each proposal's relevancy to the goals of U.S. MAB. Proposals will then be funded in the order of their assigned rank and based on available funds.

Prinicipals will receive copies of all peer review evaluations made of their proposal and a written notification of the Committee's decision on their project. Winning proposals become part of the public domain. Proposals not selected for funding by the National Committee will be returned to the authors.

The National Committee will notify all principals of its final decisions in August 1990. Funds will be committed to the managing institutions identified in the selected proposals by September 30, 1990.

Agencies involved with the U.S. MAB Program: Department of State, Agency for International Development, USDA Forest Service, National Park Service, National Aeronautics and Space Administration, the Peace Corps, National Oceanic and Atmospheric Administration, the Environmental Protection Agency and the Smithsonian Institution.

Abstracts of Directorates Mission Statements

High-Latitude Ecosystems

Background

High-latitude regions of the earth include the zones of continuous and discontinuous permafrost in North America and Eurasia, and the cold-dominated ecosystems at lower latitudes such as the Aleutian Peninsula. Circumpolar high-latitude regions include some of the most undeveloped land areas of the northern hemisphere. These regions support indigenous human populations which until very recently have been practicing a relatively stable subsistence lifestyle. Now, however, these regions are undergoing rapidly accelerating social change, including increasing pressure for resource extraction, growing resident populations as a result of population migration from lower latitudes, and, concurrently, increased scrutiny of resource use and decisions concerning their management.

The circumpolar high-latitude regions encompass a multiplicity of ecosystems including arctic tundra, alpine tundra, cold deserts, subartic taiga forests, urbanized settings, freshwater systems and estuaries and coastal and marine systems.

Mission Statement

The mission of the High-Latitude Ecosystems Directorate of the United States Man and the Biosphere program is to foster mutually supportive relationships between humans and the biosphere in high-latitude ecosystems through a program of research and projects which integrate social, physical and biological sciences in addressing actual problems on which to base recommendations to policymakers.

Among the areas for concentrated project activities and proposed research are:

—Sustainable resource management and cultural development;
—Monitoring of global climatic change, implications for biological productivity, engineering works and transportation systems, and resident human populations;
—Maintaining aquatic areas and wetlands;
—Maintaining and protecting biological diversity;
—Cooperation in research and policy development to recover any of the above that are lost or are in the process of being damaged.

N.B. A decision was made by the U.S. National Committee to establish a Directorate for Human Dominated Systems rather than for Human Settlements in order for U.S. MAB to be able to support projects and activities over a broader range of problems.

Human Dominated Systems

Background

There are many circumstances in which human activity has so profoundly altered the underlying ecosystems that a very different environment is created. Present day population growth levels have caused such ecosystem alteration more rapidly and over wider areas than ever before, resulting in urbanization and intensification of agriculture that present tremendous problems for human health and continued food production. Other processes, such as mining and resource extraction, and tourist developments also create altered and distinct ecologies dominated by humans. Many of these areas suffer from severe problems arising from the collapse of ecological life support systems, such as severe air pollution in cities, soil degradation and tropical deforestation in relation to agriculture, and the loss of beaches and coastal areas due to the expansion of various kinds of development. As a result, the capacity of natural systems, and the viability of various types of human interventions need to be better understood.

Mission Statement

The mission of the Human-Dominated Systems Directorate of the U.S. Man and the Biosphere Program is to foster interdisciplinary research on the problems arising from human activity that profoundly modify or dominate underlying ecosystems and related life support systems. This program will integrate social, physical and biological sciences in providing information and research results in addressing actual problems on which to base recommendations to policymakers.

The research needed to address the issues arising in connection with human activities that overwhelm or threaten to overwhelm natural ecosystems and their life support functions will focus not on defined geographical areas, but on areas in which dense aggregations of people occur or where natural systems have been profoundly altered by purposeful human manipulation. Such research would include:

- Identifying levels or intensity of activity that can be supported without causing the collapse of life support systems essential to the activity, e.g. agriculture, or urban development;
- Identifying key factors that can be manipulated and those than cannot without detrimental effect, e.g. major controllable variables causing the greenhouse effect, its origins and the effects of various control methods;
- Addressing the major pollution issues facing urban settlements, identifying both immediate health effects or indirect effects such as groundwater pollution, chemical run-off or atmospheric pollution/climate change;
- Identifying and analyzing methods for reintegrating natural functions into modified ecosystems so as to restore or support important life-support systems;
- Analyzing human decision-making processes as they relate to resource and ecosystem management, and methods for improving integration of ecosystem considerations in such decisionmaking; and
- Analyzing how the stress resulting from deteriorating environment impacts upon human beings.

Marine and Coastal Ecosystems

Background

The coastal zones of the world, the region of terrestrial-marine convergence, constitute an area equal to the African continent and contain most of the marine resources used by humans. Growing problems of marine pollution, habitat degradation and biological impoverishment are found in a number of the world's poorly mixed coastal waters, especially those associated with population centers, industrial activity and river inputs.

Mission Statement

The mission of the Marine and Coastal Ecosystems Directorate of the United States Man and the Biosphere Program is to foster mutually supportive relationship between humans and the biosphere in coastal and marine ecosystems through a program of research and projects which integrate social, physical and biolgical sciences in addressing problems on which to base recommendations to policymakers.

The Directorate will encourage research and project activities on the biolgeography of marine and coastal ecosystems, including their influences on and interdependencies with human activities and well-being.

The areas of concentrated project activities and proposed research are:

- Monitoring of sources and quantity of pollution;
- Rising sea level;
- Planned marine disposal;

- Preservation of traditional uses of ocean space;
- Eutrophication in coastal areas
- Sedimentation;
- Red tides and harmful blooms.

Tropical Ecosystems

Background

Dramatic changes in land-use have had enormous consequences to the maintenance and quality of life of people in the tropical latitutdes. The magnitude of the change is affecting the biological diversity of the planet, causing losses of precious genetic material, changing the chemistry and composition of the oceans and the atmosphere, seriously depleting the fertility of soils and nature's ability to replenish that fertility, changing the climate of the world and greatly influencing the biogeo-chemical cycles of the planet. Therefore, the overriding issues facing governments, researchers, resource managers, local communities, and resource users in the tropics are: how can we stem the tide of negative global change and protect the world's biological diversity; while also providing conditions supportive of the growth and developoment of social systems needed to maintain a healthy human population.

Mission Statement

The mission of the Tropical Ecosystems Directorate of the United States Man and the Biosphere Program is to foster mutually supportive relationship between humans and the biosphere in tropical ecosystems through a program of research and projects which integrate social, physical sciences in addressing actural problems on which to base recommendations to policy makers.

Among the research and project activities that will form the focus of the tropical directorate are:

- Tropical forest restoration;
- Producing management plans that outline the steps for restoring landscapes, fresh water systems or grazing lands;
- Improving communication between social and natural scientists or managers who are working on the conservation of tropical ecosystems; and
- Generating data bases which contain available solutions to the problems of natural resource

Temperate Ecosystem

Background

The Temperate Zone is occupied by the most industrialized nations and contains about two-thirds of the earth's population. Consequently, human activities have had substantial impacts on natural ecosystems as well as on global ecological processes. The per capital rate of resource consumption and pollution are far higher in the temperate zone than in other zones, and modification to natural ecosystems is extensive.

Mission Statement

The mission of the Temperate Ecosystem Directorate of the United States Man and the Biosphere Program is to foster mutually supportive relationships betwen humans and the biosphere in temperate ecosystems through a program of research and projects which integrate social, physical and biological sciences in addressing actual problems on which to base recommendations to policymakers.

Among the problem areas that will provide the focus of the directorate program are:

- Human modification of ecosystem structure and function, especially the impacts upon ecosystem productivity, sustainability and resilience;
- Development and application of environmental management practices that provide for both commodity production and preservation of biological diversity;
- Adaptation of humans to an increasing extent, frequency and severity of environmental hazards;
- Adoption of soil conservation practices in arid and semi-arid temperate ecosystems with declining productivity;
- Adaptation of human populations to increasingly economically marginal environments.

Would You Like to Participate in a U.S. MAB Directorate?

In our bulletin of March 1989 you were informed of our reorganization of the U.S. MAB Program into five new Directorates. An Abstract of the Mission Statement of each of these new Directorates appears above.

Our National Committee wants to ensure that these new Directorates are composed of a balance of both social and biological/natural scientists as well as of governmental agency and private sector scientists and representatives. Therefore, if you are interested in being appointed to a Directorate, please write to the U.S. MAB Secretariat to receive copies of the full Directorate mission statements and an application form.

Applicants should submit the form and a short (4 page maximum) CV to the U.S. MAB Secretariat by October 1, 1989. By the end of October 1989, Directorate members and their Chairs will be appointed.

An organizational meeting for each of the new Directorates will be held sometime between Thanksgiving and Christmas 1989 in Washington, DC.

[FR Doc. 89-18530 Filed 8-7-89; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Pub. L. 96-192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80-2-69 established the first interim SFFL and Order 89-6-31 set the currently effective two-month SFFL applicable through July 31, 1989.

In establishing the SFFL for the two-month period beginning August 1, 1989, we have projected nonfuel costs based on the year ended March 31, 1989 data, and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department.

By Order 89-7-53 fares may be increased by the following factors over the October 1, 1979, level:

Atlantic	1.2513
Latin American	1.3726
Pacific	1.7279
Canada	1.3964

FOR FURTHER INFORMATION CONTACT: Keith A. Shangraw (202) 366-2439.

By the Department of Transportation: July 31, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-18428 Filed 8-7-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-89-31]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion of omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before August 28, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No._____, 800 Independence Avenue, SW., Washington, DC. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 1, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25902
Petitioner: Mountain Air Cargo, Inc.
Regulations Affected: 14 CFR 135.225(d)
Description of Relief Sought: To allow petitioner to operate C208 aircraft in less than the prescribed visibility and landing minimum with pilots having less than 100 hours of pilot-in-command experience in that type of aircraft.

Docket No.: 25903
Petitioner: Falcon Jet Corporation
Section of the FAR Affected: 14 CFR 47.9(b)(2)
Description of Relief Sought: To allow petitioner to extend the initial reporting period for foreign-owned corporations from every 6 months after registration to an initial reporting period of 12-months after registration and every 6 months thereafter.

Docket No.: 25927
Petitioner: Golden Goose Company
Section of the FAR Affected: 14 CFR 135.267(b)(2) and (c)(2) and 135.269(b)(4)
Description of Relief Sought: To allow petitioner to assign a pilot and to permit a pilot to accept an assignment for flight time in excess of 10 hours for a two-pilot crew and in excess of 12 hours for a three-pilot crew.

Docket No.: 25935
Petitioner: New Creations, Inc., d/b/a U.S. Check
Sections of the FAR Affected: 14 CFR 43.3(a) and (h)
Description of Relief Sought: To allow persons not certificated as mechanics under the provisions of Part 65 to conduct preventive maintenance and other simple maintenance and inspection procedures on aircraft operated by U.S. Check.

Docket No.: 25951
Petitioner: Mid Pacific Air Corporation
Section of the FAR Affected: 14 CFR 121.343(b)
Description of Relief Sought: To delay the installation of new digital flight recorders in three YS-11A aircraft for 75 days and to use aircraft foil-type recorders on a temporary basis during the time period requested.

Docket No.: 24453
Petitioner: Braniff, Inc.
Regulations Affected: 14 CFR 121.411 and 121.413
Description of Relief Sought/Disposition: To extend and amend Exemption No. 5015 that allows petitioner to use certain Aeroformation A320 pilot flight instructors and simulator instructors to train petitioner's initial cadre of A320 pilots. The amendment would add another Aeroformation pilot instructor to the list of approved instructors.
Grant, July 21, 1989, Exemption No. 5015A

Docket No.: 24700
Petitioner: San Juan Airlines
Sections of the FAR Affected: 14 CFR 135.225(e)(1)
Description of Relief Sought/Disposition: To extend Exemption No. 4761 that allows aircraft operated by petitioner to take off under instrument flight rules from any Canadian civil airport when the weather visibility minimum at those airports is less than 1-mile visibility, but not less than the minimums prescribed by Transport Canada, which is the Canadian government agency responsible for establishing such weather visibility minimum.
Grant, February 27, 1989, Exemption No. 4761A

Docket No.: 25779
Petitioner: JBH Air Charter
Sections of the FAR Affected: 14 CFR 43.3
Description of Relief Sought/Disposition: To allow petitioner's flightcrews to remove passenger seats and cabinets and install patient stretchers or cargo floors and nets.
Denial July 21, 1989, Exemption No. 5074

[FR Doc. 89-18466 Filed 8-7-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance; Napa Valley Railroad Co.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for the request.

All communications concerning this proceeding should identify the appropriate docket number (Waiver Petition Docket Number RSRM 89-1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before September 21, 1989, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petitioner seeking an exemption or waiver of compliance is:

Napa Valley Railroad Company

(Waiver Petition docket Number RSRM–89–1)

The NAPA Valley Railroad Company (NVR) seeks an exemption from the regulation requiring that a prescribed rear end marking device be displayed on passenger, commuter and freight trains (Title 49, Code of Federal Regulations, part 221). Instead, the NVR proposes to use an alternative marking device similar to the original equipment used on this historical passenger train. The train is proposed to operate between NAPA and St. Helena, a distance of 19.0 miles.

Today, the NVR switches an occasional car of freight on industrial sidings. In the future, it is proposed to provide this service over the line at separate times. For this reason, the NVR feels the request is not contrary to the public interest or safety.

Issued in Washington, DC, on July 31, 1989.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89–18429 filed 8–7–89; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

Highway Safety Programs; Amendment of Conforming Products List of Calibrating Units for Breath Alcohol Testers

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice.

SUMMARY: This notice amends the Conforming Products List for instruments which have been found to conform to the Model Specifications for Calibrating Units for Breath Alcohol Testing (49 FR 48865).

EFFECTIVE DATE: August 8, 1989.

FOR FURTHER INFORMATION CONTACT: Mrs. Robin Mayer, Office of Alcohol and State Programs, NTS–21, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; Telephone: (202) 366–9825.

SUPPLEMENTARY INFORMATION: On August 19, 1975 (40 FR 36167), the National Highway Traffic Safety Administration (NHTSA) published the Standards for Calibrating Units for Breath Alcohol Testers. A Qualified Products List of Calibrating Units for Breath Alcohol Testers, of devices which met this standard, was first issued on November 30, 1976 (41 FR 53384).

On December 14, 1984 (49 FR 48864), NHTSA converted this standard to Model Specifications for Calibrating Units for Breath Alcohol Testers, and published in Appendix B (49 FR 48872), a Conforming Products List (CPL) of calibrating units which were found to conform to the Model Specifications. Amendments to the CPL have been published in the **Federal Register** since that time.

Since the last publication of the CPL for calibrating units, several calibrating units not previously on the CPL, have been tested in accordance with the Model Specifications, and were found to be in conformance. These units include: CMI, Inc.'s Toxitest II; Guth Laboratories, Inc., Model 34C FM; Protection Devices, Inc., LS34, Model 6100; and Systems Innovation, Inc., True-Test MD 901.

The Conforming Product List is therefore amended as follows:

Conforming Products List for Calibrating Units for Breath Alcohol Testers

Manufacturer and Calibrating Unit

1. Century Systems, Inc., Arkansas City, KA: Breath Alcohol Simulator BAS311.
2. CMI, Inc., Owensboro, KY: Toxitest II.
3. Federal Signal Corporation, CMI, Inc., Minturn, CO: Toxitest Model ABS 120.
4. Guth Laboratories, Inc., Harrisburg, PA: Model 34C Simulator; Model 34C Cal DOJ; Model 34C–FM; and Model 10–4.
5. Intoximeters, Inc., St. Louis, MO: Nalco Breath Alcohol Standard.
6. Luckey Laboratories, Inc., San Bernardino, CA: Simulator.
7. Protection Devices, Inc., Dayton, NJ: LS34 Model 6100.
8. Smith & Wesson Electronic Co., Springfield, MA: Mark II–A Simulator.
9. Systems Innovation, Inc., Hallstead, PA: True-Test MD 901.

(23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501)

Issued on: August 8, 1989.

Robert Nicholson,

Acting Associate Administrator for Traffic Safety Programs.

[FR Doc. 89–18545 Filed 8–3–89; 1:46 pm]

BILLING CODE 4910–59–M

Highway Safety Program; Amendment of Conforming Products List of Evidential Breath Testing Devices

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice.

SUMMARY: This notice amends the Conforming Products List for instruments which have been found to conform to the Model Specifications for Evidential Breath Testing Devices (49 FR 48854).

EFFECTIVE DATE: August 8, 1989.

FOR FURTHER INFORMATION CONTACT: Mrs. Robin Mayer, Office of Alcohol and State Programs, NTS–21, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; Telephone: (202) 366–9825.

SUPPLEMENTARY INFORMATION: On November 5, 1973, the National Highway Traffic Safety Administration (NHTSA) pubished the Standards for Devices to Measure Breath Alcohol (38 FR 30459). A Qualified Products List of Evidential Breath Measurement Devices comprised of instruments that met this standard was first issued on November 21, 1974 (38 FR 41399).

On December 14, 1984 (49 FR 48854), NHTSA converted this standard to Model Specifications for Evidential Breath Testing Devices, and published in Appendix D to that notice (49 FR 48864), a Conforming Products List (CPL) of instruments that were found to conform to the Model Specifications. Amendments to the CPL have been published in the **Federal Register** since that time.

Since the last publication of the CPL, one device has been tested in accordance with the Model Specifications, and was found to conform to the Model Specifications: Intoximeter Inc.'s Intoximeter 3000 (rev B2) w/FM option.

Further, CMI, Inc., has moved its manufacturing plant from Mintern, CO, to Owensboro, KY. Instruments manufactured by CMI in Owensboro have been tested and found to remain in conformance with the Model Specifications. In addition, several typographical errors found in prior Conforming Product Lists have been corrected.

The Conforming Products List is therefore amended as follows:

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES

Manufacturer and model	Mobile	Nonmobile
Alcohol Countermeasures System, Inc., Port Huron, MI		
Alert J3AD	X	X
BAC Systems, Inc., Ontario, Canada		
Breath Analysis Computer		X

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer and model	Mobile	Nonmobile
CAMED Ltd., North Shields, Tyne and Ware, England		
IR Breath Analyzer	X	X
CMI, Inc., Owensboro, KY		
Intoxilyzer Model		
4011	X	X
4011A	X	X
4011AS	X	X
4011AS–A	X	X
4011AS–AQ	X	X
4011AW	X	X
4011A27–10100	X	X
4011A27–10100 with filter	X	X
5000	X	X
5000 (w/Cal. Vapor Re-Circ.)	X	X
5000w/3/8" ID Hose option)	X	X
5000 (CAL DOJ)	X	X
5000(VA)	X	X
PAC 1200	X	X
Decator Electronics, Decator, IL		
Alco-Tector model 500		X
Intoximeters, Inc., St. Louis, MO		
Photo Electric Intoximetor		X
GC Intoximeter MK II	X	X
GC Intoximeter MK IV	X	X
Auto Intoximeter	X	X
Intoximeter Model		
3000	X	X
3000 (rev B1)	X	X
3000 (rev B2A)	X	X
3000 (rev B2A)	X	X
3000 (rev B2A) w/ FM option	X	X
3000 (Fuel Cell)	X	X
Alco-Sensor III	X	X
Alco-Sensor III	X	X
RBT III	X	X
Komyo Kitagawa, Kogyo, K.K.		
Alcolyzer DPA–2	X	X
Breath Alcohol Meter PAM 101B	X	X
Lion Laboratories, Ltd., Cardiff, Wales, UK		
Alcolmeter Model		
AE–D1	X	X
SD–2	X	X
EBA	X	X
Auto-Alcolmeter		
Lucky Laboratories, San Bernardino, CA		
Alco-Analyzer Model		
1000		X
2000		X
National Draeger, Inc., Pittsburgh, PA		
Alcotest Model		
7010	X	X
7110	X	X
Breathalyzer Model		
900	X	X
900A	X	X
900BG	X	X
National Patent Analytical Systems, Inc., East Hartford, CT		
BAC Datamaster	X	X

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer and model	Mobile	Nonmobile
Omicron Systems, Palo Alto, CA		
Intoxilyzer Model		
4011	X	X
4011AW	X	X
Siemans-Allis, Cherry Hill, NJ		
Alcomat	X	X
Alcomat F	X	X
Smith and Wesson Electronics, Springfield, MA		
Breathalyzer Model		
900	X	X
900A	X	X
1000	X	X
2000	X	X
2000 (non-Humidity Sensor)	X	X
Stephenson Corp.		
Breathalyzer 900	X	X
Varian Systems, Inc., Fairport, NY		
The BAC Verifier	X	X
BAC Verifier Datamaster	X	X
BAC Verifier Datamaster II	X	X

(23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501.)

Robert Nicholson,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 89–18534 Filed 8–3–89; 1:46 pm]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1989 Rev., Supp. No. 1]

Surety Companies Acceptable on Federal Bonds; Acstar Insurance Co.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1989 Revision, on page 27801 to reflect this addition:

Acstar Insurance Company. Business Address: 141 Prestige Park Road, P.O. Box 8307, East Hartford, CT 06108. Underwriting Limitation *b/*: *$1,493,000.* Surety Licenses *c/*: All except AS, DE, GU, HI, PR, and VI. Incorporated IN: Illinois.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287–3921.

Dated: August 1, 1989.

Mitchell A. Levin,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 89–18483 Filed 8–7–89; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination; Canaletto

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Canaletto" (see list),[1] imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, in New York, NY, beginning on or about October 30, 1989 to on or about January 21, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 28, 1989.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 89–18455 Filed 8–7–89; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202–485–8827, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

Culturally Significant Objects Imported for Exhibition; Determination; Czech Modernism: 1900–1945

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Czech Modernism: 1900–1945" (see list[1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. I also determine that the temporary exhibition or display of the listed exhibit objects at the Museum of Fine Arts, Houston, Texas, beginning on or about October 6, 1989 to on or about January 7, 1990, is in the national interest. The works in the painting, sculpture, drawings, and prints segment of the exhibition will be further displayed at the Brooklyn Museum, Brooklyn, New York, beginning on or about March 2, 1990 to on or about May 7, 1990. The works in the photography segment of the exhibition will be further displayed at the International Center of Photography, New York, New York, beginning on or about February 9, 1990 to on or about May 7, 1990, and at the Akron Art Museum, Akron, Ohio, beginning on or about June 23, 1990 to on or about August 26, 1990. These additional displays are also deemed to be in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 29, 1989.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 89–18454 Filed 8–7–89; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg of the Office of the General Counsel, USIA. The telephone number is (202) 485–8827, and the address is Room 700, U.S. Information Agency, 301–4th Street, SW., Washington, DC 20547.

Culturally Significant Objects Imported for Exhibition, Determination; Velazquez Exhibition

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Velazquez Exhibition" (see list),[1] imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art in New York, beginning on or about October 3, 1989 to on or about January 7, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 28, 1989.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 89–18456 Filed 8–7–89; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202–485–8827, and the address is Room 700, U.S. Information Agency, 301 4th Sreet SW., Washington, DC 20547.

Grants Program for Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency invites applications from private sector organizations to conduct two youth exchange projects between the U.S. and several American Republics countries (Latine America/ the Caribbean). Please note that both of these projects were announced in the **Federal Register** of December 6, 1988, pages 49266–67. Subsequent substantial modifications have caused the reannouncement of these projects.

The deadline for receipt of proposals in USIA is August 15, 1989.

Uruguay

A two-way project for students from a junior college or junior college consortium and students from the Binational Center in Montevideo to learn about the host culture through education. The students will attend classes in various subjects at the host institution(s) and will participate in cultural activities. Each phase will last six weeks.

Regional Projects

Young Diplomats.—A two-way project for students from Latin American diplomatic academies and young American professionals or graduate students preparing for a foreign service career to learn about the foreign policy organization, foreign policy formulation and training for the foreign service in another country. The 10 northbound participants will attend courses and briefings with their American counterparts in the U.S. for three weeks. The 8 Americans will spend one week in each of three of the participating Latin American countries for a total of three weeks. In these countries they will visit and attend courses and briefings with their counterparts from the northbound segment.

Youth Exchange Programs, Bureau of Educational and Cultural Affairs, (ATTN: Susan Wanger-Crystal, Youth Exchange Staff, United States Information Agency), 301 4th St. SW., Rm 357, Washington, DC 20547, Telephone 202/485–7299.

Dated: July 26, 1989.

Csaba T. Chikes,

Director, Youth Exchange Staff.

[FR Doc. 89–18457 Filed 8–7–89; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 151
Tuesday, August 8, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 3, 1989.

TIME AND DATE: 10:00 a.m., Thursday, August 10, 1989.

PLACE: Room 600, 1730 K Street, NW., Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor, MSHA v. Garden Creek Pocahontas Co.*, Docket No. VA 88–9, etc. (Issues include whether certain injuries were "occupational injuries" required to be reported to MSHA pursuant to 30 CFR § 50.20(a).)

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)]

The meeting will be closed after discussion of the above. The Commission will continue its consideration of the following:

2. *Westwood Energy Properties*, Docket No. PENN 88–42–R. (Issues include whether the Secretary has jurisdiction under the Mine Act to inspect operations involving a culm bank at Westwood's power plant.)

3. *FMC Wyoming Corporation*, Docket No. WEST 88–43–RM, etc. (Issues include whether FMC Wyoming's violation of 30 CFR § 57.5002 was a significant and substantial contribution to a mine health hazard and the result of FMC's unwarrantable failure to comply, and whether FMC violated 30 CFR § 57.18002.)

Any person intending to attend the open portion of this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFOR: Jean Ellen, (202) 653–5629/(202) 566–2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89–18613 Filed 8–4–89; 2:27 pm]

BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, August 14, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 4, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–18647 Filed 8–4–89; 3:15 pm]

BILLING CODE 6210–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

TIME AND DATE: 1:05 p.m., Friday, August 4, 1989.

PLACE: Chairman's Office, 6th Floor, 1776 G Street NW., Washington, DC 20456.

STATUS: Closed.

MATTER CONSIDERED:

1. Special Assistance under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

The Board voted unanimously that Agency business required that a meeting be held with less than the usual seven days advance notice.

The Board voted unanimously to close the meeting under the exemptions listed above. The Deputy General Counsel certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 89–18662 Filed 8–4–89; 3:56 pm]

BILLING CODE 1535–01–M

NATIONAL SCIENCE BOARD

DATE AND TIME: August 18, 1989.

8:00 a.m. Closed Session
10:15 a.m. Open Session

PLACE: National Science Foundation, 1800 G Street, NW, Room 540, Washington, DC 20550.

STATUS:

Most of this meeting will be open to the public.

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED AUGUST 18:

Closed Session (8:00 a.m. to 10:15 a.m.)

1. Minutes—June 1989 Meeting.
2. NSB and NSF Staff Nominees.
3. Future NSF Budgets.
4. Grants and Contracts—Action Items.

Open Session (10:15 a.m. to 12:00 noon)

5. Grants, Contracts, and Programs—Action Item.
6. Chairman's Report.
7. Minutes—June 1989 Meeting.
8. Biennial Delegation of Authority.
9. Director's Report.
10. Draft Report of the NSB Task Force on Global Biodiversity.
11. Opportunities for Research in Japan.
12. Other Business.

Thomas Ubois,

Executive Officer.

[FR Doc. 89–18618 Filed 8–4–89; 2:29 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 7, 14, 21, and 28, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 7

Thursday, August 10

2:00 p.m.
Periodic Briefing by Advisory Committee on Reactor Safeguards (ACRS) Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, August 11

10:00 a.m.
Briefing on Certification of DOT Transuranic Waste Package—TRUPACT II (Public Meeting)

Week of August 14—Tentative

Tuesday, August 15

10:00 a.m.
Periodic Briefing on EEO Program (Public Meeting)

Wednesday, August 16

10:00 a.m.
Briefing on Status of Calvert Cliffs (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, August 17

10:00 a.m.
Discussion of Full Power Operating License for Limerick-2 (Public Meeting)

Week of August 21—Tentative

There are no meetings scheduled for the Week of August 21.

Week of August 28—Tentative

There are no meetings scheduled for the Week of August 28.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (Recording)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: August 3, 1989.

William M. Hill, Jr.,
Office of the Secretary.

[FR Doc. 89–18641 Filed 8–4–89; 2:30 pm]
BILLING CODE 7590-01-M

MISSISSIPPI RIVER COMMISSION

TIME AND PLACE: 9:00 a.m., September 11, 1989.

PLACE: On board MV MISSISSIPPI at foot of Eighth Street, Cairo, IL.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Memphis District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,
Executive Assistant, Mississippi River Commission.

[FR Doc. 89–18614 Filed 8–4–89; 2:28 pm]
BILLING CODE 3710-GX-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., September 12, 1989.

PLACE: On board MV MISSISSIPPI at City Front, vicinity of Beale Street, Memphis, TN.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; and (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,
Executive Assistant, Mississippi River Commission.

[FR Doc. 89–18615 Filed 8–4–89; 2:28 pm]
BILLING CODE 3710-GX-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., September 13, 1989.

PLACE: On board MV MISSISSIPPI at City Front, Greenville, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris, Executive Assistant
Mississippi River Commission.

[FR Doc. 89–18616 Filed 8–4–89; 2:28 pm]
BILLING CODE 3710-GX-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., September 15, 1989.

PLACE: On board MV MISSISSIPPI at City Front, Morgan City, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,
Executive Assistant, Mississippi River Commission.

[FR Doc. 89–18617 Filed 8–4–89; 2:28 pm]
BILLING CODE 3710-GX-M

Corrections

Federal Register
Vol. 54, No. 151
Tuesday, August 8, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-09-4214-12; MTM 15568]

Termination of Classification for Multiple-Use Management; Montana

Correction

In notice document 89-17586 beginning on page 31254 in the issue of Thursday, July 27, 1989, make the following corrections:

1. On page 31254, in the third column, under **Principal Meridian Montana**, the 10th and 11th lines should be removed.

2. On the same page, in the same column, the third line from the end should read "sec. 30, N½NE¼.".

3. On page 31255, in the first column, the fourth line should read "sec. 24, N½."

4. On the same page, in the same column, in the 14th line, the comma preceding "and" should be removed.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010-AB21

Oil, Gas, and Sulphur Operations in the Outer Continental Shelf; Training Requirements for Personnel Engaged in Drilling, Production, Well-Completion, and Well-Workover Operations

Correction

In proposed rule document 89-17712 beginning on page 31768 in the issue of Tuesday, August 1, 1989, the heading should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43, 65, and 145

[Docket No. 25965]

RIN 2120-AC38

Repair Station and Repairmen Certification Rules; Regulatory Review; Meetings

Correction

In proposed rule document 89-17239 beginning on page 30866 in the issue of Monday, July 24, 1989, make the following corrections:

On page 30867, in the third column, in the third paragraph, in the material set off by dashes "Class 3" and "Class 2" should read "Class 2" and "Class 3" respectively.

BILLING CODE 1505-01-D

federal register

Tuesday
August 8, 1989

Part II

Environmental Protection Agency

40 CFR Part 85

Control of Air Pollution From Motor Vehicles and Motor Vehicle Engines; Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program; Final Rulemaking

BEST COPY AVAILABLE

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 85

[FRL-3484-4]

Control of Air Pollution From Motor Vehicles and Motor Vehicle Engines; Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This final rule amends the Emission Control System Performance Warranty regulations and the Voluntary Aftermarket Part Certification Program. EPA developed this rulemaking in response to the October 14, 1983, decisions of the United States Court of Appeals for the District of Columbia Circuit.[1] The court's decision for the most part upheld the Emissions Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program.[2] However, it cited several areas of concern where the court felt some revision was required. EPA proposed amendments addressing these concerns in the January 9, 1987, Notice of Proposed Rulemaking (NPRM), 52 FR 924, and received numerous comments from aftermarket part manufacturers and vehicle manufacturers.

These final rules amend the voluntary aftermarket part regulations to provide all aftermarket part manufacturers a means to certify emission related parts.[3] The amended regulations provide part and vehicle manufacturers with a defined mechanism for resolving warranty claim disputes involving these certified parts. Additionally, vehicle manufacturers are provided with guidelines for denying warranty coverage for repairs involving uncertified parts. Finally, these rules require that durable labels that are unique (and thus distinguishable between manufacturers) be used on all certified aftermarket parts.

EFFECTIVE DATE: September 7, 1989.

ADDRESSES: Copies of materials relevant to this rulemaking proceeding are contained in public Docket EN-84-08 at the U.S. Environmental Protection Agency, Central Docket Section, Room 4, South Conference Center (LE—131), Waterside Mall, 401 M Street SW., Washington, DC 20460, and are available for review weekdays between 8:00 a.m. and 3:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Michael Sabourin, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Rd., Ann Arbor, MI 48105 (313) 668-4318.

SUPPLEMENTARY INFORMATION

I. Background

Section 207(a)(1) of the Clean Air Act (the Act) requires motor vehicle manufacturers to warrant that each new vehicle is designed, built, and equipped to conform to the applicable Federal emission standards. The vehicle manufacturer must also warrant that the vehicle is free from defects which would cause the vehicle or engine to fail to conform to the applicable regulations within the useful life of the vehicle. Section 207(b) of the Act directs EPA to promulgate rules requiring vehicle manufacturers to also warrant the performance of certified emission related parts or systems (the performance warranty) for the useful life of the vehicle, if EPA determines that testing methods and procedures are available to determine if a vehicle is in compliance with applicable emission standards during its useful life. EPA promulgated these emission control system performance warranty regulations on May 23, 1980 (45 FR 34829). Proper maintenance and use of a vehicle are prerequisites to section 207(b) performance warranty coverage.

EPA also promulgated regulations, as authorized by section 207(a)(2) of the Act, that allow automotive part manufacturers to certify their parts as equivalent to original equipment manufacturer (OEM) parts (45 FR 78448, November 25, 1980). Vehicle manufacturers cannot deny a performance warranty claim on the ground that use of an aftermarket part is improper maintenance or repair if the part is certified under the voluntary aftermarket part certification regulations. Thus, consumers can use certified aftermarket parts without jeopardizing their emission control performance warranties. Further, the consumer can purchase certified parts knowing that they have been evaluated for emission performance.

The vehicle manufacturers are required by section 207(b) to honor warranties for vehicles equipped with certified aftermarket parts. However, the certified part manufacturer is required to reimburse the vehicle manufacturer if the certified part caused the emissions failure.

The regulations promulgated in 1980 limited certification to thirteen specific replacement parts. For each of these parts, the regulations defined unique durability procedures and emission critical parameters (ECP's). ECP's are those physical and performance characteristics of a part which, if duplicated (or exceeded), will result in satisfactory emission performance. Manufacturers of the thirteen specific parts covered by the regulations could certify by evaluating their parts according to these ECP procedures or, at the manufacturer's option, on the basis of Federal Test Procedure (FTP) emission results and such other evaluation as approved by the Administrator of EPA.

Vehicle manufacturers and part manufacturers challenged several aspects of the aftermarket part certification regulations and the emission control system performance warranty regulations.[4] On October 14, 1983, the United States Court of Appeals for the District of Columbia Circuit ruled on the petitions. The court's decision basically upheld the regulations. However, the court directed EPA to make or consider amendments to the following areas.

A. Specialty Parts

The original regulations specifically excluded add-on or specialty parts from the aftermarket part certification program since there were no recognized emission critical parameter evaluation procedures for these parts. This exclusion was challenged by manufacturers of specialty parts. The court ruled that even if emission critical parameter evaluation procedures were not available, manufacturers of specialty parts should at least be allowed to certify on the basis of FTP test results unless EPA could provide a reasoned explanation for excluding these parts from certification. Thus, EPA proposed to allow specialty parts to be certified on the basis of FTP results. Additionally, although not directed by the court to do so, EPA proposed amendments which would allow manufacturers of all types of aftermarket emission related parts to certify on the basis of FTP results. This proposal would greatly expand the number and types of parts eligible for aftermarket part certification.

B. Inspection/Maintenance (I/M) Short Tests

The original regulations denied the use of I/M type short tests[5] for aftermarket part certification, relying instead on either the emission critical parameter procedures or FTP test results. Aftermarket part manufacturers argued in favor of certification based on the I/M-type short tests since, in practice, these short tests were used to determine emission compliance for performance warranty purposes. The court directed EPA to reconsider its policy and technical reasons for rejecting short tests. EPA did so in the NPRM, explaining that existing short tests are not a substitute for the FTP, the concern for potential emission degradation if certification via short tests were widely used, and the expected increase in performance warranty emission failures if short test certification was allowed.

C. Reimbursement Plan

As required by the original regulations, a motor vehicle manufacturer has to honor a consumer emission performance warranty claim, provided the vehicle failed to meet emission standards during its useful life and has been properly used and maintained with OEM parts or certified aftermarket parts. However, the motor vehicle manufacturer can require reimbursement from the certified part manufacturer for "reasonable expenses" incurred in the repair of a vehicle if a "valid emission performance warranty claim" arose because of the use of the certified aftermarket part. The original regulations did not define the two terms "reasonable expense" and "valid emission performance warranty claim," nor did they specify a reimbursement plan for the manufacturers to follow in the event of a dispute between the two parties.

The motor vehicle manufacturers and representatives of parts rebuilders contended that the two terms, "reasonable expense" and "valid emission performance warranty claim," were too vague to provide meaningful guidance to part manufacturers and vehicle manufacturers; the court agreed. The court required that EPA either apply its expertise in the area and define the terms within the regulations, or provide a forum in which the terms would be clarified through an adversarial process, such as arbitration. EPA improved the definition of these terms and proposed the adoption of an arbitration process to be followed when other attempts to settle a claim are unsuccessful.

D. Warranty Denial

The regulations allow a manufacturer to deny emission performance warranty to a customer if a vehicle's emission performance failure was traced to an uncertified aftermarket part. The original regulations required the vehicle manufacturer to "present evidence that an uncertified part on a vehicle was defective, or not equivalent, from an emission standpoint, to an OEM part" before the manufacturer could be free of emission performance warranty responsibility.[6] Vehicle manufacturers argued that demonstrating that a part was either defective or not equivalent to an OEM part placed an excessive burden on them. The court cautioned EPA not to "shift * * * the burden of demonstrating equivalency * * * to the vehicle manufacturers"[7] but permitted EPA to "* * * require vehicle manufacturers to submit a statement (or other evidence) indicating why an uncertified part was relevant to the vehicles' [emission] failure * * *."[8]

EPA proposed to allow the vehicle manufacturer to deny a warranty claim if it can make a technical determination that the uncertified aftermarket part was at fault and provide the consumer with a written assertion and supporting objective evidence that the uncertified part was at fault and that restoring the vehicle to OEM condition would repair the emission problem.

Finally, vehicle manufacturers argued the need for permanent labels or identification symbols on certified parts. EPA concurred with the vehicle manufacturers and, although not directed to do so by the court, proposed permanent labeling requirements.

II. Summary of Final Rule

These final rules permit all aftermarket part manufacturers to voluntarily certify their emission related parts. The previously existing method of certifying eligible parts using ECP's is unchanged by these rules. Therefore, manufacturers of the thirteen types of parts currently eligible to certify using ECP criteria are still allowed to certify these parts by that method.[9] However, today's action provides an alternative means of certifying parts which does not rely on ECP procedures. Utilizing this alternative method, the regulations also expand eligibility for voluntary certification to all emission related aftermarket parts.

The alternative method relies on FTP test results to demonstrate that use of the aftermarket part will not result in an unacceptable emissions increase compared to the vehicle in its original equipment (OE) configuration.

The alternative method also requires some form of durability demonstration for certain parts, depending on the potential emissions impact of the part to be certified. These final rules establish two categories of durability demonstration requirements for parts. The first category consists of parts which, when excessively deteriorated or failed in-use, will result in driveability problems likely to be quickly corrected. No durability testing is required for these parts to ensure continued emissions compliance. The second category consists of parts for which durability testing is required to demonstrate emissions compliance. The failure of these parts in-use will likely not cause driveability problems which would be automatically repaired.

Vehicle manufacturers will continue to be required to repair vehicles which fail in-use emission tests and are covered by the Act's section 207(b) emission warranty. If the warranty repair requires replacement of a defective or deteriorated certified aftermarket part, the vehicle manufacturer will make that repair without charge to the customer. The vehicle manufacturer is entitled to reimbursement from the manufacturer of the certified aftermarket part for reasonable costs incurred while repairing emissions failure caused by the aftermarket part. These final regulations establish reimbursement procedures for warranty cost claims between vehicle and certified aftermarket part manufacturers. The regulations also expand and clarify the meaning of reasonable expense and a valid emission performance warranty claim. This provides additional guidance for resolving reimbursement disputes that may arise. EPA prefers that disputes between vehicle manufacturers and aftermarket part manufacturers over warranty cost claims be resolved informally. Disputes which cannot be

---

[1] *Specialty Equipment Manufacturers Association (SEMA)* v. *Ruckelshaus*, 720 F.2d 124; *Automotive Parts Rebuilders Association (APRA)* v. *EPA*, 720 F.2d 142.

[2] Code of Federal Regulations (CFR), title 40, part 85, subpart V.

[3] Emission related components include those components installed for the specific purpose of controlling emissions (such as exhaust gas recirculation valves) as well as those components, systems, or elements of design which must function properly to assure continued vehicle emission compliance (such as the fuel metering system).

[4] *SEMA* v. *Ruckelshaus*, 720 F.2d at 124; *APRA* v. *EPA*, 720 F.2d at 142.

[5] Short test are relatively quick, inexpensive tests ordinarily used by States in inspection/maintenance (I/M) programs to screen vehicles in use for compliance with certain emission standards. Failure of a short test approved under section 207(b) of the Act may result in a performance warranty claim.

[6] 40 CFR 85.2105(b).

[7] *APRA* v. *EPA*, 720 F.2d at 157.

[8] Ibid. at 156 n.53

[9] The thirteen currently eligible parts are listed in 40 CFR 85.2122.

resolved informally will be decided through arbitration.

These revised regulations prohibit denial of warranty coverage involving an uncertified part unless the vehicle manufacturer determines and documents to the consumer that the uncertified part was relevant to the failure. The regulations provide the requirements the vehicle manufacturer must meet to make such a denial.

The revised regulations also require that each certified aftermarket part be identified with a unique and durable label.

III. Discussion of Final Rulemaking[10]

A. Certification of Aftermarket Parts

1. Eligibility

The regulations promulgated in 1980 which established the voluntary certification program for aftermarket parts, limited certification to thirteen parts which had defined ECP (emission critical parameter) categories. As a result of the court case brought by aftermarket specialty part industry representatives, EPA was directed to either develop further its reasoning for limiting certification access or provide a means by which other emission related aftermarket parts can be certified.[11]

As proposed in the NPRM and set forth in these final rules, all manufacturers of emission related aftermarket parts are now eligible to participate in the voluntary certification process. EPA has developed testing criteria for the certification of emission related parts. These testing criteria will give reasonable assurance that use of these parts will not cause vehicles to fail to meet emission standards.

While EPA is allowing emission related specialty (i.e., add-on) parts to participate in this certification program, the main purpose of this program is to facilitate the maintenance and repair of an owner's vehicle by making good quality parts available for that purpose. It is not EPA's intention to encourage repair facilities to remove a primary OEM emission control component that is still properly operating (i.e., a low mileage part with no overt or driveability malfunction) in order to install a certified aftermarket part. While certified aftermarket parts must undergo testing that demonstrates their compliance with warranty requirements, the part manufacturer does not have to demonstrate a part's durability and emission performance as extensively as a vehicle manufacturer must do in certifying a vehicle. While EPA sees that increased part availability as a result of this certification program will generally be beneficial, use of a certified aftermarket part to replace a properly functioning OEM component may not always be in the best interest of air quality. Thus, EPA intends to monitor the use of certified parts. If the Agency determines that these parts are being used in a manner that is detrimental to air quality, EPA will consider amending these regulations to address that situation.

Consistent with EPA's past practice, the certifying manufacturer of an aftermarket part must not only demonstrate the part complies with emission standards during certification demonstration, but also attest that the part does not cause a substantial increase to emissions in any other normal vehicle driving mode not represented during certification or compliance testing. Parts that cannot meet these demonstration criteria are called defeat devices. For example, EPA is concerned about electronic devices such as replaceable PROM's (programmable read only memory chips) which store many of the operating parameters of the emission control system used by the vehicle's on-board computer. Aftermarket PROM's could be programmed to operate adequately under Inspection/Maintenance testing or under FTP testing, yet cause a substantial loss in emission control in normal vehicle operating modes not represented by one or both of these two test cycles. This might be due to lack of design sophistication or deliberate design intent (i.e., performance enhancement). Whatever the cause, if EPA obtains data showing that a part is a defeat device, that part will be decertified.

2. Warranty Obligations

The final rules clarify the existing requirement (40 CFR 85.2117) that all certified aftermarket parts must be warranted by the part manufacturer not to cause emission noncompliance of the vehicle on which it is installed. The amended rules clarify that this warranty applies for the remainder of the useful life of the vehicle on which the part is installed. The original vehicle manufacturer is required to honor all valid emission performance warranty claims involving any and all properly installed certified parts.[12] The vehicle manufacturer may then obtain reimbursement from the certified part manufacturer for a valid warranty claim caused by the certified part according to procedures described later in these final rules.

The basic performance warranty requirements contained in 40 CFR 85.2103 for vehicles are unchanged by these amendments. However, certain clarification is warranted here. Basically, the owner is eligible for warranty repair if his or her vehicle has been properly maintained and used yet fails an EPA approved state or local I/M test during the vehicle's useful life and the owner is required to seek repair of the vehicle or incur some other sanction. Of particular interest to this rulemaking, the vehicle manufacturer is required to repair or replace without charge those certified emission related components necessary to remedy that emission failure if it occurs within the prescribed warranty period. Warranted components include all OEM emission related components and any certified aftermarket component installed on the vehicle. For vehicles in operation less than 24 months or 24,000 miles, any emission related repairs to the vehicle are covered by the warranty. After 24 months or 24,000 miles, only those parts installed for the sole or primary purpose of reducing emissions are covered by the performance warranty.

Certified parts and systems shall be warranted for the remaining warranty period of the vehicle. Since these parts could be installed on a vehicle with low mileage, the part manufacturer must be prepared to warrant its parts for the full warranty period of the vehicle (e.g., for the full useful life of 5 years or 50,000 miles for primary emission control devices installed on light-duty vehicles). Since the OEM is only required to warrant certain emission related parts for 2 years or 24,000 miles under the performance warranty, the aftermarket part manufacturer is likewise only required to warrant its comparable parts for that same period, even if the OEM is required to warrant its part for an interval greater than the 2 years or 24,000 miles under the defect warranty.

In the NPRM, EPA proposed an option that would have allowed vehicle manufacturers to deny warranty coverage to a vehicle owner when a certified specialty part was determined to be the cause of a performance warranty claim. EPA had suggested that since specialty parts were typically add-on parts not used primarily for maintenance and repair, as specifically covered in the warranty provisions of section 207(b) of the Act, they could be denied warranty repair by the vehicle manufacturer if the failure was related to the add-on part. Under this proposed option the vehicle owner would go directly to the certified specialty part manufacturer for warranty coverage.

A number of commenters pointed out problems with the definition of specialty parts in the NPRM. It was unclear whether the NPRM definition of specialty parts included parts which provide a necessary repair or replacement function as well as an additional feature or function. Commenters contended that these parts do not fit the definition proposed by EPA. They stated that consumers may buy these parts for convenience and/or cost savings, with no intention of altering the vehicle's emission system. This is contrary to EPA's contention in the NPRM that consumer's generally purchase specialty parts with the knowledge and intent of altering the vehicle's emission control system. Thus, these commenters requested that specialty parts should be treated the same as all other certified aftermarket parts and that OE manufacturers should not be allowed to deny warranty repairs for problems caused by a certified specialty part.

Based on these comments, EPA can see difficulties in clearly defining what constitutes a specialty part. The difficulty rests in determining whether a part provides a repair or maintenance function to warrant certification. It appears that many parts will fall into this category of providing both a replacement/maintenance function and some additional, unnecessary enhancement.

On the other hand, in their comments to the NPRM, vehicle manufacturers supported the optional treatment of certified specialty parts based on the concern that OEM dealerships would not know how to diagnose and repair problems caused by specialty parts which were designed to perform substantially different functions than OEM parts. However, as indicated above, many parts that normally are considered specialty parts also serve a replacement function. For such parts, the OEM dealership generally should be able to determine if the replacement features of the specialty part are performing adequately. Diagnosis of problems due to parts other than the specialty part should further allow the repair facility to assess whether the specialty part is significantly contributing to the emissions noncompliance. Additionally, EPA expects that major suppliers of specialty equipment will make diagnosis and repair information available to repair facilities. Finally, manufacturers can verify their diagnosis by removing the specialty equipment and returning the vehicle to its OEM configuration. EPA recognizes that this could be relatively expensive and would expect repair facilities only to take this action when it is quite likely that the specialty part is at fault.

Specialty parts certified according to the rules being promulgated today will have demonstrated their emission control capability. EPA expects warranty claims due to certified specialty parts to occur no more frequently than for any other certified part. Thus, specialty part warranty claims should be relatively rare. Given the difficulty, complexity and potential confusion associated with trying to implement a separate warranty system for specialty parts and the expected infrequent occurrences of certified specialty part warranty claims, EPA cannot justify a separate specialty part warranty system. Thus, for all of the above reasons, these final rules clarify that warranty claims involving certified specialty parts will be handled in the same way as all other claims involving certified parts as suggested by certain commenters. However, EPA may reconsider the proposed option if the need arises in the future.

3. Certification Emissions Test Requirements

a. *Certification using ECP's.* As noted earlier, today's final rules do not change the regulations currently allowing certification using ECP's (emission critical parameters). Specifically, today's rules do not add or delete any part categories that are eligible to certify using ECP's. Several commenters expressed an interest in expanding the ECP parts list. EPA believes the approach of using ECP's is a sound one, as well as the most straightforward procedure for certifying parts in cases where it is possible to develop ECP's. EPA encourages industry initiatives to develop additional categories of ECP's for the certification of aftermarket parts. It is one approach that meets the needs of a part manufacturer to certify at reasonable cost and gives reasonable assurance that the specific part will work properly for its useful life.

Any expansion of the ECP list will require another EPA rulemaking. In the meantime, this final rulemaking also allows all part manufacturers to certify their emission related aftermarket parts, whether or not their parts have defined ECP's, through FTP testing.

b. *Certification using the FTP.* As proposed in the NPRM, the regulations being promulgated today permit a part manufacturer to conduct FTP emission testing to demonstrate emissions compliance by vehicles using its part.[13]

For aftermarket parts determined not to accelerate the deterioration of other preexisting emission related parts, the actual test procedure will require two FTP tests, the first in the test vehicle's original configuration and the second with the aftermarket part installed. To obtain certification, the difference of emissions between the two tests must be less than the smallest "certification vehicle emission margin" of all the OEM engine families on which the part is specified for use by the part manufacturer. "Certification vehicle emission margin" for a certified engine family means the difference between the EPA emission standards and the average FTP emission test results of that engine family's emission-data vehicles at the projected full useful life mileage point (full useful life mileage for light-duty vehicles is presently 50,000 miles and for light-duty trucks is 120,000 miles) obtained by the OE manufacturer during vehicle certification.

Aftermarket parts accelerating deterioration of other OEM emission related parts ordinarily will require only one test on a worst-case vehicle. The vehicle with the part installed must be driven for its useful life and then emission tested to determine compliance with applicable standards.

Several commenters indicated that EPA should not allow the part manufacturers to use up the emission margin created by the OEM during vehicle development and certification. Vehicle manufacturers commented that this margin is necessary to allow for production differences and other factors which might cause an emission increase to be detected during selective enforcement auditing (SEA) [14] or in-use compliance testing (e.g., recall).[15]

---

[10] In this section, where appropriate, EPA responds to certain comments on the NPRM. Responses to other significant comments are in the "Summary and Analysis of Comments" which has been placed in the public docket for this rulemaking.

[11] The court case only directed EPA to reconsider certification of specialty parts. *SEMA* v. *Ruckelshaus*, 720 F.2d at 137–138. However, EPA has decided it is appropriate to include all emission related parts in this category.

[12] If an original vehicle manufacturer's authorized service facility improperly installs a certified part, the vehicle manufacturer is still required to honor the performance warranty claim.

[13] However, as discussed later in this notice, in order to minimize testing expenses for parts manufacturers, EPA is eliminating (or reducing) durability testing requirements for certain parts.

[14] Under section 206(b) of the Act EPA implements the SEA program involving assembly line emission testing to determine whether new motor vehicles or new motor vehicle engines conform with applicable emissions regulations.

[15] Under section 207(c) EPA implements what is sometimes referred to as its recall program. Vehicle manufacturers are required to recall and repair a class of vehicles if EPA determines that a

Continued

However, in the 1983 court case reviewing the 1980 regulations,[16] EPA was already challenged on the issue of allowing an increase in emissions during aftermarket parts certification. The Motor Vehicle Manufacturers Association (MVMA) argued that parts should be certified to a "no increase" standard. EPA argued that the regulations need only require that a part not cause a vehicle to exceed emission standards, not that the part cause no emissions increase. The court upheld EPA's interpretation as being consistent with section 207 of the Act. The statute says nothing about prohibiting certified parts from causing any increase in emissions. Its only concern is that a vehicle in which parts are installed comply with emission standards.

From an emission perspective, EPA would prefer not to allow any emissions increase due to the installation of aftermarket parts. However, in order to treat part manufacturers with similar equity to vehicle manufacturers, the Agency will not prohibit aftermarket part manufacturers from using up the certification vehicle emission margin during certification. Vehicle manufacturers may comply with certification requirements by certifying at a level equal to or below the emission standards. EPA does not believe it is necessary or equitable to require another set of lower standards (i.e., lower than the vehicle emission standards listed in the regulations) to which the part manufacturer must certify, if the part manufacturer demonstrates that its part when installed will not cause this original emission standard to be exceeded.

Moreover, EPA expects that any potential emission increase due to some aftermarket parts using up some of this certification margin will be small. Additionally, the SEA and in-use compliance programs are unaffected by this. For the SEA program OEM compliance is based on the performance of assembly line vehicles equipped with OEM components. For the in-use compliance program nonconformity determination will not be based on vehicles with unrepresentative emissions caused by non-OEM parts. Therefore, the vehicle manufacturer is not in jeopardy of failing emission standards in these programs due to the installation of aftermarket parts. Further, this potentially small total emission increase should not result in an appreciable increase in performance warranty emission test failures. The I/M programs currently in place have relatively high short test emission standards. Few properly maintained and functioning vehicles would be expected to fail these short test standards due to part certification using up some of the original certification vehicle emission margin. Moreover, a certified part manufacturer has a strong incentive not to certify or produce parts that would use up so much of the vehicle certification margin as to make it likely that a vehicle would fail an emission test since the part manufacturer must warrant its parts and reimburse vehicle manufacturers if a certified part causes a vehicle to fail a short test. Thus, the Agency has concluded that it is not necessary to adopt more stringent certification requirements for part manufacturers and the part manufacturer need only show that its parts will not cause vehicles in which the part is installed to exceed emission standards.

After the certification process, both part and vehicle manufacturers are responsible on their own to assure that standards will be met in-use. EPA has established strong incentives for part and vehicle manufacturers to demonstrate in-use compliance. As discussed above, vehicle manufacturers have to meet SEA and in-use compliance requirements in addition to honoring the performance warranty, while aftermarket part manufacturers must honor performance warranties and reimburse vehicle manufacturers for the cost of vehicle warranty repair if the certified parts cause emission failures.

One vehicle manufacturer expressed concern that emission failure during in-use compliance (recall) testing under section 207(c) of the Act may increase due to provisions of this certification program. The commenter explained that the vehicle manufacturer should not be forced to recall vehicles which fail to meet standards due to aftermarket part installation. The Agency currently considers the representativeness of each vehicle tested in the recall program. EPA will continue to screen vehicles to ensure that the emissions of the vehicles (when tested by EPA) are not made unrepresentative by the use of non-OEM parts. Nonconformity determinations, as they pertain to vehicle manufacturers, will not be based on vehicles with unrepresentative emissions caused by non-OEM parts.

One commenter stated that EPA should account for the effect of multiple parts on emissions. The commenter theorizes that interaction of several aftermarket parts may cause emissions to increase beyond that normally expected by simply accounting for the emissions increase of each individual component. The commenter believes that the part certification test procedure may not adequately account for this possible effect and that in-use vehicles equipped with multiple parts may exceed standards.

EPA does not expect a significant air quality impact from multiple aftermarket part usage. Since most OEM parts are designed to be durable for the full useful life of the vehicle, EPA expects few of these parts to be replaced before 50,000 miles in use. Multiple failures of OEM parts are even more unlikely. Furthermore, the court of appeals has already addressed a concern raised by the MVMA on the potential effect of multiple aftermarket parts on in-use emissions.[17] *APRA* v. *EPA* considered parts certified using ECP'S. MVMA argued that several certified parts, each of which only cause some increase in emissions, together might result in a failure (during I/M testing). However, the court stated that such a result is entirely speculative and not a basis for overturning the rules. EPA believes the same reasoning applies to this rulemaking. Since the possibility of a multiple component failure is likely small and there is no currently available evidence that such failures are occurring in use, EPA has no basis on which to revise the regulations to accommodate this issue at this time. If evidence becomes available at some later date confirming a problem with failures caused by multiple aftermarket part usage, EPA will readdress this issue at that time.

4. Denying Use of Short Tests for Aftermarket Parts Certification

Aftermarket part manufacturers continue to prefer the use of short tests rather than the FTP as a basis for certification of parts, pointing out that short tests are less expensive to conduct than the FTP. Allowing short test use in certification would reduce certification costs compared to a program relying on FTP test results. The aftermarket part manufacturers also commented that section 207(b) emission performance warranty claims only result from failure of EPA approved short tests, not the FTP. Therefore, they contend, it is only necessary that the manufacturer demonstrate compliance with the short tests, not with the FTP.

In *SEMA* v. *Ruckelshaus*, the court stated that section 207(a)(2) of the Act neither prevents use of the short test for parts certification purposes, nor does it require EPA to use short tests as a basis for certification. The court went on to say that there may be valid policy reasons for rejecting short tests[18] and directed EPA to better explain its rationale before doing so.

In the NPRM, EPA presented its reasons for proposing to prohibit use of a short test for certification from both a policy and technical perspective. Several commenters still argued for the use of alternative short tests for certification of aftermarket parts. To effectively analyze the suitability of various types of short tests for aftermarket part certification, this section is divided into three groupings: (a) The existing I/M short tests currently listed in the federal regulations; (b) the alternative non-FTP tests not listed in the federal regulations but considered in the preamble of the NPRM; and (c) the cold 505 (Bag 1) portion of the FTP test, a short test not specifically considered in the NPRM but recommended in the comments.

a. *Existing I/M short tests.* These final rules do not adopt any existing I/M short test for certification under this program. EPA does not believe that I/M short tests, standing alone, are adequate for certification purposes.

EPA does not accept the argument made by part manufacturers that the I/M short test must be used for certification because it is the only basis for determining performance warranty claims. Congress has empowered EPA to ensure that vehicles meet all applicable emission standards for their statutory useful life. EPA does not believe it can satisfy this purpose with the I/M short test alone and, as a policy matter EPA does not believe it would be appropriate to attempt to do so.

To carry out Congress' intent, EPA has published regulations that spell out the manufacturer's certification and in-use compliance responsibilities, which at times exceed performance warranty responsibilities. For example, while many original vehicle parts have performance warranty coverage for only 2 years or 24,000 miles, EPA has determined that some of these parts are either too critical to emission performance, or not sufficiently likely to be serviced in use, to allow manufacturers to replace the part at intervals as low as 24,000 miles during certification vehicle mileage accumulation. In 40 CFR 86.088–25, EPA established minimum emission part change intervals required during certification vehicle durability demonstration that go beyond the performance warranty requirements. In many cases, while a vehicle manufacturer may only warrant a certain part (e.g., ignition wires, emission-related hoses and tubes) for 2 years or 24,000 miles under the performance warranty, that same part would be covered under the 207(a) defect warranty up to 5 years or 50,000 miles, and that manufacturer may not be allowed to change that same part on the durability test vehicle for the entire certification mileage accumulation cycle (50,000 miles for LDV's). Thus, EPA believes it would be inappropriate and inequitable to allow certified aftermarket parts to meet only section 207(b) short test requirements while the OEM parts they are intended to replace are subject to a 5 year/50,000 mile defect warranty, and often must demonstrate compliance under the much more stringent FTP test, including full useful life durability requirements.

Moreover, from a more technical perspective, EPA does not believe it should adopt the I/M short tests for part certification. Existing I/M short tests were not designed to predict accurately in every case actual vehicle or emission part performance under the wide range of operating conditions typically encountered in use. I/M short tests are used to screen, in a short time period, large numbers of vehicles that have already passed certification and assembly line testing requirements using the full FTP and to identify vehicles with atypically high emissions which need maintenance or repair. Working within these severe constraints, the short test is designed specifically to be a screening tool; it is not a predicting tool.

Faced with technical and practical implementation constraints (discussed at length in the NPRM and the Summary and Analysis of Comments to this rulemaking), it was appropriate for EPA to optimize the I/M short test's effectiveness as an in-use inspection screening tool of vehicles that had demonstrated compliance in certification and SEA, with no intention of ever using the I/M short test for a part's certification demonstration. The optimization was accomplished by minimizing the chances that a vehicle capable of passing the FTP test would fail the short test (minimize errors of commission) while at the same time catching vehicles with particularly high emissions which, if repaired, would result in the greatest emission benefit per failing vehicle. In particular, this was achieved by setting I/M test standards so that the typical vehicle failing the existing I/M short tests and standards would most likely be expected to have FTP emission levels above the FTP standards. While this gives the Agency reasonable confidence that the I/M tests will catch particularly high emitters that would fail the FTP and will not inappropriately fail many vehicles, the existing I/M short tests do not accurately identify every vehicle which would meet the Federal FTP emission standards and every vehicle which would fail to meet those standards.

The discussion above outlines the effectiveness of current short tests in screening many vehicles to identify potential FTP failures, and appropriately providing warranty repair for some high emitters in the current population of in-use vehicles. EPA believes that the current I/M short tests are reasonably effective and correlate reasonably well with the FTP for these purposes largely because the vehicles being tested in-use were certified and produced to pass the FTP standards. EPA's elaborate preproduction certification and end of production line programs are in place to continually verify FTP compliance of vehicles as produced. Since certified vehicle designs have passed the FTP, and assembly line vehicles have passed or are subject to FTP testing in the SEA process, EPA is reasonably confident that most properly maintained vehicles in-use will meet FTP emission standards.

Under the present system, use of existing short tests serves the purpose of section 207(b) by protecting manufacturers from errors of commission, while sufficiently protecting consumers and the environment by identifying high emitting vehicles and providing an economical means for ensuring repair of those vehicles. However, the present system relies on the fact that FTP-based certification and selective enforcement auditing help reduce the risk that other vehicles may be exceeding standards in-use. By contrast, EPA has no data on how effective the current short tests would be in flagging FTP failures, or how well they would "reasonably correlate" with the FTP, if vehicle/part designs not certified for FTP compliance were also included in the in use population. However, EPA expects that the addition of numerous "new" vehicle/part designs, not previously certified under the FTP or subject to any FTP audits, would significantly increase the variability between emission results that would be obtained under I/M short tests and that would be expected under the FTP and increase the risk that more

substantial number are failing in use during their useful lives even though properly maintained and used.

[16] *APRA* v. *EPA*, 720 F.2d at 142.

[17] Ibid.

[18] *SEMA* v. *Ruckelshaus*, 720 F.2d at 138–137, 141.

vehicles passing the short tests would fail the FTP (or vice versa).

In determining whether to use short tests to certify aftermarket parts, the close relationship between the effectiveness of the current I/M short tests and the FTP-tested design of the in-use vehicles is particularly important. As noted earlier, aftermarket part manufacturers argued that it was only necessary to demonstrate compliance with approved short tests since only these short tests would be used to assess in-use compliance of the part and to initiate a performance warranty claim for which the part manufacturer would be responsible. Moreover, a vehicle with an aftermarket part installed is, in effect, a new vehicle/part combination which may or may not have been designed and produced to pass the FTP. Thus, if the part manufacturers' comments were adopted, and part certification was permitted based on existing short tests, EPA would not have confidence that the short test results would "reasonably correlate" with FTP results, given the new vehicle/part combination.

As discussed above, allowing aftermarket part certification relying upon only the existing short tests for new vehicle/part combinations likely would decrease the degree of correlation between the I/M short tests and the FTP. Two undesirable results could occur. First, in-use emissions could increase as a result of the short tests passing more vehicle/aftermarket part combinations that would fail the FTP. Second, the current I/M tests could fail more in-use vehicles which actually would pass FTP standards and thus increase improper performance warranty claims. It is inappropriate for EPA to establish an aftermarket certification program which could unnecessarily burden the current I/M and performance warranty programs with more improper claims. EPA also believes it is somewhat inequitable to allow aftermarket manufacturers to meet less vigorous, less effective tests than required of OEM's.

Finally, while performance warranty (I/M) testing is an important part of EPA's comprehensive strategy for controlling air pollution, it is not the only component in EPA's compliance program strategy. This testing is not sufficient or adequate outside the context of the vehicle compliance program to ensure emissions compliance. The I/M performance warranty program was implemented to complement the certification process by efficiently and economically identifying in-use vehicles with abnormally high emissions so that they might be specifically emission repaired. It has been EPA's policy to use an integrated comprehensive approach to meeting Congress' goals. Certifying aftermarket parts to meet only performance warranty requirements would be inconsistent with EPA's overall policy approach and would present a high risk that these parts would not allow vehicles to comply with emission standards.

For these reasons, EPA continues to reject any of the existing approved short tests as the basis for aftermarket part certification.

b. *Alternative short tests considered in the NPRM.* Since the court ruling, EPA has investigated several alternative short tests and discussed them at length in the NPRM. These tests have an advantage over currently implemented I/M short tests in that they, like the FTP, may be loaded tests and may measure NO_x emissions as well as HC and CO. However, in comparison to directly utilizing the FTP, these tests remain at a disadvantage because there is no data that show how well these tests correlate with the FTP. Furthermore, no standards have been established by EPA that can be used with these tests to determine compliance with Clean Air Act (CAA) emission standards. Moreover, these tests have not been reviewed by the technical community at large for their acceptability.

EPA has not changed its position that the alternative tests considered in the NPRM should not be adopted in these final rules. EPA did not receive comments which specifically addressed the first three alternatives discussed in the NPRM. Thus, for reasons discussed in the NPRM and its accompanying issue paper,[19] those tests are not adopted in these final rules.

The other two alternative procedures discussed in the NPRM were procedures proposed by SEMA.[20] In each case, SEMA proposed a multi-tier approach to certification testing. Each tier attempted to match the level of certification demonstration stringency to the uncertainty of the part's ability to perform properly. The tiers ranged from accepting engineering judgment to FTP testing a vehicle with and without the candidate aftermarket part installed as adequate demonstration of a part's performance.

SEMA commented that their proposals were not adequately reviewed by EPA in the NPRM. EPA does not agree. In the NPRM and supporting issue paper EPA pointed out a number of areas where further development of the demonstration criteria required to carry out SEMA's proposals was necessary before these approaches would be justified. EPA did not receive comments from any party, including SEMA, that addressed the development of the necessary screening criteria. Therefore, for the reasons discussed in the NPRM and the issue paper, EPA concludes that there is no adequate basis for adopting the SEMA proposals. Should new information be submitted which supports the SEMA proposed procedures, EPA may consider reevaluation of those options at that time.

c. *Proposed cold 505 portion of the FTP as a short test.* During the comment period on the NPRM, SEMA suggested an alternative short test that consisted of using the bag 1 (cold 505) portion of the FTP in lieu of using the entire FTP for certification emissions testing. SEMA submitted a California Air Resources Board (CARB) analysis involving regressions between cold 505 (bag 1) and corresponding FTP (all 3 bags) gram/mile emission results from in-use vehicles in CARB's database. According to SEMA, the CARB analyses suggested that the cold 505 emission results could possibly be used to demonstrate compliance by "either meeting an appropriate emission standard or by showing no increase in emissions."[21]

The cold 505 emissions test procedure was not considered in the NPRM and largely for this reason is not being adopted with this final rulemaking. However, in response to SEMA's suggestion, EPA has analyzed the technical merits of this alternative short test. EPA believes the bag 1 portion of the FTP can be used to reasonably screen parts for compliance with the full FTP standard. First, this alternative test is a loaded, transient test, overcoming critical shortcomings of a number of the tests considered in the NPRM. Secondly, this alternative reflects the impact on emissions during start up and cold transient performance, two operating conditions not evaluated in any of the other short tests considered. What is lacking, however, is an appropriate standard for the cold 505 test which can be used to reasonably assure that vehicles meeting such a cold 505 test standard with an aftermarket part installed would also be expected to meet FTP standards. An evaluation of the cold 505 short test alternative and possible cold 505 values that correspond to FTP standards are included in the docket to this rulemaking in a report entitled, "Using the Cold 505 Emission Test Procedure for Certification of Aftermarket Parts".[22]

Public comment on this new alternative test procedure and the appropriate standard is necessary. Consequently, elsewhere in today's Federal Register, EPA is proposing use of the cold 505 portion of the FTP as an alternative to FTP testing for the certification of aftermarket parts. EPA will take final action on this alternative test procedure based on comments to that proposal.

5. Durability Requirements

These final rules promulgate the durability demonstration requirements for aftermarket parts proposed in the NPRM.[23] To certify an aftermarket part, the part manufacturer must prove its part will operate properly (i.e., not cause emission failure, unacceptable driveability or safety problems)[24] for the remainder of the warranted useful life of the vehicle on which the part is installed. These final rules are adopting the same durability (part useful life) requirements for aftermarket parts as are required under vehicle certification for original equipment parts.

EPA has established what the Agency considers to be the minimum aftermarket part durability demonstration requirements necessary to assure the continued satisfactory emission performance of vehicles on which the certified parts are installed. EPA has selected these procedures in order to minimize the cost of durability testing. In those cases where durability testing is required, EPA does recognize that the cost of demonstration may be a disincentive to certification (see section F). However, continued satisfactory emission performance over the expected life of the part is necessary. Currently the Agency does not know of an alternative scheme which would be applicable to a wide range of aftermarket parts and yet provide sufficient assurance of aftermarket part emission performance durability.

To establish a program that gives reasonable compliance assurance at a reasonable cost, EPA has categorized parts by the minimal level of durability demonstration necessary to maintain sufficient confidence that the part will not contribute to excess in-use emissions. For these final rules discussion, the categories fall under those parts requiring no testing and those parts requiring testing. A summary of the program durability requirements, and the decision process involved to determine when these requirements apply to a specific part to be certified, is shown in Attachment I.

a. *Parts requiring no durability testing.* These regulations will allow a durability exemption for certification of any emission related parts that upon failure normally cause a noticeable vehicle driveability performance, and/or fuel economy change of the vehicle at a level detectable by the driver and likely to result in near term repair. Even parts designed primarily for emission control will be considered for durability exemption if failure of these parts will normally result in noticeable driveability problems.[25] Due to the driveability problems, early maintenance of such malfunctioning parts will likely occur. Thus, since in-use emission problems caused by malfunction of these parts should be short term, parts properly assigned to this category will be allowed a durability exemption. Only parts that during normal part operation, are determined to accelerate the emission deterioration of existing components will be required to perform durability demonstration as described in the next section (part 5b).

The regulations (at 40 CFR 85.2114) require the manufacturer to submit with its notification a document which provides adequate demonstration that the part will be replaced at failure due to poor driveability, poor performance and/or poor fuel economy. It is the responsibility of the part manufacturer to demonstrate that failure of the part would result in vehicle repair, and thereby, be exempt from any durability demonstration. The type of conditions that must be satisfied for durability exemption are more fully discussed in the Summary and Analysis of Comments.

b. *Parts requiring durability testing—*
i. *Parts demonstrated to cause no noticeable change in vehicle driveability when the part fails.* These regulations require that an aftermarket part manufacturer, certifying a part that is appropriately categorized as those emission related parts that do not normally cause noticeable driveability change when their emission performance deteriorates or fails, must demonstrate the part's durability by aging it over an accepted durability cycle on an appropriate durability vehicle. EPA cannot be sure that failure of these parts, and the resulting vehicle emission noncompliance, would be detected and repaired in a timely manner. Thus, these parts must be shown to be durable for their full useful lives.

These regulations state that part aging for these shall be conducted by driving the durability vehicle with the part installed for the part's useful life over the durability cycle specified in 40 CFR part 86, appendix IV. The manufacturer may use an alternative durability cycle if it determines that the alternative cycle is at least as representative of typical in-use operation as the cycle described in appendix IV. However, in some cases, test data from a durability vehicle run specifically for certification purposes will not be required if the manufacturer submits other data collected for other purposes, (e.g., for design reliability purposes) that is sufficient to demonstrate the durability of a part (i.e., if the manufacturer determines that the operating cycle and other factors potentially affecting the data are typically representative of what would occur for in-use vehicles).

For parts that during normal part operation would not be expected to cause accelerated deterioration (compared to OEM counterparts) of other existing emission related components, it is not necessary that the vehicle used for durability aging also be used for demonstrating certification emission compliance. The aftermarket part manufacturer may choose to demonstrate certification emission compliance of the aged part on another test vehicle if for some reason the manufacturer determines the durability vehicle is not suitable for emission testing.

Only parts that during normal part operation are determined to accelerate

---

[19] See the Public Docket #EN-84-08, category II-B-6.

[20] See the NPRM and the issue paper, docket number EN-84-08, category II-B-6 for a detailed explanation.

[21] Docket #EN-84-08, Category IV-D-4, SEMA's Comments.

[22] Docket #EN-84-08, Category IV—A.

[23] These requirements address deterioration due to mileage accumulation, but arguably do not reflect deterioration caused by salt, moisture, dirt, and other phenomenon that age a part or system over time. While EPA does not explicitly require material and workmanship specifications in these regulation revisions, it is EPA's intention that the part manufacturer will consider aging effects in its designs. EPA will monitor the material and structural specifications of parts and, if the Agency determines there is a high risk that parts will not withstand aging effects for the required useful life, EPA may revise these regulations to address this issue.

[24] The Act, section 202(a)(4), states EPA's responsibility for not allowing use of devices or emission designs where the "* * * device system or element of design will cause or contribute to an unreasonable risk to public health or safety in its operation or function."

[25] Two commenters (MEMA and SEMA) were uncertain as to how parts "designed primarily for emissions control" that cause driveability problems would be categorized. This clarification in these final rules show that such parts will be considered for durability exemption.

the emission deterioration of existing emission related components will be required to perform more stringent durability demonstration as described in the next paragraph.

ii. *Parts that accelerate deterioration of existing emission related parts.* EPA expects that manufacturers will be able to determine that the great majority of their parts will not accelerate deterioration of other existing emission related components. EPA expects aftermarket parts that mainly perform the same function as an OEM component, or even a consolidated function, can be determined by the aftermarket part manufacturer not to accelerate deterioration of other existing emission related components compared to OEM parts. However, in the case where an aftermarket part might cause emission deterioration of existing emission related parts beyond that expected if only OEM parts were present, both the part's deterioration and the degradation to the rest of the emission related components must be evaluated.

For these parts, an appropriate durability vehicle (see Section E of this preamble) must be aged for the vehicle's full useful life with the aftermarket part installed. At the time of certification, the same durability vehicle is emission tested with the aged part installed. Since both vehicle and part are aged, a part passes certification if the FTP emission results of the fully aged vehicle with the aged part installed do not exceed the applicable FTP standards.

One commenter (APAA) asked for an example of "the accelerated deterioration to other emission related components of the vehicle." A detailed example is presented in the Summary and Analysis of Comments.

One vehicle manufacturer (Ford) expressed its concern that when a part and vehicle are aged and tested together, as required for parts that accelerate deterioration of other parts, a part that is a maintenance part with a scheduled replacement interval of less than 50,000 miles could be replaced during certification mileage accumulation. If the part is replaced, the last installed part may not be aged to its full warranted mileage at the time of certification testing. In such a case, the emission impact of a fully deteriorated part will not be evaluated. EPA agrees with this comment. Therefore, EPA will require that the installed part be aged to at least the recommended replacement mileage prior to certification testing. This may require the reinstallation of a replaced part used during durability mileage accumulation that is aged for the minimum recommended mileage. A full discussion is given in the Summary and Analysis of Comments.

c. *Light-Duty Truck (LDT) part durability.* To demonstrate LDT part durability for 120,000 miles (the useful life for LDT's), EPA proposed in the NPRM that for a LDT part manufacturer required to perform durability testing, the manufacturer would have to accumulate not more than 50,000 vehicle miles on the part and then project FTP emission results from the worst case test vehicle with the aged part installed out to the 120,000 mile useful life point.

Ford expressed concern with the method proposed in the NPRM for projecting LDT emission results, commenting that it would be difficult for a part manufacturer to predict aftermarket part impact on truck emission deterioration from 50,000 to 120,000 miles without intimate knowledge of the rest of the truck. EPA agrees that Ford's comment has some merit and understands the technical difficulty of the proposal. Thus, EPA has reviewed the complete proposed method of certifying these LDT parts for consistency and ease of implementation relative to the entire part certification program. Based on that review, it has been determined that the LDT certification process as proposed can be clarified in such a way that, while maintaining a reasonable demonstration requirement, it will be more consistent with LDV demonstration and in most cases rely on actual test data rather than extrapolated deterioration estimates.

For LDT parts that are exempt from durability testing (i.e., parts demonstrated to cause a noticeable change in vehicle driveability when the part fails, but also have no deteriorative affect on existing emission related components), two FTP tests will be performed on the worst case test vehicle, one test before and one test after the part is installed. As in the case of comparable LDV parts, the difference in emissions between the two tests must be less than the certification vehicle emission margin at the full useful life mileage point.

The situation is a little different for parts requiring durability evaluation. It is expected that most LDT aftermarket parts will not be installed on vehicles for anything near the full 120,000 mile useful life of the truck. Therefore, EPA will retain the 50,000 mile durability mileage accumulation demonstration requirement as proposed for those parts that require durability testing. If the part manufacturer has determined that full durability demonstration is more appropriate for its LDT part, the manufacturer has the option of accumulating 120,000 miles on its part and then testing for emission performance rather than using 50,000 mile emission test results.

For LDT parts demonstrated to cause no noticeable change in vehicle driveability when the part fails, and also have no deteriorative effect on existing emission related components or systems, the part does not have to be aged on the same test vehicle used for emission testing. After the part is aged for 50,000 miles, the selected worst case emission test vehicle is FTP tested once before and once after the aged part is installed. As in the case of comparable LDV parts, the difference in emissions between the two tests must be less than the certification vehicle emission margin at 120,000 miles as determined using deterioration factors (d.f.'s) during the vehicle certification process. (Note that the certification vehicle emission margin is determined at 50,000 miles for LDVs but at 120,000 miles for LDTs. However, 50,000 miles for LDVs approximates half of the full life expected for LDVs, whereas 120,000 estimates the full useful life for LDTs. Thus, aging aftermarket parts to 50,000 for both classes of vehicles reasonably evaluates the aftermarket parts for about half the full useful life of the vehicles on which they are installed.)

For only those LDT parts that are categorized as parts that cause accelerated deterioration to existing emission related parts or systems, EPA requires that the part be aged on the same test vehicle that will be used for emission testing. An FTP test must be performed at 4,000 miles and at 50,000 miles (other FTP tests may be performed at interim mileages at the option of the manufacturer). Deterioration factors (d.f.'s) for the test vehicle with the part installed will be calculated from these two test results, or from all test results when multiple FTP tests are run, using linear regression. The LDT d.f.'s will be used to linearly project the 50,000 mile test result out to 120,000 miles. EPA has observed that original vehicle manufacturers never project LDT deterioration at greater than a linear rate. Therefore, the regulations require linear d.f. projections as representative of expected emission deterioration for these parts. The projected 120,000 mile test results must meet LDT emission standards.[26]

[26] For those LDT part manufacturers that choose to run a full 120,000 miles of durability demonstration, the actual FTP test at the 120,000 mile point must pass the FTP standards. The one test is then sufficient for certification and no other FTP tests or emission projections are necessary.

Aside from requiring projections to 120,000 miles, this method of demonstration is basically the same as the requirements for LDV parts that have similar effects on existing emission related parts. The added burden of one extra FTP test at 4,000 miles is necessary to enable the part manufacturer to reasonably project its results out to 120,000 miles, thus avoiding the burden of actually accumulating mileage on the test vehicle out to 120,000 miles. As in the case of LDV parts with comparable effects on existing emission related parts, EPA again believes that few LDT aftermarket parts will be certified in this category (see discussion in section III.A.5.b).

d. *Evaporative emission control system durability.* EPA is adopting the evaporative system durability requirements proposed in the NPRM. No comments were received on this proposal. For aftermarket parts which the manufacturer determines should only affect evaporative emission performance, the durability requirements of the regulations are similar to those in place for vehicle evaporative certification. The regulations require the aftermarket part manufacturer to determine and document the appropriate methodology for durability evaluation of its evaporative emission control system parts and their synergistic deteriorative effect on OEM evaporative emission components. As specified in the current regulations (§ 85.2114(d)), compliance with the evaporative emission standards would be determined after completing durability evaluation by performing the evaporative emission portion of the FTP on the vehicle with the part installed.

6. Test Vehicle Selection

The proposed regulations would have required that certification emission testing be performed on a single worst case test vehicle selected by the aftermarket part manufacturer for each part design it is certifying. One part manufacturer association (SEMA) was concerned that its members would have to perform extensive analyses to determine a single worst-case configuration for certification testing. It proposed that EPA define narrow selection criteria that would specifically identify two test vehicle applications and reasonably assure worst case demonstration. SEMA suggested specific criteria for the two alternative test vehicles but stated that EPA may determine other, more acceptable criteria.

These final rules adopt the EPA proposed method of vehicle selection and, as requested by the comments, offer an alternative, optional, two vehicle method for test vehicle selection. The first method, as proposed, requires the aftermarket part manufacturer to select that vehicle application expected to have the largest increase in emission levels due to the installation of the part to be certified. For part manufacturers capable of making this determination, this selection method is potentially the least costly method since only one test vehicle and set of emission tests are needed to certify.

The alternative method requires selection of two test vehicles. The first test vehicle is selected from the certified vehicle configurations representing the largest projected sales volumes of the part. Within this group of certified vehicles, the manufacturer shall select the heaviest equivalent test weight from the set of test vehicles originally used to demonstrate vehicle certification. Within the group of vehicles of that weight, the manufacturer shall select the design which corresponds to the vehicle certification emission data vehicle which has the largest engine displacement.

The second test vehicle is required to come from a different vehicle manufacturer than the first vehicle; if the part is intended for installation on only a single manufacturer's product line, then the second test vehicle is to be selected from a different engine family. Within this set of vehicles, the same criteria as used to select the first test vehicle are used to select the second test vehicle. The test vehicle selected will correspond to the certification emission data vehicle with the highest equivalent test weight for all possible applications of the part. Within this group, the largest engine displacement shall be selected. If a part applies to only one engine family then only the first worst case vehicle is required to certify.

While slightly different from SEMA's specific proposal, these selection criteria are consistent with those recommended by SEMA.[27] Most importantly, these criteria satisfy SEMA's goal of providing objective criteria for test vehicle selection. For part manufacturers that cannot determine their own worst case vehicle selection, the alternative method is a reasonable choice.

Information on vehicle certification emission data vehicles is conveniently available to the public through the annual "Federal Certification Test Result List." From this list the aftermarket part manufacturer can select the test vehicles according to the criteria above. Carline designation need not be identical between the vehicle certification emission data vehicle and the aftermarket part certification test vehicle. The only requirements are that the test vehicle has the same equivalent test weight and engine displacement and be from the same engine family as determined by the specific criteria. If the certification test car list contains more than one emission data vehicle satisfying the criteria for an aftermarket part test vehicle selection, then the manufacturer may select any one of the eligible designs.

The regulations require the aftermarket part certification test vehicle or vehicles selected to be serviced to ensure all parts function properly before testing. All excessively worn or malfunctioning emission components should be repaired or replaced before testing.

If durability demonstration is necessary, EPA is adopting the NPRM proposal that the part manufacturer select the durability vehicle expected to cause the greatest deterioration in the performance characteristics of the part that influence emissions. EPA is also adopting an alternative selection criteria for durability test vehicles proposed by SEMA during the comment period. Manufacturers may choose (as they did when selecting certification test vehicles) the vehicle representing the highest equivalent test weight with the largest engine displacement size of all configurations on which the part is meant to be used (the alternative second vehicle selection). Thus, if the manufacturer chooses, a certification test vehicle could be used as the durability vehicle. For durability vehicle selection, only the one vehicle is required to reasonably represent the part.

On occasion, an aftermarket part manufacturer may determine that more than one part that it wishes to certify will use the same durability and/or emission test vehicle. The regulations do not prohibit this manufacturer from simultaneously installing more than one part on one demonstration test vehicle and performing the durability and/or emission test requirement. The part manufacturer could realize a cost benefit by using one test cycle to demonstrate the compliance of more than one part. However, if the manufacturer plans to separately certify and sell each of these jointly tested parts, it must assure EPA, with a

[27] Although SEMA recommended inertia weight instead of equivalent test weight as a criteria, equivalent test weight is a more appropriate criterion for selecting a unique test vehicle. As a subset of inertia weight, equivalent test weight more accurately defines the actual weight of the vehicle and is the simulated weight at which it is emission tested on the chassis dynamometer.

technical rationale, that each component, if tested separately, would not cause the vehicle to exceed emission standards.

One vehicle manufacturer (Ford) suggested that the worst case test vehicle requirement for part certification be the same as the worst case selection criteria for vehicle certification. Vehicle manufacturers must select a worst-case vehicle for each engine family certified each model year. As proposed, an aftermarket part manufacturer could certify a part for use on several engines or across several model years so long as the critical design aspects of the part remained the same and therefore the test data were relevant. However, EPA does not find it appropriate to require a part manufacturer to run a test vehicle for every application of a part every model year. The sales of a part on each engine family would likely not be great enough to justify the cost of yearly individual certification demonstration. Furthermore, just as in the case of vehicle manufacturers, part manufacturers often have specific components which are installed on many engine families and are expected to perform identically on each engine family. Since one aftermarket part design can cover several families, models, and model years, a single set of test data can appropriately apply across these families, models, and model years. Therefore, Ford's suggestion is not adopted.

7. Parts that Affect the Vehicle's Onboard Diagnostic System

EPA proposed that no manufacturer may certify a part that would alter or render ineffective the onboard diagnostic system of any vehicle on which it is installed. Only if a part integrates properly with the existing diagnostic system can it be certified. These provisions involving vehicle diagnostic systems received no comments, and are adopted as proposed.

8. Notification of Intent to Certify

The regulations currently require that a notification of intent to certify a part be sent to EPA by the part manufacturer at least 45 days prior to the proposed date of sale of the part as certified. The Agency may use this period to review the notification for adequacy and notify a part manufacturer of potential problems, if necessary.

For part manufacturers who have not developed a format for their notification, EPA will make available upon request a recommended generic format. Its use is optional.

For convenience, EPA will place all notifications received in a public information file in the EPA headquarters library so that any party, including vehicle manufacturers, interested in reviewing the notification can do so. However, EPA will treat material which the part manufacturer has clearly identified as proprietary or confidential in a manner that complies with Agency confidentiality regulations.

B. Reimbursement and Dispute Resolution Procedure

In these final rules, as was proposed in the NPRM, EPA has provided a forum in which vehicle manufacturers and certified aftermarket part manufacturers can resolve cost reimbursement disputes that arise with regard to a performance warranty claim involving a certified aftermarket part. EPA prefers that disputes that arise between vehicle and part manufacturers be resolved informally. Therefore, provisions are made in this rulemaking to require discussion between involved parties before a more formal dispute mechanism is pursued.

As was proposed in the NPRM, disputes which cannot be resolved informally will be decided through arbitration. Either party may then resort to a court of competent jurisdiction as provided by law. The NPRM provisions provided guidelines for arbitration based generally on the comprehensive arbitration rules of the American Arbitration Association (the AAA). In the NPRM, EPA expressed its belief that it was necessary to leave some latitude to resolve individual warranty disputes on a case-by-case basis. Comments received from vehicle manufacturers, however, indicated that additional guidance as to the specifics of the arbitration process was required.

Based on these comments, EPA has decided in these final rules to specify the exact arbitration framework it contemplated in the NPRM by explicitly adopting the AAA arbitration mechanism with certain changes. Consequently, disputes which cannot be resolved informally will be decided by means of arbitration rules based on Commercial Arbitration Rules, published by the AAA, revised and in effect as of September 1, 1988.

As a precondition to certification, part manufacturers must agree to arbitration should an otherwise unresolvable reimbursement dispute occur over the use of a certified aftermarket part. To initiate the arbitration procedure, the involved parties may select arbitrators pursuant to the steps presented in this rulemaking.

The regulations provide that if a part manufacturer refuses to go to arbitration after attempts at independent settlement have failed to resolve the dispute, that party is treated as if it loses the arbitration and is liable to pay all "reasonable expenses" (reasonable expenses are those defined in the following section) billed by the vehicle manufacturer.

If a vehicle manufacturer refuses to participate in arbitration concerning a specific claim, that manufacturer is treated as if it loses the arbitration.

1. Reimbursement Definitions

Under existing regulations a vehicle manufacturer must honor a consumer emission performance warranty claim during the time frames provided by Clean Air Act section 207(b), provided the vehicle has been properly used and maintained, whether the failure is caused by OEM parts or certified aftermarket parts. The vehicle manufacturer is entitled to reimbursement from the certified part manufacturer for "reasonable expenses" incurred in the repair of a vehicle if a "valid emission performance warranty claim" arose because of the use of the certified aftermarket part.

Prior to this rulemaking, vehicle and part manufacturers contended that the terms "reasonable expense" and "valid emission performance warranty claim" used in the existing regulations were too vague to provide meaningful guidance to part manufacturers and vehicle manufacturers. In *SEMA* v. *Ruckelshaus*, 720 F.2d at 139–40, the court required that EPA either apply its expertise in the area and define terms, or provide a forum in which the terms would be clarified through an adversarial process such as arbitration. Today's rulemaking does both. These final rules clarify and broaden the definition for "reasonable expense" and require the OEM or the aftermarket part manufacturer to retain replaced parts prior to the resolution of a "valid emission performance warranty claim." It also establishes a step-by-step dispute resolution process that requires specific actions and imposes deadlines to resolve claim disputes leading into the arbitration process. The arbitration process provides a forum for further clarification of the meaning of these terms on a case-by-case basis.

a. *Reasonable expenses.* In the NPRM, EPA proposed to define "reasonable expense" to include any expense categories that would be considered payable by the vehicle manufacturer to its authorized dealer under similar conditions where an OEM part was determined to be the cause of the failure. EPA further stated that these expenses might include but are not limited to cost of labor, materials, recordkeeping, and billing. EPA also pointed out that any additional necessary clarification would occur during the dispute resolution process.

Vehicle manufacturers commented that the proposed definition of "reasonable expense" was too limited and should be further defined and expanded. They recommended a number of additional expense categories unique to processing claims involving aftermarket parts. Manufacturers were looking for a means of reimbursement of those costs beyond normal dealer-related costs. Furthermore, vehicle manufacturers recommended that the ultimate scope and specifics of the term should not be left to the dispute resolution process for clarification. In this rulemaking, EPA has determined that reimbursement for some but not all of these additional expense categories suggested by vehicle manufacturers is reasonable and should be allowed. While EPA recognizes the vehicle manufacturers' concern about resolving the definition and has taken steps to broaden expense categories where appropriate, the Agency also realizes that unforeseen issues may surface and will have to be dealt with on a case by case basis during the resulting dispute resolution process.

In order to provide an equitably defined expense category for both vehicle and part manufacturers, the regulations provide the following structure for determining reimbursable costs.

i. Reasonable expenses will include normal warranty costs reimbursable from the vehicle manufacturers to their dealers, as proposed, plus additional vehicle manufacturer costs unique to processing claims involving non-original equipment parts, as suggested by commenters. However, all charges beyond actual parts and labor repair expenses must be amortized over the number of valid claims and/or a number of years in a manner consistent with generally accepted accounting principles. Moreover, storage costs are not reimbursable.

ii. The vehicle manufacturer, who has extensive experience with the evaluation of warranty claims from the dealer network for OEM parts, should make an evaluation of what is deemed reasonable and submit an itemized bill to the part manufacturer. The part manufacturer has the right to dispute any portion of the billing that it deems unreasonable through the dispute resolution procedure.

iii. Storage costs related to retention of a certified aftermarket part involved in a performance warranty claim are not reimbursable. Parts must be retained until the claim has been resolved. The vehicle manufacturer providing the repair may, in lieu of storing the parts, transfer the parts to the applicable part manufacturer for storage. The part manufacturer is only required to retain the parts related to those claims it intends to contest. While storage costs are not reimbursable, the cost to the vehicle manufacturer of shipping the part may be added to the reasonable expense of a valid warranty claim.

b. *Valid emission warranty claim.* As was proposed, these final rules define a "valid emission performance warranty claim" on a vehicle as a claim for which (1) there is no evidence that the vehicle was not properly maintained and operated in accordance with manufacturer instructions in a manner linked to emission failures; (2) the vehicle failed to conform to applicable emission standards as measured by an EPA-approved emissions warranty test during the useful life of a part related to emission control, and (3) in the case of a test failure, the owner is subject to a sanction as a result of a test failure.

Part manufacturers commented that they should not be required to honor a warranty claim allegedly caused by an aftermarket part without sufficient proof that the claim is valid. Part manufacturers said this proof should include access to the parts replaced. Vehicle manufacturers commented that either they should be allowed to recover the substantial costs associated with retaining the part or part retention should not be required. In the latter case, some other means of providing proof of a part failure should be established in lieu of providing the actual part to the part manufacturer.

Since the parts involved in a warranty claim are likely the most concrete and necessary evidence with which to validate a claim, these final rules require retention of the involved parts until disputes have been resolved. However, EPA will allow the vehicle manufacturer the option to transfer the parts to the part manufacturer for storage. The part manufacturer need only retain those parts related to the warranty reimbursement claims it chooses to dispute. If the part manufacturer does not receive a bill from the vehicle manufacturer within one year of the date of repair of these parts, the part manufacturer is not required to store the parts beyond one year from the date of repair.

2. Dispute Resolution Forum

a. *Arbitration.* EPA intends that independent settlement between manufacturers will be the normal mechanism of dispute resolution. However, when disputes cannot be resolved through independent negotiation, the involved manufacturers must follow a structured forum for dispute resolution via arbitration consistent with the guidelines provided by these final rules. This provides a reasonable method for manufacturers to present a case, to further clarify what "reasonable expenses" and "valid warranty claims" are, and to receive a quick, impartial decision. Since EPA expects the arbitrator's award and decision to have due regard for precedent, arbitration awards and decisions will be maintained on file at EPA as described in section 4, below.

Many commenters requested additional details for the arbitration procedure as presented in the NPRM. The regulations specify the step by step process from beginning through arbitration for manufacturers pursuing warranty claims involving certified aftermarket parts. The process specified in the regulations is a revised version of that presented in the proposal. The finally-adopted process provides further guidance and additional details regarding scheduling to ensure that a forum exists for resolving disputes prior to judicial involvement.

In a general commercial setting, arbitration is binding because the parties voluntarily agree to give up their right to immediate judicial recourse. Section 207(a)(2) of the Clean Air Act and the order of the SEMA court referred to above, however, provide the authority for establishing arbitration as a mechanism to resolve warranty disputes. In addition, under section 301(a)(1) of the Clean Air Act the Administrator has general regulatory authority to prescribe regulations to carry out provisions of the Clean Air Act.

A form of arbitration utilizing the AAA was chosen as the dispute resolution mechanism in this context for three reasons. Firstly, cost reimbursement disputes are generally commercial matters and do not commonly involve questions of public policy. They can therefore be resolved independently of the Agency by an outside entity whose impartial decision is clearly not Agency action. Secondly, the AAA has considerable experience in resolving commercial disputes and has agreed to assist EPA in dealing with any unique problems that might arise.

Thirdly, AAA based arbitration as a dispute resolution mechanism has been incorporated into regulations promulgated under other environmental statutes such as the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act (40 CFR 791.20 et seq. and 29 CFR part 1440).

The following is a brief summary of the arbitration process adopted today. The vehicle manufacturer is required to submit a bill for reimbursement to the part manufacturer. If the vehicle manufacturer transfers the part to the part manufacturer, the vehicle manufacturer must submit the bill within one year of the date of repair. Independent discussions between the parties must take place within 60 days after receipt of the warranty claim bill. Arbitration may begin before the end of the 60 day period only if both parties agree to arbitration. After expiration of the 60 day period, if either party files, then both parties must submit to arbitration. The party filing for arbitration must also notify EPA at that time. If the parties by themselves cannot select an arbitrator within 90 days of receipt of the original repair bill, then the arbitrator will be appointed from the National Panel of Commercial Arbitrators that is established and maintained by the AAA. The arbitrator will determine the date, time and place of the hearing.

If the aftermarket part manufacturer is ordered by the arbitrator to reimburse all or part of the warranty repair costs, it must do so within 30 days of an arbitration decision, or, if a court of competent jurisdiction agrees with the arbitrator's decision, within 30 days of the court's decision unless the court orders otherwise.

EPA believes that this arbitration procedure has a number of advantages. Evidentiary rules are flexible so that less time will be spent arguing about the propriety and relevance of evidence. The hearings are apt to be less expensive and less likely to create antagonism between the parties. The flexible process used by the greater discretion of the arbitrator will easily accommodate the variety of situations in which reimbursement questions will arise.

Many commenters expressed a desire for more detail than was provided in the arbitration mechanism proposed in the NPRM. They suggested that the industry be allowed to develop a master arbitration agreement as a means of providing detail beyond that proposed. Since the arbitration mechanism is described in considerable detail in the final regulations, EPA believes that it provides the type of guidance for resolving disputes contemplated by the commenters in requesting a master arbitration agreement. The procedures specified in these final rules can be varied only with the agreement of both parties.

By requiring an arbitration mechanism, EPA is providing a structured forum for the initial resolution of disputes. However, this does not prohibit either party from resorting to the judicial system, as provided for by law, after the arbitration is concluded. Moreover, the regulations do not preclude either party from filing a lawsuit in an appropriate court *ab initio* if neither desires to submit the dispute to arbitration. If either party does file for arbitration, however, both parties are bound to follow the arbitration procedure to its conclusion prior to recourse to the courts.

b. *EPA Involvement.* Several manufacturers questioned the efficiency of the dispute resolution program proposed in the NPRM without direct EPA involvement. EPA believes that this program will provide a fair, effective, and well structured forum for resolving those disputes (expected to be relatively few) not resolved informally. Moreover, EPA will monitor the effectiveness of this program, keeping the Agency involved both by manufacturer feedback and EPA initiated monitoring. Should a need for change become apparent, EPA will act accordingly to provide further regulatory interpretation and guidance or revise regulations if necessary. To aid in this monitoring effort, EPA requires that the Manufacturers Operations Division (MOD) Director of the Office of Mobile Sources be informed of scheduled arbitration hearings by the filing party. Should the arbitration panel need specific information from EPA, EPA will be available on a consulting basis.

Manufacturers in their comments on the NPRM suggested that EPA participate on an arbitration panel. The apparent reason for suggesting EPA participation is the possibility that EPA could speed up the dispute resolution process because of the Agency's knowledge and exposure to certain voluntary aftermarket part certification program issues.

However, the technical expertise required to make an informed arbitration determination is not unique to EPA personnel. An uninvolved outside party could also provide an adequate determination assuming the party was given the appropriate background. The arbitrator, or members of an arbitration panel, would be briefed by the involved parties and would be provided with adequate information and evidence on which to base the arbitration decision. Moreover, direct EPA participation would not necessarily expedite the proceeding; in fact it could result in some delay.

EPA is compelled to use its limited resources in a manner that will most effectively benefit air quality. While EPA recognizes the importance of dispute resolution, EPA could not maintain a resource bank waiting for an aftermarket dispute to occur. Should an arbitration claim be brought during a time when EPA resources were committed to other projects, it could substantially slow up the entire process.

Thus, the option of using EPA personnel as arbitrators in resolving disputes is not adopted.

3. Arbitration Costs and Payments

The arbitration costs are set out in the Administrative Fee Schedule of the AAA. Unless determined otherwise by the arbitrator, the arbitration costs will be allocated as follows. Individual case costs will be borne by the losing party. If the judgment is wholly against the vehicle manufacturer, it would need to pay only the arbitration costs of the decision, since it would have already absorbed the original repair costs. If the judgment is wholly against the aftermarket part manufacturer, it must not only pay all arbitration costs, but also reimburse the vehicle manufacturer for the original repair costs. If the arbitrator does not rule wholly in favor of either party, the parties will share the cost of repair and arbitration.

As adopted in today's final rules, the part manufacturer is required to make payment on a lost arbitration decision or after completion of judicial proceedings, if any, relating to the arbitrator's decision. However, if the part manufacturer does not pay for a lost arbitration settlement (including both original repair costs and its share of arbitration costs) on a timely basis, EPA will decertify that part on all vehicle applications for which it is certified. The aftermarket part manufacturer will then be liable for all results of decertification specified in 40 CFR 85.2121.

4. Provision for Recurring Disputes

In their comments, several motor vehicle manufacturers stated that EPA needs to provide a mechanism for handling recurring disputes especially if there are subsequent claims for a part that has previously been decertified or when there is a large number of claims for a particular part which was previously determined in arbitration to be defective. Vehicle manufacturers recommended that once an arbitration panel has determined that an aftermarket part is the cause of emissions failure, the decision should set a precedent for future disputes. Therefore, a vehicle manufacturer could obtain automatic reimbursement for recurring warranty claims and avoid the burden of repeated reimbursement proceedings.

EPA is rejecting the commenters' suggestion to include a provision for handling recurring disputes for the following reasons:

First, it is EPA's intent that in subsequent arbitration proceedings, consideration will be given to previous arbitration decisions which involved the same manufacturer and specific part. EPA intends and believes that all arbitrators will treat prior decisions as precedents and give them appropriate deference whenever the circumstances justify that. However, a provision allowing a previous decision on the same part to dictate all future decisions (i.e., automatic payment of a claim by the part manufacturer) denies the part manufacturer access to arbitration and could potentially impair the right of the part manufacturer to present evidence as to why, under the specific circumstances of its case, a prior, decision should not be considered a binding precedent.

Similarly, all claims for a part failure may not necessarily be legitimate. The circumstances which made the first claim for a part failure legitimate may not necessarily apply in the subsequent cases brought to arbitration. Thus, all claims will need to be settled on a case by case basis in order to determine the validity of each claim.

Third, businesses that comprise the aftermarket industry are unlikely to want to go to the expense of rearguing a claim for the same part and circumstances which were involved in a previous claim for which they lost arbitration. Thus, there should be few such cases requiring arbitration.

Finally, in the case where a part manufacturer has lost repeated claims involving a particular defective part, EPA may decide to decertify the part. While this would not affect the part manufacturer's warranty liability for parts already sold as certified parts to consumers, it would stop future production, distribution and sales by the part manufacturer of these parts as certified components. In so doing, it would reduce the number of warranty claims involving this aftermarket part over a period of time and correspondingly reduce the disputes that arise due to the part.

While not adopting a provision for handling recurring disputes, EPA will assist in assuring prompt dissemination of arbitration decisions by acting as a clearing house for the results and records of arbitration hearings. The Agency will maintain a file of records submitted by industry, organized by manufacturer and component as well as a file of arbitration awards and decisions organized along the same lines. EPA expects the vehicle manufacturers will voluntarily supply this information since it is to their benefit. Any vehicle and part manufacturer will have reasonable access to this information upon request. This information may be used by manufacturers during arbitration hearings involving a repeat failure. Furthermore, this file may act to flag parts showing pattern failures that should be considered for decertification.

5. Escrow/Bond Requirement

In the NPRM, EPA considered but did not propose a requirement for part manufacturers to demonstrate financial stability by posting bond or escrow. Requiring posting of a bond would violate EPA's intent to make certification as efficient and inexpensive as possible for part manufacturers. In addition, there is no evidence that suggests that part manufacturers are financially unstable.

EPA's position is basically the same as it was when the parts certification regulations were first promulgated in 1980. That position was upheld by the court in *SEMA* v. *Ruckelshaus*, 720 F.2d at 140. The court in the SEMA case pointed out that one intent of the regulations was to make certification as efficient and inexpensive as possible (while maintaining technical and legal integrity), so that small part manufacturers will be able to overcome the competitive disadvantages of the performance warranty program, and that a bonding requirement could be anti-competitive. *SEMA* v. *Ruckelshaus*, 720 F.2d at 140.

Certain vehicle manufacturers nonetheless commented in response to the NPRM that in order to assure that part manufacturers have an equal incentive and financial stake, an escrow account should be required. Specifically, they suggested that since the vehicle manufacturer must initially pay for repairs, the part manufacturers should be required to set up an escrow account as a condition of certification or at the beginning of the arbitration process. It was argued that an escrow account would bring the part manufacturers into the dispute resolution mechanism with a financial stake equal to that extended by the vehicle manufacturer. These vehicle manufacturers contended this may either lead to fewer requests for arbitration or quicker conclusions.

One vehicle manufacturer suggested an option to require certification bonds from part manufacturers who have refused to pay claims, who are delinquent in paying claims, or who have demonstrated abnormally high dispute losses. It claimed that this requirement would have a potential to encourage prompt resolution. Subsequently, many claims could be resolved without resorting to full arbitration.

However, EPA still believes that the suggested financial instability of certified part manufacturers is purely speculative. To date, EPA is aware of no specific evidence which would indicate significant problems in this area. EPA has no information that suggests that part manufacturers would not live up to their financial responsibilities and promptly pay valid warranty reimbursement claims. Similarly, there is no evidence at this time that part manufacturers are likely to request arbitration on frivolous grounds or to delay arbitration proceedings. Thus, the vehicle manufacturers' requests for an escrow or bonding requirement have no factual support. Moreover, as discussed in the NPRM and the SEMA opinion, such requirements could be an economic disincentive to small part manufacturers to participate in certification and could increase the potential anti-competitive effects of the performance warranty. Therefore, EPA rejects the commenters' requests.

Nevertheless, for the sole purpose of defraying arbitration costs, a reasonable deposit may be required from the parties prior to an arbitration hearing. EPA does not view such a deposit as a bond or escrow account.

C. Denial of a Consumer Warranty Claim Based on the Use of an Uncertified Replacement Part

To deny a warranty claim based on a performance warranty failure involving an uncertified part, the performance warranty regulations originally required the vehicle manufacturer to present evidence that the uncertified part was either defective in materials or workmanship, or not equivalent from an emissions standpoint to the original equipment part.[28] Further, the uncertified part had to be relevant to the failure for any warranty denial to occur.[29]

[28] 40 CFR 85.2105(b)(1)
[29] 40 CFR 85.2104(h)(3)

The MVMA and the Automotive Parts Rebuilders Association (APRA) brought legal challenges to these regulations claiming that EPA exceeded its authority in forcing vehicle manufacturers to carry the burden of demonstrating equivalency before they may deny a warranty claim.[30] The court agreed that EPA may not shift the burden of demonstrating equivalency to the vehicle manufacturers, but permitted EPA to "* * * require vehicle manufacturers to submit a statement (or other evidence) indicating why the uncertified part was relevant to the vehicles' emission failure."[31] The court indicated that EPA may use its expertise to decide what is the permissible information required for the vehicle manufacturer to demonstrate that the uncertified part was relevant to the emissions failure.[32]

In the NPRM EPA proposed that, in lieu of demonstrating that an aftermarket part is not equivalent to a comparable OEM part, the vehicle manufacturer should provide both written assertions and a list of available "objective evidence" (described below) used in the warranty denial determination to demonstrate that the part was relevant to the failure. EPA determined that this approach would best ensure appropriate warranty denial decisions.

In their comments, vehicle manufacturers expressed their concern over the scope of the "objective evidence" required in the NPRM. EPA had proposed that "objective evidence" be defined to include any historical data such as previous warranty claims, recall information, or manufacturer studies on similar phenomenon that were related to the current claim, as well as any diagnostic information used to make the warranty denial determination. EPA also stated in the NPRM that any evidence used by the vehicle manufacturer in the warranty denial should be accessible to the consumer upon request.

Vehicle manufacturers commented they could not know which or how much past information should be used to support a warranty denial and felt that assembling and supplying this information could not be done in a timely manner. They also felt that their dealers lack the technical expertise necessary to administer a warranty denial based on objective evidence as described in the NPRM.

In light of the *APRA* court decision, EPA believes that a valid warranty denial determination will best be made if a comprehensive definition for objective evidence, such as that proposed in the NPRM, is adopted.[33] Denying a consumer warranty coverage for a performance failure for any reason is an important move and should be carried out only after careful consideration of the actual cause of failure. EPA's major concerns are that the vehicle noncompliance be appropriately diagnosed and repaired, to protect the environment, and that the consumer obtain the protection afforded by the section 207(b) warranty when the failure is not caused by improper maintenance and use (as when the failure is caused by an uncertified part). Only by requiring the vehicle manufacturer to demonstrate improper use or maintenance or a relevant failure of an uncertified part to escape warranty liability, can EPA assure that consumers will be encouraged to use section 207(b) and that they and the environment will get the benefits Congress intended.

These final rules essentially adopt the NPRM proposal for denial of a performance warranty claim involving an uncertified part. However, based on comments, EPA has revised the proposed definition for allowable "objective evidence" to minimize the burden on the OEM's. The actual requirements adopted in today's final rules were based on EPA's consideration, in light of the comments, of what is minimally necessary to properly judge a warranty denial determination with due concern for the OEM manufacturers' burden.

Under these final rules, the vehicle manufacturer will provide to the consumer a written assertion that the uncertified part is the cause of a vehicle's emission test failure due to the part's own failure and/or damage to other engine or emission components caused by the uncertified part.[34] The written assertion will also state that the removal of the uncertified part and the reinstallation and recalibration of any OEM part that was replaced or damaged by the uncertified part is expected to repair the emissions failure.

If the vehicle manufacturer claims other components have been subsequently damaged, the vehicle manufacturer will have to specify which components were affected, what appears to be wrong with the parts, and why the manufacturer believes the uncertified part caused the damage. This information must also be provided in writing to the consumer along with any objective evidence used in the determination.

"Objective evidence" is defined in these final rules as all diagnostic information and data, and any other information directly used in making the warranty denial determination. This eliminates the requirement that the vehicle manufacturer present historical data as proposed in the NPRM. EPA's new treatment of objective evidence should resolve vehicle manufacturers' concerns that certain information is not readily available or that OEM dealers do not have an adequate level of expertise to provide the information required. If a dealer is unable to meet even this reduced level of demonstration, it is questionable whether the warranty denial was valid. At the same time, the revised requirements will still provide the consumer with access to sufficient information to determine the validity of the vehicle manufacturer's determination.

One vehicle manufacturer (Ford) recommended, as an alternative to EPA's proposal on objective evidence, that verification that the remaining certified components function properly be considered sufficient evidence that the aftermarket part caused the failure. EPA has considered this proposal but has decided not to adopt this as an alternative method. A vehicle in its original configuration (no aftermarket parts installed) may fail an I/M test, yet all OEM emission components test out as functioning properly. This type of failure has been seen in specific instances in the I/M program and is called a "pattern failure." Thus, while use of an uncertified part on such a vehicle would not actually be the cause of the performance warranty failure, the alternative method of demonstration proposed by Ford would mistakenly identify the uncertified part as the cause of the failure. Furthermore, the actual cause of the pattern failure might never be identified and repaired properly.

[30] *APRA* v. *EPA*, 720 F.2d at 157.

[31] Ibid., at 158–159 n.63 (emphasis in original).

[32] Ibid.

[33] At the same time, EPA recognizes that this places a burden on the OEM for supporting a denial determination when, in fact, the OEM is not responsible for the part being on the vehicle in the first place. Nonetheless, the vehicle manufacturer is not automatically relieved of responsibility for its own part's performance merely by the presence of an uncertified part on the vehicle. Nothing in the Act suggests that manufacturers may deny warranty coverage solely on that basis.

[34] Alternatively, the vehicle manufacturer could assert that the uncertified part was installed improperly and therefore caused failure to the vehicle emission system. However, in this case, as under the current regulations, a warranty cannot be denied based on improper installation by an OEM authorized facility since consumers who, in good faith, had their vehicle repaired at an authorized facility should have assurance that they will not lose their warranty due to improper service by the authorized facility.

Many commenters recommended "causal proof" as a more appropriate method for denying warranty to an uncertified part. Commenters did not provide a specific definition of causal proof. However, it appears they are referring to a procedure where the vehicle manufacturer identifies a part as uncertified, and only asserts that the uncertified part caused the failure (perhaps with some technical explanation short of any supportive evidence). However, this procedure would not provide the consumer with any concrete evidence that the part caused the problem, and leaves the consumer with very little recourse but to pay for the repair. This would unduly limit the use of, and environmental benefits expected from, section 207(b)'s warranty requirement. In contrast, the final rules require the vehicle manufacturer to provide the consumer with a list of the factual information directly used in the warranty denial determination, and then to provide the actual information to the consumer on request. Since this information should be readily available, EPA believes the small additional burden to the vehicle manufacturer is more than offset by the substantially improved position of the consumer attempting to judge the validity of a warranty denial. Thus, EPA rejects the commenters' suggestion.

D. Labeling

These final rules adopt the language proposed in the NPRM for certified aftermarket part labeling. Aftermarket part manufacturers will be required to identify their certified parts with unique, readable labels that are durable for the useful life of the part as specified by the manufacturer. These unique certification labels and symbols may only be used on production aftermarket parts that are certified through this regulation. Furthermore, if a manufacturer's part that was previously certified is later decertified under § 85.2118, that manufacturer may no longer use the unique certification label or symbol on any of these parts built or assembled after the date of decertification. Comments to the NPRM suggest motor vehicle and aftermarket part manufacturers are in agreement with the language incorporated in § 85.2119.

Several vehicle manufacturers also suggested that some sort of cataloguing or tracking system for certified parts should be utilized by EPA and provided to the vehicle manufacturers. Vehicle manufacturers are in favor of this option since it would provide them with an up to date ready reference of all certified parts. This reference would make warranty claim decisions much easier since their service departments would probably have access to these references.

EPA agrees with this comment. Therefore, EPA will make available a yearly listing of certified aftermarket parts and each certified aftermarket part manufacturer's unique symbol or identifier. In addition, EPA expects that, in order to promote the use and proper repair of their parts, part manufacturers will provide the vehicle manufacturers with proof or a listing of their actual certified parts.

One part rebuilder association expressed concern over adequate space availability for labels on a small part, especially one which has been rebuilt several times. To deal with rebuilt parts and this potential problem of space for several logos for subsequent rebuilders, EPA will allow a subsequent rebuilder to remove or cover the previously applied label.

E. 2 Year/24,000 Miles Quality Warranty Requirement

These final rules do *not* adopt the NPRM proposal that would require a minimum "acceptable quality" warranty of 2 years or 24,000 miles.

Part manufacturer associations (MEMA and SEMA) commented that the warranty requirement proposed in the NPRM would increase costs and that it would be unnecessary because of current requirements that involve certification and durability testing. They pointed out that the aftermarket part industry currently provides the level of quality and associated warranty coverage demanded by the part purchaser. The consumers decide how much they want to pay for additional warranty coverage.

The quality of the parts that EPA approves is an important issue. The Agency's intention in proposing this provision was to assure that only acceptable quality parts which the manufacturer will stand behind obtain EPA certification. However, EPA does not currently have evidence suggesting that existing emission related aftermarket parts are showing unacceptable quality. Therefore, EPA is not convinced that this provision is necessary, and the Agency will not adopt the minimum quality warranty requirement proposed in the NPRM. However, if sufficient evidence arises showing that parts are not capable of performing for a reasonable lifetime (e.g., a minimum of 2 years or 24,000 miles), then EPA may repropose this warranty option and revise this regulation at a future date.

F. Costs of Emission Testing and Durability Demonstration

1. FTP Costs

In the NPRM, EPA presented emission testing costs that the part manufacturer would be expected to incur during the certification process. EPA's FTP cost figures of $600 to $900 per test were determined based on a survey of independent laboratories that are available for all part manufacturers to use.[35]

Several part manufacturer associations disagreed with EPA's cost estimates. These manufacturers submitted annual FTP costs per certified part which are much higher than the EPA estimates. There are several apparent reasons for their higher cost estimates.

Some manufacturers indicated that certification using the FTP test cycle would require them to run numerous FTP tests during the emission compliance development of their parts. However, EPA believes that even prior to amendment of these certification regulations, many part manufacturers probably had developed their parts sufficiently so that little if any additional emission development will be necessary. Many of these aftermarket part manufacturers also supply the OEM's with parts. The OEM parts have proven emission performance. The development that goes into the parts supplied to the OEM is likely in many cases to be directly transferable to the aftermarket parts. Similarly, aftermarket parts which are designed to be functionally equivalent (or superior) to the OEM part should not require any significant further development to assure their emission performance prior to certification.

Only in the case of unique parts which alter or are significantly different from the OEM parts, such as specialty parts, is there a concern that significant emission development work might be necessary prior to certification demonstration. It is impossible, however, for EPA to determine if significant development work will be necessary for specialty parts or to estimate the cost of that development should it be necessary. However, the strong interest in the certification program shown by the specialty parts manufacturers suggests that this segment of the aftermarket part industry is confident in the emission control capability of their parts and anxious to

[35] "Cost of Alternative Short Tests", EPA memo from M. Sabourin to R. Larson, Aug. 7, 1986, in the public docket #EN–84–08.

prove this capability via the voluntary aftermarket part certification program. EPA believes this confidence in the emission performance capability of these parts is based upon reasoned analysis supported by data. In such a case, the amount of additional development work should also be minimal.

Finally, although the FTP cycle is relied upon for certification demonstration, the manufacturer has at its disposable a wide range of alternative evaluation tests and criteria including, for example, material and structural analyses and bench tests. EPA expects the competent manufacturers to make full use of these alternative evaluations, many of which would be far less expensive and often more useful for development purposes than the FTP test. Thus, EPA rejects the commenters suggestions that FTP testing during the development process will be a widespread and frequent occurrence.

One commenter (SEMA) also stated that, based on the "worst case" vehicle selection criteria presented in the NPRM, most part manufacturers would need to test ten or more worst case vehicle configurations per part per model year to ensure the appropriate application was tested. Thus, its resulting cost estimates were based on a large number of test vehicles.

In these final rules, EPA has adopted an alternative for worst case vehicle selection that specifically identifies the criteria for selection of two worst case vehicles. This clear guidance should make it unnecessary for a part manufacturer to test more than two vehicles to certify. Part manufacturers that have determined that they can appropriately select the one worst-case application as proposed in the NPRM may still do so. Furthermore, since one part likely will often have application over more than one model year, vehicle selection is not model year specific and parts are not required to be recertified every model year (unless a new model year application is not properly represented by previous worst case vehicles).

Based on the cost figures presented in the NPRM, and after considering comments on certification costs, EPA estimates the cost of FTP tailpipe emissions testing to be $600–$900 per test. This is based on a survey of independent laboratories which are available for all part manufacturers to use.[36] This cost does not include SHED testing (as SHED testing is not required unless parts affect evaporative emission results). For components requiring SHED tests instead of tailpipe emissions tests (i.e., components affecting evaporative emission control only), EPA estimates that the cost will not be greater than the tailpipe FTP cost of $600–$900 per test.[37]

Either one or two worst-case vehicles are required to be tested for each part, leading to a total FTP certification cost between $1200–$3600 per part (based on a minimum of two tests per part at $600 per test, up to four tests per part at $900 per test). Such FTP costs can be amortized over the applicable vehicle models and model years of the certified part.

2. Durability Costs

As indicated in the NPRM and earlier in this preamble, durability demonstration requirements, and therefore costs, will differ significantly among parts to be certified. Many of the parts to be certified will be eligible for durability exemption. In these cases, the manufacturer does not incur a durability cost. Furthermore, in those other cases requiring durability demonstration, one part will likely work for many vehicle applications over a number of model years and one durability vehicle may suffice to represent a large number of applications for a part. This will help control costs for the part manufacturer.

Also, the regulations allow for alternative mileage accumulation cycles which may be less expensive than that described in 40 CFR Part 86, appendix IV. The manufacturer may opt to use an alternative durability cycle if it determines that the alternative cycle is at least as representative of typical in-use operation as the cycle described in appendix IV of the FTP. For example, the manufacturer may determine that an "on road" durability cycle may be representative of an aftermarket part's aging and therefore suitable for durability demonstration. EPA currently evaluates and approves alternative durability cycles through its policy described in Advisory Circular 37–A.

One part manufacturer association (SEMA) estimated a durability cost of $80,000 per part. This is an accurate cost figure for current large volume vehicle manufacturers who support entire in-house programs of multiple vehicles and run vehicles sufficient to represent each engine family to be certified each model year. It is highly unlikely that a durability vehicle will be required for every aftermarket part certified, or that the part manufacturer will choose to pay to run a vehicle just for part durability demonstration. Several testing facilities have submitted information to EPA to demonstrate that alternative, less expensive, mileage accumulation cycles are available that are at least as stringent as the currently approved cycle listed in the Federal Regulations. At least one of these cycles costs around five cents per mile plus a $200 to $300 report charge. Thus, durability mileage accumulation could cost around $3,000 when durability testing is necessary. However, EPA expects that durability demonstrations will typically not be utilized, especially in the initial years of implementation. Initially, manufacturers are more likely to choose to voluntarily certify those parts that are technically and economically easier to certify (i.e., those that are eligible for durability exemption or eligible for an alternative cycle). Since they may rarely durability test a part, the durability cost amortized over every part will likely be even less than $3,000 per part.

For the above reasons, EPA believes that FTP testing and durability demonstration costs will, for the great majority of parts, be much less than certain part manufacturers have suggested and that the actual costs of certification will be reasonable and appropriate given the purposes and requirements of the certification program.

IV. Reporting and Recordkeeping Requirements

The Agency does not believe the additional reporting and recordkeeping requirements imposed by this amendment to the regulations are burdensome. An economic impact analysis was prepared for the original 1980 rulemaking and is contained in Central Docket #EN–79–8. The document concluded that the regulations did not pose a significant cost to the parties involved. The modifications being adopted here should not increase that cost substantially.

These revisions to the regulations would impose some new reporting and recordkeeping requirements on aftermarket part manufacturers that choose to take advantage of the certification program, as well as the vehicle manufacturers. The addition of a reimbursement mechanism will require recordkeeping. The certification program will be extended to include manufacturers of parts not certifiable under the regulations before these revisions. The new manufacturers will need to keep records and report certification. The new requirements for labeling may increase some manufacturer material expenses. As noted in the information collection request document approved for these final rules under OMB control number 2060–0060, this burden was estimated at $166,500 at the time of proposal. No commenters disagreed with this estimate and EPA believes it is still correct.

V. Paperwork Reduction Act

The information collection requirements contained in these rules have been approved by the Office of Management and Budget (OMB) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060–0060.

Public reporting burden for this collection of information is estimated to average 124 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Paperwork Reduction Project (2060–0060), Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

VI. Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a regulatory impact analysis. This regulation should not be considered a major regulation because it meets none of the conditions for a major regulation. As discussed fully in the Summary and Analysis of Comments (see Docket #EN–84–08), these final rules will have an annual effect on the economy of less than $100 million. It is estimated that at most a retail price and service repair value of $2 billion of emission related parts will be certified in any one year. About 1 percent or $20 million worth of parts will require warranty service each year, which represents most of the economic impact of this regulation (certification costs, in comparison, will be far less than warranty repair costs). This will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. Nor will there be any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

These final rules and certain accompanying documents were submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA written response to those comments are available for public inspection in the docket for this rulemaking; Docket #EN–84–08. The EPA's Central Docket Section (LE–131) is located at 401 M Street SW., Washington, DC, 20460.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is required to determine whether a final regulation will have a significant impact on a substantial number of small entities so as to require a regulatory flexibility analysis.

Several aftermarket part manufacturer organizations contested EPA's assertion in the NPRM that there would be no significant adverse impact on a substantial number of small entities because of the aftermarket part certification program, given that the program is voluntary.

SEMA stated that certification is not voluntary since it is the only means that its members can use to eliminate the potentially anti-competitive effects of the CAA warranties. EPA has no data or other information which establishes the potentially anti-competitive effects of the CAA warranties claimed by SEMA. EPA also has no data which could be used to evaluate any countervailing impact of the aftermarket certification program. However, if SEMA believes that sales of its members' parts will significantly increase as a result of certification, then it follows that the aftermarket certification program will have a beneficial impact on aftermarket part manufacturers by reducing or eliminating the anti-competitive effects of the CAA performance warranty. These regulations open up the certification program to allow certification of all types of components which are emission related (including the specialty parts manufactured by SEMA's members) and adopt a relatively low cost compliance demonstration program so that most potential certifiers of quality aftermarket parts will not be economically excluded. EPA hopes that other manufacturers will see advantages in certifying aftermarket parts which will tend to proliferate the quantity and choice of aftermarket parts with proven emission control capability. Thus, rather than having an adverse impact on small part manufacturers these final rules should benefit any manufacturers that choose to take advantage of them.

Another commenter stated that, as an aftermarket part manufacturer, it would be forced to participate in the program and absorb all associated costs in order to compete with larger suppliers of certified aftermarket parts. EPA agrees that the part manufacturer will incur some costs if it chooses to certify a part. However, EPA believes that these final rules will aid competition by providing the opportunity for part manufacturers to sell emission related parts with reduced or no anti-competitive effects from the performance warranty program.

EPA has designed these final rules to minimize certification demonstration costs while at the same time providing necessary assurance of adequate emission control. Two measures have been adopted to reduce durability costs. First, for components that are likely to be repaired or replaced in actual use, these parts are exempted from any independent certification durability demonstration. Second, for parts that do require durability testing, EPA expects that many will be able to demonstrate no additional deterioration of other emission related components; these parts can be aged on a vehicle which in itself does not need to meet emission standards. This should help limit the durability test costs for these aftermarket parts.

Emission compliance demonstration cost is also minimized by not requiring the emission test vehicle to meet standards. Rather the changes in emissions due to aftermarket part installation is quantified and compared to the preexisting certification vehicle emissions margin for vehicle designs. Again, vehicle and test costs are minimized. Finally, worst case testing is allowed to reduce the number of required test vehicles and emission tests. Only in the case of short test versus FTP test costs was EPA unable to find a more economic, acceptable cost reduction alternative. Even in this case, the estimated cost differential between the required FTP tests and short tests is likely less than $3,600 per part certified. This should not represent a significant barrier to aftermarket part certification for most manufacturers.

I hereby certify that this regulation will not have a significant adverse impact on a substantial number of small entities. Specialty part manufacturers

[36] Ibid.

[37] Ibid.

(who are often small) will be eligible for the first time to certify under this revised aftermarket part certification program which should benefit these manufacturers. The potential adverse impact is further minimized since the program is voluntary and, presumably, no part manufacturer will participate unless it sees an economic benefit to doing so. Further, for those manufacturers that choose to participate, certification of quality parts should be attainable at a reasonable cost.

List of Subjects in 40 CFR Part 85

Imports, Labeling, Motor vehicle pollution, reporting and recordkeeping requirements, Research, Warranties.

Authority: 42 U.S.C. 7522, 7541, 7542, and 7601(a).

Dated: July 27, 1989.

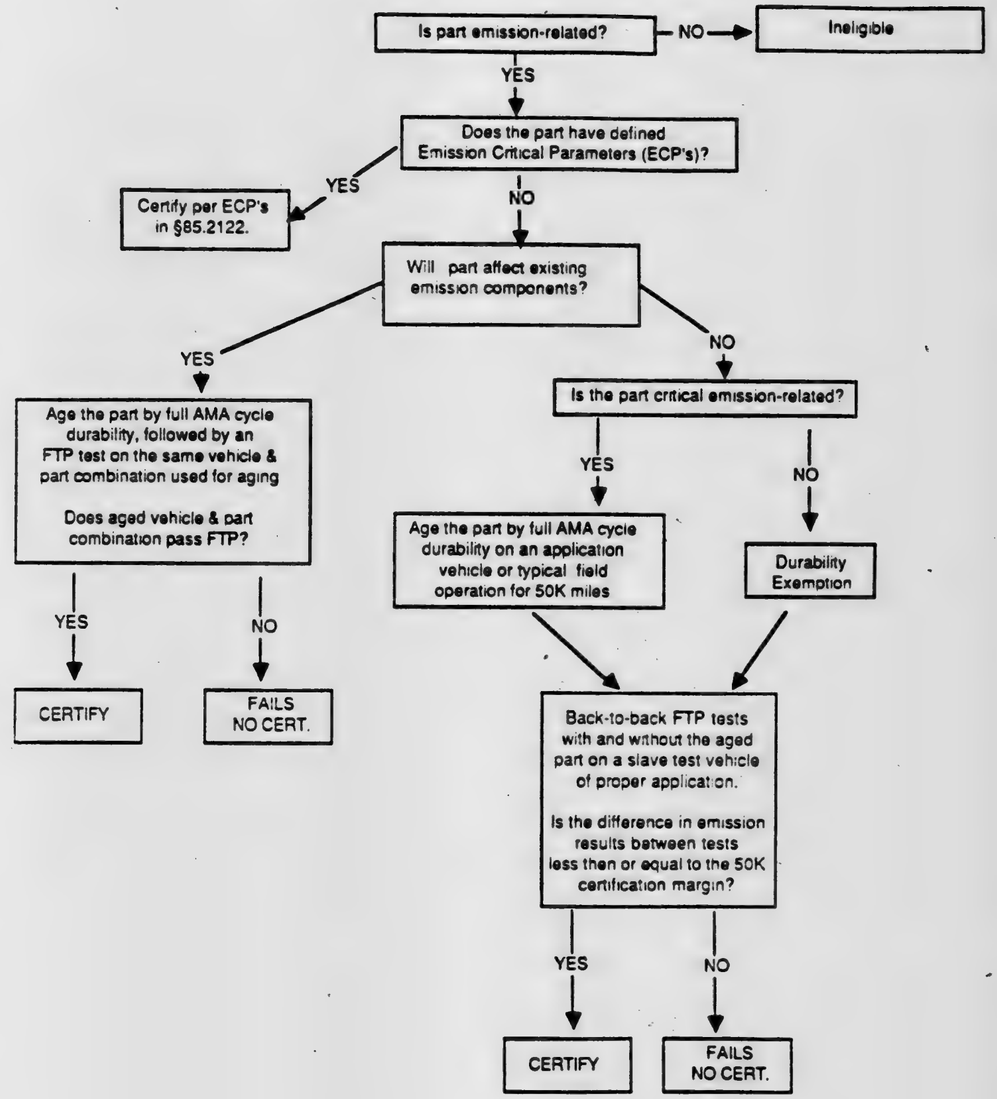
William K. Reilly,

Administrator.

[BILLING CODE 6560-50-M]

Attachment I

Aftermarket Parts Certification Procedure



BEST COPY AVAILABLE

Appendix—Explanation of Specific Changes

Section	Change	Reason
1. Part 85, Authority	None	
2. Supbart V	Nomenclature change from "Agency" or "EPA" to "MOD Director", from "Director" to "MOD Director," and from "Deputy Assistant Administrator" to "Office Director".	For clarification and new designation of responsibility.
3. Section 85.2102:		
(a)(2)	Revise paragraph from "Administrator" to "Office Director"	Clarification.
(a)(14)	Add paragraph to define "Emission Related Parts"	Do.
(a)(15)	Add paragraph to define "Objective Evidence"	Do.
(a)(16)	Add paragraph to define "Valid Emission Performance Warranty Claim".	Do.
(a)(17)	Add paragraph to define "Reasonable Expense"	Do.
(a)(18)	Add paragraph to define "MOD Director"	Do.
4. Section 85.2103(a)(2)	Add language to include family emission limits	Expanded for consideration of family emission limits.
5. Section 85.2104(d)	Change referencing of paragraph (c)(5) to paragraph (e)	Changed to proper reference.
6. Section 85.2105:		
Title	Change from "Replacement Parts" to "Aftermarket Parts"	Expanded to include all aftermarket parts.
(a)	Revise language to clarify reimbursement of warranty claim to vehicle manufacturer.	To alert reader that a vehicle manufacturer may seek reimbursement of warranty claim from the aftermarket part manufacturer.
(b)	Revise language to establish new criteria for vehicle manufacturers' warranty denial.	In response to court order.
7. Section 85.2106:		
(e)(2)	Revise language to establish criteria link	Clarifies with respect to § 85.2105(b).
(e)(3)	Add language to include new requirement	To require vehicle manufacturers to submit a written document that justifies warranty denial.
(f)	Correct line 10 from "to" to "of"	Typographical error.
8. Section 85.2107:		
(c)	Revise language to clarify warranty reimbursement procedures.	To alert reader to initial steps of seeking warranty reimbursement.
(e)	Add language to include warranty denial to uncertified parts	Added for consideration of vehicle manufacturers' warranty responsibilities to uncertified aftermarket (non-OEM) parts.
9. Section 85.2110(b)	Revise language to correct mailing address	Division is now under a new office.
10. Section 85.2112 Introduction	Revise by deleting language that limits regulation to parts with emission-critical parameters.	To open regulation to all emission related aftermarket parts.
11. Section 85.2113(e)–(k)	Remove concepts no longer needed. Renumber remaining terms and replace with language to define new concepts.	Responsibility change and clarification of new terms used in revisions.
12. Section 85.2114	Revise language in entire section to explain the certification process.	To make certification available to all aftermarket parts requires these new testing methods.
13. Section 85.2115	Revise language in entire section to explain process for notification of intent to certify.	To clarify which information is required for notification of intent to certify.
14. Section 85.2116:		
(a)(2)	Revise language to change from "§ 85.2114(b)" to "§ 85.2114(d)(2)".	Redesignation required by changes made to § 85.2114.
(a)(4)	Revise language to change from "§ 85.2114(c)" to "§ 85.2114".	Do.
(a)(7)	Make minor revisions to language and add the word "or" to the end of the paragraph.	To accommodate addition of new requirements and to accommodate new information in paragraph (a)(8).
(a)(8)	Add language that facilitates possible inadequacy of durability documentation.	To accommodate inclusion of new durability demonstration requirements.
15. Section 85.2117:		
Title	Change from "Warranty" to "Warranty and Dispute Resolution".	To accommodate inclusion of a resolution procedure for warranty disputes.
Section 85.2117	Revise entire section to cover warranty requirements and dispute resolution procedure for all aftermarket part and vehicle manufacturers.	To accommodate the expansion of the regulation to cover all aftermarket parts and to spell out dispute resolution procedure for warranty disputes.
16. Section 85.2118:		
(a)	Change reference from § 85.2114(a)(1) to § 85.2114(b)	To reference redesignated paragraph.
(b)	Change reference from § 85.2114(a)(2) to § 85.2114(c)	To reference redesignated paragraph.
17. Section 85.2119:		
(a)	Revise language to require that label be durable and readable for the defined useful life of the part.	This is a new requirement.
(b)	Revised language to change from "identification" to "unique identification".	To include the new requirement of label uniqueness.
18. Section 85.2121:		
(a)(1)(ii)(A)	Change reference from § 85.2114(b)(4) to § 85.2114(d)	To reference redesignated paragraph.
(a)(1)(ii)(B)	Change reference from § 85.2114(b) to § 85.2114(d)	To reference redesignated paragraph.
(a)(1)(ii)(C)	Add language that allows decertification for improper durability demonstration.	To increase incentive to part manufacturers to perform appropriate durability demonstration.
(a)(1)(vi)	Add language allowing decertification for failure to submit records.	To assure aftermarket part manufacturers make necessary information available to EPA.
(a)(1)(vii)	Add language that allows decertification when adequate documentation to support durability demonstration is not submitted or is insufficient.	To increase incentive to part manufacturers to submit information required for proper evaluation.
(a)(1)(viii)	Add language that allows basis for decertification if lost arbitration is not paid.	To increase incentive to comply with arbitration decision.
19. Section 85.2122(a)	Change reference from § 85.2114(a)(1) to § 85.2114(b)	To reference redesignated paragraph.

Section	Change	Reason
20. Appendix Title	Change to "Appendix I" and change "Emission Related Standards" to "Emission Critical Parameters".	To accommodate addition of Appendix II and to change "Emission Related Standards" to a more familiar term, "Emission Critical Parameters."
21. Appendix II	Add Appendix II	To provide for a detailed arbitration procedure for warranty disputes.

For the reasons set out in the preamble, 40 CFR part 85 is amended as follows:

1. The authority citation for part 85 continues to read as follows:

Authority: Sec. 203, 207, 208, and 301(a). Clean Air Act, as amended (42 U.S.C. 7522, 7541, 7542, and 7601(a)).

Subpart V—[Amended]

2. Subpart V is amended by making a nomenclature change in each occurrence in the entire subpart from "Agency" or "EPA" to "MOD Director", from "Director" to "MOD Director", and from "Deputy Assistant Administrator" to "Office Director."

3. Section 85.2102 is amended by revising paragraph (a)(2), and by adding paragraphs (a)(14), (a)(15), (a)(16), (a)(17), and (a)(18) to read as follows:

§ 85.2102 Definitions.

* * * * *

(a) * * *

(2) "Office Director" means the Director for the Office of Mobile Sources—Office of Air and Radiation of the Environmental Protection Agency or other authorized representative of the Administrator.

* * * * *

(14) "Emission Related Parts" means those parts installed for the specific purpose of controlling emissions or those components, systems, or elements of design which must function properly to assure continued vehicle emission compliance.

(15) "Objective Evidence" of an emission related repair means all diagnostic information and data, the actual parts replaced during repair, and any other information directly used to support a warranty claim, or to support denial of such a claim.

(16) "Valid Emission Performance Warranty Claim" means a claim in which there is no evidence that the vehicle had not been properly maintained and operated in accordance with manufacturer instructions, the vehicle failed to conform to applicable emission standards as measured by an EPA-approved type of emission warranty test during its useful life and the owner is subject to sanction as a result of the test failure.

(17) "Reasonable Expense" means any expense incurred due to repair of a warranty failure caused by a non-original equipment certified part, including, but not limited to, all charges in any expense categories that would be considered payable by the involved vehicle manufacturer to its authorized dealer under a similar warranty situation where an original equipment part was the cause of the failure. Included in "reasonable expense" are any additional costs incurred specifically due to the processing of a claim involving a certified aftermarket part or parts as covered in these regulations. The direct parts and labor expenses of carrying out repairs is immediately chargeable to the part manufacturer. All charges beyond the actual parts and labor repair expenses must be amortized over the number of claims and/or over a number of years in a manner that would be considered consistent with generally accepted accounting principles. These expense categories shall include but are not limited to the cost of labor, materials, record keeping, special handling, and billing as a result of replacement of a certified aftermarket part.

(18) "MOD Director" means Director of Manufacturers Operations Division, Office of Mobile Sources—Office of Air and Radiation of the Environmental Protection Agency.

4. Section 85.2103 is amended by revising paragraph (a)(2) as follows:

§ 85.2103 Emission performance warranty.

(a) * * *

(2) The vehicle fails to conform at any time during its useful life to the applicable emission standards or family emission limits as determined by an EPA-approved emission test, and

* * * * * *

5. Section 85.2104 is amended by revising paragraph (d) as follows:

§ 85.2104 Owner's compliance with instructions for proper maintenance and use.

* * * * *

(d) Except as provided in paragraph (e) of this section, the time/mileage interval for scheduled maintenance services shall be the service interval specified for the part in the written instructions for proper maintenance and use.

* * * * *

6. Section 85.2105 is amended by revising the section heading, and by revising paragraphs (a) and (b) to read as follows:

§ 85.2105 Aftermarket parts.

(a) No valid emission performance warranty claim shall be denied on the basis of the use of a properly installed certified aftermarket part in the maintenance or repair of a vehicle. A vehicle manufacturer that honors a valid emission performance warranty claim involving a certified aftermarket part may seek reimbursement for reasonable expenses incurred in honoring the claim by following the warranty claim procedures listed in § 85.2107(c).

(b) Except as provided in § 85.2104(h), a vehicle manufacturer may deny an emission performance warranty claim on the basis of an uncertified aftermarket part used in the maintenance or repair of a vehicle if the vehicle manufacturer can demonstrate that the vehicle's failure to meet emission standards was caused by use of the uncertified part. A warranty claim may be denied if the vehicle manufacturer submits a written document to the vehicle owner that the vehicle owner is unable or unwilling to refute. The document must:

(1) Establish a causal connection between the emissions short test failure and use of the uncertified part, and,

(2) Assert that:

(i) Removal of the uncertified part and installation of any comparable certified or original equipment part previously removed or replaced during installation of the uncertified part will resolve the observed emissions failure in the vehicle, and/or

(ii) Use of the uncertified part has caused subsequent damage to other specified certified components such that replacement of these components would also be necessary to resolve the observed vehicle emissions failure, and.

(3) List all objective evidence as defined in § 85.2102 that was used in the determination to deny warranty. This evidence must be made available to the vehicle owner or EPA upon request, and

* * * * *

7. Section 85.2106 is amended by revising paragraph (e)(2) and (f) and by adding paragraph (e)(3) to read as follows:

§ 85.2106 Warranty claim procedures.

* * * * *

(e) * * *

(2) Provide the owner, in writing, with an explanation of the basis upon which the claim is being denied; or

(3) If the basis of the claim denial involves use of an uncertified part, provide the owner in writing with an explanation of the basis upon which the claim is being denied according to all criteria specified in § 85.2105(b).

(f) Failure to notify an owner within the required time period (as determined under paragraph (d) of this section) for reasons that are not attributable to the vehicle owner or events which are not beyond the control of the vehicle manufacturer or the repair facility, shall result in the vehicle manufacturer being responsible for repairing the warranted items free of charge to the vehicle owner.

* * * * *

8. Section 85.2107 is amended by revising paragraph (c) and adding paragraph (e), to read as follows:

§ 85.2107 Warranty remedy.

* * * * *

(c) The remedy provided under paragraph (a) of this section shall include the repair or replacement of certified parts as required in § 85.2105(a). To seek reimbursement from the involved certified aftermarket part manufacturer for reasonable expenses incurred due to the certified aftermarket parts determined to be the cause of a performance warranty failure, the vehicle manufacturer must:

(1) Retain all parts replaced during the performance warranty repair, and

(2) Follow the procedures laid out in § 85.2117.

* * * * *

(e) The vehicle manufacturer may deny warranty for a failure caused by an uncertified part in accordance with the criteria in § 85.2105.

9. Section 85.2110 is amended by revising paragraph (b) to read as follows:

§ 85.2110 Submission of owners' manuals warranty statements to EPA.

* * * * *

(b) All materials described in paragraph (a) of this section shall be sent to: Director, Field Operations and Support Division (EN 397F), Office of Mobile Sources, Environmental Protection Agency, 401 "M" Street SW., Washington, DC., 20460.

10. Section 85.2112 is revised to read as follows:

§ 85.2112 Applicability.

The provisions of §§ 85.2112 through 85.2122 apply to emission related automotive aftermarket parts which are to be installed in or on 1968 and later model year light-duty vehicles and light-duty trucks.

11. Section 85.2113 is amended by revising paragraphs (e) through (k) to read as follows:

§ 85.2113 Definitions.

* * * * *

(e) "Certified Aftermarket Part" means any aftermarket part which has been certified pursuant to this subpart.

(f) "Emission Warranty" means those warranties given by vehicle manufacturers pursuant to section 207 of the Act.

(g) "Emission-Critical Parameters" means those critical parameters and tolerances which, if equivalent from one part to another, will not cause the vehicle to exceed applicable emission standards with such parts installed.

(h) "Engine Family" means the basic classification unit of a vehicle's product line for a single model year used for the purpose of emission-data vehicle or engine selection and as determined in accordance with 40 CFR 86.078–24.

(i) "Vehicle or Engine Configuration" means the specific subclassification unit of an engine family or certified part application group as determined by engine displacement, fuel system, engine code, transmission and inertia weight class, as applicable.

(j) "Certification Vehicle Emission Margin" for a certified engine family means the difference between the EPA emission standards and the average FTP emission test results of that engine family's emission-data vehicles at the projected applicable useful life mileage point (i.e., useful life mileage for light-duty vehicles is 50,000 miles and for light-duty trucks is 120,000 miles for 1985 and later model years or 50,000 miles for 1984 and earlier model years).

(k) "Applications" means all vehicle or engine configurations for which one part is being certified as set forth in the aftermarket part manufacturer's notification of intent to certify pursuant to § 85.2115(a)(1).

12. Section 85.2114 is revised to read as follows:

§ 85.2114 Basis of certification.

(a) *Prior to certifying,* the aftermarket part manufacturer must determine:

(1) Whether the part to be certified is an emission related part as defined in § 85.2102. The MOD Director shall deny certification to any parts which he or she determines is not an emission related part.

(2) The vehicle or engine configurations for which this part is being certified. These are the vehicle and engine designs for which the aftermarket part manufacturer intends to sell the certified aftermarket part.

(3) Whether the part qualifies under one of the part categories, listed in § 85.2122 of this subpart that are eligible to certify using emission critical parameters and, if so, whether the manufacturer elects to demonstrate certification using emission critical parameters. An aftermarket part may be certified under this category only if the part's emission-critical parameters, as set forth in § 85.2122, are equivalent to those of the original equipment or previously certified part it is to replace. Compliance with the emission-critical parameters discussed in paragraph (b) of this section may be demonstrated by compliance with the relevant test procedures and criteria specified in appendix I to this subpart. The requirements of this paragraph apply to all on-road vehicles and engines. Alternatively, the manufacturer may elect to demonstrate certification compliance according to the emission test procedures described in paragraph (c) of this section.

(b) *For parts eligible to certify using emission-critical parameters, certification compliance can be demonstrated as follows.* (1) The durability procedure contained in Appendix I to this subpart can be used. As an alternative, the aftermarket part manufacturer may use a different durability procedure if it can demonstrate to the MOD Director that the alternative procedure results in an improved technical evaluation of the part's influence on vehicle or engine emissions for its useful life mileage interval, or results in a significant cost savings to the aftermarket part manufacturer with no loss in technical validity compared to the recommended durability procedure. The aftermarket part manufacturer shall receive the written approval from the MOD Director prior to implementation of the alternative procedures.

(2) Compliance with certification requirements is based on conformance with all emission-critical parameters in § 85.2122. This shall be accomplished by performing such procedures, tests, or analyses described in appendix I, or other procedures subject to the MOD Director's approval, necessary to ascertain with a high degree of certainty the emission-critical parameter specifications and tolerances for the aftermarket part and the original equipment or previously certified part for which an equivalent aftermarket certified part is to be used.

(i) If information is available in Appendix I of this subpart to identify the applicable emission-critical parameters, the aftermarket part certifier must use such information.

(ii) If sampling and analysis of original equipment or previously certified parts is relied upon, the aftermarket part certifier must use sound statistical sampling techniques to ascertain the mean and range of the applicable emission parameters.

(iii) If an aftermarket part replaces more than one part on the same application, it may be certified only if the aftermarket part meets the applicable emission-critical parameters of § 85.2122 for each part or parts which the aftermarket part is to replace. If an aftermarket part is to replace more than one part or an entire system, compliance must be demonstrated for all emission-critical parameters involved, except those which relate solely to the interface between the parts being replaced by the aftermarket part.

(c) *For parts certifying on the basis of emission test results, durability demonstration testing shall be conducted as follows.* (1) Prior to certification emission testing, the actual aftermarket part used for certification testing must meet the durability demonstration requirements of this paragraph for at least the part's useful life mileage interval.

(i) If an original equipment part has no scheduled replacement interval, then the useful life mileage interval of the aftermarket part of that type or which replaces the function of that part may be certified with a service interval less than the useful life of the motor vehicle or motor vehicle engine, or

(ii) If any provision of 40 CFR part 86 establishes a minimum replacement or service interval for an original equipment part during vehicle or engine certification, then the useful life mileage interval of the aftermarket part of that type or which replaces the function of that part is said minimum interval.

(2) The part manufacturer must decide whether it can demonstrate to the MOD Director that, during normal vehicle operation, the candidate part will not accelerate deterioration of any original equipment emission related parts. This demonstration must be based on technical rationale that shows that the candidate part has no significant physical or operational effect on any original emission components or system which would be different than that experienced by the vehicle operating with all original equipment emission system parts. The part's effect on each major emission system must be addressed separately in the demonstration.

(i) If the aftermarket part to be certified accelerates deterioration of any existing emission related parts then certification shall be carried out as specified under the paragraph (c)(3) of this section for parts that accelerate deterioration of existing emission related parts.

(ii) If the aftermarket part manufacturer can demonstrate that the part to be certified will not accelerate deterioration of any existing emission related components, then the manufacturer can certify according to paragraph (c)(4) in this section for parts demonstrated to not accelerate deterioration of existing emission related parts.

(3) *For aftermarket parts that accelerate deterioration of existing emission related parts during normal operation.* (i) The aftermarket test part can be installed on the durability test vehicle and aged for 50,000 miles using the vehicle durability driving schedules contained in part 86, appendix IV. As an alternative, the aftermarket part manufacturer may use a different durability procedure if it can demonstrate to the MOD Director that the alternative procedure results in an improved technical evaluation of the part's influence on vehicle or engine emissions for the part's useful life mileage interval, or results in a significant cost savings to the aftermarket part manufacturer with no loss in technical validity compared to the recommended durability schedules in part 86, appendix IV. The aftermarket part manufacturer shall receive the written approval from the MOD Director prior to implementation of the alternative procedures.

Note: At the time of certification emission testing, the same part and vehicle combination used for mileage accumulation shall be used for emission testing.

(ii) Where the comparable original equipment part has a recommended replacement interval of less than 50,000 miles, the test part shall be replaced no sooner than its useful life mileage interval during the required 50,000 mile durability demonstration.

Note: At the time of certification emission testing, one of the aftermarket parts that accumulated at least its useful life mileage during the aging process under this paragraph shall be installed on the durability test vehicle that has accumulated 50,000 miles.

(4) *For aftermarket parts demonstrated not to accelerate deterioration on existing emission related parts during normal operation,* the part manufacturer must determine whether the part will cause a noticeable change in vehicle driveability.

(i) Parts that cause no noticeable change in vehicle driveability, performance, and/or fuel economy when the part fails, the durability driving schedules contained in part 86, appendix IV can be used. As an alternative, the aftermarket part manufacturer may use a different durability procedure if it can demonstrate to the MOD Director that the alternative procedure results in an improved technical evaluation of the part's influence on vehicle or engine emissions for its useful life mileage interval, or results in a significant cost savings to the aftermarket part manufacturer with no loss in technical validity compared to the durability schedules in part 86, appendix IV. The aftermarket part manufacturer shall receive the written approval from the MOD Director prior to implementation of the alternative procedures.

(ii) Parts demonstrated to cause a noticeable change in vehicle driveability, performance, and/or fuel economy when the part fails, are exempt from aging if the part manufacturer can demonstrate to the MOD Director that the primary failure mode of the aftermarket component or system affects the driveability, performance, and/or fuel economy of the vehicle at a level readily detectable by the driver and likely to result in near term repair of failing components and correction of the emissions failure. (Use of on-board diagnostics and malfunction indicators as covered in paragraph (g) of this section is not necessarily an adequate demonstration that the certified part will be replaced. The part manufacturer must demonstrate that the diagnostic and malfunction indicator system will routinely result in repair or replacement of the part in use).

(5) *For parts which only affect evaporative emissions performance,* the aftermarket part manufacturer shall determine and demonstrate to the MOD Director the appropriate durability procedure to age its part. The demonstration shall include all documentation, analyses, and test results that support this determination, and the documentation that support the durability procedure results shall be submitted with the notification of intent to certify as per § 85.2115 and is subject to MOD Director's review.

(6) *Durability demonstration vehicle selection.* The demonstration vehicle

used must represent the "worst case" of all the configurations for which the aftermarket part is being certified. The worst case configuration shall be that configuration which will likely cause the most deterioration in the performance characteristics of the aftermarket part which influence emissions during the part's useful life mileage. The worst case configuration shall be selected from among those configurations for which the aftermarket part is to be certified. One of the following two methods shall be used to select the worst case durability demonstration vehicle(s):

(i) In the first method, the selection shall be based on a technical judgment by the aftermarket part manufacturer of the impact of the particular design, or calibration of a particular parameter or combination of parameters, and/or an analysis of appropriate data, or

(ii) In the second alternative method, the selection shall be made from among those vehicle configurations with the heaviest equivalent test weight, and within that group, the largest displacement engine.

(d) *For parts certifying on the basis of emission test results, certification compliance shall be demonstrated as follows.* (1) The emission test to be used is the Federal Test Procedure as set forth in the applicable portions of 40 CFR part 86. Certification emission testing must be carried out using representative production aftermarket parts as provided in paragraph (e) of this section. The test results must demonstrate that the proper installation of the certified aftermarket part will not cause the vehicle to fail to meet any applicable Federal emission requirements under section 202 of the Act.

(2) The following portions of the Federal Test Procedure are not required to be performed when certifying a part using emission testing:

(i) The evaporative emissions portion, if the aftermarket manufacturer has an adequate technical basis for believing that the part has no effect on the vehicle's evaporative emissions;

(ii) The exhaust emissions portion, if the part manufacturer has an adequate technical basis for believing that the part has no affect on the vehicle's exhaust emissions; and

(iii) Other portions therein which the part manufacturer believes are not relevant; *Provided, That* the part manufacturer has requested and been granted a waiver in writing by the MOD Director for excluding such portion.

(3) Exhaust Emission Testing. Certification exhaust emission testing for aftermarket parts shall be carried out in the following manner:

(i) For light duty vehicle parts that accelerate deterioration of existing emission related parts, at least one emission test is required. The test(s) shall be performed according to the Federal Test Procedure on the same test vehicle and aftermarket part combination that was previously aged as required. The results of all tests performed shall be averaged for each emission constituent. The average values shall meet all applicable Federal emission requirements under section 202 of the Act.

(A) For aftermarket parts where the comparable original equipment part has no recommended replacement interval, the same part and vehicle combination used for the durability demonstration shall be used for certification exhaust emission testing.

(B) For aftermarket parts where the comparable original equipment part has a recommended replacement interval of less than 50,000 miles, one of the aftermarket parts that accumulated at least the part's useful life mileage during the durability demonstration must be installed on the durability demonstration vehicle that has accumulated 50,000 miles for certification exhaust emission testing.

(ii) For light duty truck parts that accelerate deterioration of existing emission related parts.

(A) An emission test shall be performed on emission test vehicles at 4000 miles and at 50,000 miles, with the part installed. Exhaust emission deterioration factors for the test vehicle shall be calculated from these two test results. The aftermarket part manufacturer may elect to perform other emission tests at interim mileages. However, any interim tests must be spaced at equal mileage intervals. If more than one test is performed at any one mileage point, then all tests at this point shall be averaged prior to determining the deterioration factor. The deterioration factor shall be calculated using the least squares straight line method, in accordance with § 86.088–28(a). The deterioration factor for each emission constituent shall be used to linearly project the 50,000 mile test result out to 120,000 miles. The projected 120,000 mile test result shall meet light duty truck emission standards.

(B) As an option, the light-duty truck part manufacturer may durability age the test vehicle and aftermarket part to 120,000 miles, and then perform one Federal Test Procedure test. The actual test results in this case must pass all Federal emission standards.

(iii) For parts demonstrated to not accelerate deterioration of existing emission related parts during normal operation:

(A) If parts cause no noticeable change in vehicle driveability, performance, and/or fuel economy when the part fails, the certification exhaust emission test vehicle need not be the same vehicle as that used for durability demonstration. Upon completion of aging, one Federal Test Procedure test shall be performed with the aged aftermarket part installed on a test vehicle that has just completed one Federal Test Procedure test in the original equipment configuration (i.e., before the aftermarket part or system is installed). If more than one test is performed either before or after the aftermarket part is installed, then an equivalent number of tests must be performed in both configurations. The results of all tests performed before the part is installed shall be averaged and the results of all tests performed after the part is installed shall be averaged for each emission constituent. The difference in Federal Test Procedure emission results between the tests with the aged aftermarket part installed and the test vehicle in the original equipment configuration shall be less than or equal to the certification vehicle emission margin of any and all of the certification test vehicles from the various configurations for which the aftermarket part is being certified.

(B) For parts demonstrated to cause a noticeable change in vehicle driveability, performance, and/or fuel economy when the part fails, no durability aging of the part is required before certification emission testing. One Federal Test Procedure test shall be performed on the test vehicle in its original equipment configuration (i.e., before the aftermarket part or system is installed) and one test with an aftermarket part representative of production (as provided in paragraph (e) of this section) installed on the test vehicle. If more than one test is performed either before or after the aftermarket part is installed, then an equivalent number of tests must be performed in both configurations. The results of all tests performed with the aftermarket part installed shall be averaged and the results of all tests performed in the original equipment configuration shall be averaged for each emission constituent. The difference in Federal Test Procedure emission results between the tests with the aftermarket part installed and the test vehicle in the original equipment configuration shall be less than or equal to the certification vehicle emission margin of any and all of the certification test vehicles from the various configurations for which the aftermarket part is being certified.

(4) Evaporative emission testing. For parts determined by the part manufacturer (with appropriate technical rationale) to affect only evaporative emissions performance, at least one evaporative emissions portion of the Federal Test Procedure test shall be performed on the vehicle in its original equipment configuration and at least one with the aftermarket part installed. Both the original equipment and aftermarket part shall be aged according to paragraph (c)(5) of this section prior to testing. If more than one test is performed either before or after the aftermarket part is installed, then an equivalent number of tests must be performed in both configurations. The emission results of all tests performed before the part is installed shall be averaged and the emission results of all tests performed after the part is installed shall be averaged. The difference in Federal Test Procedure emission results between the tests with the aged aftermarket part installed and the test vehicle in the original equipment configuration shall be less than or equal to the certification vehicle emission margin of any and all of the certification test vehicles from the various configurations for which the aftermarket part is being certified.

(5) Emission test vehicle selection: The test vehicle used must represent the "worst case" with respect to emissions of all those configurations for which the aftermarket part is being certified. The worst case configuration shall be that configuration which, having the aftermarket part installed, is least likely to meet the applicable emission standards among all those configurations on which the aftermarket part is intended to be installed as a certified aftermarket part. One of the following two methods shall be used to select the worst case emission test vehicle(s):

(i) In the first method, the selection shall be based on a technical judgment by the aftermarket part manufacturer of the impact of the particular design or calibration of a particular parameter or combination of parameters and/or an analysis of appropriate data, or

(ii) In the second alternative method, two defined worst case test vehicles shall be selected from the vehicle configurations using the following criteria:

(A) The first test vehicle is that engine family for which the largest number of parts are projected to be sold. Within that family the manufacturer shall select the configurations with the heaviest equivalent test weight, and then within that group the configuration with the largest displacement engine.

(B) The second test vehicle shall be from a different vehicle manufacturer than the first test vehicle, or if the aftermarket part applies to only one vehicle manufacturer, from a different engine family. Engine families are determined by the vehicle manufacturer or when certifying under 40 CFR Part 86. Within that group, the second test vehicle is selected from the vehicle configurations with the heaviest equivalent test weight, and then, within that group, the configuration with the largest displacement engine. If a part applies to only one engine family then only the vehicle specified in paragraph (d)(5)(ii)(A), of this section, is required to be tested.

(iii) The results of certification tests using the worst case vehicle selections made in this section shall only be applicable for configurations that are required to meet the same or less stringent (numerically higher) emission standards than those of the worst case configuration.

(iv) The worst case test vehicle(s) selected for certification emission testing is(are) not required to meet Federal emission standards in its original configuration. However, each test vehicle shall have representative emissions performance that is close to the standards and have no obvious emission defects. Each test vehicle shall be tuned properly and set to the vehicle manufacturer's specifications before testing is performed. Any excessively worn or malfunctioning emission related part shall be repaired prior to testing.

(e) *Test part selection.* Certification shall be based upon tests utilizing representative production aftermarket parts selected in a random manner in accordance with accepted statistical procedures.

(f) *Replacing original equipment parts.* Installation of any certified aftermarket part shall not result in the removal or rendering inoperative of any original equipment emission related part other than the part(s) being replaced. Furthermore, installation of any certified aftermarket part shall not require the readjustment of any other emission related part to other than the vehicle manufacturer specifications, cause or contribute to an unreasonable risk to the public health, welfare or safety, or result in any additional range of parameter adjustability or accessibility to adjustment than that of the vehicle manufacturer's emission related parts.

(g) *Affects on vehicle on board diagnostic system.* Installation of any certified aftermarket part shall not alter or render inoperative any feature of the on-board diagnostic system incorporated by the vehicle manufacturer. The certified part may integrate with the existing diagnostic system if it does not alter or render inoperative any features of the system. However, use of on-board diagnostics or warning indicators to alert the driver to part failure is not sufficient by itself to qualify the part for exemption from aging under paragraph (c)(4)(ii) of this section. The part manufacturer must demonstrate that the diagnostic and malfunction indicator system will routinely result in repair or replacement of the aftermarket part in use.

(Approved by the Office of Management and Budget under the control number 2060-0016)

13. Section 85.2115 is revised to read as follows:

§ 85.2115 Notification of intent to certify.

(a) At least 45 days prior to the sale of any certified automotive aftermarket part, notification of the intent to certify must be received by the Agency.

(1) The notification shall include:

(i) Identification of each part to be certified; and,

(ii) Identification of all vehicle or engine configurations for which the part is being certified including make(s), model(s), year(s), engine size(s) and all other specific configuration characteristics necessary to assure that the part will not be installed in any configuration for which it has not been certified; and

(iii) All determinations, demonstrations, technical rationale, and documentation provided in § 85.2114; and

(iv) Any and all written waivers and approvals obtained from the MOD director as provided in § 85.2114, and any correspondence with EPA regarding certification of that part; and

(v) A description of the tests, techniques, procedures, and results utilized to demonstrate compliance with § 85.2114(b) applicable to parts eligible to certify using emission-critical parameters, except that, if the procedure utilized is recommended in appendix I of this subpart, then only a statement to this effect is necessary. A description of all statistical methods and analyses used to determine the emission-critical parameters of the original equipment parts and compliance of the certified part(s) with those parameters including numbers of parts tested, selection criteria, means, variance, etc; and

(vi) All results and documentation of tests and procedures used by the part manufacturer as evidence of compliance

with the durability and emission requirements specified in § 85.2114; and

(vii) A discussion of the technical basis(es) for foregoing any portion of the Federal Test Procedure when applicable; and

(viii) A description of the test part selection criteria used, and a statement that the test part(s) used for certification testing is(are) a representative production aftermarket part(s) consistent with § 85.2114(e); and

(ix) A description of the test and demonstration vehicle selection criteria used, and rationale that supports the technical judgment that the vehicle configurations used for emission testing and durability demonstration represent worst case with respect to emissions of all those configurations for which the aftermarket part is being certified, and all data that supports that conclusion; and

(x) The service intervals of the part, including maintenance and replacement intervals in months and/or miles, as applicable, and a statement indicating whether it is different than the service, maintenance, and replacement interval of the original equipment requirements; and

(xi) A statement, if applicable, that the part will not meet the labeling requirements of § 85.2119(a) and the description of the markings the aftermarket manufacturer intends to put on the part in order to comply with § 85.2119(b); and

(xii) A statement that the aftermarket part manufacturer accepts, as a condition of certification, the obligation to comply with the warranty requirements and dispute resolution procedures provided in § 85.2117; and

(xiii) A statement of commitment and willingness to comply with all the relevant terms and conditions of this subpart; and

(xiv) A statement by the aftermarket part manufacturer that use of its certified part will not cause a substantial increase to vehicle emissions in any normal driving mode not represented during certification or compliance testing; and

(xv) The office or officer of the aftermarket part manufacturer authorized to receive correspondence regarding certification requirements pursuant to this subpart.

(2) The notification shall be signed by an individual attesting to the accuracy and completeness of the information supplied in the notification.

(3) Notification to the Agency shall be by certified mail or another method by which date of receipt can be established.

(4) Two complete and identical copies of the notification and any subsequent industry comments on any such notification shall be submitted by the aftermarket manufacturer to: Director, MOD (EN-340F), Attention: Aftermarket Parts, 401 "M" St. SW., Washington, DC 20460.

(5) A copy of the notification submitted under paragraph (a)(4) of this section will be placed in a public docket. Comments on any notice in the public docket may be made to the MOD Director.

(b) The MOD Director reserves the right to review an application to determine if the submitted documents adequately meet all the requirements for certification specified in §§ 85.2114 and 85.2115. A part may be sold as certified 45 days after the receipt by the Agency of the notification given pursuant to this subsection provided that the Agency has not notified the part manufacturer otherwise.

(Approved by the Office of Management and Budget under the control number 2060-0016)

14. Section 85.2116 is amended by revising paragraphs (a)(2), (a)(4) and (a)(7) and by adding paragraph (a)(8) to read as follows:

§ 85.2116 Objections to certification.

(a) * * *

(2) The part is to be certified on the basis of emission testing, and the procedure used in such tests was not in compliance with those portions of the Federal Test Procedure not waived pursuant to § 85.2114(d)(2).

* * * * *

(4) The durability requirement of § 85.2114 has not been complied with;

* * * * *

(7) Information and/or data required to be in the notification of intent to certify as provided by § 85.2115 have not been provided or may be inadequate; or,

(8) Documentation submitted under § 85.2114(c)(4)(ii) was determined inadequate for durability exemption.

* * * * *

15. Section 85.2117 is revised to read as follows:

§ 85.2117 Warranty and dispute resolution.

(a) *Warranty.* (1) As a condition of certification, the aftermarket part manufacturer shall warrant that if the certified part is properly installed it will not cause a vehicle to exceed Federal emission requirements as determined by an emission test approved by EPA under section 207(b)(1) of the Act. This aftermarket part warranty shall extend for the remaining performance warranty period of any vehicle on which the part is installed, or for the warranty period specified for an equivalent original equipment component, if this period is shorter than the remaining warranty period of the vehicle.

(2) The aftermarket part manufacturer's minimum obligation under this warranty shall be to reimburse vehicle manufacturers for all reasonable expenses incurred as a result of honoring a valid emission performance warranty claim which arises because of the use of the certified aftermarket part.

(3) The procedure used to process a certified aftermarket part warranty claim is as follows. The time requirements are in units of calendar days.

(i) The vehicle manufacturer shall submit, by certified mail or another method by which date of receipt can be established, a bill for reasonable expenses incurred to the part manufacturer for reimbursement. Accompanying the bill shall be a letter to the part manufacturer with an explanation of how the certified part caused the failure and a copy of the warranty repair order or receipt establishing the date that the performance repair was initiated by the vehicle owner.

(ii) The parts retained pursuant to § 85.2107(c)(1) shall be retained until the reimbursement process is resolved. The vehicle manufacturer shall store these parts or transfer these parts to the involved certified part manufacturer for storage. If the vehicle manufacturer transfers these parts to the certified part manufacturer, the part manufacturer shall retain these parts:

(A) For at least one year from the date of repair involving these parts, if the part manufacturer does not receive a bill from the vehicle manufacturer within that time period, or

(B) Until the claim reimbursement process has been resolved, if the part manufacturer receives a bill from the vehicle manufacturer within one year of the date of repair involving these parts.

(iii) If the vehicle manufacturer transfers the parts retained pursuant to paragraph (a)(3)(ii) of this section to the part manufacturer, a bill shall be submitted to the part manufacturer within one year of the date of initiation of the actual repair by the vehicle owner. If this requirement is not met, the vehicle manufacturer shall forfeit all rights to the reimbursement provisions provided in this regulation.

(iv) Storage costs are not reimbursable as part of a performance warranty claim.

(b) *Dispute resolution.* (1) The part manufacturer shall respond to the vehicle manufacturer within 30 days of receipt of the bill by paying the claim or requesting a meeting to resolve any disagreement. A meeting shall occur within the next two week period. At this meeting the parties shall, in all good faith, attempt to resolve their disagreement. Discussions should be completed within 60 days of receipt of the bill for the warranty claim by the part manufacturer.

(2) If the parties cannot resolve their disagreement within 60 days, either party may file for arbitration. Neither party may file for arbitration within 60 days unless both parties agree to seek arbitration prior to the end of the 60-day period. If, after 60 days, either party files, then both parties shall submit to arbitration.

(3) This arbitration shall be carried out pursuant to the Arbitration Rules contained in Appendix II of this subpart which are based on Commercial Arbitration Rules published by the American Arbitration Association, revised and in effect as of September 1, 1988. The Arbitration Rules detail the procedures to be followed by the parties and the arbitrator in resolving disputes under this section. They can be varied only with the agreement of both parties. If either involved manufacturer refuses to participate in the arbitration process, that party is treated as if it had lost the arbitration and is required to pay all reasonable expenses.

(4) Any party losing the arbitration has the right to resort to an appropriate federal district court or state court, subject to the established rules of that court regarding subject matter jurisdiction and personal jurisdiction.

(5) If the vehicle manufacturer wins the arbitration, the part manufacturer must provide reimbursement in accordance with the arbitrator's award and decision. Such reimbursement must be made within 30 days of the award and decision.

(6)(i) If the part manufacturer refuses to pay a lost arbitration award, the involved part will be decertified pursuant to 40 CFR 85.2121, provided that if the part manufacturer resorts to a court of competent jurisdiction, decertification will be withheld pending the outcome of such judicial determination.

(ii) In addition, under these circumstances, the vehicle manufacturer has the right to bring an enforcement action on the arbitration award and decision in the appropriate federal district court or state court, subject to the established rules of that court regarding subject matter jurisdiction and personal jurisdiction. If this court agrees with the arbitrator's award and decision, reimbursement shall be made within 30 days of the court's decision unless the court orders otherwise.

16. Section 85.2118 is amended by revising paragraphs (a) and (b) and republishing the introductory text for the convenience of the reader as follows:

§ 85.2118 Changes after certification.

The aftermarket part manufacturer shall be required to recertify any part which:

(a) Was certified pursuant to § 85.2114(b) and to which modifications are subsequently made which could affect the results of any test or judgment made that the part meets all of the applicable Emission-Critical Parameters;

(b) Was certified pursuant to § 85.2114(c) and to which modifications are made which are likely to affect emissions or the capability of the part to meet any other requirement of this subpart; or

* * * * *

17. Section 85.2119 is amended by revising paragraphs (a) and (b) to read as follows:

§ 85.2119 Labeling requirements.

(a) Except as specified in paragraph (b) of this section, each part certified pursuant to these regulations shall have "Certified to EPA Standards" and the name of the aftermarket part manufacturer or other party designated to determine the validity of warranty claims placed on the part. The name of the aftermarket part manufacturer or other party and the statement, "Certified to EPA Standards," must be made durable and readable for at least the useful life mileage interval of the part.

(b) In lieu of the name of the aftermarket part manufacturer or other party and "Certified to EPA Standards," the part may contain unique identification markings. A description of the marking and statement that such marking is intended in lieu of the name of the aftermarket part manufacturer or other party and "Certified to EPA Standards," shall be made to the Agency in the notification of intent to certify. The unique symbol shall not be used on any uncertified or decertified part built or assembled after the date of decertification.

* * * * *

18. Section 85.2121 is amended by revising paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) and (a)(1)(vi) and by adding paragraphs (a)(1)(ii)(C), (a)(1)(vii) and (a)(1)(viii) to read as follows:

§ 85.2121 Decertification.

(a) * * *

(1) * * *

(ii) * * *

(A) The procedures used in such tests were not in substantial compliance with a portion or portions of the Federal Test Procedure which were not waived pursuant to § 85.2114(d);

(B) The emission results were not in compliance with the requirements of § 85.2114(d); or

(C) The procedures used for part aging for durability demonstration were not in substantial compliance with the durability cycle required by § 85.2114.

* * * * *

(vi) The manufacturer of such parts has not established, maintained or retained the records required pursuant to § 85.2120 or fails to make the records available to the MOD Director upon written request pursuant to § 85.2120.

(vii) Documentation required to support the type of durability demonstration used for a part under § 85.2114:

(A) Were not submitted for the part, or

(B) Were insufficient to justify a claim of durability exemption status.

(viii) The aftermarket part manufacturer failed to pay a lost arbitration settlement within 30 days of the arbitrator's decision or within 30 days after completion of judicial review, if any.

* * * * *

19. Section 85.2122 is amended by revising paragraph (a) introductory text to read as follows:

§ 85.2122 Emission-critical parameters.

(a) The following parts may be certified in accordance with § 85.2114(b):

* * * * *

20. The existing Appendix to Subpart V is designated as Appendix I and the heading is revised to read as follows:

Appendix I to Subpart V—Recommended Test Procedures and Test Criteria and Recommended Durability Procedures to Demonstrate Compliance With Emission Critical Parameters

* * * * *

21. Appendix II is added to Subpart V to read as follows:

Appendix II—Arbitration Rules

Part A—Pre-Hearing

Section 1: Initiation of Arbitration

Either party may commence an arbitration under these rules by filing at any regional office of the American Arbitration Association (the AAA) three copies of a written submission to arbitrate under these rules, signed by either party. It shall contain a statement of the matter in dispute, the

amount of money involved, the remedy sought, and the hearing locale requested, together with the appropriate administrative fee as provided in the Administrative Fee Schedule of the AAA in effect at the time the arbitration is filed. The filing party shall notify the MOD Director in writing within 14 days of when it files for arbitration and provide the MOD Director with the date of receipt of the bill by the part manufacturer.

Unless the AAA in its discretion determines otherwise and no party disagrees, the Expedited Procedures (as described in Part E of these Rules) shall be applied in any case where no disclosed claim or counterclaim exceeds $25,000, exclusive of interest and arbitration costs. Parties may also agree to the Expedited Procedures in cases involving claims in excess of $25,000.

All other cases, including those involving claims not in excess of $25,000 where either party so desires, shall be administered in accordance with Parts A through D of these Rules.

Section 2: Qualification of Arbitrator

Any arbitrator appointed pursuant to these Rules shall be neutral, subject to disqualification for the reasons specified in Section 6. If the parties specifically so agree in writing, the arbitrator shall not be subject to disqualification for said reasons.

The term "arbitrator" in these rules refers to the arbitration panel, whether composed of one or more arbitrators.

Section 3: Direct Appointment by Mutual Agreement of Parties

The involved manufacturers should select a mutually-agreeable arbitrator through which they will resolve their dispute. This step should be completed within 90 days from the date of receipt of the warranty claim bill by the part manufacturer.

Section 4: Appointment From Panel

If the parties have not appointed an arbitrator and have not provided any other method of appointment, the arbitrator shall be appointed in the following manner: 90 days from the date of receipt of the warranty claim bill by the part manufacturer, the AAA shall submit simultaneously to each party to the dispute an identical list of names of persons chosen from the National Panel of Commercial Arbitrators, established and maintained by the AAA.

Each party to the dispute shall have ten days from the mailing date in which to cross off any names objected to, number the remaining names in order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the panel without the submission of additional lists.

Section 5: Number of Arbitrators; Notice to Arbitrator of Appointment

The dispute shall be heard and determined by one arbitrator, unless the AAA in its discretion, directs that a greater number of arbitrators be appointed.

Notice of the appointment of the arbitrator shall be mailed to the arbitrator by the AAA, together with a copy of these rules, and the signed acceptance of the arbitrator shall be filed with the AAA prior to the opening of the first hearing.

Section 6: Disclosure and Challenge Procedure

Any person appointed as an arbitrator shall disclose to the AAA any circumstance likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives. Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others. Upon objection of a party to the continued service of an arbitrator, the AAA shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

Section 7: Vacancies

If for any reason an arbitrator should be unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules.

In the event of a vacancy in a panel of arbitrators after the hearings have commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.

Section 8: Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these rules, it shall be decided by a majority vote. If that is unobtainable, either an arbitrator or a party may refer the question to the AAA for final decision. All other rules shall be interpreted and applied by the AAA.

Section 9: Administrative Conference and Preliminary Hearing.

At the request of any party or at the discretion of the AAA, an administrative conference with the AAA and the parties and/or their representatives will be scheduled in appropriate cases to expedite the arbitration proceedings.

In large or complex cases, at the request of any party or at the discretion of the arbitrator or the AAA, a preliminary hearing with the parties and/or their representatives and the arbitrator may be scheduled by the arbitrator to specify the issues to be resolved, stipulate to uncontested facts, and to consider any other matters that will expedite the arbitration proceedings. Consistent with the expedited nature of arbitration, the arbitrator may, at the preliminary hearing, establish (i) the extent of and the schedule for the production of relevant documents and other information, (ii) the identification of any witnesses to be called, and (iii) a schedule for further hearings to resolve the dispute.

Section 10: Fixing of Locale

The parties may mutually agree on the locale where the arbitration is to be held. If any party requests that the hearing be held in a specific locale and the other party files no objection thereto within ten days after notice of the request has been mailed to it by the AAA, the locale shall be the one requested. If a party objects to the locale requested by the other party, the AAA shall have the power to determine the locale and its decision shall be final and binding.

Part B—The Hearing

Section 1: Date, Time, and Place of Hearing

The arbitrator shall set the date, time, and place for each hearing. The AAA shall mail to each party notice thereof at least ten days in advance, unless the parties by mutual agreement waive such notice or modify the terms thereof.

Section 2: Representation

Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party and the AAA of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

Section 3: Attendance at Hearings

The arbitrator shall maintain the privacy of the hearings unless the law provides to the contrary. Representatives of the MOD director, and any persons having a direct interest in the arbitration are entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

Section 4: Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

Section 5: Majority Decision

All decisions of the arbitrators must be by a majority. The award must also be made by a majority.

Section 6: Order of Proceedings and Communication with Arbitrator

A hearing shall be opened by the filing of the oath of the arbitrator, where required; by the recording of the date, time, and place of the hearing, and the presence of the arbitrator, the parties and their representatives, if any; and by the receipt by the arbitrator of the statement of the claim and the answering statement, if any.

The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved. In some cases, part or all of the above will have been accomplished at the preliminary hearing conducted by the arbitrator pursuant to Part A Section 9 of these Rules.

The complaining party shall then present evidence to support its claim. The defending party shall then present evidence supporting its defense. Witnesses for each party shall submit to questions or other examination. The arbitrator has the discretion to vary this procedure but shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence.

Exhibits, when offered by either party, may be received in evidence by the arbitrator.

The names and addresses of all witnesses and a description of the exhibits in the order received shall be made a part of the record.

There shall be no direct communication between the parties and an arbitrator other than at oral hearing, unless the parties and the arbitrator agree otherwise. Any other oral or written communication from the parties to the neutral arbitrator shall be directed to the AAA for transmittal to the arbitrator.

Section 7: Evidence

The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent, in default, or has waived the right to be present.

Section 8: Evidence by Affidavit and Post-hearing Filing of Documents or Other Evidence

The arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, the documents or other evidence shall be filed with the AAA for transmission to the arbitrator. All parties shall be afforded an opportunity to examine such documents or other evidence.

Section 9: Closing of Hearing

The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed and a minute thereof shall be recorded. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided for in Part B Section 9 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearing.

Section 10: Reopening of Hearing

The hearing may be reopened on the arbitrator's initiative, or upon application of a party, at any time before the award is made. The arbitrator may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to make an award.

Section 11: Waiver of Oral Hearing

The parties may provide, by written agreement, for the waiver of oral hearings.

Section 12: Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection thereto in writing, shall be deemed to have waived the right to object.

Section 13: Extensions of Time

The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The AAA shall notify the parties of any extension.

Section 14: Serving of Notice

Each party shall be deemed to have consented that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules; for any court action in connection therewith; or for the entry of judgment on any award made under these rules may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, inside or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to the party.

The AAA and the parties may also use facsimile transmission, telex, telegram, or other written forms of electronic communication to give the notices required by these rules.

Part C—Award and Decision

Section 1: Time of Award

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the AAA's transmittal of the final statements and proofs to the arbitrator.

Section 2: Form of Award

The award shall be in writing and shall be signed by the arbitrator, or if a panel is utilized, a majority of the arbitrators. It shall be accompanied by a written decision which sets forth the reasons for the award. Both the award and the decision shall be filed by the arbitrator with the MOD Director.

Section 3: Scope of Award

The arbitrator may grant to the vehicle manufacturer any repair expenses that he or she deems to be just and equitable.

Section 4: Award upon Settlement

If the parties settle their dispute during the course of the arbitration, the arbitrator may set forth the terms of the agreed settlement in an award. Such an award is referred to as a consent award. The consent award shall be filed by the arbitrator with the MOD Director.

Section 5: Delivery of Award to Parties

Parties shall accept as legal delivery of the award, the placing of the award, or a true copy thereof in the mail addressed to a party or its representative at the last known address, personal service of the award, or the filing of the award in any other manner that is permitted by law.

Section 6: Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party, furnish to the party, at its expense, certified copies of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

Part D—Fees and Expenses

Section 1: Administrative Fee

The AAA shall be compensated for the cost of providing administrative services according to the AAA Administrative Fee Schedule and the AAA Refund Schedule. The Schedules in effect at the time the demand for arbitration or submission agreement is received shall be applicable.

The administrative fee shall be advanced by the initiating party or parties, subject to final allocation at the end of the case.

When a claim or counterclaim is withdrawn or settled, the refund shall be made in accordance with the Refund Schedule. The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fee.

Section 2: Expenses

The loser of the arbitration is liable for all arbitration expenses unless determined otherwise by the arbitrator.

Section 3: Arbitrator's Fee

An arrangement for the compensation of an arbitrator shall be made through discussions by the parties with the AAA and not directly between the parties and the arbitrator. The terms of compensation of arbitrators on a panel shall be identical.

Section 4: Deposits

The AAA may require the parties to deposit in advance of any hearings such sums of money as it deems necessary to defray the expense of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case.

Part E—Expedited Procedures

Section 1: Notice by Telephone

The parties shall accept all notices from the AAA by telephone. Such notices by the AAA shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any notice hereunder, the proceeding shall nonetheless be valid if notice has, in fact, been given by telephone.

Section 2: Appointment and Qualifications of Arbitrator

The AAA shall submit simultaneously to each party an identical list of five proposed arbitrators drawn from the National Panel of Commercial Arbitrators, from which one arbitrator shall be appointed

Each party may strike two names from the list on a preemptory basis. The list is returnable to the AAA within seven days from the date of the AAA's mailing of the list to the parties.

If for any reason the appointment of an arbitrator cannot be made from the list, the AAA may make the appointment from among other members of the panel without the submission of additional lists.

The parties will be given notice by the AAA by telephone of the appointment of the arbitrator, who shall be subject to disqualification for the reasons specified in Part A, Section 8. The parties shall notify the AAA, by telephone, within seven days of any objection to the arbitrator appointed. Any objection by a party to the arbitrator shall be confirmed in writing to the AAA with a copy to the other party or parties.

Section 3: Date, Time, and Place of Hearing

The arbitrator shall set the date, time, and place of the hearing. The AAA will notify the parties by telephone, at least seven days in advance of the hearing date. Formal Notice of Hearing will be sent by the AAA to the parties and the MOD Director.

Section 4: The Hearing

Generally, the hearing shall be completed within one day, unless the dispute is resolved by the submission of documents. The arbitrator, for good cause shown, may schedule an additional hearing to be held within seven days.

Section 5: Time of Award

Unless otherwise agreed by the parties, the award shall be rendered not later than 14 days from the date of the closing of the hearing.

Section 6: Applicability of Rules

Unless explicitly contradicted by the provisions of this part, provisions of other parts of the Rules apply to proceedings conducted under this part.

[FR Doc. 89-18340 Filed 8-7-89; 8:45 am]

BILLING CODE 6560-50-M

federal register

Tuesday
August 8, 1989

Part III

Environmental Protection Agency

40 CFR Part 85

Performance Warranty Regulations and the Voluntary Aftermarket Part Certification Program: Proposed Alternative Short Test Procedure; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 85

[AMS FRL-3491-8]

Performance Warranty Regulations and the Voluntary Aftermarket Part Certification Program: Proposed Alternative Short Test Procedure

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) proposes to amend the voluntary aftermarket part certification program regulations by adopting an alternative, shorter test procedure for the certification of aftermarket parts.

Elsewhere in today's **Federal Register**, EPA is promulgating a final rule which revises its aftermarket part certification regulations. Under that final rule, any aftermarket part manufacturer that wishes to certify its emission-related part must demonstrate that use of its part will not cause a vehicle to fail Federal emission standards during the vehicle's useful life. When the demonstration involves emission testing the final rule specifies that the Federal Test Procedure (FTP) is the only acceptable test.

During the comment period prior to publishing today's final rule, aftermarket part manufacturers submitted information suggesting an alternative "short test" is available that would provide reasonable correlation to the currently required FTP test at a lower cost.[1] EPA's independent analyses indicate that the shorter procedure (known as the cold 505 test procedure) may correlate reasonably well with the FTP.[2] This notice of proposed rulemaking (NPRM) proposes to adopt such an alternative short test procedure for certification of aftermarket parts, and proposes standards that will ensure that this short test demonstrates compliance with the existing FTP emission standards.

DATES: Public comments on the NPRM must be submitted on or before October 10, 1989. The date and place of a public hearing will be announced shortly in the **Federal Register**. The public comment period will be open until at least 30 days after the hearing.

ADDRESSES: Comments on the NPRM may be submitted to the U.S. Environmental Protection Agency, Central Docket Section, Room 4, South Conference Center (LE–131), Waterside Mall, 401 M Street SW., Washington, DC, 20460, Attn: Docket No. A–88–31.

FOR FURTHER INFORMATION CONTACT: Daniel Heiser, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Rd., Ann Arbor, MI 48105 (313) 668–4502.

SUPPLEMENTARY INFORMATION:

I. Background

Section 207(a)(2) of the Clean Air Act (the Act) provides that a motor vehicle part manufacturer may certify that use of its parts will not result in a failure of the vehicle or engine to comply with emission standards promulgated under section 202 of the Act. Section 207(a)(2) instructs EPA to promulgate regulations for the certification of automotive parts. Although part manufacturers are not required to certify aftermarket parts, those aftermarket parts voluntarily certified are covered under the vehicle manufacturer's performance warranty provisions.

In 1980 EPA promulgated regulations that allow automotive part manufacturers to certify their parts as equivalent to original equipment manufacturer (OEM) parts (45 FR 78448, November 25, 1980). Elsewhere in today's **Federal Register**, EPA is promulgating revisions to those regulations that expand the applicability of the part certification program to include all emission-related aftermarket parts.[3] Those revisions to the voluntary self-certification regulations [4] allow aftermarket part manufacturers to certify their parts on the basis of FTP data.

The FTP is a test procedure that collects emissions under transient driving conditions, including acceleration, deceleration, stop and go, and constant speed driving modes. The FTP also includes "loaded" conditions where the test vehicle is subjected to simulated operation loads that represent proper test vehicle weight, aerodynamic drag, and other frictional forces. The FTP exhaust test cycle begins after the test vehicle has been "soaked" (i.e., placed in the controlled ambient environment of an enclosed room with all vehicle power systems turned off for twelve hours minimum) to ensure that all vehicle systems start the test at the same baseline temperature. The actual test starts with one cold start driving cycle followed by one hot transient driving cycle, and finishes with one hot start driving cycle. Emissions are collected from each cycle in a separate enclosed collection medium known as an emission bag. FTP emissions are based on a weighted average of emissions from all three emission bags.[5]

In reviewing the 1980 regulations on aftermarket parts certification in *Specialty Equipment Market Association (SEMA)* v. *Ruckelshaus* 720 F.2d 124 (1983), the DC Circuit Court of Appeals stated that section 207(a)(2) of the Act does not prevent EPA from using short tests in place of the FTP as a basis for certification. It pointed out that EPA had approved the use of short tests for Inspection/Maintenance purposes to trigger the vehicle manufacturer's performance warranty under section 207(b) of the Act.[6] The *SEMA* court stated, however, that the Act does not require EPA to authorize the use of short tests for certification of aftermarket parts. It noted that there may be valid policy grounds for rejecting short tests for this purpose. 720 F.2d at 136–137 (1983).

EPA has already considered and rejected several alternative short test procedures for aftermarket part certification.[7] These short tests were suggested by SEMA, which claimed such tests were less expensive than the full FTP for certification of aftermarket parts. EPA rejected these alternative test procedures since they had test cycle deficiencies and would not reasonably assure adequate emission performance

[1] Docket No. EN–84–08, Category IV–D–4, comments of Specialty Equipment Market Association (SEMA).

[2] See "Using the Cold 505 Emission Test Procedure for Certification of Aftermarket Parts," Certification Division (CD), EPA, December, 1988. This technical support document has been placed in the public docket for this NPRM, docket no. A–88–31.

[3] Emission-related aftermarket parts are parts installed for those components, systems, or elements of design which must function properly to assure continued vehicle emission compliance.

[4] 40 CFR, Part 85, Subpart V.

[5] 40 CFR 86.144–78.

[6] Section 207(b) requires the establishment of short test procedures to be used for determining in-use compliance of vehicles with federal emission standards, if the Administrator determines that three conditions have been met: (1) The short test methods and procedures are available (i.e., that the necessary equipment may be readily obtained and the procedure is reasonably expected to serve its function); (2) the procedures are consistent with good engineering practices; and (3) such methods and procedures are reasonably capable of being correlated with the FTP.

[7] A detailed explanation of EPA's analysis of these short tests is contained in several publicly available documents. See the following three documents: "Options for Amendments to the Emission Control Performance Warranty Regulation and Voluntary Aftermarket Part Certification Program," Nov. 1986, Docket #EN–84–08, Category II–B–6; "NPRM for Emission Control Warranty Regulations and Voluntary Aftermarket Part Certification Program," 45 FR 924; and "Summary and Analysis of Comments Regarding the January 9, 1987 NPRM Concerning the Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program," Docket #EN–84–08, Category IV–D–4.

over the range of driving conditions typical of the FTP.

However, the cold 505 procedure proposed today differs from the short tests already rejected because there is a reasonable technical basis that compliance with this procedure will assure reasonable compliance with the FTP standards. The cold 505 test procedure shows a reasonable correlation with the FTP and includes important test cycle features of the FTP that were lacking in the rejected short tests.

II. Summary of Proposal

EPA proposes to allow use of the first 505 seconds of the FTP test (the cold 505 test) for the certification of most aftermarket parts. For most parts, the aftermarket part manufacturer could use the cold 505 test in place of the full FTP test whenever an FTP is required for certification of the part under the final certification regulations published today. EPA also proposes cold 505 test standards in today's NPRM.

III. Discussion

A. Cold 505 Test Procedure

In its comments on the NPRM corresponding to the final rulemaking published in today's **Federal Register** that revises the voluntary aftermarket part certification program regulations, SEMA asserted that there is good reason to allow part manufacturers to use the cold 505 test in lieu of the full FTP test for certification of aftermarket parts.[8] The cold 505 test is the first 505 seconds of the FTP, which includes a cold start after the test vehicle has been soaked for at least twelve hours under controlled ambient conditions. During the cold 505 test, emissions are collected in the first emission bag of the FTP. SEMA submitted data generated by the California Air Resources Board (CARB), and claimed that this data established a correlation between the cold 505 test and the full FTP test. CARB's report noted that, "[SEMA is] seeking compliance determination criteria based on either meeting an appropriate standard or by showing no increase in emissions.[9]

SEMA believes that aftermarket part certification testing can be conducted with the cold 505 test at a significant cost savings compared to the FTP. SEMA claims that, by using the cold 505 test, aftermarket part manufacturers could save up to half of testing costs associated with the full FTP. EPA continues to believe that the cost of using the full FTP emission test for certification is reasonable for aftermarket part certification and that the cost savings of the cold 505 procedure may not be as great as estimated by SEMA. However, these cost savings may prove significant to very small part manufacturers. Therefore, EPA has followed up on CARB's work by performing its own independent analyses of the cold 505 test.[10]

EPA's analyses are based on vehicle FTP emission results contained in EPA's emissions factor database of vehicles driven in-use. Using these data, it appears that a reasonable correlation does exist between results from the cold 505 and the FTP, such that cold 505 emission values can be established that will reasonably predict compliance with Federal emission standards.

B. Proposed Cold 505 Standards

To ensure compliance with the Federal emission standards, EPA believes that the cold 505 standards should be set at levels such that a vehicle equipped with an aftermarket part that fails the FTP should also fail when tested according to the proposed cold 505 test. EPA has determined that if a test vehicle containing an aftermarket part produces values less than or equal to the standards set forth below, it is almost certain that the vehicle configuration also will meet the FTP standards (i.e., the errors of omission, Eo,[11] will be equal to zero).

For light-duty vehicles (LDV's), EPA proposes that the test vehicles, selected according to the aftermarket part certification regulations (and with the part installed), when tested using the cold 505 test procedure must yield emission results at 50,000 miles of no higher than 0.46 grams per mile (g/mi) for hydrocarbons (HC), 4.3 g/mi for carbon monoxide (CO), and 0.7 g/mi for oxides of nitrogen (NO_x).[12]

For light duty trucks (LDT's), EPA proposes a separate set of standards that must be met at the full useful life of 120,000 miles.[13] For all LDT's, the proposed standard for HC is 0.98 g/mi and for CO is 13.0 g/mi. For LDT's weighing 3750 pounds or less, the proposed NOx standard is 1.0 g/mi, and for LDT's weighing 3751 pounds or more, the proposed NOx standard is 1.7 g/mi.

EPA evaluated the sensitivity of the cold 505 proposed standards to changes in the Eo rate, by determining standards that correspond to Eo rates greater than zero.[14] This would allow some vehicles to pass the cold 505 standard but fail the FTP, a result that EPA does not believe is appropriate. EPA found that a small increase in the Eo rate resulted in a significant increase in the cold 505 standards. These higher cold 505 values would make it easier for some parts that are not capable of passing the FTP emission standards to be certified. Such a relaxation in standards appears unjustified to EPA. Nevertheless, EPA solicits comment on the appropriate level of the cold 505 standards and may adjust the standards based on comment and further analysis.

All emission testing under the cold 505 procedure would be required to comply with the absolute standards proposed herein. Today's proposal does not provide for certification to a "certification vehicle emissions margin" [15] as adopted in the final regulations promulgated today, for certification using the full FTP.

C. Other Provisions

For aftermarket parts that cause accelerated deterioration of other original equipment components, the certification procedures are the same as those promulgated in today's aftermarket part final rule. EPA proposes, however, to give the part manufacturer the option to substitute the cold 505 test for the full FTP test required by the aftermarket part regulations adopted today.

For aftermarket parts that do not cause accelerated deterioration to other original equipment parts, the part manufacturer will have to demonstrate full useful life compliance for its part (i.e., 50,000 miles for LDV's and 120,000

[8] See SEMA's comments, docket No. EN–84–08, Category IV–D–4.

[9] See attachment to SEMA's comments, docket No. EN–84–08, Category IV–D–4.

[10] See "Using the Cold 505 Emission Test Procedure for Certification of Aftermarket Parts," Certification Division (CD), EPA, December, 1988. This technical support document has been placed in the public docket for this NPRM, docket No. A–88–31.

[11] An error of omission (Eo) occurs when a vehicle passes the cold 505 standards when tested using the cold 505 procedure but cannot pass FTP standards when tested over the entire FTP procedure.

[12] Currently, vehicle manufacturers must comply with the LDV emission standards for the full useful life period of 50,000 miles. 40 CFR 86.085–2.

[13] Currently, LDT manufacturers must comply with LDT emission standards for the full useful life of 120,000 miles. 40 CFR 86.085–2.

[14] See "Using the Cold 505 Emission Test Procedure for Certification of Aftermarket Parts," Certification Division (CD), EPA, December 1988. This technical support document has been placed in the public docket for this NPRM, Docket No. A–88–31.

[15] "Certification vehicle emissions margin" is the difference between the emission standard and the 50,000 mile certification emission level of the original certification test vehicle used during vehicle FTP certification.

miles for LDT's) by multiplying each cold 505 test emission value by a deterioration factor (d.f.).[16] EPA proposes to use the original vehicle certification FTP d.f.'s of the engine family corresponding to the test vehicle. These parts are not expected to adversely affect the durability performance of the remainder of the vehicle's emission-related components. Therefore, the d.f.'s characteristic of the vehicle in its originally certified configuration should reasonably predict the emission deterioration rates with the aftermarket part installed.

All other aspects of aftermarket parts certification, such as durability treatment of parts and test vehicle selection, would be left unchanged by today's NPRM.

D. Limited Applicability of Cold 505 Test

Since the cold 505 test procedure does not yield results perfectly correlated with the FTP data, a particular part could meet the cold 505 standards yet fail the FTP standards. EPA is particularly concerned about aftermarket parts which would affect only part of the calibration performance of a vehicle. Such a part could have little or no impact on the startup emission performance of a vehicle (i.e., that tested by the cold 505 procedure) while having a significant adverse impact on emissions during particular warm engine operating modes such as rapid accelerations (which are represented in the later stages of the FTP). Such a part's impact on overall vehicle emission performance would not be well represented by the cold 505 test and could be inappropriately certified. Specifically, EPA is concerned that aftermarket programmable read only memory chips (PROM's) or other parts or calibration kits that alter the emission control logic of the vehicle's control computer could be inappropriately certified if allowed to demonstrate compliance using only the cold 505 test procedure and standards. EPA has no data on this type of aftermarket device which would alleviate this concern. Therefore, EPA is proposing that PROM's and similar devices or systems that alter the computer control logic not be certified using the cold 505 test procedure and standards. Certification of these devices would continue to be based upon compliance with FTP standards. EPA solicits comment on whether it is inappropriate to certify any other aftermarket part using the cold 505 test procedure.

The cold 505 procedure proposed today is recommended based on the premise that a candidate aftermarket part is to be used on a vehicle designed and certified to meet FTP emission standards. This short test, although acceptable for certification of parts used for maintenance and repair of previously certified vehicles, would be considered inadequate for certifying new vehicle designs or determining import, SEA, or in-use compliance.

[16] The d.f. is an estimate of the deterioration rate of a vehicle's useful life emissions. For vehicle certification, the 4000-mile emission results of the emission data vehicle must be multiplied by the d.f. to predict emissions out to the useful life of the vehicle. The d.f. calculation procedure is described in 40 CFR 86.088-28.

IV. Reporting and Recordkeeping Requirements

These proposed revisions to the existing regulations would impose no new reporting or recordkeeping requirements on aftermarket part manufacturers that choose to use the certification program, nor on vehicle manufacturers that are affected by part certification. Today's proposal would merely provide the option of an alternative test procedure to be used for certification.

V. Paperwork Reduction Act

Today's proposal is expected to have no effect on information collection requirements of the regulations which this notice proposes to amend. The Office of Management and Budget (OMB) has approved the information collection requirements for these regulations under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0060.

Public reporting burden for this collection of information is estimated to average 124 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Paperwork Reduction Project (2060-0060), Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

VI. Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory impact analysis. This regulation should not be considered "major" because it meets none of the conditions for a major regulation. It will have an annual effect on the economy of less than $100 million. It will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions. Nor will there be any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Comments from OMB to EPA and any EPA response to those comments are available for public inspection in the docket for this rulemaking: Docket No. A-88-31. The EPA's Central Docket Section (LE-131) is located at 401 M Street SW., Washington, DC 20460.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether a proposed regulation will have a significant impact on a substantial number of small entities so as to require a preliminary regulatory flexibility analysis.

I hereby certify that this proposed regulation will not have a significant adverse impact on a substantial number of small entities. This proposal in part responds to a request by the specialty equipment manufacturers for an alternative test procedure to the Federal Test Procedure (FTP) currently required for certification of certain parts. The specialty equipment manufacturers believe that the proposed revisions will reduce their burden to certify aftermarket parts.

List of Subjects in 40 CFR Part 85

Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, and Warranties.

Authority: 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7546, and 7601(a).

Dated: July 27, 1989.

William K. Reilly,

Administrator.

APPENDIX—EXPLANATION OF SPECIFIC CHANGES

Section	Change	Reason
1. Part 85, Authority.	None.	
2. Section 85.2113		
(l)	Add paragraph to define "Cold 505 Emissions Test Procedure".	Clarification.
(m)	Add paragraph to define "Exhaust Emission Deterioration Factor".	Clarification.
3. Section 85.2114		
(d)(1)-(d)(3)	Revise paragraphs to address certification using the Cold 505 Emissions Test Procedure.	To discuss aftermarket part certification using the Cold 505 Emissions Test Procedure.
(d)(6)	Add paragraph to define Cold 505 Emissions Test Procedure standards.	To show required Cold 505 Emissions Test Procedure standards
(h)	Add paragraph to exclude certain parts from using the Cold 505 Emissions Procedure for certification.	PROM's and parts affecting computer control are excluded from certification using the Cold 505 Emissions Test Procedure.

For the reasons set forth in the preamble, 40 CFR Part 85 is proposed to be amended as follows:

PART 85—[AMENDED]

1. The authority citation for Part 85 will continue to read as follows:

Authority: Sections 202, 203, 205, 206, 207, 208, 212, and 301(a) of the Clean Air Act, as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7546, and 7501(a), unless otherwise noted.

2. Section 85.2113 is amended by adding new paragraphs (l) and (m) to read as follows:

§ 85.2113 Definitions.

* * * * *

(l) "Cold 505 Emissions Test Procedure" means that test procedure which is the first 505 seconds of the Federal Test Procedure cycle, including all test vehicle preconditioning for testing, as described in § 86.132-82. Emissions collected during the Cold 505 Emissions Test Procedure (measured in grams per mile) are identical to FTP "bag 1" emissions.

(m) "Exhaust Emission Deterioration Factor" means that factor determined in accordance with § 86.088-28.

3. Section 85.2114 is amended by revising paragraphs (d)(1), (d)(2) introductory text, (d)(3)(i)(A), (d)(3)(ii) and (d)(3)(iii) and by adding paragraphs (d)(6) and (h) to read as follows:

§ 85.2114 Basis of certification.

* * * * *

(d) *For Parts Certifying on the Basis of Emission Test Results, Certification Compliance Shall Be Demonstrated as Follows*

(1) The emission test to be used is either the Federal Test Procedure as set forth in the applicable portions of 40 CFR Part 86, or the Cold 505 Test Procedure as defined in § 85.2113(1). Certification emission testing must be carried out using representative production aftermarket parts as provided in paragraph (e) of this section. The test results must demonstrate that the proper installation of the certified aftermarket part will not cause the vehicle to fail to meet any applicable Federal emission requirements under section 202 of the Act.

(2) When the aftermarket part manufacturer elects to use the Federal Test Procedure to certify a part, the following portions of the Federal Test Procedure are not required to be performed:

* * * * *

(3) Exhaust Emission Testing: Certification exhaust emission testing for aftermarket parts, using either the Federal Test Procedure or the Cold 505 Test Procedure, shall be carried out in the following manner:

(i) *For light-duty vehicle parts that accelerate deterioration of existing emission related parts*, at least one emission test is required.

(A) The test(s) shall be performed on the same test vehicle and aftermarket part combination that was previously aged as required. If multiple exhaust emission tests are conducted, all tests must follow either the Federal Test Procedure or the Cold 505 Test Procedure. The results of all valid tests performed on a vehicle shall be averaged for each emission constituent.

(*1*) When the Federal Test Procedure is used, the test results, or the average of the test results if multiple tests are conducted, shall meet all applicable Federal emission requirements under section 202 of the Act.

(*2*) When the Cold 505 Test Procedure is used, the test results, or the average of the test results if multiple tests are conducted, shall meet all applicable emission standards as set forth in paragraph (d)(6) of this section.

* * * * *

(ii) *For light-duty truck parts that accelerate deterioration of existing emission related parts*

(A) Emission testing shall be carried out by one of the following methods:

(*1*) By performing an emission test on an emission test vehicle at 4,000 miles and at 50,000 miles, with the part installed. Exhaust emission deterioration factors for the test vehicle shall be calculated from these two test results. The aftermarket part manufacturer may elect to perform additional emission tests at interim mileages. However, any interim tests must be spaced at equal mileage intervals. If more than one test is performed at any one mileage point, then all tests at this point shall be averaged prior to determining the deterioration factor. The deterioration factor shall be calculated using the least squares straight line method, in accordance with § 86.088-28(a). The deterioration factor for each emission constituent shall be used to linearly project the 50,000 mile test result out to 120,000 miles. or

(*2*) By durability aging the test vehicle and aftermarket part to 120,000 miles, and then performing at least one emission test.

(B) When certifying on the basis of test results conducted according to:

(*1*) The Federal Test Procedure, the projected 120,000 mile test result emission levels or the actual 120,000 mile (or average results, if more than one test is conducted) shall meet light-duty truck Federal Test Procedure emission standards.

(*2*) The Cold 505 Test Procedure, the projected 120,000 mile test result emission levels or the actual 120,000 mile (or average results, if more than one test is conducted) shall meet light-duty truck emission standards as set forth in paragraph (d)(6) of this section.

(iii) For parts demonstrated to not accelerate deterioration of existing emission related parts during normal operation:

(A) If parts cause no noticeable change in vehicle driveability, performance, and/or fuel economy when the part fails, the certification exhaust emission test vehicle need not be the

same vehicle as that used for durability demonstration.

(*1*) If the Federal Test Procedure is used for certification emission testing, upon completion of aging, one Federal Test Procedure test shall be performed with the aged aftermarket part installed on a test vehicle that has just completed one test in the original equipment configuration (i.e., before the aftermarket part or system is installed). If more than one test is performed either before or after the aftermarket part is installed, then an equivalent number of tests must be performed in both configurations. The results of all tests performed before the part is installed shall be averaged and the results of all tests performed after the part is installed shall be averaged for each emission constituent. The difference in Federal Test Procedure emission results between the tests with the aged aftermarket part installed and the test vehicle in the original equipment configuration shall be less than or equal to the certification vehicle emission margin of any and all of the certification test vehicles from the various configurations for which the aftermarket part is being certified.

(*2*) If the Cold 505 Test Procedure is used for certification emission testing, the aged aftermarket part shall be installed on a test vehicle with an accumulated mileage of 4,000 miles or more and the vehicle shall be emission tested. If more than one emission test is performed, then test results shall be averaged for each emission constituent. To determine compliance, each emission constituent from the emission test result (or average emission constituent value from multiple emission test results) shall be multiplied by the test vehicle's original certification exhaust emission deterioration factor. The resulting values shall be less than or equal to the appropriate standards of paragraph (d)(6) of this section.

(B) For parts demonstrated to cause a noticeable change in vehicle driveability, performance, and/or fuel economy when the part fails, no durability aging of the part is required before certification emission testing.

(*1*) If the Federal Test Procedure is used for certification, one emission test shall be performed on the test vehicle in its original equipment configuration (i.e., before the aftermarket part or system is installed) and one test with an aftermarket part representative of production (as provided in paragraph (e) of this section) installed on the test vehicle. If more than one test is performed either before or after the aftermarket part is installed, then an equivalent number of tests must be performed in both configurations. The results of all tests performed with the aftermarket part installed shall be averaged and the results of all tests performed in the original equipment configuration shall be averaged for each emission constituent. The difference in Federal Test Procedure emission results between the tests with the aftermarket part installed and the test vehicle in the original equipment configuration shall be less than or equal to the certification vehicle emission margin of any and all of the certification test vehicles from the various configurations for which the aftermarket part is being certified.

(*2*) If the Cold 505 Test Procedure is used for certification, the aftermarket part shall be installed on a test vehicle with an accumulated mileage of 4,000 miles or more and the vehicle shall be emission tested. If more than one emission test is performed, then test results shall be averaged for each emission constituent. To determine compliance, each emission constituent from the emission test result (or average emission constituent value from multiple emission test results) shall be multiplied by the test vehicle's original certification exhaust emission deterioration factor. The resulting values shall be less than or equal to the appropriate standards of paragraph (d)(6) of this section.

* * * * *

(6) Cold 505 Emission Standards: When the Cold 505 Test Procedure is used for certification, the useful life emission test standards are:

(A) For light duty vehicles: 0.46 grams per mile (g/mi) for hydrocarbon (HC), 4.3 g/mi for carbon monoxide (CO), and 0.7 g/mi for oxides of nitrogen (NO_x).

(B) For all light duty trucks (LDT's): 0.98 g/mi for HC and 13.0 g/mi for CO. For LDT's with loaded weights of 3,750 pounds or less, 1.0 g/mi for NO_x. For LDT's with loaded weights of 3,751 pounds or more, 1.7 g/mi for NO_x.

* * * * *

(h) *Emission Testing of Programmable Read Only Memory Chips and Certain Other Parts:* The Cold 505 Emissions Test Procedure shall not be allowed for the certification emission testing of programmable read only memory chips (PROM's) or other parts or calibration kits that the MOD Director determines may specifically alter an emission system control function of the control computer of the vehicle on which the part is installed. Only the Federal Test Procedure will be allowed for certification of these types of aftermarket parts.

(Approved by the Office of Management and Budget under the control number 2060–0016)

[FR Doc. 89–18339 Filed 8–7–89; 8:45 am]

BILLING CODE 6560–50–M

federal register

Tuesday
August 8, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of the Charlotte Terminal Control Area and Revocation of the Charlotte/Douglas International Airport—Airport Radar Service Area; NC; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWA-1]

RIN 2120-AD08

Establishment of the Charlotte Terminal Control Area and Revocation of the Charlotte/Douglas International Airport—Airport Radar Service Area; NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes a Terminal Control Area (TCA) at Charlotte, NC. The TCA will consist of airspace from the surface or higher within a 30-mile radius of Charlotte/Douglas International Airport to and including 10,000 feet above mean sea level (MSL). This action will increase the capability of the air traffic control (ATC) system to separate all aircraft in the terminal airspace around Charlotte/Douglas International Airport while providing sufficient flexibility to permit aircraft operating under visual flight rules (VFR) to operate within or outside the TCA. Charlotte/Douglas International Airport is currently served by an Airport Radar Service Area (ARSA) which is rescinded concurrent with the establishment of this TCA.

EFFECTIVE DATE: 0901 UTC, August 24, 1989.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under VFR and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

On August 22, 1987, the Secretary of Transportation announced nine locations for which the FAA would issue Notices proposing the establishment of TCA's. The nine candidates cited qualify for TCA status by meeting the criteria published in FAA Handbook 7400.2C, "Procedures for Handling Airspace Matters." The criteria for establishing a TCA are based on factors which include the number of aircraft and people using that airspace, the traffic density, and the type or nature of operations being conducted. Accordingly, guidelines have been established to identify TCA locations based on two elements—the number of enplaned passengers and the number of aircraft operations.

To date, the FAA has established a total of 23 TCA's. The FAA is proposing to take action to modify or implement the application of these proven control techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

User Group Participation

The TCA adopted by this amendment is the product of discussion with a broad representation of the aviation community. In conjunction with this action, the FAA will continue to work cooperatively with local user groups to ensure that the TCA is effective for all users by identifying any adjustments or modifications that appear necessary. Through joint FAA and user cooperation, any problems that arise can then be identified and corrective action taken when necessary.

The TCA configuration adopted here has been developed through substantial public participation. Initially, informal airspace meetings were held on July 12 and 13, 1988, to allow local aviation interests and airspace users an opportunity to present input on the design of the proposed Charlotte TCA. Subsequently, a TCA Ad Hoc Committee was formed comprising a cross section of the aviation community with technical assistance and support supplied by Charlotte Tower personnel. After those initial meetings and after extensive coordination with the TCA Ad Hoc Committee, a tentative TCA configuration was prepared for public discussion. As a result of those efforts, further adjustments to the TCA configuration were made and were reflected in the FAA's modified configuration proposed formally for adoption. An additional opportunity for public participation was provided by a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on May 8, 1989 (54 FR 19860). Comments were received in response to the Notice. Due consideration has been given to these comments as well as the comments received at the various meetings.

Discussion of Comments

In response to the TCA proposal, the FAA received eleven written comments from individuals, pilots and owners of aircraft, local government agencies, and aviation trade and industry associations. In addition, the FAA has had the benefit of considerable dialog at user group meetings. The FAA appreciates the thoughtful and meaningful contributions and the interest expressed by all of those who took time to participate in the several steps of this rulemaking proceeding. Following is an analysis of the comments received.

Several commenters, in lieu of the TCA, were supportive of the climb and descent corridor concept which would keep jets in a narrow area and at high altitudes until necessary to descend. They cited, "it would enable all pilots (private and commercial) to know exactly where the incoming and outgoing passenger jet aircraft would be located and would focus our attention in these four pathways." The primary concern in any proposed TCA action is providing the highest degree of safety while preserving the most efficient use of the available terminal airspace. A simulated test of the climb/descent corridor concept was conducted in the Boston, MA, area. One TCA and three corridor configurations were tested. It was concluded that, while corridors do provide a degree of safety to aircraft arriving and departing terminal areas, they do not provide adequate and/or sufficient airspace required to effectively vector, sequence, and meter the vast numbers of aircraft served in major terminal areas today. The use of corridors would result in a drop in the capacity for most terminal areas because of the different performance characteristics of aircraft.

Other commenters were critical of the Mode C veil (that airspace within 30 miles of a primary TCA airport, as established in 53 FR 23356, June 21, 1988) which would be established concurrent with the TCA. The Mode C rule requires pilots to have and operate a transponder with Mode C in their aircraft when operating within 30 miles of any designated TCA primary airport (commonly called Mode C veil) from the surface to 10,000 feet MSL. The advantages of transponder with Mode C are: (1) To provide automatic conflict alert and low-altitude alert warnings to controllers, which can be quickly relayed to the pilot; (2) to provide the controllers with a continuous, more complete traffic picture; (3) to reduce radio communications; and (4) to assist aircraft being controlled by ATC to avoid aircraft operating without ATC assistance.

One commenter opposed the TCA because it did not include a buffer area. 1,200 feet above ground level (AGL) and 15 miles from the primary airport to the end of the Mode C veil, for instance, which would allow recreational and business aircraft which are not equipped with Mode C equipment to fly to feeder airports. The floor of the TCA from 11 miles to 20 miles from the primary airport is 3,600 feet MSL; this area has the greater concentration of satellite airports. This is more than adequate to allow VFR ingress/egress to satellite airports within the Charlotte terminal area. However, aircraft in these areas are required to comply with the Mode C transponder rule.

One commenter felt the proposal was acceptable, but suggested the use of long range navigation (LORAN) as a substitute for VOR or TACAN in the TCA. LORAN was originally developed for marine use and is presently being used for *supplemental* air navigation, primarily because of its low acquisition cost and area navigation coverage down to the surface. LORAN C is intended as an interim supplemental radio navigation system for aviation use providing at least single-level coverage for en route and terminal IFR navigation for the contiguous United States. The use of LORAN C does not offer the same navigational coverage throughout the United States as the present system.

Several commenters suggested Charlotte/Douglas International Airport does not have the volume of traffic to warrant a TCA. Although the criteria for establishing a TCA include the number of aircraft, it is also based on factors which include the people using that airspace, the traffic density, and the type or nature of operations being conducted. The annual enplaned passengers at Charlotte/Douglas International Airport almost double the 3.5 million necessary for consideration as a TCA candidate. Additionally, within the proposed boundaries, more than 700,000 flight operations are conducted annually.

The Gastonia Airport Authority (GAA) suggested postponing the TCA until a Remote Communication Outlet (RCO) could be installed at Gastonia Airport. The RCO would allow departing pilots to request and receive departure instructions while on the ground in their aircraft. The GAA suggests without the use of an RCO, aircraft arriving and departing Gastonia would be restricted to using the corridor to the west. The FAA agrees that the installation of an RCO would be beneficial to the operation at Gastonia Airport and will support the GAA's effort to install and operate this equipment. However, until this equipment is installed and operational, pilots can use a dedicated telephone hookup located at Gastonia Airport. This telephone line is a direct communication link provided between the Gastonia Airport and the Charlotte Approach Control. As this telephone line is used by pilots at Gastonia to obtain IFR clearance from Charlotte Approach Control, it can also be used to obtain TCA instructions before departure.

The Air Line Pilots Association (ALPA) suggested lowering the floor of Area C and D of the proposed TCA to 6,000 feet MSL and adding a 25- to 30-mile ring to include 8,000 to 10,000 feet. ALPA suggested this airspace was necessary to insure B-727 jet aircraft containment in the TCA during hot summer days. Conversely, The Soaring Society of America (SSA) suggested the elimination of Area D and all of Area C not aligned with Area E, the arrival descent corridors. Data developed by a local airline using its B-727 flight simulator indicated the necessity for the 20- to 25-mile ring to contain B-727 departures during hot weather. Additionally, data supplied by Charlotte Tower also indicates a need for this airspace to allow adequate airspace for departures and inbound mixing of aircraft.

The SSA also suggested that a cutout was not provided for Chester Airport as recommended by the TCA AD HOC committee. Although the Chester Airport was excluded from the TCA lateral boundaries, additional airspace will be provided for soaring activities in the vicinity of Chester Airport under a Letter of Agreement between Charlotte Tower and the Bermuda High Soaring School.

One commenter stated that Charlotte did not need a TCA with a 30-mile radius. It is the FAA policy to use only that airspace necessary to accomplish the objective of the TCA. The airspace configuration about the Charlotte TCA extends to 30 miles only in four critical arrival descent corridors. This airspace is necessary to allow for safe transition from the en route to the terminal environment while allowing adequate room for VFR operations.

One commenter suggested in lieu of a TCA, the airport trust fund should be used to build or invest in satellite airports close to the metropolitan area that can be used by all. There are plans for a new Gastonia Airport with improved facilities for GA, as well as, plans for a new reliever airport for Cabasas County, east of Charlotte, to accommodate GA in that area. Federal funds have already been used to make improvements in the Rock Hill and Monroe Airports, south and southeast of Charlotte.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a Terminal Control Area (TCA) at the Charlotte/Douglas International Airport, NC, using NAVAID radials and distances where practical to accommodate current traffic flows and provide a greater degree of safety in known areas of congestion involving controlled IFR and uncontrolled VFR flights. Consequently, the FAA has determined that establishment of a TCA at Charlotte/Douglas International Airport is in the interest of flight safety and will result in a greater degree of protection for the greatest number of people during flight in that terminal area. Charlotte/Douglas International Airport is currently served by an ARSA which is rescinded with the establishment of this TCA.

Regulatory Evaluation Summary

The FAA is required to assess the benefits and costs of each proposed rulemaking action to assure that the public is not burdened with rules whose costs outweigh their benefits. This section contains an analysis which quantifies, to the maximum possible extent, the costs and benefits of establishing a TCA at Charlotte, NC.

This final rule is intended to lower the likelihood of midair collisions by increasing the capability of the ATC system to separate all aircraft in terminal airspace around the Charlotte/Douglas International Airport. This

BEST COPY AVAILABLE

action was prompted by data indicating that a high percentage of near midair collisions reported to the FAA in terminal areas involve VFR aircraft that are not required to be under the control of ATC. Thus, the overall objective of this rule is to substantially increase safety while accommodating the legitimate concerns of airspace users.

Costs-Benefits Analysis

a. Costs

The FAA estimates the total cost expected to accrue from implementation of this rule to be $6.1 million ($3.4 million, discounted) in 1987 dollars. Approximately $2.7 million (discounted) or 80 percent of the total estimated costs will be incurred by the FAA primarily for training and additional personnel. The remaining costs will be incurred by small GA aircraft operators who will be required under this rule to equip their aircraft with Mode C transponders sooner than they would have for the ARSA under the previous FAA rule: "Transponder With Automatic Altitude Reporting Capability Requirement (Mode C)" (53 FR 23356, June 21, 1988). This rule will be implemented in two phases. Phase I, which began July 1, 1989, will require a transponder with Mode C at and above 10,000 feet MSL and in the vicinity (30 nautical miles) of TCA primary airports. There are currently 23 TCA's.

Phase II will implement a transponder with Mode C requirement in the airspace in the vicinity (10 nautical miles) of ARSA primary airports. Phase II becomes effective on December 30, 1990, and will affect over 135 ARSA's. Also in Phase II, a transponder with Mode C will be required at other designated airports for which either a TCA or ARSA has not been adopted. Consequently, most aircraft without Mode C transponders will need ATC authorization to fly within 30 nautical miles of a primary TCA airport, within 10 nautical miles of a primary ARSA airport, or within controlled airspace of other designated airports that will also require Mode C transponders.

Thus, this evaluation, as well as the Mode C rule, assumes that all aircraft without Mode C will acquire such equipment rather than circumnavigate the subject airport. The only aircraft without this equipment will be those without electrical systems. Costs to these types of aircraft operators have already been accounted for by the Mode C rule. As a result, aircraft operators impacted by this rule will only incur the opportunity cost of capital by requiring them to acquire, install, and maintain Mode C transponders one and a half years earlier than they would be required to do so in accordance with Phase II of the Mode C rule.

b. Benefits

This final rule is expected to generate potential benefits primarily in the form of enhanced safety to the aviation community and the flying public. Such safety, for instance, would take the form of reduced casualty losses (namely, aviation fatalities and property damage) resulting from a lowered likelihood of midair collisions because of increased control in airspace to be established by the TCA. In addition, potential benefits are expected to accrue in the form of improved operational efficiency on the part of FAA air traffic controllers.

Ordinarily, the potential benefits of this rule will be the reduction in the probability of midair collisions resulting from converting the existing ARSA to a TCA. However, because of the recent Mode C rule (and to some extent, the rule for Traffic Alert and Collision Avoidance (TCAS), 54 FR 940, January 10, 1989), the number of potential midair collisions avoided by this rule is expected to be significantly lower. Nevertheless, this rule is still expected to accrue benefits in terms of enhanced safety, though on a much smaller scale.

This point can be illustrated with the use of statistical models based on actual and projected critical near midair collision (NMAC) incidents in lieu of actual midair collisions (A critical NMAC is an event involving two aircraft coming within 100 feet of each other; the fact that they do not collide is not due to an action on the part of either pilot; but, rather, it is due purely to chance.) Since midair collisions involving Part 135 aircraft and especially Part 121 aircraft are rare, the use of critical NMAC's will serve to illustrate, to some degree, the potential improvements in aviation safety of implementing this rule.

Simple regression analyses were prepared for this evaluation which focused on critical NMAC's and aircraft operations in the 23 existing TCA's and in a random sample of 23 of the existing 79 ARSA's (as of 1986 and 1987). The results of these analyses indicated that TCA's have approximately 68 percent fewer critical NMAC's annually, on average, than ARSA's. While there is no demonstrated relationship between NMAC's and actual midair collisions, the lower NMAC rate does indicate a more efficient separation of aircraft in congested airspace.

As the result of these findings, if the existing Charlotte ARSA were to remain unchanged (and the recent Mode C and TCAS rules were not in effect), the Charlotte Terminal Area would be expected to experience approximately 2.4 critical NMAC's annually (or 37 critical NMAC's over the next 15 years). If, however, the ARSA were to become a TCA, this figure would reduce to approximately 0.7 critical NMAC's annually (or 12 critical NMAC's over the next 15 years) Thus, over the next 15 years, this rule could result in the reduction of approximately 25 critical NMAC's. However, it is important to note that many, if not most, of these potential critical NMAC's would never materialize as predicted primarily because of the "Mode C" rule as it is applied to the Charlotte ARSA and, to some extent, the "TCAS" rule.

According to Phase II of the Mode C rule, all aircraft operating within 10 nautical miles (except for flights under the outer 5 mile "shelf") of an ARSA primary airport must be equipped with a Mode C transponder. Phase I of the Mode C rule requires, as of July 1989, aircraft operating within 30 nautical miles of a TCA to be equipped with a Mode C transponder. These requirements are expected to significantly reduce the risk of midair collisions in ARSA's and TCA's. For this reason, the primary safety benefit of this rule to create a TCA in 1989 at Charlotte is that the safety enhancements of the Mode C and TCAS requirements will occur one and a half years earlier than they otherwise would be expected without this rule. A second safety benefit would be in terms of the lowered likelihood of midair collisions as the result of expanding the lateral boundaries of positive ATC by 20 nautical miles through replacing the Charlotte ARSA with a TCA.

The safety benefits of the establishment of a new TCA, while positive, will be less than would otherwise accrue in the absence of the Mode C and TCAS rules. Since this rule essentially extends the effects of the Mode C rule, virtually all of its potential safety benefits are assumed to be part of that rule. Such benefits cannot be estimated separately and, therefore, are considered to be inextricably linked primarily to the Mode C rule. Over a 15-year period, the Mode C rule is expected to generate total potential safety benefits of $344 million (discounted, in 1987 dollars). (The Mode C rule benefits estimate of $310 million for 10 years has been adjusted to a 15-year period for the purpose of comparability with the TCAS rule and other FAA rulemaking actions.) It is important to note that part of these safety benefits would be attributed to the TCAS rule. Thus, the potential safety benefits of this rule, and the Mode C and TCAS rules are considered to be inextricably linked.

Another potential benefit of this rule will be improved operational efficiency on the part of FAA air traffic controllers. Under this rule, Mode C transponder requirements will ease controller workload per aircraft being controlled because of the reduction in radio communications. The rule will also make potential traffic conflicts more readily apparent to the controller. As the result of improved operational efficiency, the impact of the controller workload increased by separation requirements in the TCA will be somewhat offset because of the controller's ability to adjust the volume of VFR traffic in any given portion of the TCA.

Improved operational efficiency should generate other types of benefits in the form of significant reductions in the number of VFR aircraft requests denied and VFR aircraft delayed during busy periods. As the result of converting the existing Charlotte ARSA to a TCA, the improved operational efficiency will accrue because of the availability of additional air traffic controllers. If the Charlotte ARSA were to remain intact, such air traffic personnel would not be required. Therefore, potential benefits of improved operational efficiency, which are not considered to be quantifiable in monetary terms in this evaluation, will be attributed to this rule rather than either the Mode C rule or TCAS rule.

c. Comparison of Benefits and Costs

The total cost that will accrue from implementation of this rule is estimated to be $3.4 million (discounted, in 1987 dollars). Approximately, 20 percent of this total cost estimate will fall on those GA aircraft operators without Mode C transponders in the form of opportunity costs by requiring them to acquire such avionics equipment, including maintenance, one and a half years sooner than they otherwise would under the status quo. The typical individual GA aircraft operator impacted will incur an estimated one-time cost ranging from $126 to $280 (discounted) under this rule. (As the result of the opportunity cost concept, the derivation of these cost estimates are too complex to discuss briefly. Therefore, the reader should refer to the detailed regulatory evaluation, which is contained in the docket, for a full explanation of the method by which these costs estimates were made.)

The potential benefits of this rule will be the lowered likelihood of midair collisions from the conversion of the existing ARSA to a TCA. The number of midair collisions avoided and their respective monetary values cannot be estimated for this rule independent of the Mode C and TCAS rules, but the FAA believes the risk will be substantially reduced. An FAA analysis prepared for this evaluation, however, has shown that critical near midair collisions occur approximately two-thirds less frequently in a TCA than in an ARSA. The FAA believes that even after the aviation community complies with the Mode C and TCAS rules, locations converting from ARSA's to TCA's would continue to experience reduced critical NMAC's. In addition, this rule will generate improved operational efficiency benefits on the part of FAA air traffic controllers, though they are not considered to be quantifiable in monetary terms.

Clearly, in view of the cost of compliance relative to the significant reduction in the likelihood of midair collisions as well as improved operational efficiency in the Charlotte Terminal Area, the FAA firmly believes this rule is cost-beneficial.

The Regulatory Evaluation that has been placed in the docket contains additional detailed information related to the costs and benefits that are expected to accrue from the implementation of this final rule.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities which could be potentially affected by the implementation of this rule are unscheduled operators of aircraft for hire who own nine or fewer aircraft.

Virtually all of the aircraft operators impacted by this rule will be those who acquire Mode C transponder capability. The FAA believes that all unscheduled aircraft operators (namely, air taxi operators) potentially impacted by this rule already have Mode C transponders due to the fact that such operators fly regularly in or near airports where radar approach control service has been established. Even if some of these operators were to acquire, install, and maintain Mode C transponders, the cost will not have a significant economic impact on a substantial number of them. The annual FAA threshold for significant economic impact is $3,700 (1987 dollars) for a small entity. According to FAA Order 2100.14A (Regulatory Flexibility Criteria and Guidance), the definition of a small entity, in terms of an air taxi operator, is one with nine aircraft owned, but not necessarily operated.

If we were to assume that a particular aircraft operator had nine aircraft without transponders, then the one-time cost per aircraft will be approximately $243. This figure represents the annualized cost for each impacted aircraft. The total cost per small entity will amount to an estimated $2,187. Thus, the annual worst case cost for a small entity will fall far below the FAA's annual threshold of $3,700. Therefore, the FAA believes this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

This final rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. This is because the rule will only potentially impact small GA aircraft operators without Mode C, and not aircraft manufacturers. The average cost of acquiring Mode C capability is estimated to range from $900 (to upgrade from a Mode A transponder) to $2,000 (to acquire a Mode C transponder without having a Mode A transponder). The cost of acquiring Mode C capability is not considered to be high enough to discourage potential buyers of small GA airplanes.

Federalism Implications

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this regulation is not a "major rule" under Executive Order 12291 This rulemaking is considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this rule will not have a significant economic impact on a substantial number of small entities.

The FAA has determined that the users of the Charlotte/Douglas International Airport and surrounding

area will benefit from the implementation of the TCA. In order to obtain this benefit at the earliest time, the FAA will have the TCA charted on the next available charting date, which is August 24, 1989, and is making the implementation of the TCA effective on that charting date. Therefore, due to the need to implement the TCA at the earliest possible time, the FAA finds good cause for making this amendment effective in 16 days from the date of the publication of this amendment.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas, Airport radar service areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.403 [Amended]

2. § 71.403 is amended as follows:

Charlotte, NC [New]

Primary Airport
Charlotte/Douglas International Airport (lat. 35°12'52" N., long. 80°56'37" W.)
Charlotte/Douglas VOR (lat. 35°11'25" N., long. 80°57'07" W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within an 11-mile radius of the Charlotte/Douglas VOR, excluding that airspace within a 2-mile radius of the Gastonia Municipal Airport (lat 35°12'01" N., long. 81°09'04" W.).

Area B. That airspace extending upward from 3,600 feet MSL to and including 10,000 feet MSL between the 11- and 20-mile radius of the Charlotte/Douglas VOR, and that airspace within a 2-mile radius of the Gastonia Municipal Airport within the 11-mile radius of the Charlotte/Douglas VOR.

Area C. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL between the 20- and 25-mile radius of the Charlotte/Douglas VOR, excluding that airspace from the Charlotte/Douglas VOR 053° radial clockwise to the Charlotte/Douglas VOR 120° radial, and excluding that airspace from the Charlotte/Douglas VOR 242° radial clockwise to the Charlotte/Douglas VOR 293° radial.

Area D. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL between the 20- and 25-mile radius of the Charlotte/Douglas VOR, excluding that airspace contained in Area C.

Area E. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL between the 25- and 30-mile radius of the Charlotte/Douglas VOR, excluding that airspace from the Charlotte/Douglas VOR 053° radial clockwise to the Charlotte/Douglas VOR 120° radial' excluding that airspace from the Charlotte/Douglas VOR 147° radial clockwise to the Charlotte/Douglas VOR 218° radial, excluding that airspace from the Charlotte/Douglas VOR 242° radial clockwise to the Charlotte/Douglas VOR 293° radial, excluding that airspace northwest of a line from the Charlotte/Douglas 313° radial 30-mile fix to the Charlotte/Douglas 320° radial 28-mile fix, and excluding that airspace from the Charlotte/Douglas VOR 320° radial clockwise to the Charlotte/Douglas VOR 025° radial.

§ 71.501 [Amended]

3. § 71.501 is amended as follows:

Charlotte/Douglas International Airport, NC [Removed].

Issued in Washington, DC, on August 2, 1989.

James B. Busey,
Administrator.

[FR Doc. 89-18474 Filed 8-3-89; 9:56 am]
BILLING CODE 4910-13-M

federal register

Tuesday
August 8, 1989

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Ch. I

Food Labeling; Advance Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 89N-0228]

RIN 0905-AD08

Food Labeling

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; request for public comment.

SUMMARY: The Food and Drug Administration (FDA) requests public comment on possible changes in the labeling of food products regulated by FDA. The agency has long required certain labeling, such as ingredients and net weight on packaged foods, and in recent years has bolstered such labeling with requirements for label information about the nutritional quality of foods. Now, FDA believes it is timely to consider revising the food labeling requirements, and seeks public comment on five areas: (1) Whether to revise the requirements for nutrition labeling; (2) whether to change the nutrition label format on food packages; (3) whether to revise the requirements for ingredient labeling; (4) whether to formally define commonly used food descriptions and/or reconsider the use of standards of identity for foods; and (5) how to reasonably permit the use of messages on food labels that link food components to the prevention of disease.

DATES: Comments by December 6, 1989.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1561.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA is soliciting public comment on a wide range of food labeling issues to help the agency determine what changes in food labeling requirements, if any, should be proposed by this Administration. Although the food label has been the subject of considerable study and revision over the past 20 years, FDA believes it appropriate now to consider significant new improvements in food labeling.

Several factors underscore this belief. First, the recent "The Surgeon General's Report on Nutrition and Health" and the National Academy of Sciences' report entitled "Diet and Health: Implications for Reducing Chronic Disease Risk" provide authoritative current views on the evidence linking dietary patterns and health. Second, surveys demonstrate that consumers themselves want to play a more active role in self-care (see "Trends 1989: Consumer Attitudes in the Supermarket" by the Food Marketing Institute, Washington, DC) and that, specifically, they seek more useful and easily understood information about the nutritional characteristics of the foods they eat (see FDA's analysis of the 1988 Health and Diet Survey). Third, recognizing this interest by consumers, both consumer and industry groups have been striving to design what they consider to be more informative food labels; food manufacturers have also expressed increasing interest in using food labels to convey the relationship between diet and certain diseases. Finally, numerous bills have recently been introduced in Congress and in State legislatures that would amend the current food labeling requirements (e.g., mandatory nutrition labeling, cholesterol content, label identification of vegetable oils, and sodium and potassium content).

Accordingly, FDA solicits public comment on the ways to most effectively use the food label to promote sound nutrition for the Nation's consumers. In addition to specific questions listed throughout this notice, FDA requests comments on the following general questions:

1. Are the public health benefits likely to be derived from revised food labeling sufficient to warrant the economic costs associated with such revisions?

2. What should be the agency's priorities in deciding which changes to make in the food label, i.e., which changes are most important and which are least important?

3. What changes in the Federal Food, Drug, and Cosmetic Act (the act) should FDA seek to help the agency bring about reforms in food labeling; in the absence of legislative change, what should be FDA's priorities for changes in its regulations and policies?

4. What should be FDA's policy for permitting or restricting the use of food labels that link a food to prevention or treatment of disease?

5. Should FDA seek to expand nutrition labeling, particularly by making it mandatory for most packaged foods?

6. What areas need further research and evaluation before decisions can be reached on whether and how changes can be made?

7. What modifications can be made in the food label to help both ordinary consumers and the under-educated better understand and benefit from the information on the label?

8. How best can FDA harmonize its food labeling regulations with those of other nations, particularly the European Community and Canada? With other Federal agencies, such as the Department of Agriculture?

9. Are there any topics in this notice that would represent such a significant commitment of agency time and resources that consideration of them should be deferred?

10. Since food labeling concerns change over time, what mechanism might be used in the future to assure that evolving concerns are addressed and that food labeling requirements reflect current scientific knowledge and consumer information needs?

To maximize the public's responsiveness to these questions, FDA plans to hold public hearings in different areas of the country. The time and place of these hearings will be announced in future issues of the **Federal Register.** FDA plans to utilize both the written and oral comments to propose specific changes to the current food labeling requirements. Also, the National Academy of Sciences' Institute of Medicine has been commissioned by the Public Health Service and the Department of Agriculture's Food Safety and Inspection Service to review food labeling policy as administered by FDA and the Department of Agriculture and suggest options for improving Federal food labeling policy. That study will also complement this notice and the planned hearings by suggesting options for making improvements in Federal food labeling policy. Information gathered from written and oral comments will be shared with the Institute of Medicine for use in preparation of its report and recommendations.

II. Recent Food Labeling History

This current food labeling initiative must be viewed within the context of the food labeling developments of the past 20 years, beginning with the White House Conference on Food, Nutrition, and Health (the Conference) that took place in 1969. Following the Conference's recommendations, FDA implemented significant initiatives dealing with nutrition labeling, ingredient labeling, common or usual name labeling, imitation/substitute food labeling, fortification policy, and safe and suitable ingredient policy.

In 1973, FDA published final rules on nutrition labeling that permitted, and in some cases required, foods to be labeled for their nutritional value.

In 1978, FDA, along with the Department of Agriculture and the Federal Trade Commission, conducted a basic reassessment of food labeling policy, out of concern that food labeling regulations had become overly complex and, in some cases, inconsistent. The three agencies held five public hearings across the nation, gathering public views on ingredient labeling, imitation/substitute foods, food fortification, the nutrition label, and other labeling issues. Over 450 persons appeared at the hearings and more than 9,000 written comments were received. The comments focused mostly on ingredient, nutrition, and open date labeling. This process resulted in a December 1979, notice announcing tentative agency positions. At that time, FDA also conducted a nationwide consumer survey on food labeling, the results of which were published in October 1979.

In 1981, however, as a result of concerns expressed to the Presidential Task Force on Regulatory Relief, FDA deferred consideration of a broad food labeling initiative, and proceeded instead on a regulation-by-regulation basis. The first such proposal was published the next year, 1982, when FDA proposed that sodium content be included as a mandatory part of nutrition labeling. That proposal also defined terms for describing the sodium content of foods, such as "low sodium," "reduced sodium," and "sodium free." The need for this kind of sodium labeling was triggered by the association between sodium consumption and hypertension. A final sodium regulation became effective in July 1986.

In 1986, FDA published a similar proposal regarding cholesterol and fatty acid labeling, based on the relationship between blood cholesterol levels and heart disease. That proposal would establish definitions for the descriptive terms "cholesterol free," "low cholesterol," and "reduced cholesterol," and would require the inclusion of cholesterol and fatty acid content in nutrition labeling whenever a claim was made for either food component. A final rule based on the proposal is now in the final stages of development.

Lastly, in 1987, FDA published a proposal that would permit appropriate health messages on food labels. Given advances in knowledge about the relationships between diet and health, the agency has proposed that health-related messages, when appropriately formulated for use on food labels, could provide valuable information to health-conscious consumers. For reasons described further below, a final rule based on that proposal has not yet been promulgated.

III. Summary of Issues

The food label has developed so that it has several possible components, all of which are intended to convey accurate, useful information to consumers. The remainder of this notice solicits comments in the following five areas:

1. *Nutrition Labeling*—Nutrition labeling includes the list of a food's nutritional value—calories, protein, carbohydrate, fat, sodium, vitamins, and minerals. Because the basic nutrition labeling regulations were developed almost 20 years ago, FDA believes this may be an appropriate time to review the regulations to determine if certain required elements could be made voluntary (e.g., some vitamins) or if elements that are currently voluntary should be made mandatory (e.g., saturated fats) to ensure uniformity. Moreover, because nutrition labeling is voluntary for most foods, FDA is seeking comment on whether nutrition labeling should be mandatory for more foods and how this could best be accomplished.

2. *Nutrition Label Format*—FDA has long recognized that the current nutrition label might not be in the optimal format for conveying useable information to consumers. Industry and consumer groups have also argued that the information on the label should be in an easier-to-understand format so that consumers can readily identify foods suitable for their individual diets. FDA is seeking comment on how the current label format might be improved.

3. *Ingredient Labeling*—FDA seeks comment on whether the current ingredient labeling requirements that are not mandated by the act should be amended and whether legislative changes should be sought for mandated requirements (e.g., for more detailed ingredient information). The agency is also seeking comments on whether and how the format for ingredient labeling should be revised.

4. *Descriptions of Food*—There are a number of ways in which the food label is used to describe foods—names established by standards of identity, common or usual names, imitation or substitute foods, and descriptor labeling such as "low calorie." FDA has several regulations in each of these areas and standards are specifically provided for by law. Among the issues the agency is seeking comment on are: (1) The usefulness of food standards in assuring consumers that commonly purchased foods meet certain standards of identity and composition, and whether revisions should be made in specific standards themselves or in the procedures by which standards are adopted or amended; and (2) whether FDA should define, in a manner analogous to current regulatory definitions for "low sodium," other labeling such as "low fat" and "lite" that are being used by manufacturers.

5. *Health Messages*—There has been increasing use of food labels to impart health messages to consumers about such things as the relationship between high fiber foods and colon cancer risks, low cholesterol foods and heart disease, and high calcium foods' impact on osteoporosis. FDA has traditionally determined that foods may not make such "medical" claims; in recent years, however, scientific evidence has accumulated that may support certain claims. The agency is seeking public comment on how such messages can be properly conveyed to consumers.

IV. Major Issues Under Consideration

The specific issues and questions on which FDA is seeking public comment are discussed in the remainder of this notice.

A. Nutrition Labeling

When a food processor makes a claim about nutritional value of a food in labeling or advertising, or when a nutrient such as a vitamin is added to the food, nutrition labeling must be provided (21 CFR 101.9). Nutrition labeling may also be voluntarily provided. Whenever nutrition labeling is provided, the following must be included:

1. Serving size;
2. Number of servings;
3. Caloric content;
4. Protein, carbohydrate, and fat content in grams;
5. Sodium in milligrams; and
6. Protein, vitamins A and C, thiamine, riboflavin, niacin, calcium, and iron expressed as a percentage of the U.S. Recommended Daily Allowance (RDA).

Additionally, fatty acid composition (saturated and polyunsaturated) and cholesterol content may be voluntarily disclosed as part of the information on fat, and vitamins D, E, B_6, and B_{12} as well as folic acid, biotin, pantothenic acid, phosphorus, iodine, magnesium, zinc, potassium, and copper may be voluntarily disclosed. If a label claim is made about any of the latter nutrients, or if any are added, they must be included in nutrition labeling. All nutrient values are expressed on a per serving basis.

FDA seeks public comment on whether the current nutrition label

requirements should be changed. The questions to be addressed include:

1. Should nutrition labeling be voluntary or mandatory?

Currently, about 60 percent of FDA-regulated packaged foods bear nutrition labeling. However, many consumer advocacy groups, health professionals, and nutrition educators would like to see nutrition labeling on all foods. The agency believes that, although the act could be interpreted to permit FDA to require nutrition labeling on all foods, legislation explicitly mandating nutrition labeling would probably be most desirable. Thus, responses to the following questions are solicited:

a. Should the current system of nutrition labeling be retained (i.e., mandatory when a claim is made or when nutrients are added, otherwise voluntary), should it be made completely voluntary, or should FDA seek legislation that would make nutrition labeling mandatory? Alternatively, is the regulatory route for mandatory labeling preferable?

b. If the current system of nutrition labeling is retained, should the conditions that trigger mandatory nutrition labeling (i.e., added nutrients or nutritional claims) be revised?

2. What foods should be exempt from nutrition labeling?

If nutrition labeling were to become mandatory, FDA might wish to continue exemptions for certain foods. Thus, should FDA exempt, or require nutrition labeling for:

a. Foods that make insignificant nutritional contributions? (i.e., spices, coffee, tea, sugar, salt, condiments, etc.)

b. Fresh fruits and vegetables?

3. What nutrients should be declared in nutrition labeling?

When the list of nutrients required on nutrition labels was established in 1973, public health concerns generally had focused on nutrient deficiencies rather than, as is now the case, on the potentially adverse effects of over-consumption of certain food components. Also, at that time, analytical methodologies and RDAs were unavailable for many nutrients. Thus, there is considerable interest in reviewing the list of required nutrients to ensure that nutrition labeling provides the most salient, yet appropriately balanced, information from a public health perspective. Questions on which FDA seeks comments are:

a. *Are there currently required nutrients that could become optional elements?* Are there any nutrients that are currently required to be listed in nutrition labeling that have become of less public health significance (e.g., thiamine, riboflavin), and for which the listing should be made optional? If nutrients are to be identified as optional elements, what criteria should be used for determining which nutrients listings are optional?

b. *Are there currently optional nutrients that should be made required elements*? Has the public health significance of any nutrients that are currently permitted to be listed in nutrition labeling as optional elements changed to such a degree that they should now be made mandatory (e.g., fiber, fat, cholesterol)? What are the criteria upon which such decisions should be based?

c. *Are there other nutrients or food components that should now be made either optional or required?* Are there any additional nutrients or food components that should be considered for listing in nutrition labeling? What criteria should be used to make these determinations?

d. *Should fat labeling be revised?* Given that "The Surgeon General's Report on Nutrition and Health" and the National Academy of Sciences' report entitled "Diet and Health: Implications for Reducing Chronic Disease Risk" both focused on the level of fat consumption by Americans as the primary diet-related health issue, how should fat labeling of food within the context of the nutrition label be handled? Are there certain foods for which fat content labeling should be required? Should a detailed, quantitative listing of fatty acids (e.g., saturated, monounsaturated, polyunsaturated) be required? If so, what are the definitions and suitable methodologies for the appropriate fatty acids to be listed? What should be the labeling status of other components of fat (e.g., *omega*-3 and *omega*-6 fatty acids, *trans*-fatty acids, cholesterol)? Should the "and/or" policy for oil labeling be changed to focus only on the content of saturated and unsaturated oils, rather than naming the specific oils (see Section III C—Ingredient Labeling)?

e. *Should fiber be included in the nutrition label?* Although not a traditional "nutrient," the fiber content of food is receiving increased attention. How should the labeling of fiber be treated within the context of nutrition labeling? Is it appropriate to label separate components of fiber? What are the definitions and methodologies to be used for fiber labeling?

f. *Should carbohydrate labeling be revised?* How should the listing of components of carbohydrate be treated within the context of nutrition labeling (e.g., complex starches, total sugars)?

g. *Is it necessary for all foods to have the same nutrition labeling or is it possible to design nutritional labeling requirements that vary depending on the class or type of food?* Is an approach feasible that has certain required elements for all foods with additional elements that are required depending on factors such as food type, fortification, or claims? What are the decision criteria in designing such a system?

4. What criteria should be used in determining serving size?

There is continuing debate on how serving sizes, which are currently left to the manufacturer, are derived. In 1974, FDA attempted to impose serving sizes on several commodities but because of resources and complexity was never able to complete rulemaking. Now that consumers are more interested in nutrients associated with chronic diseases (e.g., fat, sodium), a few manufacturers are selecting smaller and smaller serving sizes. These changes become a problem if manufacturers claim multiple servings in obvious single-serving containers or fractional servings per container and when similar products have inconsistent serving sizes. Thus, FDA seeks comment on whether serving sizes should be determined by FDA (by regulation) or by manufacturers (following criteria established by FDA) or not included.

B. Nutrition Labeling Format

Section 403(f) of the Act requires that food information be conspicuously displayed and be presented in terms that the ordinary consumer is likely to read and understand under ordinary conditions of purchase and use. The details of features such as type size and location of information are contained in FDA's regulations (21 CFR Part 101).

FDA regulations specify that nutrition information is to appear in a format that consists of "columns of figures." In the years since those regulations were promulgated, numerous suggestions have been made for presenting the large quantity of information, mandatory and voluntary, that appears on packaged food labels. Nevertheless, after many years of experience with label formats in the marketplace, no consensus has emerged regarding the best ones to use. Food labeling surveys contracted by FDA in 1978 and 1982 revealed that many consumers believe the present system is too inflexible, complex, and difficult for the average consumer to understand.

Various alternative formats have been suggested to improve the usefulness of the food label. Consumers are increasingly reading food labels as they strive to improve their eating habits in accordance with guidelines set forth in such recent scientific reports as "The Surgeon General's Report on Nutrition and Health" and the National Academy of Sciences' report entitled "Diet and Health: Implications for Reducing Chronic Disease Risk." A more "user-friendly," format that is easier to read and understand will be crucial for improving the communication of diet-related information to consumers.

What is the best format for the nutrition label? FDA welcomes comments that address the types of label formats that could be used to convey to consumers the diverse technical information required. Format changes should result in simplification, clarity, flexibility, and standardization. Specifically, comments on or responses to the following questions are solicited:

1. Can nutrition labels be made more helpful? Are they easy to read?

2. Are there terms on the nutrition label that are not readily understandable? For example, is the current use of metric measurements (i.e., grams and milligrams) acceptable? What are the alternatives?

3. If the nutrition label were to be revised, should it maintain the numerical approach currently required? Would graphics such as pie graphs or bar charts be preferable, or would the use of some adjectival scale (e.g., fair, good, excellent) be preferable? Would a combination of numbers and illustrations or adjectives be useful?

4. Should the organization of the nutrition label be changed? For example, should the order in which nutrients are listed be changed? Should any of the nutrition label elements be highlighted or emphasized? If so, which ones and how?

5. Small packages and cans create a problem for manufacturers who are confronted with space limitations. What can or should FDA do to accommodate those situations?

6. It has become routine procedure in the food industry to consumer-test possible changes in marketing variables such as package design and label advertising. Should FDA and/or industry conduct such research before making any changes in the food label format?

C. Ingredient Labeling

Most packaged foods containing two or more ingredients must list those ingredients in descending order of predominance by weight (21 CFR 101.4). However, there are a few exceptions. Foods that are the subject of a food standard are exempt from declaring the mandatory ingredients, although optional ingredients must be labeled.

For fats and oils, each individual fat or oil ingredient of a food must be declared by its specific common or usual name in order of predominance in the food, except when the total fat and oil component of the food does not exceed the weight of the most predominant ingredient in the food. In this case, manufacturers are permitted to list fats or oils in combination irrespective of whether they are actually used in the product. Statements such as "contains one or more of the following" are followed by a listing of fats or oils that may be used in the product. The purpose of this "and/or" rule is to allow manufacturers to take advantage of shifting prices for the various fats and oils without a requirement to revise the label each time the fat or oil ingredient is changed.

Specific questions FDA wishes addressed include:

1. Should the existing order of predominance labeling be bolstered by a requirement that major ingredients be listed by percentage?

2. Should the agency's current "and/or" labeling regulations be modified?

a. Should "and/or" labeling be extended to permit such a labeling exemption for nutritive carbohydrate sweeteners?

b. Should "and/or" labeling for fats and oils be continued as currently permitted, or, should FDA:

i. Revoke the exemption?

ii. Modify the exemption so that it would apply only where the total fat and oil content constitutes a minor portion of the food product?

iii. Permit continued use of "and/or" labeling where the fats and oils are of like nutritional value (e.g., "and/or" for similar polyunsaturated vegetable oils)?

3. Should ingredient labeling be expanded?

a. Should legislation be sought to require the labeling of specific spices, colors, and flavors?

b. Should there be ingredient labeling for "fast" food? If so, how could this be accomplished?

c. Should FDA act, either administratively or by seeking legislation, to require ingredient labeling on all food?

4. How could the ingredient labeling format be revised to be more informative to consumers (e.g., through the use of graphics, such as bar charts)?

D. Description of Food

Describing a food in a way that accurately represents the food's characteristics and that does not deceive the consumer would seem to be a fairly straightforward task. However, how to do this has become quite controversial in recent years and also may be an appropriate focus for reform.

Nutritional labeling and ingredient labeling, which have both been discussed already, are two ways to describe a food. This section will discuss two other ways—naming a food and labeling statements about its characteristics.

1. Should the current methods of naming foods be changed? Congress' original approach to how foods should be named was to provide for standards of identity for foods in the act. The idea behind the standards concept was that there are certain traditional foods that everyone knows, such as bread, milk, and cheese, and that when consumers buy these foods, they should get the foods that they are expecting. Initially Congress authorized FDA to adopt standards of identity that define the composition of these foods and that thereby may prevent the debasement of these foods with new and cheaper ingredients. While Congress recognized that there may be some foods that would not be subject to standards, it specifically stated that if a food resembled a standardized food but did not comply with the standard, that food must be labeled as an "imitation."

Standards must be established and amended in accordance with the procedures set out in section 701(e) of the act. There must be a notice of a proposed standard and then a final rule. After the final rule is published, a person who objects to the final rule may be entitled to a formal evidentiary hearing. Moreover, the filing of an objection automatically stays the effect of the final rule until the Commissioner issues a final decision. Consequently, it is very difficult to adopt a standard or to amend one once it has been adopted. For example, it took almost a decade to adopt the peanut butter standard.

As a result, it has been almost impossible to keep the food standards up-to-date with advances in food technology and in nutrition. For example, fat, which was considered to be a valuable component of food at the time that the cheese standards were adopted, is now viewed by many as something to be reduced in the diet. However, the cheese standards are based largely on the fat content of the food. Thus, to be called "cheddar

cheese," a product still must contain a minimum of 50 percent milkfat, even though a reduced fat product would be more desirable to some (although the resulting product would not be the traditional "cheddar cheese"). Moreover, cheese meeting the standard is not required to declare its fat content.

The whole standards of identity approach may pose an additional problem for new food products with respect to market entry. Due to the tight recipe specifications and the inflexibility of the standards system, new products may be at a disadvantage when they enter the market because they can not be called something that is easily recognized or desired by consumers. For instance, low fat cheeses have to be named with something other than the standardized term. Consumers may be less willing to try such products.

To allow manufacturers to take advantage of advances in food technology, and thus to give them relief from the dilemma of either complying with an outdated standard or having to label their food as an "imitation," FDA sought to narrow the scope of food standards. The agency did so by adopting the so-called "imitation policy." By regulation, 21 CFR 101.3(e), FDA said that a food that resembles another food need not be labeled as an imitation if it is not nutritionally inferior to the food that it resembles, and if it bears a descriptive name that distinguishes from the standardized food.

In addition, to minimize the need for new standards, FDA has adopted, in 21 CFR Part 102, regulations that establish common or usual names for particular types of food. The common or usual names for particular types of food. The common or usual name that the agency adopts is a term that describes the basic nature or the characteristics of the type of food. For example, the common or usual name of shrimp in cocktail sauce is "shrimp cocktail, contains _____% shrimp." However, the common or usual name regulations are adopted and amended by notice and comment rulemaking, rather than by the formal rulemaking procedures of section 701(e) of the act, which must be followed for food standards. The controversy with respect to the labeling of dilute fruit juices demonstrates that a common or usual name that declares the percentage of juice in a beverage may still not adequately describe the product.

The agency is aware that some people strongly favor the current system of food standards. This support has been evidenced by State legislation that has sought to limit applicability of FDA's imitation policy. (See, e.g., *GMA* v. *Gerace*, 755 F.2d 993 (2d Cir.), *aff'd without opinion*, 474 U.S. 801, *cert. denied*, 474 U.S. 820 (1985).)

Given this situation, FDA seeks comments and suggestions on the current methods of naming foods. The agency requests comments on whether, and to what extent, food st_ndards have continuing value in the 1990's. Should efforts be made to eliminate food standards and to replace them with a system under which foods are given common or usual names like those prescribed under 21 CFR 102.5?

The agency seeks comments on whether the problems with food standards can be addressed by administrative action or whether this matter should be included on the agency's legislative agenda. The agency also seeks comments on the possible approaches to standards that could be taken in legislation. One alternative to elimination would be to amend section 701(e)(1) of the act to delete the requirements for a formal evidentiary hearing for food standards. This change would subject food standards to notice and comment rulemaking and thus assure that the standards are more readily amendable.

The agency solicits any other comments that bear on how food is named.

2. Should any changes be made in how FDA prescribes use of descriptors?

Because of the growing public interest in eating healthy foods, manufacturers began to place statements on their labels that described their products in ways such as "fresh," "natural," "low in salt," "reduced fat," and "no cholesterol." FDA found, however, that these descriptions were not always in honest or consistent ways. For example, foods with various levels of sodium were all being described as "low sodium."

To bring some order to the marketplace and to ensure that consumers are not misled, FDA is developing a series of descriptors for use on the labels of foods. These regulations define such terms as "no," "low," and "reduced" for use in conjunction with a particular food component. For example, FDA has said that a food can be described as low in sodium if it contains 140 milligrams or less of sodium per serving (21 CFR 101.13(a)(3)). To date, FDA has adopted regulations that prescribe descriptors on calorie content (21 CFR 105.66) and sodium content (21 CFR 101.13). It has also proposed a set of cholesterol content descriptors (51 FR 42584; November 25, 1986).

FDA has approached descriptors on a food–component–by–food–component basis, selecting reduction values that are nutritionally significant. Thus, it has considered, for example, what level of sodium reduction is nutritionally significant, and what level of calorie reduction is significant. As a result, FDA regulations permit a reduced sodium claim to be made on the basis of a 75 percent reduction (21 CFR 101.13(a)(4)), while they permit a reduced calorie claim on the basis of a one-third reduction (21 CFR 105.66(d)(1)). Two specific questions the agency is seeking comment on are:

a. How should descriptors be defined?

FDA is aware that some believe that descriptors would be more understandable to consumers if they were consistent across categories of food components. Thus, for example, these people believe that a "reduced" claim should be permitted whenever there is a one-third reduction in a food component, without regard to whether that reduction is nutritionally significant. FDA's view has been that to permit a "reduced" claim in such circumstances would be misleading. FDA solicits comments on which approach to defining descriptors is the more appropriate one.

b. What other descriptors are necessary?

FDA is aware of public interest in descriptors for fat content, for fiber content, and in regulatory definitions for such terms as "lite," "fresh," and "natural." FDA solicits comments on the need for regulations defining these types of descriptors and on the priority that the agency should give to addressing these descriptors.

For example, FDA is aware that the Federal Trade Commission tried to develop standards for the use of the term "natural" and was unable to do so. Is an FDA regulation on "natural" needed?

FDA's traditional position is that the use of the term "fresh" on a food that has been processed in any way ("fresh pasteurized orange juice") is misleading. Is a regulation on the use of the term "fresh" necessary?

FDA also seeks comment on whether there are any other matters involving food descriptors that should be addressed or considered by the agency.

E. Health Messages

FDA has traditionally considered disease-related claims on food labeling to be drug claims that misbrand the food and subject it to the new drug provisions of the act. However, during the past few years, food manufacturers have expressed their desire to utilize food labeling as a mechanism for providing consumers with information about the relationship between diet and health, particularly in the context of contributing to disease prevention. In addition, consumers have become increasingly aware that certain dietary habits have been associated with some chronic, serious conditions and that good nutrition and diet are essential to good health. Thus, consumers also have expressed the need for information about the relationship between specific food components and health and about how to select foods that may be used to improve their diets.

In response to industry and consumer requests for health-related information on food labeling, FDA proposed to amend the food regulations to establish criteria for exempting a food with a health-related nutrition claim from the new drug provisions of the act (August 4, 1987; 52 FR 28843). Most persons who have an interest in this proposal acknowledge that consumers should be provided with truthful and useful information about diet and health. However, this generally is the only point on which the various interest groups agree. On most other aspects of FDA's 1987 proposal, consumers and consumer advocacy groups, industry representatives, health professionals, and government officials generally are polarized in their opinions and expectations. Points of controversy associated with the proposal include:

1. Consideration of whether food labeling, in particular, is an appropriate vehicle for disseminating health-related dietary information concerning specific diseases;

2. The legal basis under the act for permitting health-related statements that traditionally would have rendered the food an unapproved new drug;

3. Consideration of the type of foods for which health-related statements would be permitted on the labeling;

4. Establishment of practical and enforceable guidelines or criteria for evaluating whether the health-related dietary information is false or misleading;

5. The level of scientific evidence that should be necessary prior to permitting health-related dietary information on food labeling;

6. Whether a regulation to permit health-related dietary information on food labeling would encourage over-fortification of foods with nutrients for which "positive" claims could be made;

7. Whether FDA has sufficient resources to adequately monitor and enforce compliance with a permissive regulation; and,

8. Whether, and to what extent, the health messages policy should apply to dietary supplements.

The extreme divergence of opinions on the legal, scientific, and practical aspects of the 1987 proposal have impeded the agency's progress toward a resolultion. Thus, FDA considers it appropriate to request further comments from interested persons. Specifically, the agency requests comments on the approach or process that should be utilized to assure resolution of the issue. Options for resolution that the agency currently considers to be available include:

1. Revise the 1987 proposal based on comments received and publish the revision as a reproposal.

2. Revise the 1987 proposed regulation based on comments received and publish the revision as a final rule.

3. Withdraw the 1987 proposal and publish a new proposal to permit food labeling to bear factual health-related statements on how, based on their normal use in a well-balanced diet, food components will affect the structure or function of the body to promote good health. This option, because it has not been discussed before by the agency, needs some explanation.

The 1987 proposal focused on health claims that conveyed information regarding the role of a food in the prevention, cure, mitigation, or treatment of a disease or a disease syndrome. The problem is that these types of effects are also the types of effects that can be considered drug attributes under section 201(g)(1)(B) of the act. Thus, the 1987 proposal created a tension in FDA's enforcement of the act because any food that is labeled in the manner permitted by the proposal could, by definition, also be viewed as a drug.

A label description of the effects that a food will have on the body need not, however, make that food a drug. For example, the claim "This product is high in calcium; dietary calcium is important to the maintenance of strong and health bones" would fit this category. The act specifically recognizes, in section 201(g)(1)(C), that foods affect the structure or function, and thus the health, of the body in ways that do not make them drugs. Foods have these effects by virtue of their nutritional qualities when consumed over time and not as the result of an immediate pharmacological response as expected of drugs.

The agency is interested in exploring the possibility of establishing a program that would permit manufacturers to make health claims that describe the nutritional qualities of a food and that explain, in a manner that is not false or misleading, how these nutritional qualities affect the structure or function of the body in ways that will contribute to good health.

FDA seeks comment on the feasibility and appropriateness of such a health message policy.

Interested persons may, on or before December 6, 1989, submit to the Dockets Management Branch (address above) written comments regarding this advance notice of proposed rulemaking; request for public comment. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This advance notice of proposed rulemaking; request for public comment is issued under sections 201, 401, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 371).

Frank E. Young,

Commissioner of Food and Drugs.

Louis W. Sullivan,

Secretary of Health and Human Services.

Dated: July 31, 1989.

[FR Doc. 89–18487 Filed 8–3–89; 10:46 am]

BILLING CODE 4160–01–M

federal register

Tuesday
August 8, 1989

Part VI

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Formula Grants; Notice of Final Regulation

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Formula Grants

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of final regulation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing the final revision of the existing Formula Grants Regulation (28 CFR part 31), which implements part B of Title II of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1988, (subtitle F of title VII of the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, 102 Stat. 4181, November 18, 1988). The 1988 Amendments reauthorize and modify the Federal assistance program of grants to state and local governments and private not-for-profit agencies for juvenile justice and delinquency prevention improvements authorized under part B of Title II of the JJDP Act (42 U.S.C. 5611 *et seq.*). The final revision to the existing Regulation provides guidance to states in the formulation, submission, and implementation of state formula grants plans.

EFFECTIVE DATE: This regulation is effective August 8, 1989.

FOR FURTHER INFORMATION CONTACT: Jeff Allison, Compliance Monitoring Coordinator, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention (OJJDP), 633 Indiana Avenue, NW., Room 760, Washington, DC 20531; (202) 724-5924.

SUPPLEMENTARY INFORMATION:

Statutory Amendments

The 1988 reauthorization of the JJDP Act resulted in statutory amendments that impact the Formula Grants Program. These statutory changes include: A modified formula grant fund allocation minimum for participating states and territories; a funding pass-through requirement for Indian tribes; a plan requirement related to assessing and addressing the overrepresentation of minority juveniles in all types of secure facilities; extension through 1993 of the non-MSA exception to the jail and lockup removal requirement; an alternative substantial compliance standard for jail and lockup removal; and, a provision for the Administrator to waive termination of funding eligibility for states that have failed to achieve substantial or full compliance with the jail and lockup removal requirement. The final regulation details revised procedures and requirements for states participating in the Formula Grants Program resulting from the 1988 amendments to the JJDP Act.

Description of Major Changes

Formula Grant Allocations

Section 222(a) of the JJDP Act was amended to raise the minimum Formula Grant allocation from $225,000 per state and $56,250 per territory. The minimum allocations are now $325,000 per state and $75,000 per territory if the title II appropriation is less than $75 million (other than part D). If the title II appropriation is more than $75 million (other than part D), the minimum allocations are $400,000 per state and $100,000 per territory. State and territory allocations will be reduced prorata to the extent necessary to ensure that no state receives less than it was allotted in Fiscal Year 1988.

Indian Pass-Through

Section 223(a)(5) of the JJDP Act was amended to require that a portion of each participating state's 66⅔ percent Formula Grant pass-through be made available to fund programs of Indian tribes that perform law enforcement functions, and that agree to attempt to comply with the deinstitutionalization of status offenders, separation, and jail and lockup removal requirements of the JJDP Act. The proportion of pass-through funds made available for these programs must be the same as the proportion of the state's population under 18 years of age which resides in those geographical areas where Indian tribes perform such law enforcement functions. Each year, the Secretary of the Interior will provide OJJDP with an updated list of those tribes within states that perform law enforcement functions. The initial list is available through OJJDP.

A related provision, section 223(a)(8)(A) of the JJDP Act, was amended to require that each state's juvenile crime analysis, which is submitted annually as part of the Formula Grant Application and Plan, include an assessment of juvenile crime problems and prevention needs within the geographical areas in which Indian tribes perform law enforcement functions.

Minority Overrepresentation in Secure Facilities

Section 223(a)(23) of the JJDP Act was amended to require that each participating state's Formula Grant Plan address efforts to reduce the proportion of juveniles who are members of minority groups detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups, if such proportion exceeds the proportion such groups represent in the general population.

Jail Removal

Section 223(a)(14) of the JJDP Act was amended to continue the non-MSA (low population density) exception to the jail and lockup removal requirement through 1993. The statutory criteria outlined in section 223(a)(14) (A), (B) and (C) that must be satisfied for a state to use this exception remain the same (28 CFR 31.303(f)(4)).

Section 223(c) of the JJDP Act was amended to create an alternative substantial compliance standard for those states unable to achieve a 75 percent reduction in jail and lockup removal violations, but which have made sufficient progress to merit continued funding. The new standard establishes four criteria which, if satisfied, may be used in lieu of achieving a 75 percent numerical reduction to demonstrate substantial compliance. The four criteria require that the state has: (1) Removed all status and nonoffender juveniles from adult jails and lockups; (2) made meaningful progress in removing other juveniles from adult jails and lockups; (3) diligently carried out the state's jail and lockup removal plan; and (4) historically expended and continues to expend an appropriate and significant share of Formula Grant resources to comply with section 223(a)(14) of the JJDP Act. As with the 75 percent reduction standard, for a state to be eligible for a finding of substantial compliance under this alternative standard the state must demonstrate an unequivocal commitment to achieving full compliance within a reasonable time, not to exceed three additional years, after the December 8, 1985, statutory deadline for achieving substantial compliance with the jail and lockup removal requirement.

The statutory deadlines for substantial and full compliance with section 223(a)(14) of the JJDP Act were not changed by the 1988 Amendments. Each participating state and territory's 1987 and 1988 Monitoring Reports (due by December 31, 1987, and December 31, 1988, respectively) must demonstrate either substantial or full compliance with the jail and lockup removal requirement in order for the state to be eligible (absent a waiver of termination) for the FY 1989 and 1990 Formula Grant awards, respectively. Each participating state and territory's 1989 Monitoring Report (due by December 31, 1989), must demonstrate full compliance or full compliance with de minimis exceptions with section 223(a)(14) in order for the state to be eligible (absent a waiver of termination) for the FY 1991 Formula Grant award, and all subsequent awards.

Section 223(c) of the JJDP Act was also amended to provide the Administrator of OJJDP with the discretion to waive termination of funding eligibility for those states and territories that have not achieved substantial or full compliance with the jail and lockup removal requirement, provided that the state or territory agrees to expend all of its Formula Grant resources, except planning and administration, advisory group set aside, and Indian tribe pass-through funds, to achieve compliance with section 223(a)(14). This final revision of the Formula Grants Regulation sets forth standards that a state must demonstrate it meets in order to be considered by the Administrator for a waiver of the termination sanction. A state which satisfies these standards qualifies for a waiver on the basis that: (1) It has made significant progress to date; and (2) additional funding is likely to produce further progress toward compliance.

Discussion of Comments

The proposed revisions to the existing Formula Grants Regulation were published in the **Federal Register** on April 12, 1989 (54 FR 14768), for public comment. Written comments were received from eight states, two regional coalitions of state juvenile justice advisory groups, the National Coalition of State Juvenile Justice Advisory Groups, the University of Wisconsin School of Social Welfare, and the Subcommittee on Human Resources of the U.S. House of Representatives' Committee on Education and Labor. The National Coalition of State Juvenile Justice Advisory Groups submitted a resolution passed at their May 7-10, 1989 National Conference in Reno. All comments have been considered by OJJDP in the issuance of this final regulation.

The following is a summary of the comments and the responses by OJJDP:

1. *Comment:* The majority of respondents expressed concern that paragraphs (f)(6)(iii)(D)(1)(v) and (f)(6)(iii)(D)(2) (vii) of the proposed regulation only required states to demonstrate a "commitment" to achieving full compliance when seeking a waiver of termination of eligibility for failure to achieve substantial or full compliance with the jail and lockup removal provision, section 223(a)(14) of the JJDP Act. These respondents indicated that states should be required to demonstrate an "unequivocal commitment" to achieving full compliance in order to be eligible for a waiver of termination. The House Subcommittee on Human Resources commented that requiring a lesser commitment for a state in the context of an application for a waiver than is required for that state to achieve substantial compliance weakens the Act's compliance scheme, which was not the intent of the 1988 Amendments. The House Subcommittee further commented that only a requirement of unequivocal commitment will enable the Administrator to make the determination, with certainty, that additional funding is likely to produce further progress toward compliance when waivers are granted. The comments and the resolution of the National Coalition of State Juvenile Justice Advisory Groups supported this position.

Several respondents commented that the positive responses of state legislatures and governors to the requirement of an unequivocal commitment as a basis of eligibility for participation in the OJJDP sponsored Jail Removal Initiative I demonstrates the level of commitment that most states have already made to achieving the goals of jail removal. Within this context, respondents commented that OJJDP should remain consistent in its interpretation of requirements, as weakening the standard undermines gains already achieved by many states.

Finally, several respondents indicated that without requiring the higher, well defined standard of "unequivocal commitment," waivers of termination would practically be automatic, and the jail and lockup removal provision of the JJDP Act would be weakened.

One state supported the "commitment" language in the proposed regulation.

Response: It is the OJJDP position that the legislation itself is clear in that it does not require the Administrator to demand an "unequivocal commitment" but allows the Administrator discretion to waive termination of eligibility when a state is unable to meet the standard for substantial compliance, or the standard for full compliance. The Act imposes only one condition upon the Administrator in utilizing the waiver provision: That those states who are unable to demonstrate substantial or full compliance (as required by the Act) must commit all of their formula grant dollars to the issue of jail removal except as provided by the statute. This is a substantial requirement and is demonstrative of a state's willingness and commitment to comply with the jail removal mandate.

The Regulation incorporates this requirement and in addition requires states to: Have an adequate monitoring system, diligently carry out the state's jail and lockup removal plan, submit an acceptable plan to eliminate noncompliant incidents and to demonstrate a commitment to achieving full compliance. Therefore, the Regulation satisfies not only the clear language of the statute, it also satisfies the intent of Congress that the waiver be applied to those cases where the Administrator determines the states have made significant progress and additional funding is likely to produce further progress toward compliance. It is consistent with Congressional action in creating the waiver provision by assisting states that are committed to maintaining progress toward and achieving full compliance with 223(a)(14).

Based on these conclusions, paragraphs (f)(6)(iii)(D)(1)(v) and (f)(6)(iii)(D)(2)(vii) of the final regulation retain the original language from the proposed regulation requiring states seeking a waiver of termination of eligibility to demonstrate a "commitment" to achieving full compliance.

2. *Comment:* One respondent indicated that there was no justification for allowing the Administrator to waive termination of a state's eligibility for failure to achieve substantial compliance with the jail and lockup removal provision.

Response: Section 223(c)(2)(B) of the JJDP Act clearly applies the waiver of termination sanction to those states unable to achieve substantial compliance with the jail and lockup removal provision, pursuant to section 223(c)(2)(A). This interpretation of the statute is supported by the House Committee on Education and Labor Report (100-605) which states on page 11, "It should be noted that the bill makes this alternative sanction available with regard to enforcing the substantial and full compliance requirements."

It is the OJJDP's intention to apply the waiver provision carefully, as directed by Congress. This will occur in those situations where, although substantial compliance has not been achieved within the applicable time limit, the state has made significant progress in removing juveniles from adult jails and

lockups, and there is substantive evidence that additional funding is likely to produce further progress toward full compliance.

3. *Comment:* One respondent requested that the waiver maximum apply only to (f)(6)(iii)(D)(2), which relates to full compliance and not to (f)(6)(iii)(D)(1), which relates to substantial compliance. Thus the maximum number of waivers would only be counted for failure to achieve full compliance. Waivers applied to states for failure to achieve substantial compliance would not be counted toward the three waiver maximum.

Response: Although the standard for substantial compliance is different from the standard for full compliance no other distinction is made in the application of the three year waiver limitation. No state, regardless of whether the substantial compliance standard is used or the full compliance standard is used, is eligible for more than three waivers.

4. *Comment:* One respondent recommended that paragraph (j)(1), which requires that documentation be provided in the State Plan Juvenile Crime Analysis to indicate whether minority juveniles are disproportionately detained or confined, provide more specific information as to what kind of documentation is required.

Response: OJJDP agrees with this recommendation and will prepare supplemental information, including recommended data collection and analysis strategies. For those states whose Fiscal Year 1989 plan has already been submitted, separate instructions for supplementing the FY 1989 plan update to meet any new or modified requirements imposed by the final regulation will also be issued.

5. *Comment:* One respondent expressed concern about how the implementation of the workplan for addressing overrepresentation of minorities in the juvenile justice system will be monitored to ensure that the plan is being carried out.

Response: OJJDP intends to monitor implementation of workplans through site visits and through reviewing Performance Reports. In addition, OJJDP plans to develop an addendum to the Monitoring Compliance Report which is currently submitted annually to determine compliance with section 223(a)(12)(A), (13), and (14). This addendum will apply to the 1990 Monitoring Report due December 31, 1990, and all subsequent monitoring reports.

6. *Comment:* One respondent expressed concern about the interpretation of the statutory language in section 223(a)(23) of the Act that requires states to address the over-representation of minority youth in secure detention facilities. The basis for this concern is that the language "if such proportion exceeds the proportion such groups represent in the general population," if interpreted literally, might lead to a situation in which the proportion of minority youth in secure detention would be compared to the proportion of minority members in the general population. Such a comparison would be misleading because of the skewed age distributions of minority populations in the United States at the present. Minority populations tend to be composed of greater percentages of younger individuals. Thus, while in a given jurisdiction 25 percent of the overall population may be members of a minority group, 30 percent or more of the population could be under 20 years of age. If this were the case, and assuming equal risks of offense, apprehension and other decision making, it would still be the case that this hypothetical jurisdiction would appear to have an over-representation of minority youth.

The respondent recommends that for purposes of determining over-representation of minority youth in secure facilities, the general population be defined as youth at risk for such confinement.

Response: OJJDP also recognized the potential for misinterpretation of the statutory language. As a consequence, this language was clarified in § 31.303 (j)(1) of the proposed OJJDP Formula Grants Regulation. This clarification has been retained in the final Regulation.

7. *Comment:* The Subcommittee on Human Resources of the House Committee on Education and Labor commented on the definition of Indian tribes that perform law enforcement functions. Concern was expressed that the definition does not fully track the definition of "law enforcement and criminal justice" in section 103(6) of the Act. While the proposed definition specifically includes police efforts, it omits any specific reference to activities of courts, corrections, probation, or parole authorities. Concern was expressed that OJJDP not interpret the term "law enforcement functions" too narrowly and a suggestion made that this definition be expanded to more closely track the section 103(6) language. Two state respondents expressed similar concerns.

Response: In response to this comment, as well as to those from the two state respondents, the language for the definition of law enforcement functions has been expanded to include corrections, probation, and parole activities.

8. *Comment:* One state, which has only one Indian tribe that might be able to qualify for pass-through funds, expects that the population under 18 years is too small to warrant an individual grant. A question was raised about how OJJDP defines the term "larger tribal jurisdiction" as it relates to that situation?

Response: OJJDP recognizes the range of populations of Indian Tribes and Alaskan Native villages, and the Regulation is designed to give the State Agency flexibility in targeting funds where substantial impact can be anticipated through the funding of tribes attempting to achieve compliance with section 223(a) (12)(A), (13) and (14) of the JJDP Act. It also recognizes the variation in resources among Indian tribes to develop and manage projects, and, accordingly, provides for making pass-through funds available to organizations designated by tribes to represent them, or to combinations of eligible tribes. Where a state has only one tribe, that tribe, regardless of size would be the eligible tribe and would necessarily be the recipient or beneficiary of the Indian tribe pass-through, if it met the requirements of performing law enforcement functions and agreeing to attempt to achieve compliance with the statutory mandates.

An excerpt from The U.S. Census 1980 Report on the General Characteristics for American Indian Persons on Reservations, which provides data on juvenile populations under 18 residing on Indian Reservations by state and by Indian tribe is available through OJJDP. Data on Alaskan Native Organizations is also included. In addition, the 1980 Bureau of Census data for juvenile populations under 18 by state (the figure for each state is total juvenile population under 18, and includes Indian juvenile population under 18), is available through OJJDP. Given the fact that the 1980 Census data on Indian tribe population is the most recent data available at this time, states are expected to use the comparable 1980 census data for the general youth population under 18 to compute the proportion of the pass-through for Indian tribes performing law enforcement functions. The Indian population will need to be subtracted from the total juvenile population under 18 for each state. The 1980 data will be used until the 1990 Census Report is issued and provides more current data on Indian tribe youth populations. In the event that there are Indian tribes performing law enforcement functions that do not appear on the Bureau of Census listing, the cognizant OJJDP State Representative should be contacted for assistance in securing other population data.

9. *Comment:* In the proposed regulations, numerous references are made to Indian tribes that perform law enforcement functions. There are Alaska Natives that are recognized by the Department of the Interior as having law enforcement functions, and it is important that references and definitions include these populations.

Response: In drafting this section OJJDP used the language of the Amendments. There is no intent to exclude any tribal unit, determined by the Secretary of the Department of the Interior as performing law enforcement functions. Moreover, section 103(18) of the 1988 Amendments defines "Indian tribe" as: (A) A Federally recognized Indian tribe or (B) An Alaskan Native organization. The Department of the Interior provided the OJJDP with a listing that will be used to determine Indian tribe eligibility to receive Formula Grant funds from the State agencies. Alaskan Native organizations are included in the list. The listing is entitled, "Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs," published by the Bureau of Indian Affairs, U.S. Department of the Interior, December 29, 1988. This is the list of tribes eligible to receive BIA services and presumed to perform law enforcement functions, pursuant to the definition provided in paragraph § 31.301(b)(2) of this regulation. While this list is more encompassing than Indian tribes performing law enforcement functions, this is the only list available from the Department of the Interior at this time. Thus, it will be used by State Planning Agencies until revised or updated by the Department of the Interior, for purposes of determining Indian tribes eligibility for the pass-through;

10. *Comment:* One comment reflected concern about the difficulty in defining tribes that perform law enforcement functions.

Response: Section 103(6) of the Act provides the definition of law enforcement and criminal justice for the purposes of OJJDP programs. This definition includes those activities that impact on section 223(a)(12)(A), (13) and (14). Section 223(a)(5) designates the Secretary of the Department of the Interior as the authority for determining which tribes perform law enforcement functions using this definition.

Executive Order 12291

This notice does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more, (b) a major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Regulatory Flexibility Act

This final regulation, does not have a "significant" economic impact on a substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96-354).

Paperwork Reduction Act

No collection of information requirements are contained in or effected by this regulation (See the Paperwork Reduction Act, 44 U.S.C. 3504(h)).

Intergovernmental Review of Federal Programs

In accordance with Executive Order 12372 and the Department of Justice's implementing regulation 28 CFR part 31, states must submit formula grant applications to the State "Single Point of Contact," if one exists. The State may take up to 60 days from the application date to comment on the application.

List of Subjects in 28 CFR Part 31

Grant programs—law, Juvenile delinquency, Grant programs.

For the reasons set out in the preamble, the OJJDP Formula Grants Regulation, 28 CFR part 31, is amended as follows:

PART 31—[AMENDED]

1. The authority citation for part 31 continues to read as follows:

Authority: Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5601 et seq.).

2. Paragraphs (a) and (b) of § 31.301, are revised to read as follows:

§ 31.301 Funding.

* * * * *

(a) *Allocation to States.* Each state receives a base allocation of $325,000, and each territory receives a base allocation of $75,000 when the title II appropriation is less than $75 million (other than part D). When the title II appropriation equals or exceeds $75 million (other than part D), each state receives a base allocation of $400,000, and each territory receives a base allocation of $100,000. To the extent necessary, each state and territory's base allocation will be reduced proportionately to ensure that no state receives less than it was allocated in Fiscal Year 1988.

(b) *Funds for Local Use.* At least two-thirds of the formula grant allocation to the state (other than the section 222(d) State Advisory Group set aside) must be used for programs by local government, local private agencies, and eligible Indian Tribes, unless the State applies for and is granted a waiver by the OJJDP. The proportion of pass-through funds to be made available to eligible Indian tribes shall be based upon that proportion of the state youth population under 18 years of age who reside in geographical areas where tribes perform law enforcement functions. Pursuant to section 223(a)(5)(C) of the JJDP Act, each of the standards set forth in paragraphs (b)(1) (i) through (iii) of this section must be met in order to establish the eligibility of Indian tribes to receive pass through funds:

(1)(i) The tribal entity must be recognized by the Secretary of the Interior as an Indian tribe that performs law enforcement functions as defined in paragraph (b)(2) of this section.

(ii) The tribal entity must agree to attempt to comply with the requirements of section 223(a)(12)(A), (13), and (14) of the JJDP Act; and

(iii) The tribal entity must identify the juvenile justice needs to be served by these funds within the geographical area where the tribe performs law enforcement functions.

(2) "Law enforcement functions" are deemed to include those activities pertaining to the custody of children, including, but not limited to, police efforts to prevent, control, or reduce crime and delinquency or to apprehend criminal and delinquent offenders, and/or activities of adult and juvenile corrections, probation, or parole authorities.

(3) To carry out this requirement, OJJDP will annually provide each state with the most recent Bureau of Census statistics on the number of persons under age 18 living within the state, and the number of persons under age 18 who reside in geographical areas where Indian tribes perform law enforcement functions.

(4) Pass-through funds available to tribal entities under section 223(a)(5)(C) shall be made available within states to Indian tribes, combinations of Indian tribes, or to an organization or organizations designated by such tribe(s), that meet the standards set forth in paragraphs (b)(1) (i)–(iii) of this section. Where the relative number of persons under age 18 within a geographic area where an Indian tribe

performs law enforcement functions is too small to warrant an individual subgrant or subgrants, the state may, after consultation with the eligible tribe(s), make pass-through funds available to a combination of eligible tribes within the state, or to an organization or organizations designated by and representing a group of qualifying tribes, or target the funds on the larger tribal jurisdictions within the state.

(5) Consistent with section 223(a)(4) of the JJDP Act, the state must provide for consultation with Indian tribes or a combination of eligible tribes within the state, or an organization or organizations designated by qualifying tribes, in the development of a state plan which adequately takes into account the juvenile justice needs and requests of those Indian tribes within the state.

* * * * *

3. Section 31.303 is amended by adding paragraphs (f)(4)(vi) and (k); and by revising paragraph (f)(6)(iii), introductory text of (g) and paragraph (j) to read as follows:

§ 31.303 Substantive requirements.

* * * * *

(f) * * *

(4) * * *

(vi) Pursuant to section 223(a)(14) of the JJDP Act, the nonMSA (low population density) exception to the jail and lockup removal requirement described in paragraphs (f)(4) (i) through (v) of this section shall remain in effect through 1993.

* * * * *

(6) * * *

(iii)(A) Substantial compliance with section 223(a)(14) requires:

(*1*) The achievement of a 75% reduction in the number of juveniles held in adult jails and lockups after December 8, 1985; or

(*2*) That a state demonstrate it has met each of the standards set forth in paragraphs (f)(6)(iii)(A)(*2*) (*i*)–(*iv*) of this section:

(*i*) Removed all status and nonoffender juveniles from adult jails and lockups. Compliance with this standard requires that the last submitted monitoring report demonstrate that no status offender (including those accused of or adjudicated for violating a valid court order) or nonoffender juveniles were securely detained in adult jails or lockups for any length of time; or, that all status offenders and nonoffenders securely detained in adult jails and lockups for any length of time were held in violation of an enforceable state law and did not constitute a pattern or practice within the state;

(*ii*) Made meaningful progress in removing other juveniles from adult jails and lockups. Compliance with this standard requires the state to document a significant reduction in the number of jurisdictions securely detaining juvenile criminal-type offenders in violation of section 223(a)(14) of the JJDP Act; or, a significant reduction in the number of facilities securely detaining such juveniles; or, a significant reduction in the number of juvenile criminal-type offenders securely detained in violation of section 223(a)(14) of the JJDP Act; or, a significant reduction in the average length of time each juvenile criminal-type offender is securely detained in an adult jail or lockup; or, that state legislation has recently been enacted and taken effect and which the state demonstrates will significantly impact the secure detention of juvenile criminal-type offenders in adult jails and lockups;

(*iii*) Diligently carried out the state's jail and lockup removal plan approved by OJJDP. Compliance with this standard requires that actions have been undertaken to achieve the state's jail and lockup removal goals and objectives within approved timelines, and that the State Advisory Group, required by section 223(a)(3) of the JJDP Act, has maintained an appropriate involvement in developing and/or implementing the state's plan;

(*iv*) Historically expended and continues to expend an appropriate and significant share of its Formula Grant funds to comply with Section 223(a)(14). Compliance with this standard requires that, based on an average from two (2) Formula Grant Awards, a minimum of 40 percent of the program funds was expended to support jail and lockup removal programs; or that the state provides a justification which supports the conclusion that a lesser amount constituted an appropriate and significant share because the state's existent jail and lockup removal barriers did not require a larger expenditure of Formula Grant Program funds; and

(*3*) The state has made an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance within a reasonable time but in no event may such time extend beyond December 8, 1988.

(B) Full compliance is achieved when a state demonstrates that the last submitted monitoring report, covering 12 months of actual data, demonstrates that no juveniles were held in adult jails or lockups in circumstances that were in violation of section 223(a)(14).

(C) Full compliance with de minimis exceptions is achieved when a state demonstrates that it has met the standard set forth in either of paragraphs (f)(6)(iii)(C) (*1*) or (*2*) of this section:

(*1*) *Substantive De Minimis Standard.* To comply with this standard the state must demonstrate that each of the following requirements have been met:

(*i*) State law, court rule, or other statewide executive or judicial policy clearly prohibits the detention or confinement of all juveniles in circumstances that would be in violation of section 223(a)(14);

(*ii*) All instances of noncompliance reported in the last submitted monitoring report were in violation of or departures from, the state law, rule, or policy referred to in paragraph (f)(6)(iii)(C)(*1*)(*i*) of this section;

(*iii*) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances;

(*iv*) Existing mechanisms for the enforcement of the state law, rule or policy referred to in paragraph (f)(6)(iii)(C)(*1*)(*i*) of this section are such that the instances of noncompliance are unlikely to recur in the future; and

(*v*) An acceptable plan has been developed to eliminate the noncompliant incidents and to monitor the existing mechanism referred to in paragraph (f)(6)(iii)(C)(*1*)(*iv*) of this section.

(*2*) *Numerical De Minimis Standard.* To comply with this standard the state must demonstrate that each of the following requirements under paragraphs (f)(6) (iii)(C)(*2*) (*i*) and (*ii*) of this section have been met:

(*i*) The incidents of noncompliance reported in the state's last submitted monitoring report do not exceed an annual rate of 9 per 100,000 juvenile population of the state;

(*ii*) An acceptable plan has been developed to eliminate the noncompliant incidents through the enactment or enforcement of state law, rule, or statewide executive or judicial policy, education, the provision of alternatives, or other effective means.

(*iii*) Exception. When the annual rate for a state exceeds 9 incidents of noncompliance per 100,000 juvenile population, the state will be considered ineligible for a finding of full compliance with de minimis exceptions under the numerical de minimis standard unless the state has recently enacted changes in state law which have gone into effect and which the state demonstrates can reasonably be expected to have a substantial, significant and positive impact on the state's achieving full (100%) compliance or full compliance with de minimis exceptions by the end of the monitoring period immediately following the monitoring period under consideration.

(*iv*) Progress. Beginning with the monitoring report due by December 31, 1990, any state whose prior full compliance status is based on having met the numerical de minimis standard set forth in paragraph (f)(6)(iii)(C)(*2*)(*i*) of § 31.303, must annually demonstrate, in its request for a finding of full compliance with de minimis exceptions, continued and meaningful progress toward achieving full (100%) compliance in order to maintain eligibility for a continued finding of full compliance with de minimis exceptions.

(*v*) Request Submission. Determinations of full compliance and full compliance with de minimis exceptions are made annually by OJJDP following submission of the monitoring report due by December 31 of each calendar year. Any state reporting less than full (100%) compliance in any annual monitoring report may request a finding of full compliance with de minimis exceptions under paragraph (f)(6)(iii)(C) (*1*) or (*2*) of this section. The request may be submitted in conjunction with the monitoring report, as soon thereafter as all information required for a determination is available, or be included in the annual state plan and application for the state's Formula Grant Award.

(D) *Waiver.* (*1*) Failure to achieve substantial compliance as defined in this section shall terminate any state's eligibility for Formula Grant funds unless the Administrator of OJJDP waives termination of the state's eligibility. In order to be eligible for a waiver of termination, a state must submit a waiver request which demonstrates that it meets the standards set forth in paragraph (f)(6)(iii)(D)(*1*) (*i*)–(*v*) of this section:

(*i*) Agrees to expend all of its Formula Grant Award except planning and administration, advisory group set aside, and Indian-tribe pass-through funds, to achieve compliance with section 223(a)(14); and

(*ii*) Diligently carried out the state's jail and lockup removal plan as set forth in paragraph (f)(6)(iii)(A)(*2*)(*iii*) of this section; and

(*iii*) Submitted an acceptable plan, based on an assessment of current jail and lockup removal barriers within the state, to eliminate noncompliant incidents; and

(*iv*) Achieved compliance with section 223(a)(15) of the JJDP Act; and

(*v*) Demonstrates a commitment, through appropriate executive or legislative action, to achieving full compliance.

(*2*) Failure to achieve full compliance as defined in this section shall terminate any state's eligibility for Formula Grant funds unless the Administrator of OJJDP waives termination of the state's eligibility. In order to be eligible for this waiver of termination, a state must request a waiver and demonstrate that it meets the standards set forth in paragraphs (f)(6)(iii)(D)(*2*) (*i*)–(*vii*) of this section:

(*i*) Agrees to expend all of its Formula Grant Award except planning and administration, advisory group set aside, and Indian tribe pass-through funds, to achieve compliance with section 223(a)(14); and

(*ii*) Removed all status and nonoffender juveniles from adult jails and lockups as set forth in paragraph (f)(6)(iii)(A)(*2*)(*i*) of this section; and

(*iii*) Made meaningful progress in removing other juveniles from adult jails and lockups as set forth in paragraphs (f)(6)(iii)(A)(*2*)(*ii*) of this section; and

(*iv*) Diligently carried out the state's jail and lockup removal plan as set forth in paragraph (f)(6)(iii)(A)(*2*)(*iii*) of this section; and

(*v*) Submitted an acceptable plan, based on an assessment of current jail and lockup removal barriers within the state, to eliminate noncompliant incidents; and

(*vi*) Achieved compliance with section 223(a)(15) of the JJDP Act; and

(*vii*) Demonstrates a commitment, through appropriate executive or legislative action, to achieving full compliance.

(E) Waiver Maximum. A state may receive a waiver of termination of eligibility from the Administrator under paragraph (f)(6)(iii)(D) (*1*) and (*2*) of this section for a combined maximum of three Formula Grant Awards. No additional waivers will be granted.

* * * * *

(g) Juvenile Crime Analysis. Pursuant to section 223(a)(8) (A) and (B), the state must conduct an analysis of juvenile crime problems, including juvenile gangs that commit crimes, and juvenile justice and delinquency prevention needs within the state, including those geographical areas in which an Indian tribe performs law enforcement functions.

* * * * *

(j) Minority Detention and Confinement. Pursuant to section 223(a)(23) of the JJDP Act, states must address efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population, viz., youth at risk for secure confinement. It is important for states to approach this in a comprehensive manner. Compliance with this provision is achieved when a state has met the requirements set forth in paragraphs (j)(1)–(3) of this section:

(1) Provide documentation in the State Plan Juvenile Crime Analysis to indicate whether minority juveniles are disproportionately detained or confined in secure detention or correctional facilities, jails, or lockups in relation to their proportion of the at risk youth population;

(2) Where documentation is unavailable, or demonstrates that minorities are disproportionately detained or confined in relation to their proportion in the at risk youth population, states must provide a strategy for addressing the disproportionate representation of minority juveniles in the juvenile justice system, including but not limited to:

(i) Assessing the differences in arrest, diversion, and adjudication rates, court dispositions other than incarceration, and the rates and periods of commitment to secure facilities of minority youth and non-minority youth in the juvenile justice system;

(ii) Increasing the availability and improving the quality of diversion programs for minorities who come in contact with the juvenile justice system such as police diversion programs;

(iii) Providing support for prevention programs in communities with a high percentage of minority residents with emphasis upon support for community-based organizations that serve minority youth;

(iv) Providing support for reintegration programs designed to facilitate reintegration and reduce recidivism of minority youths;

(v) Initiate or improve the usefulness of relevant information systems and disseminate information regarding minorities in the juvenile justice system.

(3) Each state is required to submit a supplement to the 1988 Multi-Year Plan for addressing the extent of disproportionate representation of minorities in the juvenile justice system. This supplement, which will be submitted as a component of the 1989 Formula Grant Application and Multi-Year Plan Update, must include the state's assessment of disproportionate minority representation, and a workplan for addressing this issue programmatically. Where data is insufficient to make a complete assessment, the workplan must include provisions for improving the information

collection systems. The workplan, once approved by OJJDP, is to be implemented as a component of the state's 1990 Formula Grant Plan.

(4) For purposes of this plan requirement, minority populations are defined as members of the following groups: Asian Pacific Islanders; Blacks; Hispanics; and, American Indians.

(k) Pursuant to section 223(a)(24) of the JJDP Act, states shall agree to other terms and conditions as the Administrator may reasonably prescribe to assure the effectiveness of programs assisted under the Formula Grant.

Terrence S. Donahue,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 89-18482 Filed 8-7-89; 8:45 am]

BILLING CODE 4410-18-M

federal register

Tuesday
August 8, 1989

Part VII

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Draft Environmental Impact Statement on the Proposed Permit Application, Black Mesa-Kayenta Mine, Navajo and Hopi Indian Reservations, AZ; Cancellation of Public Meeting

BEST COPY AVAILABLE

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[OSMRE-EIS-25]

Draft Environmental Impact Statement on the Proposed Permit Application, Black Mesa-Kayenta Mine, Navajo and Hopi Indian Reservations, AZ; Cancellation of Public Meeting

In the matter of cancellation of public meeting in Window Rock, Arizona, August 11, 1989, North Conference Room, Navajo Tribal Council Chambers, for the Draft Environmental Impact Statement on the Proposed Permit Application, Black Mesa-Kayenta Mine; Navajo and Hopi Indian Reservations, Arizona (OSMRE-EIS-25).

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Cancellation of a public meeting in Window Rock, Arizona.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) published in the **Federal Register**, Vol. 54, No. 114, June 15, 1989, a notice of availability and notice of public meetings for the Black Mesa-Kayenta Mine draft environmental impact statement (EIS). Five public meetings were scheduled to receive public comments on the draft EIS. The meeting scheduled for Window Rock, Arizona, on August 11, 1989, is hereby cancelled. Four public meetings will therefore be held as scheduled on the dates and locations given under "DATES." Written comments on the draft EIS must be received by 4:00 p.m. (MDT), August 18, 1989, at the location listed below under **"ADDRESSES."**

DATES: *Public Meetings:* The meeting scheduled for Window Rock, Arizona, on August 11, 1989, at 2:00 p.m. (local time) is hereby cancelled. The following public meetings will be held to receive comments on the draft EIS—

August 7, 1989: Flagstaff, Arizona; 7 p.m. (local time), Best Western Little America Motel, American "B" Conference Room, 2515 East Butler Avenue.

August 8, 1989: Moenkopi, Arizona; 7 p.m. (local time), Moenkopi Community Building.

August 9, 1989: Kykotsmovi, Arizona; 2 p.m. (local time), Hopi Tribe Council Chambers.

August 10, 1989: Kayenta, Arizona; 7 p.m. (local time), Kayenta Chapter House.

ADDRESSES: Written comments on the draft EIS must be received by 4:00 p.m. (m.d.t.), August 18, 1989, and be hand-delivered or mailed to Peter A. Rutledge, Chief, Federal Programs Division, Office of Surface Mining Reclamation and Enforcement, Western Field Operations, Brooks Towers, Second Floor, 1020 15th Street, Denver, Colorado, 80202, Attention: Sarah E. Bransom.

FOR FURTHER INFORMATION CONTACT: Sarah E. Bransom, Black Mesa-Kayenta mine EIS Project Leader (Telephone: (303) 844-2891) at the Denver, Colorado, location given under **"ADDRESSES."**

Dated: August 4, 1989.

Brent Wahlquist,

Assistant Director, Program Policy.

[FR Doc. 89-18671 Filed 8-7-89; 8:45 am]

BILLING CODE 4310-05-M

Reader Aids

Federal Register
Vol. 54, No. 151
Tuesday, August 8, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

31645-31796	1
31797-31932	2
31933-32034	3
32035-32332	4
32333-32432	7
32433-32628	8

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

6002	31794
6003	31931
6004	31933
6005	32033

Executive Orders:

12685	31796

7 CFR

29	31797
58	31646
910	32035
945	31798
947	32433
1076	31799

Proposed Rules:

51	32419
911	31843
929	31844
967	31845
993	31846

8 CFR

Proposed Rules:

210	31966

9 CFR

51	32434
92	31800

10 CFR

7	31646

Proposed Rules:

430	32349

12 CFR

33	31935
207	31646
220	31646
221	31646
224	31646
229	32035

Proposed Rules:

226	32089

14 CFR

39	31649, 31651-31653, 31803-31809, 31935, 32435-32437
71	31654, 31936, 31937, 32439, 32440, 32603
73	31655
75	31937
217	31810
241	31810

Proposed Rule:

39	31693, 31694, 31847
43	32563
65	32563
71	31696-31704, 31966, 32452
75	31705, 31967
145	32563

15 CFR

773	31812

17 CFR

140	31814
211	32333, 32334
270	31850, 32048
274	32048
275	32048, 32441
279	32048

Proposed Rules:

230	32226
239	32226
240	31850, 32229
249	32226
260	32226
269	32226

18 CFR

271	31938

Proposed rules:

37	31706

20 CFR

Proposed Rules:

208	32163
219	31939
220	32163
230	32163
260	32163
327	31968
416	31656

21 CFR

133	32050
179	32335
520	32336

Proposed Rules:

Ch. I	32610
133	32091
522	31949
556	31949
1308	31815, 31855
1310	31657
1313	31657
1316	31669

22 CFR

60	31815
61	31815
62	31815
63	31815
64	31815
65	31815

24 CFR

200.....32059
206.....32059
570.....31670
Proposed Rule:
Ch. I.....31856

26 CFR

1.....31672, 31816
602.....31672
Proposed Rule:
1.....31708, 32453

28 CFR

31.....32618
523.....32027
544.....32026

29 CFR

1600.....32061
1601.....32061
1610.....32061
1611.....32061
1620.....32061
1626.....32061
1691.....32061
1910.....31765, 31970
Proposed Rule:
1910.....31858

30 CFR

934.....32063
Proposed Rules:
250.....31768, 32316, 32563
917.....32093
925.....32094
931.....32095, 32096
946.....32097, 32098

31 CFR

500.....32064

32 CFR

706.....31825

33 CFR

100.....31826, 32066, 32441-32442
110.....32419
117.....31827
162.....32419
165.....32419, 32443
Proposed Rules:
100.....31859, 31860, 32453

35 CFR

Proposed Rules:
133.....32099
135.....32099

36 CFR

1153.....32337-32342
1155.....32337-32342
1202.....32067
1250.....32067
1254.....32067
Proposed Rules:
1206.....32455

38 CFR

3.....31828, 31960
21.....31829, 31950-31952, 32070

39 CFR

111.....32071

40 CFR

52.....31953, 32072, 32073
60.....32444
61.....32444
81.....32078
85.....32566
180.....31674, 31830-31836
Proposed Rules
52.....32101
81.....31860, 31971, 31972
85.....32598
180.....31971, 31972
185.....31636
186.....31832-31836
228.....32351-32356
261.....31675, 32320
302.....32320
704.....31680

41 CFR

101-47.....32445

42 CFR

50.....32446
Proposed Rules:
5.....32459

44 CFR

80.....31681
83.....31681
352.....31920
Proposed Rules:
335.....32359

45 CFR

232.....32284
302.....32284
303.....32284
304.....32284
306.....32284
307.....32284
1632.....31954

47 CFR

2.....32339
15.....32339
73.....31685, 31686, 31838, 31960, 32340
80.....31839
Proposed Rules:
73.....32361, 32362
94.....32362

48 CFR

203.....32161
208.....32161
209.....32161
212.....32161
213.....32161
214.....32161
215.....32161
216.....32161
217.....32161
219.....32161
222.....32161
223.....32161
226.....32161
242.....32161
245.....32161
252.....32161
253.....32161
273.....32161
991.....31961
Proposed Rules:
44.....32422
45.....32424
51.....32424
52.....32424

49 CFR

190.....32342
191.....32342
192.....32344
195.....32342, 32344
571.....31687, 32345

50 CFR

17.....32326
215.....32346
226.....32085
227.....32085
661.....31841
663.....31688
675.....31842
Proposed Rules:
263.....32362
267.....32362
611.....31861
620.....31861
655.....31862
672.....31861
675.....31861

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List: August 3, 1989

Public Laws

are now available for the 101st Congress, 1st Session, 1989

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 101st Congress, 1st Session, 1989.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws and prices).

Superintendent of Documents Subscriptions Order Form

Order Processing Code
***6216**

Charge your order. It's easy!

☐ **YES,** please send me _____ subscriptions to **PUBLIC LAWS** for the 101st Congress, 1st Session, 1989 for $107 per subscription.

1. The total cost of my order is $_____ . All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

1/89

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

L

4

S

G

39

11

OL
4
SS
5
2
G
9
89
MI

8-9-89
Vol. 54 No. 152

federal register

Wednesday
August 9, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 89 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

8-9-89
Vol. 54 No. 152
Pages 32629-32784

federal register

Wednesday
August 9, 1989

BEST COPY AVAILABLE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 54, No. 152
Wednesday, August 9, 1989

Agriculture Department
See Cooperative State Research Service; Forest Service

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control
NOTICES
Grants and cooperative agreements; availability, etc.:
Chronic disease prevention and control programs; correction, 32742
Meetings:
Vital and Health Statistics National Committee, 32696

Coast Guard
PROPOSED RULES
Ports and waterways safety:
Ohio River, KY; restricted area, 32661
Regattas and marine parades:
Fleetweek Parade of Ships and Blue Angels Demonstration, 32659

Commerce Department
See National Oceanic and Atmospheric Administration; Patent and Trademark Office

Commodity Futures Trading Commission
NOTICES
Meetings:
Agricultural Advisory Committee, 32682

Comptroller of the Currency
PROPOSED RULES
National banks:
Securities transactions; recordkeeping requirements, 32653

Conservation and Renewable Energy Office
PROPOSED RULES
Consumer products:
Energy conservation standards—
Dishwashers, and clothes washers and dryers, 32744
NOTICES
Environmental statements; availability, etc.:
Dishwashers, clothes washers, and clothes dryers; energy conservation standards, 32766

Cooperative State Research Service
NOTICES
Meetings:
Committee of Nine, 32677

Customs Service
RULES
Administrative rulings; nationwide uniformity, etc.
Correction, 32742

Defense Department
See Navy Department

Education Department
RULES
Special education and rehabilitative services:
Technology-related assistance for individuals with disabilities; State grants program, 32770
NOTICES
Grants and cooperative agreements; availability, etc.:
Educational research grant program, 32683

Energy Department
See also Conservation and Renewable Energy Office; Federal Energy Regulatory Commission
NOTICES
Atomic energy agreements; subsequent arrangements, 32684
Grants and cooperative agreement awards:
Colorado School of Mines, 32684
Natural gas exportation and importation:
Project Orange Associates, L.P., 32690
Transco Energy Marketing Co., 32692

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Ohio, 32637
Pesticide programs:
Pesticide and active ingredient-producing establishments registration pesticide report submissions, 32638
PROPOSED RULES
Hazardous waste:
Identification and listing—
Exclusions, 32662
Superfund program:
Hazardous substances—
Federally permitted releases; reporting and liability exemptions, 32671

Executive Office of the President
See Presidential Documents; Trade Representative, Office of United States

Federal Communications Commission
RULES
Radio broadcasting:
Radio-television cross-ownership rules; waiver policy liberalized, 32639
Radio stations; table of assignments:
Alabama, 32640
Indiana, 32641
Missouri, 32641
PROPOSED RULES
Radio stations; table of assignments:
Florida, 32672
Illinois, 32672
Iowa, 32672
Michigan, 32673
Minnesota, 32673
New Jersey et al., 32674
North Carolina, 32674, 32675 (3 documents)
Wisconsin, 32675

Television stations; table of assignments:
California, 32676
(2 documents)
NOTICES
Agency information collection activities under OMB review, 32694

Federal Energy Regulatory Commission
NOTICES
Hydroelectric applications, 32684
Applications, hearings, determinations, etc.:
Great Lakes Gas Transmission Co., 32688
Northwest Pipeline Corp., 32689
Valero Interstate Transmission Co., 32690
Vesta Energy Corp. et al., 32690

Federal Maritime Commission
NOTICES
Agreements filed, etc., 32694
(2 documents)
Freight forwarder licenses:
Sunrise International Co., Inc., et al., 32695

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
CBS Banc-Corp. et al., 32695
Lauder, Winston R., 32695
Peters, Jay D. et al.; correction, 32695

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 32741

Federal Trade Commission
RULES
Appliances, consumer; energy costs and consumption information in labeling and advertising:
Comparability ranges—
Dishwashers, 32631
PROPOSED RULES
Freedom of Information Act; implementation:
Uniform fee schedules and administrative guidelines, 32654

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Maduramicin ammonium with bacitracin methylene disalicylate, 32634
Monensin, 32633
Nystatin, neomycin, thiostrepton, triamcinolone acetonide ointment, 32632
Sponsor name and address changes—
Dupont Pharmaceuticals, 32632
NOTICES
Human drugs:
Diutensen tablets; approval withdrawn, 32696

Forest Service
NOTICES
Boundary establishment, descriptions, etc.:
Merced and South Fork Merced Wild and Scenic Rivers, CA, 32677
Environmental statements; availability, etc.:
Boise National Forest, ID, 32677
Nez Perce National Forest, ID, 32677
Stanislaus National Forest, CA, 32678, 32679
(5 documents)

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Dentistry, general practice; residency training and advanced education, 32696

Interior Department
See Land Management Bureau; Minerals Management Service

International Trade Commission
NOTICES
Import investigations:
Erasable programmable read only memories, components products containing memories, and processes for making memories, 32700
Food treatment ovens, components, and process, 32700
Generic cephalexin capsules from Israel and Portugal, 32701
Low friction drawer supports, components, and products containing same, 32701
United States-Canada Free Trade Agreement; accelerated tariff elimination; effect on U.S. industries and consumers, 32701

Justice Department
NOTICES
Pollution control; consent judgments:
International Paper Co., 32702
Navistar International Transportation Corp., 32703

Labor Department
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Mineral interest applications
Arizona, 32698
Realty actions; sales, leases, etc.:
Alaska, 32698
Withdrawal and reservation of lands:
Idaho, 32699

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
Total Minatome Corp., 32699

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 32703

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Inter-Arts Advisory Panel, 32704

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 32642
NOTICES
Coastal zone management programs and estuarine sanctuaries:
State programs—
Evaluation findings availability, 32680
Intent to evaluate performance, 32680
Permits:
Marine mammals, 32680

Navy Department
NOTICES
Privacy Act:
Systems of records, 32682

Nuclear Regulatory Commission
PROPOSED RULES
Regulatory agenda:
Quarterly report, 32653
NOTICES
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 32704
Applications, hearings, determinations, etc.:
Virginia Electric & Power Co., 32729

Office of United States Trade Representative
See Trade Representative, Office of United States

Patent and Trademark Office
RULES
Patent and trademark cases:
Judicial review of Board of Patent Appeals and Interferences and Trademark Trial and Appeal Board decisions—
Correction, 32637
NOTICES
Meetings:
Automated Patent System Industry Review Advisory Committee, 32681
Senior Executive Service:
Performance Review Board; membership, 32681

Pension and Welfare Benefits Administration
RULES
Federal Employees' Retirement System Act:
Civil penalties, 32635

Presidential Documents
PROCLAMATIONS
Special observances:
Neighborhood Crime Watch Day (Proc. 6006), 32783
EXECUTIVE ORDERS
Committees; establishment, renewal, termination, etc.:
Commission (EO 12686), 32629

Public Health Service
See Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration

Research and Special Programs Administration
RULES
Pipeline safety:
Transportation of natural and other gas by pipeline; marking of materials, 32641

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 32731
Applications, hearings, determinations, etc.:
Philadelphia Stock Exchange, Inc., 32736

Trade Representative, Office of United States
NOTICES
Unfair trade practices, petitions, etc.:
Thailand; importation, distribution, and sale of cigarettes, 32731

Transportation Department
See also Coast Guard; Research and Special Programs Administration
NOTICES
Aviation proceedings:
Hearings, etc.—
International Travel Club, 32738

Treasury Department
See Comptroller of the Currency; Customs Service

Veterans Affairs Department
NOTICES
Organization, functions, and authority delegations:
Assistant Secretary for Finance and Planning et al., 32738

Separate Parts In This Issue

Part II
Deaprtment of Energy, Conservation and Renewable Energy Office, 32744

Part III
Department of Education, 32770

Part IV
The President, 32783

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6006.....32783
Executive Orders:
12686.....32629

10 CFR
Proposed Rules:
Ch. I.....32653
430.....32744

12 CFR
Proposed Rules:
12.....32653

16 CFR
305.....32631
Proposed Rules:
4.....32654

19 CFR
177.....32742

21 CFR
510.....32632
522.....32632
524.....32632
556.....32633
558 (2 documents).....32633, 32634

29 CFR
2589.....32635

33 CFR
Proposed Rules:
100.....32659
162.....32661

34 CFR
345.....32770

37 CFR
1.....32637
2.....32637

40 CFR
52.....32637
167.....32638
Proposed Rules:
261.....32662
302.....32671
355.....32671

47 CFR
73 (4 documents).....32639–32641
Proposed Rules:
73 (12 documents).....32672–32676

49 CFR
192.....32641

50 CFR
611.....32642
675.....32642

Federal Register
Vol. 54, No. 152
Wednesday, August 9, 1989

Presidential Documents

Title 3—

The President

Executive Order 12686 of August 4, 1989

President's Commission on Aviation Security and Terrorism

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish a Commission on Aviation Security and Terrorism, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the President's Commission on Aviation Security and Terrorism to review and evaluate policy options in connection with aviation security, with particular reference to the destruction on December 21, 1988, of Pan American World Airways Flight 103. The Commission shall consist of seven members appointed by the President. Two members shall be Senators, and two shall be Members of the House of Representatives; they shall represent both parties equally. The President shall consult with the Majority and Republican Leaders of the Senate and the Speaker and Minority Leader of the House of Representatives in making appointments from the Senate and House of Representatives, respectively.

(b) The President shall designate a Chairman from among the members of the Commission.

Sec. 2. *Functions.* (a) The Commission shall conduct a comprehensive study and appraisal of practices and policy options with respect to preventing terrorist acts involving aviation. In conducting this effort, the Commission shall evaluate the adequacy of existing procedures for aviation security, compliance therewith, and enforcement thereof. The Commission also shall review options for handling terrorist threats, including prior notification to the public. Further, the Commission shall investigate practices, policies, and laws with respect to the treatment of families of victims of terrorist acts.

(b) Within 6 months of the date of this order, the Commission shall submit a report to the President, which shall be classified if necessary, containing findings and recommendations. If the Commission's report is classified, an unclassified version shall be prepared for public distribution.

Sec. 3. *Administration.* (a) To the extent permitted by law and fully protecting intelligence sources and methods and the ongoing investigations into the destruction of Pan American World Airways Flight 103 of December 21, 1988, the heads of executive departments, agencies, and independent instrumentalities shall provide the Commission, upon request, with such information as it may require for purposes of carrying out its functions.

(b) Members of the Commission appointed from among private citizens may receive compensation for their work on the Commission at the daily rate specified for GS–18 of the General Schedule. While engaged in the work of the Commission, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(c) To the extent permitted by law and subject to the availability of appropriations, the Department of Transportation shall, among other Administrative functions, provide the Commission with administrative services, funds, facilities, staff, and other support services necessary for the performance of its functions, and the Secretary of Transportation shall perform the functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), except that of reporting to the Congress, in accordance with the

guidelines and procedures established by the Administrator of General Services.

(d) The Commission shall adhere to the requirements set forth in the Federal Advisory Committee Act, as amended. All executive branch officials assigned duties by the Federal Advisory Committee Act shall comply with its requirements with respect to this Commission.

Sec. 4. *General Provision.* The Commission shall terminate 30 days after submitting its report to the President.

George Bush

THE WHITE HOUSE,
August 4, 1989.

[FR Doc. 89-18760
Filed 8-7-89; 2:50 pm]
Billing code 3195-01-M

Editorial note: For a White House statement, dated Aug. 4, on the establishment of the Commission, see the *Weekly Compilation of Presidential Documents* (vol. 25, no. 31).

Rules and Regulations

Federal Register
Vol. 54, No. 152
Wednesday, August 9, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AA26

Use of Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances; Ranges of Comparability for Dishwashers

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its appliance labeling rule by revising the ranges of comparability used on required labels for dishwashers.

Under the rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled mode. This notice publishes the new range figures, which, under §§ 305.10, 305.11 and 305.14 of the rule, must be used on labels on dishwashers manufactured on and after November 7, 1989, and in advertising of dishwashers beginning November 7, 1989. Properly labeled dishwashers manufactured prior to the effective date need not be relabeled. Catalogs printed prior to the effective date in accordance with 16 CFR 305.14 need not be revised.

EFFECTIVE DATE: November 7, 1989.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202-326-3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA) [1] required the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances. Dishwashers are included as one of the categories. Before these labeling requirements may be prescribed, the statute requires the Department of Energy ("DOE") to develop test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule [2] covering seven of the thirteen appliance categories, including dishwashers. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all dishwashers presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a dishwasher is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then on each page of the catalog that lists the product shall be included the range of estimated annual energy costs for the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Section 305.8(b) of the rule requires manufacturers, after filing an initial report, to report annually by specified dates for each product type.[3] The data submitted by manufacturers are based, in part, on the representative average unit cost of the type of energy used to run the appliances tested. According to section 305.9 of the rule, these average energy costs, which are provided by DOE, will be periodically revised by the Commission, but not more often than annually. Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information in line with these changes, the Commission is empowered under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%.

The new figures for the estimated annual costs of operation for dishwashers, which were calculated using the 1989 representative average energy costs published by DOE on December 7, 1988,[4] have been submitted and have been analyzed by the Commission. New ranges based upon them are herewith published.

In consideration of the foregoing, the Commission amends Appendix C of its Appliance Labeling Rule by publishing the following ranges of comparability for use in the labeling and advertising of dishwashers beginning November 7, 1989.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for Part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94-163) (1975), as amended by the National Energy Conservation Policy Act (Pub. L. 95-619) (1978), the National Appliance Energy Conservation Act (Pub. L. 100-12) (1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100-357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

Appendix C to Part 305 [Amended]

2. In Appendix C, paragraph 1 and the introductory test in paragraph 2 are revised to read as follows:

[1] Public Law 94-163, 89 Stat. 871 (Dec. 22, 1975).

[2] 44 FR 66466, 16 CFR part 305 (Nov. 19, 1979). On December 10, 1987 (52 FR 46888), the Commission amended the Appliance Labeling Rule by extending coverage to include central air conditioners and heat pumps.

[3] Reports for dishwashers are due by June 1.

[4] 53 FR 48349. The cost of electricity was published as 7.70 cents per kilowatt-hour; For natural gas: 55.2 cents for therm; For propane: 77 cents per gallon; For no. 2 heating oil: 78 cents per gallon.

Appendices to Part 305

* * * * *

Appendix C—Dishwashers

1. *Range Information:* "Compact" includes countertop dishwasher models with a capacity of fewer that eight (8) place settings.

"Standard" includes portable or built-in dishwasher models with a capacity of eight (8) or more place settings.

Place settings shall conform to AHAM Specification DE–1 for chinaware, flatware and serving pieces. Load patterns shall conform to the operating normal for the model being tested.

Ranges of comparability	Ranges of estimated yearly energy costs			
	Electrically heated water		Natural gas heated water	
	Low	High	Low	High
Compact	[1]	[1]	[1]	[1]
Standard	$39.00	$78.00	$22.00	$41.00

[1] No data submitted.

2. *Yearly Cost Information:* Estimates on the scales are based on a national average electic rate of 7.70¢ per kilowatt hour, a national average natural gas rate of 55.2¢ per therm, and eight loads of dishes per week.

* * * * *

Donald S. Clark,

Secretary.

[FR Doc. 89–18619 Filed 8–8–89; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name for a new animal drug application (NADA) from DuPont Pharmaceuticals, Inc., to Dupont Pharmaceuticals.

EFFECTIVE DATE: August 9, 1989.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1415.

SUPPLEMENTARY INFORMATION: The agency has been informed by E.I. DuPont de Nemours & Co., sponsor of NADA 35–825, which provides for use of naloxone hydrochloride injection as a narcotic antagonist in dogs, that it has transferred the ownership of the NADA from its subsidiary, DuPont Pharmaceuticals, Inc., P.O. Box 383, Manati, PR 00701, to DuPont Pharmaceuticals, One Rodney Square, Wilmington, DE 19898.

Accordingly, the agency is amending the lists of sponsors of approved NADA's in 21 CFR 510.600(c) to remove the entries for DuPont Pharmaceuticals, Inc. (the firm no longer sponsors an approved NADA). Additionally, the agency is amending 21 CFR 522.1462(b) to reflect the change of sponsor name.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) by removing the entry "DuPont Pharmaceuticals, Inc." and in paragraph (c)(2) by removing the entry "000590".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 522.1462 [Amended]

4. Section 522.1462 *Naloxone hydrochloride injection* is amended in paragraph (b) by removing the entry "000590" and adding in its place "000056".

Dated: August 3, 1989.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 89–18591 Filed 8–8–89; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Nystatin, Neomycin, Thiostrepton, Triamcinolone Acetonide Ointment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) sponsored by Norden Laboratories, Inc. The NADA provides for the use of a nystatin, neomycin, thiostrepton, triamcinolone acetonide ointment for dogs and cats for the treatment of acute and chronic otitis, interdigital cysts and management of dermatologic disorders, and for dogs for the treatment of anal gland infections.

EFFECTIVE DATE: August 9, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Norden Laboratories, Inc., Lincoln, Nebraska 68501, filed NADA 140–879 which provides for the use of a nystatin, neomycin, thiostrepton, triamcinolone acetonide ointment for the treatment of acute and chronic otitis of varied etiologies, in interdigital cysts in cats and dogs, in anal gland infections in dogs, and for the management of dermatologic disorders characterized by inflammation and dry or exudative dermatitis, particularly those caused, complicated, or threatened by bacterial or candidal (*Candida albicans*) infections. It is also of value in exzematous dermatitis, contact dermatitis, and seborrheic dermatitis, and as an adjunct in the treatment of dermatitis due to parasitic infestation.

The NADA is approved and the regulations are amended to reflect the approval by adding a new sponsor to § 524.1600a in paragraph (b) (21 CFR 524.1600a(b)). The basis of approval is described in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR Part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 524 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 524.1600a is amended by revising paragraph (b) to read as follows:

§ 524.1600a Nystatin, neomycin, thiostrepton, and triamcinolone acetonide ointment.

* * * * *

(b) *Sponsor.* See Nos. 011519, 025463, 051259, and 053501 in § 510.600(c) of this chapter.

* * * * *

Dated: August 1, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–18590 Filed 8–8–89; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Parts 556 and 558

Animal Drugs, Feeds, and Related Products; Monensin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Products Co. The supplemental application provides for the use of monensin in Type C medicated feed for the prevention of certain forms of coccidiosis in goats. The regulations are also amended to establish a tolerance for monensin residues in edible goat tissues.

EFFECTIVE DATE: August 9, 1989.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: Elanco Products Co., a division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed a supplement to NADA 95–735 to provide for the use of a 60-gram-per-pound monensin Type A article to make a 20-gram-per-ton Type C medicated feed used for the prevention of coccidiosis caused by *Eimeria crandallis, E. christenseni,* and *E. ninakohlyakimovae* in goats maintained in confinement. The application is approved and 21 CFR 556.420 is amended to establish a tolerance for residues of monensin in the edible tissues of goats. In addition, 21 CFR 558.4 is amended to reflect the exemption from the requirements of a medicated feed application for this use, and 21 CFR 558.355 is amended to reflect approval of the application. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR Part 556 continues to read as follows:

Authority: Section 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 556.420 is amended by revising paragraph (a) to read as follows:

§ 556.420 Monensin.

(a) *Cattle and goats.* A tolerance of 0.05 part per million is established for negligible residues of monensin in the edible tissues of cattle and goats.

* * * * *

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.4 [Amended]

4. Section 558.4 *Medicated feed applications* is amended in paragraph (d) in the table "Category I" for the entry "Monensin" by revising the entry under the heading "Assay limits percent [1] type B/C [2]" to read "Chickens: 75–125; Cattle: 5–10 g/ton 80–120; Cattle: 10–30 g/ton 85–115; Goats: 20 g/ton 85–115; Liq. feed: 80–120."

5. Section 558.355 is amended by adding new paragraphs (b)(14), (d) (3), (10), and (11), and (f)(6) to read as follows:

§ 558.355 Monensin.

* * * * *

(b) * * *

(14) To 000986: 60 grams per pound, as monensin sodium, paragraph (f)(6) of this section.

* * * * *

(d) * * *

(3) Type C goat feeds shall bear an expiration date of 30 days after date of manufacture.

* * * * *

(10) The labeling of all Type A articles and Type B feeds (liquid and dry) containing monensin intended for use in

goats shall bear, in addition to the caution statement in paragraph (d)(6) of this section, the following caution statements:

(i) Monensin medicated goat feed is safe for use in goats only. Consumption by unapproved species may result in toxic reactions.

(ii) Feeding undiluted or mixing errors resulting in high concentrations of monensin could be fatal to goats.

(iii) Must be thoroughly mixed in feeds before use.

(iv) Do not feed undiluted.

(v) Do not exceed the levels of monensin recommended in the feeding directions, as reduced average daily gains may result.

(11) The labeling of complete feeds containing monensin intended for use in goats shall bear the caution statements specified in paragraphs (d)(6) and (d)(10) (i) and (v) of this section.

* * * * *

(f) * * *

(6) *Goats*—(i) *Amount per ton.* Monensin, 20 grams.

(*a*) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria crandallis, E. christenseni,* and *E. ninakohlyakimovae.*

(*b*) *Limitations.* (*1*) Feed only to goats being fed in confinement. Do not feed to lactating goats. Feed continuously in Type C feed as monensin sodium. Type C feeds may be manufactured from monensin liquid Type B feeds. The liquid Type B feeds have a pH of 4.3 to 7.1 and their labels must bear appropriate mixing directions. Mixing directions for liquid Type B feeds stored in recirculating tank systems are: Recirculate immediately prior to use for no less than 10 minutes, moving not less than 1 percent of the tank contents per minute from the bottom of the tank to the top. Recirculate daily, as directed in this paragraph, even when Type B feed is not used. Mixing directions for liquid Type B feeds stored in mechanical, air, or other agitation-type tank systems are: Agitate immediately prior to use for not less than 10 minutes, creating a turbulence at the bottom of the tank that is visible at the top. Agitate daily, as directed in this paragraph, even when Type B feed is not used. The liquid Type B feed must bear directions to mix thoroughly with grain and/or roughage prior to feeding and must bear caution statement as follows: Inadequate mixing (recirculation or agitation), of liquid Type B feeds has resulted in increased monensin concentration which could be fatal to goats.

(*2*) An approved positionally stable monensin liquid Type B feed will not be subject to the requirements for mixing directions and cautionary labeling prescribed in paragraph (f)(6)(i)(*b*)(*1*) of this section. A manufacturer may secure approval of a positionally stable liquid Type B feed by (*i*) either filing an NADA for the product or by establishing a master file containing data to support the stability of its product; (*ii*) authorizing the agency to reference and rely upon the data in the master file to support approval of a supplemental NADA to establish positional stability; and (*iii*) requesting No. 000986 in § 510.600(c) of this chapter to file a supplemental NADA to provide for the use of its monensin Type A article in the manufacture of the liquid Type B feed specified in the appropriate master file. If the data demonstrate the stability of the liquid Type B feed described in the master file, the agency will approve the supplemental NADA. Approval of the Type B feed need not be published in the **Federal Register** because approval will not affect or alter the content of the regulation. The approval will, however, provide a basis for the individual liquid feed manufacturer to submit, and for the agency to approve, a medicated feed application under section 512(m) of the act for the liquid Type B feed. A manufacturer who seeks to market a positionally unstable monensin liquid Type B feed with mixing directions different from the standard established in paragraph (f)(6)(i)(*b*)(*1*) of this section may also follow this procedure.

(ii) [Reserved]

Dated: August 2, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-18589 Filed 8-8-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Maduramicin Ammonium With Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by American Cyanamid Co. The application provides for use of currently approved maduramicin ammonium 1 percent Type A medicated articles and bacitracin methylene disalicylate 25, 40, or 50 grams per pound Type A articles to make combination drug Type C medicated feeds. The feeds are for the prevention of coccidiosis and for increased rate of weight gain and improved feed efficiency in broiler chickens.

EFFECTIVE DATE: August 9, 1989.

FOR FURTHER INFORMATION CONTACT: James F. McCormack, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Berdan Ave., Wayne, NJ 07470, is the sponsor of NADA 140-823 which provides for combining Cygro® (maduramicin ammonium) 1 percent Type A medicated articles with BMD® (bacitracin methylene disalicylate) 25, 40, or 50 grams per pound Type A articles to make Type C medicated broiler feeds. The Type C broiler feeds contain 4.54 to 5.45 grams of maduramicin ammonium activity with 4 to 50 grams of bacitracin activity per ton for the prevention of coccidiosis caused by *Eimeria acervulina, E. tenella, E. brunetti, E. maxima, E. necatrix,* and *E. mivati,* and for increased rate of weight gain and improved feed efficiency. The NADA is approved and 21 CFR 558.76 is amended by adding new paragraph (d)(3)(xiv) and 21 CFR 558.340 is amended by adding new paragraph (c)(3) to reflect the approval.

Maduramicin ammonium and bacitracin methylene disalicylate are new animal drugs used in separately approved Type A articles to make a combination drug Type C feed. Maduramicin ammonium is a category II drug which, as provided in 21 CFR 558.4, requires an approved form FDA-1900 for making a Type C feed from a Type A article as in the NADA as approved and in the regulations as amended in 21 CFR 558.340.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.76 is amended by adding new paragraph (d)(3)(xiv) to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

* * * * *

(d) * * *

(3) * * *

(xiv) Maduramicin ammonium as in § 558.340.

3. Section 558.340 is amended by adding new paragraph (c)(3) to read as follows:

§ 558.340 Maduramicin ammonium.

* * * * *

(c) * * *

(3) *Amount.* 4.54 to 5.45 grams per ton (5 to 6 parts per million) with bacitracin methylene disalicylate 4 to 50 grams per ton.

(i) *Indications for use.* For prevention of coccidiosis caused by *Eimeria acervulina, E. tenella, E. brunetti, E. maxima, E. necatrix,* and *E. mivati;* for increased rate of weight gain and improved feed efficiency.

(ii) *Limitations.* For broiler chickens only. Feed continuously as sole ration. Do not feed to laying hens. Withdraw 5 days before slaughter. Bacitracin methylene disalicylate as provided by No. 046573 in § 510.600(c) of this chapter; maduramicin ammonium as provided by No. 010042 in § 510.600(c) of this chapter.

Dated: August 3, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-18588 Filed 8-8-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2589

Final Regulation Relating to Civil Penalties Under FERSA Section 8477(e)(1)(B)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Final regulation.

SUMMARY: This document contains a final regulation that sets forth the manner in which the Department of Labor (the Department) intends to assess civil penalties under section 8477 of the Federal Employees' Retirement System Act of 1986 (FERSA or the Act) against parties in interest who engage in prohibited transactions with the Federal Thrift Savings Fund established under FERSA. The final regulation adopts the definitions of terms and procedures established for assessment of civil penalties under section 502(i) of the Employee Retirement Income Security Act of 1974, 29 CFR Part 2560.502i-1 and Part 2570, Subpart A (53 FR 37474, Monday, September 26, 1988). The regulation will affect parties in interest such as participants in the Federal Thrift Savings Fund and the Fund's fiduciaries and service providers.

EFFECTIVE DATE: September 8, 1989.

FOR FURTHER INFORMATION CONTACT: Susan E. Rees, Plan Benefits Security Division, Office of the Solicitor, (202) 523-9141, U.S. Department of Labor, Washington, DC 20210 or David Lurie, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 523-8671, U.S. Department of Labor, Washington, DC 20210.

SUPPLEMENTARY INFORMATION: On September 26, 1988, the Department of Labor published a proposed regulation at 53 FR 37485 which is intended to provide definitions of terms and procedures for assessing civil penalties against parties in interest who engage in prohibited transactions with the Federal Thrift Savings Fund. The Department received no comments on the proposed regulation and therefore publishes the regulation as proposed for the reasons explained below.

Background

In 1986 Congress passed the Federal Employees' Retirement System Act (FERSA), as amended, 5 U.S.C. 8401 *et seq.*,[1] which established a retirement system for most civilian federal employees hired after December, 1983, and which provided for participation by certain other federal employees. Section 8437 of FERSA established a Thrift Savings Fund (the Fund) which consists of all employee and government contributions into the system, and the net earnings of the Fund. Section 8477(c) of FERSA prohibits certain transactions between the Fund and a "party in interest" (as defined in section 8477(a)(4) of the Act) with respect to the Fund. In section 8477(e)(1)(B), Congress granted the Secretary of Labor the authority to assess civil penalties against parties in interest who engage in prohibited transactions with the Fund. Pursuant to sections 8477(e)(1)(B) and 8477(f), the Secretary is issuing this regulation to carry out the Department's FERSA civil penalty functions.

Definition of Terms for FERSA Civil Penalty Proceedings

Pursuant to section 8477(e)(1)(B) of the Act, the regulation at 29 CFR 2589.1(a) provides that the initial penalty under section 8477(e)(1)(B) is five percent of the "amount involved" in each transaction for each year or part thereof during which the prohibited transaction continues. However, if the prohibited transaction is not corrected during the "correction" period, the civil penalty may be in an amount not more than one hundred percent of the "amount involved."

Section 8477(e)(1)(B) adopts the meaning given the terms "amount involved" and "correction" in the prohibited transaction excise tax provisions of the Internal Revenue Code (the Code or IRC). These Code provisions were also adopted for purposes of section 502(i) of ERISA which provides for assessment of civil penalties against parties in interest with respect to prohibited transactions involving ERISA-covered welfare plans and pension plans which are not "qualified" plans under the Code. On September 26, 1988, at 29 CFR 2560.502i-1, the Department issued a regulation interpreting section 502(i) which adopts

[1] Sections 8401 through 8479 of Title 5, United States Code (U.S.C.), were enacted by Congress at section 101(a) of FERSA. The Act itself provides no independent numbering system for these provisions, but directly assigns the chapter and section numbers under which those provisions are to be codified in Title 5 of the United States Code. For purposes of clarity and convenience, therefore, this preamble references the provisions of FERSA by using the U.S.C. section numbers which Congress assigned to them in the Act. Thus, for example, the following reference to "section 8437 of FERSA" is to Title 5 U.S.C. 8437.

the definitions of "amount involved" and "correction" as set forth in the Code and applicable IRC regulations. The Department's regulations under 502(i) also adopt the definition of "correction period" and the method of computation of penalties from the IRC regulations.

In light of the express Congressional intent that the prohibited transaction penalty provisions of FERSA and ERISA be interpreted consistently with the parallel Code provisions, the Department has determined to adopt the interpretations set forth at 29 CFR 2560.502i–1(b)–(e), which provide the terms for assessment of ERISA section 502(i) civil penalties, for purposes of prohibited transaction penalty proceedings under FERSA section 8477(e)(1)(B). *See* 29 CFR 2589.1(a).

Procedures for the Assessment of Civil Penalties Under FERSA

Section 8477(e)(1)(B) of FERSA grants the Secretary of Labor the authority to assess the FERSA prohibited transaction civil penalties, and under section 8477(f), the Secretary may prescribe regulations to implement civil penalty procedures. The Department believes that it is appropriate to administer the various civil penalty provisions under its authority consistently. After careful review, the Department has decided that the procedural regulations at 29 CFR Part 2570, Subpart A, which provide for assessment of ERISA section 502(i) civil penalties, are equally appropriate for civil penalty proceedings under FERSA section 8477(e)(1)(B). The Department therefore adopts 29 CFR Part 2570, Subpart A, as the rules of procedure applicable to prohibited transaction penalty proceedings under FERSA section 8477(e)(1)(B). *See* 29 CFR 2589.1(b).

Regulatory Flexibility Act

The Regulatory Flexibility Act imposes certain requirements with respect to rules which would have significant impact on a substantial number of small entities. A "rule" under the Regulatory Flexibility Act is one for which a general notice of proposed rulemaking is required under section 553(b) of the Administrative Procedure Act. Under section 553(b) of the Administrative Procedure Act a general notice of proposed rulemaking is not required for rules of agency organization, procedure or practice. Thus, such rules are excluded from the definition of "rule" under the Regulatory Flexibility Act. Since the procedural regulation (29 CFR 2589.1(b)) is a rule of agency procedure or practice it is thus not subject to the requirements of the Regulatory Flexibility Act.

The Department has also determined that the interpretative regulation at 29 CFR 2589.1(a) will not have any significant impact on a substantial number of small entities, and contains no reporting and disclosure requirements. The primary purpose of the regulation is to deter individuals who manage the Thrift Savings Fund from engaging in prohibited transactions, e.g., from using such assets for their own benefit. To that extent, the regulation will enable the Department to assess civil penalties on those individuals who are found to be violating the FERSA prohibited transaction provisions.

Based on anticipated enforcement experience under section 502(i) of ERISA, and taking into account both the difference in nature of the Thrift Savings Fund under FERSA as compared to private sector plans subject to section 502(i) of ERISA as well as the fact that this is a new program, the Department estimates that it will identify a very limited number of cases in any year which will result in penalties, and that in some years there will be no cases which result in such penalties. Given the selective nature of the burden imposed by this regulation, the Department believes that the regulation will not have a significant impact on small entities which provide services to the Thrift Savings Fund or small entities in which the Thrift Savings Fund invests.

Executive Order 12291

The Department has determined that this regulation does not constitute a "major rule" as that term is used in Executive Order 12291 because the action does not result in: an annual effect on the economy of $100 million; a major increase in cost or prices for consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The Paperwork Reduction Act mandates that agencies provide data with respect to information collection requirements which may be imposed by certain regulatory action. The regulation defining terms which relate to the assessment of civil sanctions under FERSA section 8477(e)(1)(B) does not contain any new information collection requirements and does not modify any existing requirements. Thus, it is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h). In addition, section 3508(c)(1)(B) of the Paperwork Reduction Act provides that the requirements of the Act do not apply to administrative actions involving specific individuals or entities. Thus, the Department has determined that the administrative adjudications which would be conducted pursuant to the procedures contained in this regulation fall within the scope of this exemption from the Paperwork Reduction Act.

Statutory Authority

The regulation is adopted pursuant to the authority contained in sections 8477(e)(l)(B) and (f) of FERSA (Sec. 101, Pub. L. No. 99–335, 100 Stat. 584, 586, 5 U.S.C. 8477(e)(1)(B) and (f), and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

List of Subjects in 29 CFR Part 2589

Administrative practices and procedures, Claims, Employee benefit plans, Federal Employee Retirement System, Law enforcement, Party in Interest, Pensions, Pension and Welfare Benefits Administration, Prohibited transactions.

Final Regulation

In view of the foregoing, Chapter XXV of Title 29 of the Code of Federal Regulations is amended by adding a new Subchapter K consisting of Part 2589 to read as follows:

SUBCHAPTER K—ADMINISTRATION AND ENFORCEMENT UNDER THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986

PART 2589—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

Authority: Sections 8477(e)(1)(B) and (f) of FERSA (Sec. 101, Pub. L. No. 99–335, 100 Stat. 584, 586, 5 U.S.C. 8477(e)(1)(B) and (f), and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

§ 2589.1 Civil penalties under section 8477(e)(1)(B) of FERSA.

(a) Section 8477(e)(1)(B) of FERSA, 5 U.S.C. 8477(e)(1)(B), permits the Secretary of Labor to assess a civil penalty against a party in interest who engages in a prohibited transaction with respect to the Thrift Savings Fund. The initial penalty under section 8477(e)(1)(B) is five percent of the "amount involved" in each such transaction for each year or part thereof during which the prohibited transaction continues. However, if the prohibited transaction is not corrected during the "correction period," the civil penalty may be in an amount not more than 100% of the "amount involved." The Department of Labor will apply the definitions set out in §§ 2560.502i–1(b)–(e) of this Chapter of Title 29 (civil penalties under section 502(i) of ERISA) in determining the "amount involved," "correction," "correction period," and for computation of the section 8477(e)(1)(B) penalty.

(b) The rules of practice set forth in §§ 2570.1–.12 of Part 2570, Subpart A of Subchapter G of this Chapter of Title 29 (procedures for the assessment of civil sanctions under ERISA section 502(i)) are applicable to prohibited transaction penalty proceedings under FERSA section 8477(e)(1)(B).

Signed at Washington, DC, this 2nd day of August, 1989.

Ann L. Combs,

Deputy Assistant Secretary for Policy.

[FR Doc. 89–18502 Filed 8–8–89; 8:45 am]

BILLING CODE 4510–29–M

Dated: August 4, 1989

Fred E. McKelvey,

Solicitor.

[FR Doc. 89–18607 Filed 8–8–89; 8:45 am]

BILLING CODE 3510–16–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 90143–9144]

RIN 0651–AA35

Amendment of Patent and Trademark Rules Concerning Judicial Review of Decisions of the Board of Patent Appeals and Interferences and the Trademark Trial and Appeal Board and Other Miscellaneous Matters; Correction

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final Rule; Correction.

SUMMARY: The Patent and Trademark Office is correcting errors in the final rule which appeared in the **Federal Register** on Thursday, July 13, 1989 (54 FR 29548).

1. On page 29551, in the third column, in § 1.136(b), in the tenth line, "affect" should read "effect".

2. On page 29553, in the first column, in § 1.303(c), the tenth line, "provided in 35 U.S.C. 146. The notice of" should read "provided in 35 U.S.C. 146, the notice of".

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3606–8]

Approval and Promulgation of Implementation Plans, Ohio; Ozone

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving a site-specific revision to the ozone portion of the Ohio State Implementation Plan (SIP) for the Goodyear Tire and Rubber Company (Goodyear) in St. Marys, Ohio. The revision, submitted by the State of Ohio on June 1, 1987, consists of variances for Goodyear's adhesive application lines K001, to K019, which exempts these lines from the requirements of Ohio Administrative Code (OAC) Rule 3745–21–09(U). The variances also limit the total volatile organic compound (VOC) emissions from the lines to 255 tons per year.

EFFECTIVE DATE: This final action becomes effective September 8, 1989.

ADDRESSES: Copies of the State submittal and other materials related to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Maggie Greene, at (312) 886–6088, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, P.O. Box 1049, Columbus, Ohio 43266–0149.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, (312) 886–6088.

SUPPLEMENTARY INFORMATION:

I. Background Information

USEPA approved the Ohio VOC rules as part of the ozone SIP as meeting the reasonable available control technology (RACT) Part D requirements of the Clean Air Act on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097).[1] Although RACT VOC regulations are only required by Part D of the Clean Air Act in all ozone nonattainment areas, Ohio's rules are applicable to both attainment and nonattainment areas.

On November 23, 1988 (53 FR 47547), USEPA published a Notice of Proposed Rulemaking (NPR) on a revision to Ohio's ozone SIP for Goodyear Tire and Rubber in St. Marys. Although the State requested that this revision be approved as a site-specific RACT determination for Goodyear, USEPA proposed to approve this revision as a relaxation from RACT, in conjunction with the removal of the accommodative SIP for the area. In order for a site-specific RACT determination to be approvable, a source must demonstrate that it is either technically or economically infeasible to meet an emission rate limit lower than that proposed as site-specific RACT for the source.

Reductions in VOC emissions may be obtained, either by reducing the VOC content of the coatings, or by installing control systems to capture and destroy the VOC before they escape into the ambient air. Therefore, it must be demonstrated that both of these control methods are either technically or economically infeasible at the facility.

A detailed discussion on the extent of such an investigation of available coatings is contained in Appendix A of the proposed rulemaking on Easco published on November 9, 1988, at 53 FR 45285. (Although the Easco proposed rulemaking pertains to RACT requirements in a nonattainment area, the same kind of investigation applies to RACT determinations in attainment areas where there is an accommodative SIP in place.)

II. Public Comments

Comments on the NPR were received from the Ohio Environmental Protection Agency (OEPA) on December 23, 1988. These comments and USEPA's responses are provided below.

OEPA Comment

The OEPA believes no additional documentation is needed on the unavailability of complying coatings for bonding metal and rubber for the following reasons:

(1) The two coating suppliers (Lord Corp. and Dayton Chemical Products-Whittaker Corp.) identified in the technical support materials are the two major suppliers of metal-to-rubber adhesive coatings for the Ohio area.

[1] RACT is defined as the lowest emission rate that a source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

(2) The OEPA is not aware of any plants in Ohio that employ complying metal-to-rubber adhesive coatings (all affected plants not otherwise exempted had submitted variance applications).

USEPA Response

OEPA still has not made an adequate demonstration that complying coatings are unavailable. As discussed in the Notice of Proposed Rulemaking (NPR), the two suppliers identified in the technical support materials indicated that they currently have some water-based adhesives available and are working to develop others. OEPA has not addressed this point. In addition, the NPR references an appendix to a notice for Essco Aluminum, published on November 9, 1988 (53 FR 45288), which contains a detailed discussion of the kind of demonstration required. OEPA has made no attempt to address these requirements.

OEPA Comment

Assuming that USEPA agrees on the unavailability of complying coatings, the OEPA prefers to use a tons per year limit, in place of a very high VOC content limit. The tons of VOC per year limit is a status quo limit that is related to the submitted study on cost-effectiveness of add-on control. There is a purpose to the annual VOC limit. However, the use of a pounds of VOC per gallon limit, based on the highest VOC content currently employed, really has no meaningful purpose. The current coatings average 6.4 pounds of VOC per gallon.

USEPA Response

It is not acceptable to use a tons per year limit, in place of a VOC content limit. RACT for surface coating lines is generally defined in terms of pounds of VOC per gallon of coating. If OEPA is concerned with the total mass emission limit, such a limit may be allowed, along with a VOC content limit. However, USEPA believes that in practice, an annual emission limit is not enforceable under Section 113 of the Clean Air Act. USEPA does not approve such limits in nonattainment areas or for the purposes of new source review. See John R. O'Conner's January 20, 1984, memorandum entitled "Averaging Time for Compliance with VOC Emission Limits—SIP Revision Policy" and Edward E. Reich's March 13, 1986, memorandum entitled "Time Frames for Determination of Applicability to New Source Review."

OEPA Comment

If USEPA still believes that this revision is a RACT relaxation, the OEPA must point out that the affected operations come under Standard Industrial Classification (SIC) Code 3069 (fabricated rubber products), and such operations are not really subject to USEPA's RACT determination for miscellaneous metal parts or products. The USEPA guidance documents do not include operations under SIC code 3069. See Table 1.1 (page 1–2) in the document *EPA–450/2–78–015*, and see page 28 in the document *EPA–450/2–79–004*.

USEPA Response

Although the Control Techniques Guidelines (CTG) for miscellaneous metal parts and products does list many categories of sources which are covered, it does not specifically exempt any categories. The purpose of this CTG was to "provide guidance on VOC emission control for job shop and original equipment manufacturing (OEM) industries which apply coatings on metal substrates which have not been the subject of more specific previous documents in this series." For this reason, the application of any coating to a metal substrate must be considered subject to the miscellaneous metal parts and products CTG, unless it is covered by another CTG or specifically exempted.

III. Conclusion

Region V reviewed OEPA's public comments and determined that none of the comments justifies a change from USEPA's proposed action. USEPA is approving this SIP revision request as a relaxation from RACT because the source is located in Auglaize County, which is a rural attainment area for ozone; and the Clean Air Act does not require RACT level VOC control on existing sources in attainment areas. However, this final approval eliminates the accommodative ozone SIP in Auglaize County, Ohio.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Petitions for judicial review of the action under section 307(b)(1) of the Clean Air Act must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 1989. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401–7642.

Dated: June 13, 1989.

Valdas Adamkus,

Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Ohio—Subpart KK

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1870 is amended by adding new paragragh (c)(84) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(84) On June 1, 1987, the Ohio Environmental Protection Agency (OEPA) submitted a revision request to Ohio's ozone SIP for the Goodyear Tire and Rubber Company in St. Marys (Auglaize County) Ohio. The revision was in the form of variances for adhesive application lines K001 to K019 and exempts them from the requirements contained in Ohio Administrative Code (OAC) Rule 3745–21–09(U). These variances expire on (3 years and 30 days from date of publication). The accommodative SIP for Auglaize County is removed for the period these variances are in effect.

(i) *Incorporation by reference.* (A) Condition Number 8 (which references Special Terms and Conditions Numbers 1 through 5) within each of 19 "State of Ohio Environmental Protection Agency Variances to Operate An Air Contaminant Source", Application Numbers 0306010138K001–0306010138K019, for Goodyear Tire and Rubber Company. The Date of Issuance is May 22, 1987.

[FR Doc. 89–18497 Filed 8–8–89; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 167

[OPP–70000B; FRL–3625–4]

Registration of Pesticide and Active Ingredient-Producing Establishments, Submission of Pesticide Reports; Confirmation of Effective Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Confirmation of effective date.

SUMMARY: This document announces the effective date of a final regulation issued by the Agency on September 8, 1988. As required by section 25(a)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA submitted the final regulation to both Houses of Congress for review prior to it taking effect. The rule required that producers of pesticide active ingredients register their establishments and submit reports to EPA. The final rule was published in the **Federal Register** of September 8, 1988 (53 FR 35056). The minimum 60-day period for Congressional review has ended.

EFFECTIVE DATE: The regulation is effective on August 9, 1989.

FOR FURTHER INFORMATION CONTACT: Phyllis Flaherty, Office of Compliance Monitoring (EN–342), Environmental Protection Agency, Rm. E–703C, 401 M St., SW., Washington, DC 20460, 202–382–7825.

SUPPLEMENTARY INFORMATION: EPA issued a final regulation requiring producers of active ingredients to register their establishments and submit reports to EPA. The final regulation also deleted the establishment registration requirement for custom blenders as well as several minor changes clarifying the requirements for pesticide-producing establishments.

However, as required by section 25(a) (4) of FIFRA, the final rule could not take effect until it had been submitted to Congress for a period of 60 days of concurrent Congressional session, as defined by section 25(a)(4). Since it was not possible to predict an exact date on which the Congressional review period would end, the preamble to the final rule stated that EPA would issue a **Federal Register** notice after the review period was over announcing the effective date of the regulation. The 60-day period of continuous Congressional session ended on April 19, 1989.

Accordingly, the final regulation promulgated on September 8, 1988, is effective on August 9, 1989.

List of Subjects in 40 CFR Part 167

General provisions, Registration requirements, Recordkeeping and reporting requirements.

Dated: July 21, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89–18255 Filed 8–8–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–7; FCC 89–256]

Broadcast Services; Amendment of the Radio-TV Cross-Ownership Rule To Liberalize the Commission's Waiver Policy With Respect to the Common Ownership of a Radio-TV Station Combination in the Same Market

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This decision considers petitions for reconsideration of the *Second Report and Order* in MM Docket No. 87–7, which adopted new waiver policies for the common ownership of radio and television combinations the same market. This action reaffirms the decision to look with favor upon waivers of the multiple ownership rules in the top 25 markets where there are 30 or more separately owned, operated, and controlled broadcast licensees after the proposed merger. The decision also deletes a rule adopted in the *Second Report and Order* barring ownership of more than one AM station, one FM station and one television station in a single metropolitan market to give the Commission discretion to consider combinations involving a television station and more than one radio station in the same service when unique public interest benefits can be demonstrated.

EFFECTIVE DATE: August 2, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tatsu Kondo, Policy and Rules Division, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's decision in MM Docket No. 87–7, adopted August 2, 1989, and released August 4, 1989. The full text of this Commission decision is available for inspection and copying during business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Decision

1. The *Second Report and Order* in MM Docket No. 87–7, 54 FR 8744 (March 2, 1989) ("*Second Report and Order*"), relaxed on the Commission's one-to-a-market multiple ownership rule, which prohibits the common ownership of radio and television stations in the same television market. Although the Commission retained the rule, it adopted a new, more relaxed case-by-case waiver policy for all potential radio-TV combinations. First, the Commission will look favorably upon waiver applications involving radio and television station combinations in the top television markets where there are at least 30 separately owned, operated and controlled broadcast licensees or "voices" after the proposed merger. Second, it will look favorably upon proposed combinations involving at least one "failed station"—*i.e.*, a station that has not been operated for a substantial period of time or that is involved in bankruptcy proceedings. All other waiver applications will be examined on a case-by-case basis upon certain specific public interest criteria.

Under the new waiver policy, however, the Commission stated it would not grant any application if the proposed combination would result in any one entity holding an attributable interest in more than one AM station, one FM station, and one television station in any single television "metro" market, as defined by the Arbitron Ratings Company.

2. Great American Television and Radio, Inc., and Holston Valley Broadcasting Corp. filed petitions for reconsideration of the *Second Report and Order*. Great American requested that the Commission reconsider its decision to limit its new waiver policy to the top 25 markets. Great American is the licensee of stations in the 28th and 29th markets, and each of those markets has 30 or more voices. Great American argued that there was no reason for the Commission to adopt a top 25 market cut-off in the *Second Report and Order*. It therefore requested that the Commission apply its new waiver policy to all markets in which there are 30 or more voices.

3. The Commission determined that Great American had not presented arguments in its request for reconsideration not already considered prior to adoption of the top 25 market/30 voices standard for the new waiver policy. Before adopting this standard, the Commission carefuly considered other options suggested by the commenters, including whether to expand the cut-off to more markets or whether to have a market cut-off at all. Based on the relemaking record, however, the Commission determined that a cautious approach, limiting the new waiver policy to the very largest, or top 25 markets where there are at least

30 voices, would enable both the public and broadcasters to benefit from common ownership and allow the Commission to monitor the effects of the modified one-to-a-market rules. It therefore denied Great American's request for reconsideration. The Commission emphasized, however, that it will carefully consider all waiver petitions, both within and outside the top 25 markets, in order to ensure that factually comparable petitions are resolved in a similar manner.

4. The second petition for reconsideration was filed by Holston Valley Broadcasting Corp. Holston is the licensee of a UHF television station, an AM station, and an FM station in the 86th television market, and is the proposed assignee of a second AM station in that market. Holston requested that the Commission reconsider its decision to prohibit common ownership of a television station and more than one radio station in the same service. This prohibition bars the Commission from evaluating waiver requests involving more than one radio station in the same service, even if the proposed radio-TV combination could be demonstrated to have unique public benefits. The Commission found that to preclude it from exercising its discretion and judgment to assess the costs and benefits of such combinations is detrimental to the public interest. Therefore, on reconsideration, the Commission determined that the flat prohibition against combinations involving common ownership of a television station and more than one radio station in the same service should be eliminated so that such proposed combinations could be evaluated on a case-by-case basis. Thus, the Commission granted Holston's petition for reconsideration and amended the multiple ownership rules accordingly.

5. *Final Regulatory Flexibility Analysis:* Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, a change was made to the final regulatory flexibility analysis in the *Second Report and Order*. The rule change will not have a significant impact on a substantial number of small entities because the modification of the rules adopted in the *Second Report and Order* simply permits the Commission discretion to evaluate waivers of the one-to-a-market rule involving more than radio station in the same service and a television station in the same market.

6. Therefore, *it is ordered*, pursuant to Sections 4(i) and 303 of the Communications Act of 1934, as amended, and Section 1.429(i) of the Commission's Rules, That the Petition for Reconsideration filed by Great American Television and Radio Co. is denied. *It is Further Ordered*, pursuant to Sections 4(i) and 303 of the Communications Act of 1934, as amended, and Section 429(i) of the Commission's Rules, That the Petition for Reconsideration and Clarification filed by Holston Valley Broadcasting Corp. *is granted* to the extent set forth above.

7. *It is further ordered* That Part 73 is amended effective upon adoption of this *Memorandum Opinion and Order*. *See* 5 U.S.C. 553(d)(1).

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Rule Amendments

Part 73 of the Code of Federal Regulations is amended to read as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, and 303.

2. Section 73.3555 is amended by revising Note 7 to read as follows:

§ 73.3555 Multiple ownership.

* * * * *

Note 7: The Commission will entertain requests to waive the restrictions of paragraph (b) of this section on a case-by-case basis. The Commission will look favorably upon waiver applications that meet either of the following two standards: (1) Those involving radio and television station combinations in the top 25 television markets where there will be at least 30 separately owned, operated and controlled broadcast licensees after the proposed combination, as determined by counting television licensees in the relevant ADI television market and radio licensees in the relevant television metropolitan market; (2) those involving "failed" broadcast stations that have not been operated for a substantial period of time, *e.g.*, four months, or that are involved in bankruptcy proceedings. For the purposes of determining the top 25 ADI television markets, the relevant ADI television market, and the relevant television metropolitan market for each prospective combination, we will use the most recent *Arbitron Ratings Television ADI Market Guide*. We will determine the number of radio stations in the relevant television metropolitan market and the number of television licensees within the relevant ADI television market based on the most recent Commmission ownership records.

Other waiver requests will be evaluated on a more rigorous case-by-case basis, as set forth in the *Second Report and Order* in MM Docket No. 87-7, FCC 88-407, released February 23, 1989, and *Memorandum Opinion and Order* in MM Docket No. 87-7, FCC 89-256, released August 4, 1989.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-18631 Filed 8-8-89; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 89-73; RM-6523]

Radio Broadcasting Services; Linden, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 275C2 for Channel 275A at Linden, Alabama, and modifies the Class A permit of Linden Radio Joint Venture, as requested, to specify operation on the higher powered channel, thereby providing that community with an additional expanded coverage FM service. See 54 FR 13533, April 4, 1989. Coordinates used for Channel 275C2 at Linden are 32-28-03 and 87-37-48. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-73, adopted July 11, 1989, and released August 3, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Linden, Alabama, is amended by removing Channel 275A and adding Channel 275C2.

Federal Communications Commission

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-18579 Filed 8-8-89; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 87-195; RM-5526 and RM-5587]

Radio Broadcasting Services; Bloomington and Nashville, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants the request of Bruce Quinn to allot Channel 236A to Nashville, Indiana to provide for its first local broadcast outlet. This channel can be allotted to Nashville in compliance with the Commission's minimum distance separation requirements using a site located at coordinates North Latitude 39-10-46 and West Longitude 86-15-47. The Commission rejected the request of Bloomington County Radio to allot Channel 236A to Bloomington, Indiana for non-commercial educational FM (NCE-FM) use, on a reserved or non-reserved basis. The Commission refused to reserve Channel 236A for NCE-FM use because Bloomington County Radio failed to show convincingly that harmful interference to reception of Indianapolis Channel 6 TV station could not be avoided when using one of the channels normally reserved for NCE-FM use. With this action, the proceeding is terminated.

DATES: Effective September 11, 1989; the window period for filing applications will open on September 12, 1989 and close on October 12, 1989.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-195, adopted June 27, 1989, and released July 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Nashville, Indiana, Channel 236A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy & Rules Division, Mass Media Bureau.

[FR Doc. 89-18640 Filed 8-8-89; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 87-493; RM-5912]

Radio Broadcasting Services; Columbia and Fulton, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 252C2 for Channel 252A at Columbia, Missouri, and modifies the license of Station KFMZ(FM). This action is taken in response to a petition filed by Contemporary Broadcasting, Inc. To accommodate the upgrade at Columbia, it is necessary to make a substitution at Fulton, Missouri. Thus, Channel 263A is substituted for Channel 249A at Fulton, and the license of Station KKCA is modified accordingly. With these actions, this proceeding is terminated.

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Douglas Minster, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 87-493, adopted June 30, 1989, and released August 4, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW; Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303

§ 73.202 [Amended]

2. 47 CFR 73.202(b), the Table of FM Allotments, is amended under Missouri by removing Channel 252A and adding Channel 252C2 at Columbia, and by removing Channel 249A and adding Channel 263A at Fulton.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-18632 Filed 8-8-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-103, Amdt. No. 192-61A]

Transportation of Gas by Pipeline; Marking of Materials

AGENCY: Office of Pipeline Safety, DOT

ACTION: Technical amendment.

SUMMARY: In Amendment No. 192-61, published in the **Federal Register** on Thursday, September 22, 1988 (53 FR 36793), § 192.63 was amended by removing paragraph (b) and redesignating paragraphs (c)-(e) as (b)-(d). However, in paragraph (a), the cross reference to the old paragraph (e) was inadvertently not changed to reference the redesignated paragraph (d). This document corrects paragraph (a) so that it references paragraph (d).

DATE: This amendment takes effect August 9, 1989.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 366-2392.

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 192

Pipeline safety, Materials, Marking.

Therefore, Part 192 of Title 49 of the Code of Federal Regulations is amended as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

§ 192.63 [Amended]

2. The text of § 192.63(a) is amended by removing "paragraph (e)" and adding in its place "paragraph (d)."

Issued in Washington, DC, on August 3, 1989.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 89-18561 Filed 8-8-89; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 90407-9170]

RIN 0648-AC74

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendment 12a to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). As approved by the Secretary of Commerce (Secretary), this rule will control the incidental harvest of certain species of crabs and Pacific halibut in commercial fisheries for groundfish in the U.S. exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands (BSAI) area. These regulations are necessary for the conservation and management of marine fishery resources in the EEZ of BSAI area and for the orderly conduct of groundfish fisheries.

EFFECTIVE DATE: September 3, 1989, through December 31, 1990.

ADDRESSES: Individual copies of Amendment 12a and the environmental assessment, regulatory impact review, and final regulatory flexibility analysis (EA/RIR/FRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (telephone 907-271-2809).

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter (Fishery Management Biologist, NMFS), 907-586-7229.

SUPPLEMENTARY INFORMATION: Domestic and foreign groundfish fisheries in the EEZ of the BSAI area are managed in accordance with the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP is implemented by regulations appearing at 50 CFR 611.93 and part 675.

The Council approved Amendment 12a to the FMP at its January 16-19, 1989 meeting for submission to the Secretary for review, approval and implementation under sections 304(a) and 305(c) of the Magnuson Act. The Secretary received Amendment 12a on April 4, 1989 and immediately began a review to determine its consistency with the Magnuson Act and other applicable law. The Director, Alaska Region, NMFS (Regional Director) determined that the amendment was consistent with the Magnuson Act and other applicable law. A notice of availability of Amendment 12A was published in the **Federal Register** on April 10, 1989 (54 FR 14256, correction at 54 FR 15302, April 17, 1989). Proposed implementing regulations were published on May 4, 1989 (54 FR 19199, correction at 54 FR 21343, May 17, 1989). The corrected notice of availability invited public review and comment until June 5, 1989 and the corrected notice of proposed rulemaking invited comments until June 12, 1989. Thirteen letters commenting on the amendment and its proposed implementing regulations were received and considered in developing this final rule. Several minor changes were made between the proposed and final rules for clarification purposes and are described later. A summary of, and response to, all comments received is given below.

Description

The purpose of Amendment 12A is to limit incidental catches of *Chionoecetes bairdi* Tanner crab, red king crab (*Paralithodes camtschatica*), and Pacific halibut (*Hippoglossus stenolepis*) by the groundfish fisheries in the BSAI area and thus minimize the impact of domestic groundfish fisheries on these species. Such incidental catches are referred to as bycatches in fisheries targeting other species. The FMP and its implementing regulations define these species of crabs and halibut as prohibited species which, if caught while fishing for groundfish, must be returned to the sea with a minimum of injury (§ 675.20(c)). Amendment 12a reflects an effort to balance potentially excessive bycatches of prohibited species in the groundfish fishery against added operating costs resulting from bycatch control regulations. As such, the Council has determined that the bycatch controls imposed by this amendment will provide the domestic groundfish fishery sufficient opportunity to harvest the total allowable catch of groundfish while keeping the wasteful discard of incidentally harvested prohibited species to a reasonable minimum.

To achieve this purpose, the Council proposed specification of prohibited species catch (PSC) limits for *C. bairdi* Tanner crab, red king crab and halibut and apportionment of these PSC limits among four specified groundfish fisheries. When a specified fishery reaches its apportionment of the PSC limit, it will be prohibited from fishing in certain areas or bycatch limitation zones for the remainder of the fishing year. A full description of Amendment 12A is given in the preamble to the proposed rule. The following is a summary of what it will accomplish.

Bycatch Limitation Zones

Three bycatch limitation zones are established (see Figure 2). Zones 1 and 2 would be identical to those under Amendment 10 to the FMP. A new halibut protection zone, Zone 2H, is established in that part of Zone 2 that is south of 56°30' N. latitude and between 165° and 170° W. longitude. These zones describe areas in which crab and halibut stocks are especially abundant. Approximately 88 percent of the total red king crab population of the Bering Sea and Aleutian Islands is estimated to be within Zone 1. About 98 percent of the *C. bairdi* Tanner crab population of the Bering Sea and Aleutian Islands is estimated to be within Zones 1 and 2 combined and about 60 percent in only Zone 2. Pacific halibut are more broadly distributed in the Bering Sea than are crab species. However, Zones 1 and 2H combined encompass an area known for high abundance of juvenile halibut and for seasonal migration of halibut between deep and shallower continental shelf waters. Sequential closing of these zones to groundfish fisheries which have attained their share of the PSC limits provides for a reduction in bycatch rates without prohibiting the fisheries access to all Bering Sea groundfish resources.

An area within Zone 1, south of 58° N. latitude and between 160° and 162° W. longitude, is closed to all fishing with trawl gear. The western boundary of this closed area will be extended to 163° W. longitude during the period March 15 through June 15. This closed area will protect a significant portion of the red king crab and *C. bairdi* Tanner crab stock from trawl gear. An exception to the closed area and its seasonal extension is provided in that part of the area south of a line approximating the 25 fathom isobath. This exception applies only to directed fishing for Pacific cod, provided that a PSC limit of 12,000 red king crabs is not exceeded. The purpose of this exception is to allow fishing for Pacific cod in that part of the closed area in which crab bycatch has been demonstrated to be relatively low.

Fisheries

For purposes of this action, two domestic annual processing (DAP) fisheries and two joint venture processing (JVP) fisheries are defined as follows:

(a) "DAP flatfish fishery" means DAP fishing which, on a weekly basis, retains yellowfin sole, rock sole, and "other flatfish" in the aggregate that is 20 percent or more of the total amount of groundfish retained.

(b) "DAP other fishery" means DAP fishing which, on a weekly basis, retains any other combination of groundfish species that would not qualify such fishing as a "flatfish fishery."

(c) "JVP flatfish fishery" means JVP fishing which, on a weekly basis, delivers yellowfin sole, rock sole, and "other flatfish" in the aggregate to foreign vessels that is 20 percent or more of the total amount of groundfish delivered.

(d) "JVP other fishery" means JPV fishing which, on a weekly basis, delivers to foreign vessels any other combination of groundfish species that would not qualify such fishing as a "flatfish fishery."

Foreign directed fishing would not be affected by this rule. Existing PSC limits specified in the foreign fishing regulations (§ 611.93) would apply to foreign fishing if any allocation of groundfish in the BSAI area is made to foreign directed fishing during the effective period of this rule.

PSC Limits

For *C. bairdi* Tanner crab, the PSC limit is 1,000,000 animals in Zone 1 and 3,000,000 animals in Zone 2. For red king crab, which are distributed almost entirely within Zone 1, the PSC limit is 200,000 animals in Zone 1. Bycatches of these crab species within the two bycatch limitation zones would be counted against the respective PSC limits. The PSC limit for Pacific halibut is applied differently. Because halibut are more broadly distributed than crabs, bycatches of halibut anywhere in the BSAI area are counted against a primary PSC limit of 4,400 metric tons (mt) which would lead to closures of Zones 1 and 2H and a secondary PSC limit of 5,333 mt which would trigger a closure of the entire BSAI area.

These PSC limits were the subject of negotiations between trawl fishing industry representatives and those of the crab and halibut fishing industries. Determination of the PSC limits began with the best available scientific information on the abundance and distribution of the specified crab and halibut species, and their rate of bycatch in fisheries for certain species of groundfish, and proceeded in public meetings of the Council's Bycatch Committee during 1987 and 1988. In addition, the Council heard extensive public debate and testimony during 1988 and at its January 1989 meeting on this issue. Although a consensus was not achieved and some PSB limits remain controversial, the Council determined that the bycatch control measures in Amendment 12a achieve the desired balance between excessive bycatch and unreasonably prohibitive bycatch control. Due to the unique blend of allocative and biological concerns represented in this bycatch control issue, the Secretary is not substituting his judgement for that of the Council's in determining that the PSC limits should be, if any. Instead, the Secretary limited review of Amendment 12a to the question of whether the Council's recommended PSC limits are consistent with the Magnuson Act and other applicable law. NOAA has determined, and the Secretary has concurred with the finding, that they are consistent with applicable statutes.

Apportionment, Monitoring and Enforcement of PSC Limits

Each PSC limit will be apportioned among the four specified fisheries in proportion to the anticipated bycatch of each fishery. Anticipated bycatches for a fishing year will be derived from a mathematical model which predicts the total annual unconstrained bycatch by each fishery based on known or estimated bycatches from the most recent previous years. The proportion of a fishery's predicted bycatch to the total predicted bycatch of a species will be the share of that species' PSC limit apportioned to that fishery, or its PSC allowance, in that fishing year.

Each PSC allowance will be determined annually by the Regional Director in consultation with the Council and made available for public comment concurrently with the notice of preliminary initial specification of harvestable amounts of groundfish required under § 675.20(a)(6). A final notice of PSC allowances also will be published concurrent with the final notice of initial specifications. Existing authority to make inseason adjustments to PSC allowances is revised to allow correction of a PSC allowance that was initially incorrectly specified due to a calculation error or wrong assumption in predicting a fishery's bycatch.

Since this amendment is implemented during 1989, the above procedure for specifying PSC allowances for the 1989 fishing year was not followed exactly. Instead, proposed PSC allowances were published in Table 2 of the proposed rule (at 54 FR 19205) and comments on them were specifically requested. No comments on the proposed PSC allowances per se were received. The PSC allowances in Table 2 of this notice serve as the final notice of initial specification of the PSC allowances for the 1989 fishing year.

Observed or estimated bycatches of crabs and halibut caught with groundfish will be counted and totals estimated using standard statistical procedures. The total bycatch of crabs and halibut reported or estimated for any one week (Sunday through Saturday) reporting period will be credited to the bycatch allowance of the DAP or JVP "flatfish fishery" if the total amount of groundfish retained or delivered during that reporting period is composed in the aggregate of 20 percent or more of yellowfin sole, rock sole, and "other flatfish." If the total amount of groundfish retained or delivered in any one week reporting period is composed of any other combination of groundfish species which does not qualify as "flatfish," then the total amount of crabs and halibut taken as bycatch during that week will be credited to the bycatch allowance of the DAP of JVP "other fishery." In the absence of observers on DAP fishing vessels, crab and halibut bycatches in the DAP fisheries will be calculated from estimated bycatch rates, based on the best available information.

For DAP bycatch accounting purposes, discriminating between the "flatfish" and "other" fisheries will be based on a blend of data from the weekly catch/receipt reports required of catcher/processors and mothership/processors under § 675.5(a)(3)(iv) and the fish ticket reports required of all DAP fishing vessels under § 675.5(a)(1). For purposes of determining when a PSC allowance for a DAP fishery will be attained, the Regional Director may forecast bycatches of crabs and halibut based on recent weekly catch/receipt and fish ticket reports and any pertinent observer reports.

Any catch of groundfish by U.S. fishermen, on a weekly basis, will occur within one of the four specified fisheries as defined above and bycatches will be credited accordingly against the PSC allowance of the respective fishery. Theoretically, PSC limits will not be exceeded since attainment of a fishery's PSC allowance in a bycatch limitation zone or area will trigger closure of that fishery in that zone or area. For example, when the "DAP flatfish fishery" attains its PSC allowance of

BEST COPY AVAILABLE

either *C. bairdi* Tanner crab or red king crab in Zone 1, then the Secretary will prohibit DAP directed fishing for yellowfin sole, rock sole, and "other flatfish" for the remainder of the fishing year in Zone 1. Directed fishing is defined at § 675.2. Attainment of a PSC allowance of an "other fishery" however, would not trigger closure of directed fishing for all other species. Instead, this rule provides only for the closure of directed fishing for Pacific cod and pollock with bottom trawl gear when the PSC allowance of the "other fishery" is attained. Fishing for other species in the "other fishery" with bottom trawl gear and fishing with off-bottom or mid-water trawl gear could continue. The reason for this difference between responding to attainment of the PSC allowance of the "flatfish fishery" and that of the "other fishery" is that bycatches of halibut and crabs appear to be significant in the "other fishery" only when fishermen target Pacific cod and pollock with bottom trawl gear.

In addition, the monitoring of the PSC allowances for halibut differs somewhat from that of the PSC allowances for crabs. A fishery's bycatches of red king crab and *C. bairdi* Tanner crab taken within a bycatch limitation zone that accrue to a crab PSC allowance for that zone will trigger closure of that zone to that fishery. Bycatches of Pacific halibut anywhere in the BSAI area, however, accrue to the primary and secondary PSC allowances for halibut. Attainment of the primary PSC allowance by a fishery will trigger closure of Zones 1 and 2H to that fishery. If that fishery subsequently attains its secondary PSC allowance, it will be prohibited from the entire BSAI area. The reason for this difference in enforcing the PSC allowances of crabs and halibut is that halibut are more broadly distributed on the eastern Bering Sea shelf than are crabs.

Specific Changes From the Proposed Rule in the Final Rule

No substantive changes are made in the final rule as a result of review of and comment on the proposed rule. Several minor wording changes in the preamble and regulatory text are made to improve clarity, however. The first involved a slight change in the definition of a DAP or JVP "other fishery." In the proposed rule and preamble, a DAP other fishery means "DAP fishing which, on a weekly basis, retained groundfish that is 95 percent or more pollock, or 50 percent or more pollock and Pacific cod in the aggregate, or any other combination of groundfish species that would not qualify such fishing as a "flatfish fishery." Similar language was used with respect to the meaning of a JVP "other fishery." NOAA considered this definition too cumbersome since the operative language is "* * * any combination of groundfish species that would not qualify such fishing as a "flatfish fishery." A weekly aggregate catch of groundfish that is retained by a DAP operation or delivered to foreign vessels in a JVP operation must be categorized as either a "flatfish fishery" or an "other fishery" for bycatch accounting purposes. There is no way for a weekly aggregate of groundfish to be categorized differently. To make this intent and meaning clear, the phrase "groundfish that is 95 percent or more pollock, or 50 percent or more pollock and Pacific cod in the aggregate, or," is deleted from the preamble and regulatory text of the final rule (§ 675.21(b)(3) (ii) and (iv)).

The second change involves the Secretary's inseason management authority at § 675.20(e)(4). This paragraph provides for the adjustment of a TAC, PSC limit or PSC allowance that is determined by the Regional Director to be incorrectly specified given the actual performance of a fishery during the fishing season which is different from that predicted. The inseason management authority accommodates such differences by allowing discretion to correct previously specified PSC allowances. To clarify this authority in a way which is consistent with the preamble of the proposed rule point, NOAA had added the words "and harvest" to the first sentence of § 675.20(e)(4) after the phrase "* * * concerning the biological stock status * * *" and added the phrase "or to allow redistribution of uncaught PSC allowances among fisheries" at the end of the paragraph.

Another change from the proposed rule to the final rule involves language in § 675.20(e)(4). The adjective "best" is added before "available scientific information" and the phrase "and harvest" is added after "biological stock status" to indicate that harvest data will also be used by the Regional Director to determine correctness of PSC limits and PSC allowances for a given species.

Also, in the proposed rule the latitude for one of the coordinates for the definition of *Bycatch Limitation Zone 2H*, was incorrectly listed as 55° 44'. This latitude in the final rule has been corrected to read 55° 42'.

Comments Received

Fourteen letters of comment on the proposed rule were received prior to the end of the comment period on June 12, 1989. Three letters of comment were received after the close of the comment period, but the substance of these letters presented no issue or point of view uniquely different from the other letters. Most of the letters in opposition to the proposed rule reiterated common themes such as discontent with the restrictiveness of the rule and questioned its fairness. Similar comments are summarized as a single comment. All unique comments are treated separately.

Comment 1: The PSC limits are too low, unnecessarily restrictive, and will cause severe economic impacts in excess of $100 million on the trawl fisheries when areas are closed. As such, Amendment 12A constitutes a "major rule" under Executive Order 12291 (E.O. 12291). PSC limits should not be expressed as fixed amounts but rather as proportions of the total population of the prohibited species in the area.

Response: This opinion was reiterated in most of the letters written in opposition to Amendment 12A. It reflects a view that any bycatch limit is too low that inhibits the catch of groundfish by a fisherman with an "average" unconstrained bycatch rate. This view is inconsistent with the Council's policy of limiting the bycatch of crabs and halibut in the groundfish fisheries to less than what would be taken in unconstrained groundfish fisheries. The objective of Amendment 12a is to reduce the biological and economic effect of the groundfish fisheries on fisheries for crabs and halibut from what it would be without such control. This action implementing Amendment 12a is intended to modify unconstrained fishing behavior so as to reduce bycatch rates.

There is no question that modifying behavior by requiring compliance with a rule is achieved at some cost. NOAA would agree that a rule is unnecessarily restrictive if the cost of compliance is excessive relative to its biological, economic, social and environmental benefits. In this instance, the behavior modification cost to trawlers is not clear. Although the regulatory impact analysis indicates that forgone groundfish and profits to the groundfish fishery under this rule could produce negative benefits, such a scenario is based on an assumption that trawl fishermen will not modify their fishing behavior from what it would be with no bycatch controls. NOAA does not believe that this scenario, although analytically useful, is realistic. The groundfish trawl fishing fleet is more likely to respond to the potential for lost revenues by modifying fishing patterns and practices to reduce bycatch rates, and thereby mitigate any negative impacts on their profits. The Council heard considerable public testimony at its January 1989 meeting that, given imposition of the Amendment 12a bycatch controls, the groundfish fishery would use all available technology and expertise to reduce the bycatch of crabs and halibut to avoid costly area closures. In addition, NOAA is persuaded by the positive response to similar bycatch limits imposed on the foreign fisheries in 1983 and on the JVP fishery in 1985 which resulted in substantial reduction in observed bycatch rates without apparently costing those fisheries significant forgone groundfish harvests.

In any event, this action has been thoroughly reviewed for consistency with E.O. 12291 and other applicable law. To the extent that net quantifiable benefits may not occur despite the best efforts of trawl operators to reduce bycatches by modifying fishing behavior, unquantifiable environmental benefits still warrant taking this action. Such benefits include the reduction of crab and halibut mortality from encounters with trawl gear that do not result in their capture.

NOAA agrees that PSC limits expressed as a proportion would better accommodate changes in population abundance of crabs and halibut. This rule, in which the PSC limits are established as fixed amounts, however, will be effective only through 1990, or less than 18 months. In addition, the recommended PSC limits are based on the most recent (1988) estimates of crab and halibut population sizes. Therefore, NOAA finds that the recommended PSC limits as fixed amounts are acceptable.

Comment 2: The PSC limits on crabs violate National Standards 1, 2 and 4. The proposed rule violates National Standard 4 in that it discriminates between categories of U.S. harvesters and does not allocate PSC limits fairly and equitably. The proposed bycatch controls are not equitable in that crab bycatches in the crab fishery may be far in excess of bycatches in the trawl fishery. Amendment 12a ignores the bycatches of the longline (pot and hook) fisheries for groundfish. The assumption that the trawl fleet is the culprit in the bycatch issue is unfounded and there is inequity in the treatment between trawl and other gear types.

Response: National Standard 1 requires management measures to prevent overfishing while achieving optimum yield from each fishery (Magnuson Act section 301(a)(1)). The prescribed PSC limits serve to prevent overfishing of crab stocks by imposing a constraining limit on crab bycatches in the groundfish fishery, even though the bycatch mortality of crabs from trawl gear is not solely responsible for changes in crab abundance. In the same way, the PSC limits also assure that the optimum yield in the crab fishery is achieved insofar as impacts from the groundfish fishery affect that optimum yield of crabs. Achievement of the optimum yield of groundfish is assumed, providing trawl operators respond positively to the incentive to reduce their bycatch rates. In making this assumption, NOAA relies on previous experience controlling the prohibited species bycatches in the foreign and JVP groundfish fisheries.

National standard 2 requires that management measures be based on the best available scientific information. After review of the environmental and regulatory impact analysis supporting this action, NOAA finds that it is consistent with this standard. The analysis is based largely on crab distribution and abundance estimates derived from the 1988 crab survey of the Eastern Bering Sea performed by NMFS crab biologists. These estimates will not be revised until after the 1989 survey is complete, probably in September 1989. Bycatch assumptions used in the analysis are based on observed bycatch rates in the 1987 and 1988 JVP groundfish fisheries. NOAA recognizes the statistical limitations of its crab biomass estimates and of extrapolating the performance of DAP fisheries from JVP fisheries. However, a better and equally practical analytical approach is not apparent.

National Standard 4 prohibits management measures from discriminating between residents of different states and requires any allocation of fishing privileges to be fair and equitable, to promote conservation, and be carried out so that no particular individual, corporation or other entity acquires an excessive share of such privileges. The bycatch restrictions of this rule do not discriminate between residents of different states as trawl fishermen from all states are equally burdened to operate within the specified PSC limits.

Inherent in any allocation is the advantaging of one group to the detriment of another. To be fair and equitable, an allocation of fishing privileges should be rationally connected to the achievement of optimum yield and to an objective of an approved fishery management plan. For the reasons discussed in response to the previous comment, NOAA believes that the bycatch control measures imposed by this rule enhance the achievement of the optimum yield to the red king and *C. bairdi* Tanner crab fisheries while not necessarily preventing achievement of the groundfish optimum yield. Hence, these bycatch control measures are rationally connected to the achievement of the optimum yields of crabs and groundfish. Moreover, they serve to carry out one of the expressed management objectives of the FMP, that is, to minimize the impact of groundfish fisheries on prohibited species such as crabs and halibut (FMP at section 14.1).

In addition, an allocation scheme may promote conservation (in the sense of wise use) by optimizing yield in terms of size, value, market mix, price, or economic or social benefit of the product. The observed bycatch of crabs and halibut in the groundfish trawl fishery is composed mostly of small, pre-recruit animals. By catching and discarding these animals with probable 100 percent mortality, the groundfish fishery preempts the productive use of the discards in the crab and halibut fisheries and the associated economic and social benefits. On the other hand, PSC limits that prevent harvesting the groundfish optimum yield when every effort is made by that fishery to avoid excessive bycatches also would not be considered wise use of the crab and halibut resources. This is the essence of the allocative balance between allowing relatively unconstrained fishing for groundfish with trawl gear and limiting that fishery's use of other resources that may have potentially adverse affects on other fisheries. After lengthy debate and study, the Council appears to have made a reasonable management recommendation that strikes an appropriate balance between these competing interests.

NOAA recognizes the difficult judgement necessary in making such allocative management decisions. By implementing the Council's bycatch control recommendations in Amendment 12a, NOAA is not making any assumption that the trawl fleet is the culprit in the bycatch issue. Although it is true that about 82 percent of the catcher vessels with current Federal permits to harvest groundfish off Alaska operate longline (pots and hooks) gear, about 92 percent of the groundfish harvest through June 10, 1989 has been taken by trawl gear. While bycatch data on the groundfish longline fisheries are scant, based on the relative distribution of groundfish harvest among gear types it may be assumed that trawl gear takes most of the total prohibited species bycatch taken in all groundfish fisheries.

The bycatch of red king crabs in the *C. bairdi* Tanner crab fishery also is

acknowledged along with the bycatch of female and small male red king crabs in the red king crab fishery. The control of such bycatches is properly done by the State of Alaska Department of Fish and Game (ADF&G) in cooperation with the Council under terms of the fishery management plan for Bering Sea crabs. The ADF&G closed the Tanner crab fishery in the Bering Sea on May 7, 1989 partly because of excessive red king crab bycatches (ADF&G emergency order no. 4–S–09–89). Other reasons included the imminent molting period during which time bycatch mortality increases, and a lower than expected catch per unit effort. Further, a complete closure of the red king crab fishery is possible due to the current severe low abundance of this species although this decision will not be made by the ADF&G until after the 1989 crab survey is complete. Hence, NOAA does not perceive an unfair bycatch regulatory burden being imposed on trawlers. Moreover, the focus on this rule is control of the bycatch effects of one fishery on others, i.e., the effect of the groundfish trawl fishery on crab and halibut fisheries. Bycatches of crabs in the crab fishery and of groundfish in the groundfish fishery also may be problems on which the Council may make regulatory recommendations to the Secretary in the future.

Comment 3: The boundaries of the closed area are inappropriately specified, the northern boundary being too far north and the eastern boundary being too far east. Seasonal expansion of the closed area is unjustified and was established by the Council without opportunity for public comment. Midwater trawling should be exempt from the area closed to all trawl gear since midwater trawl gear accounts for little bycatch of crabs and halibut. For halibut conservation purposes there is no need for a year-round area closure.

Response: NOAA acknowledges that crabs and halibut in the area closed to fishing with trawl gear under § 675.22 probably move in and out of the area. Exactly how many crabs and halibut are protected at any one time from encountering trawl gear within this area is unknown. Based on the 1988 crab survey, the area south of 58°00′ N. latitude and between 160°00′ and 162°00′ W. longitude contained about 22 percent of the red king crab population. Of this amount, an estimated 37 percent were mature males (110–199mm) and 38 percent were mature females (90–199mm). Surveys in earlier years showed larger proportions of the red king crab population within the closed area indicating that crab distribution will vary between years. The 1989 crab survey may indicate an increase or decrease in the proportions of the total red king crab population encompassed by the closed area boundaries. However, NOAA finds that current data indicate that a significant portion of the population of this crab species is protected by the closed area.

The seasonal expansion of the closed area to 163°00′ W. longitude will bring an additional 52.3 percent of the total red king crab population under protection during the critical molting and mating period when their shells are soft and more vulnerable to damage from trawl gear. Shifting the northern boundary of this area one half degree latitude south and the eastern boundary one degree longitude west would remove about 15 percent of the total red king crab population from the protection of the closed area. While this is not a large portion of the total population, it would constitute a significant dilution of the protective effect of the closed area for red king crabs.

The Council decided to expand the closed area, after receiving public testimony, on the basis of scientific response to questions developed during Council discussion. NOAA does not find that such a discovery process obviates public comment during the rulemaking process and further that the public has been afforded additional comment opportunity during the public review of the proposed rule.

As its name implies, midwater or off-bottom trawl gear usually does not operate in contact with the sea bottom where crabs live. Therefore, such trawl gear often has substantially lower bycatch rates than bottom trawl gear. This appears especially true when midwater gear is used during the first four months of the year to harvest pollock in spawning aggregations. However, midwater trawl gear can be rigged at other times to catch fish very close to the sea bottom, for example, pollock in more dispersed feeding schools during the summer. The bycatch rates of midwater gear operated close to the bottom may be significantly higher than when the gear is operated higher in the water column. As such, there is no way for NOAA to verify whether any particular midwater trawl is being operated at a depth which will minimize its bycatch. NOAA, therefore, has no reason to change the constraint on using midwater trawl gear in the closed area.

NOAA agrees that halibut are widely distributed on the Bering Sea continental shelf and that the closed area by itself offers little overall bycatch protection to halibut. However, the closed area includes an area north of the Alaska Peninsula in which juvenile halibut are particularly abundant. Any relocation of the trawl fleet to other areas that contain older fish would serve to decrease the effect of trawl bycatches on recruitment to the halibut fishery. Any benefits of the closed area in this regard are highly uncertain, however. The principal purpose of the closed area is the protection of red king crabs and, to a lesser extent, *C. bairdi* Tanner crabs and halibut.

Comment 4: The 1989 JVP fishery has left the DAP fishery with too little king crab PSC limit relative to its uncaught groundfish quota.

Response: The JVP fisheries in 1989 to date have operated from January 1 through March 12. Preliminary observer data from these fisheries indicate that a total 175,657 red king and 153,371 *C. bairdi* Tanner crabs were taken in Zone 1. An additional 82,729 *C. bairdi* Tanner crabs were taken in Zone 2 and 560 mt of halibut were taken in the BSAI area. Any of these bycatch amounts that meet or exceed the specified PSC allowances for the two JVP fisheries will trigger appropriate area closures; however, the rule does not provide for deducting bycatches in excess of a PSC allowance from other PSC allowances. Hence, DAP fisheries will be unaffected by excessive bycatches in, for example, the JVP flatfish fishery, because DAP estimated red king crab bycatch would be counted retroactively against the PSC apportionment of the DAP flatfish fishery. This provision implements the intent of the Council not to sanction all fisheries with an area closure due to the excessive bycatches of a single fishery.

Ordinarily, bycatches of the four fisheries would not exceed their respective PSC allowances because their attainment would trigger area closures. Since the sum of the PSC allowances equals the PSC limit for a species, prompt closures would ensure that PSC limits also will not be exceeded. Due to the effective date of this rule late in the 1989 fishing year, however, some PSC allowances may be exceeded. The amounts by which PSC allowances are exceeded in 1989, if at all, are not expected to be significantly damaging to the biological welfare of crabs and halibut or the economic welfare of crab and halibut fisheries.

Comment 5: Without requiring observers on DAP fishing vessels, estimates of bycatch in the DAP fisheries will be faulty due to:

(a) Reliance on voluntary submission of catch data,

(b) Estimates of DAP bycatch based on extrapolation from JVP bycatch data from earlier years when JVP fishing behavior was modified by incentives not applicable to DAP, and

(c) Large error inherent in estimator calculations. How does such voluntary compliance and extrapolation of bycatch rates to DAP fisheries prevent overfishing and comply with National Standard 2? The system of accounting for DAP bycatches will confer an excessive privilege on DAP fishermen compared with JVP fishermen. Amendment 12A should be changed to include a comprehensive observer requirement and incentives to reduce bycatches at the company or individual vessel levels.

Response: NOAA agrees that full observer coverage on all fishing vessels sorting trawl-caught groundfish, as is currently the case in JVP fisheries, provides the most accurate estimate of prohibited species bycatch. Such observer coverage on DAP fishing vessels currently is not available. NOAA believes, however, that realistic estimates of DAP bycatches can be derived from a variety of other data sources. One of these sources is the DAP catch data reports. These reports are required under § 675.5 and are not voluntary. Catches and receipts of groundfish by catcher/processor and mothership/processor vessels are submitted weekly by the vessel operator and are corroborated by unannounced inspections at sea and by State of Alaska fish tickets which are required of all vessels fishing off Alaska. All catcher/processor and mothership/processor vessels also must check in and out of each statistical area in which they operate. NOAA scientists will estimate unobserved DAP bycatches based on the species composition of harvested groundfish, the time and location of harvests, comparison with known bycatch rates from previous similar fisheries, and any other relevant data. This may involve extrapolation from JVP bycatch data from earlier years. NOAA acknowledges the statistical limitations and implications of this approach. It will be consistent with National Standard 2, however, if it is based on the best available scientific information.

Any estimation of the amount of crabs and halibut taken as bycatch will be subject to error. Bycatch estimates of unobserved catches probably will have a greater error than observed catches. The NMFS, therefore, will make conservative assumptions in determining whether a DAP fishery has attained its PSC apportionment. In addition, the NMFS intends to make ample use of the marine resource observers authorized under the Marine Mammal Protection Act to substantiate estimates of DAP bycatch rates as the DAP fisheries are being conducted. Hence, the system used to estimate unobserved DAP bycatches is not likely to permit DAP fisheries to have significantly larger bycatches than their PSC allowances. NOAA agrees, however, that this system, although adequate in this situation, is not perfect and does not provide sufficient incentive for individual vessel operators to reduce their bycatch of prohibited species. NOAA will encourage the Council to this end as it prepares future bycatch management recommendations to succeed Amendment 12a.

Comment 6: At sea enforcement will be difficult and sometimes impossible. All DAP vessels should be required to maintain daily catch logs, offload all product when any one area is closed to one DAP fishery and not the other, or the fisheries should be defined on a tow-by-tow and retained-on-board basis.

Response: NOAA acknowledges that the assignment of prohibited species bycatches to one of the four defined fisheries based on weekly catch reports cannot be verified at sea. Closure of one DAP (or JVP) fishery and not the other will be enforced through the use of the directed fishing definition (§ 675.2). For example, when the "DAP flatfish fishery" attains its PSC allowance of red king crab in Zone 1, then the Secretary would prohibit DAP directed fishing for yellowfin sole, rock sole, and "other flatfish" for the remainder of the fishing year in Zone 1. According to the directed fishing definition, such a prohibition would mean that any DAP fishing vessel in Zone 1 would be in violation if it were found to have retained yellowfin sole, rock sole, and "other flatfish," in the aggregate, amounting to 20 percent or more of the total amount of fish and fish products on board, as calculated in round-weight equivalents. NOAA agrees also that the maintenance of daily catch logs would document when and where catches of groundfish were made by a DAP fishing vessel. Although the Council has recommended requiring daily catch and production logs to be implemented for the 1990 fishing year, they currently are not required.

Comment 7: Closure of Zones 1 and 2H to a fishery on attainment of its primary halibut PSC allowance will be of minimal value in controlling the effects of halibut bycatch. Bycatch management for halibut should emphasize actual removals on a BSAI-wide basis. The PSC limit for halibut is too high. It would be increased from 1,325 mt under Amendment 10 to 5,333 mt under Amendment 12a at a time when the exploitable biomass of halibut appears to be declining at about 5 percent per year. The Alaska-wide halibut bycatch mortality should not exceed 6,000 mt since this is the 10-year average under which the halibut resource has rebuilt itself from previous declines. The halibut PSC allowances for the DAP fisheries should be monitored by using a predictive model in the absence of on-board observers. Bycatch controls should incorporate incentives for individual fishermen to reduce bycatch rates.

Response: NOAA is aware of recent scientific work suggesting that species composition of the groundfish catch has the single most important influence on halibut bycatch rates. This work appears to discount previous information showing the distribution of juvenile halibut. The recommendation to close Zones 1 and 2H at some primary level of bycatch was based in part on this distribution information. Although the biological value to halibut of closing these zones to groundfish fishing at certain times remains to be seen, such closures may have value also in the protection of other prohibited species and in providing incentive for groundfish fishermen to avoid bycatches of halibut. NOAA agrees that this approach does not provide ideal incentives to the individual vessel operator, and will consider such an approach in the future.

The principal reason why the halibut PSC limit is higher than it was under Amendment 10 (implemented in 1987 and 1988 at 52 FR 8592, March 19, 1987) is that the bycatch of more groundfish fisheries is being counted against the PSC limit than was done under Amendment 10. NOAA finds the goal of an Alaska-wide halibut bycatch of 6,000 mt reasonable, but notes that any significant increase in bycatch is likely to be reflected in a reduction of catch limits for halibut fishermen in future years. Although this may not be a desirable effect, it is in the judgment of the Council and the Secretary, a reasonable balance between excessive bycatch and prohibitive bycatch control. At lower levels of halibut biomass, this balance may more reasonably be struck at a PSC limit less than 6,000 mt Alaska-wide or 5,333 mt for the BSAI area.

Comment 8: What amount of bycatch of crabs would be considered statistically and biologically significant? The PSC limits for crab species should be established at 1 percent or 2 percent of the total crab population.

Response: A key feature of the controversy over the establishment of crab PSC limits was the biological significance of crab bycatch mortality to the overall crab population. The Council's Scientific and Statistical Committee advised that, with current crab survey methods, a removal of 1 percent of the total population of a crab species would not be detected. Trawl fishing interests who had proposed 1 percent of the population as a PSC limit interpreted this advice as confirmation of a biologically acceptable bycatch amount.

In 1988, the total red king crab population was estimated to be about 40 million animals. The precision of this estimate, however, is such that the true abundance of red king crabs in 1988 had a 95 percent probability of being within the range of 21 million to 59 million animals. With this kind of precision, the removal of the 1 percent PSC limit of 400,000 animals probably would not be statistically significant. However, at very low population levels, say the lower end of the probable abundance range, 400,000 animals may be biologically meaningful to the regenerative potential of the stock. Clearly, there is no simple biologically or scientifically "correct" PSC limit. Instead, the best PSC limit is the one that strikes the best balance between excessive bycatch and prohibitive regulation. These are admittedly qualitative terms that suggest some optimum among competing objectives. NOAA suggests that this optimum is practically impossible to discover or prove scientifically.

Comment 9: There should be provision for reapportionment of PSC allowances among fisheries concurrent with the reapportionment of TAC between JVP and DAP.

Response: NOAA agrees. Such authority was contemplated in the proposed rule at § 675.20(e)(4) and discussed in the preamble to the proposed rule (page 19201, center column at 54 FR 19199, May 4, 1989). To clarify this intent, however, the language of § 675.20(e)(4) has been slightly revised in the final rule.

Comment 10: Amendment 12A complies with the National Standards of the Magnuson Act and should be approved. Domestic trawling is supposed to be closely monitored in the winter halibut saving area according to the FMP. Since the bycatch of halibut tends to be of juvenile animals, the impact on the commercial halibut fishery will be delayed two to four years. Halibut bycatch was reduced by foreign fleets even with an increasing halibut population. Therefore, Amendment 12a is not overly restrictive and should be implemented.

Response: Comment noted.

Classification

The Regional Director has determined the FMP Amendment 12a is necessary for the conservation and management of the BSAI area groundfish fisheries and that this amendment is consistent with the provisions of the Magnuson Act, and other applicable law.

The Council prepared an environmental assessment (EA) for these amendments. The Assistant Administrator for Fisheries concluded that there will be no significant impact on the environment as a result of this rule. A copy of the EA may be obtained from the Council at the address above.

The Under Secretary of Commerce for Oceans and Atmosphere of NOAA (Under Secretary) determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the EA/RIR/FRFA prepared by the Council which concluded that past industry performance and public testimony indicate that the trawl fisheries will be able to reduce their bycatch rates of halibut and crab and avoid early closures. Although some scenarios discussed in the RIR, projected profit losses to the trawl fisheries in excess of $100 million, NOAA believes that the groundfish trawl fishing fleet will respond to the potential for lost revenues by modifying fishing patterns to reduce bycatch rates, thereby mitigating any negative impacts on their profits. A copy of the EA/RIR/IRFA may be obtained from the Council at the address above.

The Under Secretary concludes that this rule would have significant effects on small entities. These effects have been discussed in the EA/RIR/IRFA, a copy of which may be obtained from the Council at the address above. The Under Secretary determined that this rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State agencies failed to comment within the statutory time period.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects

50 CFR Part 611

Fisheries, Foreign fishing.

50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: August 4, 1989.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 611 and 675 are proposed to be amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. Section 611.93 is amended by adding paragraph (b)(5) effective through December 31, 1990, to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(b) * * *

(5) *Receiving groundfish prohibited.* (i) Whether or not a nation receives a notice under paragraph (b)(3)(ii) of this section, receipts of U.S.-harvested groundfish that are composed of yellowfin sole, rock sole, and "other flatfish" in the aggregate in any amount greater than or equal to 20 percent of the total amount of groundfish received is prohibited in any bycatch limitation zone or statistical area defined in § 675.2 of this Title when the JVP bycatch allowance pertaining to such bycatch limitation zone or statistical area, as specified under § 675.21 of this Title, has been attained.

(ii) Whether or not a nation receives a notice under paragraph (b)(3)(ii) of this section, receipts of U.S.-harvested groundfish that are caught with bottom trawl gear and composed of pollock and Pacific cod in the aggregate in any amount greater than or equal to 20 percent of the total amount of groundfish received is prohibited in any bycatch limitation zone or area defined in § 675.2 of this Title when the bycatch allowance pertaining to such bycatch limitation zone or statistical area, as specified under § 675.21 of this Title, has been attained.

* * * * *

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS

3. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 675.2, two new definitions, *Bottom trawl* and *Bycatch limitation zone 2H* are added in alphabetical order, the definitions, "Bycatch limitation zone 1 (Zone 1)" and "Bycatch limitation zone 2 (Zone 2)" are revised and the definition of "statistical area" is amended by revising the introductory text, redesignating paragraphs (f), (g), (h), and (i) as (h), (i), (j), and (k) respectively, and adding new paragraphs (f) and (g), effective through December 31, 1990, to read as follows:

§ 675.2 Definitions.

* * * * *

Bottom trawl means a trawl in which the ground rope of the net is equipped with bobbins or roller gear.

Bycatch limitation zone 1 (Zone 1) means that part of the Bering Sea Subarea that is south of 58°00' N. latitude and east of 165°00' W. longitude (Figure 2).

Bycatch limitation zone 2 (Zone 2) means that part of the Bering Sea Subarea bounded by straight lines connecting the following coordinates in the order listed (Figure 2):

North latitude	West longitude
54°30'	165°00'
58°00'	165°00'
58°00'	171°00'
60°00'	171°00'
60°00'	179°20'
59°25'	179°20'
54°30'	167°00'
54°30'	165°00'

Bycatch limitation zone 2H means that part of the Bering Sea Subarea bounded by sraight lines connecting the following coordinates (Figure 2):

North latitude	West longitude
54°30'	165°00'
56°00'	165°00'
56°30'	170°00'
55°42'	170°00'
54°30'	167°00'
54°30'	165°00'

* * * * *

Statistical area means any one of the eleven statistical areas of the Bering Sea and Aleutian Islands management area defined as follows (Figure 2):

* * * * *

(f) Statistical area 516—that part of Statistical area 511 that is south of 58° N. lat. and between 162° and 163° W. long.;

(g) Statistical area 517—that part of Statistical area 513 that is south of 56°30' N. lat. and between 165° and 170° W. long.;

* * * * *

5. In § 675.7, paragraph (c) is revised and new paragraph (d) is added, effective through December 31, 1990, to read as follows:

§ 675.7 Prohibitions.

* * * * *

(c) Use a vessel:

(1) To fish with trawl gear in that part of Zone 1 closed to fishing with trawl gear in violation of § 675.22(a) of this part unless specifically allowed by the Secretary as provided under § 675.22 (b), (c), and (d) of this part;

(2) To fish with trawl gear in that part of Zone 1 closed to fishing with trawl gear at any time when no scientific data collection and monitoring program exists or after such a program has been terminated; or

(3) To fish with trawl gear in that part of Zone 1 closed to fishing with trawl gear without complying fully with a scientific data collection and monitoring program; or

(d) conduct any fishing contrary to a notice issued under § 675.21 of this part.

6. In § 675.20, effective through December 31, 1990, add the phrase "or PSC allowance" after the phrase "PSC limits" in paragraph (e)(1)(iii) and after the phrase "PSC limit' in both places where it appears in paragraph (e)(2)(ii).

7. In § 675.20, paragraph (e)(4) is revised, effective through December 31, 1990, to read as follows:

§ 675.20 General limitations.

* * * * *

(e) * * *

(4) The adjustment of TAC or PSC limit or PSC allowance for any species under paragraph (e)(1)(iii) of this section must be based on the best available scientific information concerning the biological stock status and harvest of the species in question and on the Regional Director's determination that the currently specified TAC or PSC limit or PSC allowance is incorrect. Any adjustment to a TAC or PSC limit or PSC allowance must be reasonably related to a change in biological stock status, except that a PSC limit or PSC allowance may be adjusted if it was incorrectly specified or to allow redistribution of uncaught PSC allowances among fisheries.

8. A new § 675.21 and Table 2 are added, effective through December 31, 1990, to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

(a) *PSC limits.* (1) The PSC limit of red king crab caught while conducting any domestic trawl fishery for groundfish in Zone 1 during any fishing year is 200,000 red king crabs.

(2) The PSC limit of Tanner crab (*C. bairdi*) caught while conducting any domestic travel fishery for groundfish in Zone 1 during any fishing year is 1 million animals.

(3) The PSC limit of Tanner crab (*C. bairdi*) caught while conducting any domestic fishery for groundfish in Zone 2 during any fishing year is 3 million animals.

(4) The primary PSC limit of Pacific halibut caught while conducting any domestic fishery for groundfish in the Bering Sea and Aleutian Islands Management Area during any fishing year is an amount of Pacific halibut equivalent to 4,400 metric tons.

(5) The secondary PSC limit of Pacific halibut caught while conducting any domestic fishery for groundfish in the Bering Sea and Aleutian Islands Msnagement Area during any fishing year is an amount of Pacific halibut equivalent to 5,333 metric tons.

(b) *Apportionment of PSC limits.* (1) The Secretary, after consultation with the North Pacific Fishery Management Council (Council), will apportion each PSC limit into bycatch allowances that will be assigned to each fishery, specified in paragraph (b)(3) of this section, according to its anticipated incidental catch during a fishing year of prohibited species for which a PSC limit is specified through the use of a mathematical prediction procedure based on statistical information derived from fishery performance in previous years and expectations of projected performances of the fisheries.

(2) The Secretary will publish PSC limits and PSC allowances annually in the notices required under § 675.20(a)(6) of this part. Public comment will be accepted by the Secretary for a period of 30 days after the first publication of the amounts. See Table 2 for purposes of this paragraph.

(3) For purposes of this section, four domestic fisheries are defined as follows:

(i) "DAP flatfish fishery" means DAP fishing operations which retain, on a weekly basis, yellowfin sole, rock sole, and "other flatfish" in the aggregate in

an amount greater than or equal to 20 percent of the total amount of groundfish retained.

(ii) "DAP other fishery" means DAP fishing operations which retain, on a weekly basis, any combination of groundfish species which does not qualify the fishery as a "flatfish fishery."

(iii) "JVP flatfish fishery" means JVP fishing operations which deliver, on a weekly basis, yellowfin sole, rock sole, and "other flatfish" in the aggregate in an amount greater than or equal to 20 percent of the total amount of groundfish delivered.

(iv) "JVP other fishery" means JVP fishing operations which deliver, on a weekly basis, any combination of groundfish species which does not qualify the fishery as a 'flatfish fishery."

(c) *"Attainment of a PSC allowance.*

(1) By the "DAP flatfish fishery."

(i) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch either of the PSC allowances or red king crab or *C. bairdi* in Zone 1 while participating in the "DAP flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for yellowfin sole, rock sole, and "other flatfish" in the aggregate in Zone 1 by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(ii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the PSC allowance of *C. bairdi* in Zone 2 while participating in the "DAP flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for yellowfin sole, rock sole, and "other flatfish" in the aggregate in Zone 2 by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(iii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the primary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP" flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for yellowfin sole, rock sole, and "other flatfish" in the aggregate in Zones 1 and 2H by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(iv) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the secondary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for yellowfin sole, rock sole, and "other flatfish" in the aggregate in the entire Bering Sea and Aleutian Islands Management Area by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(2) By the "DAP other fisheries."

(i) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch either of the PSC allowances of red king crab of *C. bairdi* in Zone 1 while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for pollock and Pacific cod in the aggregate with bottom trawl gear in Zone 1 by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(ii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the PSC allowance of *C. bairdi* in Zone 2 while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for pollock and Pacific cod in the aggregate with bottom trawl gear in Zone 2 by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(iii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the primary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for pollock and Pacific cod in the aggregate with bottom trawl gear in Zones 1 and 2H by U.S. fishing vessels that process their catch on board or deliver it to U.S processors.

(iv) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the secondary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for pollock and Pacific cod in the aggregate with bottom trawl gear in the entire Bering Sea and Aleutian Islands Management Area by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(3) By the "JVP flatfish fishery."

(i) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch either of the PSC allowances of red king crab or *C. bairdi* in Zone 1 while participating in the "JVP flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught from Zone 1 that is composed of 20 percent or more yellowfin sole, rock sole, and "other flatfish" in the aggregate.

(ii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the PSC allowance of *C. bairdi* in Zone 2 while participating in the "JVP flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught from Zone 2 that is composed of 20 percent or more yellowfin sole, rock sole, and "other flatfish" in the aggregate.

(iii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the primary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while anticipating in the "JVP flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught from Zones 1 and 2H that is composed of 20 percent or more yellowfin sole, rock sole, and "other flatfish" in the aggregate.

(iv) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the secondary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while anticipating in the "JVP flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught in the entire Bering Sea and Aleutian Islands Management Area that is composed of 20 percent or more yellowfin sole, rock sole, and "other flatfish" in the aggregate.

(4) By the "JVP other fisheries."

(i) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch either of the PSC allowances of red king crab or *C. bairdi* in Zone 1 while participating in the "JVP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught from Zone 1 with bottom trawl gear that is composed of 20 percent or more pollock and Pacific cod in the aggregate.

(ii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the PSC allowance of *C. bairdi* in Zone 2 while participating in the "JVP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught from Zone 2 with bottom trawl gear that is composed of 20 percent or more pollock and Pacific cod in the aggregate.

(iii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the primary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "JVP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught from Zones 1 and 2H with bottom trawl gear that is composed of 20 percent or more pollock and Pacific cod in the aggregate.

(iv) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the secondary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "JVP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught in the entire Bering Sea and Aleutian Islands Management Area with bottom trawl gear that is composed of 20 percent or more pollock and Pacific cod in the aggregate.

TABLE 2.—1989 PROHIBITED SPECIES CATCH ALLOWANCES

Fisheries	Zone 1	Zone 2	Zone 1+2H primary	BSAI-wide secondary
Red king crab, animals:				
DAP flatfish fisheries	50,579			
DAP other fisheries	20,579			
JVP flatfish fisheries	111,858			
JVP other fisheries	16,684			
C. bairdi Tanner crab, animals:				
DAP flatfish fisheries	86,970	260,910		
DAP other fisheries	509,519	1,826,558		
JVP flatfish fisheries	93,359	280,077		
JVP other fisheries	210,152	630,455		
Pacific halibut, metric tons:				
DAP flatfish fisheries			181	220
DAP other fisheries			3,406	4,131
JVP flatfish fisheries			146	177
JVP other fisheries			665	805

9. A new § 675.22 is added effective through December 31, 1990, to read as follows:

§ 675.22 Time and area closures.

(a) No fishing with trawl gear is allowed at any time in that part of Zone 1 in the Bering Sea Subarea that is south of 58° 00′ N. latitude and between 160° 00′ W. longitude and 162° 00′ W. longitude (see Figure 2) except as described in paragraph (c) of this section.

(b) No fishing with trawl gear is allowed at any time in that part of Zone 1 in the Bering Sea Subarea that is south of 58° 00′ N. latitude and between 162° 00′ W. longitude and 163° W. longitude during the period March 15 through June 15 except as described in paragraph (d) of this section.

(c) The Secretary may allow fishing for Pacific cod with trawl gear in that portion of the area described in paragraph (a) of this section that lies south of a straight line connecting the coordinates 56° 43′ N. latitude, 160° 00′ W. longitude, and 58° 00′ N. latitude 162° 00′ W.longitude, provided that such fishing is in compliance with a scientific data collection and monitoring program, established by the Regional Director after consultation with the Council, designed to provide data useful in the management of the trawl fishery, the Pacific halibut, Tanner crab and king crab fisheries, and to prevent overfishing of the Pacific halibut, Tanner and king crab stocks in the area.

(d) During the period March 15 through June 15, the Secretary may allow fishing for Pacific cod with trawl gear in that portion of the area described in paragraph (b) of this section that lies south of a line connecting 56° 00′ N. latitude, 162° W. longitude, and 55° 38′ N. latitude 163° 00′ W. longitude, provided that such fishing is in compliance with a scientific data collection and monitoring program, established by the Regional Director after consultation with the Council, designed to provide data useful in the management of the trawl fishery, the Pacific halibut, Tanner crab and king crab fisheries, and to prevent overfishing of the Pacific halibut, Tanner and king crab stocks in the area.

(e) If the Regional Director determines that vessels fishing with trawl gear in the areas described in paragraphs (a) and (b) of this section will catch the PSC limit of 12,000 red king crabs, he will immediately prohibit all fishing with trawl gear in those areas by notice in the **Federal Register.**

10. Figure 2 is revised, effective through December 31, 1990 and placed at the end of this part 675 to read as follows:

BILLING CODE 3510-22-M

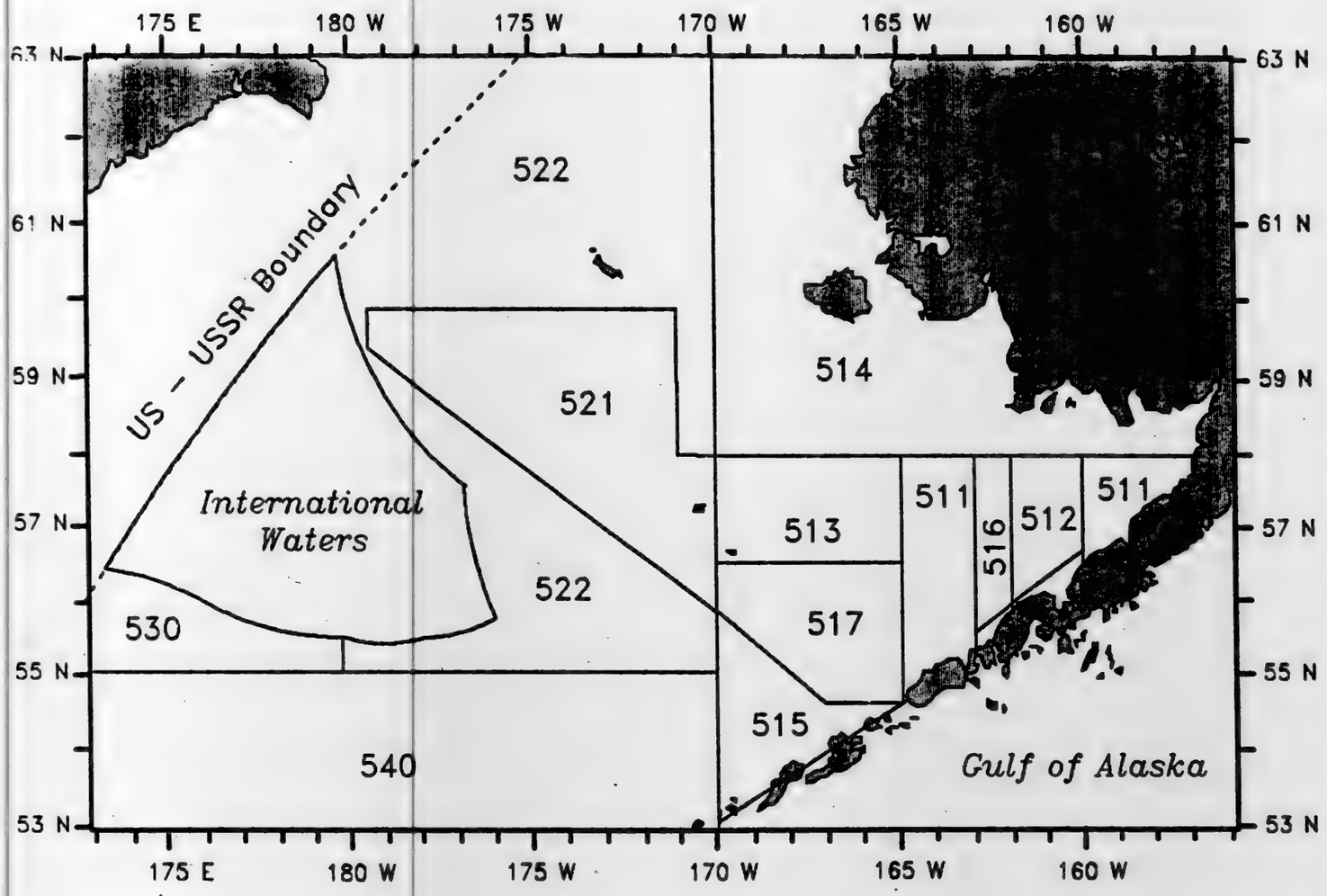


Figure 2. Statistical reporting areas in the BS/AI (Amendment 12A)

Bycatch protection zones: Zone 1 = 511 + 512 + 516
Zone 2 = 513 + 517 + 521
Zone 2H = 517

[FR Doc. 89-18612 Filed 8-4-89; 3:34 pm]
BILLING CODE 3510-22-C

Proposed Rules

Federal Register
Vol. 54, No. 152
Wednesday, August 9, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

Issuance of Quarterly Report on the Regulatory Agenda

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Regulatory Agenda.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued the NRC Regulatory Agenda for the second quarter, April through June, of 1989. The agenda is issued to provide the public with information about NRC's rulemaking activities. Each issue of the agenda includes information for one quarter of the calendar year. The agenda briefly describes and gives the status for each rule that the NRC is considering, has proposed, or has published with an effective date. It also describes and gives the status of each petition for rulemaking that the NRC is considering.

ADDRESSES: A copy of this report, designated NRC Regulatory Agenda (NUREG–0936) Vol. 8, No. 2, is available for inspection, and copying for a fee, at the Nuclear Regulatory Commission's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

In addition, the U.S. Government Printing Office (GPO) sells the NRC Regulatory Agenda. To purchase it, a customer may call (202) 275–2060 or (202) 275–2171 or write to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Acting Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–7758, toll-free number (800) 368–5642.

Dated at Bethesda, Maryland, this 27th day of July 1989.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services Office of Administration

[FR Doc. 89–18600 Filed 8–8–89; 8:45 am]
BILLING CODE 7590–01–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 12

[Docket No. 89–9]

Recordkeeping Requirements for Securities Transactions

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend 12 CFR Part 12, which establishes recordkeeping and confirmation requirements for securities transactions undertaken by a national bank for its customers. The proposal would broaden an exemption from requirements that banks maintain certain records and establish certain written policies and procedures. Under the proposal, the current exemption for banks with an average of less than 200 securities transactions per year would be expanded to 1,000 transactions per year. The purpose of broadening the exemption from 200 transactions per year to 1,000 transactions per year is to reduce the regulatory burden on banks of all sizes that engage in a low number of securities transactions per year.

DATE: Comments must be received by October 10, 1989.

ADDRESS: Comments should be directed to: Communications Division, 5th Floor, 490 L'Enfant Plaza East, SW., Washington, DC 20219, Attention: Docket No. 89–9.

Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: John Kerr, National Bank Examiner, Investment Securities Division, Office of the Comptroller of the Currency, Washington, DC 20219, (202) 447–1901.

SUPPLEMENTARY INFORMATION:

Background

Under 12 CFR 12.3 and 12.6, every national bank effecting securities transactions for customers is required to maintain specified types of records and to establish specified written policies and procedures. However, § 12.7(a) provides a partial exemption from these recordkeeping and written policy requirements for national banks having an average of less than 200 securities transactions per year for customers over the prior three calendar year period, excluding transactions in U.S. government and federal agency obligations.

Thus, a national bank falling within the current 200 transactions per year exemption does not have to maintain, among other things, detailed account records for each customer; order tickets for each purchase or sale of securities showing details of the transaction; or a record of all broker/dealers selected by the bank to effect securities transactions. Additionally, an exempt national bank does not have to establish written policies and procedures for: (1) Assigning responsibility for supervising employees who execute securities transactions or transmit orders to broker/dealers; (2) assigning the fair and equitable allocation of securities and prices to accounts when orders for the same security are received at approximately the same time; and (3) crossing buy and sell orders on a fair and equitable basis.

This does not mean that an exempt national bank can forego maintaining records or establishing policies completely. Exempt national banks must maintain chronological records of original entry containing an itemized daily record of all purchases and sales of securities including the account or customer name, a description of the security, price, trade date and name of person from whom purchased or to whom sold. Exempt national banks must establish written policies requiring reporting of certain transactions to the bank by bank officers and employees who make or participate in the determination of investment recommendations or decisions for the accounts of customers. See 12 CFR 12.3(a) and 12.6(d). In addition, the bank must send a confirmation as prescribed by § 12.4.

The OCC adopted the 200 transaction low activity threshold exception in § 12.7(a) when it initially promulgated 12 CFR Part 12. See 44 FR 43252 (1979). Subsequently, the exception was revised to exclude transactions in U.S. government and federal agency securities from the total number of securities transactions executed and to exempt banks that do not exceed the low activity transaction threshold from the written policy and procedure requirements of §§ 12.6(a)–(c). See 44 FR 77137 (1979).

Comparable regulations were adopted concurrently by the Federal Reserve Board in 12 CFR 208.8(k) with a similar 200 transaction per year exemption in § 208.8(k)(6)(i), and by the Federal Deposit Insurance Corporation in 12 CFR 344 with a similar exemption in § 344.7(a).

Proposal

To reduce the burden and attendant expense imposed on banks by these recordkeeping and written policy and procedure requirements, OCC is proposing to raise the current exemption threshold from 200 to 1,000 securities transactions per calendar year. In effect, a national bank with an average of approximately four transactions per business day would be exempted. Small banks and banks with small securities brokerage operations are expected to be the principal beneficiaries of this amendment.

Few small national banks exceed 1,000 securities transactions per year. The 1,000 transaction threshold would ease the burden on approximately 1,500 national banks with under $1 billion in assets. Banks that have 1,000 or more securities transactions per year, usually national banks with $1 billion or more in assets, would not be affected by this proposal.

OCC requests comment on whether 1,000 transactions is an appropriate threshold figure, and whether a 1,000 threshold will afford adequate protection to investors who purchase and sell securities through national banks.

Some banks with a low volume of securities transactions offer the service primarily as an accommodation to their customers. OCC has received no substantive complaints from bank customers using the securities services of banks for which the 200 transaction exemption is available.

The OCC is not proposing any change in the recordkeeping and written policy requirements in §§ 12.3(a) and 12.6(d) or in the written confirmation requirements in § 12.4. These requirements, described above, will remain in effect for all national banks that effect securities transactions for customers.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is certified that this amendment will not have a substantial economic impact on a significant number of small entities. Small entities are the primary beneficiaries of this burden-reducing amendment, but the impact will not be substantial.

Excutive Order 12291

The OCC has determined that this amendment is not a "major rule" and therefore does not require a Regulatory Impact Analysis.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget under control number 1557–0142 for review in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h). Comments on the collection of information should be sent to the Comptroller of the Currency, Legislative and Regulatory Analysis Division, 5th Floor, 490 L'Enfant Plaza East, SW., Washington, DC 20219, with a copy to the Office of Management and Budget, Paperwork Reduction Project (1557–0142), Washington, DC 20503.

The collections of information in this regulation are set forth in 12 CFR 12.3, 12.4 and 12.6, and the exemption is set forth in 12 CFR 12.7(a). This information is needed to ensure national bank compliance with securities laws and to protect persons who purchase and sell securities through national banks. The likely respondents are for-profit institutions.

Estimated annual reporting burden for 12 CFR Part 12 is 165,001 burden hours. This proposal, if adopted as a final rule, will reduce the burden by an estimated 40,721 hours. The OCC estimates that 1,728 banks maintain records under 12 CFR Part 12. Small banks and banks with fewer than 1,000 transactions will be required to maintain fewer records and therefore are the primary beneficiaries of this burden reducing change.

The average burden will be approximately 72 hours per recordkeeper. Depending on the degree of activity and whether a bank falls under the proposed 1,000 transaction exemption, the actual burden per bank is estimated to range from approximately 4,600 hours annually for a large bank with numerous transactions to approximately three hours annually for a small bank with few transactions.

List of Subjects in 12 CFR Part 12

National banks, Banking, Securities transactions, Recordkeeping, Confirmation.

Authority and Issuance

For the reasons set forth in the preamble, Part 12 of Chapter I of Title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 12—[AMENDED]

1. The authority citation for Part 12 is revised to read as follows:

Authority: 12 U.S.C. 24, 92a and 93a.

2. Section 12.7(a) is revised to read as follows:

§ 12.7 Exceptions.

(a) The requirements of §§ 12.3(b) through (d) and 12.6(a) through (c) shall not apply to banks having an average of less than 1,000 securities transactions per year for customers over the prior three calendar year period, exclusive of transactions in U.S. government and federal agency obligations.

* * * * *

Dated: August 2, 1989.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 89–18546 Filed 8–8–89; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL TRADE COMMISSION

16 CFR Part 4

Miscellaneous Rules

AGENCY: Federal Trade Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Trade Commission proposes to amend its rules concerning fees and fee waivers to reflect the amendments to the Freedom of Information Act ("FOIA"), as embodied in the Freedom of Information Reform Act of 1986 ("Reform Act"), and guidelines promulgated by the Office of Management and Budget pursuant to the Reform Act amendments. The proposed rule also reduces certain fees and increases others to reflect changes in, or more accurate information about, the costs of providing services, and authorizes the use of credit cards to pay fees.

In addition, the proposed rule makes all of the fee and fee waiver provisions applicable not only to FOIA requests, but also to requests for public records and to requests from other government agencies seeking information for purposes other than law enforcement. To this end, Rule 4.8 is restructured to include all provisions generally relating to fees and fee waivers for agency records. Other provisions of the current rule, which pertain only to public records, are moved to Rule 4.9.

In addition to changes pertaining to fees and fee waivers, the proposed rule incorporates changes to conform Rule 4.10 ("Nonpublic records") to the provisions of the Reform Act that expand the exemption for investigative records, and that create new categories for records that are not subject to the FOIA.

DATE: Comments will be received until September 8, 1989.

ADDRESSES: Comments should be addressed to the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580.

Comments will be entered on the public record of the Commission and will be available for public inspection in Room 130 at the above address during the hours of 9:00 a.m. until 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Keith Golden, Information Services Division, Federal Trade Commission, 6th & Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2410.

SUPPLEMENTARY INFORMATION:

I. Fees and Fee Waivers.

Under the proposed rule, all fee and fee waiver provisions generally applicable to requests for Commission records will appear in Rule 4.8; thus, certain provisions now embodied in Rule 4.11(a)(i)(1) will be incorporated into Rule 4.8. On the other hand, subsections (a) and (b) of Rule 4.8 (which are specifically applicable to public records) will be moved, in amended form, to Rule 4.9.

The Commission previously proposed changes to its fee and fee waiver provisions in 1986. 51 FR 32657. The 1986 proposal preceded and thus did not reflect the amendments to the FOIA fee and fee waiver provisions contained in the Reform Act. The Commission is therefore publishing this new proposal, reflecting both the 1986 amendments, Pub. L. 99–570, sections 1801–1804, and the guidelines promulgated by the Office of Management and Budget, 52 FR 10012–10020, for an additional comment period.

A. *Proposed Rule 4.8(a).* Proposed Rule 4.8(a) defines the terms "search," "duplication," "review," and "direct costs," consistent with the amended FOIA and OMB Guideline 6, 52 FR 10017.

B. *Proposed Rule 4.8(b)(1)–(3).* These provisions define four categories of requesters (commercial use requesters, educational requesters, non-commercial scientific institution requesters, and representatives of the news media), and establish a residual category for other requesters. The proposed definitions of the categories of requesters are consistent with the amended FOIA and OMB Guideline 6, 52 FR 10017–18. Consistent with the amended FOIA, the provisions also prescribe types of charge that will be imposed on each type of requester, and on requesters who fall into none of the categories. 5 U.S.C. 552(a)(4)(A)(ii), 552(a)(4)(A)(ii).

C. *Proposed Rule 4.8(b)(4).* Proposed Rule 4.8(b)(4) provides that charges that do not exceed $5.00 will be waived. A waiver provision of this nature is mandated by the amended FOIA, which requires a waiver "if the costs of routine collection or processing of the fee are likely to equal or exceed the amount of the fee." 5 U.S.C. 554(a)(4)(A)(iv)(I). *See also* OMB Guideline 7.f., 52 FR 10018–19. The $5.00 threshold is based on past Commission experience respecting the cost of assessing and collecting fees.

The current rule also contains a minimum fee provision, which provides that all charges that do not exceed a $10.00 threshold will be waived. 16 CFR 4.8(c)(1). The new provision will operate somewhat differently. Under the proposed rule, charges will be waived based only if that total cost is below the threshold (now $5.00). Thus, if total costs are $5.00, the requester will be billed nothing; on the other hand, if total costs are $6.00, the full amount will be billed.

D. *Proposed Rule 4.8(b)(5).* Proposed Rule 4.8(b)(5) provides that certain materials may be made available to all requesters without charge, and is consistent with current Rule 4.8(b), 16 CFR 4.8(b). For example, the Commission prints a number of copies of its decisions when they are issued. These decisions will be distributed without charge, to FOIA or other requesters, until the initial supply is exhausted.

E. *Proposed Rule 4.8(b)(6).* This provision, which establishes specific fees that will be charged to requesters under the FOIA, substantially revises the fee schedule in Rule 4.8(c)(2) of the current rule, 16 CFR 4.8(c)(2). Certain fees are raised to reflect increased costs; others are reduced to reflect diminished costs. Also, a new fee category is established for Express Mail Service, a service that will be available on request.

Consistent with existing Commission practice, most fees are described by a specific dollar figure. However, to increase flexibility in administering the fee provisions, search and review fees are described by a formula: quarter-hourly fees will be established for three categories of employees (clerical, attorney/economist, and other professional), based on the averge pay of employees in each class, increased by a 16 percent factor to reflect the cost of additional benefits accorded government employees. This formula is consistent with the OMB Guideline 7.a, 52 FR 10018 (providing for 16 percent adjustment to salary, and authorizing the use of an average rate). Further, the use of a formula in the text of the rule, as opposed to a specific dollar figure, is consistent with the practice of other agencies. *See, e.g.,* 5 CFR 1303.40 (OMB regulations). The current hourly fees for attorneys/economists, other professionals, and paralegals are $13.25, $8.15, and $5.50, respectfully. Under the proposed rule, they will rise to approximately $32.10, $23.70, and $13.20, respectfully.

F. *Proposed Rule 4.8(c).* Proposed Rule 4.8(c) provides that each public request for records should set forth whether the request is made for other than commercial purposes and whether the requester is an educational institution, a noncommercial scientific institution, or a representative of the news media. This information will enable the Deputy Executive Director initially, or the General Counsel or Commission on appeal, to apply the new fee provisions. If the information is lacking in a written request, the decisionmaker may use additional information provided by the requester, and any other relevant information, to determine the proper fee classification. When a request is made orally, the relevant information may be provided orally.

G. *Proposed Rule 4.8(d).* Proposed Rule 4.8(d) requires, with one exception, that an agreement to pay fees accompany all requests. The agreement may assert that the requester shall pay any fees that are incurred, or it may be limited to a specific dollar amount. The one exception is that, when a requester applies for a fee waiver, the request may state that the requester is unwilling to pay fees if the waiver is denied.

If such an agreement is lacking, and if the estimated fees exceed $25.00, the requester will be advised of the estimated fees and the request will not be processed until the requester agrees to pay the fees. The $25.00 figure in the proposed rule provision is consistent with the OMB Guidelines for

notification to a requester who has not agreed to pay charges. *See* Guideline 7.d (notice when duplication charges are likely to exceed $25.00); Guideline 9.a. (notice when search charges are likely to exceed $25.00). It is also consistent with Rule 4.11(a)(1)(i)(D) of the current rules of practice but, unlike the current rule, the proposed rule does not require that the agreement be in writing, and the provision is expressly applicable to all record requests from the public, and not only to requests under the FOIA.

H. *Proposed Rule 4.8(e).* Proposed Rule 4.8(e) provides for fee waivers in the public interest. The proposed rule describes the procedures to request a waiver, and sets forth a six-part test for fee waivers, similar to the six-part tests established by numerous other agencies. *See, e.g.*, 28 CFR 16.10(d) (Department of Justice); 49 CFR 7.97(d) (Department of Transportation).

The six-part test is based on two statutory standards under the Reform Act, which provide respectively that a fee waiver will be granted (1) "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government," and, (2) if disclosure "is not primarily in the commercial interest of the requester." The first four parts of the proposed six-part test are based closely on the first of these statutory provisions; the last two parts of the proposed six-part test are based closely on the second statutory provision.

The fee waiver provisions, like the other provisions of Proposed Rule 4.8, apply to requests for public records as well as requests for nonpublic records. As a practical matter, public records are readily available at the Commission's headquarters and, to a lesser extent, its regional offices, and fee waivers will rarely be granted for public records. However, the Commission believes that the fee waiver standards could be met by a requester who seeks public records, although the requester would have to show why the waiver would satisfy the relevant standards, including particularly the standard in Rule 4.8(e)(2)(i)(D), notwithstanding that the documents are already available to both the requester and the general public.

I. *Proposed Rule 4.8(f).* Proposed Rule 4.8(f) provides that fees may be charged for an unsuccesful search, i.e., a search in which no documents or only exempt documents were located. OMB Guideline 1, 52 FR 10017, specifically notes a Congressional intent that agencies recover their costs, and OMB Guideline 7.a, 52 FR 10019, specifically provides for recovering costs of unsuccessful searches. Consistent with this Guideline, Proposed Rule 4.8(d), discussed above, contains guidelines to insure that requesters consent to payment of fees when estimated costs exceed $25.00, and will operate to assure that requesters will be aware of possible charges for an unsuccessful search.

Consistent with OMB Guideline 7.a, the proposed rule states only that charges *may* be imposed for an unsuccessful search. Nevertheless, it is the Commission's intent that these charges generally will be imposed, except in unusual cases. Charges for unsuccessful searches, of course, will be subject to limitations applicable to all charges; i.e., requesters (other than commercial use requesters) will not be charged for the first two hours of search time (Proposed Rule 4.8(b) (2) and (3)), and requesters will not be billed if the total chargeable fees do not exceed $5.00 (Proposed Rule 4.8(b)(4)).

J. *Proposed Rule 4.8(g).* This provision authorizes aggregation of requests for purposes of determining the applicable fee. The Deputy Executive Director for Planning and Information (DEDPI) initially, or the General Counsel on appeal, may aggregate requests for purposes of fees when the DEDPI or General Counsel determines that a requester or a group of requesters is attempting to evade fees by dividing a single request into a series of smaller requests. *See* OMB Guideline 9.c, 52 FR 10019–20.

K. *Proposed Rule 4.8(h).* Proposed Rule 4.8(h) provides that the DEDPI or General Counsel may require advance payment of estimated fees that are likely to exceed $250. Advance payment may also be required when a requester has failed to pay a previous bill in a timely fashion. In appropriate circumstances, requesters may also be required to pay prior unpaid bills, including accrued interest, before a new request is processed. The proposed Rule is based on the amended FOIA, 5 U.S.C. 552(a)(4)(A)(v), and OMB Guideline 9.d, 52 FR 110020.

L. *Proposed Rule 4.8(i).* Proposed Rule 4.8(i) authorizes the use of credit cards, in addition to checks or money orders payable to the U.S. Treasury, as an alternative method of paying fees imposed by the Rule.

M. *Proposed Rule 4.8(j).* Consistent with OMB Guideline 9.a, 52 FR 10018, the proposed Rule provides that interest charges may be assessed starting on the 31st day after a bill is sent.

N. *Proposed Rule 4.8(k).* As provided by OMB Guideline 9.e, 52 FR 10029, Proposed Rule 4.8(k) authorizes use of the Debt Collection Act of 1982, Pub. L. 97–365, to collect unpaid fees.

O. *Proposed Rule 4.9.(a)(4).* Proposed Rule 4.9(a)(4), like Rule 4.8(b) of the current rules, 16 CFR 4.8(b), provides for copying of public records. The provision is moved to Rule 4.9, which now contains all provisions relating generally to public records. The provision makes explicit that costs will be imposed for all requests for public records to the same extent that they would be imposed for FOIA requests.

Subsection (ii) cross-references three provisions of Proposed Rule 4.8, to highlight to requesters the availability of fee waivers, the need to provide information to determine fees, and the need to agree to pay fees.

Subsection (iii) provides that records for sale at another government agency will not be provided to requesters under this section. This provision conforms the rules with section (a)(4)(A)(6) of the amended FOIA, 5 U.S.C. 552(a)(4)(A)(6). *See also* OMB Guideline 8.b., 7, 52 FR 10017–18.

P. *Proposed Rule 4.11(a)(1)(i).* Subsections (C), (D), and (E) of the rule are proposed to be amended.

Subsection (C) of the Proposed Rule contains cross-references to fee and fee waiver provisions that appear in Rule 4.11 of the current rule and that, in the proposed rule, are amended and transferred to Rule 4.8.

Subsection (D) provides that FOIA requests will not be deemed to be received until a requester agrees to pay fees, and that the request will be denied if the requester refuses to pay fees and is not granted a fee waiver. The provision delaying the date when a request will be deemed to be received is similar to provisions in subsections (D) and (E) of the current rule and is consistant with section (a)(3) of the FOIA, 5 U.S.C. 552(a)(3) (agency will provide records in response to a request that "is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed.") Since the provision requires an *agreement* to pay, and not actual payment, it is not inconsistent with section (a)(4)(A)(5) of the amended FOIA, 5 U.S.C. 552(a)(4)(A)(5), which limits the authority of agencies to demand advance payments.

Subsection (E), which parallels Rule 4.9(a)(4)(iii), provides that the Commission will not produce copies of documents under the FOIA if the documents are available for sale from another agency.

Q. *Proposed Rule 4.11(d).* Rule 4.11(d) governs requests from other government agencies seeking documents for purposes other than law enforcement. The proposed amendment would apply the fee and fee waiver provisions of Proposed Rule 4.8 to such requests. The Commission proposed a similar change in 1986. 51 FR 32857.

These cost provisions would not apply to requests that are made for law enforcement purposes under Rule 4.11(c), 16 CFR 4.11(c). Also, as with other non-commercial requesters, government requesters under this provision will not be charged for two hours of search time and 100 pages of reproduction, nor will they be charged if their bill does not exceed $5.00. Furthermore, fee waivers will be available to government requesters in appropriate cases, even if they do not have a law enforcement purpose.

II. Nonpublic Records

The Reform Act amended the FOIA's exemption from disclosure for law enforcement records. 5 U.S.C. 552(b)(7) (Exemption 7). Proposed Rule 4.10(a)(5) amends the provision of the Commission's rules relating to Exemption 7.

Also, Proposed Rule 4.10(a)(11) incorporates the "exclusion" in section (c)(1) of the FOIA, 5 U.S.C. 552(c)(1), which provides that the statute's disclosure provisions are not applicable if (1) the records are law enforcement records, (2) the records relate to a pending investigation or proceeding that involves a possible violation of criminal law, (3) there is reason to believe that the subject is not aware of the pendency of the investigation or proceeding, and (4) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings. This provision would apply to records held by the Commission that contain information about potential criminal violations that may be referred to the Department of Justice for further prosecution. *Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act* (Dec. 1987), at 20 and n.37. In responding to an FOIA request, the agency can simply treat these records as if they do not exist, and advise the requester that there are no responsive documents. *Id.* at 27.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information Act.

In consideration of the foregoing, the Commission proposes to amend Title 16, Chapter I, Subchapter A of the Code of Federal Regulations, as follows:

PART 4—MISCELLANEOUS RULES

1. The authority for Part 4 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

2. Section 4.8(a) is redesignated as § 4.9(a)(3), and is amended by adding a heading before the first sentence:

§ 4.9 Public records.

(a) * * *

(3) *Location of Public Records.* * * *

* * * * * *

3. Section 4.8 is revised to read as follows:

§ 4.8 Costs for obtaining Commission records.

(a) *Definitions.* For the purpose of this section:

(1) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

(2) The term "duplication" refers to the process of making a copy of a document in order to respond to a request for Commission records.

(3) The term "review" refers to the examination of documents located in response to a request to determine whether any portion of such documents may be withheld, and the redaction or other processing of documents for disclosure. Review does not include time spent resolving general legal or policy issues regarding the release of the document.

(4) The term "direct costs" means expenditures that the Commission actually incurs in processing requests. Not included in direct costs are overhead expenses such as costs of document review facilities or the costs of heating or lighting such a facility or other facilities in which records are stored. The direct costs of specific services are set forth in § 4.8(b)(6).

(b) *Fees.* User fees pursuant to 31 U.S.C. 483(a) and 5 U.S.C. 552(a) will be charged according to this paragraph.

(1) *Commercial use requesters.* Commercial use requesters will be charged for the direct costs to search for, review, and duplicate documents. A commercial use requester is a requester who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(2) *Educational requesters, non-commercial scientific institution requesters, and representatives of the news media.* Requesters in these categories will be charged for the direct costs to duplicate documents, excluding charges for the first 100 pages. An "educational institution" is a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. A "non-commercial scientific institution" is an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (b)(1) of this section, and that is operated solely to conduct scientific research the results of which are not intended to promote any particular product or industry. A "representative of the news media" is any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. "News" means information that is about current events or that would be of current interest to the public.

(3) *Other requesters.* Other requesters will be charged for the direct costs to search for and duplicate documents, except that the first 100 pages of duplication and the first two hours of search time will be furnished without charge.

(4) *Waiver of small charges.* Charges will be waived if the total chargeable fees for a request do not exceed $5.00.

(5) *Materials available without charge.* These provisions do not apply to recent Commission decisions and other materials that may be made available to all requesters without charge while supplies last.

(6) *Schedule of direct costs.* The following uniform schedule of fees applies to records held by all constituent units of the Commission.

Duplication

Paper Copy (up to 8½" X 14") (Reproduced by Commission staff).	$0.14 per page.
(Reproduced by Requester).	$0.05 per page.
Computer Paper	$0.14 per page.

Microfilm Services

Film Copy—Paper to 16mm film.	$0.02 per frame.
Fiche Copy—Paper to 105mm fiche.	$0.02 per frame. +$0.23 per fiche.
Film Copy—Duplication of existing 100 ft. roll of 16mm film..	$3.35 per roll.

Fiche Copy— Duplication of existing 105mm fiche.	$0.04 per fiche.
Paper Copy— Converting existing 16mm film to paper	
(Conversion by Commission Staff).	$0.23 per page.
(Conversion by Requester).	$0.14 per page.
Paper Copy— Converting existing 105mm fiche to paper	
(Conversion by Commission Staff).	$0.23 per page.
(Conversion by Requester).	$0.14 per page.
Film Cassettes	$3.60 per cassette.

Other Charges

Computer Tape	$18.50 per tape.
Certification	$10.35 each.
Express Mail	$5.00 for the first pound and $.69 for each additional pound (per request).

Search and Review Fees

Agency staff is divded into three categories: clerical, attorney/economist, and other professional. Fees for search and review are assessed on a quarter-hourly basis, and are determined by identifying the category into which the staff member(s) conducting the search or review belong(s), determining the average quarter-hourly wages of all staff members within that category, and adding 16 percent to reflect the cost of additional benefits accorded to government employees. The exact fees are calculated and announced periodically and are available from the Public Reference Section, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580; (202) 326–2222.

(c) *Information to determine fees.* Each request for records shall set forth whether the request is made for other than commercial purposes and whether the requester is an educational institution, a noncommercial scientific institution, or a representative of the news media. The Deputy Executive Director initially, or the General Counsel or Commission on appeal, will use this information, any additional information provided by the requester, and any other relevant information to determine the appropriate fee category in which to place the requester.

(d) *Agreement to pay fees.* (1) Each request that does not contain an application for a fee waiver shall specifically indicate the requester's willingness either:

(i) To pay, in accordance with § 4.8(b) of these rules, whatever fees may be charged for processing the request; or

(ii) A willingness to pay such fees up to a specified amount.

(2) Each request that contains an application for a fee waiver must specifically indicate;

(i) The requester's willingness to pay, in accordance with § 4.8(c) of the rules, whatever fees may be charged for processing the request;

(ii) The requester's willingness to pay fees up to a specified amount; or

(iii) That the requester is not willing to pay fees if the waiver is not granted.

(3) If the agreement required by this section is absent, and if the estimated fees exceed $25.00, the requester will be advised of the estimated fees and the request will not be processed until the requester agrees to pay such fees.

(e) *Public interest fee waivers.*—(1) *Procedures.* A requester may apply for a waiver of fees. The requester shall explain why a waiver is appropriate under the standards set forth in this paragraph. The application shall also include a statement, as provided by paragraph (d) of this section, of whether the requester agrees to pay costs if the waiver is denied. The Deputy Executive Director initially, and the General Counsel or Commission on appeal, will rule on applications for fee waivers.

(2) *Standards.* (i) The first requirement for a fee waiver is that disclosure will likely contribute significantly to public understanding of the operations or activities of the government. This requirement shall be met if:

(A) The subject matter of the requested information concerns the operations or activities of the Federal government;

(B) The disclosure is likely to contribute to an understanding of these operations or activities;

(C) The understanding to which disclosure is likely to contribute is the understanding of the public at large, as opposed to the understanding of the individual requester or a narrow segment of interested persons; and

(D) The likely contribution to public understanding will be significant.

(ii) The second requirement for a fee waiver is that the request not be primarily in the commercial interest of the requester. Satisfaction of this requirement shall be determined by considering:

(A) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and

(B) If so, whether the public interest in disclosure is outweighed by the indentified commercial interest of the requester so as to render the disclosure primarily in the requester's commercial interest.

(f) *Unsuccessful searches.* Charges may be assessed for search time even if the agency fails to locate any responsive records or if it locates only records that are determined to be exempt from disclosure.

(g) *Aggregating requests.* If the Deputy Executive Director for Planning and Information initially, or the General Counsel or Commission on appeal, reasonably believes that a requester, or a group of requesters acting in concert, is attempting to evade an assessment of fees by dividing a single request into a series of smaller requests, the requests may be aggregated and fees charged accordingly.

(h) *Advance payment.* If the Deputy Executive Director for Planning and Information initially, or the General Counsel or Commission on appeal, estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, or if the requester has previously failed to pay a fee within 30 days of the date of billing, the requester may be required to pay some or all of the total estimated charge in advance. Further, the requester may be required to pay all unpaid bills, including accrued, interest, prior to processing the request.

(i) *Means of payment.* Payment shall be made by check or money order payable to the Treasury of the United States, or by credit card. Procedures for paying fees by credit card are available from the Public Reference Section, Federal Trade Commission, Sixth Street and Pennsylvania Avenue NW., Washington, DC 20580; (202) 326–2222.

(j) *Interest charges.* The Commission will begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent. Interest will accrue from the date of the billing, and will be calculated at the rate prescribed in 31 U.S.C. 3717.

(k) *Effect of the Debt Collection Act of 1982 (pub. L. 97–365).* The Commission may pursue repayment, where appropriate, by employing the provisions of the Debt Collection Act, (Pub. L. 97–365), including disclosure to consumer reporting agencies and use of collection agencies.

4. Section 4.9 is amended by adding paragraph (a)(4) as follows.

§ 4.9 Public records.

(a) * * *

(4) *Copying of public records—(i) Procedures.* Reasonable facilities for copying public records are provided at each office of the Commission. Subject to appropriate limitations and the availability of facilities, any person may copy public records available for inspection at each of those offices. Further, the agency will provide copies to any person upon request. Written requests for copies of public records should be addressed to the Deputy Executive Director for Planning and Information, and should specify as clearly and accurately as reasonably possible the records desired. For records that cannot be specified with complete clarity and particularity, requesters must provide descriptions sufficient to enable qualified Commission personnel to locate the records sought. In any instance, the Commission, the Deputy Executive Director for Planning and Information, or the official in charge of each office may prohibit the use of the Commission facilities to produce more than one copy of any public record, and may refuse to permit the use of such facilities for copying records that have been published or are publicly available at places other than the offices of the Commission.

(ii) *Costs; agreement to pay costs.* Requesters will be charged search and duplication costs prescribed by Rule 4.8 for requests under this section. All requests shall include a statement of the information needed to determine fees, as provided by § 4.8(c), and an agreement to pay fees (or a statement that the requester will not pay fees if a fee waiver is denied), as provided by § 4.8(d). Requests may also include an application for a fee waiver, as provieded § 4.8(e). Advance payment may be required, as provided by § 4.8(h).

(iii) *Records for sale at another government agency.* If requested materials are available for sale at another government agency, the requester will not be provided with copies of the materials but will be advised to obtain them from the selling agency.

* * * * *

5. Section 4.11(a)(1)(i)(C), (D), and (E) are revised to read as follows:

§ 4.11 Request for disclosure of records.

(a) * * *

(1) * * *

(i) * * *

(C) *Costs; agreement to pay costs.* Requesters will be charged search and duplication costs prescribed by Rule 4.8 for requests under this section. All requests shall include a statement of the information needed to determine fees, as provided by § 4.8(c), and an agreement to pay fees (or a statement that the requester will not pay fees if a fee waiver is denied), as provided by § 4.8(d). Requests may also include an application for a fee waiver, as provided by § 4.8(e). An advance payment may be required in appropriate cases as provided by § 4.8(h).

(D) *Failure to agree to pay fees.* If a request does not include an agreement to pay fees, and if the requester is notified of the estimated costs pursuant to Rule 4.8(d)(3), the request will be deemed not to have been received until the requester agrees to pay such fees. If a requester declines to pay fees and is not granted a fee waiver, the request will be denied.

(E) *Records for sale at another government agency.* If requested materials are available for sale at another government agency, the requester will not be provided with copies of the materials but will be advised to obtain them from the selling agency.

* * * *

6. Section 4.11(d) is amended by adding at the end of the existing text:

§ 4.11 Request for disclosure of records.

* * * * *

(d) * * * Requests under this section shall be subject to the fee and fee waiver provisions of § 4.8.

7. Section 4.10 is amended by revising paragraph (a) (5) to read as follows:

§ 4.10 Nonpublic information.

(a) * * *

(5) Records or information complied for law enforcement purposes, but only to the extent that production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution that furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidental source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

8. Section 4.10 is amended by adding paragraph (a)(11) to read as follows:

(a) * * *

(11) Records in an investigation or proceeding that involves a possible violation of criminal law, when there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the investigation could reasonably be expected to interfere with enforcement proceedings. When a request is made for records under § 4.11(a), the Commission may treat the records as not subject to the requirements of the Freedom of Information Act.

* * * * *

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 89–18620 Filed 8–8–89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11–90–15]

Special Local Regulations; Navy Fleetweek Parade of Ships and Blue Angels Demonstration; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The U.S. Navy and the City of San Francisco coordinate an annual "Fleetweek" event on San Franscico Bay featuring a parade of ships sailing into the Bay and low level air shows performed by the Navy's Blue Angels along the San Francisco waterfront. This event takes place annually in early October. The Coast Guard is proposing to establish permanent special local regulations to ensure the safety of Navy Fleetweek participants an spectators. The special local regulations will restrict vessel traffic in regulated areas during the Fleetweek event. Annual notice of the specific dates and times of these regulations will be published in the Local Notice to Mariners and in the **Federal Register**.

DATES: Comments must be received on or before September 8, 1989. Because of the nature of these regulations and to ensure these regulations will be in effect for the upcoming October 1989 Fleetweek, while allowing sufficient opportunity for public comment, good cause exists to provide a 30-day comment period.

ADDRESSES: Comments should be mailed to Commander, Coast Guard Group San Francisco, Yerba Buena Island, San Francisco, CA 94130-8309. The comments and other materials referenced in this notice will be available for inspection and copying at Coast Guard Group San Francisco, Yerba Buena Island, San Francisco, California. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant G.E. Dunn, Coast Guard Group San Francisco, California. Telephone (415) 339-3445.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD11-89-15) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant G.E. Dunn, Project Officer, Coast Guard Group San Francisco, and Lieutenant Commander J.J. Jaskot, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulation

The U.S. Navy/City of San Francisco Fleetweek is held annually in early October. The week's activities are highlighted by the Navy Parade of Ships and the Navy Blue Angels Aerial Show. The ship parade and aerial show are held on the Saturday of Fleetweek. To respond to safety requirements for the transit of the large Navy vessels and the Blue Angels' flight operations, the Coast Guard Captain of the Port has annually issued regulations creating safety zones for this event. Since this event is conducted annually and includes virtually the same restricted areas each year, the Coast Guard proposes to establish permanent special local regulations which will provide for a regulated area during the event. Annual notice of the specific effective dates and times of these regulations will be published in the Local Notice to Mariners and in the **Federal Register**.

Regulated area "Alpha" will ensure unobstructed waters for safe navigation for the Parade of Navy Ships proceeding inbound via the Eastbound San Francisco Bay Traffic Lane. At approximately 10:30 a.m. local time (specific times will be annually announced in Local Notice to Mariners and the **Federal Register**), the naval vessels will sail in a column under the Golden Gate Bridge. The vessels will be spaced approximately 500 yards apart and will proceed at about 10 knots. The ship parade will sail along the San Francisco waterfront in the Eastbound San Francisco Bay Traffic Lane to a location near the San Francisco-Oakland Bay Bridge where the ships will disperse to their respective moorings. Except for persons or vessels authorized by the Coast Guard Patrol Commander, in regulated area "Alpha" no person or vessel may enter or remain within 500 yards ahead of the lead naval parade vessel, within 200 yards astern of the last parade vessel, and within 200 yards on either side of all parade vessels.

An aerial demonstration by the U.S. Navy Blue Angels will begin after the ship parade clears the San Francisco-Oakland Bay Bridge. In preparation for this demonstration, the Blue Angels will conduct a familiarization flight at approximately 12:00 Noon local time (with specific times to be annually announced) on the Thursday preceding the Saturday Parade of Ships, and a practice flight at approximately 12:00 Noon on the Friday preceding the Saturday Parade of Ships. On that Thursday, Friday, and Saturday, regulated area "Bravo" will cover the Blue Angels' flight line from Fort Point to Blossom Rock. Two Coast Guard vessels will be positioned within the regulated area to serve as reference points along the flight line for the aircraft pilots. The extremely low altitude passes require vessels to keep clear for the safety of the aircraft, vessels, and persons onboard. An aerial demonstration may be scheduled on Sunday if weather prevents the Saturday performance. The regulated area for the Blue Angels' demonstrations will restrict vessel access to some marinas and commercial docks. The short duration and minimal size of the regulated area will minimize any convenience.

Persons and vessels shall not enter or remain within the stated distances from the naval parade vessels in regulated area "Alpha", or enter or remain within regulated area "Bravo", unless authorized by the Coast Guard Patrol Commander. Fleetweek activities have traditionally attracted a sizable fleet of vessels, and large vessel operators needing to transit near Fleetweek activities are encouraged to make such transits well before or after the regulated areas are in effect.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The short length of time and minimal size of the regulated area will have minimal economic impact. Advance notice of the maritime event will also minimize the impact to maritime commerce. In prior years, Fleetweek activities have not created significant economic impact.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 USC 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.1105 is added to read as follows:

§ 100.1105 San Francisco Bay Navy Fleetweek Parade of Ships and Blue Angels demonstration.

(a) *Effective Periods.* This section is effective during the U.S. Navy/City of San Francisco Fleetweek Parade of Navy Ships and Navy Blue Angels flight activities held annually in early October, from Thursday through Saturday (with a possible Sunday Blue Angels Flight Demonstration if weather prevents a Saturday performance). Annual notice of the special effective dates and times of these regulations will be published by the Coast Guard in the Local Notice to Mariners and in the **Federal Register**. To be placed on the Local Notice to Mariners mailing list contact: Commander (oan), Eleventh Coast Guard District, 400 Oceangate Boulevard, Long Beach, CA 90822-5399.

(b) *Regulated Areas:* The following areas are designated "regulated areas" during the Navy Parade of Ships and Blue Angels' Flight activities.

(1) *Regulated Area "Alpha" for Navy Parade of Ships.* The water of San Francisco Bay bounded by a line connecting the following points:

Latitude	*Longitude*
37°48'40" N	122°28'38" W
37°48'10" N	122°28'41" W
37°46'31" N	122°25'18" W
37°46'06" N	122°24'06" W
37°47'53" N	122°22'42" W
37°46'00" N	122°22'00" W
37°46'00" N	122°23'07" W

and thence along the shore to the point of beginning.

(2) *Regulated Area "Bravo" for U.S. Navy Blue Angels Activities.* The waters of San Francisco Bay bounded by a line connecting the following points:

Lotitude	*Longitude*
37°48'53" N	122°24'06" W
37°49'32" N	122°24'16" W
37°48'56" N	122°27'58" W
37°48'21" N	122°27'44" W

and thence to the point of beginning.

Datum: NAD 83

(c) *Regulations:* All persons and/or vessels not authorized as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state or local law enforcement vessels assigned and/or approved by Commander, Coast Guard Group San Francisco to patrol the Fleetweek event.

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, in regulated area "Alpha" no preson or vessel may enter or remain within 500 yards ahead of the lead Navy parade vessel, within 200 yards astern of the last parade vessel, and within 200 yards on either side of all parade vessels. No person or vessel shall anchor, block, loiter in, or impede the through transit of ship parade participants or official patrol vessels in regulated area "Alpha."

(2) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain within regulated area "Bravo."

(3) When hailed and/or signaled by an official patrol vessel, a person or vessel shall come to an immediate stop. Persons or vessels shall comply with all directions given.

(4) The Patrol Commander shall be designated by the Commander, Coast Guard Group San Francisco, California. The Coast Guard Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated areas.

Dated: August 3, 1989.

J.W. Kime,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 89-18606 Filed 8-8-89; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 162

[CGD2-89-04]

Ohio River at Louisville, KY; Restricted Area

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed rulemaking.

SUMMARY: The Coast Guard is proposing to restrict the launching and docking of recreational boats at the Louisville, Kentucky Wharf. The redevelopment of the wharf area no longer makes it possible to launch recreational boats from the wharf. In addition, routine docking space is no longer available as the wharf serves as the normal moorings for a number of commercial passenger vessels. Overlaying this area is an existing regulatory restriction previously enacted due to the narrow channel, numerous bridges, and a sharp bend in the river. Recreational boaters add to the congestion and increase the risk and likelihood of a marine casualty because they feel they can transit the canal area and turn around without violating the current regulation. The impact of the proposed action will be to further clarify the existing regulation allowing passage through the McAlpine Lock but precluding entrance of recreational boaters no intending to transit the lock. It will reduce congestion and the risk of a marine casualty in this constricted passageway.

DATES: Comments must be received on or before September 25, 1989.

ADDRESSES: Comments should be mailed to Commanding Officer, U.S. Coast Guard Marine Safety Office, Room 360, 600 Martin Luther King Jr. Place, Louisville, Kentucky 40202-2230. The Comments and other materials referenced in this notice will be available for inspection and copying at 600 Martin Luther King Jr. Place, Room 360, Louisville, Kentucky 40202-2230. Normal office hours are between 8 a.m. and 4 p.m., local time, Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT Michael R. Stalker, Project Officer. Commercial (502) 582-5194, FTS 352-5194.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this Notice CGD2-89-04, and the specific section of the proposal to which their comments apply, and give specific reasons for each comment.

This proposal may be changed in light of the comments received. All comments received before the end of the comment period will be considered before final action is taken. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rule making process.

Drafting Information: The drafters of this notice are LT Michael Stalker, Project Officer, and LT Michael A. Sutre, Project Attorney, Second Coast Guard District, 1430 Olive Street, St. Louis, Missouri, 63103-2398.

Discussion of Proposed Regulations: As a result of the redevelopment of the Louisville, Kentucky wharf it is no longer possible to launch recreational boats in the area. There is no longer sufficient space available for recreational boaters to dock at the wharf on a routine basis since this is the normal moorings for a number of commercial passenger vessels, including the "Zachary Taylor II", The "Belle of Louisville" support barge. This area is already a restricted area, 33 CFR 62.100, for approaching tows and large commercial vessels due to the narrow channel, numerous bridges, and a sharp bend in the river. Some recreational boater as are of the opinion that they can transit the canal and turn around therein. This adds to the congestion and

increases the likelihood of a marine casualty. The existing regulation states, in part, that it applies to "passage through the Louisville and Portland Canal." The intent was to allow passage through the McAlpine Lock, whereas interpretation of the current wording has added to the already serious congestion. This proposal will clarify the original intent of the existing regulation and it will remove the exception for launching and docking of pleasure of fishing craft within the restricted area or at the Louisville Kentucky wharf.

Economic Assessment and Certification: The proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The change will merely extend the restricted area to include recreational boaters since the operation of commercial vessels and large tows are already addressed within the existing regulations. By including recreational boaters in the regulation, congestion and the likelihood of marine casualty will be lessened, thus potentially saving lives and property, and allowing more vessels to transit the area efficiently and safely.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 162

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations: In consideration of the foregoing, the Coast Guard proposes to amend Part 162 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 162 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. Section 160.100 is revised to read as follows:

§ 162.100 Ohio River at Louisville, KY; Restricted Area

(a) *The area.* The portion of the Ohio River from the Clark Memorial (Highway) Bridge, Mile 603.5, Downstream to McAlpine Dam, Mile 604.4.

(b) *The regulations.* No pleasure of fishing craft shall be operated within the restricted area at any time without prior permission of the Captain of the Port, Louisville, Kentucky, except in case of emergency and except:

(1) For passage through McAlpine Lock, and

(2) During open river conditions.

Dated: July 28, 1989.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard Commander, Second Coast Guard District.

[FR Doc. 89-18605 Filed 8-8-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3625-7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Denial

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to deny a petition submitted by Lake City Army Ammunitions Plant (LCAAP), Independence, Missouri, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on the re-evaluation of waste-specific information provided by the petitioner. EPA previously proposed to grant this petition on March 8, 1986 (see 51 FR 7820).

The Agency is also proposing the use of an organic leachate model and a fate and transport model and their application in evaluating the waste-specific information provided by the petitioner. These models have been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned wastes, once it is disposed of.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the organic leachate model and fate and transport model used to evaluate the petition. Comments will be accepted until September 25, 1989. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision and/or the models used in the petition evaluation by filing a request with Joseph Carra, whose address appears below, by August 24, 1989. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-89-LCDP-FFFFF".

Requests for a hearing should be addressed to Joseph Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS-340), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, in room M2427, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Bob Kayser, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460, (202) 382-2224.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published

in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3(c) and (d)(2). The substantive standard for "delisting" a treatment residue or as mixture is the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use an organic leachate model and a fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of LCAAP's petitioned waste on human health and the environment. Specifically, the models will be used to predict compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this fate and transport model represents a reasonable worst-case waste disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that, because LCAAP is seeking a delisting for waste managed on site, ground-water monitoring data collected from the area where the petitioned waste is contained are necessary to determine whether hazardous constituents have migrated to the underlying ground water. Ground-water monitoring data collected from LCAAP's monitoring wells will help characterize the impact (if any) of the disposal of LCAAP's waste on ground-water quality.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at requested hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

A. Lake City Army Ammunitions Plant, Independence, MO

1. Petition for Exclusion

The Lake City Army Ammunitions Plant (LCAAP) located in Independence, Missouri is involved in the manufacture of small arms ammunition and related items. LCAAP petitioned the Agency to exclude, on a one-time basis, its wastewater treatment sludge disposed of on-site in its south landfill cell (*i.e.*, Cell #2). Presently, EPA lists the treatment sludge as Hazardous Waste No. K046—"Wastewater treatment sludges from the manufacturing, formulation, and loading of lead-based

BEST COPY AVAILABLE

initiating compounds". The listed constituent for EPA Hazardous Waste No. K046 is lead.

LCAAP petitioned to exclude its waste because it does not believe that the waste meets the criteria of the listing. LCAAP believes that the wastewater treatment sludge contained in its south landfill cell is non-hazardous because the constituent of concern, although present in the waste, is in an essentially immobile form. LCAAP further asserts that the waste is not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous) Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 USC 6921(f), and 40 CFR 260.22(d)(2)–(4).

As discussed in more detail below, the Agency previously proposed to exclude LCAAP's waste from hazardous waste regulation. However, as a result of public comments received on the proposed exclusion, the Agency reassessed its decision concerning the exclusion of LCAAP's waste. Today's proposal to deny this petition for delisting is the result of the Agency's re-evaluation of LCAAP's petition.

2. Background

On May 18, 1982, LCAAP petitioned the Agency to exclude its K046 wastewater treatment sludge that, in the past, was collected in two on-site lagoon trains (also referred to as the east and west lagoon trains) and then periodically transferred from the lagoon trains to the south landfill cell for disposal. On March 6, 1986, the Agency proposed to exclude LCAAP's waste from hazardous regulation (see 51 FR 7820). On April 22, 1986, the Agency received one public comment pertaining to the proposed exclusion of LCAAP's petition. The commenter primarily questioned the Agency's use of a statistical mean rather than the maximum EP leachate value in the vertical and horizontal spread (VHS) model. Furthermore, the commenter pointed out that EPA should have considered existing ground-water monitoring data for the landfill during the evaluation of the petition, including evidence of pre-existing contamination from the landfill and other units at the site. As a result of this comment, EPA recognized that available ground-water monitoring data were important in the evaluation of the petition and requested that LCAAP provide further sampling and analysis of the south landfill waste, as well as ground-water monitoring data.

On May 30, 1986, upon request of the EPA, LCAAP also submitted a petition addressing only the waste residing in the two on-site lagoon trains. (The lagoon trains are each composed of three lagoons in series.) EPA requested this separate delisting demonstration to ensure that these lagoon trains had not adversely affected the environment. As a consequence of this separate demonstration, the original petition (*i.e.*, the subject of this notice) became a petition solely for the waste contained in the south landfill cell. (LCAAP subsequently withdrew its petition for the lagoon trains on August 31, 1988.)

On July 14, 1986, the Agency announced the availability of ground-water monitoring data that was submitted in support of LCAAP's petition and provided an opportunity for public comment on these data (see 51 FR 25372). The same commenter mentioned previously in today's notice reiterated its concerns regarding the Agency's evaluation of LCAAP's ground-water monitoring data.

The Agency's re-evaluation of the petition, including the additional information requested as a result of comments received on the March 6, 1986 proposed exclusion, indicates that the petitioned south landfill cell waste is hazardous and has the potential to harm human health and the environment. EPA recognized, during its re-evaluation of the petition, that it was probably more appropriate to determine average leachable lead levels on a waste- and sampling event-specific basis than to estimate a single average leachable lead level for all wastes, or an average for all lagoon wastes and an average for all landfill wastes. Although the commenter on the previous notices suggested that the Agency, at a minimum, undertake a standard statistical analysis of the leachable lead data. EPA did not believe it necessary to perform such an analysis for the following reasons: (1) the calculated mean values for the east and west lagoon data indicated significant levels of leachable lead (*i.e.*, greater than the delisting health-based level for lead) at the compliance point; (2) the calculated mean values for the south landfill cell waste equal the delisting health-based level for lead; and (3) the maximum reported leachable lead levels for the lagoon and south landfill data for all sampling events conducted between August 1980 and September 1985 indicate significant levels of leachable lead at the compliance point. (The Agency's evaluation of leachable lead concentrations in LCAAP's wastes is discussed in more detail in a later section of today's notice.)

The Agency's re-evaluation of the ground-water monitoring wells in the vicinity of the south landfill cell, including the additional information obtained subsequent to the March 6, 1986 proposal, indicates that the existing ground-water monitoring system is inadequate for determining the full impact of the petitioned waste on ground water. In addition, ground-water monitoring data show detected levels of lead and antimony in ground water which exceed the delisting health-based levels for these constituents. (The Agency's evalution of LCAAP's ground-water monitoring system and data is discussed in more detail in a later section of today's notice.) Because the Agency already has sufficient bases to propose denial of LCAAP's petition, EPA chose not to assess whether evidence of pre-existing ground-water contamination (*i.e.*, the additive effects of potential contamination from other sources) should also be included as part of the rationale for denying the petition.

The Agency's re-evaluation of the petitioned south landfill cell waste also indicates that the petition is incomplete and that this information should have been submitted for the south landfill waste. Specifically, LCAAP did not quantify total or leachable concentrations of the EP toxic metals (except for lead), nickel, cyanide, and antimony for the waste in the south landfill. Although the Agency considers the petition incomplete, the Agency believes that there is sufficient data to propose to deny the petition without further information. Furthermore, the Agency believes that the wastes collected in the lagoon trains, to some extent, characterize the waste contained in the south landfill cell because the wastes, once removed from the lagoon trains, are transferred to LCAAP's landfill. EPA believes that the metal species in the lagoon train wastes may be less concentrated than in the south landfill cell waste because the lagoon train wastes contain a higher percentage of liquid. Therefore, the Agency used characterization data of the east and west lagoon train waste to supplement available data for the south landfill cell in its re-evaluation of the petitioned south landfill cell waste.

In support of its petition, LCAAP submitted (1) detailed descriptions of its manufacturing and waste treatment processes, including schematic diagrams; (2) a listing of raw materials used in the manufacturing and treatment processes; (3) results of total constituent and EP leachate analyses of various waste samples for the EP toxic metals, nickel, cyanide, and antimony; (4) results of total constituent analyses of representative samples of the waste for methylene chloride, resorcinol, toluene, and 1,1,1-trichloroethane; (5) total oil and grease analyses data on representative waste samples; (6) results from characteristics testing for ignitability, corrosivity, and reactivity tests; and (7) ground-water monitoring data for the unit in which the petitioned waste is managed.

In its manufacture of small arms ammunition and related items, LCAAP fabricates metal primer cups containing a blend of lead styphnate and barium nitrate and other compounds such as antimony sulfide. These primer cups are ultimately inserted, or charged, into ammunition cartridges. Production of the metal primer cups begins with the formulation of the lead styphnate blend. The preparation of this blend occurs through four steps. The first step involves nitrating resorcinol in sulfuric acid to produce trinitroresorcinol (TNR). The TNR is then reacted with magnesium oxide to produce magnesium styphnate. In turn, the magnesium styphnate is reacted with lead nitrate to form lead styphnate. The final step involves blending lead styphnate and barium nitrate with other compounds (*i.e.*, antimony sulfide, tetracene, pentaerythritol tetranitrate, calcium silicide, aluminum powder, or acetylene black) to produce various priming mixes. As stated previously, primer cups of various blends are then charged into ammunition cartridges.

LCAAP's petitioned K046 waste results from the treatment of clean-up water used in the blending and primer charging processes. Initially, LCAAP treats the clean-up water with aluminum, caustic (*i.e.*, sodium hydroxide), and heat to destroy the reactivity of residual explosive materials. The neutralized clean-up water is then combined (at the entrance to LCAAP's waste treatment facility) with non-hazardous wastestreams discharged primarily from metal forming operations and, to a lesser extent, from wastestreams discharged from other facility operations, including water treatment, incendiary handling, and miscellaneous ballistics-testing operations. In general, these wastestreams are composed of alkaline cleaners, acid pickling solutions, soaps, emulsion lubricants, and rinsewaters.

At the waste treatment facility, a pH controlled flotation unit removes waste oils and grease from the combined wastewater streams. The removed waste oils and grease are disposed of in a separate on-site sanitary landfill. Lime is then added to the wastewater stream to raise the pH, thereby precipitating heavy metal hydroxides. The precipitated metal hydroxides are flocculated with alum and are subsequently discharged to the lagoon trains to partially dry for several weeks before disposal in LCAAP's landfill. The effluent from LCAAP's waste treatment facility is discharged under a National Pollutant Discharge Elimination System (NPDES) permit. The wastewater treatment sludge contained in the south landfill cell is the subject of today's notice.

To collect representative samples from lagoons and landfills the size of LCAAP's, petitioners are normally requested to divide the unit into 10,000 square foot sections and randomly collect five full-depth core samples from each section. The five full-depth core samples are then composited (mixed) by section. See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW–846, (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

As stated previously, the Agency also used characterization data of the waste in the east and west lagoon trains in its re-evaluation of LCAAP's petition because the chemical composition of the lagoon waste is considered by LCAAP and EPA to be very similar to the landfill waste. The landfill contains wastes that had originally been collected in the lagoons. In its delisting demonstration, LCAAP provided analytical results for numerous sampling events. Each of these sampling events is discussed in the following paragraphs in chronological order. A summary of the analytical information submitted in support of LCAAP's petition is also presented in Table 1, which follows the description of all sampling events.

LCAAP's original delisting petition contained analyses of waste collected from the east and west lagoon trains. During the period from August 1980 to February 1982, LCAAP collected five random samples of the waste in the lagoon trains. A detailed description of procedures used to collect these grab samples was not provided. LCAAP indicated, however, that these samples were collected at the "top of the sludge bed at the edges of the lagoon". Four of these five samples were analyzed for the extraction procedure (EP) leachate concentration (*i.e.*, mass of a particular constituent per unit volume of extract) of the EP toxic metals. One of these four samples was analyzed for leachable concentrations of endrin, lindane, methoxychlor, toxaphene, 2,4-D, and 2,4,5-TP (Silvex). The fifth sample was analyzed for only leachable concentrations of barium and lead.

In June 1982, LCAAP collected eight waste samples, four each from the first lagoons in the east and west lagoon trains. The first lagoons were divided into four 10,000 square foot sections, from which five full-depth core samples were collected. The five core samples were then composited by section, producing a total of four composite samples, one from each section, for each lagoon train. Excess liquid was removed, using a 0.45 micron filter, from these samples prior to analysis. These samples were analyzed only for leachable concentrations of lead.

In February 1984, LCAAP collected four composite samples from the east lagoon train according to the sampling procedures utilized in the June 1982 sampling. The February 1984 samples were analyzed for the total constituent concentrations (*i.e.*, mass of a particular constituent per mass of waste) of methylene chloride, toluene, and 1,1,1-trichloroethane, and total oil and grease content.

LCAAP also sampled the south landfill cell in February 1984. The south landfill cell was divided into four quadrants, from which five full-depth core samples were collected. The samples were composited by quadrant, producing a total of four samples, one from each quadrant. Because the south landfill cell is 2.5 acres, LCAAP should have divided the landfill cell into at least ten sections and collected at least ten composite samples of the south landfill cell waste. Although the four south landfill cell samples collected may not be completely representative of all of the waste contained in the landfill cell, the Agency considers these samples to be representative of at least a portion of the petitioned waste and, therefore, considered these samples in the evaluation of LCAAP's petition. The February 1984 samples were analyzed for the total constituent concentrations of methylene chloride, toluene, and 1,1,1-trichloroethane, and total oil and grease content.

LCAAP also provided leachable lead levels for eight samples collected from the east lagoon train during August 1984 and characterized the data as being for the south landfill cell. A detailed description of procedures used to collect these samples was not provided.

In September 1984, LCAAP again collected four composite samples from both the east lagoon train and the south landfill cell according to procedures previously utilized in the June 1982 sampling. These eight samples were analyzed for total constituent concentrations of resorcinol.

During three sampling events conducted in September and October 1985, LCAAP collected 12 additional composite samples from the east lagoon train. A detailed description of procedures used to collect these samples was not provided. Four composite samples were analyzed for only leachable concentrations of lead. The other eight composite samples were analyzed for total constituent and leachable concentrations of the EP toxic metals, nickel, cyanide, and antimony, and total sulfide levels.

As requested by EPA, LCAAP collected four composite samples from the west lagoon train on March 31, 1986. The sampling procedure used was consistent with the procedure utilized in the June 1982 sampling. LCAAP analyzed these four composite samples for total constituent and EP leachate concentrations of the EP toxic metals, nickel, and cyanide. These samples also were analyzed for total constituent concentrations of antimony, methylene chloride, resorcinol, toluene, and 1,1,1-trichloroethane and total oil and grease content.

Comments received on the proposed exclusion of LCAAP's petition suggested that the petitioned waste was not well mixed and showed wide variability in composition. In response, the Agency requested that LCAAP sample the south landfill cell to further characterize the petitioned waste. In February 1987, the south landfill cell was divided into four sections. Twelve random full-depth core samples were collected from one section and eleven random full-depth core samples were collected from each of the other three sections for a total of 45 core samples. These 45 core samples were analyzed for leachable concentrations of lead. Eight of these core samples, two from each section, were analyzed for total constituent concentrations of lead; LCAAP did not indicate how these eight samples were selected for analysis.

Table 1 summarizes the sampling events for the lagoon trains and the south landfill cell and provides information regarding the number, sample location, and the analyses performed on the waste samples. As demonstrated in Table 1, LCAAP characterized the waste with respect to specific constituents. In addition, LCAAP claims that additional hazardous constituents (as listed in 40 CFR 261, Appendix VIII) are not present in the waste. Thus, only the constituents listed in Table 1 were target analytes of LCAAP's analyses.

TABLE 1.—SUMMARY OF ANALYSIS INFORMATION SUBMITTED, WASTEWATER TREATMENT SLUDGES

Sampling date(s)	No. of samples	Sampling location	Analyte(s)
8/80–2/82	5	East, West Lagoon	—leachable EP toxic metals —leachable endrin, lindane, methoxychlor, toxaphene, 2,4-D, and 2,4,5-TP (Silvex)
6/82	4	East Lagoon	—leachable lead
	4	West Lagoon	
2/84	4	East Lagoon	—methylene chloride, 1,1,1-trichloroethane, toluene
	4	South Landfill	—oil & grease
8/84	8	East Lagoon	—leachable lead
9/84	4	East Lagoon	—resorcinol
	4	South Landfill	
9/85–10/85	8	East Lagoon	—total and leachable EP toxic metals, nickel, cyanide, and antimony —total sulfide
9/85	4	East Lagoon	—leachable lead
3/86	4	West Lagoon	—total and leachable EP toxic metals, nickel, and cyanide —total antimony —methylene chloride, resorcinol, toluene, 1,1,1-trichloroethane —oil & grease
2/87	45	South Landfill	—leachable lead —total lead (8 samples)

Based on comments received on the proposed exclusion regarding the evaluation of ground-water monitoring data, the Agency requested and LCAAP subsequently submitted additional ground-water monitoring information collected from wells monitoring the Solid Waste Landfill to demonstrate that waste contained in the south landfill cell was not adversely impacting ground-water quality. The ground-water monitoring information submitted by LCAAP and received from EPA Regional authorities included: (1) Well location information; (2) boring logs and well construction details for each well; (3) water levels; and (4) results of the analysis of ground-water samples.

3. Agency Analysis

LCAAP did not specify analytical methods used to quantify the total constituent concentrations of the EP toxic metals, nickel, cyanide, and antimony in the waste samples. LCAAP used the EP Toxicity Test procedure, as described in 45 FR 33119 (May 19, 1980), to quantify the leachable concentrations of the EP toxic metals, nickel, cyanide, and antimony in the lagoon samples and leachable concentrations of lead in the south landfill cell samples. Table 2 presents the maximum total constituent and EP leachate concentrations of the EP toxic metals (excluding leachable lead), nickel, cyanide, and antimony. Table 2 also presents total sulfide levels in the lagoon waste. (Analysis for EP leachable concentrations of sulfide (or reactive sulfide) is not necessary because the Agency's level of regulatory concern is based on the total constituent concentration of reactive sulfide.)

LCAAP did not submit total constituent analysis data for the EP toxic metals (except for lead) for samples collected from the south landfill cell. The Agency, however, believes that the east and west lagoon train data, to some extent, characterize the waste contained in the south landfill cell because the waste, once removed from the lagoon trains, was disposed of in LCAAP's landfill. The Agency did not require LCAAP to re-analyze its south landfill cell waste for total constituent

or leachable levels of the EP toxic metals, nickel, cyanide, or antimony because there was sufficient basis to propose to deny the petition without this information.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND EP LEACHATE CONCENTRATIONS (PPM) WASTEWATER TREATMENT SLUDGES

Constituents	Total constituent concentrations	EP leachate concentrations
East Lagoon		
Antimony	244	<1.0
Arsenic	<1.0	<0.25
Barium	56	<5.0
Cadmium	<1.0	<0.05
Chromium	48	<0.25
Lead	1,470	°
Mercury	0.844	<0.01
Nickel	22	<0.25
Selenium	<1.0	<0.05
Silver	<1.0	<0.25
Cyanide	0.062	<0.001
Sulfide	6.1	—
West Lagoon		
Antimony	137	1.07
Arsenic	0.69	<0.25
Barium	1,081	<5.0
Cadmium	6.4	<0.05
Chromium	42	<0.10
Lead	1,200	°
Mercury	0.1	<0.01
Nickel	25.6	<0.25
Selenium	0.64	<0.05
Silver	7.9	<0.25
Cyanide	<0.01	<0.001
Sulfide	<4	—
South Landfill		
Lead	1,044	°

<: Denotes that the constituent was not detected at the detection limit specified in the table.
° Leachable lead data are presented in Table 3 of today's notice.

The Agency recognized that detection limits in Table 2 (and Tables 3, 4 that follow) may not represent the lowest concentrations quantifiable by LCAAP, when using the appropriate analytical methods to analyze its waste. However, the Agency did not require LCAAP to re-analyze its waste using lower detection limits because these detection levels were sufficient to evaluate the petition. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits).

Table 3 that follows presents the collective EP leahchate analyses results for lead in LCAAP's wastewater treatment sludges. For each sampling event, the sampling location and the maximum and mean lead concentrations are presented.

TABLE 3.—SUMMARY OF EP LEACHABLE LEAD DATA (PPM) WASTEWATER TREATMENT SLUDGES

Sampling date(s)	Sampling location	Maximum lead concentrations	Mean lead concentrations
8/80–2/82	East and West Lagoons	0.34	0.19
6/82	East Lagoon	1.7	1.3
8/84		0.57	0.41
9/85		1.53	0.3
10/85		0.07	0.055
6/82	West Lagoon	1.1	0.79
3/86		<0.05	<0.05
8/84	South Landfill	0.43	0.34
2/87		0.143	0.053

<: Denotes that the constituent was not detected at the detection limit specified in the table.

Using "Methods for Chemical Analysis of Water and Wastes," U.S. EPA, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio (EPA–600/4–79–020) Method 413.1, LCAAP determined that its south landfill cell, east lagoon train, and west lagoon train wastes had maximum oil and grease contents of 0.69, 0.66, 0.28 percent, respectively; therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology (*i.e.*, wastes having more than one percent total oil and grease may either have significant concentrations of the constituents of concern in the oil phase, which may not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample). See SW–846 Method 1330.

Based on analytical results provided by the petitioner, pursuant to 40 CFR 260.22, the south landfill cell waste was determined not to be ignitable, corrosive, or reactive. See 40 CFR 261.21, 261.22, and 261.23.

LCAAP used SW–846 Method 8040 to analyze its lagoon train and south landfill cell wastes for resorcinol. LCAAP did not specify the analytical methods used to quantify toluene, 1,1,1trichloro-ethane, and methylene chloride levels in the wastes. Table 4 presents the maximum total concentrations of methylene chloride, resorcinol, toluene, and 1,1,1-trichloroethane reported in LCAAP's petition.

TABLE 4.—TOTAL CONSTITUENT CONCENTRATIONS (PPM) WASTEWATER TREATMENT SLUDGES

Constituents	East Lagoon	West Lagoon	South Landfill
Methylene chloride	0.06	<1	<0.01
Resorcinol	<0.15	<1	<0.15
Toluene	<0.01	<1	<0.01
1,1,1-Trichloroethane	<0.01	<1	<0.01

<: Denotes that the constituent was not detected at the detection limit specified in the table.

LCAAP submitted a signed certification stating that approximately 3,000 cubic yards of wastewater treatment sludge had been discarded annually in the south landfill cell for at lest five years. LCAAP estimates that

the 2.5 acre south landfill cell contains about 15,000 cubic yards of waste. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts LCAAP's certified estimate of 15,000 cubic yards.

The Agency conducts a spot-check sampling and analysis program to verify the representative nature of the date for some percentage of delisting petitions. As part of this program, the Agency conducted a spot-check sampling visit to LCAAP. The results of this visit are discussed later in this notice.

4. Agency Evaluation

Because LCAAP's petition is for waste contained in an on-site landfill, the Agency chose to evaluate the petition using a landfill scenario. The Agency believes that this scenario is appropriate and a reasonable worst-case management scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (*i.e.*, the model estimates the dilution of a toxicant within the aquifer for a specific volume of waste). In addition, the Agency used its Organic Leachate Model (OM) to estimate the leachable portion of the organic constituents in the petitioned waste. See 50 FR 43953 (November 27, 1985), 51 FR 41084 (November 13, 1986), and the RCRA public docket for these notices for a detailed description of the OLM and its parameters. The results of the OLM analysis were used in conjunction with the VHS model to estimate the potential impact of the organic constituents on the underlying aquifer. The Agency requests comments on the use of the OLM and VHS model as applied to the evaluation of LCAAP's waste.

Specifically, the Agency used the VHS model to evaluate the mobility of the hazardous inorganic constituents detected in the EP extract of LCAAP's wastewater treatment sludge. This evaluation used available EP leachate data submitted by LCAAP for its south landfill cell and lagoon train wastes. As stated previously, the Agency believes that LCAAP should have evaluated the south landfill cell samples for the EP toxic metals as opposed to just lead, but did not request additional analyses because there was sufficient basis to propose denial of the petition. The Agency also believes that the lagoon train EP leachate data, to some extent, characterize the south landfill cell waste.

The Agency's evaluation of antimony levels, using LCAAP's estimate of 15,000 cubic yards of south landfill cell waste and the maximum reported EP leachate concentrations for the lagoon train samples, generated a compliance-point concentration of 0.17 ppm, which is above the 0.01 ppm health-based level for antimony used in delisting decision-making.[1] The Agency's evaluation of lead levels (maximum and mean EP leachate concentrations of landfill cell and lagoon train samples), using LCAAP's estimate of 15,000 cubic yards, generated the compliance-point concentrations shown in Table 5. Six of the eight maximum compliance-point concentrations and three of eight mean compliance-point concentrations exceed the 0.05 ppm health-based level for lead used in delisting decision-making.

TABLE 5.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS FOR LEAD (PPM) WASTEWATER TREATMENT SLUDGES

Sampling date(s)	Sampling location	Compliance-point concentrations[1]	
		Maximum	Mean
8/80–2/82	East and West Lagoons	[2] 0.054	0.03
6/82	East Lagoon	[2] 0.27	[2] 0.21
8/84		[2] 0.09	[2] 0.065
9/85		[2] 0.24	0.047
10/85		0.01	0.01
6/82	West Lagoon	[2] 0.17	[2] 0.12
8/84	South Landfill	[2] 0.068	0.05
2/87		0.023	0.008

[1] Represents compliance-point concentrations calculated using maximum or mean lead leachate data (see Table 3).
[2] Compliance-point concentration exceeds the health-based level for lead of 0.05 ppm. See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1989, located in the RCRA public docket.

The Agency typically does not present its evaluation of the mobility of non-detectable levels of hazardous constituents from a petitioner's waste when appropriate analytical test methods are used. However, as stated previously, the Agency recognizes that detection limits in Table 2 may not represent the lowest concentrations quantifiable by LCAAP, when using appropriate analytical methods. Therefore, the Agency wishes to note that its evaluation of the remaining inorganic constituents (*i.e.*, arsenic, barium, cadmium, chromium, mercury, selenium, silver, nickel, and cyanide) from LCAAP's lagoon train waste, using the VHS model and the detection limits in Table 2, generated compliance-point concentrations below the delisting health-based levels for these constituents. (See the RCRA public docket for today's notice for more detail.)

The lagoon train waste exhibited antimony levels at the compliance point that exceed the health-based level for antimony used in delisting decision-making. Leachable antimony levels in all four of the west lagoon train samples failed the VHS model evaluation. Although EP leachate data were not provided for the south landfill cell samples, the Agency believes that it is likely that antimony levels in the south landfill cell would also be of concern. As stated previously, EPA believes that the metal species in the south landfill cell waste may be more concentrated than in the lagoon train waste because the south landfill waste contains a lower percentage of liquid. The Agency believes that leachable antimony concentrations in the south landfill cell samples should either approximate or exceed leachable antimony concentrations in the lagoon train samples.

As seen in Table 5, LCAAP's lagoon train and south landfill cell wastes exhaibit levels at the compliance point that exceed or equal the delisting health-based level for lead regardless of whether the maximum leachate values or calculated mean values are used in the evaluation. This evaluation clearly shows that the wastewater treatment sludge contains significant levels of leachable lead.

The maximum reported concentration of total cyanide in the lagoon train waste is 0.062 ppm, from which the Agency concludes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket. Lastly, because the total constituent concentration of sulfide in the lagoon train waste in less than 6.1 ppm, the Agency believes that the concentration of reactive sulfide will be below the Agency's interim standard of 500 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket. Due to the lack of data for cyanide and sulfide in the south landfill waste, the Agency is unable to conclude whether reactive cyanide or sulfide levels in the south landfill cell waste will also be below the respective interim standards for cyanide and sulfide.

The Agency also used the VHS model to evaluate the mobility of methylene chloride that is potentially present in the petitioned waste. The Agency used the OLM to predict the leachable concentration of methylene chloride, based on a detected level of 0.06 ppm in the lagoon train waste. The resulting leachable concentration and LCAAP's estimate of 15,000 cubic yards of south landfill cell waste were used as inputs in the VHS model in order to assess the potential impacts of this constituent upon the ground water. The compliance-point concentration for methylene chloride was calculated to be 0.002 ppm, which is below the 0.005 ppm health-based level for methylene chloride used in delisting decision-making.[2]

As stated previously, LCAAP did not specify the analytical methods used to quantify toluene and 1,1,1-trichloroethane concentrations in the waste. Thus, the Agency recognizes that detection limits in Table 4 may not represent the lowest concentrations quantifiable by LCAAP, when using appropriate analytical methods. Therefore, the Agency wishes to note that its evaluation of toluene and 1,1,1-trichloroethane levels, using the OLM/VHS model and the detection limits in Table 4, generated compliance-point concentrations below the delisting health-based levels for these constituents. (See the RCRA public docket for today's notice for more detail.)

The Agency did not evaluate the mobility of resorcinol from LCAAP's lagoon train waste because it was not detected using the appropriate analytical test method (see Table 4). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

The Agency reviewed LCAAP's argument concerning the presence of hazardous constituents (*e.g.*, those constituents listed in 40 CFR 261, Appendix VIII), other than those tested for, in the south landfill cell waste. LCAAP claims that the additional hazardous constituents are not expected to be present in the petitioned waste given the nature of the facility's manufacturing and treatment operations and raw materials used in these operations. The Agency believes that LCAAP's analyses and presentation may be insufficient to demonstrate that the south landfill cell waste contains no other hazardous constituents. Specifically, the Agency is uncertain whether LCAAP has fully described the solid wastes that have been disposed of in the south landfill cell. Because all solid wastes disposed of in the south landfill cell are also considered hazardous in accordance with 40 CFR 261.3(a)(2)(iv) (*i.e.*, the mixture rule), LCAAP should have also demonstrated that these wastes did not contain additional hazardous constituents. The Agency typically requires petitioners to submit analytical results or mass balance calculations for constituents expected to be present in petitioned wastes. The Agency, however, did not request LCAAP to provide further information about additional hazardous constituents in the south landfill cell because sufficient data existed to support a proposed denial of the petition.

On August 14, 1986, staff under contract to the Agency conducted a site visit to LCAAP as part of the Agency's spot-check sampling and analysis program. Eight composite samples (each composed of two full-depth core samples) were collected from the landfill cell and eight full-depth core samples were collected from the west lagoon train. The samples were analyzed according to EPA test methods by a laboratory under contract to EPA. Analytical difficulties were encountered during analyses of the spot-check samples. These data, therefore, were not considered in the Agency's review of LCAAP's petition. (See the RCRA public docket for today's notice for more detail.)

In response to public comments of the proposed exclusion of the waste contained in LCAAP's south landfill cell, the Agency requested that LCAAP submit additional ground-water monitoring data for the wells which monitor the Solid Waste Landfill (of which the south landfill cell is a part). (A notice of availability of the ground-water monitoring data was published on July 14, 1986 (see 51 FR 25372).) The Agency reviewed the ground-water monitoring information available for the south landfill cell, including information provided by staff in EPA Region VII. The Agency was determined that the monitoring system for the Solid Waste Landfill is inadequate for meeting the requirements of 40 CFR Part 265, Subpart F. (See the RCRA public docket for today's notice for more detail.) Nevertheless, the Agency believes that the ground-water monitoring data are sufficient to support a proposed denial of LCAAP's petition.

Although the ground-water monitoring system for the south landfill cell is inadequate for determining the full impact of the petitioned waste on ground water, the Agency believes that the data from wells #2 and #5, located adjacent to the south landfill cell, are sufficient evidence to indicate that the petitioned waste may have the potential to contaminate ground water at levels that exceed delisting health-based levels. Specifically, lead and antimony were detected at concentrations exceeding the delisting health-based levels in ground-water samples collected from wells #2 and #5. Lead and antimony concentrations reported in samples collected from #2 and #5 are presented in Table 6.

[1] See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket."

[2] See footnote 1.

TABLE 6—SUMMARY OF SELECTED GROUND-WATER MONITORING DATA (PPM) SOLID WASTE LANDFILL

Constituents and sampling dates	Levels of regulatory concern [1]	Well #2	Well #5
Lead	0.05		
5-24-85 [2]		0.074	0.087
8-14-85		0.027	0.035
8-16-85		0.019	0.042
10-23-85		0.039	0.035
1-30-86		<0.01	0.022
4-9-86		<0.01	<0.01
7-23-86		<0.010	<0.010
9-29-87 [3]		<0.010/0.015	0.017/0/019
Antimony	0.01		
9-29-87		0.011	0.013

<: Denotes that the constituent was not detected at the detection limit specified in the table.
[1] See "Docket Report on Health-based Regulatory Leels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.
[2] LCAAP believes that the results of the 5-24-85 sampling event "were in error due to a laboratory abnormality" (correspondence dated September 6, 1985 to David Topping, EPA Headquarter, from R.D. Langevin, LCAAP). The Agency does not believe that LCAAP's resampling results (8-14-85 and 8-16-85) constitute adequate evidence to support such a conclusion. Not only did LCAAP's resampling events occur almost three months after the original sampling efforts (a period of time equivalent to a "quarter"), but the data provided do not demonstrate that any analytical error occurred in the 5-24-85 sampling event.
[3] Values represent the results of replicate analyses.

Ground-water monitoring information indicates that from the initiation of LCAAP's ground-water monitoring program until at least October 6, 1986, LCAAP filtered their ground-water samples prior to analysis for metals. For the purposes of delisting, filtering ground-water samples is not considered an acceptable technique. As a result, the concentration of total lead in ground-water in the wells near the south landfill cell may be greater than the lead concentrations reported by LCAAP, at least prior to October 6, 1986.

In addition to ground-water monitoring, LCAAP has performed unsaturated zone monitoring at the south landfill cell. Two lysimeters were installed under the south landfill cell at depths of 4 feet below the bottom of the cell. LCAAP reported lead concentrations of 0.172 and 0.05 ppm for lysimeter samples collected on May 24 and August 14, 1985, respectively. LCAAP believes that the results of the May 24, 1985 sampling event "were in error due to a laboratory abnormality" (correspondence dated September 6, 1985 to David Topping, EPA Headquarters, from R.D. Langevin, LCAAP). The Agency does not believe that LCAAP's resampling results (August 14, 1985) constitute adequate evidence to support such a conclusion. Not only did LCAAP's resampling occur almost three months after the original sampling effort (a period of time equivalent to a "quarter"), but the results obtained do not demonstrate that any error occurred in the analysis of the May 24, 1985 sample. The Agency believes the results of unsaturated zone monitoring support a conclusion that the waste contained in the south landfill cell has adversely affected the environment, and has the potential for causing ground-water contamination.

In summary, the Agency believes that the ground-water monitoring data from the existing monitoring system are not adequate to eliminate the south landfill cell as a source of ground-water contamination, and to the contrary, provide a reasonable basis for concluding that the south landfill cell waste may have adversely affected ground-water quality.

5. Conclusion

The Agency believes that LCAAP has not demonstrated that the petitioned waste is not hazardous. Specifically, the EP leachate data provided by LCAAP indicate that the south landfill cell waste may leach significant concentrations of lead. This conclusion is supported by EP leachate data for antimony and lead from the lagoon train wastes and ground-water monitoring data for the south landfill cell, and further indicated by lysimeter data for the south landfill cell. The Agency believes that the lagoon train samples were non-biased and demonstrate, to some extent, the potential variation of constituent concentrations that may occur in these wastes. The Agency also notes that, due to the very limited analysis provided for samples from the south landfill cell (only lead was determined), LCAAP has not adequately demonstrated that other constituents are not present at hazardous levels. In the absense of this south landfill cell waste data, EPA considered the data from the lagoon trains for evidence of the concentrations of other constituents in the south landfill cell waste. This consideration does not imply that the lagoon train data are an acceptable substitute for south landfill cell data. LCAAP should have provided these data, but were not requested to because there was already sufficient technical basis to propose denial of the petition. The lagoon train data provided by LCAAP indicate, however, that the waste contained in the south landfill cell may also leach significant concentrations of antimony.

Furthermore, the Agency believes that data from the analyses of samples collected from the existing ground-water monitoring system at the solid waste landfill indicate that the petitioned unit may have contributed to ground-water contamination. Specifically, the Agency believes that the ground-water monitoring data from the existing well system are not adequate to eliminate the south landfill cell as a source of ground-water contamination and, to the contrary, provide a basis for concluding that the south landfill cell waste may be contributing to ground-water contamination. Furthermore, the Agency believes that the petitioned waste's potential to contribute to ground-water contamination is a sufficient basis for denial of LCAAP's petition because the Agency, in its evaluation of a petition, must determine whether factors (including additional constituents) could cause the petitioned waste to be hazardous (see 40 CFR 260.22(a)(2)).

For these reasons, the Agency proposes to deny the petition submitted by the Lake City Army Ammunitions Plant, Independence, Missouri for exclusion of its wastewater treatment sludges described in its petition as EPA Hazardous Waste No. K046 and contained in its south landfill cell. This waste should continue to be subject to regulation under 40 CFR Parts 260 through 268 and the permitting standards of 40 CFR Part 270.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would not change the existing requirements for persons generating hazardous wastes. This facility has been obligated to manage its waste as hazardous before and during the Agency's review of its petition. Because a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this denial should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administration Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The proposed denial of this petition, if promulgated, would not impose an economic burden on this facility because prior to submitting and during review of the petition, this facility should have continued to handle its waste as hazardous. The denial of the petition means that they are to continue managing their waste as hazardous in the manner in which they have been doing, economically, and otherwise. There is no additional economic impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibilty analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities. The facility included in this notice may be considered a small entity, however, this rule only affects one facility in one industrial segment. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significantly economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. Law 96-511, 44 U.S.C. 3501 *et. seq.*) and have been assigned OMB Control Number 2050-0053.

VII. List of Subjects in 40 CFR Part 261

Hazardous Materials, Waste Treatment and Disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: July 27, 1989.

Walter W. Kovalick, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 89-18597 Filed 8-8-89; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Parts 302 and 355

[FRL-3626-1]

Reporting and Liability Exemptions for Federally Permitted Releases of Hazardous Substances

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Supplemental notice to proposed rule; extension of comment period.

SUMMARY: On July 19, 1989, the U.S. Environmental Protection Agency (EPA) published a Notice of Proposed Rulemaking (NPRM) to define the scope of the exemption from reporting and liability for "federally permitted releases" under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. On July 11, 1989, EPA published a Supplemental Notice addressing certain aspects of the proposed scope of the CERCLA exemption for releases permitted under the Clean Air Act, to solicit comments on these issues. Today, EPA is extending the comment period on the Supplemental Notice from August 10, 1989, to September 10, 1989.

DATES: Comments must be received on or before September 10, 1989.

ADDRESSES: Comments should be submitted in triplicate to: Emergency Response Division, Superfund Docket Clerk, Attention: Docket Number 101(10) FPR, Room 2427M, (OS-210), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Copies of materials relevant to this rulemaking are kept in Room 2427M, at the above address. The docket is available for inspection between 9 a.m. and 4 p.m. Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 1-202/382-3046. As provided in 40 CFR Part 2, a reasonable fee (the first 50 pages are free and each additional page costs $.20) may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Hubert Watters, Project Officer, Response Standards and Criteria Branch, Emergency Reponse Division (OS-210), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, 1-202/382-2463; or the RCRA/Superfund Hotline at 1-800/424-9346; in Washington, DC, 1-202-382-3000.

SUPPLEMENTARY INFORMATION: On July 19, 1988, EPA proposed a rule (53 FR 27268) to clarify reporting exemptions for federally permitted releases of hazardous substances under section 101(10) of CERCLA (40 CFR Parts 117, 302, and 355). On July 11, 1989, EPA published a Supplemental Notice (54 FR 29306) addressing certain aspects of the proposed scope of the CERCLA section 101(10)(H) exemption for releases permitted under the Clean Air Act (40 CFR Parts 302 and 355). The Agency requested comments on the Supplemental Notice, which were to be received by August 10, 1989.

EPA has received requests from members of the regulated community for an extension of the comment period to allow time to prepare their responses. The Agency has decided to extend the comment period until September 10, 1989, to provide members of the public with additional time to review and comment on the Supplemental Notice.

Dated: August 4, 1989.
Robert L. Dupree,
Acting Assistant Administrator.
[FR Doc. 89-18733 Filed 8-8-89; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-332, RM-6720]

Radio Broadcasting Services; Defuniak Springs, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Defuniak Communications, Inc. ("petitioner") seeking the substitution of Channel 276C2 for Channel 276A at Defuniak Springs, Florida, and the modification of its license for Station WQUH(FM) to specify operation on the higher class co-channel. The coordinates for this allotment are 30-42-27 and 86-11-48. In accordance with Section 1.420(g) of the Commission's rules, we shall not accept competing expressions of interest in the use of Channel 276C2 at Defuniak Springs or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before September 25, 1989, and reply comments on or before October 10, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Defuniak Communications, Inc., P.O. Box 986, Brentwood, TN 37027-0986 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-332, adopted July 20, 1989, and released August 4, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 89-18633 Filed 8-8-89; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-331, RM-6737]

Radio Broadcasting Services; Bartonville, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Willis Jordan proposing the allotment of Channel 260A to Bartonville, Illinois, as that community's first local FM service. The coordinates for this proposal are 40-40-28 and 89-40-07.

DATES: Comments must be filed on or before September 25, 1989, and reply comments on or before October 10, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Harry C. Martin, Reddy, Begley & Martin 2033 M Street, NW., Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-331, adopted July 20, 1989, and released August 4, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 89-18634 Filed 8-8-89; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-334, RM-6716]

Radio Broadcasting Services, Stuart, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Coon Valley Communications seeking the allotment of Channel 251A to Stuart, Iowa, as the community's first local FM service. Channel 251A can be allotted to Stuart in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 41-30-18 and West Longitude 94-19-06.

DATES: Comments must be filed on or before, September 25, 1989, and reply comments on or before October 10, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Coon Valley Communications, Box 40, Stuart, Iowa 50250 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Medica Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-334, adopted July 13, 1989, and released August 3, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Karl Kensinger,
Chief, Allocations Branch Policy and Rules Division Mass Media Bureau.
[FR Doc. 89-18580 Filed 8-8-89; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-325, RM-6719]

Radio Broadcasting Services; Caro, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Prime Time Radio, Inc., proposing the substitution of FM Channel 221A for 285A at Caro, Michigan, and modification of its license for Station WIDL, to reflect the new channel. concurrence of the Canadian government will be obtained for the allotment of Channel 221A at Caro at coordinates 43-28-51 and 83-20-31.

DATES: Comments must be filed on or before September 25, 1989, and reply comments on or before October 10, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert Benkleman, President, Prime Time Radio, Inc., 1184 Cleaver Road, Caro, Michigan 48723.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-325, adopted July 13, 1989, and released August 2, 1989.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Karl Kensinger,
Chief, Allocations Branch, Policy And Rules Division, Mass Media Bureau.
[FR Doc. 89-18581 Filed 8-8-89; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-335, RM-6743]

Radio Broadcasting Services; Cloquet, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by WKLK, Inc., proposing the allotment of FM Channel 243A to Cloquet, Minnesota, as that community's second FM broadcast service. Canadian concurrence will be obtained for the allotment of Channel 243A at Cloquet at coordinates 46-43-12 and 92-28-12.

DATES: Comments must be filed on or before September 25, 1989, and reply comments on or before October 10, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John E. Carl, President, WKLK, Inc., Rt. 2, Box 325B, Kellogg, Iowa 50135.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-335, adopted July 11, 1989, and released August 3, 1989.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-18582 Filed 8-8-89; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-325, RM-6777]

Radio Broadcasting Services; Belvidere, NJ, Scranton, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by WRNJ-Daytimer seeking the allotment of Channel 296A to Belvidere, NJ, as the community's first local FM service. In addition, WRNJ-Daytimer requests the substitution of Channel 295A for Channel 296A at Scranton, PA, and the modification of The Scranton Times' license for Station WEZX accordingly. Channel 296A can be allotted to Belvidere in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.3 kilometers (2.1 miles north to avoid a short-spacing to Station WKDN, Channel 295B, Camden, NJ, and to Station WBYO, Channel 298B, Boyertown, PA. The coordinates for the Belvidere allotment are North Latitude 40-51-17 and West Longitude 75-04-50. Channel 295A can be allotted to Scranton, PA, in compliance with the Commission's minimum distance separation requirements and can be used at Station WEZX's present transmitter site. The cordinates for the Scranton allotment are North Latitude 41-25-41 and West Longitude 75-44-50. Canadian concurrence in the Scranton allotment is required since the community is located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before September 25, 1989, and reply comments on or before October 10, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lawrence Roberts, Esq., Mark N. Lipp, Esq., Mullin, Rhyne, Emmons and Topel, P.C., 1000 Connecticut Avenue, NW., Suite 500, Washington, DC 20036 (Counsel to WRNJ-Daytimer).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No 89-328, adopted July 20, 1989, and released August 4, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-18635 Filed 8-8-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-327, RM-6779]

Radio Broadcasting Services; Longwood, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Great Southern Media seeking the allotment of Channel 235A to Longwood, NC, as its first local service. The Commission seeks further information as to the status of Longwood as a community for allotment purposes. Channel 235A can be allotted to Longwood in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.3 kilometers (2.7 miles) southwest to avoid a short-spacing to Station WRNS, Channel 236C, Kinston, NC. The coordinates for this allotment are North Latitude 33-58-41 and West Longitude 78-34-36.

DATES: Comments must be filed on or before September 25, 1989, and reply comments on or before October 10, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William J. Pennington, III, Great Southern Media, 5519 Rockingham Road-East, Greensboro, North Carolina 27407 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-327, adopted July 20, 1989, and released August 3, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-18583 Filed 8-8-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-329, RM-6781]

Radio Broadcasting Services; Atlantic, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Great Southern Media seeking the allotment of Channel 297A to Atlantic, North Carolina, as its first local FM service. Channel 297A can be allotted to Atlantic in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 34-53-30 and West Longitude 76-20-24. Petitioner is requested to furnish additional information to establish Atlantic's status as a community for allotment purposes.

DATES: Comments must be filed on or before September 28, 1989, and reply comments on or before October 13, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William J. Pennington III, 5519 Rockingham Road—East, Greensboro, North Carolina 27407 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synposis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-328, adopted July 20, 1989, and released August 4, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contracts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-18636 Filed 8-8-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-326, RM-6785; RM-6782]

Radio Broadcasting Services; Shallotte, Carolina Beach and Kure Beach, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: The Commission requests comments on two mutually exclusive petitions for rule making. Beach Broadcasting of North Carolina, Inc. requests the substitution of Channel 252A for Channel 292A at Shallotte, North Carolina, the modification of its license for Station WPGO-FM accordingly, and the allotment of Channel 292A to Carolina Beach, North Carolina, as the community's first local FM service. Hendrix Broadcasting requests the allotment of Channel 294A to Kure Beach, North Carolina, as its first local FM service. Kure Beach and Carolina Beach are located less than the minimum distance separation for second adjacent Class A channels. Channel 252A can be allotted to Shallotte in compliance with the Commission's minimum distance separation requirements and can be used at the present tramsmitter site of Station WPGO-FM. Channel 292A can be allotted to Carolina Beach with a site restriction of 8.6 kilometers (5.4 miles) south to avoid a short-spacing to Station WSFL-FM, Channel 293C1, New Bern, North Carolina, or alternatively Channel 294A can be allotted to Kure Beach with a site restriction of 2.5 kilometers (1.6 miles) southwest to aviod a short-spacing to Station WSFL-FM at New Bern. The coordinates for Channel 252A at Shallotte are North Latitude 34-02-50 and West Longitude 78-16-12. The coordinates for Channel 292A at Carolina Beach are North Latitude 33-57-45 and West Longitude 77-55-45. The coordinates for Channel 294A at Kure Beach are North Latitude 33-58-37 and West Longitude 77-55-12.

DATE: Comments must be filed on or before September 25, 1989, and reply comments on or before Obtober 10, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jerrold Miller, Esq., Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033 (Counsel to Beach Broadcasting) and Dale Hendrix, Hendrix Broadcasting, 126 South Jefferson, Aurora, Missouri 65605 (Petitioner for Kure Beach).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-326, adopted July 20, 1989, and released August 3, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Steet, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the mattter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-18584 Filed 8-8-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-330, RM-6722]

Radio Broadcasting Services; Altoona, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Margaret Keefer proposing the allotment of Channel 251A to Altoona, Wisconsin, as that community's first local FM service. Channel 251A can be allotted to Altoona in compliance with the Commission's minimum separation requirements at the

city reference coordinates, which are 44-48-26 and 91-26-40.

DATES: Comments must be filed on or before September 25, 1989, and reply comments on or before October 10, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Margaret Keefer, 811 Duke, Rice Lake, WI 54868 (Petitioner); and Larry G. Fuss, Consultant, Contemporary Communications, P.O. Box 4010, Opelika, AL 36803 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-330, adopted July 19, 1989, and released August 4, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Member of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-18637 Filed 8-8-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-61; RM-6863]

Television Broadcasting Services; San Clemente & Brawley, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition filed by Steve Mewhort seeking the allotment of UHF television Channel *26 to San Clemente, as well as the substitution of Channel *48 for Channel *26 at Brawley, California, to accommodate the proposal, based on the petitioner's failure to file supporting comments. See 52 FR 52971, December 27, 1985. With this action, the proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 85-61, adopted June 28, 1989, and released July 21, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-18638 Filed 8-8-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-336, RM-6800]

Television Broadcasting Services; Paradise and Chico, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Sainte Limited, requesting that reserved UHF Channel *30 at Chico be dereserved and substituted for UHF Channel 46 at Paradise, California, that UHF Channel 46 be allotted to Chico as a reserved educational channel, and that Sainte's construction permit for Station KBCP be modified to specify operation on Channel 30.

DATES: Comments must be filed on or before September 25, 1989, and reply comments on or before October 10, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Arthur Scrutchins, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-336, adopted July 11, 1989, and released August 3, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR Section 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch Policy and Rules Division Mass Media Bureau.

[FR Doc. 89-18585 Filed 8-8-89; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register

Vol. 54, No. 152

Wednesday, August 9, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, 86 Stat. 770-776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.

Date and Time: September 6-7, 1989, 8:30 a.m.-5:00 p.m. September 8, 1989, 9:30 a.m.-5:00 p.m.

Place: Oregon State University Memorial Union, Board Room—September 6-7, 1989, Corvallis, Oregon 97331-5103. Hatfield Marine Science Center, September 8, 1989, Newport, Oregon 97365.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State agricultural experiment stations.

Contact Person for Agenda and More Information: Dr. John A. Naegele, Executive Secretary, U.S. Department of Agriculture, Cooperative State Research Service, Room 328, Aerospace Building, Washington, D.C. 20250-2200, Telephone: 202-447-4587.

Done at Washington, DC, this 1st day of August 1989.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 89-18596 Filed 8-8-89; 8:45 am]

BILLING CODE 3410-22-M

Forest Service

Availability of Boundaries and Classifications of Portions of the Merced and South Fork Merced Wild and Scenic Rivers

AGENCY: Forest Service, Agriculture.

ACTION: Notice of availability.

SUMMARY: The boundaries and classifications of portions of the Merced and South Fork Merced Wild and Scenic Rivers administered by the Forest Service are available at the following Forest Service locations: Office of the Chief of the Forest Service, 12th and Independence Avenue SW., Washington, DC 20250; Sierra National Forest, 1130 "O" Street, Fresno, CA 93721; and Pacific Southwest Regional Office, 630 Sansome Street, San Franciso, CA 94111.

Joyce T. Muraoka,

Director, Planning and Budget.

[FR Doc. 89-18567 Filed 8-8-89; 8:45 am]

BILLING CODE 3410-11-M

Environmental Impact Statement for the Proposed Valbois Destination Resort Village, Special Use Permit, Boise National Forest, Valley County, ID

AGENCY: Forest Service, USDA.

ACTION: Extension of time period for public review of the Draft Environmental Impact Statement.

INFORMATION: Notice of filing a draft environmental impact statement (DEIS) for the Valbois Destination Resort Village was published in the Federal Register on June 30, 1989. Comments were due by August 14, 1989. The period for commenting is now extended 30 days until September 13, 1989. This extension has been granted in response to requests from a number of parties. The additional period provides needed time for parties to review and formulate comments on this large and complex proposal, while still being responsive to the developer's timeframe needs.

DATE: Comments on the DEIS must be received by September 13, 1989.

ADDRESS: Send written comments to the Forest Supervisor, Boise National Forest, 1750 Front Street, Boise, ID 83702.

FOR FURTHER INFORMATION CONTACT: Greg Spangenberg (208) 364-4104.

August 2, 1989.

Dave Rittersbacher,

Forest Supervisor.

[FR Doc. 89-18587 Filed 8-8-89; 8:45 am]

BILLING CODE 3410-11-M

Cove-Mallard Area Access and Development; Nez Perce National Forest; Idaho County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; cancellation of notice of intent to prepare an environmental impact statement.

SUMMARY: On March 12, 1986, notice was published in the **Federal Register** [51 FR 8524] that an environmental impact statement would be prepared to assess the effects of a transportation system and associated timber sales within the Jersey Creek, Noble Creek, and Big Mallard Creek areas on the Red River Ranger District, Nez Perce National Forest.

That notice is hereby cancelled.

Analysis of these projects began on schedule, but was delayed until the Nez Perce National Forest Plan was approved in October, 1987. Further analysis after that date indicated that the scope of the proposed action was likely too broad for reasonably thorough site-specific treatment in a single environmental impact statement. As a result of this additional analysis, two separate proposed actions have been formulated and each will be treated in a separate environmental impact statement. Notices of Intent to prepare these two environmental impact statements will appear in the **Federal Register** later this month.

DATE: This action is effective upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mark Peterson, Supervisory Forester, Red River Ranger District, Elk City, Idaho 83525, (208) 842-2255.

Tom Kovalicky,

Forest Supervisor.

Date: August 1, 1989.

[FR Doc. 89-18568 Filed 8-8-89; 8:45 am]

BILLING CODE 3410-11-M

Big Creek Reforestation; Stanislaus National Forest, Tuolumne County, CA; Intent To Prepare an Environmental Impact Statement

The U.S. Department of Agriculture, Forest Service will prepare an environmental impact statement for proposed reforestation of a portion of the area burned in the Stanislaus Complex Fire of 1987. This analysis includes approximately 11,000 acres on the Groveland Ranger District.

The purpose of the proposed reforestation project is to contribute toward the attainment of goals identified in the Stanislaus National Forest Timber Management Plan and the Groveland Ranger District Multiple Use Plan. These goals include providing a continuous supply of timber products and growing and maintaining a healthy, productive forest.

Several alternatives will be considered for this proposed reforestation project. One alternative will be to take no action to achieve reforestation. Other alternatives will include combinations of hand, mechanical or chemical (herbicide) treatments and controlled burning, for the purposes of site preparation for planting, and release of conifer seedlings from competition. Both plantation survival and tree growth will be emphasized.

The project area is located in Tuolumne County, California, in the following townships, ranges and sections (Mount Diablo Base Meridian): T. 1 S., R. 17 E., sections 25 and 36; T. 1 S., R. 18 E., sections 1–5 and 8–36; T. 2 S., R. 18 E., sections 1–5 and 11–13; 6; T. 1 S., R. 19 E., sections 1–24 and 26–35; and T. 2 S., R. 19 E., sections 4–10 and 16–18.

Federal, State, and local agencies; private landowners within and adjacent to the proposed project area; forest user groups; special use permitees; and other individuals or organizations who may be interested in or affected by the decision are invited to participate in the scoping process. This process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of issues covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

Blaine L. Cornell, Forest Supervisor, Stanislaus National Forest, Sonora, California, is the responsible official.

The analysis is expected to take about three months. The draft environmental impact statement should be available for public reivew by May 1990. The final environmental impact statement is scheduled to be completed by August 1990.

Written comments and suggestions concerning the analysis should be sent to Kit Perlee, District Ranger, Groveland Ranger District, Star Route Box 75G, Groveland, California 95321, by September 11, 1989.

Questions about the proposed action and environmental impact statement should be directed to John Schmechel, District Silviculturist, Groveland Ranger District, phone 209–962–7825.

Date: August 1, 1989.

Blaine L. Cornell,

Forest Supervisor.

[FR Doc. 89–18570 Filed 8–8–89; 8:45 am]

BILLING CODE 3410–11–M

Hamm-Hasloe Reforestation; Stanislaus National Forest, Tuolumne and Mariposa Counties, CA; Intent To Prepare an Environmental Impact Statement

The U.S. Department of Agriculture, Forest Service will prepare an environmental impact statement for proposed reforestation of a portion of the area burned in the Stanislaus Complex Fire of 1987. This analysis includes approximately 21,000 acres on the Groveland Ranger District.

The purpose of the proposed reforestation project is to contribute toward the attainment of goals identified in the Stanislaus National Forest Timber Management Plan and the Groveland Ranger District Multiple Use Plan. These goals include providing a continuous supply of timber products and growing and maintaining a healthy, productive forest.

Several alternatives will be considered for this proposed reforestation project. One alternative will be to take no action to achieve reforestation. Other alternatives will include combinations of hand, mechanical or chemical (herbicide) treatments and controlled burning, for the purposes of site preparation for planting, and released of conifer seedlings from competition. Both plantation survival and tree growth will be emphasized.

The project area is located in Tuolumne and Mariposa Counties, California, in the following townships, ranges and sections (Mount Diablo Base Meridian): T.1S., R.17E., sections 6–8 and 16–36; T.2S., R.17E., sections 1–36; T.3S., R.17E., sections 1–6; T.2S., R.18E., sections 3–9 and 16–20; and T.3S., R.16E., section 6.

Federal, State, and local agencies; private landowners within and adjacent to the proposed project area; forst user groups; special use permitees; and other individuals or organizations who may be interested in or affected by the decision are invited to participate in the scoping processing. This process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of issues covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

Blaine L. Cornell, Forest Supervisor, Stanislaus National Forest, Sonora, California, is the responsible official.

The analysis is expected to take about three months. The draft environmental impact statement should be available for public review by March 1990. The final environmental impact statement is scheduled to be completed by June 1990.

Written comments and suggestions concerning the analysis should be sent to Kit Perlee, District Ranger, Groveland Ranger District, Star Route Box 75G, Groveland, California 95321, by September 11, 1989.

Questions about the proposed action and environmental impact statement should be directed to John Schmechel, District Silviculturist, Groveland Ranger District, phone 209–962–7825.

Blaine L. Cornell,

Forest Supervisor.

Date: August, 1, 1989.

[FR Doc. 89–18573 Filed 8–8–89; 8:45 am]

BILLING CODE 3410–11–M

Jawbone Reforestation; Stanislaus National Forest Tuolumne County, CA; Intent To Prepare an Environmental Impact Statement

The U.S. Department of Agriculture, Forest Service will prepare an environmental impact statement for proposed reforestation of a portion of the area burned in the Stanislaus Complex Fire of 1987. This analysis includes approximately 15,000 acres on the Mi-Wok and Groveland Ranger Districts.

The purpose of the proposed reforestation project is to contribute toward the attachment of goals identified in the Stanislaus National Forest Timber Management Plan and the Mi-Wok and Groveland Ranger District Multiple Use Plans. These goals include providing a continuous supply of timber products and growing and maintaining a healthy, productive forest.

Several alternatives will be considered for this proposed reforestation project. One alternative will be to take no action to achieve reforestation. Other alternatives will include combinations of hand, mechanical or chemical (herbicide) treatments and controlled burning, for the purposes of site preparation for planting, and release of conifer seedlings from competition. Both plantation survival and tree growth will be emphasized.

The project area is located in Tuolumne County, California, in the following townships, ranges and sections (Mount Diablo Base Meridian): T.1N., R.17E., sections 24–28 and 32–36; T.1S., R.17E., sections 1–5 and 8–12; T.1S., R.18E., sections 3–6, 7 and 18; T.1N., R.18E., sections 5–8 and 17–36; T.2N., R.18E., sections 12–16 and 19–36; T.2N., R.19E., sections 5–18, 15–22 and 27–34; and T.1N., R.19E., sections 4–6, 8–9, 16–21 and 28–33.

Federal, State, and local agencies; private landowners within and adjacent to the proposed project area; forest user groups; special use permittees; and other individuals or organizations who may be interested in or affected by the decision are invited to participate in the scoping process. This process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of issues covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

Blaine L. Cornell, Forest Supervisor, Stanislaus National Forest, Sonora, California, is the responsible official.

The analysis is expected to take about three months. The draft environmental impact statement should be available for public review by January 1990. The final environmental impact statement is scheduled to be completed by March 1990.

Written comments and suggestions concerning the analysis should be sent to Gerald J. Kowalski, District Ranger, Mi-Wok Ranger District, P.O. Box 100, Mi-Wuk Village, California 95346, by September 11, 1989.

Questions about the proposed action and environmental impact statement should be directed to Joseph W. Sherlock, District Silviculturist, Mi-Wok Ranger District, phone 209–586–3234.

Date: August 1, 1989.

Blaine L. Cornell,

Forest Supervisor.

[FR Doc. 89–18571 Filed 8–8–89; 8:45 am]

BILLING CODE 3410–11–M

Larson Reforestation; Stanislaus National Forest, Mariposa County, California; Intent to Prepare an Environmental Impact Statement

The U.S. Department of Agriculture, Forest Service will prepare an environmental impact statement for proposed reforestation of a portion of the area burned in the Stanislaus Complex Fire of 1987. This analysis includes approximately 27,000 acres on the Groveland Ranger District.

The purpose of the proposed reforestation project is to contribute toward the attainment of goals identified in the Stanislaus national Forest Timber Management Plan and the Groveland Ranger District Multiple Use Plan. These goals include providing a continuous supply of timber products and growing and maintaining a healthy, productive forest.

Several alternatives will be considered for this proposed reforestation project. One alternative will be to take no action to achieve reforestation. Other alternatives will include combinations of hand, mechanical or chemical (herbicide) treatments and controlled burning, for the purposes of site preparation for planting, and release of conifer seedlings from competition. Both plantation survival and tree growth will be emphasized.

The project area is located in Mariposa County, California, in the following townships, ranges and sections (Mount Diablo Base Meridian): T. 2S., R. 18 E., sections 3, 9–11, 13–17 and 19–36; T. 3S., R. 18 E., sections 1–24; T. 2S., R. 19 E., sections 9–10 and 15–36; T. 3S., R. 19 E., sections 1–22; T. 2S., R. 20 E., sections 29–32; and T. 3S, R. 20E., sections 4–9 and 16–18.

Federal, State, and local agencies; private landowners within and adjacent to the proposed project area; forest user groups; special use permittees; and other individuals or organizations who may be interested in or affected by the decision are invited to participate in the scoping process. This process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of issues covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

Blaine L. Cornell, Forest Supervisor, Stanislaus National Forest, Sonora, California, is the responsible official.

The analysis is expected to take about three months. The draft environmental impact statement should be available for public review by April 1990. The final environmental impact statement is scheduled to be completed by July 1990.

Written comments and suggestions concerning the analysis should be sent to Kit Perlee, District Ranger, Groveland Ranger District, Star Route Box 75G, Groveland, California 95321, by September 11, 1989.

Questions about the proposed action and environmental impact statement should be directed to John Schmechel, District Silviculturist, Groveland Ranger District, phone 209–962–7825.

Blaine L. Cornell,

Forest Supervisor.

Date: August 1, 1989.

[FR Doc. 89–18569 Filed 8–8–89; 8:45 am]

BILLING CODE 3410–11–M

Paper Reforestation; Stanislaus National Forest Tuolumne County, CA; Intent To Prepare an Environmental Impact Statement

The U.S. Department of Agricluture, Forest Service will prepare an environmental impact statment for proposed reforestation of a portion of the area burned in the Stanislaus Complex Fire of 1987. This analysis includes approximately 15,000 acres on the Mi-Wok Range District.

The purpose of the proposed reforestation project is to contribute toward the attainment of goals identified in the Stanislaus National Forest Timber Management Plan and the Mi-Wok Range District Multiple Use Plan. These goals include providing a continuous supply of timber products and growing and maintaining a healthy, productive forest.

Several alternatives will be considered for this proposed reforestation project. One alternative will be to take no action to achieve reforestation. Other alternatives will include combinations of hand, mechanical or chemical (herbicide) treatments and controlled burning, for the purposes of site preparation for planting, and release of conifer seedlings from competition. Both plantation survival and tree growth will be emphasized.

The project area is located in Tuolumne County, California, in the following townships, ranges and sections (Mount Diablo Base Meridian):, T. 1 N., R. 1 6E., sections 1–3, 10, 11, 13–16 and 21–36; T. 2 N., R. 1 6E., sections 25, 26 and 34–36; T. 2 N., R. 17 E., sections 30, 31 and 34–36; and T. 1 N., R. 17 E., sections 1–23 and 28–32.

Federal, State, and local agencies; private landowners within and adjacent to the proposed project area; forest user

groups; special use permitees; and other individuals or ogranaizations who may be interested in or affected by the decision are invited to participate in the scoping process. This process includes:

1. Identification of potential issues.
2. Identification of issues covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

Blaine L. Cornell, Forest Supervisor, Stanislaus National Forest, Sonora, California, is the responsible official.

The analysis is expected to take about three months. The draft environmental impact statement should be available for public review by January 1990. The final environmental impact statement is scheduled to be completed by March 1990.

Written comments and suggestions concerning the analysis should be sent Gerald J. Kowalski, District Ranger, Mi-Wok Ranger District, P.O. Box 100, Mi-Wuk Village, California 95346, by September 11, 1989.

Questions about the proposed action and environmental impact statement should be directed to Joseph W. Sherlock, District Silviculturist, Mi-Wok Ranger District, phone 209–586–3234.

Blaine L. Cornell,

Forest Supervisor.

Dated: August 1, 1989.

[FR Doc. 89–18572 Filed 8–8–89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State/Territorial Coastal Management Program, Coastal Energy Impact Program and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the American Samoa and Virgin Islands Coastal Management Programs, and the Puerto Rico (Jobos Bay) National Estuarine Research Reserve. Section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), requires a continuing review of the performance of each coastal state with respect to funds authorized under the CZMA and to the implementation of its federally approved Coastal Management Program. Section 315 of the CZMA requires the periodic review of the peformance of each estuarine research reserve with respect to its operation and management. The states/territories evaluated were found to be adhering to the programmatic terms of their financial assistance awards and/or to their approved coastal management programs; and to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate. Accomplishments in implementing Coastal Management Programs were occurring with respect to the national coastal management objectives identified in section 303(2)(A)–(I) of the CZMA. A copy of the assessment and detailed findings for these programs may be obtained on request from: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235 (telephone 202/673–5104).

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

Thomas J. Maginnis,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 89–18625 Filed 8–8–89; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management Programs and Estuarine Sanctuaries; Intent to Evaluate Performance

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resources Management (OCRM), announces its intent to evaluate the performance of the Alabama Coastal Management Program (CMP); Florida CMP; and Virginia CMP; and Georgia (Sapelo) National Estuarine Research Reserve (NERR) through September 30, 1989. Evaluation of coastal management programs will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), which requires a continuing review of the performance of coastal states with respect to coastal management, including detailed findings regarding the extent to which the state has implemented and enforced the program approved by the Secretary of Commerce, addressed the coastal management needs identified in section 303(2) (A) through (I) of the CZMA, and adhered to the terms of any grant, loan or cooperative agreement funded under the CZMA. Evaluation of the National Estuarine Research Reserves will be conducted pursuant to section 315(f) of the CZMA, which requires the periodic review of the performance of each reserve with respect to its operation and management. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, state and local agencies, and with members of the public. Public meetings will be held as part of the site visits. The respective state will issue notice of these meetings. Copies of each state's most recent performance report, as well as OCRM's notification letter and supplemental information request, if any, to the state are available upon request from the OCRM. Written comments from all interested parties on each of these programs are encouraged at this time. Please direct comments to John H. McLeod (see Further Contact below). OCRM will place subsequent notice in the **Federal Register** announcing the availability of the Final Findings based on each evaluation.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235 (telephone: 202/673–5104).

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

Dated: August 2, 1989.

Thomas J. Maginnis.

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 89–18626 Filed 8–8–89; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals Permit Applications; Kenneth S. Norris, Randall S. Wells, Jan S. Ostman, Carl Schilt, and William T. Doyle (P20J)

Notice is hereby given that the Applicants have applied in due form for a Permit to take marine mammals as authorized by the marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicants: Dr. Kenneth S. Norris, Dr. Randall S. Wells, Mr. Jan S. Ostman, Mr. Carl Schilt, and Dr. William T. Doyle, University of California, Institute of Marine Sciences, Long Marine Laboratory, 100 Shaffer Road, Santa Cruz, CA 95060.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Hawaiian spinner dolphin (*Stenella longirostris*) 2,400.

4. Type of Take: To take by potential harassment by making 30 hukilau sets around spinner dolphin schools in order to define the size and dimensions of an opening in the net that will allow intact dolphin subgroups to swim out.

5. Location of Activity: Kona coast of the Big Island of Hawaii.

6. Period of Activity: 3 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: August 2, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–18595 Filed 8–8–89; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Automated Patent System Industry Review Advisory Committee; Closed Meeting

AGENCY: Patent and Trademark Office, Commerce

DATES AND LOCATION: The meeting will convene August 21, 1989, at 9:00 a.m. and adjourn by 4:00 p.m. on August 22, 1989. The meeting, which is closed, will be held at the U.S. Patent and Trademark Office (PTO) in the Information Systems Conference Room, Two Crystal Park, 2121 Crystal Drive, Arlington, VA 22202.

SUMMARY: The Automated Patent System Industry Review Advisory Committee, consisting of nine members, was established on March 17, 1989 in accordance with the Federal Advisory Committee Act, with the approval of the Assistant Secretary for Administration. This Committee meeting agenda has two parts: (1) A review of actions taken/planned in response to recommendations by an Industry Review Board and (2) a discussion of PTO's proposed long-range plans for future development of the Automated Patent System and related systems. This meeting is closed to the public in accordance with section 552b(c)(4) of Title 5, U.S.C. because matters discussed at these meetings will disclose trade secrets and confidential financial information.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formerly determined on July 14, 1989, pursuant to section 10(d) of the Federal Advisory Committee Act, that the meeting may be properly closed because it is concerned with matters that are within the purview of 5 U.S.C. 552b(c)(4). A copy of the determination is available for public inspection in the Central Reference and Records Inspection Facility, Room 6219, Main Commerce.

FOR FURTHER INFORMATION CONTACT: Mr. Boyd Alexander, Deputy Assistant Commissioner for Information Systems, U.S. Patent and Trademark Office, Suite 1002, 2121 Crystal Drive, Arlington, VA 22202, telephone (703) 557–6000.

Dated: July 31, 1989.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 89–18608 Filed 8–8–89; 8:45 am]

BILLING CODE 3510-16-M

Performance Review Board

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Announcement of Membership of the Patent and Trademark Office Performance Review Board.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), the Patent and Trademark Office announces the appointment of persons to serve as members of its Peformance Review Board (PRB).

This notice announces the termination of the appointments and replacement of Rene D. Tegtmeyer and Robert F. Burnett, who have retired. Marilyn G. Wagner and Al L. Smith, whose terms expire on September 30, 1989, are also being replaced.

ADDRESS: Comments should be addressed to Personnel Officer, Patent and Trademark Office, Office of Personnel, One Crystal Park, Suite 700, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Carolyn P. Acree at the above address or (703) 557–2662.

SUPPLEMENTARY INFORMATION: The new membership of the Patent and Trademark Office Board is as follows:

Bradford R. Huther, Chairman, Assistant Commissioner for Finance and Planning, Patent and Trademark Office, Washington, DC 20231. Term—permanent

James E. Denny, Member, Acting, Assistant Commissioner for Patents, Patent and Trademark Office, Washington, DC 20231. Term—permanent

Jeffrey M. Samuels, Member, Assistant Commissioner for Trademarks, Patent and Trademark Office, Washington, DC 20231. Term—permanent

Theresa A. Brelsford, Member, Assistant Commissioner for Administration, Patent and Trademark Office, Washington, DC 20231. Term—permanent

Thomas P. Giammo, Member, Assistant Commissioner for Information Systems, Patent and Trademark Office Washington, C 20231. Term—permanent

Fred E. McKelvey, Member, Solicitor, Patent and Trademark office Washington, DC 20231. Term—expires September 30, 1992.

Dr. Michael G. Hansen, (Outside) Member, Director, Federal Executive Institute, Charlottesville, VA 22901. Term—expires September 30, 1992.

Edward Kubasiewicz, Member, Director, Patent Examining Group 250, Patent and Trademark Office, Washington, DC 20231. Term—expires September 30, 1992.

Dated: August 4, 1989

Carolyn P. Acree,

Personnel Officer.

[FR Doc. 89–18609 Filed 8–8–89; 8:45 am]

BILLING CODE 3510-16-M

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. I, 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Agricultural Advisory Committee will conduct a public meeting in the Fifth Floor Hearing Room at the Commission's Washington, DC headquarters located at Room 532, 2033 K Street NW., Washington, DC 20581, on August 28, 1989, beginning at 9 a.m. and lasting until 12:30 p.m. The agenda will consist of:

Agenda

1. Introductory remarks by Commissioner Kalo A. Hineman;
2. Review of events relating to expiration of Chicago Board of Trade July 1989 soybean futures contract;
3. Discussion of EFP (exchanges of futures for physicals) transactions;
4. Status report on CFTC reauthorization legislation; and
5. Other issues for Committee consideration; timing of next meeting; other Committee business.

The purpose of this meeting is to solicit the views of the Committee on the above-listed agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on agricultural issues. The purposes and objectives of the Advisory Committee are more fully set forth in the May 9, 1989, third renewal charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Kalo A. Hineman, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Agricultural Advisory Committee, c/o Charles O. Conrad, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Mr. Conrad in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC, on August 3, 1989.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–18544 Filed 8–8–89; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; Deletion of Systems of Records Notices

AGENCY: Department of the Navy, DoD.

ACTION: Notice of deletion of systems of records.

SUMMARY: The Department of the Navy proposed to delete twenty-one systems of records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: This action will be effective August 10, 1989.

ADDRESS: Send any comments to Mrs. Gwen Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP–09B30), Department of the Navy, Room 5E521, The Pentagon, Washington, DC 20350–2000, telephone: (202) 697–1459, Autovon: 227–1459.

SUPPLEMENTARY INFORMATION: Department of the Navy systems or records notices inventory subject to the Privacy Act of 1974 have been published in the **Federal Register** as follows:

51 FR 12908, Apr 16, 1986
51 FR 18086, May 16, 1986 (Compilation, changes follow)
51 FR 19884, Jun 3, 1986
51 FR 30377, Aug 26, 1986
51 FR 30393, Aug 26, 1986
51 FR 45931, Dec 23, 1986
52 FR 2147, Jan 20, 1987
52 FR 2149, Jan 20, 1987
52 FR 8500, Mar 18, 1987
52 FR 15530, Apr 29, 1987
52 FR 22671, Jun 15, 1987
52 FR 45846, Dec 2, 1987
53 FR 17240, May 16, 1988
53 FR 21512, Jun 8, 1988
53 FR 22028, Jun 13, 1988
53 FR 25363, Jul 6, 1988
53 FR 39499, Oct 7, 1988
53 FR 41224, Oct 20, 1988
54 FR 14378, Apr 11, 1989

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 4, 1989.

Deletions

N05880–1

System name: Federal Tort Claims Files (51 FR 18178, May 16, 1986).
Reason: This system has been incorporated into N05890–1, "Claims Information System".

N05890–2

System name: Affirmative Claims Files (51 FR 18180, May 16, 1986).
Reason: This system has been incorporated into N05890–1, "Claims Information System".

N05890–3

System name: Foreign Claims Files (51 FR 18181, May 16, 1986).
Reason: This system has been incorporated into N05890–1, "Claims Information System".

N05890–4

System name: Military Claims Files (51 FR 18182, May 16, 1986).
Reason: This system has been incorporated into N05890–1, "Claims Information System".

N05890–5

System name: Nonscope Claims Files (51 FR 18182, May 16, 1986).
Reason: This system has been incorporated into N05890–1, "Claims Information System".

N05890–6

System name: Military Personnel and Civilian Employees' Claims (51 FR 18183, May 16, 1986).
Reason: This system has been incorporated into N05890–1, "Claims Information System".

N05890–7

System name: U.S. Postal Service Indemnity Claims Files, (51 FR 18184, May 16, 1986).
Reasons: This system has been incorporated into N05890–1, "Claims Information System".

N01070–5

System name: Personnel Resources Information System for Management (PRISM), (51 FR 18096, May 16, 1986).
Reason: This system has been incorporated into N05300–2, "Administrative Personnel Management System".

N01533–1

System name: NROTC Educational Development Records, (51 FR 18115, May 16, 1986).
Reason: This system has been incorporated into N01500–2, "NAVSCOLS/TIS, USMC Training Subsys".

N01770–1

System name: Decedent Affairs Records System, (51 FR 18122, May 16, 1986).
Reason: This system contains information which is retrievable only by the names of deceased individuals. Since deceased individuals do not fall within the coverage of the Privacy Act, this system is no longer needed.

N03461–1

System name: Summary Debriefs of Prisoners of War, (51 FR 18128, May 16, 1986).
Reason: This system is now under the Defense Intelligence Agency under system #LDIA 1728, "Southeast Asia Operational Casualty Records".

N04350–1

System name: Contract Field Service File, (51 FR 18136, May 16, 1986).
Reason: This system has been incorporated into N05300–2, "Administrative Personnel Management System".

N05101–2

System name: Sight Conservation Program, (51 FR 18144, May 16, 1986).
Reason: This system has been incorporated into N05300–2, "Administrative Personnel Management System".

N05353–1

System name: Treatment Effectiveness Assessment System, (51 FR 18152, May 16, 1986).
Reason: This program has been cancelled.

N05527–3

System name: Naval Educational Development, (51 FR 18161, May 16, 1986).
Reason: This system has been incorporated into N01500–2, "NAVSCOLS/TIS, USMC Training Subsys".

N05527–5

System name: Navy Central Clearance Group (NCCG) Records, (51 FR 18163, May 16, 1986).
Reason: This system has been incorporated into N05300–2, "Administrative Personnel Management System".

N06470–1

System name: USN/USMC Nuclear Test Personnel Review Program, (51 FR 18192, May 16, 1986).
Reason: This system is now under the Defense Nuclear Agency under system #HDNA 010, "Nuclear Test Participants".

N07300–2

System name: Resource Accounting and Project Tracking System, (RAPTS) (51 FR 18202, May 16, 1986).
Reason: This program has been cancelled.

N09593–1

System name: Naval Environmental Training System (NETS), (51 FR 18206, May 16, 1986).
Reason: This program has been cancelled.

N11101–3

System name: Family Housing Mock Utility System, (51 FR 18212, May 16, 1986).
Reason: This program has been cancelled.

N12950–1

System name: Career Development Program for Communicators, (51 FR 18220, May 16, 1986).
Reason: This program has been cancelled.

[FR Doc. 89–18663 Filed 8–9–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.117K]

Educational Research Grant Program; Proposed Funding Priority for Fiscal Year 1990

SUMMARY: The Secretary proposes to establish a funding priority by reserving a portion of the funds available for the Educational Research Grant Program for Fiscal Year 1990 to support research projects led by teachers in public and private elementary and secondary schools.

DATE: Comments must be received on or before September 8, 1989.

ADDRESS: Comments concerning this priority should be addressed to L. Ann Benjamin, Research Applications Division, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW. (Room 508e—M/S 1508), Washington, DC 20208–5643.

FOR FURTHER INFORMATION CONTACT: L. Ann Benjamin Telephone: (202) 357–6187.

SUPPLEMENTARY INFORMATION: The purpose of the Educational Research Grant Program (ERGP) is to support scientific inquiry designed to provide more dependable knowledge about the processes of learning and education.

Proposed Absolute Priority: The Secretary proposes to give an absolute preference for a portion of the funds available for the ERGP during fiscal year 1990 to applications that meet the priority described below. Only applications that meet this priority would be considered under this competition:

Teacher-led research projects endorsed by appropriate education officials. The Secretary proposes to support only those applications that are for teacher-led research projects. Teacher-led research projects are those in which one or more classroom teachers serve as principal investigator(s) for the project, although involvement of other personnel such as school administrators, supervisors of teachers, curriculum specialists, and staff developers may also be appropriate.

Each project in a public school must be endorsed by the appropriate officials of the local educational agency (LEA). Each project in a private school must be endorsed by the larger, local organization of private schools of which the school is a member, or if the school is not part of a larger, local organization of private schools, by appropriate officials at the school itself.

The Secretary also proposes that each grantee, in carrying out its teacher-led project, must address one or more of the following topics. Following each topic are examples, illustrative only, of specific study emphasis which might be included under that topic.

1. Teachers' roles and teaching function (e.g., instructional roles, roles as a professional educator, parent-teacher interactions in teaching).
2. Specific instructional processes and materials (e.g., effective teaching techniques, classroom management strategies, organizing learning groups).
3. Effective teaching of subject matter content (e.g., subject specific approaches, interdisciplinary strategies, examining appropriateness of content).
4. Approaches to professional development of educational personnel (e.g., in-service education, induction of beginning teachers, school-based preservice initiatives).
5. Alternative patterns of school management and organization (e.g., administrator-teacher shared decision-making, differentiated staffing, career ladder programs).
6. Ways for schools to find, understand, and use research and practice-based knowledge more effectively in local improvement initiatives (e.g., development of local problem-solving capacity, diagnosing

BEST COPY AVAILABLE

readiness for change, implementing and assessing research-based improvement).

7. More effective strategies to assess student, teacher or school indicators of excellence (e.g., student testing strategies, measurement of achievement of school-wide objectives, teacher performance assessment).

Invitation To Comment: Interested persons are invited to submit comments and recommendations regarding the proposed priority.

All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, and 85; and (b) the regulations for this program in 34 CFR Part 700.

Program Authority: 20 U.S.C. 1221e.

Dated: July 17, 1989

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.117K; Educational Research Grant Program)

[FR Doc. 89-18802 Filed 8-8-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Intent to Make a Noncompetitive Financial Assistance Award; Colorado School of Mines

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7 (b)(2)(i)(B) and (D), competition for a grant has been restricted to the Colorado School of Mines (CSM), to conduct a summer Energy and Minerals Field Institute which will promote a better understanding of energy and minerals issues and problem areas by the participants and add significantly to their capability to analyze energy issues relating to one of the most important energy-producing regions in the Nation.

Scope: This grant will provide assistance required to support the Colorado School of Mines twelfth annual Summer Field Institute: to provide funding for July and August 1989 sessions.

Eligibility: The summer institute would be conducted by the Colorado School of Mines using its own resources: however, DOE support of this activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity. The Colorado School of Mines is a non-profit institution with exclusive domestic capability to perform this activity successfully. Eleven years of previous experience in conducting the summer institute has given CSM a capability that is currently unique. Therefore, DOE has determined that it is appropriate to be noncompetitive in its solicitation.

The term of this grant shall be one year from the effective date of award.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Witt, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-1570.

Thomas S. Keefe,

Director, Contract Operations Division 'B', Office of Procurement Operations.

[FR Doc. 89-18828 Filed 8-8-89; 8:45 am]

BILLING CODE 6450-01-M

Office for Assistant Secretary for International Affairs and Energy Emergencies, Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of Indonesia concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangements to be carried out under the above-mentioned agreement involve approval of the following sales: Contract Number S-IE-9, for the sale of 149.968 grams of uranium depleted in the isotope uranium-235, 233.174 grams of natural uranium, and 3.003 grams of uranium enriched to an average of 23.286 percent in the isotope uranium-235 for use as standard reference materials by the National Atomic Energy Agency of Indonesia.

Contract Number S-IE-10, for the sale of 1 gram of uraniun depleted in the isotope uranium-235, and 9.00 grams of uranium enriched to an average of 22.195 percent in the isotope uranium-235 for use as standard reference materials by the National Atomic Energy Agency of Indonesia.

Contract Number S-IE-11, for the sale of 149.966 grams of uranium depleted in the isotope uranium-235, 381.54 grams of natural uranium, and 4.002 grams of uranium enriched to an average of 17.463 percent in the isotope uranium-235 for use as standard reference materials by the United Nations Development Program, Jakarta, Indonesia.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: August 3, 1989.

Richard H. Williamson,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 89-18827 Filed 8-8-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project Nos. 2409-024, et al.]

Hydroelectric Applications (Calaveras County Water District, et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* Amendment of License.

b. *Project No.:* 2409-024.

c. *Date Filed:* June 2, 1989.

d. *Applicant:* Calaveras County Water District.

e. *Name of Project:* North Fork Stanislaus River, Hydroelectric Project.

f. *Location:* On the North Fork Stanislaus River, Stanislaus River, Highland Creek, Beaver Creek, Silver Creek, and Duck Creek in the Counties of Calaveras, Alpine, and Tuolomne, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Hari Modi, Project Director, Northern California Power Agency, 180 Cirby Way, Roseville, CA 95678 (916) 781-4204.

i. *FERC Contact:* Ken Fearon, (202) 376-9789.

j. *Comment Date:* September 13, 1989.

k. *Description of Amendment:* The amendment of license proposes to increase the rated capacity of the generating units at the Collierville Powerhouse from the authorized capacity of 205.2-MW to 256.8-MW. The applicant intends to utilize the run-off between Spicer Meadow and McKays Point Diversion Dam, or additional releases from Spicer Meadow Dam when the run-off does not provide sufficient flows, to generate the additional capacity.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

2a. *Type of Application:* Surrender of License.

b. *Project No.:* 4369-009.

c. *Date Filed:* June 5, 1989.

d. *Applicant:* City of Anoka.

e. *Name of Project:* Coon Rapids Dam.

f. *Location:* In Anoka and Hennepin Counties, Minnesota, on the Mississippi River.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mark Nagel, City Manager, City of Anoka, Minnesota, 2015 First Avenue, Anoka, MN 55303, (612) 421-6630.

i. *FERC Contact:* Mary Nowak, (202) 376-9834.

j. *Comment Date:* September 7, 1989.

k. *Description of Project:* The license for this project was issued on May 29, 1987, for an installed capacity of 10.4 megawatts. The licensee states that it has determined that the project would be economically infeasible. No construction has commenced at the project site.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

3a. *Type of Application:* Surrender of License.

b. *Project No.:* 7806-012.

c. *Date Filed:* June 16, 1989.

d. *Applicant:* Richard J. Wilkinson and Georgenia M. Wilkinson.

e. *Name of Project:* Prospect Creek.

f. *Location:* On the licensee's land on Prospect Creek in Sanders County, Montana near the town of Thompson Falls. T21N R29W, section 18.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Richard J. and Georgenia M. Wilkinson, P.O. Box 848, Thompson Falls, MT 59873.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely at (202) 376-1669.

j. *Comment Date:* September 7, 1989.

k. *Description of Proposed Action:* The proposed project for which the license is being surrendered would have consisted of: (1) a 10-foot-high, 50-foot-long reinforced concrete diversion dam at elevation 2,555 feet; (2) a 6-foot-diameter, 4,170-foot-long penstock; (3) a powerhouse containing two generating units with a combined capacity of 2,900 kW; (4) a tailrace; (5) 2.4-kV generator leads; (6) a 2.4/4.16-kV step-up transformer; (7) a 200-foot-long, 4.16-kV transmission line tying into an existing Montana Power Company line; and (7) appurtenant facilities.

The licensee states that the project is not financially feasible at this time. Construction of the project has not begun.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

4a. *Type of Application:* Transfer of License.

b. *Project No.:* 8357-008.

c. *Date Filed:* June 30, 1989.

d. *Applicant:* Al Forward (transferor) and Highland Hydro Construction, Inc. (transferee).

e. *Name of Project:* Ponderosa/Bailey Creek.

f. *Location:* On Bailey Creek, near Manton in Shasta County, California.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Al Forward, Rt. 1, Box 325, Manton, CA 96059. Merle Williams, Vice President, Highland Hydro Construction, Inc., 2576 Hartnell Avenue, Redding, CA 96022, (916) 222-1414.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely at (202) 376-1669.

j. *Comment Date:* September 5, 1989.

k. *Description of Transfer:* On June 14, 1985, a minor license was issued to Al Forward for the construction, operation, and maintenance of the Ponderosa/Bailey Creek Project No. 8357. Mr. Al Forward has proposed to transfer the license to Highland Hydro Construction, Inc.

The transferee is a private corporation organized under the laws of the State of California.

The licensee certifies that it has fully complied with the terms and conditions of its license, as amended, and obligates itself to pay all annual charges accrued under the license to the date of the transfer. The transferee accepts all the terms and conditions of the license and agrees to be bound by them to the same extent as though it was the original licensee.

l. *This notice also consists of the following standard paragraphs:* B and C.

5a. *Type of Application:* Surrender of License.

b. *Project No.:* 9214-005.

c. *Date Filed:* June 14, 1989.

d. *Applicant:* Provo Hydro Associates.

e. *Name of Project:* Murdock Dam Hydro Project.

f. *Location:* On Provo River in Utah County, Utah.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Domonique Darne, 1900 L Street, N.W., Suite 606, Washington, DC 20036.

i. *FERC Contact:* Nanzo T. Coley, (202) 376-9416.

j. *Comment Date:* September 9, 1989.

k. *Description of Proposed Action:* The license to be surrendered would have included a project consisting of (1) a 60-inch-diameter, 6-foot-long penstock; (2) a powerhouse with an installed capacity of 200 kW under a head of 23 feet; (3) a tailrace returning the flow to the Provo River; (4) an underground 12.5-kV transmission line, about 100 feet long; and (5) appurtenant facilities. The applicant estimates the average annual energy output at 1,178,373 kWh. Energy produced at the project would have been sold to Utah Power and Light Company

l. *This notice also consists of the following standard paragraphs:* B and C, & D2.

6a. *Type of Application:* Minor License.

b. *Project No.:* 9765-001.

c. *Date filed:* February 16, 1989.

d. *Applicant:* Ramah Energy, Inc.

e. *Name of Project:* Big Sand Wash Dam.

f. *Location:* On Big Sand Wash, a tributary of Dry Gulch Creek, a tributary of the Duchesne River, in Duchesne County, Utah.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)-825(r).

h. *Applicant Contact:* Mr. James F. Smith, President, Ramah Energy, Inc., 291 East 200 North, Roosevelt, UT 84066.

i. *FERC Contact:* Michael Spencer at (202) 376-1669.

j. *Comment Date:* September 6, 1989.

k. *Description of Project:* The proposed project would utilize the Big Sand Wash Dam and Reservoir, owned by the Utah Board of Water Resources and operated and maintained by the Moon Lake Water Users Association, and would consist of: (1) the existing earthfill dam, 112 feet high and 795 feet long, with a crest elevation at 5,892 feet m.s.l.; (2) a reservoir having a capacity of 12,050 acre-feet at spillway elevation of 5,885 feet m.s.l.; (3) a new penstock utilizing the existing 40-inch-diameter outlet works conduit; (4) a new powerhouse containing two generating units with a combined capacity of 800 kW operating under an average head of 66.5 feet; (5) a tailrace returning flow to the stream a short distance downstream from the dam; (6) a new 13.8-kV transmission line, about one half mile long; and (7) appurtenant facilities. The applicant estimates that the average annual energy output would be 2,211,149 kWh and the total cost of construction would be $429,150.

l. *Purpose of Project:* Project power would be sold to the Moon Lake Electric

Association and/or Utah Power & Light Company.

m. *This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.*

7a. *Type of Filing:* Exemption (5-MW or less).

b. *Project No.:* 10610–000.

c. *Date Filed:* May 27, 1988.

d. *Applicant:* Trout Creek, Inc.

e. *Name of Project:* Trout Creek Hydroelectric Project.

f. *Location:* On Trout Creek near the town of Thatcher, in Caribou County, Idaho.

g. *Filed Pursuant to:* Section 408 of the Energy Security Act of 1980, U.S.C. 2705 and 2708 as amended.

h. *Applicant Contact:* John C. Arkoosh, P.O. Box 32, Gooding, ID 83330 (208) 934–8401.

i. *FERC Contact:* Thomas Dean, (202) 376–9562.

j. *Comment Date:* September 5, 1989.

k. *Description of project:* The proposed project would consist of: (1) an existing diversion structure at elevation 5,075 feet msl; (2) a 4-foot-deep, 12-foot-wide, 1,400-foot-long earthen canal; (3) a 36-inch-diameter, 750-foot-long pipeline leading to; (4) a powerhouse containing a single generating unit with an installed capacity of 330 kilowatt; (5) a 100-foot-long tailrace; and (6) a 0.25-mile-long, three phase transmission line. The applicant estimates the average annual energy generation to be 1,600 MWh.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility to Utah Power and Light Company.

m. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, and D3a.

8a. *Type of Filing:* Exemption (5-MW or less).

b. *Project No.:* 10611–000.

c. *Date Filed:* May 27, 1988.

d. *Applicant:* Whiskey Creek, Inc.

e. *Name of Project:* Whiskey Creek Hydroelectric Project.

f. *Location:* On Whiskey Creek near the town of Thatcher, in Caribou County, Idaho.

g. *Filed Pursuant to:* Section 408 of the Energy Security Act of 1980, U.S.C. 2705 and 2708 as amended.

h. *Applicant Contact:* John C. Arkoosh, P.O. Box 32, Gooding, ID 83330 (208) 934–8401.

i. *FERC Contact:* Thomas Dean, (202) 376–9562.

j. *Comment Date:* September 5, 1989.

k. *Description of project:* The proposed project would consist of: (1) an existing diversion structure at elevation 5,110 feet msl; (2) a 36-inch-diameter, 1,650-long pipeline leading to; (3) a powerhouse containing a single generating unit with an installed capacity of 480 kilowatt; (4) a 100-foot-long tailrace; and (5) a 0.25-mile-long, three phase transmission line. The applicant estimates the average annual energy generation to be 2,400 MWh.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility to Utah Power and Light Company.

m. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, and D3a.

9a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 10669–000.

c. *Date Filed:* November 4, 1988.

d. *Applicant:* Massachusetts Water Resources Authority, Waterworks Division.

e. *Name of Project:* Oakdale Power Plant Project.

f. *Location:* On the Quabbin Pressure Aqueduct at the Wachusett Reservoir in Worcester County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William A. Brutsch, Massachusetts Water Resources Authority, Waterworks Division, 100 First Avenue, Charlestown Navy Yard, Boston, MA 02129 (617) 242–6000.

i. *FERC Contact:* Ed Lee, (202) 376–5786.

j. *Comment Date:* September 5, 1989.

k. *Description of Project:* The existing operating project consists of: (1) one turbine-generator rated at 3,500 kW; and (2) appurtenant facilities. The project generates an average of 13,000 MWh annually. The project is owned by the Metropolitan District Commission. The project is operated and maintained by the applicant.

l. *Purpose of Project:* Project power would continue to be sold to the New England Power Company and Boston Edison Company.

m. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, D3b.

10a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10749–000.

c. *Date Filed:* March 13, 1989.

d. *Applicant:* Iowa Hydropower Development Corporation.

e. *Name of Project:* Saylorville.

f. *Location:* On the Des Moines River in Polk County, Iowa.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Justin Rundle, 708 Iowa Avenue, Iowa City, IA 52240 (319) 337–9875.

i. *FERC Contact:* Charles T. Raabe, (202) 376–9778.

j. *Comment Date:* September 11, 1989.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Saylorville Dam and Reservoir and would consist of: (1) a proposed siphon penstock; (2) a proposed powerhouse containing two generating units having a total installed capacity of 12,480–kW; (3) a proposed tailrace; (4) a proposed short overhead transmission line; and (5) appurtenant facilities. The applicant estimates the average annual generation would be 30.69 GWh. The cost of the studies to be performed under the terms of the permit would be $15,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C & D2.

11a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10779–000.

c. *Date Filed:* May 15, 1989.

d. *Applicant:* Flannagan Power Company.

e. *Name of Project:* Flannagan Dam Project.

f. *Location:* On the Pound River near Clintwood, Dickenson County, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Richard E. Kessel, Sithe Energies USA, 135 East 57th St., 23rd Floor, New York, NY 10022 (212) 755–7300.

i. *FERC Contact:* Michael Dees (202) 376–9414.

j. *Comment Date:* September 7, 1989.

k. *Description of Project:* The proposed project would utilize the existing Corps of Engineers' Flannagan Dam and reservoir and would consist of: (1) an existing intake structure and tunnel; (2) a proposed penstock 10 feet in diameter and 275 feet long; (3) a proposed powerhouse housing two hydropower units rated at 3.5MW each; (4) a proposed 69-kV transmission line three miles long; and (5) appurtenant facilities. The estimated annual energy production is 19 GWh. Project energy would be sold to a utility company. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $100,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

12a *Type of Application:* Preliminary Permit.

b. *Project No.:* 10761–000.

c. *Date filed:* May 22, 1989.

d. *Applicant:* Dahlberg Light and Power Company.

e. *Name of Project:* Orienta Water Power Project.

f. *Location:* On the Iron River, in Bayfield County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mark F. Dahlberg, President, Dahlberg Light and Power Company, 104 South Pine Street, P.O. Box 8, Grantsburg, Wisconsin 54840–0008 (715) 463–5371.

i. *FERC Contact:* Mary Nowak (202) 376–9634.

j. *Comment Date:* September 7, 1989.

k. Description of Project: The proposed project would consist of the following facilities: (1) an existing concrete gravity dam 15 feet high and 240 feet long; (2) a proposed reservoir with a surface area of 133 acres and a total storage capacity of 370 acre-feet at a crest elevation of 665.3 feet mean sea level; (3) an existing penstock 103 feet long and 7 feet in diameter; (4) a reconstructed powerhouse containing one generating unit at a total installed capacity of 800 kilowatts; and (5) appurtenant facilities. The existing dam is owned by Dahlberg Light and Power Company. The applicant estimates that the cost of the studies under permit would be about $25,000. The applicant estimates that the average annual generation would be 2,714,240 kilowatthours.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

13a. *Type of Application:* Preliminary Permit.

b. *Project No.:*10787–000.

c. *Date Filed:* June 1, 1989.

d. *Applicant:* Pacific Hydro, Inc.

e. *Name of Project:* McLeod Ridge Hydroelectric Project.

f. *Location:* On North Fork of the Snoqualmie River in King County, Washington, near the town of North Bend. T24 N, Ranges 8E and 9E, sections 24 and 25.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r).

h. *Applicant Contact:* Lonnie Covin, Project Manager, Pacific Hydro, Inc., 1422 130th Ave., NE, Bellevue, WA 98005, Frank Frisk, Jr., Attorney-at-Law, Pacific Hydro, Inc., 1054 31st St., N.W., 2nd Floor, Washington, DC 20007; Mr. Harry Hall, Pacific Hydro, Inc., 50/116th North Avenue S.E., Suite 201, Bellevue, WA 98004.

i. *Commission Contact:* Ms. Deborah Frazier-Stutely (202) 376–1669.

j. *Comment Date:* September 6, 1989.

k. *Description of Project:* The proposed project would consist of: (1) an 11-foot-high, 160-foot-long ogee spillway diversion dam at elevation 949 feet; (2) a 23-foot-high 150-foot-long earthfill embankment at elevation 961 feet; (3) a 7,870-foot-long tunnel; (4) a 10-foot-diameter penstock bifurcating into two 7-foot-diameter penstocks; (5) a powerhouse to contain one or two generating units with an installed capacity of 25,000 kW producing an average annual energy output of 120,400 MWh (6) a 60-foot-long tailrace; (7) a 1,950-foot-long transmission line tying into the proposed Black Creek Project line (FERC No. 6221); and (8) three access roads for the purpose of project construction and operation.

The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $300,000, and that no new access road would be needed to conduct the studies.

l. *Purpose of Project:* Project power would be sold to Puget Power or another utility.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

14a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10792–000.

c. *Date Filed:* June 5, 1989.

d. *Applicant:* Monia Hydro Corporation.

e. *Name of Project:* Monticello Mill Dam Project.

f. *Location:* On Maquoketa River Near Monticello, Jones County, Iowa.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas Wilkinson, 700 Higley Bldg., P.O. Box 1968, Cedar Rapids, IA 52406 (319) 366–4990.

i. *FERC Contact:* Ed Lee (202) 376–5786.

j. *Comment Date:* September 15, 1989.

k. *Description of Project:* The proposed project would consist of: (1) an existing 43.4-foot-long and 16-foot-high concrete dam; (2) a 40-acre reservoir; (3) a new powerhouse housing one 310-kW generator; (4) a 1,800-foot-long, 36k-V transmission line; and (5) appurtenant facilities. The applicant estimates that the average annual generation would be 1,367 MWh. The cost of the work and studies to be performed under the permit would be $27,000. The site is owned by the Jones County Conservation Board, Center Junction, IA 52212. The applicant estimates that the power generated would be sold a local utility company.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

15a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10794–000.

c. *Date Filed:* June 5, 1989.

d. *Applicant:* Maria Hydro Corporation.

e. *Name of Project:* Marble Rock Mill Dam Project.

f. *Location:* On the Shell Rock River near Marble Rock, Floyd County, Iowa.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas Wilkinson, 700 Higley Bldg., P.O. Box 1968, Cedar Rapids, IA 52406 (319) 366–4990.

i. *FERC Contact:* Ed Lee (202) 376–5786.

j. *Comment Date:* September 15, 1989.

k. *Description of Project:* The proposed project would consist of: (1) an existing 160-foot-long and 15-foot-high concrete dam; (2) an 55-acre reservoir; (3) a new powerhouse containing a single 658–kW generator; (4) a 50-foot-long, 13.8–kV transmission line; and (5) appurtenant facilities. The applicant estimates that the average annual generation would be 3,628 MWh. The cost of the work and studies to be performed under the permit would be $27,000. The site is owned by the City of Marble Rock, IA 50616. The applicant estimates that the power generated will be sold to a local utility company.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs: A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified coment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A6. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for

the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in Section 313(b) of the Federal Power Act, 16 U.S.C. Section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. Agency Comments—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are required, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, state and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 3, 1989, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 89–18556 Filed 8–8–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP87–164–005 et al.]

Great Lakes Gas Transmission Co., Petition To Amend

August 2, 1989.

In the matter of Docket Nos. CP87–164–005 [1], CP87–474–006, CP88–307–005, CP88–310–003, and CP88–599–002.

Take notice that on July 19, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket Nos. CP87–164–005, CP87–474–006, CP88–307–005, CP88–310–003 and CP88–599–002, a petition to amend the orders issued in Docket Nos. CP87–164–000, CP87–474–000, CP88–307–000, CP88–310–000, and CP88–599–000, pursuant to Section 7(c) of the Natural Gas Act, so as to continue the transportation of natural gas, on an interruptible basis, for its respective customers in the above mentioned dockets, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

[1] These proceedings are not consolidated.

Great Lakes states that in each of the above-referenced proceedings, the Commission issued an order authorizing Great Lakes to transport natural gas for a particular customer, on an interruptible basis, for a term of the earlier of one year from the date of such order, or the date that Great Lakes accepts a blanket certificate issued by the Commission pursuant to Part 284 of its Regulations. Great Lakes further states that each of these customers has entered into arrangements with Great Lakes for continuation of the subject services, as described below. Great Lakes indicates that no new facilities would be required to provide continuation of the proposed services.

Great Lakes states that the specifics of each of the proceedings is as follows:

a. CP88–310–000: Under the contractual arrangements between Great Lakes and Peoples Natural Gas Company, a Division of UtiliCorp United Inc. (Peoples), Great Lakes states that it is authorized to transport up to 100,000 Mcf per day of gas during the Winter Period (October through April), and up to 30,000 Mcf per day during the Summer Period (May through September) from a point on the international border between the United States and Canada, near Emerson, Manitoba (Emerson Receipt Point) to a point near Carlton, Minnesota (Carlton Delivery Point), where the facilities of Great Lakes interconnect with those of Northern Natural Gas Company. The Commission's October 5, 1988 order, issued in Docket No. CP88–310–000, limited the term of the authorization as discussed above, it is stated. Great Lakes indicates that Peoples has requested that the transportation arrangements continue for an additional year, to October 5, 1990, as originally contemplated by the parties.

b. Docket No. CP87–164–000: Under the contractual arrangements between Great Lakes and Southeastern Michigan Gas Company (Southeastern), Great Lakes states that it is authorized to transport up to 20,000 Mcf of gas per day from the Emerson Receipt Point to a point near Muttonville, Michigan (Muttonville Delivery Point), where the facilities of Great Lakes interconnect with those of ANR Pipeline Company (ANR Pipeline). The Commission's December 10, 1988 order, issued in Docket No. CP87–164–003, limited the term of the authorization as discussed above, it is stated. Great Lakes indicates that Southeastern has requested that the transportation arrangements continue, and the parties have entered into an Amendatory Agreement dated April 21, 1989 which, *inter alia*, extends such service until November 1, 1990, and further provides for extension from contract year to contract year thereafter, unless terminated by either party.

c. Docket No. CP87–474–000: Under the contractual arrangements between Great Lakes and Ford Motor Company (Ford), Great Lakes states that it is authorized to transport up to 110,000 Mcf per day from the Emerson Receipt Point to (1) a point near Farwell, Michigan (Farwell Delivery Point) where the facilities of Great Lakes interconnect with those of ANR Pipeline; (2) a point near Belle River Mills, Michigan (Belle River Mills Delivery Point) where the facilities of Great Lakes interconnect with those of Michigan Consolidated Gas Company (MichCon); and (3) the Muttonville Delivery Point. The Commission's January 27, 1989 order, issued in Docket No. CP87–474–002, limited the term of the authorization as discussed above, it is stated. Great Lakes indicates that Ford has requested that the transportation arrangements continue for an additional year, as originally contemplated by the parties.

d. Docket No. CP88–307–000: Under the contractual arrangements between Great Lakes and Northern States Power Company (NSP), Great Lakes states that it is authorized to transport up to 30,000 Mcf per day from the Emerson Receipt Point to the Carlton Delivery Point. The Commission's October 31, 1988 order, issued in Docket No. CP88–307–000, limited the term of the authorization as described above, it is stated. Great Lakes indicates that NSP has requested that the transportation arrangements continue for an additional year, to October 31, 1990, as originally contemplated, it is stated. Great Lakes indicates that NSP has also advised that the subject gas will be used by NSP for its own system sypply, and the system supply of its affiliated company, Northern States Power Company, a Minnesota corporation.

e. Docket No. CP88–599–000: Under the contractual arrangements between Unicorp Energy Inc. (Unicorp), and Great Lakes, Great Lakes states that it is authorized to transport up to 15,000 Mcf per day from the Emerson Receipt Point to (1) the Farwell Delivery Point; (2) the Belle River Mills Delivery Point; (3) a point near Boyne City, Michigan where the facilities of Great Lakes interconnect with those of MichCon; and (4) a point near Fortune Lake, Michigan where the facilities of Great Lakes interconnnect with those of ANR Pipeline. The initial contractual arrangements provided for a contract term to end on November 1st of the first contract year and to be extended from year to year thereafter, unless terminated by either party, it is stated. The Commission's February 17, 1989 order, issued in Docket No. CP88–599–000, limited the term of the authorization as discussed above, it is further stated. Great Lakes indicates that Unicorp has requested that (1) the transportation arrangements continue as originally contemplated by the parties, and (2) the daily contract quantity be increased to 75,000 Mcf per day. Great Lakes further indicates that the parties have entered into an Amendatory Agreement dated April 21, 1989, which, *inter alia*, reflects these requests.

Great Lakes states that the transportation arrangements between Great Lakes and Southeastern, Ford, Peoples, NSP, and Unicorp, are filed, respectively, as Rate Scheduled T–19, T–20, T–21, T–22, and T–23, of Great Lakes' FERC Gas Tariff, Original Volume No. 21 and such Schedules would continue to govern the services for which a continuation of authorization is being requested in the instant application.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 23, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 89–18558 Filed 8–8–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA89–4–37–009 and RP89–1–012]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

August 2, 1989.

Take notice that on July 28, 1989, Northwest Pipeline Corporation ("Northwest") in compliance with a Federal Energy Regulatory Commission ("Commission") order issued July 11, 1989 in the above-captioned dockets,

submitted the following tariff sheets to be a part of its FERC Gas Tariff.

Third Substitute Second Amended Thirty-Ninth Revised Sheet No. 10 (Effective April 1, 1988)
Third Substitute Fourth Amended Thirty-Ninth Revised Sheet No. 10 (Effective June 1, 1988)
Third Substitute Seventh Amended Thirty-Ninth Revised Sheet No. 10 (Effective July 1, 1988)
Third Amended Substitute Fortieth Revised Sheet No. 10 (Effective July 3, 1988)
Third Revised Sheet No. 11 (Effective October 1, 1988)

Northwest states that these tariff sheets reflect the recalculation of the PGA surcharge for the period April 1 through September 30, 1988, and Third Revised Sheet No. 11 reflects the restatement of the Account No. 191 net direct-bill amount pursuant to the July 11, 1989 order in the above referenced dockets.

A copy of this filing has been served on all parties and all jurisdictional sales customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC, 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before August 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-18559 Filed 8-8-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ89-3-56-000]

Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

August 2, 1989.

Take notice that Valero Interstate Transmission Company ("Vitco"), on July 31, 1989 tendered for filing the following tariff sheets as required by Orders 483 and 483-A containing changes in Purchased Gas Cost Rates pursuant to such provisions.

FERC Gas Tariff, Original Volume No. 1
13th Revised Sheet No. 14.2
FERC Gas Tariff, Original Volume No. 2
18th Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483-A.

The change in rates to Rate Schedule S-1, FERC Gas Tariff, Original Volume No. 2 includes a decrease in purchased gas costs of $2.3843 per MMBtu. The change in rates to Rate Schedule S-3 includes an increase in purchased gas cost of $.3247 per MMBtu.

The proposed effective take for the above filing is September 1, 1989. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by September 1, 1989.

Any person desiring to be heard to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with ¶¶ 385.215 and 385.211 of the Commission's Rules and Regulations. All such motions or protest should be filed on or before August 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 89-18560 Filed 8-8-89; 8:45 am]
BILLING CODE 6717-02-M

[Docket No. RP89-152-000]

Vesta Energy Corp. v. Williams Natural Gas Co.; Notice Granting Waiver

August 2, 1989.

On April 26, 1989, Vesta Energy Company (Vesta) filed a complaint against Williams Natural Gas Company (Williams) in the above-referenced docket alleging that Williams unlawfully retained quantities of Vesta's gas and improperly assessed imbalance overrun penalties against Vesta. On June 28, 1989, Williams filed an answer in response to Vesta's complaint. On June 28, 1989, Vesta filed a letter with the Commission requesting that it be given an opportunity to respond to Williams' answer, stating that Williams' answer is in the nature of a motion for summary disposition.

To the extent that Williams' filing may be construed as a motion for summary disposition, Vesta is granted waiver of the rules to file an answer. Vesta's answer is due within 30 days of the issuance of this notice.

Lois D. Cashell,
Secretary.

[FR Doc. 89-18557 Filed 8-8-89; 8:45 am]
BILLING CODE 6717-01-M

Office of Fossil Energy

[ERA Docket No. 88-01-NG]

Project Orange Associates, L.P., Application To Amend a Conditional Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application to amend a conditional order granting long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 18, 1989, of an application filed by Project Orange Associates, L.P. (Project Orange), to amend a conditional authorization to import natural gas from Canada granted by the Economic Regulatory Administration (ERA) on October 17, 1988, in DOE/ERA Opinion and Order No. 274 (Order 274). Project Orange is seeking interim authority to import interruptible supplies of gas through existing pipeline facilities until new facilities to accommodate firm deliveries are built.

Order 274 was originally issued in ERA Docket No. 88-01-NG to G.A.S. Orange Development, Inc. (1 ERA Para. 70,815). Subsequently, on December 19, 1988, the ERA approved the transfer of this conditional authority to Project Orange (unnumbered and unpublished order). Order 274 addressed various non-environmental issues and made initial findings regarding these issues. As stated in Order 274, the conditional determination is to be reconsidered after completion of the environmental review of impacts associated with construction and operation of certain pipeline facilities proposed by Tennessee Gas Pipeline Company (Tennessee) to provide firm transportation service for the gas from the international border near Niagara Falls, New York.

On January 6, 1989, the authority to regulate natural gas imports and exports was transferred from the ERA to FE. DOE Delegation Order No. 0204-127 specifies the transferred functions (54 FR 11436, March 20, 1989).

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than September 8, 1989.

FOR FURTHER INFORMATION:

P. J. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-094, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586-4819

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Project Orange is conditionally authorized under Order 274 to import up to 120 million MMBtu of Canadian gas from Noranda, Inc. (Noranda), over a term of 20 years beginning on the date of the initial delivery. The gas will be imported to fuel a new cogeneration facility to be built in Syracuse, New York. In the original January 5, 1988, import application, the commercial operation date of the cogeneration plant and the date on which initial deliveries would take place was projected to be June 30, 1990. The commercial operation date is now scheduled for March 1, 1991. The import authorization is conditioned upon completion of the environmental review of certain proposed facilities. The Federal Energy Regulatory Commission (FERC) has the lead in preparing the environmental analysis of the additional transmission facilities proposed by Tennessee to increase its system capacity. The capacity increase is necessary to transport the gas for Project Orange on a firm daily basis from Niagara Falls to a proposed interconnection with Project Orange south of Syracuse (FERC Docket No. 88-171-000). After the FERC has completed its environmental analysis and the DOE reviews it and makes its own environmental determination, DOE would issue a final opinion and order.

Project Orange indicates in its present filing before FE that there is a possibility that Tennessee's pipeline expansion may not be accomplished before the cogeneration plant comes on line, due to the uncertainties of when the FERC's environmental review will be completed and the actual timing of construction. Therefore, it has arranged interruptible transportation on existing Tennessee pipeline facilities for the gas purchased from Noranda. Project Orange requests that Order 274 be amended to authorize the important of volumes from Noranda utilizing Tennessee's existing mainline capacity until the interruptible service can be converted to firm service when the expansion of Tennessee's pipeline facilities takes place.

Under the transportation agreement, Tennessee will deliver 24,000 Dth per day to Project Orange. The only pipeline construction necessary for the interruptible transportation would be the installation of tie-in facilities at the point where Tennessee's No. 200 mainline and the 7-miles, 12-inch delivery pipeline extending from the cogeneration plant intersect.

The ERA preliminarily determined in issuing Order 274 that the import arrangement is competitive and consistent with the DOE natural gas import policy guildelines (49 FR 6684, February 22, 1984), that there is a demonstrated need for the gas, and that proven reserves owned or controlled by Noranda would provide a secure supply over the term of the requested authorization. Although the commodity pricing provisions of the gas sales agreement depart from customary provisions permitting fluctuations in response to market changes, the ERA noted that the agreement results from arm's length negotiations and reflects a balancing of the parties' respective commercial interest. A single up-front payment for gas was negotiated for in order to secure a long-ter supply commitment and, also, the importer was given the flexibility to request that Noranda market, either in Canada or in the United States, up to 4.5 million MMBtu each year (or 50 percent of the annual contract quantity) and refund the net proceeds to the importer. In addition, the sales agreement contains an arbitration procedure which either party can initiate.

At the time Order 274 was issued, the lump sum payment was set at $72.9 million. Project Orange filed with its application to amend Order 274 a January 11, 1989, amendment to the gas purchase contract with Noranda which revised the lump sum payment amount to $77.6 million. This payment equates to about $0.65/Mcf if the total contract volume is taken over the 20-year term. In addition to the lump sum payment, a fee will be paid to Noranda to cover gathering and processing costs. The fee initially would be set at $0.30/MMBtu and would be adjusted annually thereafter for inflation.

The present application will be reviewed under section 3 of the NGA, the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127, and the DOE's policy guidelines. Under the guidelines, the competitiveness of an import in the markets served is the primary consideration in determining whether it is in the public interest. Based on the application, the only change in the original proposal conditionally approved by the ERA in Order 274 would be the possible transportation of the gas on an interruptible basis utilizing pipeline facilities currently in place. The contractual terms under which the gas would be supplied are substantially the same and the quantity imported would not change. Absent a protest, it is expected that the ERA's initial evaluation that the import would provide a needed, secure, and competitive supply of gas would remain valid for Project Orange's present application.

All parties should be aware that if approved, the authorization would be temporary and limited to imported gas that is delivered through existing transmission facilities to the cogeneration facility once it is operational. The authority would expire when a final opinion and order is issued in this proceeding after completion of the enviornmental review of Tennessee's proposed pipeline facilities.

NEPA Compliance

Under Section D of the DOE guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, actions that grant or deny import authorizations where no new gas transmission facilities are needed but where new ancillary facilities are to be constructed, such as a cogeneration facility, would normally require the preparation of an environmental assessment (EA), because they involve "minor new construction" (54 FR 12474, March 27, 1989). However, we believe that preparation of an EA to approve or disapprove Project Orange's application to amend Order 247 is unnecessary, and compliance with NEPA for the proposed action can be acheived by invoking two categorical exclusions in the DOE NEPA guidelines (52 FR 47622, December 15, 1987).

The environmental impacts of constructing and operating new cogeneration facilities have been addressed on numerous occasions by the ERA in conjunction with processing

exemption petitions under the Powerplant and Industrial Fuel Use Act (FUA) (10 U.S.C. 3801 *et. seq*, as amended), and as a result, such actions have been granted a categorical exclusion from further NEPA review (52 FR 47670, December 15, 1987). The cogeneration facilities to be constructed in connection with these import applications are identical to those facilities covered by the categorical exclusion for FUA actions. Therefore, it is an appropriate application of another categorical exclusion contained in the DOE guidelines for "actions that are substantially the same as other actions for which the environmental effects have already been assessed in a NEPA document and determined by DOE to be clearly insignificant and where such assessment is currently valid" (52 FR 47668, December 15, 1987) to extend the FUA categorical exclusion for cogeneration facilities to the grant of an authorization to imprt natural gas under the NGA which results in the construction and operation of a cogeneration facility.

A categorical exclusion raises a rebuttable presumption that the Federal action will not significantly affect the quality of the human environment. Unless it appears during the proceedings, on this import application that the grant or denial of interim authorization will significantly affect the quality of the human environment, FE expects that no additional environmental review will be required.

The decision on Project Orange's application for interim authorization would be final with respect to gas transported through pipeline facilities that currently exist. However, no final decision will be issued in this proceeding for imports which are dependent on Tennessee expanding its system capacity until the DOE completes a NEPA review of the environmental effects associated wih constructing and operating the proposed additional facilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application, must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. Persons who have already been granted permission to intervene in this docket need not file new motions to intervene, but may submit additional comments or request additional procedures in this case concerning Project Orange's request to amend Order 274. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices, of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. (202) 586–9478. They must be filed no later than 4:30 p.m., e.d.t., September 8, 1989.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceedings. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial type hearing is necessary for a full and true disclosure of the fact.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Project Orange's application to amend its import authorization is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hourse of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 26, 1988.

Constance L. Buckley,

Acting Deputy Assistant, Secretary for Fuels Programs, Fossil Energy.

[FR Doc. 89–18629 Filed 8–8–89; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. 89–45–NG]

Transco Energy Marketing Co.; Application To Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for long-term authorization to import Canadian natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 17, 1989, of an application filed by Transco Energy Marketing Company (TEMCO) for authorization to import on behalf of three local distribution companies (LDC) up to a total of 75,000 Mcf per day of Canadian natural gas for a term commencing on the date the authorization is granted through October 31, 2002. In addition, TEMCO requests blanket authorization to import volumes not purchased by the LDC customers, up to 75,000 Mcf per day during the same term, for short-term sales. The gas would be purchased in Canada by TEMCO from Esso Resources Canada, Ltd., and immediately resold in Canada to Long Island Lighting Company (LILCO), Public Service Electric & Gas Company (PSE&G), and Baltimore Gas & Electric Company (BG&E). TEMCO will arrange for transportation of the gas from the Province of Alberta to the LDCs' pipeline systems in New York, New Jersey, and Maryland over both existing and proposed U.S. transmission facilities. The volumes would enter the U.S. near Niagara Falls, New York.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than September 8, 1989.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9622;

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: TEMCO, a Delaware corporation with its principal place of business in Houston, Texas, is a gas marketing company and a wholly-owned subsidiary of Transco Energy Services Corporation which, in turn, is a wholly-owned subsidiary of Transco Energy Company. TEMCO is also an affiliate of Transcontinental Gas Pipe Line Corporation (Transco) and sells gas purchased from a variety of sources to customers on and off Transco's system.

On July 8, 1988, TEMCO entered into separately-negotiated sales contracts with BG&E and LILCO, and on July 14, 1989, with PSE&G for the purchase of the imported gas. Under these sales agreements, the price paid to TEMCO would be established monthly and billed on the basis of a demand/commodity pricing structure. TEMCO states that the maximum demand charge for transportation under any agreement would be no greater than 30 percent of the total delivered price. According to the application, the delivered, city-gate price paid by an LDC each month would be determined by TEMCO's weighted average sales price (WASP) of all gas sold by TEMCO in the prior month, plus the costs incurred by TEMCO for transportation of the imported gas from the Alberta wellhead. Further, in calculating the monthly delivered price, the WASP would be reduced by an amount established in each contract to take into account the difference in transportation costs for imported gas received from Alberta and domestically produced gas received from the U.S. Gulf Coast. Adjustments to the WASP under the three contracts are 40 cents for BG&E, 36 cents for LILCO, and 43 cents for PSE&G. TEMCO states that its WASP for June 1989, was $1.624 per MMBtu. Using this WASP, TEMCO states that the delivered cost of gas to the LDCs in July, under the maximum pricing provisions, would be $2.684 (U.S.) per MMBtu for LILCO, $2.644 for BG&E, and $2.614 for PSG&E at 100 percent load factor. These city-gate prices include the 100 percent load factor transportation rate of $.95 for Canadian transportation and $.47 for U.S. transportation. The U.S. transportation rate includes $.122 for Transco's producer settlement payment surcharge. TEMCO states that the pricing formula is subject to renegotiation if TEMCO's WASP is no longer competitive with the delivered cost of U.S. Gulf Coat gas supplies.

Each sales agreement also includes a price cap which TEMCO states is designed to ensure that the imported gas remains competitive with gas prices charged by major U.S. pipelines serving that LDC. The maximum ceiling price contained in any agreement is the 100 percent load factor sales rate for the interstate pipeline(s) serving the LDC, plus 30 cents.

According to TEMCO, no customer is required to purchase gas which exceeds 50 percent of their contract demand during the summer months and 65 percent of their contract entitlement on an annual basis. If an LDCs annual takes of gas fall below its agreed level of purchase, a deficiency charge may be assessed which is no greater than 20 percent of the average commodity sales price in effect during the annual period.

The proposed imports would enter the U.S. near Niagara Falls, New York, and would be transported on the pipeline systems of Tennessee Gas Pipeline Company (Tennessee), National Fuel Gas Supply Corporation (National), and Transco. All three pipelines are proposing to construct new facilities through which TEMCO's imports would be transported. Applications to construct these facilities and provide transportation service to TEMCO are pending before the Federal Energy Regulatory Commission (FERC) in Tennessee Docket No. CP88–171–000, National Docket No. CP88–94–000, and Transco Docket No. CP88–92–000.

The decision on TEMCO's application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters that may be considered in making a public interest determination include need for gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. The applicant asserts that this import arragement is in the public interest because the volumes are needed by the LDCs, the price of the gas is competitive, and its Canadian supplier is reliable. Parties opposing the import arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the requested import is approved, the authorization would be conditioned on the filing of quarterly reports indicating volumes imported and the purchase price. All parties should also be aware that, in accordance with its present policy and past practice, if FE approves the blanket authorization, it may limit the term to two years.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. The FERC, is currently performing an environmental review of the impacts of constructing and operating the proposed facilities related to this project. The DOE will independently review the results of the FERC environmental evaluation of this project in the course of making its own environmental determination. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., e.d.t., September 8, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto.

Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comment should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of TEMCO's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., July 26, 1989.

Constance L. Buckley,

Acting Deputy Assistant Secretary for Fuels Programs, Fossil Energy.

[FR Doc. 89–18630 Filed 8–8–89; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Approval by Office of Management and Budget

August 2, 1989.

The following information collection requirement has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3507). For further information contact Jerry Cowden, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0426

Title: BC Docket 81–742—Amendments to pre-hearing designation applications in renewal proceedings

OMB Approval Expiration Date: July 31, 1992.

The text of this information collection requirement may be found in the following document: First Report and Order in BC Docket No. 81–742, Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process (FCC 89–108). The Report and Order was adopted by the Commission on March 30, 1989, and released on May 16, 1989. A synopsis of this Report and Order appears in the **Federal Register** at 54 FR 22595 (May 25, 1989).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–18586 Filed 8–8–89; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20537, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200179–001.

Title: City of Los Angeles Terminal Agreement.

Parties:

City of Los Angeles (CLA)
California Cartage Company, Inc. (CCC)

Synopsis: The Agreement provides for the CLA to assign additional warehouse and open storage area to CCC and change the size of the premises by 40,000 square feet, provided the cumulative change does not exceed 80,000 square feet. It also provides for adjustments to compensation on a pro rata basis.

Agreement No.: 224–004161–004.

Title: San Francisco Port Commission Terminal Agreement.

Parties:

San Francisco Port Commission
Marine Terminals Corporation

Synopsis: The Agreement extends the term of the basic agreement through September 30, 1989. All other provisions of the basic agreement remain the same.

By Order of the Federal Maritime Commission.

Dated: August 4, 1989.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 89–18610 Filed 8–8–89; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 02–007680–075.

Title: American West African Freight Conference.

Parties:

America-Africa Europe Line GMBH
Barber West Africa Line
Farrell Lines, Inc.
Maersk Line
Societe Ivoirienne de Transport Maritime, SITRAM
Torm West Africa Line
Westwind Africa Line

Synopsis: The proposed modification would delete Maersk Line from the Westbound Group of the geographic scope of the Agreement from ports and points in the Canary Islands to ports and points in the U.S.A. and Canada.

Agreement No.: 203–011233–001.

Title: USA-East African Discussion Agreement.

Parties:

Conference Parties
The Bank Line, Ltd.
Lykes Bros. Steamship Co., Inc.

P & O Containers, Ltd.
Independent Carrier Parties
A. P. Moller-Maersk Line
Mediterranean Shipping Company S.A.

Synopsis: The proposed modification would add Compagnie Generale Maritime as an independent carrier to the Agreement.

Agreement No.: 232–011247.

Title: Safbank/Lykes Reciprocal Space Charter and Coordinated Sailing Agreement.

Parties:

Safbank Line Ltd.
Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed Agreement would authorize the parties to agree on sailing schedules, and service frequency in the trade between the United States and South Africa. It would also permit the parties to charter space from one another.

By Order of the Federal Maritime Commission.

Dated: August 4, 1989.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 89–18611 Filed 8–8–89; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations; Sunrise International Co. Inc. et al,

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 2851
Name: Sunrise International Co., Inc.
Address: 155–06 South Conduit Ave., Jamaica, NY 11434
Date Revoked: July 8, 1989.
Reason: Failed to maintain a valid surety bond

License Number: 2546
Name: Compagnie D'Affretement Et De Transport U.S.A., Inc. dba C.A.T. Inc.
Address: 74 Trinity Place, New York, NY 10006
Date Revoked: July 12, 1989.
Reason: Failed to maintain a valid surety bond

License Number: 1703R
Name: Karevan, Inc.
Address: P.O. Box 11009, Torrance, CA 90510–1009
Date Revoked: July 24, 1989
Reason: Surrendered license voluntarily

License Number: 1068
Name: William A. Marshall Inc.
Address: 2472 East Main Street, Bridgeport, CT 06610
Date Revoked: July 26, 1989
Reason: Failed to maintain a valid surety bond

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 89–18552 Filed 8–8–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

CBS Banc-Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 31, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *CBS Banc-Corp.*, Russellville, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank & Savings Company, Rusellville, Alabama.

2. *Southern Crescent Financial Corp.*, Jonesboro, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Clayton National Bank, Morrow, Georgia, a *de novo* bank.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Chemical Financial Corporation*, Midland, Michigan; to acquire 25 percent of the voting shares of Community Bancorp, Inc., St. Charles, Michigan, and thereby indirectly acquire Community State Bank of St. Charles, St. Charles, Michigan.

Board of Governors of the Federal Reserve System, August 3, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–18564 Filed 8–8–89; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(f)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 23, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Winston R. Lauder*, Ketchum, Idaho; to acquire between 90 and 100 percent of the voting shares of Idaho State Bank, Glenns Ferry, Idaho.

Board of Governors of the Federal Reserve System, August 3, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–18565 Filed 8–8–89; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bankholding Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89–16287) published at page 29387 of the issue for Wednesday, July 12, 1989.

Under the Federal Reserve Bank of Kansas City, the entry for Jay D. Peters is amended to read as follows:

1. Jay D. Peters and Joan M. Peters, both of Martell, Nebraska; to acquire an additional 95.2 percent of the voting shares of Martell Financial Services, Inc., for a total of 100 percent, and thereby indirectly acquire The Martell State Bank, Martell, Nebraska.

Comments on this application must be received by August 23, 1989.

Board of Governors of the Federal Reserve System, August 3, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-18566 Filed 8-8-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Committee on Vital and Health Statistics Subcommittee on Ambulatory Care Statistics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics Subcommittee on Ambulatory Care Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, announces the following meeting.

Name: National Committee on Vital and Health Statistics Subcommittee on Ambulatory Care Statistics.

Time and Date: 9:00 am.-5:00 pm—August 24 and 25, 1989.

Place: Hubert H. Humphrey Building, Room 337A-339A, 200 Independence Avenue SW., Washington, DC 20201

Status: Open.

Purpose: The NCVHS Subcommittee on Ambulatory Care Statistics will receive presentations and hold discussions concerning the statistical aspects of physicians payment systems.

Contact Person For More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2-12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7050.

Dated: August 4, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-18679 Filed 8-8-89; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 86N-0141; DESI 12708]

Diutensen Tablets; Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of new drug application (NDA) for Diutensen Tablets because the drug lacks substantial evidence of effectiveness. The product has been used in basic hypertensive therapy and for essential hypertension of all grades of severity.

EFFECTIVE DATE: September 8, 1989.

ADDRESSES: Requests for an opinion of the applicability of this notice to a specific product should be identified with DESI number 12708 and directed to the Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Margaret F. Sharkey, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 5, 1966 (51 FR 20552), the Commissioner of Food and Drug granted an evidentiary hearing before an administrative law judge on the proposal to withdraw approval of the new drug application for the following product containing 2.0 milligrams (mg) cryptenamine as the tannate salt and 2.5 mg methyclothiazide: Diutensen Tablets (NDA 12-708, held by Wallace Laboratories, Division of Carter-Wallace, Inc., Half Acre Rd., Cranberry, NJ 08512).

Subsequently, in accordance with an agreement to resolve the issue of the drug's effectiveness by other means, Carter-Wallace withdrew its hearing request. Pursuant to that agreement, FDA had concluded that the drug has not been shown to be effective and is now withdrawing approval of the new drug application.

Any drug product that is identical, related, or similar to this product and is not the subject of an approved new drug application is covered by NDA 12-708 and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance at the address given above.

The Director of the Center for Drug Evaluation and Research, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1058 as amended (21 U.S.C. 355)) and under the authority delegated to him (21 CFR 5.82) finds that, on the basis of new information before him with resepct to the product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the product will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing finding, approval of NDA 12-708 and all the amendments and supplements thereto is withdrawn effective September 8, 1989. Shipment in interstate commerce of the product above or any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: July 31, 1989.

Gerald F. Meyer,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 89-18592 Filed 8-8-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Program Announcement and Proposed Funding Preferences for Grants for Residency Training and Advanced Education in the General Practice of Dentistry

The Health Resources and Services Administration announces that applications for Fiscal Year 1990, Grants for Residency Training and Advanced Education in the General Practice of Dentistry are being accepted under the authority of section 785 of the Public Health Service Act extended by the Health Professions Reauthorization Act of 1988, Title VI, Pub. L. 100-607 and invites comments on the proposed funding preferences stated below.

Section 785 of the PHS Act (formerly section 786(b)) authorizes the Secretary to make grants to any public or nonprofit private school of dentistry or accredited postgraduate dental training institution (e.g., hospitals and medical centers) to plan, develop, and operate an approved residency or an approved advanced educational program in the general practice of dentistry and to provide financial assistance to participants in such a program who are in need of financial assistance and who plan to specialize in the practice of general dentistry.

The Administration's budget request for Fiscal Year 1990 does not inlcude funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in timely fashion consistent with the needs of the programs as well as provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

To receive support, programs must meet the requirements of final regulations at 42 CFR Part 57, Subpart L.

Review Criteria

The review of applications will take into consideration the following criteria:

(a) The potential effectiveness of the proposed project in carrying out the training purposes of section 785 of the Act;

(b) The degree to which the proposed project adequately provides for meeting the project requirements;

(c) The administrative and managerial capability of the applicant to carry out the proposed project in a cost-effective manner;

(d) The qualifications of proposed staff and faculty;

(e) The potential of the project to continue on a self-sustaining basis after the period of grant support; and

(f) The degree to which the proposed project proposes to attract, maintain and graduate minority and disadvantaged students.

In addition, the following mechanisms may be applied in determining the funding of approved applications:

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

The following funding preferences are proposed for Fiscal Year 1990. These preferences had been established in the Federal Register of April 17, 1986, (51 FR 13099).

New programs (Category 1), followed by expanding programs (Category 2), and then program improvements (Category 3), and within Category 1, first funding will be for approved applications designed to establish programs in States in which no nonfederal supported residency or advanced educational programs in general dentistry are currently in operation.

Category 1 of these preferences addressed new programs. The Department is proposing to expand this preference to include applicants which have been operating an advanced general dentistry program for three years or less, which are proposing to increase the number of trainees in the program, and which have not received grant funds under this authority. This revision is to provide institutions which begin an advanced dentistry program, on their own initiative, without Federal funds, with the same opportunity to obtain funding as those institutions which wait for the availability of Federal grant funds before beginning an advanced dentistry program.

No funding preference between residency training programs and advanced educational programs in general dentistry is being proposed.

In accordance with section 785 of the Act, three distinct categories of program development can be supported. Applications must address at least one of these categories.

Category 1: Program Initiation

An applicant may request for up to one year of program planning and development, followed by two years of program operation. For this purpose an applicant must show, at a minimum, preliminary provisional approval from the Commission on Dental Accreditation before the initial grant award date (grants will be effective July 1 of the current fiscal year). Before a second year grant award will be made, the grantee must show an accreditation classification of accreditation eligible.

An applicant who has been operating an accredited program for three years or less who proposes to increase the number of first year trainees in the program, which has not received grant funding under this authority will be considered a Category 1 applicant.

Category 2: Program Expansion

An applicant may request support for an existing program which has full approval accreditation classification to fund the cost of a first-year enrollment increase in the program.

Category 3: Program Improvement

An applicant may request support for an existing program which has conditional approval or provisional approval accreditation to correct deficiencies or weaknesses in order to gain full approval accreditation status. Support is also available for an existing program which has full approval accreditation for changes or additions in faculty, curriculum and/or facilities to enhance the quality of the program.

Interested persons are invited to comment on the proposed funding preferences. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1990 award cycle, this comment period has been reduced to 30 days. All comments received on or before September 8, 1989 will be considered before the final funding preferences are established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding preferences will be applied.

Written comments should be addressed to: Acting Director, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-15, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Associated and Dental Health Professions, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

The following funding priorities were implemented for the Fiscal Year 1989 grant cycle and the Administration is extending these priorities in Fiscal Year 1990:

(1) Projects which satisfactorily document enrollment of underrepresented minorities in proportion to or greater than their percentage in the general population or can document an increase in the number of underrepresented minorities (i.e., Black, Hispanic and American Indian/Alaskan Native or Pacific Islanders) over average enrollment of the past three years in the project's postgraduate year (PGY) trainees.

(2) Projects in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center or PHS 781 funded Area Health Education Center or State designated clinic/center serving an underserved population.

(3) Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient

case management of HIV/AIDS infection-related diseases.

(4) Applications which are innovative in their educational approaches to quality assurance/risk management activities, monitoring and evaluation of dental services and utilization of peer-developed guidelines and standards.

(5) Applications proposing to provide substantial *multidisciplinary* geriatric training experiences in multiple ambulatory settings and inpatient and extended care facilities.

The Administration does not intend to apply any special considerations in the review of applications for Fiscal Year 1990.

Grant application materials are being mailed only in response to requests received. Such requests and questions regarding grants policy should be directed to: Grants Management Officer (D–30), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–22, Rockville, Maryland 20857, Telephone: (301) 443–6857.

Completed applications should be sent to the Grants Management Officer at the above address.

To obtain specific information concerning programmatic aspects of the grant program, contact: Dental Health Branch, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–15, Rockville, Maryland 20857, Telephone: (301) 443–6837.

Pub. L. 100–607, section 633(a), requires that for grants issued under sections 780, 784, 785, and 786 for Fiscal Year 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation. Should a second cycle be necessary, the application deadline date will be approximately six months from the first deadline.

The application deadline date is September 8, 1989. Applications will be considered as meeting the deadline if they are either:

(1) *Received on* or before the deadline date, or

(2) *Postmarked on* or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be acceptable as proof of timely mailing. Applications received after the deadline will be returned to the applicant.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

This program is listed at 13.897 in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: August 3, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–18593 Filed 8–8–89; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management (BLM)

[AZ 020–41–5410–10–ZAFH; AZA–23386]

Receipt of Conveyance of Mineral Interest Application

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Food City Inc. and Noah and Marie Billings have applied for conveyance of the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 9 N., R. 2 E.,
Sec. 13, E½NE¼, SW¼NE¼, SE¼NW¼, S½.
T. 9 N., R. 3 E.,
Sec. 29, all;
Sec. 30, Lots 1, 2, 3, E½, E½NW¼, NE¼ SE¼.
Containing 1,678.52 acres, more or less.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminte either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, February 9, 1989, whichever occurs first.

Charles R. Frost,

Associate District Manager.

Dated: July 26, 1989.

[FR Doc. 89–18574 Filed 8–8–89; 8:45 am]

BILLING CODE 4310–32–M

[AK–932–09–4214–10; A–031764]

Conformance to Survey; Transfer of Jurisdiction; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This Notice provides official publication of the surveyed description and of the transfer of administrative jurisdiction from the Department of the Navy to the U.S. Coast Guard, of certain lands on Kodiak Island, Alaska, within Public Land Order No. 1949.

Conformance to Survey

1. Plats of survey for the following land were officially filed in the Alaska State Office, Bureau of Land Management, Anchorage, Alaska, on January 9, 1980.

Seward Meridian

T. 27 S., R. 20 W., Tract A;
T. 27 S., R. 21 W., Tract A;
T. 28 S., R. 21 W., Tract A.

The area described containing 6,254.57 acres represents the land that was previously described as follows:

Kodiak Island

Beginning at Corner No. 2 of U.S. Survey No. 2539, U.S. Naval Reserve at Kodiak, thence;
East, 11,832.42 feet along boundary of U.S. Survey No. 2539,
N. 34°41' W., 7,907.16 feet;
S. 85°45'15" W., 4,157.22 feet;
N. 89°25'45" W., 5,957.22 feet;
S. 52°28'30" W., 10,567.29 feet;
S. 13°10'30" W., 9,085.74 feet;
S. 6°34' E., 4,371.48 feet;
S. 87°18'35" E., 12,715.45 feet to a point on the west boundary of U.S. Survey No. 2539;
North 13,973.68 feet along west boundary to the point of beginning.

The area described contains approximately 6,269.70 acres.

2. A plat of survey for the following land was officially filed in the Alaska State Office, Bureau of Land Management, Anchorage, Alaska, on January 10, 1980.

Seward Meridian

T. 29 S., R. 20 W.,
Sec. 10, lot 1;
Sec. 15, lot 1.

The area described containing 12.56 acres represents the land that was previously described as follows:

Middle Bay

The portion of the northwest shore of Middle Bay lying east of the east boundary of U.S. Survey No. 2539, U.S. Naval Reserve.

The area described contains 49.28 acreas.

Transfer of Jurisdiction

Subject to valid existing rights, the administrative jurisdiction of the lands withdrawn by Public Land Order No. 1949, as amended, dated August 19, 1959, was transferred on May 21, 1975, from the Department of the Navy to the U.S. Coast Guard pursuant to 10 U.S.C. 2571(a)(1970).

Terms and conditions of Public Land Order No. 1949, as amended, remain the same and the surveyed lands described above remain withdrawn from all forms of appropriation and disposition under the public land laws, including the mining and mineral leasing laws, but excepting disposals of materials under the Act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601–604 (1982)), as amended.

ADDRESS: Inquiries about this land should be sent to the Alaska State Office, Bureau of Land Management, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 907–271–3342.

Sue A. Wolf,

Chief, Branch of Land Resources.

[FR Doc. 89–18623 Filed 8–8–89; 8:45 am]

BILLING CODE 4310–JA–M

[ID–943–09–4214–11; I–011823, I–09526]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that 462.36 acres of land withdrawn for nine recreation and historical sites, continue for an additional 20 years. The lands have substantial recreation facilities constructed on them. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing under the proposal.

EFFECTIVE DATE: Comments should be received within 90 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1735. The U.S. Forest Service proposes that the existing land withdrawals made by Public Land Order Nos. 5290 and 2623, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as they affect the following described land:

Boise Meridian

(I–09526, Nezperce NF)

Robbins Creek Recreation Area

T. 24 N., R. 3 E.,
Sec. 13, lot 1.

Pilot Rock Recreation Area

T. 24 N., R. 4 E.,
Sec. 7, S½S½SW¼SE¼ and S½S½SE¼ SE¼;
Sec. 18, lots 1 and 3.

Kelley Creek Recreation Area

T. 24 N., R. 3 E.,
Sec. 18, lot 1.

Van Creek Recreation Area

T. 24 N., R. 3 E.,
Sec. 7, S½S½SE¼SW¼;
Sec. 18, lot 2.

Spring Bar Creek Recreation Area

T. 24 N., R. 2 E.,
Sec. 12, SE¼SW¼SE¼;
Sec. 13, lot 2.

Allison Creek Recreation Area

T. 24 N., R. 2 E.,
Sec. 13, lot 6.
(I–011823, Nezperce NF)

Florence Cemetery Historical Site

T. 25 N., R. 3 E.
Sec. 13, SE¼SW¼NW¼NE¼, SW¼SE¼ NW¼NE¼, NW¼NE¼SW¼NE¼ and NE¼NW¼SW¼NE¼.

Wind River Recreation Area

T. 24 N., R. 4 E.,
Sec. 3, lot 1.

Red River Recreation Area

A strip of land eight chains wide being five chains on the northerly side and three chains on the southerly side of the Red River beginning at the point where Red River is closest to the center of unsurveyed section 34, T. 28 N., R. 9 E., and extending appropriately 4 5 miles upstream to the point where Red River crosses the section line between unsurveyed section 24, T. 28 N., R. 9 E. and unsurveyed section 19, T. 28 N., R. 10 E., and located wholly within the following subdivisions:

T. 28 N. R. 9 E., unsurveyed
Sec. 23, E½SE¼;
Sec. 24, S½N½ and W½SW¼;
Sec. 26, NE¼, S½NW¼, E½SW¼ and NW¼SE¼;
Sec. 27, SE¼;
Sec. 34, NE¼.

The areas described aggregate 462.36 acres in Idaho and Shoshone Counties.

The withdrawals are essential for protection of the historical values and capital improvement constructed on the sites. The withdrawals closed the lands to surface entry and mining, but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Dated: July 31, 1989.

William E. Ireland,

Chief Reality Operations Section.

[FR Doc. 89–18575 Filed 8–8–89; 8:45 am]

BILLING CODE 430–99–M

Minerals Management Service

Receipt of Outer Continent Shelf Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Total Minatome Corporation has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 2082 and 1152, Blocks 268 and 255, respectively, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Berwick, Louisiana.

DATE: The subject DOCD was deemed submitted on August 1, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from

the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 1, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-18624 Filed 8-8-89; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-276]

Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories; Institution of Formal Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has instituted a formal enforcement proceeding relating to the cease and desist and exclusion orders issued on March 16, 1989, at the conclusion of the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1102.

SUPPLEMENTARY INFORMATION: The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 211.56(c) of the Commission's Interim Rules of Practice and Procedure, 53 FR 33076 (Aug. 29, 1988), to be codified at 19 CFR 211.56(c).

On March 16, 1989, the Commission issued its final determination in the investigation. The Commission determined that there was a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) in the unlicensed importation and sale of certain erasable programmable read only memories (EPROMs) by, *inter alia*, respondent Atmel Corp. (Atmel). The Commission determined that a limited exclusion order and six cease and desist orders were the appropriate remedy. One of the cease and desist orders was issued to Atmel. The Commission's determination and orders became final on May 22, 1989, the President having determined to take no action with respect to the Commission's determination and orders.

On July 11, 1989, complainant Intel Corp. (Intel) filed a request for a formal enforcement proceeding against Atmel and Jack Peckham, Atmel's Vice President of Sales.

The Commission having examined the request for a formal enforcement proceeding filed by Intel, and having found that the request complies with the requirements for institution of a formal enforcement proceeding, determined to institute a formal enforcement proceeding.

Copies of the Commission's Order and all other nonconfidential documents filed in connection with this formal enforcement proceeding are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC, 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Issued: August 2, 1989.
By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-18547 Filed 8-8-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-299]

Certain Food Treatment Ovens, Components Thereof and Processes Carried out Therein; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Koppens Machinefabriek B.V. and Koppens Industries, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. S1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on August 3, 1989.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-252-1805.

Issued: August 2, 1989.
By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-18548 Filed 8-8-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-436 and 437 (Preliminary)]

Generic Cephalexin Capsules From Israel and Portugal

AGENCY: United States International Trade Commission.

ACTION: Notice of withdrawal of petition and termination of antidumping investigations.

SUMMARY: On August 1, 1989, the U.S. Department of Commerce and the U.S. International Trade Commission received a letter from petitioner in the subject investigations (Biocraft Laboratories, Inc., Elmwood Park, NJ) withdrawing its petition. Commerce has not initiated an investigation as provided in section 732(c) of the Tariff Act of 1930 (19 U.S.C. 1673a(c)). Accordingly, the Commission gives notice that its antidumping investigations concerning generic cephalexin capsules from Israel and Portugal (investigations Nos. 731-TA-436 and 437 (Preliminary)) are terminated.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202-252-1184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Authority: These investigations are being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.40 of the Commission's rules (19 CFR 207.40)

Issued: August 2, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-18549 Filed 8-8-89; 8:45 am]

BILLING CODE 7020-02-M

[Inv. No. 337-TA-298]

Low Friction Drawer Supports, Components Thereof, and Products Containing Same; Commission Decision Not To Review an Initial Determination Granting Complainant's Motion To Amend the Complaint and Notice of Investigation To Add an Allegation of Infringement of Claims 11 and 15 of U.S. Letters Patent 4,125,297

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has decided not to review an initial determination (ID) (Order No. 1) issued by the presiding administrative law judge (ALJ) granting the motion of complainant GWN, Inc., d/b/a Delta Industries ("Delta") for leave to amend its complaint and the notice of investigation to add an allegation of infringement of claims 11 and 15 of an additional patent, U.S. Letters Patent 4,125,297.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Calvin Cobb, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1103.

Hearing impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-252-1810.

SUPPLEMENTARY INFORMATION: Delta filed a complaint with the Commission on April 26, 1989. The complaint, as supplemented, alleged that GM Industries, Inc. is violating section 337(a)(1)(B)(i) by reason of unauthorized importation and sale of products infringing claims 1 through 6, 9, and 11 through 15 of U.S. Letters Patent 4,236,773. The Commission instituted an investigation of Delta's complaint and published its notice of investigation in the **Federal Register** 54 FR 23294 (May 31, 1989).

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Interim Rules of Practice and Procedure (53 FR 33070, Aug. 29, 1988).

Issued: August 2, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-18550 Filed 8-8-89; 8:45 am]

BILLING CODE 7020-02-M

[332-278]

United States-Canada Free-Trade Agreement: Probable Economic Effect on U.S. Industries and Consumers of Accelerated Elimination of U.S. Tariffs on Certain Articles From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on July 17, 1989, of a request from the U.S. Trade Representative (USTR) pursuant to authority delegated by the President, the Commission instituted investigation No. 332-278 under section 332(g) of the Tariff Act of 1930, (19 U.S.C. 1332(g)) to advise the President, with respect to each article contained in Annex I of the USTR's **Federal Register** notice of July 17, 1989 (54 FR 29959), of its judgment as to the probable economic effect of the immediate elimination of the U.S. tariff, under the United States-Canada Free-Trade Agreement, on domestic industries in the United States producing like or directly competitive products, and on consumers.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: The Project Leader, Carl F. Seastrum (202-252-1493), General Manufactures Division, Office of Industries, U.S.

International Trade Commission, 500 E Street SW., Washington, DC 20436. For information on legal aspects of the investigation contact William Gearhart of the Commission's Office of the General Counsel (202–252–1091). The Media should contact Jim Craig, Director, Office of Public Affairs (202–252–1822). For information on a product basis, contact the appropriate member of the Commission's Office of Industries, as follows:

(1) Agricultural products, Mr. Fred Warren (202–252–1311)
(2) Textiles and apparel, Ms. Mary Elizabeth Enfield (202–252–1455)
(3) Chemical products, Mr. Larry Johnson (202–252–1351)
(4) Minerals and metals, Mr. Vincent DeSapio (202–252–1435)
(5) Machinery and equipment, Mr. David Slingerland (202–252–1400)
(6) General manufactures, Ms. Kathryn Bishop (202–252–1494)

Hearing-impaired persons can obtain information on this study by contacting our TDD terminal on (202–252–1810).

SUPPLEMENTARY INFORMATION:

Background

The United States-Canada Free-Trade Agreement (FTA), which entered into force on January 1, 1989, provides that all products of Canada imported into the United States and all products of the United States imported into Canada shall be free of duty by January 1, 1998. In the United States, it was approved and implemented by the United States-Canada Free-Trade Agreement Implementation Act of 1988.

Annex 401.2 of the FTA established three principal timetables for the staged elimination of tariffs on all dutiable products in the United States and Canadian tariff schedules. These timetables are: (1) Immediate elimination of tariffs upon implementation of the FTA; (2) elimination in five equal annual cuts of 20 percent per year resulting in duty-free treatment by January 1, 1993; and (3) elimination in ten equal annual cuts of 10 percent per year resulting in duty-free treatment by January 1, 1998.

Article 401(5) of the FTA provides that at the request of either government, the two governments are to undertake consultation to consider agreeing to accelerate the elimination of the duties on specific products in the schedule of each government. Section 201(b) of the FTA Implementation Act grants the President, subject to certain consultation and layover requirements, the authority to proclaim any such agreed acceleration of the elimination of a U.S. duty. The FTA Implementation Act also provides that the Administration will consider requests from interested private sector groups as a matter of priority in implementing the authority of section 201(b).

The USTR requested that the Commission provide the probable economic effect advice, required by section 103(a)(1)(B) of the FTA Implementation Act, preparatory to entering into consultations with the Government of Canada, on the U.S. rates of duty to be applied on the articles listed in 54 FR 29959, when imported from Canada on and after January 1, 1990.

In addition to the advice requested with respect to the articles identified in Annex I of 54 FR 29959, the USTR in her letter of July 17, 1989, indicated that a number of the petitions received by the Governments of the United States and Canada have requested acceleration only for selected products within a tariff subheading. USTR will provide the Commission with a list of such products and the 8-digit tariff subheadings under which they are classified. The Commission's advice, in addition to covering all products within each subheading on the list, will also address, to the extent possible, the effect of acceleration of tariff elimination on the narrower product coverage specified in such petitions as well. When received, this list will be available for public inspection in the Office of the Secretary to the Commission.

Public Hearing

A public hearing in connection with the investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. On September 11, 1989, and continuing, as required, on September 12 through 15. All persons will have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear not later than August 30, 1989. Prehearing briefs (original and 14 copies) should also be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, not later than 5:00 p.m., August 30, 1989. Any post-hearing briefs must be filed by September 20, 1989.

Written Submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on September 6, 1989. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Issued: August 1, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–18551 Filed 8–8–89; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act; United States v. International Paper Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 1, 1989, a proposed Consent Decree in *United States* v. *International Paper Co.*, No. 89–0172–B, was lodged with the United States District Court for the District of Maine. The proposed Consent Decree arises from a civil action filed simultaneously alleging violations of the New Source Performance Standards of Section 111 of the Clean Air Act, 42 U.S.C. 7411, at the company's pulp and paper mill in Jay, Maine. The proposed Decree requires the company to modify its waste fuel boiler so as to render it incapable of firing fossil fuel in excess of 250 million BTU/hr, to install a wet scrubber air pollution control device on the boiler to reduce its emissions, and to pay civil penalties to the federal government and the State of Maine totalling $990,000.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *International Paper Co.*, DJ Ref No. 90–5–2–1–1172.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Maine, Room 321, Federal Building, 202 Harlow Street, Bangor, Maine, and at the Region I Office of the Environmental Protection Agency, 22nd Floor, JFK Federal Building, Boston, Massachusetts. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $3.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–18577 Filed 8–8–89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 24, 1989 a proposed Consent Decree in *United States of America v. Navistar International Transportation Corp.* Civil Action No. IP89–418–C (S.D. Inc.), between the United States, on behalf of the United States Environmental Protection Agency ("U.S. EPA"), and Navistar International Transportation Corporation has been lodged with the United States District Court for the Southern District of Indiana. The Consent Decree required Navistar to complete construction of air pollution control equipment and implement a maintenance and testing program that will assure compliance with the Indiana SIP. The Consent Decree requires Navistar to pay a civil penalty of $33,750.

The Department of Justice will receive comments relating to the Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America* v. *Navistar International Transportation Corp.*, D.J. Ref. No. 90–5–2–1—1227. The proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of Indiana, U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204, at the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1748, Tenth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–18412 Filed 8–8–89; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATE: Requests for copies must be received in writing on or before September 25, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Defense, Office of the Secretary of Defense (N1–330–89–1). DOD Dependent School Special Education Files.

2. Joint Chiefs of Staff, Joint Staff Secretariat (N1–218–89–1). Facilitative records relating to manpower and personnel management, information security war gaming, communications and general administration.

3. Department of Justice, Justice Management Division (N1–60–88–10 thru –13). Case files created or accumulated by the various legal divisions and the Office of Legal Counsel in carrying out the Department's responsibilities in matters arising under the laws of the United States in which legal action may be taken or considered.

4. Department of Justice, Justice Management Division (N1–60–89–5).

BEST COPY AVAILABLE

Electronic tracking records for debt collection management.

5. National Archives and Records Administration, Office of Records Administration, Records Appraisal and Disposition Division (N1–GRS–89–4). Agency Privacy Act implementation reports and reports of new systems submitted to the Office of Management and Budget.

6. National Science Foundation (N1–307–88–2). Records pertaining to review and administration of research grant and contract proposals accounts.

7. Department of State, Under Secretary for Management, Office of Medical Services (N1–59–89–37). Routine and facilitative medical services records.

8. Department of State, All Foreign Service Posts (N1–84–88–5). Comprehensive schedule covering health and medical records.

9. Department of the Treasury, Internal Revenue Service (N1–58–89–4). Comprehensive records schedule for the Research Division.

Dated: August 2, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89–18578 Filed 8–8–89; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (US/Japan Fellowships Section) to the National Council on the Arts will be held on August 23, 1989, from 9:00 a.m.–5:00 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–18543 Filed 8–8–89; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 17, 1989 through July 28, 1989 (54 FR 31097). The last biweekly notice was published on July 26, 1989.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 8, 1989 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arkansas Power & Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: June 16, 1988 as supplemented on April 27, 1989

Description of amendment request: The proposed amendment would revise the Technical Specification surveillance test frequency requirements for the radiation monitoring system.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

Arkansas Power and Light Company (AP&L) has reviewed the proposed change and has determined that: (1) The proposed change would not increase the probability or consequences of any accident previously evaluated since it does not affect previously analyzed accidents associated with plant operations and does not affect any information required to safely shut down the plant; (2) the proposed change would not create the possibility of a new or different kind of accident from any previously analyzed since the change does not allow the instrumentation to be operated in any new or different way from what is currently allowed; and (3) the proposed change would not involve a significant reduction in the margin of safety since it does not impact plant operation or involve any plant modifications. Therefore, AP&L has determined that the requested changes do not involve a significant hazards consideration.

The proposed amendment would change Technical Specification Table 4.1-1 regarding Item 28, "Radiation Monitoring System other than containment high range monitors." The "Channel Description" would be changed to identify two subparts of the Radiation Monitoring System: Process Monitoring System and Area Monitoring System. Each subpart would have separate surveillance test frequencies specified. The channel check frequency for both subparts would be increased to once per shift from once per week. The channel functional test frequency for the Process Monitoring System would be decreased from monthly to quarterly, and would remain monthly for the Area Monitoring System. Finally the channel calibration frequency for both subparts would be decreased to once per 18 months from once per quarter.

These proposed surveillance frequencies are consistent with the Radiological Effluent Monitoring Instrumentation Technical Specifications, which require a quarterly channel functional test and a channel calibration every 18 months. They are also identical to the Radiation Monitoring System surveillance frequencies specified in the Arkansas Nuclear One, Unit 2, Technical Specifications, which are consistent with the Combustion Engineering Standardized Format Technical Specifications and the channel calibration frequency (during refueling outages) indicated in Section 12.3 of the Standard Review Plan. Additionally, the decrease in the channel calibration frequency to once every 18 months is justified by a significant record of reliable instrument performance.

Based on the above, the staff concludes that these proposed changes do not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. Therefore the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell, & Reynolds, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Frederick J. Hebdon

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: March 29, 1989

Description of amendment request: The amendments will implement expanded operating domains for both Brunswick units. The expansion of the operating domain allows the fuel cycle economics to be enhanced through implementation of flow control spectral shift operation and increased core flow coast down capability.

The amendment for each unit is divided into three categories of changes. Category one changes are as follows:

Delete the flow-biased APRM scram and rod block trip setpoint setdown requirements, delete reference to the k_f flow adjustment factor, introduce power and flow dependent adjustments to the average planar linear heat generation rate (APLHGR) and minimum critical power ratio (MCPR) limits, and delete the definitions of the fraction of rated thermal power (FRTP) and the core maximum average planar linear heat generation rate ratio (CMAPRAT).

Category two changes modify the flow-biased average power range monitors (APRM) scram and rod block trip equations to accommodate an expanded operating domain. Category three changes modify the rod block monitor (RBM) trip setpoints and RBM system operability requirements.

Basis for proposed no significant hazard consideration determination: The Commission has provided standards for determining whether a no significant hazard consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following analysis for Category 1 changes to support a no significant hazards consideration determination.

1. Changes in the operating limit values will maintain existing margins between the operating limit and the safety limit. Operation within the operating limit will ensure that the consequences of any accident which could occur would be within acceptable limits. There will be no impact on the probability of any accident previously evaluated. The proposed change identifies that adjustments to the MCPR and APLHGR limits as specified in the Core Operating Limits Report will be made as functions of core flow and power. These adjustments as specified in the Core Operating Limits Report are determined using NRC approved methods as required by Technical Specification 6.9.3.2. The adjustments impose restrictive conditions on plant operation such that the consequences of anticipated operational occurrences are no more severe than the most limiting condition with the current Technical Specifications with flow-biased APRM scram and rod block setpoint setdown provisions. Thus, there is no significant change in the consequences of any accident previously evaluated.

2. The proposed change eliminates the requirement for setdown of the flow-biased APRM scram and rod block trip setpoints under specified conditions and substitutes adjustments to the MCPR and APLHGR operating limits. The MCPR and APLHGR operating limits are defined such that no postulated transient event, if initiated from other than rated power or flow conditions, could result in violation of either the safety limit MCPR or the fuel thermal-mechanical design bases. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The flow and power adjustment factors were determined using NRC approved methods and satisfy the same NRC approved criteria met by analyses assuming setdown of the flow-biased APRM scram and rod block setpoints. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The licensee provided the following analysis for Category 2 changes to support a no significant hazards consideration determination:

1. The proposed change expands the power and flow operating domain by relaxing the restrictions imposed by the formulation of the flow-biased APRM rod block and scram trip setpoints. The probability of any accident is not significantly increased by operating at a higher power at a lower core flow because the formulation of the flow-biased APRM rod block trip equation has been notified to provide the same protection as currently exists. The consequences of anticipated operational occurrences have been evaluated using NRC approved methods and the proposed setpoint formulations have been selected so as not to involve a significant increase in the consequences of any accident.

2. Changing the formulation for the flow-biased APRM rod block and scram trip setpoints does not change their respective functions. The APRM rod block trip setpoint will continue to block control rod withdrawal when core power significantly exceeds design bases and approaches the scram level. The APRM scram trip setpoint will continue to initiate a scram if the power/flow condition exceeds that specified by the APRM rod block setpoint. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. As stated above, the flow-biased APRM rod block and scram trip setpoints will continue to perform their respective functions. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The licensee provided the following analysis for Category 3 changes to support a no significant hazards consideration determination.

1. The RBM system is not involved in the initiation of any accident and does not increase the probability of the occurrence of any accident. The RBM system only serves to mitigate the consequences of one event; the rod withdrawal error (RWE) anticipated operational occurrence. Analyses of the RWE were performed using NRC approved methods for the modified setpoints. The results demonstrate that the consequences of the RWE event are no more severe with the modified RBM system than with the current configuration. Therefore, the proposed change does not involve a significant increase in the consequences of any accident previously evaluated.

2. The proposed change does not alter the function of any component or system other than the RBM system. The changes to the RBM system have been designed to enhance the reliability and accuracy of the RBM system without impacting the degree of isolation of the RBM system from other plant systems. The function of the RBM system does not change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change revises the setpoints for the RBM system which is solely designed to mitigate the consequences of the RWE anticipated operational occurrence. Analyses of the RWE event are used to derive the setpoints such that the safety limit for the minimum critical power ratio (MCPR) will not be challenged assuming the initial MCPR was no less than the operating limit MCPR. These setpoints are therefore dependent upon the operating limit MCPR. For this reason, the proposed change also identifies that these setpoints are specified in the Core Operating Limits Report. The Core Operating Limits Report is prepared based on the results of NRC approved methods as required by Technical Specification 6.9.3.2. The setpoints reported in the Core Operating Limits Report are derived such that the RWE event is not the most limiting event in determining the operating limit MCPR. The operating limit MCPR maintains the margin of safety for this thermal limit. Thus, the proposed change does not involve a significant reduction in the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. In addition, the staff has reviewed NEDC-31654P, "Maximum Extended Operating Domain Analysis for Brunswick Steam Electric Plant," which was enclosed as part of the licensee's March 29, 1989 submittal. The staff has verified that the transients which have been considered potentially limiting in the Brunswick Updated Final Safety Analysis Report, Chapter 15, have been reanalyzed using the proposed maximum extended operating domain conditions. The purpose of the transient reanalysis, using an NRC-approved methodology, is to ensure that the limits of the safety analysis are maintained. The results of the analysis, as documented in NEDC-36154P, show that the safety limit MCPR has not been exceeeded. Based on this finding, the staff agrees with the licensee that for Category one changes, the proposed requested amendment will not increase the consequences of an accident previously evaluated. Furthermore, the staff finds that the operation in the maximum extended operating domains for both Brunswick Units has no effect on the probability of occurrence of any transients because plant equipment and systems still operate within their design limits. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: May 25, 1989

Description of amendments request: Commonwealth Edison Company (CECo) has proposed amending Sections 3.5.C & E (including applicable Bases) of the Technical Specifications (TS) in Appendix A of the Quad Cities Operating Licenses, DPR-29 and DPR-30. These amendments would revise certain Limiting Conditions of Operability (LCO) and Surveillance requirements associated with the High Pressure Core Injection (HPCI) and Reactor Core Isolation Cooling (RCIC) systems. The general purpose of CECo's proposed TS revision is to conform Quad Cities' LCO and surveillance requirements with those of the Standard TS for General Electric Boiling Water Reactors, NUREG-0123, Revision 3. Specific TS changes proposed by CECo as part of their amendment application are as follows:

(1) Expand HPCI/RCIC LCO applicability to include whenever fuel is in the reactor vessel; increase the required Reactor Pressure for HPCI operability from 90 psig to 150 psig; and delete requirement for HPCI & RCIC operability prior to reactor startup from cold shutdown.

(2) Extend allowed out-of-service time (i.e. inoperability) for HPCI & RCIC during reactor operation to 14 days (versus 7-days).

(3) Establish time limits for continued reactor startup following an outage, in which work was performed that directly affected HPCI & RCIC operability, until HPCI & RCIC are proven operable.

(4) Delete the surveillance requirement for immediately demonstrating operability of other Emergency Core Cooling System (ECCS) subsystems whenever HPCI or RCIC are inoperable - require instead a verification of ECCS subsystems operability rather than demonstration.

(5) Expand surveillance requirements of HPCI & RCIC to test pump flow rates at low and rated reactor pressures. Replace the monthly valve operability check with a monthly valve lineup check, and delete the monthly pump operability check.

(6) Change required reactor pressure to be reduced to during orderly shutdown due to HPCI or RCIC inoperability from 90 psig to 150 psig.

(7) Revise applicable BASES as appropriate.

(8) Delete the obsolete RCIC LCO that was only applicable from November 6 through November 20, 1978. All of the aforementioned TS changes are consistent with Standard TS language, industry operating practices, and existing QCNPS design considerations.

(9) Expand HPCI/RCIC LCO applicability to whenever fuel is in the reactor vessel.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated;

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) involve a significant reduction in a margin of safety.

Commonwealth has evaluated this proposed amendment and determined that it involves no significant hazards consideration. In accordance with the criteria of 10 CFR 50.92(c):

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment requires HPCI to be operable at greater than 150 psig which is in conformance to design requirements and allows approximately a 175 psi overlap with the low pressure core cooling subsystems injection capabilities at approximately 325 psig. The deletion of the requirement for HPCI and RCI to be operable prior to reactor startup from a cold shutdown provides clarification of intent until the

reactor is producing steam at a pressure sufficient to provide water injection to the reactor. This clarification of intent does not reduce the availability of either the HPCI or the RCIC systems when needed to perform their design function. The proposed change for reduction of reactor pressure from 90 to 150 psig for RCIC inoperability requirement is made to provide consistency with the reactor pressure of 150 psig presently allowed in the RCIC operability requirements. The change for both HPCI and RCIC in the allowed out-of-service time from 7 to 14 days, reflects an adoption of later BWR operating plant requirements at Quad Cities for these systems. The 14 day out-of-service period reflects the low probability of the need for the systems and also reflects the availability of high and low pressure core cooling systems for post accident mitigation functions. The deletion of the term irradiated from the system operability requirements is conservative and does not reduce system availability.

Proposed changes in testing requirements for HPCI and RCIC include deletion of the testing of other core cooling systems when HPCI or RCIC is inoperable. The present testing methods represent requirements beyond those necessary to adequately assure that remaining core cooling systems are operable and capable of performing their design intent. The proposed deletion of this multiple system testing requirement will bring Quad Cities Units 1 and 2 in line with current BWR plant testing requirements.

The remaining changes to HPCI and RCIC requirements involve inclusion of Inservice Testing Program requirements where applicable and Standard Plant testing quidelines. These changes include deletion of monthly pump and valve operability tests but also include addition of monthly valve lineup checks and a new pump flow test to be conducted under certain startup conditions. The changes to the testing requirements will enhance determination of system operability by providing both a low and high pressure demonstration of pump performance. The quarterly pump performance tests have been demonstrated at later plants to provide assurance of system operability and thus the present monthly pump operability test can be deleted. The proposed monthly valve lineup checks have also been shown through use at other facilities to provide assurance of system alignment and thus the monthly valve operability checks can be deleted. The Quad Cities Inservice Testing Program also provides assurance of valve operability and pump performance where applicable. Flow rate testing of HPCI and RCIC is performed prior to exceeding 325 psig following a refueling outage or an outage in which work was performed that directly affected system operability. Selection of the 325 psig limit for testing ensures stable reactor conditions during the test.

The deletion of the one-time exemption in the RCIC LCO for Quad Cities Unit 1 is strictly an administrative change and does not affect any accident analysis.

The proposed changes do not affect any accident precursors and, therefore, do not increase the probability of an accident previously evaluated. The changes in HPCI and RCIC Operability requirements reflect system design, assure system operability when required, and provide sufficient overlap with low pressure core cooling systems. The changes in testing requirements represent deletion of outdated requirements while implementing provisions that will provide assurance of system operability and, therefore, the changes do not involve a significant increase in the consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not modify HPCI or RCIC design or reduce the capability of these systems to perform their design intent. The proposed changes in testing implement the provisions of the Inservice Testing Program where applicable in the Technical Specifications and follow proven implementation at other operating BWR plants. Even though the testing intervals are relaxed in some places, this relaxation has been demonstrated at other facilities, with similar systems to those at Quad Cities Units 1 and 2, to provide adequate demonstration of component and system operability.

Since HPCI and RCIC system design basis are not changed by the proposed changes, there is no possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed change does not involve a significant reduction in the margin of safety.

The proposed amendment will not significantly reduce the availability of HPCI or RCIC when required to mitigate accident conditions. Excessive testing of systems and components can reduce rather than increase reliability. An acceptable level of testing to demonstrate operability currently being used at later BWR plants does not include multiple testing of other systems when HPCI or RCIC is inoperable. The testing that will remain in the Technical Specifications provides adequate assurance of system performance. Changes to HPCI and RCIC system testing requirements include adoption of proven testing methods at other plants, inclusion of applicable IST program requirements, and inclusion of plant specific testing requirements.

Changes to the operability requirements for HPCI and RCIC are made to recognize design parameters and to provide consistency in operability and shutdown provisions. Actual system operating overlap with the low pressure core cooling systems has not changed since actual system design flow and pressure ability has not been modified. Adoption of the 14-day allowed out-of-service period does not significantly affect the accident mitigation function of the overall core cooling network.

The proposed changes follow similar provisions that are implemented at BWR plants with systems like those at Quad Cities Units 1 and 2. Since the proposed changes will help to assure availability of the HPCI and RCIC systems when required by accident analysis, these changes do not involve a significant reduction in the margin of safety.

Therefore, the NRC staff proposes to determine that this amendment request does not involve significant hazards consideration based upon a preliminary review of the application, the licensee's evaluation of no significant hazards, and NRC guidance.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Acting Project Director: Paul C. Shemanski

Connecticut Yankee Atomic Power Company and Northeast Nuclear Energy Company, et al, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut; Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: June 29, 1989

Description of amendment request: The proposed amendments would change Technical Specifications (TS) 4.10.1.D.1.h for the Haddam Neck Plant and TS 4.4.5.4.a.8 for Millstone Unit 3. The proposed change to the TS would allow the licensees to inspect steam generator tubes by insertion of the ultrasonic test probe from the cold leg side of the steam generator tube.

Basis for proposed no significant hazards consideration determination: Millstone Unit 3 and Haddam Neck utilize a steam generator tube design shaped as an inverted "U". These steam generator tubes traverse the steam generator from the hot leg to the cold leg side of steam generator tube sheet. Steam generator tubes are periodically subjected to ultrasonic testing (UT) to detect flaws in the tubes. The testing is accomplished by inserting a probe into the tube. At the present time, TS 4.4.5.4.a.8 and 4.10.1.D.1.h define a steam generator tube inspection as "...an inspection of the steam generator tube from the point of entry (hot leg side) completely around the U Bend to the top support of the cold leg." The licensees have proposed that the definition of tube inspection be expanded to also include: "from the point of entry (hot leg or cold leg side) completely around the U-bend to the opposite tube end."

Title 10 CFR 50.92, "Issuance of amendment," contains standards for determining if a proposed license amendment involves no significant hazards consideration. In this regard, the proposed change to TS 4.4.5.4.a.8 and 4.10.1.D.1.h would not involve a significant increase in the probability or consequences of an accident previously evaluated. The purpose of steam generator tube inspections is to locate flaws that could potentially result in a steam generator tube rupture. The proposed change to the TS would maintain the ability of the licensee to identify steam generator tube flaws and take preventive measures to limit the probability of a steam generator tube rupture. Since the intent of the required steam generator tube inspection has not been changed, there is no impact on the probability or consequences of a steam generator tube rupture accident.

The proposed change to the TS would not create the possibility of a new or different kind of accident. The use of UT for steam generator tubes is an established form of inspection that has no adverse effects on the tubes. The proposed change to the TS does not involve a change in the test method, and retains inspection of the hot leg and U-bend sections of the tubes. Probe entry point (hot leg vs. cold leg) will become optional. The choice of entry side has no adverse effect on inspection capability or results.

Finally, the proposed change to the TS would not involve a significant reduction in a margin of safety. Because of the large number of steam generator tubes, the surface area of the tubes represents a substantial fraction of the total primary system boundary area. Thus, steam generator tube integrity is an important part of the overall primary system integrity. The location and repair of excessive steam generator tube degradation will retain the margin of safety with regard to primary system integrity.

Based upon the above, the Commission proposes to determine that the proposed change to TS 4.4.5.4.a.8 and 4.10.1.D.1.h involves no significant hazards considerations.

Local Public Document Room location: Russel Library, 123 Broad Street, Middletown, Connecticut 06457 and Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: July 14, 1989

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to delete requirements for leak testing of main steam stop valves (MSSVs). TS 4.8.2 currently specifies leakage testing of the MSSVs at 59 psig during each refueling outage. The specification limits leakage to 25 cubic feet per hour. The apparent basis for the leak rate is for the use of the MSSVs as containment isolation valves in the unlikely event of a simultaneous break of the reactor coolant line and a steam generator feedwater header. The technical basis for the allowable leakage of 25 cubic feet per hour is 25% of the total allowable containment leakage from all penetrations and isolation valves. The acceptance criteria used in the performance test of the MSSVs measure water leakage through the valve seat. This leak rate is not corrected for an equivalent steam/air specific volume.

Through a detailed review and engineering evaluation, the licensee has determined that leak testing of the MSSVs is unnecessary in order to determine the operability of these valves and that the basis for the leak rate testing requirement specified by 4.8.2 is inappropriate. The proposed amendments would delete the leak rate testing specified in TS 4.8.2.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendment, the licensee has determined the following:

Each accident analysis addressed within the Oconee FSAR has been examined with respect to changes proposed within this amendment request. Changes included within this request delete unnecessary requirements for MSSV leak testing. Leak testing of MSSVs is not necessary to assure operability. As such, the probability of any design basis accident is not increased by this change since MSSV operability is assured as well as operation within the bounds of accident analyses addressed in the Oconee FSAR. Therefore, this change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

Operation of Oconee in accordance with these TS will not create any failure modes not bounded by previously evaluated accidents. As such, this change will not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

The design basis of the MSSVs is to isolate the faulted steam line from the unfaulted steam line in the event of a main steam line break. In addition, the MSSVs function to isolate the faulted steam generator in the event of a steam generator tube rupture. Changes included within this amendment request will not degrade the ability of the MSSVs to perform these safety functions. Therefore, there will be no reduction in any margin of safety.

The NRC staff has reviewed the licensee's determination related to no significant hazards consideration and concurs with its finding.

On this basis the Commission proposes to determine that the proposed amendments involve no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005

NRC Project Director: David B. Matthews

Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: June 29, 1989

Description of amendment request: The proposed amendments would revise the Technical Specifications of each unit as follows:

(1) Section 4.1.2.3.2 and 4.1.2.3.3 regarding Unit 1 surveillance requirements of the charging pump and low-head safety injection pump would be modified to provide operational flexibility.

(2) Table 4.3-6 and 4.3-7 of Unit 1 - Notation referencing a non-existent surveillance requirement would be corrected.

(3) Specification 3.3.3.8.a of Unit 2 - The reference to "Specification 3.4.11.a" is a typographical error and would be corrected to "Specification 3.4.11."

(4) Table 3.3-13 - Action 31, regarding grab sampling when one channel of the waste gas decay tank oxygen monitor is inoperable, would be relaxed. In addition, the action statement would be expanded to include the condition when two channels are inoperable.

(5) Section 4.5.1.3 and associated basis - A note would be added to permit, when reactor pressure is less than the low-temperature overpressure setpoint, opening of the accumulator discharge isolation valve to perform check valve testing.

(6) Section 4.6.2.1.b of Unit 1 - The monthly flow testing of the quench spray pumps would be changed to quarterly, consistent with a new edition of the ASME Code Section XI.

(7) Section 3.7.1.5 of Unit 1 - The action statement regarding main steam isolation operability would be clarified by correcting inconsistencies.

(8) Section 4.9.8.1, surveillance requirement of the residual heat removal system - This section would be editorially rearranged for better clarity. In addition, a more stringent surveillance requirement would be imposed during reduced reactor coolant inventory conditions.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in accordance with 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazard consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed changes involved only editorial correction of existing requirements, minor changes of existing surveillance requirements or imposition of new surveillance requirements. None of such changes have been previously identified to be precursors of any accident, and none have been a factor in evaluation of accident consequences. Hence the answer to the first criterion is negative. No design, hardware, or operational changes are involved. Hence no new accidents can be created and the answer to the second criterion is negative. Finally, the changes will not affect any plant setpoints, accident analysis assumptions, or technical specification limits. Hence the answer to the third criterion is also negative.

The staff therefore proposes to determine that the requested amendments involve no significant hazards considerations.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: June 30, 1989

Description of amendment request: The proposed amendment would add Technical Specifications which would limit conditions of operation and surveillance requirements for the high range radioactive noble gas effluent monitors. This accident monitoring instrumentation is installed to comply with NUREG 0737, Item II.F.1.1.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c).

The licensee has determined and the NRC staff agrees that the proposed amendment will not:

(1) Involve a significant increase in the probability or the consequence of an accident previously evaluated. The high range radioactive noble gas effluent monitors are installed to provide the plant operator with information on plant releases of noble gases during and following an accident. This capability is required by NUREG 0737 Item II.F.1.1. The addition of specifications for installed accident monitoring instrumentation does not increase the probability or the consequence of an accident.

(2) Create the possibility of a new or different kind of accident from any previously evaluated. It has been determined that a new or different kind of accident will not be possible due to this change. The addition of specifications for installed accident monitoring instrumentation does not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. The proposed specifications will provide added assurance that the operability of the monitors will be maintained within acceptable limits. Therefore, this change does not reduce a margin of safety.

Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2, (TMI-2), Dauphin County, Pennsylvania

Date of amendment request: August 15, 1988

Description of amendment request: The proposed amendment would revise TMI-2 Operating License No. DPR-73 by modifying Appendix A Technical Specifications Sections 1.0 "Definitions" and 6.0 "Administrative Controls." The proposed changes would revise the staffing requirements for the TMI-2 Safety Review Group (SRG) to reflect the current and future configuration of the facility. The proposed changes also revise the current definition of review significant items and resolve a conflict with the existing regulatory requirements related to the submission of reports to the NRC.

In Section 1 the licensee propose a change in the definition of "Review Significant." The definition currently defines review significant items as those system operating procedures and associated emergency, abnormal, alarm response procedures which require NRC approval. The licensee proposes to change the definition to state specifically the procedures which still require NRC approval.

License amendment No. 30, dated May 27, 1988 deleted the requirement for NRC prior approval of procedures except those specified by section 3.1.13. The revised definition of "Review Significant" would limit review of procedures to those specified by Section 3.9.13.

Section 6.5 defines the licensee's review and audit requirements for TMI-2. The licensee proposes to reduce the minimum staffing requirement for the TMI-2 Safety Review Group (SRG) after completion of defueling and elimination of the possibility of a criticality. The SRG would be reduced from one manager and five engineers to one manager and three engineers. The licensee further proposes that once all canisters containing fuel have been shipped offsite the SRG would be eliminated. In its place the licensee proposes to implement a new requirement for Independent Safety Reviewers (ISRs). These ISRs would perform the independent review of the subjects listed in Specification 6.5.2.5. The licensee states that following the completion of defueling the reduction in the minimum SRG staffing requirement to a manager and three engineers can be implemented without significantly affecting the ability of the SRG to perform its required functions. The licensee believes that the proposed reduction in the SRG minimum staffing requirements is appropriate based on the reduced scope of the cleanup activities after the end of defueling.

Once all fuel in canisters have been shipped offsite the reactor vessel and the reactor coolant system drained the potential for a release exceeding the guidelines of 10 CFR 50 Appendix I will be essentially eliminated. The potential for any immediate notification as required by by 10 CFR 50.72 or reportable by 10 CFR 50.73, both of which currently require SRG review, will be unlikely. Most plant systems and components will be isolated and not operating. The licensee believes that the need for the SRG will no longer exist. The ISRs will perform the function previously performed by the SRG. Changes to procedures will continue to receive review and approval by Responsible Technical Reviewers (RTRs).

Section 6.9.1, Routine Reports and Reportable Occurrences, and 6.9.2, Special Reports, require that specific reports be submitted to the NRC Region I Administrator unless otherwise noted. The licensee proposes to change both sections and specify that reports be submitted in accordance with 10 CFR 50.4. Specific requirements for the submission of reports are contained in 10 CFR 50.4. The proposed change is administrative in nature and removes any conflict with existing regulatory requirements and the current technical specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

TMI-2 is currently in a post-accident, cold shutdown, long-term cleanup mode. The licensee is presently completing the defueling of the damaged reactor, and readying the plant for long-term storage. As of the end of June 1989, greater than 90 percent of the fuel contained in the reactor vessel has been removed. Defueling activities will be completed in the fall of 1989. The staff has determined in previous license amendments, that the potential accidents analyzed for TMI-2 in the current cleanup mode are bounded in scope and severity by the range of accidents originally analyzed in the facility FSAR. The changes proposed by the licensee are changes to the Appendix A Technical Specifications.

The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated because no changes are proposed to current safety systems or setpoints. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because no new modes of operation or new equipment are being introduced. The proposed changes revise the review procedures for the facility and as such do not directly affect the potential or severity of an accident at TMI-2. The proposed changes in review procedures is commensurate with the potential and severity of an accident at TMI-2 during these last phases of the current cleanup effort. The proposed changes do not involve a significant reduction in the margin of safety, because, as mentioned previously, the changes are either administrative in nature or eliminate unnecessary personnel or review requirements.

Based on the above considerations, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601 Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: June 12 and July 17, 1989

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 5.3.1, "Fuel Assemblies," to increase the maximum enrichment of reload fuel from 3.5 weight percent U-235 to 4.55 weight percent U-235. Associated with the higher enriched fuel is an increase in allowed batch average burnup from 33,000 MWD/MTU to 36,000 MWD/MTU.

Basis for proposed no significant hazards consideration determination: The proposed change is in the Design Features section of the TS and does not involve any change to the Safety Limits, Limiting Conditions for Operation or Surveillance Requirements.

Parameters such as shutdown margin, reactivity coefficients and power peaking factors are not affected by the change. The specification of the fuel enrichment in the Design Features section alone does not uniquely determine nor limit the values of the reactor core parameters contained elsewhere in the TS. Each reload design is evaluated to confirm that the cycle core design adheres to the limits that exist in the current accident analyses and TS. With respect to increasing the maximum enrichment which can be stored in new fuel or spent fuel storage racks, criticality analyses have been performed by the licensee to demonstrate that applicable NRC licensing criteria are met for the receipt and storage of 4.55 weight percent U-235 fuel.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendments, the licensee has determined the following.

(1) The use of reload fuel with an enrichment of 4.55 weight percent U-235 will not involve a significant increase in the probability or consequences of an accident previously evaluated because the enrichment is not a unique parameter in the safety analyses and the change does not affect the normal refueling process that ensures that the core design for each cycle is within the current safety analyses.

(2) This change to the Technical Specifications does not create the possibility of a new or different kind of accident from any previously evaluated because it does not result in any physical changes to the plant, and therefore does not present the possibility of a new or different type of event other than those that have been previously evaluated.

(3) This change will not involve a significant reduction in a margin of safety because it does not result in a change to the types of safety analyses required nor to their acceptance criteria. Criticality analyses have

been performed to demonstrate that the new fuel storage and spent fuel storage criteria will continue to be met.

The NRC staff has reviewed the licensee's determination and concurs with its findings.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: June 10, 1988

Description of amendments request: The proposed amendment would change the expiration date for *Facility Operating License No.* DPR-49 for the Duane Arnold Energy Center (DAEC) from June 21, 2010 to February 21, 2014.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards consideration in its request for a license amendment. In the licensee's view, the proposed amendment:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated. No changes will be made in the design or operation of the DAEC. The proposed operating license extension is within the original design considerations for the plant and the current maintenance, surveillance, inspection, and testing practices provide assurance that any degradation of plant equipment will be identified and corrected throughout the operating life of the facility.

(2) Does not create the possibility of a new or different kind of accident. No changes will be made in the design or operation of the facility. The DAEC's inservice testing and inspection program will provide early detection of any age-related problems in structures or components originally designed for the life of the plant prior to their becoming failures. Also, the DAEC is very similar in design and construction to other BWR's which have been in service longer. Therefore, DAEC would expect to learn of any new age-related problems before they develop at the DAEC.

(3) Does not involve a significant reduction in the margin of safety. Neither the Technical Specifications nor the accident analyses which form the bases for the Technical Specifications are affected. Specifically, the inservice inspection and inservice testing requirements are not being changed. No changes to the design or operation of the facility will be made. No margin of safety will be reduced.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety.

The staff has reviewed the licensee's evaluation of the proposed amendment, and agrees with the licensee's conclusion. Therefore, the staff proposes to determine that the proposed amendment to the Facility Operating License does not involve significant hazards considerations.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: May 1, 1989 as modified by letter dated June 15, 1989.

Description of amendment request: By letter dated May 1, 1989, as amended June 15, 1989, the licensee proposed to modify the operability requirements for the High Pressure Coolant Injection (HPCI) system to allow for improved control of feedwater flow during periods of low flow demand. The change would permit the closing of one feedwater pump blocking valve in one HPCI pump train during reactor startup when core power is less than or equal to 25% of rated thermal power. Closing one blocking valve would enhance the control of flow using the bypass valve around the main flow control valve (minimum flow control valve), and reduce the excessive service conditions that result when the main flow control valves are used to control feedwater flow during periods of low flow demand. In addition, the effective use of the minimum flow control valves would reduce thermal cycling that is currently experienced on the reactor feedwater nozzles and feedwater piping.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee provided the following analysis in its May 1, 1989 submittal:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the HPCI system is not considered an engineering safety feature and its operation is not considered in analyses demonstrating compliance with 10 CFR 50 Appendix K requirements. Since the core spray system is the design basis system for loss-of-coolant accident (LOCA) makeup water capability, operation with one HPCI train available during reactor startup will have no adverse effect on any previously evaluated accident.

(2) The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As discussed above, modifying the reactor startup procedure to close the feedwater pump blocking valve will improve feedwater flow control, reduce excessive main flow control valve service conditions, and reduce thermal cycling of feedwater nozzles and piping. This change represents a modification to a normal plant evolution that improves operations and may contribute to maintaining the integrity of HPCI/feedwater system components.

(3) The proposed amendment does not involve a significant reduction in a margin of safety since HPCI flow is not credited in establishing safety margins. The core spray system is the design basis system for makeup flow to the core during a LOCA. Although the HPCI system is not a safety-related system, one train of HPCI would be available to provide normal HPCI flow upon automatic LOCA initiation. Additionally the closed feedwater pump blocking valve is a motor-operated valve capable of being fully open 60 seconds after manual initiation.

The staff agrees with the licensee's analysis. Therefore, the staff proposes that the amendment will not involve a significant hazards determination.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Robert A. Capra

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: July 26, 1989

Description of amendment request: Generic Letter 88-16, dated October 4, 1988, from the NRC to power reactor licensees, provided guidance for preparation of applications for removal of cycle-specific parameter limits from facility Technical Specifications. The licensee's application is in response to this NRC initiative. The proposed amendment would revise the Appendix A Technical Specifications of the facility operating limits, applicable to Cycle 13, with a reference to a Core Operating Limits Report, which would specify the values of those limits for future operating cycles. The cycle-specific limits include (a) limiting control rod pattern definition, (b) rod block monitor upscale trip settings, (c) maximum average planar linear heat generation rate and (d) minimum critical power ratio. These limits will be determined in accordance with previously approved methodology. The methodology, described in the staff-approved vendor documents, would not be affected by this amendment. The Core Operating Limits Report for each reload, and any mid-cycle revisions, are to be provided to the NRC upon issuance by the licensee.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed revision to the License Condition is in accordance with the guidance provided in Generic Letter 88-16 for licensees requesting relocation of cycle-specific parameter limits from the Technical Specifications to a reference Core Operating Limits Report. The establishment of these limits in accordance with NRC-approved methodology, and the incorporation of these limits into the Core Operating Limits Report in a manner consistent with Generic Letter 88-16 guidance, will (1) ensure that proper steps are taken to determine the values of these limits, (2) enable the staff to review the values of these limits without the need for prior approval, and (3) eliminate the need for frequent Technical Specifications amendments which are applicable to only a single fuel cycle. The revised Technical Specifications with the deletion of the values of cycle-specific parameter limits and the reference to the Core Operating Limits Report does not create the possibility of a new or different kind of accident from those previously evaluated. It also do not involve a significant reduction in the margin of safety since the changes does not alter the methods and criteria used to establish these limits. Consequently, the proposed removal of the values of cycle-specific limits does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Because the values of cycle-specific core operating limits are simply being relocated to a reference document and will continue to be determined in accordance with an NRC-approved methodology and in a manner consistent with the applicable limits of the safety analysis, the proposed amendment is administrative in nature and does not impact the operation of the facility in a manner that involves significant hazards considerations.

The proposed amendment does not alter the requirement that the plant be appropriately operated within the limits for cycle-specific parameters nor that specific remedial actions must be taken when these limits are not met. With the removal of the values of these limits from the Technical Specifications, and their incorporation into the Core Operating Limits Report that is to be submitted to the Commission, appropriate means will exist for staff review of the values of these limits. Accordingly, the proposed amendment is administrative in nature and does not impact the operation of the facility in a manner that involves significant hazards considerations.

Based on the above, the staff believes this proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Lawrence A. Yandell, Acting.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: July 5, 1989 (Reference LAR 89-06)

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to reduce the boron concentration in the Boric Acid System from 12 to 4 weight percent and delete the requirement for heat tracing. As discussed in Generic Letter 85-16, there have been incidents at operating plants in which boric acid crystallization in safety-related system components has been sufficient to render the systems inoperable. The changes proposed in this license amendment request (LAR) would reduce the potential for such incidents at Diablo Canyon and reduce routine maintenance and operations problems associated with the boric acid storage and transfer system. The requirement to maintain heat tracing as a condition for operability would be deleted because the precipitation temperature for 4 weight percent boric acid is much closer to room temperature than for the 12 weight percent boric acid currently in use. The heat tracing system as presently installed with its associated redundancy and alarm capability will be maintained and used as necessary to prevent precipitation.

The specific TS changes proposed would include the following:

(1) TS 3.1.1.1, "Shutdown Margin - Tavg Greater than 200 degrees F." Due to a decrease in boric acid concentration from 12 weight percent (20,000 ppm) to 4 weight percent (7,000 ppm) the borated water flow rate will be increased from 10 gallons per minute (gpm) to 30 gpm.

(2) TS 3.1.1.2, "Shutdown Margin - Tavg Less Than or Equal to 200 degrees F." As in Technical Specification 3.1.1.1,

boron concentration will be decreased from 20,000 ppm to 7,000 ppm and borated water flow rate increased from 10 to 30 gpm.

(3) TS 4.1.2.1, "Flow Path - Shutdown." The surveillance requirement for verification of the temperature of the heat tracing will be changed from 145 degrees F to 65 degrees F and the reference to heat traced portions of the flow path will be deleted.

(4) TS 4.1.2.2, "Flow Path - Operating." The same revisions as in TS 4.1.2.1 will be made. Also, TS 4.1.2.2d, which verifies every 18 months that the flow path to the RCS delivers a flow rate of 10 gpm, will be changed to 30 gpm.

(5) TS 3.1.2.5, "Borated Water Source - Shutdown." Since the boron concentration will be decreased from 20,000 to 7,000 ppm, the minimum usable borated water volume will be increased from 835 to 2,499 gallons. Also, the minimum solution temperature will be changed from 145 degrees F to 65 degrees F, the reference to a heat tracing channel will be deleted, the reference to a minimum boron concentration of 2,000 ppm for Unit 1 Cycle 2 will be deleted, and the cycle dependent notes will be deleted.

(6) TS 3.1.2.6, "Borated Water Source - Operating." Since the boron concentration will be decreased from 20,000 to 7,000 ppm, the minimum usable borated water volume will be increased from 5,106 to 14,042 gallons. Also, the minimum solution temperature will be changed from 145 degrees F to 65 degrees F, the reference to a heat tracing channel will be deleted, the reference to a boron concentration between 2,000 and 2,200 ppm for Unit 1 Cycle 2 will be deleted, and the cycle dependent notes will be deleted.

(7) TS 3.5.5, "Refueling Water Storage Tank." This specification will be revised to reflect that a boron concentration of between 2,300 ppm and 2,500 ppm is being utilized in Units 1 and 2 and the cycle dependent notes will be deleted.

(8) TS 3.9.1, "Refueling Operations - Boron Concentration." The action statement will be revised to reflect the change to 7,000 ppm boric acid solution and the increased boric acid flowrate to 30 gpm.

(9) TS 3.10.1, "Special Test Exceptions - Shutdown." The action statement will be revised to reflect the change to 7,000 ppm boric acid solution and the increased boric acid flow rate to 30 gpm.

(10) TS Bases 3/4.1.2, "Boration Systems." The second paragraph currently states that, "The maximum expected boration capability requirement occurs at EOL from full power equilibrium xenon conditions." This will be replaced by "The maximum expected boration capability occurs at BOL when borating from hot zero percent power to cold shutdown ...." The minimum usable borated water volume of 5,106 gallons will be increased to 14,042 gallons and the boron concentration of 20,000 ppm will be decreased to 7,000 ppm. Also, the reference in the Bases specifying the volume of borated water in the refueling water storage tank (RWST) needed to provide adequate shutdown margin will be changed from 75,000 gallons to 65,784 gallons. The above changes affect Modes 1 to 4.

The requirements for borated water for Modes 5 and 6 are also affected. The boric acid tank (BAT) required volume will change from 835 gallons of 20,000 ppm borated water to 2,499 gallons of 7,000 ppm borated water. The reference in the Bases specifying the water volume in the RWST needed to provide adequate shutdown margin will be increased from 9,680 to 17,865 gallons. Also, the reference to having heat tracing as a requirement for operability of the system is proposed to be deleted.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating licer e involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment will not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its submittal of July 5, 1989, evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed changes do not involve a significant hazards consideration. The licensee's evaluation is as follows:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The BAT borated water is not assumed for mitigation of any of the design basis accidents or transients in the FSAR Update. The RWST, however, supplies borated water to mitigate accidents such as, Minor Secondary System Breaks (FSAR Update Section 15.3.2), and, "Rupture of a Main Steam Line (FSAR Section 15.4.2.1)." The new RWST volumes specified in the Bases section of the Technical Specification for the BAT and RWST are bounded by the current volumes specified in the Technical Specifications.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Precipitation in the BIT/BAT recirculation line may cause malfunctions of safety injection flow paths, as discussed in Generic Letter 85-16. Reducing the boric acid concentration from 12 weight percent to 4 weight percent will reduce the probability of precipitation of boric acid in the Emergency Core Cooling flow path. Furthermore, the removal of heat tracing from the technical specifications will have no adverse effect because the fluid temperature will still be required to be maintained above the solubility limit.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The Basis Section, 3/4.1.2, "Boration System," states that the boron injection system ensures that negative reactivity control is available during each mode of facility operation to provide a sufficient boron water source to provide a shutdown margin from expected operating conditions of 1.6% delta k/k after xenon decay and cooldown to 200 degrees and a shutdown margin of 1% delta k/k after xenon decay and cooldown from 200 to 140 degrees. The new BAT volumes of 14,042 gallons of 4 percent boron for Modes 1, 2, 3, and 4 and 2,499 gallons of 4 weight percent boron for Modes 5 and 6 still meet this requirement.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the proposed changes and the licensee's no significant hazards consideration determination and finds them acceptable. Therefore, the staff proposes to determine that these changes do not involve significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: July 7, 1989 (Reference LAR 89-07)

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to change the heatup and cooldown curves and delete the surveillance capsule withdrawal schedule. The revised heatup and cooldown curves were calculated using methods described in Revision 2 to NRC Regulatory Guide 1.99, "Radiation Embrittlement of Reactor Vessel Materials," as recommended by Generic Letter 88-11, to predict the effect of neutron radiation on reactor vessel materials while continuing to meet the requirements of 10 CFR Part 50, Appendix G. The Pressure/Temperature (P/T) limit curves in the existing TS are applicable through 6 effective full power years (EFPY). The proposed P/T limits are applicable through 8 EFPY. The expected exposures for the Units 1 and 2 reactor vessels at the end of July 1989 are 3.27 and 2.64 EFPY, respectively. Specific TS changes would include (1) Revision of Figure 3.4-1, "Reactor Coolant System Heatup Limitations," and Figure 3.4-3, "Reactor Coolant System Cooldown Limitations," to update the controlling chemical composition and P/T curves; (2) Deletion of TS 4.4.9.1.2 and Table 4.4-5, "Reactor Vessel Material Surveillance Program Withdrawal Schedule," (the surveillance schedule will be included in the next FSAR Update Revision); and (3) Revision of TS Bases 3/4.4.9 to update information and delete figures and tables that have been included in the FSAR Update, Revision 4.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment will not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its submittal of July 7, 1989, evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed changes do not involve a significant hazards consideration. The licensee's evaluation is as follows:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes to TS 3/4.4.9, "Reactor Coolant System - Pressure/Temperature (P/T) Limits" and associated Bases revise the heatup/cooldown curves in accordance with NRC Regulatory Guide 1.99, Revision 2. The proposed P/T limits are generally more restrictive than the present P/T limits except in a narrow low temperature band on the heatup curve. The present LTOP pressure setpoint and the enable temperature were reviewed and found to be acceptable for the new P/T limits.

The P/T limits are prescribed as guidance used during normal operation to avoid encountering pressure, temperature and temperature rate-of-change conditions which might cause undetected flaws to propagate resulting in non-ductile failure of the reactor coolant pressure boundary. The P/T limits are not derived from design bases accident events presented in the Diablo Canyon FSAR Update. As such the revision to the P/T limits does not affect the probability or consequences of a previously analyzed accident.

The proposed deletion of TS 4.4.9.1.2 and the associated withdrawal schedule are administrative changes. 10 CFR 50, Appendix H, requires a withdrawal schedule to be established, and repeating the requirement in the Technical Specifications is unnecessary. In addition, deletion of the tables and figures from the Bases is an administrative change. This information will be provided in the Diablo Canyon FSAR Update. These changes are purely administrative.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Using more conservative vessel embrittlement projections, the proposed revision merely updates the existing pressure/temperature limits. The proposed P/T curves are in general slightly more restrictive than the present P/T limits except in a narrow low temperature band on the heatup curve. The LTOP pressure setpoint and enable temperature are not being changed and have been shown to be set conservatively in accordance with analysis and NUREG-0800 methodology, respectively. The removal of the capsule withdrawal schedule and surveillance requirement is purely administrative. None of the proposed revisions to the TS and associated Bases result in any physical alteration to any plant system, nor is there a change in the method by which any safety-related system performs its function. Therefore, the proposed changes do not create the possibility of a new of different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The proposed updates to the P/T limits are based on the conservative methodology of Revision 2 to NRC Regulatory Guide 1.99. The revisions to TS 3/4.4.9 and associated Bases meet all of the requirements of 10 CFR 50, Appendix G. The removal of the capsule withdrawal schedule and surveillance requirement from the TS does not affect the requirements of 10 CFR 50, Appendix H. The FSAR Chapter 15 safety analyses are unaffected by the proposed changes.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the proposed changes and the licensee's no significant hazards consideration determination and finds them acceptable. Therefore, the staff proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: June 7, 1989

Description of amendment request: The proposed amendment would (1) require that the opening angle of containment ventilation isolation valves be limited to 53.5° (90° is fully open) consistent with analysis, (2) incorporate leak testing acceptance criteria for containment ventilation isolation valves and airlocks, (3) provide technical specifications consistent with the Standard Technical Specifications for containment ventilation isolation valves and airlocks, and (4) reduce the personnel air lock door seal test pressure from 10 psig to 3 psig.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis about the issue of no significant hazards consideration which is quoted below:

1. Will operation of the facility in accordance with this proposed change

involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

Proposed Change Number (PCN) 211 will establish technical specification requirements for airlock and isolation valve leak testing acceptance criteria that are not currently in the specifications. The acceptance criteria will ensure that these penetrations can withstand the post accident containment pressure with minimal leakage and that degradation of leakage integrity is detected in a timely manner. PCN 211 will also establish opening limits for the containment vent valves. Provisions to limit the valve openings are currently in place in accordance with NRC requirements. These provisions will minimize the force required to close the valves during a design basis LOCA thus providing additional assurance of the isolation function of these valves. The proposed change will establish requirements to ensure the valve opening limitations are maintained. PCN 211 will incorporate limiting conditions for operation (LCOs) and ACTION statements for the personnel air locks consistent with the Westinghouse Standard Technical Specifications into the Technical Specifications. Finally, PCN 211 will reduce the lower test pressure for the personnel airlock from 10 psig to 3 psig. This change will enhance the reliability of the airlock by limiting unnecessary stresses placed on airlock components during testing at 10 psig. Accident consequences or probability will not be increased since containment pressure during design basis LOCA will seal the inner door. Based on the foregoing, operation of the facility in accordance with the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with the proposed change create the possibility of a new or different kind or accident from any accident previously evaluated?

Response: No

The changes proposed by PCN 211 establish new technical specification requirements for the containment purge and vent valves and the personnel airlocks. These new requirements are intended to enhance the reliability of the components in their post accident function. Reducing the lower test pressure on the personnel airlock from 10 psig to 3 psig is proposed to minimize stresses placed on the airlock during testing while maintaining a test pressure sufficient to detect degradation of components. Incorporation of LCO's and ACTION statements not currently in the technical specifications may result in avoiding unnecessary plant shutdowns. Therefore, none of the changes proposed by PCN 211 will create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

The margin of safety for the containment purge and vent valves and the personnel airlock is defined by the sealing capability in the event of a reactor transient. The changes proposed by PCN 211 are intended to ensure that the sealing capability of these components is maintained and any degradation is detected in a timely manner. Reduction of the lower test pressure for the air lock from 10 psig to 3 psig does not affect the margin of safety since the direction of the test pressure is opposite that which the door would experience during an accident. Testing at 3 psig reduces stresses placed on the door and has been demonstrated to have adequate sensitivity to detect leakage and degradation of components. It is also noted that PCN 211 does not impact the semi-annual air lock testing requirement performed at a test pressure of 49.4 psig. Accordingly, operation of the facility in accordance with this proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Southern California Edison Company, et al., Docket No. 50-362, San Onofre Nuclear Generating Station, Unit 3, San Diego County, California

Date of amendment request: June 12, 1989 (PCN-292)

Description of amendment request: The proposed change would revise Technical Specifications 3/4.4.8.1, "Reactor Coolant System. Pressure/Temperature Limits;" 3.4.1.4.1, "Cold Shutdown - Loops Filled;" 3.4.1.3, "Hot Shutdown;" 3.4.8.3.1, "Overpressure Protection Systems, RCS Temperature less than or equal to 285° F;" and 3.4.8.3.2, "Overpressure Protection Systems, RCS Temperature greater than 285° F." The change would revise the Reactor Coolant System pressure/temperature (PT) limit curves, low temperature overpressure protection (LTOP) temperatures, and associated bases to be effective up to 8 effective full power years (EFPY) of operation. The maximum allowable Reactor Coolant System pressure at any temperature is based upon the stress limitations for brittle fracture considerations. Technical Specification 3/4.4.8.1, "Reactor Coolant System, Pressure/Temperature Limits," provides operational constraints in all modes of reactor operation to ensure that the most stress limiting location in the reactor pressure vessel is not susceptible to brittle failure as a consequence of reactor operations. The neutron-induced enbrittlement of the reactor vessel wall also affects the temperature below which LTOP is required. LTOP is provided by the Shutdown Cooling System (SDCS) relief valves, which must be aligned below the specified temperature to provide assurance that the reactor vessel will be operated in the ductile region in accordance with 10 CFR Part 50, Appendix G, during both normal operation and overpressurization events due to equipment malfunction or operator error. Technical Specifications require alignment of the SDCS relief valves at temperatures below the temperature corresponding to the PT curve pressurizer relief valve set point of 2500 psia. The current Unit 3 RCS PT limit curves in the Technical Specification 3/4.4.8, Figures 3.4-2 and 3.4-3, are valid for 4 EFPY and are based on the adjusted RT_{NDT} of 103° F. The current LTOP temperature is 285° F and provides RCS pressure relief at temperatures below the intersection of the pressurizer relief valve setpoint, 2500 psia, and the 30° F/hr heatup curve.

The proposed change would revise the PT limits for heatup and cooldown shown in Figures 3.4-2 and 3.4-3, respectively, and the LTOP temperature, based on the fluence at 8 EFPY. The minimum boltup temperature would be 86° F as stated in the proposed Technical Specification 3.4.8.1.d. An analysis was conducted by the licensees in accordance with 10 CFR Part 50, Appendix G; Standard Review Plan Sections 5.2.2 and 5.3.2; ASME B&PV Code, Section III, Division 1, Appendix G; and Regulatory Guide 1.99, Revision 2, May 1988. Using values listed in the FSAR Table 5.2-5, "San Onofre 3 Beltline Material," an adjusted RT_{NDT} of 92.4° F was calculated by the licensees based on the projected fluence at 8 EFPY. Separate heatup and cooldown LTOP temperatures, 302° F and 267° F, respectively, were calculated. The LTOP heatup and cooldown temperatures were determined from the intersections of the pressurizer relief valve setpoint and the 60° F/hr heatup curve and 100° F/hr cooldown curve, respectively, at which the LTOP functions must be transferred between the SDCS relief valves and the pressurizer relief valve during heatup and cooldown. The effect on the heatup and cooldown curves due to the PT limits for the closure flange has been analyzed and incorporated into these curves. The material correlations were based on the copper and nickel content of the reactor vessel in accordance with the new Regulatory Guide 1.99, Revision 2.

The proposed LTOP controlling pressure of 416 psia corresponds to the calculated maximum RCS pressure which could be reached during a postulated overpressurization event in the temperature region where the LTOP system is aligned. Moreover, the licensees state that LTOP controlling pressure is more limiting than the PT limit curves, providing added margin that the PT limit is not exceeded. The licensees believe that the intersections of the LTOP controlling pressure with the 30° F/hr heatup curve provides the temperature at which the heatup rate can be increased to 30° F/hr. The temperatures for which even higher heatup rates are proposed has been determined in a similar manner. Using interpolation, the licensee has constructed a continuous curve of allowed RCS heatup rate versus coolant temperature. The intersection of the LTOP control pressure with the 100° F/hr cooldown curve provides the temperature at which the cooldown rate must be reduced. As described for the heatup curve, the licensee has constructed a curve of the maximum permitted cooldown rate versus RCS coldleg temperature.

The proposed change would also modify Technical Specification Table 4.4-5, "Reactor Vessel Material Surveillance Program - Withdrawal Schedule." This table provides the schedule by which the reactor vessel surveillance capsules are to be withdrawn. The proposal would change the withdrawal time for the first Unit 3 surveillance capsule from 5.6 EFPY to 4.4 EFPY.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

(1) Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

To compensate for any increase in the RT_{NDT} caused by irradiation, limits on the pressure-temperature relationship are periodically changed in accordance with 10 CFR 50, Appendix G, to stay within the stress limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, which the pressure boundary may be subjected to over its service lifetime. The update to Figures 3.4-2 and 3.4-3, which includes new LTOP settings, incorporates the changes of the pressure-temperature relationship analyzed using conservative fluence values. The update, therefore, maintains margins of safety against the nonductile failure of the reactor pressure vessel. The change to Table 4.4-5 provides only a change in schedule for withdrawal of the first surveillance capsule for Unit 3. This change continues to provide a surveillance program that conforms to that originally planned for Units 2 and 3. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed change incorporates the change in the RT_{NDT} from an unirradiated condition to reflect the accumulation of fast neutron exposure. All design basis energy addition and mass addition transients have been evaluated previously and there is no significant change in the configuration or operation of the facility due to the proposed change. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

The purpose of the PT Limit curves is to limit thermal stress induced by the normal load transients, reactor trips, and startup and shutdown operations. The revision to the PT limit curves incorporates the effects of neutron-induced embrittlement in the material to preserve the margin of safety, as required by 10 CFR 50, Appendix G. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: May 25, 1989 (TS 89-03)

Description of amendment requests: The Tennessee Valley Authority (TVA) proposes to modify the Sequoyah Nuclear Plant (SQN), Units 1 and 2, Technical Specifications (TS). The proposed changes are to revise Tables 3.3-3, "Engineered Safety Feature Actuation System Instrumentation," 3.3-4, "Engineered Safety Feature Actuation System Instrumentation Trip Setpoints," and 4.3-2, "Engineered Safety Feature Actuation System Instrumentation Surveillance Requirements." The proposed changes add requirements for the logic time delays associated with the auxiliary feedwater (AFW) automatic suction transfer. Specifically, the following changes are proposed: (1) a "Functional Unit" 6.h is added to each of the above tables to include requirements for the AFW suction transfer time delays, (2) the current wording of Table 3.3-3, Action 21, is replaced with a new action appropriate for the AFW suction transfer pressure switches and time delays, and (3) the "Action" and "Minimum Channels Operable" columns for Table 3.3-3, Item 6.g, are revised to reflect the new Action 21 described above. In addition, the wording of Table 4.3-2, "Functional Unit," Item 6.g, is revised to correct an inadvertent omission from a previous license amendment.

Basis for proposed no significant hazards consideration determination: TVA provided the following information in its submittal to support its proposed changes to the TS:

By letter dated November 17, 1987, TVA submitted proposed TS change 87-40. This change revised the AFW suction-pressure. low-trip setpoint and allowable value of Table 3.3-4, Item 6.g, for both units for the turbine-driven AFW pump.

The logic time delays associated with the automatic AFW suction transfer were discussed in the TS 87-40 submittal. TVA identified that the time delays were added to the logic sequence to prevent spurious actuation because of signal noise. This minimizes the potential for the detrimental effects of raw water injection into the steam generators. This design feature is based on economic concerns. At the time, TVA concluded that the time delays should not be included in the TSs because the equipment did not meet the criteria specified in the NRC policy statement on TS content as published in the February 6, 1987, edition of the **Federal Register.** The inclusion of the logic time delays was discussed with NRC during their review of TS 87-40. During these discussions, it was concluded that, because the logic

timers are an integral part of the actuation sequence for automatically transferring AFW suction, it was appropriate that these be included in the TSs. TVA committed to add the logic timers to the TSs in a November 23, 1988, letter to NRC. NRC recognized this commitment in their December 30, 1988, letter approving TS 87-40. Change 1 described above satisfied this commitment.

The deletion of the current wording of Action 21 of Table 3.3-3 is made to facilitate the generation of a new action appropriate for the AFW suction transfer pressure switches and time delays. Action 21 is not currently applied to any entry in Table 3.3-3. As such, its deletion is considered an administrative change. The new action is proposed to better reflect the significance of an inoperable AFW suction transfer pressure switch or logic timer.

The revisions of the "Action" and the "Minimum Channels Operable" for Table 3.3-3, Item 6.g, are effectively administrative changes to implement the new Action 21 described above. The wording change to the "Functional Unit," 6.g, of Table 4.3-2 is an administrative change to correct an inadvertent omission created in SQN license amendments 29 (Unit 1) and 18 (Unit 2) dated May 5, 1983. This change will make the wording of Table 4.3-2, Item 6.g, consistent with the items in Tables 3.3-3 and 3.3-4.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

TVA has evaluated the proposed TS change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

As described in SQN FSAR [Sequoyah Final Safety Analysis Report], Section 10.4.7.2, the AFW system supplies sufficient feedwater to the steam generators to remove primary system stored and residual core energy in the event of a loss of the main feedwater supply. The preferred sources of water to the AFW pumps are the two nonseismic CSTs [condensate storage tanks]. A seismic, unlimited backup water source is provided by connection to the ERCW [Essential Raw Cooling Water System]. ERCW flow is automatically initiated to the AFW pumps upon receipt of a low suction-pressure signal (FSAR Figure 10.4.7-10).

The addition of the suction swapover logic time delays to the TSs is effectively an administrative change to reflect that the time delays are an integral part of the swapover sequence. The timers are currently calibrated periodically in accordance with [procedure] MI-13.1.2. MI-13.1.2 calibrates the timers to the values established in engineering calculation "Auxiliary Feedwater System Pressure Switch Setpoints." Calibration to these values ensures that adequate NPSH [net positive suction head] is maintained to the AFW pumps during the suction transfer sequence. Since this proposed TS change is essentially administrative in nature and does not affect the AFW suction transfer to its qualified water source, the proposed change will not increase the probability or consequences of an accident previously evaluated. The deletion of the current wording of Table 3.3-3, Action 21, is administrative in nature because the action is not applied to any item listed in Table 3.3-3. As an administrative change, it will not increase the probability or consequences of a previously evaluated accident.

The new wording of Table 3.3-3, Action 21, is selected to create an action that provides an appropriate response to the inoperability of an AFW suction transfer switch or logic timer. A forced plant shutdown resulting from the inoperability of a suction transfer pressure switch or logic timer that affects only one AFW pump is considered to be excessive.

The new wording provides consistency with the AFW system actions of specification 3.7.1.2 and removes the potential for unnecessary plant transients and shutdowns. As such, this proposed change will not increase the probability or consequences of a previously evaluated accident.

The remaining changes are administrative in nature. The first revises the action and minimum channels operable for Item 6.g of Table 3.3-3 to implement the new action described above. The second inserts text that was inadvertently omitted by a previous license amendment. The probability or consequences of an accident previously evaluated are not increased by these proposed administrative changes.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

As described above, the proposed TS change is made to reflect that the logic time delays are an integral part of the automatic AFW suction transfer and is effectively administrative in nature. The proposed changes reflect that the timer settings currently in use for SQN and that the surveillance requirements are consistent with other time delay relays listed in the TSs. Other tabular entries are consistent with those for the AFW suction pressure switches, which are part of the same control loop. The remaining changes are either administrative in nature or reduce the potential for unnecessary plant transients and shutdowns. The function and operation of the automatic AFW suction swapover sequence, as well as the AFW system, are not affected by this change. As such, the possibility of a new or different kind of accident from any previously evaluated is not created.

(3) Involve a significant reduction in a margin of safety.

The primary function of the AFW system is to provide sufficient heat removal capability for heatup accidents following reactor trip to remove the decay heat generated by the core and prevent reactor coolant system overpressurization. The proposed additions to Tables 3.3-3, 3.3-4, and 4.3-2 are administrative in nature and do not affect the AFW system's ability to fulfill its design function. The proposed changes merely reflect that the logic time delays are an integral sequence [in transferring the AFW pump suction] from the CSTs to [the] ERCW. The revised action for inoperable AFW suction transfer pressure switches and logic timers provide a more prudent response in that unnecessary plant transients and shutdowns are avoided. Therefore, there is no reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: May 25, 1989 (TS 89-04)

Description of amendment requests: The Tennessee Valley Authority (TVA) proposes to modify the Sequoyah Nuclear Plant (SQN), Units 1 and 2, Technical Specifications (TS). The proposed changes are to revise Section 4.8.3.2 and Table 3.8-2 to add a surveillance requirement for the turbine-driven auxiliary feedwater pump (AFW) trip and throttle valves. These valves, 1-FCV-1-51 and 2-FCV-1-51, will be identified in Table 3.8-2 as being bypassed under certain accident conditions. The overload devices for these valves are normally in force during plant operation and bypassed under accident conditions. The proposed changes also identify valves 1-FCV-70-207 and 2-FCV-70-207 in Table 3.8-2 as common to both units.

Basis for proposed no significant hazards consideration determination: TVA provided the following information in its submittal to support the proposed changes to the TS:

The SQN turbine-driven auxiliary feedwater pump trip and throttle valves (valves 1-FCV-1-51 and 2-FCV-1-51) have thermal overload devices that are normally in force during plant operation and bypassed under accident conditions. Problem reporting document SQQ 880057P was initiated to document the need for testing the bypass circuitry of these valves. As permitted by Regulatory Guide 1.106, "Thermal Overload Protection for Electric Motors on Motor-Operated Valves," TVA proposes to ensure these motor-operated valves will perform their function by conducting a channel functional test of the bypass circuitry at least once every 18 months.

The condensate demineralizer waste evaporator throttle valves (1-FCV-70-207 and 2-FCV-70-207) are common valves to both units. The proposed change will provide administrative consistency by identifying them as such.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

TVA has evaluated the proposed TS change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change to perform a channel functional test of the bypass circuitry has no effect on currently analyzed accidents; the current analysis is based on single-failure criteria and will be unchanged. The proposed change to identify the condensate demineralizer waste evaporator throttle valves as common valves to both units is an administrative change and has no effect on hardware. It [, the amendments request,] therefore does not significantly increase the probability or consequences of a previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The channel functional test of the bypass circuitry is an appropriate surveillance recommended by

Regulatory Guide 1.106. The identification of the condensate demineralizer waste evaporator throttle valves as common valves to both units is an administrative change and has no effect on hardware. It [, the amendments request,] therefore does not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. The appropriate testing of the bypass circuitry at least once every 18 months acts to confirm the performance of the turbine-driven auxiliary feedwater pump trip and throttle valves as required; it should act to increase the margin of safety. The identification of the condensate demineralizer waste evaporator throttle valves as common valves to both units is an administrative change and has no effect on hardware. It [, the amendments request,] therefore does not significantly reduce the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: June 20, 1988

Description of amendment request: The proposed amendment would involve several administrative and editorial revisions to the Administrative Controls section of the Technical Specifications, including the Station Review Board's (SRB's) responsibilities and the Company Nuclear Review Board's (CNRB's) audit responsibilities. The proposed changes would also remove investigation and report preparation responsibilities from the SRB and thereby enhance the SRB's intended review and oversight function consistent with the Technical Specifications previously approved by NRC (NUREG-0926, June 1982, and NUREG-0932, August 1982). Also, responsibility for review of the Offsite Dose Calculation Manual (ODCM) and the Process Control Program (PCP) would be reassigned from SRB to the CNRB, consistent with NUREG-0472. Several minor editorial and administrative changes are additionally proposed.

Basis for proposed no significant hazards consideration determination: The Commission provided standards in 10 CFR 50.92 for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analyses in support of a no significant hazards consideration determination. The proposed changes would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the changes are administrative in nature, and provide for increased consistency between license requirements, intended SRB and CNRB functions and the Standard Technical Specifications. Review of the ODCM and the PCP will be made part of the CNRB audit functions and report preparation/investigation activities will be reviewed, rather than performed, by SRB, thus enhancing SRB review function. These proposed changes will have no effect on the safety function of any system or component.

Also, the proposed changes would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes are administrative in nature, provide for increased consistency between license requirements, intended SRB and CNRB functions and the Standard Technical Specifications, and do not affect any assumptions used in previous accident evaluations. All accidents continue to be bounded by previous analysis and the proposed changes will not introduce the possibility of any new or different kind of accident.

Finally, the proposed changes would not (3) involve a significant reduction in a margin of safety because the proposed changes provide for increased consistency between license requirements, intended SRB and CNRB functions and Standard Technical Specifications, do not affect operating practices or limits and do not constitute a modification of a safety-related system.

The NRC staff has reviewed the licensee's proposed no significant hazards determination and agrees with the licensee's analysis. Accordingly, the staff proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: February 23, 1989

Description of amendment request: The proposed changes would revise Section 3/4.6, Table 3.6-1 Containment Isolation Valves for North Anna Units 1&2 (NA-1&2) to identify additional valves exempt from the Type C test, to identify valves that are associated with water-filled penetrations for which a Type C test penalty will not be added to the Type A test results, to add containment isolation valves not previously listed, and to delete a valve incorrectly listed in the Table for Unit 1. Certain valves have been determined to be either exempt from the Type C testing penalty for the Type A test results or exempt from Type C testing. The identification of these containment isolation valves is based on the analysis of those penetrations that are maintained in a water-filled configuration during accident conditions, or are part of a closed system in containment. As permitted by III.A.1.(d) of 10 CFR Part 50 Appendix J, those penetrations that are water filled are not required to be vented and drained during the Type A test, however, these valves will continue to be Type C tested. The valves associated with a closed system in containment which do not rupture as a result of a loss of coolant accident are not required to be Type C tested.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes in the plant Technical Specifications (TS) in accordance with the standards of 10 CFR 50.92(c) and has determined that operation of NA-1&2 in accordance with these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change[s] [do] not change the design or operation of any system [or] equipment. Leakage testing continues to be performed in accordance with 10 CFR 50 Appendix J to ensure containment isolation in the event of a release of radioactive material to containment atmosphere or pressurization of the containment. The proposed change[s] [update Table] 3.6-1 and [reflect] the requirements of Appendix J.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The isolation valves associated with water-filled penetrations will continue to be Type C tested and their leakage rates will continue to be added to the local leakage rate. The isolation valves associated with closed systems which will not be Type C tested meet the requirements of 10 CFR 50 Appendix J for exemption.

(3) Involve a significant reduction in the margin of safety. The proposed [changes meet] the requirements of 10 CFR 50 Appendix J to ensure containment isolation.

The NRC staff agrees that the proposed changes to the TS meet the criteria specified in 10 CFR Part 50.92(c) and, hence, proposes to determine that they involve no significant hazards considerations.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: March 1, 1989

Description of amendment request: The proposed change would add a license condition stating that the limiting doses to control room operators would be revised in accordance with the findings specified in the licensee's March 1, 1989 submittal. In December 1986, the NRC conducted a Control Room Habitability Survey at NA-1&2. The survey was documented in an NRC letter dated May 4, 1987 and in NRC Inspection Report 87-19, dated September 10, 1987. The results of the survey identified various control room habitability issues that needed to be resolved. The response to the survey was documented in the licensee's letters dated June 8, 1987 and September 11, 1987. One of the survey issues dealt with control room access during an emergency. The survey identified that the procedure for limiting access to the control room might not be workable. The licensee's response to this issue indicated that an engineering evaluation would be performed to determine the best method for limiting access to the control room following an accident. In September 1988, a followup NRC inspection was performed to resolve the issues opened in the Control Room Habitability Survey. This followup inspection was documented in Inspection Report 88-28, dated November 23, 1988. During this inspection, the licensee committed to provide the results of the engineering evaluation and any proposed corrective actions by February 28, 1989.

The licensee's submittal of March 1, 1989 documents the results of the engineering evaluation and describes the corrective actions taken to ensure compliance with General Design Criterion (GDC) 19 of Appendix A to 10 CFR Part 50.

During accident scenarios at NA-1&2, the control room envelope is pressurized (upon receipt of a control room isolation signal) to 0.05 inch water gauge to minimize in-leakage of air and airborne radioactive material. The pressurization is initially provided by a bottled air system, which has sufficient capacity to supply the control room for 60 minutes. When the bottled air supply is depleted, breathing and pressurization air are provided by an emergency filtered air system which draws air from the turbine building through HEPA and charcoal filters. The emergency ventilation system maintains the control room envelope at a minimum pressure of 0.04 inch water gauge relative to the outside atmosphere. Previous radiological dose evaluations for the control room during accident scenarios assumed zero in-leakage of unfiltered air while the control room envelope is pressurized. Inherent in this assumption was the condition that no doors to the control room are opened. However, the emergency operating procedures at NA-1&2 require personnel to enter and exit the control room envelope during an accident. It was therefore necessary for the licensee to modify the NA-1&2 control room habitability calculations to address the impact to the required door openings on the control room doses. The Condition IV accidents defined in Chapter 15 of the NA-1&2 UFSAR are those which result in the most significant impact on control room habitability. Specifically, the following accident conditions were addressed in the licensee's evaluation: (1) Loss of Coolant Accident (LOCA), (2) Main Steam Line Breaks (MSLB), (3) Fuel Handling Accident (FHA), (4) Steam Generator Tube Rupture (SGTR), and (5) Locked Rotor Accident (LRA).

Calculations were performed to determine the 30-day dose to control room inhabitants, and the calculations were based on models and methodology which are consistent with NUREG-0800 which assumes unfiltered in-leakage at 10 cubic feet per minute (cfm) for the duration of the accident to account for control room access.

The evaluation determined that the MSLB and the SGTR are the two most limiting accidents for radiation exposure to the control room operator. The results of the licensee's evaluation indicate that the radiation exposure to control room operators is increased above the assumptions currently delineated in Chapter 15 of the NA-1&2 UFSAR. However, all of the accident scenarios that can have a significant impact on control room operator doses were determined to be within the limits specified by GDC-19. Acceptable means of allowing required entries to control room pressure envelope during the first hour of an accident were also identified. This involved several modifications of the NA-1&2 control room habitability system to ensure that doses to control room personnel do not exceed the limits of GDC-19. These modifications included: (1) operation of two fan/filter units of the emergency ventilation system in the recirculation mode for the duration of the accident, (2) initiation of the emergency ventilation recirculation concurrent with actuation of the bottled air system (i.e., on safety injection), and (3) initiation of control room isolation on receipt of a fuel building high-high radiation alarm. The licensee's dose calculations assumed that these modifications were made. For those cases where the system modifications have not yet been implemented, it was verified that intermediate measures, such as temporary procedures, are in place to ensure that GDC-19 requirements will be satisfied.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided the following discussion regarding the above three criteria:

1. The change does not involve a significant change in the probability or consequences of an accident previously evaluated. There are no system changes which increase the probability of an accident occurring. The effects on the analysis for each accident has been investigated, and the doses to control room personnel were found to increase. This increase is not significant because the revised doses remain below the limits in GDC-19 of Appendix A of 10 CFR 50, and meet the guidelines of NUREG-0800 (Section 6.4).

2. No new accident types or equipment malfunction scenarios will be introduced as a result of the recommended emergency ventilation system changes. Therefore, the possibility of an accident of a different type than any evaluated previously in the [NA-1&2] UFSAR is not created.

3. There is no significant reduction in the margin of safety. The revised dose calculations for all accidents continue to meet the appropriate GDC-19 limits for the recommended modifications to the emergency ventilation system. The GDC-19 limits will also be met for the [intermediate measures] and [temporary] procedure changes.

The NRC staff has made a preliminary review of the licensee's above analyses of the proposed change and agrees with the licensee's conclusion that the three standards in 10 CFR 50.92(c) are met. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: July 24, 1989

Description of amendment request: The proposed change would modify the Administrative Controls Section of the Technical Specifications (TS) which identifies the membership composition of the Station Nuclear Safety and Operating Committee (SNSOC) by adding the Superintendent-Engineering to the list of members.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed change in accordance with the requirements of 10 CFR 50.92 and has determined that the request does not involve significant hazards considerations in that it would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated, because the [change reflects] administrative considerations and [does] not change the plant design or operation. Presently, provisions made in the Technical Specifications for the appointment of alternate members to the SNSOC may be utilized with regard to the Superintendent-Engineering. The proposed change merely allows the augmentation of the pool of members readily available to convene meetings of the SNSOC; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated, because, as above, plant design or operation is not affected by [the] proposed [change], or

(3) Involve a significant reduction in a margin of safety, because neither plant design or operation is affected. [The] proposed [change does] not alter the function, alternates, meeting frequency, quorum, responsibilities, authority, or records of the SNSOC as defined by the Administrative Controls of the Technical Specifications.

Based on the staff's review of the licensee's evaluation, the staff agrees with the licensee's conclusions as stated above. Therefore, the staff proposes to determine that the proposed amendments do not involve significant hazards considerations.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: June 12, 1989

Description of amendment request: The proposed license amendment would provide Technical Specification (TS) clarification by redefining the current measure of fuel oil supply for the emergency diesel generators' (DG's)

storage tanks from a quantity of time, to a quantity of volume. The amendment would also clarify the bases of the required storage capacity.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed Technical Specification change and has determined that the changes would involve no significant hazards consideration. The licensee's basis for this conclusion is that the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change does not involve any alterations to the way the emergency diesel generators are operated or constructed. Rather, the new TS defines an adequate fuel oil volume capacity that is essential for sustaining continuous operation of one diesel generator for 7 days as assumed in the USAR and required by NRC accepted guides and standards. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously analyzed. The proposed amendment would not involve a significant change in the assumptions specified in the USAR, therefore it would not place the plant in an unanalyzed condition. The 8-hour supply provided by the day tank would be changed to indicate a specific volume requirement of 1000 gallons. The proposed minimum volume specification is well within the guidelines specified in Regulatory Guide 1.137 and ANSI standard N-195-1976. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. Involve a significant reduction in a margin of safety. The proposed change will decrease the fuel oil in each diesel generator's respective day tanks and increase the amount of fuel oil in the two underground storage tanks. The total onsite storage of fuel will increase. Although the proposed day tank specification is reduced, there is still a wide margin of conservatism with respect to ANSI N195-1976/ANS-59.51. Thus, there is no significant reduction in the margin of safety.

The staff has reviewed the licensee's determination that the proposed license amendment involves no significant hazards consideration and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: David Baker, Esq. Foley and Lardner, P. O. Box 2193 Orlando, Florida 31082.

NRC Project Director: John N. Hannon.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of amendment request: July 12, 1989

Brief description of amendment request: This amendment requests modification of the Technical Specifications to reflect a change in the reactor vessel level (narrow range) and reactor pressure instrumentation calibration frequency from once per six months to once per operating cycle.

Date of publication of individual notice in **Federal Register:** July 19, 1989 (54 FR 30296)

Expiration date of individual notice: August 17, 1989

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (Regional Depository), Commonwealth and Walnut Streets, Box 1601, Harrisburg, Pennsylvania 17126.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Commonwealth Edison Company, Docket Nos. 50-454 and 50-455, Byron Station, Units 1 and 2, Ogle County, Illinois; Docket Nos. 50-456 and 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: June 17, 1987, supplemented May 6, 1988 and June 23, 1989.

Brief description of amendments: These amendments modify the Technical Specifications 3.4.6.1b to allow 7 days to restore the Containment Floor Drain and Reactor Cavity Flow Monitoring System to operable before shutting down the plant.

Date of issuance: July 26, 1989

Effective date: July 26, 1989

Amendment Nos.: 31 for Byron and 21 for Braidwood

Facility Operating License Nos. NPF-37 and NPF-66. The amendments revised the Technical Specification.

Date of initial notice in **Federal Register:** September 9, 1987 (52 FR 34001). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 26, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron Station, the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Acting Project Director: Paul C. Shemanski

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Unit Nos. 1 and 2, LaSalle County, Illinois

Date of application for amendments: January 30, 1989

Brief description of amendments: These amendments revise the LaSalle County Station, Units 1 and 2 Technical Specifications by revising the MAPLHGR Limits Curves to reflect the higher nodal exposures values for specific fuel types.

Date of issuance: July 20, 1989

Effective date: July 20, 1989

Amendment Nos.: 69 and 51

Facility Operating License Nos. NPF-11 and NPF-18. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 19, 1989 (54 FR 15825). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 20, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: January 10, 1989.

Brief description of amendment: The amendment revises the Technical Specifications to (a) split and revise existing Technical Specification (TS) Section 3.3.1.5 "Isolated Loop," into Sections 3.3.15 "Isolated Loop" (Modes 1 and 2) and 3.3.1.6 "Isolated Loop" (Modes 3, 4, 5 and 6), (b) renumber and revise existing TS Section 3.3.1.6 "Isolated Loop Startup," to TS Section 3.3.1.7 "Isolated Loop Startup," (c) split and revise existing TS Section 3.3.1.7 "Idle Loop," into Sections 3.3.1.8 "Idled Loop" (Modes 1 and 2) and 3.3.1.9 "Idled Loop" (Modes 3, 4, 5 and 6), and (d) split and revise existing TS Section 3.3.1.8 "Idled Loop Startup," into Sections 3.3.1.10 "Idled Loop Startup" (Modes 1 and 2) and 3.3.1.11 "Idled Loop Startup" (Modes 3, 4, 5 and 6). Currently, the TS requires that the boron concentration in the idled/isolated loops be maintained greater than or equal to the boron concentration in the operating loops. The revised TS will separate Modes 1 and 2 from Modes 3, 4, 5 and 6. In Modes 1 and 2 the existing TS will remain unchanged while in Modes 3,4, 5 and 6, the revised TS will require a boron concentration in the idled/isolated loops that is greater than or equal to the shutdown margin requirements as specified in existing TS 3.1.10.2, 3.10.1.3 and 3.13.

Date of Issuance: July 18, 1989

Effective date: July 18, 1989

Amendment No.: 119

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18946). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 18, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: April 14, 1989, as supplemented June 16, 1989.

Brief description of amendment: The amendment changes Technical Specifications 3.17.1, "Axial Offset" and 3.17.2 "Linear Heat Generation Rate" to allow coastdown operation of the Haddam Neck Plant at the end of Cycle 15. The change in the axial offset limits and revised linear heat generation rate will assure that the peak clad temperature remains below the Interim Acceptance Criteria of 2300° F.

Date of Issuance: July 20, 1989

Effective date: July 20, 1989

Amendment No.: 120

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 31, 1989 (54 FR 23308). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 20, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: December 28, 1988, as clarified May 10, 1989

Brief description of amendment: The amendment adds a new surveillance requirement to Technical Specification 4.16 requiring periodic leak testing of the low head injection line check valves 897A-D and RHR check valves 838A-D. The amendment also makes certain editorial changes in Technical Specification 4.16 which are administrative in nature.

Date of issuance: July 19, 1989

Effective date: July 19, 1989

Amendment No.: 142

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 14, 1989 (54 FR 25372). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 19, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library,

BEST COPY AVAILABLE

100 Martine Avenue, White Plains, New York 10610.

NRC Project Director: Robert A. Capra

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: June 12, 1987, as supplemented July 9, 1987, January 8, 1988, and May 3, 1989.

Brief description of amendments: The amendments modified the Technical Specifications by adding operability and surveillance requirements for radioactive liquid effluent monitoring instrumentation for water from the turbine building sump after treatment by an alternate demineralizer system.

Date of issuance: July 18, 1989

Effective date: July 18, 1989

Amendment Nos.: 66 and 60

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 23, 1987 (52 FR 35791). Because the January 8, 1988, and May 3, 1989, submittals clarified certain aspects of the original request, the substance of the changes noticed in the **Federal Register** and the proposed no significant hazards determination were not affected.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: April 28, 1989

Brief description of amendments: The amendments modified Technical Specification Tables 3.3-7 and 4.3-4 to change the elevation at which seismic monitor 1MIMT 5010 is located.

Date of issuance: July 18, 1989

Effective date: July 18, 1989

Amendment Nos.: 67 and 61

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 14, 1989 (54 FR 25373). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: January 22, 1989, as supplemented May 17 and June 19, 1989.

Brief description of amendments: The amendments updated pressure and temperature limits for heatup and cooldown of the reactor coolant system.

Date of issuance: July 18, 1989

Effective date: July 18, 1989

Amendment Nos.: 109 and 82

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 5, 1989 (54 FR 13763). Because the May 17 and June 19, 1989, submittals clarified or corrected certain aspects of the original request, the substance of the changes noticed in the **Federal Register** and the proposed no significant hazards determination were not affected. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: September 6, 1988

Brief description of amendments: The amendments modified the Technical Specifications to change the action level regarding suppression pool temperature from 95° F to 100° F.

Date of issuance: July 18, 1989

Effective date: July 18, 1989

Amendment Nos.: 165 and 102

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 2, 1988 (53 FR 44251). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of application for amendment: March 20, 1989

Brief description of amendment: The amendment changes Technical Specification 4.6.F.2 so that reactor coolant activity sampling would be required only once every 24 hours at times when the continuous activity monitor is out of service and the reactor coolant temperature is equal to or less than 212° F.

Date of issuance: July 18, 1989

Effective date: July 18, 1989

Amendment No.: 168

Facility Operating License No. DPR-57. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 31, 1989 (54 FR 23313). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 18, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: December 21, 1988

Description of amendment request: The change will delete the limitation on use of the drywell vent and purge system.

Date of issuance: July 24, 1989

Effective date: July 24, 1989

Amendment No.: 23

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 19, 1989 (54 FR 15829). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 24, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: **The Vespasian Warner Public Library, 120 West Johnson Street,** Clinton, Illinois 61727.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: June 6, 1988, as amended by letters dated July 22 and November 8, 1988.

Brief description of amendment: This amendment deletes Figure 6.2-1 "Management Organizational Chart," and Figure 6.2-2 "Nuclear Site Organization," in accordance with Generic Letter 88-06, "Removal of Organization Charts From Technical Specifications." Administrative changes to Section 6.1, 6.2, 6.5, 6.6, and 6.7 are included and Specification 6.9 is being revised to make the Unit 1 Specifications consistent with 10 CFR 50.4. By letter dated November 8, 1988, the licensee amended the amendment application to propose additional administrative changes to the Specifications. These changes reflect the creation of the position of Executive Vice President-Nuclear Operations. This title replaces all current references to Senior Vice President in the Specifications.

Date of issuance: June 30, 1989

Effective date: June 30, 1989

Amendment No.: 9

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 7, 1988 (53 FR 34608) and renoticed on May 17, 1989 (54 FR 21312). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 1989.

No Significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

NRC Project Director: Robert A. Capra

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: April 21, 1988

Brief description of amendment: The amendment revises the Technical Specifications by transferring the air start receiver requirements for EDG*2 from 4.8.1.1.2.a.7 to 4.8.1.1.2.a.8 and reducing the minimum allowable pressure for the Division III (EDG*2) emergency standby diesel generator air start receivers from 225 psig to 190 psig.

Date of issuance: July 12, 1989

Effective date: July 12, 1989

Amendment No.: 10

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 15, 1988 (53 FR 22402). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 12, 1989.

Significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

NRC Project Director: Robert A. Capra

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: August 14, 1987, as revised January 4, February 10, and August 31, 1988.

Brief description of amendment: This amendment revises Section 6 of the plant Technical Specifications to: (1) remove the figures depicting corporate and plant organizational charts and specifying, in lieu thereof, general requirements that capture the essential aspects of the organizational structure that are defined by existing onsite and offsite organization charts, in accordance with the guidance provided in NRC Generic Letter 88-06; and (2) delete the requirement for plant management and support staff, not assigned to a rotating operations shift, to hold a current Senior Reactor Operator license.

Date of issuance: July 14, 1989

Effective date: July 14, 1989

Amendment No.: 68

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 5, 1988 (53 FR 39174). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 14, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of application for amendments: March 20, 1989 (Reference LAR 89-02), as supplemented by letter dated June 29, 1989.

Brief description of amendments: The amendments revised Technical Specifications Section 6, "Administrative Controls," to change the requirements for membership of the General Office Nuclear Plant Review and Audit Committee (GONPRAC), and for routine and special reports. Other portions of the amendment request were denied by the Commission.

Date of issuance: July 19, 1989.

Effective date: July 19, 1989.

Amendment Nos.: 43 and 42.

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18950). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 19, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

NRC Project Director: George W. Knighton

Public Service Electric & Gas Company, Docket No. 50-311, Salem Generating Station, Unit No. 2, Salem County, New Jersey

Date of application for amendment: May 5, 1989

Brief description of amendment: This amendment deleted the criterion from specification 4.7.9.e.1 that requires expanding the sample if the measured drag force of mechanical snubbers exceeds the previously measured drag force by more than 50%.

Date of issuance: July 20, 1989

Effective date: As of the date of issuance to be implemented within 45 days of the date of issuance.

Amendment No. 75

Facility Operating License No. DPR-75: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 14, 1989 (54 FR 25377). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 20, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: February 28, 1986, as supplemented May 14, 1987 and August 31, 1988.

Brief description of amendment: The amendment revises Technical Specification 3.6, "Reactor Building," and Table 3.6-1, "Containment Isolation Valves," to (1) allow an increase in the maximum closure time for selected containment isolation valves and (2) add 12 valves to the table.

Date of issuance: July 17, 1989

Effective date: July 17, 1989

Amendment No.: 112

Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 14, 1989 (54 FR 25377). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 17, 1989.

No significant hazards consideration comments received. No.

Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

NRC Project Director: George W. Knighton

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Dates of applications for amendment: March 31, 1987, supplemented December 21, 1987 and January 31, 1989; July 6, 1987, supplemented May 16, July 18, and December 22, 1988, and January 6, 1989.

Brief description of amendment: The amendment changes the Technical Specifications (TS) by revising: (1) TS 6.1.1, 6.5.1, and 6.5.3 to change the title for the job currently titled Director, Nuclear Plant Operations to General Manager, Nuclear Plant Operations; (2) TS 6.4 to meet training requirements specified in ANSI 3.1-1981, "Qualification and Training of Personnel for Nuclear Power Plants," and 10 CFR 50.59, "Requalification"; (3) TS 6.2.1 to reflect the recommendations of Generic Letter (GL) 88-06, "Removal of Organization Charts from Technical Specifications Administrative Control Requirements"; (4) deletion of TS Figures 6.2-1 and 6.2-2 consistent with the recommendations of GL 88-06; and (5) TS 6.5-1 and 6.5-3 to reflect new titles and new constituency resulting from the reorganization which occurred in January 1988.

The amendment also deletes the existing TS on fire protection, and modifies License Condition 2.C.(18) to require Commission approval if the change to the fire protection program would adversely affect the capability of the station to achieve and maintain safe shutdown in the event of fire. This amendment is effective as of its date of issuance and shall be implemented within 90 days of the date of issuance.

Date of issuance: July 24, 1989

Effective date: July 24, 1989

Amendment No.: 79

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Dates of notices in **Federal Register:** July 9, 1987 (52 FR 25388), September 9, 1987 (52 FR 34019), February 24, 1988 (53 FR 5496), May 4, 1988 (53 FR 15916), August 10, 1988 (53 FR 30142) and August 24, 1988 (53 FR 32296).

The additional submittals of December 22, 1988 and January 31, 1989 provided clarifying information that did not change the determination of no significant hazards consideration as published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 24, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: April 26, 1988, October 11, 1988, December 16, 1988, January 20 and March 28, 1989.

Brief description of amendments: The amendments revised the following Technical Specifications (TS) to increase the interval for the 18 month surveillance tests to at least once per refueling interval, which is defined as 24 months: TS 3/4.3.3.10, "Loose-Part Detection Instrumentation"; TS 3/4.8.4.1, "Containment Penetration Conductor Overcurrent Protective Devices"; TS 3/4.6.4.3, "Containment Dome Air Circulators"; TS 3/4.7.1.2, "Auxiliary Feedwater System"; TS 3/4.7.3, "Component Cooling Water System"; TS 3/4.7.4, "Salt Water Cooling System"; TS 3/4.7.10, "Emergency Chilled Water System" and TS 3/4.7.8.1, "Fire Suppression Water System."

Date of issuance: July 28, 1989

Effective date: July 28, 1989

Amendment Nos.: 75 and 63

Facility Operating License Nos. NPF-10 and NPF-15: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** March 8, 1989 (54 FR 9931 and 9934), March 22, 1989 (54 FR 11843) and May 3, 1989 (54 FR 18961). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 27, 1989 and an Environmental Assessment dated July 24, 1989 (54 FR 31394).

No significant hazards consideration comments received: No.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Tennessee Valley Authority ,Docket No. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: May 15, 1989 (TS 269)

Brief description of amendments: These amendments modify the Limiting Conditions For Operation (LCO) and Surveillance Requirements (SR) for the control room emergency ventilation system (CREVS) 4.7.E.4 and Technical Specification (TS) 4.11.B.3.a.(3) Fire Pump Battery Cell Voltage as follows:

(1) TS 4.7.E.4 is being updated to add a CREVS isolation damper which was added by a design change.

(2) TS 4.11.B.3.a.(3) is revised to correct an administrative error in the listed value for the fire pump battery pilot cell voltage.

Date of issuance: July 19, 1989

Effective date: July 19, 1989

Amendments Nos.: 168, 168, 139

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 14, 1989 (54 FR 25378). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 19, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: December 5, 1988 (TS 88-66)

Brief description of amendments: The amendments modify the Sequoyah Nuclear Plant, Units 1 and 2 Technical Specifications (TS). The changes are to relax the test frequency for the containment purge supply and exhaust isolation valves. Surveillance Requirement (SR) 4.6.3.4 which is deleted stated that each containment purge isolation valve be demonstrated operable within 24 hours after each closing of the valve except when the valve is being used for multiple cyclings. Any purge valve that has undergone multiple cyclings is required to be tested at least every 72 hours. Operability is demonstrated by performance of a Type C leak test of Appendix J to 10 CFR Part 50. This test is to verify that the measured leakage rate from each purge valve, when added to the leakage rates for all other Type B and Type C penetrations, does not exceed 60 percent of the maximum containment leakage rate (La).

In lieu of SR 4.6.3.4, a new surveillance requirement is added under Containment Ventilation System Specification 3.6.1.9. The new SR 4.6.1.9.3 relaxs the 24/72-hour test requirement to include a 3-month test interval and establishes a specific maximum leakage rate of 0.05 La for each purge valve. An action statement from Revision 5 of the NRC Standard Technical Specifications (STS) is added to address operability requirements for leakage in excess of 0.05 La to be consistent with the revised surveillance requirement. These changes are patterned after Revision 5 of the NRC STS.

Date of issuance: July 5, 1989

Effective date: July 5, 1989

Amendment Nos.: 120, 109

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1988 (53 FR 53101). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 5, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: September 30, 1988

Brief description of amendments: The amendments allow direct reactor trip on turbine trip to be blocked below 30% of rated thermal power. Implementation of the amendments shall take place no later than the end of the next refueling outages for NA-1&2.

Date of issuance: July 18, 1989

Effective date: July 18, 1989

Amendment Nos.: 119 and 103

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46164). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: April 13, 1989

Brief description of amendment: This amendment revised Technical Specifications 3.1.3.4 and Figure 3.1-1 to change the fully withdrawn position of the Rod Cluster Control Assemblies for Wolf Creek Generating Station to a range of 222 to 231 steps, inclusive.

Date of Issuance: July 5, 1989

Effective date: July 5, 1989

Amendment No.: 32

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 17, 1989 (54 FR 21318). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 5, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has

determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By September 8, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Duquesne Light Company, Docket No. 50-334 Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: June 22, 1989

Brief description of amendment: The amendment raises the maximum allowed service water (river water) temperature from 86° F to 90° F. The amendment also revises a number of requirements associated with this change.

Date of issuance: July 27, 1989

Effective date: July 27, 1989

Amendment No.: 143

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. Published in **Federal Register** July 26, 1989 (54 FR 31105). The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated July 27, 1989.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

NRC Project Director: John F. Stolz

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of Application for amendment: June 10, 1989

Brief description of amendment: The amendment changed the Technical Specifications to add a footnote to Surveillance Requirement 4.1.3.5.b.2 so that applicability would be required at or below 800 psig reactor vessel pressure. A temporary waiver of compliance from this provision of the Technical Specifications was granted by letter dated June 9, 1989.

Date of Issuance: July 24, 1989

Effective Date: June 9, 1989

Amendment No.: 31

Facility Operating License No. NPF-39: Amendment revised the Technical Specifications

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, consultation with the State of Pennsylvania, and final no significant hazards considerations determination are contained in a Safety Evaluation dated July 24, 1989.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, Washington, DC 20036

Local Public Document Room Location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464

NRC Project Director: Walter R. Butler

Dated at Rockville, Maryland, this 2nd day of August, 1989.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[Doc. 89-18515 Filed 8-8-89; 8:45 am]

BILLING CODE 7590-01-D

[Docket Nos. 50-338 and 50-339]

Virginia Electric and Power Co., Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-4 and NPF-7, issued to Virginia Electric and Power Company (the licensee) for operation of the North Anna Power Station, Units No. 1 and 2 (NA-1&2) located in Louisa County, Virginia.

The proposed changes would revise the NA-1&2 Technical Specifications (TS) 3/4 3.21 and the TS definition of slave relay testing and clarify the testing requirements for Engineered Safeguards Features (ESF) slave relays. The proposed changes would also add a requirement to test the selected ESF protection system slave relays on a quarterly test frequency. This change is consistent with the latest revision of the Westinghouse TS. The proposed changes also exclude the quarterly testing requirements those relays which satisfy the following criteria: (1) A single failure in the Safeguards Test Cabinet circuitry would cause an inadvertent Reactor Protection System (RPS) or ESF actuation, (2) the test would adversely affect two or more components in one ESF system or two or more ESF systems, and (3) the test would create a transient (reactivity, thermal, or hydraulic) condition on the Reactor Coolant System (RCS).

These criteria were established following an extensive evaluation of the capability of NA-1&2 to perform online testing of slave relays. The evaluation referenced the material submitted to the NRC dated May 8, 1989, and also included a technical assessment and failure analysis of the installed hardware that would be used for testing the relays. In addition, the system effects, operational impact, and safety significance of testing these relays were evaluated. Based on the results of this evaluation, it was determined that the additional assurance of equipment operability provided by testing all the relays online would be negated by the adverse consequences such that the overall margin of safety would be reduced.

The testing of some slave relays online would require significant plant manipulations, abnormal configurations, and remove from service various equipment for the duration of the relay test. By imposing off-normal plant manipulations and configurations, there exists some increased probability of human error or component malfunction which may lead to more significant events. In addition, the time to complete this type of testing is expected to take several 8-hour shifts, if not more. For example, the testing of one relay would take over 8 hours to perform. If an actual demand was required during this time, some equipment would not be available to perform its intended safety function. The safety implications of this are significant when considering that a single failure on the opposite train could result in a total loss of an ESF safety function. This could also lead to a more safety significant event and could cause the NA-1&2 design basis and accident analysis to be exceeded.

Finally, the additional risk in testing all the slave relays online is not justified by the failure analysis, operational impact, and safety significance since there presently exists adequate design features, sufficient, safe, and proven testing methods, and administrative controls to assure proper equipment operation.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendments involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. A summary of the licensee's evaluation of the above three criteria is provided below:

1. The proposed changes are based on the licensee's evaluation of transients that could occur from testing ESF relays at power. Many of the ESF relay tests presently required by the NA-1&2 TS create a significant potential for transients which is unacceptable to the licensee. The proposed changes would reduce the potential for causing transients that could challenge safety systems when operating NA-1&2 at power. Therefore, the licensee finds that limiting the at-power relay tests to a select group and decreasing the frequency of testing will not involve a significant increase in the probability or consequences of an accident previously evaluated. In addition, by not testing all of the slave relays at power and placing the plant and equipment in off-normal configurations, the consequences of an accident or the probability of a malfunction would be reduced.

2. The majority of the ESF relays that were evaluated for online testing involved unusual and complex systems manipulations for accomplishing the testing. These system alignments were

considered by the licensee to be unusual and potentially unsafe if conducted during power operations. The limited number of relays selected for testing at power were chosen to ensure that the potential impact on plant operations and the possibility of inducing some type of plant transient is minimized. Therefore, the licensee concludes that the requested changes do not create the possibility of a new or different kind of accident previously evaluated. In addition, the licensee finds the proposed changes reduce the possibility of a new or different kind of accident from those accidents previously evaluated.

3. The licensee's evaluation supporting the proposed changes provides a thorough evaluation addressing the overall plant operational margin of safety. The submittal, as proposed, ensures that overall plant operational safety has been preserved and may have been enhanced by the rigorous evaluation of the potential failure modes and consequences related to ESF relay testing while at power. Therefore, the licensee concludes that the margin of safety has not been decreased by the proposed changes. In addition, the testing of only selected relays provides additional assurance of equipment operability without subjecting the unit to adverse conditions such that the overall margin of safety is increased.

Therefore, based on the licensee's evaluation of the proposed changes as presented above, the Commission has made a proposed determination that the amendment request involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene are discussed below.

By September 8, 1989, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendments involves no significant hazards considerations, the Commission may issue the amendments and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If a final determination is that the amendments involve significant hazards considerations, any hearing held would take place before the issuance of any amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 12, 1989, a supplemented July 26, 1989, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Local Public Document Room located at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Rockville, Maryland, this 3rd day of August 1989.

For the Nuclear Regulatory Commission.

Leon B. Engle,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 89–18601 Filed 8–8–89; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–72]

Unfair Trade Practices; Notice of Public Hearing; Thailand's Restrictions on Access to its Cigarette Market

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Public Hearing.

SUMMARY: On May 25, 1989, the United States Trade Representative (USTR) initiated an investigation under section 302 of the Trade Act of 1974, as amended, regarding the Royal Thai Government's policies and practices with respect to the importation, distribution and sale of cigarettes. The USTR has received written comments on the issues raised in this investigation, and will conduct a public hearing on this matter on September 19 and 20, 1989.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Director for Southeast Asian Affairs, (202) 395–6813, or Catherine Field, Associate General Counsel, (202) 395–3432, Office of the U.S. Trade Representative 600 17th Street, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: On April 10, 1989, the United States Cigarette Export Association (CEA) filed a petition under section 302(a) of the Trade Act of 1974, as amended, 19 U.S.C. 2412(a), alleging that the Royal Thai Government and its instrumentality, the Thailand Tobacco Monopoly (TTM), engaged in acts, policies and practices that are unreasonable or discriminate against imports and burden and restrict U.S. commerce. The Thai government maintains an effective ban on the importation of foreign cigarettes and prohibits foreign investment in cigarette manufacture. The petitioner contends that these bans on importation and investment, combined with high tariffs, discriminatory domestic taxes and TTM distribution practices, deny U.S. firms fair and equitable market opportunities. Finally, the CEA alleges that Thai government restrictions on cigarette advertising are intended to put foreign cigarette brands at a comparative disadvantage.

On May 25, 1989, the U.S. Trade Representative initiated an investigation of the Thai government's policies and practices affecting fair and equitable access to the Thai cigarette market. USTR also requested consultations with the Royal Thai Government, as required by section 303(a) of the Trade Act of 1974, as amended.

Public Hearing: The section 301 Committee will hold a public hearing at 9:30 a.m. on September 19, 1989. The hearing will be conducted in Court Room A (Room 100) at the International Trade Commission, 500 E. Street, SW. Washington DC 20436, and will continue on September 20, if necessary.

Interested parties wishing to testify orally must provide a written request to do so by noon on Friday, September 1, 1989, to Ms. Janet Roell, Staff Assistant to the section 301 Committee, Office of the U.S. Trade Representative, Room 222, 600 17th Street NW., Washington, DC 20506. In addition, they must provide the following information: (1) Name, address, telephone number, and firm or affiliation; and (2) a summary of the presentation. After consideration of a request to present oral testimony at the public hearing, the Chairman of the Section 301 Committee will notify the applicant of the time of his or her testimony, if the request conforms to the requirements of 15 CFR 2006.8(a). Remarks at the hearing will be limited to 5 minutes.

In addition, person presenting oral testimony must submit 20 copies of their complete written testimony, in English, by noon Friday September 8, 1989, to Ms. Roell at the address listed above. All written submissions must be filed in accordance with 15 CFR 2006.8.

In order to assure each party an opportunity to contest the information provided by other parties, the Section 301 Committee will entertain rebuttal briefs filed by any party, in accordance with 15 CFR 2006.8(c), by noon on Friday September 29, 1989.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 89–18562 Filed 8–8–89; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–27093; File No. SR–CBOE–89–06]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to the Arbitration Process and the Use of Predispute Arbitration Clauses

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 8, 1989, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule changes as described in Items I and II below, which items have been prepared by the self-regulatory organization ("SRO"). Amendments No. 1 and 2, submitted on May 15, 1989 and July 14, 1989, respectively, proposed additional changes to the Exchange's rules. The CBOE has requested accelerated approval of this proposal because the filing is substantially identical to rule filings of the New York Stock Exchange ("NYSE"), National Association of Securities Dealers ("NASD"), and American Stock

Exchange ("AMEX") that were approved by the Commission on May 10, 1989.[1] The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

The proposed rule changes would amend the Exchange's rules for administering arbitration proceedings and address many issues regarding the fairness and efficiency of the arbitration process administered by the Exchange, as well as institute new requirements applicable to the use by Exchange members of predispute arbitration clauses in agreements with customers.

The CBOE developed these proposed rule changes through the auspices of the Securities Industry Conference on Arbitration ("SICA"). The SROs have worked together over the past twelve years to develop uniform arbitration rules through SICA, which is comprised of a representative from each SRO that administers an arbitration program,[2] a representative of the securities industry, and four representatives of the public.

On September 10, 1987, after a review of securities industry-sponsored arbitration, the Commission sent to SICA a letter that set out its views regarding the need for changes to the Uniform Code of Arbitration ("Uniform Code").[3] The Commission also sent letters to the SROs on July 8, 1988 requesting that the SROs review the issues raised by the current use of mandatory predispute arbitration agreements by their member firms.[4] Since September 1987, SICA and its subcommittees have met regularly to develop proposals in response to the Commission's letters.

The majority of the proposals to amend the CBOE's rules were based on changes in the Uniform Code made by SICA largely in response to the September 1987 and July 1988 Commission letters.[5] The other proposals included in this order were developed to meet concerns that have arisen through the administration of the arbitration programs.

Substantially identical rule filings sumitted by the NYSE, AMEX and NASD were approved by the Commission on May 10, 1989. In its approval order, the Commission addressed fully the significant public dialogue and comment that preceded its action. This notice and order granting accelerated approval of the proposed rule change is consistent with the substance of the May 10, 1989 order, and the discussion set out in that order is fully applicable to the CBOE rules approved herein.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule changes is available at the Office of the Secretary, CBOE, and at the Commission's Public Reference Section.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

(a) *Service of Pleadings.* The CBOE proposes to modify the procedures for service of pleadings. Currently, the arbitration department of the CBOE serves all pleadings on the parties. As cases have increased, using the arbitration department as an intermediary for the service of pleadings had added unnecessarily to delays in processing cases and to the cost of operating the arbitration system. The CBOE proposes to serve only the initial pleading in a case, the "claim," and to require that parties serve all subsequent pleadings directly upon one another. This approach is intended to save administrative time and costs while continuing to ensure that respondents receive adequate notice of the institution of arbitration proceedings.

Under amended CBOE Rule 18.15, parties also will be required to supply the department of arbitration with sufficient additional copies of the pleadings for the arbitration department staff and each of the arbitrators. Additionally, the proposal specifies that service by first-class postage prepaid or by overnight mail service is considered to be made on the date of mailing and service by other means is considered to be made on the date of delivery.

This proposed rule change would apply both to arbitration proceedings conducted pursuant to the simplified procedures for small claims under CBOE Rule 18.4 and regular cases initiated pursuant to CBOE Rule 18.15.

(b) *Classification of Arbitrators.* The arbitration panels at the SROs for cases involving public customers have historically been composed of a majority of "public arbitrators" and a minority of "industry arbitrators". However, there have not been clear requirements or specifications for who may serve as a public arbitrator. Under the Exchange's proposal, amended CBOE Rule 18.10 would specify who may not serve as a public arbitrator and who may serve as an industry arbitrator.

The CBOE's proposal addresses the potential for real or apparent bias on the part of public arbitrators who may have some professional or personal association with the securities industry. CBOE Rule 18.10 defines as an industry arbitrator one who is associated with a member of an SRO, broker, dealer, government securities broker, government securities dealer, municipal securities dealer, or registered investment adviser. CBOE Rule 18.10 also deals with the appropriate role in the arbitration system of professionals such as attorneys or accountants who provide services to securities industry clients. The rule would classify as industry arbitrators, rather than public arbitrators, attorneys, accountants and other professionals who devoted twenty percent or more of their professional work effort to securities industry clients within the last two years. In addition, the rule excludes from service as a public or industry arbitrator persons who are spouses or other members of the household of a person associated with a registered broker-dealer, municipal securities dealer, government securities dealer or investment adviser.

CBOE Rule 18.10 permits an individual who had been associated with the securities industry to become a public arbitrator after five years, if the individual has gone on to other work and is not retired from the securities industry. Also, under the rule, industry retirees will no longer be permitted to serve as public arbitrators, although they may continue to serve as industry arbitrators. In addition, the CBOE proposes to exclude anyone from its public arbitrator rolls who had spent a substantial part of his business career in the securities industry, notwithstanding the passage of five years. Accordingly, under the CBOE proposal, an individual who had worked in the securities industry for a substantial period of time and then left the profession for some other work would not, after five years, be assigned to its public arbitrator roster.[6]

The CBOE is also proposing disclosure provisions designed to assist parties in assuring that the panel assigned to each case is appropriately balanced. Under proposed CBOE Rule 18.11, the employment histories of the arbitrators for the past ten years as well as the information provided by arbitrators pursuant to separate disclosure obligations contained in proposed CBOE Rule 18.13 will be disclosed.[7]

The amendments regarding the classification of arbitrators are designed to promote impartial and knowledgeable decisions in the arbitration of disputes between investors and broker-dealers. The reclassification of securities industry retirees to the industry arbitration pool and the establishment of a five year period before a former securities industry employee may serve as a public arbitrator should relieve any doubts that investors may have had regarding the impartiality of the public arbitrator pool. Similarly, the judgment to exlude from the public arbitrator pool lawyers, accountants and other professionals who regularly service the securities industry makes clearer the distinctions between the two arbitrator pools.

(c) *Arbitrator Disclosure and Background Information to be Supplied to the Parties.* The CBOE is also proposing changes to its rules dealing with disclosures to be made by arbitrators, and with supplying arbitrator disclosures to the parties. Under the current rules, parties have been provided only with the names and current business affiliations of the arbitrators proposed for their cases. The Exchange's proposed rule change would provide the necessary guidance to arbitrators about the types of relationships that may create conflicts of interest. Moreover, parties have had to request specifically any other information from the arbitration departments within very short time frames. The Exchange's proposed rule change would provide to the parties all of the information disclosed by arbitrators pursuant to the amended disclosure rules at the time when the parties are first given the arbitrators' names. This change would provide full disclosure of arbitrators' backgrounds to parties at the earliest possible stage in the process, and should therefore avoid unnecessary postponements of hearings and promote knowledgeable use of challenges.

Accordingly, proposed CBOE Rule 18.13(a) establishes specific disclosure obligations of arbitrators. The rule requires that arbitrators disclose any existing or past financial, business, professional, family or social relationships that are likely to affect impartiality or might reasonably create an appearance of partiality or bias. These disclosures extend to any relationships the arbitrators may have with any party, or its counsel, or with any individual whom they have been advised will be a witness. The rule also requires arbitrators to disclose any such relationship involving members of their families or their current employers, partners or business associates.

CBOE Rule 18.13(b) admonishes prospective arbitrators to make a reasonable effort to inform themselves of any interests or relationships described in paragraph (a). Rule 18.13(c) advises arbitrators that the duty to disclose under paragraph (a) of the rule is an ongoing duty, and that any person who serves as an arbitrator must disclose at any stage of the arbitration proceeding any such interests, relationships, or circumstances that arise, or that are recalled or discovered. Also, under Rule 18.13(d), the CBOE has clarified that prior to the first session, the director of arbitration may remove an arbitrator based on information disclosed pursuant to the rule. Parties are to be informed of any information disclosed pursuant to the rule, if the arbitrator has not been removed.[8]

As discussed above, CBOE Rule 18.11 provides that parties will be informed of the names and business affiliations of the arbitrators for the past ten years, as well as any information disclosed pursuant to Rule 18.13 at least eight days prior to the date fixed for the initial hearing session. Under Rule 18.11, parties may also make further inquiry through the department of arbitration concerning the arbitrators' background.

(d) *Appointment of Replacement Arbitrators on a Panel.* The CBOE is also proposing two changes with respect to its ability to appoint a replacement arbitrator on a panel when a vacancy occurs. The first of these changes concerns the ability of the director of arbitration to replace an arbitrator who becomes unavailable to serve less than eight days prior to the first hearing session. Under the proposed amendment, if after appointment and prior to the first hearing session an arbitrator resigns, dies, withdraws, is disqualified or otherwise unable to perform as an arbitrator, CBOE Rule 18.11 authorizes the director of arbitration to appoint a replacement arbitrator. The rule permits the appointment of replacement arbitrators closer than eight days to the hearing. The rule also explicitly provides that parties are entitled to receive the same disclosure regarding the background of the replacement arbitrator as they received for the initial arbitrator(s), and have the same right to request more information, and to challenge the arbitrator as provided in the rules, although within a shorter time frame.

The second change concerning the ability to appoint replacement arbitrators addresses situations where an arbitrator resigns, dies, withdraws, is disqualified or otherwise unable to perform as an arbitrator after the commencement of the first hearing session. Under the CBOE's existing rules, if a vacancy occurs after the hearings have begun, both parties must consent either to the appointment of a replacement arbitrator to hear the rest of the case, or to continuing with the

---

[1] Securities Exchange Act Release No. 25805 (May 10, 1988), 54 FR 21144 (May 16, 1988) (approving Files No. SR-NYSE-88-8, SR-NYSE-88-22, SR-NASD-88-29, SR-NASD-88-51, SR-NASD-88-19, and SR-AMEX-88-29) ("May 10, 1989 Order").

[2] The SROs that administer an arbitration program are the CBOE, NYSE, NASD, AMEX, Municipal Securities Rulemaking Board, Pacific Stock Exchange, Midwest Stock Exchange, Boston Stock Exchange, Cincinnati Stock Exchange and Philadelphia Stock Exchange.

[3] *See* letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to James E. Buck, Senior Vice President, NYSE, dated September 10, 1987. This letter was also addressed separately to each of the other members of SICA.

[4] *See* letter from David S. Ruder, Chairman, SEC, to John J. Phelan, Jr., Chairman, NYSE dated July 8, 1988. This letter was also addressed to the senior executive officers of all other SROs that administer arbitration facilities.

[5] The Exchange's rules developed in response to the Commission's letters are CBOE Rules 18.10, 18.11, 18.13, 18.15(e), 18.27, 18.31 and 18.35.

[6] The CBOE has also included in its filing guidelines for the classification of arbitrators that complement its classification rule. In the guidelines, the CBOE states that while it will continue to classify as public arbitrators lawyers and other professionals whose partners represent the securities industry, it will recognize challenges for cause against them.

[7] The disclosure rules are proposed rule changes discussed in subsection (c) of this notice. The rules require arbitrators to make extensive disclosures to the parties.

[8] Once the arbitration panel is sworn, it controls all of the procedural aspects of the hearing. Accordingly, under the Uniform Code and the CBOE's Arbitration Code, the director of arbitration may not remove an arbitrator after the hearings have begun. An arbitrator should be alert to the guidelines set out in the American Bar Association/American Arbitration Association Code of Ethics for Arbitrators in Commercial Disputes ("ABA/AAA Code") and the applicable law with respect to arbitrator bias, and remove himself from the panel when conflicts arise after hearings have begun. *See* Canon II, E.(2) of the ABA/AAA Code.

BEST COPY AVAILABLE

remaining arbitrator(s). Otherwise, if that consent cannot be obtained, the case must be reheard from the beginning with a full panel.

The proposed amendment to CBOE Rule 18.14 permits the remaining arbitrators to continue with the hearing and determination of the controversy. However, under the proposal, if a party objects, a replacement arbitrator would be appointed by the director of arbitration under the same procedures as for the replacement of an arbitrator prior to the first hearing. The rule is designed to permit parties in particular cases to make the decision that makes the most sense for their case. For example, in cases where only peripheral issues have been dealt with and relatively little progress has been made, it may make sense for parties to request a replacement arbitrator. Conversely, where the hearings have progressed significantly, or are in fact substantially completed, it would make less sense for parties to request a replacement arbitrator, who then would have to learn all that had occurred in his absence.

In the event that parties do request a replacement arbitrator, it is clear that the arbitrators have the authority to require the rehearing of part or all of the case, or to withdraw from the case, effectively requiring the appointment of another panel, as is appropriate in their judgement. With this rule change, however, a party may no longer delay the resolution of the dispute by insisting on a rehearing whenever an arbitrator unexpectedly is unable to continue in his hearing of a case.

(e) *Availability of Small Claims Procedures and the Number of Arbitrators Required to Hear a Claim.* The CBOE proposes to amend Rule 18.4(e) to increase to $10,000 from $5,000 the monetary claim limit for cases to be heard under the simplified procedures developed in the Uniform Code. Under these expedited procedures, a single arbitrator decides a case based upon the papers submitted by the parties. No oral hearing is held unless requested by the investor, or ordered by the arbitrator. This change is designed to decrease the costs of arbitration.[9]

CBOE Rule 18.10(a) would change the number of arbitrators generally used for large cases from five to three. The rule currently provides for the appointment of five arbitrators in cases brought by public customers in which the claim exceeds $500,000. In order to alleviate administrative delays and costs frequently encountered in such cases, the proposed rule would eliminate the requirement of five-member panels, allowing the director of arbitration to exercise discretion in appointing panels of no fewer than three and no more than five arbitrators in cases not heard under the CBOE's simplified arbitration procedures.

The CBOE also proposed a technical amendment, in CBOE Rule 18.4(e), regarding the single arbitrators used in cases administered under the simplifed procedures. The amendment codifies the existing practice of appointing a public arbitrator as the single arbitrator in the case.

(f) *Discovery.* The CBOE is proposing significant changes to its arbitration discovery rules, which should assist in the early resolution of discovery disputes and encourage the efficient resolution of cases on their merits. Under current Exchange rules, parties have been expected to exchange documents informally and voluntarily. Parties may also request documents pursuant to subpoena under the existing rules, but these do not have to be produced until the day of the hearing.

The CBOE's proposed discovery rule expands party access to prehearing discovery and provides specific time frames for parties to request information from parties and for responding to such an information request. The rule also establishes a mechanism for prehearing conferences and for arbitrator involvement in prehearing matters where needed. Under the CBOE's proposed rule change arbitrators may also order depositions when appropriate.

Proposed CBOE Rule 18.15(e)(1) continues the policy established under existing rules for parties to cooperate to the fullest exent possible in the voluntary exchange of documents and information. In the event that voluntary exchanges are not sufficient, the rule estalishes a clear framework for document production and information requests.

Proposed CBOE Rule 18.15(e)(2) provides that a party may serve a written request for information or documents twenty days after service of the claim or upon the filing of the answer, whichever is earlier. All parties are to receive copies of the request, and parties are required to endeavor to work out disputes regarding the request between themselves before an objection to the request is filed. Unless the requesting party allows more time, information requests must either be satisfied or objected to within thirty calendar days from the date of service. The party who made an information request has ten days from receipt of the objection to respond to the objection.

Under the proposal, a party whose information request has not been satisfied may request in writing that the director of arbitration refer the matter to a prehearing conference. Parties may also find that there are other matters in addition to unresolved information requests that require the assistance of a prehearing conference. CBOE Rule 18.15(e)(4) provides that the director of arbitration may appoint someone to preside over the prehearing conference. The prehearing conferences could be held either in person or by telephone conference call, and are designed to help the parties to reach agreement on such matters as the exchange of information, exchange or production of documents, identification of witnesses, identification and exchange of hearing documents, stipulations of fact, identification and briefing of contested issues, and any other matter which will expedite the arbitration proceedings.

When a prehearing conference is unable to resolve any of these issues, CBOE Rule 18.15(e)(5) provides for the director of arbitration to appoint a single arbitrator to decide the issues outstanding. The rule allows the arbitrator to issue subpoenas, direct appearances of witnesses, direct the production of documents and depositions, and set deadlines and issue any other ruling which will expedite and the hearing and permit any party to develop fully its case. CBOE Rule 18.15(e)(5) provides that the single arbitrator appointed to decide prehearing matters would be a public arbitrator in those cases where public customers have requested a majority of public arbitrators for their panel.

Other amendments to the prehearing provisions require parties to serve on one another at least ten days prior to the first hearing copies of documents in their possession that they intend to present at the hearing and identify witnesses they intend to present at the hearing. Under proposed CBOE Rule 18.15(e)(3), arbitrators may exclude from the arbitration, documents not exchanged or witnesses not identified at that time. The provision does not extend to documents or witnesses that parties may use for cross-examination or rebuttal. In addition, the CBOE is proposing to amend its rules regarding subpoenas. In CBOE Rule 1815(e)(6), the Exchange proposes to require parties to serve copies of all subpoenas on all parties.

(g) *Preservation of a Record.* The CBOE is amending its arbitration rules to assure that records of arbitration proceedings are made and preserved. These records are necessary for courts to use in conjunction with any review of the proceedings they may make. CBOE Rule 18.27 would codify a requirement that a verbatim record by stenographic reporter or tape recording be maintained. The rule further provides that, if a party to a proceeding elects to have the record transcribed, the cost of such transcription shall be born by that party unless the arbitrator(s) direct otherwise. If a record is transcribed at the request of a party, the rule requires that a copy shall be provided to the arbitrators.

(h) *Content and Public Availability of Arbitration Awards.* The CBOE's proposed rule for arbitration awards expands both the content and public availability of arbitration awards. Prior to the Commission's May 10, 1989 approval of the amended arbitration rules of the Amex, NASD and NYSE, and prior to the submission of the proposal made in this filing, the only information generally available to the public regarding SRO arbitration cases was the percentage of investors that received some portion of the amount they claimed against their broker-dealer. No data had been previously available with respect to particular arbitrators' awards. The CBOE's proposal affords substantially more public access to the results of this process of dispute resolution.

Proposed CBOE Rule 18.31(e) provides that awards shall contain the names of the parties, a summary of the issues in controversy, the damages and/or other relief requested, the damages and/or other relief awarded, a statement of any other issues resolved, the dates the claim was filed and the award rendered, the number and dates of hearing sessions, the location of the hearing(s), the names of the arbitrators and the signatures of the arbitrators concurring in the award. The awards, including any written opinion voluntarily prepared by the arbitrators, are to be made public, except that the names of customer parties to the arbitration will be excluded pursuant to proposed CBOE Rule 18.31(f) if the customer parties request in writing that their names not be included on the public version of the award.

(i) *Arbitration Fees.* Under proposed CBOE Rule 18.33, the fees that may be assessed by the arbitrators for particular cases have been significantly incresed n order to defray the CBOE's costs of administering its arbitration program.[10] For example, CBOE Rule 18.33(a) proposes that all parties who file claims, such as counterclaims, cross-claims and third party claims, now should be required to pay deposits. Under the existing rules, deposits are required only of original claimants. This significantly increases the potential fees that may be recovered by the Exchange and assessed against a party since arbitrators may assess costs against a single party. Proposed CBOE Rule 18.33(d) would raise to $200 from $100 the minimum deposit for cases where no money damages are claimed. Proposed CBOE Rule 18.33(h) sets a fee for prehearing sessions with an arbitrator of seventy-five percent of hearing session fees.

Proposed CBOE Rule 18.33(c) also clarifies that arbitrators may assess the costs of conducting a hearing against the parties as they deem appropriate. These costs include not only the fees for each session, but all other costs of conducting the hearing contemplated under the rules, such as the costs of transcribing a record, or producing witnesses or documents, and any other cost contemplated by the agreement between the parties or permitted by applicable law.

Finally, the CBOE is proposing to codify its definition of a "hearing session". Under proposed CBOE Rule 18.33(b), a "hearing session" would be a meeting between the parties and arbitrators that lasts less than four hours.

(j) *Predispute Arbitration Clauses.* The CBOE also proposes two rule changes designed through the auspices of SICA to improve disclosure to customers in account opening agreements and to restrict the content of the arbitration clauses. Under the proposed rule change, CBOE Rule 18.35 would require broker-dealers that employ predispute arbitration clauses to place immediately before the clause introductory language that would inform customers that they are waiving their right to seek remedies in court, that arbitration is final, that discovery is generally more limited than in court proceedings, that the award is not required to contain factual findings and legal reasoning, and that the arbitration panel typically will include a minority of arbitrators associated with the securities industry.

Proposed CBOE Rule 18.35 would require that the disclosure language be highlighted four ways. First, large or otherwise distinguishable type must be used. Second, the disclosure language must be set out in outline form so as to be noticeable to readers. Third, a statement, also highlighted, that provides that the agreement contains a predispute arbitration clause, and where that clause is located in the contract, must be inserted into the agreement immediately preceding the signature line. Fourth, a copy of the agrement containing a predispute arbitration clause must be given to the customer, who is to acknowledge receipt of the agreement, either in the agreement itself or in a separate document.

Additionally, proposed CBOE Rule 18.35 prohibits SRO members from having agreements with customers that limit or contradict the rules of any SRO, or limit the ability of a party to file any claim in arbitration or limit the ability of the arbitrators to make any award.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section s6(b) and 15A(b) of the Act, 15 U.S.C. 78f(b), 78o–3(b), which require that national securities exchanges have rules designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, provide for an equitable allocation of fees, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that there is good cause to approve the CBOE's proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the Federal Register.[11] The proposal is substantially identical to the NYSE, NASD and AMEX rule filings that were the subject of the Commission's May 10, 1989 approval order.[12] The NYSE's,

[9] CBOE Rule 18.4(c) would establish a filing fee of $200 in cases where the amount in controversy is more than $5,000 but does not exceed $10,000.

[10] The CBOE has advised the Commission that its costs for administering its arbitration program for the years 1987 and 1988 were $17,000 and $32,500, respectively. It recovered $0 in 1987 and $0 in 1988 through the arbitrators' assessment of fees.

[11] The proposed rule changes to CBOE Rules 18.4, 18.10, 18.11, 18.13, 18.14, 18.27 and 18.33 are effective upon approval. The proposed rule changes to CBOE Rules 18.15 and 18.31 are effective only for cases filed with the CBOE after September 1, 1989. The proposed rule change to CBOE Rule 18.35 will become effective September 7, 1989.

[12] *See* note 1, *supra.*

NASD's and AMEX's versions of the same rules were published for public comment in the **Federal Register**, providing both the public and broker-dealer community with ample opportunity to comment on the proposed rule change that is the subject of this release. All public comments directed at the other SROs' arbitration filings were considered in the context of the review undertaken for the Commission's May 10, 1989 approval order. In light of the Commission's thorough consideration of all comments directed at the SRO arbitration filings that were the subject of the Commission's May 10, 1989 approval order, the substantially identical nature of the CBOE's arbitration proposal, and the benefits that will accrue to investors from the availability of these improved arbitration procedures, the Commission believes that a good cause finding is justified.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6(b)(4) and (5) of the Act,[13] which require that national securities exchanges and registered securities associations have rules designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, provide for an equitable allocation of fees, and, in general, protect investors and the public interest.

The Commission believes that the proposed rules appropriately balance the need to strengthen investor confidence in the arbitration systems at the SROs, both by improving the procedures for administering the arbitrations and by creating clear obligations regarding the use of SRO members of predispute arbitration clauses, with the need to maintain arbitration as a form of dispute resolution that provides for equitable and efficient administration of justice. In particular, the rule changes affecting the classification of arbitrators, arbitrator disclosure, discovery, the preservation of a record, the form and public availability of awards, and guidelines for the use of predispute arbitration clauses dynamically advance the public interest in SRO arbitration.[14] Likewise, the SROs' initiatives with respect to the handling of pleadings, appointment of replacement arbitrators, the use of small claims procedures, and the number of arbitrators should improve the efficiency and speed of arbitration, maintaining those bargained for qualities of traditional arbitration. Because these rules will aid in the just resolution of disputes between investors and broker-dealers, we conclude that these rules are designed to prevent fraudulent and manipulative practices, promote just and equitable principles of trade and in general, protect investors and the public interest consistent with section 6(b)(5) of the Act. The fee increases represented by these changes appear to be reasonable and provide for an equitable allocation of fees among SRO members and investors using the arbitration facilities consistent with section 6(b)(4) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements addressing the Proposed Rule Change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be witheld from the public in accordance with 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filings and comment letters will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 30, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[15] that the above mentioned proposed rule changes be and hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Dated: August 2, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-18554 Filed 8-8-89; 8:45 am]

BILLING CODE 8010-01-M

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] The Commission's approval of CBOE Rule 18.35, and the comparable rules of the NYSE, NASD and AMEX, is consistent with the conclusion of the Court of Appeals for the Sixth Circuit in *Roney v. Gorsn*, No. 88-1974 (May 26, 1989), that the Commission has the authority to assure customer choice among SRO arbitration forums.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30-3(a)(12) (1989).

[Rel. No. 34-27092; File No. SR-PHLX-89-21]

Self-Regulatory Organizations; Proposed Rule Change By the Philadelphia Stock Exchange, Inc., Relating to Specialist Privileges in Currency Warrants

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 24, 1989, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as desribed in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or the "Exchange") proposes to adopt a policy that would allow an affiliated broker-dealer specialist unit of a corporate issuer of currency warrants ("warrants") to be eligible to become the registered specialist in such warrents listed and eligible for trading on the Exchange pursuant to its previously adopted currency warrent listing standards of PHLX Rule 803. *See* SR-PHLX-87-21.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

While the Exchange, like other regional exchanges, does not have formal isolation and restriction requirements relating to its equity specialists ("Chinese Wall" requirements), the Exchange intends to give heightened scrutiny to the activities of any specialist unit in warrants that is affiliated with an issuer of such warrants. In this regard, the PHLX intends to evaluate each instance of an affiliated broker-dealer specialist unit of an issuer pursuing registration in warrants to assure compliance with the policies specified below. In each instance, the broker-dealer would have to satisfy the PHLX that it and the issuer of the warrants had received a no-action letter from the Commission, substantially to the effect that Rule 10b-6 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), will not apply to the activities of the broker-dealer's proposed specialist unit prior to or during distributions by an affiliated issuer of additional warrants of the same class or series.

The issuer of the warrants and its affiliated broker-dealer would also have to satisfy PHLX that they have imposed, and have adequate means of enforcing, appropriate Chinese Wall procedures respecting the proposed specialist operations of the broker-dealer. The Exchange considers the imposition of such procedures to be essential to the maintenance of a fair and orderly market in the warrants. In particular, the Exchange believes that the affiliation of an issuer of warrants with a broker-dealer that also acts as specialist in the warrants presents two concerns. First, there is a potential for conflicts of interest if the broker-dealer's customer activities are not adequately isolated from the specialist's activities. Second, although the warrants are expected to trade primarily based on movements in the foreign exchange market and should not react significantly to issuer-specific information, there is a potential for misuse of material non-public information regarding the issuer if access by the specialist unit to that information is not restricted. In view of the seriousness of these concerns, the Exchange will not permit an affiliated broker-dealer to commence its specialist operations in the warrants until the broker-dealer and the issuer have demonstrated to the satisfaction of the Exchange their compliance with the Exchange's Chinese Wall policies.

To effect its policy and to protect against conflicts of interest with the broker-dealer's customers who trade in the warrants, the Exchange intends to review the broker-dealer's policies with respect to information flow between the retail operations of the broker-dealer and its specialist unit. To protect against abuse of material non-public information regarding the issuer of the warrants, the Exchange likewise intends to review the firm's policies regarding the dissemination of such information within the issuer and its affiliates, particularly the proposed specialist unit, such as the existence of an appropriate employee confidentiality policy and other restrictions on dissemination of information.

The Exchange recognizes that the nature of the proposed Chinese Wall procedures may vary. Accordingly, the Exchange intends to review the viability of such procedures on a case-by-case basis. In connection with its review of Chinese Wall procedures, the Exchange will discuss the adequacy of existing procedures with all relevant compliance departments and will give special consideration to the ability of such departments to monitor the agreed upon procedures. The Exchange will also monitor compliance with such procedures during the term of the specialist's operations.

The PHLX has not chosen to require isolation and restriction of the broker-dealer's specialist unit from other affiliated proprietary foreign currency trading operations primarily because it believes that a currency warrant product traded by an affiliated broker-dealer specialist unit of an issuer presents fundamentally different circumstances from those presented by an affiliated broker-dealer specialist unit in a listed or over-the-counter equity option or other type of listed debt issue. The primary difference is the fact that, unlike options on corporate equity and debt issues, the prices of which depend on the current state of the issuer's business, the price of a currency warrant product largely depends on the relationship of the spot and forward foreign currency markets, a relationship that may be tracked over time through the use of any options pricing model. Moreover, the spot and forward foreign exchange markets, as well as the related derivative markets, are deep, liquid and subject to the price disciplines ordinarily associated with mature, integrated cash and forward markets.

Given the size of these markets, the multiplicity of market participants and the mathematical price relationship between the cash and forward markets and the market for the warrants, the ability of any broker-dealer, specialist unit and/or proprietary trading desk (including those of a broker-dealer affiliated with the issuer) to affect even the short term market for the warrants is remote. A barrier between a broker-dealer's specialist and foreign exchange operations would thus have little effect on the secondary market, but would probably make it impracticable for any firm to act as a specialist in the warrants, since the specialist's ability to set appropriate pricing and market trading levels depends on its access to information concerning the behavior of the remainder of the foreign exchange market. Moreover, if it were appropriate to prevent specialist access to such information, then any such restriction would apply to all specialists rather than only those affiliated with the issuer—a proposition that has not, to the knowledge of the Exchange, been implemented or suggested. Although, based on the foregoing, the PHLX does not believe that additional Chinese Wall procedures in this area are necessary, the PHLX committed to utilizing its foreign currency options surveillance program to detect any discrepancies between prevailing spot and forward currency prices related to the warrants and to review promptly any reports of purported market manipulation.

The Commission has asked the Exchange to address whether approval for listing and trading of warrants by an affiliated broker-dealer specialist unit of an issuer would potentially result in an undesired proliferation of such products. As required in SR-PHLX-87-21, listed foreign currency warrants would be obligations of their issuer, registered with the Commission and subject to cash settlement in U.S. dollars during a limited term from their date of issuance. Moreover, the issuer of the warrants must have at least 250,000 warrants outstanding, exclusive of concentrated holdings and those of officers and directors, and at least 500 holders of a class of equity securities which would otherwise be eligible for listing. The warrant issuer must have such assets at the issuance of the warrants so that there is a reasonable expectation that it will have sufficient means to meet its settlement obligations. In this regard, PHLX Rule 803 will be strictly enforced to require that the issuer will have at least $1 million net tangible assets.

The aforementioned listing requirements, to a great extent, will limit the number of potential issuers. The PHLX believes that a limited number of potential issuers would concentrate their currency warrant and related issues in only the most liquid foreign currencies, *i.e.*, the Deutsche Mark, Yen, British Pound, and Swiss Franc. The PHLX anticipates that the market would be characterized by participation of a limited number of sophisticated institutional investors to whom full disclosure respecting the securities and the credit and market risk of dealing with another currency warrant market participant was known. Even if this is not the case, the PHLX has, in any event, agreed that although warrants are

generally classified as equity products, currency warrants will be subject to requirements applicable to options sales practices, including options suitability requirements. *See* SR–PHLX–87–21.

The Commission has also asked the Exchange to address whether approval of a registration of an affiliated broker-dealer specialist unit in warrants of an issuer might pose a problem respecting whether the potential removal or reallocation of warrants from the specialist affiliated with the issuer, for disciplinary or performance grounds, would unduly affect the secondary market for such warrants. The PHLX currently trades a significantly diversified list of products in the financial markets utilized by a wide spectrum of market participants. The Exchange would apply it rules respecting reallocation when, and if, necessary, and would endeavor to secure a registered specialist unit with sufficient capital to commit to the maintenance of fair and orderly markets with consistency and continuity of pricing in the warrants.

The Exchange cannot at this time give any further assurances that the withdrawl of an affiliated broker-dealer specialist unit of an issuer of warrants would not affect the depth and liquidity in the secondary market for such warrants. This is a risk of which market participants are cognizant when they participate in trading activity in securities currently traded by the Exchange on a primary market basis. In this regard, the PHLX believes that as a result of the recent growth and commitment of significant capital resources by an increasing number of broker-dealer member organizations, it would be able to secure a competent replacement registered specialist unit for the warrants should the need so arise.

The proposed rule change is consistent with Section 6(b)(5) of the Exchange Act, which provides, in part, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 30, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 2, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18555 Filed 8–8–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of Hearings

[Docket No. 46424]

International Travel Club; Deceptive Advertising Enforcement Proceeding Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge Burton S. Kolko. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M–50, Room 9228, Department of Transportation, 400 Seventh Street SW., Washington DC 20590. Telephone: (202) 366–2142.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 89–18563 Filed 8–8–89; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF VETERANS AFFAIRS

Organizational Structure

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs Act, Pub. L. 100–527, dated October 25, 1988, established the Veterans Administration as the Department of Veterans Affairs, an executive level Department. This notice provides the basic organizational structure and functional assignments of each Assistant Secretary within the Department of Veterans Affairs (VA).

EFFECTIVE DATE: June 7, 1989.

FOR FURTHER INFORMATION CONTACT: Lynn H. Covington, Director, Paperwork Management and Regulations Service (73), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3616.

SUPPLEMENTAL INFORMATION: The VA mission is to provide health care and benefits services to veterans and their beneficiaries. As required by 5 U.S.C 552(a)(1), VA is publishing the newly established organizational chart and a list of the functional assignments of each Assistant Secretary.

At a later date, the Department will publish a more detailed version to include descriptions of the Department's organization and activities. The information contained in this Notice supersedes the Notice published July 18, 1986, in the **Federal Register** (51 FR 26094).

APPROVED: August 2, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

The basic functional alignment for the Department of Veterans Affairs is as follows:

Assistant Secretary for Finance and Planning

Budget
- Budget Service
- Resource Planning Service

Financial Management
- Finance Service
- Financial Management
- Financial Systems

Planning & Management Analysis
- Program Planning Coordination
- Quality/Productivity Improvement Programs
- A–76 (Performance of Commercial Activities)
- Statistics & Research
- Management and Policy Studies
- Economic Analysis
- Internal Controls

Assistant Secretary for Information Resources

Information Resources Management
- Systems Planning Policy & Acquisition Control
- Systems Policy, Standards & Integration
- Systems Audit and Security
- Management and Decision Support System
- Paperwork Management
- Reporting Policy and Review Service
- Paperwork and Regulations Service

Information Resources Operations
- Systems Operations
- Customer Support
- Telecommunications

Assistant Secretary for Human Resources and Administration

Personnel & Labor Relations
- Personnel
- Labor Relations
- Training & Executive Development
- Designated Agency Safety & Health Official

Equal Employment Opportunity

Administration
- Central Office Support Service
- VA Central Office Building Management
- VA Central Office Layout Functions
- Publications/Forms Design Functions
- Audio Visuals
- Emergency Preparedness/VA Central Office Security
- Travel Policy

Assistant Secretary for Veterans Liaison and Program Coordination

Veterans Liaison
- Special Events Coordination
- Special Interest Group Liaison
- Veterans Service Organizations Liaison
- Intergovernmental Affairs
- Consumer Affairs

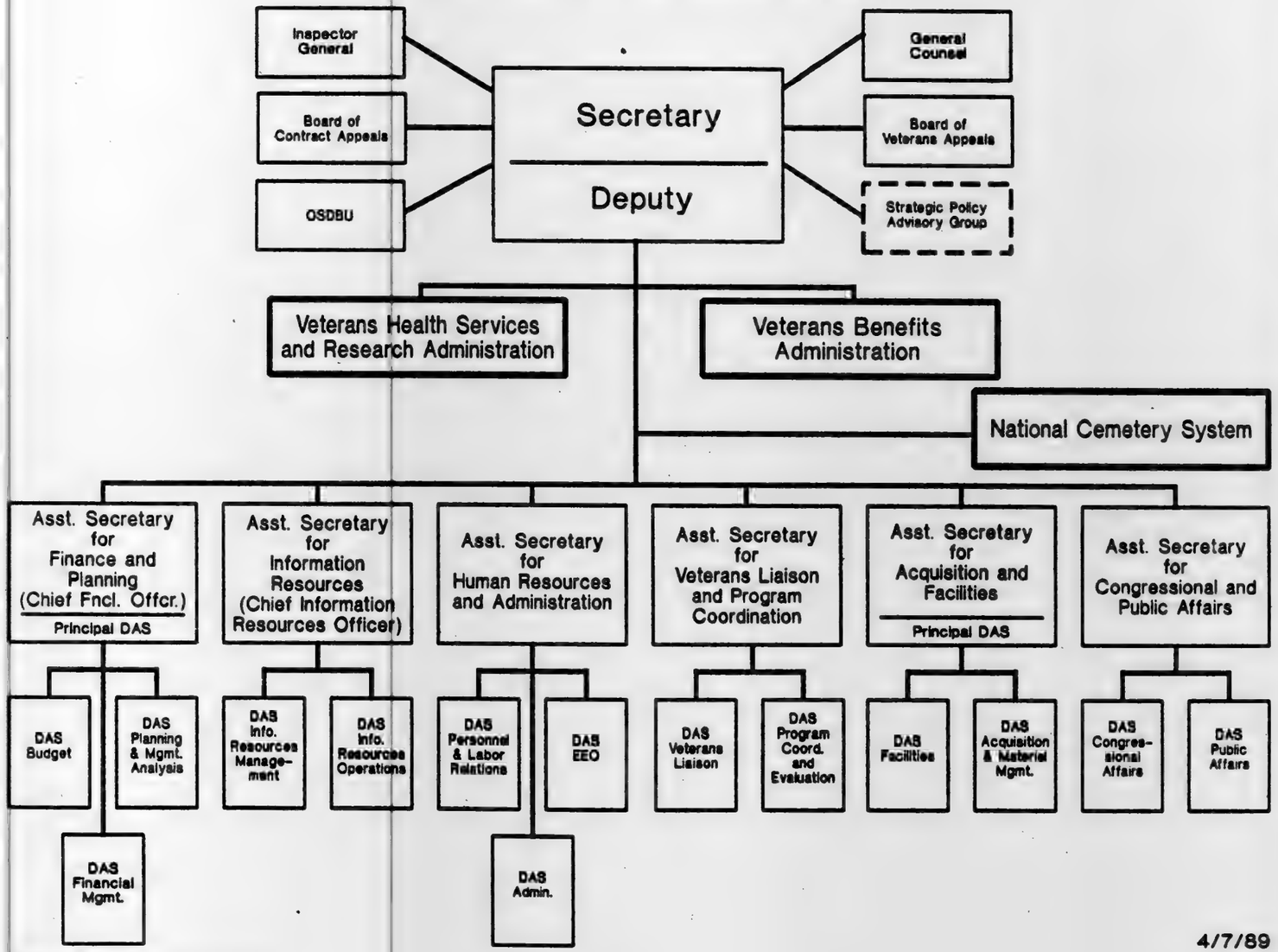
Program Coordination and Evaluation
- Special Issue Coordination
- Advisory Committee Coordination
- Program Evaluation
- Management Efficiency Pilot Project

Assistant Secretary for Acquisition and Facilities
- Facilities
- Procurement
- Acquisition Functions
- Management Studies Contracts
- Program Service Audits

Assistant Secretary for Congressional and Public Affairs
- Congressional Affairs
- Public Affairs

BILLING CODE 8320–01–M

Organizational Structure
Department of Veterans Affairs



4/7/89

[FR Doc. 89-18642 Filed 8-8-89; 8:45 am]
BILLING CODE 8320-01-C

Sunshine Act Meetings

Federal Register
Vol. 54, No. 152
Wednesday, August 9, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m. August 21, 1989.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of last meeting.
2. Thrift Savings Plan activities report by the Executive Director.
3. Quarterly review of investment performance.

CONTACT PERSON FOR MORE INFORMATION Tom Trabucco, Director, Office of External Affairs, (202) 523-5660.

Dated: August 7, 1989.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 89-18741 Filed 8-7-89; 1:43 pm]

BILLING CODE 6760-01-M

Corrections

Federal Register
Vol. 54, No. 152
Wednesday, August 9, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement 940]

Assistance Program for Chronic Disease Prevention and Control

Correction

In notice document 89-17532 beginning on page 31250 in the issue of Thursday, July 27, 1989, make the following corrections:

1. On page 31253, at the bottom of the first column, subparagraph "(8)"should be designated "(9)", and subparagraph (8) should be inserted to read "(8) Clear delineation of CDC versus State responsibilities."

2. On the same page, in the second column, paragraph "2." should be designated "3.", and paragraph 2. should be inserted to read "2. Consistency of the application with the stated programmatic interests of the program announcement. (15%)"

3. On page 31254, in the first column, in the second line, "NW."should read "NE.".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

RIN 1515-AA71

Administrative Procedures

Correction

In rule document 89-17601 beginning on page 31511 in the issue of Monday, July 31, 1989, make the following correction:

On page 31513, in the second column, immediately preceeding the subheading *Summary*, the heading should read "**Delaying the Effective Date of Certain Rulings**"

BILLING CODE 1505-01-D

federal register

Wednesday
August 9, 1989

Part II

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Proposed Rule and Notice

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CE-RM-88-101]

Energy Conservation Program for Consumer Products: Proposed Rulemaking and Public Hearing Regarding Energy Conservation Standards for Three Types of Consumer Products

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Proposed rule and public hearing.

SUMMARY: The Energy Policy and Conservation Act (EPCA), as amended by the National Energy Conservation Policy Act (NECPA), the National Appliance Energy Conservation Act (NAECA) and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), prescribes energy conservation standards for certain major household appliances, and requires the Department of Energy (DOE) to administer an energy conservation program for these products. Among other things, NAECA requires DOE to consider amending the energy conservation standards for dishwashers, clothes washers, and clothes dryers.

EPCA, as amended, prescribed standards for dishwashers, clothes washers and clothes dryers, effective January 1, 1988. In accordance with NAECA, the Department has reviewed amendments to the prescribed standards. As a result of its review, DOE proposes that revised standards for dishwashers, clothes washers and clothes dryers would result in a significant conservation of energy and would be economically justified.

For clothes washers, the Department is not proposing a specific level within the range considered; rather, DOE is soliciting comments and information from the public to be considered in promulgating the final rule, which will specify a specific level for clothes washers; the level selected could include no change to the standard level prescribed by NAECA.

For dishwashers, the Department is proposing a minimum energy efficiency standard.

For clothes dryers, the Department is proposing a prescriptive standard that would require clothes dryers to be equipped with an automatic termination device, either a moisture termination or temperature termination device.

The purpose of this notice of proposed rulemaking is to provide interested persons an opportunity to comment on the proposed rule, and to invite interested persons to participate in the appliance energy conservation standards rulemaking process.

DATES: Written comments on the proposed rule must be received by the Department by October 10, 1989.

Oral views, data, and arguments may be presented at the public hearing to be held in Washington, DC, on September 20, 1989. Requests to speak at the hearing must be received by the Department no later than 4:00 p.m., September 18, 1989.

The hearing will begin at 9:30 a.m., on September 20, 1989.

The length of each presentation is limited to 20 minutes.

ADDRESSES: Written comments, oral statements, requests to speak at the hearing and requests for speaker lists are to be submitted to U.S. Department of Energy, Office of Conservation and Renewable Energy, CE–43.1.

Hearings and Dockets, Energy Conservation Program for Consumer Products, Docket No. CE–RM–88–101, Room 6B–025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9320.

The hearing will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC.

Copies of the transcript of the public hearing and public comments received may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

For more information concerning public participation in this rulemaking proceeding, see section V, "Public Comment Procedures," of this notice.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE–132, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

U.S. Department of Energy, CE–43.1, Docket No. CE–RM–88–101, Forrestal Building, Room 6B–025, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9320.

SUPPLEMENTARY INFORMATION:

I. Introduction
- a. Authority
- b. Background

II. General Discussion
- a. Test Procedures
- b. Technological Feasibility
  - 1. General
  - 2. Maximum Technologically Feasible Levels
- c. Energy Savings
  - 1. Determination of Savings
  - 2. Significance of Savings
- d. Rebuttable Presumption
- e. Economic Justification
  - 1. Economic Impact on Manufacturers and Consumers
  - 2. Life-Cycle Costs
  - 3. Energy Savings
  - 4. Lessening of Utility of Performance of Products
  - 5. Impact of Lessening of Competition
  - 6. Need of The Nation to Conserve Energy
  - 7. Other Factors

III. Product-Specific Discussion
- a. Dishwashers
  - 1. Classes
  - 2. Design Options
  - 3. Comments on the Advance Notice of Proposed Rulemaking
  - 4. Efficiency Levels Analyzed
- b. Clothes Washers
  - 1. Classes
  - 2. Designs Options
  - 3. Comments on the Advance Notice of Proposed Rulemaking
  - 4. Efficiency Levels Analyzed
- c. Clothes Dryers
  - 1. Classes
  - 2. Design Options
  - 3. Comments on the Advance Notice of Proposed Rulemaking
  - 4. Efficiency Levels Analyzed

IV. Environmental, Regulatory Impact, Takings Assessment, Federalism and Regulatory Flexibility Reviews
- a. Environmental Review
- b. Regulatory Impact Review
- c. "Takings" Assessment Review
- d. Federalism Review
- e. Regulatory Flexibility Review

V. Public Comment Procedures
- a. Participation in Rulemaking
- b. Written Comment Procedures
- c. Public Hearing
- d. Issues Requested for Comment

I. Introduction

a. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619, by the National Appliance Energy Conservation Act (NAECA), Pub. L. 100–12, and by the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Pub. L. 100–357,[1] created the Energy Conservation Program for Consumer Products other than Automobiles. The consumer products subject to this program (often referred to hereafter as "covered products") are: refrigerators, refrigerator-freezers and freezers; dishwashers; clothes dryers; water heaters; central air conditioners and central air conditioning heat pumps; furnaces; direct heating equipment; television sets; kitchen ranges and ovens; clothes washers; room air conditioners; fluorescent lamp ballasts; and pool heaters; as well as any other consumer product classified by the Secretary of Energy. Section 322. To date, the Secretary has not so classified any additional products.

Under the Act, the program consists essentially of three parts: testing, labeling, and mandatory energy conservation standards. The Department of Energy (DOE or Department), in consultation with the National Institute of Standards and Technology (NIST), is required to amend or establish new test procedures as appropriate for each of the covered products. Section 323. The purpose of the test procedures is to provide for test results that reflect the energy efficiency, energy use, or estimated annual operating costs of each of the covered products. Section 323(b)(3). A test procedure is not required if DOE determines by rule that one cannot be developed. Section 323(d)(1). One hundred and eighty days after a test procedure for a product is adopted, no manufacturer may represent the energy consumption of, or the cost of energy consumed by the product except as reflected in a test conducted according to the DOE test procedure. Section 323(c)(2).

The Federal Trade Commission (FTC) is required by the Act to prescribe rules governing the labeling of covered products for which test procedures have been prescribed by DOE. Section 324(a). These rules are to require that each particular model of a covered product bear a label that indicates its annual operating cost and the range of estimated annual operating costs for other models of that product. Section 324(c)(1). Disclosure of estimated operating cost is not required under section 324 if the FTC determines that such disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible. In such a case, FTC must require a different useful measure of energy consumption. Section 324(c). At the present time there are FTC rules requiring labels for the following products: room air conditioners, furnaces, clothes washers, dishwashers, water heaters, freezers, refrigerators and refrigerator-freezers, and central air conditioners. 44 FR 66475, November 19, 1979, and 52 FR 46888, December 10, 1987.

For each of 12 of the covered products, the Act prescribes an initial Federal energy conservation standard. Section 325 (b)–(h). The Act establishes effective dates for the standards in 1988, 1990, 1992 or 1993, depending on the product, and specifies that the standards are to be reviewed by the Department within three to ten years, also depending on the product. Section 325 (b)–(h). After the specified three- to ten-year period, DOE may promulgate new standards for each product; however, the Secretary may not prescribe any amended standard which increases the maximum allowable energy use, or decreases the minimum required energy efficiency, of a covered product. Section 325(1)(1). The Department's current review of standards is for dishwashers, clothes washers, and clothes dryers.

Any new or amended standard is required to be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325(1)(2)(A).

Section 325(1)(2)(B)(i) provides that before DOE determines whether a standard is economically justified, it must first solicit comments on a proposed standard. After reviewing comments on the proposal, DOE must then determine that the benefits of the standard exceed its burdens, based, to the greatest extent practicable, on a weighing of the following seven factors:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of the covered products which are likely to result directly from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

In addition, the Act specifies criteria for petitions to DOE in regard to amendments to standards. Section 325(k). Under the Act, any person may petition the Department to conduct a rulemaking to amend a Federal energy conservation standard for any covered product. Section 325(k)(1). The Department must grant such a petition if it determines that an amended standard will result in significant conservation of energy, is technologically feasible and is cost-effective. Section 325(k)(2).

Sections 325(k)(3) (A) and (B) stipulate that in no case may an amended standard apply to products manufactured within three years or five years, depending on the product, after publication of the final rule establishing a standard.

Prior to proposing a new or amended standard, DOE is required to publish an advance notice of proposed rulemaking which specifies the type (or class) of covered product to which the rule may apply and which provides a 60-day period during which interested persons may submit written comments. Section 325(m)(1) (A) and (B).

Section 326 of the Act authorizes the Secretary to require manufacturers to submit information or reports to assure that each covered product to which a standard applies meets the required energy efficiency level. The Act also specifies that in determining information requirements, DOE consider existing sources of information, including nationally recognized trade association certification programs. Section 326(d).

Enforcement-related provisions of the Act provide for: (1) DOE to prescribe rules requiring manufacturers to allow the Department to observe testing and inspect results of testing conducted by the manufacturer (section 326(b)(5)); (2) manufacturers to supply to DOE a reasonable number of products for testing purposes (section 326(b)(3)); (3) manufacturers to submit information or reports necessary to ensure compliance (section 326(d)); and (4) injunctive relief against any prohibited act, including distribution of noncomplying products (section 334).

[1] Part B of Title III of EPCA, as amended by NECPA, NAECA, and NAECA 1988, is referred to in this notice as the "Act." Part B of Title III is codified at 42 U.S.C. 6291 et seq. Part B of Title III of EPCA, as amended by NECPA only, is referred to in this notice as NECPA.

b. Background

NECPA required DOE to establish mandatory energy efficiency standards for each of 13 covered products.[2] These standards were to be designed to achieve the maximum improvement in energy efficiency that was technologically feasible and economically justified.

NECPA provided, however, that no standard for a product be established if there were no test procedure for the product, or if DOE determined by rule either that a standard would not result in significant conservation of energy, or that a standard was not technologically feasible or economically justified. In determining whether a standard was economically justified, the Department was directed to determine whether the benefits of the standard exceeded its burdens by weighing the seven factors discussed above.

NECPA specified the priorities and procedures to be followed in adopting efficiency standards. Nine of the 13 covered products were given priority. These nine products were: refrigerators and refrigerator-freezers; freezers; clothes dryers; water heaters; room air conditioners; home heating equipment not including furnaces; kitchen ranges and ovens; central air conditioners; and furnaces.

The Department published an advance notice of proposed rulemaking for the nine priority products on January 2, 1979. 44 FR 20. On December 13, 1979, DOE published an advance notice of proposed rulemaking for dishwashers; television sets; clothes washers; and humidifiers and dehumidifiers. 44 FR 72276. An advance notice for central air conditioners (heat pumps) was published on January 23, 1980. 45 FR 5602.

After receiving comments on the January 2, 1979, advance notice, DOE published, on June 30, 1980, its first proposed rulemaking for the nine products. 45 FR 43976. (Hereafter referred to as the June 1980 proposal.) This NOPR set forth DOE's proposal concerning energy efficiency standards for the covered products. It also proposed comprehensive requirements for certification and enforcement of the standards, procedures for processing petitions by States that sought exemption for regulations subject to the general preemption requirements of NECPA, and small business exemptions.

On April 2, 1982, DOE issued a further notice of proposed rulemaking with respect to the nine priority products. 47 FR 14424. (Hereafter referred to as the April 1982 proposal). With respect to eight of the products, DOE proposed to make a determination that a standard would not result in significant conservation of energy and would not be economically justified.[3] The April 1982 proposal also proposed rules governing petitions to DOE both by States to obtain exemption from preemption of State or local energy efficiency standards, as well as by manufacturers to obtain preemption of State or local standards.

On December 22, 1982, DOE published a final rule in which the Department determined that efficiency standards were not warranted for clothes dryers and kitchen ranges and ovens. 47 FR 57198. (Hereafter referred to as the December 1982 final rule.) At that time, DOE also adopted final procedures by which States might obtain exemption for State or local efficiency standards from Federal preemption, and by which manufacturers might obtain preemption of a State or local standard not otherwise preempted.

On August 30, 1983, DOE published a final rule with respect to the remaining six covered products: refrigerators and refrigerator-freezers, freezers, water heaters, furnaces, room air conditioners and central air conditioners. 48 FR 39376. (Hereafter referred to as the August 1983 final rule.) For each of the six products covered by the August 1983 final rule, except central air conditioners, DOE determined that an energy efficiency standard would not result in significant conservation of energy and would not be economically justified. With respect to central air conditioners, DOE found that an energy efficiency standard would result in significant conservation of energy, but would not be economically justified.

On April 1, 1985, DOE published a proposed rule with respect to four covered products: dishwashers, television sets, clothes washers and humidifiers and dehumidifiers. 50 FR 12966. (Hereafter referred to as the April 1985 proposal). For each of the four products covered by the April 1985 proposal, DOE proposed that an energy efficiency standard would not be economically justified and would not result in a significant conservation of energy.

During 1983, DOE's December 1982 and August 1983 final rules were challenged in a lawsuit brought by the Natural Resources Defense Council (NRDC) and others against the Department. On July 16, 1985, the U.S. Court of Appeals set aside DOE's December 1982 and August 1983 final rules. *NRDC* v. *Herrington*, 768 F.2d 1355 (D.C. Cir. 1985).

Consequently, on March 5, 1986, DOE published notices in the **Federal Register** removing the December 1982 and August 1983 final rules and withdrawing the April 1985 proposal. 51 FR 7549 and 51 FR 7582.

The National Appliance Energy Conservation Act, which became law on March 17, 1987, amended EPCA in part by: redefining "covered products" (specifically, refrigerators, refrigerator-freezers, and freezers were combined into one product type from two; humidifiers and dehumidifiers were deleted; and pool heaters were added); establishing Federal energy conservation standards for 11 of the 12 covered products; and creating a schedule, according to which each standard is to be reviewed to determine if an amended standard is required.

The National Appliance Energy Conservation Amendments of 1988, which became law on June 28, 1988, established Federal energy conservation standards for fluorescent lamp ballasts. These amendments also created a review schedule for DOE to determine if an amended standard for fluorescent lamp ballasts is required.

As directed by the Act, DOE published an advance notice of proposed rulemaking, with a 60-day comment period that ended July 18, 1988. 53 FR 17712, May 18, 1988. (Hereafter referred to as the advance notice). The advance notice presented the product classes that DOE planned to analyze, and provided a detailed discussion of the analytical methodology and analytical models that the Department expected to use in performing the analysis to support this rulemaking. The Department invited comments and data on the accuracy and feasibility of the planned methodology and encouraged interested persons to recommend improvements or alternatives to DOE's approach. The comments in response to the advance notice are addressed in sections II and III of this notice.

II. General Discussion

As stated above, NAECA requires DOE to determine if the legislated standards for dishwashers, clothes washers, and clothes dryers should be amended.

The Act prohibits DOE from promulgating a standard for a product if: (1) There is no test procedure for the product (except in the case of clothes washers, clothes dryers, dishwashers, and kitchen ranges and ovens), (2) a standard is not technologically feasible, (3) DOE determines that a standard would not be economically justified, (4) if a standard would not result in a significant conservation of energy or (5) if the Secretary has made a finding that such a standard will likely result in the unavailability of currently available performance characteristics. To measure possible energy savings and economic justification, DOE analyzed several possible standard levels for each product type. Furthermore, the Act stipulates that any adjustment of a standard may only be toward more stringent levels. With respect to each appliance, DOE analyzed various specific design options, including prototypes. A prototype can be either an individual component, e.g., an improved food filter, or a complete assembly with the design option installed, e.g., heat pump clothes dryers. While a prototype design may be technologically feasible as an individual component or as part of a bread-board[4] assembly, it does not necessarily follow that techniques have been developed for mass production of the prototype design.

a. Test Procedures

For each product discussed in today's proposed rulemaking there is an applicable DOE test procedure to evaluate its energy efficiency.

b. Technological Feasibility

1. *General.* For those products and classes of products discussed in today's notice, DOE believes that the efficiency levels analyzed, while not necessarily in production, are technologically possible. The technological feasibility of the design options is addressed in the product specific discussion. DOE's criteria for evaluating design options for technological feasibility are that the design options are already in use by the respective industry or that research has progressed to the likely development of a prototype.

One comment on the advance notice addressed the subject of technological feasibility. Whirlpool Corporation (Whirlpool) contended that a design option is not technologically feasible unless it is acceptable to the consumer and commercially workable. (Whirlpool, No. 1, at 17).[5] DOE considers a design option to be technologically feasible, if, based on the Department's analysis, DOE believes it is capable of being carried out.

2. *Maximum Technologically Feasible Levels.* The Act requires that in considering any new or amended standards, the Department must consider those that "shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." (Section 325 (1)(2)(A)). Accordingly, for each class of product under consideration in this rulemaking, a maximum technologically feasible design option was identified. This is the most efficient model of a class for which at least a prototype exists. In comments on the advance notice, Whirlpool and the Association of Home Appliance Manufacturers (AHAM) stated that any determination of maximum technological feasibility include only those options that are "commercially workable." (AHAM, No. 5 at 7; Whirlpool, No. 1, at 17). While the Department will consider the commercial workability "of a maximum technologically feasible" design in the economic justification analysis, such a consideration is not relevant in determining the maximum technologically feasible design, which is largely an engineering determination. DOE considers a design option to be technologically feasible, if, based on the Department's analysis, DOE believes it is capable of being carried out.

A complete discussion of each maximum technologically feasible level, and the design options included in each, is found in the Engineering Analysis. *See* Technical Support Document, Chapter 3, specifically sections 3.2.5, 3.3.5, and 3.4.5. These are presented in Table 2–1, below.

TABLE 2–1—MAXIMUM TECHNOLOGICALLY FEASIBLE LEVELS

Products and product classes	Unit energy consumption
Dishwashers:	
Compact, 115V	525 kWh/yr.
Standard, 115V	742 kWh/yr.
Standard water heating, 115V	704.5 kWh/yr.
Clothes washers:	
Top loading, compact [1]	576 kWh/yr.
Top loading, standard capacity [2]	743 kWh/yr.
Top loading, large capacity [3]	1,010 kWh/yr.
Clothes dryers:	
Compact, electric, 110V [4]	347 kWh/yr.
Compact, electric, 240V [4]	384 kWh/yr.
Standard electric [5]	859 kWh/yr.
Electric heat pump [5]	336 kWh/yr.
Gas [5]	Standard 3.27/MMBtu/yr.

kWh/yr. = kilowatt hours per year
MMBtu/yr. = million British thermal units per year.

[1] Capacity equals 1.45 ft.[3]
[2] Capacity equals 2.4 ft.[3]
[3] Capacity equals 3.0 ft.[3]
[4] Capacity equals 3.45 ft.[3]
[5] Capacity equals 5.9 ft.[3]

DOE proposes that the maximum technologically feasible level is one that can be carried out by the addition of design options, both commercially feasible and prototypes, to the baseline units without affecting the product's utility. DOE believes that there are no products available with the same utility and capacity that are more efficient than the maximum technological level.

Each maximum technologically feasible level was evaluated to determine if it would be economically justified at the time of the effective date of the standard. Standards that have unacceptable impacts on consumers or manufacturers or result in the changing of the utility of the product were rejected.

DOE provided lists of design options for the engineering analysis in the advance notice. The comments on these design options resulted in more detailed design options for DOE review. DOE has considered these suggestions and has addressed them in the product specific discussions in this notice.

The analysis process is described fully in the Technical Support Document. Computer models and manufacturers' data were used to predict improvements in product efficiencies and the costs associated with these improvements.

The Engineering Analysis addresses two statutory requirements. The first requirement is the Department's evaluation of the maximum improvements in energy efficiency that are technologically feasible. The second requirement relates to the lessening of utility to the consumer of any of the covered products due to the imposition of standards. The Engineering Analysis also provides information on efficiencies and manufacturing costs to other sections of the overall analysis. The product specific sections of this notice

[2] The consumer products covered by NECPA include: refrigerators and refrigerator-freezers; freezers; dishwashers; clothes dryers; water heaters; room air conditioners; home heating equipment not including furnaces; television sets; kitchen ranges and ovens; clothes washers; humidifiers and dehumidifiers; central air conditioners; and furnaces.

[3] The April 1982 proposal did not propose any rule with respect to the product type "home heating equipment, not including furnaces," or with respect to that class of the product water heaters made up of heat pump water heaters, or with respect to those classes of the product central air conditioners that are heat pumps.

[4] A bread-board unit is an experimental arrangement of the design made to test its feasibility.

[5] Comments on the advance notice have been assigned docket numbers and have been numbered consecutively.

include the method of analysis for each product.

c. Energy Savings

1. *Determination of Savings.* The Department forecasts energy consumption through the use of the Lawrence Berkeley Laboratory Residential Energy Model (LBL–REM). The LBL–REM forecasts energy consumption over the period of analysis for candidate standards and the base case.[6] The Department quantified the energy savings that would be attributable to a standard as the difference in energy consumption between the candidate standard's case and the base case.

The LBL–REM is an improvement of the Oak Ridge National Laboratory Residential Energy End Use Model (ORNL Model), which was used by DOE in previous standards rulemakings. The LBL–REM is fully explained in the Technical Support Document. Appendix B to that document addresses the LBL–REM in detail. The LBL–REM contains algorithms to project average efficiencies, usage behavior, and market shares for each product.

The market share calculations contains the following steps: potential purchasers may purchase any competing technology within an end-use, or none. For clothes washers and dishwashers, the decision to purchase or not is modeled, and the fraction of the total that chooses each class, e.g., standard 115V, standard water heating 115V, etc., is specified exogenously. For clothes dryers, the decision to purchase or not and the choice of fuel is modeled, and the fraction of the total that chooses each class is specified exogenously. Long-term market share elasticities have been assumed with respect to equipment price, operating expense, and income. The effects of standards are expected to be lower operating expense and higher equipment price. The percentage changes in these quantities are used, together with the elasticities, to determine changes in market share resulting from standards. Higher equipment prices will decrease market shares, while lower operating expenses will increase market shares. The net result depends on the standard level selected, and associated equipment prices and operating expenses.

The LBL–REM is used to project residential energy use over the relevant time periods for these three products with and without amended standards. By comparing the energy consumption projection at alternative standard levels, or NAECA's 1988 standards, the Department estimated the amount of energy projected to be saved during the period 1993–2015.[7] The energy saved is expressed in Quads, i.e., quadrillion Btu's. With respect to electricity, the savings are quads of source or primary energy, which is the energy necessary to generate and transmit electricity. The Act defines "energy use" as the quantity of energy directly consumed by a consumer product at point of use. This is generally called "site" energy, as opposed to "source" energy. There are major differences between these types of energy. In 1987, the amount of electrical energy consumed at the site was less than one-third of the amount of source energy that was required to generate and transmit the site electrical energy.[8] Therefore, it is important to identify whether the electricity involved is site or source energy.

The LBL–REM projections are dependent on many assumptions. Among the most important are responsiveness of household appliance purchases to changes in energy prices and consumer income, future energy prices, future levels of housing construction, and options that exist for improving the energy efficiency of appliances. As is the case with any complicated computer model simulation, the validity of the outputs is critically dependent on the inputs.

Comments that DOE received questioned several of the assumptions that were described in the advance notice. These included the following:

Rebound Effect

In the analysis, the Department assumed that greater efficiency in these three product types would not cause them to be used more intensively because of the efficiency improvements. Therefore, in estimating energy savings from different standard levels for dishwashers, clothes washers, and clothes dryers, the Department did not use a rebound effect. The Department has no data indicating that changes in either energy prices or efficiency will cause consumers to use these products any differently.

Discount Rate

The Natural Resources Defense Council (NRDC) questioned the Department's use of consumer discount rates for calculating the cost of conserved energy and suggested, instead, that DOE use a discount rate that is based on "real financial markets." (NRDC, No. 3, at 9). The Department agrees, and notes that the discount rate that was used in this and earlier rulemakings (seven percent) is based on "real financial markets." [9]

Since a dollar in the future is worth less than a dollar today, that future dollar must be discounted to determine its value today. If the discount rate chosen is too high, the present value of future dollars will be understated. Thus, higher discount rates tend to preclude more capital-intensive candidate standard levels. Nevertheless, the Department does not believe that the seven percent rate that was used in the analysis is artificially high. From the business perspective, a reasonable discount rate would be one that represented the private opportunity cost of capital used to meet any appliance conservation standard. A gauge of the private opportunity cost of capital is the most profitable alternative use of that capital. One measure of that cost could be the prime rate, that is, the interest rate that is offered by lending institutions to their most credit-worthy customers. In early March 1989, the prime rate was 11.5 percent. If such a business secured a loan at one of those rates of interest, and repaid it in the 1990–1995 time period, the real rate of interest would be 6.5 percent. This results because the expected annual rate of price increases in that time period is approximately five percent. Most businesses, however, are not eligible for loans at the prime rate of interest, so the estimated real rate of interest for these firms would probably be slightly higher.

Similarly, from the consumer perspective, one approach to selecting an appropriate discount rate is to look at the interest payable on a consumer loan and depreciate that interest by the inflation rate. If a consumer secures a loan at 12 percent interest, and repays it in the 1990–1995 time period, the real rate of interest will be seven percent. Thus, DOE believes that from both the business and consumer perspectives, a seven percent discount rate is reasonable.

On the other hand, it may not be reasonable to require consumers to make an investment where there are inherent risks. For example, if consumers perceive a risk because of the uncertainty of energy prices and reliability and longevity of the equipment, they would require a greater return on their investment, i.e., a higher discount rate. It has been argued that the discount rate should be as high as 15 percent. Dubin and McFadden, "An Econometric Analysis of Residential Electric Appliance Holdings and Consumption," *Econometrica* March 1984, pp. 345–361. DOE requests comments on the approach taken to select an appropriate discount rate, alternative approaches, and the consumer and business risks to be considered.

Several of the inputs, e.g., energy and equipment prices, were tested in sensitivity analyses to determine the effects of varying certain assumptions on the results of the analysis. By such sensitivity analyses, it is possible to determine those inputs where changes, including possible errors, are meaningful to the model's output, and those inputs for which changes are not meaningful. *See* Technical Support Document, §§ 4.3 and 5.4.

The savings attributable to the different standard levels are identified for each product in section III of this notice.

Modeling

Several comments offered suggestions on the LBL–REM modeling efforts. NYSEO critiqued the use of "old data" in LBL–REM in developing the baseline units for analysis, and contended that use of such old data could underestimate the impact that increased efficiency standards could have on saving energy. (NYSEO, No. 2 at 3).

While historical data were used as a starting point for the analysis of these three product types, all of the data bases were updated to reflect current prices and levels of efficiency in the marketplace. These data were then used to calculate annual energy consumption for the LBL–REM and life-cycle cost (LCC) analyses. For example, in the LCC analysis, DOE used both the cycles of operation and the more recent, 1986, Proctor and Gamble (Part 5) data to calculate the life-cycle cost. This calculation does not account for variability in consumer usage patterns, nor does it reflect any changes in typical consumer usage behavior since the test procedures were developed. While the adoption of out-of-date usage values may affect the results of the LBL–REM and LCC analysis, DOE is not certain to what extent the results would be affected since, for example, the energy savings and net present value calculation of the LBL–REM would use the dated usage values in both the base case and standards case.

It is important to note out the difference between "baseline unit" and "base case." In the engineering analysis, the baseline unit for each product class under consideration is identified. These are units that are representative of units that are expected to be offered for sale in the beginning year of the analysis.[10]

Baseline refers only to the engineering analysis and is the first point identified in each cost-efficiency curve. It is the product to which design options are added to create more efficient units. On the other hand, "base case" refers to the economic analysis forecast with only those standards mandated by the Act.

Two comments raised issues about the Department's modeling of utility impacts. First, NYSEO suggested that utility impacts be analyzed for smaller areas in order to capture better the differences among individual power pools. (NYSEO, No. 2, at 9). While the Department agrees with this point in principle, data limitations prevent the implementation of this suggestion.

NYSEO also stated that inclusion of all planned generating facilities as available capacity is inappropriate. (NYSEO, No. 2, at 9–10). The Department notes that the National Electricity Reliability Council (NERC) forecast assumed that certain power plants, e.g., Shoreham and Seabrook, will operate, even though these plants may be delayed, cancelled, or shut down. The Department's estimate of capacity benefits is conservative, because cancelling these plants would increase the reliability benefits of the appliance standards.

On another point, NYSEO contended that the Department underestimates reliability benefits when adequate reserve margins have been forecasted. (NYSEO, No. 2, at 10). The Department believes that such benefits could be estimated for individual utilities, but is unable to do so for larger regions.

NSPC also contended that use of a combustion turbine, which is typically a peak-load generator, in estimating the capacity impact measures of baseload appliances undervalues the cost of new generating capacity. (NSPC, Id.). While there are several alternative methods for valuing capacity impacts, the Department's utility analysis is one that has been adopted by many utilities. For more detailed explanations of, and justification for, the valuation of capacity impacts, *see* Technical Support Document, chapter 8 and Appendix D.

2. *Significance of Savings.* Under section 325(1)(3)(B) of the Act, the Department is prohibited from adopting a standard for a product if that standard would not result in significant energy savings. While the term "significant" has never been defined precisely in the Act, the Department believes that a standard level option need not meet a threshold level of energy savings to be considered a significant saver of energy. The U.S. Court of Appeals, *NRDC* v. *Herrington, supra,* concluded that Congressional intent in using the word "significant" was to mean "non-trivial." *Id.* at 30. Thus, DOE believes that each candidate standard considered results in significant energy savings.

d. Rebuttable Presumption

NAECA established new criteria for determining whether a standard level is economically justified. Section 325(1)(2)(B)(iii) states:

> If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a stamdard is economically justified.

DOE believes this provision means that if the added price of an appliance, caused by a conservation standard, would repay itself to the consumer in energy savings in less than three years, then it can be presumed that such standard is economically justified.[11] This presumption of economic justification can be rebutted by the seven factors of economic justification.

[6] The base case for these three products represents NAECA's 1988 standards, which are design standards only.

[7] LBL–REM was programmed to analyze a single standard level or alternative levels, over the entire period. That is, the fact that a standard might be revised during subsequent rulemakings was not considered by the model. The Department believes that it is not possible to predict what result such reviews may have, and therefore it would be speculative to model any particular result. Therefore, for purposes of this rulemaking, each standard level that was analyzed was projected to have been in place from the time of implementation to the year 2015.

[8] Energy Information Administration, *Electric Power Annual 1987,* Tables 25 and 82, DOE/EIA–0348(87), 1987.

[9] DOE in the calculation of life-cycle cost and net present value, discounted the value of energy; the Department did not discount other measures, e.g., energy and emissions.

[10] The baseline units are those with estimated average shipment-weighted energy factors (SWEF's) in 1987. The baseline clothes dryer efficiencies are estimated from very limited data, while the efficiencies for dishwashers and clothes dryers are estimated from more extensive data which was available because these products are covered by the FTC labeling program.

[11] For this calculation, the Department calculated cost-of-operation based on the DOE test procedures. Therefore, the consumer is assumed to be an "average" consumer as defined by the DOE test procedures. Consumers that use the products less than the test procedure assumes will experience a longer payback while those that use them more than the test procedure assumes will have a shorter payback.

e. Economic Justification

As noted earlier, section 325(1)(2)(B)(i) of the Act provides seven factors to be evaluated in determining whether a conservation standard is economically justified.

The Association of Home Appliance Manufacturers (AHAM) proposed a methodology that the Department could use in evaluating candidate standard amendments. (AHAM, No. 5, at 11–12). Except for its proposal that the maximum technologically feasible design options be chosen only from those that are "commercially workable," the Department's planned methodology is consistent with the AHAM's proposal.

NRDC suggested that the Department rank design options in ascending order of cost of conserved energy. (NRDC, No. 3, at 9). The Department, with one exception, clothes dry automatic termination, has ranked the design options in ascending order of incremental payback period; this is equivalent to NRDC's suggestion.

NRDC also suggested that any water savings that could result from amended standards be included in the cost-effectiveness, environmental, and economic impact analyses. (NRDC, No. 3, at 8). The Department has included estimates not only of the potential water savings for amended standards, but also of the foregone water disposal expenses that such water savings would cause.

1. *Economic Impact on Manufacturers and Consumers.* The engineering analysis identified improvements in efficiency along with the associated costs to manufacturers for each class of product. For each design option, these costs constitute the increased per unit cost to manufacturers to achieve the indicated energy efficiency levels. Manufacturer, wholesaler, and retailer markups will result in a consumer purchase price higher than the manufacturer cost.

To assess the likely impacts of standards on manufacturers, the Department used a computer model that simulated hypothetical firms in the three industries under consideration. This model, the Lawrence Berkeley Laboratory Manufacturer Impact Model (LBL–MIM), is explained fully in the Technical Support Document. LBL–MIM provides a broad array of outputs, including shipments, price, revenue, net income, and return-on-equity (ROE). An "Output Table" lists values for all these outputs in the base case and in each of the standards cases under consideration. It also gives a range for each of these estimates. A "Sensitivity Chart" shows how ROE would be affected by a change in any one of the model's nine control variables.

For consumers, a measure of economic impact is the life-cycle cost of a product, because it accounts for the increased first price, any increased maintenance expenses, and the reduced fuel expenses resulting from the product's greater efficiency. Under section 325 of the Act, life-cycle cost analysis is a separate factor to be considered in determining economic justification.

2. *Life-Cycle Costs (LCC).* One measure of the effect of proposed standards on consumers is the change in operating expense as compared to the change in purchase price, both resulting from standards. This is quantified by the difference in life-cycle cost (LCC) between the base and standards case for the appliance classes analyzed. The LCC is the sum of the purchase price and the operating expense, including maintenance expenditures, discounted over the lifetime of the appliance.

The LCC is calculated at the estimated average efficiency for each class in the year standards are imposed using consumer discount rates of five, seven, and 10 percent. The purchase price is based on the factory costs in the Engineering Analysis and includes a factory markup plus a distributor and retailer markup. Energy price forecasts are inputs that are taken from the 1987 Annual Energy Outlook of the Energy Information Administration. Appliance usage inputs are taken from the relevant test procedures and recent P and G data. The Department seeks comments on the input to the LCC analysis, including the discount rate and energy price forecasts.

The differences in life-cycle costs between the base case and various levels of standards for dishwashers, clothes washers, and clothes dryers are presented in Tables 6.1–6.3 of the Technical Support Document. These LCC's are calculated at a seven percent discount rate; a higher rate, e.g., 10 percent, gives a smaller difference, while a lower rate, e.g., five percent, produces a greater difference. As discussed above, it has been argued that discount rates as high as 15 percent should be used. The Department did not use 15 percent in the LCC analysis; however, as can be seen in the various LCC curves, the use of a higher discount rate would result in a flatter curve with the minimum life-cycle cost dropping, i.e., approaching the baseline unit. If a higher discount rate were used, e.g., 15 percent, and energy prices were lower than average, the minimum life-cycle cost point could be less efficient than the baseline units.

When the LCC numbers are plotted graphically (on the Y axis) against unit energy consumption (on the X axis), the data generally produce a curve that is concave from above in shape. This means that at first the LCC curve will decline as efficiency improvements are made, will reach a minimum (which may or may not be discrete), and then rise. This indicates that the first efficiency improvements will produce energy savings, the value of which will more than pay for the design change. As efficiency improvements are made, it becomes increasingly costly to save more energy, and, eventually, the value of the energy savings will not cover the expenditures for the design improvements. *See* Technical Support Document, section 3.5.

The minimum of the LCC curve was of particular interest in the analysis. The minimum of the curve represents that level of efficiency improvements that maximizes the difference between the value of energy saved and the additional consumer expenditures for the relevant efficiency improvements. Therefore, design options that corresponded to the minimum point were of special consideration in establishing standard levels. Efficiency levels exceeding the LCC minima were generally rejected as standards as not being economically justified. At efficiency levels beyond the LCC minima, the incremental first cost of the product exceeds the value of the energy savings such that the average consumer does not realize an incremental benefit from the investment beyond the LCC minimum.

The Department conducted a net present value (NPV) analysis to assess the differential economic impacts on consumers that would occur from the adoption of amended standards for these three products compared to a base case with no change in the NAECA-imposed 1988 standards. *See* Technical Support Document, Chapter 5. The LBL–REM calculates the total expenditure for each product (discounted total value of energy consumption from 1993 through the last year of use for those products purchased through the year 2015), plus the total discounted expenses for equipment purchased from 1993 through 2015, with more stringent standards and with NAECA 1988 standards. The NPV analysis is similar to the LCC analysis, in that the greatest NPV should occur at the standard level that corresponds to the LCC minimum for the product.[12] The

[12] The net present value (NPV) of a standard, per appliance, is calculated for all affected appliances that are purchased in the projection period, while

Continued

NPV for each product at the different standard levels is identified in section III of this notice. The NPV calculation, is based on average efficiency from P and G and usage values.[13] This analysis does not take into account variations in appliance usage rates, local energy prices and consumer energy efficiency choices. Instead, the model assumes that nationwide average appliance usage rates, energy prices and efficiency apply to all consumers in all areas of the nation. In other words, it assumes that consumers who face high energy prices or expect to make extensive use of their appliances, will, on average, purchase the same distribution of appliance efficiencies as consumers facing low energy prices or low appliance usage rates. To the extent that individual consumer decisions are influenced by local (rather than national average) energy prices or by their individual (rather than national average) usage rates, the model could yield inaccurate results.

If, as DOE believes, consumers who face below-average energy prices are more likely to purchase less-efficient appliances, then the analysis is likely to understate the energy savings resulting from standards for these consumers. Likewise, for those consumers who would purchase more-efficient appliances, the analysis would overstate the energy savings resulting from standards. If the consumers who live in low- and high-energy cost areas would purchase less-efficient and more-efficient appliances, respectively, then valuing all energy savings at the national average energy price could overstate the value of energy savings to the former by more than it understates the value of energy savings to the latter. Thus, under these circumstances, the net effect of assuming a national average energy price would be to overestimate the total value of energy saved.

Similarly, if consumers who live in low- and high-energy usage areas would purchase less-efficient and more-efficient appliances, respectively, then using the national average energy usage rate could overstate the energy savings to the former by more than it understates the energy savings to the latter. Thus, under these circumstances, the net effect of assuming a national average energy usage rates could be to overestimate the total amount of energy saved.

In either case, to the extent that the model inaccurately predicts the value and/or quantity of energy savings, then it could lead to an inaccurate estimate of life-cycle cost savings and a standard that is different from the optimal standards. DOE does not have the data to determine if, or to what extent, the NPV calculations are affected by using average energy prices, usage rates and efficiency. DOE requests comments on this issue.

Specifically, DOE requests data on the effects of energy prices and usage rates on consumer energy efficiency choice. Such data could include manufacturer warranty and/or registration data that includes appliance efficiency and purchase location. Similarly, DOE also requests data on the effect of energy efficiency on usage rates. DOE also solicits comments on the likely improvements to the analysis that would result from the incorporation of such data and, in the absence of relevant data, alternative analytic approaches to capture the effect of these variations.

3. *Energy Savings.* While the significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, the Act requires DOE, in determining the economic justification of a standard, to consider the total projected savings that are expected to result directly from revised standards. DOE used the LBL–REM results, discussed earlier, in its consideration of total projected savings. The savings for the three products are provided in section III of this notice.

4. *Lessening of Utility or Performance of Products.* This factor cannnot be quantified. Whirlpool and AHAM both urged that the Department not establish any amended standards that could lessen the utility of the affected product to the consumer. (Whirlpool, No. 1, at 16; AHAM, No. 5, at 8). The Department believes that it has met this concern by a careful selection of product classes, as discussed below.

In establishing classes of products and design options, the Department tried to eliminate any degradation of utility or performance in the three products under consideration in this rulemaking. That is, to the extent that comments or DOE's own research indicated that a product included a utility or performance-related feature that affected energy efficiency, a separate class with a different efficiency standard was created for that product. In this way the Department attempted to minimize the impact of this factor as a result of the standards that were analyzed.

5. *Impact of Lessening of Competition.* It is important to note that this factor has two parts; on the one hand, it assumes that there could be some lessening of competition as a result of standards; and, on the other hand, it directs the Attorney General to gauge the impact, if any, of that effect.

In order to assist the Attorney General in making such a determination, the Department studied the affected appliance industries to determine their existing concentrations, levels of competitiveness, and financial performances. This information will be sent to the Attorney General. *See* Technical Support Document, Chapter 7. The Department has also provided the Attorney General with copies of this notice and the Technical Support Document for his review.

6. *Need of the Nation to Conserve Energy.* One measure of the need of the Nation to conserve energy is the country's reliance on energy in the form of oil, especially imported oil. This was documented in 1987 in a DOE report (*Energy Security: A Report to The President of The United States,* Washington, D.C.: U.S. Department of Energy, March 1987). In that report, U.S. energy security essentially was considered to be a function of free oil markets. The three products being considered in this rulemaking (dishwashers, clothes washers, and clothes dryers) are all fueled by energy forms other than oil, specifically electricity for all three and natural gas for some clothes dryers. While some oil is used to generate the electricity on which these products operate, that is a very small part of our national energy picture. Specifically, only 4.6 percent of net electricity was generated by petroleum in 1987. DOE requests comments on this issue.

7. *Other Factors.* This provision allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that he deems to be relevant. To date, the Department has not identified any such factors with regard to these three products.

III. Product-Specific Discussion

a. Dishwashers

1. Classes

In the advance notice, the Department discussed its methodology for reviewing the energy conservation standards for dishwashers that were established by the Act, to determine if the standards should be amended. NAECA currently

the life-cycle cost (LCC) is calculated only for the lifetime of an appliance that is purchased in the first year of the relevant standard. Therefore, NPV and LCC estimates, per appliance, may not correlate exactly.

[13] The NPV usage values are taken from recent Proctor and Gamble data, while the LCC usage values were taken from both the DOE test procedures and the Proctor and Gamble data.

prescribes a design standard for dishwashers; units manufactured after January 1, 1988, are required to have an option to dry without heat.

The following are the classes of dishwashers that have been identified:

(A) Compact Dishwasher (115V)

(B) Standard Dishwasher (115V)

(C) Water Heating Dishwasher, Compact (115V)

(D) Water Heating Dishwasher, Standard (115V)

(E) Water Heating Dishwasher, Compact (230V)

(F) Water Heating Dishwasher, Standard (230V)

2. Design Options

The following is a list of design options that were examined:

(A) Improved Food Filters

(B) Improved Fill Control

(C) Improved Motor Efficiency

3. Comments on the Advance Notice of Proposed Rulemaking

Whirlpool commented that after reviewing all of the design options for dishwashers included in the advance notice, it found that not one could be utilized to improve the energy efficiency of those machines. Whirlpool claimed that many of the possible configurations of design options identified by DOE have already been developed and have achieved the maximum energy efficiency possible; in other cases, the design improvements are so costly that the extra expense would outweigh any conservation benefits. (Whirlpool, No. 1, at 3–7).

After reviewing the potential energy conservation improvements of the design options for dishwashers, the Department has found that several, i.e., improved food filters, motors, and water fill controls, do exhibit the potential to save energy above what Whirlpool claims is possible.

NRDC stated that DOE should consider the "broadest possible range of measures." For dishwashers, NRDC suggested the Ecotech I prototype; heat pumps for water heating dishwashers; and the range of designs currently available. (NRDC, No. 3, at 4–6). The Department analyzed the Ecotech I, and performed literature reviews on new designs. In addition, data were sought from manufacturers on current and proposed designs. Heat pump dishwashers have not been analyzed because the Department could not determine if design is technologically feasible since no data have been presented and no prototypes exist.

4. Efficiency Levels Analyzed

DOE examined a range of standard levels, including the 1988 NAECA standard. As discussed above, the impacts of any revised standards were compared to the 1988 NAECA standard; therefore, the impacts of the base case are generally not presented because they are calculated to be zero.

Table 3–1 presents the efficiency levels, other than the base case, selected for analysis for 1993. Alternate levels were selected to generate a range of impacts for analysis. Initially, the levels were selected for the class of standard dishwasher (115 volt), Level 3 corresponds to the highest efficiency level identified in the engineering analysis. Levels 2 and 1 correspond to lower efficiencies than that of level 3. Each level was analyzed discretely in the engineering analysis. Standard levels for the other class of dishwashers were based on the combination of design options for the standard dishwasher (115 volt).

The Department did not analyze compact and standard-sized water heating dishwashers (115 volt) separately. Nevertheless, the impacts for those classes are expected to be similar since the design options that would be adopted would be the same.

Because of the small amount of empirical data on compact water-heating dishwashers (115V and 230V) and on standard water-heating dishwashers (230V), the Department was unable to analyze these classes. As a result, the Department is not proposing any amended standard for them. Nevertheless, the standards that require dishwashers of all classes to have an option today without heat will remain in effect for these three classes.

TABLE 3–1—ALTERNATIVE EFFICIENCY LEVELS FOR 1993 FOR DISHWASHERS

[Energy Factor = Loads/kWh/Yr.]

Product class	Level analyzed		
	1	2	3
Compact dishwashers (115V)	0.58	0.60	0.61
Standard dishwasher (115V)	.41	.42	.43
Standard water heating dishwasher (115V)	.44	.45	.46

Payback Period Table 3–2 presents the payback period for the efficiency levels analyzed for the most prevalent class of product (standard water heating dishwasher (115 volt)). Standard level 1 involves efficiencies achievable with an improved food filter, level 2 involves additional efficiencies achievable with an improved motor, and level 3 adds an improved water fill control. All three standard levels meet the rebuttable presumption test in that the payback is less than three years. Standard level 3 is also the maximum technologically feasible design option identified in the analysis. *See* Technical Support Document, Table 6.6.

TABLE 3–2—PAYBACK PERIODS (YEARS) STANDARD WATER HEATING DISHWASHER (115 VOLTS)

Standard level:	Payback period
1	0.9
2	1.3
3	2.1

Significance of Energy Savings. By the year 2000, the weighted average energy consumption of new dishwashers sold in the absence of revised standards is not projected to change compared to the year 1993. The weighted average energy consumption is projected to decline between the year 2000 and 2015. Overall, the average energy consumption is projected to decrease slightly from 1993 to 2015. *See* Technical Support Document, Table 5.2. This is because residential electricity rates are projected to decline from 1984 to 1995, then increase, reaching 1985 levels by 2015 (in real terms). *See* Technical Support Document, Table 4.5 and DOE/EIA–0383(87) Annual Energy Outlook 1987, Table A.3. Without upward pressure on operating expenses, the LBL–REM projects that there will be no major energy consumption improvements. The LBL–REM projects, for the period 1993–2015, the following energy savings would result from the increased standards:

Level 1—0.39 Quads
Level 2—0.52 Quads
Level 3—0.65 Quads

See Technical Support Document, Table 5.3

On the basis of the above, DOE believes that the increased standard levels considered for dishwashers would result in a significant conservation of energy. However, DOE believes that the LBL–REM base case projections of no improvement in the efficiency of dishwashers compared to the year 2000 is unlikely. Between 1972 and 1983, the average efficiency of dishwashers increased nearly 55 percent. During this time, the nation experienced both declining and increasing real energy prices. DOE believes there is no reason to conclude that the average efficiency of dishwashers will not increase. Changes

in shipment weighted energy factor (SWEF) can be brought about by a number of factors including heightened consumer awareness. DOE requests comments on this issue particularly the LBL–REM's forecast of dishwasher efficiency.

Economic Justification— A. *Economic Impact on Manufacturers and Consumers.* The per unit increased cost to manufacturers to meet the level 1 efficiency (improved food filter) is $7.50, while the addition of improved motor efficiency in standard level 2 costs an additional $4.00. Standard level 3 provides efficiencies obtained with an improved fill control, which adds another $8.00. *See* Technical Support Document, Tables 3.3 and 3.4.

For consumers, standard level 1 would cause a price increase of $10.75 for a standard dishwasher; standard level 2 would add an additional $6.21, while level 3 would be $12.57 more. The price increases caused by standard levels for water-heating dishwashers are the same. *See* Technical Support Document, Tables 3.18 and 3.19.

The Lawrence Berkeley Laboratory Manufacturers Impact Model (LBL–MIM), in the base case, projects manufacturers' long-run return-on-equity (ROE) to be 6.80 percent for dishwashers. At level 1, the LBL–MIM predicts that a prototypical dishwasher manufacturer would have an ROE of 6.64 percent, a loss of 2.4 percent. At level 2, the manufacturer's ROE is expected to be 6.72 percent, a 1.2 percent decline. At level 3, however, the LBL–MIM projects that the prototypical dishwasher mamufacturer's ROE would be 6.97 percent, an increase of 2.5 percent over the base case. *See* Technical Support Document, Table 7.9.

This industry has displayed continuing consolidation for several decades, especially during periods of low earnings. By increasing profitability, as DOE projects at standard level 3, standards could lead to a reduction in the rate of such consolidations, thereby possibly contributing to more robust competitiveness than is likely in the base case.

The Department's characterization of the prototypical manufacturer in the base case assumes that manufacturers' typical dishwasher designs are based on the combination of options presented in the Engineering Analysis for the baseline unit. If manufacturers use a different combination of design options to produce dishwashers that minimally comply with the 1993 standard, the Department may have inappropriately characterized the financial position of the prototypical manufacturer in the LBL–MIM. Furthermore, since financial data of the type needed to characterize the prototypical manufacturer are generally not available, DOE had to make a number of assumptions based on the limited data publicly available, e.g., Securities and Exchange Commission 10K reports and company annual reports. Because of the significant impact that these assumptions could have on the results of the analysis, DOE requests comments on these issues, particularly from small manufacturers.

The sensitivity analysis, however, indicates that the dishwasher industry is sensitive to price and operating expense elasticities. For example, the high price and low operating cost scenario indicates that the effects of standards would be to decrease return-on-equity for dishwasher manufacturers by 2.5 percent. *See* Technical Support Document, Table 7.13. While these scenarios are theoretically possible, the Department expects that the original analysis will be the likely outcome.

B. *Life Cycle Cost and Net Present Value.* The LCC analysis indicates that for each possible standard level the increase in purchase price would be offset by savings in operating expenses. Standard level 3 corresponds to the minima of the life-cycle cost curves. *See* Technical Support Document, Figures 3.17 and 3.18. This indicates that the standard level would not cause any economic burden on the average consumer. For consumers, standard level 1 would cause a reduction in life-cycle cost of $98.56 for a standard dishwasher; standard level 2 would reduce life-cycle cost an additional $5.45, while level 3 would result in a further decrease of $.96 compared to level 2. For standard water heating dishwashers standard level 1 would cause a reduction in life-cycle cost of $92.09; standard level 2 would reduce life-cycle cost an additional $5.45, while level 3 would result in an increase of $.02 compared to level 2. *See* Technical Support Document, Table 6.3.

While DOE examined the effect of different discount rates, five, seven, and 10 percent, on the LCC curves and generally found little impact, the Department did not consider higher discount rates. Similarly, DOE did not consider differemt energy prices, including regional prices, in the LCC analysis. However, DOE did examine the effect of a usage rate that was different from the 322 cycles per year set by the DOE test procedure. Recent Procter and Gamble data appear to indicate that national average dishwasher annual usage rate is 260 cycles per year, nearly 20 percent less than the test procedure representative average use cycle. The lower usage numbers tend to result in lower life-cycle cost estimates, with the purchase price carrying greater weight in the calculations. For standard dishwashers, at the lower usage rate, standard level 2 becomes the minimum life-cycle cost point. Standard level 1 would cause a reduction of $89.23 for a standard dishwasher; standard level 2 would reduce life-cycle cost an additional $3.21, while level 3 would result in an increase of $1.42 compared to level 2. *See* Technical Support Document, Table 6.3. As can be seen, not only does the minimum life-cycle cost point change but the overall reduction in life-cycle costs would be reduced by approximately 10 percent. The Department requests comments on the effects of usage rates.

Another way to compare the costs and benefits that would be associated with any standard level is to estimate the net impact on life-cycle cost. Such a comparison for each standard level is shown below. The incremental consumer price for each standard level for all equipment purchased in the first year after the standard goes into effect; the total operating expense savings calculated at a 5, 7 and 10 percent discount rates; and the net difference in discounted savings and incremental prices paid are presented. The results show that, for each standard level, there is a positive net reduction in life-cycle cost; which indicates that, using national average values, the benefits of each candidate standard level exceed the increase in price paid for the appliance by the affected consumers.

DISHWASHER NET PRESENT VALUES

[In millions of dollars, 1987]

Standard level	Price increase	Operating expense savings			LCC differences
		5%	7%	10%	
1	29.79	268.61	240.42	205.90	210.64
2	51.05	304.65	272.67	233.51	221.62
3	95.27	348.47	310.13	266.57	214.86

The LBL–REM employs national average energy prices and usage rates. The appropriateness of this approach depends on the relationship between energy prices and consumer choice of efficiency levels and the relationship between consumers' expected usage and choice of energy efficiency level. If those consumers who face higher energy prices and/or expect to use their dishwashers more intensively, are on average, more likely to buy higher efficiency dishwashers, then a modeling approach that assumes that national average energy prices and usage rates apply to all consumers will yield results

BEST COPY AVAILABLE

that overstate the net benefits that could be expected. As discussed above, recent Procter and Gamble data have shown declines in usage rates for dishwashers. The Department requests comments and data on the effects of energy prices and expected usage rates on the consumer's choice of efficiency level.

The NPV analysis indicates that if a standard were adopted at level 1, there would be a net present value of $710 million from energy savings over the period 1993–2015. At levels 2 and 3, the corresponding NPV's would be $811 million and $609 million, respectively. *See* Technical Support Document, Table 5.6.

C. *Energy Savings.* As discussed above, DOE proposes that standards, at each candidate standard level, would result in a significant saving of energy. The Department conducted several sensitivity cases, one of which was to assume that after 1993, the market would produce dishwashers of an efficiency that increases more than the standards would otherwise require.

The base case projects that there will be only slight increases in the SWEF of dishwashers after 1993, i.e., that the private sector will not continue to improve the efficiency of those appliances much beyond the mandated levels. The sensitivity case assumes that after the 1993 standards are in place, the base case efficiency growth will increase from 0.5 percent annually to 2.0 percent. The Department believes that the maximum improvement in market-induced dishwasher energy efficiency after 1993 would be the historical improvement rate, 3.1 percent annually. The Department does not have any reason to assume that energy efficiency would improve at a greater than historical rate.

The Department believes that the range of market-induced efficiencies that would occur after 1993 in the absence of additional Federal standards would be from a low of no improvement to a high of an historical average growth rate. If SWEF increases, the energy savings due to standards would be less than calculated.

D. *Lessening of Utility or Performance of Products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of dishwashers. However, there is no assurance that future utility or performance of dishwashers would not be lessened as a result of standards-induced disincentives to investments in energy-using new features.

In addition, the Department believes adoption of any of the design options considered will not affect utility or performance.

E. *Impact of Lessening Competition.* The determination of this factor must be made by the Attorney General.

F. *Need to Save Energy.* Dishwashers use electricity as a primary energy source, both for operation of the motors and for the electric coils that are used in the drying cycle. In addition, that portion of water heater electricity consumption that provides hot water to the dishwasher is considered to be indirect dishwasher electricity consumption. Similarly, since some of the hot water that is supplied to dishwashers comes from gas water heaters, dishwashers are responsible for indirect gas consumption, too.

In 1987, source electricity generation in the United States totaled 27.6 quadrillion Btu's, and gas consumption totaled 17.18 quadrillion Btu's. Dishwashers accounted for .8 percent (or .22 Quads) of the electricity generation and .4 percent (or .069 Quads) of the gas consumption: over six percent of that dishwasher energy consumption would be saved by standard level 1, and over eight percent of that consumption would be saved at level 2. Furthermore, standard level 3 would save over 10 percent of the 1987 dishwasher energy consumption. The sensitivity analysis on the LBL–REM indicates that if market improvements and consumer awareness of appliance efficiencies continue at their historical rates, then the projected savings at level 3 would be .17 Quads as compared to .65 Quads.

Conclusion. After careful consideration of the analysis, the Department is proposing a revision of the dishwasher standard to standard level 1. The Department proposes that standard level 1 for dishwashers saves a significant amount of energy, and is economically justified.

As discussed above, DOE's analysis indicates that there would be a significant energy savings at each candidate standard level. For standard level 1, during the period 1993–2015, this savings would be .39 Quad of primary electricity compared to the base case. This represents five percent of the expected dishwasher energy consumption over that period.

Although standard level 1 would cause an increase in the initial price to the consumer of $10.75, the standard is estimated to reduce the typical consumer's life-cycle cost by $99. In addition, with a payback of 0.9 years, the candidate standard level satisfies the rebuttable presumption test, i.e., it has a value of energy savings that repaid the initial purchase price increase to the average consumer in less than three years.

The technologies that may be necessary to meet the standard are available now in the form of improved food filters used by some manufacturers. For manufacturers, the standard is expected to result in long-run returns on equity of 6.64 percent.

The results of the analysis discussed above, could change if a different discount rate were used, energy prices drop, or if the uses of national average energy prices and national appliance usage rates have introduced an uncertainty into the analysis.

Standard levels 2 and 3 were both found to save a significant amount of energy but the Department proposes that neither is economically justified. Standard levels 2 and 3 result in marginal benefits compared to standard level 1. The life-cycle cost savings compared to standard level 1 are calculated to be $5.45 and $6.41 respectively. While the energy savings are projected to be 0.52 and 0.65 Quads. The payback period for standard levels 2 and 3 are less than 3 years; however, the bulk of the consumer benefits are due to standard level 1 benefits. Furthermore, if energy prices were to drop from the projected or usage rates were lower than assumed, standard level 1 could become the minimum life-cycle cost point. If this were to occur, DOE is concerned that consumers would be precluded from purchasing the most cost-effective unit.

Level 3 standards, the maximum technologically feasible level, involves technologies that the Department believes are generally available, i.e., improved food filter, improved motor and improved fill control. However, the Department finds that the price of the improved fill control, $12.57, results in a $13.53 reduction in lifetime operating cost which yields the life-cycle operating cost savings of $.96, or less than $.10 per year over the average dishwasher lifetime. While the benefits of standards, on a life-cycle cost basis, are calculated to exceed the cost to consumers, the Department believes the risks of standards at this level exceed the possible benefits. As can be seen in Figure 3.15 of the Technical Support Document, the life-cycle cost curve for standard dishwashers is relatively flat between standard levels 1 and 3; DOE believes that the differences in the life-cycle costs between points 1, 2, and 3 are probably less significant than the possible inaccuracy of the analysis. For example, if usage is lower than that assumed, or if energy prices are lower than those used in the analysis,

incremental increases in price to meet standard level 3, as compared to standard level 2, would likely not be met by the value of the energy saved. Furthermore, the analysis predicts energy savings of .65 Quads, or .13 Quads over standard level 2. The Department believes that the marginal energy saving benefits of level 3, as compared to the uncertain nature of the analysis as discussed, particularly with respect to the LBL–REM's forecast of relatively small improvements in SWEF over the period of analysis and the questions surrounding dishwasher usage and appropriate discount rates do not justify standards at this level. Therefore, the Department concludes for the reasons discussed above, that revised dishwasher standards at standard level 3 are not economically justified.

Level 2 standards involve technologies that the Department believes are widely available, i.e., improved food filter and improved motor. However, the Department finds that the price of the improved motor, $8.21, results in a $11.66 reduction in lifetime operating cost or a life-cycle cost savings of $5.45; approximately $.50 per year over the average dishwasher lifetime. As discussed above, the Department does not believe that these marginal savings justify standards at this level, because of the associated risks at this level. Therefore, the Department concludes that revised dishwasher standards at standard level 2 are not economically justified.

In weighing the costs and benefits of standards, the Department gave considerable weight to the impacts on consumers as measured in the life-cycle cost analysis. The major impact of standards on life-cycle cost occurs at standard level 1. Because of the uncertainty of the analysis, i.e., energy price forecasts and usage rates, consumers may not receive the marginal benefits in life-cycle costs projected at levels 2 and 3. Furthermore, DOE believes that standard levels 2 and 3 could be beyond the minimum life-cycle cost point, precluding consumers from purchasing the most cost-effective unit. Therefore, DOE is proposing standard level 1. The Department request comments on the above, including DOE's weighing of the factors.

b. Clothes Washers

1. Classes

In the advance notice, the Department discussed its methodology for reviewing the energy conservation standards for clothes washers that were established by the Act, to determine if the standards should be amended. NAECA prescribed a design standard for clothes washers; units manufactured after January 1, 1988, are required to have an option for a cold water rinse.

The following are the classes of clothes washers that have been identified:

Top Loading, Compact (1.6 ft.^{3} capacity or less)
Top Loading, Standard (1.61 to 2.74 ft.^{3} capacity)
Top Loading, Large (2.75 ft.^{3} capacity or greater)
Top Loading, Semi-Automatic
Front Loading
Suds Savers

A review of the characteristics and data regarding fully automatic top loading washers indicates that class distinction by capacity may be appropriate. Compact washers offer the utility of small cabinet size allowing them to be placed in size-restricted spaces. Larger washers offer the utility of time savings for users that have large laundry loads. However, the energy use characteristics of existing machines indicates that energy use is not a linear function of capacity as might be expected. This seems to preclude having one standard for all capacities. From the data collected to date, the Department is unable to discern exactly why energy usage varies disproportionately with capacity, but suspects that different mixes of temperature control functions may play a major role. If this is the case, temperature control function may be a better criteria than capacity by which to distinguish classes. The Department seeks comments on this subject.

Furthermore, since the last three of these classes collectively represent less than 5 percent of total industry shipments, the Department did not analyze them and is therefore not proposing amended standards for these classes; however, the existing standard requiring a cold water rinse option is proposed to remain in effect.

2. Design Options

The following is a list of design options that were examined:

Warm Rinse Elimination
Improved Fill Control
Reduced Thermal Mass
Increased Motor Efficiency
Thermostatically Controlled Mixing Valves Employed

3. Comments on the Advance Notice of Proposed Rulemaking

For clothes washers, NRDC suggested that the Department consider: (a) Reduced wash cycle temperatures; (b) insulation of the drum, (c) a combination of (a) and (b); and (d) the wide range of currently available designs for energy efficiency in clothes washers. (NRDC, No. 3, at 6). In its analysis, the Department did consider each of these energy conserving options. Reduced wash cycle temperatures were dismissed since studies have shown that such lowered water temperatures affect performance. Otherwise the Department did examine all energy-concerning designs in clothes washers that could be found through literature searches, discussions with industry personnel and researchers, both domestically and abroad.

NRDC suggested that the "suds savings" feature of certain clothes washers be considered a conservation measure, rather than a separate class. (NRDC, No. 3, at 3).

The Department believes that "suds savings" provides a unique utility to the consumer, both as a feature in itself, and as a water and detergent saver. Furthermore, because of the fact that "suds savings" requires a nearby sink or other storage device, its applicability as a conservation measure could not be universally employed. Therefore, the Department has concluded that "suds savings" clothes washers should be a separate class.

The Speed Queen Company (Speed Queen) suggested that the large capacity clothes washer not be considered as a separate class, but rather it should remain in the class as standard machines so as to reflect their higher actual energy usage. (Speed Queen, No. 4, at 1–2). The Department agrees with Speed Queen that large capacity washers use more energy. The Department, however, is proposing to retain large capacity washers as a separate class because of their utility as discussed above. If large washers were to be grouped together with standard size washers and required to meet a single standard, the large washers would likely have more difficulty in meeting that standard because energy use is a function of volume.

4. Efficiency Levels Analyzed

Table 3–3 presents the efficiency levels that have been selected for analysis for 1993. These efficiency estimates are for a standard capacity, top-loading clothes washer. Alternate levels were selected to generate a range of impacts for analysis. As noted earlier, standard level 1 corresponds to efficiencies achieved by elimination of a warm water rinse; level 2 corresponds to efficiencies achieved by thermostatic mixing valves; level 3 adds a more efficient motor; and, level 4 substitutes a plastic tub.

TABLE 3-3.—STANDARD LEVELS ANALYZED FOR TOP-LOADING CLOTHES WASHERS

Size	Baseline	Energy Factor (cu. ft./kWh)			
		1	2	3	4
Compact [1]	0.76	0.96	1.02	1.04	1.05
Standard [2]	.86	1.23	1.32	1.34	1.35
Large [3]	.90	1.13	1.21	1.23	1.24

[1] Capacity less than 1.6 ft.³
[2] Capacity 1.6 ft.³ to 2.75 ft.³
[3] Capacity greater than 2.75 ft.³

Payback Period. Table 3–4 presents the payback period for the efficiency levels analyzed. Standard level 1 involves efficiencies achievable with eliminating warm water rinse altogether, level 2 involves additional efficiencies achievable with thermostatic mixing values, level 3 adds an improved motor, and level 4 replaces the metal tub with a plastic one. For standard capacity, top-loading clothes washers, each standard level satisfies the rebuttable presumption test, i.e., the additional cost of purchasing a product at each efficiency level will be less than three times the value of the energy savings that the consumer will receive during the first year. *See* Technical Support Document Table 6.5.

TABLE 3–4.—PAYBACK PERIODS OF DESIGN OPTIONS (YEARS) FOR STANDARD SIZE, TOP-LOADING CLOTHES WASHERS

Standard Level:	Payback Period
1	0
2	0.9
3	1.2
4	1.6

Significance of Energy Savings. By the year 2015, the weighted average energy consumption of new clothes washers sold in the absence of amended standards is projected to be 923 kilowatt hours per year (kWh/yr) a decline from 1152 kWh/yr in 1987. *See* Technical Support Document, Table 5.9. At standard levels 1 through 4, the average consumption is expected to be 895, 867, 860, and 858 kWh/yr, respectively. *See* Technical Support Document, Table 5.10. The LBL–REM projects, for the period 1993–2015, the following energy savings would result from the increased standards:

Level 1—0.70 Quad
Level 2—1.21 Quads
Level 3—1.38 Quads
Level 4—1.50 Quads

Economic Justification.—A. *Economic Impact on Manufacturers and Consumers.* The per unit increased cost to manufacturers to meet the level 1 efficiency is $0; to meet levels 2–4, the manufacturers' cost increases, as compared to the base case, are $13, $17, and $23, respectively, for a standard, top-loading clothes washer. *See* Technical Support Document, Table 3.8.

At those levels of efficiency, the incremental consumer price increases are $0, $19, $25.30, and $33.80 for standard levels 1–4, respectively. *See* Technical Support Document, Table 3.16.

The LBL–MIM results for clothes washers show that standard level 1 would cause manufacturers to have a decline in ROE from 6.64 percent in the base case to 6.45 percent (a decline of 2.9 percent). Standard levels 2–4, however, are projected to improve manufacturers' ROE's by 3.5 percent, 6.3 percent, and 8.4 percent, respectively. *See* Technical Support Document, Table 7.17. This industry has displayed continuing consolidation for several decades, especially during periods of low earnings. By increasing profitability, as DOE projects at standards levels 2, 3, and 4, standards could lead to a reduction in the rate of such consolidations, thereby possibly contributing to more robust competitiveness than is likely in the base case.

The Department's characterization of the prototypical manufacturer in the base case assumes that manufacturers' typical clothes washer designs are based on the combination of options presented in the Engineering Analysis for the baseline unit. If manufacturers use a different combination of design options to produce clothes washers that minimally comply with the 1993 standard, the Department may have inappropriately characterized the financial position of the prototypical manufacturer in the LBL–MIM. Furthermore, since financial data of the type needed to characterize the prototypical manufacturer are generally not available, DOE had to make a number of assumptions based on the limited data publicly available, e.g., Securities and Exchange Commission 10K reports and company annual reports. Because of the significant impact that these assumptions could have on the results of the analysis, DOE requests comments on these issues, particularly from small manufacturers.

B. *Life Cycle Cost and Net Present Value.* The LCC analysis indicates that at each possible standard level the increase in purchase price would be offset by savings in operating expenses. *See* Technical Support Document, Tables 3.16 and 3.17. Also, of the four candidate standard levels, level 3 had the lowest consumer life-cycle cost. This indicates that the standard level would not cause any economic burden on the average consumer because of the decreasing life-cycle costs.

Standard level 1 would cause a reduction in life-cycle cost of $147 for a top loading standard-sized clothes washer; standard level 2 would reduce life-cycle cost an additional $19, standard level 3, the minimum life-cycle cost point, an additional $4, while standard level 4 would result in an increase of $7 compared to standard level 3. While DOE examined the effect of different discount rates, 5, 7, and 10 percent, on the LCC curves and generally found little impact, the Department did not consider higher discount rates. Similarly, DOE did not consider different energy prices, including regional prices, in the LCC analysis. However, DOE did examine the effect of a usage rate different from the 416 cycles per year set by the DOE test procedure. Recent Procter and Gamble data appear to indicate that the national average clothes washer annual usage rate is 406 cycles per year, approximately 3 percent less than the test procedure representative average use cycle. The slightly lower usage numbers tend to result in lower life-cycle cost estimates, with the initial purchase price increase carrying greater weight in the calculations. *See* Technical Support Document, Tables 3.16 and 3.17.

Another way to compare the costs and benefits that would be associated with any standard level is to estimate the net impact on life-cycle cost. Such a comparison for each standard level is shown below. The incremental consumer price for each standard level for all equipment purchased in the first year after the standard goes into effect; the total operating expense savings calculated at a 5, 7 and 10 percent discount rates; and the net difference in discounted savings and incremental prices paid are presented. The results show that, for each standard level, there is a positive net reduction in life-cycle cost; which indicates that, using national average values, the benefits of each candidate standard level exceed the increase in price paid for the appliance by the affected consumers.

CLOTHES WASHER NET PRESENT VALUES

[In millions of dollars, 1987]

Standard level	Price increase	Operating expense savings			LCC differences
		5 percent	7 percent	10 percent	
1	29.27	461.70	407.12	342.03	377.85
2	84.39	726.58	640.75	538.09	576.36
3	99.11	783.79	691.19	580.87	592.06
4	153.77	809.95	709.01	595.83	556.23

The LBL–REM employs national average energy prices and usage rates. The appropriateness of this approach depends on the relationship between energy prices and consumer choice of efficiency levels and the relationship between consumers' expected usage and choice of energy efficiency level. If those consumers who face higher energy prices and/or expect to use their dishwashers more intensively, are, on average, more likely to buy higher efficiency dishwashers, then a modeling approach that assumes that national average energy prices and usage rates apply to all consumers will yield results that may overstate the net benefits that could be expected. As discussed above, recent Procter and Gamble data have shown declines in usage rates for clothes washers. The Department requests comments and data on the effects of energy prices and expected usage rates on consumer's choice of efficiency level.

The NPV analysis indicates that standard level 1 would produce a net present value of $1.45 billion to consumers. The corresponding NPV numbers for levels 2–4 are $2.47 billion, $2.62 billion, and $2.47 billion, respectively. *See* Technical Support Document, Table 5.14.

C. *Energy Savings.* As indicated above, standards will result in savings of electricity consumption for clothes washers. If, however, the marketplace continues to demand changes in efficiency at the same rate as historically, the LBL–REM projects that energy savings from standards over the 1993–2015 period will be reduced by .43 Quads.

D. *Lessening of Performance of Products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of clothes washers.

Standard level 1 involves an efficiency level that was attained by eliminating the warm water rinse option. It could be argued that if manufacturers chose to achieve the standard's efficiency levels by eliminating that option, the utility of the clothes washer could be lessened. DOE appreciates that concern, but considers the utility of a clothes washer is its ability to clean clothes. The Department welcomes comments about the utility of a warm water rinse option in a clothes washer.

E. *Impact of Lessening Competition.* The determination of this factor must be made by the Attorney General.

F. *Need to Save Energy.* Like dishwashers, clothes washers use electricity directly, and are responsible for the water heater energy consumption that is necessary to supply the heated water to the clothes washer. That water heater energy consumption is primarily either electricity or natural gas, depending upon how the water heater is fueled. Consequently, clothes washers are responsible for both gas and electricity consumption. In 1987, 1.6 percent of source electricity (or, .442 Quads) and 1.4 percent of natural gas consumption (or, .241 Quads) were consumed by clothes washers. Standard level 1 would save nearly five percent of the .683 Quads that clothes washers consumed in 1987. Standard levels 2 through 4 would save 8.1 percent, 9.2 percent, and 10.0 percent, respectively. The sensitivity analysis on the LBL–REM indicates, however, that if consumer awareness of, and concern with, appliance efficiencies were to continue at their historic averages, the projected savings from standard level 3 would be 1.07 Quads over the 1993–2015 period.

Conclusion. After careful consideration of the analysis, the Department is proposing a revision of the clothes washer standard to include a range of standards that includes continuing the 1988 NAECA standards to standard level 2. The Department proposes that each candidate standard level for clothes washers saves a significant amount of energy and that standard levels 1 and 2 are economically justified. However, because of the analytical issues discussed above, the Department is not proposing specific standard levels within the above range. Rather, DOE is presenting the results of the analysis and is soliciting additional comment and information to be considered in promulgating the final rule. The final rule will specify a specific level for clothes washers; the level selected could include no change to the 1988 NAECA standards.

As discussed above, DOE's analysis indicates that there would be a significant energy savings at each candidate standard level of efficiency. During the period 1993–2015, the cumulative energy savings would be .7 Quads of primary electricity for level 1, and 1.2 Quads for level 2.

For standard level 1 these estimated savings can be achieved by eliminating warm water rinse options; if so, the standard would cause no extra costs to manufacturers and zero consumer financial expenditure. In fact, if the savings are attained by this change in feature, the standard is estimated to reduce the typical consumer's life-cycle costs by $144, from $3,870 to $3,726, with a zero payback period (since there are no additional expenses that are possible to pay back). For standard level 2 these savings would be achieved by adding thermostatic mixing values resulting in an increase in consumer expenditure of $19 with a corresponding reduction in life-cycle costs of $19.

Although these standards were assumed to eliminate warm water rinse, some consumers may continue to want clothes washers with a warm water rinse. If some manufacturers responded to these consumer demands by continuing to provide that feature, then those producers would have to meet the energy conservation standard by some other efficiency improvement. In doing that, there would be some additional manufacturing costs and higher consumer prices, the amounts of which would depend on the energy conservation improvement made. In addition, while the same amount of energy would conceivably be saved, there would be some positive payback period for the consumer, the length of which would also depend on the extra expense of the other efficiency improvement.

DOE believes the technologies that may be necessary to meet each standard level will be commercially available by 1993. The technologies to meet standard levels 1–3 are considered to be presently widely available or capable of being carried out. For manufacturers, level 1 standards are expected to produce increases in their return-on-equity of 6.45 percent, a decline of nearly 3 percent from the baseline. Standard level 2 will result in a return-on-equity of 6.87 percent. DOE considers the decline in ROE for level 1 to be an anomaly of the LBL–MIM which is caused by the no additional manufacturer cost of the eliminate warm rinse design option.

In the base case (1988 NAECA standards), DOE believes the analysis may not accurately estimate the impacts of amended standards. As discussed above, the Department believes that the LBL–REM overestimates energy consumption in the base case by forecasting moderate increases in

clothes washer efficiency. Furthermore, characterization of the prototypical firm in the LBL–MIM does not account for manufacturers electing to continue to provide a warm water rinse option, and adding other, presumably more costly design options.

For standard level 1, the Department proposes that there would be a significant conservation of energy and that the standards are projected to have little economic impact on manufacturers. In addition, the standards would likely not cause an increase in price to consumers. However, standards at this level, eliminating warm water rinse, may be viewed as negatively affecting the utility of the product. Also, the analysis may underestimate the economic impacts on consumers and manufacturers as discussed above, if manufacturers elect to retain the warm water rinse option and incorporate other design options.

For standard level 2, the Department proposes that there would be significant conservation of energy and that the standards are projected to have little economic impact on manufacturers. Standards at this level would likely be met with existing technology and would reduce consumer life-cycle costs.

More stringent standard levels were examined and rejected for the following reasons: First, the level 4 standard, the maximum technologically feasible level, is beyond the minimum life-cycle cost point; this would preclude the average consumer from purchasing the most cost-effective product; i.e., the minimum life-cycle cost unit. In addition, the results of the analysis could change if different annual cycles of operation were used, thereby reducing benefits of standards. While standard level 4 would save additional amounts of energy, 1.5 Quads as compared to 0.7 Quads, level 1, and would appear to have positive economic impacts on manufacturers—standards are forecast to cause an increase in manufacturers' return-on-equity—DOE does not consider these benefits to outweigh the consumer life-cycle cost impacts.

Level 3 standards, the minimum life-cycle cost point, involves technologies the Department believes to be widely available, i.e., warm rinse elimination, and use of thermostatic mixing valves and improved motors. However, the Department believes that the additional price of the improved motor, $6.30, and the corresponding decrease in life-cycle costs, $4 or approximately $.30 per year over the average clothes washer lifetime, do not justify standards at this level. DOE believes the risks of standards at this level exceed the possible benefits. As can be seen in Figure 3.17 of the Technical Support Document, the life-cycle cost curve for top-loading standard size clothes washers is relatively flat between standard levels 2 and 4; DOE believes that the differences in the life-cycle costs between these levels are likely less significant than the uncertainty of the analysis. For example, for consumers whose usage is lower than assumed by the test procedures or whose energy prices are lower than those used in the analysis, the incremental price increase to meet standard level 3, compared to standard level 2, would likely not be met by the value of the energy saved. In addition, the analysis predicts energy savings of 1.38 Quads, or .17 Quads over standard level 2. Finally, the impact of this standard on manufacturers is likely to increase manufacturers' return-on-equity. The Department believes that the marginal benefits as compared to the uncertainty in the analysis as discussed above, do not economically justify standards at this level. Therefore, the Department concludes that revised clothes washer standards at standard level 3 are not economically justified.

c. Clothes Dryers

1. Classes

In the advance notice, the Department discussed its methodology for reviewing energy conservation standards for clothes dryers that were established by the Act, to determine if the standards should be amended. NAECA prescribed a design standard for gas clothes dryers; standing pilot lights are prohibited on units manufactured after January 1, 1988. The following classes of clothes dryers have been identified:

Electric, Standard
Electric, Compact (120V)
Electric, Compact (240V)
Electric Heat Pump
Gas, Standard
Gas, Compact

Compact gas clothes dryers and heat pump clothes dryers were not analyzed for this rulemaking. In these instances the product classes represent a very small segment of the market and manufacturer or industry cost and performance data were not available. Therefore, cost and performance estimates were not performed. Compact gas clothes dryers will retain the ban on standing pilot lights and heat pump clothes dryers will have no standards imposed in this rulemaking. Both of these classes will be addressed in the next rulemaking cycle.

2. Design Options

The following is a list of design options that were examined:

Automatic Termination by Temperature Sensing
Automatic Termination by Moisture Sensing
Added Insulation
Recycle Heat Exchanger Used

3. Comments on the Advance Notice of Proposed Rulemaking

The Department received one comment concerning clothes dryers. In its comments, NRDC suggested consideration of both condensing and non-condensing heat exchangers, a variety of efficiencies of heat pump and microwave dryers, as well as spin-assisted drying. (NRDC, No. 3, at 7–8).

The Department has analyzed both condensing and non-condensing heat exchangers. In addition, DOE identified and analyzed one prototype heat pump dryer, which the Department believes largely captures the likely energy savings possible. The Department has placed heat pump clothes dryers in a separate class because such units are likely to be relatively larger than conventional dryers, relatively slower in drying time, and would probably need a drain (thereby preventing their universal applicability, and, as a consequence, affecting their utility).

DOE does not believe that a microwave dryer is technologically feasible. DOE requested data on microwave dryers in the advance notice; no information has been submitted. Therefore, this design option has not been evaluated.

Standard levels 1 and 2 represent efficiencies achieved by two different forms of automatic termination, temperature-sensing and moisture-sensing, respectively. The test procedure gives both moisture-sensing and temperature-sensing termination the same energy savings credit. In the analysis the Department gave moisture-sensing approximately 78 percent more credit than temperature-sensing termination. Nevertheless, in evaluating the results, the Department treated them as having the same energy savings impact. The Department requests comments about the relative energy efficiencies of these two forms of automatic termination in clothes dryers.

4. Efficiency Levels Analyzed

Tables 3–5 and 3–6 present the efficiency levels that have been selected for analysis for 1993.

TABLE 3–5.—STANDARD LEVELS ANALYZED FOR STANDARD CAPACITY ELECTRIC AND GAS CLOTHES DRYERS

Standard level	Energy factor (lb/kWh)	Energy factor (lb/kWh)
Baseline	2.75	2.49
1	2.95	2.68
2	3.12	2.82
3	3.19	2.88
4	3.39	3.04

TABLE 3–6.—STANDARD LEVELS ANALYZED FOR COMPACT CLOTHES DRYERS

Standard level	Compact 110V energy factor (lb/kWh)	Compact, 240V energy factor (lb/kWh)
Baseline	2.91	2.63
1	3.13	2.82
2	3.31	2.99
3	3.38	3.05
4	3.60	3.25

Payback Period.

Table 3–7 presents the payback periods for the efficiency levels analyzed. For standard-size electric clothes dryers, only standard level 4 does not satisfy the rebuttable presumption test; levels 1–3 all will result in paybacks to the consumer in less than 3 years.

For standard gas clothes dryers, however, there is no standard level whose efficiency improvement will repay itself to the consumer in less than 3 years.

TABLE 3–7—PAYBACK PERIODS OF DESIGN OPTIONS (YEARS) FOR STANDARD ELECTRIC AND GAS CLOTHES DRYERS

	Payback periods	
	Electric	Gas
Standard level:		
1	2.0	7.2
2	1.9	6.5
3	2.5	8.8
4	4.7	16.5

See Technical Support Document, Table 6.4.

Significance of Energy Savings. By the year 2015, the weighted average energy consumption of new electric and gas clothes dryers sold in the absence of amended standards is projected to be 933 kWh/yr and 3.52 million Btu's/year, respectively. *See* Technical Support Document, Tables 5.15 and 5.16.

The majority of the savings due to standards is electricity, since the LBL–REM projects that between 1993 and 1998 gas clothes dryer average energy consumption, in the base case, will decrease by over 10 percent (the base case electric clothes dryer energy consumption is not expected to change until after 2005). This is because residential electricity rates are projected to decline from 1984 to 1995, then increase, reaching 1985 levels by 2015 (in real terms).

The LBL–REM projects, for the period 1993–2015, the following energy saving would result from the increased standards:

	Electricity	Gas
Level 1	0.50 Quad	0
Level 2	0.87 Quad	0
Level 3	1.08 Quads	0.02 Quads
Level 4	1.70 Quads	0.08 Quads

On the basis of the above, DOE believes that the standard levels considered for clothes dryers would result in a significant conservation of energy (total gas and electricity).

Economic Justification—A. *Economic Impact on Manufacturers and Consumers.* The per unit increased cost to manufacturers to meet the level 1 efficiency is $8 for a standard electric or gas unit. To meet levels 2–4, the incremental cost increases are $5, $6.60, and $30, respectively. *See* Technical Support Document, Tables 3.12 and 3.13.

At those levels of efficiency, the incremental consumer price increases for an electric or gas dryer are $11.60, $7.10, $10.00, and $46.90, respectively. *See* Technical Support Document, tables 3.14 and 3.15.

The *LBL–MIM* results for clothes dryers estimate that standard level 1 would cause manufacturers to have an increase in ROE from 6.6 percent in the base case to 6.1 percent (a gain of 23 percent). At standard level 2 through 4, the percentage changes in ROE (compared to the base case ROE) are 42, 14, and minus 145 percent, respectively. *See* Technical Support Document, Table 7.25.

The reason for the striking decline in ROE under standard level 4 is thought to be the industry's price elasticity of demand: standard level 4 causes such a large price increase that a significant decline in the quantity of dryers demanded occurs. In LBL–MIM, this fall in unit sales causes a greater reduction in revenue than in variable costs and, as a result, profit and ROE decline.

This industry has displayed continuing consolidation for several decades, especially during periods of low earnings. By increasing profitability, as DOE projects at standard levels 1, 2 and 3 standards could lead to a reduction in the rate of such consolidations, thereby possibly contributing to more robust competitiveness than is likely in the base case.

The Department's characterization of the prototypical manufacturer in the base case assumes that manufacturers' typical clothes dryer designs are based on the combination of options presented in the Engineering Analysis for the baseline unit. If manufacturers use a different combination of design options to produce clothes dryers that minimally comply with the 1993 standard, the Department may have inappropriately characterized the financial position of the prototypical manufacturer in the LBL–MIM. Furthermore, since financial data of the type needed to characterize the prototypical manufacturer are generally not available, DOE had to make a number of assumptions based on the limited data publicly available, e.g., Securities and Exchange Commission 10K reports and company annual reports. Because of the significant impact that these assumptions could have on the results of the analysis, DOE requests comments on these issues, particularly from small manufacturers.

B. *Life Cycle Cost and Net Present Value.* For clothes dryers, the LCC analysis indicates that at each possible standard level, except level 4 for gas clothes dryers, the increase in purchase price would be offset by savings in operating expenses. *See* Technical Support Document, Tables 3.18 and 3.19. Also, of the four candidate standard levels, standard level 3 for electric clothes dryers and standard level 2 for gas clothes dryers had the lowest life-cycle cost. This indicates at these levels the standard would not cause any economic burden on the average consumer because of the decreasing life-cycle costs.

Standard level 1 would cause a reduction in life-cycle costs of $45.62 for electric standard clothes dryers and $7.68 for gas standard clothes dryers; standard level 2 would reduce life-cycle cost an additional $37.22 and $7.88 respectively; standard level 3 would result in a $5.28 reduction and $5.03 increase for standard electric and gas clothes dryers, respectively; standard level 4 would result in an increase of $1.59 and $30.84 respectively.

While DOE examined the effect of different discount rates, 5, 7, and 10 percent, on the LCC curves and generally found little impact, the Department did not consider higher discount rates. Similarly, DOE did not consider different energy prices, including regional prices, in the LCC analysis. However, DOE did examine

the effect of a usage rate different from the 416 cycles per year set by the DOE test procedure. Recent Procter and Gamble clothes washer data, when applied to clothes dryers, appear to indicate that the national average clothes dryer annual usage rate is 406 cycles per year, approximately 3 percent less than the test procedure representative average use cycle. The slightly lower usage numbers tend to result in lower life-cycle cost estimates, with the initial purchase price increase carrying slightly greater weight in the calculations. *See* Technical Support Document, Tables 3.18 and 3.19.

Another way to compare the costs and benefits that would be associated with any standard level is to estimate the net impact on life-cycle cost. Such a comparison for each standard level is shown below. The incremental consumer price for each standard level for all equipment purchased in the first year after the standard goes into effect; the total operating expense savings calculated at a 5, 7 and 10 percent discount rates; and the net difference in discounted savings and incremental prices paid are presented. The results show that, for each standard level, there is a positive net reduction in life-cycle cost; which indicates that, using national average values, the benefits of each candidate standard level exceed the increase in price paid for the appliance by the affected consumers.

CLOTHES DRYER NET PRESENT VALUES

[In millions of 1987 dollars]

Standard level	Price increase	Operating expense savings			LCC difference
		5 percent	7 percent	10 percent	
1	80.07	213.24	164.00	150.43	193.93
2	80.77	376.45	326.59	288.96	245.82
3	124.17	435.39	375.71	307.11	251.54
4	322.83	600.80	516.25	423.96	196.43

The LBL–REM employs national average energy prices and usage rates. The appropriateness of this approach depends on the relationship between energy prices and consumer choice of efficiency levels and the relationship between consumers' expected usage and choice of energy efficiency level. If those consumers who face higher energy prices and/or expect to use their dishwashers more intensively, are, on average, more likely to buy higher efficiency dishwashers, then a modeling approach that assumes that national average energy prices and usage rates apply to all consumers will yield results that overstate the net benefits that could be expected. As discussed above, recent Procter and Gamble data, when applied to clothes dryers, would appear to show a decline in usage rates for clothes dryers. The Department requests comments and data on the effects of energy prices and expected usage rates on consumer's choice of efficiency level.

The NPV analysis indicates that standard level 1 would produce a net present value of $856 million over the forecast period (all of the $856 million would be attributed to the standard on electric dryers). At standard level 2, the NPV would be $1,646 million, of which $1,625 would come from the standard on electric dryers. Standard level 3 would produce an electric dryer NPV of $1,711 million and a gas dryer NPV of minus $21 million, for a total NPV for the standard of $1,690 million. Lastly, standard level 4 produces the same $1,711 million NPV for electric dryers, but, under this standard level, the NPV for gas dryers is a negative $229 million, leaving the standard's NPV at $1,482 million. *See* Technical Support Document, Table 5.21.

C. *Energy Savings.* As indicated above, standards will result in savings of energy consumption by clothes dryers. The cumulative energy savings over the 1993–2015 period would range from 0.5 Quads at standard level 1 to 1.78 Quads at standard level 4.

D. *Lessening of Utility or Performance of Products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of clothes dryers.

E. *Impact of Lessening Competition.* The determination of this factor must be made by the Attorney General.

F. *Need to Save Energy.* Clothes dryers use electricity and natural gas as their energy sources. Approximately 1.8 percent of the nation's 1987 source electricity generation, and 0.3 percent of that year's natural gas consumption were used to operate clothes dryers. This represented a total of .55 Quads of energy, of which standard level 1 would save 4.1 percent. Standard levels 2 through 4 would save 7.2 percent, 9.0 percent, and 14.8 percent, respectively. The LBL–REM sensitivity analysis indicates, however, that if consumer awareness of, and concern with, appliance efficiency were to continue at its historical rate, the projected savings at standard level 2 would be .09 Quads over the 1993–2015 period.

Conclusion. After careful consideration of the analysis, the Department is proposing a revision of the clothes dryers standard to require all clothes dryers manufactured after January 1, 1993, to be equipped with an automatic termination device, either a temperature or moisture sensing termination control. The Department proposes that this prescriptive standard saves a significant amount of energy and is economically justified.

As discussed above, DOE's analysis indicates that there would be a significant energy savings at the candidate standard levels of efficiency. During the period 1993–2015, the cumulative energy saving is expected to be between .50 Quads (level 1) and .87 Quads (level 2) of primary electricity. This represents three to six percent of the expected clothes dryer electricity consumption over that period. DOE's analysis indicates that there would not be any gas saved due to the imposition of the proposed standard. However, DOE believes this is due to the LBL–REM forecast that between 1993 and 1996 the average energy consumption of new gas clothes dryers is to decrease which the Department believes is due to the incorporation of automatic termination devices.

Therefore, DOE believes that for gas clothes dryers the marketplace forces will demand automatic termination devices. While the analysis would appear to indicate that level 2, moisture termination, would save more energy, and do so at lower consumer life-cycle costs than level 1, temperature termination, the Department's clothes dryer test procedures treats both as having the same energy conservation potential. DOE's analysis of the available data indicates that either the two technologies have the same energy conservation potential or that the test procedure gives too much credit to temperature termination. There are presently no data available to DOE to indicate that the test procedure should give moisture termination a larger energy conservation credit. Finally, as indicated above, the data are not conclusive that the test procedure should be revised. Therefore, DOE is proposing a prescriptive standard that would allow manufacturers to choose either type of automatic termination device.

Although a prescriptive standard for electric clothes dryers would cause an increase in the initial price to the consumer of $11.57 and $18.67 for temperature-termination and moisture-termination, respectively, the standard is calculated to reduce the typical consumer's life-cycle costs of $38.80 and $69 for temperature-termination and moisture-termination, respectively. For gas clothes dryers, a prescriptive standard would cause an increase in the initial purchase price to the consumer by the same amount as electric clothes dryers and with a corresponding decrease in life-cycle cost of $7.98 and $15.56 for temperature-termination and moisture-termination, respectively.

The technologies that may be necessary to meet the standard are available now in the form of temperature-sensing and moisture-sensing termination controls that are presently installed in many electric clothes dryers. For manufacturers, the standard is expected to result in an increase in long-run returns-on-equity from 6.60 percent to between 8.10 percent and 9.40 percent.

As discussed above, there is uncertainty about the forecasting effort; for example, the results of the analysis could have been different if energy prices changed differently from the energy price forecasts or if use of national energy prices and appliance usage rates introduced a bias.

The Department examined more stringent standard levels and rejected them for the following reasons: First the level 4 standard, the maximum technologically feasible level, is beyond the minimum life-cycle cost point for both gas and electric clothes dryers; this would preclude the average consumer from purchasing the most cost-effective product, i.e., the minimum life-cycle cost unit. Furthermore, the analysis indicates that the standard would cause an increase in the initial price to the consumer of nearly $46.00 for both electric and gas clothes dryers. This increase in price is expected to preclude many consumers from purchasing clothes dryers and would also cause the negative return-on-equity projected by the LBL—MIM. While standard level 4 would save additional amounts of energy (1.78 Quads as compared to 0.5 Quads, level 1); the Department believes standards at this level would have negative impacts on manufacturers and consumers as discussed above.

Level 3 standards involve technologies the Department believes to be generally available, i.e., automatic termination devices and 1 inch insulation. However, for gas clothes dryers the standard is beyond the minimum life-cycle cost point, which would prevent some consumers from being able to purchase the cost-effective units for them. For electric clothes dryers, the Department believes that the additional price of the insulation, $10.02, and the corresponding minimal decrease in life-cycle costs, $5.03 or less than $.50 per year over the average clothes dryer lifetime, do not justify standards at this level. DOE believes the risks of standards at this level exceed the possible benefits. As can be seen in Figure 3.19 of the Technical Support Document, the life-cycle cost curve for standard electric clothes dryers is relatively flat between standard levels 2 and 3; DOE believes that the difference in the life-cycle costs between these levels are likely less significant than the accuracy of the analysis. For example, for consumers whose usage is lower than assumed by the test procedures or whose energy prices are lower than used in the analysis, the incremental price increase to meet standard level 3, as compared to standard level 2, would likely not be met by the value of the energy saved. In addition, the analysis predicts electricity savings of 1.08 Quads, or .19 Quads over standard level 2. Finally, the impact of the standards on manufacturers is to reduce their return-on-equity from 9.4 percent at level 2 to 7.5 percent. The Department believes that the marginal benefits as compared to the burdens of the standards and the questionable nature of the analysis as discussed above do not justify standards at this level. Therefore, the Department concludes that revised clothes dryer standards at the standard level 3 are not economically justified.

IV. Environmental, Regulatory Impact, Takings Assessment, Federalism and Regulatory Flexibility Reviews

The Department has reviewed today's proposed action in accordance with the Department's obligations under:

- The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), the Council on Environmental Quality regulations implementing the procedural provisions of NEPA regulations (40 CFR Part 1500 et seq.), and the Department's own NEPA regulations (10 CFR Part 1021);
- Executive Order 12291 (46 FR 13193, February 19, 1981) which pertains to agency review of the impact of Federal regulations;
- Executive Order 12630 (53 FR 8859, March 18, 1988) which pertains to agency consideration of Federal actions that interfere with constitutionally protected property rights;
- Executive Order 12612 (52 FR 41685, October 30, 1987) which pertains to agency consideration of federal actions that would have a substantial direct effect on States, on the relationship between the National Government and the States, and on the distribution of power and responsibilities among the various levels of government; and
- The Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) which requires, in part, that an agency prepare an initial regulatory flexibility analysis for any proposed rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and explanation of that determination in the Federal Register.

a. Environmental Review

DOE prepared an Environmental Assessment (EA) on the proposed standards pursuant to the National Environmental Policy Act of 1969, as amended, Pub. L. 91–190, 40 U.S.C. 4221 et seq., and the implementing regulations of the Council on Environmental Quality (40 CFR Parts 1500 through 1508). The EA addresses the possible incremental environmental effects attributable to the application of the proposed standards to the design of three types of covered products: dishwashers, clothes washers, and clothes dryers.

A Finding of No Significant Impact (FONSI) is published in today's Federal Register. The FONSI concludes that the proposed standards would result in no significant environmental impacts and that an environmental impact statement is not required.

The EA is part of the Technical Support Document and is available at the DOE Freedom of Information Reading Room at the address provided at the beginning of this notice.

b. Regulatory Impact Review

Executive Order 12291 (46 FR 13193, February 19, 1981) directs that, in proposing a major rule,[14] an agency perform a regulatory analysis. Such an analysis presents major alternatives to the regulation that could substantially achieve the same regulatory goal at lower cost, as well as a description of the costs and benefits (including potential net benefits) of the proposed rule.

DOE has determined that this proposed rule is a "major rule." Accordingly, a Draft Regulatory Impact Review has been prepared.

The Regulatory Analysis is summarized below. This summary focuses on the major alternatives considered in arriving at the proposed approach to improving the energy efficiency of consumer products. The

[14] "Major rule" means any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

reader is referred to the complete draft "Regulatory Impact Analysis," which is contained in the Technical Support Document, available as indicated at the beginning of this notice. It consists of: (1) A statement of the problem addressed by this regulation, and the mandate for government action; (2) a description and analysis of the feasible policy alternatives to this regulation; (3) a quantitative comparison of the impacts of the alternatives; and (4) the economic impact of the proposed standard.

It should be noted at the outset that none of the alternatives that were examined for these three products saved as much energy as the proposed rule. Also, most of the alternatives would require that enabling legislation be enacted, since authority to carry out those alternatives does not presently exist.

Alternatives for Achieving Consumer Product Energy Conservation

Six major alternatives were identified by DOE as representing feasible policy alternatives for achieving consumer product energy efficiency. These alternatives include:

- No New Regulatory Action
- Informational Action

—Product labeling
—Consumer education

- Prescriptive Standards
- Financial Incentives

—Tax credits
—Rebates

- Voluntary Energy Efficiency Targets
- The Proposed Approach

(Performance Standards)

Each alternative has been evaluated in terms of its ability to achieve significant energy savings at reasonable costs, and has been compared to the effectiveness of the proposed regulation.

If no new regulatory action were taken, then no new standards would be implemented for dishwashers, clothes washers, and clothes dryers. This is essentially the "base case" for each appliance. In this case, between the years 1993 and 2015 there would be expected energy use of 40.54 Quads of primary energy, with no energy savings and a zero net present value.

Several alternatives to the base case can be grouped under the heading of informational action. They include consumer product labeling and DOE's public education and information program. Both of these alternatives are mandated by the Act. One base case alternative would be to estimate the energy conservation potential of enhancing these programs. To model this possibility, the Department assumed that market discount rates would be lowered by five percent for purchasers of these three products. This resulted in energy savings equal to 2.32 Quads, with expected consumption equal to 38.22 Quads. The net present value is estimated to be $3.05 billion.

Another method of setting standards would entail requiring that certain design options be used on each product, i.e., prescriptive standards. For these three products, this involved assuming level 1 standards, i.e., improved food filters for dishwashers, elimination of warm rinse options for clothes washers, and temperature termination for clothes dryers. This resulted in energy consumption, between 1993 and 2015, of 38.95 Quads, and savings of 1.59 Quads. The net present value, in 1987 dollars, was $3.02 billion.

Various financial incentive alternatives were tested. These included tax credits and rebates to consumers, as well as tax credits to manufacturers. The tax credits to consumers were assumed to be 15 percent of the increased cost of higher energy efficiency features of these appliances, while the rebates were assumed to be 15 percent of the increase in equipment prices. The tax credits to consumers showed a sizable change from the base case, i.e., this alternative would save 2.30 Quads with a net present value of $3.22 billion. Consumer rebates also showed sizable changes; they would save 2.29 Quads with a net present value of $3.42 billion.

Another financial incentive that was considered was tax credits to manufacturers for the production of energy-efficient dishwashers, clothes washers, and clothes dryers. In this scenario, an investment tax credit (ITC) of 20 percent was assumed. The tax credits to manufacturers had almost no effect, since the energy consumption estimates are 39.99 Quads with savings equal to .55 Quad, and a net present value equal to $52 million.

The impact of this scenario is so small because the ITC was applicable only to the tooling and machinery costs of the firms, i.e., the firms' fixed costs, and most of the design improvements that would likely be adopted to manufacture more efficient versions of these products would involve purchased parts. Expenses for purchased parts would not be eligible for an ITC.

Two scenarios of voluntary energy efficiency targets were examined; in the first one, the proposed energy conservation standards were assumed to be voluntarily adopted by all the relevant manufacturers in five years, and, in the second scenario, the proposed standards were assumed to be adopted in 10 years. In these scenarios, the five year delay would result in energy consumption by these appliances of 39.19 Quads, energy savings of 1.35 Quads, and a net present value of $2.22 billion; the 10 year delay would result in 40.04 Quads of energy being consumed, .50 Quad being saved, and a net present value of $940 million.

These scenarios assume that there would be universal voluntary adoption of the energy conservation standards by these appliance manufacturers, an assumption for which there is no reasonable assurance.

Lastly, all of these alternatives must be gauged against the performance standards that are being proposed in this notice. Such performance standards would result in energy consumption of dishwashers, clothes washers, and clothes dryers to total an estimated 38.07 Quads of primary energy over the 1993–2015 time period. Savings would be 2.47 Quads, and the net present value would be an expected $4.83 billion.

As noted at the beginning of this section, none of the alternatives that were considered for these products would save as much energy as the proposed rule.

c. "Takings" Assessment Review

Executive Order 12630 (53 FR 8859, March 18, 1988) directs that, in proposing a regulation, an agency conduct a "takings" review. Such a review is intended to assist agencies in avoiding unnecessary takings and help such agencies account for those takings that are necessitated by statutory mandate.

For purposes of the Order:

"Policies that have takings implications" refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property.

It appears that there are three parts of the appliance standards program that conceivably could be viewed as having "takings implications." These are testing and certification requirements, the impacts of standard levels, and possible DOE testing of products for validation.

With regard to the first part, namely, testing and certification, the Department believes that such a requirement, implementing a long-established statutory mandate in a manner calculated to minimize adverse economic impacts, does not constitute a "taking" of private property.

Similarly, the Department's possible validation testing does not constitute a "taking," within the limitations described above.

Lastly, the impact of standards could be viewed by some as a "taking." Nevertheless, the Department believes that the fact that while an energy conservation standard may limit some manufacturers in the range of appliance efficiencies that they can produce, such narrowing of the energy efficiency range does not constitute a "taking" in the sense described above.

In short, in none of the three parts of the appliance standards program does the Department believe that the provisions of E.O. 12630 pertain.

d. Federalism Review

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

The Department believes that today's regulation, when finalized, would not have a substantial direct effect on State governments. Firstly, State regulations that may have existed on these three products were preempted by the Federal standards established in NAECA; secondly, States could have petitioned the Department for exemption from such preemption, and none has done that; lastly, today's regulation, when finalized, amends (or, in one case reaffirms) the Federal standards from NAECA.

e. Regulatory Flexibility Review

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires an assessment of the impact of proposed regulations on small businesses. Small businesses are defined as those firms within an industry that are privately owned and less dominant in the market.

In this rulemaking, three different products and, hence, industries, are being addressed. Regulatory flexibility issues will be discussed for the dishwasher, clothes washer, and clothes dryer industries for which standards are being proposed.

First, the energy conservation standard of an improved food filter on those dishwasher manufacturers, who could be considered small businesses, will be discussed.

Dishwasher manufacturing firms may be divided into two groups: those that compete on large sales-volume products and those that compete in small, specialized markets. Small firms are generally forced to specialize in small market niches that offer some protection from the cost advantage that large firms hold when they can produce in volume. This effect can even be observed among the major producers in the tendency of the smaller major producers to produce somewhat more specialized products.

There are significant differences among the major firms. As learned from discussions with industry consultants, average cost decreases with firm size. Thus, the industry has economies of scale, and large firms (to the extent that their facilities are up-to-date) have lower average costs than small firms. This fact, coupled with increasing competitiveness of the national and international markets, probably accounts for the continuing consolidation that has been occurring for several decades. The fact that the consolidation has been producing larger firms strongly corroborates the finding that large firms have a cost advantage.

A principal implication of consolidation is that the smaller of the major firms will be, on average, in more danger of failing or being bought out than will the large firms. Because of the greater precariousness of smaller firms, any decrease in average profitability is more likely to damage seriously a smaller firm, and an increase in average profitability is more likely to mean the difference between success and failure for a smaller firm.

From the point of view of competitiveness, a decrease in average profitability could speed up the process of consolidation, producing a less competitive industry, while an increase in average profitability could help maintain the current levels of competition. Either effect might well be temporary, because, in the long-run, the number of firms should be determined by the industry's cost structure and by the way a single firm's elasticity of demand relates to the number of competing firms.

Although larger firms have a cost advantage due to economies of scale, the very small firms in the dishwasher manufacturing industry have found market niches in which to survive profitably. The small firms sell dishwashers primarily to the replacement and kitchen remodel markets, which tend to offer higher profit margins than does the builder market. As a result, it is possible, according to industry consultants, that small firms would have an easier time passing through increased variable costs that result from the proposed standard, and thus may be affected more positively than the large firms.

Therefore, the fact that this energy conservation standard on dishwashers is not likely to "have a significant economic impact on a substantial number of small entities" suggests that the provisions of section 605.(b) of the Regulatory Flexibility Act pertain. These provisions state that neither an initial nor a final regulatory flexibility analysis need be performed for a proposed or final rule "if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

Secondly, the proposed energy conservation standards on clothes washer manufacturers needs to be addressed. The proposed standard is an efficiency level that was achieved by the elimination of a warm rinse option. For those manufacturers who choose to meet the standard by eliminating that option, there will be essentially a zero cost increase resulting from the standard. Consequently, since this standard may have no effect on any manufacturer, large or small, the Department believes that in this industry, too, the provisions of section 605.(b) of the Regulatory Flexibility Act pertain.

Lastly, the proposed energy conservation standards on electric clothes dryer manufacturers need to be addressed. It is not at all clear that the prescriptive standard levels being proposed will "have a significant economic impact on a substantial number of small entities." The LBL–MIM indicates, through its prediction on an increase in typical ROE, that the proposed standards are likely to slow down the consolidation process temporarily. This would lead to a temporary slowing down of the continuing decrease in this industry's competitiveness. However, this prediction would be tempered by the observation that if standards were technologically difficult to meet they could hurt some smaller firms the most, since smaller firms tend to have less sophisticated research and development capabilities. This should not be a serious consideration for regulatory flexibility, since the proposed standard levels on clothes dryers will not be technologically difficult to meet.

Therefore, since the prescriptive standards that are being proposed are expected to increase the clothes dryer

manufacturers' ROE, and slow down the industry's consolidation, the Department believes that section 605.(b) of the Regulatory Flexibility Act pertains here, also.

Thus, for each of these three industries, the Department is concluding that the proposed standard level will not "have a significant economic impact on a substantial number of small entities," and that preparation of neither an initial nor a final regulatory flexibility analysis need be performed. DOE welcomes comments on this conclusion.

V. Public Comment Procedures

a. Participation in Rulemaking.

DOE encourages the maximum level of public participation possible in this rulemaking. Individual consumers, representatives of consumer groups, manufacturers, associations, States or other governmental entities, utilities, retailers, distributors, manufacturers, and others are urged to submit written statements on the proposal. The Department also encourages interested persons to participate in the public hearing to be held in Washington, DC, at the time and place indicated at the beginning of this notice.

The DOE has established a comment period of 60 days following publication of this notice for persons to comment on this proposal. All public comments received and the transcript of the public hearing will be available for review in the DOE Freedom of Information Reading Room.

b. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth at the beginning of this notice and below.

Comments should be labeled both on the envelope and on the documents, "Three Products Rulemaking (Docket No. CE–RM–88–101)," and must be received by the date specified at the beginning of this notice. Ten copies are requested to be submitted. All comments received by the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed regulation.

All written comments received on the proposed rule will be available for public inspection at the Freedom of Information Reading Room, as provided at the beginning of this notice.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential and exempt by law from public disclosure should submit one complete copy of the document and 10 copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to DOE, when evaluating requests to treat information as confidential include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

c. Public Hearing

1. *Procedure for Submitting Requests to Speak.* The time and place of the public hearing are indicated at the beginning of this notice. DOE invites any person who has an interest in these proceedings, or who is a representative of a group or class of persons having an interest, to make a written request for an opportunity to make an oral presentation at the public hearing. Such requests should be labeled both on the letter and the envelope, "Three Products Rulemaking (Docket No. CE–RM–88–101)," and should be sent to the address, and must be received by the time specified, at the beginning of this notice. Requests may be hand-delivered or telephoned in to such address between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The person making the request should briefly describe the interest concerned and, if appropriate, state why he or she is a proper representative of the group or class of persons that has such an interest, and give a telephone number where he or she may be contacted. Each person selected to be heard will be so notified by DOE as to the time they will be speaking.

Each person selected to be heard is requested to submit 10 copies of the statement at the beginning of the hearing. In the event any persons wishing to testify cannot meet this requirement, that person may make alternative arrangements with the Office of Hearings and Dockets in advance by so indicating in the letter requesting to make an oral presentation.

2. *Conduct of Hearing.* DOE reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 20 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 533 and section 336 of the Act. At the conclusion of all initial oral statements at each day of the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statement will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any interested person may submit, to the presiding official, written questions to be asked of any person making a statement at the hearing. The presiding official will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Further questioning of speakers will be permitted by DOE. The presiding official will afford any interested person an opportunity to question, with respect to disputed issues of material fact, other interested persons who made oral presentations, as well as employees of the United States Government who have made written or oral presentations, relating to the proposed rule. This opportunity will be afforded after any rebuttal statements, to the extent that the presiding official determines that such questioning is likely to result in a more timely and effective resolution of disputed issues of material fact. If the time provided is insufficient or inconvenient, DOE will consider affording an additional opportunity for questioning at a mutually convenient time. Persons interested in making use of this opportunity must submit their request to the presiding official no later than shortly after the completion of any rebuttal statements and be prepared to state specific justification, including why the issue is one of disputed fact and how the proposed questions would expedite their resolution.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding official.

A transcript of the hearing will be made, and the entire record of this rulemaking, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice. Any person may purchase a copy of the transcript from the transcribing reporter.

d. Issues Requested for Comment

As discussed above in today's notice, DOE has identified a number of issues where comments are requested. These issues include, but are not limited to the following:

- The baseline units and the base cases;
- Market share elasticities;
- Usage elasticities;
- Appropriate discount rates, including those for consumer analyses (LCC and LBL–REM) and the use of a social discount rate (LBL–REM);
- Energy price forecasts;
- The characterization of prototypical firms for the manufacturer impact analysis (LBL–MIM);
- Efficiency forecasts for these three products;
- Any lessening of product utility, especially with respect to the elimination of warm water rinse in clothes washers;
- The effects on forecasts due to the use of national average energy prices and usage rates;
- The effects of standards on manufacturer's incentives to develop innovative products and product features; and
- Any uncertainties in modeling especially product usage, e.g., changes in usage rates as shown by survey data or changes in usage of features such as no-heat dry options on dishwashers.

In consideration of the foregoing, it is proposed to amend Part 430 of Chapter II of Title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, DC, July 13, 1989.

John R. Berg,

Assistant Secretary, Conservation and Renewable Energy.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

The authority citation for Part 430 continues to read as follows:

Authority: Energy Policy and Conservation Act, Title III, Part B, as amended by National Energy Conservation Policy Act, Title IV, Part 2, National Appliance Energy Conservation Act of 1987, and National Appliance Energy Conservation Amendments of 1988 (42 U.S.C. 6291–6309).

* * * * *

2. Section 430.32 is amended by revising paragraphs (f), (g), and (h) to read as follows:

§ 430.32 Energy conservation standards.

The energy conservation standards for the covered product classes are:

* * * * *

(f) *Dishwashers.*

Product class	Energy factor (loads/kWh) effective January 1, 1993
1. Compact Dishwasher (115V).	0.58.
2. Standard Dishwasher (115V).	0.41.
3. Water Heating Dishwasher, Compact (115V).	Must be equipped with option to dry without heat.
4. Water Heating Dishwasher, Standard (115V).	0.44.
5. Water Heating Dishwasher, Compact (220V).	Must be equipped with option to dry without heat.
6. Water Heating Dishwasher, Standard (220V).	Must be equipped with option to dry without heat.

(g) *Clothes washers.*

Product class	Energy factor (cu. ft./kWh/cycle) effective January 1, 1993
1. Top Loading, Compact (1.6 ft.³ capacity or less).	Must have an unheated rinse option to 1.02 cu. ft./kWh/cycle.
2. Top Loading, Standard (1.61 to 2.74 ft.³ capacity or greater).	Must have an unheated rinse option to 1.32 cu. ft./kWh/cycle.
3. Top Loading, Large (2.75 ft.³ capacity or greater).	Must have an unheated rinse option to 1.21 cu. ft./kWh/cycle.
4. Top Loading, Semi-Automatic.	Must have an unheated rinse option.
5. Front Loading	Must have an unheated rinse option.
6. Suds Saver	Must have an unheated rinse option.

(h) *Clothes dryers.*

Product class	Requirement—January 1, 1993
1. Electric, Standard	Shall have moisture or temperature termination.
2. Electric, Compact (120V).	Shall have moisture or temperature termination.
3. Electric, Compact (240V).	Shall have moisture or temperature termination.
4. Electric Heat Pump [Reserved].	
5. Gas, Standard	Shall have moisture or temperature termination.
6. Gas, Compact	Shall have moisture or temperature termination.

* * * * *

[FR Doc. 89–18537 Filed 8–8–89; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

[Docket Number CE-RM-88-101]

Energy Conservation Program for Consumer Products

AGENCY: Department of Energy.

ACTION: Finding of No Significant Impact (FONSI) for Candidate Energy Conservation Standards for Dishwashers, Clothes Washers and Clothes Dryers.

SUMMARY: The Energy Policy and Conservation Act (EPCA), as amended by the National Energy Conservation Policy Act (NECPA) and the National Appliance Energy Conservation Act (NAECA), prescribes energy conservation standards for certain major household appliances, and requires the Department of Energy (DOE) to administer an energy conservation program for these products. As a general matter, these federal standards preempt State and local standards and any other State and local requirements with respect to energy efficiency or energy use of these products. Among other things, NAECA requires DOE to consider amending the energy conservation standards for dishwashers, clothes washers and clothes dryers.

Based on an Environmental Assessment (EA), (DOE/EA-0386), DOE has determined that the proposal of any of the candidate amended energy efficiency standards for dishwashers, clothes washers and clothes dryers would not be a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA). Therefore an Environmental Impact Statement is not required.

Public Availability: The EA is published within the Technical Support Document for the range of candidate amended energy efficiency standards and is available on request at the following address: Hearings and Dockets Branch, Office of Conservation and Renewable Energy, U.S. Department of Energy, Docket Number CE-RM-88-101, 1000 Independence Avenue. SW., Room 6B-025. CE-43.1 Washington, DC 20585 (202) 586-9320.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy (CE-132), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Donald E. Henninger, U.S. Department of Energy, Office of NEPA Project Assistance (EH-25), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2410.

Martha S. Crosland, U.S. Department of Energy, Office of General Counsel (GC-11), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6947.

SUPPLEMENTARY INFORMATION: DOE prepared an Environmental Assessment (DOE/EA-0386) on the candidate standards for amended energy-efficiency standards pursuant to the National Environmental Policy Act of 1969, as amended, Pub. L. 91-190, 40 U.S.C. 4221 et seq., and the implementing regulations of the Council on Environmental Quality [40 CFR Parts 1500-1508]. The EA addresses the possible incremental environmental effects attributable to the application of a range of candidate amended standards (in the form of engineering changes) to the design of dishwashers, clothes washers, and clothes dryers. The effects of the candidate amended standards range from no change to a slight improvement in the environment as discussed in the General Findings below.

Approach Used in the Analysis

The EA evaluates the environmental impacts resulting from the proposed setting of a range of amended energy-efficiency standards for dishwashers, clothes washers, and clothes dryers in accordance with the NAECA. A complete description of the Engineering and Economic Analysis of the range of amended standards may be found in the Technical Support Document (TSD).

The main environmental concern addressed is emissions from fossil fueled electricity generation. Each of the design options for dishwashers, clothes washers and clothes dryers would result in decreased electricity use and, therefore, reduced powerplant emissions. The proposed efficiency standards would decrease air pollution by decreasing future energy demand. The greatest decreases in air pollution would be in sulfur oxides.

Some design options for dishwashers would also reduce water consumption, resulting in lower in-house emissions from fuel-burning water heaters.

An in-depth analysis of particulate emissions is not included in the EA because particulate emissions are minor compared to sulfur and nitrogen oxide emissions. For example, in 1984 power plants contributed only 7 percent of U.S. total particulate emissions as compared to contributions of 83 percent and 34 percent of total SO_2 and NO_2 emissions, respectively (EPA, 1986)

General Findings

1. Dishwashers

The greatest environmental impacts of the candidate standards would result from generating less electricity. Power plants' main environmental effects on air and water result from emissions of sulfur oxides (SO_x), nitrogen oxides (NO_x), and carbon dioxide (CO_2). All SO_x and NO_x emissions are expressed in the equivalent weights of SO_2 and NO_2, respectively. Carbon dioxide emissions are commonly expressed as tons of carbon. General findings are summarized below.

A. Sulfur Dioxide

The greatest decrease in air pollution would occur for sulfur dioxide. The range of expected reductions from the candidate standards is from 4,442 tons, or 0.03 percent of the U.S. SO_2 emissions expected to be emitted by power plants in the year 2010, to a level of 9,523 tons, or 0.06 percent of the expected U.S. power plant emissions of SO_2 in 2010.

B. Nitrogen Dioxide

The expected reductions in NO_2 from the candidate standard levels range from 3,299 tons, or 0.03 percent of the total NO_2 emissions expected to be emitted by power plants in the year 2010, to a level of 6,869 tons, or 0.07 percent of the expected U.S. power plant emissions of NO_2 in 2010.

C. Carbon Dioxide

The expected reductions in CO_2 from the candidate standard levels range from the equivalent of 350,000 tons, or 0.02 percent of the total CO_2 emissions expected to be emitted in the U.S. in the year 2010, to a level of 704,000 tons, or 0.04 percent of expected U.S. emissions of CO_2 in 2010.

The candidate dishwasher standards would also save 197 billion to 276 billion gallons of water during the 1993-2015 time period.

None of the environmental impacts from the savings of SO_2, NO_2, or CO_2 from the candidate standards is considered to be significant.

2. Clothes Washers

The greatest environmental impact of the candidate standards for clothes washers would be a decrease in electricity consumption. General findings are summarized below:

A. Sulfur Dioxide

The expected reductions in SO_2 from the candidate standard levels range

from 8,943 tons, or 0.05 percent of the expected U.S. power plant emissions of SO_2 in 2010, to a level of 21,526 tons or 0.13 percent of the U.S. SO_2 emissions expected to be emitted by power plants in the year 2010.

B. Nitrogen Dioxide

The expected reductions in NO_2 from the candidate standard levels range from 6,759 tons, or .07 percent of the U.S. NO_2 emissions expected to be emitted by power plants in the year 2010, to a level of 15,875 tons, or 0.16 percent of 2010 emissions of NO_2 from U.S. power plants.

C. Carbon Dioxide

The expected reductions in CO_2 from the candidate standard levels range from 736,000 tons, or 0.04 percent of the expected CO_2 emissions in the U.S. in 2010, to a level of 1,677,000 tons, or C.09 percent of the CO_2 emissions expected in the U.S. in the year 2010.

The environmental impacts from the savings of SO_2, NO_2, or CO_2 from the candidate standards are considered to be insignificant.

3. Clothes Dryers

The greatest impact of the candidate standard levels for clothes dryers is a decrease in electricity consumption. General findings are summarized below:

A. Sulfur Dioxide

The expected reductions in SO_2 from the candidate standard levels range from 10,552 tons, or 0.06 percent of the SO_2 emissions expected from U.S. power plants in the year 2010, to a level of 38,230 tons, which would represent 0.22 percent of SO_2 emissions by U.S. power plants in 2010.

B. Nitrogen Dioxide

The expected reductions in NO_2 from the candidate standard levels range from 7,020 tons, or 0.07 percent of the U.S. NO_2 emissions expected to be emitted by U.S. power plants in the year 2010, to a level of 25,641 tons, representing 0.25 percent of NO_2 emissions by U.S. power plants in 2010.

C. Carbon Dioxide

The expected reductions in CO_2 from the candidate standard levels range from 638,000 tons, or 0.04 tons of the CO_2 emissions expected to be emitted in the U.S. in the year 2010, to a level of 2,398,000 tons, or 0.13 percent of U.S. emissions of CO_2 in 2010.

The environmental impacts from the savings of SO_2, NO_2, or CO_2 from the candidate standards are considered to be insignificant.

In conclusion, no levels of the candidate standards for the appliances, individually or cumulatively, would result in significant reductions of SO_2, NO_2, or CO_2 and therefore none would result in significant environmental impacts.

Determination

Based upon the EA, DOE has determined that the proposal of any of the candidate amended energy-efficiency standards for dishwashers, clothes dryers and clothes washers would not constitute a major federal action significantly affecting the quality of the human environment, within the meaning of NEPA. Therefore, an Environmental Impact Statement is not required.

Issued in Washington, DC, May 30, 1989.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 89-18536 Filed 8-8-89; 8:45 am]

BILLING CODE 6450-01-M

federal register

Wednesday
August 9, 1989

Part III

Department of Education

34 CFR Part 345

State Grants Program for Technology-Related Assistance for Individuals With Disabilities; Rule

DEPARTMENT OF EDUCATION

34 CFR Part 345

RIN 1820-AA84

State Grants Program for Technology-Related Assistance for Individuals With Disabilities

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary announces final regulations to implement the Technology-Related Assistance for Individuals with Disabilities Act of 1988. The regulations implement Title I of the Act, a program of State grants for the development of consumer-responsive statewide programs of technology-related assistance for individuals with disabilities. The rules state the purposes of the program, the types of activities that may be supported, application requirements, the selection criteria by which the Secretary evaluates applications, and the requirements that must be met by States that receive grants under the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland; Telephone: (202) 732-1139; deaf or hearing-impaired persons who use telecommunication devices for the deaf (TDD) may call (202) 732-1198.

SUPPLEMENTARY INFORMATION: In August 1988, Congress passed, and the President signed, the Technology-Related Assistance Act for Individuals with Disabilities (Pub. L. 100-407). The Act is based upon the finding that advances in modern technology can enable some persons with disabilities to have greater control over their own lives, to enhance their participation in education, employment, family, and community activities, and to otherwise benefit from opportunities that are commonly available to individuals who do not have disabilities. Title I of the Act, the subject of these final regulations, authorizes financial assistance to States to help each State develop a consumer-responsive, statewide program of technology-related assistance for individuals with disabilities.

The regulations incorporate the seven statutory purposes of the program and provide that a State must address each of these purposes in its consumer-responsive, comprehensive statewide program. The regulations further provide that, in accordance with the statutory requirements, the Governor must designate a single responsible entity to apply for a grant and administer the activities under the grant, and must designate a public agency to receive and disburse the funds and maintain fiscal controls.

From time to time, the Secretary will publish a notice in the **Federal Register** requesting applications for development grants. In an application for a development grant, a State must provide, among other things, a preliminary assessment of its need for technology-related assistance and a description of its existing efforts to establish a consumer-responsive, comprehensive statewide system for the delivery of technology-related assistance. Each State must also state the goals and objectives of its proposed program under the development grant. A development grant will be awarded for a three-year period.

The Secretary will refer complete applications to one or more groups of expert peer reviewers, which will evaluate the applications according to the selection criteria in § 345.31. The Secretary will seek the involvement as members of the peer review panels individuals with disabilities, family members of individuals with disabilities, and others who have expertise, by reason of training or personal experience, in such areas as the provision of technology-related services or assistive devices; public administration; development and implementation of public systems; evaluation of service delivery programs; education, training, and public information; development and maintenance of information systems; provision of services to individuals with disabilities and their families; health care and benefits administration; use of assistive technology; and other relevant and appropriate areas.

The selection criteria for applications for development grants, which are detailed in the regulations at § 345.31, include the extent to which a State: demonstrates a comprehensive assessment of the need for a statewide, consumer-responsive program; presents measurable goals and objectives that address the stated needs; presents a plan of activities that is likely to accomplish the goals and objectives; presents an adequate management plan, including staffing, resource deployment, and coordination; presents an adequate plan of evaluation; describes substantive roles for individuals with disabilities or their families or representatives in the development and implementation of the State's program under the grant; and describes extensive coordination among appropriate State, public, and private agencies in all phases of the project.

In the third year of its development grant, a State may apply for an extension grant. In its application for an extension grant, a State must include a followup needs assessment and a description of the activities and accomplishments under the development grant. States are required to collect data and document the extent to which they have made progress toward the goals specified in the application for the development grant. An application for an extension grant also must include an assessment of the degree of satisfaction of individuals with disabilities, their families or representatives, public and private service providers, employers, and other appropriate individuals with the activities under the development grant and with their involvement in the development and implementation of the statewide program of technology-related assistance under the grant.

The Secretary may award extension grants to States that have made significant progress under the development grant. Applications for extension grants will be evaluated based on the application that is submitted and the Secretary's assessment of the extent to which the State made significant progress toward achieving the goals and objectives under its development grant.

The regulations provide that the Secretary will base the assessment of progress on the results of a site visit to the State's program and the documentation of progress the State has presented in its extension grant application.

The rules clarify the obligations of a grantee with respect to fiscal accountability, reporting, and cooperation with the Secretary in the discharge of the Secretary's responsibilities under this program.

Finally, the rules outline the penalties to which a State may be subject if it violates the requirements of this part. There are no program-specific appeals procedures in this part because general Department of Education procedures governing the withholding and recovery of funds apply to any State that is found to be in noncompliance with the requirements of this program as a result of a site visit or failure to supply

relevant information that the Secretary requires.

The Department of Education's responsibilities under this Act will be administered by the National Institute on Disability and Rehabilitation Research (NIDRR), created under Title II of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602, 98-221, and 99-506. The administration of the program will be governed generally by the Education Department General Administrative Regulations (EDGAR), with certain specific exceptions. In specifying the regulations that apply to this program, the Secretary has excluded 34 CFR 80.32(a) and 34 CFR 80.33(a) because the statute specifically encourages transfer of title to equipment and supplies, and § 75.618 because the statute authorizes grantees to lease equipment.

On April 12, 1989, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** at 54 FR 14773.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, the Department received 20 letters of comment. An analysis of the comments and of the changes in the regulations since the publication of the NPRM is published as an appendix to these final regulations. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. Because these regulations would affect only States and entities designated to act on behalf of States, the regulations would not have an impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 345

Administrative practice and procedure, Education, Educational research, Grant programs—education, Handicapped, Reporting and recordkeeping requirements.

Dated: July 5, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.224, National Institute on Disability and Rehabilitation Research)

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 345, to read as follows:

PART 345—STATE GRANTS PROGRAM FOR TECHNOLOGY-RELATED ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES

Subpart A—General

Sec.
345.1 What is the State Grants Program for Technology-Related Assistance for Individuals with Disabilities?
345.2 What are the purposes of the State grants program for technology-related assistance for individuals with disabilities?
345.3 What are the types of awards under this program?
345.4 Who is eligible to receive assistance under this program?
345.5 What regulations apply to this program?
345.6 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support Under this Program?

345.10 What are the functions of projects funded under this program?
345.11 What types of activities are authorized under this program?

Subpart C—How Does a State Apply for a Grant?

345.20 What is the content of an application for a development grant?
345.21 What is the content of an application for an extension grant?

Subpart D—How Does the Secretary Make a Grant?

345.30 How does the Secretary evaluate an application for a development grant under this program?
345.31 What selection criteria are used for development grants under this program?
345.32 What other factors does the Secretary take into consideration in making development grant awards under this program?
345.33 What is the review process for an application for an extension grant?

Subpart E—What Conditions Must Be Met After an Award?

345.40 What are the reporting requirements for the recipient of a development grant?
345.41 What are the reporting requirements for the recipient of an extension grant?
345.42 Who retains title to technology devices provided under this program?
345.43 What are the requirements for grantee participation in the Secretary's progress assessments?
345.44 What are the restrictions on the use of funds under this program?
345.45 What is the relation between this program and related assistance under other programs?
345.46 What are the requirements for participation in the Secretary's evaluation of this program?

Subpart F—What Compliance Procedures May the Secretary Use?

345.50 Who is subject to a corrective action plan?
345.51 What penalties may the Secretary impose on a grantee that is found not to be in compliance?

Authority: 29 U.S.C. 2201-2271, unless otherwise noted.

Subpart A—General

§ 345.1 What is the State Grants Program for Technology-Related Assistance for Individuals with Disabilities?

This program provides financial assistance to States to assist each State to develop and implement a consumer-responsive, comprehensive statewide program of technology-related assistance for individuals with disabilities that accomplishes the purposes described in § 345.2.

(Authority: 29 U.S.C. 2211(a))

§ 345.2 What are the purposes of the State grants program for technology-related assistance for individuals with disabilities?

The purposes of this program are to create and support consumer-responsive, comprehensive, statewide programs of technology-related assistance that are designed to increase—

(a) Awareness of the needs of individuals with disabilities for assistive technology devices and assistive technology services;

(b) Awareness of policies, practices, and procedures that facilitate or impede the availability or provision of assistive technology devices and assistive technology services;

(c) The availability of and funding for the provision of assistive technology

devices and assistive technology services for individuals with disabilities;

(d) Awareness and knowledge of the efficacy of assistive technology devices and assistive technology services among individuals with disabilities, their families or representatives, individuals who work for public agencies and private entities that have contact with individuals with disabilities (including insurers), employers, and other appropriate individuals;

(e) The capacity of public and private entities to provide technology-related assistance, particularly assistive technology devices and assistive technology services, and to pay for the provision of assistive technology devices and assistive technology services;

(f) Coordination among State agencies and public and private entities that provide technology-related assistance, particularly assistive technology devices and assistive technology services; and

(g) The probability that individuals of all ages with disabilities will, to the extent appropriate, be able to secure and maintain possession of assistive technology devices as they make the transition between services offered by human service agencies or between settings of daily living.

(Authority: 29 U.S.C. 2201(b)(1))

§ 345.3 What are the types of awards under this program?

Under this program, the Secretary—

(a) Awards three-year development grants to assist States in developing and implementing statewide programs that accomplish the purposes in § 345.2; and

(b) May award a two-year extension grant to any State that demonstrates significant progress under the development grant in developing and implementing a statewide program that accomplishes the purposes in § 345.2.

(Authority: 29 U.S.C. 2212 (a) and 2213(a))

§ 345.4 Who is eligible to receive assistance under this program?

(a) A State is eligible to receive a grant under this program, providing that the Governor has designated—

(1) An office, agency, entity, or individual to be responsible for preparing the application and carrying out the purposes and activities of the program under the grant; and

(2) A public agency to be responsible for receiving and disbursing to that office, agency, entity, or individual the funds received under the program and maintaining fiscal accountability and responsibility.

(b) A State that is receiving funding for a third year under a development grant may apply for an extension grant, pursuant to § 345.21.

(Authority: 29 U.S.C. 2212 (a) and (e)(1) and 2213(a))

§ 345.5 What regulations apply to this program?

The following regulations apply to the State Grants Program for Technology-Related Assistance for Individuals with Disabilities:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs) except § 75.618, Part 77 (Definitions That Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), except §§ 80.32(a) and 80.33(a), Part 81 (General Education Provisions Act—Enforcement), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this Part 345.

(Authority: 29 U.S.C. 2201–2217)

§ 345.6 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Grant period
Nonprofit
Nonpublic
Private
Project
Project period
Public

(b) *Definitions in the Technology-Related Assistance for individuals with Disabilities Act of 1988.* The following terms used in this part are defined in section 3 of the Act:

Assistive technology device
Assistive technology service
Individual with disabilities
Institution of higher education
Secretary
State
Technology-related assistance
Underserved group

(c) *Other definitions.* The following definition also applies to this part:

"Major life functions" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(Authority: 29 U.S.C. 2201–2217)

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 345.10 What are the functions of projects funded under this program?

The following functions may be carried out by States in accomplishing the purposes described in § 345.2:

(a) Identification of individuals with disabilities, including individuals from underserved groups, residing in the State, and an ongoing assessment of the needs of those individuals with disabilities for technology-related assistance, which may be based on existing data.

(b) Identification and coordination of Federal and State policies, resources, and services related to the provision of technology-related assistance to individuals with disabilities, including entering into interagency agreements.

(c) Provision to individuals with disabilities of assistive technology devices and services that will mitigate the effects of those disabilities, and payment for these devices and services.

(d) Dissemination of information about technology-related assistance and funding sources for assistive technology devices and services to individuals with disabilities, their families or representatives, employers, individuals who work for public agencies or private entities that have contact with individuals with disabilities (including insurers), and other appropriate individuals.

(e) Provision of training and technical assistance related to assistive technology devices and services to individuals with disabilities, their families or representatives, employers, and individuals who work for public agencies or private entities that have contact with individuals with disabilities (including insurers), and other appropriate individuals.

(f) Conduct of a public awareness program focusing on the efficacy and availability of assistive technology services and devices for individuals with disabilities.

(g) Provision of assistance to statewide and community-based organizations that provide assistive technology services to individuals with disabilities.

(h) Support for the establishment or continuation of partnerships and cooperative initiatives between public agencies and both nonprofit and for-profit entities to facilitate the development and implementation of a statewide program of technology-related assistance for individuals with disabilities.

(i) Actions to develop standards or, as appropriate, apply existing standards to ensure the availability of qualified personnel.

(j) Compilation and evaluation of appropriate data relating to the program.

(k) The establishment of procedures providing for the active involvement of individuals with disabilities, their families or representatives, and other appropriate individuals in the development and implementation of the program, and for the active involvement, to the maximum extent appropriate, of individuals with disabilities who use assistive technology devices and assistive technology services in decisions relating to these assistive technology devices and assistive technology services.

(l) Any other functions approved by the Secretary that further the purposes in § 345.2.

(Authority: 29 U.S.C. 2211(b))

§ 345.11 What type of activities are authorized under this program?

In carrying out the purposes described in § 345.2 and the functions described in § 345.10, a State may undertake one or more of the following activities:

(a) Develop and implement model systems for the delivery of assistive technology devices and services to individuals with disabilities that, if successful, could be replicated or made generally applicable, and that may include—

(1) The purchase, lease, or other acquisition of assistive technology devices and services, or payment for the provision of assistive technology devices and services;

(2) The provision of counselors, including peer counselors, to assist individuals with disabilities and their families to obtain assistive technology devices and services;

(3) Provisions for the involvement of individuals with disabilities or, if appropriate, their families or representatives in the development and operation of the model delivery system; and

(4) The evaluation of the efficacy of the model service delivery system.

(b) Conduct a statewide needs assessment, which may be based on existing data and may include—

(1) Estimates of the number of individuals with disabilities within the State, categorized by residence, type and extent of disabilities, age, race, gender, and ethnicity;

(2) A description of the efforts during fiscal year 1987 to provide technology-related assistance to individuals with disabilities, including the devices and services provided and the number and types of individuals receiving appropriate devices and services;

(3) An estimate of the number of individuals with disabilities who are in need of assistive technology devices and services and a description of the types of assistance needed;

(4) An estimate of the cost of providing technology-related assistance to all individuals with disabilities who need technology-related assistance;

(5) A description of State and local public and private resources, including insurance, available to establish a statewide program of technology-related assistance;

(6) The identification of State and Federal policies that facilitate or interfere with the operation of a statewide system of technology-related assistance;

(7) A description of alternative State-financed systems to subsidize the provision of technology-related assistance, including loans for assistive technology devices, a low-interest loan fund, a revolving fund, a loan insurance program, or a partnership with private entities for the purchase, lease, or other acquisition of assistive technology devices and services, and a description of the eligibility criteria under these alternative systems;

(8) A description of the State's procurement policies and the extent to which those policies will ensure, to the extent practicable, the compatibility of assistive technology devices supplied as a result of this program with technology designed for general use by those in the population who are not disabled; and

(9) An inquiry into whether it is advantageous for either a State agency or a task force comprised of representatives from both the State and the private sector to study the practices of private companies offering health and disability insurance in the State with regard to the purchase, lease, or other acquisition of assistive technology devices and use of assistive technology services.

(c) Conduct or support a public awareness program designed to provide information on the efficacy and availability of assistive technology devices and services to individuals with disabilities, their families or representatives, individuals who work for public agencies and private entities that have contact with individuals with disabilities (including insurers), employers, and other appropriate individuals that may include—

(1) The development and dissemination of information relating to the nature of assistive technology devices and services including their cost, appropriateness, availability, and means of access, and the efficacy of assistive technology devices and services in enhancing the capacities of individuals with disabilities;

(2) Procedures for providing direct communication between public and private providers, including employers, of assistive technology devices and services; and

(3) The development and dissemination of information relating to the use of the public awareness program by individuals with disabilities, their family members or representatives, professionals who work in the field of technology-related assistance, and other appropriate individuals, and the nature of the inquiries these individuals have made.

(d) Encourage the creation of or support for the maintenance of a program of support groups among statewide or community-based organizations or systems that assist individuals with disabilities to use assistive technology devices or services.

(e) Provide or support a program of training and technical assistance relating to the use of assistive devices and assistive technology services to individuals with disabilities, their families or representatives, individuals who work for public agencies or private entities that have contact with individuals with disabilities, insurers, employers, and other appropriate individuals.

(f) Develop, operate, or expand a system for public access to information about technology-related assistance that may—

(1) Include information about assistive technology devices and services, and about the availability, costs, and sources of funds, and the individuals, organizations, and agencies capable of providing technology-related assistance to individuals with disabilities;

(2) Identify and classify existing funding sources, and conditions of and criteria for access to those sources, including any funding mechanisms or strategies developed by the State;

(3) Develop, compile, and categorize a catalog of print, braille, audio, video, captioned video, and other materials in various media that contain the information described in § 345.11(f)(1) so as to ensure accessibility to individuals with sensory and cognitive disabilities;

BEST COPY AVAILABLE

(4) Identify existing support groups and systems available to assist individuals with disabilities to make effective use of technology-related assistance; and

(5) Maintain a record of the extent to which citizens of the State use or make inquiries of this information system, and the nature of their inquiries.

(g) Develop cooperative agreements with other States to expand the capacity of the States to assist individuals of all ages with disabilities to learn about, acquire, use, maintain, adapt, and upgrade assistive technology devices and assistive technology services that these individuals need at home, school, work, or other environments that are part of daily living.

(h) Conduct any other activities necessary to developing, implementing, or evaluating the statewide program of technology-related assistance.

(Authority: 29 U.S.C. 2211(c))

Subpart C—How Does a State Apply for a Grant?

§ 345.20 What is the content of an application for a development grant?

(a) Applicants for development grants under this program shall include the following information in their applications:

(1) The designation by the Governor of the State of the office, agency, entity, or individual responsible for preparing the application; administering and supervising the use of amounts made available under the grant; planning and developing the statewide program of technology-related assistance; ensuring coordination between public and private agencies, including the entering into of interagency agreements; ensuring active, timely, and meaningful participation by individuals with disabilities and their families or representatives, and other appropriate individuals with respect to performing functions and carrying out activities under the grant; and delegating any of these responsibilities to one or more appropriate agencies, entities, or individuals.

(2) A description of the nature and extent of involvement of various State agencies in the preparation of the application and of their continuing role in the development of the statewide program of technology-related assistance.

(3) A description of the nature and extent of involvement of individuals not employed by any State agency, including individuals with disabilities, their families or representatives, and other appropriate individuals in the development of the application and the continuing role of these individuals in the development of the statewide program under the grant.

(4) A preliminary assessment of the needs of individuals with disabilities in the State, including individuals from underserved groups, and individuals in various geographic areas of the State for assistive technology services, devices, and support.

(5) A description of the State's current and previous efforts to develop a statewide program of technology-related assistance and an assessment of the effectiveness of those efforts.

(6) A description of the objectives, functions, goals, and activities planned under the grant and the expected outcomes at the end of the grant period with respect to a consumer-responsive statewide program consistent with the purposes of the program stated in § 345.2.

(7) A description of the State's and other resources that can be committed to the development of the statewide program, including a description of the types of collaborative relationships that will be developed among public and private entities in the State to further the purposes of the grant.

(8) A description of the procedures used for compiling information for the application and of the procedures that the State will use to collect information and conduct evaluations of progress and accomplishments under the grant.

(9) A description of State policies and procedures governing contracts, grants, and other arrangements with public and private entities and individuals for the purpose of developing a statewide system and providing assistive technology devices and services under the grant that will indicate that a State's policies and procedures are adequate to ensure appropriate fiscal accounting, recordkeeping and reporting, and program accountability by all parties receiving funds under the grant.

(b) Applicants for development grants shall include the following assurances in their applications:

(1) An assurance that, to the extent practicable, devices and services provided under the grant will be equitably distributed among all geographic areas of the State.

(2) An assurance that title to devices purchased with grant funds, including through subgrants or contracts, will be held by public agencies or will be transferred to the disabled individual or to a family member or guardian in accordance with the provisions of § 345.42.

(3) An assurance that funds received under the grant—

(i) Will be expended in accordance with the provisions of Title I of the Technology-Related Assistance for Individuals with Disabilities Act of 1988 and the regulations in this part;

(ii) Will be used to supplement amounts available from other sources for technology-related assistance;

(iii) Will not be used to pay a financial obligation for technology-related devices or services that would otherwise have been paid from other sources, unless that payment is made to prevent a delay in receipt of technology-related assistance by an individual and is subsequently reimbursed in full; and

(iv) Will not be used to supplant related assistance available under the Social Security Act (Titles II, V, XVI, XVIII, XIX, or XX), the Education of the Handicapped Act, the Rehabilitation Act of 1973, or laws pertaining to veterans benefits.

(4) An assurance that the State will adopt such fiscal control and accounting procedures as may be necessary to ensure proper disbursement of and accounting for funds under the grant, and that a public agency will control and administer all funds received under the grant and will not commingle monies received under the grant with State or other funds.

(5) An assurance that the State will make available information concerning technology-related assistance to individuals with disabilities and their families or representatives in a form that will enable those individuals to make effective use of the information; in preparing information for dissemination, will consider the needs of individuals with sensory and cognitive impairments; and will consider the provision of information through a variety of formats, including audio cassettes and braille materials, and visual materials such as captioned video cassettes and discs.

(6) An assurance that the State will prepare reports to the Secretary in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this program, and will keep such records, and allow access to those records as the Secretary may require to ensure the correctness and verification of information provided by the State in its application.

(c) Applicants for development grants shall provide any other related information and assurances that the Secretary may reasonably require.

(Authority: 29 U.S.C. 2212(e))

(Approved by the Office of Management and Budget under Control No. 1820-0027)

§ 345.21 What is the content of an application for an extension grant?

A State that seeks an extension grant shall include the following in an application:

(a) A description of the needs of individuals with disabilities, their families or representatives, including individuals from underserved groups and other appropriate individuals within the State, for assistive technology devices and services.

(b) A description of the specific activities carried out under the development grant and the relationship of these activities to the creation of a statewide program of technology-related assistance.

(c) Documentation of the progress made under the development grant toward development of a statewide system of technology-related assistance.

(d) A description of the actions the State has taken to determine the degree of satisfaction of individuals with disabilities and their families or representatives, public and private service providers, employers, and other appropriate individuals with the degree of their ongoing participation in the development and implementation of the statewide system, with the specific activities carried out under the development grant, and with the progress made under the grant toward a consumer-responsive statewide system. That description must include—

(1) A description of the involvement of individuals with disabilities and their families or representatives in the activities carried out under the development grant and of their continuing involvement in the extension grant; and

(2) A description of the involvement of State agencies, other public agencies, and private organizations, including service providers and employers, in the activities under the development grant and in the resultant statewide system, and their continuing roles under the extension grant.

(e) A summary of comments on the State's programs and progress under the development grant that the State has solicited from relevant parties, including persons with disabilities and their families or representatives, public and private service providers, employers, and other appropriate individuals and organizations and a summary of the State's response to those comments.

(f) Information and assurances as described in § 345.20.

(g) An assurance that the State will comply with the guidelines established under Section 508 of the Rehabilitation Act of 1973 in making electronic equipment accessible to individuals with disabilities.

(Authority: 29 U.S.C. 2213(c))

(Approved by the Office of Management and Budget under Control No. 1820-0027)

Subpart D—How Does the Secretary Make a Grant?

§ 345.30 How does the Secretary evaluate an application for a development grant under this program?

(a) The Secretary evaluates each application using the selection criteria in § 345.31.

(b) The Secretary awards each application a value of zero to five (0–5) for each of seven (7) criteria listed in § 345.31. These values are based on how well the application addresses each criterion, as follows: Outstanding (5); Superior (4); Satisfactory (3); Marginal (2); poor (1); or not addressed in the application (0).

(c) The Secretary weights each criterion as indicated in § 345.31. The value awarded to each criterion in a State's application is multiplied by the standard weight accorded to that criterion in § 345.31.

(d) The final score for each application is determined by totaling the scores computed for each criterion.

(e) The maximum score for each application is 100 points.

(Authority: 29 U.S.C. 2212)

§ 345.31 What selection criteria are used for development grants under this program?

(a) The Secretary rates each application to determine the degree to which—

(1) *Needs assessment* (Weight: 2; Total Points: 10) The application demonstrates a comprehensive assessment of the need for a statewide, consumer-responsive program of technology-related assistance that includes—

(i) A preliminary assessment of the needs of individuals with disabilities for assistive technology devices and services, including the needs of individuals from underserved groups and in various geographic areas of the State, that includes a description of how these estimates were obtained;

(ii) An assessment of existing efforts in the State to provide technology-related assistance to individuals with disabilities, including a description of the type, extent, and level of technology-related assistance activities, the public and private agencies and individuals involved in these activities and the nature of their involvement, and an assessment of the effectiveness of these activities; and

(iii) An assessment of the current unmet needs in the State that would have to be met in order to accomplish each of the seven purposes of the program as described in § 345.2;

(2) *Goals and objectives* (Weight: 3; Total Points: 15) The application identifies goals and objectives that—

(i) Address each of the unmet needs in the State described in § 345.31(a)(1); and

(ii) Are clearly measurable, with both milestones of progress and indicators of success;

(3) *Plan of activities* (Weight: 3; Total Points: 15) The application presents a plan of activities that—

(i) Indicates a likelihood that the proposed activities will accomplish the goals and objectives as set forth in § 345.31(a)(2) and will result in the development and implementation of a comprehensive, consumer-responsive, statewide system of technology-related assistance;

(ii) Is consistent with the authorized purposes, functions, and activities of the program; and

(iii) Provides, to the extent feasible, for equitable distribution of amounts received under the grant in all geographic areas of the State, and effectively considers the needs of underserved groups;

(4) *Evaluation plan* (Weight: 3; Total Points: 15) The application presents an effective plan for evaluating the progress made toward accomplishment of the goals and objectives of the State's project that—

(i) Specifies adequate indicators of accomplishment for each of the goals and objectives;

(ii) Specifies appropriate measures to be used and the data elements needed for these measures that will result in an adequate evaluation;

(iii) Specifies appropriate sources of data and feasible and appropriate data collection methods to be used for each measure;

(iv) Describes acceptable methods of data analysis that are likely to yield objective and meaningful evaluation results; and

(v) Allocates sufficient resources, including personnel, funds, and administrative priority, to the evaluation to ensure that the evaluation will meet the requirements of this part;

(5) *Management plan* (Weight: 2; Total Points: 10) The application presents a plan for management of the activities under the grant that—

(i) Includes an adequate number of staff with appropriate training and experience to implement the activities under the project grant;

(ii) Presents an appropriate plan to manage and account for the fiscal resources of the project, consistent with the requirements of the program, including §§ 345.4, 345.20, 345.44, and 345.45;

(iii) Presents a detailed internal management plan for the management of the resources under the grant, including specification of responsibilities and administrative authority and provisions for internal monitoring of progress;

(iv) Presents a realistic timeline for the implementation of project activities so as to ensure accomplishment of proposed goals and objectives within the time period proposed in the application; and

(v) Allots sufficient and appropriate resources from the grant or other sources for the accomplishment of the proposed project activities;

(6) *Inclusion of individuals with disabilities and their families or representatives* (Weight: 4; Total Points: 20) The application describes substantive roles for individuals with disabilities and their families or representatives in—

(i) The development of the application, including the assessment of needs;

(ii) The establishment of goals and objectives for the project;

(iii) The planning and implementation of the functions and activities to be carried out under the project grant; and

(iv) The evaluation of activities under the grant and the assessment of the progress that the State has made toward the accomplishment of the project's goals and objectives; and

(7) *Coordination* (Weight: 3; Total Points: 15) The application describes adequate coordination among appropriate State, public, and private agencies and organizations in—

(i) The development of the application, including the assessment of needs and description of current related activities in the State;

(ii) The identification of goals and objectives for the project to be conducted under the grant;

(iii) Participation in the proposed functions and activities to be conducted under the grant;

(iv) The development and implementation of interagency activities, including interagency agreements, if appropriate, that will result in the broad scale participation and exchange of information necessary to implement a statewide program of technology-related assistance; and

(v) The evaluation of the project and of the progress made toward the development of a consumer-responsive, statewide system.

(Authority: 29 U.S.C. 2212(e), 2214(a) and 2217(c))

(Approved by the Office of Management and Budget under Control No. 1820–0027)

§ 345.32 What other factors does the Secretary take into consideration in making development grant awards under this program?

In making development grants under this program, the Secretary takes into consideration, to the extent feasible—

(a) Achieving a balance among States that have differing levels of development of statewide programs of technology-related assistance; and

(b) Achieving a geographically equitable distribution of the grants.

(Authority: 29 U.S.C. 2212(d) (1) and (2))

§ 345.33 What is the review process for an application for an extension grant?

The Secretary may award an extension grant to a State that demonstrates to the Secretary that it has made significant progress in developing and implementing a consumer-responsive, statewide program of technology-related assistance under a development grant. The Secretary bases the decision to make an award on—

(a) The State's application for an extension grant as described in § 345.21; and

(b) The report of the site visit team, which is composed of peers from other participating States and other qualified individuals, and which visits the State's project during the final year of the development grant, concerning the extent to which the State has made significant progress in developing a consumer-responsive statewide program of technology-related assistance.

(Authority: 29 U.S.C. 2213(c) and 2215(a))

Subpart E—What Conditions Must Be Met After an Award?

§ 345.40 What are the reporting requirements for the recipient of a development grant?

States receiving development grants shall submit the following reports, and shall make these reports readily available to the public at no extra cost:

(a) An annual progress report that, at a minimum, describes—

(1) Activities completed under the grant;

(2) Progress made toward achieving the goals and objectives of the development of a consumer-responsive, statewide program of technology related assistance;

(3) The impact of the program activities on individuals with disabilities, public agencies, financial resources committed to technology-related assistance for individuals with disabilities, community-based organizations, and employers, and, to the extent appropriate, examples of the impact on individuals with disabilities;

(4) The problems, if any, that were encountered in carrying out the proposed activities under the grant;

(5) Activities planned for the following year to rectify problems encountered in implementing grant activities; and

(6) Revisions, if any, to the measurable goals and objectives specified in the original grant application, based on experiences under the grant and revisions, if any, to the plan for measuring achievement of those goals and objectives.

(b) Any other reports that the Secretary may reasonably require to carry out the Secretary's functions under this program.

(Authority: 29 U.S.C. 2212(e) and 2214(a))

(Approved by the Office of Management and Budget under Control No. 1820–0027)

§ 345.41 What are the reporting requirements for the recipient of an extension grant?

In addition to meeting the reporting requirements specified in § 345.40, recipients of extension grants shall include in their annual reports a description of the types of assistance provided under the grant, the settings in which the assistance was provided, the effects of that assistance, especially with respect to individuals with disabilities, and the methods by which the information required for the annual report was obtained.

(Authority: 29 U.S.C. 2214(b))

(Approved by the Office of Management and Budget under Control No. 1820–0027)

§ 345.42 Who retains title to devices provided under this program?

Title to devices purchased with grant funds under this part, either directly or through any contract or subgrant, must be held by a public agency or by an individual with disabilities who is the beneficiary of the device. If the disabled individual does not have legal status to hold title, the title may be retained by a parent or legal guardian.

(Authority: 29 U.S.C. 2212(e)(12))

§ 345.43 What are the requirements for grantee participation in the Secretary's progress assessments?

Recipients of development grants shall participate in the Secretary's assessment of the extent to which States are making significant progress by—

(a) Participating in the on-site monitoring visits that will be made to each grantee during the final year of the development grant; and

(b) Providing written evaluations of the State's progress toward fulfilling its goals and the objectives of the project, and such other documents as the Secretary may reasonably require to complete the required assessment.

(Authority: 29 U.S.C. 2215(a))

(Approved by the Office of Management and Budget under Control No. 1820–0027)

§ 345.44 What are the restrictions on the use of funds under this program?

(a) States receiving funds under this part shall—

(1) Place control of and administrative responsibility for the funds under a public agency;

(2) Avoid commingling funds under the grant with funds from any other source;

(3) Use funds under the grant to supplement rather than replace amounts available from other sources for technology-related assistance; and

(4) Not use funds under this part to pay financial obligations for technology-related assistance that would otherwise have been paid from amounts available from other sources, unless payment is only to prevent a delay in the receipt of technology-related assistance by an individual with disabilities and the amount used to pay the financial obligation is reimbursed in full by the responsible agency or entity.

(b) A State receiving a grant may make contracts or subgrants with public or private nonprofit and for-profit agencies to carry out activities under the grant, provided that—

(1) A designated public agency maintains fiscal responsibility and accountability; and

(2) All appropriate provisions related to data collection, recordkeeping, and cooperation with the Secretary's evaluation and program monitoring efforts are applied to all subcontractors and subgrantees as well as to the agency receiving the grant.

(Authority: 29 U.S.C. 2201(b)(1)(E), 2211(b) (7) and (8), and (c) (2)(G), (3), and (5), and 2212(e) (8), (11), (12)(A), and (14))

§ 345.45 What is the relation between this program and related assistance under other programs?

No State or Federal agency may, by reason of this program, reduce medical or other assistance available to or alter eligibility under—

(a) Titles II, V, XVI, XVIII, XIX, or XX of the Social Security Act;

(b) The Education of the Handicapped Act;

(c) The Rehabilitation Act of 1973; or

(d) Laws relating to veterans benefits.

(Authority: 29 U.S.C. 2215(c))

§ 345.46 What are the requirements for participation in the Secretary's evaluation of this program?

States receiving grants under this program shall—

(a) Cooperate with the Secretary in the development of an information system that can be used to compile qualitative and quantitative descriptions of the impact of the program on—

(1) The lives of individuals with disabilities, particularly with respect to—

(i) Greater control over their own lives;

(ii) Greater participation in home, school, work, and community activities;

(iii) More extensive interactions with individuals who do not have disabilities; and

(iv) Enhanced benefits from opportunities generally available to individuals who do not have disabilities;

(2) Public agencies, community-based organizations, and employers; and

(3) Fiscal resources committed to technology-related assistance for individuals with disabilities; and

(b) Provide to the Secretary such other information as may be necessary to complete the required national evaluation.

(Authority: 29 U.S.C. 2217 (b) and (c))

(Approved by the Office of Management and Budget under Control No. 1820–0027)

Subpart F—What Compliance Procedures May the Secretary Use?

§ 345.50 Who is subject to a corrective action plan?

Any State that fails to comply with the requirements of this part is subject to a corrective action plan.

(Authority: 29 U.S.C. 2215(b)(1))

§ 345.51 What penalties may the Secretary impose on a grantee that is found not to be in compliance?

A State that fails to comply with the requirements of this part may be subject to penalties such as—

(a) Partial or complete termination of funds;

(b) Ineligibility to participate in the grant program in the following year; or

(c) Reduction in funding for the following year.

(Authority: 29 U.S.C. 2215(b)(2))

Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix—Analysis of Comments and Changes

Composition of the Peer Review Panel

Comment: Several commenters remarked on the reference in the preamble to the composition of a peer review panel, urging the Department to assure that individuals with disabilities, or their family members, be included on each peer review panel.

Discussion: The reference to peer review in the preamble was meant to notify the public that the Department intends to conduct peer review of the applications, as required by the Education Department General Administrative Regulations (EDGAR), since there was no reference to peer review in the statute. The NPRM referred to the inclusion of individuals who had experience with "personal use of assistive technology." It is the general policy of NIDRR and the Office of Special Education and Rehabilitative Services (OSERS) to include consumers who have disabilities or members of their families in the peer review of applications.

In accordance with this policy, the Secretary intends to seek the involvement of individuals with disabilities, or a family member of an individual with disabilities, in the peer review panels, and has noted this intention in the preamble to the regulations. The Secretary agrees that the involvement of persons with disabilities in the review of the applications for this program is important.

Changes: None.

Definitions

Comment: Several commenters suggested that the regulations should include the statutory definitions of several important terms, so as to emphasize those definitions and call them to the attention of the public.

Discussion: It is not the practice of the Department to repeat statutory definitions in the regulations because to do so would be redundant. The regulations are meant to be used in conjunction with the statute and other regulations, and not to stand independently of them.

Changes: None.

Comment: One group of commenters requested that the Department clarify in the regulations such issues as "what is a consumer-responsive, comprehensive statewide system" and "how does a State develop such a system."

Discussion: The Department believes that the legislation was framed to give States considerable flexibility in

designing and implementing systems that would be appropriate for the individual States. The Secretary believes that the Department should not limit this flexibility by imposing restrictive regulatory requirements about what such a system should be, or how a State should go about developing such a system. The Secretary believes that the regulations emphasize the elements of a proposed approach that would be important, including the involvement of individuals with disabilities and the involvement of a range of public and private agencies.

Changes: None.

Selection Criteria

Comment: Many commenters remarked on the weights given to various criteria in the evaluation of applications for grants. While there were many different suggestions for how the criteria should be weighted, there was a general consensus that the weights accorded to "Needs assessment" and "Goals and objectives" were excessive because the statute authorizes the conduct of a needs assessment as one of the activities to be supported under the grant. At the same time, many commenters argued that criteria emphasizing the inclusion of individuals with disabilities and coordination among agencies were undervalued. A number of commenters also stated that more weight should be given to the quality of the evaluation plan. One commenter urged that the provision of devices and training in the use of devices were critical elements of the program, and that these elements should be reflected in the selection criteria.

Discussion: The Secretary believes that there are a number of reasonable approaches to evaluating applications under this program and that there is considerable merit to increasing the emphasis on the role of persons with disabilities, the evaluation plan, and coordination in the selection of applications, and to decreasing the weight attached to the needs assessment and goals. The statute authorizes grantees to conduct needs assessments with grant funds, and it is probable that the preliminary needs assessments included in the original grant applications will be cursory and based on estimates. Therefore, the Secretary agrees that it is not reasonable to assign a large weight to these assessments in the evaluation of the applications. Similarly, a State's goals and objectives would be expected to change based on the results of the needs assessment; therefore, it is not prudent to assign great importance to what may be only interim goals and objectives.

However, the Secretary would like to emphasize that the intent and structure of the program is to give each State an opportunity to improve on its current system of technology-related assistance. In the evaluation of whether individual States have made significant progress and thus should receive extension grants, the Secretary will assess the extent to which each State has met the State's needs. It is important, therefore, that the applicants provide as much detailed information as possible about goals, objectives, and the needs that are to be met, so that the Secretary will have baseline information from which to judge the extent of a grantee's progress for the purpose of making future awards.

The Secretary believes that the grantee's evaluation plans are critical elements in maintaining program accountability and in enabling both the grantee and the Government to assess the progress made under the grant.

The statute does not require each State to provide devices or training, but permits the States to select from a range of options those that would be most appropriate for a given State in developing a program to accomplish the purposes of the Act. Thus, the Secretary believes that there is no statutory basis for using the selection criteria to require the States to provide devices or training.

Changes: The points assigned to "Needs assessment" and "Goals and objectives" have been decreased to 10 and 15 respectively. The points assigned to "Inclusion of individuals with disabilities" have been increased to 20; the points assigned to "Evaluation plan" have been increased to 15; and the points assigned to "Coordination" have been increased to 15.

Use of Funds

Comment: One commenter stated that the funds under the Act must be used for the purchase and distribution of devices, while another contended that a limit should be set on the percentage of funds that could be used for those purposes so as not to deplete grant funds with benefits to only a small number of individuals.

Discussion: The Secretary understands both concerns. On the one hand, many individuals with disabilities and others are concerned that there are insufficient funds for the acquisition of technology devices and would like to assure that this program results in tangible benefits by providing devices. Conversely, others are concerned that emphasis on acquisition and distribution of devices could result in benefits to relatively few individuals, without any significant changes in the overall system of providing technology-related devices and services to persons with disabilities.

Both the purchase of devices and the development of a technology system are authorized by the statute. The Secretary believes that there is no basis for imposing either of the limitations suggested.

Changes: None.

Services to All Ages

Comment: A few commenters asked that the regulations clarify that the States must create systems that provide technology-related services for children and adults of all ages, with all types of disabilities of all levels of severity.

Discussion: Section two of the Act clearly states that the purpose of the Act is to provide financial assistance to States to help each State to develop and implement a consumer-responsive statewide program of technology-related assistance for individuals of all ages with disabilities. The statute does not address the issue of severity of disability, and thus the Secretary has no basis for imposing a regulatory requirement on the States that they must provide devices and services for individuals with all levels of severity of disability. However, the statute does imply that States are expected to identify the teohnology-related needs of all individuals in the States, to project the costs of meeting the needs of all individuals in the States who could benefit from technological devices or technology-related services, and to provide a plan for meeting the identified needs.

Changes: None.

Administration

Comment: One commenter questioned why § 345.4 refers to the need for a Governor to designate an agency to administer that program and a public agency to administer the funds. The commenter questioned whether these could or should be the same agency.

Discussion: The statute permits the Governor of a State to designate a private agency or entity, as well as a public agency, to develop and submit the application and conduct the program, but requires that the agency designated to receive and manage the funds be a public agency. If the Governor designates a public agency to make the application, then the Governor may designate the same agency for both purposes.

Changes: None.

Comment: One commenter requested that the provisions of § 345.20 be amended to permit voluntary agencies to hold title to devices purchased with program funds.

Discussion: The statute provides that title to these devices must be held by the individual with a disability or by a public agency.

Changes: None.

Comment: One commenter requested that the term "not disabled" be substituted for "nondisabled" in § 345.11.

Discussion: The Secretary agrees that this change is an improvement.

Changes: Section 345.11 has been revised accordingly.

Comment: One commenter objected to the statement in the preamble that the States must address each of the seven purposes of the State grants program stated in Section 2(b)(1) of the statute.

This commenter argued that some of the purposes might not be relevant to the needs in a given State.

Discussion: The statute requires that the State programs address all of the purposes described in section 2(b)(1) of the Act. Each of those purposes is stated in terms of increasing awareness, availability, or likelihood of receiving devices and services. The purpose of the program is to assist States to improve along all of these dimensions. However, there is no requirement that a State implement separate activities to address each purpose, or that it devote specific resources to each purpose. It is conceivable that the analysis of needs will demonstrate conclusively that no resources should be expended for a given purpose. In that situation, of course, the application would not include a plan for such unnecessary spending. The purpose will have been addressed and unnecessary spending will not take place.

Changes: None.

Description of Prior Activities

Comment: One commenter questioned why the regulations state, in § 345.11, that a State may provide a description of relevant activities during fiscal year 1987 as an activity under the grant.

This commenter believed that the regulations should authorize descriptions of selected activities over a number of different years, rather than a comprehensive description of one fiscal year.

Discussion: In describing the statewide needs assessment that is authorized under the program, Section 101(c)(2) of the Act specifically refers to "* * * a description of efforts during the fiscal year ending before the date of the enactment of this Act * * *"

Changes: None.

Repair and Maintenance

Comment: One commenter stated that the regulations should place more emphasis on repair and maintenance of assistive devices, as referred to in the Act in the definition of "assistive technology service." The commenter specifically requested that repair and maintenance be emphasized in § 345.10 of the regulations.

Discussion: The definitions in the Act are incorporated into the regulations by reference. The regulations are designed to implement the statute, and the only reference to repair and maintenance is in the definitions section of the statute. Because the Act authorizes all of the activities included in the definition of "assistive technology service", the Department expects that States will include repair and maintenance in their activities.

However, the statutory definition also includes many other activities that are equally as important as repair and maintenance. The Secretary does not believe it is practical to mention each of these activities in the regulations. At the same time, there is no justification for providing additional emphasis to repair and maintenance.

Further, § 345.10 of the regulations specifically implements Section 101(b) of the Act, which does not make reference to repair and maintenance. Therefore, it would not be appropriate to refer to repair and maintenance in that section of the regulations.

Repair and maintenance of assistive devices are critical to a technology service system. However, the statute permits each State to determine the extent to which its programs under the grant should emphasize these activities.

Changes: None.

[FR Doc. 89-18508 Filed 8-8-89; 8:45 am]
BILLING CODE 4000-01-M

federal register

Wednesday
August 9, 1989

Part IV

The President

Proclamation 6006—National Neighborhood Crime Watch Day, 1989

Presidential Documents

Proclamation 6006 of August 7, 1989

National Neighborhood Crime Watch Day, 1989

By the President of the United States of America

A Proclamation

Communities across the United States bear testimony to the great things Americans can accomplish through their own resourcefulness and the help of neighbors. In business, government, education, and social services, the ingenuity and hard work of individual Americans have been both the foundation and the catalyst for progress.

Individual private citizens represent a particularly important force in our Nation's fight against crime. Last year, crime struck one in four American households. While law enforcement officials do all they can to apprehend and prosecute those who prey upon innocent victims, the cooperation of law-abiding citizens is vital to their efforts.

Today, more than 19 million Americans participate in neighborhood crime watch programs. They remain vigilant against criminal activity in their neighborhoods and report suspicious behavior to the police. They also keep special watch over elderly persons and others who might easily become victims of theft or violence. These Americans who look out for their neighbors and make a personal commitment to help fight crime serve as positive role models for young people, thereby demonstrating not only respect for the law, but also active concern for the well-being of others. Participants in crime watch programs affirm that, as communities, we must not and will not tolerate contempt for civil order and disregard for the rights of innocent people.

On August 8, 1989, millions of Americans will join their neighbors in "National Night Out," an evening sponsored each year by the National Association of Town Watch. This event provides citizens an opportunity to demonstrate the importance and effectiveness of community participation in crime prevention efforts. During the "National Night Out," families spend the period between 8:00 p.m. and 10:00 p.m. on the porches, steps, or lawns of their homes as a notice to criminals that their communities are off limits to drug trafficking and other illicit activities. "National Night Out" is a way for all Americans to express their determination to protect and enjoy the security of their homes and neighborhoods.

To encourage all Americans to join with their neighbors in such crime prevention programs, the Congress, by Senate Joint Resolution 136, has authorized and requested the President to issue a proclamation designating August 8, 1989, as "National Neighborhood Crime Watch Day."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim August 8, 1989, as National Neighborhood Crime Watch Day. I call upon the people of the United States to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of August, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-18817
Filed 8-8-89; 10:49 am]
Billing code 3195-01-M

Reader Aids

Federal Register
Vol. 54, No. 152
Wednesday, August 9, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

31645-31796	1
31797-31932	2
31933-32034	3
32035-32332	4
32333-32432	7
32433-32628	8
32629-32784	9

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6002 31794
6003 31931
6004 31933
6005 32033
6006 32783

Executive Orders:
12685 31796
12686 32629

7 CFR

29 31797
58 31646
910 32035
945 31798
947 32433
1076 31799

Proposed Rules:
51 32419
911 31843
929 31844
967 31845
993 31846

8 CFR

Proposed Rules:
210 31966

9 CFR

51 32434
92 31800

10 CFR

7 31646

Proposed Rules:
Ch. I 32653
430 ..... 32349, 32744

12 CFR

33 31935
207 31646
220 31646
221 31646
224 31646
229 32035

Proposed Rules:
12 32653
226 32089

14 CFR

39 ..... 31649, 31651-31653, 31803-31809, 31935, 32435-32437
71 ..... 31654, 31936, 31937, 32439, 32440, 32603
73 31655
75 31937
217 31810
241 31810

Proposed Rule:
39 ..... 31693, 31694, 31847
43 32563
65 32563
71 ..... 31696-31704, 31966, 32452
75 ..... 31705, 31967
145 32563

15 CFR

773 31812

16 CFR

305 32631

Proposed Rules:
4 32654

17 CFR

140 31814
211 ..... 32333, 32334
270 ..... 31850, 32048
274 32048
275 ..... 32048, 32441
279 32048

Proposed Rules:
230 32226
239 32226
240 ..... 31850, 32229
249 32226
260 32226
269 32226

18 CFR

271 31938

Proposed rules:
37 31706

19 CFR

177 32742

20 CFR

Proposed Rules:
208 32163
219 31939
220 32163
230 32163
260 32163
327 31968
416 31656

21 CFR

133 32050
179 32335
510 32632
520 32336
522 32632
524 32632
556 32633
558 32633-32634

Proposed Rules:
Ch. I 32610
133 32091

522.....31949
556.....31949
1308.....31815, 31855
1310.....31657
1313.....31657
1316.....31669

22 CFR

60.....31815
61.....31815
62.....31815
63.....31815
64.....31815
65.....31815

24 CFR

200.....32059
206.....32059
570.....31670

Proposed Rule:

Ch. I.....31856

26 CFR

1.....31672, 31816
602.....31672

Proposed Rule:

1.....31708, 32453

28 CFR

31.....32618
523.....32027
544.....32026

29 CFR

1600.....32061
1601.....32061
1610.....32061
1611.....32061
1620.....32061
1626.....32061
1691.....32061
1910.....31765, 31970
2589.....32635

Proposed Rule:

1910.....31858

30 CFR

934.....32063

Proposed Rules:

250.....31768, 32316, 32563
917.....32093
925.....32094
931.....32095, 32096
946.....32097, 32098

31 CFR

500.....32064

32 CFR

706.....31825

33 CFR

100.....31826, 32066, 32441–32442
110.....32419
117.....31827
162.....32419
165.....32419, 32443

Proposed Rules:

100.....31859, 31860, 32453, 32659
162.....32661

34 CFR

345.....32770

35 CFR

Proposed Rules:

133.....32099
135.....32099

36 CFR

1153.....32337–32342
1155.....32337–32342
1202.....32067
1250.....32067
1254.....32067

Proposed Rules:

1206.....32455

37 CFR

1.....32637
2.....32637

38 CFR

3.....31828, 31950
21.....31829, 31950–31952, 32070

39 CFR

111.....32071

40 CFR

52.....31953, 32072, 32073, 32637
60.....32444
61.....32444
81.....32078
85.....32566
167.....32638
180.....31674, 31830–31836

Proposed Rules

52.....32101
81.....31860, 31971, 31972
85.....32598
180.....31971, 31972
185.....31836
186.....31832–31836
228.....32351–32356
261.....31675, 32320, 32662
302.....32320, 32671
355.....32671
704.....31680

41 CFR

101–47.....32445

42 CFR

50.....32446

Proposed Rules:

5.....32459

44 CFR

80.....31681
83.....31681
352.....31920

Proposed Rules:

335.....32359

45 CFR

232.....32284
302.....32284
303.....32284
304.....32284
306.....32284
307.....32284
1632.....31954

47 CFR

2.....32339
15.....32339
73.....31685, 31686, 31838, 31960, 32340, 32639–32641
80.....31839

Proposed Rules:

73.....32361, 32362, 32672–32676
94.....32362

48 CFR

203.....32161
208.....32161
209.....32161
212.....32161
213.....32161
214.....32161
215.....32161
216.....32161
217.....32161
219.....32161
222.....32161
223.....32161
226.....32161
242.....32161
245.....32161
252.....32161
253.....32161
273.....32161
801.....31961

Proposed Rules:

44.....32422
45.....32424
51.....32424
52.....32424

49 CFR

190.....32342
191.....32342
192.....32344, 32641
195.....32342, 32344
571.....31687, 32345

50 CFR

17.....32326
215.....32346
226.....32085
227.....32085
611.....32642
661.....31841
663.....31688
675.....31842, 32642

Proposed Rules:

263.....32362
267.....32362
611.....31861
620.....31861
655.....31862
672.....31861
675.....31861

LIST OF PUBLIC LAWS

Last List: August 3, 1989

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.R. 310/Pub. L. 101–68

To remove a restriction from a parcel of land in Roanoke Virginia, in order for that land to be conveyed to the state of Virginia for use as a veterans nursing home. (Aug. 1, 1989; 103 Stat. 175; 1 page) Price: $1.00

S.J. Res. 150/Pub. L. 101–69

To designate August 1, 1989, as "Helsinki Human Rights Day". (Aug. 2, 1989; 103 Stat. 176; 4 pages) Price: $1.00

H.R. 999/Pub. L. 101–70

To reauthorize the Advisory Council on Historic Preservation. (Aug. 3, 1989; 103 Stat. 180; 1 page) Price: $1.00

H.R. 968/Pub. L. 101–71

Noise Reduction Reimbursement Act of 1989. (Aug. 4, 1989; 103 Stat. 181; 1 page) Price: $1.00

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 193 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued. Or, the previous year's full set may be purchased at a reduced price and mailed as a single shipment.

Microfiche Subscription Prices:

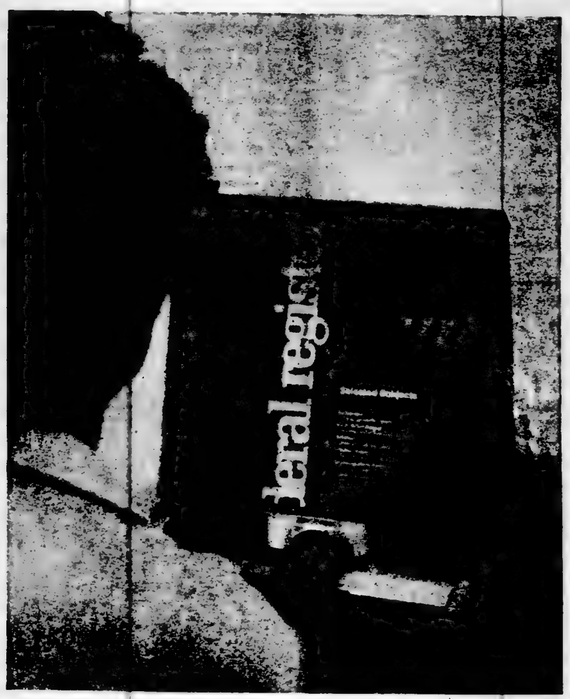
Federal Register:

One year: $195
Six months: $97.50

Code of Federal Regulations:

Current year (as issued): $188

Previous year's full set: $115
(single shipment)



Superintendent of Documents Subscriptions Order Form

Order Processing Code:
* 6462

Charge your order. It's easy! VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

24x MICROFICHE FORMAT:

____ **Federal Register:** ____ One year as issued: $195 ____ Six months: $97.50

____ **Code of Federal Regulations:** ____ Current year $188 ____ Previous year's full set: $115 (single shipment)

1. The total cost of my order is $_____ . All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
_____
(Daytime phone including area code)

3. **Please choose method of payment:**

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371 (Rev. 1-1-89)

L

S

G

9

I

OL
4
SS
1
5
3
G
O
89
MI

8-10-89
Vol. 54 No. 153

federal register

Thursday
August 10, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 89 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

8-10-89
Vol. 54 No. 153
Pages 32785-32950

federal register

Thursday
August 10, 1989

BEST COPY AVAILABLE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 54, No. 153
Thursday, August 10, 1989

Agricultural Marketing Service
RULES
Pears, plums, and peaches grown in California, 32794

Agriculture Department
See also Agricultural Marketing Service; Animal and Plant Health Inspection Service; Foreign Agricultural Service; Forest Service
NOTICES
Agency information collection activities under OMB review, 32838
Edam Gouda cheese, domestic; price-undercutting by imported Edam and Gouda cheese produced in Netherlands, 32836

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Black stem rust, 32788

Antitrust Division
NOTICES
National cooperative research notifications:
Semiconductor Research Corp., 32855

Coast Guard
NOTICES
Meetings:
Chemical Transportation Advisory Committee, 32914

Commerce Department
See International Trade Administration; Minority Business Development Agency; National Institute of Standards and Technology; National Oceanic and Atmospheric Administration

Comptroller of the Currency
PROPOSED RULES
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 32820

Copyright Royalty Tribunal
RULES
Satellite carrier compulsory license rules, 32810

Customs Service
RULES
Administrative rulings; nationwide uniformity, etc.
Correction, 32810

Education Department
RULES
Educational research and improvement:
Mathematics and science education national program, 32946
Elementary and secondary education:
Mathematics-science education program; State grants, 32936
NOTICES
Agency information collection activities under OMB review, 32845

Employment Standards Administration
See Wage and Hour Division

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
PROPOSED RULES
Toxic substances:
Testing requirements—
1,6-Hexamethylene diisocyanate, 32829

Executive Office of the President
See Presidential Documents; Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
British Aerospace, 32796
Control zones, 32797, 32799
(2 documents)
Transition areas, 32798
(2 documents)
Transition areas; correction, 32799
VOR Federal airways and restricted areas, 32800
PROPOSED RULES
Airworthiness directives:
Boeing, 32824, 32826
(2 documents)
Control zones, 32827

Federal Communications Commission
PROPOSED RULES
Frequency allocations and radio treaty matters:
Radio frequency devices capable of causing harmful interference; importation, 32830
NOTICES
Television broadcasting:
Cable retransmission; compulsory copyright license, 32848

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 32917

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
Colorado et al., 32813
North Dakota et al., 32814

Federal Energy Regulatory Commission
RULES
Electric utilities:
Construction work in progress, anticompetitive procedures; preliminary relief, 32802
Natural Gas Policy Act:
First sellers to make and report refunds; deadline establishment, 32805
NOTICES
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 32846

CNG Transmission Corp., 32846
Kentucky West Virginia Gas Co., 32846
KN Energy, Inc., 32847
Natural Gas Pipeline Co. of America, 32847
Questar Pipeline Co., 32847
Transwestern Pipeline Co., 32847
United Gas Pipe Line Co., 32848
Williams Natural Gas Co., 32848

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 32917

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 32917

Federal Retirement Thrift Investment Board
RULES
Thrift savings plan:
Bankruptcy judges and magistrates and Article III justices and judges; eligibility, 32785

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Animal notice of review—
Correction, 32833
Louisiana black bear, 32833
NOTICES
Endangered and threatened species:
Texas bitterweed, bunched cory cactus, and Lloyd's mariposa cactus; draft recovery plans, 32851

Food and Drug Administration
NOTICES
Color additive petitions:
Davis & Geck, 32850

Foreign Agricultural Service
NOTICES
Import quotas and fees:
Dairy import licenses, 32836

Foreign Claims Settlement Commission
NOTICES
Claims against Egypt; adjudication program transfer from State Department, 32856

Forest Service
NOTICES
Environmental statements; availability, etc.:
Fremont National Forest, OR, 32837

Geological Survey
NOTICES
Memorandums of agreements:
Newmont Exploration Ltd.; personnel and chemical analyses of core from holes drilled in Shoshone Range, NV, 32851

Health and Human Services Department
See Food and Drug Administration; National Institutes of Health

Interior Department
See Fish and Wildlife Service; Geological Survey; Land Management Bureau; Surface Mining Reclamation and Enforcement Office

International Broadcasting Board
NOTICES
Meetings; Sunshine Act, 32917

International Trade Administration
NOTICES
Antidumping:
Choline chloride from Canada, 32838
Short supply determinations:
Aluminum-clad steel wire, 32839

Interstate Commerce Commission
NOTICES
Rail carriers:
Passenger train operation—
Wisconsin Central Ltd., 32853
Railroad services abandonment:
Norfolk & Western Railway Co., 32854
Southern Railway Co., 32854

Justice Department
See also Antitrust Division; Foreign Claims Settlement Commission; National Institute of Corrections
NOTICES
Pollution control consent judgments:
Chase Chemical Co., L. P., 32855
Wheeling-Pittsburgh Steel Corp. et al., 32855

Labor Department
See Wage and Hour Division

Land Management Bureau
RULES
Public land orders:
Alaska, 32812
California, 32812
NOTICES
Classification of public lands:
California, 32852
Environmental statements; availability, etc.:
King Top wilderness study area, UT; mine claim reclamation, 32852
Meetings:
Craig District Grazing Advisory Board, 32852
Spokane District Advisory Council, 32852
Resource management plans, etc.:
Cascade Resource Area, ID, 32853
Withdrawal and reservation of lands:
California; correction, 32853

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

Minority Business Development Agency
NOTICES
Business development center program applications:
Florida, 32840
Mississippi, 32840

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Occupant crash protection—
Interior impact; head protection, 32830

National Institute of Corrections
NOTICES
Grants and cooperative agreements; availability, etc.:
Program plan/Academy training schedule (1990 FY), 32857

National Institute of Standards and Technology
NOTICES
Information processing standards, Federal:
Fiber Distributed Data Interface (FDDI), 32841

National Institutes of Health
NOTICES
Meetings:
Animal Resources Review Committee, 32850
National Institute of Dental Research, 32850
Research Resources National Advisory Council, 32851

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 32819
Marine mammals:
Commercial fishing operations—
Sea turtle conservation; shrimp, 32815
PROPOSED RULES
Fishery conservation and management:
American lobster, 32834
NOTICES
Coastal zone management programs and estuarine sanctuaries:
Consistency appeals—
Bull, B.J., 32844
Oak Beach Inn Corp., 32844
Meetings:
Delaware National Estuarine Research Reserve System; site nominations, 32844

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Commonwealth Edison Co.; correction, 32857
Tennessee Valley Authority, 32857

Office of United States Trade Representative
See Trade Representative, Office of United States

Personnel Management Office
NOTICES
Excepted service:
Schedules A, B, and C; positions placed or revoked—Consolidated list, 32859

Presidential Documents
EXECUTIVE ORDERS
Committees; establishment, renewal, termination, etc.:
Aviation Security and Terrorism, President's Commission (EO 12686) [Editorial Note: This document appearing at page 32829 in the Federal Register of August 9, 1989, was listed incorrectly in that issue's table of contents.]

Public Health Service
See Food and Drug Administration; National Institutes of Health

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
National Securities Clearing Corp., 32890
Options Clearing Corp., 32890

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Colorado, 32828

Trade Representative, Office of United States
NOTICES
Generalized System of Preferences:
International Trade Commission review of petitions, etc., 32891

Transportation Department
See also Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration
NOTICES
Agency information collection activities under OMB review, 32910
Aviation proceedings:
Certificate of public convenience and necessity and foreign air permits; weekly applications, 32910
Meetings:
Electronic Tariff Filing System Advisory Committee, 32912
Transportation policy, national; formulation; hearing, 32912

Treasury Department
See also Comptroller of the Currency; Customs Service
NOTICES
Agency information collection activities under OMB review, 32920
(4 documents)

Wage and Hour Division
RULES
Fair Labor Standards Act:
Disabled workers: employment under special certificates, 32914–32916

Separate Parts In This Issue

Part II
Department of Labor, Wage and Hour Division, 32920

Part III
Department of Education, 32936

Part IV
Department of Education, 32946

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
1620.....32785

7 CFR
301.....32788
917.....32794

12 CFR
Proposed Rules:
4.....32820

14 CFR
39.....32796
71 (6 documents).....32797-32800
73.....32800

Proposed Rules:
39 (2 documents).....32824, 32826
71.....32827

18 CFR
35.....32802
270.....32805
271.....32805

19 CFR
177.....32810

29 CFR
524.....32920
525.....32920
529.....32920

30 CFR
Proposed Rules:
906.....32828

34 CFR
208.....32936
755.....32946

37 CFR
301.....32810
309.....32810

40 CFR
Proposed Rules:
799.....32829

43 CFR
Public Land Orders:
6741.....32812
6742.....32812

44 CFR
64 (2 documents).....32813, 32814

47 CFR
Proposed Rules:
2.....32830

49 CFR
Proposed Rules:
571.....32830

50 CFR
217.....32815
227.....32815
611.....32819
672.....32819

Proposed Rules:
17 (2 documents).....32833
649.....32834

Rules and Regulations

Federal Register
Vol. 54, No. 153
Thursday, August 10, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1620

Thrift Savings Plan; Thrift Savings Plan Eligibility

AGENCY: Federal Retirement Thrift Investment Board.
ACTION: Interim rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing in Title 5 of CFR, Part 1620, Subparts E and F, interim regulations concerning eligibility of certain individuals to contribute to the Thrift Savings Plan (Plan). Subpart E provides rules for participation in the Plan by bankruptcy judges and magistrates who elect to receive an annuity under the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, Public Law 100–659 (November 15, 1988), and who are authorized by section 7 of that Act to participate in the Plan. Subpart F provides rules for participation in the Plan by justices and judges appointed under Article III of the United States Constitution, as authorized by section 401 of the Federal Employees Health Benefits Amendments Act of 1988, Public Law 100–654 (November 14, 1988).

DATES: Interim rules are effective November 15, 1988. Comments must be received on or before October 10, 1989.

ADDRESS: Comments may be sent to Theresa Barnes-Pirko, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Theresa Barnes-Pirko, (202) 523–6367.

SUPPLEMENTARY INFORMATION: Part 1620, Subpart E, contains the rules for participation in the Plan by certain bankruptcy judges and magistrates. Subpart F contains the rules for participation in the Plan by Article III justices and judges.

Section 1620.70 describes the scope of Subpart E. Section 1620.71 contains the definitions used in this subpart.

Section 1620.72 states the rules for Plan contributions by bankruptcy judges and magistrates who have chosen to receive an annuity under the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, Public Law 100–659 (Act). These judges and magistrates may make contributions of up to 5 percent of basic pay per pay period. They are not entitled to receive Government basic or matching contributions. Previous Government basic or matching contributions are not forfeited. However, they do affect the basic annuity through the offset described in § 1620.76.

Section 1620.73 states that all Plan contributions made by bankruptcy judges or magistrates who have chosen to receive an annuity under the Act may be invested only in the G Fund. Amounts invested in the C and F Funds at the time a participant makes that choice will be transferred into the G Fund.

Section 1620.74(a) states that bankruptcy judges or magistrates who leave Government service entitled to an immediate annuity under 28 U.S.C. 377 or section 2(c) of the Act, or who leave entitled to a disability annuity under those sections, may withdraw their Plan account balances as an immediate annuity, a deferred annuity, one or more substantially equal payments, or a transfer to an Individual Retirement account (IRA) or other eligible retirement plan. Section 1620.74(b) states that bankruptcy judges or magistrates who leave Government service entitled to an annuity under 28 U.S.C. 377(c) or section 2(c) of the Act, but who leave before reaching age 65, may withdraw their Plan account balances as an immediate annuity, a deferred annuity, one or more substantially equal payments to begin no earlier than the date of entitlement to an immediate annuity under 28 U.S.C. 377 or section 2(c) of the Act, or a transfer to an IRA or other eligible retirement plan. Section 1620.74(c) states that bankruptcy judges or magistrates who leave before becoming eligible for an annuity under 28 U.S.C. 377 or section 2(c) of the Act are required to transfer their Plan accounts to an IRA or other eligible retirement plan.

Section 1620.75 describes the spousal rights that apply to bankruptcy judges and magistrates who have chosen to receive an annuity under 28 U.S.C. 377 or section 2(c) of the Act. The rights of spouses and former spouses are stated at 5 U.S.C. 8435 and 8467. They include the right to consent to the participant's choice of a withdrawal from other than designated type of joint and survivor annuity, and to consent to a loan to the participant.

Section 1620.76 states that a bankruptcy judge's or magistrate's annuity under 28 U.S.C. 377 or section 2(c) of the Act will be offset by the total amount of Government basic or matching contributions made to the judge's or magistrate's Plan account. The Administrative Office of the United States Courts is responsible for determining the rules for the offset.

Section 1620.80 describes the scope of subpart F, which deals with Plan contributions by justices and judges appointed under Article III of the United States Constitution. Section 1620.81 contains the definitions used in this subpart.

Section 1620.82 describes the rules that apply during the initial and subsequent election periods. Any appointed justice or judge who is receiving basic pay during the 60-day period following the enactment of Public Law 100–654, which runs from November 15, 1988 through January 13, 1989, may elect to make contributions to the Plan. Those elections are to be effective no later than the next pay period after the agency receives a properly completed election form. Justices and Judges appointed after January 13, 1989 are subject to the same eligibility and election rules as other Plan participants, which are found in 5 CFR, Part 1600, including the rules requiring mandatory waiting periods before making a Plan election if the justice or judge was not previously eligible to make Plan contributions.

Section 1620.83 indicates that justices and judges may contribute up to 5 percent of basic pay per pay period to the Plan, and are not eligible to receive Government basic or matching contributions.

Section 1620.84 states that justices and judges may invest solely in the G

Fund. Amounts invested in the C or F Funds at the time a participant becomes subject to this subpart will be transferred into the G Fund.

Section 1620.85 describes the Plan withdrawal options available to justices and judges. Justices and judges who retire under 28 U.S.C. 371(a), (b) or 372(a), may withdraw their Plan accounts as an immediate annuity, a deferred annuity, one or more substantially equal payments, or a transfer to an IRA or other eligible retirement plan. A justice or judge who leaves Government service before meeting the age and service requirements found at 28 U.S.C. 371(c) may only transfer his or her Plan account to an IRA or other eligible retirement plan.

Section 1620.86 describes the rights of spouses of justices and judges. These rights are set forth in 5 U.S.C. 8351(b)(7) and include the right to receive notice of a withdrawal of the justice's or judge's Plan account or of a Plan loan.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only the bankruptcy judges and magistrates who elect to receive retirement benefits under the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, Pub. L. 100–659, the Article III justices and judges who contribute to the Thrift Savings Plan, and the agencies responsible for coordinating pay and benefits for these justices, judges and magistrates.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Under 5 U.S.C. 553 (b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. It is necessary for these regulations to be effective as of November 15, 1988, which is the day on which Article III justices and judges were eligible to elect to make contributions to the Thrift Savings Plan.

List of Subjects in 5 CFR Part 1620

Employee benefit plans, Government employees, Retirement, Pensions.

Federal Retirement Thrift Investment Board.

Francis X. Cavanaugh,

Executive Director.

Accordingly, 5 CFR Part 1620 is amended as follows:

1. The authority citation for Part 1620 is revised to read as follows:

PART 1620—CONTINUATION OF ELIGIBILITY

Authority: 5 U.S.C. 8474, Pub. L. 100–238, Pub. L. 99–591, Pub. L. 100–659.

2. Part 1620 is amended by adding subparts E and F, to read as follows:

* * * * *

Subpart E—Bankruptcy Judges and Magistrates

Sec.

1620.70 Scope.
1620.71 Definitions.
1620.72 Plan contributions after choosing judges' annuity.
1620.73 Mandatory transfer of money to G Fund after choosing judges' annuity.
1620.74 Election of plan benefits after choosing judges' annuity.
1620.75 Spousal rights.
1620.76 Offset of judges' annuity.

Subpart F—Article III Justices and Judges

1620.80 Scope.
1620.81 Definitions.
1620.82 Periods for making or changing contributions.
1620.83 Contributions to the plan.
1620.84 Investment choices.
1620.85 Election of plan benefits.
1620.86 Spousal rights.

Subpart E—Bankruptcy Judges and Magistrates

§ 1620.70 Scope.

This subpart applies to any bankruptcy judge or magistrate who has chosen to receive an annuity under 28 U.S.C. 377 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, Public Law 100–659. Such a bankruptcy judge or magistrate may participate in the Plan only as allowed in the following regulations. A bankruptcy judge or magistrate who is not covered by 28 U.S.C. 377 or section 2(c) of the Act may participate in the Plan as allowed under either 5 U.S.C. 8351, if a CSRS employee, or 5 U.S.C. 8430–8440, 8471–8479, if a FERS employee.

§ 1620.71 Definitions.

As used in this subpart, these terms have the following meanings:

Account balance means the total amount of money in an individual account;

Act means the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, Public Law 100–659;

Bankruptcy judge or *judge* means an individual described in 28 U.S.C. 377(h)(1), as added by the Act;

C Fund means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C);

CSRS means the Civil Service Retirement System established by subchapter III of chapter 83 of title 5, U.S.C., and any equivalent Government retirement plan;

CSRS employee means any employee covered by CSRS or any equivalent Government retirement plan;

Employee contributions means any contributions made under 5 U.S.C. 8432(a) or 5 U.S.C. 8351(a);

Employer contributions means Government basic contributions and Government matching contributions;

FERS means the Federal Employees' Retirement System established by chapter 84 of title 5, U.S.C., and any equivalent Government retirement plan;

FERS employee means any employee covered by FERS or any equivalent Government retirement plan;

F Fund means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B);

G Fund means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A);

Government basic contributions means any contributions made under 5 U.S.C. 8432(c)(1) or 5 U.S.C. 8432(c)(3);

Government matching contributions means any contributions made under 5 U.S.C. 8432(c)(2);

Investment Fund means the G Fund, the F Fund, or the C Fund;

Judges' annuity means an annuity under 28 U.S.C. 377 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, Public Law 100–659;

Magistrate means an individual appointed pursuant to 28 U.S.C. 631;

Participant means any person with an individual account in the Thrift Savings Fund;

Recordkeeper means the organization designated by the Board as the Plan's recordkeeper;

Thrift Savings Fund or *Fund* means the Fund described in 5 U.S.C. 8437;

Thrift Savings Plan or *Plan* means the Federal Retirement Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986, codified in pertinent part at 5 U.S.C 8431–8440, 8471–8479.

§ 1620.72 Plan contributions after choosing judges' annuity.

(a) A judge or magistrate who has chosen to receive a judges' annuity is entitled to contribute to the Plan. Except as otherwise provided in this subpart, these judges and magistrates are covered by the same rules and regulations as apply to CSRS participants in the Plan.

(b) (1) Judges and magistrates who have chosen to receive a judges' annuity may elect to contribute up to 5 percent of their basic pay per period to the Plan. Basic pay has the same meaning as under 5 U.S.C. 8431. Amounts received under a judges' annuity are not basic pay, and no Plan contributions may be made from those annuity payments.

(2) Retirement under 28 U.S.C. 377, including removal from office under section 377(d) on the ground of mental or physical disability, is a separation from service.

(c) A judge or magistrate who has chosen to receive a judges' annuity is not entitled to receive employer contributions under 5 U.S.C. 8432(c). This limitation does not apply retroactively or in any other way cause a judge or magistrate who previously was eligible to receive employer contributions under 5 U.S.C. 8432(c) to forfeit those contributions. However, as indicated in § 1620.76 below, the judge or magistrate may receive a reduced annuity under 28 U.S.C. 377 or section 2(c) of the Act as a result of such contributions.

(d) A judge or magistrate who has chosen to receive a judges' annuity may invest new contributions made after such choice only in the G Fund.

§ 1620.73 Mandatory transfer of money to G Fund after choosing judges' annuity.

A judge or magistrate who has chosen to receive a judges' annuity may invest his or her existing account balance only in the G Fund. Following the receipt of notice by the Plan recordkeeping that a judge or magistrate has chosen to receive a judges' annuity, the judge's or magistrate's entire account balance will be invested in the G Fund. Any money invested in the C or F Funds will be transferred to the G Fund at the time of the next available disbursement cycle for the transfer of money out of the C and F Funds.

§ 1620.74 Election of Plan benefits after choosing judges' annuity.

(a) A judge or magistrate who has chosen to receive a judges' annuity and who separates after age 65 entitled to an immediate annuity under either section 28 U.S.C. 377 or section 2(c) of the Act, or who separates at any age entitled to a disability annuity under 28 U.S.C. 377(d), may elect to receive his or her Plan account as provided in 5 U.S.C. 8433(b).

(b) A judge or magistrate who has chosen to receive a judges' annuity and who separates before reaching age 65, but who is entitled to receive an annuity under 28 U.S.C. 377(c) or section 2(c) of the Act upon reaching age 65, may elect to receive his or her Plan account as provided in 5 U.S.C. 8433(c). However, the period described in section 8433(c)(3) will be the period that begins on or after the date on which the judge's or magistrate's annuity under 28 U.S.C. 377 or section 2(c) of the Act commences.

(c) A judge or magistrate who has chosen to receive a judges' annuity and who separates before becoming eligible under 28 U.S.C. 377 or section 2(c) of the Act for an immediate annuity or an annuity upon reaching 65 is required to transfer his or her Plan account balance to an eligible retirement plan as defined in 26 U.S.C. 402(a)(5)(E)(iv).

§ 1620.75 Spousal rights.

(a) A spouse or former spouse of a judge or magistrate who is a Plan participate and who has not chosen a judges' annuity retains the rights provided under 5 U.S.C. 8351, if the judge or magistrate is a CSRS employee, or under 5 U.S.C. 8435 and 8467, if the judge or magistrate is a FERS employee.

(b) A spouse or former spouse of a judge or magistrate who is a Plan participant and who has chosen a judges' annuity is entitled to whatever rights are provided under 5 U.S.C. 8435 and 8467 with respect to the judge's or magistrate's entire Plan account. Section 5 U.S.C. 8351 does not aply to a spouse or former spouse of a judge or magistrate who has chosen a judges' annuity, even if the judge or magistrate was a CSRS employee before choosing a judges' annuity.

§ 1620.76 Offset of judges' annuity.

Under rules to be established by the Administrative Office of the United States Courts, the annuity received by a judge or magistrate under 28 U.S.C. 377 or section 2(c) of the Act will be reduced by the amount of employer contributions to the Plan made on behalf of the judge or magistrate.

Subpart F—Article III Justices and Judges

§ 1620.80 Scope.

This subpart applies to any justice or judge of the United States, as defined in 28 U.S.C. 451.

§ 1620.81 Definitions.

As used in this subpart, these terms have the following meanings:

Account balance means the total amount of money in an individual account;

Act means the Federal Employees Health Benefits Amendments Act of 1988, Public Law 100–654 (November 14, 1988);

C Fund means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C);

CSRS means the Civil Service Retirement System established by subchapter III of chapter 83 of title 5, U.S.C., and any equivalent Government retirement plan;

CSRS employee means any employee covered by CSRS or any equivalent Government retirement plan;

Election period means the last calendar month of an open season and is the earliest period in which an election to make or change a contribution during that open season can become effective;

Employee contributions means any contributions made under 5 U.S.C. 8432(a) or 5 U.S.C. 8351(a);

Employer contributions means Government basic contributions and Government matching contributions;

FERS means the Federal Employees' Retirement System established by Chapter 84 of Title 5, U.S.C., and any equivalent Government retirement plan;

FERS employee means any employee covered by FERS or any equivalent Government retirement plan;

F Fund means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B);

G Fund means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A);

Government basic contributions means any contributions made under 5 U.S.C. 8432(c)(1) or 5 U.S.C. 8432(c)(3);

Government matching contributions means any contributions made under 5 U.S.C. 8432(c)(2);

Investment Fund means the G Fund, the F Fund, or the C Fund;

Judge means a judge of the United States, as defined in 28 U.S.C. 451;

Justice means a justice of the United States, as defined in 28 U.S.C. 451;

Open season means the period during which participants may elect to begin making contributions to the Thrift Savings Plan, or change the rate of contributions, or discontinue (without losing the right to recommence contributions the next open season) the amount currently being contributed to the Thrift Savings Plan;

Participant means any person with an individual account in the Thrift Savings Fund;

Recordkeeper means the organization designated by the Board as the Plan's recordkeeper;

"Thrift Savings Plan" or *"Plan"* means the Fund described in 5 U.S.C. 8437;

"Thrift Savings Plan" or "Plan" means the Federal Retirement Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986, codified in pertinent part at 5 U.S.C. 8431–8440, 8471–8479.

§ 1620.82 Periods for Making or Changing Contributions.

(a) *Initial Election Period.* Any justice or judge who is receiving basic pay may elect to make contributions to the Plan during a special election period beginning on November 15, 1988 and continuing through January 13, 1989, which is the 60-day period immediately following the effective date of the Act. Any properly completed election forms that are accepted by the payroll office during this 60-day period will be effective no later than the next pay period beginning after the date of acceptance.

(b) *Subsequent Election Periods.* For every election period that begins after the beginning date of the initial election period described in paragraph (a) of this action, including the election period from January 1, 1989 through January 31, 1989, justices and judges are subject to the provisions of 5 U.S.C. 8432(b) and Part 1600 of 5 CFR, and may choose to stop, start, or change their rate of contribution to the Plan in accordance with those provisions and applicable regulations. Accordingly, justices and judges who are appointed after January 13, 1989, and who were not previously eligible to make contributions to the Plan, must wait until the second election period after they are appointed to make contributions to the Plan.

§ 1620.83 Contributions to the Plan.

(a) Pursuant to section 401 of the Act, justices and judges may contribute an amount up to 5 percent of basic pay per pay period to the Plan. For purposes of these contributions, "basic pay" has the same meaning as that contained in 5 U.S.C. 8431. Salary or annuity payments received under 28 U.S.C. 371 (a), (b), and 372(a), are not "basic pay."

(b) A justice or judge contributing to the TSP is not entitled to receive employer contributions under 5 U.S.C. 8432(c). However, any employer contributions previously made on behalf of a justice or judge while he or she served as a FERS employee will remain identified as employer contributions for recordkeeping purposes.

(c) A justice or judge contributing to the Plan may invest new employee contributions only in the G Fund.

§ 1620.84 Investment choices.

A justice or judge contributing to the Plan may invest his or her existing account balance only in the G Fund. Following the receipt of notice by the Plan recordkeeper that a participant has become subject to section 401 of the Act and to these regulations, the justice's or judge's entire account balance will be invested in the G Fund. Any money which is invested in the C or F Funds will be transferred to the G Fund at the time of the next available disbursement cycle for the transfer of money out of the C and F Funds.

§ 1620.85 Election of Plan benefits.

(a) A justice or judge who retires under section 371 (a) or (b) or section 372(a) of Title 28, may elect to receive his or her Plan account as provided in 5 U.S.C. 8433(b).

(b) A justice or judge who resigns or separates before having met the age and service requirements listed in section 371(c) of Title 28 is required to transfer his or her Plan account balance to an eligible retirement plan as defined in 26 U.S.C. 402(a)(5)(E)(iv).

§ 1620.86 Spousal rights.

For purposes of amounts held in the Plan, a spouse or former spouse of a justice or judge who is a Plan participant is entitled to the rights provided under 5 U.S.C. 8351(b)(7).

[FR Doc. 89–18688 Filed 8–9–89; 8:45 am]
BILLING CODE 6760–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89–101]

7 CFR Part 301

Black Stem Rust

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are revising the Black Stem Rust Quarantine and Regulations by restricting the interstate movement of certain regulated articles to areas where they will not present any risk of crop damage, and by protecting certain areas from possible infestation. This action is being taken to reflect the fact that rust-susceptible alternate host plants have been largely eradicated from the northern small grain producing states where black stem rust would be harmful to crops, and because preventative measures are necessary to prevent its re-introduction through plant hosts. The revised regulations will prevent the re-introduction of rust-susceptible alternate host plants into protected areas by prohibiting the entry of certain plants and by prescribing the conditions under which other regulated articles may be moved interstate.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas G. Flanigan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 643, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8247.

SUPPLEMENTARY INFORMATION:

Background

The Black Stem Rust and Quarantine Regulations in 7 CFR Part 301, § 301.38 *et seq.* (referred to below as the regulations), quarantine the conterminous 48 states and the District of Columbia and govern the interstate movement of certain plants of the genera *Berberis, Mahoberberis,* and *Mahonia* in order to prevent the development of new races of black stem rust, a destructive plant disease affecting small grains.

Black stem rust is one of the most destructive plant diseases of small grains known to exist in the United States. The disease is caused by a fungus which reduces the quality and yield of wheat, oats, barley, and rye crops by robbing host plants of food and water. The fungus lives on a variety of host plants that are species of the genera *Berberis, Mahoberberis,* and *Mahonia,* and can spread from host-to-host by way of wind-borne spores.

The regulations were originally issued as part of a cooperative federal-state black stem rust eradication program. The eradication phase of the cooperative program officially ended in 1981. However, APHIS agreed to continue the quarantine on the basis that the states perform nursery inspections to detect whether any rust-susceptible varieties are present.

On April 28, 1989, we published in the **Federal Register** (54 FR 18288–18296, Docket No. 88–118), a document proposing to completely revise the regulations by removing the eradication area provisions and adding provisions authorizing the Administrator to designate states or counties as protected areas if they meet certain criteria, and by setting forth conditions governing the interstate movement of *Berberis, Mahoberberis,* and *Mahonia.* Under the proposed rule, interstate movement of all *Berberis, Mahoberberis,* and *Mahonia* would be allowed from, to, and between non-protected areas without restriction. Rust-resistant varieties would be allowed to move into or through protected areas if accompanied by a certificate verifying that the plants are rust resistant. Interstate movement of rust-susceptible *Berberis, Mahoberberis,* and *Mahonia* into or through protected areas would be prohibited, except with a limited permit (which would be issued under narrow circumstances, as described in the regulations). The protected areas would be responsible for issuing the certificates required for interstate movement, and for inspecting every plant nursery within the state at least once each year to ensure that they are free of rust-susceptible plants.

We are adopting the provisions of the proposed rule based on the reasons set forth in the proposal and in this supplementary information section.

Comments

Our proposal invited the submission of written comments postmarked or received on or before May 15, 1989.

We received 10 comments addressing the proposed rule that were timely. Two of the comments were from nurseries. The other comments we received were from state Departments of Agriculture for the following states: Colorado, Iowa, Kansas, Missouri, Nebraska, Pennsylvania, South Dakota, and Wyoming.

Both nurseries supported our proposal but added that the quarantine could safely be lifted even in grain producing areas since no commercially produced barberry plants pose any threat to grain crops in the United States. We disagree with the two commenters. Although many grains grown in the United States today are resistant to existing races of the black stem rust organism, spores from different black stem rust organisms hosted by rust-susceptible varieties of *Berberis, Mahoberberis,* and *Mahonia* may combine, resulting in new strains of black stem rust capable of successfully attacking small grain crops. We believe it is necessary to maintain restrictions on the interstate movement of host plants in order to protect small grain crops from this risk.

Of the 8 states that commented on the proposed rule, 5 generally supported the proposal and 3 opposed allowing any interstate movement of rust-susceptible varieties.

Those states generally in favor of the proposed changes also noted the need for APHIS to compile and publish reference materials, such as training materials and illustrated guides for the identification of susceptible and resistant varieties, for use by the states in enforcing the regulations. Both the Central Plant Board and the Eastern Plant Board have adopted resolutions to this effect. The materials currently issued by APHIS for use in identifying varieties of *Berberis, Mahoberberis,* and *Mahonia* include most plants of these genera, however they need to be updated to include the newer varieties that have been identified as rust-resistant or rust-susceptible since those materials were last published. We are requesting that funds be authorized for this effort in the coming fiscal year so that we may prepare and issue revised materials to assist in detecting and identifying these regulated articles.

The commenters generally supportive of the proposed changes also raised the following concerns:

The Kansas State Board of Agriculture stated that contrary to our statement in the supplementary information accompanying the proposed rule (see 54 FR 18288), varieties of small grains are being grown in the United States today that are not resistant to black stem rust. Rather, the small grains that have been developed and that are being grown today mature earlier and are exposed to wind-borne black stem rust spores at a more advanced stage of development. As a result, they are less affected by the organism. Because of the lessened economic impact of black stem rust on current grain crops, the comment noted that some wheat breeders are not including black stem rust resistance in their breeding programs and should. We agree that it would be to their benefit to do so; however, we do not regulate wheat breeding programs.

The Department of Agriculture for the Commonwealth of Pennsylvania commented that requiring inspection of the area within one-half mile of a nursery growing any rust-resistant plants of *Berberis, Mahoberberis,* and *Mahonia* from seed is excessive. The comment stated that inspecting the area within one-quarter mile of such a nursery is adequate. APHIS's Biological Assessment and Support Staff has determined that a distance of 300 meters will protect plants from pollination by unwanted spore types. The one-half mile distance proposed is equal to twice that distance plus an additional ten percent of that distance. As explained in the supplementary information accompanying the proposed rule, we believe that because the seeds may be wind-borne, the half mile inspection requirement adds a desirable margin of safety against the germination of new rust-susceptible varieties near the nursery. No change is made in the final rule as a result of the comment.

Pennsylvania also commented that in addition to USDA testing for rust susceptibility of *Berberis, Mahoberberis,* and *Mahonia* plant varieties, USDA should continue to identify black stem rust races and the geographic areas where they occur. The Agricultural Research Service of the U.S. Department of Agriculture provides the service of identifying new strains of black stem rust. Information concerning identification of black stem rust races may be obtained by writing to the Agricultural Research Service, Cereal Rust Laboratory, University of Minnesota, St. Paul, Minnesota 55108, attention: Alan Roelfs.

South Dakota commented that while states have authority to stop intrastate sales or regulated articles for violations of state regulations, APHIS must impose and enforce penalties for interstate movements of regulated articles that violate the regulations. Although the proposed regulations do not impose penalties for violations, they do provide enforcement mechanisms that may be invoked by those states that are designated as protected areas or that encompass protected areas, and by APHIS, in non-protected areas. The proposal provides that a certificate that has been issued for interstate movement of regulated articles may be withdrawn if the certificate holder fails to comply with the regulations. Under the proposal, regulated articles cannot be moved into or through a protected area without the required certificate. The certificates are federal documents; however, under the terms of the proposed rule and in accordance with a cooperative arrangement with those states that are designated as protected areas, state employees would be authorized to issue and withdraw the certificates in protected areas. The proposal also provides that a compliance agreement between a state that is a protected area or that encompasses a protected area may be cancelled by an inspector for noncompliance. Under the regulations as proposed, and in accordance with the memorandum of understanding an inspector includes any person, including state employees, authorized by the Administrator to enforce the regulations.

South Dakota commented that all the northern wheat producing states should be included in the protected area, and, accordingly, Wyoming and Colorado should be included as protected areas.

In its comment to us, Wyoming's Department of Agriculture requested that Wyoming be designated as a

protected area and added to § 301.38(c)(1) if the regulations are adopted as a final rule. The Administrator believes that Wyoming, currently listed as an "Eradication area" under § 301.28–2a, meets the criteria set forth in the proposed rule for a state to be designated as a protected area. Therefore, we will publish in the **Federal Register**, for public comment, a document proposing to add Wyoming to the regulations as a protected area.

Colorado does not meet the criteria to be designated as a protected area, however, and has not requested to be so designated. Colorado does not maintain a program regulating the growth or intrastate movement of *Berberis, Mahoberberis,* and *Mahonia* and, under the criteria set forth in § 301.38–3, is ineligible for "protected" status.

In addition to its request to be designated as a protected area, Wyoming expressed opposition to our proposal claiming that the proposed changes would result in the rapid reintroduction of rust-susceptible varieties of *Berberis, Mahoberberis,* and *Mahonia* into the state, even if it is designated as protected. This reintroduction would occur as a result of private movement of rust-susceptible varieties between Colorado's retail discount nursery trade and residents of Wyoming's wheat producing area, owing to the large price differential between Wyoming nursery stock and Colorado-grown nursery stock. The comment stated that APHIS and the protected areas could not assure that the protected areas would be safe from the reintroduction of rust-susceptible varieties through illegal acts or negligence, and that once sold to retail customers the plants' movement becomes virtually impossible to track.

Allowing retail sales of susceptible varieties in nearby non-protected states would result in reinfestation of adjacent protected areas through retail sales, according to Wyoming's Department of Agriculture. For these reasons, Wyoming stated that it is completely opposed to allowing interstate movement of rust-susceptible *Berberis, Mahoberberis,* and *Mahonia* anywhere in the United States. The comments we received from the Departments of Agriculture for Nebraska and Missouri shared this view.

We do not agree. We do not believe there is any economic risk in allowing the interstate movement of rust-susceptible varieties of *Berberis, Mahoberberis,* and *Mahonia* to, from, or through non-wheat producing areas, and that this movement need not be restricted. The regulations, as proposed, provide effective safeguards against the reintroduction of rust-susceptible *Berberis, Mahoberberis,* and *Mahonia* into the protected areas. Interstate movement of rust-susceptible plants is prohibited, except in non-protected areas. In order to ensure that only rust-resistant varieties are moved interstate into or through protected areas, the regulations require that they be moved interstate only if accompanied by a certificate, issued upon inspection of the regulated articles or in accordance with the terms of a compliance agreement. Wyoming's particular concerns should be allayed upon qualifying to be designated as a protected area. No change is made in the final rule on the basis of these comments.

The Colorado Department of Agriculture commented that even if the proposed regulations would not jeopardize the eradication efforts of the protected states, APHIS should provide the support needed to conduct the activities necessary to be designated as a protected area. These activities include nursery inspections and the issuance of the certificates required for interstate movement of regulated articles. We do not agree with this comment. APHIS concluded its eradication efforts in 1981. At that time, the states that were designated "Eradication areas" in the regulations agreed to continue the nursery inspection program under the cooperative federal-state black stem rust program, in order to ensure that rust-susceptible varieties were not reintroduced into the state. On that basis, APHIS agreed to continue the quarantine. Under the proposed rule, in order to be designated as protected areas, states must be responsible for issuing and withdrawing certificates and enforcing compliance agreements. We do not believe it is appropriate or necessary to promote the effective implementation and enforcement of the regulations to shift responsibility for these activities to APHIS.

Nebraska's Department of Agriculture requested clarification as to whether the certificates that would be issued under proposed § 301.38–5 would be federal or state certificates, and as to whether certificates must be issued for interstate movement of regulated articles from nurseries that are not propagating the material, but are only raising plant material originating from other nurseries (presumably outside the protected area).

The certificates required for interstate movement of regulated articles in protected areas are federal documents. Under the proposed regulations and the cooperative arrangement with states having protected areas, state employees would be authorized to issue and withdraw certificates. Such certificates must be issued for *any* interstate movement of *any* regulated articles moved interstate into or through a protected area, in accordance with the regulations.

On the basis of the foregoing, we are not making any changes in the final rule as a result of the comments we received, except to clarify that state personnel in states having protected areas are responsible for issuing and withdrawing certificates. However, a separate document will be published in the **Federal Register** proposing to add Wyoming as a protected area.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Federal restrictions on interstate movements of plants and plant parts of *Berberis, Mahoberberis,* and *Mahonia* are limited to a protected area that includes 15 states and part of a sixteenth. The principal group affected by this final rule consists of nursery growers of the regulated articles, *Berberis, Mahoberberis,* and *Mahonia.* We are not changing the effect of the substantive interstate movement restrictions applicable to growers within this protected area from those of the current regulations, and therefore, they will not be affected by this revision of the regulations.

In the non-protected areas, growers will be able to sell and transport interstate, to non-protected areas, all varieties of *Berberis, Mahoberberis,* and *Mahonia* without certification or inspection requirements. Some potential benefit may run to nursery growers in the non-protected areas, since such interstate sales of rust-susceptible varities would be allowed within those areas. Also, the waiting period applicable to new varieties of *Berberis* is eliminated for articles moving only in the non-protected areas. This relieves certain growers from the monetary losses resulting from developing new hybrids which are subsequently found to be rust-susceptible, and therefore may only be sold intrastate in non-eradication areas under the existing regulations.

Based upon Small Business Administration (SBA) statistics and the 1982 Census of Agriculture statistics, the most recent statistics available to us, we estimate that 71 percent of the 13,217 growers of nursery products in the United States (9,384), are located in the non-protected areas, and that 29 percent (3,833) are in the protected areas. Our projections indicate that of this total, 96 percent are small businesses, as classified by the SBA in its Standards (those with $500,000-or-less in annual receipts). As we stated in the supplementary information accompanying the proposed rule (see 54 FR 18292), we do not have statistics indicating the number of small nursery growers dealing in plants of the restricted genera and the proportion of their revenues derived from such plants. Nevertheless, we believe that most growers of nursery products grow rust-resistant varieties primarily, so they can sell them to a broader market and ship interstate.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR 3015, Subpart V.)

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and given OMB control number 0579–0022.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Black stem rust, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, we are revising 7 CFR Part 301, Subpart—Black Stem Rust, as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

Subpart—Black Stem Rust

Sec.

301.38 Notice of quarantine; restrictions on interstate movement of regulated articles.
301.38–1 Definitions.
301.38–2 Regulated articles.
301.38–3 Protected areas.
301.38–4 Interstate movement of regulated articles.
301.38–5 Assembly and inspection of regulated articles; issuance and concellation of certificates.
301.38–6 Compliance agreements and cancellation.
301.38–7 Attachment and disposition of certificates.
301.38–8 Costs and charges.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, 164–167; and 450; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.38 Notice of quarantine; restrictions on interstate movement of regulated articles.

The conterminous 48 states and the District of Columbia are quarantined in order to prevent the spread of black stem rust. No person shall move interstate any regulated article except in accordance with this subpart.[1]

§ 301.38–1 Definitions.

In this subpart the following definitions apply:

Administrator. The Administrator, Animal and Plant Health Inspection Service (APHIS), or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculure.

Black stem rust. The disease commonly known as the black stem rust of grains (*Puccinia graminis*).

Certificate. A document in which an inspector, or a person operating under a compliance agreement, affirms that a specified regulatory article has met the criteria in § 301.38–5(b) of this subpart and may be moved interstate to any destination.

Compliance agreement. A written agreement between a state that is a protected area or that encompasses a protected area and a person who moves regulated articles interstate, or in a non-protected area between APHIS and such person, in which that person agrees to comply with this subpart.

Departmental permit. A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes, and that the regulated article is eligible for interstate movement under the conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the introduction of rust-susceptible varieties of the genera *Berberis, Mahoberberis,* and *Mahonia* into protected areas.

Inspector. Any APHIS employee or other person authorized by the Administrator in accordance with law to enforce this subpart.

Interstate. From any state into or through any other state.

Limited permit. A document issued by an inspector to allow the interstate movement into or through a protected area of regulated articles not eligible for certification under this subpart to a specified destination outside the protected area.

Moved (movement, move). Shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved. "Movement" and "move" shall be construed in accordance with this definition.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.

Protected area. Those states or counties designated in § 301.38–3(c) of this subpart.

Rust-resistant plants. All plants of the genera *Berberis, Mahoberberis,* and *Mahonia* species, and their progeny, that have proven resistant to black stem rust during testing by the United States Department of Agriculture,[2] and that are

[1] Any properly identified employee of the Animal and Plant Health Inspection Service is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to destroy, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 10 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

[2] Testing is performed by the Agricultural Research Service of USDA as follows: In a greenhouse, the suspect plant, or test subject, is placed under a screen with a control plant, *i.e.*, a known rust-susceptible variety of *Berberis, Mahoberberis,* or *Mahonia.* Infected wheat stems, a primary host of black stem rust, are placed on top of the screen. The plants are moistened and maintained in 100% humidity, causing spores to swell and fall on the plants lying under the screen. The plants are then observed for 7 days at 20–80% relative humidity. This test procedure is repeated 12 times. If in all 12 tests, the rust-susceptible plant shows signs of infection after 7 days and the test plants do not, USDA will declare the test plant variety rust-resistant. The tests must be performed on new growth, just as the leaves are unfolding.

listed as rust-resistant under §§ 301.38–2 (b) and (c).

Rust-susceptible plants. All plants of the genera *Berberis, Mahoberberis,* and *Mahonia* species not listed as rust-resistant under §§ 301.38–2 (b) and (c).

Regulated article. Any article listed in § 301.38–2 (a) through (d) of this subpart or otherwise designated as a regulated article in accordance with § 301.38–2(e) of this subpart.

Seedling. Any plant of the genera *Berberis, Mahoberberis,* and *Mahonia* grown from seed and having less than 2 years' growth.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any state, territory or possession of the United States.

Two years' growth. The growth of a plant during all growing seasons of 2 successive calendar years.

§ 301.38–2 Regulated articles.

The following are regulated articles: [3]

(a) All seedlings and plants of less than 2 years' growth of the genus *Berberis.*

(b) All plants, seeds, fruits, and other plant parts capable of propagation from the following rust-resistant *Berberis* species.

B. aridocalida
B. beaniana
B. buxifolia
B. buxifolia nana
B. calliantha
B. candidula
B. cavallieri
B. chenaulti
B. chanaulti "Apricot Queen
B. circumserrata
B. concinna
B. coxii
B. darwini
B. dasystachya
B. dubia
B. feddeana
B. formosana
B. franchetiana
B. gagnepaini
B. gilgiana
B. gladwynensis
B. gyalaica
B. heterophylla
B. horvathi
B. hybrido-gagnepaini
B. insignis
B. julianae
B. julianae "Nana"
B. julianae "Spring Glory"
B. koreana
B. lempergiana
B. lepidifolia
B. linearifolia
B. linearifolia var. "Orange King"
B. lologensis
B. manipurana
B. media "Park Juweel"
B. mentorensis
B. pallens
B. potanini
B. Renton
B. replicata
B. sanguinea
B. sargentiana
B. sikkimensis
B. stenophylla
B. stenophylla diversifolia
B. stenophylla irwini
B. stenophylla gracilis
B. stenophylla nana compacta
B. taliensis
B. telomaica artisepala
B. thunbergii
B. thunbergii aurea
B. thunbergii argenteo marginata
B. thunbergii atropurpurea
B. thunbergii atropurpurea erecta
B. thunbergii atropurpurea erecta Marshalli
B. thunbergii atropurpurea "Golden Ring"
B. thunbergii atropurpurea "Knight Burgundy
B. thunbergii atropurpurea nana
B. thunbergii atropurpurea "Redbird"
B. thunbergii atropurpurea "Rosy Glow"
B. thunbergii "Bagatelle"
B. thunbergii "Dwarf Jewell"
B. thunbergii erecta
B. thunbergii "globe"
B. thunbergii "golden"
B. thunbergii "Helmond Pillar"
B. thunbergii "Kobold"
B. thunbergii maximowiczi
B. thunbergii minor
B. thunbergii pluriflora
B. thunbergii "Sparkle"
B. thunbergii "Thornless"
B. thunbergii "Upright Jewell"
B. thunbergii variegata
B. thunbergii xanthocarpa
B. triacanthophora
B. triculosa
B. verruculosa
B. virgatorum
B. workingensis
B. xanthoxylon

(c) All plants, seedlings, fruits, and other plant parts capable of propagation from the following rust-resistant *Mahoberberis* and *Mahonia* species, except *Mahonia* cuttings for decorative purposes:

(1) Genera *Mahoberberis*:
M. aqui-candidula
M. aqui-sargentiae
M. miethkeana

(2) Genera *Mahonia*:
M. amplectens
M. aquifolium
M. aquifolium atropurpurea
M. aquifolium compacta
M. aquifolium compacta "John Muir"
M. aquifolium "Donewell"
M. aquifolium "Kings Ransom"
M. aquifolium "Orangee Flame"
M. aquifolium "Winter Sun"
M. "Arthur Menzies"
M. bealei
M. dictyota
M. fortunei
M. "Golden Abundance"
M. japonica
M. lomarifolia
M. nervosa
M. pinnata
M. pinnata "Ken Hartman"
M. piperiana
M. pumila
M. repens

(d) All plants, seeds, fruits, and other plant parts capable of propagation from rust-susceptible species and varieties of the gnera *Berberis, Mahoberberis,* and *Mahonia,* and seedlings from rust-susceptible species and varieties of the genera *Mahoberberis* and *Mahonia,* except *Mahonia* cuttings for decorative purposes.

(e) Any other product or article not listed in paragraphs (a) through (d) of this section, that an inspector determines presents a risk of spread of black stem rust. The inspector must notify the person in possession of the product or article that it is subject to the provisions of this subpart.

§ 301.38–3 Protected areas.

(a) The Administrator may designate as a protected area in paragraph (c) of this section any state that has eradicated rust-susceptible plants of the genera *Berberis, Mahoberberis,* and *Mahonia* under the cooperative federal-state eradication program. In addition, the state must employ personnel with responsibility for the issuance and withdrawal of certificates in accordance with § 301.38–5, and maintain and enforce an inspection program under which every plant nursery within the state is inspected at least once each year to ensure that they are free of rust-susceptible plants. During the requisite nursery inspections, all nursery stock shall be examined to determine that it consists only of rust-resistant varieties of the genera *Berberis, Mahoberberis,* and *Mahonia,* and that the plants are true to type. Plants that do not meet this criteria must be destroyed. If a nursery within the state raises plants of the genera *Berberis, Mahoberberis,* and *Mahonia* from seed, the state must conduct a visual inspection to verify that no wild or domesticated rust-susceptible plants are growing within one-half mile of the nursery.[4]

(b) The Administrator may designate as a protected area any county within a state, rather than the entire state, if areas within the state have eradicated rust-susceptible plants of the genera *Berberis, Mahoberberis,* and *Mahonia* under the cooperative federal-state program, and;

(1) The state employs personnel with responsibility for the issuance and withdrawal of certificates in accordance with § 301.38–5;

(2) The state is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles, as determined by the Administrator; and

(3) The state maintains and enforces an inspection program under which every plant nursery within the county is inspected at least once each year to ensure that plant nurseries within that area are free of rust-susceptible plants of the genera *Berberis, Mahoberberis,* and *Mahonia.* During the requisite nursery inspections, all nursery stock shall be examined to determine that it consists only of rust-resistant varieties of the genera *Berberis, Mahoberberis,* and *Mahonia,* and that the plants are true to type. Plants that do not meet this criteria must be destroyed. If a nursery grows plants of *Berberis, Mahoberberis,* and *Mahonia* from seed, the state must conduct a visual inspection to verify that no wild or domesticated rust-susceptible plants are growing within one-half of the nursery.[4]

(c) The following are designated as protected areas:

(1) The states of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, Pennsylvania, South Dakota, West Virginia, and Wisconsin.

(2) The following counties in the State of Washington: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, Yakima.

(d) Each state that is a protected area or that encompasses a protected area must submit annually to the Administrator a written statement, signed by an inspector, assuring APHIS that all nursery inspections have been performed in accordance with this section. The statement must be submitted by January 1st of each year, and must include a list of the nurseries inspected and found free of rust-susceptible plants.

(e) The Administrator may remove a protected area from the list of designated protected areas in paragraph (c) of this section if he or she determines that it no longer meets the criteria of paragraph (a) or (b)(1)–(3) of this section. A hearing will be held to resolve any conflict as to any material fact. Rules of practice for the hearing shall be adopted by the Administrator.

§ 301.38–4 Interstate movement of regulated articles.

(a) *Non-protected areas.* (1) Interstate movement of regulated articles into or through any state or area that is not designated a protected area under § 301.38–3(c) is allowed without restriction under this subpart.

(b) *Protected areas*—(1) *Prohibited movement.* The following regulated articles are prohibited from moving interstate into or through any protected area:

(i) All *Berberis* seedlings and plants of less than 2 years' growth, and rust-susceptible *Berberis* plants, seeds, fruits, and other plant parts capable of propagation.

(ii) Rust-susceptible *Mahoberberis* and *Mahonia* plants, seedlings, seeds, fruits, and other plant parts capable of propagation.

(2) *Restricted movement:* The following regulated articles may be moved interstate into or through a protected area with a certificate issued and attached in accordance with §§ 301.38–5 and 301.38–7 of this subpart:

(i) Plants of at least two years' growth, seeds, fruits, and other plant parts capable of propagation of the genus *Berberis* that are designated as rust-resistant in § 301.38–2(b) of this subpart;

(ii) Plants, seedlings, seeds, fruits, and other plant parts capable of propagation of the genera *Mahoberberis* and *Mahonia* that are designated as rust-resistant in § 301.38–2(c) of this subpart.

(c) An inspector may issue a limited permit to allow a regulated article not eligible for certication under § 301.38–4(b)(2) to move interstate into or through a protected area to a specified destination that is stated in the permit and is outside the protected area, if the requirements of all other applicable federal domestic plant quarantines are met. A regulated article moved interstate under a limited permit must be placed in a closed sealed container that prevents unauthorized removal of the regulated article, and that remains sealed until the regulated article reaches the final destination stated in the permit. At the final destination, the sealed container must be opened only in the presence of an inspector or with the authorization of an inspector obtained expressly for that shipment.

(d) The United States Department of Agriculture may move any regulated article interstate into or through a protected area in accordance with the conditions determined necessary to prevent the introduction or spread of black stem rust in protected areas, as specified in a Departmental permit issued for this purpose.

§ 301.38–5 Assembly and inspection of regulated articles; issuance and cancellation of certificates.

(a) Any person, other than a person authorized to issue certificates under paragraph (c) of this section, who desires to move interstate a regulated article that must be accompanied by a certificate under § 301.38–4(b), shall, as far in advance of the desired interstate movement as possible (and no less than 48 hours before the desired interstate movement), request an inspector [5] to issue a certificate. To expedite the issuance of a certificate, an inspector may direct that the regulated articles be assembled in a manner that facilitates inspection.

(b) An inspector [5] may issue a certificate for the interstate movement of a regulated article if he or she:

(1) Determines, upon examination, that the regulated article may be moved interstate in accordance with § 301.38–4; and

(2) Determines that the regulated article may be moved interestate in accordance with all other federal

[3] Permit and other requirements for the interstate movement of black stem rust organisms are contained in Part 330 of this chapter.

[4] Persons performing the inspection must be able to recognize rust-susceptible varieties of *Berberis, Mahoberberis,* and *Mahonia.* Inspectors must work side by side, 10 to 20 feet apart, and walk outward, away from the nursery, a distance of one half mile measured from the edge of the nursery, and observe all plants growing in the half-mile band. The distance between the inspectors may vary within this range depending upon the visibility of plant growth. In areas with low brush and flat terrain, the inspectors may be the maximum distance of 20 feet apart if they can observe all plants growing within ten feet of them. In areas of high plant growth or hilly terrain, the inspectors must be closer together due to limited or obstructed visibility. Each inspector must observe all plants growing between themselves and the mid-point of the distance between themselves and the next inspector. This process must be repeated so that the entire band, measured from the border of the nursery to the circumference of an imaginary circle having the nursery as its mid-point, is visually inspected in this manner.

[5] Services of an inspector may be requested by contacting a local APHIS office (listed in telephone directories under Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine). The addresses and telephone numbers of local offices may also be obtained by writing to the Administrator, c/o Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates for interstate movement of regulated articles may be issued by an inspector [5] to a person operating under a compliance agreement for use with subsequent shipments of regulated articles to facilitate their movement. A person operating under a compliance agreement must make the determinations set forth in paragraph (b) of this section before shipping any regulated articles.

(d) Any certificate that has been issued may be withdrawn by an inspector, orally or in writing, if he or she determines that the holder of the certificate has not complied with the conditions of this subpart for the use of the certificate. If the withdrawal is oral, the inspector will confirm the withdrawal and the reasons for the withdrawal, in writing, within 20 days of oral notification of the withdrawal. Any person whose certificate has been withdrawn may appeal the decision, in writing within 10 days after receiving written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate was wrongfully withdrawn. A hearing will be held to resolve any conflict as to any material fact. An appeal shall be granted or denied, in writing, as promptly as circumstances allow, and the reasons for the decision shall be stated. In a non-protected area, appeal shall be made to the Administrator. The Administrator shall adopt rules of practice for the hearing. The certificate will remain withdrawn pending decision of the appeal.

§ 301.38–6 Compliance agreements and cancellation.

(a) Any state that is a protected area or that encompasses a protected area may enter into a written compliance agreement with any person who grows or handles regulated articles in the protected area, or moves interstate regulated articles from the protected area, under which that person agrees to comply with this subpart, to provide inspectors with information concerning the source of any regulated articles acquired each year, and to prevent the unauthorized use of certificates issued or future use under the compliance agreement.[6]

[6] In non-protected areas, compliance agreements may be arranged by contacting a local office of the Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine, or by writing to the Administrator, c/o Domestic and Emergency Operations Staff, PPQ, APHIS, USDA, Room 646, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

(b) A compliance agreement may be cancelled by an inspector, orally or in writing, whenever he or she determines that the person who has entered into the compliance agreement has failed to comply with the agreement or this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed, in writing, within 20 days of oral notification of the cancellation. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. A hearing will be held to resolve any conflict as to any material fact. An appeal shall be granted or denied, in writing, as promptly as circumstances allow, and the reasons for the decision shall be stated. In a non-protected area, appeal shall be made to the Administrator. The Administrator shall adopt rules of practice for the hearing. The compliance agreement will remain cancelled pending decision of the appeal.

§ 301.38–7 Attachment and disposition of certificates.

(a) The certificate required for the interstate movement of a regulated article must, at all times during the interstate movement, be attached to the outside of the container containing the regulated article except as follows:

(1) The certificate may be attached to the regulated article itself if it is not in container; or

(2) The certificate may be attached to the accompanying waybill or other shipping document if the regulated acticle is identified and described on the certificate or waybill.

(b) The carrier must furnish the certificate to the consignee at the destination of the regulated article.

§ 301.38–8 Costs and charges.

The services of an inspector [4] during normal business hours, Monday through Friday, 8 a.m. to 4:30 p.m., will be furnished without cost of persons requiring the services. The United States Department of Agriculture will not be responsible for any other costs or charges.

Done in Washington, DC, this 7th day of August 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–18734 Filed 8–9–89; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 917

[Docket No. FV–89–079]

Fresh Pears, Plums and Peaches Grown in California; Modification of Grade Requirements for Pears for the 1989 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule relaxes grade requirements for organically grown Bartlett or Max-Red (Max-Red Bartlett and Red Bartlett) pears (produced without application of synthetically compounded fertilizers, pesticides and growth regulators) grown in California, for the 1989 season. Shipments of organically grown pears of these varieties would be required to grade at least U.S. Combination grade, with at least 50 percent, by count, grading U.S. No. 1 and the balance of each lot grading at least U.S. No. 2. The committee believes that a limited market exists for organically grown pears, and that handlers should be given the opportunity to meet the needs of the market. Non-organically grown pears must continue to grade at least U.S. Combination with not less than 80 percent, by count, of the pears grading at least U.S. No. 1, with the balance of the fruit grading at least U.S. No. 2.

DATES: This interim final rule becomes effective August 4, 1989 and specifies less restrictive grade requirements for organically grown Bartlett or Max-Red (Max-Red Bartlett or Red Bartlett) pears shipped during the 1989 season. Comments received by September 3, 1989 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments should be sent to: Docket Clerk, U.S. Department of Agriculture, Agricultural Marketing Service, Fruit and Vegetable Division, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Three copies of all material should be submitted and will be available for public inspection in the office of the

Docket Clerk during regular business hours. The comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, F&V, AMS, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone: (202) 475–5464.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 917 (7 CFR Part 917) regulating the handling of fresh pears, plums and peaches grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of pears subject to regulation under the pear, plum and peach marketing order (7 CFR Part 917), and there are approximately 300 producers of pears in the regulated area. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California pears may be classified as small entities.

Shipments of California pears are regulated by grade, size and pack under Pear Regulation 12 (7 CFR 917.461). Because these regulations do not change substantially from season to season, they have been issued on a continuing basis, subject to amendment, modification or suspension as may be recommended by the Pear Commodity Committee (committee) and approved by the Secretary.

Fresh California pears shipped during the 1988 season totalled approximately 127.4 million pounds. The packinghouse door value of the pears in 1988 was approximately $20.2 million.

This interim final rule is based upon a unanimous recommendation of the committee and other available information. Recent consumer interest in "natural" or "organic" foods offers a potentially viable new market for pear producers—one which the committee would like to meet. This action would provide additional opportunities for producers to utilize organic cultural practices to meet consumer demand in these markets.

For the purposes of this rulemaking action, "organically grown" pears should be defined as pears which are produced, harvested, distributed, stored, processed and packaged without the application of synthetically compounded fertilizers, pesticides or growth regulators. No synthetically compounded fertilizers, pesticides or growth regulators shall be applied by the grower to the orchard in which the pears are grown for 12 months prior to the appearance of flower buds and throughout the entire growing and harvest season for pears. This definition is consistent with applicable provisions of the term "organically grown" as defined in section 26569.11(a) (1) and (2) of the California Health and Safety Code, as enacted by the California Organic Food Act of 1979, as amended.

Currently, as specified in paragraph (a)(1) of § 917.461, no handler is permitted to ship any package or container of Bartlett or Max-Red (Max-Red Bartlett or Red Bartlett) pears unless the pears grade at least U.S. Combination with no less than 80 percent, by count, of the pears grading at least U.S. No. 1. Organically grown pears usually have more russetting and other appearance defects than non-organically produced fruit. Hence, it is difficult for organically produced fruit to meet the current requirements. This interim final rule permits the shipment of organically grown pears, during the 1989 season, grading at least U.S. Combination with no less than 50 percent, by count, U.S. No. 1 pears and the balance of the pears must grade at least U.S. No. 2 quality. The relaxation will permit the shipment of fruit with more appearance defects and enable all handlers of organically grown pears to meet the needs of their buyers. Such defects do not affect the eating quality of the fruit. Size, container and pack requirements as specified in paragraphs (a)(2) through (a)(6) of § 917.461 would apply to such organically grown pears.

Field officers of the committee will closely monitor the packing of organically grown pears during the 1989 season. Handlers who intend to ship organic pears in accordance with these relaxed grade requirements shall provide, upon the request of the Committee, with the approval of the Secretary, information indicating that the pears were grown in accordance with the provisions of § 917.461(b)(5). The committee, with the approval of the Secretary, has the authority to require handlers to furnish information as may be necessary to perform its duties under the marketing order. Most producers of organic fruit in the production area are members of associations that certify that produce is grown without the aid of synthetically compounded fertilizers, pesticides or growth regulators. Additionally, the California Department of Food and Agriculture (CDFA) currently requires that all agricultural producers register their chemical use.

This marketing experiment is in place for the 1989 season only. The committee will meet to discuss the grade relaxation experiment, and whether to recommend that the relaxed standards for organic pears be continued in subsequent seasons.

This interim final rule will allow producers of organically grown pears to market a larger portion of their production. Without grade relaxation, an estimated 1,500 packages would be shipped under current regulations. With the grade relaxation specified in this interim final rule, approximately 3,000 packages of organic pears are expected to be shipped. This amount represents an estimated one tenth of one percent of the entire California pear market. The relatively small increase in appearance defects and number of packages shipped are not expected to adversely effect market conditions for non-organically grown pears, particularly since organic fruit is normally sold in specialty markets. Further, information obtained on the marketing of organically grown pears during the 1989 shipping season would be used for evaluating the desirability of authorizing such shipments on a continuing basis.

This action also deletes obsolete wording from the introductory text of § 917.461. Provisions are also added to paragraph (b) of § 917.461 defining "organic pears" and indicating that "U.S. No. 2" means the same as defined in the United States Standards for

Summer and Fall Pears (7 CFR 51.1260–51.1280).

Based on available information, the Administrator of the AMS has determined that this interim final rule will not have a significant impact on a substantial number of small entities.

After consideration of all relevant information presented, including the committee's recommendation, and other information, it is found that the modification of the grade requirements, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that, upon good cause, it is impracticable, unnecessary and contrary to the public interest to give notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Shipments of 1989 organically grown California pears are expected to begin around August 5, 1989; (2) this action relaxes grade requirements by allowing shipments of such organically grown pears with at least 50 percent U.S. No. 1 Grade and the remainder of the package containing U.S. No. 2 Grade pears; (3) handlers are aware of this action discussed at a public meeting and need no additional time to operate under the relaxed requirements; and (4) no useful purpose would be served by delaying the effective date of the relaxed requirements.

The committee's recommendation, and all written comments timely received in response to this publication will be considered prior to any finalization of this interim final rule.

List of Subjects in 7 CFR Part 917

Marketing agreement and order, Pears, Plums and Peaches, California.

For the reasons set forth in the preamble, 7 CFR Part 917 is amended as follows:

Note: This action will appear in the *Code of Federal Regulations.*

PART 917—FRESH PEARS, PLUMS AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 917.461 is amended by revising the introductory text of (a) paragraphs (a)(1) and (b)(3), and by adding paragraph (b)(5) to read as follows:

§ 917.461 Pear Regulation 12.

(a) No handler shall ship:

(1) Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears which do not grade at least U.S. Combination with not less than 80 percent, by count, of the pears grading at least U.S. No. 1: *Provided*, That for the 1989 crop year, no handler shall ship organic pears of these varieties unless they grade at least U.S. Combination with not less than 50 percent, by count, grading at least U.S. No. 1 and the remainder grading at least U.S. No. 2. Handlers who intend to ship organic pears in accordance with this paragraph shall provide, upon request of the committee, with the approval of the Secretary, information to indicate that the pears were grown in accordance with the provisions of paragraph (b)(5) of this section.

* * * * *

(b) * * *

(3) "U.S. No. 1", "U.S. No. 2", "U.S. Combination", and "Standard Pack" means the same as defined in the United States Standards for Summer and Fall Pears (7 CFR 51.1260 to 51.1280).

* * * * *

(5) "Organic pears" means pears which are produced, harvested, distributed, stored, processed and packaged without application of synthetically compounded fertilizers, pesticides, or growth regulators. In addition, no synthetically compounded fertilizers, pesticides, or growth regulators shall be applied by the grower to the field or area in which the pears are grown for 12 months prior to the appearance of flower buds and throughout the entire growing and harvest season for pears.

Dated: August 4, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–18665 Filed 8–9–89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–55–AD; Amdt. 39–6294]

Airworthiness Directives: British Aerospace Model BAe/DH/BH/HS 125 Series Airplanes Equipped With Garrett TFE731 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe/DH/BH/HS 125 series airplanes equipped with Garrett TFE731 engines, which requires inspection and additional insulation of certain electrical contactor bodies. This amendment is prompted by a report of an electrical overheat due to a battery shorting to ground through the electrical contactors. This condition, if not corrected, could lead to grounding of the contractors and possible electrical fire.

EFFECTIVE DATE: September 15, 1989.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 431–1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive applicable to certrain British Aerospace Model BAe/DH/BH/HS 123 series airplanes equipped with Garrett TFE731 engines, which requires inspection and additional insulation of certain electrical contactor bodies, was published in the **Federal Register** on May 9, 1989 (54 FR 19907).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters supported the rule, but one commenter (the manufacturer) suggested that paragraph B. be changed to include Hartman contactors, Part Numbers A848KHS and A848KSS, as parts which should not be installed unless modified in accordance with the service bulletin. The FAA concurs and has added those part numbers to paragraph B. of the final rule. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described above.

It is estimated that 285 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The required parts will be provided by the manufacturer at no charge. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $34,200.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace (BAE), PLC: Applies to Model BAe/DH/BH/HS 123 series airplanes equipped with Garrett TFE731 engines, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent an electrical fire caused by grounding of certain electrical contactors, accomplish the following:

A. Within 120 days after the effective date of this AD, inspect and modify Hartman electrical contactor components, in accordance with paragraph 2.A of British Aerospace Service Bulletin 24–268–3223A&B, Revision 2, dated February 28, 1989.

B. After the effective date of this AD, Hartman contactors having Part Numbers A848MAS, A848KHS, or A848KSS shall not be installed on any airplane unless modified in accordance with paragraph 2.B. of British Aerospace Service Bulletin 24–268–3223A&B, Revision 2, dated February 28, 1989.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 15, 1989.

Issued in Seattle, Washington, on August 1, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–18712 Filed 8–9–89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89–ASO–27]

Amendment to Control Zone, Miami, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Miami, FL, Control Zone adds an arrival area extension. The extension will provide additional controlled airspace for protection of Instrument Flight Rules (IFR) aircraft executing a Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP) to Runway 9L at the Miami International Airport based on the Cook NDB.

EFFECTIVE DATE: 0901 u.t.c., September 21, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On June 28, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Miami, FL, Control Zone (54 FR 27184). This amendment would add an arrival area extension to provide controlled airspace for protection of IFR aircraft executing an NDB SIAP planned for Runway 9L at the Miami International Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations adds an arrival area extension to the Miami, Florida, Control Zone. This action will provide additional controlled airspace for protection of IFR aircraft executing a new NDB Runway 9L Standard Instrument Approach Procedure to the Miami International Airport based on the Cook NDB.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a

routine matter that will not affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Miami, FL [Amended]

Following the phrase, "* * * Miami International Airport (Latitude 25°47'34" N; Longitude 80°17'10" W)"; insert the phrase, "within 2.5 miles each side of the 267° bearing from the Cook NDB, extending from the 6-mile radius area to 4 miles west of the NDB."

Issued in East Point, Georgia, on July 25, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-18718 Filed 8-9-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-26]

Amendment to Transition Area, Orlando, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Orlando, FL, Transition Area adds an arrival area extension northeast of the Orlando Executive Airport. This action is necessary to provide airspace protection for instrument flight rules (IFR) aircraft executing the instrument landing system (ILS) Runway 25 localizer approach. This procedure is being modified in order to accommodate a new ILS standard instrument approach procedure (SIAP) at Orlando International Airport.

EFFECTIVE DATE: 0901 u.t.c., September 21, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On June 19, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Transition Area, Orlando, FL (54 FR 25730). This action would add an arrival area extension northeast of the Orlando Executive Airport to provide airspace protection for IFR aircraft executing the ILS Runway 25 localizer approach. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the Orlando, FL, Transition Area by adding an arrival area extension northeast of the Orlando Executive Airport. This action is necessary to provide airspace protection for IFR aircraft executing the ILS Runway 25 localizer approach. This procedure is being modified in order to accommodate a new ILS SIAP at Orlando International Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Orlando, FL [Amended]

Following the phrase in the existing description which states, "* * * 14 miles northwest of the VORTAC;" add the following: "within five miles each side of the ILS localizer northeast course extending from the 8.5-mile radius area to 10 miles northeast of the airport;".

Issued in East Point, Georgia, on July 28, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-18720 Filed 8-9-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-23]

Revision of Transition Area, Swainsboro, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Swainsboro, GA, transition area. The Swainsboro very high frequency omnidirectional range station (VOR) is planned to be decommissioned, thus, eliminating the need for the existing arrival area extension based on the VOR. A new standard instrument approach procedure (SIAP) has been developed predicated on the Emanuel County nondirectional radio beacon (NDB). This revision increases the radius of the transition area to provide additional airspace protection for instrument flight rules (IFR) aircraft executing the new NDB SIAP plus existing IFR aeronautical operations. Also, a minor correction is made to the geographic position coordinates of the Emanuel County Airport.

EFFECTIVE DATE: 0901 u.t.c., September 21, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On June 9, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Swainsboro, GA, transition area (54 FR 24714). The Swainsboro VOR is planned to be decommissioned, thus, eliminating the need for the existing arrival area extension based on the VOR. A new SIAP has been developed predicated on the Emanuel County NDB. This revision would increase the radius of the transition area to provide additional airspace protection for IFR aircraft executing the new NDB SIAP plus existing IFR aeronautical operations. Also, a minor correction would be made to the geographic position coordinates of the Emanuel County Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Swainsboro, GA, transition area by eliminating an arrival area extension based on the Swainsboro VOR. The transition area radius has been increased to accommodate IFR aeronautical operations including aircraft executing a new SIAP based on the NDB. Also, a minor correction has been made to the geograpahic position coordinates of the Emanuel County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Swainsboro, GA [Revised]

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Emanuel County Airport (latitude 32°36'27" N, longitude 82°22'05" W).

Issued in East Point, Georgia, on July 25, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-18717 Filed 8-9-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AWP-3]

Establishment of Transition Areas, Lovelock, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The Federal Aviation Administration (FAA) is correcting errors that appeared in the **Federal Register** on June 28, 1989, (54 FR 27158, 27159). The errors were discovered in the description of the Lovelock VORTAC radial (true) on which the instrument approach is predicated. Also, errors were discovered in the latitude/longitude description of transition areas southeast of Derby Field, Lovelock, NV. This action corrects those errors.

FOR FURTHER INFORMATION CONTACT: Jon L. Semanek, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-0433.

§ 71.181 [Corrected]

1. § 71.181 is amended as follows:

Lovelock, NV [Corrected]

On page 27159, in the first column, in § 71.181, under Lovelock, NV [NEW], in the third line, "40°04'05" N., long. 118°33'42" W." should read "40°03'59" N., long. 118°33'51" W." In the fifth line, (317T) should read (349T). In the sixth and seventh lines, "extending to 12 miles north Lovelock VORTAC" should read "extending from the 5 mile radius area to 12 miles north of Lovelock VORTAC". In the ninth line, "40°37'.00" N." should read "40°37'30" N." In the thirteenth line "118°22'00" W." should read "118°22'30" W." In the fifteenth line, "40°05'30" N., long. 118°27'00" W." should read "40°05'05" N., long. 118°28'00" W." In the eighteenth line, "40°01'00" N., long. 118°28'00" W." should read "40°00'00" N., long. 118°30'30" W."

Issued in Los Angeles, CA, on July 28, 1989.

Merle D. Clure,

Asst. Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 89-18715 Filed 8-9-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-29]

Amendment to Control Zone, Nashville, TN

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Nashville, TN, Control Zone enlarges the existing arrival area extension south of the airport by expanding the area one additional mile to the east. A new runway (2R) has been built at the Nashville International Airport and an associated standard instrument approach procedure (SIAP) has been developed. This additional controlled airspace is required for protection of instrument flight rules (IFR) aircraft executing the new SIAP.

EFFECTIVE DATE: 0901 u.t.c., September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Patterson, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On June 28, 1989, the FAA proposed to amend Part 71 of the Federal Aviation

BEST COPY AVAILABLE

Regulations (14 CFR Part 71) to amend the Nashville, TN, Transition Area (54 FR 27187). This proposed action would expand the existing arrival area extension south of the airport. This was necessary to provide additional controlled airspace for IFR aircraft executing a new SIAP to a parallel runway (2R) recently constructed at the Nashville International Airport. The existing control zone extension on the south would be expanded to the east one additional mile. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to § 71.171 of Part 71 of the Federal Aviation Regulations amends the Nashville, TN, control zone by enlarging the arrival extension south of the International Airport. The control zone extension is being expanded one additional mile to the east to provide controlled airspace for protection of IFR aircraft executing a recently developed SIAP to a new parallel runway (2R).

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Nashville, TN [Amended]

By changing the phrase in the existing description, "within 1.5 miles each side of the ILS localizer south course, extending from the 5-mile radius zone to the LOM;" to read: "within 1.5 miles west and 2.5 miles east of the BNA ILS localizer south course, extending from the 5-mile radius zone to 7 miles south of the airport;".

Issued in East Point, Georgia, on July 28, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-18719 Filed 8-9-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Parts 71 and 73

[Airspace Docket No. 88-ASW-60]

Establishment of Restricted Areas R-6316 Eagle Pass; R-6317 El Sauz; and Alteration of VOR Federal Airway V-13; Texas

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Restricted Areas R-6316 located near Eagle Pass, TX; R-6317 located near El Sauz, TX; and alters the description of Federal Airway V-13 located in the vicinity of El Sauz, TX. This action provides for the deployment of a tethered aerostat-borne radar system within each restricted area at the request of the United States Customs Service. This action allows the Customs Service to provide surveillance of airspace from the surface up to 15,000 feet mean sea level (MSL) and to detect low-altitude suspect aircraft attempting to penetrate the airspace. In addition, the Continental Control Area is amended to reflect R-6316 and R-6317.

EFFECTIVE DATE: 0901 u.t.c. September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Jesse Bogan, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On March 10, 1989, the FAA proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to establish Restricted Areas R-6316 located near Eagle Pass, TX; R-6317 located near El Sauz, TX; R-6318 located near Marfa, TX; and to alter the description of Federal Airway V-13 located in the vicinity of El Sauz, TX (54 FR 10167). This action would allow the Customs Service to provide surveillance of airspace and to detect low-altitude suspect aircraft attempting to penetrate the airspace. The notice of proposed rulemaking (NPRM) for the establishment of R-6316, R-6317 and alteration of Federal Airway V-13 also included the establishment of R-6318. Preparations for the deployment of a tethered aerostat-borne radar system were completed earlier for R-6318. Therefore, the establishment of R-6318 was set forth in a separate final rule action prior to the establishment of R-6316, R-6317 and alteration of Federal Airway V-13. Only those comments specifically related to the establishment of R-6316, R-6317 and alteration of V-13 are listed since this document pertains only to R-6316, R-6317, and V-13.

Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. Comments on the proposal were received from the United States Air Force (USAF), the Texas Aeronautical Commission (TAC), and the Aircraft Owners and Pilots Association (AOPA).

The USAF expressed no objection to the proposed establishment of R-6316, R-6317 and alteration of V-13.

The TAC objected to the proposed location of R-6316, in the vicinity of Farm and Market (FM) Road 1021, which would partially block a major Visual Flight Rules (VFR) flyway between Eagle Pass and Laredo, TX, along FM Road 1021. The TAC was concerned with the separation of southeastbound aircraft and northwestbound aircraft both circumnavigating the proposed restricted area to the north since the southern boundary of the restricted area is located adjacent to the United States/Mexico border. The TAC also expressed a concern that the aircraft circumnavigating the proposed restricted area would possibly lose sight of FM Road 1021 during marginal VFR weather. Separation of opposite direction traffic circumnavigating the restricted area to the north would be maintained by aircraft adhering to hemispherical altitudes. While it is true that aircraft may lose sight of VFR landmarks, e.g., FM Road 1021, during marginal VFR weather while circumnavigating the restricted area, we feel reasonably comfortable with the idea that pilots will be able to establish their aircraft on a heading or course which would allow them to site the FM Road within a relatively short period of time or distance.

The TAC expressed a concern that pilots would be unable to determine the exact location of the aerostat balloon within each restricted area and that the unlit tether cables of the aerostat balloons would be a considerable risk for any VFR pilot flying through the restricted area. The restricted area is designed to completely contain the aerostat balloon and its cables, lighted or unlighted. We recognize pilots' desire to be able to see the balloon and its cable, but pilots must continue to be responsible to remain clear of a restricted area between the designated altitudes and during the time of designation for the restricted area, unless pilots have advance permission to traverse the restricted area.

The TAC recommended that alternate sites be studied before any final decision is made on the exact locations for the aerostat balloons. Prior to the selection of a site for the restricted area, the Customs Service considered several sites for the restricted areas. The sites selected for the establishment of the restricted areas were determined to be the best possible sites for the deployment of the tethered aerostat-borne radar systems.

The AOPA requested that public hearings should be held to allow for user input. Due to the nature of the aerostat program and security, the Customs Service felt that public hearings prior to the establishment of the aerostat restricted areas would not be in the best interest of the aerostat program.

The AOPA requested the aerostat balloons should not be flown prior to being indicated on the aeronautical charts. The U.S. Customs Service is aware that the aerostat balloons cannot be flown until the associated restricted areas become effective and are published on the en route altitude charts.

The AOPA made comment that the FAA should publish Notices to Airmen (NOTAMs) concerning the establishment of the restricted areas. The routine notification procedures for establishing restricted areas coincide with the en route charting dates. This method of notification and establishment of restricted areas has proven to be effective. Therefore, the FAA feels that publishing the establishment of restricted areas in Class II Notices to Airmen in addition to the routine notification procedures is not warranted at this time.

The AOPA requested that the Customs Service should place strobe lights on the aerostat balloons' tether cables. The FAA does not require the Customs Service to place strobe lights on the aerostat balloons' tether cables while the balloons are within the confines of the resricted areas. Also, the Customs Service feels that placing strobe lights on the aerostat balloons' tether cables would pose a dangerous threat to the aerostat balloons during inclement weather, as well as a danger to operators when they retrieve the balloon during lightning activity.

With the exception of that part of the notice which proposed to establish R-6318 and editorial changes, these amendments are the same as those proposed in the notice. A separate action to establish R-6318 was taken prior to this action to establish R-6316, R-6317 and alteration of V-13. Sections 71.123, 71.151, and 73.63 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6E dated January 3, 1989.

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations establish Restricted Areas R-6316 in the vicinity of Eagle Pass, TX; R-6317 in the vicinity of El Sauz, TX; and amend the description of Federal Airway V-13 located in the vicinity of El Sauz, TX. The U.S. Customs Service will deploy a tethered aerostat-borne radar system at each location with the capability of detecting low-altitude suspect aircraft attempting to penetrate the airspace at each location. The systems will increase the probability of the interception and interdiction of suspect aircraft and provide low altitude radar coverage for the Customs Service. In order to achieve the aim of the Customs Service, it is necessary to restrict airspace from the surface to 15,000 feet MSL, within a 3-statute-mile radius of a point on the Laughlin very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) 156° radial, 64 miles from the VORTAC, for R-6316 and from the surface to 15,000 feet MSL, within a 3-statute-mile radius of a point on the McAllen very high frequency omni-directional radio range (VOR) 307° radial, 39 miles from the VOR, for R-6317. The Continental Control Area is amended to reflect R-6316 and R-6317.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, VOR federal airways, Continental control area, Restricted areas.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) are amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-13 [Amended]

By removing the words "From Laredo, TX, via INT Laredo 156° and McAllen, TX, 306° radials; McAllen;" and by substituting the words "From McAllen, TX, via"

§ 71.151 [Amended]

3. § 71.151 is amended as follows:

R-6316 Eagle Pass, TX [New]
R-6317 El Sauz, TX [New]

PART 73—SPECIAL USE AIRSPACE

4. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.83 [Amended]

5. § 73.83 is amended as follows:

R-6316 Eagle Pass, TX [New]

Boundaries. A 3-mile radius centered at lat. 28°23'06" N., long. 100°17'10" W.
Designated altitudes. Surface to 15,000 feet MSL.
Time of designation. Continuous.
Controlling agency. FAA, Houston ARTCC.
Using agency. United States Customs Service.

R-6317 El Saux, TX [New]

Boundaries. A 3-mile radius centered at lat. 28°34'12" N., long. 98°49'06" W.
Designated altitudes. Surface to 15,000 feet MSL.
Time of designation. Continuous.
Controlling agency. FAA, Houston ARTCC.
Using agency. United States Customs Service.

Issued in Washington, DC, on July 27, 1989.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-18721 Filed 8-9-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM86-6-007; Order No. 474-B]

Construction Work in Progress

Issued August 3, 1989.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on remand.

SUMMARY: The Federal Energy Regulatory Commission is modifying § 35.26(g)(2) of its regulations which concern the recovery by public utilities of costs for Construction Work in Progress (CWIP). The Commission is responding to the United States Court of Appeals for the District of Columbia Circuit ruling, which affirmed in part but vacated in part the Commission's prior Construction Work in Progress (CWIP) rule (Order No. 474) (52 FR 23948 (June 26, 1987)). The Commission is modifying § 35.26(g)(2) by changing the burden of proof required of a wholesale customer seeking preliminary relief from an alleged price squeeze. This order adopts a revised standard for preliminary relief.

EFFECTIVE DATE: This order becomes effective September 11, 1989.

FOR FURTHER INFORMATION CONTACT:
Andre Goodson, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol St. NE., Washington, DC 20426, (202) 357-8467.
William Longenecker, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol St. NE., Washington, DC 20426, (202) 376-4444.
Ronald Rattey, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol St. NE., Washington, DC 20426, (202) 357-8293.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

I. Introduction

This proceeding is on remand from the United States Court of Appeals for the District of Columbia Circuit.[1] In response to the Court's mandate, the Commission is modifying § 35.26(g)(2) of its regulations, which concern the recovery by public utilities of costs for Construction Work in Progress (CWIP), by changing the burden of proof required of a wholesale customer seeking preliminary relief from an alleged price squeeze.[2]

Section 35.26(g)(2) is modified by eliminating the requirement that a party seeking preliminary relief make a concrete, substantial showing that it is likely to incur imminent, irreparable harm if the requested non-pollution control/fuel conversion CWIP is allowed. In place of the imminent, irreparable harm standard, a new standard is adopted whereby a party requesting preliminary relief must show that it is likely to be harmed in some way if the requested non-pollution control/fuel conversion CWIP is allowed. Upon such a showing, the Commission will balance the respective interests of the party seeking preliminary relief, the public utility applying for non-pollution control/fuel conversion CWIP, and the public in determining whether to grant the request for preliminary relief.

II. Background

A. The Commission's CWIP Policy Prior to Order No. 474

In 1976, this Commission's predecessor, the Federal Power Commission, adopted a rule whereby a public utility could include CWIP in rate base in three instances: (1) To construct pollution control facilities; (2) to convert oil and gas burning plants to coal burning plants; and (3) where the public utility requesting CWIP was in severe financial distress which could not be alleviated in the absence of CWIP in rate base without materially increasing the cost of electricity to consumers.[3]

In 1983, the Commission modified its CWIP policy and permitted any public utility to include up to 50 percent of non-pollution control/fuel conversion CWIP in rate base in addition to any CWIP related to pollution control or fuel conversion facilities.[4]

On appeal of the Commission's 1983 CWIP rule (Order No. 298), the D.C. Circuit upheld the Commission's policy objectives supporting the rule, but remanded the rule to the Commission for consideration of the rule's potential anticompetitive effects.[5]

[1] Mid-Tex Electric Cooperative, *et al.* v. FERC, 864 F.2d 156 (D.C. Cir. 1988) (*Mid-Tex III*).

[2] 18 CFR 35.26(g)(2) (1988). *See* Order No. 474, FERC Stats. & Regs. Regs. Preambles ¶ 30,751 (June 18, 1987), 52 FR 23948 (June 26, 1987), *order on reh'g*, Order No. 474-A, FERC Stats. & Regs., Regs. Preambles ¶ 30,765 (Sept. 17, 1987), 52 FR 35695 (Sept. 23, 1987).

[3] Order No. 555, 56 FPC 2939 (Nov. 8, 1976), 41 FR 51362 (Nov. 22, 1976), *order on reh'g*, Order No. 555-A, 57 FPC 8, 42 FR 3022 (1977).

[4] Order No. 298, FERC Stats. & Regs., Regs. Preambles 1982-85 ¶ 30,455 (May 16, 1983), 48 FR 24323 (June 1, 1983), *order on reh'g*, Order No. 298-A, FERC Stats. & Regs., Regs. Preambles 1982-85 ¶ 30,500 (Oct. 4, 1983), 48 FR 46012 (Oct. 11, 1983).

[5] Mid-Tex Electric Cooperative, Inc. v. FERC, 773 F.2d 327 (D.C. Cir. 1985) (*Mid-Tex I*).

Following the court's remand, the Commission promulgated an interim CWIP rule (Order No. 448) that recodified, with certain modifications, many of the provisions of the 1983 CWIP rule pending consideration of the issues remanded to the Commission.[6] In the interim CWIP rule, the Commission also solicited comments on a number of issues related to potential anticompetitive effects of the rule. The court upheld the interim rule.[7]

B. Order No. 474

In 1987, after review of the comments filed in response to the interim CWIP rule, the Commission issued a final CWIP rule (Order No. 474). Order No. 474 continued the Commission's policy of allowing utilities to request up to 50 percent of non-pollution control/fuel conversion CWIP in rate base. However, in response to the Mid-Tex I remand, Order No. 474 also provided for filing requirements and procedures designed to address, mitigate, remedy, and/or prevent non-pollution control/fuel conversion CWIP-related price squeeze and double whammy.[8]

C. The Court's Remand of Order No. 474

In Mid-Tex III, the court affirmed the final CWIP rule (Order No. 474) on all but one issue, holding that "[t]he decisions regarding the anticompetitive problem of double whammy and the case-by-case approach to remedying price squeeze are the products of reasoned decisionmaking."[9] However, the court remanded the CWIP rule to the Commission for further consideration of the appropriate burden of proof required of a wholesale customer seeking preliminary relief from an alleged non-pollution control/fuel conversion CWIP-related price squeeze.[10]

The regulation at issue, § 35.26(g)(2) provides as follows:

(2) *Preliminary relief.* If an intervenor in its initial pleading alleges that a price squeeze will occur as a direct result of the public utility's request for CWIP pursuant to § 35.26(c)(3) of this part and makes a concrete, substantial showing that it is likely to incur imminent, irreparable harm if such CWIP is allowed, the Commission will consider preliminary relief at the suspension stage of the case pursuant to paragraph (g)(4) of this section. Whether or not preliminary relief is granted at the suspension stage will not preclude consideration of further remedies later in the proceedings, if warranted.

Under § 35.26(g)(4) of the regulations, after the requirements of paragraph (g)(2) have been met:

[T]he Commission, depending on the type of showing made including the likelihood, immediacy, and severity of any anticompetitive harm, may:

(i) Suspend the entire rate increase or all or a portion of the non-pollution control/fuel conversion CWIP component for up to five months;

(ii) Allow all or a portion of the non-pollution control/fuel conversion CWIP only prospectively from the issuance of the Commission's final order on rehearing on the matter; or

(iii) Take such other action as is proper under the circumstances.

Mid-Tex had alleged that the imminent, irreparable harm standard for obtaining preliminary relief was unduly stringent. The court did not decide that the standard was impermissible. However, the court was not persuaded by the rule's first rationale that if the Commission suspended an entire rate increase for up to five months, this would constitute a permanent loss of revenues to the utility. The court noted the Commission's authority under § 35.26(g)(4)(i) of its regulations to suspend *less* than the entire rate increase, if the Commission were to suspend only the CWIP component of the rate increase, stated the court, such suspension "would only defer the utility's collection of the revenue, for costs denied as CWIP could be recovered later under AFUDC."[11] Consequently, the court rejected the rule's first rationale because of the Commission's ability to suspend only the CWIP portion of a rate increase, and thereby subject the utility to no permanent loss of revenue.

The court also was not persuaded by the Commission's rationale that the imminent, irreparable harm standard is appropriate because this is the standard for preliminary relief in all of its suspension decisions. The court determined that while the affected wholesale customer may be permanently harmed by a CWIP-induced price squeeze if it cannot obtain preliminary relief, the record indicated that the only harm suppliers would suffer from a suspension of the CWIP portion of the rate increase is a delay in recouping financing charges. The court concluded that the balance of harm to the customer and harm to the supplier seems to favor a less stringent standard than "the traditional stringent standard" that the Commission normally applies in suspension decisions. The court's holding did not preclude the Commission from adopting the imminent, irreparable harm standard provided that it gives a fuller explanation which balances the respective harm suffered by the supplier and the wholesale customer.[12]

III. Discussion

In response to the court's remand,[13] this order modifies § 35.26(g)(2) by revising the standard for obtaining preliminary relief from alleged non-pollution control/fuel conversion CWIP-related price squeeze. The court in Mid-Tex III held that, absent further explanation by the Commission, the imminent, irreparable harm standard for preliminary relief was too stringent. Accordingly, we are amending § 35.26(g)(2) by eliminating the requirement that an intervenor alleging non-pollution control/fuel conversion CWIP-related price squeeze make a concrete, substantial showing of imminent, irreparable harm in order to obtain preliminary relief. In place of the imminent, irreparable harm standard, this order adopts a new standard.

Under the revised § 35.26(g)(2), an intervenor seeking preliminary relief from an alleged non-pollution control/fuel conversion CWIP-related price squeeze must show that it is likely to incur some type of specific harm

[6] Order No. 448, FERC Stats. & Regs., Regs. Preambles ¶ 30,889 (Feb. 28, 1988), 50 FR 7774 (Mar. 6, 1988).

[7] Mid-Tex Electric Cooperative, Inc. v. FERC, 822 F.2d 1123 (D.C. Cir. 1987) (*Mid-Tex II*).

[8] "Price squeeze" occurs when a utility's wholesale rate (in relation to costs) is higher than its retail rates (in relation to costs), creating the potential for an anticompetitive effect because the wholesale customer is inhibited in its ability to compete at the retail level against the wholesale supplier. *See* FERC Stats. & Regs., Regs. Preambles ¶ 30,751 at 30,728 note 4, 52 FR 23948. "Double whammy" is essentially a situation in which a wholesale customer embarks upon its own or participates in a construction program to supply itself with all or a portion of its future power needs, thereby reducing its future dependence on the CWIP of the rate applicant, but is simultaneously forced to pay to the CWIP rate applicant the CWIP portion of the wholesale rates that reflects existing levels of service or a different anticipated service level. It is argued that this is anticompetitive because it would cause the wholesale customer to essentially subsidize other wholesale customers who would shoulder less of the CWIP burden as a result, thereby putting the first wholesale customer at competitive disadvantages vis-a-vis the utility and the other wholesale customers. *See* FERC Stats. & Regs., Regs. Preambles ¶ 30,751 at 30,728 note 5, 52 FR 23948.

[9] 864 F.2d at 164.

[10] 864 F.2d at 163-65.

[11] 864 F.2d at 164.

[12] *Id.*

[13] The Commission has received comments with respect to the appropriate preliminary relief standard through comments in response to Order No. 448, the requests for rehearing of Order No. 474, and the appeal of Order No. 474. In view of those comments and the court's opinion in Mid-Tex III, the Commission believes that further comment would not enhance the record.

associated with price squeeze if the requested non-pollution control/fuel conversion CWIP is allowed. The intervenor must show that the suspension and refund constraints to which the entire rate change would otherwise be subjected would not provide adequate relief with respect to the CWIP portion of the rate. Upon such a showing by the intervenor, the Commission will balance the following public interest considerations: (1) The harm to the intervenor if it is not granted preliminary relief from the requested CWIP; (2) the harm to the public utility if, during the interim period of preliminary relief, the public utility is required to recover its financing charges later through AFUDC rather than immediately through CWIP; and (3) the interests, identified in Order No. 298 (and affirmed by the court in Mid-Tex I), of mitigating bias against investment in new plants, ensuring accurate price signals, and fostering rate stability. If the balance of interests favors the intervenor, the Commission will grant the intervenor preliminary relief. The appropriate preliminary relief would be determined in accordance with § 35.28(g)(4) of the regulations.

An intervenor must make this showing at the time it files its motion to intervene in order for the Commission to consider preliminary relief at the suspension stage of a rate proceeding. This is necessary because of the time constraints placed on the Commission by the 60-day statutory time limit for Commission action on rate filings.[14] Regardless of the Commission's disposition at the suspension stage, however, the intervenor may request interim relief any time later in the proceeding.

The showing of harm made by the intervenor will affect the relief deemed appropriate by the Commission. In other words, the more the balance of hardships tilts toward the intervenor, the greater the preliminary relief the Commission will consider granting the intervenor. As part of this balancing process, the Commission must also determine that the relief sought would relieve the alleged harm before it grants such relief. Under the new § 35.28(g)(2)(i), an intervenor must show how the harm will be mitigated or eliminated by the type of relief requested. Under this standard, an intervenor would have to make a showing of greater harm in order for the Commission to allow prospective-only collection of non-pollution control/fuel conversion CWIP pursuant to § 35.28(g)(4)(ii) than the intervenor would have to make in order for the Commission to merely suspend all or part of the non-pollution control/fuel conversion CWIP portion of the rate filing.[15]

One type of harm for which preliminary relief might be appropriate would be an instance in which the intervenor alleges that it will be harmed if it passes the CWIP costs through to its own customers. For example, the intervenor could allege that such a pass-through of costs would lead to the loss of customers or inhibit its ability to attract new customers. We would expect the intervenor to show how the relief requested would mitigate the loss of customers or inability to attract new ones. Another type of harm might be a situation in which the wholesale customer absorbs some or all of the CWIP costs rather than passing those costs through to its own customers. For example, the customer might allege that such a circumstance would have deleterious effects on the viability of its business, *i.e.*, it would have to operate at a loss or there would be more than a remote possibility of adverse effects on service reliability. The examples discussed above are not exclusive. Intervenors may make any showing that they deem appropriate. Determinations of whether to grant preliminary relief, and the appropriate relief to be granted, will necessarily be case-specific.

In Mid-Tex I, the court upheld the Commission's policy objectives supporting the CWIP rule.[16] In Mid-Tex III, the court upheld the final rule's approach addressing anticompetitive implications of the CWIP rule,[17] and the court's remand was very narrow in scope, limited to the preliminary relief standard. Therefore, given the fact that the court has upheld, in principle, the Commission's policy of allowing requests for the collection of non-pollution control/fuel conversion CWIP on a generic basis, the revised § 35.28(g)(2) requires more than a bare allegation of harm for preliminary relief to be considered. The Commission believes that to allow preliminary relief as a routine matter upon a mere allegation of harm would serve to undermine the CWIP rule's purpose of generally allowing such CWIP to be collected, subject to refund and other conditions, in order to mitigate bias against investment in new plants. Finally, even if the intervenor is denied preliminary relief at the suspension stage of the proceeding, it may still seek interim relief at any time later in the proceeding.

[14] Under section 205 of the Federal Power Act, rate filings become effective 60 days after filing, absent Commission action within the 60-day period to suspend or reject the rates.

[15] As another example, if an intervenor makes a showing supporting a one-day suspension of the entire rate change filing, it must make some additional showing of harm in order to merit consideration of a longer suspension of the non-pollution control/fuel conversion CWIP portion of the rate filing.

[16] Mid-Tex I, 773 F.2d at 344–45, 362.

[17] Mid-Tex III, 864 F.2d at 164.

IV. Effective Date

The change to the Commission's regulations adopted in this order is effective September 11, 1989.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 35, Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

By the Commission. Commissioner Stalon concurred with a separate statement to be issued later.

Linwood A Watson, Jr.

Acting Secretary.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for Part 35 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

2. In § 35.26, paragraph (g)(2) is revised to read as follows:

§ 35.26 Construction work in progress.

* * * * *

(g) *Anticompetitive procedures.* * * *

(2) *Preliminary relief.* (i) If an intervenor in its initial pleading alleges that a price squeeze will occur as a direct result of the public utility's request for CWIP pursuant to § 35.26(c)(3), makes a showing that it is likely to incur harm if such CWIP is allowed subject to refund, and makes a showing of how the harm to the intervenor would be mitigated or eliminated by the types of preliminary relief requested, the Commission will consider preliminary relief at the suspension stage of the case pursuant to paragraph (g)(4) of this section. In determining whether to grant preliminary relief, the Commission will balance the following public interest considerations:

(A) The harm to the intervenor if it is not granted preliminary relief from the requested CWIP;

(B) The harm to the public utility if, during the interim period of preliminary relief, the public utility is required to recover its financing charges later through AFUDC rather than immediately through CWIP; and

(C) Mitigating bias against investment in new plants, ensuring accurate price signals, and fostering rate stability.

(ii) Whether or not preliminary relief is granted at the suspension stage will not preclude consideration of further interim or final remedies later in the preceedings, if warranted.

* * * * *

[FR Doc. 89-18948 Filed 8-9-89; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Parts 270 and 271

[Docket No. RM89-6-000; Order No. 515]

Establishment of Deadlines for First Sellers to Make and Report Refunds

Issued August 3, 1989.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations for carrying out wellhead pricing refund requirements under the Natural Gas Policy Act of 1978 (NGPA). This final rule revises §§ 270.101 and 271.805 of the Commission's regulations to establish specific time limits by which first sellers must make refunds of overcollections or unauthorized collections and file refund reports with the Commission.

EFFECTIVE DATE: This final rule is effective September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is revising its regulations for carrying out wellhead pricing refund requirements under the Natural Gas Policy Act of 1978 (NGPA).[1] The Commission's regulations currently require first sellers of natural gas to make certain refunds "promptly."[2] This final rule revises §§ 270.101 and 271.805 of the Commission's regulations to establish specific time limits by which first sellers must make refunds of overcollections or unauthorized collections and file refund reports with the Commission.

II. Public Reporting Burden

The Commission estimates the public reporting burden for the collection of information in this final rule to average one hour per response.[3] This estimate includes the time for reviewing instructions, searching data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Interested persons may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, (202) 357–8205); and to the Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

III. Background

On February 23, 1989, the Commission issued a notice of proposed rulemaking (NOPR)[4] proposing to revise its regulations for carrying out wellhead pricing refund requirements under the NGPA. The NOPR was issued in response to an audit of the Commission's wellhead pricing refund program conducted at the Commission's request by the Office of Inspector General, United States Department of Energy.[5] The audit report concluded that, overall, first sellers do not refund overcharges or file refund reports in a timely manner. The audit report attributed these delays primarily to the lack of specific time limits for first sellers to make refunds and reports for all types of refunds other than for interim collections under § 273.302 of the Commission's regulations,[6] and the absence of penalty actions for late refunds or late reports. The NOPR proposed specific time limits to make and report refunds.

Specifically, the NOPR proposed to require first sellers to pay refunds under § 270.101 within 60 days after being notified that a refund is due or becoming aware that a refund is due, unless the refunds were recovered by purchasers through a billing adjustment. A new provision also would be added in § 270.101(e) to allow recoupment of a refund by purchasers through such a billing adjustment. The NOPR also proposed to require first sellers to file refund reports within 90 days after being notified of a refund obligation or becoming aware that a refund is due, unless the refund was recovered through a billing adjustment.

Additionally, the NPR proposed to revise the regulations governing stripper wells to specifically require refunds and reports after disqualification of a stripper well.[7] Under the proposal, a provision would be added to § 271.805(f) of the Commission's regulations to require a well operator to comply with the new refund and report provisions, added in § 270.101(e), when a petition for a jurisdictional agency stripper well determination under § 271.806 or a motion contesting disqualification of a stripper well is denied or withdrawn. In

[1] 15 U.S.C. 3301–3432 (1982).

[2] *See* 18 CFR 270.101(e) (1988).

[3] Many responses are a statement that no refunds are due.

[4] 54 FR 8557; Mar. 1, 1989.

[5] U.S. Department of Energy, Office of Inspector General. The Federal Energy Regulatory Commission's Wellhead Pricing Refund Program. No. 0250 (Sept. 29, 1988).

[6] Section 273.302, which applies to the obligation to refund interim collections, specifies the timing for making and reporting refunds; § 270.101, which applies to all other refund obligations, does not.

[7] Under § 271.805(f), an operator who files either a petition under § 271.806 for jurisdictional agency stripper well determination, or a motion contesting the disqualification of a stripper well, may collect, subject to refund, the stripper well maximum lawful price.

the case of refunds due to disqualification of a stripper well, new provisions in § 271.805(g)(2) also would require that a first seller refund all amounts collected in excess of the maximum lawful price, with interest, within 180 days after the last day of the disqualifying 90-day or 12-month period,[8] unless the first seller has filed a petition for a jurisdictional agency stripper well determination under § 271.806 within 150 days after the last day of the disqualifying period, or unless the refund has been recovered through a billing adjustment in accordance with § 270.101(e). Compliance with the interim collection refund requirements under § 273.302 would not eliminate this refund obligation.

As proposed, § 271.805(g)(2) also would require a first seller to file either a refund report or a statement that no refunds are due, with each to be accompanied by a purchaser concurrence, within 210 days after the last day of the disqualifying 90-day or 12-month period.[9] The first seller would not be required to make a refund report, however, if a refund was recovered by an interstate pipeline purchaser through a billing adjustment.

Nine comments were filed in response to the NOPR.[10] After consideration of the comments, the Commission is adopting the NOPR's proposal with changes as described below.

IV. Discussion

A. Refund Period

1. Section 270.101(e)

The Commission proposed revising the refund regulations in § 270.101(e) to require a first seller to pay refunds within 60 days after being notified that a refund is due or becoming aware that a refund is due, unless the refund is recovered through a billing adjustment. Commenters claim that this 60-day time period is too short. Exxon argues that the Commission should adopt a 120-day time period, while Sellers argue that the period for making refunds or billing adjustments should be 180 days. They and ARCO maintain that a longer period is necessary to retrieve, assemble, and evaluate the records essential to ensuring that the refunds are based on accurate documentation rather than mere estimates.

Sellers also request that the Commission establish procedures for extending the time period whenever a first seller cannot in good faith determine that refunds are due or whenever a first seller cannot make the refunds within the required time period. United argues that the Commission should provide guidelines and procedures to obtain a waiver of the proposed refund time limitations and late refund penalties when the first seller does not have adequate resources or liquidity to make a lump sum payment. Finally, United requests that the Commission provide a means for purchasers to notify the Commission that first sellers have not made timely refunds under § 270.101(e).

The Commission agrees that additional time should be allowed for first sellers to make refunds. The purpose of this rulemaking proceeding is to establish specific time limits on which both the industry and the Commission can rely to accomplish prompt refunds and reports of refunds. However, the Commission also recognizes that first sellers may experience difficulties in verifying and calculating refunds within the proposed 60-day time period. Accordingly, the Commission is revising proposed § 270.101(e)(1) to provide that a first seller must make refunds within 120 days after notice of a refund obligation.[11] This 120-day time period for the first sellers' refund obligation should provide first sellers with sufficient time to calculate and make accurate refunds without the risk of penalty for untimely refunds.

The Commission will not adopt either Seller's proposal to establish procedures for extending the time periods in § 270.101(e)(1) or United's proposal to establish procedures for purchasers to notify the Commission when the first sellers have not made timely refunds because our present regulations already address these concerns. First sellers can file for an adjustment when longer periods of time are needed to make the refunds. On the other hand, purchasers can file a complaint with the Commission when first sellers have not made timely refunds.

2. Section 271.805

The NOPR proposed adding a new § 271.805(g) that would require first sellers to make refunds within 180 days after the last day of a 90-day or 12-month stripper well disqualifying period, and to file refund reports within 210 days after that last day. El Paso requests that these time periods run instead from the time when a first seller becomes aware that a well disqualifies. It claims that it at times experiences data adjustments to production history (metered volumes, number of days of production, and shut in days) to wells tied to its system, and that these data adjustments cause time lags in identification and notification of stripper well disqualification. When these time lags occur, it argues, it could have difficulty, despite its best efforts, meeting the proposed time requirements.

The Commission does not see how additional time for making and reporting refunds from stripper wells is warranted. Under the regulations adopted here, a first seller will have six months from the end of the disqualifying period before refunds will be due.[12] The Commission believes this is an adequate period for data adjustments and adequate time for first seller to verify these refunds.

B. Notification

Several commenters were concerned with the proposed language of § 270.101(e)(1) that would require a first seller to make refunds "after the seller is notified that refund is due or becomes aware that a refund is due". Columbia notes that it is unclear how a purchaser will know when a first seller becomes aware that a refund is due, thus making it unclear when the purchaser must make the refund recovery through a billing adjustment if the first seller fails to make the refund. ARCO suggests that the time period should run from the time the first seller's refund liability is verified, instead of from the time when the first seller is notified that a refund is due or becomes aware that a refund is due. Columbia also requests clarification that purchasers need not determine when the first seller becomes aware that a refund is due and argues that this can be accomplished by (1) requiring the first seller to notify the purchaser of a disqualified well, and (2) requiring the purchaser to obtain a refund through a billing adjustment only after the purchaser becomes aware that a refund is due.

Upon consideration of these comments, the Commission is revising the language in § 270.101(e)(1) to specify that the first seller must make refunds after the first seller is notified by Commission staff or the purchaser that refunds are due. The Commission notes that first sellers and purchasers are required to monitor stripper well production and report disqualifications to each other. In addition, a copy of any staff letter notifying a first seller of a refund obligation will be sent to the purchaser. Thus, the Commission believes the purchaser will know when billing adjustments should be used.

C. Billing Adjustments

The Commission proposed in the NOPR that when a first seller fails to make a refund, purchasers may utilize a billing adjustment to recover refunds. The proposed regulations provide that the first seller and purchaser could agree to completion of a billing adjustment within a reasonable period not to exceed 120 days. In the alternative, it is proposed that a purchaser be allowed to make a billing adjustment unilaterally, without the agreement of the first seller. Before the purchaser makes a unilateral billing adjustment, however, the proposed regulations would require the purchaser to provide the first seller written notice of the refund amount and the time period during which the billing adjustment would be completed.

Columbia argues that the Commission should not limit the time period for recovery of an agreed-to billing adjustment to 120 days but instead allow for a certain time period for the first seller and purchaser to negotiate a refund, not to exceed one year. United requests the Commission to establish procedures to obtain a waiver of the 120-day time limit for billing adjustments to avoid undue harm to the first seller. Tennessee Gas recommends that § 270.101(e)(2) be clarified to establish that the 120-day time period during which all agreed-to billing adjustments are to be concluded is to be calculated from the date the first seller is notified of the refund obligation or becomes aware that a refund obligation may be due. In response to these concerns, the Commission is revising the regulations to substitute one year for the 120-day time period for an agreed-to billing adjustment, and to specify a starting date for the one-year term. The revised regulations provide instead that the purchaser can make a billing adjustment, either with or without previous agreement by the seller, within a reasonable period of time not to exceed one year from the date the first seller is notified of a refund obligation. As we noted earlier, first sellers may seek an adjustment based on the facts of a particular situation if more time is needed.

Commenters also raise a number of concerns about the unilateral billing adjustment procedures proposed in the NOPR. Exxon argues that a unilateral billing adjustment by the purchaser should not be permitted until 30 days after the close of the first sellers' refund period. Sellers and ARCO argue that purchasers should not have the right to recover the refund through a unilateral billing adjustment without the first seller's concurrence as to amount and time allowed for recovery. Sellers also argue that the Commission should require the purchaser to pay interest on refund amounts wrongly recouped by the purchaser through a billing adjustment. In the alternative, Sellers seek procedures that may be used to prevent a purchaser from unilaterally making a billing adjustment when the first seller has a good faith belief that no refund is due or that the refund amount is in error.

ARCO argues that the purchaser must provide, in addition to notice to the first seller that the purchaser is invoking the unilateral billing adjustment, sufficient documentation to support the basis on which the purchaser proposes to recoup the funds through the billing adjustment. On the other hand, El Paso requests that the Commission delete the provision in § 270.101(e)(3) requiring the purchaser to notify the first seller of the amount of the refund to be recovered and the time period during which the billing adjustment will be completed. El Paso argues that this requirement would be unduly burdensome, because of the large number of stripper wells in which it is first purchaser, and duplicative, because the first seller already is aware of a refund being due. It requests that the Commission provide instead for unilateral billing adjustments without prior notification from the purchaser.

These arguments regarding unilateral billing adjustments were initially raised and addressed in Order No. 423 when the Commission first established procedures permitting purchasers to use billing adjustments to recover interim collection refunds under § 273.302 of the Commission's regulations. In addition to specifying time periods for refund collection, the final rule adopted here allows purchasers to use virtually the same billing adjustment procedures established in Order No. 423 for all refund obligations other than interim collection refund obligations. The Commission continues to believe that additional protection for first sellers against incorrect billing adjustments is generally unnecessary. The purchasers' notice requirement in the billing adjustment procedures was established in Order No. 423 to guarantee that the rights of producers are protected.[13] The Commission has not seen any evidence that the billing adjustment procedures in the interim collection refund regulations are creating any hardships for sellers or purchasers.[14] The Commission, therefore, concludes that it is unnecessary to modify the unilateral billing adjustment procedures as they apply to all refund obligations in this final rule.

Sellers contend further that a billing adjustment cannot be used if the current purchaser of gas from a well is not the purchaser to whom the refunds are owed. The Commission notes, however, that Order No. 423 stated that a billing adjustment can be made on any other well in which the first seller has an interest that the purchaser is taking gas from. This policy should apply also to all refund obligations covered by this final rule.

Finally, United is concerned about being required to refund to its customers the amounts not yet collected from first sellers. The Commission clarifies that a purchaser is not obligated to make refunds to its customers until it has the refunds from the first seller.

D. First Seller's Refund Report

In both § 270.101(e)(4) and § 271.805(g)(2) of the proposed regulations, the Commission would require the first seller to file a refund report, accompanied by a purchaser's concurrence. Section 271.850(g)(2) would require in the alternative a statement, also accompanied by a purchaser concurrence, that no refunds are due. First sellers would not need to file these refund reports if an interstate pipeline purchaser recovers the refund through a billing adjustment.

ARCO argues that the Commission should sever the purchaser's concurrence from the first seller's refund report and require the purchaser to submit the concurrence independently.

---

[8] *See* 18 CFR 271.805(a) and (b) (1988).

[9] When no petition is filed under § 271.806 within 150 days from the last day of the disqualifying period, the first seller must make refunds within 30 days from that date and file a refund report within 60 days of that date.

[10] Individually, ARCO Oil and Gas Company (ARCO); Arkansas Public Service Commission (Arkansas); Columbia Gas Transmission Corporation (Columbia); El Paso Natural Gas Company (El Paso); Exxon Corporation (Exxon); Tennessee Gas Pipeline Company (Tennessee Gas); and United Gas Pipe Line Company (United). Jointly, ANR Pipeline Company and Colorado Interstate Gas Company (ANR & CIG) and 13 sellers of natural gas (Sellers). Sellers include Texaco Inc.; Amoco Production Company; BP Exploration Inc.; Chevron U.S.A. Inc.; Conoco Inc.; Hunt Oil Company; Marathon Oil Co.; Maxus Energy Corporation; Mitchell Energy Corporation; Mobil Natural Gas Inc.; Phillips Petroleum Company; Phillips 66 Natural Gas Company and Shell Oil Company.

[11] There is no change in the NOPR's proposal that the first sellers' refund reports must be filed 30 days after the date that the refund payment is due.

[12] *See* 18 CFR 271.805(g) under which first sellers will have 180 days after the last day of a disqualifying 90-day or 12-month period to make refunds. These six months consist of 90 days to report the disqualification, 60 days to decide whether to file a petition under § 271.806, and an additional 30 days to make the refund.

[13] As noted in Order No. 423, first sellers may avoid billing adjustments by making lump-sum payments within the specified period of time.

[14] Accordingly, the Commission believes it is not necessary to amend § 273.302(e)(1)(iii) as proposed by Exxon.

Sellers argue that the requirement to file a statement that no refunds are due should be eliminated from § 271.805(g)(2). In the alternative, Sellers argue that the Commission at least should eliminate the purchaser's concurrence in § 271.805(g)(2). Sellers also request that the Commission require the purchaser to provide the seller with a statement of concurrence or nonconcurrence within a specific period of time after receiving a refund. Finally, Sellers request that the Commission permit first sellers to file a statement that no concurrence by the purchaser was received whenever the purchaser fails to provide the seller with a concurrence within the specific time limits that Sellers are seeking to have imposed for that purpose.

In response to these concerns, the Commission clarifies that if the purchaser has not submitted a concurrence before the time period to submit the refund report passes, the first seller may file the refund report without the purchaser's concurrence. In this event, the purchaser must then file the concurrence separately with the Commission within 30 days of the first seller's refund report.

In order to monitor the payment of all required refunds, a refund report or a statement that no refunds are due, together with a purchaser's concurrence, is necessary. However, in response to comments by Sellers that the requirement in § 271.805(g)(2) for filing a purchaser's concurrence is burdensome because many sales are made in the spot market and the purchaser may not be aware that some of the gas is subject to a maximum lawful price, the Commission is adding to § 271.805(g)(2) a provision to permit the first seller to submit in lieu of a "no refund due" statement and a purchaser's concurrence, an affidavit stating that it did not collect more than the otherwise applicable MLP.

E. Miscellaneous

1. Purchasers Need Information From First Sellers on a Well-by-Well Basis

Tennessee Gas argues that the Commission's objective of prompt enforcement of all refund obligations (whether under the interim collection refund regulation in § 273.302 or the general refund regulations in § 270.101) cannot be achieved until the Commission (1) recognizes that the purchaser must have well-by-well information available to it from the first sellers in order to verify and enforce refund obligations and recover refunds through billing adjustments, and (2) imposes on all first sellers a continuing obligation to provide purchasers with detailed well information for each well drilled and completed or redrilled in the applicable contract area.

In general, the NGPA established maximum lawful prices for natural gas on a well-by-well basis. The Commission believes that Tennessee Gas, as a prudent purchaser, should require producers to submit such data as part of its own billing procedures to ensure that its payments comply with the NGPA price ceilings. The Commission, therefore, sees no need for a specific requirement for individual well data in the refund regulations established in this final rule.

2. Responsibility for Refunding Excess Severance Taxes

ANR & CIG argue that the NOPR does not address the need to refund excess state production and severance taxes remitted to the appropriate tax authority by a pipeline purchaser on behalf of a first seller. They note that neither §§ 270.101 or 271.805, as they exist or are proposed to be revised, squarely addresses the issue of whether the first seller or the purchaser is responsible for obtaining a refund of excess state taxes which have been remitted by the purchaser. ANR & CIG, therefore, request the Commission to clarify that refunds will include any excess state severance or production taxes remitted by purchasers on behalf of first sellers.

NGPA section 110 and § 271.1102(a) of the Commission's regulations provide that the maximum lawful price may be exceeded only to the extent necessary to recover state severance taxes borne by the first seller. Therefore, the Commission clarifies that if the purchaser paid excess severance or production taxes on behalf of a first seller, the first seller's refund obligation includes amounts attributable to the excess severance or production taxes.

3. Civil Penalty Remedies

In the NOPR, the Commission noted the most interstate pipelines have not taken advantage of the billing adjustment provisions in Order No. 423 [15] as a remedy to first sellers' almost chronic delays in making refunds. The Commission advised interstate pipelines that corrective action will be pursued if the billing adjustment provisions continue to be ignored. Additionally, the Commission noted its authority under section 504(b)(6) of the NGPA to assess civil penalties for knowing violations of its regulations. The Commission noted that if the problem of delay in refunding persists, it will consider the civil penalty remedy on a case-by-case basis.

El Paso seeks confirmation from the Commission that it would be inequitable to assess a civil penalty against a purchaser when the Commission's regulations assign first sellers the duty of calculating and returning amounts overcollected in a first sale. The Commission does not agree with El Paso's position.

The Commission emphasized in the NOPR that even though a first seller continues to carry the primary responsibility for its refund obligation, purchasers also have an obligation, as part of prudent management, to ensure that they recover and pass through refunds owed to their customers. The Commission stressed that most interstate pipelines have contributed to the problem of delay by not using billing adjustments as a remedy to first sellers' almost chronic delays in making interim collection refunds. As a consequence, the Commission advised interstate pipelines that it intends to pursue corrective action if the billing adjustment provisions continue to be ignored. The Commission, therefore, has made clear in both the NOPR and this final rule that both first sellers and purchasers have an affirmative obligation to ensure prompt refunds.

4. Statute of Limitations

United argues that the imposition of time limits for refunds and the recovery of refunds through billing adjustments has the effect of imposing a statute of limitations on the pipeline's ability to collect these refunds. The Commission points out that the 120-day time period in § 270.101(e) is only a deadline for the first seller to make a lump sum payment of the refund; it does not relieve the first seller of its refund obligation if the refund is not made within the 120-day period. Neither is the purchaser relieved of the obligation to pursue the refund in any manner.

5. Effective Date of Refund Regulations

Exxon argues that no refunds should be due under the final rule until 120 days after its effective date or that the effective date should be 120 days after the final rule is issued. According to Exxon, unless some type of grandfathering is provided for, refunds could literally be due the day the final rule is issued. The Commission believes that 120 days is too long to wait before the final rule in this proceeding becomes effective, and that an effective date of 30 days after publication in the Federal Register is adequate. The deadlines imposed herein are reasonable, and purchasers and sellers have had extensive notice (through the NOPR) of the Commission's intent to adopt them.

[15] 50 FR 23,668 (June 5, 1985); FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,665 (May 30, 1985).

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement must be prepared for any Commission action that may have a significant adverse effect on the human environment.[16] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[17] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or that does not substantially change the effect of legislation or regulations being amended.[18] This rule is procedural in nature and merely sets time frames for existing refunds and reporting requirements. Consequently, since this rule falls within the categorical exemptions provided in the Commission's regulations, neither an environmental impact statement nor an environmental assessment is required.[19]

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities.[20] The Commission is not required to make an RFA analysis if it certifies that a proposed rule will not have a "significant economic impact on a substantial number of small entities."

The final rule revises § 270.101(e) by setting a time limit of 120 days for the seller to refund excess charges and a time limit of 30 days after the refund is due to report refunds to the Commission. Currently, overcharges must be refunded and reported promptly. Thus, this final rule simply provides time frames for the refund and reporting requirements which are already in place.

The final rule also revises § 271.805(g) to specify that refunds due to the disqualification of stripper wells are due within 180 days after the last day of the disqualifying 90-day or 12-month period. A refund report or statement of no refund due for stripper wells is due within 210 days after the last day of the disqualifying 90-day or 12-month period. The reports required by § 270.101(e)(4) and § 271.805(g)(2) will not include any information regarding a refund recovered by an interstate pipeline purchaser through a billing adjustment.

In view of these considerations, the Commission has determined, pursuant to section 605(a) of the RFA, that the filing dates for refunds and refund reports will not have "a significant economic impact on a substantial number of small entities."

VII. Paperwork Reduction Act Statement

The Paperwork Reduction Act [21] and the Office of Management and Budget's (OMB) regulations [22] require that OMB approve certain information collection requirements imposed by agency rule. The information collection provisions in this final rule are being submitted to OMB for its approval.

The Commission promulgated the information collection provisions of this rule in order to ensure that refunds owed by producers and other first sellers of natural gas are made as quickly as possible and ultimately passed through to residential customers and other end users. These proposals do not change the current requirement to report refunds to the Commission. The provisions clarify the current obligation under §§ 270.101(e) and 271.805 to report refunds, and establish deadlines for first sellers to comply with the existing reporting requirements.

Pursuant to OMB's regulations,[23] the Commission is providing the following information:

(1) The title of the collection of information in this final rule is "Establishment of Deadlines for First Sellers to Make and Report Refunds."

(2) The Commission needs to collect this information to ensure that first sellers are making required refunds to their customers for overcollections or unauthorized collections of prices for first sales of natural gas, pursuant to the NGPA and the Commission's implementing regulations.

(3) Respondents that will provide the needed information will be first sellers of natural gas.

(4) The Commission estimates that: (a) The public reporting burden averages one hour per response; (b) the frequency of responses is based upon the frequency of occurrence of the refunds per year and cannot be projected; and (c) the total annual number of likely responses is 4,000, although some respondents may submit more than one response.

Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (Attention: Michael Miller at (202) 357–9205). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VIII. Effective Date Statement

This final rule is effective September 11, 1989. However, if OMB has not approved the information collection provisions in this rule by that date, the Commission will issue a notice temporarily suspending the effective date until OMB has approved the reporting requirements.

List of Subjects

18 CFR Part 270

Natural gas, Price controls, Reporting and recordkeeping requirements.

18 CFR Part 271

Continental Shelf, Natural gas, Price controls, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission revises Parts 270 and 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

PART 270—RULES GENERALLY APPLICABLE TO REGULATED SALES OF NATURAL GAS

1. The authority citation for Part 270 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

2. In § 270.101, paragraph (e) is revised to read as follows:

§ 270.101 Application of ceiling prices to first sales of natural gas.

* * * * *

(3) *General refund obligation and filing requirements for first sellers.* (i) Any price collected with respect to a first sale of natural gas to which

[16] Regulations Implementing National Environmental Policy Act of 1969, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., ¶ 30,783 (Dec. 10, 1987).

[17] 18 CFR 380.4 (1988).

[18] 18 CFR 380.4(a)(2)(ii) (1988).

[19] *See* CFR 380.4(a)(1) (1988).

[20] 5 U.S.C. 601–612 (1982).

[21] 44 U.S.C. 3501–3520 (1982).

[22] 5 CFR 1320–12 (1988).

[23] 5 CFR 1320.15(a) (1988).

Subchapter H applies is collected subject to a general obligation to refund any portion of the price, together with interest determined in accordance with §§ 154.102 (c) and (d) of this chapter, which is in excess of the maximum lawful price or collection of which is not authorized by Subchapter H. The refund, including interest, must be paid within 120 days after the seller is notified by Commission staff or a purchaser that a refund is due unless the refund is recovered through a billing adjustment as provided in paragraphs (e)(2) or (e)(3) of this section. Compliance with the specific refund requirements of § 273.302 of this chapter will not terminate the general refund obligation under Subchapter H.

(2) A purchaser may not use a billing adjustment to recover a refund required by paragraph (e)(1) of this section before the expiration of the 120-day period for the seller to make the refund. If the seller fails to make a refund within the 120-day period, the purchaser may use a billing adjustment to recover the refund without agreement by the seller. Before making a billing adjustment, the purchaser must provide the seller written notice of the amount of the refund to be recovered and the time period during which the billing adjustment will be completed. The time period for the billing adjustment can be a reasonable period of time not to exceed one year from the date a first seller is notified of a refund obligation.

(3)(i) Except as provided in paragraph (e)(3)(ii) of this section, within 150 days after the seller is notified by Commission staff or a purchaser that a refund is due, the seller must file an original and two copies of a refund report, accompanied by a purchaser's concurrence, containing the information specified in § 273.302(f) of this chapter. A seller is not required to include in a report filed under this paragraph any information regarding a refund recovered by an interstate pipeline purchaser through a billing adjustment.

(ii) If a purchaser does not provide the seller with its concurrence within the time period specified in paragraph (e)(3)(i) of this section, the seller may file the refund report without the purchaser's concurrence.

* * * * *

PART 271—CEILING PRICES

3. The authority citation for Part 271 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

4. In § 271.805, paragraph (f) is revised, paragraph (g) is redesignated as paragraph (h) and a new paragraph (g) is added.

§ 271.805 Continuing qualification.

* * * * *

(f) *Collection subject to refund.* (1) An operator who files a petition or motion under paragraph (e) may collect, subject to refund, the maximum lawful price provided in § 271.802:

(i) From the last day of the 90-day or the 12-month disqualifying period if the petition or motion is filed within 150 days after the last day of the 90-day or the 12-month disqualifying period, or

(ii) In all other cases, after the date the petition is filed.

(2) When the petition or motion filed under paragraph (e) of this section is denied or withdrawn, the operator or purchaser must comply with the provisions of § 270.101(e) of this chapter.

(g) *Refunds due to disqualification.* (1) Unless the seller files a petition under § 271.806 within 150 days after the last day of the disqualifying 90-day or 12-month period, and unless the refund is recovered through a billing adjustment as provided in §§ 270.101(e) (1) and (2) of this chapter, the seller must refund to the purchaser the amount collected in excess of the maximum lawful price, together with interest determined in accordance with §§ 154.102 (c) and (d) of this chapter, within 180 days after the last day of the disqualifying 90-day or 12-month period. Compliance with the specific refund requirements of § 273.302 of this chapter will not terminate the general refund obligation under Subpart H.

(2)(i) Except as provided in paragraph (g)(2)(ii) of this section, within 210 days after the last day of the disqualifying 90-day or 12-month period, the seller must file either:

(A) An original and two copies of a refund report, accompanied by a purchaser concurrence, containing the information specified in § 273.302(f) of this chapter;

(B) A statement, accompanied by a purchaser concurrence, that no refunds are due; or

(C) An affidavit that the seller did not collect more than the otherwise applicable maximum lawful price.

(ii) If a purchaser does not provide the seller with its concurrence within the time period specified in paragraph (g)(2)(i) of this section, the seller may file the refund reports or statements that no refunds are due without the purchaser's concurrence.

(3) A seller is not required to include in a report filed under this paragraph any information regarding a refund recovered by an interstate pipeline purchaser through a billing adjustment.

* * * * *

[FR Doc. 89-18849 Filed 8-9-89; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

[T.D. 89-74]

Administrative Procedures; Correction

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: A document was published in the Federal Register (54 FR 31511) on July 31, 1989, amending Part 177, Customs Regulations, by changing certain existing procedures and creating other new procedures that will enhance and expedite Customs dealings with the importing public. This document corrects an error that appears in that document. The document inadvertently omitted the Treasury Decision (T.D.) number. The final rule is T.D. 89-74.

FOR FURTHER INFORMATION CONTACT: John T. Roth, Commercial Rulings Division. (202) 566-5868.

Kathryn C. Peterson,
Chief, Regulations and Disclosure Law Branch.

Approved: August 4, 1989.

[FR Doc. 89-18846 Filed 8-9-89; 8:45 am]
BILLING CODE 4820-02-M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Parts 301 and 309

[CRT Docket No. 89-3-RM]

Satellite Carrier Compulsory License Rules

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule.

SUMMARY: The Tribunal is amending its rules to provide for the filing of satellite carrier claims with the Tribunal and to establish the rules of procedure for distributing the satellite carrier copyright royalty fees to the proper copyright owners. These regulations implement the provisions of the Satellite Home Viewer Act of 1988.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036, (202-653-5175).

SUPPLEMENTARY INFORMATION: The Satellite Home Viewer Act of 1988, effective January 1, 1989, created a new copyright compulsory license. In general, it provides that a satellite carrier may retransmit broadcast signals to the public for private home viewing so long as the satellite carrier pays a statutorily-set copyright royalty fee. The fees are to be paid by the satellite carrier to the Copyright Office semiannually. 17 U.S.C. 119(b)(1).

To implement the Satellite Home Viewer Act, the Tribunal proposed to amend some of its existing regulations, and to adopt new regulations. 54 FR 21451 (May 18, 1989).

The Tribunal received comments from: the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), the Joint Sports Claimants which include Major League Baseball, the National Basketball Association, the National Hockey League and the National Collegiate Athletic Association (JSC), the Motion Picture Association of America (MPAA) and SESAC, Inc., (SESAC).

All comments favored the adoption of the proposed rules. Certain editorial changes were proposed by MPAA and by BMI which the Tribunal has reviewed and accepts.

List of Subjects

37 CFR Part 301

Administrative practice and procedure, Freedom of information, Sunshine Act.

37 CFR Part 309

Claims, Copyright, Satellites.

For the reasons set forth in the preamble, the Tribunal amends 37 CFR Part 301 as follows:

PART 301—COPYRIGHT ROYALTY TRIBUNAL RULES OF PROCEDURE

1. The authority citation for Part 301 continues to read as follows:

Authority: 17 U.S.C. 803(a)

2. In Section 301.1, paragraph (d) is revised, and a new paragraph (e) is added as follows:

§ 301.1 Purpose.

* * * * *

(d) To distribute cable television, jukebox and satellite carrier royalties under 17 U.S.C. 111, 116 and 119, respectively, deposited with the Register of Copyrights.

(e) To monitor and assist the negotiation of an adjustment to the satellite carrier royalty rates, and/or to assist and review the arbitration of an adjustment to the satellite carrier royalty rates (17 U.S.C. 119).

3. Section 301.70 is revised as follows:

§ 301.70 Scope.

This subpart governs only those proceedings dealing with the distribution of compulsory cable television, coin-operated phonorecord player (jukebox) and satellite carrier royalties deposited with the Register of Copyrights, according to the terms of 17 U.S.C. (d)(4), 116(c) and 119(b), respectively. It does not govern unrelated rulemaking proceedings. Those provisions of Subpart E generally regulating the conduct of proceedings shall apply to royalty fee distribution proceedings, unless they are inconsistent with the specific provisions of this subpart.

4. In § 301.71, a new paragraph (c) is added as follows:

§ 301.71 Commencement proceedings.

* * * * *

(c) *Satellite carriers.* In the case of compulsory royalty fees for the secondary transmissions by satellite carriers of television broadcast stations to the public for private home viewing, any person claiming to be entitled to such fees must file a claim with the Tribunal during the month of July of each year in accordance with Tribunal regulations.

5. In § 301.72, a new paragraph (c) is added as follows:

§ 301.72 Determination of controversy.

* * * * *

(c) *Satellite carriers.* After the first day of August each year, the Tribunal shall determine whether a controversy exists among the claimants of satellite carrier compulsory royalty fees. In order to determine whether a controversy exists, the Tribunal may conduct whatever proceedings it feels necessary, subject to the procedures and regulations of Subpart E. The results of this determination shall be announced in the Federal Register. If the Tribunal decides that a controversy exists, the Federal Register notice shall also announce the commencement of the royalty distribution proceeding, and shall, to the extent feasible, describe the general structure and schedule of the proceeding.

6. A new Part 309, consisting of §§ 309.1 through 309.6 is added as follows:

PART 309 FILING OF CLAIMS TO SATELLITE CARRIER ROYALTY FEES

Sec.
309.1 General.
309.2 Time of filing.
309.3 Content of claim.
309.4 Compliance with statutory dates.
309.5 Separate claims required.
309.6 Forms.

Authority: 17 U.S.C. 119(b)(4).

§ 309.1 General.

This regulation prescribes procedures pursuant to 17 U.S.C. 119(b)(4), whereby persons claiming to be entitled to compulsory license fees for secondary transmissions by satellite carriers of television broadcast signals to the public for private home viewing shall file claims with the Copyright Royalty Tribunal.

§ 309.2 Time of filing.

Commencing with July, 1990, and during July of each succeeding year, every person claiming to be entitled to compulsory license fees for secondary transmissions by satellite carriers during the previous calendar year of television broadcast signals to the public for private home viewing shall file a claim with the Copyright Royalty Tribunal. No royalty fees shall be distributed to any person during the specified period unless such person has filed a claim to such fees during the following calendar month of July. Claimants may file jointly or as a single claim. A performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership or affiliate agreements, for purposes of this filing and fee distribution.

§ 309.3 Content of claims.

Claims filed for satellite carrier compulsory license fees shall include the following information:

(a) The full legal name of the person or entity claiming compulsory license fees;

(b) The full address, including a specific number and street name or rural route, of the place of business of the person or entity;

(c) A general statement of the nature of the copyrighted works whose secondary transmission by satellite carriers for private home viewing provides the basis of the claim; and

(d) Identification of at least one secondary transmission by a satellite carrier for private home viewing establishing a basis for the claim.

§ 309.4 Compliance with statutory dates.

Claims filed with the Copyright Royalty Tribunal shall be considered timely filed only if:

(a) They are received in the offices of the Copyright Royalty Tribunal during normal business hours during the month of July, or

(b) They are properly addressed to the Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036 and they are deposited with sufficient postage with the United States Postal Service and bear a July U.S. postmark.

§ 309.5 Separate claims required.

If a person or entity intends to file claims for both cable compulsory license fees and satellite carrier compulsory license fees during the same month of July, that person or entity must file his or her claims separately with the Copyright Royalty Tribunal. Any single claim which purports to file for both cable and satellite carrier compulsory license fees will be rejected.

§ 309.6 Forms.

The Copyright Royalty Tribunal does not provide printed forms for the filing of claims.

Dated: August 7, 1989.

Mario F. Aguero,

Acting Chairman,

[FR Doc. 89-18704 Filed 8-9-89; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6741

[CA-940-09-4214-10; CACA-16444]

Partial Revocation of Departmental Order Dated June 24, 1952; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes Departmental Order dated June 24, 1952, insofar as it affects 22.62 acres of land withdrawn for Powersite Classification No. 425. The land is no longer needed for the purpose for which it was withdrawn. This action will open 22.62 acres to surface entry to permit consummation of a U.S. Forest Service exchange. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, Room E-2845, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, 916-978-4820.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Departmental Order dated June 24, 1952, which withdrew public land for Powersite Classification No. 425 is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

Plumas National Forest

T. 27 N., R. 9 E., sec. 34, lot 2 (formerly a portion of the SW¼SE¼).

The area described contains 22.62 acres in Plumas County.

2. At 10 a.m. on September 11, 1989, the land shall be opened to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

Dated: August 2, 1989.

Frank A. Bracken,

Under Secretary of the Interior.

[FR Doc. 89-18691 Filed 8-9-89; 8:45 am]

BILLING CODE 4310-40-M

43 CFR Public Land Order 6742

[AK-932-09-4214-10; F-030972]

Partial Revocation of Air Navigation Site No. 140, Candle, for Selection of Land by the State of Alaska

AGENCY: Bureau of Land Management Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Department Order insofar as it affects 54.3 acres of public land withdrawn for Air Navigation Site No. 140 at Candle, Alaska. The land is no longer needed for the purpose for which it was withdrawn. This action will also open the land for selection by the State of Alaska, if such land is otherwise available. If the land is not selected by the State, this order opens the land to metalliferous mining. The land has been and will remain closed to nonmetalliferous mining and mineral leasing pursuant to Public Land Order No. 5180, as amended.

EFFECTIVE DATE: August 10, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-3342.

By virtue of the authority vested in the Secretary of the Interior, by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by section 17(d)(1) of the Alaska Native Claims Settlement Act, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. The Departmental Order dated April 17, 1940, as amended, which withdrew public land for Air Navigation Site No. 140 is hereby revoked insofar as it affects the following described land:

Candle, Alaska

Beginning at Corner No. 1, approximate latitude 65°55' N., longitude 161°55' W., from which USLM No. 1237 in the Fairbanks Recording Precinct at Candle, Alaska, bears approximately S. 40° W. 2,485 feet; thence from said beginning corner

S. 12°20' E. 750 feet to Corner No. 2;
S. 37° E. 650 feet to Corner No. 3;
S. 44°30' E. 680 feet to Corner No. 4;
S. 60° E. 1,580 feet to Corner No. 5;

(Corners 1 to 5 are all on the right bank of the Keewalik River);

N. 33°30' E. 550 feet to Corner No. 6;
N. 48°41' W. 3,323.3 feet to Corner No. 7;
S. 58°15' W. 239.9 feet to Corner No. 1, the place of beginning.

The area described contains approximately 54.3 acres.

2. Subject to valid existing rights, the land described above is hereby opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 72 State. 339, et seq.; 48 U.S.C. prec. 21, or section 906(b) of the Alaska National Interest Lands Conservation Act, 94 Stat. 2371, 2437-2438; 43 U.S.C. 1635.

3. As provided by section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the land described above, for a period of ninety-one (91) days from the date of publication of this order, if the land is otherwise available. Any of the land described herein that is not selected by the State of Alaska will be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal of record.

4. At 10 a.m. on November 9, 1989, the land will be opened to location and entry under the United States mining laws for metalliferous minerals subject to valid existing rights, the provisions of existing withdrawals, and the requirement of applicable laws. Appropriation of any of the land described in this order under the general mining laws for metalliferous minerals prior to the date and the time of restoration is unauthorized. Any such attempted appropriations, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: August 2, 1989.

Frank A. Bracken,

Under Secretary of the Interior.

[FR Doc. 89-18690 Filed 8-9-89; 8:45am]

BILLING CODE 4310-JA-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6842]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: As shown in fifth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures

On August 25, 1986, FEMA published a final rule in the Federal Register that revised the NFIP floodplain management critera. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP critera and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and community name	County	Community number	Effective date
Colorado:			
Cripple Creek, City of	Teller	080174	August 15, 1988.
Frisco, Town of	Summit	080245	Do.
Maryland:			
Unincorporated Areas of	Frederick	240027	Do.
North Dakota:			
Beulah, City of	Mercer	380066	Do.
Unincorporated Areas of	Dunn	380026	Do.
Lindaas, Township of	Traill	380300	Do.
Lisbon, City of	Ransom	380091	Do.
Souris, City of	Bottineau	380010	Do.
Wing, City of	Burleigh	380213	Do.
Ohio:			
Mentor, City of	Lake	390317	Do.

State and community name	County	Community number	Effective date
Middleburg Heights, City of	Cuyahoga	390117	Do.
Middletown, City of	Butler	390040	Do.
Mogadore, Village of	Portage	390526	Do.
Mount Healthy, City of	Hamilton	390229	Do.
Mount Vernon, City of	Knox	390311	Do.
New Holland, Village of	Fayette	390448	Do.
New Miami, Village of	Butler	390043	Do.
Newburgh Heights, Village of	Cuyahoga	390119	Do.
North College Hill, City of	Hamilton	390232	Do.
South Dakota:			
Unincorporated Areas of	Davison	460020	Do.
Revillo, Town of	Grant	460031	Do.
Sisseton, City of	Roberts	460072	Do.
Veblen, Town of	Marshall	460146	Do.
Utah:			
Smithfield, City of	Cache	490029	Do.
Spanish Fork, City of	Utah	490241	Do.
Spring City, City of	Sanpete	490119	Do.
Stockton, Town of	Tooele	490144	Do.
Sunset, City of	Davis	490050	Do.
Wyoming:			
Lovell, Town of	Big Horn	560073	Do.
Newcastle, City of	Weston	560057	Do.
Unincorporated Areas of	Park	560085	Do.
Pine Bluffs, Town of	Laramie	560031	Do.
Pinedale, Town of	Sublette	560049	Do.
Saratoga, Town of	Carbon	560012	Do.

Issued August 4, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-18701 Filed 8-9-89; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6843]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective on October 1, 1986. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATE: As shown in fifth column.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457, Lanham, Maryland 20706, phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of the Federal Emergency Management Agency has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

§ 64.6 List of eligible communities.

State and community name	County	Community No.	Effective date
North Dakota:			
Dunseith, City of	Rolette	380103	July 4, 1989.[1]
Dwight, Township of	Richland	380857	Do.
Eldorado, Township of	Traill County	380645	Do.
Marmarth, City of	Slope	380115	Do.
Walhalla, City of	Pembina	380254	Do.
Wishek, City of	McIntosh	380053	Do.
Ohio:			
Napoleon, City of	Henry	390266	Do.
Newton Falls, City of	Trumbull	390539	Do.
North Lewisburg, Village of	Champaign	390056	Do.
Colorado:			
Central City, City of	Gilpin	080077	July 17, 1989.[1]
Creede, Town of	Mineral	080118	Do.
Unincorporated Areas	Garfield	080205	Do.
Granada, Town of	Prowers	080144	Do.
Montana:			
Boulder, Town of	Jefferson	300035	Do.
Unincorporated Areas	Broadwater	300145	Do.
Chester, Town of	Liberty	300041	Do.
Columbia Falls, City of	Flathead	300024	Do.
Unincorporated Areas	Custer	300147	Do.
Dodson, Town of	Phillips	300053	Do.
Townsend, City of	Broadwater	300131	Do.
White Sulphur Springs, City of	Meagher	300047	Do.
North Dakota:			
Antelope, Township of	Richland	380863	Do.
Arthur, City of	Cass	380156	Do.
Ohio:			
Berea, City of	Cuyahoga	390097	Do.
Brairwood Beach, Village of	Medina	390379	Do.
Clarington, Village of	Monroe	390405	Do.
Pepper Pike, City of	Cuyahoga	390125	Do.
Powhatan Point, Village of	Belmont	390030	Do.
Yorkville, Village of	Belmont	390033	Do.
South Dakota:			
Brandon, City of	Minnehaha	460296	Do.
Unincorporated Areas	Brookings	460004	Do.
Unincorporated Areas	Codington	460260	Do.
Colome, Town of	Tripp	460084	Do.
Corona, Town of	Roberts	460071	Do.
Utah:			
Unincorporated Areas	Wasatch	490164	Do.
Unincorporated Areas	Washington	490182	Do.
Wellsville, City of	Cache	490031	Do.
Wendover, Town of	Tooele	490222	Do.
Woodruff, Town of	Rich	490101	Do.

[1] Suspension withdrawn.

Issued August 4, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-18702 Filed 8-9-89; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 90683-9183]

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NOAA Fisheries), NOAA, Commerce.

ACTION: Interim final rule.

SUMMARY: The Secretary of Commerce issues an interim final rule amending the rule that requires shrimp fishermen in the Gulf of Mexico (Gulf) and the Atlantic Ocean off the coast of the southeastern United States to use Turtle Excluder Devices (TEDs) to reduce incidental captures of endangered and threatened species of sea turtles during shrimp fishing operations. Until September 7, 1989, shrimp fishermen in offshore waters will be allowed to choose between continuing to use TEDs or restricting trawling times to specified 105 minute periods. This proposed trawl time restriction will also apply to vessels less than 25 feet in length that are fishing in offshore waters. The trawl time restriction includes authorized starting times as well as periods during which no trawling is authorized unless TEDs are used. These uniform trawling times will improve enforcement and consequently save more turtles through improved compliance. NOAA Fisheries believes that 105-minute trawl times provide protection to sea turtles during a brief period while the agency considers alternative measures to improve compliance with the sea turtle conservation program. Comments are invited on this interim final rule, particularly as to whether the 105-minute trawl time restriction should be continued, increased, decreased or abolished after September 7, 1989, in light of conservation needs of sea turtle populations and the economics of the shrimp fishing industry.

DATES: *Effective dates.* This interim final rule is effective 12:01 a.m., Eastern Daylight Time, August 8, 1989 (11:01 p.m. Central Daylight Time, August 7, 1989). This rule expires 12:01 a.m., Eastern Daylight Time, September 8, 1989 (11:01 p.m. Central Daylight Time, September 7, 1989).

Comment Period. Comments will be accepted until August 21, 1989.

ADDRESS: Dr. Nancy Foster, Office of Protected Species, NOAA Fisheries, 1335 East-West Hwy., Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles Karnella, (301) 427–2322, or Charles A. Oravetz, (813) 893–3366.

SUPPLEMENTARY INFORMATION:

a. Background

NOAA Fisheries issued regulations (affecting 50 CFR Parts 217, 222, and 227) to protect endangered and threatened sea turtles on June 29, 1987 (hereafter referred to as the TED regulations, 52 FR 24244) under the Endangered Species Act of 1973 (ESA). These regulations did not become effective in most areas until May 1, 1989, due to a delay imposed by Congress. In the Canaveral Area of Florida, however, regulations have been in effect since October 1, 1987. In the Atlantic offshore waters of north Florida, an emergency rule requiring the use of TEDs became effective March 9, 1989 (see 54 FR 7773 (2/23/89)).

When the congressional delay expired on May 1, 1989, the Secretary implemented a 60-day grace period during which only written warnings were given for violations of the regulations, except for repeat or flagrant violations. The purpose of this leniency was to give shrimp fishermen sufficient time to obtain TEDs and install them in their nets. On June 30, 1989, the 60-day grace period expired.

The Eighth District of the United States Coast Guard suspended enforcement of the TED regulations on July 10, 1989, until the Secretary could resolve problems concerning unusual accumulations of sargassum sea grass in the Gulf of Mexico, which allegedly made trawling with TEDs difficult and inefficient. NOAA Fisheries conducted a survey of the Gulf and concluded that the sea grass problem was fairly minor or, at worst, probably limited to a few isolated areas.

On July 20, 1989, the Secretary advised Congress that he would resume enforcement of the TED regulations. The Secretary also noted that he intended to increase a captive breeding program and to establish an advisory committee composed of representatives of the shrimping industry and the environmental community to explore alternative methods of protecting turtles.

Over the weekend of July 22–23, shrimp fishermen in Galveston, Texas and several other Gulf ports blockaded harbors, disrupted navigation, and engaged in other forms of violence to protest enforcement of the TED regulations. At the request of the Coast Guard, high ranking officials from the Department of Commerce, NOAA, and NOAA Fisheries flew to Galveston on July 24, 1989, to meet with the leaders of the protest. That same day, after meeting with concerned Members of Congress, the Secretary announced a 45-day suspension of enforcement of the TED regulations and stated that an effort would be undertaken to amend the regulations to allow shrimp fishermen to limit their trawling times instead of using TEDs.

b. Recent Litigation

The National Wildlife Federation, South Carolina Wildlife Federation, and Florida Wildlife Federation filed suit against the Secretary on July 25, 1989. The plaintiffs claimed that the Secretary had violated the National Environmental Policy Act (NEPA), the Administrative Procedure Act (APA), the Sea Turtle Conservation provisions of the ESA Amendments of 1988, and Section 7 of the ESA, by failing to enforce the TED regulations. On August 3, 1989, the U.S. District Court for the District of Columbia granted summary judgment for the plaintiffs finding that the Secretary lacked "good cause" to suspend enforcement.

The court indicated that the decision to delay adopting any alternative means of protecting sea turtles during the time the agency was attempting to amend the TED regulations was a primary reason for its ruling against the Secretary. The court's order directs the Secretary to either "reinstitute existing TED regulations, or issue interim turtle conservation measures to become effective immediately." The court stayed the effectiveness of its ruling until August 7, 1989, to allow time for any party to appeal.

The Secretary will not appeal. These interim final rules are responsive to the court's order and take effect immediately after the time set for appeal has expired unless there is a further order from the U.S. District Court for the District of Columbia.

c. Existing Rule

The sea turtle conservation regulations published on June 29, 1987, require that shrimp trawlers over 25 feet in length fishing in "offshore waters" of the southeastern United States use TEDs in their nets while fishing. In the Atlantic Area, the offshore requirements are in place from May 1 to August 31, with the exception of Northern Florida where an emergency regulation requires the use of TEDs from March 9, 1989, to November 6, 1989, in both inshore and offshore areas. The emergency rule was promulgated in response to an unusually high number of sea turtle strandings in the area during the fall and winter. Shrimp fishermen in the Gulf are required to use TEDs while fishing in offshore waters from March 1 to November 30. In southwest Florida, vessels are required to use TEDs all year. Shrimp fishermen in the Canaveral Area are required to use TEDs in their nets in both inshore and offshore areas all year. "Offshore waters" means "marine and tidal waters seaward of the 72 COLREGS demarcation line * * *" (see 50 CFR 217.12).

Under the existing regulations, vessels that are under 25 feet in length that are fishing in offshore waters are required to restrict their tow times to 90 minutes. "Tow time" means "the interval from trawl doors entering the water to trawl doors being removed from the water" (see 50 CFR 217.12).

d. Interim Final Rule

NOAA Fisheries is issuing this interim final rule to provide shrimp fishermen in offshore areas the option of restricting their trawling to specified 105-minute periods or using TEDs in their nets. This new trawl time restriction will provide those shrimp fishermen who have adamantly opposed TEDs, and would undoubtedly present a serious compliance problem, with an alternative that will also allow them to continue fishing without violating the Endangered Species Act.

Questions have been raised as to whether the full effects of turtle conservation measures on the livelihoods of shrimp fishermen have been fully evaluated. The Secretary, therefore, wishes to explore alternative methods of conserving sea turtles that may have less serious economic impacts on the shrimp fishing industry. It is hoped that the 15-day comment period will provide an opportunity for various other options to be proposed and evaluated.

The Secretary acknowledges that there are also differing opinions as to the best means to conserve sea turtles. He wishes to evaluate those opinions as well and make a final judgment on conservation measures based on that evaluation. The existing TED regulations may be reinstated or modified after September 7, 1989, and they also may be further modified after the Secretary receives a report on sea turtle conservation from the National Academy of Sciences.

An approach to sea turtle protection involving limited trawling times is believed to be an effective approach. Because there is so much opposition to the TED regulations, compliance has been very low in some areas. It is, therefore, likely that many turtles are dying in the nets of those trawlers who are refusing to use TEDs. Because a 105-minute trawling period is more palatable to the shrimp fishermen, compliance, and hence sea turtle conservation, is likely to be improved under the trawling period scheme.

The uniform trawling time approach is easier to enforce than the 90-minute tow time restriction in the existing regulations because a violation can be documented based on a single observation that the vessel had trawled during one or more of the 30-minute prohibited period, followed by a boarding to inspect for TED usage and all other applicable law. Only those vessels fishing during a prohibited 30-minute period would have to be boarded, thereby conserving very limited enforcement resources.

There are, admittedly, questions with respect to the efficacy of the trawl time restriction approach. These issues, however, should be addressed during the comment period with the pros and cons of other options.

The 105-minute trawling option has authorized starting times and periods during which no trawling is authorized. Under this interim rule, trawling is permitted during 105-minute intervals followed by a 30-minute period during which trawling is not permitted. For example, trawling will be authorized from 12:00 midnight to 1:45 a.m. (Eastern Daylight Time). From 1:45 a.m. to 2:15 a.m. no trawling is authorized. Trawling may resume at 2:15 a.m. and continue until 4:00 a.m., followed once again by a 30-minute period of no trawling. Nets cannot be in the water prior to the beginning of the trawl period and must be completely out of the water by the end of the 105-minute period. Nets are not considered to be out of the water unless the cod end of the net and the trawl doors are completely out of the water.

Shrimp fishermen using TEDs in their nets are allowed to trawl during the 30-minute prohibited periods. If a shrimp fisherman cannot demonstrate that a qualified TED has been properly installed in each net for the entire duration of the trip, trawling during any 30-minute period will be considered a violation of these regulations. Shrimp fishermen will also be required to haul back their nets at the request of an enforcement officer.

e. Differences Between the Interim Final Rule and the Existing Rule

This interim final rule amends the existing rule as it pertains to offshore waters and also as it pertains to vessels under 25 feet in length. This rule is more restrictive than the existing rule regarding vessels under 25 feet in length in that it would impose a more regimented and enforceable trawl time restriction on those vessels than that allowed under the existing rule. This rule is less restrictive than the existing rule for vessels 25 feet in length or longer in that it provides an alternative method for complying with the Endangered Species Act.

Nothing in this rule affects the portion of the existing rule that documents which TEDs have been approved for use. This proposed rule would, however, rescind the emergency regulation that was promulgated for north Florida on February 23, 1989.

The Endangered Species Act provides that any state law or regulation respecting the taking of an endangered or threatened species may be more restrictive than any Federal regulation implementing the Act. Accordingly, nothing in this regulation supersedes or preempts any state law or regulation providing a greater degree of protection to endangered or threatened species of sea turtles.

f. "Good cause" Under the Administrative Procedure Act (APA)

The APA requires that a Federal agency give general notice of a rulemaking unless the agency "for good cause" finds that notice and prior comment thereon are impracticable, unnecessary, or contrary to the public interest" (5 U.S.C. 553(b)(B)). If the agency makes such a "good cause" finding, it must incorporate that finding and a brief statement of its reasons therefore in the rules issued (5 U.S.C. 553(b)). The APA further permits a Federal agency to give immediate effect to its rules "for good cause" (5 U.S.C. 553(d)(3)).

The Secretary is issuing this rule on an expedited basis in an attempt to defuse a very volatile situation in the Gulf of Mexico. The violent reaction of shrimp fishermen in the Gulf to implementation of the TED regulations and the need to provide immediate protection to endangered and threatened species of sea turtles for the time necessary to amend the existing rules provides the Secretary with "good cause" to modify those rules without seeking prior public comment and to make the modification effective immediately.

g. Compliance With Other Laws

NOAA Fisheries is cognizant of its responsibilities under other existing laws and will seek to comply with all environmental laws, both procedural and substantive, prior to the expiration of this interim rule.

Public comment is requested on this interim final rule. A final rule addressing those comments will be published no later than September 7, 1989.

Classification

A Final Environmental Impact Statement covering portions of this action was prepared in 1978. An Environmental Assessment covering prior voluntary efforts to encourage TED usage was prepared in 1983. A Final Supplementary Environmental Impact Statement was prepared for the June 29, 1987 Final Rule. NOAA Fisheries will prepare the appropriate documentation to satisfy the National Environmental Policy Act prior to the expiration of this interim rule on September 7, 1989. Copies of the environmental documents may be obtained from the address given above.

This rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director, Office of Management and Budget (OMB), with an explanation of why it is not possible to follow the procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because it is issued without opportunity for prior public comment.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant a federalism assessment under E.O. 12612.

NOAA has determined that this rule is consistent, to the maximum extent practicable, with the approved coastal zone management programs of the affected States. Neither this rule nor the ESA preclude any State from adopting more stringent sea turtle protective measures. This determination will be submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act of 1972, 16 U.S.C. 1457.

List of Subjects in 50 CFR Parts 217 and 227

Endangered Species, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 4, 1989.

James W. Brennan,

Assistant Administrator for Fisheries.

For reasons set out in the preamble, 50 CFR Parts 217 and 227 are amended as follows:

PART 217—GENERAL PROVISIONS

1. The authority citation for Part 217 continues to read as follows:

Authority: 16 U.S.C. 1521–1543 and 16 U.S.C. 742a *et seq.*

2. In § 217.12, the definition of *"tow time"* is removed and the following definition is added in alphabetical order to read as follows:

§ 217.12 Definitions.

* * * * *

"Trip" means the period of time beginning when the vessel leaves a port and ending when the vessel arrives in a port.

* * * * *

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for Part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. Section 227.72 is amended by revising paragraphs (e)(2)(i) and (e)(3)(ii); by redesignating paragraphs (e)(3)(iii) and (e)(3)(iv) as (e)(3)(iv) and (e)(3)(v); by adding a new paragraph (e)(3)(iii); by revising paragraphs (e)(6)(i), (e)(6)(ii), and (e)(6)(iii) and by adding a new paragraph (e)(6)(vi); by adding paragraph (e)(9); by revising the title of Table 2 in paragraph (e) to read "Waters Where TEDs Are Required or Trawling Periods Are Restricted"; by removing the column labeled "Vessel sizes" from Table 2 in paragraph (e); by revising the title of Map 1 in paragraph (e) to read "Offshore Atlantic Waters Where TEDs Are Required or Trawling Periods Are Restricted"; and by revising the title of Map 2 in paragraph (e) to read "Offshore Gulf of Mexico Waters Where TEDs Are Required or Trawling Periods Are Restricted"; to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(1) * * *

(2) *Gear requirements.* (i) Except as provided in paragraphs (e)(2)(ii), (e)(2)(iii), (e)(2)(iv), and (e)(3) of this section, a qualified turtle excluder device (TED) must be properly installed at all times during the trip and used in each net during trawling by a shrimp trawler, regardless of length, fishing for white, brown, pink, or seabob shrimp (or for rock shrimp in the Gulf of Mexico) in areas and during periods (see Table 1 for a summary of the requirements and Maps 1 and 2 for depictions of the areas):

(A) Atlantic Ocean:

(*1*) Canaveral Area, offshore—all year.

(*2*) Atlantic Area, offshore—May 1 through August 31.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, offshore—all year.

(*2*) Gulf Area, offshore—March 1 through November 30 each year.

* * * * *

(3) *Trawl time restrictions.*

(i) * * *

(ii) Except for a shrimp trawler carrying and using a qualified TED in each net during trawling, a shrimp trawler, regardless of length, fishing for white, brown, pink, or seabob shrimp may trawl only during the hours and as specified in paragraph (e)(3)(iii) of this section, in areas and during periods as follows (see Table 2 for a summary of the requirements and Maps 1 and 2 for depictions of the areas):

(A) Atlantic Ocean:

(*1*) Canaveral Area, offshore—all year.

(*2*) Atlantic Area, offshore—May 1 through August 31.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, offshore—all year.

(*2*) Gulf Area, offshore—March 1 through November 30 each year.

(iii) Trawling under paragraph (e)(3)(ii) of this section is permitted during 105-minute periods beginning at midnight Eastern Time, as set out in Table 3. One permitted trawling period is only 60 minutes in length. For the 30-minute periods during which trawling is prohibited, the cod end of the net and the trawl doors must be completely out of the water. Any vessel with a net in the water during a 30-minute prohibited period is in violation of this section unless the operator can demonstrate that a qualified TED is properly installed in the net and has been so installed at all times during the trip.

* * * * *

(6) * * *

(i) Fail to use a qualified TED in each net during trawling in an area where and at a time when a TED is required pursuant to this part;

(ii) Operate with nets or trawl doors in the water during the 30-minute prohibited periods in an area and at a time such a restriction applies, unless a qualified TED is being used in each net during trawling.

(iii) Land from or possess on board a vessel white, brown, pink or seabob shrimp in quantities exceeding 10 percent of the total shrimp landed or on board after having fished for royal red shrimp (or for rock shrimp in the Atlantic Ocean) in an area and at a time when a qualified TED is required or trawling periods are restricted, without complying with the TED or tow-time requirement.

* * * * *

(vi) Catch or harvest shrimp without complying with the provisions of this section.

* * * * *

(9) *Enforcement.* The operator of, or any person aboard any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to haul back a net for his or her inspection for purposes of enforcing the Act and this part.

3 In § 227.72(e) a new Table 3 is added following Table 2 as set forth below:

§ 227.72 [Amended]

TABLE 3—HOURS OF PERMITTED AND PROHIBITED TRAWLING FOR SHRIMP TRAWLERS FOR NET EQUIPPED WITH TEDS

Trawling permitted	Trawling prohibited
Eastern Time Zone	
2400–0145	0145–0215
0215–0400	0400–0430
0430–0615	0615–0645
0645–0830	0830–0900
0900–1045	1045–1115
1115–1215 (only one hour)	1215–1245
1245–1430	1430–1500
1500–1645	1645–1715
1715–1900	1900–1930
1930–2115	2115–2145
2145–2330	2330–2400
Central Time Zone	
2300–0045	0045–0115
0115–0300	0300–0330
0330–0515	0515–0545
0545–0730	0730–0800
0800–0945	0945–1015
1015–1115 (only one hour)	1115–1145
1145–1330	1330–1400
1400–1545	1545–1615
1615–1800	1800–1830
1830–2015	2015–2045
2045–2230	2230–2300

[FR Doc. 89–18676 Filed 8–7–89; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Parts 611 and 672

[Docket No. 81132-9033]

Foreign Fishing; Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of adjustment to the 1989 specification of total allowable catch for pollock; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) announces an adjustment to the total allowable catch (TAC) for pollock in the combined Western/Central Regulatory Area of the Gulf of Alaska. The adjustment is necessary to respond to the best available scientific information concerning the biological status of pollock stocks that shows that the TAC is misspecified. This action is intended to carry out management objectives contained in the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Effective September 5, 1989. Comments are invited until September 5, 1989.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Fishery Management Biologist, 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

TACs for groundfish species in the Gulf of Alaska are established annually by the Secretary under authority of the FMP, which was developed by the North Pacific Fishery Management Council under the Magnuson Fishery Conservation and Management Act. The FMP is implemented by regulations at 50 CFR 611.92 and Part 672. TACs for the 1989 fishing year were specified by the Secretary and were published in the Federal Register on February 13, 1989 (54 FR 6524). The Council determined that the acceptable biological catch (ABC) for pollock for the entire Western/Central Regulatory Area was 80,000 metric tons (mt), recommended that the Secretary implement this amount and recommended that only 6,250 mt of this total should be harvested from the Shelikof Strait area. The Secretary specified a TAC of 6,250 for the Shelikof Strait area and 53,750 mt for the remainder of that regulatory area or a total of 60,000 mt for the entire regulatory area.

The Council's Scientific and Statistical Committee (SSC) had recommended an ABC of 60,000 mt, after reviewing the best available information concerning the status of pollock stocks. Best available information was considered to be the results of the 1987 triennial bottom trawl survey conducted by the Alaska Fisheries Science Center (AFSC). The survey, which was a single source of information, indicated that the total pollock biomass was about 593,000 mt. Using an exploitation rate of approximately 10 percent, the SSC calculated the 60,000 mt ABC.

The 1989 fishery targeted on roe-bearing pollock in Shelikof Strait and elsewhere in the Western/Central Regulatory Area. The Shelikof Strait fishery closed on March 21 and the remainder of the Western/Central Regulatory Area closed on March 23. Whereas in previous years, the roe fishery was conducted predominantly in Shelikof Strait, 1989 was the first fishing year when significant harvests of roe bearing pollock occurred outside Shelikof Strait.

Fishing representatives have expressed concern that the 1989 pollock TAC was underestimated, and that a significant amount of pollock exploitable biomass exists but is not accounted for in the AFSC surveys. At the request of the Council, the AFSC conducted an exhaustive study of data relevant to the status of pollock stocks. The analysis incorporated an analytical synthesis model that combined analyses of catch, abundance, and age composition data. In doing the analysis, the AFSC estimated the age specific selectivity of the survey and fishing gears. In addition, the biomass estimates derived from the model include fish older than age 10 which were previously ignored in estimating exploitable biomass but may contribute to the catch. The SSC recalculated the 1989 ABC using information from the synthesis model. The synthesis model estimate of fish age 3+ in the Gulf of Alaska was 720,000 mt. Therefore, the SSC recommended that ABC be adjusted to 72,000 mt. This recommendation was derived by applying the 10 percent exploitation rate used earlier to the exploitable biomass estimate of 720,000 mt.

The Council reviewed the results of the analysis and the SSC's recommendation at its June 20–23, 1989, meeting. On the basis of the analysis, the Council recommends that the specification of the 1989 pollock TAC be 72,000 mt, for the entire Western/Central Regulatory Area, an increase of 12,000 mt. The Secretary concurs with the Council's recommendation and has determined that the TAC should be adjusted to prevent underharvesting the pollock resource, which would otherwise occur, because the current pollock TAC is currently misspecified.

The Secretary, therefore, proposes that the specification of the 1989 pollock TAC should be adjusted to equal 72,000 mt for the entire Western/Central Regulatory Area. The 12,000 mt increase is not divided between the Shelikof Strait and the rest of this area. This inseason adjustment takes effect 30 days after the Secretary has filed the proposed adjustment with the Office of the Federal Register.

Classification

This action is taken under § 672.22 and Amendment 15 to the FMP that provides for additional fishing opportunities if current information demonstrates a harvest level was set too low. This action is in compliance with Executive Order 12291. Public comments on the necessity for and appropriateness of this action are invited for a period of 30 days.

List of Subjects in 50 CFR Parts 611 and 672

Fisheries.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: August 4, 1989.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–18661 Filed 8–4–89; 4:23 am]

BILLING CODE 3510-22-M

BEST COPY AVAILABLE

Proposed Rules

Federal Register
Vol. 54, No. 153
Thursday, August 10, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 4

[Docket No. 89-10]

Description of Office, Procedures, Public Information

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: As required by the Freedom of Information Reform Act of 1986 (Pub. L. 99-570) (FOIRA), the Office of the Comptroller of the Currency (OCC) is publishing for comment amendments to its regulations governing the disclosure of information under the Freedom of Information Act (FOIA). The effect of the proposed rulemaking is to implement recent amendments to FOIA contained in FOIRA. Those amendments concern Exemption 7 of the FOIA (concerning law enforcement records) and the provisions of the FOIA concerning fees and fee waivers. In addition, the proposed rulemaking implements Executive Order 12600, which deals with predisclosure notification procedures for confidential commercial information. This proposed rulemaking also makes technical, clarifying changes to the OCC's existing FOIA regulation. This proposed rulemaking, and the OCC's FOIA regulation in general, affect public disclosure of information by the OCC.

DATE: Comments must be received on or before October 10, 1989.

ADDRESSES: Comments should be mailed or delivered to Docket No. 89-*10*, Communications Division, 5th Floor, 490 L'Enfant Plaza East, SW., Office of the Comptroller of the Currency, Washington, DC 20219, Attention: Jacqueline England. (202) 447-1800. Comments will be available for inspection and photocopying at that address.

FOR FURTHER INFORMATION CONTACT: Dean DeBuck, Freedom of Information Officer, (202)447-1800, or Ronald Shimabukuro, Attorney, Legal Advisory Services Division, (202)447-1880, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background and General Information

Freedom of Information Reform Act

FOIRA amended FOIA (5 U.S.C. 552) by modifying Exemption 7 and by supplying new provisions relating to charging and waiving fees. FOIRA requires Federal agencies to issue regulations establishing a schedule of fees and procedures for determining when fees should be waived or reduced. The fee schedule is to be in conformance with guidelines issued by the Office of Management and Budget (OMB).

The FOIRA modified Exemption 7 of the FOIA, which exempts from public disclosure certain records or information compiled for law enforcement purposes, in three ways: (1) It added language to allow for an exemption based on a reasonable expectation of any number of specified harms from disclosure; (2) it added explanatory language describing a confidential source; and (3) it provided an exemption from disclosure if release of the information "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." This Notice of Proposed Rulemaking (NPRM) incorporates these FOIRA amendments into the OCC's FOIA regulations at 12 CFR 4.16(b)(7).

The FOIRA also significantly amended the fee provision of the FOIA by establishing five classes of FOIA requesters: (1) Commercial; (2) educational institutions; (3) noncommercial scientific institutions; (4) representatives of the news media; and (5) all others. Commercial requesters will be charged for the direct costs of review, search and duplication of records. Educational institutions, noncommercial scientific institutions and representatives of the news media will be charged fees for direct costs of duplication with the first 100 pages provided free of charge. All other requesters will be charged fees for search and duplication, with two hours of search time and 100 pages of duplication provided free of charge. Prior to the FOIRA, requesters were not classified and charges were made in all cases for search and duplication; *i.e.*, unless fees were specifically waived or reduced, all requesters were charged the same fees.

In addition, the FOIRA amended the FOIA with respect to waiver or reduction of fees. Under FOIRA, documents are to be furnished without a fee or with a reduced fee if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." Prior to the FOIRA, the waiver or reduction of fees occurred when an agency determined that such waiver or reduction was in the "public interest because furnishing the information can be considered as primarily benefiting the general public." Proposed § 4.17(g) incorporates the OCC's new schedule for the charging and waiving of fees.

Executive Order 12600

Confidential Commercial Information Executive Order 12600 (52 FR 23781, June 25, 1987) requires each Executive department and agency subject to FOIA to establish procedures to notify submitters of records containing confidential commercial information when those records are requested under FOIA. Under this NPRM, a submitter of confidential commercial information will have an opportunity to make written objections to disclosure and to state all grounds upon which disclosure is opposed. Furthermore, such a submitter will be notified whenever a FOIA requester institutes a suit seeking to compel disclosure of the confidential commercial information provided to the OCC by the business submitter. Proposed § 4.18(d) implements Executive Order 12600.

OMB and Department of Justice (DOJ) Guidelines

The portion of the NPRM dealing with the fee schedule contains the basic requirements of the FOIRA and also reflects OMB's guidelines, which the FOIRA required OMB to publish. OMB's proposed and final guidelines were published at 52 FR 1962 (January 16, 1987) and 52 FR 10012 (March 27, 1987), respectively. While the numbering system and titles of some subsections in this NPRM differ from the OMB guidelines, the substance of the rule is similar in all material respects.

Proposed § 4.17(g)(2)(vii) is based upon guidelines issued by DOJ. The DOJ guidelines were not published in the Federal Register, but are available upon request from the OCC at the address listed above under the heading "For Further Information Contact". Furthermore, the proposed rule includes numerous editorial changes; for example, portions have been rewritten for clarity and organizational updates have been made to include address changes as well as changes in the names of offices.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that these changes, if adopted as proposed, will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Executive Order 12291

The OCC has determined that this NPRM does not constitute a major rule within the meaning of Executive Order 12291. Accordingly, a Regulatory Impact Analysis will not be required on the grounds that this revision (1) would not have an annual effect on the economy of $100 million or more, (2) would not result in a major increase in the cost of bank operations or governmental supervision, and (3) would not have a significant adverse effect on competition (foreign or domestic), employment, investment, productivity, or innovation.

List of Subjects in 12 CFR Part 4

National banks, Public disclosure, FOIA exemptions, Criminal investigations, Schedule of fees, Waivers or reductions of fees, and notice prior to disclosure.

For the reasons set forth in the preamble, Title 12, Chapter I, Part 4 of the Code of Federal Regulations is proposed to be amended as follows:

PART 4—[AMENDED]

1. The authority citation for Part 4 continues to read as follows:

Authority: 12 U.S.C. 93, 5 U.S.C. 552.

2. Section 4.13, paragraph (a)(1) is revised to read as follows:

§ 4.13 Forms and instructions.

(a) * * *

(1) *Mailing address.* Freedom of Information Officer, Communications Division, Office of the Comptroller of the Currency, Washington, DC 20219.

* * * * *

3. In § 4.15, paragraphs (a) introductory text and (b) are revised to read as follows:

§ 4.15 Orders, opinions, etc. available to the public.

(a) Subject to the exceptions listed in § 4.18 of this part, the Office of the Comptroller of the Currency (OCC) makes the following documents available to the public—either in publications or upon written request—for inspection and/or copying:

* * * * *

(b) The OCC maintains and makes available to the public, upon written request, for inspection and copying a current index identifying the various documents referred to in paragraphs (a)(1) through (4) and (10) of this section issued, adopted or promulgated after July 4, 1967. The index is located in the Communications Division, Comptroller of the Currency, Sixth Floor, 490 L'Enfant Plaza East, SW., Washington DC 20219.

* * * * *

4. Section 4.16, paragraphs (a) and (b)(7) are revised to read as follows:

§ 4.16 Other records available to public; exceptions.

(a) All records of the OCC, including those referred to in § 4.15 of this part, are available to any person, upon written request, for inspection and copying in accordance with §§ 4.17 and 4.17a of this part, except as provided in paragraph (b) of this section.

(b) * * *

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of those records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

* * * * *

5. Section 4.17 is revised to read as follows:

§ 4.17 Location of public reading rooms, requests for identifiable records; and service of process.

(a) *General.* This section identifies the titles of officers designated to make the initial and appellate determinations with respect to requests, the officer designated to receive service of process, the addresses for delivery of requests, appeals and service of process, and the required content of requests.

(b) *Location of certain records.* All public records of the OCC, except: (1) The public portions of applications by national banking associations to establish a branch or seasonal agency; (2) the public portions of applications to organize a national banking association during the period such applications are in the investigatory process in the respective districts; and (3) records concerning matters delegated to the district offices (such as those listed in § 5.3(c) of this chapter), are available at the location listed in § 4.13(a)(2). During this investigatory period, the public portion of the applications listed in paragraph (b)(2) of this section will be available in the respective districts as listed in § 4.1a(b).

(c) *Information concerning records.* (1) Requests for information, other than blank forms, concerning the following:

(i) Consolidated Reports of Condition (domestic);

(ii) Consolidated Reports of Condition (foreign and domestic);

(iii) Consolidated Large Bank Supplements;

(iv) Special Reports;

(v) Past Due, Nonaccrual and Renegotiated Loans and Lease Financing Receivables; and

(vi) Annual Reports of Trust Assets, should be submitted to:

(A) *Mailing address.* Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

(B) *Location.* Room 6108, 550 17th Street, NW., Washington, DC 20429.

(2) Initial determinations as to whether to grant requests for all records of the OCC available under §§ 4.15 and 4.16 of this part, other than those described in paragraph (c)(1) of this section and other than those described in paragraph (b) of this section as being located in the District Offices, will be made by the Director of Communications or that person's designee. Requests for all records, other than those listed in paragraph (c)(1) of this section and other than those described in paragraph (b) of this section as being located in the District Offices, shall be submitted to:

(i) *Mailing address.* Director of Communications, Comptroller of the Currency, Washington, DC 20219.

(ii) *Location.* Sixth Floor, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

(3) Initial determinations as to whether to grant requests for records described in paragraph (b) of this section as being located in the District Offices shall be made by the Deputy Comptroller for each respective district, or that person's designee. All requests for those records shall be submitted to the respective Deputy Comptroller at the location set forth in § 4.1a(b).

(d) *Administrative appeal of initial determination to deny records.* Appellate determinations with respect to requests for records of the OCC will be made by the Comptroller of the Currency or that person's designee. Requesters shall submit appeals in writing within 35 days of the date of the initial denial and shall state the circumstances, reasons or arguments advanced in support of disclosure of the requested records. Appeals shall be submitted to:

(1) *Mailing address.* Director of Communications, Comptroller of the Currency, Washington, DC 20219.

(2) *Location.* Comptroller of the Currency, Sixth Floor, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

(e) *Service of process.* Service of process by litigants seeking access to records of the OCC will be received by the Chief Counsel, Comptroller of the Currency and shall be served at the following location:

(1) *Mailing address.* Chief Counsel, Comptroller of the Currency, Washington, DC 20219.

(2) *Location.* Office of the Chief Counsel, Comptroller of the Currency, Sixth Floor, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

(f) *Content of request for identifiable records.* A request for records of the OCC available under §§ 4.15 and 4.16 must be in writing and state the full name, address and telephone number of the person requesting access to the records and a reasonable description of the records sought. A reasonable description includes sufficient detail to enable personnel of the OCC who are familiar with the subject area of the request to locate the records with a reasonable amount of effort. A request for records shall also state how the documents released will be used (*See* § 4.17(g)). The OCC may determine from the use specified in the request that the requester is a "commercial use requester."

(g) *Fees for document search, review, and duplication; waiver and reduction of fees*—(1) *Definitions.* (i) *Direct costs* means those expenditures which the OCC actually incurs in searching for and duplicating (and in the case of commercial use requesters, reviewing) documents to respond to a request for information under the Freedom of Information Act (FOIA).

(ii) *Search* means all time spent by personnel of the OCC in locating documents that are responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually and/or by computer.

(iii) *Duplication* means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audiovisual materials, or machine readable documentation (*e.g.*, magnetic tape or disk), among others.

(iv) *Review* means the process of examining documents located in response to a request to determine whether any portion of any document may be withheld. It also includes the processing of any documents for disclosure.

(v) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(vi) *Educational institution,* whether public or private, means a preschool, an elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(vii) *Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis, as that term is defined in paragraph (g)(1)(v) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(viii) *Representative of the news media* means any person actively gathering news for, or a free-lance journalist who reasonably expects to have his or her work product published or broadcast by, an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public.

(2) *Fees.* The OCC may charge fees that recoup the full allowable direct costs it incurs. The OCC may contract with non-government enterprises to locate, reproduce, and/or disseminate records; provided however, that the OCC has determined that the ultimate cost to the requester will be no greater than it would be if the OCC performed these tasks itself. In no case will the OCC contract out responsibilities which the FOIA provides that the OCC alone may discharge, such as determining the applicability of an exemption or whether to waive or reduce fees. Fees are subject to change as costs change.

(i) *Searches other than for computerized records.* The OCC shall charge for records at the salary rate(s) (*i.e.*, basic pay plus 16 percent) of the employee(s) making the search. However, where a single class of personnel (*e.g.*, all administrative/clerical, or all professional/executive) is used exclusively, an average rate for the range of grades typically involved may be established at the discretion of the OCC. This charge shall include transportation, at actual cost, of personnel and records necessary to the search.

(ii) *Searches for computerized records.* The fee for searches of computerized records shall be the actual direct cost of the search, including computer time, computer runs, and the operator's salary. The fee for computer printouts will be actual costs.

(iii) *Duplication of records.*

(A) The per-page fee for paper copy reproduction of documents is fifteen cents;

(B) If any other method of duplication is used, the OCC will charge the actual direct cost of duplicating the documents.

(iv) *Review.* The term "review" refers to the process of examining documents located in response to a commercial use request to determine whether any portion of any document is permitted to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to excise them and otherwise prepare them for release.

(v) *Fees to exceed $25.* If the OCC estimates that duplication and/or search fees are likely to exceed $25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. If so notified by the OCC, the requester will have an opportunity to confer with personnel of the OCC in order to revise the request in hopes of meeting his or her needs at a lower cost. The administrative time limits in subsection (a)(6) of the FOIA (*i.e.*, 10 business days from the receipt of initial requests and 20 business days from the receipt of appeals from an initial denial, plus permissible extensions of these time limits) will begin only after the OCC receives a revised request from the requester.

(vi) *Other services.* Complying with requests for special services is entirely at the discretion of the OCC. The OCC may recover the full costs of providing such services to the extent it elects to provide them.

(vii) *Restriction on assessing fees.* The OCC will not charge fees to any requester, including commercial use requesters, if the ordinary cost of collecting a fee is equal to or greater than the fee itself.

(viii) *Waiving or reducing fees.* The OCC shall waive or reduce fees under this section whenever, in its opinion, disclosure of information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(A) The following factors will be used in determining whether a waiver or reduction of fees is in the public interest:

(*1*) The subject of the request—Whether the subject of the requested records concerns the operations or activities of the government;

(*2*) The informative value of the information to be disclosed—Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(*3*) The contribution to an understanding of the subject by the general public—Whether disclosure of the requested information will contribute to public understanding of the subject;

(*4*) The significance of the contribution to public understanding—Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(B) If the public interest requirement is met, the OCC will then make a determination on the "commercial interest" requirement, based upon the following factors:

(*1*) The existence and magnitude of a commercial interest—Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(*2*) The primary interest in disclosure—Whether the magnitude of the identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is reasonably considered by the OCC to be primarily in the commercial interest of the requester.

(C) The OCC, if the required public interest exists and the requester's commercial interest is not primary in comparison to that public interest, may waive or reduce the fees that would normally be charged to that requester.

(3) *Categories of requesters*— (i) *Commercial use requesters.* The OCC may assess fees for commercial use requesters which recover the allowable costs of search, review, and duplication. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of duplication of documents.

(ii) *Requesters who are representatives of the news media, as well as educational and noncommercial scientific institution requesters.* The OCC will provide documents to requesters in these categories for the cost of duplication alone. No fee will be assessed for the first 100 pages.

(iii) *All other requesters.* The OCC will assess fees for requesters who do not fit into any of the above categories to recover the full reasonable direct cost of search and duplication. No fees will be assessed for the first 100 pages of duplication or the first two hours of search time.

(4) *Interest on unpaid fees.* The OCC may begin assessing interest charges on an unpaid bill for FOIA-related fees on the 31st day following the day on which the bill was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(5) *Fees for unsuccessful search and review.* The OCC may assess fees for time spent in search and review, even if the records requested are not located or if the records located are exempt from disclosure.

(6) *Aggregating requests.* A FOIA requester(s) may not file multiple requests, each seeking portions of a document or documents, in order to avoid payment of fees. If this is done, the OCC may aggregate the requests and charge accordingly. The OCC will not aggregate multiple FOIA requests on unrelated subjects from the same requester.

(7) *Advance payment of fees.* FOIA requesters must include a statement agreeing to pay all fees that are properly charged by the OCC; however, the OCC will not require a FOIA requester to make an advance payment, unless:

(i) The OCC estimates or determines that the fees the requester may be required to pay are likely to exceed $250. If it appears that the fees will exceed $250, the OCC will notify the requester of the likely cost and obtain satisfactory assurance of full payment, where the requester has a history of prompt payment of FOIA fees; in the case of requesters with no history of payment, the OCC will require an advance payment of the full estimated charges that will be incurred; or

(ii) A requester has previously failed to pay a fee in a timely fashion (within 30 days of the date of the billing). The OCC may require such a requester to pay the full amount owed plus any applicable interest, as provided in paragraph (g)(4) of this section, or demonstrate that the fee owed has been paid. The OCC may also require this type of FOIA requester to make an advance payment of the full amount of the estimated fees before the OCC begins to process a new request, or finishes the processing of a pending request.

(8) *Tolling of administrative time limits.* When the OCC takes action under paragraphs (g)(7) (i) or (ii) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA begin only after the OCC has received the fee payments described.

6. Section 4.18 is amended by adding a new paragraph (d) to read as follows:

§ 4.18 Other rules of disclosure.

* * * * *

(d) *Procedures for protecting the confidentiality of commercial information as required by Executive Order 12600*— (1) *Definitions.* For purposes of this section, the following definitions shall apply:

(i) *Confidential commercial information* means records provided to the OCC by a submitter which arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act (FOIA), because disclosure could reasonably be expected to cause substantial competitive harm to the submitter thereof.

(ii) *Submitter* means any person or entity who provides confidential commercial information to the OCC. The term "submitter" includes, but is not

limited to, national banks and their officers, directors and principal shareholders, as well as corporations, State governments, and foreign governments.

(2) *Notice to submitters of confidential commercial information.* The OCC shall provide a submitter of confidential commercial information with prompt written notice of the receipt of a request seeking access to the submitter's confidential commercial information, whenever required to do so in accordance with paragraph (d)(3) of this section, and except as provided in paragraph (d)(7) of this section. The notice shall either describe the exact nature of the confidential commercial information requested or provide copies of the records or portions of records containing that information.

(3) *When notice is required.* (i) For confidential commercial information submitted to the OCC prior to January 1, 1988, the OCC shall provide the submitter thereof with notice of the receipt of a request for that information whenever:

(A) The records are less than 10 years old and the information has been designated by the submitter as confidential commercial information;

(B) The OCC has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm to the submitter; or

(C) The information is subject to a prior express commitment of confidentiality given by the OCC to the submitter.

(ii) For confidential commercial information submitted on or after January 1, 1988, the OCC shall provide the submitter thereof with notice of the receipt of a request encompassing such information whenever:

(A) The submitter has in good faith designated the information as being of a commercially or financially sensitive nature; or

(B) The OCC has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm to the submitter.

(iii) Notice of a FOIA request seeking confidential commercial information falling within either paragraphs (d)(3) (i) or (ii) of this section shall be required for a period of not more than 10 years after the date of submission, unless the submitter of the confidential commercial information requests, and provides acceptable justification for, a specific notice period of greater duration.

(iv) Whenever reasonably possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the entity that the information in question is in fact confidential commercial information and has not been disclosed to the public.

(4) *Opportunity to object to disclosure.* Through the notice described in paragraph (d)(2) of this section, the OCC shall afford the submitter of confidential commercial information 10 business days within which to provide the OCC with a detailed statement of any objection to disclosure of the information. That statement shall specify all grounds for withholding any of the information under any exemption of the FOIA and, in the case of Exemption 4, shall demonstrate why the submitter contends that the information is confidential commercial information. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA. When notice is given to a submitter under this section, the requester will be advised that notice has been given to the submitter of the information requested. The OCC will also advise the requester that there will be a delay in its decision of whether to grant or deny access to the information sought. The requester will be further advised that this delay by the OCC may be considered a denial of access to the records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the requester may agree to a voluntary extension of time so that the OCC may review the submitter's objections to disclosure.

(5) *Notice of intent to disclose.* The OCC shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose the confidential commercial information. Whenever the OCC decides to disclose confidential commercial information over the objection of the submitter thereof, the OCC shall forward to the submitter a written notice which shall include:

(i) A statement of the reasons for which the submitter's objections to disclosure were not sustained;

(ii) A description of the confidential commercial information to be disclosed;

(iii) A specified disclosure date, which is 10 business days after the notice of the final decision to release the requested information has been mailed to the submitter. A copy of the disclosure notice shall be forwarded to the requester at the same time; and

(iv) A statement that if the submitter is going to seek injunctive relief, to advise the OCC immediately.

(6) *Notice of FOIA requester's lawsuit.* Whenever a FOIA requester brings suit seeking to compel disclosure of confidential commercial information covered by paragraph (d)(3) of this section, the OCC shall promptly notify the submitter of the confidential commercial information that a lawsuit has been brought.

(7) *Exceptions to the notice requirement.* The notice requirement of this section shall not apply if:

(i) The OCC determines that the information shall not be disclosed;

(ii) The information has been made public by the submitter or has otherwise been officially made available;

(iii) Disclosure is required by law (other than 5 U.S.C. 552);

(iv) The information was acquired in the course of a lawful investigation of a possible violation of criminal law;

(v) The information requested was not designated by the submitter as confidential commercial information pursuant to paragraphs (d)(3)(ii) (A) and (B) of this section, when the submitter had an opportunity to do so at the time of submission of the information or a reasonable time thereafter, unless the OCC has substantial reason to believe that disclosure of the information would result in competitive harm; or

(vi) The designation made by the submitter in accordance with paragraph (d)(3) of this section appears obviously frivolous; except that, in such case, the OCC must provide the submitter with written notice of any final administrative determination to disclose the information, at least 10 business days prior to the specified date when the information is to be disclosed.

Dated: August 3, 1989.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 89-18584 Filed 8-9-89; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-116-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which would require inspection of the wing center section front spar web, and repair, if necessary. This proposal is prompted by reports of cracks in the wing center section front spar web. This condition, if not corrected, could lead to fuel leakage and/or depressurization of the cabin.

DATES: Comments must be received no later than October 2, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-116-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington 98124.

FOR FURTHER INFORMATION CONTACT: Ms. Kathi N. Ishimaru, Airframe Branch, ANM-120S; telephone (206) 431-1525. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-116-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

There have been several reports of cracks in the wing center section front spar web on Boeing Model 727 airplanes. Cracking has been attributed to fatigue due to repeated pressurization cyles. The cracks, if not detected and repaired, could lead to fuel leakage and/or possible cabin depressurization.

The FAA has reviewed and approved Boeing Service Bulletin 727-57-0177, dated December 22, 1988, which describes procedures for inspection, modification, and repairs of the wing center section front spar web.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection for cracks of the wing center section front spar web, and repair, if necessary, in accordance with the service bulletin previously described.

There are approximately 1,540 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 970 airplanes of U.S. registry would be affected by this AD, that it would take approximately 13 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $504,400.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes, listed in Boeing Service Bulletin 727-57-0177, dated December 22, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracks in the wing center section front spar, accomplish the following:

A. Prior to the accumulation of 40,000 flight cycles or within the next 2,300 flight cycles after the effective date of this AD, whichever occurs later, unless accomplished within the last 700 flight cycles, and thereafter at intervals not to exceed 3,000 flight cycles, conduct a close visual inspection of the wing center section front spar web for cracks, in accordance with Figure 1 of Boeing Service Bulletin 727-57-0177, dated December 22, 1988.

B. Repair cracks, prior to further flight, in accordance with Figure 2 of Boeing Service Bulletin 727-57-0177, dated December 22, 1988.

C. Modification in accordance with Figure 3, and repair, if necessary, in accordance with Figure 2 of Boeing Service Bulletin 727-57-0177, dated December 22, 1988, constitutes terminating action for the repetitive inspections required by paragraph A., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All person affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon

request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 1, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-18714 Filed 8-9-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 89-NM-128-AD]

Airworthiness Directives; Boeing Model 737-200, -300, and -400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain Boeing Model 737-200, -300, and -400 series airplanes, which currently requires testing of the engine fire/overheat detection system following any electrical transfer, to verify that the system is operating properly. This action would require modification of the fire/overheat detector module to minimize the risk of the fire/overheat detection system becoming inoperative following an electrical power transfer. This proposal is prompted by the development of a design modification to the fire/overheat detection module that eliminates the basic cause of the system becoming inoperative. This condition, if not corrected, could result in a situation where a propulsion system overheat or fire may not be annunciated to the flightcrew, which could jeopardize continued safe flight and landing.

DATES: Comments must be received no later than October 2, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-128-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Simonson, Propulsion Branch, ANM-140S; telephone (206) 431-1965. Mailing address: FAA Northwest Mountain Region 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-128-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On March 30, 1989, the FAA issued AD 89-08-12, Amendment 39-6167 (54 FR 14642; April 12, 1989), applicable to certain Boeing Model 737-200, -300, and -400 series airplanes, to require testing of the engine fire/overheat detection system following any electrical power transfer, and verification that the system is operating properly. That action was prompted by reports from Boeing that indicated that the fire/overheat detection system could become inert after a transfer of electrical power. This condition, if not corrected, could result in a situation where a propulsion system overheat or fire may not be annunciated to the flightcrew, which could jeopardize continued safe flight and landing.

Since issuance of that AD, a modification to the fire/overheat detection module has been developed to minimize the risk that the fire/overheat detection system will become inert following an electrical power transfer.

The FAA has reviewed and approved Boeing Service Bulletin 737-26-1063, dated May 18, 1989, which identifies Walter Kidde modifications of the fire detection module, that increase reliability of the fire/overheat detection system following electrical power application, transfer, or interruption.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would revise AD 89-08-12 to require modification of the fire/overheat detection module in accordance with the service bulletin previously described. Accomplishment of this modification would constitute terminating action for the existing testing requirement.

There are approximately 400 Model 737-200, -300, and -400 series airplanes of the affected design in the worldwide fleet. It is estimated that 175 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3.25 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The parts required to accomplish this modification will be provided by Walter Kidde at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $22,750.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by revising AD 89-08-12, Amendment 39-6167 (54 FR 14642; April 12, 1989), as follows:

Boeing: Applies to Boeing Model 737-200, -300, and -400 series airplanes, as listed in Service Bulletin 737-26-1063, dated May 18, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To reduce the potential for dispatching an airplane with an inoperative fire/overheat system, accomplish the following:

A. Within 10 days after April 24, 1989 (effective date of Amendment 39-6187), inspect the engine fire/overheat detection module to determine that part number.

1. If part number 10-61096-41, -71, -81, -91, -92, or 10-62061-1, -2, -3, -11, or -12 is installed, add the following Engine Fire Detection System Test Procedure to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM:

a. Prior to engine start, accomplish fire/overheat warning system test.

b. After engine start, and with the electrical power supply system in the flight configuration, accomplish the fire/overheat warning system test.

c. In the event of an electrical power supply configuration change inflight (e.g., generator failure), perform the fire/overheat warning system test. In the event that this test is unsuccessful, land at the nearest suitable airport.

2. If part numbers other than those listed in paragraph A.1., above, are installed, no further action is required.

B. Within 30 days after the effective date of this amendment, modify the engine fire/overheat detection module, in accordance with Boeing Service Bulletin 737-26-1063 dated May 18, 1989. Once this modification is accomplished, the limitation required by paragraph A.1., above, may be removed from the AFM.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 1, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-18713 Filed 8-9-89; 8:45am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 89-AWP-18]

Proposed Amendment to San Jose, CA Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the effective hours of the San Jose, California control zone. The San Jose control zone is currently described as a full-time control zone. The control zone does not meet fulltime control zone criteria; thus there is a need for an amendment to part-time status.

DATE: Comments must be received on or before September 22, 1989. Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the office of the Manager, Airspace and Procedures Branch, Air Traffic Division, Airspace and Procedures Branch, AWP-530, at the above address.

FOR FURTHER INFORMATION CONTACT: Jon L. Semanek, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-0433.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmenal, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AWP-18." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, AWP-530, at 15000 Aviation Boulevard, Lawndale, California, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, AWP-530 at the

above address. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the San Jose, California control zone. The San Jose control zone is currently described in FAA Handbook 7400.6E as a full-time control zone. The control zone does not meet full-time control zone criteria; thus there is a the need for an amendment to part-time status. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that the regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; Febraury 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, Federal Aviation Administration proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

San Jose, CA [Revised]

Within a 5 mile radius of San Jose Municipal Airport (latitude 37°21'42" N./longitude 121°55'39" W.), excluding the portion NW of a line from latitude 37°25'45" N/longitude 121°56'36"W.; to latitude 37°19'30"N./longitude 122°00'10"W. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will therefore be continuously published in the Airport/Facility Directory.

Issued in Los Angeles, California on July 26, 1988.

Jacqueline L. Smith,

Manager, Air Traffic Division.

[FR Doc. 89-18716 Filed 8-9-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Colorado Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSMRE is announcing the receipt of a proposed amendment to the Colorado permanent regulatory program (hereinafter, the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to permit information requirements, ownership and control, permit rescission, permitting, coal exploration, archaeology and cultural resources, civil penalties, restriction on financial interests of State employees, diversions, siltation structures, impoundments, hydrologic balance protection, inspection and enforcement, use of explosives, excess spoil, coal mine waste, backfilling and grading, previously mined area, prime farmland, reclamation plan, and fish and wildlife. The amendment is intended to revise the State program so that it will remain consistent with the corresponding Federal standards, provide additional safeguards, and clarify ambiguities within the State program.

This notice sets forth the times and locations that the Colorado program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., m.d.t. September 11, 1989. If requested, a public hearing on the proposed amendment will be held on September 5, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on August 25, 1989.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. Robert H. Hagen at the address listed below.

Copies of the Colorado program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Albuquerque Field Office.

Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, New Mexico 87102, Telephone: (505) 766-1486.

Colorado Mined Land Reclamation Division, 423 Centennial Building, 1313 Sherman Street, Denver, CO 80203, Telephone: (303) 866-3567.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, **Federal Register** (45 FR 82211). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.15 and 906.30.

II. Submission of Proposed Amendment

By letter dated July 18, 1989, Colorado submitted to OSMRE a proposed amendment, (Administrative Record No. CO-457), to its program pursuant to SMCRA. Colorado submitted the proposed amendment at its own initiative and in response to OSMRE's letters dated May 7, 1986, June 7, 1987, November 7, 1988, and May 11, 1989 (Administrative Record Nos. CO-282, CO-342, CO-418, and CO-441 respectively). These letters were issued in accordance with 30 CFR 732.17(c). The regulations that Colorado proposes to amend are listed below.

Permit Information Requirements

Colorado proposes to amend Rules 2.03.4, 2.03.5, 2.07.6, 2.07.7, and 5.03.2.

Ownership and Control

Colorado proposes to amend Rules 1.04 and 2.07.6.

Permit Rescission

Colorado proposes to amend Rule 2.11.1.

Permitting

Colorado proposes to amend Rule 2.07.7.

Coal Exploration

Colorado proposes to amend Rules 2.02.7, and 4.21.4.

Archaeology and Cultural Resources

Colorado proposes to amend Rule 2.02.3.

Civil Penalties

Colorado proposes to amend Rules 1.04, 5.03.5, 5.04.7, and 5.04.8.

Restriction on Financial Interests of State Employees

Colorado proposes to amend Rules 1.10.2 and 1.10.4.

Diversions

Colorado proposes to amend Rules 4.05.3 and 4.05.4.

Siltation Structures

Colorado proposes to amend Rule 4.05.6.

Impoundments

Colorado proposes to amend Rules 1.04, 4.05.6, and 4.05.9.

Hydrologic Balance Protection

Colorado proposes to amend Rule 4.05.8.

Inspection and Enforcement

Colorado proposes to amend Rules 3.03.3 and 5.02.2.

Use of Explosives

Colorado proposes to amend Rules 4.08.1, 4.08.4, and 4.08.5.

Excess Spoil

Colorado proposes to amend Rules 4.09.1 and 4.09.2.

Coal Mine Waste

Colorado proposes to amend Rule 4.11.5.

Backfilling and Grading

Colorado proposes to amend Rules 4.14.1 and 4.23.2.

Previously Mined Area

Colorado proposes to amend Rule 1.04.

Prime Farmland

Colorado proposes to amend Rule 4.25.1.

Reclamation Plan

Colorado proposes to amend Rule 2.05.3.

Fish and Wildlife

Colorado proposes to amend Rule 2.05.6.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Colorado program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m., m.d.t. on August 25, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 1, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-18672 Filed 8-9-89; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS 42107A; FRL 3626-2]

1,6-Hexamethylene Diisocyanate Extension of Comment Period on Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the comment period for the proposed test rule on 1,6-hexamethylene diisocyanate (HDI) for 30 days after publication of this notice. Extension of the comment period was requested by the Chemical Manufacturers Association (CMA) to allow industry additional time to address unanticipated issues raised in the Proposed Rulemaking (54 FR 21240; May 17, 1989) and to provide interested parties additional opportunity for comment.

DATES: Written comments on the proposed rule should be submitted on or before September 11, 1989.

ADDRESSES: Address written comments identified by the document control number OPTS–42107A, in triplicate to: TSCA Public Docket Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm NE–G004, 401 M St., SW., Washington, DC 20460.

The public records supporting these actions are available for inspection in Room NE–G004 at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm EB–44, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule for 1,6-hexamethylene diisocyanate, published in the Federal Register of May 17, 1989 (54 FR 21240), in respone to the 22nd Interagency Testing Committee (ITC) Reports (53 FR 18196; May 20, 1988). EPA made a finding of "significant or substantial human exposure" to 1,6-hexamethylene diisocyanate under section 4(a)(1)(B) of TSCA. On June 2, 1989, the CMA requested an extension of the comment period for 30 days to allow industry additional time to address unanticipated issues.

Therefore, EPA is extending the comment period for 30 days. Comments on the proposed test rule for 1,6-hexamethylene diisocyanate are now due September 11, 1989. EPA believes that extension of the comment period will not cause undue delay in the consideration of the test rule proposal.

Authority: 15 U.S.C. 2603.

Dated: July 31, 1989.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 89–18735 Filed 8–9–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[General Docket No. 89–349, FCC No. 89–244]

Importation of Radio Frequency Devices Capable of Causing Harmful Interference

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The FCC proposes to amend part 2 of its rules concerning the importation of radio frequency (RF) devices capable of causing harmful interference and the filing of FCC Form 740. It is made in response to United States Customs Service (Customs) efforts to eliminate paper filings, informal industry requests for changes in the existing rules and procedures, and the FCC's desire to reduce the burden associated with handling the existing Form 740. This proposal should result in the elimination of a significant and duplicative regulatory burden upon the imports industry, allow Customs to move from a paper system to an automated system, and allow the FCC to spend its limited resources on the most productive and important aspects of its imports program.

DATES: Comments must be submitted on or before September 28, 1989, and reply comments on or before October 13, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard B. Engelman, Chief, Inspections & Investigations Branch, Field Operations Bureau, Washington, DC 20554, (202) 632–6345.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, General Docket No. 89–349, FCC No. 89–244, adopted July 25, 1989 and released August 7, 1989. The full text of this proposal is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text may also be purchased from the Commission's copy contractor, International Transcription Services Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

The proposal would update existing rules, reduce the circumstances in which Form 740 information must be filed, require the filing of Form 740 only with the U.S. Customs Service (Customs) instead of with both the FCC and Customs, and allow the filing of Form 740 information electronically.

List of Subjects in 47 CFR Part 2

Communications equipment, Electronic products, Imports, Telecommunications.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–18705 Filed 8–9–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89–16; Notice 01]

RIN 2127–AC84

Occupant Protection in Interior Impact

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice seeks public comment on a variety of issues relating to Safety Standard No. 201, Occupant Protection in Interior Impact. Some of the issues arise from this agency's granting of a petition for rulemaking from the Chrysler Motors Corporation requesting that NHTSA exclude air bag equipped vehicles from the head impact protection requirements of Standard No. 201. Chrysler alleges that the head impact protection requirements "interfere" with efforts to develop new "top mounted" crash deployed systems having an air bag module located beneath the top surface of the instrument panel. The agency seeks data and other information that would assist the agency in determining whether to propose such an exclusion from the standard.

The other issues explored by this notice arise partly out of the difficulty which the agency has experienced in applying the language of the standard in order to determine whether some portions of the interior in several vehicle models fall within exclusions from the standard's requirements. The agency's review of the exclusions for "console assemblies" and for "areas below any point at which a vertical line is tangent to the rearmost surface of the panel" has led it to seek comment on whether to issue a proposal to clarify, narrow or eliminate those exclusions.

DATE: Comments on this notice must be received by the agency no later than September 25, 1989.

ADDRESS: Comments should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–5267. Docket hours are 8:00 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Jettner, NRM–12, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366–4917.

SUPPLEMENTARY INFORMATION:

The Standard

Standard No. 201 specifies occupant impact protection requirements for interior vehicle components likely to be struck by a lap-belted occupant in a crash, including instrument panels, seat backs, sun visors and armrests. In addition, the standard requires interior compartment doors (e.g., glove compartment doors) to remain closed during a crash.

In order to comply with Standard No. 201's impact requirements, vehicle manufacturers install energy absorbing materials in the areas of the instrument panel within the "head impact area," as defined in 49 CFR 571.3. The requirements specify that when those areas are impacted by a head form at 15 miles per hour (mph), the deceleration of the head form must not exceed 80g continously for more than 3 milliseconds (S3.1). Installation of appropriate energy absorbing materials in the upper and middle surfaces of the instrument panel in order to meet the requirement can prevent or mitigate chest and head injuries resulting from contacts with the panel.

Paragraph S3.1.1 of Standard No. 201 sets forth five exclusions from the above head impact protection requirements. One of these (S3.1.1(a)) is for "console assemblies." The other four exclusions relate to areas on the instrument panel which, although located in the head impact area, had been thought to be unlikely to be struck by a vehicle occupant in a crash, due to the location of other vehicle components (e.g., the windshield) relative to the instrument panel.

Chrysler's Petition

Chrysler requests that S3.1.1 be amended by adding an exclusion for the "head impact area determined for the front passenger seating positions in vehicles that conform to the requirements of Standard No. 208 by means of air bag systems." The petitioner's request apparently stems from its research efforts at exploring "top mounted" air bag systems for future model vehicles. Chrysler believes Standard No. 201's head impact protection requirements "interfere" with the development of their top-mounted system.

According to the petitioner, the air bag module for the top-mounted system must be located in the head impact area because only there can it rapidly deploy and be supported with sufficient structure "to provide a reaction to the high deployment forces, properly direct the deploying air bag toward the occupant, and * * * provide occupant ride-down" (i.e., cushion and decelerate the occupant). The petitioner states that Standard No. 201's head impact protection requirements "simply cannot be met in the area of the rigid module and its support structure."

Chrysler states that it has attempted to achieve compliance with the head impact protection requirements of Standard No. 201, but has been unsuccessful in its efforts. The petitioner states:

> We have studied the possibility of locating the module beneath the panel surface and employing a rigid tube to direct the deploying bag to the panel surface. Our conclusion is that the structural tube rather than the module would then preclude meeting the head form impact requirements * * *. Recessing the module is therefore not a solution, and we have not been able to determine another. (Petitioner for rulemaking, page 2.)

Chrysler believes that top-mounted air bags "appear to have an advantage in the accommodation of the out-of-position occupant and standing child." NHTSA interprets this statement to mean that top-mounted air bags initially deploy more upward (toward the windshield) than directly rearward, and that petitioner believes the benefits of this upward deployment is that the deploying air bag is less likely than rearward-deploying ones to strike forcefully an occupant leaning toward or a child standing near the instrument panel.

Chrysler further believes Standard No. 201's head protection requirements are unnecessary because they only duplicate the occupant crash protection required by Standard No. 208. The petitioner believes the front barrier test of Standard No. 208 is "far more sensitive to the many sources of occupant head injury than is the head impact test of MVSS 201."

The agency has determined that the alleged "interference" from Standard No. 201's head impact protection requirements with the development of new air bag systems should be further considered. NHTSA notes that in January 1988, the agency denied a petition for rulemaking from Mitsubishi Motors Corporation which, similar to Chrysler's petition, had requested that NHTSA exclude air bag equipped vehicles from Standard No. 201. (53 FR 780; January 13, 1988.) However, unlike Chrysler, Mitsubishi did not even allege that compliance with Standard No. 201 interferes in any way with the development of air bag technology, or that there is sufficient reason for removing the protection offered by that standard. Since Chrysler has based its petition on alleged incompatibility problems between Standard No. 201 and petitioner's efforts at developing new air bag technology, NHTSA decided to grant Chrysler's petition.

However, although vehicle manufacturers should be allowed flexibility in developing complying air bag systems to the extent possible, the agency is concerned about any potential safety problems that may arise from an amendment to Standard No. 201. Therefore, the agency seeks comments on the issues raised by the petition before deciding whether a notice of proposed rulemaking should be issued.

NHTSA does not agree with the petitioner that the protection afforded by Standard No. 201's requirement for padded instrument panels duplicates the occupant crash protection provided by an air bag. Typically, current air bag systems deploy during a collision at an approximate barrier equivalent speed of 12 mph. NHTSA believes Standard No. 201 reduces injuries occurring when occupants strike the instrument panel in crashes for which an air bag was not designed to deploy, such as under-12 mph frontal crashes; in crashes involving a car whose air bags had been previously deployed, but not replaced; in rear crashes in which the occupant rebounds from the seat and strikes the instrument panel; or in side crashes or rollover crashes. Data indicate that occupant contact with the instrument panel occurs frequently. Based on 1982–1985 data from the National Accident Sampling System, there are approximately 2,100 AIS 2 or greater injuries annually resulting from contacts between front seat occupants' heads or faces and the instrument panel in side impacts alone. NHTSA seeks more information on the possible safety effect of amending Standard No. 201 along the lines suggested by the petitioner.

NHTSA requests comments on whether the requested exclusion would have net safety benefits above the level of safety protection afforded by the existing provision. The agency notes that Chrysler has presented only limited evidence that compliance with Standard No. 201 for top mounted systems is impracticable or infeasible, and has not provided alternative suggestions for a proposed amendment, short of a complete exclusion, that might be able to provide relief. However, the agency believes it would not have been appropriate to deny this petition because vehicle manufacturers have begun to acquire testing experience of crash deployed restraint systems under

Standard No. 208 which may have produced data or other information on top-mounted or other air bag systems, and potential incompatibility problems between Standards No. 201 and No. 208. If information indicates that the Standard No. 201 compliance problem alleged by Chrysler could be solved without changing the provisions of that standard for air bag equipped vehicles, the agency will consider terminating rulemaking on this petition.

The agency is particularly interested in obtaining comments relating to the questions numbered below. In responding to a particular question, interested persons are requested to provide any relevant factual information to support their conclusions or opinions, including but not limited to test data, statistical data and estimated costs and benefits, and the source of such information.

NHTSA emphasizes that the granting of Chrysler's petition does not necessarily mean that a rule will be issued. The determination of whether to issue a rule is made in the course of the rulemaking proceeding, in accordance with statutory criteria. If the agency were ultimately to issue a final rule, it would do so only after further notice of proposed rulemaking and opportunity to comment.

Issues

1. What benefits are foreseen from implementation of top-mounted air bags? How do these benefits compare to those for a conventionally mounted passenger-side air bag?

2. Are other manufacturers planning to use top-mounted air bags at the right front position in passenger vehicles?

3. If so, are they experiencing difficulty meeting both FMVSS No. 208 and No. 201 requirements? Do they anticipate problems in future designs using top-mounted air bags?

4. Are there feasible design and/or material selections for top-mounted air bag installations which show potential for satisfying head form acceleration limitations now specified for FMVSS No. 201 compliance?

5. What problems in achieving compliance with FMVSS No. 201 are encountered by manufacturers who currently install an air bag for the front outboard passenger position? Are these problems limited to top-mounted designs?

6. Could top-mounted air bag designs meet S3.1 of FMVSS No. 201 if the test speed were lowered from 15 mph to 10–12 mph for air bag equipped vehicles?

7. Are there data from manufacturers, hospital records or insurance claims that would indicate the frequency and severity of head injuries currently occurring in frontal crashes from impacts on the instrument panel in crashes with delta V's (i.e., reductions in velocity) between 0 and 15 mph?

8. If Standard No. 201 were amended as suggested by the petitioner, would a top-mounted air bag only reduce one set of injuries and increase other instrument panel injuries? Would there be a net decrease or a net increase in injuries?

9. If Standard No. 201 were amended as suggested by the petitioner, should Standard No. 208 require lap/shoulder belts at all positions exempted from Standard No. 201 for which automatic crash protection is provided by air bags?

Areas Currently Excluded

The agency is interested in assessing whether existing exclusions in Standard No. 201 should continue. As noted above, paragraph S3.1.1 of Standard No. 201 excludes five areas or objects within the head impact area from the instrument panel performance requirements. One exclusion is for console assemblies. (Paragraph S3.1.1(a).) Another exclusion is for "[a]reas below any point at which a vertical line is tangent to the rearmost surface of the panel." (Paragraph S3.1.1(e).)

The agency is interested in determining whether console assemblies should continue to be excluded from the head impact protection requirements of the standard, and even if so, whether more precise language should be proposed to clarify what constitutes a "console assembly." Console assembly designs have changed significantly since the exclusion for console assemblies was established. NHTSA has become aware that some new vehicle interior designs have a structure which would be commonly recognized as a console assembly, since the structure is a low-lying structure mounted on the vehicle floor, lying between the front seats. However, the structure can also extend upwards to virtually or actually join with the instrument panel in a one-piece, T-shape type of design. Some one-piece designs, such as the Mercedes 260 E, have a small indentation or space between the dashboard and the console assembly. Other designs, such as the Porsche 928 S4, lack an indentation. In some configurations, identifying where the instrument panel ends and the console assembly begins is extremely difficult.

This difficulty has complicated the agency's applying the existing exclusion of console assemblies to the interior designs in several models (see, for example, the agency's September 21, 1988 and October 27, 1986 letters to MMC Services, Inc.), and has resulted in NHTSA's reviewing the merits of the console assembly exclusion. As a result, NHTSA seeks comment on whether the agency should issue a proposal to clarify, narrow or eliminate the exclusion.

NHTSA's review of the exclusions of S3.1.1 has led it to consider also whether the area described in S3.1.1(e) should continue to be excluded from S3.1 of the standard, and even if generally so, whether the agency should propose to narrow the exclusion. NHTSA seeks comment on whether there would be safety benefits in ending or narrowing the exclusion, and on the difficulties manufacturers would have in designing areas presently excluded by S3.1.1(e) to meet the head impact protection requirements of S3.1.

To make these assessments, NHTSA requests information on the following questions:

10. Are manufacturers tending toward one-piece designs which incorporate the form and function of both instrument panel and console assembly?

11. Should console assemblies continue to be excluded from the requirements of S3.1?

(a) If yes, why?

(b) How can a manufacturer or NHTSA determine where the dividing line is between the console assembly and area that is not the console assembly on one-piece designs? How can Standard No. 201 clarify what is meant by "console assembly" and "instrument panel" so as to facilitate distinguishing one from the other?

(c) Even if we could identify where the instrument panel ends and the console assembly begins, should Standard No. 201 exempt all of the console from S3.1, or just a portion thereof? What would be an appropriate portion to exempt?

(d) What is the likelihood of an occupant's head hitting a portion of the console assembly in a crash?

(e) If some or all portions of a console assembly could injure an occupant, would it be difficult for those portions of console assemblies to meet S3.1 of the standard? What design changes would be necessary for compliance? At what estimated cost?

12. Should the area described in S3.1(e) continue to be excluded from the requirements of S3.1? What is the likelihood of an occupant's hitting his or her head in a crash on an area currently excluded by S3.1.1(e)?

13. What difficulties would manufacturers experience in designing areas presently excluded by S3.1.1(e) to meet the head impact protection requirements of S3.1? What design changes would be necessary for compliance? At what estimated cost?

Comments

NHTSA solicits public comments on this notice. It is requested, but not required, that commenters provide 10 copies of written comments and two copies of films, tapes, and other materials.

All comments must not exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the notice will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on this notice will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50)

Issued: August 4, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89–18703 Filed 8–9–89; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Animal Review; Corrections

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of correction.

SUMMARY: This notice corrects errors in the Service's Animal Notice of Review published January 6, 1989 (54 FR 554–579).

FOR FURTHER INFORMATION CONTACT: Endangered Species Coordinator, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231–231–6150 or FTS 429–6150), or Mr. William Knapp, Chief, Division of Endangered Species and Habitat Conservation, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/538–2161 or FTS 921–2161).

SUPPLEMENTARY INFORMATION:

The following are errors that have been identified in the U.S. Fish and Wildlife Service's Animal Notice of Review published January 6, 1989 (54 FR 554–579). The indicated correction do not reflect post-publication changes in the Service's assessments of species' status; any such changes are reserved for later republication of, or supplement to, the animal notice.

1. On page 559, entry 16, CATEGORY for Desert tortoise (Mojave Desert population)—2 should read. 1.

2. On page 560, CATEGORY for Mariana fruit dove (entry 24), Guam white-throated ground dove (entry 26), and Cardinal honey eater (entry 43), 3A should read 3C.

3. On page 560, entry 23; SCIENTIFIC NAME for Truk Micronesian pigeon—*teraoki* should read *teraokai.*

4. On page 560, entry 41, SCIENTIFIC NAME for Palau white-breasted wood-swallow—*Aretamus* should read *Artamus.*

5. On page 561, entry 40, COMMON NAME for Mariana flying fox—Agigun should read Agiguan and Siapan should read Saipan; FAMILY—Pteropidae should area Pteropodidae.

6. On page 561, entry 44, SCIENTIFIC NAME for Mexican long-tongued bat—*Choenycteris* should read *Choeronycteris;* HISTORIC RANGE—NM, Mexico should read NM, TX, Mexico.

7. On page 566, entry 40, FAMILY for Edgewood blind harvestman—should read Phalangodidae.

8. On page 572, entry 52 COMMON NAME for Mardon blue butterfly—Mardon blue should read Mardon skipper; SCIENTIFIC NAME—*Plejebus* should read *Polites;* FAMILY—Lycaenidae should read Hesperiidae.

9. On page 579, entry 8, SCIENTIFIC NAME for shiny-rayed pocketbook (mussel)—*Lampsilsis* should read *Lampsilis.*

Dated: July 25, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–16737 Filed 8–9–89; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Finding on Petition To List the Louisiana Black Bear

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of finding on petition.

SUMMARY: The Service announces the second 12-month finding for the petition to amend the Lists of Endangered and Threatened Wildlife and Plants by adding the Louisiana black bear. As with the first 12-month petition finding, the action requested has again been determined to be warranted but precluded by other actions to amend the lists.

DATES: The finding announced in this notice was made in April 1989. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions regarding the Louisiana black bear petition may be submitted to the U.S. Fish and Wildlife Service, Jackson Mall Office Center, 300 Woodrow Wilson Avenue, Suite 316, Jackson, Mississippi 39213. The petition, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Bowker at the above address (601/965–4900 or FTS 490–4900).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act, as amended, requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, a finding be made within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted, but precluded from immediate proposal by other pending proposals. Section 4(b)(3)(C) requires that petitions for which the action requested is found to be warranted but precluded should be treated as though resubmitted on the date of such finding, i.e. requiring a subsequent finding to be made within 12 months. Such 12-month findings are to be published promptly in the Federal Register.

A petition dated March 6, 1987, from Mr. Harold Schoeffler, was received by the Service on March 23, 1987. It requested the Service to list *Ursus americanus luteolus*, the Louisiana black bear. The Service had previously initiated review of the status of the Louisiana black bear in a notice published December 30, 1982 (47 FR 58454). The petition gave a summary of evidence that this subspecies is still extant in two restricted areas in the Tensas River Basin and in the lower Atchafalaya Basin of Louisiana. This range was described as a contraction from an area once covering most of Louisiana and extending into eastern Texas and western Mississippi. A number of threats were indicated to exist, including the threat of interbreeding with black bear stocks introduced within the historic range from Minnesota between 1964 and 1967.

In July 1987, the Service determined that the action requested by this petitioner may be warranted. In 1988, a 12-month finding was made that the action requested in respect to the Louisiana black bear was warranted but precluded by work on other species having higher priority for listing. Both findings were reported in the Federal Register for August 19, 1988 (53 FR 31723). The Service wishes to develop further information about the existence and exact status of the subspecies in order to support a rule to propose it for addition to the List of Endangered and Threatened Wildlife. There is sufficient evidence to justify active continuation of surveys to answer the necessary questions about its status. The Tensas River National Wildlife Refuge is surveying in the Tensas River basin; and the Louisiana Cooperative Fish and Wildlife Research Unit at Baton Rouge is assisting the Service by surveying the remainder of the known current range in the Atchafalaya River basin.

Tissue samples from the Atchafalaya River basin and the Tensas River basin are being analyzed using electrophoresis techniques for blood proteins and mitochondrial DNA. Dr. Mike Pelton of the University of Tennessee is coordinating these analyses through the Savannah River ecology laboratory (blood proteins) and the University of North Texas (mitochondrial DNA). These analyses should be complete by June 1989, at which time the Service will undertake an assessment of these genetic data to determine if the Louisiana black bear (*U. a. luteolus*) continues to exist as a distinct subspecies.

The most recent 12-month finding again is that the petitioned action is warranted but precluded by work on other species having higher priority for listing.

Section 4(b)(3)(iii) of the Act states that petitioned actions may be found to be warranted but precluded by other listing actions when it is also found that the Service is making expeditious progress in revising the lists. Expeditious progress in listing endangered and threatened species is being made, and is reported annually in the Federal Register. The most recent progress report was published on December 29, 1988 (53 FR 52746).

Author

This notice was prepared by Wendell A. Neal, U.S. Fish and Wildlife Service, Jackson Mall Office Center, 300 Woodrow Wilson Avenue, Suite 316, Jackson, Mississippi 39213 (telephone 601/965–4900, FTS 490–4900).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411), unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: July 20, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–18738 Filed 8–9–89; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

RIN 0648–AC28

American Lobster Fishery

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to the fishery management plan and request for comments.

SUMMARY: NOAA announces that the New England Fishery Management Council (Council) has submitted Amendment 3 to the Fishery Management Plan for American Lobster for Secretarial review and is requesting comments from the public.

DATE: Comments will be accepted on or before October 5, 1989.

ADDRESS: All comments should be sent to Richard Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930. Clearly mark the outside of the envelope "Comments on Amendment 3 to the American Lobster FMP."

Copies of Amendment 3 are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, Massachusetts 01906.

FOR FURTHER INFORMATION CONTACT: Patricia A. Kurkul, Resource Policy Analyst, (508) 281–9331.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, requires that a Council-prepared fishery management plan or amendment be submitted to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires that the Secretary upon receipt, immediately publish a notice that the document is available for public review and comment. The Secretary will consider any public comments received in determining the approvability of the document.

Amendment 3 proposes to: (1) Delay implementation of the escape vent requirement scheduled for January 1, 1990, to January 1, 1992, and (2) require that lobster traps contain an escape panel or equivalent mechanism that would degrade and allow lobsters to escape after a trap has been abandoned or lost for 12 months or more. Proposal 2 would become effective January 1, 1992, only if the Council specifies, and the Regional Director publishes, a list of acceptable escape mechanisms at least twelve months prior to January 1, 1992.

The intent of the first proposal is to relieve an unforseen regulatory burden on the industry. The purpose of Proposal 2 is to reduce mortality caused by lost traps. These measures are expected to increase revenues and landings in the lobster fishery.

Regulations proposed by the Council to implement Amendment 3 are scheduled to be published within 15 days.

Authority: (16 U.S.C. 1801 *et seq.*)

Dated: August 4, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–18880 Filed 8–9–89; 4:05 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 54, No. 153
Thursday, August 10, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 4, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form numbers(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington DC 20250, (202) 447–2118.

Extension

• *Agricultural Marketing Service*

Application for Permit to Export Tobacco Seed or Plants
TB–31
On occasion
Small businesses or organizations; 55 responses; 28 hours; not applicable under 3504(h)
Larry L. Crabtree, (202) 447–3469

• *Agricultural Marketing Service*

Meat Market News
None
Daily
Businesses or other for-profit; 172,640 responses; 2,877 hours; not applicable under 3504(h)
James A. Ray (202) 477–6231

• *Agricultural Marketing Service*

Cotton Classification, Market News Service, and Cotton Fiber and Processing Tests
CN–110, CN–59
On occasion; Weekly; Annually
Farms; Business or other for-profit; 7,765 responses; 545 hours; not applicable under 3504(h)
Elvis W. Morris, (FTS) 222–2921

• *Economic Research Service*

U.S. Milled Rice Distribution Survey
None
Biennially
Businesses or other for-profit; Small businesses or organizations; 20 responses; 120 hours; not applicable under 3504(h)
Nathan W. Childs, (202) 786–1840

Donald E. Hulcher,
Acting Departmental Clearance Officer.

[FR Doc. 89–18664 Filed 8–9–89; 8:45 am]
BILLING CODE 3410–01–M

Office of the Secretary

Price-Undercutting of Domestic Edam and Gouda Cheese by Imported Edam and Gouda Cheese Produced in the Netherlands

AGENCY: Department of Agriculture (USDA).

ACTION: Notice.

On July 6, 1989, the U.S. Department of Agriculture received a complaint alleging price-undercutting of domestic Edam and Gouda cheese by imported subsidized Edam and Gouda quota cheese produced in the Netherlands. Under section 702 of the Trade Agreements Act of 1979 (Pub. L. 96–39), the Secretary of Agriculture must conduct a price-undercutting investigation and make a determination as to the validity of the allegation no later than 30 days after receiving a complaint.

Based on the investigation of the Director, Dairy, Livestock, and Poultry Division, Foreign Agricultural Service, pursuant to the regulations at 7 CFR 6.40–44, I have determined that the duty-paid wholesale price in the New York market area of imported subsidized Edam and Gouda quota cheese and Edam Balls produced in the Netherlands during the period October 1988 through March 1989 was $2.50 per pound and $2.42 per pound, respectively. I have also determined that the domestic wholesale market price for similar U.S. produced Edam and Gouda cheese and Edam Balls in the New York market area during the period October 1988 through March 1989 was $2.04 per pound and $2.27 per pound, respectively.

I, therefore, have determined that there is no price-undercutting of U.S. produced Edam and Gouda cheese or Edam Cheese Balls by imported subsidized Edam and Gouda quota cheese or Edam Cheese Balls produced in the Netherlands.

Done at Washington, DC this 4th day of August 1989.

Clayton Yeutter,
Secretary.

[FR Doc. 89–18739 Filed 8–9–89; 8:45 am]
BILLING CODE 3410–10–M

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of the fee for dairy import licenses for the 1990 quota year.

SUMMARY: This notice announces that the fee to be charged for the 1990 quota year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles which are subject to quotas proclaimed under the authority of section 22 of the Agricultural Adjustment Act of 1933, as amended, will be $72.00 per license.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Room 6616-South Building, U.S. Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 447–5270.

SUPPLEMENTARY INFORMATION: Regulations promulgated by the Department of Agriculture and codified at 7 CFR 6.20–6.34 provide for the issuance of licenses to importers of certain dairy articles which are subject to quotas proclaimed by the President pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624). Those dairy articles may only be entered into the United States by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of such licenses and the regulations.

The licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country. The use of licenses by the license holder to import dairy articles is monitored by the Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, U.S. Department of Agriculture (the "Licensing Authority") and the U.S. Customs Service.

Regulations at 7 CFR 6.33(a) provide that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to reimburse the Department of Agriculture for the costs of administering the licensing system under this regulation. The fee is to be based upon the total cost to the Department of Agriculture of administering the licensing system during the calendar year preceding the year for which the fee is to be charged, divided by the average number of licenses issued per year for the three years preceding the year for which the fee is to be assessed.

Regulations at 7 CFR 6.33(b) provide that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be filed with the Federal Register. Accordingly, this notice sets out the fee for the licenses to be issued for the 1990 calendar year.

Notice

The total cost to the Department of Agriculture of administering the licensing system during 1989 has been determined to be $259,609. Of this amount, $134,603 represents the cost of the staff and supervisory hours devoted directly to administering the licensing system during 1989 (total personnel costs for the Import Licensing Group of the Foreign Agricultural Service equaled $106,225; a proportionate share of the supervisory costs devoted directly to administering the licensing system equaled $28,378); $108,600 represents the cost of the computer on-line entry system used to monitor the use of licenses during 1989; and $25,000 represents other miscellaneous costs, including travel, postage, and an in-house computer system. The average number of licenses issued per year for the three years immediately preceding 1990 has been determined to be 3,577.

Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 1990 calendar year, in accordance with the regulations codified at 7 CFR 6.20–6.34, will be $72.00 per license.

Issued at Washington, DC the 4th day of August, 1989.

Richard P. Wasseck,
Licensing Authority.

[FR Doc. 89–18707 Filed 8–9–89; 8:45 am]
BILLING CODE 3410–10–M

Forest Service

White King/Luck Lass Abandoned Uranium Mine Remedial Action Project, Fremont National Forest, Lake County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for assessment and remedial action of the White King and Luck Lass abandoned uranium mines on the Lakeview Ranger District, Fremont National Forest, Lake County, Oregon. This EIS will tier to the Fremont National Forest Land and Resource Management Plan of May 12, 1989 (Goals, Objectives, Standards and Guidelines and Management Area direction), which provides overall guidance in achieving the desired future condition for the area. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected individuals and organizations are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by September 15, 1989.

ADDRESSES: Send written comments and suggestions concerning the scope of the analysis to Joe Tague, District Ranger, Lakeview Ranger District, Fremont National Forest, HC 64, Box 60, Lakeview, Oregon 97630.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Felix R. Miera, Project Manager, phone (503) 947–3334.

SUPPLEMENTARY INFORMATION: The White King/Lucky Lass uranium mines have been listed on the Federal Agency Hazardous Waste Compliance Docket. Under the Superfund Amendments and Reauthorization Act (SARA) of 1986 (Pub. L. 99–499) federal agencies are required to list sites on the docket, that have been documented as a hazardous waste site. In SARA, Congress set specific time frames within which the Forest Service must evaluate the hazardous waste sites, and propose and implement acceptable alternatives for remediation of the sites. The mines are located approximately 15 miles northwest of Lakeview, in south-central Oregon. The Lucky Lass mine site is located completely on National Forest System (NFS) lands. The White King mine site is partially on National Forest lands and partially on private lands. The private parcels are surrounded by NFS lands. Both mines operated intermittently from about 1955 through the early 1960's. In 1961, the Lakeview uranium processing mill shutdown. Neither of the mine sites has since produced ore. Production and sale of uranium ore mined and processed, was controlled under contract to the federal government. Cleanup of the abandoned Lakeview uranium processing mill and mill wastes is presently being completed under a contract authorized by the Uranium Mill Tailings Radiation Control Act of 1978, Title I.

There are three types of wastes that were left behind at the mines sites that are cause for potential health, safety, and environmental concern. These include stockpiled ore, acid waste water that has filled the open mine pits, and overburden. The uranium ore and overburden have elevated levels of naturally occurring radioactive materials and also hazardous metals. The stockpiles were left unprotected and exposed to the elements.

Open pit mining at both sites left large depressions for the collection of storm runoff and are also fed by springs. Because of the mineral content of the ore deposits, a very acidic body of water has been created on site. As a result of this acid environment, many of the hazardous metals and radioactive constituents are in solution in the water.

The primary hazards posed by the mine wastes include: gamma radiation exposure from the wastes radioactive constituents; emanation of radon gas, a decay product from radium present in the wastes; and environmental contamination by hazardous chemicals

and the radioactive constituents of surface and ground waters.

The Forest Service is undertaking a site investigation/preliminary assessment of both the White King and Lucky Lass mine sites to determine:

1. The extent and levels of contamination for hazardous constituents and residual radioactivity in soils, ponded water, and the adjacent Augur Creek.

2. The current impacts of this site on the adjacent and surrounding NFS land.

3. The potential for long-term impacts to adjacent and surrounding NFS land.

Based on evaluation of the information obtained from the site investigation and assessment, the Forest Service will then evaluate appropriate corrective action alternatives to mitigate environmental impacts from the mine sites. One of these will be that no corrective action is necessary. Other alternatives will consider stabilizing of contaminated materials at their present location. This could include building a separate clay lined containment cell to hold solid contaminants. Contaminated water would be treated as required prior to release off site and backfill of the open mine pits.

One of the management decisions the Forest Service will evaluate through this EIS process is the appropriateness for the Forest Service to take title to the private lands at the White King mine site. Under this scenario, the Forest Service would take on the full burden for remedial action of the mine site, and also be responsible for the long-term maintenance and surveillance of the site as required under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601–9657. The basis for this approach has already been established by the Congress in addressing remedial actions for Title I sites under the Uranium Mill Tailings Radiation Control Act.

Orville D. Grossarth, Forest Supervisor, Fremont National Forest, Lakeview, Oregon is the responsible official.

The Environmental Protection Agency (EPA) and the Oregon State Department of Energy will be participate as cooperating agencies in this proposed project. Permits may be required from other federal, state and local agencies, such as, Army Corps of Engineers, Oregon State Department of Environmental Quality, Oregon State Department of Geology and Mineral Industries, and Lake County.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.

2. Identifying issues to be analyzed in depth.

3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.

4. Exploring additional alternatives.

5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The Fremont National Forest will hold a public scoping meeting in Lakeview, Oregon, on Thursday, August 31, 1989 at 7:30 pm at the Lakeview Community Center.

The draft EIS is expected to be filed with the EPA and to be available for public review by March 1990. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Sup. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewer may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environment Policy Act at 40 CFR 1503.3 in addressing these points.)

After the 45 day comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by June 1990. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to review under 36 CFR 217.

Date: August 1, 1989.

Sherman A. Radtke,

Acting Forest Supervisor.

[FR Doc. 89–18683 Filed 8–9–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Commission

[A–122–016]

Choline Chloride From Canada; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent to revoke.

SUMMARY: In response to a request by Chinook Chemicals Co., Ltd., the Department of Commerce has conducted an administrative review of the antidumping duty order on choline chloride from Canada. The review covers Chinook Chemicals Co., Ltd., and the period November 17, 1986 through January 8, 1988. We preliminarily determine the margin to be 0.0008 percent *ad valorem*, a rate we consider *de minimis*. As a result of the review, the Department intends to revoke the antidumping duty order. Interested parties are invited to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: August 10, 1989.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or Chip Hayes, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 9786) the final results of its last administrative review of the antidumping duty order on choline chloride from Canada (49 FR 45489, November 16, 1984). On November 30, 1987, Chinook Chemicals Co., Ltd., requested in accordance with § 353.53a(a) of the Commerce Regulations (1988) that we conduct an administrative review. We published a notice of initiation on December 15, 1987 (52 FR 47617). The Department has now conducted that review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of choline chloride from Canada. Choline chloride is marketed in several forms including, but not limited to, a solution of 70 percent choline chloride in water (aqueous choline chloride) or in potencies of 50 to 60 percent dried on a cereal carrier. During the review period, such merchandise was classifiable under *Tariff Schedules of the United States Annotated* ("TSUSA") item number 439.5055 and is currently classifiable under HTS item number 2923.10.00. The TSUSA and HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

The review covers Chinook Chemicals Co., Ltd., the only known manufacturer and/or exporter of Canadian choline chloride to the United States, and the period November 17, 1986 through January 8, 1988.

United States Price

In calculating United States price we used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed or unpacked, duty-paid, delivered price to unrelated purchasers in the United States. Where applicable, we made adjustments for U.S. and foreign inland freight, import duties, brokerage and handling charges, and discounts. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value we used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on packed or unpacked, ex-factory or delivered price to unrelated purchasers in Canada. We made adjustments, where applicable, for inland freight, credit, and indirect selling expenses when a commission was paid in one market and not the other. In accordance with § 353.55 of the Commerce Regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.55), we did not include sales of small quantities of aqueous choline chloride in drums in calculating home market price. No other adjustments were claimed or allowed.

Preliminary Results of Review and Intent To Revoke

As a result of our review, we preliminarily determine the weighted-average dumping margin to be 0.0008 percent for Chinook Chemicals Co., Ltd., during the period November 17, 1986 through January 8, 1988.

On January 8, 1988, we tentatively revoked the order with respect to Chinook (53 FR 548). However, since Chinook is the only known manufacturer/exporter covered by this order, we intend to revoke the entire order. If this revocation is made final, it will apply to all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the tentative revocation.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested will be held 45 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

This administrative review, intent to revoke, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1) and (c)) and § 353.22 of the new Commerce Department's Regulations. Because the tentative revocation was published (53 FR 548, January 8, 1988) prior to the effective date of the Commerce Regulations published in the **Federal Register** on March 28, 1989, we are proceeding with the intent to revoke pursuant to 19 CFR 353.54 (1988).

Dated: August 4, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89–18643 Filed 8–9–89; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Short-Supply Review on Certain Aluminum-Clad Steel Wire; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products with respect to various sizes of aluminum-clad steel wire.

EFFECTIVE DATE: Comments must be submitted no later than August 21, 1989.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and

BEST COPY AVAILABLE

Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTAL INFORMATION: Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply and demand factors, the United States steel industry will be unable to meet demand in the United States of America for a particular category or sub-category (including substantial objective evidence such as allocation, extended delivery periods or other relevant factors), an additional tonnage shall be allowed for such category or sub-category * * *."

We have received a short-supply request for 200 metric tons per month for August and September 1989 of high carbon cold-drawn aluminum-clad steel wire conforming to ASTM specification B 415, in diameters ranging from 0.0854 inch to 0.3120 inch.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than August 21, 1989. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Dated: August 4, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-18644 Filed 8-9-89; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: Orlando, FL Service Area

Dated: August 4, 1989.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is established at $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period 01/1/90 to 12/31/90. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Orlando, Florida geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDAs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determined if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

Closing Date: The closing date for applications is September 15, 1989. Applications must be postmarked on or before September 15, 1989.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, Suite 505, Atlanta, Georgia 30309, Area Code/Telephone Number 404/347-4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Date: August 4, 1989.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree St., NE., Suite 505, Atlanta, Georgia, August 30, 1989, at 9:00 a.m.

[FR Doc. 89-18677 Filed 8-9-89; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications: Jackson, Mississippi Service Area

Dated: August 4, 1989.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is established at $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period 01/1/90 to 12/31/90. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Jackson, Mississippi geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (MTA) rendered must be charged by MBDAs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost of firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

Closing Date: The closing date for applications is September 15, 1989. Applications must be postmarked on or before September 15, 1989.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, Suite 505, Atlanta, Georgia 30309. Area Code/Telephone Number 404/347-4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

August 4, 1989.

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree St., NE, Suite 505, Atlanta, Georgia, August 30, 1989, at 9:00 a.m.

[FR Doc. 89-18678 Filed 8-9-89; 8:45 am]

BILLING CODE 3510-21-M

National Institute of Standards and Technology

[Docket No. 90647-9147]

RIN 0693-AA74

Proposed Federal Information Processing Standard (FIPS) for Fiber Distributed Data Interface (FDDI)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Request for comments.

SUMMARY: A Federal Information Processing Standard adopting voluntary industry standards for the Fiber Distributed Data Interface (FDDI) is proposed for federal agency use. The FDDI is a layered standard for a 100 Mbits fiber optic token ring Local Area Network (LAN). The FDDI network will allow up to 500 stations connected by up to 200 km of fiber, and is particularly suited as a "backbone" network interconnecting other, lower data-rate LANs, for applications inherently requiring high bandwidth, such as image processing with engineering workstations, and connecting storage servers to powerful computers, and other applications whose size and data transfer requirements exceed the capacity of other LANs.

Prior to the submission of this proposed FIPS to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the published technical specifications ANSI X3.139-1987, FDDI Medium Access Control (MAC), and ANSI X3.148-1988, FDDI Physical Layer Protocol (PHY), from: American National Standards Institute (ANSI), 1430 Broadway, New York, NY 10018 (212) 642-4900. Order the draft technical specifications X3.166, FDDI Physical Layer Medium Department (PMD); X3.XXX, FDDI Station Management (SMT); and X3.XXX, FDDI Single-Mode Physical Layer Dependent (SMF-PMD) from: Global Engineering Documents, Inc., 1-800-854-7179.

All of the technical specifications are derived from standards development projects of X3T9, I/O Interfaces, a technical committee of Accredited Standard Committee X3, Information Processing, which operates under accreditation procedures of ANSI. The final FIPS will adopt specifications as approved by ANSI.

DATE: Comments on this proposed FIPS must be received on or before November 8, 1989.

ADDRESS: Written comments on this proposed standard should be sent to-Director, National Computer Systems Laboratory, ATTN: Proposed GIPS for FDDI, Technology Building, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. William E. Burr, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-2914.

Dated: August 4, 1989.

Raymond G. Kammer,

Acting Director

Federal Information Processing Standards Publication

Announcing the Standard for Fiber Distributed Data Interface (FDDI)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

1. *Name of Standard:* LOCAL AREA NETWORKS: Fiber Distributed Data Interface (FDDI).

2. *Category of Standard.* Hardware and Software Standards, Computer Network Protocols.

3. *Explanation.* This Federal Information Processing Standard adopts the fiber Distributed Data Interface (FDDI). FDDI is a layered standard for a 100 Mbits fiber optic token ring Local Area Network (LAN). The default configuration of FDDI allows up to 500 stations connected by as much as 200 km of fiber. This network is particularly suited as a "backbone" network interconnecting other, lower data-rate LANs, for applications inherently requiring high bandwidth, such as image processing with engineering workstations, and connecting storage servers to powerful computers, and other applications whose size and data transfer requirements exceed the capacity of other LANs.

The FDDI standard covers the Physical Layer and lower portion of the Data Link Layer of the Open System Interconnection (OSI) reference Model. It supports the DIS 88012 Logical Link Control (LLC) Standard, and fits within the framework of the Government Open Systems Interconnection Profile (GOSIP), FIPS 146, as one of several lower layer standards supporting LLC.

In addition to supporting the application specified by GOSIP, FDDI is expected to be widely used for applications which are not yet included in GOSIP or which inherently are not "open" applications. An example would be intra-system communications within a loosely coupled multiprocessor system. Both OSI and non-OSI applications may coexist on the same FDDI LAN.

FDDI is a layered standard consisting of four distinct parts:

(a) Medium Access Control (MAC) which provides frame delivery services to the Logical Link Control (LLC) Sublayer above it. LLC is not a part of FDDI. MAC specifies the format of FDDI frames and the token passing medium access protocol.

(b) Physical Layer Protocol (PHY) which provides code word delivery services to the MAC sublayer above it. It is responsible for encoding, decoding and clock recovery functions.

(c) Physical Medium Dependent (PMD) which provides code bit delivery services to the PHY sublayer above it via fiber optic transmission to other PMD entities. Two alternative versions of PMD are defined, one using multimode optical fibers to connect stations separated by less than 2 km, and the other using single mode fiber capable of connecting stations separated by 50 km or more. The multimode version of FDDI is the normal case.

(d) Station Management (SMT) supervises the MAC, PHY and PMD layers and controls the initialization and configuration of the FDDI network, as well as the isolation and resolution of faults. It further provides management services to the OSI Common Management Information Protocol (CMIP) for remote management.

While FDDI is a token ring, it supports a complex topology called a "dual ring of trees," which combines both the dual counter-rotating ring and the ring concentrator strategies for bypassing failures. Four classes of stations are defined:

(a) Dual Attachment Stations (DAS) which are connected to other "peer" DAS to form a dual counter rotating ring.

(b) Single Attachment Stations (SAS) which are connected to the FDDI network as "slaves" through concentrators.

(c) Dual Attachment Concentrations (DAC) which are a DAS with a number of "master" ports to which SAS may be connected. Concentrators will bypass defective or inactive slaves.

(d) Single Attachment Concentrators (SAC) which are SAS and attach as a slave to the master ports of other concentrators, in turn providing a number of master ports to a lower level of slaves. This permits a tree structure of concentrators, with SAS at the terminal leaves.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* U.S. Department of Commerce, National Institute of Standards and Technology, National Computer Systems Laboratory.

6. *Cross Index.*

(a) IS 9314-1:1989 Information process systems—Fiber Distributed Data Interface (FDDI)—Part 1: Physical Layer Protocol (PHY) requirements.

(b) IS 9314-2:1989 Information process systems—Fiber Distributed Data Interface (FDDI)—Part 2: Medium Access Control (MAC) requirements.

(c) DIS 9314-3 Information processing systems—Fiber Distributed Data Interface (FDDI)—Part 3: Physical Medium Dependent (PMD) requirements.

7. *Related Documents.*

(a) FIPS PUB 146, Government Open Systems Interconnection Profile (GOSIP).

(b) NBS Special Publication 500-150, Stable Implementation Agreements for Open Systems Interconnection Protocols—Version 1, Edition 1.

(c) NIST Special Publication 500-162, Stable Implementation Agreements for Open Systems Interconnection Protocols—Version 2, Edition 1.

(d) NBSIR 88-3824-2, Ongoing Implementation Agreements for Open Systems Interconnection Protocols: Volume II, Continuing Agreements.

(e) FED-STD-1070, Telecommunications: Detail Specification for 62.5-mm Core Diameter/125-mm Cladding Diameter Class Ia Multimode, Graded-Index Optical Waveguide Fibers.

8. *Objectives.* The primary objectives of this standard are:

—to achieve interconnection and interoperability of computers, systems and storage systems that are acquired from different manufactures;

—to reduce the costs of computer network systems by increasing alternative sources of supply;

—to facilitate the use of advanced technology by the Federal Government;

—to stimulate the development of commercial products compatable with Open Systems Interconnection (OSI) standards.

9. *Specifications.* This standard adopts the following American National Standards:

X3.139-1987, FDDI Medium Access Control (MAC)

X3.148-1988, FDDI Physical Layer Protocol (PHY)

X3.XXX-19XX, FDDI Station Management (SMT)

In addition, either of the following two standards are adopted for the Physical medium:

(1) X3.166-19XX FDDI Physical Layer Medium Dependent (PMD)

or

(2) X3.XXX-19XX FDDI Single-Mode Physical Layer Dependent (SMF-PMD).

X3.166-19XX specifies a multimode optical fiber medium, and is ordinarily used within buildings and whenever distances between stations are less than 2 km. Unless specifically stated otherwise, multimode PMD is understood to be specified. Although FDDI stations may work with other types of multimode fiber, they have been developed for use with the type of Fiber specified in FED-STD-1070, which should normally be specified when installing fiber cable plants for use with FDDI.

X3.XXX-19XX specifies a single mode fiber medium, and is used, as required, whenever link distances exceed 2 km, and can provide for links exceeding 50 km.

Since ring networks are made by chaining point-to-point connections, it is normal for both physical medium standards to be employed in the same network, depending upon the distance of individual links. Similarly, it is normal for a dual attachment (2 port) FDDI station to have one port of each kind.

In addition, when FDDI is used for Open System Interconnections (OSI) applications, the above American National Standards will be supplemented by the *Stable Agreements for Open System Interconnection Protocols,* which is updated periodically. The current version of this publication is NIST Special Publication 500-162, which does not include additional requirements for FDDI. NBSIR 88-3824-2 contains proposed implementation agreements for FDDI, MAC, PHY and PMD, which are expected to be included in the next revision of the *Stable Agreements for Open System Interconnection Protocols.* Implementation agreements for FDDI SMT are expected to be included in a later revision to the *Stable Agreements for Open System Interconnection Protocols.* These agreements will provide additional specifications for FDDI which select options from the FDDI standards and impose some additional requirements. When implementation agreements for FDDI are included in the current revision to the *Stable Agreements for Open System Interconnection Protocols,* they shall be a requirement of this FIPS whenever FDDI is used for applications within the scope of Open Systems Interconnection. See FIPS PUB 146, Government Open Systems Interconnection Profile (GOSIP) for further information on these agreements.

FDDI may be used for special applications which are not within the scope of Open System Interconnection and do not fall under GOSIP. In these cases, requirements of the *Stable Agreements for Open System Interconnection Protocols* may not be appropriate and agencies may choose not to require the observance of some or all of their provisions.

10. *Applicability.* FDDI shall be used by Federal agencies when acquiring fiber optic token ring computer Local Area Network products having a data transfer rate over 50 Mbits and less than 150 Mbits. The applicability includes, but is not limited to applications covered by the Government Open Systems Interconnection Profile (GOSIP), Federal Information Processing Standards Publication 146.

11. *Implementation.* This standard is effective six (6) months after approval. Agencies are encouraged to use this standard for solicitations and contracts for new fiber optic ring computer Local Area Networks to be acquired after the effective date. This standard is compulsory and binding for use in solicitations and contracts for fiber optic token ring computer Local Area Networks to be acquired two (2) years after the effective date.

The National Institute of Standards and Technology is developing a program to accredit testing organizations for specific tests or types of tests for computer products and services. Information on these tests and test procedures will be made available in the future. Until the tests and test procedures are available, government agencies acquiring networks and services in accordance with this standard may wish to require testing for conformance, interoperation, and performance. The tests to be administered and the testing organization are at the discretion of the agency Acquisition Authority. Guidance on testing for GOSIP specifications is contained in section 2 of the GOSIP document.

12. *Waivers.* Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code.

Requests for waivers shall be granted only when:

(a) Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

(b) Cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may approve requests for waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, National Computer Systems Laboratory, ATTN: FIPS Waiver Decisions, Technology Building, Room B-154, National Institute of Standards and Technology, Gaithersburg, MD 20899. In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the Federal Register.

When the determination on a waiver request applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver request, any supporting documents, the document approving the waiver request and any supporting accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

13. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications documents is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication _____ (FIPSPUB) _____), and title. Specify order or NTIS deposit account.

[FR Doc. 89-18729 Filed 8-9-89; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by B.J. Bull From an Objection by the South Carolina Coastal Council

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

On June 20, 1989, B.J. Bull (Appellant), through counsel, filed with the Secretary of Commerce (Secretary) a notice of appeal pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H. The appeal arises from an objection by the South Carolina Coastal Commission (State) to the Appellant's consistency certification for a U.S. Army Corps of Engineers (Corps) permit to place dredged or filled material in an isolated wetland in the South Carolina coastal zone. The State's objection precludes the Corps from issuing a permit to the Appellant to perform these activities pending the outcome of the Appellant's appeal.

If the Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the **Federal Register** and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Kirsten Erickson, Attorney-Adviser, NOAA Office of General Counsel, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235 (202) 673–5200.

Dated: August 2, 1989.

B. Kent Burton,

Assistant Secretary for Oceans and Atmosphere.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance]

[FR Doc. 89–18669 Filed 8–9–89; 8:45 am]

BILLING CODE 3510–08–M

Coastal Zone Management: Federal Consistency Appeal by Oak Beach Inn Corporation From an Objection by the New York Department of State

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

On June 2, 1989, Oak Beach Inn Corporation (Appellant), through counsel, filed with the Secretary of Commerce (Secretary) a notice of appeal pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H. The appeal arises from an objection by the New York Department of State (State) to the Appellant's consistency certification for an intake pipe for a fire sprinkler system, construction of bulkhead with fill, maintenance of an existing deck and enclosure of a second deck. The State's objection precludes the U.S. Army Corps of Engineers from issuing a permit to the Appellant to perform these activities pending the outcome of the Appellant's appeal.

If the Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the **Federal Register** and a local newspaper.

FOR FURTHER INFORMATION CONTACT: Kirsten Erickson, Attorney-Adviser, NOAA Office of General Counsel, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235 (202) 673–5200.

Dated: August 2, 1989.

B. Kent Burton,

Assistant Secretary for Oceans and Atmosphere.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance]

[FR Doc. 89–18670 Filed 8–9–89; 8:45 am]

BILLING CODE 3510–08–M

Intent To Conduct a Public Meeting on the Sites Being Considered for Nomination as Components to the Proposed Delaware National Estuarine Research Reserve

AGENCY: Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Public meeting notice.

SUMMARY: Notice is hereby given that the Department of Natural Resources and Environmental Control (DNREC), of the State of Delaware, intends to conduct a public meeting to discuss the proposed nomination of three sites to form a multi-component Delaware Estuarine Research Reserve System. This public meeting is being held for the purpose of soliciting comments about the following sites: (1) The lower St. Jones River southeast of Dover; (2) a portion of the upper Blackbird Creek between Odessa and Smyrna; and (3) a portion of the Great Marsh northwest of Lewes which are under consideration by the DNREC for nomination. The State of Delaware's completed site nomination package will be submitted to the Marine and Estuarine Management Division, of the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, which administers the National Estuarine Reserve Research System. Environmental impact statements and draft management plans will be prepared for those State nominated sites receiving NOAA approval.

The public meeting will be held at 7:00 PM on Monday, August 28, 1989 in the DNREC auditorium, Department of Natural Resources and Environmental Control building at 89 Kings Highway, in Dover, Delaware, 19903.

Background

The State of Delaware is identifying estuarine areas in an effort to establish a multi-component system for research and education which adequately represents the major estuarine characteristics of the Delaware coastal zone. Sites ultimately designated as components of the Delaware National Estuarine Research Reserve (DNERR) will be used to study the Delaware estuarine eocaystem, as well as by schools and the general public for learning about estuarine ecology and related issues. Sites undergoing preliminary evaluation are: the lower St. Jones River southeast of Dover; a portion of the upper Blackbird Creek between Odessa and Smyrna; and a portion of the Great Marsh northwest of Lewes. Site selection criteria are based on ecological representation, value for research and education and practical management considerations.

All interested individuals are encouraged to attend the public meeting. Invited speakers include representatives of DNREC, DNERR Site Selection Committee, and NOAA. Speakers will describe the importance of the proposed reserve program to local, regional and/or statewide environment issues, and the opportunities for local involvement in reserve operations and management. Public comments on the reserve concept are invited.

An information packet on the proposed Delaware National Estuarine Research Reserve will be available at the public meeting. Speakers are asked to provide a written copy of their statement at the meeting. It is recommended that members of the public limit their presentations to 3–5 minutes in length.

Thomas J. Maginnis,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Dated: August 5, 1989.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Estuarine Sanctuaries

[FR Doc. 89–18736 Filed 8–9–89; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 11, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invities public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: August 7, 1989.

Carlos U. Rice,

Director, Office of Information Resources Management.

Office of Special Education and Rehabilitatives Services

Type of Review: Reinstatement
Title: Three-year State Plan for Independent Living Rehabilitation Services Under Title VII, Part A of the Rehabilitation Act of 1973, as amended.
Frequency: Triennial
Affected Public: State or local governments
Reporting Burden:
Responses: 80
Burden Hours: 800
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: State Vocational Rehabilitation agences submit a three-year State plan to receive Federal funds. The Department uses the information to make grant awards, and to evaluate State's performance and compliance under Title VII of the Rehabilitations Act, as amended.

Office of Special Education and Rehabilitative Services

Type of Review: Extension
Title: Number and Type of Personnel (In Full-Time Equivalency of Assignment) Employed and Additional Personnel Needed to Provide Early Intervention Services to Infants and Toddlers and Their Families
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 58
Burden Hours: 3,596
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State or local agencies to report to the Department the number of infants and toddlers receiving early intervention services in each State. The Department uses this information to assess the progress, impact, and effectiveness of State efforts to implement such programs and to report this information to Congress.

Office of Special Education and Rehabilitative Services

Type of Review: Extension
Title: Report of Federal, State and Local Funds Expended for Early Intervention Services
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 58
Burden Hours: 5,974
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State or local agencies to report to the Department the amount of Federal, State and local funds expended for early intervention services. The Department uses this information for monitoring and Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Extension
Title: Report of Early Intervention Services in Need of Improvement
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 58
Burden Hours: 2,378
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State or local agencies to report the number of personnel employed and needed to provide early intervention services to handicapped infants and toddlers. The Department uses this information to monitor the State's compliance with Federal program regulations.

Office of Special Education and Rehabilitative Services

Type of Review: Extension
Title: Report of Infants and Toddlers Receiving Early Intervention Services in Accord with Part H
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 58
Burden Hours: 2,378
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State or local agencies to report to the Department the number of infants and toddlers receiving early intervention services in each State. The Department uses this information to assess the progress, impact, and effectiveness of State efforts to implement such programs and to report this information to Congress.

Office of Special Education and Rehabilitative Services

Type of Review: Extension
Title: Report of Federal, State and Local Funds Expended for Early Intervention Services
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 58
Burden Hours: 5,974
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State or local agencies to report to the Department the amount of Federal, State and local funds expended for early intervention services. The Department uses this information for monitoring and Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Extension
Title: Report of Early Intervention Services in Need of Improvement
Frequency: Annually
Affected Public: State or local governments

Reporting Burden:
Responses: 58
Burden Hours: 1,596
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State or local agencies to report to the Department the early intervention services in need of improvement. The Department uses this information to monitor the progress of State efforts to improve these services and to report this information to Congress.

[FR Doc. 89-18734 Filed 8-9-89; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM89-7-20-000]

Algonquin Gas Transmission Co.; Proposed Change in FERC Gas Tariff

August 3, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on July 31, 1989, tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheet:

Proposed to be effective May 1, 1989

Substitute Thirty-third Revised Sheet No. 203
Substitute Twenty-first Revised Sheet No. 211
Substitute Sixteenth Revised Sheet No. 214

Proposed to be effective June 1, 1989

Substitute Thirty-fourth Revised Sheet No. 203

Algonquin States that pursuant to section 7 of Rate Schedule F-2, section 10 of Rate Schedule STB and section 9 of Rate Schedule SS-III, Algonquin is filing the above listed tariff sheets to concurrently track rate changes made by its pipeline suppliers, CNG Transmission Corporation and Texas Eastern Transmission Corporation in the services underlying Algonquin's Rate Schedules F-2, STB and SS-III.

Algonquin further maintains that the effect on Rate Schedule F-2 due to the revision of the take-or-pay unit charge in CNGT's underlying service is to increase the commodity rate by 0.31 cents per MMBtu. Similarly, Texas Eastern has flowed through CNGT's revision of the take-or-pay unit charge through Rate Schedules SS-2 and SS-3. Texas Eastern's Rate Schedules SS-2 and SS-3 are the underlying services for Algonquin's Rate Schedule STB and SS-III, respectively. The effect of the Texas Eastern flow through of CNGT's revised take-or-pay unit charge is to increase the Injection charge by 0.31 cents per MMBtu in Algonquin's Rate Schedules STB and SS-III. All as more fully set forth in Algonquin's instant filing.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 9, 1989. Protest will be considered by the Commission is determining the appropriate action to be taken but will not serve to make protestants, parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-18650 Filed 8-9-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM89-3-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 3, 1989.

Take notice that CNG Transmission Company ("CNG") on July 28, 1989, pursuant to section 4 of the Natural Gas Act, the Commission's September 30, 1988, August 12, 1988, November 4, 1988, December 28, 1988, March 3, 1989, and June 1, 1989 orders in this docket, and § 12.9 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

First Revised Sheet Nos. 49A, 49C and 160I
Second Revised Sheet Nos. 48, 160F, and 160H
Third Revised Sheet Nos. 41, 44, 47, 48, 49, 160B, 160C, 160E and 160G

The proposed effective date for First Revised Sheet No. 49C is June 1, 1989. The proposed effective date for the remaining sheets is August 1, 1989.

CNG states that the purpose of this filing is to change CNG's take-or-pay pass-through provisions to reflect modifications and additions to Order No. 500 buyout and buydown costs that have been made recently by CNG's pipeline suppliers.

CNG states that copies of the filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR § 385.214 and 385.211. All motions or protests should be filed on or before August 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-18651 Filed 8-9-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ89-3-46-002]

Kentucky West Virginia Gas Co.; Compliance Filing

August 3, 1989.

Take notice that on July 8, 1989, Kentucky West Virginia Gas Company (Kentucky West) filed Substitute Fourteenth Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective August 1, 1989.

Kentucky West states that this filing is in compliance with the Commission's Letter Order issued June 21, 1989.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before August 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-18652 Filed 8-9-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ89-4-53-000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

August 3, 1989.

Take notice that K N Energy, Inc. ("K N") on July 31, 1989 tendered for filing a quarterly PGA proposing changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Purchased Gas Adjustment provision (section 19) of the General Terms and Conditions of K N's FERC Gas Tariff, Original Volume No. 1-B to reflect changes in the Current Adjustment. The proposed changes would increase the commodity rate under each of K N Energy's jurisdictional rate schedules, exclusive of IOR-1 and IOR-2, by 1.92¢ per Mcf. Rates under Rate Schedules IOR-1 and IOR-2 are proposed to increase by 0.72¢ per Mcf and 0.44¢ per Mcf, respectively. K N has also revised the rates of its various rate schedules to reflect a decrease in D1 and D2 demand costs as set forth in K N's transmittal letter and tariff sheets. K N states that the filing reflects revision to its base tariff rates to reflect projected weighted average gas costs for the quarter ending November 30, 1989. The proposed effective date for the rate changes in September 1, 1989.

K N states that copies of the filing were served upon K N's jurisdictional customers, and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before August 10, 1989 file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-18653 Filed 8-9-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ89-3-26-000]

Natural Gas Pipeline Co. of America; Changes in Rates

August 3, 1989.

Take notice that on August 1, 1989, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC gas Tariff, Third Revised Volume No. 1 (Tariff) the below listed tariff sheets to be effective September 1, 1989.

Eightieth Revised Sheet No. 5
Forty-fifth revised Sheet No. 5A
Twenty-fifth Revised Sheet No. 5B
Twenty-sixth Revised Sheet No. 5C

Natural states the purpose of the instant filing is to implement Natural's quarterly PGA unit rate adjustment calculated pursuant to section 18 of the General Terms and Conditions of Natural's Tariff.

The overall effect of the quarterly adjustment when compared to Natural's quarterly PGA filing in Docket No. TQ89-2-26-000 effective June 1, 1989, is an increase in the DMQ-1 commodity charge of 45.81¢, and decreases in the DMQ-1 demand and entitlement demand and entitlement charges of $.04 and $.0026, respectively. Appropriate adjustments have been made with respect to Natural's other rate schedules.

Natural states that a copy of the filing is being mailed to Natural's jurisdictional sales customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before August 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishng to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-18654 Filed 8-9-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ89-3-55-000]

Questar Pipeline Co.; Rate Change

August 3, 1989.

Take notice that on July 31, 1989, Questar Pipeline Company tendered for filing and acceptance Twenty-third Revised Sheet No. 12 to its FERC Gas Tariff, First Revised Volume No. 1, to be effective September 1, 1989.

Questar Pipeline states that the purpose of this filing is to adjust the purchased gas costs under its sale-for-resale Rate Schedule CD-1 effective September 1, 1989.

Questar Pipeline further states that Twenty-third Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of $2.23257/Dth which is $0.15144 lower than the currently effective rate of $2.38401/Dth. The demand base cost of purchased gas as adjusted is decreased by $.00059/Mcf from $0.00767/Mcf to $0.00708/Mcf.

Questar Pipeline states that it has provided a copy of the filing to its sales customer and state public service commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before August 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-18655 Filed 8-9-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-130-005]

Transwestern Pipeline Co.; Compliance Filing

August 3, 1989.

Take notice that Transwestern Pipeline Company (Transwestern) on July 31, 1989 tendered for as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

Effective April 1, 1989

First Substitute 2nd Revised Sheet No. 87

Reason for Filing

Transwestern states that this tariff sheet is filed to comply with the Commission's order issued July 14, 1989 in Docket Nos. RP89-130-003 and RP89-130-004 (Order). The Order directed Transwestern to eliminate certain tariff

language from Sheet No. 67 of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. Therefore, Transwestern has revised Sheet No. 67 to eliminate the tariff language as outlined in the Order.

Transwestern requests that the Commission grant any and all waivers of its rules, regulations and orders as may be necessary so as to permit the above listed tariff sheet to become effective April 1, 1989 as approved in the Order.

Transwestern filed for rehearing of the Commission's Order issued on April 28, 1989 (Docket Nos. RP89-130-000,001 and RP88-198-004,005), which required Transwestern, in part, to eliminate the "or administrative proceedings" reference in its Litigation Exception Clause. Therefore, in the event Transwestern prevails in its request for rehearing of the Commission's requirement that Transwestern remove the "or administrative proceedings" reference, or if Transwestern prevails in its request for rehearing, which it contemplates filing, of the Commission's July 14, 1989 Order in Docket Nos. RP89-130-003 and RP89-130-004, then Transwestern reserves its right to refile and implement tariff sheets accordingly.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission Rules of Practice and Procedure. All such protests should be filed on or before August 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-18656 Filed 8-9-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA90-1-11-000]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

August 3, 1989.

Take Notice that on July 31, 1989, United Gas Pipe Line Company (United) tendered for filing the following tariff sheets:

Original Volume 1
Eighty-Ninth Revised Sheet No. 4
Eighth Revised Sheet No. 4.1
Eighth Revised Sheet No. 4-G

The proposed effective date of the above referenced tariff sheets in this docket is October 1, 1989. The above referenced tariff sheets are being filed pursuant to § 154.310 of the Commission's regulations to reflect changes in United's purchased gas cost adjustment as provided in section 19 of United's FERC Gas Tariff, First Revised Volume No. 1.

United states that it has filed tariff sheets to reflect a 1.65¢ per Mcf overall net decrease in gas commodity costs. This overall net decrease includes an increase of 6.32¢ per Mcf in United's Current Adjustment, and a decrease in the Annual Surcharge of 8.17¢ per Mcf. The surcharge to be effective on October 1, 1989, and remaining in effect through September 30, 1990, is 4.47¢ per Mcf. This reflects the projected recovery of approximately $1.1 million in Additional Deferred Costs in accordance with United's settlement in Docket Nos. TA87-1-11-000, *et al.* and TA87-2-11-000 *et al.*

United also states that it will continue to suspend its right to collect an 18¢ per Mcf Settlement Surcharge for the same reasons given in Docket No. TQ89-3-11-000; that it will forever forego the recovery of approximately $9.4 million of its current deferred gas cost balance pursuant to its PGA Settlement; and that it will reflect a 9¢ per Mcf increase in the demand component of its Current Adjustment attributable to the jurisdictional portion of costs allocoable to United pursuant to the Commission's order issued in *Sea Robin Pipeline Company*, Docket No. TA89-1-6-000, 46 FERC ¶ 61,152 (1989).

United states that the revised tariff sheets and supporting data are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in such accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such petitions or protests should be filed on or before August 9, 1989.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-18657 Filed 8-9-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM89-2-43-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 3, 1989.

Take notice that Williams Natural Gas Company (WNG) on July 31, 1989 tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet Nos. 6B-6D

The proposed effective date of these tariff sheets is August 1, 1989.

WNG made a filing on December 1, 1988, as amended January 30, 1989, to place tariff sheets into effect to establish procedures pursuant to Order No. 500 through which WNG will recover from its customers the take-or-pay and contract reformation fixed charges and commodity surcharges which WNG's pipeline suppliers bill to WNG under § 2.104 of the Commission's General Policy and Interpretations. The instant filing is being made to track additional costs to be billed to WNG by its pipeline suppliers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-18658 Filed 8-9-89; 8:45 am]
BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

[General Docket No. 87-25; FCC 88-340]

Compulsory Copyright License for Cable Retransmission

AGENCY: Federal Communications Commission.

ACTION: Notice; report.

SUMMARY: This report analyzes the compulsory license for cable retransmission of television broadcast signals in light of the substantial changes in the cable programming and delivery industries that have occurred since the compulsory license was established in 1976. Drawing on its communications policy expertise, and guided by its longstanding policy goal of encouraging the provision of a rich and diverse menu of video programming to the American public, the Commission concludes that the public interest would be served by the elimination of the compulsory license. The report therefore recommends that Congress abolish the compulsory license for retransmission of distant and local television broadcast signals.

FOR FURTHER INFORMATION CONTACT: Jonathan D. Levy, Office of Plans and Policy; (202) 653-5940.

SUPPLEMENTARY INFORMATION: This is a sumary of the Commission's *Report* in General Docket 87-25, FCC 88-340, Adopted October 27, 1988 and Released August 3, 1989.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington DC 20037.

Summary of Report

This report evaluates the compulsory license for cable retransmission of television broadcast signals and concludes that the public interest would be served by its repeal. The cable compulsory license was granted by Congress in the Copyright Act of 1976, effective in 1978. The Commission's report recommends that Congress eliminate the compulsory licenses for both distant and local television signals and replace it with full copyright liability.

The recommendation to repeal the compulsory license is based on two conclusions. First, under full copyright liability, consumers will benefit from a menu of programming, including new programming, that more closely matches their preferences and that is delivered by a more efficiently utilized group of delivery systems. Second, under full liability, mechanisms will be available, with moderate transactions costs, to license programming to cable operators.

The legislative history of the Copyright Act of 1976 suggests that the primary reason for the choice of the compulsory license was Congress' judgment that the transactions costs (costs of negotiating licenses for cable retransmission) would be unacceptably high under full copyright liability. Some observers suggest that Congress was also concerned that broadcasters might withhold their programming from cable, thus depriving cable subscribers of access to broadcast signals that they were uanble to receive over the air.

Under the licensing mechanism set up by the 1976 Act, the Commission defines which signals may be obtained under the compulsory license and the Copyright Royalty Tribunal (a federal agency set up by the Act) administers the statutory royalty rates, adjusting them in response to inflation and in the event of changes in certain FCC rules. While the Tribunal tries to stimulate market results in its distributions, this is an impossible goal for an administrative agency. Moreover, the Tribunal is constrained by the statute in the adjustments that it can make.

Ten years of experience with signal distribution pursuant to this program suggests that the resulting divergence between compulsory license rates and market rates diminishes consumer welfare. Market rates, which are free to vary over time and across programs based on varying consumer preferences, provide an important flow of information regarding those preferences and furnish incentives to program producers to match their output closely to consumer demands. The compulsory license impedes this flow, to the detriment of the public interest in diverse and popular programming. Moreover, by providing a program acquisition advantage to one medium—cable—the compulsory license reduces the efficiency of the program distribution mechanism. This too reduces the welfare of consumers, whom the distribution system is designed to serve.

Under full copyright liability, a variety of mechanisms may develop by which cable operators could obtain the rights to retransmit broadcast signals. In the most likely scenario, individual broadcast stations would act as "retransmission rights packagers," analogous in some respects to cable or broadcast networks. Some stations would acquire national cable retransmission rights; these would most likely be independent television stations. At the local (or regional) level, both independent stations and affiliates could act as retransmission rights packagers, acquiring cable retrainsmission rights for their local or regional service areas. In either case, the broadcast station would then market the retransmission rights that it had acquired to a group of cable systems, wich would be analogous to "affiliates."

The proliferation of full copyright, satellite-delivered cable networks since 1976, and the steps currently being taken by a few superstations to acquire national rights to their programming strongly suggest that this mechanism is workable. Furthermore, the multitude of cable networks and, at the local level, the strongly expressed desire of broadcasters for cable carriage, indicate that today cable systems are unlikely to be foreclosed from access to broadcast programming.

With respect to transactions costs, structural changes in the cable industry over the past 12 years have reduced their burden on a per subscriber basis. Moreover, experience has shown that the transactions costs of the compulsory license system are significant.

In evaluating the compulsory license, the report compares the efficiency of program production and distribution with and without that license in force. This is an inherently difficult task, since it involves analysis of a hypothetical situation, but it is the relevant comparison for public policy purposes. In and of themselves, the health and profitability of the broadcast, cable, or program production industries are not of decisional significance. While the recommendation to eliminate the compulsory license for distant signals in unconditional, the local signal recommendation would have to be reconsidered in the event that new must carry rules are imposed.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

[FR Doc. 89-18706 Filed 8-9-89; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89C-0304]

Davis and Geck; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Davis & Geck has filed a petition proposing that the color additive regulations be amended to provide for the safe use of [phthalocyaninato (2-)]copper to color a nonabsorbable monofilament suture composed of polybutylene terephthalate for general and ophthalmic surgery.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1), 74 Stat. 402-403 (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 8C0213) has been filed by Davis & Geck, 1 Casper St., Danbury, CT 06810, proposing that § 74.3045 [*Phthalocyaninato(2-)]copper* (21 CFR 74.3045) of the color additive regulations be amended to provide for the safe use of [phthalocyaninato(2-)]copper to color a nonabsorbable monofilament suture composed of polybutylene terephthalate for general and ophthalmic surgery.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulations in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 2, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-18645 Filed 8-9-89; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Division of Research Resources; Meetings of the Subcommittees of the Animal Resources Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the Subcommittees of the Animal Resources Review Committee, Division of Research Resources, National Institutes of Health.

These meetings will be open to the public as listed below for a brief staff presentation on the current status of the Animal Resources Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 522b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meetings will be closed to the public as listed below for the review, discussions and evaluation of individual grant applications submitted to the Animal Resource Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Subcommittee: Subcommittee on Primate Research Centers
Date of Meeting: September 15, 1989
Place of Meeting: Hotel El Rancho, 4120 Chiles Road, Davis, California 95616
Open: 10:00 a.m.-Adjournment
Closed: 8:00 a.m.-10:00 a.m.
Name of Subcommittee: Subcommittee on Animal Resources
Dates of Meeting: October 23-24, 1989
Place of Meeting: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conference Room 9, Bethesda, MD 20892
Open: October 23—1:00 p.m.-3:00 p.m.
Closed: October 23—8:00 a.m.-12 noon, October 24—8:00 a.m.-Adjournment

Mr. Michael Fluharty, Public Affairs Specialist, Division of Research Resources, Westwood Building, Room 857, 5333 Westbard Avenue, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Arthur D. Schaerdel, Executive Secretary of the Animal Resources Review Committee, Division of Research Resources, National Institutes of Health, Westwood Building, Room 10A/18, Bethesda, Maryland 20892, (301) 496-4390, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs No. 13.306, Laboratory Animal Sciences, National Institutes of Health)

Dated: August 2, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-18680 Filed 8-9-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research; Meeting of National Advisory Dental Research Council

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, to be held September 25-26, 1989, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9 a.m. to recess on September 25 for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on September 26 from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Preston A. Littleton, Executive Secretary, National Advisory Dental Research Council, and Deputy Director, National Institute of Dental Research, National Institutes of Health, Building 31, Room 2039, Betheda, Maryland 20892, (telephone 301-496-9469) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Support Tissues; Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122—Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845—Dental Research Institutes; National Institutes of Health.)

Dated: August 2, 1989

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-18681 Filed 8-9-89; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Resources; Meeting of the National Advisory Research Resources Council

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), Division of Research Resources (DRR), on September 21-22, 1989, at the National Institutes of Health, Conference Room 10, Building 31C, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on September 21, from 9 a.m. until recess and from 8:30 a.m. until approximately 11 a.m. on September 22, during which time there will be discussions on administrative matters such as previous meeting minutes; the Report of the Acting Director, DRR; and review of budget and legislative updates. Attendance by the public will be space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on September 22 from approximately 11 a.m. until adjournment for the review, discussion and evaluation of individual grant applications.

The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Michael Fluharty, Public Affairs Specialist, DRR, Westwood Building, Room 857, National Institutes of Health, Bethesda, Maryland 20892, 301/496-5545, will provide a summary of the meeting and a roster of the Council members upon request. Dr. James F. O'Donnell, Deputy Director, DRR, Westwood Building, Room 8A16, National Institutes of Health, Bethesda, Maryland 20892, 301/496-6023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, Laboratory Animal Sciences and Primate Research; 13.333, Clinical Research; 13.337, Biomedical Research Support; 13.371, Biomedical Research Technology; 13.375, Minority Biomedical Research Support; 13.389 Research Centers in Minority Institutions, National Institutes of Health.)

Dated: August 2, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-18682 Filed 8-9-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plans for Three Texas Plants for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the draft recovery plans for *Hymenoxys texana* (Texas bitterweed), *Coryphantha ramillosa* (bunched cory cactus), and *Neolloydia mariposensis* (Lloyd's mariposa cactus). The two cactus species occur in west Texas and probably in suitable habitat in northern Mexico, and *Hymenoxys texana* occurs in southeastern Texas. The Service solicits review and comment from the public on these draft plans.

DATE: Comments on the draft recovery plans must be received on or before September 11, 1989 to receive consideration by the Service.

ADDRESSES: Written comments and materials regarding these plans should be addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services, c/o CCSU, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412 (512/888-3346 or FTS 529-3346). The plan is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Philip Clayton, Botanist, or Roy Perez, Field Supervisor, Corpus Christi Ecological Services Field Office (see ADDRESSES).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan.

The species being considered in these recovery plans are *Hymenoxys texana, Coryphantha ramillosa,* and *Neolloydia mariposensis.* The area of emphasis for recovery actions of the cactus species is west Texas (Brewster and Terrell Counties) and for *Hymenoxys texana* is southeast Texas (Fort Bend and Harris Counties). Habitat protection, land acquisition, and development of propagation techniques are major objectives of these recovery plans.

Public Comments Solicited

The Service solicits written comments on the recovery plans described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: August 3, 1989.

Conrad A. Fjetland,

Acting Regional Director.

[FR Doc. 89-18689 Filed 8-9-89; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Collaboration Between Geological Survey and Newmont Exploration, Limited

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that a collaborative effort between the U.S. Geological Survey and Newmont Exploration Limited has been granted to provide personnel and chemical analyses of core from two holes drilled

in the Shoshone Range in north-central Nevada.

DATES: This action is effective as of July 14, 1989, for a duration of 6 months.

ADDRESSES: Copies of the Memorandum of Agreement are available for inspection upon request at the following location: U.S. Geological Survey, Branch of Western Mineral Resources, 345 Middlefield Road, Menlo Park, California 94025.

FOR FURTHER INFORMATION CONTACT: Dr. Chester Wrucke of the U.S. Geological Survey, Branch of Western Mineral Resources, at the address given above; telephone 415/329-5413, (FTS) 459-5413.

Benjamin A. Morgan,

Chief Geologist.

[FR Doc. 89-18621 Filed 8-9-89; 8:45 am]

BILLING CODE 4310-01-M

Bureau of Land Management

[CA-940-09-CACA 12716]

Termination of Recreation and Public Purposes Classification; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Termination of recreation and public purposes classification.

SUMMARY: This action terminates a Recreation and Public Purposes Classification in its entirety which classified public land for disposition pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended. The land was classified as a result of an application filed under the Act cited above. The application was subsequently withdrawn and the classification is moot. The classification segregated the public lands from all forms of appropriation under the public land laws, including location under the United States mining laws, but not leasing under the mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: Mike Selman, BLM Palm Springs-South Coast Resource Area Office, 400 South Farrell Drive, Suite B205, Palm Springs, California 92262.

1. By virtue of the authority vested in the Secretary of the Interior by section 7 of the Act of June 28, 1934, 48 Stat. 1272, as amended, the Recreation and Public Purposes Classification is hereby terminated in its entirety from the following land:

San Bernardino Meridian

T. 9 S., R. 3 W.,
sec. 15, NW¼NW¼.

The area described contains 40 acres in San Diego County.

2. At 10 a.m. on September 12, 1989, the land in paragraph 1 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on September 12, 1989 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on September 12, 1989, the land described in paragraph 1 will be opened to location and entry under the United States mining laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Date: August 20, 1989.

Ed Hastey,

State Director.

[FR Doc. 89-18602 Filed 8-9-89; 8:45 am]

BILLING CODE 4310-40-M

[UT-050-09-4410-08]

Environmental Assessment for the King Top WSA Mine Claim; Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of comment period.

SUMMARY: An Environmental Assessment (EA) for the King Top WSA Mine Claim Reclamation in the King Top WSA will be available for public review August 11, 1989. For further information, contact Dave Henderson at (801) 743-6811. Copies of the EA will be available at the Warm Springs Resource Area, P.O. Box 778, Fillmore, Utah 84631.

Dated: July 31, 1989.

Larry R. Adroyd,

Associate District Manager, Richfield District Office.

[FR Doc. 89-18622 Filed 8-9-89; 8:45 am]

BILLING CODE 4310-DQ-M

[CO-010-09-4320-02]

Craig District Grazing Advisory Board Meeting

Time and Date: September 15, 1989, at 10:00 a.m.

Place: Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Status: Open to public, interested persons may make oral statements between 10:00 a.m. and 11:00 a.m., or may file written statements.

Matters to be Considered: 1. Riparian presentation, 2. Status report on FY'89 range improvement projects, 3. Area reports, 4. Expenditures of Grazing Advisory Board Funds.

Contact Person for More Information: John Denker, Craig District Office, 455 Emerson Street, Craig, Colorado 81625-1129; Phone: (303) 824-8261.

Dated: August 3, 1989.

Jerry L. Kidd,

Associate District Manager.

[FR Doc. 89-18693 Filed 8-9-89; 8:45 am]

BILLING CODE 4310-JB-M

[OR-130-09-4830-12; GP9-301]

District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR, Part 1780, that a meeting of the Spokane District Advisory Council will be held on September 12, 1989. The meeting will begin at 9:30 a.m. in the conference room of the BLM Spokane District Office, East 4217 Main Avenue, Spokane, Washington.

The agenda of the meeting is as follows:

1. Opening remarks and general business.
2. Spokane District Resource Management Plan (RMP) Amendment.
3. Yakima Canyon Recreation Plan.
4. Iceberg Point/Point Colville Planning Analysis.
5. Land Exchange Update.
6. Accomplishments for FY 89.
7. Outlook for FY 90.

Any responsible person wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Spokane District Office, East 4217 Main Avenue, Spokane, Washington 99202, or telephone (509) 353-2570 by the close of business, 4:30 p.m., Friday, September 8, 1989. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

A written report of the Council Meeting will be maintained at the BLM Spokane District Office and will be made available for public inspection.

Reproduction of the meeting report will be made available to the public at the cost of duplication.

The meeting is open to the public and news media.

Dated: August 2, 1989.

Pearl E. Lee,

Acting District Manager.

[FR Doc. 89-18694 Filed 8-9-89; 8:45 am]

BILLING CODE 4310-33-M

[ID-010-09-4370-08]

Initiation of Plan Amendment for the Boise District's Cascade Resources Management Plan; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to initiate a plan amendment for the Boise District's Cascade Resource Management Plan (RMP) and prepare an environmental assessment (EA) to consider removal of the 4-mile wild horse herd area designation.

SUMMARY: The amendment would provide for the protection of extensive bitterbrush plantings and maintenance of other projects established to rehabilitate a large wildlife area in a crucial big-game winter range. It would also facilitate the development of a grazing rest-rotation system designed for re-establishing bitterbrush and enhancing perennial grasses.

All remaining Cascade RMP objectives and management decisions would remain the same as shown in the Record of Decision.

The geographical area to be considered encompasses approximately 18,500 acres of public lands in the Cascade Resource Area of the Boise District, and the land involved includes Dry Creek, 4-Mile Area, and Willow Ridge.

The main issue identified for this amendment is the impact the wild horse herd would have on the established bitterbrush plantings and proposed rotation grazing system.

An interdisciplinary team consisting of range, wildlife, watershed, cultural, and planning specialists will prepare the amendment and environmental assessment.

Affected publics are invited to participate in the process. To date, no public meetings are scheduled; however, any public meetings which may be scheduled will be announced in the local media.

FOR FURTHER INFORMATION CONTACT: More detailed information can be obtained by contacting Richard Geier, Cascade Area Manager at Bureau of Land Management, Boise District, 3948 Development Avenue, Boise, Idaho 83705 or at (208) 334-1582.

Date: August 3, 1989.

Rodger E. Schmitt,

Associate District Manager.

[FR Doc. 89-18695 Filed 8-9-89; 8:45 am]

BILLING CODE 4310-GG-M

[CA-940-09-4214-10; CACA 3620]

California; Partial Termination of Proposed Withdrawal and Reservation of Land; Correction

In notice document 86-23780 beginning on page 37496 in the issue of October 22, 1986, make the following corrections:

On page 37496 in the first column, line 24 from the top which reads "Sec. 11, SE¼NE¼, SE¼SW¼;" is hereby corrected to read "Sec. 11, SE¼NE¼, SW¼SE¼"; and line 26 from the top which reads "NE¼W¼NE¼, N½SW¼SW¼NE¼," is hereby corrected to read "NW¼SW¼NE¼, N½SW¼SW¼NE¼."

Date: August 1, 1989.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 89-18696 Filed 8-9-89; 8:45 am]

BILLING CODE 4310-40-M

INTERSTATE COMMERCE COMMISSION

[I.C.C. Order No. P-101]

Passenger Train Operation

To: Wisconsin Central Ltd.

The National Railroad Passenger Corporation (AMTRAK) has established through passenger train service between Chicago, Illinois and Seattle, Washington, Train Nos. 7 & 8, the Empire Builder. These train operations require the use of tracks and other facilities of the Soo Line Railroad Company (SL). A portion of the SL tracks near Portage, Wisconsin are temporarily out of service because of a derailment. An alternate route is available via the Wisconsin Central Ltd. (WC) between Duplainville and Junction City, Wisconsin.

It is the opinion of the Commission that such an operation is necessary in the interest of the public and the commerce of the people; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, (a) Pursuant to authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by Section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), Wisconsin Central Ltd. (WC) is directed to operate trains of the National Railroad Passenger Corporation (AMTRAK) between Duplainville, Wisconsin and a connection with Soo Line Railroad Company (SL) at Junction City, Wisconsin.

(b) In executing the provisions of this order, the common carriers involved shall proceed even if no agreements or arrangements may now exist between them with reference to the compensation terms and conditions applicable to said operations. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) *Effective date.* This order shall become effective at 4:30 p.m., (CDT), July 6, 1989.

(e) *Expiration date.* The provisions of this order shall expire at 4:30. p.m., (CDT), July 7, 1989, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Wisconsin Central Ltd., and upon the National Railroad Passenger Corporation (AMTRAK), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, July 6, 1989.

William J. Love, Agent.

Noreta R. McGee,

Secretary.

[FR Doc. 89-18673 Filed 8-9-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 76X)]

Norfolk and Western Railway Co.—Abandonment Exemption—In Madison and St. Clair Counties, Illinois

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 10.4-mile line of railroad between milepost A-20.3, at Troy Junction, and milepost A-30.7, at O'Fallon, in Madison and St. Clair Counties, IL.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 9, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 21, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by August 30, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 15, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 4, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-18574 Filed 8-9-89; 8:45am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 76X)]

Southern Railway Co.—Abandonment Exemption—In Chatham and Lee Counties, NC

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 2.2-mile line of railroad between milepost CF-121.0, at Gulf, and milepost CF-123.2, at Cumnock, in Chatham and Lee Counties, NC.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 9, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 21, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by August 30, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*. Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 15, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 2, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-18505 Filed 8-9-89; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on July 13, 1989, a Consent Decree in *United States* v. *Chase Chemical Company, L.P.*, Civil Action No. 88-2828, was lodged with the United States District Court for the District of New Jersey. The Consent Decree requires the Defendants to pay a civil penalty of $175,000, and obligates them to install pollution control equipment by August 15, 1989, and achieve compliance with the Clean Air Act and the New Jersey State Implementation Plan as to emissions of volatile organic compounds by November 30, 1989.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Chase Chemical Company, L.P.*, D.J. Ref. No. 90-5-2-1-1180.

The Consent Decree may be examined at the office of the United States Attorney, District of New Jersey, Federal Building, 970 Broad Street, Room 502, Newark, New Jersey, 07102; at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree can be obtained in person or by mail from the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.80 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-18696 Filed 8-9-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act; Wheeling-Pittsburgh Steel Corp.; U.S. Environmental Protection Agency

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 1, 1989, a proposed Consent Decree in *Wheeling-Pittsburgh Steel Corp.* v. *United States Environmental Protection Agency ("EPA")*, No. 85-0124-W, was lodged with the United States District Court for the Northern District of West Virginia. The proposed Consent Decree arises from a civil action filed by Wheeling Pittsburgh Steel Corp. in 1985 challenging a Final Administrative Order issued by EPA pursuant to Section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. 6928(a). The Consent Decree requires that the company conduct a closure of its hazardous waste facility, groundwater monitoring, and, if necessary, corrective action pursuant to Section 3008 of the Resource Conservation and Recovery Act, 42 U.S.C. 6928, and pay a civil penalty of $17,500 assessed under the administrative order.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *Wheeling-Pittsburgh Steel Corp.* v. *United States Environmental Protection Agency ("EPA")*, DJ Ref No. 90-7-1-309A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of West Virginia, Room 247, Federal Building, 1125-1141 Chapline Street, Wheeling, West Virginia, and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania, 19107. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $2.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-18699 Filed 8-9-89; 8:45 am]

BILLING CODE 4410-10-M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984; Semiconductor Research Corporation

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Semiconductor Research Corporation ("SRC") on July 13, 1989, has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in the membership of SRC. The changes consist of the addition of Solid State Equipment Corporation and Silvaco Data Systems and the deletion of the Silicon System, Incorporated.

The SRC filed its notification of these membership changes for the purpose of extending the Act's provisions limiting recovery by antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties of the SRC and the SRC's general area of planned activity are given below.

The SRC is a joint venture which, with the additions and deletions of the previously identified companies, comprises the following members:

Advanced Micro Devices, Incorporated
Applied Materials, Inc.
AT&T Technology, Incorporated
Control Data Corporation
Digital Equipment Corporation
E.I. du Pont de Nemours & Company
Eastman Kodak Company
Eaton Corporation
E-Systems, Incorporated
General Electric Company/RCA
General Motors Corporation
Harris Corporation
Hewlett-Packard Company
Honeywell, Incorporated
IBM Corporation

Intel Corporation
LSI Logic Corporation
Microelectronics and Computer Technology Corporation
Micron Technology, Inc.
Motorola, Incorporated
National Semiconductor Corporation
NCR Corporation
Perkin–Elmer Corporation
Rockwell International Corporation
SEMATECH, Inc.
Silvaco Data Systems
Solid State Equipment Corporation
Texas Instruments, Incorporated
Union Carbide Corporation
Varian Associates, Incorporated
Westinghouse Electric Corporation
Xerox Corporation

The SRC's purpose is to plan, promote, coordinate, sponsor, and conduct research supportive of the semiconductor industry and directed toward:

1. Increasing knowledge of semiconductor materials and phenomena, and of related scientific and engineering subjects that are required for the useful application of semiconductors;
2. Developing new and more efficient designs and manufacturing technologies for semiconductor devices;
3. Identifying directions, limits, opportunities, and problems in generic semiconductor technologies;
4. Increasing the number of scientists and engineers proficient in research, development, and manufacture of semiconductor devices;
5. Increasing industry-university ties, establishing university semiconductor research centers with major long-term research thrusts and developing university semiconductor research activities with more precisely defined, short-term objectives;
6. Developing more relevant graduate school education and a larger supply of graduate students in areas related to semiconductor technology;
7. Increasing the ability of universities to attract and retain competent faculty in the semiconductor field;
8. Decreasing fragmentation and redundancy in United States semiconductor research;
9. Establishing advanced research efforts for critical semiconductor technology areas that are beyond the individual resources of many SRC members; and
10. Promoting efficient communication of research results to SRC members and to the United States semiconductor community, as a whole.

On January 8, 1985, SRC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice ("the Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 30, 1985 (50 FR 4281). SRC filed additional notifications on June 6, 1985, November 4, 1985, February 19, 1986, and September 11, 1987, notice of which the Department published on June 28, 1985 (50 FR 26850), December 24, 1985 (50 FR 52568), March 18, 1986 (51 FR 9287), and October 9, 1987 (52 FR 37849), respectively. SRC also filed additional notifications on December 19, 1986 and January 30, 1987; the Department published notice of both on February 13, 1987 (52 FR 4671). SRC also filed an additional notification on December 13, 1988, notice of which the Department published on January 13, 1989, (FR 1454). SRC also filed additional notifications of January 31, 1989 and February 10, 1989; the Department published notice of both on March 13, 1989 (54 FR 10456). SRC also filed an additional notification on March 29, 1989, notice of which the Department published on May 4, 1989 (54 FR 19256).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89–18697 Filed 8–9–89; 8:45 am]

BILLING CODE 4410–01–M

Foreign Claims Settlement Commission

Claims Against Egypt; Adjudication Program Transfer From State Department

AGENCY: Foreign Claims Settlement Commission of the United States.

ACTION: Notice.

SUMMARY: This notice announces the transfer from the Department of State to the Foreign Claims Settlement Commission of the Department's program for adjudication of claims of United States nationals against the Government of the Arab Republic of Egypt for losses resulting from that government's nationalization or other taking of property, as settled under the U.S.-Egyptian claims agreement which entered into force on October 27, 1976. Secondly, this notice establishes the final deadline for filing of claims of United States nationals for losses specifically resulting from the blocking of bank accounts by the Government of the Arab Republic of Egypt, and the evidence and information required to be included with such filing. Thirdly, this notice establishes the deadline for completion of the Foreign Claims Settlement Commission's final adjudication of claims of United States nationals against the Government of the Arab Republic of Egypt.

DATES: The deadline for filing with the Foreign Claims Settlement Commission of any new, previously unadjudicated claims against the Government of Arab Republic of Egypt shall be November 30, 1989. The deadline for completion of the claims adjudication program shall be June 30, 1990.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission of the United States, 1111 20th St. NW., Room 400, Washington, DC 20579, (202) 653–5883 or FAX (202) 653–6009.

Notice of Time for Filing and Completion of Program

I. Pursuant to section 4(b) of Title I of the International Claims Settlement Act of 1949, as amended (22 U.S.C. 1623(b)), the Foreign Claims Settlement Commission hereby gives notice that the period for the filing of any new, previously unadjudicated claims for losses resulting from the blocking by the Government of the Arab Republic of Egypt of bank accounts in Egypt owned by United States nationals will begin on the date of publication hereof and will end on October 31, 1989. The setting of this final deadline is necessary because no deadline was previously set by the Department of State for the filing of such claims.

Claims coming within this category are more specifically described as those based on bank accounts in Egypt which were subject to exchange control and regulation under Egyptian Law No. 80 of 1947, as amended. A claimant holding a previously unadjudicated claim under this category may qualify for compensation if such claimant can demonstrate that, as of October 27, 1976, he or she had title to an outstanding balance in a blocked bank account in Egypt and was a United States national. This is the only type of new claims that will be accepted.

Persons or entities wishing to file new claims coming within this category must submit to the Commission, no later than November 30, 1989, the following evidence and information:

(1) *Evidence of United States nationality*

(a) Individuals

(i) Native born—copy of birth certificate or passport

(ii) Naturalized—naturalization certificate (send via registered mail)

(b) Corporations

(i) Certified copy of articles of incorporation;

(ii) Sworn statement of an officer of the corporation that natural persons who are nationals of the United States own, directly or indirectly, more than 50 percent of the outstanding stock or other beneficial interest in the corporation; and

(iii) Certificate of good standing from the Secretary of State of the state of incorporation.

(c) Partnerships or other legal entities

(i) Certified copy of the partnership agreement or articles of association; and

(ii) Evidence, as described in paragraphs (a) and (b) above, of the nationality of those partners who are United States nationals.

(2) *Evidence of Blocked Bank Account*

(a) Name and location of bank, and bank account number

(b) Any documents substantiating ownership of the account, including bank statements and copies of any letters and communications from the bank or from Egyptian governmental authorities

(c) Statement from the bank showing the balance in the account as of October 27, 1976, if at all possible

Approval has been obtained from the Office of Management and Budget for the collection of this information. Approval No. 1105–0044, expiration date June 30, 1990.

II. Claims against the Government of the Arab Republic of Egypt which were initially filed with the Department of State prior to the filing deadline of January 22, 1975 (set by the Department by publication in the **Federal Register** on October 18, 1974 (39 FR 37218)), and transferred to the Commission, will be considered as timely filed. The Commission's action on these claims will be limited to determination of the amount by which the awards granted by the Department of State shall be augmented to provide an award of interest as part of the compensation properly payable under international law.

Claimants must notify the Commission if their address has changed since their last correspondence with the Department of State. In addition, the legal successors of claimants who have died since receiving their last award payments from the Department will be required to document their right to receive the awards to which their predecessors would have been entitled.

The Commission will conduct this program and render decisions therein in accordance with its regulations, which are published in Chapter V of Title 45, Code of Federal Regulations (45 CFR 500 *et seq.*). In particular, attention is directed to section 531.6(d) of those regulations, which provides that the claimant shall bear the burden of proof on all elements of his or her claim. A copy of the regulations is available from the Commission on request.

Stanley J. Glod,

Chairman.

[FR Doc. 89–18742 Filed 8–9–89; 8:45 am]

BILLING CODE 4410–01–M

National Institute of Corrections

Announcement of Grants, Services, and Training

The National Institute of Corrections, U.S. Department of Justice, has published its Annual Program Plan/Academy Training Schedule for Fiscal Year 1990. The document describes the services and grant monies available beginning October 1, 1989, as well as training that will be provided by the Institute's National Academy of Corrections. Eligibility criteria for participation in the training sessions and an application form are included.

Those interested in obtaining a copy of the Annual Program Plan/Academy Training Schedule may contact the National Institute of Corrections, 320 First Street, NW., Washington, DC 20534 (telephone 202–724–8449) or its Academy or Jail Center, 1790 30th Street, Boulder, CO 80301 (telephone 303–939–8855 or 8866, respectively).

Larry Solomon,

Acting Director.

[FR Doc. 89–18700 Filed 8–9–89; 8:45 am]

BILLING CODE 4410–36–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–456 and 50–457]

Commonwealth Edison Co.; Issuance of Amendment to Facility Operating Licenses; Correction

On July 31, 1989 (54 FR 31596), the Federal Register published a Notice of Issuance of Amendment to Facility Operating Licenses. A correction needs to be made to the heading of that notice:

On page 31596, in the third column, delete "and Opportunity for Hearing."

Dated at Rockville, Maryland this 3rd day of August 1989.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Acting Director, Project Directorate III–2, Division of Reactor Projects III, IV, V, and Special Projects.

[FR Doc. 89–18728 Filed 8–9–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–327 and 50–328; License Nos. DPR–77 and DPR–79, EA 88–307]

Tennessee Valley Authority (Sequoyah Nuclear Plant Units 1 and 2); Order Imposing Civil Monetary Penalty

I

Tennessee Valley Authority (licensee) is the holder of Operating License No. DPR–77 and No. DPR–79 (licenses) issued by the Nuclear Regulatory Commission (Commission or NRC) on September 17, 1980 and September 15, 1981, respectively. The licenses authorize the licensee to operate the Sequoyah Nuclear Plant, Units 1 and 2, at Soddy-Daisy, Tennessee, in accordance with the conditions specified therein.

II

NRC inspections of the licensee's activities under the licenses were conducted on July 11–15, August 22–23, and November 16–December 1, 1988. The results of these inspections indicated that the licensee had not conducted its activities in fully compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated February 23, 1989. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice by letter dated March 24, 1989. In its response, the licensee admitted the violations but requested reconsideration or mitigation of the civil penalty.

III

After consideration of the licensee's response and the statements of fact, explanations, and argument for reconsideration or mitigation contained therein, the staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby Ordered That:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN:

Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with copies to the Assistant General Counsel for Hearings and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Associate Director for Special Projects, Office of Nuclear Reactor Regulation, Washington, DC 20555; and a copy to the NRC Resident Inspector, Sequoyah Nuclear Plant.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payments has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether, on the basis of the violations, this Order should be sustained.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Dated at Rockville, Maryland this 1st day of August 1989.

Appendix—Evaluation and Conclusion

On February 23, 1989, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during routine NRC inspections at the Sequoyah Nuclear Plant, Units 1 and 2. TVA responded to the Notice in a letter dated March 24, 1989. In its response, the licensee admitted the violations, but requested reconsideration or mitigation of the proposed civil penalty. The NRC staff's evaluation and conclusion regarding TVA's response is as follows:

I. Restatement of Violations

a. 10 CFR 50.59, Changes, Tests, and Experiments, allows a licensee to make changes in a facility, as described in the safety analysis report, without prior Commission approval, provided the change does not involve an unreviewed safety question. In part, a change is deemed to involve an unreviewed safety question if the probability of occurrence or the consequences of an accident or a malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased, or if the margin of safety as defined in the basis for any technical specification is reduced.

Sequoyah Final Safety Analysis Report (FSAR), §§ 7.7 and 15.1, require, in part, that the feedwater control systems prevent the average reactor coolant temperature (Tavg) from dropping below the 547°F programmed no-load temperature following a reactor trip to ensure that adequate shutdown margin (SDM) is maintained.

Contrary to the above, the feedwater control system failed to perform as described in the FSAR in that during the reactor trips of May 19, May 23 and June 6, 1988, Tavg dropped below the 547° programmed no-load temperature needed to assure adequate shutdown margin. This would result in an end-of-life condition for the subject cores which would have violated the Technical Specification limit for shutdown margin after a reactor trip, and increased the probability of occurrence and consequences of an accident previously evaluated and, therefore, an unreviewed safety question. There was no evaluation supporting this deviation from the FSAR pursuant to 10 CFR 50.59(b), and this change was implemented without prior Commission approval as required by 10 CFR 50.59(a).

b. 10 CFR Part 40, Appendix B, Criterion XVI, Corrective Action, requires that measures be established to assure that conditions adverse to quality such as failures, malfunctions, deficiencies, deviations, defective material and equipment, and non-conformances are promptly identified and corrected.

Contrary to the above, licensee corrective actions, which included procedure changes and operator training as outlined in TVA's October 5 and October 14, 1988 letters to the NRC to prevent excessive post-trip reactor cooldowns, were not adequately implemented as demonstrated by the excessive cooldown following the November 18, 1988 Unit 1 reactor trip. This excessive cooldown resulted, in part, due to insufficient training in manual auxiliary feedwater (AFW) control and unclear instructions for manual AFW control in emergency operating procedure ES–01, Reactor Trip Response.

c. 10 CFR Part 50, Appendix B, Criterion B, Instructions, Drawings, and Procedures, requires that activities affecting quality shall be prescribed by documented instructions, drawings, or procedures of a type appropriate to the circumstances and shall be accomplished in accordance with those instructions, drawings, or procedures. Instructions, drawings, or procedures shall include appropriate quantitative or qualitative acceptance criteria for determining the important activities have been satisfactorily accomplished.

Contrary to the above, AI–18, Reactor Post-Trip Review Procedure, established to identify and correct conditions adverse to quality occurring during a reactor trip, failed to provide sufficient guidance and acceptance criteria to evaluate plant performance. The procedure did not compare actual post-trip parameters with FSAR values. Consequently, the post-trip reviews performed following the May 19, 23 and June 6, 1988 reactor trips were inadequate to identify and correct the reactor coolant system overcooling problem.

Collectively, these violations are categorized as a Severity Level III problem (Supplement I).

Civil Penalty—$50,000 (assessed equally among the violations).

II. Summary of Licensee Response

The licensee admits the violations cited in the subject Notice and acknowledges that the SDM issue represented a condition that, if left uncorrected, could have allowed operation prohibited by the technical specifications (TS). The licensee further acknowledges that overcooling of the RCS in a manner inconsistent with design requirements represents clear departure from good operating principles. However, the licensee believes that there are points meriting consideration relative to their performance in addressing the subject issues. The licensee believes their performance prior to the 1985 shutdown is clearly not reflective of their current ability and inclination to identify and correct safety deficiencies. Extensive management and culture changes were needed and were accomplished during the extended shutdown.

Pertaining to the mitigation factors in section V.B of the enforcement policy in 10 CFR Part 2, Appendix C, the licensee makes the following arguments relative to reconsideration or mitigation of the proposed civil penalty.

a. The licensee believes they identified the SDM issue following the first Unit 2 trip after the May 1988 restart.

b. The licensee believes it promptly resolved the SDM safety issue in June 1988 by instituting requirements for boration and comprehensive corrective actions were initiated to institute programmatic improvements.

While part of the actions taken to address RCS overcooling were determined to be ineffective, as evidenced by operator response to the November 18, 1988, Unit 1 trip, no safety issue resulted because SDM continued to be ensured by boration. The licensee believes that management response to this trip was immediate and thorough, resulting in implementation of additional actions and enhancements to address both specific and programmatic concerns.

Pertaining to enforcement discretion in Section V.G of the enforcement policy in 10 CFR Part 2, Appendix C, the licensee stated that imposition of the civil penalty is not warranted recognizing the licensee's identification, reporting, and correction of the violations.

III. NRC Staff's Evaluation of Licensee Response

The NRC acknowledges that the performance of the licensee in the area of identification and correction of safety deficiencies has improved substantially since the 1985 shutdown of the Sequoyah units. However, one part of the violations involved the failure to take timely corrective action when the post-trip cooldown issue was brought to the attention of the licensee as on May 20, 1988. Thereafter, several additional reactor trips occurred before the licensee's incident review process investigated the safety significance of the post-trip cooldown. This failure to identify the safety significance of the post-trip cooldown in a timely manner indicated a deficiency in the post-trip review process.

In the area of identification and reporting, the NRC considered the difference of opinion between TVA and the NRC as to who identified the issue. The NRC questioned the excessive cooldown on May 20, 1988. Although the licensee stated that they were evaluating a shutdown margin anomaly after the May 19, 1988 reactor trip, there is no objective evidence that the post-trip cooldown condition was categorized and reviewed by the licensee as a condition adverse to quality prior to the tie-in with potentially inadequate shutdown margin on June 14, 1988. In addition, the excessive post-trip cooldown was contrary to conditions described in the FSAR and should have been promptly evaluated pursuant to 10 CFR 50.59. While the NRC agrees that in most respects the licensee met the minimum regulatory reporting requirements for the shutdown margin issue, on two occasions, on June 19 and July 14, 1988, the licensee failed to communicate the status of its review findings and planned actions concerning this issue to the NRC. This information was important prior to June 19, 1988 because of the pending NRC decision of whether to allow restart of Sequoyah Unit 2. This issue and the associated proposed corrective actions were not brought to the attention of the onsite NRC restart staff and were not discovered by NRC inspectors until after NRC permission had been given to the licensee to restart the plant on June 19, 1988. On July 14, 1988, an NRC inspection team reviewing this issue was informed by the licensee that the licensee did not intend to report the issue, while the licensee was issuing an LER on the same day. Therefore, mitigation of the base civil penalty was not considered appropriate for the factor of identification and reporting.

The licensee's corrective actions did not warrant mitigation of the base civil penalty because they did not prevent an excessive post-trip cooldown during a subsequent reactor trip on November 18, 1988. In addition, TVA knew that the plant simulator did not adequately model post-trip cooldowns, but took no action to change it to facilitate training of reactor operators until after the November 18, 1988 reactor trip. Although a sufficient amount of boron was injected into the plant to ensure adequate shutdown margin, boron injection flow path discrepancies could have been foreseen had the licensee, in addition to testing the procedure on the simulator, reviewed their procedure against the recent reactor trips which had excessive post-trip cooldowns. On balance, neither mitigation nor escalation were considered appropriate for this factor.

Mitigation of the civil penalty pursuant to section V.G.2 of the NRC Enforcement Policy, extended shutdown facility, is not warranted because the violations do not deal with activities of the licensee that occurred prior to the shutdown and prior to NRC approval for restart of the units. Therefore, enforcement discretion under section V.G.2 of the NRC Enforcement Policy is not considered applicable.

Mitigation of the civil penalty pursant to section V.G.3 of the NRC Enforcement Policy is also not warranted. The violations in this matter do not meet these criteria since, as explained above, they were not identified by the licensee, comprehensive corrective actions were not initiated in a reasonable period of time to prevent the excessive post-trip cooldown that occurred on May 23, June 6, and November 19, 1988, and the violations could have been prevented because the licensee had prior knowledge of the problem after the reactor trip of May 19, 1988. In this regard, although the licensee stated that it was evaluating a shutdown margin anomaly after the May 19, 1988 reactor trip, there is no objective evidence that the post-trip cooldown condition was categorized and reviewed as a condition adverse to quality prior to the tie-in with shutdown margin on June 14, 1988. In fact, the excessive post-trip cooldown was contrary to conditions described in the FSAR and should have been promptly evaluated pursuant to 10 CFR 50.59.

The imposition of the civil penalty is intended to emphasize the need to use established programs such as the post-trip review and 10 CFR 50.59 safety evaluation programs to evaluate and correct problems prior to their impact on actual plant operation.

IV. NRC Staff's Conclusion

The licensee did not provide a sufficient basis for reduction of the proposed civil penalty. Consequently, the NRC staff concludes that the proposed civil penalty in the amount of $50,000 should be imposed.

[FR Doc. 89–18727 Filed 8–9–89; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives a consolidated notice of all positions excepted under Schedules A, B, and C as of June 30, 1989, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

SUPPLEMENTARY INFORMATION: Civil Service Rule VI (5 CFR 6.1) requires the Office of Personnel Management (OPM) to publish notice of all exceptions granted under Schedules A, B, and C. Title 5, Code of Federal Regulations, § 213.103(c) further requires that a consolidated listing, current as of June 30 of each year, be published annually as a notice in the **Federal Register**. That notice follows. OPM maintains continuing information on the status of all Schedule A, B, and C excepted appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by contacting the Staffing

BEST COPY AVAILABLE

Operations Division, Room 6A12, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, or by calling (202) 632-6728. The following exceptions were current on June 30, 1989:

Schedule A

Section 213.3102 Entire Executive Civil Service

(a) Positions of Chaplain and Chaplain's Assistant.

(b) [Reserved].

(c) Positions to which appointments are made by the President without confirmation by the Senate.

(d) Attorneys.

(e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admissioin to the bar. No person shall be given more than one appointment under this paragraph. However, an appointment which was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.

(f) Chinese, Japanese, and Hindu interpreters.

(g) Any nontemporary position the duties of which are part-time or intermittent in which the appointee will receive compensation during his or her service year that aggregates not more than 40 percent of the annual salary rate for the first step of grade GS-3. This limited compensation includes any premium pay such as for overtime, night, Sunday, or holiday work. It does not, however, include any mandatory within-grade salary increases to which the employee becomes entitled subsequent to appointment under this authority. Appointments under this authority may not be for temporary project employment.

(h) Positions in Federal mental institutions when filled by persons who have been patients of such institutions and have been discharged and are certified by an appropriate medical authority thereof as recovered sufficiently to be regularly employed but it is believed desirable and in the interest of the persons and the institution that they be employed at the institution.

(i) Subject to prior approval of OPM, positions requiring temporary, part-time, or intermittent employment in wage board type occupations (i.e., position excluded from Classification Act coverage by section 202(7) of the Act) on construction or repair work, where the activity is carried on in localities where examination coverage for the positions has not been provided and where because of employment conditions there is a shortage of available candidates for the positions. Appointments under this paragraph shall not extend beyond 1 year and the employment thereunder shall not exceed 180 working days a year. Seasonal employments of a recurring nature are not authorized under this paragraph.

(j) Positions filled by (1) appointment of persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) in positions at the same or equivalent grade level, or below, who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) or 5 U.S.C. 8457 by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment; or (2) reassignment, promotion, or demotion within the same agency of former National Guard Technicians originally appointed under this authority.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of professional, scientific, or technical experts for consultation purposes.

(m) Nonsupervisory positions of custodial laborer (levels 1, 2, and 3) and general laborer (levels 2 and 3) in field establishments outside central office and regional office cities of OPM where examination coverage has not been provided for the positions, as follows:

(1) For temporary, intermittent, or seasonal employment (exclusive of positions covered by paragraph (1) of this section) not to exceed 180 working days a year in the Departments of Agriculture, Commerce, Interior, and Energy, in the Federal Aviation Agency, and in the International Boundary and Water Commission; or

(2) When it is specifically held by OPM that this authority is applicable for employment in localities that are isolated with respect to labor supply and where there is a shortage of available candidates for the positions.

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis.

(o) Positions of a scientific, professional, or analytical nature when filled by bona fide members of the faculty of an accredited college or university who have special qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p) Positions of a scientific, professional, or analytical nature when filled by bona fide graduate students at accredited colleges or universities provided that the work performed for the agency is to be used by the student as a basis for completing certain academic requirements toward a graduate degree. Appointments under this authority may not exceed 1 year, but may be extended for additional period(s) not to exceed 1 year as long as the conditions for appointment continue to be met. The appointment of any individual under this authority shall terminate upon the individual's completion of requirements for the graduate degree.

(q) Positions at grade GS-7, or equivalent, and below when appointees are to assist scientific, professional, or technical employees. Persons employed under this provision shall be (1) bona fide high school science or mathematics teachers; or (2) bona fide students at high schools or accredited colleges or universities who are pursuing courses related to the field in which employed. The appointment of any individual under this authority shall terminate upon the individual's ceasing to be enrolled in a qualifying educational program or to be employed as a teacher. No one shall be employed under this provision in routine clerical positions, routine trades and labor positions—unless such employment clearly relates to a scientific, professional, or technical curriculum—or in excess of 1040 working hours a year. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR Part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(r)–(s) [Reserved].

(t) Positions when filled by mentally retarded persons in accordance with the guidance in Federal Personnel Manual chapter 306. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(u) Positions when filled by severely physically handicapped persons who: (1) Under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or (2) have been certified by counselors of State vocational rehabilitation agencies or the Veterans Administration as likely to succeed in the performance of the duties. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(v) Between May 13 and September 30 only, temporary Summer-Aid positions the duties of which involve work of a routine nature not regularly covered under the General Schedule requiring no specific knowledge or skills, when filled by youths, either (1) appointed under economic needs standards prescribed by OPM; or (2) who are mentally retarded or severely physically handicapped. Youths may not be appointed unless they have reached their 16th birthday. This paragraph shall apply only to positions for which pay is fixed at the highest Federal minimum wage rate established by the Fair Labor Standards Act of 1938, as amended.

(w) Part-time or intermittent positions, the duties of which involve routine work up to and including the GS-4 level of difficulty or equivalent under the Federal Wage system, when filled by bona fide students appointed under the Stay-in-School Program. Students may be appointed if they need the earnings from this employment to continue in school or if they are mentally retarded or severely physically handicapped, provided that the following conditions are met: (1) Appointees are enrolled in or accepted for enrollment as a resident student in a secondary school (or other appropriate school for mentally retarded students) or an institution of higher learning not above the baccalaureate level, accredited by a recognized accrediting body;

(2) Employment does not exceed 20 hours in any calendar week except that students may work full time during any period in which their school is officially closed and during any school vacation period.

(3) While employed, appointees continue to maintain an acceptable school standing, although they need not attend school during the summer;

(4) Appointees meet the economic criteria prescribed by the Office of Personnel Management, except that this requirement does not apply to mentally retarded or severely physically handicapped students appointed under the authority; and

(5) Salaries are fixed by the agency head at a level commensurate with the duties assigned and the expected level of performance.

Appointments under this authority may not extend beyond 1 year. However, such appointments may be made for additional periods of not to exceed 1 year, each, if the conditions for initial appointment are still met. Students may not be appointed under this authority unless they have reached their 16th birthday. No new appointments may be made between May 13 and August 31, inclusive.

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia, and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work-release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work-release programs authorized by the States. Initial appointments under this authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed one additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this authority longer than 1 year beyond the date of that person's release from custody.

(y) Positions at grade GS-2 and below for summer employment as defined in § 213.3104(d), of assistants to scientific, professional, and technical employees, when filled by finalists in national science contests.

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS-11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory outcome of evaluation of the associate's research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of OPM except when the authority is specifically included in a delegated examining agreement with OPM.

(cc) Positions at GS-15 and below when filled by persons identified as Interchange Executives by the President's Commission on Personnel Interchange. Apointments made under this authority may not extend beyond 2 years.

(dd)–(ee) [Reserved]

(ff) Not to exceed 25 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Pub. L. 91-452 and related statutes. A person appointed under this authority may continue to be employed under it after he/she ceases to be in a qualifying program only as long as he/she remains in the same agency without a break in service.

(gg)–(hh) [Reserved]

(ii) Positions of Presidential intern, GS-9 and 11, in the Presidential Management Intern Program. Initial appointments must be made at the GS-9 level. No one may serve under this authority for more than 2 years, unless extended with OPM approval for up to one additional year. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive appointment under the provisions of Executive Order 12364, in accordance with requirements published in the Federal Personnel Manual.

(jj) Legal intern positions. Appointments under this paragraph shall be confined to bona fide students at recognized law schools who are candidates for J.D. or LL.B. degrees. Appointments under this authority may not exceed 1 year, but may be extended for additional period(s) not to exceed 1 year as long as the conditions for appointment continue to be met. The appointment of any individual under this authority shall terminate upon the individual's graduation from law school.

(kk) [Reserved]

(ll) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full time, part-time, or intermittent basis.

Section 213.3103 Executive Office of the President

(a) *Office of Administration.* (1) Not to exceed 75 positions to provide administrative services and support to the White House office.

(b) *Office of Management and Budget.* (1) Not to exceed 10 positions at grades GS-9/15.

(c) *Council on Environmental Quality.* (1) Professional and technical positions in grades GS-13 through -15 on the staff of the Council.

(d)–(f) [Reserved]

(g) *National Security Council.* (1) All positions on the staff of the Council.

(h) *Office of Science and Technology Policy.* (1) Thirty positions of Senior Policy Analyst, GS–15; Policy Analyst, GS–11/14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

Section 213.3104 Department of State

(a) *Office of the Secretary.* (1) All positions, GS–15 and below, on the staff of the Family Liaison Office, Office of the Under Secretary for Management.

(2)–(5) [Reserved]

(b) *American Embassy, Paris, France.* (1) Chief, Travel and Visitor Unit. No new appointments may be made under this authority after August 10, 1981.

(c) [Reserved]

(d) *International Boundary Commission, United States and Canada.* (1) Temporary and intermittent field employees such as instrumentmen, foremen, recorders, packers, cooks, and axemen, for not to exceed 180 working days within any one calendar year.

(e) *Bureau of Oceans and International Environmental and Scientific Affairs.* (1) Two Physical Science Administration Officer positions at GS–16.

(f) [Reserved]

(g) *Office of Refugee and Migration Affairs.* (1) Not to exceed 10 positions at grades GS–5 through 11 on the staff of the office.

(h) *Bureau of Administration.* (1) One Presidential Trip Specialist. No new appointments may be made under this authority after June 11, 1981.

Section 213.3105 Department of the Treasury

(a) *Office of the Secretary.* (1) Not to exceed 20 positions at the equivalent of GS–13 through GS–17 to supplement permanent staff in the study of complex problems relating to international financial, economic, trade, and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(2) Not to exceed 20 positions, which will supplement permanent staff involved in the study and analysis of complex problems in the area of domestic economic and financial policy. Employment under this authority may not exceed 4 years.

(b) *U.S. Customs Service.* (1) Positions in foreign countries designated as "interpreter-translator" and "special employees," when filled by appointment of persons who are not citizens of the United States; and positions in foreign countries of messenger and janitor.

(2) [Reserved]

(3) Positions of part-time, intermittent, or temporary Customs Inspectors, and Port Directors in Alaska paid at a rate not above GS-9 and for not more than 130 working days in a service year.

(4) [Reserved]

(5) Positions at GS-9 and below of Customs Enforcement Officer, Customs Inspector, Customs Marine Clerk/Officer, Customs Aid (sampling), Customs Warehouse Officer, Port Director, Interpreter, and Laborer, with duties of a continuing nature that require the part-time or intermittent service of an employee for not more than 700 hours in his/her service year. An individual appointed under this exception may not be employed in the Bureau of Customs under a combination of this and any other exception for more than 700 hours in his/her service year.

(6) Twenty-five positions of Criminal Investigator for special assignments.

(7)–(8) [Reserved]

(9) Not to exceed 25 positions of Customs Patrol Officers in the Papago Indian Agency in the state of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(c) *Office of the Comptroller of the Currency.* (1) Not to exceed six positions filled under the Professional Accounting Fellow Program. Appointments under this authority may not exceed 2 years.

(d) [Reserved]

(3) *Internal Revenue Service.* Twenty positions of investigator for special assignments.

(2) Two positions of Senior Visiting Pension Actuary, GS–1510–14/15. Appointments to these positions must be for periods not to exceed 24 months.

(f) [Reserved]

(g) *Bureau of Alcohol, Tobacco, and Firearms.* (1) One hundred positions of criminal investigator for special assignments.

(h) [Reserved]

(i) *Bureau of Government Financial Operations.* (1) Clerical positions at grades GS–5 and below established in Emergency Disbursing Offices to process emergency payments to victims of catastrophes or natural disasters requiring emergency disbursing services. Employment under this authority may not exceed 1 year.

Section 213.3106 Department of Defense

(a) *Office of the Secretary.* (1) Not to exceed 30 positions at grades GS–6/15 in the Defense Mobilization Systems Planning Activity, Office of the Deputy Assistant Secretary of Defense (Mobilization Planning and Requirements.) No new appointments may be made under this authority after March 31, 1993.

(2)–(5) [Reserved]

(6) One Executive Secretary, US-USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) *Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force).* (1) Professional positions in Military Dependent Schools Systems overseas.

(2) Positions in attache 1 systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the Staffs of the Chaplains in the military services.

(5) Positions under the program for utilization of alien scientists approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the Department of Defense when filled by dependents of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or the separation of a dependent's sponsor: *Provided,* That (i) a school employee may be permitted to complete the school year; and (ii) an employee other than a school employee may be permitted to serve up to one additional year when the military department concerned finds that the additional employment is in the interest of management.

(7) Fifteen secretarial and staff support positions at GS–12 or below on the White House Support Group.

(8) Positions in DOD research and development activities occupied by participants in the DOD Science and Engineering Apprenticeship Program for High School Students. Persons employed under this authority shall be bona fide high school students, at least 14 years old, pursuing courses related to the position occupied and limited to 1040 working hours a year. Children of DOD employees may be appointed to these positions, notwithstanding the sons and daughters restriction, if the positions are in the field activities at remote locations. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR Part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(c) *Defense Contract Audit Agency.* (1) Not to exceed two positions of Accounting Fellow, Auditor, GM–511–14, filled under the Accounting Fellowship Program. Appointments under this authority may not exceed 2 years.

(d) *General.* (1) Positions concerned with advising, administering, supervising or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM, it is impracticable to examine. This authority does not apply to positions assigned to cryptologic and communications intelligence activities/functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the applications of engineering, physical or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, or estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) *Uniformed Services University of the Health Sciences.* (1) Positions of Dean, Associate Dean, Assistant Dean, faculty members, postdoctoral fellows, research associates, senior research associates, and visiting scientists.

(2) Positions established to perform work on projects funded from grants.

(f) *National Defense University.* (1) Not to exceed 18 positions of senior policy analyst, GS–15, at the strategic Concepts Development Center. Initial appointments to these positions may not exceed 6 years, but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely.

(g) *Defense Communications Agency.* (1) Not to exceed 10 positions at grades GS–10/15 to staff and support the Crisis Management Center at the White House.

(h) *Defense Systems Management College, Fort Belvoir, VA.*

(1) The Provost and professors in grades GS–13 through 15.

Section 213.3107 Department of the Army

(a) *General.* (1) Not to exceed 30 positions on the faculty and staff which are classified in the GS–1700 occupational group and the GS–1410 Librarian series, located at the U.S. Army Russian Institute, Garmisch, Germany, and the U.S. Army Foreign Language Training Center Europe, Munich, Germany.

(b) *Aviation Systems Command.* (1) One scientific and professional research position in the U.S. Army Research and Technology Laboratories, the duties of which require specific knowledge of aviation technology in non-allied nations.

(c) *Corps of Engineers.* (1) [Reserved]

(2) Nonsupervisory trades, crafts, and manual labor positions at grades WG–8 and below on survey, construction, short-term maintenance, or floating-plant operations, where because of turnover, lack of housing facilities, mobility of work site, or remoteness of personnel servicing facilities, an adequate labor force can be recruited only by immediate gate hiring on a local basis. This authority can be used only when OPM has determined that it is specifically applicable to a given situation; ordinarily, it will not be used for employment in OPM central office, regional, and branch office cities or in cities where there is a local OPM area office to service the employing establishment.

(d) *U.S. Military Academy, West Point, New York.* (1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, chapel organist and choir-master, Director of Intercollegiate Athletics, Associate Director of Intercollegiate Athletics, Facility Manager, Building Manager, three Physical Therapists (Athletic Trainers), Associate Director of Admissions for Plans and Programs, Deputy Director of Alumni Affairs; and librarian when filled by an officer of the Regular Army retired from active service, and the military secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e) *U.S. Army School of the Americas, Fort Benning, Georgia.* (1) Positions of Translator (Typing), GS–1040–5/9, and Supervisory Translator, GS–1040–11. No new appointments may be made under this authority after December 31, 1985.

(f) *Central Identification Laboratory.* (1) One position of Scientific Director, GM–190–15, and four positions of Forensic Scientists, GM–190–14. Initial appointment to these positions is NTE 3–5 years, with provision for indefinite numbers of renewals in 1-, 2-, or 3-year increments.

(g) *Defense Language Institute.* (1) All positions on the faculty and staff which are classified in the GS–1700 occupational group, the GS–1040 Language Specialist series, and the GS–303 Bilingual Clerk series, that require either a proficiency in a foreign language or a knowledge of foreign language teaching methods.

(h) *Army War College, Carlisle Barracks, Pa.* (1) Five positions of Educational Specialist for employment of not to exceed 1 year: *Provided,* That such employment may, with the prior approval of OPM, be extended for not to exceed one additional year.

(2) Nine senior policy analyst positions, GS–14/15, at the Strategic Studies Institute, Army War College, with appointments to be made initially for up to 3 years and thereafter extended annually if needed.

(3) Five research oriented faculty positions, GS–14/15, with the U.S. Army War College, at Carlisle Barracks, Pennsylvania, with appointments to be made initially for up to 3 years and thereafter extended annually if needed.

(i) [Reserved]

(j) *U.S. Military Academy Preparatory School, Fort Monmouth, New Jersey.* (1) Positions of Academic Director, Department Head and Instructor.

Section 213.3108 Department of the Navy

(a) *General.* (1) [Reserved]

(2) Positions of Student Pharmacist for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, clinics and departments when filled by students who are enrolled in an approved pharmacy program in a participating non-Federal institution, and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed one year.

(3) [Reserved]

(4) Not to exceed 30 positions of resident-in-training at U.S. naval

regional medical centers, hospitals, and dispensaries which have residency training programs, when filled by residents assigned as affiliates for part of their training from non-Federal hospitals. Assignments shall be on a temporary (full-time or part-time) or intermittent basis, shall not amount to more than 6 months for any person, and shall be applied only to persons whose compensation is fixed under 5 U.S.C. 5351–54.

(5) [Reserved]

(6) Positions of Student Operating Room Technician for temporary, part-time or intermittent employment in U.S. naval regional medical centers and hospitals, when filled by students who are enrolled in an approved operating room technician program in a participating non-Federal institution, whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(7) Positions of student social worker for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by bona fide students enrolled in academic institutions: *Provided,* That the work performed in the agency is to be used by the student as a basis for completing certain academic requirements by such educational institution to qualify for a graduate degree in social work. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351–54.

(8) Positions of student practical nurse for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by trainees enrolled in a non-Federal institution in an approved program of educational and clinical training which meets the requirements for licensing as a practical nurse. This authority shall be applied only to trainees whose compensation is fixed under 5 U.S.C. 5351–54.

(9) [Reserved]

(10) Positions of medical technology intern in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by students enrolled in approved programs of training in non-Federal institutions. Employment under this authority may be filled on a full-time, part-time, or intermittent basis but may not exceed 1 year. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351–54.

(11) Positions of medical intern at U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are serving medical internships at participating non-Federal hospitals and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(12) Positions of student speech pathologist at U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are enrolled in participating non-Federal institutions and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(13) Positions of student dental assistant in U.S. naval dental centers, clinics, and departments, when filled by students who are enrolled in an approved dental assistant program in a participating non-Federal institution, and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(14) [Reserved]

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(16) All positions necessary for the administration and maintenance of the official residence of the Vice President.

(b) *Naval Academy, Naval Postgraduate School, and Naval War College.* (1) Professors, instructors, and teachers; the Director of Academic Planning, Naval Postgraduate School; and the librarian, organist-choirmaster, registrar, the dean of admissions, and social counselors at the Naval Academy.

(c) *Chief of Naval Operations.* (1) One position at grade GS–12 or above that will provide technical, managerial, or administrative support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy, and Operations).

(d) *Military Sealift Command.* (1) All positions on vessels operated by the Military Sealift Command.

(e) *Pacific Missile Range Facility, Barking Sands, Hawaii.* (1) All positions. This authority applies only to positions that must be filled pending final decision on contracting of Facility operations. No new appointments may be made under this authority after July 29, 1988.

(f) [Reserved]

(g) *Office of Naval Research.* (1) Not to exceed five positions of Liaison Scientists, GS–13/15, in the Naval Research Branch Office in Japan, when filled by research scientists who have specialized experience in scientific disciplines of current interest to the Department and who have a demonstrated ability to deal with the Japanese scientific community in their disciplines. An appointment under this authority may be made initially for a period not to exceed 2 years. With the prior approval of OPM, total employment under this authority may be for as long as 3 years.

Section 213.3109 Department of the Air Force

(a) *Office of the Secretary.* (1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) *General.* (1) Professional, technical, managerial and administrative positions supporting space activities, when approved by the Secretary of the Air Force.

(2) Sixty-five positions engaged in interdepartmental defense projects involving scientific and technical evaluations.

(c) Not to exceed 20 professional positions, GS–11 through GS–15, in Detachments 6 and 51, SM–ALC, Norton and McClellan Air Force Bases, California, which will provide logistic support management to specialized research and development projects.

(d) *U.S. Air Force Academy, Colorado.* (1) Positions of Cadet Hostesses, Instructors in Physical Education, Instructors in Music (choirmasters), one Training Instructor (Parachuting), one Training Instructor (Code of Conduct and Evasion), and two Physical Therapists (Athletic Trainers).

(e) Not to exceed five positions, GS–12 through GS–15, in the Specialized Management Office (WR–ALC/QL) at Robins Air Force Base, Georgia, which will provide logistic support management staff guidance for highly sensitive and high priority programs and projects. Employment under this authority is not to exceed May 30, 1988.

(c) *Drug Enforcement Administration.* (1) [Reserved]

(2) One hundred and fifty positions of Intelligence Research Agent and/or Intelligence Operation Specialist in the GS–132 series, grades GS–9 through GS–15.

(3) Not to exceed 200 positions of Criminal Investigator (Special Agent). New appointments may be made under this authority only at grades GS–7/11

Section 213.3112 Department of the Interior

(a) *General.* (1) Technical, maintenance, and clerical positions at or below grades GS–7, WG–10, or equivalent in the field service of the Department of the Interior, when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS–7, or its equivalent, and below in such areas as forestry, range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: *Provided,* That an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible for defining the term "Indian."

(8) Temporary, intermittent, or seasonal positions at GS–7 or below in Alaska, as follows: Positions in non-professional mining activities, such as those of drillers, miners, caterpillar operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers equipment operators and tradesmen on construction, repair, or maintenance work not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is fixed at the Federal minimum rate. Employment under this authority may not exceed 10 weeks.

(b) [Reserved]

(c) *Indian Arts and Crafts Board.* (1) The Executive Director.

(d) [Reserved]

(e) *Office of the Assistant Secretary, Territorial and International Affairs.* (1) [Reserved]

(2) Not to exceed four positions of Territorial Management Interns, grades GS–5, GS–7, or GS–9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship. Employment under this authority may not exceed 6 months.

(3) [Reserved]

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his or her immediate staff.

(f) *National Park Service.* (1) Park Ranger positions (appropriate specializations) at salaries equivalent to GS–2 through GS–5 to perform practical and technical work supporting the management of Park Service areas and resources in the functional areas of interpretation, resources management, visitor protection, and visitor services; and positions at salaries equivalent to grades GS–6 and GS–7 in which the duties are supervisory or consist of highly specialized technical work in support of National Park Service operations in the functional areas delineated above. The total number of Park Ranger and Park Technician positions at salaries equivalent to GS–6 and GS–7 excepted under this paragraph shall not exceed 200. Employment under this paragraph is limited to persons who meet the qualification standards for each salary level which have been agreed upon by OPM and the Department. These standards include as a minimum the following number of previous seasons' experience at a salary equivalent to the next lower grade or equivalent experience, in a Federal, State, or local park:

(i) For IGS–7: Two seasons at IGS–6 level in the National Park Service.

(ii) For IGS–6: Two seasons at IGS–5 level in the National Park Service.

(iii) For IGS–5: One season at IGS–4 level or its equivalent in experience.

(iv) For IGS–4: One season at IGS–3 level or its equivalent in experience.

(v) For IGS–3: One season at IGS–2 level or its equivalent in experience.

Employment under this paragraph shall be only for duty that is temporary, intermittent, or seasonal, and no person shall be employed by the same appointing office in the National Park Service under this paragraph or a combination of this and any other excepting authorities in excess of 180 working days a year.

(2) [Reserved]

(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Public Law 95–250.

(4) One Special Representative of the Director.

(g) *Bureau of Reclamation.* (1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entrymen-review projects where knowledge of local values or conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case: *Provided,* That such employment may, with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) *Office of the Deputy Assistant Secretary for Territorial Affairs.* (1) Positions of Territorial Management Interns, GS–5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

Section 213.3113 Department of Agriculture

(a) *General.* (1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not

applicable to positions in the Agricultural Research Service or the Statistical Reporting Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural Commodity grader (grain) and (meat), (poultry), and (dairy) agricultural commodity aid (grain), and tobacco inspection positions.

(2)–(4) [Reserved]

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS–7 and WG–10 in the following types of positions: Field assistants for subprofessional services; caretakers at temporarily closed camps or improved areas; forest workers engaged primarily for fire prevention or suppression activities and other forest workers employed at headquarters other than forest supervisor and regional offices; State performance assistants in the Agricultural Stabilization and Conservation Service; agricultural helpers, helper-leaders, and workers in the Agricultural Research Service and the Animal and Plant Health Inspection Service, and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: *Provided*, That an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraphs (i) and (m) of § 213.3102.

(6) [Reserved]

(7) Not to exceed 34 Program Assistants, whose experience acquired in positions excepted from the competitive civil service in the administration of agricultural programs at the State level is needed by the Department for the more efficient administration of its programs. No new appointment may be made under this authority after December 31, 1985.

(b) [Reserved]

(c) *Forest Service.* (1) [Reserved]

(2) Positions in Alaska of Laborers, Boat Operations, Mechanics, Equipment Operators, and Carpenters whose duties require the operation of boats in coastal waters and/or the establishment and maintenance of work camps in remote areas.

(d) *Agricultural Stabilization and Conservation Service.*

(1) Not to exceed 34 positions of Agricultural Program Specialist, GS–1145–7/12, engaged in conversion of ASCS' directives and information system to a completely automated format. Appointments to these positions may be made initially at the GS–7/11 levels and may not exceed September 30, 1989.

(2) Members of State Committees: *Provided*, That employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(e) *Farmers Home Administration.* (1) [Reserved]

(2) County committeemen to consider, recommend, and advise with respect to the Farmers Home Administration program.

(3) Temporary positions whose principal duties involve the making and servicing of natural disaster emergency loans pursuant to current statutes authorizing natural disaster emergency loans. Appointments under this provision shall not exceed 1 year unless extended for one additional period not to exceed 1 year, but may, with prior approval of OPM, be further extended for additional periods not to exceed 1 year each.

(4)–(5) [Reserved]

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(f) *Agricultural Marketing Service.* (1) Positions of: Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–9 and below in the tobacco, dairy, and poultry commodities; Meat Acceptance Specialists at grades GS–11 and below; Clerks, Clerk-Typists, and Computer Clerks at grades GS–4 and below; and Laborers under the Wage System. Employment under this authority is limited to either 1280 hours or 180 days in a service year.

(2) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–11 and below in the cotton, raisin, and processed fruit and vegetable commodities. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton Agricultural Commodity Graders, GS–5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the service year limitation.

(3) Milk Market Administrators.

(4) All positions on the staffs of Milk Market Administrators.

(g)–(i) [Reserved]

(j) *Food and Nutrition Service.* (1) [Reserved]

(2) Three hundred fifty positions of food assistance program specialist, GS–5/7, under the Child Nutrition Summer Feeding Program, for temporary employment not to begin before March 1 and not to exceed September 30 of each year, on a full-time, part-time, or intermittent basis.

(k) [Reserved]

(l) *Food Safety and Inspection Service.* (1)–(2) [Reserved].

(3) Positions of meat and poultry inspectors (veterinarians at GS–11 and below and nonveterinarians at appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(m) *Federal Grain Inspection Service.* (1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions of Agricultural Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

Section 213.3114 Department of Commerce

(a) *General.* (1)–(2) [Reserved]

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United States for periods of orientation, training, analysis of data, and report writing.

(b) *Office of the Secretary.* (1) One position of Administrative Assistant, GS–301–8, in the Office of Economic Affairs. New appointments may not be made after March 30, 1978.

(c) [Reserved]

(d) *Bureau of the Census.* (1) Managers, supervisors, technicians, clerks, interviewers, and enumerators in the field service, for (1) temporary, part-time or intermittent employment in connection with major economic and demographic censuses or with surveys of a nonrecurring or noncyclical nature; and (2) indefinite employment for the duration of each decennial census for key employees located at the Master District Offices (MDO) and Processing Offices (PO): *Provided*, That temporary, part-time employment of the nature described in (1) above will be for periods not to exceed 1 year; and that such appointments may be extended for additional periods of not to exceed 1 year each; but that prior Office approval is required for extension of total service beyond 2 years.

(2) Current Program Interviewers employed on an intermittent or part-time basis in the field service.

(3) Not to exceed 20 professional and scientific positions at grades GS–9 through GS–12 filled by participants in the ASA research trainee program. Employment of any individual under this authority may not exceed 2 years.

(e)–(h) [Reserved]

(i) *Office of the Under Secretary for International Trade.* (1) Thirty positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) Not to exceed 40 positions of Managers and Deputy Managers of International Trade Fairs and Exhibit Programs in foreign countries when the duties require a considerable portion of the employee's time to be spent in foreign countries.

(3) Not to exceed 30 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit practices applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period of not to exceed 2 years and may, with prior approval of OPM, be extended for an additional period of 2 years.

(j) *National Oceanic and Atmospheric Administration.* (1) Subject to prior approval of OPM, which shall be contingent upon a showing of inadequate housing facilities, meteorological aid positions at the following stations in Alaska: Barrow, Bethal, Kotzebue, McGrath, Northway, and St. Paul Island.

(2) [Reserved]

(3) All civilian positions on vessels operated by the National Ocean Survey.

(4) Temporary positions required in connection with the surveying operations of the field service of the National Ocean Survey. Appointment to such positions shall not exceed 8 months in any one calendar year.

(5) Field positions, GS–9 and below, in the National Marine Fisheries Service conducting fish and processed fish products inspection, funded by the private sector. New appointments under this authority may not be made after July 1, 1990.

(k) [Reserved]

(l) *National Telecommunication and Information Administration.* (1) Seventeen professional positions in grades GS–13 through GS–15.

Section 213.3115 Department of Labor

(a) *Office of the Secretary.* (1) Chairman and five members, Employees' Compensation Appeals Board.

(2) Chairman and eight members, Benefits Review Board.

(b) *Bureau of Labor Statistics.* (1) Not to exceed 500 positions involving part-time and intermittent employment for field survey and enumeration work in the Bureau of Labor Statistics. This authority is applicable to positions where the salary is equivalent to GS–6 and below. Employment under this authority may not exceed 1,600 work hours in a service year. No new appointment may be made under this authority after December 31, 1984.

(c) [Reserved]

(d) *Employment and Training Administration.* (1) Not to exceed 10 positions of supervisory manpower development specialist and manpower development specialist, GS–7/15, in the Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

Section 213.3116 Department of Health and Human Services

(a) [Reserved]

(b) *Public Health Service.* (1) Not to exceed five positions a year of Medical Technologist Resident, GS–644–7, in the Blood Bank Department, Clinical Center, of the National Institutes of Health. Appointments under this authority will not exceed 1 year.

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) All positions in the Public Health Service Hospital, Carville, La.

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the cooperating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5) Medical and dental interns, externs, and residents; and student nurses.

(6) Positions of scientific, professional, or technical nature when filled by bona fide students enrolled in academic institutions: *Provided*, That the work performed in the agency is to be used by the student as a basis for completing certain academic requirements required by an educational institution to qualify for a scientific, professional, or technical field. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351–5356.

(7) Not to exceed 50 positions associated with health screening programs for refugees.

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term "Indian."

(9) Twelve positions of Therapeutic Radiologic Technician Trainee in the Radiation Oncology Branch, National Cancer Institute. Employment under this authority shall not exceed 1 year for any individual. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351–5356.

(10) Health care positions of the National Health Service Corps for employment of any one individual not to

exceed 4 years of service in health manpower shortage areas.

(11) Pharmacy Resident positions at GS–7 in the National Institutes of Health's Clinical Center, Pharmacy Department. Employment in these positions is confined to graduates of approved schools of pharmacy and is limited to a period not to exceed 12 months pending licensure.

(12) Hospital Administration Resident positions at GS–9 in the National Institutes of Health's Clinical Center, Bethesda, Maryland. Employment in these positions is confined to graduates of approved hospital or health care administration programs and is limited to a period not to exceed 1 year.

(13) Not to exceed 30 positions of Cancer Control Science Associate in the Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, for assignments at a level of difficulty and responsibility at or equivalent to GS–11/13. No one may be employed under this authority for more than 3 years, and no more than 10 appointments will be made under the authority in any 1 year.

(14) Not to exceed 30 positions at grades GS–11/13 associated with the postdoctoral training program for interdisciplinary toxicologists in the National Institute of Environmental Health Sciences, National Institutes of Health, Research Triangle Park, North Carolina.

(c) [Reserved]

(d) *Social Security Administration.* (1) Six positions of social insurance representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(2) Seven positions of social insurance representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(3) Two positions of social insurance representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointment of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

(e) [Reserved]

(f) *The President's Council on Physical Fitness.* (1) Four staff assistants, The President's Council on Physical Fitness.

(g)–(i) [Reserved]

(j) *Health Care Financing Administration.* (1) [Reserved]

(2) Not to exceed 10 professional positions, GS–9 through GS–15, to be filled under the Health Care Financing Administration Professional Exchange Program. Appointments under this authority will not exceed 1 year.

(k) *Office of the Secretary.* (1) [Reserved].

(2) Not to exceed 10 positions at grades GS–9/14 in the Office of the Assistant Secretary for Planning and Evaluation filled under the Policy Research Associate Program. New appointments to these positions may be made only at grades GS–9/12. Employment of any individual under this authority may not exceed 2 years.

Section 213.3117 Department of Education

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

Section 213.3124 Board of Governors, Federal Reserve System

(a) All positions.

Section 213.3127 Department of Veterans Affairs

(a) *Construction Division.* (1) Temporary construction workers paid from "purchase and hire" funds and appointed for not to exceed the duration of a construction project.

(b) Not to exceed 400 positions of rehabilitation counselors, GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) [Reserved]

(d) Not to exceed 600 positions at grades GS–3 through GS–11, involved in the Department's Vietnam Era Veterans Readjustment Counseling Service.

Section 213.3128 U.S. Information Agency

(a) *Office of Congressional and Public Liaison.* (1) Two positions of Liaison Officer (Congressional), GS–14.

(b) Five positions of Supervisory International Exchange Officer (Reception Center Director), GS–13 and GS–14, located in USIA's field offices of New Orleans, New York, Miami, San Francisco and Honolulu. Initial appointments will not exceed December 31 of the calendar year in which appointment is made with extensions permitted up to a maximum period of 4 years.

Section 213.3130 Securities and Exchange Commission

(a)–(b) [Reserved]

(c) Positions of accountant and auditor, GS–13 through 15, when filled by persons selected under the SEC Accounting Fellow Program, as follows: (1) Five positions, for employment of any one individual not to exceed 2 years; and

(2) Two additional identical positions, for employment of any one individual not to exceed 90 days, which may be used to provide a period of transition and orientation between Fellowship appointments. These additional identical positions must be filled by persons who either have completed a 2-year Fellowship or have been selected as replacement Fellows for a 2-year term. Appointments of outgoing Fellows under this authority must be made without a break in service of 1 workday following completion of their 2-year terms; incoming Fellows apointed under this provision must be appointed to 2-year Fellowships without a break in service of 1 workday following their 90-day appointments.

(d) Positions of Economist, GS–13 through 15, when filled by persons selected under the SEC Economic Fellow Program. No more than four positions may be filled under this authority at any one time. An employee may not serve under this authority longer than 2 years unless selected under provisions set forth in the Intergovernmental Personnel Act (IPA), 5 U.S.C. 3372(b)(2)

(e) Not to exceed 10 positions of accountant, GS–12/13, when filled by persons selected as SEC Accounting Fellows for the Full Disclosure Program. Employment under this authority may not exceed 2 years.

Section 213.3131 Department of Energy

(a) [Reserved]

(b) *Bonneville Power Administration.* (1) Five Area Managers.

Section 213.3132 Small Business Administration

(a) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in the area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Exception to this time limit may only be made with prior Office approval. Appointments under this authority may not be used to extend the 2-year service limit contained in paragraph (b) below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, or the Secretary of Agriculture under 7 U.S.C. 1961 or the Small Business Administration under 15 U.S.C. 636(b)(1), declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 8 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(c) Positions of Community Economic-Industrial Planner, GS–7 through 12, when filled by local residents who represent the interest of the groups to be served by the Minority Entrepreneurship Teams of which they are members. No new appointments may be made under this authority after May 1, 1977.

Section 213.3133 Federal Deposit Insurance Corporation

(a) All Liquidation Graded, temporary field positions concerned with the work of liquidating the assets of closed banks, of liquidation loans to banks, or of paying the depositors of closed insured banks. New appointments may be made under this authority only during the 5-year period following a bank closing and/or establishment of a consolidated liquidation site.

Section 213.3136 U.S. Soldiers' and Airmen's Home

(a) [Reserved]

(b) Positions when filled by member-residents of the Home.

Section 213.3137 General Services Administration

(a) [Reserved]

(b) Not to exceed 25 positions at grades GS–14/15, in order to bring into the agency current industry expertise in various program areas. Appointments under this authority may not exceed 2 years.

Section 213.3141 National Labor Relations Board

(a) Election Examiners for temporary, part-time or intermittent employment in connection with elections under the Labor-Management Relations Act.

Section 213.3142 Export-Import Bank of the United States

(a) One Special Assistant to the Board of Directors, grade GS–14 and above.

Section 213.3146 Selective Service System

(a) State Directors.

(b)–(c) [Reserve]

(d) Executive Secretary, National Selective Service Appeal Board.

Section 213.3148 National Aeronautics and Space Administration

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.

(b) Not to exceed 40 positions of fully qualified pilot and mission specialists astronauts.

(c)–(e) [Reserved]

(f) Positions of Program Coordinator/Counselor at grades GS–7/9/11 for part-time and summer employment in connection with the High School Students Summer Research Apprenticeship Program.

Section 213.3152 U.S. Government Printing Office

(a) Not to exceed three positions of Research Associate at grades GS–15 and below, involved in the study and analysis of complex problems relating to the reduction of the Government's printing costs and to provision of more efficient service to customer agencies and the public. Appointments under this authority may not exceed 1 year, but may be extended for not to exceed one additional year.

(b) Positions in the printing trades when filled by students majoring in printing technology employed under a cooperative education agreement with the University of the District of Columbia.

Section 213.3154 Federal Home Loan Bank Board

(a) One Secretary, Federal Home Loan Bank Board.

(b) [Reserved]

(c) Positions in the Federal Savings and Loan Insurance Corporation concerned with the work of liquidating the assets of closed insured institutions or the liquidation of loans or the handling of contributions to insured institutions and the purchase of assets therefrom; and positions of the Federal Savings and Loan Insurance Corporation the work of which is concerned with paying the depositors of closed insured institutions. Appointments under this authority may not exceed 3 years.

Section 213.3156 Commission on Civil Rights

(a) Twenty-five positions at grade GS–11 and above of employees who collect, study, and appraise civil rights information to carry out the national clearinghouse responsibilities of the Commission under Pub. L. 88–352, as amended. No new appointments may be made under this authority after March 31, 1976.

Section 213.3174 Smithsonian Institution

(a) Not to exceed 25 positions at grades GS–11 and below which support planning and production of the Annual American Folklife Festival. Employment under this authority may not exceed 6 months in connnection with any one Festival.

(b) All positions located in Panama which are part of or support the Smithsonian Tropical Research Institute.

Section 213.3175 Woodrow Wilson International Center for Scholars

(a) One East Asian Studies Program Administrator, one International Security Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, one West European Program Administrator, and one Social Science Program Administrator.

Section 213.3182 National Foundation on the Arts and the Humanities

(a) *National Endowment for the Arts.* (1) Until September 30, 1990, one position of Assistant Director, Artists-in-Education Programs, Office for Partnership, GS–301–14.

(2) Until September 30, 1990, one position of Assistant Director for State Programs.

(3) Until September 30, 1990, one position of Director of Literature Programs.

(4) Until September 30, 1990, one position of Assistant Director of Theatre Programs.

(5) Until September 30, 1990, one position of Director of Folk Arts Programs.

(6) Until September 30, 1990, one position of Director, Opera/Musical Theatre Programs.

(7) Until September 30, 1990, one position of Assistant Director of Opera/Musical Threatre Programs.

(8) Until September 30, 1990, one position of Assistant Director of Literature Programs.

(9) Until September 30, 1990, one position of Director of Locals Test Programs, Office of the Deputy to the Chairman for Public Partnership.

(10) Until September 30, 1990, one position of Deputy Chairman for Public Partnership.

(11) Until September 30, 1990, four Project Evaluators.

(12) Until September 30, 1990, one position of Director of Museum Programs.

(13) Until September 30, 1990, one position of Assistant Director of Folk Arts, Office of the Deputy Chairman for Programs.

(14) Until September 30, 1990, one position of Assistant Director of Music Programs.

(15) Until September 30, 1990, one position of Director of Expansion Arts Programs.

(16) Until September 30, 1990, one position of Director of Media Arts Programs.

(17) Until September 30, 1990, one position of Director, Challenge and Advancement Grant Program.

(18) Until September 30, 1990, one position of Assistant Director, Challenge and Advancement Grant Programs.

(19) [Reserved]

(20) Until September 30, 1990, one position of Director of Inter Arts Program.

(21) Until September 30, 1990, one position of Assistant Director of Expansion of Arts Programs.

(22) Until September 30, 1990, one position of Assistant Director of Media Arts Programs.

(23) Until September 30, 1990, one position of Assistant Director of Design Arts Program.

(24) Until September 30, 1990, one position of Assistant Director of Dance Programs.

(25) Until September 30, 1990, one position of Assistant Director of Visual Arts Programs.

(26) Until September 30, 1990, one position of Assistant Director of Museum Programs.

(27)–(29) [Reserved]

(30) Until September 30, 1990, one position of Director of Education Programs.

(31) Until September 30, 1990, one position of Director of Music Programs.

(32) Until September 30, 1990, one position of Director of Theater Programs.

(33) Until September 30, 1990, one position of Director of Dance Programs.

(34) Until September 30, 1990, one position of Director of Visual Arts Programs.

(35) Until September 30, 1990, one position of Director of Design Arts Program.

(36) [Reserved]

(37) Until September 30, 1990, one Director for State Programs.

(38) Until September 30, 1990, one Director for Artists-in-Education Programs.

Section 213.3184 Department of Housing and Urban Development

(a) One position of Special Advisor to the Regional Administrator, GS–301–14, in San Francisco. Employment under this authority may not exceed 2 years.

Section 213.3191 Office of Personnel Management

(a) Not to exceed 500 positions in Federal Job Information Centers, to be filled under the Community Outreach Information Network program. Appointments under this authority may not exceed 90 days, and no one may receive more than one appointment under the authority.

(b)–(c) [Reserved]

(d) Part-time and intermittent positions of test examiners at grades GS–6 and below.

Section 213.3194 Department of Transportation

(a) *U.S. Coast Guard.* (1) Not to exceed 25 positions of Marine Traffic Controller (Pilot), at grade GS–11 and below for temporary, intermittent or seasonal employment in the State of Louisiana. Temporary appointments may not exceed 1 year, and temporary appointees may be reappointed under this authority only after a break in service of at least 6 months. Intermittent or seasonal employment may not exceed 180 working days in a service year, except that this limitation for an individual employee may be extended to 220 days when necessitated by emergencies caused by unusual flooding conditions or high river stages.

(2) Lamplighters.

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Conn.

(b) [Reserved]

(c) *Federal Highway Administation.* (1) Temporary, intermittent, or seasonal employment in the field service of the Federal Highway Administration at grades not higher than GS–5 for subprofessional engineering aide work on the highway surveys and construction projects, for not to exceed 180 working days a year, when in the opinion of OPM, appointment through competitive examination is impracticable.

(d) [Reserved]

(e) *Maritime Administation.* (1)–(2) [Reserved]

(3) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.

(4)–(5) [Reserved]

(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers: including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.

(7) U.S. Merchant Marine Academy positions of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program Assistant.

Section 213.3195 Federal Emergency Management Agency

(a) Field positions at grades GS–15 and below, or equivalent, which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Pub. L. 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly necessitated by the emergency response effort.

(b) Not to exceed 30 positions at grades GS–15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies

not covered by the Disaster Relief Act of 1974, Pub. L. 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority.

(c) Not to exceed 350 professional and technical positions at grades GS–5 through GS–15, or equivalent, in Mobile Emergency Response Support Detachments (MERS).

Section 213.3199 Temporary organizations

(a) Positions at GS–15 and below on the staffs of temporary boards and commissions which are established by law or Executive order for specified periods not to exceed 4 years to perform specific projects. A temporary board or commission originally established for less than 4 years and subsequently extended may continue to fill its staff positions under this authority as long as its total life, including extension(s) does not exceed 4 years. No board or commission may use this authority for more than 4 years to make appointments and position changes unless prior approval of the Office is obtained.

(b) Positions at GS–15 and below on the staffs of temporary organizations established within continuing agencies when all of the following conditions are met: (1) The temporary organization is established by an authority outside the agency, usually by law or Executive order; (2) the temporary organization is established for an initial period of 4 years or less and, if subsequently extended, its total life including extension(s) will not exceed 4 years; (3) the work to be performed by the temporary organization is outside the agency's continuing responsibilities; and (4) the positions filled under this authority are those for which other staffing resources or authorities are not available within the agency. An agency may use this authority to fill positions in organizations which do not meet all of the above conditions or to make appointments and position changes in a single organization during a period longer than 4 years only with prior approval of the Office.

Schedule B

Section 213.3202 Entire executive civil service

The provisions established under paragraphs (a) through (i) are authorized under provisions of E.O. 12015 and support career-related work-study programs. OPM's requirements relating to appointment under paragraphs (a) through (i) will be published in the Federal Personnel Manual. Further, appointments under paragraphs (a) through (i) are subject to all the requirements and conditions governing career or career-conditional appointments, including investigation by OPM to establish an appointee's qualifications and suitability. Appointments of participants may be converted to career or career-conditional at any time within a 120-day period after satisfactory completion of a career-related work-study program.

(a) Student positions established in connection with a bachelor's degree cooperative education program which provide for a formally arranged schedule of attendance at an institution of higher learning combined with at least 26 weeks, or 1040 hours, of study-related work in a Federal agency. The periods of work and study together must satisfy requirements for a bachelor's degree and must provide the experience necessary for a career or career-conditional appointment to administrative, professional or technical positions in the Federal career service upon the student's graduation.

(b) Student positions established in support of cooperative education programs for graduate students which provide for scheduled periods of attendance at a graduate school combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of work and study must satisfy requirements for the graduate degree and provide experience necessary for career or career-conditional appointment in the Federal career service upon the student's graduation.

(c) Student positions established in connection with associate degree cooperative education programs which provide for a formally arranged schedule of attendance at a recognized 2-year educational institution combined with at least 26 weeks or 1040 hours of study-related work in a Federal agency. The periods of work and study together must satisfy requirements for graduation and must provide the experience necessary for career or career-conditional appointment in selected occupations in the Federal career service upon the student's graduation.

(d) Student positions established in connection with the Harry S. Truman Foundation Scholarship Program under the provisions of Public Law 93–624 to permit scheduled periods of attendance at institutions of higher education combined with at least 26 weeks or 1040 hours of study-related work in a Federal agency. The periods of work and study must satisfy requirements of programs established by agreement between the Harry S. Truman Scholarship Foundation and the employing agency and provide the experience necessary for career or career-conditional appointment in the Federal career service upon the student's graduation.

(e) Student positions established in support of the Cooperative Education (Vocational Education) Programs for high school students which provide for scheduled periods of classroom study combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of study and work must satisfy requirements for a high school diploma and provide experience necessary for career or career-conditional appointment into office and administrative support, technician, assistant, helper, and preapprentice occupations in the Federal career service upon the student's graduation.

(f) Positions under the Federal Junior Fellowship Program, a career-related work-study program covered under the provisions of Executive Order 12015.

(g) Student positions established in support of the Cooperative Education Program in which the student is enrolled in an undergraduate certificate or diploma program in an accredited college, technical, trade, vocational, or business school which provides for scheduled periods of classroom study combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of study and work must satisfy requirements for an undergraduate certificate or diploma and provide experience necessary for career or career-conditional appointment into office and administrative support, technician, assistant, helper, and preapprentice occupations in the Federal career service upon the student's graduation.

(h)–(i) [Reserved]

(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment not exceeding three years for one individual.

(k) Positions at grades GS–15 and below when filled by individuals who (1) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of

substantially disrupted employment because of the disability; and (2) are certified to a specific position by a State vocational rehabilitation counselor or a Veterans Administration counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they will be appointed, and that any residual disability is not job related. Employment of any individual under this authority may not exceed 2 years following each significant period of mental illness.

(l) Professional and administrative career (PAC) positions at the GS–5 or GS–7 grade level which are subject to the decree entered on November 19, 1981, by the United States District Court for the District of Columbia in the civil action known as *Luevano* v. *Devine* and numbered as No. 79–271, which were not removed from coverage of the Professional and Administrative Career Examination (PACE) prior to the effective date of the consent decree, and which are to be filled, under the conditions described below, by appointment of individuals other than those who at the time of such appointment already have competitive status in the Federal civil service. When a Federal agency needs to fill a PAC position that was not removed from PACE coverage before the consent decree became effective, and the agency has made maximum use of priority placement sources and has given appropriate consideration to available and qualified status applicants, then OPM may authorize the agency to make a new appointment under this paragraph. Such appointments shall be authorized and made pursuant to such Schedule B requirements for PAC positions as shall be prescribed in the Federal Personnel Manual. Terms of use of this appointment authority shall be established by an appointment authority agreement to be executed for each position excepted from the competitive service pursuant to this authority. The appointment authority agreement will remain in effect with respect to particular GS–5 and GS–7 PAC positions only so long as there is no competitive examination available to fill those positions. Establishment of a register under an alternative competitive examination for any PAC position(s) at grades GS–5 and GS–7 will immediately terminate all agreements permitting new Schedule B appointments to such position(s) under this authority. Individuals appointed before termination of the agreements, however, may continue to serve under those appointments at grades GS–5 and GS–7 until they are appointed to a competitive position in accordance with applicable civil service laws, rules, and regulations. An incumbent of a Schedule B PAC position may be converted to a career or career-conditional appointment under the provisions of Executive Order 12596, subject to the conditions set out in § 315.710 of this chapter.

(m) Positions when filled under any of the following conditions:

(1) Appointment at grades GS–15 and above, or equivalent, in the same or a different agency without a break in service from a career appointment in the Senior Executive Service (SES) of an individual who:

(i) Has completed the SES probationary period;

(ii) Has been removed from the SES because of less than fully successfully executive performance or a reduction in force; and

(iii) Is entitled to be placed in another civil service position under 5 U.S.C. 3594(b).

(2) Appointment in a different agency without a break in service of an individual originally appointed under paragraph (m)(1).

(3) Reassignment, promotion, or demotion within the same agency of an individual appointed under this authority.

Section 213.3203 Executive Office of the President

(a) [Reserved]

(b) *Office of the Special Representative for Trade Negotiations.* (1) Seventeen positions of economist at grades GS–12 through GS–15.

Section 213.3204 Department of State

(a)–(c) (Reserved)

(d) Fourteen positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) Four Physical Science Administration Officer positions at GS–11 and GS–12 under the Bureau of Oceans and International Environmental and Scientific Affairs' Science, Engineering and Diplomacy Fellowship Program. Employment under this authority is not to exceed 1 year.

(f) Scientific, professional, and technical positions at grades GS–12 to GS15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

Section 213.3205 Department of the Treasury

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b) Not to exceed 10 positions engaged in functions mandated by Public Law 99–190, the duties of which require expertise and knowledge gained as a present or former employee of the Synthetic Fuels Corporation, as an employee of an organization carrying out projects or contracts for the Corporation, or as an employee of a Government agency involved in the Synthetic Fuels Program. Appointments under this authority may not exceed 4 years.

(c) Not to exceed two positions of Accountant (Tax Specialist) at grades GS–13 and above to serve as specialists on the accounting analysis and treatment of corporation taxes. Employments under this paragraph shall not exceed a period of 18 months in any individual case.

(d) Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective service are prescribed by law, when filled in accordance with special appointment procedures approved by OPM. Service under this authority may not exceed (1) a total of 4 years; or (2) 120 days following completion of the service required for conservation under Executive Order 11203, whichever occurs first.

Section 213.3206 Department of Defense

(a) *Office of the Secretary.* (1) [Reserved]

(2) Professional positions at GS–11 through GS–15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) [Reserved]

(5) For Net Assessment Analysts.

(b) *Interdepartmental activities.* (1) Five positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(c) *National Defense University.* (1) Sixty-one positions of professor, GS–13/15, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in 1-, 2-, or 3-year increments indefinitely thereafter.

(d) *General.* (1) One position of Law Enforcement Liaison Officer (Drugs), GS–301–15, U.S. European Command.

(e) *Office of the Inspector General.* (1) Positions of Criminal Investigator, GS–1811–5/15.

(f) *Department of Defense Polygraph Institute, Fort McClellan, Alabama.* (1) One Director, GM–15.

Section 213.3207 Department of the Army

(a) *U.S. Army Command and General Staff College.* (1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

(b) *Brooke Army Medical Center, Fort Sam Houston, Texas.* (1) Two Medical Officer (Surgery) positions, GS–12, in the Clinical Division, U.S. Army Institute of Surgical Research, whose incumbents are enrolled in medical school surgical residency progams. Employment under this authority shall not exceed 12 months.

Section 213.3208 Department of the Navy

(a) *Naval Underwater Systems Center, New London, Connecticut.* (1) One position of oceanographer, grade GS–14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

(c) One Director and four Research Psychologists at the professor or GS–15 level in the Defense Personnel Security Research and Education Center.

Section 213.3209 Department of the Air Force

(a) Not to exceed eight interdisciplinary positions for the Air Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1, 2, or 3 years indefinitely thereafter.

(b) [Reserved]

(c) One Director of Instruction and 14 civilian Instructors at the Defense Institute of Security Assistance Management, Wright-Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration.

(c) Eighteen positions of professor, associate professor, or professional academic staff at the Air University, Maxwell Air Force Base, Alabama, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in 1-, 2-, or 3-year increments indefinitely thereafter.

Section 213.3210 Department of Justice

(a) Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS–5 through 11. Service under the authority may not exceed 4 years. Appointments made under this authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed upon between the Department and OPM.

(b) Positions of Port Receptionist and Supervisory Port Receptionist, Immigration and Naturalization Service.

(c) Not to exceed 400 positions at grades GS–5 through 15 assigned to regional task forces established to conduct special investigations to combat drug trafficking and organized crime.

(d) Until September 30, 1987, positions, other than those providing routine clerical and admininstrative support, on the staff of the offices of United States Trustees. Terms of service under this authority shall be established in accordance with provisions of the Bankruptcy Reform Act of 1978 and subsequent applicable legislation.

Section 213.3213 Department of Agriculture

(a) *Office of International Cooperation and Development.* (1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 2 years on a single project for any individual. No more than 20 new appointments may be made under this authority in any 12-month period.

(b) *General.* (1) Temporary positions of professional Research Scientists, GS–15 or below, in the Agricultural Research Service and the Forest Service, when such positions are established to support the Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate Administrator. Appointments may be made for initial periods not to exceed 2 years and may be extended for up to two additional years.

Section 213.3214 Department of Commerce

(a) *Bureau of the Census.* (1) [Reserved]

(2) Not to exceed 50 Community Services Specialist positions at the equivalent of GS–5 through GS–12.

(3) Not to exceed 300 Community Awareness Specialist positions at the equivalent of GS–7 through GS–12. Employment under this authority may not exceed December 31, 1992.

(b) [Reserved]

(c) *Minority Business Development Agency.* (1) One position of minority business opportunity specialist at grades GS–9 through GS–15. This authority may not be used for new appointments after December 31, 1977.

(d) *National Telecommunications and Information Administration.* (1) Not to exceed 10 positions of Telecommunications Policy Analysts, grades GS–11 through 15. Employment under this authority may not exceed 2 years.

Section 213.3215 Department of Labor

(a) Positions of Chairman and Member, Wage Appeals Board.

(b) *Office of the Inspector General.* (1) Not to exceed 110 positions of Criminal Investigator (Special Agent), GS–1811–5/15, in the Office of Labor Racketeering.

Section 213.3216 Department of Health and Human Services

(a) *Public Health Service.* (1) Not to exceed 68 positions at GS–11 and below on the Health and Nutrition Examination Survey teams of the National Center for Health Statistics.

(2) One Public Health Education Specialist, GS–1725–15, in the Center for Disease Control, Atlanta, Georgia.

(b)–(c) [Reserved]

(d) *National Library of Medicine.* (1) Ten positions of Librarian, GS–7, the incumbents of which will be trainees in the Library Associate Training Program in Medical Librarianship and Biomedical Communications. Employment under this authority is not to exceed 1 year.

Section 213.3217 Department of Education

(a) Seventy-five positions, not in excess of GS–13, of a professional or analytical nature when filled by persons, other than college faculty

members or candidates working toward college degrees, who are participating in midcareer development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS–7 through GS–11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Office of Personnel Management, be extended for an additional period of 1 year.

Section 213.3227 Department of Veterans Affairs

(a) Not to exceed 800 principal investigatory, scientific, professional and technical positions at grades GS–11 and above in the medical research program. Employment under this authority may not exceed 7 years for any individual.

Section 213.3228 U.S. Information Agency

(a) *Voice of America:* (1) Not to exceed 150 positions at grades GS–15 and below in the Cuba Service. Appointments may not be made under this authority to administrative, clerical, and technical support positions.

(b) Positions of English Language Radio Broadcast Intern, GS–1001–5/7/9. Employment is not to exceed 2 years for any intern.

Section 213.3231 Department of Energy

(a) Twenty Exceptions and Appeals Analyst positions at grades GS–7 through 11, when filled by persons selected under DOE's fellowship program in its Office of Hearings and Appeals, Washington, DC. Appointments under this authority shall not exceed 3 years.

Section 213.3234 Federal Trade Commission

(a) Positions filled under the Economic Fellows Program. No more than five new appointments may be made under this authority in any fiscal year. Service of an individual Fellow may not exceed 4 years.

Section 213.3236 U.S. Soldiers' and Airmen's Home

(a) Three GS–11 Medical Officer positions under a fellowship program on geriatrics.

(b) Director, Health Care Services; Director, Member Services; Director, Logistics; and Director, Plans and Programs.

Section 213.3237 General Services Administration.

(a) One position of Deputy Director of Network Services.

Section 213.3242 Export-Import Bank of the U.S.

(a) One position of Food Service Worker WG–7804–3/4/5, in the Office of the President and Chairman.

Section 213.3248 National Aeronautics and Space Administration

(a) Not to exceed 40 positions of Command Pilot, Pilot and Mission Specialist candidates at grades GS–7 through 15 in the Space Shuttle Astronaut program. Employment under this authority may not exceed 3 years.

Section 213.3254 Federal Home Loan Bank Board

(a) Positions of Accounting Policy Analyst, GS–13/14/15, in the Office of Examinations and Supervision filed in connection with a fellowship program. Appointments under this authority may not exceed 2 years. No more than three new appointments may be made under this authority during any consecutive 12-month perid.

(b) Up to 569 positions at GS–15 and below in the Federal Home Loan Bank Board engaged in exploring methods to promote stability in the thrift industry, restore the industry to profitability, and protect individual savers. No additional appointments may be made under this authority after September 30, 1990.

Section 213.3257 National Credit Union Administration

(a) *Central Liquidity Facility.* (1) All managerial and supervisory position at pay levels greater than the equivalent of GS–13.

Section 213.3259 ACTION

(a) *Office of Domestic and Anti-Poverty Operations.* (1) Not to exceed 25 positions of Program Specialist at grades GS–9 thrugh GS–15.

(b) *Office of Policy and Research.* (1) Three positions of Program Specialist at grades GS–7 through GS–15.

Section 213.3264 U.S. Arms Control and Disarmament Agency

(a) Twenty-five scientific, professional, and technical positions at grades GS–12 through GS–15 when filled by persons having special qualifications in the fields of foreign policy, foreign affairs, arms control, and related fields. Total employment under this authority may not exceed 4 years.

Section 213.3272 Administrative Office of the U.S. Courts

(a) Not to exceed 18 positions of Federal Probation System Administrator in the Division of Probation, when filled by Federal Probation Officers and/or Pretrial Services Officers on active service in the U.S. Courts.

(b) [Reserved]

(c) Six positions of Clerks Liaison Officer in the Division of Clerks of Court.

Section 213.3274 Smithsonian Institution

(a) *National Zoological Park.* (1) Four positions of Veterinary Intern, GS–8/9/11. Employment under this authority is not to exceed 36 months.

(b) *Freer Gallery of Art.* (1) Not to exceed four positions of Oriental Art Restoration Specialist at grades GS–9 through GS–15.

Section 213.3276 Appalachian Regional Commission

(a) Two Program Coordinators.

Section 213.3282 National Foundation on the Arts and the Humanities

(a) [Reserved]

(b) *National Endowment for the Humanities.* (1) Until September 30, 1990, Humanities Administrator, Reference Materials Programs, Division of Research Programs.

(2) Until September 30, 1990, Humanities Administrator (Assistant Director), Humanities Projects in Higher Education Program, Division of Education Programs.

(3) Until September 30, 1990, Deputy Director, Division of Education Programs.

(4) Until September 30, 1990, Director, Division of Research Grants.

(5) Until September 30, 1990, one position of Director, GS–1701–15, one position of Deputy Director, GS–1701–14, and seven positions of Humanities Administrator, GS–1701–13, Division of State Programs.

(6) Until September 30, 1990, one Director and one Deputy Director, Division of Fellowships and Seminars.

(7) Until September 30, 1990, one Humanities Administrator, Fellowships for College Teachers, Division of Fellowships.

(8) Until September 30, 1990, seven positions of Humanities Administrator, Media Program, Division of General Programs.

(9) Until September 30, 1990, one position of Humanities Administrator, Humanities Projects in Higher Education Program, Division of Education Programs.

(10) Until September 30, 1990, one position of Assistant Director for the Elementary and Secondary Education Program, Division of Education Programs.

(11) Until September 30, 1990, one position of Assistant Director for the Museums and Historical Organizations Program, Division of General Programs.

(12) Until September 30, 1990, four positions of Humanities Administrator, Museums and Historical Organizations Program, Division of General Programs.

(13) Until September 30, 1990, four positions of Humanities Administrator, Elementary and Secondary Education Program, Division of Education Programs.

(14) Until September 30, 1990, Director of General Programs.

(15) Until September 30, 1990, one Assistant to the Director, General Programs.

(16) Until September 30, 1990, one Humanities Administrator, Younger Scholars Programs, Division of General Programs.

(17) Until September 30, 1990, one Humanities Administrator, Public Humanities Projects, Division of General Programs.

(18) Until September 30, 1990, one position of Director, Division of Education Programs.

(19) Until September 30, 1990, one Humanities Administrator (Assistant Director), Texts Programs, Division of Research Programs.

(20) Until September 30, 1990, one Humanities Administrator,Centers for Advanced Study, Division of Research Programs.

(21) Until September 30, 1990, one Challenge Grants Officer.

(22) Until September 30, 1990, one Assistant Director, Media Program, Division of General Programs.

(23) Until September 30, 1990, one position of Humanities Administrator, Publications Program, Division of Research Grants.

(24) Until September 30, 1990, one Deputy Director, Division of Research Grants.

(25) Until September 30, 1990, one Humanities Administrator, Summer Seminars for College Teachers, Division of Fellowships and Seminars.

(26) Until September 30, 1990, two positions of Humanities Administrator, Humanities Libraries Projects, Division of General Programs.

(27) Until September 30, 1990, one position of Humanities Projects Assessment Officer and one position of Humanities Administrator, Office of the Assistant Chairman for Programs.

(28) Until September 30, 1990, one position of Humanities Administrator, Public Humanities Projects, Division of General Programs, GS–14.

(29) Until September 30, 1990, one position of Humanities Administrator, GS–1701–14, in the Interpretive Research Programs, Division of Research Programs.

(30) Until September 30, 1990, one Humanities Administrator, Office of Challenge Grants.

(31)–(33) [Reserved]

(34) Until September 30, 1990, one Humanities Administrator, GS–1701–12, Humanities Projects in Higher Education Program, Division of Education Programs.

(35) Until September 30, 1990, one Humanities Administrator, Humanities Projects in Higher Education Program, Division of Education Programs.

(36) Until September 30, 1990, three Humanities Administrators, Humanities Projects in Higher Education Program, Division of Education Programs.

(37) Until September 30, 1990, two Humanities Administrators, Summer Seminars for Secondary School Teachers, Division of Fellowships and Seminars.

(38) Until September 30, 1990, one Humanities Administrator, Summer Stipends, Division of Fellowships and Seminars.

(39) Until September 30, 1990, one Humanities Administrator, Travel to Collections, Division of Fellowships and Seminars.

(40) Until September 30, 1990, one Humanities Administrator, Translation Program, Reference Works Program, Division of Research Programs.

(41) Until September 30, 1990, one Humanities Administrator, Editions Program, Reference Works Program, Division of Research Programs.

(42) [Reserved]

(43) Until September 30, 1990, one Humanities Administrator, Foundations of American Society Program, Division of Fellowships and Seminars.

(44) Until September 30, 1990, one Humanities Administrator, Humanities Projects in Museums and Historical Organizations, Division of General Programs.

(45) Until September 30, 1990, four Humanities Administrators, Office of Preservation.

(46) Until September 30, 1990, one Director, Office of Preservation.

(47) Until September 30, 1990, one Humanities Administrator (Program Officer), Regrant Programs, Division of Research Programs.

(48) Until September 30, 1990, one Director, Office of Planning and Budget.

(49) Until September 30, 1990, one Humanities Administrator, Access Program, Reference Materials Program, Division of Research Programs.

(50) Until September 30, 1990, one Humanities Administrator, Access Program, Reference Materials Program, Division of Research Programs.

(51) Until September 30, 1990, one Humanities Administrator, Project Research, interpretive Research Program, Division of Research Programs.

(52) Until September 30, 1990, one Humanities Administrator, Humanities, Science, and Technology Program, Interpretive Research Program, Division of Research Programs.

Section 213.3285 Pennsylvania Avenue Development Corporation

(a) One position of Civil Engineer (Construction Manager).

Section 213.3291 Office of Personnel Management

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS–13 and GS–14. Appointments may be made for any period up to 3 years and may be extended without prior approval for any individual. Not more than half of the authorized faculty positions at any one Executive Seminar Center may be filled under this authority.

(b) Twelve positions of faculty members at grades GS–13 through 15, at the Federal Executive Institute. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1-, 2-, or 3-year increments indefinitely thereafter.

Section 213.3294 Department of Transportation

(a) *Federal Railroad Administration.* (1) Regional Director of Railroad Safety, Fort Worth Texas.

Schedule C

Section 213.3303 Executive Office of the President

Council of Economic Advisers

CEA 4 Secretary to the Chairman.
CEA 5 Secretary to the Council Member.

Council on Environmental Quality

CEQ 2 Executive Assistant to a Council Member.
CEQ 3 Confidential Assistant to the Chairman.
CEQ 4 Confidential Assistant to the Chairman.

Office of Management and Budget

OMB 8 Special Assistant to the Deputy Director.
OMB 10 Secretary to the Associate Director for Natural Resources, Energy, and Science.
OMB 11 Secretary to the Associate Director, National Security and International Affairs.
OMB 50 Legislative Assistant to the Assistant Director for Legislative Affairs.
OMB 59 Public Affairs Assistant to the Assistant Director for External Affairs.
OMB 66 Secretary to the Associate Director for Economic Policy.
OMB 68 Secretary to the Director.
OMB 71 Confidential Assistant to the General Counsel.
OMB 74 Special Assistant to the Associate Director for Congressional Affairs.
OMB 75 Deputy Director of External Affairs.

Office of Science and Technology Policy

OSTP 1 Public Information Assistant to the Director.
OSTP 8 Confidential Secretary to the Director.

President's Commission on Executive Exchange

PCEE 1 Confidential Assistant to the Executive Director.
PCEE 2 Special Assistant to the Executive Director.
PCEE 5 Public Affairs Specialist to the Executive Director.
PCEE 6 Staff Assistant (Typing) to the Executive Director.
PCEE 7 Staff Assistant (Typing) to the Executive Director.
PCEE 8 Secretary (Typing) to the Executive Director.

Office of the United States Trade Representative

USTR 7 Public Affairs Specialist to the Ambassador/United States Trade Representative.
USTR 14 Confidential Secretary to the Ambassador/United States Trade Representative.
USTR 20 Deputy Assistant United States Trade Representative.
USTR 25 Confidential Assistant to the General Counsel.
USTR 28 Congressional Affairs Officer to the Assistant United States Trade Representative for Congressional Affairs.
USTR 29 Director, Office of Private Sector Liaison, to the Assistant United States Trade Representative for Public and Intergovernmental Affairs.
USTR 30 Confidential Assistant to the Deputy United States Trade Representative—Geneva.

Section 213.3304 Department of State

ST 59 Secretary (Steno) to the Under Secretary for Economic Affairs.
ST 67 Secretary (Steno) to the Director, Bureau of Politico-Military Affairs.
ST 79 Special Assistant to the United States Representative to the United Nations.
ST 83 Foreign Affairs Officer to the Chief of Protocol.
ST 86 Foreign Affairs Officer to the Assistant Secretary, Bureau of International Organization Affairs.
ST 100 Secretary (Steno) to the United States Representative to the United Nations.
ST 106 Protocol Officer to the Chief of Protocol.
ST 107 Secretary (Typing) to the Assistant Secretary, Bureau of Economic and Business Affairs.
ST 112 Member, Policy Planning Staff, to the Director, Policy Planning Staff.
ST 116 Special Assistant to the Counselor.
ST 117 Confidential Clerk to the Secretary.
ST 122 Staff Assistant to the Under Secretary for Management.
ST 132 Secretary (Typing) to the Assistant Secretary, Bureau of International Organization Affairs.
ST 134 Secretary (Steno) to the Deputy Secretary.
ST 149 Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs.
ST 155 Protocol Officer (Visits) to the Chief of Protocol.
ST 161 Secretary (Steno) to the Under Secretary for Management.
ST 162 Secretary (Steno) to the Assistant Secretary, Bureau of Consular Affairs.
ST 167 Protocol Officer to the Chief of Protocol.
ST 168 Staff Assistant to the Legal Adviser.
ST 170 Special Assistant to the Deputy Secretary.
ST 172 Staff Assistant to the Under Secretary for Management.
ST 173 Special Assistant to the Under Secretary for Management.
ST 174 Public Affairs Specialist to the Deputy Assistant Secretary for Public Affairs.
ST 175 Legislative Management Officer to the Principal Deputy Assistant Secretary for Congressional Relations.
ST 176 Staff Assistant to the Under Secretary for Management.
ST 177 Special Assistant to the Chairman, International Joint Commission.
ST 178 Secretary (Steno) to the Assistant Secretary for International Narcotics Matters.
ST 179 Congressional Relations Officer to the Assistant Secretary, Office of Congressional Relations.
ST 180 Director of Programs to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs.
ST 181 Director/Coordinator of Intergovernmental Affairs to the Assistant Secretary, Bureau of Public Affairs.
ST 182 Special Assistant to the Assistant Secretary, Bureau of Consular Affairs.
ST 183 Public Affairs Advisor to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs.
ST 188 Staff Assistant to the Assistant Secretary for International Narcotics Matters.
ST 190 Special Assistant to the Ambassador-at-Large and Special Advisor to the Secretary.
ST 191 Secretary (Steno) to the Executive Secretary/Special Assistant to the Secretary.
ST 192 Staff Assistant to the Deputy Secretary.
ST 195 Staff Assistant to the Assistant Secretary for Congressional Relations.
ST 202 Special Assistant to the Ambassdor-at-Large.
ST 203 Staff Assistant to the Counselor.
ST 208 Foreign Affairs Officer to the Assistant Secretary, Bureau of International Organization Affairs.
ST 209 Protocol Officer to the Assistant Chief of Protocol.
ST 213 Staff Assistant to the Assistant Secretary for Human Rights and Humanitarian Affairs.
ST 217 Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs.
ST 224 Special Assistant to the Assistant Secretary, Bureau of East Asian and Pacific Affairs.
ST 226 Special Assistant to the Assistant Secretary, Bureau of Near Eastern and South Asian Affairs.
ST 229 Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs.
ST 243 Program Specialist to the Chief of Protocol.
ST 244 Staff Assistant to the Assistant Secretary, Bureau of Inter-American Affairs.

ST 246 Secretary (Steno) to the Ambassador-at-Large for Cultural Affairs.
ST 248 Special Assistant to the Deputy Assistant Secretary for International Social and Humanitarian Affairs, Bureau of International Organization Affairs.
ST 250 Public Information Officer to the Deputy Assistant Secretary for International Social and Humanitarian Affairs, Bureau of International Organization Affairs.
ST 251 Special Assistant to the Deputy Assistant Secretary for Policy and Counter Terrorism, Bureau of Diplomatic Security.
ST 253 Secretary (Steno) to the Ambassador-at-Large for Counter Terrorism.
ST 256 Policy and Press Advisor to the U.S. Permanent Representative to the U.S. Mission to the Organization of American States.
ST 258 Secretary (Steno) to the Inspector General.
ST 260 Special Assistant to the Under Secretary for Security Assistance, Science, and Technology.
ST 261 Special Assistant to the Under Secretary for Security Assistance, Science, and Technology.
ST 262 Associate Director to the Deputy Assistant Secretary, Office of Equal Employment Opportunity and Civil Rights.
ST 267 Secretary to the Assistant Secretary, Bureau of Public Affairs.
ST 268 Staff Assistant to the Secretary.
ST 269 Supervisory Protocol Officer to the Chief of Protocol.
ST 270 Staff Assistant to the Director, Policy Planning Staff.
ST 274 Special Assistant to the Head of the U.S. Delegation to Geneva for Arms Reduction Negotiations.

Section 213.3305 Department of the Treasury

TREA 27 Executive Assistant to the Secretary.
TREA 28 Special Assistant to the Director of the Mint.
TREA 44 Legislative Manager to the Assistant Secretary for Legislative Affairs.
TREA 56 Confidential Assistant to the Assistant Secretary for Legislative Affairs.
TREA 79 Legislative Assistant to the Assistant Secretary for Legislative Affairs.
TREA 92 Director, Consumer Affairs, to the Assistant Secretary for Public Affairs and Public Liaison.
TREA 93 Special Assistant to the Deputy Assistant Secretary for Public Affairs.
TREA 94 Executive Assistant to the Commissioner of Customs.
TREA 113 Executive Assistant to the Special Assistant to the Commissioner of Customs.
TREA 115 Staff Assistant to the Deputy Assistant Secretary for Financial Systems.
TREA 120 Special Assistant to the Assistant Secretary for Policy, Planning and Communications.
TREA 122 Public Affairs Specialist to the Assistant Secretary for Policy, Planning and Communications.
TREA 126 Staff Assistant to the Director of the Mint.
TREA 128 Confidential Assistant to the Secretary.
TREA 139 Director of Scheduling to the Assistant Secretary for Public Affairs and Public Liaison.
TREA 144 Staff Assistant to the Assistant Secretary for Public Affairs and Public Liaison.
TREA 145 Travel Assistant to the Assistant Director for Travel and Special Event Services.
TREA 146 Legislative Aid to the Assistant Secretary for Legislative Affairs.
TREA 148 Director, Special Operations Division, to the Deputy Assistant Secretary for Administration.
TREA 150 Special Assistant to the Deputy Assistant Secretary for Developing Nations, Office of the Assistant Secretary for International Affairs.
TREA 153 Legislative Specialist to the Assistant Secretary for Legislative Affairs.
TREA 156 Special Assistant to the Assistant Secretary for Policy Development.
TREA 157 Congressional Liaison Officer to the Associate Commissioner of Customs for Congressional Affairs.
TREA 158 Confidential Assistant to the Assistant Secretary for Public Affairs and Public Liaison.
TREA 166 Travel Assistant to the Deputy Assistant Secretary for Administration.
TREA 170 Assistant Director for Travel and Special Event Services, to the Director, Special Operations Division.
TREA 171 Executive Assistant to the Deputy Secretary.
TREA 174 Senior Assistant to the Deputy Assistant Secretary for Law Enforcement.
TREA 177 Special Assistant to the Executive Director, U.S. Savings Bonds Division.
TREA 179 Legislative Manager to the Assistant Secretary for Legislative Affairs.
TREA 183 Staff Assistant to the Director of the Mint.
TREA 185 Legislative Manager to the Assistant Secretary for Legislative Affairs.
TREA 186 Public Affairs Specialist to the Treasurer of the United States.
TREA 188 Special Assistant (Policy Analysis) to the Secretary.
TREA 189 Special Assistant (Personnel) to the Secretary.
TREA 190 Special Assistant to the Assistant Secretary for Policy Development.
TREA 191 Special Assistant to the Deputy Assistant Secretary for Departmental Finance and Management.
TREA 192 Confidential Assistant to the Secretary.
TREA 193 Director, Office of Intergovernmental Affairs, to the Deputy Assistant Secretary (Public Liaison).
TREA 194 Confidential Assistant to the Assistant Secretary for Public Affairs and Public Liaison.
TREA 195 Review Officer to the Assistant Secretary for Policy Development.
TREA 196 Confidential Assistant to the Executive Secretary.
TREA 197 Staff Assistant to the Deputy Assistant Secretary for Departmental Finance and Management.
TREA 198 Executive Assistant to the Assistant Secretary for Management.
TREA 199 Executive Assistant to the Deputy Secretary.
TREA 200 Legislative Manager to the Assistant Secretary for Legislative Affairs.
TREA 201 Deputy Assistant Secretary for Legislative Affairs.
TREA 203 Staff Assistant to the Executive Secretary.
TREA 205 Director, Office of Corporate Finance, to the Deputy Assistant Secretary (Corporate Finance).
TREA 206 Staff Assistant to the Assistant Secretary (Enforcement).

Section 213.3306 Department of Defense

DOD 5 Private Secretary to the Deputy Secretary.
DOD 19 Personal and Confidential Assistant to the Director, Program Analysis and Evaluation.
DOD 22 Private and Confidential Secretary to the Assistant to the Secretary (Atomic Energy).
DOD 23 Confidential Assistant to the Military Assistant to the Secretary.
DOD 24 Chauffeur to the Secretary.
DOD 30 Secretary (Steno) to the Defense Advisor to U.S. NATO.

DOD 32 Special Assistant to the Assistant Secretary for Legislative Affairs.
DOD 33 Personal Secretary to the Deputy Secretary.
DOD 34 Private Secretary to the Principal Deputy Assistant Secretary for International Security Affairs.
DOD 35 Confidential Assistant to the Executive Secretary.
DOD 51 Private Secretary to the Assistant Secretary for Reserve Affairs.
DOD 54 Private Secretary to the Judge, U.S. Court of Military Appeals.
DOD 55 Private Secretary to the Chief Judge, U.S. Court of Military Appeals.
DOD 56 Private Secretary to the Judge, U.S. Court of Military Appeals.
DOD 62 Management Officer to the Chairman, President's Intelligence Oversight Board.
DOD 66 Private Secretary to the Physician to the President, White House Support Group.
DOD 89 Secretary (Typing) to the Principal Deputy Assistant Secretary (Public Affairs).
DOD 119 Private Secretary to the Principal Deputy Director, Program Analysis and Evaluation.
DOD 133 Public Affairs Specialist to the Assistant Secretary (Public Affairs).
DOD 171 Special Assistant to the Deputy Assistant Secretary (Reserve Affairs).
DOD 175 Personal and Confidential Assistant to the Judge, U.S. Court of Military Appeals.
DOD 178 Special Assistant to the Assistant Secretary for Legislative Affairs.
DOD 194 Private Secretary to the Assistant Secretary (International Security Policy).
DOD 205 Personal and Confidential Assistant to the Judge, U.S. Court of Military Appeals.
DOD 212 Private Secretary to the Deputy Under Secretary, Research and Engineering (International Programs and Technology).
DOD 217 Private Secretary to the Assistant Secretary (Command, Control, Communications, and Intelligence).
DOD 229 Special Assistant to the Assistant Secretary for International Security Policy.
DOD 236 Special Assistant to the Assistant Secretary for Public Affairs.
DOD 238 Special Assistant to the Assistant Secretary for Legislative Affairs.
DOD 250 Speechwriter to the Assistant Secretary for Public Affairs.
DOD 252 Confidential Assistant to the Secretary.
DOD 254 Special Assistant for Emergency Planning to the Assistant Secretary (Acquisition and Logistics).
DOD 256 Staff Assistant to the Assistant Secretary (Force Management and Personnel).
DOD 261 Special Assistant for European Security and Political Affairs to the Deputy Assistant Secretary (European and NATO Policy).
DOD 270 Private Secretary to the Director, Strategic Defense Initiative Organization.
DOD 274 Security Advisor to the Deputy Assistant to the President, White House Support Group.
DOD 275 Assistant for European Security Negotiations to the Deputy Assistant Secretary (Negotiations Policy).
DOD 279 Personal and Confidential Assistant to the Director, Operational Testing and Evaluation.
DOD 283 Special Assistant to the Assistant Secretary for Public Affairs.
DOD 284 Special Assistant to the Director, Office of Civilian Health and Medical Programs of the Uniformed Services.
DOD 287 Special Assistant for Strategic Defense and Space Arms Control Policy to the Deputy Assistant Secretary (Nuclear Forces and Arms Control Policy).
DOD 290 Public Affairs Specialist to the Principal Deputy Assistant Secretary for Public Affairs.
DOD 294 Staff Specialist to the Deputy Director, Strategic Defense Initiative Organization.
DOD 295 Special Assistant to the Assistant Secretary (Force Management and Personnel).
DOD 298 Confidential Assistant to the Under Secretary for Acquisition.
DOD 301 Personal and Confidential Assistant to the Assistant Secretary for Production and Logistics.
DOD 305 Special Assistant to the Director, Strategic Defense Initiative Organization.
DOD 308 Director, Low-Intensity Conflict, to the Deputy Assistant Secretary for Low-Intensity Conflict.
DOD 310 Staff Assistant to the Chairman, Joint Chiefs of Staff.
DOD 311 Staff Assistant to the Assistant to the Chairman, Joint Chiefs of Staff.
DOD 313 Staff Assistant to the Deputy Assistant Secretary (Family Support, Education, and Safety).
DOD 314 Personal and Confidential Assistant to the Under Secretary for Acquisition.
DOD 316 Law Clerk to the Judge, U.S. Court of Military Appeals.
DOD 319 Executive Assistant to the Special Assistant to the Assistant Secretary (Production and Logistics) for Stockpile Policy and Programs.
DOD 320 Executive Assistant to the Secretary.

Section 213.3307 Department of the Army

ARMY 1 Staff Assistant to the Secretary.
ARMY 2 Secretary (Steno) to the Under Secretary.
ARMY 3 Secretary (Steno) to the Assistant Secretary for Manpower and Reserve Affairs.
ARMY 6 Secretary (Typing) to the Assistant Secretary, Research, Development, and Acquisition.
ARMY 21 Secretary (Steno) to the General Counsel.
ARMY 38 Plans Coordinator to the Chief of Public Affairs.
ARMY 41 Assistant Director to the Chairman and Executive Director of the President's Foreign Intelligence Advisory Board.
ARMY 55 Secretary (Typing) to the Assistant Secretary, Financial Management.

Section 213.3308 Department of the Navy

NAV 2 Staff Assistant to the Secretary.
NAV 5 Private Secretary to the Assistant Secretary for Financial Management.
NAV 7 Private Secretary to the Assistant Secretary for Research and Engineering.
NAV 20 Special Assistant to the Military Assistant to the President.
NAV 23 Special Assistant to the Military Assistant to the President.
NAV 24 Private Secretary to the Assistant Secretary for Manpower and Reserve Affairs.
NAV 27 Special Assistant for Emergency Planning to the Military Assistant to the President.
NAV 30 Staff Assistant to the Deputy Under Secretary.
NAV 31 Staff Assistant to the Under Secretary.
NAV 38 Private Secretary to the Under Secretary.
NAV 40 Special Assistant to the Deputy Under Secretary (Policy).

Section 213.3309 Department of the Air Force

AF 1 Secretary (Steno) to the Secretary.
AF 3 Secretary (Steno) to the Assistant Secretary for Manpower, Reserve Affairs, and Installations.
AF 5 Secretary (Steno) to the Assistant Secretary for Research and Development Logistics.

AF 8 Secretary (Steno) to the General Counsel.
AF 20 Secretary (Steno) to the Military Assistant to the President.
AF 21 Special Assistant to the Military Assistant to the President.
AF 28 Special Assistant to the General Counsel.

Section 213.3310 Department of Justice

JUS 70 Special Assistant to the Assistant Attorney General, Civil Rights Division.
JUS 83 Confidential Assistant to the Attorney General.
JUS 85 Special Assistant to the Director, Community Relations Service.
JUS 100 Confidential Assistant to the Director of Congressional and Public Affairs, Immigration and Naturalization Service.
JUS 104 Special Assistant to the Director, Community Relations Service.
JUS 152 Secretary and Confidential Assistant to the U.S. Attorney.
JUS 158 Secretary (Stenographer) to the U.S. Attorney.
JUS 166 Special Assistant to the Attorney General.
JUS 200 Secretary and Confidential Assistant to the U.S. Attorney.
JUS 224 Special Assistant to the Deputy Attorney General.
JUS 227 Staff Assistant to the Director, Community Relations Service.
JUS 240 Special Assistant to the Deputy Assistant Attorney General, Civil Rights Division.
JUS 241 Confidential Assistant and Private Secretary to the Chairman, Foreign Claims Settlement Commission.
JUS 248 Missing Children Program Coordinator to the Administrator, Office of Juvenile Justice and Delinquency Prevention.
JUS 262 Staff Assistant to the Director, Bureau of Justice Statistics.
JUS 266 Public Affairs Specialist to the Deputy Director, Office of Public Affairs.
JUS 270 Special Assistant to the Assistant Attorney General, Civil Rights Division.
JUS 271 Confidential Assistant to the Assistant Attorney General, Office of Legal Policy.
JUS 277 Staff Assistant to the Assistant Attorney General/Chief of Staff.
JUS 294 Special Assistant to the Assistant Attorney General, Tax Division.
JUS 301 Attorney-Advisor (Special Assistant) to the Principal Deputy Assistant Attorney General.
JUS 314 Senior Liaison Officer to the Director, Office of Liaison Services.
JUS 315 Confidential Assistant to the Director, National Obscenity Enforcement Unit, Criminal Division.
JUS 316 General Attorney to the Director, Office of Victims of Crime.
JUS 319 Supervisory Attorney-Advisor (Associate Director), National Obscenity Enforcement Unit, Criminal Division.
JUS 320 Special Assistant to the Assistant Attorney General, Antitrust Division.
JUS 331 Special Assistant to the Director, National Institute of Justice.
JUS 335 Special Assistant to the Assistant Attorney General, Civil Division.
JUS 339 Executive U.S. Marshal.
JUS 340 Chief of Staff to the Director, Community Relations Service.
JUS 341 Confidential Assistant to the Director, Executive Office for U.S. Attorneys.
JUS 342 Executive Assistant to the Deputy Commissioner, Immigration and Naturalization Service.
JUS 343 Special Assistant to the Attorney General.
JUS 344 Confidential Assistant to the Attorney General.
JUS 345 Special Assistant to the Director, Community Relations Service.

Section 213.3311 Federal Judicial Center

FJC2 Staff Assistant to the Director.

Section 213.3312 Department of the Interior

INT 116 Special Assistant to the Deputy Assistant Secretary for Policy and Analysis.
INT 152 Special Assistant to the Deputy Director, National Park Service.
INT 155 Confidential Assistant to the Director, Office of Surface Mining.
INT 165 Special Assistant to the Director, Bureau of Land Management.
INT 190 Special Assistant to the Director, Bureau of Mines.
INT 191 Special Assistant to the Director, Bureau of Mines.
INT 208 Congressional Liaison Officer to the Director, Minerals Management Service.
INT 212 Special Assistant to the Assistant to the Secretary and Director, External Affairs.
INT 215 Confidential Assistant to the Executive Assistant to the Secretary.
INT 232 Staff Assistant to the Assistant to the Secretary and Director, External Affairs.
INT 235 Confidential Assistant to the Director, Fish and Wildlife Service.
INT 238 Director, Office of External Affairs, to the Commissioner of Reclamation.
INT 246 Public Affairs Specialist to the Director, Minerals Management Service.
INT 250 Staff Assistant to the Associate Director, Bureau of Land Management.
INT 264 Confidential Assistant to the Special Assistant (Field Representative) to the Secretary.
INT 285 Special Assistant to the Director, Bureau of Land Management.
INT 288 Special Assistant to the Director, Office of Surface Mining and Reclamation.
INT 272 Special Assistant to the Assistant to the Secretary and Director, Office of External Affairs.
INT 274 Congressional Liaison Specialist to the Director, Office of Surface Mining and Reclamation.
INT 282 Confidential Assistant to the Solicitor.
INT 287 Assistant to the Director, Bureau of Land Management.
INT 292 Special Assistant to the Director, Bureau of Land Management.
INT 294 Special Assistant to the Director, Fish and Wildlife Service.
INT 298 Special Assistant to the Assistant to the Secretary and Director, Office of External Affairs.
INT 308 Special Assistant to the Solicitor.
INT 309 Special Assistant to the Director, Fish and Wildlife Service.
INT 311 Special Assistant to the Assistant Secretary for Policy, Budget, and Administration.
INT 312 Confidential Assistant to the Secretary.
INT 313 Special Assistant to the Assistant Secretary for Policy, Budget, and Administration.
INT 315 Staff Assistant to the Commissioner of Reclamation.
INT 317 Special Assistant to the Assistant Director of External Affairs, Fish and Wildlife Service.
INT 323 Confidential Assistant to the Director of Security and Drug Enforcement.
INT 324 Confidential Assistant to the Assistant to the Secretary and Director, Office of Congressional and Legislative Affairs.
INT 327 Special Assistant to the Director, National Park Service.
INT 328 Staff Assistant to the Director, Geological Survey.
INT 329 Special Assistant to the Assistant to the Secretary and Director, External Affairs.
INT 330 Deputy Director, Office of Public Affairs, to the Assistant to the Secretary and Director, Office of Public Affairs.

BEST COPY AVAILABLE

INT 331 Confidential Assistant to the Director, Minerals Management Service.

Section 213.3313 Department of Agriculture

AGR 1 Staff Assistant to the Executive Assistant for Operations and Correspondence to the Seretary.
AGR 6 Chauffeur to the Secretary.
AGR 12 Private Secretary to the Under Secretary for International Affairs and Commodity Programs.
AGR 28 Members, Board of Directors, to the Secretary, Federal Crop Insurance Corporation.
AGR 29 Member, Board of Directors, to the Secretary, Federal Crop Insurance Corporation.
AGR 31 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 33 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 34 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 44 Private Secretary to the Assistant Secretary for Economics.
AGR 48 Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 56 Private Secretary to the Assistant Secretary for Governmental and Public Affairs.
AGR 61 Private Secretary to the Assistant Secretary for Special Services.
AGR 62 Confidential Assistant to the Under Secretary for Small Community and Rural Development.
AGR 64 Confidential Assistant to the Under Secretary of Small Community and Rural Development.
AGR 81 Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 96 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 102 Confidential Assistant to the Assistant Secretary for Food and Consumer Services.
AGR 103 Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 106 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 108 Private Secretary to the Deputy Under Secretary for International Affairs and Commodity Programs.
AGR 110 Confidential Assistant to the General Counsel.
AGR 111 Confidential Assistant to the Deputy Secretary.
AGR 128 Private Secretary to the Administrator, Federal Grain Inspection Service.
AGR 129 Private Secretary to the Assistant Secretary, Marketing and Inspection Service.
AGR 130 Private Secretary to the Deputy Assistant Secretary, Marketing and Inspection Service.
AGR 137 Confidential Assistant to the Assistant Secretary for Economics.
AGR 139 Staff Assistant to the Secretary.
AGR 154 Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 164 Confidential Assistant to the Assistant Secretary for Science and Education.
AGR 182 Confidential Assistant to the Administrator, Rural Electrification Administration.
AGR 188 Northeast Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 189 Southeast Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 190 Midwest Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 191 Northwest Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 192 Southwest Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 194 Private Secretary to the Under Secretary for Small Community and Rural Development.
AGR 201 Confidential Assistant to the Special Assistant to the Secretary.
AGR 206 Director, Office of the Consumer Advisor to the Assistant Secretary for Food and Consumer Services.
AGR 207 Member, Board of Directors, to the Secretary, Federal Crop Insurance Corporation.
AGR 208 Member, Board of Directors, to the Secretary, Federal Crop Insurance Corporation.
AGR 210 Staff Assistant to the Administrator, Office of International Development and Cooperation.
AGR 212 Speical Assistant to the Assistant Secretary for Administration.
AGR 218 Staff Assistant to the Assistant Secretary for Administration.
AGR 220 Private Secretary to the Deputy Assistant Secretary for Administration.
AGR 222 Confidential Assistant to the Manager, Federal Crop Insurance Corporation.
AGR 224 Director, Congressional and Public Affairs Division, to the Manager, Federal Crop Insurance Corporation.
AGR 226 Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 229 Staff Assistant/ Correspondence Review Officer to the Director, Executive Secretariat.
AGR 231 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 232 Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 235 Confidential Assistant to the Administrator, Agricultural Marketing Service.
AGR 236 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service.
AGR 238 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 242 Staff Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 243 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 244 Confidential Assistant to the Chief, Soil Conservation Service.
AGR 247 Private Secretary to the Inspector General.
AGR 257 Executive Assistant to the Assistant Secretary for Food and Consumer Services.
AGR 260 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 261 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 262 Confidential Assistant to the Assistant Secretary for Science and Education.
AGR 263 Confidential Assistant to the Assistant Secretary for Special Services.
AGR 267 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 273 Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 275 Special Assistant to the Secretary.
AGR 276 Confidential Assistant to the Administrator, Agricultural Research Service.
AGR 277 Confidential Assistant to the Chief, Soil Conservation Service.
AGR 279 Confidential Assistant to the Administrator, Foreign Agricultural Service.

AGR 282 Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 283 Staff Assistant to the Administrator, Agricultural Stabilization and Conservation Service.

Section 213.3314 Department of Commerce

COM 2 Confidential Assistant to the Secretary.
COM 3 Deputy to the Chief of Staff.
COM 5 Special Assistant to the Director, Office of Executive Programs.
COM 12 Confidential Assistant to the Deputy Secretary.
COM 20 Confidential Assistant to the Deputy Assistant Secretary for Administration.
COM 21 Congressional Liaison Officer to the Assistant Secretary for Congressional Affairs.
COM 22 Deputy Director, Congressional Affairs, to the Deputy Assistant Secretary for Congressional Affairs.
COM 73 Congressional Liaison Specialist to the Director, Office of Congressional Relations.
COM 147 Confidential Assistant to the Director, Office of Executive Programs.
COM 156 Confidential Assistant to the Assistant Secretary, Economic Development Administration.
COM 159 Director of Public Affairs to the Under Secretary.
COM 162 Confidential Assistant to the Assistant Secretary, for International Economic Polly, International Trade Administration.
COM 165 Director of Business Liaison to the Under Secretary.
COM 184 Confidential Assistant to the Director, National Bureau of Standards.
COM 191 Confidential Assistant to the General Counsel.
COM 200 Congressional Liaison Officer to the Assistant Secretary for Congressional Affairs.
COM 203 Congressional Liaison Specialist to the Deputy Assistant Secretary for Congressional Affairs.
COM 220 Confidential Assistant to the Deputy Assistant Secretary for East Asia and the Pacific, International Trade Administration.
COM 224 Confidential Assistant to the Under Secretary, International Trade Administration.
COM 225 Director, Congressional Affairs Staff, to the Under Secretary for Export Administration.
COM 232 Special Assistant to the Assistant Secretary, Economic Development Administration.
COM 268 Special Assistant to the Deputy Secretary.
COM 283 Confidential Assistant to the Assistant Secretary for Trade Development, International Trade Administration.
COM 268 Executive Assistant to the Associate Deputy Secretary.
COM 272 Confidential Assistant to the Assistant Secretary for Trade Development, International Trade Administration.
COM 274 Confidential Assistant to the Director, Office of Business Liaison.
COM 284 Confidential Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs.
COM 285 Deputy Director, Office of Intergovernmental Affairs, to the Deputy Assistant Secretary for Intergovernmental Affairs.
COM 287 Congressional Liaison Assistant to the Deputy Assistant Secretary for Congressional Affairs.
COM 288 Confidential Assistant to the Director, Office of Business Liaison.
COM 289 Confidential Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs.
COM 293 Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs.
COM 294 Confidential Assistant to the Secretary.
COM 295 Confidential Assistant to the Director, Office of Executive Programs.
COM 303 Confidential Assistant to the Assistant Secretary for Administration.
COM 311 Confidential Assistant to the Director, Office of Executive Programs.
COM 312 Confidential Assistant to the Director General, U.S. and Foreign Commercial Service.
COM 313 Confidential Assistant to the Director, Office of Executive programs.
COM 321 Director, Office of Public Affairs to the Under Secretary for International Trade.
COM 325 Confidential Assistant to the Deputy Assistant Secretary for Africa, Near East, and South Asia, International Trade Administration.
COM 329 Congressional Liaison Assistant to the Director of Congressional Affairs, International Trade Administration.
COM 332 Confidential Assistant to the Deputy Assistant Secretary for Capital Goods and International Construction, International trade Administration.
COM 334 Special Assistant to the Assistant Secretary for Trade Administration.
COM 337 Congressional Liaison Assistant to the Deputy Director, Congressional Affairs.
COM 350 Deputy Director to the Director, Office of Business Liaison.
COM 359 Confidential Assistant to the Deputy Assistant Secretary for Africa, Near East, and South Asia, International Trade Administration.
COM 365 Confidential Assistant to the Director, Minority Business Development Agency.
COM 370 Chief of Congressional Affairs to the Director, Minority Business Development Agency.
COM 374 Congressional Affairs Specialist to the Congresional Affairs Advisor, Bureau of the Census.
COM 376 Confidential Assistant to the Director, Office of Executive Programs.
COM 378 Congressional Liaison Officer to the Under Secretary for Economic Affairs.
COM 382 Confidential Assistant to the Director, Office of Executive Programs.
COM 390 Confidential Assistant to the Under Secretary for Economic Affairs.
COM 397 Congressional Affairs Advisor to the Director, Bureau of the Census.
COM 410 Confidential Assistant to the Director, Office of Public Affairs, International Trade Administration.
COM 415 Congressional Affairs Specialist to the Director, Office of Legislative Affairs, National Oceanic and Atmospheric Administration.
COM 416 Director, Office of Consumer Affairs, to the Director, Office of Public Affairs.
COM 422 Confidential Assistant to the Director, Commercial Space Programs.
COM 429 Confidential Assistant to the Director, Office of Executive Programs.
COM 430 Special Assistant to the Assistant Secretary for Export Administration.
COM 432 Confidential Assistant to the Director, Commercial Space Programs.
COM 433 Senior Advisor to the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.
COM 434 Executive Assistant to the Under Secretary for Export Administration.
COM 436 Director, Office of Private Sector Initiatives, to the Director, Office of Business Liaison.
COM 438 Confidential Assistant to the Director, Office of Executive Programs.

Section 213.3315 Department of Labor

LAB 3 Special Assistant to the Secretary.
LAB 17 Senior Liaison Officer to the Assistant Secretary for Congressional Affairs.
LAB 25 Legislative Officer to the Assistant Secretary for Congressional Affairs.
LAB 44 Senior Liaison Officer to the Assistant Secretary for Congressional Affairs.
LAB 49 Special Assistant to the assistant Secretary, Occupational Safety and Health Administration.
LAB 55 Staff Assistant to the Deputy Under Secretary for Congressional Affairs.
LAB 64 Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 91 Confidential Staff Assistant to the Deputy Under Secretary for Congressional Affairs.
LAB 99 Special Assistant to the Assistant Secretary for Education and Training.
LAB 100 Special Assistant to the Deputy Under Secretary for International Labor Affairs.
LAB 103 Secretary's Representatives to the Associate Deputy Under Secretary for Intergovernmental Affairs.
LAB 104 Secretary's Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 106 Secretary's Representative to the Associate Deputy Under Secretary for Intergovernmental Affairs.
LAB 107 Secretary's Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 108 Secretary's Representative to the Associate Deputy Under Secretary for Intergovernmental Affairs.
LAB 109 Secretary's Representative to the Associate Deputy Under Secretary for Intergovernmental Affairs.
LAB 110 Secretary's Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 111 Secretary's Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 115 Secretary (Typing) to the Secretary's Representative.
LAB 116 Secretary (Typing) to the Secretary's Representative.
LAB 118 Secretary (Typing) to the Secretary's Representative.
LAB 122 Secretary (Typing) to the Secretary's Representative.
LAB 127 Staff Assistant to the Director, Office of Workers' Compensation Programs.
LAB 130 Special Assistant to the Secretary.
LAB 132 Senior Legislative Officer to the Assistant Secretary for Congressional Affairs.
LAB 137 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs.
LAB 146 Confidential Assistant to the Solicitor.
LAB 152 Special Assistant to the Deputy Director, Women's Bureau.
LAB 160 Confidential Assistant to the Secretary.
LAB 169 Special Assistant to the Assistant Secretary for Policy.
LAB 171 Special Assistant to the Secretary.
LAB 179 Executive Assistant to the Assistant Secretary, Employment Standards Administration.
LAB 184 Special Assistant for Public Affairs to the Deputy Under Secretary for Employment Standards.
LAB 189 Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 190 Special Assistant to the Assistant Secretary for Policy.
LAB 191 Staff Assistant to the Secretary.
LAB 192 Staff Assistant to the Assistant Secretary for Pension and Welfare Benefits Programs.
LAB 195 Special Assistant to the Assistant Secretary for Employment and Training.
LAB 196 Executive Assistant to the Assistant Secretary for Veterans' Employment and Training.
LAB 199 Deputy Liaison Officer to the Assistant Secretary for Congressional Affairs.
LAB 200 Special Assistant (Speech Writer) to the Assistant Secretary for Employment and Training.
LAB 208 Deputy Liaison Officer to the Assistant Secretary for Congressional Affairs.
LAB 209 Confidential Assistant to the Assistant Secretary for Veterans' Employment and Training.
LAB 210 Special Assistant to the Assistant Secretary for Policy.
LAB 212 Staff Assistant to the Secretary.
LAB 215 Staff Assistant to the Director, Women's Bureau.
LAB 219 Special Assistant to the Associate Deputy Under Secretary for Intergovernmental Affairs.
LAB 221 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs.
LAB 230 Special Assistant to the Assistant Secretary for Public and Intergovernment Affairs.
LAB 231 Special Assistant to the Associate Deputy Under Secretary for Intergovernmental Affairs.
LAB 234 Senior Liaison Officer to the Deputy Under Secretary for Congressional Affairs.
LAB 237 Special Assistant to the Assistant Secretary for Congressional Affairs.
LAB 238 Assistant to the Secretary's Representative.
LAB 240 Assistant to the Secretary's Representative.
LAB 243 Deputy Liaison Officer to the Deputy Under Secretary for Congressional Affairs.
LAB 244 Staff Assistant to the Secretary.
LAB 245 Assistant to the Secretary's Representative.
LAB 246 Assistant to the Secretary's Representative.
LAB 248 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs.
LAB 251 Staff Assistant to the Deputy Assistant Secretary for Mine Safety and Health.
LAB 254 Associate Assistant Secretary for Congressional Affairs.

Section 213.3316 Department of Health and Human Services

HHS 213 Steward to the Secretary.
HHS 230 Attorney-Advisor (Special Assistant) to the General Counsel.
HHS 273 Special Assistant to the Deputy Assistant Secretary for Legislation.
HHS 293 Special Assistant to the Commissioner, Administration for Children, Youth and Families, Office of Human Development Services.
HHS 331 Special Assistant to the Administrator, Health Care Financing Administration.
HHS 332 Executive Assistant to the Assistant Secretary for Human Development Services.
HHS 336 Special Assistant to the Deputy Assistant Secretary for Legislation (Human Services).
HHS 354 Associate Commissioner, Administration for Children, Youth and Families, Office of Human Development Services.
HHS 358 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison).
HHS 394 Confidential Assistant to the Executive Secretary.
HHS 419 Confidential Assistant to the Secretary.
HHS 446 Special Assistant to the Chief of Staff.
HHS 448 Staff Assistant to the Associate Commissioner for Governmental Affairs, Social Security Administration.
HHS 452 Special Assistant for Advisory Committees to the Special Assistant/Advisory Committee Officer.

HHS 455 Confidential Assistant to the Director, Office of Legislation and Policy, Health Care Financing Adminsitration.
HHS 462 Special Assistant for Liaison Activities to the Administrator, Alcohol, Drug Abuse and Mental Health Administration, Public Health Service.
HHS 467 Confidential Assistant to the Director, Office of Community Services, Family Support Administration.
HHS 477 Special Assistant for Policy Development to the Director, Policy Development Staff, Social Security Administration.
HHS 484 Confidential Assistant to the Director, Office of Legislation and Policy, Health Care Financing Administration.
HHS 487 Confidential Assistant to the Administrator, Health Care Financing Administration.
HHS 491 Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families.
HHS 509 Director, Youth 2000 Program, to the Assistant Secretary for Human Development Services.
HHS 510 Deputy Director, Office of Public Liaison, Health Care Financing Administration.
HHS 512 Special Assistant to the Deputy Assistant Secretary for Human Development Services.
HHS 517 Special Assistant to the Director, Office of Family Assistance.

Section 213.3317 Department of Education

EDU 1 Special Assistant to the Deputy Under Secretary for Planning, Budget, and Evaluation.
EDU 4 Special Assistant to the Director, Intergovernmental Affairs, Office of Intergovernmental and Interagency Affairs.
EDU Confidential Assistant to the Under Secretary.
EDU 8 Confidential Assistant to the Assistant Secretary, Office of Civil Rights.
EDU 14 Special Assistant to the Deputy Under Secretary for Management.
EDU 15 Special Assistant to the Deputy Under Secretary for Management.
EDU 20 Steward to the Executive Assistant to the Secretary.
EDU 21 Confidential Assistant to the Deputy Assistant Secretary for Legislation.
EDU 37 Special Assistant to the Secretary.
EDU 38 Special Assistant to the Assistant Secretary for Postsecondary Education.
EDU 46 Special Assistant to the Assistant Secretary for Vocational and Adult Education.
EDU 67 Special Assistant Chief of Staff/Counselor to the Secretary.
EDU 71 Special Assistant to the Assistant Secretary for Legislation.
EDU 72 Special Assistant to the Assistant Secretary for Legislation.
EDU 74 Executive Assistant to the Assistant Secretary for Legislation.
EDU 77 Executive Assistant to the Assistant Secretary for Civil Rights.
EDU 78 Special Assistant to the Assistant Secretary for Civil Rights.
EDU 87 Special Assistant to the Assistant Secretary for Elementary and Secondary Education.
EDU 91 Special Assistant to the Assistant Secretary for Civil Rights.
EDU 94 Confidential Assistant to the Assistant Secretary for Postsecondary Education.
EDU 96 Special Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs.
EDU 101 Special Assistant to the Deputy Under Secretary for Management.
EDU 105 Secretary's Regional Representative.
EDU 106 Secretary's Regional Representative.
EDU 109 Secretary's Regional Representative.
EDU 110 Secretary's Regional Representative.
EDU 111 Secretary's Regional Representative.
EDU 112 Special Assistant to the Assistant Secretary for Educational Research and Improvement.
EDU 115 Special Assistant to the Deputy Assistant Secretary for Higher Education Programs.
EDU 131 Secretary's Regional Representative.
EDU 146 Special Assistant to the Deputy Assistant Secretary for Special Education and Rehabilitative Services.
EDU 147 Secretary's Regional Representative.
EDU 149 Special Assistant to the Under Secretary.
EDU 152 Special Assistant to the Deputy Under Secretary for Management.
EDU 153 Special Assistant to the Director, Intergovernmental Affairs Staff, Office of Intergovernmental and Interagency Affairs.
EDU 154 Executive Director, Intergovernmental Advisory Council on Education, to the Deputy Under Secretary for Intergovernmental and Intergency Affairs.
EDU 155 Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 158 Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 167 Diretor, Operations Support Services, to the Deputy Assistant Secretary for Operations, Office of Civil Rights.
EDU 168 Special Assistant to the Under Secretary.
EDU 171 Director, Legislative Liaison, to the Deputy Assistant Secretary for Legislation.
EDU 185 Staff Assistant to the Secretary's Regional Representative.
EDU 186 Special Assistant to the Secretary's Regional Representative.
EDU 188 Staff Assistant to the Secretary's Regional Representative.
EDU 193 Executive Secretary to the Chief of Staff.
EDU 195 Executive Assistant to the Comptroller, Office of the Deputy Under Secretary for Management.
EDU 196 Special Assistant to the Director, Special Education Programs, Office of Special Education and Rehabilitative Services.
EDU 204 Deputy Secretary's Regional Representative.
EDU 205 Special Assistant to the Secretary.
EDU 209 Special Assistant to the Secretary for Educational Research and Improvement.
EDU 214 Special Assistant to the Secretary's Regional Representative.
EDU 218 Special Assistant to the Deputy Assistant Secretary for Higher Education, Office of Postsecondary Education.
EDU 248 Executive Assistant to the Assistant Secretary for Postsecondary Education.
EDU 249 Staff Assistant to the Director, Programs for the Improvement of Practice, Office of Educational Research and Improvement.
EDU 251 Special Assistant to the Director, Intergovernmental Affairs Staff, Office of Intergovernmental and Interagency Affairs.
EDU 254 Director, Postsecondary Relations Staff, to the Deputy Assistant Secretary for Higher Education, Office of Postsecondary Education.
EDU 256 Special Assistant to the Director, Legislative Liaison Staff, Office of Legislation.
EDU 266 Special Assistant to the Assistant Secretary for Postsecondary Education.

EDU 267 Special Assistant to the Assistant Secretary for Vocational and Adult Education.
EDU 275 Staff Assistant to the Assistant Secretary for Vocational and Adult Education.
EDU 295 Special Assistant to the Deputy Assistant Secretary for Student Financial Assistance Programs, Office of Postsecondary Education.
EDU 297 Confidential Assistant to the Secretary's Senior Special Assistant.
EDU 301 Confidential Assistant to the Director, Intergovernmental Affairs, Office of Intergovernmental and Interagency Affairs.
EDU 302 Confidential Assistant to the Chief of Staff.
EDU 303 Special Assistant to the Executive Secretary.
EDU 305 Confidential Assistant to the Director, Private Sector Initiative Staff.
EDU 306 Confidential Assistant to the Chief of Staff/Counselor to the Secretary.
EDU 307 Confidential Assistant to the Director, Private Sector Initiative Staff.
EDU 308 Confidential Assistant to the Director, Private Sector Initiative Staff.
EDU 310 Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 312 Confidential Assistant to the Assistant Secretary for Educational Research and Improvement.
EDU 313 Special Assistant to the Deputy Under Secretary for Management.

Section 213.3318 Environmental Protection Agency

EPA 5 Confidential Assistant to the Deputy Administrator.
EPA 58 Congressional Liaison Specialist to the Director, Office of Congressional Liaison.
EPA 61 Special Assistant to the Assistant Administrator for Administration and Resource Management.
EPA 69 Deputy Director, Office of Congressional Liaison.
EPA 70 Congressional Relations Officer to the Director, Office of Congressional Liaison.
EPA 94 Special Assistant to the Regional Administrator.
EPA 100 Staff Assistant to the Associate Administrator.
EPA 106 Staff Assistant to the Director, Office of Public Affairs.
EPA 109 Special Assistant to the Assistant Administrator for Solid Waste and Emergency Response.
EPA 111 Special Assistant to the Director of Public Affairs.
EPA 112 Staff Assistant to the General Counsel.
EPA 116 Special Assistant to the Assistant Administrator for Administration and Resources Management.
EPA 118 Staff Assistant to the Assistant Administrator for Enforcement and Compliance Monitoring.

Section 213.3322 Interstate Commerce Commission

ICC 1 Confidential Assistant to a Commissioner.
ICC 3 Confidential Assistant to a Commissioner.
ICC 5 Confidential Assistant to a Commissioner.
ICC 6 Confidential Assistant to a Commissioner.
ICC 8 Confidential Assistant to a Chairman.
ICC 45 Congressional Liaison Representative to the Director, Office of Legislative and Public Affairs.
ICC 47 Government Affairs Assistant to the Director, Office of Government and Public Affairs.
ICC 48 Congressional Liaison Representative to the Director, Office of Government and Public Affairs.

Section 213.3325 Tax Court of the United States

TCOUS 40 Secretary and Confidential Assistant to the Judge.
TCOUS 41 Secretary and Confidential Assistant to the Judge.
TCOUS 42 Secretary and Confidential Assistant to the Judge.
TCOUS 43 Secretary and Confidential Assistant to the Judge.
TCOUS 44 Secretary and Confidential Assistant to the Judge.
TCOUS 45 Secretary and Confidential Assistant to the Judge.
TCOUS 46 Secretary and Confidential Assistant to the Judge.
TCOUS 47 Secretary and Confidential Assistant to the Judge.
TCOUS 48 Secretary and Confidential Assistant to the Judge.
TCOUS 49 Secretary and Confidential Assistant to the Judge.
TCOUS 50 Secretary and Confidential Assistant to the Judge.
TCOUS 51 Secretary and Confidential Assistant to the Judge.
TCOUS 52 Secretary and Confidential Assistant to the Judge.
TCOUS 53 Secretary and Confidential Assistant to the Judge.
TCOUS 54 Secretary and Confidential Assistant to the Judge.
TCOUS 55 Secretary and Confidential Assistant to the Judge.
TCOUS 56 Secretary and Confidential Assistant to the Judge.
TCOUS 57 Secretary and Confidential Assistant to the Judge.
TCOUS 58 Secretary and Confidential Assistant to the Judge.
TCOUS 59 Secretary and Confidential Assistant to the Judge.
TCOUS 60 Secretary and Confidential Assistant to the Judge.
TCOUS 61 Secretary and Confidential Assistant to the Judge.
TCOUS 62 Secretary and Confidential Assistant to the Judge.
TCOUS 63 Secretary and Confidential Assistant to the Judge.
TCOUS 65 Secretary and Confidential Assistant to the Judge.
TCOUS 66 Trial Clerk to the Judge.
TCOUS 67 Trial Clerk to the Judge.
TCOUS 68 Trial Clerk to the Judge.
TCOUS 69 Trial Clerk to the Judge.
TCOUS 70 Trial Clerk to the Judge.
TCOUS 71 Trial Clerk to the Judge.
TCOUS 72 Trial Clerk to the Judge.
TCOUS 73 Trial Clerk to the Judge.
TCOUS 74 Trial Clerk to the Judge.
TCOUS 75 Trial Clerk to the Judge.
TCOUS 76 Trial Clerk to the Judge.
TCOUS 77 Trial Clerk to the Judge.
TCOUS 78 Trial Clerk to the Judge.

Section 213.3327 Department of Veterans Affairs

VA 34 Director, Congressional Affairs, to the Associate Deputy Administrator for Congressional and Intergovernmental Affairs.
VA 42 Confidential Assistant to the Director, Congressional Affairs.
VA 48 Confidential Assistant to the Chief of Staff.

Section 213.3328 United States Information Agency

USIA 2 Executive Assistant to the Director.
USIA 22 Director, New York Foreign Press Center, to the Associate Director for Programs.
USIA 29 Public Affairs Specialist to the Deputy Counselor for Press and Public Affairs.
USIA 56 Staff Specialist to the Director, Office of Private Sector Liaison.
USIA 57 Special Assistant to the Associate Director for Educational and Cultural Affairs.
USIA 58 Special Assistant to the Deputy Director.
USIA 67 Chief, Voluntary Visitor Division, to the Associate Director for Educational and Cultural Affairs.
USIA 73 Special Assistant to the Associate Director for Educational and Cultural Affairs.

USIA 75 Special Assistant to the General Counsel.
USIA 77 Special Assistant to the Associate Director for Management.
USIA 91 Program Officer to the Coordinator, U.S.-Soviet Exchange Initiative.
USIA 96 Special Assistant to the Director.
USIA 101 Program Officer to the Director, New York Foreign Press Center.
USIA 103 Equal Employment Manager to the Associate Director for Management.
USIA 104 Special Assistant to the Director, Private Sector Committees.

Section 213.3330 Securities and Exchange Commission

SEC 2 Executive Aide (Typing) to the Executive Assistant to the Chairman.
SEC 5 Confidential Assistant to a Commissioner.
SEC 6 Confidential Assistant to a Commissioner.
SEC 9 Secretary to the General Counsel.
SEC 12 Public Information Officer to the Chairman.
SEC 14 Secretary (Typing) to the Director of Economic and Policy Research.
SEC 15 Secretary (Steno) to the Director, Division of Market Regulation.
SEC 18 Secretary (Steno) to the Director, Division of Investment Management.
SEC 19 Secretary (Typing) to the Director, Division of Corporate Finance.
SEC 24 Secretary (Typing) to the Chief Economist.

Section 213.3331 Department of Energy

DOE 2 Secretary (Confidential Assistant) to the Secretary.
DOE 40 Legal Advisor to a Member, Federal Energy Regulatory Commission.
DOE 41 Legal Advisor to a Member, Federal Energy Regulatory Commission.
DOE 42 Legal Advisor to a Member, Federal Energy Regulatory Commission.
DOE 47 Technical Advisor to a Member, Federal Energy Regulatory Commission.
DOE 55 Staff Assistant to the Special Assistant to the Secretary.
DOE 60 Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 68 Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 74 Secretary (Confidential Assistant) to the General Counsel.
DOE 75 Legal Advisor to a Member, Federal Energy Regulatory Commission.
DOE 77 Staff Assistant to the Administrative Assistant to the Secretary and Chief of Staff.
DOE 87 Staff Assistant to the Associate Director, Office of Resource Management.
DOE 95 Staff Assistant to the General Counsel.
DOE 103 Attorney Advisor (Public Utilities), to the Chairman, Federal Energy Regulatory Commission.
DOE 105 Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 106 Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 172 Staff Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 174 Special Assistant to the Assistant Secretary for Fossil Energy.
DOE 185 Confidential Assistant to the Director, Office of External Affairs, Federal Energy Regulatory Commission.
DOE 197 Director, Division of Congressional Affairs, to the Director, Office of External Affairs, Federal Energy Regulatory Commission.
DOE 196 Director, Senate Liaison Branch, to the Director, Office of External Affairs, Federal Energy Regulatory Commission.
DOE 198 Confidential Assistant to the Director, Office of Consumer and Public Affairs, Federal Energy and Regulatory Commission.
DOE 208 Special Assistant to the Deputy Secretary.
DOE 214 Staff Assistant to the Chief of Staff.
DOE 218 Director, Intergovernmental Affairs Division, to the Director, Office of External Affairs, Federal Energy Regulatory Commission.
DOE 243 Staff Assistant to the Assistant Secretary for International Affairs.
DOE 250 Director, Division of Public Affairs, to the Director, Office of External Affairs, Federal Energy Regulatory Commission.
DOE 264 Staff Assistant to the Administrator, Energy Information Administration.
DOE 269 Deputy Assistant Secretary to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental, and Public Affairs.
DOE 274 Staff Assistant to the Special Assistant to the Secretary.
DOE 276 Secretary (Confidential Assistant) to the Special Assistant to the Secretary.
DOE 292 Chauffeur to the Secretary.
DOE 294 Special Programs Liaison Specialist to the Director, Division of Public Liaison, Office of Congressional, Intergovernmental and Public Affairs.
DOE 306 Special Assistant to the Chief of Staff.
DOE 307 Special Assistant to the Assistant Secretary for Environment, Safety and Health.
DOE 314 Staff Assistant to the Assistant Secretary for International Affairs and Energy Emergencies.
DOE 328 Senior Policy Assistant to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental and Public Affairs.
DOE 339 Special Assistant to the Deputy Assistant Secretary for Energy Emergencies.
DOE 344 Senior Policy Assistant to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental, and Public Affairs.
DOE 350 Associate Director to the Director, Office of Policy, Planning, and Analysis.
DOE 357 Special Assistant to the Assistant Secretary for International Affairs and Energy Emergencies.
DOE 358 Staff Assistant to the Chief of Staff.
DOE 359 Staff Assistant to the Executive Assistant to the Secretary.
DOE 360 Staff Assistant to the Assistant Secretary for Defense Programs.
DOE 361 Staff Assistant to the Principal Deputy Assistant Secretary for Conservation and Renewable Energy.
DOE 362 Confidential Assistant to the Executive Assistant Secretary.
DOE 363 Staff Assistant to the Deputy General Counsel for Environment, Conservation, and Legislation.
DOE 365 Staff Assistant to the Deputy Assistant Secretary for External Affairs.
DOE 366 Speechwriter to the Deputy Assistant Secretary for External Affairs.
DOE 367 Staff Assistant to the Assistant Secretary for Nuclear Energy.
DOE 368 Staff Assistant to the Assistant Secretary, Management and Administration.
DOE 369 Staff Assistant to the Deputy Assistant Secretary for Energy Emergencies.

Section 213.3332 Small Business Administration

SBA 4 Special Assistant to the Administrator.

SBA 11 Deputy Assistant Administrator for Congressional and Legislative Affairs.
SBA 43 Special Assistant to the Assistant Administrator for Congressional and Legislative Affairs.
SBA 45 Special Assistant to the Associate Administrator for Procurement Affairs.
SBA 66 Special Assistant to the Regional Administrator.
SBA 69 Special Assistant to the Regional Administrator.
SBA 71 Special Assistant to the Regional Administrator.
SBA 73 Special Assistant to the Regional Administrator.
SBA 76 Executive Assistant to the Director of Women's Business Ownership.
SBA 97 Confidential Assistant to the General Counsel.
SBA 100 Special Assistant to the Regional Administrator.
SBA 106 Director, Office of Private Sector Initiatives, to the Associate Deputy Administrator for Special Programs.
SBA 122 Special Assistant to the Regional Administrator.
SBA 128 Director of Women's Business Ownership to the Associate Administrator for Business Development.
SBA 132 Special Assistant to the Regional Administrator.
SBA 134 Special Assistant to the Associate Administrator for Business Development.
SBA 135 Special Assistant to the Regional Administrator.
SBA 139 Special Assistant to the Associate Administrator for Business Development.
SBA 140 Special Assistant to the Regional Administrator.
SBA 141 Staff Assistant to the Associate Deputy Administrator for Special Programs.

Section 213.3333 Federal Deposit Insurance Corporation

FDIC 2 Secretary to a Member.
FDIC 7 Special Assistant to the Director, Congressional Liaison Staff.
FDIC 9 Legislative Attorney and Advisor to the Director, Office of Congressional Relations and Public Information.
FDIC 10 Legislative Advisor to the Director of Legislative Affairs.

Section 213.3334 Federal Trade Commission

FTC 2 Director, Office of Public Affairs, to the Chairman.
FTC 6 Director Congressional Relations to the Chairman.
FTC 7 Deputy Director, Office of Congressional Relations.
FTC 9 Staff Assistant to the Chairman.

Section 213.3337 General Services Administration

GSA 16 Confidential Assistant to the General Counsel.
GSA 24 Special Assistant to the Commissioner, Public Building Service.
GSA 26 Confidential Assistant to the Commissioner, Public Building Service.
GSA 51 Special Assistant to the Administrator.
GSA 63 Director, Office of Business and Industry Affairs, to the Associate Administrator for Congressional Affairs and Industry Relations.
GSA 72 Confidential Assistant to the Commissioner, Federal Supply Service.
GSA 73 Confidential Assistant to the Deputy Administrator.
GSA 83 Confidential Assistant to the Regional Administrator.
GSA 86 Confidential Assistant to the Regional Administrator.
GSA 89 Confidential Assistant to the Director of Congressional Affairs.
GSA 90 Special Assistant to the Associate Administrator for Congressional Affairs.
GSA 93 Executive Assistant to the Administrator for Operations.
GSA 99 Confidential Assistant to the Regional Administrator.
GSA 100 Director, Office of the Executive Secretariat, to the Administrator.
GSA 103 Confidential Assistant to the Director, Office of the Executive Secretariat.
GSA 106 Special Assistant to the Associate Administrator for Public Affairs.
GSA 107 Special Assistant to the Executive Director, Office of Information Resources Management.
GSA 109 Confidential Assistant to the Regional Administrator.
GSA 114 Confidential Assistant to the Regional Administrator.

Section 213.3338 Federal Communications Commission

FCC 9 Confidential Assistant to the Chief of Staff.
FCC 13 Congressional Liaison Specialist to the Director, Office of Legislative Affairs.
FCC 15 Chief, News Media Division to the Director, Office of Public Affairs.
FCC 17 Confidential Staff Assistant to the Chief, Office of Plans and Policy.
FCC 18 Confidential Staff Assistant to the Director, Office of Legislative Affairs.

Section 213.3339 U.S. International Trade Commission

ITC 1 Confidential Assistant to a Commissioner.
ITC 3 Staff Assistant (Economics) to a Commissioner.
ITC 5 Confidential Assistant to a Commissioner.
ITC 6 Staff Assistant (Economics) to a Commissioner.
ITC 7 Special Assistant (Economics) to a Commissioner.
ITC 9 Confidential Assistant to a Commissioner.
ITC 12 Staff Assistant (Economics) to a Commissioner.
ITC 13 Staff Assistant (Legal) to a Commissioner.
ITC 14 Staff Assistant (Legal) to a Commissioner.
ITC 15 Confidential Assistant to a Commissioner.
ITC 17 Staff Assistant (Legal) to a Commissioner.
ITC 18 Confidential Assistant to a Commissioner.
ITC 19 Staff Assistant (Economics) to a Commissioner.
ITC 22 Staff Assistant (Legal) to a Commissioner.
ITC 24 Staff Assistant (Legal) to a Commissioner.
ITC 25 Staff Assistant (Legal) to a Commissioner.
ITC 26 Staff Assistant (Legal) to a Commissioner.
ITC 29 Staff Assistant (Legal) to the Chairman.
ITC 30 Confidential Assistant to a Commissioner.
ITC 31 Staff Assistant (Legal) to a Commissioner.
ITC 32 Staff Assistant (Legal) to a Commissioner.
ITC 33 Staff Assistant to a Commissioner.
ITC 34 Staff Assistant (Legal) to a Commissioner.

Section 213.3340 National Archives and Records Administration

NARA 4 Assistant to the Archivist of the United States.

Section 213.3341 National Labor Relations Board

NLRB 5 Confidential Assistant to a Board Member.
NLRB 17 Attorney Advisor (Labor) to the Chairman.

Section 213.3342 Export-Import Bank of the United States

EXIM 2 Private Secretary to the First Vice President and Vice Chairman.
EXIM 3 Administrative Assistant to a Director.

EXIM 4 Administrative Assistant to a Director.
EXIM 5 Administrative Assistant to a Director.
EXIM 12 Secretary (Steno) to the Senior Vice President for Exporter Credits, Guarantees, and Insurance.
EXIM 15 Administrative Assistant (Typing) to the President and Cheirman.
EXIM 16 Administrative Assistant to the General Counsel.
EXIM 24 Secretary (Steno) to the Executive Vice President.

Section 213.3343 Farm Credit Administration

FCA 2 Private Secretary to a Board Member.
FCA 4 Deputy Director for Public Affairs to the Director, Office of Congressional and Public Affairs.
FCA 5 Confidential Assistant to the Director, Office of Congressional and Public Affairs.
FCA 6 Executive Assistant to a Board Member.
FCA 8 Secretary to the Chairman.

Section 213.3346 Selective Service System

SSS 9 Assistant Director of Congressional and Intergovernmental Affairs

Section 213.3348 National Aeronautics and Space Administration

NASA 1 Secretary (Steno) to the Administrator.
NASA 2 Secretary (Steno) to the Deputy Administrator.

Section 213.3351 Federal Mine Safety and Health Review Commission

FM 1 Secretary (Steno) to a Commissioner.
FM 3 Confidential Secretary to a Commissioner.
FM 4 Confidential Secretary to a Commissioner.
FM 7 Attorney-Advisor (General) to a Commissioner.
FM 8 Attorney-Advisor (General) to a Commissioner.

Section 213.3352 Government Printing Office

GPO 15 Special Assistant to the Public Printer.

Section 213.3354 Federal Home Loan Bank Board

FHLB Secretary (Typing) to a Board Member.
FHLB 5 Staff Assistant to the Chairman.
FHLB 6 Assistant to a Board Member.
FHLB 7 Assistant to a Board Member.
FHLB 19 Congressional Liaison to the Executive Staff Director.
FHLB 33 Special Assistant to the Chairman.
FHLB 35 Deputy Director, Office of Congressional Liaison.
FHLB 36 Deputy Chief of Staff to the Executive Director and Chief of Staff.
FHLB 40 Assistant to a Board Member.
FHLB 43 Deputy to the Executive Director, Federal Savings and Loan Insurance Corporation, for the Southwest Plan.
FHLB 45 Congressional Lobbying Specialist to the Executive Director for Public Affairs.
FHLB 46 Assistant to the Deputy Executive Director for Asset Management.

Section 213.3356 Commission on Civil Rights

CCR 1 Special Assistant to the Staff Director.
CCR 12 Special Assistant to a Commissioner.
CCR 13 Special Assistant to a Commissioner.
CCR 14 Deputy General Counsel to the General Counsel.
CCR 15 Special Assistant to a Commissioner.
CCR 23 Special Assistant to a Commissioner.
CCR 27 Public Affairs Officer to the Staff Director.
CCR 28 Special Assistant to a Commissioner.
CCR 29 Special Assistant to a Commissioner.
CCR 30 Special Assistant to a Commissioner.
CCR 32 Special Assistant to a Commissioner.

Section 213.3357 National Credit Union Administration

NCUA 9 Staff Assistant to the Chairman.
NCUA 15 Secretary (Typing) to the President, Central Liquidity Facility.
NCUA 16 Confidential Assistant to a Board Member.
NCUA 18 Special Assistant to the Chairman.
NCUA 19 Writer-Editor to the Executive Director.
NCUA 21 Staff Assistant to a Board Member.

Section 213.3359 ACTION

ACT 32 Confidential Assistant to the Associate Director for Domestic and Anti-Poverty Operations.
ACT 48 Special Assistant to the Deputy Director.
ACT 56 Special Assistant to the Associate Director for Domestic and Anti-Poverty Operations.
ACT 58 Special Assistant to the Director.
ACT 79 Assistant Director for VISTA/Student Community Service Programs to the Associate Director.

Section 213.3360 Consumer Product Safety Commission.

CPSC 7 Special Assistant (Legal) to a Commissioner.
CPSC 16 Director, Office of Congressional Relations, to the Chairman.
CPSC 20 Special Assistant (Legal) to a Commissioner.
CPSC 23 Special Assistant to a Commissioner.
CPSC 25 Staff Assistant to a Commissioner.
CPSC 37 Supervisory Public Affairs Specialist to the Executive Director, Office of Public Affairs.

Section 213.3364 U.S. Arms Control and Disarmament Agency

ACDA 2 Secretary (Steno) to the Director.
ACDA 4 Private Secretary to the Assistant Director for Verification and Intelligence.
ACDA 5 Secretary (Steno) to the Assistant Director for Nuclear and Weapons Control.
ACDA 15 Secretary to the Chairman, General Advisory Committee.
ACDA 17 Secretary (Steno) to the Director.
ACDA 20 Special Assistant to the Deputy Director for Public Affairs.
ACDA 23 Staff Assistant to the Assistant Director for Multilateral Affairs.
ACDA 27 Special Assistant to the Director.
ACDA 29 Congressional Affairs Specialist to the Director of Congressional Affairs.
ACDA 30 Secretary (Steno) to the Special Representative for Arms Control and Disarmament.
ACDA 32 Secretary (Typing) to the Assistant Director for Strategic Programs.

Section 213.3367 Federal Maritime Commission

FMC 2 Confidential Assistant to a Commissioner.
FMC 5 Confidential Assistant to a Commissioner.
FMC 7 Secretary (Steno) to a Commissioner.
FMC 8 Secretary (Steno) to a Commissioner.
FMC 9 Secretary (Typing) to a Commissioner.
FMC 10 Secretary (Steno) to a Commissioner.

Section 213.3368 Agency for International Development

AID 38 Director, Office of Interbureau Affairs and Special Projects, to the Deputy Assistant Administrator for External Affairs.
AID 45 Deputy Assistant to the Administrator for Public Affairs to the Assistant Administrator, External Affairs.
AID 48 Special Assistant to the Director of Policy Development and Program Review.
AID 58 Special Assistant to the Coordinator, Office of Public Diplomacy for Latin America and the Caribbean.
AID 64 Special Assistant to the Deputy Assistant Administrator for Management.
AID 65 Supervisory Public Affairs Specialist to the Deputy Assistant Administrator for Public Affairs.
AID 68 Special Assistant to the Assistant Administrator for Private Enterprise.
AID 76 Public Affairs Specialist to the Director, Public Liaison.
AID 80 Confidential Assistant to the Deputy Administrator.
AID 82 Congressional Liaison Officer to the Deputy Director, Office of Legislative Affairs.

Section 213.3372 Administrative Office of the United States Courts

AOUSC 5 Secretary (Steno) to the Deputy Legislative Affairs Officer.
AOUSC 8 Attorney-Advisor (Legislative) to the Legislative and Public Affairs Officer.
AOUSC 9 Public Information Officer to the Legislative and Public Affairs Officer.
AOUSC 10 Secretary (Typing) to the Legislative and Public Affairs Officer.

Section 213.3376 Appalachian Regional Commission

ARC 8 Legislative and Policy Advisor to the Federal Co-Chairman.

Section 213.3377 Equal Employment Opportunity Commission

EEOC 2 Special Assistant to the Chairman.
EEOC 5 Confidential Assistant to a Member.
EEOC 9 Special Assistant to the Chairman.
EEOC 12 Media Contact Specialist to the Director, Communications Staff, Office of Communications and Legislative Affairs.
EEOC 15 Research Specialist to the Chairman.
EEOC 17 Special Assistant to a Member.
EEOC 22 Director, Legislative Affairs, to the Director, Office of Communications and Legislative Affairs.
EEOC 23 Special Assistant to a Member.
EEOC 25 Media Contact Specialist to the Director, Communications Staff, Office of Communications and Legislative Affairs.
EEOC 37 Social Science Research Specialist to the Director, Office of Program Research.
EEOC 38 Legislative Affairs Specialist to the Director, Office of Congressional Affairs.
EEOC 40 Legislative Affairs Specialist to the Director, Office of Communications and Legislative Affairs.
EEOC 41 Confidential Assistant to the Director, Office of Communications and Legislative Affairs.

Section 213.3379 Commodity Futures Trading Commission

CFTC 1 Administrative Assistant to the Chairman.
CFTC 3 Administrative Assistant to a Commissioner.
CFTC 4 Administrative Assistant to a Commissioner.
CFTC 5 Administrative Assistant to a Commissioner.
CFTC 6 Administrative Assistant to a Commissioner.
CFTC 7 Supervisory Public Affairs Specialist to the Chairman.
CFTC 12 Special Assistant to a Commissioner.
CFTC 15 Special Assistant to a Commissioner.
CFTC 21 Governmental Affairs Officer to the Chairman.

Section 213.3382 National Foundation on the Arts and the Humanities

National Endowment for the Arts

NEA 9 Congressional Liaison Officer to the Chairman.
NEA 45 Special Assistant to the Chairman.
NEA 49 Associate Deputy Chairman for Programs.
NEA 50 Special Projects Coordinator (Development) to the Chairman.

National Endowment for the Humanities

NEH 46 Special Assistant to the Chairman.
NEH 48 Congressional Liaison Officer to the Chairman.
NEH 54 Confidential Assistant to the Assistant Director, Institute of Museum Services.

Section 213.3384 Department of Housing and Urban Development

HUD 35 Legislative Officer to the Deputy Assistant Secretary for Legislation.
HUD 60 Supervisory Public Affairs Specialist to the Assistant Secretary for Public Affairs.
HUD 114 Special Assistant/Director, Executive Secretariat to the Secretary.
HUD 135 Special Assistant to the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.
HUD 151 Staff Assistant to the President, Government National Mortgage Association.
HUD 163 Special Assistant to the Deputy Assistant Secretary for Multifamily Housing.
HUD 176 Special Assistant to the Secretary.
HUD 182 Special Assistant to the Assistant Secretary for Housing.
HUD 184 Senior Assistant for Congressional Relations to the Deputy Assistant Secretary for Legislation and Congressional Relations.
HUD 200 Staff Assistant to the Assistant Secretary for Administration.
HUD 203 Legislative Officer to the Deputy Assistant Secretary for Legislation.
HUD 206 Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations.
HUD 212 Staff Assistant to the Deputy Assistant Secretary for Research.
HUD 213 Staff Assistant to the Assistant Secretary for Program Development and Research.
HUD 216 Special Assistant to the Assistant Secretary for Administration.
HUD 227 Executive Assistant to the Regional Administrator.
HUD 238 Special Assistant to the Secretary.
HUD 247 Executive Assistant to the Assistant Secretary for Housing.
HUD 255 Executive Assistant to the Assistant Secretary for Program Development and Research.
HUD 266 Special Assistant to the President, Government National Mortgage Association.
HUD 281 Special Assistant to the Regional Administrator.
HUD 289 Associate Deputy Assistant Secretary for Program Policy Development and Evaluation.
HUD 292 Special Assistant to the Assistant Secretary for Community Planning and Development.
HUD 359 Special Assistant to the Regional Administrator.
HUD 373 Special Assistant (Speech Issues to the Assistant Secretary for Public Affairs.
HUD 374 Executive Assistant to the Deputy Under Secretary for Field Coordination.

HUD 376 Special Assistant to the Regional Administrator.
HUD 386 Executive Assistant to the Under Secretary.
HUD 396 Special Assistant to the Director, Office of Small and Disadvantaged Business Utilization.
HUD 400 Special Advisor to the Assistant Secretary for Legislation and Congressional Relations.
HUD 404 Special Assistant to the Regional Administrator.
HUD 407 Executive Assistant to the Regional Administrator.
HUD 408 Special Projects Coordinator to the Deputy Assistant Secretary for Policy, Financial Management, and Administration.

Section 213.3388 President's Commission on White House Fellows

PCWHF 2 Associate Director.
PCWHF 3 Confidential Assistant to the Director.
PCWHF 4 Special Assistant to the Director.

Section 213.3389 National Mediation Board

NMB 53 Confidential Assistant to the Chairman.
NMB 54 Confidential Assistant to a Member.

Section 213.3391 Office of Personnel Management

OPM 8 Confidential Assistant to the Director.
OPM 10 Confidential Assistant to the Assistant Director for Public Affairs.
OPM 11 Confidential Assistant to the Director, Office of Executive Administration.
OPM 17 Special Assistant to the Associate Director for Administration.
OPM 18 Staff Assistant (Typing) to the Director, Office of Executive Administration.
OPM 19 Special Assistant to the Associate Director for Administration.
OPM 21 Special Assistant to the Director, Office of Public Affairs.
OPM 25 Special Assistant to the Director, Office of Congressional Relations.
OPM 26 Confidential Assistant (Typing) to the Director, Office of Government Ethics.
OPM 31 Staff Assistant to the Counselor to the Director.
OPM 33 Confidential Assistant to the Assistant Director for Congressional Relations.
OPM 36 Staff Assistant to the Director, Office of Executive Administration.
OPM 37 Executive Assistant to the Director, Office of Government Ethics.
OPM 39 Special Assistant to the Deputy Director.
OPM 40 Special Assistant to the Associate Director for Administration.
OPM 41 Special Assistant to the Director, Office of Public Affairs.
OPM 42 Confidential Assistant (Typing) to the Chief of Staff.

Section 213.3392 Federal Labor Relations Authority

FLRA 13 Special Assistant to the General Counsel.

Section 213.3394 Department of Transportation

DOT 1 Staff Assistant to the Secretary.
DOT 14 Chauffeur to the Secretary.
DOT 56 Special Assistant to the Administrator, Saint Lawrence Seaway Development Corporation.
DOT 57 Confidential Assistant to the Assistant Secretary for Governmental Affairs.
DOT 60 Congressional Liaison Officer to the Director, Office of Congressional Affairs.
DOT 77 Special Assistant to the Assistant Secretary for Public Affairs.
DOT 131 Staff Assistant to the Administrator, Federal Highway Administration.
DOT 147 Staff Assistant to the Assistant Secretary for Public Affairs.
DOT 157 Secretary (Steno) to the Associate Administrator for Policy and International Aviation, Federal Aviation Administration.
DOT 197 Staff Assistant to the Secretary.
DOT 204 Executive Assistant to the Administrator, Federal Railroad Administration.
DOT 209 Special Assistant to the Administrator, Urban Mass Transportation Administration.
DOT 218 Staff Assistant to the Director, Office of Congressional Affairs.
DOT 233 Staff Assistant to the General Counsel.
DOT 239 Executive Assistant to the Administrator, Maritime Administration.
DOT 243 Special Assistant to the Secretary for Public Affairs.
DOT 244 Deputy Executive Secretary for Management to the Director, Executive Secretariat.
DOT 249 Deputy Executive Secretary for Policy to the Director, Executive Secretariat.
DOT 251 Staff Assistant to the Administrator, Maritime Administration.
DOT 257 Staff Assistant to the Secretary for Public Affairs.
DOT 263 Special Assistant to the Administrator, Saint Lawrence Seaway Development Corporation.
DOT 270 Special Assistant to the Administrator, Federal Aviation Administration.
DOT 274 Special Assistant to the Assistant Secretary for Public Affairs.
DOT 276 Special Assistant to the Administrator, Research and Special Programs Administration.
DOT 278 Staff Assistant to the Deputy Secretary.
DOT 281 Special Assistant for Intergovernmental Relations to the Administrator, Saint Lawrence Seaway Development Corporation.
DOT 287 Staff Assistant to the Deputy Secretary.
DOT 301 Legislative Research Officer to the Assistant Secretary for Governmental Affairs.
DOT 303 Special Assistant to the Administrator, Federal Aviation Administration.
DOT 307 Director, Office of Intergovernmental and Consumer Affairs, to the Deputy Assistant Secretary for Intergovernmental and Consumer Affairs.
DOT 308 Deputy Director (Intergovernmental) to the Director, Office of Intergovernmental and Consumer Affairs.
DOT 309 Special Assistant to the Administrator, Federal Aviation Administration.
DOT 311 Staff Assistant to the Chief of Staff.

Section 213.3395 Federal Emergency Management Agency

FEMA 3 Director of Congressional Affairs.
FEMA 33 Director, Office of Regional Operations, to the Director.
FEMA 34 Executive Assistant to the Deputy Director.
FEMA 36 Confidential Assistant to the Associate Director, Emergency Operations Directorate.
FEMA 38 Confidential Assistant to the Associate Director, Emergency Operations Directorate.

Section 213.3396 National Transportation Safety Board

NTSB 1 Special Assistant to a Board Member.
NTSB 30 Confidential Assistant to the Chairman.
NTSB 31 Confidential Assistant to a Board Member.
NTSB 32 Confidential Assistant to a Board Member.
NTSB 33 Confidential Assistant to a Board Member.
NTSB 34 Confidential Assistant to a Board Member.

NTSB 92 Government and Public Affairs Officer to the Managing Director.

NTSB 104 Special Assistant to a Board Member.

NTSB 105 Special Assistant to the Chairman.

Office of Personnel Management.

Constance Berry Newman,

Director.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

[FR Doc. 89–18743 Filed 8–9–89; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[34–27090; NSCC–89–11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Securities Clearing Corporation ("NSCC") Regarding the Fees That the Midwest Clearing Corp. ("MCC") and the Depository Trust Co. ("DTC") Will Pay to NSCC for Their Use of the Fund/SERV Service

August 2, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 20, 1989 NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the following fee agreements. The fee which MCC and DTC shall pay to NSCC on a monthly basis for their use of the Fund/SERV service are as follows: 1. $50.00 per Fund/SERV Participant per month, 2. $.50 per side per settled transaction, 3. Pass through of NSCC's costs for Communications access.

The above referenced fees, except for the communication fees shall be subject to a 10% discount. These fees are based on the prevailing fees currently charged to NSCC Members and set forth in NSCC's Fee Schedule. Should NSCC increase these Fees, MCC's and DTC's charges will be similarly increased.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The proposed rule filing consists of the fees to be charged Depository Trust Company ("DTC") and Midwest Clearing Corporation ("MCC") for their use of NSCC's Fund/SERV service.

(b) The proposed rule filing provides for the equitable allocation of reasonable fees for NSCC's Fund/SERV service to DTC and MCC and, therefore, is consistent with the requirements of the 1934 Act, as amended ("the ACT") and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change that are filed with Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR–NSCC–89–09 and should be submitted by August 31, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18730 Filed 8–9–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27085; File No. SR–OCC–89–07]

Self Regulatory Organizations; Options Clearing Corp.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Concerning Delayed Settlement of Equity Options Where Underlying Securities are Subject to When Distributed Trading in the Primary Market

The Options Clearing Corporation ("OCC") on July 5, 1989, filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposal allows OCC to delay settlement of any option during the period "when distributed" trading is declared by the primary market for the underlying stock of such option. The Commission is publishing this notice to solicit public comment on this proposal.

The proposal adds Interpretation and Policy .01 ("Interpretation .01") to Rule 902 of Chapter 9 of OCC's Rules.[1] interpretation .01 provides that OCC may delay settlement of any option during the period "when distributed" trading is declared by the primary market for the underlying stock of such option.

OCC states in its filing that it has been OCC's practice to delay settlement of an option as of the date the primary market declares "when distributed" trading for the underlying stock because it has no reasonable alternative. OCC further states that failure to do so could result in a "short squeeze" [2] in the options.

OCC's Margin Committee ("Committee") monitors the effect of market conditions upon options contracts and has the delegated authority to impose special exercise settlement procedures and extensions of exercise settlement dates. The Committee recently executed an authorization to delay settlement of any OCC issued option in the event the related underlying security trades on a "when distributed" basis. OCC states that the authorization procedure is cumbersome and time-consuming, and thus seeks to codify the procedures it has often used in the above-described situation.

OCC states that the proposal is consistent with the purposes and requirements of section 17A of the Act in that it would further the public interest by helping to avoid a short squeeze in OCC-issued options.

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of the Act.

Interested persons are invited to submit written comments. Persons desiring to submit written comments should file six copies with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of the OCC. All submissions should refer to File No. SR–OCC–89–07 and should be submitted by August 31, 1989.

For the commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 1, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18731 Filed 8–9–89; 8:45 am]

BILLING CODE 8010–01–M

[1] Chapter 9 contains the rules governing settlement of options contracts.

[2] A "short squeeze" refers to a situation where a lack of available stock causes short sellers to have difficulty borrowing the stock that they have sold short. The rush to cover produces additional upward pressure on the price of the stock.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Notice of Review of Product Petitions, Public Hearings, and List of Articles To Be Sent to the U.S. International Trade Commission (USITC) for Review

SUMMARY: The purpose of this notice on the GSP annual review is (1) to announce the acceptance for review of petitions to modify the list of articles eligible for duty-free treatment under the GSP and to modify the status of countries as GSP beneficiary countries in regard to their practices as specified in 15 CFR 2007.0 (a) and (b); (2) to announce the timetable for public hearings to consider petitions accepted for review; and (3) to announce that the list of articles herein will be sent by the United States Trade Representative to the USITC to seek advice with respect to modification of the list of eligible articles for GSP.

I. Acceptance of Petitions for Review

Notice is hereby given of acceptance for review of petitions requesting modification of the list of articles eligible to receive duty-free treatment under the GSP, and modification in the status of countries presently designated as GSP beneficiary countries, as provided for in Title V of the Trade Act of 1974 (the Act) (19 U.S.C. 2461–2465). These petitions were submitted, and will be reviewed, pursuant to regulations codified at 15 CFR part 2007.

1. Requests to Modify Product and Country Eligibility

Petitions have been submitted by interested parties or foreign governments (1) to designate additional articles as eligible for the GSP; or (2) to withdraw, suspend or limit GSP duty-free treatment accorded either to eligible articles under the GSP or to individual beneficiary developing countries with respect to specific GSP eligible articles; or (3) to otherwise modify GSP coverage. In addition, requests have been received requesting that the GSP status of certain beneficiary developing countries be reviewed with respect to the relevant criteria listed in subsection 502(b) of 502(c) of the Act.

As in previous reviews, requests to add products to or remove them from the list of articles eligible for GSP duty-free treatment will be evaluated in accordance with the "graduation" policy. In considering CSP eligibility for products, limitations on GSP benefits will be considered for the more economically advanced beneficiary developing countries in specific products where it is determined that they have demonstrated sufficient competitiveness. Four criteria will be taken into account when any such graduation action is considered: the development level of individual beneficiary countries; their competitive position in the product concerned; the countries' practices relating to trade, investment and worker rights; and the overall economic interests of the United States. The GSP Subcommittee will review information for the relevant U.S. industry as enumerated in 15 CFR 2007.1(a)(5) when considering the removal of any beneficiary developing country from GSP eligibility.

Product designations announced at the conclusion of the review process, therefore, may be made on a differential basis. This means that certain beneficiary developing countries may not be designated for GSP benefits on certain products even though those countries are not excluded under the competitive need provisions set forth in section 504(c)(1) of the Trade Act of 1974, as amended. It also is possible to withdraw GSP treatment on a product from certain beneficiary developing countries, or reduce the competitive need limit applicable to the countries and product in question, rather than remove the product entirely from GSP coverage.

As is required under section 504(a), the eligibility factors set forth in sections 501 and 502(c) will be considered with respect to decisions to withdraw, suspend or limit duty-free treatment with respect to any article or with respect to any country.

2. Information Subject to Public Inspection

Information submitted in connection with the hearings will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted

"business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2006.10. Briefs or statements must be submitted in twenty copies in English. If the document contains business confidential information, twenty copies of a nonconfidential version of the submission along with twelve copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "non-confidential").

3. Communications

All communications with regard to these hearings should be addressed to: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., Room 517, Washington, DC 20506. The telephone number of the Secretary of the GSP Subcommittee is (202) 395–6971. Questions may be directed to any member of the staff of the GSP Information Center.

Acceptance for review of the petitions listed herein does not indicate any opinion with respect to a disposition on the merits of the petitions. Acceptance indicates only that the listed petitions have been found to be eligible for review by the GSP Subcommittee and the Trade Policy Committee (TPSC), and that such review will take place.

II. Deadline for Receipt of Requests to Participate in the Public Hearings

The GSP Subcommittee of the TPSC invites submissions in support of or in opposition to any petition contained in this notice. All such submissions should conform to 15 CFR 2007, particularly sections 2007.0, 2007.1(a)(1), 2007.1(a)(2), and 2007.1(a)(3). All submissions should identify the product of interest in terms of the current Harmonized System tariff nomenclature.

Hearings will be held on September 25–28 beginning at 10:00 a.m. in the U.S. International Trade Commission's Hearing Room, 7th and E Streets, SW., Washington, DC. The hearings will be open to the public and a transcript of the hearings will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

Requests to present oral testimony in connection with public hearings should be accompanied by twenty copies, in English, of all written briefs or statements and should be received by the Chairman of the GSP Subcommittee no later than 5:00 p.m. Tuesday, September 5. Oral testimony before the GSP Subcommittee will be limited to five minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. All interested parties wishing to make an oral presentation at the hearings must submit the name, address, and telephone number of the witness(es) representing their organization by 5:00 p.m. Monday, September 11. Post-hearing briefs or statements will be accepted if they conform with the regulations cited above and are submitted in twenty copies, in English, no later than 5:00 p.m. Wednesday, October 18. Parties not wishing to appear may submit such written briefs or statements also by October 18. Rebuttal briefs should be submitted in twenty copies, in English, by 5:00 p.m. Monday, November 13.

During 1989 and/or January 1990, an opportunity will be provided for the public to comment on nonconfidential USITC analysis. Notice of the availability of this analysis and the timetable for comment will be published in the **Federal Register**.

III. List of Articles Which May Be Considered for Designation as Eligible Articles for Purposes of the GSP or for Waiver of the Competitive Need Limit and On Which the USITC Will Be Asked To Provide Advice

1. In conformity with sections 502(a) and 131(a) of the Trade Act of 1974 as amended (19 U.S.C. 2543(A) and 2151(A)), notice is hereby given that the articles listed herein may be considered for designation as eligible articles for purposes of the GSP, or for modification of their current GSP status.

An article which is determined to be import sensitive in the context of the GSP cannot be designated as an eligible article. Recommendations with respect to the eligibility of any listed article will be made after public hearings have been held and advice has been received from the USITC on the probable effects of the requested modification in the GSP on industries producing like or directly competitive articles and on consumers.

2. As explained in 52 FR 10960, the Harmonized Systems (HS) tariff nomenclature is a new international product nomenclature developed under the auspices of the Customs Cooperation Council (CCC) for the purposes of classifying goods in international trade. The HS was implemented by the United States and internationally on January 1, 1989, and replaced the previous TSUS nomenclature. Product eligibility under the coverage of the GSP program is currently defined in terms of the eight-digit HS classifications. Therefore, all product-related petitions must identify the product(s) of interest in terms of the HS tariff nomenclature. The lists that follow describe the articles that have been accepted for review in this year's review in terms of the HS tariff nomenclature only.

3. Advice of the United States International Trade Commission. On behalf of the President and in accordance with sections 503(A) and 131(A) of the Trade Act of 1974 as amended, the USITC is being furnished with the list of articles published herein for the purpose of securing from the USITC its advice on the probable economic effect on U.S. industries producing like or directly competitive articles, and on consumers, of the modification of the list of articles eligible for GSP. Also, on behalf of the President and in accordance with section 504(c)(3)(A)(i) of the Act, the USITC is being asked to furnish economic advice on the probable economic effect on U.S. industries producing like or directly competitive articles, and on consumers, of the granting of a waiver of competitive need limits for the products identified in section D of the lists which follow.

IV. Cases Accepted for Review Regarding Country Practices, Pursuant to 15 CFR 2007.0(b)

Pursuant to 15 CFR 2007.0(b), the TPSC has accepted for review petitions to review the status of Benin, Indonesia, Nepal, Thailand, and the Dominican Republic as GSP beneficiary countries in relation to their practices relating to worker rights.

Because review of the 1988 worker rights cases of Haiti, Liberia, and Syria has been extended, comments on the worker rights practices of these three countries will also be welcomed during the public hearing and comment process described in section II.

Pursuant to 15 CFR 2007.0(b), the TPSC has accepted for review requests filed by the following groups or individuals to review the GSP status of various countries with regard to each country's practices concerning expropriation without compensation: American International Group (Peru), Charles Sayous (Uruguay), and Administradora Commercial (Costa Rica). Comments regarding the Venezuelan expropriation case filed by Occidental Petroleum Co. in 1988 will also be welcome since the review of this case was extended into 1989.

Sandra J. Kristoff,

Chairwoman, Trade Policy Staff Committee.

BILLING CODE 3190-01-M

Annex

Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences.	
		Vegetables (uncooked or cooked by steaming or boiling in water), frozen:	
		Leguminous vegetables, shelled or unshelled:	
		Beans (Vigna spp., Phaseolus spp.):	
		Not reduced in size:	
89-1	0710.22.30(pt.)	String beans (snap beans)	Government of Peru
		Fruit and nuts, uncooked or cooked by steaming or boiling in water, frozen, whether or not containing added sugar or other sweetening matter:	
		[Articles provided for in subheadings 0811.10.00 thru 0811.20.40]	
		Other:	
89-2	0811.90.40	Papayas	do.
89-3	0811.90.60(pt.)	Mangoes	do.
		Cereal flours other than of wheat or meslin:	
		[Rye flour; corn (maize) flour; rice flour]	
		Other:	
		[Buckwheat flour]	
		Other:	
89-4	1102.90.40(pt.)	Mixtures	do.
		Cereal grains otherwise worked (for example, hulled, rolled, flaked, pearled, sliced or kibbled), except rice of heading 1006; germ of cereals, whole, rolled, flaked or ground:	
		[Rolled or flaked grains]	
		Other worked grains (for example, hulled, pearled, sliced or kibbled):	
		[Of barley; of oats; of corn (maize)]	
89-5	1104.29.00	Of other cereals	do.
		Sunflower-seed, safflower or cottonseed oil, and fractions thereof, whether or not refined, but not chemically modified:	
		Sunflower-seed or safflower oil and fractions thereof:	
		Crude oil:	
89-6	1512.11.0040	Safflower oil	Oilseeds International, Ltd., San Francisco, CA; Producers Cotton Oil, Co., Fresno, CA; Safflower Seed & Oil California Oils Corp., Richmond, CA

1/ Harmonized Tariff Schedule of the United States.

Annex
-2-

Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen:	
		Potatoes:	
89-7	2004.10.00(pt.)	Yellow (Solano) potatoes	Government of Colombia
		Jams, fruit jellies, marmalades, fruit or nut puree and fruit or nut pastes, being cooked preparations, whether or not containing added sugar or other sweetening matter:	
		[Homogenized preparations]	
		Other:	
		[Citrus fruit]	
		Other:	
		Pastes and purees:	
		[Apple, quince and pear; guava and mango]	
89-8	2007.99.55	Papaya	Government of the Philippines
		[Strawberry]	
89-9	2007.99.65	Other	do.
		Vegetable materials and vegetable waste, vegetable residues and byproducts, whether or not in the form of pellets, of a kind used in animal feeding, not elsewhere specified or included:	
		[Acorns and horse-chestnuts]	
		Other:	
89-10	2308.90.60(pt.)	Dehydrated marigolds	Government of Peru
		Carboxyamide-function compounds; amide-function compounds of carbonic acid:	
		Cyclic amides (including cyclic carbamates) and their derivatives; salts thereof:	
		[Ureines and their derivatives; salts thereof]	
		Other:	
		Aromatic:	
		[Articles provided for in subheading 2924.29.05 thru 2924.29.14]	
		Other:	
		[Pesticides; fast color bases; drugs]	
		Other:	
89-11	2924.29.40(pt.)	5-Bromoacetyl-2-salicylamide	Sour Pliva, Yugoslavia

1/ Harmonized Tariff Schedule of the United States.

Annex
-3-

Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.	Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)		
		Sulfonamides:	
		[Articles provided for in subheadings 2935.00.05 thru 2935.00.15]	
		Other:	
		Drugs:	
		[Anti-infective agents]	
		Other:	
89-12	2935.00.45(pt.)	N-[5-(Aminosulfonyl)-1,3,4-thiadiazol-2-yl]acetamide	Sour Pliva, Yugoslavia
		Modeling pastes, including those put up for children's amusement; preparations known as "dental wax" or as "dental impression compounds", put up in sets, in packings for retail sale or in plates, horseshoe shapes, sticks or similar forms; other preparations for use in dentistry, with a basis of plaster (of calcined gypsum or calcium sulfate):	
89-13	3407.00.00(pt.)	Modeling pastes, including those put up for children's amusement	American Art Clay Co., Inc., Indianapolis, IN; Industries Isemarf S.A., Mexico
		Prepared rubber accelerators; compound plasticizers for rubber or plastics, not elsewhere specified or included; antioxidizing preparations and other compound stabilizers for rubber or plastics:	
		Antioxidizing preparations and other compound stabilizers for rubber or plastics:	
		Containing any aromatic or modified aromatic antioxidant or other stabilizer:	
89-14	3812.30.10(pt.)	Mixtures of N,N'-diaryl-p-phenylenediamines	Novaquim, S.A. de C.V., Mexico
		Synthetic staple fibers, not carded, combed or otherwise processed for spinning:	
89-15	5503.40.00	Of polypropylene	Fitesa, S.A., Brazil
		Gloves, mittens and mitts, knitted or crocheted:	
		Gloves, mittens and mitts, impregnated, coated or covered with plastics or rubber:	
		[Ski or snowmobile gloves, mittens and mitts]	
		Other:	
		[Without fourchettes]	
		With fourchettes:	
89-16	6116.10.4505	Specially designed for use in sports	Government of the Philippines

1/ Harmonized Tariff Schedule of the United States.

Annex
-4-

Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.	Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)		
		Gloves, mittens and mitts:	
		Impregnated, coated or covered with plastics or rubber:	
		[Ski or snowmobile gloves, mittens and mitts]	
		Other:	
		Without fourchettes:	
		[Cut and sewn from pre-existing machine-woven fabric that is impregnated, coated or covered with plastics or rubber]	
		Other:	
89-17	6216.00.2505	Specially designed for use in sports	Government of the Philippines
		With fourchettes:	
89-18	6216.00.3005	Specially designed for use in sports	do.
		Other:	
		Of man-made fibers:	
		[Ski or snowmobile gloves, mittens and mitts]	
		Other:	
89-19	6216.00.4805	Specially designed for use in sports	do.
		Other furnishing articles, excluding those of heading 9404:	
		[Bedspreads]	
		Other:	
		[Articles provided for in subheadings 6304.91.00 thru 6304.93.00]	
		Not knitted or crocheted, of other textile materials:	
		[Wall hangings of wool or fine animal hair]	
		Other:	
		Of vegetable fibers (except cotton):	
89-20	6304.99.20(pt.)	Wall hangings of jute	Intercontinental Art, Inc., Gardena, CA

1/ Harmonized Tariff Schedule of the United States.

Annex
-5-

Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Tableware, kitchenware, other household articles and toilet articles, of porcelain or china:	
		Tableware and kitchenware:	
		[Hotel or restaurant ware and other ware not household ware]	
		Other:	
		[Of bone chineware]	
		Other:	
		[Articles provided for in subheadings 6911.10.35 and 6911.10.39]	
		Other:	
		[Articles provided for in subheadings 6911.10.41 thru 6911.10.49]	
89-21	6911.10.50(pt.)	Serviette rings	Government of the Philippines
		Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china:	
		Tableware and kitchenware:	
		[Articles provided for in subheading 6912.00.10]	
		Other:	
		[Hotel or restaurant ware and other ware not household ware]	
		Other:	
		[Articles provided for in subheadings 6912.00.35 and 6912.00.39]	
		Other:	
		[Articles provided for in subheadings 6912.00.41 thru 6912.00.47]	
89-22	6912.00.49(pt.)	Serviette rings	do.

1/ Harmonized Tariff Schedule of the United States.

Annex
-6-

Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent or reflecting layer, but not otherwise worked:	
		[Nonwired glass, having an absorbent or reflecting layer]	
		Other nonwired glass:	
		Colored throughout the mass (body tinted), opacified, flashed or merely surface ground:	
89-23	7005.21.10	Measuring less than 10 mm in thickness	Government of Mexico; Vidrio Plano de Mexico, S.A., Mexico; Vitro Flotado, S.A., Mexico
89-24	7005.21.20	Measuring 10 mm or more in thickness	do.
		Other:	
		Measuring less than 10 mm in thickness:	
		Measuring not over 0.65 m^2 in area:	
89-25	7005.29.0510	Measuring not over 0.26 m^2 in area	do.
89-26	7005.29.15	Measuring over 0.65 m^2 in area	do.
89-27	7005.29.25	Measuring 10 mm or more in thickness	do.
		Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):	
		[Articles provided for in subheadings 7013.10.10 thru 7013.39.60]	
		Other glassware:	
		[Of lead crystal]	
		Other:	
		[Articles provided for in subheadings 7013.99.10 and 7013.99.20]	
		Other:	
		[Articles provided for in subheadings 7013.99.30 and 7013.99.35]	
		Other:	
		Valued over $0.30 but not over $3 each:	
89-28	7013.99.50(pt.)	Globe-shaped bowls	Crisa Corporation, Laredo, TX; Vitrocrisa Cristaleria, S.A. de C.V., Mexico

1/ Harmonized Tariff Schedule of the United States.

BEST COPY AVAILABLE

Annex
-7-

Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.	Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)		
		Stranded wire, cables, plaited bands and the like, including slings and similar articles, of aluminum, not electrically insulated:	
		[With steel core]	
		Other:	
		Not fitted with fittings and not made up into articles:	
89-29	7614.90.10(pt.)	Electrical conductors	Government of Venezuela; General Cable Company, Greenwich, CT;
		Television receivers (including video monitors and video projection television receivers), whether or not combined, in the same housing, with radiobroadcast receivers or sound or video recording or reproducing apparatus:	
		Color:	
		[Video recording or reproducing apparatus incorporating a television tuner]	
		Other television receivers:	
		Not having a picture tube:	
89-30	8528.10.8055	Apparatus for the reception of television signals relayed by television satellite	Uniden Corporation of America, Fort Worth, TX
		Electrical capacitors, fixed, variable or adjustable (pre-set); parts thereof:	
89-31	8532.10.00	Fixed capacitors designed for use in 50/60 Hz circuits and having a reactive power handling capacity of not less than 0.5 kvar (power capacitors)	ABB Capacitores, S.A. de C.V., Mexico
		Other fixed capacitors:	
		[Articles provided subheadings 8532.21.00 thru 8532.24.00]	
89-32	8532.25.00	Dielectric of paper or plastics	do.
89-33	8532.29.00	Other	do.

1/ Harmonized Tariff Schedule of the United States.

Annex
-8-

Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
		Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof:	
		Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes:	
		[Light-emitting diodes (LED's); other diodes; transistors]	
		Other:	
89-34	8541.40.9060	Optical coupled isolators 2/	Siemens Components, Inc., Cupertino, CA
		Slide fasteners and parts thereof:	
		Slide fasteners:	
89-35	9607.11.00	Fitted with chain scoops of base metal	Government of Mexico; Asociacion Mexicana de Fabricantes de Cremalleras Automaticas, A.C., Mexico
89-36	9607.19.00	Other	do.
B.	Petitions to remove products from the List of eligible articles for the Generalized System of Preferences.		
		Chlorides, chloride oxides and chloride hydroxides; bromides and bromide oxides; iodides and iodide oxides:	
		Bromides and bromide oxides:	
		Bromides of sodium or of potassium:	
89-37	2827.51.10	Of sodium	Ethyl Corporation, Richmond, VA; Great Lakes Chemical Corporation, West Lafayette, IN
		Acyclic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		[Saturated monohydric alcohols; unsaturated monohydric alcohols; diols]	
		Other polyhydric alcohols:	
89-38	2905.44.00	D-glucitol (Sorbitol)	ICI Americas Inc., Wilmington, DE

1/ Harmonized Tariff Schedule of the United States.
2/ Waiver of competitive need limit for Malaysia also requested for optical coupled isolators in HTS 8541.40.9060.

Annex
-9-

Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
B.	Petitions to remove products from the list of eligible articles for the Generalized System of Preferences. (con.)		
		Gelatin (including gelatin in rectangular (including square) sheets, whether or not surface-worked or colored) and gelatin derivatives; isinglass; other glues of animal origin, excluding casein glues of heading 3501:	
		[Fish glue; inedible gelatin and animal glue valued under 88 cents per kg]	
89-39	3503.00.50	Other	Hudson Industries Corporation, West Orange, NJ
		Prepared glues and other prepared adhesives, not elsewhere specified or included; products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg:	
		[Products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg]	
		Other:	
		[Adhesives based on rubber or plastics (including artificial resins)]	
89-40	3506.99.00	Other	do.
		Cellulose and its chemical derivatives, not elsewhere specified or included, in primary forms:	
89-41	3912.20.00	Cellulose nitrates (including collodions)	Hercules Incorporated, Wilmington, DE
		Stranded wire, ropes, cables, plaited bands, slings and the like, of iron or steel, not electrically insulated:	
		Stranded wire, ropes and cables:	
		[Stranded wire]	
		Ropes, cables, and cordage other than stranded wire:	
		Of stainless steel:	
89-42	7312.10.5[illegible]	Fitted with fittings or made up into articles	Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, Washington, DC
89-43	7312.10.60	Other	do.

1/ Harmonized Tariff Schedule of the United States.

Annex
-10-

Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
B.	Petitions to remove products from the list of eligible articles for the Generalized System of Preferences. (con.)		
		Stranded wire, ropes, cables, plaited bands, slings and the like, of iron or steel, not electrically insulated (con.):	
		Stranded wire, ropes and cables (con.):	
		Ropes, cables, and cordage other than stranded wire (con.):	
		Other:	
89-44	7312.10.70	Fitted with fittings or made up into articles	Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, Washington, DC
		Other:	
		[Of brass plated wire]	
89-45	7312.10.90	Other	do.
		Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof:	
		Lead-acid storage batteries, of a kind used for starting piston engines:	
		[Used batteries, for recovery of metal]	
		Other:	
		12 V batteries:	
89-46	8507.10.0060	Exceeding 6 kg in weight	U.S. Battery Trade Council, Washington, DC
C.	Petition to remove duty-free status from a beneficiary developing country for a product on the list of eligible articles for the Generalized System of Preferences. 2/		
		Acyclic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		[Saturated monohydric alcohols; unsaturated monohydric alcohols; diols]	
		Ot[illegible] polyhydric alcohols:	
89-47	2905.43.00 (Brazil)	Mannitol	ICI Americas Inc., Wilmington, DE

1/ Harmonized Tariff Schedule of the United States.
2/ The country named is the beneficiary developing country specified by the petitioner. While the Trade Policy Staff Committee (TPSC) review will focus on that country, the TPSC reserves the right to address removal of GSP status for countries other than those specified by the petitioner.

Annex
-11-

Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
		D. Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences.	
		Vegetables provisionally preserved (for example, by sulfur dioxide gas, in brine, in sulfur water or in other preservative solutions), but unsuitable in that state for immediate consumption: [Onions; olives; capers; cucumbers including gherkins]	
		Other vegetables; mixtures of vegetables:	
89-48	0711.90.60(pt.) (Mexico)	Jalapeno or serrano chili peppers	Camara Nacional de la Industria de Conservas Alimenticias, Mexico
		Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid: [Cucumbers including gherkins; onions]	
		Other:	
		[Capers]	
		Other:	
		Vegetables:	
89-49	2001.90.40(pt.) (Mexico)	Nopalitos 2/	Government of Mexico; Empacadora San Marcos, S.A. de C.V., Mexico
89-50	2001.90.40(pt.) (Mexico)	Jalapeno or serrano chili peppers	Camara Nacional de la Industria de Conservas Alimenticias, Mexico
		Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen: [Articles provided for in subheadings 2005.10.00 thru 2005.80.00]	
		Other vegetables and mixtures of vegetables:	
89-51	2005.90.90(pt.) (Mexico)	Nopalitos 2/	McCormick & Company, Incorporated Hunt Valley, MD; Festin Foods Corporation, Carlsbad, CA
89-52	2203.00.00 (Mexico)	Beer made from malt	Government of Mexico; Cerveceria Cuauhtemoc, S.A. de C.V., Mexico; Cerveceria Moctezuma, S.A. de C.V., Mexico

1/ Harmonized Tariff Schedule of the United States.
2/ 504(d) waiver also requested for nopalitos in HTS 2001.90.40 or HTS 2005.90.90.

Annex
-12-

Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
		D. Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. (con.)	
		Polymers of styrene, in primary forms: Polystyrene: [Expandable]	
89-53	3903.19.00 (Mexico)	Other	Government of Mexico; Industrias Resistol, S.A. Mexico; Poliestireno Y Derivados, S.A. de C.V., Mexico; Polioles, S.A. de C.V., Mexico
		Polymers of vinyl chloride or of other halogenated olefins, in primary forms:	
89-54	3904.10.00 (Mexico)	Polyvinyl chloride, not mixed with any other substances	Government of Mexico; Grupo Primex, S.A. de C.V., Mexico
		Toilet paper, handkerchiefs, cleansing tissues, towels, tablecloths, table napkins, diapers, tampons, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibers:	
89-55	4818.10.00 (Mexico)	Toilet paper	Government of Mexico; Cia. Industrial San Cristobal, S.A., Mexico; Kimberly-Clark Corporation, Irving, TX; Kimberly-Clark de Mexico, S.A. de C.V., Mexico; Productos San Cristobal, S.A. de C.V., Mexico; Scott Paper Company, Philadelphia, PA
89-56	4818.20.00 (Mexico)	Handkerchiefs, cleansing or facial tissues and towels	do.
89-57	4818.30.00 (Mexico)	Tablecloths and table napkins	do.

1/ Harmonized Tariff Schedule of the United States.

Annex
-13-

Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
D.		Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. (con.)	
		Cloth (including endless bands), grill, netting and fencing, of iron or steel wire; expanded metal of iron or steel:	
		Woven products:	
		[Of stainless steel]	
89-58	7314.19.00 (Mexico)	Other	Government of Mexico; DEACERO, S.A. de C.V., Mexico
		Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof:	
		Filtering or purifying machinery and apparatus for liquids:	
89-59	8421.23.00 (Mexico)	Oil or fuel filters for internal combustion engines	Government of Mexico; Gonher, Mexico
		Filtering or purifying machinery and apparatus for gases:	
89-60	8421.31.00 (Mexico)	Intake air filters for internal combustion engines	do.
		Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included:	
		[Analog or hybrid automatic data processing machines]	
89-61	8471.20.00 (Mexico)	Digital automatic data processing machines, containing in the same housing at least a central processing unit and an input and output unit, whether or not combined	Government of Mexico; IBM de Mexico, S.A., Mexico
		Other:	
89-62	8471.91.00 (Mexico)	Digital processing units, whether or not entered with the rest of a system, which c... contain in the same housing one or two of the following types of units: storage units, input units, output units	do.
		[Articles provided for in subheadings 8471.92.10 thru 8471.93.60]	
		Other:	
89-63	8471.99.30 (Malaysia)	Power supplies	Astec U.S.A. (HK) Ltd., Santa Clara, CA

1/ Harmonized Tariff Schedule of the United States.

Annex
-14-

Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
D.		Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. (con.)	
		Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof:	
89-64	8504.40.00 (Malaysia)	Static converters	Astec U.S.A. (HK) Ltd., Santa Clara, CA
		Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization; electromagnetic or permanent magnet chucks, clamps and similar holding devices; electromagnetic couplings, clutches and brakes; electromagnetic lifting heads; parts thereof:	
		Permanent magnets and articles intended to become permanent magnets after magnetization:	
		[Of metal]	
89-65	8505.19.00 (Mexico)	Other	General Motors Corporation, Rochester, NY
		Electrical ignition or starting equipment of a kind used for spark-ignition or compression-ignition internal combustion engines (for example, ignition magnetos, magneto-dynamos, ignition coils, spark plugs and glow plugs, starter motors); generators (for example, dynamos, alternators) and cut-outs of a kind used in conjunction with such engines; parts thereof:	
89-66	8511.30.00 (Mexico)	Distributors; ignition coils	Government of Mexico; Bobinadores Unidos, S.A. de C.V., Mexico
		Prepared unrecorded media for sound recording or similar recording of other phenomena, other than products of chapter 37:	
89-67	8523.20.00 (Mexico)	Magnetic discs	Government of Mexico; Aurex, S.A. de C.V., Mexico
		Transmission apparatus for radiotelephony, radiotelegraphy, radiobroadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras:	
		Transmission apparatus incorporating reception apparatus:	
		Transceivers:	
		[Articles provided for in subheadings 8525.20.05 thru 8525.20.20]	
89-68	8525.20.30 (Malaysia)	Other	Motorola Inc., Schaumburg, IL

1/ Harmonized Tariff Schedule of the United States.

Annex
-15-

Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
D.		Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. (con.)	
89-69	8605.00.00 (Mexico)	Railway or tramway passenger coaches, not self-propelled; luggage vans, post office coaches and other special purpose railway or tramway coaches, not self-propelled (excluding those of heading 8604)	Government of Mexico; Constructora Nacional de Carros de Ferrocarril, Mexico
		Railway or tramway freight cars, not self-propelled:	
89-70	8606.10.00 (Mexico)	Tank cars and the like	do.
89-71	8606.20.00 (Mexico)	Insulated or refrigerated cars, other than those of subheading 8606.10	do.
89-72	8606.30.00 (Mexico)	Self-discharging cars, other than those of subheading 8606.10 or 8606.20	do.
		Other:	
89-73	8606.91.00 (Mexico)	Covered and closed	do.
89-74	8606.92.00 (Mexico)	Open, with non-removable sides of a height exceeding 60 cm	do.
89-75	8606.99.00 (Mexico)	Other	do.
		Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: [Articles provided for in subheadings 9503.10.00 thru 9503.60.00]	
		Other toys, put up in sets or outfits, and parts and accessories thereof: [Toy tea sets of ceramic ware made to the approximate scale of 1 to 10 or larger]	
		Other: [Toy alphabet blocks]	
89-76	9503.70.80 (Mexico)	Other	Mattel Inc., Hawthorne, CA; Tonka Corporation, Minnetonka, MN
		[Other toys and models, incorporating a motor, and parts and accessories thereof]	

1/ Harmonized Tariff Schedule of the United States.

Annex
-16-

Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
D.		Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. (con.)	
		Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof (con.):	
		Other:	
		[Kites]	
		Other:	
89-77	9503.90.50 (Mexico)	Inflatable toy balls, balloons and punchballs	Government of Mexico; Latex Occidental, S.A. de C.V., Mexico
89-78	9503.90.60 (Mexico)	Other toys (except models), not having a spring mechanism	Mattel Inc., Hawthorne, CA; Tonka Corporation, Minnetonka, MN
E.		Petition pursuant to section 504(d) of the Trade Act of 1974 to determine an eligible article as not like or directly competitive with any article produced in the United States on January 3, 1985, in order to avoid loss of GSP duty-free treatment under the provisions of section 504(c)(1)(B) of the Trade Act of 1974.	
		Other fixed vegetable fats and oils (including jojoba oil) and their fractions, whether or not refined, but not chemically modified:	
		Castor oil and its fractions:	
89-79	1515.30.00(pt.)	Crude oil	Alnor Oil Company, Inc., Valley Stream, NY; Caschem, Inc., Bayonne, NJ; Union Camp Corporation, Wayne, NJ
		Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included: [Articles provided for in subheadings 9405.10.40 thru 9405.60.60]	
		Parts:	
		Of glass:	
		Globes and shades:	
89-80	9405.91.20(pt.)	Of lead crystal	Crisa Corporation, Laredo, TX; Philip Goldin Associates, Inc., Baldwin, NY; Vitrocrisa Kristal, S.A., Mexico

1/ Harmonized Tariff Schedule of the United States.

[FR Doc. 89-18722 Filed 8-9-89; 8:45 am]
BILLING CODE 3190-01-C

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 4, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming applications, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No.: 46435
Date filed: August 4, 1989
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 1, 1989
Description: Application of Delta Air Lines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applied for a new or amended certificate of public convenience and necessity to permit Delta to provide nonstop air transportation between the United States and New Zealand.

Docket No.: 29833
Date filed: July 31, 1989
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 28, 1989
Description: Application of Transporturile Aeriene Romane (TAROM) pursuant to section 402 of the Act and Subpart Q of the Regulations applies for an emergency renewal of its foreign air carrier permit, pursuant to Order 85-2-72.

Docket No.: 45348
Date filed: August 3, 1989
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 31, 1989
Description: Supplement to the Application of Haiti Trans Air, S.A., pursuant to section 402 of the Act and Subpart Q of the Regulations request the issuance of the additional Miami-Santo Domingo authority requested.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 89-18711 Filed 8-9-89; 8:45 am]
BILLING CODE 4910-62-M

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB on August 4, 1989

AGENCY: Department of Transportation (DOT), Office of the Secretary.
ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on August 4, 1989, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone, (202) 366-4735, or Gary Waxman or Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on August 4, 1989.

DOT No: 3246
OMB No: 2127-0052
Administration: National Highway Traffic Safety Administration
Title: Brake Hose Manufacturing Identification Standard 106
Need for Information: To be able to trace the manufacturer in case a defect is found in the hose.
Proposed Use of Information: The purpose of this requirement is to ensure traceability should a noncompliance or safety related defect be discovered.
Frequency: On occasion
Burden Estimate: 30 hours
Respondents: Manufacturers
Form(s): None
Average Burden Hours Per Respondent: 30 minutes

DOT No: 3247
OMB No: 2130-0511
Administration: Federal Railroad Administration
Title: Designation of Qualified Persons
Need for Information: To verify that all freight car inspections are conducted by qualified persons thus preventing unsafe movement of defective equipment.
Proposed Use of Information: To prevent the unsafe movement of defective equipment authorized by personnel unqualified to make such determinations.
Frequency: On occasion
Burden Estimate: 50 hours
Respondents: 400 Railroads
Form(s): None
Average Burden Hours Per Respondent: 2 minutes

DOT No: 3248
OMB No: 2120-0040
Administration: Federal Aviation Administration
Title: Aviation Maintenance Technician School—FAR 147
Need for Information: The collection of information is necessary to ensure that Aviation Maintenance Technician schools meet the minimum requirements for procedures and curriculum set forth by the FAA in FAR 147.
Proposed Use of Information: The information is used to certify aviation maintenance technician schools and maintain a standardized level of proficiency in those schools.

Frequency: On occasion
Burden Estimate: 61515 hours annually
Respondents: Aviation Maintenance Technician school operators and owners.
Form(s): FAA Form-8310-6
Average Burden Hours Per Respondent: 40 hours

DOT No: 3249
OMB No: 2127-0042
Administration: National Highway Traffic Safety Administration
Title: 49 CFR Part 576, Record Retention
Need for Information: To insure records are kept by manufacturers for proper investigation of possible defects related to motor vehicle safety.
Proposed Use of Information: This regulation requires manufacturers to retain one copy of complaints, reports, and other records of malfunctions that may be related to motor vehicle safety. These records may be used to investigate possible defects and noncompliance.
Frequency: Recordkeeping
Total Estimated Burden: 40,000 hours
Respondents: 1,000 manufacturers
Form(s): None
Average Burden Hours Per Respondent: 39⅓ minutes

DOT No: 3250
OMB No: 2130-0527
Administration: Federal Railroad Administration
Title: New Locomotive Certification (Noise Compliance Regulations)
Need for Information: To obviate the need for additional noise testing by the railroads when purchasing new locomotives.
Proposed Use of Information: To ensure compliance with the Environmental Protection Agency noise standards for new locomotives and cars.
Frequency: Recordkeeping
Burden Estimate: 190 hours
Respondents: 2 Manufacturers
Form(s): None
Average Burden Hours Per Respondent: 30 minutes

DOT No: 3251
OMB No: 2120-0517
Administration: Federal Aviation Administration
Title: FAR Part 150—Airport Noise Compatibility Planning
Need for Information: The FAA needs the information to determine which airport operators are eligible for an 8% set aside of discretionary grant funds under the FAA Airport Improvement Program.
Proposed Use of Information: The FAA will use the voluntarily submitted information in conducting its Aviation Safety and Noise Abatement Act of 1979 required reviews of the submissions.
Frequency: On occasion
Burden Estimate: 78,300 hours annually
Respondents: Airport operators
Form(s): None
Average Burden Hours Per Respondent: 9,000 hours annually for a medium to large hub airport, 4,500 hours for a large heliport, and 1,800 hours annually for a small hub airport.

DOT No: 3252
OMB No: 2120-0508
Administration: Federal Aviation Administration
Title: Fuel Venting and Exhaust Emission Requirements for Turbine Powered Airplanes
Need for Information: This is a labeling requirement to permit rapid determination by FAA inspectors, owners, and operators as to whether an engine can legally be installed and operated on an aircraft in the USA.
Proposed Use of Information: This is a labeling requirement to put the date of manufacture and compliance with U.S. EPA pollution requirements on the identification plate. The information on the label is intended to minimize the effort required to determine whether a turbojet engine may legally be installed and operated on an aircraft in the United States.
Frequency: On occasion
Burden Estimate: 100 hours
Respondents: Aircraft engine manufacturers
Form(s): None
Average Burden Hours Per Respondent: 5 minutes

DOT No: 3253
OMB No: 2115-0043
Administration: U.S. Coast Guard
Title: Plan Approval and Records for Load Lines
Proposed Use of Information: The Coast Guard uses the information so that there are procedures for vessel owners, to determine vessel compliance with design requirements and vessel compliance with load line regulations.
Need for Information: Owners of merchant vessels over 150 gross tons or 79 feet long engaged in commerce on international or coastwise voyages by sea and required by law to obtain a load line certificate. This procedure ensures that no such vessel is loaded deeper than the line of safety.
Frequency: On occasion
Burden Estimate: 11560
Respondents: Waterway users
Form(s): LL 9-A, LL 10-A, LL 14-A, LL 18-E, LL 40-A, LL 101-A
Average Burden Hours Per Response: 10 hours and 15 minutes reporting; 8 minutes recordkeeping

DOT No: 3254
OMB No: 2115-0076
Administration: U.S. Coast Guard
Title: Security Zones, Regulated Navigation Areas and Safety Zones
Need for Information: This information collection requirement is needed to establish a limited access zone for the purpose of safeguarding ports, harbors, territories or waters of the U.S. from a threat or potential threat to national security.
Proposed Use of Information: The Coast Guard uses the information to control vessel traffic in such areas by prohibiting marine traffic, requiring reduced speed, controlling spectators, or other restrictions.
Frequency: On occasion
Burden Estimate: 645
Respondents: Waterway users
Form(s): None
Average Burden Hours Per Response: 1 hour and 15 minutes

DOT No: 3255
OMB No.: 2133-0025
Administration: Maritime Administration
Title: Position Reporting System For Vessels
Need for Information: To document changes in ship location
Proposed Use of Information: Search and rescue, defense contingency planning
Frequency: Other (every 48 hours)
Burden Estimate: 78,767 hours
Respondents: Ship Operators
Form(s): CG-4796A
Average Burden Hours Per Respondent: 10 minutes

DOT No: 3256
OMB No: 2132-0544
Administration: Urban Mass Transportation Administration
Title: Buy American Requirements
Need For Information: UMTA regulations require all bidders to certify compliance with the general requirements or the special requirements for rolling stock.
Proposed Use of Information: To ensure that products that are being purchased by UMTA grantees or contractors comply with requirement that, with exceptions, all steel and manufactured products must be of U.S. origin.
Frequency: On occasion
Burden Estimate: 7,500 hours
Respondents: 10,000
Form(s): Certificate
Average Burden Hours Per Response: 15 minutes

DOT No: 3257
OMB No: 2115–0042
Administration: U.S. Coast Guard
Title: Certificate of Discharge to Merchant Seamen
Need For Information: This information collection requirement is needed to provide merchant seamen with a document of evidence of sea service to determine eligibility for various benefits.
Proposed Use of Information: The Seamen and Coast Guard use the information to establish sea service time and qualifications for issuing original documents or upgrading existing documents. It is also used to develop maritime sea service statistics.
Frequency: On occasion
Burden Estimate: 7,508
Respondents: Merchant Seamen
Form(s): CG–718A
Average Burden Hours Per Response: 3 minutes

DOT No: 3258
OMB No: 2115–0520
Administration: U.S. Coast Guard
Title: Plan Approval and Records for Existing Tank Vessels of 20,000 to 40,000 Deadweight Tons (DWT) Carrying Oil in Bulk
Need For Information: This information collection requirement is needed to ensure that vessels have on board, approved plans and records for safe operation.
Proposed Use of Information: The Coast Guard uses the information to certify that vessels comply with the standards. Also, operating personnel use the information for safe and proper operation of the vessel and equipment.
Frequency: On occasion
Burden Estimate: 56.75
Respondents: U.S. and Foreign tank vessel owners, builders and operators
Form(s):
Average Burden Hours Per Respondent: 18 minutes for reporting and 32½ minutes

DOT No: 3259
OMB No: 2137–0542
Administration: Research and Special Programs Administration
Title: Cryogenic Liquids Requirements
Need For Information: To assure the compliance of special requirements needed for cryogenics due to their extreme flammability and high compression ratio, one to six hundred, and low temperatures, about minus 400 degrees F., needed to maintain cryogenics in the liquid state.
Proposed Use of Information: To ascertain that drivers of cargo tanks transporting flammable cryogenics have received training pertaining to the proper handling of cargo tanks, properties and hazards of material in the cargo tank and emergency procedures; and that tanks are properly loaded and have not been malfunctioning.
Frequency: Each trip
Burden Estimate: 1520 hours annually
Respondents: Carriers of cryogenic materials
Form(s): None
Average Burden Hours Per Response: 2 hours and 40 minutes

DOT No: 3260
OMB No: 2137–0561
Administration: Research and Special Programs Administration
Title: Rule Making and Exemption Requirements
Need For Information: To allow the regulated public a means to propose new or amended safety standards or to deviate from the hazardous materials regulations to try out new methods of transportation, packaging, etc., on a trial basis.
Proposed Use of Information: To ensure that all conditions of an exemption are adhered to, ensuring the safe transportation of the hazardous materials authorized under its terms.
Frequency: On occasion
Burden Estimate: 4319 hours annually
Respondents: Shippers, carriers and manufacturers of containers for hazardous materials
Form(s): None
Average Burden Hours Per Response: 45 minutes

Issued in Washington, DC, on August 4, 1989.

Robert J. Woods,
Director of Information Resource Management.

[FR Doc. 89–18709 Filed 8–9–89; 8:45 am]
BILLING CODE 4910–62–M

[Docket No. 43343; Notice 89–7]

Electronic Tariff System; Advisory Committee Meeting

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Department announces the third meeting of the Electronic Tariff Filing System Advisory Committee to be held on September 7, 1989, in Washington, DC. The agenda includes a summary of the developments for the interim Electronic Tariff Filing System and a detailed demonstration of the system interface with the first tariff filer granted permission, on an experimental basis, to file electronically.

DATE: The Advisory Committee meeting will commence on September 7, 1989, at 9:00 a.m. and, if necessary, continue through September 8, 1989.

ADDRESS: The Advisory Committee meeting will be held in Room 6202 at 400 7th Street, SW., Washington, DC. Comments should be sent to the Docket Clerk, C–55, Docket 43343, Department of Transportation, Room 4107, 400 7th Street, SW., Washington, DC 20590. Comments will be available for review by the public at this address from 9:00 a.m. through 5:00 p.m., Monday through Friday. Persons wishing acknowledgment of their comments should include a stamped, self-addressed postcard with their comments. The docket clerk will stamp the card with the time and date, and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Committee Executive Director, Douglas V. Leister, Office of International Aviation, P–40, 400 7th Street, SW., Washington, DC 20590, telephone: (202) 366–2422.

SUPPLEMENTARY INFORMATION: The Advisory Committee was established in November of 1988 (51 FR 42327) to advise the Department on the study, development, and operation of an automated tariff filing system. The Committee includes representatives of airlines, airline associations, tariff agents, consumer groups, and the information industry. The Committee held its first meeting on March 24–25, and the second on June 30, 1987.

The meeting will be open to public observation. A period will be set aside for oral comments or questions, not to exceed 10 minutes for each individual, by the public. Public comments regarding Committee affairs may be submitted at any time before or after the meeting. Limited seating will be available for the public (including media representatives) on a first-come, first-served basis.

Dated: August 4, 1989.

Jeffrey N. Shane,
Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–18710 Filed 8–9–89; 8:45 am]
BILLING CODE 4910–62–M

Formulation of a National Transportation Policy

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of additional public hearing.

SUMMARY: This notice announces the intent of the Department of Transportation to elicit public comment

with respect to international transportation systems in the formulation of a comprehensive, integrated National Transportation Policy. The international policy cluster group plans to conduct an additional public hearing to solicit information and advice. The DOT believes public comment is essential to development of a viable public policy. As a consequence, this notice describes some key issues and requests a dialogue and input on issues, positions, problems, and recommended solutions for addressing the challenges facing international transportation in the 1990's and beyond.

In order to stimulate a discussion of such concerns, in addition to the public hearings the cluster group will be holding a series of focus groups and site visits. Through the discussion and comments gathered from these outreach efforts, the Department seeks to broaden its knowledge for a national multi-modal transportation policy addressing international transportation. The information will be used in formulation of a National Transportation Policy which will set forth the framework through which decisions in transportation infrastructure, services, and related needs can be systematically assessed and implemented during the next decade and into the 21st Century.

DATES: Comments must be received on or before September 1, 1989 in order to be fully considered in the development of the national transportation policy. Comments can be sent to the Cluster Chairperson listed in **ADDRESSES**.

The additional public hearing will be held on August 29, 1989, at New York City, New York. While not excluding any international transportation issues, this hearing will focus on international maritime issues.

ADDRESSES: Comments relating to international transportation issues should be addressed to the International Cluster Group Chairman; Mr. Arnold Levine, Director, Office of International Transportation and Trade, U.S. Department of Transportation, Room 10300, 400 Seventh Street, SW., Washington, DC 20590 Ph: (202) 366–4368.

The public hearing will be held at the following location: Room 4 and 5, World Trade Institute, 55th floor West, 1 World Trade Center, New York City, New York.

Those seeking further information or wishing to participate in the hearing should contact: Ms. Florizelle Liser, Special Trade Policy Advisor, P–22, Office of International Transportation and Trade, U.S. Department of Transportation, Room 10300, 400 Seventh Street, SW., Washington, DC 20590 (202) 366–9510.

SUPPLEMENTARY INFORMATION: The development of an integrated National Transportation Policy should involve the widest possible dialogue with affected parties. To that end, public hearings have been scheduled at which views may be expressed orally.

With regard to the overall purpose of developing an integrated National Transportation Policy, refer to OST's notice issued on June 28, 1989 (54 FR 27970); published July 3, 1989. For information on other hearings scheduled by the international cluster group, see OST's notices published on July 19, 1989 (54 FR 30308) and July 20, 1989 (54 FR 30498).

Hearing Procedures

(a) Attendance is open to the interested public but limited to the space and time available. With the approval of the chairperson, members of the public may present oral statements at the hearings.

(b) Any persons wishing to make a presentation will be asked to sign in and estimate an amount of time needed for their statement. Statements should be limited to fifteen minutes.

(c) The chairperson may allocate the time available for each presentation in order to accommodate all speakers. The hearing may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Written material concerning the topics will also be accepted by the chairperson of the hearing. Every effort will be made to hear every request for presentation consistent with a reasonable closing time for the hearing.

(e) The hearing will not be formally recorded. However, informal recordings will be made of presentations to ensure that each respondent's comments are accurately noted.

The international cluster group has identified a number of broad issues to be addressed; they include:

1. *Maximizing transportation efficiency* for passengers and shippers for the purpose of fostering a more competitive economy; facilitating international transportation of passengers and freight;

—How can the U.S. Government encourage U.S. flag and other carriers and port authorities to operate efficiently? To invest in modern equipment and facilities?

—How can the U.S. Government encourage its trading partners to adopt market oriented policies that emphasize the development and facilitation of efficient transportation infrastructure necessary to support an intergrated international system?

—How vigorously should the U.S. Government protect access of third-flag carriers to U.S. trade?

—How can the U.S. Government balance the sometimes competing demands of carriers, passengers, and shippers in international markets?

2. *Achieving an equitable international competitive environment* for U.S. transportation companies; eliminating unfair and discriminatory practices that affect U.S. carriers;

—How best can the U.S. Government eliminate those foreign policies and practices that discriminate against or otherwise inhibit the provision of competitive services by U.S. carriers? Merits of multilateral vs. Bilateral vs unilateral approaches?

—Under what circumstances should the U.S. Government apply sanctions against foreign carriers (*i.e.* reduce efficiency in the short term for potential gains in efficiency in the long term)?

—Again, how best can the U.S. Goverment balance the needs of carriers, passengers, and shippers?

3. *Promoting U.S. transportation interests* to achieve national security, transportation safety and security and economic objectives through such unilateral measures as direct or indirect financial assistance, buy/fly/ship American policies, and sabotage restrictions;

—What are the broad national policy goals that warrent government promotion and support of transportation services and equipment manufacturing?

—How effective are current methods of promoting and supporting the transportation industry in helping to achieve those broad policy goals?

—What alternative methods of promotion and support might be more effective.

—What role, if any, should the Department of Transportation play in promoting the sale of U.S. transportation equipment and services (*e.g.*, consulting and engineering services)?

4. *Cooperating internationally* to achieve national security, transportation safety and security, environmental, and economic objectives through adoption of treaties and conventions, participation in international organizations, and the development of joint policy approaches bilaterally and internationally:

—What key international treaties and conventions should the United States adopt?

—In what, if any, areas should the United States consider proposing new international agreements?

—On what international bodies should the United States focus its resources?

—What additional benefits can be derived from fuller participation in international bodies and cooperative efforts.

—Under what circumstances/in what areas would it be inadvisable for the United States to pursue multilateral solutions to international transportation issues?

—How can the Department of Transportation encourage U.S. engineering and equipment manufacturers to strengthen their efforts to acquire and use advanced transportation technology from abroad?

5. Views are also solicated on the issue of Great Lakes pilotage. In December 1988, the Depatment issued the final report of the Great Lakes Pilotage Study; the report contained recommendations for changes to the system. A number of parties have requested a public hearing in order to make their views known on these recommendations and on the future of the pilotage system itself.

Issued in Washington, DC, on August 4, 1989.

Florizelle Liser,

Special Trade Policy Advisor, International Cluster Group.

[FR Doc. 89-18798 Filed 8-8-89; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 89-059]

Meeting of the Subcommittee on Coal Transportation, Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee on Coal Transportation of the Chemical Transportation Advisory Committee (CTAC) will hold a meeting on Thursday, September 14, 1989 in Room 4436, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, DC. The Subcommittee is considering requirements for the safe transportation of coal in ships and barges. The meeting is scheduled to run from 9:30 a.m. until 4:00 p.m.

The meeting will be devoted to discussing Draft reports on Safe Procedures for Carrying Coal in Vessels and Recommended Guidelines for Coal Loading and Transportation.

Attendance is open to the public. Members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time.

FOR FURTHER INFORMATION CONTACT: Mrs. D. Anderson or LCDR R. Fitch, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second Street, SW., Washington, DC 20593, (202) 267-1217.

Dated: August 3, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-18667 Filed 8-9-89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 4, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0022.
Form Number: ATF Form 5320.20.
Type of Review: Extension.
Title: Application to Transport Interstate or to Temporarily Export Certain National Firearms Act (NFA) Firearms.
Description: When approved this form satisfies requirements that the Secretary give prior approval to the movement of certain NFA firearms in interstate or foreign commerce.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 700.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 350 hours.
OMB Number: 1512-0046.
Form Number: ATF Form 27-G (5520.3).
Type of Review: Extension.
Title: Applications—Volatile Fruit-Flavor Concentrate Plants.
Description: Persons who wish to establish premises to manufacture Volatile fruit-flavor concentrates are required to file an application so requesting. ATF uses the application information to identify persons responsible for such manufacture, since these products contain ethyl alcohol and have potential for use as alcoholic beverages with consequent loss of revenue. The application constitutes registry of a still, a statutory requirement.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Response: 3 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 30 hours.
OMB Nubmer: 1512-0385.
Form Number: ATF REC 5900/1.
Type of Review: Extension.
Title: Proprietors of Claimants Exporting Liquors.
Description: Distilled spirits, wine and beer may be exported from bonded premises without payment of tax or these products may be exported in a taxpaid status with the tax claimed back (drawback). Record is needed to allow the amounts exported to be verified and to maintain accountability over products. Protects the revenue.
Respondents: Business or other for-profit, Small businesses or organizations.
Estimated Number of Recordkeepers: 120.
Estimated Burden Hours Per Recordkeeper: 60 hours.
Frequency of Response: Recordkeeping.
Estimated Total Recordkeeping Burden: 7,200 hours.
Clearance Officer: Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-18684 Filed 8-9-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 4, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

Internal Revenue Service

OMB Number 1545-0087.
Form Number: IRS Form 1040-ES, 1040-ES(NR), 1040-ES (Espanol).
Type of Review: Revisions.
Title: Estimated Tax for Individuals (3 forms) (1) U.S. Citizens and Residents, (2) For Nonresident Aliens, (3) For use in Puerto Rico (In Spanish).
Description: Form 1040-ES is used by individuals (including self-employed) to make estimated tax payments if their estimated tax is $500 or more. IRS uses the data to credit taxpayers accounts and to determine if the estimated tax has been properly computed and timely paid.
Respondents: Individuals or households.
Estimated Number of Respondents: 14,563,250.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping: 1 hour, 25 minutes.
Learning about the law or the form: 20 minutes.
Preparing the form: 16 minutes.
Copying, assembling, and sending the form to IRS: 10 minutes.
Frequency of Response: Quarterly
Estimated Total Recordkeeping/ Reporting Burden: 130,596,320 hours
OMB Number: 1545-0975.
Form Number: IRS Form 1120-W.
Type of Review: Revision.
Title: Corporation Estimated Tax.
Description: Form 1120-W is used by corporations to figure estimated income tax liability and the amount of each installment payment. Form 1120-W is a worksheet only. It is not to be filed with the Internal Revenue Service.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 900,000
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping: 27 hours, 52 minutes.
Learning about the law or the form: 1 hour, 40 minutes.
Preparing the form: 5 hours, 50 minutes.
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 8,573,218 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Department Reports Management Officer.

[FR Doc. 89-18685 Filed 8-9-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 4, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0051.
Form Number: 990-C.
Type of Review: Revision.
Title: Farmers' Cooperative Association Income Tax Return.
Description: Form 990-C is used by farmers' cooperatives to report the tax imposed by section 1381. IRS uses the information to determine whether the tax is being properly reported.
Respondents: Farms, Businesses or other for-profit.
Estimated Number of Respondents: 5,800.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping: 69 hours 7 minutes.
Learning about the law or the form: 17 hours 49 minutes.
Preparing the form: 34 hours 37 minutes.
Copying, assembling, and sending the form to IRS: 4 hours 17 minutes.
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 804,384 hours.
OMB Number: 1545-0110.
Form Number: 1099-DIV.
Type of Review: Extension.
Title: Statement for Recipients of Dividends and Distributions.
Description: The form is used by the Service to insure that dividends are properly reported as required by Code section 6042 and that liquidation distributions are correctly reported as required by Code section 6043, and to determine whether payees are correctly reporting their income.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 163,384.
Estimated Burden Hours Per Response: 13 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 19,678,949 hours.
OMB Number: 1545-0128.
Form Number: 1120-L.
Type of Review: Revision.
Title: U.S. Life Insurance Company Income Tax Return.
Description: Life insurance companies are required to file an annual return of income and compute and pay the tax due. The data is used to insure that companies have correctly reported taxable income and paid the correct tax.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 2,440.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping: 69 hours 50 minutes.
Learning about the law or the form: 29 hours 59 minutes.
Preparing the form: 54 hours 47 minutes.
Copying, assembling, and sending the form to IRS: 6 hours 26 minutes.
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 392,962 hours.
OMB Number: 1545-0715.
Form Number: 1099-B.
Type of Review: Extension.
Title: Statement for Recipients of Proceeds From Broker and Barter Exchange Transactions.
Description: Form 1099-B is used by brokers and barter exchanges to report proceeds from Transactions to the Internal Revenue Service.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 146,859.

Estimated Burden Hours Per Response: 14 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 16,169,536 hours.
OMB Number: 1545–1027.
Form Number: 1120–PC.
Type of Review: Revision.
Title: U.S. Property and Casualty Insurance Company Income Tax Return.
Description: Property and casualty insurance companies are required to file an annual return of income and pay the tax due. The data is used to insure that companies have correctly reported income and paid the correct tax.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 7,500.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping: 104 hours 45 minutes.
Learning about the law or the form: 42 hours.
Preparing the form: 78 hours 7 minutes.
Copying, assembling, and sending the form to IRS: 9 hours 23 minutes.
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 1,779,375 hours.
OMB Number: 1545–1078.
Form Number: None.
Type of Review: Extension.
Title: Customer Survey on IRS Tax Publications.
Description: The information we get will help us identify who our customers are and how we can better meet their needs. It will point us to possible problem areas in certain publications. We can then produce a more understandable publication that will reduce the burden on taxpayers and help them comply with the tax laws. The random sample will come from taxpayers requesting the targeted publication(s).
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 3,294.
Estimated Burden Hours Per Response: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 329 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 89–18687 Filed 8–9–89; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review.

Date: August 4, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980. Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535–0005.
Form Number: PD 3253.
Type of Review: Revision.
Title: Exchange Application for U.S. Savings Bonds of Series HH.
Description: This form is used by owners of bonds of Series EE/E or notes to request exchange for series HH Savings Bonds.
Respondents: Individuals or households.
Estimated Number of Respondents: 60,000.
Estimated Burden Hours Per Response: 40 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 39,960 hours.
Clearance Officer: Rita DeNagy (202) 447–1640, Bureau of the Public Debt, Room 137, BEP Annex, 300 13th Street, SW., Washington, DC 20239–0001.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 89–18686 Filed 8–9–89; 8:45 am]
BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 153
Thursday, August 10, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 9:00 am September 8, 1989.

PLACE: The Forbes Building, 60 Fifth Avenue, New York, NY 10011.

STATUS: Closed, pursuant to 5 U.S.C. (b)(c)(1) 22 CFR 1302.4 (c) and (h) of the Board's rules [42 FR 9388, March 12, 1977].

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Mark G Pomar, Deputy Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue NW., Washington, DC 20036.

Mark G. Pomark,
Deputy Executive Director.
[FR Doc. 89–18855 Filed 8–8–89; 8:45 am]
BILLING CODE 6155–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 32561, August 8, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Thursday, August 10, 1989.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Part open and part closed.

CHANGE IN THE MEETING: The discussion of all items listed has been cancelled.

1. *Secretary of Labor, MSHA* v. *Garden Creek Pocahontas Co.*, Docket No. VA 88–9, etc.
2. *Westwood Energy Properties*, Docket No. PENN 88–42–R.
3. *FMC Wyoming Corporation*, Docket No. WEST 86–43–RM, etc.

It was determined by a unanimous vote of Commissioners that this meeting be cancelled and no earlier announcement of the change was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 566–2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 89–18811 Filed 8–8–89; 10:40 am]
BILLING CODE 6735–01–M

FEDERAL ELECTION COMMISSION

DATE & TIME: Tuesday, August 15, 1989, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:
Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, August 17, 1989, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:
Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory Opinion 1989–14: Mr. Anthony Athanas on behalf of Pier 4 Restaurant, Inc.
Draft Final Rules: 11 CFR 100.7(b)(8), 100.8(b)(9), 110.4(a).
Status of Presidential Audits.
FY 1991 Initial Budget Request.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Hilda Arnold,
Administrative Assistant, Office of the Secretariat.
[FR Doc. 89–18895 Filed 8–8–89; 3:51 pm]
BILLING CODE 6715–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 32023, August 3, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Tuesday, August 8, 1989.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added:

Renovation proposals regarding the Federal Reserve Bank of St. Louis. (This item was originally announced for a closed Board meeting on July 31, 1989.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: August 8, 1989.

William W. Wiles,
Secretary of the Board.
[FR Doc. 89–18893 Filed 8–8–89; 3:51 pm]
BILLING CODE 6210–01–M

federal register

Thursday
August 10, 1989

Part II

Department of Labor

Wage and Hour Division, Employment Standards Administration

29 CFR Parts 524, 525, and 529

Employment of Workers With Disabilities Under Special Certificates; Final Rule

BEST COPY AVAILABLE

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

29 CFR Parts 524, 525, and 529

RIN: 1215-AA34

Employment of Workers With Disabilities Under Special Certificates

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final text of the regulations governing the employment of individuals with disabilities at special minimum wages under section 14(c) of the Fair Labor Standards Act (FLSA). A notice of proposed rulemaking implementing the 1986 Amendments to section 14(c) of FLSA was published on May 20, 1988 (53 FR 18234) and provided for a 60-day public comment period. A notice reopening and extending the public comment period for 15 days was published on October 31, 1988 (53 FR 43899). In amending the regulations, the Department also elected to incorporate changes in policies and procedures adopted since these regulations were last amended in 1966 and to clarify certain areas, such as the requirement to determine prevailing wages, which have proven difficult to administer. In addition, the Department proposed to consolidate the three separate regulations relating to competitive employment, sheltered workshops, and hospitals and institutions, into a single regulation.

Forty comments were received during the initial public comment period. Fourteen additional comments were received as a result of reopening and extending the comment period. These comments, while offering numerous specific recommendations for improving parts of the proposed regulations, were generally support of the overall intent of the proposed regulations and the idea of consolidating the existing three separate regulations into one. The specific recommendations contained in the responses have been reviewed and, where appropriate, have been adopted in this final rule.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210 (202) 523-8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

On October 16, 1986, Pub. L. 99-486 was signed and became effective. This law amended section 14(c) of FLSA which has been a part of the Act since 1938 and provides for the employment under certificate of workers with disabilities at special minimum wage rates. Such wage rates are below the minimum otherwise required by FLSA but commensurate with (i.e., based on comparative productivity) those paid to experienced nondisabled workers performing essentially the same type of work in the same vicinity. Special minimum wage rates are permitted in order to prevent the curtailment of opportunities for employment.

Prior to the 1986 Amendments, section 14(c) provided for three distinct types of certification with different requirements and guarantees. The provisions establishing the distinct types of certification were introduced as a part of the FLSA Amendments of 1966. It was the intent at that time to establish a minimum guarantee of 50 percent of the statutory minimum for the majority of workers with disabilities employed under a certificate. Workers not receiving such a guarantee would be those participating in evaluation or training programs, those with multiple disabilities, or those employed in work activities centers "planned and designed exclusively to provide therapeutic activities" for workers with inconsequential productive capacity.

However, as more individuals with severe disabilities were deinstitutionalized and placed in rehabilitation facilities offering employment as a part of the rehabilitation program, the work activities center became the predominant type of certified facility. By fiscal year 1986, work activities centers comprised over 55 percent of the certified programs and employed nearly 60 percent of the workers employed under certificates.

It became apparent, subsequent to the 1966 Amendments, that having three distinct types of certification and requiring that work activities centers, as a consequence of being planned and designed exclusively for workers with inconsequential productive capacity, be physically separate from other programs was creating serious administrative problems for both the Department and the rehabilitation facilities without providing benefit to the workers with disabilities themselves. Several unsuccessful efforts were initiated prior to 1986 to amend and simplify section 14(c). In 1986, these efforts were finally successful.

The 1986 Amendments eliminated the various types of certification while retaining the basic requirement that workers with disabilities employed under certificates be paid wages commensurate with those paid to nondisabled workers for essentially the same type, quality, and quantity of work. The legislation also included the following new provisons:

(1) During a two-year period beginning June 1, 1986, wage rates of certain workers could not be reduced without prior authorization of the Secretary of Labor; (2) employers must provide written assurances of semi-annual wage reviews for workers paid an hourly wage rate and annual wage reviews of prevailing wage rates; and, (3) employees may petition for a review by an Administrative Law Judge of the special minimum wage rates paid pursuant to section 14(c).

After reviewing the 1986 Amendments, the Department undertook the revision of the regulations. One of the first questions the Department addressed was whether it was necessary to continue to have three separate regulations governing the employment of workers with disabilities under section 14(c): (1) Regulations, 29 CFR Part 524 governing competitive employment; (2) Regulations, 29 CFR Part 525 governing employment in sheltered workshops; and, (3) Regulations, 29 CFR Part 529 governing employment in hospitals and institutions. Because of the similarities between these three regulations and the fact that section 14(c) does not require separate regulations, the Department prepared a proposal combining the three existing regulations. The Department was encouraged in this approach by its Advisory Committee on Special Minimum Wages, which provides the Department with advice and recommendations with respect to the administration of section 14(c), and by the various groups which were instrumental in passing the legislation. In addition to incorporating the 1986 Amendments and consolidating the three regulations, the proposed rule also included several policies developed by the Department since the 1966 Amendments and guidelines intended to clarify areas such as the determination of prevailing wages which have proven particularly difficult to administer.

Paperwork Reduction Act

The recordkeeping provisions that are included in these rules were previously developed under OMB 1215-0017 in conjunction with 29 CFR Part 516.

Discussion of Comments

A total of 54 comments on the proposed rule were received. Thirty-five were from local rehabilitation facilities and nine were from local or national organizations of such facilities or their representatives. Five comments were received from individuals, three from State or local government officials, and two from advocacy groups representing workers with disabilities. All but one of these comments were substantive, many containing numerous statements on the proposed rule. None of the comments indicated that the separate regulations should be maintained. The comments did include many statments relating to improvements or clarifications in specific sections of the proposed regulations.

The Department has completed its analysis of all of the comments and has made changes as appropriate. A section-by-section analysis of these changes follows:

Section 525.1 Introduction

This section sets forth the applicability of the regulations and summarizes the statutory language contained in FLSA section 14(c). One comment was received, stating objections to several statements or requirements. Since the commenter did not demonstrate errors in the regulation's summary of the statutory language, no change is made in this section.

Section 525.3 Definitions

This section contains the definitions of the terms used in this part. Ten comments were received on this section.

Two of the comments expressed opposition to the use of the terms "mental deficiency" or "mentally defective" in defining the term "worker with a disability" in § 525.3(d). The term mental deficiency is used in FLSA. However, based on concerns voiced earlier by the Advisory Committee on Special Minimum Wages, the Department is aware that this term is considered pejorative and is no longer acceptable in the rehabilitation community. The final rule has been amended to delete this phrase. In order to provide greater clarity, this definition has also been amended to include examples of those disabilities which meet the statutory requirements.

The definition of the term "employ" in section 525.3(g) generated five comments. One indicated, without elaborating, that this definition is current with respect to private employers but conflicts with the 1985 FLSA Amendments relating to public employees who may, under certain provisions, volunteer their services. This definition is a restatement of the basic definition contained in FLSA with special emphasis given to its applicability to workers with disabilities. The Department has reviewed the 1985 Amendments and Subpart B, relating to volunteers, of the Regulations at 29 CFR Part 553 and was unable to discern a conflict. One comment expressed concern that other agencies used the FLSA definition of "employ" to determine who was an employee for purposes of their laws or regulations and asked that explicit language be included to make it clear that the definition in these regulations applies only for purposes of FLSA. The language of the definition makes clear that it is limited to FLSA, and no change is required. One comment suggested that the six criteria the Department uses to distinguish a trainee from an employee be included in this section of the regulations. In determining whether persons receiving training are or are not employees, the Department applies six judicially developed criteria. These are set forth at section 10b11(b) of the Wage-Hour Field Operations Handbook.

This section provides that if all six of the following criteria apply, the trainees or students will not be considered to be employees within the meaning of the FLSA:

(1) The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;

(2) The training is for the benefit of the trainees or students;

(3) The trainees or students do not displace regular employees, but work under their close observation;

(4) The employer that provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion his or her operations may actually be impeded;

(5) The trainees or students are not necessarily entitled to a job at the conclusion of the training period; and,

(6) The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

Inasmuch as the Department has not been delegated general regulatory authority under the FLSA, and these regulations are authorized to govern certain special provisions applicable to workers with disabilities, the Department has concluded that the inclusion of this material in these regulations would be inappropriate. One comment indicated that work which was incidental to diagnostic assessment, situational evaluation, or work adjustment, should not render an individual an employee. The Department has always considered work performed as a part of an evaluation or training program to be compensable. This is made clear in the definition of "employ" which states that an employment relationship "does not depend upon the level of performance or whether the work is of some therapeutic benefit." This position conforms to various court decisions regarding the employment relationship under FLSA. (A sentence has been added to this definition from 525.4 regarding workers engaged in producing craft products. See that section for discussion.)

One comment notes that §525.3(h) could be read to mean that a certificate is issued "to a worker with a disability" and asks if this is correct. This section has been amended to make clear that certificates are issued to employers, not workers.

One comment suggests eliminating the example given in § 525.3(i) for calculating a commensurate wage since the example implies that the Department may require commensurate wages in excess of the statutory minimum. The illustrative language has been retained but a statement has been added making it clear that commensurate wages, for purposes of FLSA, need never be higher than the statutory minimum wage.

Two comments asked that guidance be included regarding the acceptable manner of weighing the factors of quantity and quality for purposes of arriving at a commensurate wage for workers paid at hourly rates, and suggest allowing employers to use differing ratios of quality to quantity based on local industry surveys. Historically, there have been difficulties in agreeing upon an objective method of determining the commensurate wage rate of individuals paid on an hourly-rate basis as opposed to a piece-rate basis. Based on a demonstration study conducted several years ago with the help of the Advisory Committee, the Department adopted a policy of accepting a ratio of 90 percent quantity to 10 percent quality as most nearly resulting in payment of commensurate wage rates. While the Department recognizes the limitations of this policy, there is no indication that its application has curtailed employment opportunities or resulted in payment of less than commensurate wage rates. This policy is a rule-of-thumb and, where it is not appropriate for the work to be performed, variations are allowed. Since

this policy is used only as a guideline, it is not considered appropriate for inclusion in these regulations.

Two comments expressed concern over the lack of a definition of the term experienced worker. A definition has been added.

Section 524.4 Patient Workers

This section contains guidelines that are unique to determining if an employment relationship exists for patient workers in hospitals or institutions. There were four comments on this section.

Two comments asked for more guidance with respect to determining under what circumstances a patient worker may volunteer to work in the institution or the community. In addition, one of these comments asked why certain guidelines contained in the Field Operations Handbook (FOH) regarding the employment relationship were not included in the regulations and whether the position regarding the production of craft items was limited to patient workers. The Department has determined that the regulations contain sufficient guidelines concerning the employment relationship and that inclusion of additional guidelines from the FOH is not appropriate in this instance. Upon review, the Department has also determined that the position with respect to craft items applies to all workers with disabilities, not just those who are patient workers. This position has therefore been moved to § 525.3(g).

One comment asked for a clarification of the statement in this section that no employment relationship exists where an individual "performs personal housekeeping chores." The comment pointed out a possible conflict with recently promulgated 42 CFR Part 483 governing Intermediate Care Facilities for the mentally retarded which states that "* * * it is acceptable for individuals to engage in household tasks which are in common with other individuals, all sharing the total household tasks commonly shared in nuclear family units." This part also states that "[t]he expectation is that tasks are the general responsibility of the individual, and that the duties rotate to the maximum extent possible." The apparent conflict with § 525.4 arises from this section's silence on performing commonly shared household tasks as opposed to performing only one's own personnal chores. In the past, the Department has reviewed individual situations involving small units operating in a family-like or nuclear family manner and has found that individuals may share and rotate duties without creating an employment relationship. The Department agrees that the regulations need to make some reference to such situations, and language has been added to indicate that performance of commonly shared household tasks may be acceptable. However, the Department does not intend that any facility may avoid compensating its patient workers by deeming the situation a "family-like setting" and rotating the tasks.

The Department feels it is necessary to closely review such situations and will provide guidance on a case-by-case basis.

A lengthy comment was received from representatives of therapeutic communities for substance abuse. The representatives asked that changes be made in §§ 525.3 (e) and (g) and § 525.4 to specifically exclude from the definition of "employee" persons who are residents of therapeutic communities for substance abuse who voluntarily perform tasks in those communities as a part of structured treatment programs. The comment stated that such residents should be excluded because application of FLSA and these regulations would interfere with the rehabilitation program of the residents and substantially increase the cost of these programs, which would have to be charged back to the residents. The representatives stated that this special exception should be made because the programs in the therapeutic communities are not comparable to long-term programs in mental institutions where protection against exploitation and abuse is necessary. The Department currently has a policy with respect to residential programs for drug treatment as follows: The Department will not assert the existence of an employment relationship where, but only where, the activities of the residents are those ordinarily carried on on a daily basis in a private home and not for the economic benefit of the facility; the activities would ordinarily not be performed by full-time employees; residence at the facility is short-term (usually no more than one year) and the facility is relatively small with no paid staff other than counselors. The representatives of therapeutic communities state that this policy should be modified since, due to the scope of the drug problem today, facilities have grown larger (up to 300 beds) and programs have grown longer. The Department is aware of the size and scope of the drug problem and understands that some therapeutic drug treatment programs may have certain features which make them different from programs for individuals with other disabilities. However, the Department does not conclude that these differences sufficiently distinguish these programs from other programs for individuals with disabilities to justify the action requested.

The Department's position that FLSA must be enforced with respect to patient workers is mandated by the court's ruling in *Souder* v. *Brennon*, 72 CCH Lab. Cas. 32, 980 (D.D.C. 1973), which held that an employment relationship exists "[s]o long as the institution derives any consequential economic benefit" from the work performed by patients.

Section 525.6 Compensable Time

This section clarifies the issue of compensable time with respect to workers with disabilities. Twelve comments were received on this section.

Eight of the comment indicated that including vocational training as an example of an alternative program that was not a compensable activity was confusing since vocational training could easily be directly related to the workers' jobs and therefore should be compensable. Upon review, the Department agrees that the example, as stated, could lead to confusion as to whether training is compensable and has deleted it. One of the comments suggested including job seeking skills training, independent living skills training, or adult basic eduation as additional examples. The examples have been added. One comment favored the vocational training example but objected to restricting it to work not related to the worker's job. The comment stated that ruling out programs directly related to the worker's job was not in the best interest of the individual with disabilities and that some training without compensation is fair to the employee and employer. The Department recognizes that many individuals with disabilities participate in rehabilitation programs that include some form of vocational training which is closely job-related. It also recognizes that the existence of an employment relationship must be determined on a case-by-case basis (see discussion concerning § 525.3, *supra*), that such programs are designed primarily to be of ultimate benefit to the individual, and that the existence of an employment relationship and payment of wages may not be of primary importance to the individual or the facility. However, once it has been established that an employment relationship exists, the Department has no authority to waive the requirements of FLSA, even where such a relationship may be an incidental or insignificant part of an overall program. Two comments ask if the guidelines apply to individuals employed in the community as opposed to those employed in rehabilitation facilities. These guidelines would apply in any situation. However, it is generally recognized that individuals with disabilities employed in rehabilitation facilities may not be able to leave the facilities when work is not available. In such situations, the facilities may provide alternative noncompensable activities, so long as a clear distinction is made between such activities and those that are compensable. It is unlikely that individuals employed in the community would be unable to leave the premises of the employer when work was unavailable or that the employer would be expected to provide alternative activities. This section does include a reference to the general guidelines regarding compensable time contained in Part 785.

Section 525.7 Application for Certification

This section contains the procedural requirements for submitting an application for a certificate authorizing special minimum wages. Two comments were received regarding this section.

Four comments state that this section should be considerably expanded by including more guidance on the application process. The comments noted concern about an alleged variance in the interpretation of application requirements among different regional offices of the Department and a backlog of unprocessed applications in certain regional offices which could result in possible violations. Specifically, it was suggested that the application forms themselves, as well as the type and amount of information required on them, be made a part of the regulations and that definitions of the terms "branch establishment" and "enclave" be included. After careful consideration, the Department has decided not to include the application forms in these regulations. It does not seem that this approach would address the concerns expressed in the comments. The applications are official Department of Labor forms which must be approved periodically by the Office of Management and Budget. Placing the official form in the regulations would not preclude misinterpretations or backlogs of unprocessed applications. In addition, puting the application forms in the regulations would increase the length and complexity of the regulations and make it difficult to modify these forms in the future. The Department views the definitions of "branch establishment" and "enclave," as policy matters which are best addressed in the FOH. However, the Department recognizes the validity of the concerns expressed and intends to initiate efforts after the adoption of this final rule to insure that there is consistency from region to region. One comment objects that certificates become effective upon application, not Departmental approval. This is not current Departmental policy or procedure. Certificates issued in response to initial applications are effective only after review by the Department. Special minimum wages are not permitted prior to such approval. The Department recognizes its responsibility to promptly review initial applications and gives them priority.

Section 525.8 Special Provisions for Temporary Authority

This section contains provisions relating to obtaining temporary authority to employ workers with disabilities pursuant to a vocational program administered by the Veterans Administration or a State agency. There were two comments on this section.

One commenter expresses concern that temporary authority, which may only be extended for 90 days, could expire before the Department takes action on the application, resulting in violations due to the lack of a certificate. This response suggested that the regulations require the Department to respond within 90 days. The Department appreciates the need to review such applications in a timely manner and has established standards to that effect.

The other comment contended that there is no statutory authority for granting temporary authority. Section 14(c) of FLSA authorizes the Secretary of Labor, by regulation or order, to provide for the employment under special certificates of individuals with disabilities at special minimum wages. The Secretary has determined that this authority should be exercised by permitting limited and very temporary self-certification by certain governmental entities. The purpose of these procedures, which were a part of the regulations prior to the 1986 Amendments (29 CFR Part 524.4), is to allow for timely placements and avoid undue delay. The Department retains oversight over such temporary certificates, which are only good for 90 days and may not be renewed except by the Department. Since these provisions have been a long standing part of the regulations without presenting serious problems they have been retained in the final rule.

Section 525.9 Criteria for Employment of Workers With Disabilities Under Certificates at Special Minimum Wage Rates

This section contains the criteria for consideration in deciding whether to issue a certificate authorizing the employment of workers with disabilities at special minimum wages. There were thirteen comments on this section.

Two of the comments pointed out that the terms "handicapped" and "disabled" had been used interchangeably in this section as well as elsewhere in the regulations, causing possible confusion. The comments also suggested that a definition of the term "disabled" be included. The regulations have been revised to consistently use the terms "disabled" or "disabilities" in referring to individuals subject to these regulations. While a definition has not been added of the term "disability" per se, the definition of the term "worker with a disability" has been expanded to include examples of disabilities that do or do not fall within the scope of these regulations (§ 525.3[d]).

Eight of the comments suggested amendments to sections 525.9(a) (2) and (3). Several of the comments suggested changing subsection (a)(2) to read "The prevailing wages of 100% productive experienced employees * * *" Others suggested changing subsection (a)(3) to read "The productivity of workers with disabilities * * *" rather than "The comparative productivity of workers with disabilities * * *" It was apparent from these comments that this subsection was not clearly worded with respect to the Department's intent. These comments indicated that, if literally interpreted, the proposed sections would have required potential employers of workers with disabilities at special minimum wages to determine the productivity of nondisabled experienced workers of other employers in the vicinity by visiting the job sites of such other employers. This section has been revised to make it clear that the Department does not expect the potential employer to directly determine the productivity of individuals employed by other employers in order to make a showing that special minimum wages are required in order to prevent the curtailment of opportunities for employment. The potential employer must determine the productivity of nondisabled workers but may use the methods outlined elsewhere in these regulations.

One comment suggests that employers be required to make written assurances that employees receive advance written

notices of any wage evaluation and written notices explaining in detail the results of any such evaluation. The regulations already require, in § 525.12(g), that the workers with disabilities be informed orally and in writing of the terms of the certificate under which they are employed. While the Department would encourage employers to make such information available, the Department is reluctant to add to an employer's paperwork burdens by making this a formal regulatory requirement.

One comment indicates that annual reviews for both workers paid at hourly rates and those paid at piece rates should be adequate and that semi-annual reviews for hourly-rated workers should not be required. A semi-annual review for an hourly-rated worker is a statutory requirement.

Section 525.10 Prevailing Wage Rates

This section, which was not contained in previous regulations, provides basic guidelines with respect to determining a prevailing wage rate for purposes of paying commensurate wages to workers with disabilities. The guidelines contained in this section are based on policies developed and used by the Department in administering this requirement and have been discussed with the Advisory Committee on Special Minimum Wages.

As expected, this section of the proposed regulations drew the most comments, a total of forty-four. While no comment suggested that prevailing wages are unnecessary, there is considerable disagreement on how an acceptable prevailing wage rate should be determined. In general, the comments sought clarification of certain points or asked for more specific guidelines.

One of the key elements in arriving at the commensurate wage rate of a worker with disabilities is determining the prevailing wage rate. The prevailing wage rate is simply the wage rate paid to workers not disabled for the work to be performed, employed in the vicinity in which the individuals under the certificates are employed, for essentially the same type, quality, and quantity of work. However, the Department has found, both in administering this program and reviewing the comments to the proposed regulations, that this single area generates the most disagreement.

In general, the comments pointed out numerous areas that needed additional clarification. After reviewing all of the comments, this section has been revised to clarify what the Department will accept as a prevailing wage for purposes of determining a commensurate wage. The following points have been clarified in the final rule: (1) That, while there may not be a single prevailing wage rate, the employer has the responsibility to demonstrate that the rate used was objectively determined; (2) when employers may use the wage rates paid to their employees and when surveys must be conducted; (3) what constitutes a representative sample and a similar employer; and (4) that there is no one prescribed method for calculating the prevailing wage.

Section 525.12 Terms and Conditions of Special Minimum Wage Certificates

This section states the terms and conditions of special certificates. There were twenty-seven comments on this section.

One of the comments recommended that paragraph (c) should indicate that certificates would not be issued for periods to exceed one year to insure an annual review by the Department. The Department appreciates the desirability of an annual review and it is current policy to require annual renewal of authority to pay special minimum wages. However, the Department has elected not to include this particular policy in the regulations in order to preserve flexibility in the administration of certificate requirements.

One comment pointed out that the term "experienced worker," as used in paragraphs (d) and (f) should be defined. This has been addressed in § 525.3(k).

Seven comments were received regarding subsection (g) which requires that a worker with a disability, or the worker's parent or guardian, be informed of the terms of a certificate. One comment suggests this subsection should specifically state what terms must be disclosed, because of the possibility of an appeal under § 525.22, and another suggests that a copy of the certificate be given to the workers. Both recommendations have been addressed by adding language to this subsection indicating that the disclosure requirement may be satisfied by making available copies of the certificate. Information with respect to appeals under § 525.22 is covered by the poster requirement in § 525.14. Two comments ask for clarification of what is meant by the phrase "where appropriate." It was not the intent of this subsection to require that parents or guardians be informed of certificate terms if the worker has an understanding of these terms and chooses not to have other parties informed. Language has been added to clarify this. Two of the comments expressed specific support for requiring written and oral notification.

There were eighteen comments on paragraph (h) regarding the establishment of piece rates. Two of the comments point out the need to have this section as clearly written as possible, particularly in light of the possibility of an appeal before an administrative law judge. The Department recognizes the need for clarity and that there are a number of methods available for establishing piece rates that are generally recognized and accepted. Difficulties have arisen not in choosing among such recognized methods, provided such methods are properly applied, but in utilizing a recognized method rather than paying an arbitrary wage rate. Where an employer determines that special minimum wages are necessary in order to prevent the curtailment of opportunities for employment, the employer must take those steps necessary to arrive at a commensurate wage. These regulations attempt to establish minimum acceptable procedures under which commensurate wage rates can be determined without creating unnecessary administrative burdens for employers or limiting the way in which such wages can be determined.

One comment asks what is meant by "other measurement methods" and if there will be a training prerequisite while three other responses ask if the Department will provide training. The term "other measurement methods" is meant to be inclusive rather than exclusive and covers any generally recognized method. It is the responsibility of the employer, in order to justify the payment of special minimum wages, to be able to demonstrate that the method is one generally recognized and accepted among industrial engineers and has been properly applied. The Department will not establish standards for training but may make some voluntary training available at various conferences and workshops. We have added language to paragraph (h)(1) to make the Department's position clear.

One comment suggests that the "50 minute hour" be cited as an acceptable work measurement method. The Department has accepted a simplified work measurement method, usually referred to as the "50 minute hour," and will continue to do so. However, it is not deemed appropriate or necessary to cite this method in the regulations since it might imply that it is the one preferred by the Department.

In paragraph (h)(1), one of the comments suggests that a host company's piece rates could be used where the employer of workers with disabilities is subcontracting work from the host or contracting employer and is using the same method of production. Language has been included in paragraph (h)(1) to make clear that an employer may use established piece rates where the methods of production are the same.

One comment asks for further clarification of work measurement specifics, especially in regard to hourly rated workers. After adoption of these regulations, the Department intends to develop nontechnical publications outlining acceptable procedures and therefore considers it inappropriate and unnecessary to include such procedures in the regulations.

Several comments pointed out that § 525.12(h)(2)(i) contained a typographical error: "competition" should have been "completion." This has been corrected.

Several comments asked what was meant by successful completion of training in performance rating or leveling, whether the Department would provide such training, and if Departmental personnel will have completed such training. The Department considers performance rating or leveling to be an accepted work measurement technique that is used to adjust the observed time of an individual worker to reflect that worker's pace as compared to the pace that an average worker could be expected to maintain for an extended period. Departmental personnel will be sufficiently familiar with this technique to make a judgment as to whether it has been used appropriately. Several other specific questions were raised regarding the definition of "normal or near normal performance," the availability of resources to complete work measurements, and the training of individuals in specific work measurement methods. The Department intends to develop nontechnical pamphlets to address these issues.

Several comments indicated that paragraph (h)(2)(iii) needed clarification with respect to when the Department would expect a second work measurement to be conducted. The Department recognizes that employers may develop jigs or fixtures which enable workers with disabilities to perform the work or to increase productivity. For example, where workers with disabilities have difficulty in counting, the employer may develop a counting board. Rather than counting the items, the employee would place them on the counting board and then drop them into a container. However, in determining the standard for workers without disabilities, the counting board may not have been used since it would not have been required to perform the work. In this instance, the employer would not have to perform a second work measurement. On the other hand, where an employer does not have a sufficient number of machines for all workers and some workers must perform tasks manually, a second work measurement would be required for those individuals who do not have access to the machinery, except that the employer may choose to use the higher piece rate for all employees. Paragraph (h)(2)(iii) has been amended to make these requirements clear.

Two comments were received regarding paragraph (i) which allows the pooling of earnings in limited circumstances, one opposed to pooling and one supporting pooling. The Department discourages the pooling of earnings since an employer who pools earnings may not be fulfilling the commensurate wage responsibilities. However, there may be some limited situations, such as that cited in the regulations, where the pooling of earnings would be acceptable. This provision was contained in the previous regulations, and since it is applicable only in limited situations will be retained.

There were ten comments on paragraph (j). These comments pointed out that, if an initial evaluation was not required until after one month, a worker with disabilities might not receive a commensurate wage during that period. The comments also pointed out that individual workers could change jobs frequently during a six month period and therefore should have more frequent evaluations. The language of this subsection has been amended in an effort to address those problems.

Section 525.13 Renewal of Special Minimum Wage Certificates

This section contains procedures for certificate renewal. There was one comment on this section.

The comment expressed opposition to paragraph (b), which extends authority to pay special minimum wages if renewal applications are properly and timely filed, and to paragraph (c), which provides for continued payment of special minimum wages pending review of a denial action. The commenter opposes (b) because employers should be responsible for anticipating their renewal needs and the statute requires prior authorization, not after-the-fact approval. The purpose of paragraph (b) is to insure that authority to employ workers with disabilities at special minimum wages does not lapse where the employer has submitted a properly completed renewal application and the employer has no reason to believe that the application will be disapproved, but the Department has not had the opportunity to process that application. However, upon further consideration, the Department agrees that employers should not be permitted to continue paying special minimum wages where sufficient grounds for denial of an application exist. Paragraph (c) has been amended accordingly.

Section 525.14 Posting of Notices

This section sets forth the requirement that an employer with a certificate post a notice alerting workers being paid special minimum wages of the terms and conditions of their employment. There were three comments on this section.

One comment opposes the posting of notices since posting a notice regarding workers with disabilities could stigmatize those workers or discourage employers from hiring them. The purpose of posting a notice is to insure that workers employed at special minimum wages are informed of the terms and conditions of their employment. However, the Department recognizes that in certain situations, such as where an employer may have only one or two workers with disabilities, posting of the notice may not be in a worker's best interest. We have modified this section to allow the employer to provide the notice directly to the worker.

One comment asks for clarification of what is meant by "as prescribed by the Administrator." This has been clarified by adding that the Administrator will also supply such posters.

One comment indicates that copies should be distributed and made available in other formats, including Braille and recorded tapes. We have added language to the effect that posters will be made available in other formats on request.

Section 525.16 Records to be Kept by Employers

This section outlines those recordkeeping requirements unique to the employment of workers with disabilities at special minimum wages. There were seven comments on this section.

Five comments express concern that these regulations now require every employer to maintain records verifying a worker's disability. In combining regulations which dealt separately with competitive employment, nonprofit rehabilitation facilities, and hospitals and institutions, the Department overlooked the difficulty and burden of requiring every employer to maintain

medical records related to a worker's disability. Language has been changed to allow such information to be maintained by other appropriate referring agencies or facilities.

One comment expresses concern that the verification of nonobvious disabilities is discriminatory and verification should be required for all workers employed at special minimum wages. This language has been deleted.

One comment indicates that employees, parents, guardians, or their authorized representatives should have access to all records identified in this section and that records to be kept by employers should also include the results of any Wage and Hour investigations and decisions made under § 525.22. There is no statutory authority for requiring employers to disclose all records to employees. However, insofar as such records become a part of closed Departmental investigation files, they may be disclosable under the Freedom of Information Act.

Section 525.17 Revocation of Certificates

This section contains procedures for revoking certificates where serious violations occur or where the certificate is no longer necessary to prevent the curtailment of opportunities for employment. There was one comment on this section.

The comment opposed the provision in paragraph (b) extending a certificate in effect during a request for a review of revocation action. The commenter felt that the basis for revocation should be sufficient to warrant immediate termination of authority to pay special minimum wages. Upon consideration, the Department concurs with this comment, and has deleted this paragraph.

The commenter also opposes paragraph (c) which affords an employer the opportunity to demonstrate or achieve compliance before a certificate is revoked. The comment would have this section specify that payment of the full minimum wage should be required. In the Department's view, fairness requires that such an opportunity be provided except in cases of willfulness or where the public interest requires otherwise.

Section 525.19 Investigations and Hearings

This section addresses investigations and hearings initiated by the Administrator to review a certification action. There were two comments on this section.

Both comments noted the lack of specific rules or procedures for such investigations or hearings. One asked about authority for such procedures and the relationship to the provisions for review by an aministrative law judge under FLSA section 14(c)(5). Provisions for investigations and hearings have been a part of these regulations since their adoption. There are no formal rules pertaining to such procedures, which are separate and apart from proceedings under section 14(c)(5), and relate only to the issuance or revocation of certificates. Language has been added to make it clear that these procedures are unrelated to those taken pursuant to FLSA section 14(c)(5).

Section 525.20 Relation to Other Laws

This section points out the relationship of the requirements of these regulations to other laws which may establish higher standards. There was one comment on this part.

The comment asked that the regulations adopted the position that the receipt of a certificate does not carry an implied or explicit determination that the employer would be exempt from any applicable provision of the National Labor Relations Act. While the Department appreciates the concerns expressed in this comment, especially in light of the Court of Appeals decision in *Arkansas Lighthouse for the Blind* v. *NLRB*, 851 F.2nd 180 (8th Cir 1988), such a position relates to an interpretation of the National Labor Relations Act, and is inappropriate in FLSA regulations.

Section 525.21 Lowering of Wage Rates

This section interprets the provision in section 14(c)(3) prohibiting the reduction of the wage rates of certain workers with disabilities without prior approval from the Secretary of Labor until May 31, 1988. There were five comments on this section.

Three of the comments pointed out that the end of the period had already passed, making this section obsolete, and suggested deletion. However, since the statute of limitations covering FLSA violations is two years (three years in the case of willful violations), this section will have some relevance for several more years. One response asks for additional guidelines with respect to the criteria listed in (d). Requests for exceptions during the period were handled on a case-by-case basis. Since the period during which prior approval was required has passed, additional guidelines are not needed.

Section 525.22 Employee's Right to Petition

This section discusses the employee's right to petition for a review by an Administrative Law Judge (ALJ) of the employee's special minimum wage rate. There were seven comments on this section.

Three of the comments asserted that insufficient guidance was given to employers with respect to the exact criteria that ALJs would use or whether the hearing will be a part of the enforcement program of the Wage and Hour Division. The proposed rule reflects the statutory language which was new with the 1986 amendments. Additional guidance will be made available as experience is gained.

Two comments indicated that workers with disabilities should have the opportunity to work out disputes through a normal grievance procedure at the local level. One comment noted that the proposed rule did not preclude such a procedure but proposed that the rule encourage such. While the Department appreciates the importance of such procedures, it considers it inappropriate to include any provision which would in any way tend to discourage an employee's exercise of rights conferred by the statute.

One comment points out that if the employee has no guardian, the involvement of a parent or guardian need not be required if the employee so decides. This is made sufficiently clear in the language which state that a petition may be filed by the employee or a parent or guardian.

One comment raises a question about the time requirements in paragraphs 525.22(b) and (c). Paragraph (b) indicates that all parties to a hearing shall be given at least eight days notice. Paragraph (c) indicates that any employer intending to participate shall provide documentary evidence no later than 15 days prior to the commencement of the hearing. Language has been added to (c) to provide the employer with additional time where notice of the hearing was not timely received. The same comment also contained concenrs about the time requirements applicable once the ALJ has rendered a decision. Since the time requirements in the regulations essentially reflect the statutory language, the Department lacks authority to provide for longer time frames.

One comment proposes several technical changes in this section. In paragraph (a), it is suggested that an employee's right to counsel be made clear. We have added language to do so. The comment objects that paragraph (c) permits the Administrator to participate in the proceedings but not other parties. This provision has been included because the Administrator has a special role to play and interest in assuring that the law is correctly and consistently interpreted and applied. The comment also objects to the provision in paragraph (e) which gives the ALJ authority to determine a wage below the statutory minimum where the wages paid are found not justified. The comment indicates that such authority is not found in the statute and that, where a specific special minimum wage is found not justified, the employer should be required to pay the full statutory minimum until a new determination can be made. The Department believes that the issue of the correct wage should not be left unsettled pending further proceedings, and that in the interest of administrative responsibility, the ALJ should have the authority to decide the correct wage based on the evidence presented. Such authority is appropriate to avoid the necessity for continued proceedings. The comment also asserts that paragraph (f) is too open-ended, allowing anyone to seek a review of the decision of an ALJ. This subsection has been amended to clarify that only those who participated in the initial decision, including the Administrator, may request a review. The comment asks that paragraph (g) be clarified with respect to the amount of time the Secretary may take to review a decision of an ALJ. The Department reads the statute as allowing the Secretary 30 days to review the record after receiving a request for a review. This respondent also recommends additional language providing for the award of attorney's fees. The Department finds no statutory authority for such fees.

Section 525.23 Work Activities Centers

This section restates the provisions of section 14(c)(4) which allow employers to continue to maintain or establish work activities centers. Two comments were received regarding this section.

One comment expressed the view that the use of the term "inconsequential productive capacity" used in this section disregarded the experience of the last several years in successfully placing workers with severe disabilities in the community and was both pejorative and unnecessary and suggested that the reference be deleted. This term has been deleted from the final rule.

The other comment opposed the use of the term "deficiency" as used to define a worker with a disability. This term is no longer used.

Section 525.24 Advisory Committee on Special Minimum Wages

This section provides a regulatory reference to the Committee. One comment addressed this section.

The comment discussed the implied authority of the Administrator to determine the agenda for a meeting and the composition of the Committee. These matters are more properly addressed in the regulations on Federal Advisory Committee Management (41 CFR Part 101-6) and the Charter of the Committee, which must be filed with and approved by the General Services Administration.

In addition to the comments regarding specific sections, there were five general comments. One asks how to determine whether an employment relationship exists for incarcerated youthful offenders, many of whom may have been diagnosed as having mental or physical disabilities, who have been enrolled in sheltered workshop-type programs. Because circumstances may differ from program to program or situation to situation, these questions must be addressed on a case by case basis. One comment suggested it would be helpful if addresses and telephone numbers of various Departmental offices were more readily available because calls to local offices draw blank responses or incorrect referrals. Lists of all regional offices are available for distribution. In addition, the addresses of individual offices are included on certificates and posters. One comment suggested basing vacation, holiday, and sick pay on the criteria established in § 525.12(j) (2) and (3) to satisfy state law requirements even though such requirements are not a part of FLSA. Since such requirements are not a part of FLSA, the Department may not set standards in these regulations. One comment addressed the lack of prohibitions against unfair competition. While such a prohibition was contained in the previous regulations governing the employment of workers with disabilities in nonprofit rehabilitation facilities, the Department appeared to lack statutory authority to enforce such a provision. Therefore, such a prohibition was not included in these regulations. The same comment opposed the payment of fringe benefits under a contract subject to the Service Contract Act since many of the individuals are already receiving other benefits such as Medicare or Medicaid. The commenter proposed providing benefits only to those not already receiving benefits or at the same proportionate rate as productivity. The requirement for full fringe benefits to worker with disabilities employed under certificates issued pursuant to this part is contained in Regulations 29 CFR Part 4. One comment complained about the difficulty of completing the I-9 form required under the Immigration and Reform Control Act. This is outside the scope of these regulations. The final question asked was whether there are provisions for training in specific recordkeeping requirements or if there are any written guidelines. As soon as the final rule is adopted, the Department intends to develop appropriate nontechnical pamphlets and to conduct public training sessions with respect to these regulations.

Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore no regulatory impact analysis is required.

Regulatory Flexibility Act

This rule will not have a significant effect on a substantial number of small entities. This conclusion is based on all information presently available to the Department concerning the employment of workers with disabilities. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects

29 CFR Part 524

Handicapped, Minimum wages, Reporting and recordkeeping requirements.

29 CFR Part 525

Disabled, Handicapped, Hospitals, Minimum wages, Reporting and recordkeeping requirements.

29 CFR Part 529

Hospitals, Minimum wages, Reporting and recordkeeping requirements.

For the reasons set forth above, 29 CFR Parts 524 and 529 are removed and 29 CFR Part 525 is revised as set forth below.

Signed at Washington, DC, on the 4th day of August, 1989.

Elisabeth Dole,

Secretary of Labor.

John Fraser,

Acting Assistant Secretary for Employment Standards.

Paula V. Smith,

Administrator, Wage and Hour Division.

PART 524—[REMOVED]

1. Part 524, Special Minimum Wages for Handicapped Workers in Competitive Employment, is removed.

PART 529—[REMOVED]

2. Part 529, Employment of Patient Workers in Hospitals and Institutions at Subminimum Wages, is removed.

3. Part 525 is revised to read as follows:

PART 525—EMPLOYMENT OF WORKERS WITH DISABILITIES UNDER SPECIAL CERTIFICATES

Sec.

525.1 Introduction.
525.2 Purpose and scope.
525.3 Definitions.
525.4 Patient workers.
525.5 Wage payments.
525.6 Compensable time.
525.7 Application for certificates.
525.8 Special provisions for temporary authority.
525.9 Criteria for employment of workers with disabilities under certificates at special minimum wage rates.
525.10 Prevailing wage rates.
525.11 Issuance of certificates.
525.12 Terms and conditions of special minimum wage certificates.
525.13 Renewal of special minimum wage certificates.
525.14 Posting of notices.
525.15 Industrial homework.
525.16 Records to be kept by employers.
525.17 Revocation of certificates.
525.18 Review.
525.19 Investigations and hearings.
525.20 Relation to other laws.
525.21 Lowering of wage rates.
525.22 Employee's right to petition.
525.23 Work activities centers.
525.24 Advisory Committee on Special Minimum Wages.

Authority: 52 Stat. 1060, as amended (29 U.S.C. 201–219); Pub. L. 99–486, 100 Stat. 1229 (29 U.S.C. 214).

§ 525.1 Introduction.

The Fair Labor Standards Amendments of 1986 (Pub. L. 99–486, 100 Stat. 1229) substantially revised those provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 201) (FLSA) permitting the employment of individuals disabled for the work to be performed (workers with disabilities) at special minimum wage rates below the rate that would otherwise be required by statute. These provisions are codified at section 14(c) of the FLSA and:

(a) Provide for the employment under certificates of individuals with disabilities at special minimum wage rates which are commensurate with those paid to workers not disabled for the work to be performed employed in the vicinity for essentially the same type, quality, and quantity of work;

(b) Require employers to provide written assurances that wage rates of individuals paid on an hourly rate basis be reviewed at least once every six months and that the wages of all employees be reviewed at least annually to reflect changes in the prevailing wages paid to experienced individuals not disabled for the work to be performed employed in the locality for essentially the same type of work;

(c) Prohibit employers from reducing the wage rates prescribed by certificate in effect on June 1, 1986, for two years;

(d) Permit the continuance or establishment of work activities centers; and

(e) Provide that any employee receiving a special minimum wage rate pursuant to section 14(c), or the parent or guardian of such an employee, may petition for a review of that wage rate by an administrative law judge.

§ 525.2 Purpose and scope.

The regulations in this part govern the issuance of all certificates authorizing the employment of workers with disabilities at special minimum wages pursuant to section 14(c) of FLSA.

§ 525.3 Definitions.

(a) "FLSA" means the Fair Labor Standards Act of 1938, as amended.

(b) "Secretary" means the Secretary of Labor or the Secretary of Labor's authorized representative.

(c) "Administrator" means the Administrator of the Wage and Hour Division, U.S. Department of Labor, or the Administrator's authorized representative.

(d) "Worker with a disability" for the purpose of this Part means an individual whose earning or productive capacity is impaired by a physical or mental disability, including those relating to age or injury, for the work to be performed. Disabilities which may affect earning or productive capacity include blindness, mental illness, mental retardation, cerebral palsy, alcoholism, and drug addiction. The following, taken by themselves, are not considered disabilities for the purposes of this part: Vocational, social, cultural, or educational disabilities; chronic unemployment; receipt of welfare benefits; nonattendance at school; juvenile delinquency; and, correctional parole or probation. Further, a disability which may affect earning or productive capacity for one type of work may not affect such capacity for another.

(e) "Patient worker" means a worker with a disability, as defined above, employed by a hospital or institution providing residential care where such worker receives treatment or care without regard to whether such worker is a resident of the establishment.

(f) "Hospital or institution," hereafter referred to as "institution," is a public or private, nonprofit or for-profit facility primarily engaged in (i.e., more than 50 percent of the income is attributable to) providing residential care for the sick, the aged, or the mentally ill or retarded, including but not limited to nursing homes, intermediate care facilities, rest homes, convalescent homes, homes for the elderly and infirm, halfway houses, residential centers for drug addicts or alcoholics, and the like, whether licensed or not licensed.

(g) "Employ" is defined in FLSA as "to suffer or permit to work." An employment relationship arises whenever an individual, including an individual with a disability, is suffered or permitted to work. The determination of an employment relationship does not depend upon the level of performance or whether the work is of some therapeutic benefit. However, an individual does not become an employee if engaged in such activities as making craft products where the individual voluntarily participates in such activities and the products become the property of the individual making them, or all of the funds resulting from the sale of the products are divided among the participants in the activity or are used in purchasing additional materials to make craft products.

(h) "Special minimum wage" is a wage authorized under a certificate issued to an employer under this part that is less than the statutory minimum wage.

(i) "Commensurate" wage is a special minimum wage paid to a worker with a disability which is based on the worker's individual productivity in proportion to the wage and productivity of experienced nondisabled workers performing essentially the same type, quality, and quantity of work in the vicinity in which the individual under certificate is employed. For example, the commensurate wage of a worker with a disability who is 75% as productive as the average experienced nondisabled worker, taking into consideration the type, quality, and quantity of work of the disabled worker, would be set at 75% of the wage paid to the nondisabled worker. For purposes of these regulations, a commensurate wage is always a special minimum wage, i.e., a wage below the statutory minimum.

(j) "Vicinity" or "locality" means the geographic area from which the labor force of the community is drawn.

(k) "Experienced worker" means a worker who has learned the basic elements or requirements of the work to be performed, ordinarily by completion of a probationary or training period. Typically, such a worker will have received at least one pay raise after successful completion of the probationary or training period.

§ 525.4 Patient workers.

With respect to patient workers, as defined in § 525.3(e), a major factor in determining if an employment relationship exists is whether the work performed is of any consequential economic benefit to the institution. Generally, work shall be considered to be of consequential economic benefit if it is of the type that workers without disabilities normally perform, in whole or in part in the institution or elsewhere. However, a patient does not become an employee if he or she merely performs personal housekeeping chores, such as maintaining his or her own quarters, or receives a token remuneration in connection with such services. It may also be possible for patients in family-like settings such as group homes to rotate or share household tasks or chores without becoming employees.

§ 525.5 Wage payments.

(a) An individual whose earning or productive capacity is not impaired for the work being performed cannot be employed under a certificate issued pursuant to this part and must be paid at least the applicable minimum wage. An individual whose earning or productive capacity is impaired to the extent that the individual is unable to earn at least the applicable minimum wage may be paid a commensurate wage, but only after the employer has obtained a certificate authorizing payment of special minimum wages from the appropriate office of the Wage and Hour Division of the Department of Labor.

(b) With respect to patient workers employed in institutions, no deductions can be made from such individuals' commensurate wages to cover the cost of room, board, or other services provided by the facility. Such an individual must receive his or her wages free and clear, except for amounts deducted for taxes assessed against the employee and any voluntary wage assignments directed by the employee. (See Part 531 of this title.) However, it is not the intention of these regulations to preclude the institution thereafter from assessing or collecting charges for room, board, and other services actually provided to an individual to the extent permitted by applicable Federal or State law and on the same basis as it assesses and collects from nonworking patients.

§ 525.6 Compensable time.

Individuals employed subject to this part must be compensated for all hours worked. Compensable time includes not only those hours during which the individual is actually performing productive work but also includes those hours when no work is performed but the individual is required by the employer to remain available for the next assignment. However, where the individual is completely relieved from duty and is not required to remain available for the next assignment, such time will not be considered compensable time. For example, an individual employed by a rehabilitation facility would not be engaged in a compensable activity where such individual is completely relieved from duty but is provided therapy or the opportunity to participate in an alternative program or activity in the facility not involving work and not directly related to the worker's job (e.g., self-help skills training, recreation, job seeking skills training, independent living skills, or adult basic education). The burden of establishing that such hours are not compensable rests with the facility and such hours must be clearly distinguishable from compensable hours. (For further information on compensable time in general under FLSA, see Part 785 of this title.)

§ 525.7 Application for certificates.

(a) Application for a certificate may be filed by any employer with the Regional Office of the Wage and Hour Division having administrative jurisdiction over the geographic area in which the employment is to take place.

(b) The employer shall provide answers to all of the applicable questions contained on the application form provided by the Regional Office.

(c) The application shall be signed by the employer or the employer's authorized representative.

§ 525.8 Special provisions for temporary authority.

(a) Temporary authority may be granted to an employer permitting the employment of workers with disabilities pursuant to a vocational rehabilitation program of the Veterans Administration for veterans with a service-incurred disability or a vocational rehabilitation program administered by a State agency.

(b) Temporary authority is effective for 90 days from the date the appropriate section of the application form is signed and completed by the duly designated representative of the State agency or the Veterans Administration. Such authority may not be renewed or extended by the issuing agency.

(c) The signed application constitutes the temporary authority to employ workers with disabilities at special minimum wage rates. A copy of the application must be forwarded within 10 days to the appropriate Regional Office of the Wage and Hour Division. Upon receipt, the application will be reviewed and, where appropriate, a certificate will be issued by the Regional Office. Where additional information is required or certification is denied, the applicant will receive notification from the Regional Office.

§ 525.9 Criteria for employment of workers with disabilities under certificates at special minimum wage rates.

(a) In order to determine that special minimum wage rates are necessary in order to prevent the curtailment of opportunities for employment, the following criteria will be considered:

(1) The nature and extent of the disabilities of the individuals employed as these disabilities relate to the individuals' productivity;

(2) The prevailing wages of experienced employees not disabled for the job who are employed in the vicinity in industry engaged in work comparable to that performed at the special minimum wage rate;

(3) The productivity of the workers with disabilities compared to the norm established for nondisabled workers through the use of a verifiable work measurement method (see § 525.12(h)) or the productivity of experienced nondisabled workers employed in the vicinity on comparable work; and,

(4) The wage rates to be paid to the workers with disabilities for work comparable to that performed by experienced nondisabled workers.

(b) In order to be granted a certificate authorizing the employment of workers with disabilities at special minimum wage rates, the employer must provide the following written assurances concerning such employment:

(1) In the case of individuals paid hourly rates, the special minimum wage rates will be reviewed by the employer

at periodic intervals at a minimum of once every six months; and,

(2) Wages for all employees will be adjusted by the employer at periodic intervals at a minimum of once each year to reflect changes in the prevailing wages paid to experienced nondisabled individuals employed in the locality for essentially the same type of work.

§ 525.10 Prevailing wage rates.

(a) A prevailing wage rate is a wage rate that is paid to an experienced worker not disabled for the work to be performed. The Department recognizes that there may be more than one wage rate for a specific type of work in a given area. An employer must be able to demonstrate that the rate being used as prevailing for determining a commensurate wage was objectively determined according to the guidelines contained in this section.

(b) An employer whose work force primarily consists of nondisabled workers or who employs more than a token number of nondisabled workers doing similar work may use as the prevailing wage the wage rate paid to that employer's experienced nondisabled employees performing similar work. Where an agency places a worker or workers with disabilities on the premises of an employer described above, the wage paid to the employer's experienced workers may be used as prevailing.

(c) An employer whose work force primarily consists of workers disabled for the work to be performed may determine the prevailing wage by ascertaining the wage rates paid to the experienced nondisabled workers of other employers in the vicinity. Such data may be obtained by surveying comparable firms in the area that employ primarily nondisabled workers doing similar work. The firms surveyed must be representative of comparable firms in terms of wages paid to experienced workers doing similar work. The appropriate size of such a sample will depend on the number of firms doing similar work but should include no less than three firms unless there are fewer firms doing such work in the area. A comparable firm is one which is of similar size in terms of employees or which competes for or bids on contracts of a similar size or nature. Employers may contact other sources such as the Bureau of Labor Statistics or private or State employment services where surveys are not practical. If similar work cannot be found in the area defined by the geographic labor market, the closest comparable community may be used.

(d) The prevailing wage rate must be based upon the wage rate paid to experienced nondisabled workers as defined elsewhere in these regulations. Employment services which only provide entry level wage data are not acceptable as sources for prevailing wage information as required in these regulations.

(e) There is no prescribed method for tabulating the results of a prevailing wage survey. For example, either a weighted or unweighted average would be acceptable provided the employer is consistent in the methodology used.

(f) The prevailing wage must be based upon work utilizing similar methods and equipment. Where the employer is unable to obtain the prevailing wage for a specific job to be performed on the premises, such as collating documents, it would be acceptable to use as the prevailing wage the wage paid to experienced individuals employed in similar jobs such as file clerk or general office clerk, requiring the same general skill levels.

(g) The following information should be recorded in documenting the determination of prevailing wage rates:

(1) Date of contact with firm or other source;

(2) Name, address, and phone number of firm or other source contacted;

(3) Individual contacted within firm or source;

(4) Title of individual contacted;

(5) Wage rate information provided;

(6) Brief description of work for which wage information is provided;

(7) Basis for the conclusion that wage rate is not based upon an entry level position. (See also § 525.10(c).)

(h) A prevailing wage may not be less than the minimum wage specified in section 6(a) of FLSA.

§ 525.11 Issuance of certificates.

(a) Upon consideration of the criteria cited in these regulations, a special certificate may be issued.

(b) If a special minimum wage certificate is issued, a copy shall be sent to the employer. If denied, the employer will be notified in writing and told the reasons for the denial, as well as the right to petition under § 525.18.

§ 525.12 Terms and conditions of special minimum wage certificates.

(a) A special minimum wage certificate shall specify the terms and conditions under which it is granted.

(b) A special minimum wage certificate shall apply to all workers employed by the employer to which the special certificate is granted provided such workers are in fact disabled for the work they are to perform.

(c) A special minimum wage certificate shall be effective for a period to be designated by the Administrator. Workers with disabilities may be paid wages lower than the statutory minimum wage rate set forth in section 6 of FLSA only during the effective period of the certificate.

(d) Workers paid under special minimum wage certificates shall be paid wages commensurate with those paid experienced nondisabled workers employed in the vicinity in which they are employed for essentially the same type, quality, and quantity of work.

(e) Workers with disabilities shall be paid not less than one and one-half times their regular rates of pay for all hours worked in excess of the maximum workweek applicable under section 7 of FLSA.

(f) The wages of all workers paid a special minimum wage under this part shall be adjusted by the employer at periodic intervals at a minimum of once a year to reflect changes in the prevailing wages paid to experienced individuals not disabled for the work to be performed employed in the vicinity for essentially the same type of work.

(g) Each worker with a disability and, where appropriate, a parent or guardian of the worker, shall be informed, orally and in writing, of the terms of the certificate under which such worker is employed. This requirement may be satisfied by making copies of the certificate available. Where a worker with disabilities displays an understanding of the terms of a certificate and requests that other parties not be informed, it is not necessary to inform a parent or guardian.

(h) In establishing piece rates for workers with disabilities, the following criteria shall be used:

(1) Industrial work measurement methods such as stop watch time studies, predetermined time systems, standard data, or other measurement methods (hereinafter referred to as "work measurement methods") shall be used by the employer to establish standard production rates of workers not disabled for the work to be performed. The Department will accept the use of whatever method an employer chooses to use. However, the employer has the responsibility of demonstrating that a particular method is generally accepted by industrial engineers and has been properly executed. No specific training or certification will be required. Where work measurement methods have already been applied by another employer or source, and documentation exists to show that the methods used are the same, it is not necessary to repeat these methods to establish production standards.

(i) The piece rates shall be based on the standard production rates (number of units an experienced worker not disabled for the work is expected to produce per hour) and the prevailing industry wage rate paid experienced nondisabled workers in the vicinity for essentially the same type and quality of work or for work requiring similar skill. (Prevailing industry wage rate divided by the standard number of units per hour equals the piece rate.).

(ii) Piece rates shall not be less than the prevailing piece rates paid experienced workers not disabled for the work doing the same or similar work in the vicinity when such piece rates exist and can be compared with the actual employment situations of the workers with disabilities.

(2) Any work measurement method used to establish piece rates shall be verifiable through the use of established industrial work measurement techniques.

(i) If stop watch time studies are made, they shall be made with a person or persons whose productivity represents normal or near normal performance. If their productivity does not represent normal or near normal performance, adjustments of performance shall be made. Such adjustments, sometimes called "performance rating" or "leveling" shall be made only by a person knowledgeable in this technique, as evidenced by successful completion of training in this area. The persons observed should be given time to practice the work to be performed in order to provide them with an opportunity to overcome the initial learning curve. The persons observed shall be trained to use the specific work method and tools which are available to workers with disabilities employed under special minimum wage certificates.

(ii) Appropriate time shall be allowed for personal time, fatigue, and unavoidable delays. Generally, not less than 15% allowances (9–10 minutes per hour) shall be used in conducting time studies.

(iii) Work measurements shall be conducted using the same work method that will be utilized by the workers with disabilities. When modifications such as jigs or fixtures are made to production methods to accommodate special needs of individual workers with disabilities, additional work measurements need not be conducted where the modifications enable the workers with disabilities to perform the work or increase productivity but would impede a worker without disabilities. Where workers with disabilities do not have a method available to them, as for example where an adequate number of machines are not available, a second work measurement should be conducted.

(i) Each worker with a disability employed on a piece rate basis should be paid full earnings. Employers may "pool" earnings only where piece rates cannot be established for each individual worker. An example of this situation is a team production operation where each worker's individual contribution to the finished product cannot be determined separately. However, in such situations, the employer should make every effort to objectively divide the earnings according to the productivity level of each individual worker.

(j) The following terms shall be met for workers with disabilities employed at hourly rates:

(1) Hourly rates shall be based upon the prevailing hourly wage rates paid to experienced workers not disabled for the job doing essentially the same type of work and using similar methods or equipment in the vicinity. (See also § 525.10.)

(2) An initial evaluation of a worker's productivity shall be made within the first month after employment begins in order to determine the worker's commensurate wage rate. The results of the evaluation shall be recorded and the worker's wages shall be adjusted accordingly no later than the first complete pay period following the initial evaluation. Each worker is entitled to commensurate wages for all hours worked. Where the wages paid to the worker during pay periods prior to the initial evaluation were less than the commensurate wage indicated by the evaluation, the employer must compensate the worker for any such difference unless it can be demonstrated that the initial payments reflected the commensurate wage due at that time.

(3) Upon completion of not more than six months of employment, a review shall be made with respect to the quantity and quality of work of each hourly-rated worker with a disability as compared to that of nondisabled workers engaged in similar work or work requiring similar skills and the findings shall be recorded. The worker's productivity shall then be reviewed and the findings recorded at least every 6 months thereafter. A review and recording of productivity shall also be made after a worker changes jobs and at least every 6 months thereafter. The worker's wages shall be adjusted accordingly no later than the first complete pay period following each review. Conducting reviews at six-month intervals should be viewed as a minimum requirement since workers with disabilities are entitled to commensurate wages for all hours worked. Reviews must be conducted in a manner and frequency to insure payment of commensurate wages. For example, evaluations should not be conducted before a worker has had an opportunity to become familiar with the job or at a time when the worker is fatigued or subject to conditions that result in less than normal productivity.

(4) Each review should contain, as a minimum and in addition to the data cited above, the following: name of the individual being reviewed; date and time of the review; and, name and position of the individual doing the review.

§ 525.13 Renewal of special minimum wage certificates.

(a) Applications may be filed for renewal of special minimum wage certificates.

(b) If an application for renewal has been properly and timely filed, an existing special minimum wage certificate shall remain in effect until the application for renewal has been granted or denied.

(c) Workers with disabilities may not continue to be paid special minimum wages after notice that an application for renewal has been denied.

(d) Except in cases of willfulness or those in which the public interest requires otherwise, before an application for renewal is denied facts or conduct which may warrant such action shall be called to the attention of the employer in writing and such employer shall be afforded an opportunity to demonstrate or achieve compliance with all legal requirements.

§ 525.14 Posting of notices.

Every employer having workers who are employed under special minimum wage certificates shall at all times display and make available to employees a poster as prescribed and supplied by the Administrator. The Administrator will make available, upon request, posters in other formats such as Braille or recorded tapes. Such a poster will explain, in general terms, the conditions under which special minimum wages may be paid and shall be posted in a conspicuous place on the employer's premises where it may be readily observed by the workers with disabilities, the parents and guardians of such workers, and other workers. Where an employer finds it inappropriate to

post such a notice, this requirement may be satisfied by providing the poster directly to all employees subject to its terms.

§ 525.15 Industrial homework.

(a) Where the employer is an organization or institution carrying out a recognized program of rehabilitation for workers with disabilities and holds a special certificate issued pursuant to this part, certification under regulations governing the employment of industrial homeworkers (29 CFR Part 530) is not required.

(b) For all other types of employers, special rules apply to the employment of homeworkers in the following industries: Jewelry manufacturing, knitted outerwear, gloves and mittens, buttons and buckles, handkerchief manufacturing, embroideries, and women's apparel. (See 29 CFR Part 530.)

§ 525.16 Records to be kept by employers.

Every employer, or where appropriate (in the case of records verifying the workers' disabilities) the referring agency or facility, of workers employed under special minimum wage certificates shall maintain and have available for inspection records indicating:

(a) Verification of the workers' disabilities;

(b) Evidence of the productivity of each worker with a disability gathered on a continuing basis or at periodic intervals (not to exceed six months in the case of employees paid hourly wage rates);

(c) The prevailing wages paid workers not disabled for the job performed who are employed in industry in the vicinity for essentially the same type of work using similar methods and equipment as that used by each worker with disabilities employed under a special minimum wage certificate (see also § 525.10(b) and (d));

(d) The production standards and supporting documentation for nondisabled workers for each job being performed by workers with disabilities employed under special certificates; and

(e) The records required under all of the applicable provisions of Part 516 of this title, except that any provision pertaining to homeworker handbooks shall not be applicable to workers with disabilities who are employed by a recognized nonprofit rehabilitation facility and working in or about a home, apartment, tenement, or room in a residential establishment. (See § 525.15) Records required by this section shall be maintained and preserved for the periods specified in Part 516 of this title.

(Approved by the Office of Management and Budget under control number 1215–0017)

§ 525.17 Revocation of certificates.

(a) A special minimum wage certificate may be revoked for cause at any time. A certificate may be revoked:

(1) As of the date of issuance, if it is found that misrepresentations or false statements have been made in obtaining the certificate or in permitting a worker with a disability to be employed thereunder;

(2) As of the date of violation, if it is found that any of the provisions of FLSA or of the terms of the certificate have been violated; or

(3) As of the date of notice of revocation, if it is found that the certificate is no longer necessary in order to prevent curtailment of opportunities for employment, or that the requirements of these regulations other than those referred to in (a)(2) above have not been complied with.

(b) Except in cases of willfulness or those in which the public interest requires otherwise, before any certificate shall be revoked, facts or conduct which may warrant such action shall be called to the attention of the employer in writing and such employer shall be afforded an opportunity to demonstrate or achieve compliance with all legal requirements.

§ 525.18 Review.

Any person aggrieved by any action of the Administrator taken pursuant to this part may, within 60 days or such additional time as the Administrator may allow, file with the Administrator a petition for review. Such review, if granted, shall be made by the Administrator. Other interested persons, to the extent it is deemed appropriate, may be afforded an opportunity to present data and views.

§ 525.19 Investigations and hearings.

The Administrator may conduct an investigation, which may include a hearing, prior to taking any action pursuant to these regulations. To the extent it is deemed appropriate, the Administrator may provide an opportunity to other interested persons to present data and views. Proceedings initiated pursuant to this section are separate from those taken pursuant to FLSA section 14(c)(5) and § 525.22.

§ 525.20 Relation to other laws.

No provision of these regulations, or of any special minimum wage certificate issued thereunder, shall excuse noncompliance with any other Federal or State law or municipal ordinance establishing higher standards.

§ 525.21 Lowering of wage rates.

(a) No employer may reduce the minimum hourly wage rate, guaranteed by a special minimum wage certificate in effect on June 1, 1986, of any worker with disabilities from June 1, 1986 until May 31, 1988, without prior authorization of the Secretary.

(b) This provision applies to those workers with disabilities who were:

(1) Employed during the pay period which included June 1, 1986, even if no work was performed during that pay period; and

(2) Employed under a group or individual special minimum wage certificate which specified a minimum guaranteed rate, i.e., a special certificate issued under former section 14(c) (1) or (2)(b) of FLSA.

(c) In order to obtain authority to lower the wage rate of a worker with a disability to whom this provision applies to a rate below the certificate rate, the employer must submit information as prescribed under this section to the appropriate Regional Office. The burden of establishing the necessity of lowering the wage of a worker with a disability rests with the employer.

(d) In reviewing a request to lower a wage rate of a worker with a disability, documented evidence of the following will be considered:

(1) Any change in the worker's disabling condition which has a substantially negative impact on productive capacity;

(2) Any change in the type of work being performed in the facility which would affect the productivity of the worker with a disability or which would result in the application of a lower prevailing wage rate;

(3) Any change in general economic conditions in the locality in which the work is performed which results in lower prevailing wage rates.

(e) A wage rate may not be lowered until authorization is obtained.

§ 525.22 Employee's right to petition.

(a) Any employee receiving a special minimum wage at a rate specified pursuant to subsection 14(c) of FLSA or the parent or guardian of such an employee may petition the Secretary to obtain a review of such special minimum wage rate. No particular form of petition is required, except that a petition must be signed by the individual, or the parent or guaradian of the individual, and should contain the name and address of the employee and the name and address of the employee's employer. A petition may be filed in person or by mail with the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S3502, 200 Constitution Avenue NW., Washington, DC 20210. The petitioner may be represented by counsel in any stage of such proceedings. Upon receipt, the petition shall be forwarded immediately to the Chief Administrative Law Judge.

(b) Upon receipt of a petition, the Chief Administrative Law Judge shall, within 10 days of the receipt of the petition by the Secretary, appoint an Administrative Law Judge (ALJ) to hear the case. Upon receipt, the ALJ shall notify the employer named in the petition. The ALJ shall also notify the employee, the employer, the Administrator, and the Associate Solicitor for Fair Labor Standards of the time and place of the hearing. The date of the hearing shall be not more than 30 days after the assignment of the case to the ALJ. All the parties shall be given at least eight days' notice of such hearing. Because of the time constraints imposed by the statute, requests for postponement shall be granted only sparingly and for compelling reasons.

(c) Hearings held under this subpart shall be conducted, consistent with statutory time limitations, under the Department's rules of practice and procedure for administrative hearings found in 29 CFR Part 18. There shall be a minimum of formality in the proceeding consistent with orderly procedure. Any employer who intends to participate in the proceeding shall provide to the ALJ, and shall serve on the petitioner and the Associate Solicitor for Fair Labor Standards no later than 15 days prior to the commencement of the hearing, or as soon as practical depending on when the notice of a hearing as required under paragraph (b) was received, that documentary evidence pertaining to the employee or employees identified in the petition which is contained in the records required by § 525.16 (a), (b), (c) and (d). The Administrator shall be permitted to participate by counsel in the proceeding upon application.

(d) In determining whether any special minimum wage rate is justified, the ALJ shall consider, to the extent evidence is available, the productivity of the employee or employees identified in the petition and the conditions under which such productivity was measured, and the productivity of other employees performing work of essentially the same type and quality for other employers in the same vicinity and the conditions under which much productivity was mesured. In these proceedings, the burden of proof on all matters relating to the propriety of a wage at issue shall rest with the employer.

(e) The ALJ shall issue a decision within 30 days after the termination of the hearing and shall serve the decision on the Administrator and all interested parties by Express Mail or other similar system guaranteeing one-day delivery. The decision shall contain appropriate findings and conclusions and an order. If the ALJ finds that the special minimum wage being paid or which has been paid is not justified, the order shall specify the lawful rate and the period of employment to which the rate is applicable. In the absence of evidence sufficient to support the conclusion that the proper wage should be less than the minimum wage, the ALJ shall order that the minimum wage be paid.

(f) Within 15 days after the date of the decision of the ALJ, the petitioner, the Administrator, or the employer who seeks review thereof may request review by the Secretary. No particular form of request is required, except that a request must be in writing and must attach a copy of the ALJ's decision. Requests for review shall be filed with the Secretary of Labor, 200 Constitution Ave. NW., Washington, DC 20210. Any other interested party may file a reply thereto with the Secretary and the Administrator within 5 working days of receipt of such request for review. The request for review and reply thereto shall be transmitted by the Administrator to all interested parties by Express Mail or other similar system guaranteeing one-day delivery.

(g) The decision of the ALJ shall be deemed to be final agency action 30 days after issuance thereof, unless within 30 days of the date of the decision the Secretary grants a request to review the decision. Where such request for review is granted, within 30 days after receipt of such request the Secretary shall review the record and shall either adopt the decision of the ALJ or issue exceptions. The decision of the ALJ, together with any exceptions issued by the Secretary, shall be deemed to be a final agency action.

(h) Within 30 days of issuance of the final action of the Secretary reviewing the decision of the ALJ or declining to grant such review, any person adversely affected or aggrieved by such action may seek judicial review pursuant to Chapter 7 of Title 5, United States Code. The record of the case, including the record of proceedings before the ALJ, shall be transmitted by the Secretary to the appropriate court pursuant to the rules of such court.

§ 525.23 Work activities centers.

Nothing in these regulations shall be interpreted to prevent an employer from maintaining or establishing work activities centers to provide therapeutic activities for workers with disabilities as long as the employer complies with the requirement of these regulations. Work activities centers shall include centers planned and designed to provide therapeutic activities for workers with severe disabilities affecting their productive capacity. Any establishment whose workers with disabilities are employed at special minimum wages must comply with the requirements of this part, regardless of the designation of such establishment.

§ 525.24 Advisory Committee on Special Minimum Wages.

The Advisory Committee on Special Minimum Wages, the members of which are appointed by the Secretary, shall advise and make recommendations to the Administrator concerning the administration and enforcement of these regulations and the need for amendments thereof and shall serve such other functions as may be desired by the Administrator.

[FR Doc. 89–18668 Filed 8–9–89; 8:45 am]
BILLING CODE 4510–27–M

federal register

Thursday
August 10, 1989

Part III

Department of Education

34 CFR Part 208

Mathematics-Science Education Program; State Grants; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 208

RIN 1810-AA40

Mathematics-Science Education Program; State Grants

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues these regulations for the program of State grants for strengthening the economic competitiveness and national security of the United States by improving the skills of teachers and the quality of instruction in mathematics and science in the Nation's public and private elementary and secondary schools. These regulations implement the changes in the Mathematics and Science Education Program as a result of its reauthorization as the Dwight D. Eisenhower Mathematics and Science Education Act of 1988.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments, with the exception of §§ 208.11 and 208.22. Sections 208.11 and 208.22 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Genevieve W. Cornelius, Director, Division of Formula Grants, School Improvement Programs, 400 Maryland Avenue SW., (Room 2040, FOB-6), Washington, DC, 20202-6246, (202) 732-4052.

SUPPLEMENTARY INFORMATION: Title II, Part A of the Elementary and Secondary Education Act of 1965, enacted in the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297), reauthorizes the mathematics and science education program. The new Act (the Dwight D. Eisenhower Mathematics and Science Education Act) revises several of the provisions of the predecessor statute (Title II of the Education for Economic Security Act). However, the purpose of the program is still to improve the skills of teachers and the quality of instruction in mathematics and science.

The following regulations implement the changes required by Pub. L. 100-297.

On December 6, 1988, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the Federal Register (53 FR 49280).

The NPRM included a discussion of major changes and issues. In addition to clarifying changes mandated by the statute, this discussion included a statement of the Secretary's policy, in situations where the State educational agency (SEA) determines that a local educational agency (LEA) has not made adequate progress in implementing its program, to permit the SEA either to approve appropriate revisions in the LEA's application or, after providing the LEA an opportunity for a hearing, to disapprove the LEA's application. In addition, the discussion proposed an explanation of the expanded definition of retraining in the higher education program as well as some specifics of the required agreement between institutions of higher education (IHEs) and LEAs. Finally, it explained briefly that the regulations that would govern a bypass for a grantee's failure to provide for the participation of children or teachers from private nonprofit schools were those proposed in the Federal Register on August 18, 1988.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, the Department received a number of written comments on the proposed regulations. An analysis of the substantive comments is published as an appendix to these final regulations.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 208

Colleges and universities, Consortium, Economically disadvantaged, Education, Elementary and secondary education, Gifted and talented, Grants administration, Grant programs—education, Inservice education, Low-income families, Mathematics, Museums, Nonprofit educational organization, Other appropriate educational personnel, Preservice education, Private schools, Recruitment and retention, Reporting and recordkeeping requirements, Retraining, Science and technology, State administered programs, Students, Teachers, Training program, Underserved and underrepresented, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.164, The Dwight D. Eisenhower Mathematics and Science Education Act.)

Dated: August 4, 1989.

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising Part 208 to read as follows:

PART 208—MATHEMATICS AND SCIENCE EDUCATION PROGRAM

Subpart A—General

Sec.
208.1 Purpose.
208.2 Applicable regulations.
208.3 Definitions that apply to programs under this part.
208.4–208.10 [Reserved]

Subpart B—Application Procedures

208.11 State application.
208.12–208.20 [Reserved]

Subpart C—Elementary and Secondary Education Programs and Activities

208.21 In-State apportionment.
208.22 LEA application.
208.23 Use of funds by LEAs.
208.24 Use of funds by SEAs for demonstration and exemplary programs.
208.25 Use of funds by SEAs for technical assistance and administrative costs.

208.26–208.30 [Reserved]

Subpart D—Higher Education Programs and Activities

208.31 Apportionment of funds.
208.32 IHE application.
208.33 Use of funds by IHEs.
208.34–208.40 [Reserved]

Subpart E—Fiscal Requirements

208.41 Supplement not supplant.
208.42–208.50 [Reserved]

Subpart F—Participation of Private Schools

208.51 Participation of children and teachers in private schools.
208.52 Bypass.
208.53–208.60 [Reserved]

Authority: 20 U.S.C. 2961–2993.

Subpart A—General

§ 208.1 Purpose.

The Secretary provides financial assistance under this part to states to strengthen the economic competitiveness and national security of the United States by improving the skills of teachers and the quality of instruction in mathematics and science in the Nation's public and private elementary and secondary schools.

(Authority: 20 U.S.C. 2962)

§ 208.2 Applicable regulations.

The following regulations apply to programs for which the Secretary provides financial assistance under this part:

(a) The regulations in this part.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), and part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-free Workplace (Grants)).

(Authority: 20 U.S.C. 2961–2991, 2993)

§ 208.3 Definitions that apply to programs under this part.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Application
Department
EDGAR
Elementary school
Fiscal year
Local educational agency (LEA)
Nonprofit
Private
Public
Secretary
State educational agency (SEA)

(b) *Additional definitions.* The following additional terms used in this part are defined as follows:

Act means Title II, part A of the Elementary and Secondary Education Act of 1965 (The Dwight D. Eisenhower Mathematics and Science Education Act).

Institution of higher education (IHE) has the meaning given that term in section 1201(a) of the Higher Education Act of 1965, 20 U.S.C. 1141(a).

Magnet school programs for gifted and talented students means programs for gifted and talented students in magnet schools or magnet programs in regular schools that attract gifted and talented students from other schools. Magnet schools are schools or education centers that offer a special curriculum, and include but are not limited to, schools or education centers capable of attracting substantial numbers of students of different racial backgrounds.

Nonprofit organizations include, but are not limited to, museums, libraries, educational television stations, professional science, mathematics, and engineering societies and associations, associations for the development and dissemination of projects designed to improve student understanding and performance in science and mathematics, and other organizations that meet the definition of "nonprofit" in 34 CFR 77.1.

Secondary school means a day or residential school that provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

State means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico. "State" also includes the "insular areas" of Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and, as appropriate, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau (or the Trust Territory of the Pacific Islands (Palau), if the Compact of Free Association for Palau has not been ratified when funds are allocated).

State agency for higher education (SAHE) means the State board of higher education or other agency or officer primarily responsible for the State supervision of higher education, or, if there is no such officer or agency, an officer or agency designated for the purposes of this part by the Governor or by State law.

(Authority: 20 U.S.C. 2961–2991, 2993)

§§ 208.4–208.10 [Reserved]

Subpart B—Application Procedures

§ 208.11 State application.

(a) Of the amount allotted to each State under section 2004 of the Act, the Secretary awards, on the basis of approved State applications, 75 percent to the State's SEA for elementary and secondary education programs (in accordance with §§ 208.23, 208.24, and 208.25) and 25 percent to the State's SAHE for higher education programs (in accordance with § 208.33). The SEA shall apportion these funds in accordance with § 208.21; the SAHE shall apportion these funds in accordance with § 208.31.

(b) A State that desires to receive funds under this part shall have on file with the Secretary an application that covers a period of three fiscal years. Each State application must—

(1) Designate the SEA as the agency responsible for the administration and supervision of the elementary and secondary education programs described in subpart C of this part and the SAHE as the agency responsible for the administration and supervision of the higher education programs described in subpart D of this part;

(2) Provide assurances that—

(i) Payments will be distributed by the State in accordance with the provisions of § 208.21 and 208.31;

(ii) Provision will be made for the equitable participation of nonprofit private school children and teachers, in accordance with § 208.51, in elementary and secondary education programs described in subpart F of this part;

(iii) Provision will be made for fiscal control and accounting procedures to ensure proper accounting and expenditure of funds made available under this part;

(iv) Funds made available under this part will be used to supplement and not supplant non-Federal funds in accordance with § 208.41;

(v) During the three-year period of the plan, the State will evaluate its standards for teacher preparation, licensing, certification, and endorsement for elementary and secondary mathematics and science;

(vi) The State will take into account the needs for greater access to, and participation in, mathematics and science by students and teachers from

historically underrepresented and underserved groups, including females, minorities, individuals with limited English proficiency, the economically disadvantaged and the handicapped;

(vii) The needs of teachers and students in areas of high concentrations of low-income students and sparsely populated areas will be considered in the distribution of funds reserved for State use; and

(viii) The programs conducted with State funds will be assessed annually (including collecting statistics on the number of students and teachers involved in these programs) and the data from these assessments, as well as a summary of the local assessments required under § 208.22(b)(1), will be submitted to the Secretary;

(3) Provide descriptions of—

(i) How, if appropriate, funds paid under this part will be coordinated with State and local funds and other Federal resources, particularly resources available from the National Science Foundation or the Department of Energy, or both;

(ii) Procedures for—

(A) Submitting applications for the programs described in subparts C and D of this part; and

(B) Approval of applications by the appropriate State agency, including procedures to ensure in accordance with 34 CFR 76.401 that the State agency will not disapprove an application without notice and opportunity for a hearing. Disapproval of an application does not include a determination by a SAHE as to the relative merit of a competing application submitted under § 208.32;

(iii) How programs under this part will meet the teacher training and curriculum needs projected under paragraph (b)(4) of this section;

(iv) Specific activities that will be undertaken that involve IHEs;

(v) Specific activities that will be supported with funds reserved for State use, and how those activities relate to the State's needs in mathematics and science; and

(vi) Specific activities the State will support to improve access of historically underrepresented groups in mathematics and science education; and

(4) Contain the following information:

(i) A projection of the supply and demand for teachers within the State in all the mathematics and science subject areas at the elementary and secondary levels, including a consideration of the impact of changing State graduation requirements and other State reforms on the supply of those teachers.

(ii) An assessment of the current elementary and secondary curriculum needs within the State in mathematics and science.

(c) The Secretary approves any State application that meets the requirements of this section.

(Authority: 20 U.S.C. 2988)

§§ 208.12-208.20 [Reserved]

Subpart C—Elementary and Secondary Education Programs and Activities

§ 208.21 In-State apportionment.

(a) Each SEA shall distribute to LEAs within the State, for use under § 208.23, not less than 90 percent of the funds allotted to it under § 208.11(a), as follows:

(1)(i) Fifty (50) percent of the funds must be distributed to LEAs according to the relative enrollments in public and private nonprofit schools within the school districts of the LEAs. Relative enrollments may be calculated, at the option of the SEA, on the basis of the total number of children enrolled in public schools and—

(A) Private nonprofit schools; or

(B) Private nonprofit schools desiring that their children and teachers participate in programs or projects assisted under the Act.

(ii) Nothing in paragraph (a)(1)(i) of this section diminishes the responsibility of an LEA to contact, on an annual basis, appropriate officials of private nonprofit schools within its school district to determine whether those officials desire that their children and teachers participate in programs or projects funded under the Act.

(2) Fifty (50) percent of the funds must be distributed to LEAs in the same proportion as funds under part A of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, are distributed.

(b) Each SEA shall use not less than five percent of the total funds allotted to it under § 208.11(a) for demonstration and exemplary program activities described in § 208.24.

(c) Each SEA shall use not more than five percent of the funds allotted to it under § 208.11(a) for technical assistance and administrative costs, as described in § 208.25.

(Authority: 20 U.S.C. 2988)

§ 208.22 LEA application.

(a) An LEA that desires to receive an allocation of funds under subpart C of this part shall submit to the SEA an application that covers a period of three fiscal years and meets the requirements of this section.

(b) An LEA may apply for funds under paragraph (a) of this section, singly or in conjunction with other LEAs, IHEs, or an intermediate educational unit to conduct programs under § 208.23. Each LEA application must include—

(1) A summary assessment of—

(i) The needs of its current teachers in mathematics and science and whether a shortage of qualified teachers in these subjects exists or will exist within five years of the date of the application;

(ii) The current levels of mathematics and science student achievement in the LEA; and

(iii) The curricular needs of the LEA In mathematics and science;

(2) Information the SEA may require describing the LEA's proposed activities and expenditures of funds for those activities under § 208.23. This information must include, at minimum, a description of—

(i) How the LEA plans to use funds received under this part to meet the needs described in paragraph (b)(1)(i) of this section;

(ii) If applicable, how funds it receives under this part will be coordinated with State, local, and other Federal resources, especially with respect to any programs available from the National Science Foundation, the Department of Energy, or both; and

(iii) If applicable, how the assisted programs will use other resources of the community and involve public agencies, private industry, IHEs, public and private nonprofit organizations, and other appropriate institutions; and

(3) Assurances that—

(i) Programs will take into account the need for greater access to and participation in mathematics and science programs by students from historically underrepresented groups, including females, minorities, individuals with limited English proficiency, the economically disadvantaged, and the handicapped; and

(ii) Programs assisted will be assessed and progress made will be reported, in terms of numbers of teachers and students affected, and the results will be submitted to the SEA in the time and manner that the SEA requires.

(c) Notwithstanding paragraph (a) of this section, an LEA that has applied for funds singly or in conjunction with other LEAs, IHEs, or an intermediate educational unit, and that desires to change the basis on which its programs are funded, shall submit to the SEA an amended application for the remainder of the application period. The amended application must update the information required by paragraph (b) of this section.

(d) (1) The SEA shall renew payments to the LEA under this program if it determines on the basis of its review of the LEA's application and any other information it may have, that the LEA is making adequate progress toward the goals of this part.

(2) If the SEA determines that the LEA has not made adequate progress toward meeting the goals of this part, the SEA may—

(i) Approve revisions to the programs funded under this part that are proposed by the LEA, if those revisions will enable the LEA to meet the goals of this part; or

(ii) After affording the LEA notice and opportunity for a hearing, disapprove the LEA's application.

(Authority: 20 U.S.C. 2989)

§ 208.23 Use of funds by LEAs.

(a) An LEA shall use the funds it receives under § 208.21(a) to support one or more of the following:

(1) The expansion and improvement of preservice and inservice training and retraining for teachers and other appropriate school personnel in the fields of mathematics and science, including vocational education teachers who use mathematics and science in teaching vocational education courses.

(2) Recruitment or retraining of minority teachers to become mathematics and science teachers.

(3) Training in and instructional use of computers, video, and other telecommunications technologies as part of a mathematics and science program (which may include the purchase of computers or other telecommunications equipment in schools with an enrollment of 50 percent or more of students from low-income families after all other training needs have been met).

(4) Integrating higher-order analytical and problem-solving skills into the mathematics and science curriculum.

(5) Providing funds for grants projects for individual teachers within the LEA to undertake projects to improve either their teaching ability or the instructional materials they use in their mathematics and science classrooms.

(b) An LEA may carry out the training and instruction under this section—

(1) Through agreements with public agencies, private industry, IHEs, and nonprofit organizations; and

(2) In conjunction with one or more LEAs within the State, with the SEA, or with both LEAs and the SEA.

(c) An LEA may use not more than five percent of the funds it receives under § 208.21 for local administration of these programs.

(Authority: 20 U.S.C. 2988)

§ 208.24 Use of funds by SEAs for demonstration and exemplary programs.

(a) An SEA shall use the funds described under § 208.21(b) to support one or more of the following:

(1) Demonstration and exemplary programs in the fields of mathematics and science for—

(i) Teacher training and retraining and inservice upgrading of teacher skills;

(ii) Instructional equipment and materials and necessary technical assistance; or

(iii) Special projects for historically underrepresented and underserved populations and for gifted and talented students.

(2) The dissemination of information relating to demonstration and exemplary programs to all LEAs within the State.

(b) In funding demonstration and exemplary programs under paragraph (a)(1) of this section, the SEA shall give special consideration to special projects in mathematics and science for—

(1) Students from historically underrepresented and underserved populations, including females, minorities, handicapped individuals, individuals with limited English proficiency, and migrant students; and

(2) Gifted and talented students. A program for gifted and talented students may include assistance to a magnet school program for those students.

(Authority: 20 U.S.C. 2988)

§ 208.25 Use of funds by SEAs for technical assistance and administrative costs.

An SEA may use the funds described under § 208.21(c)—

(a) To provide technical assistance to LEAs and, if appropriate, IHEs and nonprofit organizations that are conducting programs under § 208.23; and

(b) For the costs incurred by the SEA in administering and assessing programs assisted under this part.

(Authority: 20 U.S.C. 2988)

§§ 208.26-208.30 [Reserved]

Subpart D—Higher Education Programs and Activities

§ 208.31 Apportionment of funds.

(a) *Funds for IHEs.* (1) A SAHE shall distribute not less than ninety-five (95) percent of the funds it receives under § 208.11(a) to IHEs in accordance with the application procedures governing IHEs in § 208.32.

(2) The SAHE shall make every effort to ensure equitable participation of public and private IHEs.

(3) The SAHE may use funds described in this section for cooperative programs among IHEs, LEAs, SEAs, private industry, and nonprofit organizations, for the development and dissemination of projects designed to improve student understanding and performance in science and mathematics.

(b) *Funds retained by SAHEs.* A SAHE may reserve not more than five percent of the funds it receives under § 208.11 for the costs incurred by the SAHE for the State assessment of curriculum needs required by § 208.11(b)(4)(ii) and for administration and evaluation of programs assisted under this part.

(Authority: 20 U.S.C. 2987)

§ 208.32 IHE application.

An IHE wishing to receive a grant for programs funded under the Act may apply to the SAHE on a competitive basis either as an individual subgrantee or on behalf of a proposed cooperative program (see § 208.31(a)(2)). The application must contain information that the SAHE may require, and must demonstrate the IHE's involvement with one or more LEAs, as required by § 208.33(d).

(Authority: 20 U.S.C. 2987)

§ 208.33 Use of funds by IHEs.

(a) Subject to the requirement in paragraph (c) of this section, an IHE shall use funds awarded under § 208.31(a) for one or more of the following activities:

(1) Establishing traineeship programs for new teachers who will specialize in teaching mathematics and science at the secondary school level.

(2) Retraining. (i) Teachers who specialize in disciplines other than the teaching of mathematics and science, to specialize in the teaching of mathematics and science; or

(ii) Mathematics and science secondary school teachers to expand their areas of specialization within those disciplines (e.g., retraining biology teachers in physics or geometry teachers in calculus) or to expand their specializations across disciplines (e.g., retraining biology teachers in algebra).

(3) Inservice training for elementary, secondary, and vocational school teachers and training for other appropriate school personnel to improve their teaching skills in the fields of mathematics and science.

(b) Support for inservice training and retraining includes the provision of stipends for participation in institutes authorized under Title I of the EESA or any other program of the National Science Foundation.

BEST COPY AVAILABLE

(c) Each IHE receiving funds under this part shall ensure that programs of training, retraining, and inservice training will take into account the need for greater access to and participation in mathematics and science, and careers for—

(1) Students from historically underrepresented and underserved groups, including females, minorities, individuals with limited English proficiency, the handicapped, and migrants; and

(2) Gifted and talented students.

(d)(1) To receive funds for programs under paragraphs (1) (2) and (3) of this section, and IHE shall enter into an agreement with an LEA, or a consortium of LEAs, to provide inservice training and retraining for elementary and secondary school teachers in public and private schools in the LEA or LEAs.

(2) In the agreement, the IHE shall provide evidence that proposed projects and activities are the result of cooperative planning with LEAs affected, and that those projects and activities reflect the training, retraining, and inservice training needs of teachers as determined jointly by the LEA or LEAs and the IHE.

(Authority: 20 U.S.C. 2987)

§§ 208.34–208.40 [Reserved]

Subpart E—Fiscal Requirements

§ 208.41 Supplement not supplant.

A grantee or subgrantee that receives funds under this part—

(a) May use those funds only to supplement and, to the extent practicable, to increase the level of funds from non-Federal sources that, in the absence of funds made available under this part, would be made available for the purposes described in subparts C and D of this part; and

(b) May not use funds made available under this part to supplant funds from non-Federal sources.

(Authority: 20 U.S.C. 2988)

§§ 208.42–208.50 [Reserved]

Subpart F—Participation of Private Schools

§ 208.51 Participation of children and teachers in private schools.

(a) *Participation of private nonprofit school students.* To the extent consistent with the number of children in a State or an LEA who are enrolled in private nonprofit elementary and secondary schools, the SEA or LEA shall, after consultation with appropriate private nonprofit school representatives, make provisions for including services and arrangements for the benefit of these children to ensure their equitable participation in the purposes and benefits of this part.

(b) *Participation of private nonprofit school teachers.* (1) To the extent consistent with the number of children in the State or an LEA who are enrolled in private nonprofit elementary and secondary schools, an SEA, LEA, SAHE, or IHE shall, after consultation with appropriate private nonprofit school representatives, make provision for teacher training, retraining, and inservice training for the benefit of private nonprofit school teachers as will ensure their equitable participation in the purposes and benefits of this part.

(2) To receive funds for programs under § 208.33(a)(2) and (3), an IHE shall meet the requirements in § 208.33(d) for serving teachers in public and private nonprofit elementary and secondary schools.

(c) *Applicable requirements.* In fulfilling the equitable participation requirements in paragraphs (a) and (b) of this section an SEA, LEA, or IHE shall comply with the provisions in 34 CFR 76.650–76.662 regarding equipment and supplies and construction.

(Authority: 20 U.S.C. 2990)

§ 208.52 Bypass.

The Secretary implements a bypass if—

(a) An SEA, LEA, or IHE is prohibited by law from providing for the participation of children or teachers from private nonprofit schools as required by § 208.51; or

(b) The Secretary determines that an SEA or LEA has substantially failed or is unwilling to provide for the participation of children or teachers from private nonprofit schools on an equitable basis.

(Authority: 20 U.S.C. 2990)

§ 208.53–208.60 [Reserved]

Note: This appendix will not be codified in the Code of Federal Regulations

Appendix—Analysis of Comments and Changes

General Comments

Comment: One commenter recommended that the groups considered to be historically underserved and underrepresented be consistent in §§ 208.11(b)(2)(vi), 208.22(b)(3)(i), and 208.33(c)(1), and that those listings include the gifted and talented.

Discussion: The NPRM lists groups of "underserved and underrepresented" as provided in the statute. The gifted and talented are expressly included in program requirements in §§ 208.11(b)(2)(vi), 208.22(b)(3)(i), and 208.33(c)(1) governing the use of the funds by SEAs and IHEs. Section 208.33(b)(3)(i) governs assurances required in State and LEA applications. While States and LEAs are free to determine that the gifted and talented should be included in those assurances, the Secretary does not believe it is necessary to require broader assurances than are required by the Statute.

Changes: None.

Section 208.2 Applicable Regulations

Comment: One commenter noted that the regulations governing audit appeals in 34 CFR part 78 (Education Appeal Board) are no longer applicable and should be replaced by regulations governing the new Office of Administrative Law Judge in 34 CFR part 81.

Discussion: The Secretary agrees that part 78 is not applicable. Final regulations were issued for part 81 (General Education Provisions Act—Enforcement) on May 5, 1989 at 54 FR 19512, and apply to all appeals from final audit determinations pertaining to this program.

Changes: The reference to part 78 has been replaced by a reference to part 81.

Section 208.11 State Application

Comment: One commenter recommended that the requirement in § 208.11(b)(2)(v) for a State to evaluate, once every three years, its standards for teacher preparation, licensing, certification, and endorsement not apply if a State has reviewed or revised its standards within the past three to five years. The commenter expressed concern about the burden that this review will place on State staff, and the consequence of a fragmented State review of its certification code.

Discussion: Section 2008(b)(2)(E) of the statute expressly requires a State to include in its application an assurance that during the three-year period of the plan, the State will evaluate its standards for teacher preparation, licensing, certification, and endorsement for elementary and secondary mathematics and science. The regulation reflects the statutory requirement. If a State has recently evaluated these standards, meeting this requirement should present few problems.

Changes: None.

Comment: One commenter recommended that, for greater emphasis, the State application include not only assurances that funds will be used to address the needs of students historically underrepresented and underserved in mathematics and science, but also a timeline for using funds to address those needs. Another commenter strongly supported the provision as provided in the NPRM.

Discussion: Section 2008(b)(2)(F) of the statute requires each State to provide an assurance that it "will take into account the needs for greater access to and participation in mathematics and science by students and teachers from historically underrepresented groups." In § 2008(d)(4), the statute also requires the State's application to describe "the specific activities the State will support to improve the access of (these groups) in mathematics and science education." This requirement is reflected in § 208.11(b)(3)(vi). The Secretary interprets these State supported activities to include activities at the LEA, IHE, and State levels.

While the Secretary declines to impose by regulations a specific requirement for a timeline, the Secretary believes that a detailed description of the activities described in § 208.11(b)(3)(vi) should meet the commenter's concern.

Changes: None.

Section 208.22 LEA Application

Comment: One commenter expressed concern over the apparent lack of provision for periodic amendments to LEA plans.

Discussion: Section 208.2(b) of these regulations incorporates the requirements in part 80 of the Education Department General Administrative Regulations (EDGAR). Section 80.30(d)(1) requires an LEA to seek the prior approval of its respective SEA whenever it anticipates a desire to make "any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision (§ 80.30(b)) requiring prior approval)." The Secretary is satisfied that given this provision, and the inherent authority of SEAs to specify conditions when subgrantees should amend their applications, the regulations in part 208 do not need to address periodic amendments to LEA plans.

Changes: None.

Comment: Several commenters believed that the phrase "information the SEA may require" in § 208.22(b)(2) should be revised to read "information the SEA must require." The commenters stressed that this would clarify that the LEA's application must contain information on its proposed activities and use of funds and expenditures for those activities under § 208.23.

Discussion: Section 208.22(b) contains a list of items an LEA must include in its application. One of those items, in § 208.22(b)(2), is "information the SEA may require describing the LEA's proposed activities * * *." The word "may" was used in the NPRM to indicate that the SEA may decide to require more than the elements prescribed in § 208.22(b)(2)(i)–(iii). Although the Secretary believes that the NPRM language was appropriate, in view of the apparent confusion he has added further clarifying language.

Change: Section 208.22(b)(2) has been revised to clarify that while SEAs may require more information, all LEA applications must include, "at minimum" the information described in paragraphs (b)(2)(i) through (b)(2)(iii).

Comment: One commenter asked for clarification of an apparent conflict between the requirement in both section 2009(a) of the statute and § 208.22(a) of the NPRM that an LEA application cover three years, and the provision in section 2008(b)(3) of the statute providing that an LEA "for any fiscal year may apply for funds as part of a consortium * * *."

Discussion: LEAs, whether participating individually or as part of a consortium, need apply only once every three years. However, after submitting an individual application, and LEA desiring to participate through a consortium must amend its application accordingly in any subsequent fiscal year.

Change: To avoid confusion, a new § 208.22(c) has been added, which provides that notwithstanding the LEA's three-year application cycle, an LEA wishing to change the basis under which it previously applied for funds may submit an amended application to the SEA for the remainder of the application period. Proposed § 208.22(c) has been redesignated as § 208.22(d).

Section 208.23 Use of Funds by LEAs

Comment: One commenter recommended that training be given priority over "instruction, " i.e., over non-staff development kinds of activities. The commenter observed that under the predecessor statute, Public Law 98–377, an approved waiver was required in order to use funds for non-training instructional improvement purposes.

Discussion: Section 2006(b)(1)(D) and (E) of the statute specifically authorizes an LEA to use funds for training or instructional purposes related to mathematics and science and does not establish the kind of priority the commenter has recommended. Therefore, there is no authority for the Secretary to do so.

Moreover, the Secretary believes that LEAs are in the best position to establish priorities in the use of program funds that will most effectively meet their needs.

Changes: None.

Comment: None.

Discussion: The Secretary believes that § 208.23(a) should clarify that LEAs may use funds for one or more of the specified activities.

Changes: Section 208.23(a) has been revised accordingly.

Comment: Two commenters requested a clarification of an LEA's role in preservice training activities, in light of the fact that preservice training is normally the responsibility of higher education agencies.

Discussion: Section 2006(b)(1) of the statute lists preservice teacher training as one of a number of activities on which an LEA may spend its funds. If an LEA choose to undertake preservice training as an activity, section 2006(b)(2) of the statute permits the LEA to involve other agencies or organizations, including higher education agencies, through agreements with them. Any expenditure made for preservice training activities must relate to program improvement for the LEA in mathematics or science.

Changes: None.

Comment: One commenter requested an interpretation of the meaning of the word "school" in § 208.23(a)(3), regarding limitations on purchases of computers or other telecommunications equipment. The commenter recommended that it be defined as a "school building."

Discussion: The Secretary interprets the word "school," as used in § 208.23(a)(3) of the regulations and section 2006(b)(C) of the statute, to mean an individual school building or school campus within a school district.

Changes: None.

Comment: One commenter suggested that in § 208.23(a)(3) clarification is needed about whether a school that does not meet the 50 percent or more low income guideline will be precluded from buying any computer, video, or instructional equipment even if the LEA indicates that it is an essential and necessary part of conducting the training outlined in its application. The commenter recommended that the purchase of equipment be allowed if the district provides an assurance that the equipment is essential to the conduct of the proposed training.

Discussion: Section 2006(b)(C) of the statute limits the purchase of this equipment to the circumstances described in § 208.23(a)(3) of the regulations. The statute does not provide the latitude the commenter desires.

Changes: None.

Comment: The Department received several comments requesting clarification of the particular costs that are subject to § 208.23(c)'s five percent limitation on the amount an LEA can charge to program funds for "local administration" of its program. One commenter inquired whether those administrative costs include indirect costs and salaries of the project director, coordinator or consultant, or teacher released to provide program-related technical assistance. Another commenter was unsure whether LEA activities allowed under section 2006(b) of the statute (and § 208.23(a) of the regulations) were themselves technical assistance training activities that should be treated as LEA administrative costs. Still another commenter recommended that the five percent limitation on an LEA's allowable administrative costs not include indirect costs it could claim through application of an established indirect cost rate.

Discussion: The five percent limitation on an LEA's administrative costs includes only charges attributable to program administration. Administrative costs include, as they do under section 1521 of the statute for the Chapter 2 program, planning and processing of funds and monitoring and evaluation of program activities. Therefore, to the extent that persons paid with program funds perform work directly related to program implementation or supervision of project activities, their salaries can be considered program costs rather than administrative costs. This is so regardless of the activity, under § 208.23(a), the LEA is implementing. Moreover, while that section and section 2006(d) of the statute limit to five percent the combined SEA level expenditures for technical assistance and administrative costs, so-called "technical assistance" activities at the LEA level are not subject to the LEA's five percent limit on administrative costs unless they reasonably must be considered, on their own, as administrative costs. The fact that one might characterize project activities as "technical assistance" or "on-site training" does not make the charge an administrative cost.

Indirect costs, which LEAs may charge to program funds through application of an indirect cost rate, are a form of administrative cost that cannot readily be identified as relating to a single cost objective or function. Therefore, the Secretary has concluded that an LEA's indirect costs must be subsumed within the five percent limitation on its charges for local administration of the program.

Changes: None.

Comment: One commenter requested clarification of the phrase "instructional

materials" as used in § 208.23(a)(5), and asked whether it includes equipment as well as supplies.

Discussion: Instructional materials may include any teaching equipment and supplies, if, within the design of an approved project for an individual teacher, the equipment and supplies are essential and their purchase is allowable under EDGAR. The LEA would be responsible for ensuring that the purchases are essential to the program proposed and are used for the purpose intended. The purchase of any computers or telecommunications equipment must also meet the restrictions in § 208.23(a)(3) on the schools for which they may be purchased.

Changes: None.

Comment: One commenter recommended that proposed § 208.23(b)(2), which specified entities with which LEAs may carry out instruction or training activities, be amended to reflect what the commenter believes is the statutory intent to permit LEAs to carry out training and instruction with IHEs and intermediate educational units.

Discussion: Section 2006(b)(2) of the statute authorizes LEAs to carry out their teacher training and instructional activities "through agreements with public agencies, private industry (IHEs), and nonprofit organizations." The Secretary has determined that § 208.23(b)(2) permits, but does not require, those agreements to be made in conjunction with the SEA or other LEAs in the State. Therefore, the regulation permits the LEA to carry out training and instruction as the commenter would desire.

Changes: None.

Section 208.24 Use of Funds by SEAs for Demonstration and Exemplary Programs

Comment: One commenter urged that proposed § 208.24(a)(1), which described allowable demonstration and exemplary programs, be rewritten to clarify that an SEA may conduct one or more of the activities described.

Discussion: The Secretary agrees that the section as written could be confusing.

Changes: Section 208.24(a)(1)(ii) has been changed accordingly.

Comment: Section 208.24(a)(1)(i) specifies that SEAs may use funds of teacher training and retraining, and inservice upgrading of teacher skills. One commenter asked if SEAs may also use funds to train administrators and support personnel such as principals, science supervisors, and curriculum directors, in the issues affecting the mathematics and science program. The commenter observed that these persons may supervise teachers or help them in developing curriculum but have no classroom responsibilities.

Discussion: Unless the training is directly related to the "inservice upgrading of teacher skills," program funds may not be spent for these purposes. However, section 2006(c) of the statute, which authorizes the SEA Demonstration and Exemplary Programs, authorizes the SEA to provide training for administrators and support personnel, but only if that training is directly related to the improvement of classroom teaching in mathematics and science.

Changes: None.

Section 208.32 IHE Appliction

Comment: Several commenters disagreed with the Secretary's proposal to require that SAHEs wishing to fund cooperative programs under section 2007(c) of the statute, do so through competitive grants to IHEs. Commenters claimed that the statute is ambiguous as to whether cooperative programs must be funded competitively since the requirements in section 2007(b)(1)(B) of the statute that grants to IHEs be awarded competitively need not relate to funds used to support cooperative programs funded under section 2007(c). The commenters viewed the statute as eliminating the previous statutory requirements that at least 20 percent of higher education program funds support cooperative programs, while retaining the option that SAHEs award cooperative grants without formal competition.

Therefore, the commenters recommended that the Secretary continue to provide SAHEs the discretion to develop, plan, and fund cooperative programs on a non-competitive basis, a process that several commenters agreed had resulted in very successful projects. This, they claimed, will ensure that cooperative programs meet identified State needs, such as those in rural areas, and that SAHEs retain their leadership role in promoting the most effective programs in mathematics and science education. One commenter also stated that if cooperative programs must be awarded competitively, the limitation in section 2007(d) of the statute on the amount of funds available to SAHEs for administrative costs will provide insufficient financial support for planning and developing appropriate cooperative programs.

Discussion: While the Secretary understands these concerns, he continues to believe that the statute requires cooperative programs to be funded on a competitive basis.

Section 2007(c), which describes cooperative programs, references the funds to be awarded as grants to IHEs under section 2007(b)(1)(A). Section 2007(b)(1)(A) states that not less than 95 percent of funds available shall be used by the SAHE "for grants to (IHEs) in accordance with the provisions of this subsection" (meaning section 2007(b)). Section 2007(b)(1)(B), which is a part of "this subsection," states, among other things, that the SAHE shall make funds available on a competitive basis to IHEs that apply for funds and that demonstrate the involvement of LEAs. Consequently, the Secretary interprets section 2007(c) of the statute to require that SAHEs fund cooperative programs on a competitive basis as grants to IHEs.

This interpretation is supported by the Conference Committee Report accompanying the statute, which states that of the funds reserved for higher education activities: "Up to five percent may be used for State assessment and administration and not less than 95 percent must be used for grants to (IHEs) for training programs conducted in conjunction with LEAs." See H. Rep. 100-567, 100th Cong., 2d Sess., p. 354, para. 17. As the requirement that grants be awarded for training purposes conducted in conjunction with LEAs is itself part of section 2007(b)(1)(B), the requirements governing all funds provided under section 2007(b)(1)(A) appear to be those in section 2007(b)(1)(B). As noted above, this includes the requirement that grants be issued to IHEs on a competitive basis.

While the Secretary cannot alter the amount of funds that section 2007(d) permits SAHEs to retain for their administrative costs, the requirement of competitive award-making should not significantly impair a SAHE's ability to fund cooperative programs, even non-traditional programs, that it believes are important. The statute, for example, does not limit a SAHE's authority to develop the specific content of projects it wants funded on a cooperative basis and to solicit corresponding applications from IHEs. Nor does it either preclude SAHEs from reserving a portion of funds available under section 2007(b) for cooperative programs, or impose selection criteria for awards to successful applicants. The statute requires only that SEAs use a process of awarding grants that does not pre-select the recipients of grants to operate cooperative programs.

Changes: None.

Section 208.33 Use of Funds by IHEs

Comment: One commenter asked whether IHEs may use funds under this section to train administrators and other non-teaching support personnel so that they understand the scope of the issues and improvements in mathematics and science programs in the State.

Discussion: The regulations, like the underlying provision in section 2007(b) of the statute, authorizes training only for teachers unless, under § 208.33(a)(3) (section 2007(b)(2)(C) of the statute), inservice training is needed to permit other school personnel to improve their mathematics and science teaching skills.

Changes: None.

Comment: One commenter felt the proposed regulations should be amended to recognize the special needs of rural schools for teachers with multicertifications (i.e., in a number of subjects).

Discussion: The provisions of § 208.33 permit IHEs to use funds to provide training for teachers to obtain multicertifications in mathematics and science. Moreover, like the statute, the regulations emphasize the State's responsibility to meet the needs of its rural population. For example, under § 208.11(b)(vii), the State's application must include an assurance that the needs of the rural population will be considered in the SEA's and SAHE's use of funds reserved for State use. In addition, to the extent that the State determines that its rural population is "historically underserved," the SEA may use Demonstration and Exemplary Program funds to concentrate on rural demonstration and exemplary programs under § 208.24(a)(1)(iii). Similarly, to the extent that the rural population is considered historically underserved, under § 208.33(c)(1) an IHE might be required to take the special needs of a rural population into account in the activities it supports with program funds.

Changes: None.

Comment: Three commenters strongly supported the proposed expanded definition of allowable "retraining" services in § 208.33(a)(2)(ii), which would expressly permit funds to be used to expand teachers' areas of specialization within their existing disciplines. However, two commenters believed that the proposed provision would weaken and confuse the purpose of section 2007(b)(2)(B) of the statute, which the commenters felt is to increase the numbers of mathematics and science teachers. These latter commenters also believed the expanded definition is duplicative of the "inservice training" services authorized by section 2007(b)(2)(C) of the statute.

Discussion: The Secretary agrees that the principal purpose of section 2007(b)(2)(B) is to increase the number of qualified mathematics and science teachers. However, not all States appear to view intradisciplinary retraining as an allowable form of "inservice" training. In those that do not, the question of whether program funds could be used to retrain those already teaching mathematics or science appears to create significant uncertainty. Because the Secretary views intradisciplinary and interdisciplinary training to be equally within the purpose of the statute, the Secretary proposed § 208.33(a)(2)(ii).

Moreover, national research studies, including the Department of Education's "Summary Report of Title II State Needs Assessments", "A Study of Certified Teacher Availability in the States" by Joanne Capper for the Council of Chief State School Officers, and National Science Teachers Association studies of training within the science fields, indicate that one of the major retraining needs is the retraining of science teachers who are teaching courses within science other than those for which they were specifically prepared. Indeed, Capper has reported that "15,127 teachers of mathematics, science and foreign languages are teaching out-of-field, and that 500,000 students in the 29 states surveyed are being taught by teachers who are not fully certified to teach their subjects." According to the American Association for the Advancement of Science report Project 2061, "Few elementary school teachers have even a rudimentary education in science and math and many junior and senior high school teachers of science and mathematics do not meet reasonable standards of preparation in those fields." Thus the regulation enhances the flexibility States have in meeting their most urgent needs.

Changes: None.

Comment: One commenter requested the data source for the statement in the NPRM (53 FR 49280), "because the greatest need for retraining is intradisciplinary".

Discussion: Upon further review, the phrase "greatest need" may have been an overstatement. However, several reports from professional associations, including those mentioned in response to the preceding comment, the staff experience of Title II, and the needs expressed by a number of States, have confirmed that intradisciplinary retraining is a major need in science and mathematics education. Therefore, the Secretary has determined that these regulations should permit the expenditure of program funds on intradisciplinary retraining.

Changes: None.

Comment: One commenter stressed that for rural areas, meaningful agreements between IHEs and consortia of LEAs will not be feasible unless the SAHE makes funds available to administer and operate the consortia. The commenter observed that small schools have difficulty attracting and retaining teachers of quality, and the IHEs lack funds to operate the consortia. The commenter recommended either that some administrative funds be made available to IHEs that form and coordinate consortia of rural schools, or that the consortia receive additional funding for their administrative costs.

Discussion: The statute provides ways of defraying administrative costs of IHEs that coordinate consortia of rural schools. If an IHE's activities are funded by a subgrant or subcontract from a number of LEAs, the IHE could incur administrative costs provided that the total amount of administrative costs the LEAs and the IHE incur does not exceed the five percent limitation in section 2006(b)(4) of the statutes. If the IHE's activities are funded by a competitive grant from the SAHE, its administrative costs would be subject to the SAHE approved budget and applicable provisions of EDGAR.

Changes: None.

Comment: Two commenters strongly supported proposed § 208.33(d)(2), which would require that applications to SAHEs from IHEs provide evidence of both (1) cooperative planning with the affected LEAs, and (2) that the funded activities reflect the training, retraining, and inservice training needs of teachers as jointly determined by the affected LEAs and IHEs. Two other commenters objected to the provision on the ground that it would impose requirements that lack a statutory basis. The commenters believed that the proposed regulation will not rectify the perceived problem of IHEs offering programs ill-suited to LEA needs. Moreover, given the variety of subjects that IHE applications must address, the commenters stated that the proposed regulation places too much emphasis on IHE-LEA collaboration in program planning.

Discussion: Section 2007(b)(3) of the statute states that to receive a grant, an IHE must enter into an agreement with an LEA, or consortium of LEAs, to provide inservice training and retraining for teachers in the public and private schools. Furthermore, section 2007(b)(1)(B) of the statute requires an IHE's application for funds to demonstrate the involvement of LEAs. The Secretary has concluded that an IHE cannot reasonably meet these responsibilities unless it has worked with the respective LEAs in identifying the needs for training or retraining among the teachers working within the affected school districts. Therefore, the Secretary concludes that the provisions of § 208.33(d)(2) are reasonable and consistent with those statutory requirements. Moreover, because maximum impact at the school level from such training generally occurs when school personnel are continually and fully involved in the improvement process, the Secretary also believes that the elements of an agreement listed in § 208.33(b)(2) are necessary for adequate program management.

Changes: None.

Section 208.51 Participation of Children and Teachers in Private Schools

Comment: One commenter objected to the use of the words "sufficient" in proposed § 208.51(b), which would have required that LEAs make "sufficient provision for teacher training, retraining, and inservice training for the benefit of private nonprofit school teachers * * *." The commenter stressed that the word is vague and that it is not used in the statute.

Discussion: The Secretary agrees with the commenter.

Changes: The word "sufficient" has been deleted from § 208.51(b).

[FR Doc. 89-18725 Filed 8-9-89; 8:45 am]

BILLING CODE 4000-01-M

federal register

Thursday
August 10, 1989

Part IV

Department of Education

34 CFR Part 755
National Program for Mathematics and Science Education; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 755

RIN 1850-AA34

National Program for Mathematics and Science Education

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for the National Program for Mathematics and Science Education. These regulations are needed to implement section 2012 of the Dwight D. Eisenhower Mathematics and Science Education Act, Title II, part A of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments, with the exception of § 755.32. Section 755.32 will become effective after the information collection requirements contained in that section have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Richard T. La Pointe, U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching, 555 New Jersey Avenue, NW., Room 522, Washington, DC 20208-5524, Telephone: (202) 357-6496.

SUPPLEMENTARY INFORMATION: The National Program for Mathematics and Science Education supports projects of national significance in elementary and secondary schools in mathematics and science instruction designed to improve the skills of teachers and instruction in these areas and to increase the access of all students to that instruction.

On May 24, 1989, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the Federal Register (54 FR 22552). There are no differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, one party submitted a comment on the proposed regulations. An analysis of the comment follows:

Section 755.32 What Are the Selection Criteria?

Comment: One letter was received suggesting that the Secretary in evaluating applications for mathematics education projects use the Curriculum and Evaluation Standards for School Mathematics developed by the National Council of Teachers of Mathematics.

Discussion: The Secretary does not believe that it would be appropriate to evaluate all applications on the basis of a particular set of curriculum guidelines. The selection criteria for this program address general concerns such as the quality of teaching and instruction in mathematics and science (§ 755.32(e)) and national significance (§ 755.32(f)). While the goal of the Standards may also be to improve the quality of instruction in mathematics, the Standards describe a particular approach to be followed in reaching that goal. The Secretary believes that the criteria should be general in order to permit applicants to propose a variety of approaches. Adoption of particular curriculum standards as part of the selection criteria would have the effect of limiting this flexibility.

Change: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective in the Executive Order is to foster an intergovernmental partnership and a strengthened Federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based upon the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 755

Historically underserved and underrepresented populations, Gifted and talented students, Grant programs—Education, Instruction, Mathematics, Reporting and recordkeeping requirements, Science.

(Catalog of Federal Domestic Assistance number 84.168, Mathematics and Science Education National Programs)

Dated: August 1, 1989.

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising Part 755 to read as follows:

PART 755—NATIONAL PROGRAM FOR MATHEMATICS AND SCIENCE EDUCATION

Subpart A—General

Sec.

755.1 What is the National Program for Mathematics and Science Education?
755.2 What parties are eligible for a grant under this program?
755.3 What regulations apply to this program?
755.4 What definitions apply to this program?

Sec.

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?

755.11 What types of projects does the Secretary assist?
755.12 How does the Secretary establish priorities for this program?

Subpart C—How Does One Apply for a Grant?

755.20 What assurances must an applicant make?

Subpart D—How Does the Secretary Make a Grant?

755.30 How does the Secretary evaluate applications?
755.31 How does the Secretary evaluate unsolicited applications?
755.32 What are the selection criteria?
755.33 What special considerations may the Secretary use in selecting an application for funding?
755.34 Are there restrictions on the use of funds for equipment under this program?

Authority: 20 U.S.C. 2992, unless otherwise noted.

Subpart A—General

§ 755.1 What is the National Program for Mathematics and Science Education?

The National Program for Mathematics and Science Education assists projects of national significance in elementary and secondary school mathematics and science instruction designed to improve the skills of teachers and instruction in these areas and to increase the access of all students to that instruction.

(Authority: 20 U.S.C. 2992)

§ 755.2 What parties are eligible for a grant under this program?

The Secretary may award grants to State educational agencies, local educational agencies, institutions of higher education, and public and private nonprofit organizations, including museums, libraries, educational television producers, distributors, and stations, and professional science, mathematics, and engineering societies and associations.

(Authority: 20 U.S.C. 2992)

§ 755.3 What regulations apply to this program?

The following regulations apply to grants made under this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions That Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs, and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), and part 85 (Governmentwide Debarment and Suspension (Nonprocurement), Governmentwide Requirements for Drug-Free Workplace (Grants); and

(b) The regulations in this part 755.

(Authority: 20 U.S.C. 2992)

§ 755.4 What definitions apply to this program?

(a) *Definitions in the act.* The following terms used in this part are defined in section 2013 of the Act:

Institution of higher education
State agency for higher education

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Department
Elementary School
EDGAR
Facilities
Fiscal Year
Grant
Local educational agency
Nonprofit
Private
Project
Public
Secondary school
Secretary
State
State educational agency

(c) *Additional definitions.* The following terms are used in this part:

Act means the Dwight D. Eisenhower Mathematics and Science Education Act, Title II, part A of the Elementary and Secondary Education Act of 1965, as amended.

Gifted and talented student means a student, identified by various measures, who demonstrates actual or potential high performance capability, particularly in the fields of mathematics and science.

Historically underserved and underrepresented populations includes females, minorities, handicapped persons, persons of limited-English proficiency, economically disadvantaged persons, and migrants.

Magnet school means a school or education center that offers a special curriculum and to which students are not automatically assigned but may seek to attend on a voluntary basis because of the special curriculum, including but not limited to a school or education center capable of attracting substantial numbers of students of different racial backgrounds.

Unsolicited application means an application, not specifically invited by the Secretary, that supports one or more of the activities listed in §755.11.

(Authority: 20 U.S.C. 2992, 2993)

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?

§755.11 What types of projects does the Secretary assist?

(a) The Secretary funds applications proposing projects of national significance in mathematics and science instruction.

(b) Projects of national significance in mathematics and science instruction include those designed to—

(1) Improve teacher recruitment and retention in the fields of mathematics and science;

(2) Improve teacher qualifications and skills in the fields of mathematics and science; and

(3) Improve curricula in mathematics and science, including the use of new technologies.

(c) The Secretary does not provide operating revenue to meet local needs to any applicant under this program.

(Authority: 20 U.S.C. 2992)

§ 755.12 How does the Secretary establish priorities for this program?

(a) The Secretary may establish the following priorities:

(1) Establishing or improving magnet schools.

(2) Providing special services to historically underserved and underrepresented populations, especially gifted and talented children from these populations.

(3) Building upon and adding to a project that is already developed and disseminated.

(4) Training and retraining teachers in methods of scientific inquiry.

(5) Providing materials that aid the education of students.

(b) In addition to the priorities established in paragraph (a) of this section, each year the Secretary may select as a priority one or more of the types of projects listed in §755.11.

(c) The Secretary may limit any priority to mathematics or science, particular educational levels, or any combination of these subject areas and educational levels.

(Authority: 20 U.S.C. 2992)

Subpart C—How Does One Apply for a Grant?

§ 755.20 What assurances must an applicant make?

(a) An applicant that is a State (including a State educational agency or a State agency for higher education) or a local educational agency shall comply with the provisions of section 2010 of the Act governing the equitable participation of private school children and teachers in the purposes and benefits of the Act.

(b) An applicant described in paragraph (a) of this section shall include an assurance in its application that, in accordance with section 2010 of the Act, it will provide for consultation with appropriate private school representatives and for the equitable participation of children and teachers in private elementary or secondary schools if the applicant proposes to use grant funds to provide benefits to children and teachers in public elementary or secondary schools, including the provision of services, materials, equipment, and inservice or teacher training and retraining.

Note: EDGAR establishes requirements for participation of private school children. See 34 CFR 75.650.

(Authority: 20 U.S.C. 2992)

Subpart D—How Does the Secretary Make a Grant?

§ 755.30 How does the Secretary evaluate applications?

(a) For each competition, the Secretary evaluates an application submitted under this program on the basis of the applicable selection criteria in §755.32.

(b) The Secretary awards up to 100 points, including a reserved 10 points to be distributed in accordance with paragraph (d) of this section, based on the applicable criteria in § 755.32.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion in § 755.32 is indicated in parentheses.

(d) For each competition, as announced through a notice published in the **Federal Register**, the Secretary distributes the reserved 10 points among the applicable criteria listed in § 755.32

(Authority: 20 U.S.C. 2992)

§ 755.31 How does the Secretary evaluate unsolicited applications?

(a)(1) At any time during a fiscal year, the Secretary may accept and consider for funding an unsolicited application for a project that does not meet a priority established in accordance with § 755.12 if the project—

(i) Furthers the purposes and objectives of the program as described in § 755.1; and

(ii) Satisfies all other requirements for funding under this program.

(2) In a fiscal year in which the Secretary does not establish absolute priorities, the Secretary does not consider unsolicited applications for funding.

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the **Federal Register**.

(c) The Secretary may select unsolicited applications for funding in accordance with the procedures contained in § 755.30(a)–(c).

(d) The Secretary reviews and evaluates an unsolicited application on the basis of the selection criteria in § 755.32.

(e) The Secretary assigns the reserved 10 points under § 755.30(b) to the selection criterion at § 755.32(f) (National significance) so that the maximum number of possible points for this criterion is 30.

(Authority: 20 U.S.C. 2992)

§ 755.32 What are the selection criteria?

The Secretary uses the following criteria in evaluating each application:

(a) *Plan of operation.* (15 Points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(4) For an applicant who makes an assurance under § 755.20 as to the equitable participation of children and teachers in private elementary or secondary schools, how the applicant will ensure that equitable participation.

(b) *Quality of key personnel.* (5 Points) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(2) To determine personnel qualifications under paragraphs (b)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(c) *Budget and cost-effectiveness.* (5 Points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) Are objective; and

(3) Document and quantify the project's effectiveness in achieving its stated goals.

Cross-reference. See 34 CFR 75.590 Evalutation by the grantee.

(e) *Improvement of the quality of teaching and instruction in mathematics and science.* (25 Points) The Secretary reviews each application to determine the extent to which the project will contribute to the improvement of teaching and instruction in mathematics and science, including—

(1) The objectives of the project; and

(2) The manner in which the objectives of the project further the purposes of improving the quality of teaching and instruction in mathematics and science.

(f) *National significance.* (20 Points) The Secretary reviews each application to determine the national significance of the project, including—

(1) The magnitude of the need for the proposed project;

(2) The likely impact of the proposed project, and

(3) The potential transferability of the proposed project to other settings with the likelihood of accomplishing similar results.

(g) *Applicant's commitment and capacity.* (10 Points) The Secretary considers the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

(Authority: 20 U.S.C. 2992)

§ 755.33 What special considerations may the Secretary use in selecting an application for funding?

(a) After evaluating applications according to the criteria contained in § 755.32, the Secretary may determine whether the most highly rated applications are broadly and equitably distributed throughout the Nation for each competition or under this program.

(b) The Secretary may select other applications for funding if doing so would improve—

(1) The geographical distribution of projects funded under a particular competition or under this program, or

(2) The diversity of activities or projects funded under a particular competition or under this program.

(c) The Secretary may decline to fund a project that is eligible for funding by the Secretary under a different, specific Department of Education competition or program.

(d) The Secretary does not fund a project that receives Federal funds from other programs authorized under the Act.

(Authority: 20 U.S.C. 2992)

§ 755.34 Are there restrictions on the use of funds for equipment under this program?

Of the funds made available through a grant under this program, the Secretary may restrict the amount of funds used under this part to purchase equipment.

(Authority: 20 U.S.C. 2992)

[FR Doc. 89-18723 Filed 8-9-89; 8:45 am]
BILLING CODE 4000-01-M

Reader Aids

Federal Register
Vol. 54, No. 153
Thursday, August 10, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

31645-31796.....1
31797-31932.....2
31933-32034.....3
32035-32332.....4
32333-32432.....7
32433-32628.....8
32629-32784.....9
32785-32950.....10

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6002.....31794
6003.....31931
6004.....31933
6005.....32033
6006.....32783

Executive Orders:
12685.....31796
12688.....32629

5 CFR
1620.....32785

7 CFR
29.....31797
58.....31646
301.....32788
910.....32035
917.....32794
945.....31798
947.....32433
1076.....31799

Proposed Rules:
51.....32419
911.....31843
929.....31844
967.....31845
993.....31846

8 CFR

Proposed Rules:
210.....31966

9 CFR
51.....32434
92.....31800

10 CFR
7.....31646

Proposed Rules:
Ch. I.....32653
430.....32349, 32744

12 CFR
33.....31935
207.....31646
220.....31646
221.....31646
224.....31646
229.....32035

Proposed Rules:
4.....32620
12.....32653
226.....32069

14 CFR
39.....31649, 31651-31653, 31803-31809, 31935, 32435-32437, 32796
71.....31654, 31936, 31937, 32439, 32440, 32603, 32797-32800
73.....31655, 32800
75.....31937
217.....31810
241.....31810

Proposed Rules:
39.....31693, 31694, 31847, 32624, 32826
43.....32563
65.....32563
71.....31696-31704, 31966, 32452, 32827
75.....31705, 31967
145.....32563

15 CFR
773.....31812

16 CFR
305.....32631

Proposed Rules:
4.....32654

17 CFR
140.....31814
211.....32333, 32334
270.....31850, 32048
274.....32048
275.....32048, 32441
279.....32048

Proposed Rules:
230.....32226
239.....32226
240.....31850, 32229
249.....32226
260.....32226
269.....32226

18 CFR
35.....32802
270.....32805
271.....31938, 32805

Proposed Rules:
37.....31706

19 CFR
177.....32742, 32810

20 CFR

Proposed Rules:
208.....32163
219.....31939
220.....32163
230.....32163
260.....32163
327.....31968

416.....31656

21 CFR

133.....32050
179.....32335
510.....32632
520.....32336
522.....32632
524.....32632
556.....32633
558.....32633-32634

Proposed Rules:

Ch. I.....32610
133.....32091
522.....31949
558.....31949
1308.....31815, 31855
1310.....31657
1313.....31657
1316.....31668

22 CFR

60.....31815
61.....31815
62.....31815
63.....31815
64.....31815
65.....31815

24 CFR

200.....32059
206.....32059
570.....31670

Proposed Rules:

Ch. I.....31656

26 CFR

1.....31672, 31816
602.....31672

Proposed Rules:

1.....31708, 32453

28 CFR

31.....32618
523.....32027
544.....32026

29 CFR

524.....32920
525.....32920
529.....32920
1600.....32061
1601.....32061
1610.....32061
1611.....32061
1620.....32061
1626.....32061
1691.....32061
1910.....31785, 31970
2369.....32635

Proposed Rules:

1910.....31656

30 CFR

934.....32663

Proposed Rules:

250.....31768, 32316, 32563
906.....32628
917.....32668
925.....32094
931.....32095, 32098
946.....32097, 32098

31 CFR

509.....32064

32 CFR

706.....31825

33 CFR

100.....31826, 32066, 32441-32442
110.....32419
117.....31827
162.....32419
165.....32419, 32443

Proposed Rules:

100.....31859, 31860, 32453, 32659
162.....32661

34 CFR

208.....32936
345.....32770
755.....32946

35 CFR

Proposed Rules:

133.....32099
135.....32099

36 CFR

1153.....32337-32342
1155.....32337-32342
1202.....32067
1250.....32067
1254.....32067

Proposed Rules:

1206.....32455

37 CFR

1.....32637
2.....32637
301.....32810
309.....32810

38 CFR

3.....31828, 31950
21.....31829, 31950-31952, 32070

39 CFR

111.....32071

40 CFR

52.....31953, 32072, 32073, 32637
60.....32444
61.....32444
81.....32078
85.....32566
167.....32636
180.....31674, 31830-31836

Proposed Rules:

52.....32101
81.....31860, 31971, 31972
85.....32566
180.....31971, 31972
185.....31836
186.....31832-31836
228.....32351-32356
261.....31675, 32320, 32662
302.....32330, 32671
355.....32671
704.....31680
799.....32629

41 CFR

101-47.....32445

42 CFR

50.....32446

Proposed Rules:

5.....32459

43 CFR

Public Lands Orders:

6741.....32812
6742.....32812

44 CFR

64.....32813, 32814
80.....31681
83.....31681
352.....31920

Proposed Rules:

335.....32359

45 CFR

232.....32284
302.....32284
303.....32284
304.....32284
306.....32284
307.....32284
1632.....31954

47 CFR

2.....32339
15.....32339
73.....31685, 31686, 31838, 31960, 32340, 32639-32641
80.....31839

Proposed Rules:

2.....32830
73.....32361, 32362, 32672-32676
94.....32362

48 CFR

203.....32161
208.....32161
209.....32161
212.....32161
213.....32161
214.....32161
215.....32161
216.....32161
217.....32161
219.....32161
222.....32161
223.....32161
226.....32161
242.....32161
245.....32161
252.....32161
253.....32161
273.....32161
801.....31961

Proposed Rules:

44.....32422
45.....32424
51.....32424
52.....32424

49 CFR

190.....32342
191.....32342
192.....32344, 32641
195.....32342, 32344
571.....31687, 32345

Proposed Rules:

571.....32830

50 CFR

17.....32326
217.....32815
227.....32815
215.....32348
226.....32085
227.....32085
611.....32642, 32819
661.....31841
663.....31688
672.....32819
675.....31842, 32642

Proposed Rules:

17.....32833
263.....32362
267.....32362
611.....31861
620.....31861
649.....32634
655.....31862
672.....31961
675.....31961

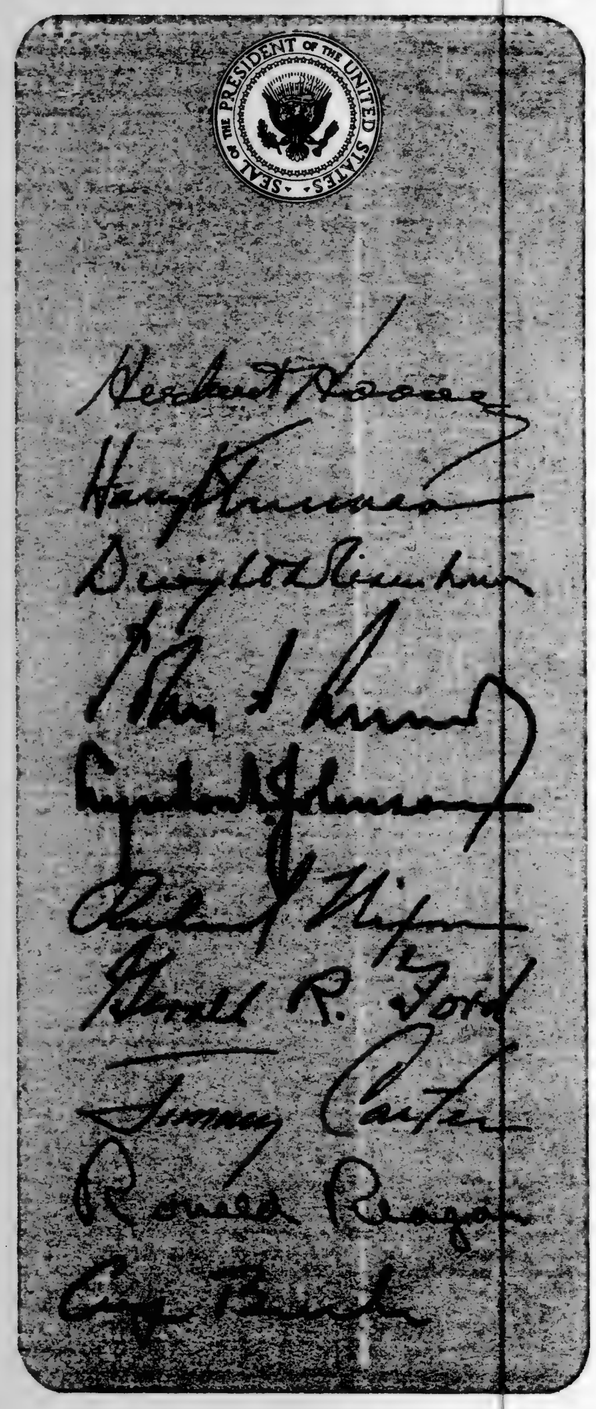
LIST OF PUBLIC LAWS

Last List August 9, 1989

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 3624 / Pub. L. 101-72

To increase the statutory limit on the public debt, and for other purposes. (Aug. 7, 1989; 103 Stat. 182; 1 page)
Price: $1.00



Public Papers of the Presidents of the United States

Annual volumes containing the public messages and statements, news conferences, and other selected papers released by the White House.

Volumes for the following years are available; other volumes not listed are out of print.

Gerald R. Ford

1975
(Book I) $22.00

Jimmy Carter

1978
(Book I) $24.00

1979
(Book I) $24.00

1979
(Book II) $24.00

1980–81
(Book I) $21.00

1980–81
(Book II) $22.00

1980–81
(Book III) $24.00

Ronald Reagan

1981 .....$25.00

1982
(Book II) $25.00

1983
(Book I) $31.00

1983
(Book II) $32.00

1984
(Book I) $36.00

1984
(Book II) $36.00

1985
(Book I) $34.00

1985
(Book II) $30.00

1986
(Book I) $37.00

1986
(Book II) $35.00

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402–9325.

8-11-89
Vol. 54 No. 154

federal register

Friday
August 11, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 89 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

8-11-89
Vol. 54 No. 154
Pages 32951-33182

federal register

Friday
August 11, 1989

BEST COPY AVAILABLE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The Federal Register will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 54, No. 154
Friday, August 11, 1989

Agricultural Marketing Service
RULES
Lemons grown in California and Arizona, 32951
Milk marketing orders:
Texas, 32951

Agricultural Research Service
NOTICES
Patent licenses, exclusive:
University of Nebraska, 33047

Agriculture Department
See also Agricultural Marketing Service; Agricultural Research Service; Farmers Home Administration; Food Safety and Inspection Service; Forest Service
PROPOSED RULES
Immigration and Nationality Act (Section 210A); replenishment agricultural workers; shortage number determination methodology, 32985

Alcohol, Tobacco and Firearms Bureau
NOTICES
Firearms:
Federal firearms privileges restoration; list, 33108

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Centers for Disease Control
NOTICES
Grants and cooperative agreements; availability, etc.:
Human immunodeficiency virus (HIV) prevention—
Adults with special learning needs, 33081
Laborer's International Union of North America (LIUNA); disease prevention and health promotion program development, 33080

Coast Guard
RULES
Outer Continental Shelf activities:
Manned OCS facilities; emergency evacuation plans Reporting and recordkeeping requirements, 32971
PROPOSED RULES
Merchant marine officers and seamen:
Pilot licensing; withdrawn, 33045
NOTICES
Bridges, proposed construction:
Cape Coral and Fort Meyers, FL, 33106

Commerce Department
See National Oceanic and Atmospheric Administration

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list; 1989:
Additions and deletions, 33051
Procurement list; 1989:
Additions and deletions, 33051
(2 documents)

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Thailand, 33049, 33050
(3 documents)

Defense Department
See also Navy Department
RULES
Acquisition regulations:
Regulatory and miscellaneous amendments Correction, 32975
PROPOSED RULES
Acquisition regulations:
Publicizing contract actions, 33045

Employment and Training Administration
NOTICES
Adjustment assistance:
Arvin Supreme, Inc., 33094
Economy Color Card, Inc. et al., 33095
Forest Oil Corp., 33098
Valex Petroleum, Inc., 33098
Alien temporary employment labor certification process:
Agricultural H-2A applications; job offers enforcement; employers' responsibilities; policy memorandum, 33098
Apprenticeship 2000 focus papers; expansion, quality, support activities and program linkages, 33099

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 33100

Energy Department
See also Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department; Western Area Power Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Industrial energy conservation with waste gas reduction, 33054
Natural gas exportation and importation:
Northridge Petroleum Marketing U.S., Inc., 33055

Environmental Protection Agency
RULES
Air pollution; standards of performance for new stationary sources:
Volatile organic liquid storage vessels (including petroleum liquid storage vessels; technical amendment, 32972
Air quality implementation plans; approval and promulgation; various States:
New Hampshire, 32971
Hazardous waste program authorizations:
Guam, 32973
Toxic substances:
Test guidelines; technical amendments Correction, 33148

Test rules and consent orders; modifications; annual notice
Correction, 33148
PROPOSED RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Iprodione, 33044
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 33070
Weekly receipts, 33071
Pesticides; emergency exemptions, etc.:
Glyphosate, etc.; correction, 33148
Toxic and hazardous substances control:
Premanufacture exemption application, 33071
Premanufacture notices receipts, 33071
Water pollution control:
Underground injection control program—
Formation-specific maximum injection pressure values for Class II enhanced recovery wells establishment; Oklahoma, 33072

Family Support Administration
NOTICES
Agency information collection activities under OMB review, 33083
(2 documents)

Farmers Home Administration
RULES
Program regulations:
Debt settlement actions processing, 32953

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 33146
(2 documents)

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 33056
Arkla Energy Resources, 33056
Bear Creek Storage Co., 33056
Black Marlin Pipeline Co., 33057
Colorado Interstate Gas Co., 33057
Columbia Gas Transmission Corp., 33057
Mississippi River Transmission Corp., 33058
Panhandle Eastern Pipe Line Co., 33058, 33059
(2 documents)
Tennessee Gas Pipeline Co., 33059
Trunkline Gas Co., 33060
Williams Natural Gas Co., 33060

Federal Highway Administration
RULES
Engineering and traffic operations:
Speed limit enforcement certification
Correction, 32967

Federal Home Loan Bank Board
RULES
Federal Savings and Loan Insurance Corporation:
Savings and loan holding companies—
Creation by insured institutions, approval; application processing, 32959
Federal savings and loan system:
Securities brokerage service; preapproved corporation activities, 32954
NOTICES
Federal Savings and Loan Insurance Corporation:
Insurance premium, 33074
Receiver appointments:
Lincoln Savings & Loan Association, 33075
Self-regulatory organizations; unlisted trading privileges:
Midwest Stock Exchange, Inc., 33076
(2 documents)
Philadelphia Stock Exchange, Inc., 33077
Applications, hearings, determinations, etc.:
Charter Federal Savings & Loan Association, 33077
Fayetteville First Federal Savings & Loan Association, 33077
Fedstar Savings Bank, F.S.B., 33077

Federal Maritime Commission
NOTICES
Agreements filed, etc., 33077

Federal Reserve System
RULES
Truth in lending (Regulation Z):
Credit and charge card disclosures
Correction, 32953
NOTICES
Applications, hearings, determinations, etc.:
Main Line Bancshares, Inc., et al., 33078
Merchant House; correction, 33078
Mid State Banks, Inc., 33078
Union Planters Corp., 33079
United Nebraska Financial Co., 33079

Fish and Wildlife Service
RULES
Migratory bird hunting:
Seasons, limits, and shooting hours; establishment, etc., 32975

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Salinomycin and chlortetracycline
Correction, 32963
NOTICES
Human drugs:
Export applications—
Quinapril hydrochloride, 33084
Meetings:
Advisory committees, panels, etc., 33084

Food Safety and Inspection Service
NOTICES
Meetings:
Microbiological Criteria for Foods National Advisory Committee, 33047

Forest Service
NOTICES
Environmental statements; availability, etc.:
Manti-La Sal National Forest, UT, 33047

Health and Human Services Department
See Centers for Disease Control; Family Support Administration; Food and Drug Administration; Public Health Service

Health Resources and Services Administration
See Public Health Service

Hearings and Appeals Office, Energy Department
NOTICES
Special refund procedures; implementation, 33060

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Allegheny Reservation of Seneca Nation of Indians, 32968
PROPOSED RULES
Mortgage and loan insurance programs:
Land development program (Title X) termination, 33039
NOTICES
Agency information collection activities under OMB review, 33085, 33086, 33087
(3 documents)
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 33088

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Organization, functions, and authority delegations:
Assistant Commissioner (International) et al., 33144

Interstate Commerce Commission
NOTICES
Agency information collection activities under OMB review, 33092
Motor carriers:
Compensated intercorporate hauling operations, 33092
Rail carriers:
Declaratory order petitions—
Bessemer & Lake Erie Railroad Co., 33093
Joint rates between Official and Southwestern Divisions, 33093
Railroad operation, acquisition, construction, etc.:
Chattooga & Chickamauga Railway Co., 33093

Labor Department
See also Employment and Training Administration; Employment Standards Administration
PROPOSED RULES
Immigration and Nationality Act (Section 210A); replenishment agricultural workers; shortage number determination methodology, 32985
NOTICES
Agency information collection activities under OMB review, 33094

Land Management Bureau
NOTICES
Agency information collection activities under OMB review, 33090
Classification of public lands:
Idaho; correction, 33091
(2 documents)
Closure of public lands:
Nevada, 33091
Environmental statements; availability, etc.:
Fifty Mile Mountain wilderness study area, UT, 33091
Meetings:
Idaho Falls District Advisory Council, 33091
Survey plat filings:
Idaho, 33092
Nevada, 33092
Withdrawal and reservation of lands:
New Mexico; correction, 33148

Minerals Management Service
PROPOSED RULES
Outer Continental Shelf; oil, gas, and sulphur operations:
Safety and pollution-prevention equipment; quality assurance program; incorporation by reference update; meeting, 33042

National Aeronautics and Space Administration
RULES
NASA seal and other devices, and Congressional Space Medal of Honor:
Assistant Administrator for Headquarters Operations, position title corrected; and use of NASA program and astronaut badges, 32963

National Highway Traffic Safety Administration
RULES
Speed limit enforcement certification
Correction, 32967

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Oceanic and Atmospheric Administration
NOTICES
Permits:
Endangered and threatened species, 33048
(2 documents)
Marine mammals, 33049

Navy Department
NOTICES
Environmental statements; availability, etc.:
Naval Submarine Base, Bangor, WA; Trident D-5 upgrade program, 33052
Senior Executive Service:
Performance Review Boards; membership, 33053

Nuclear Regulatory Commission
RULES
Fitness-for-duty programs:
Nuclear power plant personnel
Correction, 33148
Practice rules:
Domestic licensing proceedings; hearing process, 33168
NOTICES
Reports; availability, etc.:
Uranium mill tailings sites, stabilization; erosion protection covers design; draft staff technical position, 33101

Personnel Management Office
NOTICES
Agency information collection activities under OMB review, 33102

President's Outer Continental Shelf Leasing and Development Task Force
NOTICES
Environmental concerns and options; staff summary, 33150

Public Health Service
See also Centers for Disease Control; Food and Drug Administration
NOTICES
Agency information collection activities under OMB review, 33085

Securities and Exchange Commission
PROPOSED RULES
Investment companies:
Acquisition of equity securities of foreign securities firms, 33027
Securities and investment companies:
Closed-end management investment companies; registration form, 32993
NOTICES
Meetings; Sunshine Act, 33146
(2 documents)
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 33102
Midwest Clearing Corp., 33104
Applications, hearings, determinations, etc.:
Public utility holding company filings, 33105

Small Business Administration
NOTICES
Agency information collection activities under OMB review, 33106

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Maryland, 33043

Susquehanna River Basin Commission
PROPOSED RULES
Project review regulations and procedures, 33036

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See also Coast Guard; Federal Highway Administration; National Highway Traffic Safety Administration
NOTICES
Aviation proceedings:
Hearings, etc.—
Mid Pacific Air Corp., 33106

Treasury Department
See also Alcohol, Tobacco and Firearms Bureau; Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 33107, 33108
(3 documents)

United States Information Agency
RULES
Exchange visitor program:
Citizenship of responsible officers and sponsorship, 32984
NOTICES
Art objects, importation for exhibition:
Frans Hals, 33145

Veterans Affairs Department
NOTICES
Reports, program evaluation; availability etc.:
Chapter 30 program, 33145
Restored entitlement program for survivors, 33145

Western Area Power Administration
NOTICES
Power marketing plans, etc.:
Central Valley Project, CA, 33064

Separate Parts In This Issue

Part II
President's Outer Continental Shelf Leasing and Development Task Force, 33150

Part III
Nuclear Regulatory Commission, 33168

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
910.....32951
1126.....32951
1864.....32953
Proposed Rules:
1e.....32985
10 CFR
2.....33168
26.....33148
12 CFR
226.....32953
545.....32954
574.....32959
14 CFR
1221.....32963
17 CFR
Proposed Rules:
230.....32993
239.....32993
270 (2 documents).....32993, 33027
274.....32993
18 CFR
Proposed Rules:
803.....33036
21 CFR
558.....32963
22 CFR
514.....32964
23 CFR
659.....32967
24 CFR
200.....32968
203.....32968
204.....32968
213.....32968
220.....32968
221.....32968
222.....32968
226.....32968
227.....32968
235.....32968
237.....32968
240.....32968
Proposed Rules:
200.....33039
205.....33039
29 CFR
Proposed Rules:
503.....32985
30 CFR
Proposed Rules:
250.....33042
920.....33042
33 CFR
146.....32971
40 CFR
52.....32971
60.....32972
271.....32973
796.....32148
797.....32148
799.....32148
Proposed Rules:
180.....33044
45 CFR
Proposed Rules:
10.....33045
15.....33045
46 CFR
215.....32975
Proposed Rules:
205.....33045
50 CFR
20.....32975

Rules and Regulations

Federal Register
Vol. 54, No. 154
Friday, August 11, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 678]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final Rule.

SUMMARY: Regulation 678 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 310,000 cartons during the period August 13 through August 19, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 678 (§ 910.978) is effective for the period August 13 through August 19, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989-90. The Committee met publicly on August 8, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is fair.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purpose of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.978 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.978 Lemon Regulation 678.

The quantity of lemons grown in California and Arizona which may be handled during the period August 13, 1989, through August 19, 1989, is established at 310,000 cartons.

Dated: August 8, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-18987 Filed 8-10-89; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 1126

[DA-89-025]

Milk in the Texas Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action continues, for the months of August 1989 through July 1990, a suspension of portions of the pool plant and producer milk definitions of the Texas order. The continuation of the suspension, was requested by Associated Milk Producers, Inc., and

Mid-America Dairymen, Inc., cooperative associations that represent a substantial proportion of the producers who supply milk to the market. The action is necessary because the marketing conditions that resulted in granting the current suspension continue due to production increases in Texas.

EFFECTIVE DATE: August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding.

Notice of Proposed Suspension: Issued June 20, 1989; published June 26, 1989 (54 FR 26780).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a rule on small entities.

Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Texas marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on June 26, 1989 (54 FR 26780) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No opposing views were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of August 1989 through July 1990 the following provisions of the order do not tend to effectuate the declared policy of the Act.

1. In § 1126.7(d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section".

2. In § 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

3. In § 1126.13, paragraph (e)(1), the words "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant".

4. In § 1126.13(e)(2), the paragraph references "(a), (b), (c), and (d)".

5. In § 1126.13(e)(3), the sentence, "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;"

Statement of Consideration

This action continues, for the months of August 1989 through July 1990, the suspension of portions of the pool plant and producer milk definitions of the Texas order. Specifically, the action continues the suspension of the 60-percent delivery standard for pool plants operated by cooperatives, the restrictions on the types of pool plants at which milk must be received to establish the maximum amount of milk that a cooperative may divert to nonpool plants, and the limits on the amount of milk that a pool plant operator may divert to nonpool plants. In addition, for the same time period, the action continues to suspend the shipping standards that must be met by supply plants to be pooled under the order and the individual producer performance standards that must be met in order for a producer's milk to be eligible for diversion to a nonpool plant.

The order provides for pooling a cooperative association plant located in the marketing area if at least 60 percent of the producer milk of members of the cooperative association is physically received at pool distributing plants during the month. Also, a cooperative association may divert to nonpool plants up to one-third of the amount of milk that the cooperative causes to be physically received at pool distributing and supply plants during the month. In addition, the order provides that the operator of a pool plant may divert to nonpool plants not more than one-third of the milk that is physically received during the month at the handler's pool plant. This action will continue to inactivate the 60-percent delivery standard for plants operated by a cooperative association, allow a cooperative's deliveries to all types of pool plants to be included as a basis from which the diversion allowance would be computed, and remove the diversion limitation applicable to the operator of a pool plant.

The order also provides for regulating a supply plant each month in which it ships a sufficient percentage of its receipts to distributing plants. The order provides for pooling a supply plant that ships 15 percent of its milk receipts during August and December and 50 percent of its receipts during September through November and January. A supply plant that is pooled during each of the immediately preceding months of September through January is pooled under the order during the following months of February through July without making qualifying shipments to distributing plants. This action continues to remove these performance standards for an additional 12 months for August 1989 through July 1990 for supply plants that were regulated under the Texas order during each of the immediately preceding months of September through January.

The order also specifies that the milk of each producer must be physically received at a pool plant each month in order to be eligible for diversion to a nonpool plant. During the months of September through January, 15 percent of a producer's milk must be received at a pool plant for diversion eligibility. This action also continues the suspension of these requirements for an additional 12 months.

The continuation of the current suspension was requested by two cooperative associations (Associated Milk Producers, Inc., and Mid-America Dairymen, Inc.) that represent a substantial proportion of the dairy farmers who supply the Texas market. Associated Milk Producers operates two supply-balancing plants that are pooled under the Texas order and a new supply-balancing plant will begin operation in June 1989, but will not reach its capacity until late in 1989. Mid-America Dairymen operates a supply plant in southwestern Missouri that has historically been pooled under the Texas order and a designated supply plant in Texas used strictly to assemble milk for shipment to nonpool plants for use in manufactured dairy products.

Based on the information submitted by the cooperatives, this additional 12-month continuation of the current suspension is necessary because the marketing conditions that resulted in the granting of the current suspension continue due to production increases in Texas. The continued substantial production increases have not made it possible to project production levels in 1990 and beyond with any degree of a certainty, thereby making any amendatory action at this time impractical. Moreover, the suspension continuation is necessary to give handlers the flexibility to dispose of excess milk in the most efficient manner. Thus, the suspension will allow handlers to eliminate costly and inefficient movements of milk that otherwise would be made solely for the purpose of pooling the milk of dairy farmers who have historically supplied the Texas market.

The notice of proposed suspension published June 26, 1989 (54 FR 26780) contained an inadvertent error in that it indicated that the entire paragraph (e)(1) of § 1126.13 was proposed to be suspended. The purpose of the proposal was to continue through July 1990 the suspension of portions of the pool plant and producer milk definition that had been in effect since August 1988. The suspension provisions which were in effect at the time of the proposal suspended only a portion of § 1126.13(e)(1). The error is corrected in this rulemaking by suspension of only that portion of § 1126.13(e)(1) which was previously suspended.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that such action will eliminate unnecessary milk movements and ensure that dairy farmers who have been supplying the market's fluid requirements will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No opposing views were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1126

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provisions of the Texas order are hereby suspended for August 1989 through July 1990.

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. The authority citation for 7 CFR Part 1126 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 1126.7 [Temporarily suspended in part]

2. In § 1126.7(d) (introductory text) the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section".

3. In § 1126.7(e) (introductory text) the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

§ 1126.13 [Temporarily suspended in part]

4. In § 1126.13, paragraph (e)(1), the words "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant".

5. In § 1126.13(e)(2), the paragraph references "(a), (b), (c), and (d)".

6. In § 1126.13(e)(3), the sentence, "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the months that is eligible to be diverted by the plant operator;".

Signed at Washington, DC, on August 7, 1989.

Jo Ann R. Smith,

Assistant Secretary.

[FR Doc. 89-18853 Filed 8-10-89; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1864

Debt Settlement

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; correction.

SUMMARY: The Farmers Home Administration (FmHA) corrects a final rule regarding debt settlement published September 23, 1988, (53 FR 36954). This final rule changed a form number to accurately reflect a regulation change. The intended effect of this action is to remove a reference which is not published.

Accordingly, Amendment No. 2 on page 36955 is corrected by removing the words, "Exhibit B, under column heading 'Form Used' (5 places)."

EFFECTIVE DATE: August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Betty Throne, Realty Specialist, Property Management Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5309, South Agriculture Building, Washington, DC 20250, Telephone (202) 382-1452.

Dated: July 24, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-18740 Filed 8-10-89; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-0654]

Truth in Lending; Credit and Charge Card Disclosures; Corrections

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; corrections.

SUMMARY: The Board is making corrections to its final rule revising Regulation Z to implement the Fair Credit and Charge Card Disclosure Act amendments to the Truth in Lending Act, which appeared in the **Federal Register** on April 6, 1989 (54 FR 13856).

FOR FURTHER INFORMATION CONTACT: The following attorneys in the Division of Consumer and Community Affairs, at (202) 452-2412 or 452-3867: Michael S. Bylsma or Adrienne D. Hurt, Senior Attorneys, or Jane Ahrens, Staff Attorney; for the hearing impaired *only*, contact Earnestine Hill or Dorothea

Thompson, Telecommunications Device for the Deaf at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Board is making corrections to the Federal Register notice that contains its final rule revising Regulation Z to implement the Fair Credit and Charge Card Disclosure Act amendments to the Truth in Lending Act, including technical revisions to §§ 226.5a(a)(3), 226.5a(g), 226.9(e), and 226.9(f) of the regulation.

Section 226.5a(a)(3) currently provides that the disclosures under § 226.5a are not required for applications and solicitations to open home equity lines of credit accessed by a credit or charge card that are "subject to" § 226.5b of Regulation Z (which implements the Home Equity Loan Consumer Protection Act). Paragraphs (e) and (f) of § 226.9 state that the requirements of those paragraphs are applicable to credit or charge card accounts "subject to" section 226.5a. A literal reading of this language could too narrowly construe the exception in § 226.5a(a)(3) and the requirements in § 226.9(e) and § 226.9(f). Therefore the phrase "subject to" is being changed to "of the type subject to."

The technical revisions to the above mentioned sections are intended to clarify that these provisions apply to the *type* of plans or card accounts referred to in the relevant provisions. Therefore, the exception from coverage for home equity lines of credit accessed by a credit or charge card applies to the general types of plans that will be subject to § 226.5b of Regulation Z including those entered into before November 7, 1989, the mandatory effective date of the home equity line disclosure amendments (see 54 FR 24670).

The renewal notice requirements of § 226.9(e) apply to all of a card issuer's "traditional" credit and charge card accounts used primarily to purchase goods and services for which a fee to renew the account is imposed, including those in existence before the effective date of the new rule. Beginning on August 31, 1989, card issuers must give renewal disclosures in one of the two ways the regulation permits. For example, if a card issuer that bills monthly follows the notice requirements of § 226.9(e)(1)—advance notice of renewal—the issuer must provide renewal notices to all cardholders who will be billed for renewal on or after September 30, 1989. If the card issuer follows the notice requirements of § 226.9(e)(2), it must provide renewal notices to all cardholders that receive a periodic statement reflecting a renewal fee on or after August 31, 1989. Also, in accordance with § 226.9(f), on or after August 31, 1989, a card issuer must provide notice if it changes the company providing credit insurance on any existing "traditional" credit card account.

Technical revisions also are being made to paragraphs (g)(2)(i) and (ii) of § 226.5a, which describe the "two-cycle average daily balance" method of computing finance charges on credit card accounts. Both sections currently provide that, in a two-cycle method, the balance for the billing cycle preceding the current cycle is figured "in the same way" as the balance for the current cycle. The language is too limiting insofar as it would unnecessarily exclude too many plans from these categories. The categories were intended to include not only those card accounts in which the balance for the prior cycle is figured in exactly the same way as that for the current cycle, but also those accounts in which the balance for the prior cycle is an average daily balance but is figured differently from the balance for the current cycle. Deletion of the phrase "and is figured in the same way as the first balance" clarifies the broad coverage intended for the two-cycle average daily balance descriptions. With the revisions, for example, it will be clear that the name "two-cycle average daily balance (excluding new purchases)" should be used to describe a method in which the finance charge for the current cycle, figured on an average daily balance (excluding new purchases), will be added to the finance charge for the prior cycle, figured on an average daily balance of only new transactions during that prior cycle.

Corrections

The following corrections are made in FR Doc. 89-8225, Truth in Lending; Credit and Charge Card Disclosures:

1. On page 13855, third column, third full paragraph, line 7, "a" should be inserted after "to."

2. On page 13862, first column, first full paragraph, line 6, "cards" should read "card."

3. On page 13864, first column, first full paragraph, line 1, "sectin" should read "section."

4. On page 13864, first column, last paragraph, line 3, "regulated" should read "related."

5. On page 13864, first column, last paragraph, line 18, "from" should read "form."

6. On page 13864, second column, fourth full paragraph, line 2, "provide" should read "provided."

7. On page 13864, third column, line 31, "card" should be inserted after "credit."

§ 226.5a [Corrected]

8. On page 13865, third column, under § 226.5a(a)(3), line 4, "of the type" should be inserted before "subject to."

9. On page 13866, first column, under § 226.5a(d)(2), line 3, "need not be given if the card issuer either" should be inserted after "section."

10. On page 13866, third column, under § 226.5a(g)(2)(i), the words "and is figured in the same way as the first balance" should be removed from the end of the last sentence.

11. On page 13867, first column, under § 226.5a(g)(2)(ii), the words "and is figured in the same way as the first balance" should be removed from the end of the last sentence.

§ 226.9 [Corrected]

12. On page 13867, first column, under § 226.9(e)(1), line 7, "of the type" should be inserted before "subject to."

13. On page 13867, second column, under § 226.9(f)(1), line 7, "of the type" should be inserted before "subject to."

§ 226.28 [Corrected]

14. On page 13868, first column, line 6, under § 226.28(a), "consistency" should read "inconsistency."

By order of the Board of Governors of the Federal Reserve System, dated August 7, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-18806 Filed 8-10-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 545

[No. 89-2216]

RIN 3068-AA98

Preapproved Securities Brokerage Service Corporation Activities

Date: August 4, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending 12 CFR 545.74, its service corporation regulations, by inserting a new § 545.74(c)(4) entitled "Securities brokerage activities" and renumbering subsequent paragraphs. The amendments enable service corporations to commence certain types of securities brokerage activities more quickly than under current procedures and regulations, by designating certain types of securities brokerage and investment advisory activities as preapproved service corporation activities.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Dean V. Shahinian, Deputy Director for Corporate Activities, (202) 906-7289; V. Gerard Comizio, Director, (202) 906-6411, Corporate and Securities Division, or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 906-6459, Office of General Counsel; Cynthia Miller, Financial Analyst, (202) 906-7492, Kathleen V. Willard, Assistant Director, (202) 906-6789, Patrick G. Berbakos, Director, (202) 906-6720, Office of District Banks, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

Section 5(c)(4)(B) of the Home Owners Loan Act of 1933, 12 U.S.C. 1464(c)(4)(B), provides that a Federal association may invest up to three percent of its assets in a corporation chartered in the state where the association has its home office, provided that at least one-half of the investments in excess of one percent are for community development purposes. The Board has implemented this authority in 12 CFR 545.74, which authorizes Federal associations to invest in various types of "service corporation" subsidiaries.

The Board considers service corporations an important adjunct to traditional association activities and recognizes that they can make significant profit contributions. The Board also seeks to ensure, however, that associations conduct activities in ways that do not entail undue risk to institutional safety and soundness and that do not result in financial loss or damage to the reputation of insured institutions.

In recent years, the Board has received numerous applications for service corporations to conduct different types of securities brokerage activities. The application process for these filings entails review by the Supervisory Agent at the District Bank; transmittal to and review by the Board's Office of District Banks, Office of General Counsel, and Office of Regulatory Activities; and submission to the Board.

The staff has noted that while certain applications raise legal and/or safety and soundness concerns or present unusual or problematic facts, many applications present similar facts and seek permission to conduct activities structured in a way that either does not raise legal or supervisory concerns or that raise concerns that can be and have been addressed by the Board, *e.g.*, by imposing conditions on the approvals, or by limiting the scope of the activity approved.

The Board is sensitive to the importance of expediting the processing and review of applications in the minimum time period necessary to satisfy the Board's interests in assuring the safety, soundness, and legality of a proposed service corporation activity. As a result of this concern, the Board has in the past delegated authority to the Supervisory Agents of the Board at the District Banks to approve certain applications which are modelled upon those previously approved by the Board. In these cases, the SA reviews the documents, analyzes the materiality of any differences between the application approved by the Board, and (if there are no material differences) may approve the application subject to the conditions that the Board has specified.

B. Summary of the Current Proposal

The Board proposed amendments to 12 CFR 545.74(c) in Board Resolution No. 89-1044 (March 28, 1989), published at 54 FR 14091 (April 7, 1989) ("Current Proposal"). Section 545.74(c) lists activities in which service corporations may engage without prior approval. The Current Proposal would add certain securities brokerage activities to those that are preapproved, creating a new paragraph (c)(4), "Securities brokerage activities," which includes certain securities brokerage and investment advisory services, and make corresponding technical changes.

Section 545.74(c)(4), as proposed, sets forth requirements relating to the manner in which the preapproved service corporation brokerage activities could be conducted. These are contained in two paragraphs: (i) (A)–(E), relating to the manner in which the business is conducted, and paragraphs (ii) (A)–(G), identifying activities in which the service corporation may engage only with express Board approval. Paragraph (i) states, essentially, that the preapproved service corporation must offer securities services in a separated area, provide proper supervision to prevent and cure violations of securities regulations, advertise as an independent entity, be indemnified, along with the parent association, in appropriate respects by the broker-dealer, and not condition the provision of brokerage services on the use of any services of affiliated entities. 12 CFR 545.74(c)(4)(ii) specifies that the preapproval does not apply where a service corporation seeks to make markets in, underwrite, and engage in certain other securities activities; if association employees receive payments for referring association customers to the broker-dealer absent a "no-action" letter from the U.S. Securities and Exchange Commission ("SEC"); to solicitation of transactions in particular securities; to provision of certain indemnifications; to extension of margin credit by the parent association; to contracts directly between an association and a broker-dealer; and if the association has non-registered persons performing other than ministerial or clerical tasks.

The Current Proposal also delegates to the Office of District Banks, with the concurrence of the Office of General Counsel, the authority to approve service corporation applications that do not raise a significant issue of law or policy or would not establish a precedent of national significance. This delegation provision applies to all types of service corporation applications.

The Current Proposal is a revision of the Board's earlier proposed amendments to 12 CFR 545.74(c), set forth in Board Resolution No. 88-303 (April 28, 1988) and published at 53 FR 16147 (May 5, 1988) ("First Proposal"). The First Proposal consisted of many of the provisions of the Current Proposal except for the delegation to the Office of District Banks and certain other requirements. For example, § 545.74(c)(4)(i) of the First Proposal included as additional requirements: A certification that the association and service corporation were separate corporate entities; a projection that the service corporation would receive a profit within the upcoming twelve-month period; a prohibition on the dissemination of association customers' account balances and deposit maturity dates to service corporations and to broker-dealers engaged in joint ventures with the service corporations ("joint-venture broker-dealers"); and disclosure of whether a joint-venture broker-dealer had been sanctioned by a court, governmental agency, or self-regulatory organization for securities violations. Section 545.74(c)(4)(ii) of the First Proposal contained essentially the same prohibitions as in the Current Proposal as well as a few additional ones. These included requiring Board approval for certain investment advisory services, all

referral fees, and certain indemnification arrangements. The Board is not adopting these provisions of the First Proposal for reasons set forth at 54 FR 14093–14095.

C. Summary of Comments

In response to the proposal, the Board received four public comments, including one from a federal association, two from broker-dealers, and one from an industry association. The federal association commented on the limitation on soliciting transactions in particular securities and recommended that the provision exempt solicitations of general investment advice and solicitations to institutional investors. The broker-dealers objected to the requirement of obtaining an SEC no-action letter in order to pay referral fees and to the limitations on the soliciting transactions in specific securities. They also requested clarification of the indemnification restriction and of the process for associations seeking approval pursuant to existing delegations. These points are discussed in context below. The industry association noted that the Current Proposal incorporated comments made to the First Proposal and had no further comments other than to request speedy adoption.

II. Amendments to the Service Corporation Regulations

A. Overview

Under the amendments, the types of securities brokerage and investment advice activities that the Board has routinely approved on a case-by-case basis now are approved under a preapproval procedure. For example, an association may invest in a service corporation that executes transactions in securities on an agency or "riskless principal" basis under the preapproval. In addition, to qualify for preapproval, brokerage services must be provided in areas clearly identified and distinguished from the areas in which the association conducts its depository activities. The advertisements for the services also must distinguish the service corporation from the insured institution in order to minimize the opportunities for investor confusion between federally-insured savings accounts and stocks and other securities that are not federally-insured.

These amendments do not preapprove other securities activities not described in the new preapproval provisions, such as making a market in securities, underwriting stocks and bonds, and investment banking.

The Board has in the past approved on a case-by-case basis applications to provide various types of investment advice to individuals and certain institutions. The Board has no evidence that these activities have not been carried on responsibly and, accordingly, believes it appropriate also to preapprove such financial advisory services.

B. Description of Amendment Subsections

The requirements for the preapproval under the new amendments are as follows:

1. *Section 545.74(c)(4)(i)(A).* The service corporation must conduct its securities brokerage and investment advisory services in an area that maintains a distinction in the minds of association customers between federally-insured deposits and non-insured securities products and services and that appropriately reflects the separate corporate identities of the Federal association and the service corporation.

2. *Section 545.74(c)(4)(i)(B).* Any advertising of the service corporation's securities brokerage or investment advisory services must be distinguishable from that of the association and not indicate or imply that the securities sold or transactions executed by the service corporation are federally-insured deposits. Advertisements must indicate that it is the service corporation and the broker-dealer, and not the association, that is providing the brokerage services. In order further to prevent customer confusion, the name of the broker-dealer providing the securities brokerage services must be disclosed, and the logo of the service corporation's parent insured institution may not be used in the text of any advertisement prepared or distributed by the service corporation or by the broker-dealer or in any advertisement for specific securities products.

3. *Section 545.74(c)(4)(i)(C).* A service corporation that contracts with a third-party broker-dealer to provide securities brokerage services must obtain a contractual commitment from the broker-dealer for full indemnification to the service corporation and to the parent association with respect to liability arising from the negligence, recklessness, or intentional conduct of the broker-dealer and its employees.

In addition, the service corporation must evidence the contractual agreement with any broker-dealer with an executed written contract that sets forth operating, marketing, compensation, and other relevant terms. The Board is not preapproving activities based upon oral understandings of material terms.

4. *Section 545.74(c)(4)(i)(D).* The service corporation must file initially with the Supervisory Agent an opinion of counsel to the broker-dealer or the senior securities principal that the brokerage program has adequate supervisory controls and these controls will be applied to detect and prevent securities regulatory violations. Thereafter, on an annual basis, the senior securities principal must file a certification that he or she has discharged his responsibilities under the supervisory system and does not know and has no reason to know of improper conduct or other regulatory violations. Supervisory systems must exist when operations commence. It is unsatisfactory to represent that supervisory systems will be implemented or that manuals will be written in the future.

5. *Section 545.74(c)(4)(i)(E).* A service corporation may not predicate the execution of securities transactions on the customer's use of any safekeeping or other services by the federal association, service corporation, the broker-dealer, or any of their affiliates. To the extent such arrangements are legally permissible, they require express Board approval.

6. *Section 545.74(c)(4)(ii)(A).* The service corporation may not execute securities transactions on a principal basis, except a "riskless principal" basis, and may not underwrite or make a market in a security within the scope of the preapproved activities.

7. *Section 545.74(c)(4)(ii)(B).* The preapproval is applicable where association employees receive referral fees only if the association has in advance: (1) Obtained a "no-action" letter from the SEC to the effect that the association would not be required to register as a broker-dealer pursuant to Section 15(a) of the Securities Exchange Act of 1934 [1] and (2) provides advance

[1] Section 15(a) of the Securities Exchange Act of 1934 requires any broker or dealer to register prior to conducting any business. Sections 3(a)(4) and 3(a)(5) of the Exchange Act define "broker" and "dealer" both to exempt "banks," but do not mention savings and loan associations. The SEC has never interpreted the term "banks" in Section 3 to include savings and loan associations or exempted them from registration. However, the SEC, on a case-by-case basis, has issued "no-action" letters permitting savings and loan associations to conduct brokerage activities through service corporation subsidiaries provided that the operations of the subsidiary were sufficiently separated from those of its parent.

notice to the Supervisory Agent of the type and amount of referral fees to be paid, together with a copy of the "no-action" letter.

8. *Section 545.74(c)(4)(ii)(C).* To qualify for preapproval, a service corporation may not solicit a transaction in a particular security. A service corporation may, however, solicit interest in an overall securities or investment advisory services program. The service corporation also may make recommendations in response to a request by an existing customer. Under the new preapproval, transactions may be solicited from institutional investors.

9. *Section 545.74(c)(4)(ii)(D).* A service corporation is permitted to indemnify a third-party broker-dealer to an extent no greater than the extent to which the third-party broker-dealer indemnifies the service corporation, without express Board approval. A service corporation may negotiate to provide a lower level of indemnification, and many have done so. The association is prohibited from indemnifying a third-party broker-dealer.

10. *Section 545.74(c)(4)(ii)(E).* The parent Federal association may not extend margin credit to the customers of the service corporation or the joint-venture broker-dealer, without express Board approval.

11. *Section 545.74(c)(4)(ii)(F).* To qualify for preapproval, the parent Federal association may not sign or otherwise enter a contract directly with the third-party broker-dealer. Any contract for brokerage services to be performed through a service corporation must be between the service corporation and the broker-dealer. It should not include the Federal association as a signatory or obligate the Federal association.

12. *Section 545.74(c)(4)(ii)(G).* Persons who participate in offering the service corporation brokerage services but who are not registered representatives, such as association employees, may perform only clerical or ministerial tasks. Such tasks can include directing inquiring customers to the brokerage kiosk or telephone "hot line" to the broker-dealer, filling promotional pamphlet racks, and distributing forms and publicity related to the securities services.

13. *Section 545.74(c)(4)(iii).* An association intending to invest in a service corporation engaging in preapproved securities brokerage activities must send a notice to its Supervisory Agent prior to the commencement of operations. The required notice must include a full description of the brokerage service to be provided and copies of all executed contracts between the service corporation and broker-dealers, investment advisors, and their affiliates, and the association, such as the operating agreement with a broker-dealer, a lease for space with the association, and a contract for clerical and ministerial services with the association. If referral fees will be paid to association employees, the notice should include a no-action letter from the SEC. The notice should also include pro forma income and expense statements for the first three years of operations and any required professional opinions, such as that required pursuant to § 545.74(c)(4)(i)(D). A reasoned legal opinion that the service corporation activities qualify as preapproved also must accompany the notice.

The Board is amending the Current Proposal to require that the notice be submitted no later than 30 days and no earlier than 180 days prior to the commencement of operations. Thus, the notice will be filed reasonably close in time to the commencement of operations, in order for the Supervisory Agent to review the proposed activities in accordance with the contemporary condition of the insured institution. If a Supervisory Agent receives a notice and six months passes without commencement of the activity, the notice is deemed withdrawn.

14. *Section 545.74(c)(1)(4)(iv).* The Supervisory Agent may request additional information at any time regarding the operations of the service corporation. The Supervisory Agent also may limit or prohibit activities for supervisory reasons, pursuant to 12 CFR 545.74(b)(5).

15. *Section 545.74(f).* The Board is delegating authority to the Board's Office of District Banks ("ODB") to approve service corporation applications for activities that are not preapproved under § 545.74(c). ODB, with the concurrence of the Board's Office of General Counsel and Office of Regulatory Activities, is authorized to approve or deny any service corporation application that does not present a significant issue of law or policy. This delegation can further improve the processing of service corporation applications, reserving for the Board's attention only those applications that have significant legal or policy implications or precedential impact.

III. Supplemental Information

The Board wishes to note certain additional issues that have presented questions in connection with service corporations offering securities brokerage and investment advisory services:

A. *Compensation of Registered Representatives.* The service corporation may compensate its employees by salary, salary plus bonus, or commissions, or any other reasonable manner.

B. *Opinion of Counsel.* Where the preapproval requires an opinion of counsel, any licensed, practicing attorney in good standing, including counsel to the association, the service corporation or the broker-dealer, may provide the opinion.

C. *Previous Delegations.* This preapproval does not affect previous Board approvals or delegations. An association that wants to invest in a service corporation that would contract with a broker-dealer that is the subject of an existing delegation may apply to its Principal Supervisory Agent for approval under that delegation. The Board recommends that the applicant file with the necessary application materials a cover letter identifying all differences between the current application and the contracts that the Board has approved in the delegation.

D. *Corporate Separateness.* The Board is not requiring the submission of certifications that the service corporation and the association are separate corporate entities and that both are in conformity with applicable regulations as a precondition of the preapproval, because the obligation of service corporations and associations to comply with 12 CFR 563.37 and 570.10 is not altered by this preapproval. The Board continues to require that the service corporation be adequately capitalized as a separate corporation in the light of normal obligations reasonably foreseeable in a business of its size and character, maintain separate accounts and records, and be held out to the public as a separate enterprise. An institution would fail to meet the Board's separate corporate identities requirement if it dominates the service corporation to the extent that the latter is treated as a mere department of the former.

E. *Customer Lists.* Although these amendments do not address the association's distribution of information about its customers to the service corporation and to outside third parties, the Board does not permit the unrestricted dissemination of customer list information. The association and its service corporation must follow applicable Bank Board policy regarding the release of customer information.

F. *Pending Applications.* These amendments will be effective 30 days

after publication in the Federal Register. As of the effective date, the Board will be in the process of reviewing pending applications. At effectiveness, however, the delegation of authority to the Office of District Banks to approve certain brokerage and investment advisory service corporation applications will take effect. All pending applications will be subject to § 545.74(f). With respect to the applicable § 571.12 timeclocks, all applications that have been deemed complete on or before the effectiveness date of this regulation will be acted upon within 90 days from the date when the application was deemed complete.

An applicant may choose to withdraw an application and submit a notice under the preapproval regulation. This notice must be filed no later than thirty days prior to the commencement of operations. During this period, the Supervisory Agent will review the notice to determine whether it is complete, satisfies the preapproval criteria, and raises any supervisory concerns. Therefore, certain pending applications that have been deemed complete as of the effectiveness date will be approved pursuant to delegated authority at an earlier date than would applications deemed complete on the same date that are withdrawn, with a preapproval notice filed, and thirty day review period observed.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following final regulatory flexibility analysis.

1. *Reasons, objectives, and legal bases underlying the regulation.* These elements have been discussed elsewhere in the SUPPLEMENTARY INFORMATION regarding the amendments.

2. *Small entities to which the regulation would apply.* The regulation would apply to all insured institutions.

3. *Impact of the regulation on small institutions.* To the extent that the regulation would affect small institutions, this has been discussed elsewhere.

4. *Overlapping or conflicting federal rules.* There are no other federal regulations which duplicate, overlap, or conflict with the final regulation.

5. *Alternatives to the regulation.* Other alternatives, such as present regulations, may tend to prolong the waiting for permission to engage in brokerage activities. More liberal provisions may raise questions of statutory authority.

List of Subjects in 12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends part 545, subchapter C, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

PART 545—OPERATIONS

Subchapter C—Federal Savings and Loan System

1. The authority citation for Part 545 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727 as added by sec. 1, 64 Stat. 256 as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1728, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–1948 Comp., p. 1071.

2. Amend § 545.74 by redesignating existing paragraphs (c)(4), (c)(5), and (c)(6) as new paragraphs (c)(5), (c)(6), and (c)(7); by adding a new paragraph (c)(4); by revising new paragraph (c)(5)(v); revising new paragraph (c)(7); and by adding new paragraphs (f) and (g) to read as follows:

§ 545.74 Service corporations.

* * * * *

(c) *Permitted activities.* * * *

(4) *Securities brokerage services.* (i) Execution of securities transactions on an agency or riskless principal basis solely upon the order of and for the account of customers, and the provision of standardized and individualized investment advice to individuals and entities, provided that the service corporation:

(A) Conducts securities brokerage and investment advisory activities in an area that is clearly identified and distinguished from the areas where the association's depository functions are performed;

(B) Distinguishes advertising by the service corporation from that of the association, such that advertising does not confuse securities transactions executed, securities purchased, or investment advice provided by the service corporation with federally-insured deposits; that advertising indicates that the service corporation and broker-dealer, and not the association, is providing the securities brokerage or investment advisory services, identifies the broker-dealer in advertising, and does not use the logo of the parent association in the text of any advertisement prepared or distributed by the service corporation or the broker-dealer or in the text of any advertisement for specific securities products;

(C) Where the service corporation contracts with a third-party broker-dealer, has a written contract with the broker-dealer that provides that the broker-dealer agrees to indemnify fully the service corporation and the association for any liability arising from the negligence, recklessness, or intentional conduct of the broker-dealer or its employees, and that sets forth operating, marketing, compensation, and other relevant terms;

(D) Provides to the Supervisory Agent an initial opinion of counsel or an opinion from the senior securities principal responsible for overseeing the subject brokerage program that the program has been established pursuant to operational procedures that are intended to ensure that the program is conducted in conformity with applicable securities laws and regulations and that such procedures include internal controls and supervisory systems that have been established and are to be applied to detect and prevent violations of federal securities statutes, the rules adopted thereunder, and the rules of self-regulatory organizations applicable to broker-dealers, including but not limited to those provisions designed to prevent churning, unsuitable recommendations, charging excessive prices, and the making of fraudulent representations in connection with the offer, sale, or purchase of securities ("the regulations"); and on an annual basis thereunder provides a certification by the senior securities principal responsible for supervising and overseeing the subject brokerage program that he or she has discharged the obligations incumbent upon him or her by reason of such procedures and systems previously described and has no reasonable belief or cause to believe that such procedures and systems have not been and are not being complied with or that a violation of the regulations has occurred; and

(E) Does not condition the provision of securities services to a customer on the customer's utilizing services of any affiliate of the association, the service corporation, or a broker-dealer;

(ii) Service corporation activities authorized under this paragraph may not include the following activities:

(A) Execution of securities transactions on a principal basis, including market-making and underwriting, except on a riskless principal basis, and except as permitted under § 545.74(c)(3);

(B) Payment to any employee of the association of referral fee, bonus, or any incentive compensation, in cash or in kind, for referring any customer to the service corporation except as may be consistent with a "no-action" letter received by the association from the U.S. Securities and Exchange Commission ("SEC"), stating that the SEC will not recommend enforcement action if association employees receive the planned referral fee but do not register with a broker-dealer and the association does not register as a broker-dealer;

(C) Solicitation of a person to execute a transaction in a specific security by any registered representative;

(D) Indemnification by the service corporation to a degree greater than that indemnification provided to it by the third-party broker-dealer of a third-party broker-dealer or by the service corporation; and the association is prohibited from indemnifying a third-party broker-dealer;

(E) Extension of margin credit by the association to customers of the service corporation or broker-dealer;

(F) Entry into any third-party contract with a broker-dealer, directly by the association; and

(G) Non-registered representatives who are dual or sole employees of the association performing tasks other than clerical or ministerial tasks; prohibited activities include accepting or delivering money or securities and taking orders to execute securities transactions.

(iii) Any association that intends to acquire or establish a service corporation to engage in preapproved securities brokerage activities shall furnish to the Supervisory Agent, no earlier than 180 days and no later than 30 days prior to the commencement of operations, written notice containing a full description of the brokerage services to be provided, together with copies of all executed contractual agreements and memoranda between the service corporation and broker-dealers, investment advisors, the parent insured institution, and their affiliates, pro forma income statements for a three-year period, any required professional opinions, and a reasoned legal opinion from counsel that the securities brokerage service qualify as preapproved under this paragraph (c)(4)(iii).

(iv) The Supervisory Agent may request additional information at any time regarding the operations of the service corporation if he has supervisory concerns about the activity, has evidence that the activity may not be in the best interest of the association or service corporation, or has questions as to whether the activities are being conducted in a manner that is preapproved.

(5) *Other investments.* * * *

(v) Investing in the capital of a small business investment company or minority enterprise small business investment company licensed pursuant to section 302(d) of the Small Business Investment Act of 1958 by the U.S. Small Business Administration to invest in small businesses engaged exclusively in the activities listed in paragraph (c) (1) through (6) of this section;

* * * * *

(7) Activities reasonably incident to those listed in paragraphs (c) (1) through (6) of this section.

* * * * *

(f) *Delegation of authority.* Unless an application of a federal association to invest in a service corporation involves a significant issue of law or policy or would establish a precedent of national significance, the Director of the Office of District Banks, with the concurrence of the General Counsel and the Office of Regulatory Activities, or their respective designees, is authorized (1) to approve an application filed pursuant to this section, if it is complete and in compliance with regulatory requirements and (2) to deny an application that does not satisfy the approval criteria. If the Director of the Office of District Banks, the General Counsel, or the Office of Regulatory Activities, or their respective designees, is of the opinion that the application involves considerations of law or policy that warrant resolution by the Board, the Director shall submit the application to the Board for its determination and notify the applicant. If the Director fails to obtain the concurrence of the General Counsel and the Director of the Office of Regulatory Activities, or their designees, the Director shall present the application to the Board for its determination and notify the applicant.

(g) *Appeals.* Denial of an application by the Office of District Banks pursuant to paragraph (f) of this section may be appealed to the Board under the following procedure. Within 30 days after notification of the Office of District Bank's decision as provided in this section, the applicant must file a written request for review with the Board stating the applicant's desire to appeal the Office of District Bank's decision. The request for review must identify the party seeking review and describe with specificity the action taken for which review is sought and the reasons why the Office of District Bank's denial is contended to be erroneous. Three copies of such request for review shall be submitted to the Office of District Banks, Applications Division, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. One copy of such request should be addressed to the attention of "Office of District Banks;" one copy to the attention of "Office of General Counsel, Corporate and Securities Division;" and one copy to the attention of "Office of Regulatory Activities, Corporate Activities Section." Also, one copy shall be sent to the appropriate Principal Supervisory Agent. The Office of District Banks shall forward to the Board its record, or a copy thereof, used as a basis for the determination together with any other information believed by the Office of District Banks to be useful in reviewing the determination. If an applicant does not file a request for review within the time permitted under this section, any objection to the initial determination by the Office of District Banks is waived. A timely filing of a request for review in accordance with the provisions of this section shall be mandatory for securing judicial review of an initial determination.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–18782 Filed 8–10–89; 8:45 am]

BILLING CODE 6720–01–M

12 CFR Part 574

[No. 89–2208]

RIN 3068–AA79

Acquisition of Control of Insured Institutions

Date: August 8, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or the "Corporation"), is adopting amendments to its regulations concerning the processing of certain applications filed with the Board for approval of the creation of savings and loan holding companies by insured institutions. The amendments provide for the automatic approval of such applications, subject to specified conditions. The Board is taking this action in order to expedite the processing of routine holding company

reorganization applications filed by insured institutions.

EFFECTIVE DATE: August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Howard C. Bluver, Assistant Deputy Director, (202) 906-7504; Kevin A. Corcoran, Deputy Director for Corporate Transactions, (202) 906-6982; V. Gerard Comizio, Director, (202) 906-6411, Corporate and Securities Division; Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 906-6549, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552; or Robyn Dennis, Financial Analyst, (202) 331-4572, Office of Regulatory Activities, Federal Home Loan Bank Board, 801 17th Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: On January 27, 1989, (54 FR 4040), the Board, in Resolution No. 89-32, proposed certain amendments to its regulations designed to expedite and streamline the processing of routine holding company reorganization applications by providing for the automatic approval of such applications, subject to specified conditions. Written comments were solicited by the Board, with the comment period ending March 28, 1989.

The Board invited commenters to address all aspects of the proposal, including the conditions that should apply to automatically approved applications. Specifically, the Board solicited comment on whether such conditions should be included at all, whether the proposed rules should be expanded, modified, or deleted in part, and whether any requirements should be promulgated in the form of supervisory guidance.

The Board received a total of 3 comments in response to the proposal, all of which expressed support for the proposal. Of the comments received, two came from law firms that represent thrift institutions and one came from a national thrift trade organization. While each of the comments expressed support for the proposal, several suggested certain modifications in the conditions that should apply to automatically approved applications. After carefully considering the issues raised by the commenters, the Board has determined to adopt the proposal with certain modifications and clarifications.

The final regulations provide for automatic approval of applications by insured institutions for approval of routine reorganizations involving the creation of savings and loan holding companies, subject to specified requirements. Such applications will be automatically approved 45 calendar days after the filing of the application unless the Board or its delegate has either requested additional information from the applicant in writing, notified the applicant that the application is materially deficient and will not be processed, or denied the application. Given the types of transactions and other conditions established for the availability of the automatic approval process, it is the Board's expectation that any requests for additional information that would prolong the 45 day decision period would be extremely rare. The new regulations also provide for a corresponding streamlined approval for permission to organize and insurance of accounts, and for the merger of a disappearing interim institution that is used as a component of the reorganization transaction.

While the proposal published in January 1989 envisioned automatic approval of holding company reorganization applications 30 calendar days after filing, the Board notes that applications filed under 12 CFR 574.3(a) require public notice and are subject to a public comment period that may be extended to 40 calendar days after filing pursuant to 12 CFR 574.6(e). Thus, holding company reorganization applications, in order to be automatically approved 30 calendar days after filing, would need to be exempted from the public notice requirement, or, alternatively, the automatic approval date would have to be tied to the end of the public comment period. After considering this issue, the Board, in an effort to maximize public participation in the application process consistent with existing regulations and to maintain certainty with respect to the automatic approval date, has determined to extend the automatic approval date to 45 calendar days after filing. The Board wishes to emphasize, however, that, notwithstanding the automatic approval mechanism in the new regulations, the Board's staff will process holding company reorganization applications expeditiously and, where appropriate, will notify applicants in writing that the application has been approved prior to the expiration of the 45 day period for automatic approval.

In order to qualify for automatic approval under the new regulations, an application must involve only the creation of a holding company by an insured institution and no other transaction incident thereto (other than the creation of an interim institution that will disappear upon consummation of the reorganization and the merger of the insured institution with such interim institution), and the applicant company must not be seeking any regulatory waivers, regulatory forbearances, or resolution of legal or supervisory issues. In addition, the application must not present any significant policy issues pursuant to applicable Board policies.

One comment letter asked for further clarification as to what would constitute an "other transaction" within the meaning of the rule and thus render the automatic approval mechanism unavailable. It is the Board's intent that any transaction that is not a direct component of the reorganization transaction or would otherwise normally require another approval from the Board or its delegate, would generally cause the automatic approval mechanism to become unavailable. Examples of transactions that would have such an effect, if intended to be accomplished as part of the reorganization or shortly after consummation, would include the payment of management fees to the holding company by the insured institution, the incurrence of debt by the holding company, transactions involving the purchase, sale, or lease of property or assets between the holding company and the insured institution, and other affiliate transactions that may be prohibited or restricted. Any inquiries relating to specific transactions and whether engaging in such transactions as part of a reorganization would render the automatic approval mechanism unavailable should be directed to the Corporate and Securities Division of the Board's Office of General Counsel in Washington, DC.

The Board wishes to point out, however, that the automatic approval mechanism would be available to an institution whose reorganization is part of a standard conversion from the mutual to the stock form of organization. In this regard, a converting institution also is required to file a Form AC to obtain approval to convert. The Form AC, among other things, is required to describe the complete transaction in detail and must include as exhibits all of the documents prepared in connection with the conversion. Accordingly, many of the issues presented in a holding company, application required for a holding company conversion will be reviewed and passed upon by the Board in its review of the Form AC. Accordingly, the Board believes that expedited processing of a holding company application filed as part of a holding company conversion is appropriate. Notwithstanding the foregoing, the Board urges converting institutions that are contemporaneously reorganizing into the holding company form to file their holding company applications and their Forms AC concurrently, or file their holding company applications before their Forms AC. In several instances in the past, converting institutions have filed required holding company applications well after the Forms AC have been filed, resulting in a delay in the conversion process while the processing of the holding company application was completed. To avoid such a possibility, converting institutions are urged to file holding company applications as early as possible, even in cases where the automatic approval process is available.

Another condition of qualifying for automatic approval under the new regulations is that the initial capitalization of the holding company (to the extent that the capital is provided by the insured institution itself) must not exceed the amount that the insured institution could pay in dividends to its holding company as of the date of the reorganization pursuant to applicable regulations, or, in the absence of such regulations, pursuant to the then current Board policy guidelines issued by the Board's Office of Regulatory Activities ("ORA") (*See e.g.*, Office of Regulatory Activities, Thrift Bulletin No. 5 (October 19, 1988)). While the proposal published in January 1989 envisioned an initial capitalization standard based on the lesser of the amount that the insured institution could pay in dividends or the amount that the institution could invest in a service corporation, the Board, after considering several comments on this issue, has determined to adopt an initial capitalization standard based on the ability of an institution to pay dividends since this standard is more directly relevant to the holding company transaction that is occurring. The Board, among other things, does not wish to preclude healthy, well-capitalized institutions from reorganizing into holding company form pursuant to the automatic approval mechanism simply because such institutions may have fully utilized their service corporation investment authority. Such a result could occur under the initial capitalization standard set forth in the original proposal. Accordingly, the Board believes a dividend-based initial capitalization standard is appropriate.

In addition to the foregoing, to qualify for automatic approval under the new regulations, the board of directors and executive officers of the new holding company must be composed of persons who are, at the time of the reorganization, executive officers and directors of the insured institution, although they need not hold the same positions, and all executive officers and directors of the institution need not also be executive officers and directors of the holding company.

In a policy statement dated August 2, 1988 (*See* 53 FR 31761 (August 19, 1988)), the Board provided guidance on the extent to which savings and loan holding companies should be required to contribute financial assistance to their subsidiary insured institutions and, in particular, whether a proposed acquiror of an insured institution would be required to execute a regulatory capital maintenance agreement as a condition to receiving approval of a proposed acquisition. For the reasons set forth in the policy statement, a proposed acquiror has the option of executing either (i) a regulatory capital maintenance agreement providing for a specified dollar cap on the amount of the acquiror's maintenance obligation, or (ii) a so-called "prenuptial" agreement, which provides for the transfer to the Board of the right to vote the securities of the institution, remove the board of directors of the institution, cause additional securities of the institution to be issued to the Board, or dispose of any or all of the securities of the institution owned by the acquiror, in the event the institution's capital level declines below a specified level. At the direction of the Board, the Board's Office of Regulatory Activities, in Thrift Bulletin No. 5, dated October 19, 1988, issued policy guidelines on, among other things, the amount of the dollar cap that will generally be required in a regulatory capital maintenance agreement and, with respect to prenuptial agreements, the minimum capital level that must be maintained by the institution in order to avoid triggering the transfer to the Board of the various powers described above. Agreements that exceed the scope of these guidelines are considered to present significant policy issues that warrant consideration by the Board itself. Accordingly, in order to qualify for automatic approval under the new regulations, the reorganization transaction must not raise a significant policy issue as described in the Board's August 12, 1988 policy statement or the ORA Guidelines of October 19, 1988. The proposed holding company in the reorganization would, therefore, generally be required to submit, prior to consummation of the reorganization, either a "dollar capped" regulatory capital maintenance agreement or a "prenuptial" agreement that, in either case, is consistent with the Board's policy statement and the ORA guidelines. We note in this regard, however, that, pursuant to the ORA Guidelines, if an institution would meet its fully-phased in capital requirement following consummation of the reorganization transaction, neither the regulatory capital maintenance agreement nor the prenuptial agreement would be required. The proposed holding company would be required, however, to enter into a dividend limitation agreement described in the ORA Guidelines prior to consummation of the reorganization transaction in all cases and would, in the future, be subject to any general regulations adopted by the Board to set standards for payment of dividends and other "capital distributions" by insured institutions.

In addition to the foregoing requirements, the new regulations require the holding company to file certain certifications and opinions with the insured institution's Supervisory Agent within a specified time before or after the consummation of the acquisition. These certifications and opinions are customarily required to be filed by holding companies completing the prior approval process under current Board regulations. These requirements are as follows:

(1) On the business day prior to the date of consummation of the acquisition, the chief financial officers of the holding company and the insured institution shall certify to the Supervisory Agent in writing that no material adverse events or material adverse changes have occurred with respect to the financial condition or operations of the holding company or the insured institution since the date of the financial statements submitted with the application;

(2) No later than thirty days from the date of consummation of the acquisition, the holding company shall file with the Supervisory Agent a certification by legal counsel stating the effective date of the acquisition, the exact number of shares of stock of the insured institution acquired by the holding company, and that the acquisition has been consummated in accordance with the provisions of all applicable laws and regulations and the application;

(3) No later than thirty days from the date of consummation of the acquisition, the holding company shall file with the Supervisory Agent an opinion from its independent auditors certifying that the transaction was consummated in accordance with generally accepted accounting principles; and

(4) No later than thirty days from the date of consummation of the acquisition, the holding company shall file with the Supervisory Agent a certification stating that the holding company will not cause the insured institution to deviate materially from the business plan submitted in connection with the application, unless prior written

approval from the Supervisory Agent is obtained.

Similar standard certifications are required to be furnished by the resulting institution in the event an interim institution is organized to facilitate the reorganization transaction.

The new regulations also require that the proposed acquisition be consummated within 120 days after the application is automatically approved.

Finally, the Board notes that the new regulations provide that in cases where the insured institution has converted from mutual to stock form, the institution's newly formed holding company will become subject to certain post-conversion requirements that are applicable to the institution itself pursuant to various sections of the Board's mutual to stock conversion regulations. This treatment of the holding company simply insures that creation of a holding company will not be used as a route to evade such post-conversion safeguards. These safeguards, which pertain to post-conversion acquisitions of an institution's stock, purchases and sale of conversion stock by the institution's officers and directors, registration of the stock under the Securities Exchange Act of 1934, the existence of market-makers in the institution's stock, and restrictions on certain stock repurchases, have customarily been imposed as conditions of approval of holding company applications where converted institutions reorganize into holding company structure. Treatment of this area in the regulation avoids the need for such a cumbersome conditioning process.

The Board believes that the new regulations further expedite and streamline the application process under Part 574 by reducing substantially the processing period for routine holding company reorganization applications.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605, the Board certifies that these changes will not have a significant economic impact on a substantial number of small entities. Accordingly, a final Regulatory Flexibility Analysis is not required.

List of Subjects in 12 CFR Part 574

Administrative practice and procedure, Savings and loan associations, Securities, Holding companies.

Accordingly, the Board hereby amends part 574, Subchapter D, Charter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 574—ACQUISITION OF CONTROL OF INSURED INSTITUTIONS

The authority citation for Part 574 continues to read as follows:

Authority: Sec. 407, 48 Stat. 1260, as amended (12 U.S.C. 1730); sec. 406, 82 Stat. 5, as amended (12 U.S.C. 1730a).

(2) Amend § 574.7 by redesignating paragraph (a) as paragraph (a)(1) and adding new paragraphs (a)(2) and (a)(3) to read as follows:

§ 574.7 Determination by the corporation.

(a) *Acquisition by a company.* * * *

(2) An application filed pursuant to 574.6(a)(1) by an insured institution solely for the purpose of obtaining approval for the creation of a savings and loan holding company by such insured institution, and related applications for permission to organize an interim federal institution, for insurance of accounts, for Federal Home Loan Bank membership, and for merger with such interim institution, shall be deemed to be approved 45 calendar days after such applications are properly filed in accordance with the procedures set forth herein, unless, prior to such date:

(i) The Corporation has requested additional information of the applicant in writing;

(ii) Notified the applicant that the application is materially deficient and will not be processed; or

(iii) Denied the application prior to that time; provided that to be eligible for approval under this paragraph:

(A) The holding company shall not be capitalized initially in an amount exceeding the amount the insured institution is permitted to pay in dividends to its holding company as of the date of the reorganization pursuant to applicable regulations or, in the absence thereof, pursuant to the then current policy guidelines issued by the Board's Office of Regulatory Activities;

(B) The creation of the savings and loan holding company by the institution is the sole transaction contained in the application, and there are no other transactions requiring Corporation approval incident to the creation of the holding company (other than the creation of an interim institution that will disappear upon consummation of the reorganization and the merger of the insured institution with such interim institution to effect the reorganization), and the holding company is not also seeking any regulatory waivers, regulatory forbearances, or resolution of legal or supervisory issues;

(C) The board of directors and executive officers of the holding company are composed of persons who, at the time of acquisition, are executive officers and directors of the institution;

(D) The acquisition raises no significant issues of law or policy under then current Board policy;

(E) Prior to consummation of the reorganization transaction, the holding company shall enter into any dividend limitation, regulatory capital maintenance, or prenuptial agreement required by Board regulations, or in the absence thereof, required pursuant to policy guidelines issued by the Board's Office of Regulatory Activities;

(F) The holding company shall furnish the following information in accordance with the specified time frames:

(*1*) On the business day prior to the date of consummation of the acquisition, the chief financial officers of the holding company and the insured institution shall certify to the Supervisory Agent in writing that no material adverse events or material adverse changes have occurred with respect to the financial condition or operations of the holding company or the insured institution since the date of the financial statements submitted with the application;

(*2*) No later than thirty days from the date of consummation of the acquisition, the holding company shall file with the Supervisory Agent a certification by legal counsel stating the effective date of the acquisition, the exact number of shares of stock of the insured institution acquired by the holding company, and that the acquisition has been consummated in accordance with the provisions of all applicable laws, and regulations and the application;

(*3*) No later than thirty days from the date of consummation of the acquisition, the holding company shall file with the Supervisory Agent an opinion from its independent auditors certifying that the transaction was consummated in accordance with generally accepted accounting principles; and

(*4*) No later than thirty days from the date of consummation of the acquisition, the holding company shall file with the Supervisory Agent a certification stating that the holding company will not cause the insured institution to deviate materially from the business plan submitted in connection with the application, unless prior written approval from the Supervisory Agent is obtained;

(G) In the event an interim institution is utilized to facilitate the reorganization transaction, the resulting institution shall, no later than 30 days from the date of consummation of the reorganization transaction, furnish a certification by legal counsel stating:

(*1*) The effective date of the merger involving the interim institution and that the merger has been consummated in accordance with the Agreement and Plan of Reorganization or similar document pursuant to which the transaction was accomplished;

(*2*) The interim institution has not opened for business:

(*3*) The merger was consummated within 120 calendar days of the date of approval; and

(*4*) After completion of the organization of the interim institution, the board of directors of the interim institution ratified the Agreement and Plan of Reorganization or similar document: and

(H) The proposed acquisition shall be consummated within 120 days after the application is automatically approved under this § 574.7(a)(2).

(3) To the extent that an institution reorganizing into holding company form is subject to provisions relating to its mutual to stock conversion imposed by 12 CFR 563b.3(i), (c)(9),(c) (17), (c)(18), (c)(19) or (g)(1), such provisions shall be applicable to any holding company approved automatically pursuant to paragraph (a)(2) of this section.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-18783 Filed 8-10-89; 8:45 am]

BILLING CODE 6720-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1221

NASA Seal and Other Devices, and the Congressional Space Medal of Honor

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR part 1221 by revising two paragraphs in subpart 1221.1, "NASA Seal, Insignia, Logotype Insignia, Program and Astronaut Badges, and Flags, and the Agency's Unified Visual Communications System." These revised paragraphs correct a position title in paragraph (d) of § 1221.110 and insert words that were inadvertently omitted from paragraph (b)(1) of § 1221.112.

EFFECTIVE DATE: August 11, 1989.

ADDRESS: Public Services Division, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Robert Schulman, (202) 453-8315.

SUPPLEMENTARY INFORMATION: The position title of Assistant Associate Administrator for Headquarters Administration in 14 CFR 1221.110(d) is changed to Assistant Administrator for Headquarters Operations. The words "cloth or other material, a decal, or" were mistakenly omitted from 14 CFR 1221.112(b)(1) and are now being inserted.

Since this revision is internal, administrative, and editorial in nature, notice and public comment are not required.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1221

Decorations, Medals, Awards, Flags, Seals, Insignia, Unified visual communications system.

For reasons set out in the Preamble, 14 CFR Part 1221 is amended as follows:

PART 1221—THE NASA SEAL AND OTHER DEVICES, AND THE CONGRESSIONAL SPACE MEDAL OF HONOR

1. The authority citation for 14 CFR Part 1221 continues to read as follows:

Authority: 42 U.S.C. 2472(a) and 2473(b)(1).

2. Section 1221.110 is amended by revising paragraph (d) to read as follows:

§ 1221.110 Establishment of the NASA Unified Visual Communications System.

* * * * *

(d) The Director of each Field Installation has designated an official to serve as Graphics Coordinator for his/her installation. The Assistant Administrator for Headquarters Operations has designated an official to serve as Headquarters Graphics Coordinator. Any changes in these assignments shall be reported to the NASA Graphics Coordinator, NASA Headquarters.

* * * * *

3. Section 1221.112 is amended by revising paragraph (b)(1) to read as follows:

§ 1221.112 Use of the NASA program and astronaut badges.

* * * * *

(b) * * *

(1) Use of exact reproductions of a badge in the form of a patch made of cloth or other material, or a decal, or a gummed sticker on articles of wearing apparel and personal property items: and

* * * * * *

Richard H. Truly,

Administrator.

[FR Doc. 89-18799 Filed 8-10-89; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin and Chlortetracycline; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that amended the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by the American Cyanamid Co. providing for the use of previously approved salinomycin and chlortetracycline Type A medicated articles to make Type C medicated feeds for broilers (54 FR 25115; June 13, 1989). In codifying the limitations, the sentences "In feeds containing 0.8 percent dietary calcium. Not to be fed for more than 5 days." were inadvertently published as one sentence. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: J. Taylor Madill, Center for Veterinary Medicine (HFV-231), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3336.

In FR Doc. 89-13989, appearing at page 25115 in the **Federal Register** of Tuesday, June 13, 1989, the following correction is made.

§ 558.550 [Corrected]

On page 25116, in the first column, under § 558.550(b)(1)(xvi)(*c*), the second sentence is corrected to read "In feeds containing 0.8 percent dietary calcium. Not to be fed for more than 5 days."

Dated: August 4, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-18818 Filed 8-10-89; 8:45 am]

BILLING CODE 4160-01-M

BEST COPY AVAILABLE

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 3]

Citizenship of Responsible Officers and Sponsors Exchange-Visitor Program

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: On May 29, 1987, the Agency published a notice of proposed rulemaking at 52 FR 20097 to provide that Responsible Officers of designated sponsors be citizens of the United States and that designated sponsors be United States organizations and corporations. By this notice a final rule is adopted wherein the longstanding requirement of United States citizenship is further defined.

The final rule shall become effective August 11, 1989. At that time the Agency will begin to review files of designated organizations and ask every designated organization to submit documentation that it is in compliance with this rule. Failure to come into compliance within 90 days of receipt of such request will result in withdrawal of the designation. Applications for new designations for organizations not meeting the requirements will not be approved.

EFFECTIVE DATES: August 11, 1989.

ADDRESS: Merry Lynn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Merry Lynn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 485–8829.

SUPPLEMENTARY INFORMATION: The definition of "sponsor" was first published at 14 FR 4592, July 22, 1949. It appeared at 22 CFR 68.1 (b) as follows:

> As used in this part, the term "sponsor" means any existing reputable United States agency or institution, public or private, which makes application, as hereinafter prescribed, to the Secretary of State for designation of a program under its sponsorship as an "Exchange-Visitor Program."

The regulation was intended to mean and was interpreted to mean organizations of United States citizenship. The definition has been modified over the years, but the requirement that the sponsor be a United States agency or institution remained. (The only exception in the definition, which was inserted subsequently, is an international organization of which the United States Government is a member, e.g. the United Nations.) While it has come to the Agency's attention that a few administrative errors were committed, and that some non United States organizations were designated, for the most part, the requirement that sponsors be United States organization was honored.

The Agency began to review its regulations shortly after the passage of three new immigration statutes in November, 1986: The Immigration Reform and Control Act of 1986, Pub. L. 99–603; The Immigration Marriage Fraud Amendments of 1986, Pub. L. 99–639; and The Immigration and Nationality Act Amendments of 1986, Pub. L. 99–653.

Upon reveiw of the exchange visitor regulations, the Agency found that there was no requirement that Responsible Officers of designated organizations be United States citizens. Additionally, because the definition of sponsor did not specify what was meant by United States organization, the Agency found that there was some confusion. Consequently, on May 29, 1987 the Agency published a notice of proposed rulemaking setting forth the following proposed definitions and seeking public comment:

> "Responsible Officer" means the official of an organization sponsoring an Exchange-Visitor Program who has been listed with the agency as being responsible for administering the program and carrying out the obligations which the organization assumes in undertaking to sponsor a program (See § 514.14). The designation of an Alternate Responsible Officer is permitted and encouraged. The Responsible Officer and all Alternate Responsible Officers must be United States Citizens.
>
> "Sponsor" means any reputable U.S. agency or organization or recognized international agency or organization having U.S. membership and offices which makes application as hereinafter prescribed to the Director for designation of a program under its sponsorship as an Exchange-Visitor Program and whose application is approved. Other corporations or organizations which are not incorporated under United States law may not be designated as a sponsor.

The Comments

The Agency received nine coments from the public. A list of the parties is found in appendix A. All comments were carefully considered, however, not all comments are specifically discussed. Comments received from the Department of State and the Immigration and Naturalization Service support the proposed modification. All of the other comments oppose either one or both of the provisions.

For the most part those opposing the requirement that only United States citizens be Responsible Officers argue that the sponsoring organization should have the right to appoint whomever it so chooses, and that this is especially important because the Responsible Officer often has duties unrelated to the exchange visitor program. Further, they assert that non citizens understand the exchange visitor program and can administer it. The National Association for Foreign Student Affairs (NAFSA) suggests that the proposal is unconstitutional. It also asserts that the Agency must document actual examples of problems arising because a Responsible Officer is a non citizen. One party states that there is no objection to the requirement, but suggests that it be amended to (1) allow permanent residents to serve as Responsible Officers, and (2) allow the Responsible Officer to appoint an alternate, who may be (and who, in many cases, is) stationed in a foreign country. Several parties point out that Agency's reference to Responsible Officers being agents of the United States Government is incorrect. They point out that the Responsible Officers are, in fact, employees and agents of the sponsoring organization. In the words of the University of Colorado at Boulder: "We are employed to protect the interests of our institutions, and it is our professional responsibility to serve our institutions, not our government."

The University of Colorado at Boulder also objects to the requirement that organizations be incorporated in the United States as being impossible or redundant. First, it points out that corporations are incorporated under state laws not United States law. Second, some organizations, such as the universities, are not incorporated but chartered or established by state constitutions. One party contends that none of the other business visas, such as the E (Treaty Traders and Treaty Investors), H (Temporary Workers and Trainees), and L (Intracompany Transferees) require foreign corporations with a U.S. presence to be incorporated in the United States. It argues that foreign entities should qualify as sponsors if they have a bona fide U.S. presence. It asserts that failure to allow foreign entities to sponsor exchange visitors may conflict with numerous treaties of Friendship, Commerce and Navigation which were established to provide for reciprocal benefits to nationals of each country who invest in the other country or who conduct trade between the countries. Further, it argues that the modification would undermine public and foreign policy goals of the United States Government. It suggests that the test of whether an organization should be designated should be whether it is subject to the jurisdiction of U.S. courts, tax laws, is stable, is registered to do business, and has bona fide offices in the United States. Additionally, this party asserts that designation is an "entitlement."

The Immigration and Naturalization Service and the Department of State support the proposed modification. However, the Department of State points out that the modification, as proposed, will not necessarily achieve its aim. It stated: "It has been the Department's experience that a corporation or other organization incorporated in the United States may, not infrequently, be controlled or wholly owned by foreign persons or entities."

Discussion

The statutory basis under which the United States Information Agency can designate programs as sponsors for a J-visa classification is found in 8 U.S.C. 1101(a)(15)(J). That subsection was added to the Immigration and Nationality Act in 1961 by section 109 of the Mutual Educational and Cultural Exchange Act of 1961. By placing the provision in the Immigration and Nationality Act, Congress intended to make it part of the overall statutory scheme. Consequently any interpretation of that section, must harmonize with that statute as a whole. No interpretation or application can be given which would undermine or circumvent the Immigration and Nationality Act, taken as a totality.

According to the legislative history (1961 U.S. Code Cong. & Admin. News, p. 2774) the new subsection "creates and incorporates into the basic law a special new nonimmigrant visa designed to serve solely the purposes of the Mutual Educational and Cultural Exchange Act of 1961." The purpose of that Act is to strengthen international understanding. The exchange program is an instrument of foreign policy. Decisions as to which exchange programs should be pursued is a foreign policy determination. Accordingly, it is not an "entitlement" program as alleged, but rather, subject to the Agency's discretion in its implementation of foreign policy. The exchange program was set up in the Department of State and later in USIA in order "to provide coordination with U.S. foreign relations" (1961 U.S. Cong. Code & Admin. News 2760). That the decision regarding the designation of exchange organizations is a foreign relations decision should be intuitively obvious, since the task has been conferred upon a foreign affairs agency.

> * * * The Bureau of Educational and Cultural Affairs has been set up in the Department of State to provide coordination with U.S. foreign relations. (1961 U.S. Cong. & Admin. News 2760).

Congress determined that:

> In modern international relations a positive U.S. Government program promoting educational and cultural cooperation is essential to the welfare of the American people. (1961 U.S. Cong. Code & Admin. News 2760.)

See also the testimony of Walter Laves, Chairman of the Department of Government of the University of Indiana, (Hearings before the Committee on Foreign Relations, United States Senate on S. 1154, March 29 and April 27, 1961 p. 74.) wherein he stated:

> * * * the area which encompasses education, science, culture, knowledge, skills, technical assistance, and information * * * how significant this big area of foreign relations really is, and to what extent our welfare as a nation * * * may depend upon the effectiveness with which this aspect of our foreign relations is conducted.

Additionally, the exchanges (which are not conducted on a strictly reciprocal basis) are to be undertaken "only when it is considered that they will 'strengthen international cooperative relations'." (Senate Report o. 372, Report from the Committee on Foreign Relations to accompany S. 1154, June 1961, p. 8) Consequently, all persons entering the United States on A J-visa must enter pursuant to a program, the purpose of which is to strengthen international understanding and cooperation—as determined by the Agency. The Agency, in fulfilling its foreign relations obligations, is to promote exchange activities, when the exchange activities coincide with foreign relations determinations.

8 U.S.C. 1101(a)(15)(J) merely refers to the designation function of the Agency by describing an exchange visitor as a "participant in a program designated by the Director of the United States Information Agency." No criteria are set forth requiring the Agency to designate certain programs. The criteria are left to Agency discretion. Because of the nature of foreign relations, the agency has been given broad authority to implement its legislation. The courts have found that this authority is—broader than that given to domestic agencies. Promulgation of regulations consistent with the Act and its legislative history are not considered an abuse of agency discretion. (See *Zemel* v. *Rusk*, 381 U.S. 1 (1965) and *Haig* v. *Agee*, 453 U.S. 280 (1981). See also *Slyper* v. *Attorney General*, 827 F.2d 821, 823 (D.C. Cir. 1987) wherein the court stated: "The statute contains no standard or criterion upon which to make or withhold a favorable recommendation. This broad delegation of discretionary authority is 'clear and convincing evidence' of congressional intent to restrict judicial review in cases such as those we now face.")

The Agency, in the exercise of its discretion, has determined that noncitizens should not be given excessive authority in making the foreign relations determination coupled with the strong visa issuance recommendation (which is inherent in the responsibility for filling out the IAP-66 forms) as to which aliens should be exchange visitors. The Agency has several reasons for its determination. First, the Agency believes that United States citizens are best equipped to further the purposes of the governmentally authorized exchange program. They are in a better position than aliens to understand and represent the United States and to "generat[e] goodwill for the United States abroad" (H.R. Rep. No. 130, 98th Cong., 1st Sess. 61, reprinted in 1983 U.S. Code Cong. & Admin. News 1484, 1544).[1]

Second, United States citizens owe allegiance to the United States. Noncitizens do not owe allegiance to the United States. While the comments point out that sponsors and responsible officers are not agents of the United States Government, they are in the position of carrying out United States foreign policy in selecting individual participants in the exchange visitor program in the place of the Agency making the appointments. Additionally, they are in the position of signing a United States Government document. The act of signing that document confers on them a shared responsibility with the Agency in carrying out its foreign relations obligations. As the University of Colorado at Boulder stated: "* * * it is not the job of a Responsible Officer to protect the interests of the United States Government. We are employed to protect the interests of our institutions, and it is our professional responsibility to serve our institutions, not the government." Since Responsible Officers are not serving the interests of

[1] Even where the Agency's formal decision making process includes noncitizens, such as in a binational board, there is always representation of American citizens in an at least an equal number on the board. Furthermore, such input is undertaken only pursuant to a government to government agreement. The responsibility for signing the IAP-66 forms rests with the USIS officers at the Agency Posts abroad.

the United States Government but rather their institutions, and the interests of the institution may not always coincide with the interests of the United States Government, indeed may sometimes conflict, and these Responsible Officers are entrusted with review of participants in a foreign relations program to ensure that the selection conforms with the designation, the Agency must impose certain restrictions on the programs. Where the organization is foreign, the Agency runs too high a risk that the interests of the organization are not in concert with those of the United States Government, and that individuals selected to participate in exchange programs are not in keeping with the intent of the program, but rather that the participants are selected to further the interests of the foreign organization. With regard to Responsible Officers who are citizens, and who owe allegiance to the United States, the Agency believes that they are more likely than aliens to weigh their actions carefully when their employers' interests conflict with those of the United States Government.

Third, the designation of a sponsor confers a grave responsibility on that sponsor. Upon designation, the sponsor is issued blank controlled United States Government forms. The forms in the hands of the wrong persons can do great damage to the interests of the United States. Moreover, the scheme set forth in the Immigration and Nationality Act expresses the intent of Congress that it would define who could come to the United States, and under what circumstances. Because Congress provided that different terms and conditions would apply to the different visas, it is important that the Agency administer the exchange program in such a way as to limit its access to only those aliens Congress intended to be included in the program. The Agency believes it can best ensure the integrity of the program and the proper use of the forms if access to the forms is confined to United States citizens.

The assertion that the Agency's proposal is inconsistent with other visas used for business purposes is inapposite. The J visa is not a business visa. It is not to be used for business purposes. It is a visa exclusively for educational and cultural exchange. Furthermore, to qualify for the visas to which the party refers, the E, L, and H, the prospective sponsor must petition directly to the Immigration and Naturalization Service on behalf of the individual alien. The alien in possession of a form IAP-66, stating that he/she is eligible for a J visa is not subjected to the strenuous screening applicants for the other named visas are subjected. In the other visas, for example, each petition by a sponsor on behalf of an alien is put through several levels of review, on a case by case basis, in the United States before the alien abroad is issued a document which can be presented to the Consul abroad. In the exchange program, only the sponsor makes the determination prior to presentation to the Consul abroad. Consequently, a higher standard of review must be applied to the sponsor at the outset. Thus this assertion that the proposal will jeopardize other treaties is, again, inapposite. The referenced treaties are related to business and commerce. There are adequate visas for implementation of these treaties. The J visa implements educational and cultural agreements.

The Agency is concerned about preserving the integrity of the J visa program and maintaining control over the program itself, the sponsors, and the forms. The Agency apprehends that if certificates of eligibility for J visas are controlled by aliens who are in turn subject to control by aliens in other countries, the Agency will experience considerably diminished effective control over the administration of its exchange programs and over compliance by sponsors, their responsible officers and even exchange visitors with U.S. labor and immigration laws. The Agency questions whether the alien responsible officers and other officials of foreign corporate sponsors will be adequately motivated to observe the purpose and intent of the Exchange Visitor Program. Consequently, the Agency is persuaded that there exists a legitimate governmental purpose in restricting both sponsorship and the control of certificates of eligibility to American citizens.

Some parties argue that such a proposal is unconstitutional. In order to pass constitutional muster, the proposed regulation must meet two tests: USIA may exclude noncitizens from designations as sponsors and Responsible Officers if (1) the justification for such an action is rationally related to a federal interest, and (2) that federal interest is properly the concern of the USIA. (See *Mathews* v. *Diaz*, 426 U.S. 67 (1976); *Chevron U.S.A.* v. *Natural Resources Defense Council*, 467 U.S. 837, 865 (1984); *Hampton* v. *Mow Sun Wong*, 426 U.S. 88 (1976); and 2 R. Rotunda, J. Nowak & J. Young, Treatise on Constitutional Law: Substance and Procedure section 18.12, at 461 (1986). The justification is rationally related to a federal interest. The Agency has shown that the involved decisions are the implementation of foreign policy. Foreign policy is indeed a federal interest. Further, that federal interest is properly the concern of the USIA. Under the Mutual Educational and Cultural Exchange Act of 1961 the Agency is required to strengthen international cooperative relations, by educational and cultural exchanges. Thus, the Agency has shown that the federal interest is properly the concern of the USIA. Accordingly, the Agency must exercise its discretion in determining "who" will best assist in its mission. Further, the Agency has given a rational basis for its decision to exclude aliens from designations. Consequently, the Agency believes its decision is constitutional.

This situation is distinguishable from that in *Hampton* v. *Mow Sun Wong*, 96 S.Ct. 1985, 1910 (1976) wherein the Court stated:

> It is the business of the Civil Service Commission to adopt and enforce regulations which will best promote the efficiency of the federal civil service. That agency has no responsibility for foreign affairs, for treaty negotiations, for establishing immigration quotas or conditions of entry, or for naturalization policies. Indeed, it is not even within the responsibility of the Commission to be concerned with the economic consequences of permitting or prohibiting the participation by aliens in employment opportunities in different parts of the national market. On the contrary, the Commission performs a limited specific function.

On the contrary, the Agency does have responsibility for foreign affairs, for treaty negotiations, for establishing conditions of entry for participants in the exchange program. Indeed, it is even within the responsibility of the Agency to be concerned with the economic consequences of permitting or prohibiting the participation by exchange visitors in employment opportunities. Accordingly, the Agency believes it has met the test as to the protection of a national interest within the realm of the Agency's responsibility.

In researching the discover precedents to help the Agency define with greater precision what it means by the term "United States citizen," the Agency discovered the following definition in the Federal Aviation Act (49 U.S.C. 1301 (13)):

> (13) "Citizen of the United States" means (a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States or of any state, territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 per centum of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

This definition responds closely to the Agency's perceived needs.

Findings and Conclusions

For the reasons stated above, the Agency finds that the exclusion of noncitizens from serving as sponsors and responsible officers is rationally related to a federal interest and that the federal interest is properly the concern of the USIA. Furthermore, the agency has determined that such exclusion is necessary to ensure the integrity of the exchange visitor program. Accordingly, the Agency is modifying the definition of citizen found in the Federal Aviation Act and inserting the modification into the Agency's regulations.

This decision does not significantly affect the quality of the human environment and is not a major or regulatory action under the Energy and Conservation Act of 1975.

This rule does not constitute a 'major rule' as that term is defined in section 1 (b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State of local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (42 U.S.C. 3501–3520) and have been assigned OMB Control Number 3116–0009.

List of Subjects in 22 CFR Part 514

Cultural exchange programs, Reporting and recordkeeping requirements.

Accordingly, 22 CFR part 514 is amended as follows:

PART 514—[AMENDED]

1. The authority citation for 22 CFR part 514 continues to read:

> **Authority:** U.S. Information and Educational Exchange Act of 1948, as amended, Pub. L. 80–402, as amended (22 U.S.C. 1431–1442); Mutual Educational and Cultural Exchange Act of 1961, as amended, Pub. L. 87–256, 75 Stat. 527, 634, 535 (8 U.S.C. 1101, 1104, 1182, 1258 and 22 U.S.C. 2451–2460); Pub. L. 97–241, 96 Stat. 1291; 66 Stat. 166, 182, 184, 204 (8 U.S.C. 1101(a)(15)(j), 1182(e), 1182(j), 1258); Pub. L. 91–225, 84 Stat. 116, 117, (8 U.S.C. 1101, 1182); Pub. L. 97–116, 95 Stat. 1611, 1612, 1613, (8 U.S.C. 1101, 1182); Reorg. Plan No. 2 of 1977; E.O. 12048 of March 27, 1978; USIA Delegation Order No. 85–5 (50 FR 27393).

2. Section 514.1 is amended by adding a definition of "Citizen of the United States" and revising the definitions of "Responsible Officer" and "Sponsor" as set forth below.

§ 514.1 Definitions.

* * * * *

Citizen of the United States means (a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is a United States citizen, or (c) a corporation or association created or organized under the laws of the United States, of which the chief executive officer, president, chairman of the board of directors, and 75 per centum of the members of the board and its other managing officers are United States citizens and in which at least 75 per centum of the stock or voting interest in owned or controlled by persons who are citizens of the United States or of one of its possessions.

* * * * *

Responsible Officer means the official of an organization sponsoring an Exchange-Visitor Program who has been listed with the Agency as being responsible for administering the program and carrying out the obligations which the organization of an Alternate Responsible Officer is permitted and encouraged. The Responsible Officer and all Alternate Responsible Officers must be United States citizens.

Sponsor means any reputable United States federal, state or local government agency or recognized international agency or organization of which the United States government is a member and has offices in the United States or a reputable organization which is a "citizen of the United States" as that term is defined by this regulation which makes application as prescribed to the Director of the United States Information Agency for designation of a program under its sponsorship as an Exchange-Visitor Program and whose application is approved. Other corporations or organizations which are not citizens of the United States as herein defined may not be designated as a sponsor.

* * * * *

Dated: July 17, 1989.

R. Wallace Stuart,

Acting General Counsel.

Appendix A

Comments on Rulemaking No. 3—Citizenship for Responsible Officers and Sponsors

Jones, Day, Reavis & Pogue
Ohio University
National Association for Foreign Students Affairs
Liaison Group for International Educational Exchange
Department of Justice, Immigration and Naturalization Service
The University of Iowa
Tony Cook Associates
University of Colorado
Department of State

[FR Doc. 89–18820 Filed 8–10–89; 8:45 am]
BILLING CODE 8230–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

23 CFR Part 659

[FHWA Docket No. 88–5]

Certification of Speed Limit Enforcement; Revision of Procedures

AGENCY: Federal Highway Administration (FHWA)/National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Correction to final rule.

SUMMARY: The Final Rule concerning the procedure for determining State compliance with the provisions of Federal law regarding maximum speed limits was issued on June 7, 1989, and published in the Federal Register at 54 FR 25565 on June 16, 1989. This rule amended the current regulation, 23 CFR Part 659, "Certification of Speed Limit Enforcement." The Rule, as issued, contained an erroneous definition at § 659.5(e), relating to the definition of "an area of 50,000 population or more." The addition of this definition to the regulation is incorrect and differs from the definition of the underlying statute, 23 U.S.C. 101(a). This action makes the

editorial correction of removing the provision at § 659.5(e).

EFFECTIVE DATE: August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Skinner, HTO-30, (202) 366-2186, Federal Highway Administration, or Ms. Kathleen DeMeter, General Law Division, (202) 366-1834, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

In consideration of the foregoing, FHWA and NHTSA make the following correction:

PART 659—CERTIFICATION OF SPEED LIMIT ENFORCEMENT

§ 659.5 [Corrected]

In FR Doc. 89-14232, published on page 25585 in the **Federal Register** of Friday, June 16, 1989, § 659.5 is corrected by removing paragraph (e).

Issued on August 3, 1989.

R.D. Morgan,

Executive Director, Federal Highway Administration.

Jeffrey R. Miller,

Acting Administrator, National Highway Traffic Safety Administration.

[FR Doc. 89-18708 Filed 8-10-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 200, 203, 204, 213, 220, 221, 222, 226, 227, 235, 237, and 240

[Docket No. R-89-1357, FR 2382]

RIN 2502-AE09

Mortgage Insurance for the Allegheny Reservation of the Seneca Nation of Indians

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: Section 203(q) of the National Housing Act authorizes the Secretary of HUD to insure mortgages on certain leased property in Salamanca, New York, within the Allegheny Reservation of the Seneca Nation of Indians. The leases terminate in February 1991 unless renewed, and the terms of renewal are uncertain. This rule explains the conditions under which the Secretary will insure mortgages on the leased property.

EFFECTIVE DATE: October 5, 1989.

FOR FURTHER INFORMATION CONTACT: Stephen A. Martin, Director, Office of Insured Single Family Housing, Department of Housing and Urban Development, Room 9266, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-3046. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2502-0370. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, Findings and Certifications. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Section 203(q) of the National Housing Act (12 U.S.C. 1709(q)) was enacted as part of Pub. L. 99-601, November 5, 1986, and amended by Pub. L. 100-242, February 5, 1988. This provision authorizes the Secretary of HUD to insure mortgages on certain leased property within the Allegheny Reservation of the Seneca Nation of Indians, primarily in Salamanca, NY. Section 203(q) was needed before mortgage insurance could be granted because the property in question involves ground leases with terms expiring in February 1991 (with certain rights of extension).

On December 21, 1987, the Department published an interim rule to implement section 203(q) (52 FR 48197). Subsequently, the Department announced an effective date of March 28, 1988 for the interim rule. A correction to the interim rule was published on April 25, 1988 (53 FR 13404), to provide that certain provisions in the rule were not dependent upon publication of an effective date for the independent rule, published on March 5, 1987, relating to Temporary Mortgage Assistance Payments (TMAP). The Department began insuring mortgages upon the interim rule taking effect.

An extensive description of the background of section 203(q) and the reasons for the provisions of the interim rule may be found in the preamble to that interim rule. They will not be repeated here. However, a brief summary is needed here in order to provide a framework for discussion of the public comments.

The properties covered by section 203(q) are single family residential properties subject to ground leases given by the Seneca Nation of Indians under authority of Federal statutes enacted in 1875 and 1890. The leases are scheduled to expire in February 1991; the lessees have a right to renewal for up to 99 years on such conditions as may be agreed upon with the Seneca Nation, or on terms fixed by arbitrators. (Each party would select one arbitrator; the arbitrators would select a third arbitrator if needed.) Mortgage financing for the affected properties became unavailable as the lease termination date approached without renegotiated lease renewals of appointment or arbitrators.

HUD was required under section 203(q) to make mortgage insurance available in order that prudent mortgage lenders could extend financing on the basis of current leases and the associated rights of mortgagors/lessees to lease renewals. The interim rule required several steps to increase the likelihood of timely renewal of leases which secure insured mortgages. Special language was to be added to each insured mortgage which would permit foreclosure if the mortgagor failed to take the necessary steps to obtain renewal (in particular, if the mortgagor failed to appoint an arbitrator by September 19, 1989) or permit the mortgagee to seek lease renewal on behalf of the mortgagor. Each mortgagor was also required to enter into a separate agreement with HUD, in which the mortgagor would promise to seek lease renewal (including appointment of an arbitrator by September 19, 1989) and empower HUD to seek lease renewal on behalf of the mortgagor. The rule allowed the Seneca Nation also to be a party to the HUD agreement. The rule limited mortgage insurance to purchase money mortgages for owner occupants and specifically excluded refinancing mortgages.

Comments were received from the City of Salamanca, New York (which includes most of the property affected by the interim rule), legal counsel for the Seneca Nation of Indians, and one individual. Representatives of the

Department met with representatives of the City and the Seneca Nation before program implementation began and the Department's initial responses to their comments have been previously communicated to them. As a result of the Department's review and evaluation of the comments, this final rule contains one substantive change from the interim rule.

The City of Salamanca questioned whether February 1991 was the outside date for insurance under the interim rule. Section 203(q) was specifically intended to make mortgage insurance available under special terms because of the short remaining lease terms, and HUD does not interpret the statute as authorizing insurance for mortgages signed after the leases should have been extended (i.e., after February 1991). However, any insurance granted before the scheduled lease termination date will be incontestable for the life of the mortgage, in the absence of mortgagee fraud or misrepresentation, as provided in section 203(e) of the National Housing Act. The City also objected to allowing the Seneca Nation to be a party to the separate agreement between HUD and the mortgagor, on the grounds that each mortgagor had rights (including arbitration) which were not subject to agreement by the Seneca Nation. HUD continues to believe that an advance requirement between interested parties on the specific arbitration arrangements would be useful. However, the Department's contacts with the Seneca Nation regarding possible terms of such an agreement have not been fruitful to date and the Department expects to continue using its current HUD-mortgagor agreement. No change in rule language is needed to continue the current practice.

In a further comment, the City expressed concern over the indefiniteness in the interim rule regarding when HUD might exercise remedies against the mortgagor for inadequate efforts regarding lease renewal. We agree with the City that failure specifically to describe the required actions could have been a problem; however, the loan documents drafted by HUD and currently in use do specify the actions, and we believe that repetition of those specific actions in this final rule text is not needed.

The City also questioned how HUD would estimate future lease payments for underwriting purposes. The preamble to the interim rule stated: "* * * HUD expects initially to use * * * the highest level proposed by the Seneca Nation in negotiations until HUD has reason to conclude that a lesser rent level is a likely outcome of negotiations or arbitration" (52 FR 48199). Before HUD began insuring mortgages under the interim rule, the HUD Buffalo Office did receive additional information enabling it to make better projections of reasonable future lease payments. The rule text does not specify the method of estimating payments and does not need modification.

The interim rule provided for possible suspension of the section 203(q) program where actual experience showed an unacceptable default or claim rate. The City suggested that HUD should not act if the default rate occurs due to "outside influences which are temporary and correctable." HUD does not expect to suspend the program unless it is clear that the actual risks significantly exceed those anticipated by Congress when it enacted section 203(q). It is the Department's understanding, however, that section 203(q) is not designed to require the Department to accept special risks other than those associated with possible lease termination, and that it is also consistent with the law for the Department to react to specific indications that lease renewals are not occurring or will not occur as expected.

The City also argued that the program should not be limited to financing home purchases, but that home mortgage refinancing, apartment financing and home equity loans were other important needs for mortgage money which the rule should address. The statute only authorizes mortgage insurance under section 203(b) of the National Housing Act (as modified by section 203(q)); as a result, insurance is only legally available for first mortgages on homes. However, the law does allow insurance of refinancing mortgages on owner-occupied homes. The City's comments state: "Refinancing is * * * important because we have a number of past home purchasers who mortgaged with the seller and the mortgages will balloon. Such persons so mortgaged in anticipation that the lease situation would be resolved or that the Federal government would do something in aid of the well-known situation." The Department agrees that it is appropriate to use the special section 203(q) insurance authority to address the balloon mortgage situation, since persons with such mortgages are in immediate danger of losing their homes because of the lack of available uninsured financing. The final rule contains a change to 24 CFR 203.43j(e) to address this problem.

Finally, the City commented that determination of value should be made in the usual manner for insured leasehold mortgages. HUD agrees, with the exception that the assumed, rather than actual, rent must be used. No rule change is needed.

The individual who submitted comments urged withdrawal of the entire rule, and stated that the right to negotiate the future of Salamanca should be left to the City of Salamanca and the Seneca Nation. HUD is required to implement the statute, and the statutory scheme is sufficiently general that validly promulgated regulations are needed to fill in the details of the program. While HUD has attempted to minimize interference with negotiations, it believes it must require that mortgagors negotiate or otherwise assert their legal rights as leaseholders in order to preserve value in the insured mortgages.

The Seneca Nation also commented on the interim rule. It suggested that steps which a mortgagor must take toward lease renewal to avoid default should be spelled out in the rule. We do not agree that this level of detail is necessary in the rule. At closing, each mortgagor signs documents explaining his or her responsibilities. In particular, the mortgagor must sign a letter to the Seneca Nation giving notice that the mortgagor is exercising his or her option to renew the lease, and an agreement with HUD providing, in part, that the mortgagor will name an arbitrator by September 19, 1989, if there is no agreement on the terms of renewal by then. (HUD may review and adjust these requirements as September 19, 1989 gets nearer.) The Seneca Nation also indicated interest in joining as a party in the agreement between HUD and the mortgagor, as allowed by § 203.43j(c). No form of agreement including the Seneca Nation has been reached to date, but the final rule will allow such an agreement. The Seneca Nation agreed that § 203.43j(f) should be implemented, as suggested in the interim rule preamble, by using the highest rent level proposed in negotiations as the estimated future rent level for underwriting purposes, and requested that this approach be included in the rule text. As discussed above, HUD has now received better information to use in estimating future rents.

Finally, with reference to § 203.350(d), which authorizes HUD to accept assignment of mortgages in default, the Seneca Nation requested that it be given notice of default and a first option to acquire the mortgage. HUD does not regard these requests as relevant to the basic purpose of § 203.350(d). As explained in the preamble to the interim rule, HUD concluded that it should

provide for the possibility of assignment so that mortgages would have some protection from involvement in complex lease renewal problems beyond those a mortgagee could reasonably be expected to handle.

Findings and Certifications

This rule does not constitute a "major rule" as that term is defined in section (b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy on $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule only provides for a limited number of mortgages on homes in Salamanca, New York, to be insured during a limited period of time. It should provide new economic opportunities equally to large and small entities by enabling them to obtain mortgage loans on a financially feasible basis for the first time in recent years.

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Sections 203.606 (b) and (c) of this rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

Description of information	Section of 24 CFR affected	Number of respondents	Total annual responses	Hours per response	Total hours
Information needed for assignments	203.606 (b) and (c)	10	5	50	27.5

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. The rule, pursuant to a statutory mandate, implements a special mortgage insurance program limited to a specific geographical area. Except where required by the statute, the special program operates within the existing, established framework of the FHA insurance programs. While it should have a significant impact on one, peculiarly situated, political subdivision of a state, the effect of the rule is to provide special relief of that subdivision as mandated by the Congress. The rule does not in any way preempt state law nor does it require use of the special mortgage insurance program it provides for.

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule does not have a potentially significant impact on family formation, maintenance, and general well-being, and thus, is not subject to review under the Order. The rule is very limited in scope, being confined to a specific geographical area. It provides special relief to mortgagor families within that area by making otherwise unavailable Federal mortgage insurance available to families within the area for a limited period of time.

This rule was listed in the Department's Semiannual Agenda of Regulations published on April 24, 1989 (54 FR 16710, 16728) under Executive Order 12291 and the Regulatory Flexibility Act at sequence number 954.

The mortgage insurance program is listed in the Catalog of Federal Domestic Assistance under the following number: 14.117.

List of Subjects

24 CFR Part 200

Administrative practice and procedures, Mortgage insurance.

24 CFR Part 203

Home improvement, Loan program; Housing and community development; Mortgage insurance; Solar energy.

24 CFR Part 204

Mortgage insurance.

24 CFR Part 213

Mortgage insurance; Cooperatives.

24 CFR Part 220

Home improvement; Mortgage insurance; Urban renewal; Rental housing; Loan programs; Housing and community development; Projects.

24 CFR Part 221

Condominiums; Low and moderate income housing; Mortgage insurance; Displaced families; Single family housing; Projects; Cooperatives.

24 CFR Part 222

Condominiums; Military personnel; Mortgage insurance.

24 CFR Part 226

Government employees; Mortgage insurance; Single family housing.

24 CFR Part 227

Federally affected areas; Defense housing; Mortgage insurance.

24 CFR Part 234

Condominiums; Mortgage insurance; Homeownership; Projects; Units.

24 CFR Part 235

Condominiums; Cooperative; Low and moderate income housing; Mortgage insurance; Homeownership; Grant programs; Housing and community development.

24 CFR Part 237

Low and moderate income housing, Mortgage insurance.

24 CFR Part 240

Mortgage insurance; Fee title purchase.

Accordingly, the Department adopts all of the revisions contained in the interim rule of December 21, 1987 (52 FR 48197) and the correction to the interim rule of April 25, 1988 (53 FR 13404), without change, except § 203.43j(e).

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for Part 203 continues to read as follows:

Authority: Secs. 203 and 211, National Housing Act (12 U.S.C. 1709, 1715(b)); 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, Subpart C is issued under Sec. 230, National Housing Act (12 U.S.C. 1715u).

2. Section 203.43j(e) is revised to read as follows:

§ 203.43j Eligibility of Mortgages on Allegheny Reservation of Seneca Nation of Indians

* * * * *

(e) *Owner-occupant purchase or refinance.* The mortgagor must be either a purchaser intending to occupy the property as a principal residence, or a current owner-occupant refinancing a mortgage which is now due or which will become due before the lease termination date in February 1991.

* * * * *

Dated: July 18, 1989.

John R. Ambrogne, Jr.,

Acting General Deputy, Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 89-18765 Filed 8-10-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 146

[CGD 84-098b]

Emergency Evacuation Plans for Manned OCS Facilities

AGENCY: Coast Guard, DOT.

ACTION: Notice of Effective Date of Information Collection Requirements.

SUMMARY: The Office of Management and Budget (OMB) has approved the information collection requirements in §§ 146.140 and 146.210 of the final rule on Emergency Evacuation Plans for manned OCS facilities published in the **Federal Register** on May 18, 1989 (54 FR 21566) and has assigned OMB Control Number 2115-0580. OMB approval of information collection requirements is required before those requirements may be made effective. The provisions approved concern the development of emergency evacuation plans and their submission to the Coast Guard for review. Emergency evacuation plans for OCS facilities existing on June 19, 1989, including mobile offshore drilling units, must be submitted to the Coast Guard before December 18, 1989.

These provisions are being made effective on the date of publication of this notice because they were published as part of a final rule on May 18, 1989, more than 30 days ago.

In a separate document to be published at a later date, the Coast Guard will amend 33 CFR part 4 to include this approval number.

EFFECTIVE DATE: August 11, 1989.

FOR FURTHER INFORMATION CONTACT: LCDR Anthony Dupree or LCDR Steve Ciccalone, Merchant Vessel Inspection and Documentation Division, (202) 267-2307.

Dated: August 3, 1989.

M. J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-18666 Filed 8-10-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3627-1]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Early Delegation of Authority for the Nitrogen Dioxide Increment Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is advancing the effective date of the prevention of significant deterioration (PSD) increments for nitrogen dioxide (NO_2) found at 40 CFR 52.21 to October 17, 1989, in New Hampshire's State Implementation Plan. The intended effect of this action is to advance the effective date of the NO_2 increments provisions of 40 CFR 52.21 from November 19, 1990, to October 17, 1989, in the State of New Hampshire by amending 40 CFR Part 52, Subpart EE—New Hampshire, § 52.1529. This notice also announces that the State of New Hampshire has negotiated an amendment to its delegation agreement with EPA to implement the PSD requirements of 40 CFR 52.21 including protection of the NO_2 increments as a criterion for PSD issuance effective October 17, 1989.

EFFECTIVE DATE: This action will become effective October 10, 1989, unless notice is received within 30 days that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203; and Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302-2033.

FOR FURTHER INFORMATION CONTACT: Lynne A. Hamjian, (617) 565-3246; FTS 835-3246.

SUPPLEMENTARY INFORMATION: On October 17, 1988 (53 FR 40656), EPA promulgated ambient air quality increments for NO_2 under the PSD regulations at 40 CFR Part 51 and 40 CFR Part 52. The effective date promulgated for the NO_2 increments in Part 51 is October 17, 1989. However, the effective date promulgated for the NO_2 increments in Part 52 is November 19, 1990.

This means that a State which adopted PSD regulations pursuant to 40 CFR Part 51, and had those regulations approved by EPA as revisions to its State Implementation Plan (SIP) can adopt and implement requirements to protect the NO_2 increments as early as October 17, 1989 (12 months from the October 17, 1988 promulgation date). Such a State may wait to revise the PSD regulations in its SIP for up to nine months after the effective date. The implementation of protection of the NO_2 increments could, therefore, occur as late as November 19, 1990, in such a State (25 months after the November 17, 1988 promulgation date). However, many States implement the requirements for PSD via authority delegated to them by EPA to implement 40 CFR 52.21. EPA federally promulgated the provisions of 40 CFR 52.21 into these States SIPs because they did not adopt and submit State regulations for incorporation into their SIPS pursuant to 40 CFR Part 51 requirements. These federal promulgations are codified in each State's respective subpart of 40 CFR Part 52 (in New Hampshire's case at 40 CFR Part 52, Subpart EE—New Hampshire, § 52.1529).

Because the effective date of the NO_2 increments promulgated in 40 CFR 52.21 is November 19, 1990, States with PSD

authority via delegation of the provisions of 40 CFR 52.21 (e.g., New Hampshire) cannot, in general, implement protection of NO_2 increments until that date. In recognition that protection of the NO_2 increments is available as early as October 17, 1988, to a State which adopted PSD regulations pursuant to Part 51 and had them incorporated into its SIP, EPA stated in the Federal Register notice promulgating the NO_2 increments that it will advance the general effective date of Part 52 on a case-by-case basis pursuant to a State's request.

On February 15, 1989, EPA's Office of Air Quality Planning and Standards issued a guidance memorandum entitled, "Guidance on Early Delegation of Authority for the Nitrogen Dioxide (NO_2) Increments Program." This memorandum outlines the requirements that a State must include in its amended delegation agreement and the procedure which EPA must follow to advance the general effective date of 40 CFR Part 52 NO_2 increment regulations. The State must submit an amended delegation agreement to EPA for review and approval. The amended PSD delegation agreement must—

(1) Explain how the State plans to meet the new NO_2 increment requirements,

(2) Demonstrate that the State has adequate legal authority under State law to accept the delegation,

(3) Address how the State will determine increment consumed since February 8, 1988, and how it will correct possible exceedances,

(4) Address how the State will track increment consumption in the future, and

(5) Contain a stipulation by the appropriate State official that it does not intend to submit the necessary Part 51 State Implementation Plan (SIP) revisions within 21 months of the promulgation of the NO_2 increment regulations.

These criteria and how they are met in New Hampshire's amended delegation agreement are detailed in a memorandum dated July 18, 1989 entitled, "Technical Support Document—Advancement of the Effective Date of the PSD Nitrogen Dioxide Increment Program in the State of New Hampshire at 40 CFR 52.1529." Copies of this document are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this notice. EPA has evaluated New Hampshire's request and has determined that the New Hampshire's May 2, 1989 submittal meets all of the criteria in EPA's guidance.

EPA is advancing the effective date of the NO_2 increments regulations in the State of New Hampshire without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this Federal Register notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdrawn the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on October 10, 1989.

Final Action

EPA is advancing the effective date of the PSD increment provisions for NO_2 in 40 CFR 52.21(b) through (w) from November 19, 1990 to October 17, 1989 in the State of New Hampshire by amending 40 CFR part 52, subpart EE—New Hampshire, § 52.1529 to include the advanced date.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Nitrogen dioxide, Prevention of significant deterioration.

Dated: July 28, 1989.

Stephen F. Ells,

Acting Regional Administrator Region I.

Subpart EE, Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart EE—New Hampshire

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1529 is amended by adding paragraph (c) to read as follows:

§ 52.1529 Significant deterioration of air quality

* * * * *

(c) The revisions promulgated on October 17, 1988 (53 FR 40671) to §§ 52.21 (b) through (w) including increment provisions for nitrogen dioxide are hereby incorporated and made a part of the applicable State Implementation Plan for the State of New Hampshire. The effective date of the revisions promulgated on October 17, 1988 to §§ 52.21 (b) through (w) are hereby advanced from November 19, 1990 to October 17, 1989 in the State of New Hampshire.

[FR Doc. 89-18835 Filed 8-10-89; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 60

[AD-FRL-3625-6]

Standards of Performance for New Stationary Sources: Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels); Correction and Clarification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction and clarification.

SUMMARY: This document clarifies and corrects several aspects of the new source performance standards for volatile organic liquid (VOL) storage vessels (including petroleum liquid storage vessels) subpart Kb which was promulgated April 8, 1987 (52 FR 11420).

EFFECTIVE DATE: April 8, 1987.

FOR FURTHER INFORMATION CONTACT: Doug Bell or Laura Butler, Standards Development Branch, ESD (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5568 or (919) 541–5267, respectively.

SUPPLEMENTARY INFORMATION: This action is necessary in order to make the following corrections and clarifications:

(1) To correct typographical errors in §§ 60.110b(c) and 60.113b(a)(2).

(2) To clarify that the regulation applies only to stored liquids that are VOL's stored in the volume range and at the vapor pressure range specified in § 60.112b of the standards. This has been clarified by adding the words "VOL's to the definition of "maximum true vapor pressure" in § 60.111b of the standards.

(3) To clarify the visual inspection requirements of an internal floating roof storage vessel in § 60.113b of the regulation that was published in the Federal Register on April 8, 1987 (52 FR 11420). This notice clarifies that an owner or operator of a storage vessel who chooses to install a double-seal system as specified in § 60.112b(a)(1)(ii)(B) and then chooses to conduct an annual visual inspection of the double-seal system must also conduct an internal inspection at intervals no greater than 10 years. This section also clarifies that an owner or operator who chooses to install a double-seal system may conduct an internal inspection at intervals no greater than 5 years, instead of the annual visual inspection. If the operator equips the storage vessel with a double-seal system and conducts an internal inspection every 5 years, the controls are considered equivalent to a single seal system and annual visual inspection.

These corrections and clarifications do not change the requirements of the regulation. They primarily clarify minor technical ambiguities that have been identified during the implementation of the standards.

List of Subjects in 40 CFR Part 60

Air pollution control, Environmental protection, Petroleum.

Dated: August 4, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

For reasons set out in the preamble, 40 CFR Part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7411 and 7601(a).

2. Section 60.110b is amended by revising paragraph (c) to read as follows:

§ 60.110b Applicability and designation of affected facility.

* * * * *

(c) Except as specified in paragraphs (a) and (b) of § 60.116b, vessels either with a capacity greater than or equal to 151 m^3 storing a liquid with a maximum true vapor pressure less than 3.5 kPa or with a capacity greater than or equal to 75 m^3 but less than 151 m^3 storing a liquid with a maximum true vapor pressure less than 15.0 kPa are exempt from the General Provisions (Part 60, Subpart A) and from the provisions of this subpart.

* * * * *

3. Section 60.111b is amended by revising paragraph (f) introductory text to read as follows:

§ 60.111b Definitions.

* * * * *

(f) "Maximum true vapor pressure" means the equilibrium partial pressure exerted by the stored VOL at the temperature equal to the highest calendar-month average of the VOL storage temperature for VOL's stored above or below the ambient temperature or at the local maximum monthly average temperature as reported by the National Weather Service for VOL's stored at the ambient temperature, as determined:

* * * * *

4. Section 60.113b is amended by revising paragraph (a)(2) to read as follows:

§ 60.113b Testing and procedures.

* * * * *

(a) * * *

(2) For Vessels equipped with a liquid-mounted or mechanical shoe primary seal, visually inspect the internal floating roof and the primary seal or the secondary seal (if one is in service) through manholes and roof hatches on the fixed roof at least once every 12 months after initial fill. If the internal floating roof is not resting on the surface of the VOL inside the storage vessel, or there is liquid accumulated on the roof, or the seal is detached, or there are holes or tears in the seal fabric, the owner or operator shall repair the items or empty and remove the storage vessel from service within 45 days. If a failure that is detected during inspections required in this paragraph cannot be repaired within 45 days and if the vessel cannot be emptied within 45 days, a 30-day extension may be requested from the Administrator in the inspection report required in § 60.115b(a)(3). Such a request for an extension must document that alternate storage capacity is unavailable and specify a schedule of actions the company will take that will assure that the control equipment will be repaired or the vessel will be emptied as soon as possible.

* * * * *

5. Section 60.113b is amended by revising paragraph (a)(4) to read as follows:

§ 60.113b Testing and procedures.

* * * * *

(a) * * *

(4) Visually inspect the internal floating roof, the primary seal, the secondary seal (if one is in service), gaskets, slotted membranes and sleeve seals (if any) each time the storage vessel is emptied and degassed. If the internal floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal or the seal fabric, or the gaskets no longer close off the liquid surfaces from the atmosphere, or the slotted membrane has more than 10 percent open area, the owner or operator shall repair the items as necessary so that none of the conditions specified in this paragraph exist before refilling the storage vessel with VOL. In no event shall inspections conducted in accordance with this provision occur at intervals greater than 10 years in the case of vessels conducting the annual visual inspection as specified in paragraphs (a)(2) and (a)(3(ii) of this section and at intervals no greater than 5 years in the case of vessels specified in paragraph (a)(3)(i) of this section.

* * * * *

[FR Doc. 89-18598 Filed 8-10-89; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 271

[FRL-3526-7]

Guam; Final Authorization of Territorial Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The Territory of Guam has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Guam's application and has made a decision, subject to public review and comment, that Guam's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Guam's hazardous waste programs revisions. Guam's application for program revision is available for public review and comment.

DATES: Final authorization for Guam shall be effective October 10, 1989 unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Guam's program revision application must be received by the close of business September 10, 1989.

ADDRESSES: Copies of Guam's program revision application are available during the business hours of 9:00 a.m. to 5:00 p.m. at the following addresses for inspection and copying:

Guam Environmental Protection Agency, I T & E Harmon Plaza, Complex Unit D–107, 130 Rojas Street,

Harmon, Guam 96911 Phone: 671/646-8865.
U.S. EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC 20460 Phone: 202/382-5926.
U.S. EPA Region IX Library-Information Center, 215 Fremont Street, San Francisco, CA 94105 Phone: 415/974-8076.

Written comments should be sent to April Katsura, U.S. EPA Region IX (T-2-5), 215 Fremont Street, San Francisco, CA 94105 Phone: 415/974-0771.

FOR FURTHER INFORMATION CONTACT: April Katsura at the above address, Phone: 415/974-0771.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260-266 and 124 and 270.

B. Guam

Guam initially received final authorization on January 27, 1986. Guam received final authorization for revisions to its program on May 22, 1988. On May 9, 1989, Guam submitted a program revision application for additional program approvals. Today, Guam is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Guam's application, and has made an immediate final decision that Guam's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Guam. The public may submit written comments on EPA's immediate final decision up until September 10, 1989. Copies of Guam's application for program revision are available for inspection and copying at the locations indicated in the "ADDRESSES" section of this notice.

Approval of Guam's program revision shall become effective in 60 days unless an adverse comment pertaining to the Territory's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Guam is applying for authorization for the following Federal hazardous waste statute and regulations:

Federal requirement	Territory authority
• Listing of Spent Pickle Liquor (K062) (51 FR 29320, May 26, 1986), as amended (51 FR 33612, Sept. 22, (1986).	10 Guam Code Annotated (GCA) section 51103(a)(11); Hazardous Waste Management Regulations (HWMR) Part III.A.
• Regulation of the Hazardous Components of Radioactive Mixed Waste (51 FR 24504, July 3, 1986).	10 GCA section 51102(8) and (22) and section 51103(a)(11).
• Standards for Hazardous Waste Storage and Treatment Tank Systems (51 FR 25470, July 14, 1986) including portions promulgated under HSWA.	10 GCA section 51103(a)(11); HWMR parts II.A, B, C.20 and D.7; III.A and B; IV.A and B; VI.A, B and G; VII.A, B, and G-M; and IX.A and B.
• Liability Coverage (51 FR 25350, July 11, 1986).	10 GCA section 55103(a)(11); HWMR parts VI.A and VII.A
• Corrections to Listing of Commercial Chemical Products and Appendix VIII Constituents (51 FR 28296, August 6, 1986).	10 GCA section 51103(a)(11); HWMR part III.A.
• Revised Manual SW-846; Amended Incorporation by Reference (52 FR 8072, March 16, 1987).	10 GCA section 51103(a)(11); HWMR parts II.B and IX.A.
• Closure/Post-Closure Care for Interim Status Surface Impoundments (52 FR 8704, March 19, 1987).	10 GCA section 51103(a)(11); HWMR part VII.A and B.
• Definition of Solid Waste Technical Corrections (52 FR 21306, June 5, 1987).	10 GCA section 51103(a)(11); HWMR parts III.A and B and VIII.A.
• Amendments to Part B Information Requirements for Disposal Facilities (52 FR 23447, June 22, 1987).	10 GCA section 51103(a)(11); HWMR part IX.A and B.

Guam's program revision contains no Territorial requirements that are broader in scope than the relevant Federal requirements. Guam will not have issued any Territorial hazardous waste permits prior to being authorized for the above program revisions. The Territorial program does not include jurisdiction over Indian Lands, because there are no Indian Lands in Guam.

C. Decision

I conclude that Guam's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Guam is granted final authorization to operate its hazardous waste program as revised. Guam has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. Guam also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under The Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Guam's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the Territory. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 11, 1989.

John Wise,
Acting Regional Administrator.

[FR Doc. 89-18383 Filed 8-10-89; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF DEFENSE

48 CFR Part 215

[Defense Acquisition Circular 88-11]

Department of Defense Federal Acquisition Regulation Supplement (DFARS)

AGENCY: Department of Defense (DoD).
ACTION: Final rules; correction.

SUMMARY: This document corrects a final rule (Defense Acquisition Circular 88-11) which was published in the Federal Register on Wednesday, July 26, 1989, 54 FR 31035. This action is necessary to delete coverage which was inadvertently added and not part of the approved text.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7266.

Charles W. Lloyd,
Executive Secretary, Defense Acquisition Regulatory Council.

Accordingly, the Department of Defense is correcting 48 CFR part 215 as follows:

PART 215—[CORRECTED]

215.806-2 [Corrected]

215.806-3 [Corrected]

1. On page 31038, paragraph 5 of the amendatory language is corrected to read: "Section 215.806-3 is added to read as follows:", and section 215.806-2 is removed in its entirety.

[FR Doc. 89-18773 Filed 8-10-89; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Final Frameworks for Selecting Early Hunting Seasons on Certain Migratory Game Birds in the United States, Including Alaska, and Puerto Rico and the Virgin Islands, for the 1989-90 Season

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Final rule.

SUMMARY: This rule prescribes final frameworks (i.e., the outer limits for dates and times when shooting may begin and end, hunting areas, and the numbers of birds which may be taken and possessed) for early-season migratory bird hunting regulations from which States and Puerto Rico and the Virgin Islands may select season dates and daily bag and possession limits for the 1989-90 season. These seasons may open prior to October 1, 1989.

DATE: Effective on August 11, 1989. Selected season dates are to be transmitted to the U.S. Fish and Wildlife Service (hereinafter the Service) for publication in the Federal Register as amendments to §§ 20.103 through 20.106 and 20.109 of 50 CFR Part 20.

ADDRESSES: Season selections from States and Territories are to be mailed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634—Arlington Square, Washington, DC 20240. Comments received are available for public inspection during normal business hours at the Service's office in Room 634, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Byron K. Williams, Acting Chief, Office of Migratory Bird Management, Department of the Interior, Washington, DC 20240, telephone (703) 358-1714.

SUPPLEMENTARY INFORMATION: On March 27, 1989, the U.S. Fish and Wildlife Service published for public comment in the Federal Register (54 FR 12534) initial proposals to amend 50 CFR Part 20, with comment periods ending July 23, 1989, for early-season frameworks and August 28, 1989, for late-season frameworks. The March 27, 1989, document dealt with establishment of seasons, limits and shooting hours for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. A supplemental proposed rulemaking for both the early and late hunting season frameworks appeared in the Federal Register dated June 6, 1989 (54 FR 24290).

On June 22, 1989, a public hearing was held in Washington, DC, to review the status of woodcock, band-tailed pigeons, mourning, white-winged and white-tipped doves, sandhill cranes and other species. The meeting was announced in the Federal Register on March 27, 1989 (54 FR 12534) and June 6, 1989 (54 FR 24290). Proposed hunting regulations were discussed for these species and for rails; moorhens and gallinules; common snipe; sea ducks in the Atlantic Flyway; September teal; experimental September duck seasons in identified States; experimental and special September Canada goose seasons in portions of identified States; doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. Public comments on these matters were received.

On July 13, 1989, the Service published in the Federal Register (54 FR 29340) a third document in the series of proposed and final rulemaking documents. The third document dealt specifically with proposed frameworks for the 1989-90 season. When published in a fourth document as final frameworks, wildlife conservation agency officials may select season dates and bag limits for hunting certain migratory birds in their respective jurisdictions during the 1989-90 season.

This rulemaking is the fourth in the series, and deals specifically with final frameworks for early-season migratory game bird hunting regulations from which wildlife conservation agency officials from the States, Pureto Rico, and the Virgin Islands may select season dates and daily bag and possession limits for the 1989-90 season. These seasons may open prior to October 1, 1989, and apply to mourning white-winged and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sea ducks in the Atlantic Flyway; experimental September duck seasons in identified States; experimental and special September Canada goose seasons in portions of identified States; sandhill cranes in the Central and Pacific Flyways; doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. Late seasons include the general waterfowl seasons; coots; moorhens; gallinules and common snipe in the Pacific Flyway; and remaining extended falconry seasons.

Review of Public Comments

Public hearing and written comments received through July 23, 1989, relating to proposed early season frameworks are discussed and addressed here. The comments are discussed in the same order as the numbered items to which they apply. Only current numbered items are included. A continuous list of all the numbered items used in Service documents appeared in the March 27, 1989, Federal Register (54 FR 12534).

1. Shooting Hours

Public Hearing Comments: Mr. Ronnie R. George, representing the Central Flyway Council and the Texas Parks and Wildlife Department, presented a statement opposing restrictive shooting hours for early-season regulations.

Written Comments: The Atlantic, Central, and Pacific Flyway Councils; the Lower Region Regulations Committee of the Mississippi Flyway Council; the States of Alaska, Arizona, Arkansas, California, Colorado, Florida, Minnesota, Missouri, Montana, New York, Oklahoma, South Carolina, Tennessee, and Texas; North Dakota Tourism Promotion; Ducks Unlimited, Alaska Waterfowl Association, California Waterfowl Association, Louisiana Wildlife Federaton, National Rifle Association, Sportsman Conservationists of Texas, and South Carolina Waterfowl Association; 6 local organizations; and 22 individuals opposed restrictive shooting hours as originally proposed in the March 27, 1989, Federal Register (at 54 FR 12539), for the 1989–90 migratory bird hunting season. The State of Wisconsin and 2 individuals were in favor of restrictive shooting hours.

Response: After further review, the Service concluded that restrictive shooting hours were not warranted for early-season hunting seasons. Restrictive shooting hours for early season species would not benefit duck populations which are low in numbers and may further discourage hunters from participating in hunting seasons and reduce support for habitat and management efforts. Late-season shooting hours will be determined at the same time as other late-season regulations are set.

5. Sea Ducks

Written Comments: A sportsman's organization supported the proposal for the 107-day season and for a bag limit of 7 sea ducks.

Response: The Service will continue a 107-day season with a bag limit of 7 sea ducks.

6. September Teal Season

Public Hearing Comments: Mr. Ronnie R. George, representing the Central Flyway Council and the Texas Parks and Wildlife Department, presented a statement in support of the September teal season.

Written Comments: The Central Flyway Council; the Southern Region Regulations Committee of the Mississippi Flyway Council; the States of Arkansas, Colorado, and Louisiana; 2 organizations, 1 member of Congress, and 27 individuals from Texas; and 1 individual from Oklahoma requested that the September teal season be reinstated with restrictions as necessary. Arguments presented include:

a. Artificial wetland areas will not be provided due to lack of incentive.

b. Relatively low band recovery and harvest rates for blue-winged teal indicate there is little impact on the species.

c. Population level is only slightly below the average since 1981.

d. Breeding habitat conditions are similar to the conditions when these seasons were implemented.

e. Due to early migration of bluewings, suspension virtually precludes harvest in many States.

The State of Wisconsin and 3 individuals from Texas supported suspension of the September teal season.

Response: Blue-winged teal were on a downward trend through the 1980's, production has declined substantially, and the population is currently at a record low. The potential for population response is being diminished by substantial deterioration in the quality and quantity of wetlands and upland nesting cover on the breeding grounds. Habitat conditions are not much better than in 1988 and the outlook for the fall flight is poor. Although band recovery and harvest rates for bluewings are relatively low, we have little predictive information on the effects of harvest on the population when at this low level. The Service recognizes that the suspension will eliminate substantial portions of the harvest in some areas and this will result in some unmeasured amount of habitat that will not be provided. However, in view of the very poor population status and production outlook, reinstatement of the September teal season is not warranted and is not offered. The Service encourages private land managers to continue to provide habitat to benefit waterfowl at this time of the year, in anticipation of improved populations status in the future.

8. September Duck Seasons

a. *Written Comments:* The Atlantic Flyway Council and the State of Florida recommended that the bag limit during the experimental September duck season in Florida be 4 wood ducks only.

Response: A bag limit of 3 wood ducks only per day for the regular season was established in 1988 to limit the take of all ducks. Most special seasons were cancelled. Bag limits for early wood duck seasons were reduced to 2 per day in Kentucky and Tennessee, and 3 per day in Florida. The Service currently is reviewing harvest management strategies, such as September duck seasons and special wood duck seasons. The review of harvest management strategies likely will not be complete until next year. For this year, the Service believes a bag limit to include 3 wood ducks only for the 5-day September duck season in Forida is appropriate.

b. *Public Hearing Comments:* Mr. Lauren Schaaf, representing the Kentucky Department of Fish and Wildlife Resources, presented a statement in support of the experimental September duck season in Kentucky. Mr. John M. Anderson, representing the National Audubon Society, recommended that no liberalizations be allowed in these early wood duck seasons.

Written Comments: The States of Arkansas and Tennessee supported the proposal to continue the experimental September duck seasons.

Response: The Service believes continuation of the restrictive experimental 5-day season for wood ducks in Kentucky and Tennessee is warranted.

14. Frameworks for Geese and Brant in the Conterminous United States—Outside Dates, Season Length and Bag Limits

Atlantic Flyway

Written Comments: The Atlantic Flyway Council recommended that a 3-year experimental season be established for resident Canada geese in North Carolina. The season would include a daily bag limit of 2 geese from September 1 through September 10.

Response: These frameworks offer such a season for the 1989–90 hunting season.

Mississippi Flyway

Written Comments: The Mississippi Flyway Council recommended that 3-year experimental seasons be established in the Fargus-Alex zone and the Southwest Border zone of Minnesota. The seasons would run from September 1 to September 10 and are designed to harvest local Canada geese. The States of Minnesota and Wisconsin supported this recommendation.

Response: These frameworks offer such seasons for the 1989–90 hunting season.

Pacific Flyway

Written Comments: The Pacific Flyway Council recommended that the special September Canada goose season in Wyoming be modified to include 160 permits, for 2 geese per season, to be allocated among three areas in 1989.

Response: These frameworks offer such a season for the 1989–90 hunting season.

16. Sandhill Cranes

Central Flyway

Public Hearing Comments: Mr. Ronnie R. George, representing the Central Flyway Council and the Texas Parks and Wildlife Department, and Mr. John M. Anderson, representing the National Audubon Society, presented statements in support of the proposed frameworks. Mr. George supported the expansion of the hunting area in north-central Texas. Mr. Anderson saw no apparent reason to oppose the expansion in Texas.

Written Comments: The Central Flyway Council recommended continuation of regular seasons without change, except to permit an expansion of the hunting area in north-central Texas.

Response: The Service believes that the expansion is warranted and that other frameworks should remain unchanged from those in effect during the 1988–89 seasons.

Pacific Flyway

Public Hearing Comments: Mr. Ronnie R. George, representing the Central Flyway Council and the Texas Parks and Wildlife Department, and Mr. John M. Anderson, representing the National Audubon Society, presented statements in support of the proposed frameworks. Mr. George specifically supported the option for Utah to initiate a sandhill crane season.

Written Comments: The Central and Pacific Flyways endorsed a recommendation that Utah be allowed a sandhill crane hunting season.

Response: The sandhill crane hunt in Utah was presented as an option to the State in 1988. The Service will again offer Utah that option for the 1989–90 hunting season. Other frameworks will remain unchanged from those in effect during the 1988–89 seasons.

17. Coots

The California Department of Fish and Game requested that frameworks for this species be separated from the duck frameworks to provide additional hunting opportunity.

Response: The Service notes that, nationally, coots and ducks are, and have been, regulated together, i.e., coot seasons are the same as regular duck seasons. The Service intends to continue to regulate coots and ducks together, but defers this issue to the late-season cycle.

20. Common Snipe

a. The California Department of Fish and Game requested that frameworks for this species be separated from the duck frameworks to provide additional hunting opportunity.

Response: The Service believes that this issue may be better handled through the late-season regulations process, and consideration of this issue is therefore deferred.

b. The Service notes that the paragraph dealing with hunting seasons for common snipe was misplaced under the heading rails in the July 13, 1989, Federal Register (at 54 FR 29647).

21. Woodcock

a. *Public Hearing Comments:* Mr. William Goudy expressed his opposition to February woodcock hunting, especially in Tennessee. He feels it is wrong to hunt at a time when birds are beginning to nest and migrate to northern breeding grounds. He further requests that the Service restrict the use of split seasons for woodcock. Mr. John M. Anderson, representing the National Audubon Society, strongly encouraged review of the effect of February hunting on nesting and population status. Mr. Charles Kelley, representing the Alabama Department of Conservation and Natural Resources, stated that February woodcock hunting was halted in Alabama because some woodcock were nesting in February. Mr. Robert L. Miles, submitted a letter on behalf of the Northeast Association of Fish and Wildlife Resources Agencies, expressing concern for woodcock populations and requesting careful monitoring and review of hunting regulations for southern wintering areas.

Written Comments: The State of Tennessee stated that this season probably has no significant impact on the population, but should data become available to the contrary, they would want to review and make appropriate changes to this season.

Response: The Service noted in the March 27, 1989, Federal Register (at 54 FR 12541), that it would discuss February hunting of woodcock with the Flyway Technical Committees. This was done and the Service intends to continue discussion and review of the issue with all interested parties. A preliminary proposal concerning February hunting of woodcock will appear in the March 1990 Federal Register.

b. *Written Comments:* The State of Wisconsin supported the proposed frameworks and one individual requested relaxation of woodcock frameworks in the northeast.

Response: The Service has continued the woodcock frameworks as they existed during the 1988–89 hunting season.

23. Mourning Doves

a. *Written Comments:* Tennessee requested the option of an 18-bird bag limit for mourning doves in the Eastern Management Unit.

Response: The Service notes that States may currently select an option that includes a 15-bird bag limit. The Service is not proposing a bag limit of 18 mourning doves in the Eastern Management Unit for the 1989–90 season.

b. *Public Hearing Comments:* Mr. Charles Kelley, representing the Alabama Department of Conservation and Natural Resources, supported the addition of Barbour County, Alabama, to the south zone in that State.

Response: The zone change requested by Alabama is reflected in the mourning dove frameworks.

c. *Public Hearing Comments:* Mr. John M. Anderson, representing the National Audubon Society, encouraged continuation of restrictive regulations initiated in 1987 for the Western Management Unit and also expressed concern about declines in some populations of the Central Management Unit.

Written Comments: The Pacific Flyway Council supported the mourning dove proposed frameworks.

Response: The Service will continue mourning dove frameworks as they existed during the 1988–89 season.

24. White-winged and White-tipped Doves

a. *Public Hearing Comments:* Mr. Ronnie R. George, representing the Central Flyway Council and the Texas Parks and Wildlife Department, supported the modified proposal for the experimental aggregate bag limit in Texas during the special 4-day white-winged dove season. Mr. John M. Anderson, representing the National Audubon Society, noted that white-winged dove regulations in Texas are

complicated and research should continue. He further noted that the proposed regulations for south Texas appear to be reasonable.

Written Comments: The State of Texas requested an experimental aggregate dove bag limit for the special 4-day white-winged dove season. The request was later modified by Texas and subsequently endorsed by the Central Flyway Council. This modified request is discussed in the July 13, 1989, **Federal Register** (54 FR 29640), and is contained in the frameworks part of this document.

Response: The experimental aggregate bag limit will be allowed in Texas for the 1989 season. Continuation of the study in subsequent years will be made on an annual basis.

b. *Written Comments:* The Pacific Flyway Council recommended continuation of last season's white-winged dove frameworks in the Western Management Unit.

Response: The 1989 frameworks for white-winged doves in the Western Management Unit are unchanged from those of 1988.

25. Migratory Bird Hunting Seasons in Alaska

Written Comments: The Pacific Flyway Council, the State of Alaska, and one sportsman's organization requested the same frameworks for 1989–90 as was in effect during the 1988–89 migratory bird seasons, especially that shooting hours beginning at one-half hour before sunrise be retained.

Response: The Service is not aware of any reason to change the frameworks from those of last year. No benefit could be expected from restrictive morning shooting hours in far northern latitudes and these frameworks are unchanged from those of 1988–89. The experimental tundra swan season is tentatively approved, although a petition against all swan hunting has been filed. The petition will be addressed with the late-season regulations.

27. Migratory Bird Seasons for Falconers

The State of Wisconsin, 6 falconry associations, and 3 falconers have supported the proposed falconry regulations.

Response: The Service is establishing falconry frameworks as discussed in the July 13, 1989, **Federal Register** (54 FR 29640).

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–54)" was filed with the Council on Environmental Quality (CEQ) on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). A supplement to the FES, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)", was filed with the Environmental Protection Agency on June 9, 1988, and Notice of Availability was published in the **Federal Register** of June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727).

Endangered Species Act Consideration

On June 22, 1989, the Division of Endangered Species and Habitat Conservation concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats.

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for inspection in the Office of Endangered Species and Habitat Conservation and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

In the **Federal Register** dated March 27, 1989 (54 FR 12534), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. These regulations contain no collection of information subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

In the **Federal Register** dated March 27, 1989, (54 FR 12534) the Service stated that it planned to publish its Memorandum of Law for the 1989–90 migratory bird hunting regulations with its first final rulemaking.

Memorandum of Law: Section 4 of the Executive Order 12291 requires that certain determinations be made before any final major rule may be approved. Section 4(a) specifies that the regulation must be clearly within the authority of law and consistent with congressional intent, and that a memorandum of law be provided to support that determination. Also, the agency must state that the factual conclusions upon which the law is based have substantial support in the agency record and that full attention has been given to public comments in general, and to comments of persons directly affected by the rule in particular.

The development of the annual migratory bird hunting regulations is provided for under section 3 of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 701–718h). Such regulations have been promulgated annually since 1918. They appear in 50 CFR part 20, subpart K. Congressional support for the development of these rules and ancillary activities involved in their development are reflected in the U.S. Fish and Wildlife Service's budget. Among these activities are biological surveys, hunter activity and harvest surveys, research investigations, law enforcement, and administrative costs associated with the development and publication of the proposed and final rules. Many other Service activities, such as the acquisition and management of habitats for migratory birds, indirectly assist in maintaining the migratory bird resource at levels which allow reasonable sport hunting harvest.

In developing its annual hunting rules for 1989–90, the Service has published three proposed rules for public comment and conducted one public hearing to facilitate public input into the rulemaking process. Four additional proposed and final rulemakings, and another public hearing, are included in the remaining schedule for establishing the annual hunting regulations for 1989–90. Numerous public comments summarized and responded to in **Federal Registers** listed in the preamble of this document describe the Service's consideration of the impacts of its proposed rules on the public. Many of these comments originated from affected State conservation agencies, while others were submitted by the affected public. Comments in support of the Service's initial or supplementary regulatory proposals are noted. Comments which do not support proposed Service action have been adequately addressed. Additional public comments are invited and will be addressed in subsequent **Federal Register** documents. The complete administrative record, including copies of public comments, is available for inspection at the Office of Migratory Bird Management.

Consequently, the Department has determined that it has fulfilled requirements of section 4 of Executive Order 12291 and the Migratory Bird Treaty Act in developing the 1989–90 migratory bird hunting regulations which are adequately supported by the Service's records.

Authorship

The primary author of this final rulemaking is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Byron K. Williams, Acting Chief.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed rules were published March 27, June 6, and July 13, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that at the periods' close, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that States would have insufficient time to select their season dates, shooting hours and limits; to communicate those selections to the Service; and finally establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended, (40 Stat. 755; 16 U.S.C. 701–718h), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from State officials, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the contiguous United States, Alaska, Puerto Rico and the Virgin Islands for the 1989–90 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act and these frameworks will, therefore, will take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1989–90 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 701–718h); the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712); and the Alaska Game Act of 1925 (43 Stat. 739, as amended, 54 Stat. 1103–04).

Final Regulations Frameworks for 1989–90 Early Hunting Seasons on Certain Migratory Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved final frameworks for season lengths, bag limits, shooting hours, and outside dates within which States may select seasons for mourning, white-winged and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; American woodcock; common snipe; experimental September duck seasons in identified States; sea ducks in the Atlantic Flyway; September Canada goose seasons in portions of identified States; sandhill cranes in the Central and Pacific Flyways; extended falconry seasons; and migratory birds in Alaska, Puerto Rico and the Virgin Islands.

Notice

Any State desiring its hunting seasons for mourning doves, white-winged doves, white-tipped doves, band-tailed pigeons, rails, woodcock, common snipe, common moorhens and purple gallinules, sandhill cranes or extended falconry seasons to open in September must make its selection no later than August 9, 1989. States desiring these seasons to open after September 30 may make their selections at the time they select regular waterfowl seasons. Season selections for the seven States offered experimental September waterfowl seasons and Wyoming's special Canada goose season must also be made by August 14, 1989.

Atlantic Flyway coastal States desiring their seasons on sea ducks in certain defined areas to open in September must make their selection no later than August 14, 1989. Those desiring this season to open after September may make their selections when they select their regular waterfowl seasons.

Outside Dates: All dates noted are inclusive.

Shooting Hours: Between ½ hour before sunrise and sunset daily for all species except as noted below. The hours noted here and elsewhere also apply to hawking (taking by falconry).

Mourning Doves

Outside Dates: Between September 1, 1989, and January 15, 1990, except as otherwise provided, States may select hunting seasons and bag limits as follows:

Eastern Management Unit

(All States east of the Mississippi River and Louisiana)

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 70 days with bag and possesson limits of 12 and 24, respectively,

or

Not more than 60 days with bag and possession limits of 15 and 30, respectively. Hunting seasons may be split into not more than 3 periods under either option.

Zoning: Alabama, Georgia, Louisiana and *Mississippi,* may elect to zone their States as follows:

A. Two zones per State having the following descriptions or division lines:

Alabama—South Zone: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston, Barbour and Henry Counties. North Zone: Remainder of the State.

Georgia—North Zone: That portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County, thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the sourhern border of Jeff Davis and Appling Counties; thence north along the eastern border of

Appling County to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans to Bulloch County; thence north along the western border of Bulloch County to Highway 301; thence northeast along Highway 301 to the South Carolina line. South Zone: Remainder of the State.

Louisiana—Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

Mississippi—U.S. Highway 84.

B. Within each zone, these States may select hunting seasons of not more than 70 days (or 60 under the alternative) which may be split into not more than 3 periods.

C. The hunting seasons in the South Zones of Alabama, Georgia, Louisiana and Mississippi may commence no earlier than September 20, 1989.

D. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

(Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas and Wyoming)

Hunting Seasons and Daily Bag and Possession Limits: Not more than 70 days with bag and possession limits of 12 and 24, respectively,

or

Not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Texas Zoning: As an alternative to the basic frameworks, Texas may select hunting seasons for each of 3 zones described below.

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. 90 to San Antonio; then east on Interstate 10 to Orange, Texas.

Special White-Winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. Highway 90 to Uvalde, south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Central Zone—That portion of the State lying between the North and South Zones. Hunting seasons in these zones are subject to the following conditions:

A. The hunting season may be split into not more than 2 periods, except that, in that portion of Texas where the special 4-day white-winged dove season is allowed, a limited mourning dove season may be held concurrently with the white-winged dove season and with shooting hours coinciding with those for white-winged doves (see white-winged dove frameworks).

B. Each zone may have a season of not more than 70 days (or 60 under the alternative). The North and Central zones may select a season between September 1, 1989 and January 25, 1990; the South zone between September 20, 1989 and January 25, 1990.

C. Except during the special 4-day white-winged dove season in the South Zone, each zone may have an aggregate daily bag limit of 12 doves (or 15 under the alternative), no more than 2 of which may be white-winged doves and no more than 2 of which may be white-tipped doves. The possession limit is double the daily bag limit.

D. Regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

(Arizona, California, Idaho, Nevada, Oregon, Utah and Washington)

Hunting Seasons and Daily Bag and Possession Limits

Idaho, Nevada, Oregon, Utah and Washington—Not more than 30 consecutive days between September 1, 1989 and January 15, 1990. Bag and possession limits, 10/20 mourning doves (in Nevada, the daily bag and possession limits of mourning and white-winged dove may not exceed 10/20, respectively, singly or in the aggregate).

Arizona and California—Not more than 60 days to be split between two periods, September 1–15, 1989, and November 1, 1989–January 15, 1990. Bag and possession limits: in Arizona the daily bag limit is 10 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession limit is 20 mourning and white-winged doves in the aggregate of which no more than 12 may be white-winged doves. In California the bag and possession limits for mourning and white-winged doves are 10 and 20, singly or in the aggregate.

White-Winged Doves

Outside Dates: Arizona, California, Nevada, New Mexico, and Texas (except as shown below) may select hunting seasons between September 1 and December 31, 1989. Florida may select its hunting season between September 1, 1989 and January 15, 1990.

Arizona may select a hunting season of not more than 30 consecutive days running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after the opening day.

In the Nevada counties of Clark and Nye, and in the California counties of Imperial, Riverside and San Bernardino, the aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 10 and 20, respectively, and run concurrently with the season on mourning doves.

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone. In that portion of the special area north and west of Del Rio, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves; the possession limit may not exceed 20 doves in the aggregate, of which no more than 4 may be white-tipped doves. In that portion of the special area south and east of Del Rio, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves; the possession limit may not exceed 20 doves in the aggregate, of which no more than 10 may be mourning doves and 4 may be white-tipped doves.

and

In addition, Texas may also select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1989, and January 25, 1990, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged doves and not more than 2 may be white-tipped doves. The possession limit may not exceed 24 white-winged, mourning and white-tipped doves (or 30 under the alternative) in the aggregate, of which not more than 4 may be white-winged doves and not more than 4 may be white-tipped doves.

Florida may select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1989, and January 15, 1990, and coinciding with the mourning dove season. The aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected); however, for either option, the bag and possession limits of white-winged doves may not exceed 4 and 8, respectively.

Band-Tailed Pigeons

Pacific Coast States and Nevada: California, Oregon, Washington and the Nevada counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral and Storey.

Outside Dates: Between September 15, 1989, and January 1, 1990.

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 16 consecutive days, with a bag and possession limit of 4.

Zoning: California may select hunting seasons of 16 consecutive days in each of the following two zones:

1. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama and Trinity; and

2. The remainder of the State.

Four-Corners States: Arizona, Colorado, New Mexico and Utah.

Outside Dates: Between September 1 and November 30, 1989.

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 30 consecutive days, with bag and possession limits of 5 and 10, respectively.

Areas: These seasons shall be open only in the areas delineated by the respective States in their hunting regulations.

Zoning: New Mexico may be divided into North and South Zones along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and south along Interstate Highway 25 from Socorro to the Texas State line. Hunting seasons not to exceed 20 consecutive days may be selected between September 1 and November 30, 1989, in the North Zone and October 1 and November 30, 1989, in the South Zone.

Rails

(Clapper, King, Sora and Virginia)

Outside Dates: States included herein may select seasons between September 1, 1989, and January 20, 1990, on clapper, king, and sora and Virginia rails as follows:

Hunting Seasons: The season may not exceed 70 days. Any State may split its season into two segments.

Clapper and King Rails

Daily Bag and Possession Limits

In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10 and 20 respectively, singly or in the aggregate of these two species.

In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15 and 30, respectively, singly or in the aggregate of the two species.

Sora and Virginia Rails

Daily Bag and Possession Limits: In the Atlantic, Mississippi and Central [1] Flyways and portions of Colorado, Montana, New Mexico and Wyoming in the Pacific Flyway [2] (the remainder of the Pacific Flyway is closed to rail hunting), 25 daily and 25 in possession, singly or in the aggregate of the two species.

American Woodcock

Outside Dates: States in the Atlantic Flyway may select hunting seasons between October 1, 1989, and January 31, 1990. States in the Central and Mississippi Flyways may select hunting seasons between September 1, 1989, and February 28, 1990.

Hunting Seasons, and Daily Bag and Possession Limits: In the Atlantic Flyway, seasons may not exceed 45 days, with bag and possession limits of 3 and 6, respectively; in the Central and Mississippi Flyways, seasons may not exceed 65 days, with bag and possession limits of 5 and 10, respectively. Seasons may be split into two segments.

Zoning: New Jersey may select seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 35 days.

Common Snipe

Outside Dates: Between September 1, 1989, and February 28, 1990. In Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland and Virginia the season must end no later than January 31.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 107 days in the Atlantic, Mississippi and Central Flyways and 93 days in Pacific Flyway portions of Montana, Wyoming, Colorado and New Mexico. In the remainder of the Pacific Flyway the season shall coincide with the duck seasons. Seasons may be split into two segments. Bag and possession limits are 8 and 16, respectively.

Common Moorhens and Purple Gallinules

Outside Dates: September 1, 1989, through January 20, 1990, in the Atlantic

[1] The Central Flyway is defined as follows: Colorado (east of the Continental Divide), Kansas, Montana (east of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nebraska, New Mexico (east of the Continental Divide but outside the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas and Wyoming (east of the Continental Divide).

[2] The Pacific Flyway is defined as follows: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the entire Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascade, Meagher and Park, and all counties west thereof.

and Mississippi Flyways and September 1, 1989, through January 21, 1990, in the Central Flyway. States in the Pacific Flyway must select their hunting seasons to coincide with their duck seasons.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi and Central Flyways; in the Pacific Flyway, seasons must be the same as the duck seasons. Seasons may be split into two segments. Bag and possession limits are 15 and 30 common moorhens and purple gallinules, singly or in the aggregate of the two species, respectively; except the daily bag and possession limits in the Pacific Flyway may not exceed 25 coots and common moorhens, singly or in the aggregate of the two species.

Sandhill Cranes

Regular Seasons in the Central Flyway

Seasons not to exceed 58 days between September 1, 1989, and February 28, 1990, may be selected in the following States: Colorado (the Central Flyway portion except the San Luis Valley); Kansas; Montana (the Central Flyway portion except that area south of I–90 and west of the Bighorn River); North Dakota (west of U.S. 281); South Dakota; and Wyoming (in the counties of Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte and Weston).

For the remainder of the flyway, seasons not to exceed 93 days between September 1, 1989 and February 28, 1990, may be selected in the following States: New Mexico (the counties of Chaves, Curry, DeBaca, Eddy, Lea, Quay and Roosevelt); Oklahoma (that portion west of I–35); and Texas (that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to I–35 at Austin; I– 35 to I–35W; I–35W to the Texas-Oklahoma boundary).

Bag and Possession Limits: 3 and 6, respectively.

Permits: Each person participating in the regular sandhill crane seasons must obtain and have in his possession while hunting a valid Federal sandhill crane hunting permit.

Special Seasons in the Central and Pacific Flyways

Arizona, Colorado, Idaho, Montana, New Mexico, Utah and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (as described in a management plan approved March 22, 1982 (revised July 28, 1987), by the Central and Pacific Flyway Councils) subject to the following conditions:

1. Outside dates are September 1–November 30, 1989 except September 1, 1989–January 31, 1990, in the Hatch-Deming Area (Zone) in New Mexico (Sierra, Luna, and Dona Ana Counties).
2. Season(s) in any State or zone may not exceed 30 days.
3. Daily bag limits may not exceed 3 and season limits may not exceed 9.
4. Participants must have in their possession while hunting a valid permit issued by the appropriate State.
5. Numbers of permits, areas open and season dates, protection plans for other species, and other provisions of seasons are consistent with the management plan and approved by the Central and Pacific Flyway Councils.
6. Seasons in Utah and in the Middle Rio Grande Valley zone and the Hatch-Deming Zone in New Mexico will be experimental.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15, 1989, and January 20, 1990.

Hunting Seasons, and Daily Bag and Possession Limits: Not to exceed 107 days, with bag and possession limits of 7 and 14, respectively, singly or in the aggregate of these species.

Bag and Possession Limits During Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may set, in addition to the limits applying to other ducks during the regular duck season, a daily limit of 7 and a possession limit of 14 scoter, eider and oldsquaw ducks, singly or in the aggregate of these species.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season daily bag and possession limits.

Special September Wood Duck Seasons

Florida: An experimental 5-consecutive-day wood duck season may be selected in September. The daily bag limit will be 3 wood ducks and the possession limit will be double the daily bag limit.

Tennessee and Kentucky: Experimental 5-consecutive-day wood duck seasons may be selected in September. The daily bag limit will be 2 wood ducks and the possession limit will be double the daily bag limit.

Special Early-September Canada Goose Seasons

Experimental Canada goose seasons of up to 10 consecutive days may be selected in September by Michigan, Illinois, North Carolina, and Minnesota subject to the following conditions:

1. Outside dates for the season are September 1–10, 1989.
2. The daily bag and possession limits will be no more than 5 and 10 Canada geese, respectively. In North Carolina, hunting will be by State permit to take not more than 2 Canada geese daily and 4 in possession.
3. Areas open to the hunting of Canada geese are as follows:

Michigan: Lower Peninsula—all areas except the Shiawassee River, Allegan, Lapeer and Muskegon State Game Areas (SGA), the Shiawassee National Wildlife Refuge, that portion of the Maple River SGA east of State Road, that portion of the Pointe Mouillee SGA south of the Huron River, Muskegon County Wastewater Area, and the Fish Point and Nayanquing Point Wildlife Areas.

Upper Peninsula—that area bounded by a line beginning at the Michigan/Wisconsin border in Green Bay and extending north through the center of Little Bay De Noc and the center of White Fish River to U.S. Highway 2, east along U.S. Highway 2 to Interstate Highway 75, north along Interstate Highway 75 to State Highway 28, west along State Highway 28 to State Highway 221, then north along State Highway 221 to Brimley, then north to the Michigan/Ontario border.

Illinois: McHenry, Lake, Kane, Du Page, Cook, Kendall, Grundy, Will, and Kankakee Counties.

North Carolina: That portion of the State west of Interstate 95; see State hunting regulations for area descriptions.

Minnesota: Twin Cities Metropolitan Zone—all or portions of Anoka, Washington, Ramsey, Hennepin, Carver, Scott and Dakota Counties.

Fergus Falls/Alexandria Zone—all or portions of Pope, Douglas, Otter Tail, Wilkin, and Grant Counties.

Southwest Border Zone—all or portions of Martin and Jackson Counties.

4. Areas open to hunting must be described, delineated and designated as such in each State's hunting regulations.

Wyoming may select a September season for Canada geese subject to the following conditions:

1. The season must be concurrent with the September Sandhill crane season.
2. Outside dates for the season(s) are September 1–22, 1989.
3. Hunting will be by State permit.
4. No more than 160 permits, in total, may be issued for the Salt River (Star Valley) and Bear River Areas in Lincoln County and the Eden-Farson Agricultural Project Area in Sweetwater and Sublette Counties, combined.
5. Each permittee may take no more than 2 geese per season.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1, 1989 and March 10, 1990.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular season bag and possession limits do not apply to falconry.

Note: Total season length for all hunting methods combined shall not exceed 107 days for any species or group of species in one geographical area. The extension of this framework to include the period from September 1 to March 10, and the option to split the extended falconry season into a maximum of 3 segments are considered tentative, and will be evaluated, in cooperation with States offering such extensions, after a period of several years.

Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Alaska, 1989–90

Outside Dates: Between September 1, 1989, and January 26, 1990, Alaska may select seasons on waterfowl, snipe, cranes, and tundra swans subject to the following limitations:

Shooting hours: One-half hour before sunrise to sunset daily.

Hunting Seasons

Ducks, geese and brant—107 consecutive days for ducks, geese, and brant in each of the following: North Zone (State Game Management Units 11–13 and 17–26); Gulf Coast Zone (State Game Management Units 5–7, 9, 14–16, and 10—Unimak Island only); Southeast Zone (State Game Management Units 1–4); Pribilof and Aleutian Islands Zone (State Game Management Unit 10—except Unimak Island); Kodiak Zone (State Game Management Unit 8). The season may be split without penalty in the Kodiak Zone. *Exceptions:* The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. Throughout the State there is open hunting season for Aleutian Canada geese, cackling Canada geese and emperor geese.

Snipe and sandhill cranes—An open season should be concurrent with the duck season.

Daily Bag and Possession Limits

Ducks—Except as noted, a basic daily bag limit of 5 and a possession limit of 15 ducks. Daily bag and possession limits in the North Zone are 8 and 24, and in the Gulf Coast Zone they are 6 and 18, respectively. The basic limits may not include more than 2 pintails daily and 6 pintails in possession. There is no open season on canvasback. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, eider, oldsquaw, harlequin, and common and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be greater white-fronted or Canada geese, singly or in the aggregate of these species.

Brant—A daily bag limit of 2 and a possession limit of 4.

Common snipe—A daily bag limit of 8 and a possession limit of 16.

Sandhill cranes—A daily bag limit of 3 and a possession limit of 6.

Tundra swans—In Game Management Unit 22 an experimental open season for tundra swans may be selected subject to the following conditions:

1. No more than 300 permits may be issued, authorizing each permittee to take 1 tundra swan.
2. The season must be concurrent with the duck season.
3. The appropriate State agency must issue permits, obtain harvest and hunter participation data, and report the results of this hunt to the Service by June 1, 1990.

Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Puerto Rico, 1989–90

Shooting hours: Between one-half hour before sunrise and sunset daily.

Doves and Pigeons

Outside Dates: Puerto Rico may select hunting seasons between September 1, 1989, and January 15, 1990, as follows:

Hunting Seasons: Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

Daily Bag and Possession Limits: Not to exceed 10 doves of the species named herein, singly or in the aggregate, not to exceed 5 scaly-naped pigeons.

Closed Areas

Municipality of Culebra and Desecheo Island—Closed under Commonwealth regulations.

Mona Island—Closed in order to protect the reduced population of white-crowned pigeon *(Columba leucocephala)*, known locally as "Paloma cabeciblanca."

El Verde Closure Area—Consisting of those areas of the municipalites of Rio Grande and Loiza delineated as follows: (1) all lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture on 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one kilometer from the juncture of Routes 186 and 956 south to KM 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rican parrot *(Amazona vittata)* presently listed as an endangered species under the Endangered Species Act of 1973.

Cidra Municipality and Adjacent Areas—Consisting of all of Cidra

BEST COPY AVAILABLE

Municipality and portions of Aguas Buenas, Caguas, Cayer, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Plain pigeon *(Columba inornata wetmorei)*, locally known as "Paloma Sabanera," which is present in the above locale in small numbers and is presently listed as an endangered species under the Endangered Species Act of 1973.

Ducks, Coots, Moorhens, Gallinules and Snipe

Outside Dates: Between November 5, 1989, and February 28, 1990, Puerto Rico may select hunting as follows.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag and Possession Limits

Ducks—Not to exceed 3 daily and 6 in possession, except that the season is closed on the ruddy duck *(Oxyura jamaicensis)*; the White-cheeked pintail *(Anas bahamensis)*; West Indian whistling (tree) duck *(Dendrocygna arborea)*; fulvous whistling (tree) duck *(Dendrocygna bicolor)*, and the masked duck *(Oxyura dominica)*, which are protected by the Commonwealth of Puerto Rico.

Common moorhens—Not to exceed 6 daily and 12 in possession; the season is closed on purple gallinules *(Porphyrula martinica)*.

Common snipe—Not to exceed 6 daily and 12 in possession.

Coots—There is no open season on coots, i.e., common coots *(Fulica americana)* and Caribbean coots *(Fulica caribaea)*.

Closed Areas: No open season for ducks, common moorhens, and common snipe is prescribed in the Municipality of Culebra and on Desecheo Island.

Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in the Virgin Islands, 1989–90

Shooting Hours: Between one-half hour before sunrise and sunset daily.

Doves and Pigeons

Outside Dates: The Virgin Islands may select hunting seasons between September 1, 1989, and January 15, 1990, as follows.

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Seasons: No open season is prescribed for ground or quail doves, or other pigeons in the Virgin Islands.

Local Names for Certain Birds

Zenaida dove (*Zenaida aurita*)—Mountain dove.

Bridled quail dove *(Geotrygon mystacea)*—Barbary dove, partridge (protected).

Common Ground dove *(Columba passerina)*—Stone dove, tobacco dove, rola, tortolita (protected).

Scaly-naped pigeon *(Columba squamosa)*—Red-necked pigeon, scaled pigeon.

Ducks

Outside Dates: Between December 1, 1989, and January 31, 1990, the Virgin Islands may select a duck hunting season as follows.

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag and Possession Limits: Not to exceed 3 daily and 6 possession, except that the season is closed on the ruddy duck *(Oxyura jamaicensis)*; the White-cheeked pintail *(Anas bahamensis)*; West Indian whistling (tree) duck *(Dendrocygna arborea)*; fulvous whistling (tree) duck *(Dendrocygna bicolor)*, and the masked duck *(Oxyura dominica)*.

Dated: August 1, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-18857 Filed 8-10-89; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 54, No. 154
Friday, August 11, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1e

DEPARTMENT OF LABOR

29 CFR Part 503

RIN 1290-AA10

Methodology for Determining the Shortage Number Under Section 210A of the Immigration and Nationality Act

AGENCIES: Office of the Secretary, United States Department of Agriculture; Office of the Secretary, United States Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Department of Agriculture (USDA) and the United States Department of Labor (DOL) are promulgating proposed regulations regarding the methodology to be used by the Secretaries of Agriculture and Labor (hereafter "the Secretaries") in determining the number (if any) of additional aliens who should be admitted to the United States or who should otherwise acquire the status of aliens lawfully admitted for temporary residence, under section 210A of the Immigration and Nationality Act (INA), as added by section 303 of the Immigration Reform and Control Act of 1986 (IRCA), to meet a shortage of workers to perform seasonal agricultural services, including calculation of the annual numerical limitation on such workers. These proposed regulations also will establish the procedure through which a group or association representing employers in seasonal agricultural services may appeal to the Secretaries for an increase in the shortage number. Further, these proposed regulations will set forth the procedure through which a group of agricultural workers, admitted or adjusted under section 210A of the INA, may petition the Secretaries for a decrease in the number of work-days of work required in order to maintain their temporary resident alien status.

DATE: Comments must be received on or before September 8, 1989.

ADDRESS: Send written comments to either:

Assistant Secretary for Economics, United States Department of Agriculture, Room 227-E, Fourteenth Street and Independence Avenue SW., Washington, DC 20250-1400, Attention: Coordinator of Agricultural Labor Affairs, or

Assistant Secretary for Policy, United States Department of Labor, Room S2114, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Director, Office of Program Economics.

FOR FURTHER INFORMATION CONTACT:

Mr. Gary B. Reed, DOL, Telephone (202) 523-6007, or

Mr. Al French, USDA, Telephone (202) 447-4737

SUPPLEMENTARY INFORMATION: The INA was amended by the IRCA to (1) control illegal immigration into the United States and (2) make limited changes in the system for legal immigration. There was concern during consideration of the IRCA that employers in seasonal agricultural services, who had come to rely on unauthorized aliens to perform field work, would be unable to obtain sufficient legal workers to satisfy their needs.

To address this concern, the IRCA added section 210 to the INA to establish a program that grants temporary resident alien status to special agricultural workers (SAWs) who can demonstrate that they performed seasonal agricultural services for at least 90 man-days during the 12-month period ending May 1, 1986. The legislation specifies that individuals admitted under this provision are not required to continue working in agriculture, and in fact are free to seek employment in any occupation or industry.

Because there was also concern that large numbers of SAWs would in fact leave agricultural employment, which would again cause a shortage of workers to perform seasonal agricultural services, the IRCA added section 210A to the INA, which provides a system for admitting additional special agricultural workers, known as replenishment agricultural workers (RAWs). The number of RAWs who may be admitted in any fiscal year (FY), beginning with FY 1990 and ending with FY 1993, is the smaller of (1) the annual numerical limitation established by formula in section 210A(b) of the INA, or (2) the shortage number determined by the Secretaries. These proposed regulations set forth the procedures to be used by the Secretaries in determining the shortage number and the annual numerical limitation.

The INA requires that before the beginning of each FY, starting with FY 1990 and ending with FY 1993, the Secretaries shall determine jointly the number (if any) of additional aliens who should be admitted to the United States or who should otherwise acquire the status of aliens lawfully admitted for temporary residence, to meet a shortage of workers to perform seasonal agricultural services. The number so determined is referred to as the "shortage number." The INA further provides that the Attorney General shall provide for the admission for lawful temporary resident status, or for the adjustment of status to lawful temporary resident status, of a number of aliens equal to the shortage number (if any). Such number may not exceed the annual numerical limitation established by section 210A(b) of the INA.

The annual numerical limitation is a limit, set by a statutory formula, on the number of aliens who may be admitted or who otherwise may acquire lawful temporary resident alien status under the provisions of INA which permit the entry of additional aliens for employment in seasonal agricultural services. The annual numerical limitation is based upon a percentage of those individuals who had their status adjusted under the special agricultural worker (SAW) program established by section 210 of the INA, less the number of SAWs, including RAWs, who continue to work in seasonal agricultural services, and must be adjusted to take into account any change in the number of nonimmigrant aliens admitted under section 101(a)(15)(H)(ii)(a) of the INA (H-2A workers) to perform temporary seasonal agricultural services.

Because of the unexpectedly large number of SAW applicants, the Immigration and Naturalization Service (INS) has indicated that it may not be able to make final determinations on all

applicants prior to the beginning of FY 1990. In the event a final determination has not been made on all applications, in order to establish the numerical limitation, the Secretaries will calculate the annual numerical limitation based upon the number of aliens finally adjudicated (approved) as SAWs as reported by INS to the Director of the Bureau of the Census (hereafter "the Director); the Director will advise the Secretaries by September 1, 1989, of the number to be used in the calculation, based upon the latest available INS data. The Secretaries will announce the annual numerical limitation in the **Federal Register** at the time the shortage number is announced. Consideration was given to using an estimate of the number of SAWs who will be adjusted under section 210 of the INA, applying the ratio of approvals to denials, of those applications which have been finally determined, to the number of applications remaining to be adjudicated. That approach was abandoned because there was no statutory language, nor legislative history, to support such an approach.

In the event INS is not able to complete its adjudication of all SAW applications by the end of FY 1989, the Secretaries, prior to the end of each of the following fiscal quarters, will recalculate the annual numerical limitation by including in the "starting number" all those aliens who have been finally adjudicated as SAWs subsequent to any earlier determinations of the annual numerical limitation, and by adjusting the number of SAWs who worked in seasonal agricultural services to take into account the increase in the number of reportable workers who obtained SAW status.

If the annual numerical limitation is low enough to serve as an effective upper limit on the number of RAWs to be admitted (in other words, if the annual numerical limitation is lower than the shortage number), any increases in the annual numerical limitation that results from the recalculations will permit entry or adjustment of additional RAWs until the shortage number is reached, or the annual numerical limitation is again an effective limit. In addition, if an emergency increase in the shortage number is granted pursuant to § ———20 of these proposed regulations, but additional RAWs are barred from entry due to the annual numerical limitation, the Secretaries will recalculate the annual numerical limitation based upon the most recent data available from INS and the Director.

These proposed regulations set forth the procedures to be used by the Secretaries in determining the shortage number. Any aliens to be admitted as a result of a determination that a shortage of workers to perform seasonal agricultural services exists are known as RAWs and will be admitted under criteria established by the INS in regulations located at 8 CFR part 210a.

The shortage number is determined under a statutory formula and consists of (1) the need for labor to perform seasonal agricultural services, stated in work-days, minus (2) the supply of such labor, stated in work-days, divided by (3) the work-day per worker factor as determined by the Bureau of the Census. These proposed regulations also set forth the responsibilities of the Federal agencies involved in the process. USDA under proposed § ———11 will provide certain data needed in order for the Secretaries to determine the level of need for workers to perform seasonal agricultural services. DOL will provide data on the supply of such workers as indicated in proposed § ———12.

The Director is also involved under proposed § ———13 and will determine the average number of work-days of seasonal agricultural services performed by SAWs in the United States at any time in a given FY. (Note: although the language of the INA indicates that this estimate would be based upon the number of SAWs who worked in seasonal agricultural services "at any time" during a FY, the Conference Report on the Immigration Reform and Control Act of 1986 (H.R. Conf. Rep. No. 99-1000, 99th Cong., 2d Sess. 96, reprinted in 1986 U.S. Code Cong. & Admin. News 5840, 5852), however, specifies that the term "at any time" means at least 15 man-days. Thus, the Secretaries have defined "at any time" to mean at least 15 days.) The average number of work-days determined by the Director is known as the work-day per worker factor and becomes the denominator in the statutory formula which the Secretaries must use to determine the shortage number. The term "work-day" is defined in this proposed regulation as a calendar day in which at least 4 hours of work in seasonal agricultural services is performed, and is used in lieu of the statutory term "man-day," which is used in other labor standards statutes (defined as one hour per day) and is used under INA to determine whether an alien has sufficient experience in agricultural employment to be eligible for SAW/RAW status.

In making the determination of the work-day per worker factor, the Director will use information contained in the reports (ESA-92, OMB approval number 1215-0168) which must be submitted by employers of SAWs under regulations located at 29 CFR Part 502. In doing so, the language of INA requires that the Director count the work experience of SAWs during 1989 in order to estimate the work-day per worker factor applicable during 1990, but limits the Director to counting only the experience of RAWs when determining the work-day per worker factor for FY's 1991-1993. The proposed regulation supplements the statute by establishing a method for setting the work-day per worker factor in the event that no RAWs are admitted in a particular year. The Secretaries propose that if no RAWs are admitted during FY 1990, the work-day per worker factor determined for FY 1990 will be the factor for 1991. For FY 1992 and 1993, if no RAWs are admitted during the two previous FYs, the work-day per worker factor determined for FY 1990 will be the factor. However, commenters are encouraged to suggest reasonable alternatives to this method for consideration in the further development of these regulations.

In recognition of the uncertainties associated with agricultural production, the statute contains emergency procedures for adjusting the shortage number. These proposed regulations establish the procedure through which a group or association representing employers in seasonal agricultural services may appeal to the Secretaries for an increase in the shortage number. While the request may be made by a group or association which is experiencing a shortage of workers in a particular area or region, the process is not designed or intended to deal with localized, short-term problems that individual farmers may have in obtaining needed workers. To succeed in obtaining an increase in the shortage number, the requesters must demonstrate that a significant increase in the shortage number, which is determined on a national basis, is appropriate. That is, they must show that they have undertaken reasonable recruitment efforts and that they continue to have a significant shortage of the labor needed to avoid crop damage or loss. Further, that the need for labor to avoid crop damage or loss is significantly greater than the availability of able, willing, qualified, and unemployed SAWs, rural low skill, or manual laborers, and domestic agricultural workers. Requesters must show that they have undertaken reasonable recruitment efforts by

recruiting in the region or regions of traditional and expected labor supply, offering wages, working conditions, and other terms of employment, including, but not limited to, housing, transportation, meals, and subsistence, comparable to or better than those provided generally in the same or comparable occupations and crops in the labor market area, and that the normal qualifications for such occupations and crops were applied.

The statute requires that the Secretaries make their decision on the emergency request within 21 days of receipt of the request. Because of this short time within which to make the decision, interested parties will have only 10 days in which to provide information in support, or opposition, of the request. The Secretaries will use any information available from the State Employment Service Agencies, and the United States Employment Service to evaluate the request. USDA and DOL staff will meet to evaluate the original request and any comments that may have been submitted by interested parties. Staff members may contact local offices of State Employment Service Agencies in the alleged shortage areas and in labor supply States to confirm that reasonable recruitment efforts were conducted and to learn the extent to which able, willing, and qualified workers were found to be available. Staff may also contact local county extension agents associated with USDA's Extension Service in the alleged shortage areas for information they may have regarding the labor supply and crop conditions. This emergency procedure is an area of particular concern to the Secretaries and one in which commenters are encouraged to provide comments.

These proposed regulations also set forth the procedure through which a group of agricultural workers may petition the Secretaries for a decrease in the number of work-days of work required in order to maintain their temporary resident alien status. Under section 210A(d)(5) of the INA, RAWs must work at least 90 work-days in seasonal agricultural services, in each of three years, in order to maintain their status. If an oversupply of workers should exist, due to limited employment opportunities in seasonal agricultural services (such as might be caused by extreme weather conditions), the statute provides for the possible reduction in the work-day requirement for the particular FY involved. (Note: the INA, in setting forth the procedure for a RAW to request a change in the work-day requirement, refers to subparagraphs (A) and (B) of section 210A(d)(2), but that is a typographical error, since subsection (d)(2) has no subparagraphs (A) nor (B). Such subparagraphs are found only in subsection (d)(5).) RAWs are required by subparagraph (A) of section 210A(d)(5) to perform seasonal agricultural services for at least 90 work-days in each of the first three years after the alien obtained the status of an alien lawfully admitted for temporary residence, in order to avoid deportation. Furthermore, subparagraph (B) of section 210A(d)(5) provides that such an alien may not be naturalized, unless that alien has worked at least 90 work-days in seasonal agricultural services in each of five years after obtaining the status of an alien lawfully admitted for temporary residence.

These proposed regulations were developed in consultation with the Department of Justice and the Bureau of the Census.

Executive Order 12291; Regulatory Flexibility Act

The USDA and the DOL have determined that this proposed rule is not a major rule under Executive Order 12291. They have also determined that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule is largely procedural in nature and sets forth the manner in which the USDA and the DOL will use available information, including INS information and Bureau of the Census estimates to make certain determinations regarding whether there is a shortage of workers in the United States to perform seasonal agricultural services, and related determinations. Consequently, the USDA and DOL certify under the Regulatory Flexibility Act that the rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 1e and 29 CFR Part 503

Agriculture, Aliens, Immigration, Labor, Migrant worker, Rural labor.

DEPARTMENT OF AGRICULTURE

7 CFR Part 1e

Accordingly, it is proposed that Title 7 of the Code of Federal Regulations be amended by adding Part 1e as set forth at the end of this document.

PART 1e—METHODOLOGY FOR DETERMINING THE SHORTAGE NUMBER UNDER SECTION 210A OF THE IMMIGRATION AND NATIONALITY ACT

Subpart A—General Provisions

Sec.

1e.0 Introduction.
1e.1 Purpose and scope.
1e.2 Definitions.
1e.3 Overall determination of the shortage number.
1e.4 No replenishment if no shortage.
1e.5 Determination of need.
1e.6 Determination of supply.
1e.7 Estimate of the number of SAWs in seasonal agricultural services and determination of work-day per worker factor.
1e.8 Announcement of the annual numerical limitation on the admission of replenishment agricultural workers.

Subpart B—Procedure for Determination of the Shortage Number.

1e.10 General.
1e.11 Data for determination of need to be collected by the Secretary of Agriculture.
1e.12 Data for determination of supply to be collected by the Secretary of Labor.
1e.13 Director, Bureau of the Census, to determine the workday per worker factor.
1e.14 Secretaries of Agriculture and Labor, joint determination of the shortage number.

Subpart C—Emergency Procedure for Increase in Shortage Number.

1e.20 Request by group or association representing employers.

Subpart D—Procedure for Decreasing the Work-day Requirement.

1e.30 Request by group of special agricultural workers.

Authority: 8 U.S.C. 1161.

Done at Washington, DC, this 8th day of August, 1989.

Clayton K. Yeutter,

Secretary of Agriculture.

DEPARTMENT OF LABOR

29 CFR Part 503

Accordingly, it is proposed that Title 29 of the Code of Federal Regulations be amended by adding Part 503 as set forth at the end of this document.

PART 503—METHODOLOGY FOR DETERMINING THE SHORTAGE NUMBER UNDER SECTION 210A OF THE IMMIGRATION AND NATIONALITY ACT

Subpart A—General Provisions

Sec.

503.0 Introduction.
503.1 Purpose and scope.
503.2 Definitions.

Sec.
503.3 Overall determination of the shortage number.
503.4 No replenishment if no shortage.
503.5 Determination of need.
503.6 Determination of supply.
503.7 Estimate of the number of SAWs in seasonal agricultural services and determination of work-day per worker factor.
503.8 Announcement of the annual numerical limitation on the admission of replenishment agricultural workers.

Subpart B—Procedure for Determination of the Shortage Number.

503.10 General.
503.11 Data for determination of need to be collected by the Secretary of Agriculture.
503.12 Data for determination of supply to be collected by the Secretary of Labor.
503.13 Director, Bureau of the Census, to determine the workday per worker factor.
503.14 Secretaries of Agriculture and Labor, joint determination of the shortage number.

Subpart C—Emergency Procedure for Increase in Shortage Number.

503.20 Request by group or association representing employers.

Subpart D—Procedure for Decreasing the Work-day Requirement.

503.30 Request by group of special agricultural workers.

Authority: 8 U.S.C. 1161.

Done at Washington, DC, this 8th day of August, 1989.

Elizabeth Dole,

Secretary of Labor.

Text of the Proposed Joint Rule

The text of the proposed joint rule as adopted by USDA and DOL in this document appears below.

PART _____—METHODOLOGY FOR DETERMINING THE SHORTAGE NUMBER UNDER SECTION 210A OF THE IMMIGRATION AND NATIONALITY ACT

Subpart A—General Provisions

§_____.0 Introduction.

(a) Section 210 of the INA established the SAW program. Under this program, aliens could apply (during the 18-month period ending November 30, 1988) to have their status adjusted to that of an alien lawfully admitted for temporary residence, provided they could demonstrate residence in the United States and performance of seasonal agricultural services for at least 90 man-days during the 12 month period ending May 1, 1986. While employment in seasonal agricultural services was required in order to qualify for SAW status, there is no requirement that SAWs continue to work in agriculture. Because SAWs may seek employment in any occupation or industry, the INA provides a framework for admitting additional aliens to work in seasonal agricultural services if a shortage of workers develops.

(b) Pursuant to section 210A(a)(1) of the INA, before the beginning of each fiscal year (FY), beginning with FY 1990 and ending with FY 1993, the Secretaries shall determine jointly the number (if any) of additional aliens who should be admitted to the United States or who should otherwise acquire the status of aliens lawfully admitted for temporary residence under section 210A of the INA during the FY to meet a shortage of workers to perform seasonal agricultural services. Such number is known as the "shortage number", which may not exceed the annual numerical limitation on the admission of additional SAWs, known in this part as RAWs.

(c) This part sets forth the procedure that will be used by the Secretaries in making a determination of the shortage number, and of the annual numerical limitation. This part also establishes the procedure which a group or association of employers of individuals who work in seasonal agricultural services must use in order to request the Secretaries to increase the shortage number. Further, this part sets forth the procedure through which a group of RAWs may request the Secretaries to decrease the number of work-days of employment required for a given FY in order to maintain their temporary resident alien status.

§_____.1 Purpose and scope.

(a) This part has a narrow focus. It is based in part on regulations already promulgated by DOL, USDA, and INS, all of which have responsibilities under the INA. Where appropriate in this part, reference will be made to existing regulations and their location.

(b) Section 210A(a)(1) of the INA requires action by the Secretaries to determine the shortage number. That number will become the basis upon which the Attorney General will provide for the admission for lawful temporary resident status, or for the adjustment of status to lawful temporary resident status, of a number of aliens. The number (if any) of such aliens to be admitted will be the lesser of the shortage number, or the annual numerical limitation on admission of additional SAWs, which is set by formula in section 210A(b) of the INA. These additional SAWs are known as RAWs and may be admitted beginning with FY 1990.

(c) This part establishes the procedure by which the Secretaries will use available information to make the determination required by the INA. This part is not concerned with the procedure, nor qualifications, through which individuals may become eligible for RAW status.

§_____.2 Definitions.

For purposes of this part:

(a) "Act" and "INA" mean the Immigration and Nationality Act (8 U.S.C. 1101, *et seq.*), as amended by the Immigration Reform and Control Act of 1986 (IRCA), with reference particularly to sections 210 and 210A (8 U.S.C. 1160 and 1161).

(b) "Alien 'A' Number" refers to an INS Alien Registration Number assigned to each alien.

(c) "Annual numerical limitation" refers to the upper limit on the number of aliens who may be admitted as RAWs in any FY and is set by statutory formula in section 210A(b) of INA. If the shortage number determined under this part exceeds the annual numerical limitation, the number of aliens who may be admitted, or have their status adjusted, cannot exceed the annual numerical limitation.

(d) "Director" means the Director of the Bureau of the Census, United States Department of Commerce.

(e) "DOL" means the United States Department of Labor.

(f) "Immigration and Naturalization Service (INS)" is the agency within the United States Department of Justice which is responsible for administering the INA.

(g) "Replenishment Agricultural Worker (RAW)" is an alien identified with an INS Alien Registration Number in the A94000000 series (A94 followed by any six digits) who is admitted during FY 1990 through FY 1993 for lawful temporary resident alien status or whose status is adjusted to that of an alien lawfully admitted for temporary residence, in accordance with section 210A of the INA, to meet a shortage of workers employed in seasonal agricultural services.

(h) "Reportable Worker" is an alien employed in seasonal agricultural services who is admitted with lawful temporary resident alien status or whose status is adjusted to that of an alien lawfully admitted for temporary residence, and who is identified by an INS Alien Registration Number in the A90000000 series (A9 followed by any seven digits). This series includes:

(1) Resident aliens admitted under section 245A of the INA,

(2) Resident alien-special agricultural workers admitted under section 210 of the INA, and

(3) Anticipated resident alien-replenishment agricultural workers admitted between FY 1990 and FY 1993 under section 210A of the INA.

(i) "Seasonal Agricultural Services" as provided by section 210(h) of the Act means the "performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture." 8 U.S.C. 1160(h). The definitions promulgated by the Secretary of Agriculture are located at 7 CFR part 1d, and are restated for informational purposes at 29 CFR 502.2(o)(2).

(j) "Secretaries" for purposes of this part means the Secretary of the United States Department of Agriculture and the Secretary of the United States Department of Labor.

(k) "Shortage Number" means the number, determined jointly by the Secretaries, of additional aliens who should be admitted to the United States or who should otherwise acquire the status of aliens lawfully admitted for temporary residence under section 210A of the INA to meet a shortage of workers to perform seasonal agricultural services in the United States during a specific FY.

(l) "Special Agricultural Worker (SAW)" is:

(1) An alien granted temporary resident alien status as a result of an application filed pursuant to section 210 of the INA, establishing residence in the United States and employment in seasonal agricultural services for at least 90 man-days (days in which at least one hour is worked) during the 12-month period ending May 1, 1986; and

(2) A RAW granted temporary resident alien status pursuant to section 210A of the INA.

(m) "Starting number" is the number of individuals whose status has been finally adjudicated to that of SAWs under section 210 of the INA, as reported to the Secretaries by the Director by September 1 of each FY. It is the base number from which the annual numerical limitation is determined.

(n) "USDA" means the United States Department of Agriculture.

(o) "Work-day" means a calendar day during which at least 4 hours of work in seasonal agricultural services is performed. (Note: work-day is a term specific to the SAW/RAW program and carries with it employer reporting requirements under 29 CFR part 502. The term is to be distinguished from "man-day" (one hour per day) which is used in other labor standards statutes, and is used under INA to determine whether an alien has sufficient experience in agricultural employment to be eligible for SAW/RAW status.)

§_____.3 Overall determination of the shortage number.

The shortage number is:

(a) The anticipated need in work-days for labor to perform seasonal agricultural services (as determined in § _____.5 of this part) for the FY, minus

(b) The supply in work-days of labor to perform seasonal agricultural services (as determined in § _____.6 of this part) for that FY.

(c) Divided by the factor (determined under § _____.13 of this part) for work-days per worker.

The formula set forth in this section is (paragraph (a)—paragraph (b))÷paragraph (c).

§_____.4 No replenishment if no shortage.

The Secretaries may not determine that there is a shortage unless, after considering all of the criteria set forth in §§ _____.5 and _____.6 of this part, the Secretaries determine that there will not be sufficient able, willing, and qualified workers available to perform seasonal agricultural services required in the FY involved. If there is no determination of shortage, no RAWs may be admitted for the FY involved, except as provided under section 210A(a)(7) of the Act, and § _____.20 of this part.

§_____.5 Determination of need.

(a) The anticipated need for labor to perform seasonal agricultural services for a FY is determined as follows:

(1) *Base.* The Secretaries shall estimate jointly, using statistically valid methods, the number of work-days of labor performed in seasonal agricultural services in the United States in the previous FY. This is an estimate of the total work-days of labor performed by hired labor in seasonal agricultural services—not just those work-days performed by SAWs.

(2) *Adjustment for crop losses and changes in industry.* The Secretaries shall jointly—

(i) Increase the base number by the number of work-days of labor in seasonal agricultural services in the United States that the Secretaries estimate would have been needed in the previous FY to avoid any crop damage or other loss that resulted from the unavailability of labor, and

(ii) Increase or decrease the base number by the projected change in the number of work-days of labor in seasonal agricultural services as a result of—

(A) The forecast of growth or contraction in the production of crops included in seasonal agricultural services, and

(B) The forecast of changes in the number of work-days of labor due to on-farm changes in technologies and personnel practices that affect the need for, and retention of, workers to perform such services.

(b) The Secretary of Agriculture shall collect the data necessary for making the estimate described in paragraph (a) of this section.

§_____.6 Determination of supply.

(a) The anticipated supply of labor to perform seasonal agricultural services for a FY is determined as follows:

(1) *Base.* The Secretaries shall use the number estimated under §_____.5(a)(1) of this part as the base number for estimating the anticipated supply of such labor.

(2) *Adjustments for retirements and increased recruitment.* The Secretaries shall jointly:

(i) Decrease the base number by the number of work-days of labor in seasonal agricultural services in the United States that the Secretaries estimate will be lost due to retirement and movement of workers out of performance of seasonal agricultural services, and

(ii) Increase the base number by the number of additional work-days of labor in seasonal agricultural services in the United States that the Secretaries estimate can reasonably be expected to result from the availability of able, willing, qualified, and unemployed SAWs, rural low skill or manual laborers, and domestic agricultural workers.

(3) *Bases for increased number.* In making the adjustment under paragraph (a)(2) of this section, the Secretaries shall consider—

(i) The effect, if any, that improvements in wages and working conditions offered by employers are projected to have on the availability of workers to perform seasonal agricultural services, taking into account the adverse effect, if any, such improvements in wages and working conditions are projected to have on the economic competitiveness of the perishable agricultural industry,

(ii) The effect, if any, of enhanced recruitment efforts by employers of such workers and government employment services in the traditional and expected areas of supply of such workers, and

(iii) The number of able, willing, and qualified individuals who apply for employment opportunities in seasonal

agricultural services listed with offices of government employment services.

(b) The Secretary of Labor shall collect the data necessary for making the adjustments described in paragraphs (a)(2) and (a)(3) of this section, except that the Secretary of Agriculture shall determine any adverse effect on the economic competitiveness of the perishable agricultural industry described above in paragraph (a)(3)(i) of this section.

§ _____.7 Estimate of the number of SAWs in seasonal agricultural services and determination of work-day per worker factor.

(a) Employers who utilize reportable workers (identified by an INS alien registration number beginning A9 followed by any seven digits) to perform seasonal agricultural services during FY 1989 through FY 1992 are required by section 210A(b)(2) of the INA and regulations located at 29 CFR part 502 to report to the Federal government on the utilization of such workers. An official form, ESA–92 (OMB approval number 1215–0168) must be submitted quarterly, by any employers who employed such workers in seasonal agricultural services during the quarter. The Secretaries have designated the Committee for Employment Information on Special Agricultural Workers, 1201 East 10th Street, Jeffersonville, Indiana 47132, as the entity to receive the reports.

(b) The Director shall, before the end of each FY (beginning with FY 1989 and ending with FY 1992), estimate the number of SAWs who have performed seasonal agricultural services in the United States for at least 15 work-days during the FY. The Act further requires that the Director determine the average number of work-days worked in seasonal agricultural services by certain of such workers who worked at least 15 work-days in seasonal agricultural services during the FY under consideration.

(c) The Committee for Employment Information on Special Agricultural Workers shall furnish to the Director, in the form and manner specified by the Director, information contained in the reports (ESA–92's) submitted by employers. The Director shall base estimates of the number of SAWs working in seasonal agricultural services and the average number of work-days worked by such SAWs on the information received from the Committee.

(d) In making the estimates, the Director shall take into account (to the extent feasible) the underreporting or duplicate reporting on the number of SAWs that may be occurring. The Director shall conduct appropriate surveys of agricultural employers and others to ascertain the extent of such underreporting or duplicate reporting.

(e) Subject to the provisions of § _____.13 of this part for each FY, the estimate of the average number of work-days so derived by the Director is the basis for determination of the work-day per worker factor. That factor is the denominator in the formula specified in § _____.3 of this part for making the overall determination of the shortage number.

§ _____.8 Announcement of the annual numerical limitation on the admission of replenishment agricultural workers.

(a) The Secretaries will make the calculation of the "annual numerical limitation" according to the statutory formula established by section 210A(b) of the INA. In doing so, the Secretaries will use information from INS regarding the number of individuals whose status was finally adjudicated (approved) as SAWs under section 210 of the INA. In the event that INS is not able to make final determinations on all SAW applicants prior to the beginning of FY 1990, the Secretaries will use the number of final adjudications reported by INS to the Director as the "starting number" for the calculation applicable to FY.1990. The Director will advise the Secretaries by September 1, 1989, of the number to be used in the calculation, based upon the latest available INS data. However, in the event INS is unable to complete its adjudication of all SAW applications by the end of FY 1989, the Secretaries, prior to the end of each of the following fiscal quarters, will recalculate the annual numerical limitation by including in the "starting number" all those aliens who the Director reports have been finally adjudicated as SAWs subsequent to any earlier determination of the annual numerical limitation, and by adjusting the number of SAWs who worked in seasonal agricultural services to take into account the increase in the number of reportable workers who obtained SAW status.

(b) Section 210A(b)(3)(i) of the INA requires that before the end of each FY, beginning with FY 1989 and ending with FY 1992, the Director estimate the number of SAWs (those individuals whose status was finally adjusted under section 210 of the INA or who were admitted or whose status was adjusted under section 210A of the INA) who performed seasonal agricultural services at any time (for at least 15 work-days) during the FY. The estimate of the Director will be determined pursuant to § _____.7 of this part and will be used by the Secretaries as specified in the formula for calculating the annual numerical limitation.

(c) Section 210A(b)(1)(C) of the INA requires that the estimate of the Director be increased or decreased to reflect any increase or decrease in the number of nonimmigrant aliens admitted to perform temporary seasonal agricultural labor (H–2A workers) in the FY, compared to the prior FY. The Secretaries will use the difference between the utilization of H–2A workers during FY 1989 compared to FY 1988 as the basis for adjusting the estimate of the Director of SAWs who worked in seasonal agricultural service in FY 1989, and in each of the following FY's will use the change between the current and prior years as the basis for adjusting the estimate of the Director. Specifically, if there is an increase in the utilization of H–2A workers in FY 1989 compared to 1988, the amount of the increase will be added to the estimate of the Director of the number of SAWs who performed seasonal agricultural services in FY 1989. If there is a decrease in the utilization of H–2A workers, the amount of the decrease will be subtracted from the estimate of the Director.

(d) For FY 1990, the numerical limitation is: (1) 95 percent of the number of individuals finally adjudicated as SAWs (described in paragraph (a) of this section as the "starting number"), minus (2) the number of SAWs who performed seasonal agricultural services during FY 1989 as estimated by the Director (as described above in paragraph (b) of this section), and as adjusted to reflect any change in the utilization of H–2A workers as described above in paragraph (c) of this section.

(e) For FY 1991, the numerical limitation is:

(1) 90 percent of the number determined in accordance with step 1 in paragraph (d) of this section (that is, 90 percent of 95 percent of the starting number, except, in the event that INS continues to adjust individuals to SAW status after the beginning of FY 1990, the additional SAWs will be added to the starting number used for 1990 and the entire calculation will be redone prior to the end of each fiscal quarter based upon the larger "starting number"), minus

(2) The number of SAWs, including RAWs, who performed seasonal agricultural services during FY 1990 as estimated by the Director adjusted to reflect any change in the utilization of H–2A workers.

(f) For FY 1992 and 1993, the numerical limitation is:

(1) 90 percent of the number determined in accordance with step 1 for the prior FY (that is, for 1992, 90 percent of 90 percent of 95 percent of the starting number, except, in the event that INS continues to adjust individuals to SAW status after the beginning of FY 1991, the additional SAWs will again be added to the original "starting number" and the entire calculation be redone prior to the end of each fiscal quarter. Similarly for 1993, if INS continues to adjust individuals to SAW status after the beginning of FY 1992, the additional SAWs will be added to the "starting number" and the entire calculation redone prior to the end of each fiscal quarter by taking 90 percent of 90 percent of 90 percent of 95 percent of the starting number), minus

(2) The number of SAWs, including RAWs, who performed seasonal agricultural services during the prior FY, adjusted to reflect any change in the utilization of H–2A workers.

(g) The Secretaries will also recalculate the annual numerical limitation pursuant to the procedure set forth in paragraph (e) or (f) of this section, as appropriate, to incorporate the latest available information from INS and the Director, if the Secretaries grant an increase in the shortage number under § _____.20 of this part and the annual numerical limitation is lower than the resulting shortage number.

(h) Once INS and the Director advise the Secretaries that all applications for SAW status have been finally adjudicated, the annual numerical limitation will be determined once for each subsequent FY, prior to the end of the preceding FY, and the number will be fixed for the entire FY.

(i) The Secretaries will announce the annual numerical limitation in the **Federal Register** at the time the shortage number is announced. Subsequent additions to the starting number and annual numerical limitation will be announced in the **Federal Register**.

(j) There shall be no administrative appeal of the Secretaries' determination of the annual numerical limitation, which shall be the final agency action.

Subpart B—Procedure for Determination of the Shortage Number

§ _____.10 General.

Although under the INA it is the responsibility of the Secretaries to determine the shortage number, that duty requires the cooperation and input of DOL, USDA, INS, and the Director. INS has the data and the authority needed to identify SAWs and RAWs from among all reportable workers for whom data is submitted on the ESA–92 forms, based upon their alien registration numbers. The Director is responsible for determination of the work-day per worker factor, which is the denominator in the overall formula to be used by the Secretaries.

§ _____.11 Data for determination of need to be collected by the Secretary of Agriculture.

The Secretary of Agriculture will provide the data required by § _____.5(a) of this part, for estimating the anticipated need for SAWs, through on-going surveys and estimating procedures, including the quarterly agricultural labor surveys (OMB approval number 0535–0109), conducted by the National Agricultural Statistics Service (NASS), and the USDA baseline method of forecasting crop production.

§ _____.12 Data for determination of supply to be collected by the Secretary of Labor.

The Secretary of Labor will collect the data to estimate the anticipated supply of labor required by § _____.6(a) of this part, except that relating to the economic competitiveness of the perishable agricultural industry, which is monitored by USDA. DOL will collect these data through a four-year series of farmworker surveys (OMB approval number 1225–0044) and surveys among the rural unemployed (OMB approval number 1225–0048) to develop information for estimating changes in the labor supply. DOL will also use additional information from the forms ESA–92 which employers of reportable workers in seasonal agricultural services must submit to the Committee for Employment Information on Special Agricultural Workers. The surveys will be limited to employment and potential employment within seasonal agricultural services, as defined by the Secretary of Agriculture in regulations located at 7 CFR part 1d.

§ _____.13 Director, Bureau of the Census, to determine the work-day per worker factor.

(a) For FY 1990, the work-day per worker factor is the average number, as estimated by the Director pursuant to § _____.7 of this part, of work-days of seasonal agricultural services performed by SAWs in the United States at any time (for at least 15 work-days) in FY 1989.

(1) However, if the Director determines that the information reported by employers using the ESA–92 form is not adequate to make a reasonable estimate of the average number, and the inadequacy is not due to the refusal or failure of employers to report the required information, the factor for FY 1990 is 90.

(2) If the Director determines that the information is inadequate because employers refused or failed to report the required information, the Director, in consultation with the Secretaries, shall use any information available and set the value of the work-day per worker factor.

(b) For FY 1991, the factor is the average number, as estimated by the Director pursuant to § _____.7 of this part, of work-days of seasonal agricultural services performed in the United States by RAWs during FY 1990. RAWs are a specific subset of SAWs, who may enter the United States beginning with FY 1990 as RAWs. See § _____.2 of this part. If no RAWs are admitted during FY 1990, the work-day per worker factor determined in paragraph (a)(1) or (a)(2) of this section will be the factor for 1991.

(c) For FY 1992, the factor is the average number, as estimated by the Director pursuant to § _____.7 of this part, of work-days of seasonal agricultural services performed in the United States in each of the two previous FY's (1990 and 1991) by RAWs who obtained lawful temporary resident alien status during either of those years. If no RAWs are admitted during FY 1990 and 1991, the work-day per worker factor determined in paragraph (a)(1) or (a)(2) of this section will be the factor for 1992.

(d) For FY 1993, the factor is the average number, as estimated by the Director pursuant to § _____.7 of this part, of work-days of seasonal agricultural services performed in the United States in each of the two previous FY's (1991 and 1992) by RAWs who obtained lawful temporary resident alien status during either of those years. If no RAWs are admitted during FY 1991 and 1992, the average number of work-days worked by RAWs who obtained lawful temporary resident alien status during FY 1990 will be the factor. If no RAWs are admitted during FY 1990, 1991, and 1992, the work-day per worker factor determined in paragraph (a)(1) or (a)(2) of this section will be the factor for FY 1993.

§ _____.14 Secretaries of Agriculture and Labor, joint determination of the shortage number.

(a) Section 210(A) of the INA requires that before the beginning of each FY, starting with FY 1990 and ending with FY 1993, the Secretaries shall determine jointly the shortage number. The shortage number is the number (if any) of additional aliens (RAWs) who should

be admitted to the United States or should otherwise acquire the status of aliens lawfully admitted for temporary residence under section 210A of the INA to meet a shortage of workers to perform seasonal agricultural services in a given FY. The Secretaries will announce their determination by the publication of a notice in the **Federal Register**.

(b) No later than September 1, prior to the FY under consideration (September 1, 1989, for FY 1990), the Director shall provide the Secretaries with the estimate of the Director of the number of SAWs who performed seasonal agricultural services during the FY, and the determination of the Director of the work-day per worker factor.

(c) No later than September 1, prior to the FY under consideration, staff from the USDA and DOL offices identified in § _____.20(d) of this part shall exchange estimates prepared in accordance with §§ _____.5 and _____.6 of this part, to facilitate review and determination of the shortage number.

(d) There shall be no administrative appeal of the determination of the Secretaries of the shortage number, except as set forth in §§ _____.20 and _____.30 of this part.

Subpart C—Emergency Procedure for Increase in Shortage Number

§ _____.20 Request by group or association representing employers.

(a) After the beginning of a FY in which RAWs may be admitted (1990 through 1993), a group or association of employers, or potential employers, of individuals who perform seasonal agricultural services may request the Secretaries to increase the shortage number for the FY. This may include a request that the Secretaries set a shortage number in the event that they did not initially determine that a shortage would exist for the FY under consideration. It is anticipated that this provision would apply in cases of an unanticipated bumper crop, a significant change in weather conditions or cropping patterns, or other significant changes that could not have been reasonably predicted or accounted for in the original determination of the shortage number for a FY.

(b) The request must show that extraordinary, unusual, and unforeseen circumstances have resulted in a significant shortage of workers to perform seasonal agricultural services due to—

(1) A significant increase in the need for SAWs in the FY,

(2) A significant decrease in the availability of able, willing, and qualified workers to perform seasonal agricultural services, or

(3) A significant decrease, below the work-day per worker factor applicable to the FY, in the number of work-days of seasonal agricultural services performed by RAWs.

(c) The requesters must demonstrate that a significant increase in the shortage number is appropriate. That is, they must show that they have undertaken reasonable recruitment efforts and that they continue to have a significant shortage of the labor needed to avoid crop damage or loss. They must show further, that the need for labor to avoid crop damage or loss is significantly greater than the availability of able, willing, qualified, and unemployed SAWs, rural low skill or manual laborers, and domestic agricultural workers. Requesters must show that they have undertaken reasonable recruitment efforts by recruiting in the region or regions of traditional and expected labor supply, offering wages, working conditions, and other terms of employment, including, but not limited to, housing, transportation, meals, and subsistence, comparable to or better than those provided generally in the same or comparable occupations and crops in the labor market area, and that the normal qualifications for such occupations and crops were applied.

(d) The request must be in writing and must be submitted to either the Secretary of Labor, Attention: Assistant Secretary for Policy, 200 Constitution Ave., NW., Washington, DC 20210, or the Secretary of Agriculture, Attention: Assistant Secretary for Economics, Fourteenth St. and Independence Ave., SW., Washington, DC 20250–1400. For purposes of the time periods specified below, the date the request is received by either Secretary will mark the beginning of the time periods.

(e) Not later than 3 business days (days when the Federal offices involved are open for normal business) after the request is received, the Secretaries shall provide for notice in the **Federal Register** of the substance of the request and shall provide the opportunity for interested parties to submit information to the Secretaries on a timely basis (received by the Secretaries within 10 calendar days of publication of the notice).

(f) Not later than 21 calendar days after receipt of the request, and after consideration of any information submitted on a timely basis with respect to the request, the Secretaries shall make their determination on the request and provide for notice in the **Federal Register**. The request shall be granted and the shortage number for the FY increased if and to the extent that the Secretaries determine that such an increase is justified based upon the showing and circumstances described above in paragraph (b) of this section, and that such an increase takes into account that reasonable recruitment efforts have been made in the traditional and expected areas of supply of such workers.

(g) In making their determination, the Secretaries may use any available information, including available data from the State Employment Service Agencies and the United States Employment Service to examine the validity of the information submitted by interested parties.

(h) There shall be no administrative appeal of the decision of the Secretaries regarding a particular request for an increase in the shortage number, which shall be the final agency action.

Subpart D—Procedure for Decreasing the Work-day Requirement

§ _____.30 Request by group of special agricultural workers.

(a) After the beginning of a FY in which RAWs may be admitted (FY 1990 through FY 1993), a group of such workers may request that the Secretaries decrease the number of work-days required under section 210A(d)(5)(A) and (B) of the INA. Subparagraph (A) requires that RAWs perform seasonal agricultural services for at least 90 work-days in each of the first three years after the alien obtained the status of an alien lawfully admitted for temporary residence, in order to avoid deportation. Subparagraph (B) provides that such an alien may not be naturalized unless that alien has worked at least 90 work-days in seasonal agricultural services in each of five years after obtaining the status of an alien lawfully admitted for temporary residence.

(b) The request must show that extraordinary, unusual, and unforeseen circumstances have resulted in a significant decrease in the shortage number with respect to that FY due to—

(1) A significant decrease in the need for SAWs in the FY,

(2) A significant increase in the availability of able, willing, and qualified workers to perform seasonal agricultural services, or

(3) A significant increase, above the work-day per worker factor applicable to the FY, in the number of man-days of seasonal agricultural services performed by RAWs.

(c) The request must be in writing and must be submitted to either the Secretary of Labor or the Secretary of Agriculture as specified in § _____.20(c) of this part.

(d) Not later than 3 business days after the request is received, the Secretaries shall provide for notice in the **Federal Register** of the substance of the request and shall provide the opportunity for interested parties to submit information to the Secretaries on a timely basis. The time allowed for the receipt of such information will be set by the Secretaries, taking into account the number of calendar days remaining in the FY.

(e) Before the end of the FY, the Secretaries, after consideration of any information submitted on a timely basis with respect to the request, shall make their determination on the request and provide for notice in the **Federal Register**. The request shall be granted and the required number of work-days for the FY shall be reduced if, and by the same proportion as, the Secretaries determine that a decrease in the shortage number is justified based upon the showing and circumstances described in paragraph (b) of this section.

(f) There shall be no administrative appeal of the decision of the Secretaries regarding a particular request for a decrease in the number of work-days required under section 210A(d)(5) of the INA, which shall be the final agency action.

[FR Doc. 89–18908 Filed 8–10–89; 8:45 am]

BILLING CODES 3410–01–M; 4510–23–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 270, and 274

[Release No. 33–6842; IC–17091; S7–21–89]

RIN 3235–AB40

Registration Form For Closed-end Management Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule, form amendments, rule amendments, and guidelines.

SUMMARY: The Commission is proposing for public comment (1) amendments to Form N–2, the registration form used by closed-end management investment companies under the Investment Company Act of 1940 and the Securities Act of 1933, that would establish a two-part format for disclosure to prospective investors and update current disclosure requirements; (2) related form and rule amendments; and (3) staff guidelines for the preparation of Form N–2. These amendments are being proposed to shorten and simplify the prospectus provided to investors, while making more extensive information available to those that request it, and to codify in the form and guidelines disclosure standards that have been developed for closed-end investment companies, including companies electing to be regulated as business development companies.

DATE: Comments on the proposed amendments to the form, rule amendments, and guidelines should be received on or before October 20, 1989.

ADDRESS: Three copies of all comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be available for public inspection and copying in the Commission's public reference room, 450 Fifth Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Berman, Special Counsel, or Robert E. Plaze, Chief of Office, (202) 272–2107, Office of Disclosure and Adviser Regulation, or with respect to matters concerning financial statements, Lawrence A. Friend, Chief Accountant, (202) 272–2106, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is proposing for comment:

(1) Amendments to Form N–2 (17 CFR 274.11a–1), the registration form for closed-end investment companies ("funds" or "closed-end funds") under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("1933 Act") and the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) ("1940 Act").[1] The proposed amendments would divide Form N–2 into three parts: Part A would be the prospectus required by section 10(a) of the 1933 Act (15 U.S.C. 77j(a)); Part B would be the "Statement of Additional Information" ("SAI") which would contain additional information about the closed-end fund to be provided promptly upon request to recipients of the prospectus; and part C would contain other information that would be required to be in the registration statement. The proposed amendments also would clarify and update disclosure standards that have been developed for closed-end funds.

(2) Amendments to rules 495, 496, and 497 (17 CFR 230.495, 496, and 497) of Regulation C under the 1933 Act (17 CFR 230.400 *et seq.*) to add Form N–2 to the registration forms specified in those rules.

(3) Amendments to rules 8b–11, 8b–12, and 8b–16 (17 CFR 270.8b–11, 8b–12, and 8b–16) under the 1940 Act. Rules 8b–11 and 8b–12 would be amended to add Form N–2 to the registration forms specified in those rules. The proposed amendment to rule 8b–16 would exempt closed-end funds from the requirement to annually update their registration statements provided certain disclosures are made to fund shareholders.

(4) Amendments to Form N–14 (17 CFR 239.23), the registration form under the 1933 Act to register securities issued in certain investment company business combination transactions. The amendments to Form N–14 would reflect the three part registration format being proposed for Form N–2.

(5) A new rule 134b and amendments to rules 430, 460, 463 and 481 (17 CFR 230.430, 460, 463, and 481) of Regulation C under the 1933 Act. The amendments to rules 430 and 460 would require that an SAI be available for delivery to investors at the time that a preliminary prospectus is circulated. Proposed rule 134b would provide a "safe harbor" for the use of the SAI prior to the effective date of the registration statement. The amendment to rule 481 would specify the appropriate legend to be printed on an SAI used prior to the effective date of the registration statement. The amendment to rule 463 would clarify that a closed-end fund that has elected to be regulated as a business development company ("BDC") is not required to file a report on Form SR (17 CFR 239.61) with respect to the use of proceeds from an initial public offering.

The Commission also is publishing staff guidelines for the preparation of amended Form N–2 which are contained in Appendix C to this release. All comments and suggestions received concerning staff guidelines will be considered by the staff in developing final guidelines.

I. Background and Summary

Form N–2 is the registration form used by closed-end funds to register as investment companies under the 1940 Act and to register their securities under the 1933 Act. Unlike open-end management investment companies ("mutual funds"), closed-end funds do not issue redeemable securities or continuously offer their shares to the public. Rather, a closed-end fund issues, in a traditional underwritten offering, a

[1] The text of amended Form N–2 is Appendix B to this release.

fixed number of shares that are subsequently traded on a securities exchange or in the over-the-counter market at a price determined by the market, which typically is lower than the share's net asset value.[3] Another distinction between closed-end funds and mutual funds is that the 1940 Act permits a closed-end fund to issue senior securities consisting of one class of preferred stock and one class of debt.[3] However, a closed-end fund is much like a mutual fund in that it offers to investors an opportunity to invest in a professionally managed portfolio of securities. Therefore, closed-end funds usually serve as investment vehicles for individual investors who do not have the expertise or resources to assemble and manage a diversified investment portfolio.

The number of closed-end funds has increased dramatically in recent years.[4] Financial commentators have advanced a number of explanations for their increased popularity: that closed-end bond funds have received the benefit of increased investor interest in debt, rather than equity, investments after the October 1987 Market Break; [5] that the ability of closed-end funds to provide leverage through the issuance of senior securities attracts investors with the prospect of higher rates of returns than non-leveraged open-end funds with similar investment objectives; [6] and that brokerage firms have placed more emphasis on marketing closed-end funds in the wake of the decline in initial public offerings that followed the October 1987 Market Break.[7] In addition, certain closed-end funds have been used as vehicles for investing in foreign securities markets which may not otherwise be readily accessible to United States investors.[8]

The proposed amendments would make available to closed-end funds the kind of simplified prospectus previously adopted for other classes of investment companies. In 1983 the Commission adopted Form N–1A (17 CFR 274.11A), the registration form for mutual funds, which consists of three parts: a simplified prospectus, an SAI that must be provided to investors upon request, and other information that must be filed with the Commission but not delivered to investors.[9] When Form N–1A was published for comment, the Commission stated its intention to develop a simplified prospectus form for other types of investment companies.[10] Since Form N–1A was adopted, the Commission has adopted Forms N–3 and N–4 (17 CFR 274.11b and 274.11c) for insurance company separate accounts offering variable annuity contracts ("separate accounts"),[11] and Form N–14 for the registration of securities issued in certain investment company business combination transactions [12] using the same three part registration form with a simplified prospectus and an SAI. The Commission now is proposing amendments to Form N–2 to permit closed-end funds to use the same disclosure format.

The two part disclosure document (prospectus and SAI) is based on the conclusion reached by the Commission in 1983 that a shortened and simplified prospectus is necessary to permit individual investors to assess matters of fundamental importance about the fund. The Commission believed that many of these investors were discouraged from reading the prospectus by its length and complexity. On the other hand, the Commission realized that some investors, such as institutional investors or investment advisers, may desire more detailed information about an investment company. To meet the needs of both of these types of investors, the Commission developed Form N–1A under which a simplified prospectus is delivered to all investors, but more extensive information is available to those investors who desire it.[13]

Form N–2 is used by closed-end funds (except small business investment companies licensed as such by the United States Small Business Administration, which use Form N–5 (17 CFR 274.5)) to register under the 1940 Act and register their securities under the 1933 Act. The Commission believes that the similarities between open-end and closed-end fund prospectus disclosure and the type of investors who invest in these funds warrant extending the three part registration statement format to closed-end funds. The simplified prospectus is intended to be more comprehensible and, accordingly, more likely to be read by investors. This, the Commission hopes, will result in greater use of the prospectus as the primary selling document for closed-end funds, which in turn should result in better informed investors.

The Commission recognizes that there are important distinctions between closed-end and open-end funds that might affect the desirability of using the two part disclosure format. First, closed-end funds are distributed through the use of a preliminary prospectus in underwritten offerings with a number of participants. This may result in as many as four documents (two prospectuses and two SAIs) being handled by participating underwriters and dealers. It may be difficult to ensure that participants in the distribution have all of the prospectuses and SAIs and have systems in place to assure delivery to prospective investors. However, under the proposals, underwriters and dealers would not have to distribute the SAI; they could direct their customers to a single source—*e.g.*, the managing underwriter (the phone number of which would be on the cover of the prospectus)—to request it.[14] In such a case, participants in a closed-end fund underwriting would not have to deliver any more disclosure documents than in other offerings.

Second, closed-end fund shares are offered during a relatively short underwriting period (approximately 30 days).[15] This makes it more difficult to devise a mechanism by which an investor can request and obtain an SAI before having to make an investment decision. To address the time constraints posed by closed-end fund offerings, the Commission is proposing a requirement, modeled after a similar instruction in Form N–14, that a telephone number to request an SAI be provided on the cover page of the prospectus and the SAI be mailed within one business day of receipt of the request.[16] Comment is requested on these and other issues regarding the appropriateness of the use of the two part disclosure format for closed-end fund registration statements.

In addition to use of the three part registration statement format, the Commission is proposing revisions to Form N–2 that would enhance prospectus disclosure about closed-end funds in certain key areas such as expenses, condensed financial information, the risk of shares trading at less than net asset value, portfolio managers, dividend reinvestment plans, and charter and by-law provisions that would restrict a change of control of a closed-end fund. The revised form would also clarify the disclosure obligations of closed-end funds that have elected to be regulated as BDCs.[17]

II. Synopsis of the Amendments to Form N–2

As proposed to be amended, Form N–2 would contain three parts. Part A would be the simplified prospectus that meets the requirements of section 10(a) under the 1933 Act, the delivery of which satisfies the prospectus delivery requirements of section 5(b)(2) of the 1933 Act (15 U.S.C. 77e(b)(2)). The prospectus would contain a concise presentation of essential information about the closed-end fund and its securities. Part B (the SAI) would include additional information about the fund, including its financial statements, that would not be required to be included in the prospectus (provided that certain conditions are met) but must be made available to investors upon written or oral request and without charge. More detailed discussions of matters required to be in the prospectus, as well as other items that may interest some investors, would be contained in the SAI. Part C would contain other information about the fund required in the registration statement but not required to be delivered to investors.

III. Proposed Amendments to Form N–2

A. General Instructions

Part A of amended Form N–2 would contain instructions for the preparation of the prospectus. The instructions are similar to the instructions to Form N–1A with three exceptions. First, an instruction would be added to reduce from ten to seven the number of copies required by rules 402 and 472 of Regulation C (17 CFR 230.402, 472) to be submitted when filing a registration statement, and to reduce from eight to five the number of copies required when filing an amendment to a registration statement.[18] Second, an instruction would be added directing the attention of funds using rule 415 under the 1933 Act to the undertaking to file post-effective amendments required by proposed Item 33.4 of Form N–2.[19] Third, as noted above, the instruction for use of the SAI would be tailored to provide for timely delivery of the SAI within the time constraints of a closed-end fund offering. Specifically, proposed Instruction H would require closed-end funds to (1) include a telephone number on the cover page of the prospectus for prospective investors to use to request the SAI,[20] (2) provide a self-addressed card for requesting the SAI unless a toll-free telephone number is provided, and (3) send the SAI within one business day of the receipt of the request by first class mail or other means designed to ensure equally prompt delivery.[21] Closed-end funds would be required by proposed Item 33.7 to undertake to send the SAI within one business day of receipt of the request in the manner specified by the instruction.[22]

B. Part A: The Prospectus

Part A of amended Form N–2 would contain thirteen items. Many of the disclosure items have not been substantially revised. Others have been revised to conform to the short-form prospectus disclosure requirements of Form N–1A or to provide the type of detail found in similar disclosure requirements of Regulation S–K (17 CFR 229 *et seq.*).[23] These types of changes are generally not addressed in detail in this release. The significant changes are discussed below.

Item 1—Outside Front Cover Page

Item 1 would be revised to require a closed-end fund to disclose on the outside front cover page its name and type (*e.g.*, bond fund, BDC, etc.), the title and amount of securities being offered, and the date of the prospectus (and SAI).[24] The cover page would be required to include a statement that the prospectus sets forth concisely information about the fund, that it should be retained for future reference, and that an SAI can be obtained and how it may be requested.[25] In addition, where the prospectus is used before effectiveness or omits information as permitted by rule 430A under the Securities Act (17 CFR 230.430A), the legend required by rule 461(b)(2) (17 CFR 230.461(b)(2)) would be required to be placed on the prospectus cover.[26]

---

[3] *See* section III.B. of this release for a discussion of the discount which characterizes the share price of most closed-end funds.

[3] *See* section 18(a) of the 1940 Act (15 U.S.C. 80a–18(a)).

[4] According to the Investment Company Institute's Survey of Closed End Funds (May 1, 1989), in 1985 there were 82 closed-end funds with approximately $7.6 billion of assets. By the end of 1988 there were 108 closed-end funds with approximately $40.8 billion of assets.

[5] *See* Closed-End Funds: Answers to Questions, The Wall Street Journal, Sep. 14, 1988, at p. 37. Measured in terms of proceeds to the issuer, bond funds represented 91% of the 69 new closed-end funds which came to market in 1988. Source: Investment Company Institute, Survey of Closed-End Funds, *supra*.

[6] *See* Herzfeld, Churn and Earn: Closed-End Bond Funds as Trading Vehicles, Barron's, Sep. 12, 1988, at p. 45.

[7] *See* Five Month Fizzles: What Lots of Closed-End IPOs Are, Barron's, Aug. 8, 1988, at p. 21.

[8] *See* Pick A Country, Buy a Mutual Fund, The New York Times, July 19, 1987, at p. F10; International Mutual Funds, The New York Times, Sep. 28, 1987, at p. 38.

[9] Investment Company Act Rel. No. 13436 (Aug. 12, 1983) (48 FR 37928 (Aug. 22, 1983)).

[10] Investment Company Act Rel. No. 12927 (Dec. 21, 1982) (48 FR 813 (Jan. 7, 1983)).

[11] Investment Company Act Rel. No. 14575 (June 14, 1985) (50 FR 26145 (June 25, 1985)).

[12] Investment Company Act Rel. No. 14796 (Nov. 14, 1985) (50 FR 46379 (Nov. 25, 1985)).

[13] In addition, the SAI provides the Commission with information that is important in its review of the prospectus and in assuring that the regulatory requirements of the 1940 Act are met.

[14] *See* discussion of proposed cover page requirements *infra* at section III.A. of this release and the discussion of the relationship of the SAI to the preliminary prospectus in section VI of this release. The proposed amendment to rule 460 would distinguish between distribution requirements for preliminary prospectuses (a sufficient number of which must be distributed to underwriters and dealers who have been invited to participate in the offering) and the SAI (which will have to be available, but which need not be distributed to prospective underwriters and dealers).

[15] Offerings periods in excess of 30 days may be made in reliance on rule 415 under the 1933 Act (17 CFR 230.415).

[16] *See* proposed Instruction H and the undertaking set forth in proposed Item 33.7. The Commission also believes that this problem will not be significant based on its experience that most investors find the information in the prospectus sufficient and that only a small number of investors request an SAI. Thus, the burden of actually responding to requests for the SAI, whether borne by dealers, the managing underwriters, or the fund, should not be great.

[17] *See* discussion *infra* at section III.F. of this release.

[18] *See* proposed Instruction C to Form N–2. The same reduction in copies has been made for variable annuity prospectuses. *See* Instruction C to Forms N–3 and N–4.

[19] *See* proposed Instruction E.3 to Form N–2.

[20] Although Form N–1A only requires the cover page to contain a statement that the SAI is available upon request and without charge, most mutual funds include a telephone number for investors to use to request the SAI. *See* Item 1(a)(iii) of Form N–1A.

[21] These instructions are similar to General Instruction F to Form N–14 and reflect the time constraints of most closed-end fund offerings. *See supra* text accompanying notes 15 and 16.

[22] Items 37 (c) and (d) of Form N–3 and Items 32 (c) and (d) of Form N–4 require similar undertakings.

[23] Appendix A to this Release contains a cross-reference table indicating which items of Form N–2 are not being changed; which changes are derived from Form N–1A or Form N–3; which changes are derived from Regulation S–K; and which changes represent new disclosure items. While, as noted above, closed-end funds have many characteristics in common with mutual funds, they also are similar to non-investment company issuers in that they issue securities, in more traditional underwritings, which are subsequently traded on exchanges or in the over-the-counter market. Where the disclosure item in Form N–2 concerns matters that closed-end funds have in common with mutual funds, the provisions of the proposed revisions have been drafted to parallel Form N–1A. Where the disclosure item in Form N–2 concerns matters that closed-end fund offerings have in common with offerings of non-investment company issuers, the proposed revisions have been drafted to parallel Regulation S–K.

[24] *See* proposed Items 1.1.a, 1.1.b, 1.1.c, and 1.1.e. If any of the securities are offered for the account of an existing securityholder this fact must also be disclosed. *See* proposed Item 1.1.f.

[25] *See* proposed Item 1.1.d.

[26] *See* proposed Item 1.1.h. In addition, proposed rule 461(g) would require a similar legend to be placed on the cover of the SAI when it is used before the effective date of the registration statement. *See* discussion *infra*, Section VI of this release.

The cover page also would contain the table currently required by Form N–2 which sets forth the underwriting compensation and the amount of proceeds to the fund.[27] However, in order to use terminology that is more familiar to investors in investment companies, the Commission is proposing to change the caption on the table that currently refers to underwriting discounts to "Sales Load".[28] The Commission believes that use of the term "sales load" will improve investors' understanding of why the per share net asset value of a closed-end fund which charges a sales load typically is less than the share price paid by investors in the offering.

In addition to these items of information, the Commission is proposing to require prominent disclosure on the cover of a prospectus used during an initial offering stating that the Registrant's securities have no history of public trading, and describing the tendency of closed-end funds frequently to trade in the secondary market at a price below net asset value and their offering price and the risk of loss this creates for those investors purchasing shares in the initial offering.[29] A study recently completed by the Commission's Office of Economic Analysis demonstrates that a substantial decrease in the value of shares quite often occurs shortly after the initial offering.[30] While some of the decrease is due to the sales load, there appears to be, in many instances, a further reduction in share value below net asset value that cannot be explained by the sales load. The significance of this decrease and the likelihood of its occurrence shortly after an initial offering of closed-end fund shares makes this material information that an investor would want to know before investing.

Comment is requested on whether funds should be permitted to develop appropriate disclosure describing the risks associated with closed-end fund discounts, as contemplated by the proposed item, or whether the Commission should require specific disclosure in the form of a prescribed legend describing the discount phenomenon and, if so, what the prescribed legend should be. Commenters are asked to weigh the advantages and disadvantages of a standardized legend with those of providing some flexibility to funds in this area. If funds are permitted to develop their own disclosure, they must, of course, describe the frequency of closed-end fund discounts in a non-misleading manner. Disclosure creating the impression that closed-end fund shares are as likely to trade at a premium as at a discount would not be adequate. Comment also is requested on whether disclosure of the type proposed would sufficiently inform investors of the risks associated with closed-end fund discounts or whether additional, or different requirements should be prescribed and, if so, what those requirements should be. For example, to further investor understanding of the discount from the offering price attributable to underwriting commissions, should consideration also be given to requiring that confirmations for sales of securities of closed-end funds in the initial offering disclose these amounts as sales loads?

The Commission recognizes that prospectus disclosure may not be useful to persons who make a decision to purchase prior to receiving a prospectus. Accordingly, the Commission requests comment with respect to current industry practice by brokers in disclosing the discount risk to customers. In addition, how should brokers consider the discount risk in making determinations whether to solicit or otherwise recommend closed-end funds? *See Hanly* v. *SEC*, 415 F.2d 589, 597 (2d Cir. 1969) (broker-dealer "cannot recommend a security unless there is an adequate and reasonable basis for such recommendation"). What effect, if any, would prominent prospectus disclosure have on brokers sales practices with respect to closed-end funds? What is the responsibility of brokers who sell closed-end funds to disclose the discount risk to their customers? Finally, comment is requested on whether the discount disclosure requirements for closed-end bond funds should be different from those for equity funds.[31]

The Commission also is proposing that, where applicable, the cover of the prospectus contain a cross-reference to the sections of the prospectus that describe any factors that would make the offering speculative or one of high risk.[32]

Item 2—Inside Front and Outside Back Cover Pages

Proposed Item 2 would require disclosure about certain significant matters on the inside front or outside back cover pages of the prospectus. This item, which is similar to Item 502 of Regulation S–K (17 CFR 229.502), would incorporate the requirements of paragraphs (d) through (f) of rule 461 under the 1933 Act (17 CFR 230.461(d)–(f)), which require a statement or legend, where applicable, with respect to over-allotments or stabilizing transactions, offerings to existing shareholders pursuant to warrants or rights, and prospectus delivery requirements of dealers (in addition to their obligation when acting as underwriters and with respect to their unsold allotments or subscriptions). Proposed Item 2 would also require funds whose securities are listed on a national securities exchange or on the over-the-counter market to disclose this fact and identify the symbol under which their securities are listed.[33]

Item 3—Synopsis

The Commission proposes to amend Item 3 of Form N–2 (currently Item 2) to require a tabular presentation of expenses ("fee table") to be set out as part of the synopsis at the beginning of the prospectus.[34] The fee table would

[27] *See* proposed Item 1.1.g. A new instruction is proposed to be added to this item to notify funds that pay underwriting expenses by borrowing amounts instead of selling at a discount *not* to reflect those amounts in the table but to provide a cross-reference to the text of the prospectus discussing the borrowed amounts. These amounts would also be disclosed in the fee table. *See* discussion *infra* at section III.B. of the release. Instructions would also be added similar to Instructions 3 and 4 to Item 501(c)(10) of Regulation S–K (17 CFR 229.501(c)(10)) concerning offerings made on a best efforts basis and over-allotment options.

[28] *See* Instruction 2 to proposed Item 1.1.g. The underwriting discount constitutes "sales load" under section 2(a)(35) of the 1940 Act (15 U.S.C. 80a–2(a)(35)). Any compensation to underwriters or dealers that does not constitute sales load will be set forth in a footnote to the table. Any additional offering expenses would be set forth in the footnote to the table called for by Instruction 8 to proposed Item 1.1.g.

[29] *See* proposed Item 1.1.i.

[30] "The Post-Offering Price Performance of Closed-End Funds," July 21, 1989.

[31] The study found that bond funds trade at a negligible discount after 120 trading days. *Id.* However, one expert has found that bond funds have, over the past ten years, traded at a discount of 3.96%. *See* Herzfeld, The People's Choice: Money Still Pouring In to Closed-End Funds, Barron's, May 16, 1988, at 55. The Commission is proposing to require the disclosure on the cover of all closed-end fund prospectuses, including bond funds, since there is an immediate decrease in the value of an investor's investment.

[32] *See* proposed Item 1.1.j. Item 501(c)(4) of Regulation S–K (17 CFR 229.501(c)(4)) requires a similar cross-reference.

[33] Item 2(a) of Form N–14 and Item 502(a)(3) of Regulation S–K (17 CFR 229.502(a)(3)) require similar disclosure.

[34] Open-end funds filing on Form N–1A are required to include a fee table as a result of amendments to Form N–1A adopted in Investment Company Act Rel. No. 16244 (Feb. 1, 1988) (53 FR 3192 (Feb. 4, 1988)). Amendments to Form N–3 and Form N–4 require a fee table in the registration statements used for variable annuity separate accounts. Investment Company Act Rel. No. 16766 (Jan. 23, 1989) (54 FR 4772 (Jan. 31, 1989)).

reflect both transactional expenses and expenses paid directly by shareholders, such as sales loads; expenses deducted from fund assets, such as management fees; and payments to preferred shareholders.[35] The fee table also would provide an example of the cumulative amounts of the fees charged over various investment periods.

The proposed fee table ("N–2 fee table") is similar in many respects to the table required by Form N–1A for mutual funds ("N–1A fee table") [36] except that it has been modified to reflect certain types of closed-end fund expenses and to provide a method of calculating these expenses.[37]

A new section of the N–2 fee table would show payments to preferred shareholders. While these distributions usually are not considered an "expense" of a fund, these payments reduce earnings available for distribution to common shareholders and as such represent a "cost" to those shareholders.[38]

The proposed N–2 fee table would not be required to be included in prospectuses that offer only debt securities, because the level of a fund's expenses shown on the N–2 fee table is much less important to an investor not having an after-expense interest in the returns of a closed-end fund. These expenses should not affect the anticipated return on a fund's debt securities, since the fund's obligations to meet the interest and repayment requirements of these securities is not tied to the fund's yield or total return. In addition, the asset coverage requirements of the 1940 Act mitigate the effects of a fund's expenses on the interest and repayment requirements of debt securities, since they provide additional assurance that these expenses will be absorbed by the holders of common and preferred stock.[39] The Commission requests comment on whether the information that would be included in the N–2 fee table would be material to purchasers of debt securities.

Item 4—Condensed Financial Information

The Commission is proposing extensive revisions to the condensed financial information ("per share table") contained in the prospectus. The revisions are intended to shorten and simplify the per share table while providing more useful and understandable information to investors. Some items would be deleted, others added, and the captions of some rephrased to make them easier to understand.

The per share table summarizes the financial statements.[40] It currently consists of thirteen items of information set out in columnar format for each of the last ten fiscal years of the fund. The first nine items set out the yearly income and capital changes of the fund on a per share basis. The last four items disclose certain fund ratios. Under the proposed revisions, the per share table would be reduced to ten items. The current and proposed tables are set out below:

Current Table	Proposed Table
Per share income and capital changes (for a share outstanding throughout the year)	
1. Investment income; 2. Expenses; 3. Net investment income; 4. Dividends from net investment income; 5. Net realized and unrealized gains (losses) on securities; 6. Distributions from net realized gains on securities; 7. Net increase (decrease) in net asset value; 8. Net asset value at beginning of period; 9. Net asset value at end of period.	1. Net investment income 2. Net gains or losses on securities (both realized and unrealized) 3. Dividends (from net investment income) 4. Distributions (from capital gains) 5. Net asset value (at end of period)
Ratios	
10. Expenses to average net assets 11. Net investment income to average net assets 12. Portfolio turnover rate 13. Number of shares outstanding at end of period	6. Expense ratio (expense to assets average net assets) 7. Net investment income to average net assets 8. Portfolio turnover rate 9. Total return 10. Net assets at end of period (000s)

[35] Payments to preferred shareholders would not be required in a prospectus that offers only preferred shares. *See* Instruction 11 to proposed Item 3.

[36] *See* Item 2(a)(i) of Form N–1A.

[37] Unlike the N–1A fee table, the proposed N–2 fee table does not instruct the fund to look to the expenses during the last fiscal year to determine the annual expenses, but rather instructs the fund to state the basis on which the expenses are deducted or, if none, to estimate the expenses that will be deducted. This is because most closed-end funds do not have any operating history prior to the use of their current prospectus. In this respect all closed-end funds would be treated like "new" mutual funds (*see* Instructions 11(a) and 13(b) to Item 2(a)(i) of Form N–1A) except that the "Example," which sets out cumulative expenses over one, three, five, and ten year periods, would be required by the N–2 fee table to show expenses for each of the periods. Unlike "new" mutual funds, which are only required to show expenses for one and three year periods (*see* Instruction 14(e) to Item 2(a)(i) of Form N–1A), "new" closed-end funds generally have a fixed capitalization and do not increase their assets under management by continuously offering their securities. Accordingly, closed-end funds have relatively stable expenses and extrapolating those expenses into the future would produce meaningful information. The Commission is requesting comment on how the table should be further adapted to accommodate BDCs. *See* discussion *infra* at section III.F of this release.

[38] Similarly, interest payments on long-term debt, which may be part of the capitalization of a closed-end fund, would be included among the annual shareholder expenses. *See* Instruction 8 to proposed Item 3.1 of Form N–2.

[39] Section 18(a)(1) of the 1940 Act (15 U.S.C. 80a–18(a)(1)) requires a closed-end fund that offers debt securities to maintain a 300% net asset coverage immediately following the offering and on an ongoing basis as a condition to declaring dividends and distributions.

[40] As proposed, the financial statements would be located in the SAI. Most closed-end fund prospectuses, since they are used only during the initial offering, do not contain financial statements or a per share table. As is the case with current Form N–2, the table would appear only in a prospectus used in a subsequent offering or, if the fund issues securities in connection with a business combination, as part of a registration statement on Form N–14.

The first two items of the table, "investment income" and "expenses," would be deleted so that the initial caption would be "net investment income." The deleted items, which served mainly to disclose fund expenses, would be reflected in the summarized expense information provided in the N–2 fee table, which would be required to be located near the per share table.[41] Although the fee table would include only current expense information, historical expense information, while not required in the prospectus, would be available for recent periods in the financial statements included in the SAI.

Two items of information that set out net asset values at the beginning and end of each period and the net change in net asset value during each period would be condensed so that only the net asset value of the fund at the end of each period (and, if the fund has been in operation for less than one year, its net asset value immediately after its initial public offering) would be set forth.[42]

A line would be added to set forth the total return of the fund for each period. Currently, investors are only able to estimate overall performance of a fund by analyzing the change in net asset value and distributions during a period. Inclusion of total return information in the prospectus [43] should provide more concise, precise, and useful information regarding historical performance of a closed-end fund.[44]

The Commission proposes to replace the item requiring disclosure of the "number of shares outstanding during the period" with disclosure of the net assets of the fund at the end of the period. The number of shares outstanding is in-and-of-itself not significant financial information because the number of shares is a function of both the size of the fund and the price of a share, the latter of which is largely determined arbitrarily (*e.g.*, $10.00) at the time of the initial offering.[45] However, the size of the fund (which currently can be determined by multiplying the number of shares by the fund's per share net asset value) may be an important consideration for many investors in selecting a fund. For this reason, a line would be added to the Form N–2 per share table to set out the closed-end fund's total net assets at the end of each period.

[41] The information in Items 1 through 4 of proposed Form N–2 would be required to be set forth in numerical order in the prospectus, not preceded or separated by any other item. *See* General Instructions to Parts A and B of proposed Form N–2. The N–2 fee table, Item 3, would therefore precede the per share table, Item 4.

[42] Since the net asset value at the end of one period will be the same as the net asset value at the beginning of the next period, the current format for this information is repetitive. The proposed format will still permit investors to track fluctuations in net asset value from one year to the next.

[43] The Commission recently adopted amendments to rule 482 (17 CFR 230.482), the "omitting prospectus rule" which, among other things, require that an advertisement of a mutual fund that contains performance information disclose the fund's total return for the previous one, five, and ten year periods. *See* rule 482(e) under the 1933 Act (17 CFR 230.482(e)) and Investment Company Act Rel. No. 16245 (Feb. 2, 1988) (53 FR 3868 (Feb. 10, 1988)). Nine commenters on the proposal of these amendments urged that total return be provided in the mutual fund prospectus (in lieu of advertisements). See Summary of Comments on Mutual Fund Advertising Proposals (March 31, 1987) in File No. S7–23–86. The Commission expects to consider proposing for comment similar amendments to the mutual fund per share table.

[44] Proposed Instruction 14 to the per share table specifies that, unlike the total return figures used in mutual fund advertisements, the per share table total return figures would be based on fiscal years and would not reflect sales loads. This is because the per share table information (as well as the financial statements) report only direct fund expenses, and because the year-by-year format makes it impractical to deduct a sales load. The instruction would require the fund to include a note to the per share table explaining the fact that these charges are not reflected in total return. Finally, the instruction specifies that total return is to be calculated assuming that shares were purchased on the first day of the fiscal year and sold on the last day at the then-current market prices, and that all dividends and distributions were reinvested at prices obtained by the fund's dividend reinvestment plan. If the fund does not have such a plan, the instruction specifies that reinvestments shall be assumed to be made at the per share net asset value on the date of distribution, unless the market value of the shares is less than the per share net asset value, in which case, the fund is directed to assume that dividends and distributions were reinvested at market value. This method focuses on the investment experience of fund shareholders. Comment is requested on an alternate method that assumes that dividends and distributions are reinvested at the net asset value calculated on the date of distribution. Under this method a shareholder's total return generally will not match the total return set out in the per share table since share price will diverge from net asset value.

[45] The number of shares outstanding is important information with respect to voting control of the fund. Proposed Item 10.6 of Form N–2 would require a table disclosing the number of shares currently outstanding in the text of the prospectus.

Items 5 and 6—Plan of Distribution and Selling Shareholders

Revised Item 5 would require the disclosure of substantially the same information called for by Item 4 of current Form N–2. In addition, the item would specifically require a description of any arrangements under which an underwriter will perform administrative or custodial services for the Registrant;[46] a statement of the underwriter's intention to proceed with the offering if a material adverse change occurs prior to the time investors are required to make an investment decision;[47] and information with respect to the intention of underwriters to act as market makers for the fund's securities if they are not listed on a national securities exchange.[48] These requirements are intended to elicit information concerning the continuing relationship between the underwriter and the fund, the completion of the underwriting of the fund's securities, and the likelihood of a secondary market in the fund's securities developing after the offering is completed. Disclosure concerning escrow arrangements for investor's funds, if applicable, and the date on which payment for securities must be made by investors also would be required.[49] In addition, the sales load terminology has been incorporated into this item, consistent with the approach taken on the cover page. Finally, the information with respect to selling shareholders required by Item 507 of Regulation S–K (17 CFR 229.507), some of which is currently called for by Item 4(e) of Form N–2, would be required to be set forth in response to Item 6.

Item 7—Use of Proceeds

Revised Item 7 would require disclosure of the fund's principal use of proceeds from the offering. This proposed item is similar to Item 5 of Form N–2 but would require an additional item of information and include two new instructions. Instruction 2 would require funds using a material amount of proceeds from the offering to discharge indebtedness to state the interest rate and maturity of the indebtedness being retired.[50] Instruction 3 would require funds intending to borrow money in connection with the offering to pay underwriting commissions or discounts to identify the lender and disclose the amount of the first installment, the rate of interest, the date on which payments will begin, the dates and amounts of subsequent installments, and the fact that interest paid will not be available for investment purposes and will increase the expenses of the fund. Finally, Item 7.2 would require disclosure of the length of time until the fund expects to invest net proceeds fully, the reasons for any anticipated lengthy delay in investing net proceeds, and the consequences of any delay.[51]

[46] *See* proposed Item 5.1.b. A more detailed description of these services would be required in the SAI in response to paragraphs 20.3 and 20.4 of proposed Item 20.

[47] *See* proposed Item 5.1.d.

[48] *See* proposed Item 5.9.

[49] *See* proposed Items 5.8 and 5.7.

[50] Instruction 2 to Item 5 of Form N–2 currently does not provide specific guidance on this disclosure obligation. The language of this proposed instruction is derived from Instruction 4 to Item 504 of Regulation S–K (17 CFR 229.504).

[51] Instruction 3 to proposed Item 7.1 and proposed Item 7.2 would codify current disclosure practices.

Item 8—General Description of the Registrant

(1) *Changes in Investment Policies.* Proposed Item 8.2, which requires the fund to describe its investment objectives and policies, is substantially the same as Item 7 of Form N–2 and Item 4(a)(ii) of Form N–IA. Consistent with the current form, proposed Item 8.2 would not require detailed disclosure of any policy that has not been used by the fund during the prior year and which the fund does not contemplate using in the future, or which limits a particular investment practice so that no more than 5 percent of the fund's net assets are at risk from the use of such practice.[52] This item would be revised to require disclosure of whether the fund will provide any notice to its securityholders of a change of such an investment policy.[53] Often, a fund may change its policies from those set forth in the prospectus in a manner that, for example, may substantially increase the level of risk involved in an investment in the fund. Unless the change relates to certain policies specified by the 1940 Act as requiring a shareholder vote,[54] or policies which the fund designates in its prospectus as only being changeable by shareholder vote,[55] funds would not be required to make securityholders aware of these policy changes.[56] The proposed disclosure would alert investors to the risk that policy changes may be made without their knowledge.

(2) *Market Data.* Item 6(d) of Form N–2 currently requires that the prospectus set forth in tabular form the fund's high/low share prices, net asset value, and the volume of trading for the prior three years. The Commission is proposing to modify this requirement in order to require disclosure that provides a more precise correlation between share price and market discount or premium. Proposed Item 8.5 would require the prospectus to set forth historical market price information for the fund's common stock for the preceding two full fiscal years, plus any subsequent interim fiscal period.[57] Item 8.5 would also require the premium or discount of the market prices to net asset value to be set forth. This information would include quarterly high/low price information and the corresponding premium or discount of the market prices to net asset value. Item 8.6 would require the prospectus to disclose whether the fund's common stock has historically traded at a discount or premium to net asset value and to set forth in tabular form the range of the discount or premium of market value to net asset value on a quarterly basis for the preceding two years.[58] The purpose of these two sub-items would be to provide investors with the historical market price information which generally is considered significant in evaluating closed-end funds. The additional data that would be required by Item 8.6 concerning the range of discounts and premiums may be necessary because the premium or discount corresponding to the high/low market prices will not necessarily reflect those periods when the discount or premium to market value was at its highest or lowest. The Commission requests comment as to whether its proposed approach for disclosing market price information and discount/premium information would be helpful to investors, whether the time periods suggested are appropriate, whether high/low net asset value information should continue to be included during the specified periods, and whether the Commission should consider making the information called for by proposed Items 8.5 and 8.6 available to shareholders on an annual basis in the proxy statement or annual report to shareholders of closed-end funds.

[52] The proposed item would include a new instruction on how to calculate the percentage of assets which are at risk in connection with a particular practice. As noted in the instruction, the determination should be made by reference to the potential liability or loss which may be incurred in connection with a particular practice (*e.g.*, the potential loss if a fund sells a "call" option) and not the amount the fund initially expends in connection with a particular practice.

[53] *See* proposed Item 8.4.b. The item would require information regarding notice to senior securityholders as well as common shareholders.

[54] *See* section 13(a) of the 1940 Act (15 U.S.C. 80a–13(a)).

[55] *See* section 8(b)(2) of the 1940 Act (15 U.S.C. 80a–8(b)(2)).

[56] Shareholders of open-end funds could become aware of such changes (although not always prospectively) when they receive updated prospectuses. *See* Part V of this release.

[57] Similar information is called for by Item 201(a) of Regulation S–K (17 CFR 229.201(a)).

[58] Proposed Item 8.6 would also require disclosure of any methods undertaken (or to be undertaken) to reduce any discount.

Item 9—Management

Revised Item 9 of Form N–2 would require disclosure of how the fund is managed. This item is similar to Item 5 of Form N–IA and would consist of many of the disclosure requirements currently contained in Items 13 through 15 of Form N–2, but would vary in two significant respects.[59]

(1) *Portfolio Managers.* Item 9.1.c would require disclosure about all persons who significantly contribute to the fund's investment advice. Item 15 of Form N–2 currently requires disclosure of the management responsibilities of the board of directors and the investment adviser of a closed-end fund, but does not require the name of any individual employed by the adviser of the fund, such as a portfolio manager, whose participation in providing investment advice may be important to fund investors. Item 9.1.c would require disclosure of each such person's name, title, business experience, and the period in the position with the fund. The disclosure of this information is intended to make investors aware of the individuals who may not be named as the investment adviser to the fund, but who nonetheless may have a significant impact on the fund's investment success. This disclosure will permit investors to assess the background and experience of such person and evaluate the extent of this person's responsibility for the previous investment success (or lack thereof) of the fund before making an investment decision.[60]

[59] Following the approach taken in Form N–1A, disclosure about the fund's management would be abbreviated in the prospectus. Additional information would be available in the SAI. *See* proposed Item 18 of Form N–2.

[60] The Commission also is proposing to require total return data to be included in the condensed financial information in the prospectus. *See* discussion, *supra*. The disclosure of changes in the portfolio manager would allow investors to evaluate the historical performance data in light of this information. The Commission expects to consider proposing for comment similar amendments to Form N–1A.

The Commission has twice proposed a similar disclosure requirement.[61] In 1982, when Form N–1A was proposed for comment, the Commission proposed that each fund identify any individual or committee that managed twenty-five percent or more of the fund's portfolio.[62] In 1984, as part of proposed Form N–SAR, the Commission proposed requiring disclosure of the name of the fund's "portfolio manager," the person primarily responsible for the day-to-day task of managing the investment portfolio.[63] These proposals were not adopted primarily because of concern expressed by commenters that, in many instances, the proposals could tend to arbitrarily label individuals as having material responsibilities for providing investment advice to the fund. This, commenters asserted, would not necessarily reflect the dynamics of the investment advisory function.

To address these concerns, the proposed amendment has been drafted to limit required disclosure to only those persons who, under the organizational arrangements of the investment adviser (or of the fund, if internally managed), make a significant contribution to the investment advice received by the fund.[64] The proposed amendment is based upon Item 401(c) of Regulation S–K (17 CFR 229.401(c)), which requires similar disclosure regarding employees who make, or are expected to make, significant contributions to the registrant's business, although they are not officers, directors, or control persons. Like those registrants subject to the Item 401(c) disclosure requirement, the success of a fund may be, "to a large extent, contingent upon retaining such persons." [65] The Commission requests comment on whether the proposed disclosure requirement should be modeled after Item 401(c) or whether a different test with a more objective standard should be formulated for determining when portfolio manager disclosure is required, and if so, what this test should be. The Commission also requests comment as to whether additional disclosure should be required in the SAI discussing specifically the nature of the adviser's (or fund's) portfolio decision-making process, and the role in that process of any person listed in the prospectus in response to this item.

(2) *Non-resident Officers, Directors, Experts, and Advisers.* The Commission is proposing a new Item 9.2 which would require the fund to disclose limitations on the ability of investors to enforce the civil liability provisions of the federal securities laws against non-resident officers, directors, advisers, and experts named in the registration statement ("experts") who have not appointed an agent for service of process in the United States or who maintain a substantial portion of their assets outside the United States. In recent years, many closed-end funds have registered with the Commission with investment objectives that involve substantial investment in foreign securities. These funds include "global funds" (funds investing in the securities of several countries, including the United States), "international funds" (funds investing in the securities of several countries, excluding the United States), and "country funds" (funds investing in a single country or a geographically related group of countries). Often these funds have non-resident directors, officers, advisers, or experts, who do not consent to service of process or maintain a substantial amount of assets in the United States. These non-resident persons may become liable to shareholders under the federal securities laws.

Non-resident investment advisers to registered closed-end funds must, under rule 0–2 (17 CFR 275.0–2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b *et seq.*) ("Advisers Act"), appoint an agent for service of process in the United States. Non-resident officers, directors, and experts of funds are under no such obligation. If such non-resident persons have not consented to service of process within the United States, it may be impossible for an investor to obtain personal jurisdiction over them in a case alleging liability under the federal securities law. Even if personal jurisdiction is obtained, if these persons do not maintain assets in the United States, any judgment may be unenforceable because some foreign courts may not honor such judgments or because the cost of enforcing a judgment in a foreign court would be prohibitively expensive.

Proposed Item 9.2 is based on Item 502(f) of Regulation S–K (17 CFR 229.502(f)) and would require identification of each of these non-resident persons and a discussion of how enforcement of securities law judgments by investors may be affected by the fact that these persons are residents of foreign countries and maintain a substantial portion of their assets outside of the United States. If the fund relies on the opinion of counsel in making this disclosure, a consent to the use of the counsel's name and opinion would be required to be included as an exhibit to the registration statement.

In addition to requiring this disclosure, the Commission seeks comment on whether non-resident officers, directors, and experts of closed-end funds should be required to consent to service of process in the United States. Imposing this requirement would further the protection afforded to investors by the federal securities laws. Currently, rule 7d–1(b)(7) under the 1940 Act (17 CFR 270.7d–1(b)(7)) requires non-resident officers and directors of Canadian funds seeking to register with the Commission pursuant to an order under Section 7(d) of the 1940 Act (15 U.S.C. 80a–7(d)) to execute a consent to service of process within the United States, and, as noted above, rule 0–2 under the Advisers Act also requires non-resident investment advisers to execute a consent.

Item 10—Capital Stock, Long-Term Debt, and Other Securities

Item 10 of amended Form N–2 would require disclosure about the capital stock, long-term debt, and other securities issued by the fund. Although the disclosure required by revised Item 10 would be essentially the same as current prospectus disclosure requirements,[66] Item 10 would address four additional matters.[67]

(1) *Guaranteed Distribution Programs.* Instruction 2 to Item 10.1.a would clarify the disclosure obligation of funds with guaranteed distribution programs. Under these programs, a closed-end fund guarantees investors a minimum cash distribution or dividend payable at predetermined times. If fund earnings are insufficient to generate this minimum guaranteed amount, the fund may be required to liquidate a portion of its portfolio to fund these distributions. The instruction would require disclosure about these programs, including a statement that the program may result in the reduction of the principal of a shareholder's investment, and a description of any tax consequences of the payments.

(2) *Dividend Reinvestment Plans.* Item 10.1.e would require a fund that offers a dividend reinvestment plan to shareholders to disclose the material aspects of the plan. These aspects would include how shareholders may apply to participate in the plan, how they may acquire additional information about the plan, how the plan operates, the income tax consequences of participation in the plan, how a shareholder may terminate participation in the plan and shareholder rights upon termination, whether transferring brokerage accounts will affect the ability of a shareholder to participate in the plan, expenses associated with participation in the plan, and, if a cash purchase plan option is available, any minimum or maximum investment required.

(3) *Change of Control Provisions.* Item 10.1.f would require disclosure about any provision in the fund's charter or by-laws that would delay or prevent a change in control of the fund ("change of control provision"). Change of control provisions recently have been adopted by a number of closed-end funds. These provisions may affect the price of fund shares and the ability of fund shareholders to sell shares at a premium over prevailing market price.[68] The language of the proposed item is based on Item 202(a)(5) of Regulation S–K (17 CFR 229.202(a)(5)).[69]

(4) *Security Ratings.* Finally, Item 10.7 would require a fund which issues senior securities rated by a nationally recognized securities rating organization ("NRSRO") [70] to discuss, if the rating is disclosed in the prospectus, the significance of the rating and the basis upon which the rating is issued, any conditions or guidelines imposed by the NRSRO for maintaining the rating, and whether or not the fund intends, or has any contractual obligation, to comply with these conditions or guidelines. Item 10.7 would also require disclosure of the material terms of any agreement between the fund and the NRSRO under which the NRSRO provides the rating. Instruction 3 to proposed Item 10.7 would also refer funds to the statement of the Commission's views on important matters to be considered in disclosing security ratings set forth in Regulation S–K.[71]

Ratings are generally material to investors who use these ratings to assess the creditworthiness of the issuer of the senior securities, or who are required by law or otherwise to invest in securities which are assigned a specified rating. A rating, the conditions for maintaining it, and the consequences of failing to do so (such as the occurrence of an event of default with respect to the senior securities), may also be material to investors in the fund's common shares, even if the shares themselves are not rated, since these factors may have a significant effect on the fund's investment policies and performance. The disclosures called for by proposed Item 10.7 are designed to elicit material information with respect to ratings and reflects current disclosure practices.

Item 12—Legal Proceedings

Item 12 of Form N–2 (currently Item 10) requires disclosure of material pending legal proceedings. This item would be amended to require disclosure about the factual basis alleged to underlie material litigation brought against the fund, or any subsidiary of or investment adviser or underwriter to the fund, and a description of the relief sought.[72]

Item 13—Table of Contents of the Statement of Additional Information

New Item 13 of Form N–2 would require the prospectus to set forth the table of contents for the SAI. This information would enable investors to review the type of additional information available to them and to determine whether they want to request it.[73]

C. Part B: The Statement of Additional Information

Most of the items in the SAI are similar to those in Form N–1A or, in the case of Item 23 (Financial Statements), substantially the same as the current form, and are therefore not discussed in this release.[74] New disclosure requirements are addressed below.

Item 14—Cover Page

The cover page of an SAI used prior to the effective date of the registration statement would be required to contain the legend set forth in proposed rule 481(g).[75]

Item 18—Management

Revised Item 18 would add a new Item 18.3 that would require funds with any non-resident directors or officers that have authorized an agent to receive service of process to disclose the name and address of the agent.

Item 19—Control Persons and Principal Holders of Securities

Item 11 of Form N–2 currently requires a fund to disclose information about persons who control the closed-end fund as of a date not more than ninety days prior to the filing of the registration statement or amendment. To obtain more current information and conform with Item 15 of Form N–1A, this time period would be reduced under proposed Item 19 to thirty days.

D. Part C: Other Information

Part C of revised Form N–2 would contain information required to be in the registration statement but not in the prospectus or the SAI. Except for certain new exhibits and undertakings, Part C would require information that is essentially the same as that currently required by Part II of Form N–2.

The exhibit requirements, Item 24 of the revised form, would be amended to include, where applicable, a copy of the

---

[61] In addition, in 1972 the Commission published for comment a proposed staff Guideline to Forms S–4 and S–5 that would have required identification of the three individuals who had the greatest responsibility for making portfolio investment determinations. *See* Investment Company Act Rel. No. 7219 (June 9, 1972) (37 FR 12804 (June 29, 1972)). This guideline was never adopted.

[62] *See* Investment Company Rel. No. 12927, *supra* note 10. The Commission explained that this disclosure requirement was proposed because institutional investors were interested in obtaining this information. Commenters argued, however, that institutional investors already had sufficient access to such information. As discussed above, the disclosure requirement proposed today is not based upon only the need for institutional investors to have access to this information.

[63] *See* Investment Company Act Rel. No. 14080 (Aug. 6, 1984) (49 FR 32370 (Aug. 14, 1984)) (proposing Form N–SAR, the semi-annual report for registered investment companies filed with the Commission pursuant to rule 30b1–1 under the 1940 Act (17 CFR 270.30b1–1)).

[64] Several closed-end funds have asserted the responsibility of a single individual for portfolio management when seeking to include private account performance data in the prospectuses of closed-end funds. *See, e.g.*, Growth Stock Outlook Trust, Inc. (pub. avail. Apr. 15, 1986).

[65] Securities Act Rel No. 5949 (July 28, 1978) (43 FR 34402 (Aug. 3, 1978)) (incorporating Form S–1 (7 CFR 239.11) disclosure items regarding management of publicly held companies into Regulation S–K).

[66] *See* Items 16 through 18 of Form N–2.

[67] A fifth matter concerning BDCs is discussed *infra* at section III.F. of this release.

[68] Change in control provisions would include super-majority voting requirements on matters related to mergers or consolidations, classification of directors with staggered terms of office, and provisions that increase, above state and federal statutory requirements, the votes required for the removal of directors. See Securities Exchange Act Rel. No. 15230 (Oct. 13, 1978) (43 FR 49863 (Oct. 25, 1978)) (discussing disclosure requirements for proxy and information statements containing change of control provisions).

[69] The instructions to this item are also being amended to clarify that disclosure is not required in response to revised Item 10.5 with respect to a control person who is an adviser or underwriter to the fund and would not control the fund immediately after the public offering.

[70] The term "nationally recognized securities rating organization" is defined in rule 15c3–1(c)(2)(vi)(F) (17 CFR 240.15c3–1(c)(2)(vi)(F)) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("1934 Act"). The Commission permits registrants to disclose, on a voluntary basis, ratings assigned by rating organizations to classes of debt securities, convertible debt securities and preferred stock in registration statements. *See* Regulation S–K, General (17 CFR 229.10).

[71] *Id.*

[72] *See* Item 103 of Regulation S–K (17 CFR 229.103).

[73] Item 15 of Form N–3 and Item 14 of Form N–4 require this information in the prospectuses of separate accounts.

[74] *See* the cross-reference table in Appendix A to this release.

[75] *See infra*, Section VI of this release.

fund's dividend reinvestment plan and, if any non-resident director, officer, expert, or adviser to the fund has executed a consent to service of process, a copy of that consent.[76] An instruction would be added to clarify that an exhibit which has been filed as part of the registration statement is not required to be refiled as part of a post-effective amendment unless there has been a change to the exhibit, except with respect to exhibits that consist of opinions or consents of experts named in the registration statement.[77] Finally, Instruction 1 would be revised to specify what should be included in a cross-reference to a previously filed exhibit in order to facilitate locating it in the prior filing.

Four new undertakings would be required by the amendments to be included as exhibits. The first new undertaking would codify a closed-end fund's obligation under sections 15(a) and 32(a) of the 1940 Act (15 U.S.C. 80a–15(a) and 31(a)) to submit its investment advisory agreement(s) and the selection of its independent accountants to shareholders for approval at the first regular or special meeting of shareholders.[78] This undertaking would end some confusion regarding a fund's obligation under those sections and assure that votes in these matters are taken by "public" shareholders.[79]

The second would require funds to undertake to deliver the SAI within one business day of receipt of receiving requests from prospective investors and shareholders.[80]

The third proposed new undertaking would be required to be made when, in reliance on rule 415 under 1933 Act, a closed-end fund proposes to offer securities on a delayed or continuous basis ("shelf offering").[81] The undertaking would require such a fund to file a post-effective amendment containing, among other things, certain changes in the information previously disclosed, to assume 1933 Act liability for each such post-effective amendment filed, and to remove from registration any securities that remain unsold at the termination of the offering. Such an undertaking is a condition of using rule 415 to make a shelf offering.[82]

Finally, the Commission proposes to add an undertaking to be made when, under rule 430A, a fund omits from its registration statement certain price-related information about the securities being offered to the public.[83] The undertaking would satisfy rule 430A's requirement that the fund undertake to assume 1933 Act liability with respect to the omitted information.[84]

E. Summary Prospectuses

The Commission is proposing to delete the instructions in Form N–2 for use of a summary prospectus. Summary prospectuses have rarely been used by closed-end funds; their need has been superseded by the availability of rule 482 under the 1933 Act which permits information that could be contained in a summary prospectus to be included in an "omitting prospectus."[85]

F. Business Development Companies[86]

A closed-end fund that has elected to be regulated as a business development company ("BDC") is not required to register under the 1940 Act, but is required to register its securities under the 1933 Act on Form N–2.[87] While BDCs are similar to other closed-end funds, there are several significant differences which give rise to different disclosure obligations. In contrast to most closed-end funds, which are passive investors, BDCs are organized to provide both investment capital and operational or managerial assistance to small and developing companies. Regulation of BDCs under the 1940 Act reflects these differences.[88] Sections 57, 61(a), and 63 of the 1940 Act, respectively, provide BDCs with greater flexibility with respect to dealings with portfolio companies, issuing securities, and in compensating management.[89] Prospectus disclosure of these aspects of a BDC's operations were addressed by the Division of Investment Management in a 1981 staff interpretive release.[90] The Commission is now proposing to incorporate these staff interpretations into Form N–2.

The proposed amendments would add a new instruction to revised Item 4 exempting BDCs from the requirement to include a per share table in the prospectus.[91] However, BDCs would be required to include financial disclosure comparable to that provided by non-investment company issuers, *i.e.*, management's discussion and analysis of financial condition and results of operations, supplementary financial information, and selected financial data.[92] Comment is requested on whether BDCs should be required to include their financial statements in the prospectus rather than the Statement of Additional Information, as permitted by Item 23.

Closed-end funds would be required by revised Item 8 to disclose information about their organization and proposed operations. Proposed Item 8.7 would require additional disclosure by BDCs regarding their portfolio companies and any investment in a wholly-owned small business investment company subsidiary ("subsidiary"). Item 8.7.a would require disclosure of material information about the portfolio companies in which the BDC is investing, including: the name and address of the companies; the nature of the companies' businesses; the title, class, percentage of class, and value of all securities of the portfolio companies held by the BDC; the amount and general terms of loans to portfolio companies; and the relationship of the companies to the BDC. Item 8.7.b would require a BDC with a subsidiary to disclose whether the subsidiary is regulated as a BDC or as an investment company under the 1940 Act, the percentage of the parent company's assets that are invested in the subsidiary, and information about the small business investment company's operations, including material differences in investment policies between the parent company and the subsidiary. Item 8.7.c would require disclosure by a company that has had operations prior to electing to be regulated as a BDC regarding anticipated changes in operation as a result of being subject to section 55 of the 1940 Act (15 U.S.C. 80(a)–54), which prohibits a BDC from acquiring any assets that would result in it holding less than 70 percent of its assets in certain qualifying investments described in that section.[93] Item 8.7.d would require disclosure of the special risks associated with investing in a BDC, including the risks associated with investing in a portfolio of small and developing or financially troubled businesses.

Revised Item 9 of Form N–2 would require disclosure about a BDC's management. In contrast to other closed-end funds, most BDCs are internally managed and have the ability to pay special compensation to management, *i.e.*, to set up profit-sharing and executive compensation plans.[94] Proposed Instruction 2 to Item 9.1.a would require a BDC to disclose any special compensation arrangements available. In addition, BDCs provide significant managerial assistance to their portfolio companies. Proposed Instruction 2 to Item 9.1.b(2) would require a description of the type of managerial assistance that would be provided to the portfolio companies and the qualifications of the investment adviser to provide such management assistance.

BDCs often have transaction and management fee structures that differ significantly from most closed-end companies. These fees may take the form of subordinated fees (*i.e.*, fees which are only payable if certain financial criteria are met); fees based on the amount of funds invested in portfolio companies; one-time advisory fees payable at the closing of the offering; and special partnership interests which are in the nature of management compensation. BDCs will be expected to provide comprehensible and meaningful disclosure in response to proposed Item 3.1, the N–2 fee table, even if such disclosure requires the development of expense categories not provided for in proposed Form N–2, and the inclusion of items that may not, for accounting purposes, be treated as expenses. The Commission specifically requests comment on whether any BDC-specific items should be included in the N–2 fee table, or whether disclosure would be enhanced if BDCs are given additional flexibility to develop fee tables to meet their specific situations. Comment also is requested as to whether any further modifications to Form N–2 are needed to assure full disclosure by BDCs while accommodating their particular characteristics.

IV. Staff Guidelines

Form N–1A is accompanied by a series of staff guidelines designed to facilitate the registration process for mutual funds. Appendix C to this release contains nine draft staff guidelines to accompany Form N–2.[95] In addition, because many of the disclosure items in the proposed revision of Form N–2 are the same as those contained in Form N–1A, the instructions to the draft Guidelines to Form N–2 direct closed-end funds to other applicable guidelines, which are not repeated in the Guidelines to Form N–2.

The draft Guidelines set forth current staff positions on the period of time which a Registrant has to invest the proceeds from an offering (Guide 1); required disclosures with respect to share repurchase programs designed to reduce the discount to net asset value of a Registrant's share market price and other issues relating to fund tender offers (including "odd-lot" tender offers) (Guide 2)[96]; change of control provisions in a Registrant's charter (Guide 3); undertakings to convert to openend status (Guide 4); dividend reinvestment plans (Guide 5); required disclosures in connection with leveraged capital structures (Guide 6); suggested synopsis disclosure (Guide 7); continuous offerings under rule 415 (Guide 8); and investing in foreign securities (Guide 9).

Comment is requested on the issues addressed by the guidelines in order to assist the staff in developing guidelines to amended Form N–2.

V. Annual Updating

Rule 8b–16 under the 1940 Act requires investment companies, including closed-end funds, to update their registration statements with the Commission on an annual basis.[97] Mutual funds, which are in continuous registration under the 1933 Act, are also, in effect, required by sections 10(a)(3) (15 U.S.C. 77j(a)(3)) and 5(b) (15 U.S.C. 77e(b)) of the 1933 Act to update their registration statements at least annually and to deliver an updated prospectus to their shareholders before (or at the time of) confirming the sale of any additional shares.[98] In contrast, closed-end funds

---

[76] *See* proposed Items 24.2.e and 24.2.m. Item 24.2.n would be clarified to make it clear that accountants' consents should be filed in response to that item.

[77] *See* proposed Instruction 2 to Item 24.2. Instruction 2 to both Item 28 of Form N–3 and Item 24 of Form N–4 is similar.

[78] Proposed Item 33.6.

[79] The Commission has interpreted shareholder approval under Sections 15(a) and 32(a) of the 1940 Act with respect to these matters to mean "public" shareholder approval. This interpretation was originally included in staff Guidelines to Forms S–4 and S–5 (the predecessors to Forms N–1 and N–2) in the form of similar required undertakings. Investment Company Act Rel. No. 7220 (June 9, 1972) (37 FR 12790 (July 29, 1972)). Forms N–1 (17 CFR 274.11) and N–2 did not incorporate these guidelines because the Commission believed they were unnecessary since these obligations were already required by the 1940 Act. Investment Company Act Rel. No. 9732 (May 31, 1977) (42 FR 29716 (June 9, 1977)).

[80] Proposed Item 33.7. *See* discussion *supra* at Section III.A of the Release. Item 37(d) of Form N–3 and Item 32(c) of Form N–4 require a similar undertaking.

[81] Proposed Item 33.4. Closed-end funds are the only type of investment company eligible to make a shelf offering under rule 415. *See* rule 415(b) (17 CFR 230.415(b)).

[82] Rule 415(a)(3) (17 CFR 230.415(a)(3)) and Item 512(a) of Regulation S–K (17 CFR 229.512(a)).

[83] Proposed Item 33.5. In addition, a new Instruction 3 to proposed Item 24 would be added to permit exhibits to be filed that omit certain price-related information when the information is provided in a prospectus filed with the Commission under rule 497(b) (17 CFR 230.497(b)) after effectiveness of the registration statement, rather than being included in an amendment to the registration statement.

[84] Rule 430A(a)(2) (17 CFR 230.430A(a)(2)) and Item 512(j) of Regulation S–K (17 CFR 229.512(j)).

[85] Under rule 482, an investment company advertisement is deemed to be a "prospectus" under section 10(b) of the 1933 Act (15 U.S.C. 77j(b)) if it contains information the substance of which is contained in the statutory prospectus and states from whom a prospectus containing more complete information may be obtained and that the investor should read the prospectus carefully before investing.

[86] A business development company is a closed-end fund that (1) is operated for the purpose of making investments in small and developing businesses, (2) makes available "significant managerial assistance" to its portfolio companies, and (3) has elected to be subject to Sections 55 through 65 of the 1940 Act (15 U.S.C. 80a–54 through 80a–64). *See* section 2(a)(48) of the 1940 Act (15 U.S.C. 80a–2(a)(48)).

[87] *See* General Instruction A to Form N–2.

[88] The Small Business Investment Incentives Act of 1980, Pub. L. No. 96–477, Sections 201–203, 94 Stat. 2275 (1980), amended the 1940 Act to provide this flexibility.

[89] 15 U.S.C. 80a–56, 80a–60(a), and 80a–62.

[90] Investment Company Act Rel. No. 11703 (Mar. 26, 1981) (46 FR 19459 (Mar. 31, 1981)).

[91] Instruction 1 to proposed Item 4.1.

[92] Proposed Item 4.2 of Form N–2 would require the fund to furnish the information called for by Items 301, 302, and 303 of Regulation S–K (17 CFR 229.301, 229.302, and 229.303). The 1981 staff interpretative release did not require BDCs to furnish the supplementary financial information required by Item 302 of Regulation S–K. However, such information is required to be furnished in a BDC's annual report on Form 10–K (17 CFR 249.310). Proposed Item 4.2 will conform the prospectus disclosure with that required by Form 10–K.

[93] The Commission is proposing an instruction to Item 23, which requires the fund to provide financial statements and schedules required by Regulation S–X (17 CFR 210 *et seq.*), to require a BDC's portfolio schedule to indicate which investments are not qualifying investments for purposes of Section 55 and to include a footnote explaining the significance of non-qualification.

[94] *See* Section 57(n) and 61(a)(3)(B) under the 1940 Act (15 U.S.C. 80a–56(n), 80a–60(a)(3)(B)).

[95] Unless the guidelines incorporate rules of the Commission, they do not have the force of rules promulgated by the Commission.

[96] In Investment Company Act Rel. No. 3548 (Oct. 3, 1962) (27 FR 9987 (Oct. 11, 1962)) ("share repurchase release") the Commission discussed the provisions of the 1940 Act and rule 10b–6 (17 CFR 240.10b–6) under the 1934 Act applicable to share repurchases by closed-end investment companies. In that release, the Commission suggested that closed-end investment companies contemplating share repurchases consult with the Division of Corporate Regulation (the predecessor of the Division of Investment Management) about the nature of disclosures in connection with share repurchases. Since the date of the share repurchase release, the Commission has adopted a number of rules and regulations under the 1934 Act applicable to share repurchases with which closed-end funds must comply in connection with their share repurchase programs. The 1934 Act and these rules and regulations require certain types of disclosures and impose other legal requirements which are administered by the Office of Trading Practices of the Division of Market Regulation and the Office of Tender Offers of the Division of Corporation Finance. Funds contemplating share repurchases should be familiar with the applicable requirements of these rules and regulations. To the extent the share repurchase release may suggest that the issues involving share repurchases are solely disclosure issues administered by the Division of Investment Management, it is incorrect.

[97] Certain items in Form N–2 relating to the distribution of fund shares are not required to be included in the prospectus when it is updated only for purpose of rule 8b–16. *See* General Instruction F.3 to Form N–2.

[98] Under section 5(b)(1) (15 U.S.C. 77e(b)(1)), it is unlawful to transmit a prospectus by use of any means of interstate commerce for which a registration statement has been filed, unless it meets the requirements of section 10 (15 U.S.C. 77(j)). Section 2(10)(a) of the 1933 Act (15 U.S.C.

Continued

BEST COPY AVAILABLE

do not generally make a public offering of shares after the initial offering and therefore update their registration statements only to comply with rule 8b–16. In most cases, the updated prospectuses are not distributed to investors. The Commission is considering exempting closed-end funds from rule 8b–16, provided that certain critical updating information about the fund, which otherwise might not be available to shareholders, is provided in the annual report to shareholders.

Rule 8b–16 was adopted in 1978 to ensure that there is a central source of current and complete information about closed-end funds available to investors and Commission staff.[99] However, this data source appears to be used infrequently, possibly because investors are not aware of the amendments, which are filed with the Commission but not transmitted to shareholders. The Commission staff does not use the amendments because information needed for regulatory purposes is contained in semi-annual reports on Form N–SAR (17 CFR 274.101), which are filed by closed-end funds.[100]

In order to reduce their filing burden, the Commission is proposing to exempt closed-end funds from rule 8b–16. However, as a condition to the exemption, the Commission is proposing to require that certain important information be provided to shareholders (and the trading markets) in the annual report to shareholders. This information would include: information about the fund's dividend reinvestment plan, if it has one; material changes in the fund's investment policies that have not been approved by shareholders; changes in any change of control provision that have not been approved by shareholders; material changes in the principal risk factors associated with an investment in the fund; and any changes in the portfolio manager(s) and the business experience of the new portfolio manager. The scope of each disclosure requirement is keyed to an item in Form N–2. Except for information about the fund's dividend reinvestment plan, which would have to include a description of the plan as complete as the one required by proposed Item 10.1.e of Form N–2, only changes that have occurred during the year covered by the annual report would be required to be disclosed, and, therefore, most annual reports should include little additional disclosure.[101]

The disclosure required to satisfy the condition for exemption from rule 8b–16 would otherwise be required in amendments to registration statements under rule 8b–16, if the proposed revisions to Form N–2 are adopted. Therefore, the Commission believes that the proposed rule amendments would overall reduce burdens on funds. Comment is requested, however, particularly from users of closed-end fund disclosure documents, on whether the required additional annual report disclosure would be an adequate substitute for the more detailed updating amendments to registration statements currently required by rule 8b–16. Finally, comment is requested as to the adequacy of information about closed-end funds in the secondary market in general. Do investors and market professionals have access to sufficient information to make knowledgeable investment decisions concerning closed-end funds? Should the Commission consider requiring periodic reports such as those filed by operating companies on Forms 10–K and 10–Q (17 CFR 249.308a)? [102]

VI. Rules Relating to SAI Delivery Requirements

As discussed in Section I of this Release, a preliminary SAI would be required to be delivered on request to investors who receive a preliminary prospectus included in a registration statement on Form N–2. The Commission is proposing a new rule and amendments to several rules to implement this requirement and to clarify the status of a preliminary SAI under the 1933 Act. These rules generally would be applicable to all investment company registration statements that use the two part disclosure format.

Rule 430 under the 1933 Act provides for use of a preliminary prospectus during the period after the filing of a registration statement but before effectiveness. The Commission is proposing an amendment to add a new paragraph to rule 430 that would require an investment company filing a registration statement using the two part disclosure format to have filed an SAI and to make it available to persons receiving a preliminary prospectus. Rule 460 currently provides that the Commission will consider, in determining whether to accelerate the effective date of a registration statement, whether sufficient copies of the preliminary prospectus have been made available to prospective underwriters and dealers. The Commission is proposing to amend this rule to add as a consideration, in the case of a closed-end fund,[103] a similar requirement with respect to the SAI. However, the new paragraph would permit copies of the preliminary SAI, unlike the preliminary prospectus, to be made available to the managing underwriter, dealer or other source specified on the cover page of the preliminary prospectus rather than to *each* prospective underwriter or dealer.[104] Proposed rule 481(g) would set forth the legend required to appear on an SAI used prior to the effective date of the registration statement or the completion of information which may be omitted under rule 430A.[105]

The Commission also proposes to clarify the status of the preliminary SAI under section 5 of the 1933 Act (15 U.S.C. 77e). When an SAI is delivered after the effective date of a registration statement, it does not constitute a prospectus as long as a prospectus meeting the requirements of section 10(a) of the 1933 Act was delivered to the recipient prior to or at the same time as the SAI.[106] However, no statutory safe harbor exists with respect to the use of a preliminary SAI, since it would be used prior to the effective date of the registration statement.[107] Proposed rule 134b would provide an explicit "safe harbor" under section 5(b) of the 1933 Act for the use of an SAI prior to the effective date of the registration statement. It provides, in effect, that an SAI accompanied or preceded by a preliminary prospectus is not a "prospectus" for purposes of section 5(b) of the 1933 Act. The safe harbor is conditioned on the delivery of the preliminary prospectus with or prior to the delivery of the SAI.

VII. Miscellaneous Rule Amendments

The Commission is proposing to use in Form N–2 the same type of disclosure format adopted in connection with Form N–1A. Rules 495, 496, and 497 under the 1933 Act and rules 8b–11 and 8b–12 under the 1940 Act implement the three-part disclosure format. The Commission is now proposing amendments to these rules to accommodate Form N–2.

The Commission also is proposing for comment a clarifying amendment to rule 463 under the 1933 Act, which requires that certain issuers file reports on Form SR with respect to the use of proceeds from their initial public offerings. Registered investment companies are not required to file these reports and the amendment would make it clear that this exemption extends to BDCs.

VIII. Cost/Benefit Analysis

The revisions to Form N–2 proposed today for public comment are intended to shorten and simplify the prospectus provided to investors and to improve the quality of prospectus disclosure. The proposed revisions should benefit investors by providing them with a shorter, more readable, and more informative document. Because the proposed revisions would shorten the prospectus, the revisions should reduce the burdens of preparing and the cost of mailing the prospectus for closed -end funds and their underwriters. Those additional items of disclosure that would be required (*e.g.*, the fee table, information about the portfolio manager) call for disclosure of information readily available to the fund. In addition, elimination of the rule 8b–16 annual updating requirement should eliminate a burden currently imposed on closed-end funds without significantly diminishing the information available to investors, since, as a condition to the exemption, certain material information would be provided to shareholders in the annual reports funds are required to deliver to shareholders. The Commission would like to develop specific data concerning these issues and is seeking public comment concerning the cost savings or cost burdens to closed-end funds of all sizes affected by these proposals. In this regard, the Commission requests specific comment on the effect which the proposals might have on the costs of smaller closed-end funds.

IX. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendments. The analysis notes that the proposed amendments are intended to simplify disclosure and update the form. Other appropriate cost-benefit information reflected in the section of this release titled "Cost/Benefit Analysis" is also reflected in the Analysis. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Kenneth J. Berman, Mail Stop 5–2, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

X. Text of Proposed Rule and Form Amendments

List of Subjects in 17 CFR Parts 230, 239, 270, 274

Investment companies, Reporting and recordkeeping requirements, Securities.

The Commission is proposing to amend Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read as follows:

Authority: Sections 230.100 to 230.174 issued under sec. 19, 48 Stat. 85 as amended (15 U.S.C. 77s), unless otherwise noted.

Section 230.151 is also issued under section 19(a) (15 U.S.C. 77s(a)).

2. By adding § 230.134b to read as follows:

§ 230.134b Statements of additional information.

For the purposes only of section 5(b) of the Act, the term "prospectus" as defined in section 2(10) of the Act does not include a Statement of Additional Information filed as part of a registration statement on Form N–1A (§ 239.12A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a–1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), or Form N–4 (§ 239.17b and § 274.11c of this chapter) transmitted prior to the effective date of the registration statement if it is accompanied or preceded by a preliminary prospectus meeting the requirements of rule 430 (§ 230.430 of this chapter).

Regulation C—[Amended]

3. The authority citation for Regulation C of part 230 continues to read as follows:

Authority: Secs. 230.400 to 230.499 issued under secs. 6, 8, 10, 19, 48 Stat. 78, 79, 81, as amended, 85, as amended; 15 U.S.C. 77f, 77h, 77j, 77s, unless otherwise noted.

4. By redesignating the first paragraph of § 230.430 as paragraph (a) and adding a new paragraph (b) to § 230.430 to read as follows:

§ 230.430 Prospectus for use prior to effective date.

* * * * *

(b) A form of prospectus filed as part of a registration statement on Form N–1A (§ 239.12A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a–1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), or Form N–4 (§ 239.17b and § 274.11c of this chapter) shall be deemed to meet the requirements of section 10 of the Act for the purpose of section 5(b)(1) thereof prior to the effective date of the registration statement, provided that (1) such form of prospectus meets the requirements of paragraph (a) of this section and (2) such registration statement contains a form of Statement of Additional Information that is made available to persons receiving such prospectus upon written or oral request, and without charge, unless the form of prospectus contains the information otherwise required to be disclosed in the form of Statement of Additional Information. Every such form of

---

77b(10)(a)) defines the term "prospectus" to include a confirmation of the sale of the security. Section 2(10)(b) of the 1933 Act (15 U.S.C. 77b(10)(b)) excludes from the definition of a "prospectus" communications (including a confirmation) accompanied or preceded by a prospectus meeting the requirements of section 10. Under section 10(a)(3) of the 1933 Act, information contained in a prospectus used more than nine months after the effective date of the registration statement must be dated within sixteen months prior to its use.

[99] Investment Company Act Rel. No. 10376 (Aug. 28, 1978) (43 FR 39548 (Sept. 5, 1978)). *See also* Investment Company Act Rel. No. 9782 (May 31, 1977) (42 FR 29716 (June 9, 1977)) (proposing rule 8b–16).

[100] *See* rule 30b1–1 (17 CFR 270.30b1–1).

[101] A complete description of a dividend reinvestment plan would probably be of interest to all investors in a fund, since their decision to participate in the plan may vary from year to year depending upon their financial needs. It may be of particular interest to those investors who purchased their shares in the secondary market and never received a prospectus.

[102] Closed-end funds are exempt from the reporting requirements of sections 13 and 15(d) of the 1934 Act (15 U.S.C. 78m and 78o(d),, by rule 30a–1 under the 1940 Act (17 CFR 270.30a–1).

[103] As noted in Part I of this release, it is the Commission's understanding that open-end funds and separate accounts generally do not use preliminary prospectuses. Thus, compliance with the preliminary prospectus distribution requirement of rule 460 generally has not been taken into account in considering acceleration requests relating to registration statements on which such investment companies register their shares. In proposing the amendments and proposed rule 134b, the Commission is not suggesting that open-end funds and separate accounts distribute preliminary prospectuses. The amendment to rule 460 is, by its terms, only applicable to registration statements filed on Form N–2. However, the proposed amendment to rule 430 would make clear that if investment companies using Forms N–1A, N–2, N–3, and N–4 choose to distribute a preliminary prospectus, a preliminary SAI must be made available.

[104] Funds may also satisfy this requirement by making sufficient copies of the preliminary SAI available to prospective underwriters and dealers.

[105] The Commission also is proposing an amendment to rule 430A which will clarify that the information which may be omitted from a form of prospectus in a registration statement which is declared effective also may be omitted from the form of SAI contained in the registration statement.

[106] *See* section 2(10) of the 1933 Act (15 U.S.C. 77b(10)). Thus, an SAI constitutes supplemental sales material, subject to the liability provisions of section 17(a) of the 1933 Act (15 U.S.C. 77g(a)) and section 10(b) of the 1934 Act (15 U.S.C. 78j(b)) and rule 10b–5 thereunder. *See* rule 156 under the 1933 Act (17 CFR 230.156). In addition, since the SAI is part of the registration statement, it is also subject to the liability provisions of section 11 under the 1933 Act (15 U.S.C. 77k).

[107] Section 5(b) of the 1933 Act prohibits the transmission of any prospectus unless the prospectus meets the requirement of section 10. Rule 430 specifically provides that a preliminary prospectus meeting the conditions specified in that rule is deemed to meet the requirements of section 10

prospectus shall be deemed to have been filed as part of the registration statement for the purpose of section 7 of the Act.

5. By adding a new paragraph (e) to § 230.430A before the Note to read as follows:

§ 230.430A Prospectus in a registration statement of the time of effectiveness.

* * * * *

(e) In the case of a registration statement filed on Form N–1A (§ 239.12A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a–1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), or Form N–4 (§ 239.17b and § 274.11c of this chapter), the references to "form of prospectus" in paragraphs (a) and (b) of this section and the accompanying Note shall be deemed also to refer to the form of Statement of Additional Information filed as part of such a registration statement.

* * * * *

6. By redesignating paragraph (b) of § 230.460 as paragraph (b)(1) and adding a new paragraph (b)(2) to read as follows:

§ 230.460 Distribution of preliminary prospectus.

* * * * *

(b) * * *

(2) In the case of a registration statement filed by a closed-end investment company on Form N–2 (§ 239.14 and § 274.11a–1 of this chapter), reasonable steps to make information conveniently available would involve distribution of a sufficient number of as many copies of the Statement of Additional Information required by Rule 430(b) (§ 230.430(b) of this chapter) as it appears to be reasonable to secure their adequate distribution either to each underwriter or dealer who it is reasonably anticipated will be invited to participate in the distribution of the security, or to the underwriter, dealer or other source named on the cover page of the preliminary prospectus as being the person investors should contact in order to obtain the Statement of Additional Information.

* * * * *

7. By revising paragraph (d)(6) of § 230.463 as follows:

§ 230.463 Reporting of offering of securities and use of proceeds therefrom.

* * * * *

(d) * * *

(6) By any investment company registered under the Investment Company Act of 1940 and any issuer that has elected to be regulated as a business development company under the Investment Company Act of 1940.

* * * * *

8. By adding a new paragraph (g) to § 230.481 to read as follows:

§ 230.481 Information required in prospectus.

* * * * *

(g) The outside front cover page of a Statement of Additional Information to be used before the effective date of the registration statement (or, in the case of any Statement of Additional Information that omits information as permitted by Rule 430A under the Securities Act (§ 230.430A of this chapter), to be used before the determination of the initial public offering price), shall set forth, in red ink, the caption "Subject to Completion," the date of its issuance and the following statement printed in type as large as that generally in the body of the Statement of Additional Information:

"Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor any offers to buy be accepted prior to the time the registration statement becomes effective. This Statement of Additional Information does not constitute a prospectus."

9. By revising paragraphs (a), (c), and (d) of § 230.495 as follows:

§ 230.495 Preparation of registration statement.

(a) A registration statement on Form N–1A, Form N–2, Form N–3, or Form N–4, shall consist of the facing sheet of the applicable form; cross-reference sheet; a prospectus containing the information called for by such form; the information, list of exhibits, undertakings and signatures required to be set forth in such form; financial statements and schedules; exhibits; and other information or documents filed as part of the registration statement; and all documents or information incorporated by reference in the foregoing (whether or not required to be filed).

* * * * *

(c) In the case of a registration statement filed on Form N–1A, Form N–2, Form N–3, or Form N–4, parts A and B shall contain the information called for by each of the items of the applicable part, except that unless otherwise specified, no reference need be made to inapplicable items, and negative answers to any item may be omitted. Copies of parts A and B may be filed as part of the registration statement in lieu of furnishing the information in item-and-answer form. Wherever such copies are filed in lieu of information in item-and-answer form, the text of the items of the form is to be omitted from the registration statement, as well as from parts A and B, except to the extent provided in paragraph (d) of the rule.

(d) In the case of a registration statement filed on Form N–1A, Form N–2, Form N–3, or Form N–4, where any item of those forms calls for information not required to be included in parts A and B, (generally part C of such form) the text of such items, including the numbers and captions thereof, together with the answers thereto shall be filed with parts A and B under cover of the facing sheet of the form as part of the registration statement. However, the text of such items may be omitted, provided the answers are so prepared as to indicate the coverage of the item without the necessity of reference to the text of the item. If any such item is inapplicable, or the answer thereto is in the negative, a statement to that effect shall be made. Any financial statements not required to be included in parts A and B shall also be filed as part of the registration proper, unless incorporated by reference pursuant to Rule 411 (§ 230.411 of this chapter).

10. By revising § 230.496 as follows:

§ 230.496 Contents of prospectus used after nine months.

In the case of a registration statement filed on Form N–1A, Form N–2, Form N–3, or Form N–4, there may be omitted from any prospectus or Statement of Additional Information used more than 9 months after the effective date of the registration statement any information previously required to be contained in the prospectus or the Statement of Additional Information insofar as later information covering the same subjects, including the latest available certified financial statements, as of a date not more than 16 months prior to the use of the prospectus or the Statement of Additional Information is contained therein.

11. By revising paragraphs (c) and (e) of § 230.497 as follows:

§ 230.497 Filing of investment company prospectus—number of copies.

* * * * *

(c) For investment companies filing on Form N–1A (§ 239.12A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a–1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), or Form N–4 (§ 239.17b and § 274.11c of this chapter), within five days after the effective date of the commencement of a public offering or after the effective date of a registration statement, whichever occurs later, ten copies of each form of prospectus and form of Statement of Additional Information used after the effective date in connection with such offering shall be filed with the Commission in the exact form in which it was used.

* * * * *

(e) For investment companies filing on Form N–1A, Form N–2, Form N–3, or Form N–4, after the effective date of a registration statement, no prospectus which purports to comply with section 10 of the Act or Statement of Additional Information which varies from any form of prospectus or form of Statement of Additional Information filed pursuant to paragraph (b) of this section shall be used until copies thereof have been filed with, or mailed for filing to the Commission, together with five copies of a cross reference sheet similar to that previously filed, if changed.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

The authority citation for Part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, unless otherwise noted.

§ 239.23 [Amended]

12. By revising paragraph (b) of Item 5 of Form N–14 in § 239.23 to read as follows:

* * * * *

Item 5. Information about the Registrant

* * * * *

(b) If the registrant is a closed-end management investment company, furnish the information required by Items 4; 5(a), (b), (d), (e) and (f); 9; 10; 11; and 12 of Form N–2 under the 1940 Act.

* * * * *

13. By proposing to revise clause (ii) of paragraph (a)(2) of Item 6 of Form N–14 in § 239.23 to read as follows:

Item 6. Information About the Company Being Acquired

* * * * *

(a) * * *

(2) * * *

(ii) Provided the requirements of Instruction F are satisfied, include a statement that information about the company being acquired is incorporated by reference from the current prospectus of the company being acquired and is available upon request from the registrant without charge. (Provide a copy of the prospectus of the acquired company upon request in accordance with the requirements in Instruction F. If the company being acquired is registered on Form N–1A, Form N–2, Form N–3, or Form N–4 under the 1940 Act, in responding to requests under this Item, provide both a copy of the prospectus of the acquired company and the Statement of Additional Information with respect to that prospectus.)

* * * * *

14. By revising Item 12 of Form N–14 by redesignating paragraph (b) as (c) and adding new paragraph (b) to read as follows:

Item 12. Additional Information About the Registrant

* * * * *

(b) If the registrant is a closed-end management investment company, furnish the information required by Items 14 through 23 of Form N–2 under the 1940 Act.

* * * * *

15. By revising Item 13 by redesignating paragraph (b) as (c) and adding new paragraph (b) of Form N–14 to read as follows:

Item 13. Additional Information about the Company Being Acquired

* * * * *

(b) If the company being acquired is a closed-end management investment company, furnish the information required by Items 14 through 18 and 20 through 23 of Form N–2.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

16. The authority citation for part 270 continues to read as follows:

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a–37, 80a–39; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a–1 *et seq.*; unless otherwise noted.

17. By revising paragraph (b) of § 270.8b–11 as follows:

§ 270.8b–11 Number of copies; signatures; binding.

* * * * *

(b) In the case of a registration statement filed on Form N–1A, Form N–2, Form N–3, or Form N–4, three complete copies of each part of the registration statement (including, if applicable, exhibits and all other papers and documents filed as part of Part C of the registration statement) shall be filed with the Commission.

* * * * *

18. By revising paragraph (b) of § 270.8b–12 as follows:

§ 270.8b–12 Requirements as to paper, printing and language.

* * * * *

(b) In the case of a registration statement filed on Form N–1A, Form N–2, Form N–3, or Form N–4, Part C of the registration statement shall be filed on good quality, unglazed, white paper, no larger than 8½×11 inches in size, insofar as practicable. The prospectus and, if applicable, the Statement of Additional Information, however, may be filed on smaller-sized paper provided that the size of paper used in each document is uniform.

* * * * *

19. By amending § 270.8b–16 by designating the current text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 270.8b–16 Amendments to registration statements.

* * * * *

(b) Paragraph (a) of this section shall not apply to a registered closed-end management investment company; provided, that the following information is transmitted to shareholders in its annual report to shareholders:

(1) If the company offers a dividend reinvestment plan to shareholders, information about the plan required to be disclosed in the company's prospectus by Item 10.1.e of Form N–2 (17 CFR 274.11a–1);

(2) Any material changes in the company's investment policies (described in Item 8.2 of Form N–2) that have not been approved by shareholders;

(3) Any changes in the company's charter or by-laws that would delay or prevent a change of control of the company (described in Item 10.1.f of Form N–2) that have not been approved by shareholders;

(4) Any material changes in the principal risk factors associated with investment in the company (described in Item 8.3 of Form N–2); and

(5) Any changes in the persons who are expected to make significant contributions to the investment advice provided to the company (described in Item 9.1.c of Form N–2), including any new person's business experience and the length of time he or she has been employed by the company's investment adviser or the company.

The changes required to be disclosed by paragraphs (b)(2) through (b)(5) are those that occurred since the later of either the effective date of the company's registration statement relating to its initial offering of securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (or the most recent post-effective amendment thereto), or the close of the period covered by the previously transmitted annual shareholder report.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

20. By revising Form N–2 in §§ 239.14 and 274.11a–1. (See Appendix B.)

The authority citation for Part 239 continues to read as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, unless otherwise noted.

§ 239.14 Form N–2, registration statement of closed-end management investment companies. [Amended]

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

The authority citation for Part 274 continues to read as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a–1, *et seq.*, unless otherwise noted.

§ 274.11a–1 Form N–2, registration statement of closed-end management information companies. [Amended]

Text of Form N–2

See Appendix B. Form N–2 will not be codified in the Code of Federal Regulations.

Dated: July 28, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

Separate Statement of Commissioner Grundfest

Among the recommendations proposed for comment in Release 33–6824 is the suggestion that the Commission require the addition of a "warning label" to prospectuses for some or all closed-end fund initial public offerings ("IPOs").[1] This notion raises intriguing questions about the probable effectiveness of cautionary legends in initial public offerings of closed-end funds.[2] In particular, if investors rely predominantly on the recommendation of brokers when making the decision to purchase shares of a closed-end fund IPO, then the addition of a cautionary legend may not change observed behavior unless the legend also changes broker behavior.

But will broker behavior change? That question is not addressed in the Commission's release. A careful consideration of that issue requires an analysis of the process by which closed-end fund IPOs are sold, and it is to that process that I now turn.

The observation that closed-end domestic equity funds tend to trade at a discount from net asset value is hardly new.[3]

The academic literature is replete with studies that document the pervasiveness and persistence of these discounts.[4] The popular press has also frequently informed the public that shares of closed-end domestic equity funds tend to trade at substantial discounts.[5]

Viewed from this perspective, the major contribution of the Office of Economic Analysis' recent study of closed-end funds is not to discover that closed-end domestic equity funds trade at a discount. We already know that. Instead, the contribution of the OEA study is to document the path followed by the prices of recently offered closed-end domestic equity fund shares as they decline from their initial offering price, which reflects net asset value plus a sales load, to their aftermarket price, which reflects a discount from net asset value. The OEA Study, which is based on data drawn from 1985–1987 market experience, finds that after 24 weeks closed-end domestic equity funds trade, on average, at a discount of approximately ten percent. Beyond this point, there appears to be no systematic change in the size of the discount on closed-end domestic equity funds.

This large body of empirical evidence raises some intriguing questions about the IPO market for closed-end domestic equity funds. In particular, if an investor has a choice between purchasing shares of a closed-end domestic equity fund in its IPO and purchasing shares of the same fund in the aftermarket, the aftermarket purchase is clearly preferable. The reason for this conclusion is simple: if a closed-end fund is a good investment at an offering price of, say, $10.50, then it is that much of a better buy in the aftermarket at a price of $9.00 where the same shares are soon trading at a discount from net asset value.[6]

This observation suggests, however, that no new closed-end domestic equity funds could ever successfully be brought to market because no one would ever want to purchase shares of those funds in the IPO. Investors would, instead, prefer to acquire those same shares in the secondary market where a discount prevails.[7] This characterization of the market obviously does not accurately describe reality because we in fact observe successful IPOs of closed-end funds that rapidly and systematically trade to significant discounts.

One possible explanation for the successful marketing of closed-end fund IPOs is that fully informed investors believe that each new fund is sufficiently different from its predecessors that it will not trade to a discount even though its predecessors have. This explanation, which relies on the systematic triumph of hope over experience, seems sufficiently implausible that it can readily be dismissed as an explanation of the behavior of fully informed, rational investors.

A second and probably more accurate explanation for the successful initial public offering of closed-end domestic equity funds relies on the observation that investors can be divided into two categories that, for want of a better label, can be called "smart enough" and "not smart enough."[8] Investors who are "smart enough" know that initial public offerings of closed-end domestic equity funds quickly trade to a discount. These investors never purchase in the IPO. Investors who are "not smart enough" are unaware of the prevalence of closed-end fund discounts and, unless specifically warned, can be persuaded to purchase shares of a closed-end equity fund in an initial public offering.

It should be emphasized that investors who, for purposes of this analysis, fall into the "not smart enough" category can be extraordinarily intelligent, indeed, brilliant in other endeavors. For example, a professor of engineering who is well versed in the solution of partial differential equations that are far beyond the comprehension of the average stockbroker can be totally oblivious of the empirical evidence that closed-end domestic equity fund IPOs quickly trade to a discount. Life is complicated and nobody can know everything.

In this context, an IPO of an equity fund can succeed if investors who are "not smart enough" can be persuaded to purchase all the shares offered in the IPO. Indeed, compounding this problem is the fact that brokers who sell closed-end domestic equity fund shares earn greater compensation than brokers who sell the same number of fund shares in the aftermarket.[9] If a broker is willing to put his interest in commission income ahead of his client's best financial interests, then such a broker might recommend a closed-end IPO purchase to a client who is "not smart enough." Such agency problems are hardly rare in our modern economy.[10]

Interestingly, the available data tend to support a characterization of the closed-end IPO market as one characterized by a subpopulation of investors who are "not smart enough." It seems that institutional investors, whose funds are typically managed by market professionals, tend to avoid closed-end fund IPOs.[11] Thus, institutional investors may tend to be "smart enough" to avoid closed-end domestic equity fund IPOs while the population of investors who are "not smart enough" is drawn from the ranks of retail investors.

Data from January 1988 through May 1989, a period subsequent to that studied in the OEA Report, indicate a marked decline in the volume of closed-end fund IPOs. During that period, of the 77 closed-end funds offered in the U.S., 65 (84.4 percent) were bond funds, 7 (9.1 percent) were foreign stock funds, and only 5 (6.5 percent) were domestic equity funds.[12] The five domestic equity closed-end funds declined in value by approximately 9.45 percent after 120 trading days. These data suggest that the market may have learned that closed-end domestic equity funds tend not to be profitable IPO investments and that the number of those funds brought to market has therefore declined.

This analysis raises some interesting questions about the conduct of brokers who recommend closed-end domestic equity fund IPOs to their customers. Suppose a broker fails to explain to a customer that, rather than buying shares in a closed-end domestic equity fund IPO, the investor would be better off buying shares of the same fund in the aftermarket. Is such a failure unobjectionable because the quantity and quality of the evidence regarding discounts provides an insufficient basis for making such a recommendation? If so, how does the quantity and quality of the closed-end discount evidence compare with information upon which brokers rely when making other recommendations? What quantity and quality evidence should then be required as a basis for a recommendation?

Assuming that the evidence regarding discounts is credible, and recognizing that not every broker can know every fact about every product he recommends, could a failure to advise a customer to purchase in the aftermarket rather than in the IPO be supported on the basis that a broker could not reasonably be expected to know about the prevalence of discounts? The argument in support of this proposition must be that the level of skill and care expected of a broker does not rise to the level at which a customer reasonably should expect the broker to be aware of the substantial probability that the closed-end fund IPO shares will trade at a discount. If one accepts this argument, how knowledgeable should a customer expect a broker to be about specific investment recommendations made to that customer? How does this standard of care relate to the advice that brokers generally provide to clients?

Put a bit differently, if brokers can legitimately rely on evidence of past positive performance of a category of securities as a basis for a recommendation in selling an IPO, to what extent should brokers be expected to take into account equivalently credible evidence of past negative performance of a category of securities before making such a recommendation? For example, consider a situation in which the evidence of the positive performance history of a category of securities is as powerful as the evidence regarding discounts following IPO

---

[1] Securities Act Release No. 6824 (July 28, 1989) at 15.

[2] For a more general discussion of the policy issues raised by the use of warning labels and other "information remedies" *see, e.g.*, Beales, Craswell & Salop, The Efficient Regulation of Consumer Information, 24 J. Law & Econ. 491 (1981).

[3] This separate statement focuses solely on discounts observed among closed-end domestic equity funds because the available evidence suggests that these discounts are more pronounced and systematic than discounts observed in connection with other closed-end funds. *See* The Post-Offering Price Performance of Closed-End Funds, Study by the Office of Economic Analysis, Securities and Exchange Commission, at 4, 11–12, 14–15, 27–28 (July 21, 1989) (hereafter cited as "OEA Study").

[4] For example, Kraakman, Taking Discounts Seriously: The Implications of "Discounted" Share Prices as an Acquisition Motive, 88 Col. L. Rev. 891, 903 n.39 (1988), cites the following studies as support for the proposition that "there have been numerous investigations of discounts on closed-end funds": Boudreaux, Discounts and Premiums on Closed-End Mutual Funds: A Study in Valuation, 28 J. Fin. 515 (1973); Brauer, "Open-Ending" Closed-End Funds, 13 J. Fin. Econ. 491 (1984); Brickley & Schallheim, Lifting the Lid on Closed-End Investment Companies: A Case of Abnormal Returns, 20 J. Fin. and Quantitative Analysis 107 (1985); Leonard & Nole, Estimation of Time-Varying Systematic Risk and Investment Performance: Closed-End Investment Companies, 4 J. Fin. Res. 109 (1981); Malkiel, The Valuation of Closed-End Investment Company Shares, 32 J. Fin. 847 (1977); Mendelson, Closed-End Fund Discounts Revisited, Fin. Rev., Spring 1978, at 48; Roendfeldt & Tuttle, An Examination of the Discounts and Premiums of Closed-End Investment Companies, 1 J. Bus. Res. 129 (1973); Thompson, The Information Content of Discounts and Premiums on Closed-End Fund Shares, 6 J. Fin. Econ. 151 (1978); R. Thompson, Capital Market Efficiency, Two Parameter Asset Pricing and the Market for Corporate Control: The Implications of Closed-End Investment Company Discounts and Premiums (unpublished Ph.D. dissertation, Graduate School of Management, University of Rochester, 1978).

As support for the proposition that "discounts on seasoned funds of 20% or more, persisting for five years or longer, have been common in the recent past," Kraakman, *supra* at 903 n.36 cites: D. Mullins, Managerial Discretion and Corporate Financial Management, ch. 5, at 1–3 (unpublished Ph.D. dissertation, Harvard Business School, July 29, 1963); Sharpe & Sosin, Closed-End Investment Companies in the United States: Risk and Return, in European Financial Association 1974 Proceedings 39–40 (B. Jacquillat ed.).

[5] *See* Closed-End Funds' Crop Thins Out, Wall St. J., Apr. 28, 1989, at C1–C2; Closed-End Funds are Easy Targets, N.Y. Times, Apr. 14, 1989, at D8; Five-Month Fizzles—What Lots of Closed-End IPOs Are, Barrons, Aug. 8, 1988, at 21–22; Patience, Sir, Forbes, Nov. 2, 1987, at 81.

[6] Of course, this assumes that the net asset value of the fund does not increase so quickly that the investor winds up earning a profit even after the fund trades at a discount. Given the magnitude of discounts and the probability of such significant run-ups in net asset value during the immediate aftermarket, the assumption implicit in the text seems quite reasonable.

[7] Put another way, the public offering of a closed-end domestic equity fund's shares is analogous a back-end loaded two-tier offer. The front-end is composed of the higher priced IPO shares. The back-end is composed of the lower priced aftermarket shares. Because rational, fully informed investors have no incentive to participate in the front-end of such offers, back-end loaded two-tier offers cannot succeed in markets composed of rational, fully informed investors.

[8] The finance literature contains several examples of models in which some investors are better informed than others. *See, e.g.*, Black, Noise, 41 J. Fin. 529 (1986); De Long, Shleifer, Summers & Waldmann, The Size and Incidence of the Losses From Noise Trading, 44 J. Fin. 681 (1989).

[9] "Fund specialists say brokers can make $200 on a typical $10,000 closed-end offering, compared with $75 for a similar fund already trading in the secondary market." Caution Urged for Closed-End Fund Investors, Wall St. J., March 22, 1988, at 37. See also Burnt Offerings: Closed-End Funds Bring No Blessings to Shareholders, Barrons, Aug. 10, 1987, at 6–7, 32–36.

Because a broker's income is higher if he sells a fund's shares in the IPO than in the aftermarket, viewed from the broker's selfish perspective, an IPO of a closed-end domestic equity fund is a front-end loaded two-tier transaction. A rational, self-interested broker thus has every incentive to suggest that his clients invest in a closed-end domestic equity fund IPO unless the broker fears the adverse consequences that may follow when the clients complain that the fund is trading at a discount.

[10] An agency problem arises whenever a person (a principal) hires someone else (an agent) to make a decision and the agent's incentives differ from the principal's. In this case, the agency problem arises, in part, because the closed-end domestic equity fund IPO is back-end loaded from the investor's (principal's) perspective and front-end loaded from the brokers (agent's) perspective. *See* generally Jensen & Meckling, The Theory of the Firm: Managerial Behavior Agency Costs and Ownership Structure, 3 J. Fin. Econ. 305 (1976); Ross, The Economic Theory of Agency: The Principal's Problem, 63 Amer. Econ. Rev. 134 (1973); Spence & Zeckhauser, Insurance, Information, and Individual Action, 61 Amer. Econ. Rev. 119 (1971).

[11] OEA Study, at 23–25.

[12] Office of the Chief Economist, Memorandum from Kathleen Weiss to Kenneth Lehn and David Malmquist, Closed-End Fund Study Update, June 20, 1989 (copy placed in public file no. S7–21–89).

closed-end domestic equity fund offerings. If brokers are permitted to rely on evidence of past positive performance should they be expected to give equal weight to equally powerful evidence of past negative performance?

Further, if it is correct that no rational, fully informed investor would purchase closed-end domestic equity fund shares in an IPO, how can a broker recommend such a purchase? Is it because the broker is not sufficiently informed? Or, is it because the broker's incentive is different from the customer's and the logical choice from the broker's perspective is not the logical choice from the customer's perspective? After all, the broker earns substantially more by selling the shares in the IPO than by selling the same shares in the aftermarket. In that case, how does the broker's recommendation benefit the customer? Does the presence of such a potential conflict alter the degree of care that one expects the broker to exercise in connection with a recommendation? Does it alter the information that the broker should convey to his customer before making a recommendation? Does it alter the degree of confidence that retail customers should have in broker recommendations?

Finally, how do these observations relate to the proposed requirement that prospectuses contain cautionary legends about closed-end fund IPOs? Will such a legend change broker behavior in recommending closed-end fund IPOs? Should such a legend change broker behavior in recommending closed-end fund IPOs?

Appendix A

Set forth below is a cross-reference sheet listing each item and certain sub-items of proposed Form N–2 and a cross-reference to the item or sub-item of current Form N–2 ("N–2"), Form N–1A ("N–1A"), Form N–3 ("N–3"), or Regulation S–K ("S–K") from which the proposed item was derived. Items of proposed Form N–2 which are new, or which include disclosure not previously called for by these sources, are designated as "New."

Revised form N–2 item	Source of revision
PART A	
1.1.a	N–1A, Item 1(a)(i).
1.1.b	N–1A, Item 1(a)(ii).
1.1.c	S–K, Item 501(c)(2).
1.1.d	N–1A, Item 1(a)(iii).
1.1.e	N–1A, Item 1(a)(iv).
1.1.f	S–K, Item 501(c)(3).
1.1.g	N–2, Item 1(a)/. S–K, Item 501(c)(7)/New.
1.1.h	N–1A, Item 1(a)(v).
1.1.i	New.
1.1.j	S–K, Item 501(c)(4).
1.1.k	N–1A, Item 1(a)(vi).
1.2	N–1A, Item 1(b).
2.1	New.
2.2	S–K, Item 502(b)(3).
3.1	N–1A, Item 2(a)(i)/New.
3.2	N–3, Item 3
3.3	New.
4.1	N–2, Item 3/New.
4.2	New.
4.3	N–2, Item 3(b)/New.
5.1.a	N–2, Item 4(a)(1)
5.1.b	N–2, Item 4(a)(2)/New.
5.1.c	N–2, Item 4(a)(3).
5.1.d	N–2, Item 4(a)(4)/New.
5.2	N–2, Item 4(b).
5.3	S–K, Item 508(e),(h).
5.4	S–K, Item 508(g).
5.5	S–K, Item 508(i).
5.6	New.
5.7	N–2, Item 4(g).
5.8	New.
5.9	New.
5.10	S–K, Item 508(c)/N–2, Item 4(f).
6	N–2, Item 4(e)/. S–K, Item 507.
7.1	N–2, Item 5/S–K, Item 504/New.
7.2	New.
8.1.a	N–2, Item 6(a)(i).
8.1.b	N–1A, Item 4(a)(i)(B).
8.2.a	N–1A, Item 4(a)(ii)(A).
8.2.b	N–1A, Item 4(a)(ii)(B).
8.2.c	N–1A, Item 4(a)(ii).
8.2.d	N–1A, Item 4(a)(ii)(B)(2).
8.3	N–1A, Item 4(c).
8.4	N–1A, Item 4(d)/New.
8.5	S–K, Item 201(a)/N–2, Item 6(d).
8.6	New.
8.7	New.
9.1.a	N–1A, Item 5(a).
9.1.b	N–1A, Item 5(b).
9.1.c	S–K, Item 401(c).
9.1.d	N–1A, Item 5(c).
9.1.e	N–1A, Item 5(d).
9.1.f	N–3, Item 7(f).
9.1.g	N–1A, Item 5(f).
9.2	S–K, Item 502(f).
10.1	N–2, Item 7/. S–K, Item 202(a).
10.2	S–K, Item 202(b).
10.3	S–K, Item 202(d).
10.4	N–1A, Item 6(g).
10.5	N–1A, Item 6(b).
10.6	N–2, Item 17(b).
10.7	New.
11	N–2, Item 16
12	N–2, Item 10/ N–1A, Item 9/ S–K, Item 103
13	New.
PART B	
14.1.a	N–1A, Item 10(a)(i).
14.1.b	N–1A, Item 10(a)(ii).
14.1.c	N–1A, Item 10(a)(iv).
14.1.d	N–1A, Item 10(a)(iii).
14.1.e	New.
14.2	N–1A, Item 10(b).
15	N–1A, Item 11.
16	N–1A, Item 12.
17	N–1A, Item 13.
18.1	N–1A, Item 14(a).
18.2	N–1A, Item 14(b).
18.3	New.
18.4	N–2, Item 13.
19	N–1A, Item 15.
20	N–1A, Item 16.
21	N–1A, Item 17.
22	N–1A, Item 20.
23	N–1A, Item 23.
PART C	
24	N–2, Part C, Item 4/New.
25	N–2, Part C, Item 1.
26	N–2, Part C, Item 2.
27	N–2, Part C, Item 5.
28	N–2, Part C, Item 6.
29	N–2, Part C, Item 3.
30	N–2, Part C, Item 8.
31	N–2, Part C, Item 7.
32	N–2, Part C, Item 9.
33.1	N–2, Part C, Item 10(a).
33.2	N–2, Part C, Item 10(b).
33.3	N–2, Part C, Item 10(c).
33.4	S–K, Item 512(a).
33.5	S–K, Item 512(j).
33.6	New.
33.7	N–3, Item 37(d).

Appendix B

1933 Act File No. 33– _____
1940 Act File No. 811– _____

U.S. Securities and Exchange Commission
Washington, D.C. 20549

FORM N–2

(Check appropriate box or boxes)

OMB APPROVAL

OMB Number: 3235–0026
Expires: December 31, 1990
Estimated average burden hours per response. 1630.0

☐ REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933
☐ Pre-Effective Amendment No. _____
☐ Post-Effective Amendment No. _____
and/or
☐ REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF 1940
☐ Amendment No. _____

_____
Exact Name of Registrant as Specified in Charter

_____
Address of Principal Executive Offices

_____
(Number, Street, City, State, Zip Code)

_____
Registrant's Telephone Number, including Area Code

_____
Approximate Date of Proposed Public Offering

If any of the securities being registered on this form are to be offered on a delayed or continuous basis in reliance on rule 415 under the Securities Act of 1933, other than securities offered in connection with a dividend reinvestment plan, check the following box _____☐

CALCULATION OF REGISTRATION FEE UNDER THE SECURITIES ACT OF 1933

Title of securities being registered	Amount being registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Instructions

If the registration statement or an amendment to it is being filed under only one of the Acts, reference to the other Act should be omitted from the facing sheet. The "Approximate Date of Proposed Public Offering" and the table showing the calculation of the registration fee under the Securities Act of 1933 should be included only where shares are being registered under the Securities Act of 1933.

Fill in the 811– _____ and 33– _____ blanks only if these filing numbers (for the Investment Company Act of 1940 registration and the Securities Act of 1933 registration, respectively) have already been assigned by the Securities and Exchange Commission in the course of previous filings.

Note: The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3228 New Executive Office Building, Washington, DC 20503.

Contents of FORM N–2

General Instructions
A. Use of Form N–2.
B. Registration Fees.
C. Number of copies.
D. Application of General Rules and Regulations.
E. Amendments.
F. Incorporation by Reference.
G. Documents Comprising the Registration Statement or Amendment.
H. Preparation of the Registration Statement or Amendment.
Part A: The Prospectus.
Part B: Statement of Additional Information.
General Instructions for Parts A and B.

Part A—INFORMATION REQUIRED IN A PROSPECTUS

Item 1. Outside Front Cover Page.
Item 2. Inside Front and Outside Back Cover Page.
Item 3. Synopsis.
Item 4. Condensed Financial Information.
Item 5. Plan of Distribution.
Item 6. Selling Shareholders.
Item 7. Use of Proceeds.
Item 8. General Description of the Registrant.
Item 9. Management.
Item 10. Capital Stock, Long-Term Debt, and Other Securities.
Item 11. Defaults and Arrears on Senior Securities.
Item 12. Legal Proceedings.
Item 13. Table of Contents of the Statement of Additional Information.

Part B—INFORMATION REQUIRED IN A STATEMENT OF ADDITIONAL INFORMATION

Item 14. Cover Page.
Item 15. Table of Contents.
Item 16. General Information and History.
Item 17. Investment Objective and Policies.
Item 18. Management.
Item 19. Control Persons and Principal Holders of Securities.
Item 20. Investment Advisory and Other Services.
Item 21. Brokerage Allocation and Other Practices.
Item 22. Tax Status.
Item 23. Financial Statements.

Part C—OTHER INFORMATION

Item 24. Financial Statements and Exhibits.
Item 25. Marketing Arrangements.
Item 26. Other Expenses of Issuance and Distribution.
Item 27. Persons Controlled by or Under Common Control.
Item 28. Number of Holders of Securities.
Item 29. Indemnification.
Item 30. Business and Other Connections of Investment Adviser.
Item 31. Location of Accounts and Records.
Item 32. Management Services.
Item 33. Undertakings.

SIGNATURES

General Instructions

A. Use of Form N–2

Form N–2 shall be used by all closed-end management investment companies, except small business investment companies licensed as such by the United States Small Business Administration, for filing: (1) An initial registration statement under section 8(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(b)) ("1940 Act") and any amendment to it; (2) a registration statement under the Securities Act of 1933 ("1933 Act") (15 U.S.C. 77(a) *et seq.*) and any amendment to it; or (3) any combination of this filings.

B. Registration Fees

Section 6(b) of the 1933 Act (15 U.S.C. 77f(b)) and rule 457 (17 CFR 230.457) set forth the fee requirements under the 1933 Act. Rule 8b–6 under the 1940 Act (17 CFR 270.8b–6) sets forth the fee for filing an initial registration statement under that Act. The 1940 Act fee is in addition to the fee required under the 1933 Act.

C. Number of copies

Filings of registration statements on Form N–2 shall contain the number of copies specified in rule 402 under the 1933 Act (17 CFR 230.402), except that seven additional copies of the registration statement shall be furnished to the Commission, instead of the ten additional copies required by rule 402(b) (17 CFR 230.402(b)).

Filings of amendments on Form N–2 shall contain the number of copies specified in rule 472 under the 1933 Act (17 CFR 230.472), except that there shall be filed with the Commission three additional copies of such amendment, two of which shall be marked to indicate clearly and precisely, by underlining or in some other appropriate manner the changes made in the registration statement by the amendment, instead of the eight additional copies with at least five marked as required by rule 472(a) (17 CFR 230.472(a)).

D. Application of General Rules and Regulations

If the registration statement is being filed under both Acts or under only the 1933 Act, the General Rules and Regulations under the 1933 Act, particularly Regulation C (17 CFR 230.400–497), shall apply, and compliance with them will deemed to the meet the rules for registration statements under the 1940 Act (15 U.S.C. 80a *et seq.*). However, if the registration statement is being filed under only the 1940 Act, the General Rules and Regulations under that Act, particularly Regulation 8(b) (17 CFR 270.8b–1 *et seq.*), shall apply.

E. Amendments

1. Attention is specifically directed to paragraph (b) of the rule 8b–16 under the 1940 Act (17 CFR 270.8b–16) which exempts closed-end management investment companies from the requirement to annually amend the 1940 Act registration statement under paragraph (a) of that rule, provided that the information specified by that rule is transmitted to shareholders on an annual basis.

2. Where Form N–2 has been used to file a registration statement under both the 1933 and 1940 Acts, any amendment of that registration statement shall be deemed to be filed under both Acts unless otherwise indicated on the facing sheet.

3. If any securities being registered are to be offered on a delayed or continuous basis in reliance on rule 415 under the 1933 Act (17 CFR 230.415), attention is directed to the undertaking required to be set forth in response to item 33.4 with respect to the filing of post-effective amendments.

F. Incorporation by Reference

Incorporation by reference permits a Registrant to include documents and exhibits filed previously with the Commission as part

of the registration statement by making reference to where, and under what designation, these documents can be found in previous filings. A Registrant may, at its discretion, incorporate all or part of the Statement of Additional Information into the prospectus, without physically delivering the Statement of Additional Information with the prospectus, so long as the Statement of Additional Information is available to investors upon request at no charge and any information or documents incorporated by reference into the Statement of Additional Information are provided along with the Statement of Additional Information, except to the extent provided by instruction F.3. below.

Rule 411 under the 1933 Act (17 CFR 230.411), and rules 0–4, 8b–23, 8b–24, and 8b–32 under the 1940 Act (17 CFR 270.0–4, 270.8b–23, 270.8b–24, and 270.8b–32) provide guidance on incorporating information or documents by reference into a registration statement. In general, a Registrant may incorporate by reference, in response to any item of Form N–2 not required to be included in the prospectus, any information contained elsewhere in the registration statement or in other statements, applications, or reports filed with the Commission.

The rules on incorporation by reference under both the 1933 Act and the 1940 Act are subject to the limitations of rule 24 of the Commission's Rules of Practice (17 CFR 201.24). Since rule 24 may be amended from time to time, Registrants are advised to review the rule before incorporating by reference any document as an exhibit to a registration statement.

Subject to the above rules, a Registrant may incorporate by reference into the prospectus or the Statement of Additional Information in response to items 4.1 or 23, respectively, of this form the information contained in any report to shareholders meeting the requirements of section 30(d) of the 1940 Act (15 U.S.C. 80a–29(d)) and rule 30d–1 (17 CFR 270.30d–1) thereunder, provided:

1. The material incorporated by reference is prepared in accordance with, and covers the periods specified by, this form;

2. The Registrant states in the prospectus or the Statement of Additional Information, at the place where the information required by items 4.1 or 23 of the form, respectively, would normally appear, that the information is incorporated by reference from a report to shareholders (The Registrant also may describe, in either the prospectus, the Statement of Additional Information, or Part C of the registration statement (in response to item 24.1), or any combination thereof, those portions of the report to shareholders that are not incorporated by reference and are not a part of the registration statement.); and

3. The material incorporated by reference is provided with the prospectus or the Statement of Additional Information to each person to whom the prospectus or the Statement of Additional Information is sent or given, unless the person holds securities of the Registrant and otherwise has received a copy of the material. (The Registrant must state in the prospectus or the Statement of Additional Information that it will furnish, without charge, a copy of such material on request and the name, address, and telephone number of the person to contact.)

G. Documents Comprising the Registration Statement or Amendment

1. A registration statement or an amendment to it filed under both the 1933 and 1940 Acts, shall consist of the facing sheet of the form, the cross-reference sheet required by rule 495(a) under the 1933 Act (17 CFR 230.495(a)), Part A, Part B, Part C, required signatures, all other documents filed as a part of the registration statement, and documents or information permitted to be incorporated by reference, whether or not required to be filed.

2. A registration statement or amendment to it that is filed under only the 1933 Act shall contain all the information and documents specified in paragraph 1 of this Instruction G.

3. A registration statement or an amendment to it that is filed under only the 1940 Act shall consist of the facing sheet of the form, the cross-reference sheet required by rule 495(a) under the 1933 Act, responses to all items of Parts A and B except items 1, 2, 3.2, 4, 5, 6, and 7 of Part A, responses to all items of Part C except items 24.2.g, and 24.2.k through m, required signatures, and all other documents that are required or which the Registrant may file as part of the registration statement.

H. Preparation of the Registration Statement or Amendment

The instructions for Form N–2 are divided into three parts. Part A relates to the prospectus required by section 10(a) of the 1933 Act (15 U.S.C. 77j(a)). Part B relates to the Statement of Additional Information that must be provided upon request to recipients of the prospectus. Part C relates to other information that is required to be in the registration statement.

Part A: The Prospectus

The purpose of the prospectus is to provide essential information about the Registrant in a way that will help investors make informed decisions about whether to purchase the securities being offered. The information in the prospectus should be clear, concise, and understandable. Avoid the use of technical or legal terms, complex language, or excessive detail.

Responses to the items of Part A should be as simple and direct as possible and include only information needed to understand the fundamental characteristics of the Registrant. Descriptions of practices that are required by law generally should not include detailed discussions of the law itself. No response is required for inapplicable items.

Part B: Statement of Additional Information

The items in Part B call for additional information about the Registrant that may be of interest to some investors. In addition, Part B affords the Registrant an opportunity to augment discussions of the matters described in the prospectus by including additional information about such matters that the Registrant believes may be of interest to some investors. Information in the Statement of Additional information is not required to be included in the prospectus or to accompany it when sent to shareholders and prospective investors provided that: (1) The cover page of the prospectus states that the Statement of Additional Information is available upon oral or written request and without charge and includes a telephone number for use by prospective investors; (2) unless a toll-free telephone number is included, a self-addressed card for requesting the Statement of Additional Information accompanies the prospectus; and (3) when a request for the Statement of Additional Information is received by the Registrant, the statement is sent within one business day of receipt of the request by first class mail or other means designed to ensure equally prompt delivery. A Registrant placing information in Part B should not repeat information that is in the prospectus, except where necessary to make Part B understandable.

General Instructions for Parts A and B

1. The information in the prospectus and the Statement of Additional Information should be organized to make it easy to understand the organization and operation of the Registrant. The information need not be in any particular order, with the exception that items 1, 2, 3, and 4 must be in numerical order in the prospectus and may not be preceded or separated by any other item.

2. The prospectus or the Statement of Additional Information may contain more information than called for by this form, provided that the information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation, obscure or impede understanding of required information.

3. The statutory provisions relating to the dating of the prospectus apply equally to the dating of the Statement of Additional Information for purposes of rule 423 under the 1933 Act (117 CFR 230.423). Furthermore, the Statement of Additional Information should be made available at the same time that the prospectus becomes available for purposes of rules 430 and 460 under the 1933 Act (17 CFR 230.430, 230.460).

4. The prospectus should not be presented in fold-out or road-map type fashion.

5. Instructions for charts, graphs, and sales literature:

a. A registration statement on this form may include any chart, graph, or table that is not misleading; however, with the exception of the fee table and the table of contents (required by rule 481(c) under the 1933 Act (17 CFR 230.481(c))), no chart, graph, or table should precede the condensed financial information specified in item 4.

6. If "sales literature" is included in the prospectus, (1) it should not significantly lengthen the prospectus nor obscure essential disclosure and (2) members of the National Association of Securities Dealers, Inc. ("NASD") are not relieved of the filing and other requirements of the NASD for investment company sales literature (*See* Securities Act Release No. 5359, Jan. 26, 1973 (38 FR 7220 (Mar. 19, 1973))).

Part A—Information Required in a Prospectus

Item 1. Outside Front Cover Page

1. The outside front cover page must contain the following information:

a. The Registrant's name;

b. Identification of the type of Registrant (e.g., bond fund, balanced fund, business development company, etc.) or a brief statement of the Registrant's investment objective(s);

c. The title and amount of securities offered and a brief description of such securities (unless not necessary to indicate the material terms of the securities, as in the case of an issue of common stock with full voting rights and the dividend and liquidation rights usually associated with common stock);

d. A statement or statements that (A) the prospectus sets forth concisely the information about the Registrant that a prospective investor ought to know before investing; (B) the prospectus should be retained for further reference; and (C) additional information about the Registrant has been filed with the Commission and is available upon written or oral request and without charge (This statement should explain how to obtain the Statement of Additional Information, whether any of it has been incorporated by reference into the prospectus, and where the table of contents of the Statement of Additional Information appears in the prospectus.);

e. The date of the prospectus and the date of the Statement of Additional Information;

f. If any of the securities being registered are to be offered for the account of shareholders, a statement to that effect;

g. The information called for by the following table in substantially the tabular form indicated as to all securities being registered that are to be offered for cash (estimate, if necessary):

Price to public	Sales load	Proceeds to registrant or other persons
Per share		
Total		

Instructions:

1. If it is impracticable to state the price to the public, explain the method by which it is to be determined (*e.g.*, by reference to net asset value). In addition, if the securities are to be offered at the market, indicate the market involved and the market price as of the latest practicable date.

2. The term "sales load" is defined in section 2(a)(35) of the 1940 Act (15 U.S.C. 80a–2(a)(35)). Only include that portion of sales load which consists of underwriting discounts and commissions and include any commissions paid by selling shareholders (the term "commissions" is defined in paragrpah 17 of Schedule A of the 1933 Act). Commissions paid by other persons and other consideration to underwriters shall be set forth in a note to the table with a reference thereto in the second column.

3. If the Registrant intends to incur loans to pay underwriting commissions or any other organizational and offering costs, disclose this practice in a note to the table and provide a cross-reference to those portions of the prospectus discussing the borrowed amounts and the effect of repayment on net asset value. In the table, the amount of funds borrowed should not be deducted from the amount of proceeds to the Registrant.

4. Where an underwriter has received an over-allotment option, present maximum-minimum information in the price table or in a note thereto, based on the purchase of all or none of the shares subject to the option. The terms of the option may be described in response to item 5 of this form rather than on the cover page of the prospectus.

5. If the securities are to be offered on a best efforts basis, set forth the termination date of the offering, any minimum required purchase, and any arrangements to place the funds received in an escrow, trust, or similar arrangement. If no such arrangements have been made, so state. Set forth the following tabular presentation of the total maximum and minimum securities to be offered in lieu of the "Total" information called for by the required table.

Price to public	Sales load	Proceeds to registrant or other persons
Total Minimum		
Total Maximum		

6. Set forth in a note to the proceeds column of the distribution table the total of other expenses of issuance and distribution called for by item 26 of this form, stated separately for the Registrant and for the selling shareholders, if any.

h. The statements required by paragraphs (1) and (2) of rule 481(b) under the 1933 Act (17 CFR 230.481(b) (1) and (2));

i. With respect to a Registrant whose securities have no history of public trading, a prominent statement to that effect and a statement describing the tendency of closed-end fund shares to trade frequently at a discount to their offering price and net asset value and the risk of loss this creates for investors purchasing shares in the initial public offering;

j. A cross-reference, where applicable, to the discussion in the prospectus of the factors that make the offering speculative or one of high risk, printed in bold face common type at least as large as ten point modern type and at least two points leaded; and

Instruction: This cross-reference is not necessary where the securities in which the registrant is authorized to invest are subject only to the basic risks inherent in investing in securities generally (*e.g.*, the risk that the value of portfolio securities may fluctuate depending upon market conditions, or the risks that debt securities may be prepaid and the proceeds from the prepayments invested in debt instruments with lower interest rates). The cross-reference should be included where the nature of the Registrant's investment objectives, investment policies (*e.g.*, investment in securities which are highly speculative or which by their nature are highly volatile), capital structure (*e.g.*, the use of leverage), or trading markets for the Registrant's securities (*e.g.*, if there is no established trading market and no market is expected to develop) increase the likelihood that an investor could lose a significant portion of his investment.

k. Any other information required by rules of the Commission or by any other governmental authority having jurisdiction over the Registrant or the issuance of its securities.

2. The cover page may include other information if it does not, by its nature, quantity, or manner of presentation impede understanding of the required information.

Item 2. Inside Front and Outside Back Cover Page

Furnish the following information to the extent applicable on the inside front or the outside back cover page of the prospectus:

1. The information required by paragraphs (d) through (f) of rule 481 under the 1933 Act (17 CFR 230.481 (d) through (f)); and

2. The name of any national exchange or over-the-counter market on which the shares being offered will be listed and the symbol that the shares will be listed under.

Item 3. Synopsis

1. If the prospectus offers common or preferred stock of the Registrant, include a table furnishing information about the various costs and expenses that the investor will bear directly or indirectly, using the captions provided, in the format illustrated below:

	Percent	Percent
Shareholder Transaction Expenses:		
Sales load (as a percentage of offering price)		
Dividend reinvestment and cash purchase plan fees		
Annual expenses (as a percentage of net assets):		
Management fees		
Interest payments on borrowed funds		
Other expenses		
Total annual expenses		
Payments to Preferred Shareholders (as a percentage of net assets)		

Example	1 year	3 years	5 years	10 years
You would pay the following on a $1,000 investment, assuming a 5% annual return	$	$	$	$

Instructions:

General Instructions

1. Immediately after the table, provide a brief narrative explaining that the purpose of the table is to assist the investor in

understanding the various costs and expenses that an investor in the fund will bear directly or indirectly. Include, where appropriate, cross references to the relevant sections of the prospectus for more complete descriptions of the various costs and expenses.

2. If a particular caption is not applicable to the Registrant, omit the caption from the table.

3. Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

Shareholder Transaction Expenses

4. "Dividend Reinvestment and Cash Purchase Plan Fees" include all fees (except brokerage commissions) that are charged to participating shareholder accounts.

5. If the Registrant (or any other party pursuant to an agreement with the Registrant) charges any other transaction fee, add another caption describing it and list the (maximum) amount or basis on which the fee is deducted.

Annual Expenses

6. The Registrant should state the basis on which payments will be made, except that "Other Expenses" should be estimated and stated (after any expense reimbursement or waiver) as a percentage of net asset value attributable to common shares. Disclosure should be made in the narrative following the table that "Other Expenses" are based on estimated amounts for the current fiscal year.

7. "Management Fees" include investment advisory fees (including any component thereof based on the performance of the Registrant), any other management fees payable to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates not included as "Other Expenses."

8. "Interest Payments on Borrowed Funds" include all interest paid in connection with outstanding loans (including interest paid on funds borrowed to pay underwriting expenses), bonds, or other forms of debt. Show interest expenses as a percentage of net assets and not the face amount of debt.

9. "Other Expenses" include all fees and expenses (except brokerage commissions and other capital items, underwriting costs, repayment of the principal on borrowed funds, payments on borrowed funds, share repurchase charges, dividend reinvestment and cash purchase plan fees, management fees, or payments to preferred shareholders) that are deducted from the Registrant's assets. This caption may be subdivided into no more than three subcategories of the Registrant's choosing, but must also include a total of all "Other Expenses."

Payments to Preferred Shareholders

10. "Payments to Preferred Shareholders" should be expressed as a percentage of net asset value attributable to common shares and not as a percentage of the par value of the preferred shares. If payments will vary because the dividend rate on the class of preferred shares is variable, assume that the base rate is paid.

11. If the prospectus offers only preferred shares, the line item captioned "Payments to Preferred Shareholders" may be omitted.

Example

12. For purposes of the Example in the table:

a. Assume that the rates listed under "Annual Expenses" and "Payments to Preferred Shareholders" remain the same in each year, except that an appropriate adjustment to reflect reduced annual expenses from the scheduled maturity of outstanding debt and completion of organization expense amortization may be made;

b. Assume reinvestment of all dividends and distributions at net asset value;

c. Reflect all recurring and nonrecurring fees including underwriting discounts and commissions;

d. Prominently disclose that the Example should not be considered a representation of future expenses and that actual expenses may be greater or lesser than those shown; and

e. If the Registrant has outstanding preferred stock, modify the caption to the example to include the words "(including dividend payments to preferred shareholders)" after the word "expenses."

2. The Registrant should include a synopsis of information contained in the prospectus when the prospectus is long or complex, except that the table required in paragraph 1 above must be included in all prospectuses. Normally, a synopsis should not be provided where the prospectus is twelve or fewer printed pages.

Instruction: The synopsis should be a clear and concise description of the key features of the offering and the Registrant, with cross-references to relevant disclosures elsewhere in the prospectus or in the Statement of Additional Information required by Part B of the registration statement.

3. In the case of a business development company, include the information required by item 502(a) of Regulation S–K (17 CFR 229.502(a)).

Item 4. Condensed Financial Information

1. Furnish the following information for the Registrant, or for the Registrant and its subsidiaries, consolidated as prescribed in rule 6–03 (17 CFR 210.6–03) of Regulation S–X.

Per Share Income and Capital Changes (for a share outstanding throughout the year)

a. Net Investment Income

b. Net Gains or Losses on Securities (both realized and unrealized)

c. Dividends (from net investment income)

d. Distributions (from capital gains)

e. Net asset value (at end of period)

Ratios

f. Expense Ratio (expenses to average net assets)

g. Income Ratio (net investment income to average net assets)

h. Portfolio Turnover Rate

i. Total Return

j. Net assets at End of Period (000s)

Instructions:

1. A Registrant that is regulated as a business development company may omit the information called for by item 4.1, but must include the information required by item 4.2.

2. Present the information in comparative columnar form for each of the last ten fiscal years of the Registrant (or for the life of the Registrant and its immediate predecessors, if less) but only for periods after the effective date of Registrant's 1933 Act registration statement. In addition, present the information for the period between the end of the latest fiscal year and the date of the latest balance sheet or statement of assets and liabilities furnished. Where the period for which the Registrant provides condensed financial information is less than a full fiscal year, the ratios set forth in the table may be annualized but the fact of this annualization must be disclosed in a note to the table.

3. List per share amounts at least to the nearest cent. If the computation of the offering price is extended to tenths of a cent or more, then state the amounts on the table in tenths of a cent. Present the information using a consistent number of decimal places.

4. Make, and indicate in a note, all appropriate adjustments to reflect any stock split or stock dividend during the period.

5. If the investment adviser has been changed during the period covered by this item, disclose the date(s) of the change(s) in a note.

6. The condensed financial information for not less than the latest five fiscal years must be audited and must so state. The auditor's report as to the condensed financial information need not be included in the prospectus.

7. Derive the amount to be shown at caption a by adding (deducting) the increase (decrease) per share in undistributed net investment income for the year to (from) dividends from net investment income per share for the year. Such increase (decrease) may be derived from a comparison of the per share figures obtained by dividing the undistributed net investment income at the beginning and end of the year by the number of shares outstanding on those respective dates. Other methods may be acceptable, but should be explained in a note to the table.

8. The amount to be shown at caption b, which is derived by adding together the amounts computed for the periods during the year when shares were sold or repurchased (which could be as often as twice daily), is also the balancing figure derived from the other figures in the statement and should be so computed. The amount shown at this caption for a share outstanding throughout the year may not agree with the change in the aggregate gains and losses in the portfolio securities for the year because of the timing of sales and repurchases of Registrant's shares in relation to fluctuating market values for the portfolio.

9. Distributions not exceeding the capital gains computed on the federal tax basis may be treated as distributions from capital gains for purposes of the table, even though they exceed such gains on a book basis.

10. If any distributions were made from capital sources other than net realized profits on securities, state the per share amounts thereof separately immediately below caption c. In a note indicate the nature of such distributions.

11. In caption e, the net asset value should be set forth at the end of each period for which the information in the table is being provided. If the Registrant has been in operation for less than one fiscal year, in a footnote to this caption set forth its net asset value immediately after the closing of its first public offering.

12. Compute the "average net assets," as used in captions f and g, upon the basis of the value of the net assets determined no less frequently than as of the end of each month.

13. Compute the portfolio turnover rate to be shown at caption h as follows:

a. Divide (A) the lesser of purchases or sales of portfolio securities for the particular fiscal year by (B) the monthly average of the value of the portfolio securities owned by the Registrant during the fiscal year. Calculate the monthly average by totalling the values of the portfolio securities as of the beginning and end of the first month of the particular fiscal year and as of the end of each of the succeeding eleven months and dividing the sum by 13.

b. Exclude from both the numerator and the denominator all securities, including options, whose maturity or expiration date at the time of acquisition were one year or less. All long-term securities, including long-term U.S. Government securities, should be included. Purchases shall include any cash paid upon the conversion of one portfolio security into another and the cost of rights or warrants purchased. Sales shall include the net proceeds of the sale of rights or warrants and the net proceeds of portfolio securities that have been called, or for which payment has been made through redemption or maturity.

c. If during the fiscal year the Registrant acquired the assets of another investment company or of a personal holding company in exchange for its own shares, excluded from purchases the value of securities so acquired, and from sales, all sales of such securities made following a purchase-of-assets transaction to realign the Registrant's portfolio. In such event, make appropriate adjustment in the denominator of the portfolio turnover computation and disclose such exclusions and adjustments.

d. Short sales that the Registrant intends to maintain for more than one year and put and call options where the expiration date is more than one year from the date of acquisition are included in purchases and sales for purposes of this item. The proceeds from a short sale should be included in the value of the portfolio securities that the Registrant sold during the period and the cost of covering a short sale should be included in the value of the portfolio securities which the Registrant purchased during the period. The premiums paid to purchase options should be included in the value of the portfolio securities that the Registrant purchased during the reporting period and the premiums received from the sale of options should be included in the value of the portfolio securities that the Registrant sold during the period.

e. If periods prior to 1985 are not calculated on the same basis as that required above, disclose this in a note to the table.

14. When calculating the "total return" to be shown at caption i:

a. Assume a purchase of common stock at the current market price on the first day and a sale at the current market price on the last day of each period reported on the table;

b. Do not reflect sales load (Indicate in a footnote that the total return does not reflect sales load.); and

c. Assume reinvestment of all dividends and distributions at prices that were obtained by the Registrant's dividend reinvestment plan or, if the Registrant does not have a dividend reinvestment plan, at the per share net asset value on the date of distribution unless the market value of the shares of the Registrant is less than the per share net asset value of the Registrant, in which case assume that dividends and distributions were reinvested at the market value of the shares on the date of distribution.

2. If the Registrant is regulated as a business development company under the 1940 Act, furnish the information required by items 301, 302, and 303 of Regulation S-K (17 CFR 229.301, 229.302, and 229.303).

3. Furnish the following information as of the end of each of the Registrant's last ten fiscal years for each class of senior securities (including bank loans) of the Registrant. If consolidated statements were prepared as of any of the dates specified, furnish the information on a consolidated basis:

(1) Year	
(2) Total amount outstanding exclusive of Treasury securities	
(3) Asset coverage per unit	
(4) Involuntary liquidating preference per unit	
(5) Average market value per unit (exclude bank loans)	

Instructions:

1. Instructions 2, 3, and 6 to item 4.1 also apply to this sub-item.

2. Use the method described in section 18(h) of the 1940 Act to calculate the asset coverage to be set forth in column (3). However, in lieu of expressing asset coverage in terms of a ratio, as described in section 18(h), express it for each class of senior securities in terms of dollar amounts per share (in the case of preferred stock) or per $1,000 of indebtedness (in the case of senior indebtedness).

3. Column (4) need be included only with respect to senior stock.

4. Set forth in a note to the table the method used to determine the averages called for by column (5) (*e.g.*, weighted, monthly, daily, etc.).

Item 5. Plan of Distribution

Briefly describe how the securities being registered will be distributed. Include the following information:

1. For each principal underwriter distributing the securities being offered set forth:

a. Its name and principal business address;

b. The nature of any material relationship with the Registrant (other than that of principal underwriter) including any arrangement under which a principal underwriter or its affiliates will perform administrative or custodial services for the registrant;

c. The amount of securities underwritten; and

d. The nature of the obligation to distribute the Registrant's securities, including a statement of the underwriters' obligations and intent to proceed with the distribution in the event a material adverse event with respect to the Registrant occurs prior to the time investors are required to make an investment decision.

Instruction: All that is required as to the nature of the underwriter's obligation is whether the underwriters will be committed to take and pay for all the securities if any are taken, or whether it is merely an agency or "best-efforts" arrangement under which the underwriters are required to take and pay for only such securities as they may sell to the public. Conditions precedent to the underwriter's taking the securities, including "market outs," need not be described, except in the case of an agency or "best-efforts" arrangement.

2. The price to the public.

Instructions: 1. If it is impracticable to state the price to the public, concisely explain the way in which the price is determined, including a description of the valuation procedure used by the Registrant in determining such prices. If the securities are to be offered at the market price, or if the offering price is to be determined by a formula related to market price, indicate the market involved and the market price as of the latest practicable date.

2. For restrictions on distributions and repurchases of closed-end company securities *see* section 23 of the 1940 Act (15 U.S.C. 80a–23) and Investment Company Act Rel. No. 3167 (Feb. 6, 1961) (26 FR 1275 (Feb. 15, 1961)).

3. Explain the basis for any differences in the price at which securities are offered to the public, as individuals and as groups, and to officers, directors and employees of the Registrant, its adviser or underwriter.

3. To the extent not set forth on the cover page of the prospectus, state the amount of the sales load, if any, (as a percentage of the public offering price) and describe the commissions to be allowed or paid to (i) underwriters and all other items that would be deemed by the National Association of Securities Dealers to constitute underwriting compensation for purposes of the Association's Rules of Fair Practice and (ii) dealers including all cash, securities, contracts, or other considerations to be realized by any dealer in connection with the sale of securities.

Instruction: If any dealers are to act in the capacity of sub-underwriters and are allowed or paid any additional discounts or commission for acting in such capacity, a general statement to that effect will suffice without giving the additional amounts to be sold.

4. If the underwriting agreement provides for indemnification by the Registrant of the underwriters or their controlling persons against any liability arising under the 1933 Act or 1940 Act, describe such indemnification provisions.

5. The identity of any finder and, if applicable, describe the nature of any material relationship between such finder and the Registrant, its officers, directors, principal shareholders, finders or promoters or the principal underwriters(s), or if there is a managing underwriters(s), the managing underwriter(s) (including, in each case affiliates or associates thereof).

6. The date by which payment for securities must be made by investors.

7. If the securities are being offered in conjunction with any retirement plan, provide a statement regarding how further information about the plan can be obtained.

8. If investors' funds will be forwarded to an escrow account, identify the escrow agent, describe the conditions for release of the funds, whether such funds will accrue interest while in escrow, and the manner in which the monies in such account will be distributed if such conditions are not satisfied, including how accrued interest, if any, will be distributed to investors.

9. If the securities offered by the Registrant are not being listed on a national securities exchange, disclose whether any of the underwriters intends to act as a market maker with respect to such unlisted securities.

10. Outline briefly the plan of distribution of any securities that are to be offered otherwise than through underwriters.

a. If the securities are to be offered through the selling efforts of brokers or dealers, describe the plan of distribution and the terms of any agreement, arrangement, or understanding entered into with broker(s) or dealer(s) prior to the effective date of the registration statement, including volume limitations on sales, parties to the agreement, and the conditions under which the agreement may be terminated. If known, identify the broker(s) or dealer(s) which will participate in the offering and state the amount to be offered through each.

b. If any of the securities being registered are to be offered other than for cash, describe the general purposes of the distribution, the basis upon which the securities are to be offered, the amount of compensation and other expenses of distribution, and by whom they are to be borne.

c. If the distribution is to be made under a plan of acquisition, reorganization, readjustment or succession, provide a statement regarding the general effect of the plan and when it becomes operative. As to any material amount of assets to be acquired under the plan, furnish the information required by instruction 4 to item 7 below.

Item 6. Selling Shareholders

If any securities being registered are to be offered for the account of shareholders, furnish the information required by item 507 of Regulation S-K (17 CFR 229.507).

Item 7. Use of Proceeds

1. State the principal purposes for which the net proceeds of the offering are intended to be used and the approximate amount intended to be used for each purpose.

Instructions: 1. If any substantial portion of the proceeds will not be allocated in accordance with the investment objectives and policies, a statement to that effect should be made together with a statement of the amount not allocated and how the amount not allocated will be invested.

2. If a material part of the proceeds will be used to discharge indebtedness, state the interest rate and maturity of the indebtedness.

3. If the the Registrant intends to incur loans to pay underwriting commissions or any other organizational or offering expenses, disclose this fact and state the name of the lender, amount of the first installment, rate of interest, the date on which payments will begin, the dates and amounts of subsequent installments, and the final maturity date. Explain that the interest paid on such borrowing will not be available for investment purposes and will increase the expenses of the fund.

4. If any material part of the proceeds will be used to acquire assets other than in the ordinary course of business, briefly describe the assets, the names of the persons from whom they are to be acquired, the cost of the assets to the Registrant, and how the costs were determined.

2. Disclose how long it is expected to take to fully invest net proceeds in accordance with the Registrant's investment objectives and policies, the reasons for any anticipated lengthy delay in investing the net proceeds, and the consequences of any delay.

Item 8. General Description of the Registrant

Concisely discuss the organization and operation or proposed operation of the Registrant. Include the information specified below.

1. Describe the Registrant, including:

a. The date and form of organization and the name of the state or other jurisdiction under whose laws it is organized; and

b. The classification and subclassification under sections 4 and 5 of the 1940 Act (15 U.S.C. 80a–4, 80a–5);

2. Describe the investment objectives and policies of the Registrant, including:

a. If these objectives may be changed without a vote of the holders of a majority of voting securities, a brief statement to that effect;

b. How the Registrant proposes to achieve its objectives, including:

(1) the types of securities in which Registrant invests or will invest principally; and

(2) the identity of any particular industry or group of industries in which the Registrant proposes to concentrate (Concentration, for purposes of this item, is deemed 25 percent or more of the value of Registrant's total assets invested or proposed to be invested in a particular industry or group of industries. The policy on concentration should not be consistent with Registrant's name);

c. Subject to paragraph 4 of this item, the identity of other policies of Registrant that may not be changed without the vote of a majority of the outstanding voting securities, including those policies that the Registrant deems to be fundamental within the meaning of section 8(b) of the 1940 Act; and

d. Subject to paragraph 4 of this item, the significant investment practices or techniques (such as risk arbitrage, repurchase agreements, reverse repurchase agreements, forward delivery contracts, when-issued securities, stand-by commitments, options and futures contract, options on futures contracts, currency transactions, foreign securities, investing for control of management, lending of portfolio securities) which are not described pursuant to subparagraph 2.c above that the Registrant employs or intends to employ.

3. Discuss the principal risk factors associated with investment in the Registrant specifically, as well as those factors generally associated with investment in a company with investment policies and objectives similar to the Registrant's.

4. Discuss the types of investment by the Registrant that will not constitute its principal portfolio emphasis and related policies or practices. This discussion should generally receive less emphasis in the prospectus, and under the circumstances set forth below may be omitted or limited to information necessary to identify the type of investment, policy, or practice. Specifically, notwithstanding paragraph 2 above:

a. Do not disclose a policy that prohibits a particular practice, or permits a particular practice that the Registrant has not used within the past year (or since its initial public offering, if such period is shorter) and does not intend to use, and

b. If a policy limits a particular practice so that no more than 5 percent of the Registrant's net assets are at risk, or if the Registrant has not followed that practice within the last year (or since its initial public offering, if such period is shorter) in such a manner that more than 5 percent of the Registrant's net assets were at risk and does not intend to follow such practice in such a manner that more than 5 percent of the Registrant's net assets will be at risk, disclosure of information in the prospectus about such practice should be limited to that which is necessary to identify the practice and a statement as to whether or not the Registrant will provide prior notice to securityholders of its intention to commence or expand the use of such practice.

Instruction: The amount of the Registrant's net assets which are at risk for purposes of determining whether "more than 5 percent of the Registrant's net assets are at risk" is not limited to the initial amount of the Registrant's assets which are invested in a particular practice, *e.g.*, the purchase price of an option. The amount of net assets at risk is determined by reference to the potential liability or loss which may be incurred by the Registrant in connection with a particular practice.

5. If the Registrant's common equity is publicly held, identify the principal United States market or markets in which the common equity is being traded. Where there is no established public trading market, furnish a statement to that effect. For purposes of this item, the existence of limited or sporadic quotations should not itself be deemed to constitute an "established public trading market." If the principal United States market for the common equity is an exchange, state the high and low sales prices for the equity for each full quarterly period within the two most recent fiscal years and each full fiscal quarter since the beginning of the current fiscal year, as reported in the consolidated transaction reporting system or, if not so reported, as reported on the principal exchange market for the equity. If the principal United States market for the common equity is not an exchange, state the range of high and low bid information for the common equity for the periods described in the preceding sentence, as regularly quoted in the automated quotation system of a registered securities association, or if not so quoted, the range of reported high and low bid quotations, indicating the source of the quotations. This information should be set forth in tabular form. Indicate, as applicable, that such over-the-counter market quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission and may not necessarily represent actual transactions. Where there is an absence of an established public trading market, reference to quotations shall be qualified by appropriate explanation. Also, include price information as of the latest practicable date. With respect to each quotation, disclose the discount or premium to net asset value (expressed as a percentage) which such quotation represents.

6. If the Registrant's common equity is publicly-held, disclose whether it has historically traded at, above, or less than net asset value and, if so, disclose, in tabular form, the range of discount or premium to net asset value (expressed as a percentage) for each full quarterly period within each of the last two fiscal years and since the beginning of the current fiscal year. Disclose any methods undertaken or to be undertaken by the Registrant that are intended to reduce the discount (such as the repurchase of fund shares, providing for the ability to convert to an open-end investment company, guaranteed distribution plans, etc.) and discuss the effects that such measures have or may have on the Registrant.

7. A Registrant that has elected to be registered as a business development company should, in addition, provide the following information:

a. For each portfolio company in which the Registrant is investing, disclose: (1) The name and address; (2) nature of business; (3) title, class, percentage of classes, and value of portfolio companies held by the Registrant; (4) amount and general terms of all loans to such companies; and (5) the relationship of the companies to the Registrant.

b. If the Registrant has a wholly-owned small business investment company subsidiary, disclose: (1) Whether the subidiary is regulated as a business development company or investment company under the 1940 Act; (2) the percentage of the Registrant's assets invested in the subsidiary; and (3) material information about the small business investment company's operations, including the special risks of investing in a portfolio heavily invested in securities of small and developing or financially troubled businesses.

Instructions: 1. In describing the nature of the business of portfolio companies include matters such as the competitive conditions of the business of the company; its market share; dependence on a single or small number of customers; importance to it of any patents, trademarks, licenses, franchises, or concessions held; key operating personnel; and particular vulnerability to changes in government regulation, interest rates, or technology.

2. In disclosing the relationship of portfolio companies to the Registrant, include a discussion of the extent to which the Registrant makes available significant managerial assistance to its portfolio companies. Disclose any other material business, professional, or family relationship between the officers and directors of the Registrant and any portfolio company, its officers, and directors.

c. If the Registrant has had an operating history prior to notifying the Commission of its intent to become a business development company, disclose any anticipated changes in its operations as a result of coming into compliance with section 55(a) (15 U.S.C. 80a–54(a)) of the 1940 Act. This information may be omitted in a prospectus used in a subsequent offering made a sufficient time after election to be regulated as a business development company so that it is no longer material.

d. To the extent not disclosed in response to paragraphs a, b, or c of this item, describe the special risks of investing in a business development company, including the risks associated with investing in a portfolio of small and developing or financially troubled businesses.

Item 9. Management

1. Describe concisely how the business of the Registrant is managed, including:

a. A description of the responsibilities of the board of directors with respect to the management of the Registrant;

Instructions: 1. In responding to this item, it is sufficient to include a general statement as to the responsibilities of the board of directors under the applicable laws of the Registrant's jurisdiction of organization.

2. A Registrant that has elected to be regulated as a business development company should disclose any special compensation plans available to management.

b. For each investment adviser of the Registrant:

(1) Its name and principal business address, a description of its experience as an investment adviser and, if the investment adviser is controlled by another person, the name of that person and the general nature of its business;

Instruction: If the investment adviser is subject to more than one level of control, it is sufficient to provide the name of the ultimate control person.

(2) a description of the services provided by the investment adviser; and

Instructions: 1. If, in addition to providing investment advice, the investment adviser or persons employed by or associated with the investment adviser are, subject to the authority of the board of directors, responsible for overall management of Registrant's business affairs, it is sufficient to state that fact instead of listing all services provided.

2. A Registrant that has elected to be regulated as a business development company should describe the type of managerial assistance that is or will be provided to the businesses in which it is investing and the qualifications of the investment adviser to render such management assistance.

3. A description of its compensation.

Instructions: 1. State generally what the adviser's fee is or will be as a percentage of average net assets, including any break-point, but it is not necessary to include precise details as to how the fee is computed or paid.

2. If the investment advisory fee is paid in some manner other than on the basis of average net assets, briefly describe the basis of payment.

c. Disclose the name and title of all persons who make or are expected to make significant contributions to the investment advice provided to the Registrant and describe each person's business experience and the length of time he or she had been employed by or associated with the investment adviser (or Registrant);

d. Disclose the identity of any other person who provides significant administrative or business affairs management services (*e.g.*, an "Administrator" or "Sub-Administrator") and a description of the services provided and the compensation to be paid;

e. Disclose the name and principal business address of the custodian(s), transfer agent, and dividend paying agent;

f. Describe the type of expenses for which the Registrant is responsible and, if organization expenses of the Registrant are to be paid out of its assets, explain how the expenses will be amortized and the period over which the amortization will occur; and

g. If the Registrant pays (or will pay) brokerage commissions to any broker that is an (1) affiliated person of the Registrant, (2) affiliated person of such person, or (3) affiliated person of an affiliated person of the Registrant, its investment adviser, or its principal underwriter, a statement to that effect.

2. If any non-resident officer, director, underwriter, investment adviser, or expert named in the registration statement has a substantial portion of its assets located outside the United States, identify each person and state how the enforcement by investors of civil liabilities under the federal securities laws may be affected. This disclosure should indicate:

a. Whether investors will be able to effect service of process within the United States upon these persons;

b. Whether investors will be able to enforce in United States courts, judgments against these persons obtained in such courts predicated upon the civil liability provisions of the federal securities laws;

c. Whether the appropriate foreign courts would enforce judgments of United States courts obtained in actions against these persons predicated upon the civil liability provisions of the federal securities laws; and

d. Whether the appropriate foreign courts would enforce, in original actions, liabilities against these persons predicated solely upon the federal securities laws.

Instruction: If any portions of this disclosure are stated to be based upon an opinion of counsel, counsel shall be named in the prospectus and an appropriate manually signed consent to the use of counsel's name and opinion shall be included as an exhibit to the registration statement.

Item 10. Capital Stock, Long-Term Debt, and Other Securities

1. For each class of capital stock of the Registrant, state the title and describe such of the matters listed in paragraphs 1.a through 1.f that are relevant;

a. Discuss the nature and most significant attributes, including, where applicable, (1) dividend rights, policies, or limitations; (2) voting rights; (3) liquidation rights; (4) liability to further calls or to assessments by the Registrant; (5) preemptive rights, conversion rights, redemption provisions, and sinking fund provisions; and (6) any material obligations or potential liability associated with ownership of the security (not including investment risks);

Instructions: 1. A complete legal description of the securities need not be given.

2. If the Registrant has a policy of making distribution or dividend payments at predetermined times and minimum rates, disclosure should include a statement that if the fund's investments do not generate sufficient income, the fund may be required to liquidate a portion of its portfolio to fund these distributions, and therefore these payments may represent a reduction of the shareholders' principal investment. The tax consequences of such payments should also be described.

b. With respect to preferred stock, (1) state whether there are any restrictions on the Registrant while there is an arrearage in the payment of dividends or sinking fund installments and, if so, describe the restrictions and (2) describe provisions restricting the declaration of dividends, requiring the maintenance of any ratio or assets, requiring the creation or maintenance of reserves or permitting or restricting the issuance of additional securities;

c. If the rights of holders of the security may be modified other than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain;

d. If rights evidenced by, or the amounts payable with respect to, any class of securities being described are, or may be, materially limited or qualified by the rights of any other authorized class of securities include the information regarding the other securities as will enable investors to understand such rights and limitations;

e. If the Registrant has a dividend reinvestment plan, discuss the material aspects of the plan including, but not limited to, (1) whether the plan is automatic or whether shareholders must affirmatively elect to participate; (2) the method by which shareholders can elect to reinvest stock dividends or, if the plan is automatic, to receive cash dividends; (3) from whom additional information about the plan may be obtained (a telephone number or address should be provided); (4) the method of determining the number of shares that will be distributed in lieu of a cash dividend; (5) income tax consequences of participation in the plan (*i.e.*, that capital gains and income are realized although cash is not received by the shareholder); (6) how to terminate participation in the plan and rights upon termination; (7) if applicable, that an investor holding shares that participate in the dividend reinvestment plan in a brokerage account may not be able to transfer the shares to another broker and continue to participate in the dividend reinvestment plan; (8) the amount of fees, commissions, and expenses incurred in connection with the plan and the anticipated cost to participants for each transaction; and (9) if a cash purchase plan option is available, any minimum or maximum investment required; and

f. Describe any provision of the Registrant's charter or by-laws that would have an effect of delaying, deferring or preventing a change of control of the Registrant and that would operate only with respect to an extraordinary corporate transaction involving the Registrant, such as a merger, reorganization, tender offer, sale or transfer of substantially all of its assets, or liquidation.

Instruction: Provisions and arrangements required by law or imposed by governmental or judicial authority need not be discussed. Provisions or arrangements adopted by the Registrant to effect or further compliance with law or governmental or judicial mandate must be described where compliance does not require the specific provisions or arrangements adopted.

2. If the Registrant is issuing or has outstanding a class of long-term debt, state the title of the debt securities, their principal amount, and describe such of the matters listed in paragraphs 2.a through 2.e that are relevant:

a. Provisions concerning maturity, interest, conversion, redemption, amortization, sinking fund, or retirement;

b. Provisions restricting the declaration of dividends, requiring the maintenance of any ratio or assets, or requiring the creation or maintenance of reserves;

c. Provisions permitting or restricting the issuance of additional securities, incurring of additional debt, the release or substitution of assets securing the issue, and the modification of the terms of the securites;

Instruction: A complete legal description of the securities need not be given.

d. For each trustee, its name, the nature of any material relationship it has with the Registrant or any of its affiliates, the percentage of securities necessary to require the trustee to take action, and any indemnification the trustee may require before proceeding against assets of the Registrant; and

e. To the extent not otherwise disclosed in response to this item, whether the rights evidenced by the long-term debt are, or may be, materially limited or qualified by the rights of any other authorized class of securities and, if so, include the information regarding such other securities as will enable investors to understand such rights and limitations.

3. With respect to each class of authorized securities of the Registrant other than capital stock or long term debt, provide disclosure regarding the significant attributes of such securities comparable to that called for by paragraphs 1 and 2 of this item. If the securities are subscription warrants or rights, state the title and amount of securities called for, and the period during which and the prices at which the warrants or right are exercised.

4. Describe the tax consequences to investors of an investment in the securities being offered. If the Registrant intends to qualify for treatment under Subchapter M of the Internal Revenue Code of 1986 (26 U.S.C. 851–856), it is sufficient, in the absence of special circumstances, to state that: (i) The Registrant will distribute all of its net investment income and gains to shareholders and that these distributions are taxable as ordinary income or capital gains; (ii) shareholders may be proportionately liable for taxes on income and gains of the Registrant but that shareholders not subject to tax on their income will not be required to pay tax on amounts distributed to them; and (iii) the Registrant will inform shareholders of the amount and nature of the income or gains.

Instructions: 1. The description should not include detailed discussions of applicable law.

2. Registrant should specifically address whether shareholders will be subject to the alternative minimum tax.

5. Identify each person who, as of a specified date no more than 30 days prior to the date of filing the registration statement (or amendment to it), controls the Registrant.

Instruction: For the purposes of this item, "control" means (1) the beneficial ownership, either directly or through one or more controlled companies, of more than 25 percent of the voting securities of a company; (2) the acknowledgement or assertion by either the controlled or controlling party of the existence of control; or (3) an adjudication under section 2(a)(9) of the 1940 Act (15 U.S.C. 80a–2(a)(9)), which has become final, that control exists.

6. Furnish the following information, in substantially the tabular form indicated, for each class of authorized securities of the Registrant. The information must be current within 90 days of the filing of this registration statement or amendment to it.

(1) Title of class ——————
(2) Amount authorized ——————
(3) Amount held by registrant or for its account ——————
(4) Amount outstanding exclusive of amount shown under (3) ——————

7. If the senior securities of the Registrant have been assigned a rating by a nationally recognized securities rating organization ("NRSRO"), and the rating is disclosed in the prospectus, discuss the significance of the rating, the basis upon which ratings are issued, any conditions or guidelines imposed by the NRSRO for the Registrant to maintain the rating, and whether or not the Registrant intends, or has any contractual obligation, to comply with these conditions or guidelines. In addition, disclose the material terms of any agreement between the Registrant or any of its affiliates and the NRSRO under which the NRSRO provides such rating.

Instructions: 1. The term "nationally recognized securities rating organization" has the same meaning as used in rule 15c3–1(c)(2)(vi)(F) (17 CFR 240.15c3–1(c)(2)(vi)(F)) under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*]

2. Rule 436(g)(1) of Regulation C (17 CFR 230.436(g)(1)) under the 1933 Act provides that a security rating assigned by an NRSRO to a class of debt securities, a class of convertible debt securities, or a class of preferred stock is not considered a part of the registration statement for purposes of sections 7 and 11 of the 1933 Act (15 U.S.C. 77g, 77k). Therefore, in the case of disclosure of a rating assigned to these types of securities issued by the Registrant, the Registrant need not include a written consent of the NRSRO as an exhibit to the registration statement as required by item 24.2.n, but must provide the diclosure called for by this item.

3. Reference should be made to the statement of the Commission's policy on security ratings set forth under General in Regulation S–K (17 CFR 229.10) for the Commission's views on other important matters to be considered in disclosing securities ratings.

Item 11. Defaults and Arrears on Senior Securities

1. State the nature, date, and amount of default of payment of principal, interest, or amortization, for each issue of long-term debt of the Registrant that is in default on the date of filing.

2. If an issue of capital stock has any accumulated dividend in arrears at the date of filing, state the title of each issue and the amount per share in arrears.

Item 12. Legal Proceedings

Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Registrant, any subsidiary of the Registrant, or Registrant's investment adviser or principal underwriter, is a party. Include the name of the court where the case is pending, the date instituted, the principal parties, a description of the factual basis alleged to underlie the proceeding, and the relief sought. Include similar information as to any proceeding instituted by a governmental authority or known to be contemplated by a governmental authority.

Instruction: Legal proceedings, for purposes of this item, are material only to the extent that they are likely to have a material adverse effect upon: (1) The ability of the investment adviser or principal underwriter to perform its contract with the Registrant; or (2) the Registrant.

Item 13. Table of Contents of the Statement of Additional Information

List the contents of the Statement of Additional Information.

Part B—Information Required in a Statement of Additional Information

Item 14. Cover Page

1. The outside cover page must contain the following information:

a. the Registrant's name;

b. a statement or statements (1) that the Statement of Additional Information is not a prospectus, (2) that the Statement of Additional of Information should be read with the prospectus, and (3) how a copy of the prospectus may be obtained;

c. the date of the Statement of Additional Information;

d. the date of the related prospectus and any other identifying information that the Registrant deems appropriate; and

e. the statement required by paragraph (g) of rule 481 under the 1933 Act (17 CFR 230.561(g)).

2. The cover page may include other information, provided that it does not, by its nature, quantity, or manner of presentation, impede understanding of required information.

Item 15. Table of Contents

List the contents of the Statement of Additional Information and, where useful, provide a cross-reference to related disclosure in the prospectus.

Item 16. General Information and History

If the Registrant has engaged in a business other than that of an investment company during the past five years, state the nature of the other business and give the approximate date on which the Registrant commenced business as an investment company. If the Registrant's name was changed during that period, state its former name and the approximate date on which it was changed. If the change in the Registrant's business or name occurred in connection with any bankruptcy, receivership or similar proceeding or any other material reorganization, readjustment or succession, briefly describe the nature and results of the same.

Item 17. Investment Objective and Policies

1. Describe clearly the investment policies of the Registrant. It is not necessary to repeat information contained in the prospectus, but, in augmenting the disclosure about those types of investments, policies, or practices that are briefly discussed or identified in the prospectus, the Registrant should refer to the prospectus when necessary to clarify the additional information called for by this item.

2. Describe any fundamental policy of the Registrant not described in the prospectus with respect to each of the following activities:

a. The issuance of senior securities;

b. Short sales, purchases on margin, and the writing of put and call options;

c. The borrowing of money (Describe any fundamental policy that limits the Registrant's ability to borrow money and state the purpose for which the proceeds will be used.);

d. The underwriting of securities of other issuers (include any fundamental policy concerning the acquisition of restricted securities, *i.e.*, securities that must be registered under the 1933 Act before they may be offered or sold to the public.);

e. The concentration of investments in a particular industry or groups of industries;

f. The purchase or sale of real estate and real estate mortage loans;

g. Purchase or sale of commodities or commodity contracts including futures contracts;

h. The making of loans (For purposes of this item, the term "loans" does not include the purchase of a portion of an issue of publicly distributed bonds, debentures, or other securities, whether or not the purchase was made upon the original issuance of the securities. However, the term "loan" includes the loaning of cash or portfolio securities to any person); and

i. Any other policy that the Registrant deems fundamental.

Instructions: 1. For purposes of this item, the term "fundamental policy" is defined as any policy that the Registrant has deemed to be fundamental or that may not be changed without the approval of a majority of the Registrant's outstanding voting securities.

2. The Registrant may reserve freedom of action with respect to any of the foregoing activities (other than the activity described in paragraph e), but it must disclose the maximum percentage of assets to be devoted to the particular activity.

3. Describe fully any significant investment policies of the Registrant not described in the prospectus that are not deemed fundamental and that may be changed without the approval of the holders of a majority of the voting securities (*e.g.*, investing for control of management, investing in foreign securities, or arbitrage activities).

Instruction: The Registrant should disclose the extent to which it may engage in the above policies and the risks inherent in such policies.

4. Explain any significant change in the Registrant's portfolio turnover rates over the last two fiscal years. If the Registrant anticipates a significant change in the portfolio turnover rate from that reported under caption g of item 4.1 of its most recent fiscal year, so state. In the case of a new registration, the Registrant should state its policy whith respect to portfolio turnover.

Item 18. Management

1. Furnish the information required by the following table as to each director and officer of the Registrant and, if Registrant has an advisory board, as to each member of the board. Also state the nature of any family relationship between the persons listed.

(1) Name and address ——————
(2) Position(s) held with registrant ——————
(3) Principal occupation(s) during past 5 years ——————

Instructions: 1. For purposes of this item, the term "officer" means the president, vice-president, secretary, treasurer, controller, and any other officers who perform policy-making functions for the Registrant. The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. The principal business of any corporation or other organization listed under column (3) should be stated unless implicit in its name.

3. If the Registrant has an executive or investment committee, identify the members and the duties and functions of the committee.

4. Identify by asterisk the directors who are interested persons as defined in section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder.

2. For each individual listed in column (1) of the table required by paragraph 1 of this item, describe any positions held with affiliated persons or principal underwriters of the Registrant.

3. For each non-resident director or officer of the Registrant listed in column (1) of the table required by paragraph 1 of this item, disclose whether they have authorized an

agent in the United States to receive notice and, if so, disclose the name and address of the agent.

4. Furnish the information required by the following table for each person specified below who received from the Registrant or its subsidiaries during the Registrant's last fiscal year aggregate remuneration in excess of $60,000 for services in all capacities:

a. Each director, each of the three highest paid officers, and each advisory board member of the Registrant;

b. Each affiliated person of the Registrant not included in subparagraph a except investment advisers;

c. Each affiliated person of an affiliate or principal underwriter of the Registrant; and

d. All directors, officers, and members of the advisory board of the Registrant as a group without naming them.

(1) Name of person

(2) Capacities in which remuneration received

(3) Aggregate remuneration

(4) Pension or retirement benefit accrued during registrant's last fiscal year

(5) Estimated annual benefits upon retirement

Instructions: 1. Information required by this table should be provided with respect to any person who was a director, officer or member of the advisory board of the Registrant at any time during the last fiscal year. Provide the information on an accrual basis if practicable.

2. If the Registrant has not completed its first full fiscal year since its organization, provide the information for the current fiscal year, estimating future payments for a 12-month period that would be made pursuant to an existing agreement or understanding.

3. Columns (4) and (5) should be completed only for those persons named in response to paragraph 1 of this item and should include all pension or retirement benefits proposed to be paid directly or indirectly by the Registrant or any of its subsidiaries to each such person under any existing plan in the event of retirement at normal retirement date.

4. Column (4) need not be completed with respect to payments computed on an actuarial basis under any plan that provides for fixed benefits in the event of retirement at a specified age or after a specified number of years of service.

5. The information called for by column (5) may be provided in a table showing the annual benefits payable upon retirement to persons in specified salary classifications.

6. In the case of any plan, other than those specified in instruction 3, where the amount set aside each year depends upon the earnings of the issuer or its subsidiaries for that year or a prior year, or where it is otherwise impracticable to state the estimated annual benefits upon retirement, instead of the information called for by column (5), provide the total amount set aside or accrued to date, unless it is impracticable to do so, in which case state the method of computing such benefits.

Item 19. Control Persons and Principal Holders of Securities

Furnish the following information as of a specified date no more than 30 days prior to the date of filing of the registration statement or amendment to it.

1. State the name and address of each person who controls the Registrant and explain the effect of such control on the voting rights of other shareholders. For each control person, state the percentage of the Registrant's voting securities owned or any other basis of control. If the control person is a company, disclose the state or other jurisdiction under the laws of which it is organized. List all parents of each control person.

Instructions: 1. For purposes of this item, the term "control" is defined in the instruction to paragraph 5 of item 10 of this form.

2. This item does not apply to a Registrant that is controlled by its adviser or underwriter(s) before the effective date of the registration statement if immediately after the public offering there will be no control person.

3. State the name, address, and percentage of ownership of each person who owns of record or is known by the Registrant to own of record or beneficially 5 percent or more of any class of the Registrant's outstanding equity securities.

Instructions: 1. Calculate the percentage on the basis of the amount of securities outstanding.

2. If securities are being registered in connection with or pursuant to a plan of acquisition, reorganization, readjustment, or succession, indicate, to the extent practicable, the status to exist upon consummation of the plan on the basis of present holdings and commitments.

3. If to the knowledge of the Registrant or any principal underwriter of its securities, 5 percent or more of any class of voting securities of the Registrant are or will be held subject to any voting trust or other similar agreement, disclose this fact.

4. Indicate whether the securities are owned both of record and beneficially, or of record only, or beneficially only, and disclose the respective percentage owned in each manner.

3. Disclose all equity securities of the Registrant owned by all officers, directors and members of the advisory board of the Registrant as a group, without naming them. In any case where the amount owned by directors and officers as a group is less than one percent of the class, a statement to that effect is sufficient.

Item 20. Investment Advisory and Other Services

1. Furnish the following information about each investment adviser:

a. The names of all controlling persons and the basis of such control and, if material, the business history of any organization that controls the adviser;

b. The name of any affiliated person of the Registrant who is also an affiliated person of the investment adviser and a list of all capacities in which such person named is affiliated with the Registrant and with the investment adviser; and

Instruction: If an affiliated person of the Registrant either alone or together with others is a controlling person of the investment adviser, the Registrant must disclose that fact but need not supply the specific amount of percentage of the outstanding voting securities of the investment adviser that are owned by the controlling person.

c. The method of computing the advisory fee payable by the Registrant including:

(1) The total dollar amount paid to the adviser by the Registrant under the investment advisory contract for the last three fiscal years;

(2) If applicable, any credits that reduced the advisory fee for any of the last fiscal years; and

(3) Any expense limitation provision.

Instructions: 1. If the advisory fee payable by the Registrant varies depending on the Registrant's investment performance in relation to some standard, set forth the standard along with a fee schedule in tabular form. The Registrant may include examples showing the fees the adviser would earn at various levels of performance, but such examples must include calculations showing the maximum and minimum fee percentages that could be earned under the contract.

2. State each type of credit or offset separately.

3. Where the Registrant is subject to more than one expense limitation provision, describe only the most restrictive provision.

4. If the Registrant has more than a single class of capital stock, the response to paragraph 1.c of this item should describe the methods of allocation and payment of advisory fees for each class.

2. Describe all services performed for or on behalf of the Registrant that are supplied or paid for wholly or in substantial part by the investment adviser in connection with the investment advisory contract.

3. Describe all fees, expenses, and cost of the Registrant that are to be paid by persons other than the investment adviser or the Registrant and identify such persons.

4. Summarize any management-related service contract, under which services are provided to the Registrant, that is not otherwise disclosed in response to an item of this form and may be of interest to a purchaser of the Registrant's securities, indicating the parties to the contract and the total dollars paid, and by whom, for the past three years.

Instructions: 1. A "management-related service contract" includes any agreement whereby another person contracts with the Registrant to keep, prepare, or file accounts, books, records, or other documents that the Registrant may be required to keep under federal or state law, or to provide any similar services with respect to the daily administration of the Registrant, but does not include the following: (1) Any contract with the Registrant to provide investment advice; (2) any agreement to act as custodian, transfer agent, or dividend-paying agent; and (3) bona fide contracts for outside legal or auditing services, or bona fide contracts for personal employment entered into in the ordinary course of business.

2. No information is required about the service of mailing proxies or periodic reports to shareholders of the Registrant.

3. In summarizing the substantive provisions of a management-related service contract, include: the name of the person providing the service; any direct or indirect relationship of that person with the Registrant, its investment adviser, or its principal underwriter; the nature of the services provided; and the basis of the compensation paid for the last three fiscal years.

5. If any person (other than a bona fide director, officer, member of an advisory board, or employee of the Registrant, as such, or a person named as an investment adviser in response to paragraph 1 of this item), pursuant to any understanding whether formal or informal, regularly furnishes advice to the Registrant or the investment adviser of the Registrant with respect to the desirability of the Registrant's investing in, purchasing, or selling securities or other property, or is empowered to determine what securities or other property should be purchased or sold by the Registrant, and receives direct or indirect remuneration, furnish the following information:

a. The name of the person;

b. A description of the nature of the arrangement and the advice or information given; and

c. Any remuneration (including, for example, participation, directly or indirectly, in commissions or other compensation paid in connection with transactions in the Registrant's portfolio securities) paid for such advice or information, and a statement as to how and by whom such remuneration was paid for the last three fiscal years.

Instruction: No information is required with respect to any of the following:

a. Persons whose advice was furnished solely through uniform publications distributed to subscribers;

b. Persons who furnished only statistical and other factual information, advice regarding economic factors and trends, or advice as to occasional transactions in specific securities, but without generally furnishing advice to them or making recommendations to them regarding the purchase or sale of securities by the Registrant;

c. A company that is excluded from the definition of "investment adviser" of an investment company by reason of section 2(a)(20)(iii) of the 1940 Act (15 U.S.C. 80a-2(a)(20)(iii));

d. Any person the character and amount of whose compensation for such service must be approved by court; or

e. Such other persons as the Commission has by rules and regulations or order determined not to be an "investment adviser" of an investment company.

6. If the portfolio securities of the Registrant are held by a person other than a commercial bank, trust company or depository registered with the Commission as custodian, state the nature of the business of each such person.

7. Furnish the name and principal business address of the Registrant's custodian and independent public accountant and provide a general description of the services performed by each.

8. If an affiliated person of the Registrant or an affiliated person of such an affiliated person acts as custodian, transfer agent or dividend-paying agent for the Registrant, furnish a description of the services performed by such person and the basis for remuneration (*e.g.*, the method by which such person's fee is calculated).

Item 21. Brokerage Allocation and Other Practices

1. Describe how transactions in portfolio securities are or will be effected. Provide a general statement about brokerage commissions and mark-ups on principal transactions and the aggregate amount of any brokerage commissions paid by the Registrant during the three most recent fiscal years. Explain any material change in brokerage commissions paid by the Registrant during the most recent fiscal year as compared to the two prior fiscal years.

2. a. State the total dollar amount, if any, of brokerage commissions paid by the Registrant during the three most recent fiscal years to any broker that: (1) Is an affiliated person of the Registrant; (2) is an affiliated person of an affiliated person of the Registrant; or (3) has an affiliated person that is an affiliated person of the Registrant, its investment adviser, or principal underwriter. In the case of an initial public offering, disclose whether or not the Registrant intends to use any such brokers. Identify each broker and state the relationships that cause the broker to be identified in this item.

b. State for each broker identified in response to paragraph 2.a of this item:

(1) The percentage of Registrant's aggregate brokerage commissions paid to such broker during the most recent fiscal year; and

(2) The percentage of Registrant's aggregate dollar amount of transactions involving the payment of commissions effected through such broker during the most recent fiscal year.

c. Where there is a material difference in the percentage of brokerage commissions paid to, and the percentage of transactions effected through, any broker identified in response to paragraph 2.a of this item, state the reasons for such difference.

3. Describe how brokers will be selected to effect securities transactions for the Registrant and how evaluations will be made of the overall reasonableness of brokerage commissions paid, including the factors considered.

Instructions: 1. If the receipt of products or services other than brokerage or research services is a factor considered in the selection of brokers, specify the products and services.

2. If the receipt of research services is a factor in selecting brokers, identify the nature of the research services.

3. State whether persons acting on behalf of the Registrant are authorized to pay a broker a commission in excess of that which another broker might have charged for effecting the same transaction because of the value of brokerage or research services provided by the broker.

4. If applicable, explain that research services furnished by brokers through whom the Registrant effects securities transactions may be used by Registrant's investment adviser in servicing all of its accounts and that not all the services may be used by the investment adviser in connection with the Registrant; or, if other policies or practices are applicable to Registrant with respect to the allocation of research services provided by brokers, explain the policies and practices.

5. Registrants should refer to rule 17e-1 under the 1940 Act (17 CFR 270.17e-1) with respect to securities transactions executed by exchange members.

4. If during the last fiscal year the Registrant or its investment adviser, pursuant to an agreement or understanding with a broker or otherwise through an internal allocation procedure, directed Registrant's brokerage transactions to a broker because of research services provided, state the amount of the transactions and related commissions.

5. If the Registrant has acquired during its most recent fiscal year or during the period of time since organization, whichever is shorter, securities of its regular brokers or dealers as defined in rule 10b-1 under the 1940 Act (17 CFR 270-10b-1), or their parents, identify those brokers or dealers and state the value of the Registrants aggregate holdings of the securities of each subject issuer as of the close of the Registrant's most recent fiscal year.

Instruction: The Registrant need only disclose information with respect to the parent of a broker or dealer that derived more than 15% of its gross revenues from the business of a broker, a dealer, an underwriter, or an investment adviser. If the Registrant has issued more than one class of stock, the required information must be disclosed for the class that has securities being registered.

Item 22. Tax Status

Provide information about the Registrant's tax status that is not required to be in the prospectus but that Registrant believes is of interest to investors including, but not limited to, an explanation of the legal basis for the Registrant's tax status. If the Registrant is qualified or intends to qualify under Subchapter M of the Internal Revenue Code and has not disclosed that fact in the prospectus, then disclosure of that fact will be sufficient. If not otherwise disclosed, describe any special or unusual tax aspects of the Registrant, such as taxes resulting from foreign investment or from status as a personal holding company, or any tax loss carry-forward to which Registrant may be entitled.

Item 23. Financial Statements

Provide the financial statements of the Registrant.

Instructions: 1. a. Furnish, in a separate section following the responses to the above items in Part B of the registration statement, the financial statements and schedules required by Regulation S-X (17 CFR part 210).

b. A company that is regulated as a business development company under the 1940 Act should provide an indication in its Schedule of Investments, of those investments that are not qualifying investments under section 55(a) of the 1940 Act and, in a footnote, explain the significance of non-qualification.

2. Notwithstanding the requirements of instruction 1 above, the following statements and schedules required by Regulation S–X may be omitted from Part B and included in Part C of the registration statement:

a. The statement of any subsidiary that is not a majority-owned subsidiary; and

b. The following schedules in support of the most recent balance sheet (a) columns C and D of Schedule III (17 CFR 210.12–03); and (b) Schedule VI (17 CFR 210.12–04).

3. In addition to the requirements of rule 3–18 of Regulation S–X (17 CFR 210.3–18), any company registered under the 1940 Act that has not previously had an effective registration statement under the 1933 Act shall include in its initial registration statement under the 1933 Act such additional financial statements and condensed financial information (which need not be audited) as is necessary to make the financial statements and condensed financial information included in the registration statement as of a date within 90 days prior to the date of filing.

4. Every annual report to shareholders required by section 30(d) of the 1940 Act (15 U.S.C. 80a–29(d)) and rule 30d–1 thereunder shall contain the following information:

a. The audited financial statements required by Regulation S–X, as modified by instruction 2 above for the periods specified by Regulation S–X;

b. The condensed financial information required by item 4.1 of this form, for the five most recent fiscal years, with at least the most recent year audited; and

c. Unless shown elsewhere in the report as part of the financial statements required by a above, the aggregate remuneration paid by the company during the period covered by the report (A) to all directors and to all members of any advisory board for regular compensation; (B) to each director and to each member of an advisory board for special compensation; (C) to all officers; and (D) to each person of whom any officer or director of the company is an affiliated person.

5. Every report to shareholders required by section 30(d) of the 1940 Act and rule 30d–1 thereunder, except the annual report, shall contain the following information (which need not be audited):

a. The financial statements required by Regulation S–X, as modified by instruction 2 above, for the period commencing either with (1) the beginning of the company's fiscal year (or date of organization, if newly organized) or (2) a date not later than the date after the close of the period included in the last report conforming with the requirements of rule 30d–1 and the most recent preceding fiscal year;

b. The condensed financial information required by item 4.1 of this form, for the period of the report as specified by subparagraph a of this instruction, and the most recent preceding fiscal year; and

c. Unless shown elsewhere in the report as part of the financial statements required by subparagraph a of this instruction, the aggregate remuneration paid by the company during the period covered by the report (1) to all directors and to all members of any advisory board for regular compensation; (2) to each director and to each member of an advisory board for special compensation; (3) to all officers; and (4) to each person of whom an officer or director of the company is an affiliated person.

6. Reference is made to General Instruction F regarding incorporation by reference.

Part C—Other Information

Item 24. Financial Statements and Exhibits

List all financial statements and exhibits filed as part of the registration statement.

1. Financial statements.

Instruction:

Identify those financial statements that are included in Parts A and B of the registration statement.

2. Exhibits:

a. Copies of the charter as now in effect;

b. Copies of the existing bylaws or instruments corresponding thereto:

c. Copies of any voting trust agreement with respect to more than 5 percent of any class of equity securities of the Registrant;

d. Specimens or copies of each class of security issued by the Registrant, including copies of all constituent instruments, defining the rights of the holders of the securities, and copies of each class of security being registered;

e. A copy of the document setting forth the Registrant's dividend reinvestment plan, if any;

f. Copies of the constituent instruments defining the rights of the holders of long-term debt of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed (The instrument relating to any class of long-term debt of the Registrant or any subsidiary need not be filed if the total amount of securities authorized thereunder amounts to less than 2 percent of the total assets of the Registrant and its subsidiaries on a consolidated basis and if the Registrant files an agreement to furnish such copies to the Commission upon request.);

g. Copies of all investment advisory contracts relating to the management of the assets of the Registrant;

h. Copies of each underwriting or distribution contract between the Registrant and a principal underwriter, and specimens or copies of all agreements between principal underwriters and dealers;

i. Copies of all bonus, profit sharing, pension, or other similar contracts or arrangements wholly or partly for the benefit of directors or officers of the Registrant in their capacity as such (A reasonably detailed description of any plan that is not set forth in a formal document should be furnished.);

j. Copies of all custodian agreements and depository contracts entered into in conformance with section 17(f) of the 1940 Act (15 U.S.C. 80a–17(f)) or rules thereunder with respect to securities and similar investments of the Registrant, including the schedule of remuneration;

k. Copies of all other material contracts not made in the ordinary course of business that are to be performed in whole or in part at or after the date of filing the registration statement;

l. An opinion of counsel and consent to its use as to the legality of the securities being registered, indicating whether they will be legally issued, fully paid, and nonassessable;

m. If a non-resident director, officer, investment adviser, or expert named in the registration statement has executed a consent to service or process within the United States, a copy of that consent to service;

n. Copies of any other opinions, appraisals, or rulings, and consents to their use relied on in preparing this registration statement, and consents to the use of accountants reports relating to audited financial statements required by section 7 of the 1933 Act (15 U.S.C. 77g);

o. All financial statements omitted from item 23;

p. Copies of any agreements or understandings made in consideration for providing the initial capital between or among the Registrant, the underwriter, adviser, promoter, or initial stockholders and written assurance from the promoters or initial stockholders that their purchases were made for investment purposes without any present intention of reselling; and

q. Copies of the model plan used in the establishment of any retirement plan in conjunction with which the Registrant offers its securities, any instructions to it and any other documents making up the model plan (such form(s) should disclose the costs and fees charged in connection with the plan).

Instructions: 1. Subject to the rules on incorporation by reference and instruction 2 below, the foregoing exhibits shall be filed as a part of the registration statement. Exhibits required by paragraphs 2.m, 2.n, and 2.o above need to be filed only as part of a 1933 Act registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in a previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits. The reference shall include the form, file number and date of the previous filing and the exhibit number (*i.e.*, exhibit 2.a, 2.b, etc.) under which the exhibit was previously filed.

2. A Registrant need not file an exhibit as part of a post-effective amendment if the exhibit has been filed in the Registrant's initial registration statement or in a previous post-effective amendment, unless there has been a change in the exhibit or unless the exhibit is a copy of a consent required by section 7 of the 1933 Act or is a financial statement omitted from item 23. The reference to this exhibit shall include the number of the previous filing (e.g., pre-effective amendment No. 1) where such exhibit was filed.

3. If an exhibit to a registration statement (other than an opinion or consent), filed in preliminary form, has been changed (1) only to insert information as to interest, dividend or conversion rates, redemption or conversion prices, purchase or offering prices, underwriters' or dealers' commissions, names, addresses or participation of underwriters or similar matters, which information appears elsewhere in an amendment to the registration statement or a prospectus filed pursuant to rule 497(b) under the Securities Act of 1933 (17 CFR 230.497(b)) of (2) to correct typographical errors, insert signatures or make other similar immaterial changes, then, notwithstanding any contrary requirement of any rule or form, the Registrant need not refile the exhibit as so amended. Any incomplete exhibit may not, however, be incorporated by reference in any subsequent filing under any Act administered by the Commission. If an exhibit required to be executed (e.g., an underwriting agreement) is filed in final form, a copy of an executed copy shall be filed.

Item 25. Marketing Arrangements

Briefly describe any arrangements known to the Registrant or to any person named in response to item 5, or to any person specified in item 19.2, made for any of the following purposes:

1. To limit or restrict the sale of other securities of the same class to be offered for the period of distribution;

2. To stabilize the market for any of the securities to be offered; or

3. To hold each underwriter or dealer responsible for the distribution of his participation.

Instruction: If the answer to this item is contained in an exhibit, the item may be answered by cross-reference to the relevant paragraphs of the exhibit.

Item 26. Other Expenses of Issuance and Distribution

Furnish a reasonably itemized statement of all expenses in connection with the issuance and distribution of the securities being registered, other than underwriting discounts and commissions. If any of the securities being registered are to be offered for the account of securityholders, indicate the portion of expenses to be borne by securityholders.

Instruction: Insofar as practicable, separately itemize registration fees, federal taxes, state taxes and fees, trustees' and transfer agents' fees, cost of printing and engraving, rating agency fees, and legal and accounting fees. The information may be given subject to future contingencies. Provide estimates if the amount of any items are not known.

Item 27. Persons Controlled by or Under Common Control

Furnish a list or diagram of all persons directly or indirectly controlled by or under common control with the Registrant and as to each of these persons indicate (1) if a company, the state or other jurisdiction under whose laws it is organized, and (2) the percentage of voting securities owned or other basis of control by the person, if any, immediately controlling it.

Instructions: 1. The list or diagram shall include the Registrant and shall show clearly the relationship of each company named to the Registrant and to other companies named. If the company is controlled by the direct ownership of its securities by two or more persons, so indicate by appropriate cross-reference.

2. Identify, by appropriate symbols: (1) Subsidiaries for which separate financial statements are filed (2) subsidiaries included in the respective consolidated financial statements; (3) subsidiaries included in the respective group financial statements filed for unconsolidated subsidiaries; and (4) other subsidiaries, indicating briefly why statements of these subsidiaries are not filed.

Item 28. Number of Holders of Securities

State in substantially the tabular form indicated, as of a specified date within 90 days prior to the date of filing, the number of record holders of each class of securities of the Registrant.

(1) Title of class ——————

(2) Number of record holders ——————

Item 29. Indemnification

State the general effect of any contract, arrangement, or statute under which any director, officer, underwriter, or affiliated person of the Registrant is insured or indemnified in any manner against any liability that may be incurred in such capacity, other than insurance provided by any member of the board of directors, officer, underwriter, or affiliated person for their own protection.

Instruction: In responding to this item, the Registrant should note the requirement of rules 461 and 484 under the 1933 Act (17 CFR 230.461, 230.484) and section 17 of the 1940 Act (15 U.S.C. 80a–17). [*See* Investment Company Act Rel. No. 11330 (Sept. 2, 1980) and Investment Company Act Rel. No. 7221 (June 9, 1972).]

Item 30. Business and Other Connections of Investment Adviser

Describe any other business, profession, vocation, or employment of a substantial nature in which each investment adviser of the Registrant, and each director, officer, or partner of any such investment adviser, is or has been, at any time during the past two fiscal years, engaged for his or her own account or in the capacity of director, officer, employee, partner, or trustee.

Instructions: 1. State the name and principal business address of any company of which any person specified above is connected in the capacity of director, officer, employee, partner, or trustee, and the nature of the connection.

2. The names of investment advisory clients need not be provided.

Item 31. Location of Accounts and Records

Furnish the name and address of each person maintaining physical possession of each account, book, or other document required to be maintained by section 31(a) of the 1940 Act (15 U.S.C. 80a–30(a)) and the rules thereunder (17 CFR 270.31a–1 to 31a–3).

Item 32. Management Services

Furnish a summary of the substantive provisions of any management-related service contract not discussed in Parts A or B of the registration statement (because the contract was not believed to be of interest to a purchaser of the Registrant's securities), indicating the parties to the contract, the total dollars paid, and by whom, for the last three fiscal years.

Instructions: 1. The instructions to item 18.4 of this form shall also apply to this item.

2. Information need not be provided for any service for which total payments of less than $5,000 were made during each of the last three fiscal years.

Item 33. Undertakings

Furnish the following undertakings in substantially the following form in all registration statements filed under the 1933 Act:

1. An undertaking to suspend the offering of shares until the prospectus is amended if (1) subsequent to the effective date of its registration statement, the net asset value declines more than 10 percent from its net asset value as of the effective date of the registration statement or (2) the net asset value increases to an amount greater than its net proceeds as stated in the prospectus.

2. An undertaking to file a post-effective amendment with certified financials showing the initial capital received before accepting subscriptions from more than 25 persons, if the Registrant proposes to raise its initial capital under section 14(a)(3) of the 1940 Act (15 U.S.C. 80a–14(a)(3)).

3. If the securities being registered are to be offered to existing shareholders pursuant to warrants or rights and any securities not taken by shareholders are to be reoffered to the public, an undertaking to supplement the prospectus, after the expiration of the subscription period, to set forth the results of the subscription offer, the transactions by underwriters during the subscription period, the amount of unsubscribed securities to be purchased by underwriters, and the terms of any subsequent reoffering thereof. If any public offering by the underwriters of the securities being registered is to be made on terms differing from those set forth on the cover page of the prospectus, the Registrant shall undertake to file a post-effective amendment to set forth the terms of such offering.

4. If the securities are being registered in reliance on rule 415 under the 1933 Act, an undertaking:

a. To file, during any period in which offers or sales are being made, a post-effective amendment to the registration statement:

(1) To include any prospectus required by section 10(a)(3) of the 1933 Act (15 U.S.C. 77j(a)(3));

(2) To reflect in the prospectus any facts or events after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; and

(3) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

b. That, for the purpose of determining any liability under the 1933 Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of those securities at that time shall be deemed to be the initial bona fide offering thereof; and

c. To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

5. If the Registrant is filing a registration statement permitted by rule 430A under the

BEST COPY AVAILABLE

Securities Act of 1933 (17 CFR 230.430A), an undertaking that:

a. For the purpose of determining any liability under the 1933 Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon rule 430A and contained in a form of prospectus filed by the registrant under rule 497(h) under the 1933 Act (17 CFR 230.497(h)) shall be deemed to be part of this registration statement as of the time it was declared effective; and

b. For the purpose of determining any liability under the 1933 Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of the securities at that time shall be deemed to be the initial bona fide offering thereof.

8. An undertaking to submit its investment advisory agreement and the selection of its independent accountants, who are to certify financial statements to the Commission, to its shareholders for their approval at a regular or special meeting of shareholders held within one year after the effective date of this registration statement or the commencement of operations, whichever is later.

7. An undertaking to send by first class mail or other means designed to ensure equally prompt delivery, within one business day of receipt of a written or oral request, any Statement of Additional Information.

Signatures

Pursuant to the requirements of the Securities Act of 1933 and/or the Investment Company Act of 1940, the Registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of ———, and State of ———, on the ——— day of ———, 19——.

Registrant ———

By (Signature and Title) ———

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature ———

Title ———

Date ———

Appendix C—Guidelines for Form N–2

This release contains Guidelines prepared by the Division of Investment Management for registration statements on Form N–2 for closed-end management investment companies. The Guidelines are based on Commission releases and Division interpretations. Adherence to these Guidelines by registrants should speed the examination by the Division's staff of registration statements on Form N–2.

The Guidelines are not rules of the Commission and, except as noted, represent only the views of the staff of the Division, not the Commission. The Guidelines should be read with the Investment Company Act Releases cited in them. The policies stated in the Guidelines may be changed, if necessary. The Guidelines to Form N–1A are also applicable to Form N–2 unless the context dictates otherwise.

Table of Contents

Guide 1 Use of Proceeds
Guide 2 Issuer Repurchase of Fund Shares
Guide 3 Change of Control Provisions in the Registrant's Charter or By-Laws
Guide 4 Conversion to an Open-end Company
Guide 5 Dividend Reinvestment Plans
Guide 6 Leverage and Senior Securities
Guide 7 Synopsis
Guide 8 Continuous Offerings
Guide 9 Foreign Securities

Guide 1—Use of Proceeds

In response to Item 7, the registrant should disclose how long it will take to invest all or substantially all of the proceeds from an offering in accordance with its investment objectives. If the registrant expects the investment period to exceed three months, the reasons for the expected delay should be stated. It is the view of the Division of Investment Management ("Division") that an investment company which takes in excess of six months to invest net proceeds will not be operating in accordance with its investment objectives and policies as disclosed in its registration statement. Freedom of action to take in excess of six months is considered by the Division to be prohibited by sections 8(b)(1) and 13(a) of the Investment Company Act of 1940 ("1940 Act") (15 U.S.C. 80a–8(b)(1), 80a–13(a)), and the registrant would be required to seek its shareholders' consent to a change of investment objectives if after six months it had not invested net proceeds in accordance with its investment objectives. In the case of an initial public offering of a business development company ("BDC"), the Division is of the view that section 58 of the 1940 Act (15 U.S.C. 80a–57) requires that 65% of the registrant's assets should be invested in the types of securities designed to meet its stated investment objective within two years after commencement of the offering. The Division will not consider a registrant to be invested in accordance with the applicable requirements if it is invested in money market instruments or other securities which do not conform with the registrant's stated investment objective and policies.

Guide 2—Issuer Repurchase of Shares

Issuer repurchases of shares in the secondary market or through tender offers (collectively "share repurchases") are limited by section 23 of the 1940 Act (15 U.S.C. 80a–23) and rule 23c–1 thereunder (17 CFR 270.23c–1) and are subject to sections 10(b), 13(e), and 14(e) (15 U.S.C. 78j(b), 78m(e), and 78n(e)) of the Securities Exchange Act of 1934 ("1934 Act") and the rules thereunder, particularly (i) rule 10b–5 (17 CFR 240.10b–5); (ii) rule 10b–13 (17 CFR 240.10b–13) (with respect to tender offers); (iii) rule 10b–18 (17 CFR 240.10b–18), rule 13e–1 (17 CFR 240.13e–1), and rule 13e–3 (17 CFR 240.13e–3) (with respect to the types of share repurchases specified in those rules); and (iv) rule 13e–4 (17 CFR 240.13e–4) and regulation 14E (17 CFR 240.14e–1 *et seq.*) (in the case of tender offers). Registrants are urged to raise any questions with respect to the applicability of provisions of the 1934 Act and the rules thereunder and related disclosure issues with the staffs of the Office of Trading Practices of the Division of Market Regulation and the Office of Tender Offers of the Division of Corporation Finance prior to commencing any share repurchases, whether by secondary market purchases or through tender offers.

In response to Item 8(f), registrants contemplating making share repurchases should disclose the expected timing of and procedures associated with such repurchases, including, in the case of a tender offer, when the purchase price will be determined and how shareholders may readily ascertain the net asset value per share during the period that the tender offer is open.[1] If tender offers are contemplated, the prospectus should disclose that, if a tender offer is made, notice will be provided describing the tender offer and that the notice will contain information shareholders should consider in deciding whether or not to tender their shares and detailed instructions on how to tender shares.[2]

[1] The price at which a registrant may purchase its shares in a tender offer may be (and usually is) expressed in terms of its net asset value at the close of business on the day the offer ends. Thus, the net asset value of a registrant's shares during a tender offer will be material information to investors in determining whether or not to tender shares.

[2] Rule 13e–4(f)(8)(i) (17 CFR 240.13e–4(f)(8)(i)) requires a tender offer to be open to all security holders of the class of securities subject to the tender offer. Therefore, no record dates may be specified with respect to the eligibility of a shareholder to participate in any tender offer that may be made, since all shareholders must be able to participate in the offer until the close of the offering period. In addition, rule 13e–4(f)(8)(ii) (17 CFR 240.13e–4(f)(8)(ii)) requires that the consideration paid to any holder during the tender offer be the highest paid to any other security holder during the tender offer. Therefore, deducting a service fee from consideration paid to shareholders is not allowed because the effect would be to lower the price paid to those shareholders tendering a small amount of shares relative to the price paid to shareholders tendering a large number of shares.

The Division believes that a statement in the prospectus that the registrant will make share repurchases for its shares may be inconsistent with the fiduciary duties of the board of directors of the registrant to consider, at the time of the transaction, the merits of the share repurchase and to determine that the share repurchase would be in the best interests of the registrant and registrant's shareholders based on the circumstances at the time the repurchase is made. To avoid such a result, a registrant contemplating repurchasing shares on a specified date in the future or on a regular (*e.g.*, quarterly) or frequent basis should neither state nor imply in its prospectus that the repurchase will be automatic. Nor should the registrant provide any assurance that share repurchases will reduce or eliminate the discount of its share's market price to net asset value. To avoid investors from drawing unwarranted inferences that there is an automatic right to tender stock back to the registrant (in the case of a tender offer), and to avoid any implication that the board of directors have limited its discretion in determining whether or not to proceed with a share repurchase based upon conditions at the time of the repurchase and the best interests of the registrant and its shareholders, a registrant should prominently disclose in the prospectus that the board of directors will consider making share repurchases (or tender offers), and the factors that the Board will consider, including how frequently the board will consider making repurchases. In addition, while the disclosure need not be as detailed as that which would appear in an offer to purchase delivered to shareholders in connection with a tender offer, it should disclose the types of factors that would preclude a share repurchase.

The means by which share repurchases will be funded generally would be material and thus these means and any risks inherent in the policies relating to funding should be disclosed. Therefore, if the registrant intends to incur debt to finance a share repurchase, the registrant should disclose the maximum amount of debt that may be incurred for that purpose, the restrictions imposed by the 1940 Act on leverage, and the attendant risks of leveraging.[3] In addition, the registrant should discuss the effect that share repurchases and related financings might have on expense ratios; portfolio turnover; and on the ability of the registrant to achieve its investment objectives. The ability of the registrant to qualify as a regulated investment company under the Internal Revenue Code (or the extent to which the registrant's Board will consider such risk in deciding to proceed with a share repurchase which will be funded through the liquidation of portfolio securities) should also be discussed. Finally, registrants should discuss the potential tax consequences to investors and the registrant of share repurchases in response to items 10(d) or 22, as appropriate.

Occasionally, a registrant may wish to make an "odd-lot" tender offer (*i.e.*, an offer to purchase all of the shares held by shareholders who hold less than 100 shares) in order to reduce its administrative costs and give small shareholders an opportunity to sell shares without brokerage costs. The Division is of the view that an "odd-lot" tender offer is permitted under rule 23c–1 [4] if it complies with the conditions set forth in that rule and the applicable provisions of, and the rules and regulations under, the 1934 Act, including rule 13e–4(g)(5) (17 CFR 240.13e–4(g)(5)), which specifically permits odd-lot tenders. The Division is of the view that purchases made in accordance with the applicable rules would not violate rule 23c–1(a)(9), which requires that repurchases made in reliance on rule 23c–1 not be made in a manner or on a basis which discriminates unfairly against any holders of the class of securities purchased. The Division believes that holders who tender their shares in odd-lot tender offers are treated fairly because they are given the opportunity to sell their shares at the lesser of the fund shares' market price or net asset value [5] without incurring the high brokerage costs usually associated with odd-lot transactions. The registrant's remaining shareholders are benefitted because the elimination of odd-lot holders usually results in a reduction in the registrant's administrative expenses.

As noted above, odd-lot tender offers are subject to the anti-fraud provisions of the 1934 Act, and a registrant making such an offer has the responsibility to make adequate disclosure of materially pertinent information in connection with such tender offers, including the reasons for making the offer, the terms and conditions of the offer, tax consequences to tendering shareholders, and any significant developments in the affairs of the registrant since its most recent report to shareholders.

Guide 3—Change of Control Provisions in the Registrant's Charter or By-laws

If the registrant has any provisions in its charter or by-laws that would have an effect of delaying, deferring or preventing a change of control (such as super-majority voting requirements on matters related to merger, consolidation, sale of assets or liquidation, or classification of directors with staggered terms of office), a description of these provisions should be set forth in the prospectus in response to Item 10(a)(vi) and, if one is otherwise required, in the synopsis. Each applicable provision should be separately identified and its substance and effects discussed.

The following information about such provisions should be discussed in response to Item 10(a)(vi): (1) The rationale for adopting these provisions; (2) the positive and negative effects of these provisions (such as the effect of depriving shareholders of an opportunity of selling their shares at a premium over prevailing market price); (3) whether the voting requirements to change the nature of the company's business, approve extraordinary corporate transactions, convert to an open-end investment company, or remove directors are higher than those imposed by federal or state law; and (4) whether the board of directors or trustees have considered the provisions and determined that they are in the best interest of shareholders.[6]

Guide 4—Conversion to an Open End Company

Some closed-end investment company prospectuses disclose that the board of directors of the registrant will consider converting the company to an open-end fund after a specified period of time. Because shares of an open-end company are sold and redeemed at net asset value, the prospect of a conversion is often intended to reduce the discount to

[3] *See* section 18 of the 1940 Act (15 U.S.C. 80a–18) and Guide 6 to Form N–2. Guide 6 contains a detailed discussion of the Division's views on the risks associated with leverage.

[4] Section 23(c)(2) of the 1940 Act (15 U.S.C. 80a–23(c)(2)) is not applicable to odd-lot tender offers because they are not made to all holders of the class of securities to be purchased. Section 23(c)(3) (15 U.S.C. 80a–23(c)(3)) authorizes the Commission to permit repurchases either by issuing a rule or by order upon application. Pursuant to that section, the Commission has adopted rule 23c–1, which permits a closed-end fund to repurchase its securities subject to the conditions in that rule.

[5] Rule 23c–1(a)(6) (17 CFR 270.23c–1(a)(6)).

[6] In addition, *see* Securities Exchange Act of 1934 Release No. 15230 (October 13, 1978) (43 FR 49863 (Oct. 25, 1978)) which discusses disclosure requirements for proxy and information statements containing anti-takeover and similar proposals.

net asset value of the registrant's share price. If conversion to an open-end company is disclosed as a possible course of action in the prospectus, the prospectus should discuss the factors which the registrant's board of directors will consider in determining whether to propose a conversion. The requisite shareholder vote to effect a conversion should also be disclosed.

An investment in an open-end company raises risks for investors that are different from an investment in a closed-end company, and these risks should be discussed in a prospectus which raises the possibility of conversion to an open-end company. For example, because a shareholder of an open-end investment company may present his shares for redemption any time, and payment must be made within seven days of presentation at their net asset value, conversion to open-end status may require changes in how the registrant's portfolio is managed in order to meet the liquidity requirements applicable to open-end funds. Because portfolio securities may have to be liquidated to meet redemptions, this could affect the registrant's ability to meet its investment objective or use investment policies and techniques that are more appropriate for a fixed portfolio rather than one subject to constant demands for redemption and inflows of cash.

The registrant also should disclose whether it contemplates charging sales or redemption fees upon conversion to an open-end fund and whether redemptions will be made in cash or securities. If the registrant, after conversion, intends to retain the option of meeting redemptions with portfolio securities, the costs and risks imposed on the redeeming shareholders of receiving such securities also should be discussed.

Guide 5—Dividend Reinvestment Plans

Item 10(a)(v) of Form N–2 requires the registrant to describe any dividend reinvestment plan available to shareholders. It is the position of the Commission staff that securities issued by a registrant in connection with a plan are not required to be registered under the Securities Act of 1933 ("1933 Act") if there is no "sale for value" within the meaning of section 2(3) of the 1933 Act (15 U.S.C. 77b(3)).[7] As a general matter, no sale for value would occur when a shareholder elects, before the declaration of a dividend, to receive a dividend in stock in lieu of cash, no sales load is deducted upon issuance of the additional shares,[8] and the shareholder provides no consideration (besides the foregone cash dividend) for the additional securities. In the case of a dividend reinvestment plan that provides for the purchase of shares for additional consideration ("cash purchase plan"), a sale by an issuer would not be deemed to occur where: (a) The securities are purchased in the secondary market on behalf of the plan participant by an agent not affiliated with the registrant, its adviser, or underwriter; and (b) the registrants' participation in the plan is limited to administrative functions such as bookkeeping.[9]

Guide 6—Leverage and Senior Securities

Section 18 of the 1940 Act (15 U.S.C. 80a–18) imposes restrictions on a closed-end investment company's capital structure. Under section 18(c) (15 U.S.C. 80a–18(c)), a closed-end investment company may issue only one class of senior securities representing indebtedness and one class of senior securities representing preferred stock. Section 18(a)(1) (15 U.S.C. 80a–18(a)(1)) requires a company that offers senior stock or senior debt securities to maintain a 200% and 300% net asset coverage, respectively, immediately following the offering and on an ongoing basis as a condition to declaring dividends or distributions.

A registrant that uses a leveraged capital structure creates additional investment risks for its shareholders. Where a registrant uses or has reserved the authority to create a leveraged capital structure by issuing senior securities, cross reference to the discussion of these risks should be included on the cover page of the prospectus as required by Item 1(a)(x).

The following factors could increase investment risk and the volatility of the price of the registrant's shares and should be discussed in the prospectus: (1) That leveraging exaggerates any increase or decrease in the value of the registrant's portfolio; (2) that the costs of borrowing may exceed the income from the portfolio securities purchased with the borrowed money; (3) the decline in net asset value if the investment performance of the additional securities purchased fails to cover their cost (including any interest paid on the money borrowed or dividend requirements of preferred stock) to the registrant (including the effect on common stock dividend payments); (4) that a failure to pay dividends or make distributions could result in the registrant ceasing to qualify as a regulated investment company under the Internal Revenue Code; and (5) that if the asset coverage for preferred stock or debt securities declines to less than 200% or 300%, respectively (as a result of market fluctuations or otherwise), the registrant may be required to sell a portion of its investments when it may be disadvantageous to do so.

Special risks also are created where the registrant issues short-term debt or auction rate preferred stock to fund the purchase of long-term debt or fixed income securities ("borrowing short and lending long"). The registrant should discuss the consequences to holders of its senior securities and equity securities, respectively, of fluctuations in short-term and long-term rates and the effect on these securities if short-term rates exceed long-term rates.

Where the registrant is offering debt or buying securities on margin,[10] disclosure also should include a discussion of whether the registrant's assets will be used as security for the borrowings or whether the borrowings will be unsecured.

If the senior securities are to be issued with a specified rating by a rating agency (such as Standard & Poor's), the risk disclosure in the prospectus required by Item 8(c) of Form N–2 should make it clear that the rating does not eliminate or mitigate the risks of investing in the Registrant's securities. The prospectus should describe the effects on each class of the registrant's securities if the rating is lowered or withdrawn and the relationship of the ratings on senior securities to the investment quality of the securities in which the registrant will invest.

The prospectus should describe the financial impact on common shareholders of the issuance of senior securities, including the impact of the costs related to such issuances (*e.g.*, that the underwriting commissions, offering expenses, rating agency fees and organization expenses will be borne by the holders of the common shares) and the effects of dividend and interest requirements on distributions to common shareholders.

Registrants should provide a concise explanation of the asset coverage tests required by section 18 of the 1940 Act and their effects, particularly where two classes of senior securities are, or might be, issued. Registrants should consider providing simplified numerical examples to illustrate how the asset coverage tests will operate.

Section 18(i) of the 1940 Act (15 U.S.C. 80a–18(i)) requires that preferred shareholders have voting rights and have equal voting rights with other outstanding voting stocks, except as provided by section 18(a) (15 U.S.C. 80a–18(a)) or otherwise required by law. Section 18(a) gives the holders of a class of senior securities the right to elect directors in the event specified asset coverage tests are not met or dividends are not paid. Such voting rights should be described in the prospectus.

Guide 7—Synopsis

Guide 33 to Form N–1A sets forth the Division's views as to the appropriate content of a synopsis. A synopsis included in a prospectus of a closed-end fund should include the items specified in that Guide, and: (i) A brief description of the principal trading market for the registrant's securities; if none, so state; (ii) the principal speculative or risk factors peculiar to the registrant, if any; and (iii) a summary of the plan of distribution for the registrant's securities, including a concise description of any subscription agreement or escrow arrangements.

Guide 8—Continuous Offerings

Closed-end companies offering securities on a best efforts basis may have continuous offering periods that extend beyond 30 days. Such offerings may be made in accordance with rule 415 under the 1933 Act (17 CFR 230.415). Rule 415 imposes certain conditions on continuous offerings, including a requirement that the registrant provide an undertaking to file post-effective amendments in the event of the occurrence of any events which "represent a fundamental change in the information set forth in the registration statement * * *." *See* Item 33(d) of Form N–2. A fundamental change will have occurred where the registrant has made a material acquisition or a series of acquisitions that are in the aggregate material, or the consummation of these acquisitions become probable. Where a closed-end fund has structured a continuous offering involving a series of closings (with each closing being held at such time as subscription thresholds are met), sales of fund securities must be stopped from the time that a fundamental change in the affairs of the registrant becomes probable until a post-effective amendment describing the change becomes effective. In addition, registrants using multiple closings must comply with the 1940 Act's requirement's on pricing of securities. See sections 23(b) and 63(2)(A) (with respect to business development companies) of the 1940 Act (15 U.S.C. 80a–23(b) and 80a–62(2)(A)).

Registrants conducting continuous offerings are precluded from making any share repurchases, whether in the secondary market or by means of a tender offer, under rule 10b–6 under the Securities Exchange Act (17 CFR 240.10b–6), absent an exception to or exemption from that rule. Registrants are urged to contact the Office of Trading Practices of the Division of Market Regulation concerning any question regarding rule 10b–6.

Guide 9—Foreign Securities

A registrant that intends to invest 10 percent or more of its assets in foreign securities that are not publicly traded in the United States should concisely address in the prospectus where applicable, the risks associated with: (1) Currency fluctuations; (2) restrictions on, and cost associated with, the exchange of currencies; (3) the difficulty in obtaining or enforcing a court judgment abroad; (4) reduced levels of publicly available information concerning issuers; (5) restrictions on foreign investment in other jurisdictions; (6) reduced levels of governmental regulation of foreign securities markets; (7) difficulties in effecting the repatriation of capital invested abroad; (8) difficulties in transaction settlements and the effect of this delay on shareholder equity; (9) foreign withholding taxes; (10) political, economic, and similar risks, including expropriation and nationalization; (11) different accounting, auditing, and financial standards; (12) price volatility; and (13) reduced liquidity in the markets in which the fund will invest. In response to Items 20 (f) and (g), the Statement of Additional Information of any fund which invests more than 10 percent of its assets in foreign securities should discuss custodial arrangements for foreign securities.

In response to Items 9(a)(ii) (A) and (D), the prospectus should also provide a basis for an investor to assess the expertise and experience of the fund's investment adviser (and any person making a significant contribution to the investment advice provided to the registrant), with respect to the foreign markets in which the fund will invest and, in the case of a foreign adviser, the adviser's knowledge of regulatory requirements of the United States securities laws should be indicated.

In the case of a "country fund," or a fund that invests substantially all of its assets in securities of issuers organized under the laws of a single foreign country or region, the prospectus should address the following: (1) Restrictions placed by the foreign jurisdiction on foreign investment, including the material terms and conditions imposed on the fund by any statutes, regulations or orders relating to its investing activities; (2) restrictions or prohibitions placed on foreign investment in any major industry or market sector, such as the defense industry, energy or transportation; (3) restrictions placed on the total amount or type of securities in any single issuer that may be held by a foreign investor; and (4) any other restrictions of the foreign jurisdiction that would operate to limit the ability of the registrant to implement its investment policies or to operate in the manner described in its prospectus and SAI. The registrant also should discuss political and economic conditions, economic forecasts by government officials if available, capitalization, volume of trading and unusual characteristics of the securities markets of the jurisdiction, and the regulation of the foreign securities markets in which it intends to invest.

Registrants using a foreign custodian should comply with the provisions of rule 17f–5 under the Investment Company Act.

[FR Doc. 89–18516 Filed 8–10–89; 8:45 am]
BILLING CODE 8010–01–M

---

[7] Securities Act Rel. No. 929 (July 29, 1936). *See also* Investment Company Act Rel. No. 6480 (May 10, 1971) (36 FR 9627 (May 27, 1971)). Registrants should note that the issuance of shares in connection with a dividend reinvestment plan is restricted by Section 23(b) of the 1940 Act (15 U.S.C. 80a–23(b)) which prohibits closed-end investment companies from issuing shares at a price below net asset value.

[8] Investment Company Act Rel. No. 6480; *id.*

[9] Securities Act Rel. No. 5515 (July 22, 1974) (39 FR 28520 (Aug. 8, 1974)); Securities Act Rel. No. 4790 (July 13, 1965) (30 FR 9059 (July 20, 1965)). The operation of a dividend reinvestment plan may involve the creation of a separate investment company. *Id. See also* Lucky Stores (pub. avail. July 8, 1974).

[10] Section 12(a)(1) of the 1940 Act (15 U.S.C. 80a–12(a)(1)) limits margin transactions to such short-term credits as are necessary for the clearance of transactions.

---

17 CFR Part 270

[Release No. IC–17096; International Series—111; File No. S7–22–89]

RIN 3235–AD19

Acquisition by Registered Investment Companies of the Equity Securities of Foreign Securities Firms

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments and requests for comment.

SUMMARY: The Commission is publishing for public comment rule amendments that would facilitate the acquisition by a registered investment company and any

company or companies controlled by such company ("acquiring company") of the equity securities of foreign securities firms. The proposed rule amendments would allow the acquisition of such securities, provided that those securities met criteria comparable to those applicable to equity securities of United States securities-related businesses. The Commission proposes these amendments because of numerous applications that have been filed seeking an exemption to permit registered investment companies to purchase equity securities of foreign securities firms.

DATE: Comments must be received on or before October 10, 1989.

ADDRESS: Send comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comments should refer to File No. S7–22–89. All comments will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Brian P. Kindelan, Special Counsel, (202) 272–2048, or C. Christopher Sprague, Staff Attorney, (202) 272–7779, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is asking for public comment on proposed amendments to rule 12d3–1 [17 CFR 270.12d3–1] under section 12(d)(3) of the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (the "Act"). The proposed amendments would facilitate the acquisition by registered investment companies and companies controlled by them of the equity securities of foreign securities firms.

Executive Summary

Section 12(d)(3) of the Act [15 U.S.C. 80a–12(d)(3)] makes it unlawful "for any registered investment company and any company or companies controlled by such registered investment company to purchase or otherwise acquire any security issued by or any other interest in the business of any person who is a broker, a dealer, is engaged in the business of underwriting, or is either an investment adviser of an investment company or an investment adviser registered under [the Investment Advisers Act of 1940] [15 U.S.C. 80b–1 *et seq.*] * * *."[1] Rule 12d3–1 under the Act, however, permits a registered investment company, or any company or companies controlled by such registered investment company ("acquiring company"), to acquire any security issued by any person that, in its most recent fiscal year, derived more than 15 percent of its gross revenues from securities-related activities,[2] provided certain quantitative and qualitative conditions are satisfied.[3] Of particular relevance here is the condition that, at the time of acquisition, any equity security acquired must be a "margin security," as defined in Regulation T [12 CFR 220.1 et seq.] ("Regulation T") promulgated by the Board of Governors of the Federal Reserve System (the "Board").

Several applicants for exemption from section 12(d)(3) have argued that the margin security requirement prevented them from acquiring the equity securities of foreign securities firms, because an equity security must have a public market in the United States to meet that requirement.[4] The Commission typically has granted the requested exemptions, subject to the acquired securities meeting criteria comparable to those set out in the Board's margin security definition. The proposed amendments would codify many of the standards in those orders. The standards are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks ("OTC margin stocks").

One set of such requirements concerns the liquidity of the acquired security. These requirements address characteristics of both the market in which the security is traded and of the security itself. Concerning the market, the equity security of the foreign securities firm would have to be listed on a "qualified foreign exchange" meeting certain requirements as to structure, size and stability. For example, to assure a depth of market comparable to that of United States national securities exchanges, the qualified foreign exchange would be required to have had an annual trading volume in stocks totalling at least 7.5 billion United States dollars in the year preceding the acquisition.[5] Concerning the security itself, the proposed amendments also would impose conditions related to the security's marketability, requiring that the equity security have been listed on a qualified foreign exchange for at least six months prior to the acquisition.[6] Finally, the issuer of the equity security to be acquired would be required to have made public all information that it is required to make public in its home country and to have filed with any stock exchange on which its securities are traded the filings required by that exchange.[7] Other conditions of the proposed amended rule are set out in the proposed rule text.

The proposed amended rule would have only prospective effect. Thus, recipients of nonconforming prior orders would continue to be permitted to acquire foreign securities firm equity securities in accordance with those orders, notwithstanding the adoption of the proposed amended rule. The Commission has not proposed to supersede these orders, although it invites comment on this issue, because it believes flexibility is appropriate in this evolving international area. Upon the adoption of the proposed amended rule, any acquisition that falls outside the scope of those orders would have to be made either in accordance with the standards of the proposed amended rule, or pursuant to another exemptive order where alternative conditions are substituted.

Background

Section 12(d)(3) of the Act states that it shall be unlawful "for any registered investment company and any company or companies controlled by such registered investment company to purchase or otherwise acquire any security issued by or any other interest in the business of any person who is a broker, a dealer, is engaged in the business of underwriting, or is either an investment adviser of an investment company or an investment adviser registered under [the Investment Advisers Act of 1940] * * *."[8] The section was intended to prevent investment company assets from being subjected to the entrepreneurial risks associated with securities-related businesses, particularly because, at the time the section was enacted, many such businesses were organized as private partnerships.[9] A partnership interest could subject the investment company to the liabilities of the entire partnership and, moreover, could be difficult to sell. Prevention of this risk, however, was not the only purpose of the section.[10] The section also was designed to (1) prevent investment companies from being controlled by brokers, dealers, underwriters, or investment advisers, and (2) restrict certain reciprocal practices between investment companies and brokers, dealers, underwriters or investment advisers.[11]

Section 12(d)(3) prevented investment companies from participating in some desirable investment opportunities that did not implicate the policies behind the section. This observation led to the adoption in 1964 of former rule 12d–1,[12] which allowed investment companies to acquire the securities of companies engaged to a limited degree in securities-related activities, but which companies were primarily and predominantly engaged in other businesses.[13] In 1984, citing "dramatic changes in the securities industry since 1940," the Commission further altered the section 12(d)(3) restrictions by replacing rule 12d–1 with rule 12d3–1.[14]

Unlike rule 12d–1, rule 12d3–1 allows a registered investment company, or any company or companies controlled by such company, to purchase securities of issuers substantially engaged in securities-related activities. Rule 12d3–1 distinguishes between issuers that derive 15% or less of their gross revenues from securities-related activities and those issuers that derive more than 15% of their gross revenues from securities-related activities. Under the rule, the limitations of section 12(d)(3) are not deemed to apply to any security of any issuer that, in its most recent fiscal year, derived 15% or less of its gross revenues from securities-related activities, unless the investment company would control the issuer after the acquisition.[15] In addition, an investment company may acquire any security of any issuer that, in its most recent fiscal year, derived more than 15% of its gross revenues from securities-related activities if certain quantitative and qualitative conditions are met.[16] The qualitative conditions require that: (1) an equity security be a "margin security" as defined in Regulation T, and (2) a debt security be classified as "investment grade" by the acquiring company's board of directors.[17]

There are several ways that an equity security can meet the definition of "margin security" under Regulation T. Margin security is defined as any (1) security registered or admitted to unlisted trading privileges on a national securities exchange, (2) OTC margin stock,[18] (3) OTC margin bond, (4) OTC

---

[1] These prohibitions do not apply where "(A) such person is a corporation all the outstanding securities of which (other than short-term paper, securities representing bank loans, and directors' qualifying shares) are, or after such acquisition will be, owned by one or more registered investment companies; and (B) such person is primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, or any one or more of such or related activities, and the gross income of such person normally is derived principally from such business or related activities." Section 12(d)(3)(A), (B).

[2] Rule 12d3–1(d)(1) defines "securities-related activities" as "a person's activities as a broker, as a dealer, from the business of underwriting, as an investment adviser registered under the Investment Advisers Act of 1940, as amended, or as an investment adviser to a registered investment company." Section 12(d)(3) of the Act, in pertinent part, prohibits an acquiring company from acquiring any security issued by or any other interest in "an investment adviser of an investment company." Proposed amended rule 12d3–1 would track the language in section 12(d)(3) by omitting the word "registered" from the phrase "investment adviser to a registered investment company" in the current definition of "securities-related activities" as well as in the definition of "securities-related business." Absent this change, acquiring companies cannot rely on rule 12d3–1 to acquire interests in a company that serves as an investment adviser to an investment company, foreign or domestic, that is not registered with the Commission.

[3] Rule 12d3–1(a) also provides that for purposes of section 12(d)(3) of the Act, an acquiring company may acquire without limitation any security of any issuer that, in its most recent fiscal year, derived 15% or less of its gross revenues from securities-related activities, unless the acquiring company would control such person after the acquisition. *See* text accompanying note 15, *infra*.

[4] *See infra* notes 24–26. In a letter to the Division of Investment Management, the Investment Company Institute ("ICI") requested that rule 12d3–1 be amended to permit an investment company to purchase the equity securities of foreign securities firms without first obtaining an exemptive order. *See* Letter from Susan F. Hart to Kathryn B. McGrath, Director, Division of Investment Management, dated April 28, 1987.

[5] *See* paragraph (d)(6)(iii) of the proposed amended rule.

[6] *See* paragraph (b)(8)(i) of the proposed amended rule.

[7] *See* paragraph (b)(5)(iv)(C) of the proposed amended rule. *Cf.* rule 12g3–2(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*] ("Exchange Act") (which exempts securities of any foreign private issuer from section 12(g) of the Exchange Act [15 U.S.C. 78l(g)], conditioned on the furnishing of such publicly disseminated information and other data to the Commission).

[8] These prohibitions do not apply to certain acquisitions as discussed at note 1, *supra*.

[9] In the Senate hearings on the Act, David Schenker, the Commission's counsel for the Investment Trust Study, stated: "Section 12(c)(2) [which ultimately became section 12(d)(3)] merely states that an investment company cannot buy an interest in a brokerage firm, a distributing company, or an investment banking house * * *. You can see the reason for that. They may not want to subject all the assets of the investment trust to the risks of the underwriting business. So we see no difficulty if they avail themselves of the corporate fiction and limit their liabilities to the amount of money they want to invest. . . ." Investment Trusts and Investment Companies: Hearings on S. 3580 before a Subcomm. of the Comm. on Banking and Currency, 76th Cong., 3d Sess. 243 (1940). *See* generally Investment Company Act Rel. No. 13725 (Jan. 17, 1984) (49 FR 2912, Jan. 24, 1984) (hereinafter "Release 13725") (Release 13725 proposed amendments to rule 12d–1 to permit investment companies to acquire securities of issuers substantially engaged in securities-related activities.).

[10] As the Commission stated in Release 13725, *supra* note 9, if prevention of this risk were the only purpose of section 12(d)(3), investment companies could have been allowed to purchase the stock of any securities firm, provided it was a corporation, and thereby maintain limited liability. However, as discussed in *supra* note 1, the section permits such purchases only if the entity (a) is a corporation all the outstanding securities of which (other than short-term paper, securities representing bank loans, and directors' qualifying shares) are, or after such acquisition will be, owned by one or more registered investment companies; and (b) is primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, or any one or more of such or related activities, and the gross income of such entity normally is derived principally from such business or related activities. Thus, section 12(d)(3) makes sense only if it also seeks to prevent potential conflicts of interest between the investment company and the securities firm.

[11] For example, the section 12(d)(3) prohibition seeks to prevent an investment company from investing in a broker-dealer to reward the broker-dealer for selling the company's shares, rather than investing based solely on merit. *See* Release 13725, *supra* note 9. As the Commission stated, "placing a floor on the quality of securities that an investment company may acquire under the rule may lessen any harm from certain reciprocal practices in which an investment company and a broker-dealer could engage." Investment Company Act Rel. No. 14036 (July 13, 1984) (49 FR 29382, July 20, 1984) (final rule revision) (hereinafter "Release 14036") at n.4.

[12] Rule 12d–1 was redesignated as rule 12d3–1 in 1984. *See* Release 14036, *supra* note 11.

[13] Investment Company Act Rel. No. 4044 (Sept. 4, 1964) (29 FR 12915, Sept. 15, 1964).

[14] In the release proposing adoption of rule 12d3–1 (Release 13725), the Commission noted that "an increasing number of securities-related businesses have incorporated, enabling investors in those businesses to limit their liability to the amount of their original investment." Release 13725, *supra* note 9. In that release, the Commission also observed that an increasing number of non-securities businesses had become involved in securities-related activities through mergers with or acquisitions of securities-related businesses.

[15] *See* rule 12d3–1(a).

[16] *See* rule 12d3–1(b). For a full discussion of the quantitative conditions of rule 12d3–1, consult Release 14036, *supra* note 11.

[17] *See* Release 14036, *supra* note 11. In Release 14036, the Commission stated that the qualitative conditions of the rule promote two objectives: (a) That the securities acquired by an investment company be liquid, and (b) that of lessening the effect of any reciprocal practices between an investment company and a broker-dealer. It is also instructive to study the Board's definition of margin security, because that concept is incorporated into rule 12d3–1. Liquidity is a paramount concern embodied in the Board's definition of margin security. For example, the Board amended the definition of "margin security" in 1984 to include securities designated as being National Market System securities by the National Association of Securities Dealers. Federal Reserve System Docket No. 0512 (Sept. 5, 1984) (49 FR 35756, Sept. 22, 1984) (final rule). The Board adopted that amendment based on the conclusion of its staff that "liquidity and other factors [of the NMS securities] compare favorably with securities traded on major exchanges". Federal Reserve System Docket No. 0512 (Mar. 7, 1984) (49 FR 9741, Mar 15, 1984) (proposed amendments).

[18] OTC margin stock is defined as any equity security not traded on a national securities exchange that the Board has determined has the degree of national investor interest, the depth and breadth of market, the availability of information respecting the security and its issuer, and the character and permanence of the issuer to warrant being treated like an equity security traded on a national securities exchange. 12 CFR 220.2(s) (1988).

security designated as qualified for trading in the National Market System under a designation plan approved by the Commission ("NMS security"), or (5) security issued by either an open-end investment company or unit investment trust that is registered under section 8 of the Act (15 U.S.C. 80a–8).[19]

A security issued by a foreign securities firm may qualify as a margin security if it is listed or has unlisted trading privileges on a national securities exchange that is registered under section 6 of the Exchange Act (15 U.S.C. 78f).[20] To have its securities listed on a national securities exchange, a foreign securities firm would have to register its securities under section 12 of the Exchange Act, which, among other things, would require the company to make a variety of disclosures in its application to the Commission.

Foreign securities also may be deemed margin securities by being included in the list of OTC margin stocks. In 1982, the Board amended the criteria for inclusion on the list of OTC margin stocks to allow the equity securities of foreign issuers to be eligible.[21]

Rule 12d3–1, therefore, permits acquisitions by registered investment companies of the equity securities of only those foreign securities firms that meet the margin security definition, or that derive 15% or less of their gross revenues from securities-related activities.

In the release adopting rule 12d3–1, the Commission predicted that investment in foreign companies engaged in securities-related activities would not be limited significantly by the rule, because for many such investments, investment companies would be able to rely on the blanket exemption (*i.e.*, the exemption applicable to an issuer deriving 15% or less of its gross revenues from securities-related activities), or on the exemption provided for debt securities issued by securities-related businesses.[22] However, investment companies now have considerable interest in acquiring equity interests in foreign securities firms that are not covered by the existing exemptive rule.

Since the adoption of rule 12d3–1,[23] the Commission has received several applications for exemption from section 12(d)(3) to allow registered investment companies to acquire the equity securities of foreign securities firms. To date, the Division of Investment Management ("Division"), by delegated authority, has authorized acquisitions of the equity securities of certain Japanese securities firms,[24] certain European banks engaged in securities-related activities,[25] and certain foreign securities firms listed on specified foreign stock exchanges.[26]

The applicants that received the exemptive orders permitting the acquisition of the equity securities of major Japanese securities firms complied with all of the conditions of rule 12d3–1, except for the "margin security" requirement.[27] The orders were based on representations that the securities met quality standards comparable to those embodied in the margin security requirement. Specifically, the applicants represented that each of the Japanese securities firms was listed on the Tokyo Stock Exchange (First Section), the listing requirements for which were comparable, in terms of share distribution, total market value and earning power, to those imposed by the (i) New York and American Stock Exchanges, (ii) National Association of Securities Dealers ("NASD") to become eligible for listing on the NASD automated quotation system ("NASDAQ"), and (iii) Board for inclusion on the OTC margin security list. In addition, shares of the Japanese securities firms were traded on the Tokyo and Osaka stock exchanges, which, at the time of the application, respectively ranked second and third worldwide in terms of total market value of equity shares listed, according to an applicant. Also significant was the fact that all Japanese companies with publicly issued securities are required to file with the Japanese Minister of Finance ("Minister") annual reports (which are publicly available) containing information relating to the company's objectives, stated capital, securities issued and financial position, the nature and state of its business operations, and such other information as the Minister may request. Amended reports must be filed with the Minister upon the occurrence of any material change of information. The applicants further represented that the financial statements contained in annual reports must be certified by a certified public accountant or an incorporated accounting firm which has no special interest in the reporting corporation. Finally, the applicants represented that the Japanese securities firms were required to publish their annual reports in English.

The applicants in The Helvetia Fund and Germany Fund orders,[28] also agreed to satisfy all the conditions of rule 12d3–1, except the "margin security" requirement. Those applications concerned the proposed acquisition of the equity securities of foreign banks involved substantially in securities-related activities. In each case, the applicant represented that the securities it sought to acquire, although listed only on foreign stock exchanges, would be eligible for listing on one or more of the following: The New York Stock Exchange, the American Stock Exchange or NASDAQ. Each applicant represented that the disclosure requirements applicable to the banks were the substantial equivalent of the disclosures required by the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act"). The applicants also represented that the banks were subject to various ongoing disclosure requirements. For example, the banks in the Germany Fund order are required by German law to publish annual reports disclosing, among other things, all material facts and events occurring since the prior annual report. The applicant also represented that all of the German banks governed by the order publish their annual reports in English.

Finally, in Daily Money Fund,[29] the applicants were permitted to acquire equity and convertible debt securities that met certain quality standards and were listed on certain "qualified foreign exchanges".[30] These conditions were, to a large extent, patterned after the requirements for inclusion on the list of OTC margin stocks, and have been incorporated in subsequent exemptive orders under rule 12d3–1.[31]

Discussion

The past several years have witnessed a dramatic increase in the internationalization of the world's securities markets. Investment companies have participated actively in this internationalization process.[32] Indeed, a significant part of the recent increase in United States investments in foreign markets is attributable to a surge in investments by domestic mutual funds and closed-end investment companies in foreign securities.[33] The equity securities of companies that are securities firms, or that fall within the definition of "securities firm," often figure prominently in the equity markets of a particular foreign country.[34]

Several recent Commission proposals have responded to the desire of investors to trade in financial markets around the world.[35] Complementing such efforts are the proposals of some foreign countries to open their securities markets to investors.[36] Through the proposed amendments to rule 12d3–1, the Commission would be using its exemptive power under section 6(c) of the Act (15 U.S.C. 80a–6(c)) to assist in these efforts.

Section 6(c) provides that the Commission, by rules and regulations upon its own motion, may, among other things, conditionally or unconditionally exempt any person or any class or classes of persons, from any provision of the Act, "if and to the extent that such exception is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions" of the Act. The exemption that would be provided by the proposed amendments to rule 12d3–1, if adopted, would be appropriate in the public interest by responding to the developments discussed above and by increasing the range of investment opportunities available to acquiring companies. As discussed more fully below, the Commission also believes the proposed amended rule would be consistent with the protection of investors and the purposes fairly

---

[19] *See* 12 CFR 220.2 (o) and (v) (1988).

[20] 15 U.S.C. 78*l*. The American Stock Exchange and the New York Stock Exchange, for example, are each registered as national securities exchanges under section 6 of the Exchange Act. The American Stock Exchange and New York Stock Exchange each allow the securities of foreign companies to be listed with them. *See* American Stock Exchange Company Guide, section 110; New York Stock Exchange Listed Company Manual, section 103.

[21] Federal Reserve System Docket No. 0872 (May 12, 1982) [47 FR 21756, May 20, 1982]. As the Board stated in the adopting release:

> Foreign issuers were precluded from OTC List eligibility in the past because of the relative lack of access to such issuers' financial information. The strengthened disclosure rules of the Securities and Exchange Commission now make it possible to obtain comprehensive and up to date financial information on many foreign issuers. Because of these improvements, it is no longer necessary to restrict OTC List candidates to domestic issuers. Foreign as well as domestic issuers must, however, be registered or filed with the Securities and Exchange Commission in order to be eligible for inclusion on the OTC List.

[22] See Release 14036, *supra* note 11. The Commission observed that an investment company would still be able to acquire debt securities of foreign securities firms under rule 12d3–1, because such acquisitions are conditioned on the company's board of directors classifying the debt securities as investment grade. The proposed amendments would retain that condition, and thus would not affect acquisitions of foreign securities firm debt securities.

[23] Subsequent to Release 14036, *supra* note 11, the Commission amended rule 12d3–1 to permit money market funds to purchase put options from persons engaged in securities-related businesses. Investment Company Act Rel. No. 14963 [Mar. 12, 1986) (51 FR 9773, Mar. 21, 1986).

[24] Lifetime Global Equity Trust, Investment Company Act Rel. Nos. 15757 (May 28, 1987) (52 FR 20618, June 8, 1987) (notice of application) and 15823 (June 24, 1987) (order); Daily Money Fund, Investment Company Act Rel. Nos. 15325 (Sept. 25, 1986) (51 FR 35313, Oct. 2, 1986) (notice of application) and 15363 (Oct. 20, 1986) (order); Merrill Lynch Pacific Fund, Inc., Investment Company Act Rel. Nos. 15039 (Apr. 4, 1986) (51 FR 12413, Apr. 10, 1986) (notice of application) and 15077 (Apr. 30, 1986) (order); The Japan Fund, Inc., Investment Company Act Rel. Nos. 14432 (Mar. 20, 1985) (50 FR 12427, Mar. 28, 1985) (notice of application) and 14471 (Apr. 16, 1985) (order). *See also* Investment Company Institute (pub. avail. Sept. 30, 1987) (in which the Division took a no-action position as to purchases of the equity securities of the twelve major Japanese securities firms).

[25] Germany Fund, Investment Company Act Rel. Nos. 16028 (Oct. 2, 1987) (52 FR 37691, Oct. 8, 1987) (notice of application) and 16095 (Oct. 29, 1987) (order); The Helvetia Fund, Inc., Investment Company Act Rel. Nos. 15686 (July 21, 1987) (52 FR 28215, July 28, 1987) (notice of application) and 15820 (Aug. 13, 1987) (order).

[26] Daily Money Fund, Investment Company Act Rel. Nos. 16049 (Oct. 14, 1987) (52 FR 38687, Oct. 20, 1987) (notice of application) and 16119 (Nov. 10, 1987) (order) ("Daily Money Fund"). The order permits the applicants to acquire foreign securities firm equity securities meeting specified criteria that are listed on one or more of the foreign stock exchanges set out in the application, provided such exchanges continue to meet the fixed standards set out in the order. At the time the Daily Money Fund order was issued, the following foreign stock exchanges met those standards: Association of Exchanges, Australia; Brussels, Belgium; Rio De Janeiro and Sao Paulo, Brazil; Toronto, Canada; Paris, France; Federation of Exchanges (limited to the Frankfurt and Dusseldorf Exchanges), Germany; Hong Kong; Milan, Italy; Tokyo, Japan; Amsterdam, Netherlands; Stockholm, Sweden; Basel, Geneva, and Zurich, Switzerland; and London, United Kingdom. It should be noted that certain of these foreign stock exchanges no longer appear to meet the standards specified in Daily Money Fund, and would not currently qualify under the proposed rule amendments because of lower turnover ratios. The same conditions as to the foreign exchange, the equity security and its issuer were included in an application granted subsequent to Daily Money Fund. Prudential-Bache Global Fund, Inc., Investment Company Act Rel. Nos. 16691 (Dec. 12, 1988) (53 FR 50614, Dec. 16, 1988) (notice of application) and 16647 (Jan. 10, 1989) (order).

[27] *See* orders cited in note 24, *supra*.

[28] *See supra* note 25.

[29] *See supra* note 26.

[30] The exchanges deemed to be qualified under the conditions of that order are those exchanges listed in note 26, *supra*, subject to the condition that they continue to meet the following minimum criteria: (1) The exchange has listed equity shares with a market value of at least 25 billion United States dollars, (2) the equity shares of at least 150 companies are listed on the exchange, (3) the exchange has had an average daily trading volume over the preceding six month period of at least 25 million United States dollars, and (4) the exchange has had, in the previous year, a minimum turnover ratio of at least 20% of its total market capitalization. As discussed, Daily Money Fund and Prudential-Bache Global Fund, *supra* note 26, which had these foreign exchange conditions, each set out fixed criteria to describe what constitutes a qualified foreign exchange. Accordingly, recipients of those orders may acquire foreign securities firm equity securities traded on a foreign stock exchange only so long as that exchange continues to meet the fixed criteria. The proposed amended rule would impose fixed conditions as to the foreign stock exchange on which the equity security is traded, and thus would function similarly. The Daily Money Fund order also is conditioned on the acquired securities themselves meeting the following standards: (1) Daily quotations for both bid and asked prices for the stock are continuously available to the general public, (2) the stock has been publicly traded for at least six months, (3) the issuer or a predecessor in interest has been in existence for at least three years, (4) the issuer has at least 10 million United States dollars of capital, surplus and undivided profits, (5) the issuer is required by exchange or governmental regulation to file publicly (i) reports of any important financial or structural corporate changes, (ii) semi-annual profit and loss statements, and (iii) annual reports of independently audited assets and liabilities, profits and losses, and changes in financial position, (6) the issuer must have a minimum market capitalization of 20 million United States dollars, and (7) the stock must have (i) an average daily trading volume of at least 500 shares and (ii) an average daily trading volume totaling at least 25,000 United States dollars.

[31] *See* Prudential-Bache Global Fund, Inc., *supra* note 26. *See also* The Thai Fund, Inc., Investment Company Act Rel. Nos. 16803 (Feb. 8, 1989) (54 FR 6962, Feb. 15, 1989) (notice of application) and 16851 (Mar. 8, 1989) (order), in which the applicant was permitted to acquire the equity securities of Thai securities firms that were listed on the Securities Exchange of Thailand, subject to the same conditions as to the equity security and its issuer that were set out in Daily Money Fund, *supra* note 26. In addition, the applicant represented that it would invest only in securities that met criteria concerning total market value, earning power and share distribution so as to be eligible for listing on one or more of the following: the New York Stock Exchange, the American Stock Exchange or NASDAQ as a National Market System security. The applicant did not, however, comply with Daily Money Fund's requirements as to the foreign stock exchange, because the Securities Exchange of Thailand is considerably smaller than the exchanges set out in Daily Money Fund. Nonetheless, the applicant offered alternate conditions, including (a) that it would not invest more than 2% of its assets, determined as of the time of purchase, in the securities of any one Thai securities firm, and (b) that it would maintain in one place all of the necessary documentation relating to its investment decisions regarding securities issued by the Thai securities firms and employ an independent third party to review periodically its compliance with the terms of the order.

[32] *See* Report of the Staff of the U.S. Securities and Exchange Commission to the Senate Comm. on Banking, Housing and Urban Affairs and the House Comm. on Energy and Commerce, Internationalization of the Securities Markets (July 27, 1987) (hereinafter "Internationalization Report") at II–2, VI–1. The Internationalization Report noted that since 1983, the number of domestic open-end investment companies that concentrated their portfolio investments in foreign securities had nearly tripled, and the total assets of those companies had grown from $3.5 billion to over $14 billion.

[33] *See* Internationalization Report, *supra* note 32, at II–78.

[34] *E.g.*, Germany Fund, *supra* note 25, in which the applicant represented that the German banks in which it proposed to invest represented 9.13% of the Frankfurter Alldemgemeine Zeitung Index (which is composed of a broadly representative list of major industrial, mining, financial and utility stocks).

[35] *E.g.*, Rel. No. 33–6838, International Series Rel. No. 103 (July 11, 1989) (54 FR 30083, July 18, 1989) (revised proposed regulation and request for comment regarding offshore offers and sales); Rel. No. 33–6839 (July 11, 1989) (54 FR 30076, July 18, 1989) (proposed rule and rule amendments regarding resale of restricted securities); Rel. No. 33–6841 (July 24, 1989) (54 FR 32228, August 4, 1989) (proposed multijurisdictional disclosure system).

[36] For example, the South Korean Ministry of Finance recently announced its plan to allow some direct trading by foreigners on its stock market by 1991. The ceiling on foreign investment in local securities firms also may be raised. *See* Korea Sets Timetable for Financial Markets Reform, Financial Times, Nov. 14, 1988, at 27.

intended by the policy and provisions of the Act because the conditions of the proposed amendments provide standards comparable to those provided by current rule 12d3–1.

The Commission believes now, as it did when it adopted rule 12d3–1, that the quality standards applicable to the equity securities of foreign securities firms should be comparable to those applicable to the equity securities of domestic issuers.[37] Accordingly, the Commission proposes amendments to rule 12d3–1 that would allow acquiring companies to purchase the equity securities [38] of foreign securities firms,[39] provided such securities meet certain conditions as to liquidity and other factors. The proposed amendments are designed to permit the acquisition of the equity securities of foreign securities firms that do not meet the definition of margin security. Thus, acquisitions of foreign securities firm equity securities that do meet the definition of margin security would be unaffected by the proposal.

Consistent with the existing rule, the various determinations required of investment companies concerning whether a foreign securities firm equity security meets the proposed amended rule's standards for acquisition need only be made at the time of acquisition. An acquiring company therefore need not divest itself of a security of a foreign securities firm if, subsequent to its acquisition, any particular condition is no longer met.

In keeping with the objectives of the rule, the proposed standards relating to the equity securities of foreign securities firms are comparable (and in certain instances identical) to the requirements for inclusion of securities on the list of OTC margin stocks.[40] Like the margin stock requirements, the requirements of the proposed amendments focus on the characteristics of the market in which the security is traded and on the characteristics of the security itself. Adequate disclosure to investors is another objective promoted by the proposed amendments.

Two of the requirements for inclusion on the list of OTC margin stocks relate to the market for the security.[41] One requirement is that daily quotations for both bid and asked prices for the stock be continuously available to the general public. This requirement relates to liquidity,[42] and is included without modification in the proposed amendments. The other OTC margin requirement is that four or more dealers stand willing to make, and do in fact make, a market in the stock and regularly submit bona fide bids and offers to an automated quotations systems for their own accounts. Because this requirement is appropriate to an over-the-counter stock market, but not to a stock exchange, the proposed amendments require instead that the security to be acquired be listed on a foreign stock exchange that meets specified standards.

Under the proposed amendments, an acquiring company could acquire an equity security of a foreign securities firm only if that security were listed on at least one foreign stock exchange meeting the following characteristics ("qualified foreign exchange"): (a) Trading on the exchange occurs at least four days per seven-day week (except when the exchange is closed for national holidays),[43] (b) neither exchange rules nor foreign governmental regulations restrict the ability of an acquiring company to trade its holdings on the exchange (unless such restrictions apply equally to all persons),[44] (c) the exchange has had an annual trading volume in stocks over the preceding year totalling at least 7.5 billion United States dollars,[45] and (d) the exchange has had, in the preceding year, a turnover ratio of at least 20% of its total market capitalization.[46] As discussed in notes 45 and 46, the criteria regarding turnover ratio and trading volume are derived from figures representative of national securities exchanges in the United States.[47] The Commission seeks comment on alternative formulations of the trading volume and turnover ratio criteria.[48]

The remaining margin stock requirements focus on the security and its issuer. The proposed rule would incorporate several of these criteria, with modifications. The proposed rule would require that (1) the equity security of the foreign securities firm have been publicly traded for at least six months prior to being acquired, (2) the average daily trading volume of such equity security over the six months preceding the acquisition be at least 500 shares,[49] (3) there be 400,000 or more shares of such stock outstanding, not counting shares held beneficially by officers, directors, or beneficial owners of more than ten percent of the equity security,[50] (4) the foreign securities firm have capital, surplus and undivided profits (or their equivalent) collectively totalling at least 4 million United States dollars,[51] and (5) the foreign securities firm have been in existence for at least three years prior to the acquisition.

The margin stock requirements also provide that the minimum average bid price of the stock shall be at least $5 per share, a characteristic that demonstrates some level of character and permanence on the part of the issuer.[52] However, some foreign securities firms possessing character and permanence comparable to that of United States companies meeting the $5 per share standard may have shares that trade well below the equivalent of $5 per share.[53] Accordingly, the Commission proposes an alternative standard.[54] The margin stock requirements contemplate an average daily trading volume for the stock of at least 500 shares and a minimum average bid price of at least $5 per share, which amounts to an average daily trading volume valued at a minimum of $2,500. The proposed amendments would require the trading volume in the foreign equity security measured in dollar terms to exceed a specified level. The figures disclosed in exemptive applications indicate that this level may be substantially higher than $2,500 and accordingly, the proposed amended rule would require an average daily trading volume equal in value to at least $25,000.[55]

The remaining margin stock requirement [56] is keyed primarily to security registration under section 12 of the Exchange Act, and thereby requires certain disclosures to the investing public. In keeping with the basic purpose of that margin stock requirement, a foreign securities firm would be required to have made public all information that it is required to make public in its home country and to have filed with any stock exchange on which its securities are traded the filings required by that exchange.[57] Specifically, the foreign securities firm would be required (A) to have made publicly available all information that it was required to make public since the beginning of its last fiscal year pursuant to the law of the country of its domicile or in which it is incorporated or organized, and (B) to have made all filings required since the beginning of its last fiscal year by any stock exchange on which its securities are traded.[58] The Commission believes that public availability of this information will protect acquiring companies and their shareholders. Comment is sought on the appropriateness of the disclosures contemplated by the proposed amended rule.

While proposed amended rule 12d3–1 imposes specific conditions as to an acquiring company's acquisition of the equity securities of foreign securities firms, the Commission anticipates that investment advisers will continue to consider the interests of the acquiring company and its shareholders in determining whether to acquire the equity securities of a foreign securities firm.

Cost/Benefit of Proposed Action

Although acquiring companies would incur some costs in making the determinations necessary to ensure that the conditions of the proposed amended

---

[37] *See* Release 14036, *supra* note 11 at 4B.

[38] As in current rule 12d3–1, the proposed amended rule would define "equity security" in accordance with rule 3a11–1 under the Exchange Act (17 CFR 240.3a11–1 (1988)). Rule 3a11–1 defines equity security to include, among other things, any security convertible into an equity security.

[39] The proposed amended rule would not separately define "foreign securities firm," since such entities would be embraced by existing definitions in the rule, which refer to "persons" engaged in "securities-related activities." Section 2(a)(28) of the Act (15 U.S.C. 80a–2(a)(28)) defines "person" as "a natural person or a company."

[40] Regulation T states that OTC margin stock shall meet the following requirements:

(1) Four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stock, as determined by the Board, is at least $5 per share;

(3) The stock is registered under section 12 of the Exchange Act, is issued by an insurance company subject to section 12(g)(2)(G) of the Exchange Act, is issued by a closed-end investment management company subject to registration pursuant to section 8 of the Act, is an American Depository Receipt (ADR) of a foreign issuer whose securities are registered under section 12 of the Exchange Act, or is a stock of an issuer required to file reports under section 15(d) of the Exchange Act;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The stock has been publicly traded for at least six months;

(6) The issuer has at least $4 million of capital, surplus, and undivided profits;

(7) There are 400,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors or beneficial owners of more than 10 percent of the stock;

(8) There are 1,200 or more holders of record, as defined in Rule 12g5–1 (17 CFR 240.12g5 1) of the stock who are not officers, directors or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock as determined by the Board is at least 500 shares; and

(9) The issuer or a predecessor in interest has been in existence for at least three years.

[41] 12 CFR 220.17 (a)(1) and (a)(4) (1988).

[42] Registered investment companies issuing redeemable securities are required under rule 22c–1 of the Act (17 CFR 270.22c–1 (1988)) to compute current net asset value no less frequently than once daily. The requirement of the proposed amended rule would therefore allow such an investment company to make this computation as to foreign securities firm stocks in its portfolio.

[43] This condition is designed to provide the acquiring company with ample opportunity to trade its holdings of the foreign securities firm's equity securities.

[44] This condition is designed to ensure that the acquiring company may trade without restriction in the foreign stock market. *Cf.* The Thai Fund, Inc. (pub. avail. Oct. 29, 1987), in which the applicant represented that because non-Thai nationals may purchase Thai securities under only very limited circumstances, it was necessary to create a Thai entity through which the fund could purchase Thai securities. Through this entity, the fund was able to trade freely. The Division's no-action position would not be affected by the proposal or adoption of amended rule 12d3–1. Moreover, the Commission may grant an exemptive order to an applicant that does not meet this proposed condition, provided comparable safeguards are present.

[45] Trading volume is indicative of the level of activity in the market. Qualified foreign exchanges should be comparable to United States national stock exchanges with respect to this criterion. The annual trading volume figure (7.5 billion United States dollars) approximates the market value of stocks sold on the Cincinnati Stock Exchange during 1988, as well as the trading volume figure of Daily Money Fund (*i.e.*, 25 million United States dollars daily, which equates to 7.5 billion United States dollars annually), *supra* note 28. *See* SEC Monthly Statistical Review, Vol. 48, No. 2. Measurement of share volume in United States dollars rather than in number of shares is consistent with the reporting practices of Federation Internationale des Bourses de Valeurs. Any trading volume figure adopted would be reviewed periodically by the Commission to assure that it continues to be sufficient or relevant as a standard.

Whenever a currency conversion to United States dollars would be required to determine compliance with a condition of the proposed amended rule, the exchange rate in existence at the time of acquisition must be used. *See* paragraph (d)(11) of the proposed amended rule.

[46] Turnover ratio for a stock exchange is obtained by dividing the annual share volume by the average number of shares listed during that year. It provides a general indication of the frequency with which shares listed on an exchange are traded. The turnover ratio appearing in the proposed rule amendments is the same as that in Daily Money Fund, *supra* note 28, and also approximates the turnover ratio for the American Stock Exchange for 1988 (*i.e.*, 28.8%).

[47] Under the ICI proposal to amend rule 12d3–1 (*see supra* note 4), the acquisition of the equity security of a foreign securities firm would be conditioned only on the security being listed on a "principal national securities exchange." The Commission believes, however, that it is preferable for the proposed amendments to contain specific requirements as to the foreign stock exchange on which the foreign securities firm equity security is traded. These requirements would provide a more objective standard as a basis for the amended rule's availability.

[48] There are other aspects of the foreign market (such as the time it takes to settle transactions) that may affect liquidity but are not incorporated into the proposed amended rule. Comment is sought on whether other factors should be made a part of the proposed amended rule, and what those factors are. The Commission also seeks comment on whether a turnover criterion for the equity security itself would be an appropriate substitute for the proposed exchange turnover criterion.

[49] This condition is taken from the margin stock requirement that there be either 1,200 or more holders of record who are not officers, directors or beneficial owners of 10 percent or more of the stock *or* the average daily trading volume of the stock as determined by the Board be at least 500 shares. In many foreign countries, it may be problematic to ascertain the number of shareholders because such information need not be made public. *See* Internationalization Report, *supra* note 32, at III–84 (noting that under European Economic Community Council Directive, "disclosure of shareholder interests below an established threshold need not be made, and this threshold may be set by member states at as high as 20 percent of the equity"). Accordingly, the proposed rule amendments would require an average daily trading volume of at least 500 shares, which the Commission believes should be ascertainable.

[50] The 400,000 share requirement also was taken from the margin stock requirements. Apart from the exclusion of holders of more than 10% of the equity securities, this requirement focuses on the number of shares outstanding, rather than the number of holders of the stock, and hence should be ascertainable in most instances. However, comment is sought specifically on the feasibility of this criterion.

[51] This condition is a modification of a margin stock requirement, changed to reflect the fact that the terms capital, surplus and undivided profits may be defined differently in foreign countries than in the United States. *See* Internationalization Report, *supra* note 32, at IV–8, IV–13. Accordingly, a registered investment company may acquire securities of a foreign securities firm under the proposed rule if it determines that the firm has assets equivalent to $4 million of capital, surplus and undivided profits as those terms are defined under generally accepted accounting principles.

[52] The character and permanence of the issuer are factors considered by the Board in determining whether to classify the issuer's stock as "OTC margin stock." *See supra* note 18.

[53] *See* Daily Money Fund, *supra* note 28. *See also* application of Merrill Lynch Pacific Fund, Inc. (File No. 812 6314), Investment Company Act Rel. Nos. 15039 (Apr. 4, 1988) (51 FR 12413, Apr. 10, 1986) (notice of application) and 15077 (Apr. 30, 1986) (order), in which the applicant represented that the market prices per share of each of the twelve major Japanese securities firms were well below the yen equivalent of $5 per share.

[54] The Commission acknowledges that some United States issuers that may possess a significant degree of character and permanence would be excluded from the margin security definition if their shares traded below $5 per share. A number of the applicants for exemption from the margin security requirement of rule 12d3–1 indicated that it would be appropriate not to hold foreign securities firms to the $5 per share standard. Accordingly, the proposed amended rule posits an alternative standard.

[55] This figure was proposed by the applicants in Daily Money Fund, *supra* note 28, and incorporated into the order. *See also* Prudential-Bache Global Fund, Inc., *supra* note 28, (in which the same condition was proposed by the applicant and incorporated into the order). Comment is sought specifically on the suitability of this criterion.

[56] The stock must be registered under section 12 of the Exchange Act, issued by an insurance company subject to section 12(g)(2)(G) of the Exchange Act, issued by a closedend investment management company subject to registration pursuant to section 8 of the Act (15 U.S.C. 80a–8), an American Depository Receipt (ADR) of a foreign issuer whose securities are registered under section 12 of the Exchange Act, or the stock of an issuer required to file reports under section 15(d) of the Exchange Act (15 U.S.C. 78o(d)). 12 CFR 220.17(a)(3) (1988).

[57] Of course, the disclosures required under the proposed amended rule would not be a substitute for the disclosures that could be required under other United States securities laws, such as section 5 of the Securities Act (15 U.S.C. 77c).

[58] *Cf.* rule 12g3–2(b) of the Exchange Act (17 C.F.R. 240.12g3–2(b)) (which exempts securities of any foreign private issuer from section 12(g) of the Exchange Act, conditioned on the furnishing of such information and other data to the Commission).

Continued

rule are complied with, the proposed amendments to rule 12d3–1 would not impose any significant additional burdens on investment companies. On the contrary, investment companies to which the rule would apply would generally file fewer applications for exemption. The proposed amendments also would provide investment companies and companies controlled by them with a greater range of foreign securities in which to invest. The Commission would benefit from the proposed amendments because its staff would review fewer applications for exemption in this area. Comments are requested on these matters, however, and on the costs or benefits of any other aspect of the proposed amendments.

Summary of Initial Regulatory Flexibility Act Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding proposed amended rule 12d3–1. Although the proposed amended rule as presently drafted would have a significant impact on a substantial number of small entities, the other significant alternatives considered by the Commission would not have achieved the rule's objectives, and thus were not proposed. The proposed amended rule promotes the objectives discussed in the proposing release in a way that minimizes the impact on small entities. The Analysis explains that proposed amended rule 12d3–1, which would be adopted under the authority granted to the Commission in sections 6(c) and 38(a) of the Act, would facilitate the acquisition of the equity securities of foreign securities firms by small entities and other acquiring companies. It states that the proposed amended rule is intended to protect investors from the abuses that led to the enactment of section 12(d)(3) of the Act, and to reduce the number of applications filed with the Commission regarding the acquisition of the equity securities of foreign securities firms. Any company with net assets of $50 million or less would be a small entity subject to the proposed amendments to rule 12d3–1. It is estimated that out of 3,479 active investment companies registered with the Commission as of March 31, 1989, 1,925 of such companies would be considered small entities. The Analysis indicates that the proposed amended rule contains no reporting or recordkeeping requirements and does not overlap, duplicate or conflict with other federal laws. To the extent that the proposed amended rule would eliminate the need for acquiring companies to file applications seeking orders under section 12(d)(3), it would reduce costs incurred by small entities and other acquiring companies in preparing and filing applications.

The Analysis discusses the following significant alternatives to the proposed, amended rule that were considered by the Commission: (a) That acquisitions of foreign securities firm equity securities be conditioned only on a finding by the company's board of directors that such securities are as liquid as securities meeting the margin security definition, (b) that such acquisitions be conditioned only on the security being listed on a principal national securities exchange, (c) that the share turnover and share volume criteria be omitted from the proposed amended rule, and (d) that a disclosure regime different from that being proposed be applied to the foreign securities firms subject to the rule.

The first alternative is a performance standard that would simplify the compliance requirements of the proposed amended rule for small acquiring companies, in that fewer criteria would have to be considered prior to an acquisition. This reduced compliance burden, which also would be promoted by the second alternative, might have been particularly beneficial to small investment companies with limited research staffs. The Commission rejected these approaches, however, because the specific standards of the proposed amended rule should provide better guidance to small entities and other acquiring companies. Moreover, those approaches would not have fulfilled the objectives of section 12(d)(3) and the rule.

The Commission also declined to omit conditions as to share turnover and share volume. Although that approach also would have simplified the compliance requirements for small acquiring companies, those conditions of the proposed amended rule promote liquidity, which is integral to rule 12d3–1. The Commission also believes that the disclosure contemplated by the proposed amended rule is consistent with the policies underlying the margin security concept. Any other disclosure requirement, although it would result in a different compliance requirement for small entities, would not promote those policies. Finally, because it is equally important that small acquiring companies be protected by the conditions of the proposed amended rule, the Commission opted not to exempt such small entities from the coverage of the rule. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting C. Christopher Sprague, Esq., Mail Stop 5–2, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Amended Proposed Rule

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is proposed to be amended as shown.

1. The authority citation for part 270 continues to read in part as follows:

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a–37, 80a–39; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a–1 et seq.; unless otherwise noted. * * * Section 270.12d3–1 is also issued under Sec. 6(c) (15 U.S.C. 80a–6(c)).

2. By revising § 270.12d3–1 to read as follows:

§ 270.12d3–1 Exemption of Acquisitions of Securities Issued by Persons Engaged in Securities-Related Businesses.

(a) For purposes of section 12(d)(3) of the Act, the acquisition by a registered investment company, or any company or companies controlled by such registered investment company ("acquiring company") of any security issued by any person that, in its most recent fiscal year, derived 15 percent or less of its gross revenues from securities-related activities shall not be deemed an acquisition of securities issued by a securities-related business unless the acquiring company would control such person after the acquisition.

(b) The acquisition by an acquiring company of any security issued by any person that, in its most recent fiscal year, derived more than 15 percent of its gross revenues from securities-related activities ("issuer") shall be exempt from the provisions of section 12(d)(3) of the Act, Provided, that:

(1) Immediately after the acquisition of any equity security of the issuer, the acquiring company owns not more than 5 percent of the outstanding securities of that class of the issuer's equity securities;

(2) Immediately after the acquisition of any debt security, the acquiring company owns not more than 10 percent of the outstanding principal amount of the issuer's debt securities;

(3) Immediately after any such acquisition, the acquiring company has invested not more than 5 percent of the value of its total assets in securities of the issuer;

(4) At the time of acquisition, any debt security of the issuer acquired by the acquiring company is investment grade as determined by the board of directors of the acquiring company; and

(5) At the time of acquisition, any equity security of the issuer acquired by the acquiring company is a "margin security" as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System (12 CFR 220.2(o)) or

(i) Has been listed on a qualified foreign exchange for at least six months prior to the acquisition,

(ii) Has had an average daily trading volume in the six months preceding the acquisition of at least 500 shares equal in value to at least 25,000 United States dollars,

(iii) Is part of a class of equity securities consisting of at least 400,000 shares issued and outstanding, not counting shares held beneficially by officers, directors, or beneficial owners of more than ten percent of the stock,

(iv) The issuer of which (A) has, at the time of acquisition, capital, surplus and undivided profits (as those terms are defined under generally accepted accounting principles) collectively totalling at least 4 million United States dollars or the substantial equivalent of such items, (B) has been in existence for at least three years prior to the acquisition, and (C) has made publicly available all information that it was required to make public since the beginning of its last fiscal year pursuant to the law of the country of its domicile or in which it is incorporated or organized, and has made all filings required since the beginning of its last fiscal year by any stock exchange on which its securities are traded, and

(v) Is quoted daily as to both bid and asked prices and such prices are continuously available to the general public.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, no registered investment company shall acquire (1) a general partnership interest in a securities-related business, or (2) any security issued by its investment adviser, promoter, or principal underwriter or any affiliated person of such investment adviser, promoter, or principal underwriter that is a securities-related business, unless otherwise permitted under sections 12(d)(3) (A) and (B).

(d) For purposes of this rule,

(1) *Securities-related activities* are a person's activities as a broker, as a dealer, from the business of underwriting, as an investment adviser registered under the Investment Advisers Act of 1940, as amended, or as an investment adviser to an investment company;

(2) An issuer's gross revenues from its own securities-related activities and from its ratable share of the securities-related activities of enterprises of which it owns 20 percent or more of the voting or equity interest should be considered in determining the degree to which an issuer is engaged in securities-related activities. Such information may be obtained from the issuer's annual report to shareholders, the issuer's periodic reports or registration statement filed with the Commission, or the issuer's chief financial officer;

(3) A *securities-related business* is a person who directly or indirectly is a broker, a dealer, engaged in the business of underwriting, an investment adviser registered under the Investment Advisers Act of 1940, as amended, or an investment adviser to an investment company;

(4) *Equity security* shall be as defined in Rule 3a–11 under the Securities Exchange Act (17 CFR 240.3a11–1);

(5) *Debt securities* shall include all securities of an issuer other than equity securities;

(6) *Qualified Foreign Exchange* is a stock exchange located in a country other than the United States that meets the following requirements:

(i) Trading on the exchange occurs at least four days per seven-day week (except when the exchange is closed for national holidays);

(ii) Neither the rules of the exchange nor laws or regulations of the country in which the exchange is located restrict the ability of an acquiring company to trade its holdings on the exchange (unless such restrictions apply equally to all persons);

(iii) The exchange has had an annual trading volume in stocks in the preceding year equal in value to at least 7.5 billion United States dollars; and

(iv) The exchange has had, in the preceding year, a turnover ratio of at least 20% of its total market capitalization;

(7) Determination of the percentage of an acquiring company's ownership of any class of outstanding equity securities of an issuer shall be made in accordance with the procedures described in rule 16a–2 under the Securities Exchange Act (17 CFR 240.16a–2);

(8) Where an acquiring company is considering acquiring or has acquired options, warrants, rights or convertible securities of a securities-related business, the determination required by paragraph (b) of this section shall be made as though such options, warrants, rights or conversion privileges had been exercised;

(9) The following transactions will not be deemed to be an acquisition of securities of a securities-related business:

(i) Receipt of stock dividends on securities acquired in compliance with this rule;

(ii) Receipt of securities arising from a stock-for-stock split on securities acquired in compliance with this rule;

(iii) Exercise of options, warrants, or rights acquired in compliance with this rule;

(iv) Conversion of convertible securities acquired in compliance with this rule; and

(v) Acquisition of puts, as defined in rule 2a–7(c)(3) under the Act (17 CFR 270.2a7(c)(3)), provided that, immediately after the acquisition of any put, the company will not, with respect to 75 percent of the total value of its assets, have invested more than five percent of the total value of its assets in securities underlying puts from the same institution. An unconditional put shall not be considered a put from that institution, provided that, the value of all securities issued or guaranteed by the same institution and held by the investment company does not exceed ten percent of the total value of the company's assets. For the purposes of this section, a put will be considered to be from the party to whom the company will look for payment of the exercise price and an unconditional put, as defined in rule 2a–7(c)(6) under the Act (17 CFR 270.2a–7(c)(6)), will be considered to be a guarantee of the underlying security or securities the exercise price;

(10) Any class or series of an investment company that issues two or more classes or series of preferred or special stock, each of which is preferred over all other classes or series with respect to assets specifically allocated to that class or series, shall be treated as if it is a registered investment company; and

(11) Whenever a currency conversion to United States dollars is required to determine compliance with a condition of this rule, the exchange rate in existence at the time of acquisition shall be used.

(e) No provision of this rule supersedes the requirements prescribed in Investment Company Act Release No. 13005,[1] dated February 2, 1983 (48 FR

[1] Available from Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549.

5894; February 9, 1983), with respect to repurchase agreements with brokers or dealers.

Date: August 3, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-18732 Filed 8-10-89; 8:45 am]

BILLING CODE 8010-01-M

SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Part 803

Regulations and Procedures for Review of Projects

AGENCY: Susquehanna River Basin Commission (SRBC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Susquehanna River Basin Commission proposed to amend its project review regulations in order to clarify language, eliminate redundant sections, and eliminate or modify requirements that are updated or difficult to implement.

DATES: Comments from interested parties should be submitted on or before September 25, 1989.

ADDRESSES: Send comments on the proposed amendments to: Robert J. Bielo, Executive Director, Susquehanna River Basin Commission, 1721 N. Front St., Harrisburg, PA 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, Secretary to the Commission, SRBC, 1721 N. Front St., Harrisburg, PA 17102-2391, Telephone: (717) 238-0423.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful.

The Proposal

The Commission wishes to amend its Regulations & Procedures for Review of Projects under which the Commission carries out its project review responsibilities pursuant to the Susquehanna River Basin Compact, Pub. L. 91-575. The purpose of the amendments are twofold: (1) To clarify the language of some sections in order to improve their administration and avoid confusion on the part of project sponsors; and (2) update other sections of the regulations to correct deficiencies and meet new conditions. A section by section analysis of the proposed amendments follows:

Section 803.4

The title of this section is being revised to indicate that both review and approval are required for the type of projects listed. Also, revisions have been included to clarify the procedure employed by the Commission in acting on a project application, i.e. approve, disapprove or approve with conditions. Finally, a phrase has been added noting that ground-water withdrawals, as described in § 803.62, must be approved by the Commission. This phrase had inadvertently been omitted from § 803.4 when § 803.62 was promulgated in 1978.

Section 803.22

The Commission has found that, because the signatory parties do not, in most cases, have regulations comparable to the Commission's consumptive use and ground-water withdrawal regulations, it is better to have the applications for consumptive use and ground-water withdrawal submitted directly to the Commission instead of through a signatory party. The revisions to § 803.22 provide for such direct submissions.

Section 803.23

This Section contains language similar to § 803.22 and it therefore had to be adjusted accordingly. Also, because all ground-water withdrawal requirements are being set forth in § 803.62, all references to ground-water withdrawal applications and the contents thereof are being stricken from § 803.23.

Section 803.61

Amendments to this Section regulating consumptive uses of water are a combination of clarification and update.

The definition of consumptive use at paragraph (a)(1) is being recast to make it clear that consumptive uses only includes that water not returned to either the ground water or surface water of the basin.

The previous definition suggested that water not returned directly to the source from which it originated constituted a consumptive use. Also, a definition of "compensation" is added at new paragraph (a)(3) to indicate that this is water provided from surface storage or ground water as make-up for a project's consumptive use.

In paragraph (b)(1), the "regulation of flows and supplies of surface and ground waters" is added as a purpose of the regulation and, in paragraph (b)(2), the exemtion clause is amended to indicate that consumptive uses not exceeding "a thirty day average" of 20,000 gpd are exempt. The previous wording of the regulation did not specify an average consumptive use, thereby contributing to some confusion over the application of the regulation to short-term consumptive uses exceeding 20,000 gpd.

Changes to paragraph (c)(1)(ii) recognizes that virtually all ground-water sources of water are connected to streamflow and that therefore the regulation should apply to any consumptive use of ground water exceeding the exempted amount. This removes the nebulous concept of "hydraulic connection" from the regulation and clearly notifies ground-water users that they will be treated the same as surface water users for purposes of consumptive use regulation.

Clarifying language is also added to program (c)(1)(iii) with respect to the place where make-up water should be released and the flow that should be maintained on the affected stream.

In order to provide more flexibility to applicants in meeting the requirements of the regulations, the list of methods for providing compensation in a new paragraph (c)(1)(iv) is expanded to include: (1) The use of water from a public water supplier where Q7-10 flows are maintained by a minumum flow-by or conservation releases; (2) ground-water pumpage; and (3) purchase and release of waters stored in other subbasins.

In a similar vein the list of alternatives to compensation set forth in paragraph (c)(2) will be expanded to include payment of a monetary charge to the Commission. Under paragraph (c)(3), the Commission retains the authority to determine an acceptable method of compensation or an alternative to compensation.

A portion of paragraph (d) is changed to indicate that the Commission will assume the responsibility for determining when compensation is required and notify the project sponsor. This is in keeping with present Commission practice whereby streamflows in the basin are constantly monitored by staff.

Finally, in a new paragraph (g), the Commission proposes to place the burden of compliance upon the actual consumptive user rather than upon the public water supplier who simply provides the water and experiences incidental losses in the distribution system. As stated above, consumptive users on such a public water supply system may still satisfy the requirement for compensation if the supplier maintains a Q7-10 or higher flow on the affected stream through a conservation release on minimum flow-by.

Section 803.62

The introductory paragraphs have been modified to provide a specific description of criteria under which ground-water withdrawal projects will be reviewed. The amount of withdrawal triggering the application is not stated in terms of a thirty-day average for the same reasons noted above. Also, language has been added to require reporting and periodic review of projects having a previously grandfathered withdrawal that have increased their withdrawal amount without adding a new source. Finally, project sponsors are specifically directed to complete and file ground-water withdrawal applications with the Commission.

Paragraph (a) is changed to reflect a reduction in the length of the required pumping test from 72 hours to 48 hours which will be more consistent with the requirements of the member states. A withdrawal application form is specified (Form SRBC #24) and changes in the wording are made to allow for some flexibility in the withdrawal application contents. Although much of the application will be the same for all projects, some parts can not be modified to fit the individual project.

Paragraph (b) is modified to clarify the existing metering requirement for gound-water withdrawals. Exemptions to the metering requirement are listed.

Paragraph (c) specifies the monitoring and periodic reporting requirements for ground-water withdrawals subject to the regulation. This revised paragraph consolidates and simplifies existing paragraphs (d) and (e) on monitoring and water quality and ties the reporting requirements more closely to the data requested in Form SRBC #30 which is available from the Commission. The long list of specific water quality parameters in the existing regulations are stricken so as to allow for more flexibility.

Paragraph (d), as in paragraph (f) of the existing regulations, allows the Commission to modify the requirements of paragraphs (a), (b) or (c) if the essential purposes of the ground-water regulation continue to be served. This also builds flexibility into the regulation.

Paragraph (e), (f) and (g) are additions and reflect the need for periodic review of approved withdrawals, for planning in areas of rapid growth, and for protection of existing wells from excessive interference from new withdrawals.

Existing paragraphs (g) and (h) of this section are being removed because "Conservation" and "System Losses" are now addressed in § 803.63 of the Regulations.

Section 803.62

List of Subjects in 18 CFR Part 803

Administrative practice and procedure, Water resources.

The Proposed Amendment

Accordingly, pursuant to the authority granted under the Susquehanna River Basin Compact, Pub. L. 91-575; 84 Stat. 1509 et seq., the Susquehanna River Basin Commission proposes to amend Part 803 of its regulations and procedures for review of projects (18 CFR Part 803) as follows:

PART 803—REVIEW OF PROJECTS

1. The authority citation for Part 803 continues to read as follows:

Authority: Sec. 3.4(9), 3.10, and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq.

2. Section 803.4 is amended by revising the section heading, the introductory text of paragraph (a) and paragraph (a)(2) to read as follows:

§ 803.4 Projects requiring review and approval.

(a) As determined from applications or otherwise, the Commission shall review and either approve, approve with conditions, or disapprove the following proposed projects within the Susquehanna River Basin.

* * * * *

(2) Any project involving either the consumptive use of water (as described in § 803.61), a ground-water withdrawal (as described in § 803.62), or the transfer of water into or from the basin.

* * * * *

3. Subpart B, § 803.22 is amended by revising the introductory text of paragraphs (a) and (b) to read as follows:

§ 803.22 Submission of application.

(a) Except as stated in paragraph (b) of this section, projects requiring a permit or other form of regulatory approval from a State or Federal agency having authority regarding water resources use, development, control and conservation.

* * * * *

(b) Projects not subject to the jurisdiction of the above agencies and projects involving a consumptive use of water as regulated under § 803.61 or a ground-water withdrawal as regulated under § 803.62.

* * * * *

4. Subpart B, § 803.23 is amended by revising the introductory text of paragraphs (a) and (b), paragraph (b)(1) and by removing and reserving paragraph (c)(2)(vii)(b) to read as follows:

§ 803.23 Contents of application.

(a) Except as stated in paragraph (b) of this section, projects requiring a permit or other form of regulatory approval from a State or Federal agency having regulatory authority regarding water resources use, development, control and conservation.

* * * * *

(b) Projects not subject to the jurisdiction of the above agencies and projects involving a consumptive use of water as regulated under § 803.61 or a ground-water withdrawal as regulated under § 803.62.

(1) With the exception of applications for ground-water withdrawals under § 803.62 hereof, the sponsor's application shall address the aspects pertinent to the project listed in paragraph (c) of this section. The requirements for ground-water withdrawal applications are described in § 803.62.

* * * * *

5. Subpart D, § 803.61 is amended by revising paragraphs (a)(1), (b)(1), (b)(2), (c)(1) (ii) and (iii), (c)(2), (c)(3), the fourth sentence of (d) and by adding new paragraph (a)(3), (c)(1)(iv) and (g) to read as follows:

§ 803.61 Consumptive uses of water.

(a) * * *

(1) *Consumptive Use.* Water withdrawn from ground water of surface water, via a man-made conveyance system, and not returned to the ground water of surface water of the basin thereby making it unavailable for other water uses or purposes.

* * * * *

(3) *Compensation.* Water provided from surface storage or ground-water as make-up for a project's consumptive use.

(b) * * *

(1) Compensation shall be required for consumptive uses of water during periods of low flow. Compensation is required during periods of low flow for the purposes of protection of public health; stream quality control; economic development; protection of fisheries; recreation; dilution and abatement of pollution; the regulation of flows and supplies of surface and ground waters; the prevention of undue salinity; protection of the Chesapeake Bay; and other purposes as determined by the Commission.

(2) Consumptive uses by a project not exceeding a thirty-day average of 20,000 gpd from surface or ground waters are exempt from the requirement unless

such uses adversely affect the purposes outlined in paragraph [b](1) of this section.

(c) * * *

(1) * * *

(ii) Ground-water source. Compensation for the project's consumptive use of ground water shall be required when the stream flow is less than the applicable low flow criterion. For the purposes of implementing this regulation, the Commission will identify the appropriate stream gaging station for determining the applicable low flow.

(iii) The required amount of compensation shall be provided by the applicant or project sponsor at the point of taking (for a surface source) or another appropriate site as approved by the Commission to satisfy the purposes outlined in Paragraph (b)(1) of this section. If compensation for consumptive use from a surface source is be provided upstream from the point of taking, such compensation shall assure no diminution of the flow immediately downstream from the point of taking which would otherwise exist naturally, plus any other dedicated augmentation.

(iv) Compensation may be provided by one, or a combination of the following:

(*a*) Construction or acquisition of storage facilities.

(*b*) Purchase of available water supply storage in existing public or private storage facilities, or in public or private facilities scheduled for completion prior to completion of the applicant's project.

(*c*) Purchase of water to be released as required from a water purveyor.

(*d*) Releases from an existing facility owned and operated by the applicant.

(*e*) Use of water from a public water supplier utilizing raw water storage that maintains a conservation release or flow-by, as applicable, of Q7–10 or greater at the public water supplier's point of taking.

(*f*) Ground water.

(*g*) Purchase and release of waters stored in other subbasins or watersheds.

(*h*) Other Alternatives.

(2) Alternatives to compensation may be appropriate such as discontinuance of that part of the project's operation that consumes water, imposition of conservation measures, or utilization of an alternative source that is unaffected by the compensation requirement, or a monetary payment to the Commission in an amount to be determined by the Commission from time-to-time.

(3) The Commission shall, in its sole discretion, determine the acceptable manner of compensation or alternatives to compensation, as applicable, for consumptive uses by a project. Such a determination will be made after considering the project location, anticipated amount of consumptive use and its effect on the purposes set forth in paragraph (b)(1) of this section, and any other pertinent factors.

(d) * * * When the project is operational, the Commission shall be responsible for determining when compensation is required and shall notify the project sponsor accordingly.

* * *

* * * * *

(g) Public water suppliers, except to the extent that they are diverting the waters of the basin, shall be exempt from the requirements of this section; provided, however, that nothing herein shall be construed to exempt individual consumptive users connected to any such public water supply system from the requirements of the section.

6. Subpart D, § 803.62 is amended by revising the introductory text and paragraphs (a), (b), (c), (d), (e), (f), and (g) and by removing and reserving paragraph (h), to read as follows:

§ 803.62 Ground-water withdrawals.

Any project sponsor proposing to withdraw groundwater form a single well or a well field in excess of a thirty-day average of 100,000 gpd or proposing to increase an existing withdrawal to more than a thirty-day average of 100,000 gpd shall obtain Commission approval of the withdrawal. These withdrawals may be limited by the Commission to the amount (quantity and rate) of ground water that can be withdrawn from an aquifer or aquifer system without causing long-term progressive lowering of groundwater levels, rendering competing supplies unreliable, causing water quality degradation that may be injurious to any existing or potential ground or surface water use, causing permanent loss of aquifer storage capacity, or having substantial impact on low flow of perennial streams. Projects withdrawing more than a 30-day average of 100,000 gallons per day prior to the effective date of this Section are exempt from the above approval requirements, provided that the current withdrawal rate does not exceed the amount withdrawn before the said effective date. Any such exempted project that increases its 30-day average withdrawal to a level above that which it was withdrawing prior to the said effective date shall be subject to the monitoring and reporting requirements described in paragraph (c) of this section and the 5-year review described in paragraph (e) of this section. Any sponsor of a project subject to Commission review and approval shall complete a ground-water withdrawal application. Also, after obtaining approval for the withdrawal, the sponsor shall comply with metering, monitoring, and conservation requirements as follows:

(a) Withdrawal Application (Form SRBC #24). Information required by the Commission is specified in the ground-water withdrawal application and includes but is not limited to the following:

(1) Drillers' and/or geologists' report.

(2) Location map(s) showing all project wells and other pertinent information.

(3) Results of a minimum, 48-hour constant rate pumping test. Note: Review and approval of the test procedures to be used by the applicant are necessary before the test is started.

(4) A chemical analysis of ground water from the proposed source.

(b) Metering. Ground-water users shall meter all approved ground-water sources. The meters shall be accurate to within five percent of the actual flow. Withdrawals for all commercial farm irrigation, sand and gravel operations, and temporary dewatering operations shall be exempt from the requirement for metering. They shall, however, record pump capacity and elapsed hours of operation. This information shall be reported as monthly totals annually or more frequentty if required by the permitting agency.

(c) Monitoring and Reporting. Periodic monitoring and reporting of water levels, well production, and ground-water quality are required of all aproved ground-water withdrawals. The required information is listed in Form SRBC #30 (Ground-Water Withdrawal Reporting Form) and includes but is not limited to the following:

(1) Ground-water levels shall be measured weekly in all approved production wells and reported to the Commission annually. Additional water levels may be required in one or more observation wells as determined by the Commission.

(2) Production from approved ground-water sources shall be recorded weekly and reported to the Commission annually.

(3) Samples of ground-water for water quality analysis shall be obtained and the results reported to the Commission every three years. The required chemical constituents to be included in the analysis are listed in Form SRBC #30.

Note: The information may be provided to the Commission either on Form SRBC #30 or other similar document containing all of the required information.

(d) The Commission may, in its discretion, modify the requirements of paragraphs (a), (b), or (c) of this section if the essential purposes of the groundwater program continue to be served.

(e) Approvals by the Commission for ground-water withdrawals shall be subject to review at intervals of 5 years, after whcih the Commission may, at its discretion, choose to modify the approval based on information obtained from monitoring or other sources.

(f) Planning. If projections indicate that a project's ground-water supply will be constrained in the future by either the quantity or quality of available ground water, the Commission may, in its discretion, require the submission of a water resource-development plan prior to accepting any new withdrawal applications for the same or related projects.

(g) Interference with Existing Wells. If review of the application or other substantial data demonstrates that operation of a proposed ground-water withdrawal will significantly affect or interfere with an existing well or wells, the project sponsor may be required to provide, at its expense, an alternate water supply or other mitigating measures.

Dated: August 3, 1989.

Respectfully submitted.

Robert J. Bielo,

Executive Director.

[FR Doc. 89-18815 Filed 8-10-89; 8:45 am]

BILLING CODE 7040-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 200 and 205

[Docket No. R-89-1448; FR-2677]

Mortgage Insurance for Land Development; Title X of the National Housing Act; Proposed Termination of Program

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule seeks to terminate the mortgage insurance program authorized under Title X of the National Housing Act (12 U.S.C. 1749aa–1749*11*). Under Title X, HUD insures mortgages to finance the purchase and development of land, including building sites, water and sewer systems, streets and lighting, and other installations needed for residential communities. Termination is based on the serious adverse financial condition of the program, the program's inability to achieve its statutory goals, the Secretary's judgment that restructuring the program would not be an effective way of correcting these deficiencies, and the fact that termination of the program would have virtually no effect on the availability of financing for land development across the Nation.

DATE: Comments must be received by October 10, 1989.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel; Rules Docket Clerk; Room 10276; Department of Housing and Urban Development; 451 Seventh Street, SW.; Washington, DC 20410. Communications submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 755–2575. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via the FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, but the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 755–7584). (This is not a toll-free number.)

FOR FURTHER INFORMATION CONTACT: Edwin W. Baker; Single Family Development Division; Office of Housing; Department of Housing and Urban Development; 451 Seventh Street, SW.; Washington, DC 20410. Telephone: (202) 755–6720. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title X of the National Housing Act (12 U.S.C. 1749aa–174911) was added by the Housing and Urban Development Act of 1965. Under this program, HUD is given discretionary authority to insure mortgages for land purchase and development in connection with new subdivisions and new communities. The improvements that may be installed by the developer and financed with the mortgage proceeds include: installations for water lines; water supply; sewage disposal; complete water or sewage systems; and roads, streets, curbs, gutters, sidewalks, and storm drains. Title X projects must be designed for primarily residential use, although a reasonable amount of related non-residential use is permitted. In connection with the program, HUD is directed to adopt requirements designed to encourage the maintenance of a diversified local home-building industry; broad participation by builders, particularly small builders; and the inclusion of a proper balance of housing for families of low and moderate income.

On June 29, 1989, Secretary Kemp announced HUD's suspension of the Title X program. He announced that HUD would discontinue the processing of Title X applications that had not received a legally binding commitment by June 29, 1989, and would return application fees. Projects with legally binding commitments issued before June 29, 1989 would be eligible for insurance, subject to a specific examination for evidence of fraud or misrepresentation. The Secretary further stated that HUD would publish a rule proposing to terminate the program. Today's Notice solicits public comment on this proposed termination.

The Secretary proposes to terminate the Title X program on the basis of the following factors: the serious adverse financial condition of the program, its inability to meet its statutory goals, the Secretary's judgment that restructuring the program would not be an effective way of correcting these deficiencies, and the fact that its termination would have virtually no effect on the availability of financing for land development across the Nation. The following discussion addresses each of these points.

1. Financial Condition of the Title X Program

Land development projects insured under the Title X program are among the riskiest of HUD-insured projects. The development of land is inherently more speculative than the development of structures. Moreover, due to the long development process under the Title X program (typically four to five years), HUD must make accurate projections far into the future about the economic conditions and market demand for the improvements that are planned ultimately to be erected on the property. The difficulty of making such projections is amply illustrated by the housing depression currently afflicting a number of areas and even entire regions, of the country—a condition that few foresaw in either its depth or breadth.

Title X has proved to be a financial disaster to the Department and to the American people. The program has experienced exceptionally high claim rates, and it has already inflicted massive losses on the Department's insurance fund, with substantial additional losses anticipated. The

program is actuarially unsound, a situation that is particularly troublesome since it involves a program that is intended to be self-supporting (see section 1008 of the National Housing Act).

An analysis of the operations of the program from 1977 to October 1988 reveals the following:

—Fifty-eight loans were insured under the program (approximately five per year). These mortgages generated $12.5 million in insurance premiums and fees for the fund and were insured for a total of $505,148,309 (approximately $8.7 million per loan).

—Claims have been paid on 25 of the 58 loans. This represents a claim rate of 43 percent. It should be noted, however, that 13 of the 58 loans are still in the construction phase, during which an insurance claim is far less likely to occur than late in the life of the loan. Based on historical trends, defaults are likely to be experienced by at least some of these projects. Thus, the 43 percent claim rate understates—and probably significantly so—the scope of the problem. Claim rates of the order incurred by the Title X program are astronomically high for any program, but especially for one such as Title X that is designed to be operated in an actuarially sound manner. As a point of comparison, the percent claim rate for the section 221(d) multifamily mortgage insurance program for the period 1974 through 1988 was 9.87 percent for HUD-processed loans and 17.31 percent for the Section 221(d) coinsurance program.

—HUD has experienced no significant reduction in Title X financial problems despite changes that were instituted between 1983 and 1985 to improve the program. These changes included: restricting the number of lots or units in a single phase project to the number of lots that can reasonably be sold within two years after final endorsement; limiting the number of acres in land banks to 50 percent of the total project acreage; and requiring a risk analysis test as one of the factors used to determine whether the lots can be sold quickly enough to generate funds required to retire the debt. From the issuance of the revised Title X handbook in October 1983 to October 1988, HUD insured 27 projects. The mortgages of eight of these post-1983 projects have been, or are in the process of being, assigned to the Department—a claim rate of 30 percent. Since 13 of these post-1983 projects are in the construction phase, this 30 percent claim rate, as noted above, understates the scope of the financial problem for these loans.

—By October 1988, 13 of the 25 Title X projects for which HUD has paid claims since 1977 have been sold, resulting in a total loss to the Federal government of more than $50 million and an average loss of almost $4 million per claim. Losses on the remaining 12 projects have not, as yet, been determined. However, assuming comparable losses upon the disposition of these projects, HUD anticipates a total loss on the 25 claims of approximately $90 million. The ultimate loss will exceed $90 million, since HUD has issued legally binding commitments for a number of projects that are still in the pipeline.

—The Government's future losses under the program can only be expected to increase if the program is allowed to continue, since the amounts sought to be insured under individual Title X applications are increasing. In March 1989, HUD insured one mortgage for $76 million, and applications being processed included two applications, each of which involved a mortgage in excess of $75 million.

Consequently, HUD believes that approved Title X projects, together with the propose projects in the pipeline, will continue to subject the FHA insurance fund to unacceptable financial losses. In moving to discontinue the Title X program, the Secretary has considered his obligation to ensure sound financial management of the General Insurance Fund and the fact that the Title X program was intended to be financially self-sufficient. The continuation of a program that involves such an unacceptably high insurance claim rate is inconsistent, in the Secretary's judgment, with his obligation to manage the Fund prudently. This is especially so, since, as noted below, Title X has not achieved its statutory goals.

2. Inability to Promote Statutory Purposes

Section 1005 of the Act states:

> The Secretary shall adopt such requirements as he deems necessary in land development covered by mortgages insured under Title X to encourage * * * and the inclusion of a proper balance of housing for families of moderate or low income.

Various HUD directives acknowledge the statutory goal of encouraging the inclusion of a proper balance of low- and moderate-income housing (see *e.g.*, paragraph 2-4, HUD Handbook 4800.1 Rev-1, dated October 1983). However, HUD has been unable, through its handbooks and regulations, to achieve this desired program goal.

The HUD Inspector General draft audit report dated March 31, 1987 reviewed 17 Title X projects in three HUD regions that produced 11,300 housing units. These projects collectively were insured for a total of $212 million. The review revealed that only a single project may have provided housing for moderate-income persons, and no project provided housing for families with low incomes.

HUD believes that the inability to attain this goal is inherent in the Title X program and in the very nature of the financing of land development. Housing located on land developed under the program is typically new construction that is designed for sale to prospective homeowners. This type of housing generally costs more than low-income families, and even many moderate-income families, can afford to pay. In addition, undeveloped land suitable for use in the program is generally located in suburban areas, and involves an "up-scale" emphasis that is often beyond the reach of even moderate-income families. Finally, given the high risk level and economic uncertainties that attend loans for land development, developers naturally desire the economic "cushion" afforded by higher-priced homes. Thus, the central thrust of Title X is away from the very income groups the statute directs the Department to focus upon in administering the program.

3. Can Title X Be Fixed?

The Department has carefully considered whether Title X's central ills—an astronomical claim rate and an inability to meet the program's statutory purposes—can be cured by restructuring the program and committing more HUD resources and staff to its administration. Even assuming that such an investment of resources would be possible in this period of Budget restraint, the Department does not believe that the effort would pay off.

The private sector currently finances virtually all land development projects without the need for Federal insurance. Although data are limited, the Department estimates that between 4,000 and 6,000 subdivisions are developed annually in the United States. By comparison, activity under the Title X program since 1977 has averaged only five applications per year. Looked at another way, Title X's share of the land development market has averaged only about *.001*—one-tenth of one percent—of the national total—an infinitesimal contribution to the total financing for land development.

If the Department undertook to "fix" Title X, we believe that the result would reduce the current five applications per year to zero. Any restructuring of the program would include more rigorous requirements to ensure the participation of small builders and a significant proportion of low- and moderate-income families in the housing ultimately developed. It also would involve stricter underwriting standards and other measures to ensure that insured projects represented a substantially improved mortgage insurance risk. The Department believes that "tightening" the program in these ways—ways literally required by Title X—would virtually end any developer interest in the program. Thus, continuation of the program confronts the Department with an impossible dilemma: permit the program to continue as is and tolerate continued financial hemorrhaging, or take steps to revamp the program and, in so doing, effectively kill it. The Department believes that neither of these alternatives is acceptable: the proper response is simply to terminate the program.

4. Effect on the Availability of Financing for Land Development

Finally, it should be noted that the termination of Title X would have virtually no effect on the availability of financing for land development across the Nation. As indicated above, the private sector finances the overwhelming number of land developments, with Title X's share of the market being negligible.

For these reasons, HUD is proposing to revise Part 205—Mortgage insurance for land development (Title X), to add a new § 205.2. This new section would state that projects with legally binding commitments issued before June 29, 1989, and projects with notes that were initially endorsed before June 29, 1989, would be governed by the eligibility and other requirements of part 205 (subpart A) as it currently exists. No other projects would be eligible for insurance under Title X. Subpart B and § 205.1 (definitions) would be retained to govern the rights and obligations under existing Title X mortgage insurance contracts. The remainder of part 205 would be removed. Miscellaneous cross-references to part 205 Title II would be removed, except for cross-references contained in the delegation provisions in part 200, subpart D, which will be addressed in a separate final rule.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The elimination of the program would not have a significant economic impact, since conventional insurance for land development projects is available and is used by developers much more frequently than is Title X. As noted above, approximately .1 percent of subdivisions in the United States are developed under Title X. Moreover because few Title X-insured mortgages are provided to small entities, HUD does not believe that a substantial number of small entities would be affected.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the rule will not have a significant impact on family formation, maintenance, or well-being. While the proposed rule would eliminate a mortgage insurance program that furthers the development of subdivisions available for housing for families, relatively few lots are developed annually under the program, and alternative conventional financing is available. HUD, thus, does not believe that the rule would have significant "family impact."

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, federalism, has determined that the final rule does not involve the preemption of State law by Federal statute or regulation and does not have "federalism implications." The rule would eliminate a little-used mortgage insurance program to assist private developers. It should have no appreciable impact on State or local governments.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 24, 1989 (54 FR 16708) under Executive Order 12291, Federal Regulation, and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.125.

List of Subjects

24 CFR Part 200

Administrative practice and procedure; Claims; Equal Housing Opportunity; Fair Housing; Housing standards; Loan programs: housing and community development; Mortgage insurance; Organization and functions (Government agencies); Reporting and recordkeeping requirements; Minimum Property Standards; Incorporation by reference.

24 CFR Part 205

Community facilities; Mortgage insurance; Land development.

Accordingly, the Department would amend 24 CFR parts 200 and 205 as follows:

PART 200—INTRODUCTION

1. The authority citation for part 200 would be revised to read as follows:

Authority: Titles I and II, National Housing Act (12 U.S.C. 1701-1715z-18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 200.27 [Removed]

2. Section 200.27 would be removed.

PART 205—MORTGAGE INSURANCE FOR LAND DEVELOPMENT (TITLE X)

3. The authority citation for part 205 would continue to read as follows:

Authority: Sec. 1010, National Housing Act (12 U.S.C. 1749jj); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. A new § 205.2 would be added to read as follows:

§ 205.2 Applicability

Projects with legally binding commitments issued before June 29, 1989, and projects with notes that were initially endorsed before June 29, 1989, under Title X of the National Housing Act will be governed by the eligibility and other requirements of 24 CFR Part 205 (Subpart A) in effect before (*insert effective date of final rule*). No other

projects will be eligible for insurance under Title X.

§ 205.5 through 205.249 [Removed]

5. Sections 205.5 through 205.249 would be removed.

Dated: July 21, 1989.

Jack Kemp,

Secretary.

[FR Doc. 89-18766 Filed 8-10-89; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and sulphur Operations in the Outer Continental Shelf; Safety and Pollution-Prevention Equipment

AGENCY: Minerals Management Service, Interior.

ACTION: Reopening of comment period; notice of meeting.

SUMMARY: Current rules governing offshore oil and gas operations require that safety and pollution-prevention equipment (i.e., surface safety valves, underwater safety valves, and subsurface safety valves) be manufactured in accordance with a quality assurance program specified in the rule. On July 6, 1988, the Minerals Management Service (MMS) issued a notice of proposed rulemaking which would amend existing rules to update the American National Standard Institute/American Society of Mechanical Engineers (ANSI/ASME) SPPE-1 quality assurance standard from the 1985 edition to the 1988 edition and to provide for the recognition of the American Petroleum Institute's (API) quality assurance program, API Spec Q1 in combination with API Spec 14A and Spec 14D, as an acceptable alternate or optional quality assurance program for the manufacture of safety and pollution-prevention equipment. This notice reopens the comment period for additional time to allow the public to review supplements to API Spec 14A and Spec 14D. This notice also announces a public meeting to discuss the proposed rule change.

DATES: Comments must be received or postmarked by September 15, 1989. The public meeting will be held on Thursday, August 31, 1989, at 9:00 a.m.

ADDRESS: Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service; Mail Stop 646; 381 Elden Street; Herndon, Virginia 22070; Attention: Gerald D. Rhodes.

The Public Meeting will be held at the Houston Airport Marriott, Houston International Airport, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: M.L. Courtois; Chief, Offshore Inspection and Enforcement Division; Minerals Management Service; Mail Stop 647; 381 Elden Street; Herndon, Virginia 22070; or telephone (703) 787-1576.

SUPPLEMENTARY INFORMATION: The current regulation requires that safety and pollution-prevention equipment be manufactured under the 1985 edition of the ANSI/ASME SPPE-1 quality assurance program. On July 6, 1988, MMS issued a notice of proposed rulemaking (53 FR 25349) to amend the regulations to recognize the API quality assurance program using API Spec Q1 in combination with API Spec 14A and Spec 14D as an acceptable alternative to the ANSI/ASME quality assurance program using ANSI/ASME SPPE-1 and to incorporate the 1988 edition of ANSI/ASME SPPE-1 in lieu of the 1985 edition. Since that time, API has issued its August 1989 Supplements to API Spec 14A and Spec 14D. These supplements provide for operators to report receipt of API Spec 14A and Spec 14D equipment to manufacturers. They also provide for the reporting of equipment failures to API and the manufacturers. Since several of the comments received in response to the proposed rule concerned similar reporting provisions, MMS is reopening the comment period to allow parties to review the supplements to API Spec 14A and Spec 14D and to submit additional comments on the basis of these supplements.

The proposed rule remains unchanged from the rule proposed in the **Federal Register** Notice of July 6, 1988, except that the editions of API Spec 14A and Spec 14D proposed to be incorporated by reference include Supplement 1 of August 1989 for each of the documents.

The MMS is also holding a public meeting to discuss the proposed rule. The public meeting will be held at the time and location given above.

Comment submitted during the original comment period need not be resubmitted.

Dated: August 4, 1989.

William D. Bettenberg,

Associate Director for Offshore Minerals Management.

[FR Doc. 89-18864 Filed 8-10-89; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation Enforcement

30 CFR Part 920

Maryland Permanent Regulatory Program; Public Notice; Permitting; Reporting Requirements; Bond Forfeiture.

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments are intended to incorporate rule changes initiated by the State. The proposed amendments change certain definitions, administrative procedures for permitting and regulating coal mining, and the powers and duties of the Land Reclamation Committee.

This notice sets forth the times and locations that the Maryland program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on September 11, 1989. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on September 5, 1989. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on August 28, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, at the address listed below. Copies of the proposed amendments and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Charleston Field Office.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, Attention: Maryland Administrative Record, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158

Maryland Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532, Telephone: (301) 689-4136.

FOR FURTHER INFORMATION CONTACT: James C. Blankenship, Jr., Director, OSMRE, Charleston Field Office, Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Information regarding general background on the Maryland program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214-7217).

Subsequent actions concerning amendments to the Maryland program are contained in 30 CFR 920.16.

II. Discussion of Proposed Amendments

By letter dated June 15, 1989, the Maryland Bureau of Mines (MDBOM) submitted copies of Senate Bills (SB) 118, 119 and 120. They were passed and entered as Chapters 481, 309 and 310, respectively, by the 1989 Maryland General Assembly, as proposed amendments to Maryland's approved program in accordance with 30 CFR 732.17(g).

SB 118, which concerns the deep mining of coal, applies to Sections 7-5A-05, 7-5A-05.1, 7-5A-05.2, 7-5A-09, 7-5A-10, and 7-5A-13 of the Maryland Annotated Code (MAC), Natural Resources Article.

MAC section 7-5A-05(c) was revised to require the applicant to publish a public notice of intended mining. The State formerly issued the public notice. The contents of the public notice are delineated in this section.

MAC section 7-5A-05(d) was revised to require that a public hearing, if requested, is to be held at least 15 days but not more than 60 days after the MDBOM provides public notice of the hearing. Further, the MDBOM shall notify the applicant and publish the hearing date in a newspaper. Copies of the application are to be available for public inspection and a record of the hearing is to be made available to the public.

MAC section 7-5A-05.1 was added to require MDBOM to adopt regulations to protect against, prevent, or correct material damage due to mine subsidence. Existing regulations in the Code of Maryland Administrative Regulations (COMAR) are to remain in effect under this section until any changes are proposed and adopted.

Section 7-5A-05.2 was added to require an operator to replace the water supply of affected legitimate landowners whose underground or surface source has been adversely affected by deep mining operations. It defines Maryland Department of Natural Resources requirements and responsibilities in this area and allows use of deep mining funds to replace affected water supplies if the operator fails to do so.

MAC section 7-5A-09(c) was revised to modify the wording regarding duration of bond liability with respect to a mining operation. A bond may not be fully released until all permit conditions and State regulations have been satisfied.

MAC section 7-5A-10(d) was revised to require that forfeited funds be directed to the Deep Mining Fund and used for reclaiming the land affected by the operation from which the specific bond was forfeited. It also specifies that forfeited funds in excess of the site specific reclamation requirements may be used to reclaim any other land adversely affected by deep mining.

MAC section 7-5A-13(c) regarding reclamation inspections, and MAC section 7-5A-13(d) regarding refunding or forfeiting bond were both deleted. Section (c) required the MDBOM to conduct at least annual inspections of the completed mine sites to determine the adequacy of the reclamation work. Section (d) required the MDBOM to refund or forfeit bond no later than five years from the filing date of the completion report.

SB 119, which concerns the strip mining of coal, applies to MAC sections 7-502(n), 7-505(c)(1), 7-505(d)(1), 7-505(k), 7-507(a), 7-507(b), 7-509, and 7-514(d).

A new definition was added to MAC section 7-501 (n). The term "surface coal mining" is defined as "open pit mining" or "strip mining."

MAC sections 7-505(c)(1) and 7-505(d)(1) were changed to require MDBOM approval of the text of an applicant's public notice for permits and permit revisions prior to publication.

MAC section 7-505(k) was added to require prior written approval of the MDBOM before transfers, assignments, or sale of right granted under a permit may be executed.

MAC section 7-507(a) was reworded to clarify the requirement of an annual and monthly production personnel-safety-reclamation status report.

MAC section 7-507(b) was revised to require submission of the Mining and Reclamation Progress Report for every strip mine operation which continues in operation beyond one year.

MAC section 7-509 was revised to require submission of a completion report by each operator after completion of all coal removal and reclamation. MDBOM review of this report is generally defined along with further operator requirements, options, and actions.

SB 120, which concerns strip mining of coal and the powers and duties of the Land Reclamation Committee, applies to MAC sections 7-203(h), 7-205(b) and (c), 7-505(c) and (d), 7-507(c)(3), and 7-510(b).

MAC section 7-203(h) was added. It allows utilization of funds from any source for the reclamation and revegetation of areas affected by bituminous coal mining.

MAC section 7-205(b) was deleted and replaced with MAC section 7-205(b)(1) and (2). The Land Reclamation Committee's (LRC) authority to determine the amount of revegetation bonds was deleted. The LRC may "approve, reject, or modify reclamation plans for Surface Coal Mine Permit Applications". Other elective and mandatory responsibilities are delineated.

MAC section 7-205(c) was deleted and replaced. The mandatory annual report regarding each major watershed in Garrett and Allegany counties was deleted. The replacement provision requires the LRC to notify the department if it believes a violation of law, regulation or permit conditions exists. The Department is required to respond to the committee's notification.

MAC section 7-507(c)(3) was deleted. It allowed LRC members to enter any open-pit operation to determine land reclamation conditions and progress. It also provided LRC authority to suspend the permit until corrective action was taken.

MAC section 7-510(b) which required LRC approval for the Department to receive and expend funds for reclamation and revegetation of any strip mined area was deleted.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(b), OSMRE is now seeking comments on whether the amendments proposed by Maryland satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Maryland program.

BEST COPY AVAILABLE

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "DATES" or at locations other than the OSMRE Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m. on August 28, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting rather than a public hearing, may be held.

Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations under "ADDRESSES". A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 920

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 3, 1989.

Jeffrey D. Jarrett,

Assistant Director, Eastern Field Operations.

[FR Doc. 89-18625 Filed 8-10-89; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6F3366/P487; FRL 3628-4]

Pesticide Tolerances for Iprodione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a permanent tolerance for residues of the fungicide iprodione in or on potatoes. This regulation to establish the maximum permissible level for residues of iprodione in or on this raw agricultural commodity was requested by Rhone-Poulenc, Inc.

DATE: Comments, identified by the document control number (PP 6F3366/P487), must be received on or before August 28, 1989.

ADDRESS: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Lewis, Acting Product Manager (PM) 21, Registration Division (H-7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of March 19, 1986 (51 FR 9514), which announced that Rhone-Poulenc, Inc., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted a pesticide petition (PP 6F3366) to EPA proposing that 40 CFR part 180 be amended by establishing tolerances for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] in or on potatoes at 0.5 part per million (ppm).

A rule was published in the Federal Register of June 8, 1988 (53 FR 21452) that established a tolerance for a period of 1 year from the date of publication of the rule in the Federal Register. Based on the review of the potato-processing data, the Agency will determine whether the issuance of a permanent tolerance is appropriate. No comments were received in response to the rule.

The data submitted in the petition and other relevant material have been evaluated. Rhone-Poulenc, Inc., submitted a potato-processing study that adequately demonstrates that iprodione, its isomer, and its metabolite are not likely to concentrate in potato waste. Based on these data, the published tolerance that expired on June 8, 1989 for iprodione, its isomer, and its metabolite would adequately cover iprodione residues in potatoes. This document proposes to establish a permanent tolerance for iprodione, its isomer, and its metabolite in or on potatoes at 0.5 ppm.

The toxicological data considered in support of the proposed tolerance include:

1. A three-generation rat reproduction study using dosage levels of 0, 250, 500, and 2,000 ppm with a no-observed-effect level (NOEL) of 500 ppm (25 milligrams per kilogram of body weight per day (mg/kg bwt/day)), a reproductive lowest-effect level (LEL) of 2,000 ppm (100 mg/kg bwt/day), and a systemic NOEL equal to or greater than 2,000 ppm (100 mg/kg bwt/day);

2. A rabbit teratology study in which the following doses were administered by gavage: 0, 20, 60, and 200 mg/kg bwt, resulting in a teratogenic NOEL equal to or greater than 60 mg/kg bwt;

3. A rat teratology study in which the following doses were administered by gavage: 0, 40, 90, and 200 mg/kg bwt, with a developmental toxicity NOEL equal to 90 mg/kg/bwt and an LEL of 200 mg/kg bwt;

4. A 24-month feeding/oncogenicity study in rats using dosage levels of 125, 250, and 1,000 ppm (6.25, 12.5, and 50 mg/kg bwt/day), which showed no oncogenic effects under the conditions of the study;

5. An 18-month oncogenicity study in mice using dosage levels of 200, 500, and 1,250 ppm (28.6, 71.4, and 178.6 mg/kg bwt/day), which showed no oncogenic effects under the conditions of the study.

6. A 1-year dog feeding study using dosage levels of 168, 600, and 3,600 ppm (4.2, 15, and 90 mg/kg bwt/day) with a NOEL of 168 ppm (4.2 mg/kg bwt/day) and an LEL of 600 ppm (15 mg/kg bwt/day); and

7. A 90-day dog feeding study using dosage levels of 800, 2,400, and 7,200 ppm (20, 60, and 180 mg/kg bwt/day) with a NOEL of 2,400 ppm (60 mg/kg bwt/day) and an LEL of 7,200 ppm (180 mg/kg bwt/day).

Data currently lacking is an appropriate animal metabolism study. The registrant will be submitting this study to the Agency by the end of 1989.

The acceptable daily intake (ADI) based on the NOEL of 4.2 mg/kg bwt/day from the 1-year dog feeding study and using a hundredfold safety factor is calculated to be 0.04 mg/kg bwt/day. The total exposure from the previously established tolerances using data on anticipated residues (estimate of residues of pesticides found on food at the time of consumption) from field studies and percent crop treated data plus the proposed tolerance is 0.011223 mg/kg bwt/day and utilizes 28.1 percent of the ADI for the overall U.S. population.

The June 8, 1988 Federal Register Notice for Iprodione on potatoes stated that the tolerance and the previously established tolerances utilize a total of 109.4 percent of the ADI for the U.S. population; however, the Agency believes that the actual residues to which the public is likely to be exposed are considerably less than indicated by the TMRC for the following reasons:

1. Not all the planted crop for which a tolerance is established is normally treated with the pesticide.

2. Most treated crops have residue levels which are below the established tolerance level.

3. Not all crops contributing to the TMRC (PADI) are likely to be consumed by an individual. Therefore the Agency now used anticipated residues and percent crop treated for the ADI anaylsis since this more accurately reflects the amount of pesticide residue likely to be consumed than does the tolerance.

There are no regulatory actions pending against the registration of iprodione. The metabolism of iprodione in plants and animals, except for an appropriate toxicology laboratory animal metabolism study as noted above, is adequately understood for purposes of the tolerance. An analytical method, gas liquid chromatography using an electron capture detector, is available in Volume II of the "Pesticide Analytical Manual" for enforcement purposes.

Based on the data and information considered by the Agency, it is concluded that the pesticide is useful for the purposes for which the tolerance is sought, and it is concluded that the proposed tolerance will protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

As provided for in the Administrative Procedures Act (5. U.S.C. 553 (d) (3), the time for comment period is shortened to less than 30 days because of the necessity to expeditiously provide a means to control sclerotinia on potatoes.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6F3366/P487]. All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects In 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: August 4, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.399 [Amended]

2. In § 180.399 *Iprodione; tolerances for residues* by amended paragraph (a) by removing the footnote 1 in the entry for potatoes and at the end of the table.

[FR Doc. 89-18948 Filed 8-10-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

[CGD 84-060]

RIN 2115-AB87

Licensing of Pilots; Manning of Vessels-Pilots; Prince William Sound Pilotage

AGENCY: Coast Guard, DOT.

ACTION: Notice of withdrawal.

SUMMARY: The Coast Guard is withdrawing the proposal regarding Prince William Sound Pilotage contained in the Supplemental Notice of Proposed Rulemaking published in the Federal Register on June 6, 1988 (53 FR 20654). A study group has been appointed by the Commandant of the Coast Guard to examine a number of issues relating to pilotage, including Prince William Sound pilotage (see 54 FR 31130). Further action on the remainder of the proposals in this docket (CGD 84-060) will be held in abeyance until the completion of the pilotage study.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Hartke, Merchant Vessel Personnel Division (G-MVP/12), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-0217.

Dated: August 7, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-18837 Filed 8-10-89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

48 CFR Part 205

Department of Defense Federal Acquisition Regulation Supplement; DFARS Publicizing Contract Actions

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for public comment.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council is considering changes to the Defense Federal Acquisition Regulation Supplement (DFARS), to delete DFARS 205.101(a)(2) and DFARS 205.201(S–70). These changes are being proposed as the coverage is considered to be an unnecessary duplication of the FAR.

DATE: Comments concerning the proposed rule must be received by September 11, 1989, to be considered in formulating a final rule. Please cite DAR Case 89–403 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Acquisition Regulatory Council is considering the following deletions from the DFARS as unnecessary duplication of the FAR. DFARS 205.101(a)[2] is deleted as the existing coverage in FAR 5.101(a)(2) adequately covers the requirements. DFARS 205.210(S–70) is deleted as it is an unnecessary supplementation of FAR 5.201.

B. Regulatory Flexibility Act

The proposed rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected DFARS Subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 89–610D in correspondence.

C. Paperwork Reduction Act.

The rule does not contain informtion collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Part 205

Government Procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR part 205 be amended as follows:

PART 205—PUBLICIZING CONTRACT ACTIONS

1. The authority citation for 48 CFR part 205 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

§ 205.101 [Removed]

2. Section 205.101 is removed in its entirety.

§ 205.201 [Amended]

3. Section 205.201 is amended by removing paragraph (S–70).

[FR Doc. 89–18774 Filed 8–10–89; 8:45 am]

BILLING CODE 3810–01–M

Notices

Federal Register
Vol. 54, No. 154
Friday, August 11, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Intent To Grant an Exclusive License to the University of Nebraska

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to greant to the University of Nebraska, Lincoln, Nebraska, an exclusive license to U.S. Patent No. 4,265,048, "Automatic Moisture Control for Roller Applicator," issued May 5, 1981.

DATES: Comments must be received on or before October 10, 1989.

ADDRESSES: Send comments to: USDA ARS–Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, Room 401, BARC–W, Beltsville, Maryland 20705.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301/344–2786, (FTS) 344–2786.

SUPPLEMENTARY INFORMATION: The USDA-ARS intends to grant to the University of Nebraska, Lincoln, Nebraska, an exclusive license in the United States to practice the invention disclosed in U.S. Patent No. 4,265,048 "Automatic Moisture Control for Roller Applicator," issued May 5, 1981. Patent rights to this invention are assigned to the United States of America as represented by the Secretary of Agriculture. The exclusive license will be royalty bearing and will comply with the provisions of 35 U.S.C. 209 and 37 CFR 404.7.

It is in the public interest to so license this invention so as to jointly market this invention with University of Nebraska owned U.S. Patent No. 4,223,479. The inventions are closely related; effective practice of one invention requires the practice of the other. Bringing the inventions to the point of practical application requires their marketing and marketing of the inventions cannot be achieved if they are not marketed together.

The license will be granted unless ARS receives written evidence and argument which convincingly establishes that the intended course of actions is not in the public interest.

William H. Tallent,

Assistant Administrator.

[FR Doc. 89–18854 Filed 8–10–89; 8:45 am]

BILLING CODE 3410–03–M

Food Safety and Inspection Service

[Docket No. 89–024N]

National Advisory Committee on Microbiological Criteria for Foods; Meeting and Announcement of New Members

Notice is hereby given that a meeting of the National Advisory Committee on Microbiological Criteria for Foods, Meat and Poultry Subcommittee will be held on Wednesday, Thursday, and Friday, August 30 to September 1, 1989. The hours of the meeting are as follows: 10:00 a.m. to 5:00 p.m. on Wednesday, 8:30 a.m. to 5:00 p.m. on Thursday, and 8:30 a.m. to 1:00 p.m. on Friday. The meeting will be held at the Residence Inn-O'Hare, 9450 W. Lawrence Avenue, Chicago, Illinois 60601.

Notice is hereby given that six new members have been added to the Committee. The new members are: Dr. Catherine E. Adams, Special Assistant to the Administrator, Food Safety and Inspection Service, Washington, DC; Dr. Frank M. Calia, Vice Chairman and Director of Education, University of Maryland, School of Medicine, College Park, MD; Dr. David W. Dreesen, Associate Professor, Department of Medical Microbiology, University of Georgia, College of Veterinary Medicine, Athens, GA; Dr. Ranzell Nickelson, II, President, Applied Microbiological Service, Inc., College Station, TX; Dr. Merle D. Pierson, Head, Department of Food Science and Technology, Virginia Polytechnic Institute and State University, Blacksburg, VA; and Dr. David M. Theno, Jr., Director of Technical Services, Foster Farms, Livingston, CA.

The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether foods have been produced using good manufacturing practices.

The subcommittee will be meeting to review and discuss assignments referred to them by the full committee and to prepare comments on those assignments.

The Committee meetings are open to the public on a space available basis. Comments of interested persons may be filed before or after the meeting and should be addressed to Ms. Catherine M. DeRoever, Director, Executive Secretariat, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 3175, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. Background materials are available for inspection by contacting Ms. DeRoever on (202) 447–9150.

Done at Washington, DC on August 8, 1989.

Lester M. Crawford,

Chairman.

[FR Doc. 89–18836 Filed 8–10–89; 8:45 am]

BILLING CODE 3410–DM–M

Forest Service

Relocation of a Segment of Questar Pipeline Company's Mainline # 41 Gas Transmission Pipeline; Manti-La Sal National Forest, Carbon, Emery and Sanpete Counties, Utah

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement (EIS).

SUMMARY: The Forest Service will prepare an environmental impact statement for a proposal to relocate a 4.25 mile segment of Mainline # 41. The purpose is to bypass an area where coal mining has been proposed and avoid potential damage from mining induced subsidence. The segment of the pipeline proposed for relocation is authorized under a Forest Service Special-Use Permit.

DATE: Comments concerning the scope of the analysis should be received in writing by September 14, 1989.

ADDRESSES: Send written comments to George Morris, Forest Supervisor, Manti-La Sal National Forest, 599 West Price River Drive, Price, Utah 84501.

FOR FURTHER INFORMATION CONTACT: Aaron Howe, Engineering/Minerals Staff Officer, (801) 637–2817.

SUPPLEMENTARY INFORMATION: .

The Forest Supervisor must evaluate the proposal and any viable alternatives (including the "no action" alternative) to decide whether or not to allow the pipeline to be moved and to modify the existing Special-Use Permit. The proposal, depending on which alternative is approved, could require an amendment to the Manti-La Sal National Forest Land and Resource Management Plan. Issues and concerns to be addressed in the EIS will be determined through project scoping. For this purpose, the Forest is requesting written comments as discussed above and will hold a public meeting in Price, Utah on August 30, 1989. The proposed action involves only National Forest system lands administered by the Manti-La Sal National Forest. Other alternatives could involve adjacent lands and other land owners or agencies. George Morris, Forest Supervisor, will be the responsible official in regard to National Forest System lands. The Forest anticipates release of the Draft EIS for public review on January 29, 1990.

The comment period on the draft environment impact statement will be 45 days from the date the notice of availability appears in the **Federal Register**. It is very important that those interested in the proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: August 2, 1989.

George A. Morris,

Forest Supervisor, Manti-La Sal National Forest.

[FR Doc. 89–18553 Filed 8–10–89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered Species: Issuance of Permit; St. George's School (P437)

On December 28, 1988, notice was published in the **Federal Register** (53 FR 47568) that an application had been filed by St. George's School, Newport, Rhode Island 02840, for a permit to take by capture, tag, measure, weight, and release sea turtles from the species green turtle (*Chelonia mydas*), loggerhead turtle (*Caretta caretta*), hawksbill turtle (*Eretmochelys imbricata*), leatherback turtle (*Dermochelys coriacea*), olive ridley turtle (*Lepidochelys olivaceo*), and Kemp's ridley turtle (*Lepidochelys kempii*) for scientific purposes.

Notice is hereby given that on August 4, 1989, as authorized by the provisions of the Endangered Species Act of 1973, the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) will be consistent with the purposes and policies set forth in Section 2 of the Act. This Permit was also issued in accordance with and is subject to parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910;

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702.

Dated: August 4, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–18795 Filed 8–10–89; 8:45 am]

BILLING CODE 3510-22-M

National Marine Fisheries Service, Endangered Marine Mammals; Permit Application; Sigma Chemical Co. (P419B)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. *Applicant:* Sigma Chemical Company, P.O. Box 14508, St. Louis, Missouri 63178.

2. *Type of Permit:* Scientific Research.

3. *Species of Marine Mammal:* Sperm whale (*Physeter catodon*).

4. *Requested Activity:* As presented by the Applicant, "Activities encompassed by this Permit Application include importation, purchase, possession, research, processing, sale, transportation, distribution, exportation and reexportation of Sperm Whale Myoglobin, Sperm Whale Apomyoglobin and Sperm Whale Apomyoglobin DITC Glass via intrastate commerce, interstate commerce and foreign commerce by Sigma and other researchers supplied by Sigma."

5. *Duration of Activity:* 2 years.

6. *Location of Activity:* Imported from Great Britain.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, c/o Office of Protected Resources, National Marine Fisheries Service, Room 7330, 1335 East-West Hwy., Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Room 7330, Silver Spring, Maryland 20910;

Director, Northwest Region, National Marine Fisheries Service, BIN C15700, 7600 Sand Point Way, Seattle, Washington 98115;

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930;

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7451; and

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: August 4, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 89–18796 Filed 8–10–89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals: Issuance of Permit; Southest Fisheries Center, NMFS (P77#34)

On June 8, 1989, notice was published in the **Federal Register** (54 FR 24577) that an application had been filed by the NMFS, Southwest Fisheries Center, P.O. Box 271, La Jolla, California 92038, for a scientific research permit to take up to 30 harbor porpoise (*Phocoena*).

Notice is hereby given that on August 4, 1989, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that this research satisfies the issuance criteria for scientific research permits. The taking is required to further a bona fide scientific purpose and does not involve unnecessary duplication of research. No lethal taking is authorized.

The Permit is available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: August 4, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–18797 Filed 8–10–89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Thailand

August 7, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Report posted on the bulletin boards of each Customs port or call (202) 343–6581. For information on embargoes and quota re-openings, call (202) 377–3715. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority. Executive order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Article 3 of the Arrangement Regarding International Trade in Textiles.

Inasmuch as recent consultations held between the Governments of the United States and Thailand have not resulted in a mutually satisfactory solution for Categories 374/348 and 448, the United States Government has decided to control imports in these categories for the period January 1, 1989 through December 31, 1989.

The United States remains committed to finding a solution concerning Categories 374/348 and 448. Should such a solution be reached in further consultations with the Government of Thailand, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 4863, published on January 31, 1989.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 7, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 14, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989, in excess of the following levels of restraint:

Category	12-month restraint limit [1]
347/348	262,382 dozen.
448	7,677 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

Imports charged to limits for these categories for the period January 1, 1989 through December 31, 1989 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

Textile products in Categories 347/348 and 448 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall with the foreign affairs

exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Donald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-18744 Filed 8-10-89; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of an Import Limit for Certain Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Thailand

August 7, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6581. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Article 3 of the Arrangement Regarding International Trade in Textiles.

Inasmuch as recent consultations held between the Governments of the United States and Thailand have not resulted in a mutually satisfactory solution for Category 847, the United States Government has decided to control imports in Category 847 for the period May 26, 1989 through May 25, 1990.

The United States remains committed to finding a solution concerning Category 847. Should such a solution be reached in further consultations with the Government of Thailand, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 24732, published on June 9, 1989.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 7, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Comissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 14, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of silk blend and other vegetable fiber textile products in Category 847, produced or manufactured in Thailand and exported during the twelve-month period which began on May 26, 1989 and extends through May 25, 1990, in excess of 101,346 dozen.[1]

Textile products in Category 847 which have been exported to the United States prior to May 26, 1989 shall not be subject to this directive.

Textile products in Category 847 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levan,

Acting Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 89-18745 Filed 8-10-89; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

August 7, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Report posted on the bulletin boards of each Customs port or call (202) 343-6581. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March, 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Article 3 of the Arrangement Regarding International Trade in Textiles.

Inasmuch as recent consultations held between the Governments of the United States and Thailand have not resulted in a mutually satisfactory solution for Categories 341/641 and 638/639, the United States Government has decided to control imports in these categories for the period March 31, 1989 through March 30, 1990.

Goods exported in 1988 in Categories 341/641 and 638/639 shall be charged against the 1988 levels of restraint to the extent of any unfilled balances. Goods in excess of these levels shall be charged to the levels established for the March 31, 1989 through March 30, 1990 period.

The United States remains committed to finding a solution concerning Categories 341/641 and 638/639. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 14986, published on April 14, 1989.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 7, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 14, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Thailand and exported during the twelve-month period which began on March 31, 1989 and extends through March 30, 1990, in excess of the following levels of restraint:

Category	12-month limit [1]
341/641	378,081 dozen.
638/639	1,722,290 dozen.

[1] The limits have not been adjusted to account for any imports exported after March 30, 1989.

You are directed to amend the current counting period for Categories 341, 638, 639 and 641 to end on March 30, 1989.

Imports charged to the limits for Categories 341, 638, 639 and 641 for the period January 1, 1988 through December 31, 1988 shall be charged against those levels of restraint to the extent of any unfilled balances.

Textile products in Categories 341/641 and 638/639 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1448(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall with the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-18746 Filed 8-10-89; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after May 25, 1989.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Addition; Clarification

This clarifies the addition of janitorial/custodial service, Griffis Air Force Base, New York to the Procurement List appearing on page 37139 of FR Doc 84-25116 in the issue of Friday, September 21, 1984. That addition was intended to cover buildings included in a master base contract for janitorial service. We have learned recently that there were other contracts for janitorial services on the base at the time of addition. This action rephrases the addition to the Procurement List to indicate clearly that buildings and areas covered by the other contracts are excluded. The rephrased addition is as follows: Janitorial/custodial, Griffis AFB, New York except for buildings 3, 104, 105, 106, 120, 240, 247, 248, 346, 510, all RADC Test Sites, and building 112 (other than the Biological Environmental Office and the hallway leading to that office).

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-18822 Filed 8-10-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 a commodity to be produced and services to be provided by worksops for the blind or other severely handicapped.

Comments Must be Received on or Before: September 11, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(A)(2) and 41 CFT 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and service to Procurement List 1989, which was published on November 15, 1988 (53 FR 46016):

Commodity

Case, Revolver
1095-00-491-8467

* * * * *

Services

Janitorial/Custodial
U.S. Border Station
International Bridge Plaze Sault Ste. Marie, Michigan
Janitorial-Custodial
910 Tactical Airlift Group (AFRES), Except Bldg. 540
Youngstown Municipal Airport
Vienna, Ohio
Janitorial/Custodial
U.S. Army Reserve Center
DePace Building
Boot and Chestnut Streets
Downingtown, Pennsylvania
Janitorial/Custodial
U.S. Army Reserve Center
1020 Sandy Street
Norristown, Pennsylvania
Janitorial/Custodial
U.S. Army Reserve Center
Potshop and Berks Road
Worcester, Pennsylvania

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-18823 Filed 8-10-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1989; Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletions from procurement list.

SUMMARY: This action adds to and deletes from Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: September 11, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On March 24, May 5, June 16 and 26, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 12262, 19428, 25601 and 26828) of proposed additions to and deletions from Procurement List 1989, which was published on November 15, 1988 (53 FR 46016).

Additions

No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to provide the services at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the services listed.

c. The actions will result in authorizing small entities to provide the services procured by the Government.

Accordingly, the following services are hereby added to Procurement List 1989:

Assembly, Kit Camoflage Support System
(1080-00-179-6025)
Red River Army Depot
Texarkana, Texas

Commissary Shelf Stocking
Naval Outlying Landing Field
Imperial Beach, California

Commissary Shelf Stocking and Custodial
Fort Gillem, Georgia

Commissary Shelf Stocking and Custodial and Warehousing
Randolph Air Force Base, Texas

Janitorial/Custodial
U.S. Army Reserve Center
547 Philadelphia Avenue
Reading, Pennsylvania

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

Accordingly, the following commodities are hereby deleted from Procurement List 1989:

Paper Set, Manifold and Carbon
7530–00–401–6010
7530–01–072–2536
7530–01–072–2537
7530–01–072–2538
7530–01–072–2539
(Requirements for GSA Regions 7 and 9 only)

Beverly L. Milkman,
Executive Director.

[FR Doc. 89–18834 Filed 8–10–89; 8:45 am]
BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Navy

Finding of No Significant Impact for Proposed Trident D–5 Upgrade Program at Naval Submarine Base, Bangor, WA

Pursuant to the Council on Environmental Quality Regulations (40 CFR parts 1500–1506) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of the Navy gives notice that an Environmental Assessment (EA) has been prepared and an Environmental Impact Statement (EIS) is not being prepared for the proposed D–5 Upgrade Program at Naval Submarine Base (SUBASE), Bangor, Washington.

In accordance with 40 CFR 1501.4(e)(2), this Finding of No Significant Impact (FONSI) is being made available for 30 days public review from the date of Federal Register publication before the Navy will make its final determination whether to prepare an EIS. If the determination is made that an EIS is not required, the proposed action will begin without further notice. Comments presenting new information concerning this FONSI should be sent to the address given at the end of this notice.

The proposed action is a $248 million modification, addition, and new construction program to support the Pacific Fleet introduction of the new TRIDENT D–5 missile. This action was previously discussed in a 1974 EIS and Supplements and described in the preliminary Base Master Plan referenced in the EIS. This action also includes new requirements which have arisen since the EIS and Supplements were published. The proposed action will construct nine new buildings, add to or modify ten existing buildings, construct 54 new magazines, modify 32 magazines, build a second explosive handling wharf, and provide utilities and site improvements for facilities upgrade. The new buildings consist of: an Engineering Services Building, a Radiographic Inspection Building, a Motor Inspection Building, a Missile Assembly Building, a Transfer Facility, a Support Equipment Storage Building, a Launcher Storage Building, a Ballast Can Facility, and a Dockside Handling Building. The proposed construction program would commence in 1989 and be completed in 1997.

The current SUBASE Bangor was designed and built to support TRIDENT submarines carrying C–4 missiles. Early planning for the SUBASE included explosive safety arcs and siting considerations for production of the larger D–5 missile, although, at the time SUBASE Bangor was built, the D–5 missile was still many years in the future. The missile is now going through its final testing and is scheduled to deploy in the Atlantic early in 1990. In the Pacific, however, construction of new facilities and upgrading of present facilities will be required before the D–5 missile can be deployed from Bangor.

Alternatives to the proposed action considered in the EA include no action and the construction of only those facilities identified in the 1974 EIS and Supplements and supporting documentation.

The no action alternative would not allow the deployment of D–5 from SUBASE Bangor, since new and altered facilities are required to receive, assemble, transport, store, load, and conduct training associated with the TRIDENT D–5 Weapons System. This alternative would not allow Pacific TRIDENT submarines to receive the missiles that would enable them to operate at full design capability. It would leave a multi-billion dollar strategic deterrent system without the means to utilize the new, technically advanced missile for which the system was designed from its inception. This is essential since the D–5 missile is expected to remain operational well into the twenty-first century, while the current C–4 missile has a remaining life expectancy of just over ten years. This alternative would prevent the Navy from having facilities ready to assemble and deliver the D–5 missiles to submarines prior to the C–4 missile's expected retirement.

The second alternative, allows construction of only those facilities previously discussed in the 1974 EIS, Supplements and supporting documents. While the EIS and Supplements planned for future deployment of the D–5 missile, not all shore facility requirements were known at the time of document preparation. This alternative falls short of D–5 Upgrade requirements in many critical areas, including missile transport, training, and launcher support. Without the projects as specified in the EA proposed action, SUBASE Bangor could not support deployment of the D–5 Weapons System. Similar to the no action alternative, this alternative would leave the Navy without the D–5 capability in the Pacific. The proposed action was determined to be the only practicable way of providing required support facilities.

Impacts associated with the proposed action were not considered significant.

Site preparations and construction will be designed to minimize erosion and to avoid unnecessary disturbance of adjacent areas. Erosion control measures will be used during construction to further reduce soil erosion. Storm water discharge resulting from the proposed construction on areas with existing facilities will be serviced by existing storm water controls (storm water detention and oil-water separation systems) with no adverse impact to the environment. A new permanent storm water detention/sedimentation pond will be constructed to control storm water discharges from facilities constructed in the Devil's Hole watershed. About 0.3 acre of the proposed site for this detention pond is a wetland created by water retention at the intersection of two roads. Construction of the pond is authorized under a U.S. Army Corps of Engineers (COE) Nationwide Wetland Fill Permit. As required, the Navy will notify COE prior to construction. As mitigation for this disturbance, wetland vegetation will be planted on the banks of the pond. Thus no net loss of wetland vegetation will occur and an overall increase in habitat quality will result.

Air emissions resulting from construction and operation of the proposed facilities will be in compliance with Puget Sound Air Pollution Control Agency guidelines and regulations.

Ground water resources are not expected to be affected by any of the D–5 projects. Erosion and sediment control measures mentioned earlier will be included in construction contracts to avoid the potential for erosion and sediment suspension.

No disturbance to any existing hazardous waste sites on SUBASE Bangor will occur, nor will remedial measures planned for any identified waste sites be impacted as a result of the proposed action.

The proposed action will clear about 57 acres of forestlands (about 1.5% of total managed forest resources on SUBASE) dominated by Douglas fir. Timber to be cut ranges in diameter from four to twelve inches. No "old growth" timber stands will be impacted by the proposed action. In mitigation, about 57 acres of previously cleared land will be seeded and planted in herbaceous/shrub species, which will increase plant species diversity and provide wildlife habitat. Federally protected endangered species will not be impacted as a result of the proposed action.

Construction of the proposed explosive handling wharf will require no dredging. Pile driving activity will cause a minor and short-term suspension of sediments in the immediate area of work. Environmental monitoring conducted continuously since 1973 indicates no adverse impacts have resulted from construction or operations of EHW–1. The proposed new wharf will provide additional intertidal and subtidal invertebrate and fisheries habitat. In coordination with the State of Washington, the site for the new wharf will be harvested of geoducks prior to construction and allowed to seed in naturally after construction. In-water construction moratoria during fish migration periods will be incorporated into project design and contract documents. Necessary permits for in-water construction will be secured from the COE. Applicable standards developed by the Washington State Departments of Fisheries and Wildlife, U.S. Fisheries and Wildlife Service, and National Marine Fisheries Service for marine resource protection will be incorporated into design and contract documentation, and facility operation.

The proposed action will not impact archaeological, cultural, or historic resources listed or determined eligible for listing on the National Register of Historic Places.

The number of construction workers at SUBASE Bangor will increase by about 200 during the nine years of planned construction; however, it is anticipated these workers will be recruited from the local area. About 50% of the money spent on construction will remain in the local economy, producing positive economic benefits. About 364 technical support staff personnel will relocate to the Bangor area as a result of the proposed action. This population increase will be small by comparison to normal county growth projections. Since real SUBASE population growth falls well within projected county growth and since new personnel are expected to settle at diverse locations, impacts on housing and schools will be minor. The small increase in traffic will produce only minor impacts to air quality and noise levels.

Since all utility services currently provided to SUBASE are capable of handling the increased loads to be caused by D–5, only minor impacts, if any, are expected.

Based on the information gathered during the preparation of the EA, the Navy finds that the TRIDENT D–5 Upgrade Program at SUBASE Bangor will not have a significant impact on the quality of the human environment.

The EA prepared by the Navy addressing this action may be reviewed at the offices of: Commanding Officer, Strategic Weapons Facility, Pacific, Silverdale, WA 98315–5500 (ATTN: Mr. Glenn Starr, #396–4968).

The EA has also been placed in the following Kitsap County Regional Libraries:

Central Library, 1301 Sylvan Way, Bremerton, WA 98310
Bainbridge Island Branch, 1270 Madison North, Bainbridge Island, WA 98110
Subase Bangor Branch, Building 2500, Silverdale, WA 98383
Downtown Bremerton Branch, 612 5th Avenue, Bremerton, WA 98310
Kingston Branch, Kingston Community Center, Kingston, WA 98346
Little Boston Branch, Little Boston Road NE, Little Boston, WA 98346
Manchester Branch, Main Street, Manchester, WA 98353
Port Orchard Branch, 87 Sidney, Port Orchard, WA 98366
Silverdale Branch, 3450 NW Carlton Street, Silverdale, WA 98383
Poulsbo Branch, 700 NE Lincoln, Poulsbo, WA 98370

The EA is on file and may be reviewed by interested parties at the place of origin, Strategic Systems Programs, Department of the Navy, Washington, DC 20376 (Attn: Mr. Darryl Devnich, Code SP 20162, telephone (202) 697–8054). A limited number of copies of the EA are available to fill single copy requests.

Dated: August 8, 1989.

J. M. Dougherty,
Captain, CEC, USN, Assistant for Civil Engineering, Deputy Chief of Naval Operations (Logistics).

[FR Doc. 89–18862 Filed 8–10–89; 8:45 am]
BILLING CODE 3810–AE–M

Performance Review Board Membership

Pursuant to 5 U.S.C. 4314(C)(4), the Department of the Navy (DON) announces the appointment of members to the DON's numerous Senior Executive Service (SEC) Performance Review Boards (PRB's). The purpose of the Boards is to provide fair and impartial review of the SES performance appraisals prepared by the senior executive's immediate and second level supervisor; to make recommendations to the Secretary of the Navy regarding acceptance or modification of the performance rating, transfer, reassignment, or removal from the SES of any senior executive whose performance is considered to be unsatisfactory; and to make recommendations for monetary performance awards. Composition of the particular Boards will be determined on

an ad hoc basis from among individuals listed below:

Ailes, R.H. RADM
Ashe, O.R. Mr.
Baker, A.D. Mr.
Beach, C.P. Mr.
Beans, J.D. BGEN
Bergquist, K. The Honorable
Blickstein, I.N. Mr.
Calvert, J.F. RADM
Cammack, E.G. Mr.
Camp, J.R. Mr.
Campbell, W. Mr.
Cantrell, W.H. RADM
Carson, W.G. LTGEN
Cassity, J.E. MGEN
Cipriano, J.R. Mr.
Clark, C.C. Ms.
Clark, C.H. Mr.
Coffey, K.J.
Coffey, T. Dr.
Collie, J.D. Mr.
Comstock, E.T. Mr.
Cornett, N.G. Ms.
Costello, J.N. Mr.
Cropsey, S. Mr.
Curtis, III G.H. RADM
De Prete, A. Mr.
Dilworth, G. Mr.
Ditrapani, A.R. Mr.
Dixson, H.L. Mr.
Donalson, E.L. Mr.
Donegan, J.J. CAPT
Everett, D.G. Mr.
Ford, F.B. Mr.
Forssell, A.G. Mr.
Franklin, R. MGEN
Gaffney, P.G. CAPT
Gaines, J.E. Mr.
Geiger, C.G. Mr.
Gentz, R.C. RADM
Goodman, R.O. Mr.
Guenther, J.J. Mr.
Haas, R.L. Mr.
Hallex, R.A. Mr.
Hannah, B. Mr.
Hardman, J.W. Mr.
Harner, P.A. Mr.
Hathaway, D.L. Mr.
Haycock, T.J. Mr.
Herd, J.H. Mr.
Hicks, S.N. Mr.
Higgins, M.L. Mr.
Hillyer, R.H. Mr.
Hines, D.H. RADM
Hitch, P.M. Mr.
Hoffmann, G.C. Mr.
Holloway, L.J. RADM
Horne, R.B. RADM
Hudson, J.L. LTGEN
Johnson, A.E. Mr.
Johnson, JR, R.V. Mr.
Joiner, G.B. Dr.
Kinney, E.T. Mr.
Kiss, R.K. Mr.
Knudsen, R. Dr.
Kreitzer, L.P. Mr.
Lamade, L.L. Mr.
Leach, R.A. Mr.
Lefande, R.A. Dr.
Leuschner, R.L. RADM
Lindahl, W.H. Mr.
Loftus, S. RADM
Lynch, J.G. Mr.
Mackinnon, III, M. RADM
Maclean, W.G. Mr.
Marsh, J.W. Mr.
Masciarelli, J.R. Mr.
Matteo, D.A. Mr.
McCauley, D.W. Mr.
McGrail, C. RADM
Meletzke, D.M. Ms.
Messere, E. Mr.
Metrey, R.E. Mr.
Moore, R.P. Mr.
Murphy, P.M. Mr.
Myatt, J.M. BGEN
Nemfakos, C.P. Mr.
Nickell, J. Mr.
Nieroski, J.S. Mr.
O'Connor, J.J. Mr.
Painter, J.A. Mr.
Panek, R.L. Mr.
Pennisi, R.A. Mr.
Peters, R.K. Ms.
Phelps, F.A. Mr.
Phillips, R.L. BGEN
Price, R.W. Mr.
Rathjen, R.A. Mr.
Reese, H.E. Mr.
Riffey, A.K. RADM
Riggs, R.K. Mr.
Robinson, B.B. Dr.
Rojas, R.R. Mr.
Roth, A.J. Mr.
Routson, S.J. Mr.
Rumpf, R.L. Mr.
Saalfeld, F.E. Dr.
Sansone, W. Mr.
Saul, E.L. Mr.
Schaefer, Jr, W.J. Mr.
Schiefer, G.R. Mr.
Schneider, P.A. Mr.
Seely, J.M. RADM
Selwyn, P.A. Dr.
Shaffer, R.L. Mr.
Shepard, J.J. Dr.
Sheridan, F.L. Mr.
Silva, E.A. Dr.
Sinsky, J. Dr.
Steele, R.H. Mr.
Sterns, F.S. Mr.

Dated: August 7, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-18863 Filed 8-10-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Program Interest for Cooperative Agreement

AGENCY: U.S. Department of Energy.

ACTION: Notice of program interest (NOPI) for cooperative agreement applications.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.15, announces the availability of a Notice of Program Interest No. DE-NP02-90CH10414 for Industrial Energy Conservation with Waste Gas Reduction.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Waldman, U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439, (312) 972-2189.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE), Office of Industrial Programs, is planning to fund research and development of innovative concepts that will conserve energy in the industrial sector while utilizing, reducing, or eliminating industrial gaseous wastes. Industrial gaseous wastes are defined as gases emitted from or associated with industrial processes for which there exists no viable commercial means for utilization, reduction or elimination. Concepts for converting the gaseous waste to any other form for disposal purposes are not acceptable for funding. The term "innovative concept" is to be interpreted in a very broad sense and includes, but is not limited to: (a) The development of new processes, technologies, materials, or products; (b) the substitution of materials/products; or (c) significant changes to existing manufacturing processes and operations. The innovative concept may be applicable in more than one industry, enhancing the energy savings potential. Proposed concepts must have an annual net energy savings greater than one trillion Btu/year by the year 2010, if implemented on national scale with an appropriate market penetration.

The following are examples of areas of research and development which might serve as a basis for an application:

1. Application of biotechnology to waste gas utilization, reduction, or elimination. Examples are development of improved catalysts which increase reaction rates resulting in reduced gaseous wastes; recovery of bio-modified hydrocarbons; semiconductor photocatalysis; and improved waste gas cleanup with bioreactors.

2. Reduction or elimination of volatile organic compounds emissions.

3. New processes to utilize or minimize waste gases and/or particulates in all industries (excluding the ferrous metal but including the nonferrous metals industry).

4. Development of new products to replace existing products whose manufacture, use, and/or disposal produces significant amounts of waste gases.

5. Improved process controls to reduce waste gas generation.

6. Development of unusual processes (e.g., electro-magnetic radiation, high magnetic fields, ultrasound) for improving chemical/mechanical system performance to reduce gaseous waste.

Innovative concepts must be applicable to the industrial sector (SIC 1-49) to be eligible for consideration.

Research and development work may include any or all of (1) exploratory development, (2) engineering development—pilot scale, and (3) engineering development—full scale. Significant cost sharing in the research and development work is essential. Participation and/or support by the affected industry is also essential.

It is anticipated that several awards, totaling approximately $500,000 of DOE funding, will be made in FY 1990 for initial phase activities. DOE funding in subsequent FYs is expected to total $1,000,000 for each subsequent phase, applied to several projects. The NOPI will be issued on August 1, 1989, with complete information on funding, eligibility, application preparation, and evaluation. It will remain open until January 31, 1990. If you are interested in receiving the NOPI, contact Peter Waldman at the above address or phone number. All responsible sources may submit an application, which will be considered.

Issued in Chicago, Illinois, on July 20, 1989.

Edwin H. Hendricks,

Deputy Assistant Manager for Administration.

[FR Doc. 89-18858 Filed 8-10-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 89-41-NG]

Northridge Petroleum Marketing U.S., Inc.; Application To Extend Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for extension of blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 7, 1989, of an application filed by Northridge Petroleum Marketing U.S., Inc. (Northridge), requesting that the blanket import authorization previously granted in DOE/ERA Opinion and Order No. 212 (Order 212), issued December 23, 1987 (ERA Docket No. 87-57-NG), be extended for two additional years commencing December 5, 1989, and ending December 4, 1991. Order 212 amended Northridge's original blanket import authorization granted in DOE/ERA Opinion and Order No. 88, issued September 27, 1985, to increase the volume from 100 to up to 200 Bcf of Canadian natural gas and to extend the applicant's authority for a two-year term expiring December 4, 1989.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than September 11, 1989.

FOR FURTHER INFORMATION:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9590.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Northridge, a wholly-owned subsidiary of Northridge Petroleum Marketing, Inc., a Canadian corporation, is registered in the State of Colorado as a natural gas marketing company. Northridge requests authority to continue to import Canadian gas from various Canadian suppliers for its own account or as agent for Canadian suppliers and/or U.S. purchasers. The spot and short-term imported volumes would continue to be sold to a variety of U.S. customers including but not limited to local distribution companies, interstate pipelines, electric utilities, natural gas marketers, agricultural users, pipelines and industrial and commercial end-users.

Northridge states that the specific terms of each import arrangement would be negotiated on an individual basis, including price and volume, and that existing pipeline facilities would be used to transport its gas supplies. Northridge also states that it would continue to file quarterly reports giving details of the individual transactions.

In support of its application, Northridge asserts that the proposed extension of the term of its existing blanket import authorization to import up to 200 Bcf over the term is not inconsistent with the public interest. Northridge states that the extension requested would allow Northridge to continue to make its imported gas available to U.S. purchasers under contract terms that will be competitive in their market areas and that will remain competitive throughout the requested term of the import authority.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or

notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., e.s.t., September 11, 1989.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of Northridge's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 31, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–18859 Filed 8–10–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. TQ89–3–20–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

August 4, 1989.

Take notice the Algonquin Gas Transmission Company ("Algonquin") on August 1, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, as set forth in the revised tariff sheet:

Proposed to be effective September 1, 1989

Thirty-fourth Revised Sheet No. 201.

Algonquin states that pursuant to section 17 of the General Terms and Conditions of its FERC Gas Tariff Second Revised Volume No. 1, it is filing Thirty-fourth Revised Sheet No. 201 to update its latest estimate of purchased gas costs based upon changes by its supplier, Texas Eastern in the rates of the underlying services, as set forth in Texas Eastern's Quarterly PGA dated June 30, 1989 in Docket No. TQ89–3–17–000 and interim PGA dated July 28, 1989 in Docket No. TF89–3–17–000.

Algonquin further states that the rate changes represent a projected increase in Algonquin's purchased gas costs of approximately $530,000 for the effective period of Algonquin's instant Quarterly PGA filing for Rate Schedules F–1, WS–1, E–1 and I–1 from the purchased gas costs in Algonquin's Interim PGA filing in Docket No. TF89–3–20–000.

Algonquin notes that copies of the filing were served upon the affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–18747 Filed 8–10–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA89–1–31–004]

Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Tariff Adjustment and Take-or-Pay Recovery

August 4, 1989.

Take notice that on July 28, 1989, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the tariff sheets set forth below.

AER states that this filing is made to substitute and refile two of the tariff sheets included in AER's July 17, 1989 filing as follows.

1. 1st Substitute Original Sheet No. 12F.1, First Revised Volume No. 1. This tariff sheet revises the PGA language in paragraph B, D and E to further clarify the determination of demand costs in the total rate under Rate Schedule G–2.

2. 2nd Substitute Original Sheet No. 187C.1, Original Volume No. 3, Rate Schedule No. X–26. This tariff sheet is being issued to correct the numbering from 1st Substitute to 2nd Substitute.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before August 11, 1989. Protests will be considered by the Commission in determining the appropriate parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–18748 Filed 8–10–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–58–001]

Bear Creek Storage Co.; Proposed Changes to FERC Gas Tariff

August 4, 1989.

Take notice that on July 31, 1989, Bear Creek Storage Company ("Bear Creek") tendered the following Tariff Sheets to its FERC Gas Tariff, Original Volume No. 1. The revised tariff sheets are being filed with a proposed effective date of September 1, 1989:

First Revised Sheet No. 5
First Revised Sheet No. 6
First Revised Sheet No. 10

Bear Creek states that First Revised Sheet Nos. 5, 6 and 10 are submitted pursuant to the Stipulation and Agreement dated June 9, 1989 and approved by the Commission on July 26, 1989 in Docket No. RP89–58–000. Bear Creek submits that the provisions of the Stipulation and Agreement will reduce Bear Creek's annual jurisdictional rates and revenues by approximately $11.5 million. Additionally, the Stipulation and Agreement requires Bear Creek to file rates which reflect a revised rate design based upon (1) deliverability, (2) capacity, and (3) injections and withdrawals.

Bear Creek states that copies of the filing will be served upon all of the parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214 and 385.211). All such protests should be filed on or before August 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–18749 Filed 8–10–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–213–000]

Black Marlin Pipeline Co.; Filing

August 4, 1989.

Take notice that on July 31, 1989, Black Marlin Pipeline Company (Black Marlin) tendered for filing to become a part of Black Marlin's FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

3rd Revised Sheet No. 1
1st Revised Sheet No. 4
Original Sheet Nos. 5–99
2nd Revised Sheet No. 105
2nd Revised Sheet No. 106
1st Revised Sheet No. 106A
1st Revised Sheet No. 107
1st Revised Sheet No. 108
2nd Revised Sheet No. 109
1st Revised Sheet No. 110
1st Revised Sheet No. 111
2nd Revised Sheet No. 112
1st Revised Sheet No. 113
Original Sheet No. 113A
3rd Revised Sheet No. 215
2nd Revised Sheet No. 215A
2nd Revised Sheet No. 222
3rd Revised Sheet No. 300
4th Revised Sheet No. 301
3rd Revised Sheet No. 302
4th Revised Sheet No. 303
3nd Revised Sheet No. 304

Black Marlin proposed to establish Rate Schedules FTS and ITS under which it will provide "open access" transportation on a firm and interruptible basis respectively in accordance with part 284 B of the Commission's Regulations to eligible shippers under section 311 of the NGPA.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.214). All such motions or protests should be filed on or before August 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–18750 Filed 8–10–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA90–1–32–000 (PGA90–1)]

Colorado Interstate Gas Co.; Filing of Annual Purchased Gas Adjustment Pursuant to Order Nos. 483 and 483–A

August 4, 1989.

Take notice that Colorado Interstate Gas Company (CIG) on August 1, 1989, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1, to implement its annual purchased gas adjustment under the provisions of Order Nos. 483 and 483–A. The proposed tariff sheets are to be effective October 1, 1989.

CIG states that the revised tariff sheets reflect a demand rate decrease of 41 cents, which is due in large measure to the expiration on October 31, 1989 of PGA recovery of "as billed" charges from Northwest Pipeline Corporation, pursuant to Commission Order issued September 20, 1988 in Docket No. RP88–213. The filing also reflects a 22.85 cent increase in the commodity rate for the G–1, P–1, H–1, F–1 and PS–1 Rate Schedules and an increase of 19.48 cents in the one-part rates under Rate Schedule SG–1, of which 3.53 cents is due to current purchased gas costs projected for the quarter beginning October 1, 1989, and 19.32 cents to the expiration of the current "credit" surcharge (20.87 cents) on September 30, 1989. The proposed rates compare with the rates filed by CIG on May 30, 1989 in Docket No. TQ89–3–32, which rates were accepted by Commission Letter Order of June 30, 1989, to become effective on July 1, 1989.

CIG states that copies of the filing have been served upon CIG's jurisdictional customers and other interested persons, including public bodies.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 N. Capitol St., NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before August 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–18751 Filed 8–10–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP89–214–000 and TM89–5–21–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 4, 1989.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 31, 1989, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1:

To Be Effective May 1, 1989

Substitute Twentieth Revised Sheet No. 16B
Substitute Tenth Revised Sheet No. 16B1
Substitute Tenth Revised Sheet No. 16B2

To Be Effective June 1, 1989

Substitute Twenty-first Revised Sheet No. 16B
Substitute Eleventh Revised Sheet No. 16B1
Substitute Eleventh Revised Sheet No. 16B2

To Be Effective August 1, 1989

Twenty-second Revised Sheet No. 16B
Twelfth Revised Sheet No. 16B1
Twelfth Revised Sheet No. 16B2

Columbia states that the foregoing tariff sheets modify and supplement Columbia's previous filings in Docket Nos. RP88-187 and RP89-181 in which Columbia established procedures pursuant to Order No. 500 to recover from its customers the take-or-pay and contract reformation costs billed to Columbia by its pipeline suppliers. Specifically, Columbia proposes to modify its earlier filings to permit it to flow through revised take-or-pay and contract reformation costs from (i) Texas Eastern Transmission Corporation (Texas Eastern) pursuant to a filing made on April 28, 1989 which was accepted by the Federal Energy Regulatory Commission's (Commission) order issued on May 26, 1989 in Docket Nos. RP89-154 and TM89-6-17, (ii) Texas Eastern pursuant to a filing made on April 28, 1989 which was accepted by Commision's order issued on May 26, 1989 in Docket No. RP89-153, (iii) Texas Eastern pursuant to a filing made on May 31, 1989 which was accepted by Commission order issued on June 30, 1989 in Docket No. RP89-184, (iv) Transcontinental Gas Pipe Line Corporation pursuant to a filing made on May 1, 1989 in Docket No. RP89-163 which was accepted by Commission order dated May 31, 1989, and (v) Tennessee Gas Pipeline Company pursuant to a filing made on May 31, 1989 which was accepted by Commission's order issued on June 30, 1989 in Docket No. RP88-191-010.

Additionally, Columbia states that certain tariff sheets relating to Columbia's filings of April 21, 1989 and May 30, 1989 in Docket Nos. RP88-187, *et al.* contained incorrect allocation factors. This inadvertent clerical error resulted in incorrect Fixed Monthly Demand Surcharges to its customers for the flow through of take-or-pay costs attributable to Texas Eastern's Docket No. TM89-4-17. The tariff sheets submitted with the instant filing reflect the revised allocation factors and Fixed Monthly Demand Surcharges.

Copies of the filing were served upon Columbia's jurisdictional customers and intersted state commissions and upon each person designated on the official service list compiled by the Commission's Secretary in Docket Nos. RP88-187, *et al.* and RP89-181, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-18752 Filed 8-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-5-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

August 4, 1989.

Take notice that on August 1, 1989, Mississippi River Transmission Corporation (MRT) tendered for filing, to be effective September 1, 1989, Thirty-Third Revised Sheet No. 4, Thirteenth Revised Sheet No. 4A, Fourth Revised Sheet No. 4A.1, Fourth Revised Sheet No. 4A.2, First Revised Sheet No. 4A.3, First Revised Sheet No. 4A.4, Original Sheet No. 4A.5, Eighth Revised Sheet No. 62 and Tenth Revised Sheet No. 72 to its FERC Gas Tariff, Second Revised Volume No. 1. MRT states that this filing is being submitted to reflect its quarterly purchased gas cost adjustment (PGA) pursuant to § 154.308 of the Commission's Regulations and the PGA provisions of MRT's tariff, and is designed to track various pipeline and producer cost changes.

MRT notes that its filing is predicated upon the settlement rates made effective by United Gas Pipe Line Company (United) in its pending rate proceedings at Docket Nos. RP88-92-000, *et al.*; and, thus, MRT expressly reserves its rights to increase the rates reflected in this filing in the event of modificaton of United's settlement rates to MRT. The quarterly impact of MRT's PGA filing on its jurisdictional customers is stated to be an increase of approximately $1.9 million for the September 1, 1989-November 30, 1989 quarter.

MRT states that while the instant PGA filing represents MRT's best current estimate of purchased gas costs which it will experience during the September 1, 1989 through November 30, 1989 quarter, § 154.305(c) of the Commission's PGA Regulations requires that projected costs of gas purchased from producer suppliers be based upon contractual obligations that are in existence as of the date the PGA is filed. MRT states that it purchases a substantial volume of short-term, spot market gas for its system supply, and spot market prices tend to be lower in summer months than during fall and winter periods. MRT notes that because the instant PGA, submitted in August, covers a fall/winter quarter, the potential for increases in spot market prices above those reflected in its filing is a real likelihood. Consequently, MRT states that its PGA is being submitted with the understanding that if price increases occur such that MRT's costs of purchased gas during the subject quarter exceed those projected in its filing, MRT may submit an out-of-cycle PGA to so reflect such increases.

MRT further states that the enclosed Sheet No. 4A reflect the most recent fixed take-or-pay charges applicable to MRT as a result of filings of United, Natural Gas Pipeline Company of America and Trunkline Gas Company. MRT states that the quarterly jurisdictional impact of this take-or-pay flowthrough filing is an increase of approximately $.3 million.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-18753 Filed 8-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP75-85-005]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

August 4, 1989.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on July 31, 1989 tendered for filing Substitute Original Sheet No. 1 and Thirteenth Revised Sheet Nos. 2 through 38 to its FERC Gas Tariff, Original Volume No. 1-A.

Panhandle states that on February 8, 1980 the Commission approved a Stipulation and Agreement (Agreement) in the proceedings entitled *Village of Pawnee, Illinois, et al.* vs. *Panhandle Eastern Pipe Line Company*, in the subject docket. Under the terms of the Agreement, certain Small Customers as defined in Article II of the Agreement, are permitted to add new Priority 1 requirements up to 10 percent of their original annual base period volumes during the first twelve-month period and up to 8 percent of their original annual base period volumes in each succeeding twelve-month period that the Agreement is in effect. Article V of the Agreement requires the Small Customers to report to Panhandle changes in their estimated monthly and annual volumes, which changes are to be reflected as adjustments to the monthly base period volumes for each Small Customer. Thirteenth Revised Sheet Nos. 2 through 38 reflect these adjustments in the monthly base period for each Small Customer. Panhandle proposes an effective date of September 1, 1989.

Panhandle states that copies of this filing have been served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such protests should be filed on or before August 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-18754 Filed 8-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-28-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

August 4, 1989.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on August 1, 1989, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Seventy-Third Revised Sheet No. 3-A
Fiftieth Revised Sheet No. 3-B

The proposed effective date of these revised tariff sheets is September 1, 1989.

Panhandle states that these revised tariff sheets filed herewith reflect a non-gas commodity rate decrease of (2.15¢) per Dt pursuant to section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism).

Panhandle further states that these revised tariff sheets filed herewith also reflect the following respecting Panhandle's D1 and D2 demand rates:

(1) An increase of $0.15 for D1 pursuant to section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism); and

(2) An increase of $0.20 for D1 and no change for D2 pursuant to § 18.4 of the General Terms and Conditions of Panhandle's tariff (pipeline suppliers' demand costs).

Panhandle states that the above-referenced tariff sheets are being filed in accordance with § 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to §§ 18.1 and 18.4 (Purchased Gas Demand Rate Adjustments by Pipeline Suppliers) and section 22 (ANGTS tracking mechanism) of Panhandle's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Panhandle's jurisdictional rates effective September 1, 1989.

Panhandle states that it should be noted that by order dated June 30, 1989, issued in Docket No. RP89-185-000, the Commission accepted for filing section 25 (Seasonal Sales Program) of Panhandle's FERC Gas Tariff, Original Volume No. 1. Purusant to § 25.31 thereof, §§ 18.2, 18.3, 18.5, 18.6, 18.7, and 18.8 are suspended until re-established in accordance with § 25.32. Accordingly, Panhandle is reflecting as a current adjustment only the decrease in the non-gas commodity rates mentioned above.

Panhandle further states it should be noted that Panhandle has not adjusted its D1 and D2 rates to reflect revisions to Trunkline Gas Company's demand rates that may result from Commission approval of the Stipulation and Agreement in Docket No. RP88-160-000, for that Stipulation and Agreement has not been approved but is awaiting Commission action. Should the Stipulation and Agreement become effective during the current period, Panhandle will make an appropirate filing to adjust its D1 and D2 rates.

Panhandle states that copies of its filing have been served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-18755 Filed 8-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-216-000]

Tennessee Gas Pipeline Co.

August 4, 1989.

Take notice that on August 1, 1989, Tennessee Gas Pipeline Company (Tennessee) filed the following tariff sheets to its FERC Gas Tariff to be effective September 1, 1989, subject to certain conditions:

Second Revised Volume No. 1

Fourteenth Revised Sheet No. 20
Eleventh Revised Sheet No. 20A
Second Substitute Seventh Revised Sheet No. 22

Tennessee states that it is filing these sheets and associated workpapers in compliance with the terms of the Stipulation and Agreement (Stipulation) filed June 13, 1989 in Bear Creek Storage Company, Docket No. RP89-58. Tennessee further states that it is filing the above tariff sheets on the condition that the Commission accept them subject to the rate restoration and surcharge provisions of the Stipulation.

Tennessee requests that the Commission grant any waivers it deems necessary for the acceptance of this filing.

Tennessee states that copies of the filing have been mailed to all parties in this proceeding, affected customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 11, 1989. Protests will be

considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-18756 Filed 8-10-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP78-86-004]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

August 4, 1989.

Take notice that Trunkline Gas Company (Trunkline) on July 31, 1989 tendered for filing Fourteenth Revised Sheet No. 21–C.8 to its FERC Gas Tariff, Original Volume No. 1.

Trunkline states that on February 8, 1980 the Commission approved a Stipulation and Agreement (Agreement) in the proceedings entitled *Kaskaskia Gas Company, et al.* vs. *Trunkline Gas Company*, in the subject docket. Under the terms of the Agreement, certain Small Customers as defined in Article II of the Agreement, are permitted to add new Priority 1 requirements up to 10 percent of their original annual base period volumes during the first twelve-month period and up to 8 percent of their original annual base period volumes in each succeeding twelve-month period that the Agreement is in effect. Article V of the Agreement requires the Small Customers to report to Trunkline changes in their estimated monthly and annual volumes, which changes are to be reflected as adjustments to the monthly base period volumes for each Small Customer. Fourteenth Revised Sheet No. 21–C.8 reflects these adjustments in the monthly base period for each Small Customer. Trunkline proposes an effective date of September 1, 1989.

Trunkline states that copies of this filing have been served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All protests should be filed on or before August 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-18757 Filed 8-10-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-183-003]

Williams Natural Gas Co.; Filing

August 4, 1989.

Take notice that on July 31, 1989, Williams Natural Gas Company (WNG) filed Revised Thirteenth Revised Sheet No. 6 to its FERC Gas Tariff, Original Volume No. 1, to be effective December 1, 1989.

WNG states that this filing is in compliance with the Commission's order of June 30, 1989. WNG states that this tariff sheet reflects the elimination of take-or-pay buyout and/or buydown Order No. 500 costs that it previously filed to recover in Docket No. RP89-140-000.

WNG states that copies of this filing are being served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before August 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-18758 Filed 8-10-89; 8:45 am]
BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $19,824.44, plus accrued interest, obtained from Pedersen Oil, Inc. pursuant to a Consent Order executed on October 15, 1981. The funds will be distributed to successful claimants who purchased motor gasoline from Pedersen between May 1, 1979 through September 30, 1979.

DATE AND ADDRESS: Applications for Refund from the Pedersen escrow fund must be filed in duplicate and must be received within 90 days of publication of this notice in the **Federal Register**. All Applications for Refund from this escrow fund should display a conspicuous reference to Case Number HEF-0147, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Darlene Gee, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6602.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the procedures that the DOE has formulated to distribute monies obtained from Pedersen Oil, Inc. (Pedersen) to settle pricing violations with respect to the firm's sales of motor gasoline between May 1, 1979 and October 30, 1979 (the audit period).

OHA has determined that a portion of the escrow fund should be distributed to purchasers of Pedersen motor gasoline during the audit period. In order to obtain a refund, each claimant will be required to submit a schedule of its monthly purchases of motor gasoline for Pedersen. The specific requirements which an applicant must meet in order to receive a refund are set out in Section II of the Decision. Residual funds in the escrow account will be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. 99-509, Title III.

Applications for Refund will now be accepted provided they are filed in duplicate and received no later than 90 days after publication of this Decision and Order in the **Federal Register**. Applicatons should be sent to the address set forth at the beginning of this notice. All applications received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: July 19, 1989.

George B. Breznay,
Director, Office of Hearings and Appeals.

Decision and Order

Name of Firm: Pedersen Oil, Inc.
Date of Filing: October 13, 1983
Case Number: HEF-0147

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR part 205, subpart V. On October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order entered into with Pedersen Oil, Inc. (Pedersen).

I. Background

Pedersen was a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31, and was located in Silverdale, Washington. A DOE audit of Pedersen's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR part 212, subpart F. More specifically, the audit revealed that between May 1, 1979 and September 30, 1979, Pedersen may have violated the DOE's pricing regulations with respect to its sales of motor gasoline.

In order to resolve its potential civil liabilities arising from the ERA's audit, Pedersen entered into a Consent Order with the DOE on October 15, 1981. The Consent Order refers to ERA's allegations of overcharges, but does not find that any violations occurred. In addition, the Consent Order states that Pedersen does not admit any such violations.

Under the terms of the Consent Order, Pedersen was required to deposit $23,617 into an escrow account for ultimate distribution by the DOE.[1] On May 11, 1982, Pedersen made a deposit of $9,802.44, its only payment into the account. Since that payment was made, Pedersen's assets have been liquidated and a successor firm is also in bankruptcy. Therefore, no further payments are expected. Pedersen, however, was eligible for a refund of $10,222 in a proceeding instituted by OHA to distribute funds remitted to the DOE by the Mobil Oil Corporation. Mobil Oil Corp., 13 DOE ¶ 85,339 (1985). Because of Pedersen's outstanding obligation to the DOE under the terms of its Consent Order, OHA transferred the full amount of Pedersen's refund in the Mobil proceeding to the Pedersen consent order fund. Mobil Oil Corporation/National Acceptance Company of California, 16 DOE ¶ 85,554, (1987). The Pedersen fund now contains $19, 824.44 in principal, or 84% of the amount Pedersen was required to deposit under the terms of the Consent Order. This decision concerns the procedures for the distribution of the funds in the Pedersen escrow account.

On June 3, 1988, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of refunds to parties that make a reasonable showing of injury as a result of Pedersen's alleged overcharges. In order to give notice to all potentially affected parties, a copy of the PD&O was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. 53 FR 21910 (June 10, 1988). We received no comments concerning the proposed refund procedures for Pedersen. Therefore, we will adopt the procedures in the PD&O as final procedures for the distribution of the Pedersen refined product funds.

II. Final Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations in which the DOE is unable to identify readily those persons who may have been injured by the alleged regulatory violations or to determine the amount of such injuries. A more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds is set forth in the cases of Office of Enforcement, 9 DOE ¶ 82,508 (1981); and Office of Enforcement, 8 DOE ¶ 82,597 (1981) (Vickers).

Pursuant to the goals of the Subpart V regulations, we will attempt to provide refunds to claimants who demonstrate that they were injured by Pedersen's alleged regulatory violations in its sales of motor gasoline during the May 1, 1979, through September 30, 1979 consent order period. Residual funds in the Pedersen escrow account will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), Public Law No. 99-509, Title III. *See* 51 FR 43964 (December 5, 1986).

A. Calculation of Refund Amounts

The first step in the refund process is the calculation of an applicant's potential refund. To facilitate this process, we intend to rely, in part, on the information gathered by the ERA during its audit of Pedersen. *See, e.g.*, Marion Corp., 12 DOE ¶ 85,014 (1984) (Marion). The ERA identified 20 firms that were allegedly overcharged by Pedersen and calculated the amount of the potential refunds for each of these firms. The firms, together with their potential refunds, are listed in the Appendices to this Decision. The total amount of the Pedersen settlement allocated to the ERA-identified purchasers is $11,046.

The ERA specifically noted, however, that it was unable to identify all of the customers whom Pedersen allegedly overcharged. In order to determine the potential refunds for these purchasers, we proposed to adopt a volumetric refund presumption. This presumption assumes that Pedersen's alleged overcharges were spread evenly over all of the gallons of motor gasoline that Pederson sold during the consent order period.

Under this volumetric presumption, the potential refund for a previously unidentified claimant will be calculated by multiplying the number of gallons of motor gasoline that it purchased from Pedersen during the consent order period times a volumetric factor of $0.0025 per gallon.[2] In addition,

[1] The actual settlement between Pedersen and the DOE totaled $25,000. Of that sum, Pedersen made direct payments totaling $1,383 to the following end/user customers, all located in Tacoma, Washington: Barbie Lumber, Erdahl Trucking, Heinke Painting, Baxter Manufacturing, Jim Lamon's Doors and Cabinets, United Services, Allstate Elevator, and Time DC, Inc. These direct refunds were based upon the ERA's calculations of Pedersen's alleged overcharges. Because these firms have already received refunds for the matters settled by the Pedersen Consent Order, they will not be eligible for a further refund in this proceeding. The balance of the settlement amount, $23,617, was to be deposited into an escrow account for ultimate distribution by the DOE.

[2] Because we were unable to determine the number of gallons of motor gasoline that Pedersen sold to its customers who received direct refunds, *see* supra note 1, and to the 20 ERA-identified purchasers, we computed the volumetric factor by dividing $21,207.44 (the $19,824.44 deposited into the Pedersen escrow, plus the $1,383 Pedersen paid out in direct refunds) by 8,561,862, the total number of gallons of motor gasoline sold by the firm during the consent order period.

successful claimants will receive proportionate shares of the interest that has accrued on the Pedersen escrow account. The total amount of the Pedersen consent order funds allotted to unidentified claimants is $8,792.[3]

The volumetric refund presumption is rebuttable. Because we realize that the impact on an individual claimant may have been greater than its potential refund calculated using the volumetric methodology, a claimant may submit evidence detailing the specific alleged overcharge that it incurred in order to be eligible for a larger refund. *See* Standard Oil Co. (Indiana)/Army and Air Force Exchange Service, 12 DOE ¶ 85,015 (1984).

As in previous cases, only claims for at least $15 in principal will be processed. This minimum has been adopted in refined product refund proceedings because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those instances. *See, e.g.*, Mobil Oil Crop., 13 DOE ¶ 85,339 (1985); *see also* 10 CFR 205.286(b). If an applicant's potential refund is calculated using the volumetric methodology, it must have purchased at least 5,800 gallons of Pedersen motor gasoline in order for its claim to be considered.

B. Determination of Injury

Once a claimant's potential refund has been calculated, we must determine whether the claimant was injured by its purchases from Pedersen, *i.e.*, whether it was forced to absorb the alleged overcharges. Based on our experience in numerous Subpart V proceedings, we will adopt certain presumptions concerning injury in this case. The use of presumptions in refund cases is specifically authorized by DOE procedural regulations. 10 CFR 205.282(e). An applicant that is not covered by one of these presumptions must demonstrate injury in accordance with the non-presumption procedures outlined in the latter part of this Decision.

1. Presumptions Concerning Injury

The presumptions we will adopt in this case are designed to allow claimants to participate in the refund process without incurring inordinate expense, and to enable OHA to consider the refund applications in the most efficient way possible. We will presume that end-users of Pedersen motor gasoline, certain types of regulated firms, and cooperatives were injured by their purchases from Pedersen. In addition, we will presume that resellers and retailers of Pedersen gasoline submitting small claims were injured by their purchases. On the other hand, we will presume that resellers and retailers that made spot purchases of Pedersen motor gasoline and those who sold it on consignment were not injured by their purchases. Each of these presumptions is discussed below, along with the rationale underlying its use.

a. *End-Users.* First, in accordance with prior subpart V proceedings, we will presume that end-users, *i.e.*, ultimate consumers of Pedersen motor gasoline whose businesses are unrelated to the petroleum industry, were injured by the firm's alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. *See* Marion Corporation, 12 DOE ¶ 85,014 (1984) and cases cited therein. Therefore, end-users need only document their purchase volumes of Pedersen motor gasoline to demonstrate that they were injured by the alleged overcharges.

b. Regulated Firms and Cooperatives. Second, public utilities, agricultural cooperatives, and other firms whose prices are regulated by government agencies or cooperative agreements do not have to submit detailed proof of injury. Such firms would have routinely passed through price increases, including overcharges, to their customers. Likewise, their customers would share the benefits of cost decreases resulting from refunds. *See, e.g.*, Office of Special Counsel, 9 DOE ¶ 82,538 (1982) (Tennece); Office of Special Counsel, 9 DOE ¶ 82,545 at 85,244 (1982) (Pennzoil). Such firms applying for refunds should certify that they will pass through any refund received to their customers and should explain how they will alert the appropriate regulatory body or membership group to monies received. Purchases by cooperatives that were subsequently resold to nonmembers will generally not be covered by this presumption.

c. *Reseller and Retailer Small Claims.* Third, we will presume that a reseller or retailer seeking a refund of $5,000 or less, excluding accrued interest, was injured by Pedersen's pricing practices. Without this presumption, such an applicant would have to gather records dating as far back as 1973 in order to demonstrate that it absorbed Pedersen's alleged overcharges. The cost to the applicant of gathering this information, and to OHA of analyzing it, could exceed the actual refund amount. Therefore, a small claimant must only document the volumes of motor gasoline it purchased from Pedersen in order to demonstrate injury. *See* Texas Oil & Gas Corp., 12 DOE ¶ 85,069 at 88,210 (1984). ERA-identified resellers and retailers seeking small claims refunds have to submit only a statement indicating their willingness to rely on the information contained in the ERA audit files. Resellers and retailers of Pedersen motor gasoline that are seeking refunds in excess of $5,000 must follow the procedures that are outlined below in section 2.

d. *Spot Purchasers.* Fourth, resellers and retailers that were spot purchasers of motor gasoline from Pedersen, *i.e.*, made only sporadic, discretionary purchases, are presumed not to have been injured and consequently, generally will be ineligible for refunds. The basis for this presumption is that a spot purchaser tended to have considerable discretion as to where and when to make a purchase, and therefore, would not have made a purchase unless it was able to recover the full amount of its purchase price, including any alleged overcharges, from its customers. *See* Vickers at 85,396–97. A spot purchaser can rebut this presumption by demonstrating that its base period supply obligation limited its discretion in making the purchases and that it resold the product at a loss that was not subsequently recouped. *See, e.g.*, Saber Energy, Inc./Mobil Oil Corp., 14 DOE ¶ 85,170 (1986).

e. *Consignees.* Finally, we will presume that consignees of Pedersen motor gasoline were not injured by the firm's alleged pricing violations. *See, e.g.*, Jay Oil Co., 16 DOE ¶ 85,147 (1987). A consignee agent generally sold products pursuant to an agreement whereby its supplier established the prices to be charged by the consignee and compensated the consignee with a fixed commission based upon the volume of products that it sold. A consignee may rebut the presumption of non-injury by demonstrating that its sales volumes and corresponding commission revenues declined due to the alleged uncompetitiveness of Pedersen's pricing practices. *See* Gulf Oil Corp./C.F. Canter Oil Co., 13 DOE ¶ 85,388 at 88,962 (1986).

2. Non-Presumption Demonstration of Injury

A reseller or retailer whose allocable share is in excess of $5,000 that does not elect to receive a refund under the small claims presumption will be required to demonstrate its injury. There are two aspects to such a demonstration. First, a firm generally is required to provide a monthly schedule of its banks of unrecouped increased product costs for motor gasoline that it purchased from Pedersen. Cost banks should cover the period May 1, 1979, through July 15, 1979, for retailers, and April 30, 1980, for resellers of Pedersen motor gasoline.[4] If a firm no longer has records of contemporaneously calculated cost banks for motor gasoline, it may approximate those banks by submitting the following information regarding its purchases of motor gasoline from all of its suppliers:

(1) The weighted average gross profit margin that the firm received from motor gasoline on May 15, 1973;

(2) A monthly schedule of the weighted average gross profit margins that it received for motor gasoline during the period May 1, 1979 through July 15, 1979 for retailers and May 1, 1979 through April 30, 1980 for resellers; and

(3) A monthly schedule of the firm's purchase or sales volumes of motor gasoline during the period May 1, 1979 through July 15, 1979 for retailers, and May 1, 1979 through April 30, 1980 for resellers.[5]

The existence of banks of unrecouped increased product costs that exceed an applicant's potential refund is only the first part of an injury demonstration. A firm must also show that market conditions forced it to absorb the alleged overcharges. We will infer this to be true if the prices the applicant paid Pedersen were higher than average market prices for motor gasoline at the same level of distribution.[6] Accordingly, a claimant attempting to demonstrate injury should submit a monthly schedule of the weighted average prices that it paid Pedersen for motor gasoline during the May 1, 1979 through September 30, 1979 consent order period.

If a reseller or retailer that is eligible for a refund in excess of $5,000 does not submit the cost bank and purchase price information described above, it can still apply for a refund of $5,000, plus accrued interest, using the small claims presumption.

If, however, a firm provides the above-mentioned data and we subsequently conclude that the firm should receive a refund of less than the $5,000 small claims threshold, the firm cannot opt for a full $5,000 refund.

C. General Refund Application Requirements

Pursuant to 10 CFR 205.283, we will now accept Applications for Refund from individuals and firms that purchased motor gasoline from Pedersen between May 1, 1979 and September 30, 1979. No "class claims" on behalf of groups of applicants will be permitted. There is no specific application form that must be used. All Applications for Refund should include the following information:

(1) A conspicuous reference to Case Number HEF–0147 and the name and address of the applicant during the period for which the claim is filed, as well as the name to whom the refund check should be made out and the address to which the check should be sent;

(2) The name, title, address and telephone number of a person who may be contacted by OHA for additional information concerning the Application;

(3) The manner in which the applicant used the Pedersen motor gasoline, *i.e.*, whether it was a reseller, retailer, consignee, end-user, etc.;

(4) A monthly schedule of purchases of motor gasoline from Pedersen during the period May 1, 1979 through September 30, 1979. ERA-identified potential claimants seeking small claims refunds have to submit only a statement indicating their willingness to rely on the information contained in the ERA audit files. If the applicant was an indirect purchaser it must also submit the name of its immediate supplier and indicate why it believes the covered product was originally sold by Pedersen;

(5) All relevant material necessary to support its claim in accordance with the injury presumptions and requirements outlined above;

(6) If the applicant was or is in any way affiliated with Pedersen, an explanation of the nature of the affiliation;

(7) A statement as to whether there has been a change in ownership of the entity that purchased the Pedersen motor gasoline during or since the consent order period. If there was such a change, the applicant must submit a copy of the sales agreement, as well as provide the names and addresses of the previous or subsequent owners;

(8) A statement as to whether the applicant is or has been involved in any DOE enforcement proceedings or private actions filed under section 210 of the Economic Stabilization Act. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must inform OHA of any change is status while its Application for Refund is pending. *See* 10 CFR 205.9(d);

(9) A statement as to whether the applicant has received a refund, from any source, for the alleged overcharges identified in the ERA audits underlying this proceeding;

(10) A statement as to whether the applicant or a related firm has filed any other Applications for Refund in this proceeding;

(11) A statement as to whether the claimant or a related firm has authorized any other individual(s) to file an Application for Refund on the claimant's behalf in the Pedersen proceeding; and

(12) The following statement signed by the applicant or a responsible official of the business or organization claiming the refund: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c).

Applications for refund should be sent to: Pederson Refund Proceeding, Case No. HEF–0147, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585

All applications must be filed in duplicate and must be postmarked within 90 days from the date of publication of this Decision in the **Federal Register**. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant that believes that its application contains confidential information must submit two additional copies of its application from which the confidential information has been

[3] The ERA allocated $13,180 of the Pedersen settlement to identified purchasers and the remainder of the settlement, $10,467, to unidentified end-users. Because the Pedersen escrow account contains only 84% of the principal specified in the Consent Order, we reduced these amounts accordingly.

[4] We generally require applicants to submit cost banks that continue until a product's price decontrol date. Resellers and resellers of motor gasoline, however, were only required to maintain banks through July 15, 1979, and April 30, 1980, respectively, rather than the January 27, 1981 decontrol date of motor gasoline.

[5] For motor gasoline, retailers and resellers have to submit the information detailed in Parts (2) and (3) only through July 15, 1979 and April 30, 1980, respectively. *See supra* note 12.

[6] We generally obtain average market price information from Platt's Oil Price Handbook and Oilmanac (Platt's). If price data for a particular product is not available in Platt's, the burden of supplying alternative information will be on the claimant.

BEST COPY AVAILABLE

deleted, together with a statement specifying why the information is confidential.

It Is Therefore Ordered, That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Pedersen Oil, Inc., pursuant to the Consent Order finalized on October 15, 1981 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision in the Federal Register.

Dated: July 19, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX 1.—ERA-IDENTIFIED POTENTIAL CLAIMANTS, PEDERSEN OIL, INC., CASE NO. HEF-0147

First purchasers	Share of settlement [1]
Gull Oil Company, 4th Avenue S., Seattle, WA 98134	$5,617.16
Fletcher Oil Company, 471 North Curtis Rd., Boise, ID 83706	90.41
Maxwell Oil Company,[2] 701 S. Plum, Olympia, WA 98507	319.44
Robert Buehler, 1104 N. Callow, Bremerton, WA 98312	115.43
Stann Dunn, City Fed, 5002 Kitsap Way, Suite 202, Bremerton, WA 98312	170.55
Earl Fuller, 5886 S.E. Olalla Burley Rd., Olalla, WA 98359	150.57
Time Oil Company, 2737 West Commodore, Seattle, WA 98199	966.67
Hi-way Market, 6250 Bethel Ave., SE., Port Orchard, WA 98366	165.63
Irondale Grocery, c/o Douglas Brown, 821 Irondale Rd., Hadlock, WA 98339	813.07
Hank's Grocery, 3629 Shico Way NW., Bremerton, WA 98310	195.74
Doug McGee's Arco, 402 Sleater Kinney Road NE., Olympia, WA 98503	421.60
Mel's Mobil, 140 Highway 101 S., Brinnan, WA 98320	195.74
Nebert Bros., 1233 E. First Street, Port Angeles, WA 98362	20.08
Roy's Auto Specialty, 499 Madison Ave. N., Bambridge Island, WA 98110	105.40
Gene Fetty, Rt. #1, Box 11, Port Townsend, WA 98368	856.24
Virgil Robbins, 109 Elma Monte Road, Elma, WA 98541	190.72
Hanaville Repair, Rt #2, Box 201, Hanaville, WA 98340	135.51
Total	10,534.05

[1] This figure does not include accrued interest.
[2] Last known address: firm is no longer in business.

APPENDIX 2.—ERA-IDENTIFIED POTENTIAL CLAIMANTS, PEDERSEN OIL, INC., CASE NO. HEF-0147

First purchasers addresses unknown	Share of settlement [1]
E. Hansen	$496.89
W. Pitt [2]	10.04

APPENDIX 2.—ERA-IDENTIFIED POTENTIAL CLAIMANTS, PEDERSEN OIL, INC., CASE NO. HEF-0147—Continued

First purchasers addresses unknown	Share of settlement [1]
Barnards [2]	5.02
Total	511.96

[1] This figure does not include accrued interest.
[2] As explained in the Decision, we do not intend to process claims for less than $15.

[FR Doc. 89-18860 Filed 8-10-89; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Central Valley Project, 1994 Power Marketing Plan

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of the 1994 Power Marketing Plan Alternatives; the draft plan; preparation of an environmental assessment; announcement of the schedule for public meetings; and request for comments.

SUMMARY: The Western Area Power Administration (Western) is developing a power marketing plan for Central Valley Project (CVP) power resources marketed by Western's Sacramento Area Office (SAO). The 1994 Power Marketing Plan will govern the sale of 449,136 kilowatts (kW) of long-term power and presently 89,795 kW of short-term power sold under electric service contracts which expire on or before June 30, 1994. Contracts expiring in 2004 are not covered by this 1994 Power Marketing Plan. Four alternative plans are being considered by Western at this initial stage of the public process. An environmental assessment of these four alternative plans will be conducted in order to provide the information necessary to guide Western in its development of the plan. Dates for the public forums concerning this plan are provided in this notice.

FOR FURTHER INFORMATION CONTACT: A brochure explaining the basis and rationale of the four marketing alternatives, the background and history of Western and the CVP, and the draft applicant profile data will be distributed to all SAO Customers and other interested parties prior to the first public information forum. Public information and public comment forums will be held in accordance with procedures for public participation pursuant to the Administrative Procedure Act (5 U.S.C. 500, *et seq.*). Scoping for the purpose of compliance with the National Environmental Policy Act of 1969 (NEPA) will be conducted in conjunction with these forums. Dates for these forums and other filing deadlines are indicated below.

Data, studies, reports, and other documents used in the development of the 1994 Power Marketing Plan are available for inspection and/or duplication in Western's SAO. Written comments and requests for information may be submitted to the address provided below throughout the public process: Mr. David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, CA 95825, (916) 649-4418.

Additional information on the environmental review of the 1994 Power Marketing Plan is available from: Ms. Nancy Weintraub, Area Environmental Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, CA 95825, (916) 649-4460.

SUPPLEMENTARY INFORMATION: Four alternative plans are being considered by Western at this initial stage of the public process. These four plans are those that Western believes to define the range of alternatives in the context of the contractual and operational constraints within which the CVP operates. These constraints deal with how Western's CVP resources are integrated with the Pacific Gas and Electric Company's (PG&E) resources and how they are operated to comply with the mandatory water release requirements of the Bureau of Reclamation (BuRec).

The four alternative plans are (1) the Status Quo or No Action alternative—Western renews all existing contract rates of delivery (CROD) in the same amounts and with the same Customers, that is, without any changes; (2) the Draft Plan alternative—which calls for a variety of options including renewals, allocations to new Customers, reductions in some programs, and expansion of other programs; (3) the Zero Base alternative—Western allocates the available firm power but no renewals would occur and allocations would be zero based; and (4) the Termination alternative—Western allows the contracts with June 30, 1994, or earlier termination dates to expire under their respective terms and conditions. None of the four alternatives would affect the amount of power served under contracts with an expiration date of 2004. However, each alternative would impact, in varying degrees, the cost of power served under contracts with an expiration date of 2004.

These four alternative plans are described in further detail in a brochure that will be made available to Customers and interested parties prior to the first public information forum. The public process will be comprised of the marketing evaluation and the environmental assessment review of the four alternatives pursuant to the NEPA. By combining these two reviews, Western believes that the interests of all parties will be best served and that the process can be completed in a timely manner.

The environmental assessment review of the four alternatives will begin with a scoping meeting held in conjunction with the first public information forum. The purpose of this meeting is to describe the four alternatives and the environmental review process, to listen to concerns and questions, and to receive other information from the public. A public comment forum will be held to receive comments on the scope of the environmental analysis and generally on the four marketing plan alternatives or other alternatives. Written comments will be accepted for up to 30 days after the date of the October 20, 1989, public comment forum. The information received from the public will help Western to determine the issues and range of alternatives to be analyzed in the environmental assessment, and to prepare the 1994 Proposed Power Marketing Plan.

To facilitate the public review process, one of the four alternatives, the Draft Plan, is published herein. This Draft Plan is based on the comments received from three informal public meetings held in October 1988, January 1989, and February 1989 to solicit Customers' and interested parties' ideas and opinions of the issues and possible directions that Western should take in the development of the 1994 Power Marketing Plan. This alternative contains the most variations and some of the features of each of the other alternatives, thereby providing reviewers with more information on which to evaluate the other three alternatives.

The Draft Plan consists of classes of electric service, contract conditions, general allocation and contract principles, eligibility and selection criteria, the marketing of Stampede Powerplant generation, and the Transmission Marketing Plan. The publication of the Draft Plan is not an endorsement of the alternative by Western. Western will make its choice of a power marketing plan when it announces the proposed 1994 Power Marketing Plan. The proposed plan will be subject to change by Western, and will be announced after the environmental assessment is complete.

DATES: The public process will begin on the date of publication of this notice. The proposed schedule for this public process is as follows:

Date	Event
September 12, 1989	Public Information Forum Presentation of Power Marketing Plan Alternatives, Environmental Scoping. Location: Holiday Inn-Holidome, 5321 Date Avenue, Sacramento, CA, 10 a.m.
October 20, 1989	Public Comment Forum Receipt of Oral and Written Comments on the Power Marketing Plan Alternatives and Environmental Concerns. Location: Holiday Inn-Holidome, 5321 Date Avenue, Sacramento, CA, 10 a.m.
November 20, 1989	Deadline to Receive Written Comments on the Power Marketing Plan Alternatives and Scope of the Environmental Analysis. Must be Postmarked on or Before November 20, 1989, to be Assured of Consideration.
June 1990	Draft or Final Environmental Assessment.
July 1990	Finding of No Significant Impact or Environmental Impact Statement Determination.
September 1990	FEDERAL REGISTER Notice of Proposed 1994 Power Marketing Plan, Proposed General Allocation and Contract Principles, Proposed Eligibility and Selection Criteria, and Call for Applications.
October 1990	Public Information Forum Presentation of Proposed 1994 Power Marketing Plan, Proposed General Allocation and Contract Principles, and Proposed Eligibility and Selection Criteria.
November 1990	Public Comment Forum Receipt of Oral and Written Comments on the Proposed 1994 Power Marketing Plan, Proposed General Allocation and Contract Principles, and Proposed Eligibility and Selection Criteria.
December 1990	Deadline to Receive Written Comments on the Proposed 1994 Power Marketing Plan, Proposed General Allocation and Contract Principles, and Proposed Eligibility and Selection Criteria. Must be Postmarked by Deadline Date to be Assured of Consideration.
1991—To Be Determined.	FEDERAL REGISTER Notice of Final Power Marketing Plan, Final General Allocation and Contract Principles, Final Eligibility and Selection Criteria, and Proposed Allocations (if any).
1991—To Be Determined.	Public Comment Forum Receipt of Written Comments on the Proposed Allocations (if any).
1991—To Be Determined.	FEDERAL REGISTER Notice of Final Allocations (if any).

Draft Plan

I. Definitions

1. Allocation means an offer by Western to sell to the Allottee a specified type and quantity of power made available by Western, in accordance with the 1994 Power Marketing Plan.

2. Allottee means a qualified Preference Entity receiving an Allocation pursuant to this 1994 Power Marketing Plan.

3. CVP means the Central Valley Project, a multipurpose Federal water development project extending from the Cascade Range in northern California to south of Bakersfield, operated by the BuRec (50 Stat. 844, August 26, 1937). The hydroelectric generation from the 10 powerplants of the CVP, having an installed capacity of 2,039 megawatts (MW), is marketed and transmitted into the northern and central California transmission grid by Western.

4. Contract Rate of Delivery (CROD) means the amount of an Allocation served by Western on an annual basis and which is placed under contract between an Allottee and Western, and as it may be reduced or increased in accordance with applicable law, this 1994 Power Marketing Plan, the Customer's electric service contract, and the Final Withdrawal Procedures.

5. Contract 2948A means Contract No. 14-06-200-2948A between PG&E and Western, which provides for certain

sales, exchanges, and transmission of electric power.

6. Customer means a qualifying entity having an electric service with Western.

7. Diversity Power means firm power made available because of the diversity of Western's Customer's peak demands at the time of Western's simultaneous peak demand. The Customer, at the request of Western, must shed a specified amount of load at the time of Western's simultaneous peak demands. This power is subject to additional terms and conditions specified in an electric service contract.

8. Final Withdrawal Procedures mean those procedures published in the Federal Register on March 5, 1986 (51 FR 43), which specify the methods to be used by Western for the adjustment of CROD under varying circumstances.

9. General Power Contract Provisions (GPCP) mean the most recent standard terms and conditions applicable to electric service provided by Western and which are attached to and made a part of Western's electric service contracts.

10. Interruptible Power means power which permits a Customer to schedule a specified amount of power during all times except during Western's partial and on-peak periods, as determined by Western. Such power will be withdrawn to protect the 1,152–MW Load Level before Type III Withdrawable Power is withdrawn and will be subject to additional terms and conditions specified in an electric service contract.

11. Load Factor means the amount of kilowatthours (kWh) used by an entity in a given period divided by the product of that entity's peak demand, in kW, and the number of hours in the same given period; this resulting number is multiplied by 100 to express load factor in a percentage format.

12. Long-Term Firm Power means firm power allocated by Western and subject to the terms and conditions specified in an electric service contract.

13. Pacific Gas and Electric Company (PG&E) means the investor-owned utility having a service area in northern and central California, and load control responsibility for the northern and central California area and with whom Western sells, exchanges, and transmits power under Contract 2948A.

14. Power means electrical capacity and associated energy.

15. Preference Entity means an entity that meets the requirements of Reclamation Law, which provides that preference shall be given to municipalities and other public corporations or agencies; and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 (Reclamation Project Act of 1939, section 9(c), 43 U.S.C. 485h(c)).

16. Renewable Resource and Cogeneration Power means firm power allocated by Western for the development or operation of a renewable resource or cogeneration project and which is subject to the terms and conditions specified in an electric service contract.

17. Santa Clara Settlement or MOU means the Memorandum of Understanding among Western, PG&E, the city of Santa Clara, and other CVP Customers, dated February 8, 1980, providing for settlement of issues raised on the case of the city of Santa Clara v. Andrus, 572 F. 2d 660 (9th Cir.), cert. denied, 439 U.S. 859 (1978), and for PG&E's agreement to allow Western the option of increasing the load level from 1,050 MW to 1,152 MW.

18. Scheduling Agreement means a contractual agreement that specifies the terms and conditions for the real-time scheduling or resources to load. Normally, this agreement is a companion agreement to a contract for interconnected operations between two utilities.

19. Type III Withdrawable Power means firm power which is withdrawable to protect the 1,152–MW Load Level before withdrawal of other types of noninterruptible power and which is subject to additional terms and conditions specified in an electric service contract.

20. Western Area Power Administration (Western) means the Federal power marketing administration within the U.S. Department of Energy (DOE) responsible for marketing the surplus generation from BuRec projects pursuant to Reclamation Law and the DOE Organization Act (91 Stat. 565).

21. Westlands Withdrawable Power means Long-Term Firm Power which is additionally withdrawable to meet the load requirements of Westlands Water District under conditions specified in the Customer's electric service contract and as specified in the Final Withdrawal Procedures.

22. The 1,152–NW Load Level means the maximum simultaneous customer load level of 1,152 MW that Western provides, and that PG&E is obligated to support, in accordance with the terms of the Santa Clara Settlement and Contract 2948A.

II. Marketing Area

The SAO of Western has a marketing area which generally encompasses the CVP water basin and the Washoe Project in northern Nevada. The generation of the sole powerplant of the Washoe Project, the Stampede Powerplant, is marketed within northern Nevada. The CVP resources have traditonally been utilized in the northern and central California area, and area planning has develped under the assumption that those resources will be used in the area. Under Contract 2948A, there are constraints involved with marketing CVP power resources outside the northern and central California area. Further, Western has no transmission capability to serve the northern Nevada area.

Given these considerations and constraints, Western will market its CVP power only within the northern and central California portion of the SAO marketing area.

III. Classes of Service

A. Long-Term Firm Power

Proposed option: Western will renew all Long-Term Firm Power CROD (349,195 kW) currently sold under existing contracts, including those having the Westlands Withdrawable Condition, with the same quantity of Long-Term Firm Power which each Customer had just prior to the earlier of the effective date of a new electric service contract entered into pursuant to this 1994 Power Marketing Plan or June 30, 1994. Such Long-Term Firm Power will be sold under new electric service contracts with standard terms and conditions as specified in sections IV. and V. below.

Alternative options: (1) Western will renew an amount equal to 95 percent of the Long-Term Firm Power CROD (331,735 kW) which each Customer had just prior to the earlier of the effective date of a new electric service contract entered into pursuant to this 1994 Power Marketing Plan or on June 30, 1994, provided that the minimum allocation for each such Customer shall be as specified in section V.A.3. below. The remaining amount to be allocated is an amount equal to 5 percent of the 349,195 kW of Long-Term Firm Power or 17,460 kW. These amounts may be modified by Western through the public comment process of this power marketing plan. The 17,460 kW, as it may be modified, will be allocated only to new Allottees which have not had previous contracts for firm power from Western. (2) Same as alternative option (1) except that the 17,460-kW amount, as may be modified by this 1994 Power Marketing Plan, will be allocated to Customer and/or new Allottees in amounts to be determined by Western. Under alternative options (1) or (2), such Long-Term Firm Power will be allocated in accordance with sections VI.A and VI.B.1. below, and will be sold under new electric service contracts with standard terms and conditions as specified in sections IV. and V. below.

B. Type III Withdrawable Power

Proposed option: Western will renew all Type III Withdrawable Power CROD (36,409 kW) currently sold under existing contracts with the same quantity of Type III Withdrawable Power which each Customer had just prior to the earlier of the effective date of a new electric service contract entered into pursuant to this 1994 Power Marketing Plan or June 30, 1994. Such Type III Withdrawable Power will be allocated in accordance with section VI.B.3., and will be sold under new electric service contracts with standards terms and conditions as specified in sections IV. and V. below.

Alternative Option: Western will not renew the Type III Withdrawable Power CROD, allowing such contracts to terminate by their provisions on June 30, 1994.

C. Diversity Power

Proposed option: Western will not renew the Diversity Power CROD. Instead, Western will convert all 30 MW of the former Diversity Power to Type III Withdrawable Power Allocations. Such Type III Withdrawable Power will be allocated to new Allottees and/or existing Customers. Such Type III Withdrawable Power will be allocated in accordance with sections VI.A., VI.B.1, and VI.B.4. below, and will be sold under new electric service contracts with standard terms and conditions as specified in sections IV. and V. below.

Alternative Options: Western will not convert the Diversity Power to Type III Withdrawable Power and will either (1) renew the Diversity Power CROD in the same amounts with NASA-Ames, Stanford Linear Accelerator Center, and Lawrence Berkeley Laboratory but under new terms and conditions to be negotiated; or (2) allocate the 30 MW of Diversity Power to new Allottees and/or existing Customers in accordance with sections VI.A., VI.B.1, and VI.B.4. below. Such Diversity Power will be sold under new electric service contracts with standard terms and conditions as specified in sections IV. and V. below.

D. Interruptible Power

Proposed option: Existing Type III Interruptible Power (presently 89,795 kW) will be called Interruptible Power in contracts executed pursuant to this 1994 Power Marketing Plan. Western will renew an amount equal to 50 percent of the Type III Interruptible Power which each Customer had just prior to the earlier of the effective date of a new electric service contract entered into pursuant to this 1994 Power Marketing Plan or on June 30, 1994, provided that the minimum allocation shall be as specified in section V.A.3. below. The remaining 50 percent of the existing Type III Interruptible Power will be allocated to other Allottees which have Scheduling Agreements with Western, or which have real-time scheduling capability and which enter into Scheduling Agreements with Western. These amounts are allocated to protect the 1,152-MW Load Level and are, therefore, subject to interruption and withdrawal if the load level is exceeded. The actual amount allocated will be in accordance with sections VI.A. and VI.B.5. below and is subject to any withdrawals occurring prior to the execution of electric service contracts. Such power will be sold under new electric service contracts with standard terms and conditions as specified in sections IV. and V. below.

Alternative Options: (1) Western will not renew the existing Type III Interruptible Power, allowing it to terminate under the terms of the existing contract or June 30, 1994, whichever occurs earlier; or (2) Western will renew 75 percent, 67,346 kW, of the existing Type III Interruptible Power. The remaining 25 percent, 22,449 kW, and an additional 30 MW will be allocated to new Allottees with such Allocations made in accordance with sections VI.A. and VI.B.5. Under either option (1) or (2), such power will be sold under new electric service contracts with standard terms and conditions as specified in sections IV. and V. below.

E. Renewable Resource and Cogeneration Power

Proposed option: Western will renew all Renewable Resource and Cogeneration Power CROD (24,343 kW) currently sold under existing contracts with the same quantity of Renewable Resource and Cogeneration Power which each Customer had just prior to the earlier of the effective date of a replacement electric service contract entered into pursuant to this 1994 Power Marketing Plan or June 30, 1994. Each such Customer must have had an existing, effective, and operational contract for its Renewable Resource and Cogeneration Power in place for a 5-year period ending June 30, 1994. Renewable Resource and Cogeneration Allocations of 5.657 MW that were made in the 1981 Power Marketing Plan but which are not under an effective and operational contract shall be allocated as Long-Term Firm Power to new Allottees. Renewable Resource and Cogeneration Power will be sold under electric service contracts with standard terms and conditions as specified in sections IV. and V. below. Long-Term Firm Power will be allocated pursuant to sections VI.A. and VI.B.1., and will be sold under electric service contracts with standard terms and conditions as specified in sections IV. and V. below.

Alternative option: (1) Western will not renew the Renewable Resource and Cogeneration Power, but instead will reallocate such power as Long-Term Power and only to new Allottees, or only to existing Customers, or to both new Allottees and existing Customers. Long-Term Firm Power will be allocated in accordance with sections VI.A., VI.B.1., and VI.B.2. below, and will be sold under electric service contracts under terms and conditions as specified in sections IV. and V. below. (2) Western will allocate the Renewable Resource and Cogeneration Power to existing Customers and/or new Allottees who have not had a contract for Renewable Resource and Cogeneration Power. Renewable Resource and Cogeneration Power will be allocated in accordance with sections VI.A., VI.B.1., and VI.B.6. below and will be sold under electric service contracts under terms and conditions as specified in sections IV. and V. below.

F. Other Classes of Service

Proposed option: In this 1994 Power Marketing Plan, and depending on the option selected for the final 1994 Power Marketing Plan, Western will offer only Long-Term Firm Power, Diversity Power, Interruptible Power, Type III Withdrawable Power, and Renewable Resource and Cogeneration Power. Other classes of service, such as peaking capacity, emergency and backup power, and spinning reserves, if offered, will be marketed on a short-term basis or pursuant to a separate marketing plan.

Alternative option: None proposed.

IV. Electric Service Contract Conditions

A. Minimum Load Requirement

Proposed option: Western will reserve the right to terminate a contract if an Allottee that receives Federal power from the system of PG&E does not have monthly demands of 500 kW or more for 3 consecutive months in the 12 months immediately preceding the date that PG&E is requested by Western to begin service.

Alternative option: If power is received from the system of PG&E, the minimum load requirement could be raised to 1,000 kW.

B. Westlands Withdrawable Power

Proposed option: All power made available under new contracts effective July 1, 1994, will be made available without the Westlands Withdrawable Power condition. The elimination of this condition will not affect Westlands Water District's current contract rights to power from Western.

Alternative option: All Long-Term Firm Power made available under new contracts effective July 1, 1994, will be made available with the Westlands Withdrawable Power condition. This option will have no affect on Westlands Water District's current contract rights to firm power from Western.

C. Integration Contract/Firming Service Condition

Proposed option: All power made available under new contracts effective July 1, 1994, will be made available without the condition that a Customer's CROD can be reduced in any amount necessary due to the expiration or termination of a firming contract with PG&E.

Alternative option: Western will require as a standard provision that a Customer's CROD can be reduced by any amount in the event of the expiration or termination of a firming contract with PG&E.

D. Transmission Service Condition

Proposed option: Western will be responsible for obtaining all necessary third-party transmission arrangements for delivery of its power to Customers in the PG&E service area unless otherwise agreed by Western, the transmission agent, and the affected Customers. Customers outside the PG&E service territory have the ultimate responsibility to obtain any necessary transmission contracts required from transmission of power from the PG&E service area to their point of delivery. The Customers will have 1 year from the execution of a contract with Western to acquire the necessary transmission service arrangements. Western will assist and cooperate with those Allottees to obtain any necessary transmission arrangements outside the PG&E service area.

Alternative option: Same as above, plus for those Customers not in the PG&E service area, Western will require as a condition that these Customers acquire the necessary transmission service arrangements within 6 months of the execution of an electric service contract with Western.

E. Contract Term

Proposed option: All electric service contracts which will be executed pursuant to this 1994 Power Marketing Plan shall have expiration dates of December 31, 2004.

Alternative option: None proposed.

F. Other Contract Conditions

Proposed option: All contracts entered into as a result of this 1994 Power Marketing Plan will incorporate, as applicable, Western's standard provisions for power sales contracts, including the latest version of the GPCP; withdrawals for project-use, load-level limit, and first preference; resale of electric energy; and conservation and renewable energy.

Alternative option: None proposed.

V. Draft General Allocation and Contract Principles

A. 1. Allocations of power will be made in amounts solely determined by Western.

2. The Allottee has the right to purchase such power only upon the execution of a new electric service contract between Western and the Allottee, and satisfaction of all conditions precedent in that contract.

3. The minimum Allocation shall be 500 kW provided that Western may waive this requirement for preference entities directly connected to Western's transmission system, which historically have had loads under 500 kW.

B. New or renewed Allocations will be sold with energy either provided (a) on an A-over-B basis where A is the CROD and B is the Customer's monthly peak demand, unless specifically excepted under Contract 2948A and agreed by Western, or (b) pursuant to a Scheduling Agreement where energy entitlements are based on the Customer's monthly average energy use calculated over the most recent 5-year period, and recalculated on a 5-year rolling basis, except as mutually agreed by Western and the Customer. Energy provided with Interruptible Power will be provided in quantities, at rates, and under other terms and conditions mutually agreed upon between Western and the Customer.

C. Contracts for renewal of Long-Term Firm Power, Type III Withdrawable Power, Interruptible Power, Diversity Power, and Renewable Resource and Cogeneration Power:

1. To consummate the renewal of any of the above classes of power pursuant to this 1994 Power Marketing Plan, new electric service contracts for such a service must be executed no later than the expiration date of the existing electric service contract, unless otherwise agreed in writing by Western. Renewed CROD shall be effective on the effective date of the new electric service contract.

2. All contracts for a renewal of a Renewable Resource and Cogeneration CROD will not include return-energy provisions, However, the new contract shall contain an enabling provision providing for the sale of energy by the Customer to Western from sources available to the Customer, at market-based rates, such amounts and rates to be determined and agreed upon from time to time by the parties' dispatchers. Other terms and conditions for such an energy sale shall be negotiated.

D. To consummate any new Allocation, an electric service contract for such an Allocation shall be executed within 6 months of a contract offer by Western, unless otherwise agreed in writing by Western. New Allocations shall be effective on the later of the effective date of service under a new electric service contract or July 1, 1994.

E. Any renewed CROD or new Allocation or part thereof shall cease to exist as to the original Customer or Allottee if it is not under contract in the time period specified in subsections C.I. and D. above, or if a Customer's contract is terminated prior to December 31, 2004. In either case, Western will choose to:

1. Not allocate the particular class of service prior to 2004; or

2. Allocate the particular class of service at any time in accordance with the applicable criteria of this 1994 Power Marketing Plan to any qualifying applicant.

F. In the event that Type III Withdrawable Power or Interruptible Power is reduced to zero, such power may be reinstated in accordance with the terms of the contract, and the contract shall continue to exist through its term unless terminated by either party.

G. For New Renewable Resource and Cogeneration Power

1. To be effective, an executed contract will be contingent upon the development and commerical operation of a specific project. In the event that the original project does not meet this condition precedent, then Western will consider allowing a Customer to replace the original project with an alternate renewable resource or cogeneration project. The alternate project must comply with the intent and criteria of the renewable resource and cogeneration program of the 1994 Power Marketing Plan.

2. The scheduled operation date of any planned generation project, as certified by a registered professional engineer, shall be within 3 years of the publication date of the Final Allocations. Failure of a project to begin commercial operation within this time period, as determined by Western, will give Western the option, upon giving 6-months' advance written notice to the Allottee, to rescind the Allocation. Allocations under contract shall not become effective until the first day of the month following commercial operation of the project.

3. Demonstration projects will not be considered.

4. All new contracts for Renewable Resource and Cogeneration Power shall contain an enabling provision providing for the sale of energy by the Customer to Western from sources available to the Customer, at market-based rates, such amounts and rates to be determined and agreed upon from time to time by the parties' dispatchers. Other terms and conditions for such an energy sale shall be negotiated.

H. Scheduling Agreements

Western will encourage and enter into Scheduling Agreements with its Customers when advantageous to Western's customer base as a whole and when consistent with applicable law or when required in accordance with the normal utility practice of interconnected utilities. Western may condition its entering into a Scheduling Agreement upon satisfactory resolution of issues related to interconnected operations, including use of transmission capacity, voltage support, power factor, reactive powerflow, system operations, and modifications of facilities.

I. Consolidation of Contract Rates of Delivery

Western will normally contract with each individual Customer. However, Western will enter into consolidated or combined delivery contracts with a group of Customers or with a representative of a group of Customers when advantageous to Western's customer base as a whole and when consistent with applicable law.

VI. Eligibility and Selection Criteria

A. Draft General Eligibility Criteria

In the event that new Allocations are to be made to existing Customers or new Allottees, the following General Eligibility Criteria shall apply to all applicants seeking an Allocation of power under the 1994 Power Marketing Plan.

1. Only applications from Preference Entities will be accepted.

2. To be eligible to receive an Allocation, the Preference Entity must have been in existence and operation, and be ready, willing, and able to receive and use or receive and distribute Federal power as of the publication date of the final 1994 Power Marketing Plan, except that Western will not require the Allottee to have in effect the necessary transmission contracts pursuant to section IV.D. as of that date.

3. Applicants shall file an application in response to the written notice issued by Western and published in the Federal Register in conjunction with this 1994 Power Marketing Plan. The filing instructions, format, and the deadline for the applications will also be published in the Federal Register.

B. Draft Specific Selection Criteria

In the event that Western decides to allocate to any new Preference Entities under the 1994 Power Marketing Plan, the following Specific Selection Criteria shall apply.

1. Specific Selection Criteria common to Long-Term Firm Power, Interruptible Power, Type III Withdrawable Power, Diversity Power, and Renewable Resource and Cogeneration Power:

a. An Allottee's minimum load at each delivery point to be served shall be no less than 500 kW at peak.

b. Allocations to new Allottees will be made only to those applicants in the PG&E service area.

c. Allocations to new irrigation or water districts will be made only to those who purchase CVP water or to those who have water rights recognized under California law.

d. Greater consideration will be given to those applicants who can demonstrate a contribution to Western's system diversity at the time of Western's simultaneous peak; i.e., the applicant's peak demands are not coincident with Western's peaks.

e. Greater consideration will be given to those applicants who have instituted and continue to actively pursue demand-side management activities.

f. Greater consideration will be given to those applicants who are constructing, planning, or developing new renewable resource and cogeneration projects.

g. Greater consideration will be given to those applicants who assist Western in its mission of meeting its customer loads at the lowest possible cost consistent with sound business principles. Factors such as, among others, providing transmission access to low-cost sources of power and aiding in providing efficient and reliable electrical service will be considered.

2. Additional Specific Selection Criteria for Long-Term Firm Power: Both new and existing Allottees (depending upon the Allocation option) will be considered.

3. Additional Specific Selection Criteria for Type III Withdrawable Power: Both new and existing Allottees will be considered.

4. Additional Specific Selection Criteria for Diversity Power Allocations:

a. Both new and existing Allottees will be considered.

b. Greater consideration will be given to those Allottees who have a historical or demonstrated potential to either reduce their Federal power or real-time schedule generation capacity to displace Western's deliveries at Western's weak periods.

5. Additional Specific Selection Criteria for Interruptible Power.

a. Both new and existing Allottees will be considered.

b. Greater consideration will be given to those Allottees who have a historical or demonstrated potential to either reduce their Federal power or real-time schedule generation capacity to displace Western's deliveries at Western's peak periods.

c. Only Allottees which have Scheduling Agreements with Western or have scheduling capability and which enter into Scheduling Agreements with Western will be considered.

6. Additional Specific Selection Criteria for Renewable Resource and Cogeneration Power:

a. Both new and existing Allottees will be considered.

b. Greater consideration will be given to those applicants whose generation projects reduce the United States dependence on natural gas or imported oil.

c. Greater consideration will be given to those applicants whose generation projects are environmentally benign.

d. Greater consideration will be given to those applicants whose generation projects result in significant improvements in energy efficiency and at the same time are cost effective over the life cycle of the powerplant.

VII. Stampede Powerplant

Proposed option: Western will not integrate the Stampede Powerplant of the Washoe Project with the CVP, provided that this decision does not preclude reconsideration of such integration at any time during the effective period of this 1994 Power Marketing Plan.

Alternative option: Western will integrate the Stampede Powerplant with the CVP. Stampede energy would then be integrated with CVP generation and other power purchases. The repayment obligation of Stampede, including the cost of transmitting the generation to Western's system, would then be met by the CVP.

VIII. Transmission Marketing Plan

Proposed option: SAO's transmission marketing policy consists of the following six components:

1. Western will deliver Federal power to project and customer loads as required under Reclamation Law and its contractual obligations.

2. Surplus transmission capability, if available after serving 1. above, will be utilized for power purchases associated with CVP sales of power to project and customer loads.

3. Surplus transmission capability, if available after serving 1. and 2. above, will be made available to Customers to serve their own firm load requirements not served by Western and who are directly connected to Western's transmission system.

4. Surplus transmission capability, if available after serving 1., 2., and 3. above, will be made available on a first-come first-served basis to any requesting utility. Generally capability will not be made available to nonutility generators, independent power producers, and qualifying facilities unless there is a utility involved.

5. Western will cooperate in area-wide emergency planning programs and utilize its transmission system to provide appropriate assistance during emergency and curtailment situations to assist all interconnected utilities where feasible.

6. Western will cooperate and assist customers in compatible efforts to integrate their transmission with Western's service and project and customer loads.

Alternative options: None proposed.

Environmental Compliance

In compliance with NEPA, Council on Environmental Quality Regulation (40 CFR Parts 1500 through 1508), and DOE guidelines published in the Federal Register on December 15, 1987 (52 FR 47662), Western is conducting an environmental assessment concurrently with the development of the 1994 Power Marketing Plan.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.* (Act), each agency, when required to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. Western has determined that (1) this rulemaking relates to service offered by Western, and therefore is not a rule within the purview of the Act; (2) there will be only a few qualifying applicants, which will be small entities; and (3) the impacts of an allocation from Western would not cause an adverse economic impact to such entities. The requirements of the Act can be waived if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. By his execution of this Federal Register notice, the Administrator certifies that no significant economic impact on a substantial number of small entities will occur.

Determination Under Executive Order 12291

The DOE has determined that the 1994 Power Marketing Plan alternatives and allocation criteria are not major rules because they do not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291; accordingly, no clearance of this procedure by Office of Management and Budget is required.

Issued at Golden, Colorado, July 21, 1989.

William H. Clagett,

Administrator.

[FR Doc. 89-18861 Filed 8-10-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3626-7]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed July 31, 1989 Through August 4, 1989 Pursuant to 40 CFR 1506.9

EIS No. 890211, Final, FHW, AK, South Cushman Street Upgrading, Van Horn Road to Gaffney Road, Funding, Fairbanks, North Star Borough, AK, Due: September 11, 1989, Contact: Tom Neunaber (907) 586-7428.

EIS No. 890212, Final, AFS, ID, Lightning Peak Open Pit Mine Development, Plan of Operation Approval, Payette National Forest, Krassel Ranger District, Valley County, ID, Due: September 11, 1989, Contact: Earl Kimball (208) 634-8151.

EIS No. 890213, Final, AFS, SD, WY, Norbeck Wildlife Preserve Land Management Plan, Implementation, Black Hills National Forest Land and Resource Management Plan, Custer and Pennington Counties, SD, Due: September 11, 1989, Contact: Mary Sue Waxler (605) 673-2251.

EIS No. 890214, Final, AFS, AL, GA, KY, NC, SC, TN, VA, WV, Appalachian Mountains National Forests Vegetation Mangement Plan, Implementation, AL, GA, KY, NC, SC, TN, VA and WV, Due: September 11, 1989, Contact: Steve McCorquodale (404) 347-7076.

EIS No. 890215, FSuppl, IBR, CO, Rudi Reservoir Round II Water Sale Marketing Program, Fryingpa-Arkansas Project, CO, Due: September 11, 1989, Contact: Wayne Deason (303) 236-9336.

EIS No. 890216, Draft, AFS, ID, Cuddy Mountain Roadless Area Timber Sale and Road Construction, Payette National Forest Land and Resource Management Plan, Implementation, Washington and Adams Counties, ID, Due: September 25, 1989, Contact: Phil Gilman (208) 634-8151.

EIS No. 890217, Draft, FHW, CA, Bristol Street Improvement, Between Warner Avenue and Memory Lane, Funding, Orange County, CA, Due: September 25, 1989, Contact: Joyce Amerson (714) 467-5606.

EIS No. 890218, Draft, NPS, FL, Big Cypress National Preserve, General Management Plan, Implementation, Collier, Dade, and Monroe Counties, FL, Due: December 1, 1989, Contact: Fred Fagergren (813) 695-2000.

EIS No. 890219, Draft, FHW, FL, Miracle Parkway, Everest Parkway Improvement and Midpoint Bridge Construction, Over the Caloosahatchee River, Funding, Cape Coral to Fort Myers, Lee County, FL, Due: September 25, 1989, Contact: Brodie Rich (305) 536-4103.

EIS No. 890220, Final, FHW, CA, CA-52 Construction, Santo Road to CA-67, Funding and 404 Permit, San Diego and Santee Cities, San Diego County, CA, Due: September 11, 1989, Contact: Susan Klekar (619) 551-1307.

EIS No. 890221, Final, UAF, MT, Malstrom AFB, Deployment of the Second KC-135R Air Refueling Squardron, 301st Air Refueling Wing, City of Great Falls, Cascade County, MT, Due: September 11, 1989, Contact: LTC. Thomas J. Bartol (714) 382-4891.

EIS No. 890222, Final, EPA, LA, Barataria Bay Waterway, Ocean Dredged Material Disposal Site (ODMDS), Designation, Jefferson Parish, LA, Due: September 11, 1989, Contact: Norm Thomas (214) 655-2280.

EIS No. 890223, Draft, FRC, OR, Salt Caves 60 MW Hydroelectric Project No. 10199, Construction and Operation, License, Klamath River, Klamath County, OR, Due: September 25, 1989, Contact: Frank Karwoski (202) 376-9284.

Dated: August 8, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-18865 Filed 8-10-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3626-8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 24, 1989 through July 28, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D-BOP-D61016-MD, Rating EC2, Cumberland Minimum Security Federal Prison Camp and Correctional Institution Facility, Construction and Operation, Mexico Farms Industrial Park, Cumberland, Allegheny County, MD.

Summary: EPA feels additional information is required to assess groundwater and wetland impacts of the alternatives. ERP No. DA-FHW-B40050-MA, Rating EC2, Central Artery/I-93 and Third Harbor Tunnel/I-90, South Boston Haul Road, Construction, Dorchester Avenue to Congress Street, Funding, 404 Permit and NPDES Permit, City of Boston, Suffolk County, MA.

Summary: EPA believes that this document lacks adequate soil and groundwater data from the standpoint of NEPA's disclosure requirements and federal and state hazardous waste and water pollution control regulations. As a result, the environmental consequences associated with the proposed project cannot be adequately assessed. Furthermore, the lack of groundwater and stormwater data limits EPA's ability to evaluate aspects of the project subject to National Pollutant Discharge Elimination System (NPDES) permits under the Clean Water Act.

ERP No. D-FHW-L40170-OR, Rating EC2, US 30/Columbia River Highway Improvements, Bennett Road to Columbia Road, Funding and 404 Permit, Columbia County, OR.

Summary: EPA's environmental concerns are based on potential water quality, wetlands, and noise effects. Additional information and clarification are needed on noise mitigation measures, water quality and fishery effects and mitigation, and the wetland mitigation plan.

Final EISs

ERP No. F-FHW-D40219-VA, Va-265/Danville Expressway Completion, US-58 to US-29, Funding and 404 Permit, City of Danville, Pittsylvania County, VA.

Summary: EPA expressed environmental concerns due to insufficient information pertaining to the alternative analysis, land use, water quality, and secondary development issues. EPA requested the preparation of a supplemental document or that further clarification of the issues be presented in the Record of Decision.

ERP No. F-FHW-G40119-TX, US 67 Bypass Construction, Near FM-1434 to Near Spur 102, Cleburne, Funding, Johnson County, TX.

Summary: EPA has no objection to the proposed action as described in this document.

Dated: August 8, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-18866 Filed 8-10-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59273; FRL-3626-6]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the Federal Register of May 13, 1988 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application(s) for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

DATES: Written comments by: T 89-19, August 17, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS-59273]" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Room L-100, Washington, DC 20460 (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 89-19

Close of Review Period. August 31, 1989.

Manufacturer. Confidential.

Chemical. (G) Aminosilane.

Use/Production. (S) Film coating. Prod. range: 3,240 kg/yr.

Date: July 26, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-18832 Filed 8-10-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59272; FRL-3626-4]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences.

Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of six such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Y 89-146, July 23, 1989.

Y 89-149, 89-150, July 25, 1989.

Y 89-151, August 1, 1989.

Y 89-15, 89-153, August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 89-146

Manufacturer. Eastman Kodak Company.

Chemical. (G) Polyvinyl alcohol polymer.

Use/Production. (G) Contained use in an article. Prod. range: 100-500 kg/yr.

Y 89-142

Manufacturer. Confidential.

Chemical. (S) 1-Methyl-2-pyrrolidone.

Use/Production. (G) Decorative and protective coatings for wall, floor and metallic surfaces. Prod. range: Confidential.

Y 89-150

Manufacturer. Confidential.

Chemical. (S) Triethyl amine.

Use/Production. (S) Coatings. Prod. range: Confidential.

Y 89-151

Manufacturer. Confidential.

Chemical. (G) Polyester resin.

Use/Production. (G) An additive used in the plastic industry. Prod. range: Confidential.

Y 89-152

Importer. Nagase America Corporation.

Chemical. (G) Partially c osslinked polymer of styrene-butadiene rubber and a block polymer of polybutadiene and substituted acrylates.

Use/Import. (S) Binder of printing plates for flexography. Import range: 10,000-30,000 kg/yr.

Y 89-153

Manufacturer. Confidential.

Chemical. (G) Polyamide.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

Date: July 28, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-18833 Filed 8-10-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3628-9]

Underground Injection Control Program; Proposed Formation-Specific Maximum Injection Pressure Values for Class II Enhanced Recovery Wells on the Osage Mineral Reserve, Oklahoma

AGENCY: Environmental Protection Agency.

ACTION: Notice with request for comment.

SUMMARY: Notice is hereby given of proposed formation-specific limitations establishing formation-specific maximum injection pressure values for existing Class II enhanced recovery wells on the Osage Mineral Reserve, Oklahoma. The Regional Administrator is required to establish such maximum pressures after notice, opportunity for comment, and opportunity for a public hearing according to the provisions of 40 CFR part 124, subpart A, and will inform owners and operators in writing of the applicable maximum pressures.

DATES: The EPA will accept public comment, in writing, on the proposed formation-specific pressure limitations until September 28, 1989.

A public hearing to discuss this proposal has been scheduled for 7:00 p.m. on September 11, 1989. The hearing will be held at the Tri-County Technical School Auditorium in Bartlesville, Oklahoma. However if sufficient public interest is not expressed for a public hearing by September 1, 1989, the EPA reserves the right to cancel this hearing.

ADDRESS: Written public comments regarding this proposal need to be addressed to Gus Chavarria, Chief, UIC Permits and Enforcement Section (6W-SE), EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Gus Chavarria, UIC Permits and Enforcement Section (6W-SE), EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 655-7165.

SUPPLEMENTARY INFORMATION:

Background

These formation-specific limitations are being proposed under the authority of Part C of the Safe Drinking Water Act (SDWA) which specifically mandates regulation of underground injection of fluids through wells. The EPA has promulgated an EPA-administered program for the Osage Mineral Reserve, Oklahoma. This program requires the Regional Administrator to establish a maximum injection pressure for the field or formation in which existing Class II enhanced recovery wells are located (40 CFR 147.2912(b)(2)(i)). The EPA has considered various hydrologic, geologic and historical conditions in determining the proposed injection pressure limitations for existing Class II enhanced recovery wells. The pressure limitation informatiohn was derived from data submitted by operators pursuant to 40 CFR 147.2912(b)(2)(ii)(B).

Basis for Proposal

The EPA Region 6 required owners or operators of enhanced recovery wells to submit formation-specific, maximum pressure values on a field or project basis. Owners and operators of enhanced recovery wells submitted formation-specific, fracture related data on over 1,400 enhanced recovery wells. Some data, in addition to being formation and field specific are also well specific. In situations where data were not available for a specific enhanced recovery well, data from an offset well were accepted by the EPA.

The majority of the formation-specific, fracture related data received from the owners and operators of enhanced recovery wells were derived from the instantaneous shut-in pressure method for determining fracture pressure gradients. In formations with multiple wells, an average gradient was calculated.

These values will provide an adequate safety margin for the lowermost confining layer between the injection zone and the USDW. All gradient values were rounded to two significant figures. In fields or projects where no reliable data were available, the EPA is not proposing a fracture gradient value. Therefore, for those geologic formations being utilized for the enhanced recovery of oil and gas not listed in Table 1, the formula to be utilized for determining the maximum injection pressure (Pm) is: Pm=(0.75 −0.433 (Specific Gravity))×Depth to injection in feet.

The EPA proposes to use the list of gradients in Table 1 as the limiting factor on wellhead injection pressures for each of the corresponding fields/projects and formations. Those owners and/or operators who feel that a particular value would adversely affect their injection operations may propose an alternative field or formation gradient during the comment period. These owners/operators may be granted a different value if they can demonstrate to the satisfaction of the Regional Administrator that the performance standards of 40 CFR 147.2912 (b) and (c) would be satisfied.

In some fields or projects where data were not submitted, were inconclusive or were inadequate, the EPA is unable to propose a gradient at this time. Operators with enhanced recovery wells in fields or projects not identified in this notice should submit their data during the comment period. Failure to submit the required data (40 CFR 147.2912(b)(2)(ii)(B)) will result in the EPA requiring individual or area permits in accordance with 40 CFR 147.2915(b)(1) of the Osage UIC program regulations.

Table 1 reflects the fracture gradients that were derived from the data submitted by the operators. It lists the field or project name, the formation, the legal location and the fracture gradient.

TABLE 1

Field/Project	Formation	Location	Gradient/(psi/ft)
Atlantic	Bartlesville	T25N R8E	0.61
Avant			
North	Bartlesville	T24N R11E	0.61
West	Bartlesville	T23N R11E	0.89
	Cleveland	T23N R11E	0.73
	Bartlesville	T23N R10E	0.74
	Mississippi Chat	T23N R11E	0.71
Barker	Skinner	T24N R7E	0.57
	Mississippi Chat	T24N R7E	0.57
Barnsdall			
South	Bartlesville	T23N R11E	0.50
West	Bartlesville	T24N R10E	0.63
Bartlesville District	Bartlesville	T26N R12E	0.53
	Wayside	T27N R12E	1.10
Belford	Mississippi Chat	T24N R4E	0.71
Big Bend	Layton	T25N R3E	0.60
West	Layton	T25N R2E	0.60
East	Layton	T25N R3E	0.51
Bighorse District	Bartlesville	T27N R11E	0.66
Bird Creek	Bartlesville	T21N R12E	0.68
Blackland	Mississippi Chat	T27N R7E	0.53
Boston	Bartlesville	T21N R7E	0.50
Bowring	Wayside	T26N R11E	0.55
Buell	Skinner	T23N R9E	0.75
Bulldog District (South)	Bartlesville	T24N R9E	0.50
Burbank			
North	Burbank	T26N R5E & 6E, T27N R5E & 6E	0.57
Mid	Burbank	T26N R6E	0.56
South	Burbank	T25N R6E, T26N R6E	0.59
	Mississippi Chat	T25N R6E	0.55
Candy Creek	Mississippi Chat	T24N R12E	0.56
Dalton			
West	Tyner	T24N R7E	0.52
Doga (Southwest)	Mississippi Chat	T24N R4E	0.52
Dome District			
South	Bartlesville	T27N R10E, T26N R10E	0.78
Southwest	Bartlesville	T26N R10E	0.83
North	Wayside	T27N R10E	0.92
Drum Creek			
North	Mississippi Chat	T25N R4E	0.48
Northwest	Mississippi Chat	T25N R4E	0.49
Fairfax Unit	Burbank	T25N R6E	0.66
Flood A Unit	Burbank	T26N R6E	0.57
Gilliland	Bartlesville	T23N R7E, T23N R8E	0.76
Hardy			
East	Mississippi Chat	T25N R3E	0.46
Southwest	Mississippi Chat	T23N R3E	0.46
Happy Hollow	Mississippi Chat	T24N R8E	0.73
Herb District (South)	Mississippi Chat	T27N R10E	0.50
Hickory Creek	Wayside	T29N R11E	0.89
Hominy			
East	Bartlesville	T22N R9E	0.68
Kaw	Skinner	T26N R4E	0.52
Kennedy (St. John)	Skinner	T24N R7E, T25N R7E	0.71
Landon (Northwest)	Wayside	T28NN R9E	0.73
Madalene (East)	Prue	T21N R10E	0.87
Marion (North)	Bartlesville	T23N R9E	0.56
McCord	Layton	T25N R2E	0.57

TABLE 1—Continued

Field/Project	Formation	Location	Gradient/ (psi/ft)
Mayes (South)	Skinner	T26N R9E	0.65
NE Lisbe Chief Unit	Burbank	T25N R6E, T26N R6E	0.56
Naval Reserve Northwest	Burbank	T25N R7E, T24N R7E	0.65
Mid	Burbank	T24N R7E	0.53
North Lons Spring	Cleveland	T23N R9E	0.73
Osage (Southwest)	Bartlesville	T26N R11E	0.70
Osage City	Burgress	T21N R9E	0.67
	Bartlesville	T21N R8E & 9E, T22N R8E	0.77
Osage Hominy	Mississippi Chat	T23N R8E	0.77
Osage Hominy District (North)	Mississippi Chat	T24N R8E	0.75
Pearsonia	Mississippi Chat	T27N R8E	0.50
Pengelly	Bartlesville	T23N R7E, T23N R8E	0.76
Penn Creek	Skinner	T23N R8E	0.65
Pershing	Bartlesville	T24N R9E	0.46
Quapaw	Bartlesville	T25N R11E	0.55
Ramona	Bartlesville	T24N R12E	0.60
Remington	Mississippi Chat	T25N R5E, T25N R6E	0.67
Stanley Unit North	Burbank	T27N R6E	0.57
South	Burbank	T26N R6E	0.57
Shirley Unit	Mississippi Chat	T24N R9E	0.70
Siemens Unit	Mississippi Chat	T24N R8E	0.57
SSKW Unit	Burbank	T25N R6E	0.56
	Mississippi Chat	T25N R6E, T25N R7E	0.53
Tidal Osage	Bartlesville	T24N R8E	0.50
Wildhorse	Bartlesville	T22N R10E	0.58
Northeast	Cleveland	T22N R10E	0.74
	Bartlesville	T22N R10E	0.60
Wynona	Tenaha	T22N R11E	0.58
	Bartlesville	T24N R9E, T24N R10E	0.49
West Littlechief Unit	Burbank	T26N R6E	0.59

Myron O. Knudson,
Director, Water Management Division (6W).
[FR Doc. 89-18831 Filed 8-10-89; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. 89-2214]

Federal Savings and Loan Insurance Corporation Insurance Premium

Date: August 3, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), has adopted a resolution pursuant to which the Corporation orders the assessment against each insured institution of an additional premium for FSLIC insurance in an amount equal to one eighth of one percentum of the total amount of the accounts of the insured members of such insured institution determined as of June 30, 1989, and prorated by the number of days from July 1, 1989 and the date of enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") during which such accounts were insured by the FSLIC.

EFFECTIVE DATE: August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Carole Edwards, Financial Operations Division, FSLIC, (202) 416-2073, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Whereas, the Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), may authorize the Corporation, pursuant to section 404(c) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1727(c) (1982), to assess against each institution the accounts of which are insured by the Corporation pursuant to section 403 of the NHA, 12 U.S.C. 1726 (1982) ("insured institution"), additional premiums for such insurance until the amount of such premiums equals the amount of all losses and expenses of the Corporation, *provided* that the total amount so assessed in any one year against any insured institution shall not exceed one eighth of one per centum of the total amount of the accounts of the insured members of such institution and *provided further* that the amount of the additional premium for the calendar year 1989 may not exceed one-sixteenth of one percentum of the total amount of the accounts of the insured members of such institution unless the Bank Board determines that severe pressures on the Corporation exist which necessitate an infusion of additional funds; and

Whereas, The Bank Board, as operating head of the Corporation, by Resolution No. 85-142, dated February 22, 1985, by Resolution No. 85-437, dated June 5, 1985, by Resolution No. 85-770, dated August 28, 1985, by Resolution No. 85-1142, dated December 9, 1985, by Resolution No. 86-213, dated March 6, 1986, by Resolution No. 86-582, dated June 10, 1986, by Resolution No. 86-941, dated September 2, 1986, by Resolution No. 86-1253, dated December 15, 1986, by Resolution No. 87-281 dated March 16, 1987, by Resolution No. 87-610 dated May 27, 1987, by Resolution No. 87-950 dated September 9, 1987, by Resolution No. 87-1254 dated December 14, 1987, by Resolution No. 88-537 dated June 29, 1988, by Resolution No 88-981 dated September 15, 1988, by Resolution No. 88-1267 dated December 7, 1988, by Resolution No. 89-1028 dated March 15, 1989, and by Resolution No. 89-1539 dated June 8, 1989, ordered assessments against each insured institution of an additional premium for insurance in an amount equal to one thirty-second of one per centum of the total amount of the accounts of the insured members of each insured institution determined as of December 31, 1984, for the first assessment, as of March 31, 1985, for the second, as of June 30, 1985, for the third, as of September 30, 1985, for the fourth, as of December 31, 1985, for the fifth, as of March 31, 1986, for the sixth, as of June 30, 1986, for the seventh, as of September 30, 1986, for the eighth, as of December 31, 1986, for the ninth, as of March 31, 1987, for the tenth, as of June 30, 1987, for the eleventh, as of September 30, 1987, for the twelfth, as of December 31, 1987, for the thirteenth, as of March 31, 1988, for the fourteenth, as of June 30, 1988, for the fifteenth, as of September 30, 1988 for the sixteenth, as of December 31, 1988 for the seventeenth, and as of March 31, 1989 of the eighteenth; and

Whereas, the Bank Board has considered memoranda of the Corporate Accounting Branch and the Chief Financial and Administrative Office, Office of the FSLIC (a copy of which memoranda are in the Minute Exhibit file), describing the impact of the collection of the additional premiums for insurance assessed pursuant to Resolution No. 85-142, dated February 22, 1985, Resolution No. 85-437, dated June 5, 1985, Resolution No. 85-770, dated August 28, 1985, Resolution No. 85-1142, dated December 9, 1985, Resolution No. 86-213, dated March 6, 1986, Resolution No. 86-582, dated June 10, 1986, Resolution No. 86-941, dated September 2, 1986, Resolution No. 86-1253, dated December 15, 1986, Resolution No. 87-281, dated March 16, 1987, Resolution No. 87-610 dated May 27, 1987, Resolution No. 87-950 dated September 9, 1987, Resolution No. 87-1254 dated December 14, 1987, Resolution No. 88-256 dated April 7, 1988, Resolution No. 88-537, dated June 29, 1988, Resolution No. 88-981, dated September 15, 1988, Resolution No. 88-1267 dated December 7, 1988, Resolution No. 89-1228 dated March 15, 1989, and Resolution No. 89-1539 dated June 8, 1989, upon the Corporation's insurance reserves:

Now, therefore, it is resolved, That on the basis of the administrative record, the Bank Board finds and determines that the Corporation has incurred substantial losses during calendar years 1981 through the second quarter of 1989; and

Resolved further, That the Bank Board finds and determines that:

1. Losses and expenses incurred by the Corporation, as defined in Resolution No. 85-142, require the assessment of additional insurance premiums pursuant to section 404(c) of the NHA in addition to the additional insurance premiums assessed pursuant to Resolutions No. 85-142, No. 85-437, No. 85-770, No. 85-1142, No. 86-213, No. 86-582, No. 86-941, No. 86-1253, No. 87-281, No. 87-601, No. 87-950, No. 87-1254, No. 88-256, No. 88-537, No. 88-981, No. 88-1267, No. 89-1028, and 89-1539, in order to maintain the insurance reserves of the Corporation at a level adequate to meet in part the Corporation's losses and expenses and to protect the insured members of insured institutions;

2. Severe pressures on the Corporation exist which necessitate an infusion of additional funds;

3. Postponement of a reduction in the assessment of an additional premium, as provided in section 404(c)(2) of the NHA, will improve the financing environment for selling obligations of the Financing Corporation organized pursuant of the Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987;

4. It is appropriate, therefore, to provide for assessment of an additional insurance premium at this time, pursuant to section 404(a)(2) and 404(c)(1) of the NHA, by order of this Corporation; and

Resolved further, That the Corporation hereby orders the assessment against each insured institution of an additional premium for insurance for the period from July 1, 1989 until the date of enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") in an amount equal to one eighth of one percentum of the total amount of the accounts of the insured members of such insured institution determined as of June 30, 1989, and prorated by the number of days from July 1, 1989 and the date of enactment of the FIRREA during which such accounts were insured by the FSLIC; and

Resolved further, That the additional insurance premium assessed pursuant to this Resolution shall be payable to the FSLIC, or to its successor, on or about September 30, 1989; and

Resolved further, That the Executive Director or the Principal Deputy Director of the FSLIC, or a designee of either of them ("Director"), shall determine the amount of the additional premium due, including an offset of one half of twenty percent (ten percent) of each insured institution's pro rata share of the statutorily prescribed amount as provided in section 404(e)(2) of the NHA, prorated by the number of days from July 1, 1989 and the date of enactment of the FIRREA, to be paid on or about September 30, 1989, by each insured institution, and shall notify each insured institution of such amount at least fifteen (15) days prior to the date such amount is due; and

Resolved further, That the Director, on behalf of the Corporation, is hereby authorized to take all other actions necessary or appropriate to determine and collect the additional insurance premium authorized and ordered by this Resolution; and

Resolved further, That the Secretary shall forward this Resolution for publication in the **Federal Register.**

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-18786 Filed 8-10-89; 8:45 am]
BILLING CODE 6720-01-M

[No. 89-2178]

Power of Receiver and Conduct of Receiverships; Repurchase Agreements; Lincoln Savings and Loan Association

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board is supplementing an earlier resolution concerning Lincoln Savings and Loan Association, Los Angeles, California ("Lincoln") to provide that the protections afforded to certain persons and entities engaged in repurchase agreements ("repos") with Lincoln will be afforded to such persons or entities engaged in similar transactions with Lincoln Savings and Loan Association, F.A., Irvine, California to which such repos were transferred by the Federal Savings and Loan Insurance Corporation as receiver for Lincoln.

EFFECTIVE DATE: August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel for FSLIC, (202) 906-6248; or Deborah E. Siegel, Attorney, Office of General Counsel, (202) 906-6848; Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board has adopted the following resolution:

Whereas, The Federal Home Loan Bank Board ("Board"), by its Resolution No. 89-2163, dated August 2, 1989, replaced the conservator for Lincoln Savings and Loan Association, Los Angeles, California ("Lincoln") with, and appointed, the Federal Savings and Loan Insurance Corporation ("Corporation") as receiver ("Receiver") for Lincoln; and

Whereas, The Board has previously adopted Resolution No. 89-1338, dated April 18, 1989, regarding repos ("Repo Resolution"); and

Whereas, The Board desires to supplement the Repo Resolution (which supplementation the Board does not consider to be an amendment or rescission of such Resolution) to take into account the transfer of certain of Lincoln's assets and liabilities to Lincoln Savings and Loan Association, F.A., Irvine, California ("New Federal") and to provide the same protections and commitments to counterparties to Repos with New Federal.

Now, therefore, the Board resolves as follows:

1. All references in the Repo Resolution to "Lincoln" shall also be references to New Federal.

2. This resolution shall be effective immediately upon its adoption by the Board.

3. The Secretary of the Board shall forward this resolution for publication in the Federal Register.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-18787 Filed 8-10-89; 8:45 am]
BILLING CODE 6720-01-M

[No. 89-2220]

Approval of Applications for Unlisted Trading Privileges; Midwest Stock Exchange, Inc.

Date: August 4, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of approval of applications.

SUMMARY: The Midwest Stock Exchange, Inc. filed with the Federal Home Loan Bank ("Board") applications ("Applications"), pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 (17 CFR 240.12f-1) thereunder, for unlisted trading privileges in the following securities which are listed on one or more national securities exchanges:

The Dime Savings Bank of New York, Brooklyn, New York (FHLBB No. 7837), Common Stock, $1.00 Par Value

Home Owners Federal Savings and Loan Association, Boston, Massachusetts (FHLBB No. 3988), Common Stock, $.01 Par Value.

Notice of the Applications and opportunity for hearing was published in the **Federal Register** on January 24, 1989, and interested persons were invited to submit written data, views and arguments within 15 days. *See* Board Resolution No. 89-5, dated January 9, 1989. 54 FR 3531, January 24, 1989. The Board received no comments with respect to the Applications. Notice is hereby given that the Office of General Counsel for the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Applications for unlisted trading privileges in these securities on August 4, 1989.

SUPPLEMENTARY INFORMATION: The Board finds that the approval of the Applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Securities and Exchange Commission ("Commission") pursuant to section 6 of the Act, the Midwest Stock Exchange, Inc. is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under sections 17 and 19 of the Act and the rules and regulations thereunder. Transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act. 17 CFR 240Aa3-1. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Midwest Stock Exchange, Inc. are executed at prices which are reasonably related to those occurring in other markets. Further, the approval of the Applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system. Finally, the Board received no comments indicating that the granting of the Applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors.

Accordingly, pursuant to section 12(f)(1)(B) of the Act, the Office of General Counsel for the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Applications for unlisted trading privileges in the above named securities on August 4, 1989.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-18788 Filed 8-10-89; 8:45 am]
BILLING CODE 6720-01-M

[No. 89-2219]

Applications for Unlisted Trading Privileges and Opportunity for Hearing; Midwest Stock Exchange, Inc.

Date: August 4, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of applications.

SUMMARY: The Midwest Stock Exchange, Inc. has filed, pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, applications ("Applications") with the Federal Home Loan Bank Board ("Board") for unlisted trading privileges in the following securities.

American Savings Bank, FSB, New York, New York (FHLBB No. 7776), Common Stock, No Par Value

Crossland Savings Bank, FSB, Brooklyn, New York (FHLBB No. 7812), Common Stock, No Par Value

Northeast Savings, F.A., Hartford, Connecticut (FHLBB No. 3231), Preferred Stock, $.01 Par Value.

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

COMMENTS: Any interested person may inspect the Applications at the Board, and, within 15 days of publication of this notice in the **Federal Register**, submit to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, written data, views and arguments bearing upon whether the extensions of unlisted trading privileges pursuant to the Applications are consistent with the maintenance of fair and orderly markets and the protection of investors. Following this opportunity for hearing, the Board will approve the Application after the date mentioned above if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to the Application is consistent with the maintenance of fair and orderly markets and the protection of investors.

FOR FURTHER INFORMATION CONTACT: John P. Harootunian, Assistant General Counsel for Securities Policy, Corporate and Securities Division, Office of General Counsel, at (202) 906-6415 or at the above address.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-18789 Filed 8-10-89; 8:45 am]
BILLING CODE 6720-01-M

[No. 89-2218]

Application for Unlisted Trading Privileges and Opportunity for Hearing, Philadelphia Stock Exchange

Date: August 4, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of application.

SUMMARY: The Philadelphia Stock Exchange has filed, pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, an application ("Application") with the Federal Home Loan Bank Board ("Board") for unlisted trading privileges in the following securities.

Crossland Savings Bank, FSB, Brooklyn, New York (FHLBB No. 7812), Common Stock, $1.00 Par Value.

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

COMMENTS: Any interested person may inspect the Application at the Board, and, within 15 days of publication of this notice in the **Federal Register**, submit to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, written data, views and arguments bearing upon whether the extension of unlisted trading privileges pursuant to the Application is consistent with the maintenance of fair and orderly markets and the protection of investors. Following this opportunity for hearing, the Board will approve the Application after the date mentioned above if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to the Application is consistent with the maintenance of fair and orderly markets and the protection of investors.

FOR FURTHER INFORMATION CONTACT: John P. Harootunian, Assistant General Counsel for Securities Policy, Corporate and Securities Division, Office of General Counsel, at (202) 906-6415 or at the above address.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-18790 Filed 8-10-89; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-776]

Charter Federal Savings and Loan Association; Final Action Denial of Conversion Application

Date: August 3, 1989.

Notice is hereby given that on August 3, 1989, the Federal Home Loan Bank Board denied the application of Charter Federal Savings and Loan Association, West Point, Georgia ("Association"), for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion and change in control.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-18791 Filed 8-10-89; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-778; FHLBB No. 5522]

Fayetteville First Federal Savings and Loan Association, Fayetteville, TN; Final Action Approval of Conversion Application

Date: August 4, 1989.

Notice is hereby given that on August 3, 1989, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Fayetteville First Federal Savings and Loan Association, Fayetteville, Tennessee, for permission to convert to the stock form of ogranization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium Two, 221 E. 4th Street, Cincinnati, Ohio 45201.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-18792 Filed 8-10-89; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-777]

Fedstar Savings Bank, F.S.B.; Alexandria, VA; Final Action Approval of Conversion Application

Date: August 4, 1989.

Notice is hereby given that on August 3, 1989, the Office of General Counsel ("OGC") and the Office of Regulatory Activities ("ORA"), or their respective designees, acting pursuant to delegated authority, approved the application of Fedstar Savings Bank, F.S.B., Alexandria, Virginia ("Fedstar"), for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion and the acquisition of the assets and liabilities of Fedstar by Household International, Inc., Prospect Heights, Illinois through the merger of Fedstar with and into Household Bank, f.s.b., Newport Beach, California the wholly-owned subsidiary of Household International, Inc.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-18793 Filed 8-10-89; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010877-001
Title: Tampa Port Authority Terminal, Lease Agreement
Parties: Gulf-Tampa of Florida, Inc. d/b/a, Southport Stevedores, Tampa Port Authority
Synopsis: The Agreement extends the terms of the basic Lease (Agreement No. 224-010877) until February 28, 1992.

Agreement No.: 224–200273
Title: City of Los Angeles Terminal Agreement
Parties: City of Los Angeles (CIA), Metropolitan Stevedore Company (MSA)
Synopsis: The Agreement provides for MSC to use certain lands, waters and/or facilities (premises) at 301 Terminal Way, Terminal Island, California for the purpose of operating a container freight station. It also provides that MSC will pay CLA 2,200 per month as rent for the use of the premises.
Agreement No.: 224–010677–002
Title: Tampa Port Authority Terminal, Lease Agreement
Parties: Gulf-Tampa of Florida, Inc. d/b/a. Southport Stevedores, Tampa Port Authority
Synopsis: The Agreement is an assignment of Southport Stevedores' Lease Agreement No. 224–010677 to Tampa Bay International Terminals, Inc.

By Order of the Federal Maritime Commission.

Dated: August 8, 1989.

Ronald D. Murphy,
Assistant Secretary.

[FR Doc. 89–18628 Filed 8–10–89; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Main Line Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 1, 1989.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Main Line Bancshares, Inc.*, Wayne, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of National Bank of the Main Line, Wayne, Pennsylvania.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Graymont Bancorp, Inc.*, Graymont, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Graymont, Graymont, Illinois.

2. *Sheldon Security Bancorporation, Inc.*, Sheldon, Iowa; to acquire 54.3 percent of the voting shares of Sheldon Security Financial Corporation, Sheldon, Iowa, and thereby indirectly acquire Security State Bank, Sheldon, Iowa. In connection with this application, Sheldon Security Financial Corporation, has applied to become a bank holding company by acquiring 100 percent of the voting shares of Security State Bank.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Bainum Bancorp II*, Murfreesboro, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Pike County Bank, Murfreesboro, Arkansas, which engages in the sale, as agent, of credit related insurance sold in connection with extensions of credit made by the bank.

2. *Terre Du Lac Bancshares, Inc.*, St. Louis, Missouri; to acquire at least 52.71 percent of the voting shares of First National Bank of Callaway County, Fulton, Missouri.

3. *West-Ark Bancshares, Inc.*, Clarksville, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Arkansas State Bank, Clarksville, Arkansas.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *P.N.B. Financial Corporation*, Kingfisher, Oklahoma; to retain 100 percent of the voting shares of First National Bank of Hennessey, Hennessey, Oklahoma.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Surety Capital Corporation*, Fort Worth, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Texas National Bank of Lufkin, Lufkin, Texas.

Board of Governors of the Federal Reserve System, August 7, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89–18807 Filed 8–10–89; 8:45 am]
BILLING CODE 6210–01–M

Merchant House; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company; Correction

This notice corrects a previous Federal Register notice (FR Doc. 89–15942) published at page 28720 of the issue for Friday, July 7, 1989.

Under the Federal Reserve Bank of San Francisco, the entry for Merchant House is amended to read as follows:

1. *Merchant House*, Santa Ana, California; to become a bank holding company by acquiring 52.60 percent of the voting shares of PNB Financial Group, Inc., Newport Beach, California, and thereby indirectly acquire Pacific National Bank, Newport Beach, California.

In connection with this application, Applicant also proposes to acquire Pacific National Realty Finance, Newport Beach, California, and thereby engage in mortgage banking pursuant to § 225.25(b)(1), real estate appraisal pursuant to § 225.25(b)(13); and arranging commercial real estate equity financing pursuant to § 225.25(b)(14) of the Board's Regulation Y.

Comments on this application must be received by August 25, 1989.

Board of Governors of the Federal Reserve System, August 7, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89–18805 Filed 8–10–89; 8:45 am]
BILLING CODE 6210–01–M

Mid State Banks, Inc.; Application to Engage De Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 1, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Mid State Banks, Inc.*, Cordele, Georgia; to engage *de novo* in marketing and furnishing computer software and services to its three wholly-owned subsidiary banks and to third party banks pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 7, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89–18808 Filed 8–10–89; 8:45 am]
BILLING CODE 6210–01–M

Union Planters Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 1, 1989.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Union Planters Corporation*, Memphis, Tennessee; to acquire GulfNet, Inc., Mandeville, Louisiana, and thereby engage in providing to others data processing and data transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 7, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89–18809 Filed 8–10–89; 8:45 am]
BILLING CODE 6210–01–M

United Nebraska Financial Co.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 1, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *United Nebraska Financial Co.*, Ord, Nebraska; to merge with Labanco, Inc., Ord, Nebraska, and thereby indirectly acquire Bank of Burwell, Burwell, Nebraska.

In connection with this application, Applicant proposes to retain Burwell Insurance Agency, Burwell, Nebraska, a subsidiary of Labanco, and thereby engage in general insurance activities in

a town with a population of less than 5,000 pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y. These activities will be conducted in the town of Harwell and in surrounding Garfield County, Nebraska.

Board of Governors of the Federal Reserve System, August 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-18810 Filed 8-10-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement 950]

Development of a Disease Prevention and Health Promotion Program for the Laborers' National Health and Safety Fund of the Laborers' International Union of North America; Availability of Funds for Fiscal Year 1989

Introduction

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), announces the availability of funds for a cooperative agreement for the development of a disease prevention and health promotion program the the Laborers' International Union of North America (LIUNA).

Authority

The program is authorized under section 20(a) of the Occupational Safety and Health act of 1970. Program regulations applicable to the cooperative agreement are set forth in Title 42, part 87, of the U.S. Code of Federal Regulations entitled "National Institute for Occupational Safety and Health Research and Demonstration Grants."

Eligible Applicant

Assistance will be provided only to the Laborers' National Health and Safety Fund (LNHSF) of the Laborers' International Union of North America (LIUNA). No other applicants will be solicited or will be accepted.

LNHSF is a joint labor management trustee organization established under the provisions of the Taft-Hartley Act for the membership of LIUNA. It has unique characteristics and capacities to meet the objectives stated by NIOSH. It is proposed that a cooperative agreement be negotiated with the LNHSF for the following reasons:

1. The LIUNA is the principal and largest organization of construction laborers in the U.S. It consists of 998,000 members, of which 328,000 are directly involved in construction. No other organization represents more construction laborers.

2. The LNHSF has access to personnel, job history, and medical and disability claims' records of all members of LIUNA. These are not available anywhere else.

3. The LNHSF of LIUNA is the only national institute involving employers and employee representatives with a commitment to the development of a program of research and development in occupational disease prevention and health promotion for construction laborers.

4. The LIUNA has instituted a program using funds from employers and employees to implement an ongoing disease prevention and health promotion program for construction laborers.

5. Construction laborers are not concentrated in any particular geographic area or with a few large companies. To reach these workers, a nationwide institution that represents them is required. LNHSF is the only institution or program that can provide access, organization, and commitment to controlling health problems in construction laborers. This group of workers is in the highest risk category for health problems of all workers. LIUNA has specifically identified the construction industry as a very high risk occupational area where innovative programs to eliminate or reduce these risks should be considered. There is overwhelming evidene that LIUNA possesses unique and superior qualifications and no other sources can fulfill the requirements of the program.

Availability of Funds

Approximately $77,000 is available in Fiscal Year 1989 to fund this award. The award is expected to beging September 30, 1989, for a twelve month budget perid in a one year project period.

Purpose

By the Year 2000, the LIUNA health program aims to eradicate differences in mortality rates for its members compared to the national average. This is consitent with the PHS Health Objectives for the Nation, The Cancer Control Objectives for the Year 2000, and the Report of the Secretary's Task Fore on Black and Minority Health. To accomplish this ain, (1) a program of state-of-the-science disease prevention and health promotion must be developed in accordance with the needs and characteristics of the LIUNA membership, (2) the LIUNA organization must be mobilized to implement it, and (3) program implementation must be monitored to determine progress towards the aim.

Program Requirements

NIOSH will assist LIUNA in identifying the occupational health risks to its members and in the development of protocols for disease prevention and health promotion activities.

(a) Recipient Activities

The LIUNA will conduct research and develop protocols to evaluate mortality and morbidity risks from occupational cardiovascular diseases, injuries, and respiratory cancers. The LNHSF will utilize health and personnel and personnel records of LIUNA members. The LNHSF will review LIUNA death records to assess feasibility for use in research.

Research conducted through this cooperative agreement that involves collection of information from 10 or more individuals will be subject to review under the Paperwork Reduction Act.

(b) NIOSH Activities

This project will be tracked within the Industrywide Studies Branch (IWSB) of the Division of Surveillance, Hazard Evaluations and Field Studies. The IWSB will collaborate with LIUNA on issues pertaining to research design, data handling, and medical screening; serve in an advisory capacity for the project; and coordinate the involvement of other specialists within CDC, such as from the Center for Environmental Health and Injury Control, CDC.

Evaluation Criteria

The application will be reviewed and evaluated according to the following crieria:

1. The applicant's understanding of the need or problem to be addressed and the purpose of this cooperative agreement.

2. The ability to provide the staff, knowledge, financial and other resources required to perform the applicant's responsibilities in this project, and describe the approach to be used in carrying out those responsibilities.

3. The extent to which the applicant understands the objectives of the project; the steps to be taken in planning and implementing this project, and the respective responsibilities of the applicant, NIOSH and any other entities for carrying out those steps.

4. The proposed schedule for accomplishing each of the activities to be carried out in this project and a method for evaluating the accomplishment are clearly defined.

5. The qualifications and appropriateness of proposed program staff and time allocated for them to accomplish program activities; the support staff available for the performance of this project; and the facilities, space and equipment available for performance of this project.

6. The proposed plan for administering this project and the name, qualifications, and time allocations of the individual whom the applicant proposes to make responsible for its administration.

7. The estimated cost to the Government of the project, a detailed budget which indicates (1) anticipated costs for personnel, travel, communications and postage, equipment, and supplies and (2) the sources of funds to meet those needs.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 13.262.

Application Submission and Deadline

LNHSF must submit an original and two copies of application form PHS 516-1 (Rev. 3/89) to Henry S. Cassell, III, Grants Managment Officer, Grants Managment Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, on or before August 25 1989.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 950 and contract the following:

Business: Lisa G. Tamaroff, Grants Managment Specialist, Grants Managment Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, (404) 842-6796 or FTS 236-6796.

Technical: Dr. Paul A. Schulte, Division of Surveillance, Hazard Evaluations, and Field Studies, National Institute for Occupational Safety and Health, Centers for Disease Control, Cinicinnati, Ohio 45213, (513) 841-4207 or FTS 684-4207.

J. Donald Millar,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 89-18801 Filed 8-10-89; 8:45 am]

BILLING CODE 4160-19-M

[Program Announcement 003]

Assistance Request for Project Grants To Support Education To Prevent the Spread of the Human Immunodeficiency Virus (HIV) in Adults with Special Learning Needs

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1990 to support project grants for Human Immunodeficiency Virus (HIV) Prevention Projects targeted to adults, persons usually 21 years and older who are beyond the secondary school setting, with special learning needs. These include adult individuals with mental retardation, hearing or visual impairments, and other types of disabilities, which may be impediments to learning or to learning through conventional means, who are at risk of exposure to HIV.

Authority

These programs are authorized under the Public Health Service Act: section 301(a) (42 U.S.C. 241(a), as amended; and, section 317(k)(3) 42 U.S.C. 247(c)), as amended.

Eligible Applicants

Eligible applicants are public, private, nonprofit, and profit making organizations and institutions. Because of the urgency in getting appropriate HIV prevention knowledge and skills to adults with special learning needs, eligibility is limited to those applicants with an existing national organizational structure of local affiliates or collaborating organizations with a record of service to adults with mental retardation, sight or hearing impairments, or other types of disabilities, which may be impediments to learning or to learning through conventional means, who are at risk of exposure to HIV.

Availability of Funds

Approximately $500,000 will be available in Fiscal Year 1990 to fund approximately 3–5 awards. Awards are expected to range from $50,000 to $250,000 with an average award of $100,000. It is expected that awards will begin on or about January 1, 1990, for a 12 month budget period within a 1 to 3 year project period. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this program is to develop, implement, and evaluate initiatives to prevent HIV infection among adults with special learning needs, sight or hearing impairments, mental retardation, or other types of disabilities, which may be impediments to learning or to learning through conventional means, by:

A. Developing and disseminating curricula for adult instructional settings and/or nonschool-based educational materials on preventing HIV infection for use by local agencies serving persons with special learning needs; and/or

B. Developing and implementing training, including pilot testing as indicated, for teachers/client support persons in local organizations serving adults with special learning needs.

C. Developing and disseminating materials appropriate for use by adults with special learning needs community members, and their families.

Applications involving HIV education in a structured instructional setting should plan to also address related health concerns, such as other sexually transmitted diseases and drug abuse. Such applications should also consider the need to teach general skills, e.g., assertiveness, interpersonal communication, etc., that are relevant to HIV prevention.

Applicants will not be required to develop new instructional programs when successful programs have already been developed which can be disseminated to or replicated by other users. In fact, dissemination or replication of existing instructional materials is encouraged.

Program Requirements

A. Background and Need

Design a program of education and/or training for preventing HIV infection that enhances the program of local agencies and affiliates serving adults with special learning needs. Specifically:

1. Explain the special learning needs of adults being served;

2. Assess the adequacy of conventional modes, methods, or materials for educating constituents about preventing HIV infection;

3. Establish realistic, time-phased, and numerically measurable impact objectives for the project. Impact objectives for preventing HIV infection are precise statements of what the program expects to accomplish; specifically, how much the program expects to improve on baseline levels of HIV-related knowledge, attitudes, beliefs, (KAB) and behaviors over the next year. Initially, impact objectives may not be possible to establish

because KAB and behavior data for client populations may not be available. If so, process objectives would be used to begin the project. Process objectives state in measurable terms those next year activities most important to program success and whose progress management needs to monitor, e.g., to survey a random sample of clients and develop impact objectives using these baseline KAB and behavior data;

4. Create an operational plan to carry out the program promptly and effectively, considering the use of any existing networks that assist adults with special learning needs and the feasibility of educating them by conducting HIV prevention training for persons in those networks who presently provide them other forms of education and support; and

5. Outline an evaluation plan describing methods to monitor progress and to determine if impact objectives are achieved.

B. Develop a Plan and Implement the Program, Specifically

1. Obtain appropriate consultation and assistance from affiliates/clients to refine program plans and materials;

2. Obtain assistance, as needed, from consultants and affiliates/clients in gathering the KAB and behavior data necessary for setting impact objectives and evaluating both progress and ultimate results;

3. Develop or select and review educational/training materials to be used by the program;

4. Provide logistical and technical support (e.g., arrange to have HIV experts available for program workshop, meetings, conferences, etc.) to facilitate implementation; and

5. Collaborate and coordinate program activities with other Federally funded activities in order to avoid duplicative, competitive, inconsistent, or wasteful efforts, e.g., State and local HIV Prevention and Surveillance programs funded by CDC.

C. Assess program progress in carrying out activities and achieving process and impact objectives.

D. Participate in sharing program descriptions, progress reports, and educational materials through the CDC National AIDS Information clearinghouse database and utilize the Clearinghouse database to avoid duplication of efforts.

E. Participate in CDC sponsored conferences dealing with program activities.

Other Requirements

Applications must comply with the document titled: Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions (October 1988) (54 FR 10040, March 9, 1989).

Review and Evaluation Criteria

A. Competing Applications

Each application will be reviewed and evaluated on an individual basis according to the following criteria:

1. The need for support as documented in the application about the special learning needs of adults who are at risk of HIV infection being served and assessment of the adequacy of conventional modes, methods, or materials for educating constituents about preventing HIV infection. (15 points)

2. The appropriateness of the applicant's record of service to adults with special learning needs for whom the program is directed and the extent to which the applicant has the organization and affiliations to mount a nationwide education dissemination or training initiative; familiarity with effective programs that are already available locally and the capability to readily adapt such a program for broad dissemination; and a current access to, or relationship with, persons directly training adults with special learning needs. (25 points)

3. The appropriateness and feasibility of proposed program in achieving this program's purpose of helping adults with special learning needs in preventing HIV infection. (20 points)

4. The appropriateness of the applicant's impact and process objectives. Where KAB and behavior data are not available for setting impact objectives, this criterion will focus on the process objectives; however, attention will be given to plans to obtain data which will permit the establishment of impact objectives during the course of the project. (15 points)

5. The quality and feasibility of the operational plan to carry out the proposed program and achieve the applicant's impact and process objectives. (15 points)

6. The appropriateness and quality of the proposed plan for evaluation in monitoring ongoing progress and in assessing the achievement of objectives. (10 points)

In addition, consideration will be given to the appropriateness and reasonable of the budget request, proposed use of project funds, and the extent to which the applicant is contributing its own resources to HIV/AIDS prevention activities.

B. Noncompeting Continuation Application

Continuation awards within an approved project period will be made on the basis of availability of funds and documented progress toward the achievement of established objectives; the extent to which objectives for the new budget period are consistent with the purposes for which the project grant was originally approved, and are realistic, specific, measurable, and time-phased, and the extent to which any proposed changes in the need for support, objectives, methods of operation, evaluation plans, or personnel are likely to enhance the success of the project. In addition, consideration will be given to the extent to which the budget request and proposed use of project funds are appropriate and reasonable.

Funding Priorities

Priority consideration will be given to those organizations who demonstrate (1) familiarity with effective programs that are already available locally and the capability to readily adapt such a program promptly for broad dissemination; and (2) a current access to, or relationship with, persons directly training adults with special learning needs who might assist in actually delivering, reinforcing, or evaluating HIV prevention training.

Priority will be given to supporting at least one project addressing each of the populations listed above with special learning needs.

E.O. 13372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is *13.118*, Acquired Immunodeficiency Syndrome (AIDS) Activity.

Application and Submission Deadline

The original and two (2) copies of the application (PHS 5161-1) must be submitted to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before October 20, 1989.

A. *Deadline.* Applications shall be considered as meeting the deadline if they are either:

1. Received at the above address on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. *Late Applications.* Applications which do not meet the criteria in A. 1. or 2. are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

Information on application procedures, copies of application forms, and other materials may be obtained from Marsha D. Driggans, Grants Management Specialist, Grants Management Branch, Procurement and Grants office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, (404) 842-6575.

Announcement Number 003 "Project Grants to Support Education to Prevent the Spread of Human Immunodeficiency Virus in Persons With Special Educational Needs" must be referenced in all requests for information pertaining to these projects.

Technical information may be obtained from Willard Cates, M.D., Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia, 30333, Telephone (404) 639-2552.

Dated: August 7, 1989.

Glenda S. Cowart,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-18909 Filed 8-10-89; 8:45 am]

BILLING CODE 4160-18-M

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). Following is the Federal Register submission for FSA:

Participation Rate Statistical Report—FSA—103—New—The information is needed to determine the JOBS program participation rate and appropriate Federal Financial Participation (FFP) rate in each State. Respondents: States or local Governments; Number of Respondents: 51; Frequency of Response: Quarterly; Average Burden per Response: 12 hours; Estimated Annual Burden: 2,448 hours.

OMB Desk Clearance Officer: Justin Kopca.

Consideration will be given to comments and suggestions received within 60 days of publication. Written comments and recommendations for the proposed information should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 1725 17th Street, NW., Washington, DC 20503.

Dated: July 28, 1989.

Naomi B. Marr,

Associate Administrator, Office of Management and Information Systems.

[FR Doc. 89-18368 Filed 8-10-89; 8:45 am]

BILLING CODE 4150-04-M

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Since the last scheduled publication on August 4, 1989, the following packages were submitted to OMB:

For a copy of packages, call the FSA, Reports Clearance Officer on 202-252-5500.

1. Annual Report on Households Assisted by the Low Income Home Energy Assistance Program (LIHEAP)—0960-0446—Requires LIHEAP grantees to provide counts each year on the number and income levels of households assisted by LIHEAP funds and the number of households assisted with elderly or handicapped members. Respondents: State or local governments; Number of Respondents: 185; Frequency of Response: 1; Average Burden per Response: 45 hours; Estimated Burden: 8,325 hours.

2. 45 CFR 95.600 State Requests For HHS Approval of Federal Financial Participation in the Cost of ADP Systems, Equipment and Services—0990-0056—To receive Federal financial participation in the costs of their ADP acquisitions, States must obtain HHS prior approval of advance planning documents and related procurement documents. This process implements HHS policies governing Federal assistance to States in information systems development. The information collections are:

A. *Title: 45 CFR 95.605 Advance Planning Documents*—Respondents: State or local governments; Number of respondents 50; Frequency of response: 115; Average Burden per response: 60 hours; Estimated Burden: 6,900 hours.

B. *Title: 45 CFR 95.611 Prior Approval Condition*—Respondents: State or local governments; Number of respondents 50; Frequency of response: 96; Average Burden per response: 1.5 hours; Estimated Burden: 144 hours.

C. *Title: 45 CFR 95.617 Ownership Rights Disclosure Clause*—Respondents: State or local governments; Number of respondents N/A; Frequency of response: N/A; Average Burden per response: No Federal Burden—already part of state contracts; Estimated Burden: 0.

D. *Title: 45 CFR 95.621 Service Agreement (Recordkeeping Requirement)*—Respondents: State or local governments; Number of respondents 14; Frequency of response: 14; Average Burden per response: 1 hours; Estimated Burden: 14.

E. *Title: 45 CFR 95.624 Emergency Situation Request*—Respondents: State or local governments; Number of respondents 27; Frequency of response: 27; Average Burden per response: 1; Estimated Burden: 27.

Total Estimated Burden for all Collections: 7,085 hours.

3. Applications and Discontinuances for Aid to Families with Dependent Children (AFDC)—FSA-3800—0970-0003—The information collected on the FSA-3800 is needed to monitor the AFDC program. This form provides basic quarterly information on applications, disposition of applications and reasons for discontinuances. Respondents: States or local governments; Number of Respondents: 54; Frequency of Response: Quarterly; Average Burden per Response: 4 hours; Estimated Annual Burden: 864 hours.

OMB Desk Officer: Justin Kopca.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 725 17th Street NW., Washington, DC 20503.

BEST COPY AVAILABLE

Dated: August 4, 1989.
Naomi B. Marr,
Associate Administrator, Office of Management and Information Systems, FSA.
[FR Doc. 89-18761 Filed 8-10-89; 8:45 am]
BILLING CODE 4160-01-M

Food and Drug Administration

[Docket No. 89N-0334]

Drug Export; Quinapril Hydrochloride

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Parke-Davis has filed an application requesting approval for the export of the human drug Quinapril Hydrochloride to France.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Mary F. Cooper, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The Drug Export Amendment Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitiate public participation in its review of the application. To meet this requirement, the agency is providing notice that Parke-Davis Pharmaceutical Research Division, Warner-Lambert Co., 2800 Plymouth Rd., Ann Arbor, MI 48105-2430, has filed an application requesting approval for the export of the drug Quinapril Hydrochloride, to France. This drug is indicated for use in the treatment of arterial hypertension and congestive heart failure. The application was received and filed in the Center for Drug Evaluation and Research on July 21, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 21, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: August 2, 1989.
Daniel L. Michels,
Director, Office of Compliance, Center for Drug Evaluation and Research.
[FR Doc. 89-18619 Filed 8-10-89; 8:45 am]
BILLING CODE 4160-01-M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Anti-Infective Drugs, Advisory Committee

Date, time, and place. August 17, 1989, 8 a.m., Hyatt Regency, One Bethesda Metro Center, Bethesda, MD.

Type of meeting and contact person. Open committee discussion, 8 a.m. to 11:15 a.m., open public hearing, 11:15 a.m. to 12:15 p.m., unless public participation does not last that long; open committee discussion, 1:15 p.m. to 5 p.m.; Thomas E. Nightingale, Center for Drug Evaluation and Research (HFD-9), Rm. 8B-45, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committee. The committee reviews and evaluate available data on the safety and effectiveness of marketed and investigational human drugs for use in infectious diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person as soon as possible, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee and consultants from the academic community, industry, and acquired immunodeficiency syndrome (AIDS) advocacy groups will discuss issues raised by recent proposals for the expanded availability of experimental drugs and in the treatment of human immunodeficiency virus (HIV) infection (parallel tracking).

FDA is giving less than 15 days public notice of this meeting because of the urgent need to discuss the concept and implementation of expanded availability. It is the Public Health Service goal to make promising investigational drugs available to patients with life-threatening conditions as early as possible in drug development. The proposals under consideration would place an increased emphasis on early availability of promosing investigational agents for people with no therapeutic alternatives, while still maintaining the integrity of controlled clinical trials intended to demonstrate the safety and efficacy of these agents. The next regularly scheduled meeting of the committee is November 20, and 21, 1989. FDA does not believe it appropriate to wait that long. Attempts were made to schedule a committee meeting later in August or early September to permit sufficient time for at least a 15-day public notice of the meeting. The agency decided that it was in the public interest to hold this scientific discussion on August 17, 1989, even if there was not sufficient time for the customary 15-day public notice.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are not closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentation by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: August 9, 1989
Adam J. Trujillo,
Acting Associate Commissioner for Regulatory Affairs.
[FR Doc. 89-18894 Filed 8-9-89; 11:29 am]
BILLING CODE 4160-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on Friday, August 4, 1989.

Call Reports Clearance Officer on 202-245-2100 for copies of package.

1. Reporting and Recordkeeping Requirements for Electronic Products under Public Law 90-602 General Requirements—0910-0025—In order to protect the public from unnecessary exposure to radiation from electronic products, FDA must collect certain information from manufacturers and dealers/distributors about electronic products they sell and install. Respondents: Businesses or other for-profit, small businesses or organizations.

	No. of respondents	No. of hours per response	No. of responses per respondent
21 CFR 1002.10-1010.5(d)			
Reporting	1,801	8.99	6
Recordkeeping	41,801	31.00	

Estimated annual burden—1,267,410 hours.

2. National Household Seroprevalence Survey (NHSS)—Pretest—0920-0225—The Centers for Disease Control is proposing a pretest to address the feasibility of a national survey of HIV seroprevalence and to determine the best methods for a national survey. The pretest builds upon a pilot study conducted in Allegheny County, Pennsylvania, earlier this year. The pretest will involve a sample of about 2,300 households in Dallas County, Texas. In each household, one adult in the age range of 18-54 years will be randomly selected and invited to participate. The results of the pretest will be used to decide whether to proceed with a full scale national survey. Respondents: Individuals or households. Number of Respondents: 2,300; Number of Responses per Respondent: 1; Average Burden per Response: 0.618 hours; Estimated Annual Burden: 1,417 hours.

OMB Desk Officer: Shannah Koss-McCallum

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC, 20503.

Dated: August 9, 1989.
James M. Friedman,
Acting Deputy Assistant Secretary for Health (Planning and Evaluation).
[FR Doc. 89-18958 Filed 8-10-89; 8:45 am]
BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-2031]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 3, 1989.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Proposal: Comprehensive Improvement Assistance Program (CIAP): Application Requirements (F.R.–2488).

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: This information collection will be used by Public Housing Agencies/Indian Housing Authorities (PHAs/IHAs) in assessing their physical and management improvement needs and in applying for CIAP funds. It is necessary to carry out the statutory requirements for CIAP.

Form Number: HUD–52823, 52824, 52825, 50070, 52820.

Respondents: State of Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting burden:

	Number of respondents	Frequency of response	Hours per response	Burden hours
Management Needs Assessment	1,100	1.5	4	6,600
HUD–52824, Five-Year Funding Request Plan	1,600	1.0	3	4,800
HUD–52825, Comprehensive Assessment/Program Budget	1,600	1.0	10	16,000
Narrative Statement Addressing Technical Review Factor	1,600	1.0	2	3,200
Replacement Reserves Estimate (Survey)	1,100	1.5	1	1,650
HUD–52823, Project Financial Forecast	1,000	1.5	2	2,300
Participating Homeownership Unit/Cost (Survey)	60	4.0	1	240
Modernization on Organization and Staffing Plan	1,400	1.0	2	2,800
PHA Report on Local Compliance with Cooperative Agreement	1,600	1.0	.50	800
HUD–50070, Certification for a Drug-Free Workplace	1,600	1.0	.25	400
HUD–52820, PAA/FHA Board Resolution Approving CIAP Application	1,600	1.0	.25	400

Total Estimated Burden Hours: 40,190.

Status: Revision.

Contact: Pris Buckler, HUD, (202) 755–6640, John Allison, OMB, (202) 395–6880.

Dated: August 3, 1989.

[FR Doc. 89–18767 Filed 8–10–89; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–89–2032]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: August 4, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Collection of Multifamily Assisted Housing Addresses and Site Identification Codes.

Office: Policy Development and Research.

Description of the Need For The Information and Its Proposed Use: The data collected will be used to generate information descriptive of HUD's multifamily assisted housing programs. It will be used to more effectively monitor HUD's programs as well as target compliance reviews.

Form Number: HUD–951.

Respondents: State or Local Governments, Businesses of Other For-Profit, and Non-Profit Institutions.

Frequency of Submission: One Time Only.

Reporting Burden:

	Number of respondents	Frequency of response	Hours per response	Burden hours
HUD 951	21,000	3	.33	20,790

Total Estimated Burden Hours: 20,790.

Status: Extension.

Contact: John B. Carson, Jr., HUD, (202) 755–5574, John Allison, OMB, (202) 395–6880.

Dated: August 4, 1989.

[FR Doc. 89–18768 Filed 8–10–89; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–89–2033]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management Building, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal: (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of repondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42. U.S.C. 3535(d).

Dated: August 2, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Housing Survey, OHRC/RFA HA–15094 (Under Cooperative Agreement) Type II.

Office: FHEO.

Description of the Need for the Information and Its Proposed Use: Under the Housing Discrimination, Civil Rights Law, we will survey 5,000 respondents by mail to gather data concerning their attitude toward, knowledge of, and experience with the Fair Housing Laws and issues. The Department will use the data to enhance an outreach/education program for detection of housing discrimination.

Form Number: None.

Respondents: Individuals or Households.

Frequency of Submission: Other.

Reporting Burden:

	Number of repondents	Frequency of response	Hours per response	Burden hours
Survey	5,000	1	.33	1,667

Total Estimated Burden Hours: 1,667.
Status: New.
Contact: George Wilson, HUD, (202) 755–0453; John Allison, OMB, (202) 395–6880.

Dated: August 2, 1989.

[FR Doc. 89-18798 Filed 8-10-89; 8:45 am]
BILLING CODE 4210-01-M

Office of the Assistant Secretary of Housing—Federal Housing Commissioner

[Docket No. N-89-1917; FR-3066]

Underutilized and Unutilized Federal Buildings and Real Property Determined to be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: August 11, 1989.

ADDRESS: For further information, contact Morris Bourne, Director, Transitional Housing Development Staff, Room 9146, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755–0075; TDD number for the hearing- and speech-impaired (202) 426–0915. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the Federal Register identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency with respect to any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice form HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Finally, in lieu of declaring any particular property as excess, the landholding agency may decide to make the property available to the homeless for use on an interim basis.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's Federal Register notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilites, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: (Military Facilities) HQ–DA, Attn: DAEN–ZCI–P–Robert Conte; Room 1E671 Pentagon, Washington, DC 20360–2600 (202) 693–4583; (Corps of Engineers civil works projects) Bob Swieconek, HQ–US Army Corps of Engineers, Attn: CERE–MN, 20 Massachusetts Avenue NW., Washington, DC 20415–1000 (202) 272–1750; GSA: James Folliard, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405 (202) 535–7067; HHS: Wayne Mullinex, U.S. Public Health Service, HHS, Room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (These are not toll-free numbers.)

Dated: August 7, 1989.

C. Austin Fitts,
Assistant Secretary for Housing-Federal Housing Commissioner.

Suitable Land—By State

Number of properties ( )

Arkansas

Big Creek (1)
Norfolk Lake
Mountain Home, AR
Agency: Corps of Engineers
Comment: 175 acres
Curly Point (1)
Norfolk Lake
Mountain Home, AR
Agency: Corps of Engineers
Comment: 215 acres with boat ramp, toilet, lake access
Bectum Hall (1)
Ozark Land
Ozark, AR
Agency: Corps of Engineers
Comment: 155 acres
Lick Creek (1)
Norfolk Dam & Lake
Mountain Home, AR
Agency: Corps of Engineers
Comment: 140 acres
Ford Cove (1)
Norfolk Lake
Mountain Home, AR
Agency: Corps of Engineers
Comment: 540 acres
Seward Point (1)
Norfolk Lake
Mountain Home, AR
Agency: Corps of Engineers

Comment: 1000 acres
Talbert (1)
Norfolk Lake
Mountain Home, AR
Agency: Corps of Engineers
Comment: 4 acres, paved, boat ramp
Newton Landing (1)
Norfolk Lake
Mountain Home, AR
Agency: Corps of Engineers
Comment: 160 acres

Missouri

James River (1)
Table Rock Lake
Branson, MO
Agency: Corps of Engineers
Comment: 39 acres
Kings River (1)
Table Rock Lake
Branson, MO
Agency: Corps of Engineers
Comment: Located in MO and AR; 36 acres
Big Indian (1)
Table Rock Lake
Branson, MO
Agency: Corps of Engineers
Comment: Located in MO and AR; 50 acres, paved, boat ramp, sealed toilt

New Jersey

Fort Monmouth (1)
Evans Area
Monmouth, NJ
Agency: Army
Fort Monmouth (1)
Evans Area
Monmouth, NJ
Agency: Army
Comment: 91 acres, access dependent on retrocede of jurisdiction from exclusive to concurrent

Suitable Buildings

Arizona

US Army Yuma Proving Ground (1)
Yuma, AZ
Agency: Army
Comment: Property S–1003; 2227 sf

Georgia

Fort Benning Military Reservation (1)
Muscogee, GA
Agency: Army
Comment: Property 276; 438 sf currently used for storage
Fort Benning Military Reservation (1)
Muscogee, GA
Agency: Army
Comment: Property 275; 4055 sf currently used for storage

Idaho

May House Site, Bldg 3(1)
May Lemhi County, ID
Agency: GSA
Comment: Property 9–I–ID–532

Maryland

Aberdeen Proving Ground Support Activity (1)
Harford, MD
Agency: Army
Comment: Property E5975; 650 sf, poor condition
Aberdeen Proving Ground Support Activity (1)
Harford, MD
Agency: Army
Comment: Property E5978; 256 sf
Aberdeen Proving Ground Support Activity (1)
Harford, MD
Agency: Army
Comment: Properties E5678, E5679; possible asbestos contaminator
Aberdeen Proving Ground Support Activity (1)
Harford, MD
Agency: Army
Comment: Property E5974; possible asbestos contaminator
Aberdeen Proving Ground Support Activity (1)
Harford, MD
Agency: Army
Comment: Property E4736; Storage bldg, 2227 sf; possible presence of asbestos
Aberdeen Proving Ground Support Activity (11)
Harford, MD
Agency: Army
Comment: Properties 3632, 3630, 3643, 3646, 3633, 3645, 3644, 3638, 4723, 5104, E1426; asbestos may be present
Aberdeen Proving Ground Support Activity (18)
Harford, MD
Agency: Army
Comment: Properties 3621, 3622, 3623, 3624, 3626, 3627, 3629, 3634, 3635, 3637, 3639, 3640, 3641, 3642, 2173, 2174, 2001; barracks w/possible asbestos, very poor condition.
Aberdeen Proving Ground Support Activity (2)
Harford, MD
Agency: Army
Comment: Properties 3631, E1480; asbestos survey being conducted

New Jersey

Fort Monmouth (3)
Monmouth, NJ
Agency: Army
Comment: Properties 401, 2337, 2543; access dependent on retrocede of jurisdiction from exclusive to concurrent.
Evans Area, Fort Monmouth (2)
Monmouth, NJ
Agency: Army
Comment: Properties 9004, 9005

Oklahoma

Water Well System (1)
Kegelman Auxiliary Air Field
Alfalfa County, OK
Agency: GSA
Comment: Property 7–D–OK–458–C; 308 sf; 148 sf; 127 sf; currently used as pump stations for water wells; contains non-friable asbestos.

Texas

Portion, Former Ft. Walters (10)
Walters Ind. Park
Mineral Wells, TX
Agency: GSA
Comment: Properties 734, 735, 739, 740, 540, 541, 551, 552, 575, 576 on 56 acres; 7–GR–(4) TX 548Y

West Virginia

Single Family Residence (1)
211 Highland Avenue
Petersburg, WV
Agency: GSA
Comment: Single family residence; friable asbestos wrapping on heatduct.

Unsuitable Land

Maryland

DOE Germantown Complex (1)
Montgomery County, MD
Agency: GSA
Comment: Formerly portion of DOE Germantown Complex, Middle Brook Road Parcel P–12; 2.07 acres NW Corner, Intersection of I–270 & Middle Brook Road; not accessible by road floodway; right/entry agreement with MD DOT; half of property to be part of I–270 interchange.
Middle Brook Road Parcel P12 (1)
Montgomery County, MD
Agency: GSA
Comment: Floodway; NW corner, Intersection of I–270 and Middle Brook Rd; half of land has no legal access, other half under highway construction.
Aberdeen Proving Ground Support Activity (1)
Harford, MD
Agency: Army
Comment: Within 2000 ft. from flammable or explosive material; partially secure area 2530 acres; 1330 acres with unexploded materials.
Aberdeen Proving Ground Support Activity (1)
Harford, MD
Agency: Army
Comment: Within 2000 ft from flammable or explosive material; secured area.
Aberdeen Proving Ground Support Activity (1)
Harford, MD
Agency: Army
Comment: secure area

Virginia

JW Powell Federal Bldg Site (1)
2051 Mercator Drive
Reston, VA
Agency: GSA
Comment: 50 ft wide access road through private property to Powell Federal Bldg.

Unsuitable Buildings

Alaska

PHS Hospital, Mt. Edgecumbe (1)
222 Tongass Drive
Sitka, AK
Agency: HHS PHS
Comment: Friable asbestos (pipings) and no heating. Bldgs to be renovated; abestos abated.

Arizona

US Army Yuma Proving Ground (1)
Yuma, AZ
Agency: Army
Comment: Property 3553; secured area

Maryland

Aberdeen Proving Ground Support Activity (2)
Harford, MD
Agency: Army
Comment: Properties E5190, E5239; within 2000 ft of flammable or explosive material
Aberdeen Proving Ground Support Activity (13)
Harford, MD
Agency: Army
Comment: Properties E5325, E5375, E5380, E5440, E5444, E5478, E5485, E5487, E5439, E5852, E5877; within 2000 ft of flammable or explosive material.
Aberdeen Proving Ground Support activity (6)
Harford, MD
Agency: Army
Comment: Properties E8891, E7012, E7123, E7124, E7825, E7248; secured area.
Aberdeen Proving Ground Support activity (1)
Harford, MD
Agency: Army
Comment: Property 5740, within 2000 feet from flammable or explosive material; secured area.
Aberdeen Proving Ground Support Activity (1)
Harford, MD
Agency: Army
Comment: Property E5761; contamination.
Aberdeen Proving Ground Support Activity (1)
Harford, MD
Agency: Army
Comment: Property E5032; within 2000 feet from flammable or explosive material.
Aberdeen Proving Ground Support Activity (4)
Harford, MD
Agency: Army
Comment: Properties 892, 918A, 906, 956; within 2000 feet from flammable or explosive material.
Aberdeen Proving Ground Support Activity (6)
Harford, MD
Agency: Army
Comment: Properties 461, 705A 689, 394A, 396, 813; within 2000 ft from flammable or explosive material; secured area.
Aberdeen Proving Ground Support Activity (4)
Harford, MD
Agency: Army
Properties 815A, 816, 615, 814A; not accessible by road; secured area.
Aberdeen Proving Ground Support Activity (1)
Harford, MD
Agency: Army
Comment: Property 10302; too small—42sf, asbestos may be present.
Aberdeen Proving Ground Support Activity (9)
Harford, MD
Agency: Army
Comment: Properties E3170, E3374, E3376, E3380, E3378, E3460, E3482, E3484, E3574; secured area.
Aberdeen Proving Ground Support Activity (6)
Harford, MD
Agency: Army
Comment: Properties E3462, E3464, E3470, E3472, E3474, E3426; within 2000 ft of flammable or explosive material; secured area.

New Jersey

Evans, Area, Fort Monmouth (17)
Monmouth, NJ
Agency: Army
Comment: Properties 9047, 9007, 9061, 9087 9094, 9095, 9117, 9119, 9124, 9126, 9154, 9315, 9334, 9342, 9347, 9359, 9379; secured area.

Washington

Fort Lewis (16)
Pierce, WA
Agency: Army
Comment: Property TO1213, TO1312, TO7927, TO9440 TO9441, TO9450, TO0460, TA0218, DOODSA, TO4523, TO8973, TO8974, TO8975, 8982, 8983, 8985; secured area

[FR Doc. 89-18816 Filed 8-10-89; 8:45 am]
BILLING CODE 4310-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-680-09-4142-02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0103), Washington, DC 20503, telephone 202-395-7340.

Title: Mineral Materials Disposal, 43 CFR Part 3600
OMB Approval Number: 1004-0103
Abstract: Respondents supply information and data necessary to process applications for the removal of mineral materials from the public lands. This information is needed to prevent unnecessary destruction of natural resources, to ensure that the Government is not liable for costly reclamation of abandoned sites, and to ensure that the Government receives fair market value for the disposal of mineral materials.
Bureau Form Number: 3600-4, 3600-5
Frequency: Upon application
Description of Respondents: Individuals and entities applying for a permit or contract to remove mineral materials from the public lands.
Estimated Completion Time: 0.2 hours average
Annual Responses: 6,250
Annual Burden Hours: 1,250
Bureau Clearance Officer: Richard Lovaine, 202-653-8853.

Dated: July 18, 1989.
Adam A. Sokoloski,
Acting Assistant Director, Energy and Mineral Resources.

[FR Doc. 89-18856 Filed 8-10-89; 8:45 am]
BILLING CODE 4310-84-M

[ID-943-09-4214-12; I-1542]

Termination of Classification for Multiple Use Management; Idaho

AGENCY: Bureau of Land Management, Interior.
ACTION: Correction.

The land description in FR Doc. 89-9188 published on page 15564 in the issue of Tuesday, April 18, 1989, is corrected as follows:

1. The description under T. 7 S., R. 25 E., which reads, "Sec. 5, lots 1, 2, S½NE¼, SE¼NW¼, E½SW¼, NE¼" is corrected to read: "Sec. 5, lots 1, 2, S½NE¼, SE¼NW¼, E½SW¼, SE¼."

2. The description under T. 9 S., R. 28 E. which reads "Secs. 13 to 19, inclusive, in Power County north of Snake River" is corrected to read: "Secs. 13 to 24, inclusive, in Power County North of Snake River."

Dated: August 1, 1989.
Martin J. Zimmer,
Acting State Director.

[FR Doc. 89-18812 Filed 8-10-89; 8:45 am]
BILLING CODE 4310-GG-M

[ID-943-09-4214-12; I-2345]

Partial Termination of Classification for Multiple Use Management; Idaho

AGENCY: Bureau of Land Management, Interior.
ACTION: Correction.

The land description in FR Doc. 89-8268, published on page 14188 in the issue of Friday, April 7, 1989, is corrected as follows:

The description under T. 7 S., R. 12 E., which reads "Sec. 7, S½ SE¼, SE¼" is corrected to read "Sec. 7, S½NE¼, SE¼."

Dated: August 1, 1989.
Martin J. Zimmer,
Acting State Director.

[FR Doc. 89-18813 Filed 8-10-89; 8:45 am]
BILLING CODE 4310-GG-M

[NV-930-09-4333-11; NV5-89-33]

Nevada; Temporary Closure of Certain Public Lands in the Las Vegas and Battle Mountain Districts for Management of the Nevada 500 Off-Highway Vehicle (OHV) Race.

Temporary closure of certain Public Lands in the Clark, Nye, and Esmeralda Counties, Nevada, on and adjacent to the Nevada 500 race course, on August 12, 1989. Access will be limited to race officials, entrants, law enforcement and emergency personnel, licensed permittees and right-of-way grantees.

Certain public lands in the Las Vegas and Battle Mountain District, Clark, Nye, and Esmeralda Counties, Nevada will be temporarily closed to public access from 0001 hours, August 12, 1989, to 0600 hours, August 13, 1989, to protect persons, property, and public land resources on and adjacent to the 1989 Nevada 500 OHV race course. The Las Vegas District Manager is the authorized officer for the Nevada 500 OHV race and permit (NV5-89-33). These temporary closures and restrictions are made pursuant to 43 CFR Part 8364. The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washes identified as the 1989 Nevada 500 OHV race course. The following public lands restricted or closed are described as: the Pahrump area; T. 19 S., R. 54 E., all of sections 19, 20, 21, 28, 27, and 26; T. 19 S., R. 53 E., all of sections 1, 2, 3, 4, 5, 11, 12, 12, 14, and 24; T. 18 S., R. 53 E., all of sections 31, 32, 33, 34, 35, and 36; the Amargosa valley area, T. 14 S., R. 47 E., all of sections 18, 21, 22, and 28; The Beatty hills area, T. 11 S., R. 47 E., all of sections 7, and 18; T. 11 S., R. 46 E., all of sections 26, and 35; the Sarcobatus Flats area, T. 11 S., R. 45 E., all of sections 1, 2, 3, 4, and 5; T. 10 S., R. 44 E., all of sections 19, 30, 31, 32, 33, 34, 35, and 36; T. 10 S., R. 44 E., all of sections 6, 7, 8, 16, 17, 20, 21, 27, 28, 33, and 34; T. 8 S., R. 43 E., all of sections 25, 26, and 36; the Gold Point area, T. 7 S., R. 41 ½ E., all of sections 28, 33, and 34; T. 7 S., R. 41 E., all of sections 1, 2, 11, 12, 13, 14, 23, 24, 35, and 36; T. 6 S., R. 41 E., all of sections 7, 8, 9, 16, 17, 18, 20, 21, 22, 26, 27, 28, 34, and 35.

The above legal land descriptions are for public lands within Clark, Nye, and Esmeralda Counties, Nevada. A map showing specific areas closed to public access is available from the following BLM offices: the Las Vegas District Office, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, (702) 646-5200, and the Battle Mountain District, Tonopah Resource Area Office, Bldg., 102 Old Radar Base, P.O. Box 911, Tonopah, Nevada 89049, (702) 482-6214. Any person who fails to comply with this closure order issued under 43 CFR part 8364 may be subject to the penalties provided in 43 CFR 8360.7.

Dated: August 2, 1989.
Ben F. Collins,
District Manager, Las Vegas, NV.

[FR Doc. 89-18770 Filed 8-10-89; 8:45 am]
BILLING CODE 4310-HC-M

[UT-040-09-4351-12]

Environmental Assessment Proposed Action Within Wilderness Study Area

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice of availability of a draft environmental assessment for a proposed action within the Fifty Mile Mountain Wilderness Study Area.

SUMMARY: The Bureau of Land Management, Cedar City District, is proposing to authorize the installation of two water guzzlers for desert bighorn within the Fifty Mile Mountain Wilderness Study Area.

ADDRESS: To obtain a copy of the environmental assessment for the proposed water guzzlers contact Martha Hahn, Area Manager, Kanab Resource Area, 318 North First East, Kanab, UT, 84741 or telephone 801/644-2672.

DATES: Comments will be accepted for 30 days from the first date of publication of this notice.

Dated: August 2, 1989.
Gordon R. Staker,
District Manager.

[FR Doc. 89-18771 Filed 8-10-89; 8:45 am]
BILLING CODE 4310-DQ-M

[ID-030-09-4410-08]

Idaho Falls District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.
ACTION: Meeting of the Idaho Falls District Advisory Council.

SUMMARY: The Idaho Falls District Advisory Council will meet Thursday, September 21, 1989. Notice of this meeting is in accordance with Public Law 92-463. The meeting will begin at 9:00 a.m. at the Idaho Falls District Office on 940 Lincoln Road, Idaho Falls, Idaho. The meeting is open to the public; public comments will be accepted from 11:00 a.m. to 11:30 a.m.

The agenda for this meeting includes a briefing on the Snake River Activity/Operations Plan being developed jointly by the Bureau of Land Management and Forest Service. The draft plan addresses detailed multiple use management actions for lands administered by the agencies from Palisades Reservoir along the South Fork of the Snake River corridor to the confluence with the Henry's Fork of the Snake River. The Council will be given an opportunity to make comments and recommendations as a group and individually.

Detailed minutes of the meeting will be maintained in the District Office and will be available for public review during business hours (7:45 a.m. to 4:30 p.m., Monday through Friday) within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Lloyd H. Ferguson, District Manager, telephone (208) 529–1020.

Dated: August 4, 1989.

Sandra K. Courtney,

Acting District Manager.

[FR Doc. 89–18772 Filed 8–10–89; 8:45 am]

BILLING CODE 4310–GG–M

[ID–943–09–4730–12]

Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., August 2, 1989.

The plat representing the dependent resurvey of a portion of the north boundary, T. 6 S., R. 5 E.; portions of the west boundary and subdivisional lines and the subdivision of sections 31 and 32, T. 5 S., R. 5 E., Boise Meridian, Idaho, Group No. 679, was accepted July 31, 1989.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: August 2, 1989.

Gary T. Oviatt,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 89–18814 Filed 8–10–89; 8:45 am]

BILLING CODE 4310–GG–M

[NV–930–09–4212–22]

Filing of Plats of Survey; Nevada

August 4, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

EFFECTIVE DATE: Filings were effective at 10:00 a.m. on August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Lacel Bland, Chief, Branch of Cadastral Survey, Bureau of Land Management, (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–328–6341.

SUPPLEMENTARY INFORMATION: The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada on August 2, 1989.

Mount Diablo Meridian Nevada

T. 20., R. 20 E.—Supplemental Plat
T. 41., R. 44 E. Dependent Resurvey
T. 40., R. 45 E. Dependent Resurvey
T. 41., R. 45 E. Dependent Resurvey
T. 33., R. 30 E. Dependent Resurvey

The supplemental plat for T. 20 N., R. 20 E., was accepted on July 31, 1989; the other listed surveys were accepted on July 26, 1989. All the surveys were executed to meet certain administrative needs of the Bureau of Land Management.

All of the above-listed surveys are now the basic record for describing the lands for all authorized purposes. The surveys will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fee.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89–18776 Filed 8–10–89; 8:45 am]

BILLING CODE 4310–HC–M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275–6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1319, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395–7340.

Type of Clearance: New and Extension
Bureau/Office: Office of Compliance and Consumer Assistance
Title of Form: Financial Responsibility—Trucking (and Freight Forwarding)
OMB Form No.: 3120–0061
Agency Form No.: BMC Forms 32, 34, 35, 36, 82, 83, 84 90, 91, 91X Extension BMC 40 and 85 New
Frequency: On occasion
Respondents: ICC regulated Transportation Entities
No. of Respondents: 45,000
Total Burden Hrs.: 22,350 (average amount of time to file BMC 40 is 120 hours, all other forms average 15 minutes)
Brief Description of the need and proposed use: The filing of these forms is required to satisfy statutory requirements that transportation entities have liability insurance coverage. This is to ensure that the public is protected for any claims involving bodily injury and property damage or cargo loss or damage.

Noreta R. McGee,

Secretary.

[FR Doc. 89–18842 Filed 8–10–89; 8:45 am]

BILLING CODE 7035–01–M

Intention To Engage in Compensated Intercorporate Hauling Operations

This is to provde notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. The parent corporation is Premier Industrial Corporation, with its principle office located at 4500 Euclid Avenue, Cleveland, Ohio. The wholly-owned subsidiaries which will participate in the operations are:

1. Premier Industrial Corporation, incorporated in the State of Ohio.
2. Premierco Service Corporation, incorporated in the State of Ohio.
3. Premier Energy Corporation, incorporated in the State of Ohio.
4. U.S. Oil, incorporated in the State of Ohio.
5. PIC Corporation, incorporated in the State of Ohio.
6. D-A Lubricant, Inc., incorporated in the State of Ohio.
7. Premier Fastener Limited (Canada), incorporated in the Province of Ontario
8. Premier Industrial (U.K.) Limited, incorporated in United Kingdom.
9. Premier Industrial France S.A.R.L., incorporated in France.
10. Premier Industrial Belgium S.A., incorporated in Belgium.
11. N.V. Certanium Services, S.A., incorporated in Belgium.
12. Premier Industrial Holland B.V., incorporated in Holland.
13. Certanium B.V., incorporated in Holland.
14. Certanium (Deutschland) Gmbh, incorporated in Germany.
15. Premier Foreign Sales Corporation, Inc., incorporated in Virgin Islands.

B. 1. Parent corporation and address of principal office: V-B Williams Furniture Company, Inc., 602 Fulton Street, P.O. Box 1489, Sumter, South Carolina 29151.

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation: VBW Trucking, Inc., State of incorporation: Virginia.

Noreta R. McGee,

Secretary.

[FR Doc. 89–18843 Filed 8–10–89; 8:45 am]

BILLING CODE 7035–01–M

[No. 40220]

Bessemer & Lake Erie Railroad Co. Petition for Declaratory Order Concerning Interchange Facilities and Trackage Rights

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Institution of Proceeding.

SUMMARY: Bessemer and Lake Erie Railroad Company (Bessemer) filed a petition on April 11, 1989, requesting the Commission to issue a declaratory order finding that neither the threat of a secondary boycott nor an actual secondary boycott by a striking union excuses rail common carriers from providing reasonable interchange facilities as required by section 10742 of the Interstate Commerce Act or from honoring the terms of valid, existing trackage rights agreements. We find that this petition discloses a sufficient controversy to warrant a proceeding under 5 U.S.C. 554(e) and therefore institute such a proceeding.

DATES: Any person interested in participating in this proceeding as a party of record by filing and receiving written comments on the issues must file a notice of intent to do so by August 21, 1989. We will issue a service list of the parties of record shortly after the due date for notices of intent to participate. Initial written comments must be filed by 30 days from the date of service of the service list. Reply comments must be filed by 60 days from the date of service of the service list. Comments must be served upon all parties of record.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 [TDD for hearing impaired: (202) 275–1721].

ADDRESSES: An original and 10 copies of all notices of intent and comments must be sent to: Office of the Secretary, Case Control Branch, Attn: Docket No. 40220, Interstate Commerce Commission, Washington, DC 20423.

In addition, one copy of all comments must be sent to all parties of record.

SUPPLEMENTAL INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: August 4, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–18840 Filed 8–10–89; 8:45 am]

BILLING CODE 7035–01–M

[No. 29636 (Sub 1)]

Official-Southwestern Divisions; Joint Rate Divisions

AGENCY: Interstate Commerce Commission.

ACTION: Final decison.

SUMMARY: The orders prescribing joint rate divisions in Official-Southwestern Divisions, 287 I.C.C. 553 (1953) and subsequent decisions are vacated.

DATES: This action is effective on September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4357/4359. Assistance for hearing impaired is available through TDD service (202) 275–1721.

Decided: August 4, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee

Secretary

[FR Doc. 89–18841 Filed 8–10–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31516]

Chattooga & Chickamauga Railway Co. Grant of Overhead Trackage Rights by the Alabama Great Southern Railroad Co., et al.

The Alabama Great Southern Railroad Company (AGS) has agreed to grant overhead trackage right to Chattooga & Chickamauga Railway Co. (Chattooga) between milepost G–2.66, at a connection with the Tennessee, Alabama & Georgia Railway Company (TAG) line and milepost G–1.02 at the north end of Shipp Yard in Chattanooga, TN, a distance of approximately 1.6 miles. Central of Georgia Railroad Company (COG) also agreed to grant overhead trackage rights to Chattooga between milepost C–445.4, at the north end of the Chattanooga to Lyerly, GA line of COG to be leased to Chattooga[1], and milepost C–447.2. COG has also agreed to grant overhead trackage rights to Chattooga over its Alton Park Spur between milepost C–445.4 and its connection with TAG at milepost TA 3.94, a distance of approximately 3.3 miles, all in Chattanooga, TN. TAG has agreed to grant overhead trackage rights to Chattooga between milepost TA 3.94, at the north end of TAG's the line to be leased to Chattooga, and milepost TA 3.39, at TAG's connection with AGS, a distance of approximately .55 miles in Chattanooga, TN. The overhead trackage rights referenced in this notice will become effective on August 11, 1989, or when the Commission grants a petition for exemption in Finance Docket No. 31517, *Chattooga & Chickamauga Railway Co.—Lease and Operation—Central of Georgia Railroad Company, et al.*, and the lease is consummated, whichever date is later.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Comments must be filed with the Commission and served on: Lester A. Sittler, Chattooga & Chickamauga Railway Co., P.O. Box 128, 137 Main Street, Cooperstown, NY

[1] The trackage rights in this proceeding connect with two lines that are the subject of a related proceeding docketed as Finance Docket No. 31517, Chattooga & Chickamauga Railway Co.—Lease and Operation—Central of Georgia Railroad Company, et al., filed July 24, 1989. In that proceeding, Chattooga seeks exemption authority under 49 U.S.C. 10505 from the provisions of 49 U.S.C. 11343, *et seq.*, to lease and operate: (1) COG's 48.9–mile line between milepost C–445.4 at Chattanooga, TN, and milepost C–396.5 at Lyerly, GA; and (2) TAG's 19.2–mile line between milepost TA 3.94 at Chattanooga, TN and milepost TA 23.1 at Hodges, GA.

13328, and Mark D. Perreault, Norfolk Southern Corporation, Three Commercial Plaza, Norfolk, VA 23510-2191.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: August 1, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-18975 Filed 8-10-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35, considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Office will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment Standards Administration

Regulations, 29 CFR part 4—Labor Standards for Federal Service Contracts

1215-0150; SCA-4

On occasion.

Businesses or other for profit; small businesses or organizations 18,990 respondents; 16,158 total hours; 5 to 90 min. per response.

Reporting requirements in Service Contract Act regulations applicable to employers performing on service contracts with the Federal government.

Employment Standards Administration

Operator Controversion; Operator Response

1215-0068; CM-970 and CM-970a

On occasion

Businesses or other for profit; small businesses or organizations 5,000 respondents; 2,500 total hours; 15 min. per response; 2 forms.

These forms are used by coal mine operators to controvert an Initial Finding or to agree or disagree with potential liability for payment of Black Lung benefits under the Act.

Reinstatement

Mine Safety and Health Administration

Annual Status Report and Certification and Weekly Inspections of Refuse Piles and Impoundments

1219-0015

Businesses and other for profit; small businesses or organizations.

Reporting/recordkeeping requirement	Respondents	Frequency	Average time per response (hours)
Annual status report and certification.	845	Annually	2
Weekly inspections with monitoring instruments.	320	Weekly	3
Weekly inspections without monitoring instruments.	476	.....do	2

101,116 total burden hours.

Requires coal mine operators to submit to MSHA an annual status report and certification on impoundments and hazardous refuse piles; and to keep records of the results of weekly examinations and instrumentation monitoring of impoundments.

Signed at Washington, DC this 7th day August, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89-18969 Filed 8-10-89; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-26,863]

Arvin Supreme, Inc.; Negative Determination on Remand

Pursuant to a remand by the U.S. Court of International Trade, dated July 14, 1989, in *Former Employees of Arvin Supreme, Inc.*, v. *Secretary of Labor* (USCIT 88-08-00483) the Department makes the following negative determination on remand for workers of Arvin Supreme, Inc., Princeton, Kentucky.

The workers at Arvin's Princeton, Kentucky plant produced auto exhaust systems (mufflers and pipes) for the aftermarket.

The Department's initial denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act of 1974 was not met. The "contributed importantly" test is generally demonstrated by a test of the workers' firm's customers. The Department's survey of customers, which accounted for a substantial portion of Arvin Supreme's 1987 sales decline, shows that none of the respondents increased their imports of mufflers and pipes.

The Department requested the remand to include additional findings on the transfer of production and on the imports of mufflers from Mexico.

The new findings show increased production of mufflers and pipes together with increased average employment at the domestic transfer plant in the first three months of 1988 compared to the first three months of 1987 while the Princeton plant experienced decreased production and decreased average employment during the same periods. A domestic transfer of production from Princeton, Kentucky to another domestic plant would not provide a basis for a certification. Also, the type of muffler imported from Mexico was never produced domestically. The Mexican imports complemented Arvin's muffler line and amounted to less than one percent of Arvin's total production.

The equipment used in manufacturing auto mufflers and pipes at Princeton was transferred to other domestic corporate plants, scrapped, or sold to other domestic plants or to foreign subsidiaries and affiliates. However, the products in question are mufflers and pipes for auto exhaust systems not the machinery used in their manufacture.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers of Arvin Supreme Inc., Princeton, Kentucky.

Signed at Washington, DC, this 3rd day of August 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-18946 Filed 8-10-89; 8:45 am]

BILLING CODE 4510-30-M

Economy Color Cord, Inc., et al.; Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of July 1989.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-22,963; Economy Color Card, Inc., Roselle, NJ

TA-W-23,027; Challenger Circle F, Trenton, NJ

TA-W-22,971; Lumbered Corp., Woodbridge, NJ

TA-W-23,017; Stryher Machine Products Co., Trenton, NJ

TA-W-22,974; Pancratz Co., Casper, WY

TA-W-22,942; Miami Carey Corp., Swainsboro, GA

TA-W-22,941; Mark Producing, Inc., Houston, TX

TA-W-22,895; Kearfott Guidance & Navigation Corp., Little Falls, NJ

TA-W-22,901; Peerless Tube Co., Bloomfield, NJ

TA-W-22,917; Delta Products-Means Industries, Bay City Div., Bay City, MI

TA-W-22,930; Rototec, Inc., Odessa, TX

TA-W-22,924; McMarz Marble, Inc., Granbury, TX

TA-W-22,933; Chase Packaging Corp., Hudson Falls, NY

TA-W-22,998; DuPont Co., Pompton Lakes, NJ

TA-W-22,760; Bright Star Industries, Inc., Clifton, NJ

TA-W-22,939; Kennedy Mills, Janesville, WI

In the following cases, the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-23,037; GNB Batteries, Leavenworth, KS

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,969; Institute for Scientific Information, Cherry Hill, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,979; Textron, Inc., Randall Div., Cambridge, OH

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,892; Hyster Co., Sulligent, AL

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-22,919; Digitran, Inc., Lafayette, LA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,064; Petroleum Information, Log Div., Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,925; Mid-Continent Supply Co., Fort Worth, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,931; Scown Enterprises, Inc., Denver, CO

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,005; Hoake Buchler Instruments, Inc., Fort Lee, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-22,981; Trico Industries, Inc., Sidney, MT

U.S. imports of oilfield machinery are negligible.

TA-W-22,912; ADT Security Systems, Clifton, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,048; Unisys Corp., Secaucus, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-23,025; CDI Corp., Secaucus, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,962; E.W. Bowman, Inc., Uniontown, PA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,949; Transmission Technology Co., Inc., Fairfield, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–22,988; Idea Courier (Formerly Atcalel Servcom), Birmingham, MI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–22,918; Deucalion Research, Inc., Williston, ND

U.S. imports of drilling fluid are negligible.

TA–W–22,922; Marathon Oil Co., Welder Field, Sinton, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–22,923; Marathon Oil Co., Welder Gas Plant, Sinton, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–22,983; Continental Laboratories, Billings, MT

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA–W–22,944; Mundy Contract Maintenance, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–22,915; Colling Production Service, Inc., Casper, WY

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–22,940; Les Wilson, Inc., Carmi, IL

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–23,062; Leo Dress, Inc., New York, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–22,937; Gower Pumping Service, Inc., Eldorado, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–22,914; Calder Services, Co., Farmington, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–22,958; Bausch & Lomb, Inc., Optical Systems Div., Rochester, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–23,020; Victrex, Wharton, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–23,067; Roggen Gas Processing Co., Roggen, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–22,999; Everseal Manufacturing Co., Inc., Ridgefield, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–23,018; Tiara Manufacturing Potosi, MO

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–22,997; D.L. Mud, Inc., New Orleans, LA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–22,992; Bendix Safety Restraints Systems, Knoxville, TN

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–23,006; High Mountain Inspection Service, Inc., Mills, WY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–22,972; M & G Convoy, Inc., New Stanton, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–22,990; Bancroft & Martin, South Portland, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–23,019; Bolts Unlimited, Farmington, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–22,880; Baroid Corp., Shaffer Div., Houston, TX and Operating at Various Locations in The Following States: TA–W–22,880A; CA, TA–W–22,880B; LA, TA–W–22,880C; OK, TA–W–22,880D; TX TA–W–22,880E; WY

U.S. imports of oilfield machinery are negligible.

TA–W–22,877; Baroid Corp., Atlas Bradford Div., Houston, TX and Operating at Various Locations in The Following States: TA–W–22,877A; AK TA–W–22,877B; Co, TA–W–22,877C; LA, TA–W–22,877D; OK TA–W–22,877E; TX TA–W–22,877F; WY

U.S. imports of oilfield machinery are negligible.

Affirmative Determination

TA–W–22,965; Gerber Babywear, Three Oaks, MI

A certification was issued covering all workers separated on or after October 1, 1988.

TA–W–22,910; U.S.A. Knitwear Corp., Brooklyn, NY

A certification was issued covering all workers separated on or after April 24, 1988 and before July 23, 1989.

TA–W–22,043; Mueller Power Tongs, Inc., Stamford, TX

A certification was issued covering all workers separated on or after May 21, 1988.

TA–W–22,947; Senior Drilling & Exploration Co., Inc., Lafayette, LA

A certification was issued covering all workers separated on or after April 27, 1988 and before December 31, 1988.

TA–W–22,960; C & A Wallcoverings, Inc., Cheektowaga, NY

A certification was issued covering all workers separated on or after May 11, 1988.

TA–W–22,978; Tech-Service/TXX Operation, Breckenridge, TX

A certification was issued covering all workers separated on or after May 10, 1988.

TA–W–22,943; Mosler, Inc., Hamilton, OH

A certification was issued covering all workers engaged in employment related to the production of insulated vault door for fire resistive safes separated on or after May 5, 1988.

TA–W–22,984; GTE Products Corp., U.S. Lighting/Consumer Div., Montoursville, PA

A certification was issued covering all workers separated on or after May 11, 1988.

TA–W–22,973; Oxford Superconducting Technology, Carteret, NJ

A certification was issued covering all workers engaged in employment related to the production of superconducting magnets at the Carteret, NJ plant separated on or after May 4, 1988.

TA–W–22,952; Wedge Wireline, Inc., Odessa, TX and Operating Out of Locations in The Following States: TA–W–22,952A; TX, TA–W–22,952C; OK, TA–W–22,952B; LA

A certification was issued covering all workers separated on or after May 1, 1988.

TA–W–22,885; Cardone & Baker, Inc., Brooklyn, NY

A certification was issued covering all workers separated on or after April 17, 1988 and Before June 30, 1989.

TA–W–22,951; USECB Joint Venture, Riverton, WY

A certification was issued covering all workers separated on or after May 5, 1988.

TA–W–22,903; Philips Circuit Assemblies, West Lafayette, IN

A certification was issued covering all workers separated on or after April 20, 1988.

TA–W–22,921; Maidenform Bras, Perth Amboy, NJ

A certification was issued covering all workers separated on or after April 25, 1988 and before March 31, 1989.

TA–W–22,928; Production Plated Plastics, Richland, MI

A certification was issued covering all workers separated on or after November 15, 1988.

TA–W–22,911; AT & T Information System, Los Angeles, CA

A certification was issued covering all workers separated on or after October 1, 1988.

TA–W–22,975; Pearson-Sibert Oil Co of TX

A certification was issued covering all workers separated on or after May 3, 1988.

TA–W–22,975 Pearson-Sibert Oil Co., Midland, TX

A certification was issued covering all workers separated on or after May 3, 1988.

TA–W–22,934; Coppedge Oil and Gas, Inc., Plano, TX

A certification was issued covering all workers separated on or after May 1, 1988 and before January 1, 1989.

TA–W–22,945; Northronics Co., Inc., Minneapolis, MN, and Dassel, MN

A certification was issued covering all workers separated on or after September 1, 1988.

TA–W–22,059; Lone Star Logging Co., Inc., Talpa, TX

A certification was issued covering all workers separated on or after May 28, 1988.

TA–W–22,954; Accurate Parts Co., Kokomo, IN

A certification was issued covering all workers separated on or after May 9, 1988.

TA–W–22,920; Keystone Camera, Clifton, NJ

A certification was issued covering all workers separated on or after April 19, 1988.

TA–W–22,932; Wells Mfg. Corp., Manning, IA

A certification was issued covering all workers separated on or after May 1, 1989.

TA–W–21,785; Magic Marker Industries/Dynamics, Inc., Trenton, NJ

A certification was issued covering all workers separated on or after November 7, 1988

TA–W–22,913; Brookfield Petroleum, Inc., Tulsa, OK

A certification was issued covering all workers separated on or after April 28, 1988 and before July 1, 1989.

TA–W–22,929; Revlon Implement Corp., Irvington, NJ

A certification was issued covering all workers separated on or after May 1, 1988.

TA–W–22,890; Gator Industries, Inc., Hialeah, FL

A certification was issued covering all workers separated on or after April 20, 1988.

TA–W–22,879; Baroid Corp., Sperry-Sun Drilling Service, MWD Div., Headquartered in Houston, TX and Operating at Various Locations in The Following States: TA–W–22,879A; AK, TA–W–22,879C; TX, TA–W–22,879B; LA

A certification was issued covering all workers separated on or after January 31, 1988.

TA–W–22,881; Baroid Corp., Sperry-Sun Drilling Service, Sperry/Sun/Baroid Logging Systems Div., Headquartered in Houston, TX and Operating at Various Locations in The Following States: TA–W–22,881A; AL, TA–W–22,881B; AK, TA–W–22,881C; CA, TA–W–22,881D; CO, TA–W–22,881E; LA, TA–W–22,881F; MS, TA–W–22,881G; OK, TA–W–22,881H; TX, TA–W–22,881I; WY

A certification was issued covering all workers separated on or after January 31, 1988.

TA–W–22,876; Baroid Drilling Fluids, Inc., Headquartered in Houston, TX, Operated at Various Locations in The Following States: TA–W–22,876A; AK, TA–W–22,876B; AZ, TA–W–22,876C; AR, TA–W–22,876D; CA, TA–W–22,876E; CO, TA–W–22,876F; IL, TA–W–22,876G; KS, TA–W–22,876H; KY, TA–W–22,876I; LA, TA–W–22,876J; MS, TA–W–22,876K; MO, TA–W–22,876L; MT, TA–W–22,876M; NV, TA–W–22,876N; NM, TA–W–22,876O; OH, TA–W–22,876P; OK, TA–W–22,876Q; PA, TA–W–22,876R; SD, TA–W–22,876S; TX, TA–W–22,876T; UT, TA–W–22,876U; WV, TA–W–22,876V; WY,

A certification was issued covering all workers separated on or after January 1, 1989.

TA–W–22,996; Hanna Instruments, Woonsocket, RI

A certification was issued covering all workers engaged in the manufacturing of hydrometers thermohydrometers, RH transmitters and chemical test kits separated on or after May 9, 1988 and before May 31, 1989.

TA–W–23,012; Mamary Brothers, Inc., New York, NY

A certification was issued covering all workers separated on or after May 9, 1988.

TA–W–22,935; Encino Shirt, Inc., Moulton, AL

A certification was issued covering all workers separated on or after May 2, 1988 and before July 25, 1989.

TA–W–23,021; Wells Lamont Div., Marmon Holdings, Inc., Oak Grove, LA

A certification was issued covering all workers separated on or after May 17, 1988.

TA–W–22,950; Tristar Sports, Inc., Middletown, CT

A certification was issued covering all workers separated on or after May 1, 1988.

TA–W–23,967; Howard Martin Knitting Mills, Inc., Ridgefield, NJ

A certification was issued covering all workers separated on or after May 15, 1988 and before July 30, 1989.

TA–W–23,970; Kolo Cutting Room, Ridgefield, NJ

A certification was issued covering all workers separated on or after May 15, 1988 and before July 30, 1989.

TA–W–23,977; Sally Gee, Inc., Ridgefield, NJ

A certification was issued covering all workers separated on or after May 15, 1988 and before July 30, 1989.

I hereby certify that the aforementioned determinations were issued during the month of July 1989. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons to write the above address.

Dated: August 1, 1989.
Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.
[FR Doc. 89-18851 Filed 8-10-89; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-22,479]

Forest Oil Corp., Negative Determination of Reconsideration

On July 7, 1989, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers at Forest Oil Corporation, Corpus Christi, Texas. This notice was published in the Federal Register on July 19, 1989 (54 FR 30289).

The petitioner supported by the company submitted new data on sales of natural gas and crude oil and provided a list of major customers.

The Corpus Christi operation produced primarily natural gas. The Department's initial investigation showed that the decreased sales and/or production criterion of the Group Eligibility Requirements of the Trade Act of 1974 was not met.

In order for a worker group to become certified eligible to apply for trade adjustment assistance it must meet all three of the Group Eligibility Requirements of the Trade Act—a significant decrease in employment, an absolute decrease in sales or production and an increase in imports "contributed importantly" to worker separations. The "contributed importantly" test is generally demonstrated by a survey of the customers of the workers' firm.

Although the Corpus Christi operation meets the first two criteria of the Group Eligibility Requirements, it was found on reconsideration, that it did not meet the "contributed importantly" test.

The Department surveyed the major customers of the Corpus Christi operation which accounted for nearly all of Corpus Christi's natural gas sales in 1988 and found that none of the customers imported natural gas. Also, customers purchasing crude oil from Corpus Christi reported decreased purchases of imported crude oil in the first half of 1988 compared to the same period in 1987.

Investigative findings reveal that worker separations at Corpus Christi were the result of a management reorganization in early 1989 when the Corpus Christi office was combined with the Lafayette, Louisiana office.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of Forest Oil Corporation, Corpus Christi, Texas.

Signed at Washington, DC, this 4th day of August 1989.
Barbara Ann Farmer,
Director, Office of Program Management, UIS.
[FR Doc. 89-18845 Filed 8-10-89; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-22,556]

Valex Petroleum, Inc.; Negative Determination Regarding Application for Reconsideration

After being granted a filing extension, one of the petitioners requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance. The initial petition was filed on behalf of workers at Valex Petroleum, Incorporated, Denver, Colorado. The denial notice was signed on April 18, 1989 and published in the Federal Register on May 23, 1989 (54 FR 22379).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers produced crude oil and natural gas with crude oil accounting for the predominant portion of production.

In order for a worker group to be certified eligible to apply for adjustment assistance it must meet all three of the Group Eligibility Requirements of the Trade Act including the "contributed importantly" test. Workers at Valex Petroleum met the decreased employment and decreased production and/or sales criteria but did not meet the "contributed importantly" test of the increased import criterion.

The "contributed importantly" test is generally demonstrated by a survey of the workers' firm's customers. The Department's survey showed that the customers who accounted for the predominant portion of the crude oil sales of Valex reduced their purchases of imported crude oil in the first half of 1988 compared to the same period in 1987.

The claim that the Department should have considered the decline in domestic crude oil prices in the first half of 1988 since they were the result of increased U.S. imports of crude oil would not provide a basis for certification. Price is not one of the Group Eligibility Requirements for certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 3rd day of August 1989.
[FR Doc. 89-18844 Filed 8-10-89; 8:45 am]
BILLING CODE 4510-30-M

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States; Enforcement of Job Offers with H-2A Applications

AGENCY: Employment and training Administration, Labor.

ACTION: Notice:.

SUMMARY: On February 27, 1989, the Employment and Training Administration (ETA) issued a policy memorandum clarifying an employer's responsibilities to U.S. and alien workers in the event that the employer's application for temporary alien agricultural labor (H-2A) certification is granted in whole or in part, or is denied. The memorandum explains the employer's obligations with respect to wages, benefits, and working conditions; and how apparent violations will be handled by ETA and the Employment Standards Administration (ESA).

The policy memorandum is published, in pertinent part, below for public information.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certifications, Employment and Training Administration, Room N4456, Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-535-0165 (this is not a toll-free number).

Signed at Washington, DC this 3rd day of August, 1989.
Robert T. Jones,
Assistant Secretary of Labor.
February 27, 1989.

Memorandum For: Harry B. Brown, Regional Administrator, Seattle.

From: Donald J. Kulick, Administrator, Office of Regional Management.

Subject: Enforcement of Job Offers with H-2A Applications.

Enforcement of apparent violations of H-2A related job offers would be handled as follows:

1. *When certification is not granted (for any of the jobs in the employer's application).* In this situation, the employer would not be subject to a finding of a violation of labor certification from either ETA or ESA. If certification is not granted because of U.S. worker availability, but the workers have been hired as the result of SESA referrals, SESA action under the discontinuation of services procedures at 20 CFR part 658, Subpart F might be appropriate for employers who do not abide by the terms of the job order. Further, an employer could be subject to ESA penalties under MSPA.

2. *When certification is granted (for any or all of the jobs in the employer's application).* Under these conditions, the employer is obligated to comply with the provisions of the job offer and the labor certification, irrespective of whether the certification is actually used for the purpose of bringing foreign workers into the U.S. This obligation applies to all U.S. workers hired under the conditions approved in the job offer for the specific job openings and period of time involved and to workers in corresponding employment for the same period of time. Whether the U.S. workers were hired as the result of SESA referrals or through the employer's positive recruitment efforts is not material; both ETA and ESA penalties could be applied.

A variation on this type of situation could occur when a certified employer who decides not to use the certification to import aliens chooses to turn back and cancel the certification which has been granted. In this scenario, an employer would be obligated to comply with the terms of the job offer for his/her U.S. workers (SESA referrals and positive recruitment hires) up to the point in time when the certification has been turned back to the Regional Office, or be subject to H-2A penalties. Once the certification is cancelled, and the employer also cancels the job order with SESA, the employer would no longer be subject to H-2A penalties or SESA part 658 penalties for failure to comply with the conditions of the job offer *except* for those U.S. workers recruited through SESA referrals up to that point to whom hiring commitment has been made and who work for the employer into the originally stated duration of the job opportunity. (However, failure to continue to provide the wages and other benefits in the job offer to workers hired through positive recruitment or other means could subject the employer to possible MSPA penalties.) Further, under these circumstances, the employer would not be eligible for expedited redetermination or emergency certification processing in the event hired workers leave the job, and the employer decides to seek foreign workers again in the same season.

In order for a "cancellation" of a granted certification to be effective, an employer would have to actually return the original copy of the written certification determination to the Regional Office. The employer also would have to submit a signed document, such as a letter, stating that he/she has decided not to use the certification to bring aliens into the country.

[FR Doc. 89-18847 Filed 8-10-89; 8:45 am]
BILLING CODE 4510-30-M

Apprenticeship 2000, Focus Papers on Expansion, Quality, Support Activities, and Linkages

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor's Employment and Training Administration has completed the second stage of its review of apprenticeship. This review included the publication of two Focus Papers which invited response concerning various issues relating to apprenticeship and expansion of the apprenticeship concept of skill formation while learning on the job. 53 FR 40328 (October 14, 1988); and 54 FR 3756 (January 25, 1989).

A Summary Report of the responses received to both Focus Papers has been prepared and is currently available. A copy of this report will be mailed to all organizations/individuals who have received prior Apprenticeship 2000 publications. Others who wish to receive a copy of this report, free of charge, may do so by sending a written request to the address below.

ADDRESS: Requests for a copy of the Summary Report, Responses to Focus Papers shall be mailed to James D. Van Erden, Director, Bureau of Apprenticeship and Training, Room N-4649, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James D. Van Erden, Director, Bureau of Apprenticeship and Training, Office of Job Training Programs, Employment and Training Administration. Telephone: (202) 535-0540 (this is not a toll free number).

Signed at Washington, DC., this 31st day of July, 1989.
Roberts T. Jones,
Assistant Secretary of Labor.

Apprenticeship 2000—Focus Papers on Apprenticeship

Background

In December 1987, the Department of Labor (DOL) launched its Apprenticeship 2000 initiative with the publication of an issue paper in the Federal Register, 52 FR 45904 (December 2, 1987). The purpose of this initiative is to review the apprenticeship concept of training and to determine its future role in meeting America's needs for a skilled work force. Publication of that issue paper was followed by three public meetings held during February 1988, in San Francisco, Chicago, and Washington, DC The meetings were announced in the Federal Register, 53 FR 961 (January 14, 1988), and the public was invited to attend and testify on the issues presented in the issue paper.

The results of the written responses and oral testimony were summarized and published by the DOL in August 1988, in a report entitled, Apprenticeship 2000 The Public Speaks; Federal Register, 53 FR 34250 (September 2, 1988). These responses were analyzed in order to provide direction for the next stages of the apprenticeship review. Based in part on the information garnered from this endeavor, two focus papers were published for public comment in the Federal Register. These papers presented a wide range of options for expansion and change to the apprenticeship system and solicited public input on an array of issues which impact upon expansion of the apprenticeship concept.

Focus Papers

The first focus paper published in the Federal Register, 53 FR 40328 (October 14, 1988), posed two key questions regarding the future of apprenticeship in America. The first question asked how alternative approaches to apprenticeship might actually be applied so that employers' needs for differing levels of skilled workers are met while, at the same time, ensuring that the traditional journey-level status is preserved and not diluted. The second question addressed quality measurement, and solicited responses on process and outcome measures to ensure quality training in future apprenticeship programs.

There were 101 responses to this Paper. Strong support was indicated for recognizing varying levels of skill achievement for training received, as well as support for diversifying the structure of apprenticeship programs to accommodate industry's needs. In addition, there were some general comments concerning alternative approaches to apprenticeship. One such comment was that the three methods (Separate Program Structure, Program Levels, and Worker Certification) mentioned in the focus paper are not necessarily mutually exclusive approaches; many replies suggested combinations of two or more options.

There were also many ideas expressed other than direct responses to

the issues raised in the focus paper. For instance, one of the recurring themes was promotion. Many respondents suggested an aggressive informational marketing and public relations plan should be implemented by the Government. Some responded that all parties should be made aware of the benefits of apprenticeship. Another commented that schools and counsellors are ill-informed about apprenticeship from middle schools right up through college level. Many thought that employers also should be made aware of how apprenticeship can help overcome the skilled worker shortages they have presently, and will face increasingly, in the future.

Another recurring reply to this paper was that industry should have a key role in identifying and selecting alternative approaches to apprenticeship. Some respondents suggested a concentrated effort to interface business, industry, government, and education to improve our skilled work force. Those who made this proposition also generally felt that this effort should be primarily industry driven.

The second focus paper was published in the Federal Register, 54 FR 3756 (January 25, 1989). Public comment was sought on the appropriate support and linkage activities necessary for the effective modification of apprenticeship. Comment was also sought on how these activities should be organized and carried out with respect to the Federal/State roles.

There were 87 responses to this paper and, in general, most respondents who expressed opinions supported some form of support activities and linkages.

Promotion of apprenticeship was the issue addressed by most respondents, and the responses were uniformly in agreement that much more promotion of apprenticeship is needed.

Respondents generally advocated greater effort in all other areas of support activities, such as technical assistance, with the exception of loans. The majority (54 percent) responding to a question on whether loans should be made to offset initial training costs indicated, for a variety of reasons, that this would be inappropriate. Also, a number of suggestions were received as how to forge better apprenticeship program linkages together with many ideas as to specific organizations who might have a greater role in the delivery of apprenticeship.

With respect to Federal/State roles, almost all of the respondents who addressed this issue thought that there should be minimum requirements for the level of State effort as a condition of recognition by the Secretary of Labor. Also, many respondents indicated that it was desirable to have all States participate in the apprenticeship system. Only a few indicated that it was not. However, "uniformity" among States in apprenticeship program operations was deemed to be important by the vast majority of respondents addressing this issue.

Current Federal regulations do not provide for potential programs sponsors to be advised of the reasons for denial of program registration. See 29 CFR 29.3. the right to appeal an adverse finding is basic to most government programs and respondents commenting on this "Procedural Safeguards" question were unanimous in their opinion that such safeguards are in fact, needed. In this way, potential program sponsors would have a course of action available if their request for registration is denied.

In the past, suggestions have been made that additional efforts are needed to clarify respective responsibilities in States where appreaticeship is jointly administered by the Department of Labor's Bureau of Apprenticeship and Training and a State Apprenticeship Counsel (SAC). At present, in 25 of the 27 SAC States, responsibilities are established in written agreements. Thirteen of the respondents to this focus paper offered suggestions as to how to go about clarifying the Fedearl-State roles.

The Department of Labor would like to thank those who responded to the Focus Papers. The responses were helpful in assisting the Bureau of Apprenticeship and Training to develop its new policy paper on apprenticeship. The Department of Labor is grateful to those organizations and individuals who took their time and effort to respond.

[FR Doc. 89-18848 Filed 8-10-89; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any persons, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publications in the FEDERAL REGISTER are in parentheses following the decisions being modified.

Volume I

New York:
NY89-2 (January 6, 1989).. p 683, pp. 684-700.
NY89-4 (January 6, 1989).. p 709, pp. 710-716.
NY89-7 (January 6, 1989).. p 737, pp. 738-754.
NY89-8 (January 6, 1989).. p 755, pp. 756-766.
NY89-9 (January 6, 1989).. p 767, p. 768.
NY89-10 (January 6, 1989). p 769, pp. 770-780.
NY89-11 (January 6, 1989). p 781, pp. 782-788.
NY89-12 (January 6, 1989). p 789, pp. 790-798.
NY89-13 (January 6, 1989). p 799, pp. 800-806.
NY89-14 (January 6, 1989). p 807, pp. 808-810.
NY89-15 (January 6, 1989). p 811, pp. 812-816.
NY89-17 (January 6, 1989). p 817, pp. 818-826.
NY89-18 (January 6, 1989). p 827, pp. 828-836b.
NY89-19 (January 6, 1989). p 836c, pp. 836d-836h.

Volume II

Missouri, MO89-5 (January 6, 1989). p. 669, p. 670.
New Mexico, NM89-1 (January 6, 1989). p. 743, pp. 744-746, pp. 749.
Ohio, OH89-2 (January 6, 1989). p. 787, pp. 788-790, pp. 797-798.

Oklahoma:
OK89-13 (January 6, 1989). p 941, pp. 942-943.
OK89-14 (January 6, 1989). p 951, pp. 952-954.
OK89-16 (January 6, 1989). p 963, p. 964.
OK89-17 (January 6, 1989). p 967, p. 968.
OK89-18 (January 6, 1989). p 969, p. 970.
OK89-19 (January 6, 1989). p 973, p. 974.
OK89-20 (January 6, 1989). p 975, p. 976.
OR89-1 (January 6, 1989)..... p 307, p. 308.

Washington:
WA89-1 (January 6, 1989). p 383, pp. 385, 387.
WA89-3 (January 6, 1989). p 401, pp. 402-408.
WA89-7 (January 6, 1989). p 417, p. 418.
WA89-8 (January 6, 1989). p 423, pp. 424, 426a, p. 426b.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 4th day of August 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-18639 Filed 8-10-89; 8:45 am]

BILLING CODE 4510-27-M

NUCLEAR REGULATORY COMMISSION

Uranium Mill Facilities; Availability and Request for Public Comment on Draft Technical Position on Design of Erosion Protection Covers

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of and is requesting public comment on a draft Staff Technical Position entitled "Design of Erosion Protection Covers for Stabilization of Uranium Mill Tailings Sites." The Position provides guidance on acceptable methods for meeting the long-term stability requirements established in 10 CFR part 40, Appendix A and in 40 CFR part 192, with regard to the design of erosion protection covers. The NRC is requesting public comment on the draft Technical Position before it is finalized.

DATES: Comments on the draft Position should be submitted by October 10, 1989 to ensure that the comments are considered in developing the final Technical Position.

ADDRESSES: Copies of the draft Technical Position may be obtained by writing to T.L. Johnson at Mail Stop 5E4, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments on the Position should be sent to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be hand-delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, between the hours of 7:30 a.m. and 4:15 p.m. weekdays, except Federal holidays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: T.L. Johnson, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-3440.

Dated at Rockville, Maryland, this 2nd day of August 1989.

For the Nuclear Regulatory Commission.

Paul Lohaus,

Chief, Operations Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89-18728 Filed 8-10-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Extension of Standard Form 113–G

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S.C. Chapter 35), this notice announces a request submitted to OMB for clearance to continue to collect information for the Monthly Report of Full-time Equivalent/Work-Year Civilian Employment (Standard Form 113–G). The data collected are used by OMB and OPM to: (1) Monitor agencies' progress in increasing part-time employment; (2) aid OMB and the President in making decisions on agencies' budget appropriations for the next fiscal year; and (3) monitor agency work year usage under assigned ceilings during the current fiscal year. For copies of this proposal, call Grace W. Butler, Agency Clearance Officer, on (202) 632–9250.

DATE: Comments on this information collection should be received on or before August 25, 1989.

ADDRESSES: Send or deliver comments to:

C. Ronald Trueworthy, Agency Clearance Officer, Office of Personnel Management, Room 6410, 1900 E Street, NW., Washington, DC 20415, and,

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: May Eng, (202) 632–4920.

U.S. Office of Personnel Management,
Constance B. Newman,
Director.

[FR Doc. 89–18852 Filed 8–10–89; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–27097; File No. SR–CBOE–89–10]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Delta Position and Exercise Limits

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 10, 1989, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") an amendment to the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

The Exchange proposes to amend CBOE Rules 24.4 and 24.5 as set forth below for the purpose of implementing a one-year pilot program that would allow qualified market makers in market indexes to calculate their maximum allowable position and exercise limits based on two formulas that function according to the deltas of particular options positions.[2]

Rule 24.4 Position Limits

(a)(i) In determining compliance with Rule 4.11, option contracts on a market index shall be subject to a contract limitation fixed by the board, which shall not be larger than 25,000 contracts on the same side of the market, with no more than 15,000 of such contacts in the series of such market index with the nearest expiration date, except as described in subparagraph (ii) below.

(ii) In determining compliance with Rule 4.11, marketmakers in options contracts on a market index may elect, subject to prior Exchange approval, position limits not to exceed the following standard:

15,000 DEC (total delta equivalent contracts); and 35,000 adjusted DEC (adjusted for potential liquidation risk), where DEC is defin d as the absolute value of the sum of the number of series contracts (i.e., the number of contracts held of a given series) multiplied by the series delta for all series of a market index class. The adjusted DEC is the number of delta equivalent contracts calculated separately for the long call-short put series and for the short call/long put series, where the option series deltas are constrained to be at least .25. The maximum DEC and maximum adjusted DEC positions are the greatest positions, respectively, determined by calculating the DEC and the adjusted DEC at 2% intervals over a range of market movement of from −20% through +20%.

Where the positions of related accounts are currently aggregated to determine compliance with subparagraph (a)(i), such positions shall similarly be aggregated to determine compliance with this subparagraph (a)(ii). Where the use of this alternate standard for any of such aggregated accounts is disapproved, none of the aggegated accounts may elect the position limits of this subparagraph (a)(ii). Positions in the same series in aggregated accounts shall not be netted when calculating either the DEC of the adjusted DEC.

Rule 24.5 Exercise Limits

In determining compliance with Rule 4.12, exercise limits for index option contracts shall be equivalent to the position limits prescribed for option contracts with the nearest expiration date in Rule 24.4 subparagraph (a)(i), except that on the last trading day before expiration market makers electing the provisions of subparagraph (a)(ii) may exercise an amount of contracts which when added to the amount exercised over the four previous business days does not exceed 15,000 DEC and 35,000 adjusted DEC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange herein proposes a one-year pilot program for determining market maker position limits based upon delta equivalent contracts in market index option classes. The purpose of the proposal is to provide market makers with the ability to respond more effectively to retail and institutional orders without increasing unduly the risk in maintaining the resulting positions.

This position limit proposal is divided into two components: the total delta equivalent contracts in a market index class (DEC) and the DEC adjusted for potential liquidation risk (adjusted DEC). Both the DEC and the adjusted DEC are to be calculated at 2% intervals over a range of market movement of from −20% to +20%, with a minimum delta set at .25 when determining the adjusted DEC. The maximum number of contracts calculated under these two tests may not exceed 15,000 and 35,000, respectively.[3] The calculation of a maximum DEC over a broad range of market movements has been proposed to account for the tendency of delta to change rapidly in volatile markets. The establishment of a minimum delta of .25 for the liquidation test ensures that the potential impact of deep out-of-the-money contracts is not minimized. The pilot shall be limited to those market makers in market index contracts who have received Exchange approval to elect this delta standard, based upon their submission to the Exchange of acceptable written applications, which shall include, but not be limited to, a copy of the member's computer program for calculating the DEC and adjusted DEC positions.

The changes to the exercise rule are such that a market maker choosing the delta position limit option will be allowed to exercise the same amount as market makers who do not elect to use the delta position limit option except on an expiration date. On that date, the delta position limit market maker may exercise an additional number of contracts such that, when this amount is added to the amount exercised over the four previous business days, the total amount does not exceed an equivalent to 15,000 DEC and 35,000 adjusted DEC. This is the same concept as is granted other market participants given hedge exemptions.

The CBOE believes this proposal is consistent with the provisions of the Act, and, in particular, section 6(b)(5), in that the proposal is designed to perfect the mechanism of a free and open market, to enhance the ability of investors to use options for investment purposes, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before September 1, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Dated: August 3, 1989.

Jonathan G. Katz,
Secretary.

Exhibit 1

The DEC is defined as the absolute value of: Sum [series contracts * series delta] for all series.

The maximum DEC is defined in the relation:

Max DEC=Max [DEC(−20%), DEC(−18%), . . ., DEC(−2%), DEC, DEC(2%) . . ., DEC(18%), DEC(20%)] which must be less than 15,000.

Similarly, the maximum adjusted DEC is defined in the relation:

Max adjusted DEC=Max [Sum−LongMarket, Sum−ShortMarket] which must be less than 35,000,

where, at a given index level:

Sum−LongMarket=Sum (abs (series contracts * option delta) for all series that are long and market i.e., long calls and short puts, and

Sum−ShortMarket=Sum (abs (series contracts * option delta) for all series that are short the market i.e., long calls and short puts, and

subject to the condition that the option delta is set at 0.25 if it is less than 0.25 initially, and the Max is over the index moves −20% to +20% by 2% increments. The term "abs" means the absolute value.

As an example, consider the following calendar spread:

Date: 9–1–88. Index at 250. Interest rate: 7%.
Volatility: 20%
long 20,000 255 NOV calls—79 days to exp.
short 20,000 255 OCT calls—51 days to exp.

Index at	NOV delta	OCT delta	DEC *	adj DEC **
−20% 200	.0062	.0010	143	5,000
−18% 205	.0163	.0030	267	5,000
−16% 210	.0302	.0078	453	5,000
−14% 215	.0521	.0173	696	5,000
−12% 220	.0842	.0354	976	5,000
−12% 225	.1280	.0680	1,240	5,000
−8% 230	.1842	.1126	1,428	5,000
−6% 235	.2519	.1777	1,485	5,038
−4% 240	.3292	.2602	1,379	6,583
−2% 245	.4127	.3568	1,117	8,254
250	.4986	.4615	742	9,972
+2% 255	.5829	.5668	322	11,658
+4% 260	.6620	.6657	(72)	13,313
+6% 265	.7333	.7526	(387)	15,052
+8% 270	.7949	.8245	(592)	16,491
+10% 275	.8463	.8806	(686)	17,613
+12% 280	.8877	.9221	(687)	18,442
+14% 285	.9200	.9511	(624)	19,023
+16% 290	.9443	.9705	(525)	19,411
+18% 295	.9621	.9829	(416)	19,658
+20% 300	.9746	.9904	(313)	19,808
			Max [DEC]=	1,485
			Max [adj DEC]=	19,808

* DEC=20,000 * NOV Delta−20,000 * OCT delta
** adj DEC=Max [20,000 * NOV Delta, 20,000 * OCT delta] where the option delta is taken to be at least 0.25

[FR Doc. 89–18777 Filed 8–10–89; 8:45 am]

BILLING CODE 8010–01–M

---

[1] The original proposed rule change was published for comment in Securities Exchange Act Release No. 26974 (June 28, 1989), 54 FR 28850.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

[2] The delta of an option contract is the amount by which its price will change for a corresponding change in the price of the underlying instrument.

[3] For a more complete description of how position limits are to be calculated under this proposal, see Exhibit 1 to this notice.

[4] 17 CFR 200.30–3(a)(12) (1988).

BEST COPY AVAILABLE

[34-27096; SR-06]

Self-Regulatory Organizations; Midwest Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees

August 3, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 19, 1989, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the MCC's proposed fee revisions imposed to cover the costs of additional reports available through its File Transmission Service ("FTS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the placed specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish fees for the addition of new files to FTS. FTS is a CPU to CPU interface between MCC and the computers of Participants or their service bureaus. FTS makes processing smoother and more efficient by replacing tape handling and decreasing processing times.

The proposed rule change establishes fees for the following files which are being added to FTS:

Accommodation Transfer
Bond Comparison
Dividend Announcements

The revised fee schedule is consistent with Section 17A of the Securities Exchange Act of 1934 (the "Act") in that it provides for the equitable allocation of reasonable dues, fees and other charges among MCC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Midwest Clearing Corporation does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, participants or

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 1, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

EXHIBIT A

(Additional Italicized; [Deletions Bracketed])

	Daily	Weekly	Monthly*	Upon Request (testing)
R-Activity	$165.00	N/A	N/A	$75.00
R-Net Position	165.00	125.00	75.00	75.00
R-Net Position/Activity	275.00	N/A	N/A	75.00
B-Net Position/Activity	275.00	200.00	75.00	75.00
Purchase & Sales	165.00	N/A	N/A	75.00
ACATS Activity	165.00	N/A	N/A	75.00
R-Masterfile Updates	165.00	N/A	N/A	75.00
R&B Masterfile (FTP)	N/A	200.00	75.00	75.00
NIDS	165.00	N/A	N/A	75.00
Accommodation Transfer	*165.00*	*125.00*	*75.00*	*75.00*
Bond Comparison	*165.00*	*N/A*	*N/A*	*75.00*
Dividend Announcements	*165.00*	*N/A*	*N/A*	*75.00*

*Includes settlement month end, calendar month end.

[Release No. 35-24932]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 3, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 28, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

AEP Generating Company (70-7621), Indiana Michigan Power Company

AEP Generating Company ("AEGCO") and Indiana Michigan Power Company ("I&M") (collectively, "Applicants"), both located at 1 Riverside Plaza, Columbus, Ohio 43215, subsidiary companies of American Electric Power Company, Inc. ("AEP"), a registered holding company, have filed a post-effective amendment to their application-declaration pursuant to section 9(a), 10, 12(b), 12(c) and 12(d) of the Act and Rules 44, 45 and 46 thereunder.

By prior Commission orders dated April 25, 1989 and June 22, 1989 (HCAR Nos. 24872 and 24910), Applicants were authorized to enter into one or more transactions involving the sale and leaseback pursuant to a net lease or leases (collectively, "Lease") of their respective 50% undivided ownership interests ("Undivided Interests") in Rockport Generating Station Unit No. 2 ("Rockport 2") located in Spencer County, Indiana, now under construction and expected to be completed in late 1989. Applicants expect that the maximum aggregate fair market value of their Undivided Interests in Rockport 2 will not exceed $1.7 billion. To effectuate this transaction, Applicants will enter into participation agreements providing for the sale of their Undivided Interests to Wilmington Trust Company ("Owner Trustee" or "Lessor"), trustee under one or more trust agreements (collectively, "Owner Trust") between the Owner Trustee and five or more institutional equity investors ("Owner Participants"), and simultaneously Applicants will lease their Undivided Interests back from the Owner Trustee pursuant to the lease which will not exceed a term of 33 years. It is proposed that approximately 15-25% of the Lessor's cost will be provided by the Owner Participants through their equity investment in the Owner Trust and 75-85% will be borrowed by the Owner Trustee.

With respect to that portion of the Lessor's cost to be borrowed, it is expected that interim financing up to an aggregate of $1.4 billion would be provided by one or more domestic or foreign financial institutions ("Original Loan Participants") in return for nonrecourse notes ("Initial Series Notes") of the Lessor. The application stated that the Original Loan Participants would be repaid from the proceeds of long-term debt financing that would take place within two years after the inception of the Lease. Jurisdiction was reserved over the terms of such long-term financing insofar as the Lease payments by the Applicants would be affected.

Applicants now propose, in lieu of the issuance of up to $750 million principal amount of Initial Series Notes, that authorization be given allowing the private placement of up to $750 million principal amount of long-term bonds ("Bonds") by RGS (I&M) Funding Corporation and RGS (AEGCo) Funding Corporation non-affiliates of Applicants. The Bonds will be issued by each funding corporation in at least two series. The Series A Bonds will be in an aggregate principal amount not to exceed $350 million, mature no later than 15 years from the issuance thereof and bear interest at a rate of 9.59%. The Series B Bonds will be in an aggregate principal amount not to exceed $150 million, mature no later than 20 years from the issuance thereof and bear interest at a rate of 9.75%. If market conditions permit, up to $250 million of additional series of Bonds may be issued. The maturity of any such additional series of Bonds, however, will not exceed 33 years nor will any such series of Bonds bear interest at a rate in excess of 11%.

In addition to the use of proceeds previously authorized by order dated April 25, 1989 (HCAR No. 24872), I&M requests authority to use up to $65 million of the proceeds from the sale of its Undivided Interest to reduce the equity investments of AEP, such that the resulting long-term debt and common equity ratios will be approximately 52% and 40%, respectively. To this end, I&M proposes to liquidate its Other Paid-in Capital to the extent necessary to achieve these objectives.

Consolidated Natural Gas Company (70-7667)

Consolidated Natural Gas Company ("Consolidated"), CNG Tower, Pittsburgh, Pennsylvania 15222-3199, a registered holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(b), and 12(c) of the Act and Rules 42, 43, 45, 86, 87, and 90 thereunder.

Consolidated proposes to acquire, as a wholly owned subsidiary, Virginia Natural Gas, Inc. ("VNG"), a gas utility company doing business in southeastern Virginia, by purchasing the 2,344 outstanding shares of VNG common stock, no par value, for $102,560,000 and the 55,062 outstanding shares of VNG preferred stock, $100 par value, for $5,506,000 ("Preferred Stock") (collectively, "Stock") from Dominion Resources, Inc. ("DRI"), an exempt holding company.

As an inducement for DRI to sell the Stock, Consolidated at closing ("Closing") will also make long-term loand and/or a capital contribution in an amount up to $50,500,000 in order for VNG to prepay outstanding VNG debt held by DRI ($37,569,000 at March 31, 1989). This debt consists of (1) $35,169,000 remaining under a 8.45% promissory note maturing July 1, 2006 and (2) $2,400,000 outstanding under an Inter-Company Credit Agreement between DRI and VNG. Any long-term loan made by Consolidated to VNG in order for VNG to prepay inter-company debt will be made under the same terms

and conditions as set forth for Consolidated's intra-system financing of its subsidiaries as authorized by order of the Commission dated June 15, 1989 (HCAR No. 24904) ("June 15, 1989 Order").

VNG has a service agreement ("Virginia Service Agreement") with Virginia Electric & Power Company ("Virginia Power"), a subsidiary of DRI, whereby Virginia Power provides services to VNG. VNG will continue to receive certain services from Virginia Power for a transitional period following the acquisition, but no later than January 1, 1991. Services not provided under the Virginia Service Agreement will be provided to VNG by a service agreement to be entered into with Consolidated Natural Gas Service Company, Inc., a subsidiary of Consolidated.

Consolidated, through its interstate pipeline company, CNG Transmission Corporation, intends to extend to Fauquier County, Virginia its PL-1 pipeline, which presently runs from Juniata County, Pennsylvania to Loudoun County, Virginia. In Fauquier County, Virginia, the TL-465 Pipeline will be connected with an intrastate pipeline which VNG intends to construct ("Intrastate Pipeline"). Both the TL-465 Pipeline and the Intrastate Pipeline are expected to be in commercial operation in the latter half of 1991.

Consolidated also seeks authority to make subsequent to the Closing, through June 30, 1990, (i) open account advances to VNG not to exceed $25,000,000, (ii) long-term loans to VNG of up to $25,000,000, and (iii) purchases of up to $25,000,000 of additional common stock of VNG. The open account advances, long-term loans and purchase of VNG common stock subsequent to the Closing will not exceed an aggregate amount of $75 million and will have the same terms and conditions as set forth in the June 15, 1989 Order.

Consolidated proposes that VNG use the proceeds of the open account advances, long-term loans and purchase of its common stock to (1) acquire, for $100 per share, and the retire, the Preferred Stock and (2) for general corporate purposes, including gas storage inventories, other working capital requirements and temporarily for construction until long-term financing is obtained. Following the retirement of the Preferred Stock, VNG would then amend its Articles of Incorporation to delete all provisions concerning Preferred Stock and to increase its authorized common stock, no par value, from 2,500 to 10,000 shares.

Consolidated further proposes to have VNG participate, as both a borrower and lender, in the CNG System Money Pool, as authorized by order of the Commission dated June 12, 1986 (HCAR No. 24128), through June 30, 1991, up to a maximum amount of $25 million.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-18780 Filed 8-10-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before September 11, 1989. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340

Title: Score Application for Membership

Form Nos.: SBA Forms 610

Frequency: On occasion

Description of respondents: Individuals volunteering for the Service Corps of Retired Executives

Annual Responses: 2,800

Annual Burden Hours: 1,400

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 89-18794 Filed 8-10-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 89-8-7; Docket 45944]

Application of Mid Pacific Air Corp. for Certificate Transfer

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Mid Pacific Air Corporation fit and transferring to it the section 401 certificate of Mid Pacific Airlines, Inc., authorizing it to engage in interstate and overseas scheduled air transportation of persons, property, and mail, subject to certain limitations.

DATES: Persons wishing to file objections should do so no later than August 22, 1989.

ADDRESSES: Objections and answers to objections should be filed in Docket 45944 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment C to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Janet A. Davis, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: August 7, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-18839 Filed 8-10-89; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD-89-060]

Public Hearing Bridges; Proposed Improvement to the Miracle/Everest Parkway and Construction of a Bridge Across the Caloosahatchee River Between Cape Coral and Fort Myers, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing.

SUMMARY: Notice is hereby given that the Commandant has authorized a public hearing to be held by the Commander, Seventh Coast Guard District, at North Fort Myers, Florida. The purpose of the hearing is to consider an application by Lee County and the City of Cape Coral for Coast Guard approval of the location and plans to improve the Miracle-Everest Parkway and to construct a bridge across the Calloosahatchee River between Cape Coral and East Myers, Florida.

All interested persons may present data, views and comments, orally or in writing, concerning the impact of the proposed project on navigation and the human environment.

DATE: September 14, 1989, at 2:00 p.m., until all speakers in attendance wishing to comment have provided comments.

ADDRESS: The hearing will be held at the Lee County Civic Center, 11831 Bayshore Road, North Fort Myers, Florida.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Rich, Seventh Coast Guard District, Brickell Plaza, Federal Building, 909 Southeast 1st Avenue, Miami, Florida 33131-3050, (305) 536-4108.

SUPPLEMENTARY INFORMATION: The purpose of the project is to link the Miracle/Everest Parkway in Cape Coral with the proposed Midpoint Bridge. The Miracle/Everest Parkway project would consist of an ultimate six-lane arterial roadway from the Burnt Store Road extension/Miracle Parkway intersection to Everest Parkway at Del Prado Boulevard. The proposed Midpoint Bridge Corridor would begin in the West at Del Prado Boulevard in Cape Coral, with a connection to the Miracle/Everest Parkway project, as discussed above. From that point eastward, the midpoint project would provide a four-lane, divided, limited access facility for a length of approximately 8.8 miles.

The Coast Guard, as lead Federal agency has determined that this project will have a significant impact on the environment and has therefore, prepared a draft Environmental Impact Statement (DEIS). Copies of the DEIS are available for review at the office of the Seventh Coast Guard District at the above address from 7:30 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

The hearing will be informal. Representatives from the Coast Guard will preside at the hearing, make a brief opening statement and announce the procedures to be followed at the hearing. Each person who wishes to make an oral statement should notify the Commander (oan), Seventh Coast Guard District, at the above address by September 8, 1989. Such notification should include the approximate time required to make the presentation. Depending upon the number of scheduled statements, it may be necessary to limit the amount of time allocated to each person.

Any limitation of time allocated will be announced at the beginning of the hearing. Comments previously submitted are a matter of record and need not be resubmitted at the hearing. Speakes are encouraged to provide written copies of their oral statements to the hearing officer at the time of the hearing. Those wishing to make written comments only may submit those comments at the hearing, or to the Commander, Seventh Coast Guard District, through September 22, 1989. A transcript of the hearing, as well as written comments received outside of the hearing, will be available for public review at the office of the Seventh Coast Guard District approximately 30 days after the hearing date.

All comments, whether received in writing or presented orally at the public hearing, will be fully considered before final agency action is taken on the permit application.

(Sec. 502, 60 Stat 847, as amended; 33 U.S.C. 525; 49 U.S.C. 1655(g)(c); 49 CFR 1.45(c))

Dated: August 7, 1989.

John W. Lockwood,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Service.

[FR Doc. 89-18838 Filed 8-10-89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 7, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB: New

Form Number: PD 1993

Type of Review: New Collection

Title: Reinvestment Application

Description: This form may be used to request payment of matured Series H Savings Bonds and reinvestment of the proceeds in Series HH Savings Bonds bearing current issue dates.

Respondents: Individuals or households

Estimated Number of Respondents: 270,000

Estimated Burden Hours Per Response: 15 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 67,500 hours

Clearance Officer: Rita DeNagy (202) 447-1640, Bureau of the Public Debt, Room 137, BEP Annex 300 13th Street, SW., Washington, DC 20239-0001.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-18828 Filed 8-10-89; 8:45 am]

BILLING CODE 4810-35-M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 7, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0187

Form Numnber: 4835

Type of Review: Revision

Title: Farm Rental Income and Expenses

Description: This form is used by landowners (or sub-lessors) to report farm income based on crops or livestock produced by the tenant when the landowner (or sub-lessor) does not materially participate in the operation or management of the farm. This form is attached to Form 1040 and the data is used to determine whether the proper amount of rental income has been reported.

Respondents: Individuals or households, Farms

Estimated Number of Respondents: 407,719

Estimated Burden Hours Per Response/Recordkeeping: Recordkeeping—2 hours, 57 minutes; Learning about the law or the form—5 minutes; Preparing

the form—1 hour, 5 minutes; Copying, assembling, and sending the form to IRS—20 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 1,814,350 hours.
OMB Number: 1545–0823
Form Number: None
Type of Review: Extension
Title: Indian Tribal Governments Treated as States for Certain Purposes
Description: The regulations provide that if a governing body of a tribe etc. of native American Indians or Alaska natives is not designated as an Indian tribal government for purposes of sections 7701 and 7871, the governing body may apply for a ruling from the IRS. The same provisions are made for subdivisions of Indian tribal governments.
Respondents: Indian Tribal governments (or sub-divisions thereof)
Estimated Number of Respondents: 25
Estimated Burden Hours Per Response: 1 hour
Frequency of Response: Once
Estimated Total Reporting Burden: 25 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 89–18629 Filed 8–10–89; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 7, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0027
Form Number: ATF Form 4 (5320.4)
Type of Review: Extension
Title: Application for Tax-Paid Transfer and Registration of Firearms
Description: This form must be submitted to ATF to obtain approval for a tax paid transfer of NFA firearms. Approval of a transfer and registration of a firearm to a new owner are accomplished with the information supplied on this document.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 6,000
Estimated Burden Hours Per Response: 4 hours
Frequency of Response: On occasion
Estimated Total Reporting Burden: 24,000 hours
OMB Number: 1512–0029
Form Number: ATF Form 10 (5320.10)
Type of Review: Extension
Title: Application for Registration of Firearms Acquired by Certain Government Entities
Description: This form provides a method for certain government entities to register, for OFFICIAL USE ONLY firearms; otherwise unregisterable, such as those unregistered weapons seized by or abandoned to local law enforcement agencies.
Respondents: State or local governments
Estimated Number of Respondents: 300
Estimated Burden Hours Per Response: 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 300 hours
Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 89–18630 Filed 8–10–89; 8:45 am]
BILLING CODE 4810–25–M

Bureau of Alcohol, Tobacco and Firearms

Granting of Relief; Federal Firearms Privileges

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.
ACTION: Notice of granting of restoration of federal firearms privileges.

SUMMARY: The persons named in this notice have been granted restoration of their Federal firearms privileges by the Director, Bureau of Alcohol, Tobacco and Firearms.

As a result, these persons may lawfully acquire, transfer, receive, ship, and possess firearms if they are in compliance with applicable laws of the jurisdiction in which they live.

FOR FURTHER INFORMATION CONTACT: Special Agent in Charge Phil A. Orsini, Firearms Enforcement Branch, Firearms Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, (202–566–7258).

SUPPLEMENTARY INFORMATION: In accordance with 18 U.S.C. 925(c), the persons named in this notice have been granted restoration of Federal firearms privileges with respect to the acquisition, transfer, receipt, shipment, or possession of firearms. These privileges were lost by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year or because they otherwise fell within a category of persons prohibited by Federal law from acquiring, transferring, receiving, shipping or possessing firearms.

It has been established to the Director's satisfaction that the circumstances regarding the applicants' disabilities and each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the restoration will not be contrary to the public interest.

The following persons have been granted restoration:

Aaron, Ronald L., Rural Delivery 3, Box 147, Clarion, Pennsylvania, convicted on May 5, 1982, in the Court of Common Pleas, Mercer County, Pennsylvania.

Aaron, Steven Louis, 5311 Park Lane, Dallas, Texas, convicted on January 5, 1979, in the United States District Court, Eastern Texas, Texarkana, Texas.

Abel, Harold III, 316 South Lincoln Street, Three Rivers, Michigan, convicted on August 11, 1980, St. Joseph County Circuit Court, Saint Joseph, Michigan.

Adams, Edward Deranto C., 1010 Arlington, Ada, Oklahoma, convicted on November 14, 1962, in the County of Greer, Oklahoma.

Adams, Frankie Carle, Route 1, Box 240 A–1, Rock, West Virginia, convicted on May 11, 1978, in the United States District Court, Bluefield, West Virginia.

Adams, Gordon, 2029 North Columbia, Springfield, Missouri, convicted on October 20, 1977, in the Circuit Court, Greene County, Missouri.

Adams, James Bernard, Route 1, Box 72, Pine City, Minnesota, convicted on April 30, 1985, in the Third Judicial District Superior Court, Anchorage, Alaska.

Adams, Joe Sam Junior, 7322 Richmond Place, St. Louis, Missouri, convicted on March 16, 1965, in the United States District Court, St. Louis, Missouri.

Adams, Larry Joe, 636 North West Avenue, Springfield, Missouri, convicted on January 19, 1965, in the Greene County Circuit Court, Springfield, Missouri.

Adams, Philip Alan, 20 Van Gogh Drive, Apartment 5, Osterville, Massachusetts, convicted on October 11, 1966, in the Worcester Superior Court, Worcester, Massachusetts.

Akers, Christopher Russell, 524 East Pine, Apartment C, Walla Walla, Washington, convicted on December 10, 1981, in the Walla Walla County Superior Court, Washington.

Albrough, John Leonard, 814 East 9th Avenue, Sault Ste Marie, Michigan, convicted on August 19, 1983, in the Western District of Michigan.

Alford, Joseph Paul, Route 5, Box 139, Gatesville, Texas, convicted on October 29, 1982, in the District Court, Coryell County, Texas.

Anderson, David J., 670 North Atlantis Drive, Orem, Utah, convicted on November 12, 1982, in the Fourth Judicial District Court, Utah County, Utah.

Anderson, Paul, 934 South Revere, Mesa, Arizona, convicted on December 1980, in the Maricopa County Superior Court, Mesa, Arizona.

Andrews, Barry David, 6277 Bethel Road Southeast, Port Orchard, Washington, convicted on September 9, 1977, in the Superior Court, Kitsap County, Washington.

Andrews, Scott Leslie, 940 Linden Avenue, Apartment 138, Sunnyvale, California, convicted on December 30, 1980, in the County Municipal Court, Santa Clara, California.

Ansell, Duane Franklin, 1640 Seminary, Alton, Illinois, convicted on August 3, 1977, in the Seventh Judicial Circuit Court, Jerseyville, Illinois.

Aponte-Arroyo, Amparo, Ruta Estrella Buzon 65, Minillas, Bayamon, Puerto Rico, convicted on May 5, 1981, in the District Court, Bayamon, Puerto Rico.

Appleton, Macel Vernon, Senior, Box 44, Sardis, Mississippi, convicted on December 21, 1970, in the United States District Court, Oxford, Mississippi.

Arkava, Morton L., 536 Harvey Lane, Hamilton, Montana, convicted on March 9, 1984, in the United States District Court, State of Montana.

Armentrout, David Wilbur, Route 4, Box 383, Covington, Virginia, convicted on June 2, 1982, in the Circuit Court of Alleghany County, Virginia.

Armstrong, Barry Dixon, 1100–A Weeping Willow Drive, Lynchburg, Virginia, convicted on February 28, 1978, in the Circuit Court, Tazewell County, Virginia.

Armstrong, James Victor, Route 20, Box 376B, Gray Highway, Macon, Georgia, convicted on October 27, 1976, in the United States District Court, Macon, Georgia.

Arnold, John Vernon, Post Office Box 208, Vader, Washington, convicted on August 18, 1982, in the United States District Court, Western District of Washington, Tacoma, Washington.

Arnold, Luther Aubrey, 1401 Garfield Avenue, Lynchburg, Virginia, convicted on December 11, 1953, in the Corporation Court, Lynchburg, Virginia.

Arrington, James Edgar Junior, 114 Mill Avenue, Lebanon, Virginia, convicted on April 16, 1984, in the United States District Court, Abingdon, Virginia.

Arthur, Lynn Barry, 1752 Clarkson Road, Apartment B, Richmond, Virginia, convicted on November 4, 1974, in the Circuit Court, Lynchburg, Virginia.

Asbury, Allen Wayne, 8123 Anne Drive, Orland Park, Illinois, convicted on March 14, 1981, in the Circuit Court, Twelfth Judicial District, Will County, Illinois.

Ashley, Jessie William, Route 1, Box 383, Timberlake, North Carolina, convicted on August 25, 1982, in the Middle Judicial District, Greensboro, North Carolina.

Ashman, John Carson, Route 4, Box 36, Amelia, Virginia, convicted on April 5, 1983, in the Circuit Court, Amelia County, Virginia.

Augustitus, Paul Franklin, 106 Hidden Oaks Drive, Apartment 2B, Cary, North Carolina, convicted on November 7, 1983, in the Circuit Court, Arlington County, Virginia.

Aumiller, Robbie Del, 1104 "J" Street, Centralia, Washington, convicted on October 17, 1980, in the Lewis County Superior Court, Washington.

Austin, Thomas Franklin, 3801 Nathan Hale Road, Pascagoula, Mississippi, convicted on December 8, 1981, in the Circuit Court, Jackson County, Mississippi.

Avery, Martin Duane, 74 Linmar Homes, Aziqippa, Pennsylvania, convicted on May 6, 1977, in the Court of Common Pleas of Beaver County, Pennsylvania.

Ayala-Ortiz, Ramon, 1345 Damasco Street, Villa Borin Quen, Puerto Nuevo, Puerto Rico, convicted on September 30, 1964, in the Superior Court, San Juan, Puerto Rico.

Ayers, Harold Guy, Highway 231, Halfway, Kentucky, convicted on June 6, 1980, in the Allen County Circuit Court, Scottsville, Kentucky.

Ayers, Larry Dean, Rural Route 2, Box 235A, Mattoon, Illinois, convicted on August 7, 1975, in the Fifth Judicial Circuit of Illinois, Charleston, Illinois.

Ayre, Donn Michael, 14 Holiday Drive, Springfield, Illinois, convicted on December 22, 1982, in the United States District Court, Springfield, Illinois.

Azevedo, George Machado, 142 Parallell Avenue, Ripon, California, convicted on February 3, 1958, in the United States District Court, Northern District of California.

Bachman, Keith Wayne, 1102 13th Avenue Northeast, Brainerd, Minnesota, convicted on September 27, 1978, in the Crow Wing County Court Ninth Judicial District, Minnesota.

Back, Calvin Edmund, 919 Springhill Road, Staunton, Virginia, convicted on November 9, 1976, in the Circuit Court of Staunton, Staunton, Virginia.

Baddorf, Ronald Eugene, 11522 Old Carrollton Court, Richmond, Virginia, convicted on April 12, 1983, in the United States District Court, Richmond, Virginia.

Baer, Ora Daniel, 60827 C.R. 15 South, Elkhart, Indiana, convicted on June 26, 1984, in the United States District Court, Northern District of Indiana.

Bailey, Loyce Edmond, 308 Bowden Street, Senatabia, Mississippi, convicted on October 23, 1981, in the United States District Court, Northern District of Mississippi.

Bailey, Thomas Jordan Junior, Apartment 5, Sprouses Corner, Dillwyn, Virginia, on January 7, 1980, in the Albemarle County Court, Charlottesville, Virginia.

Baker, Archie Clee, Route 3, Box 186, Maxton, North Carolina, convicted on January 26, 1979, in the North Carolina Superior Court, Roberson County, Lumberton, North Carolina.

Baker, G.R. Senior, Post Office Box 17, Hazard, Kentucky, convicted on October 26, 1965, in the United States District Court, Jackson, Kentucky.

Baker, Garry Ronald, 5539 West Wilshire, Phoenix, Arizona, convicted on June 7, 1977, and on April 8, 1982, in the Superior Court, Maricopa City, Phoenix, Arizona.

Baker, Howard Arnold, 1587 Tittabawassee River Road, Midland, Michigan, convicted on April 28, 1958, November 21, 1958, June 30, 1961, December 5, 1962, and July 19, 1968, in the Circuit Court for the County of Saginaw, Michigan.

Baker, Larry James, 2101 Nuttal Avenue, Edgewood, Maryland,

convicted on November 1, 1957, in the Court of Baltimore, Maryland.

Baker, Larry Louis, 1106–A Tuscaloosa Avenue, Gadsden, Alabama, convicted on February 24, 1978, in the Circuit Court of Etowah County, Alabama.

Baker, Paul Dean, 3323 North Colorado, Loveland, Colorado, convicted on July 7, 1961, in the Larimer County District Court, Larimer County, Colorado.

Baker, William Leander, East 401 Augusta, Apartment 5, Spokane, Washington, convicted on July 15, 1980, in the United States District Court, Wyoming.

Balducci, Felice Joseph, 505 Don Drive, Greenville, South Carolina, convicted in June 1954, in the Court of General Sessions, Kings County, Brooklyn, New York.

Baldwin, Leo Lyman Senior, 1381 Millburn Drive, Conklin, New York, convicted on February 29, 1980, in the Broome County Court, Binghampton, New York.

Ball, Kenneth Charles, 430 South Lincoln, Casper, Wyoming, convicted on May 5, 1983, in the Seventh District Court, State of Wyoming.

Bandy, Larry Dean, 4777 East Gettysburg, Apartment 111, Fresno, California, convicted on January 1, 1972, in the Superior Court, Fresno, California.

Bane, Hallie Clifton Junior, 105 First Street, Bluefield, Virginia, convicted on August 25, 1978, in the Circuit Court of Tazewell County, Virginia.

Banks, Scott Edwin, 799 South Yankeetown Highway, Booneville, Indiana, convicted on June 15, 1984, in the Superior Court, Wassick County, Indiana.

Bantle, James Lester Senior, 4244 Parker Road, Port Huron, Michigan, convicted on July 3, 1958, in the Macomb County Circuit Court, Mt. Clemens, Michigan.

Barbaro, Arnold Richard, 8220 North Kendall Drive, Miami, Florida, convicted on October 31, 1978 in the Seventeenth Judicial District of Florida, Broward County.

Barisic, Bradley Vaughn, 1970 Eighth Avenue, San Francisco, California, convicted on November 7, 1980, in the United States District Court, San Francisco, California.

Barker, Willard Wesley, 1116 East Cleveland, Guthrie, Oklahoma, convicted on February 3, 1983, in the Western District Court, Oklahoma City, Oklahoma.

Barnes, Alexander G., 3733 Calle San Antonio, Palm Springs, California, convicted on September 7, 1978, in the Superior Court, Orange County, California.

Barnes, James H., Route 1, Cosby, Tennessee, convicted on February 22, 1974, in the United States District Court, Greenville, Tennessee.

Barnes, Jeffrey Monroe, 1102 "B" North Skagit, Burlington, Washington, convicted on August 29, 1980, in the Superior Court, Island County, Washington.

Barnes, Leroy Champlin, 625 West Anderson, Apartment 1, Idaho Falls, Idaho, convicted on December 18, 1979, in the Deschutes County Circuit Court, State of Oregon.

Barreras, Severo, 3000 Flax Street, El Paso, Texas, convicted on April 29, 1972, in the United States District Court, El Paso, Texas.

Barrois, Dennis James, 2118 Delille Street, Chalmette, Louisiana, convicted on May 1, 1981, in the United States District Court, Eastern District, Louisiana.

Basham, Thelma Jane, 126 South English, Leitchfield, Kentucky, convicted on September 5, 1980, in the Grayson County Circuit Court, Leitchfield, Kentucky.

Bates, Douglas Dean, 22811 Poppy Street Northwest, St. Francis Minnesota, convicted on February 14, 1980, in the Tenth District Judicial Court, Anoka County, Minnesota.

Bates, Jace Andrew, 2613 San Andres, Odessa, Texas, convicted on January 28, 1983, in the One-hundred-and-fourth Judicial District Court, Taylor County, Texas.

Baumgartner, George Patrick, #5 Anastasia Park Drive, Saint Augustine, Florida, convicted on November 3, 1980, in the Eighth Judicial Circuit Court, Alachua County, Florida.

Bayne, Allen Lee, 312 West Main Street, Glencoe, Alabama, convicted in 1948 in the Circuit Court of Etowah County, Alabama; on October 18, 1952, in the Circuit Court of Etowah County and on March 14, 1957, in the Circuit Court, Limestone County, Alabama.

Beard, Charles Thomas, Route 3, Box 449, Ridgeway, Virginia, convicted on May 14, 1975, in the Henry County Circuit Court, Martinsville, Virginia.

Beard, Sharon R., 3045 East Enos, Springfield, Illinois, convicted on January 21, 1976, in the Twenty-Fourth Judicial District Court, Jefferson Parish, Louisiana.

Bearup, Eugene Scott, 8036 South Ninth Street, Phoenix, Arizona, convicted on September 21, 1976, in the United States District Court, Tucson, Arizona.

Beasley, Barry Danford, Post Office 535, Ponder and Sims Road, Haleyville, Alabama, convicted on May 24, 1972, in the Circuit Court of Winston County, Alabama.

Beasley, Jerry Bruce, 4703 Welford, Bellaire, Texas, convicted on April 20, 1980, in the One-hundredth and Eighty-Second District Court, Harris County, Texas.

Beasley, John, 754 134th Place, Chicago, Illinois, convicted on June 18, 1940, in the United States District Court, District of Nebraska.

Beck, Ralph John Junior, Post Office Box 57, Vowinckel, Pennsylvania, convicted on June 10, 1977, in the Court of Common Pleas, Alleghany County, Pennsylvania.

Beismer, Harold Clinton Junior, Long Hill Road, County Road 30, Box 657, Afton, New York, convicted on May 1, 1978, in the Delaware County Court, Delhi, New York, and on June 2, 1980, in the Supreme Court Otsego County, New York.

Beldock, Stephen Allen, Rural Delivery 2, Lisbon, New York, convicted on August 27, 1981, in the State of New York, County Court, St. Lawrence County and convicted on July 7, 1982, in the St. Lawrence County Court, New York.

Bell, Don Gregory, Route 5, Box 367, Coushatta, Louisiana, convicted on November 23, 1982, in the United States District Court, Shreveport, Louisiana.

Benedict, Kenneth Carl, 102 Railroad Street, Box 115, Granton, Wisconsin, convicted on December 29, 1982, in the Clark County Circuit Court, Branch II, Neillsville, Wisconsin.

Benford, Patrick James, 4232 East McKinney Street, Phoenix, Arizona, convicted on April 24, 1962, in the Superior Court, Bay County, Michigan.

Bennett, Raymond Russell, 144 Worthington-Lane, Chesapeake City Maryland, convicted on December 11, 1936, in the Medie Court House, Medie, Pennsylvania.

Bennett, Warren R., Route 2, Box 128A, Lecompte, Louisiana, convicted on February 9, 1979, in the United States District Court, Eastern District of Texas.

Bennington, John Robert, 555 Chestnut Drive, Harrisonburg, Virginia, convicted on March 21, 1960, in the Circuit Court of Page County, Lurray, Virginia.

Bentley, Robert LeRoy, 204 Woodcrest Drive, Fallbrook, California, convicted on January 28, 1982, in the Marion County Court, Hannibal, Missouri, and also convicted on February 6, 1982, in the Marion County Court, Hannibal, Missouri.

Berger, Ronald Robert, 626 Laurel Avenue, St. Paul Park, Minnesota, convicted on December 12, 1980, in the Washington County District Court, Stillwater, Minnesota.

Bermudez, Fernando, 264 Tenth Avenue, New York, New York, convicted on November 21, 1961, in the Bronx Supreme Court, Bronx, New York.

Berry, Fred Wesley, 6435 Ditman Street, Philadelphia, Pennsylvania, convicted on October 17, 1968, in the Criminal Court, Bucks County, Pennsylvania.

Berry, Joseph Mohamed, 40350 West 7 Mile Road, Northville, Michigan, convicted on July 30, 1965, in the Detroit Recorders Court, Michigan.

Bertsch, Delmar Dale, 107 4th Avenue Southeast, Watertown, South Dakota, convicted on September 6, 1966, in the Fourth Judicial Circuit Court, Pankinton, Aurora County, South Dakota.

Berzon, Frederick Louis, 1400 River Street, Hyde Park, Massachusetts, convicted on October 10, 1962, in the Superior Court, Boston, Massachussetts.

Billingsley, David Harold, Route 3, Box 796–A, Ashford, Alabama, convicted on September 21, 1984, in the United States District Court, Middle District of Alabama Montgomery.

Bima, Gerald D., 3390 Farm Lane, Ann Arbor, Michigan, convicted on October 22, 1971, in the Circuit Court, Oakland County, Michigan.

Bishop, Homer, Route 2, Box 313, Winfield, Alabama, convicted on August 22, 1979, in the Circuit Court, Marion County, Alabama.

Bishop, Kenneth Dewayne, Route 4, Box 185, Wills Point, Texas, convicted on April 16, 1976, October 15, 1980 and October 15, 1980 in the Eighty-Sixth Judicial District Court, Van Zandt County, Texas.

Bishop, Roy Carroll, Route 1, Box 12, Early Branch, South Carolina, convicted on January 17, 1973, in the United States District Court, South Carolina.

Bivens, Paul Nelson, 55590 Lazy River Drive, Sunriver, Oregon, convicted on March 21, 1977, in the Superior Court, Lane County, Oregon.

Black, James L., 12121 Hope Road, Mustang, Oklahoma, convicted on February 9, 1983, in the Western Oklahoma Court, Oklahoma.

Blackwell, Gerald Richard, 125 South Galvez Street, New Orleans, Louisiana, convicted on November 3, 1981, in the United States District Court, Eastern Judicial District, Louisiana.

Blake, Kim, No. 4 Lehigh Circle, Slatington, Pennsylvania, convicted on April 2, 1981, in the Court of Common Pleas, Berks County, Reading, Pennsylvania.

Blakney, Johnny Odell, 1215 Harvell Court, Cedar Hill, Texas, convicted on December 20, 1963, in the Criminal District Court, Dallas, Texas.

Blanchard, David Allen, Post Office Box 85, East Bethel Road, Locke Mills, Maine, convicted on September 26, 1980, in the Oxford Superior Court, Oxford County, Maine.

Blanchard, David Lee, Post Office Box 283, Main Street, Evergreen, Louisiana, convicted on November 23, 1970, in the United States District Court, Western Judicial District, Lafayette, Louisiana.

Bland, Herman Junior, Post Office Box 14, Montebello, Virginia, convicted on July 17, 1975, in the Circuit Court of the City of Fredericksburg, Virginia.

Blanding, Charles Randolph Junior, 1634 Freedom Way, Baltimore, Maryland, convicted on June 29, 1965, and also convicted on March 24, 1980 in the Baltimore District Court, Baltimore, Maryland.

Blankenship, Charles Eugene, Route 1, Box 347, Munford, Alabama, convicted on August 8, 1982, in the United States District Court, Northern Alabama, Birmingham, Alabama.

Bleiwess, Bruce Martin, 801 North 2nd Street, Harrisburg, Pennsylvania, convicted on January 28, 1966, in the Cumberland County Court of Common Pleas, Carlisle, Pennsylvania, and on February 12, 1985, in the Dauphin County Court of Common Pleas, Harrisburg, Pennsylvania.

Block, William James, 202 West Bush, Caro, Michigan convicted on September 4, 1975, in the Oakland County Circuit Court, and on February 20, 1975, in the Macomb County Circuit Court, Michigan.

Bobes, Barry Philip, 30920 Southwest 191 Avenue, Homestead, Florida, convicted on May 20, 1971, in the Circuit Court, Dade County, Florida.

Boeking, Henry Edward, 6802 Northwest Grand Boulevard, Oklahoma City, Oklahoma, convicted on June 3, 1983, in the Western District, Oklahoma City, Oklahoma.

Bohannon, Horace Vincil, Block 1, Lot 10, Box 3467, Plano Colorado Estates, Milan, New Mexico, convicted on September 15, 1982, in the Bernalillo District Court, New Mexico.

Bolt, Floyd Ashley, 178 Ruth Circle, Huntsville, Alabama, convicted on January 14, 1969, in the Madison County Circuit Court, Huntsville, Alabama.

Bonck, Michael Joseph, 3341 Tulane Drive, Kenner, Louisiana, convicted on March 26, 1964, in the Orleans Parrish District Court, Orleans Parrish, Louisiana.

Bond, Laurence Frank, Box 1830, Black Canyon Stage, convicted on June 25, 1979, in the Superior Court, Yavapai County, Arizona.

Booker, George Donald, Route 2, Box 71, Woodland Hills, Blue Mountain, Mississippi, convicted on June 30, 1960, in the Criminal Court, Shelby County, Tennessee.

Booker, John Wayne, Route 7, Box 85, Meridian, Mississippi, convicted on October 23, 1968, in the United States District Court, Meridian, Mississippi.

Booth, Stephen Ellis, 27 Sherwood Court, Winchester, Kentucky, convicted on January 22, 1982, in the Mercer County Circuit Court, Harrodborg, Kentucky.

Boring, James Russell, Post Office Box 68, Optima, Oklahoma, convicted on August 10, 1982, in the Western Judicial District of Oklahoma.

Born, Henry Ernest, Lot 70, Whitley Trailer Court, South Whitley, Indiana, convicted on February 28, 1979, in the Circuit Court, Whitley County, Columbia City, Indiana.

Bosarge, David Paul, 9605 Wilkerson Circle, Pascaqoula, Mississippi, convicted on November 7, 1980, in the United States District Court, Jackson, Mississippi.

Bowe, Charles Willard, 1 South Slate Street, Chippewa Falls, Wisconsin, convicted on October 15, 1983, in the Circuit Court Branch One, Chippewa County, Eau Claire, Wisconsin.

Bower, Robert Michael, 14 Margaret Lane, Brewer, Maine, convicted on September 29, 1980, in the Superior Court, Peobscot County, Bangor, Maine.

Bowers, Terry Allen, 133 North Magnolia, Spokane, Washington, convicted on June 17, 1961, in the Superior Court, Spokane County, Washington.

Bowker, Albert Lewis, 2442 Market Street Northwest, Apartment 251, Seattle, Washington, convicted on March 8, 1973, in the King County Superior Court, Seattle, Washington.

Bowman, Leabern T. Junior, 16826 Rockbend, Houston, Texas, convicted on January 28, 1971, in the United States District Court, Southern District of Texas, Houston, Texas.

Bowman, Paul Lee, 620 West Indiana Street, New Buffalo, Michigan, convicted on February 20, 1953, in the Berrien County Circuit Court, Michigan.

Bowyer, Luther Lee Junior, Route 2, Box 51, Moneta, Virginia, convicted on June 27, 1978, in the Circuit Court, Bedford County, Virginia.

Brackley, Robert Elmer Junior, RFD 3, Box 3870, Farmington, Maine, convicted on Feburary 9, 1979, in the Superior Court of Franklin County, Maine.

Brad, David Jonathon, Route 1, Box 6A, Lake Winter Road, Winter Wisconsin, convicted on August 14, 1984, in the Circuit Court, State of Wisconsin.

Bradford, William Michael, 1718 South Charles Street, Baltimore, Maryland, convicted on May 28, 1977, in the District Court, Worcester, Maryland.

Brannon, Glenn Olan, Post Office Box, 728, St. George, Utah, convicted on May 14, 1981, in the District Court of Washington County, Utah.

Brantner, Alfred Landon, Post Office RFD 2, Box 214, Kennett, Missouri convicted on April 8, 1967, in the Dunklin County, Circuit Court, Kennett, Missouri, and convicted on October 24, 1983, in the United States District Court, Cape Girardeau, Missouri.

Brasswell, William Dale, 717 Murfreesboro Road, #12, Nashville, Tennessee, convicted on September 12, 1980, in the Superior Court of Liberty County, Georgia.

Bravo, John Wendell, 516 Park Avenue, Mukilteo, Washington, convicted on November 7, 1980, in the Superior Court, Snohomish County, Washington.

Braxton, Charles Zelior, 4701 Lebanon Road, Apartment B–113, Nashville, Tennessee, convicted on April 8, 1976, in the Superior Court, Richmond County, Georgia.

Brelsford, Kenneth George, 34 Ashwood Road, Milford, Connecticut, convicted on November 1, 1953, in the District Court, Parish of Saint Tammany, Louisiana.

Brewster, Michael Lavoyce, Route 1, Box 208H, Frierson, Louisiana, convicted on June 24, 1981, in the Eleventh Judicial District Court, DeSoto Parish, Louisiana.

Bridgeman, Vernon Jerome, Route B, Box 185, Kingston, Oklahoma, convicted on August 12, 1983, in the United States District Court, Muskogee, Oklahoma.

Bridges, David Keith, 2913 Malcom Street, Fort Worth, Texas, convicted on July 27, 1981, in the Tarrant County District Court 3, Fort Worth, Texas.

Bright, Harry Major, 1852 East Eighth Avenue, Spokane, Washington, convicted on November 18, 1977, in the Superior Court of Spokane, Washington.

Brigman, James Dennis, Box 862, Hillside Trailer Court 14, Rawlins, Wyoming convicted on April 7, 1983, in the United States District Court Judicial District of Wyoming.

Brink, John Alfred, 5747 West Dickerson Road, Akron, Michigan, convicted on January 19, 1982, in the Circuit Court, Tuscola, Michigan.

Britton, George C., 1112 South 8th Street, Yakima, Washington, convicted on May 12, 1967, in the Superior Court, Sacramento County.

Britzen, Richard James, 217 West Lancaster, North Muskegon, Michigan, convicted on June 1, 1970, in the United States District Court, Grand Rapids, Michigan.

Brock, Jerry Lee, 4767 North 34th Street, Milwaukee, Wisconsin, convicted on December 30, 1965, in the Circuit Court, Milwaukee, Wisconsin.

Bronzynski, Raymond Lee, 17190 Mount Vernon Road #56 Golden, Colorado, convicted on June 30, 1971, in the Second Judicial District Court, Carbon County, Wyoming.

Brooks, Hattie Marie, 329 West White Oak Street, Leitchfield, Kentucky, convicted on August 25, 1980, in the Grayson County Circuit Court, Leitchfield, Kentucky.

Brooks, James Richard, 6540 Paris Southeast, Grand Rapids Michigan, convicted on October 22, 1962, in the Superior Court Grand Rapids, Michigan.

Brooks, Ronald Edward, 2113 Harris Road, Huntsville, Alabama, convicted on August 30, 1983, in the United States District Court, Northern Alabama, Birmingham, Alabama.

Brown, George F., 7950 Jefferson Highway, Apartment 106, Baton Rouge, Louisiana, convicted on June 15, 1977, in the United States District Court, Baton Rouge, Louisiana.

Brown, Harding, 34260 Allen Road, Cottage Grove, Eugene, Oregon, convicted on October 23, 1981, in the Circuit Court, Eugene, Oregon.

Brown, Jerry Ray, 239 Beech Street, Clarksville, Tennessee, convicted on August 4, 1972, in the United States District Court of the Northern Judicial District, Atlanta, Georgia.

Brown, Levi Bud Junior, Route 1, Box 284C, Bishopville, South Carolina, convicted on September 28, 1959, in the General Sessions Court, Lee County, South Carolina.

Brown, Mannie L., 106 Lake of Pines, Jackson, Mississippi, convicted on February 25, 1982, in the Southern Judicial District, United States District Court, Jackson, Mississippi.

Brown, Randall Monroe, Route 1, Box 701, Morehead, Kentucky, convicted on October 24, 1974, in the Fleming County Circuit Court, Flemingburg, Kentucky.

Brown, Roy M., Rural Delivery 1, Box 902, Shinglehouse, Pennsylvania, convicted on September 10, 1975, in the Court of Common Pleas, McKean County, Pennsylvania.

Brown, Timothy Patrick, 7150 Petrie Road, Pulaski New York, convicted on June 20, 1980, in the Oswego County Court, New York.

Brown, Wayne Earl, 116 South Rosemary, Lansing, Michigan, convicted on October 1, 1951, in the Gratiot County Circuit Court, Michigan.

Browning, Charles Ray, Post Office Box 235, Verdunville, West Virginia, convicted on January 16, 1959, in the Logan County Circuit Court, Logan, West Virginia.

Browning, Nathan Ray, 8352 Old Homestead Drive, Dallas, Texas, convicted on October 19, 1979, in the Criminal District Court Number 5, Dallas County, Texas.

Brudseth, Cynthia Diane, Route 2, Box 196–T, St. Maries, Idaho, convicted on October 14, 1981, in the Benewah County District Court, Idaho.

Bruley, Timothy Leo Senior, 1737 Blair Avenue, St. Paul, Minnesota, convicted on September 10, 1980, in the Ramsey County, Second Judicial District Court, St. Paul, Minnesota.

Brummett, Todd Sawyer, Route 4, Box 118, Princeton, Kentucky, convicted on September 24, 1980, in the Caldwell County Court, Princeton, Kentucky.

Bryan, Glenn Allen, 3604 Vance Avenue, Fort Wayne, Indiana, convicted on September 24, 1979, in the Allen County Circuit Court, Allen County, Indiana.

Bryarly, Harold Dale Junior, 69639 Thomas Road, White Pigeon, Michigan, convicted on October 5, 1955, in the Elkhart Superior Court, Elkhart, Michigan.

Bucci, Florindo A., 2223 Fairhill Avenue, Glenside, Pennsylvania, convicted on November 26, 1984, in the United States District Court, Philadelphia, Pennsylvania.

Buchanan, Landon Haynes, 1021 Howbert Street, Roanoke, Virginia, convicted on April 26, 1979, in the Circuit Court, City of Roanoke, Virginia.

Burchett, Alva Ewell Junior, Route 1, Adairville, Kentucky, convicted on November 21, 1969, in the Grayson County Court, Independence, Virginia, also convicted on May 30, 1974, in the United States District Court, Bowling Green, Kentucky.

Burgan, Freddy David, Route 1, Box 304, Midway, Kentucky, convicted on October 10, 1974, in the United States District Court, Lexington, Kentucky, and on March 17, 1978, in the Fayette Circuit Court, Fayette County, Kentucky.

Burgess, Thomas Shaw, 930 Grand Concourse, Apartment 6, Bronx, New York, convicted on November 5, 1954, in the Supreme Court, State of New York.

Burgos-Colon, Carlos Jose, North 85, Hostos Street, Guayama, Puerto Rico, convicted on January 24, 1962, in the Superior Court, Guayama, Puerto Rico.

Burk, Donald Earl, 235 East Ninth Avenue, Anchorage, Alaska, convicted on May 11, 1981, in the United District Court, Anchorage, Alaska.

Burkall, Larry Steven, 6711 North 35th Avenue, Apartment 44, Phoenix, Arizona, convicted on May 17, 1982, in the United States District Court, Phoenix, Arizona.

Burke, Wilbert Ernest, 1050 Fifth Street North, Birmingham, Alabama, convicted on February 6, 1957, in the

Circuit Court, Jefferson County, Alabama.

Burks, Joseph Webb, Route 3, Box 40, Quinlan, Texas, convicted on June 15, 1979, in the Two-Hundred-and-Ninety-Second Judicial District, Dallas County, Texas.

Burnham, William Joseph, Myers Road, Box 456, Shaftsbury, Vermont, convicted on July 7, 1982, in the United States District Court, Burlington, Vermont.

Burns, Douglas Dale, 1204 North 7th Street, Kelso, Washington, convicted on May 7, 1982, in the United States District Court, Judicial District of Washington.

Burns, Lewis Fred, 1353 Oliver Avenue, Bowling Green, Kentucky, convicted on June 17, 1980, in the Warren County Circuit Court, Bowling Green, Kentucky.

Burns, Timothy Joseph, 3113 Covington Street, Fairfax, Virginia, convicted in September 1974 and in March 1975, Fairfax County Circuit Court, Fairfax, Virginia.

Burroughs, Kenneth Norris, 2497 16th Street North, Zephyrhills, Florida convicted on date unknown in the Orange County Superior Court, Chelsea, Vermont.

Burton,, Steven Jeffrey, Box 73094, Fairbanks, Alaska, convicted on March 5, 1982, in the United States District Court, District of Arizona.

Busch, George Walter Junior, 3511 Chippendale Street, Philadelphia, Pennsylvania, convicted on April 14, 1967, in the County Court, Bucks County, Pennsylvania.

Busho, Marlowe Eugene, 1152 Rice Lake Street, Owatonna, Minnesota, convicted on September 27, 1974, and on June 13, 1980, in the Steele County District Court, Third District, Owatonna, Minnesota.

Busley, Robert Clifton, 1300 South Third Street, Kelso, Washington, convicted on October 24, 1974, and also convicted on June 13, 1980, in the Superior Court, Clark County State of Washington.

Butler, Jerry Sylvester, Route 3, Box 529B, Rustburg, Virginia, convicted on March 27, 1975, in the United States District Court, Lynchburg, Virginia.

Butler, Michael Edward, Route 1, Box 42, Thompsonville Highway, Buelah, Michigan, convicted on January 30, 1957, in the Benzie County Circuit Court, Michigan.

Butterfield, Kenneth Roy, 65450 Eight Mile Road, South Lyon, Michigan, convicted on July 22, 1978, in the United States Court, Detroit, Michigan.

Buttles, Jerry Harrison, 3547 East Lamona Fresno, California, convicted on May 8, 1985, in the Superior Court, Fresno, California, and February 10, 1969, in the United States District Court, Fresno, California.

Buyase, Robert Harry, Rural Route 3, Box 182, Marshall, Minnesota, convicted on January 20, 1972, in the Fifth Judicial District Court, Lyon County, Marshall, Minnesota.

Byerly, Glen Robert, 1709 Leonard Road, Lexington, North Carolina, convicted on July 22, 1971, in the Davidson County Superior Court, Lexington, North Carolina.

Byrne, Darol Erwin, 20101 61st Place West, Apartment E–305, Lynwood, Washington, convicted on September 18, 1974, in the Superior Court of Washington, Seattle, Washington.

Cain, James Andrew, 3057 Louisiana Avenue South, Saint Louis Park, Minnesota, convicted on October 11, 1985, in the Hennepin County District Court, Fourth Judicial District, Minneapolis, Minnesota.

Calloway, Patrick Grayson, Post Office Box 2303, Cody, Wyoming, convicted on September 15, 1976, in the Superior Court, Baxter County, Arkansas.

Campbell, Dempsey Blair, Box 464, Little Sandy Creek, Elkview, West Virginia, convicted on February 7, 1972, and on October 14, 1981, in the Circuit Court of Mason County, Point Pleasant, West Virginia.

Campbell, Karl Douglas, 2024 Cumberland Avenue, Middlesboro, Kentucky, convicted on February 10, 1978, in the United States District Court, London, Kentucky.

Canessa, Peter Michael, Oakridge Road, Lunenburg, Massachusetts, convicted on May 7, 1979, in the United States District Court District of Massachusetts.

Cannon, Isiah Junior, 317 South Sixth Street, Saginaw, Michigan, convicted on May 18, 1973, in the Saginaw County Circuit, Michigan.

Cantrell, Russell Ernest, Junior, 2315 Bell Avenue, Amarillo, Texas, convicted on February 4, 1977, in the One-Hundred-and Eighth District Court, Potter County, Texas.

Capps, Larry Elvi, Hatfield Village Apartments, Maple Avenue, Apartment 02–9, Hatfield, Pennsylvania, convicted on July 2, 1974, in the Fourteenth Judicial District, Henry County, Cambridge, Illinois.

Carazzai, Renato Riccardo, 36 Hillside Avenue, Princeton, New Jersey, convicted on January 24, 1956, in the West Windsor Municipal Court, Mercer County, New Jersey.

Carlson, Michael John, 34½ River Loop Road, Tonasket, Washington, convicted on November 14, 1980, in the Superior Court of Okonogan County, Washington.

Carmichael, James A., 93 Cherokee Street, Emporia, Kansas, convicted on March 23, 1960, in the District Court, Pawnee County, Kansas.

Carnley, Eddie Dean, 105 Cawthon Street, Andalusia, Alabama, convicted on February 28, 1969, in the Circuit Court of Covington County, Andalusia, Alabama.

Carollo, Joseph Frank, 425 Boxwood Drive, Shirley, New York, convicted on May 15, 1979, in the Supreme Court, Queens County, Jamaica, New York.

Carpenter, Bobby Clinton, Route 1, Cascilla, Mississippi, convicted on October 6, 1982, in the United States District Court, Northern Mississippi, Oxford, Mississippi.

Carper, Dennis Jay, 501 Sandalwood Road, Baltimore, Maryland, convicted on January 20, 1983, in the District Court, Baltimore, Maryland.

Carrolli, Joseph Albert, 391 Willow Avenue, Greensburg, Pennsylvania, convicted on December 9, 1981, in the United States District Court, Western District of Pennsylvania.

Carswell, Kathy Payne, 9151 Wild Road, Jacksonville, Florida, convicted on December 18, 1970, December 21, 1972, and March 5, 1973, in the Criminal Court of Duval County, Jacksonville, Florida.

Carter, Melvin Douglas, Route 1, Box 305C, Magnolia, Mississippi, convicted on June 9, 1980, in the Cheatham County Circuit Court, Ashland, Tennessee.

Carter, William Sanford, 4720 Brown Road, Vassar, Michigan, convicted on May 17, 1977, in the United States District Court, Flint, Michigan.

Cartwright, Glenn Thomas, 716 Lochridge Street, Mayfield, Kentucky, convicted on November 30, 1981, in the United States District Court, London, Kentucky.

Carver, Shannon Bruce, 605 South Olympia #59, Kennewick, Washington, convicted on November 10, 1976, in the Yakima County Superior Court, State of Washington.

Casey, Daniel C., 111 Crevar Drive, Butler, Pennsylvania, convicted on June 19, 1979, in the Court of Common Pleas, Butler County, Pennsylvania.

Caso, Michael Robert, 801 Strait View Drive, Port Angeles, Washington, convicted on November 12, 1976, in the Clallam County Superior Court, State of Washington.

Catchot, William Douglas, 3140 Cedar Woods Drive North, Theodore, Alabama, convicted on February 11, 1983, in the United States District Court, Mobile, Alabama.

Caudill, Evelyn Elisabeth, 4675 Florida Street, Detroit, Michigan, convicted on May 26, 1978, in the Circuit Court, County of Ingham, Michigan.

Caudill, Johnny Dwight, Box 204, Whitesburg, Kentucky, convicted on October 30, 1975, in the Letcher Circuit Court, Whitesburg, Kentucky.

Cecil, James Craig, 2060 Bruce Street, Northeast, Salem, Oregon, convicted on October 26, 1979, in the Circuit Court for Klamath County, State of Oregon.

Cerio, James J., 105 West Manchester Road, Syracuse New York, convicted on October 29, 1969, in the Seneca County Court, Waterloo, New York.

Certaine, Dehaven Madrid, 1201 Airdrie Street, Philadelphia, Pennsylvania, convicted on February 3, 1969, in the United States District Court, Eastern Judicial District of Pennsylvania.

Chabannes, Norbert Augusta Rene, 19 Forrestaisa, Tuscaloosa, Alabama, convicted on April 24, 1979 and October 2, 1978, in the Circuit Court of Tuscaloosa County, Alabama.

Chamberlain, Michael A., 10235 North 31st Street, Apartment 23, Phoenix, Arizona, convicted on November 5, 1980, in the Circuit Court, Duval County, Florida and convicted on January 16, 1981, United States District Court, Jacksonville, Florida.

Champlain, Jacob Leroy, Route 3, Box 13, Wagoner, Oklahoma, convicted on February 10, 1956, in the Tulsa County District Court, Oklahoma.

Chapman, Gary Ray, Route 1, Box 278–B, Greenville, Tennessee, convicted on May 27, 1983, in the United States District Court, Greeneville, Tennessee.

Charbonneau, Gus Salis, Rural Delivery Route 5, Cobblehill Road, Milton, Vermont, convicted in August 10, 1982, in the Vermont District Court, Franklin Circuit, Saint Albans, Vermont.

Chavez, Timothy M., 4101 Breton Street, Indianapolis, Indiana, convicted on August 13, 1981, in the Southern District of Indiana.

Cheadle, Theodore Alan, 3206 Kallin Avenue, Long Beach, California, convicted on April 1962, in the Superior Court of Los Angeles, California.

Chess, Kenneth Ray, 65135 Redmond Bend Highway Bend, Oregon, convicted on August 15, 1983, in the Deschutes County Superior Court, Oregon.

Childers, Jerry Anthony, 1324 Steed Street, Post Office Box 3423, Rock Hill, South Carolina, convicted on September 8, 1976, in the Superior Court of York County, South Carolina.

Childers, Timmie Berl, 216 North 1st Avenue, Apartment 12, Conover, North Carolina, convicted on March 8, 1982, in the Catawba County Superior Court, Newton, North Carolina.

Christenson, George Melvin, 1280 South County Road 10, Moose Lake, Minnesota, convicted on February 10, 1982, in the Sixth Judicial District, Carlton County, Minnesota.

Christian, Jarrett Delawrence, 8431 Church Lane, Randallstown, Maryland, convicted on April 14, 1967, in the Davidson County Court, Davidson County, North Carolina, and on February 6, 1975, in the Circuit Court of Maryland, Baltimore, Maryland.

Church, Clifford Louis, 5291 Westview, Pontiac, Michigan, convicted on July 12, 1955, and April 6, 1956, in the Oakland County Circuit Court, Pontiac, Michigan, and September 21, 1971, in the United States District Court, Detroit, Michigan.

Ciatti, Frederick Charles, Route 1, Box 220A, Nashwauk, Minnesota, convicted in 1966 in the St. Louis County Court, Hibbing, Minnesota, and in 1981 in the United States District Court, St. Paul, Minnesota.

Cira, Salvatore William, 6215 Wyoming Avenue, Saint Louis, Missouri, convicted on September 7, 1979, in the Circuit Court, Saint Louis, Missouri.

Clark, James Edward, 917 Delaware Avenue, Lexington, Kentucky, convicted on March 4, 1982, in the Circuit Court, Richmond, Kentucky.

Clark, Joseph G., 5970 SouthKoinia, New Berlin, Wisconsin, convicted on January 17, 1961, in the Vilas County Circuit Court, Eagle River, Wisconsin.

Clark, Lionel L., 2700 Eaton Rapids Road #102, Lansing, Michigan, convicted on August 21, 1964, in the Ingham County Court, Michigan.

Clegg, Kenneth Ray, Junior, 2928 Candlewood Street, Lakewood, California, convicted on March 23, 1966, in the Superior Court, Los Angeles, California.

Clements, Jimmie Lee, 4559 Highway Avenue, Jacksonville, Florida, convicted on May 13, 1977, in the United States District Court, Southern Judicial District of Florida.

Cline, Euland Ira, Box 83, Baisden, West Virginia, convicted on September 27, 1947, in the Circuit Court of Mingo County, West Virginia.

Cline, Rodney Leroy, 515 Third Street, New Cumberland, Pennsylvania, convicted on September 7, 1971, in the Court of Common Pleas of Cumberland County, Carlisle, Pennsylvania.

Clowney, Allen Caffer, 110½ West 51st Street, Savannah, Georgia, convicted on September 11, 1967, in the Supreme Court of the State of New York, 87–1221 P County of New York.

Coates, Christopher Morley, Post Office Box 141 (United States Route #1), Ladysmith, Virginia, convicted on August 4, 1980, in the Circuit Court, Hanover County, Virginia.

Cobb, Terry W., Post Office Box 221, Smithland, Kentucky, convicted on December 2, 1975, in the Livington Circuit Court, Smithland, Kentucky.

Cogar, Dueward Lynn, Post Office Box 411, Webster Springs, West Virginia convicted on January 18, 1977, in the Circuit Court of Webster County, Webster Springs, West Virginia.

Colbert, Donald Kay, 1937 Suffolk Lane, Indianapolis, Indiana, convicted on October 20, 1982, in the United States District Court, Southern District of Indiana.

Cole, Gerald Coy, 3433 Dearcy Avenue, Louisville Kentucky, convicted on December 20, 1962, in the Jefferson County Circuit Court, Louisville, Kentucky.

Cole, Walter R., 23 Winnikee Avenue, Poughkeepsie, New York, convicted on February 10, 1942, in the Dutchess County Supreme Court, Poughkeepsie, New York.

Coleman, James Bruce, Route 2, Box 390, Unionville, Virginia, convicted on March 31, 1978, in the Circuit Court of Orange County, Virginia.

Coley, James Wesley, 578 Broadway Street, Apartment 807, Gary, Indiana, convicted on October 5, 1950, in the St. Joseph Criminal Court Number Two.

Collins, Ernest Berl, General Delivery, Neola, West Virginia, convicted on June 27, 1973, in the Pocahontas County Courthouse, Marlinton, West Virginia.

Collins, Herbert Howard, 2228 Rancho Drive, San Diego, California, convicted on May 12, 1980, in the Superior Court of the State of California, County of San Diego, California.

Collins, John Tucker, Route 1, Box 58–B, Eureka, Montana, convicted on July 2, 1982, in the Superior Court, Lincoln County, Montana.

Colombo, Frank Joseph, 394 Shelford Road, Apartment 3, Rochester, New York, convicted on April 20, 1970, in the Monroe County Court, Rochester, New York.

Combs, Randall Ray, 1601 Robinhood Trail, Austin, Texas, convicted on December 11, 1975, in the One-hundred-and forty-seventh Judicial District Court, Travis County, Texas.

Company—Boeing, Post Office Box 3707, M/S13–08, Seattle, Washington, convicted on June 30, 1982, in the United States District Court, District of Columbia.

Company—General Electric (PA), Re-Entry and Environmental Systems Division, 3198 Chestnut Street, Philadelphia, Pennsylvania, convicted on May 13, 1985, in the United States District Court, Eastern District of Pennsylvania.

Company—General Electric (VT), Lakeside Avenue, Burlington, Vermont, convicted on April 21, 1983, in the United States District Court, New Jersey, and on May 13, 1985, in the United States District Court, Eastern District of Pennsylvania.

Compton, Monte Dean, Rural Route #2, Box 87, Watonga, Oklahoma, convicted on October 8, 1982, in the United States District Court, Western Judicial District of Oklahoma.

Condes, Mark A., 10749 Eagle Pass, El Paso, Texas, convicted on July 2, 1980, in the One-hundred-and-ninety-eighth Judicial District Court, Menard County, Texas.

Condon, Ray Leo, Junior, 3004 North LaBarre Road, Metairie, Louisiana, convicted on January 4, 1978, in the United States District Court, Eastern District of Louisiana.

Conlin, Danny Thomas, Post Office Box 116 (31920 Highway 108), Strawberry, California, convicted on February 9, 1973, in the United States District Court, Eastern District of California.

Connolly, William John, 11504 West Outer Drive, Detroit, Michigan, convicted on May 16, 1977, in the Wayne County Circuit Court, Detroit, Michigan.

Conti, Angelo Anthony, 315 Clinton Street, Findlay, Ohio, convicted on February 23, 1973, and on March 28, 1960, in the Cook County Circuit Court, Chicago, Illinois.

Conti, Gaetano, 4 Valley Court, Thiells, New York, convicted in January 1983, in the United States District Court, Eastern District of New York.

Cook, Albert John, 2109 Pitney Road, Baltimore, Maryland, convicted on May 8, 1951, in the Baltimore City Court, Baltimore, Maryland.

Cook, Roy P., 272 Twelve Buck Trail, Durango, Colorado, convicted on February 27, 1984, in the United States District Court, Central District of California.

Coons, Kenneth Lloyd, L–221 Bethlehem Terrace, Slingerlands, New York, convicted on March 28, 1957, in the Albany County Court, Albany, New York.

Cooper, Roger Dale, Route 7, Murray, Kentucky, convicted on December 3, 1980, in the Calloway County Circuit Court, Murray, Kentucky.

Coqueuoniot, Karla Kay, 2417 Odell Street, Casper, Wyoming, convicted on March 15, 1976, in the Seventh Judicial District Court, Wyoming.

Corbitt, Albert Gerald, Post Office Box 1151, Muldrow, Oklahoma, convicted June 23, 1967, Sequoyah County, Sallisaw, Oklahoma, and convicted on April 23, 1963, United States District Court, Western Arkansas.

Corn, James Jeffrey, 5013 Fremont Avenue North, Minneapolis, Minnesota, convicted on November 12, 1979, in LaCrosse County Court, Circuit 1, LaCrosse, Wisconsin.

Corporation—General Dynamics, Pierre Laclede Center, Saint Louis, Missouri, convicted on December 2, 1985, in the United States District Court, Los Angeles, California.

Corporation—Martin Marietta, 6801 Rockledge Drive, Bethesda, Maryland, convicted on February 17, 1987, in the United States District Court, Maryland.

Cosmano, Gene John, 5550 North Forty-fourth Street, Phoenix, Arizona, convicted on May 16, 1983, in the Superior Court, Phoenix, Arizona.

Coson, James R., Junior, 7683 North Woodson, Fresno, California, convicted on June 14, 1976, in the United States District Court, Fresno, California.

Costner, Grier Wayne, Jr., Route 1, Box 84 B, Bessemer City, North Carolina, convicted on December 2, 1980, in the United States District Court, Western District of North Carolina.

Costner, Randy Wayne, 907 Union Terrace, Gastonia, North Carolina, convicted on December 2, 1980, in the United States District Court, Charlotte, North Carolina.

Cota, Frank James, 97 Airport Parkway, South Burlington, Vermont, convicted on March 12, 1982, in the United States District Court, Burlington, Vermont.

Cotton, John Lee, 1505 Albert Street, Camden, South Carolina, convicted on October 4, 1977, in the Court of General Sessions, Kershaw County Camden, South Carolina.

Coufal, Donald B., Rural Route 1, Box 177B, Arenzville, Illinois, convicted on June 16, 1981, in the Central Judicial District, Springfield, Illinois.

Covert, John Raymond, Route 2, Hutchinson, Kansas, convicted on December 5, 1962, in the District Court, Reno County, Kansas.

Covert, Sharon Ann, Route 2, Hutchinson, Kansas, convicted on December 30, 1974, in the Ninth Judicial District Court, McPherson County, Kansas.

Cox, Frankie Lee, Route 1, Box 1070, Partlow, Virginia, convicted on January 24, 1975, in the Circuit Court, City of Staunton, Virginia.

Cox, James Roger, 416 "G" Street, North Wilkesboro, North Carolina, convicted on November 5, 1969, in the United States District Court, Greensboro, North Carolina.

Cox, Timothy, Route 2, Box 256, Hayesville, North Carolina, convicted on January 23, 1984, in the United States District Court, Western District of North Carolina.

Coy, Daniel Duane, Route 1, Box 219, Pemberton, Minnesota, convicted on October 10, 1980 in the Freebom County District Court, Freebom County, Minnesota, and on July 16, 1980, in the Third Judicial District, Waseca County, Minnesota.

Craig, Gary Lee, 108 Abbott, Venice, Illinois, convicted on November 25, 1975, in the Twelveth Circuit Court, Saint Claire County, Illinois.

Craig, Stewart Patrick, 820 West 13th Street, Front Royal, Virginia, convicted on October 19, 1974, in the Circuit Court, Frederick County, Virginia.

Crawford, Donald Glenn, 131 Old Bridge Lake, Houston, Texas, convicted on June 13, 1985, in the United States District Court, Southern District, Texas.

Crawmer, Donald Edward, 166 South Collins Avenue, Baltimore, Maryland convicted on July 21, 1972, in the Howard County Circuit Court, Howard County, Maryland.

Crevison, Ross Milford, 109 Church Street, Milan, Michigan, convicted on September 10, 1970, in the United States District Court, Detroit, Michigan.

Crippen, Robert Harvey, 511 Elk Drive, Riverton, Wyoming, convicted in April 1974 and September 1975, in the Superior Court, Santa Cruz, California.

Cronk, Michael Allen, RFD 3, Box 857, Bangor, Maine, convicted on May 20, 1974, in the Superior Court, Penobscot County, Maine.

Cross, Gordon Lee, Route 1, Box 47, Zimmerman, Minnesota, convicted on June 25, 1962, in the United States District Court, Judicial District of Minnesota.

Crowe, Kenneth E., 530 Elm Street, Owensboro, Kentucky, convicted on August 3, 1971, in the Daviess County Circuit Court, Owensboro, Kentucky.

Crowley, James Trent, 2416 Willinghurst Drive, Germantown, Tennessee, convicted on November 7, 1984, in the United States District Court, Western District of Tennessee.

Crowson, Thomas Christopher, Route 2, Box 14–C, Boonville, North Carolina, convicted on July 12, 1978, in the Superior Court of Winston-Salem, North Carolina.

Cruikshank, Steven Patrick, 2439 Oakland Road, Minnetonka, Minnesota, convicted on January 9, 1984, in the United States Military Court, Fort Bragg, North Carolina.

Crumpton, Charles William, Route 2, Box 1, Space 11, Laramie, Wyoming, convicted on July 1, 1976, and on November 12, 1975, in the District Court, Second Judicial District, State of Wyoming.

Cucci, John Joseph Junior, 1612 North 20th Avenue, Melrose Park, Illinois, convicted on June 21, 1984, in the United States District Court, Northern District, Illinois.

Cuccio, Peter Alan, 1639 Douglas Avenue, Racine, Wisconsin, convicted on January 7, 1985, in the Circuit Court Branch 4, Racine, Wisconsin.

Cuervo, Peter Hector, Unabilla Road, Putnam Valley, New York, convicted on September 7, 1983, in the Putnam County Court, Putnam, New York.

Cullison, Bruce Edward, 596 Gatlin Avenue, Orlando, Florida, convicted on August 9, 1974, in the United States District Court, Tampa, Florida, and on August 8, 1974, Orange County Circuit Court, Orlando, Florida.

Cummings, Owen Neal, 1019 Riva Ridge Drive, Great Falls, Virginia, convicted on October 19, 1981, in United States District Court, District of Columbia, Washington, DC.

Currier, Robert Lee, 484 Carley Road, Springfield, Vermont, convicted on March 15, 1985, in the Municipal Court, Springfield, Vermont.

Curtis, David Benton, Railroad Bed Road, Route 1, Summertown, Tennessee, convicted on September 10, 1982, in the United States District Court, Middle of Tennessee.

Curtis, John Edward, 440 Twenty-seventh Avenue, North Saint Cloud, Minnesota, convicted on March 9, 1978, in the Seventh Judicial District Court, Saint Cloud, Minnesota.

Curtis, Martin Gregory, Post Office Box 144, River Road, Phillips, Maine, convicted on May 3, 1977, in the Superior Court, Franklin County, Farmington, Maine.

Custer, Jeffrey Dean, 14121 60th Avenue West, Edmonds, Washington, convicted on June 24, 1976, in the Skagit County Superior Court, State of Washington.

Cyr, Paul, 7914 Manor House Drive, Fairfax Station, Virginia, convicted on September 29, 1982 and July 26, 1984, in United States District Court, Washington, DC.

Czuro, Walter Murphy, 9–B Wanderer Lane, Hilton Head Island, South Carolina, convicted on January 13, 1982, in the United States District Court, Charleston, South Carolina.

D'Aloia, Cosimo, Plymouthtown Apartments, 367 Chelton Court, Norristown, Pennsylvania, convicted on December 14, 1981, in the Court of Common Pleas, Delaware City, Media, Pennsylvania.

D'Aquin, Robert Paul, 5501 Amite Drive, Marrero, Louisiana, convicted on February 19, 1982, in the Jefferson Parish Court, Louisiana.

D'Auria, Michael Martin, 36 Rolling Drive, Brookville, New York, convicted June 25, 1981, in the United States District Court, Eastern District of New York.

Daberkow, Douglas Clyde, 1549 2nd Avenue, Windom, Minnesota, convicted on April 6, 1981, in the District Court, Fifth Judicial District, Jackson County, Minnesota.

Dahnert, Michael Paul, Route 2, Box 265, Fort Atkinson, Wisconsin, convicted on December 27, 1977, in the Jefferson County Circuit Court, Jefferson, Wisconsin.

Dail, Franklin Wayne, Route 2, Box 10, Walstonburg, North Carolina, convicted on September 8, 1982, in the United States District Court, Greensboro, North Carolina.

Dalton, Bobby Gene, 3464 Colonial Avenue, Southwest, Building O, Apartment 99, Roanoke, Virginia, convicted on August 12, 1975, in the United States District Court, Roanoke, Virginia.

Dalton, Clyde Hassell Senior, 1825 Glenn Street, Danville Virginia, convicted on December 5, 1978, in the District Court of Danville, Virginia.

Dalton, David Albert, Post Office Box 131, Gervais, Oregon, convicted on December 29, 1981, in the Marion County Superior Court, Marion County, Oregon.

Dalton, Rufus Edward, 2317 Windward Shore Drive, Virginia Beach, Virginia, convicted on August 7, 1980, in the Eastern Judicial District Court, Virginia.

Daniel, Fred K. Junior, 398 Annex Avenue, Nashville, Tennessee, convicted on November 8, 1972, in the Criminal Court, Davison County, Tennessee.

Daugherty, Sterling J., 301 O'Hara, Grand Saline, Texas, convicted on November 3, 1982, in the Criminal District Court #86, Kaufman County, Texas.

Daugherty, Walter David, Route 3, Box 12, Rushville, Indiana, convicted on October 26, 1978, in the Rush County Circuit Court, Rushville, Indiana.

Davidson, Charles Todd, 3555 Kenbrooke Court, Kalamazoo, Michigan, convicted on January 24, 1983, in the Kalamazoo County Circuit Court, State of Michigan.

Davidson, Virgil Lee, 19203 Hollingsworth, West Covina, California, convicted on August 7, 1981, in the Superior Court, Benton County, Washington.

Davila, Jose Campos, 1708 Guatemozin, Laredo, Texas, convicted on October 6, 1981, in the United States District Court, San Antonio, Texas.

Davis, Clifford Lee, Route 2, Box 700–B, Astoria, Oregon, convicted on February 11, 1980, in the Curry County Circuit Court, Astoria, Oregon.

Davis, Daniel Clarence, 17724 Unicorn Street, Southwest, Rochester, Washington, convicted on April 8, 1981, in the Superior Court, Thurston County, Washington.

Davis, Edward Ray, Route 1, Box 149–1, Lansing, North Carolina, convicted on October 12, 1981, in the Superior Court, Ashe County, Jefferson, North Carolina.

Davis, George Oliver, Route 1, Box 88, Crescent, Oklahoma, convicted on December 16, 1982, in Western Oklahoma, Oklahoma City, Oklahoma.

Davis, Herbert Wayne, 174 Allman Road, Winlock, Washington, convicted on December 3, 1980, in the Lewis County Superior Court, State of Washington.

Davis, Jack D., 209 West Main, Duncan, Oklahoma, convicted on July 29, 1982, in the United States District Court, Oklahoma City, Oklahoma.

Davis, James Christopher, 2875 Washington Street, Apartment 17G, Boston, Massachusetts, convicted on August 15, 1937, in the Roxbury District Court, Boston, Massachusetts, and on January 17, 1939, in the Suffolk Superior Court, Boston, Massachusetts.

Davis, Larry Orman, 709 J Street, Aurora, Nebraska, convicted on July 23, 1974, in the Natrona County District Court, Casper, Wyoming.

Davis, Matthias, Route 1, Box 271–35, Chattaroy, Washington, convicted on October 3, 1978, in the United States District Court, District of Utah.

Davis, Trez Harley, 2553 Bon Bon Drive, San Jose, California, convicted on June 23, 1960, in the Superior Court, Santa Clara County, California.

Davis, Walter Royal, 2006 Gulf, Midland, Texas, convicted on March 8, 1948, in the United States District Court, Northern District of California.

Davoli, Phillio T., 5361 Fortuna Parkway, Clay, New York, convicted on March 13, 1979, in the Onondaga County Court, Syracuse, New York.

Daw, George David, Post Office Box 835, Highway 59 South, Foley, Alabama, convicted in September 1976, in the Jefferson County Circuit Court, Birmingham, Alabama.

Dawson, William John, 25 Western Avenue, Cohoes, New York, convicted on January 11, 1970, in the United States District Court, Northern Judicial District of New York.

Day, Daniel Engles, 4808 Cairnsean, Houston, Texas, convicted on September 23, 1982, in the Madison County Circuit Court, Madison, Tennessee.

Dean, Vernon Wayne, 109 Tall Timber Drive, Kountze, Texas, convicted on July 18, 1980, in the District Court, Jefferson County, Texas.

DeAngelo, Ronald Eugene, 124 Butler Street, Butler, Pennsylvania, convicted on July 3, 1972, in the Court of Common Pleas, Butler County, Pennsylvania.

Deck, Donald Eugene, 17 East Grandview Avenue, Mercerburg, Pennsylvania, convicted on August 20, 1984, in the United States District Court, Middle Judicial District of Pennsylvania, Harrisburg, Pennsylvania.

Deel, Irene Sue, Route 2, Box 636, Hayai, Virginia, convicted on January 28, 1982, in the Buchanan County Circuit Court, Grundy, Virginia.

Deichert, John Woodrow, 6280 Carlisle Pike, Lot 402, Mechanicsburg, Pennsylvania, convicted on September 9, 1980, in the Court of Common Pleas, Lebanon County, Pennsylvania.

Deiter, Robert J., 108 West Calhoun Street, Cuba City, Wisconsin, convicted on August 29, 1983, in the Circuit Court Branch I, Lancaster, Wisconsin.

Dela, Allan Truman Odel, 2163 Constance Boulevard, Northeast, Ham Lake, Minnesota, convicted on July 8, 1981, in the United States District Court, Middle District of Georgia.

Demers, Gregory Lind, 12249 Marshall Road Southeast, Tenino, Washington, convicted on November 26, 1975, in the Superior Court, State of Washington.

Demus, Michael William, 1515 Moore, Beloit, Wisconsin, convicted on October 18, 1982, in the Rocky Circuit Court IV, Beloit, Wisconsin.

Denner, Gay Norman, 300 West Bluff, Boscobel, Wisconsin, convicted on February 14, 1983, in the Grant County Circuit Court, Wisconsin.

Denton, Lee Roy, 212 West Cypress Street, Coweta, Oklahoma, convicted on February 14, 1984, in the United States Court, Eastern District of Oklahoma.

Derrico, Lvle David, Post Office Box 434, Cedars Plaza Baggs, Wyoming convicted on July 16, 1982, in the District Court, Carbon County, Wyoming.

Detzel, John Edward, 20301 Southwest One-hundred-seventeenth Court, Miami, Florida, convicted on March 17, 1976, in the Eleventh Judicial Circuit Court, Miami, Dade County, Florida.

Dickey, Carl Alwin III, 26235 E. 9th Street, Space #17, Highland, California, convicted on September 23, 1973, in the District Court, Dallas, Texas.

Diehl, Jack Donald, 353 South Front Street, Milton, Pennsylvania, convicted on December 18, 1961, in the Court of Quarter Sessions, County of Northumberland, Pennsylvania.

Digby, Lawrence Walter, 12951 Lookingglass Road, Roseburg, Oregon, convicted on April 9, 1980, in the Douglas County Superior Court, State of Oregon.

Diguiseppe, Joseph Michael, 1706 East Gaylon Drive, Tempe, Arizona, convicted on April 15, 1983, in the Superior Court of Maricopa City, Arizona.

Dile, Freddy, Route 2, E.P. Terry Estates, Apartment E–2, Cave City, Kentucky, convicted on April 28, 1972, in the Warren County Court, Bowling Green, Kentucky.

Dillard, James H., 106 Highland School Road, Hopkinsville, Kentucky, convicted on September 27, 1974, in the Christian County Circuit Court, Hopkinsville, Kentucky.

Dillard, Tony A., Route 2, Box 584, Honaker, Virginia 24260, convicted on September 21, 1983, in the Circuit Court of Russell County.

Dillman, Bobby Wayne, Route 1, Box 50D, Atkins, Virginia, convicted on June 25, 1975, in the Circuit Court, Smyth County, Virginia, and on March 11, 1976, in the United States District Court, Greenwood, South Carolina.

Dilorenzo, Anthony John, 11533 Mississippi Drive, Champlin, Minnesota, convicted on November 3, 1972, in the Los Angeles County Court, Norfolk, California.

Dishman, Edward E., 406 Sundown, Norman, Oklahoma, convicted on September 16, 1983, in the Western Oklahoma, Oklahoma City, Oklahoma.

Dixon, Richard Allen, 150 East Green Acres Lane, Lancaster, California, convicted on February 14, 1975, in the Superior Court, Los Angeles, California, and on March 28, 1977, in the Superior Court, Pierce County, Washington.

Dixon, Walter Edward, 3028 Tennessee Avenue, Baltimore, Maryland, convicted on December 20, 1973, in the District Court of Maryland, Baltimore, Maryland.

Dobbins, Alan Matthew, 247 Loma Linda, Amarillo, Texas convicted on September 11, 1975, in the 181st Judicial District Court, State of Texas.

Dobish, Michael John, Box 123, Beccaria, Pennsylvania, convicted on August 24, 1970, in the Court of Common Pleas, Clearfield County, Pennsylvania.

Donovan, Jerry P., 3 Barrister Lane, Levittown, New York, convicted on October 9, 1974, in the Nassau County Court, Mineola, New York.

Dorris, Chester Elwood, 206 East 31st Street, New York, New York, convicted on October 9, 1974, in the Supreme Court, Kings County, New York.

Dougherty, Carol Sue, 204 Richardson Drive, Twin Falls, Idaho, convicted on December 18, 1981, in the Fifth Judicial District Court, Idaho.

Dowdy, Roger Joe, 2301 South Main Street, Blacksburg, Virginia, convicted on November 12, 1976, in the Circuit Court, Montgomery County, Virginia.

Dressel, Shane Lee, 726 Avenue, Apartment B304, Snohomish, Washington, convicted on October 28, 1982, in the Superior Court, Snohomish County, Washington.

Drew, Ronald Lee, Route 1, Box 228A, Bolivia, North Carolina, convicted on May 28, 1981, in the Superior Court of Brunswick County, North Carolina.

Drinkard, William David, 600 Mangum Avenue, Selma, Alabama, convicted on March 3, 1969, in the Perry County Circuit Court, Marion, Alabama.

Driver, David William, 311 Cooper Drive, Stuarts Draft, Virginia, convicted on November 21, 1975, in the Circuit Court, Augusta County, Virginia.

Drory, Edward Robert, 3213 42nd Street, Metarie, Louisiana, convicted on November 24, 1981, in the United States District Court, Eastern District of Louisiana.

Dubbelde, Arnold Paul, 4425 Slater Road, Eagan, Minnesota, convicted on June 26, 1974, and June 7, 1976, in the Minnehaha Circuit Court, Sioux Falls, South Dakota.

Duckworth, Ray, 908 Green Valley Drive, Nashville, Tennessee, convicted on December 23, 1980, in the Middle District of Tennessee.

Ducoty, Richard Bruce, 506 Sunset Drive, Capitola, California, convicted on October 30, 1969, in the Superior Court, Santa Clara County, California.

Duffey, Anthony Eugene, 874 Willow Drive, Shreveport, Louisiana, convicted on November 26, 1979, in the Twenty-sixth Judicial District Court, Bossier Parish, Louisiana.

Duffield, Jeffrey D., 567 North 2350 West, West Point, Utah, convicted on November 7, 1980, in Whitman County, Washington.

Dunagan, Donald Travis, 1435 North Ashland, East Wenatchee, Washington, convicted on April 14, 1977, in the Douglas County Superior Court, Washington.

Dunagan, Joseph Walton, Route 2, Post Office Box 227, Horse Cave, Kentucky, convicted on October 5, 1983, in the United States District Court, Bowling Green, Kentucky.

Dunaisky, James Stephen, 129 East Harney Road, Esko, Minnesota, convicted on May 20, 1983, in the St. Louis County District Court, Sixth Judicial District, Duluth, Minnesota.

Dunloy, Zaran, 120 West 28th Street, New York, New York, convicted on May 2, 1978, in the United States District Court, Southern District of New York.

Dupree, Todd James, 4705 East Caballero, Apartment 3, Mesa, Arizona, convicted on March 5, 1979, in the Missoula County District Court, Missoula, Montana and on June 24, 1981, in the Superior Court, Phoenix, Arizona.

Duskie, Bradley G., 1717 East 6th, Lot 1, Concordia, Kansas, convicted on May

10, 1972, in the 12th Judicial District Court, Mitchell County, Kansas.

Dyer, Daniel M., Post Office Box 73, 4th and Washington Streets, Moscow Mills, Missouri, convicted on November 28, 1965, in the Eastern District of Missouri, and on October 2, 1981, in the Circuit Court of Pike County, Bowling Green, Kentucky.

Dykes, Randy Lee, 1013 Landon Avenue, Yakima, Washington, convicted on March 25, 1975, in the Yakima County Superior Court, Washington.

Earhart, Jeffrey Lewis, Star Route, Box 123, Churchville, Virginia, convicted on March 7, 1983, in the Circuit Court of Augusta County, Augusta County, Virginia.

Earley, Danny Jerald, 1717 Winston Road, Mobile, Alabama, convicted on October 13, 1976, in the Circuit Court, Mobile County, Alabama, and convicted on January 13, 1984, in the Superior Court, Dougherty County, Georgia.

Eaton, Peter James, Route 2, Box 36, Lovelace Road, Pelham, North Carolina, convicted on February 8, 1965, and May 10, 1966, in the United States District Court, Western District, Danville Division, Virginia, and March 18, 1966, in the United States District Court, Western District, Ashville, North Carolina.

Ebert, Allen Richard, 51 Locust Street, Repon, Wisconsin, convicted in September 1980, in the Circuit Court, Greenlake City, Greenlake, Wisconsin.

Eby, Morris Lee, Post Office Box 606, #112–D, Walla Walla, Washington, convicted on April 13, 1966, in the Circuit Court of Douglas County, Oregon.

Eddlemon, James Marion, 72 Aspen Drive, Jackson, Tennessee, convicted on September 13, 1977, in the United States District Court, Western District of Tennessee.

Eden, Thomas L., 18331 Coastline Drive, Malibu, California, convicted on April 19, 1982, in the United States District Court, Los Angeles, California.

Edinger, Clayton Monroe, Road No. 1, Rimersburg, Pennsylvania, convicted on April 8, 1985, in the Court of Common Pleas, Clarion County, Pennsylvania.

Edwards, Maceo, 187 West Ostrander Avenue, Syracuse, New York, convicted on October 24, 1957, in the County of Onondaga, Syracuse, New York.

Egan, Terrance L., 5704 Coughran Court, Sioux Falls, South Dakota, convicted on November 21, 1978, in the Second Judicial Circuit Court, Sioux Falls, South Dakota.

Elder, Jesse James, Junior, Route 4, Box 413, Murfreesboro, Tennessee, convicted on March 18, 1981, in the Rutherford County Circuit Court, Tennessee.

Eldred, Darrell Wayne, 1517 Kimberly Lane, Killeen, Texas, convicted on October 11, 1983, in the District Court #4, Dallas County, Texas.

Eldred, Jimmy Dale, Post Office Box D, Stratford, Oklahoma, convicted on April 18, 1985, in the United States District Court, Oklahoma City, Oklahoma.

Elfner, Marc Allen, 1624B Washington Street, Two Rivers, Wisconsin, convicted on May 20, 1981, in the Monitowoc Circuit Court Branch I, Monitowoc, Wisconsin.

Ellis, Clifford Ralph, Route 1, Box 83, Maramec, Oklahoma, convicted on October 13, 1982, in the United States District Court, Northern District of Oklahoma.

Ellsworth, William Vaughn, 1061 North Grand Avenue, Mesa, Arizona, convicted on December 26, 1975, in the United States District Court, Phoenix, Arizona.

Elmenhorst, Paul W., Rural Route 1, El Reno, Oklahoma, convicted on July 29, 1982, in the Western District, Oklahoma City, Oklahoma.

Elsasser, Thomas J., 81 Monitor Street, Brooklyn, New York, convicted April 4, 1957, in the Supreme Court of New York, County of Kings, New York.

Elsemore, Mark, 511 East Pine, Ironwood, Michigan, convicted on February 13, 1984, in the Circuit Court of Gogebil County, Michigan.

Emery, Elizabeth A., 1761 Arlington Avenue, Pittsburgh, Pennsylvania, convicted on March 18, 1955, in the Court of Common Pleas, Allegheny County, Pennsylvania.

Enders, Ronald Edward, 2277 Holloway Avenue, East, North St. Paul, Minnesota, convicted on September 10, 1982, in the United States District Court, Third Judicial District, Minneapolis, Minnesota.

Epperson, Oscar Floyd, Box 205, Big Laurel, Kentucky, convicted on September 30, 1976, in the Pike Circuit Court in Pikeville, Kentucky.

Ertle, John R., Senior, 601 Seneca Manor Drive #8L, Rochester, New York, convicted on May 20, 1953, in the Monroe County Superior Court, Rochester, New York.

Espeseth, James Stanley, 441 South Park Avenue, Apartment D–13, Helena, Montana, convicted on April 22, 1982, in the United States District Court, Southern District of Florida.

Evans, David George, 106 Lilac Lane, Sarver, Pennsylvania, convicted on June 17, 1970, in the Court of Common Pleas, Butler County, Pennsylvania.

Evans, Robert Michael, 1115 East Stewart Road, Midland, Michigan, convicted on June 11, 1971, in the District Court, Hansford County, Texas.

Everhart, Jimmy J., 1137 West Elliott, Springfield, Illinois, convicted on April 11, 1980, in the United States District Court, Central District of Illinois.

Evert, Charles Downey, 1418 Green Pasture Road, Sandston, Virginia, convicted on July 27, 1973, in the Circuit Court, Fairfax County, Virginia.

Evison, Theodore A., 8719 Dresden Lane, Southwest, Tacoma, Washington, convicted on April 30, 1970, in the United States District Court, Western District of Washington.

Eyster, Al Lee, Route 2, Box 263A, Hunt, Texas, convicted on April 9, 1985, in the United States District Court, Houston, Texas.

Faccio, Anthony P., 433 Second Street, Hardford, Wisconsin, convicted in June 1981, in the Circuit Court, Milwaukee County, Milwaukee, Wisconsin.

Fadler, Danny Paul, Route 1, Box 525B, Marksville, Louisiana, convicted on October 22, 1979, in the United States District Court, Western District of Louisiana.

Fagan, Francis Lee, 8175 Meadow Road, Apartment 237, Dallas, Texas, convicted on March 19, 1980, in the Quachita Parish District Court, Louisiana.

Faris, Wayne Faris, Route 1, Box 678, Evington, Virginia, convicted on September 10, 1976, in the Pittsylvania County Circuit Court, Chatham, Virginia.

Farkas, Michael L., Post Office Box 781, Moody Road, Tupper Lake, New York, convicted on March 28, 1983, in the United States District Court, Albany, New York.

Farnum, Harlan F., 5174 Wright, Troy, Michigan, convicted on June 3, 1957, in Bay County Circuit Court, Bay County, Michigan.

Farr, Brandon Orlan, 407 West Camden, Stafford, Kansas, convicted on December 4, 1984, in the Scott County District Court, Scott City, Kansas.

Farrison, Theodore Caodise, 3585 Portland Avenue, Tacoma, Washington, convicted in October 1955 and October 1957 in the United States Army, Ft. Lewis, Washington.

Faught, Ralph Edwin, 1155 Locust Street, Twin Falls, Idaho, convicted on November 1, 1977, in the District Court, Twin Falls County, Idaho.

Faulkner, Joseph Michael, Rural Route 2, Box 277, Cays Mills, Wisconsin, convicted on August 3, 1981, in the State Circuit Court, Branch I, Grant County, Wisconsin.

Faurote, Thomas Allan, 6431 Londonerry Lane, Fort Wayne, Indiana, convicted on February 8, 1983, in the United States District Court, Fort Wayne, Indiana.

Faust, Teddy George, Route 4, Box 162, Census Road, Amite, Louisiana, convicted on November 24, 1976, in the Twenty-first Judicial District Court, Tangipahoa Parish, Louisiana.

Favreau, Robert Peter, 10037 Ratcliff Court, Orlando, Florida, convicted on July 2, 1977, in the United States District Court, Charleston, South Carolina.

Fay, Dennis Arthur, Rural Delivery 1, Box 213AA, Unadilla, New York, convicted on May 25, 1977, in the General Court of Justice, Superior Court Division, Catawba County, North Carolina.

Feddersen, Donald D., 906 Sabre Pass, Route 4, El Reno, Oklahoma, convicted on July 29, 1982, in the Western Judicial District of Oklahoma, Oklahoma City, Oklahoma.

Fedrick, Melvin Thelon, Route 8, Box 169, Philadelphia, Mississippi, convicted on April 12, 1967, in the United States District Court, Meridian, Mississippi.

Ferguson, Bobby Gene, Route 2, Box 1000, Warsaw, Virginia, convicted on March 15, 1975, in the Circuit Court of Richmond County, Virginia.

Ferguson, Richard Dennis, Route 1, Box 297A, Robert, Wisconsin, convicted on December 16, 1981, in the United States District Court, District of Minnesota.

Ferguson, Wade Blakely, 1247 Crest Circle, Winchester, Virginia, convicted on August 10, 1971, in the Circuit Court, City of Winchester, Virginia.

Fernalld, Kevin Warren, Route 1, Box 221 A, Wendell, Idaho, convicted on December 1, 1982, in the Circuit Court, Umatilla County, Oregon.

Fernandez, Jose Manuel, 922 Saint Dunstan's Road, Baltimore, Maryland, convicted on January 6, 1977, in the District Court of Baltimore, Baltimore, Maryland.

Fesler, Wesley Kent, 1603 Melrose Drive, Quincy, Illinois, convicted on January 7, 1971, in the Circuit Court, Lewis County, Missouri, and on February 15, 1972, in the Circuit Court, Adams County, Illinois.

Few, Wilbert Turman, 7392 South Robin Court, Hanover, Maryland, convicted on April 19, 1949, in the Circuit Court, Carroll County, Maryland.

Finken, Kenneth Henry, Route 5, St. Cloud, Minnesota, convicted on July 25, 1977, in the United States District Court, Third Division, St. Paul, Minnesota.

Finley, David Douthit, 4744 Harriet Avenue South, Minneapolis, Minnesota, convicted on April 6, 1978, in the United States District Court, St. Paul, Minnesota.

Fisher, Joseph William, 4263 County 15, Yuma, Arizona, convicted on August 17, 1976 in the United States District Court, Greensboro, North Carolina.

Fisher, Michael L., Post Office Box 110230, Anchorage, Alaska, convicted on September 29, 1969, in the Superior Court, Lincoln County, Nebraska.

Fite, Robert Boyd, 984 Ridge Road, Chelsea, Michigan, convicted on February 1, 1961, convicted in the Washtenaw County, Sheriffs Department, Chelsea, Michigan.

Fitzgerald, Jack Alden, 23 Crescent Drive, Kalamazoo, Michigan, convicted on August 5, 1960, in the Kalamazoo County Circuit Court, Kalamazoo, Michigan, and on May 24, 1962, in the Jackson County Circuit Court, Jackson, Michigan.

Fleming, Thomas Edward, 948 Gilley Street, Flatwoods, Kentucky, convicted on March 20, 1973, in the Greenup Circuit Court, Greenup, Kentucky.

Flint Eugene E., 4940 Lake Road, Avon, New York, convicted on February 12, 1979, in the Middle District of Tennessee.

Florence, Kenneth Russell, 1023 East Gilbreath Street, Graham, North Carolina, convicted on July 15, 1982, in the Superior Court of Alamance County, North Carolina.

Flournoy, Donald Richard, 3307 Fleming, Baytown, Texas, convicted on June 23, 1959, in the Superior Court, St. Mary's Parish, Louisiana.

Folland, Roger Dean, 4431 Wallingford Avenue North, Apartment 6, Seattle, Washington, convicted on June 20, 1975, in the United States District Court, Western District of Washington.

Ford, Willis Rou, 92 Ashlee Drive, Alexander, Arkansas, convicted on November 5, 1947, in the Circuit Court, Chickasawba District, Mississippi County, Arkansas.

Foreman, Jesse Charles, 818 Blackburn Trailer Park, Ellege Lane, Route 4, Tuscumbia, Alabama convicted on December 14, 1977, in the United States District Court, Birmingham, Alabama.

Forgas Richard Allen, Rural Delivery 2, Box 394, Altoona, Pennsylvania, convicted on April 15, 1968, in the Justice Court, Blair County, Pennsylvania.

Fossati, David Roy, 816 Oak Point Road, Longview, Washington, convicted on February 18, 1971, in the Cowlitz County Superior Court, Washington.

Foster, Frank Ernest, 1220 North Jeffers, North Platte, Nebraska, convicted on October 7, 1981, in the Buffalo County District Court, Nebraska.

Fought, David Wayne, 9530 Circlewood, Dallas, Texas, convicted on March 3, 1984, in the Twelveth District Court, Carter County, Oklahoma.

Foust, Cecil Veroy, 501½ Fifth Street, Rocky, Oklahoma, convicted on April 19, 1984, in the Western District Of Oklahoma, Oklahoma City, Oklahoma.

Foutch, Oscar David, 3912 South Grand Traverse, Flint, Michigan, convicted on January 2, 1935, Roscommon County Court, Michigan.

Fox, Emil Odell, 2005 Belair, Moore, Oklahoma, convicted on August 28, 1982, in the United States District Court, Oklahoma City, Oklahoma.

Fox, Steven B., 1100 Stoney Lane, Gladwyne, Pennsylvania, convicted on March 10, 1967, in the United States District Court, Eastern District, Philadelphia, Pennsylvania.

Francisco, James Leonard, Route 1, Box 35, Gleason, Tennessee, convicted on March 21, 1984, in the United States District Court, Jackson, Tennessee.

Frank, Jerome Thomas, 441 Chatterton Drive, Virginia Beach, Virginia, convicted on October 17, 1973, in the Circuit Court, Marinette County, Wisconsin.

Franklin, George Edward Junior, 5500 Milford Road, Charlotte, North Carolina, convicted on August 13, 1981, in the United States District Court, Western District of North Carolina, Charlotte, North Carolina.

Franklin, Homer Wayne, 4515 Washington Drive, Fort Worth, Texas, convicted on November 3, 1978, in the United States District Court, Reno, Nevada, and convicted on February 22, 1979, in the United States District Court, New York, New York.

Frazier, Carroll J., Post Office Box 439, Warrenton, Virginia, convicted on February 10, 1977, in the Circuit Court, County of Fauquier, Virginia.

Frazier, Earl Junior, 121 Pandora Drive, Goose Creek, South Carolina, convicted September 18, 1974, in the Charleston County Court, South Carolina.

Freeman, Robert Gene, Box 99, Marcum, Clay County, Kentucky, convicted on August 15, 1979, in the United States District Court, Cincinnati, Ohio.

Freeman, Thurman Yarwood, 491 Huntington Avenue, Boston, Massachusetts, convicted on October 24, 1968, in the Supreme Court, Kings County, New York.

French, Owen Dale, Route 2, Ladderback Lane, Mt, Olviet, Kentucky, convicted on January 14, 1981, in the Robertson Circuit Court, Mt. Olivet, Kentucky.

Frey, William Torrence, 1858 East 11th, Spokane, Washington, convicted on May 1, 1974, in the Superior Court, Spokane, Washington, and convicted on October 14, 1975, in the Superior Court of Spokane, Washington.

Fritz, Raymond Gene, 1511 Gateway, Yuma, Arizona, convicted in November 1976, in the United States District Court, San Diego, California.

Frostad, Kevin Carroll, 811 Northeast Halsey, Portland, Oregon, convicted April 26, 1978, in the Circuit Court, Washington County, Oregon.

Frye, George Thomas junior, Elder Street, Post Office Box 48, Alamance, North Carolina, convicted on October 6, 1981, in the United States District Court, Greensboro, North Carolina.

Frye, Michael Joe, 4613 South Village Parkway, Topeka, Kansas, convicted on October 23, 1980, in the District Court, Shawnee County, Kansas.

Gaboury, Richard Murray, 4547 Northeast Sixty-sixth Street, Portland, Oregon, convicted on December 25, 1968, in the Circuit Court Multnomrah County, Oregon.

Gaither, Melinda Kaye, 118 West Pine, Hot Springs, Arkansas, convicted on May 14, 1979, in the Circuit Court, Garland County, Arkansas.

Gaither, Roy Karl, 8501 South Council, Oklahoma City, Oklahoma, convicted on December 14, 1973, in the Superior Court, Oklahoma County, Oklahoma.

Galdieri, Michael Peter, 3123 Brian Court, Arcata, California, convicted on December 10, 1971, in the Superior Court, County of San Francisco, California; and on February 25, 1977, in the Superior Court, County of Humboldt, California.

Galetka, Joseph J., Rural Route 4, Box 523, Neillsville Wisconsin, convicted on November 18, 1981, in the Clark County Circuit Court, Neillsville, Wisconsin.

Galioto, Anthony Joseph, 22 Westwood Drive, West Orange New Jersey, committed on May 11, 1971, in the District Court, Essex County, New Jersey.

Gallazzi, Joseph Carmine, 2124 Patou Drive, West Jacksonville, Florida, convicted on April 17, 1972, in the State Court of New York, Queens, New York.

Galletta, Anthony Lee, Route 13, Box 1023 #1, Hattiesburg, Mississippi, convicted on January 29, 1982, in the Circuit Court, Forrest County, Mississippi.

Galvan, Jesus, Junior, 3814 Tiger Lane, Corpus Christi, Texas, convicted on May 7, 1983, in the United States District Court, Corpus Christi, Texas.

Gamache, Michael William, 1204 8th Street, Paducah, Texas, convicted on February 28, 1979, in the United States District Court, St. Paul, Minnesota.

Gamble, Douglas Ray, 140 Poplar Drive, Blue Ridge, Virginia, convicted on November 10, 1981, in the Circuit Court of Botetourt County, Fincastle, Virginia.

Gande, Daniel Wayne, Post Office Box 248, Pounding Mill, Virginia, convicted on May 3, 1977, United States District Court, Roanoke, Virginia, and on January 23, 1978, in the Circuit Court, Giles County, Virginia.

Garcia, Mateo Antonio, 15010 Hiram Clarke, Houston, Texas, convicted on December 4, 1975, in the One-hundred-and-eighty-fourth District Court, Harris County, Texas.

Gardner, Howard Carl, Route 6, Box 248, Joplin, Missouri, convicted on September 15, 1975, and February 1, 1977, in the Circuit Court of Jasper County, Joplin, Missouri.

Garel, Vernon Mitchell, 1336 Logan Southeast, Grand Rapids, Michigan, convicted on March 27, 1946, in the Kent County Circuit Court, Grand Rapids, Michigan.

Garrett, Lance Patrick, 8795 West Darmouth Place, Lakewood, Colorado, convicted on April 20, 1981, in the United States District Court, Southern District of California.

Garruba, Angelo P., 926 Fernrest Drive, Harbor City, California, convicted on June 24, 1982, in the Eastern District Court, Brooklyn, New York.

Gartman, Richard Lee, 346 East Florence Avenue, LaHabra, California, convicted on January 3, 1970, in the Criminal Court, Parish of Orleans, Louisiana; on January 19, 1971, in the Circuit Court, Jefferson County, Alabama; on January 2, 1973, in the Circuit Court, Tenth Judicial District, Alabama; and on September 10, 1973, in the United States District Court, Northern District of Alabama.

Gartner, Randy Wallace, Route 3, Box 68, Madison, South Dakota, convicted on May 19, 1976, in the Sixth Judicial Circuit Court, Philip, Haakon County, South Dakota, and on March 3, 1976, in the Eighth Judicial Circuit Court, Belle Fourche, Butler County, South Dakota.

Gasaway, Joe Edward, 200 South Brookwood, Derby, Kansas, convicted on August 9, 1982, in the United States District Court, Wichita, Kansas.

Gaskell, George C., 102 Hillview, San Antonio, Texas, convicted on March 11, 1979, in the United States District Court, San Antonio, Texas.

Gaston, Frank Lee, 645 South Robert Street, St. Paul, Minnesota, convicted on February 1, 1974, in the United States District Court, Fourth Division, St. Paul, Minnesota.

Gatewood, William Stepen, Route 5, Box 321–F, Old Dover Road, Clarksville, Tennessee, convicted on February 16, 1972, in the Fayette Circuit Court, Lexington, Kentucky.

Gaudino, Nicholus Anthony, 2004 Spencer Street, Las Vegas, Nevada, convicted on June 5, 1978, in the United States District Court, New Jersey.

Geary, Robert Lee, Route 1, Box 2, Dextor, Missouri, convicted on November 23, 1976, in the Circuit Court, New Madrid County, Missouri.

Gelazin, Gregory Paul, 1949 East Michigan, Phoenix, Arizona, convicted on March 12, 1982, in the Superior Court, Phoenix, Arizona.

Gerber, Edwin Scott, 20637 Church Lake Drive East, Sumner, Washington, convicted on June 20, 1980, in the Superior Court of Whatcom County, Washington.

Gertz, Bruce Edward, Route 1, Box 620, Walland, Tennessee, convicted on March 22, 1977, in the Criminal Court, Ann Arundel County, Maryland.

Gibson, Bruce Richard, 533 Summitt Avenue, St. Paul, Minnesota, convicted on September 19, 1980, United States District Court, St. Paul, Minnesota.

Gibson, Richard Dale, Post Office Box 277, Altoona, Florida, convicted on September 4, 1979, in the Fifth Judicial Circuit Court, Lake County, Florida.

Giddings, Virgil Reed, Route 2, Box 202, Gibbon, Nebraska, November 23, 1964, in the Washington County District Court, Washington, Kansas.

Giese, James Marvin, 124 Barstow, Horicon, Wisconsin, convicted on September 14, 1984, in the Circuit Court, Dodge County, Juneau, Wisconsin.

Giesen, James Robert, 6704 Schroeder Road, Apartment 17, Madison, Wisconsin, convicted on September 10, 1981, in the Grant County Circuit Court, Lancaster, Wisconsin.

Gilbert, Frank Dixon, 1107 2nd Avenue South, Pell City, Alabama, convicted on January 16, 1980, in the St. Clair County Circuit Court, Pell City, Alabama.

Gildner, Laverne Earl, Junior, 11535 Bexley Drive, Whittier, California, convicted in October 1978, in the United States District Court, Baltimore, Maryland.

Giles, Phillip Ray, Route 1, Box 578, Roanoke, Virginia, convicted on January 23, 1976, in the Circuit Court, Franklin County, Virginia.

Giles, Ronald Dean, Route 9, Box 494, Cleveland, Tennessee, convicted on August 20, 1984, in the Bradley County Criminal Court, Tennessee.

Gill, James Neal, Route 4, Box 336, Murfreesboro, Tennessee, convicted on May 8, 1980, in the Circuit Court, Haids County, Mississippi, and on July 21, 1980, in the United States District Court, Western District of Tennessee.

Gilley, Darrell Wayne, 212 New Salem Road, Glasgow, Kentucky, convicted on December 8, 1980, in the Barren County Circuit Court, Glasgow, Kentucky.

Gilmer, Steven Lee, 1808 19th Street Apartment E, Two Rivers, Wisconsin, convicted on February 29, 1980, in the Circuit Court, Branch One, Manitowoc County, Manitowoc, Wisconsin.

Glander, Robert James, 17 Pond Brook Road, Newton, Connecticut, convicted on June 8, 1981, in the Circuit Court, Bradford County, Florida.

Glashen, Jerry Wayne, 211 Bluff Street, Wichita Falls, Texas, convicted on September 29, 1980, in the United District Court, Wichita Falls, Texas.

Glover, Coy Eugene, 22 Terrace Woods, 1136 North Market Street, Paris, Tennessee, convicted on March 16, 1984, in the United States District Court, Western Judicial of Tennessee, Memphis, Tennessee.

Goben, Gary Dean, Route 2, Box 2896, Toppenish, Washington, convicted on September 2, 1980, in the Superior Court, Yakima Washington.

Goessinger, George Francis, Box 212, Red Hook, New York, convicted on January 11, 1950, in the Superior Court, Fairfield County, Connecticut.

Golden, Gerald Mack, Route 2, Box 247, Cable, Wisconsin, convicted on May 15, 1985, in the Bayfield County District Court, Washburn, Wisconsin.

Gomez-Perez, Jose M., Calle Alfa #237, Extension Round Hill, Trujillo Alto, Puerto Rico, convicted on January 6, 1968, in the Superior Court of Carolina, Puerto Rico.

Gonser, George Emanuel, 863 Lincoln, Apartment A3, Holland, Michigan convicted on October 4, 1979, in the Muskegon County Circuit Court, Michigan.

Gonzales, Thomas C., 630 South Kenmore Avenue, Apartment 307, Los Angeles, California, convicted on October 1, 1951, in the Supreme Court, Richmond County, New York.

Good, Rene Clark, 5 North Circle Drive, Yardley, Pennsylvania, convicted on January 12, 1980, in the Superior Court, Bucks County, Pennsylvania.

Goodman, David Ray, 4250 Barber Street, Kannapolis, North Carolina, convicted on November 9, 1976, in the Superior Court of Cabarrus County, North Carolina.

Goodman, James Byron, Post Office Box 1108, Delta Junction, Alaska, convicted on August 12, 1983, in the United States District Court, District of Alaska.

Goolsby, Larry Roan, Post Office Box 534, Chiefland, Florida, convicted on December 3, 1968, in the Alachua County Circuit Court, Gainesville, Florida.

Gootlieb, Alan Merrill, 4725—136th Street Southeast, Bellevue, Washington, convicted on June 8, 1984, in the United States District Court, Western District of Washington.

Gordon, Daniel Bowman, 285 South Twelveth Street, Wytheville, Virginia, convicted on November 6, 1974, in the Circuit Court, Wytheville, Virginia.

Goss, Cadmus Levi Gordon, 1335 East Orangewood, Phoenix, Arizona, convicted on March 21, 1977, in the United District Court, Phoenix, Arizona.

Grabowski, Stanley Vincent, 1601 Lasalle Road, Highland, Michigan, convicted on July 18, 1980, in the Circuit Court, Oakland County, Michigan.

Grades, Ronald Lee, 2311 East Clark Road, Bath, Michigan, convicted on November 3, 1989, in the Circuit Court, Lansing, Michigan.

Graham, Evelyn Mae, 1847 Greencastle Road, Bowling Green, Kentucky, convicted on December 12, 1980, March 22, 1966, April 13, 1981, and July 14, 1982, in the Warren County Circuit Court, Bowling Green, Kentucky.

Grant, James K., 300 Elmhurst Avenue, High Point, North Carolina, convicted on October 20, 1980, in the Gullford County Superior Court, Greensboro, North Carolina.

Grasso, James John, Junior, 3425 Yorkway, Baltimore County, Maryland, convicted on June 2, 1982, in the District Court, Baltimore County, Maryland.

Graunke, George, 7335 St. James, Wauwatosa, Wisconsin, convicted on April 3, 1967, in the Langlade County Circuit Court, Antigo, Wisconsin.

Gray, Ronald Eugene, 214 East Walton Avenue, Altoona, Pennsylvania, convicted on November 30, 1970, in the Court of Common Pleas, Blair County, Pennsylvania.

Gray, Stanley Alan, 216 Hickory, El Dorado Springs, Missouri, convicted on October 19, 1981, in the Circuit Court of Cedar County, Missouri.

Green, Edward Leroy, 4019 Raymonn Avenue, Baltimore, Maryland, convicted on December 5, 1968, in the Criminal Court of Baltimore, Baltimore, Maryland.

Green, John Wesley, Junior, 16011 Kangaroo Street, Northwest, Ramsey, Minnesota, convicted on July 28, 1961, in the District Court, Minneapolis, Minnesota.

Green, Samuel Theron, 1710 South 8th Avenue, Yakima, Washington, convicted on February 19, 1968, in the Yakima County Superior Court, Washington.

Green, Teresa Biggs, 1131½ Wilson Street, Bowling Green, Kentucky, convicted on September 21, 1976, in the Warren County Circuit Court, Kentucky.

Greener, Edmund Martin, 611 Claremont, Dearborn, Michigan, convicted on May 13, 1976, in the Wayne Court, Detroit, Michigan.

Greenfield, Scott G., 906 Glenwoood Avenue Northeast, Apartment 10, Renton, Washington, convicted on July 21, 1976, in the Superior Court, King County, Washington.

Gregory, David Wayne, 5218 Braford Road, Apopka, Florida, convicted on December 14, 1984, in the Goochland County Circuit Court, Chesterfield, Virginia.

Gregory, Leslie Wayne, 4128 Hoffman Avenue, Cincinnati, Ohio, convicted on October 18, 1974, in the Court of Common Pleas, Hamilton County, Cincinnati, Ohio.

Gregory, Rocky Wayne, Box 276, Greenville, Virginia, convicted on August 31, 1972, in the Circuit Court, Augusta County, Virginia.

Griffin, John Hubbard, 568 Radnor Avenue, Baltimore, Maryland, convicted on January 5, 1953, in the Baltimore District Court, Baltimore, Maryland.

Griffin, Kenneth Royal, Junior, Route 1, Box 202, Pomaria, South Carolina, convicted on June 14, 1978, in the Court of General Sessions, Newberry County, South Carolina.

Griffing, Carey Riley, 3021 Honeysuckle, Garland, Texas, convicted on April 14, 1972, in the Criminal District Court Four, Dallas County, Texas.

Grimmett, Floyd, II, 5531 Northwest 50th Street, Apartment D, Oklahoma City, Oklahoma, convicted on September 1, 1983, in the Seventh Judicial District Court, Oklahoma City, Oklahoma.

Griswood, James Forrest, 27 Deerwood, Morrilton, Arkansas, convicted on February 2, 1981, in the United States District Court, Eastern District of Arkansas.

Gross, Jimmy Ray, 513 Glen Lily Road, Apartment 4, Bowling Green, Kentucky, convicted on June 10, 1981, in the Warren County Circuit Court, Bowling Green, Kentucky.

Grossman, Robert D., Junior, Rural Delivery 3, Flemming Road, Grover City, Pennsylvania, convicted in December 1970, in the Court of Common Pleas, Mercer County, Pennsylvania.

Grove, Gerald Erling, 14514 72nd Avenue, Court East, Puyallup, Washington, convicted on December 13, 1983, in the Military Court, McCord Air Force Base, Washington.

Guidotti, Richard L., 3938 Tutwiler, Memphis, Tennessee, convicted on September 29, 1978, in the United States District Court, Baltimore, Maryland.

Guilliams, Charles David, Route 3, Box 220B, Ferrum, Virginia, convicted on October 29, 1976, in the United States District Court, Western District of Virginia, Roanoke, Virginia.

Gullerat, David Charles, 518 Lenox Avenue, Oneida, New York, convicted

on January 10, 1983, in the Madison County Court, Wampsville, New York.

Gunn, Robert Christopher, 4786 Holton Road, Twin Lake, Michigan, convicted on February 15, 1980, in the Muskegon County Circuit Court, Muskegon, Michigan.

Guthrie, Kathryn Ann, 7116 Brackleigh Drive, Hazelwood, Missouri, convicted on March 6, 1980, in a General Court-Martial, Bitburg Airbase, Germany.

Gyorfy, Howard, 2799 North Avondale Boulevard, Milwaukee, Wisconsin, convicted on December 24, 1935, in the Milwaukee County Circuit Court, Milwaukee, Wisconsin.

Haas, Jonathan Louis, 1050 North 19th Street, Apartment 211, Phoenix, Arizona, convicted on February 7, 1980, in the Superior Court, Phoenix, Arizona.

Hackney, Vernon Anthony, 1920 Canyon Road, Alva, Oklahoma, convicted on August 24, 1982, in the Western Judicial District of Oklahoma.

Hafferty, Joseph Alfred, 98 Wilson Avenue, Warwick, Rhode Island, convicted on April 28, 1961, in the Superior Court, Providence County, Rhode Island.

Hafford, Leverette J., RFD 1, Allagash, Maine, convicted on September 24, 1976, in the Superior Court, Houlton, Maine.

Hagee, Charles Ellis, Route 4, Box 847, Thomasville, North Carolina, convicted on February 8, 1980, in the Superior Court, Davidson County, North Carolina.

Hagen, Ralph Aulden, 13702 Eighty-sixth Avenue East, Puyallup, Washington, convicted on March 5, 1982, in the United States District Court, Tacoma, Washington.

Hagen, Wilbur V., Senior, Route 3, Neillsville, Wisconsin, convicted on September 28, 1982, in the Circuit Court of Clark County, Neillsville, Wisconsin.

Hageny, Scott Hunter, 3057 Bohicket Court, Fairfax, Virginia, convicted on September 3, 1981, in the Circuit Court of Vilas County, Eagle River, Wisconsin.

Hahn, Thomas Lyle, 402 Cooper Drive, Stuarts Draft, Virginia, convicted on March 29, 1978, in the Circuit Court, Waynesboro, Virginia.

Haines, Arthur Cyril, 2483 North 10th Street, Springfield, Oregon, convicted on July 28, 1979, in the Superior Court, Lane County, Oregon.

Hale, Olie, Junior, 108 North Hampton, Rush Springs, Oklahoma, convicted on April 5, 1984, in the United States District Court, Western District of Oklahoma.

Hall, John Clyde, Post Office Box 25, Neon, Kentucky, convicted on March 22, 1976, in the Pike County Circuit Court, Pikeville, Kentucky.

Hall, Russell Lee, 7401 North Hickory, Kansas City, Missouri, convicted on January 27, 1977, in the Campbell Circuit Court, Division Two, Commonwealth of Kentucky, Newport-Alexandria, Kentucky.

Hall, Will, Junior, 1007 20th Avenue South, Seattle, Washington, convicted on November 6, 1974, in the Superior Court, Pierce County, Washington.

Hall, William Edward, 5610 Court of York, Houston, Texas, convicted on June 13, 1985, in the United States District Court, Houston, Texas.

Hamaker, J.D., Route 2, Box 993, Laramie, Wyoming, convicted on May 19, 1981, in the District Court, Albany, Wyoming.

Hamilton, Charles William, Junior, Route 1, Box 204, Berry, Kentucky, convicted on January 26, 1973, Pendleton Circuit Court, Falmouth, Kentucky.

Hamilton, Clarence Eugene, 621 South Thirteenth Street, Vincennes, Indiana, convicted on March 3, 1976, and on February 6, 1978, in the Superior Court, Knox County, Indiana.

Hamilton, Lile Kent, Route 1, Box 164, Sinton, Texas, convicted on March 26, 1976, in the United States District Court, Baltimore, Maryland.

Hamm, Burl Ervin, Senior, 420 Marley Road, Elkton, Maryland, convicted on March 10, 1971, in the Circuit Court, Cecil County, Maryland.

Hammock, George High, 1207 Gilbert Street, Durham, North Carolina, convicted on February 2, 1957, and on November 11, 1954, in the Durham County Court, Durham, North Carolina.

Hammock, Ronald Earl, Route 1, Box 246F, Henry, Virginia, convicted on September 14, 1984, in the United States District Court, Danville, Virginia.

Hampton, Samuel Spencer, Junior, 45759 Wakefield, Utica, Michigan, convicted on February 1, 1980, in the Oakland County Circuit Court, Pontiac, Michigan.

Hamsher, Edward Roy, 8173 Canadice Lake Road, Springwater, New York, convicted on April 28, 1977, in the Circuit Court, Virginia Beach, Virginia.

Hance, Michael Lee, 256 River Road, North Clarendon, Vermont, convicted on September 8, 1981, in the District Court ot Vermont, Unit 1, Rutland Circuit, Rutland, Vermont.

Hancock, Kenneth Moran, 3709 68th Street, Lubbock, Texas, convicted on March 18, 1983, in the United States District Court, Western District of Texas.

Hancock, Mickey V., 4015 5th Street, Rear Apartment, Meridian, Mississippi, convicted on October 22, 1979, in the Circuit Court, Pike County, Mississippi.

Hande, Edwin Kenneth, 5813 Knox Avenue South, Minneapolis, Minnesota, convicted on June 20, 1938, in the Judicial District, Stearns County, Saint Cloud, Minnesota.

Hansen, John Lee, 405 Monterrey, Victoria, Texas, convicted on June 18, 1982, in the District Court, Victoria County, Texas.

Hansen, John Paul, 2611 Spring Street, Apartment 23, Paso Robles, California, convicted on July 30, 1983, in the Seventeenth Judicial Court, Adams County, Colorado.

Hanson, John Andrew, Junior, Post Office Box 191, Bayfield, Wisconsin, convicted on October 11, 1965, and on May 29, 1968, in the Ashland County District Court, Ashland Wisconsin.

Hardbarger, Kenneth Ray, 800 Washington Avenue, Lot 10, Princeton, West Virginia, convicted on January 31, 1980, in the Circuit Court of Mercer County, West Virginia.

Hardin, Larry Lee, 6600 Bardstown Road, Louisville, Kentucky, convicted on September 14, 1978, in the Mercer County Circuit Court, Harrodsburg, Kentucky; and October 23, 1981, in the Boyle County Circuit Court, Danville, Kentucky.

Hardin, Robert Boz, Post Office Box 1187, Andrews, North Carolina, convicted on May 27, 1964, in the United States District Court, Bryson City, North Carolina, and on January 10, 1975, in the United States District Court, Northern District of Georgia.

Hare, Thomas Mason, 3412 New Harmony Road, Evansville, Indiana, convicted on November 4, 1970, in the Vandenburg Circuit Court, Evansville, Indiana.

Harms, Dale Gene, Rural Route 1, Box 194, Fremont, Nebraska, convicted on April 30, 1982, in the United States District Court, Omaha Judicial District of Nebraska, Omaha, Nebraska.

Harp, Paul Pickett, Route 3, Box 740, Grantsburg, Wisconsin, convicted on February 28, 1984, in Barnette County, Wisconsin.

Harper, Charles Eugene, 29 Quick Road, Clendenin, West Virginia, convicted on April 19, 1972, in the Circuit Court of Kanawha County, Charleston, West Virginia.

Harpole, James Willard, 616 North Seventh Street, Niles, Michigan, convicted on August 14, 1967, in the Berrien County Circuit Court, Michigan.

Harrell, Jesse, Junior, 288 McBride Road, Mount Airy, North Carolina, convicted on May 24, 1973, in the United States District Court, Middle District, Winston-Salem, North Carolina.

Harris, Harvey, Junior, 624 Burbank Court, Lexington, Kentucky, convicted on June 25, 1971, in the United States District Court, Eastern District of Kentucky.

Harris, Willie, 2304 Hardie Avenue, Selma, Alabama, convicted on February 19, 1942, and October 25, 1974, in the Dallas County Circuit Court, Selma, Alabama.

Hart, Arthur Lee, Junior, 5734 Jonquil Avenue, Baltimore, Maryland, convicted on May 15, 1981, in the Circuit Court of Maryland, Baltimore, Maryland.

Hart, Gregory Ernest, Box 53, United States Route 13, Parksley, Virginia, convicted on June 14, 1977, in the Circuit Court, Accomack County, Virginia.

Hart, Robert R., Senior, 106 Leitch Street, Fulton, New York, convicted on December 13, 1984, in the Oswego County Court, Oswego, New York.

Hartman, Richard Alan, North 814 Mamer Road, Spokane, Washington, convicted on December 21, 1967, in the Spokane County Superior Court, State of Washington.

Hartnett, Timothy W., 170 Spruce Street, Jackson, Wyoming, convicted on December 19, 1983, in the Court of Common Pleas, Centre County, Pennsylvania.

Hartsock, Mack Hamilton, 124 Commonwealth Extension, Bristol, Virginia, convicted on December 18, 1983, in the United States District Court, Abingdon, Virginia.

Hartwig, John Thomas, Junior, Star Route 2, Box 457A, Buckeye, Arizona, convicted on July 31, 1973, in the United States District Court, Baltimore, Maryland.

Harvey, Thomas Franklin, 2037 Pleasant Avenue, Ceres, California, convicted on April 3, 1964, in the Superior Court, Stanislaus County, California.

Hatchell, Kenneth Dale, 1428 Alton Road, Lawrenceburg, Kentucky, convicted on September 14, 1982, in the United States District Court, Anderson County, Kentucky.

Haught, Russell Paul, 305 Spruce Street, Farmington, Missouri, convicted on October 1964 and September 1967, in Wayne County, Detroit, Michigan.

Haukos, Wayne Thomas, 306 Second Street, Raymond, Minnesota, convicted on May 14, 1982, in the Eighth Judicial District, Benson, Minnesota.

Haycox, Frederick Addenbrook, III, 1856 Bay Point Drive, Virginia Beach, Virginia, convicted on May 19, 1981, in the United States District Court, Eastern District, Norfolk, Virginia.

Hayland, Richard Alexander, Junior, 8 South 41dst (#E–4 Terrace Heights), Yakima, Washington, convicted on April 28, 1982, in the Superior Court, Yakima County, Washington.

Haynes, Bobby Dean, Route 1, Box 295, Galax, Virginia, convicted on April 23, 1966, in the Carroll County Circuit Court, Hillsville, Virginia, on July 7, 1966, and December 31, 1966, in the Grayson County Circuit Court, Independence, Virginia.

Haynes, Gary Lee, 6057 South Caine Road, Vassar, Michigan, convicted on November 8, 1978, in the Tuscola County Circuit Court, Caro, Michigan.

Haynie, Joseph G., Junior, 9812 Dacono Drive, Richmond, Virginia, convicted on September 4, 1973, in the United States District Court, Richmond Division, Eastern Judicial District of Virginia.

Hazelton, Dale Patrick, 1414 Menomonee Street, Eau Claire, Wisconsin, convicted on September 19, 1983, in the Circuit Court, Eau Claire—Branch II, Eau Claire, Wisconsin.

Head, Murdock, Airlie Farm, Airlie, Virginia, convicted on July, 17, 1961, in the United States District Court, Alexandria, Virginia.

Hearn, Winfred Kenneth, 1305 West 3rd Street, Apartment 12, Weslaco, Texas, convicted on January 3, 1986, in the United States District Court, Southern Judicial District of Texas.

Hecht, Frank H., 1305 Stadium Drive, Mankato, Minnesota, convicted on May 19, 1982, in the United States District Court, St. Paul, Minnesota.

Heflin, Ricky Jewel, 227 Beiderman Street, Paducah, Kentucky, convicted on September 12, 1980, in the Pinellas County Court, Clearwater, Florida.

Heiden, Earl S., 1502 M. Oak, Guthrie, Oklahoma, convicted on December 15, 1982, in the Western District of Oklahoma, Oklahoma City, Oklahoma.

Heider, Roger Paul, Post Office Box 112, Liberty Hill, Texas, convicted on February 28, 1977, in the District Court, Dallas County, Texas.

Heitzmen, Daniel Bruce, 11414 Avondale Road, #33, Redmond, Washington, convicted on January 20, 1978, in the Superior Court, King County, Washington.

Helms, Carl Michael, Route 3, Heath Springs, South Carolina, convicted on May 31, 1965, in the General Sessions Court, County of Lancaster, South Carolina.

Helsley, Leslie Howard, Route 1, Box 369, Edinburg, Virginia, convicted on October 10, 1980, in the United States District Court, Eastern District of Virginia, Alexandria, Virginia.

Henderson, Robert William, 831 South Sycamore, Los Angeles, California, convicted on September 2, 1982, in the United States District Court, Miami, Florida.

Henderson, Terry Abraham, Route 4, Box 200, Winfield, Alabama, convicted on March 20, 1980, in the United States District Court, Birmingham, Alabama.

Hendricks, Charles Leroy, Junior, 2 Topaz Court, Apartment 2D, Baltimore, Maryland, convicted on December 8, 1953, in the Criminal Court, Baltimore, Maryland.

Henry, Elmer, 228 Court Street, Irvine, Kentucky, convicted on May 15, 1936, in the Irvine County Circuit Court, Irvine, Kentucky.

Hensley, Larry Wayne, 910 Meadow Street, Charlottesville, Virginia, convicted on June 17, 1980, in the Circuit Court, County of Albemarle, Virginia.

Hensley, Roy Iveland, 1502 East 17th Street, San Angelo, Texas, convicted on July 24, 1964, in the Ector County District Court, Texas, on October 5, 1965, and June 7, 1967, in Lea County, New Mexico, and on July 28, 1971, in the Tom Greer County, Texas.

Hernandez, Edwin, 549 Memory Lane, Addison, Illinois, convicted on October 5, 1975, in the First District State Court, Cook County, Illinois.

Herrera, Jose Antonio, 6550 Victory, Space 8, Boise, Idaho, convicted on October 19, 1977, in the Cameron County District Court, Texas.

Hibben, Gilbert Waugh, 2703 Costigan Way, Louisville, Kentucky, convicted on October 11, 1978, in the United States District Court, Missouri.

Hicks, Doyle Wayne, 1706 Calumet Road, Brookings, South Dakota, convicted on May 20, 1983, in the United States District Court, Sioux Falls, South Dakota.

Hicks, Elmer Glenn, 2724 Baker Street, Baltimore, Maryland, convicted on May 6, 1961, in the District of Maryland, Baltimore City Criminal Court.

Hicks, Garman Leon, 4812 Northwest 30th Street, Oklahoma City, Oklahoma, convicted on March 24, 1983, in the United States District Court, Oklahoma County, Oklahoma.

Higgs, Clarence Rudolph, 3951 North Nice Street, Philadelphia, Pennsylvania, convicted on January 5, 1960, in the United States District Court, Philadelphia, Pennsylvania.

Hile, Oliver Golmer, Box 2, Karn City, Pennsylvania, convicted on May 4, 1934, in the Criminal Court, Butler County, Pennsylvania.

Hill, Donald R., 210 Austin Lane, Elmira, New York, convicted on May 6, 1977, in the Chewung County Court, Elmira, New York.

Hill, Leonard Samuel, Junior, 100 North Garfield, Apartment J, Columbus, Ohio, convicted on November 9, 1984, in the United States District Court, Cincinnati, Ohio, and on November 19, 1984, in the Common Pleas Court, Franklin County, Columbus, Ohio.

Hill, Thomas Leslie, Post Office Box 23, Pickford, Michigan, convicted on July 12, 1973, in the Circuit Court, Wayne County, Michigan; and on July 1, 1975, in

BEST COPY AVAILABLE

the Circuit Court, Wayne County, Michigan.

Hills, Ernest Jay, 2221 Coe #111, Laramie, Wyoming, convicted on January 25, 1971, in the Superior Court, State of Washington.

Hiner, Raymond William, Rural Route 1, Box 786 Aurora, Indiana, convicted on January 14, 1955, in the Decateur County Circuit Court, Greensburg, Indiana.

Hirst, Carolyn W., 8108 Viola Street, Springfield, Virginia, convicted on September 9, 1983, in the United States District Court, Eastern District of Alexandria, Virginia.

Hirvela, William John, 3211 4th Avenue West, Hibbing, Minnesota, convicted on October 9, 1984, in the United States District Court, District of Minnesota.

Hoag, Alonzo E., 1061 North Shore, Springport, Michigan, convicted on September 18, 1980, in the Eaton County Circuit Court, Charlotte, Michigan.

Hoback, Wendell Elwin, Route 2, Box 704, Wytheville, Virginia, convicted on October 27, 1960, in the Circuit Court of Wythe County, Virginia.

Hobbs, Gregory Lee, 2702 Bay Area Boulevard, Apartment 4120, Houston, Texas, convicted on June 28, 1976, in the Howard County Court, Kokomo, Indiana.

Hodge, Thomas Edward, Betsy Bell Apartments, Apartment A–4, Staunton, Virginia, convicted on March 14, 1975, in the Circuit Court, Augusta County, Virginia.

Hogan, Robert John, 4016 Putty Hill Avenue, Baltimore, Maryland, convicted on February 15, 1963, in the Criminal Court of Baltimore, Baltimore, Maryland.

Holberg, Thomas Richard, 1510 Pewaukee Road, Waukesba, Wisconsin, convicted on April 2, 1984, in the Circuit Court Branch Eight, Waukesba City, Waukesba, Wisconsin.

Holewinski, Daniel Joseph, 11A Second Avenue, Skaggs Island, California, convicted on September 10, 1979, in the Circuit Court Four, Sheboygan County, Wisconsin.

Holmes, Charles Bradley, 373 North 8 Mile Road, Casper, Wyoming, convicted on August 31, 1978, in the Superior Court, Thurston County, Washington.

Holmes, Milton, Junior, 22 Green Acres Trailer Court, Murphysboro, Illinois, convicted on July 14, 1973, in the Circuit Court, Jackson County, Illinois.

Holmes, William Carrington, 2255 Northwest Overton Street, Portland, Oregon, convicted on April 16, 1958, in the Circuit Court, State of Oregon.

Hood, Sparks C., 222 South Cambrian, Bremerton, Washington, convicted in 1949, in the United States District Court, Southern District of Illinois.

Hope, Ramelle McKay, 200 Vallejo Circle, Columbia, South Carolina, convicted on February 4, 1980, in the Calhoun County General Sessions Court, St. Matthews, South Carolina.

Hopkins, Arthur William, 59502 Long Lake Road, Lot 53, Box 285, Colon, Michigan, convicted on January 29, 1973, in the Circuit Court of St. Joseph County, State of Michigan.

Hopkins, Clifford Marion, Junior, Route 10, Box 107, Fort Worth, Texas, convicted on October 19, 1971, in the One-hundred-and-ninth Judicial District Court, Andrews County, Texas.

Hopkins, Donald Wayne, 3209 Keller, Temple, Texas, convicted on June 29, 1981, in the United States District Court, Northern District of Texas.

Horrell, Ross Elmer, 799 Beulah Church Road, Apollo, Pennsylvania, convicted on July 17, 1979, in the Armstrong County Court of Common Pleas, Kittanning, Pennsylvania.

Horstman, Mark Christopher, 312 North Buchanan, Edwardsville, Illinois, convicted on September 12, 1980, in the Third Judicial Circuit Court, Madison County, Illinois.

Horton, Raymond K., 1100 West Illinois, Midland, Texas, convicted on November 8, 1979, in the United States District Court, Dallas, Texas.

Horvath, Julius T., Senior, 919 Curtis Northwest, Roanoke, Virginia, convicted on June 6, 1977, in the Circuit Court, Botetourt City, Fincastle, Virginia.

Howes, Edward Lyman, Junior, 4440 Gladys Avenue, Santa Cruz, California, convicted on December 20, 1974, in the Superior Court, Santa Cruz, California.

Hoy, Michael J., 714 20th Street, Port Townsend, Washington, convicted on December 13, 1976, in the United States District Court, Grand Rapids, Michigan.

Hudson, David William, 1839 Chedworth Lane, Stone Mountain, Georgia, convicted on March 8, 1985, in the Fulton County Superior Court, Atlanta, Georgia.

Huff, Johnnie Clonnie, 10055 Ward, Detroit, Michigan, convicted on November 30, 1959, in the Eastern District of Michigan.

Hughes, Roger Glenn, Route 5, Box 187, Decatur, Alabama, convicted on February 21, 1963, and on July 29, 1970, in the Circuit Court, Morgan County, Alabama.

Hughes, Wayne E., 9435 U.S. 231, Utica, Kentucky, convicted on March 23, 1984, in the United States District Court, Western Judicial District of Kentucky.

Hume, Eddie Dean, Box 849, Mount Gilerd Road, Tompkinsville, Kentucky, convicted on January 17, 1986, in the United States District Court, Bowling Green, Kentucky.

Humes, Gary D., Box 441, Tompkinsville, Kentucky, convicted on December 9, 1981, in the Monroe Circuit County, Tompkinsville, Kentucky.

Humphrey, Donald, 810 Atlantic Street, Bridgeport, Connecticut, convicted on September 5, 1976, in the Supreme Court, New York, New York.

Humphrey, Ronald Brown, Route 3, Box 130A, Fulton, Missouri, convicted on August 4, 1971, in the Jasper County Circuit Court, State of Missouri.

Hunsicker, Scott Linden, 1501 Mexico Street, Castroville, Texas, convicted on October 22, 1979, in the Two-hundred-and-sixteenth Judicial District Court, Kendall County, Boerne, Texas.

Hunt, David Sullivan, 2161 Lochlevin Drive, Memphis, Tennessee, convicted on September 1982, in the United States District Court, Memphis, Tennessee.

Hunt, Jonathan Lee, 104 Southeast 6th Street, College Place, Washington, convicted on August 19, 1982, in the Superior Court, Walla Walla County, Walla Walla, Washington.

Hunziker, Robert Andrew, 78 Dolphin Street, Tuckerton, New Jersey, convicted on October 30, 1969, in the Common Pleas Court, Philadelphia, Pennsylvania.

Hurwitz, Albert, 3241 Bon Vivant Drive, Tampa, Florida, convicted on February 25, 1977, in the United States District Court, New Jersey.

Huss, Robert Leo, 201 Hackberry, Apartment 1403, Clute, Texas, convicted on July 23, 1982, in the United States District Court, Portland, Maine.

Hyter, Charles K., 2206 West Minister, Hutchinson, Kansas, convicted on February 27, 1984, in the United States District Court, Wichita, Kansas.

Ibrahim, Jamal I., 301 Plymouth Drive, Apartment 233, Chalmette, Louisiana, convicted on October 8, 1982, in the United States District Court, Louisiana.

Ildefonso-Cruz, Nelson, 2 Troscher Lane, Bethpage, New York, convicted on May 31, 1985, in the United States District Court, Eastern Judicial District of New York.

Immerfall, Duane Allen, 225 Crestline Court, Duluth, Minnesota, convicted on July 28, 1982, in the St. Louis County District Court, Duluth, Minnesota.

Incorporation—Rockor, 11441 Willows Road Northeast, Post Office Box 97009, Redmond, Washington, convicted on April 27, 1984, in the United States District Court, Western District, Seattle, Washington.

Incorporation—Watlington-Anderson, 1204 North Linden, Bloomington, Illinois, convicted on June 3, 1985, in the Eleventh Judicial Circuit Court, Bloomington, Illinois.

Inglesby, Willis Bunn, Junior, 3160 South, Salt Lake City, Utah, convicted

on October 27, 1983, in the United States District Court, Northern District of California.

Jackson, Harry J., 1222 South Illinois Street, Indianapolis, Indiana, convicted on January 16, 1959, in the Daviess County Circuit Court, Washington, Indiana.

Jackson, John Lewis, 4935 Spruce Street, Philadelphia, Pennsylvania, convicted on October 26, 1970, and May 10, 1971, in the Court of Common Pleas, Philadelphia, Pennsylvania.

Jackson, Lamont Elroy, 534 Hollow Creek Road, Lexington, Kentucky, convicted on March 23, 1979, in the Fayette County Circuit Court, Lexington, Kentucky.

Jackson, Richard Harvey, 518 Belton Street, Charlotte, North Carolina, convicted on May 26, 1978, in the Mecklenburg County Superior Court, Charlotte, North Carolina.

Jackson, Roger Dale, 101 East 21st Street, Owensboro, Kentucky, convicted on November 25, 1976, in the Kentucky Circuit Court, Owensboro, Kentucky.

Jackson, William Eugene, 5649 South Garnett Road, Tulsa, Oklahoma, convicted on July 1, 1974, in the State District Court, Oklahoma City, Oklahoma.

Jacobs, Mark Edward, 550 South Barrington #2319, Los Angeles, California, convicted in 1972, and 1973, in the Seventy-fifth District Court, Chambers County, Texas.

James, Jerry Lee, 202 Florida Avenue, Winter Garden, Florida, convicted on November 6, 1981, in the Circuit Court, Orange County, Florida.

James, Ray McVay, Route 1, Box 192D, Ferrum, Virginia, convicted on January 10, 1983, in the United States District Court, Greensboro, North Carolina.

Janke, Paul K., 12888 RBC Road 8, Meeker, Colorado convicted on December 5, 1983, in the District Court, Montrose County, Colorado.

Jenkins, Donald Edward, 1508 Continental Square Apartments, Apartment 4, Lexington, Kentucky, convicted on October 5, 1984, in the Fayette Circuit Court, Lexington, Kentucky.

Jenkins, Richard Stephen, 921 7th Avenue, Iowa City, Iowa, convicted on October 20, 1969, in the Story County District Court, Nevada, Iowa.

Jenniches, Franz, 1488 Drift Creek Road, Silverton, Oregon, convicted on February 24, 1958, in the Superior Court, Los Angeles County, California.

Jennings, James Allen, 226 Southeast 54th Street, Oklahoma City, Oklahoma, convicted on May 15, 1959, in the District Court, Oklahoma County, Oklahoma

Jensen, Steve A., Route 1, Box 266, Thorp, Wisconsin, convicted on August 31, 1982, in the Clark County Circuit Court, Neillsville, Wisconsin.

Jessup, Dean H., 223 Yesler Way, #619, Seattle, Washington, convicted on May 16, 1970, in the Superior Court, Harris County, Texas.

Jett, Donald Lewis, Senior, Route 7, Box 380–S, Fredericksburg, Virginia, convicted on April 24, 1970, in the Circuit Court, Fredericksburg, Virginia.

Jim, Sam, Senior, Box 12 Georgeville, Goldendale, Washington, convicted on March 25, 1952, in the Yakima Superior Court, Yakima County, Washington.

Johnson, Alan Daryl, 4683 North Breton Court, Apartment 75, Kentwood, Michigan, convicted on February 16, 1970, October 15, 1971, May 30, 1972, August 23, 1972, and on April 4, 1975, in Kent County, Michigan.

Johnson, Buddy Lewis, Route 1, Box 57A, Ferrum, Virginia, convicted on November 5, 1975, in the United States District Court, Middle District of North Carolina.

Johnson, Charles Joseph, 25 West Pond Road, North Branford, Connecticut, convicted on June 14, 1977, in the Superior Court, New Haven County, Connecticut.

Johnson, David Michael, 246 North 25th Street, Decatur, Illinois, convicted on January 30, 1978, in the Macon County Circuit Court, Illinois.

Johnson, Eli, Route 1, Box 1350, Sandy Hook, Kentucky, convicted on December 10, 1935, in the United States Court, Eastern District of Kentucky, Catlettsburg, Kentucky.

Johnson, Elvis Eugene, 3437 Carol Drive, Springfield, Missouri, convicted on April 10, 1981, in the United States District Court, Southern District of Texas, Houston, Texas.

Johnson, Frederick Douglas, Junior, 125 Harvey Street, Belzoni, Mississippi, convicted on April 10, 1981, in the United States District Court, Northern Judicial District of Mississippi, Greensville, Mississippi.

Johnson, Jack Emmett, Post Office Box 1119, Northeast, 600 Roessel Road, Belfair, Washington, convicted on October 5, 1978, in the Superior Court, Mason County, Washington.

Johnson, James Patrick, Junior, 2121 Haveman Court, Kalamazoo, Michigan, convicted on August 3, 1973, in the Kalamazoo County Court, Kalamazoo, Michigan.

Johnson, Jerry Dwight, Route 1, Box 235, Mocksville, North Carolina, convicted on April 18, 1973, in the United States Middle District, Wilkesboro, North Carolina.

Johnson, Larry Rae, 4610 Crane Street, Eureka, California, convicted on August 17, 1983, in the Superior Court, Humboldt County, California.

Johnson, Robert Eugene, 3216 Karl Road, Columbus, Ohio, convicted on March 11, 1983, in the Franklin County Court of Common Pleas, Columbus, Ohio.

Johnson, Rodney Allan, Southeast 3133 Arcadia Road, Shelton, Washington, convicted on September 17, 1981, in the Superior Court, Mason County, Washington.

Johnson, Teddy Austin, Route 2, Box A–51, Jenkins, Kentucky, convicted on March 19, 1973, and on May 30, 1974, in the Rowan Circuit Court, Morehead, Kentucky.

Johnson, William Patrick, Route 1, Cleveland, Missouri, convicted on December 4, 1979, in the Circuit Court of Jackson County, Missouri.

Johnson, Willie Hugh, Route 2, Box 13B, Brodnax, Virginia, convicted on November 6, 1986, in the Circuit Court of the City of Mecklenburg, Virginia.

Johnston, Vincent Leroy, 359 First Avenue South, South St. Paul, Minnesota, convicted on February 14, 1983, in the United States District Court, St. Paul, Minnesota.

Jones, Clifton Allen, 2742 Meadowcliff Drive, Charlotte, North Carolina, convicted on November 21, 1975, in the Mecklenburg County Superior Court, Charlotte, North Carolina.

Jones, Edgar Eugene, Route 2, Hayesville, North Carolina, convicted on September 28, 1983, in the United States District Court, Western Judicial District, Bryson City, North Carolina.

Jones, James Larry, 403 Wallace Street, Opp, Alabama, convicted on June 7, 1963, July 11, 1966, and August 24, 1966, in the Covington County Circuit Court, Andalusia, Alabama.

Jones, Kenneth Donovan, 6524 Woodchuck, Greenville, Texas, convicted on April 18, 1980, in the Hunt County Court, Texas.

Jones, Richard Thomas, 413 Gregory Court, Lebanon, Ohio, convicted on July 21, 1987, in the United States District Court, Cincinnati, Ohio.

Jones, Thomas Victor, 1050 Moraga Drive, Los Angeles, California, convicted on May 1, 1974, in the United States District Court, Washington, DC.

Jones, Warren Lee, Post Office Box 9188, Spokane, Washington, convicted on July 19, 1982, in the United States District Court, Spokane, Washington.

Jorgensen, Kurt Henties, 2036 Palm Street, #235, Las Vegas, Nevada, convicted on May 28, 1971, in the United States District Court, Eastern District of New York.

Joseph, David L., Senior, 899 Brighton Boulevard, Zanesville, Ohio, convicted

on June 21, 1974, in the United States District Court, Southern District of Ohio.

Josephs, Budwah Joe, 1016 Hall Avenue, West St. Paul, Minnesota, convicted on December 15, 1985, in the Dakota County District Court, Hastings, Minnesota.

Justice, Erse, Post Office Box 2863, Pikeville, Kentucky, convicted in 1948 in the United States District Court, State of Kentucky.

Justice, Willard Ara, Post Office Box 102, McCracken, Kansas, convicted on June 6, 1977, in the District Court, Rush County, Kansas.

Kachel, David Todd, 103 Sunset Circle #19, Benecia, California, convicted on January 24, 1983, in the Barnes County Court, North Dakota.

Kanowsky, Kenneth Charles, 8633 Northwest Old Orchard Drive, Vancouver, Washington, convicted on October 18, 1982, in the United States District Court, Judicial District of Oregon.

Kantrowitz, Ronald, 128 Barlow Drive, Brooklyn, New York, convicted on November 11, 1980, in the United States District Court, Eastern District of Brooklyn, New York.

Kapp, Terry Robert, 1114 West Packard Street, Appleton, Wisconsin, convicted on March 3, 1964, and on December 16, 1986, in the Outagamie County Circuit Court, Branch, Appleton, Wisconsin.

Koppel, David Laurence, 509 East Franklin Street, Marshfield, Wisconsin, convicted on September 25, 1984, in the Circuit Court, Taylor County, Medford, Wisconsin.

Karnes, Danny Wayne, 100 Skyline Drive, Bedford, Virginia, convicted on November 24, 1980, and April 16, 1982, in the Circuit Court, Bedford County, Virginia.

Kasper, Lester S., 8218 33 Avenue North, St. Petersburg, Florida 33710, on November 7, 1980, in the United States District Court, Brooklyn, New York.

Keeble, Barney Jerome, 1301 Fieldcrest Apartments, Dothan, Alabama, convicted on September 30, 1988, in the United States District Court, Montgomery, Alabama.

Keene, William Charles, Junior, Route 1, Box 383–E, Faber, Virginia, convicted on May 17, 1984, in the United States District Court, Alexandria, Virginia.

Keener, Joseph Gaylord, 1121 Marion Highway, Apartment 1, Farmesville, Louisiana, convicted on April 19, 1985, in the Thirtieth District Court, Wichita County, Texas, and on May 5, 1985, in the Sixty-fourth District Court, Swisher County, Texas.

Keeton, William Richard, 2526 Country Club Drive, Pearland, Texas, convicted on October 28, 1982, in the Twenty-third Judicial District Court, Angleton, Texas.

Kellogg, Henry Alton, 2907 Independence Avenue, Shreveport, Louisiana, convicted on August, 16, 1983, in the United States District Court, Shreveport, Louisiana.

Kelly, Donald Duane, Route 9, Box 1461, Beaumont, Texas, convicted on February 9, 1979, in the United States District Court, Beaumont, Texas.

Kelly, Edward J., 198 Charissa Drive, Bayshore, New York, convicted on December 5, 1968, in the United States District Court, Eastern District of New York.

Kelly, Joan Ann, 198 Charissa Drive, Bayshore, New York, convicted on December 5, 1958, in the United States District Court, New York.

Kelly, Richard, 520 Cash Nichols Road, Stevensville, Montana, convicted on January 12, 1984, in the United States District Court, District of Columbia.

Kelly, Walter Lee, Senior, Route 4, Box 165, Leland, North Carolina, convicted on April 2, 1976, in the Superior Court of Brunswick County, North Carolina.

Kelting, Daniel E., 6291 Rapid Fall Northeast, Belmont, Michigan, convicted on September 6, 1977, in the Kent County Circuit Court, Grand Rapids, Michigan.

Kennedy, John F., 1112 West Olive, El Dorado, Kansas, convicted on July 10, 1980, in the Butler County District Court, El Dorado, Kansas.

Kennedy, Lloyd Henry, 476 Wasp Street, Marietta, Pennsylvania, convicted on December 15, 1961, in the Lancaster County Court, Lancaster, Pennsylvania.

Kent, Arthur Merritt, 2005 Gardener Street, Augusta, Georgia, convicted on June 5, 1975, in the United States District Court, Southern District of Georgia.

Kent, John Taylor, 2601 West 34th Avenue, Anchorage, Alaska, convicted on January 19, 1976, in the Superior Court, Spokane, Washington.

Kenyon, Gregory Eugene, Route 1, Box 283, Star Tannery, Virginia, convicted on February 15, 1980, in the Circuit Court, Shenandoah County, Virginia.

Keough, Ronald Joseph, 716 East 30 Street, Joplin, Missouri, convicted on December 16, 1980, in the Jasper County Circuit Court, Joplin, Missouri.

Kerns, Dwight L., Route 1, Box 52, Indianola, Oklahoma, convicted on September 8, 1983, in the United States District Court, Eastern District of Oklahoma.

Kessler, Howard Lee, 3200 North Lakeshore Drive, Chicago, Illinois, convicted on July 19, 1979, in the United States District Court, Chicago, Illinois.

Kettelhut, Steven Scott, 4428 Regent Street, Apartment 3, Duluth, Minnesota, convicted on December 18, 1979, in the Sixth Judicial District, St. Louis County, Duluth, Minnesota.

Key, Arthur Tilman, Post Office 251, West Union, South Carolina, convicted in January 1971, in the Aiken County, South Carolina Court of General Sessions.

Keyes, Kenneth Eugene, 205 Jefferson Street, Frederick, Maryland, convicted on August 25, 1966 and February 2, 1970, in the Washington County District Court, Washington County, Maryland.

Kibbey, Billy Ray, 3560 East Hawser, Tucson, Arizona, convicted on September 16, 1975, in the Superior Court, Pima County, Arizona.

Kidd, Randall Leon, Route 1, Box 423, Louisville, Tennessee, convicted on July 16, 1982, in the United States District Court, Knoxville, Tennessee.

Kieser, Rodney C., Route 1, Box 193A, Easton, Missouri, convicted on June 18, 1982, in the Circuit Court of Platte County, Platte City, Missouri.

King, Danny Cleo, Route 1, Box 63, Ragley, Louisiana, convicted on March 12, 1981, in the Eleventh Judicial District Court, Parish of Sabine, Louisiana.

King, Johnny Ray, Route 2, Box 298, Holcomb, Mississippi, convicted on August 11, 1976, in the Grenada County Circuit Court, Grenada, Mississippi.

King, Joseph Cletus, Route 1, Box 135, Bassfield, Mississippi, convicted on April 19, 1951, in the United States District Court, Hattiesburg, Mississippi.

Kinser, Kenneth Ray, Lot 16, Lost River Estates, 2809 Nashville Road, Bowling Green, Kentucky, convicted on April 21, 1972, in the Warren County Circuit Court, Bowling Green.

Kirby, Randy Ray, Route 6, Box 493, Bowling Green, Kentucky, convicted on March 18, 1970, in the Warren County Circuit Court, Bowling Green, Kentucky.

Kirk, Karlton James, Route 2, Box 78, Leesburg, Virginia, convicted on December 12, 1977, in the Circuit Court, Loundon County, Virginia.

Kirker, Donald William, 399 Bank Street, Fall River, Massachusetts, convicted on May 13, 1975, in the Superior Court, Taunton, Massachusetts.

Kirven, Douglas Joshua, Route 6, Box 156, Highway 78, Summerville, South Carolina, convicted on February 22, 1983, in Dorchester County Court, South Carolina.

Kistler, Charles James, Junior, 155 West Beechwood Boulevard, Columbus, Ohio, convicted on July 23, 1961, in the United States District Court, Southern Judicial District of Florida, Miami, Florida.

Klave, Larry Earl, 901 East Iowa Street, Indianapolis, Indiana, convicted on October 19, 1973, in the Marion County Criminal Court III, Indianapolis, Indiana.

Klein, Arthur Howard, 3416 Milford Mill Road, Baltimore, Maryland, convicted on October 5, 1966, in the Municipal Court, Baltimore City, Maryland.

Klein, George M., 2426 Country Club Road, Indianapolis, Indiana, convicted on November 14, 1980, in the United States District Court, Southern District of Florida, Miami Florida.

Klein, Gordon Francis, Route 2, Princeton, Minnesota, convicted on May 9, 1962, and June 8, 1977, in the Wright County District Court, Buffalo, Minnesota.

Kleinfelter, Roy Alfred, 765 North 32nd Street, Lebanon, Pennsylvania, convicted on February 24, 1970, in the Common Court of Pleas, City of Lebanon, Pennsylvania.

Klinesmith, Roy, 1640 South 10th East #B, Salt Lake City, Utah, convicted on December 15, 1982, in the District Court for Cheyenne County, Nebraska.

Klutts, Billy J., Route 5, Box 428, Muskogee, Oklahoma, convicted on May 1, 1984, in the United States District Court, Western District of Oklahoma.

Knight, James Elbert, 4430 Faronia Road, Memphis, Tennessee, convicted on March 4, 1974, in the United States District Court, Northern Division of Mississippi, State of Mississippi.

Knopp, Calvin Wayne, Route 3, Box 31, Rupert, Idaho, convicted on January 2, 1979, in the District Court, Minidoka County, Idaho.

Knott, Thomas E., Route 1, Box 660, Stanley, Virginia, convicted on January 29, 1957, in the Circuit Court of Page County, Luray, Virginia.

Knott, William Howard, Junior, 3706 Clipper Road, Baltimore, Maryland, convicted on May 18, 1949, in the Circuit Court, Anne Arundel County, Maryland.

Knowles, Shirlene K., 1006 South 8th Avenue, Lanett, Alabama, convicted on July 27, 1979, in the United States District Court, Middle Judicial District of Alabama.

Knowles, Tony Earl, 205 30th Street, Opelika, Alabama, convicted on June 29, 1972 and November 9, 1976, in the Circuit Court of Lee County, Opelika, Alabama.

Knudsen, Tommy Lynn, Route 5, Box 15, Georgetown, Texas, convicted on May 12, 1982, in the United States District Court, Austin, Texas.

Knutson, Arnold Robert, 473 Milbeth Drive, Pittsburgh, Pennsylvania, convicted on February 17, 1982, in the United States Court, Western District of Pennsylvania.

Kretzmer, Peter Young, 450 NE 147th Terrace, North Miami, Florida, convicted on October 7, 1955, in the District Court, Fourth Judicial District, Santa Rosa, New Mexico.

Kuba, Lionel Thomas, 4037 Jay Em Court, Ellicott City, Maryland, convicted on March 15, 1982, in the Criminal Court, Baltimore, Maryland.

Kuck, Lloyd R., 2130 Floral Drive, Boulder, Colorado, convicted on September 22, 1975, in the Circuit Court of Fairfax County, Commonwealth of Virginia.

Kuenkler, Curtis Charles, Post Office Box 308, Highway 41, Spirit Lake, Idaho, convicted on February 14, 1974, in the Circuit Court, Multandoma County, Oregon.

Kunz, Harold Arthur, 5020 North Argonne Road, Spokane, Washington, convicted on April 19, 1982, in the Spokane County Superior Court, Washington.

Lacicero, Michael Joseph, South Road Box 21, Milton, New York, convicted on October 24, 1983, in the Ulster County Court, Kingston, New York.

Lackey, John Edward, 109 Fifth Avenue Southwest, Taylorsville, North Carolina, convicted on August 19, 1983, in the United States District Court, Statesville, North Carolina.

Lacock, Gary Joseph, 5720 North Topeka, Lot 17, Topeka, Kansas, convicted on June 28, 1984, in the District Court, Shawnee City, Kansas.

Lacrone, Ivan Eugene, 419 South Chesnut, Iola, Kansas, convicted on February 27, 1978, in the District Court, Woodson County, Kansas.

Ladson, Norman, Junior, 5401 Lynview Avenue, Baltimore, Maryland, convicted on June 2, 1952, in the Criminal Court of Baltimore, Baltimore, Maryland.

Lafreniere, Luc Albert, 43 Crown Street, Springfield, Massachusetts, convicted on July 11, 1984, in the Hampden District Court, Massachusetts.

Lambert, James Bradley, 6214 Northview Street, Boise, Idaho, convicted on June 25, 1981, in the Fourth District Court, State of Idaho.

Lambert, Keith Lewis, Rural Route 4, Box 350, Martinsburg, West Virginia, convicted on October 2, 1967, in the Circuit Court of Berkeley County, West Virginia.

Lambert, Bruce Harrel, Route 4, Box 573, Marler Road, Leesville, Louisiana, convicted in 1953, United States Army, Camp Gordon, Georgia.

Lanham, Donald Ray, 100 Gilmore Court, Owensboro, Kentucky, convicted on November 7, 1971, in the Owensboro Circuit Court, Owensboro, Kentucky.

Lanier, Gary Cottle, Route 1, Box 93, Burgaw, North Carolina, convicted on October 19, 1982, in the Superior Court, Duphin County, North Carolina.

Laperle, J.A. Roland, 134 Canterbury Street, Worcester, Massachusetts, convicted on April 9, 1979, in the United States District Court, Boston, Massachusetts.

Laplant, Edward Lawrence, Post Office Box 98, 5 River Street, Chateaugay, New York, convicted on February 28, 1983, in Franklin County Court, Malone, New York.

Larson, Einar Albin, Junior, Post Office Box 773502, Eagle River, Alaska, convicted on October 17, 1974, in the Superior Court, State of Alaska.

Larson, Roger Clifford, 700 Simon Avenue, St, Paul, Minnesota, convicted on January 28, 1982, in the United States District Court, Minneapolis, Minnesota.

Lato, Peter Anton, 2539 Monroe Street, Northeast, Minneapolis, Minnesota, convicted on October 12, 1961, in the Circuit Court Branch II, Eau Claire, Wisconsin.

Lauck, Bernard Aloysious, 109 Glade Boulevard, Walkersville, Maryland, convicted on October 17, 1979, in the District Court, Anne Arundel County, Maryland.

Lawson, Jacquelyn, 1503 Stillman, Corpus Christi, Texas, convicted on January 19, 1981, in the Three-Hundred and Nineteenth District Court, Nueces County, Texas.

Lawson, Pamela Walker, 1330 Winrock Boulevard, No, 2707, Houston, Texas, convicted on December 5, 1975, in the Circuit Court, Commonwealth of Virginia, Danville, Virginia.

Laylock, Robert James, 3509 Teakwood Street, Plano, Texas, convicted on July 8, 1988, in the United States District Court, Dallas, Texas.

Lecroy, Russell Kirk, 300 Clarence Street, Charlotte, North Carolina, convicted on September 22, 1972, in the United States District Court, Western District of North Carolina.

Lee, Jack O., 2510 Apollo, Saginaw, Michigan, convicted on October 18, 1978, in the Eastern District of Michigan, Bay City, Michigan.

Lee, James Robert, 3824 Bevans, Cheyenne, Wyoming, convicted on September 6, 1962, in the Larimer County Superior Court, Colorado.

Lee, Lawrence E., 2231 A. Diamond, Tucson, Arizona, convicted on December 27, 1963, in the United States District Court, Chicago, Illinois.

Lee, Toney Robert, 320 Beltline Boulevard, Anderson, South Carolina, convicted on March 28, 1971, in the Court of Common Pleas, Clark County, Ohio, and on February 5, 1984, in the Court of General Sessions, Anderson County, South Carolina.

Leeds, Arthur James, 2433 East Tuscany, Merced, California, convicted on May 27, 1976, in the Superior Court, Los Angeles, California.

Leets, Melvyn Stewart, 15416 Circle Ridge Lane, Hacienda Heights, California, convicted on June 12, 1978, in the United States District Court, Los Angeles, California.

Leggins, Odie Ray, 304 Parish Street, Martin, Tennessee, convicted on March 21, 1984, in the United States District Court, Jackson, Tennessee.

Leighton, James Robert, Junior, 620 North 11th Street, Klamath Falls, Oregon, convicted on June 15, 1982, in the Klamath County Superior Court, Klamath Falls, Oregon.

Leinwand, Philip David, 3 Diamond Pointe Avenue, Christiansburg, Virginia, convicted on December 7, 1982, in the Montgomery County Circuit Court, Christianburg, Virginia.

Lejeune, Mitchell, Route HC, Box 103, Oberlin, Louisiana, convicted on May 16, 1983, in the United States District Court, Alexandria Division, Western Judicial District of Louisiana.

Lemley, Billy Ray, 4 Quail Ridge Road, Texarkana, Texas, convicted on February 25, 1980, in the United States District Court, Texarkana, Texas.

Lemon, Timothy Gerald, 618 Cloverleaf Parkway Northeast, Blaine, Minnesota, convicted on February 19, 1981, in the Tenth Judicial District Court, Anoka, Minnesota.

Lemon, Willie Gus, 1124 10th Street Northwest, Apartment 201, Washington, DC, convicted on March 29, 1950, in the United States District Court, Atlanta, Georgia.

Lendway, Steven John, 5695 Upper 182nd Street, Farmington, Minnesota, convicted on February 4, 1980, in the Cass County District Court, Ninth Judicial District, Walker, Minnesota.

Lennon, Kenneth Charles, 2618 Sunset Avenue, Greenville, North Carolina, convicted on September 2, 1980, in the North Carolina Superior Court, Whiteville, North Carolina.

Lester, Quade Clarkson, Junior, 813 Pitty Pat Drive, Florence, South Carolina, convicted on August 4, 1978, in the General Sessions Court, Columbia, South Carolina.

Lesueur, Frank James, Route 4, Box 135A, Culpeper, Virginia, convicted on January 9, 1986, in the Buckingham County Circuit Court, Virginia.

Levan, Delbert Clyde, Rural Delivery 5, Box 438, Lehighton, Pennsylvania, convicted on July 15, 1981, in the Court of Common Pleas, Jim Thorpe, Pennsylvania.

Lewis, David Arnold, 2217 "B" Gebbie Place, High Point, North Carolina, convicted on October 14, 1974, in the Superior Court, Robeson, North Carolina, on January 27, 1983, in the Superior Court, Randolph, North Carolina, and on February 8, 1983, in the United States District Court, Greensboro, North Carolina.

Lewis, Edwin Alan, 700 Pensinger Boulevard, Mount Lake Park, Maryland, convicted in October 1974, and in March 1975, in the Circuit Court, Garrett County, Maryland.

Lewis, Kenneth Arnold, HCR 35, Box 43, Rolla, Missouri, convicted on November 30, 1968, in the State of Illinois and on October 6, 1970, March 23, 1971, and May 12, 1974, in the Circuit Court, Phelps County, Missouri.

Liberatore, Dominic A., Rural Delivery 1, Box 116, Haskins Road, Belfast, New York, convicted on January 13, 1964, in the United States District Court, Western District of New York.

Lillis, Richard Patrick, 5237 F. Broadway Avenue, Eielson Air Force Base, Alaska, convicted on March 17, 1977, in the Circuit Court, Virginia Beach, Virginia.

Lilly, Roy Miller Junior, Route 1, Box 40, Gibsland, Louisiana, convicted on October 9, 1974, in the United States District Court, Eastern District of Louisiana, and on October 22, 1974, in the Twenty-second Judicial District Court, Parish of Washington, Louisiana.

Lim, David Alan, 2436 Date Street, Apartment 3, Honolulu, Hawaii, convicted on April 12, 1978, in the First Circuit Court, Hawaii.

Lintz, Clayton Mark, Rural Route 1, Crawfordsville, Iowa, convicted on February 8, 1983, in the United States District Court, Southern District of Iowa, in Des Moines, Iowa.

Linville, Gary Vincent, Mount Vernon Road, Berea, Kentucky, convicted on February 19, 1980, in the Madison Circuit Court, Richmond, Kentucky.

Lissy, Thomas Irvin, 8640 Sunnyside Cut-Off Road, Sanpoint, Idaho, convicted on March 3, 1969, in the United States District Court, Northern Division of Florida.

Litofsky, Joseph, 3135 Old Post Drive, Baltimore, Maryland, convicted on May 21, 1956, in the Circuit Court, Baltimore City, Maryland.

Litton, Jimmie Lee, 1306 Brighton, Oklahoma City, Oklahoma, convicted on May 27, 1983, in Western District of Oklahoma, Oklahoma City, Oklahoma.

Loftus, Richard Joseph, 152 34th Street, Grand Rapids, Michigan, convicted on July 5, 1979, in the Kent County Circuit Court, Grand Rapids, Michigan.

Lohman, Terry Ernest, Route 3, Box 374, Adamsville, Tennessee, convicted on October 30, 1980, in the United States District Court, Memphis, Tennessee.

Loken, Thomas James, 3616 Livingston Lane, Eau Claire, Wisconsin, convicted on June 4, 1967, in the Eau Claire County Circuit Court, Eau Claire, Wisconsin.

Longo, Daniel J., 100 Byran Ridge Road, Armonk, New York, convicted on April 17, 1961, in the United States District Court, Southern District of New York.

Longo, Joseph Anthony Junior, 17608 North 62nd Drive, Glendale, Arizona, convicted on September 12, 1980, in the Superior Court, Maricopa County, Arizona.

Lopez, Alberto Placido, 21 West 6th Street, Lake Ronkonkoma, New York, convicted on November 28, 1983, in the Supreme Court, County of Suffolk, Hauppauge, New York.

Lord, Robert John, 1702 Arthur Street, Caldwell, Idaho, convicted on October 3, 1977, in the Ada County District Court, Idaho.

Loy, Larry Marshall, Post Office Box 66, Stephens City, Virginia, convicted on April 21, 1978, in the Circuit Court, Warren County, Virginia.

Lundberg, William J., Post Office Box 139, Synanon Foundation, Badger, California, convicted on November 5, 1971, in the Superior Court, Suffolk County, New York.

Lundquist, Curtis Alan, 4105 Birchmont Drive Northeast, Bemidji, Minnesota, convicted on May 6, 1971, in the Traverse County District Court, Wheaton, Minnesota.

Lynch, Frank William, 7851 Riverdale Road, Apartment 303, Lanham, Maryland, convicted on July 21, 1980, in the District Court of Maryland, Prince George's County, Maryland.

Lyndaker, Rodney Joseph, Rural Delivery 1, Box 81, Carthage, New York, convicted on May 18, 1982, in the Jefferson County Court, New York.

Mack, Bruce Allen, 2014 Morninglo Lane, Columbia, South Carolina, convicted on February 19, 1980, in the United States District Court, Columbia, South Carolina.

Mackres, George Panagiotou, 257 Cherokee Trail, Forked River, New Jersey, convicted on November 8, 1984, in the United States District Court, New Jersey.

Macomber, Wayne Payson, 210 Seminole Trail, Wilmington, North Carolina, convicted on July 3, 1980, in the United States District Court, Eastern District of North Carolina, Wilmington, North Carolina.

Maguire, Robert Eugene, 2283 Hillside, Memphis, Tennessee, convicted on November 8, 1973, in the Shelby County Criminal Court, Memphis, Tennessee.

Mahoney, Dean Gross, Route 1, Box 130, Cambellsburg, Kentucky, convicted on May 7, 1979, in the Henry County Circuit Court, New Castle, Kentucky.

Major, Louis Felix, Route 1, Box 460, Newberry, Michigan, convicted on July 12, 1971, in the Luce County Court, Michigan.

Maldonado, Jose R., 1275 Webster Avenue, Apartment 16, Bronx, New York, convicted on July 15, 1983, in the Bronx County, Supreme Court, New York.

Malkow, James H., 327 South Maple Street, Oconomowoc, Wisconsin, convicted on January 30, 1982, in the Waukeska Circuit Court, Waukeska, Wisconsin.

Mallary, Richard Walker Junior, Rural Delivery 2, Box 112, Barton, Vermont, convicted on May 24, 1978, in the District Court of Chittenden County, Vermont.

Malmay, E.B., 103 West Oak, Zwolle, Louisiana, convicted on December 19, 1980, in the United States District Court, Western District of Louisiana, Shreveport Division.

Malone, Steven Ray, 5704 Elizabeth Lake Road, Pontiac, Michigan, convicted on May 27, 1971, Oakland County Circuit Court, Pontiac, Michigan.

Mangialetti, James Mark, 6528 Armfield Road, Richmond, Virginia, convicted on December 17, 1979, in the Circuit Court, Buckingham County, Virginia.

Mann, Gary Bill, 1530 Kenton Street, Bowling Green, Kentucky, convicted on January 19, 1978, in the Warren County Circuit Court, Bowling Green, Kentucky.

Manning, Herbert Eugene, 505 Brown Street, Hopkinsville, Kentucky, convicted on July 28, 1980, in the Christian County Circuit Court, Hopkinsville, Kentucky.

Manupella, Anthony Peter, 20 Poplar Street, Valley Falls, New York, convicted on November 8, 1971, in the Saratoga County Court, Ballston Spa, New York, and on March 28, 1971, in the Rensselear County Court, Troy, New York.

Marando, James Frederick, 3618 34th Street, Moline, Illinois, convicted on December 18, 1975, in the Nineteenth Judicial Circuit, Marion County, Indiana, and on July 11, 1977, in the Fourteenth Judicial Circuit, Rock Island County, Illinois.

Marchant, David Brent, 1027 Plain Street, Peru, Illinois, convicted on January 13, 1975, in Knox County Circuit Court, Galesburg, Illinois.

Marchant, Max Howard, USS Saratoga, V5 Division CV60, FPO, New York, convicted on February 9, 1967, in the Circuit Court, Wright County, Iowa.

Marcum, Charles David, Post Office Box 1, McKee, Kentucky, convicted on August 22, 1980, in the United States District Court, Eastern District of Kentucky.

Markley, Lawrence Doyle, Route 1, Box 146C, Cataldo, Idaho, convicted on April 8, 1972, in the District Court, Benewah County, Idaho.

Marko, Theodore Matthew III, Route 3, Box 158, McNeely Road, Piedmont, South Carolina, convicted on April 1, 1976, July 23, 1976, and October 21, 1976, in the Court of General Sessions.

Marmo, Dominic J., 1320 Lake Way Drive, Apartment 120, Bellingham, Washington, convicted on July 7, 1975, in the Superior Court, Skagit County, Washington.

Marsh, Chester Barry, Route 2, Box 142, Georgetown, South Carolina, convicted on January 11, 1982, in the United States District Court, Judicial District of South Carolina.

Martin, A. J., 17 Kuchle Drive, Walton, Kentucky, convicted on May 22, 1978, in the United States District Court, Covington, Kentucky.

Martin, Alan Wesley, 224 Southwest Second Place, Gainesville, Florida, convicted on December 10, 1971, in the Clay County Circuit Court, Green Cove Springs, Florida.

Martin, Leroy, County Lanes Trailer Court, Space 29–A, Rural Route 4578, Great Falls, Montana, convicted on June 1, 1966, in the District Court, Rosebud County, Montana.

Martin, Lloyd Venton, Post Office Box 213, Hope Mills, North Carolina, convicted on July 20, 1982, in the United States District Office, Eastern District, Wilmington, North Carolina.

Martin, Scipio McClure, 3740 Kendall, Detroit, Michigan, convicted on January 28, 1974, and September 4, 1975, in the Detroit Recorder's Court, Detroit, Michigan.

Mason, John Burton, 4617 East Kathleen Road, Phoenix, Arizona, convicted on November 12, 1987, in the United States District Court, Alexandria, Virginia.

Massey, Frank Edward, Box 122, Kingston, Oklahoma, convicted on November 30, 1982, in the United States Court, Muskogee, Oklahoma.

Massey, Thomas Clinton, 213 Oriole Drive, Lebanon, Tennessee, convicted on March 18, 1979, in the United District Court, Nashville, Tennessee.

Mastelloto, Jerry Robert, 131 Acacia Avenue, Oroville, California, convicted on October 27, 1983, in the United States District Court, Northern District of California.

Matherne, Raymond Anthony, Post Office Box 873761, Wasilla, Alaska convicted on May 25, 1982, in the Superior Court, Pierce County, Washington.

Mathews, Lester Kimberly, 10817 Dineen Drive, Knox, Tennessee, convicted on January 31, 1983, in the United States District Court, Knoxville, Tennessee.

Mathews, Timothy Lawrence, Star Route 1, Road M.S.W., Royal City, Washington, convicted on December 10, 1974, in the Superior Court, Grays Harbor County, Washington.

Mathis, Leroy Preston, Route 2, Box 280, Roaring River, North Carolina, convicted on November 23, 1959, in the United States District Court, Wilkesboro, North Carolina.

Mathisen, Robert Walter, 14224 32nd Avenue, Northwest, Gig Harbor, Washington, convicted on February 24, 1968, in the Superior Court, Chelan County, Washington.

Matlock, Jake D., 4031 Norton, Kansas City, Missouri, convicted on August 24, 1981, in the United States District Court, Kansas City, Kansas.

Matthews, Flossie Carol, Route 10, Box 45, Harris Creek Road, Cleveland, Tennessee, convicted on August 23, 1979, in the Superior Court, Whitfield County, Georgia.

Matthews, Orville Courtney, 1616 Ripon Place, Alexandria, Virginia, convicted on February 19, 1974, in the Circuit Court, Franklin County, Virginia.

Mazzella, Francesco Ralph, East Opal Lake Drive, Gaylord, Michigan, convicted on April 15, 1976, in the United States District Court, Michigan.

McAndrew, Joseph Harrison, 52 Sagamore Road, Bronxville, New York, convicted on April 29, 1982, in the United States District Court, Eastern District of New York.

McBreairty, Donald Junior, Post Office Box 97, St. Francis, Maine, convicted on September 30, 1981, in the Maine Superior Court, County of Aroostook, Caribou, Maine.

McBride, Ivan Charles, 7301 Sanger, #214, Waco, Texas, convicted on February 19, 1982, in the Fifty-fourth District Court, McLennan County, Texas.

McBride, Richard Gene, Senior, 5466 Maple Vista, San Antonio, Texas, on July 1, 1980, in the United States District Court, Middle District, Jacksonville, Florida.

McCarley, Randolph William, 6366 Lincoln, Apartment 103, Oroville, California, convicted on September 13, 1971, in the Superior Court, Marin County, California.

McArter, Richard Dennis, Woodrun Drive, Laurinburg, North Carolina, convicted on February 24, 1984, in the

United States District Court, Wilmington, North Carolina.

McCartin, Hubert E., Rural Route 2, Box 1126, Washington Park Road, Adams, New York, convicted on January 14, 1985, in the Jefferson County Court, Watertown, New York.

McClain, John Patrick, 13309 Wesley, Southgate, Michigan, convicted on November 29, 1982, convicted in the United States District, Miami, Florida.

McClellan, William Clinton, Route 1, Box 236H, Lincoln, Alabama, convicted on March 18, 1985, in the United States District Court, Birmingham, Alabama.

McCombs, Dwight Thomas, Rural Route 1, Box 237, Dry Ridge, Kentucky, convicted on March 14, 1969, in the Palm Beach Circuit Court, West Palm Beach, Florida, and on February 8, 1972, in the Grant County Circuit Court, Grant County, Kentucky.

McConkey, Charles Emerson, Route 1, Box 94E, Waxhaw, North Carolina, convicted on November 16, 1978, in the Wakt County Superior Court, Raleigh, North Carolina.

McConnell, Douglas Ray, 1905 McMurray Road, Mount Vernon, Washington, convicted on September 9, 1982, in the Superior Court, King County, Washington.

McConnell, Eugene, 1710 Roosevelt Street, Prichard, Alabama, convicted on March 17, 1964, in the Mobile County Circuit Court, Mobile, Alabama.

McCormick, James Theodore, Route 1, Box 2A, Monterey, Tennessee, convicted on July 20, 1981, in the Northern Judicial District, Alabama.

McCormick, Terrence James, 2955 South Xanthia County, Denver, Colorado, convicted on January 5, 1979, in the United States District Court, Denver, Colorado.

McCoshum, Vernon Lee, 20785 Scenic Drive, Red Bluff, California, convicted on October 29, 1981, in the United States District Court, Eastern District, Sacramento, California.

McCracken, Coy Talmadge, Space 123, Yakima, Washington, convicted on May 14, 1959, in the Superior Court, Yakima County, Washington.

McCracken, Dennis Dean, 418½ Hayes, Helena, Montana, convicted on April 26, 1979, in the Superior Court, Whatcom County, Washington.

McCracken, Victoria Texmo, 418½ Hayes, Helena, Montana, convicted on April 26, 1979, in the Superior Court, Whatcom County, Washington.

McCrea, James Murray, Rural Route 3, Box 147–A, Kingstree, South Carolina, convicted on June 29, 1984, in the Williamsburg Court, Court of General Sessions, Kingstree, South Carolina.

McDade, Maxwell Fowler, Junior, Magnolia Drive, Fulton, Kentucky, convicted on September 1, 1981, in the United States District Court, Western District of Tennessee.

McDaniel, Merle Thomas, 733 East 24th Place, Yuma, Arizona, convicted on May 27, 1970, in the United States District Court, Phoenix, Arizona.

McDiarmid, Mark Allan, Route 1, Box 92–A, Alden, Michigan, convicted on August 21, 1975, in the United States District Court, Flint, Michigan.

McDonald, Patrick Russell, 7620 Mero Road, Snohomish, Washington, convicted on December 12, 1975, in the Whatcom County Superior Court, Washington; on April 13, 1976, in the King County Superior Court, Washington; and on January 20, 1977, in the Clallam County Superior Court, Washington.

McDougald, Andrew Perry, Quarterdeck 21, New Bern, North Carolina, convicted on February 21, 1975, in the Superior Court of Bladen County, North Carolina.

McFall, Grover Cleveland, Route 1, Box 283B, Clintwood, Virginia, convicted on October 8, 1963, and on February 10, 1960, in the United States District Court, Abingdon, Virginia.

McGhaney, Clarance, 441 Putman Avenue, Brooklyn, New York, convicted on September 17, 1980, in the Supreme Court, Queen City, New York.

McGrow, George Michael, 2004 Tadcaster Road, Baltimore, Maryland, convicted on April 1, 1976, in the Circuit Court, Baltimore County, Maryland.

McIntosh, Julian Roberts, 1002 Cliff Road, Asheboro, North Carolina, convicted on March 3, 1983, in the Randolph County Superior Court, Ashetors, North Carolina.

McIntyre, James Robert, 1130 North Patton Street, Springfield, Illinois, convicted on September 11, 1975, and on March 20, 1978, in the Sangamon County, Springfield, Illinois.

McIntyre, Ray Gardon, Post Office Box 446, Grand Island, Florida, convicted on May 22, 1987, in the United States District Court, Jacksonville, Florida.

McKee, Jack C., 4069 Sheraton Drive, Flint Michigan, convicted on May 20, 1974, and on January 18, 1977, in the United States District Court, Eastern District of Michigan.

McKendrick, Ronald L., 13515 Waterloo Road, Waynesboro, Pennsylvania, convicted on May 5, 1986, in the United States District Court, Middle Judicial District, Harrisburg, Pennsylvania.

McKittrick, Ino Dennis, 8121 East Frederick, Spokane, Washington, convicted on February 1, 1961, in the Superior Court, Yakima County, Washington.

McLeod, Claiborne Lester, 7621 Sambar Road, Chesterfield County, Virginia, convicted on September 12, 1980, in the United States District Court, Eastern, Virginia.

McMillan, Jane Alice, 9 Pioneer Circle, Miles City, Montana, convicted on October 24, 1977, in the Superior Court, Custer County, Montana.

McMurren, Ted Harvey, 290 South F Street, Greeley, Colorado, convicted on September 15, 1983, in the United States District Court, Colorado.

McNeill, Robert Jack, Rural Route 1, Box 128, Johnston City, Illinois, convicted on October 14, 1975, in the First Judicial Circuit, Williamson County, Illinois.

McNussen, S. Hugh, 3801 Caravelle Drive, Anchorage, Alaska, convicted on May 31, 1983, in the United States District Court, Alaska.

Meadows, Roger William, Box 423H, 2nd Avenue, South Shore, Kentucky, convicted on October 4, 1977, in the United States District Court, Cincinnati, Ohio.

Medley, Johnny Trevor, 111 Coolbrook Drive, Frankfort, Kentucky, convicted on September 30, 1980, in the Anderson Circuit Court, Lawrenceburg, Kentucky.

Melina, Richard, 7624 Perry Avenue North, Brooklyn Park, Minnesota, convicted on March 26, 1956, in the Fourth Judicial District Court, Hennephin County, Minneapolis, Minnesota.

Melnick, Raymond B., 992 Westwood Avenue, Staten Island, New York, convicted on October 3, 1973, in the Kings County Superior Court, New York.

Melton, John Edward, 7221 Parkwast Apartments, Building 11, Apartment 308, Fort Worth, Texas, convicted on August 5, 1980, in the One-hundred-fifty-fifth Judicial District Court, Austin County, Texas.

Mendenhall, Randall Thomas, 6297 Pleasant Valley Road, Vacaville, California, convicted on March 10, 1977, in the Superior Court, County of Placer, California and on Febreary 28, 1972, in the Superior Court, Sacramento, California.

Meredith, Thomas Lynn, 6355 Maplecrest Road, Ft. Wayne, Indiana, convicted on December 14, 1983, in the Allen County Superior Court, Ft. Wayne, Indiana.

Merrill, James Alfred, Junior, Post Office Box 68, Cedar Lane, Rescue, Virginia, convicted on October 10, 1979, in the Circuit Court, Surry County, Virginia.

Merrill, Walter Kevin, 340 Haverhill Street, Lawrence, Massachusetts, convicted on December 13, 1988, in the

Lawrence District Court, Lawrence, Massachusetts.

Messer, Donnie Lynn, 15 Deer Lane, North Star Route, Lyons, Colorado, convicted on July 20, 1972, in the Forty-seventh District Court of Potter County, Amarillo, Texas.

Meucci, Timothy M., 66 Elm Street, Bangor, Maine, convicted on October 19, 1971, in the Superior Court, Penobsoet County, Maine.

Meyer, Dennis Alan, 5133 North 106th Street, Milwaukee, Wisconsin, convicted on December 18, 1959, Milwaukee County Circuit Court, Milwaukee, Wisconsin.

Meyer, Robert Louis, 1880 South Arcadia Street, Boise, Idaho, convicted on June 2, 1980, in the Fourth District Court, Idaho.

Michalica, Daniel Joseph, 1006 3rd Avenue, Grafton, Wisconsin, convicted on April 14, 1980, in the Ozaukee County Circuit Court, Port Washington, Wisconsin.

Michaud, Arthur John, Toothaker Road, Box 420, Route 5, Gardiner, Maine, convicted on October 11, 1971, in the Superior Court, Sagadahoc County, Maine.

Mick, Dean Edward, Rural Route 4, Beloit, Kansas, convicted on June 23, 1978, in the District Court, Fourth Judicial District, Idaho.

Middlebrooks, David Leslie, 808 West 39th Court, Lynn Haven, Florida, convicted on March 15, 1979, in the United States District Court, Panama City, Florida.

Milanesi, Eugene Emil, 1056 56th Street, Brooklyn, New York, convicted on November 13, 1980, in the United States District Court, Eastern District of New York.

Miller, Bart, 805 Whitney Drive, Garland, Texas, convicted on June 5, 1978, in the Collin County District Court, McKinney, Texas.

Miller, Dalbert Charles, 207 West Clarendon Avenue, Apartment 22–A, Phoenix, Arizona, convicted on November 15, 1976 in the United States District Court, Los Angeles, California.

Miller, Eugene Massie, Post Office Box 1648, Dublin, Virginia, convicted on May 16, 1972, in the Circuit Court, Tazewell County, Virginia.

Miller, Frank Albert, 2702 Brownfield Road, Urbana, Illinois, convicted on April 8, 1969, and December 8, 1969, in the Sixth Judicial Circuit, Champaign County, Illinois.

Miller, George Bryan, 4817 North 11th Avenue, Phoenix, Arizona, convicted on May 24, 1979, in the United States District Court, Phoenix, Arizona.

Miller, John Lester, Post Office Box 37, Ninilchik, Alaska, convicted on February 9, 1984, in the Rout County District Court, Steamboat Springs, Colorado.

Miller, Joseph Walter, 1311 Delvala Avenue, Baltimore, Maryland, convicted on October 28, 1971, in the Circuit Court of Baltimore, Baltimore, Maryland.

Miller, Mark Henry, 24 Laurel Hill, Austin, Texas, convicted on February 23, 1973, in the Fifty-fourth District Court, McLennan, Texas.

Miller, Stephen Charles, 565 Andrews Avenue, Metairie, Louisiana, convicted on December 12, 1977, in the Twenty-fourth Judicial District Court, Jefferson Parish, Louisiana.

Miller, Thomas Lars, Rural Route 3, Box 287B, Norfolk, Nebraska, convicted on June 21, 1982, in the District Court of Madison County, Madison, Nebraska.

Mills, Robert Hal, Route 1, Gates, Tennessee, convicted on January 14, 1983, in the Western Judicial District of Tennessee of Memphis, Tennessee.

Milner, Kenneth J., 47168 Rohns Court, Utica, Michigan, convicted on June 29, 1951, in the Recorder's Court, City of Detroit, Michigan.

Miskin, Rocky Dean, 978 Bannock 1, Idaho Falls, Idaho, convicted on October 5, 1982, in the District Court, Bonneville County, Idaho.

Miskowski, Raymond Edward, 626 Webb Street, Jackson, Michigan, convicted on June 3, 1970, in the Jackson Circuit Court, Jackson, Michigan.

Mitchell, David Gene, 812 Spencer Drive, Neosho, Missouri, convicted on January 13, 1976, in the Newton County Circuit Court, Neosho, Missouri.

Mock, Randy Winston, 419 Stale Road 224, Doctor's Inlet, Florida, convicted on May 9, 1984, in the Duval County Circuit Court, Jacksonville, Florida.

Moe, Trent Roger, Route 2, Box 74, Springfield, Minnesota, convicted on March 20, 1981, in the Fifth District Court, Redwood Falls, Minnesota.

Mogren, Thomas Gerald, 10188 65th Street North, Stillwater, Minnesota convicted on August 18, 1980, in the United States District Court, Minneapolis, Minnesota.

Mongenroth, Christopher Anderson, 729 First Street, Chester, California, convicted on May 24, 1969, in the Superior Court, Orange County, Califoria.

Monroe, Ernest Edward, Rural Delivery 3, Box 180, convicted on March 19, 1982, in the County Court, St, Lawrence County, Canton, New York.

Montiero, Anthony M., 6361 Northgate Avenue #21, Canoga Park, California, convicted on May 29, 1973, in the United States District Court, South Bend, Indiana.

Moody, Joe Pat, 5907 Leslie Drive, Flint, Michigan, convicted on February 6, 1961, in Douglas County, Michigan, and on November 22, 1966, in Genesee County, Michigan.

Moody, Lee Alan, 1804 Overland Drive, Bridgeport, Texas, convicted on April 27, 1978, in the District Court, Palo Pinto County, Texas.

Moody, Leroy, 2002 Ruxton Avenue, Baltimore, Maryland, convicted on June 18, 1934, in the Baltimore City Criminal Court, Baltimore, Maryland.

Moore, Donald Eugene, junior, 603 Central, Apartment 62, Yakima, Washington, convicted on November 20, 1980, in the Superior Court, Yakima, Washington.

Moore, Lahnoe Lynn, 1602 West Peninsula Drive, Moses Lake, Washington, convicted on May 2, 1980, in the Superior Court, Grant County, Washington.

Moore, Ralph Eugene, Route 1, Box 42, Woodleaf, North Carolina, convicted on May 21, 1961, Bitburg Air Force Base, Bitburg, Germany.

Moore, Ted William, 1000 3rd Street, Arcadia, Louisiana, convicted on December 8, 1977, in the Fourth Judicial District, Ovachila Parish, Monroe, Louisiana.

Moorehead, Dennis Lamar, 105 Ferree Place, Graniteville, South Carolina, convicted on November 9, 1983, in the United States Court, Rock Hill, South Carolina.

Morales, Daniel, 7926 Rilla Avenue, Dallas, Texas, convicted on Octobert 11, 1976, in the Criminal District Court #2, Dallas, Texas.

Morano, Anthony, 5 Buttonwood Road, Staten Island, New York, convicted on April 5, 1974, in the Kings County Court, New York.

Morgan, Danny R., General Delivery, Hoskinston, Kentucky, convicted on October 29, 1980, in the United States District Court, Loudou, Kentucky.

Morgan, James Edward, Route 3, Box 14M, Murray, Kentucky, convicted on October 18, 1977, in the United States District Court, Paducah, Kentucky.

Morgan, James Robert, 311 9th Avenue, Attalla, Alabama, convicted on June 13, 1984, in the United States District Court, Middle District of Alabama, Montgomery, Alabama.

Morgan, Leonard Elvin, Rural Delivery 1, Box 127AA, Hegins, Pennsylvania, convicted on May 25, 1970, in the Court of Common Pleas, Dauphin County, Pennsylvania.

Morris, Dewey Edward, Route 2, Box 25, Dyke, Virginia, convicted on July 12, 1973, in the Circuit Court, Albemarle County, Virginia.

Morris, Harry Lee, 3672 Ballestero Drive South, Jacksonville, Florida, convicted on May 19, 1976, in the

Eleventh Judicial Circuit of Florida, Dade County, Florida.

Morris, Leslie Daniel, Post Office Box 72, Lovelaceville, Kentucky, convicted on June 7, 1982, in the Manatee County Circuit Court, Bradenton, Florida.

Morse, Ray Allen, Post Office Box 128, Madawaska Road, Palmyra, Maine convicted on October 22, 1975, in the Somerset County Superior Court, Skowhegan, Maine.

Mosley, Willie, Junior, 5930 Huntview Drive, Jackson, Mississippi, convicted on April 26, 1984, in the United States District Court, Jackson, Mississippi.

Moss, Daniel Joseph, 22002 93rd South, Kent, Washington, convicted on April 23, 1975, in the United States District Court, Western District of Washington.

Mueller, Harvey Lee, 3322 29th Street, Columbus, Nebraska, convicted on March 5, 1981, in the United States District Court, District of Nebraska.

Mueller, Ronnie Ray, Rural Route 6, Box 5, Columbus, Nebraska, convicted on March 5, 1981, in the United States District Court, Omaha, Nebraska.

Mueller, Roy Otto, 7500 North Elmhurst Road, Lot #1, Des Plaines, Illinois, convicted on March 6, 1981, in the Northern Judicial District of Illinois.

Mueller, Wayne Elroy, 1728 Woodland Drive, Columbus, Nebraska, convicted March 5, 1981, in the United States District Court, Omaha, Nebraska.

Mullins, Clint Eugene, 4815 9th Avenue South, Apartment M, Birmingham, Alabama, convicted on April 16, 1982, in the Jefferson County Circuit Court, Birmingham, Alabama.

Mulloy, James William, Route 2, Space 58, Travis Street, Levelland, Texas, convicted on August 18, 1982, in the Two-hundred-and-eighty-sixth Judicial Court, Hockley County, Levelland, Texas.

Murray, James Patrick, 204 Woodland Drive Mobile Home Park, Elizabethtown, Kentucky, convicted on April 5, 1966, in the United States District Court, Fayetteville, North Carolina and on June 12, 1975, in the Harden Circuit Court, Elizabethtown, Kentucky.

Murray, John Nathaniel, 2016 Boyd Street, Baltimore, Maryland, convicted February 6, 1974, in the District Court of Maryland, Baltimore City, District One, Baltimore, Maryland.

Murry, Ray, Route 1, Box 110–C8, Jacksonville, Arkansas, convicted on September 9, 1964, in the Circuit Court, Lonoke County, Arkansas.

Musaraca, Cosmo A., 821 Avenue North, Brooklyn, New York, convicted on June 7, 1974, in the United States District Court, Eastern District of New York.

Musselman, Samuel Houston, 102 McCulloch, Tonopah, Nevada, convicted on September 25, 1979, in the Second Judicial District, Washoe County, Nevada.

Myers, Douglas James, 1101 North Walnut, Normal, Illinois, convicted on May 3, 1977, in the Eleventh Judicial Circuit, McLean County, Illinois.

Myrick, Robert Arnold, 3112 Moravia Road, Baltimore, Maryland, convicted in March 1959, in the Baltimore City, Baltimore, Maryland.

Nahabedian, Aramis M.K., 835 Centinela Lane, Santa Barbara, California, convicted on July 19, 1971, in the Superior Court in Kern County, California.

Neal, Ronnie Alton, Route 4, Box 203CC, Bluff City, Tennessee, convicted on February 11, 1977, in the Criminal Court, Blountville, Sullivan County, Tennessee.

Nelligan, Peter Burke, 63 Harmon Drive, Larchmont, New York, convicted on December 12, 1975, in the Westchester County, New York.

Nelson, Douglas Raymond, Star Route 2, San Andreas, California, convicted on March 14, 1969, in the Superior Court for Santa Barbara, Santa Barbara, California.

Nelson, James Monroe, 3089 Richmond Road, Staten Island, New York, convicted on January 29, 1958, in the Supreme Court, Kings County, Brooklyn, New York.

Nelson, Roger Lee, 4225 South 25th Street, Omaha, Nebraska convicted on August 27, 1981, in the United States District Court, Omaha, Nebraska.

Nelson, William Philip, 1344 Grand Avenue, Pacifica, California, convicted on January 21, 1958, in the Superior Court, County of San Francisco, California.

Nesset, John Christian, Post Office Box 214, Port Townsend, Washington, convicted on February 11, 1974, in the Superior Court, Lewis County, Washington.

Newman, Richard Gordon, 1328 Orchard Drive, Brookings, South Dakota, convicted on August 18, 1983, in the United States District Court, Perre, South Dakota.

Nicholson, Arthur James, Route 1, Box 32, Gordo, Alabama, convicted on January 16, 1975, in the United States District Court, Birmingham, Alabama.

Nickson, Ned Tracy, 216 Evergreen Street, Prattville, Alabama, convicted on February 19, 1960, in Cadlo Parish, Louisiana, in the First Judicial District Court, Louisiana.

Nordstrom, James L., 425 Tenth Street, Stambaugh, Michigan, convicted on October 23, 1964, in the United States District Court, Western District of Michigan.

Nordstrom, Joseph Bernard, 102 East Boyington, Iron River, Michigan, convicted on October 23, 1964, in the United States District Court, Western Judicial District of Michigan.

Norris, Merle William, North 2110 Wilbur, Spokane, Washington, convicted on May 31, 1960, in the Superior Court, Spokane County, Washington.

Nunn, John Keith, 1802 Garfield Avenue, Henderson, Kentucky, convicted on March 19, 1979, in the Henderson County Circuit Court, Henderson, Kentucky.

Nussbaum, Dewey K., 9121 Garfield, Raymond, Washington, convicted on June 27, 1980, in the Superior Court, Pacific County, Washington.

Nyberg, Gerald L., 7040 Gartner, Detroit, Michigan, convicted on November 24, 1952, in the District Court, Riley County, Kansas.

Nye, Perry D., Post Office Box 123, Mt. Vernon, Maine, convicted on August 21, 1975, in the Maine Superior Court, Kennebec County, Maine.

Nystrom, Richard D., Route 1, Box 165, Amberg, Wisconsin, convicted on December 13, 1970, in the Wisconsin Circuit Court, Marinette City, Wisconsin.

Oberdorf, Earl Theodore, 2 Green Street, Rushville, New York, convicted on March 27, 1970, in the Ontario County Court, Canadaigua, New York.

O'Halloran, Frank C., Junior, 7220 Thornley Drive, New Orleans Louisiana, convicted on May 14, 1980, in the United States District Court, Eastern District of Louisiana, New Orleans, Louisiana.

Ohnsorg, Joseph William, 21581 Creekside Circle, Lakeville, Minnesota, convicted on December 17, 1980, in the Washington County District Court, Stillwater, Minnesota.

Oldson, Donald Keith, 305 Yeager Avenue, LaGrange, Kentucky, convicted on February 18, 1977, in the Oldham County Circuit Court, LaGrange, Kentucky.

Oliver, Diana D., Post Office Box 541, Rineon Road, Wickenburg, Arizona, convicted on July 22, 1977, in the Superior Court, Phoenix, Arizona.

Olson, Richard Jackson, Southeast 370 Klah Che Min Drive, Shelton, Washington, convicted on December 12, 1977, in the Pierce County Superior Court, Washington.

Ommert, Randy C., 416 Main Street, Funk, Nebraska, convicted on January 10, 1978, in the District Court, Phillips County, Kansas.

O'Neal, William Billy, 2706 5th Street, Phenix City, Alabama, convicted on February 1, 1956, in the Russell County Circuit Court, Phenix City, Alabama.

Oravetz, William M., 133 Washington Street, Bath, Maine, convicted on January 22, 1970, in the Cumberland County Superior Court, Portland, Maine.

Osborn, Gary Kim, 1712 Lake Avenue, Ft. Wayne, Indiana, convicted on July 15, 1974, in the Superior Court, Allen County, Indiana.

Osborne, Melvin, Junior, Post Office Box 204, Fort Gibson, Oklahoma, convicted on May 29, 1968, in the Fourteenth Judicial District Court, Tulsa County, Oklahoma.

Osgood, Alfred Stanwood, East Boston Road, Vinalhaven, Maine, convicted on June 3, 1977, in the United States District Court, Portland, Maine.

Ostenson, Dean Anthony, 315 Dellwood Square, North Landfall, Minnesota, convicted on June 7, 1982, in the Ramsey County District Court, St. Paul, Minnesota.

Pachnik, Michael Anton, 128 20th Avenue North, Hopkins, Minnesota, convicted on February 21, 1979, in the Fourth Judicial District Court, Hennepin County, Minnesota.

Packard, Milan Alton, 1217 East 180 North, Springville, Utah, convicted on May 14, 1979, in the United States District Court, District of Utah.

Padelsky, Robert Paul, 2601 East 3450 North, Layton, Utah, convicted on September 5, 1980, in the United States District Court, Northern Division of Utah.

Pais, Joseph Lawrence, 575 North Peach Street, Booneville, Arkansas, convicted on December 13, 1950, in the Bernalillo County District Court, New Mexico, and on December 30, 1954, in the Circuit Court, St. Louis, Missouri, and also on June 6, 1960, in the Pulaski County Circuit Court, Arkansas.

Pannkuk, Jim Lee, 18595 Fairlawn Avenue, Prior Lake, Minnesota, convicted on June 13, 1969, in the Fifth Judicial District Court, Farebault County, Minnesota.

Papajohn, Nicholas, 54 Coventry Lane, convicted on August 31, 1938, in the Court of Quarter Sessions of the Peace, Philadelphia, Pennsylvania.

Parish, Alvin, Junior, Route 4, Box 141, Mount Pleasant, Texas, convicted on October 21, 1981, in the Eastern District of Texas, Texarkana, Texas.

Parker, Larry Warren, Box 2, Tyrone, Oklahoma, convicted on January 20, 1974, in the District Court, Seward County, Liberal, Kansas.

Parks, James L., Route 9, Box 39, Pine Creek Mobile Home Park, Roanoke, Texas, convicted on April 3, 1968, in the District Court Number 3, Dallas County, Texas; April 22, 1969, in the Eighty-fifth Judicial District Court, Brazos County, Texas, also convicted on June 14, 1972, in the District Court, Brighton Adams County, Colorado.

Parks, Ricky James, Route 1, Box 88–C, Sugar Grove, Virginia, convicted on December 8, 1981, in the Circuit Court, Smyth County, Virginia.

Parks, Thomas Ray, Appletree Apartments, Apartment 301, Post Office Box 855, Sophia, West Virginia, convicted on June 23, 1982, in the United States District Court, Northern District of West Virginia, Parkersburg, West Virginia.

Parks, Wilfred Newman, Post Office Box 633, Chilhonie, Virginia, convicted on March 19, 1984, in the Circuit Court of Smyth County, Virginia.

Parsons, Kip Allen, 16054 North 46th Drive, Glendale, Arizona, convicted on October 7, 1975, in the Circuit Court, Kirksville, Missouri, also convicted on October 29, 1975, in the Circuit Court, Springfield, Missouri.

Parsons, Robert David, 1215 South Spruce Street, Indianapolis, Indiana, convicted on March 31, 1967, in the Criminal Court of Marion County, Indianapolis, Indiana.

Partin, Anthony Ray, 8182 McGuire Drive, Raleigh, North Carolina, convicted on December 16, 1982, in the Wake County Superior Court, Raleigh, North Carolina.

Partin, Porter Cecil, Route 2, Box 4, Bell County, Kentucky, convicted on November 23, 1966, in the United States District Court, London, Kentucky; on May 19, 1977, in the Circuit Court, Pineville Kentucky; on November 27, 1939, in the United States District Court, London, Kentucky, and also on November 27, 1944, in the United States District Court, London, Kentucky.

Pascal, Warren Dana, 955 Pointer Ridge Drive, Gaithersburg, Maryland, convicted on February 4, 1977, in the United States District Court, Baltimore, Maryland.

Pate, Francis Leroy, 134 East Main Street, Cloverport, Kentucky, convicted on September 13, 1972, in the United States District Court, Louisville, Kentucky.

Patrick, Michael Ray, 2580 Holland Road, Scottsville, Kentucky, convicted on April 21, 1967, in the Allen County Circuit Court, Scottsville, Kentucky.

Patterson, Robert D., 233 North Monastery Street, Baltimore, Maryland, convicted on August 16, 1984, in the Municipal Court of Baltimore, Baltimore, Maryland.

Payment, Donald Ledgiar, 4633 Solway Road, Duluth, Minnesota, convicted on November 20, 1979, in the Sixth Judicial District Court of St. Louis County, Duluth, Minnesota.

Payne, L.B., 709 Hardin Street, Vine Grove, Kentucky, convicted on December 17, 1982, in the United States District Court, Louisville, Kentucky.

Peaco, Daniel Webster, Junior, 1209 Maulsby Court, Baltimore, Maryland, convicted on February 15, 1977, in the United States District Court, Maryland, and on May 19, 1977, in the District Court of Maryland, Baltimore, Maryland.

Pearl, Jacob, 12096 Abby Road, Philadelphia, Pennsylvania, convicted on January 22, 1945, in the Court of Common Pleas, Delaware County, Pennsylvania.

Pec, Edward Anthony, Junior, 10716 Direct River Drive, Coon Rapids, Minnesota, convicted on January 7, 1971, in the Hennepin County District Court, Minneapolis, Minnesota, also convicted on September 29, 1978, in the Anoka County District Court, Coon Rapids, Minnesota.

Peeler, Chester Baron, 1305 South Dekalb Street, Shelby, North Carolina, convicted on May 19, 1961, in the Superior Court of Newton, North Carolina.

Pendergraph, Robert Adolphus, 307 Country Club Drive, Durham, North Carolina, convicted on July 13, 1964, in the Eastern District, Wilmington, North Carolina.

Pendleton, Ray Bennett, Route 2, Box 216, Meadows of Dan, Virginia, convicted on September 5, 1963, in the Circuit Court, Patrick County, Virginia.

Pennington, James Woodrow, HC 88, Box 308, Williamsburg, Kentucky, convicted on May 28, 1976, in the Whitley Circuit Court, Williamsburg, Kentucky.

Perkins, Douglas K., Post Office Box 2, Forest Hill, Louisiana, convicted on August 16, 1974, in the Ninth Judicial District Court, Parish of Rapides, Louisiana.

Perrott, Richard V., South Stream Road, Bennington, Vermont, convicted on June 12, 1978, in the United States District Court, Burlington, Vermont.

Peters, Jonathan Brooks, 21 90th Lane, Northeast, Blaine, Minnesota, convicted on March 9, 1981, in the Ramsey County District Court, Second Judicial District, St. Paul, Minnesota.

Peters, Paul Wayne, Post Office Box 168, Tyner, Jackson Corute, Kentucky, convicted on October 10, 1966, in the Jackson County Circuit Court, McKee, Kentucky.

Peters, William Scott, Rural Route 4, Albion, Indiana, convicted on January 20, 1977, in the Noble Circuit Court, Albion, Indiana.

Peterson, Alfred Martin, 3009 Darbo Drive #1, Madison, Wisconsin.

convicted on July 3, 1969, in the Dane County Circuit Court, Madison, Wisconsin.

Peterson, Gene Alvin, East 2228 Bismark, Spokane, Washington, convicted on April 11, 1963, in the District Court, Idaho.

Peterson, Kenneth Dean, 1109 Southwest 5th Street, Aledo, Illinois, convicted on July 30, 1976, in the Circuit of the Fourteenth Judicial Court, County of Mercer, Illinois.

Peterson, Randy Lee, Post Office Box 469, Eureka, Montana, convicted on April 6, 1981, in the Lincoln County District Court, Montana.

Petrakis, Gregory, 5015 Gloucester Avenue, Springfield, Virginia, convicted on September 25, 1964, in the United States District Court, Alexandria, Virginia.

Pettus, Alvin Hershel, 157 Bynum/Coldwater Road, Eastaboga, Alabama, convicted on March 18, 1985, in the United States District Court, Birmingham, Alabama.

Phelps, William Calvin, Route 6, Box 83, Danville, Virginia, convicted on May 13, 1975, in the City Circuit Court, Danville, Virginia, also convicted on June 1, 1981, in the Pittsylvania County Circuit Court, Chatham, Virginia.

Phenneger, Randy Joe, 8912 W. Deschutes, Kennewick, Washington, convicted on November 30, 1982, in the Yakima County Superior Court, Washington.

Pierce, Michael Keith, Senior, 601 West 7th Street, Jerome, Idaho, convicted on August 3, 1976, in the District Court, Jerome County, Idaho; and on October 1, 1976, in the District Court, Idaho County, Idaho.

Pierce, Robert Leroy, Route 1, Box 1363—1363 Knox Road, Benton City, Washington, convicted on April 20, 1982, in the County Superior Court of Washington, Yakima County, Washington.

Pipes, David Stephen, 315 Cedar Tree Drive, Thibodaux, Louisiana, convicted on May 11, 1983, in the United States District Court, Eastern District of Louisiana.

Pitman, Larry Dale, Route 4, Box 38, Pulaski County, Somerset, Kentucky, convicted on November 18, 1981, in the Superior Court, Liberty County, Hinesville, Georgia.

Pitoniak, Richard Stephen, 135 High Street, Jessup, Pennsylvania, convicted on January 23, 1969, in the Luzerne County Court, Pennsylvania.

Pitts, Stuart Lyman, 4373 South Manorwood Drive, Traverse City, Michigan, convicted on May 14, 1974, in the Michigan Circuit Court of Ingham, and July 7, 1981, in the Brevard County Circuit Court, Melbourne, Florida.

Plyler, Robert Andrew, Route 11, Box 150, Salisbury, North Carolina, convicted on August 11, 1978, in the Jefferson County Court, Birmingham, Alabama.

Podgorny, Russell Anthony, 1150 Midway Drive, El Cajon, California, convicted on September 13, 1978, in the United States District Court, Los Angeles, California.

Poe, Isham, 13145 Stephenson Street, Anchorage, Alaska, convicted on June 29, 1976, in the United States District Court, District of Alaska.

Ponds, Anthony Lloyd, Route 3, Box 335, Idabel, Oklahoma, convicted on January 10, 1978, in the United States District Court, Eastern Oklahoma.

Pope, Wayne Douglas, 6106 Coniston Avenue, Richmond, Virginia, convicted on November 8, 1976, in the Circuit Court, Richmond, Virginia.

Porter, Powell Douglas, 3 Northeast 161st Street, Miami, Florida, convicted on March 9, 1971, in the Court of Records, Ft. Lauderdale, Broward County, Florida; on February 12, 1976, and on February 18, 1976, in the United States District Court, Ft. Lauderdale, Florida.

Potebnya, Walter N., 4522 18th Avenue, Northeast, Seattle, Washington, convicted on August 24, 1961, in the Superior Court, Kittitas County, Washington.

Poulin, Albert Joseph, 52 South Factory Street, Skowhegan, Maine, convicted on July 28, 1978, in the Somerset County Superior Court, Skowhegan, Maine.

Powell, Dwain E., 1850 Waggoners Gap Road, Carlisle, Pennsylvania, convicted on September 9, 1964, in the United States District Court, Middle District of Pennsylvania.

Powell, Jack Arnold, 1412 East Cedar Lane, Madison, Tennessee, convicted in 1949, Atlanta, Georgia; in 1950 in the Federal Court, Atlanta, Georgia; in 1954, in the Federal Court, Oklahoma City, Oklahoma; in 1958, in Wilmington, North Carolina; and in 1971, in Sumner County, Tennessee.

Poynter, Marvin Keith, Route 3, Box 66, Cave City, Kentucky, convicted on April 5, 1982, Barren County Circuit Court, Glasgow, Kentucky.

Pracht, Andrew White, 6 Jacana Road, Hilton Head Island, South Carolina, convicted on May 3, 1983, in the United States District Court, South Carolina.

Preiner, James Gregory, 19221 Keystone Avenue North, Forest Lake, Minnesota, convicted on January 19, 1981, in the United States District Court, St. Paul, Minnesota.

Prestianni, Kenneth William, 3201 Lawnview Avenue, Baltimore, Maryland, convicted in 1966, in the Baltimore City Circuit Court, Baltimore, Maryland.

Price, Larry Neil, Route 2, Box 629, Stoney Point, North Carolina, convicted on December 12, 1978, in the United States District Court, Columbia, South Carolina.

Price, Michael William, 700 East 8th Street, Apartment 1102, Kansas City, Missouri, convicted on May 4, 1976, in the Circuit Court, Clayton, Missouri.

Price, William Eugene, Route 1, Box 540, Appomattox, Virginia, convicted on November 19, 1974, in the Prince Edward County Circuit Court, Prince Edward County, Virginia.

Priddy, Johnie Norman, 721 Pleasant Hill Road, Upton, Kentucky, convicted on April 12, 1977, in the United States District Court, Bowling Green, Kentucky.

Pridemore, Timothy, Box 110, Bob White, West Virginia, convicted on March 11, 1980, in the Circuit Court of Boone County, Madison, West Virginia.

Priesman, Jack Frederick, Post Office Box 202, Narrow Lake Road, Charlotte, Michigan, convicted on June 22, 1976, in Eaton County, Michigan.

Pritchett, Earl Lamar, Route 7 Box 430, Albertville, Alabama, convicted on November 20, 1984, in the United States District Court, Birmingham, Alabama.

Pruett, Robert Oney, 2839 Central Avenue, Apartment D–1, Memphis, Tennessee, convicted on November 25, 1981, in the United States District Court, Memphis, Tennessee.

Pryor, Edward Galan, 207 Lafayette, Gladewater, Texas, convicted on June 29, 1955, in the Bexar County District Court, Texas.

Pryor, Joe, 13342 Holley Park, Houston, Texas, convicted in 1967 and 1970, in the District Court of Cameron County, Texas.

Puchlov, Boris, 6527 24th Avenue Northwest, Apartment 2, Seattle, Washington, convicted on March 16, 1961, in the King County Superior Court, Washington.

Purdy, Larry Wayne, Route 2, Box 2129, Wapato, Washington, convicted on April 14, 1978, in the Superior Court, Yakima County, Washington.

Purnell, Duane E., 1425 Giddings, Southeast Grand Rapids, Kent County, Michigan, convicted on July 12, 1971, in the Circuit Court, Kent County, Michigan.

Puryear, Robert Ancel, Route 1, Kuttawa, Kentucky, convicted on March 28, 1979, in the Livingston Circuit Court, Smithland, Kentucky, April 6, 1979, August 3, 1979, and April 6, 1983, in the Lyon Circuit Court, Eddyville, Kentucky.

Pyatt, Billy Miller, 608 State Street, Marion, North Carolina, convicted on August 4, 1966, in the United States

District Court, Western Judicial District of North Carolina.

Quigley, Patrick James, 8009 Irving Avenue North, Brooklyn Park, Minnesota, convicted on February 17, 1981, in the Hennepin County District Court, Minneapolis, Minnesota.

Quinn, Merle Fred, E16013 Broad Avenue, Spokane, Washington, convicted on June 22, 1981, in the Superior Court, Spokane, Washington.

Rachal, Willie James, 29441 Oakwood, Inkster, Michigan, convicted on April 29, 1985, in the Third Judicial Circuit Court, Wayne County, Michigan.

Radford, Eugene, 1315 South 6th, Apartment B, Springfield, Illinois, convicted on October 2, 1957, in the Ninth Judicial District, Illinois.

Radford, Joel Glen, Route 1, Box 12, Salmon, Idaho, convicted on January 11, 1982, in the First Judicial District Court, Idaho.

Radke, Robert Earl, 13613 Crewe Street, Van Nuys, California, convicted on December 14, 1981, in the United States District Court, Central District of California.

Rakestraw, Jack William, 1304 Case Avenue, Attalla, Alabama, convicted on August 25, 1982, United States District Court, Alabama.

Rand, Matthew Michael, 50300 Highway 245, Badger, California, convicted on January 22, 1988, in the Superior Court, Santa Barbara County, California.

Rangel, Eligio Aquilar, 233 Buena Vista Drive, El Paso, Texas, convicted on September 3, 1976, in the United States District Court, Western District of Texas.

Rapelje, Lawrence Barkley, 6813 Aurelius Road, Lansing, Michigan, convicted on June 30, 1971, in the Ingham County Court, State of Michigan.

Ratcliff, Dana Loa, Route 1, Box 117B, Pulaski, Virginia, convicted on November 20, 1978, in the Circuit Court, Pulaski County, Virginia.

Rathbone, Johnnie Alfred, 7160 Custer Street, Hollywood, Florida, convicted on October 8, 1974, in the State Court of New York, Newburgh, New York.

Ray, Jerry Clyde, 24109 East Huron, River Drive, Rockwood, Michigan, convicted in 1972, in the Scotland County Circuit Court, North Carolina.

Ray, Raymond Glen, 606 Ewing Drive, Nashville, Tennessee, convicted on May 25, 1983, in the United States District Court, Nashville, Tennessee.

Ream, John Melvin, 1719 Black Oak Drive, Plainfield, Indiana, convicted on July 15, 1983, in the United States District Court, Southern Judicial District of Indiana, Indianapolis, Indiana.

Reed, Charles Lee, 1501 Flamingo Drive, Montgomery, Alabama, convicted on December 2, 1975, in the Montgomery County Circuit Court, Montgomery, Alabama.

Reed, Peter Ross, 5224 East 17th Street, Anchorage, Alaska, convicted on October 23, 1979, in the King County Superior Court, Washington.

Reid, Christopher Peter, 803 Apartment D, Englewood Street, Greensboro, North Carolina, convicted on January 31, 1979, in the Superior Court of Rockbridge County, Staunton, Virginia.

Reid, Timothy T., 2615 Idlewild Boulevard, Vinton, Virginia, convicted on September 5, 1975, in the Circuit Court, Bedford County, Virginia, and on February 9, 1976, in the Circuit Court, Franklin County, Virginia.

Reierson, Kevin James, 512 Oak Street, Farmington, Minnesota, convicted on July 27, 1982, in the First District Court, Dakota County, Minnesota.

Reinisch, Joseph Frank, Rural Delivery 1 Box 717, Lenhartsville, Pennsylvania, convicted on September 25, 1968, in the Court of Common Pleas of Lehigh County, Criminal Division, Allentown, Pennsylvania.

Remus, Bradley Alan, 1685 Scully Road, Mount Pleasant, Michigan, convcited on June 27, 1980, in the Circuit Court, Macomb County, Michigan.

Rentfrow, Rodney Byrne, 142 Price Court, Tracy, California, convicted on June 9, 1965, in the Superior Court of King County, Washington.

Ressell, William Harold, 1725½ Lincoln Street, Whitehall Wisconsin, convicted on February 6, 1979, in the Trempeleau County Circuit Court, Whitehall, Wisconsin.

Reynolds, Billy Wayne, Post Office Box 22, Cookville, Texas, convicted on October 20, 1981, in the United States Eastern Court, Eastern Texas.

Reynolds, David Paul, 27 Westbriar Place, Madison Heights, Virginia, convicted on May 14, 1979, in the Campbell County Circuit Court, Rustburg, Virginia.

Reynolds, Jon Roger, 211 Wyntfield Drive, Lewisville, North Carolina, convicted on February 11, 1981, in the United States District Court, Charlotte, North Carolina.

Reynolds, Kevin Douglas, Route 1, White Street, Kendall, Wisconsin, convicted on July 29, 1981, in the Oneida County Court, Rhinelander, Wisconsin.

Reynolds, William Oren, 2000 West 92nd Avenue, Apartment 9, Denver, Colorado, convicted on November 21, 1980, in the Superior Court, Benton County, Washington.

Rhoads, Robert Michael, 1321 Applewood Lane, Newton, Kansas, convicted on January 11, 1982, in the United States District Court, Kansas.

Rhoden, Freddie Randall, Route 1, Box 125, Starke, Florida, convicted on December 10, 1974, in the Bradford County Circuit Court, Bradford County, Florida.

Rhyne, Ralph Richard, Post Office Box 64, Plumtree, North Carolina, convicted on January 25, 1955, in the Western District of Washington, Seattle, Washington, and on March 29, 1982, in the Avery County Superior Court, Newland, North Carolina.

Rice, Richard Allen, 102½ South High Street, Covington, Ohio, convicted on June 15, 1981, in the Common Pleas Court, Miami County, Ohio.

Ricetto, Vittorio, 20938 Whitehall Terrace, Queens Village, New York, convicted on May 9, 1984, in the Eastern District of New York.

Richards, Thomas Allard, Post Office Box 513, A–F Route 1, Chrisney, Indiana, convicted on December 23, 1980, in the United States District Court, Southern District of West Virginia.

Richardson, Clayton, 1246 East Mt. Airy Avenue, Philadelphia, Pennsylvania, convicted on December 31, 1981, in the Common Pleas Court of Philadelphia, Municipal Court, State of Pennsylvania.

Richardson, Leon, 522 10th, Snyder, Oklahoma, convicted on November 29, 1983, in the United States District Court, Western Judicial District of Oklahoma.

Richardson, Ralph Lee, Box 95, Franklin, Missouri, convicted on September 13, 1954, in the Circuit Court of Morgan County, Versailles, Missouri.

Riddle, Edwin Crosby, Route 6, Box 296, Prattville, Alabama, convicted on September 8, 1981, in the United States District Court, Middle District, Montgomery, Alabama.

Riddleberger, Donald Lynn, 3932 Meadow Lark Road, Southwest, Roanoke, Virginia, convicted on June 2, 1976, in the Circuit Court of Roanoke County, Salem, Virginia.

Rideout, Gary Lamont, 3431 West Kilbourn, Milwaukee, Wisconsin, convicted on May 18, 1975, in the Circuit Court One, Milwaukee, Wisconsin.

Rigby Myron K., 2605 Cecil Drive, Salt Lake City, Utah, convicted on May 7, 1979, in the United States District Court, Central Division of Utah.

Riley, William Franklin, Junior, 2808 Roselawn Drive, Natchez, Mississippi, convicted on September 4, 1975, in the State Hospital Whitfield, Mississippi.

Ritchie, Melvin Hensel, Route 2, Box 255, Grottoes, Virginia, convicted on March 6, 1959, in the Circuit Court, Fairfax County, Virginia.

Rivenbark, Charles Leonard, Route 3, Box 48–S, Waxhaw, North Carolina, convicted October 25, 1977, in the United States District Court, Eastern District of North Carolina.

Robbins, Gary Ambrose, 24498 37th Street, Gobles, Michigan, convicted on October 20, 1969, in the Circuit Court, Kalamazoo, Michigan.

Roberts, Larry Dean, 1205 South 10th Avenue, Yakima, Washington, convicted on July 14, 1978, in the Superior Court, Yakima County, Washington.

Robertson, Robert Dale, 4343 East Fifth, Anchorage, Alaska, convicted on December 6, 1978, in the Superior Court, First Judicial District, Alaska.

Rochelle, Robert Erwin, 7165 Riley Street, Apartment 308, Westminister, Colorado, convicted on February 16, 1982, in the Circuit Court, York County, Virginia.

Rocke, Steven Michael, Rural Route 1, Box 100, Canaan, New Hampshire, convicted on March 27, 1971, in the Grafton Superior Court, North Haverhill, New Hampshire.

Rodman, Neil Richard, 28 Allegheny Avenue #2112, Towson, Maryland, convicted on March 14, 1978, in the Baltimore City Circuit Court, Baltimore, Maryland.

Rodriguez, Greg George, 7163 Lincoln Blvd, Polermo, California, convicted on October 9, 1980, in the Superior Court, Butler County, California.

Rodriguez, Hector Reynaldo, Junior, 204 Wedgewood, Laredo, Texas, convicted on October 20, 1983, in the District Court, Bexar County, Texas.

Rogers, Michael Edwin, 305 North 3rd Street, McCall, Idaho, convicted on March 29, 1979, in Gem County, Emmett, Idaho.

Rogers, Walter L. Senior, Route 1, Box 738, Laurinburg, North Carolina, convicted on February 17 1982, in the Scotland County Superior Court, Laurinburg, North Carolina.

Roivas, Kenneth Evald, 796 Harry Paul Drive, Lake Orion, Michigan, convicted in July 1962, in Common Pleas Court, Franklin, Ohio.

Romano, Joseph Louis, 4624 Pike Drive, Metairie, Lousiana, convicted on November 9, 1983, in the United States District Court, Eastern Judicial District of Louisiana.

Rose, Bobby Ralph, 416 South Palisades Drive, Signal Mountain, Tennessee, convicted on June 24, 1980, in the United States District Court, Nashville, Tennessee.

Rosensohn, Charles F., Route 1, Box 9A, Dewitt, Virginia, convicted on January 9, 1978, in the Circuit Court, Louisa County, Virginia.

Rosenstein, Allen A., 11729 Trophy Court, Germantown, Maryland, convicted on August 17, 1966, in the Peoples Court, Montgomery County, Maryland.

Rossetti, James L., 606 Metropolitan Avenue, Brooklyn, New York, convicted on January 6, 1967, in the United States District Court, District of New Jersey.

Ross, Christy Kay, Route 2, Box 2827–B Lechelt, Kennewick, Washington, convicted on December 9, 1983, in the Benton County Superior Court, State of Washington.

Ross, Richard Allen, Route 2, Box 2827–B Lechelt, Kennewick, Washington, convicted on November 9, 1983, in the Benton County Superior Court, State of Washington.

Roth, Frederick J., Junior, 313 Ormond Oaks Drive, Destrehan, Louisiana, convicted on October 17, 1984, in the United States District Court, Eastern District of Louisiana.

Roth, Isadore, 935 Ideal Way, Charlotte, North Carolina, convicted on April 15, 1971, in the United States District Court, Western District of North Carolina.

Rothschild, Ronald Stephen, 4852 Montgomery Road, Ellicott City, Maryland, convicted on December 18, 1968, in the Baltimore County Circuit Court, Baltimore, Maryland.

Rowland, Danny Alison, Route 7, Box 228C, Tupelo, Mississippi, convicted on November 29, 1968, in the Circuit Court, Lee County, Mississippi.

Roy, David Russell, St. Julien Road, Broussard, Louisiana, convicted on September 6, 1979, in the Thirty-eigth Judicial District Court, Cameron Parish, Louisiana.

Roy, James Ferrier, Route 2, Box 389, Mansura, Louisiana, convicted on May 17, 1982, in the United States Court, Alexandria Division, Western District of Louisiana.

Roy, John Williams, Saint Julian Road, Broussard, Louisiana, convicted on September 6, 1979, in the Thirty-eight Judicial District Court, Cameron Parish, Louisiana.

Roy, Samuel Curtis, 110 Cherokee, Jeffersonville, Indiana, convicted on October 19, 1981, and on March 7, 1984, in the United States District Court, Louisville, Kentucky.

Rubino, Louis J., 70 Admiral Street, Park Jefferson, New York, convicted on September 25, 1958, in the Superior Court, Queens, New York.

Rudeen, Carl William, 13308 184th Avenue Northeast, Woodinville, Washington, convicted on October 26, 1982, in the Superior Court, King County, Washington.

Russell, Hulon C., Route 2, Box 256, Hardyville, Kentucky, convicted on October 5, 1983, in the United States District Court, Bowling Green, Kentucky.

Russell, Leonard E., 55 Lower Main Street, Norway, Maine, convicted on February 20, 1969, in the Superior Court, South Paris, Maine.

Russo, Robert Orest, 124 West 60th Street, Apartment 31L, New York, New York, convicted on January 28, 1977, in the United States District Court, Eastern District of New York.

Rybak, John J., Junior, Route 2, Box 325, Buttermeet, Wisconsin, convicted on May 17, 1961, in the Ashland County District Court, Ashland, Wisconsin.

Ryder, David R., 209 Stratford Avenue, Fredericksburg, Virginia, convicted on September 12, 1963, in the Circuit Court, Fredericksburg, Virginia.

Sakahashi, Clayton Shigechi, Post Office Box M, Hanapepe, Hawaii, convicted on November 28, 1980, in the Circuit Court, Fifth Circuit of Hawaii.

Salmon, Walter Lawrence, Junior, 4711 Edinborough Road, Greensboro, North Carolina, convicted on March 23, 1981, in the Eastern Judicial District, Raleigh, North Carolina.

Samples, Don Terry, Route 2, Horsehoe Bend Road, Maysville, Georgia, convicted on September 11, 1972, in the Superior Court, Jackson County, Georgia.

Samuels, Richard Lee, 45 Trails West, Columbia, Missouri, convicted on March 5, 1973, in the Circuit Court, Boone County, Missouri.

Sandberg, Marvin Theodore, Route 1, Box 219, Ormsby, Minnesota, convicted on August 3, 1981, in the Watoncvan County District Court, Saint James, Minnesota.

Sanders, Kenneth Eugene, Post Office Box 509, Bowling Green, Kentucky convicted on September 22, 1980, in the Edmonson County Circuit Court, Brownsville, Kentucky.

Sanford, John Monroe, 210 North Shelby Street, Wetumpka, Alabama, convicted on September 29, 1984, in the United States District Court, Middle District of Alabama, Montgomery, Alabama.

Sapp, Joseph Daniel, General Delivery, Camp Sherman, Oregon, convicted on June 26, 1969, in the Spokane County Superior Court, Washington.

Sasser, Herlon Kenneth, Route 1, Box 1191, Trenton, Florida, convicted on October 14, 1968, in the Highland County Circuit Court, Sebring, Florida.

Sawyer, Miles George III, 313 Carlton Street, Chapel Hill, North Carolina, convicted on December 30, 1968, in the Burlington Middle Judicial District Court, State of North Carolina.

Saylor, Richard Allen, 10730 Green Valley Road, Union Bridge, Maryland, convicted on September 30, 1975, in the

Frederick County District Court, Frederick County, Maryland.

Schaefer, Albert William, Route 2, Box 145A, Fulton, Missouri, convicted on February 21, 1978, in the Circuit Court of Callaway County, Fulton, Missouri.

Schaeffer, Teral K., 575 3rd South, Ucon, Idaho, convicted on June 21, 1983, in the District Court, Booneville County, Idaho.

Schick, Thomas Wayne, 1212 Dennis Street, Chippewa Falls, Wisconsin, convicted on May 9, 1978, in the Circuit Court, Dunn County, Menomonie, Wisconsin.

Schilling, Kevin Marc, 116 Stephen Place, North Syracuse, New York, convicted on October 29, 1975, in the Onondaga County Court, Syracuse County, New York.

Schmidt, Frederick J., 105 North Golview, Apartment 1, Lake Worth, Florida, convicted on July 8, 1981, in the United States District Court, Middle District of Georgia.

Schneider, Randall Claus, 1295 Dodge Street, Arlington, Nebraska, convicted on November 15, 1982, in the District Court, Blair, Nebraska.

Schoen, Stanton J., Rural Route 2, Cawker City, Kansas, convicted on April 4, 1979, in the District Court, Mitchell County, Kansas.

Schoepf, John A., Junior, 5 Lakewood Drive, Columbus, Nebraska, convicted on March 5, 1981, in the United States District Court, Judicial District of Nebraska.

Schultz, Joseph Carl, 442 Rosendale, Beaver Dam, Wisconsin, convicted on September 11, 1978, in the Circuit Court of Dodge County, Beaver Dam, Wisconsin.

Schultz, Louis John, 3805 Parkside Drive, Baltimore, Maryland, convicted on February 19, 1970, in the Baltimore City Criminal Court, Maryland.

Schulz, Peter Erich, 2135 Michigan Avenue, Detroit, Michigan, convicted on February 3, 1964, in the Circuit Court, County of Marquette, Michigan.

Schutter, Francis Prospect, Post Office Box 1275, Mattawa, Washington, convicted on November 23, 1981, in the Superior Court, Kittitas County, Washington.

Schwartz, Leonard C., 2474 Rue de Cannes, Costa Mesa, California, convicted on February 23, 1961, in the United States District Court, Central District of California.

Schwarz, William James, 501 Main Street, Norwalk, Wisconsin, convicted on February 21, 1983, in the Circuit Court of Monroe County, Sparta, Wisconsin.

Scott, Bobby Ray, 786 Dry Creek Road, Goodlettsville, Tennessee, convicted on June 28, 1978, in the United States District Court, Nashville, Tennessee.

Scott, Claude Virgil, 151 Glenwood, Martin, Tennessee, convicted on August 25, 1982, in the United States District Court, Tennessee.

Scott, Stewart W., 1011 McCormick Street, Greensboro, North Carolina, convicted on November 15, 1982, and on May 5, 1982, in the Guilford County Superior Court, Greensboro, North Carolina.

Scozzari, Charles John, Junior, 1184 Shroyer Circle, Jacksonville, North Carolina, convicted on December 20, 1984, in the General Court Martial, United States Army, Wuerzburg, Germany.

Scully, Robert Timothy, 32191 Albion Ridge Road, Albion, California, convicted on March 8, 1974, in the United States District Court, Northern, California.

Sears, Bryan, Junior, Route 2, Bell Plaine, Kansas, convicted on July 18, 1958, in the Sixteenth Judicial District Court, Ford County, Kansas and on June 5, 1959, in the Twenty-sixth Judicial District, Seward County, Kansas.

Sebree, Wilbert R., Junior, RFD 16, Box 277, Bedford, Indiana, convicted on February 14, 1959, in the Circuit Court, Boone County, Lebanon, Indiana.

Seger, Glenn Frederick, 2244 North 22nd Street, Sheboyean, Wisconsin, convicted on March 5, 1984, in the United States District Court, Eastern District of Milwaukee, Wisconsin.

Segneri, Thomas A., 2039 West Wilson Avenue, Peoria, Illinois, convicted on February 23, 1983, in the Illinois Circuit Court, Peoria, Illinois.

Seibert, Donald Mark, 841 Maryland Avenue, Hagerstown, Maryland, convicted on March 6, 1978, in the District Court of Maryland, Washington County, Maryland.

Seiter, Harry Norman, 532 Perimeter Drive, Erlanger, Kentucky, convicted on November 20, 1978, in the United States District Court, Covington, Kentucky, and on January 24, 1980, in the United States District Court, Covington, Kentucky.

Sellers, William Gordon, Route 1, Box 1989, Laurel, Mississippi, convicted on July 12, 1983, in the United States District Court, Hattiesburg, Mississippi.

Sessler, Phillip Matthew, Route 1, Box 129A, Centralia, Missouri, convicted on September 8, 1977, in the Montgomery County, Circuit Court, Missouri, and on October 4, 1976, in the Callaway County Circuit Court, Missouri.

Seymour, Wayne David, 603–B Broadway, Santa Cruz, California, convicted on July 23, 1976, in the Somerset City Court, New Jersey.

Shaker, Albert Junior, 18132 Bennett Road, North Royalton, Ohio, convicted on January 26, 1979, in the United States District Court, Northern District of Ohio.

Shalley, Carl Eugene, 4770 Northwest Maple Avenue, Redmond, Oregon, convicted on March 29, 1983, in the South Bay Judicial District Court, San Diego, California.

Shannon, Ralph Charles, North 1313 Ruby, Spokane, Washington, convicted on October 31, 1979, in the Superior Court, Spokane, Washington.

Sharits, Richard Dale, 3401 West Lisbon, Phoenix, Arizona, convicted on December 18, 1980, in the Superior Court, Phoenix, Arizona.

Sharits, Sheila Rae, 3401 West Lisbon, Phoenix, Arizona, convicted on December 18, 1980, in the Superior Court, Phoenix, Arizona.

Sharkey, Edward Michael, Junior, 11 Hillside Road, Wilmington, Delaware, convicted on June 27, 1979, in the Court of Common Pleas, New Castle County, Delaware.

Sharpe, Allen Nelson, 3049 Laurel Lane, Blowing Rock, North Carolina, convicted on October 30, 1975, in the United States District Court, Raleigh, North Carolina.

Shaw, Terry Dennis, 9191 Gerber Road, Sacramento, California, convicted on September 14, 1967, in the Municipal Court of Sacramento, California.

Shearer, William Eugene, 6540 North Central Avenue, Phoenix, Arizona, convicted on May 28, 1956, in the United States District Court, Phoenix, Arizona.

Sheetz, Robert Michael, Rural Delivery 1, Box 575, Washington Boro, Pennsylvania, convicted on May 17, 1976, in the Commonwealth County Court, Lancaster, Pennsylvania.

Sheffield, Richard Rentz, 221 Brownlea Street, Walterboro, South Carolina, convicted on May 14, 1973, in the Calleton County Court, Walterboro, South Carolina.

Sheldon, Leslie Warren, Rural Delivery 1, Box 2772, Fair Haven, Vermont, convicted on September 26, 1985, in the District Court of Rutland County, Vermont.

Shelton, Cathie Jo, Post Office Box 1725, Whitney, Texas, convicted on June 25, 1984, Sixty-sixth Judicial District, Hill County, Texas.

Shelton, Jerry Wayne, Highway 40, Box 1374, Round "O", South Carolina, convicted on October 20, 1978, in the Court of General Sessions, Charleston County, Charleston, South Carolina.

Shepard, Charles Brian, 3120 North 43rd Avenue, Phoenix, Arizona, convicted on August 17, 1979, in the

Superior Court, Maricopa County, Arizona.

Shepp, Carl Richard, 313 South Mineral Street, Keyser, West Virginia, convicted on April 15, 1988, in the United States District Court, Elkins, West Virginia.

Sherman, James Robert, 6772 Cloud Leap Court, Columbia, Maryland, convicted on November 10, 1982, in the United States District Court, Baltimore, Maryland.

Shew, Douglas Eugene, Route 2 Box 545 A, Wilkesboro, North Carolina, convicted on August 17, 1978, in the United States District Court, Wilkesboro, North Carolina.

Shiers, Eddie Guy, Post Office Box 175, Delta, Louisiana, convicted on March 25, 1988, in the Circuit Court, Warren County, Vicksburg, Mississippi.

Shindledecker, Larry Allen, Rural Delivery 1, Falls Creek, Pennsylvania, convicted on June 30, 1981, in the Court of Common Pleas, Clearfield County, Pennsylvania.

Shingler, Fredrick Nelson, Rural Delivery 1, 6197 Stevens Road, Homer, New York, convicted on May 23, 1980, in the Cortland County Court, Cortland, New York.

Shipley, Ray D., Route 4, 4715 Old Glasson Road, Scottsville, Kentucky, convicted on July 23, 1981, in the United States District Court, Bowling Green, Kentucky.

Shiver, Howard Gerald, Route 1, Box 130, Pittsview, Alabama, convicted on August 13, 1968, in the Muscogee County Superior Court, Columbus, Georgia.

Shonkwiler-Martin, Willa Mae, Route 2, Box 352, Hackensack, Minnesota, convicted on May 23, 1984, in the United States District Court, Fourth Division, Minneapolis, Minnesota.

Short, Wayne, Rural Route 3, Box 172, Berea, Kentucky, convicted on November 1, 1976, in the Madison County Circuit Court, Richmond, Kentucky.

Shreckengast, Calvin Lee, Post Office Box 35, Woodward, Pennsylvania, convicted on July 28, 1982, in the County Court, Centre Cocenty, Pennsylvania.

Shupp, Benjamin Franklin, 1112 West Washington Street, Post Office Box 941, Hagerstown, Maryland, convicted September 30, 1976, in the District Court of Maryland, Washington County.

Shurtz, Gregory Lane, 20435 15th Avenue South, Seattle, Washington, convicted on July 29, 1974, in the Superior Court, Thurston, County, Washington.

Siebert, Ronald, 414 Pennsylvania Avenue, Ness City, Kansas, convicted on December 14, 1961, in the United States District Court, Wichita, Kansas.

Sifford, Terry Linwood, Post Office Box 701, Ridgeway, Virginia, convicted on July 27, 1977, in the Circuit Court, Henry County, Virginia, and June 14, 1976, in Glendale, California.

Siggs, Roland William, 10218 Northeast 143rd Place, Bothell, Washington, convicted on June 6, 1983, in the United States District Court, Eastern Judicial District of Washington.

Silver, Melvin Dale, 504 South 15th Street, Yakima, Washington, convicted on December 26, 1974, in the Superior Court, Yakima County, Washington.

Simon, Blondie Rosettler, Route 1, Box 129A, Camden, South Carolina, convicted on December 15, 1983, in the United States District Court, Columbia, South Carolina.

Simms, Marmaduke II, 9 Manistee Lane, East Islip, New York, convicted on December 1, 1977, in the Suffolk County Supreme Court, Hauppauge, New York.

Simpson, Bennette Preston, 3800 Cavalier Drive, Winston-Salem, North Carolina, convicted on May 7, 1975, in the United States District Court, Winston-Salem, North Carolina.

Simpson, James Larry, 374 East Choctaw, Flagstaff, Arizona, convicted on May 26, 1982, United States District Court, Miami, Florida.

Simpson, Phillip Leon, 509 Bunker Road, Mount Airy, North Carolina, convicted on February 25, 1982, in the Surry County Superior Court, Dobson, North Carolina.

Simpson, Timothy King, Route 2, Box 449, Anner Road, Carriere, Mississippi, convicted on March 27, 1974, in the Orleans Parish Criminal Court, Louisiana.

Sineath, Thomas Keith, 11355 Princess Lane, Jacksonville, Florida, convicted on July 18, 1978, in the United States District Court, Middle District of Florida, Jacksonville, Florida.

Singer, Richard Charles, 318 Regent Street, Lansing, Michigan, convicted on October 29, 1965, in the Circuit Court of Ingham County, Michigan.

Sipes, Ronald Lee, Rural Route 1, Box 41, Manter, Kansas, convicted on March 17, 1982, in the United States District Court, Wichita, Kansas.

Siples, William Charles, Lot 85, Southern Pines Mobile Park, 926 U.S. 301, Bradenton, Florida, convicted on September 18, 1981, in the United States District Court, Middle Judicial, District of Florida.

Sisk, Michael David, 115 Yost Street, Manassas Park, Virginia, convicted on December 22, 1978, in the Circuit Court of Fairfax County, Virginia.

Sisk, Paul Herman, 237 Lincoln Street, High Shoals, North Carolina, convicted on June 15, 1979, in the Gaston County Superior Court, Gastonia, North Carolina.

Skipper, Edward Robert, 222 Park Avenue, Reading, Pennsylvania, convicted on August 23, 1962, in the County Court, Reading, Pennsylvania.

Skipper, James Jerry, Route 6, Harrison Road, Dothan, Alabama, convicted on March 23, 1961, in the United States District Court, Middle District of Alabama.

Slater, Jerome Francis, 313 West Kenwood Avenue, Baltimore, Maryland, convicted on October 2, 1959, in the South District Magistrate Court, Baltimore, Maryland; and on March 14, 1960, in the Criminal Court, Baltimore, Maryland.

Slater, John William, 4180 East 800 South, Jonesboro, Indiana, convicted on January 29, 1969, in the Superior Court of Grant County, Marion, Indiana.

Small, Lyle Jay, Box 102, Busby, Montana, convicted on March 9, 1961, in the District Court, Montana.

Smirl, James Richard, 238 Tennyson Street, Upland, California, convicted on March 15, 1968, in the United States District Court, San Diego, California.

Smit, Charles Thomas, 2112 Pleasant Avenue South, Apartment 112, Minneapolis, Minnesota, convicted on October 20, 1969 and on June 12, 1974, in the United States District Court, Minneapolis, Minnesota.

Smith, Bennie Eugene, 411 East Hillcrest Drive Morristown, Tennessee, convicted on July 28, 1972, in the Criminal Court, Hamblen County, Tennessee.

Smith, Blaen Quannah, 937 West Street, Winston-Salem, North Carolina, convicted on January 22, 1972, and on May 7, 1973, in the District Court, Otero County, New Mexico, and on April 19, 1973, in the York County District Court, York, Nebraska.

Smith, Brian Douglas, Rural Route 1, Box 38, Derby, Vermont, convicted on May 23, 1972, in the Circuit Court, Virginia Beach, Virginia.

Smith, Charlie Steve, 919 Waverly Road, Tallahassee, Florida, convicted on April 17, 1981, in the Duval County Circuit Court, Jacksonville, Florida.

Smith, Clifton Dewey, Senior, 255 Fifth Avenue, Chickasaw, Alabama, convicted on February 14, 1982, in the Mobile Police District Court, Mobile, Alabama.

Smith, Donald Eugene, Big Spruce Terrace, Lot 177, Newville, Pennsylvania, convicted on January 23, 1976, in the Superior Court of Long County, Ludowici, Georgia.

Smith, Douglas Lee, 1585 Prairie Drive, Midland, Michigan, convicted on May 30, 1985, in the Midland County Circuit Court, Midland Michigan; and on February 17, 1986, in the Grand Traverse County Circuit Court, Traverse City, Michigan, and on September 2, 1977, in the Midland County Circuit Court, Midland Michigan.

Smith, Edward D., 2917 Lyndale Drive, Nashville, Tennessee, convicted on November 30, 1978, in the Criminal Court, Davidson County, Tennessee.

Smith, Eric Lee, Rural Route 3, Box 193A, Princeton, Indiana, convicted on April 27, 1977, in the Gibson County, Indiana.

Smith, James Raymond, 8410 North Tahoe Drive, Houston, Texas, convicted on June 13, 1985, in the United States District Court, Houston, Texas.

Smith, Linton Henry, 12792 Captain Cove, Woodbridge, Virginia, convicted on April 9, 1975, in the Circuit Court, Richmond, Virginia.

Smith, Lyle L., Rural Route 2, Box 204, Columbus Junction, Iowa, convicted on November 16, 1984, in the United States District Court, Iowa.

Smith, Matthew, 109 West Saratoga Street, Baltimore, Maryland, convicted on July 2, 1979, in the United States District Court, Baltimore, Maryland.

Smith, Melvin Leroy, 416 South Street, Chetek, Wisconsin, convicted on June 25, 1984, in the Eau Claire County Circuit Court, Branch Three, Eau Claire, Wisconsin.

Smith, Nephi Regan, 1805 Ames Avenue, Cheyenne, Wyoming, convicted May 17, 1977, in the Superior Court, Graham County, Arizona.

Smith, Otis Harvey, Junior, 833 5th Street, Corbin Whitley County, Kentucky, convicted on June 5, 1975, in the Kentucky Circuit Court, Williamsburg, Kentucky.

Smith, Roger Lee, Route 4, Box 453, Bassett, Virginia, convicted on April 7, 1976, in the Circuit Court, Martinsville, Virginia.

Smith, Ronald Eugene, Big Springs Terrace Lot 177, Newville, Pennsylvania, convicted on January 23, 1976, in the Superior Court of Long County, Ludowici, Georgia.

Smith, William Francis, 1222 Grove Avenue, Shadyside, Maryland, convicted on January 8, 1958, in the Arlington County Circuit Court, Virginia, and on January 9, 1959, in the Circuit Court, Richmond, Virginia.

Smith, William Timothy, 121 Valley View, Lander, Wyoming, convicted on May 9, 1984, in the Superior Court, Fremont County, Wyoming.

Snoody, Michael William, Rural Delivery 4, Box 496, Halifax, Pennsylvania, convicted on December 19, 1968, in the County Court, Dauphin County, Pennsylvania.

Snyder, Lovette Duane, 310 South 7th Apartment B, Burbank, California, convicted on July 19, 1952 in the United States District Court, Charleston, South Carolina.

Soltis, William Andrew, 301 Toftrees Avenue, Apartment 146, State College, Pennsylvania, convicted on November 2, 1976, in the United States District Court, Williamsport, Pennsylvania.

Sparks, Perry Joe, Box 216 Hamptonville, North Carolina, convicted on November 16, 1982, in the Wilkes County Court, Wilkesborough, North Carolina.

Sparks, Rex Coy, Route 2, Box 178 Roaring River, North Carolina, convicted on November 20, 1966, in the United States District Court, Middle District of North Carolina.

Spell, Sidney Joseph, Junior, Route 1, Box 89, (House Creek Road) Bush, Louisiana, convicted on June 4, 1980, in the United States District, Eastern District of Louisiana, New Orleans, Louisiana.

Spencer, Isaac Reed, 606 West Viola, Yakima, Washington, convicted on December 22, 1980, in the Yakima County Superior Court, Washington.

Spencley, Joseph Brian, Cherry Square, Timberlee Drive, Apartment 13, Traverse City, Michigan, convicted on June 1, 1977; October 4, 1977, in the Mason County Court, Michigan; and on June 31, 1979, in Kent County, Michigan.

Spivey, Delmar Cisroe, Village Green, Apartment A28, Russellville, Kentucky, convicted on June 17, 1975, in the Logan County Circuit Court, Russellville, Kentucky.

Spivey, James Alvin, 110 Venable Court, Wetumpka, Alabama convicted on January 28, 1982, in the Circuit Court Montgomery City, Montgomery, Alabama, and on August 27, 1984, in the United States District Court, Middle District, Montgomery, Alabama.

Springs, Robert Edmund, 801 Maple Avenue, Brooklyn, New York, convicted on February 25, 1966, in the Criminal Court, Riverhead, New York.

St. Germain, Lynn Joseph, 245 Lake of Pines, Jackson, Mississippi, convicted on June 27, 1979, in the United States District Court, Western District of Louisiana, Lafayette, Louisiana.

Staats, Wayne Raymond, 1312 West Seventh Street, Fulton, Missouri, convicted on March 15, 1976, in the Circuit Court, Callaway County, Missouri.

Stadlberger, Chris Duane, 2109 Moore, Plano, Texas, convicted on January 21, 1981, in the United States District Court, Charleston, South Carolina.

Stallard, Rebecca F., 603 Long Street Avenue, Winchester, Virginia, convicted on January 9, 1979, in the City Circuit Court, Winchester, Virginia.

Stanfill, John Earnest, 36 Iroquois Drive, Jackson, Tennessee, convicted on June 10, 1983, in the United States District Court, Jackson, Tennessee.

Stasko, Walter Michael, Box 6875D, Palmer, Alaska, convicted on September 4, 1969, in the Superior Court, Broome County, New York.

Stasney, Arthur Jordan, 2271 Pinecrest Drive, Altadena, California, convicted on December 17, 1969, in the Superior Court, Orange County, California.

Staton, Arnold Charles, North Sabine Street, Post Office Box 470, Zwolle, Louisiana, convicted on March 5, 1960, in the District Court, Western District, Louisiana.

Steele, John E., 519 Oak Street, Bemidji, Minnesota, convicted on July 6, 1976, in the Ninth Judicial District Court, Bemidji, Minnesota.

Steinmaus, Joseph Erwin, 3971 Hadley Avenue West, Oakdale, Minnesota, convicted on June 3, 1977, in the United States District Court, Minneapolis, Minnesota.

Stimpson, Curtis Coil, 1432 Ridgeway Drive, Twin Falls, Idaho, convicted on May 2, 1979, in the Twin Falls County District Court, Idaho.

Stone, Donald Robert, 2 West Elizabeth Street, Plattsburgh, New York, convicted April 27, 1971, in the Court-Martial, Fort Meade, Maryland.

Stone, Dwight Howard, Junior, 1701 Bryn-Mahr, Atlantic, Iowa, convicted on July 30, 1984, in the United States District Court, Southern District of Iowa.

Stone, Jamie Jay, 1910 North 22nd Avenue, Buckeye, Arizona, convicted on May 24, 1982, in the United States District Court, Phoenix, Arizona.

Stone, Joe Martin, Box 1221, Old Rustburg Road, Lynchburg, Virginia, convicted on October 18, 1978, in the Lynchburg Circuit Court, Lynchburg, Virginia.

Stone, Walter F., Junior, East 11904 30th, Spokane, Washington, convicted on July 12, 1979, in the Superior Court, State of Washington.

Stoskopf, Daniel Arthur, Post Office Box 465, Highway 11, Warroad, Minnesota, convicted on March 19, 1979, and on September 24, 1981, in the Roseau County District Court, Roseau, Minnesota.

Stratton, Charles Daniel, 5760 Pembrooke Road, Hopkinsville, Kentucky, convicted on September 8, 1980, in the Circuit Court, Christian County, Hopkinsville, Kentucky.

Strawn, Jeffrey Allen, Star Route, Box 202, Moses Lake, Washington, convicted on June 29, 1979, in the Superior Court, Grant County, Washington.

Streeter, Thomas, 12709 Forest Avenue, Cleveland, Ohio, convicted on December 22, 1965, in the Court of Common Pleas, Cleveland, Ohio.

Strickland, Oren Murphy, 573 Beach Mark Motel, Room 604, Fort Walton Beach, Florida, convicted on November 19, 1973, in the Circuit Court, Lee County, Florida.

Stricklin, E.J., 1524 Woodhaven Drive, Humbolt, Tennessee, convicted on September 2, 1981, in the Western District of Tennessee.

Strout, Everett Lincoln, Box 3 (Oxford Pines Trailer Park) Oxford, Maine, convicted on January 1943, in the Superior Court, Cumberland County, Maine.

Strutt, Gail Gene, 218 North Hendrick, Stockton, Kansas, convicted on October 17, 1984, in the Rooks County District Court, Stockton, Kansas.

Stuart, Michael Roy, Junior, 613 Rockaway Beach Avenue, Baltimore, Maryland, convicted on June 24, 1981, in the Baltimore District Court, Baltimore, Maryland.

Sullivan, David Charles, 5102 East Fort Lowell Road, Tucson, Arizona, convicted on March 8, 1978, in the United States District Court, Northern District of State of Georgia.

Sullivan, Randall Eugene, 915 East Military, Fremont, Nebraska, convicted on December 5, 1974, in the District Court, Dodge County, Nebraska.

Sund, Richard Carl, Post Office Box 770609, Eagle River, Alaska, convicted on November 15, 1978, in the Superior Court, Third Judicial District of Alaska.

Swalley, Mark Harold, 9623 Willowood, Tacoma, Washington, convicted on March 15, 1983, in the Superior Court, King County, Washington.

Swilley, Byron Foster, 8149 Morrow Circle, Detroit, Michigan, convicted on July 13, 1983, in the United States District Court, Eastern District of Michigan, Detroit, Michigan.

Tabaczynski, Gregory Leo, 7206 Balfour Avenue, Allen Park, Michigan, convicted on May 27, 1982, in the Detroit Recorders Court, Detroit, Michigan.

Taber, Ray Polenz, HC 62, Box 240, Camp Verde, Arizona, convicted on June 8, 1976, in the District Court, Denver County, Colorado.

Tabor, Aubrey Charles, 3324 Baltimore Street, Baltimore, Maryland, convicted on June 16, 1958, in the Baltimore Criminal Court, Baltimore, Maryland.

Tacey, Earl Henry, 1316 North Callahan Road, Essexville, Michigan, convicted on April 24, 1984, in the United States District Court, Eastern District of Michigan.

Tackett, Gary Lynn, 20 Foxboro, Searcy, Arkansas, convicted on October 27, 1982, in the United States District Court, Eastern District of Arkansas.

Tait, William Robert, North 1511 Lincoln 2, Spokane, Washington convicted on May 16, 1978, in the Superior Court, Spokane, Washington.

Taylor, James Frederick, 92 Clapp Road, Rochester, Massachusetts, convicted on October 21, 1948, in the Superior Court, Suffolks County, Boston, Massachusetts.

Teague, Rex Lee, Route 1, Box 246, C–1, Hays, North Carolina, convicted on October 7, 1977, in the Federal Court, Winston-Salem, North Carolina.

Teel, Marvin James, 203 Hwy East, Golden Arrow Motel, Wolfpoint, Utah, convicted on August 22, 1980, United States District Court, Great Falls, Montana.

Templeton, Robert Ray, 322 South Mountain Road, Kaysville, Utah, convicted on January 28, 1981, in the United States District Court, Salt Lake City, Utah.

Terry, Vermal Edward, Post Office Box 499, Greenup, Kentucky, convicted on April 22, 1975, in the Delaware County Court.

Tharp, Daniel Floyd, 1219 Koontz Road, Chehalis, Washington, convicted on July 13, 1981, in the Superior Court, Lewis County, Washington.

Tharp, James Morris, 1104 South Edgewood Drive, Dothan, Alabama, convicted on September 19, 1957, in the Houston County Circuit Court, Dothan, Alabama.

Theuringer, Mark Steven, Rural Route 4, Box 44A, Hutchinson, Minnesota, convicted on January 27, 1981, in the Stasca County District Court, Grand Rapids, Minnesota.

Thomas, Calvin Lee, Route 777, Pembroke, Virginia, convicted on October 30, 1978, in the United States District Court, Charleston, West Virginia.

Thomas, Earnest Ray, 200 Cottonwood Lane, Prince George, Virginia, convicted on November 27, 1974, in the Superior Court, Green County, North Carolina.

Thomas, George Howard, 3109 Westgate Parkway, Dothan, Alabama, convicted March 23, 1981, in the United States District Court, Middle District of Alabama, Montgomery, Alabama.

Thomas, James Giles, 331 F. Street, Carlisle, Pennsylvania, convicted on September 15, 1981, in the United States District Court, Erie, Pennsylvania.

Thomas, Nicholas Joachim, 5523 Calvary Road, Finley, Kentucky, convicted on July 30, 1984, in the United States District Court, Louisville, Kentucky.

Thompson, Alvin Curtis, Post Office Box 472, Norlina, North Carolina, convicted on December 2, 1985, in the Eastern District Court, North Carolina.

Thompson, Clark Stuart, Post Office Box 922, Loxahatchee, West Palm Beach, Florida, convicted on April 4, 1981, in the Broward County Circuit Court, Fort Lauderdale, Florida.

Thompson, David Allen, Route 7, Box 63, Shipley Ferry Road, Blountville, Tennessee, convicted on April 11, 1983, in the Sullivan County Criminal Court, Blountville, Tennessee.

Thompson, Gary Lee, Post Office Box 901, South Shore, Kentucky, convicted on September 7, 1982 in the Common Pleas Court, Pickaway, Ohio and May 29, 1970, in the Circuit Court, Greenup, Kentucky.

Thompson, John Walter, Junior, 2809 Saint Regis Road, Greensboro, North Carolina, convicted on March 23, 1981, in the United States District Court, Raleigh, North Carolina.

Thompson, Marlin Alfred, Junior, 2403 North 15th Street, Springfield, Oregon convicted on July 17, 1981, in the Lane County Superior Court, Oregon.

Thompson, Monroe Alfred, Rural Route 1, Box 71, Aline, Oklahoma, convicted on October 8, 1982, in the United States District Court, Oklahoma City, Oklahoma.

Thompson, Richard Ames, 4726 North 58th Drive, Phoenix, Arizona, convicted on December 22, 1982, in the Superior Court, Phoenix, Arizona.

Thompson, Ronald Eugene, 427 West League, Coolidge, Arizona, convicted on March 29, 1988, in the United States District Court, Northern District of Alabama.

Thompson, Wayne R., Route 1, Box 123A, Versailles, Missouri, convicted on July 1, 1982, in the Circuit Court, Morgan County, Versailles, Missouri.

Thorpe, Jesse James, HC 80, Box 137, Jackson, Kentucky, convicted on April 5, 1983, in the United States District Court, Eastern District of Michigan.

Threet, Gary Lee, 1989 North Dixie Avenue, Cookeville, Tennessee, convicted on September 28, 1977, in the Criminal Court, Cookeville, Tennessee.

Thyfault, David A., 9011 West Wagon Trail Drive, Littleton, Colorado, convicted on November 3, 1970, in the Weld County Court, Greely, Colorado.

Tilton, William Leo, 226 South Grotto Avenue, St. Paul, Minnesota, convicted on November 5, 1970, in the United States District Court, St. Paul, Minnesota.

Tindall, Harry Thomas, Junior, Route 9, Toadville Road, Salisbury, Maryland, convicted on December 16, 1980, in the

District Court, Wicomico County, Salisbury, Maryland.

Tinsley, James Thomas, Route 3, Box 356, Bowling Green, Kentucky, convicted on October 10, 1978, in the Warren County Circuit Court, Bowling Green, Kentucky.

Todd, Larry Weldon, 5020 Moss Road, Route 6, Box 1350, Odessa, Texas, convicted on October 6, 1983, in the United States District Court, Western Judicial District of Texas, Midland, Texas.

Tomlin, Jack Braton, 1100 West Vine, Tooele, Utah, convicted on June 29, 1970, in the United States District Court, State of California.

Torgerson, Jerald Allen, 5908 Thrust Place, Sioux Falls, South Dakota, convicted on September 12, 1983, in the United States District Court, Pierre, South Dakota.

Torick, John Marion, 3127 East Madison Street, Fresno, California, convicted on April 19, 1965, and in 1964 in the Superior Court, Fresno County, California.

Toro, Jesse James, 719 North Eight-Second Street, Seattle, Washington, convicted on December 30, 1971, and January 14, 1974 in the Superior Court, King County, Washington.

Towe, John Lewis, Post Office Box 74, Cana, Virginia, convicted on June 17, 1980, in the Superior Court of Forsyth County, Winston-Salem, North Carolina.

Towers, Stewart Roland, Post Office Box 284, Bruce, Wisconsin, convicted on June 10, 1981, in the Rusk County Circuit Court, Ladysmith, Wisconsin.

Townsley, Robert Samuel, Rural Delivery 1, Box 21–B, Shirleysburg, Pennsylvania, convicted on September 27, 1977, in the United States District Court, Western Judicial District of Pennsylvania.

Trautsch, David Louis, Route 1, Box 56, Bangor, Wisconsin, convicted on August 27, 1984, in the Circuit Court for Lacrosse County, Wisconsin.

Trinkaus, Brad Ellisworth, 9515 Ramsey Road, Box 129, Hayden Lake, Idaho, convicted on May 14, 1973, in the Superior Court, Bernalillo County, New Mexico.

Truelove, Roger Dale, Post Office Box 68, Shoals, Indiana, convicted on December 1, 1961, in the Circuit Court of Martin County, Shoals, Indiana.

Tucker, Richard Thomas, 6 Ellery Street, Gloucester, Massachusetts, convicted on March 16, 1981, in the United States District Court, Massachusetts.

Tumminello, John Bernard, 3006 Brendan Avenue, Baltimore, Maryland, convicted on April 14, 1966, in the Criminal Court, Baltimore, Maryland.

Tummons, Gerald Edgar, Route 2, Box 7, Lamar, Missouri, convicted on April 30, 1963, and April 8, 1974, in the Circuit Court, Barton County, Missouri.

Turner, Charles Robert, Route 23, Box 2106, Tyler, Texas, convicted on December 12, 1980, in the Eastern District of Texas, Tyler, Texas.

Turner, David M., Junior, Route 1, Box 75, Ammons Drive, Waleska, Georgia convicted on April 10, 1978, in the United States District Court, Rochester, New York.

Turner, Kurt Allen, Route 1, Box 446, Jeffersonville, Vermont, convicted on February 8, 1983, in the District Court, Douglas County, Minnesota.

Turner, Lon D., Route 7, Box 63, Benton, Kentucky, convicted on February 2, 1968, and on May 2, 1970, in the McCracken Circuit Court, Paducah, Kentucky.

Turner, Theodore Isaac, Junior, 914 Ashbridge Drive, Apartment F, Baltimore, Maryland, convicted on December 18, 1975, in the Circuit Court, Baltimore, Maryland.

Tuttle, Michael Owen, 701 South 118th Street, Tacoma, Washington, convicted on September 19, 1980, in the Pierce County Superior Court, Washington.

Tuttolomondo, Joseph Angelo, 9230 East Altadena Avenue, Scottsdale, Arizona, convicted on December 15, 1978, in the Superior Court, New York.

Turnbrough, Jess David, 418 QLL Hollows, Wichita, Kansas, convicted on July 17, 1961, in the District Court of Reno County, Hutchinson, Kansas.

Tyson, Kay Tee, Junior, 4321 Cedargarden Road, Baltimore, Maryland, convicted on November 10, 1971, in the State District Court, Baltimore, Maryland.

Umphlett, Clyde, Senior, Post Office Box 152, River Road, Moncks Corner, South Carolina, convicted on June 6, 1984, in the United States District Court, Columbia, South Carolina.

Underwood, Jeffrey Lee, Route 2, Box 61, Dublin, Virginia, convicted on December 7, 1979, in the Giles County Circuit Court, Pearisburg, Virginia.

Ungolo, Joseph P., 3952 NW 36 Way, Lauderdale Lakes, Florida convicted on December 31, 1979, in the Eastern District of New York.

Urie, Leonn U., Box 346, Hagerman, Idaho, convicted on October 19, 1966, in the District Court, Twin Falls, Idaho.

Vail, Carl Wayne, Rural Route 1, Box 380, McCordsville, Indiana, convicted on January 28, 1985, in the United States District Court, Indianapolis, Indiana.

Valley, John Alvin, Senior, 12356 South Keyport Road Northeast, Poulsbo, Washington, convicted on October 8, 1982, in the United States District Court, Western District of Washington.

Vallie, Jim Robert, Post Office Box 2591, Elko, Alaska, convicted on October 28, 1981, in the Superior Court, Brown County, South Dakota; and on February 26, 1975, in the Superior Court, Brown County, South Dakota.

Van Heuvelen, Richard Alan, 824 Fairview Avenue, Rapid City, South Dakota, convicted on June 7, 1980, in the State District Court, Pennington County, Rapid City, South Dakota.

Van Horne, Fred Charles, 1131 Texas Avenue, Danville, Illinois, convicted on December 30, 1980, in the United States District Court, Danville, Illinois.

Vance, David Alston, 205 West Street, Batesville, Mississippi, convicted on May 21, 1981, in the United States District Court, Northern District of Mississippi.

Vanness, Charles Richard, 625 Greenwave Drive, Apartment E1, Gallatin, Tennessee, convicted on September 13, 1971, in the Criminal Court of Davidson County, Tennessee.

Vanranken, Steven Raymond, 108 Northeast 93rd Avenue, Vancouver, Washington, convicted on January 21, 1977, in the Superior Court, Clark County, Washington.

Varboncoeur, Paul Steven, 6201 Staple Road, Twin Lake, Michigan, convicted on June 13, 1977, in the Circuit Court of Muskegon County, Michigan.

Vaughn, Phillip Dean, 4629 Rochambeau Drive, Williamsburg, Virginia, convicted on March 28, 1980, in the United States District Court, Richmond, Virginia.

Verciuc, George C., 4480 Kennsington Road, Milford, Michigan, convicted on September 12, 1969, in the Federal Court, Birmingham, Alabama.

Vernon, Richard Elwood, Post Office Box 511, Raven, Virginia, convicted on July 17, 1964, in the United States District Court, Bluefield, West Virginia.

Verrette, Ronald Lee, 3890 East Bennington Road, Durand, Michigan, convicted on May 3, 1965, in the Genesee County Circuit Court, Flint, Michigan.

Viars, Victor, Post Office Box 52, Hyden, Kentucky, convicted on January 2, 1980, in the United States District Court, London, Kentucky.

Vienna, Frank Joseph, 1309 Bethlehem Avenue, Baltimore, Maryland, convicted on January 24, 1977, in the Baltimore City District Court, Baltimore, Maryland.

Vincze, Paul David, 3027 Pearl Avenue, Apartment 2, San Jose, California, convicted on July 6, 1982, in the Municipal Court, Santa Clara County, California.

Wagner, Randolph Mark, 2332 Montana Avenue, Sun Prairie, Wisconsin convicted on November 29,

1962, in the Dane County Circuit Court, Madison, Wisconsin.

Wagner, William Anton, 661 Ely Street, Northeast Pridley, Minnesota, convicted on September 12, 1975, in the Second Judicial District Court, Denver, Colorado, and on October 17, 1977, in the Second Judicial Circuit Court, Sioux Falls, South Dakota.

Wagoner, Houston Logan, Junior, 208 South Elmarch Avenue, Cynthiana, Kentucky, convicted on January 7, 1980, in the Mason County Circuit Court, Maysville, Kentucky.

Walk, Eugene Dwayne, 328 Union Street, Millersburg, Pennsylvania, convicted on April 1, 1982, in the Court of Common Pleas, Northumberland County, Sunbury, Pennsylvania.

Walker, Jack D., 700 Coates Drive, Fort Worth, Texas, convicted on June 13, 1983, in the Tarrant County Court, Tarrant County, Texas.

Wallace, Alden Charles, 613 Studley Road, Mechanicsville, Virginia, convicted on May 23, 1962, in the Circuit Court, Chesterfield, Virginia.

Waller, Bennie George, 3340 Ives Road, Virginia Beach, Virginia, convicted on January 29, 1974, Superior Court, Virginia Beach, Virginia.

Walters, Dannie Stephen, Route 1, Box 35–B, Orrum, North Carolina, convicted on September 13, 1982, in the Eastern District of Kentucky, Catlettsburg, Kentucky.

Walton, Bruce Edward, 9859 East 18 Road, Argos, Indiana, convicted on January 9, 1957, in Superior Court of Indiana, St. Joseph County, Indiana.

Walton, Robert Lewis, 1314 South 25th Street, Louisville, Kentucky, convicted on March 1, 1958, in the Logan County Circuit Court, Russellville, Kentucky.

Wang, Kevin John, Rural Route 1, Box 77 C, Webster, South Dakota, convicted on December 5, 1975, in the Fifth Judicial District Court, Aberdeen, South Dakota.

Ward, John Henry, 1035 East Moses, Cushing, Oklahoma, convicted on October 18, 1978, in the Seventh Judicial District of Oklahoma.

Warford, Karl Patrick, Route 1, Box 136, Payette, Idaho, convicted on March 17, 1970, in the United States District Court, Eastern District of Virginia, Richmond, Virginia, and on January 22, 1970, in the Circuit Court, Oakland County, Michigan.

Warner, Jeffrey James, 1515 ½ 15th Avenue, Scottsdale, Nebraska, convicted on December 17, 1982, in the District Court for Scottsbluff County, Scottsbluff, Nebraska.

Washburn, Howard Thayer, Junior, 90 Whipple Street, Lewiston, Maine, convicted on June 30, 1972, in the Superior Court, Maine.

Washington, Benjamin, 95 Baruch Drive, New York, New York, convicted on December 12, 1974, in the Circuit Court, Hampton, Virginia.

Waters, William Craig, 5237 Virginia Road, Marysville, California, convicted on October 27, 1972, in the Superior Court of the State of California.

Waterfield, Elvin Ray, 2805 Queen Anne Road, Virginia Beach, Virginia, convicted on October 17, 1980, in the United States District Court, Eastern District, Virginia.

Watson, Austin Theodore, 2606 Hoyte Drive, Shreveport, Louisiana, convicted on May 5, 1970, in the Twenty-sixth Judicial District Court, Minden, Louisiana.

Watson, Terry Ray, Route 7, Box 295, Mt. Airy, North Carolina, convicted on March 28, 1982, in the Surry County Superior Court, Dobson, North Carolina.

Watts, John Chester, 7809 Brophy Road, Howell, Michigan, convicted on February 2, 1984, in the United States District Court, Eastern District of Michigan, and on January 17, 1967, in the United States District Court, Eastern District of Michigan.

Weaver, Clyde L., 303 Euclid, Rusk, Texas, convicted on August 30, 1984, United States District Court, Tyler, Texas.

Weaver, Fred Ralph, 4086 Oak Street, Wheatridge, Colorado, convicted on February 23, 1972, in the Colorado District Court, Denver, Colorado, and on October 12, 1984, in the United States District Court, Denver, Colorado.

Webb, Marc Wayne, Route 4, Box 343, Galax, Virginia, convicted on December 1, 1975, and December 28, 1977 in the Circuit Court, Carroll County, Hillsville, Virginia.

Webb, Mary Alice Lineberry, Route 4, Box 343, Galax, Virginia, convicted on December 28, 1977, in the Circuit Court of Carroll County, Hillsville, Virginia.

Webster, James Tyree, 185 Bellevue Street, Timberville, Virginia, convicted on April 16, 1982, in the Rockingham County Circuit Court, Harrisonburg, Virginia.

Weed, Milton Jay, 3575 Lexington, Apartment 223, Egan, Minnesota, convicted on August 29, 1979, in the Washington County Court, Stillwater, Minnesota.

Weeks, Jack Winford, Junior, 402 North 9th, Box 148, Sinclair, Wyoming, convicted on January 20, 1983, in the United States District Court, District of Wyoming.

Wegner, James Louis, 3101 Cleveland Street, Northeast Minneapolis, Minnesota, convicted March 19, 1979, in the United States District Court, Minneapolis, Minnesota.

Weinkam, John David, Junior, 403 Celeste Avenue, Baltimore, Maryland, convicted on February 2, 1982, in the District Court One, Baltimore, Maryland.

Weistart, Jerome Leon, 910 Husaw, Chillicothe, Illinois, convicted on February 22, 1980, in the United States District Court, Central District of Illinois.

Wellons, Charles Stewart, Route 2, Box 365, Creedmoor, North Carolina, convicted on November 4, 1976, in the Granville County Superior Court, Oxford, North Carolina.

Wells, Wilbur Wayne, 8 Crown Street, Asheville, North Carolina, convicted on May 8, 1967, in the United States District Court, Asheville, North Carolina.

Wemmette, William R., 1345 North Wells Street, Chicago, Illinois, convicted on January 12, 1966, in the United States District Court, Chicago, Illinois.

West, Gregory Tyson, Route 10, Marion, Kentucky, convicted on November 23, 1982, in the Marshall County Circuit Court, Benton, Kentucky.

Westbo, William Daniel, Senior, 9127 Rangely, Houston, Texas, convicted on January 12, 1964, in the United States District Court, Northern District of Dallas, Texas.

Wetherholt, Jon Walter, 603 Jean Street, Charleston, West Virginia, convicted on July 18, 1980, in the Circuit Court of Kanawha County, West Virginia.

Wheeler, Roger Allen, 3724 Garfield South, Minneapolis, Minnesota, convicted on August 15, 1963, in the Superior Court, Los Angeles, California.

Wheeler, Theodore Edward III, Route 5, Box 354, Seneca, South Carolina, convicted on December 3, 1980, in the United States District Court, Southern Judicial District of Florida.

Wheeler, William Perry, Junior, Route 2, Box 20A, Rural Retreat, Virginia, convicted on April 26, 1976, in the Wythe County Court, Virginia.

Whelan, Charles E., Route 1, Brandenburg, Kentucky, convicted on April 28, 1982, in the United States District Court, Western District of Kentucky.

Whitaker, Waylan, HC 63, Box 1590, Hallie, Kentucky, convicted on February 5, 1981, in the Letcher Circuit Court, Whitesburg, Kentucky.

White, Carl Manar, HC 67, Box 665, Indianola, Oklahoma, convicted on July 27, 1983, in Eastern District of Oklahoma.

White, Jessie D., 611 West First Street, Hilliard, Florida, convicted on May 4, 1961, in the Fourth Judicial District, Duval County, Jacksonville, Florida.

White, Larry Ray, 1009 Santa Fe, Scott City, Kansas, convicted on

February 10, 1983, in the United States District Court, Wichita, Kansas.

Whitehead, Randy Keith, Route 2, Box 634, Hampton Tennessee, convicted on September 12, 1975, in the Criminal Court, Greene County, Tennessee.

Whitehurst, Aubrey Donald, 1305 Cincinnati Avenue, Panama City, Florida, convicted on December 3, 1979, in the United States District Court, Northern District of Florida.

Whitesell, Richard Leroy, 1344 Mesa Avenue, Grand Junction, Colorado, convicted on April 5, 1955, in the Court of Oyer and Terminer, Butler County of Pennsylvania.

Whitman, Ronald Brown, 32 Linda Vista, Benicia, California, convicted on November 5, 1973, in the Superior Court, California, and on November 23, 1979, in the United States District Court of Wyoming.

Whitson, Ben Ted, 1617 East Frontier, Stillwater, Oklahoma, convicted on January 18, 1974, in the Payne County District Court, Oklahoma.

Whitten, Raymond Bruce, 3575 2nd Street, Gadsen, Alabama, convicted on November 8, 1976, in the Etowah County Circuit Court, Gadsen, Alabama.

Whorley, Charles William, Senior, 19 Crestwood Drive, Madison Heights, Virginia, convicted on January 25, 1974, in the Campbell County Circuit Court, Rustburg, Virginia.

Whybark, Scott Howard, 705 College Street, Joseph, Oregon, convicted on November 9, 1982, in the Circuit Court, County of Wallowa, Oregon.

Wiemers, Lesley Lavern, Route 3, Lakin Acres, Kearney, Nebraska, convicted on October 30, 1958, in the District Court of Buffalo County, Kearney, Nebraska.

Weisner, Joseph Michael, 1247 North Century, Maplewood, Minnesota, convicted on March 16, 1976, in the Seventh Judicial Circuit Court, Springfield, Illinois.

Wilcox, Darrel Eugene, Rural Delivery 1, Box 84, Cambridge Springs, Pennsylvania, convicted on March 2, 1961, in the Court of Common Pleas, Crawford County, Pennsylvania.

Wilkerson, Deanna Louise, 3086 65th Way Southwest, Tumwater, Washington, convicted on September 29, 1982, in the Superior Court, Thurston County, Washington.

Williams, Aubrey Jennings, 8 Sara Avenue, Lake City, Florida, convicted on January 19, 1982, in the Columbia County Circuit Court, Lake City, Florida.

Williams, Bernard Ansley, Jr., 15 Center Street, Waterville, Maine, convicted on July 9, 1979, in the Kennebec County Grand Jury, State of Maine.

Williams, Clifford Gene, 1758 Wind River Road, El Cajon, California, convicted on July 18, 1977, in the United States District Court, San Diego, California.

Williams, Floyd Douglas, 73 Baggett Drive, Montgomery, Alabama, convicted on January 20, 1961 in the Federal Court, Northern District of Birmingham, Alabama.

Williams, Kenneth Vernon, 1306 North Walnut, Apartment E, Oklahoma City, Oklahoma, convicted on February 1, 1971, in the Jackson County District Court, Missouri, and on June 15, 1971, in the Johnson County District Court, Kansas.

Williams, Raymond Eugene, 4617 Balboa Drive, Orlando, Florida, convicted on October 31, 1975, in the United States District Court, Northern Ohio.

Williams, Robert Denis, 507 Fourth Street, Northeast, Auburn, Washington, convicted on March 9, 1977, in the Superior Court, King County, Washington.

Williams, Robert Frank, 10069 East Atherton Road, Davison, Michigan, convicted on August 12, 1981, in the United States District Court, Eastern District of Michigan.

Williamson, Samual, Junior, Route 2, Box 333, Siren, Wisconsin, convicted on July 29, 1985, in the Burnett County District Court, Grantsburg, Wisconsin.

Willis, Charles Henry, 2209 Ashton Street, Baltimore, Maryland, convicted on March 9, 1971, May 5, 1971, and January 14, 1974, in the Baltimore County District Court, Baltimore, Maryland.

Willis, Fred Spencer, 812 Nettles Lane, Coushatta, Louisiana, convicted on November 23, 1982, in the United States District Court, Shreveport, Louisiana.

Wilson, Charles Loyd, Post Office Box 404, Morristown, Arizona convicted on June 25, 1958, in the United States District Court, Tucson, Arizona.

Wilson, Louis Alfred, 1424 Southeast 27th Street, Gainesville, Florida, convicted on February 23, 1978, in the Eighth Judicial Circuit Court, Alacheca, Florida.

Wilson, Robert Douglas, 110 Herbert, Quilcene, Washington, convicted on March 12, 1982, in the Superior Court, Jefferson County, Washington.

Wilson, Ronald Schuyler, 640 Devonshire Drive, Dixon, California, convicted on September 2, 1959 and October 2, 1962, in the Superior Court of the State of California.

Wilson, William Burl, Route 1, Box 423K, Anniston, Alabama, convicted On January 24, 1961, in the United States District Court, Middle District of Alabama.

Wilstead, Robert Henry, 8600 Hidden Oaks Circle, Salt Lake City, Utah, convicted on August 24, 1978, in United States District Court, District of Utah.

Wimberley, Wallace Newton, Route 1, Box 372, Phil Campbell, Alabama, convicted in 1957, in the Circuit Court of Cook County, Chicago, Illinois, and on November 3, 1972, in the Northern District of Alabama, Birmingham, Alabama.

Wimmer, Leonard Joseph, Route 3, Piers, Minnesota, convicted May 4, 1961, in the District Court, County of Morrison, Seventh Judicial District Court, Little Falls, Minnesota.

Winbun, Joseph Allen, Box 16, Highway 1606, Sulphur, Kentucky, convicted on June 15, 1962, in the Bullitt Circuit Court, Sheperdsville, Kentucky.

Winger, Kathleen Mills, 1707 Essex Street, 35, San Diego, California, convicted on February 27, 1962, in the San Diego Superior Court, San Diego, California.

Winins, James, 7001 Lawrence Road, Apartment 159, New Orleans, Louisiana, convicted on October 27, 1976, in the United States District Court, Eastern District of Louisiana.

Winsor, Joseph T., 311 North 200 East, Kanab, Utah, convicted on July 26, 1974, and on April 20, 1981, in the Superior Court, Maricopa County, Arizona.

Wobig, Douglas Edward, Route 1, Box 93A, Minnesota City, Minnesota, convicted on January 24, 1983, in the Third Judicial District Court, Winona, Minnesota.

Wolf, Peter Richard, 1418 Ridgecrest Drive, Lexington, Kentucky, convicted on January 10, 1983, in the Clark County Circuit Court, Winchester, Kentucky.

Wolfe, William Henry, Junior, 7007 Coachman Lane, Apartment 101, Richmond, Virginia, convicted on November 10, 1961, in the United States District Court, Eastern District of Virginia, Richmond, Virginia.

Wood, William Leonard, 57 North Boxwood Street, Hampton, Virginia, convicted on November 17, 1983, in the Fedaral District Court, Norfolk, Virginia.

Woodard, Clarence Lamar, 1476 Orange Grove Road, Apartment C–81, Charleston, South Carolina, convicted on April 8, 1975, in the Court of General Sessions, Charleston, South Carolina, and on December 7, 1976, in the United States District Court, Brownsville, Texas.

Woods, Eddie Lee, 157 Charteroak Drive, Louisville, Kentucky, convicted on April 6, 1973, and February 17, 1977, in the Jefferson Circuit Court, Louisville, Kentucky.

BEST COPY AVAILABLE

Woods, Gary Lee, 2250 Springs View Drive, Chambersburg, Pennsylvania, convicted on October 17, 1983, in the United States District Court, Middle District of Pennsylvania.

Wooldridge, Ricky Lee, Route 3, Box 107, Russell Springs, Kentucky convicted on February 15, 1978, in the Casey County Circuit Court, Liberty, Kentucky.

Worth, Edward Wayne, 620 Wisconsin, Wisconsin Rapids, Wisconsin, convicted on January 15, 1981, in the Adams County Circuit Court, Friendship, Wisconsin.

Worthington, John Randall, Post Office Box 31, Sandia, Texas, convicted on May 16, 1975, in the Twenty-fourth Judicial District, Victoria County, Texas.

Worthington, Winston Hall, 4272 Walnut Grove Road, Memphis, Tennessee, convicted on September 26, 1980, in the United States District Court, Western Division, Memphis, Tennessee.

Wright, Carl Merlin, 1619 Gay Lane, Lansing, Michigan, convicted on March 18, 1985, in the United States District Court, Eastern District of Michigan.

Wright, Frank E., Junior, Rural Route 1, Box 508, Westville, Illinois, convicted on April 14, 1977, in the United States District Court for the Central Judicial District of Illinois, Danville, Illinois.

Wuttke, Richard Ernest, 1025 Southridge Road, New Ulm, Minnesota, convicted on March 23, 1984, in the United States District Court, Cedar Rapids, Iowa.

Wyatt, Daniel K., 847 New Salem Road, Glasgow, Kentucky, convicted on June 27, 1980, in the Barren Circuit Court, Glasgow, Kentucky.

Yalmokas, Edward Ronald, 849 East Broadway, South Boston, Massachusetts, convicted on March 10, 1965, in the Suffolk Superior Court, Suffolk, Massachusetts.

Yamry, Gerald Joseph, 2504 13th Street South, Saint Cloud, Minnesota, convicted on November 13, 1981, in the Seventh Judicial District Court, Stearns County, Saint Cloud, Minnesota.

Yanez, Santiago, 908 East 8th, Rotan, Texas, convicted on December 2, 1974, in the Forty-Second Judicial District Court, Taylor County, Texas.

Yarbrough, Fred Manson, 6619 Rivers Avenue, Apartment 105, North Charleston, South Carolina, convicted on January 16, 1981, in the United States District Court, Charleston, South Carolina.

Yaritz, Bradley Keith, 1571 East Highway 96, White Bear Lake, Minnesota, convicted on May 24, 1978, in the Ramsey County District Court, Second Judicial District, Saint Paul, Minnesota.

Yates, Timothy Coleman, Route 3 Woodsdale Road, Shepardsville, Kentucky, convicted on March 25, 1980, in the Jefferson County Circuit Court, Louisville, Kentucky.

Young, Alan Ward, 2017 Schaeffer Place, St. Louis, Missouri, convicted on May 12, 1978, in the Kansas District Court, Franklin County.

Young, Dale Richard, 132 South Sherwood Village Drive, Tucson, Arizona, convicted on January 7, 1980, in the Superior Court, Pima County, Arizona.

Young, John Myron, 1400 Lakeview Drive, Virginia Beach, Virginia, convicted on March 6, 1979, in the Circuit Court, Norfolk, Virginia.

Young, Jon Wayne, 1551 Madison Avenue #D–33, Mankota, Minnesota, convicted on December 8, 1975, and January 28, 1978, in the Fifth Judicial District Court, Blue Earth County, Mankota, Minnesota.

Young, Raymond Eugene, Route 7, Box 268, Mobile, Alabama, convicted on January 4, 1977, in the United States District Court, Mobile, Alabama.

Zamansky, David Robert, 227 Kings Row, Carbondale, Colorado, convicted on November 1, 1984, in the United States District Court, Western Oklahoma.

Zapuchlak, George B., 910 Dells Parkway, Wisconsin Dells, Wisconsin, convicted on September 30, 1982, in the Columbia County Circuit Court, Branch II, Portage, Wisconsin.

Zarello, David Michael, Rural Route 4, Norfolk, Nebraska, convicted on August 17, 1979, in the District Court, Madison County, Nebraska and June 15, 1979, in the District Court, Platte County, Nebraska.

Zarske, Steven Robert, 1101 Ashland Avenue, St. Paul, Minnesota, convicted on July 12, 1979, in the District Court of Washington County, Minnesota.

Zeigler, William E., Junior, 424 New Street, Lebanon, Pennsylvania, convicted on June 14, 1976, in the Court of Common Pleas, Lebanon County, Pennsylvania.

Zeimentz, James Joseph, 4438 State Road, Lot 50, LaCrosse, Wisconsin, convicted on February 14, 1980, in the United States District Court, Madison, Wisconsin.

Ziegler, Larry Dean, 2515 Fremont Avenue South, Minneapolis, Minnesota, convicted on February 2, 1982, and May 22, 1981, in the Martin County District Court, Fairmont, Minnesota.

Zieno, Dominic Joseph, 14 Avery Street, Sidney, New York, convicted on October 24, 1966, in the United States District Court, Northern District of New York.

Zingre, Stephen Decatur, Route 2, Box 540–H, Warrensburg, Missouri, convicted on December 15, 1980, in the Circuit Court for the Sixth Judicial Circuit of Florida, Pinnellas County, St. Petersburg, Florida.

Zink, Nancy May, Post Office Box 28, Oak Hill, West Virginia, convicted on May 13, 1981, in the United States District Court, Southern District of West Virginia, Charleston, West Virginia.

Zirbes, Randy James, 35 First Avenue Southwest, Elgin, Minnesota, convicted on November 14, 1969, and December 16, 1974, in the Olmstead County District Court, Rochester, Minnesota.

Zuch, Martin C., 315 Hitchcock Street, Barabor, Wisconsin, convicted on November 10, 1959, October 2, 1967, and July 2, 1971, in the Sauk County Court, Barabor, Wisconsin.

Zupan, George Charles, 58 Plumtree Lane, #17I, MidVale, Utah, convicted on August 24, 1981, in the Third Judicial Court, Salt Lake City, Utah.

Zwicker, Kelly Dean, 4404 Chelan Drive, Richland, Washington, convicted on January 28, 1983, in the Superior Court, Benton County, Washington.

Compliance With Executive Order 12291

It has been determined that this notice is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Signed: August 2, 1989.

Stephen E. Higgins,

Director.

[FR Doc. 89–18659 Filed 8–10–89; 8:45 am]

BILLING CODE 4810-01-M

Internal Revenue Service

[Delegation Order No. 23 (Rev. 12)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority.

SUMMARY: The Assistant Commissioner (International), District Directors and Service Center Directors are authorized to make determinations on claims for reimbursement of bank charges for stopping payment on a check, which the Service lost or misplaced and requested the taxpayer to replace. The text of the Delegation Order appears below.

EFFECTIVE DATE: July 26, 1989.

FOR FURTHER INFORMATION CONTACT: Howard Boyd, C:PRP, Room 1027, 1111 Constitution Avenue, NW., Washington, DC 20224 (202) 377–9104 (Not a Toll-Free Telephone Call).

Settlement of Tort Claims, Claims under the Small Claims Act, and Claims Made by an Employee of the Internal Revenue Service for Damage to or Loss of Personal Property Incident to Service

1. Pursuant to Treasury Orders 101–05 and 101–15 there is hereby delegated to the officials listed below the authority to handle the claims and amounts of claims as specified:

(a) Claims Manager, National Office;

(1) The authority, under 28 U.S.C. 2672 to consider, ascertain, adjust, determine, compromise, settle, and pay or transmit for payment claims for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Internal Revenue Service;

(2) The authority to consider, ascertain, adjust, and determine claims under 31 U.S.C. 3723;

(3) The authority under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, to settle and pay claims made by an employee of the Internal Revenue Service for damage to or loss of personal property incident to his/her service.

(b) Chief, Facilities Management Branch and Chief, Human Resources/Personnel Branch, as appropriate, each Regional Office, the authority under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, to settle and pay claims made by an employee within the respective regions in any amount of $500 and less, for damage to or loss of personal property incident to his/her service.

(c) Assistant Commissioner (International), District Directors and Service Center Directors, the authority to consider, ascertain, adjust and determine under 31 U.S.C. 3723 claims for reimbursement of bank charges arising out of erroneous Service levies or bank charges for stopping payment on a check, which the Service lost or misplaced and requested the taxpayer to replace.

2. The authority delegated herein may not be redelegated except as provided in paragraph 3, below.

3. The authority in 1(c) above, to consider, ascertain, adjust and determine claims for reimbursement of bank charges for stopping payment on a check may be redelegated but not lower than to first line supervisors.

4. To the extent that the authority previously exercised consistent with this order may require ratification, it is hereby approved and ratified.

5. Delegation Order No. 23 (Rev. 11) effective July 11, 1988, is superseded.

Dated: July 26, 1989.

John L. Wedick, Jr.,

Deputy Commissioner (Planning and Resources).

[FR Doc. 89–18758 Filed 8–10–89; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination; Frans Hals

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Frans Hals" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art in Washington, DC, beginning on or about October 1, 1989, to on or about December 31, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

[1] A copy of this list may be obtained by contacting Mr. Alberto J. Mora of the Office of the General Counsel of USIA. The telephone number is 202/485–7979, and the address is Room 70, U.S. Information Agency, 301 Fourth Street SW., Washington, DC 20547.

Dated: August 3, 1989.

Albert J. Mora,

General Counsel.

[FR Doc. 89–18821 Filed 8–10–89; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Availability of Report; Program Evaluation

Notice is hereby given that the Evaluation of the Chapter 30 Program for the Department of Veterans Affairs has been completed.

Single copies of the Evaluation of the Chapter 30 Program for the Department of Veterans Affairs report are available free. Reproduction of multiple copies can be arranged at the user's expense.

Direct inquiries specifying the name of the program evaluation desired to Mr. H. Raymond Wilburn, Director, Program Evaluation, Department of Veterans Affairs (07), 810 Vermont Avenue NW., Washington, DC 20420.

Dated: July 24, 1989.

By Direction of the Secretary.

H. Raymond Wilburn,

Director, Program Evaluation.

[FR Doc. 89–18802 Filed 8–10–89; 8:45 am]

BILLING CODE 8320-01-M

Availability of Report; Program Evaluation

Notice is hereby given that the Evaluation of the Department of Veterans Affairs' Restored Entitlement Program for Survivors has been completed.

Single copies of the Evaluation of the Department of Veterans Affairs' Restored Entitlement Program for Survivors report are available free. Reproduction of multiple copies can be arranged at the user's expense.

Direct inquiries specifying the name of the program evaluation desired to Mr. H. Raymond Wilburn, Director, Program Evaluation, Department of Vetrans Affairs (07), 810 Vermont Avenue NW., Washington, DC 20420.

Dated: July 24, 1989.

By Direction of the Secretary.

H. Raymond Wilburn,

Director, Program Evaluation.

[FR Doc. 89–18803 Filed 8–10–89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 154
Friday, August 11, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, August 8, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in open session to consider a memorandum regarding regulations establishing savings association insurance logo and prescribing its use by banks and savings associations.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matter on less than seven days' notice to the public and that no earlier notice of the meeting was practicable.

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: August 8, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-18949 Filed 8-9-89; 1:31 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:22 a.m. on Tuesday, August 8, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

A. Administrative enforcement proceedings.

B. Reports of the Acting Inspector General:

Audit Report re: Minneapolis Consolidated Office, Cost Center—204 (Memo dated July 20, 1989);

Audit Report re: Chicago Region Processing Center, Cost Center—200 (Memo dated July 5, 1989);

Audit Report re: Audit of the Estimated Cash Recovery System and Related Applications (Memo dated July 24, 1989).

C. Matters relating to assistance agreements pursuant to section 13(c) of the Federal Deposit Insurance Act.

D. Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: August 8, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-18950 Filed 8-9-89; 1:31 pm]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 32160 August 4, 1989.

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, August 1, 1989.

CHANGES IN THE MEETING: Addition.

The following item will be considered at a closed meeting on Tuesday, August 8, 1989, at 2:30 p.m.

Litigation matter.

Commissioner Cox, as duty officer, determined that Commission business required the above change.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Barbara Green at (202) 272-2000.

Dated: August 8, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-18964 Filed 8-9-89; 1:32 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of August 14, 1989.

Closed meetings will be held on Monday, August 14, 1989, at 3:30 p.m. and on Tuesday, August 15, 1989, at 2:30 p.m. An open meeting will be held on Wednesday, August 16, 1989, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Monday, August 14, 1989, at 3:30 p.m., will be:

Opinions.

The subject matter of the closed meeting scheduled for Tuesday, August 15, 1989, at 2:30 p.m., will be:

Settlement of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Institution of injuctive actions.

Settlement of administrative proceedings of an enforcement nature.

Regulatory matter regarding financial institution.

The subject matter of the open meeting scheduled for Wednesday, August 16, 1989, at 10:00 a.m., will be:

1. Consideration of whether to issue a release proposing amendments to the Net Capital Rule. The absolute minimum net capital required of registered broker-dealers pursuant to Securities Exchange Act Rule 15c3-1 would be raised. In addition, the deductions ("haircuts") applied to broker-dealers' equity securities positions in calculating net capital would be standardized under the proposal. Last, the amendments would establish a uniform haircut for stripped and zero coupon bonds and relieve certain aggregate indebtedness charges. For further information, please contract David I.A. Abramovitz at (202) 272-2398.

2. Consideration of whether to adopt Rule 15c2-6 (the "Penny Stock Fraud Rule"), which would impose sales practice requirements on broker-dealers who recommend purchases of certain low-priced, non-NASDAQ over-the-counter securities to persons other than established customers. Such broker-dealers would be required to make a documented suitability determination for the purchaser, and to obtain the purchaser's written agreement to the first three purchases of these securities. For further information, please contract Dan Gray at (202) 272-2848.

3. Consideration of whether to publish for comment a release revising proposals to amend the Commission's rules and forms regarding the filing of ownership reports by officers, directors, and principal shareholders and the exemption of certain transactions by those persons from the short-swing profit recovery provisions of section 16 of the Securities Exchange Act of 1934. For further information, please contact Brain J. Lane or Brain J. Lynch at (202) 272-2589.

4. Consideration of whether to issue a release for comment proposing amendments to transactional disclosure requirments to enhance shareholder analysis of corporate control transactions recommended or approved by the board of directors. Proposed amendments to Rule 13e-3 and Schedule 13E-3 would ensure that the purposes of the rule are met in all going private transactions in which management has a significant interest. The proposals also would impose a new disclosure requirement, modeled on the structure and interpretive positions of Rule 13e-3, for issuers engaged in extraordinary corporate transactions. Recommendations to reject a tender offer also would be subject to new disclosure requirements under certain circumstances. These additional disclosure requirements would be implemented by adding a new Item 703 to Regulation S-K. The Commission also will consider whether to propose amendments to Rule 14e-2 regarding the obligation of the issuer to respond promptly to revised tender offers. In addition, the Commission will consider whether to propose a procedure by which exhibits would be filed in connection with preliminary and definitive proxy materials. For further information, please contact Richard E. Baltz or Gregg Corso at (202) 272-3097.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contract: John Kincaid at (202) 272-2300.

Dated: August 8, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-18965 Filed 8-9-89; 1:32 p.m.]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 54, No. 154
Friday, August 11, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 796 and 797

[OPTS—66020; FRL-3616-1]

Toxic Substances Control Act Test Guidelines; Technical Amendments

Correction

In rule document 89-16537 beginning on page 29715 in the issue of Friday, July 14, 1989, make the following corrections:

1. On page 29715, in the second column, in the third complete paragraph, in the fifth line, "5/o mg/l" and "5.0 mg/l" should read "5/o mg/1" and "5.0 mg/1" respectively.

2. On the same page, in the same column, in the fourth complete paragraph, in the eighth line, "l2" should read "12".

§ 796.3400 [Corrected]

3. On the same page, in the third column, in § 796.3400(b)(2)(i)(B)(3)(*ii*), in the third line, "<" should read "≤".

§ 797.1400 [Corrected]

4. On the same page, in the same column, in § 797.1400(d)(2)(vii)(B), in the fifth line, "80 mg/l" should read "80 mg/1", and in the last line, "5.0 mg/l" should read "5.0 mg/1".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42113; FRL-3605-2]

Technical Amendments to Test Rules and Consent Orders

Correction

In rule document 89-15271 beginning on page 27352 in the issue of Thursday, June 29, 1989, make the following corrections:

On page 27352, in the second column, in the table, in the second column, third entry should read "[OPTS42113/47002I]".

§ 799.1700 [Corrected]

On page 27357, in the third column, in § 799.1700c(2)(i)(A)(*2*)(*iii*), in the last line, "29" should read "20".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180812;FRL-3605-8]

Emergency Exemptions; Glyphosate

Correction

In notice document 89-14892 beginning on page 26085 in the issue of Wednesday, June 21, 1989, make the following corrections:

On page 26086, in the first column, in designated paragraph 13, in the 10th line, "(54 FR 5474)" should read "(54 FR 5674)".

On the same page, in the second column, in designated paragraph 15, in the second line, "penimethalin" should read "pendimethalin".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-940-09-4214-11;NM 11643]

Proposed Continuation of Withdrawal; New Mexico

Correction

In notice document 89-17548 beginning on page 31261 in the issue of Thursday, July 27, 1989, make the following correction:

1. On page 31261, in the second column, under "New Mexico Principal Meridian", the fifth line should read, "NE¼ NE¼, SW¼ NW¼ NE¼ NE¼".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 26

RIN 3150-AC81

Fitness-for-Duty Programs

Correction

In the correction to rule document 89-12806 appearing on page 29139 in the issue of Tuesday, July 11, 1989, a portion of the text was inaccurate and should have appeared as follows:

§ 26.2 [Corrected]

In the third column, in item 1, in the last line, "December 4, 1989" should read "January 3, 1990".

BILLING CODE 1505-01-D

federal register

Friday
August 11, 1989

Part II

The President's Outer Continental Shelf Leasing and Development Task Force

Staff Summary of Environmental Concerns and Options; Notice

THE PRESIDENT'S OUTER CONTINENTAL SHELF LEASING AND DEVELOPMENT TASK FORCE

Staff Summary of Environmental Concerns and Options

AGENCY: The President's Outer Continental Shelf Leasing and Development Task Force.

ACTION: Notice.

SUMMARY: In his February 9, 1989, budget address to Congress, President Bush announced the establishment of a cabinet level Task Force to review environmental concerns in three Outer Continental Shelf (OCS) oil and gas lease sales that were scheduled for Fiscal Year 1990: Sale 91, Northern California, Sale 95 Southern California, and Sale 116, Part II, Eastern Gulf of Mexico. The President ordered that preparations for the three lease sales by the Minerals Management Service (MMS) be postponed.

Since its formation, the Task Force has held a number of public meetings and workshops to obtain technical information and public views on these proposals.

The purpose of this Notice is twofold:

1. To provide a summary of the environmental concerns presented to date to the Task Force, including possible ways of addressing these concerns, and

2. To solicit any additional concerns not yet identified and any new ideas on how to resolve them.

This information will be used by the Task Force in developing recommendations to be sent to the President by January 1, 1990.

DATE: Comments must be submitted on or before September 11, 1989.

ADDRESS: OCS Task Force, 18th and C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Robert E. Kallman, Executive Director, OCS Task Force 18th and C Streets NW., Washington, DC 20240, (202) 343-4869.

SUPPLEMENTARY INFORMATION: Additional copies of the Federal Register Notice may be obtained by contacting the OCS Task Force or visiting one of the following organizations:

California Governor's Office, Office of Offshore Development, Secretary of Environmental Affairs, 1102 Q Street, Sacramento, CA 95814
Santa Barbara County (CA), Energy Division, 1226 Anacapa Street, 2nd Floor, Santa Barbara, CA 93101
City of Carlsbad (CA), Carlsbad City Library, 1250 Elm Avenue, Carlsbad, CA 92008
San Luis Obispo County (CA), County Administration Office, County Government Center, 1035 Palm Street, San Luis Obispo, CA 93408, (805) 549-5450 or 5011
Mendocino County (CA), Mendocino County Courthouse, Board of Supervisors, Ukiah, CA 95482, (707) 463-4221
Humboldt County (CA), Humboldt County Planning Dept., 3015 H Street, Eureka, CA 95501, (707) 445-7541
Los Angeles County (CA), U.S. Government Book Store, Arco Plaza, Level C, Fifth and Flower Streets Entrance, Los Angeles, CA 90071, (213) 894-5841
San Diego County (CA), Clerk of the Board of Supervisors, County Administration Center, 1600 Pacific Highway, San Diego, CA 92101, (619) 531-5600
Orange County (CA), Hall of Administration, Public Information Office, 10 Civic Center Plaza, Santa Ana, CA 92701
Ventura County (CA), Supervisor Susan Lacey's Office, 800 S. Victoria Avenue, Ventura, CA 93009, (805) 654-2703
Florida Office of the Governor, Office of Environmental Affairs, Debbie Tucker, Carleton Bldg. Room 404, 501 South Gadsden Street, Tallahassee, Florida 32399-0001, (904) 488-5551
Dade County (FL), Metro Dade Center, 111 Northwest First Street, 29th Floor, Miami, Florida 33128, (305) 375-5311
Lee County (FL), Information Desk, Courthouse Building Lobby, 2115 2nd Street, Fort Myers, Florida 33901, (813) 335-2260
Hillsborough County (FL), Environmental Protection Commission of Hillsborough County, 1900 Ninth Avenue, Tampa, Florida 33605
Monroe County (FL), Reference Librarian, Monroe County Public Library, 700 Fleming Street, Key West, Florida 33040
Collier County (FL), County Communications and Public Affairs, Collier County Government Center, 3301 East Tamiami Trail, Naples, Florida 33962, (813) 774-8483

Richard J. Glynn,

Acting Executive Director, OCS Leasing and Development Task Force.

STAFF SUMMARY OF ENVIRONMENTAL CONCERNS AND OPTIONS

I. Purpose and Background

In his February 9, 1989, budget address to Congress, President Bush announced the establishment of a cabinet level Task Force to review environmental concerns in three Outer Continental Shelf (OCS) oil and gas lease sales that were scheduled for Fiscal Year 1990: Sale 91, Northern California, Sale 95 Southern California, and Sale 116, Part II, Eastern Gulf of Mexico. The President ordered that preparations for the three lease sales by the Minerals Management Service (MMS) be postponed.

Since its formation, the Task Force has held a number of public meetings and workshops to obtain technical information and public views on these sales.

Purpose of this Notice

The purpose of this Notice is twofold:

1. To provide a summary of the environmental concerns presented to date to the Task Force, including possible ways of addressing these concerns, and

2. To solicit any additional concerns not yet identified and any new ideas on how to resolve them.

This information will be used by the Task Force in developing recommendations to be sent to the President by January 1, 1990.

Background

On March 21, 1989, the White House announced the structure of the President's OCS Leasing and Development Task Force (Task Force). The members of the Task Force include: the Secretary of the Interior, who serves as Chairman; the Secretary of Energy; the Administrator of the National Oceanic and Atmospheric Administration (NOAA); the Director of the Office of Management and Budget (OMB); and the Administrator of the Environmental Protection Agency (EPA). In addition, the National Academy of Sciences is providing the Task Force with a technical review of the information about environmental concerns and petroleum resources.

The general location of the three lease sales under review is shown on Figure 1:

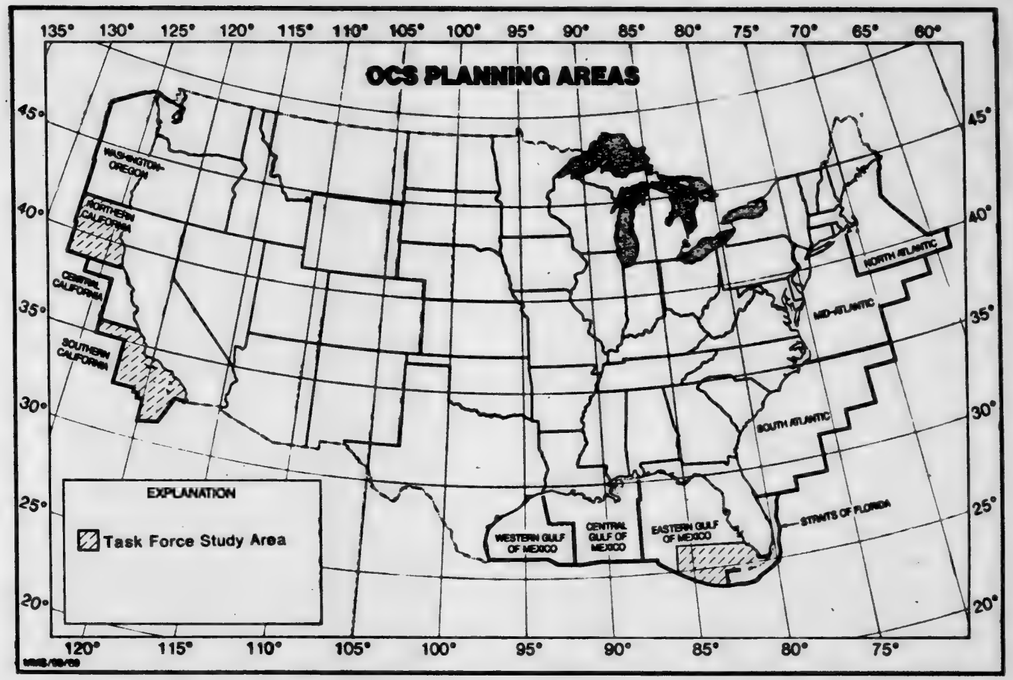


Figure 1.

Sale 91, Northern California (Figure 2)—Approximately 1.1 million acres located offshore portions of Mendocino and Humboldt Counties in the Northern California Planning Area. The proposal is in two segments: centering off Eureka in the north and from north of Point Arena to Point Delgada in the south.

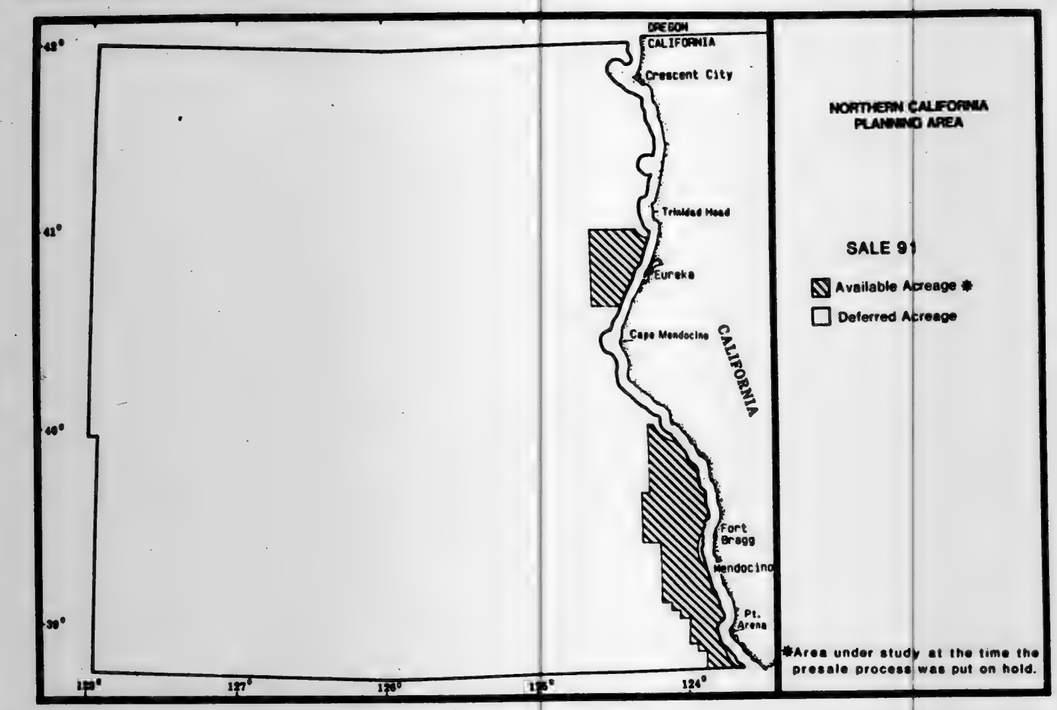


Figure 2.

Sale 95, Southern California (Figure 3)—Approximately 6.7 million acres located offshore southern California from the northern border of San Luis Obispo County to the U.S./Mexico provisional boundary.

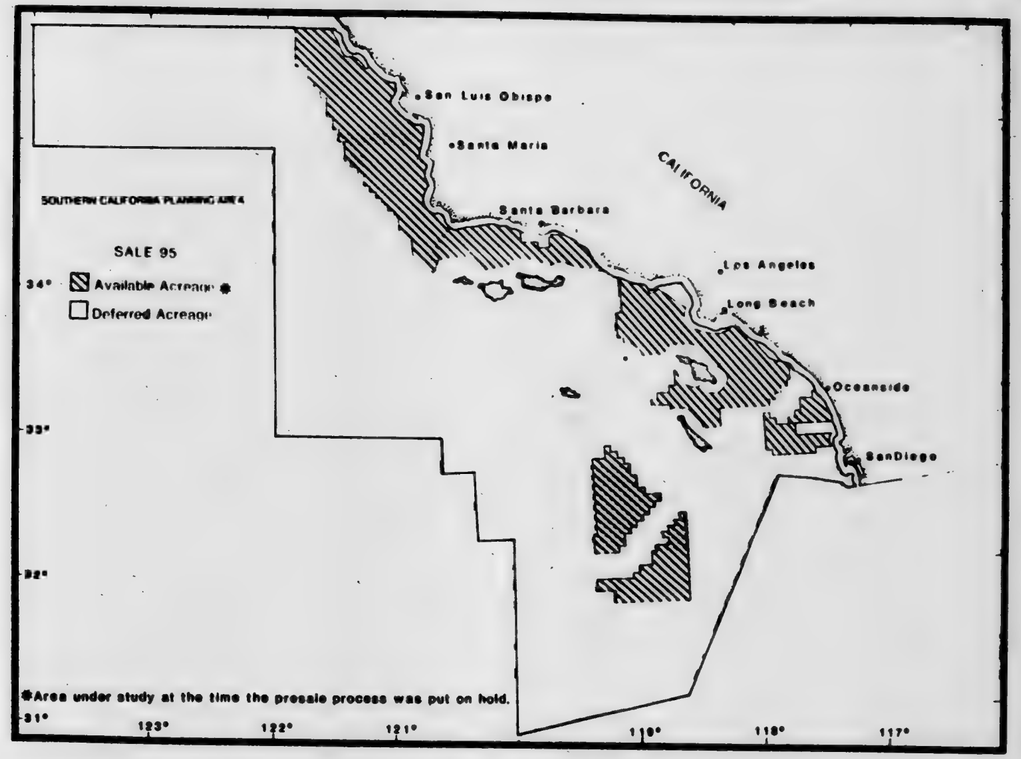


Figure 3.

Sale 116, Part II, Eastern Gulf of Mexico (Figure 4)— Approximately 14 million acres located between 26° and 24° North latitude offshore southwestern Florida (from Naples to the southern limits of the Eastern Gulf of Mexico Planning Area). The area is about 25 miles from the Dry Tortugas at its closest point to land.

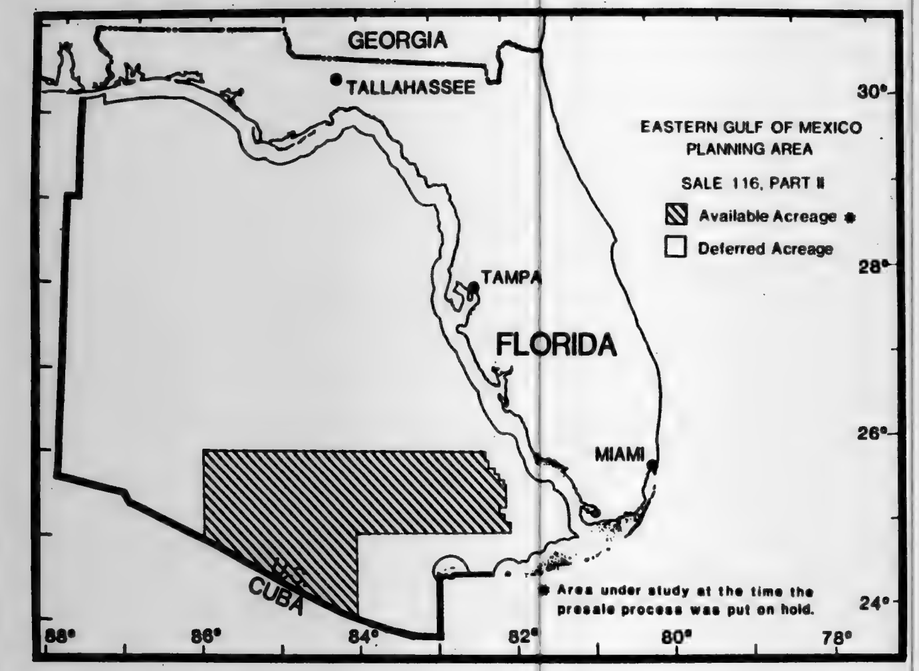


Figure 4.

Based on the President's direction, the Task Force decided to pursue the following six objectives:

1. Review environmental concerns over adverse environmental impacts in each of the three sale areas.
2. Identify and investigate environmental concerns.
3. Explore leasing proposals (including no leasing) for the three sale areas that might resolve environmental concerns.
4. Review the Administration's energy goals, environmental goals, and ocean management goals as they relate to OCS leasing.
5. Review the question of leasing and operations in the three sale areas and make recommendations to the President.
6. Review and monitor information available about the *Exxon Valdez* oil spill and cleanup effort which may aid the Task Force in accomplishing the five previous objectives.

Since May 9, 1989, nine public workshops have been held. In California, they were held in Carlsbad, Los Angeles, Arcata, Santa Barbara, and Sacramento. In Florida, they were held in Tallahassee, Fort Myers, Miami, and Key West. The Task Force heard from over 650 experts, elected officials, and members of the general public during the workshops and received approximately 11,000 written comments. The Task Force also met twice with Members of Congress who wished to express their views. The Task Force conducted field trips to examine directly some of the resources that could be affected as a result of oil and gas leasing in the proposed sale areas. It also visited a variety of oil and gas facilities.

This Notice summarizes environmental concerns, and options to resolve those concerns, which the Task Force has heard over the course of its briefings, workshops, field trips, and meetings with Members of Congress. The Task Force has not, at this point, developed any judgments on the validity of conflicting claims about environmental and economic effects or environmental protection capabilities. Nor has the Task Force attempted to evaluate the environmental or economic consequences of options or screen out any options. In fact, options are included in this Notice even if they have already been implemented. In the interests of brevity, this summary of environmental concerns and options does not attempt to cover the full technical detail which was presented to the Task Force.

This Notice is a continuation of the Task Force's information gathering process. All of the Task Force's workshops and meetings with Members of Congress have been transcribed and all written comments and materials submitted to the Task Force have been retained. Because the Task Force will continue to review and analyze these materials, there is no need for workshop participants and those who have already corresponded with the Task Force to repeat comments or proposals already made to the Task Force. Comments in response to this Notice should identify additional environmental concerns and options that should be considered.

The Task Force will accept comments on environmental concerns and options for 30 days—until September 11, 1989.

Comments should be sent to: Robert E. Kallman, Executive Director, President's OCS Leasing and Development Task Force, 18th and C Streets NW., Washington, DC 20240.

II. Environmental Concerns and Options Common to All Three Sales

A. Concerns About the Environmental Effects of OCS Oil and Gas Activities Expressed in All Three Sale Areas

The Task Force has learned first hand that many residents of the coastal regions bordering the three sale areas are concerned about the potential for substantial and costly degradation of the coastal and marine environment as a result of OCS activities. These concerns were expressed by the vast majority of those who participated in the Task Force workshops.

Many people expressed the view that, while they would suffer the losses from any environmental effects of oil and gas development, they stand to gain few, if any, of the potential benefits. Moreover, many suggested that the national benefits of a lease sale would be small. Oil industry representatives and some other workshop participants expressed a contrasting view that development would provide substantial benefits in the form of increased domestic economic activity, increased Federal and State revenues, lower oil imports, and enhanced national security.

The Task Force has been told by local officials and residents that the environmental effects that can result from OCS exploration and development, followed by the production and transportation of oil and gas, are real and concrete. Air and water can be polluted; plants, fish, birds, and marine mammals can be hurt; beaches can be fouled; access to fishing grounds may be reduced; local land use patterns may change; and ocean vistas can be marred by industrial facilities.

Several representatives of the oil and gas industry participated on panels during the workshops in Florida and California. Their comments addressed the safety and environmental record of offshore development and contradicted many of the environmental concerns raised by other panelists. For example, they repeatedly stated that oil spill risks from offshore oil and gas exploration and development are significantly lower than risks from tanker traffic. Industry representatives also described the technology that has been developed and used to prevent blow-outs, to allow drilling operations to proceed with zero discharge into the water and to withstand seismic shocks.

A number of the environmental concerns that were expressed to the Task Force are common to the three sales under review. These will be briefly summarized in this section while concerns that are unique or specific to one of the sales will be discussed in a subsequent section devoted to that specific sale.

Oil Spill Risk

The Task Force heard people strongly express their concerns about the damaging effects of oil spills that could result from OCS oil and gas production and transportation in each of the three sale areas. These concerns were clearly heightened by the catastrophic oil spill from the *Exxon Valdez* and the extensive damage to Alaskan coastal resources that it caused. Concerns were expressed about the adequacy of oil spill prevention, containment, and cleanup equipment and procedures. Many coastal residents also expressed strong apprehension about the damages an oil spill would cause to the beaches, shoreline, and marine resources which they use and value highly. The Task Force learned in its workshops that people seem to be particularly averse to risks over which they have little or no control. Many expressed the view that, with certain coastal and marine resources, no risk is acceptable.

Effects on Tourism and Recreation

In all three areas, people expressed the concern that recreation and the tourism industry, which are important parts of their local economy, would be harmed by the conduct of oil and gas operations offshore. They believe that many tourists will choose other areas to visit because of the risk of an oil spill, the esthetic effects of seeing oil rigs and platforms on the ocean, the reduction in the quality of marine resources which support coastal tourism, and the construction and operation of industrial support facilities onshore.

Effects on Commercial Fishing

Members of the fishing industry in all three areas told the Task Force that they believed their livelihood could be diminished or threatened by oil and gas activities. The causes of such interference include the effects on fish eggs, larvae, and the dispersion of fish schools from the percussion used in seismic surveys; the exclusion of fishing from areas near rigs and platforms; damage to fishing gear from seismic arrays, anchor scars, and debris left on the ocean floor; and competition for dock and harbor space.

Effects on Protected Lands

Each of the three areas is near important lands that are included in National and State Parks, Wildlife Refuges, and other public recreation areas. Many commenters expressed concern that these resources and their value would be degraded by oil and gas operations. In many cases the concerned speakers highlighted the national and international importance of these protected lands.

Effects on Protected Species and Other Wildlife

All three areas provide habitat to species that are endangered or threatened as well as many other species of marine mammals, waterfowl, and fish. Wildlife experts and members of the public told the Task Force of their concerns that wildlife populations would be reduced if oil and gas activities were allowed in the area.

Effects on Water Quality

Discharges into the ocean from drilling rigs and production platforms could affect water quality in an area undergoing exploration and development. The Task Force heard many people express particular concern about the discharge of drilling muds and cuttings as well as water produced from oil and gas reservoirs. The effects of such discharges on fish, bottom dwelling organisms, coral, and vegetation were of concern.

Changes in Onshore Infrastructure and Land Use

At workshops in all three sale areas, participants expressed concern about the additional demands for public facilities and services onshore that would be needed to support oil and gas activities and the resulting population growth. Concern was also expressed about the location of onshore oil and gas support areas, processing facilities, and transportation systems. These industrial facilities were frequently viewed as incompatible with existing or planned land use patterns. Many commenters feared that oil and gas activities could affect coastal property values.

B. Options Applicable to All Three Sale Areas

The Task Force has organized the options and recommendations it has received into those that apply to all three sale areas and those that apply to only one or two of the three. For the options that apply to all three sales, the

Task Force recognizes that the most fundamental choice is between leasing and not leasing in one, two, or all three of the areas.

Options for Not Leasing

The Task Force has grouped the options for not leasing in each of the three sale areas into categories as follows:

1. Establish a permanent ban on oil and gas activities within the sale area, as has been proposed by advocates of Ocean Sanctuaries.

2. Cancel the lease sale and all subsequent sales scheduled for the same area in the 1987–1992 5-Year Leasing Program.

3. Cancel the lease sale and proceed with the next sale in the same area only after selected additional control and mitigation measures have been developed and adopted to resolve environmental concerns.

Options for Leasing

The Task Force has grouped the options it has identified for moving forward with leasing in one or more of the lease sale areas into the following two categories:

1. Continue the status quo, in which the Department of the Interior (DOI) would resume its normal preparations for the lease sale, make decisions on sale configuration and stipulations for protection of the environment using existing procedures and policies, and apply existing regulations and procedures in overseeing oil and gas activities.

2. Proceed with leasing after deleting selected areas and/or adopting further environmental controls and mitigation measures to resolve environmental concerns.

Options for Resolving Environmental Concerns Common to the Three Sale Areas

In order to make the fundamental choice between leasing and not leasing, it is necessary first to develop various alternatives for leasing subject to additional restrictions designed to reduce the environmental impacts of oil and gas development. These alternatives can then be compared against the no leasing option.

This section is intended to present an array of alternatives or options which have been suggested as ways to address environmental concerns. The order in which these options are addressed below does not necessarily reflect either the public's or the Task Force's view on the merits of the alternatives presented. From the briefings, workshops, and written comments, the Task Force has heard a wide variety of options for avoiding, postponing, controlling, or mitigating the effects of offshore oil and gas activities. It is clear that many of the options could be implemented concurrently while others are mutually exclusive. The options common to all three sale areas are summarized below.

Sale Configuration Options

Exclude tracts near certain marine or land resources in order to protect them from the effects of oil and gas activity.

Offer a limited number of tracts to reduce the overall level of exploration and development activity in one or more of the sale areas.

Options for Controlling the Timing of OCS Activities

Defer the lease sale until certain conditions are met such as the completion of environmental studies, the development of a needed environmental protection technology, or the completion of exploration and development on existing leases in the area.

Proceed with leasing and exploration in the area, but allow development to be deferred until certain conditions are met such as demonstration of improved environmental protection measures or substantial increase in oil prices.

Proceed with exploratory drilling under Federal management, but postpone leasing and development until environmental concerns have been resolved and energy production benefits are higher.

Environmental Control and Mitigation Options

Oil Spill Risk

At the Task Force briefings and workshops a number of possibilities were suggested for reducing the risk of damages from oil spills. Many of these could apply to all sources of oil spills affecting the marine environment or all OCS operations. Such options are summarized in Section VI addressing programmatic changes.

The following options for reducing the risk of oil spill damages in one or more of the three sale areas reflect the fact that tanker transportation is a primary source of oil spill risk and that systems for the prevention, containment, and cleanup of oil spills from tankers and from OCS facilities can be coordinated to achieve efficient reductions in the risk of damaging oil spills from both sources:

Improve oil spill prevention, contingency planning, trajectory analysis, containment, and cleanup drills and capability in the sale area. This could be required of industry through several possible mechanisms including lease stipulations.

Adopt and make mandatory the use of U.S. Coast Guard (USCG) designated vessel traffic lanes in the sale area.

Allow State and local governments a greater role in establishment of vessel traffic lanes in the sale area.

Install a USCG radar or Global Positioning System traffic-control system to monitor vessels in areas near the coast in the sale area.

Require more frequent, realistic exercises to test OCS lessees' contingency plans for spills from rigs, platforms, and tankers carrying OCS oil.

Require pipelines instead of tankers for transportation of OCS oil to shore and subsequently to refining areas. This might be required as a stipulation for all leases in the sale or for leases where the oil discovery on the tract or in nearby tracts exceeds a level determined according to a formula which takes into account the economics of producing and transporting oil under specific oil prices.

Limit the total size of tankers used to transport oil from leases in the sale area; require them to be double-bottomed; limit the size of individual tanks; require tankers to have special maneuverability-enhancing features (e.g., bow thrusters).

Encourage or require lessees in the sale area to relocate non-OCS tanker traffic generally away from stationary OCS rigs and platforms.

Require lessees to permanently staff pre-positioned equipment with trained personnel, and require that the equipment be maintained always at full readiness.

Require OCS development plans in the sale area to include oil spill risk offset measures such as capturing oil from natural seeps, increasing oil spill containment capability in the area, or reducing the volume of oil tanker transport in the area. (Oil spill risk offsets could be reviewed by reference to a National Oil Spill Risk Assessment discussed in Section VI.)

Pre-approve acceptable dispersants to allow their immediate use in the event of a spill involving pre-specified oils, locations, and conditions in the sale area, thereby avoiding delays that could result while tests are being conducted to determine the acceptability of the dispersants.

Include a stipulation in the leases in the sale area requiring a special bond or certification of financial responsibility for mitigation and compensation for oil spill damages.

Increase MMS capability to monitor and enforce compliance with existing oil spill prevention regulations on rigs and platforms in the sale area, and increase frequency of regular and surprise inspections.

Require lessees to conduct oil spill prevention training for new workers on platforms and rigs in the sale area, and require periodic refresher training of employees.

Fund additional research and development on cleanup and preservation of oiled wildlife species present in the sale area.

Effects on Tourism

Require industry to mitigate economic losses from any foregone tourism caused by the environmental effects of or by the mere presence of OCS development in the sale area. Some suggested that a mitigation fee could be paid to a local organization for developing tourist attractions and promoting tourism.

Effects on Commercial Fishing

The following options have been suggested to the Task Force for reducing effects on commercial fishing in each of the sale areas:

Establish liaison offices with the fishing industry, to provide a communications, mediation, or clearinghouse function, to be staffed by personnel regarded as "neutral."

Impose appropriate seasonal or areal limits on geological and geophysical survey (G & G) work and OCS drilling in or near sensitive spawning or larvae production zones.

Require drilling rigs and platforms to be placed on the tract in a location which minimizes interference with any active fishery over that tract.

Revise or reinterpret MMS regulations on "diligence" of a lessee to explore and develop a tract, to provide flexibility to temporarily delay G & G or other work until the end of an important fish spawning season.

Require specified traffic corridors for crew and supply vessels servicing OCS operations, located to avoid fixed-gear fishing areas.

Effects on Protected Lands and Marine Resources

The following options have been suggested to the Task Force for reducing effects on protected lands in each of the sale areas:

Require consideration of resource values of protected areas when determining which tracts to offer for lease.

Require special oil spill contingency plans, trajectory analysis, containment drills, and capability (e.g., pre-positioning extra equipment) for leases issued near protected areas.

Effects on Protected Species and Other Wildlife

The following options have been suggested to the Task Force for reducing effects on protected species in each of the sale areas:

Impose seasonal or areal limits on seismic data collection and other OCS-related activity during times or in areas of particular importance to marine mammals, e.g., near major seasonal haul-out areas and during whale migration times.

Require vessels conducting seismic data collection to stop immediately if they observe marine mammals in the vicinity.

Effects on Water Quality

The following options have been suggested to the Task Force for reducing effects on water quality in each of the sale areas:

Require zero-discharge drilling rigs and platforms, through lease stipulations or EPA National Pollutant Discharge Elimination Systems (NPDES) permits under the Clean Water Act.

Require lessees to monitor for long-term impacts of drilling muds and cuttings and chronic operational discharges.

Require further government or industry research on environmental impacts of drilling muds and cuttings and chronic operational discharges.

Changes in Onshore Infrastructure and Land Use

The following options have been suggested to the Task Force for reducing effects on infrastructure and land use in each of the sale areas:

Consolidate facilities at onshore locations.

Establish a mechanism for the Federal Government to provide coordination or mediation if OCS-related onshore development causes a serious conflict with other existing or planned land uses.

Increase efforts to anticipate necessary onshore development, and require lessees to finance a larger part of the State and local planning process relating to such development.

Establish a mitigation fee program in which OCS companies contribute to a fund which finances projects that would mitigate OCS development effects on infrastructure and land use. Examples include: construction of additional infrastructure (sewage and water treatment, schools), funding social welfare programs, provision of new recreation areas.

Prohibit OCS-related onshore development in areas where it does not now exist.

Phase OCS activities with the goal of achieving a relatively constant level of loads on environmental resources and demands for onshore support facilities. In general, new oil and gas activities would be delayed until existing projects have been completed or have at least begun to phase down their environmental loads and demands for onshore support.

Phase development activities to also reduce the peak loads resulting from oil and gas production by delaying the startup of new production capacity until production from existing platforms and wells has begun its natural decline. In areas with no existing development, phasing OCS activities can slow the buildups in environmental loads and onshore support demands, providing more time for the preparation of onshore responses and facilities. Options for achieving such phasing include controls over the number and location of tracts offered for lease, of leases actually issued, over the timing of exploratory drilling permit approvals, or over development plan approvals.

Require the consolidated use of pipelines by lessees of tracts near each other.

Allow lessees in the sale areas a longer time to develop a tract either by issuing longer lease terms or by relaxing diligence requirements at the development stage.

III. Concerns and Options Specific to Sale 91

A. Environmental Concerns

The Task Force conducted a two-day public workshop in Arcata, California. The following concerns were expressed during the panel presentations, discussions, and the public comment period:

Oil Spill Risk

The Task Force heard that the oil spill risk in northern California is high due to Alaska North Slope tanker traffic bound for San Francisco, Long Beach, and the Panama Canal. OCS activity would add to these risks. The Task Force was told not to "add new risks on top of the risks we already face from Alaska tankers."

Effects on Tourism

Many speakers stated that heavy industry is incompatible with the image local communities want to project in order to encourage tourism.

Many also said that visible offshore rigs and platforms would alter the image of the spectacular, rugged, and undeveloped coast and would reduce the number of tourists attracted to the coastal area.

Speakers expressed fears that an oil spill would kill marine life, which is a

primary attraction for people who visit the northern California coast.

Effects on Commercial Fishing

The commercial fishing contributions to the northern California economy (ex-vessel value $32 million in 1985) could be adversely affected by OCS development, according to representatives of local governments and fishing concerns.

The Task Force was told that exploration and development of the OCS would eliminate significant portions of the narrow continental shelf from access by trawl. Trawling, the fishing method most susceptible to displacement by offshore oil and gas activities, accounts for 45 percent of the catch.

Some speakers said the oil and gas industry was responsive to fishermen's reports of debris left on the ocean floor by removing the debris.

Effects on Protected Lands

Concerns were expressed that air emissions from OCS development could degrade the air quality in Redwoods National Park, an area having Class I status which prohibits degradation.

Workshop participants expressed concern that oil spills would pose threats to national conservation system units (Redwoods National Park, Point Reyes National Seashore, and Golden Gate National Recreation Area; Castle Rock, Humboldt Bay, San Pablo Bay, Farallon, Point Reyes, and San Francisco Bay National Wildlife Refuges; King Range National Conservation Area; Cordell Bank and Gulf of the Farallones National Marine Sanctuaries) and State parks.

Effects on Protected Species

Speakers stated that several species, including gray and humpback whales, which reside in and migrate through the proposed sale areas would be adversely affected by chronic pollutants, oil spills, seismic surveys, and increased marine vessel traffic.

Changes in Onshore Infrastructure and Land Use

Some local government representatives stated that the infrastructure of the coast adjacent to the proposed sale area may not be able to absorb the influx of workers and their families. Population increases that typically accompany oil and gas development may overload existing schools, housing, and water and sanitary systems. The area may become subject to cycles of economic boom and bust which have accompanied oil and gas development in other regions.

Rough Seas

Generally rough seas and frequent storms may affect the industry's ability to operate platforms and facilities safely and to effectively contain and clean up oil spills, according to many workshop speakers.

Operations in a Seismically Active Area

Workshop participants expressed concern that earthquakes, underwater landslides, and tsunamis pose potential threats to offshore exploration and development equipment and facilities. The seismic risk in the Eel River Basin is as high or higher than any part of the continental margin with the possible exception of the south coast of Alaska. The Eel River Basin is located at the junction of three tectonic plates: Gorda Plate, North American Plate, and the Pacific Plate. The Task Force was told that the associated seismic activity does not necessarily preclude eventual offshore development, but it does require that seismic engineering be incorporated explicitly into the OCS development process.

B. Sale 91 Options

The following options have been presented to the Task Force in its briefings or workshops:

Current Sale 91 Proposal

The area studied for potential leasing in the Sale 91 draft environmental impact statement (EIS) included 52 blocks in the Eel River Basin offshore Humboldt County (more specifically, offshore Eureka and Arcata) and 163 blocks in the Point Arena Basin offshore Mendocino County. The study area encompasses 1.1 million acres, or 4 percent of the planning area. The available acreage generally ranges from 3 to 27 miles from shore. The exceptions are buffers adjacent to Trinidad Head, Fort Bragg, Point Arena, and Point Delgada Areas of Special Biological Significance (ASBS's). Deferred at the 5-year program stage were blocks in greater than 900 meters of water, acreage off Punta Gorda, and the buffers for the ASBS's noted above.

In addition to specific block deferrals instituted in the 5-Year Program, the Secretary of the Interior committed to include similar levels of protection as were provided in the lease sale stipulations for Sales 73 and 80, offshore southern California. The Sale 91 proposal includes these special protections, which are intended to address sensitive biological resources, archaeological resources, military use areas, transportation of hydrocarbon products, conflicts with commercial fisheries, personnel training programs, oil spill response requirements, onshore facilities, disposal of drilling discharges, and air quality.

The prelease process for Sale 91 was suspended in June 1988 after the publication of the draft EIS (October 1987) and completion of the EIS hearings (February 1988). Proceeding with the sale process as originally planned would entail the development of a final EIS (or an environmental assessment or new draft or supplemental EIS, if new information warrants).

Under the existing prelease process, the environmental analyses in the final EIS will be synthesized and incorporated into a Secretarial Issue Document (SID), which provides additional economic and qualitative analyses for the Secretary. Upon completion of decision materials, decisions on the configuration, terms, and conditions of the proposed Notice of Sale would be made. Comments from the Governor or executives of affected local governments on the size, timing, and location of the proposal are sought pursuant to the consultation requirements of the OCS Lands Act. The Secretary is required to accept the recommendations of the Governor [and may accept the recommendations of the executives of affected local governments] if they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. Based on these consultations and the balancing consideration, the final sale could be substantially different in configuration and special protection than originally studied as the proposal. The acreage offered for lease and the conditions applying to the leases are announced publicly in a Notice of Sale.

Sale Configuration Options

Proceed with the usual sale process beginning with the area studied in the EIS.

Governor Deukmejian's Proposal: In addition to the areas deferred from Sale 91 thus far in the prelease process, Governor Deukmejian's comments on the draft EIS requested extension of the ASBS buffers to a full 6 miles from the seaward boundary of the ASBS's. (The buffers currently extend 6 miles from the shoreline; some of the ASBS's are located entirely on land while others extend into the State tidelands.)

Congressman Panetta's Proposal: In addition to the areas deferred from Sale 91 thus far in the prelease process, Congressman Panetta's proposal submitted during the development of the current 5-year program would create a coastal buffer of about 6 miles from shore in the northern group of available blocks and over about 15 miles from shore in the southern group. In addition, Congressman Panetta's proposal limits the offering of selected blocks throughout the California OCS to 50 blocks total within the current 5-year program.

Offer "gas only" leases in the northern portion of the Sale 91 area. Leases would convey no rights to produce oil should it be discovered; however, condensate could be produced.

Offer only blocks in Eel River Basin.

Offer only blocks in Point Arena Basin.

Defer areas subject to geologic hazards.

Reconfigure sale to avoid commercial fishing conflicts. The Task Force heard options which included:

- Defer blocks to avoid conflicts with Dover and Petrale sole spawning and fishing grounds;
- Defer areas near the mouths of important estuaries to protect fish and shellfish resources;
- Defer blocks in the southern portion of the Point Arena basin to reduce potential oil spill risk to the Farallon Islands/Point Reyes areas.
- Defer all tracts with annual commercial fishing catches exceeding one million pounds.

Environmental Control and Mitigation Options

Oil Spill Risk

Require additional protection for Point Reyes National Seashore, Redwoods National Park, and Gulf of the Farallones National Marine Sanctuary through increased spill containment capability and buffer zones.

Effects on Commercial Fishing

Limit the timing of seismic surveys to avoid conflicts with fishing seasons and to protect Dover and Petrale Sole spawning and nursery areas.

Air Quality

Require mechanisms to insure air quality is not degraded.

Lease stipulations would require that offshore facilities meet onshore air quality standards. Residual emissions could be mitigated by onshore offsets. Special measures should be undertaken to prevent degradation of Class I air quality areas (e.g. Redwoods National Park).

IV. Concerns and Options Specific to Sale 95

A. Environmental Concerns

The Task Force conducted public workshops in Carlsbad, Los Angeles, and Santa Barbara. In addition to the general concerns summarized above, the following specific concerns were expressed during the panel presentations, discussions, and the public comment period:

Reductions in Air Quality

Workshop participants were of the opinion that increasing emissions from OCS exploration and development would exacerbate the air quality problem in southern California, which suffers from the worst air quality in the Nation. The majority of the onshore area adjoining Lease Sale 95 is designated as nonattainment for the ozone standard set by EPA. These onshore areas already implement stringent emission control standards and are in the process of adopting measures which would cause dramatic lifestyle changes for southern California residents.

Oil Spill Risk

Potential effects of a large oil spill on the heavily used beaches in southern California, tourism, fisheries, and quality of life were major concerns. Another major concern was the adequacy of present oil spill containment and cleanup techniques in adverse sea conditions.

Effects on Tourism

Speakers expressed concern that changes in recreation and tourism patterns and expenditures may occur as a result of OCS development (for example, according to some witnesses, the mere sight of OCS rigs may deter tourists) or accidents. Along the southern California coast, recreation is primarily water-oriented, from the standpoint of both active participation and aesthetic, passive aspects.

Effects on Commercial Fishing

The Task Force heard that loss of fishing gear such as crab pots could occur due to entanglement with seismic boat cables. Competition for berthing space and support services and potential economic ramifications could occur. Other concerns included reduction in harvestable fish (albacore tuna, rockfishes, Pacific ocean shrimp, California halibut, rock crab, and several species of sole) and invertebrate stocks due to oil spills, man-made structures blocking trawl areas, debris, anchor scars, and vessel traffic.

Effects on Protected Lands

Speakers stated that there is a need to place certain areas of the OCS permanently off-limits to oil and gas development in order to protect certain environmentally sensitive areas of the OCS or the coast. Areas that they said should be considered for such protection include: Channel Islands National Park and Santa Monica Mountains National Recreation Area, Channel Islands National Marine Sanctuary, State parks, State Areas of Special Biological Significance, fishery spawning or nursery areas, and the mouths of estuaries and rivers.

Effects on Protected Species

Workshop speakers said that the effects of noise from OCS oil and gas exploration and development may affect behavior of marine mammals and seabirds. In particular, this could cause abandonment of rookeries and changes in migration routes. Physical disruption of haulout areas and rookeries by pipeline construction and oil spill cleanup operations might occur. Seven endangered whale species inhabit the lease sale area including the gray, humpback, fin, sperm, blue, sei, and right whales. Two threatened marine mammals, the southern sea otter and the Guadalupe fur seal, inhabit the area. There are three endangered turtles (leatherback, green and olive ridley) and one threatened species of turtle (loggerhead) in the area. The five endangered species of birds are: California least terns, American peregrine falcon, bald eagle, California brown pelican, and the light-footed clapper rail.

Effects on Water Quality

Some witnesses expressed concern about degradation of water quality near platforms due to acute and chronic discharges (oil spills, dispersants, drilling fluids, formation water, and trace metals). The water quality of Santa Monica Bay has been seriously degraded by local municipal discharges. Discharges from OCS development could impair the recovery of the Bay.

Geological Hazards

Southern California is a seismically active area. Some witnesses expressed concern about failure of OCS oil and gas related structures due to potential earthquakes which could result in release of hydrocarbons or loss of life.

Changes in Onshore Infrastructure and Land Use

Some workshop participants were concerned that further development in the areas could result in increased traffic on roads that already are heavily used, could result in construction of pipelines and other onshore facilities that would interfere with existing land uses; and would result in increased

production of hazardous and non-hazardous wastes that would be difficult to handle in existing disposal facilities.

Visual Impacts

Some witnesses were concerned about degradation of the visual environment caused by platform placement offshore scenic and pristine areas in the Sale 95 area.

Marine Transportation

Witnesses expressed concern about increased risk of vessel accidents, due to additional crew and supply boat and shuttle tanker transits, and risk of collision with additional platforms offshore. Southern California waters are heavily used by recreational and commercial vessels. Long Beach harbor is an important terminal for tankers carrying crude oil from Alaska and other areas as well as petroleum products.

B. Options for Sale 95

The following options have been presented to the Task Force in its briefings or workshops:

Current Status of Sale 95 Planning

The area identified in October 1987 for study for potential leasing included approximately 6.7 million acres offshore southern California from the northern boundary of San Luis Obispo County to the U.S. Mexico provisional boundary. This represents 22 percent of the planning area. Deferred from consideration at the 5-year program stage were the following areas: blocks in greater than 900 meters of water; Santa Barbara Channel Federal Ecological Preserve and Buffer Zone; blocks within 6 miles of the Santa Barbara Channel Islands National Marine Sanctuary; blocks offshore Santa Monica from Point Dume to Long Beach; blocks within a coastal buffer offshore Newport Beach and the Irvine Coast Marine Life Refuges and Heisler Park ASBS; blocks within a coastal buffer offshore San Diego Marine Life Refuge and San Diego-La Jolla Ecological Reserve ASBS; the area offshore San Diego; and the San Nicolas Basin Navy Operating Area. Additionally, at the initial stages of Sale 95, the Call for Information and Area Identification, extensive military use areas south of the Channel Islands were deferred from consideration.

As with Sale 91, as part of the decisions on the 5-Year Program, the Secretary of the Interior committed to a similar level of protection for the area resources as was provided in the Sale 73 and 80 decisions.

The prelease process for Sale 95 was suspended in February 1989. The acreage offshore Camp Pendleton and Oceanside was the subject of a supplemental Call for Information issued in November 1988. Proceeding with the sale process would entail completing the second Area Identification and continuing therefrom with the development of a draft EIS, distribution of the EIS for public review and comment, and conduct of public hearings. The other steps of the leasing process would follow as described above for Sale 91.

Sale Configuration Options

Proceed with the usual sale process beginning with the area studied in the EIS.

Governor Deukmejian's proposal. In addition to the areas deferred to date in the prelease process for Sale 95, Governor Deukmejian, in comments on the Sale 95 Call for Information, requested deferral of the following areas (The Governor did note the opportunity for directional drilling into some of these areas.):

- Additional 1-mile buffer zone around the following ASBS's: San Miguel, Santa Rosa, and Santa Cruz Islands; Santa Barbara Island and Anacapa Island; San Clemente Island; Santa Clara Island, Subareas 1–4; San Diego-La Jolla Ecological Reserve; Heisler Park Ecological Reserve; and San Diego Marine Life Refuge;
- Tracts in the 6-mile buffer from the seaward boundary of the ASBS from Mugu Lagoon to Latigo Point at the border of Ventura and Los Angeles Counties;
- Tracts in the 3-mile buffer from the seaward boundary of the California oil and gas sanctuaries including portions of areas off San Luis Obispo, Orange, and San Diego Counties, as well as part of Santa Catalina Island;
- Blocks offshore Dana Point, Santa Catalina Island, San Diego County, San Luis Obispo County, and Santa Monica Bay area, and the beaches from Point Mugu to Point Fermin which had been deleted from past lease sales;
- Blocks within 12 miles of shore within the range of the southern sea otter;
- Blocks in the vessel precautionary area off the Ports of Long Beach and Los Angeles; and
- Blocks offshore San Diego.

Congressman Panetta's proposal: In addition to the areas deferred from Sale 95 thus far, Congressman Panetta, during the development of the current 5-Year Program, identified for deferral all blocks seaward of the southern extension of the southern sea otter range from San Simeon Point to the northern boundary of the planning area, blocks seaward of the Santa Monica Bay deferral, blocks in the Los Angeles-Long Beach Harbor area, and blocks within a coastal buffer running south from Huntington Beach.

In addition, Congressman Panetta would limit the offering of specified blocks throughout the California OCS areas to 50 blocks total within the current 5-year program. Included in this category are blocks adjacent to the buffer at the southern portion of the southern sea otter range, three blocks at the southwestern tip of his suggested Santa Monica Bay area deferral, and blocks beyond his suggested buffers offshore Dana Point and from San Clemente to La Jolla.

Congressman Regula's proposal: In addition to the areas deferred from Sale 95 to date, Congressman Regula's proposal submitted during the development of the current 5-Year Program includes the six northernmost rows of blocks in the planning area.

Split the sale in order to offer separately (or in some combination) blocks in the Morro Bay area, blocks near existing leases in the Santa Maria Basin, blocks in the Santa Barbara Basin, blocks near existing leases offshore Los Angeles County, and blocks south of the Los Angeles/Orange County boundary. Because of differences in the levels of existing development and varying environmental concerns, different timing, deferrals, and mitigation measures could be applied to these separate areas.

Environmental Control and Mitigation Options

Air Quality Options

Have DOI issue final regulations based on the January 1989 Notice of Proposed Rulemaking, which expanded regulatory controls and mitigation to all exploration and development activities on the California OCS and established more stringent compliance requirements for California OCS activities.

Have DOI issue regulations that assure equivalence in the requirements applicable to OCS facilities/activities, as compared to facilities/activities onshore or in State waters, but do not require OCS facilities to meet exactly the same standards as for onshore. For example, the regulations might use a "sliding scale" system to impose less stringent restrictions on OCS facilities which are relatively further offshore.

Have DOI issue regulations which would require OCS facilities and related activities to meet the same emission requirements as well as procedural and enforcement requirements as apply to similar facilities onshore. This approach might include a requirement for DOI to consult with EPA or a requirement that DOI obtain EPA certification that the OCS facility/activity meets appropriate

standards applicable to onshore and State-waters facilities/activities.

Transfer legal jurisdiction over OCS air emissions out of the OCS Lands Act (administered by DOI) and put OCS facilities and related activities under jurisdiction of the Clean Air Act (administered by EPA, the State, and local Air Quality Management Districts (AQMD)).

Establish one or more AQMDs on the Federal OCS, with an implementation plan to be developed by MMS or EPA. The OCS AQMDs would negotiate with the adjacent onshore AQMDs to allocate allowable emissions within the same air basin (or emissions which affect more than one air basin). The allocation among the various AQMDs would be subject to approval by EPA.

Extend control requirements to crew and supply boats, which witnesses stated may account for as much as 50 percent of the OCS-related air emissions. There are two types of controls. One involves physical changes, such as engine modifications and fuel switching. The second type of control is operational, such as a speed limit, or a boat-pooling requirement.

Require new sources within 25 miles of shore to apply Lowest Achievable Emission Rate (LAER) or Best Available Control Technology (BACT), when offshore of a nonattainment or attainment area, respectively. The preceding requirements could apply to both stationary and mobile offshore sources.

Require new stationary and mobile sources locating offshore of a nonattainment area to offset emissions in the same manner as required for onshore sources.

Require new emission sources locating offshore of a nonattainment area to offset emissions at a ratio of 1:1 to prevent an increase in emissions, or to offset emissions at a ratio of greater than 1:1 to assure a net reduction of emissions. The preceding requirement could apply to both stationary and mobile offshore sources. New sources located offshore of an attainment area would be required to offset emissions only when a threshold emissions limit is surpassed.

Encourage the use of non-traditional offsets, for example, reduction of mobile source emissions through fleet conversion and carpool programs. Carpool programs are an example of an offset that also could have energy conservation benefits.

Establish a mitigation fee program to provide an alternative method for new sources to acquire offsets. The new source would pay a fee to a designated agency, such as the AQMD. The Agency would be responsible to identify, develop, and certify the offsets. This program would emphasize the development of non-traditional offsets.

Require the adoption of an inspection and maintenance plan to reduce fugitive emissions from OCS facilities.

Require crew and supply vessels to operate from ports nearer to rigs and platforms.

Require all non-emergency pumps, compressors, and other equipment on OCS platforms and rigs to be powered by electricity. This option assumes that stringent air pollution control equipment would be installed at the power plant (whether onshore or offshore) generating the electricity.

Require DOI to participate in the onshore evaluation and planning process. Onshore air quality agencies must periodically evaluate their air quality program to determine whether projected emission reductions are in fact occurring and whether the reductions are having the desired effect. Additional OCS measures would be adopted if necessary in light of the review.

Require DOI to issue air quality permits for all existing and new OCS sources. The permits would be analogous to onshore permits issued by local air pollution control districts and would specify enforceable emission limits. These permits would also facilitate the use of offsets from OCS sources because the offsets from other OCS sources would be more easily verifiable.

Oil Spill Risk

Encourage or require industry to relocate non-OCS tanker traffic outside the Santa Barbara Channel, and generally away from stationary oil/gas platforms.

Install a USCG radar or Global Positioning System traffic-control system to direct vessels in the Santa Barbara Channel.

Move the USCG vessel traffic lanes entirely out of the Santa Barbara Channel.

Move the southbound USCG vessel traffic lane out of the Santa Barbara Channel, because that is the lane used most often by laden oil tankers in this area (i.e., Alaska oil tankers heading for Long Beach).

V. Concerns and Options Specific to Sale 116, Part II

A. Environmental Concerns

The Task Force held Workshops in Tallahassee, Fort Myers, Miami, and Key West, Florida. The following concerns were expressed during the panel presentations, discussion, and public comment period:

Oil Spill Risk

Citizens and elected officials raised a number of concerns about the risk of oil spills and the ability of industry or Government to clean up after a major spill. Nearly every speaker indicated that any increased risk of an oil spill is too great to accept in mangrove-seagrass-coral ecosystems. Speakers said that the oil spill response to the *Exxon Valdez* spill shows the oil industry is not really prepared to clean up spills.

Speakers noted that current oil spill risks are already high in southwest Florida due to existing oil tanker traffic to the south of the area and through the area. The cumulative effect of oil drilling and associated development would increase those risks.

Speakers pointed out that if oil is developed, it will probably be brought ashore via tankers. Tankers pose far more significant risks of oil spills than pipelines.

Workshop participants expressed concern that attempting to remove oil from mangroves, corals, and sandy- or mud-bottom estuaries would exacerbate ecological damage caused by the spilled oil.

The mangrove forests, coral reefs, and seagrass communities contacted by an oil spill in Panama have suffered extensively and shown little sign of recovery in 2 years since the spill. The same could happen in southwestern Florida according to workshop participants.

Oil and gas industry representatives stated that drilling and producing operations offshore Florida are expected to pose relatively low environmental risk due to shallow water and low pressure and high viscosity oil likely to be found in oil and gas reservoirs.

Effects on Tourism and Recreation

Many commenters stated that tourists would avoid Florida's west coast and Keys if offshore oil and gas were developed there, which could substantially damage the State's largest industry.

Speakers were concerned that corals, which are a major tourist attraction, are extremely sensitive to pollutants and turbidity from drilling mud discharges.

The Task Force was told that recreational and pleasure craft would have to compete for limited dock space with oil and gas equipment and supply vessels.

Effects on Commercial Fishing

Workshop participants raised the following concerns:

The commercial and recreational fisheries in Florida, which generate a combined economic impact of over $1.6 billion annually, could be adversely affected by OCS development.

Eggs, larvae, and juvenile fish are susceptible to chronic pollutants and acute oil spills.

Development would disrupt productive marine resource habitats such as estuaries, seagrass beds, and coral reefs.

Effects on Protected Lands

Federal, State, and local governments as well as private organizations have invested millions of dollars to purchase much of the coastal lands in southwest Florida for nature preserves, public recreation, and shoreline protection. The United Nations has designated Everglades National Park and Fort Jefferson National Monument (Dry Tortugas) ecosystem as an "International Biosphere Reserve." If an oil spill or chronic pollution from oil and gas drilling operations were to occur and foul these areas, the reason for their designation (i.e., the protection of the Florida Everglades) would be irreparably damaged, according to workshop participants.

Numerous citizens and elected officials voiced their concerns over the importance of assuring that public and private natural areas be protected from increased risks of oil spills. They raised issues over acute and chronic pollution that would result from oil and gas development.

The Task Force heard that designated national parks and sanctuaries contain many endangered and threatened species that could be affected by an oil spill.

Participants highlighted that Everglades and Biscayne National Parks, Ft. Jefferson National Monument, and Looe Key and Key Largo National Marine Sanctuaries are likely to be contaminated if an oil spill occurs from OCS leases.

Beaches and parks in Florida are one of the State's primary tourist attractions. There is no proven environmentally sound way to remove oil from sandy beaches or mangrove roots.

Effects on Protected Species

Workshop participants stated that increased marine vessel traffic could pose threats to sea turtles and manatees. Five species of endangered and threatened sea turtles inhabit the area. The endangered West Indian manatee inhabits coastal mangroves and rivers in the area.

The Task Force was told that drilling muds and other pollutants would reduce viability of sea grasses. Manatees and sea turtles forage on sea grasses and organisms which inhabit them.

Concerns were expressed that an oil spill contacting Ft. Jefferson National Monument could have devastating effects on seabird colonies. The islands contain one of the two largest seabird nesting colonies along the U.S. Gulf of Mexico coast.

Changes in Onshore Infrastructure and Land Use

Local officials and citizens expressed concern over onshore impacts associated with oil and gas development. Florida has one of the highest rates of population increase in the country. The rapidly rising population places demands on natural resources and public services—roads, water, schools, hospitals—which are currently at capacity.

Citizens and officials voiced the following concerns to the Task Force:

Solid waste disposal opportunities are extremely limited throughout the area. If Government requires companies to use "zero discharge drilling rigs," companies would have to bring drilling muds and other pollutants, some of which are toxic, to land. Southwest Florida has no place to put additional solid wastes.

Harbor space currently used by commercial fishing and recreational marinas is likely to be most affected by demands from OCS activity. Since creation of new ports is undesirable in most areas shortages and conflicts could result.

Demands for fresh water from onshore facilities supporting OCS activity will exacerbate existing shortages and saltwater intrusion, which are characteristic of the area.

The Florida Keys are not capable of supporting onshore staging and support facilities for oil and gas development.

Hurricanes and Emergency Preparedness

The Task Force heard that regular occurrence of hurricanes increases the potential for oil spills from platforms and tankers. The Dry Tortugas is a major hurricane entry point into the Gulf of Mexico. Over 150 hurricanes swept through the area between 1871 and 1986.

Furthermore, participants pointed out that hurricanes and tropical storms could rapidly spread any spilled oil.

The emergency response capabilities of local governments are already strained during and after hurricanes. This would make it difficult for them to deal with an oil spill at same time.

Submerged Habitats

The numerous corals in the south Florida area are very sensitive to pollutants and sediment accumulation.

The Task Force was told that drilling mud discharges can affect coral reefs, sea grasses, and hard bottom areas, especially in shallow, clear water. Recent studies in the Big Bend areas off Florida have shown that sea grasses within 300 meters of a drill platform were completely buried and killed. Biomass and productivity were affected out to 3.7 kilometers from the drilling facilities.

B. Options for Sale 116, Part II

The following options have been presented to the Task Force in its briefings or workshops:

Current Sale 116, Part II Proposal

The area identified as Sale 116, Part II includes about 14 million acres between 26° and 24° North latitude offshore southwest Florida. The northern boundary of the area is just south of Naples. The eastern boundary of the area under consideration for lease is about 30 miles from the mainland coast at its closest point. The southern boundary is about 25 miles north of the Dry Tortugas.

Unlike Sales 91 and 95, a final EIS for Sale 116 was published and distributed. Sale 116 was split at the proposed notice of sale stage in June 1988, Part II was postponed and later, in February 1989, included in the Task Force effort. While two special State/Federal task forces conducted reviews of oil spill trajectories and potential effects of exploration, the prelease process did not continue.

Sale Configuration Options

Proceed with the usual sale process beginning with the area studied in the EIS.

Allow no leasing or drilling within 30 miles of shore south of 28 degrees north.

Lease no areas containing coral reef or other environmentally sensitive lands.

Delete tracts in any known upwelling areas, submarine canyons, and ridges.

Establish larger buffer zones around the Fort Jefferson National Monument (Dry Tortugas).

Permit leasing only in the blocks in the Pulley Ridge and/or Howell Hook areas.

Timing of Leasing, Exploration and Development Options

Cancel Lease Sale 116, Part II and all future lease sales in the area. This is essentially the only option expressed by the vast majority of individuals at the four workshops in Florida and through written comments. In addition to canceling Lease Sale 116, Part II, many expressed the view that all existing permits for exploration from previous lease sales in those areas south of 26 degrees North be revoked and leases repurchased so as to exclude any oil and gas development activities.

Many expressed a view that there should be no oil and gas development in the entire Florida OCS.

Delay leasing and exploration in the Part II area until exploration and development is complete north of 26° North latitude.

Delay leasing until additional environmental analysis is conducted to reflect new information emerging from hydrocarbon resource evaluation and other task force efforts and studies in Florida. The additional analysis would be made available to the public. Subsequent steps of the leasing process would follow as described above from the point of publishing the final EIS for Sale 91.

Allow one (or a few) test wells on existing leases to improve resource estimates.

Require that all existing leases be explored before leasing additional tracts.

Industry representatives stated that exploration and development of already leased tracts should proceed according the lessee's schedule.

Environmental Control and Mitigation Options

Require zero discharge drilling and production equipment.

Require pipelines for transport of oil and gas to processing facilities on shore (less risk of spill).

Require tankers/barges instead of pipelines to transport oil and gas to processing facilities (less damage to bottom environments).

Prohibit drilling or platform placement within a specified distance of coral reefs, live bottoms, or seagrass beds.

Prohibit drilling mud discharges within a specified distance of coral reefs, live bottoms, or seagrass beds.

Seasonally restrict seismic data collection and drilling activities to avoid primary concentrations of ecologically and commercially valuable species.

Require industry to mitigate damage to highly productive areas such as seagrass beds and coral reefs.

Improve oil spill response capabilities by conducting further testing of dispersants and their effects on ecosystems of south Florida.

Changes in Onshore Infrastructure and Land Use

Increase Federal funds to local communities and the State of Florida to defray costs of planning and providing services needed to accommodate increased population and industry needs resulting from OCS development.

Require consolidation of shore-based support facilities at existing industrial port facilities, e.g., Tampa.

VI. Programmatic Changes Raised by Workshop Participants

The Task Force heard a wide range of options recommending fundamental changes to the OCS leasing program through amendment of the OCS Lands Act and other statutes, preparation of integrated national plans relating to energy and oil spill risk management, and general practices used by the Minerals Management Service (MMS) in leasing and supervision of lessees.

A. Changes to the OCS Leasing Program

Development of Next 5-Year Oil and Gas Leasing Program

Many comments addressed the 5-Year Leasing Program. Section 18 of the OCS Lands Act requires the Department of the Interior to prepare and maintain a 5-Year OCS Oil and Gas Leasing Program designed to set out the size, timing and location of OCS leasing activities in such a way as to meet national energy needs and obtain a proper balance between the potential environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone. On July 14, 1989, the Interior Department initiated the public consultation process required for the development of a new program to supersede the current 5-Year Program which covers the period from July 1987 to July 1992. The program development process takes over two years and is projected to result in final approval of a new program by the fall of 1991, covering OCS leasing activity over the period from that time until the fall of 1996. The process will include participation by the public, State and local governments, environmental organizations, and Members of Congress. Any decisions which the President may make on recommendations of the OCS Leasing and Development Task Force which would affect the next 5-Year Program can be incorporated as a part of this process.

Exclude Frontier Areas From the 5-Year Plan

It was recommended that frontier areas should be set on a separate schedule which reflects greater demand for research and public involvement. Analysis and research required to accurately document resources and potential effects is more complex in frontier areas, where leasing has not previously occurred, than in those areas with a leasing history. It was suggested that more study is needed before the decision is made to include such areas in the 5-Year Leasing Program.

Expand Revenue Sharing with Coastal States

Under Section 8(g) of the OCS Land Act the Federal Government shares revenues from OCS leasing with the coastal States. At present, coastal States receive 27 percent of the bonus bids, rents, and royalties from OCS leases in the first 3 miles of the OCS. The Task Force heard suggestions to increase both the areas subject to sharing OCS receipts and the percentage. The Task Force was told that the OCS Lands Act should be amended to provide for payments of shared revenues directly to coastal communities affected by OCS activity, in addition to States. A variant of this option was presented to institute revenue sharing within the 12-mile territorial sea with States or to institute a graduated revenue sharing system that would encompass the entire OCS but would reduce the percentage of revenue shared as the distance from shore increases.

Increase States' Involvement in Leasing Decisions

The Task Force was asked to consider ways to increase affected coastal States' participation in OCS decisions including whether to lease and the timing, extent, and conditions of leasing. For example, the OCS Lands Act could be amended to require that the Governors of affected States approve lease sales, plans of exploration, and development and production plans.

Amend CZMA to Include Consistency Review of OCS Lease Sales

The Coastal Zone Management Act (CZMA) provides for State review of activities in plans of OCS exploration, development, and production for consistency with State coastal zone management programs. The CZMA does not, however, authorize State consistency review of lease sales. The Task Force heard suggestions that subjecting sales to consistency review would assure leasing that is compatible with approved State and local coastal management plans.

BEST COPY AVAILABLE

Improve Other Federal Agency Involvement in OCS Decisions

In addition to the MMS, several Federal Agencies participate in the OCS process through consultations relating to effects on endangered and protected species, air and water quality permits, effects on conservation system units, transportation, and oil spill prevention and containment planning and response. Concern was expressed that participation of these agencies, which include, the U.S. Fish and Wildlife Service, the National Park Service, the National Oceanic and Atmospheric Administration, the U.S. Coast Guard, and the Department of Energy, in the decisions affecting leasing and development in the OCS is not always clearly defined along established processes. The Task Force was encouraged to recommend processes through which other Federal Agencies may formally participate in decisions.

Increase Public Involvement in OCS Decisions

It was recommended that MMS increase the level of public and State agency involvement in analysis and decisions affecting the OCS.

B. Integrated Planning

National Oil Spill Risk Assessment and Management

The Task Force heard many comments on the threat of oil spills. Sources of oil spill risk in addition to OCS production and transport include foreign tankers in U.S. waters, U.S.-flagged tankers and barges carrying Alaskan oil and refined products, and offshore production in State waters. The Task Force has been encouraged to recommend that a national oil spill risk assessment be conducted. Such an assessment would identify the sources of oil spill risk nationally and provide a systematic basis for reducing oil spill risks. Reductions in the risks from existing sources could offset the additional risk from a new source such as additional OCS development. Furthermore, additional oil spill response capabilities established in an area could be used to contain and clean-up oil spills from both OCS and non-OCS sources. One approach in areas of high oil spill risk (such as the areas near major oil tanker ports) is to allow no additional source of risk (such as OCS development) unless the added risk is offset by other reductions. Limitations on oil tanker routes could reduce oil spill risk in an area where OCS development could occur. A national assessment of oil spill risk could be used to identify those areas that would benefit from additional oil spill prevention, containment and cleanup capability.

In addition to the potential for large oil spills, significant amounts of oil constantly enter the marine environment from surface run-off, municipal wastes, normal vessel operations, and natural seeps. As with the assessment of oil spill risk, the Task Force was encouraged to recommend conduct of an inventory of sources of oil in coastal environments. This inventory could serve as an additional basis for offsets. For example, to offset the additional risk of oil spills from OCS development, oil/water separators could be installed in storm sewer outfalls.

The following options have been suggested to reduce oil spill risk from tankers, the primary source of large spills:

Improve oil spill prevention, contingency planning, trajectory analysis, containment, and cleanup drills and capability for tanker spills. This could be required through several possible mechanisms, many of which are addressed in bills now before the Congress. Coordination with the American Petroleum Institute's recently-announced "Petroleum Industry Response Organization" may also prove beneficial.

Increase Government funding for the U.S. Coast Guard's (USCG) oil spill prevention, response, and cleanup functions. This could include funding for additional pre-positioning of current equipment and for R&D to improve containment and cleanup technology. Include more frequent training exercises for Government personnel, at all levels, to heighten readiness and to improve integration of the various responsibilities carried out by the different levels of Government in responding to an oil spill.

Eliminate or increase limits on liability for damages from oil spills.

Review (and if necessary, revise) the National Contingency Plan to determine its adequacy to address major spills, with special regard to Government-industry and inter- and intragovernmental aspects.

Develop deepwater ports for the unloading of tankers to reduce nearshore tanker operations.

Revise Federal statutes governing design, construction, operation, manning and piloting of oil tankers.

A number of suggestions were made to the Task Force that would address oil spill risk on the entire OCS:

Amend the OCS Lands Act to eliminate or increase limits on liability for damages from OCS oil spills.

Provide greater assurance of availability of funds for prompt response to an OCS oil spill and for full compensation of injured parties.

Require special bonds or certification of financial responsibility for mitigation and compensation for damages.

Integrated Environmental Offsets

The Task Force has identified an opportunity to reduce several different types of environmental loads to which OCS activities contribute through a program in which OCS lessees would conduct or finance projects that would reduce several different existing environmental loads. A good example of such a project is the development and operation of a commuter transportation system using alternative fuels. A vanpooling system using alternative fueled vehicles could reduce onshore air emissions, reduce the risk of oil spills from tankers by reducing crude oil demand, and could also reduce congestion on the highways. In southern California for example, many projects that achieve savings in oil consumption will have the advantage of reducing both air emissions and oil spill risks.

By contributing to such a project, oil companies seeking approval for a major development project offshore could reduce existing air emissions and oil spill risk by more than the increases caused by the offshore development. Options for implementing this approach include expanding the existing air emission offsets program to include non-traditional sources, generalizing it to include oil spill risk and other environmental loads, and establishing a fund to finance public projects and programs through mitigation fees paid for uncontrolled and unmitigated emissions.

VII. National Energy Policy Options

Development of the National Energy Strategy

The President has directed the Department of Energy to begin development of a comprehensive "National Energy Strategy." This new policy is intended to guide the Nation in achieving ample supplies of competitively priced energy in a manner that recognizes the environmental, economic, health, and safety needs of the American public. The National Energy Strategy will be an integrated plan that emphasizes conservation as a key component.

Beginning in August, public hearings on the National Energy Strategy will be held in locations throughout the country. Comments will be solicited from public officials, industry leaders, environmental groups, and concerned citizens on a wide range of energy issues and recommended solutions. The results of the hearings will be compiled, and the information will be made available to the public. A preliminary draft of the National Energy Strategy is scheduled for release in April 1990.

Energy Policy Recommendations Received by the Task Force

At each workshop, the OCS Task Force was told repeatedly that the proposed lease sales should not be conducted because the Nation does not have a comprehensive national energy policy. Numerous witnesses stated that if such an energy policy were developed and implemented, there would be no need for oil production from environmentally sensitive offshore areas. Alternatively, many suggested leasing only if the national energy policy clearly showed the need for additional offshore oil and gas production.

In general, the contention was made that the Federal Government should take an aggressive leadership role in establishing a comprehensive energy policy with strong emphasis on energy conservation. Greater reliance on alternative energy sources, together with a renewed national commitment to the development of renewable energy resources, was also recommended. Specific suggestions for new federal initiatives included the following:

Increase fuel efficiency standards for new motor vehicles

Improve energy conservation in buildings by installing more efficient lighting and appliances

Reduce heat loss in buildings by improving wall insulation and installing windows with better heat retention properties

Reestablish tax credits for investments in energy conservation measures

Lower gasoline demand by encouraging the use of alternative fuels, such as methanol, ethanol, electricity, and compressed natural gas

Promote educational programs to create a national consciousness about energy conservation in daily living

Increase Federal funding for renewable energy R&D programs, including solar, wind, and ocean energy

Promote increased use of mass transit in urban areas

Encourage changes in urban land use planning to reduce commuting distances

In addition to policies designed to limit oil consumption, the Task Force was provided a number of specific policy recommendations relating to the OCS areas under consideration. These suggestions included:

Preserve OCS oil resources in their natural state as a reserve to be produced in the event of a future energy emergency

Instead of seeking new OCS production, revitalize the domestic oil production industry in well-developed oil producing areas where exploration and production have been reduced and existing wells have been plugged or abandoned

Develop fully oil resources in OCS areas that currently have onshore support facilities and can accommodate further development without undue environmental risks

[FR Doc. 89-18827 Filed 8-10-89; 8:45 am]

BILLING CODE 4310-MR-M

federal register

Friday
August 11, 1989

Part III

Nuclear Regulatory Commission

10 CFR Part 2

Rules of Practice for Domestic Licensing Proceedings; Procedural Changes in the Hearing Process; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150-AC22, 3150-AA05

Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process

AGENCY: Nuclear Regulatory Commission.
ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its Rules of Practice to improve the hearing process with due regard for the rights of the parties. The amendments require a person seeking to participate as a party in an NRC proceeding to file a list of contentions with the presiding officer together with a brief explanation of the bases for each contention, a concise statement of the alleged facts or expert opinion that support the contention and which, at the time of the filing, the person intends to rely upon in proving the contention at the hearing, and references to the specific sources and documents of which the person is aware and upon which he or she intends to rely to establish such facts or expert opinions. The information submitted by a potential intervenor must be sufficient to show that a genuine dispute exists between it and the applicant or licensee on an issue of law or fact. If the person fails to satisfy these requirements the presiding officer shall not admit the contention. Other amendments are made to reduce unnecessary discovery, to describe procedures by which a presiding officer may require parties to file a description of the purpose and nature of questions which they intend to ask witnesses during cross-examination, to expand the time during which motions to dispose of contentions summarily and without a hearing may be filed, and to limit an intervenor's appeals and filings of proposed findings of fact and conclusions of law to issues which that party actually placed in controversy or sought to place in controversy in the proceeding.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Stuart A. Treby, Assistant General Counsel, Rulemaking and Fuel Cycle Division, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone (301) 492-1636.

SUPPLEMENTARY INFORMATION

I. Background

On July 3, 1986, after extensive study, evaluation and review and careful consideration of prior public comments,[1] the Commission published a notice of proposed rulemaking stating that it was considering amending certain provisions of its rules of practice in order to improve the licensing process for nuclear power plants and inviting public comment (51 FR 24365, July 3, 1986.) The proposed amendments, which were initially developed by the Regulatory Reform Task Force, addressed specific aspects of the hearings process: Admission of contentions; discovery against NRC staff; use of cross-examination plans; timing of motions for summary disposition; and limitations on intervenors' filings of proposed findings of fact, conclusions of law, and appellate briefs. In addition to these proposals, the Commission also requested comments on a series of related proposals developed by former Commissioner Asselstine concerning the intervention process. The comment period expired October 17, 1986. More than 150 comments, including a few late-filed comments, were received from electric utilities, electric utility and nuclear power associations or their counsel, utility stockholders, counsel for NRC licensees, an architect-engineer, intervenors in NRC proceedings, public interest groups, states, local governments, Indian tribes and interested individuals. Copies of all comments received are available for public inspection, and copying for a fee, at the NRC Public Document Room at 2120 L Street, NW., lower level, Washington, DC.

II. Summary of Comments

A. General

Although objections were raised to some of the specific proposals, the proposed rule received broad support from electric utilities, their counsel and various industry groups. According to these commenters, the proposed rule would streamline the hearing process and make it more efficient. States, local governments, public interest groups, intervenors and individuals generally opposed the proposals on the ground that they would curtail the public's role in the licensing process and meaningful public participation in licensing proceedings would be eliminated. Noting the need for and importance of unbiased factual information in reaching sound regulatory decisions and the effectiveness of intervenors in identifying and obtaining full consideration of vital health and safety issues, these commenters expressed the view that opportunities for full public participation in the licensing process should be expanded, not reduced. Some commenters questioned the need for the proposed changes. Others stated that the Commission's rules of practice should be retained unchanged.

B. Comments on Specific Proposals, with Responses

The sections which follow contain a description of each of the proposed amendments, a summary of the comments received and an NRC response.

1. Intervention (10 CFR 2.714) Admission of Contentions

The proposed amendments to 10 CFR 2.714 would raise the threshold for the admission of contentions to require the proponent of the contention to supply information showing the existence of a genuine dispute with the applicant on an issue of law or fact. The required showing must include references to the specific portions of the application which are disputed. The contention must also be supported by a concise statement of the alleged facts or expert opinion, together with specific sources and documents of which the petitioner is aware, which will be relied on to establish the facts or expert opinion. Absent this showing, the contention will not be admitted. Under the proposed amendments, admission of a contention may also be refused if it appears unlikely that the petitioner can prove a set of facts in support of the contention or if it is determined that the contention, even if proven, would be of no consequence in the proceeding because it would not entitle the petitioner to relief. Finally, the proposed amendments would provide that a contention raising only an issue of law will not be admitted for resolution in an evidentiary hearing but shall be decided on the basis of briefs and any oral argument that may be held.

Electric utilities, their counsel and industry groups, for the most part, supported this change, while environmental and citizen action groups and state and local government representatives opposed the proposed amendments raising the threshold for the admission of contentions.

Characterizing the proposed changes respecting the admission of contentions as one of the most significant aspects of the proposed rule, the commenters who favored adopting more stringent standards of admissibility stated that the Commission's existing procedures permitted too many insignificant,

[1] A detailed account of the background of this rulemaking is set out in the preamble of the proposed rule, *see* 51 FR 24365-24366, July 3, 1986.

meritless, hypothetical and time-consuming contentions to be admitted and that the proposed amendments would have the salutary effect of requiring petitioners to know in advance of filing a petition to intervene what issues they intended to litigate and how they planned to conduct the litigation. In the opinion of some commenters, the proposed amendments, if vigorously enforced, could become an important tool in crystallizing disputes at an early stage in the proceeding, thereby significantly improving the efficiency and quality of the hearing process. The commenters noted that the proposed amendments should curtail the practice of using discovery procedures to develop contentions and that the proposed amendments would bring NRC practice more in line with Federal practice under the Administrative Procedure Act. The proposed amendments would also, in one respect, conform NRC practice more closely to that permitted by the Federal Rules of Civil Procedure. On this point, one commenter noted the similarity between Rule 12(b)(6) of the Federal Rules of Civil Procedure and the provision in proposed § 2.714(d)(2)(iii) under which a presiding officer could refuse to admit a contention upon a determination that the contention, if proven, would be of no consequence in the proceeding because it would not entitle the petitioner to relief.

Some of the proponents of the proposed amendments expressed the view that the amendments should be further revised. Several commenters expressed the view that the proposed amendments did not go far enough in that they failed to include more stringent requirements respecting standing. Several commenters questioned the propriety of admitting contentions based on disputes on issues of policy. In the opinion of these commenters, it would be inappropriate for licensing and appeal boards to decide policy issues. Policy and disagreements concerning policy should be addressed by the Commission itself. According to these commenters, to permit policy statements which have been formally adopted by the Commission to be challenged in licensing and regulatory proceedings devoted to other matters would be inconsistent with current NRC practice (see 10 CFR 2.758) which precludes parties in any adjudicatory proceeding involving initial licensing, except as provided in § 2.758 (b), (c) and (d), from challenging any Commission rule or regulation. Instead, concerns respecting Commission policies should be raised at the time the Commission is actively engaged in developing and formulating those policies in the forum provided by the Commission for that purpose.

In response, the Commission would note that the use of the terms "law, fact and policy" was not meant to change in any manner the way Commission regulations or policy statements are dealt with in NRC proceedings. The terms were used merely to encompass the variety of issues, often mixed factual, legal or policy issues, which can be the subject of contentions in NRC proceedings. However, to avoid any ambiguity about the manner in which policy issues are to be dealt with before the NRC, the word "policy" has been deleted from the final version of § 2.714.

Several commenters criticized the language used in paragraph (b)(2) of § 2.714 to describe the threshold of admissibility on the ground that it was unnecessarily redundant because it included two separate standards of admissibility, *i.e.*, (1) the existence of a genuine dispute with the applicant on a material issue of law, fact or policy, and (2) the information presented prompts reasonable minds to inquire further as to the validity of the contention. Some commenters opposed, while other commenters favored, inclusion of the "reasonable minds" standard. One commenter noted that the genuine dispute standard is the same standard used to determine standing and that if this standard is applied as it has been in the past, adoption of the proposed amendments will have little practical effect. The Commission has concluded that describing the threshold for admissibility by two different phrases is unnecessary and could create confusion. Therefore the "prompts reasonable minds to inquire further" language has been deleted from the final rule.

Commenters opposing the proposed amendments objected on the grounds that the proposed amendments were unnecessary, contrary to due process, unduly burdensome, unfair and in violation of the provisions of section 189a of the Atomic Energy Act of 1954, as amended. According to these commenters, the proposed standard for the admission of contentions is so restrictive that it would be virtually impossible for persons seeking to participate in an NRC adjudicatory proceeding to succeed in having their contentions admitted with the result that significant safety issues might not be fully explored or carefully reviewed. Instead of sharpening the issues in dispute, the proposed amendments would simply eliminate certain issues from further consideration with the result that the problems presented might never be satisfactorily resolved. This could be highly detrimental to the public health and safety.

Asserting that the proposed standard for admissibility of contentions is far more stringent than that applied by the Federal courts, the commenters argued that, if promulgated, the standard would have the effect of requiring persons seeking to participate in an NRC proceeding to prepare and prove their complete evidentiary case before any determination is made on their right to be a party to the proceeding. Under the proposed procedures, several commenters argued, petitioners would not only be required to produce the proof of their alleged facts in order to be admitted to the proof-gathering and fact-finding process; licensing boards would also be permitted to prejudge the petitioner's evidence before the petitioner was granted standing to participate in the proceeding. Several commenters took strong exception to the provision in § 2.714(d)(2)(ii) which would permit presiding officers to bar an intervenor from participating in a proceeding on the basis of a preliminary determination that "it appears unlikely that petitioner can prove a set of facts in support of its contention."

In the opinion of some commenters, the requirement that petitioners must document and furnish evidence in support of their contentions before they are entitled to participate in an adjudicatory proceeding and take advantage of the mechanisms normally available to parties to such a proceeding to obtain relevant documents and information is patently unfair and constitutes a denial of due process. In addition, they argue, contrary to the intent of the present regulatory scheme, one immediate effect of the proposed amendments would be to shift the burden of proof from the license applicant to the intervenor. The comments also noted that under the Commission's regulations, license applicants are not required to furnish all the necessary documentation supporting the application at the time the application is first submitted. These circumstances, coupled with the more stringent standard for the admission of contentions prescribed by the proposed amendments, would make it impossible for intervenors to prepare and litigate a fully definitive case.

Some commenters also argue that to the extent that the proposed amendments would operate to bar intervenors from participating in NRC adjudicatory proceedings, they would contravene the provisions of section 189a of the Atomic Energy Act of 1954,

as amended, which states, in pertinent part:

In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the payment of compensation, an award, or royalties under sections 153, 157, 186c., or 188, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding * * *.

The commenters also opposed the proposed amendments because, in their opinion, the amendments would, if adopted, create a hopeless state of confusion respecting the matters to be considered in determining whether a person should be entitled to participate in a proceeding and the matters to be considered in reaching a decision on the merits of the proceeding. In their view, the standards used in deciding an issue on the merits are not appropriate for deciding whether a particular person should be allowed to participate in a proceeding. The commenters also took exception to the cases cited in the preamble of the proposed rule in support of this proposal.

Finally, some commenters objected to the proposed amendments on the grounds that they are unnecessary. According to these commenters, presiding officers have adequate authority under the Commission's present rules of practice to bar contentions which are frivolous and without merit. In general, when an effort has been made to apply the existing requirements in a disciplined manner, presiding officers have experienced little difficulty in determining whether a particular contention is meritorious and should be admitted as an issue in the proceeding. The commenters are firmly of the view that additional amendments establishing more stringent standards for the admission of contentions are unnecessary.

The Commission disagrees with the assertions that the proposed amendments are unduly burdensome and so restrictive that it will be virtually impossible for persons to have safety contentions admitted to an NRC proceeding.

Under these new rules an intervenor will have to provide a concise statement of the alleged facts or expert opinion which support the contention and on which, at the time of filing, the intervenor intends to rely in proving the contention at hearing, together with references to the specific sources and documents of which the intervenor is aware and on which the intervenor intends to rely in establishing the validity of its contention. This requirement does not call upon the intervenor to make its case at this stage of the proceeding, but rather to indicate what facts or expert opinions, be it one fact or opinion or many, of which it is aware at that point in time which provide the basis for its contention.

In addition to providing a statement of facts and sources, the new rule will also require intervenors to submit with their list of contentions sufficient information (which may include the known significant facts described above) to show that a genuine dispute exists between the petitioner and the applicant or the licensee on a material issue of law or fact. This will require the intervenor to read the pertinent portions of the license application, including the Safety Analysis Report and the Environmental Report, state the applicant's position and the petitioner's opposing view. Where the intervenor believes the application and supporting material do not address a relevant matter, it will be sufficient for the intervenor to explain why the application is deficient.

The Commission does not agree that this rule contravenes section 189a of the Atomic Energy Act of 1954, as amended. A member of the public has no absolute or unconditional right to intervene in a nuclear power plant licensing proceeding under the Atomic Energy Act. *BPI* v. *Atomic Energy Commission*, 502 F.2d 424 (DC Cir. 1974). Section 189a of the Act which provides for intervention is subject to the Commission's rulemaking power under section 161p and, thus, to reasonable procedural requirements designed to further the purposes of the Act. *BPI* v. *Atomic Energy Commission, supra*, 502 F.2d at 427, 428; *see also American Trucking Ass'ns, Inc.* v. *United States*, 627 F.2d 1313, 1320-23 (DC Cir. 1980). Furthermore, the right to intervention under section 189a for a member of the public is explicitly conditioned upon a "request." The proposed amendments would, in effect, provide that a "proper request" by a member of the public shall include a statement of the facts supporting each contention together with references to the sources and documents on which the intervenor relies to establish those facts. Finally, the Administrative Procedure Act creates no independent right to intervene in nuclear licensing proceedings. See *Easton Utilities Commission* v. *Atomic Energy Commission*, 424 F.2d 847, 852 (DC Cir. 1970)(en banc); *cf. National Coal Operators' Assn.* v. *Kleppe*, 423 U.S. 388, 396-99, 46 L. Ed. 2d 580, 96 S. Ct. 809 (1976).

Nor does the Commission believe that this requirement represents that substantial a departure from existing practice. Under the Commission's existing requirements, as explained by the Atomic Safety and Licensing Appeal Board, "[A]n intervention petitioner has an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable the petitioner to uncover any information that could serve as the foundation for a specific contention. Neither Section 189a of the Atomic Energy Act nor § 2.714 of the Rules of Practice permits the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or Staff."

Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 468 (1982); *vacated in part on other grounds*, CLI-83-19, 17 NRC 1041 (1983). *See also Ohio* v. *NRC*, 814 F.2d 258 (6th Cir. 1987). Under the current requirement to provide the basis for a contention, a petitioner must provide some sort of minimal basis indicating the potential validity of the contention. "The requirement generally is fulfilled when the sponsor of an otherwise acceptable contention provides a brief recitation of the factors underlying the contention or references to documents and texts that provide such reasons." *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 1), ALAB-868, 25 NRC 912, 930 (1987). The revised rule does, however, overturn the holdings of *Mississippi Power and Light Co.* (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 425-26 (1973) and *Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 548-49 (1980). The Appeal Board found in those cases that the current language of 10 CFR 2.714 does not require a petitioner to describe facts which would be offered in support of a proposed contention. The new rule will require that a petitioner include in its submission some alleged fact or facts in support of its position sufficient to indicate that a genuine issue of material fact or law exists.

We reject the arguments that the new rule is unfair and a denial of due process because it requires intervenors to allege facts in support of its contention before the intervenor is entitled to discovery. Several months before contentions are filed, the applicant will have filed an application with the Commission, accompanied by multi-volume safety and environmental reports. These documents are available for public inspection and copying in the Commission's headquarters and local public document rooms. Admitted intervenors will continue to be able to use discovery to develop the facts necessary to support its case. However, the rule will require that before a contention is admitted the intervenor have some factual basis for its position and that there exists a genuine dispute between it and the applicant. It is true that this will preclude a contention from being admitted where an intervenor has no facts to support its position and where the intervenor contemplates using discovery or cross-examination as a fishing expedition which might produce relevant supporting facts. The Commission does not believe this is an appropriate use of discovery or cross-examination. *BPI* v. *Atomic Energy Commission*, 502 F.2d 424, 429 (DC Cir. 1974). The Commission believes it is a reasonable requirement that an intervenor be able to identify some facts at the time it proposes a contention to indicate that a dispute exists between it and the applicant on a material issue.

The Commission agrees with commenters that the new rule may require persons seeking intervention to do more work at an earlier stage of the proceeding than under the current regulations. However, the Commission disagrees with the conclusion reached by some commenters that the rule shifts the burden of proof to potential intervenors or should be rejected because of the burden placed on potential intervenors. The revised rule does not shift the ultimate burden of persuasion on the question of whether the permit or license should be issued; it rests with the applicant. Rather, the rule only details what is expected of an intervenor as part of its burden of coming forward with information in support of a proposed contention. *Cf. Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 345 (1973). The Commission believes it to be a reasonable requirement that before a person or organization is admitted to the proceeding it read the portions of the application (including the applicant's safety and environmental reports) that address the issues that are of concern to it and demonstrate that a dispute exists between it and the applicant on a material issue of fact or law. Many intervenors in NRC proceedings already ably do what is intended by this requirement: they review the application before submitting contentions, explain the basis for the contention by citing pertinent portions and explaining why they have a disagreement with it.

The Commission also disagrees with the comments that § 2.714(b)(2)(iii) should permit the petitioner to show that it has a dispute with the Commission staff or that petitioners not be required to set forth facts in support of contentions until the petitioner has access to NRC reports and documents. Apart from NEPA issues, which are specifically dealt with in the rule, a contention will not be admitted if the allegation is that the NRC staff has not performed an adequate analysis. With the exception of NEPA issues, the sole focus of the hearing is on whether the application satisfies NRC regulatory requirements, rather than the adequacy of the NRC staff performance. See, *e.g., Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 807, *review declined*, CLI-83-32, 18 NRC 1309 (1983).[3] For this reason, and because the license application should include sufficient information to form a basis for contentions, we reject commenters' suggestions that intervenors not be required to set forth pertinent facts until the staff has published its FES and SER.

The new rule provides that in ruling on the admissibility of a contention, the presiding officer shall not admit a contention to the proceeding if the intervenor fails to set forth the contention with reasonable specificity or establish a basis for the contention. In addition, the contention will be dismissed if the intervenor sets forth no facts or expert opinion on which it intends to rely to prove its contention, or if the contention fails to establish that a genuine dispute exists between the intervenor and the applicant (or, possibly, the NRC staff on a NEPA issue). Contrary to the assertions of some commenters, the use of this standard for the admission of contentions has been supported by the Federal courts in numerous instances. *Vermont Yankee Nuclear Power Corp.* v. *NRC*, 435 U.S. 519 (1978); *Independent Bankers Ass'n* v. *Board of Governors*, 516 F.2d 1206 (D.C. Cir. 1975); *Connecticut Bankers Ass'n* v. *Board of Governors*, 627 F.2d 245 (D.C. Cir. 1980). The court in the latter case emphasized that "a protestant does not become entitled to an evidentiary hearing merely on request, or on a bald or conclusory allegation that such a dispute exists. The protestant must make a minimal showing that material facts are in dispute, thereby demonstrating that an "inquiry in depth' is appropriate." 627 F.2d at 251. The Commission's rule is consistent with these decisions.

Several commenters were concerned that the standard "dispute on a genuine issue of material law or fact" is the same one to be used by the presiding officer in ruling on motions for summary judgment filed under 10 CFR 2.749. The Commission expects that at the contention filing stage the factual support necessary to show that a genuine dispute exists need not be in affidavit or formal evidentiary form and need not be of the quality necessary to withstand a summary disposition motion. At the summary disposition stage the parties will likely have completed discovery and essentially will have developed the evidentiary support for their positions on a contention. Accordingly, there is much less likelihood that substantial new information will be developed by the parties before the hearing. Therefore, the quality of the evidentiary support provided in affidavits at the summary disposition stage is expected to be of a higher level than at the contention filing stage.

The proposed rule also provided in § 2.714(d)(2) that the presiding officer would refuse to admit a contention where:

(ii) It appears unlikely that petitioner can prove a set of facts in support of its contention; or

(iii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

The requirement in (iii) above was intended to parallel the standard for dismissing a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. The intent of Rule 12(b)(6) is to permit dismissal of a claim where the plaintiff would be entitled to no relief under any set of facts which could be proved in support of his claim.

A number of commenters disagreed with the language of proposed § 2.714(d)(2)(ii); specifically, the phrase "appears unlikely", because it suggests that the presiding officer is to prejudge the merits of a contention before an intervenor has an opportunity to present a full case. The Commission recognizes the potential ambiguity of the proposed phrasing and the paragraph has been deleted.

Issues which arise under the National Environmental Policy Act (NEPA) are specifically addressed in the new rule.

[3] The Commission recognizes that in some cases the applicant's and the NRC staff's position on a particular issue will be similar. Although under these rules the contention must be framed to disagree with the applicant's position, an intervenor's evidentiary in the proceeding. For each issue appealed, the precise portion of the record relied upon in support of the assertion of error must also be provided.

NEPA requires the NRC to analyze the environmental impact of its proposed major actions significantly affecting the quality of the environment. In the licensing context, the NRC fulfills this obligation by issuance of a draft environmental impact statement (DES) and a final environmental impact statement (FES). Any license or permit application subject to NEPA's impact statement requirement must contain a complete Environmental Report (ER) which is essentially the applicant's proposal for the DES. (See 10 CFR 51.20 and 51.40). As described in § 2.714(b)(2)(iii), an intervenor will be required to demonstrate that a genuine dispute exists between it and the applicant or the staff on a material issue of fact or law which relates to NEPA. Several commenters took exception to the provisions in paragraph (b)(2)(iii) of § 2.714 relating to environmental matters, claiming, among other things, that those provisions appear to authorize petitioners to submit late-filed contentions based on the NRC staff's environmental review documents. One commenter recommended that the discussion of NEPA issues in § 2.714(b)(2)(iii) be deleted as unnecessary, noting the availability of a right, based on past precedents, to amend or supplement environmental documents to reflect new information. The commenters disagreed on whether contentions relating to environmental matters should focus on environmental reports submitted by the applicant or environmental documents prepared by the NRC staff.

The Commission has reexamined those portions of § 2.714(b)(2)(iii) which relate to the filing of environmental contentions in the light of these comments and has concluded that the text of the rule as presently drafted is clear and that no further revision is needed. The rule makes clear that to the extent an environmental issue is raised in the applicant's ER, an intervenor must file contentions on that document. The NRC staff in its DES or FES may well take a different position than the applicant. 10 CFR 2.714(b)(2)(iii) explicitly recognizes for environmental matters existing precedent regarding the right to amend or supplement contentions based on new information. The Commission wishes to emphasize that these amendments to § 2.714(b)(2)(iii) are not intended to alter the standards in § 2.714(a) of its rules of practice as interpreted by NRC caselaw, *e.g., Duke Power Co.*, (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983), respecting late-filed contentions nor are they intended to exempt environmental matters as a class from the application of those standards.

One commenter objected to the inclusion of the word "concise" in paragraph (b)(2)(ii) of § 2.714 on the ground that it "could be misconstrued as requiring brevity." The commenter added that a word or phrase which connotes sufficient detail to inform the reader of the various factual or other bases for the contention should be used instead.

The Commission disagrees with the view of the commenter that retention of the word "concise" in paragraph (b)(2)(ii) of § 2.714 could be misleading. In the opinion of the Commission, paragraph (b)(2)(ii), when read in context with paragraphs (b)(2)(i) and (b)(2)(iii) of § 2.714, clearly identifies the kind of detailed information which a petitioner must provide to enable the Commission or the presiding officer to determine whether a contention should be admitted in a particular adjudicatory proceeding.

Several commenters suggested that paragraph (b)(2)(iii) of § 2.714 should require that the issue being raised is not only in dispute but is also "material", that is, that the resolution of the dispute would make a difference in the outcome of the licensing proceeding. The Commission concurs that that was the intention of the requirement, as is demonstrated by the the language of paragraph (d)(2)(i) of § 2.714, which provided for "determining whether a genuine dispute exists on a *material* issue" of law or fact. Section 2.714(b)(2)(iii) has been revised to include the word "material".

One commenter expressed the view that there was very little likelihood that contentions involving purely legal issues would be submitted (in most cases contentions raise mixed questions of law and fact) and therefore paragraph (d)(2)(iv) of § 2.714 is unnecessary and should be deleted. Another commenter disagreed with the form of § 2.714(d)(2)(iv). As written, it conflicts with the proposed definition of a contention in 10 CFR 2.714(b)(2) as a statement of "*law*, fact or policy". While not opposed to the intent of the proposal, the commenter recommended that this section be revised to read as follows:

If the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on the admissibility of contentions determines that any of the admitted contentions constitute pure issues of law, those contentions must be decided on the basis of briefs or oral argument according to a schedule determined by the Commission or the presiding officer.

The intent of the proposed rule in § 2.714(d)(2)(iv) was that purely legal contentions, which occur rarely, may be admitted as issues in the proceeding. However, they will not be a part of an evidentiary hearing, but rather, will be handled on the basis of briefs and oral arguments. A new paragraph (e) has been added to § 2.714 to clarify this intention.

The Commission is also making a clarifying change to 10 CFR 2.714(c). That paragraph provides that any party to a proceeding may file an answer to a petition to intervene within certain time periods. Prior to 1978, a person petitioning to intervene in an NRC proceeding was required to state not only how his or her interest might be affected by the results of the proceeding, but also the basis for his or her contentions with regard to each aspect on which he or she desired to intervene. Under that scheme for petitions for leave to intervene, it was clear that a response filed pursuant to 10 CFR 2.714(c) could be a response to the contentions and the bases for any contentions proposed. In 1978, the Rules of Practice were amended to provide that a petitioner could file his or her contentions separately in a supplement to the original petition to intervene, not later than fifteen days prior to the special prehearing conference held pursuant to 10 CFR 2.751a or the first prehearing conference. Section 2.714(c) was not amended to make it clear that answers to these supplemental petitions containing contentions and their bases were permitted as well as to the original petition to intervene. However, the practice before the Commission since 1978 has been that answers to supplements to petitions to intervene as well as to an initial petition to intervene are permissible within the timeframe established in § 2.714(c). Language is being added to § 2.714(c) to make it clear that answers to both initial petitions and any supplements thereto are permissible.

Former Commissioner Asselstine also suggested in the proposed rule additional changes in the Commission's rules on intervention and public participation in the licensing process. Changes to 10 CFR 2.104, 2.714, 2.751a and 2.752 were proposed to require early publication of notice of receipt of an application, to specify the time within which petitions for intervention can be filed, to separate the decision on standing from the decision on the validity of contentions, to provide for a mandatory ninety day period of time to draft contentions, and to create a two stage screening process to determine

whether or not a genuine issue of a material fact exists with respect to each contention.

Those commenters who favored former Commissioner Asselstine's proposals felt they would improve the efficiency of the hearing process without imposing additional burdens on intervenors. They were thought to be logical and easy to understand and dealt with the fact that although the hearing clock begins when an application is docketed, much of the documentation of interest to intervenors may not be ready for some time. Some commenters felt the proposals would encourage informal discussion and resolution of disputes and were generally more equitable and fair.

Those commenting unfavorably on the Asselstine proposals felt they would exacerbate the current problems of instability and unpredictability in the hearing process. The use of provisional admission and the notice of receipt proposals would only add additional steps to the hearing process without increasing its effectiveness. They felt presiding officers already have the authority to reject petitions for intervention prior to submission of contentions and do so. These proposals would substantially increase the number of parties and contentions without any countervailing benefit. Other commenters, although favoring the approach of Commissioner Asselstine, believed discovery should take place before contentions and that too much discretion was being given to the presiding officer to dismiss contentions.

The Commission has considered the comments on Commissioner Asselstine's proposals and concluded that it does not wish to take any additional action regarding these proposals at this time. Several of them address the same aspects of the hearing process, *e.g.* the filing of contentions, as the proposed rule changes made by the Commission, and, the Commission has chosen to adopt those rules essentially as proposed.

2. Subpoenas (10 CFR 2.720) Discovery Against NRC Staff

The proposed amendments to 10 CFR 2.720(h)(2)(ii) would codify two existing grounds used by NRC staff to object to responding to interrogatories from parties in NRC adjudicatory proceedings. This change would enable the staff simply to cite the provisions of the rule in objecting to a request, thereby conserving limited staff time and resources. The first ground for objecting reflects existing NRC practice in which a response stating that the requested information is available in either NRC public document rooms or in public compilations and providing sufficient information to enable a party to locate the material requested is considered adequate. The second ground would limit the scope of an interrogatory by barring the requestor from asking the NRC staff to explain its reasons for not using data, assumptions and analyses where the NRC staff did not rely on this information in its review. Persons submitting interrogatories would also be prevented from asking the staff to perform additional research or analytical work beyond that needed to support the NRC staff's position on any particular matter. Requestors could continue to submit interrogatories seeking to elicit factual information reasonably related to the NRC staff's position in the proceeding, including data used, assumptions made and analyses performed by the NRC staff.

The commenters who supported the proposed amendments did so because they believed it would be advantageous if certain established and well recognized precedents commonly used in NRC adjudicatory proceedings were codified in NRC's Rules of Practice. According to the commenters, the perceived advantages of codification included conservation of increasingly limited NRC staff resources, increased use of accepted legal procedures and reduction of delays in the application review process. One commenter stated that these procedures should not be limited to the NRC staff but that they should be equally available to all parties to any NRC adjudicatory proceeding. Several commenters who opposed the rule, also made this comment.

One commenter supported codification in principle but pointed out that the proposed amendments as presently drafted, do not accurately reflect existing precedent. For example, the proposed amendments convert a statement indicating the availability of a document, long recognized as an acceptable response, into an acceptable rationale for not responding. The commenter also took issue with the prohibition against the submittal of questions requesting the NRC staff to explain why it did not use certain alternative data or assumptions or perform certain analyses. According to the commenter, questions of this type would not require the staff to perform additional research; the staff need only respond by providing an explanation.

The commenters who opposed placing additional restrictions on interrogatories to the NRC staff did so for a variety of reasons. Considered unfair, unnecessary and unwise as a matter of policy, the proposed amendments were criticized because they would defeat the basic purpose of discovery--to obtain relevant information on issues raised in and pivotal to the proceeding, thereby preventing surprise at trial.

A number of commenters noted that the staff is a major if not crucial party because it is the party with the technical resources and expertise. Intervenors need full opportunity to understand and question the staff's position. Moreover, the staff should be held accountable for its actions. This proposal could restrict the flow of information and would place the burden on intervenors to locate information bearing on the staff's position. This would increase intervention costs. The current rules provide ample protection for the staff. If anything, discovery against the staff should be increased rather than decreased.

A number of commenters opposed to the rule change expressed concerns similar to those described above made by supporters of the rule. They were concerned that the proposed rule would improperly shield the staff from its obligation to explain and justify its position. The stated rationale for the rule--caselaw on the issue of requiring extensive independent research--does not support the proposal in the view of one commenter. The staff may have examined alternative assumptions, data and analyses and chosen not to rely on them. Interrogatories asking the staff to provide an explanation for why one particular source of data or analysis was chosen is fair discovery.

Several commenters argued that parties are entitled to know not just the facts supporting the staff's position but whatever facts are in the staff's possession. It is unreasonable and unfair to limit discovery to information that supports the staff's position. Relevant facts which do not support the staff's final position could be concealed.

A number of commenters were also critical of the assertion that this proposal was an attempt to conserve staff resources. Several asserted that the existing rules already give the staff special status in responding to discovery. If the staff is to remain a full party, it should be equal not privileged. Commission arguments that this rule is necessary to preserve scarce staff resources are not consistent with positions previously taken with respect to other parties to NRC proceedings. The Commission has consistently taken the view that parties are not excused from hearing obligations due to a lack of resources. Inhibiting the flow of information is not an appropriate way to

deal with scarce staff resources. The Commission should either seek additional appropriations or eliminate party status for the staff.

If the Commission wants to institutionalize the two objections discussed in the proposal they should be made applicable to all parties not just the staff. Commenters representing applicants asserted that discovery against them has many of the same objectionable qualities--asking for documents already on the docket or requesting the applicant to perform new analyses. These commenters saw no justification for codifying the NRC caselaw solely for the benefit of the staff.

A number of commenters were also critical of the second element of the proposed rule which would codify the existing NRC practice that an adequate discovery response is to state that the requested information is available in public document rooms or other public compilations. Several commenters noted that this proposal does more than just codify existing practice. If that were all it did, the basis for it is weak, because citing a rule rather than caselaw is not a meaningful reduction in staff workload. The proposal converts a method of response (citation to a specific document) into grounds for not responding. Under the proposed rule the Licensing Board must determine if information is reasonably obtainable from the public document room or another source. But the Licensing Board won't readily be able to determine this on its own. The staff might as well respond at the outset with the information which constitutes an adequate response under existing practice--title, page reference and location of document--rather than object and become involved in a round of pleadings to determine the staff's duty to respond.

Several commenters objected to the proposal because of the impact they felt it could have on specific types of proceedings. One commenter objected to limitations on interrogatories to the staff in enforcement proceedings regarding alternative assumptions and analyses not relied on. The concern was that if the staff refused to rely on a particular analysis performed by the licensee or its contractor in determining compliance, litigation of the issue could be protracted if the staff were not required to address it during discovery.

The Commission has decided to adopt the proposed changes to its discovery procedures; however, the changes will apply to all parties to NRC proceedings, not just to the NRC staff. Because of this expanded applicability of the changes, they are being incorporated into 10 CFR 2.740, the general provisions governing discovery rather than into § 2.720 as proposed.

Commission caselaw has long established that while in response to a discovery request a party must reveal information within its possession and control, which may entail some investigation to determine what information is in the party's possession, the party is not required to engage in independent research. *Pennsylvania Power and Light Co.* (Susquehanna Steam Electric Station, Units 1 and 2, ALAB-613, 12 NRC 317, 334 (1980). The breadth of permissible interrogatories is limited to those which address factual information related to a party's position in the proceeding, such as data used, assumptions made, and analyses performed by the party.

A party must provide the basis for its position on an issue in the proceeding, but the Commission does not believe that a party should be called upon through the discovery process to explain why it did not use other data or be required to perform additional studies. Interrogatories which elicit what data the party has relied on and why are acceptable. Interrogatories which ask a party to describe reasons why other data were not relied upon in developing a party's position will not be permissible. So long as prior to the trial, parties have an opportunity to learn what another party has done or what information that other party has to provide the basis for its position, the party seeking discovery will be able to show in the hearing what, in its view, the other party should have done or why its position is incorrect. By eliminating burdensome interrogatories the Commission will conserve not only its own staff resources, but provide a fair hearing process for all parties.

These principles are particularly important when applied to the NRC staff. To the extent that discovery elicits otherwise unavailable factual information concerning the basis for the staff's position on a particular issue in a proceeding, a party should be better prepared for trial. At the same time, the staff should be able to produce the factual information requested with minimal disruption of its limited resources. Staff documents relevant to a proceeding are publicly available as a matter of course unless there is a compelling justification for their nondisclosure. These publicly available documents reasonably disclose the basis for the staff's position. Thus formal discovery against the staff may legitimately be narrowed to minimize staff resources involved in time consuming discovery procedures.

The second proposed change to discovery procedures does not, despite suggestion by some commenters to the contrary, add any new bases for objecting to interrogatories. The change merely clarifies current practice that when a document is reasonably available from another source, such as the Commission's Public Document Room or local Public Document Room, the information need not be provided in response to the interrogatory. A sufficient answer to such an interrogatory is the location, title and a page reference to the relevant document.

3. Evidence (10 CFR 2.743) Cross-Examination

The proposed amendment to 10 CFR 2.743 would require a party to a proceeding to obtain the permission of the presiding officer in order to conduct cross-examination and would bar the presiding officer from considering any request to cross-examine unless the request was accompanied by a cross-examination plan containing specified information. The required plan would include a brief description of the issues on which cross-examination would be conducted and a proposed line of questions to achieve stated objectives together with the expected answers. The cross-examination plans would be kept confidential until the presiding officer issued his or her decision.

The commenters who supported the proposed amendments believed the requirement for a plan would encourage parties to think out their case in advance and would lead to better questions and a shorter proceeding. The proposed changes would add structure to cross-examination and decrease repetitive and cumulative questions. Some noted that cross-examination plans are essentially already standard practice, while others indicated their belief that the proposed changes would improve the Board's ability to control proceedings. One commenter, in supporting the proposal, noted that the NRC was within its authority to limit cross-examination to cases where it is required for full and true disclosure of the facts; nothing in the Atomic Energy Act or the Administrative Procedure Act guarantees an absolute right to cross-examine witnesses. *Seacoast Anti-Pollution League* v. *Costle*, 572 F.2d 872, 880 (1st Cir. 1978); *cert. denied*, 439 U.S. 824 (1978).

Several of these same commenters believed the Commission's proposed changes did not go far enough. One asserted that the proposal would not change the hearing process but would only increase procedural requirements that will do little absent a vigilant presiding officer. The Commission should only permit cross-examination if the points to be made could not be achieved by written testimony. Under such an approach, cross-examination would be reserved for impeaching credibility. Several suggested that a party's cross-examination should be limited to issues or contentions that the party had placed in controversy. Another suggested that if more than one interested party had raised an issue, lead responsibility for litigating it should be assigned to one party.

One commenter stated that this proposal was so watered down from the Commission's earlier proposal in its Advanced Notice as to be almost meaningless. The Board should permit cross-examination only where, based on written evidence, there is a genuine and substantial issue of fact and resolution would be substantially assisted by cross-examination. This commenter also believed that the rule should provide for establishing time limits and noted that requiring and enforcing time limits is routine in Federal courts and other administrative agencies.

Commenters opposed to the proposed rule had concerns both with the proposal as a whole and with specific aspects of it. Several asserted that cross-examination is a fundamental right, and is especially important in NRC proceedings which deal with matters of public health and safety. In their view, the public interest in a full look at safety matters outweighs an interest in reducing a cluttered record. The proposal seeks to gain efficiency at the expense of quality decision-making and the openness of the process. To restrict cross-examination is to negate the purpose of adjudicatory proceedings--to adjudicate disputed facts. The purpose of cross-examination is to explore credibility, inconsistency and bias. Effective cross-examination requires an element of surprise and the ability to shift direction. One commenter asserted that the stated reliance on caselaw is misplaced. While the caselaw does support requiring parties to demonstrate the need for cross-examination, it has never suggested that barriers may be used to actively preclude the public litigant from participating.

Several commenters argued that the proposal imposes a disproportionately severe impact on intervenors. Some argued that the proposed rule was a blatant attempt to limit the record to testimony prepared by applicant and staff who have the resources to file a large amount of direct testimony. Intervenors are more likely to make their case on cross-examination because they lack the resources to produce their own witnesses.

A number of commenters also opposed the rule as unnecessary because the existing rules, 10 CFR 2.718 and 2.757, are more than sufficient to control cross-examination. The conduct of a hearing and the scope and amount of cross-examination are traditionally within the presiding officer's discretion. One commenter noted that prefiled cross-examination plans are essentially already standard practice. Another stated that such requirements are unnecessary for experienced counsel and unenforceable against others. Several noted that the proposal could waste more time than it would save by creating litigation of the cross-examination plans and by creating a new area for appellate litigation. The remedy is for the board to control the hearing, not add new paperwork requirements on counsel.

Another commenter took a slightly different approach in opposing the proposed rule. This commenter felt there were preferable means to limit argumentative and unnecessary cross examination. Parties should be limited to litigating only their own contentions and only their stated interest in the contention. If parties have a common interest, their contentions may be jointly admitted and lead responsibility assigned for litigating the contention, including cross-examination. Rather than develop more paperwork, the Commission should simply reiterate that hearings be conducted in strict accordance with the NRC's evidentiary practice.

One commenter questioned whether a Board in rejecting a cross-examination plan would not be prejudging an issue because the presiding officer might not understand the party's overall litigation strategy. Another questioned whether NRC can legally require a party to produce its workproduct to the Board and ultimately to other parties. On the other side, one commenter expressed concern that the filing of plans in confidence with the Board could unfairly influence the Board because parties could expound their theory of the case under the guise of describing objectives to be achieved during cross-examination.

One commenter argued that the proposed rule change violates the requirements of the National Environmental Policy Act (NEPA) for full consideration of all environmental impacts of a decision to license a nuclear power plant. Another commenter asserted that it would violate due process requirements if proceedings to impose civil penalties as well as other enforcement proceedings are not excluded from the rule.

Several objections to specific elements of the proposal were also noted. Many felt fifteen days to review prefiled testimony and prepare cross-examination plans was insufficient. A number of commenters objected to the requirement that the plans include not only questions but also the expected answers to questions. Most felt a statement of objectives and a proposed line of questions was sufficient for a Board to determine relevancy. If answers are required, then a party is in effect limited to asking questions for which he or she already knows the answers. A requirement for prefiled questions and answers would unfairly limit the scope of cross-examination because it would not allow questioners to follow up on the unexpected. Cross-examination is dynamic and litigants need the flexibility to try different tacks. The logical extension of the proposed requirement would be plans for redirect and recross-examination which would further delay a proceeding. Several commenters also noted their belief that this requirement could have a negative impact on discovery. They feared it could encourage a lack of full and prompt response to discovery by applicants in order to make it difficult for intervenors to file adequate plans and, consequently, to conduct cross-examination.

The Commission believes that cross examination plans can have a very beneficial impact on the conduct of a hearing by encouraging parties to develop and evaluate the objectives they expect their cross-examination to achieve and by giving the presiding officer the necessary information to effectively manage the proceeding. The Commission disagrees with those commenters who believe that the use of cross-examination plans will sacrifice the quality or openness of its decisionmaking for the sake of efficiency. Cross-examination plans have been used effectively in a number of Commission proceedings. We do not believe it is unduly burdensome to require a party to a proceeding to examine prefiled testimony sufficiently to be able to articulate to the presiding officer the nature of the questions the party believes are necessary to illuminate the issues of concern to it. However, because the usefulness of this procedure is highly dependent upon the circumstances of a particular

proceeding, the final rule has been changed to give the Presiding Officer discretion to require submittal of the plans.

The regulation makes clear that parties are entitled to conduct such cross-examination, in accordance with a plan if required by the Presiding Officer, as is necessary for full and true disclosure of the facts. This is the standard set forth in section 7(c) of the Administrative Procedure Act, 5 U.S.C. 556(d) and existing § 2.743(a). That provision has never been understood to confer unfettered rights to cross-examine witnesses. *See Seacoast Anti-Pollution League* v. *Costle*, 572 F.2d 872 (1st Cir. 1978); *cert. denied*, 439 U.S. 824 (1978); *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-244, 8 AEC 857, 867 n. 16 (1974), *reconsideration denied*, ALAB-252, 8 AEC 1175, aff'd., CLI-75-1, 1 NRC 1 (1975). The standard in the rule will assure that issues are appropriately examined and it is also consistent with the Commission's obligations under NEPA to consider the environmental impacts of a decision.

We do not believe, as suggested by some commenters, that a more restrictive test for cross-examination, *e.g.* where genuine and substantive issues will be substantially assisted by cross-examination, is appropriate. The option of requiring use of cross-examination plans together with the discretion granted to the presiding officer elsewhere in the regulations to limit unnecessary, argumentative or duplicative cross-examination provide adequate measures to control the conduct of cross-examination.

This regulation will not inhibit a party's ability to use the element of surprise or shift direction as the cross-examination progresses. When a plan is required, parties must submit objectives and a proposed line of questions. They are not required to submit all of the questions to be asked. If the objectives are sufficiently developed and described, there will be no impediment to shifting the direction of questioning in response to the answers received because the presiding officer will be aware of the ultimate objective of the questioner or be able to ascertain through brief queries of the cross-examiner why the change in direction is appropriate. It is also noted that the plans are required to be kept confidential by the presiding officer. The Commission does agree with a number of commenters that a requirement to include the postulated answers to the questions may create an unnecessary burden on the preparer of the plan. The intent of the requirement was to help the presiding officer understand more easily how the proposed line of questions would achieve the stated objective. We have concluded, however, that the statement of objectives can provide sufficient notice to the presiding officer of the party's intentions and the final rule deletes the requirement to include in the plan expected responses to proposed questions.

Several commenters were also concerned that 15 days was insufficient time to examine testimony and prepare cross-examination plans. Deleting the requirement to include postulated answers should eliminate much of the difficulty which commenters identified for preparation of the plans. Therefore, we are retaining the 15 day prefiling requirement. However, language has been added to § 2.743(b)(2) to indicate that the schedule for filing cross-examination plans is to be established by the Presiding Officer. This will assure that the presiding officer will have sufficient time after filing of testimony but before the hearing to review the plans and make any necessary rulings. It will also permit the Presiding Officer to accomodate any unique circumstances of a particular proceeding.

Several commenters suggested that the Commission should impose strict limits on when cross-examination will be available, *e.g.*, for impeaching credibility or where a genuine and substantive issue is substantially assisted by cross-examination, and that it should limit the issues on which an intervenor may cross-examine and assign lead responsibility to a party when several have raised the same issues. The agency's rules currently authorize a presiding officer to consolidate parties and limit or consolidate cross-examination. 10 CFR 2.715a, 2.718 and 2.757. The Commission believes it is desirable to retain the presiding officer's flexibility to decide whether such consolidation is appropriate and therefore, has not limited the presiding officer's discretion in this regard.

One commenter noted that civil penalty and enforcement proceedings should be excluded from these requirements. As drafted, proposed paragraph (b)(3) of § 2.743 provided that paragraphs (b)(1) and (2) of the section do not apply to proceedings under subpart B of this part for modification, suspension, or revocation of a license. This was intended to continue the existing exemption for enforcement proceedings from requirements regarding prefiled testimony and provide a similar exemption concerning cross-examination plans. The Commission agrees that civil penalty proceedings as an additional type of enforcement proceeding should be included within these exemptions. The final rule has been revised to clarify the intended exemptions and to include civil penalty proceedings within the exemptions.

Several changes of a clarifying nature have been made to the rule as proposed. 10 CFR 2.743(b)(2)(iii) has been modified to indicate that the presiding officer is to keep the cross-examination plans in confidence until the initial decision on the matter being litigated has been issued. The language describing how the plans are to become part of the official record has also been clarified.

4. Authority of Presiding Officer to Dispose of Certain Issues on the Pleadings (10 CFR 2.749) Summary Disposition

The proposed amendment to § 2.749(a) would permit motions for summary disposition to be filed at any time during the proceeding, including during the hearing. Current rules provide that summary disposition motions shall be filed within such time as may be fixed by the presiding officer and also provides that the presiding officer may dismiss motions filed shortly before the hearing commences if responding to or ruling on the motion would divert substantial resources from the hearing. The proposed change is intended to give parties maximum flexibility to file such motions and to terminate litigation at any point in the proceeding when it becomes apparent that no genuine issue of material fact remains in dispute.

Those commenters who favored the proposed change felt that it would help simplify and rationalize the hearing process by preventing unnecessary litigation. Resolution of issues would be permitted at any point where it became apparent further hearing is unnecessary. Thus, the proposal could expedite elimination of frivolous contentions. Another commenter pointed out that § 2.749(c) would still be available to protect a party who for valid reasons could not respond to a motion for summary disposition, and would thus provide sufficient protection against inopportune motions.

Several commenters recommended that the proposal be clarified to provide that during a hearing, where cross-examination has not created a genuine dispute of fact and the intervenor has not called any witnesses, the Board is empowered to grant summary disposition on the applicant's testimony or the evidentiary record, without a requirement for supporting affidavits.

Commenters opposing the proposed change generally felt that it would not increase the effectiveness of the hearing process, but rather could result in chaos and enormous inefficiencies during the hearing process. Several commenters were particularly concerned that this change would create the opportunity for harassing motions. Well-funded parties could overwhelm other parties with paperwork at crucial times. Several commenters felt the change would be unfair to intervenors, who generally have fewer resources and rely on volunteers. Several indicated that time was needed before trial to prepare testimony and review that of others. If summary judgment motions could be filed anytime, they could divert resources away from trial preparation. In addition, several expressed concern that motions could be filed before discovery was completed and before opponents of the motion could have obtained information to respond to the motion. This could result in legitimate safety issues being lost and never litigated. One commenter noted that this proposed change constitutes a departure from Federal practice. The purpose of summary judgment is to eliminate issues from the evidentiary hearing; therefore, summary disposition motions are appropriately filed before a hearing begins. Once the hearing has started, use of summary judgment motions is more likely to slow down rather than speed up the process.

Another commenter noted that the rule change is unnecessary because the current rule would permit summary judgment motions at all times if the presiding officer permits. If the rule is changed, however, the commenter argued that the last sentence of the current 10 CFR 2.749(a) should be retained. It provides that the Board may summarily dismiss summary disposition motions if they are filed shortly before or during the hearing and would result in a substantial diversion of resources. The commenter expressed concern that without this sentence the presiding officer's authority to control the hearing process would be diminished. The Board should be able to dismiss or at least hold in abeyance motions filed during the hearing that have the potential to disrupt the hearing.

Summary disposition is a significant procedural tool to eliminate unnecessary hearing time spent on testimony and cross-examination where no material issues of fact remain in dispute. The Commission has evaluated the comments on summary disposition and continues to believe that the advantages for streamlining the hearing process by explicitly permitting summary disposition motions to be filed at any time during the proceeding outweigh the potential disadvantages for the process. The Commission's regulations in 10 CFR 2.749(c) provide safeguards against potential abuses of the summary disposition procedures. A party who is unable to respond to such a motion because discovery is incomplete may state his or her reasons in a response to the motion and the presiding officer may refuse to grant summary disposition or take other appropriate action. The Commission believes that this provision provides sufficient protection in those instances where a party opposing a motion for summary disposition is unable to respond. However, the Commission recognizes the validity of the concern expressed by several commenters that summary disposition motions filed close to the start of or during a hearing have the potential for prolonging the hearing. Therefore, a sentence has been added to 10 CFR 2.749(a) to give the presiding officer the discretion to dismiss or hold in abeyance summary disposition motions which could divert substantial resources from the hearing and thereby prolong the hearing process.

5. Proposed Findings and Conclusions (10 CFR 2.754) and Appeals to the Commission From Initial Decisions (10 CFR 2.762) Limitations

The proposed amendment to 10 CFR 2.754(c) would limit an intervenor's filings of proposed findings of fact and conclusions of law to issues which that party actually placed in controversy or sought to place in controversy in the proceeding. The proposed amendment to 10 CFR 2.762(d) would similarly limit the issues which an intervenor could raise in an appellate brief. Under current practice, a party may file proposed findings and conclusions of law on any issue in the proceeding and may also appeal on all issues in the proceeding. The only limitation is that a party must have a discernible interest in the outcome of the particular issue being considered. The purpose of the proposed change is to ensure that presiding officers and agency appellate tribunals will be able to focus on disputed issues in a proceeding as presented and argued by parties with a primary interest in the issue. The change would also avoid having these officials inundated with filings from persons with little or no stake in the resolution of a particular issue.

The proposed amendments did not apply to the license applicant or the NRC staff. Applicants have the burden of proof to demonstrate that the action should be taken and thus should be free to submit findings on all issues which could affect the Commission's decision to grant a license or to take an appeal from an adverse decision. The NRC staff has an overall interest in the proceeding to assure that the public health and safety and environmental values are protected.

Commenters supporting the change agreed that it would improve the hearing process and would contribute to the overall effort to streamline and make the hearing process more efficient. Several indicated they felt this change had considerable merit and would ensure that filings are submitted by parties who have a real concern and interest in resolution of issues. One supporter of the proposal suggested that the current policy which permits appeals by a party on any issue whether they have litigated it or not is inconsistent with the basic tenet of hearings to resolve disputes between specific parties. Redundant filings are unnecessary and generally not helpful.

One commenter suggested that the Commission go further and preclude an intervenor from pursuing issues in which it has no cognizable interest. If this were done, there would be no need to place limits on cross-examination or filings. Another suggested that the rule should also provide that an intervenor who fails to file proposed findings on an issue may not thereafter appeal the portion of the initial decision which deals with that issue.

Comments by opponents of the proposed change focused on three main points. The first area concerned the discriminatory impact on intervenors and an asserted misperception on the part of the NRC of the role of intervenors in NRC proceedings. Several asserted that the proposal was a denial of due process and one commenter stated that the Administrative Procedure Act entitles all parties to a hearing to file proposed findings of fact and conclusions of law. 5 U.S.C. 557(c). Several argued that there was no logical explanation given for discriminating against intervenors. They called attention to the fact that in its proposed rule the Commission acknowledged that intervenors have broad, generalized interests in protecting the health and safety. This interest is akin to the same kind of interest which the Commission found to be justification for preserving the right of the NRC staff to file proposed findings and conclusions of law. One commenter asserted that the process of gaining admission as a party

should be sufficient to dismiss any allegations of a lack of a discernible interest in the outcome of issues raised in the proceeding.

Several commenters described the proposal as "mysterious" and confounding. In their view, the goal of the agency should be to compile as full a record as possible for the decisionmakers; the NRC should not seek to limit the information it receives in any licensing proceeding. Findings and conclusions do not harm the decisionmaker and could be helpful. Another commenter noted that the NRC currently has less than a dozen proceedings underway, suggesting that the Hearing Boards are not overworked or overwhelmed by cases. Commenting specifically on the limitation of appeals to issues litigated by a party, one person noted that an erroneous initial decision should be identified and corrected no matter who initially raised the issue of concern.

A second focus of concerns was on the impact of such a change on NRC proceedings. A number of commenters suggested that the proposal would cause intervenors to adopt each other's contentions and assert all issues in order to preserve their rights. This could prolong the hearing and overwhelm hearings with the volume of participation on an issue. The proposal would also make it difficult for intervenors to work together, divide tasks and share the expense of litigating issues. Such coordination now makes it possible for intervenors to financially bear the cost of litigation and reduces redundancy in the proceeding. Currently, intervenors may share issues and an intervenor may not participate fully knowing another intervenor is raising the issue. Under this proposal if a party subsequently fails to pursue an issue, other intervenors would not have the opportunity to adopt the issue. Without this opportunity, further consideration of issues would be blocked regardless of how serious or meritorious they were. Also, because of the complex and technical nature of NRC's proceedings, an intervenor may discover it is interested in an issue it did not identify initially. The proposal also ignores the fact that each intervenor brings a different perspective to the proceeding and can make a unique contribution through their filings. Boards should be able to judge these filings and give them such consideration as their quality merits.

Finally, several commenters focused on the application of this proposal to an affected state. States bring a unique perspective to NRC proceedings and should have the opportunity to submit filings. Otherwise, NRC could be deprived of valuable input from the party with the most interest in a particular issue. The State of Nevada indicated its view that under the Nuclear Waste Policy Act, a host state or Indian tribe is to be accorded the same status as the staff or an applicant. The proposed change would thus violate provisions of the NWPA.

Another group of commenters, while generally favoring the proposal, disagreed with the language which would permit filings and appeals on issues which intervenors "sought to place in controversy". If an issue has not been admitted into the proceeding then no record will have been developed and no basis for proposed findings will exist. It is appropriate to allow an appeal and briefs on the basis that a contention was erroneously rejected. But this proposal would appear to allow appeals on a much broader basis and permit filings on the merits of the contentions.

The Commission has reviewed the comments on the proposed changes to 10 CFR 2.754 and 2.762. After consideration of the various arguments put forth by the commenters, the Commission is persuaded that the proposed changes should be adopted. Limitations on proposed findings and appeals to issues that the intervenor actually placed in controversy or sought to place in controversy will ensure that the parties and the adjudicatory tribunals focus their interests and adjudicatory resources on the contested issues as presented and argued by the party with the primary interest in, and concerns over, the issues. These sorts of limitations should also serve to reduce the paper burdens for the adjudicatory boards. We disagree with the suggestion that the proposed limitations will cause intervenors to raise a multitude of issues or adopt each other's contentions in order to preserve their rights, and thus, will prolong and overwhelm the hearing process with the attendant high level of participation on all issues. The new standards for admission of contentions that we are adopting as part of this rulemaking should serve to limit the degree to which any party can gain admission of contentions that are frivolous or in which the party has little real interest. Moreover, existing §§ 2.715a and 2.718 which authorize the presiding officer to consolidate parties, issues and adjudicatory presentations, can and should be used to limit unnecessary multi-party presentations and participation in the litigation of common contentions.

The Commission has also examined the assertion that the proposed rule could violate a provision of the Administrative Procedure Act, 5 U.S.C. 557(c). That section provides that:

"Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions—(1) proposed findings or conclusions; or (2) exceptions to the decision or recommended decisions of subordinate employees or to tentative agency decisions; and (3) supporting reasons for the exception or proposed findings or conclusions."

There has been little analysis of this aspect of the APA in the case law; *see, e.g., Klinestiver* v. *DEA*, 606 F2d. 1182 (D.C. Cir. 1979). While we recognize there may be some uncertainty about the appropriate reading of section 557(c), we believe that the rule is in accord with the Administrative Procedure Act because it preserves the opportunity for parties to file findings of fact, conclusions of law, and exceptions to initial decisions with respect to those issues which the party has specifically raised as concerns in the proceeding. Practice under the Commission's existing regulations has been moving in the direction of a more carefully circumscribed appeals process. In *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-845, 24 NRC 220 (1986), the Appeal Board concluded that an intervenor which had limited its participation to certain technical issues and had not participated in any aspect of litigation of emergency planning contentions did not have a right to appeal the Licensing Board's decision in connection with the applicant's emergency plan. "Whether an intervenor has the right to pursue a particular issue on appeal is a function of the level of interest expressed by the intervenor in such issue throughout the course of the proceeding." *Id.* at 253.

We also note that the phrase "sought to place in controversy" was intended to recognize that an appeal and briefs are permissible on the basis that a contention was erroneously rejected. The language was not intended to allow appeals on a broader basis or on the merits of the contentions not admitted.

In view of all of the above, the proposed amendment has been adopted.

Miscellaneous Issues

Several commenters included their views on other possible rule changes discussed by the Commission in its 1984 Request for Public Comment on Regulatory Reform Proposals (49 FR 14698, April 12, 1984) which preceded this proposed rule. Those proposals are not a part of this rulemaking. The Commission evaluated comments on the 1984 proposals as part of the decision-making process which led to the choice of the five proposed changes which constitute this rulemaking. No further discussion of those initial proposals is necessary.

Some commenters objected to the application of these changes to High Level Waste (HLW) Licensing proceedings. The Commission has established the procedures for the HLW licensing proceeding in a final LSS rule which added a new subpart J to 10 CFR part 2 (50 FR 14925, April 14, 1989). However, the Commission is now in the process of evaluating whether any additional modifications are needed to these provisions. As part of its evaluation, the Commission is considering whether any of the provisions in the final amendments on regulatory reform that would not already be included in subpart J by cross-reference, should be added to subpart J. Section 2.1000 of subpart J cross-references any sections of general applicability in subpart G of part 2 that will continue to apply to the HLW licensing proceeding. As such, all but one of the provisions in the final regulatory reform rule (§ 2.714, which requires contentions to show that a genuine dispute exists on an issue of law or fact) will apply to the HLW proceeding. However, subpart J contains a new provision on contentions, § 2.1014, and consequently § 2.714 would no longer apply to the HLW proceeding. The Commission intends to evaluate the need to extend the "genuine issue of fact" standard to the HLW proceeding. A determination of such a need would result in the Commission proposing a rule amending 10 CFR 2.1014. As the Commission noted in the Supplementary Information to the final LSS rule –

* * * the Commission is committed to do everything it can to streamline its licensing process and at the same time conduct a thorough safety review of the Department of Energy's application to construct a high-level waste repository. The negotiators to this rulemaking have made a number of improvements to our existing procedures. However, more improvements may be necessary if the Commission is to meet the tight licensing deadline established by the Nuclear Waste Policy Act of 1982, as amended. By publishing this rule, the Commission is not ruling out further changes to its rules of practice, including further changes to the rules contained in the negotiated rulemaking. (50 FR 14925, 14930, April 14, 1989).

The revised rules do not apply to civil penalty proceedings conducted under 10 CFR 2.205. Section 189a. of the Atomic Energy Act does not provide for third parties to participate as "interested persons" in such proceedings.

These amendments will take effect thirty days after publication in the Federal Register. The amendments will apply only to contentions in proceedings initiated after that date. The Commission's rules and administrative decisions interpreting those rules in existence prior to that date will be applied to contentions filed in proceedings initiated prior to that date.

Withdrawal of Earlier Rulemaking

Commission published for public comment on June 8, 1981 (46 FR 30349) a proposed rule to make changes to elements of its Rules of Practice, including several of the sections amended by this proceeding. Because the Commission has chosen to proceed with adoption of the changes to its Rules of Practice included in this rulemaking, the earlier proposal is withdrawn.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

Regulatory Analysis

The revisions to the Commission's Rules of Practice in 10 CFR part 2 improve the effectiveness and efficiency of NRC proceedings with due consideration for the rights of all participants. The changes to 10 CFR 2.714 require the proponent of a contention to submit sufficient factual information to demonstrate the existence of a genuine dispute with the applicant or the licensee or the NRC staff regarding a material issue of law or fact. This amendment ensures that the resources of all participants in NRC proceedings are focused on real issues and disputes among the parties and thus it is preferable to existing requirements. The revisions to 10 CFR 2.720 clarify existing practice that the staff may not be required: (1) To perform additional research or analytical work beyond that required to support its position, or (2) to explain why it did not use alternative data, assumptions, or analyses in its reviews. Codification of this requirement is preferable to relying on existing case law because it conserves resources that would otherwise have to be expended in opposing such discovery requests. The final rule's provisions in 10 CFR 2.743 on cross-examination plans require a party to obtain the permission of the presiding officer in order to conduct cross-examination and bar the presiding officer from considering any such request unless it is accompanied by a plan containing specific information about the nature and purpose of the proposed line of questioning. While the use of cross-examination plans could have been left as a matter of discretion for the presiding officer, the benefits from the use of such plans, *i.e.*, more focused and controlled hearings, favor making use of such plans standard practice in NRC proceedings. The revision of 10 CFR 2.749 permits the filing of motions for summary disposition at any time during a proceeding. The current practice leaves the timing for filing of such motions wholly within the discretion of the presiding officer. The final rule is preferable to continuing the present practice because making it explicit that summary disposition motions may be filed at any time during the proceeding encourages the use of such procedures whenever an issue can be disposed of without a hearing.

Since November 1981 a number of alternative changes to improve the hearing process have been evaluated by the Regulatory Reform Task Force, the Senior Advisory Group (NRC personnel), the Ad Hoc Committee for the Review of Nuclear Reactor Licensing Reform Proposals (non-NRC persons with experience in the licensing process) and through the Request for Public Comment on Regulatory Reform Proposal published in the Federal Register on April 12, 1984 (49 FR 14698). This final rule improves the efficiency and effectiveness of NRC's hearing process while maintaining due regard for the rights of affected parties and thus is the preferred alternative. This rule does not have a significant impact on State and local governments and geographical regions, public health and safety, or the environment; nor does it represent substantial costs to licensees, the NRC, or other Federal agencies. This constitutes the regulatory analysis for this rule.

Regulatory Flexibility Certification

This final rule does not have a significant economic impact upon a

substantial number of small entities. The amendments modify the Commission's rules of practice and procedure. Most entities seeking or holding construction permits or Commission licenses that would be subject to the revised provisions would not fall within the definition of small businesses found in section 34 of the Small Business Act, 15 U.S.C. 632, in the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121, or in the NRC's size standards published December 9, 1985 (50 FR 50241). Although intervenors subject to the provisions likely would fall within the pertinent Small Business Act definition, the impact on intervenors or potential intervenors will be neutral. While intervenors or potential intervenors will have to meet a higher threshold to gain admission to NRC proceedings and, thereby incur some additional economic costs in preparing requests for hearing or requests to intervene, these costs should be offset by a reduction in intervenors' costs once the hearing commences because information developed to support admission to the proceeding will be used during the conduct of the proceeding. Thus, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC hereby certifies that this rule does not have a significant economic impact upon a substantial number of small entities.

Backfit Analysis

This final rule does not modify or add to systems, structures, components, or design of a facility; the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct, or operate a facility. Accordingly, no backfit analysis pursuant to 10 CFR 50.109(c) is required for this final rule.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the Nuclear Regulatory Commission is adopting the following amendments to 10 CFR part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. In § 2.714, paragraphs (e) through (h) are redesignated as paragraphs (f) through (i). In paragraphs (a) and (g) of § 2.714, the words "paragraph (d) of this section" which appear in the fourth sentence of paragraph (a)(1), in the single sentence in paragraph (a)(2) and in the single sentence in paragraph (g) are revised to read "paragraph (d)(1) of this section." Paragraphs (b), (c), and (d) of § 2.714 are also revised and a new paragraph (e) is added to read as follows:

§ 2.714 Intervention.

* * * * *

(b)(1) Not later than fifteen (15) days prior to the holding of the special prehearing conference pursuant to § 2.751a, or if no special prehearing conference is held, fifteen (15) days prior to the holding of the first prehearing conference, the petitioner shall file a supplement to his or her petition to intervene that must include a list of the contentions which petitioner seeks to have litigated in the hearing. A petitioner who fails to file a supplement that satisfies the requirements of paragraph (b)(2) of this section with respect to at least one contention will not be permitted to participate as a party. Additional time for filing the supplement may be granted based upon a balancing of the factors in paragraph (a)(1) of this section.

(2) Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide the following information with respect to each contention:

(i) A brief explanation of the bases of the contention.

(ii) A concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing, together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion.

(iii) Sufficient information (which may include information pursuant to paragraphs (b)(2)(i) and (ii) of this section) to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing must include references to the specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report. The petitioner can amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's document.

(c) Any party to a proceeding may file an answer to a petition for leave to intervene or a supplement thereto within ten (10) days after service of the petition or supplement, with particular attention to the factors set forth in paragraph (d)(1) of this section. The staff may file such an answer within fifteen (15) days after service of the petition or supplement.

(d) The Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on petitions to intervene and/or requests for hearing shall permit intervention, in any hearing on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area, by the State in which such area is located and by any affected Indian Tribe as defined in part 60 of this chapter. In all other circumstances, such ruling body or officer shall, in ruling on--

(1) A petition for leave to intervene or a request for a hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

(e) If the Commission or the presiding officer determines that any of the admitted contentions constitute pure issues of law, those contentions must be decided on the basis of briefs or oral argument according to a schedule determined by the Commission or presiding officer.

* * * * *

3. In § 2.740, paragraph (b)(1) is revised and a new paragraph (b)(3) is added to read as follows:

§ 2.740 General provisions governing discovery.

* * * * *

(b)(1) *In general.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. Where any book, document or other tangible thing sought is reasonably available from another source, such as from the Commission's Public Document Room or local Public Document Room, a sufficient response to an interrogatory involving such materials would be the location, the title and a page reference to the relevant book, document or tangible thing. In a proceeding on an application for a construction permit or an operating license for a production or utilization facility, discovery shall begin only after the prehearing conference provided for in § 2.751a and shall relate only to those matters in controversy which have been identified by the Commission or the presiding officer in the prehearing order entered at the conclusion of that prehearing conference. In such a proceeding, no discovery shall be had after the beginning of the prehearing conference held pursuant to § 2.752 except upon leave of the presiding officer upon good cause shown. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

* * * * *

(b)(3) While interrogatories may seek to elicit factual information reasonably related to a party's position in the proceeding, including data used, assumptions made, and analyses performed by the party, such interrogatories may not be addressed to, or be construed to require: (A) Reasons for not using alternative data, assumptions, and analyses where the alternative data, assumptions, and analyses were not relied on in developing the party's position; or (B) Performance of additional research or analytical work beyond that which is needed to support the party's position on any particular matter.

4. In § 2.743, paragraphs (a) and (b) are revised to read as follows:

§ 2.743 Evidence.

(a) *General.* Every party to a proceeding shall have the right to present such oral or documentary evidence and rebuttal evidence and to conduct, in accordance with an approved cross-examination plan that contains the information specified in paragraph (b)(2) of this section if so directed by the presiding officer, such cross-examination as may be required for full and true disclosure of the facts.

(b)(1) *Testimony and cross-examination.* The parties shall submit direct testimony of witnesses in written form, unless otherwise ordered by the presiding officer on the basis of objections presented. In any proceeding in which advance written testimony is to be used, each party shall serve copies of its proposed written testimony on each other party at least fifteen (15) days in advance of the session of the hearing at which its testimony is to be presented. The presiding officer may permit the introduction of written testimony not so served, either with the consent of all parties present or after they have had a reasonable opportunity to examine it. Written testimony must be incorporated into the transcript of the record as if read or, in the discretion of the presiding officer, may be offered and admitted in evidence as an exhibit.

(2) The presiding officer may require a party seeking an opportunity to cross-examine to request permission to do so in accordance with a schedule established by the presiding officer. A request to conduct cross-examination shall be accompanied by a cross-examination plan that contains the following information:

(i) A brief description of the issue or issues on which cross-examination will be conducted;

(ii) The objective to be achieved by cross-examination; and

(iii) The proposed line of questions that may logically lead to achieving the objective of the cross-examination. The cross-examination plan may be submitted only to the presiding officer and must be kept by the presiding officer in confidence until issuance of the initial decision on the issue being litigated. The presiding officer shall then provide each cross-examination plan to the Commission's Secretary for inclusion in the official record of the proceeding.

(3) Paragraphs (b)(1) and (2) of this section do not apply to proceedings under subpart B of this part for modification, suspension, or revocation of a license or to proceedings for imposition of a civil penalty.

* * * * *

5. In § 2.749, paragraph (a) is revised to read as follows:

§ 2.749 Authority of presiding officer to dispose of certain issues on the pleadings.

(a) Any party to a proceeding may move, with or without supporting affidavits, for a decision by the presiding officer in that party's favor as to all or any part of the matters involved in the proceeding. The moving party shall annex to the motion a separate, short, and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard. Motions may be filed at any time. Any other party may serve an answer supporting or opposing the motion, with or without affidavits, within twenty (20) days after service of the motion. The party shall annex to any answer opposing the motion a separate, short, and concise statement of the

material facts as to which it is contended there exists a genuine issue to be heard. All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party. The opposing party may, within ten (10) days after service, respond in writing to new facts and arguments presented in any statement filed in support of the motion. No further supporting statements or responses thereto may be entertained. The presiding officer may dismiss summarily or hold in abeyance motions filed shortly before the hearing commences or during the hearing if the other parties or the presiding officer would be required to divert substantial resources from the hearing in order to respond adequately to the motion and thereby extend the proceeding.

* * * * *

6. In § 2.754, paragraph (c) is revised to read as follows:

§ 2.754 Proposed findings and conclusions.

* * * * *

(c) Proposed findings of fact must be clearly and concisely set forth in numbered paragraphs and must be confined to the material issues of fact presented on the record, with exact citations to the transcript of record and exhibits in support of each proposed finding. Proposed conclusions of law must be set forth in numbered paragraphs as to all material issues of law or discretion presented on the record. An intervenor's proposed findings of fact and conclusions of law must be confined to issues which that party placed in controversy or sought to place in controversy in the proceeding.

7. In § 2.762, paragraph (d) is revised to read as follows:

§ 2.762 Appeals to the Commission from initial decisions.

* * * * *

(d) *Brief Content.* A brief in excess of ten (10) pages must contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, regulations, and other authorities cited, with references to the pages of the brief where they are cited.

(1) An appellant's brief must clearly identify the errors of fact or law that are the subject of the appeal. An intervenor-appellant's brief must be confined to issues which the intervenor-appellant placed in controversy or sought to place in controversy in the proceeding. For each issue appealed, the precise portion of the record relied upon in support of the assertion of error must also be provided.

(2) Each responsive brief must contain a reference to the precise portion of the record which supports each factual assertion made.

* * * * *

Dated at Rockville, Maryland, this 2d day of August 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-18542 Filed 8-10-89; 8:45 am]

BILLING CODE 7590-01-D

Reader Aids

Federal Register

Vol. 54, No. 154

Friday, August 11, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

31645-31796	1
31797-31932	2
31933-32034	3
32035-32332	4
32333-32432	7
32433-32628	8
32629-32784	9
32785-32950	10
32951-33182	11

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

6002	31794
6003	31931
6004	31933
6005	32033
6006	32783

Executive Orders:

12585	31796
12586	32629

5 CFR

1620	32785

7 CFR

29	31797
58	31646
301	32786
910	32035, 32951
917	32794
945	31798
947	32433
1076	31799
1128	32951
1864	32953

Proposed Rules:

1a	32985
51	32419
911	31843
929	31844
967	31845
993	31846

8 CFR

Proposed Rules:

210	31966

9 CFR

51	32434
92	31800

10 CFR

2	33168
7	31646
26	33148

Proposed Rules:

Ch. I	32653
430	32349, 32744

12 CFR

33	31935
207	31646
220	31646
221	31646
224	31646
226	32953
229	32035
545	32954
574	32959

Proposed Rules:

4	32820
12	32853
226	32089

14 CFR

39	31649, 31651-31653, 31803-31809, 31935, 32435-32437, 32799
71	31654, 31936, 31937, 32439, 32440, 32803, 32797-32800
73	31655, 32800
75	31937
217	31810
241	31810
1221	32963

Proposed Rules:

39	31693, 31694, 31847, 32824, 32925
43	32563
65	32563
71	31696-31704, 31966, 32452, 32827
75	31705, 31967
145	32563

15 CFR

773	31812

16 CFR

305	32631

Proposed Rules:

4	32654

17 CFR

140	31814
211	32333, 32334
270	31850, 32048
274	32048
275	32048, 32441
279	32048

Proposed Rules:

230	32226, 32993
239	32226, 32993
240	31850, 32229
249	32226
260	32226
269	32226
270	32993, 33027
274	32993

18 CFR

35	32802
270	32805
271	31938, 32805

Proposed Rules:

37	31706
803	33036

19 CFR

177	32742, 32810

BEST COPY AVAILABLE

20 CFR

Proposed Rules:
209.....32163
219.....31939
220.....32163
230.....32163
260.....32163
327.....31968
416.....31656

21 CFR

133.....32050
179.....32335
510.....32632
520.....32336
522.....32632
524.....32632
556.....32633
558.....32633–32634, 32963

Proposed Rules:
Ch. I.....32610
133.....32091
522.....31949
556.....31949
1308.....31815, 31855
1310.....31657
1313.....31657
1316.....31669

22 CFR

60.....31815
61.....31815
62.....31815
63.....31815
64.....31815
65.....31815
514.....32964

23 CFR

659.....32967

24 CFR

200.....32059, 32968
203.....32968
204.....32968
206.....32059
213.....32968
220.....32968
221.....32968
222.....32968
226.....32968
227.....32968
235.....32968
237.....32968
240.....32968
570.....31670

Proposed Rules:
Ch. I.....31856
200.....33039
205.....33039

26 CFR

1.....31672, 31816
602.....31672

Proposed Rules:
1.....31708, 32453

28 CFR

31.....32618
523.....32027
544.....32026

29 CFR

524.....32920
525.....32920
529.....32920
1600.....32061
1601.....32061
1610.....32061
1611.....32061
1620.....32061
1626.....32061
1691.....32061
1910.....31765, 31970
2589.....32635

Proposed Rules:
503.....32985
1910.....31858

30 CFR

934.....32063

Proposed Rules:
250.....31768, 32316, 32563, 33042
906.....32828
917.....32093
920.....33042
925.....32094
931.....32095, 32096
946.....32097, 32098

31 CFR

500.....32064

32 CFR

706.....31825

33 CFR

100.....31826, 32066, 32441–32442
110.....32419
117.....31827
146.....32971
162.....32419
165.....32419, 32443

Proposed Rules:
100.....31859, 31860, 32453, 32659
162.....32661

34 CFR

208.....32936
345.....32770
755.....32946

35 CFR

Proposed Rules:
133.....32099
135.....32099

36 CFR

1153.....32337–32342
1155.....32337–32342
1202.....32067
1250.....32067
1254.....32067

Proposed Rules:
1206.....32455

37 CFR

1.....32637
2.....32637
301.....32810
309.....32810

38 CFR

3.....31828, 31950
21.....31829, 31950–31952, 32070

39 CFR

111.....32071

40 CFR

52.....31953, 32072, 32073, 32637, 32971
60.....32444, 32972
61.....32444
81.....32078
85.....32566
167.....32638
180.....31674, 31830–31836
271.....32973
796.....33148
797.....33148
799.....33148

Proposed Rules:
52.....32101
81.....31860, 31971, 31972
85.....32598
180.....31971, 31972, 33044
185.....31836
186.....31832–31836
228.....32351–32356
261.....31675, 32320, 32662
302.....32320, 32671
355.....32671
704.....31680
799.....32829

41 CFR

101–47.....32445

42 CFR

50.....32446

Proposed Rules:
5.....32459

43 CFR

Public Lands Orders:
6741.....32812
6742.....32812

44 CFR

64.....32813, 32814
80.....31681
83.....31681
352.....31920

Proposed Rules:
335.....32359

45 CFR

232.....32284
302.....32284
303.....32284
304.....32284
306.....32284
307.....32284
1632.....31954

46 CFR

Proposed Rules:
10.....33045
15.....33045

47 CFR

2.....32339
15.....32339
73.....31685, 31686, 31838, 31960, 32340, 32639–32641
80.....31839

Proposed Rules:
2.....32630
73.....32361, 32362, 32672–32676
94.....32362

48 CFR

203.....32161
208.....32161
209.....32161
212.....32161
213.....32161
214.....32161
215.....32161, 32975
216.....32161
217.....32161
219.....32161
222.....32161
223.....32161
226.....32161
242.....32161
245.....32161
252.....32161
253.....32161
273.....32161
801.....31961

Proposed Rules:
44.....32422
45.....32424
51.....32424
52.....32424
205.....33045

49 CFR

190.....32342
191.....32342
192.....32344, 32641
195.....32342, 32344
571.....31687, 32345

Proposed Rules:
571.....32630

50 CFR

17.....32326
20.....32975
215.....32346
217.....32815
226.....32085
227.....32085, 32815
611.....32642, 32819
661.....31841
663.....31688
672.....32819
675.....31842, 32642

Proposed Rules:
17.....32633
263.....32362
267.....32362
611.....31861
620.....31861
649.....32834
655.....31862

672.....31861
675.....31861

LIST OF PUBLIC LAWS

Last List August 10, 1989

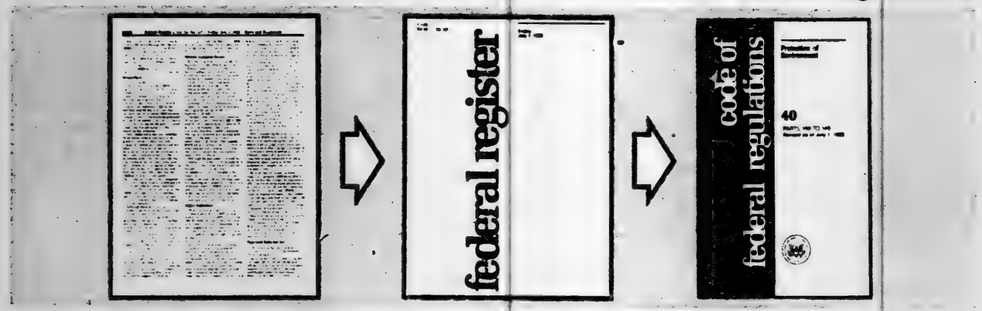
This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.R. 1278/Pub. L. 101–73

Financial Institutions Reform, Recovery, and Enforcement Act of 1989. (Aug. 9, 1989; 103 Stat. 183; 371 pages)
Price: $1.00

The Federal Register

Regulations appear as agency documents which are published daily in the **Federal Register** and codified annually in the **Code of Federal Regulations**



The **Federal Register**, published daily, is the official publication for notifying the public of proposed and final regulations. It is the tool for you to use to participate in the rulemaking process by commenting on the proposed regulations. And it keeps you up to date on the Federal regulations currently in effect.

Mailed monthly as part of a **Federal Register** subscription are: the LSA (List of CFR Sections Affected) which leads users of the **Code of Federal Regulations** to amendatory actions published in the daily **Federal Register**; and the cumulative **Federal Register Index.**

The **Code of Federal Regulations** (CFR) comprising approximately 193 volumes contains the annual codification of the final regulations printed in the **Federal Register**. Each of the 50 titles is updated annually.

Individual copies are separately priced. A price list of current **CFR** volumes appears both in the **Federal Register** each Monday and the monthly **LSA** (List of **CFR** Sections Affected). Price inquiries may be made to the Superintendent of Documents, or the Office of the Federal Register.

Superintendent of Documents Subscription Order Form

Order Processing Code:
*6463

Charge your order. It's easy! MasterCard VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

- **Federal Register**
  - **Paper:**
    ___$340 for one year
    ___$170 for six-months
  - **24 x Microfiche Format:**
    ___$195 for one year
    ___$97.50 for six-months
  - **Magnetic tape:**
    ___$37,500 for one year
    ___$18,750 for six-months

- **Code of Federal Regulations**
  - **Paper**
    ___$620 for one year
  - **24 x Microfiche Format:**
    ___$188 Current year (as issued)
    ___$115 previous year's full set (single shipment)
  - **Magnetic tape:**
    ___$21,750 for one year

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)
_____
(Additional address/attention line)
_____
(Street address)
_____
(City, State, ZIP Code)
(_____)
(Daytime phone including area code)

3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
_____ ***Thank you for your order!***
(Credit card expiration date)
_____
(Signature) (Rev. 1-1-89)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

L

S

G

9

I

8-14-89
Vol. 54 No. 155

federal register

Monday
August 14, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 89 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

8-14-89
Vol. 54 No. 155
Pages 33183-33492

federal register

Monday
August 14, 1989

BEST COPY AVAILABLE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The Federal Register will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the Federal Register.

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 54, No. 155
Monday, August 14, 1989

Administrative Conference of the United States
NOTICES
Meetings:
Rulemaking Committee, 33253

Air Force Department
NOTICES
Environmental statements; availability, etc.:
Base realignments and closures—
Mountain Home Air Force Base, CA, 33265
Meetings:
Scientific Advisory Board, 33266
Senior Executive Service:
Performance Review Boards; membership, 33266

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Meetings; advisory committees:
September, 33294

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Ohio, 33253

Commerce Department
See also Export Administration Bureau; International Trade Administration; National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 33253

Customs Service
RULES
Vessels in foreign and domestic trades:
Reciprocal privileges—
India, 33187
Luxembourg, 33189
Marshall Islands, 33188

Defense Department
See also Air Force Department
RULES
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 33190

Education Department
NOTICES
Administrative Law Judges Office hearings:
Jurisdiction designations—
American Printing House for the Blind, Inc., KY, 33266
Grants and cooperative agreements; availability, etc.:
Patricia Roberts Harris fellowship program, 33492
Meetings:
National Assessment Governing Board, 33266

Energy Department
See also Energy Research Office; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department; Western Area Power Administration
PROPOSED RULES
Acquisition regulations:
Miscellaneous amendments, 33251
NOTICES
Grants and cooperative agreement awards:
Georgia Institute of Technology, 33267
Stark, Walter, 33267
Tubemasters, Inc., 33267
Natural gas exportation and importation:
Gulf Energy Marketing Co., 33279
Natural Gas Clearinghouse, 33279
Washington Natural Gas Co., 33280

Energy Research Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Special research program—
Global survey of carbon dioxide in ocean, 33278

Environmental Protection Agency
RULES
Air programs; fuel and fuel additives:
Gasoline and alcohol blends volatility, 33218
Air quality planning purposes; designation of areas:
Wisconsin, 33219
Hazardous waste:
Land disposal facilities—
Delay of closure period, 33376
Superfund program:
Hazardous substances; reportable quantity adjustments—
1,4-Dioxane, etc., 33418
Ammonium thiosulfate, 33426
Toxic substances:
Testing requirements—
Tributyl phosphate, 33400
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Massachusetts, 33245
Wisconsin, 33247
NOTICES
Water pollution; discharge of pollutants (NPDES):
Nebraska, 33288

Executive Office of the President
See Management and Budget Office

Export Administration Bureau
NOTICES
Export privileges, sections affecting:
Walaschek, Peter et al., 33253

Federal Aviation Administration
RULES
Airworthiness directives:
McDonnell Douglas, 33186
PROPOSED RULES
Airworthiness directives:
McDonnell Douglas, 33235
Sikorsky, 33237

NOTICES
Airport noise compatibility program:
Akron-Canton Regional Airport, OH, 33306
Burbank-Glendale-Pasadena Airport, CA, 33307
McCarran International Airport, NV, 33309
Noise exposure map—
Detroit Metopolitan Wayne County Airport, MI, 33308
Little Rock Regional Airport, AR, 33308
Exemption petitions; summary and disposition, 33310
Technical standard orders:
Airborne windshear warning and engine guidance systems for transport airplanes, 33311
Aircraft fabric, grade A, 33312
Aircraft fabric, intermediate grade, 33312
Tires, 33313

Federal Communications Commission
RULES
Common carrier services:
Aeronautical services via International Maritime Satellite Organization, 33224
Land mobile satellite service; spectrum allocations, etc., 33226
Radio stations; table of assignments:
Arkansas et al., 33227
Television stations; table of assignments:
Arkansas, 33227
PROPOSED RULES
Radio stations; table of assignments:
California, 33249
(2 documents)
North Carolina et al., 33249
Tennessee, 33250
Texas, 33250
NOTICES
Agency information collection activities under OMB review, 33289
Meetings:
Advanced Television Service Advisory Committee, 33289
Travel reimbursement program; quarterly report, 33289
Applications, hearings, determinations, etc.:
Southwest Educational Media Foundation of Texas, Inc., et al., 33292

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
New York et al., 33223
Wyoming et al., 33221
NOTICES
Agency information collection activities under OMB review, 33293

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
UtiliCorp United Inc. et al., 33268
Environmental statements; availability, etc.:
Pacific Gas Transmission Co. et al., 33272
Preliminary permits surrender:
Wise, Arnold J., 33276
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 33276
Black Marlin Pipeline Co., 33276
Florida Gas Transmission Co., 33277
Northern Natural Gas Co., 33277
(3 documents)
Southern Natural Gas Co., 33277
Transwestern Pipeline Co., 33278
United Gas Pipe Line Co., 33278
(2 documents)

Federal Highway Administration
RULES
Motor carrier safety standards:
Commercial driver's license program; waivers (Alaska), 33230
NOTICES
Grants and cooperative agreements; availability, etc.:
Commercial driver's license supplemental grant program, 33313

Federal Home Loan Bank Board
RULES
Federal Savings and Loan Insurance Corporation:
Savings and loan holding companies—
Routine reorganizations approval; short-form application, 33183
PROPOSED RULES
Savings and loan holding companies:
Transactions between insured institutions and affiliates; board action, extension of time, 33235

Federal Maritime Commission
NOTICES
Agreements filed, etc., 33294

Federal Railroad Administration
RULES
Railroad safety regulations; amendments, 33227

Federal Reserve System
RULES
Procedure rules:
Technical amendments, 33183
NOTICES
Agency information collection activities under OMB review, 33294

Fish and Wildlife Service
RULES
Endangered Species Convention:
American alligators harvested in 1989-1991; export, 33231

Food and Drug Administration
NOTICES
Food additive petitions:
Calgon Corp., 33295
GRAS or prior-sanctioned ingredients:
Kraft, Inc., 33295

Health and Human Services Department
See Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration; Health Care Financing Administration; National Institutes of Health; Public Health Service; Social Security Administration

Health Care Financing Administration
RULES
Medicare:
Home health agencies; participation conditions; reporting and recordkeeping requirements, 33354

NOTICES
Agency information collection activities under OMB review, 33296

Health Resources and Services Administration
See Public Health Service

Hearings and Appeals Office, Energy Department
NOTICES
Cases filed, 33281
Special refund procedures; implementation, 33282

Interior Department
See Fish and Wildlife Service; Land Management Bureau

International Trade Administration
PROPOSED RULES
Countervailing duties; amendments, 33238
NOTICES
Antidumping:
Animal glue and inedible gelatin from West Germany, 33256
Brass sheet and strip from—
Korea, 33257
Low-fuming brazing copper and wire from New Zealand, 33258
Roller chain, other than bicycle, from Japan, 33259
Self-propelled bituminous paving equipment replacement parts from Canada, 33260
Small business telephone systems and subassemblies from Korea, 33261
Solid urea from—
East Germany, 33262
Union of Soviet Socialist Republics, 33262
Standard carnations from Chile, 33263
Antidumping and countervailing duties:
Aluminum sulfate from Venezuela, 33254
Countervailing duties:
Lime from Mexico, 33264

Land Management Bureau
NOTICES
Motor vehicle use restrictions:
California, 33297

Management and Budget Office
NOTICES
Budget rescissions and deferrals
Cumulative reports, 33486

National Capital Planning Commission
NOTICES
Senior Executive Service:
Performance Review Board; membership, 33297

National Institutes of Health
NOTICES
Meetings:
National Heart, Lung, and Blood Institute, 33296

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
South Atlantic Fishery Management Council, 33265

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 33327

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Philadelphia Electric Co., 33298

Office of Management and Budget
See Management and Budget Office

Public Health Service
See also Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration; National Institutes of Health
NOTICES
Meetings:
National Commission on Acquired Immune Deficiency Syndrome, 33296

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 33315, 33316
(2 documents)
Meetings:
Compliance with Federal requirements for reporting releases and transporting hazardous materials; joint workshop with EPA, 33317

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange, Inc., 33299
Self-regulatory organizations; unlisted trading privileges:
Cincinnati Stock Exchange, Inc., 33300
Applications, hearings, determinations, etc.:
ML-Lee Acquisition Fund II, L.P., et al., 33301

Social Security Administration
PROPOSED RULES
Social security benefits and supplemental security income:
Children; mental disorders evaluations, 33238

Tennessee Valley Authority
NOTICES
Meetings; Sunshine Act, 33327

Transportation Department
See also Federal Aviation Administration; Federal Highway Administration; Federal Railroad Administration; Research and Special Programs Administration
NOTICES
Aviation proceedings:
Hearings, etc.—
U.S.-Japan service case, 33306

Treasury Department
See also Customs Service
NOTICES
Bonds, Treasury:
2019 series, 33318
C-1999 series, 33320
T-1992 series, 33323

Veterans Affairs Department
NOTICES
Agency information collection activities under OMB review, 33325

Meetings:
Environmental Hazards Advisory Committee, 33325
Small business competitiveness demonstration program, 33326

Western Area Power Administration
NOTICES
Grant and cooperative agreement awards:
Colorado State University, 33285
Power rate adjustments:
Washoe Project, CA, 33285

Separate Parts in This Issue

Part II
Department of Health and Human Services, Health Care Financing Administration, 33354

Part III
Environmental Protection Agency, 33376

Part IV
Environmental Protection Agency, 33400

Part V
Environmental Protection Agency, 33418

Part VI
Office of Management and Budget, 33486

Part VII
Department of Education, 33492

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

12 CFR
262 33183
574 33183
Proposed Rules:
584 33235
14 CFR
39 33186
Proposed Rules:
39 (2 documents) 33235, 33237
19 CFR
4 (2 documents) 33187, 33188
10 33189
Proposed Rules:
355 33238
20 CFR
Proposed Rules:
404 33238
416 33238
32 CFR
286 33190
40 CFR
80 33218
81 33219
116 33426
117 33426
264 33376
265 33376
270 33376
302 (2 documents) 33418, 33426
795 33400
799 33400
Proposed Rules:
52 (2 documents) 33245, 33247
42 CFR
484 33354
44 CFR
64 (2 documents) 33220, 33222
47 CFR
Chapter I 33224
25 33226
73 (2 documents) 33227
Proposed Rules:
73 (5 documents) 33249, 33250
48 CFR
Proposed Rules:
970 33251
49 CFR
210 33227
215 33227
216 33227
217 33227
225 33227
226 33227
229 33227
231 33227
232 33227
383 33230
50 CFR
23 33231

Rules and Regulations

Federal Register
Vol. 54, No. 155
Monday, August 14, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 262

Board of Governors, Rules of Procedure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System is making technical amendments to its Rules of Procedure to update the citations to statutory and regulatory provisions.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Associate Secretary of the Board, Office of the Secretary, 202–452–3259. For the hearing impaired only, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) 202–452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 262

Administrative practice and procedure.

For the reasons set out in the summary, 12 CFR Part 262 is amended as follows:

PART 262—RULES OF PROCEDURE

1. The authority citation for Part 262 continues to read as follows:

Authority: 5 U.S.C. 552.

§ 262.2 [Amended]

2. Section 262.2(b) is amended by revising "§ 261.6(a)" to read "§ 261.6(b)".

3. Section 262.3(a) is amended by revising "§ 261.4(d)" to read "§ 261.9(a)".

4. Section 262.3(c) is amended by revising "in the case of a foreign bank holding company, as defined in § 225.4(g) of this chapter," to read "in the case of foreign banking organization, as defined in § 211.23(a)(2) of this chapter,".

5. Section 262.3(j)(1)(ii) is amended by revising "12 U.S.C. 1828(c)(1)(6)" to read "12 U.S.C. 1828(c)(6)".

6. Section 262.3(j) is further amended by removing paragraphs (j) (3) and (4) and by revising paragraph (j)(2) to read as follows:

§ 262.3 Applications

* * * * *

(j) *Special procedures for certain applications.* * * *

(2) For special rules governing procedures for section 4 applications, refer to § 225.23 of this chapter.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 1, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–18804 Filed 8–11–89; 8:45 am]
BILLING CODE 6210–01–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 574

[Docket No. 89–2323]

RIN 3068–AA80

Acquisition of Control of Insured Institutions

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is adopting a short-form application to be used by insured institutions for approval of routine reorganizations involving the creation of savings and loan holding companies. The purpose of the new application is to streamline the application process by limiting the required contents of routine reorganization applications to information that is necessary to enable the Board to make an informed decision on an application consistent with its statutory responsibilites.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Howard C. Bluver, Assistant Deputy Director, (202) 906–7504; Kevin A. Corcoran, Deputy Director for Corporate Transactions, (202) 906–6962; V. Gerard Comizio, Director, Corporate and Securities Division, (202) 906–6411; Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 906–6459, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; or Robyn Dennis, Financial Analyst, (202) 331–4572, Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Introduction

On January 27, 1989 (54 FR 4043), the Board, in Resolution No. 89–40, proposed to adopt a new short-form application to be used by insured institutions to obtain approval of routine reorganizations involving the creation of savings and loan holding companies.[1] Written comments were solicited by the Board with the comment period ending March 28, 1989.

The Board invited commenters to address all aspects of the proposal, including whether certain information, documents, and certifications described in the proposal should be required in the new short-form application or whether certain individual items should be expanded, modified, or deleted in whole or in part.

The Board received a total of 3 comments in response to the proposal, all of which expressed support for the proposal. Of the comments received, two came from law firms that represent thrift institutions and one came from a national thrift trade organization. While each of the comments expressed support for the proposal, several suggested certain modifications in the information, documents, and certifications that should be required in the new short-form application. After carefully considering the issues raised by the commenters, the Board has determined to adopt the proposal with certain modifications.

[1] Also on January 27, 1989, in Resolution No. 89–32, the Board proposed certain amendments to its regulations to provide for the automatic approval of such applications on an expedited basis provided the proposed transaction satisfied certain specified conditions. After considering public comments on the proposed amendments, the Board adopted final regulations at 12 CFR 574.7 (a)(2) and (a)(3) that provide for the automatic approval of simple holding company reorganization applications subject to conditions substantially similar to those proposed by the Board in January 1989.

II. Routine Holding Company Reorganizations

During the past several years, the Board's staff has processed and approved a large number of applications by insured institutions to reorganize into holding company structures. As a result of its experience with simple reorganization applications, the Board is aware that such transactions usually do not present unusual structural issues or raise significant law or policy concerns. The reorganization is almost always accomplished through a reverse triangular merger transaction whereby an interim institution chartered under federal or state law is merged into the insured institution and each share of stock of the insured institution is exchanged for one share of stock of the new holding company.[3] Furthermore, the new holding company engages in no operations prior to consummation of the reorganization, and its only significant asset immediately after the transaction is its investment in the insured institution subsidiary. Shareholders of the insured institution generally have the opportunity to vote to approve or disapprove the reorganization and can exercise dissenters' rights of appraisal under applicable law if they do not vote in favor of the reorganization.

Because the reorganization involves the acquisition of control of an insured institution by the new holding company, an application to obtain prior approval must generally be filed pursuant to the Savings and Loan Holding Company Act of 1967 (the "Holding Company Act").[3] If the transaction is not one of a relatively narrow group that qualifies as an "exempt reorganization",[4] the appropriate application under current Board regulations is Application H-(e)1.[5] This application requires detailed and often voluminous information on, among other things, the proposed transaction, the financial and managerial resources of the applicant, the current business of the applicant, and the future prospects of the applicant. The application also requires the filing of detailed financial statements on both an historical and a pro forma basis and certain exhibits. The Board believes much of the information required in Application H-(e)1 is not necessary to enable the Board to make an informed decision on a simple reorganization application consistent with its congresionally mandated responsibility to investigate the qualifications of a potential acquiror and prevent the acquisition of control of an insured institution under circumstances that might result in injury to the insured institution. *See* H.R. Rep. No. 997, 90th Cong., 1st Sess. (1967). Therefore, the Board is adopting new Application H-(e)1-S to be used solely by insured institutions seeking approval of simple reorganizations involving the creation of savings and loan holding companies.

III. Eligibility for use of Application H-(e)1-S

In order to be eligible to use Application H-(e)1-S, an insured institution must be proposing a holding company reorganization transaction that qualifies for automatic approval under 12 CFR 574.7 (a)(2) and (a)(3).[6] These regulations provide for automatic approval of such applications 45 calendar days after filing, as long as each condition specified in the regulations is satisfied.

IV. Contents of Application H-(e)1-S

The Board believes the following information, certifications and documents will enable the Board to make an informed decision consistent with its statutory responsibility in cases where routine reorganization applications are filed by insured institutions. Therefore, such information, certifications, and documents are required to be filed as part of the new Application H-(e)1-S:

1. A copy of the Registration Statement, including exhibits, filed or to be filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended ("Securities Act"), by the proposed holding company. If no such Registration Statement has been or will be filed, the applicant must provide a copy of any materials, including proxy statements, furnished or to be furnished to shareholders in connection with the reorganization, together with a brief description of the facts relied upon for concluding that an exemption from registration is available under the Securities Act.

2. Copies of the insured institution's most recent Community Reinvestment Act statement and examination report and any Community Reinvestment Act comments filed with the insured institution within the one year period preceding the filing of the application.

3. A certification that the proposed reorganization will have no effect on management interlocks compliance under the Depository Institutions Management Interlocks Act, 12 U.S.C. 3201–3207 (1982), the Savings and Loan Holding Company Act, 12 U.S.C. 1730a(i) (1982), or the regulations promulgated thereunder, 12 CFR 563f and 12 CFR 584.9.

4. A certification that the insured institution is eligible to file Application H-(e)1-S because the proposed reorganization transaction satisfies each of the conditions specified in 12 CFR 574.7(a)(2) and (a)(3).

5. For any officer or director of the insured institution who has served in such a capacity for less than a one year period on the date of the filing of the application, the biographical portion of the Board's Biographical and Financial Report on Form 1393.

6. Copies of any new or amended employment contracts to which the insured institution or the proposed holding company is or will be a party that are entered into as part of, or in connection with, the reorganization transaction, and information relating to salary increases, if any, to be effective upon consummation of the reorganization transaction.

7. In the event of the proposed officers, directors, or controlling shareholders of the proposed holding company owns 10 percent or more of a class of voting stock of a commercial bank, bank holding company, or other depository institution, information identifying the institution, the number of shares owned, and the percentage of outstanding shares owned. If no proposed officers, directors or controlling shareholders own such a percentage of shares, an affirmative statement to such effect should be provided.

8. The following information and documents, but only in the event that such information and documents are not included in the Registration Statement or other materials furnished pursuant to Item 1 above; provided however, that, to the extent such information and documents are included in the Registration Statement or other materials filed pursuant to Item 1 above, the applicant shall include a cross-reference sheet specifying the document and page number where such information and documents are located:

(a) The information required by Item 3 of Application H-(e)1 relating to information about controlling persons of the proposed holding company;

(b) The information required by Item 4 of Application H-(e)1 relating to the details of the proposed transaction;

(c) A statement as to the reasons for proposing the reorganization;

(d) The information required by Item 5 of Application H-(e)1 relating to fees, commissions, and expenses;

(e) The information required by Item 6 of Application H-(e)1 relating to regulatory approval;

(f) The information required by Item 11 of Application H-(e)1 relating to the board of directors and executive officers of the proposed holding company;

(g) A statement of capitalization as of a date no more than 90 days prior to the date of the filing of the application that shows the insured institution and the holding company on a historical basis, pro forma adjustments, if any, and the holding company on a pro forma basis;

(h) A description of the business intended to be done by the holding company for the twelve month period commencing with the filing of the Application;

(i) A description of the present dividend policy of the insured institution, and a description of the proposed dividend policy of the insured institution and the holding company subsequent to the reorganization;

(j) A copy of any contracts or agreements pursuant to which the reorganization is to be accomplished;

(k) A copy of the charter and bylaws of the holding company; and

(l) A copy of any opinions of counsel or revenue rulings received by the insured institution or the holding company in connection with the reorganization.

6. A consolidated business plan conforming to requirements set by the Principal Supervisory Agent ("PSA") for the Federal Home Loan Bank District in which the institution to be acquired is located.

The Board believes adoption of the new Application H-(e)1-S will further streamline the application process under 12 CFR Part 574 by limiting the required contents of routine reorganization applications to information that is necessary to enable the Board to make an informed decision on such an application consistent with its statutory responsibilities.

List of Subjects in 12 CFR Part 574

Administrative practice and procedure, Holding companies, Savings and loan associations, Securities.

Accordingly, the Board hereby amends part 574, subchapter D, chapter V, title 12, Code of Federal Regulations, as set forth below.

Subchapter D—Federal Savings and Loan Insurance Corporation

PART 574—ACQUISITION OF CONTROL OF INSURED INSTITUTIONS

1. The authority citation for part 574 continues to read as follows:

Authority: Sec. 407, 48 Stat. 1260, as amended (12 U.S.C. 1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a).

2. Amend § 574.6 by redesignating existing paragraphs (a)(2) through (a)(5) as the new paragraphs (a)(3) through (a)(6), respectively and by adding a new paragraph (a)(2) to read as follows:

§ 574.6 Procedural requirements.

(a) *Form of application or notice.*

* * *

(2) H-(e)1-S. Notwithstanding the provisions of paragraph (a)(1) of this section, an application filed under § 574.3(a) that satisfies each of the conditions for automatic approval specified in 12 CFR 574.7 (a)(2) and (a)(3) need only include the following information:

(i) A copy of the Registration Statement, including exhibits, filed or to be filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended ("Securities Act"). If no such Registration Statement has been or will be filed, a copy of any materials, including proxy statements, furnished or to be furnished to shareholders in connection with the reorganization, should be provided, together with a brief description of the facts relied upon for concluding that an exemption from registration is available under the Securities Act;

(ii) Copies of the insured institution's most recent Community Reinvestment Act statement and examination report, and any Community Reinvestment Act comments filed with the insured institution within the one year period preceding the filing of the application;

(iii) A certification that the proposed reorganization will have no effect on management interlocks compliance under the Depository Institutions Management Interlocks Act, 12 U.S.C. 3201–3207 (1982), the Savings and Loan Holding Company Act, 12 U.S.C. 1730a(i) (1982), or the regulations promulgated thereunder, 12 CFR Part 563f and 12 CFR 584.9;

(iv) A certification that the insured institution is eligible to file Application H-(e)1-S because the proposed reorganization transaction satisfies each of the conditions specified in 12 CFR 574.7 (a)(2) and (a)(3);

(v) For any officer or director of the insured institution who has served in such a capacity for less than a one year period on the date of the filing of the application, the biographical portion of the Board's Biographical and Financial Report on Form 1393;

(vi) Copies of any new or amended employment contracts to which the insured institution or the proposed holding company is or will be a party that are entered into as a part of, or in connection with, the reorganization transaction, and information relating to salary increases, if any, to be effective upon consummation of the reorganization transaction;

(vii) In the event any of the proposed officers, directors, or controlling shareholders of the proposed holding company owns 10 percent or more of a class of voting stock of a commercial bank, bank holding company, or other depository institution, information identifying the institution, the number of shares owned, and the percentage of outstanding shares owned. If no proposed officers, directors, or controlling shareholders own such a percentage of shares, an affirmative statement to such effect should be provided;

(viii) The following information and documents, but only in the event that such information and documents are not included in the Registration Statement or other materials furnished pursuant to § 574.6(a)(2)(i); *Provided, However*, that to the extent such information and documents are included in the Registration Statement or other materials filed pursuant to

---

[3] The shares of the new holding company issued to the former shareholders of the insured institution generally must be registered with the Securities and Exchange Commission ("SEC") under the Securities Act of 1933, as amended. Nevertheless, the SEC staff, in recognition of the fact that a simple reorganization presents relatively minimal risk to shareholders, has adopted a streamlined and expedited registration procedure for such transactions. SEC Staff Accounting Bulletin #50, which originally covered bank holding company formations only but is now applied to savings and loan holding company formations as well, permits a registrant to omit from the applicable registration statement audited financial statements and detailed statistical disclosure as long as certain conditions are satisfied. In addition, Instruction G to SEC Form S-4, which is the form utilized for most holding company formations, provides for the automatic effectiveness of the registration statement on the twentieth day after filing.

[3] The Holding Company Act prohibits any company, directly or indirectly, or acting in concert with one or more other persons, or through one or more subsidiaries, or through one or more transactions, from acquiring control of one or more insured institutions without first receiving prior written approval. 12 U.S.C. 1730a(e)(1)(B) (1982).

[4] Pursuant to 12 U.S.C. 1730a(e)(1)(B)(ii) and 12 CFR 574.3(c)(1)(ii), an acquisition of control of an insured institution is exempt from the prior application requirement if the proposed transaction involves solely the acquisition of control of that institution by a newly formed company which is controlled by the same acquirors that have controlled the insured institution for the immediately preceding three years and entails no other transactions.

[5] 12 CFR 574.6(a)(1).

[6] *See* footnote 1 *supra*.

§ 574.6(a)(2)(i), the applicant shall include a cross-reference sheet specifying the document and page number where such information and documents are located:

(A) The information required by Item 3 of Application H–(e)1 relating to information about controlling persons of the proposed holding company;

(B) The information required by Item 4 of Application H–(e)1 relating to the details of the proposed transaction;

(C) A statement as to the reasons for proposing the reorganization;

(D) The information required by Item 5 of Application H–(e)1 relating to fees, commissions, and expenses;

(E) The information required by Item 6 of Application H–(e)1 relating to regulatory approval;

(F) The information required by Item 11 of Application H–(e)1 relating to the board of directors and executive officers of the proposed holding company;

(G) A statement of capitalization as of a date no more than 90 days prior to the date of the filing of the application that shows the insured institution and the holding company on a historical basis, pro forma adjustments, if any, and the holding company on a pro forma basis;

(H) A description of the business intended to be done by the holding company for the twelve month period commencing with the filing of the application;

(I) A description of the present dividend policy of the insured institution, and a description of the proposed dividend policy of the insured institution and the holding company subsequent to the reorganization;

(J) A copy of any contracts or agreements pursuant to which the reorganization is to be accomplished;

(K) A copy of the charter and bylaws of the holding company; and

(L) A copy of any opinions of counsel or revenue rulings received by the insured institution or the holding company in connection with the reorganization.

(vi) A consolidated business plan conforming to requirements set by the Principal Supervisory Agent for the Federal Home Loan Bank District in which the institution to be acquired is located.

* * * * *

3. Amend § 574.7 by revising the introductory text of paragraph (a)(2) to read as follows:

§ 574.7 Determination by the corporation.

(a) *Acquisition by a company.* * * *

(2) An application filed pursuant to § 574.6(a)(2) by an insured institution solely for the purpose of obtaining approval for the creation of a savings and loan holding company by such insured institution, and related applications for permission to organize an interim federal institution, for insurance of accounts, for Federal Home Loan Bank membership, and for merger with such interim institution, hall be deemed to be approved 45 calendar days after such applications are properly filed in accordance with the procedures set forth herein, unless, prior to such date: * * *

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–18784 Filed 8–11–89; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–18–AD; Amdt. 39–6295]

Airworthiness Directives; McDonnell Douglas DC–9–80 (MD–80) Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC–9–80 (MD–80) series airplanes and Model MD–88 airplanes, which requires relocation of a number 2 engine pneumatic tube. This amendment is prompted by reports of chafing between the number 2 engine main fuel hose and a pneumatic tube, resulting in fuel and air leakage. This condition, if not corrected, could lead to a fire in the number 2 engine nacelle.

EFFECTIVE DATE: September 18, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications C1–L00 (54–60). This information may be examined at the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Northwest Mountain Region, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5245.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas Model DC–9–80 (MD–80) series airplanes and Model MD–88 airplanes, which requires relocation of a number 2 engine pneumatic tube, was published in the **Federal Register** on March 28, 1989 (54 FR 12644).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Commenters suggested that the proposed compliance time of 12 months be extended, due to the unavailability of required modification parts. The FAA concurs. Subsequent to the issuance of the proposal, the FAA verified that modification parts will not be available in sufficient quantity to support a compliance time of 12 months. In light of this, the FAA considers a compliance time of 18 months to be appropriate in allowing a more orderly, and timely, modification process of the U.S. fleet. The final rule has been revised accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 596 McDonnell Douglas DC–9–80 (MD–80) series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. It is estimated that 361 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $72,200.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–9–80 (MD–80) series airplanes and Model MD–88 airplanes, as listed in McDonnell Douglas Service Bulletin 80–8, dated November 3, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent fire in the number 2 engine nacelle, accomplish the following:

A. Within 18 months after the effective date of this AD, relocate the number 2 engine starter shutoff valve pneumatic tube, in accordance with the accomplishment instructions in McDonnell Douglas MD–80 Service Bulletin 80–8, dated November 3, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

This amendment becomes effective September 18, 1989.

Issued in Seattle, Washington, on August 3, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–18910 Filed 8–11–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 89–75]

Amendment to the Customs Regulations Concerning Coastwise Transportation of Certain Articles by Vessels of India

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding India to the list of nations which permit vessels of the United States to transport certain articles specified in section 27, Merchant Marine Act of 1920, as amended, between their ports.

Customs has been furnished with satisfactory evidence that India places no restrictions on the transportation of certain specified articles by vessels of the U.S. between ports in that country. This amendment recognizes reciprocal privileges for vessels registered in India.

EFFECTIVE DATES: The reciprocal privileges for vessels registered in India became effective on March 13, 1989. This amendment effect August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Rebecca Hollaway, Carrier Rulings Branch, (202–566–5706).

SUPPLEMENTARY INFORMATION:

Background

Section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. App. 883) (the Act), provides generally that no merchandise shall be transported by water, or by land and water, between points in the United States except in vessels built in and documented under the laws of the United States and owned by U.S. citizens. However, the 6th proviso of the Act, as amended, provides that, upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that a foreign nation does not restrict the transportation of certain articles between its ports by vessels of the United States, reciprocal privileges will be accorded to vessels of that nation, and the prohibition against the transportation of those articles between points in the U.S. will not apply to its vessels.

Section 4.93(b)(1), Customs Regulations (19 CFR 4.93(b)(1)) lists those nations found to extend reciprocal privileges to vessels of the U.S. for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks, § 4.93(b)(2), Customs Regulations (19 CFR 4.93(b)(2)), lists those nations found to extend reciprocal privileges to vessels of the U.S. for the transportation of equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and certain equipment for use with these barges; certain empty instruments of international traffic; and certain stevedoring equipment and material.

By letter dated March 9, 1989, The Department of State advised that the Government of India offers satisfactory evidence that India places no restrictions on the transportation of any of the articles listed in the Act by vessels of the U.S. between ports in India.

The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

Finding

On the basis of the information received from the Secretary of State and the Embassy of India, it has been determined that India places no restrictions on the transportation of the articles specified in section 27 of the Merchant Marine Act of 1920, as amended (46 U.S.C. App. 883), by vessels of the United States between ports in that country. Therefore, appropriate reciprocal privileges are accorded to vessels registered in India as of March 13, 1989.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely implements a statutory requirement and involves a matter in which the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

Inapplicability of the Regulatory Flexibility Act

This document is not subject to the provisions of the Regulatory Flexibility Act 5 U.S.C. 601 *et seq.* That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551, *et seq.*) or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major rule as defined in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Earl Martin, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices of the Customs Service participated in its development.

List of Subjects in 19 CFR Part 4

Cargo vessels, Coastwise trade, Customs duties and inspection, Maritime carriers, Vessels.

Amendment to the Regulations

To reflect the reciprocal privileges granted to vessels registered in India, part 4, Customs Regulations (19 CFR part 4), is amended in the following manner:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority for part 4 continues to read in part as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, 46 U.S.C. App. 3;

* * * * *

Section 4.93 also issued under 19 U.S.C. 1322(a), 46 U.S.C. App. 863;

* * * * *

§ 4.93 [Amended]

2. Sections 4.93(b) (1) and (2), are amended by adding "India" in appropriate alphabetical order.

Dated: August 8, 1989.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89-18880 Filed 8-11-89; 8:45 am]

BILLING CODE 4820-02-M

---

19 CFR Part 4

[T.D. 89-76]

List of Nations Entitled to Special Tonnage Tax Exemption—Marshall Islands

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding the Republic of the Marshall Islands to the list of nations whose vessels are exempt from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money. The Department of State informed Customs that there is satisfactory evidence that no discriminatory duties of tonnage or impost are being imposed in ports of the Marshall Islands upon vessels belonging to citizens of the United States or on their cargoes.

EFFECTIVE DATE: The reciprocal privileges for vessels registered in the Marshall Islands became effective on April 5, 1989. This amendment is effective August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Paul Hegland, Carrier Rulings Branch (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton, known as "light money," on all foreign vessels which enter United States ports (46 U.S.C. 121, 128). However, vessels of a foreign nation may be exempted from the payment of special tonnage taxes and light money upon presentation of proof satisfactory to the President that no discriminatory duties of tonnage or imposts are imposed by that foreign nation on United States vessels or their cargoes (46 U.S.C. 141). The President has delegated the authority to grant this exemption to the Secretary of the Treasury. Section 4.22, Customs Regulations (19 CFR 4.22) lists those nations whose vessels have been exempted from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money.

On April 6, 1989, Customs received a communication from the Department of State advising that satisfactory evidence had been obtained from the Republic of the Marshall Islands that no discriminating duties of tonnage or impost are imposed or levied in ports of that country upon vessels wholly belonging to citizens of the United States, or upon the produce, manufactures, or merchandise imported into that country on United States vessels. An accompanying copy of a letter dated April 5, 1989, was also received from a representative of the Office of the Republic of the Marshall Islands certifying that the Government of the Republic of the Marshall Islands does not impose any discriminatory duties or imposts on U.S. vessels or their cargoes. Consequently, the Department of State recommended the addition of the Marshall Islands, effective April 5, 1989, to the list of nations whose vessels are exempted from the payment of tonnage tax and light money.

The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

Finding

On the basis of the information received from the Department of State regarding the absence of discriminatory duties of tonnage or impost imposed on U.S. vessels in the ports of the Marshall Islands, it has been determined that the Marshall Islands should be added to the list of nations whose vessels are exempt from the payment of the special tonnage tax and light money.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely implements a statutory requirement and involves a matter in which the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

Inapplicability of the Regulatory Flexibility Act

This document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major rule as defined in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Earl Martin, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices of the Customs Service participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Cargo vessels, Maritime carriers, Vessels.

Amendment to the Regulations

Part 4, Customs Regulations (19 CFR Part 4), is amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority for Part 4 continues to read as follows and the specific authority for § 4.22 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, and 46 U.S.C. App. 3;

* * * * *

Section 4.22 also issued under 46 U.S.C. App. 121, 128, 141;

* * * * *

§ 4.22 [Amended]

2. Section 4.22 is amended by inserting "Marshall Islands, Republic of" in appropriate alphabetical order, in the list of nations whose vessels are exempt from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money.

Dated: August 8, 1989.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89-18881 Filed 8-11-89; 8:45 am]

BILLING CODE 4820-02-M

---

19 CFR Part 10

[T.D. 89-77]

Supplies and Equipment for Aircraft of Luxembourg

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding Luxembourg to the list of nations whose aircraft are exempt from the payment of Customs duties and internal revenue taxes on supplies and equipment withdrawn from Customs or internal revenue custody for use by aircraft in certain circumstances. The Department of Commerce has advised that the Government of Luxembourg allows to American operators of U.S. registered aircraft substantially reciprocal exemptions from Customs duties and related taxes on aviation fuels purchased for use in international commercial aviation into and out of Luxembourg. Therefore, the U.S. will now extend reciprocal privileges to Luxembourg-registered aircraft with the notation limiting the privileges to withdrawals of aviation fuels.

EFFECTIVE DATE: The reciprocal privileges for aircraft registered in Luxembourg became effective on June 6, 1989. This amendment is effective August 14, 1989.

FOR FURTHER INFORMATION CONTACT: William Rosoff, Entry Rulings Branch, (202-566-5856).

SUPPLEMENTARY INFORMATION:

Background

Sections 309 and 317, Traiff Act of 1930, as amended (19 U.S.C. 1309, 1317), provide that foreign-registered aircraft engaged in foreign trade may withdraw articles of foreign or domestic origin from Customs or internal-revenue custody without the payment of Customs duties and/or internal-revenue taxes, for use as supplies (including equipment), ground equipment, maintenance, or repair of the aircraft. This privilege is granted if the Secretary of Commerce finds, and advises the Secretary of the Treasury, that the country in which the foreign aircraft is registered allows substantially reciprocal privileges to United States-registered aircraft. Section 10.59(f), Customs Regulations (19 CFR 10.59(f)), lists those nations whose aircraft have been found to be entitled to these privileges.

In accordance with 19 U.S.C. 1309(d), the Deputy Assistant Secretary for Services of the Department of Commerce, International Trade Administration, has determined and advised the Customs Service by letter dated June 6, 1989, that Luxembourg accords aircraft of U.S. registry privileges with respect to exemptions from Customs duties and internal revenue taxes imposed by reason of the importation of aviation fuels purchased for use in international commercial aviation into and out of Luxembourg, in a manner that is substantially reciprocal to exemption privileges which the United States may provide under 19 U.S.C. 1309 and 1317, and under 26 U.S.C. 4221, for aviation fuels for use by foreign registered aircraft operating into and out of the United States.

Accordingly, corresponding privileges are extended to aircraft registered in Luxembourg and engaged in foreign trade, effective as of June 6, 1989.

Therefore, § 10.59(f) is being amended to add Luxembourg to the list of countries therein, with the notation, however, that the privileges are limited to withdrawals of aviation fuels.

The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely implements a statutory requirement and involves a matter in which the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

Inapplicability of the Regulatory Flexibility Act

This document is not subject to the provisions of 5 U.S.C. 603, 604, as added by section 3 of Public Law 96-354, the "Regulatory Flexibility Act." That Act does not apply to any regulations such as this for which a notice or proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551, *et seq.*) or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major rule as defined in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Earl Martin, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices of the Customs Service participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, Exports.

Amendment to the Regulations

Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE

1. The authority citation for Part 10 continues to read as follows:

Authority: 10 U.S.C. 66, 1202, 1481, 1498, 1506, 1623, 1624;

* * * * *

Section 10.50 also issued under 10 U.S.C. 1309, 1317;

* * * * *

§ 10.59 [Amended]

2. Section 10.59(f) is amended by inserting "Luxembourg" in appropriate alphabetical order in the column headed "Country", the number of this Treasury Decision in the next column headed "Treasury Decisions", and in the column headed "Exemptions if any, as noted-" add the words "Applicable only as to aviation fuels," opposite the listing for Luxembourg.

Dated: August 8, 1989.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89-18882 Filed 8-11-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286

[DoD 5400.7-R]

Freedom of Information Act Program

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: This document revises 32 CFR part 286 and provides administrative amendments. It implements certain provisions of the Freedom of Information Reform Act of 1986, which required agency promulgation of regulations specifying a uniform schedule of fees and guidelines for determining waiver or reduction of such fees. This rule conforms with the Office of Management and Budget's (OMB) Uniform Freedom of Information Act Fee Schedule and Guidelines, and is published pursuant to the Freedom of Information Reform Act of 1986, section 854 of the National Defense Authorization Act for Fiscal Year 1987, as amended by the Defense Technical Corrections Act of 1987.

EFFECTIVE DATE: July 17, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. C. Talbott, Office of the Assistant Secretary of Defense (Public Affairs), Washington, DC 20301-1400, Telephone number (202) 697-1180.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 286

Freedom of information.

Accordingly, 32 CFR Part 286 is revised to read as follows:

PART 286—DOD FREEDOM OF INFORMATION ACT PROGRAM

Subpart A—General Provisions

Sec.
286.1 Purpose and applicability.
286.3 DoD public information.
286.5 Definitions.
286.7 Policy.

Subpart B—FOIA Reading Rooms

286.9 Requirements.
286.11 Indexes.

Subpart C—Exemptions

286.13 General provisions.
286.15 Exemptions.

Subpart D—For Official Use Only

286.17 General provisions.
286.19 Markings.
286.21 Dissemination and transmission.
286.23 Safeguarding FOUO information.
286.25 Termination, disposal and unauthorized disclosure.

Subpart E—Release and Processing Procedures

286.27 General provisions.
286.29 Initial determinations.
286.31 Appeals.
286.33 Judicial actions.

Subpart F—Fee Schedule

286.35 General provisions.
286.37 Collection of fees and fee rates.
286.39 Collection of fees and fee rates for technical data.

Subpart G—Reports

286.41 Reports control.
286.43 Annual report.

Subpart H—Education and Training

286.45 Responsibility and purpose.
Appendix A to Part 286—Unified Commands — Processing Procedures for FOI Appeals.
Appendix B to Part 286—Addressing FOIA Requests.
Appendix C to Part 286—Litigation Status Sheet.
Appendix D to Part 286—Other Reason Categories.
Appendix E to Part 286—Record of Freedom of Information (FOI) Processing Cost (DD Form 2086).
Appendix F to Part 286—Record of Freedom of Information (FOI) Processing Cost for Technical Information (DD Form 2086-1).
Appendix G to Part 286—DoD Freedom of Information Act Program Components.

Authority: Pub. L. 99-570, secs. 1801-1804; Pub. L. 99-661, sec. 2328; 5 U.S.C. 552.

Subpart A—General Provisions

§ 286.1 Purpose and applicability.

(a) *Purpose.* The purpose of this part is to provide policies and procedures for the Department of Defense (DoD) implementation of the Freedom of Information Act and DoD Directive 5400.7[1] (32 CFR part 285) and to promote uniformity in the DoD Freedom of Information Act (FOIA) Program.

(b) *Applicability.* (1) This part applies to the Office of the Secretary of Defense (OSD) which includes for the purpose of this Regulation the Joint Staff, Unified Commands, the Military Departments, the Defense Agencies, and the DoD Field Activities (hereafter referred to as "DoD Components"), and takes precedence over all DoD Component regulations that supplement the DoD FOIA Program. A list of DoD Components is at Appendix G to this part.

(2) The National Security Agency records are subject to the provisions of this part, only to the extent the records are not exempt under Pub. L. 86-36.

§ 286.3 DoD public information.

(a) *Public information.* The public has a right to information concerning the activities of its Government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A DoD record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall be withheld only when it is exempt from mandatory public disclosure under the FOIA. In the event a requested record is exempt under the FOIA, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by the release of the record. In order that the public may have timely information concerning DoD activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information should continue to be honored through appropriate means even though the request does not qualify under FOIA requirements.

(b) *Control system.* A request for records that invokes the FOIA shall enter a formal control system designed

[1] Copies may be obtained if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1053, 5801 Tabor Avenue, Philadelphia, PA 19120.

to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this part. Any request for DoD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this part or under the Privacy Act, when the request is from the subject of the records requested.

§ 286.5 Definitions.

As used in this part, the following terms and meanings shall be applicable.

Administrative appeal. A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component to reverse an IDA decision to withhold all or part of a requested record or to deny a request for waiver or reduction of fees.

Agency record. (a) The products of data compilation, regardless of physical form or characteristics, made or received by a DoD Component in connection with the transaction of public business and preserved by a DoD Component primarily as evidence of the organization, policies, functions, decisions, or procedures of the DoD Component.

(b) The following are not included within the definition of the word "record":

(1) Library and museum material made, acquired, and preserved solely for reference or exhibition.

(2) Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles and equipment, whatever their historical value, or value as evidence.

(3) Commercially exploitable resources and administrative tools by which records are created, stored, and retrieved, including but not limited to:

(i) Maps, charts, map compilation manuscripts, map research materials and data if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component.

(ii) Computer software, if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software.)

(4) Unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials, that are available to the public through an established distribution system with or without charges.

(5) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(6) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(7) Information stored within a computer for which there is no existing computer program or printout.

(c) A record must exist and be controlled by the Department of Defense at the time of the request to be considered subject to this part. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

Appellate authority. The Head of the DoD Component or the Component head's designee having jurisdiction for this purpose over the record.

DoD component. An element of the Department of Defense, as defined in § 286.1(b), authorized to receive and act independently on FOIA requests. A DoD Component has its own initial denial authority (IDA) or appellate authority, and general counsel.

FOIA request. A written request for DoD records, made by a member of the public, that either explicitly or implicitly invokes the FOIA, 32 CFR part 285, this part, or DoD Component supplementing regulations or instructions.

Initial denial authority (IDA). An official who has been granted authority by the head of a DoD Component to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure.

§ 286.7 Policy.

(a) *Compliance with the FOIA.* DoD personnel are expected to comply with the FOIA and this part in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.

(b) *Openness with the public.* The Department of Defense shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

(c) *Avoidance of procedural obstacles.* DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this part and any supplemental part published by the DoD Components.

(d) *Prompt action on requests.* When a member of the public complies with the procedures established in this part for obtaining DoD records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days, unless a delay is authorized. When a Component has a significant number of requests, e.g., 10 or more, the requests shall be processed in order of receipt. However, this does not preclude a Component from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. Requests by individuals for access to records about themselves are processed under the provisions of the respective Act cited in the request. Requests that cite both Acts or neither Act are processed under both Acts, using the fee provisions of the Federal Privacy Act and the time limits of the FOIA. If access is controlled by another Federal statute, follow the provisions of the controlling statute and § 286.15(a)(3). For further details, see DoD 5400.11-R.[2] Even though a request that invokes the FOIA is administratively processed under Privacy Act procedures, no record shall be withheld that would be released under FOIA procedures.

(e) *Use of exemptions.* Records that may be withheld under the exemptions outlined in Subpart C of this part shall be made available to the public when it is determined that no governmental interest will be jeopardized by their release. Determination of jeopardy to governmental interest is within the sole discretion of the Component, consistent with statutory requirements, security classification requirements, or other requirements of law.

(f) *Public domain.* Nonexempt records released under the authority of this part are considered to be in the public domain. Nonexempt records maintained in a DoD Component's Public Reading Room, or which can be made available in the Public Reading Room within a short time frame (15 minutes or less) are considered to be in the public domain. Exempt records released pursuant to this part or other statutory or regulatory authority, however, may be considered to be in the public domain only when

[2] Copies may be obtained at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional Committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

(g) *Creating a record.* A record must exist and be in the possession and control of the Department of Defense at the time of the search to be considered subject to this part. Mere possession of a record does not presume departmental control and such records, or identifiable portions thereof, would be referred to the originating Agency for direct response to the requester. There is no obligation to create nor compile a record to satisfy an FOIA request. A DoD Component, however, may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existi g record. Fee assessment for direct search, review (in the case of commercial requesters), and duplication associated with the request shall be in accordance with § 286.35(b).

(h) *Description of requested record.* (1) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record, that enables the Government to locate the record with a reasonable amount of effort. The Act does not authorize "fishing expeditions." When a DoD Component receives a request that does not "reasonably describe" the requested record, it shall notify the requester of the defect. The defect should be highlighted in a specificity letter, asking the requester to provide the type of information outlined of this part. Components are not obligated to act on the request until the requester responds to the specificity letter § 286.7(h)(2). When practicable, Components shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act.

(2) The following guidelines are provided to deal with "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(3) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, nonrandom search based on the Component's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

(4) The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers are provided only in connection with a request for records concerning the requester, only records retrievable by personal identifiers need be searched. Search for such records may be conducted under Privacy Act procedures. No record may be denied that is releasable under the FOIA.

(5) The above guidelines notwithstanding, the decision of the DoD Component concerning reasonableness of description must be based on knowledge of its files. If the description enables DoD Component personnel to locate the record with reasonable effort, the description is adequate.

(i) *Referrals.* (1) A request received by a DoD Component having no records responsive to a request shall be referred routinely to another DoD Component, if the other Component confirms that it has the requested record, and this belief can be confirmed by the other DoD Component. In cases where the Component receiving the request has reason to believe that the existence or nonexistence of the record may in itself be classified, that Component shall consult the DoD Component having cognizance over the record in question before referring the request. If the DoD Component that is consulted determines that the existence or nonexistence of the record is in itself classified, the requester shall be so notified by the DoD Component originally receiving the request, and no referral shall take place. Otherwise, the request shall be referred to the other DoD Component, and the requester shall be notified of any such referral. Any DoD Component receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester.

(2) Whenever a record or a portion of a record is, after prior consultation, referred to another DoD Component or to a Government agency outside of the Department of Defense for a release determination and direct response, the requester shall be informed of the referral. Referred records shall only be identified to the extent consistent with security requirements.

(3) A DoD Component shall refer an FOIA request for a classified record that it holds to another DoD Component or agency outside the Department of Defense, if the record originated in the other DoD Component or outside agency or if the classification is derivative. In this situation, provide the record and a release recommendation on the record with the referral action.

(4) A DoD Component may refer a request for a record that it originated to another DoD Component or agency when the record was created for the use of the other DoD Component or agency. The DoD Component or agency for which the record was created may have an equally valid interest in withholding the record as the DoD Component that created the record. In such situations, provide the record and a release recommendation on the record with the referral action. An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor should be at the discretion of the contracting officer. Any FOIA request shall be referred to the appropriate contracting officer and the requester shall be notified of the referral.

(5) Within the Department of Defense, a Component shall ordinarily refer an FOIA request for a record that it holds, but that was originated by another DoD Component or that contains substantial information obtained from another DoD Component, to that Component for direct response, after direct coordination and obtaining concurrence from the Component. The requester then shall be notified of such referral. DoD Components shall not, in any case, release or deny such records without prior consultation with the other DoD Component.

(6) DoD Components that receive referred requests shall answer them in accordance with the time limits established by the FOIA and this part. Those time limits shall begin to run upon receipt of the referral by the official designated to respond.

(7) Agencies outside the Department of Defense that are subject to the FOIA:

(i) A Component may refer an FOIA request for any record that originated in an agency outside the DoD or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the Component must respond to the request.

(ii) A DoD Component shall not honor any FOIA request for investigative, intelligence, or any other type of records that are on loan to the Department of Defense for a specific purpose, if the records are restricted from further release and so marked. Such requests shall be referred to the agency that provided the record.

(iii) Notwithstanding anything to the contrary in paragraph (i) of this section, a Component shall notify requesters seeking National Security Council (NSC) or White House documents that they should write directly to the NSC or White House for such documents. DoD documents in which the NSC or White House has a concurrent reviewing interest shall be forwarded to the Office of the Assistant Secretary of Defense (Public Affairs) (OASD(PA)), ATTN: Directorate For Freedom of Information and Security Review (DFOISR), which shall effect coordination with the NSC or White House, and return the documents to the originating agency after NSC review and determination. NSC or White House documents discovered in Components' files which are responsive to the FOIA request shall be forwarded to OASD(PA), ATTN: DFOISR, for subsequent coordination with the NSC or White House, and returned to the Component with a release determination.

(8) To the extent referrals are consistent with the policies expressed by this paragraph, referrals between offices of the same DoD Component are authorized.

(9) On occasion, the Department of Defense receives FOIA requests for Government Accounting Office (GAO) documents containing DoD information, either directly from requesters, or as referrals from the GAO. The GAO is outside the Executive Branch, and as such, all FOIA requests for GAO documents containing DoD information will be processed under the provisions of Security Review or Mandatory Declassification Review (MDR) Directives. Requests received in DoD for unclassified GAO reports containing DoD information shall be transferred to the GAO Distribution Center, ATTN: DHISF, P.O. Box 6015, Gaithersburg, MD 20877-1450. Requests received in the Department of Defense for classified GAO documents (or documents unidentifiable as to classification) shall be referred to the GAO, Office of Security and Safety, Washington, DC 20548. After internal review, the GAO shall refer the request and documents to Office of the Inspector General, Department of Defense (OIG, DoD) and that Component shall refer the action to the OASD(PA), ATTN: DFOISR, for processing under Security Review or MDR provisions.

(j) *Authentication.* Records provided under this part shall be authenticated with an appropriate seal, whenever necessary, to fulfill an official Government or other legal function. This service, however, is in addition to that required under the FOIA and is not included in the FOIA fee schedule. DoD Components may charge for the service at a rate of $5.20 for each authentication.

(k) *Unified and Specified Commands.* (1) The Unified Commands are placed under the jurisdiction of the OSD, instead of the administering Military Department, only for the purpose of administering the DoD FOIA Program. This policy represents an exception to the policies directed in DoD Directive 5100.3 [3] it authorizes and requires the Unified Commands to process Freedom of Information (FOI) requests in accordance with DoD Directive 5400.7 and this part. The Unified Commands shall forward directly to the OASD(PA), all correspondence associated with the appeal of an initial denial for records under the provisions of the FOIA. Procedures to effect this administrative requirement are outlined in Appendix A of this part.

(2) The Specified Commands remain under the jurisdiction of the administering Military Department. The Commands shall designate IDAs within their headquarters; however, the appellate authority shall reside with the Military Department.

(l) *Records management.* FOIA records shall be maintained and disposed of in accordance with DoD Component Disposition instructions and schedules.

Subpart B—FOIA Reading Rooms

§ 286.9 Requirements.

(a) *Reading room.* Each Component shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the materials described below. DoD Components may share reading room facilities if the public is not unduly inconvenienced. The cost of copying shall be imposed on the person requesting the material in accordance with the provisions of Subpart F of this part.

(b) *Material availability.* The FOIA requires that so-called "(a)(2)" materials shall be made available in the FOIA reading room for inspection and copying, unless such materials are published and copies are offered for sale. Identifying details that, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from "(a)(2)" materials made available for inspection and copying. In every case, justification for the deletion must be fully explained in writing. However, a DoD Component may publish in the Federal Register a description of the basis upon which it will delete identifying details of particular types of documents to avoid clearly unwarranted invasions of privacy. In appropriate cases, the DoD Component may refer to this description rather than write a separate justification for each deletion. So-called "(a)(2)" materials are:

(1) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used, or relied upon as precedents in future adjudications.

(2) Statements of policy and interpretations that have been adopted by the agency and are not published in the Federal Register.

(3) Administrative staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

(i) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(ii) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

[3] See footnote 1 to § 286.1(a).

§ 286.11 Indexes.

(a) *"(a)(2)" Materials.* (1) Each DoD Component shall maintain in each facility prescribed in § 286.11(a), an index of materials described in § 286.11(b), that are issued, adopted, or promulgated, after July 4, 1967. No "(a)(2)" materials issued, promulgated, or adopted after July 4, 1967 that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967, need not be indexed, but must be made available upon request if not exempted under this part.

(2) Each DoD Component shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of "(a)(2)" materials or supplements thereto unless it publishes in the **Federal Register** an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in subpart F of this part.

(3) Each index of "(a)(2)" materials or supplement thereto shall be arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for DoD Component convenience.

(b) *Other materials.* (1) Any available index of DoD Component material published in the **Federal Register**, such as material required to be published by Section 552(a)(1) of the FOIA, shall be made available in DoD Component FOIA reading rooms.

(2) Although not required to be made available in response to FOIA requests or made available in FOIA reading rooms, "(a)(1)" materials shall, when feasible, be made available in FOIA reading rooms for inspection and copying. Examples of "(a)(1)" materials are: descriptions of an agency's central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

Subpart C—Exemptions

§ 286.13 General provisions.

(a) *General.* Records that meet the exemption criteria in § 286.15 may be withheld from public disclosure and need not be published in the **Federal Register**, made available in a library reading room, or provided in response to an FOIA request.

(b) *Jeopardy of government interest.* An exempted record, other than those being withheld pursuant to Exemptions 1, 3 or 6, shall be made available upon the request of any individual when, in the judgment of the releasing DoD Component or higher authority, no jeopardy to government interest would be served by release. It is appropriate for DoD Components to use their discretionary authority on a case-by-case basis in the release of given records. If a DoD Component determines that a record requested under the FOIA meets the Exemption 4 withholding criteria set forth in this part, the DoD Component shall not ordinarily exercise its discretionary power to release, absent circumstances in which a compelling public interest will be served by release of that record. Further guidance on this issue may be found at § 286.13(a)(4) and § 286.29(h).

§ 286.15 Exemptions.

(a) *FOIA exemptions.* The following types of records may be withheld in whole or in part from public disclosure under the FOIA, unless otherwise prescribed by law.

(1) *Number 1.* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as 32 CFR part 159a. Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoD 5200.1–R,[4] section 2–204f., apply.

(2) *Number 2.* Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of a DoD Component if their release to the public would substantially hinder the effective performance of a significant function of the Department of Defense and they do not impose requirements directly on the general public. Examples include:

(i) Those operating rules, guidelines, and manuals for DoD investigators, inspectors, auditors, or examiners that must remain privileged in order for the DoD Component to fulfill a legal requirement.

(ii) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(iii) Lists of DoD personnel names and duty addresses (civilian and military) created primarily for internal, trivial, housekeeping purposes for which there is no legitimate public interest or benefit. This exemption is appropriate when it would impose an administrative burden to process the request, and the requester is not seeking the information for the benefit of the general public (see also paragraph (a)(6)(ii) of this section).

(3) *Number 3.* Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

(i) National Security Agency Information Exemption, Public Law 86–36, section 6.

(ii) Patent Secrecy, 35 U.S.C. 181–188. Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(iii) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162.

(iv) Communication Intelligence, 18 U.S.C. 798.

(v) Authority to Withhold From Public Disclosure Certain Technical Data, 10 U.S.C. 130 and DoD Directive 5230.25.[5]

(vi) Confidentiality of Medical Quality Records: Qualified Immunity Participants, 10 U.S.C. 1102.

(4) *Number 4.* Those containing trade secrets or commercial or financial information that a DoD Component receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate government interest. Examples include records that contain:

[4] See footnote 2 to § 286.7(d).

[5] See footnote 1 to § 286.1(a).

(i) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

(ii) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(iii) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(iv) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the Department of Defense.

(v) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(vi) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with 10 U.S.C. 2320–2321 and DoD Federal Acquisition Regulation Supplement (DFARS), subpart 27.4. Technical data developed exclusively with Federal funds may be withheld under Exemption Number 3 if it meets the criteria of 10 U.S.C. 130 and DoD Directive 5230.25 (32 CFR part 250) (see paragraph (a)(3)(v) of this section).

(5) *Number 5.* Except as provided in paragraphs (a)(5) (ii) through (v) of this section, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e)), or within or among DoD Components.

(i) Examples include:

(A) The nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions, or suggestions.

(B) Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(C) Those nonfactual portions of evaluations by DoD Component personnel of contractors and their products.

(D) Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

(E) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interests.

(F) Records that are exchanged among agency personnel and within and among DoD Components or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any Federal, State, or military court, as well as records that qualify for the attorney-client privilege.

(G) Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(ii) If any such intra or interagency record or reasonably segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with the agency, i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing, then it should not be withheld from the general public even though discovery has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interests of the agency in maintaining its confidentiality, then the record or document need not be made available under this part.

(iii) Intra or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(iv) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(v) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(6) *Number 6.* Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy.

(i) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(A) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(B) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(ii) In determining whether the release of information would result in a "clearly unwarranted invasion of personal privacy," consideration shall be given to the stated or ascertained purpose of the request. When determining whether a release is "clearly unwarranted," the public interest in satisfying this purpose must be balanced against the sensitivity of the privacy interest being threatened. One example of such is lists of names and duty addresses of DoD personnel

(civilian and military) assigned to units that are sensitive, routinely deployable, or stationed in foreign territories. Release of such information could aid in the targeting of DoD employees and their families by terrorists (see also paragraph (a)(2)(iii) of this section). This exemption shall not be exercised in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

(iii) Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DoD Directive 5400.11[6] (32 CFR part 286a).

(iv) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record.

(7) *Number 7.* Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law.

(i) This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(A) Could reasonably be expected to interfere with enforcement proceedings.

(B) Would deprive a person of the right to a fair trial or to an impartial adjudication.

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

(D) Could reasonably be expected to disclose the identity of a confidential source, including a source within the Department of Defense, a State, local, or foreign agency or authority, or any private institution which furnishes the information on a confidential basis.

(E) Could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(F) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(G) Could reasonably be expected to endanger the life or physical safety of any individual.

(ii) Examples include:

(A) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(B) The identity of firms or individuals being investigated for alleged irregularities involving contracting with the Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States.

(C) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(iii) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500), is not diminished.

(iv) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DoD Directive 5400.11.

(v) Exclusions. Excluded from the above exemption are the following two situations applicable to the Department of Defense:

(A) Whenever a request is made which involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, Components may, during only such times as that circumstance continues, treat the records or information as not subject to exemption 7. In such situation, the response to the requester will state that no records were found.

(B) Whenever informant records maintained by a criminal law enforcement organization within a DoD Component under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the Component may treat the records as not subject to exemption 7, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject to exemption 7, the response to the requester will state that no records were found.

(8) *Number 8.* Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(9) *Number 9.* Those containing geological and geophysical information and data (including maps) concerning wells.

Subpart D—For Official Use Only

§ 286.17 General provisions.

(a) *General.* Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA exemptions 2 through 9 shall be considered as being for official use only. No other material shall be considered or marked "For Official Use Only" (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

(b) *Prior FOUO application.* The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemption or exemptions apply or applies, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

(c) *Historical papers.* Records such as notes, working papers, and drafts retained as historical evidence of DoD Component actions enjoy no special status apart from the exemptions under the FOIA.

(d) *Time to mark records.* The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

[6] See footnote 1 to § 286.1(a).

(e) *Distribution statement.* Information in a technical document that requires a distribution statement pursuant to DoD Directive 5230.24 [7] shall bear that statement and shall not be marked FOUO.

§ 286.19 Markings.

(a) *Location of markings.* (1) An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on the first page, on the back page, and on the outside of the back cover (if any).

(2) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(3) Within a classified or unclassified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

(4) Other records, such as, photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

(5) FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

> This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemptions * * * apply.

§ 286.21 Dissemination and transmission.

(a) *Release and transmission procedures.* Until FOUO status is terminated, the release and transmission instructions that follow apply:

(1) FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(2) DoD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use Only", and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

(3) Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4 [8]. Release to the GAO is governed by DoD Directive 7650.1[9]. Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

(b) *Transporting FOUO information.* Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations may be sent by fourth-class mail.

(c) *Electrically transmitted messages.* Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in ACP-121 (US Supp 1) for FOUO information.

§ 286.23 Safeguarding FOUO information.

(a) *During duty hours.* During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to nongovernmental personnel.

(b) *During nonduty hours.* At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of Pub. L. 86-36 shall meet the safeguards outlined for that group of records.

§ 286.25 Termination, disposal and unauthorized disclosures.

(a) *Termination.* The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

(b) *Disposal.* (1) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

(2) Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. Chapter 33 as implemented by DoD Component instructions concerning records disposal.

(c) *Unauthorized disclosure.* The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in criminal sanctions against responsible persons. The DoD Component that originated the

[7] See footnote 1 to § 286.1(a).

[8] See footnote 1 to § 281.1(a).

[9] See footnote 1 to § 281.1(a).

BEST COPY AVAILABLE

FOUO information shall be informed of its unauthorized disclosure.

Subpart E—Release and Processing Procedures

§ 286.27 General provisions.

(a) *Public information.* (1) Since the policy of the Department of Defense is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for a DoD record made under the FOIA may be denied only when:

(i) The record is subject to one or more of the exemptions in subpart C of this part and the Government's interest will be jeopardized by its release.

(ii) The record has not been described well enough to enable the DoD Component to locate it with a reasonable amount of effort by an employee familiar with the files.

(iii) The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the DoD Component concerned. When personally identifiable information in a record is requested by the subject of the record or his attorney, notarization of the request may be required.

(2) Individuals seeking DoD information should address their FOI requests to one of the addresses listed in Appendix B of this part.

(b) *Requests from private parties.* The provisions of the FOIA are reserved for persons with private interests as opposed to federal or foreign governments seeking information. Requests from private persons will be made in writing, and will clearly show all other addressees within the Federal Government to whom the request was also sent. This procedure will reduce processing time requirements, and ensure better inter and intra-agency coordination. Components are under no obligation to establish procedures to receive hand delivered requests. Foreign governments seeking information from DoD Components should use established official channels for obtaining information. Release of records to individuals under the FOIA is considered public release of information, except as provided for in paragraph (c) of this section.

(c) *Requests from Government officials.* Requests from officials of State, or local Governments for DoD Component records shall be honored on an expeditious basis whenever possible. For purposes of determining whether the record or records shall be provided, such officials acting in an individual capacity shall be considered the same as any other requester.

(d) *Privileged release to officials.* (1) Subject to DoD 5200.1–R, applicable to classified information, DoD Directive 5400.11, applicable to personal privacy, or other applicable law, records exempt from release under Chapter III of this Regulation may be authenticated and released, in accordance with DoD Component regulations, to officials requesting them on behalf of local, State or Federal governmental bodies, whether legislative, executive, administrative, or judicial, as follows:

(i) To Congress, in accordance with DoD Directive 5400.4.

(ii) To the Federal courts, whenever ordered by officers of the court as necessary for the proper administration of justice.

(iii) To other Federal Agencies, both executive and administrative, as determined by the head of a DoD Component or designee.

(iv) To State and local officials, as determined by the head of a DoD Component or designee.

(2) DoD Components shall inform officials receiving records under the provisions of paragraph (d)(1) of this section that those records are exempt from public release under the FOIA and are privileged. DoD Components also shall advise officials of any special handling instructions.

§ 286.29 Initial determinations.

(a) *Initial denial authority.* (1) Components shall limit the number of IDAs appointed. In designating its IDAs, a DoD Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA.

(2) The initial determination of whether to make a record available upon request may be made by any suitable official designated by the DoD Component in published regulations. The presence of the marking "For Official Use Only" does not relieve the designated official of the responsibility to review the requested record for the purpose of determining whether an exemption under this part is applicable and should be invoked.

(3) The officials designated by DoD Components to make initial determinations should consult with public affairs officers (PAOs) to become familiar with subject matter that is considered to be newsworthy, and advise PAOs of all requests from news media representatives. In addition, the officials should inform PAOs in advance when they intend to withhold or partially withhold a record, if it appears that the withholding action may be challenged in the media.

(b) *Reasons for not releasing a record.* There are seven reasons for not complying with a request for a record:

(1) The request is transferred to another DoD Component, or to another federal agency.

(2) The request is withdrawn by the requester.

(3) The information requested is not a record within the meaning of the FOIA and this part.

(4) A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(5) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this part or DoD Component supplementing regulations.

(6) The DoD Component determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record. (A "no record" determination is not considered a denial; therefore an appeal is not appropriate).

(7) The record is denied in accordance with procedures set forth in the FOIA and this part.

(c) *Denial tests.* To deny a requested record that is in the possession or control of a DoD Component, it must be determined that the denial meets the following tests:

(1) The record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and outlined in Subpart C of this part.

(2) The use of its discretionary authority is deemed unwarranted.

(d) *Reasonably segregable portions.* Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not reasonable to segregate portions of the record for release.

(e) *Response to requester.* (1) Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 working days after receipt of the request by the official designated to respond.

(2) When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with preliminary procedural requirements.

(3) When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is based. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the DoD Component.

(4) The response to the requester should contain information concerning the fee status of the request, consistent the provisions of Subpart F this part.

(5) The explanation of the substantive basis for a denial shall include specific citation of the statutory exemption applied under provisions of this part. Merely referring to a classification or to a "For Official Use Only" marking on the requested record does not constitute a proper citation or explanation of the basis for invoking an exemption.

(6) When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

(f) *Extension of time.* (1) In unusual circumstances, when additional time is needed to respond, the DoD Component shall acknowledge the request in writing within the 10-day period, describe the circumstances requiring the delay, and indicate the anticipated date for substantive response that may not exceed 10 additional working days. Unusual circumstances that may justify delay are:

(i) The requested record is located in whole or in part at places other than the office processing the request.

(ii) The request requires the collection and evaluation of a substantial number of records.

(iii) Consultation is required with other DoD Components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part under provisions of this part or should be released as a matter of discretion.

(2) The statutory extension of time for responding to an initial request must be approved on a case-by-case basis by the final appellate authority for the DoD Component, or in accordance with regulations of the DoD Component, or in accordance with regulations of the DoD Component that establish guidance governing the circumstances in which such extensions may be granted.

(3) In these unusual cases where the statutory time limits cannot be met and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester with a request that he agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made. Components are reminded that the requester still retains the right to treat this delay as a defacto denial with full adminstrative remedies.

(4) As an alternative to the taking of formal extensions of time as described in paragraphs (f) (1), (2), and (3) of this section, the negotiation by the cognizant FOIA coordinating office of informal extensions in time with requesters is encouraged where appropriate.

(g) *Misdirected requests.* Misdirected requests shall be forwarded promptly to the DoD Component with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the DoD Component that managers the records requested.

(h) *Records of non-U.S. Government source.* (1) When a request is received for a record that was obtained from a non-U.S. Government source, or for a record containing information clearly identified as having been provided by a non-U.S. Government source, the source of the record or information (also known as "the submitter" for matters pertaining to proprietary data under 5 U.S.C. 552, Exemption (b)(4)) (subpart C, § 286.15(a)(4), this part and E.O. 12600), shall be notified promptly of that request and afforded reasonable time (e.g. 30 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. This practice is required for those FOIA requests for data not deemed clearly exempt from disclosure under Exemption (b)(4). If, for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and established that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. The final decision to disclose information claimed to be exempt under Exemption (b)(4) shall be made by an official equivalent in rank to the official who would make the decision to withhold that information under the FOIA. When a substantial issue has been raised, the DoD Component may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved prior to making an agency determination. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified, and action on the request normally shall not be taken until after the outcome of that court action is known. When the requester brings court action to compel disclosure, the submitter shall be promptly notified of this action.

(2) The coordination provisions of this paragraph apply to any non-U.S. Government record in the possession and control of the Department of Defense from multi-national organizations, such as North Atlantic Treaty Organization (NATO) and North American Aerospace Defense Command (NORAD), or foreign governments. Coordination with foreign governments under the provisions of this paragraph shall be made through Department of State.

(i) *File of initial denials.* Copies of all initial denials shall be maintained by each DoD Component in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation.

(j) *Special mail services.* Components are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

(k) *Receipt accounts.* The Treasurer of the United States has established two accounts for FOIA receipts. These accounts, which are described below, shall be used for depositing all FOIA receipts, except receipts for industrially-funded and non-appropriated funded activities. Components are reminded that the below account numbers must be preceeded by the appropriate disbursing office two digit prefix. Industrially-

funded and nonappropriated funded activity FOIA receipts shall be deposited to the applicable fund.

(1) *Receipt Account 3210 Sale of Publications and Reproductions, Freedom of Information Act.* This account shall be used when depositing funds received from providing existing publications and forms that meet the Receipt Account Series description found in Federal Account Symbols and Titles.

(2) *Receipt Account 3210 Fees and Other Charges for Services, Freedom of Information Act.* This account is used to deposit search fees, fees for duplicating and reviewing (in the case of commercial requesters) records to satisfy requests that could not be filled with existing publications or forms.

§ 286.31 Appeals.

(a) *General.* If the official designated by the DoD Component to make initial determinations on requests for records declines to provide a record because the official considers it exempt, that decision may be appealed by the requester, in writing, to a designated appellate authority. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. Appeal procedures also apply to the disapproval of a request for waiver or reduction of fees. A "no record" finding may not be appealed, although the requester may ask the agency to search other files or provide more detailed identification to facilitate another search of the files.

(b) *Time of receipt.* An FOI appeal has been received by a DoD Component when it reaches the office of an appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

(c) *Time limits.* (1) The requester should be advised to file an appeal so that it reaches the appellate authority no later than 60 calendar days after the date of the initial denial letter. At the conclusion of this period, the case may be considered closed; however, such closure does not preclude the requester from filing litigation. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification. Records which are denied shall be retained during the time permitted for appeal.

(2) Final determinations on appeals normally shall be made within 20 working days after receipt.

(d) *Delay in responding to an appeal.* (1) If additional time is needed due to the unusual circumstances described in § 286.29(f) the final decision may be delayed for the number of working days (not to exceed 10), that were not used as additional time for responding to the initial request.

(2) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in § 286.29(f) they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The DoD Component shall continue to process the case expeditiously, whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing of a complaint shall be forwarded to the Department of Justice.

(e) *Response to the requester.* (1) When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(2) Final refusal to provide a requested record or to approve a request for waiver or reduction of fees must be made in writing by the head of the DoD Component or by a designated representative. The response, at a minimum, shall include the following:

(i) The basis for the refusal shall be explained to the requester, in writing, both with regard to the applicable statutory exemption or exemptions invoked under provisions of this part.

(ii) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(iii) The final denial shall include the name and title or position of the official responsible for the denial.

(iv) The response shall advise the requester that the material being denied does not contain meaningful portions that are reasonably segregable.

(v) The response shall advise the requester of the right to judicial review.

(f) *Consultation.* (1) Final refusal, involving issues not previously resolved or that the DoD Component knows to be inconsistent with rulings of other DoD Components, ordinarily should not be made before consultation with the Office of the General Counsel of the Department of Defense.

(2) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the Government shall be provided to the Department of Justice, ATTN: Office of Legal Policy, Office of Information and Policy, Washington, DC 20530.

§ 286.33 Judicial actions.

(a) *General.* (1) This section states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, nor do they bind the Department of Defense to particular judicial interpretations or procedures.

(2) A requester may seek an order from a United States District Court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the head of a Component or an appellate designee or when the DoD Component has failed to respond within the time limits prescribed by the FOIA and in this part.

(b) *Jurisdiction.* The requester may bring suit in the United States District Court in the district in which the requester resides or is the requester's place of business, in the district in which the record is located, or in the District of Columbia.

(c) *Burden of proof.* The burden of proof is on the DoD Component to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

(d) *Actions by the court.* (1) When a DoD Component has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow the Component additional time to complete its review of the records.

(2) If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

(3) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DoD Component personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board shall conduct an investigation to determine whether or not disciplinary action is warranted. The DoD Component is obligated to take the action recommended by the special counsel.

(4) The court may punish the responsible official for contempt when a DoD Component fails to comply with the court order to produce records that it determines have been withheld improperly.

(e) *Non-United States Government source information.* A requester may bring suit in a U.S. District Court to compel the release of records obtained from a nongovernment source or records based on information obtained from a nongovernment source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

(f) *Litigation status sheet.* FOIA managers at DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. The Litigation Status Sheet at Appendix C of this part provides a standard format for recording information concerning FOIA litigation and forwarding that information to the Office of the Secretary of Defense. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint shall forward a Litigation Status Sheet, with items 1 through 6 completed, and a copy of the complaint to the OASD(PA), ATTN: DFOISR, with an information copy to the General Counsel, Department of Defense, ATTN: Office of Legal Counsel. A revised Litigation Status Sheet shall be provided at each stage of the litigation.

Subpart F—Fee Schedule

§ 286.35 General provisions.

(a) *Authorities.* The Freedom of Information Act (5 U.S.C. 552), as amended; by the Freedom of Information Reform Act of 1986; the Paperwork Reduction Act (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a); the Budget and Accounting Act of 1921 (31 U.S.C. 1 et. seq.); the Budget and Accounting Procedures Act (31 U.S.C. 67 et. seq.); the Defense Authorization Act for FY 87, section 954 (Pub. L. 99–661), as amended by the Defense Technical Corrections Act of 1987 (Pub. L. 100–26).

(b) *Application.* (1) The fees described in this Subpart apply to FOIA requests, and conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines. They reflect direct costs for search, review (in the case of commercial requesters), and duplication of documents, collection of which is permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business, nor are they meant as a substitute for any other schedule of fees, such as DoD Instruction 7230.7 [10] (32 CFR Part 288) which does not supersede the collection of fees under the FOIA. Nothing in this Subpart shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records. A "statute specifically providing for setting the level of fees for particular types of records" (5 U.S.C. 552 (a)(4)(A)(vi)) means any statute that enables a Government Agency such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set and collect fees. Components should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the GPO or NTIS, they inform requesters of the steps necessary to obtain records from those sources.

(2) The term "direct costs" means those expenditures a Component actually makes in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to an FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the costs of operating duplicating machinery. These factors have been included in the fee rates prescribed at § 286.37. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are stored.

(3) The term "search" includes all time spent looking for material that is responsive to a request. Search also includes a page-by-page or line-by-line identification (if necessary) of material in the document to determine if it, or portions thereof are responsive to the request. Components should ensure that searches are done in the most efficient and least expensive manner so as to minimize costs for both the Component and the requester. For example, Components should not engage in line-by-line searches when duplicating an entire document known to contain responsive information would prove to be the less expensive and quicker method of complying with the request. Time spent reviewing documents in order to determine whether to apply one or more of the statutory exemptions is not search time, but review time. See paragraph (b)(5) of this section for the definition of review, and § 286.37(b)(2) for information pertaining to computer searches.

(4) The term "duplication" refers to the process of making a copy of a document in response to an FOIA request. Such copies can take the form of paper copy, microfiche, audiovisual, or machine readable documentation (e.g., magnetic tape or disc), among others. Every effort will be made to ensure that the copy provided is in a form that is reasonably useable by requesters. If it is not possible to provide copies which are clearly useable, the requester shall be notified that their copy is the best available and that the agency's master copy shall be made available for review upon appointment. For duplication of computer tapes and audiovisual, the actual cost, including the operator's time, shall be charged. In practice, if a Component estimates that assessable duplication charges are likely to exceed $25.00, it shall notify the requester of the estimate, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(5) The term "review" refers to the process of examining documents located in response to an FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does not include the time spent resolving general legal or policy issues regarding the application of exemptions. It should be noted that charges for commercial requesters may be assessed only for the initial review. Components may not charge for reviews required at the

[10] See footnote 1 to § 286.1(a)

administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

(c) *Fee restrictions.* (1) No fees may be charged by any DoD Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge. For example, for a request (other than one from a commercial requester) that involved two hours and ten minutes of search time, and resulted in one hundred and five pages of documents, a Component would determine the cost of only ten minutes of search time, and only five pages of reproduction. If this processing cost was equal to, or less than the cost to the Component for billing the requester and processing the fee collected, no charges would result.

(2) Requesters receiving the first two hours of search and the first one hundred pages of duplication without charge are entitled to such only once per request. Consequently, if a Component, after completing its portion of a request, finds it necessary to refer the request to a subordinate office, another DoD Component, or another Federal Agency to action their portion of the request, the referring Component shall inform the recipient of the referral of the expended amount of search time and duplication cost to date.

(3) The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the Component of receiving and recording a remittance, and processing the fee for deposit in the Department of Treasury's special account. The cost to the Department of Treasury to handle such remittance is negligible and shall not be considered in Components' determinations.

(4) For the purposes of these restrictions, the word "pages" refers to paper copies of a standard size, which will normally be "8½ x 11" or "11 x 14". Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout; however, might meet the terms of the restriction.

(5) In the case of computer searches, the first two free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal $24.00 (two hours of equivalent search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search time.

(d) *Fee waivers.* (1) Documents shall be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters in paragraph (e) of this section when the Component determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the Department of Defense and is not primarily in the commercial interest of the requester.

(2) When assessable costs for an FOIA request total $15.00 or less, fees shall be waived automatically for all requesters, regardless of category.

(3) Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis, consistent with the following factors:

(i) Disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government."

(A) *The subject of the request.* Components should analyze whether the subject matter of the request involves issues which will significantly contribute to the public understanding of the operations or activities of the Department of Defense. Requests for records in the possession of the Department of Defense which were originated by non-government organizations and are sought for their intrinsic content, rather than informative value will likely not contribute to public understanding of the operations or activities of the Department of Defense. An example of such records might be press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a DoD activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of the Department of Defense; however, the age of a particular record shall not be the sole criteria for denying relative significance under this factor. It is possible to envisage an informative issue concerning the current activities of the Department of Defense, based upon historical documentation. Requests of this nature must be closely reviewed consistent with the requester's stated purpose for desiring the records and the potential for public understanding of the operations and activities of the Department of Defense.

(B) *The informative value of the information to be disclosed.* This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and shall inform the public on the operations or activities of the Department of Defense. While the subject of a request may contain information which concerns operations or activities of the Department of Defense, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example of such would be a heavily redacted record, the balance of which may contain only random words, fragmented sentences, or paragraph headings. A determination as to whether a record in this situation will contribute to the public understanding of the operations or activities of the Department of Defense must be approached with caution, and carefully weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative, or nearly identical information already existing in the public domain may add no meaningful new information concerning the operations and activities of the Department of Defense.

(C) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform the public, rather than simply the individual requester or small segment of interested persons. The identity of the requester is essential in this situation in order to determine whether such requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, researching a particular subject, doing doctoral dissertion work, or indigency are insufficient without demonstrating the capacity to further disclose the information in a manner which will be informative to the general public. Requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

(D) *The significance of the contribution to public understanding.* In applying this factor, Components must differentiate the relative significance or impact of the disclosure against the current level of public knowledge, or understanding which exists before the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public. A decision regarding significance requires objective judgment, rather than subjective determination, and must be applied carefully to determine whether disclosure will likely lead to a significant public understanding of the issue. Components shall not make value judgments as to whether the information is important enough to be made public.

(ii) Disclosure of the information "is not primarily in the commercial interest of the requester."

(A) *The existence and magnitude of a commercial interest.* If the request is determined to be of a commercial interest, Components should address the magnitude of that interest to determine if the requester's commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether the requester is of a commercial nature, Components may draw inference from the requester's identity and circumstances of the request. In such situations, the provisions of paragraph (e) of this section, apply. Components are reminded that in order to apply the commercial standards of the FOIA, the requester's commercial benefit must clearly override any personal or non-profit interest.

(B) *The primary interest in disclosure.* Once a requester's commercial interest has been determined, Components should then determine if the disclosure would be primarily in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research, may recognize a commercial benefit, either directly, or indirectly (through the institution they represent); however, normally such pursuits are primarily undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile government information for marketing can normally be presumed to have an interest primarily of a commercial nature.

(4) Components are reminded that the above factors and examples are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of doubt as to whether to charge or waive the fee cannot be clearly resolved, Components should rule in favor of the requester.

(5) In addition, the following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

(i) A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(ii) A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g. $15.00–$30.00).

(e) *Fee assessment.* (1) Fees may not be used to discourage requesters, and to this end, FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication.

(2) In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, Components shall adhere to the following procedures:

(i) Analyze each request to determine the category of the requester. If the Component determination regarding the category of the requester is different than that claimed by the requester, the Component shall:

(A) Notify the requester that he should provide additional justification to warrant the category claimed, and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester, and within a reasonable period of time (i.e., 30 calendar days), the Component shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights of the determination.

(B) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the Component.

(ii) Requesters must submit a fee declaration appropriate for the below categories.

(A) *Commercial.* Requesters must indicate a willingness to pay all search, review and duplication costs.

(B) *Educational or noncommercial scientific institution or news media.* Requesters must indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(C) *All others.* Requesters must indicate a willingness to pay assessable search and duplication costs if more than two hours of search effort or 100 pages of records are desired.

(iii) If the previous conditions are not met, then the request need not be processed and the requester shall be so informed.

(iv) In the situations described by paragraphs (e)(2) (i) and (ii), Components must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among Components, and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should Component estimates exceed the actual amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement.

(v) No DoD Component may require advance payment of any fee; i.e., payment before work is commenced or continued on a request, unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.00. As used in this sense, a timely fashion is 30 calendar days from the date of billing (the fees have been assessed in writing) by the Component.

(vi) Where a Component estimates or determines that allowable charges that a

requester may be required to pay are likely to exceed $250.00, the Component shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(vii) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of the billing), the Component may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, and to make an advance payment of the full amount of the estimated fee before the Component begins to process a new or pending request from the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717 and confirmed with respective Finance and Accounting Offices.

(viii) After all work is completed on a request, and the documents are ready for release, Components may request payment before forwarding the documents if there is no payment history on the requester, or if the requester has previously failed to pay a fee in a timely fashion (i.e., within 30 calendar days from the date of the billing). In the case of the latter, the provisions of paragraph (e)(2)(vii) of this section apply. Components may not hold documents ready for release pending payment from requesters with a history of prompt payment.

(ix) When Components act under paragraphs (e)(2) (i) through (vii) of this section, the administrative time limits of the FOIA (i.e., 10 working days from receipt of initial requests, and 20 working days from receipt of appeals, plus permissible extensions of these time limits) will begin only after the Component has received a willingness to pay fees and satisfaction as to category determination, or fee payments (if appropriate).

(x) Components may charge for time spent searching for records, even if that search fails to locate records responsive to the request, or if records located are determined to be exempt from disclosure. In practice, if the Component estimates that search charges are likely to exceed $25.00 it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) *Commercial requesters.* Fees shall be limited to reasonable standard charges for document search, review and duplication when records are requested for commercial use. Requesters must reasonably describe the records sought (see § 286.7(h)).

(i) The term "commercial use" request refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, Components must determine the use to which a requester will put the documents requested. Moreover, where a Component has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, Components should seek additional clarification before assigning the request to a specific category.

(ii) When Components receive a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters (unlike other requesters) are not entitled to two hours of free search time, nor 100 free pages of reproduction of documents. Moreover, commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. However, because use is the exclusive determining criteria, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a non-profit organization could make a request that is for commercial use. Such situations must be addressed on a case-by-case basis.

(4) *Educational institution requesters.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research. Requesters must reasonably describe the records sought (see § 286.7(h)). The term "educational institution" refers to a pre-school, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(5) *Non-commercial scientific institution requesters.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a non-commercial scientific institution whose purpose is scientific research. Requesters must reasonably describe the records sought (see § 286.7(h)). The term "noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis as defined in paragraph (e)(3) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(6) Components shall provide documents to requesters in paragraphs (e)(4) and (5) of this section for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in these categories, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of scholarly (from an educational institution) or scientific (from a non-commercial scientific institution) research.

(7) *Representatives of the news media.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media. Requesters must reasonably describe the records sought (see § 286.7 (h)).

(i) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but Components may also look to the past publication record of a requester in making this determination.

(ii) To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (e)(7)(i) of this section and his or her request must not be made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. For example, a document request by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of reproduction alone (excluding charges for the first 100 pages).

(8) *All other requesters.* Components shall charge requesters who do not fit into any of the above categories, fees which recover the full direct cost of searching for and duplicating records, except that the first two hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters must reasonably describe the records sought (see § 286.7(h)). Requests from subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for duplication. Components are reminded that this category of requester may also be eligible for a waiver or reduction of fees if disclosure of the information is in the public interest as defined under paragraph (d) of this section (see also paragraph (e)(3)(ii)).

(f) *Aggregating requests.* Except for requests that are for a commercial use, a Component may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When a Component reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the agency may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30 day period had been made to avoid fees. For requests made over a longer period; however, such a presumption becomes harder to sustain and Components should have a solid basis for determining that aggregation is warranted in such cases. Components are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may Components aggregate multiple requests on unrelated subjects from one requester.

(g) *Effect of the Debt Collection Act of 1982 (Pub. L. 97–365).* The Debt Collection Act of 1982 (Pub. L. 97–365) provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. Components may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester of the amount owed. The interest rate shall be as prescribed in 31 U.S.C. 3717. Components should verify the current interest rate with respective Finance and Accounting Offices. After one demand letter has been sent, and 30 calendar days have lapsed with no payment, Components may submit the debt to respective Finance and Accounting Offices for collection pursuant to the Debt Collection Act of 1982.

(h) *Computation of fees.* The fee schedule in this Subpart shall be used to compute the search, review (in the case of commercial requesters) and duplication costs associated with processing a given FOIA request. Costs shall be computed on time actually spent. Neither time-based nor dollar-based minimum charges for search, review and duplication are authorized.

§ 286.37 Collection of fees and fee rates.

(a) *Collection of fees.* Collection of fees will be made at the time of providing the documents to the requester or recipient when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs. Collection of fees may not be made in advance unless the requester has failed to pay previously assessed fees within 30 calendar days from the date of the billing by the DoD Component, or the Component has determined that the fee will be in excess of $250 (see § 286.35 (e)).

(b) *Search time.*—(1) *Manual search:*

Type and grade	Hourly rate ($)
Clerical—E9/GS8 and below	12
Professional—01–06/GS9–GS/GM15	25
Executive—07/GS/GM16/ES1 and above	45

(2) *Computer search.* Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The salary scale (equating to paragraph (b)(1) of this section) for the computer operator/programmer determining how to conduct and subsequently executing the search will be recorded as part of the computer search.

(c) *Duplication:*

Type	Cost per page (¢)
Pre-Printed material	02
Office copy	15
Microfiche	25
Computer copies (tapes or printouts)	(1)

[1] Actual cost of duplicating the tape or printout (includes operator's time and cost of the tape).

(d) *Review time* (in the case of commercial requesters):

Type and grade	Hourly rate ($)
Clerical—E9/GS8 and below	12
Professional—01–06/GS9–GS/GM15	25
Executive—07/GS/GM16/ES1 and above	45

(e) *Audiovisual documentary materials.* Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(f) *Other records.* Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

(g) *Costs for special services.* Complying with requests for special services is at the discretion of the Components. Neither the FOIA, nor its fee structure cover these kinds of services. Therefore, Components may recover the costs of special services requested by the requester after agreement has been obtained in writing from the requester to pay for one or more of the following services:

(1) Certifying that records are true copies.

(2) Sending records by special methods such as express mail, etc.

§ 286.39 Collection of fees and fee rates for technical data.

(a) *Fees for technical data.* (1) Technical data, other than technical data that discloses critical technology with military or space application, if required to be released under the FOIA, shall be released after the person requesting such technical data pays all reasonable costs attributed to search, duplication and review of the records to be released. Technical data, as used in this Section, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or data incidental to contract administration, such as financial and/or management information. DoD Components shall retain the amounts received by such a release, and it shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. All reasonable costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absense of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full cost shall include all direct and indirect costs to conduct the search and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable under § 286.37 for other types of information released under the FOIA.

(2) *Waiver.* Components shall waive the payment of costs required in paragraph (a)(1) of this section which are greater than the costs that would be required for release of this same information under § 286.37 if:

(i) The request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer, or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States. However, Components may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation;

(ii) The release of technical data is requested in order to comply with the terms of an international agreement; or,

(iii) The Component determines in accordance with § 286.35(d)(1), that such a waiver is in the interest of the United States.

(3) *Fee rates*—(i) *Search time*—(A) *Manual search:*

Type	Grade	Hourly rate ($)
Clerical	E9/GS8 and below.	13.25
(Minimum charge)		[1] 8.30

[1] Professional and Executive (to be established at actual hourly rate prior to search. A minimum charge will be established at ½ hourly rates).

(b) Computer search is based on the total cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The wage (based upon the scale in § 286.39(a)(3)(i)(A)) for the computer operator and/or programmer determining how to conduct, and subsequently executing the search will be recorded as part of the computer search.

(ii) *Duplication:*

Type	Cost
Aerial photographs, specifications, permits, charts, blueprints, and other technical documents	$2.50
Engineering data (microfilm)—	
a. Aperture cards:	
(i) Silver duplicate negative, per card	.75
When key punched and verified, per card	.85
(ii) Diazo duplicate negative, per card	.65
When key punched and verified, per card	.75
b. 35mm roll film, per frame	.50
c. 16mm roll film, per frame	.45
d. Paper prints (engineering drawings), each	1.50
e. Paper reprints of microfilm indices, each	.10

(iii) *Review time:*

Type	Grade	Hourly rate ($)
Clerical	E9/GS8 and below.	13.25
(Minimum charge)		[1] 8.30

[1] Professional and Executive (to be established at actual hourly rate prior to review. A minimum charge will be established at ½ hourly rates).

(4) *Other technical data records:* Charges for any additional services not specifically provided paragraph (a)(3) of this section consistent with DoD Instruction 7230.7 shall be made by Components at the following rates:

1. Minimum charge for office copy (up to six images)	$3.50
2. Each additional image	.10
3. Each typewritten page	3.50
4. Certification and validation with seal, each	5.20
5. Handdrawn plots and sketches, each hour or fraction thereof	12.00

Subpart G—Reports

§ 286.41 Reports control.

(a) *General.* The reporting requirement outlined in this subpart is assigned Report Control Symbol DD–PA(A)1365.

§ 286.43 Annual report.

(a) *Reporting time.* Each DoD Component shall prepare statistics and accumulate paperwork for the preceding calendar year on those items prescribed for the annual report and submit them in duplicate to the ASD(PA) on or before each February 1. Existing DoD standards and registered data elements are to be used for all data requirements to the greatest extent possible in accordance with the provisions of DoD Directive 5000.11[11]. The standard data elements are contained in DoD 5000.12–M [12].

(b) *Annual report content.* The following instructions and attached format shall be used in preparing the annual report:

(1) *Item 1*—(i) *Completed public requests.* Enter the total number of FOIA requests received and responded to during the reporting period.

(ii) *Completed reportable requests.* Enter the number of actions taken on a completed public request. To arrive at this figure, count the number of blocks checked in Item (b)(1)(i) of the Annual Report Worksheet (see paragraph (d) of this section) for each request processed.

(Note: This figure will be equal to or greater than Item (b)(1)(i)).

(iii) *Number of requests denied.* Enter the number of FOIA requests which were denied in whole or in part based on one or more of the nine FOIA exemptions.

(iv) *Other reason responses.* Enter the number of FOIA requests in which you were unable to provide the requested information based on an "Other Reason" response (See Item (b)(2)(iii) of this section for an explanation of "Other Reason" responses).

(v) *Total.* Enter the sum of Items (b)(1)(iii) and (1)(iv) of this section.

(2) *Item 2*—(i) *Exemptions invoked on initial determinations.* Identify the exemption(s) claimed for each request that was denied in whole or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal or greater than that of Item (b)(1)(iii) of this section.

(ii) *"(b)(3)" statutes invoked on initial determinations.* Identify the statute(s) cited when you claimed a "(b)(3)" exemption. Cite the specific sections when invoking the Atomic Energy Act of 1954, or the National Security Act of 1947.

(iii) *Initial request other reason responses.* Identify the "other reason" response cited when responding to an FOIA request and enter the number of times each was claimed.

(A) *Transferred requests.* Enter the number of times a request was transferred to another DoD Component or Federal Agency for action.

(B) *Lack of records.* Enter the number of times a search of files failed to identify records responsive to subject request and there was no statutory obligation to create a record.

(C) *Failure of requester to reasonably describe record.* Enter the number of times an FOIA request could not be acted on since the requester failed to reasonably describe the record(s) being sought.

(D) *Other failures by requester to comply with published rules and/or directives.* Enter the number of times a requester failed to follow published rules concerning time, place, fees, and procedures.

(E) *Request/appeal withdrawn by requester.* Enter the number of times a requester withdrew a request and/or appeal.

(F) *Not an agency record.* Enter the number of times a requester was provided a response indicating the requested information was not an agency record.

Total: Enter the sum of columns (b)(1) through (6). The total will be equal to or greater than Item (b)(1)(iv) of this section since more than one other reason response may be claimed.

(3) *Item 3—Initial denial authorities (IDAs by participation)*—(i) *Total IDAs authorized.* Enter the total number of IDA's at your activity.

(ii) *Individuals involved in adverse determinations.* Enter the name, grade, activity and title of each individual who signed a partial and/or total denial response and cite the number of instances of participation.

(4) *Item 4:* Number of appeals and results—*Number of Appeals.* Enter the disposition of appeals under the appropriate category and then the total.

(5) *Item 5*—(i) *Exemptions invoked on appeal determinations.* Identify the exemption(s) claimed for each appeal that is denied in whole or part. Since more than one exemption may be claimed when responding to a single appeal, this number will be equal to or greater than the total listed in Item (b)(4) of this section.

(ii) *Statutes invoked on appeal determinations.* Identify the statute(s) cited when you claimed a "(b)(3)" exemption.

(iii) *Other reasons cited on appeal determinations.* Identify the "other reason" response when responding to an appeal and enter the number of times each was claimed and the total.

(6) *Item 6—Participation of appellate authorities (those responsible for denials in whole or in part).* Enter the name, grade, activity, and title of each individual who signed a partial and/or total denial response and cite the number of instances of participation.

(7) *Item 7—Court opinions and action taken.* Briefly describe the results of each suit the Judge Advocate General and/or the General Counsel participated in during the calendar year. Provide a copy of each final court opinion or order.

(8) *Item 8—FOIA implementation rules or regulations.* List all changes or revisions of rules or regulations affecting the implementation of the FOIA Program, followed by the **Federal Register** reference (volume number, date, and page) that announces the change or revision to the public. Append a copy of each.

(9) *Item 9—FOIA instructional and educational efforts.* Report what training and/or seminars your activity has given or attended during this reporting period.

(10) *Item 10*—(i) *Cost of routine request.* Some reporting activities shall find it economical to develop an average cost factor for processing repetitive routine requests rather than tracking costs on each request as it is processed. This section provides for that economy, but care must be exercised so that costs are comprehensive to include a 25 percent overhead, yet are not duplicated elsewhere in the report.

(ii) *Personnel costs (civilian and military)*—(A) *Direct costs of personnel assigned FOIA duties based upon estimated payroll manyears by grade.* Personnel costs are reported in two ways. This section uses a manyear/wage type of costing by grade. To achieve this computation, identify those individuals who are primarily involved in the planning, program management and/or administrative handling of FOIA requests. Use DoD 7220.9–M [13] for military personnel and Office of Personnel Management salary table for civilian personnel to identify salaries.

Sample Computation:

Grade	Number of personnel	Salary	Percentage of time	Costs
0–5	1	$50,000	10	$5,000
0–1	1	21,000	30	6,000
GS–12	1	35,000	50	17,500
GS–5	1	18,000	50	,to 9,000[1]

[1] To determine the manyear computation: Add the total percentages of time and divide the percentage by 100.

Sample Computation: Manyears=140 percent divided by 100=1.4 manyears.

(B) *Direct costs for other personnel involved in processing request not included above upon accumulation of total hourly data.* This section accounts for all other personnel (not reported above) who are involved in processing FOIA requests. Enter the total hourly cost for each area. Only search, review, and reproduction costs may be recouped from the requester. Review costs may only be recouped from commercial requesters. In the case of collections resulting from release of technical data, all reasonable costs for search and reproduction may be recouped (see § 286.37).

[11] See footnote 1 to § 286.1(a).

[12] See footnote 2 to § 286.7(d).

[13] See footnote 2 to § 286.7(d).

(1) Search time cost. This includes only those direct costs associated with time spent looking for material that is responsive to a request, including line-by-line identification of material within a document to determine if it is responsive to the request. Searches may be done manually or by computer using existing programming.

(2) Classification review costs. This includes all direct costs incurred during the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure; e.g., doing all that is necessary to excise them and otherwise prepare them for release. It does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(3) Coordination and approval/denial decision costs. This includes all costs involved in coordinating the release/denial of documents requested under the FOIA.

(4) Correspondence and form preparation costs. This includes all costs involved in typing responses, filling out forms and/or logbooks, supplies, etc., to respond to an FOIA request.

(5) Other activity costs. This includes all other processing costs not covered above, such as processing time by the mail room.

Total Manhour Costs: Enter the sum of paragraphs (b)(10)(ii)(B) (*1*) through (*5*) of this section.

(C) *Application of overhead.* The overhead rate is 25 percent and includes the cost of supervision, space and administrative support. Add items 1 and 2, then multiply the sum by 25 percent.

(iii) *Other case related costs.* Using the fee schedule, enter the total amounts incurred in each area to process FOIA requests.

(iv) *Other operating costs.* Report all other costs which are easily identifiable, such as: per diem, operation of courier vehicles, training courses, printing (indexes and forms), long distance telephone calls, special mail services, use of indicia, etc.

(v) *Summary.* The summary data provides a total cost figure for administering the FOIA Program and a recap of the fees collected.

(11) *Item 11*— (i) *Formal time extensions.* Enter the total number of instances in which it was necessary to seek a formal 10 working day time extension, because of:

(A) *Location.* The need to search for and collect the requested records from another activity that was separate from the office processing the request.

(B) *Volume.* The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records indicated in a single request.

(C) *Consultation.* The need for consultation with another agency having substantial interest in the material requested.

(D) *Court involvement.* Where court actions were taken on the basis of exhaustion of administrative procedures because the department/activity was unable to comply with the request within the applicable time limits, and in which a court allowed additional time upon a showing of exceptional circumstances, provide a copy of each court opinion and court order containing such an extension of time.

(ii) *Total.* Enter the sum of items (b) (1) through (4) of this section.

(c) *Annual report format.*

ITEM I

(A) Completed Public Requests	(B) Completed Reportable Requests	(C) Number of Requests Denied (Partial and Total)	(D) Number of "Other Reasons" Responses Made	(E) Total (C+D)

ITEM 2

A. Exemptions Claimed in Denial Letters:

(b)(1)	(b)(2)	(b)(3)	(b)(4)	(b)(5)	(b)(6)	(b)(7)	(b)(8)	(b)(9)	Total

B. "(b)(3)" Statutes Claimed Denial Letters:

List of "(b)(3)" Statutes Claimed	Number of Times Cited

C. "Other Reasons" Cited in Response to FOIA Requests	1	2	3	4	5	6	Total

ITEM 3.—DENIALS AND "OTHER REASON" RESPONSES

A. Total Number of IDAs Authorized to Sign Denial Letters

B. List of All Individuals Who Signed a Denial Response:

Name	Rank	Title	Number of Instances of Participation	
			Exemption	Other

ITEM 4

A. Number of Appeals Received and Action Taken:

(1) Granted in Full	(2) Granted in Part	(3) Denied in Full	(4) Total

ITEM 5

A. Exemptions Invoked on Appeal Determination:

(b)(1)	(b)(2)	(b)(3)	(b)(4)	(b)(5)	(b)(6)	(b)(7)	(b)(8)	(b)(9)	Total

B. "(b)(3)" Statutes Invoked on Appeal Determinations:

List of "(b)(3)" Statutes Invoked	Number of Times Cited

C. "Other Reasons" Cited on Appeal Determination	1	2	3	4	5	6	Total

ITEM 6

A. List of All Individuals Who Signed an Appeal Determination Response:

Name	Rank	Title	Number of Instances of Participation	
			Exemption	Other

Item 7

A. Court Opinions and Actions Taken, for example:

J.Q. Public v. *Department of the Army,* CMI No. 87-2600 (S.D. Cal.) On January 1, 1987, plaintiff filed suit seeking a CID investigation which was being reviewed by the United States Attorney for possible prosecution. Plaintiff is a former Army General attorney. Final order, May 1987, ordered release of majority of CID report of investigation.

ITEM 8

A. FOIA Implementation Rules or Regulations (Published During the Reporting Period):

Document Identification	Federal Register References		
	Number	Date	Page

ITEM 9

A. FOIA Instructional and Educational Efforts:

Course	Sponsor	Date	Hours

ITEM 10

	Cost
A. Cost of Routine Requests Processed: (Number of reportable requests X cost factor per request.)	$
B. Personnel Costs (Civilian and Military):	
1. Direct costs of personnel assigned FOI duties based upon estimated payroll manyears by grade.	
Total Manyears	
2. Direct costs for other personnel involved in processing requests not included above based upon accumulation of total hourly data:	
a. Search Time Costs	
b. Classification Review and Excising Action Costs	
c. Coordination/Approval/Denial Decision Costs	
d. Correspondence and Form Preparation Costs	
e. Other Activity Costs	
Total Manhour Costs	
3. Application of Overhead (Subtotal 1+2)×25% overhead	
Total of Personnel Costs	
C. Other Case Related Costs:	
1. Computer	
2. Office Copy Reproduction	
3. Microfiche Reproduction	
4. Cost of Printed Records	
Total of Other Costs	
D. Other Operating Costs:	
1. Reporting Costs	
a. Operational	
b. User	
c. Overhead: (a+b)×25%	
2. Other Costs as Directed or Which can be Reasonably Ascertained.	
Total Other Operating Costs (Subtotal 1+2)	
E. Summary:	
1. Total Costs of Sections 10A through 10D	
2. Amount Collected from Requesters during this Reporting Period:	
a. Search	
b. Copy	
c. Review	
d. Total Collected	

ITEM 11

A. Formal Time Limit Extension Taken:

(1) Location	(2) Volume	(3) Consultation	(4) Court Involvement
B. Total			

(d) *Annual report worksheet.*

a. Action(s) Taken On Completed Public Requested

_____Granted in Full
_____Granted in Part
_____Denied

Other:
_____Transferred to:
_____
_____Lack of Records
_____Requester failed to reasonably describe the record

_____Requester failed to comply with established rules/directives
_____Requester withdrew request/appeal
_____Not an agency record

b. Completed Reportable Requests:_____
(Count the number of actions checked in a. and enter total)

c. Statutory FOIA Exemptions Invoked:_____
(Enter total number blocks checked below)
_____(b)(1)
_____(b)(2)
_____(b)(3)
_____(b)(4)
_____(b)(5)
_____(b)(6)
_____(b)(7)
_____(b)(8)
_____(b)(9)

d. List of (b)(3) Statutes Invoked:_____

e. Name, Command And Title Of Initial Denial Authority: _____

f. Remarks: _____

Subpart. H—Education and Training

§ 286.45 Responsibility and purpose.

(a) *Responsibility.* The Head of each DoD Component is responsible for the establishment of educational and training programs on the provisions and requirements of this part. The educational programs should be targeted toward all members of the DoD Component, developing a general understanding and appreciation of the DoD FOIA Program; whereas, the training programs should be focused toward those personnel who are involved in the day-to-day processing of FOI requests, and should provide a thorough understanding of the procedures outlined in this part.

(b) *Purpose.* The purpose of the educational and training programs is to promote a positive attitude among DoD personnel and raise the level of understanding and appreciation of the DoD FOIA Program, thereby improving the interaction with members of the public and improving the public trust in the Department of Defense.

(c) *Scope and principles.* Each Component shall design its FOIA educational and training programs to fit the particular requirements of personnel dependent upon their degree of involvement in the implementation of this part. The program should be designed to accomplish the following objectives:

(1) Familiarize personnel with the requirements of the FOIA and its implementation by this part.

(2) Instruct personnel, who act in FOI matters, concerning the provisions of this part, advising them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.

(3) Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of initial denial and appellate authorities.

(4) Advise personnel of the penalties for noncompliance with the FOIA.

(d) *Implementation.* To ensure uniformity of interpretation, all major educational and training programs concerning the implementation of this part should be coordinated with the Director, Freedom of Information and Security Review, OASD(PA).

(e) *Uniformity of legal interpretation.* In accordance with DoD Directive 5400.7 the General Counsel of the Department of Defense shall ensure uniformity in the legal position and interpretation of the DoD FOIA Program.

Appendix A to Part 286—Unified Commands; Processing Procedures for FOI Appeals

1. General

a. In accordance with DoD Directive 5400.7 and this part, the Unified Commands are placed under the jurisdiction of the Office of the Secretary of Defense, instead of the administering Military Department, only for the purpose of administering the Freedom of Information (FOI) Program. This policy represents an exception to the policies in DoD Directive 5100.3.

b. The policy change above authorizes and requires the Unified Commands to process FOI requests in accordance with DoD Directive 5400.7 and DoD Instruction 5400.10 [13] and to forward directly to the OASD(PA) all correspondence associated with the appeal of an initial denial for information under the provisions of the FOIA.

2. Responsibilities of commands

Unified Commanders in Chief shall:

a. Designate the officials authorized to deny initial FOI requests for records.

b. Designate an office as the point-of-contact for FOI matters.

c. Refer FOI cases to the ASD(PA) for review and evaluation when the issues raised are of unusual significance, precedent setting, or otherwise require special attention or guidance.

d. Consult with other OSD and DoD Components that may have a significant interest in the requested record prior to a final determination. Coordination with agencies outside of the Department of Defense, if required, is authorized.

e. Coordinate proposed denials of records with the appropriate Unified Command's Office of the Staff Judge Advocate.

f. Answer any request for a record within 10 working days of receipt. The requester shall be notified that his request has been granted or denied. In unusual circumstances, such notification may state that additional time, not to exceed 10 working days, is required to make a determination.

g. Provide to the ASD(PA) when the request for a record is denied in whole or in part, a copy of the response to the requester or his representative, and any internal memoranda that provide background information or rationale for the denial.

h. State in the response that the decision to deny the release of the requested information, in whole or in part, may be appealed to the Assistant Secretary of Defense (Public Affairs), the Pentagon, Washington, DC 20301–1400.

i. Upon request, submit to ASD(PA) a copy of the records that were denied. ASD(PA) shall make such requests when adjudicating appeals.

3. Fees for FOI requests

The fees charged for requested records shall be in accordance with Subpart F of this part.

4. Communications

Excellent communication capabilities currently exist between the OASD(PA) and the Public Affairs Offices of the Unified Commands. This communication capability shall be used for FOI cases that are time sensitive.

5. Reporting requirements

a. The Unified Commands shall submit to the ASD(PA) an annual report. The instructions for the report are outlined in subpart G of this part.

b. The annual report shall be submitted in duplicate to the ASD(PA) not later than each February 1. This reporting requirement is assigned Report Control Symbol DD–PA(A)1365.

Appendix B to Part 286—Addressing FOIA Requests

1. General

a. The Department of Defense includes the Office of the Secretary of Defense and the Joint Staff, the Military Departments, the Unified Commands, the Defense Agencies, and the DoD Field Activities.

b. The Department of Defense does not have a central repository for DoD records. FOIA requests, therefore, should be addressed to the DoD Component that has custody of the record desired. In answering inquiries regarding FOIA requests, DoD personnel shall assist requesters in determining the correct DoD Component to address their requests. If there is uncertainty as to the ownership of the record desired, the requester shall be referred to the DoD Component that is most likely to have the record.

2. Listing of DoD component addresses for FOI requests

a. *Office of the Secretary of Defense and the Joint Staff.* Send all requests for records from the below listed offices to: Office of the Assistant Secretary of Defense (Public Affairs), ATTN: Directorate for Freedom of Information and Security Review, Room 2C757, The Pentagon, Washington, DC 20301–1400.

Executive Secretariat
Under Secretary of Defense (Policy)
Deputy Under Secretary of Defense (Policy)
Deputy Under Secretary of Defense (Planning & Resources)

[13] See footnote 1 to § 286.1(a).

Deputy Under Secretary of Defense (Trade Security Policy)
Under Secretary of Defense (Acquisition)
Assistant Secretary of Defense (Production & Logistics)
Assistant Secretary of Defense (Command, Control, Communications, and Intelligence)
Assistant to the Secretary of Defense (Atomic Energy)
Director of Defense Research and Engineering
Director of Small and Disadvantaged Business Utilization
Director, Program Integration
Comptroller of the Department of Defense
Assistant Secretary of Defense (Force Management & Personnel)
Assistant Secretary of Defense (Health Affairs)
Assistant Secretary of Defense (International Security Policy)
Deputy Assistant Secretary of Defense (European & NATO Policy)
Deputy Assistant Secretary of Defense (Negotiations Policy)
Deputy Assistant Secretary of Defense (Nuclear Forces & Arms Control Policy)
Assistant Secretary of Defense (International Security Affairs)
Deputy Assistant Secretary of Defense (African Affairs)
Deputy Assistant Secretary of Defense (East Asian & Pacific Affairs)
Deputy Assistant Secretary of Defense (Inter-American Affairs)
Deputy Assistant Secretary of Defense (Near East & South Asian Affairs)
Deputy Assistant Secretary of Defense (Policy Analysis)
Defense Security Assistance Agency
Assistant Secretary of Defense (Legislative Affairs)
Assistant Secretary of Defense (Public Affairs)
Assistant Secretary of Defense (Program Analysis & Evaluation)
Assistant Secretary of Defense (Reserve Affairs)
Assistant to the Secretary of Defense (Intelligence Oversight)
General Counsel, Department of Defense
Director of Net Assessment
Director of Operational Test and Evaluation
Defense Advanced Research Projects Agency
Strategic Defense Initiative Organization
Defense Systems Management College
National Defense University
Armed Forces Staff College
Department of Defense Dependents Schools
Uniformed Services University of the Health Sciences

b. *Department of the Army.* Army records may be requested from those Army officials who are listed in 32 CFR Part 518, Appendix B. Send requests to the Army Freedom of Information and Privacy Act Division, Information Systems Command—Pentagon, ATTN: ASQNS–OP–F, Room 1146, Hoffman I, 2461 Eisenhower Avenue, Alexandria, VA 22331–0301 for records of the Headquarters, U.S. Army, or if there is uncertainty as to which Army activity may have the records.

c. *Department of the Navy.* Navy and Marine Corps records may be requested from any Navy or Marine Corps activity by addressing a letter to the Commanding Officer and clearly indicating that it is an FOI request. Send requests to Chief of Naval Operations, Code OP–09B30, Room 5E521, Pentagon, Washington, DC 20350–2000, for records of the Headquarters, Department of the Navy, and to Freedom of Information and Privacy Act Office, Code MI–3, HQMC, Room 4327, Washington, DC 20308–0001, for records of the U.S. Marine Corps, or if there is uncertainty as to which Navy or Marine activities may have the records.

d. *Department of the Air Force.* Air Force records may be requested from the Commander of any Air Force installation, major command, or separate operating agency (ATTN: FOIA Office). For Air Force records of Headquarters, United States Air Force, or if there is uncertainty as to which Air Force activity may have the records, send requests to Secretary of the Air Force, ATTN: SAF/AADS(FOIA), Washington, DC 20330–1000.

e. *Defense Contract Audit Agency (DCAA).* DCAA records may be requested from any of its regional offices or from its headquarters. Requesters should send FOI requests to the Defense Contract Audit Agency, ATTN: CMR, Cameron Station, Alexandria, VA 22304–6178, for records of its headquarters or if there is uncertainty as to which DCAA region may have the records sought.

f. *Defense Communications Agency (DCA).* DCA records may be requested from any DCA field activity or from its headquarters. Requesters should send FOI requests to Defense Communications Agency, Code H104, Washington, DC 20305–2000.

g. *Defense Intelligence Agency (DIA).* FOI requests for DIA records may be addressed to Defense Intelligence Agency, ATTN: RTS–1B, Washington, DC 20340–3299.

h. *Defense Investigative Service (DIS).* All FOI requests for DIS records should be sent to the Defense Investigative Service, ATTN: V0020, 1900 Half St., SW., Washington, DC 20324–1700.

i. Defense Logistics Agency (DLA). DLA records may be requested from its headquarters or from any of its field activities. Requesters should send FOI requests to Defense Logistics Agency, ATTN: DLA–XA, Cameron Station, Alexandria, VA 22304–6130.

j. *Defense Mapping Agency (DMA).* FOI requests for DMA records may be sent to the Defense Mapping Agency, 8613 Lee Highway, Fairfax, VA 22031–2137.

k. *Defense Nuclear Agency (DNA).* FOI requests for DNA records may be sent to the Defense Nuclear Agency, Public Affairs Office, Room 111, Washington, DC 20305–1000.

l. *National Security Agency (NSA).* FOI requests for NSA records may be sent to the National Security Agency/Central Security Service, ATTN: Q–43, Fort George G. Meade, MD 20755–6000.

m. *Office of the Inspector General, Department of Defense (IG, DoD).* FOI requests for IG, DoD records may be sent to the Department of Defense Office of the Inspector General, Assistant Inspector General for Investigations, ATTN: FOIA Coordinator, 400 Army Navy Drive, Arlington, VA 22202.

3. Other Addressees

Although the below organizations are OSD and Joint Staff Components for the purposes of the FOIA, requests may be sent directly to the addresses indicated.

a. *Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS).* Director, OCHAMPUS, ATTN: Freedom of Information Officer, Aurora, CO 80045–6900.

b. *Chairman, Armed Services Board of Contract Appeals (ASBCA).* Chairman, Armed Services Board of Contract Appeals, Hoffman II, 200 Stovall Street, Alexandria, VA 22332

c. *U.S. Central Command.* U.S. Central Command/CCAG, MacDill Air Force Base, FL 33608

d. *U.S. European Command.* Records Administrator, Headquarters, U.S. European Command/ECJ1–AR(FOIA), APO New York 09128

e. *U.S. Southern Command.* Attorney-Advisor (International), Headquarters U.S. Southern Command/SCSJA, APO Miami 34003–0007

f. *U.S. Pacific Command.* Administrative & Security Programs Division (J147A), Joint Secretariat, CINCPAC, Box 28, Camp H.M. Smith, HI 96861–5025

g. *U.S. Special Operations Command.* U.S. Special Operations Command, ATTN: Freedom of Information Officer, MacDill Air Force Base, FL 33608

h. *U.S. Atlantic Command.* Commander-in-Chief, Atlantic Command, Code J008, Norfolk, VA 23511

i. *U.S. Space Command.* Chief, Records Management Division, Directorate of Administration, United States Space Command, Peterson Air Force Base, CO 80914–5001

4. National Guard Bureau

FOI requests for National Guard Bureau records may be sent to the Chief, National Guard Bureau, (NGB–DAI), Pentagon, Room 2C362, Washington, DC 20310–2500.

5. Miscellaneous

If there is uncertainty as to which DoD Component may have the DoD record sought, the requester may address a Freedom of Information request to the Office of the Assistant Secretary of Defense (Public Affairs), ATTN: Directorate for Freedom of Information and Security Review, Room 2C757, The Pentagon, Washington, DC 20301–1400.

Appendic C to Part 286—Litigation Status Sheet

1. Case Number [1]
2. Requester
3. Document Title or Description
4. Litigation
   a. Date Complaint Filed
   b. Court
   c. Case File Number [1]
5. Defendants (agency and individual)
6. Remarks: (brief explanation of what the case is about)

[1] Number used by Component for reference purposes.

7. Court Action
   a. Court's Finding
   b. Disciplinary Action (as appropriate)
8. Appeal (as appropriate)
   a. Date Complaint Filed
   b. Court
   c. Case File Number [1]
   d. Court's Finding
   e. Disciplinary Action (as appropriate)

Appendix D to Part 286—Other Reason Categories

1. Transferred Requests

This category applies when responsibility for making a determination or a decision on categories 2, 3, or 4 below is shifted from one Component to another, or to another Federal Agency.

2. Lack of Records

This category covers those situations wherein the requester is advised the DoD Component has no record or has no statutory obligation to create a record.

3. Failure of Requester to Reasonably Describe Record

This category is specifically based on section 552(a)(3)(a) of the FOIA.

4. Other Failures by Requesters to Comply with Published Rules or Directives

This category is based on section 552(a)(3)(b) of the FOIA and includes instances of failure to follow published rules concerning time, place, fees, and procedures.

5. Request Withdrawn by Requester

This category covers those situations wherein the requester asks an agency to disregard the request (or appeal) or pursues the request outside FOIA channels.

6. Not an Agency Record

This category covers situations where the information requested is not an agency record within the meaning of the FOIA and this part.

BILLING CODE 3810-01-M

APPENDIX E TO PART 286

RECORD OF FREEDOM OF INFORMATION *(FOI)* PROCESSING COST

Please read instructions on reverse before completing form.

1. REQUEST NUMBER	2. TYPE OF REQUEST (X one) a. INITIAL	b. APPEAL	3. DATE COMPLETED (YYMMDD)

	TOTAL HOURS (1)	HOURLY RATE (2)		COST (3)
4. CLERICAL HOURS (E-9/GS-8 and below)				
a. SEARCH			*	
b. REVIEW/EXCISING			**	
c. CORRESPONDENCE AND FORMS PREPARATION		X $12.00	=	
d. OTHER ACTIVITY				
5. PROFESSIONAL HOURS (0-1 - 0-6/GS-9 - GS/GM-15)	TOTAL HOURS (1)	HOURLY RATE (2)		COST (3)
a. SEARCH			*	
b. REVIEW/EXCISING			**	
c. COORDINATION/APPROVAL/DENIAL		X $25.00	=	
d. OTHER ACTIVITY				
6. EXECUTIVE HOURS (0-7/GS/GM-16/ES 1 and above)	TOTAL HOURS (1)	HOURLY RATE (2)		COST (3)
a. SEARCH			*	
b. REVIEW/EXCISING			**	
c. COORDINATION/APPROVAL/DENIAL		X $45.00	=	
7. COMPUTER SEARCH	TOTAL HOURS (1)	HOURLY RATE (2)		COST (3)
a. MACHINE HOURS			*	
b. PROGRAMMER/OPERATOR TIME		X	=	
(1) Clerical		$12.00	*	
(2) Professional		$25.00	*	
8. OFFICE COPY REPRODUCTION	NUMBER (1)	RATE (2)		COST (3)
a. PAGES REPRODUCED		X .15	= *	
9. MICROFICHE REPRODUCTION	NUMBER (1)	RATE (2)		COST (3)
a. MICROFICHE REPRODUCED		X .25	= *	
10. PRINTED RECORDS	TOTAL PAGES (1)	RATE (2)		COST (3)
a. FORMS			*	
b. PUBLICATIONS		X .02	= *	
c. REPORTS			*	
11. COMPUTER COPY	NUMBER (1)	ACTUAL COST (2)		COST (3)
a. TAPE			*	
b. PRINTOUT		X	= *	
12. AUDIOVISUAL MATERIALS	NUMBER (1)	ACTUAL COST (2)		COST (3)
a. MATERIALS REPRODUCED		X	= *	

13. *For FOI Office Use Only*

a. SEARCH FEES PAID		f. TOTAL COLLECTABLE COSTS		
b. REVIEW FEES PAID		g. TOTAL PROCESSING COSTS		
c. COPY FEES PAID		h. TOTAL CHARGED		
d. TOTAL PAID		i. FEES WAIVED/REDUCED (X one)	Yes	No
e. DATE PAID (YYMMDD)				

* *Chargeable to all requesters after application of all waiver criteria.*

** *Chargeable only to commercial requesters.*

DD Form 2086, JUN 89 *Previous editions are obsolete.* 1015/158

APPENDIX E - continued

INSTRUCTIONS FOR COMPLETING DD FORM 2086

This form is used to record costs associated with the processing of a Freedom of Information request.

1. REQUEST NUMBER – First two digits will express Calendar Year followed by dash (-) and Component's request number, i.e., 87-001.

2. TYPE OF REQUEST – Mark the appropriate block to indicate initial request or appeal of a denial.

3. DATE COMPLETED – Enter year, month and day, i.e., 870621.

4. CLERICAL HOURS – For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search – Time spent in locating from the files the requested information.

Review / Excising – Time spent reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.

Correspondence and Forms Preparation – Time spent in preparing the necessary correspondence and forms to answer the request.

Other Activity – Time spent in activity other than above, such as, duplicating documents, hand carrying documents to other locations, restoring files, etc.

– Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category.

5. PROFESSIONAL HOURS – For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search / Review / Excising, and Other Activity – See explanation above.

Coordination / Approval / Denial – Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

– Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category.

6. EXECUTIVE HOURS – For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search / Review / Excising – See explanation above.

Coordination / Approval / Denial – See explanation above.

– Multiply the time in the total hours column in each category by the hourly rate and enter the cost figures for each category.

7. COMPUTER SEARCH – Enter exact computer processing value in the total hours column. The salary scale (equating to items 4 and/or 5) for the programmer / operator executing the search will be recorded as part of the computer search cost, and entered in the appropriate block.

– Multiply the total hours by the hourly rates and enter the cost figures. Computer search will be based on direct cost of the Central Processing Unit, input / output devices, and memory capacity of the actual computer configuration used.

8. OFFICE COPY REPRODUCTION – Enter the number of pages reproduced.

– Multiply by the rate per copy and enter cost figures.

9. MICROFICHE REPRODUCTION – Enter the number of microfiche copies reproduced.

– Multiply by the rate per copy and enter cost figures.

10. PRINTED RECORDS – Enter total pages in each category. The categories are:

Forms *(Include any type of printed forms)*

Publications *(Include any type of bound document, such as directives, regulations, studies, etc.)*

Reports *(Include any type of memorandum, staff action paper, etc.)*

– Multiply the total number of pages in each category by the rate per page and enter cost figures.

11. COMPUTER COPY – Enter the total number of tapes and/or printouts.

– Multiply by the actual cost per tape or printout and enter cost figures.

12. AUDIOVISUAL MATERIALS – Duplication cost is the actual cost of reproducing the material, including the wage of the person doing the work.

13. FOR FOI OFFICE USE ONLY –

Search Fees Paid – Enter total search fees paid by the requester.

Review Fees Paid – Enter total review fees paid by the requester.

Copy Fees Paid – Enter the total of copy fees paid by the requester.

Total Paid – Add search fees paid and copy fees paid. Enter total in the total paid block.

Date Paid – Enter year, month and day, i.e., 871024, the fee payment was received.

Total Collectable Costs – Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Apply the appropriate waiver for the category of requester prior to inserting the final figure. Further discussion of chargeable fees is contained in Chapter VI of DoD Regulation 5400.7-R.

Total Processing Costs – Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

Total Charged – Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

Fees Waived / Reduced – Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "Yes" block or an "X" in the "No" block.

DD Form 2086 Reverse, JUN 89

APPENDIX F TO PART 286

RECORD OF FREEDOM OF INFORMATION *(FOI)* PROCESSING COST FOR TECHNICAL DATA

Please read instructions on reverse before completing form.

1. REQUEST NUMBER	2. TYPE OF REQUEST (X one) a. INITIAL	b. APPEAL	3. DATE COMPLETED (YYMMDD)

4. CLERICAL HOURS (E-9/GS-8 and below)	TOTAL HOURS (1)	HOURLY RATE (2)	COST (3)
a. SEARCH		X $ 13.25 =	*
b. REVIEW / EXCISING			*
c. CORRESPONDENCE AND FORMS PREPARATION			
d. OTHER ACTIVITY			
e. MINIMUM CHARGE		$ 8.30	

5. PROFESSIONAL HOURS (0-1 - 0-6/GS-9 - GS/GM-15)	TOTAL HOURS (1)	HOURLY RATE (2)	COST (3)
a. SEARCH		X ACTUAL HOURLY RATE =	*
b. REVIEW / EXCISING			*
c. COORDINATION / APPROVAL / DENIAL			
d. OTHER ACTIVITY			
e. MINIMUM CHARGE		1/2 HOURLY RATE	

6. EXECUTIVE HOURS (0-7/GS/GM-16/ES 1 and above)	TOTAL HOURS (1)	HOURLY RATE (2)	COST (3)
a. SEARCH		X ACTUAL HOURLY RATE =	*
b. REVIEW / EXCISING			*
c. COORDINATION / APPROVAL / DENIAL			
d. MINIMUM CHARGE		1/2 HOURLY RATE	

7. COMPUTER SEARCH	TOTAL HOURS (1)	HOURLY RATE (2)	COST (3)
a. MACHINE HOURS		X =	*
b. PROGRAMMER / OPERATOR TIME			
- Clerical		$12.25 OR MINIMUM	*
- Professional		ACTUAL OR MINIMUM	*

8. REPRODUCTION	NUMBER (1)	RATE (2)	COST (3)
a. AERIAL PHOTOGRAPHS, SPECIFICATIONS, PERMITS, CHARTS, BLUEPRINTS, AND OTHER TECHNICAL DOCUMENTS		$ 2.50	*
b. ENGINEERING DATA (Microfilm)			
- Aperture cards			
– Silver duplicate negative, per card		.75	*
– When keypunched and verified, per card		X .85 =	*
– Diazo duplicate negative, per card		.65	*
– When keypunched and verified, per card		.75	*
- 35 mm roll film, per frame		.50	*
- 16 mm roll film, per frame		.45	*
- Paper prints (engineering drawings), each		1.50	*
- Paper reprints of microfilm indices, each		.10	*
c. AUDIOVISUAL MATERIALS (Insert actual cost in block (2))			*
d. OTHER TECHNICAL DATA RECORDS Charges for any additional services not specifically provided above shall be made by components at the following rates:			
- Minimum charge for office copy (up to six images)		$ 3.50	*
- Each additional image		.10	*
- Each typewritten page		X 3.50 =	*
- Certification and validation with seal, each		5.20	*
- Hand-drawn plots and sketches, each hour or fraction thereof		12.00	*

* Chargeable to all requesters.

9. For FOI Office Use Only								
a. SEARCH FEES PAID		d. TOTAL PAID		g. TOTAL PROCESSING COSTS				
b. REVIEW FEES PAID		e. DATE PAID (YYMMDD)		h. TOTAL CHARGED				
c. COPY FEES PAID		f. TOTAL COLLECTABLE COSTS		i. FEES WAIVED / REDUCED (X one)		YES		NO

DD Form 2086-1, JUN 89

1044/198

APPENDIX F - continued

INSTRUCTIONS FOR COMPLETING DD FORM 2086-1

This form is used to record costs associated with the processing of a Freedom of Information request for technical data.

1. **REQUEST NUMBER** – First two digits will express Calendar Year followed by dash (-) and Component's request number, i.e., 87-001.

2. **TYPE OF REQUEST** – Mark the appropriate block to indicate initial request or appeal of a denial.

3. **DATE COMPLETED** – Enter year, month and day, i.e., 870621.

4. **CLERICAL HOURS** – For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search – Time spent in locating from the files the requested information.

Review / Excising – Time spent reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.

Correspondence and Forms Preparation – Time spent in preparing the necessary correspondence and forms to answer the request.

Other Activity – Time spent in activity other than above, such as, duplicating documents, hand carrying documents to other locations, restoring files, etc.

– Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Both search and review costs are chargeable to the requester.

5. **PROFESSIONAL HOURS** – For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search / Review / Excising, and Other Activity – See explanation above.

Coordination / Approval / Denial – Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

– Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Both search and review costs are chargeable to the requester.

6. **EXECUTIVE HOURS** – For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search / Review / Excising – See explanation above.

Coordination / Approval / Denial – See explanation above.

– Multiply the time in the total hours column in each category by the hourly rate and enter the cost figures for each category. Review costs are chargeable to the requester.

7. **COMPUTER SEARCH** – Enter exact computer processing value in the total hours column. The salary scale (equating to items 4 and/or 5) for the programmer / operator executing the search will be recorded as part of the computer search cost, and entered in the appropriate block.

– Multiply the total hours by the computer hourly rates and enter the cost figures. Computer search will be based on direct cost only of the Central Processing Unit, input / output devices, and memory capacity of the actual computer configuration used. This amount is fully chargeable to the requester.

8. **REPRODUCTION** – Enter the number of pages or items reproduced.

– Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester. Reproduction cost for audiovisual material is the actual cost of reproducing the material, including the wage of the person doing the work.

9. **FOR FOI OFFICE USE ONLY** –

Search Fees Paid – Enter total search fees paid by the requester.

Review Fees Paid – Enter total review fees paid by the requester.

Copy Fees Paid – Enter the total of copy fees paid by the requester.

Total Paid – Add search fees paid and copy fees paid. Enter total in the total paid block.

Date Paid – Enter year, month and day, i.e., 871024, the fee payment was received.

Total Collectable Costs – Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Only search, reproduction and printed records are chargeable to the requester. Further discussion of collectable costs is contained in Chapter VI, Section 3, DoD Regulation 5400.7-R.

Total Processing Costs – Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

Total Charged – Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

Fees Waived / Reduced – Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "Yes" block or an "X" in the "No" block.

DD Form 2086-1 Reverse, JUN 89

BILLING CODE 3810-01-C

BEST COPY AVAILABLE

Appendix G to Part 286—DoD Freedom of Information Act Program Components

Office of the Secretary of Defense/Joint Staff/Unified Commands, Defense Agencies, and the DoD Field Activities
Department of the Army
Department of the Navy
Department of the Air Force
Defense Communications Agency
Defense Contract Audit Agency
Defense Intelligence Agency
Defense Investigative Service
Defense Logistics Agency
Defense Mapping Agency
Defense Nuclear Agency
National Security Agency
Office of the Inspector General, Department of Defense

Dated: August 7, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-18764 Filed 8-11-89; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS-FRL-3627-3]

Volatility Regulations for Gasoline and Alcohol Blends Sold in Calendar Years 1989 and Beyond

AGENCY: Environmental Protection Agency.

ACTION: Notice of final rulemaking.

SUMMARY: This notice promulgates a revision of the gasoline and alcohol blend volatility regulations promulgated on March 22, 1989. The Reid vapor pressure (RVP) standard for northern New Mexico during the month of August is changed from 9.0 pounds per square inch (psi) to 9.5 psi. This revision is being made based on a reanalysis performed in response to a petition for modification of the regulations filed by Giant Industries, Inc.

EFFECTIVE DATE: These revisions are effective on August 14, 1989.

ADDRESS: Materials relevant to this rulemaking have been placed in Docket No. A-85-21. This docket is located at the Air Docket, Room M-1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12:00 noon and between 1:30 p.m. and 3:30 p.m. on weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying docket materials.

FOR FURTHER INFORMATION CONTACT: John Cabaniss, Office of Mobile Sources (ANR-455), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Telephone: (202) 382-7647.

SUPPLEMENTARY INFORMATION: On June 8, 1989, Giant Industries Inc. ("Giant") submitted a petition for modification of the gasoline volatility regulations promulgated by the Environmental Protection Agency ("EPA" or "the Agency") on March 22, 1989. 54 FR 11868. Specifically, Giant's petition asks the Agency to revise the RVP standard for northern New Mexico (i.e., the area north of 34° latitude) for the month of August from 9.0 psi to 9.5 psi. Giant argued that EPA's action in promulgating a 9.0 psi standard for this month was inconsistent with its treatment of other areas for which voluntary RVP standards established by the American Society for Testing and Materials (ASTM) allow the use of both Class A and Class B RVP fuels during a month. Giant's petition states that while EPA's proposed volatility regulations would have required all such "dual-classification" areas to meet the more stringent RVP standard, in the final rule EPA "fine-tuned" its classifications so that such areas without ozone nonattainment problems would generally be required to meet the less stringent standard while those with ozone problems would be subject to the more stringent standard. Northern New Mexico, Giant claims, is the sole exception to this classification scheme, in that although ASTM allows both Class A and Class B fuel to be sold there in August and the area does not contain any ozone nonattainment areas, EPA's regulations impose the Class A RVP standard (9.0 psi) rather than the Class B standard (9.5 psi). Giant specifically notes that adjacent topographically and geographically comparable areas (Colorado, Utah and southern Nevada) that share northern New Mexico's fuel distribution area have been treated differently in this respect. Giant asserts that this inconsistency places it in a competitive disadvantage relative to others in the refining industry in terms of compliance with EPA's gasoline RVP specifications. The company also asserts that the costs of compliance are large for a small refiner such as Giant.

EPA has reviewed Giant's petition and has found that revision of the August standard is appropriate. Under the Agency's most recent analysis of ambient air quality data, no area in northern New Mexico is classified as a nonattainment area for ozone. Furthermore, a review of RVP standards adopted in the final rule for months in which the ASTM standards allow use of both Class A and Class B gasoline indicates that the Agency promulgated its Class B standard (9.5 psi) for all such months except for August in northern New Mexico. Therefore, the Agency has determined that it is appropriate to grant Giant's petition and to revise the August standard for northern New Mexico from 9.0 psi to 9.5 psi.

The Agency has determined that this action is not a "major" rule as defined in Executive Order (E.O.) 12291. Therefore, a regulatory impact analysis has not been prepared. This regulation was submitted to the Office of Management and Budget (OMB) for review under E.O. 12291. Any written comments from OMB any EPA responses to such comments have been placed in the rulemaking docket.

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, I certify that the regulatory revision promulgated in this notice will not have a significant adverse impact on a substantial number of small entities. The regulatory revision is, in fact, being made in response to the request of a small-sized regional refiner, and it is expected to result in monetary savings and other benefits to the requestor and similarly situated small entities. Therefore, a regulatory flexibility analysis has not been prepared.

This rulemaking does not include any new information collection requirements. Information collection requirements in the regulations promulgated on March 22, 1989, were approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and have been assigned OMB control number 2060-0178.

The Agency finds that there is "good cause" under the Administrative Procedure Act, 5 U.S.C. 553 (b) and (d), to promulgate this rule without prior notice and public comment and to make this rule effective immediately. "Good cause" exists because it is impracticable to provide for notice and comment, and to establish an effective date at least 30 days after publication, prior to the August 1989 period for which the regulatory revision has been requested. Furthermore, because this action establishes a less stringent RVP standard for northern New Mexico in August than the current regulatory standard and therefore "relieves a restriction," "good cause" exists within the meaning of 5 U.S.C. 553(d).

Authority for the action promulgated in this notice is granted to EPA by sections 114, 211, and 301 of the Clean Air Act (42 U.S.C. 7414, 7545, and 7601).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of an action of the Administrator promulgating a control or prohibition under section 211 of the Act may be filed only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for judicial review of this action must be filed in that court on or before October 13, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act.)

List of Subjects in 40 CFR Part 80

Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: August 3, 1989.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for Part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545, and 7601(a).

2. The table in § 80.27 is amended by revising the entry for "New Mexico North of 34° Latitude" to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a) * * *

APPLICABLE STANDARDS [1]

State	May	June	July	Aug.	Sept.
*	*	*	*	*	
New Mexico north of 34° latitude	9.5	9.0	9.0	9.5	9.5
*	*	*	*	*	

[1] Standards are expressed in pounds per square inch (psi).

* * * * *

[FR Doc. 89-18834 Filed 8-11-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[FRL-3629-2]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: In a June 29, 1988 (53 FR 24454), notice, USEPA proposed to disapprove a request from the State of Wisconsin to revise the attainment status designation, at 40 *Code of Federal Regulations* (CFR) 81.350, for a sub-city area in the City of Green Bay, Brown County, Wisconsin, from secondary nonattainment to attainment relative to the former total suspended particulates (TSP) National Ambient Air Quality Standards (NAAQS). Under the Clean Air Act (CAA) and USEPA's transitional particulate matter policy (July 1, 1987, 52 FR 24682), TSP designations can continue to be changed if sufficient data are available to warrant such a change. USEPA will continue to process TSP redesignation requests because various regulatory provisions remain tied to the TSP attainment status.

USEPA is a disapproving Wisconsin's redesignation request because the Wisconsin Department of Natural Resources (WDNR) failed to provide sufficient evidence that (1) the monitoring data were representative of worst-case ambient concentrations, (2) emission reductions were federally approved, permanent, and must have resulted in the decrease in ambient concentrations, (3) dispersion techniques were not responsible for the improvement in air quality. These redesignation criteria are contained in an April 21, 1983, memorandum entitled "Section 107 Designation Policy Summary" from Sheldon Meyers, then Director, Office of Air Quality Planning and Standards (OAQPS), and a September 30, 1985, memorandum entitled "Total Suspended Particulate (TSP) Redesignations" from Gerald A. Emison, Director, OAQPS.

DATE: This final rulemaking becomes effective September 13, 1989.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (313) 886-6031.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the CAA, the Administrator of USEPA has promulgated the NAAQS attainment status for all areas within each State. For Wisconsin, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR 81.350. These area designations are subject to revision whenever sufficient data become available to warrant a redesignation. A sub-city area of Green Bay, Wisconsin, was designated as not attaining the secondary TSP standard. On July 23, 1987, pursuant to section 107(d)(5) of the CAA, the WDNR requested that the sub-city nonattainment area of Green Bay [1] be redesignated to attainment of the TSP NAAQS.

For areas designated nonattainment for TSP, a TSP State Implementation Plan (SIP) was required which satisfied the requirements of section 110(a) and Part D of the CAA, including assuring the attainment and maintenance of the TSP NAAQS. USEPA revised the particulate matter standard on July 1, 1987, (52 FR 24634) and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with nominal diameter of 10 micrometers or less (PM_{10}). USEPA will continue to process redesignations of areas from nonattainment to attainment for TSP in keeping with past policy, because various regulatory provisions such as new source review and prevention of significant deterioration are keyed to the attainment status of areas. The July 1, 1987, notice (page 24682, column 1) described USEPA's transition policy regarding TSP redesignations. According to USEPA's tarnsition policy, TSP redesignation requests are to be reviewed for compliance with USEPA's redesignation policies issued in memoranda on April 21, 1983, and September 30, 1985. These are: (1) The monitoring data must be representative of worst-case ambient concentrations, (2) emission reductions must be federally approved, must be permanent, and must have resulted in the decrease in ambient concentrations, (3) dispersion techniques must not be responsible for the improvement in air quality.

Based on these criteria USEPA proposed to disapprove Wisconsin's redesignation request on June 29, 1988, (53 FR 24454). Comments on this notice of proposed rulemaking were received from WDNR. Comments and USEPA's responses are provided below:

The WDNR comments addressed three basic points: (1) Misunderstanding

[1] The Green Bay sub-city secondary TSP nonattainment area is defined as follows:
North: Green Bay
West: Corner west Mason St. Ashland Ave., north to Mather St. West to Crocker Street, north on Crocker St. to Bylsby St., then to Green Bay.
South: Corner west Mason St., and Ashland Ave., east along west Mason St., and Irvin Ave.
East: Corner west Mason St., and Irvin Ave. north along Irvin Ave. to Green Bay.

of the requirements for approvable TSP redesignations, (2) the implementation of Reasonably Available Control Technology (RACT) for TSP in 1983, and (3) a request to act promptly on the Wisconsin PM_{10} SIP. A discussion of each item follows:

Misunderstanding of Requirements—As technical support for Wisconsin's redesignation requests, WDNR only submitted the Brown County monitoring data. WDNR received the impression that the monitoring data were all that was necessary from a July 1987 conference call between USEPA Region V and the Region V States.

WDNR misunderstood the requirements. The PM_{10} regulations published on July 1, 1987 (52 FR 24682), clearly state that "[redesignation] requests will continue to be reviewed during the transition period for compliance with USEPA's redesignation policies as issued in memoranda from the Director of the Office of Air Quality Planning and Standards, April 21, 1983, and September 30, 1985."

Implementation of RACT—According to WDNR, the requirement for a USEPA control strategy which has been fully implemented is fulfilled by the Wisconsin TSP RACT rules as approved by USEPA in 1983. USEPA disagrees because the RACT rules apply only in primary nonattainment areas. In the March 9, 1983, **Federal Register** notice (48 FR 9860), USEPA took no action on the RACT rules for secondary nonattainment areas in Brown (Green Day), Dane (Madison), Douglas, Kenosha (Kenosha), Manitowoc (Manitowoc), Marathon, Racine, Winnebago, and Wood Counties, because WDNR did not submit a plan for attainment and maintenance of the TSP NAAQS in these areas. The WDNR would have had to state specifically that all sources are in compliance with the 1972 SIP and note those specific federally enforceable emission decreases from mid-1970 emission levels which resulted in the change to attainment.

Wisconsin PM_{10} Committal SIP—WDNR urged prompt action on their PM_{10} committal SIP. An approved committal SIP would allow the redesignation of Green Bay without the information currently required under the transistion policy. This is because the transition policy applies to areas which are in transition from TSP to PM_{10} regulations. Once the committal SIP is approved, the PM_{10} Group Three Areas, of which Green Bay is a part, are no longer in transition. WDNR submitted their PM_{10} committal SIP on April 30, 1988. USEPA is proceeding with rulemaking. WDNR may formally request that USEPA redesignate Green Bay (and other Group Three Areas) concurrent with approval of the committal SIP.

Conclusion—USEPA is disapproving the redesignation request for a sub-city nonattainment area of Green Bay, Wisconsin, because the WDNR did not submit sufficient documentation to demonstrate that (1) the monitoring data were representative of worst-case ambient concentrations, (2) emission reductions were federally approved, permanent, and must have resulted in the decrease in ambient concentrations, (3) dispersion techniques were not responsible for the improvement in air quality.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 13, 1989. This action may not be challenged later in the proceedings to enforce its requirements. (See section 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: August 3, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89–18838 Filed 8–11–89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6844]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance in now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorgnization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of Eligible Communities.

State	Location	Community Number	Effective date authorization/cancellation of sale of Flood Insurance in community	Current Effective Map Date
Wyoming	Guernsey, Town of Platte County	560072	June 2, 1969, Emerg	Nov. 12, 1976.
South Dakota	McCook County, Unincorporated Areas	460260	do	—
Michigan	Au Gres, City of, Arenac County	260012	July 26, 1973, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.; June 1, 1989, Rein.	May 17, 1989.
Pennsylvania	York, Township of, York County	421032	August 1, 1973, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.; June 2, 1989, Rein.	May 17, 1989.
Utah	Carbon County, Unincorporated Areas	490032	November 27, 1974, Emerg.; November 15, 1979, Reg.; May 17, 1989, Susp.; June 7, 1989, Rein.	Nov. 15, 1979.
Pennsylvania	New Sewickley, Township of, Beaver County	422323	December 2, 1975, Emerg.; March 2, 1989, Reg.; March 2, 1989, Susp.; June 9, 1989, Rein.	Mar. 2, 1989.
Louisiana	Calvin, Village of, Winn Parish	220266	September 29, 1978, Emerg.; July 1, 1987, Reg.; July 1, 1987, Susp.; June 2, 1989, Rein.	July 1, 1987.
Tennessee	Winchester, City of, Franklin County	470056	May 9, 1975, Emerg.; July 2, 1980, Reg.; June 5, 1989, Withdrawn.	July 2, 1980.
Texas	Runge, City of, Karnes County	481120	June 12, 1989, Emerg	Apr. 25, 1975.
Kentucky	Brownsville, City of, Edmonson County	210236	June 13, 1989, Emerg	Oct. 8, 1976.
Oklahoma	Bethel Acres, Town of, Pottwatomie County	400345	June 16, 1989, Emerg	Dec. 21, 1978.
Texas	Cherokee County, Unincorporated Areas	480739	do	Dec. 27, 1988.
	Hood County, Unincorporated Areas	480356	May 11, 1979, Emerg.; October 16, 1988, Reg.; October 16, 1988, Susp.; June 16, 1989, Rein.	Oct. 16, 1988.
Maryland	Middletown, Town of, Frederick County	240162	December 21, 1978, Emerg.; October 23, 1981, Reg.; May 4, 1989, Susp.; June 27, 1989, Rein.	Oct. 23, 1981.
Kansas	Leona, City of, Doniphan County	200082	May 6, 1976, Emerg.; January 7, 1977, Reg.; June 5, 1989, Susp.; June 28, 1989, Rein.	Jan. 7, 1977.
Nebraska	Lodgepole, Village of, Cheyenne County	310038	July 1, 1975, Emerg.; September 27, 1985, Reg.; June 5, 1989, Susp.; June 28, 1989, Rein.	Sept. 27, 1985.
Texas	Seagraves, City of, Gaines County	480239	August 21, 1974, Emerg.; February 19, 1986, Reg.; September 2, 1988, Susp.; June 28, 1989, Rein.	Feb. 19, 1986.
Ohio	Fort Recovery, Village of, Mercer County	390395	June 30, 1976, Emerg.; May 1, 1987, Reg.; May 1, 1987, Susp.; June 21, 1989, Rein.	May 1, 1987.
	Florida, Village of, Henry County	390263	August 15, 1975, Emerg.; June 5, 1989, Reg.; June 5, 1989, Susp.; June 28, 1989, Rein.	Aug. 8, 1980.
	Gettysburg, Village of, Drake County	390686	March 18, 1976, Emerg.; January 4, 1985, Reg.; June 5, 1989, Susp.; June 28, 1989, Rein.	Jan. 4, 1985.
	Grand Rapids, Village of, Wood County	390585	February 19, 1975, Emerg.; May 2, 1983, Reg.; June 5, 1989, Susp.; June 28, 1989, Rein.	May 2, 1983.
	Hartford, Village of, Licking County	390331	December 29, 1976, Emerg.; August 10, 1979, Reg.; June 5, 1989, Susp.; June 28, 1989, Rein.	Aug. 10, 1979.
Kentucky	Radcliff,[2] City of, Hardin County	210356	July 6, 1989, Emerg.; July 6, 1989, Reg	—
Kansas	Alexander, City of, Rush County	200307	March 17, 1976, Emerg.; July 5, 1989, Withdrawn.	Feb. 14, 1975.
	Natoma, City of, Osborne County	200254	August 1, 1975, Emerg.; September 27, 1985, Reg.; June 5, 1989, Susp.; July 7, 1989, Rein.	Sept. 27, 1985.
South Dakota	Mission, City of, Todd County	460202	August 8, 1975, Emerg.; August 5, 1986, Reg.; June 19, 1989, Susp.; July 10, 1989, Rein.	Aug. 5, 1986.
Alabama	Greensboro, City of, Hale County	010336	March 19, 1975, Emerg.; August 19, 1985, Reg.; August 19, 1985, Susp.; July 10, 1989, Rein.	Aug. 19, 1985.
Nebraska	Platte Center, Village of, Platte County	310178	March 31, 1975, Emerg.; June 19, 1989, Susp.; July 10, 1989, Rein.	Dec. 20, 1974.
Pennsylvania	Liberty, Township of, Bedford County	421343	May 28, 1975, Emerg.; September 30, 1988, Reg.; September 30, 1988, Susp.; July 10, 1989, Rein.	Sept. 30, 1988.
Georgia	Eatonton, City of, Putnam County	130218	July 3, 1975, Emerg.; June 19, 1989, Reg.; June 19, 1989, Susp.; July 13, 1989, Rein.	June 19, 1989.
Kentucky	Knox County,[3] Unincorporated Areas	210131	July 29, 1975, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.; July 5, 1989, Rein.	May 17, 1989.
Texas	White Oak,[3] City of, Gregg County	480641	July 7, 1989, Emerg	Aug. 22, 1975.
Michigan	Wise, Township of, Isabella County	260623	July 18, 1989, Emerg	—
Pennsylvania	Millville, Borough of, Columbia County	421545	September 6, 1974, Emerg.; June 19, 1989, Reg.; June 19, 1989, Susp.; July 14, 1989, Rein.	June 19, 1989.
Alabama	Dale County, Unincorporated Areas	010060	September 10, 1975, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.; July 18, 1989, Rein.	July 4, 1989.

State	Location	Community Number	Effective date authorization/cancellation of sale of Flood Insurance in community	Current Effective Map Date
	Moody, Town of, St. Clair County	010167	May 21, 1975, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.; July 19, 1989, Rein.	July 4, 1989.
Pennsylvania	Evans City, Borough of, Butler County	420216	December 3, 1974, Emerg.; May 4, 1989 Reg.; May 4, 1989, Susp.; July 19, 1989, Rein.	May 4, 1989.
Texas	Olton, City of, Lamb County	480696	July 21, 1989, Emerg	Oct. 1, 1976.
Louisiana	Florien, Village of, Sabine Parish	220326	July 14, 1989, Emerg; July 14, 1989, Reg	Mar. 15, 1982.
Tennessee	Morgan County, Unincorporated Areas	470139	June 3, 1982, Emerg.; March 1, 1987, Reg.; March 4, 1988, Susp.; July 14, 1989, Rein.	Mar. 1, 1987.
Oklahoma	Okemah, City of, Okfuskee County	400429	August 1, 1977, Emerg.; August 1, 1987, Reg.; August 1, 1987, Susp.; July 24, 1989, Rein.	Aug. 1, 1987.
Ohio	Germantown,[1] Village of, Montgomery County	390411	January 16, 1975, Emerg.; July 2, 1981, Reg.; June 5, 1989, Susp.; July 17, 1989, Rein.	July 2, 1981.
Pennsylvania	Briar Creek, Township of, Columbia County	421548	August 8, 1975, Emerg.; June 19, 1989, Reg.; June 19, 1989, Susp.; July 25, 1989, Rein.	June 19, 1989.
Arkansas	Melbourne, City of, Izard County	050348	July 28, 1989, Emerg	Apr. 11, 1975.
North Carolina	Cedar Point,[2] Town of, Carteret County	370465	July 26, 1989, Emerg.; July 26, 1989, Reg	—
Louisiana	Winn Parish,[1] Unincorporated Areas	220369	July 24, 1989, Emerg.; July 24, 1989, Reg	June 5, 1985.
Ohio	Fairview Park, City of, Cuyahoga County	390106	June 24, 1975, Emerg.; February 4, 1983, Reg.; June 5, 1989, Susp.; July 26, 1989, Rein.	Feb. 4, 1983.
North Dakota	Velva, City of, McHenry County	380051	March 28, 1975, Emerg.; August 15, 1977, Reg.; July 4, 1989, Susp.; July 28, 1989, Rein.	Aug. 15, 1977
Pennsylvania	Huston, Township of, Centre County	421195	September 15, 1975, Emerg.; June 5, 1989, Reg.; June 5, 1989, Susp.; July 28, 1989, Rein.	June 5, 1989.
North Dakota	Grand Forks County, Unincorporated Areas	380033	May 13, 1974, Emerg.; May 1, 1986, Reg.; July 4, 1989, Susp.; July 31, 1989, Rein.	May 1, 1986.
California	Twentynine Palms, City of, San Bernardino County.	060734	July 27, 1989, Emerg; July 27, 1989, Reg	—
Texas	Marshall, City of,[1] Harrison County	480319	July 17, 1974, Emerg.; September 16, 1981, Reg.; September 16, 1981, Susp.; July 28, 1989, Rein.	Sept. 16, 1981.

[1] Declared Disaster Area.
[2] Adopted Carteret County's FIRM dated August 19, 1985, for floodplain management and insurance purposes.
[3] Adopted Hardin County's FIRM dated November 4, 1988 for floodplain management and insurance purposes.
[4] Adopted San Bernardino County's FIRM dated June 23, 1981, for floodplain management and insurance purposes.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
Region III			
Pennsylvania:			
Burnside, Borough of, Clearfield County	420298	July 17, 1989, suspension withdrawn	July 17, 1989.
Ferguson, Township of, Centre County	420260	do	July 17, 1989.
Londonderry, Township of, Bedford County	421345	do	July 17, 1989.
Penn, Township of, Clearfield County	421530	do	July 17, 1989.
South Franklin, Township of, Washington County	422563	do	July 17, 1989.
Walker, Township of, Centre County	421471	do	July 17, 1989.
West St. Clair, Township of, Bedford County	421354	do	July 17, 1989.
Region IV			
Georgia: Oconee County, Unincorporated Areas	130453	do	July 17, 1989.
Mississippi: Bolivar County, Unincorporated Areas	280011	do	July 17, 1989.
Region VI			
Texas: Denver City, City of, Yoakum County	480682	do	July 17, 1989.
Region VIII			
Colorado: Oak Creek, Town of, Routt County	080156	do	July 17, 1989.
Region X			
Idaho: Glenns Ferry, City of, Elmore County	160057	do	July 17, 1989.
Oregon:			
Crook County, Unincorporated Areas	410050	do	July 17, 1989.
Jefferson County, Unincorporated Areas	410101	do	July 17, 1989.
Madras, City of, Jefferson County	410103	do	July 17, 1989.
Prineville, City of, Crook County	410051	do	July 17, 1989.

Code for reading fourth column: Emerg.—Emergency. Reg.—Regular. Susp.—Suspension. Rein.—Reinstatement.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

Issued: August 9, 1989.

[FR Doc. 89-18943 Filed 8-11-89; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6845]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717. Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region II					
New York	Athens, Village of Greene County.	360285	April 24, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Cairo, Town of Greene County.	360286	October 3, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Catskill, Village of Greene County.	360287	May 13, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Claverack, Town of Columbia County.	360173	April 9, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Coxsackie, Town Greene County.	361115	December 12, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Coxsackie, Village of Greene County.	360288	November 15, 1974 Emerg.; December 2, 1983 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Athens, Town of Greene County.	361117	September 25, 1979 Emerg.; September 3, 1982 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Region III					
Pennsylvania	Manns Choice, Borough of Bedford County.	421325	March 2, 1977 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.

State	Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Do	Napier, Township of Bedford County.	421348	January 20, 1978 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Sandy, Township of Clearfield County.	421191	July 9, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Snyder, Township of Jefferson County.	421735	September 15, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Washington, Township of Jefferson County.	422451	September 30, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Confluence, Borough of Somerset County.	422043	March 11, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Hopewell, Township of Bedford County.	421339	July 28, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Region IV					
Kentucky	Clay City, City of Powell County.	210195	March 22, 1976 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
North Carolina	Lee County Unincorporated Areas.	370331	October 4, 1978 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Richmond County Unincorporated Areas.	370348	September 6, 1985 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Sanford, City of Lee County	370143	June 26, 1978 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Region V					
Ohio	Auglaize County Unincorporated Areas.	390761	August 29, 1985 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Lynchburg, Village of Highland County.	390271	April 9, 1976 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Mercer County Unincorporated Areas.	390362	November 15, 1977 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Versailles, Village of Darke County.	390142	September 16, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Wapakoneta, City of Auglaize County.	390023	June 17, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Wisconsin	Boaz, Village of Richland County.	550357	November 28, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Region VI					
Arkansas	Stone County Unincorporated Areas.	050465	January 28, 1983 Emerg.; July 16, 1987 Reg.; September 6, 1989 Susp.	July 16, 1987	July 16, 1987.
Do	Cotter, City of Baxter County.	050011	July 2, 1975 Emerg.; June 30, 1976 Reg.; September 6, 1989 Susp.	June 30, 1976	June 30, 1976.
Iowa	Williamsburg, City of Iowa County.	190427	November 15, 1978 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Region IX					
Arizona	Pima County Unincorporated Areas.	040073	October 2, 1974 Emerg.; February 15, 1983 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Maui County Unincorporated Areas.	150003	September 18, 1971 Emerg.; July 1, 1981 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989

Legend: For fourth column: Emerg.–Emergency; Reg.–Regular; Susp.–Suspension.

Harold T. Duryee, Administrator
Federal Insurance Administration.
Issued August 9, 1989.
[FR Doc. 89-18944 Filed 8-11-89; 8:45 am]
BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[Common Carrier Docket No. 87-75, FCC 89-185]

Provision of Aeronautical Services via the Inmarsat System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this rulemaking proceeding, the Commission determined how international aeronautical mobile satellite services via the International Maritime Satellite Organization (Inmarsat) will be provided in the United States. The Commission concluded that the public interest requires that Inmarsat international aeronautical mobile satellite services be made available to users in the United States, and that such services are best suited for aircraft that are in international flight. The Commission further found that the form of U.S. participation in Inmarsat aeronautical services should not be through the competitive access/consortium mechanism that was originally proposed in the NPRM in this proceeding. The Commission concluded instead that the best means of both promoting competition in the provision of Inmarsat aeronautical services and achieving timely and effective U.S. entry into the world market would be to permit Comsat to be the U.S. provider of Inmarsat space segment capacity as ancillary to its role as U.S. Signatory and operating entity for Inmarsat maritime services.

EFFECTIVE DATE: August 14, 1989.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joel Pearlman, International Policy Division, Common Carrier Bureau, (202) 632-3214.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in Common Carrier Docket No. 87-75, FCC 89-185, adopted May 31, 1989, and released August 4, 1989.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

The Commission initiated this proceeding on March 30, 1987, with the release of a Notice of Proposed Rulemaking, CC Docket No. 87-75 (52 FR 13481, 4/23/87). That NPRM requested comment on policy alternatives and related issues looking toward the establishment of a domestic structure by which U.S. entities may access Inmarsat space segment to provide aeronautical services.

The proceeding was initiated after the Commission denied applications of Comsat to provide Inmarsat aeronautical services as unlawful under the International Maritime Satellite Telecommunications Act (Maritime Satellite Act). The Maritime Satellite Act designates Comsat as the U.S. Signatory and operating entity within Inmarsat. However, based on the record then before it, the Commission concluded that Comsat's scope of authority under the Maritime Satellite Act is limited to the provision of maritime satellite services and that Comsat's role in Inmarsat could not be expanded to include exclusive provision of Inmarsat aeronautical services absent Congressional action.

In its NPRM, the Commission tentatively proposed a "competitive access" policy under which authorized U.S. entities would make their own arrangements with Inmarsat to obtain space segment capacity for the provision of aeronautical services. The Commission proposed to implement competitive access through a consortium which all U.S. service providers would be required to join. The consortium itself would not own or operate facilities or provide services to customers. These functions would be undertaken by consortium members. The consortium would serve as a second U.S. Signatory to Inmarsat in connection with aeronautical services and be responsible for fulfillment of each consortium member's obligations under the Inmarsat Convention and Operating Agreement. Comsat would continue to be the U.S. Signatory for maritime services. The Commission recognized that dual signatories would require amendments to the Inmarsat Convention and Operating Agreement, which require that each administration have only one signatory in the organization. Since this amendment process would take considerable time to implement, if achievable at all, the Commission proposed an interim arrangement in which Comsat, in its current capacity as the sole U.S. Signatory, would act as agent for the consortium to Inmarsat.

The comments that we received by the Commission in response to the consortium/competitive access proposal were mixed. Some parties believed that instituting the competitive access aspect of the proposal would weaken the U.S. vis-a-vis foreign competition; others believed that it is necessary to achieve competition among U.S. service providers. Comsat offered an alternative proposal under which it would provide customers access to Inmarsat space segment capacity for aeronautical services pursuant to flexible access and pricing arrangements, including options of on-demand service, monthly leased service, and capitalized leases. The consortium that was proposed to implement competitive access received both opposition and support from various parties. In addition, the NPRM generated several alternative proposals. There was virtually no support for the dual signatory aspect of the NPRM proposal.

Upon review of the record in the proceeding, the Commission concluded that the public interest requires that Inmarsat international aeronautical mobile satellite services be made available to users in the United States. It found that Inmarsat aeronautical services are best suited for aircraft that are in international flight as discussed above. It further found that the form of U.S. participation in Inmarsat aeronautical services should not be through the competitive access/consortium mechanism that it had proposed in the NPRM in this proceeding. The Commission concluded that it would not be in the public interest to adopt at this time a policy which provides direct investment in Inmarsat space segment capacity through a consortium of U.S. authorized aeronautical service providers. It reached this conclusion for several reasons. First, public interest benefits of the NPRM competitive access/consortium proposal were not clearly demonstrated by the record in this proceeding. Whatever theoretical benefits that may result from this approach were outweighed by the problems associated with it. Second, the complexities associated with creation of a consortium to implement competitive access would require extensive U.S. government oversight to ensure fulfillment of U.S. obligations under the Inmarsat agreements. The lack of support for the dual signatory aspect of the NPRM proposal would further complicate implementation of competitive access in a manner consistent with U.S. obligations. Absent giving signatory status to the consortium, a convoluted mechanism would have to be established to indirectly pass through Comsat as the U.S. Signatory the aeronautical-related capital costs and expense incurred by consortium members. Third, while the comments reflect support by several parties for a competitive access policy, there was no clear private sector commitment to participate in an aeronautical consortium. Fourth, the Commission believed that U.S. policy should be designed to ensure timely and effective U.S. entry into the international aeronautical satellite communications market in response to foreign competitors both in service and equipment areas. It concluded that this goal may be impeded if the U.S. embarks on creation of a cumbersome competitive access/consortium arrangement that will take time to structure, delay U.S. entry into the world market, and unnecessarily inhibit U.S. competitive posture.

The Commission concluded that the record failed to demonstrate that a competitive access scheme is necessary to achieve meaningful competition in the provision of Inmarsat aeronautical services. It concluded instead that the best means of both promoting competition in the provision of Inmarsat aeronautical services and achieving timely and effective U.S. entry into the world market would be to permit Comsat to be the U.S. provider of Inmarsat aeronautical space segment capacity as ancillary to its role as U.S. Signatory and operating entity for Inmarsat maritime services. This approach is fully consistent with the established institutional and operational requirements of the Inmarsat Convention and Operating Agreement. The U.S. will not have to seek any amendments to those documents or the Maritime Satellite Act. Neither will the Commission have to fashion and monitor complex arrangements between the U.S. Signatory and other U.S. aeronautical service providers in order to ensure fulfillment of U.S. obligations under the Inmarsat agreements. Finally, the Commission concluded that the Maritime Satellite Act does not bar it from adopting such a policy and authorizing Comsat to provide ancillary aeronautical space segment services as the U.S. operating entity in Inmarsat. I found that Comsat's provision of

Inmarsat aeronautical services will be ancillary to and supportive of its provision of maritime services and therefore permissible under the Maritime Satellite Act.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-18885 Filed 8-11-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 25

[General Docket No. 84-1234, FCC 89-182]

Allocation of Spectrum and Establishment of Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; Policies and procedures; petitions for reconsideration, applications for review.

SUMMARY: This action affirms Commission and Common Carrier Bureau decisions made in four separate orders regarding licensing policies for the Mobile Satellite Service (MSS): Second Report and Order in General Docket No. 84-1234, 2 FCC Rcd 485 (1987), 52 FR 4017 (February 9, 1987); Declaratory Order, 2 FCC Rcd 2417 (1987), 52 FR 12911 (April 20, 1987); Order, 2 FCC Rcd 5647 (1987) ("August 13th Order"); and Global Land Mobile Satellite, Inc., et al., 2 FCC Rcd 5552 (1987) ("Dismissal Order"). This action denies petitions for reconsideration and applications for review filed by Global Land Mobile Satellite, Inc. (Global); joint petition by Aeronautical Radio, Inc. (Arinc), Aircraft Owners and Pilots Association (AOPA), Air Line Pilots Association (ALPA), Air Transport Association of America (ATA), Experimental Aircraft Association (EAA), Helicopter Association International (HAI), National Air Transportation Association (NATA), and Regional Airline Association (RAA) ("Aviation Parties"); Globesat Express; and Mobile Satellite Services, Inc.

EFFECTIVE DATE: May 31, 1989.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Geraldine Matise, (202) 634-1841.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* in General Docket 84-1234, FCC 89-182, Adopted May 31, 1989 and released August 4, 1989.

The full text of this Commission decision is available for inspection and copying during the normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. In this *Memorandum Opinion and Order*, the Commission addresses petitions for reconsideration and applications for review of the *Second Report and Order* and three Bureau orders in General Docket No. 84-1234. These four orders concerned the establishment of rules and policies for the Mobile Satellite Service (MSS) and applications to implement an MSS system.

2. In the *Second Report and Order* the Commission reached the following conclusions. First, only one domestic MSS system will be licensed for the first generation to use the entire allocated spectrum at L-band, 1545-1558.5/1646.5-1660 MHz. Second, the MSS license will be granted to a consortium comprised of all qualified applicants. Third, each applicant will demonstrate its financial qualifications by making a $5 million cash contribution into the consortium. The Commission directed the twelve applicants who had filed applications for MSS systems to amend their applications to comply with the adopted policies. Specifically, the Commission ordered the applicants to place their initial $5 million cash contribution in an escrow account by April 13, 1987, and, as a group, to develop a joint ownership structure. The ownership agreement and system proposal were to be filed as a joint amendment to their applications by July 27, 1987. On reconsideration, the Commission affirmed the consortium and financial qualification requirements. The Commission found that sufficient notice of both requirements had been provided and that the financial standard adopted (*i.e.*, $5 million cash contribution) was reasonable.

3. In a *Declaratory Order*, the Common Carrier Bureau concluded that other types of financial instruments were acceptable to demonstrate compliance with the financial qualification requirement. In addition to a cash deposit in an escrow account, applicants could secure unconditional letters of credit or performance bonds and submit evidence of these by the April 13th deadline. The Commission affirmed the Bureau's determination.

4. The Common Carrier Bureau issued another order on August 13, 1987 when the MSS applicants did not fully settle their differences by the July 27th deadline. Two groups of applicants filed two different amendments, and some applicants filed pleadings that questioned other's financial qualifications. The Bureau dismissed the two proposals, directed the applicants to demonstrate strict compliance with the financial qualification requirement, and extended the deadline for filing a joint amendment. The applicants were ordered to put their $5 million cash contributions into a central escrow account. The Commission affirmed the Bureau's action in dismissing the joint amendments because the applicants had not conformed with the proscribed requirements. The Commission also found the Bureau's directive that the $5 million cash contributions be put in a central escrow account consistent with the processing scheme established by the *Second Report and Order*.

5. Finally, eight applicants deposited $5 million each into a central escrow account. Global Land Mobile Satellite, Inc., Globesat Express and Mobile Satellite Service, Inc. did not contribute to this account. The Bureau dismissed their applications for failure to comply with Commission and Bureau orders. The Commission affirmed the Bureau's dismissal of the applications on the same grounds.

Ordering Clauses

6. Accordingly, *it is ordered* That the petitions filed by Global and the Aviation Parties for reconsideration of the *Second Report and Order* in General Docket No. 84-1234 are denied.

7. *It is further ordered* That the petition for reconsideration filed by Globesat and the application for review filed by MSSI of the *Declaratory Order* in this proceeding are denied.

8. *It is further ordered* That the petition for reconsideration filed by MSSI and the application for review filed by Global and Globesat of the August 13th Order in this proceeding are denied.

9. *It is further ordered* That Global's application for review of the Common Carrier Bureau's letter response to Global's request for clarification of the August 13th Order is denied.

10. *It is further ordered* That the petition for reconsideration filed by MSSI and the applications for review filed by Global and Globesat of the *Dismissal Order* in this proceeding are denied.

11. These actions are taken pursuant to sections 4(i), 303, 308, 309, and 405 of the Communications Act, as amended, 47 U.S.C. 154(i), 303, 308, 309, and 405.

List of Subjects in 47 CFR Part 25

Satellite radio communication, Satellites.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-18887 Filed 8-11-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-264; RM-6160]

Television Broadcasting Services; Gosnell, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF television Channel 46 to Gosnell, Arkansas, as that community's first local television service, reserved for educational use, in response to a petition for rule making filed by the Gosnell School District #8. Reference coordinates for Channel 46 at Gosnell are 35-53-13 and 89-57-18.

Although the Commission has imposed a freeze on TV allotments or applications therefor in specified metropolitan areas, pending the outcome of an inquiry into the use of advanced television systems (ATV) in broadcasting, this proposal is not affected thereby. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-264, adopted July 19, 1989, and released August 9, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments, is amended under Arkansas, by adding Gosnell, Channel 46.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-18891 Filed 8-11-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-619; RM-5907, 6122, 6322]

Radio Broadcasting Services; Gosnell and Osceola, AR; Germantown and Ripley, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 230A to Gosnell, Arkansas, as that community's first local FM service, in response to a petition filed by Earl M. Hodges, d/b/a/ Mid-South Frequency Monitoring Service. Coordinates used for Channel 230A at Gosnell are 35-58-12, 89-57-40. This document also substitutes Channel 231C2 for Channel 232A at Germantown, Tennessee, and modifies the license for Station WEZI(FM) accordingly, and Channel 235A for Channel 231A at Ripley, Tennessee, at the request of Ardman Broadcasting Corporation of Tennessee, licensee of Station WEZI(FM). See 53 Fed. Reg. 3762, February 9, 1988. Coordinates used for Channel 231C2 at Germantown are 35-02-12, 89-47-10. Coordinates used for Channel 235A at Ripley are 35-47-58, 89-29-28. With this action, the proceeding is terminated.

DATES: Effective September 22, 1989; the window period for filing applications on Channel 230A at Gosnell, Arkansas, will open on September 25, 1989, and close on October 25, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Ruger, Mass Media Bureau, (202) 632-6302. Questions related to the window application filing process at Gosnell, Arkansas, should be addressed to the Audio Service Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 87-619, adopted July 19, 1989, and released August 8, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended as follows: for Arkansas, add Gosnell, Channel 230A; for Tennessee, under Germantown, remove Channel 232A and add Channel 231C2, and under Ripley, remove Channel 231A and add Channel 235A.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-18888 Filed 8-11-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 210, 215, 216, 217, 225, 228, 229, 231 and 232

[FRA Docket No. RSEP-4, Notice No. 1]

[RIN 2130-AA50]

Amendments to Railroad Safety Regulations

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is issuing this final rule to conform its railroad safety regulations to the provisions of the Rail Safety Improvement Act of 1988, which extends FRA's jurisdiction under certain railroad safety statutes to include all "railroads," not just "common carriers engaged in interstate or foreign commerce by rail."

DATE: This rule is effective August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Mark H. Tessler, Office of Chief Counsel, FRA, Washington, DC 20590 (telephone: 202–366–0628).

SUPPLEMENTARY INFORMATION: FRA draws its railroad safety jurisdiction from two Federal statutory sources, the older safety statutes (Hours of Service Act, 45 U.S.C. 61–64b; Locomotive Inspection Act, 45 U.S.C. 22–34; Safety Appliance Acts, 45 U.S.C. 1 *et seq.*; the Accident Reports Act, 45 U.S.C. 38–43; and the Signal Inspection Act, 49 App. U.S.C. 26) and the Federal Railroad Safety Act of 1970, 45 U.S.C. 421 *et seq.* The Rail Safety Improvement Act of 1988 (RSIA) (Pub. L. 100–342, 102 Stat. 624), enacted on June 22, 1988, made certain basic changes to these statutes. Sections 13 through 17 of the RSIA amended the Safety Appliance Acts, Locomotive Inspection Act, Accident Reports Act, Hours of Service Act, and Signal Inspection Act to eliminate what had been bifurcated federal safety jurisdiction. The older safety laws generally applied to "common carriers engaged in interstate commerce by rail," while the newer Federal Railroad Safety Act of 1970 (Safety Act) applies to all "railroads." RSIA has made FRA's jurisdiction under the older safety laws coextensive with that under the Safety Act by deleting references to "common carrier engaged in interstate or foreign commerce," "carrier," and "common carrier" in the older safety statutes and substituting in their place "railroad" as defined by section 202(e) of the Safety Act. Section 7 of the RSIA amended the Safety Act to define railroad as "all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation." Rather than deleting the numerous references to "common carriers" in the regulations issued under the older safety statutes, these amendments provide a definition of "common carrier" that equates that term with "railroad" under the revised section 202(e) of the Safety Act.

Because these amendments do no more than mirror statutory changes, notice and comment procedures are "impracticable, unnecessary, or contrary to the public interest" within the meaning of section 4(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553 (b)(3)(B). Public comment is unnecessary because, in making these technical amendments to give effect to the new statute, FRA is not exercising discretion in a way that could be informed by public comment. As a consequence, FRA is proceeding directly to a final rule. For similar reasons, there is good cause for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). All interested parties have had notice of the relevant provisions of the RSIA since its enactment on June 22, 1988, more than 30 days prior to the effective date of this rule.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures. It is considered to be non-major under Executive Order 12291 and non-significant under DOT policies and procedures. This rule will not have any direct or indirect economic impact because it will not alter the manner in which any existing substantive or procedural regulation is enforced. The cost of complying with existing substantive regulations is not being increased. The rule merely contains a regulatory formulation of FRA's amended statutory authority and, therefore, preparation of a full regulatory evaluation is not warranted.

Regulatory Flexibility Act

FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic impacts on small units of government, business, or other organizations.

Paperwork Reduction Act

There are no information collection requirements contained in this final rule.

Environmental Impact

FRA has concluded that this final rule will have no significant impact on the environment.

Federalism Implications

This final rule will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

List of Subjects in 49 CFR Parts 210, 215, 216, 217, 225, 228, 229, 231, and 232

Railroad safety.

Therefore, in consideration of the foregoing, Parts 210, 215, 216, 217, 225, 228, 229, 231, and 232, Title 49, Code of Federal Regulations are amended as follows:

PART 210—[AMENDED]

1. Part 210 is amended as follows:

A. The authority citation for Part 210 continues to read as follows:

Authority: Sec. 17, Pub. L. 92–574, 86 Stat 1234 (42 U.S.C. 4916); sec. 1.49(o) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(o).

B. Section 210.3(a) is revised to read as follows:

§ 210.3 Applicability.

(a) Except as provided in paragraph (b) of this section, the provisions of this part apply to the total sound emitted by moving rail cars and locomotives (including the sound produced by refrigeration and air conditioning units that are an integral element of such equipment), active retarders, switcher locomotives, car coupling operations, and load cell test stands, operated by a railroad as defined in 45 U.S.C. 22, under the conditions described in this part and in 40 CFR Part 201.

* * * * *

PART 215—[AMENDED]

2. Part 215 is amended as follows:

A. The authority citation for Part 215 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

B. Section 215.5(f) is revised to read as follows:

§ 215.5 Definitions.

* * * * *

(f) "Railroad" means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

* * * * *

PART 216—[AMENDED]

3. Part 216 is amended as follows:

A. The authority citation for Part 216 continues to read as follows:

Authority: 45 U.S.C. 431, 432, and 438, as amended; 45 U.S.C. 22–34, as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (m).

B. Section 216.1(a)(2) is revised to read as follows:

§ 216.1 Application.

(a) * * *

(2) Locomotive subject to the Locomotive Inspection Act, as amended (45 U.S.C. 22–34).

PART 217—[AMENDED]

4. Part 217 is amended as follows:

A. The authority citation for Part 217 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

B. Section 217.3(b)(2) is revised to read as follows:

§ 217.3 Application.

* * * * *

(b) * * *

(2) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

PART 225—[AMENDED]

5. Part 225 is amended as follows:

A. The authority citation for Part 225 continues to read as follows:

Authority: 45 U.S.C. 38, 42 and 43, as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (m).

B. Section 225.1 is amended by removing the third sentence which reads "Although this part is issued under the authority of both Acts, reliance is primarily based upon the authority of the Federal Railroad Safety Act because of its broader scope."

PART 228—[AMENDED]

6. Part 228 is amended as follows:

A. The authority citation for Part 228 continues to read as follows:

Authority: 45 U.S.C. 61–64b, as amended; 45 U.S.C. 437 and 438, as amended; Pub. L. 100–342; 49 App. U.S.C. 1655(e), as amended; and 49 CFR 1.49 (d) and (m).

B. Section 228.3 is revised to read as follows:

§ 228.3 Application.

(a) Except as provided in paragraph (b), this part applies to all railroads.

(b) This part does not apply to:

(1) A railroad that operates only on track inside an installation which is not part of the general railroad system of transportation; or

(2) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

C. Section 228.5 is revised to read as follows:

§ 228.5 Definitions.

As used in this part:

(a) "Administrator" means the Administrator of the Federal Railroad Administrator or any person to whom he delegated authority in the matter concerned.

(b) "Carrier," "common carrier," and "common carrier engaged in interstate or foreign commerce by railroad" mean "railroad" as that term is defined below.

(c) "Employee" means an individual employed by the common carrier who (1) is actually engaged in or connected with the movement of any train, including a person who performs the duties of a hostler, (2) dispatches, reports, transmits, receives, or delivers orders pertaining to train movements by the use of telegraph, telephone, radio, or any other electrical or mechanical device, or (3) is engaged in installing, repairing or maintaining signal systems.

(d) "Railroad" means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

PART 229—[AMENDED]

7. Part 229 is amended as follows:

A. The authority citation for Part 229 continues to read as follows:

Authority: 45 U.S.C. 22–34, as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (g).

B. Section 229.3 is revised to read as follows:

§ 229.3 Applicability.

(a) Except as provided in paragraph (b), this part applies to all standard gage railroads.

(b) This part does not apply to:

(1) A railroad that operates only on track inside an installation which is not part of the general railroad system of transportation; or

(2) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

C. Section 229.5 is amended by revising paragraph (c), redesignating paragraph (1) as paragraph (m) and adding a new paragraph (1) as follows:

§ 229.5 Definitions.

* * * * *

(c) "Carrier" means "railroad," as that term is defined below.

* * * * *

(l) "Railroad" means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

* * * * *

PART 231—[AMENDED]

8. Part 231 is amended as follows:

A. The authority citation for part 231 continues to read as follows:

Authority: 45 U.S.C. 2, 4, 6, 8, 10, and 11–16, as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (g).

B. Section 231.0 is revised to read as follows:

§ 231.0 Applicability and penalties.

(a) Except as provided in paragraph (b), this part applies to all standard gage railroads.

(b) This part does not apply to:

(1) A railroad that operates only on track inside an installation which is not part of the general railroad system of transportation; or

(2) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

(c) As used in this part, "carrier" means "railroad," as that term is defined below.

(d) "Railroad" means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-

haul rail passenger service in a metropolitan or suburban area, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

(e) Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See Appendix A to this part for a statement of agency civil penalty policy.

PART 232—[AMENDED]

9. Part 232 is amended as follows:

A. The authority citation for part 232 continues to read as follows:

Authority: 45 U.S.C. 1, 3, 5, 6, 8–12, and 16, as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (g).

B. Section 232.0 is revised to read as follows:

§ 232.0 Applicability and penalties.

(a) Except as provided in paragraph (b), this part applies to all standard gage railroads.

(b) This part does not apply to:

(1) A railroad that operates only on track inside an installation which is not part of the general railroad system of transportation; or

(2) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

(c) As used in this part, "carrier" means "railroad," as that term is defined below.

(d) "Railroad" means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

(e) Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

Issued in Washington, DC, on August 7, 1989.

Susan M. Coughlin,

Acting Administrator.

[FR Doc. 89–18906 Filed 8–11–89; 8:45 am]

BILLING CODE 4910-06-M

Federal Highway Administration

49 CFR Part 383

[FHWA Docket No. MC–89–13]

RIN 2125–AB68

Commercial Driver's License Program; Limited Waiver For State of Alaska

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The State of Alaska has sought, and the FHWA hereby grants, a waiver from compliance with certain provisions of 49 CFR part 383 for drivers in isolated sections of Alaska. The limited waiver granted by the FHWA extends to those commercial motor vehicle (CMV) operators in the State of Alaska who operate exclusively over roads that meet *both* of the following criteria.

(1) Such roads are not connected by land highway or vehicular way to the land-connected State highway system; and

(2) Such roads are not connected to land highway or vehicular way with an average daily traffic volume greater than 499.

With respect to drivers satisfying the above criteria, the FHWA grants Alaska a waiver from the following specific portions of 49 CFR part 383;

(1) The specifications in subpart H for knowledge test procedures and methods;

(2) All requirements for driving skills tests; and

(3) The requirement for a photograph on the commercial driver's license (CDL) in § 383.153(a)(4).

CDLs issued pursuant to this waiver must restrict the driver from operating a CMV over roads other than those specified above, and must also carry a restriction so that the license is not valid for use in CMVs outside the State of Alaska.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Jill L. Hochman, Office of Motor Carrier Standards, (202) 366–4009, or Mr. Paul L. Brenan, Office of the Chief Counsel, (202) 366–1352, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: In the preamble to the final rule on commercial driver testing and licensing standards (53 FR 27632, July 21, 1988), the FHWA noted "the existence [in Alaska] of many localities that, although physically detached from the State highway network and from driver testing facilities, still have CMVs and operators subject to this final rule * * * The waiver process as prescribed in the Act and in 49 CFR 383.7 would be the most appropriate forum * * * for this specific local problem."

Accordingly, on January 10, 1989, the State of Alaska petitioned the FHWA for a waiver from selected provisions of 49 CFR part 383 for drivers operating exclusively in areas that are so remote as to be connected neither to the land-connected State highway system, nor to any highway or vehicular way with an average daily traffic volume greater than 499. The State's petition cited the practical obstacles that would prevent driver applicants from bringing representative vehicles from remote areas to test sites, given the vast distances, inhospitable terrain, and lack of highway connectivity so prevalent in the State. The petition contained further evidence supporting the waiver request.

In a notice of petition and request for comment published in the Federal Register on April 28, 1989 (at 54 FR 18311), the FHWA found that the Alaska petition had merit, and proposed to grant this waiver subject to limitations regarding the provisions to be waived, the class of drivers covered, and the restrictions to be placed upon the licenses affected.

Having received no comments on its proposal, the FHWA hereby determines that this waiver, exactly as proposed, is not contrary to the public interest and does not diminish the safe operation of CMVs.

The waiver pertains only to the following provisions of 49 CFR Part 383:

(1) *Knowledge Tests.* For the class of drivers covered, the State is waived from the requirement that the knowledge tests meet the standards for testing procedures and methods contained in subpart H of part 383. However, knowledge tests fulfilling the content requirements of subpart G continue to be required of *all* applicants.

(2) *Skills Tests.* For the class of drivers covered, the State is permitted to omit the driving skills test.

(3) *Photo License.* For the class of drivers covered, the State is waived from § 383.153(a)(4), and no photograph of the driver is required.

To be exempted from the above provisions of 49 CFR part 383, drivers must operate *exclusively* over roads that meet *both* of the following criteria:

(1) Such roads are not connected by land highway or vehicular way to the land-connected State highway system; and

(2) Such roads are not connected to any highway or vehicular way with an average daily traffic volume greater than 499.

In addition, any commercial license issued under the terms of this proposed waiver must carry two restrictions:

(1) Holders may not operate CMVs over roads other than those specified above; and

(2) The license is not valid for CMV operation outside the State of Alaska.

The April 28, 1989 notice of petition contained the rationale for specific provisions of this waiver and included as an appendix the test of the petition filed by the State of Alaska on January 10, 1989.

When the promulgation of all requirements of the Act is completed, FHWA intends to amend the regulation to reflect this waiver.

Authority: Title XII of Pub. L. 99–570, 100 Stat. 3207–170; 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48.

Issued on August 7, 1989.

R.D. Morgan,

Executive Director.

[FR Doc. 89–18989 Filed 8–11–89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

RIN 1018–AB30

Export of American Alligators Harvested in 1989 Through 1991 Harvest Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain animal and plant species. As a general rule, exports of animals and plants listed on Appendix II of the Convention may occur only if a Scientific Authority has advised a permit-issuing Management Authority that such exports will not be detrimental to the survival of the species, and if the Management Authority is satisfied that the animals or plants were not obtained in violation of laws enacted for their protection. Based on documentation presented for consideration by the Convention Parties in 1983, the United States Fish and Wildlife Service (Service) has determined that the American alligator is listed on Appendix II for reasons of similarity in appearance under Article II.2(b) of the Convention as well as the potential threat to the species survival under Convention Article II.2(a).

On February 28, 1989, the Service published a notice (54 FR 8365) proposing to grant export approval for legally taken American alligators, alligator meat, parts, and products from previously approved States, plus the addition of Alabama and Mississippi, for the 1989–1991 harvest seasons.

This document announces the final findings and rule by the U. S. Scientific Authority and Management Authority that approves the export of alligators harvested during the 1989–1991 taking seasons from certain States previously approved for such export for the 1988–1988 harvest seasons plus the addition of Alabama and Mississippi. This rule also stipulates that management procedures previously established for this species be continued.

DATED: August 14, 1989.

ADDRESSES: Please send correspondence concerning this rule to the Office of Scientific Authority; U.S. Fish and Wildlife Service; Mailstop 725–Arlington Square, 18th and C Streets NW, Washington, DC 20240. Materials received will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, at the Office of Scientific Authority, Room 725, Arlington Square, 4401 North Fairfax Drive, Arlington, VA, or at the Office of Management Authority, Room 430, Arlington Square, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Scientific Authority Finding—Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Room 725, ARLSQ, 18th and C Streets NW., Washington, DC 20240, telephone (703) 358–1708.

Management Authority Findings—Mr. Ronald Singer, Office of Management Authority, U.S. Fish and Wildlife Service, Room 400, ARLSQ, 18th and C Streets NW., Washington, DC 20240, telephone (703) 358–2095.

SUPPLEMENTARY INFORMATION:

Beginning in 1977, the Service has employed the rule making process to develop and issue decisions on the export of certain species under the Convention. The reason for this approach is that it is more effective to issue general decisions on the export of all specimens harvested in a given State and season than to issue such decisions separately for each permit application. This is true especially for Convention Appendix II species that are frequently exported, such as the American alligator. On September 2, 1988, (51 FR 31130) and August 15, 1988, (53 FR 30682) the Service published rules granting export approval for American alligators (*Alligator mississippiensis*) from specified States for the 1988–1988 harvest seasons.

On February 28, 1989, the Service published a notice (54 FR 8365) proposing to continue such export approval for the 1989–1991 harvest seasons from these same States plus the addition of Alabama and Mississippi. The purpose of this announcement and rule is to allow the export of legally taken American alligators (hides, meat, parts, and products) for the 1989–1991 harvest years from previously approved States plus the addition of Alabama and Mississippi.

Scientific Authority Findings

Article IV of CITES requires that an export permit for any specimen of a species included in Appendix II shall only be granted when certain findings have been made by the Scientific Authority and Management Authority of the exporting country. The Scientific Authority must advise "that such export will not be detrimental to the survival of that species" before an export permit

can be granted by the Management Authority.

The American alligator is listed in Appendix II to respond both to problems of potential threat to the survival of American alligators (Convention Article II.2(a)) and its similarity in appearance to other crocodilians that are threatened with possible extinction (Convention Article II.2(b)).

The marking of all hides harvested with specified tags and the marking and documentation of shipments of meat and parts, required prior to the issuance of export permits by the Service, is considered sufficient to address the issue of identification due to the similarity in appearance between American alligators and other listed species (see Management Authority findings for export program and tag specifications).

Inasmuch as the alligator is also listed because of a potential threat to its survival, the Service must determine if exports will not be detrimental to the survival of the American alligator itself.

Guidelines developed for Scientific Authority advice on exports of American alligators under the provisions of Convention Article II.2(a), are summarized as follows:

A. Minimum requirements for biological information:

(1) Information on the condition of the population, including trends (the method of determination to be a matter of State choice), and population estimates where such information is available;

(2) Information on total harvest of the species;

(3) Information on distribution of harvest; and

(4) Habitat evaluation.

B. Minimum requirements for a management program:

(1) There should be a controlled harvest, methods and seasons to be a matter of choice by the State of origin;

(2) All hides, meat, and parts should be registered and marked; and,

(3) Harvest level objectives should be determined annually by the State of origin.

The Service's Office of Scientific Authority finds that current information on population status, management, and harvest reviewed concerning all the States in question, fully support a finding that the export of alligators taken in accordance with Service-approved State regulations during the 1989–1991 harvest seasons will not be detrimental to the survival of the species in the States receiving export approval. Tagging of hides and the sealing and marking of meat and parts by Service-approved States of origin, and documentation of shipments by the U.S. Management Authority provide assurance that export will not reduce the effectiveness of the Convention in controlling trade in other species of crocodilians. Documents containing information that provided the basis for the Service's findings are available for public inspection at the Office of Scientific Authority (address given above).

Management Authority Findings

Exports of Appendix II species are to be allowed under the Convention only if the Management Authority is satisfied that the specimens were not obtained in contravention of laws enacted for the protection of the involved species. The Service, therefore, must be satisfied that alligator hides, meat, parts, or products were not obtained in violation of State or Federal law in order to allow export. Evidence of legal taking for American alligator is provided by Service-approved State hide tagging and container sealing and marking programs. The Service annually contracts for the manufacture and delivery of special Convention animal hide tags for export-approved States to apply to legally taken animal skins.

In a Federal Register notice, published on April 24, 1986 (51 FR 15548), the Service announced the introduction, use, and protection of a US–CITES tag symbol. This symbol appears on every Service-supplied export tag to provide further evidence of legal export for certain Convention Appendix II listed species.

Guidelines developed for Management Authority findings on State American alligator export programs, slightly modified from the 1986–1988 rule, under provisions of Convention Article IV.2 (b), are summarized as follows:

(1) Current State alligator trapping and tagging, meat and parts processing, and shipping regulations must be on file with the Office of Management Authority (OMA);

(2) Sample reporting forms, export tag, meat and parts packing seal, parts tag, and description of standard meat/parts container must be on file with OMA;

(3) The export tag must be durable, permanently locking, and must show U.S.-CITES logo, State of origin, season of take, species, and be serially unique;

(4) The export tag, meat seal, and parts tag must be applied by the State to all hides, meat, or parts, within a minimum time after take or processing, as specified by State law, and such time should be as short as possible to minimize movement of untagged hides, meat, or parts;

(5) The tags or seals must be permanently attached to the hide or container, as mandated by Service-approved State programs;

(6) All alligator harvesters and processors must be registered by the State of origin;

(7) All hide, meat, and parts dealers must be registered by the State of origin;

(8) All State-registered alligator harvesters, processors, and dealers must make available their alligator harvest and commerce data to the State on at least an annual basis, as specified by the State;

(9) State-registered alligator dealers and licensed harvesters authorized by the State to attach export tags to the hides, in a program approved by the Service, must account for all tags received and must return unused tags to the State within a specified time after the harvest period closes;

(10) Fully manufactured alligator hide products may be exported from the United States when the State-applied Convention export tags, removed from hides contained in the manufactured products, are surrendered to the Service prior to export; and

(11) Alligator meat and parts may be exported from the United States in State-standard containers that are sealed and marked in accordance with the State's export program, as approved by the Service.

The Service's Office of Management Authority has reviewed the alligator export tagging programs of certain previously approved States and the new States (Alabama and Mississippi), and has found that these programs fully meet the guidelines listed above. Documents containing information that provided the basis for the Service's findings are available for public inspection at the Office of Management Authority (address given above).

The Service hereby approves exports of 1989–1991 harvested alligators, hide, meat, and parts in the States receiving export approval on the grounds that both Scientific Authority and Management Authority export requirements are satisfied.

Multi-year Findings

The Service has monitored existing State programs for the American alligator in most of the previously approved States for many years and expects that these States will continue to satisfy Convention requirements. To ensure that Service-approved States maintain successful export programs and that export is not detrimental to the survival of the species, the Service plans to continue annual monitoring of State management and export marking programs through evaluation of State program information and export reports from U.S. ports. Annual State program reports must be available to the Office of the Management Authority (address given above) no later than May 31 of each year.

States seeking for the first time to establish a regular harvest program for alligators should begin working with the Service early enough in order to develop their alligator programs and then apply for Convention export approval no later than January 2 of the year they plan to initiate such a program.

Public Comment

No comment was received from any source concerning this rule.

This rule is issued under authority of the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 et seq.). The primary author is Mr. S. Ronald Singer, Office of Management of Authority, U.S. Fish and Wildlife Service.

Note: The Department had previously determined that the export of alligators of various States taken in the 1986–1988 harvest seasons was not a major Federal action that would significantly affect the quality of expects that these States will continue to satisfy Convention requirements. To ensure that Service-approved States maintain successful export programs and that export is not detrimental to the survival of the species, the Service plans to continue annual monitoring of State management and export marking programs through evaluation of State program information and export reports from U.S. ports. Annual State program reports must be available to the Office of the Management Authority (address given above) no later than May 31 of each year.

States seeking for the first time to establish a regular harvest program for alligators should begin working with the Service early enough in order to develop their alligator programs and then apply for Convention export approval no later than January 2 of the year they plan to initiate such a program.

This rule extends export approval for the same States that were approved for export in previous years and extends this approval for the 1989–1991 harvest seasons.

The findings announced in this notice are effective immediately. It is the Service's opinion that a delay in the effective date of the regulations after this final rulemaking is published could adversely impact the species by preventing the international marketing of the hides and meat (where commercial harvest is an important part of the State conservation programs) thereby reducing the incentive for takers or dealers to comply with State requirements in the approved States.

The Service, therefore, finds that "good cause" exists, within the terms of U.S.C.(d)(3) of the Administrative Procedure Act, for these regulations to take effect immediately under 5 U.S.C.(d)(1).

Public Comment

No comment was received from any source concerning this rule.

This rule is issued under authority of the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 et seq.). The primary author is Mr. S. Ronald Singer, Office of Management of Authority, U.S. Fish and Wildlife Service.

Note: The Department had previously determined that the export of alligators of various States taken in the 1986–1988 harvest seasons was not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act, therefore, the preparation of an Environmental Impact Statement was not required (49 FR 1058). Because these proposed findings do not significantly differ from the prior export findings, the previous determination not to prepare an Environmental Impact Statement on export of alligators taken during the 1986–1988 harvest seasons in certain States (51 FR 31130) remains appropriate. The Department had also previously determined that such harvest was not a major rule under Executive Order 12291 and did not have a significant economic affect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). Because the existing rule treats exports on a State-by-State basis and proposes to approve export in accordance with a State management/export program, the rule will have little effect on small entities in and of itself. This rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 50 CFR Part 23

Wildlife, Imports, Exports, Plants (agriculture), Endangered and threatened wildlife, Endangered and threatened plants, Animals, Fish, Transportation, Marine mammals, Forests and forest products, Foreign officials, Treaties, and Foreign trade.

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, the Service proposes to amend part 23 of title 50, Code of Federal Regulations, as set forth below:

PART 50—[AMENDED]

1. The authority citation for 50 CFR part 23 is revised to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna an Flora, TIAS 8249; and Endangered Species Act of 1973, as amended (16 U.S.C. 1531).

Subpart F—Export of Certain Species

2. In § 23.57 revise paragraph (a) and (b) as follows:

§ 23.57 American alligator (Alligator mississippiensis).

* * * * *

(a) 1979–1991 harvest (wild and capitive bred for each year unless noted).

	AL	FL	GA	LA	MS	SC	TX
1979	–	+	–	+	–	–	–
1980	–	+	–	+	–	–	–
1981	–	+	–	+	–	–	–
1982	–	+	–	+	–	–	–
1983	–	+	–	+	–	–	–
1984	–	+	–	+	–	–	+
1985	–	+	–	+	–	–	+
1986	–	+	–	+	–	–	+
1987	–	+	–	+	–	–	+
1988	–	+	+	+	–	+	+
1989	+	+	+	+	+	+	+
1990	+	+	+	+	+	+	+
1991	+	+	+	+	+	+	+

Legend: + export approved; – export not approved.

(b) Condition on export:

(1) Each hide must be clearly identified by a durable, permanently locking Convention export tag bearing a legend showing the U.S. CITES logo, State of origin, species, season of take, a unique serial number, and be attached by the State under conditions approved by the Service.

(2) Fully manufactured hide products may be exported from the United States when State-applied export tags, removed from hides contained in the products, are surrendered to the Service prior to export.

(3) Meat from legally harvested and tagged alligators shall be packed in State-uniform containers, permanently sealed and labeled as required by State law. Bulk meat containers shall be marked with a State "parts tag" or "bulk meat tag" permanently attached indicating, at a minimum, State of origin, year of take, species, original hide export tag number, weight of meat in the container, and identification of State licensed processor or packer.

(4) Large individual parts shall have a "parts tag" permanently attached, while smaller parts may be packed with a "parts tag" permanently attached to the sealed package. "Parts tags" shall supply the same information as described for such tags used to mark alligator meat.

(5) Alligator skulls shall carry a "parts tag" and also by physically marked with the number of the original U.S.-CITES export tag used for the hide of that individual, and other markings, as required by State law.

Dated: July 10, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife.

[FR Doc.89-18909 Filed 8-13-89; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 54, No. 155
Monday, August 14, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

Federal Home Loan Bank Board

12 CFR Part 584

[89-2179]

Transactions With Affiliates; Extension of Time Period for Board Action on Outstanding Proposal

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule; extension of time period for Board action.

SUMMARY: Pursuant to its regulatory review procedures, *see* Board Res. No. 88-269, 53 FR 13156 (April 21, 1988), the Federal Home Loan Bank Board ("Board") hereby gives notice that it is extending the time period for possible action by the Board or any successor agency on the following outstanding proposed regulation as outlined in **SUPPLEMENTARY INFORMATION.** The Board is taking this action in order to allow adequate time for consideration of a number of complex issues raised by this proposal. It is not soliciting additional comments on this proposal.

DATE: October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Hoyle, Paralegal, Specialist, (202) 906-7135, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552 or the appropriate contact persons listed in the referenced **Federal Register** document.

SUPPLEMENTARY INFORMATION: Although the comment period on the proposal on Transactions with Affiliates, adopted by the Board on June 2, 1988; 53 FR 21838 (June 10, 1988), has been closed for more than six months, the Board still has the proposal under active consideration for possible further action. The Board is hereby extending the time for possible final action by the Board or any successor agency on this proposal until sixty days after the enactment of the legislation currently pending regarding the regulation of the thrift industry.

The Board notes that this action does not constitute a representation that the Board or any successor agency will take final action with respect to this proposal, only that it may do so within this extension of time. Moreover, this action carries no implication whatsoever with respect to the Board's view of the merits of the proposal.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-18785 Filed 8-11-89; 8:45 am]

BILLING CODE 6725-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-106-AD]

Airworthiness Directives; McDonnell Douglas Model DC 10-30, -30F, -40, and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC 10-30, -30F, -40, and KC-10A (Military) series airplanes, which currently requires that all landing gear brakes be inspected for wear, replaced if the wear limit prescribed in the existing AD are not met, and modification of short piston sleeve brakes to long piston sleeves brakes. This action would require that all long piston sleeve brakes be modified, and that all landing gear brakes be inspected for wear and replaced if the new wear limits prescribed in this amendment are not met. This proposal is prompted by further testing and analysis of the brakes, which revealed that the wear limits specified in the existing AD and the long piston sleeve brakes are inadequate to provide enough brake mass to accomplish a maximum energy rejected takeoff (RTO) stop. This condition, if not corrected, could result in the loss of the landing gear brake effectiveness.

DATE: Comments must be received no later than October 2, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-106-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98166. The applicable service information may be obtained from Douglas Aircraft Company, P.O. Box 1771, Long Beach, California 90801, ATTN: Manager, Service Changes, Mail Code 73-30. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Edward S. Chalpin, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-131L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5335.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to

Docket Number 89–NM–106–AD." The post card will be date/time stamped and returned to the commenter.

Discussion: On September 16, 1988, the FAA issued AD 88–16–02R1, Amendment 39–6034 (53 FR 37542; September 27, 1988), to repure that all landing gear brakes be inspected for wear and replaced if the wear limit prescribed in that AD were not met, and that all short piston sleeve brakes be modified. That action was prompted by testing and analysis of the brakes, which revealed that existing brake wear limits and short piston sleeve brakes are inadequate to provide enough brake mass to accomplish a maximum energy rejected takeoff (RTO) stop. This condition, if not corrected, could result in the loss of the landing gear brake effectiveness.

Since issuance of that AD, additional dynamometer testing showed that piston unporting can occur at speeds higher than previously estimated. These tests provided information that had been previously extrapolated and estimated in determining brake wear limits, design lives, and characteristics. Unporting of the pistons would render the brake unusable. Consequently, the FAA has determined that a revision of the brake wear limits to a more stringent dimension is needed, and, as final action, installation of extra-long piston sleeves in the brakes with an adjusted wear limit is warranted.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 32–218, dated March 17, 1989, which describes procedures for inspection of all landing gear brakes for a prescribed wear limit and modification of landing gear brakes by replacing existing long piston sleeves with extra-long sleeves.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection of all landing gear brakes for wear and replacement if the new wear limits are not met, and modification of main landing gear brakes to replace long piston sleeves with extra-long piston sleeves, in accordance with the service bulletin previously described.

There are approximately 160 Model DC–10–30, –30F, –40, and KC–10A (Military) series airplanes of the affected design in the worldwide fleet. It is estimated that 128 airplanes of U.S. registry would be affected by this AD, that it would take approximately 19 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. There is no cost for the modification parts. Based on this figures, the total cost impact of the AD on U.S operators is estimated to be $97,280.

The regulations proposed herein would not have sustantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 88–16–02R1, Amendment 39–6034 (53 FR 37542; September 27, 1988), with the following new airworthiness directive.

McDonnell Douglas: Applies to Model DC–10–30, –30F, –40, and KC–10A (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of main landing gear brake effectiveness, accomplish the following:

A. Within 90 days after October 14, 1988 (effective date of Amendment 39–6034), replace all Goodyear/Loral Systems brakes, part number 5000758–2, –3, and –5 with Goodyear/Loral Systems brakes, part number 5000758–4, –6, or –10. The maximum brake wear limit is 0.75 inch.

B. Within 90 days after October 14, 1988 (effective date of Amendment 39–6034), inspect the brakes for wear. Any brake that is worn more than 0.75 inch must be replaced, prior to further flight, with one within this limit. These limits must be maintained until the requirements of paragraphs D. and E., or F. and G., below, are accomplished.

C. Within 90 days after October 14, 1988 (effective date of Amendment 39–6034), incorporate the 0.75 inch brake wear limit into the FAA-approved maintenance inspection program.

D. Within 30 days after the effective date of this amendment, inspect the brakes for wear. Any brake worn more than 0.50 inch must be replaced, prior to further flight, with one within this limit.

E. Within 30 days after the effective date of this amendment, incorporate the 0.50 inch brake wear limit into the FAA-approved maintenance inspection program.

F. Within 180 days after the effective date of this amendment, modify and replace all Goodyear/Loral Systems brakes, part numbers 5000758–4, –6, or –10, or any brake modified in accordance with AD 88–16–02R1, Amendment 39–6034, paragraphs C.2. or D.2., with new extra-long piston sleeves and dust seal boots, and reidentify them as –4R, –6R, and –10R assemblies, respectively, in accordance with Douglas Aircraft Company DC–10 Service Bulletin Number 32–218, dated March 17, 1989. For Goodyear/Loral Systems part numbers 5000758–4R, –6R, and –10R, the maximum brake wear limit is 0.90 inch.

G. When the modifications required by paragraph F., above, are accomplished, incorporate the 0.90 inch brake wear limit in the FAA-approved maintenance inspection program.

H. An alternate means of compliance or adjustment of the compliance time which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Certification Office, FAA, Northwest Mountain Region.

Note—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Douglas Aircraft Company, P.O. Box 1771, Long Beach, California 90801, ATTN: Manager, Service Changes, Mail Code 73–30. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on August 3, 1989.

Darrell M. Pederson,

Acting Manager Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89–18911 Filed 8–11–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–ASW–29]

Airworthiness Directives; Sikorsky Model S–61 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require a one-time inspection and measurement of each bifilar attachment bolt installation for clearance and a one-time inspection for cracks around each bifilar attachment hole in the main rotor upper hub plate on Sikorsky Model S–61 series helicopters. The proposed AD is needed to detect a cracked main rotor upper hub plate, which could result in the loss of the helicopter.

DATE: Comments must be received on or before September 28, 1989.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Rules Docket, Office of the Assistant Chief Counsel, FAA, Fort Worth, Texas 76193–0007, or delivered in duplicate to the Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Room 158, Building 3B, Forth Worth, Texas. Comments must be marked: Docket No. 89–ASW–29.

Comments may be inspected at the above location between the hours of 8:00 a.m. and 4:30 p.m. weekdays, except federal holidays.

The AD-related material may be obtained from Sikorsky Aircraft Division of United Technologies Corporation, Commercial Customer Service Department, 6800 Main Street, Stratford, CT 06601–1381.

FOR FURTHER INFORMATION CONTACT: Donald F. Thompson, Airframe Branch, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7113.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before any final action is taken on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Office of the Assistant Chief Counsel for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 89–ASW–29. The postcard will be date/time stamped and returned to the commenter.

The FAA has received reports of cracks occurring in Sikorsky S–61 main rotor upper hub plates starting from the bifilar attachment bolt hole. The cause of the cracking is attributed to improper clearance between the bifilar lug and main rotor hub. The excessive clearance which is beyond the recommended drawing clearance allows the bifilar attachment bolt to preload the upper hub plate walls, thereby causing premature cracking in the hub attachment hole. Since this condition is likely to exist or develop on other helicopters of the same type design. The proposed AD would require a one-time inspection for clearance of the bifilar to upper plate attachment and a one-time inspection of the main rotor upper hub plate for cracks which start from any of the five bifilar attachment bolt holes on Sikorsky Model S–61 series helicopters.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation would only involve 32 aircraft at an approximate cost of $240 per aircraft for the initial bifilar lug clearance check and $80 per aircraft for the inspection for cracking around the five bifilar attachment holes. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

PART 39—AIRWORTHINESS DIRECTIVES

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

2. Section 39.13 is amended by adding the following AD:

Sikorsky Aircraft: Applies to Sikorsky Model S–61 series helicopters certificated in any category, equipped with Part Number (P/N) S6110–23300 main rotor head. (Docket No. 89–ASW–29.)

Compliance is required within the next 150 hours' time in service after the effective date of this AD, unless already accomplished.

To prevent possible failure of the main rotor hub upper plate, which could result in the loss of the helicopter, accomplish the following:

(a) Conduct a one-time inspection of the main rotor head, P/N S6110–23300, installed with a bifilar assembly, P/N S6112–23039, as follows:

(1) Remove main rotor fairing to provide access to the upper hub arms.

(2) Loosen the bifilar attachment bolt (NAS630–84) and nut (EB108) a minimum of two turns, one bolt at a time.

(3) Using a 0.010–inch feeler gage or equivalent, insert tip of feeler gage between washer stackup and bifilar lug. Accomplish this check on both sides of lug.

(i) If tip of feeler gage does not contact shank of attachment bolt, washer stackup and lug clearance are acceptable. Torque attachment nut to 1,690 inch-pounds.

(ii) If tip of feeler gage contacts shank of attachment bolt, reshim bifilar support assembly to provide a 0.000 to 0.004 inch clearance. Torque attachment nut to 1,690 inch-pounds.

Note: The S–61 maintenance manual contains shimming instructions.

BEST COPY AVAILABLE

(4) Repeat the requirements of paragraphs (a)(2) and (3) individually on the four remaining hub arms for each bifilar support assembly attachment hardware.

(5) Reinstall main rotor fairing.

(b) Conduct a visual inspection for cracks in area of the five main rotor hub upper plate arm bifilar attachment bolt holes. Conduct a visual inspection for cracks on the outside surfaces of each of the five hub arms, adjacent to the bifilar attachment holes. The rotor head does not require disassembly for these inspections.

(1) If a crack indication is found by the visual inspection, clean immediate area and reinspect using a dye penetrant or equivalent inspection method.

(2) If a crack is verified, remove main rotor hub assembly prior to further flight and replace with an airworthy component.

(c) Upon request, an alternate means of compliance which provides an equivalent level of safety to the requirements of this AD may be used when approved by the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7118.

(d) Upon submission of substantiating data by an owner or operator through an FAA Aviation Safety Inspector, the manager of the Boston Aircraft Certification Office may adjust the compliance time specified in this AD.

Note: Sikorsky Aircraft Co. Alert Service Bulletin No. 61610-46, dated February 7, 1989, pertains to this AD.

Issued in Fort Worth, Texas, on August 4, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89-18912 Filed 8-11-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 355

[Docket No. 90390-9096]

Countervailing Duties

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of proposed rulemaking and extension of time for public comments.

SUMMARY: The International Trade Administration is extending the time for the submission of comments on regulations codifying the methodology used to determine the existence and value of countervailable subsidies.

DATE: Written comments will be considered if received not later than September 5, 1989.

ADDRESS: Address written comments (10 copies) to Eric I. Garfinkel, Assistant Secretary for Import Administration, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Comments should be addressed: Attention: Notice of Proposed Rulemaking/Amendments to Countervailing Duty Regulations. Each person submitting a comment should include his or her name and address, and give reasons for any recommendation.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Deputy Chief Counsel for Import Administration, Office of the Chief Counsel for Import Administration, (202) 377-1411.

SUPPLEMENTARY INFORMATION: On May 31, 1989 (54 FR 23366), the International Trade Administration ("ITA") published a Notice of Proposed Rulemaking and Request for Public Comments concerning the promulgation of regulations codifying the methodology used to determine the existence and value of countervailable subsidies. The deadline for public comments, as clarified in a subsequent notice of June 16, 1989 (54 FR 25658), was July 31, 1989.

As the July 31 deadline drew near, the ITA received many oral, and some written, requests for an extension of time in which to submit comments. The amount of additional time sought varied from a few days to two months. Although our initial inclination was to deny such requests, because of the importance of these regulations, the broad interest in them which was shown, and the many useful comments we have received, we have concluded that it would be in the best interests of the ITA and the public to grant a limited extension of the public comment period. Accordingly, we are extending the public comment period until September 5, 1989.

We extend our appreciation to those persons who met the original July 31 deadline. So that they might not be disadvantaged, those persons who already submitted comments on the proposed rules may have until September 5, 1989, in which to submit additional comments. Any person submitting additional comments should indicate whether such comments are a supplement to, or a substitute for, that person's original submission. In this regard, comments submitted in connection with this rulemaking are available for public inspection in the ITA's Central Records Unit, Room B-099.

Dated: August 4, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-18872 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

TRIN 0960-AB96

[Regulations No. 4 and 16]

Disability Insurance and Supplemental Security Income; Mental Disorders in Children

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: These proposed amendments revise the medical criteria for evaluating mental disorders of children under age 18 for the disability programs in title II and title XVI of the Social Security Act. The revisions reflect advances in medical knowledge, treatment and methods of evaluating mental disorders in children and will provide up-to-date medical criteria for use in the evaluation of disability claims based on childhood mental disorders.

DATE: To be sure that your comments are considered, we must receive them no later than October 13, 1989.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21203, or delivered to the Office of Regulations, Social Security Administration, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, telephone 301-965-1759.

SUPPLEMENTARY INFORMATION: We are proposing a revision of the mental disorders listings for children. The medical criteria for evaluating mental disorders in children are found in 112.00 of Part B of the Listing of Impairments in

Appendix 1 of Subpart P of Part 404 of title 20 of the Code of Federal Regulations (CFR). Appendix 1 is divided into Part A and Part B. The criteria in Part A apply mainly to evaluating impairments of adults, but may be applied in evaluating impairments in children under age 18 if the disease process has a similar effect on adults and children. Part B of Appendix 1 contains medical criteria for the evaluation of impairments of children under age 18, where the criteria in Part A do not give appropriate consideration to the particular disease process in childhood. Part B was initially included only in Appendix 1 of Subpart I of Part 416 in 1977, subsequent to the enactment of the Supplemental Security Income Program. While Part B applies mainly to claims by children for Supplemental Security Income benefits based on disability under title XVI, it also applies to some claims for disability insurance benefits under title II. In recodifying the title II and title XVI disability regulations on August 20, 1980 (45 FR 55566), we took the medical criteria used in making disability determinations out of Part 416 and placed them only in Appendix 1 of Subpart P of Part 404. This was done to eliminate repetition in the regulations, since the medical criteria contained in Appendix 1 to apply to both the title II and title XVI disability programs. (See 20 CFR 404.1525 and 416.925.)

The proposed revisions serve several purposes. The medical terms used to describe the major mental disorders of childhood and their characteristics and symptoms have been updated to conform to the nomenclature currently used widely by psychiatrists, psychologists, and other mental health professionals. Terminology in the listings is based on that used in the third edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM III) published by the American Psychiatric Association (APA) in 1980. This edition gives a common basis for communication, which is particularly important in evaluating medical reports used in determining disability. The DSM III-Revised, which was published in May 1987 and after these evaluation criteria were developed, does not differ in its applicable terminology.

The proposed listings are also more specifically related to distinct types of mental disorders. Thus, fewer disorders are included under the same listing than are grouped together under the current listings. The result is an increase in the number of listings from four to nine. In the proposed listings, the organization of mental disorders is based on the DSM III which provides a realistic organization in terms of the common characteristics of the mental disorders that are evaluated under a particular listing. The more recently published DSM III-Revised does not differ in its organization.

Since the body of knowledge on the characteristics, treatment and management of mental disorders in children is constantly evolving, the Social Security Administration (SSA) will provide for the ongoing evaluation of the medical criteria for evaluating mental disorders in children to ensure that the criteria reflect the most up-to-date knowledge on those disorders.

The evaluation of mental disorders in children will not require the use of the Psychiatric Review Technique Form (PRTF), as is currently required for the evaluation of adult disorders. The PRTF was designed to assist adjudicators through the sequential evaluation process in adult claims involving mental disorders, which can include assessment of the residual functional capacity. Since evaluation of title XVI disabled child cases and some title II cases involves only a consideration as to whether the claimant is actually engaged in substantial gainful activity or has an impairment which meets or equals a listed impairment and does not consider whether the claimant has the ability to work, utilization of the PRTF in these cases would be unnecessary and inappropriate. Therefore, we are also proposing amendment to §§ 404.1520a and 416.920a to reflect that the PRTF will only be required in evaluating the severity of mental impairments in adults age 18 and over and in children under age 18 where the disease process has a similar effect on adults and younger persons.

The following is a summary of the proposed listings.

112.00 Preface

We are proposing several significant additions to the preface to the mental disorders listings for children under age 18. Proposed Introduction, 112.00A of the preface explains the basic approach used in the listings that follow. It explains that most the listings use a new dual approach which divides each listing into two paragraphs: the first paragraph (the A paragraph) describes the characteristics necessary to substantiate the existence of the mental disorder, while the second paragraph (the B paragraph) describes the applicable restrictions and functional limitations which result from the disorder in children.

In 112.00B of the preface, Need for Medical Evidence, we describe the need for medical evidence to substantial the existence of a medically determinable impairment.

In 112.00C of the preface, Assessment of Severity, we describe in detail the multiple factors in the paragraph B criteria of most listings which pertain to functional limitations and restrictions in various age groups in children. This significant revision in the mental disorders listings has been introduced because mental health professionals consider such factors particularly important in evaluating mental disorders of children. It should be noted that although the items in paragraph B are identical for most listings, the number of items required varies for particular listings.

In 112.00D of the preface, Documentation, we discuss the evidence needed to document mental disorders in children.

In 112.00E. Effect of Hospitalization of Residential Placement, and 112.00F, Effects of Medication, we also include new information relating to mental disorders in children. This material explains that evaluation of mental disorders must include consideration of the fact that medications, hospitalizations, or other highly structured living arrangements may minimize the overt indications of severe chronic mental disorders without necessarily affecting the functional limitations imposed by the disorder. The proposed 112.00F also acknowledges that medications may sometimes produce side effects that add to the functional limitations resulting from mental disorders in children.

112.01 Category of Impairments—Mental

112.02 Organic Mental Disorders

Paragraph A of proposed listing 112.02 contains nine characteristics of these disorders. Proposed paragraph B contains the restrictions or functional limitations used to assess the severity to these disorders.

Mental disorders do not manifest themselves in the same way in children of different ages. Therefore, the proposed paragraph B criteria provide for the assessment of impairment severity for two age groups—age 1 to attainment of age 3 and age 3 to attainment of age 18.

The criteria used to assess impairment severity in the age group of 1 to attainment of age 3 are based upon functional deficits in the following areas: gross and fine motor development, cognitive-communicative function, and social functioning. The

criteria in the age group of 3 to attainment of age 18 use functional deficits in the following areas to assess impairment severity: Cognitive/communicative function; social functioning; personal/behavioral function; and concentration, persistence and pace. To fulfill the requirements of listing 112.02 for either age grouping, it must be demonstrated that the child has functional deficits or restrictions in one of the areas to the degree specified in the paragraph B criteria.

112.03 Psychotic Disorders

The proposed listing groups psychotic conditions that are more closely related than in the current listing. Affective disorders are to be evaluated under proposed listing 112.04. Paragraph A has been revised and the proposed paragraph B has been introduced as discussed in listing 112.02.

112.04 Affective Disorders

In the current organization of the mental disorders listings, affective disorders are evaluated under listing 112.03 (Psychoses of Infancy and Childhood) or listing 112.04 (Functional Nonpsychotic Disorders). The new listing which we are proposing now relates exclusively to affective disorders. In paragraph A of the proposed listing, we describe the characteristics of affective disorders in more detail than they are described in the current listings 112.03 and 112.04. We are introducing paragraph B in the manner previously described for proposed listing 112.02.

112.05 Mental Retardation

Listing 112.05 essentially remains the same with the addition of a fourth criterion. This new criterion, proposed paragraph D, provides for separate assessment of children with an IQ of 60–69 without any coexisting physical or mental impairment but who experience either marked impairment in social functioning or marked impairment in personal/behavioral function.

112.06 Anxiety-Related Disorders

In the organization of the current listings, anxiety-related disorders are grouped with similar mental disorders in a single listing (112.04). Proposed listing 112.06 exclusively covers disorders related to anxiety. Items 3, 4 and 6 in paragraph A of this proposed listing are similar to items covered in the current listing. Four additional items have been added to better identify various characteristics of these disorders. Proposed paragraph B has been introduced as discussed in proposed listing 112.02, but three of the requirements listed in paragraph B must be satisfied for the listing requirements to be fulfilled in listing 112.06.

112.07 Disorders with Physical Manifestations

These disorders are currently evaluated with other nonpsychotic disorders under listing 112.04. This proposed listing relates specifically to nonpsychotic disorders with physical manifestations. Proposed paragraph A adds more detailed characteristic patterns of these disorders to the two now in paragraphs A and E of the current listing 112.04. Proposed paragraph B has been added in the manner previously discussed for proposed 112.02, but three of the requirements listed in paragraph B must be satisfied for the listing requirements to be fulfilled in listing 112.07.

112.08 Personality Disorders

These disorders are currently evaluated under listing 112.04. The proposed listing is a reference listing which refers the evaluator to listing 12.08 of the adult mental disorders listings in part A of the Listing of Impairments. Since personality disorders do not usually manifest themselves until later childhood, the adult mental disorder listing is a more appropriate indicator of disability.

112.09 Autism and Other Pervasive Developmental Disorders

These disorders currently are evaluated under listings 112.02, 112.03, or 112.05 based on the individual case factors. In the proposed listing, paragraph A describes the characteristics of autism or other pervasive developmental disorders. Proposed paragraph B has been added in the manner previously discussed for proposed listing 112.02.

Autism in children is well recognized as a specific, discrete mental disorder and presents its manifestations differently from that which is found in adults. Therefore, a separate listing for children is being proposed.

112.10 Developmental and Emotional Disorders of Infancy (birth to attainment of age 1)

The developmental and emotional evaluation of infants requires special consideration; therefore, a new listing is proposed which more accurately evaluates functional loss in all infants of this age group. The proposed listing is divided into four paragraphs which describe specific criteria which are indicative of severe functional loss in infants.

Other Changes

We are also proposing a technical amendment to listing 12.05D, in Part A of Appendix 1 (adult listings), pertaining to the evaluation of mental retardation and autism in order to clarify that either disorder requires two of the functional limitations to satisfy the listing.

Executive Order 12291

The additional program costs for title XVI will be as follows:

	Fiscal years					Total
	1988	1990	1991	1992	1993	
Program cost ($ in millions)	$4	$10	$16	$22	$27	$79
Admin. Savings			Negligible			$
Additional recipients	2,000	3,000	4,000	6,000	7,000	

The title II program and administrative costs will be negligible. In addition, the Medicaid/Medicare program and administrative costs will be negligible until fiscal years 1992 and 1993 when Federal costs will increase to $3 million per year. Therefore, the Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they affect only a small number of disability claimants under title II and title XVI of the Social Security Act.

Paperwork Reduction Act of 1980

These proposed regulations impose no additional reporting or recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Program Nos. 13.802, Social Security Disability Insurance; 13.807, Supplemental Security Income Program)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and disability insurance

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental security income.

Dated: April 5, 1989.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: May 26, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, Part 404, Subpart P, and Part 416, Subpart I, of Chapter III of Title 20, Code of Federal Regulations is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950 ——)

1. The authority citation for Part 404, Subpart P continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d) through (h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405(a), (b), and (d) through (h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96–265, 94 Stat. 473; secs. 2(d)(2), 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1797 1801, and 1808.

2. Section 404.1520a is amended by revising the second sentence of paragraph (a) to read as follows:

§ 404.1520a Evaluation of mental impairments.

(a) * * * In addition, in evaluating the severity of mental impairments for adults (persons age 18 and over) and in persons under age 18 where the disease process has a similar effect on adults and younger persons, a special procedure must be followed by us at each level of administrative review. * * *

* * * * *

Appendix 1 to Part 404—[Amended]

3. Part A of Appendix 1 (Listing of Impairments) of Subpart P is amended by revising the introductory text of paragraph D of listing 12.05 to read as follows:

A valid verbal, performance, or full scale IQ of 60 to 69, inclusive, or in the case of autism, gross deficits of social and communicative skills, with either condition resulting in two of the following:

4. Part B of Appendix 1 (Listing of Impairments) of Subpart P is amended by revising 112.00, Mental and Emotional Disorders, to read as follows:

112.00 Mental Disorders

A. *Introduction:* The structure of the mental disorders listing for children under age 18 parallels the structure for the mental disorders listings for adults but is modified to reflect the presentation of mental disorders in children. The listings for mental disorders in children are arranged in 9 diagnostic categories: Organic mental disorders (112.02); psychotic disorders (112.03); affective disorders (112.04); mental retardation (112.05); anxiety-related disorders (112.06); disorders with physical manifestation (112.07); personality disorders (112.08); autism and other pervasive developmental disorders (112.09); and developmental and emotional disorders of infancy (112.10).

There are significant differences between the listings for adults and the listings for children. There are disorders found in children that have no real analogy in adults, hence the differences in the diagnostic categories for children. The presentation of mental disorders in children, particularly the very young child, may be subtle and of a character different from the signs and symptoms found in adults. For example, a finding such as an infant's failure to mold or bond with the parent(s) has grave prognostic implications and serves as a finding comparable in severity to the findings that mark mental disorders in adults.

The activities appropriate to children such as learning, growing, playing, maturing, and school adjustment are also different from the activities appropriate to the adult and vary widely in the different childhood stages.

Each listing begins with an introductory statement that describes the syndrome or syndromes addressed by the listing. This is followed (except in listings 112.05, 112.08 and 112.10) by clinical findings (paragraph A criteria), which, if satisfied, lead to an assessment of functional limitations (paragraph B criteria). An individual will be found to have a listed impairment when the criteria of both paragraphs A and B of the listed impairment are satisfied.

The purpose of the criteria in paragraph A is to substantiate medically the presence of a particular mental disorder. Specific signs and symptoms under any of the listings 112.02 through 112.10 cannot be considered in isolation from the description of the mental disorder contained at the beginning of each listing category. Impairments should be analyzed or reviewed under the mental category(ies) indicated by the clinical findings.

Paragraph A of the listings is a composite of clinical findings which are used to substantiate the existence of a disorder and may or may not be appropriate for children at specific developmental stages. However, a range of clinical findings is included in the listings so that no age group is excluded. For example, in listing 112.02A7, emotional lability and crying would be inappropriate criteria to apply to infants and young children; whereas in 112.02A1, developmental arrest, delay or regression, are appropriate criteria for infants and young children. Whenever the adjudicator decides that the requirements of paragraph A of a particular mental listing are satisfied, then that listing should be applied regardless of the age of the child to be evaluated.

The purpose of the paragraph B criteria is to describe functional limitations which are applicable to children. Standardized tests of social or cognitive function and adaptive behavior are frequently available and appropriate for the evaluation of children and, thus, such tests are included in the paragraph B functional parameters. The functional restrictions in paragraph B must be the result of the mental disorder which is manifested by the clinical findings in paragraph A.

We have not included separate C criteria for listings 112.03 and 112.06 as are found in the adult listings because, for the most part, we do not believe that categories like residual schizophrenia or agoraphobia are commonly found in children. However, in individual cases where these disorders are found in children and are comparable to the severity and duration found in adults, the adult 12.03C and 12.06C critiera may be used for evaluation of the cases.

The structure of the listings for Mental Retardation (112.05), Personality Disorders (112.08) and Developmental and Emotional Disorders of Infancy (112.10) is different from that of the other mental disorders. Listing 112.05 (Mental Retardation) contains four criteria, any one of which, if satisfied, will result in a finding that the child's impairment meets the listing. Listing 112.08 (Personality Disorders) is a reference listing referring the evaluator to listing 12.08 of the adult listings. Listing 112.10 (Developmental and Emotional Disorders of Infancy) contains four criteria, any one of which, if satisfied, will result in a finding that the infant's impairment meets the listing.

B. *Need for Medical Evidence:* The existence of a medically determinable impairment of the required duration must be established by medical evidence consisting of signs, symptoms and/or laboratory, psychological or developmental test findings. Psychiatric signs are medically demonstrable phenomena which indicate specific abnormalities of behavior, affect, thought, memory, orientation, development and contact with reality as described by an appropriate medical source. Symptoms are complaints presented by the child. Signs and symptoms generally cluster together to constitute recognizable clinical syndromes (mental disorders) described in paragraph A of the listings. These findings may be intermittent or continuous depending on the nature of the disorder.

C. *Assessment of Severity:* In childhood cases, as with adults, severity is measured according to the functional limitations imposed by the medically determinable mental impairment. However, the range of functions used to assess impairment severity for children varies at different stages of

maturation. The criteria address age-appropriate functional limitations for each age group in some or all of the following areas: motor function, cognitive/communicative function, social function and personal/behavioral function. In most functional areas two separate methods of documenting the required level of severity are: use of standardized tests (where appropriate test instruments are available) and use of clinical findings. The use of standardized tests is the preferred method of documentation if such tests are available.

Newborn and young infants (birth to attainment of age 1) have not developed sufficient personality differentiation to permit formulation of appropriate diagnoses. We have, therefore, assigned listing 112.10 for Developmental and Emotional Disorders of Infancy for the evaulation of mental disorders of such children. Severity of these disorders is based on measures of development in motor, cognitive/communicative and social functions.

In defining the severity of functional limitations, two different sets of paragraph B criteria corresponding to two separate age groupings have been established, in addition to the individual infant listing 112.10. These age groupings are: infants and toddlers (age 1 to attainment of age 3) and children (age 3 to attainment of age 18). However, the following discussion on the age-appropriate areas of function is broken down into four age groupings, i.e., infants and toddlers (age 1 to attainment of age 3), preschool children (age 3 to attainment of age 6), primary school children (age 6 to attainment of age 12) and adolescents (age 12 to attainment of age 18). This was done to better explain the age group variances in disease manifestations and methods of evaluation.

1. *Infants and toddlers (age 1 to attainment of age 3).* In this age group, impairment severity is assessed in three areas: motor development, cognitive/communicative function, and social function. In infancy, much of what we can discern about mental function comes from observation of the degree of fine and gross motor function. Developmental delay as measured by a good developmental milestone history confirmed by medical examination is critical. If the delay is such that the infant or toddler has not achieved motor development generally acquired by children no more than one-half the child's chronological age, the criteria are satisfied.

Cognitive/communicative function is measured using one of several standardized infant scales. Appropriate tests for the measure of such function are discussed in 112.00D; care should be taken to avoid reliance on screening devices, which are not considered to be sufficiently reliable instruments, although such devices may provide some relevant data.

For infants and toddlers, alternative criteria covering disruption in communication as measured by their capacity to use simple verbal and nonverbal structures to communicate basic needs is provided.

Social function in infants and toddlers is measured in terms of the development of relatedness (i.e., bonding, stranger anxiety, etc.) and attachment to animate or inanimate objects. Criteria are provided that use standard social maturity scales or alternative criteria that describe marked impairment in socialization in terms of separation anxiety, withdrawal and failure to develop appropriate response to external stimuli.

2. *Preschool children (age 3 to attainment of age 6).* For the age groups including preschool children through adolescents, the functional areas used to measure severity are: cognitive/communicative function, social function, and personal/behavioral function. After 36 months, motor function is no longer felt to be a primary determinant of mental function, although, of course, any motor abnormalities should be documented and evaluated. In the preschool years and beyond, cognitive function can be measured by standardized tests of intelligence although the appropriate instrument may vary with age. A primary criterion for limited cognitive function is a valid verbal, performance, or full scale I.Q. of 69 or less. The listings also provide alternative criteria consisting of tests of language development of bizarre speech patterns.

Social function is measured by relationships with parents, other adults, and peers.

Personal/behavioral function may be measured by a standardized test of adaptive behavior or by careful description of serious maladaptive or avoidant behaviors.

3. *Primary school children (age 6 to attainment of age 12).* The measures of function here are similar to those for preschool-age children except that the test instruments may change and the capacity to function in the school setting supplements information in the cognitive and social parameters. Scores which are at least two standard deviations below the age-appropriate norm on standardized measures of academic achievement represent a marked impairment in function. As described in 112.00D, Documentation, school records are an excellent source of information concerning function and standardized testing and should always be sought for school-age children.

4. *Adolescents (age 12 to attainment of age 18).* Functional criteria parallel to those for primary school children are provided for this age group. It should be remembered, however, that mental disorders in adolescence may more closely resemble those of adults than children. Therefore, if, based on the description of the disorder by the clinician, the adjudicator believes the medical criteria of Part B do not apply, the adult listing criteia will be used.

Again, the same three general areas of function as in the primary school group (cognitive/communicative, social, and personal/behavioral) are measures of severity for this age group. Testing instruments appropriate to adolescents should be used. Comparable clinical findings of disruption of social function must consider the capacity to form appropriate, stable and lasting relationships. If information is available about cooperative working relationships in school or at part or full-time work, or about the ability to work as a member of a group, it should be considered when assessing the child's social and/or personal/behavioral functioning. Markedly impoverished social contact, isolation, withdrawal, or inappropriate or bizarre behavior under the stress of socializing with others also constitutes comparable clinical findings.

The intent of the functional criterion described in paragraph B2d common to the listings, i.e., deficiencies of concentration, persistence or pace resulting in failure to complete work-like tasks in a timely manner is to identify the school-age child age 6 to attainment of age 18 who cannot adequately function in school because of a mental impairment. Although grades and the need for special education placement are relevant factors which must be considered in reaching a decision under paragraph B2d, they are not conclusive. There is too much variability from school district to school district in the expected level of grading and in the criteria for special education placement to justify reliance solely on these factors.

Where "marked" is used as a standard measuring the degree of limitation, except as defined in 112.00C3, it means more than moderate but less than extreme. A marked limitation may arise when several activities or functions are impaired or even when only one is impaired, as long as the degree of limitation is such as to interfere seriously with the ability to function independently, appropriately, and effectively. When standardized tests are used as the measure of functional parameters, a valid score that is two standard deviations below the norm for the test will be considered a marked restriction.

D. *Documentation:* The presence of a mental disorder in a child must be documented on the basis of reports from acceptable sources of medical information. See §§ 404.1513 and 416.913. Description of functional limitations may be available from these sources and may be supplemented by reports from parents or other concerned adults who aware of the child's activities of daily living, social functioning, and ability to adapt to different settings and expectations.

For very young infants, it may be very difficult to document the presence or severity of a mental disorder. Therefore, with the exception of some genetic diseases and catastrophic congenital anomalies, it may be necessary that some cases be held until the child attains 3 months of age in order to obtain adequate observation of behavior or emotional affect. This period would be extended in cases of premature infants proportionately to the degree of prematurity.

For very young infants and toddlers, programs of early intervention involving occupational, physical and speech therapists, nurses, social workers, and special educators, are a rich source of data. They can provide the developmental milestone evaluations and records on the fine and gross motor functioning of an infant. This information is valuable and can complement the medical examination by a physician. The report of an interdisciplinary team which contains the evaluation and signature of an acceptable medical source can be considered acceptable medical evidence rather than supplemental data.

In children with mental disorders, particularly those requiring special placement, school records are a rich source of data, and the required reevaluations at specified time periods can provide the longitudinal data needed to trace impairment progression over time.

In some cases where the treating source(s) lack expertise in dealing with mental disorders of children, it may be necessary to obtain evidence from a psychiatrist or psychologist with experience and skill in the diagnosis and treatment of mental disorders as they appear in children. In these cases, however, every effort should be made to obtain the records of treating sources, since these records will help establish a longitudinal picture that cannot be established through a single purchased examination.

For purposes of these childhood mental disorders listings, standardized psychological testing indicates the use of a psychological test that has appropriate characteristics of validity, reliability, and norms, administered individually by a psychologist or psychiatrist qualified by training and experience to perform such an evaluation. Psychological tests are best considered as a set of tasks or questions designed to elicit particular behaviors when presented in a standardized manner.

The salient characteristics of a good test are: 1) validity, i.e., the test measures what it is supposed to measure, as determined by appropriate methods; 2). reliability, i.e., the consistency of results obtained over time with the same test and the same individual; and 3) appropriate normative data, i.e., individual test scores must be comparable to test data from other individuals or groups of a similar nature, representative of that population.

Identical IQ scores obtained from different tests do not always reflect a similar degree of intellectual functioning. In this connection, it must be noted that on the WISC–R, for example, IQ's of 69 and below are characteristic of approximately the lowest 2 percent of the general population. In instances where other tests are administered, it would be necessary to convert the IQ score(s) to the corresponding percentile rank in the general population in order to determine the actual degree of impairment reflected by the IQ score(s).

In cases where more than one IQ is customarily derived from the test administered, i.e., where verbal, performance, and full-scale IQ's are provided as on the WISC–R, the lowest of these is used in conjunction with listing 112.05.

Tests meeting the above requirements are acceptable and encouraged for the determination of the conditions contained in the childhood mental disorders included in the listings. The psychiatrist or psychologist administering the test must have a sound technical and professional understanding of the tests and be able to evaluate the research documentation related to the intended application of the test.

In conjunction with clinical examinations, sources may report the results of screening tests, i.e., tests used for gross determination level of functioning. These tests do not have high validity and reliability and are not considered appropriate primary evidence for disability determinations. These screening instruments may be useful in uncovering potentially severe impairments, but must be supplemented by the use of formal, standardized psychological testing for the purposes of a final disability determination where such tests are required and available.

Where reference is made to developmental milestones, this is defined as the achievement of a particular mental or motor skill at an age-appropriate level, i.e., the skills achieved by an infant or young child sequentially and within a given time period in the motor and manipulative areas; in general understanding and social behavior; in self-feeding, dressing, and toilet training; and in language. This is sometimes expressed as a developmental quotient (DQ), or the relation between developmental age and chronological age as determined by specific standardized measurements and observations. Such tests include, but are not limited to, the Cattell Infant Intelligence Scale, the Bayley Scales of Infant Development, the Gesell Developmental Screening Test, and the Revised Stanford-Binet. Formal tests of the achievement of developmental milestones are generally used in the clinical setting for determination of the developmental status of infants and toddlers.

Formal psychological tests of cognitive achievement are generally in use for preschool children, for primary school children, and for adolescents except for those instances noted below.

Exceptions to formal standardized psychological testing, when required, may be considered when a psychologist or psychiatrist who is qualified by training and experience to perform such an evaluation is not readily available. In such instances, appropriate historical, social, medical and other information must be reviewed in arriving at a determination.

Exceptions may also be considered in the case of ethnic/cultural minorities where the native language or culture is not principally English-speaking. In such instances, psychological tests which are culture-free, such as the Leiter International Performance Scale or the Scale of Multi-Culture Pluralistic Assessment (SOMPA) may be substituted for the preceding standardized tests. Any required tests must be administered in the child's principal language.

"Neuropsychological testing" refers to the administration of standardized tests which are reliable and valid with respect to assessing impairment in brain functioning. It is intended that the psychologist or psychiatrist using these tests will be able to evaluate the following functions: attention/concentration, problem solving, language, memory, motor, visual-motor and visual-perceptual, laterality and general intelligence (if not previously obtained).

E. *Effect of Hospitalization or Residential Placement:* As with adults, children with mental disorders may be placed in a variety of structured settings outside the home as part of their treatment. Such settings include, but are not limited to, psychiatric hospitals, developmental disabilities facilities, residential treatment centers and schools, community-based group homes and workshop facilities. The reduced mental demands of such structured settings may attenuate overt symptomatology and superficially make the child's level of adaptive functioning appear better than it is. Therefore, the capacity of the child to function outside highly structured settings must be considered in evaluating impairment severity.

On the other hand, there may be a variety of causes for placement of a child in a structured setting which may or may not be directly related to impairment severity and functionable ability. Placement in a structured setting in and of itself does not equate with a finding of disability. The severity of the impairment must be compared with the requirements of the appropriate listing.

F. *Effects of Medication:* Attention must be given to the effect of medication on the child's signs, symptoms and ability to function. While psychoactive medications may control certain primary manifestations of mental disorder, e.g., hallucinations, impaired attention, restlessness or hyperactivity, such treatment may or may not affect the functional limitations imposed by the mental disorder. In cases where overt symptomatology is attenuated by the psychoactive medications, particular attention must be focused on the functional limitations which may persist. These functional limitations must be considered in assessing impairment severity.

Psychotropic medicines used in the treatment of some mental illnesses may cause drowsiness, blunted affect, or other side effects involving other body systems. Such side effects must be considered in evaluating overall impairment severity.

112.01 Category of Impairments, Mental

112.02 Organic Mental Disorders: Psychological or behavioral abnormalities associated with a dysfunction of the brain. History and physical examination or laboratory tests, including psychological or neuropsychological tests, demonstrate the presence of a specific organic factor judged to be etiologically related to the abnormal mental state and associated impairment of functional abilities.

The required levels of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Demonstration of a deficit or loss of specific cognitive abilities or affective changes as medically documented by the persistence of at least one of the following:

1. Developmental arrest, delay or regression; or
2. Disorientation to time and place; or
3. Memory impairment, either short-term (inability to learn new information), intermediate, or long-term (inability to remember information that was known sometime in the past); or
4. Perceptual or thinking disturbance (e.g., hallucinations, delusions); or
5. Disturbance in personality; or
6. Disturbance in mood; or
7. Emotional liability (e.g., explosive temper outbursts, sudden crying, etc.); or

8. Impairment of impulse control (e.g., disinhibited social behavior); or

9. Impairment of cognitive function as demonstrated by neuropsychological assessment; and

B. Select the appropriate age group to evaluate the severity of the impairment:

1. For infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the following:

a. Gross or fine motor development 50 percent or less of the anticipated developmental norm documented by:

(1) An appropriate standardized test; or

(2) Clinical findings (see 112.00C of the preface); or

b. Cognitive/communicative function 50 percent or less of the anticipated developmental norm as documented by:

(1) An appropriate standardized test; or

(2) Clinical findings of equivalent cognitive/communicative abnormality such as the inability to use simple verbal or nonverbal behavior to communicate basic needs or concepts; or

c. Social function 50 percent or less of the anticipated developmental norm documented by:

(1) An appropriate standardized test; or

(2) Clinical findings of an equivalent abnormality of social functioning as exemplified by serious inability to achieve age-appropriate autonomy as manifested by excessive clinging or extreme separation anxiety; or

d. A score of 65 percent or less of the anticipated developmental norm in two or more areas covered by a., b., or c. as measured by an appropriate standardized test or the appropriate clinical findings.

2. For children (age 3 to attainment of age 16), resulting in at least one of the following:

a. Marked impairment in age-appropriate cognitive/communicative function as documented by clinical examination and supported, if necessary, by the results of appropriate standardized psychological tests, or for children under age 6, by appropriate tests of language and communication; or

b. Marked impairment in age-appropriate social functioning as documented by history and clinical examination and supported, if necessary, by the results of appropriate standardized tests; or

c. Marked impairment in personal/behavioral function as evidenced by:

(1) Marked restriction of age-appropriate activities of daily living as documented by history and clinical examination and supported by, if necessary, appropriate standardized psychological tests; or

(2) Persistent serious maladaptive behaviors destructive to self, others, animals or property requiring protective intervention; or

d. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete work-like tasks in a timely manner.

112.03 Psychotic Disorders: Characterized by a marked disturbance of thinking, feeling, and behavior. Occasionally psychotic disorders of adolescene must be more appropriately assessed under listing 12.03 of Part A of Appendix 1 because the medical criteria of this Part do not apply.)

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented persistence, for at least six months, either continuous or intermittent, of one or more of the following:

1. Delusions or hallucinations; or

2. Catatonic or other grossly disorganized behavior; or

3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech, with one of the following:

a. Blunt affect; or

b. Flat affect; or

c. Inappropriate affect; or

4. Emotional withdrawal and/or isolation; and

B. Resulting in at least one of the appropriate age-group criteria in paragraph B of 112.02.

112.04 Affective Disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome associated with at least four of the following:

a. Anhedonia, apathy or pervasive loss of interest in almost all activities; or

b. Appetite disturbance with change in weight or failure to make expected weight gains; or

c. Sleep disturbance (e.g., insomnia or hypersomnia); or

d. Psychomotor agitation, psychomotor retardation or hypoactivity; or

e. Fatigue or loss of energy; or

f. Feelings of worthlessness, self-reproach, or guilt; or

g. Difficulty concentrating or thinking; or

h. Recurrent thoughts of death, suicidal ideation, wishes to be dead, or suicide attempt; or

i. Hallucinations, delusions, or paranoid thinking; or

2. Manic or hypomanic syndrome associated with at least three of the following:

a. Increased activity or physical restlessness; or

b. Increased talkativeness or pressure of speech; or

c. Flight of ideas or subjectively experienced racing thoughts; or

d. Inflated self-esteem; or

e. Decreased need for sleep; or

f. Easy distractibility; or

g. Involvement in activities that have a high probability of painful consequences which are not recognized; or

h. Hallucinations, delusions, or paranoid thinking; or

3. Bipolar or cyclothymic syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes); and

B. Resulting in at least one of the appropriate age-group criteria in paragraph B of 112.02.

112.05 Mental Retardation: Characterized by significantly subaverage general intellectual functioning with deficits in adaptive behavior initially manifested in the developmental period. The scores specified below refer to those obtained on the WISC–R, and are used only for reference purposes. Scores obtained on other standardized and individually administered tests are acceptable, but the numerical values obtained must indicate a similar level of intellectual functioning. See 112.00D.

The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

A. Achievement of a pattern of developmental milestones generally acquired by children no more than one-half the child's chronological age; or

B. A valid performance, verbal or full scale IQ of 59 or less; or

C. A valid performance, verbal or full scale IQ of 60 to 69 inclusive and a physical or other mental impairment imposing additional and significant limitation of function; or

D. A valid performance, verbal or full scale IQ of 60 to 69 inclusive and one of the following:

1. Marked impairment in social functioning; or

2. Marked impairment in personal/behavioral function.

112.06 Anxiety-Related Disorders: In these disorders, anxiety is either the predominant clinical feature or is experienced if the individual attempts to master symptoms; e.g., confronting the dreaded object or situation in a phobic disorder, attempting to go to school in a separation anxiety, or confronting strangers or peers in avoidant disorders.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented findings of at least one of the following:

1. Excessive anxiety manifested when the child is separated, or separation is threatened, from a parent or parent surrogate; or

2. Excessive and persistent avoidance of strangers; or

3. Generalized persistent anxiety or worry; or

4. A persistent irrational fear of a specific object, activity or situation which results in a compelling desire to avoid the dreaded object, activity or situation; or

5. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or

6. Recurrent obsessions or compulsions which are a source of marked distress; or

7. Recurrent and intrusive recollections of a traumatic experience, including dreams, which are a source of marked distress; and

B. Resulting in at least three of the appropriate age-group criteria in paragraph B of 112.02.

112.07 Disorders with Physical Manifestations: Manifested by physical symptoms for which there is no demonstrable organic etiology or known physiological cause.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented findings of at least one of the following:

1. A persistent and serious disturbance of eating habits, accompanied by marked and unrealistic anxiety concerning appearance resulting in weight loss, emaciation, or other serious physical sequelae; or

2. Persistent and recurrent involuntary, repetitive, rapid, purposeless motor movements affecting multiple muscle groups with multiple vocal tics; or

3. Persistent nonorganic disturbance in one of the following:

a. Vision; or

b. Speech; or

c. Hearing; or

d. Use of a limb; or

e. Movement and its control (e.g., coordination disturbance, psychogenic seizures, akinesia, dyskinesia); or

f. Sensation (diminished or heightened); or

g. Digestion or elimination; or

4. Unrealistic interpretation of physical signs or sensations associated with the fear or belief that one has a serious disease or injury, which persists despite medical reassurance; and

B. Resulting in at least three of the appropriate age-group criteria in paragraph B of 112.02.

112.08 Personality Disorders: Evaluate under 12.08 of Part A of Appendix 1.

112.09 Autism and Other Pervasive Developmental Disorders: Autism is a pervasive disorder characterized by significant social and communication deficits originating in the developmental period. Other pervasive developmental disorders are characterized by failure to develop age-appropriate social relationships, language disorders, ritualistic and compulsive behavior and, in most cases, retardation in intellectual development. Onset of the illness is in early childhood.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented findings of the following:

1. For autism, at least two of the following:

a. Pervasive lack of responsiveness to other people; or

b. Gross deficits in language development; or

c. Bizarre responses to various aspects of the environment (e.g., resistance to change, peculiar interest in or attachments to animate or inanimate objects); or

2. For pervasive disorders, at least three of the following:

a. Sudden excessive anxiety manifested by such symptoms as free-floating anxiety, catastrophic reactions to everyday occurrences, inability to be consoled when upset, unexplained panic attacks; or

b. Constricted or inappropriate affect, including lack of appropriate fear reactions, unexplained rage reactions, and extreme mood lability; or

c. Resistance to change in the environment (e.g., upset if dinner time is changed), or insistence on doing things in the same manner every time (e.g., putting on clothes always in the same order); or

d. Oddities of motor movement, such as peculiar posturing, peculiar hand or finger movements, or walking on tiptoe; or

e. Abnormalities of speech, such as question-like melody, monotonous voice; or

f. Hyper- or hypo-sensitivity to sensory stimuli, e.g., hyperacusis; or

g. Self-mutilation, e.g., biting or hitting self, head banging; and

B. Resulting in at least one of the appropriate age-group criteria in paragraph B of 112.02.

112.10 Developmental and Emotional Disorders of Infancy (Birth to attainment of age 1): Developmental or emotional disorders of infancy are evidenced by a deficit or lag in the areas of motor, cognitive/communicative, or social functioning. These disorders may be related either to organic or to functional factors or to a combination of these factors.

The required level of severity for these disorders is met when the requirements of A, B, C, or D are satisfied.

A. Cognitive/communicative functioning 50 percent or less of the anticipated developmental norm as documented by appropriate clinical findings (e.g. infants 0–6 months, markedly diminished variation in the production or imitation of sounds and severe feeding abnormality, such as problems with sucking, swallowing, or chewing) supported, if necessary, by a standardized test; or

B. Motor development 50 percent or less of the anticipated developmental norm documented by appropriate clinical findings, supported, if necessary, by a standardized test; or

C. Apathy, over-excitability or fearfulness demonstrated by marked impairment in one of the following:

1. Response to visual stimulation; or

2. Response to auditory stimulation; or

3. Response to tactile stimulation and positioning and environment; or

D. Failure to sustain social interaction on an ongoing, reciprocal basis as evidenced by:

1. Inability to participate in vocal exchanges, visual exchange and motoric gestural exchanges (including facial expressions) by 6 months; or

2. Failure to communicate basic emotional states such as a wish for closeness, desire to explore objects or people, or protest or anger by 9 months; or

3. Failure to attend to the caregiver's voice or face and/or to explore an inanimate object for a period of time appropriate to the infant's age.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

5. The authority citation for Part 416, Subpart I continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a) and (d)(1), and 1383b; secs. 2, 5 6, and 15 of Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1806.

6. Section 416.920a is amended by revising the second sentence of paragraph (a) to read as follows:

* * * * *

§ 416.920a Evaluation of mental impairments.

(a) * * * In addition, in evaluating the severity of mental impairments for adults (persons age 18 and over) and in persons under age 18 where the disease process has a similar effect on adults and younger persons, a special procedure must be followed by us at each level of administrative review. * * *

[FR Doc. 89–18763 Filed 8–11–89; 8:45 am]

BILLING CODE 4190–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL–3627–8]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a proposed State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the use of reasonably available control technology (RACT) to reduce volatile organic compound emissions associated with production of golf balls at the Acushnet Company Plant A facility in Acushnet, Massachusetts. The intended effect of this action is to propose approval of a source specific RACT determination made by the Commonwealth of Massachusetts in accordance with the commitments of its approved 1982 Ozone Attainment Plan. This action is being taken under Section 110 of the Clean Air Act.

DATES: Comments must be received on or before September 13, 1989. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESS: Comments may be mailed to Louis F. Gitto, Director, Air, Pesticides, and Toxics Management Division, U.S. Environmental Protection Agency, Region I, Room 2313, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours at the U.S. Environmental Protection

Agency, Region I, Room 2313, JFK Federal Bldg., Boston, MA 02203 and the Department of Environmental Protection, Division of Air Quality Control, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Greene, (617) 565-3244; FTS 835-3244

SUPPLEMENTARY INFORMATION: On February 4, 1988 and February 16, 1989, the Massachusetts Department of Environmental Quality Engineering (DEQE) submitted a proposed revision to its State Implementation Plan (SIP) for the Acushnet Company Plant a facility in Acushnet, Massachusetts. The revision includes reasonably available control technology (RACT) determinations for the balata and surlyn golf ball manufacturing processes and the miscellaneous and clean up processes associated with the manufacturing of these golf balls. The uncontrolled potential emissions of these processes are greater than 100 tons per year (TPY) and are not covered by an EPA published Control Technique Guideline (CTG) document.

Massachusetts submitted a regulation, 310 CMR 7.18(17), requiring RACT on all such non-CTG sources as part of its approved 1982 Ozone Attainment Plan (48 FR 51480). In a November 17, 1982 letter to EPA, the DEQE committed to submit each of the 100 TPY individual RACT determinations to EPA for incorporation into the Massachusetts SIP as a source-specific SIP revision. This revision includes DEQE's RACT plan for Acushnet's Plant A which consists of a Conditional Plan Approval, an Administrative Order and other enforceable documents issued by the DEQE to impose RACT on the balata and surlyn golf ball manufacturing processes and on the miscellaneous and clean up processes associated with the manufacture of these golf balls. The DEQE has calculated that a reduction in VOC emissions from a pre-RACT 1982 level of 296 TPY to a post-RACT level of 74 TPY results from imposing RACT on Acushnet's Plant A facility. Although the Conditional Plan Approval and Administrative order issued by the DEQE are currently fully enforceable by that agency under State law, the formal SIP revision submitted by the DEQE to EPA must consist of the Plan Approval amended as specified in this notice before EPA will undertake final rulemaking approving it as RACT and incorporating it into the SIP.

The RACT control plan, requires that Acushnet meet the following emission limitations by June 1, 1988 (these limits are listed in Table II of the RACT Plan):

	Tons VOC/Million Balata Balls Processed
Balata Golf Balls:	
Center washing	0.0000
Center patching	0.0434
Cover annealing	0.4500
Cover rinsing	0.0000
Painting	2.1537
Subtotal	2.6471
Surlyn Golf Balls:	
Painting	0.5348
Miscellaneous:	
Clean-up and printing	0.1000

According to the DEQE's RACT plan, the VOC emission reductions, at Acushnet's Plant A facility, have been achieved by requiring the following:

Balata Golf Ball Production

(a) Elimination of the naphtha/isopropanol center washing,

(b) Installation of a Freon Imersion Dryer,

(c) Elimination of the acetone rinsing, and

(d) Improvement of the paint transfer efficiency.[1]

Surlyn Golf Ball Production

(a) Reduction in the number of paint coats from three to two and reduction of the VOC content of paint, and

(b) Improvement of the paint transfer efficiency.[2]

Miscellaneous emissions

Reduction in clean-up solvents

The DEQE's RACT plan also specifies the VOC content of the coatings that can be used at this facility to produce balata and surlyn golf balls. These coating specifications, in pounds of VOC per gallon of coating and pounds of VOC per gallon of solids as applied, are contained in a confidential table (Table III) of DEQE's RACT plan. Acushnet is allowed to change the Table III formulations only with DEQE's approval and only if the new formulations do not exceed the emission rates in tons per million golf balls listed in Table II of the RACT plan. Additionally, the production capacity is limited to a specific total number of golf balls processed per year. These limitations are contained in a confidential table (Table I) of the DEQE's RACT plan.

The DEQE's RACT plan also requires that the number of golf balls processed will be recorded by automatic golf ball counters. DEQE's RACT plan requires that records be kept on a weekly basis.

[1] Transfer efficiency is usually measured by the amount of paint that reaches the object to be coated. However, this transfer efficiency is measured by a minimum number of ball coats per gallon which is monitored by inventorying the gallons of paint used and by automatic golf ball counters.

[2] See note 1 above.

DEQE's RACT plan requires that VOC usage, cleaning solvent usage, paint usage, golf ball production quantities, inventory and paint disposal records, and the disposal and air emission records for balata ball center patching and cover annealing operations are to be reported quarterly. Those reports must demonstrate compliance. Additionally, the DEQE's RACT plan describes the compliance averaging period as the 4 or 5 week production cycles of the facility.

Amendments Required for Final EPA Approval

The DEQE's RACT plan's emission limits are not acceptable to EPA as RACT, as currently drafted. Acushnet paints each type of golf ball with different types of paints, the production cycle for processing these golf balls is 4–5 weeks, and the emission limits are expressed in tons per million golf balls for each painting process. These limitations are not acceptable because such limits do not meet EPA's Emission Trading Policy (51 FR 43814) nor EPA's enforcement criteria. Therefore, EPA is requiring that DEQE's RACT plan for the Acushnet Company Plant A be amended to specify emission rates in pounds of VOC per gallon of coating (minus water and photochemically nonreactive solvents) for each painting and process associated with the production of golf balls, before EPA will take final action on this SIP revision. Additionally, EPA is requiring the DEQE to calculate the percent reduction achieved by comparing the coatings used in 1982 (and their associated VOC per gallon content) versus those used in 1987. This percent reduction will be reported in the final rulemaking notice on this RACT determination.

EPA has reviewed DEQE's RACT plan consisting of the Conditional Plan Approval, the Administrative Order, other documents issued to Acushnet and other supporting public and confidential material submitted by the DEQE. EPA generally concurs with the DEQE's determination for reducing VOCs at Acushnet Company Plant A. However, EPA believes that this RACT determination is not enforceable as written because of the way the emission limits and percent reduction are expressed, the failure to include a compliance date for each condition, the inadequacy of the recording and reporting requirements, and the compliance averaging time.

DEQE's RACT plan must be amended, as indicated below before EPA will take final action to approve it as a SIP revision. As now drafted, EPA would have to disapprove the RACT plan. The Plan Approval must be amended to include:

(1) Emission limits and percent reduction achieved in pounds of VOC per gallon of coating (minus water and photochemically nonreactive solvents) for each painting process and other processes associated with the manufacture of golf balls.

(2) A requirement that the emission limits cannot increase.

(3) The final compliance date for each process. These compliance dates must not go beyond December 31, 1987.

(4) The recordkeeping requirements needed to determine compliance with a pounds of VOC per gallon of coating (minus water and photochemically nonreactive solvents) emission limitation, including the following:

a. Gallons of coatings used,

b. Weight and volume of each coating's solids, photochemically reactive and nonreactive solvents and water;

c. Densities of the coatings and photochemically reactive and nonreactive solvents; and

d. Pounds of VOC per gallon of solids.

A copy of the recordkeeping forms must be included in the formal SIP submittal. The records must also be reported, on at least a quarterly basis for the first 4–8 quarters of continuous compliance, and must be specified in the final plan approval.

(5) The test method, Reference Method 24 (40 CFR Part 60) with 60 minute bake time for compliance testing. This test method must be specified in the Plan Approval.

Additionally, DEQE's formal submittal must include the following background information to recalculate the percent reduction Acushnet has achieved:

a. The pounds of VOC per gallon of coating used in 1982

b. The pounds of VOC per gallon of coating used in 1987 on the same processes reported for 1982; and

c. The percent reduction achieved for each process.

These amendments must be incorporated into the final Plan Approval that is issued to Acushnet Company Plant A and formally submitted as a revision for EPA's final approval and incorporation into the SIP. If DEQE's final Plan Approval submission does not incorporate the amendments that are outlined in this notice, EPA will withdraw this proposed approval action and take action to disapprove DEQE's SIP revision request. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

This revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by Massachusetts and submitted formally to EPA for incorporation into the SIP.

Proposed Action

EPA is proposing to approve the DEQE's proposed RACT determination for Acushnet Company Plant A's, golf ball production processes. Final EPA approval is contingent upon the DEQE amending its Plan Approval, as indicated in this notice, prior to their formal submittal to EPA for incorporation into the SIP. If DEQE's final Plan Approval does not incorporate the requirements outlined in this notice, EPA will withdraw this proposed approval action and take action to disapprove DEQE's SIP revision request.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: August 4, 1989.

Paul G. Keough,

Acting Regional Administrator, Region I.

[FR Doc. 89-18939 Filed 8-11-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL 3628-5]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to approve a site-specific revision to the Wisconsin State Implementation Plan (SIP) for ozone. This revision would constitute a temporary relaxation from Wisconsin's volatile organic compound (VOC) reasonably available control technology (RACT) regulations for Tecumseh Products Company (TPC) in Tecumseh, Wisconsin. This action is taken in response to an August 27, 1987, submission from the State of Wisconsin.

USEPA today is proposing to approve this as a SIP revision because (1) the TPC facility is located in an ozone attainment area, and (2) approval of the relaxation will not affect the maintenance of the ozone standards.

DATE: Comments on this revision and on the proposed USEPA action must be received by September 13, 1989.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Ulylaine E. McMahan, at (312) 886-6031, before visiting the Region V office.).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707

Comments on this proposed rule should be addressed to: (Please submit submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ulyaine E. McMahan, (312) 886-6031.

SUPPLEMENTARY INFORMATION: On August 27, 1987, the Wisconsin Department of Natural Resources (WDNR) submitted a proposed

temporary relaxation from the RACT limits until July 15, 1988, for the VOC emissions from TPC's four coating lines. These operations are located at TPC's Lawson Engine Division in Calumet County, Tecumseh, Wisconsin. Calumet County has been designated as an attainment/unclassifiable area for ozone under Section 107(d) of the Clean Air Act (See 40 CFR 81.350).

History of the Variance

TPC currently operates four coating lines at its Lawson Engine Division in Tecumseh, Wisconsin, which are subject to the control requirements contained in Section NR 154.13(4)(m) and the compliance schedule contained in Section NR 154.13(12)(c) Wisconsin Administrator Code. These rules limit the VOC content of extreme performance coatings applied to miscellaneous metal parts and products to 3.5 pounds of VOC per gallon of coating, excluding water, by August 1, 1983. USEPA approved these rules as meeting RACT requirements under Part D of the Clean Air Act for non-attainment areas on January 11, 1980 (45 FR 2319), and June 21, 1982(47 FR 26611). Wisconsin chose to extend these RACT requirements to sources located in attainment areas as well and, thereby, created accommodative SIPs for these areas[1]. In lieu of the requirements mentioned above, WDNR has submitted a temporary relaxation from RACT until July 15, 1988, as a revision to Wisconsin SIP.

On August 27, 1987, the WDNR issued a variance for the facility, subject to the following conditions.

1. By August 31, 1987, at least 85 percent (by volume) of all coatings applied per day by TPC shall be high solids coatings meeting the applicable RACT limitation of 3.5 pounds VOC per gallon of coating, excluding water, delivered to a coating applicator. TPC shall maintain and make available to the Department upon request records demonstrating that this requirement is met, including:

a. The volume of each coating applied per day (gallons per day).

b. The VOC content of each coating applied (pound VOC per gallon applied, excluding water), determined from:

(1) The density of each coating (pound coating per gallon coating applied).

(2) The weight percent solids in each coating applied.

(3) The weight percent VOC in each coating applied.

c. The total volume of all coatings applied per day (gallons per day).

d. The total volume of RACT compliance coating applied.

e. The daily volume percentage of RACT compliance coating applied.

2. Tecumseh Products Company shall certify to the Department by September 8, 1987, that the requirements contained in condition 1. above were met.

3. By July 15, 1988, all coatings applied by Tecumseh Products Company shall meet the limitation of 3.5 pounds VOC per gallon of coating, excluding water, delivered to a coating applicator. Records shall be maintained and made available to the Department upon request demonstrating final compliance, including:

a. For each high solids coating applied, the VOC content (pound VOC per gallon applied, excluding water) determined from:

(1) The coating density (pound coating per gallon coating applied).

(2) The weight percent solids applied.

(3) The weight percent VOC applied.

b. For each water-based coating applied, or coating applied which is reduced with 1,1,1 trichloroethane or methylene chloride, the VOC content (pound VOC per gallon applied, excluding water) determined from:

(1) The solvent density (pound VOC per gallon solvent applied).

(2) The volume percent solids applied.

(3) The volume percent VOC applied.

(4) The volume percent water, 1,1,1 trichloroethane, and methylene chloride applied.

4. TPC shall certify to the Department by July 22, 1988, that the requirements contained in condition 3, above, were met.

5. The Department may modify or rescind this variance approval because of failure of TPC to comply fully with the conditions of this approval, or for other reasons which justify modification or recision of the approval.

These limits would allow TPC to continue to use the coatings currently used on these lines.

The variance issued by WDNR extends the compliance date to July 15, 1988. As discussed further below, USEPA's policy provides that where a source in an attainment area is subject to RACT under an accommodative SIP, and that source seeks a compliance date extension, the source must either demonstrate that its compliance schedule is as expeditious as practicable and will not adversely effect the maintenance demonstration for the area, or the area will lose the accommodative SIP for the duration of the variance.

Compliance Date Extension

In order for an area to retain its accommodative SIP, the State must demonstrate that it is implementing RACT as expeditiously as practicable and that the area's maintenance demonstration will not be adversely affected. Here, the extension will not affect the maintenance demonstration because it merely allows the source to continue to emit at historical levels under which the area was able to demonstrate attainment and maintenance. However, WDNR has not provided a demonstration rebutting the possibility that other similar sources were able to comply in timely fashion. In fact, WDNR's own review indicated that at least two other sources have been able to comply using low solvent coatings. See "RACT Variance Review", Wisconsin Department of Natural Resources, May 8, 1987, page 4, attached to the TSD for this notice. In addition, WDNR has not provided an adequate evaluation of other means of compliance (e.g., add-on control) which may be more expeditious than the proposed control strategy. Thus, the State has not demonstrated that TPC's compliance is expeditious.

This rulemaking relaxes a stationary source RACT emission limitation in an area that has been designated as attainment/unclassified for ozone. Originally, this RACT limitation was imposed by the State, not to satisfy an ozone nonattainment SIP planning requirement, but rather to allow the State to have an accommodative SIP. This compliance date extension if approved, will remove the original basis for the accommodative SIP of Calumet County for as long as the relaxation is in place (i.e., until July 15, 1988). This means that all new major VOC sources and major modifications in this county must comply with all PSD pre-construction monitoring requirements until that date. Because this portion of the State's accommodative SIP never had any effect relative to any designated ozone nonattainment area SIP, the RACT relaxation in this notice will also have no effect on nonattainment areas—all sources wishing to locate in nonattainment areas must continue to comply with the State's federally approved Part D new source review program. USEPA assumes that the State would prefer to have this revision approved and cancel the accommodative SIP for the duration of the variance. If the State does not wish to have a variance approved on this basis, it should so indicate during the public comment period for this notice.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

Dated: January 22, 1988.

Frank M. Covington,

Acting Regional Administrator.

Note: This document was received by the Office of the Federal Register on August 9, 1989.

[FR Doc. 89–18937 Filed 8–11–89; 8:45 am]

BILLING CODE 6560–50–M

[1] An accommodative ozone SIP for areas classified as attainment/unclassifiable requires RACT-level controls on existing sources, in lieu of requiring new major sources of VOC to do preconstruction monitoring. This monitoring would normally be required on new major sources in attainment/unclassifiable area under USEPA's Prevention of Significant Deterioration (PSD) regulations. The rationale behind this tradeoff is that the "extra" emission reductions obtained from these additional RACT controls would be able to accommodate new source growth in these attainment/unclassifiable areas.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–344, RM–6674]

Radio Broadcasting Services; Rosamond, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of P. Dale Ware, seeking the allotment of FM Channel 228A to Rosamond, California, as that community's first local broadcast service. Coordinates used for Channel 228A at Rosamond are 34–56–56 and 118–14–07.

DATES: Comments must be filed on or before October 2, 1989, and reply comments on or before October 17, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Harry P. Warner, Esq., Law Offices of Harry P. Warner, 6455 Hayes Drive, Los Angeles, CA 90048.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–344 adopted July 18, 1989, and released August 9, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M. Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M. Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–18982 Filed 8–11–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–333, RM–6678]

Radio Broadcasting Services; Camarillo, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Golden Bear Broadcasting, Inc., licensee of Station KZTR–FM, Channel 240A, Camarillo, California, seeking the substitution of FM Channel 240B1 for Channel 240A and modification of its license accordingly. Coordinates for this proposal are 34–13–21 and 119–13–48.

DATES: Comments must be filed on or before September 29, 1989, and reply comments on or before October 16, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Roger J. Metzler, Esq., McQuaid, Bedford, Brayton, Clausen & Metzler, 650 California Street, Suite 600, San Francisco, CA 94108.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–333, adopted July 19, 1989, and released August 8, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–19000 Filed 8–11–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–341, RM–6775]

Radio Broadcasting Services; Warrenton, NC, Alberta, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Warrenton Broadcasting Corporation seeking the substitution of Channel 297C2 for Channel 297A at Warrenton, North Carolina, the modification of its construction permit for Station WVRS(FM) to specify the higher powered channel, and the substitution

of Channel 276A for unoccupied but applied for Channel 299A at Alberta, Virginia. Channel 297C2 can be allotted to Warrenton, North Carolina, with a site restriction of 29.3 kilometers (18.2 miles) northeast to avoid a short-spacing to Station WFXC, Channel 296A, Durham, North Carolina, and to the application of Station WKZL, Channel 298C, Winston-Salem, North Carolina. The coordinates for this allotment are North Latitude 36–34–11 and West Longitude 77–54–16. Channel 276A can be allotted to Alberta, Virginia, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 36–51–48 and West Longitude 77–53–00. In accordance with Section 1.420 of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 296C2 at Warrenton or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before October 2, 1989, and reply comments on or before October 17, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David M. Hunsaker, Putbrese, Hunsaker & Ruddy, 6800 Fleetwood Road, Suite 100, P.O. Box 539, McLean Virginia 22101 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–341, adopted July 19, 1989, and released August 9, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–18983 Filed 8–11–89; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 89–343, RM–6761]

Radio Broadcasting Services; Dresden, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Valley View Broadcasting, Inc., proposing the allotment of Channel 236A to Dresden, Tennessee, as that community's first local FM service. A site restriction of 3.4 kilometers (2.1 miles) south of the city is required. The coordinates are 36–15–39 and 88–42–29.

DATES: Comments must be filed on or before October 2, 1989, and reply comments on or before October 17, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Jerrold Miller, Esquire, Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–343, adopted July 19, 1989, and released August 9, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–18984 Filed 8–11–89; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 89–342, RM–6740]

Radio Broadcasting Services; Monahans, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Rusk Corporation, proposing the substitution of Channel 271C for Channel 271C1 at Monahans, Texas, and modification of the license for Station KWES(FM) to specify operation on the higher class co-channel. The proposed transmitter site location is 42.6 kilometers (26.1 miles) north of Monahans, at coordinates 31–57–55 and 102–46–10.

DATES: Comments must be filed on or before October 2, 1989, and reply comments on or before October 17, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Nancy L. Wolf, Esquire, Dow, Lohnes & Albertson, 1255 23rd Street, Washington, DC 20037 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–342, adopted July 19, 1989, and released August 9, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–18985 Filed 8–11–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

Office of the Secretary

48 CFR Part 970

Acquisition Regulation

AGENCY: Department of Energy (DOE).

ACTION: Notice of proposed rulemaking (NOPR).

SUMMARY: The DOE proposes to amend 48 CFR part 970, Management and Operating (M&O) Contracts, of the Department of Energy Acquisition Regulation (DEAR). Changes are proposed to DEAR subsections 970.3102–2(i) and 970.5204–4 to conform with Federal Acquisition Regulation (FAR), subsection 31.205–6, Compensation for Personal Services, and 29.401–6, New Mexico Gross Receipts and Compensating Tax. Also, DEAR subsection 970.5204–16, Payments and Advances, is proposed to be amended to specify a 90-day interval for the contractor to notify the Contracting Officer, after the contractor knew or should have known of any claims based upon liabilities of the contractor to third parties arising out of the performance of the contract.

DATE: September 13, 1989.

ADDRESS: Comments should be addressed to: Gwen Cowan, Business and Financial Policy Division (MA–422), Office of the Deputy Assistant Secretary for Procurement and Assistance Management, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Gwen Cowan, Business and Financial Policy, Division (MA–422), Office of the Deputy Assistant Secretary for Procurement and Assistance Management, Washington, DC 20585, (202) 586–8159.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under the Regulatory Flexibility Act
C. Paperwork Reduction Act
D. National Environmental Policy Act
E. Review Under Executive Order 12612
F. Public Hearing

I. Background

Under section 644 of the DOE Organization Act, Public Law 95–91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in that position. Accordingly, the DEAR was promulgated with an effective date of April 1, 1984, (49 FR 11992, March 28, 1984), 48 CFR Chapter 9.

The purpose of this rulemaking is:

(1) To revise the DEAR to implement changes to conform with FAR 31.205–6(g)(2)(i) and to be consistent with contractor legal requirements to adhere to the provisions of certain labor laws. FAR 31.205–6(g)(2)(i) was revised to delete the provision disallowing severance payments which are in addition to early or normal retirement payments. However, severance payments will still be required to meet the remaining criteria for severance pay as well as the test of overall reasonableness of compensation.

(2) To revise the DEAR to conform with FAR 29.401–6. FAR 29.401–6 was added to eliminate double taxation of Government cost-reimbursable contractors which purchase tangible personal property to be used in performing services, title to which passes to the United States upon delivery of the property to the contractor by the vendor. This agreement is effective only when the clause, at FAR 52.229.10, State of New Mexico Gross Receipts and Compensating Tax, is included in each cost-reimbursement contract. Failure to include the clause in each cost-reimbursement contract means that the government reimburses the contractor the gross receipts tax paid to a vendor for purchased tangible personal property, and reimburses the contractor for its own gross receipts tax, which includes the tax already paid on purchased property (double taxation).

(3) To revise DEAR 970.4204–16, Payments and Advances, to include a 90-day interval for the contractor to notify the Contracting Officer of claims based upon liabilities of the contractor to third parties arising out of the performance of the contract. The contractor will be required to give notice of such claims in writing to the Contracting Officer within 90 days after the contractor knew or should have known about such claims from the claimant, and takes whatever action may be required to protect the contractor's and the Government's interest during this 90 day period.

II. Procedural Requirements

A. Review Under Executive Order 12291

This Executive Order, entitled "Federal Regulations," requires that certain regulations be reviewed by the Office of Management and Budget (OMB) prior to their promulgation. OMB Bulletin 85–7 exempts all but certain types of procurement regulations from such review. This proposed rule does not involve any of the topics requiring prior review under the bulletin and is, accordingly, exempt from such review.

B. Review Under the Regulaory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities; the costs of goods or services or other direct economic factors. It will not have significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 96–511) does not apply because this proposed rule does not impose additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

D. National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having a significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. *et seq.*, 1976), or the Council on Environmental Quality regulations (40 CFR parts 1500 through 1508), and the DOE guidelines (10 CFR part 1021), and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Review Under Executive Order 12612

The Department has concluded that this proposed rule does not involve issues which are expected to have a substantial direct effect on traditional state functions or their institutional interest and thus the "federalism" assessment requirements of Executive Order 12612, (52 FR 41685, October 30, 1987) do not apply.

F. Public Hearing

DOE has concluded that this rule does not involve a substantial issue of fact or law and that it should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Public Law 95–91, the DOE Organization Act, the DOE does not propose to hold a public hearing on this rule.

List of Subjects in 48 CFR Part 970

Government Procurement; Management and Operating Contracts.

For the reasons set out in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC, on August 2, 1989.

Berton J. Roth,

Deputy Assistant Secretary for Procurement and Assistance Management.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

970.3102-2 [Amended]

2. Subsection 970.3102–2(i), Severance Pay, is amended by removing the last sentence of paragraph (i)(2)(i).

3. Subsection 970.5204–4, New Mexico Gross Receipts and Compensating Tax is added as follows:

970.5204–4 New Mexico Gross Receipts and Compensating Tax.

When the clause at FAR 52.229–10(b) is used replace the phrase "Allowable Cost and Payment clause" with "Allowable Costs and Fixed Fee clause," or, if it is different, the title of the clause addressing allowable costs.

4. In the clause in subsection 970.5204–16, paragraph (f)(iv)(B) is revised to read as follows:

970.5204–16 Payments and advances.

* * * * *

(f) * * *

(iv) * * *

* * * * * *

(B) Claims, together with reasonable expenses identical thereto, based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided, that such claims are not known to the contractor on the date of the execution of the release; and provided further, that the contractor gives notice of such claims in writing to the Contracting Officer within 90 days after the contractor knew, or should have known, about such claims, and takes whatever action may be required to protect the Contractor's and the Government's interest during this 90 day period; and

* * * * *

FR Doc. 89–18969 Filed 8–11–89; 8:45 am]

BILLING CODE 6450-01-M

Notices

Federal Register

Vol. 54, No. 155

Monday, August 14, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Meetings of the Committee on Rulemaking

ACTION: Notice of public meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of meetings of the Committee on Rulemaking of Administrative Conference of the United States.

COMMITTEE: Committee on Rulemaking

DATE: Wednesday, September 13, 1989 at 4:30 p.m.

LOCATION: Library of the Administrative Conference, 2120 L Street NW., Suite 500, Washington, DC

AGENDA: The committee will meet to discuss possible recommendations on the subject of the indexing and disclosing of agency adjudications, and their use as precedent.

PUBLIC PARTICIPATION: The committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Kevin L. Jessar, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

Dated: August 7, 1989.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 89–18959 Filed 8–11–89; 8:45 am]

BILLING CODE 6110-01-M

COMMISSION ON CIVIL RIGHTS

Ohio Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will convene at 10:00 a.m. to 11:15 a.m. and reconvene from 2:00 p.m. to 4:00 p.m., on August 21, 1989, at Seagate Centre, 401 Jefferson Avenue, Room 219, Toledo, Ohio. The purpose of the meeting is to announce the release of the summary report of a two-day community forum held in December 1988 on the status of race relations in Toledo.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Donald C. Prock, or Farella E. Robinson, Civil Rights Analyst of the Central Regional Division (816) 426–5253, (TDD 816/436–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 7, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89–18960 Filed 8–11–89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census

Title: 1990 Census of Agriculture Tests

Form Number: 89–A1 thru 89–AXX

Type of Request: New Collection

Burden: 24,684 hours

Number of Respondents: 51,800

Avg Hours Per Response: 48 minutes

Needs and Uses: This a multi-procedural test of the report form for the 1992 Census of Agriculture, and will be used by the Bureau of the Census to determine content, wording, and format of the report form to be used in the National Agriculture Census.

Affected Public: Farms

Fequency: One time only

Respondent's Obligation: Mandatory

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 8, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–18886 Filed 8–11–89; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

Peter Walaschek et al.; Related Party Order

In the Matter of: Peter Walaschek, Marzellenstrasse, 5000 Cologne, Federal Republic of Germany, and Chemco, Siegburger Strasse 223, 5000 Cologne 21, Federal Republic of Germany, and Colimex, Mozartstrasse 7, 5000 Cologne 1, Federal Republic of Germany.

On February 24, 1989, I issued an order denying Peter Walaschek permission to apply for or use any export license until August 26, 1998. 54 FR 8582 (March 1, 1989). The order was based on Walaschek's August 26, 1988 conviction for violating the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (Supp. 1989)) (the Act).

The Act provides that any person related through affiliation, ownership, control, or position of responsibility to a person who has been denied export privileges because of his conviction for violating the Act may also be denied export privileges. On March 15, 1989, I notified Chemco and Colimex, two West German companies, that I had received

information that they were related to Walaschek through affiliation, ownership, control, or position of responsibility. I also advised them that, after consulting with the Director, Office of Export Enforcement, I intended to deny them permission to apply for or use any export license, including any general license, because of their relationship with Walaschek, as provided by the Act and § 770.15(h) of the Export Administration Regulations (15 CFR Parts 768–789, as amended, 54 FR 4004–4006 (January 27, 1989)) (the Regulations).

My notification to Chemco and Colimex also advised them of their right to request a hearing or to submit written comments concerning their relationship with Walaschek. Although both companies received that notice, neither one requested a hearing or filed any comments concerning any of the matters set forth in the notice.

Accordingly, I hereby find that Chemco, Siegburger Strasse 223, 5000 Cologne 21, Federal Republic of Germany, and Colimex, Mozartstrasse 7, 5000 Cologne 1, Federal Republic of Germany, are related to Peter Walaschek, a person denied all U.S.-export privileges until August 26, 1998, through affiliation, ownership, control, or position of responsibility. The order of February 24, 1989 denying Walaschek permission to apply for or use any export license, including any general license, is hereby amended to read as follows:

Ordered

I. All outstanding individual validated licenses in which Peter Walaschek or either of the related persons, Chemco or Colimex, appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Walaschek's, Chemco's and Colimex's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, or in any general license are hereby revoked.

II. Until August 26, 1998, Peter Walaschek, Marzellenstrasse, 5000 Cologne, Federal Republic of Germany, and the related persons, Chemco, Siegburger Strasse 223, 5000 Cologne 21, Federal Republic of Germany, and Colimex, Mozartstrasse 7, 5000 Cologne 1, Federal Republic of Germany, are denied the privilege of applying for or using any export license, including, but not limited to, any individual validated license, bulk license or general license, issued under or authorized by the Act and the Regulations. Pursuant to this order, Walaschek and the related persons, Chemco and Colimex, may not participate in any export license-related activity, including any participation: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license, or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any other firm, corporation or business organization related to Walaschek by affiliation, ownership, control or position of responsibility may also be subject to the provisions of this order.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data which are subject to the denial of export privileges set forth herein, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Walaschek or the related persons, Chemco and Colimex, or whereby Walaschek or the related persons, Chemco and Colimex, may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly, in any manner or capacity: (a) Apply for, obtain, transfer, or use any export license, Shipper's Export Declaration, bill of lading or any other export control document relating to any export, reexport, transshipment or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for Walaschek or the related persons, Chemco and Colimex, or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States. These prohibitions apply only to those commodities and technical data which are subject to the Act and the Regulations.

V. This order is effective immediately and shall remain in effect until August 26, 1998.

A copy of this order shall be delivered to Walaschek and to the related persons, Chemco and Colimex. This order shall be published in the Federal Register.

Dated: August 7, 1989.

Iain S. Baird,

Director, Office of Export Licensing.

[FR Doc. 89-18961 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-307-801; C-307-802]

Preliminary Determination of Sales at Less Than Fair Value and Alignment of Countervailing Duty Investigation; Aluminum Sulfate from Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that aluminum sulfate from Venezuela is being, or is likely to be, sold to the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of aluminum sulfate from Venezuela as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by October 18, 1989. At the request of petitioner, we are also aligning the countervailing duty investigation of aluminum sulfate from Venezuela with this investigation. The final determination in that investigation will also be issued by October 18, 1989.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins, Kimberly Hardin, or Mary S. Clapp, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–1756, 377–8371, or 377–3965, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that aluminum sulfate from Venezuela is being, or is likely to be, sold to the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation (54 FR 17802, April 25, 1989), the following events have occurred. On May 15, 1989, the ITC determined that there is a reasonable indication that imports of aluminum sulfate from Venezuela are materially injuring a regional industry in the United States (USITC Pub. 2189, May 1989).

On May 10, 1989, the Department presented Section A of the antidumping questionnaire to Sulfates del Orinoco, C.A. (SULFORCA), which accounted for a substantial portion of exports from Venezuela to the United States during the period of investigation. The response to section A of the questionnaire was received on May 25, 1989. On May 31, 1989, petitioner alleged that SULFORCA's home market sales were at prices which were below its cost of production. This allegation was amended on June 23, 1989. We have not yet determined whether the allegation provides a sufficient basis for initiating a cost investigation. On June 13, 1989, SULFORCA informed the Department that it would not be responding to the remaining portions of the sales questionnaire or to any cost questionnaire if one is issued.

On July 20, 1989, petitioner filed a request for alignment of the countervailing duty and antidumping duty final determinations. Pursuant to section 705(a)(1) of the Act, we are aligning the countervailing duty and antidumping duty final determinations.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumptions on or after that date will be classified solely according to the appropriate HTS item number. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive of the scope of our investigation.

The product covered by this investigation is aluminum sulfate from Venezuela, liquid and dry, currently provided for under HTS item number 2833.22.00.00.

Period of Investigation

The period of investigation is August 1, 1988 through March 31, 1989.

Fair Value Comparisons

To determine whether sales of aluminum sulfate from Venezuela to the United States were made at less than fair value, we compared the United States price to the foreign market value. We used best information available as required by section 776(c) of the Act for the reasons stated in the "Case History" section of this notice.

United States Price

As best information available, we used petitioner's estimate of U.S. price, as provided in the petition, which is based on a delivered price per ton of aluminum sulfate imported from Venezuela. This price is set forth in a contract between a U.S. customer and SULFORCA, the Venezuelan supplier named in the petition. U.S. price was adjusted to account for inland freight from the liquification site in Puerto Rico to the customer, liquification cost in Puerto Rico, inland freight to the liquification site in Puerto Rico, Puerto Rican excise taxes, ocean freight and insurance.

Foreign Market Value

As best information available, we used petitioner's estimate of foreign market value (FMV) which is based on an f.o.b. plant price quote dated March 10, 1989. Petitioner made no adjustment to FMV.

Verification

Since SULFORCA did not furnish a complete response to the questionnaire, we will not conduct a verification.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of aluminum sulfate from Venezuela, as defined in the "Scope of Investigation" section of this notice that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Venezuela exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
SULFORCA	96.30
All others	96.30

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after the date of the preliminary determination or 45 days after our final determination, if affirmative.

Public Comment

In accordance with § 353.38 of the Commerce Department's antidumping duty regulations published in the Federal Register of March 28, 1989 (54 FR 12742) (to be codified as 19 CFR 353.38) and § 355.38 of the Commerce Department's countervailing duty regulations published in the Federal Register of December 27, 1988 (54 52361) (to be codified as 19 CFR 355.38), case briefs in at least ten copies must be submitted to the Assistant Secretary by September 15, 1989, and rebuttal briefs by September 20, 1989. In accordance with § 353.38(b) of the Department's antidumping duty regulations and § 355.38(b) of the Department's countervailing duty regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in their case or rebuttal briefs at 10:00 a.m. in the antidumping duty investigation and 2 p.m. in the countervailing duty investigation on September 22, 1989, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in

the hearing must submit a request to the Assistant Secretary for Import Administration, Room B099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with § 353.38(b) of the Department's regulations, oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Dated: August 4, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-18676 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-082]

Animal Glue and Inedible Gelatin From West Germany; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from a manufacturer/exporter, the Department of Commerce has conducted an administrative review of the antidumping finding on animal glue and inedible gelatin from West Germany. The review covers one manufacturer/exporter of this merchandise to the United States, G. Conradt & Sohn (Conradt), and the period December 1, 1987 through November 30, 1988. There were no known shipments of this merchandise to the United States by Conradt during the period, and there are no known unliquidated entries. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Room B-099, 14th Street & Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On January 8, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 546) the final results of its last administrative review of the antidumping finding on animal glue and inedible gelatin from West Germany. A manufacturer/exporter, Conradt, requested in accordance with 19 CFR 353.53a(a) (1988) that we conduct an administrative review. We published a notice of initiation on January 31, 1989 (54 FR 4871). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after the date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of West German animal glue and inedible gelatin. During this review period such merchandise was classifiable under item numbers 455.4000 and 455.4200 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS items 3503.00.20 and 3506.10.10. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of this merchandise to the United States, Conradt, and the period December 1, 1987, through November 30, 1988. There were no known shipments of this merchandise to the United States by Conradt during the period, and there are no known unliquidated entries.

Conradt requested revocation from the finding based on no shipments since 1976. Pursuant to § 353.25 of the Department's antidumping regulations published in the **Federal Register** on March 26, 1989 (54 FR 12742) (to be codified at 19 CFR 353.25), we preliminarily determine that Conradt does not qualify for revocation, because the absence of shipments can no longer be used as the basis of revocation.

Preliminary Results of Review

As a result of our review, we preliminarily determine the margin to be:

Manufacturer/exporter	Period	Margin (percent)
Conradt	12/1/87-11/30/88	[1] 67

[1] No shipments during the period; margin from the last period in which there were shipments.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Prehearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any such comments or at a hearing.

Further, as provided for by § 353.22(c)(10) of the Department's regulations, a cash deposit of estimated antidumping duties of 67 percent shall be required for Conradt. For any shipments from the six remaining known manufacturers and/or exporters and the one known third-country reseller not covered in this review, the cash deposit will be the same as the rates published in the final results of the last administrative review for each of these firms (49 FR 13565, April 5, 1984). For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after November 30, 1988, and who is unrelated to the reviewed firm or any previously reviewed firm, no cash deposit shall be required.

Thes cash deposit requirements apply to all shipments of West German animal glue and inedible gelatin entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 4, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-18667 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-803]

Brass Sheet and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 17, 1989, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on brass sheet and strip from the Republic of Korea. The review covers one manufacturer/exporter of this merchandise to the United States and the period August 22, 1986 through December 31, 1987.

We gave interested parties an opportunity to comment on the preliminary results. At the request of the respondent, we held a hearing on April 21, 1989. Based on the comments received, we have changed the final results from those presented in the preliminary results of review.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 11258) the preliminary results of its administrative review of the antidumping duty order on brass sheet and strip from the Republic of Korea (52 FR 1215, January 12, 1987). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of the Review

Imports covered by this review are shipments of brass sheet and strip. During the review period, such merchandise was classifiable under item 612.3900 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under the Harmonized Tariff Schedule ("HTS") items 7409.21.00 and 7409.29.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter, Poongsan Metal Corporation ("Poongsan"), of brass sheet and strip from the Republic of Korea and the period August 22, 1986 through December 31, 1987.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of Poongsan, the respondent, we held a hearing on April 21, 1989. We received comments from Poongsan and the petitioners (American Brass, Hussey Copper, The Miller Company, North Coast Brass and Copper, Olin Corporation, Revere Copper Products, International Association of Machinists and Aerospace Workers, the AFL-CIO, Mechanics Educational Society of America (Local 56), and the AFL-CIO/CLC).

The Department notes that Poongsan did not provide currency identifiers on its computer tapes. As a result, we read the prices in the home market as Korean won and, for certain U.S. sales, we read "other merchandise processing fee" and "other harbor maintenance fee" as Korean won. Since Poonsan has subsequently identified certain figures as being in U.S. dollars, for these final results we have moved the decimal point so that the prices can be read in dollars.

Analysis of Poongsan's Comment

Comment 1: Poongsan argues that the Department should use the sales to its related distributor in the calculation of foreign market value because these prices are generally higher than those prices to unrelated parties in the home market.

Department's Position: We were unable to determine wehter or not Poongsan's prices to its related distributors were comparable to those prices to unrelated parties in the home market. Furthermore, we found that Poongsan sells at two different levels of trade in the home market. That is, it sells to related distributors and to unrelated OEMs. Section 353.58 of the Commerce Department's regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 355.58) states that we will calculate foreign market value and United States price based on sales at the same commercial level of trade. As a result, we compared the price to the OEMs in the United States to the price of the OEMs in the home market.

Analysis of the Petitioners' Comments

Comment 1: The petitioners argue that the Department unreasonably calculated differences in merchandise adjustments based on average 18-month variable costs rather than average quarterly variable costs for alloy 70/30. Using quarterly variable cost data to calculate difference in merchandise adjustments for alloy 70/30 is consistent with the differences in merchandise adjustments involving sales of 85/15 and 90/10. In addition, quarterly variable costs should be used in the final analysis because it is this information that most accurately reflects the variable costs of producing the merchandise actually sold. Using the average 18-month variable costs unreasonably distorts and understates the margin.

Department's Position: We determined that the 18-month variable costs were reasonable because there we no marked fluctuations in the quarterly data, and the difference in using the average 18-month variable costs versus the average quarterly costs for alloy 70/30 would have had a *de minimis* effect on the margin. For alloy 85/15 and 90/10, we did use the average quarterly variable costs because Poongsan did not provide the 18-month variable costs.

Comment 2: The petitioners argue that the Department improperly determined the date of sale on certain U.S. transactions where the metal price was fixed after the fabrication price. Using the date the metal price was fixed affects the Department's selection of contemporaneous sales of merchandise for comparison purposes. Therefore, the Department should make the necessary corrections.

Department's Position: We agree. Based on the information provided, the total fixed price for certain U.S. transactions was not established until the metal price was set. Therefore, we have made the changes to the dates of sale for those transactions where the metal price was fixed after the date of the fabrication price and we have changed the home market model matches accordingly.

Comment 3: The petitioners argue that the Department in applying its 90/60 day contemporaneous sale rule in selecting home market sales for comparison purposes, erroneously compared a U.S. sale made on October 28, 1987, with home market sales made on July 27, 1987, and a U.S. sale made on November 17, 1987, with a home market sale made on August 7, 1987.

Department's Position: We disagree. In applying the 90/60 day rule for selecting contemporaneous home market sales for comparison purposes, the Department used monthly weighted-average home market prices, not the price of an individual home market transaction. The 90/60 day guideline in such a case means that foreign market

BEST COPY AVAILABLE

values three months prior to or two months after the month in which the U.S. sale was made may be used, with preference being given to the former.

Comment 4: The petitioners argue that the Department erred by allowing Poongsan's home market warranty expense as a circumstance of sale adjustment because it was allocated across all home market sales and not just the alloys used for comparison purposes. Second, Poongsan has failed to distinguish between those warranty expenses incurred on sales to its related distributor and those warranty expenses incurred on sales to unrelated OEMs. For these reasons the Department should reject Poongsan's home market warranty expense claim.

Department's Position: We disagree. In the absence of any evidence that warranty expenses vary by grade or between various distributors and OEMs, and because Poongsan does not account for warranty expenses by alloy or customer, we find Poongsan's method of calculating this expense to be reasonable.

Comment 5: The petitioners argue that the Department should deduct the amount of the antidumping duties to be paid by Poongsan's affiliate in the United States because it is the importer of record. Petitioners further argue that this downward adjustment will achieve the price equilibrium intended by section 353.55 (now section 353.26) of the Commerce regulations.

Department's Position: Section 353.26 of the Commerce regulations provides that in calculating the United States price, the Department will deduct any amount of antidumping duties that are reimbursed to the producer or reseller. In this case, the petitioners have not alleged that antidumping duties are being reimbursed, and there is no evidence on the record that an agreement to reimburse those duties exists. Absent evidence of reimbursement, the Department has no authority to make such an adjustment to U.S. price.

As a protection against such reimbursement, § 353.26 also requires that importers provide the Customs Service a certificate of nonreimbursement prior to liquidation of entries. If that certificate is not provided, the Customs Service will decrease the United States price by the calculated amount of antidumping duties, and thus, will liquidate the entry at twice the antidumping duty rate.

Comment 6: The petitioners argue that the Department's selection of best information available for after sale warehousing expense in the United States rewards Poongsan for failing to report this expense properly. The petitioners further argue that the Department should calculate the amount of poongsan's after sale warehousing expense on a per pound basis by dividing the total expense by the total pounds sold on an f.o.b. Pan Metal (Poongsan's affiliate) warehouse basis. Poongsan argues that the Department correctly used the best information available for calculating the amount of after sale warehousing expenses. They further argue that petitioners' approach would arbitrarily and grossly overstate warehousing costs because it is inferential in nature and substantially distorts the amount of product actually stored.

Department's Position: Because Poongsan did not provided the information necessary to allocate the expense, and because the petitioners' suggested use of best information available is reasonable, we have recalculated the after sale warehousing expense on a per pound basis.

Comment 7: The petitioners contend that Poongsan's cash deposit rate should be applied to "all other" exporters and not just to new exporters as stated in our preliminary notice. Petitioners claim that this would simplify the process.

Department's Position: While simpler in some respects, applying Poongsan's rate to "all others" and not just to "new shippers" would not be in accordance with the Department's longstanding practice. (See our *Final Results of Administrative Review; Certain High Capacity Pagers from Japan*, 51 FR 16881, May 7, 1986, *Sugar and Syrups from Canada*, 51 FR 20322, June 4, 1986, and *Pig Iron from Canada*, 51 FR 42277, November 24, 1986.) Moreover, in this proceeding Poongsan is the only known exporter and, hence, to our knowledge the "all other" rate has not been applied to any other shipper.

Final Results of the Review

As a result of our review of the comment received and the correction of certain clerical errors, we have determined that a margin of 7.34 percent exists for Poongsan Metal Corporation for the period August 22, 1986 through December 31, 1987.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions for each exporter directly to the Customs Service. Individual differences between United States price and foreign market value may vary from the percentages stated above. Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposited of estimated antidumping duties based on the above margin shall be required. For any future entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipments occurred after December 31, 1987, and who is unrelated to any reviewed firm, a cash deposit of 7.34 percent shall be required.

These deposit requirements are effective for all shipments of Korean brass sheet and strip entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until the publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22.

Dated: August 4, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-18871 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-614-502]

Low-Fuming Brazing Copper Rod and Wire from New Zealand; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from a manufacturer/exporter, the Department of Commerce has conducted an administrative review of the antidumping duty order on low-fuming brazing copper rod and wire from New Zealand. The review covers one manufacturer/exporter of this merchandise to the United States, McKechnie Bros. (N.Z.) Ltd. ("McKechnie"), and the period December 1, 1986 through November 30, 1987. The review indicates the existence of dumping margins.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Chip Hayes, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4195/2923.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 21504) the final results of its last administrative review of the antidumping duty order on low-fuming brazing copper rod and wire from New Zealand (50 FR 49740, December 4, 1985). McKechnie requested in accordance with 19 CFR 353.53a(a) (1988) that we conduct an administrative review. We published a notice of initiation on January 27, 1988 (53 FR 2262). The Department has now conducted that review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number (s).

Shipments covered by this review are low-fuming brazing copper rod and wire principally of copper and zinc alloy ("brass") of varied dimensions in terms of diameter, whether cut-to-length or coiled, whether bare or flux-coated. During the review period such merchandise was classifiable under item numbers 612.6205, 612.7220, and 653.1500 of the *Tariff Schedules of the United States Annotated.* This merchandise is currently classifiable under HTS item numbers 7407.21.50, 7408.11.60, 7408.19.00, 7408.21.00, 7408.22.50, 7408.29.50, 8311.10.00, 8311.20.00, 8311.30.60, and 8311.90.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. The review covers one manufacturer/exporter of this merchandise to the United States, McKechnie, and the period December 1, 1986 through November 30, 1987.

United States Price

In calculating United States price, the Department used purchase price as defined in section 772 of the Tariff Act. Purchase price was based on the c.i.f. price to unrelated purchasers in the United States. We made adjustments for ocean freight and marine insurance. Additionally, we added the assessed amount of U.S. countervailing duty attributable to export subsidies to the United States price. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, the Department used home market or third-country price, both as defined in section 773 of the Tariff Act.

Home market price was based on the packed, free-on-railhead price to unrelated purchasers in the home market with adjustments where applicable for inland freight and U.S. commissions. We made further adjustments where applicable for differences in credit, the physical characteristics of the merchandise, and packing between the home market and U.S. merchandise. No other adjustments were claimed or allowed.

Third-country price was based on packed c.i.f. price to various purchasers in Canada. We made adjustments where applicable for ocean freight and marine insurance. We made further adjustments where applicable for differences in commissions, credit, the physical characteristics of the merchandise and packing between the third-country and U.S. merchandise. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margin exists for the review period:

Manufacturer/Exporter: McKechnie.
Time Period: 12/01/86-11/30/87.
Margin (Percent): 1.68.

Interested Parties may request disclosure within five days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 45 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751(a)(2) of the Tariff Act, a cash deposit of estimated antidumping duties of 1.68 percent shall be required for McKechnie. For any future entries of this merchandise form a new exporter, not covered in this or prior administrative reviews, whose first shipment occurred after November 30, 1987, a cash deposit of 1.68 shall be required. These cash deposits are effective for all shipments of low-fuming brazing copper rod and wire, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with sections 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Department's Regulations published in the **Federal Register** on March 26, 1989 (54 FR 12742 (to be codified at 19 CFR 353.22)).

Dated: August 4, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-18874 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-028]

Roller Chain, Other Than Bicycle, From Japan; Revocation in Part of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of revocation in part of antidumping finding.

SUMMARY: On January 23, 1989, the Department of Commerce published the final results of antidumping duty administrative review and intent to revoke in part on the antidumping finding on roller chain, other than bicycle, from Japan. At the time of publication the Department had been ordered by the Court of International Trade ("the Court") not to revoke the finding with respect to Tsubakimoto pending a decision on the matter before the Court *(U.S.T. Inc. and Tsubakimoto Chain Company v. United States,* Court No. 88-08-00993, Order dated February 4, 1988). Because the Court dismissed the case on May 15, 1989, the Department of Commerce is proceeding with revocation with respect to Tsubakimoto.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Edward F. Haley or Robert Marenick,

Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On January 23, 1989, the Department of Commerce ("the Department") published the final results of antidumping duty administrative review and intent to revoke in part on the antidumping finding on roller chain other than bicycle, from Japan (54 FR 3099). That notice stated that if the Department's intent to revoke in part was finalized, it would apply to all unliquidated entries of this merchandise manufactured and exported by Tsubakimoto and entered, or withdrawn from warehouse, for consumption on or after September 1, 1983, the date of its tentative determination to revoke with respect to this firm (48 FR 39673). At the time of publication of its intent to revoke in part, the Department has been ordered by the Court of International Trade not to revoke the finding with respect to Tsubakimoto pending a decision on the matter before the Court.

On May 15, 1989, the Court dismissed *U.S.T. Inc, and Tsubakimoto Chain Company v. United States*, Court No 86–06–00993, thereby allowing the Department to proceed with revocation in part of the antidumping finding on roller chain, other than bicycle, with respect to Tsubakimoto.

Revocation in Part of Antidumping Finding

For the reasons set forth in the final results of administrative review and intent to revoke in part, the Department, is revoke the antidumping finding on roller chain, other than bicycle, from Japan with respect to Tsubakimoto. This partial revocation applied to all unliquidated entries to this merchandise manufactured and exported by Tsubakimoto and entered, or withdrawn from warehouse, for consumption on or after September 1, 1983. The Department will instruct the Customs Service not to assess antidumping duties on entries on or after September 1, 1983.

Because the tentative revocation was published prior to the effective date of the Commerce Regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.25) this notice and revocation in part are being published in acordance with sections 19 CFR 353.54 (1988) of the Department's Regulations.

Dated: August 4, 1989

Lisa B. Barry,

Acting Assistant Secretary for Import Administration

[FR Doc. 89–18873 Filed 8–11–89; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–057]

Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from one manufacturer/exporter and the petitioner, the Department of Commerce ("the Department") has conducted an administrative review of the antidumping finding on replacement parts for self-propelled bituminous paving equipment from Canada. The review covers one manufacturer and/or exporter of this merchandise and the period September 1, 1987 through December 31, 1988. This firm, Allatt Paving Equipment Division of Ingersoll-Rand Canada Inc. (formerly Fortress Allatt Ltd.) ("Allatt"), provided inadequate and untimely responses to the Department's requests for information. Therefore, we used the best information available for this firm. As a result of the review, we have preliminarily determined to assess antidumping duties equal to the rate found during the fair value investigation as best information available for this firm.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Chip Hayes, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–8312/2923.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 1752) the final results of its last administrative review on the antidumping finding on replacement parts for self-propelled bituminous paving equipment from Canada (42 FR 41811, September 7, 1977). On May 8, 1989, the Department published in the **Federal Register** an amendment to the final results of administrative review (54 FR 19581). One manufacturer and/or exporter and the petitioner requested, in accordance with § 353.53a(a) of the Commerce Regulations (1988), that we conduct an administrative review. We published a notice of initiation on December 5, 1988 (53 FR 48951). That notice indicated that the period of review was September 1, 1987 through August 31, 1988. Subsequently, we amended the period of review to include all sales through December 31, 1988. The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Allatt provided inadequate and untimely responses to the Department's requests for information. The firm's initial questionnaire response failed to provide information on either sales of identical or similar merchandise in third-countries or information for constructed value for those parts that had no similar home market sales. It then failed to provide a timely response to a follow-up request for this information and information regarding freight charges for parts sold directly to customers, for parts sold from warehouses, commissions on sales to the United States and warehouse and selling expenses in the United States.

Accordingly, we have used the best information available. As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the rate found during the fair value investigation as best information available for this firm.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of replacement parts for self-propelled bituminous paving equipment, excluding attachments and parts for attachments, from Canada. During the review period, such merchandise was classifiable under items 652.1540, 652.1825, 652.3530, 678.5097, 680.2500, 680.3300, 685.9026, 685.9500, 686.8040, 688.1800, 712.4900, and 773.2500 of the *Tariff Schedules of the United States Annotated*. This merchandise is currently classifiable under HTS items 4016.93.10, 7315.11.00, 7315.89.50, 7315.90.00, 8336.50.00, 8479.99.00, 8481.20.00, 8482.10.10, 8483.90.90, 8539.29.20, 8544.20.00, 8544.41.00, 8544.51.80, 8544.60.20, 9015.30.40. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one exporter of this merchandise to the United States and the period September 1, 1987 through December 31, 1988.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that a margin of 30.61 percent exists for Allatt Paving Equipment Division of Ingersoll-Rand Canada Inc. for the period September 1, 1987 through December 31, 1988.

Interested parties may request disclosure whithin 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by § 353.22(c)(10) of the new Commerce Regulations (published in the Federal Register on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.22)), a cash deposit of estimated antidumping duties based on the above margins shall be required for this firm. For any shipments from the remaining known manufacturers and/or exporters not covered in this review, a cash deposit shall be required at the rates published in the final results of the last administrative review for each of these firms (May 8, 1989; 54 FR 19581). For any future entries of this merchandise from a new exporter not covered in this or in prior reviews, whose first shipment occurred after December 31, 1988, and who is unrelated to any reviewed firm or any other previously reviewed firm, a cash deposit of 1.39 percent shall be required. Because cash deposit rates assigned as best information available are not used for new exporters, we use the highest rate found in the last published review. These deposit requirements are effective for all shipments of Canadian replacement parts for self-propelled bituminous paving equipment entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the new Commerce Regulations.

Dated: August 4, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89–18869 Filed 8–11–89; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–803]

Postponement of Final Antidumping Duty Determination and Postponement of Antidumping Duty Public Hearing; Certain Small Business Telephone Systems and Subassemblies Thereof From Korea

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondents in the antidumping duty investigations to postpone the final determination, as permitted by section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)).

Based on this request, we are postponing our final determination as to whether sales of small business telephone systems and subassemblies thereof from Korea have occurred at less than fair value not later than December 18, 1989. We are also postponing our public hearing in the antidumping duty investigation until November 16, 1989.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Brad Hess at (202–377–3773), or Louis Apple at (202–377–1769), Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On August 3, 1989, we published a preliminary determination of sales at less than fair market value of this merchandise. This notice stated that if the investigation proceeded normally, we would make our final determination by October 10, 1989.

On July 28, and August 2, 1989, respondents requested a postponement of the final determination in the antidumping duty investigation until not later than December 18, 1989, the 135th day after publication of our preliminary determination, pursuant to section 735(a)(2)(A) of the Act (19 U.S.C. 1673d(a)(2)(A)). These respondents account for a significant proportion of exports of the merchandise to the United States. If exporters who account for a significant proportion of exports of the subject merchandise under investigation request a postponement of the final determination following a preliminary affirmative determination we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final antidumping duty investigation until not later than December 18, 1989.

Public Comment: In accordance with § 353.38 of the Department's regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.38), if requested we will hold a public hearing to afford interested parties an opportunity to comment on the preliminary determination in the antidumping duty investigation at 9:30 a.m. on November 16, 1989, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B–099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

Ten copies of the business proprietary version and five copies of the public version of case briefs must be submitted to the Assistant Secretary by November 9, 1989. Ten copies of the business proprietary version and five copies of the public version of rebuttal briefs must be submitted to the Assistant Secretary by November 14, 1989.

An interested party may make an affirmative presentation at the public hearings only on arguments included in

that party's case brief, and may make a rebuttal presentation only on arguments in that party's rebuttal brief. Written arguments should be submitted in accordance with section 353.38 of the Commerce Department's regulations published in the Federal Register on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.38), and will be considered only if received within the time limits specified in this notice.

The U.S. International Trade Commission is being advised of this postponement in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act.

Dated: August 7, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-18877 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-307-701]

Final Results of Antidumping Duty Administrative Review; Solid Urea From the Union of Soviet Socialist Republics

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 25, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on solid urea from the Union of Soviet Socialist Republics. The review covers one manufacturer/exporter of this merchandise to the United States, Soyuzpromexport ("SPE"), and the period January 2, 1987 through June 30, 1988.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. Based on our analysis, the final results are the same as those presented in the preliminary results of review.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph E. Downey or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On April 25, 1989, the Department of Commerce ("the Department") published in the Federal Register (54 FR 17805) the preliminary results of its administrative review of the antidumping duty order on solid urea from the Union of Soviet Socialist Republics (53 FR 2836, July 14, 1987). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of solid urea from the Union of Soviet Socialist Republics. During this review period such merchandise was classifiable under item 480.3000 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under Harmonized Tariff Schedule ("HTS") item 3102.10.00. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of this merchandise to the United States, SPE, and the period January 1, 1987 through June 30, 1988. There were no known shipments of this merchandise to the United States by SPE during the period and there are no known unliquidated entries.

Final Results of the Review

Interested parties were invited to comment on the preliminary results. We received no comments. The final results are the same as those presented in our preliminary results of review. The Department has determined that the following margin exists for the period January 2, 1987 through June 30, 1988:

Manufacturer/Exporter	Margin/Percent
SPE	*44.80

* No shipments during the period; margin from the last period in which there were shipments.

As provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties shall be required on all entries of this merchandise based on the above margin.

These deposit requirements are effective for all shipments of solid urea from the USSR entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's new regulations (54 FR 12742, March 28, 1989) (to be codified at 19 CFR 353.22).

Dated: August 4, 1989

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-18870 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-429-601]

Final Results of Antidumping Duty Administrative Review; Solid Urea From the German Democratic Republic

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 25, 1989, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on solid urea from the German Democratic Republic. The review covers one manufacturer/exporter of this merchandise to the United States, Chemie Export-Import ("Chemie"), and the period January 2, 1987 through June 30, 1988.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. Based on our analysis, the final results are the same as those presented in the preliminary results of review.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On April 25, 1989, the Department of Commerce ("the Department") published in the Federal Register (54 FR 17805) the preliminary results of its administrative review of the antidumping duty order on solid urea from the German Democratic Republic (53 FR 2836, July 14, 1987). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of solid urea from the German Democratic Republic. During this review period such merchandise was classifiable under item 480.3000 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under Harmonized Tariff Schedule ("HTS") item 3102.10.00. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of this merchandise to the United States, Chemie, and the period January 2, 1987 through June 30, 1988. There were no known shipments of this merchandise to the United States by Chemie during the period and there are no known unliquidated entries.

Final Results of the Review

Interested parties were invited to comment on the preliminary results. We received no comments. The final results are the same as those presented in our preliminary results of the review. The Department has determined that the following margin exists for the period January 2, 1987 through June 30, 1988:

Manufacturer/Exporter: Chemie.

Margin/Percent: 44.80*.

As provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties shall be required on all entries of this merchandise based on the above margin.

This deposit requirement is effective for all shipments of East German solid urea entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1671(a)(1)) and § 353.22 of the Department's new regulations (54 FR 12742, March 28, 1989) (to be codified at 19 CFR 353.22).

Dated: July 27, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-18868 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-337-802]

Standard Carnations from Chile; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner and three respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on standard carnations from Chile. The review covers four producers/exporters of this merchandise to the United States and the period November 3, 1986 through February 29, 1988. The review indicates the existence of dumping margins during the period.

As a result of the review the Department has preliminarily determined to assess dumping duties using the margin from the antidumping duty order as best information otherwise available.

We used the best information for these firms because Coexflor, Flores de Chile, and Sociedad Agricola provided inadequate responses to our requests for information and Agricola Longotoma did not respond to our antidumping questionnaire.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Laurie A. Lucksinger, Office of Antidumping Duty Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On March 20, 1987, the Department of Commerce ("the Department") published in the Federal Register (52 FR 8939) the antidumping duty order on standard carnations from Chile. The Floral Trade Council, the petitioner, and three respondents requested in accordance with 19 CFR 353.53a(a) (1988) that we conduct an administrative review.
(15083). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of standard carnations from Chile. During the review period such merchandise was classifiable under item 192.21 of the Tariff Schedules of the United States Annotated ("TSUSA"). This merchandise is currently classifiable under HTS item 0603.10.90. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. The review covers four producers and/or exporters of standard carnations from Chile to the United States and the period November 3, 1986 through February 29, 1988.

Preliminary Results of the Review

Three firms submitted inadequate responses to the Department's request for information: Coexflor, Flores de Chile, and Sociedad Agricola. The three responses and supplemental responses were inadequate because they did not provide the sale-specific data we requested. In their original responses, the three firms provided aggregate home market and/or United States sales data. In a supplemental questionnaire we requested that they provide sale-specific data and the charges associated with each sale. The supplemental responses did not provide sale-specific data but again aggregated all sales. Therefore, we were unable to analyze the individual sales to the United States and to determine the appropriate foreign market value for our dumping analysis. Agricola Longotoma failed to respond to our antidumping questionnaire. For all four firms we relied on the best information otherwise available for purposes of assessment and cash deposit of estimated antidumping duty. As best information otherwise available we used the highest rate in the antidumping duty order.

As a result of our review, we preliminarily determine that the following margins exist for the period November 3, 1986 through February 29, 1988:

Producer/Exporter	Margin (Percent)
Agricola Longotoma	28.78
Coexflor	28.78
Flores de Chile	28.78
Sociedad Agricola	28.78

Interested parties may request disclosure within 5 days of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to

* No shipments during the period; margin from the last period in which there were shipments.

issues in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required on shipments of standard carnations from Chile by the companies under review. For any future entries of this merchandise from a new producer and/or exporter, not covered in this review or in the original investigation, whose first shipments occurred after February 29, 1988, and who is unrelated to the reviewed firms or any firm which was subject to the original investigation, a cash deposit of 28.78 percent shall be required.

These deposit requirements are effective for all shipments of standard carnations from Chile entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of our antidumping regulations published in the Federal Register on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.22).

Dated: August 7, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-18875 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-402]

Lime From Mexico; Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review and Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances countervailing duty administrative review and intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce has received information sufficient to warrant initiation of a changed circumstances administrative review of the countervailing duty order on lime from Mexico. Based on this information, we preliminarily determine that the U.S. lime industry would not be materially injured or threatened with material injury if the countervailing duty order on lime from Mexico were revoked. Therefore, we intend to revoke this countervailing duty order. We invite interested parties to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: August 24, 1989.

FOR FURTHER INFORMATION CONTACT: Paul McGarr or Ilene Hersher, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On September 11, 1984, the Department of Commerce ("the Department") published in the Federal Register (49 FR 35672) a notice of final affirmative countervailing duty determination and countervailing duty order on lime from Mexico. At the time the countervailing duty order was issued, Mexico was not entitled to an injury test under U.S. and international law. Countervailing duties were imposed upon this merchandise, which was and remains duty free, without a determination that these entries were injuring the relevant domestic industry.

On August 24, 1986, Mexico acceded to the General Agreement on Tariffs and Trade ("GATT"). Consistent with our earlier positions in *Certain Fasteners from India; Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order* (47 FR 44129; October 6, 1982) and *Carbon Steel Wire Rod from Trinidad and Tobago; Preliminary Results of Administrative Review and Tentative Determination to Revoke Countervailing Duty Order* (50 FR 19561; May 9, 1985), the Department has concluded that it lacks the authority under Article VI of the GATT and section 303(a)(2) of the Tariff Act of 1930, as amended ("the Tariff Act"), to levy countervailing duties on duty-free imports from Mexico absent a determination regarding injury to the domestic industry.

On January 31, 1989, in order to fulfill our international obligations, the United States Trade Representative ("USTR") requested that the U.S. International Trade Commission ("ITC") conduct an investigation pursuant to Section 332 of the Tariff Act to assess whether (1) an industry in the United States would be materially injured, or would be threatened with material injury, or (2) the establishment of an industry in the United States would be materially retarded, if the Department were to revoke the outstanding countervailing duty order on lime from Mexico. On July 10, 1989, the ITC submitted to USTR its report on the "Conditions of Competition Between U.S. and Mexican Lime in the United States Market" (Investigation No. 332-271).

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after this date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments from Mexico of calcium oxide (CaO), commonly called quicklime or lime, and calcium hydroxide ($Ca(OH)_2$), commonly called hydrated lime or hydrate. Through 1988, such merchandise was classifiable under item numbers 512.1100 and 512.1400 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item numbers 2520.20.00, 2522.10.00 and 2522.30.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Initiation, Preliminary Results of Review and Intent to Revoke

The Government of Mexico's accession to the GATT, the international obligations that we incurred which require an affirmative determination of injury to a domestic industry prior to levying countervailing duties on duty-free imports of lime from Mexico, and the ITC's investigation of the "The Conditions of Competition Between U.S. and Mexican Lime in the United States Market" are changed circumstances sufficient to warrant initiation of a review. Further, because of our international obligations and the information in the ITC's report, we conclude that expedited action is warranted and are combining the notices of initiation and preliminary results of changed circumstances administrative review.

As a result of our review of the record developed in the ITC's investigation, we preliminarily determine that the United States lime industry would not be materially injured or threatened with material injury, nor would the establishment of an industry be materially retarded, by reason of imports of lime from Mexico if the countervailing duty order covering those imports were revoked. Further, we preliminarily determine that the Southwestern United States lime industry would not be materially injured or threatened with material injury, nor would the establishment of an industry be materially retarded, if the countervailing duty order were revoked. For these reasons, and in view of our international obligations not to levy countervailing duties on duty-free imports from GATT-member countries in the absence of an affirmative injury determination, we preliminarily determine that there is a reasonable basis to believe that the requirements for revocation based on changed circumstances are met.

Therefore, we intend to revoke the countervailing duty order on lime from Mexico effective August 24, 1988. The current requirements for the cash deposit of estimated countervailing duties will remain in effect until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and intent to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday following. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, must be filed not later than 37 days after the date of publication. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This initiation of review, administrative review, intent to revoke and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and §§ 355.22 (h)(1) and (h)(4) and 355.25 (d)(1) and (d)(3) of the Commerce Regulations published in the Federal Register on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22 and 355.25).

Dated: August 7, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-18878 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council and its Committees will meet on August 28 through September 1, 1989, at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC, to discuss snapper/grouper, large pelagics, bluefish, shark, king and Spanish mackerel, habitat, and other fishery management issues. The Council's Finance, Executive, Advisory Panel, Scientific and Statistical, and Law Enforcement Committees also will meet.

A detailed agenda will be available to the public on or about August 11, 1989. For more information contact Carrie R.F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Dated: August 8, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-18879 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Amendment to the Notice of Intent (NOI) To Prepare an Environmental Impact Statement for the Realignment of Mountain Home AFB, ID

On February 8, 1989, the Department of the Air Force published a notice of intent document in the Federal Register (54 FR 6258). Please add the following:

To accommodate the move of the 35 TTW and associated assets from George AFB, California to Mountain Home AFB, Idaho, additional air-to-ground gunnery range and associated airspace will be required at Saylor Creek Weapons Range. The exact size of new airspace and air-to-ground range expansion is still under study and will be included in the Mountain Home AFB, ID Realignment Environmental Impact Statement (EIS). As part of the range expansion, some lands managed by the Bureau of Land Management (BLM) will need to be withdrawn for Air Force use and some private and state lands will need to be acquired. The anticipated total acquisition will represent approximately 1,500,000 acres. Where compatible and possible, land use will remain as it is now. However, some weapons impact areas for the air-to-ground ranges will be designated for sole (exclusive) Air Force use.

The proposal for additional airspace requirements includes lowering the floor of the existing military operating areas (MOAs) to 10,000 feet mean sea level (MSL) for subsonic flight training over Nevada and Oregon, and possibly extending the boundary of Paradise MOA further south. The proposal for supersonic flight operations includes the proposed Owyhee MOA and the expanded Saylor Creek Range, all in the state of Idaho. Supersonic flight operations are a desirable capability for all modern fighter aircraft. Supersonic operations and associated impacts will be evaluated within the context of the EIS for the Mountain Home AFB Realignment and Saylor Creek Expansion.

Since the EIS includes a proposed land withdrawal, the Bureau of Land Management (BLM) will be a cooperating agency for the EIS. This may require BLM land use plans to be amended and updated to cover the expanded range area. All issues involved in the range and airspace expansion will be addressed in the EIS.

The range and airspace expansion were not included in the original notice of intent because the requirements associated with these expansions were being evaluated.

We plan to hold additional scoping meetings. Specific dates and times will be announced in the local media.

Questions concerning this proposal, additional scoping, or the draft EIS may be directed to: Captain Wilfred Cassidy, HQ TAC/DEEV, Langley AFB, VA 23665-5542, Telephone (804) 764-4430.

Written comments should be submitted by August 31, 1989.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-18941 Filed 8-11-89; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

August 8, 1989.

The USAF Scientific Advisory Board Division Advisory Group (AG) for Munitions Systems Division (MSD) will meet on 30 and 31 August 89 from 8:00 am to 5:00 pm and on 1 September 89 from 8:00 am to 3:00 pm at Eglin AFB, FL 32542, in Building 1.

The purpose of this meeting is to receive classified briefings and hold classified discussions on future tactical missile developments. This meeting will involve discussions of classified defense matters listed in section 552(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-18927 Filed 8-11-89; 8:45 am]

BILLING CODE 3910-01-M

Performance Review Boards; List of Members

Below is a list of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Office of the Secretary of the Air Force

BG Noah E. Loy

Air Staff

BG Graham E. Shirley

Air Force Systems Command

BG Frederick A. Fiedler, Mr. Dennis M. Ring

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-18931 Filed 8-11-89; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Office of the Secretary

Office of Administrative Law Judges; Designation of Jurisdiction; American Printing House for the Blind, Inc., Louisville, KY

AGENCY: Department of Education.

ACTION: Notice of designation of jurisdiction to Office of Administrative Law Judges.

SUMMARY: The Secretary designates the Office of Administrative Law Judges (OALJ) as the forum to hear the appeal of the American Printing House for the Blind (APHB) of a program determination letter (PDL) issued by the Assistant Secretary for the Office of Special Education and Rehabilitative Services (Assistant Secretary). In the PDL issued on March 23, 1989, the Assistant Secretary found that during the audit period (July 1, 1982–June 30, 1987) APHB misspent funds awarded under 20 U.S.C. 101 *et seq.* by including building depreciation in the cost of manufacturing and distributing educational materials for the blind to public and private nonprofit institutions and agencies. The PDL requested that APHB restore $250,370 in the form of credits for brailled materials to the affected agencies and institutions, or alternatively, refund the disallowed amount to the Department of Education (Department). On April 21, 1989, APHB appealed the PDL disallowance and requested a hearing on the matter.

FOR FURTHER INFORMATION CONTACT: Honorable John Cook, Senior Judge, OALJ, 400 Maryland Avenue, SW (Room 3053, FOB-6), Washington, DC 20202-3727, Telephone: (202) 732-5162.

SUPPLEMENTARY INFORMATION: Section 451(a) of the General Education Provisions Act (GEPA), 20 U.S.C. 1234(a), was extensively amended by the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988, Public Law No. 100-297, section 3501, 102 Stat. 349-357 (1988). Pursuant to the Amendments and final implementing regulations (54 FR 19512, May 5, 1989, to be codified at 34 CFR Part 81), the OALJ has jurisdiction to conduct the following proceedings under an applicable program of the Department:

(1) Recovery of funds hearings pursuant to section 452 of GEPA.

(2) Withholding hearings.

(3) Cease and desist hearings.

(4) "Other proceedings designated by the Secretary".

The Department has the authority to designate the OALJ to hear the APHB's appeal under GEPA, as amended, and its implementing regulations, because an applicable program is any Department of Education program except those under the Higher Education Act and the Impact Aid statutes. *See* section 460(2) of GEPA, 20 U.S.C. 1234i, and 34 CFR 81.2. Thus, the program established pursuant to 20 U.S.C. 101 *et seq.* for the APHB is an applicable program and audit appeals concerning the program may be designated by the Department to the OALJ.

The Secretary has determined that designation of this appeal to the OALJ pursuant to section 451(a)(4) of GEPA would facilitate an orderly administrative review according to procedures recently established by the Hawkins-Stafford Amendments and implementing regulations. Designation will afford APHB the same procedures that are available to grantees of most programs administered by the Department.

Under the authority of section 451(a)(4) of GEPA, as amended (20 U.S.C. 1234(a)(4)) and 34 CFR 81.3 of the regulations, the Secretary designates the OALJ as the forum to hear APHB's appeal of the PDL issued by the Assistant Secretary on March 23, 1989. The OALJ is to review this appeal in accordance with the final regulations codified at 34 CFR part 81.

(Catalog of Federal Domestic Assistance Number not applicable)

Dated: August 8, 1989.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89-18923 Filed 8-11-89; 8:45 am]

BILLING CODE 4000-01-M

Meeting of the Executive Committee of the National Assessment Governing Board

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: August 23, 1989.

TIME: 10:00 a.m. until adjournment.

LOCATION: U.S. Department of Education, National Assessment Governing Board, Suite 4060, Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20202-7583.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Staff Director, National Assessment Governing Board, U.S. Department of Education, Suite 4060, Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20202-7583. Telephone: (202) 732-1824.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title 2III-C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 21988 (Pub. L. 100-297); (20 U.S.C. 1221e-1).

The Board is established to advise the Commissioner for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The Executive Committee of the National Assessment Governing Board will meet via teleconference in Washington, DC on August 23, 1989 from 10:00 a.m. until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The proposed agenda includes delineation of items for the agenda of other matters pertaining to the Executive Committee's responsibilities.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, Mary E. Switzer Building, 330 C Street, SW., Room 4060, Washington, DC from 8:30 a.m. to 5:00 p.m.

Bruno V. Manno,

Acting Assistant Secretary.

[FR Doc. 89-19146 Filed 8-11-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award Grant to Walter Stark

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14(e), it is making a financial assistance award under Grant Number DE-FG01-89CE15370 to Walter Stark.

SCOPE: The funding for this grant will allow the grantee to design, construct and test a pre-production prototype of his dehumidification system for use in high humidity areas.

The purpose of this project is to increase dehumidification performance of a vapor compression system by using an air-to-air heat exchanger. It is anticipated that this process will attain a 20% energy reduction.

ELIGIBILITY: Based on receipt of an unsolicited application, eligibility of this award is being limited to Walter Stark. This project represents a unique idea for which a competitive solicitation would be inappropriate. This is a project with high technical merit, representing an innovative technology which has a strong possibility of allowing for future reduction in the nation's energy consumption.

The term of this grant shall be 24 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Phyllis Morgan, MA-453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Arnold A. Gjerstad,

Acting Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89-18971 Filed 8-11-89; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award Intent to Award Grant To Tubemasters, Inc.

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE-FG01-89CE15445 to Tubemasters, Inc.

SCOPE: The funding for this grant will further define three basic areas necessary to the development and fabrication of four prototypes of the invention which automates the process of retubing power plant condensors: (1) Design, (2) build and assembly, and (3) test and documentation. It encompasses two hydraulic and two pneumatic units complete with test facilities for valid evaluation.

ELIGIBILITY: Based on receipt of an unsolicited application, eligibility of this award is being limited to Tubemasters, Inc., who has high qualifications in this specialized field of technology. The project has high technical merit representing an innovative technology which has a strong possibility of allowing for future reduction in the Nation's Energy Consumption.

The term of this grant shall be two years from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Calvin Lee, MA-453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89-18972 Filed 8-11-89; 8:45 am]

BILLING CODE 6450-01-M

Procurement and Assistance Management Directorate; Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7 (b)(2), it intends to award on a noncompetitive basis a cooperative agreement to Georgia Institute of Technology to support efforts on exploratory research and technology transfer leading to a new generic materials technology based on spherical ceramic shells for thermal insulation. The cooperative agreement is to be effective September 1, 1989. The estimated amount is $522,000.

PROCUREMENT REQUEST NO.: 05-89CE90052.000

PROJECT SCOPE: The primary objective of this cooperative agreement is to develop a foundation for a new high temperature insulation technology. This project will contribute to the DOE mission in energy conservation by providing an insulation capability not available today, not likely to be available by other methods at high temperatures and with potential to enable substantial energy conservation in furnaces in both industry and buildings. Georgia Institute of Technology has exclusive domestic capabilities to perform this research a.. follow-on commercialization efforts. Eligibility for this award is, therefore, restricted to Georgia Institute of Technology.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene E. Hoffman, Energy Research and Development, Oak Ridge Operations, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831-8600, 615-576-0735.

Issued in Oak Ridge, Tennessee, on July 26, 1989.

Robert E. Lynch,

Acting Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 89-18970 Filed 8-11-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ES89-32-000, et al.]

Utilicorp United Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Utilicorp United Inc.

[Docket No. ES89-32-000]

August 2, 1989.

Take notice that on July 28, 1989, UtiliCorp United Inc. ("Applicant") file an application with the Federal Energy Regulatory Commission ("Commission"), pursuant to section 204 of the Federal Power Act, seeking authority to issue up to and including $50 million of unsecured notes in a private placement and for exemption from the competitive bidding and negotiated placement requirements.

Comment date: August 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Northern Consolidated Power, Inc.

[Docket No. QF89-290-000]

August 2, 1989.

On July 21, 1989, Northern Consolidated Power, Inc. (Applicant) of 5 Post Oak Park, Suite 1400, Houston, Texas 77027, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in North East, Pennsylvania. The facility will consist of two combustion turbine generating units, two waste heat recovery boilers and an extraction/condensing steam turbine generating unit. Steam produced by the facility will be sold to Welch Food, Inc. for process uses, and for process chilling and freezing. The maximum net electric power production capacity will be 79.9 MW. The primary energy source will be natural gas. The facility will commence operation in July 1, 1991.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Southwestern Electric Power Co.

[Docket No. ER89-571-000]

August 4, 1989

Take notice that on July 27, 1989, Southwestern Electric Power Company (SWEPCO) tendered for filing a proposed amendment, dated July 2, 1989, to its contract for the sale of electric power and energy to the City of Hope, Arkansas and operation of a new delivery point located in Hempstead County, Arkansas which will, for the first time, directly interconnect SWEPCO and Hope. SWEPCO proposes an effective date of July 15, 1989, therefore, requests waiver of the 60-day notice requirement.

Copies of the filing were served on Hope and the Arkansas Public Service Commission.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Vermont Electric Power Co.

[Docket No. ER89-522-000]

August 4, 1989

Take notice that on July 26, 1989, Vermont Electric Power Company (Vermont) tendered for filing revised pages to the New York—NEPOOL Transfer Limits—1988 Summer report which was included as an exhibit in the June 27, 1989 filing in this docket.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Portland General Exchange, Inc.

[Docket No. ER89-580-000]

August 4, 1989.

Take notice that Portland General Exchange, Inc. (PGX) on August 1, 1989 tendered for filing Long-Term Sale and Exchange Agreements with the Cities of Glendale and Burbank. Under the Agreements, PGX will provide Glendale 20 MW annually and Burbank 10 MW annually, beginning September 16, 1988 and ending September 30, 2012. PBX states that the rate for this sale is based on competitive market conditions in the Southwest. PGX and Glendale and PGX and Burbank also will exchange 20 MW and 10 MW, respectively, over the period beginning September 16, 1988 and ending February 1992. During the months of June, July, August, and September, PGX will make capacity and energy available to Glendale and Burbank up to 10 on-peak hours per day. During November, December, January, and February, Glendale and Burbank will make capacity and energy available to PGX.

PGX states that the reason for the proposed Sale and Exchange Agreements is to provide to Glendale and Burbank power and power services needed by them, at a reasonable price.

PGX requests an effective date of September 16, 1988 and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served on the City of Glendale the City of Burbank, and the Oregon Public Utility Commission.

Comment date: August 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Connecticut Light and Power Co.

[Docket No. FA87-65-000]

August 4, 1989.

Take notice that on April 28, 1989 Connecticut Light and Power Company (CP&L) tendered for filing its refund report in compliance with the Commission's order issued on April 10, 1989.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Canal Electric Co.

[Docket No. ER89-570-000]

August 4, 1989.

Take notice that on July 26, 1989 Canal Electric Company (Canal) tendered for filing a Power Contract (the "Power Contract) between itself and Commonwealth Electric Company and a Martha's Vineyard Capacity Acquisition Commitment (the Commitment). The Power Contract implements the terms of the Capacity Acquisition Agreement (FERC Rate Schedule No. 21) and the Commitment. The Power Contract is an agreement among the parties for the sale by Canal and the purchase by Commonwealth of capacity and related energy to be produced by two (2) 1690 KW leased generator sets, located at a site on Martha's Vineyard, an island in Duke's County, Massachusetts, for the time period August 1, 1989 through September 30, 1989 and continuing thereafter from month to month at Commonwealth's option. Canal has requested that the Commission's notice requirements with respect to the Power Contract and the Commitment be waived pursuant to § 35.11 of the Commission's regulations in order to allow the tendered Power Contract to become effective as of August 1, 1989.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Company of Colorado

[Docket No. ER89-575-000]

August 4, 1989.

Take notice that Public Service Company of Colorado (PSCo) on July 28, 1989, tendered for filing a proposed change in its FERC Electric Service Tariff. PSCo states that the proposed changes are Supplements to PSCo's Power Purchase Agreements (Agreement) with the City of Burlington, Towns of Center and Julesburg, Colorado (Burlington, Center or Julesburg, Customers), dated: February 19, 1974, as amended; May 6, 1976; and September 5, 1978, as amended on file with the Commission under PSCo's FERC Rate Schedule Nos. 15, 17 and 20 for Burlington, Center and Julesburg.

PSCo indicates that the proposed changes are to reflect, in the rates charged to Burlington, Center of Julesburg, those components of new Power Purchase Agreements that differ from the superseded Agreements, as more fully set forth in the filing.

PSCo states that copies of the filing were served upon all parties to the Agreement and affected state commissions.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this document.

9. Utah Power & Light Co. PacificCorp; PC/UP&L Merging Corp.

[Docket No. ER89-573-000]

August 4, 1989.

Take notice that on June 1, 1989, Utah Power & Light Company tendered for filing a Second Amendment Notice of Succession which included a small number of tariffs that were inadvertently omitted from the January 9, 1989 filing. Also included in this filing is a list of tariffs that have been filed by the Merged Company since January 9 which have been given Pacific Power and/or Utah Power designations.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Co. of New Mexico

[Docket No. ER89-577-000]

August 4, 1989.

Take notice that on July 31, 1989, Public Service Co. of New Mexico (PNM) tendered for filing the Special Delivery Agreement for Federally Allocated Salt Lake City Integrated Projects Power and Energy between PNM and Southwestern Public Service Company (SPS). The agreement provides for PNM to furnish delivery service to SPS such that certain SPS customers can utilize their allocations of long-term firm power and energy from the Salt Lake City Area Integrated Projects. Delivery service is contingent on the availability of the 345 kV transmission line from Bernalillo Algodones Switchyard to Blackwater Station and the Blackwater AC–DC–AC Converter. When PNM is unable to deliver energy to SPS simultaneously with Western's deliveries to PNM, PNM will bank this energy and deliver it at a later date.

PNM is requesting a waiver of the Commission's notice requirements and is requesting that the Agreement be accepted for filing to be effective October 1, 1989.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison of New York, Inc.

[Docket No. ER89-579-000]

August 4, 1989.

Take notice that on July 31, 1989, Consolidated Edison of New York, Inc. (Con Edison) tendered for filing agreements dated April 29, 1988 (and amendments thereto) and March 10, 1989 providing for delivery by Con Edison of power and energy for the Power Authority of the State of New York (NYPA) to NYPA's public and economic development customers in Con Edison's electric service area. Under the agreements, Con Edison will continue to deliver power and energy to NYPA's customers under the terms specified therein and without change to the currently-effective rates for delivery service.

Con Edison also filed revisions to its implementing tariff provisions (FERC Schedule Nos. 42 and 78) to change the references in the tariffs to service provided under the March 10, 1989 delivery agreement. Con Edison is also proposing to amend FERC Schedule No. 78 in respect of delivery service rendered to NYPA customers with on-site generating equipment. The changes would allow customers to pay only twenty-five percent of interconnection costs prior to commercement of service, change a provision regarding payment of reinforcement costs, and add a requirement for payment of $0.25 per-kilowatt-per-month for customers with induction-type generators. Con Edison is requesting that these latter changes be put into effect as of June 26, 1989.

A copy of this filing has been served on NYPA and the New York State Public Service Commission.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Power Service Corp.

[Docket No. ER88-615-000]

August 4, 1989.

Take notice that on June 30, 1988, Allegheny Power Service Corp., on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, filed information in response to requests by the Staff concerning the initial filing in this docket on September 19, 1988.

Copies of the filing have been served upon American Municipal Power-Ohio, Inc., the Maryland Public Service Commission, the Ohio Public Utilities Commission, the Pennsylvania Public Utility Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and Elkem Metals Company.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. Yankee Atomic Electric Co.

[Docket No. EL87-21-005]

August 4, 1989.

Take notice that on July 24, 1989, Yankee Atomic Electric Company (Yankee Atomic) submitted for filing, an amendment to the Power Contracts under which it sells electricity for resale to ten New England utilities, to eliminate the equity reopener provision, in compliance with the Commission's Opinion No. 285–B in this docket.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Power & Light Co.

[Docket No. ER89-572-000]

August 4, 1989.

Take notice that on July 28, 1989, Wisconsin Power & Light Company (WPL) tendered for filing an amendment to the wholesale power agreement dated July 18, 1989, between the City of Wisconsin Dells and WPL. WPL states that this amendment revises the previous agreement between the two parties which was dated November 1, 1979, and is designated Rate Schedule No. 125 by the Commission.

The purpose of this amendment is to lengthen the notice period required for termination.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the City of Wisconsin Dells and the Wisconsin Public Service Commission.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

15. Boston Edison Co.

[Docket No. ER89-574-000]

August 4, 1989.

Take notice that on July 28, 1989, Boston Edison Company (Edison) tendered for filing supplemental Exhibit A to a Service Agreement for Braintree Electric Light Department (Braintree), under its FERC Electric Tariff, Original Volume No. III, Non-firm Transmission

Service (the Tariff). The Exhibit A specifies the amount and duration of transmission service required by Braintree under the Tariff.

Edison requests waiver of the Commission's notice requirements to permit the Exhibit A to become effective as of the commencement date of the transaction to which it relates, May 1, 1989.

Edison states that it has served the filing on Braintree and the Massachusetts Department of Public Utilities.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

16. Central Vermont Public Service

[Docket No. ER89-552-000]

August 4, 1989.

Take notice that on July 14, 1989, Central Vermont Public Service Corporation (Central Vermont) tendered for filing the following items in accordance with the agreement between Central Vermont and the Vermont Electric Generation and Transmission Cooperative, Inc.:

Exhibit 1 Revenue Comparison setting forth the forecast and actual revenue for 1988

Exhibit 2 Cost Report computing the forecast costs for 1988

Exhibit 3 Cost Report computing the actual costs for 1988

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

17. Tucson Electric Power Co.

[Docket No. ER89-741-000]

August 4, 1989.

Take notice that July 27, 1989, Tucson Electric Power Company (Tucson) tendered as an amendment to its original filing on May 30, 1989 for filing Revised Attachments A and B and Attachment C to an agreement entitled "1989 Short Term Power Sale Agreement Between Tucson Electric Power Company (Tucson) and Arizona Public Service Company (APS)", (hereinafter the "Agreement"). The primary purpose of the Agreement is to establish the terms and conditions for the sale of firm capacity and associated energy by Tucson and APS for the period June 1, 1989 through November 30, 1989 filing is to file revised cost support information for the system demand charge (Revised Attachment A) and the energy charge (Revised Attachment B) under the Agreement.

Tucson again requests an effective date of June 1, 1989, and therefore again request waiver of the Commission's notice requirements.

Tucson states that copies of this filing were served upon APS.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

18. Public Service Co. of New Mexico

[Docket No. ER89-576-000]

August 4, 1989.

Take notice that on July 31, 1989, Public Service Company of New Mexico (PNM) tendered for filing the Delivery Service to El Paso Electric Company on behalf of Holloman Air Force Base Letter Agreement between PNM and El Paso Electric Company (EPE). The Letter Agreements provides for PNM to furnish delivery service to EPE such that Holloman Air Force Base, a customer of EPE, can utilize its allocation of long-term firm power and energy from the Salt Lake City Area Integrated Projects.

PNM is requesting a waiver of the Commission's notice requirements and is requesting that the Letter Agreement be accepted for filing to be effective as of October 1, 1989.

Copies of the filing have been served upon EPE and the New Mexico Public Service Commission.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

19. San Diego Gas & Electric Co.

[Docket No. ER89-578-000]

August 4, 1989.

Take notice that on July 31, 1989, San Diego Gas & Electric Company (SDG&E) tendered for filing and acceptance, pursuant to 18 CFR 35.12, the Interchange Agreement (Agreement) between SDG&E and Turlock Irrigation District (Turlock) including Service Schedules A, B, and C.

SDG&E requests waiver of the Commission's prior notice requirements and an effective date of August 1, 1989 for this Agreement.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Turlock.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

20. Portland General Electric Co.

[Docket No. ER89-581-000]

August 4, 1989.

Take notice that Portland General Electric Company (PGE) on August 1, 1989, tendered for filing a Services Agreement with Portland General Exchange, Inc. (PGX) for coordination services. Under the Agreement, PGE will provide PGX scheduling, dispatching, and power accounting, daily shaping, reserves, storage, economy energy, and delivery services. Rates for these services are generally based on cost of service. The Agreement includes a 30 MW firm power sale and a 30 MW thermal unit displacement firm power sale. PGE states that the rate for this sale is based on the price of other firm power available in the region, PGE's incremental cost of production, and the cost of transmission.

PGE states that the reason for the proposed Services Agreement is to allow it to recover a portion of the fixed costs associated with certain power products and services available on its system during times when those services and products are not needed to serve its system load.

PGE requests an effective date of September 15, 1988 and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on PGX, and the Oregon Public Utility Commission.

Comment date: August 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

21. New England Power Co.

[Docket No. ER89-582-000]

August 4, 1989.

Take notice that on August 1, 1989, New England Power Company (NEP) tendered for filing amendments to its FERC Electric Tariff, Original Volume No. 1, Primary Service for Resale, constituting a new rate referred to as the W-11 rate. NEP states that the proposed rate would increase base rates by approximately $113.4 million. NEP states that the W-11 rate reflects the entry into service of a new generating unit, Seabrook 1, as of March 1, 1990. NEP also proposes an interim rate increase referred to as the W-11(a) rate, which is designed to recover the revenues required by NEP during the 1990 test year assuming Seabrook 1 is not in service, and which would increase base rates by $91.2 million. NEP proposes an effective date of October 1, 1989 for both the W-11 and W-11(a) rates, but requests that both rates be suspended until January 1, 1990 and that NEP be permitted to bill Rate W-11(a) on an interim basis until Seabrook 1's in-service date and to defer billing Rate W-11 until that date.

NEP states that its filing also includes a surcharge, to become effective on the in-service date of Seabrook 1 and to remain effective for five years, to collect certain amounts specified in a settlement in Docket Nos. ER83-647-000, ER85-687-001, *et al.*, and ER88-66-000. NEP further states that its filing includes separate surcharges for the recovery from affiliated customers of costs associated with certain nondispatchable conservation and load management programs, as provided in a settlement in Docket Nos. ER88-630-000, *et al.*, voted upon favorably at the Commission's July 26, 1989 session.

NEP has proposed the W-11 and W-11(a) rates under the incremental cost rate design methodology contained in the partial settlement approved by the Commission on July 11, 1989 in Docket Nos. ER88-640-000, *et al.*

Comment date: August 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

22. Hennepin Energy Resource Co.,

[Docket Nos. EC89-15-000 and EL89-41-000]

August 4, 1989.

Take notice that on July 12, 1989, Hennepin Energy Resource Co. Limited Partnership (Hennepin), tendered for filing with the Federal Energy Regulatory Commission (Commission) a petition for a declaratory order. In its petition, Hennepin requests an order of the Commission (1) authorizing the sale and leaseback of its qualifying small power production facility, located in Minneapolis, Minnesota; (2) disclaiming jurisdiction over the proposed Owner Trustee and Owner Participant exempting them from regulation as public utilities; (3) confirming the applicability of Hennepin's initial rate schedule to sales of electricity by Hennepin to NSP after the sale and leaseback is completed; and (4) certifying that the proposed change in ownership will not result in a loss of QF status for the facility.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

23. Connecticut Light and Power Co.

[Docket No. ER89-586-000]

August 7, 1989.

Take notice that on August 2, 1989, the Connecticut Light and Power Company (CP&L) tendered for filing proposed Sales Agreements with Respect to Slice-of-System Units, for a five-year sale of entitlements in a group of units representative of CL&P's generating system, for service to Canal Electric Company, Montaup Electric Company, New England Power Company, UNITIL Power Corp., and the Massachusetts Wholesale Electric Company, (collectively "Buyers").

CL&P states that the Sales Agreements provide for sales of capacity and energy from CL&P's Slice-of-System Units (the Units) during the period November 1, 1989 to October 31, 1994. CL&P states that the rates for the proposed service are based on cost-of-service formulas. CL&P requests that the Commission permit the Sales Agreements to become effective on November 1, 1989.

CL&P states that a copy of the Sales Agreements have been mailed or delivered to Buyers.

CL&P further states that the filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: August 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

24. Western Massachusetts Electric Co.

[Docket No. ER89-585-000]

August 7, 1989.

Take notice that on August 2, 1989, Western Massachusetts Electric Company (WMECO) tendered for filing as a rate schedule, a transmission service, transformation, and distribution agreement between WMECO and UNITIL Power Corp.

WMECO requests that the Commission waive its standard notice periods and filing regulations to the extent necessary to permit the rate schedule to become effective September 1, 1989.

WMECO states that copies of this rate schedule have been mailed or delivered to each of the parties.

WMECO further states that the filing is in accordance with section 35 of the Commission's Regulations.

Comment date: August 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

25. El Paso Electric Co.

[Docket No. ER89-584-000]

August 7, 1989.

Take notice that on August 1, 1989, El Paso Electric Company (EPE) tendered for filing an Interruptible Transmission Service Agreement under which EPE has agreed to provide Holloman Air Force Base (Holloman) with interruptible transmission service for Holloman's allocation of power from the Western Area Power Administration (WAPA). Service under the agreement is to commence on the later of (a) October 1, 1989 when the agreement providing for Holloman's WAPA allocation becomes effective or (b) the commercial operation date of Arizona Interconnection Project. EPE requests that this filing be assigned an effective date of October 1, 1989, 60 days from the date of filing. If the Arizona Interconnection Project is not in commercial operation on that date, EPE requests the Commission to suspend the filing until the date when the project does enter commercial operation.

PNM has agreed with EPE to perform certain delivery and coordination services for the parties in a letter agreement which is attached to the agreement, as Appendix A and which is to be separately filed with this Commission by PNM.

The term of the agreement is five years, with a provision for an extension to ten years by mutual agreement. The agreement is to terminate however, in the event either the PNM/EPE letter agreement or the agreement providing for Holloman's WAPA allocation terminates.

EPE states copies of the filing have been served on Holloman and the New Mexico Public Service Commission.

Comment date: August 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

26. Craven County Wood Energy Limited Partnership

[Docket No. ER89-583-000]

August 7, 1989.

Take notice that on August 1, 1989, Craven County Wood Energy Limited Partnership (the "Craven County Partnership"), whose address is 100 Clinton Square, Suite 400, Syracuse, NY 13202-1049, filed with the Federal Energy Regulatory Commission ("Commission") a Proposed Initial Rate Schedule and Application for Waivers of Commission Regulations under the Federal Power Act, pursuant to Commission Rule 207(a)(2).

The Craven County Partnership, a Delaware Limited Partnership, has succeeded to the ownership of an alternative energy generating facility located in Craven County, North Carolina. This project has been certified as a qualifying small power production facility within the meaning of section 201 of the Public Utility Regulatory Policies Act of 1978 (PURPA) under the ownership of Carolina Cogeneration Company, Inc.[1] The Craven County proposes to complete construction of, and own and operate [2] a 45 MW turbine, which will utilize biomass (primarily wood waste) as the primary energy source for the facility. Capacity and associated energy produced by the facility will be purchased by Carolina Power & Light (CP&L), pursuant to an avoided cost contract between Carolina's Cogeneration Company, Inc., the Craven County Partnership's predecessor in interest, and CP&L.

[1] *Carolina Cogeneration Co., Inc.*, Docket No. QF84-91-002, 28 FERC ¶ 62,082 (1984).

[2] Operation of the facility will be contracted to HYDRA-CO Operations, Inc., a wholly-owned subsidiary of HYDRA-CO. Enterprises, Inc.

The Craven County Partnership has requested Commission approval of this initial rate filing for sales from this facility to CP&L and waiver of the requirement that rate schedules be filed nor more than one hundred twenty (120) days prior to the date when service is to commence. The Craven County Partnership will commence sales upon completion of the facility, now scheduled for November 1, 1990. Commission rules provide for waiver of this requirement when the rate schedule is predicated upon construction of new facilities.

The Craven County Partnership also has requested waiver by the Commission of the rate regulatory, accounting and reporting regulations under the Federal Power Act with respect to its ownership, operation, and sales of capacity and associated energy from the qualifying facility located in Craven County, North Carolina. The Craven County Partnership also seeks waivers for this facility which will allow it to file only the minimum information necessary to satisfy the statutory requirements concerning property disposition, authorization of otherwise proscribed interlocking directorates, and limitation of the information necessary to be filed regarding the issuance of securities and assumption of liabilities to require only notice and approval of the Commission prior to undertaking such action.

Comment data: August 21, 1989, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18952 Filed 8-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-460-000 and CP89-1851-000]

Pacific Gas Transmission Co. and Altamont Gas Transportation Project; Intent To Prepare a Joint Draft Environmental Impact Report/Statement for the Proposed PGT/PG&E Pipeline Expansion Project and Altamont Pipeline Project and Requests for Comments on Its Scope and Cooperating Agency Status

August 8, 1989.

Introduction

On January 23, 1989, and July 21, 1989, Pacific Gas Transmission Company (PGT) and Altamont Gas Transportation Project (Altamont), respectively, filed applications before the Federal Energy Regulatory Commission (FERC) in the above-referenced dockets, under section 7(c) of the Natural Gas Act, for authorization to construct certain facilities and transport Canadian natural gas to various local gas distribution companies and utilities in southern California. PGT's proposal also involves transporting gas for customers in the Pacific Northwest. Each customer to be served by the proposed pipelines would be responsible for securing gas supplies from producers in Canada which PGT or Altamont would then transport. Neither PGT nor Altamont would own the gas transported through their respective systems.

PGT would receive the gas at the United States/Canadian border at Kingsgate, British Columbia, from Alberta Natural Gas Company, Ltd. for transportation to points of interconnection with Northwest Pipeline Corporation (Northwest) at Stanfield, Oregon and with Pacific Gas and Electric Company (PG&E) at Malin, Oregon. Northwest would deliver the gas to customers in the Pacific Northwest and intermountain region, while PG&E would deliver gas to customers within the State of California. Altamont would receive gas from an expanded NOVA Corporation of Alberta (NOVA) system at the border near Wild Horse, Alberta, for transportation to a point of interconnection with Northwest and Kern River Gas Transmission Company (Kern River) at Opal, Wyoming. The proposed Kern River System would then deliver the gas to southern California.[1]

PGT/PG&E Expansion Project

PGT proposes to construct seven 36- and 42-inch diameter pipeline loops, for a total of 430 miles, extending from Kingsgate through the States of Idaho, Washington, and Oregon at a cost of $946 million.[2] The expansion would enable PGT to transport up to an additional 710 million cubic feet per day (MMcf/d) of natural gas. PG&E would construct 415 miles of 36-inch-diameter pipeline loop, in 5 segments, from the Oregon-California border to a point near Panoche Station, California, thereby increasing its system capacity by 600 MMcf/d. (See table 1 and figure 1.)[3] In addition to the pipeline facilities, PGT and PG&E propose to make minor modifications at 17 of their existing compressor stations. Additional compression (22,500 horsepower) would be required at the Brentwood Compressor Station. PG&E filed an application with the California Public Utilities Commission (CPUC) on April 14, 1989, to construct its proposed facilities. Although PG&E is not regulated by the FERC, PGT's and PG&E's proposals are being considered together as one project known as the PGT/PG&E Expansion Project for the purposes of environmental review. The PGT/PG&E Expansion Project is scheduled for construction in early 1992, with an operational date of November 30, 1993.

[1] The environmental impacts associated with the proposed Kern River pipeline were analyzed in the Mojave/Kern River/El Dorado Environmental Impact Statement issued by the FERC in December 1987. The Kern River pipeline would extend 837 miles between Opal, Wyoming and Bakersfield, California, and involve the installation of 36,200 housepower of new compression facilities.

[2] A pipeline loop is a segment which is constructed parallel and adjacent to an existing pipeline.

[3] Figures 1 and 2, and the appendix are not printed in the Federal Register, but are available from the FERC's Division of Program Management, Public Reference Section, telephone (202) 357-8118.

TABLE 1.—PGT/PG&E EXPANSION PROJECT FACILITY LOCATIONS

Proposed facilities	Pipe diameter (inches)	Length (miles)	State	County
PGT				
Loop 1	42	20.5	ID	Boundary.
Loop 2	42	35.0	ID	Bonner, Kootenai.
			WA	Spokane.
Loop 3	42	16.2	WA	Whitman.
Loop 4	42	30.0	WA	Walla Walla.
Loop 5	36	134.3	OR	Umatilla, Morrow, Gilliam, Sherman, Wasco, Jefferson, Jefferson, Crook, Deschutes, Klamath.
Loop 7	36	86.4	OR	Klamath.
Bend Comp. Sta.			OR	Deschutes.
PG&E				
Loop 8	36	82.3	CA	Modoc, Siskiyou, Shasta.
Loop 9	36	86.4	CA	Shasta, Tehama, Glenn.
Loop 10	36	36.2	CA	Colusa, Yolo.
Loop 11	36	77.4	CA	Yolo, Solano, Sacramento, Contra Costa.
Loop 12	36	120.3	CA	Contra Costa, Alameda, San Joaquin, Stanislaus, Merced, Fresno.
Brentwood Comp. Sta.			CA	Contra Costa.

Altamont Project

The Altamont proposal was developed by a consortium of western Canadian gas producers including Amoco Canada Petroleum Company Ltd., Petro-Canada Inc. and Shell Canada Ltd. The Altamont pipeline would receive natural gas at the Alberta-Montana border from NOVA and transport it across Montana and Wyoming for delivery to Kern River near Opal, Wyoming. The pipeline's daily design capacity would enable firm delivery service of approximately 700 MMcfd of natural gas at Opal. To accomplish this, Altamont proposes to construct 620 miles of 30-inch-diameter pipeline, 6 compressor stations, 1 meter station, and related appurtenant facilities including pipeline scraper launchers and receivers, mainline valves, and a microwave communications system. (See table 2 and figure 2.)[4] Overall, the proposed route parallels existing linear facilities (roads, railroads, existing pipelines) or utility corridors for about 50 percent of its length. Construction is proposed to commence in June 1993 and be completed for an in-service date of November 1, 1993. The proposed facilities are estimated to cost $580 million.

TABLE 2.—Altamont Gas Transportation Project Geographical Distribution of Facilities

State and County	Miles of Pipe [1] (approximate)	Compressor Station (CS) Number and Horsepower (HP) [2]
Montana	305	
Hill	48	CS 1—44,333 hp.
Chouteau	63	
Fergus	31	CS 2—10,743 hp.
Judith Basin	25	
Wheatland	38	
Golden Valley	8	
Stillwater	44	CS 3—10,622 hp.
Carbon	47	
Wyoming	315	
Big Horn	70	CS 4—10,323 hp.
Washakie	31	
Hot Springs	20	
Fremont	111	CS 5—9,819 hp.
Sublette	3	
Sweetwater	55	CS 6—9,224 hp.
Lincoln	25	
Total	620	95,064 hp.

[1] All pipe to be 30-inch outside diameter.

[2] All compressors to be centrifugal-type units with gas powered drivers. Horsepower listed is site-rated to account for anticipated elevations and ambient temperatures.

General Construction Procedures

The proposed facilities would be designed, constructed, and operated in accordance with all applicable regulations, including: 49 CFR Part 192—Transportation of Natural and Other Gas by Pipeline, Minimum Federal Safety Standards; 18 CFR Part 2.69—Guidline to be Followed by Natural Gas Pipeline Companies in the Planning, Clearing, and Maintenance of Rights-of-Way; and other applicable Federal, state, and local regulations and permit requirements.[4] [5]

Construction would begin with right-of-way (ROW) clearing and grading. Pipeline loops in or adjacent to existing ROWs, such as those proposed by PGT and PG&E, would generally require less clearing and grading. Rotary-wheeled ditching machines, backhoes, or rippers, would be used to excavate a sufficiently deep trench. For buried pipelines, the U.S. Department of Transportation (DOT) requires a minimum of 30 inches of cover in normal soils and 18 inches in consolidated rock. In populated areas, this increase to 36 and 24 inches of cover, respectively. Blasting would be required when areas of consolidated rock are encountered.

After trenching, the pipe would be strung along the ROW, bent to conform with the bottom of the trench, and welded and radiographically inspected in compliance with the DOT's Minimum Federal Safety Standards. Before being emplaced in the trench, the pipe would be coated to inhibit corrosion. The pipe would then be placed in the trench and the trench would be backfilled with the excavated material. Select backfill would be used where the trench was excavated in rock. The ROW would be restored to near-original contours, and reseeded, limed, fertilized, and mulched in accordance with the company's erosion control and revegetation plan. In general, construction at any one place along the pipelines would take 6 to 8 weeks between the initial land disturbance and the end of restoration. Construction at new or existing compressor station locations would be concurrent with the pipeline construction.

The methods of crossing streams and rivers would vary according to specific characteristics such as width, depth, flow, riverbed geology and environmental sensitivity. As a general rule, stream and river crossings would be constructed by opening a trench in the river bottom with a backhoe or dragline. Impacts could be minimized by

[4] See footnote 3.

[5] Because PG&E is not regulated by the FERC, 18 CFR Part 2.69 is not applicable to PG&E's proposed facilities.

constructing during low flow periods. Special procedures may be warranted at crossing that are environmentally sensitive (e.g., in scenic areas, upstream of public water intakes, in or near critical wildlife of fishery habitat).

Land Requirements

PGT and PG&E would construct their pipeline loops adjacent to their existing pipelines in most locations. On private land, ROW widths range between 15 and 100 feet. Many of the existing easements contain a provision for the installation of a second pipeline. Where the existing ROW is 100 feet wide, no new permanent ROW would be required. However, PGT and PG&E are requesting an additional 30 feet of temporary construction ROW. South of milepost (MP) 923.8 (the beginning of Loop 12), PG&E proposes to acquire between 20 and 50 feet of additional permanent easement and between 15 and 40 feet of temporary construction ROW. The loops would be installed on or adjacent to the existing ROWs for all but approximately 96 miles. In the areas where the loops would deviate from the existing ROW, the width of the construction ROW would very between 75 and 105 feet, while the new permanent ROW would be maintained at between 50 and 75 feet, respectively.

On Federal land, the existing easements do not have provisions for an additional pipline. Existing ROW widths range between 50 feet and 100 feet. However, PGT and PG&E propose to place the loops on the Federal ROW granted as part of the Alaska Natural Gas Transmission System (ANGTS).[6] The total width of the two ROWs generally varies between 76 and 106 feet. In addition, the companies request between 40 and 75 feet of temporary ROW.

In addition to the pipeline ROW, PGT and PG&E would require 4 acres for the expansion of the Bend Compressor Station (MP 472.8) located in Deschutes National Forest in Oregon, and 22 acres for the additional compressors at the Brentwood Compressor Station (MP 923.8) located in Contra Costa County, California.

Altamont proposes to acquire a 100-foot-wide construction ROW, of which approximately 50 feet would be maintained as permanent easement. The six new compressor stations would require 8 to 10 acres each, while the meter station would be sited on a 2-acre plot. Additional temporary work space may be required at major river, road or railroad crossing, or where similar obstacles are encountered. Overall, the proposal would directly affect an estimated 7,580 acres of Federal, state and private lands during construction and 3,820 acres during operation.

[6] In March 1976, the U.S. Dept. of the Interior issued the Final EIS for the ANGTS. ROW grants to cross Federal lands in Idaho, Washington, and Oregon were issued to PGT on July 22, 1986 and appear to remain operational.

Notice of Intent

On June 13, 1989, the FERC and the CPUC entered into a Memorandum of Understanding to combine their efforts to prepare an Environmental Impact Report/Statement (EIR/EIS) in accordance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) for the proposed PGT/PG&E Expansion Project. Recognizing then that the application for Altamont was to be filed with the FERC in July 1989 (and is now in fact filed) the respective staffs of the FERC and the CPUC agreed to include the Altamount Project into a single EIR/EIS covering both projects. The rationale for this is that the Altamount Project is an alternative to the PGT/PG&E Expansion Project.

Notice is hereby given that the staff of the FERC has determined that approval of either of these projects would be a major Federal action significantly affecting the quality of the human environment. Therefore, pursuant to § 380.6(a)(3) of the FERC's Rules of Practice and Procedure (18 CFR 380.6(a)(3)), and EIS will be prepared. Similarly, the staff of the CPUC has determined that an EIR, as required by CEQA, will be prepared. This notice serves as the Notice of Intent required by NEPA. The FERC will be the lead Federal agency and the CPUC will be the lead agency for the State of California for the preparation of the joint EIR/EIS. Other states with environmental laws similar to NEPA and CEQA may ultimately designate a lead state agency to coordinate their efforts directly with the FERC as a cooperating agency. The EIR/EIS will be prepared by an environmental consultant under contract to the CPUC and the joint supervision of both the FERC and the CPUC. The contractor procurement process has begun with the issuance of a Requst For Proposal (RFP) by the CPUC on July 10, 1989. It is expected that the contractor will be selected by late August or early September 1989 and scoping meetings will be conducted during the week of September 18, 1989.

Outline of Preliminary Environmental Issues

The EIR/EIS will address significant environmental concerns that have been and will be identified by the FERC and CPUC staffs, the environmental contractor, intervenors, other Federal and state agencies, and individuals who respond to this notice. These issues may include, but are not limited to:

Land Use
- —Impact on homes, future development, and public recreation areas.
- —Impact on National Forests, nature preserves, parks, and other public interest areas. (See tables 3 and 4.)
- —Use of existing transmission corridors.

Aesthetics
- —Effect of appearance of ROW and aboveground facilities on residential and scenic areas.

Pipeline Safety
- —Possibility of pipeline rupture.

Cultural Resources
- —Effect of the project on properties listed on or eligible for the National Register of Historic Places.

Water Resources
- —Effects of construction on potable water supplies and regional water quality.

Wildlife
- —Impact on fisheries.

Impact on state and federally listed threatened or endangered species.

Vegetation
- —Impact on wetlands.
- —Short- and long-term effects of clearing, revegetating, and maintaining the ROWs.

Soils & Geology
- —Erosion control and revegetation.
- —Effect on crop and timber production.
- —Effects of geologic hazards.

Air & Noise
- —Impact of new compressor stations and modifications to existing compressor stations on air quality and noise levels.

Alternatives
- —Pipeline route variations designed to avoid environmentally sensitive areas.
- —Alternative pipeline system designs.

Specific mitigating measures will also be considered in the EIR/EIS. After comments from this notice are received and analyzed, and the various issues are investigated, the FERC and CPUC staffs will publish a Draft EIR/EIS.

TABLE 3.—PGT/PG&E EXPANSION PROJECT—POTENTIALLY SENSITIVE AREAS ON OR NEAR (WITHIN 0.5 MILE *) THE PROPOSED ROUTE

Loop 1 (MPs 0.0–20.9)	
Kaniksu National Forest.	Boundary Co., ID.
Moyie River (6 crossings).	Boundary Co., ID
Loop 2 (MPs 72.7–108.9)	
Kaniksu National Forest.	Bonner and Kootenai Cos., ID
Loop 4 (MPs 225.3–255.6)	
Wallula Habitat Mgmt. Unit.	Walla Walla Co., WA
Loop 5 (MPs 277.4–410.2)	
John Day River/ Canyon.	Gilliam and Sherman Cos., OR
Oregon Trail	Morrow Co., OR
Crooked River Nat. Grasslands.	Jefferson Co., OR
Loop 6 (MPs 410.2–505.8)	
Crooked River Nat. Grasslands.	Jefferson Co., OR
Deschutes National Forest.	Deschutes and Klamath Cos., OR
Lava River Caves State Park *.	Deschutes Co., OR
Loop 7 (MPs 505.8–612.5)	
Deschutes National Forest.	Klamath Co., OR
Winema National Forest.	Klamath Co., OR
Loop 8 (MPs 612.5–694.8)	
Modoc National Forest.	Modoc Co., CA
Long Bell Game Preserve.	Modoc and Siskiyou Cos., CA
Shasta National Forest.	Siskiyou and Shasta Cos., CA
Mayfield Ice Caves	Siskiyou Co., CA
Pit River (Lake Britton).	Shasta Co., CA
Pacific Crest Trail	Shasta Co., CA
Lassen National Forest.	Shasta Co., CA
Loop 9 (MPs 694.9–793.3)	
Lassen National Forest.	Shasta Co., CA
Noble Emigrant Trail	Shasta Co., CA
Sacramento River NWR.	Tehama Co., CA
Sacramento River	Tehama Co., CA
Loop 11 (MPs 846.4–923.8)	
Jepson Prairie Preserve.	Solano Co., CA
Sacramento River	Solano and Sacramento Cos., CA
San Joaquin River	Contra Costa Co., CA
Loop 12 (MPs 923.8–1044.0)	
San Luis State Rec. Area.	Merced Co., CA
Los Banos Creek St. Rec. Area.*.	Merced Co., CA.

*As proposed, these areas would not be crossed but are within 0.5 mile of the route.

Table 4.—Altamont Gas Transportation Project Potentially Sensitive Areas on or Near the Proposed Route

Upper Missouri National Wild and Scenic River Corridor, Chouteau County, MT (MP 69)
Crow Indian Reservation, Carbon County, MT (MP 288)*
Wind River Indian Reservation, Fremont County, WY (MP 470)*
South Pass area, Fremont County, WY (MP 530)
Seedskadee National Wildlife Refuge, Sweetwater County, WY (MP 562)*

*As proposed, these areas would not be crossed but are within 0.5 mile of the route.

Cooperating Agencies

The following Federal agencies are requested to indicate whether they wish to be cooperating agencies in the preparation of the EIR/EIS and to designate one lead office per agency:

Advisory Council on Historic Preservation
Department of Agriculture
- Soil Conservation Service
- U.S. Forest Service

Department of Commerce
- National Oceanic and Atmospheric Administration

Department of Defense
- U.S. Army Corps of Engineers

Department of Energy
- Office of Fossil Energy

Department of the Interior
- U.S. Fish and Wildlife Service
- U.S. Geological Survey
- National Park Service
- Bureau of Land Management [7]
- Bureau of Reclamation

Department of State
Department of Transportation
- Federal Highway Administration
- Federal Railroad Administration

Environmental Protection Agency

These or any other Federal, state, and local agencies desiring cooperating agency status should send a request describing how they would like to be involved to Ms. Lois Cashell. Secretary, Federal Energy Regulatory Commission. The request should reference Docket Nos. CP89–460–000 and CP89–1851–000 and should be received by September 6, 1989. An additional copy of the request should be sent to the FERC project managers identified at the end of this notice. Cooperating agencies are encouraged to participate in the scoping process and to provide information to the lead agencies. Cooperating agencies are also welcome to suggest format and content modifications to facilitate ultimate adoption of the EIR/EIS; however, the lead agency will decide what modifications will be adopted in light of production constraints.

[7] In a letter to the FERC staff dated February 3, 1988, the California State Office of the BLM indicated that it would be a cooperating agency and would act as the lead BLM office for the purposes of coordinating NEPA compliance and for administering decisions involving PGT's and PG&E's extisting ROW grants.

Comment and Scoping Procedure

Joint public scoping meetings will be conducted by the FERC and the CPUC. At present, scoping meetings are planned for Antioch, California, Bend, Oregon, and Spokane, Washington on September 18, 19, and 20, respectively, for the PGT/PG&E Expansion Project with concurrently held meetings in Riverton, Wyoming and Billings, Montana on September 18 and 19, 1989, respectively, for the Altamont project. The final dates, locations, and format of the meetings will be identified in a subsequent **Federal Register** notice. Requests to hold scoping meetings at other locations will be considered on the basis of the rationale provided to support additional meetings.

The scoping meetings are primarily intended to obtain input from state and local government and the public. Federal agencies have formal channels for input into the NEPA process (including separate meetings where appropriate) on an interagency basis. Federal agencies are expected to coordinate their comments through the lead Federal agency and not use the scoping meetings for this purpose.

A copy of this notice has been distributed to Federal, State, and local agencies, public interest groups, and parties to the proceeding before both the FERC and CPUC. Comments are requested to help identify significant issues or concerns related to the proposed actions, to determine the scope of the issues (including alternatives) that need to be analyzed, and to identify and eliminate from detailed study the issues which are not significant. All comments recommending that the EIR/EIS address specific environmental issues should contain supporting documentation and rationale. Written comments must be filed on or before September 6, 1989, reference Docket Nos. CP89–460–000 and CP89–1851–000, and should be addressed to: Ms. Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Copies of all comments should also be sent to the FERC project managers at the same address:

Ms. Lauren O'Donnell (PGT/PG&E Expansion Project)

Mr. Laurence J. Sauter (Altamont Project)

The EIR/EIS will be mailed to Federal, State, and local agencies, public interest groups, interested individuals, newspapers, libraries, and parties to the proceedings. A 45-day comment period will be allotted for review and comment on the Draft EIR/EIS. After these comments are reviewed, any significant new issues investigated, and modifications made to the Draft EIR/EIS, a Final EIR/EIS will then be published by the staff and distributed. The Final EIR/EIS will contain the FERC and CPUC staffs' responses to comments received on the Draft EIR/EIS.

Additional information, including maps of limited areas of the proposed routes, may be obtained from Ms. Lauren O'Donnell at (202) 357-8874, Mr. Laurence J. Sauter, Jr. at (202) 357-8205, or Mr. Clyde Murley, Project Manager, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102, at (415) 557-4027.

Mailing Lists

Organizations and individuals receiving this Federal notice have been selected to ensure public awareness of these projects and public involvement in the review process under both NEPA and CEQA. The EIR/EIS will be sent automatically to addressees on the FERC's and CPUC's official service lists for these projects, and to the appropriate Federal agencies and State clearinghouses. However, to reduce printing and mailing costs and related logistical problems, the EIR/EIS will only be distributed to those other organizations, local agencies and individuals who return the attached appendix to this notice, preferably within 90 days.[8]

Linwood A. Watson, Jr.
Acting.

[FR Doc. 89-18897 Filed 8-11-89; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 10660-001]

Arnold J. Wise; Surrender of Preliminary Permit

August 8, 1989.

Take notice that Arnold J. Wise, Permittee for the proposed Cape Fear Locks and Dams Nos. 1, 2, & 3 Hydro Project No. 10660, has requested that its preliminary permit be terminated. The permit was issued on December 27, 1988, and would have expired November 30, 1991. The project would have been located on the Cape Fear River near Fayettsville, Bladen County, North Carolina. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on June 21, 1989, and the preliminary permit for Project No. 10660 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-18898 Filed 8-11-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM89-16-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

August 7, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on August 2, 1989, tendered for filing, to its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheet:

Proposed to be effective August 1, 1989

Second Alternate Twenty-seventh Revised Sheet No. 205

Algonquin states that pursuant to section 7 of Rate Schedule F-4, it is filing Second Alternate Twenty-seventh Revised Sheet No. 205 to concurrently track rate changes made by its pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern") in the service underlying Algonquin's Rate Schedule F-4, as set forth in Texas Eastern's Interim PGA filing dated July 28, 1989. The rate change represents a further decrease of 20.80 cents per MMBtu in the commodity charge from that originally filed for in Docket No. TM89-14-20-000 for a total decrease of 22.00 cents per MMBtu.

Algonquin notes that copies of this filing were served upon the affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-18896 Filed 8-11-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. MT88-25-002]

Black Marlin Pipeline Co.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

August 7, 1989.

Take notice that on July 31, 1989, Black Marlin Pipeline Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet:

1st Revised Sheet No. 220

Black Marlin asserts that such revised tariff sheet is being submitted in compliance with § 250.16(d)(2) and contains revisions to Black Marlin's shared operating personnel and procedures regarding complaints.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by August 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-18953 Filed 8-11-89; 8:45 am]
BILLING CODE 6717-01-M

[8] See footnote 3.

[Docket No. MT88-20-005]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

August 7, 1989.

Take notice that on July 31, 1989, Florida Gas Transmission Company (FGT) tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

2nd Revised Sheet No. 52D
1st Revised Sheet No. 571

FGT asserts that such revised tariff sheet is being submitted in compliance with § 250.16(d)(2) and contains revisions to FGT's shared operating personnel and procedures regarding complaints.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by August 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commision and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-18954 Filed 8-11-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA89-1-59-003]

Northern Natural Gas Co.; Filing

August 7, 1989.

Take notice that on July 31, 1989, Northern Natural Gas Company (Northern) filed revised Schedule D1, 06, WP 1 detailing unpaid accruals older than three years and providing justification for inclusion of such accruals in Account 191.

Northern states that this filing is made pursuant to Letter Orders issued December 30, 1988 and July 14, 1989.

Northern requests approval to continue recognition of these unpaid accruals over three years old as purchased gas costs in its rates in compliance with § 154.305(f) of the Commission's regulations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, and 385.211 (1988)]. All such protests should be filed on or before August 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-18955 Filed 8-11-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-136-004]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

August 7, 1989.

Take notice that Northern Natural Gas Company, Division of Enron Corp., (Northern) on July 31, 1989, tendered for filing proposed changes to its FERC Gas Tariff.

Northern states that this filing is being submitted pursuant to the terms and conditions set forth in the Commission's order issued on July 14, 1989 in the above proceeding. An effective date of May 1, 1989 has been requested for this filing.

Northern further states that copies of this filing were served upon Northern's customers, parties to this proceeding and all interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such protests should be filed on or before August 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-18900 Filed 8-11-89; 8:45 am]
BILLING CODE 6717-01-M

Northern Natural Gas Co.; Division of Enron Corp.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

August 7, 1989.

Take notice that on July 31, 1989, Northern Natural Gas Company, Division of Enron Corp., tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

3rd Revised Sheet No. 52f.19
3rd Revised Sheet No. 52f.20

Northern asserts that such revised tariff sheets is being submitted in compliance with § 250.16(d)(2) and contains revisions to Northern's shared operating personnel and procedures regarding complaints.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by August 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-18956 Filed 8-11-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-215-000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 7, 1989.

Take notice that on July 31, 1989, Southern Natural Gas Company (Southern) tendered for filing certain tariff sheets with a proposed effective date of September 1, 1989.

Southern states that the proposed tariff filing is being made in compliance

BEST COPY AVAILABLE

with the terms of the Stipulation and Agreement in *Bear Creek Storage Company*, Docket No. RP89–58, and the Commission's order approving the Stipulation. Southern further states that the proposed tariff sheets reflect an overall reduction in Southern's rates of approximately $5.6 million annually based on the flowthrough of the reduction in rates charged to Southern by Bear Creek Storage Company in accordance with the terms of the aforesaid Stipulation and Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before August 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–18901 Filed 8–11–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT89–26–004]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

August 7, 1989.

Take notice that on July 31, 1989, Transwestern Pipeline Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

3rd Revised Sheet No. 30F
3rd Revised Sheet No. 30G
2nd Revised Sheet No. 34F
3rd Revised Sheet No. 34F

Transwestern asserts that such revised tariff sheet is being submitted in compliance with § 250.16(d)(2) and contains revisions to Transwestern's shared operating personnel and procedures regarding complaints.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR §§ 385.214 and 385.211. All such motions or protests must be filed by August 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–18957 Filed 8–11–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–136–003]

United Gas Pipe Line Co.; Compliance Filing

August 7, 1989.

Take notice that on July 31, 1989, United Gas Pipe Line Company (United) submitted for filing the following tariff sheets and workpapers in response to the Commission's July 20, 1989 Letter Order (July 20, 1989 Order) in RP88–27 *et al.*

Effective April 1, 1989.

Substitute Second Revised Sheet No. 4–G1
Substitute Second Revised Sheet No. 4–H
Substitute Second Revised Sheet No. 4–I
Substitute Second Revised Sheet No. 4–J
Substitute Second Revised Sheet No. 4–K
Substitute Original Sheet No. 4–L

United states that the filing will be served upon all parties listed on the official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such protests should be filed on or before August 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–18902 Filed 8–11–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–147–004]

United Gas Pipe Line Co.; Compliance Filing

August 7, 1989.

Take notice that on July 31, 1989, United Gas Pipe Line Company (United) submitted for filing the following tariff sheets and certain workpapers with narrative descriptions in response to the Commission's July 21, 1989 Letter Order (July 21, 1989 Order) in this proceeding. The Tariff Sheets and workpapers are also consistent with the Commission's July 20, 1989 Order (July 20, 1989 Order) in Docket No. RP88–27 *et al.*

Effective May 1, 1989:

Second Substitute Original Sheet No. 4–M
Second Substitute Original Sheet No. 4–N
Second Substitute Original Sheet No. 4–O
Second Substitute Original Sheet No. 4–P
Second Substitute Original Sheet No. 4–Q
Substitute Original Sheet No. 4–Q1
Second Substitute Original Sheet No. 4–R

United states that the filing will be served upon all parties listed on the official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such protests should be filed on or before August 14, 1989.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–18903 Filed 8–11–89; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Special Research Grant Program Notice 89–7A; Global Survey of Carbon Dioxide in the Ocean

AGENCY: Department of Energy, (DOE).

ACTION: Amendment to Special Research Grant Notice (SRGN) 89–7: Global Survey of Carbon Dioxide in the Ocean (published in the **Federal Register** on Thursday, July 20, 1989, Vol. 54, No. 138).

SUMMARY: This announcement amends the Special Research Grant Notice 89–7: Global Survey of Carbon Dioxide in the Ocean (**Federal Register**/Vol. 54, No. 138, published on Thursday, July 20, 1989). This amendment extends the application submittal dates to October 18, 1989 for all provisions of SRGN–89–7.

According to the current schedule for the first U.S. World Ocean Circulation Experiment Hydrographic Program, the first cruise will be in the Pacific Ocean and will include two hydrographic sections. The sections will be along 150° W, from 60° N to 70° S, and along 90° W, from 15° N to 70° S. The duration of the cruise will be approximately 140 days at sea, and it will not start before October 1990, rather than January 1990 as previously indicated. Because of this change in the FY 1990–91 schedule, the deadline for grant applications for at-sea CO_2 measurements and replicate total carbon dioxide (CO_2) analyses by precision manometry at land-based laboratories is extended to October 18, 1989. Although other cruises will occur in FY 1991 and beyond, the schedule for those cruises is tentative at this time. All other provisions of SRGN–89–7 are as originally announced.

Any organization which has already submitted an application in response to SRGN–89–7 can request that the application be returned for revision and resubmission.

ADDRESS: Completed applications referencing Program Notice 89–7 should be forwarded to: U.S. Department of Energy, Division of Acquisition and Assistance Management, Office of Energy Research, ER–64, Room G–232, Washington, DC 20545.

FOR FURTHER INFORMATION CONTACT: Dr. Ari Patrinos, Carbon Dioxide Research Program, Office of Health and Environmental Research, ER–74, Washington, DC 20545, (301) 353–3213.

Issued in Washington, DC, on August 2, 1989.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 89–18876 Filed 8–11–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 89–32–NG]

Gulf Energy Marketing Co.; Order Granting Blanket Authorization to Export Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of order granting blanket authorization to export national gas to Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notices that it has issued an order granting Gulf Energy Marketing Company (Gulf Energy) blanket authorization to export natural gas from the United States to Mexico. The order issued in ERA Docket No. 89–32–NG authorizes Gulf Energy to export up to 105 Bcf of domestic gas for short-term and spot market sales over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 2, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–18973 Filed 8–11–89; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 89–43–NG]

Natural Gas Clearinghouse; Application to Amend and Extend Blanket Authorization to Import and Export Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application to amend and extend blanket authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 11, 1989, of an application filed by Natural Gas Clearinghouse (NGC) for blanket authorization to amend and extend its existing blanket authorization to import Canadian natural gas. Specifically, NGC requests blanket authorization to import up to 600 Bcf of gas, including liquefied natural gas (LNG), from Canada, Mexico, and other countries, and to export up to 130 Bcf of gas, including LNG, to Mexico, Canada, and other countries, over a two-year term beginning on the date of first delivery of imported or exported natural gas or LNG. NGC intends to utilize existing pipeline and LNG facilities for the processing and transportation of the volumes to be imported or exported and to submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than September 13, 1989.

FOR FURTHER INFORMATION CONTACT: Frank Duchaine, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H–087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8233.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: NGC, a Colorado general partnership, and the successor in interest to Natural Gas Clearinghouse Inc., holds an existing two-year blanket authorization to import up to 1 Bcf per day of Canadian gas through October 31, 1989. This authorization was issued in ERA Docket No. 87–39–NG (DOE/ERA Opinion and Order No. 198, October 20, 1987). If NGC is granted the authority requested in this docket, such authorization will supersede its existing authorization on the effective date of issuance of a final order here, provided the order is issued prior to the expiration date of its existing authorization.

Under the import authority sought, NGC contemplates purchasing natural gas from a variety of foreign suppliers and reselling those supplies to various purchasers, including local distribution companies, pipelines, and commercial and industrial end-users. Under the export authority sought, NGC proposes to secure natural gas from a variety of domestic suppliers and resell the gas to customers outside the United States. NGC would import and export natural gas and LNG both for its own account as well as for the accounts of others.

NGC states that currently it is negotiating arrangements to export natural gas to Canada and Mexico, but is requesting the flexibility to enter into agreements for the importation and exportation of natural gas and LNG to Canada and Mexico as well as other similarly situated countries. NGC asserts that the specific terms of each import and export arrangement would be negotiated on an individual basis at market responsive prices.

In support of its application, NGC asserts that the proposed imports will make competitively priced gas available to U.S. markets while the short-term

nature of the transactions will minimize the potential for undue long-term dependence on foreign sources of energy. With regard to the proposed exports, NGC states that the exported volumes would be incremental to the needs of current purchasers and that the sale of the gas would benefit domestic producers as well as result in a reduction of the current excess domestic natural gas supply, generate income, and reduce the U.S. trade deficit.

NGC requests expedited treatment of its application. A decision on NGC's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issue determined to be appropriate in a particular case. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the requested import authority, and on the domestic need for gas the applicant proposes to export. As noted above, the applicant asserts that import and export arrangements transacted under the requested authority will be competitive, and that there is no current need for domestic gas that would be exported under the proposed short-term arrangements. Parties opposing the arrangement bear the burden of overcoming these assertions.

All parties should be aware that the approval of this application may permit the import or export of natural gas or LNG at any international border point where existing transmission or processing facilities are located.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t. September 13, 1989.

A decisional record on the application will be developed through responses to this notice by parties, including the parties written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of NGC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 2, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-18974 Filed 8-11-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-23-NG]

Washington Natural Gas Co.; Order Granting Authorization to Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of order granting authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Washington Natural Gas Company (Washington Natural) authorization to import natural gas from Canada. The order issued in FE Docket No. 89-23-NG authorizes Washington Natural to import up to 25,000 MMBtu (24,038 Mcf) per day of natural gas over a 15-year period from November 1, 1989, to October 31, 2004.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 7, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-18975 Filed 8-11-89; 8:45 am]

BILLING CODE 6450-01-M

Offices of Hearings and Appeals

Cases Filed With the Office of Hearings and Appeals; Week of May 5 Through May 12, 1989

During the Week of May 5 through May 12, 1989, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 28, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of May 5 through May 12, 1989]

Date	Name and location of applicant	Case No.	Type of submission
May 8, 1989	Barlkus Oil Company, Boulder, CO	KEE-0176	Exception to the reporting requirements. If granted: Barlkus Oil Company would not be required to file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Products Sales Report."
May 8, 1989	Pester Marketing Company, Washington, DC	KEF-0134	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the settlement agreement between Pester Marketing Company and the DOE.
May 12, 1989	Beacon/San Lucas Stops, Hardin, KY	RR238-1	Request for modification/rescission. If granted: The April 17, 1989 Decision and Order issued to San Lucas Truck Stops would be modified regarding the firm's application for refund submitted in the Beacon Oil Refund Proceeding.
May 12, 1989	Economic Regulatory Administration/Kern Oil & Refining Company, Washington, DC.	KRZ-0527	Interlocutory. If granted: The Proposed Remedial Order issued to Kern Oil & Refining Company (Case No. KRO-0520) would be modified to add an additional theory of liability and to reduce the amount of overcharges.
May 12, 1989	Larry D. Delpit, Los Angeles, CA	KRD-0521	Motion for discovery. If granted: Discovery would be granted to Larry D. Delpit in connection with the Statement of Objections submitted in response to the Proposed Remedial Order issued to Larry D. Delpit (Case No. KRO-0520).
May 12, 1989	Knolls Action Project, Albany, NY	KFA-0287	Appeal of an information request denial. If granted: The April 7, 1989 Freedom of Information Request Denial issued by the Office of Naval Reactors would be rescinded, and Knolls Action Project would receive access to documents related to activities at the Knolls Atomic Power Laboratory.
May 12, 1989	Tri-Service Drilling Company, Washington, DC	KEF-0135	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with an April 21, 1989 Consent Order which the DOE entered into with Tri-Service Drilling Company.

Refund Applications Received

[Week of May 5 to May 12, 1989]

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/04/89	Thomas P. Reidy	RF40-3710
5/08/89	Bill Lapley's Gulf	RF300-10804
5/08/89	C & C Gulf	RF300-10803
5/08/89	Don's Gulf	RF300-10802
5/08/89	Owens Gulf	RF300-10801
5/08/89	Dick Beggs Riverside.	RF300-10805
5/08/89	Gas Service, Inc	RF300-10806
5/08/89	Tenn-Penn Oil Co	RF115-8
5/08/89	Ken-Wil Oil Co., Inc	RF115-9
5/08/89	Irving Schultz & Co., Inc.	RF115-10
5/08/89	Sullivan Oil Co	RF314-28
5/10/89	Adams Resources & Energy, Inc.	RF313-147
5/10/89	Barrow Oil Co., Inc	RF314-29
5/10/89	Fannon Petroleum Service, Inc.	RF300-10808
5/11/89	Uniondale Crown	RF313-148
5/11/89	Kirkland's Gulf	RF300-10807

Refund Applications Received—Continued

[Week of May 5 to May 12, 1989]

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/11/89	Yuska Oil Co	RF310-340
5/11/89	Central DuBois Vans, Inc.	RF300-10810
5/11/89	United Tool & Die	RF300-10811
5/11/89	Paducah	RF300-10812
5/11/89	Wayne Mills Co., Inc.	RF300-10809
5/11/89	Roscoe Service Center.	RF313-148
5/12/89	Riverdale Crown	RF313-149
5/12/89	A. N. Rueche Distributing Co.	RF300-10813
5/05/89 thru 5/12/89.	Crude oil refund applications received.	RF272-75470 thru RF272-75480
5/05/89 thru 5/12/89.	Atlantic Richfield refund applications received.	RF304-9250 thru RF304-9284

Refund Applications Received—Continued

[Week of May 5 to May 12, 1989]

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/05/89 thru 5/12/89.	Shell Oil refund applications received.	RF315-5668 thru RF315-5814
5/05/89 thru 5/12/89.	Exxon refund applications received.	RF307-9940 thru RF307-9952

[FR Doc. 89-18977 Filed 8-11-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $35,000 obtained as a result of a Stipulation and Agreed Final Judgment which the DOE entered into with McClure Oil Company (McClure), a reseller of motor gasoline, diesel fuel and propane located in Oklahoma. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for Refund from the McClure escrow fund must be filed in duplicate and must be received on or before November 13, 1989. All applications for Refund from this escrow fund should refer to Case Number KEF-0009 (McClure Oil Company) and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Rebecca C. Rogers, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6602.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a Stipulation and Agreed Final Judgment entered into by the DOE and McClure Oil Company that settled all claims and disputes between the firm and the DOE regarding the firm's compliance with federal price regulations in its sales of motor gasoline, diesel fuel and propane during the period November 1, 1973, through March 31, 1974 (the Judgment period). A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the McClure escrow fund was issued on January 23, 1989. 54 FR 4066 (January 27, 1989).

The Decision set forth procedures and standards which the Office of Hearings and Appeals (OHA) of the DOE has formulated to distribute the contents of the escrow account pursuant to the Judgment. OHA has determined that the escrow fund should be distributed to firms and individuals that purchased motor gasoline, diesel fuel and/or propane from McClure during the Judgment period. In order to obtain a refund, each claimant will be required to submit a schedule of its monthly purchases of those products from McClure and to demonstrate that it was injured by McClure's alleged regulatory violations. The specific requirements for proving injury are set forth in the following Decision and Order. Applications for Refund will now be accepted provided they are filed in duplicate and received no later than 90 days after publication of this Decision and Order in the Federal Register.

Residual funds in the escrow account will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Public Law No. 99-509, Title III.

Dated: August 4, 1989.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Decision and order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: McClure Oil Company
Date of Filing: November 19, 1985
Case Number: KEF-0009

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR part 205, Subpart V; *see also, Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and, *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). On November 19, 1985, the ERA filed a Petition for the Implementation of Special Refund Procedures to distribute funds received from McClure Oil Company (McClure) under the terms of a Stipulation and Agreed Final Judgement (Judgment) dated January 30, 1985.[1] In its Petition, the ERA requests that the OHA establish special procedures to make refunds in order to remedy the effects of the alleged regulatory violations that were settled in the McClure Judgment.

[1] The Judgment resolved all matters in dispute arising from a June 2, 1977 Remedial Order issued to McClure and a subsequent Judgment dated September 11, 1980.

I. Background

McClure purchased and resold refined petroleum products during the period of federal price controls. The firm was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth at 6 CFR part 150 and 10 CFR parts 210, 211, and 212. During the period of price controls, the ERA conducted an extensive audit of McClure's operations and, as a result of the audit, alleged that McClure had violated certain of the DOE's price and allocation regulations in its sales of motor gasoline, diesel fuel and propane. Settlement discussions were held, and on January 30, 1985, the ERA and McClure finalized a Judgment (No. 660E00083) that resolved issues pertaining to McClure's refined petroleum product operations during the period November 1, 1973, through March 31, 1974 (the Judgement period). Pursuant to the terms of the Judgment, McClure remitted a total of $35,000 (the Judgement fund) [2] to the DOE for distribution through Subpart V. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury, pending a determination regarding their proper distribution.

On January 23, 1989, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the McClure Judgment funds. A copy of the PD&O was published in the Federal Register on January 27, 1989, and comments were solicited. *See* 54 Federal Register 4066 (January 27, 1989). We have received only one response, a Motion to Intervene filed by McClure. This Motion in essence requests the payment to McClure of a refund that may be granted to a former customer of McClure. The basis for this request is an outstanding, unsatisfied judgment which McClure states has been entered on its behalf against the former customer by the District Court for Seminole County, Oklahoma. This matter concerns specific issues that should be addressed, if at all, in the course of the refund stage of this proceeding. Certainly, McClure's claim has no bearing on the refund procedures we proposed. Therefore, we will not address the substance of the Motion here.

No other comments were received. In this Decision and Order, we will adopt

[2] This figure consists of $18,627.13 in overcharges and $16,372.87 in interest which accrued prior to McClure's payment to the DOE. For accounting purposes, the interest remitted by McClure shall be considered as additional principal. Upon completion of payment, the Judgment fund equalled $35,000.

final refund procedures and will provide a suggested refund application format in order to assist individuals and firms in making claims.

II. Summary of Proposed Refund Procedures

Since we have received no adverse comments regarding the proposed refund procedures, we have determined that those procedures are the most equitable and efficacious means of distributing the McClure Judgment fund, and, therefore, that they should be adopted.

As we indicated in the PD&O, the McClure Judgment resolved alleged regulatory violations involving McClure's sales of motor gasoline, diesel fuel and propoane. We will implement a two-stage refund process by which firms and individuals who purchased those products from McClure during the Judgment period may submit may submit Applications for Refund in the initial stage. From our experience with Subpart V proceedings, we expect that potential applicants will fall into one of the following three categories of McClure purchasers: (i) End-users, i.e., ultimate consumers; (ii) regulated entities, such as public utilities or cooperatives; and (iii) retailers, resellers and refiners that resold McClure products.

As stated in the PD&O, each claimant will be required to submit a schedule of its monthly purchases of McClure refined petroleum products during the Judgment period. If the product was not purchased directly from McClure, the claimant must provide a statement setting forth its reasons for maintaining that the product originated with McClure.

In addition, a refiner, reseller, or retailer claimant, except one that chooses to utilize the injury presumptions adopted below, will be required to make a detailed showing that it was injured by the alleged overcharges. This showing will generally consist of two distinct elements. First, a claimant will be required to show that it maintained "banks" of unrecouped increased product costs (banked costs) in excess of the refund claimed.[3] Second, because a showing of banked costs alone is not sufficient to establish injury, a claimant must provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges. *See National Helium Corp./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom Atlantic Richfield Co. v. DOE*, 618 F. Supp. 1190 (D. Del. 1985). Such a showing could consist of a demonstration that the firm suffered a competitive disadvantage as a result of its purchases from McClure. *Id.; see also Sid Richardson Carbon and Gasoline Company and Richardson Products Company/Shapbach and Streitmatter Gas Company*, 14 DOE ¶ 85,186 (1986).

1. Presumptions For Refund Claims

The PD&O outlined various presumptions regarding classes of McClure purchasers and levels of injury which would allow claimants to participate in the refund process without incurring inordinate expense, and would insure that refund claims are evaluated in the most efficient manner possible. We will adopt those presumptions, which are summarized below.

First, we will adopt the volumetric presumption detailed in the PD&O. This presumption states that the alleged overcharges were dispersed equally in all of McClure's sales of motor gasoline, diesel fuel and propane during the Judgment period. In accordance with this presumption, refunds are to be made on a pro-rata or volumetric basis. Under this approach, a claimant's allocable share of the Judgment fund is equal to the number of gallons of products purchased times the per gallon refund amount (plus an appropriate share of the interest which has accrued on the McClure Judgment fund).[4] The PD&O established the volumetric factor at $0.02778, and we will adopt this figure.[5] As explained in the PD&O, we will establish a minimum refund amount of $15.00.[6]

In addition to the volumetric presumption, we will also adopt the injury presumptions described in the PD&O and summarized below.

a. *End-users.* We will adopt the presumption that an end-user or ultimate consumer of McClure products whose business is unrelated to the petroleum industry was injured by the alleged overcharges settled by the Judgment. These applicants will only need to document their purchase volumes from McClure during the Judgment period in order to make the requisite showing that they were injured by the alleged overcharges.

b. *Regulated Firms and Cooperatives.* We will also adopt the presumption that a claimant whose prices for goods and services are regulated by a governmental agency, e.g., a public utility, or by the terms of a cooperative agreement would have passed on any overcharges to its customers or member-customers through automatic rate adjustment mechanisms or the terms of a cooperative agreement. Thus, any refunds received by a regulated firm or cooperative should also be passed through to its customers or member-customers. We will require such a claimant to (i) certify that it will pass through any refund received to its customers or member-customers; (ii) provide us with a full explanation of how it plans to accomplish this restitution; and (iii) certify that it will notify the appropriate regulatory body or membership group of its receipt of the refund. *See Marathon*, 14 DOE at 88,515; *Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,208 (1982). Because we require regulated firms and cooperatives to pass refunds through to their customers or member-customers on a dollar for dollar basis, we do not require them to make a detailed demonstration of injury. Instead, such a claimant need only submit documentation of purchase volumes used by itself or, in the case of a cooperative, sold to its members during the Judgment period.[7]

c. *Refiners, Resellers and Retailers Seeking Refunds of $5,000 or Less.* We will adopt the small claims presumption explained in the PD&O. Refiners, resellers or retailers seeking refunds of $5,000 or less, exclusive of interest (i.e., who did not purchase more than 179,986 gallons of eligible products from McClure during the Judgment period) will not be required to submit evidence of injury. Instead, these claimants must only document their relevant purchases

[3] Claimants who have previously relied upon their banked costs in order to be eligible to receive refunds in other special refund proceedings should subtract those refunds from the cumulative banked costs sumbitted in this proceeding. *See* Husky Oil Co./Metro Oil Products, Inc., 18 DOE ¶ 85,020 at 88,178 (1987).

[4] Because we realize that the impact on an individual claimant may have been greater than the volumetric amount, any purchaser may file a refund application based upon a claim that a specifically alleged overcharge amount should be used in considering its refund application. *See, e.g.*, Standard Oil Co. (Indiana)/Army and Air Force Exchange Service, 12 DOE ¶ 85,015 (1984).

[5] We derived this figure by dividing the Judgment fund ($35,000) by the approximate number of gallons of refined products subject to price and allocation controls sold by McClure during the Judgment period (1,259,897), for a final volumetric factor of $0.02778.

[6] Applicants claiming volumetric refunds must have purchased at least 540 gallons of refined products from McClure during the Judgment period to be eligible for a refund.

[7] A cooperative's sales to non-members will be treated in the same manner as sales by other resellers. *See* Marathon, 14 DOE at 88,515.

from McClure. A claimant whose allocable share of the judgment fund exceeds $5,000, plus accrued interest.[8]

d. *Spot Purchasers.* We will adopt the rebuttable presumption, explained in the PD&O, that a refiner, reseller or retailer that made only spot purchases from McClure did not suffer injury as a result of those purchases. Spot purchasers generally had considerable discretion as to the timing and market in which they made their purchases, and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. *See Office of Enforcement,* 8 DOE ¶ 82,597 at 85,396-97 (1981). Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from McClure.[9]

e. *Consignees.* Finally, we will adopt the rebuttable presumption that consignees of McClure refined petroleum products were not injured as a result of their arrangement with their refiner/supplier. *See, e.g., Jay Oil Company,* 16 DOE ¶ 85,147 (1987). A consignee agent is a firm that distributed covered products pursuant to a contractual agreement with a refiner, under which the refiner retained title to the products, specified the price to be paid by the purchaser and paid the consignee a commission based upon the volume of covered products it distributed. *See* 10 CFR 212.31 (definition of "consignee agent"). A consignee may rebut this presumption of non-injury by establishing that "[its] sales volumes, and [its] corresponding commission revenues, declined due to the alleged uncompetitiveness of [the Judgment firm's] prices." *See Gulf Oil Corp./C.F. Canter Oil Co.,* 3 DOE ¶ 85,388 at 88,982 (1986).

2. Allocation Claims

We will also adopt the procedures, outlined in the PD&O, for resolving claims based upon McClure's alleged failure to furnish petroleum products that it was obliged to supply under the DOE allocation regulations. *See* 10 CFR part 211. Any such applications will be evaluated with reference to the standards set forth in cases such as *Amoco,* 10 DOE at 88,220, and *OKC Corp./Town & Country Markets, Inc.,* 12 DOE ¶ 85,094 (1984). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violations. Finally, the claimant must establish that it was injured and document the extent of the injury.

3. Distribution of Product Funds Remaining after First Stage

Any funds that remain after all first stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), Public Law 99-509, Title III. *See* Fed. Energy Guidelines ¶ 11,702 *et seq.* PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. PODRA, section 3003 (c) and (d). These responsibilities have been delegated to the OHA, and any funds in the McClure Judgment escrow account that the OHA determines will not be needed to effect direct restitution to injured McClure customers will be distributed in accordance with the provisions of PODRA.

III. Application for Refund Procedures

We have adopted the procedures described in the PD&O for the distribution of the McClure Judgment fund. Accordingly, we will now accept Applications for Refund from eligible customers who purchased motor gasoline, diesel fuel, and/or propane from McClure during the Judgment period. There is no official application form. Applications for Refund should be written or typed on business letterhead or personal stationery. The following pieces of information should be included on all applications:

(1) The name of the Judgment firm: McClure Oil Company, the case number: KEF-0009, and the applicant's name prominently displayed on the first page;

(2) The name and current address of the firm or individual to be designated as the refund recipient;

(3) An explanation of how the claimant used the McClure products, *i.e.,* whether the applicant was a reseller, retailer, consignee, end user, public utility, cooperative, etc.;

(4) The name, position title, and telephone number of a person who may be contacted by us for additional information concerning the application;

(5) A monthly schedule fo the applicant's purchases of McClure motor gasoline, diesel fuel, and/or propane during the Judgment period (11/01/73 through 03/31/74). A separate schedule should be included for each product;

(6) All relevant material necessary to support the applicant's claim in accordance with the injury presumptions and requirements outlined above;

(7) A statement of whether the applicant was supplied directly by McClure. If not, the applicant should state, in detail, its reasons for asserting that the products it purchased originated with McClure;

(8) A statement of whether the applicant was in any way affiliated with McClure. If so, the applicant should state the nature of that affiliation;

(9) A statement of whether the applicant was a consignee agent of McClure products, following the definition of a consignee agent described above;

(10) A statement of whether the ownership of the applicant's firm or business changed during or since the Judgment period. If so, the applicant should describe the change, and provide the names and addresses of previous and/or subsequent owners;

(11) A statement of whether the applicant is or has been involved in any DOE enforcement proceedings or private actions filed under section 210 of the Economic Stabilization Act. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If these actions are still in progress, the applicant should briefly describe the actions and their current status. The applicant must inform the OHA of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d);

(12) A statement of whether the applicant or a related firm has filed any other Application for Refund in the McClure refund proceeding;

(13) A statement of whether the applicant or a related firm has authorized any other individual(s) to file an Application for Refund on the claimant's behalf in the McClure proceeding; and

(14) The following statement signed by the applicant or a responsible official of the business or organization claiming the refund: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the Federal Government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001."

All Applications for Refund should be sent to: McClure Refund Proceeding, Case No. KEF-0009, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

All Applications must be filed in duplicate and received within 90 days after the publication of this Decision and Order in the **Federal Register.** A copy of each Application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue SW., Washington, DC. Any applicant that believes that its Application contains confidential information must submit two additional copies of the application in which the confidential material has been deleted, together with a statement specifying why the information is alleged to be privileged or confidential.

It is therefore ordered, That:

(1) Applications for Refund from the funds remitted to the Department of Energy by McClure Oil Company pursuant to the Stipulation and Agreed Final Judgment executed on January 30, 1985 may now be filed.

(2) All Applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: August 4, 1989.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 89-18978 Filed 8-11-89; 8:45 am]

BILLING CODE 6450-01-M

[8] Under these procedures, claimants who attempt to make a detailed showing of injury in order to support a refund claim, but, instead, provide evidence that leads us to conclude that they passed through all of the alleged overcharges or are eligible for a refund of less than $5,000, will not be entitled to $5,000 small claims presumption refund. Such claimants, however, will be eligible to receive a refund for the amount of injury that they demonstrate. *See* Union Texas Petroleum Corp./Arrow Enterprises, Inc., 15 DOE ¶ 85,087 (1986); Quaker State Oil Refining Corp./Campbell Oil Co., 15 DOE ¶ 85,089 (1986).

[9] In prior proceedings we have stated that refunds will be approved for spot purchasers who demonstrate that (i) they made spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (ii) they were forced by market conditions to resell the product at a loss that was not subsequently recouped. *See* Quaker State Oil Refining Corp./Certified Gasoline Co., 14 DOE ¶ 85,405 (1986).

Western Area Power Administration

Cooperative Agreement; Financial Assistance Award to Colorado State University, Department of Civil Engineering, Hydrology and Water Resources Program

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of acceptance of an unsolicited financial assistance application for a cooperative agreement award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.14(e)(1), the Department of Energy, Western Area Power Administration (Western), gives notice of its plans to award a 12-month Cooperative Agreement to the Colorado State University (CSU), Department of Civil Engineering, Hydrology and Water Resources Program, in the amount of $34,060. Funding is authorized in the Act of October 30, 1986, Public Law 99-591, 100 Stat. 3341. The pending award is based on an unsolicited proposal submitted by CSU to perform studies on the Colorado River Basin Reservoir System using indexed sequential hydrological modeling (ISM) procedures to analyze the generated power for establishing marketable hydropower. With the financial assistance from Western, CSU will be able to conduct studies using both the ISM and the Lane's Applied Stochastic Technique package developed by the Bureau of Reclamation as well as other appropriate multivariate stochastic modeling and generation analyst programs developed at CSU to simulate energy generation for the Colorado River Basin Reservoir System. CSU will test the simulated power extensively and evaluate the viability of using ISM procedures in reservoir system analysis for determining the marketable power levels. Results of this coopeative study will provide a strong documentable basis for using ISM as a reasonable alternative approach in reservoir system hydrogeneration analysis.

FOR FURTHER INFORMATION CONTACT: Linda Puttman, Contract Specialist, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231-7287, Purchase Requisition Number AA-PR-05893.

Issue at Golden, Colorado, July 28, 1989.

William H. Clagett,

Administrator.

[FR Doc. 89-18979 Filed 8-11-89; 8:45 am]

BILLING CODE 6450-01-M

Stampede Division, Washoe Project—Proposed Power Rates

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Power Rates—Stampede Division, Washoe Project, California.

SUMMARY: The Western Area Power Administration (Western) is proposing a modification to the nonfirm energy rates for the Stampede Division, Washoe Project, California. This proposed rate modification is a minor rate adjustment pursuant to 10 CFR part 903. The Stampede Powerplant (Stampede) is a 3.65-MW hydroelectric facility that was placed in service on January 15, 1988. The current Stampede nonfirm energy rates were approved by the Federal Energy Regulatory Commission (FERC) on February 10, 1987, at 40.45 mills/kilowatthour (kWh), or 27.86 mills/kWh plus annual operation and maintenance (O&M) responsibility. Western has not found a customer willing to purchase Stampede nonfirm energy at these approved rates. Presently, Stampede generation is being sold to Sierra Pacific Power Company (Sierra) under a short-term agreement at 80 percent of Sierra's quarterly weighted marginal cost. This notice proposes a flexible annual rate formula that is intended to ensure the maximum reasonable annual repayment of the Stampede power investment at marketable rates.

SUPPLEMENTARY INFORMATION: Power rates for the Stampede Division are established pursuant to the Department of Energy (DOE) Organization Act of August 4, 1977 (42 U.S.C. 7101, *et seq.*); the Reclamation Act of 1902 (43 U.S.C. 372, *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and the Act of August 1, 1956, 70 Stat. 775, authorizing construction of the Washoe Project.

By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Under Secretary of the Department of Energy; and (3) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to the FERC. On October 27, 1988, the Secretary of Energy issued a notice, DOE N 1110.29, amending Delegation Order No. 0204-

106 by transferring authority to place rates into effect on an interim basis from the Under Secretary of the Department of Energy to the Deputy Secretary of the Department of Energy. This order was published in the **Federal Register** on January 26, 1989 (54 FR 3841). This notice of proposed modification of rates is issued pursuant to the delegation to the Administrator and the rate adjustment procedures at 10 CFR part 903, published at 50 FR 37835 on September 18, 1985.

Western is developing these rates for Stampede Division, Washoe Project, in accordance with Reclamation Law, DOE financial reporting policies, procedures, and methodology (DOE Order No. RA 6120.2, September 20, 1979), and the procedures for public participation in rate adjustments found in 10 CFR part 903 (1985).

This notice initiates the public proceedings for a minor rate adjustment announcing the rates under consideration and the beginning of the 30-day consultation and comment period. Neither a public information forum nor a comment forum will be held. Under DOE procedures, such forums are optional for minor rate adjustments, which include rate adjustments for power systems with installed capacity of less than 20,000 kilowatt (kW). Stampede capacity is 3,650 kW, well under the 20,000-kW limit.

Western has decided not to hold public forums because this is a minor rate for a small quantity of nonfirm energy, and the marketing of that energy is not expected to raise any significant or controversial issues of fact or law.

Background

Stampede Dam and Reservoir are located on the Little Truckee River approximately 8 miles above the confluence of the Little Truckee and Truckee Rivers. The dam and reservoir are in Sierra County, California, about 11 miles northeast of the town of Truckee. The water source for Stampede Reservoir is the Little Truckee River drainage basin containing about 136 square miles of dense wooded slopes and grass meadowlands.

When the Stampede Dam and Reservoir were authorized in 1956, hydroelectric power development was included. Power facilities were not constructed at the time Stampede Dam was built during the period 1966 to 1970 because the power function was not economically justified. Nevertheless, provisions were made to facilitate the addition of power facilities at a later date.

A preliminary reevaluation of Stampede was published in a special Bureau of Reclamation (Reclamation) report, "Adding Powerplants at Existing Federal Dams in California," July 1976. The report recommended construction of a powerplant. Definite Plan Report studies were initiated in fiscal year (FY) 1977; the powerplant was constructed and went on-line in January 1988.

Originally, operation of Stampede Dam and Reservoir was to fulfill three purposes: flood control, fisheries enhancement, and recreation. Power generation, resulting from the addition of Stampede at the dam, adds a fourth purpose. Stampede provides approximately 10 million kWh annually. The power plant is operated as an unattended plant with automatic means for maintaining relatively constant downstream water releases in the event of unit shutdown. Generator control is automatic with capability for complete shutdown.

Under a contract with Western, Sierra constructed a ½-mile, 60-kilovolt (kV) transmission line between the Stampede power facility and Sierra's existing 60-kV transmission system for the purpose of delivering energy to Sierra's system. All plant and switchyard controls are centrally located inside the powerplant.

The energy generated by Stampede has an initial priority reservation for designated Washoe Project loads. The Lahontan National Fish Hatchery and the Marble Bluff Fish Facility were designated by Reclamation and Western as project loads of the Washoe Project. This designation makes the Fish and Wildlife Service facilities eligible to be served by Stampede on a priority basis. The projected demand of these facilities should not exceed 500-kW peakload and 2 million kWh annually. Due to the current inability to receive Stampede energy, the designated project-use loads are not currently being served by Stampede, and 100 percent of the output of Stampede is being sold to Sierra. Energy generated at Stampede is nonfirm, and except for the energy (if any) supplied to serve the project-use loads, will be sold as provided in this notice.

On October 25, 1985, Western designated Truckee-Donner Public Utility District (Truckee-Donner) as the commercial customer for Stampede energy (50 FR 43456). Western established a 50-year levelized repayment rate of 40.45 mills/kWh approved by the FERC on February 10, 1987. From the time Stampede energy was allocated to Truckee-Donner through December 1988, Western attempted to fulfill the contract with Truckee-Donner, but was not sucessful for various reasons. One key factor was that the Stampede levelized rate was above the region's nonfirm energy market levels. In the spring of 1989, Western determined a need to create an alternate rate approach.

DATES: The consultation and comment period will begin with publication of this notice in the **Federal Register** and will end September 13, 1989. Written comments may be submitted to the address below on or before the end of the consultation and comment period.

FOR FURTHER INFORMATION CONTACT: Mr. David G. Coleman, Area Manager, Western Area Power Administration, Sacramento Area Office, 1825 Bell Street, Suite 105, Sacramento, CA 95825, (916) 649-4418.

Proposed Rates

Western is proposing an annual bidding process for Stampede nonfirm energy. Annual bids for Stampede generation will only be considered if they meet or exceed the minimum rate (or Floor Rate) Western considers necessary to meet the expense of operating the plant. In addition, Western will annually calculate the conventional cost-based rate necessary to meet the Stampede repayment obligation. This rate will be considered the highest necessary bid (or the Ceiling Rate) for the Stampede energy. Western will annually issue a public notice in the appropriate publications in the region, as well as letters to customers and interested parties, to the effect that Stampede nonfirm energy is available to the highest bidder at a rate ranging between the established Floor and Ceiling Rates contained in the public notice. Entities interested in purchasing the Stampede energy will submit bids to Western indicating the rate they are willing to pay within these parameters. If the highest bid is submitted by more than one entity, selection of the purchaser will be based on the criteria discussed later in this notice.

The range of rates that Western will consider for Stampede nonfirm energy generation will be as follows, as measured at the Stampede Substation and as determined by Western.

Stampede NonFirm Energy Floor Rate (Floor Rate)

The Floor Rate will be based on the greater of either (a) the rate necessary to recover the projected annual O&M expenses for Stampede plus 2 mills per kWh, or (b) 85 percent of the purchaser's projected average annual marginal energy cost as measured at its point of receipt for such energy. This rate is intended to, at a minimum, recover the annual power O&M expenses of the Stampede facility plus part of the annual

interest expense. However, if the region's energy market is causing a potential purchaser to pay higher rates for energy than the calculated O&M-expense based Floor Rate, then Western is proposing that the Stampede energy sale would occur at 85 percent of the purchaser's demonstrated average annual marginal cost alternative, up to the Ceiling Rate discussed below.

This proposal is intended to ensure that Stampede will only be operated if there is an economic benefit to do so, and at the same time attempts to ensure the maximum reasonable revenue recovery by the Stampede Division while still benefiting the purchaser.

Estimation of a potential purchaser's average annual marginal cost alternative will be based on marginal cost filings made with regulatory entities, projected load and resource plans, as well as previous actual marginal cost experience. Western will review the basis for all bids as part of its annual selection process. Within 120 days of the termination of any annual Stampede energy sale, a recalculation of the Floor Rate will be made based on actual annual cost data. The bidder will be required to supply an analysis verifying that the Stampede energy purchases were made at or above 85 percent of the bidder's actual experienced marginal cost for the year. If the Stampede energy purchases were not at or above the actual annual Floor Rate, then the purchaser shall compensate Western for such difference in a lump sum payment that will be billed to the purchaser by Western.

Stampede Nonfirm Energy Ceiling Rate (Ceiling Rate)

The Ceiling Rate will be the cost-based rate determined by Western to be necessary to repay the Stampede power investment and annual expenses over the remaining repayment period of the power facilities. It is expected that this rate will increase annually to the extent that Stampede energy is sold below the Ceiling Rate each year. The table below shows the first Ceiling and Floor Rates and effective dates:

	Date effective	Nonfirm energy (mills per kWh)
Stampede Floor Rate [1].	Oct. 1, 1989 to Sept. 30, 1990.	19.12
Stampede Ceiling Rate.	Oct. 1, 1989 to Sept. 30, 1990.	50.96

[1] Based upon the annual O&M expenses plus 2 mills/kWh.

Point-of-Delivery and Transmission

Stampede is expected to produce 10 GWh annually under average hydrologic conditions. Station-service and project-use loads will have first priority to Stampede generation. All remaining generation will be made available as generated at the Stampede Substation, hereinafter, the point of delivery. The purchaser is responsible for acquiring any transmission or utility services beyond the point of delivery.

Bidding Process

1. Western will contract to sell Stampede generation each year for a period starting October 1 and continuing through September 30 of the next year. Western will issue a notice requesting bids on or about April 1 of each year. Western's notice shall be in the form of letters to interested parties and newspaper publications. Such notice shall contain the applicable Floor and Ceiling Rates, and the Stampede 1-year contract terms of the proposed sale. Western will accept bid responses received on or before August 1. Western will then review the responses and make a selection of a purchaser on or before September 1. Western will notify all parties that submitted bids of its decision in writing. Western's selection of a purchaser shall be an acceptance of the purchaser's offer to purchase at the rate(s) bid. Western and the purchaser shall confirm the Stampede energy sale by letter agreement, which will be consistent with the contract terms contained in the request for bids, as soon as practicable thereafter.

2. The timing and implementation of the first bid cycle is uncertain and will be described in a schedule contained in the first bid notice.

3. Bids shall be submitted in not less than 0.5 mill/kWh increments. All floor bids based on 85 percent of the proposed purchaser's average annual marginal cost, must contain information supporting the marginal cost calculation and a discussion of the proposed purchaser's ability to take Stampede generation at the point of delivery identified in the contract terms contained in the bid solititation.[2]

4. If a bid is not received at a level at or above the Floor Rate based on the Stampede O&M expenses, Western will repeat its bid request quarterly until such time that an acceptable bid is received.

[2] All information submitted supporting a bid will be considered proprietary and held as confidential to the extent allowed by Federal law. The actual bid rates received by Western may be disclosed to support Western's decision process.

5. If a tie occurs in the bidding process, Western will determine the purchaser to receive Stampede generation. Criteria that Western will use in this determination are:

a. Preference will be given to entities entitled to preference under 43 U.S.C. 485h(c).

b. Greater consideration will be given to entities that can assist Western in delivering Stampede energy to the qualified project-use loads.

FERC Process/Rate Approval

1. Western is proposing that FERC review and approve this Stampede nonfirm energy rate formula for 5 years. Western will retain the option of initiating a rate-adjustment process at any time during the approved 5-year rate period in accordance with 10 CFR Part 903, provided that any such new or adjusted rates shall not apply to a then-current purchaser for the remaining duration of its purchase from Stampede.

2. Western will annually report to FERC the basis for the Floor Rate, the Ceiling Rate, the status of Stampede Division repayment, and any decision not to operate the powerplant during a given period.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act (Act) of 1980 (5 U.S.C. 601, *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the rate adjustment for Stampede relates to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rates or services of particular applicability are not considered rules within the meaning of the Act. Since the rate for Stampede power is of limited applicability and is being set in accordance with specific regulations and legislation under particular circumstances, Western believes that no flexibility analysis is required.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 and DOE regulations published in the **Federal Register** (45 FR 20695–20701, as amended), Western is reviewing the environmental impacts of these proposed rates for the Stampede Division and will determine whether it involves a major Federal action having a significant adverse impact on the environment.

Executive Order 12291

The purpose of Executive Order 12291, dated February 17, 1981, is to reduce the burdens of existing and future regulations, increase agency accountability for regulatory actions, provide for presidential oversight of the regulatory process, minimize duplication and conflict of regulations, and insure well-reasoned regulations.

The DOE has determined that this is not a major rule pursuant to the criteria of section 1(b) of the order. Furthermore, Western has received an exemption from sections 3, 4, and 7 of Executive Order 12291, and therefore has not prepared a regulatory impact statement.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed alternative rates are and will be available for inspection and copying at the Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, California 95825, (916) 649-4418.

Issued at Golden, Colorado, July 21, 1989.

William H. Clagett,

Administrator.

[FR Doc. 89-18980 Filed 8-11-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3627-9]

Revision of Nebraska National Pollutant Discharge Elimination System (NPDES) Program to Issue General Permits

AGENCY: Environmental Protection Agency.

ACTION: Notice of Approval of the National Pollutant Discharge Elimination System General Permits Program of the State of Nebraska.

SUMMARY: On July 20, 1989, the Regional Administrator for the Environmental Protection Agency (EPA), Region VII approved the State of Nebraska's National Pollutant Discharge Elimination System General Permits Program. This action authorizes the State of Nebraska to issue general permits in lieu of individual NPDES permits.

FOR FURTHER INFORMATION CONTACT: Donald Toensing, Chief, Permits Section. U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, 913/236-2817.

SUPPLEMENTARY INFORMATION:

I. Background

EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate discharges of wastewater which result from substantially similar operations, are of the same type wastes, require the same effluent limitations or operating conditions, require similar monitoring, and are more appropriately controlled under a general permit rather than by individual permits.

Nebraska was authorized to administer the NPDES program in June, 1974. Their program, as previously approved, did not include provisions for the issuance of general permits. There are several categories which could appropriately be regulated by general permits. For these reasons the Nebraska Department of Environmental Control (NDEC) requested a revision of their NPDES program to provide for issuance of general permits. The categories which have been proposed for coverage under the general permits program include: non-contact cooling water, heat pump discharges, storm water discharges and backwash water discharges from potable water treatment plants.

Each general permit will be subject to EPA review and approval as provided by 40 CFR 123.44. Public notice and opportunity to request a hearing is also provided for each general permit.

II. Discussion

The State of Nebraska submitted in support of its request, copies of the relevant statutes and regulations. The State has also submitted a statement by the Attorney General certifying, with appropriate citations to the statutes and regulations, that the State has adequate legal authority to administer the general permits program as required by 40 CFR 123.23(c). In addition, the State submitted a program description supplementing the original application for the NPDES program authority to administer the general permits program, including the authority to perform each of the activities set forth in 40 CFR 123.44. Based upon Nebraska's program description and upon its experience in administering an approved NPDES program, EPA has concluded that the State will have the necessary procedures and resources to administer the general permits program.

III. Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA will provide Federal Register notice of any action by the Agency approving or modifying a State NPDES program. The following table will provide the public with an up-to-date list of the status of NPDES permitting authority throughout the country. Today's Federal Register notice is to announce the approval of Nebraska's authority to issue general permits.

	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program
Alabama	10/19/79	10/19/79	10/19/79
Arkansas[1]	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	
Colorado[1]	03/27/75		
Connecticut	09/26/73	01/09/89	06/03/81
Delaware	04/01/74		
Georgia	06/28/74	12/08/80	03/12/81
Hawaii	11/28/74	06/01/79	06/12/83
Illinois[1]	10/23/77	09/20/79	
Indiana	01/01/75	12/09/78	
Iowa	08/10/78	08/10/78	06/03/81
Kansas	06/28/74	06/28/85	
Kentucky[1]	09/30/83	09/30/83	09/30/83
Maryland	09/05/74	11/10/87	09/30/85
Michigan	10/17/73	12/09/78	06/07/83
Minnesota[1]	05/30/74	12/09/78	07/16/79
Mississippi	05/01/74	01/28/83	05/13/82
Missouri[1]	10/30/74	06/25/79	06/03/81
Montana[1]	06/10/74	06/23/81	
Nebraska[1]	06/12/74	11/02/79	09/07/84
Nevada	09/19/75	06/31/78	
New Jersey[1]	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80	
North Carolina	10/19/75	09/28/84	06/14/82
North Dakota	06/13/75		
Ohio	03/11/74	01/28/83	07/27/83
Oregon[1]	09/26/73	03/02/79	03/12/81
Pennsylvania	06/30/78	06/30/78	
Rhode Island [1]	09/17/84	09/17/84	09/17/84
South Caroline	06/10/75	09/26/80	04/09/82
Tennessee	12/26/77		08/10/83
Utah	07/07/87	07/07/87	07/07/87
Vermont	03/11/74		03/16/82
Virgin Islands	06/30/78		
Virginia	03/31/75	02/09/82	04/14/89
Washington	11/14/73		09/30/86
West Virginia[1]	05/10/82	05/10/82	05/10/82
Wisconsin[1]	02/04/74	11/26/79	12/24/80
Wyoming	01/30/75	05/18/81	

[1] Denotes Approved State General Permit Program.

IV. Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to Section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Pursuant to Section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this State General Permits Program will not have a significant impact on a substantial number of small entities. Approval of the Nebraska NPDES State General Permits Program establishes no new substantive requirements, nor does it alter the regulatory control over any industrial category. Approval of the Nebraska NPDES State General Permits Program merely provides a simplified administrative process.

Dated: July 28, 1989.

Morris Kay,

Regional Administrator.

[FR Doc. 89-18940 Filed 8-11-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review.

August 8, 1989.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0072.

Title: Airborne Mobile Radio Telephone License Application.

Form No.: FCC 409.

Action: Extension.

Respondents: Business or other for-profit, and small businesses or organizations.

Frequency of Response: On occasion.

Estimated Annual Burden: 3,000 Responses; 252 Hours.

Needs and Uses: The FCC 409 is used in applying for authority to operate an airborne mobile radio telephone by individual users who intend to become subscribers to a common carrier service. The form is also used for the modification and renewal of such licenses. The information is used by the Commission's staff to determine the qualifications of an applicant.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-18863 Filed 8-11-89; 8:45 am]

BILLING CODE 6712-01-M

[DA 89-947]

Advisory Committee on Advanced Television Service Planning Subcommittee Meeting

August 9, 1989.

A meeting of the Planning Subcommittee of the Advisory Committee on Advanced Television Service will be held on: September 19, 1989, 10:00 a.m., Commission Meeting Room (Room 856), 1919 M Street, NW., Washington, DC

The purpose of this meeting to receive the reports of the Subcommittee's working parties and to review the work statement for the third period of Planning Subcommittee activities.

The agenda for the meetings is as follows:

1. Call to Order by the Chairman
2. Adoption of the Minutes of the Fifth Meeting
3. Introductory Remarks
4. Review of the Work Statement
5. Status Reports by the Working Party and Advisory Group Chairmen
6. Other Business
7. Date and Location of the Next Subcommittee Meeting
8. Adjournment

This meeting is open to the public.

Parties may submit written statements prior to or at the time of the meeting. Oral statements and discussion will be permitted under the direction of the Subcommittee Chairman.

Any questions regarding this meeting should be directed to Joseph A. Flaherty at (212) 975-2213 or William Hassinger at (202) 632-6460.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-18986 Filed 8-11-89; 8:45 am]

BILLING CODE 6712-01-M

Quarterly Report on the Travel Reimbursement Program

AGENCY: Federal Communications Commission.

ACTION: Publishing of Quarterly Report on Travel Reimbursement Program.

SUMMARY: In Public Law 100-594, the Congress authorized the Federal Communications Commission to accept reimbursement from non-government organizations for travel of employees of the Commission. The Federal Communications Commission must keep records of such travel by each event and prepare a report each quarter of all reimbursements allowed and provide copies of each quarterly report to the Senate Committee on Appropriations, House Committee of Appropriations, Senate Committee on Commerce, Science and Transportation, and the House Committee on Energy and Commerce. In addition the Federal Register must publish each quarterly report in the Federal Register.

DATE: This report is for the period from April 1, 1989 through June 30, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joseph T. Hall, Office of the Managing Director, (202) 632-7194.

SUPPLEMENTARY INFORMATION: The report for the quarter ending June 30, 1989 is as follows:

FEDERAL COMMUNICATIONS COMMISSION,

TRAVEL REIMBURSEMENT PROGRAM,

April 1, 1989-June 30, 1989

Summary Report

Total Number of Sponsored events	32
Total Number of Sponsoring Organizations	30
Total Number of Commissioners/Employees Attending	56
Total Amount of Reimbursement Expected:	
Transportation	$17,120.16
Subsistence	13,714.27
Other Expenses	2,834.38
Total	33,668.81

Individual Event Reports Attached.
Amount of Reimbursement Shown May be Estimated.

Individual Event Report

Sponsoring Organization: National Cable Television Association, 1724 Massachusetts Avenue, NW., Washington, DC 20036.

Date of Event: May 21-24, 1989.

Description of the Event: 38th Annual Convention and Exposition.

Commissioners Attending: Commissioner James H. Quello.

Other Employees attending: See Attachment A.

Amount of Reimbursement:	
Transportation	$4,386.00
Subsistence	2,953.65
Other Expenses	873.59
Total	8,013.24

Attachment A—National Cable Television Association

Other Employees Attending:
Brian F. Fontes—Special Assistant, Office of Commissioner Quello
Noel C.R. Gunther—Special Assistant, Office of Commissioner Dennis
Diane S. Killory—General Counsel
Mary Beth Hess—Legal Assistant to the Bureau Chief, Common Carrier Bureau
Alex Felker, Bureau Chief
Bradley P. Holmes—Chief, Policy and Rules Division
William H. Johnson—Deputy Bureau Chief
Ronald Parver—Chief, Cable Television Branch, Mass Media Bureau
Sarah M. Lawrence—Chief, News Media Division, Office of Public Affairs
Lisa A. Hook—Legal Assistant, Office of the Chairman

Sponsoring Organization: National Translator Association, P.O. Box 628, Riverton, WY 82501.
Date of the Event: May 18–20, 1989.
Description of the Event: National Translator Association Annual Convention.
Commissioners Attending: None.
Other Employees Attending: Keith Larson—Chief, Low Power Television Branch, Alan Schneider—Chief, Auxiliary Services Branch, Thomas English—Electronics Engineer, Auxiliary Services Branch, Mass Media Bureau.

Amount of Reimbursement:

Transportation	$1,096.18
Subsistence	611.49
Other Expenses	113.74
Total	1,821.41

Sponsoring Organization: Virginia Telephone Association, 700 Building, Suite 1420, 700 East Main Street, Richmond, VA 23219.
Date of the Event: May 17–20, 1989.
Description of the Event: Virginia Telephone Association 55th Annual Meeting.
Commissioners Attending: None.
Other Employees Attending: James D. Schlichting, Legal Assistant, Office of the Chairman.

Amount of Reimbursement:

Transportation	$93.15
Subsistence	138.50
Other Expenses	0.00
Total	231.65

Sponsoring Organization: United States Telephone Association, 900 19th Street, NW., Suite 800, Washington, DC 20006–2105.
Date of the Event: May 22–25, 1989.
Description of the Event: United States Telephone Association Premier Annual Trade Show.
Commissioners Attending: None.
Other Employees Attending: Lisa A. Hook—Legal Assistant, James D. Schlichting, Legal Assistant, Office of the Chairman.

Amount of Reimbursement:

Transportation	$624.00
Subsistence	606.00
Other Expenses	94.31
Total	1,324.31

Sponsoring Organization: Telecommunications Industry Association, 150 North Michigan Avenue, Suite 600, Chicago, IL 60601–7525.
Date of the Event: May 23, 1989.
Description of the Event: SUPERCOM '89/NETWORK 90's.
Commissioners Attending: None.
Other Employees Attending: William H. Hassinger—Assistant Bureau Chief (Legal), Mass Media Bureau.

Amount of Reimbursement:

Transportation	$318.00
Subsistence	34.00
Other Expenses	39.80
Total	391.80

Sponsoring Organization: Wisconsin State Telephone Association, 4610 University Avenue, Madison, WI 53705.
Date of the Event: May 24, 1989.
Description of the Event: 1989 WSTA Convention.
Commissioners Attending: None.
Other Employees Attending: Cindy Z. Schonhaut—Attorney, Legal Branch, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$358.00
Subsistence	120.36
Other Expenses	160.23
Total	638.59

Sponsoring Organization: KMB Associates, Inc., Box 825, Lakeside Drive, Block Island, R.I.
Date of the Event: May 26, 1989.
Description of the Event: KMB Video Journal.
Commissioners Attending: None.
Other Employees Attending: Steven Gorosh—Attorney, Policy and Program Planning Division, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$152.00
Subsistence	0.00
Other Expenses	40.75
Total	192.75

Sponsoring Organization: Electronic Industries Association, 2001 Eye Street, NW., Washington, DC 20006.
Date of the Event: June 5–6, 1989.
Description of the Event: Consumer Electronics Show.
Commissioners Attending: None.
Other Employees Attending: William H. Hassinger, Assistant Bureau Chief (Engineering)—Mass Media Bureau.

Amount of Reimbursement:

Transportation	$258.00
Subsistence	151.00
Other Expenses	22.11
Total	431.11

Sponsoring Organization: Public Telephone Council, 150 N. Michigan Avenue, Suite 600, Chicago, IL 60601.
Date of the Event: June 6–8, 1989.
Description of the Event: PACE/Publicomm 1989.
Commissioners Attending: None.
Other Employees Attending: Kathie A. Kneff—Chief, Informal Complaints and Public Inquiries Branch, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$302.00
Subsistence	106.00
Other Expenses	50.00
Total	458.00

Sponsoring Organization: Northern Telecom, Inc., P.O. Box 13010, Research Triangle Park, N.C. 27709.
Date of the Event: June 11–14, 1989.
Description of the Event: International Conference on Communications 1989.
Commissioners Attending: None.
Other Employees Attending: Thomas J. Sugrue—Chief, Policy and Program Planning Division, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$152.00
Subsistence	34.00
Other Expenses	52.20
Total	236.50

Sponsoring Organization: Society of Cable Television Engineers, Inc., 669 Exton Commons, Exton, PA 19341.
Date of the Event: June 15–18, 1989.
Description of the Event: Cable—Tec Expo.
Commissioners Attending: None.
Other Employees Attending: John P. Wong—Electronics Engineer, Video Services Division, Mass Media Bureau.

Amount of Reimbursement:

Transportation	$330.00
Subsistence	333.00
Other Expenses	67.40
Total	730.40

Sponsoring Organization: 3M Company, 3M Center, St. Paul, MN 55144–1000.
Date of the Event: June 17–22, 1989.
Description of the Event: Annual "Broadcast Symposium".
Commission Attending: None.
Other Employees Attending: William H. Hassinger—Assistant Bureau Chief (Engineering), Mass Media Bureau.
Amount of Reimbursement:

Transportation	$300.0
Subsistence	93.00
Other Expenses	3.60
Total	396.60

Sponsoring Organization: Mississippi Association of Broadcasters, 15 Northtown Drive, Suite A, Jackson, MS 39211.
Date of the Event: June 15–17, 1989.
Description of the Event: Mississippi Association of Broadcasters Annual Convention.
Commissioners Attending: None.
Other Employees Attending: Alex D. Felker—Bureau Chief, Mass Media Bureau.

Amount of Reimbursement:

Transportation	$288.0
Subsistence	89.00
Other Expenses	15.65
Total	392.65

Sponsoring Organization: United States Telephone Association, 900 19th Street, NW., Suite 800, Washington, DC 20006–2105.
Date of the Event: June 19–20, 1989.
Description of the Event: Integrated Services Digital Network Seminar.
Commissioners Attending: None
Other Employees Attending: Charles Oliver—Attorney, Policy and Program Planning Division, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$300.00
Subsistence	124.50
Other Expenses	99.80
Total	524.30

Sponsoring Organization: Florida Association of Broadcasters, 514 East College, Tallahassee, FL 32301.
Date of the Event: June 21–24, 1989.
Description of the Event: Florida Association of Broadcaster's Annual Convention.
Commissioners Attending: None.
Other Employees Attending: Roderick K. Porter—Deputy Chief, Mass Media Bureau.

Amount of Reimbursement:

Transportation	$200.00
Subsistence	335.00
Other Expenses	30.00
Total	565.00

Sponsoring Organization: Maryland/District of Columbia/Delaware Broadcaster's Association, Inc., 10320 Little Patuxent Parkway, Suite 808, Columbia, MD 21044.
Date of the Event: June 22–25, 1989.
Description of the Event: Maryland/District of Columbia/Delaware Broadcaster's Association Annual Convention.
Commissioners Attending: None.
Other Employees Attending: Alex D. Felker—Bureau Chief, Mass Media Bureau.

Amount of Reimbursement:

Transportation	$21.83
Subsistence	93.00
Other Expenses	8.75
Total	123.58

Sponsoring Organization: National Association of Broadcasters, 1771 N Street, NW., Washington, DC 20036.
Date of the Event: April 29–May 2, 1989.
Description of the Event: National Association of Broadcasters 67th Annual Convention and International Exposition.
Commissioners Attending: Chairman Dennis R. Patrick, Commissioner James H. Quello, Commissioner Patricia Diaz-Dennis.
Other Employees Attending: See Attachment A.

Amount of Reimbursement:

Transportation	$2,740.00
Subsistence	4,065.30
Other Expenses	464.34
Total	7,269.64

Attachment A—National Association of Broadcasters

Other Employees Attending: Alex D. Felker—Bureau Chief, Roderick P. Porter—Deputy Bureau Chief, William H. Hassinger—Assistant Bureau Chief (Legal), Larry D. Eads—Chief, Audio Services Division, Roy J. Steward—Chief, Video Services Division, Charles W. Kelley—Chief, Enforcement Division, Mass Media Bureau.

Individual Event Report

Sponsoring Organization: HAMVENTION, P.O. Box 964, Dayton, OH 45401.
Date of the Event: April 27–30, 1989.
Description of the Event: 1989 HAMVENTION.
Commissioners Attending: None.
Other Employees Attending: John B. Johnson—Chief, Personal Radio Branch, Private Radio Branch.

Amount of Reimbursement:

Transportation	$228.00
Subsistence	193.50
Other Expenses	66.24
Total	487.74

Individual Event Report

Sponsoring Organization: Bellcore, 290 W. Mt. Pleasant Avenue, Livingston, NJ 07039–2729.
Date of the Event: April 5, 1989.
Description of the Event: Telecommunications Cost Forum.
Commissioners Attending: None
Other Employees Attending: Michael R. Wack—Legal Assistant to the Bureau Chief—Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$318.00
Subsistence	236.50
Other Expenses	60.00
Total	614.00

Individual Event Report

Sponsoring Organization: Ad Club of New Hampshire, P.O. Box 4448, Manchester, NH 03108.
Date of the Event: April 12, 1989.
Description of the Event: Ad Club of New Hampshire Meeting.
Commissioners Attending: None.
Other Employees Attending: Alex D. Felker—Bureau Chief, Mass Media Bureau.

Amount of Reimbursement:

Transportation	$157.00
Subsistence	98.00
Other Expenses	20.50
Total	275.50

Sponsoring Organization: National Economic Research Associates Inc., 101 Main Street, Cambridge MA 02142.
Date of the Event: April 12–15, 1989.
Description of the Event: Third Biennial Telecommunications Seminar.
Commissioners Attending: None.
Other Employees Attending: John R. Haring—Chief, Office of Plans and Policy.

Amount of Reimbursement:

Transportation	$529.00
Subsistence	468.00
Other Expenses	41.30
Total	1,038.30

Sponsoring Organization: New England Telephone, 98 High Street, Boston, MA 02110.
Date of the Event: April 24–28, 1989.
Description of the Event: Spring Accounting Witnesses Conference.
Commissioners Attending: None.
Other Employees Attending: Gerald P. Vaughan—Deputy Bureau Chief (Operations) Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$300.00
Subsistence	175.44
Other Expenses	5.50
Total	480.94

Sponsoring Organization: Ameritech Services, 475 N Martingale Road, Schaumburg, IL 60173.
Date of the Event: April 26–27 1989
Description of the Event: The Interindustry Advisory Group and IIIC Meetings.
Commissioners Attending: None.
Other Employees Attending: Raymond L. Dujack—Electronics Engineer, Policy and Program Planning Division, Common Carrier Bureau

Amount of Reimbursement:

Transportation	$358.00
Subsistence	245.00
Other Expenses	20.00
Total	623.00

Sponsoring Organization: NYNEX Service Company, 120 Bloomingdale Road, Room 350, White Plains, NY 10605.
Date of the Event: May 9–11, 1989.
Description of the Event: IILC Technical Working Committee, Non-Technical Working Committee and Alarm Industry Workshop.
Commissioners Attending: None.
Other Employees Attending: Raymond L. Dujack—Electronics Engineer, Policy and Program Planning Division, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$210.00
Subsistence	272.53
Other Expenses	107.60
Total	590.13

Sponsoring Organization: Telestrategies, Incorporated, 1355 Beverly Road, Suite 100, McLean, VA 22101.
Date of the Event: April 26–28, 1989.
Description of the Event: Pay Phone and Operator Services Conference.
Commissioners Attending: None.
Other Employees Attending: Howard Wilchins—Deputy Chief, Enforcement Division, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$322.00
Subsistence	223.00
Other Expenses	29.47
Total	574.47

Sponsoring Organization: Oregon Independent Telephone Association, 555 Union Street, NW., Salem, OR 97301.
Date of the Event: May 4, 1989.
Description of the Event: Oregon Independent Telephone Association Annual Meeting
Commissioners Attending: Commissioner Patricia Diaz-Dennis.
Other Employees Attending: None.

Amount of Reimbursement:

Transportation	$219.00
Subsistence	152.00
Other Expenses	46.25
Total	417.25

Sponsoring Organization: The Institute of Electrical and Electronic Engineers Inc., c/o Frank Thatcher Associates, Inc., 564 Market Street, Suite 612. San Francisco, CA 94104.
Date of the Event: May 1–3, 1989.
Description of the Event: 1989 VTS Conference.
Commissioners Attending: None.
Other Employees Attending: Thomas P. Stanley—Chief Engineer, Office of Engineering and Technology.

Amount of Reimbursement:

Transportation	$388.00
Subsistence	448.00
Other Expenses	125.00
Total	961.00

Sponsoring Organization: Bell Communications Research, 290 W. Mt. Pleasant Ave, Livingston, NJ 07039.
Date of the Event: May 2–3, 1989.
Description of the Event: Annual Third Party Marketing Executive Briefing.
Commissioners Attending: None.
Other Employees Attending: Gary Phillips—Attorney, Policy and Program Planning Division, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$378.00
Subsistence	178.00
Other Expenses	47.00
Total	603.00

Sponsoring Organization: Motorola, Inc., 1776 K Street, NW., Suite 300, Washington, DC 20006.
Date of the Event: May 3–5, 1989.
Description of the Event: Telocator Annual Meeting.
Commissioners Attending: None.
Other Employees Attending: Gerald P. Vaughan—Deputy Bureau Chief (Operation), Gregory J. Vogt—Chief, Mobile Services Division, Myron C. Peck—Deputy Chief, Mobile Services Division, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$902.00
Subsistence	709.00
Other Expenses	231.70
Total	1,842.70

Sponsoring Organization: American Women in Radio and Television, 1101 Connecticut Avenue, NW., Suite 700, Washington, DC 20036.
Date of the Event: May 12, 1989.
Description of the Event: 38th Annual Convention.
Commissioners Attending: Chairman Dennis R. Patrick.
Other Employees Attending: None.

Amount of Reimbursement:

Transportation	$110.00
Subsistence	42.50
Other Expenses	61.25
Total	213.75

Sponsoring Organization: Tennessee Cable Television Association, P.O. Box 1737, Johnson City, TN 37605–1737.
Date of the Event: April 25, 1989.
Description of the Event: Tennessee Cable Television Association Convention.
Commissioners Attending: None.
Other Employees Attending: Pamera Hairston—Attorney, Equal Employment Opportunity Branch, Mass Media Bureau.

Amount of Reimbursement:

Transportation	$316.00
Subsistence	97.50
Other Expenses	36.00
Total	449.50

Sponsoring Organization: Institute of Electrical and Electronics Engineers, Inc., 345 E. 47th Street, New York, NY 10017–2394.
Date of the Event: May 23–25, 1989.
Description of the Event: 1989 IEEE EMC Conference.
Commissioners Attending: None.
Other Employees Attending: Thomas W. Phillips—Electronics Engineer, Sampling and Measurements Branch, Office of Engineering and Technology.

Amount of Reimbursement:

Transportation	$466.00
Subsistence	288.00
Other Expenses	0.00
Total	754.00

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 89–18987 Filed 8–11–89; 8:45 am]
BILLING CODE 6712–01–M

Applications for Consolidated Hearing

1. The Commission has before it the following groups of mutually exclusive applications for three new FM stations and one new AM station:

I.

Applicant, City, and State	File No.	MM Docket No.
A. Southwest Educational Media Foundation of Texas, Inc., Waco, TX.	BPED–870610MF	89–336
B. Kennelwood Broadcasting Company, Inc., Waco, TX.	BPH–870629MU	.....
C. Richards Communications, Inc., Waco, TX.	BPH–870630MQ	.....
D. Excelsior Communications, Inc., Waco, TX.	BPH–870630NA	.....
E. Chase Communications, Inc., Waco, TX.	BPH–870630NB	.....

Issue Heading and Applicants
1. Comparative, A, B, C, D, E
2. Ultimate, A, B, C, D, E

II

Applicant, City, and State	File No.	MM Docket No.
A. Thomas Ferebee, Oscoda, MI.	BPH–870925MA	89–339
B. Iosco County Communications, Inc., Oscoda, MI.	BPH–871023ML	

Issue Heading and Applicants
1. Comparative, A, B
2. Ultimate, A, B

[Docket No.]

III.

Applicant, City, and State	File No.	MM Docket No.
A. Emision De Radio, Balmaseda, Inc., Ponte Vedra Beach, FL.	BPH–870505MA	89–350
B. Safe Care, Inc., Ponte Vedra Beach, FL.	BPH–870505MB	.....
C. Stephen G. McGowan, Ponte Vedra Beach, FL.	BPH–870506ME	.....
D. Ponte Vedra Broadcasting, Inc., Ponte Vedra Beach, FL.	BPH–870506MF	.....
E. Tallahassee Broadcasting, Co., Ponte Vedra Beach, FL.	BPH–870506MG	.....
F. Chameleon Broadcasting, Inc., Ponte Vedra Beach, FL.	BPH–870506MH	.....
G. Sunstar Communications, Inc., Ponte Vedra Beach, FL.	BPH–870506MI	.....
H. Dale Broadcasting, Inc., Ponte Vedra Beach, FL.	BPH–870506MK	.....
I. Ponte Vedra Radio Corporation, Ponte Vedra Beach, FL.	BPH–870506ML	.....
J. Ronald Scott Perry, Ponte Vedra Beach, FL.	BPH–870506MM	.....
K. First Coast Radio, Inc., Ponte Vedra Beach, FL.	BPH–870506MN	.....
L. Florida FM Limited Partnership, Ponte Vedra Beach, FL.	BPH–870506MO	.....
M. Monroe E. Berkman and Suzette M. Berkman, Ponte Vedra Beach, FL.	BPH–870506MP	.....
N. LeeAnn Kendal Scopinich, Ponte Vedra Beach, FL.	BPH–870506MQ	.....

Issue Heading and Applicants
1. See Appendix, L

Issue Heading and Applicants
1. Comparative, A, B, C, D, E
2. Ultimate, A, B, C, D, E

II

Applicant, City, and State	File No.	MM Docket No.
A. Thomas Ferebee, Oscoda, MI.	BPH–870925MA	89–339
B. Iosco County Communications, Inc., Oscoda, MI.	BPH–871023ML	

Issue Heading and Applicants
1. Comparative, A, B
2. Ultimate, A, B

[Docket No.]

III.

Applicant, City, and State	File No.	MM Docket No.
A. Emision De Radio, Balmaseda, Inc., Ponte Vedra Beach, FL.	BPH–870505MA	89–350
B. Safe Care, Inc., Ponte Vedra Beach, FL.	BPH–870505MB	.....
C. Stephen G. McGowan, Ponte Vedra Beach, FL.	BPH–870506ME	.....
D. Ponte Vedra Broadcasting, Inc., Ponte Vedra Beach, FL.	BPH–870506MF	.....
E. Tallahassee Broadcasting, Co., Ponte Vedra Beach, FL.	BPH–870506MG	.....
F. Chameleon Broadcasting, Inc., Ponte Vedra Beach, FL.	BPH–870506MH	.....
G. Sunstar Communications, Inc., Ponte Vedra Beach, FL.	BPH–870506MI	.....
H. Dale Broadcasting, Inc., Ponte Vedra Beach, FL.	BPH–870506MK	.....
I. Ponte Vedra Radio Corporation, Ponte Vedra Beach, FL.	BPH–870506ML	.....
J. Ronald Scott Perry, Ponte Vedra Beach, FL.	BPH–870506MM	.....
K. First Coast Radio, Inc., Ponte Vedra Beach, FL.	BPH–870506MN	.....
L. Florida FM Limited Partnership, Ponte Vedra Beach, FL.	BPH–870506MO	.....
M. Monroe E. Berkman and Suzette M. Berkman, Ponte Vedra Beach, FL.	BPH–870506MP	.....
N. LeeAnn Kendal Scopinich, Ponte Vedra Beach, FL.	BPH–870506MQ	.....

Issue Heading and Applicants
1. See Appendix, L
2. See Appendix, L
3. See Appendix, L
4. See Appendix, L
5. Financial Qualifications, K
6. Comparative, A–N
7. Ultimate, A–N

IV.

Applicant, City, and State	File No.	MM Docket No.
A. Statewide Broadcasters Inc., Black Canyon City, AZ.	BP–870330AL	89–340
B. Good News Broadcasting, Inc., South Tucson, AZ.	BP–870624AG	.....

Issue Heading and Applicants
1. Environmental Impact, A
2. 307(b)–Modification, A, B
3. Comparative, A, B
4. Ultimate, A, B

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 Fed. Reg. 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,
Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix—(Ponte Vedra Beach, FL)

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of L (Florida).

2. To determine whether L (Florida's) organizational structure is a sham.

3. To determine whether L (Florida) violated § 1.65 of the Commission's Rules, and/or lacked candor, by failing to timely report the designation of character issues against other applicants in which one or more of its partners has an ownership interest and/or the dismissal of such ownership interest and/or the dismissal of such applications with unresolved character issues pending.

4. To determine, from the evidence adduced pursuant to Issues 1 through 3 above, whether L (Florida) possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 89–18988 Filed 8–11–89; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0188.

Title: Disaster Response Questionnaire.

Abstract: The Disaster Response Questionnaire is used to assess the effectiveness of State and/or local response to actual disasters and also evaluate FEMA programs to support and enhance local capabilities as directed by the Federal Civil Defense Act of 1950 (As Amended).

Type of Respondents: State and Local Governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 540.

Number of Respondents: 360.

Estimated Average Burden Hours per Response: 1.5.

Frequency of Response: On occasion, after a disaster declaration.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 6465–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Pamela Barr, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: July 19, 1989.

Wesley C. Moore,
Director, Office of Administrative Support.
[FR Doc. 89–18946 Filed 8–11–89; 8:45 am]
BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before comunicating with the Commission regarding a pending agreement.

Agreement No.: 202–010790–007.

Title: Israel Easbound Conference Agreement

Parties:

Zim Israel Navigation Co., Ltd., (Zim Container Service Division)

Farrell Lines, Inc.

Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed modification would clarify existing procedures for the discussion and modification or cancellation of proposed or effective independent actions.

Agreement No.: 203–011248.

Title: NYK–PM&O Discussion Agreement.

Parties:

Nippon Yusen Kaisha

Phillipines, Micronesia & Orient Navigation Co.

Synopsis: The proposed Agreement would authorize the parties to discuss and agree upon transportation matters of mutual concern in the trades from Taiwan, Hong Kong, the Philippines, and Thailand to Hawaii. Adherence to any rate matters agreed upon would be voluntary.

By Order of the Federal Maritime Commission.

Dated: August 8, 1989.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 89–18891 Filed 8–11–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

August 8, 1989.

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the Federal Register, but occasionally the public interest requires more rapid action.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7340)

Request for OMB approval to extend with revision

1. *Report title:* Monthly Consolidated Foreign Currency Report of Banks in the United States.

Agency form number: FFIEC 035.

OMB Docket number: 7100–0178.

Frequency: Monthly.

Reporters: U.S. banks and U.S. branches or agencies of foreign banks.

Annual reporting hours: 6,999.

Estimated average hours per response: 12.68.

Number of respondents: 46. Small businesses are not affected.

General description of report:

This information collection is mandatory [12 U.S.C. 248(a) and 1844(c)] and is given confidential treatment.

This report is needed to monitor the foreign exchange positions of major banking institutions and to detect changes in policy in individual banks. Also, the report is used as an aid in the analysis of foreign exchange markets. The proposed revisions include additional data items on currency options, swaps and futures, offset by the elimination of the seven-category maturity gap breakdown.

Board of Governors of the Federal Reserve System, August 8, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–18926 Filed 8–11–89; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings in September

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming meetings of the agency's advisory committees in the month of September 1989. The National Advisory Councils will be performing review of applications for Federal assistance and the Boards of Scientific Counselors will review and evaluate intramural projects and individual staff scientists. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92–463.

Committee Name: National Advisory Council on Alcohol Abuse and Alcoholism.

Date and Time: September 11–12: 10:15 a.m.

Place: National Institutes of Health, Building #1, 3rd Floor, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting: Open—September 11: 10:15 a.m.–5:00 p.m. Closed—Otherwise.

Contact: James Vaughan, Room 16C–20, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4375.

Purpose: The Council advises the Secretary, Department of Health and Human Services regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and adherence to Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

Committee Name: Board of Scientific Counselors, NIMH.

Date and Time: September 11–13: 8:30 a.m.

Place: National Institutes of Health, Building 36, Room 1B–07, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting: Open—September 11: 8:30–9:00 a.m. Closed—Otherwise.

Contact: Steven M. Paul, National Institute of Mental Health, Building 10, Room 4N–224, 9000 Rockville Pike, Bethesda, MD 20892, (301) 496–3501.

Purpose: The Board provides expert advice to the Director, National Institute of Mental Health, on the mental health intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Committee Name: National Advisory Council on Drug Abuse, NIDA.

Date and Time: September 12–13: 9:00 a.m.

Place: NIH Campus, Building 31C, Conference Room 9, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting: Open—September 12: 9:00 a.m.—5:00 p.m. September 13: 2:00 p.m.—5:00 p.m. Closed—Otherwise.

Contact: Sheila H. Gardner, Room 8A–54, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0441.

Purpose: The Council advises and makes recommendations to the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse on the development of new initiatives and priorities and the efficient administration of drug abuse research, including prevention and treatment research, and research training. The Council also gives advice on policies and priorities for drug abuse grants and contracts, and reviews and makes final recommendations on grant applications.

Committee Name: National Advisory Health Council, NIMH.

Date and Time: September 18–20, 9:00 a.m.

Place: Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, MD 20857.

Status of Meeting: Open—September 19: 9:00 a.m.–1:00 p.m. Closed—Otherwise.

Contact: Eleanor Friedenberg, Parklawn Building, Room 9–105, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3367.

Purpose: The Council advises the Secretary, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Committee Name: Board of Scientific Counselors, NIAAA.

Date and Time: September 25–26: 9:00 a.m.

Place: Flow Building, Room 51, 12501 Washington Avenue, Rockville, MD 20852.

Status of Meeting: Open—September 25: 9:00 a.m.–9:30 a.m. Closed—Otherwise.

Contact: Boris Tabakoff, National Institute on Alcohol Abuse and Alcoholism, Building 10, Room 3C–103, 9000 Rockville Pike, Bethesda, MD 20892, (301) 496–8996.

Purpose: The Board provides expert advice to the Director, Division of Intramural Clinical and Biological Research, National Institute on Alcohol Abuse and Alcoholism (NIAAA), and to the Director, NIAAA, on the alcohol intramural research program. This advice is derived from periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Substantive information, summaries of meetings, and rosters of committee members may be obtained as follows: Ms. Camilla Holland, NIDA Committee Management Officer, Room 10–42, (301) 443–2620; Ms. Diana Widner, NIAAA Committee Management Officer, Room 16C–20 (301) 443–4375; Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9–105, (301) 443–4333. The mailing address for the above parties is: Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Date: August 7, 1989.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89–18892 Filed 8–11–89; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 89F–0315]

Calgon Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Calgon Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1, 2-dibromo-2, 4-dicyanobutane as a preservative in defoaming agents used in the manufacture of paper and paperboard intended to contact food.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4150) has been filed by Calgon Corp., Calgon Center, P.O. Box 1346, Pittsburgh, PA 15230. The petition proposes to amend § 176.210 *Defoaming agents used in the manufacture of paper and paperboard* (21 CFR 176.210) to provide for the safe use of 1,2-dibromo-2,4-dicyanobutane as a preservative in defoaming agents used in the manufacture of paper and paperboard intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: August 7, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–18932 Filed 8–11–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89G–0217]

Kraft, Inc.; Filing of Petition for Affirmation of Gras status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Kraft, Inc., has filed a petition (GRASP 9G0351), proposing to affirm that modified protein texturizers are generally recognized as safe (GRAS) as direct human food ingredients.

DATE: Comments by October 13, 1989.

ADDRESS: Written comments to the Dockets Management branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and the regulations for affirmation of GRAS status in 21 CFR 170.35, notice is given that a petition (GRASP 9G0351) has been filed by Kraft, Inc., 801 Waukegan Rd., Glenview, IL 60024, proposing that modified protein texturizers be affirmed as GRAS for use as direct human food ingredients.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in 21 CFR 170.30 and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before October 13, 1989, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments shoud include any available information that would be helpful in determining whether the substances are, or are not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 4, 1989.

Richard J. Ronk,

Deputy Director, Center for Food safety and Applied Nutrition.

[FR Doc. 89–18933 Filed 8–11–89; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

ACTION: The Health Care Financing Administration (HCFA) has submitted the following public information collection requirement to the Office of Management and Budget (OMB) for review and clearance in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

SUMMARY: On August 7, 1989, the Secretary of Health and Humans Services signed a regulation "Medicare Home Health Agency Conditions of Participation," BPD–476, which appears elsewhere in this issue of the **Federal Register**. The effective date of this regulation is July 1, 1989. Sections 484.10, 484.12, 484.14, 484.16, 484.18, 484.30, 484.32, 484.34, 484.36, 484.48, and 484.52 of the regulation requires information collection. In view of the critical importance of the residents' rights provisions contained in the regulation and the considerable opportunity already extended to the public for comment, the HCFA has requested the Office of Management and Budget to expedite their review within 30 days of this publication.

Type of Request: Revision; *Originating Office:* Health Care Financing Administration; *Title of information collection:* Medicare Home Health Agency Conditions of Participation—Information Collection Requirements; *Form number:* Form HCFA–R–39; *Frequency:* On occasion; *Respondents:* Home Health Agencies Participating in the Medicare Program; *Estimated number of responses:* 5,651; *Average hours per response:* 6.85; *Total estimated burden hours:* 38,709; *Additional Information or Comments:* Regulation BPD–476 is published elsewhere in this issue of the **Federal Register**. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: August 10, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89–19042 Filed 8–11–89; 8:45 am]

BILLING CODE 4120–03–M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of the Clinical Applications and Prevention Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute, National Institutes of Health, on October 25–26, 1989, at the Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland.

The entire meeting will be open to the public from 9:00 a.m. to recess on October 25 and 11:00 a.m. to adjournment on October 26 to discuss new initiatives, program policies, and issues. Attendance by the public will be limited to space available.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institutes, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of committee members upon request.

Dr. William R. Harlan, Director, Division of Epidemiology and Clinical Applications, Federal Building, Room 212, Bethesda, Maryland 20892, (301) 496–2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No 13.837, Heart and Vascular Diseases Research, National Institutes of Health.)

Dated: August 4, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–18968 Filed 8–11–89; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Commission on Acquired Immune Deficiency Syndrome; Meeting

This is to announce the following meeting of the National Advisory body.

NAME: National Commission on Acquired Immune Deficiency Syndrome.

Date and Time: August 17, 1989 from 2:00 p.m.—3:30 p.m.

Place: Sheraton Washington Hotel, Idaho Room, 2860 Woodley Road, NW., Washington, DC 20008

This meeting is not open to the public.

PURPOSE: The general purpose of the Commission is to carry out activities promoting the development of a national consensus on policy concerning acquired immune deficiency syndrome (AIDS), as provided in the Commission's enabling legislation, Public Law 100–607.

AGENDA: The agenda item for the meeting will be the selection of an Executive Director for the Commission and will involve the review, discussion, and evaluation of personnel applications. These personnel applications contain information of a personal nature the disclosure of which constitute a clearly unwarranted invasion of personal privacy. To protect against this disclosure of the confidential information to be discussed, as authorized by section 552b (C)(6), it is essential to close this meeting.

The meeting is being held on short notice in order to allow the Commission to promptly select its Executive Director and begin its work.

Anyone requesting information regarding the subject Commission should contact: Ms. Iris Gelberg at 202–472–4248.

Dated: August 8, 1989.

John Gallivan,

PHS Regulations Officer.

[FR Doc. 89–18936 Filed 8–11–89; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–010–82–3110–10 CAPL]

Public Use Restriction; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of temporary vehicle use restrictions in the Carrizo Plain Natural Area and the Caliente Range within San Luis Obispo County in the Caliente Resource Area, Bakersfield District, California.

SUMMARY: This emergency action restricts vehicle use on BLM-administered public land in the Carrizo Plain Natural Area and the Caliente Range in San Luis Obispo County, California, due to the acquisition of public lands which have yet to be addressed in a Resource Management Plan. Vehicle use on roads designated as "Administrative Access Only" shall be limited to persons specifically designated by the Authorized Officer to drive on said raods. The public lands affected by this category of road closure are located in portions of T31S, R19E; T31S, R20E; T32S, R19E; T32S, R20E; T32S, R21E; T32S, R22E; T12N, R28W; T12N, R27W; T12N, R26W; T11N, R28W; T11N, R27W; T11N, R26W; T11N, R25W; and T11N, R24W. Vehicle use on roads designated as "Seasonal Public Access" shall be permitted from on or about the second Saturday of August until the roads are determined to be impassable due to weather conditions or until the last Saturday in November, whichever occurs first. The public lands affected by this category of use restriction are in portions of T32N, R20E; T12N, R28W; T11N, R28W; and T11N, R29W. Vehicle use on roads designated as "Public Access" shall be permitted on a year-round basis, unless safety considerations or road condition due to weather requires a temporary road closure. The public lands affected by this category of use restirction are in portions of T30S, R19E; T30S, R20E; T31S, R19E; T31S, R20E; T31S, R21E; T32S, R20E; T32S, R21E; and T12N, R27W. Maps of the affected roads and their respective designations are avalable at the Caliente Resource Area Office, 4301 Rosedale Highway, Bakersfield, California. These restrictions will apply from the date of publication in the **Federal Register** and remain until an amendment thereof or the publication of a Resource Management Plan adequately addresses public access on these lands.

SUPPLEMENTARY INFORMATION: This emergency road closure is intended to control vehicle use on newly acquired lands and other public lands where sensitive resources are receiving or may receive increased public use. Road use restrictions in the Carrizo Plain Natural Area are designed primarily to protect significant cultural sites, to protect the habitat of endangered species, and to reduce the potential for erosion. The vehicle use restrictions in the Caliente Range are intended to protect an existing Wilderness Study Caliente Range are intended to protect an existing Wilderness Study Area, to improve the quality of recreational experiences, to reduce the potential for erosion, to enhance public, and to protect sensitive riparian habitat. Authority for these vehicle use restrictions is contained in CFR Title 43, Chapter II, 8364.1(a).

DATES: This vehicle restriction will be effective on August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Glenn Carpenter, Caliente Resource Area Manager, Caliente Resource Area, Bureau of Land Management, 4301 Rosedale Highway, Bakersfield, California, 93308; (805) 861–4236.

Dated: August 8, 1989.

Glenn A. Carpenter,

Caliente Resource Area Manager.

[FR Doc. 89–18902 Filed 8–11–89; 8:45 am]

BILLING CODE 4310–40–M

NATIONAL CAPITAL PLANNING COMMISSION

Senior Executive Service; Performance Review Board Members

AGENCY: National Capital Planning Commission.

ACTION: Notice of Members of Senior Executive Service (SES) Performance Review Board.

SUMMARY: Section 4314(c) of Title 5, U.S.C. (as amended by the Civil Service Reform Act of 1978) requires that each agency establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards (PRB) to review, evaluate, and make a final recommendation on performance appraisals assigned to individual members of the agency's SES. The PRB established for the National Capital Planning Commission (NCPC) also makes recommendations to the agency head regarding SES performance awards, ranks, and bonuses. Section 4314(c)(4) requires that notice of appointment of Performance Review Board members be published in the **Federal Register**.

The following persons have been appointed to serve as members and alternates of the SES PRB for the National Capital Planning Commission: Reginald W. Griffith, Robert E. Gresham, Eugene Kinlow, Peter J. Basso, and Syl C. Angel, from January 1, 1989 to January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Connie M. Harshaw, Administrative Officer, National Capital Planning Commission, 1325 G Street, NW., Washington, DC 20576, (202) 724–0170.

Dated: August 3, 1989.

Linda Dodd-Major,

Legal Counsel.

[FR Doc. 89–18781 Filed 8–11–89; 8:45 am]

BILLING CODE 7520–01–M

BEST COPY AVAILABLE

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-353]

Philadelphia Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to Philadelphia Electric Company, (the licensee), for operation of the Limerick Generating Station, Unit 2, located in Montgomery and Chester Counties, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would extend the permitted time of operation with a non-inerted containment to accommodate completion of the Power Ascension Test Program.

The proposed action is in accordance with the licensee's application for exemption dated December 5, 1988.

Inerting the containment for the Limerick Generating Station Unit 2 is required by 10 CFR 50.44. Section 50.44(c)(3)(i) states in part that, "Effective May 4, 1982 or 6 months after initial criticality, whichever is later, an inerted atmosphere shall be provided for each boiling light-water nuclear power reactor with a Mark I or Mark II type containment".

The licensee requested an exemption from 10 CFR 50.44(c)(3)(i) to extend the permitted time of operation with a non-inerted containment to accommodate completion of the Power Ascension Test Program. The Limerick Unit 2 Power Ascension Test Program is based on maintaining the containment in a non-inerted condition until the successful completion of the 100-hour warranty run, a condtion which normally would be expected to occur within approximately 120 effective full power days (EFPD) of core burn-up.

The Need for the Proposed Action

The regulation established a six-month exemption period after initial criticality when inerting is not required with the understanding and expectation that a Power Ascension Test Program would be a continuous program unimpeded by physical or regulatory limits to power increases. In the case of Limerick Unit 1, and most other recent BWR initial startups, unanticipated equipment problems have caused the power ascension test period to be extended beyond the six month duration. The average actual duration is approximately ten months.

It has been a long established practice, as reflected in 10 CFR 50.44, to operate boiling water plants during power ascension testing with non-inerted containments. The high frequency of containment entries during this period of plant operations make it impractical to operate with an inerted containment and inerting would impact the effectiveness of the Power Ascension Test Program. It is advantageous to operate the reactor without inerting the containment during the Power Ascension Test program to permit inspections for identification of possible safety problems. Strict compliance with the regulation would result in undue hardships and schedule pressures in excess of those contemplated when the regulation was adopted and also in excess of recent industry power ascension testing experience.

Environmental Impact of the Proposed Action

The proposed exemption from 10 CFR 50.44(c)(3)(i) will not increase the probability of any accident or create the possibility of a new or different kind of accident from any accident previously evaluated since not changes are being made in plant operation or equipment. BWR containments are inserted with nitrogen during normal plant operation to reduce the potential for a hydrogen-oxygen reaction in the unlikely event of an accident that could generate hydrogen. However, during initial startup operations, overall plant safety is enhanced by not inerting the containment. The non-inerted containment permits frequent and prompt entries to the containment to examine equipment performance. An inerted containment will tend to inhibit these containment entries and thus potentially delay discovery of malfunctioning equipment.

The staff has assessed the potential environmental impacts related to operation with the additional effective full power days of core operation with a deinerted containment and has concluded that there would be no discernible incremental environmental effects. The proposed exemption will not result in any changes to the potential types of liquid, gaseous or solid effluents that might be released during operation with a deinerted versus inerted containment. There is no projected difference in occupational radiation exposure with or without the exemption and no projected increases in radioactivity that might be released to the environment.

The staff has also concluded that there will be no significant differential in environmental impacts as a result of postulated abnormal events for the few additional months of testing without an inerted containment and the likelihood of accident releases to the environment is diminished by operation with a non-inerted containment during the initial startup testing operations.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological impact. Additionally, it does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts of the plant operations and would result in reduced operational flexibility.

Alternative Use of Resources

These actions do not involve the use of any resources not previously considered in the Final Environmental Statement for the Limerick Generating Station, Unit 2, dated April 1984.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed exemption will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated December 5, 1988 which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Rockville, Maryland, this 8th day of August 1989.

For the Nuclear Regulatory Commission.

Walter Butler,

Director Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-18942 Filed 8-11-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27096; File No. SR-NYSE-89-20]

Self-Regulatory Organization; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Reduction of the Exchange's "Questioned Trade" Resolution Process Time-Frames

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 25, 1989, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes set forth in detail two changes in the time-frames for the "Questioned Trade" resolution requirements of the Exchange's "Correction System" to: (i) Conform these procedures to the National Securities Clearing Corporation's shortened Comparison Redesign time-frames; and (ii) further shorten the "Questioned Trade" resolution procedures in preparation for the implementation of the Exchange's Overnight Comparison System ("T+1").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The Exchange has developed a plan to streamline and more efficiently process transactions in its listed stocks which were executed on the Exchange. Toward that end, it has begun implementation of its "T+1" Overnight Comparison System (OCS) which it believes will substantially increase the efficiency of the post-trade comparison process by reducing—by four full days—the length of time members and member organizations are exposed to the risk of loss due to market fluctuations on uncompared or "Questioned Trades".

The Exchange's implementation plan has been structured so that any disruption to clearing member firms' operations procedures will be minimal, and so that the personnel of clearing member firms can become acclimated to the new System gradually.

This philosophy has been enunciated in the Exchange's request for "enabling" Rule 130, which will become effective on or before September, 1990 (18 months from approval), and its request for the gradual implementation of its "Correction System", which provides for the electronic resolution of uncompared or "Questioned Trades". (For a complete description of the OCS and Exchange Rule 130, please refer to File No. SR-NYSE-88-36, which was approved by the Commission in SEC Release No. 34-26627. For a complete description of the Exchange's "Correction System", please refer to File No. SR-NYSE-89-03, which was approved by the Commission in SEC Release No. 34-26773.)

The Exchange's "Correction System" began operation on April 27, 1989, when uncompared or "Questioned Trades" in stocks whose ticker symbols began with the letter "A" were resolved through the System, and subsequently expanded in May and June 1989 through the letter "M". On July 18, stocks whose ticker symbols begin with the letters "N" through "Z" were added. Thus, all "Questioned Trades" in listed stocks will be resolved through the "Correction System" and its related procedures, and no "Questioned Trade" will be resolved through procedures contained in Exchange Rule 134.A.

Member firm Trading Floor personnel will start to process "Questioned Trades" beginning at 12:01 PM on the first business day after the trade date ("T+1") rather than on the second business day, and complete that task on the same day ("T+1"). The time-frame for the close-out of trades that cannot be compared will remain as at present—the fifth business day after the trade date. Since the procedures contained in *Exhibit B* will apply to the resolution of "Questioned Trades" in all stocks listed on the Exchange, its implementation by the Exchange will have the effect of rescinding the "Questioned Trades" comparison procedures contained in *Exhibit A*.

The Exchange believes that its initiative to streamline and more efficiently resolve uncompared transactions by the gradual implementation of its Overnight Comparison System ("T+1") and the related shortening of the Exchange's "Questioned Trade" resolution procedures through the electronic processing of its "Correction System" will help protect investors and the public interest as called for in section 6(b)(5) of the Act.

In concert with the Exchange's development of its Overnight Comparison System ("T+1") the National Securities Clearing Corporation (NSCC) has been developing its Comparison Redesign, which will require its clearing members to submit their comparison data by 2:00 AM on the first business day after the trade date ("T+1") rather than on the afternoon of "T+1". (Please refer to File No. SR-NSCC-89-4 for a description of the NSCC Comparison Redesign.)

Therefore, the Exchange proposes to shorten the operational time-frames of the "Correction System" as set forth in *Exhibit A* that, if approved, will require its clearing members to make any necessary adjustments to their uncompared trade data in their purchase and sales departments on the first business day after the trade date ("T+1") rather than on the second business day ("T+2"). "Questioned Trades" will be processed by member firms Trading Floor personnel on the second business day after the trade ("T+2") rather than on the third business day ("T+3"). The time-frames for the close-out of trades that cannot be compared will remain as at present—the fifth business day after the trade date. The Exchange will implement these shortened time-frames at the same time that NSCC implements its Comparison Redesign.

The proposed rule changes meet other requirements of section 6(b)(5) in that they will help prevent fraudulent and

manipulative acts and practices, promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in regulating, and facilitating transactions in securities. It also meets requirements of section 17A(a)(1) in that it will enhance the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule changes will impose any burden on competition not in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants of Others

The Exchange has not solicited comments on the proposed rule changes and no unsolicited comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

In view of the fact that the electronic "Correction System" is currently being used to process "Questioned Trades" in "regular way" transactions in listed stocks effeced on the Exchange, and in view of the fact that the Commission has already approved the "Correction System Operations Procedures" contained in File No. SR–NYSE–89–03, the Exchange views the instant filing merely as changes to the time-frames of an existing Exchange Rule. As such, these rule changes are being filed with the commission pursuant to section 19(b)(3)(A)(i), "constituting as stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization" and may take effect upon filing with the Commission. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Securities Exchange Act of 1934.

Since NSCC has not selected an effective date the sample Information Memo set forth in *Exhibit A* contains various blank spaces. Since the procedures contained in *Exhibit A* will apply to the resolution of all uncompared trades in all stocks listed on the Exchange, its implementation by the Exchange will have the effect of rescinding the "Questioned Trade" comparison procedures approved by the Commission in File No. SR–NYSE–89–03.

The Exchange intends to closely monitor the results of shortening the comparison cycle and the concomitant shortening of the "Questioned Trade" resolution cycle described above. At such time as the Exchange is satisfied that no significant operational problems exist, it proposes to shorten the operational time-frames of the "Correction System" still further before it fully implements the Overnight Comparison ("T+1") requirements of Exchange Rule 130. The operational requiremets of this proposal are set forth in *Exhibit B*. If approved, Exchange clearing members will be required to make any necessary adjustments to their uncompared trades in their purchase and sales departments beginning on the first business day after the trade date ("T+1") and complete that task by 12:00 PM on the same day.

IV. Solicitation of Comments

Interested persons are invited to submit data, views and arguments concerning the foregoing. Persons making written submissions should file copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above (SR–NYSE–89–20) and should be submitted by September 5, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan Katz,
Secretary.

[FR Doc. 89–18779 Filed 8–11–89; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

August 4, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

ACM Managed Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–4778)
A.L. Laboratories, Inc.
Class A Common Stock, $.20 Par Value (File No. 7–4779)
American Capital Bond Fund, Inc.
Common Stock, $1.00 Par Value (File No. 7–4780)
American Real Estate Partners, LP
Common Stock, No Par Value (File No. 7–4781)
Avalon Corp.
Common Stock, $1.00 Par Value (File No. 7–4782)
Avon Products, Inc.
$2.00 Equity Red. Cm. Pfd., $1.00 Par Value (File No. 7–4783)
Cameron Iron Works
$3.50 Cm. Cv. Exch. Pfd. $.10 Par Value (File No. 7–4784)
CDI Corp.
Common Stock, $.10 Par Value (File No. 7–4785)
Citizens & Southern Corp.
Common Stock, $2.50 Par Value (File No. 7–4786)
Colonial Intermediate High Income Fund
Common Stock, No Par Value (File No. 7–4787)
Connecticut Natural Gas Corp.
Common Stock, $3.125 Par Value (File No. 7–4788)
Counsellors Tandem Securities Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–4789)
CPI Corp.
Common Stock, $.40 Par Value (File No. 7–4790)
CRI Insured Mortgage Investments, Ltd.
Common Stock, No Par Value (File No. 7–4791)
Diamond Shamrock R&M Inc.
$2.00 Cm. Cv. Exch. Pfd., $.01 Par Value (File No. 7–4792)
Filtertek, Inc.
Common Stock, $.25 Par Value (File No. 7–4793)
First Capital Holdings
$2.0625 Cm. Cv. Pfd. Vtg., $.25 Par Value (File No. 7–4794)
Global Marine Inc.
Common Stock, $.10 Par Value (File No. 7–4795)
Gordon Jewelry Corp.
Class A Common Stock, $1.00 Par Value (File No. 7–4796)
General Energy Development Ltd.
Common Stock, No Par Value (File No. 7–4797)
HRE Properties
Common Stock, No Par Value (File No. 7–4798)
Homestead Financial Corp.
Class A Common Stock, $.01 Par Value (File No. 7–4799)
Huntingdon Int'l Holdings Plc
American Depository Receipts (File No. 7–4800)
ITEL Corp.
Common Stock, $1.00 Par Value (File No. 7–4801)
Johnstown/Consolidated Realty Trust
Common Stock, No Par Value (File No. 7–4802)
Kemper Corp.
Common Stock, No Par Value (File No. 7–4803)
Kemper Strategic Municipal Income Trust
Common Stock, $.01 Par Value (File No. 7–4804)
Kuhlman Corp.
Common Stock, $1.00 Par Value (File No. 7–4805)
MFS Multimarket Total Return Trust
Common Stock, No Par Value (File No. 7–4806)
McDermott International Inc.
Warrants (File No. 7–4807)
Mesabi Trust
Shares of Beneficial Interest (File No. 7–4808)
Morgan Grenfell Smallcap Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–4809)
Morgan Keegan, Inc.
Common Stock, $.66 ⅔ Par Value (File No. 7–4810)
Prospect Street High Income Portfolio, Inc.
Common Stock, $.01 Par Value (File No. 7–4811)
Putnam High Income Convertible and Bond Fund
Common Stock, No Par Value (File No. 7–4812)
RAC Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–4813)
RJR Holdings Group, Inc.
Fltg. Rate Cm. Exch. Pfd., $.01 Par Value (File No. 7–4814)
RPS Realty Trust
Common Stock, $.10 Par Value (File No. 7–4815)
Rayonier Timberlands LP
Common Stock, No Par Value (File No. 7–4816)
Salant Corp.
Common Stock, No Par Value (File No. 7–4817)
Trammell Crow Real Estate Investors
Common Stock, $.10 Par Value (File No. 7–4818)
United Asset Management Corp.
Common Stock, $.01 Par Value (File No. 7–4819)
Universal Matchbox Group Ltd.
Common Stock, $.10 Par Value (File No. 7–4820)
Valero Energy Corp. Convertible
$2.0625 Cm. Cv. Pref., $1.00 Par Value (File No. 7–4821)
VMS Mortgage Investment Fund
Common Stock, $.01 Par Value (File No. 7–4822)
Wells Fargo Mortgage & Equity Trust
Common Stock, No Par Value (File No. 7–4823)
Western Union Corp.
$3.00 Cm. Cv. B Pfd., $.10 Par Value (File No. 7–4824)
Westpac Banking Corp.
American Depository Shares (File No. 7–4825)
Windmere Corp.
Common Stock, $.10 Par Value (File No. 7–4826)
WICOR Inc.
Common Stock, $1.00 Par Value (File No. 7–4827)
Waban Inc. Management
Common Stock, $.01 Par Value (File No. 7–4828)
ARC International Corp.
Common Stock, No Par Value (File No. 7–4829)
COMFED Bancorp Inc.
Common Stock, $.01 Par Value (File No. 7–4830)
Crown Central Petroleum Corp.
Class A Common Stock, $5.00 Par Value (File No. 7–4831)
Crown Central Petroleum Corp.
Class B Common Stock, 1/10 Vtg., $5.00 Par Value (File No. 7–4832)
Firstfed America Inc.
Common Stock, $.01 Par Value (File No. 7–4833)
Oneita Industries Inc.
Common Stock, $.25 Par Value (File No. 7–4834)
Peters, (J.M.) Corp.
Common Stock, $.10 Par Value (File No. 7–4835)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 25, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privilege pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89–18904 Filed 8–11–89; 8:45 am]
BILLING CODE 8010-01-M

[Release No. IC–17101; 812–7133]

ML-Lee Acquisition Fund II, L.P., et al.; Notice of Application

August 7, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: ML-Lee Acquisition Fund II, L.P. ("Fund II"), ML-Lee Acquisition Fund (Retirement Accounts) II, L.P. ("Retirement Fund") (together with Fund II, "New Funds"), ML-Lee Acquisition Fund, L.P. ("Fund I") (together with the New Funds, "Funds"), Thomas H. Lee Advisors II, L.P. ("Advisors II") and Thomas H. Lee Advisors I ("Advisors I") (together with Advisors II, "Investment Advisers").

RELEVANT 1940 ACT SECTIONS: Order requested under sections 6(c), 17(d) and 57(i) and Rule 17d–1 permitting certain joint transactions which are otherwise prohibited under sections 17(d) and 57(a)(4).

SUMMARY OF APPLICATION: Applicants seek an order under sections 6(c), 57(i) and 17(d) of the 1940 Act and Rule 17d–1 permitting the purchase of securities by the New Funds in joint transactions otherwise prohibited by sections 57(a)(4) and 17(d) with Fund I and each other and in which Advisors, Advisors II, or an affiliate is a participant.

FILING DATE: The application was filed on September 23, 1988 and amended on March 9, 1989 and August 4, 1989. The Applicants will file an amendment during the notice period clarifying certain conditions to the requested order.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person

may request a hearing on this application or asked to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 P.M. on August 31, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicants with the request either personnaly or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; the Funds, World Financial Center, North Tower, New York, New York 10281–1316; the Investment Advisers, 75 State Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Cathey Baker, (202) 272–3047, or Branch Chief Brion R. Thompson, (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of a lengthy application. The complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Each New Fund is a recently formed Delaware limited partnership which is governed by its respective Amended and Restated Agreement of Limited Partnership ("Partnership Agreement"). The New Funds, which have elected to be regulated as business development companies under the 1940 Act, have been designed to provide the ability for individuals to participate in "mezzanine" level debt and preferred stock investments issued in connection with leveraged buyouts and other corporate reorganizations.

2. The investment objectives of each New Fund will be to provide a current return, an opportunity for significant capital appreciation, and return of investment in a limited period of time through investments in mezzanine loans and other securities ("Qualified Investments"). Qualified Investments include (i) Mezzanine Investments, *i.e.*, subordinated debt investments (including the mezzanine portion of traditional leveraged buyouts), private placements of debt with equity components, partial buyouts, and other forms of mezzanine financing with equity participations in the form of straight equity, options, warrants, and other equity securities, and (ii) Bridge Investments, *i.e.*, investments generally with a term of nine months or less, a portion of which is expected to become Mezzanine Investments.

3. Advisors II is a recently formed Delaware limited partnership and a registered investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). Advisors II is controlled by its administrative general partner, T.H. Lee Mezzanine II, a Massachusetts business trust controlled by Thomas H. Lee and under common control with Thomas H. Lee Company ("Lee Company"), a sole proprietorship owned by Thomas H. Lee. The Lee Company is engaged primarily in acquiring or making majority equity investments in established middle-market companies, often through a leveraged acquisition, as well as other types of investments, including those typical of the venture capital business. Thomas H. Lee is the individual general partner of Advisors II.

4. Fund I is a Delaware limited partnership organized in 1987 under an Agreement of Limited Partnership ("Partnership Agreement") and is regulated as a business development company under the 1940 Act. Fund I has the same investment objectives as the New Funds. Fund I has five general partners, four of which are individuals ("Individual General Partners"). In accordance with Section 56(a) of the 1940 Act, a majority of the Individual General Partners are persons who are not "interested persons" of Fund I within the meaning of Section 2(a)(19) of the 1940 Act ("Independent General Partners"). ML-Lee Acquisition Fund, L.P. (Investment Company Act Release No. 15918, Aug. 12, 1987).

5. The Managing General Partner for Fund I is Mezzanine Investments, L.P., a limited partnership controlled by its general partner, ML Mezzanine Inc., a special purpose, indirect, wholly-owned subsidiary of Merrill Lynch & Co., Inc. ("ML & Co."). The sole limited partner of the Managing General Partner is Advisors I, described below. Under the partnership agreement establishing the Managing General Partner, its limited partner has no authority to participate in the management of the Managing General Partner and no voting rights relating to the Managing General Partner. Fund I considers its relationship with the Managing General Partner, a registered investment adviser under the Advisers Act, to be an investment advisory relationship. Accordingly, the partnership relationship between Fund I and the Managing General Partner and the distributions made thereunder, including specifically the distributions made to Advisors I as the limited partner of the Managing General Partner, are subject to the provisions of the 1940 Act, including Section 15. Under the Partnership Agreement, the Managing General Partner is responsible for purchasing investments made by Fund I, for providing administrative services, and for admitting additional or assignee limited partners to Fund I.

6. Advisors I, the investment adviser to Fund I, is responsible for the identification of all mezzanine and related equity investments made by the fund. Advisors I is a Massachusetts business trust which is under common control with Advisors II and the Lee Company. On September 23, 1987, Fund I, Advisors I (then organized as a Massachusetts corporation, Thomas H. Lee Advisors, Inc.) and the Managing General Partner received an exemptive order under sections 6(c), 17(d) and 57(i) of the 1940 Act and Rule 17d–1 permitting the purchase of securities by Fund I in joint transactions otherwise prohibited by sections 57(a) (4) and 17(d) of the 1940 Act, in which Advisors I or an affiliate is a participant. ML-Lee Acquisition Fund, L.P. (Investment Company Act Release No. 16001) ("Prior Order").

7. The New Funds have filed a registration statement ("Registration Statement") on Form N–2 (File No. 33–25816) under the Securities Act of 1933, as amended ("1933 Act"), with respect to an offering of up to 1,000,000 units of limited partnership interest ("Units"). The public offering price will be $1,000 per Unit, with a maximum aggregate offering price of $1 billion. Subject to market conditions, the maximum aggregate offering price of $1 billion may be increased prior to effectiveness by an amendment to the Registration Statement. Merrill Lynch, Pierce, Fenner & Smith Incorporated will act as the selling agent for the Units on a "best efforts" basis. Investors desiring to become limited partners in the New Funds will be required to subscribe for at least five Units (two Units for Individual Retirement Accounts) and to meet certain suitability standards set forth in the application. The Managing General Partner will also make cash capital contributions to the New Funds. The Managing General Partner's capital contribution will be determined pursuant to the requirements of Revenue Procedure 89–12. The source of the Managing General Partner's capital contribution will be the capital contribution received by it from Advisors II, its limited partner (in contrast to the financial arrangement for Fund I in the Prior Order, where such funds were provided by the general partner of the Managing General Partner).

8. The general partners of each New Fund will consist of four individual general partners ("Individual General Partners") and Mezzanine Investments II, L.P., as managing general partner ("Managing General Partner"). The Managing General Partner is described further below. The Individual General Partners of each New Fund will include three independent general partners (defined to be individuals who are not "interested persons" of such Fund within the meaning of the 1940 Act) ("Independent General Partners") and one individual, Thomas H. Lee, who is an affiliate of Advisors II. On November 23, 1988, the New Funds (then T.H. Lee Acquisition Fund II, L.P. and T.H. Lee Acquisition Fund (Retirement Accounts (II, L.P.) received an exemptive order determining that the Independent General Partners are not "interested persons" of any New Fund or of certain other entities specified therein within the meaning of Section 2(a)(19) of the 1940 Act solely by reason of being general partners of the funds. T.H. Lee Acquisition Fund II, L.P. (Investment Company Act Release No. 16651). The New Funds, Advisors II and the Managing General Partner have filed an application for an amended order to determine that the Independent General Partners are not "interested persons" of certain other entities as well. A majority of the general partners of each New Fund must be Independent General Partners. Each Partnership Agreement provides that if at any time the number of Independent General Partners is less than a majority of the general partners, the Independent General Partners shall designate and admit within 90 days one or more Independent General Partners so as to restore the number of Independent General Partners to a majority of the general partners.

9. The Managing General Partner for each New Fund will be Mezzanine Investments II, L.P., a limited partnership controlled by its general partner, ML Mezzanine II Inc., a special purpose, indirect, wholly-owned subsidiary of ML & Co. The sole limited partner of the Managing General Partner is Advisors II, described below. Under the partnership agreement establishing the Managing General Partner, its limited partner has no authority to participate in the management of the Managing General Partner and no voting rights relating to the Managing General Partner. Under the Partnership Agreement for each New Fund, the Managing General Partner will be responsible for purchasing investments which have been approved by the Independent General Partners, for investing and managing the Fund's temporary investments, and for admitting additional or assignee limited partners to the New Fund. The Managing General Partner will also have the responsibilities with respect to investments of a New Fund which are set forth in item 15, below. The Managing General Partner will receive an allocation of profits and losses provided in the Partnership Agreement, as discussed further below. An affiliate of the Managing General Partner, ML Fund Administrators Inc., will provide administrative services to the New Funds and will receive an annual administrative fee equal to the larger of $500,000 (divided between the two New Funds in proportion to the number of Units sold) or 0.45% of the net offering proceeds, subject to certain adjustments after the fourth and eighth years of operations.

10. Each New Fund considers its relationship with the Managing General Partner, which will be a registered investment adviser under the Advisers Act, to be an investment advisory relationship. Accordingly, the partnership relationship and the distributions made thereunder, including specifically the distributions which will be made to Advisors II as the limited partner of the Managing General Partner, as discussed further in item 13 below, are subject to the provisions of the 1940 Act, including Section 15.

11. Advisors II will act as investment adviser to the New Funds pursuant to an investment advisory agreement ("Advisory Agreement") with each New Fund. The New Funds propose to retain Advisors II in light of its expertise and that of its affiliates with respect to "mezzanine" level debt and preferred stock in related equity securities and common stock investments issued in connection with leveraged buyouts and other corporate recapitalizations. Under the Advisory Agreement, Advisors II will be responsible for the identification of all Qualified Investments to be made by each New Fund. Advisors II will receive an annual fee equal to the larger of $1.2 million (divided between the two New Funds) and 1% of the assets under management, subject to certain reductions. As noted above, Advisors II will also receive the benefit of certain distributions made by the New Funds to the Managing General Partner and distributed by it in turn to Advisors II as its limited partner.

12. Each New Fund will be managed by its Individual General Partners, except with respect to the specific activities for which the Managing General Partner or Advisors II will be responsible. The Individual General Partners of a New Fund will provide overall guidance and supervision of operations and will perform the same functions as directors of a corporation. The Independent General Partners will assume the responsibilities and obligations that the 1940 Act and regulations thereunder impose upon the non-interested directors of a business development company.

13. The allocation of profits and losses of each New Fund will be made in accordance with its Partnership Agreement. The application describes in detail the specific allocation of profits and losses under the Partnership Agreement. In summary, the Partnership Agreements provide for the allocation to the Managing General Partner of income and capital gains in proportion to its equity investment in the New Fund, and up to 20% of cumulative ordinary income and net realized capital gains from investment which is subordinated to a Priority Return (as described in the application) to the limited partners of the New Fund ("Incentive Management Fee"). The allocation has been included in the Partnership Agreement on the basis exclusively of an opinion of counsel to the New Funds that such allocation, and the anticipated allocation by the Managing General Partner of 95% of the Incentive Management Fee to Advisors II as its limited partner, will not violate the provisions of Section 15 of the 1940 Act or Section 205 of the Advisers Act. The Applicants have not requested Commission review or approval of such opinion letter and the Commission expresses no opinion as to counsel's interpretation that Section 15 of the 1940 Act and section 205(C) of the Advisers Act permit the New Funds' allocations.

14. The Applicants request an order pursuant to Sections 6(c), 17(d) and 57(i) of the 1940 Act and Rule 17d–1 to permit the purchase of securities by the New Funds in joint transactions with Fund I and each other and in transactions in which Advisors II or an affiliate thereof is a participant and which are otherwise prohibited under section 17(d) and 57(a)(4) of the 1940 Act. In structuring the New Funds, the Managing General Partner and Advisors II have established specific guidelines for the New Funds' Qualified Investments ("Guidelines"). The Guidelines, which are primarily financial in nature, are based on criteria utilized for institutional mezzanine funds that are exempt from registration under the 1940 Act. The Guidelines serve to inform

prospective investors of the parameters of the New Funds' investments, and the Applicants believe that they limit potential conflicts by delineating specific categories of eligible investments, as in the case of coinvestments by institutional partnerships and their general partners. The Applicants state that it is possible that, over time, it may be appropriate to modify the Guidelines as a result of changes in the structure of Qualified Investments or otherwise. Any changes in the Guidelines would, however, require the approval of both the Managing General Partner and the Individual General Partners. In addition, as a condition to the issuance of the order requested, the Applicants undertake that no changes would be made in the guidelines until an amendment of the order is obtained from the Commission.

15. The Guidelines, relate to various aspects of Qualified Investments. As business development companies, the New Funds must, under section 2(a)(48) of the 1940 Act, make available "significant managerial assistance" to eligible portfolio companies comprising at least 70% of their assets. The Guidelines thus establish two categories of issuers of the securities to be purchased by the New Funds. The first category consists of "Managed Companies," *i.e.*, companies to which Advisors II or its affiliates intend to "make available significant managerial assistance" (as defined in section 2(a)(47) with the 1940 Act). The second category consists of "Non-Managed Companies." As used in the Guidelines, the term "Lee Affiliates" includes the Lee Company, Advisors II, Advisors I, and any other affiliated person of the Lee Company (other than the Funds) within the meaning of section 2(a)(3) (C) or (D) of the 1940 Act. Unless a Qualified Investment meets the applicable Guidelines, it will not be acquired by a New Fund unless it has been approved in advance by both the Managing General and the Independent General Partners in accordance with the conditions set forth in the application and described in this notice. Among other things, the Guidelines provide that, with respect to Managed Companies in which a New Fund makes a Qualified Investment: (i) The Lee Affiliates will make a meaningful equity investment, either (x) equal to at least $5 million or (y) consisting in the acquisition of or right to acquire 50% or more of the equity remaining after any common equity acquired by management, the Funds, and other mezzanine lenders or financing sources; (ii) the New Fund's investment will be on terms no less favorable in all respects to (*i.e.*, the same as, or no less advantageous to the Fund than) any corresponding investments in the same company by third parties, including Lee Affiliates; and (iii) at least 70% of the New Fund's assets must be invested in Qualified Investments in Managed Companies. With respect to Non-Managed Companies, the Guidelines provide that: (i) The investment has been structured by third parties which are not affiliates of Advisors II; (ii) the Lee Affiliates will not acquire more than 25% of the non-management equity of a Non-Managed Company (subject to the condition described below); (iii) the New Fund's investment will be on terms no less favorable in all respects to (*i.e.*, terms the same as, or no less advantageous to the Fund than) any corresponding investments in the same company by third parties, including any Lee Affiliates; and (iv) not more than 30% of the New Fund's assets will be invested in Non-Managed Companies.

16. In addition to the Guidelines concerning Qualified Investments, additional conditions will govern the New Funds' operations and investments. While Advisors II is responsible for the identification of investments, the conditions provide that the Independent General Partners must determine that an investment meets the applicable Guidelines. For proposed investments that do not meet such Guidelines, determinations as to several factors must be made by both the Managing General Partner and the Independent General Partners before the investment is made. The terms and conditions which would be applicable to the operations of the New Funds and coinvestments by the New Funds with each other and Fund I and a Lee Affiliate are as follows:

(i) Other than temporary investments in short-term securities and other securities complying with section 55 of the 1940 Act, and the investments described below, each investment made by the New Funds will have to meet, in the determination of the Independent General Partners of each respective New Fund, as described below, the Guidelines for Qualified Investments or be approved by the Managing General Partner and the Independent General Partners.

(ii) Each Qualified Investment that is structured by a Lee Affiliate and approved for investment by it will be brought to the attention of the Independent General Partners of each New Fund for review, subject to item (v) below. If the Independent General Partners of a New Fund determine that the investment meets the applicable Guidelines, the investment would be eligible for investment by the New Fund, and, subject to item (iv) below, each such investment will be acquired by the New Fund to the extent that the New Fund has available funds sufficient to make such acquisition. If there are presented to the Independent General Partners of a New Fund more eligible investments than the New Fund has available funds to acquire, the Independent General Partners will have to determine, with the advice of Advisors II and the Managing General Partner, the order of priority of such investments. If a proposed investment does not meet the Guidelines, the Independent General Partners will have to determine that the investment is appropriate for the New Fund in light of its objectives and policies and does not involve overreaching of the New Fund and then determine whether to acquire such investment for the New Fund.

(iii) Prior to committing to a particular investment that does not meet the Guidelines, the Independent General Partners of a New Fund would be required to determine that (a) the terms of the transaction, including the consideration to be paid, are reasonable and fair to the limited partners of the New Fund and do not involve overreaching of the New Fund or such partners on the part of any person concerned, and (b) the proposed transaction is consistent with the interests of the limited partners of the New Fund and is consistent with the policy of the New Funds recited in filings made by the New Fund under the 1933 Act, the Registration Statement and reports filed under the Securities Exchange Act of 1934, and its reports to partners.

(iv) Each Qualified Investment will be allocated among the Funds based on the ratio of each Fund's assets available for investment (including borrowings that have been committed but not yet drawn down); provided, however, that (a) with respect to Qualified Investments of at least $10 million in size, each Fund will be allocated a minimum amount of $1 million, and (b) with respect to Qualified Investments of less than $10 million in size, no Fund will be required to coinvest less than $1 million. With respect to Fund II, the determination of assets available for investment during its first two years of operation will be made as if such Fund had borrowed 50% of its net offering proceeds (or such lesser amount as Advisors II expects such Fund to borrow) and thereafter will be made based on the actual amount of its borrowings (including borrowings that have been committed but not yet drawn down).

(v) Neither Thomas H. Lee, individually, in his capacity as Individual General Partner, nor Advisors II, in its capacity as a limited partner of the Managing General Partner, will either (a) participate in the deliberations or approval of any investment by the New Funds or (b) receive and comment on information with respect to any potential investments.

(vi) Neither the Managing General Partner nor any other ML & Co. affiliate will participate in a transaction in which a New Fund invests unless such participation is permitted by the 1940 Act or any separate exemption is obtained thereunder.

(vii) To the extent a Le Affiliate purchases a security of the same class as any component of a Qualified Investment to be acquired by a New Fund, the terms of purchase of each such security (including terms as to purchase price, settlement date, registration rights (if any), and other rights provided to the purchasers of such Qualified Investments) will have to be the same as, or no more favorable than, the Fund's terms.

(viii) The Funds will participate in the disposition of securities held by them as coinvestments on a proportionate basis and on the same terms and conditions (a "lock-step" disposition). If a Fund or any Lee affiliate elects to dispose of a security purchased in a coinvestment by such Fund with a Lee Affiliate, notice of the proposed sale will be given to the Managing General Partner and the Individual General Partners at the earliest practical time. Each Fund and any Lee Affiliate holding such security will participate in the disposition of such security on a lock-step basis, unless the Managing General Partner and the Independent General Partners determine that a Fund should not participate in such sale or not participate on a lock-step basis. A Fund may only not participate on a lock-step basis in the disposition of securities to be sold by a Lee Affiliate if the Managing General Partner and the Independent General Partners find that the retention or sale, as the case may be, of the securities is fair to the Fund and that such Fund's participation or choice not to participate in the sale is not the result of overreaching by the Investment Adviser or a Lee Affiliate. If the Managing General Partner or the Independent General Partners of a Fund do not make such a finding, then such Fund must participate in such sale on the basis of a lock-step disposition. If at any time the result of a proposed disposition of any portfolio security held by a Fund would be to alter the proportionate holdings of each class of securities held by a Fund and any Lee Affiliate, then the Managing General Partner and the Independent General Partners of the Fund must determine that such a result is fair to the Fund and is not the result of overreaching by a Lee Affiliate. Neither Thomas H. Lee, individually, in his capacity as Individual General Partner, nor Advisors II, in its capacity as a limited partner of the Managing General Partner, will participate in the foregoing deliberations. The Independent General Partners will record in their records the basis of their decision as to whether to participate in such sale.

(ix) The Individual General Partners will be provided information quarterly to enable them to determine whether all investments made during the preceding quarter comply with the conditions set forth above; provided, however, that neither Thomas H. Lee, individually, in his capacity as Individual General Partner, nor Advisors II, in its capacity as a limited partner of the Managing General Partner, will participate in such deliberations to the extent any such investment was recommended to the Fund by its Investment Adviser. In addition, the Individual General Partners of a New Fund will consider on a quarterly basis the continuing appropriateness of the standards established for investments by the New Fund. In this regard, the Individual General Partners will consider whether use of such standards continues to be in the best interests of the New Fund and the limited partners and does not involve overreaching of the New Fund or the limited partners on the part of any party concerned.

(x) The Independent General Partners will maintain the records required by section 57(f)(3) of the 1940 Act and will comply with section 57(h) of the 1940 Act, and each of the Applicants will otherwise maintain all records required by the 1940 Act.

Applicant's Legal Analysis and Conclusions

17. The Applicants submit that the request for the order authorizing co-investments with affiliated persons on a prospective basis is supported by a number of factors. First, the rationale for establishing the New Funds is to provide access to "mezzanine" debt, preferred stock and related equity securities, and common stock investments not generally available to individuals. At the same time, suitability standards have been established which, in the Applicants' view, are appropriate in light of the risks and other considerations involved in an investment in a New Fund. Second, the Applicants believe that the continuing substantive obligations imposed upon the Managing General Partner and the Independent General Partners of a New Fund provide significant protection to investors. Unless a particular investment identified by Advisors II has been approved in advance by the Managing General Partner and the Independent General Partners of a New Fund, Qualified Investments must be determined by the Independent General Partners to meet the applicable Guidelines. Third, the Guidelines include minimum yield requirements on mezzanine investments in companies qualifying as Managed Companies, and, as indicated above, the allocation of income and capital gains to the Managing General Partner described in item 13 above is subordinated to a Priority Return to the limited partners of the New Fund. Lastly, the proposed coinvestments among the Funds will be allocated in accordance with the ratio of each Fund's assets available for investment, and dispositions of securities held by them as coinvestments will be made on a lock-step basis. Accordingly, the Applicants believe that the Funds' operting policies, in conjunction with the structure of their management arrangements, support the issuance of the order requested.

18. The order is also sought pursuant to section 6(c) of the 1940 Act because it involves a class of transactions rather than specific individual transactions. The Applicants believe that the terms of the relief requested in this regard are consistent with the standards enumerated in section 6(c) of the 1940 Act.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants undertake that no changes will be made in the Guidelines or the conditions set forth in item 16, above, until an amendment of the requested order is obtained from the Commission.

2. Under each Partnership Agreement, a New Fund is authorized to make in-kind distributions of portfolio securities to its partners. Applicants agree not to make any in-kind distributions of securities to partners of a New Fund until such Fund has either obtained a no-action letter from the staff of the Commission or, alternatively, has obtained an order pursuant to Section

206A of the Advisers Act permitting such distribution.

3. The New Funds represent that at least 15% of the assets of each New Fund will be invested in Non-Managed Companies in which the Lee Affiliates do not own any securities.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-18966 Filed 8-11-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Order Instituting Proceeding; U.S.-Japan Service Case

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Order 89-8-8, order instituting the *U.S.-Japan Service Case*, Docket 46838.

SUMMARY: By Order 89-8-8, the Department is instituting the *U.S.-Japan Service Case* to select a gateway/carrier combination for additional air service in the U.S.-Japan market, as well as a backup gateway/carrier combination. The Department proposes to convert this route, which was previously served by a small package delivery carrier, to combination service. The Memorandum of Understanding governing this route limits service between the points Honolulu-Tokyo, Honolulu-Nagoya, or any new U.S.-flag gateway and Tokyo. The case will be set for oral evidentiary hearing before an Administrative Law Judge, and the primary award will be for a five year term. In this Order, the Department is also dismissing applications for *pendente lite* exemptions that had been filed by the following carriers: American Airlines, America West Airlines, Continental Airlines, Delta Air Lines, and Northwest Airlines.

DATES: Applications, motions to consolidate, petitions for leave to intervene, and petitions for reconsideration shall be filed by August 25, 1989 and answers shall be filed seven calendar days thereafter.

ADDRESS: The above pleadings should be filed in Docket 46438, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590.

Dated: August 8, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-18905 Filed 8-11-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review, Akron-Canton Regional Airport, North Canton, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Akron-Canton Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) (hereinafter referred to as "the Act") and 14 CFR Part 150 by the Akron-Canton Regional Airport Authority. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR Part 150 for Arkon-Canton Regional Airport were in compliance with applicable requirements effective April 24, 1989. The proposed noise compatibility program will be approved or disapproved on or before January 17, 1990.

EFFECTIVE DATE: The effective date of the FAA's start of its review of the associated noise compatibility program is July 21, 1989. The public comment period ends September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL-611, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7538. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for that Akron-Canton Regional Airport which will be approved or disapproved on or before January 17, 1990. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Akron-Canton Regional Airport, effective on July 21, 1989. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 17, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, Room 261, Des Plaines, Illinois 60018.

Federal Aviation Administration, Detroit Airports District Office, East Willow Run Airport, 8820 Beck Road, Belleville, Michigan 48111.

Akron-Canton Regional Airport Authority, Akron-Canton Regional Airport, 5400 Lauby Road, Box No. 23, North Canton, Ohio 44720.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, July 21, 1989.

Henry A. Lamberts,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 89-18913 Filed 8-11-89; 8:45 am]

BILLING CODE 4910-13-M

Approval of Noise Compatibility Program, Burbank-Glendale-Pasadena Airport, Burbank, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Burbank-Glendale-Pasadena Airport Authority, Burbank, California, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On August 11, 1988, the FAA determined that the noise exposure maps submitted by the Airport Authority under Part 150 were in compliance with applicable requirements. On July 27, 1989, the Associate Administrator for Airports approved the Burbank-Glendale-Pasadena Airport noise compatibility program. Twenty-two of the proposed action elements were approved and nine were disapproved. These proposed measures required no FAA determination at this time. One program elements relating to new or revised flight procedures for noise abatement were proposed by the airport operator.

EFFECTIVE DATE: The effective date of the FAA's approval of the Burbank-Glendale-Pasadena Airport noise compatibility program is July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Howard S. Yoshioka, Supervisor, Planning Section, AWP-611, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for the Burbank-Glendale-Pasadena Airport, effective July 27, 1989.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create and undue burden on interstate or foreign commerce, unjustly discriminate against type or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, request for project grants must be submitted to the Regional Office.

The Burbank-Glendale-Pasadena Airport Authority submitted to the FAA on April 14, 1987 the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from January 1985 through October 1988. The Burbank-Glendale-Pasadena Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on April 22, 1988. Notice of this determination was published in the **Federal Register** on May 18, 1988 (53 FR 17814).

The Burbank-Glendale-Pasadena Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to (or beyond) the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on August 11, 1988, and was required by a provision of the Act to approve or disapprove the program within 180-days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained 34 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator for Airports effective July 27, 1989.

Outright approval was granted for all of the specific program elements. (Describe any elements disapproved or partially approved and reasons for or conditions of such action. Describe approved actions on and off airport in summary form.)

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator for

Airport on July 27, 1989. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Burbank-Glendale-Pasadena Airport.

Issued in Hawthorne, August 1, 1989.

James J. Wiggins,

Acting Manager, Airports Division.

[FR Doc. 89-18914 Filed 8-11-89; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice, Detroit Metropolitan Wayne County Airport, Detroit, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Wayne County for Detroit Metropolitan Wayne County Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL-611.1, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7335.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Detroit Metropolitan Wayne County Airport are in compliance with applicable requirements of Part 150, effective July 24, 1989.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non compatible uses.

The FAA has completed its review of the noise exposure maps and related description submitted by Wayne County. The specific maps under consideration are the noise exposure maps: Existing (1988) Noise Exposure Map (Exhibit 1), page 7 and Forecast (1993) Noise Exposure Map (Exhibit 2), page 8 (both showing unabated contours), in the submission. The FAA has determined that these maps for Detroit Metropolitan Wayne County Airport are in compliance with applicable requirements. This determination is effective on July 24, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps.

Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Great Lakes Region, Airports Division Office, 2300 East Devon Avenue, Room 289, Des Plaines, Illinois 60018.

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport East, 8820 Beck Road, Belleville, Michigan 48111.

Division of Airports, Wayne County, Detroit Metropolitan Wayne County Airport, L.C. Smith Terminal-Mezzanine, Detroit, Michigan 48242.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois on July 24, 1989.

W. Robert Billingsley,

Assistant Manager, Airports Division, Great Lakes Region.

[FR Doc. 89-18917 Filed 8-11-89; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map; Receipt of Noise Compatibility Program and Request for Review, Little Rock Regional Airport, Little Rock, AR

AGENCY: Federal Aviation Administration.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of Little Rock, Arkansas, for Little Rock Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Little Rock Regional Airport under Part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before January 24, 1990.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program is July 28, 1989. The public comment period ends September 26, 1989.

FOR FURTHER INFORMATION CONTACT: Donald C. Harris, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas, 76192-0612, (817) 624-5609. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Little Rock Regional Airport are in compliance with applicable requirements of Part 150, effective July 28, 1989. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before January 24, 1990. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The city of Little Rock, Arkansas, submitted to the FAA on September 14, 1987, noise exposure maps, descriptions and other documentation which were produced during development of the Little Rock Regional Airport FAR Part 150 Noise Compatibility Study from July, 1986 through December, 1988. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of Little Rock, Arkansas. The specific maps under consideration are the Noise Exposure Map: 1988 Unabated Conditions, and the Noise Exposure Map: 1992 Unabated Conditions found following page I-6 in the Noise Exposure Map Document.

The FAA has determined that these maps for Little Rock Regional Airport are in compliance with applicable requirements. This determination is effective on July 28, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 10 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Little Rock Regional Airport, also effective on July 28, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 24, 1990.

the FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW. Room 617, Washington, DC 20591.

Federal Aviation Administration, Airports Division, ASW-600, Fort Worth, Texas 76193-0600.

Mr. James R. Rodgers, Airport Manager, No. 1 Airport Drive, Little Rock Regional Airport, Little Rock, Arkansas 72202-4489.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas, July 28, 1989.

Wm. Jack Sasser,

Manager, Airports Division.

[FR Doc. 89-18916 Filed 8-11-89; 8:45 am]

BILLING CODE 4910-13-M

Receipt of Noise Compatibility Program and Request for Review, McCarran International Airport, Las Vegas, NV

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for McCarran International Airport (LAS), Las Vegas, Nevada, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) (hereinafter referred to as "the Act") and 14 CFR Part 150 by the Clark County Department of Aviation. This program

was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR Part 150 for the McCarran International Airport (LAS) were in compliance with applicable requirements effective November 3, 1988, and it is the FAA's intention to approve or disapprove this program on or before September 30, 1989.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is July 15, 1989. The public comment period ends September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Howard S. Yoshioka, Supervisor, Planning Section, AWP-611, Federal Aviation Administration, Western-Pacific Region, P.O. Box 91007, World Way Postal Center, Los Angeles, California 90009, (213) 297-1250. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for McCarran International Airport, which will be approved or disapproved on or before September 30, 1989. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for the McCarran International Airport (LAS), effective on March 14, 1989. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 15, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150; § 150.38. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested person are invited to comment on the proposed program with specific reference to these factors. All comments other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, 15000 S. Aviation Boulevard, Room 6R25, Hawthorne, California 90261.

Mr. Robert Broadbent, Director of Aviation, McCarran International Airport, P.O. Box 11005, Las Vegas, Nevada 89111.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California, on August 7, 1989.

James J. Wiggins,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 89-18915 Filed 8-11-89; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-89-32]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before:

ADDRESS: Send comments to any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20519; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 8, 1989.

Deborah Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25893.
Petitioner: George Loegering.
Regulations Affected: 14 CFR 91.52(b)(h).
Description of Relief Sought: To allow petitioner to operate his Beechcraft Bonanza without an automatic type emergency locator transmitter that is in operating condition attached to the airplane.

Docket No.: 25896.
Petitioner: Allen Gerbino.
Sections of the FAR Affected: 14 CFR 43.3.
Description of Relief Sought: To allow petitioner to remove, replace, reinstall, and store main rotor blades for Hughes 300 Series helicopters.

Docket No.: 25897.
Petitioner: Harvey Robert Hay.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought: To allow petitioner to maintain his airman certification after his 60th birthday.

Docket No.: 25905.
Petitioner: Eastern Air Lines, Inc.
Sections of the FAR Affected: 14 CFR 45.13(b).
Description of Relief Sought: To allow the removal of aircraft engine identification plates and the placement of the same data plate on a different engine assembly.

Docket No.: 22872.
Petitioner: Air Transport Association of America.
Regulations Affected: 14 CFR 61.157(a) and 121.424(a) and (b); item I(b) of Appendix A of Part 61; and item I(a) of Appendix E of Part 121.
Description of Relief Sought/ Disposition: To amend Exemption No. 4418, as amended, to allow the second-in-command pilots, of airplanes requiring only two flight crewmembers, of the petitioner's member airlines and other qualifying Part 121 certificate holders to receive training and checking by the use of advanced pictorial means that have been specifically approved for this purpose. GRANT, July 31, 1989. Exemption No. 4416B.

Docket No.: 23875.
Petitioner: Beech Aircraft Corporation.
Sections of the FAR Affected: 14 CFR 45.25(b)(2).
Description of Relief Sought/ Disposition: To extend Exemption No. 4061C, that allows petitioner to display 12-inch-high N-Numbers on the outboard surface of the engine nacelles that are on an intergral part of the wing pods. GRANT, July 31, 1989. Exemption No. 4061D.

Docket No.: 24541.
Petitioner: Boeing Commercial Airplanes.
Sections of the FAR Affected: 14 CFR 91.45.
Description of Relief Sought/ Disposition: To extend Exemption No. 4467, as amended, that allows petitioner to conduct ferry flights with one engine inoperative on its Boeing 707, 720, 727, or 747 turbine-engine-powered transport category airplanes without obtaining a special flight permit. GRANT, July 26, 1989. Exemption No. 4467B.

Docket No.: 25089.
Petitioner: Hawkins & Powers Aviation, Inc.
Regulations Affected: 14 CFR 137.53(c)(2).
Description of Relief Sought/ Disposition: To allow petitioner to conduct aerial applications of insecticide materials from C-118A (DC-6) aircraft, without the aircraft being equipped with a device capable of jettisoning at least one-half of the aircraft's maximum authorized load of agricultural materials within 45 seconds when operated over congested areas. GRANT, July 31, 1989. Exemption No. 5075.

Docket No.: 25166.
Petitioner: Evergreen International Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.583(a)(8).
Description of Relief Sought/ Disposition: To extend Exemption No. 4856, that allows petitioner to continue to transport employees and dependents on its DC-8-60 (DC-8) cargo flights. GRANT, July 27, 1989. Exemption No. 4856A.

Docket No.: 25195.
Petitioner: Loral Systems Group.
Sections of the FAR Affected: 14 CFR 45.27(b).
Description of Relief Sought/ Disposition: To extend Exemption No. 4861, that allows petitioner to place the nationality and registration marks (N-numbers) on the outboard surface of each propulsion duct (engine nacelle) on its GZ22 airship. GRANT, July 31, 1989. Exemption No. 4861A.

Docket No.: 25663.
Petitioner: Christopher C. Foltz.
Sections of the FAR Affected: 14 CFR 61.107.
Description of Relief Sought/ Disposition: To allows petitioner a 90-day extension on his current flight instructor certificate. GRANT, June 12, 1989. Exemption No. 5078.

[FR Doc. 89-18916 Filed 8-11-89; 8:45 am]

BILLING CODE 4910-13-M

Airborne Windshear Warning and Escape Guidance Systems for Transport Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO-C117 prescribed the minimum performance standards that airborne windshear warning and escape guidance systems for transport airplanes must be identified with the marking "TSO-C117."

DATE: Comments must identify the TSO file number and be received on or before November 24, 1989.

ADDRESS: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AIR-120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO-C117, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; or deliver comments to: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AIR-120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

Proposed TSO-C117, specifies minimum performance standards for airborne windshear warning and escape guidance systems for transport category airplanes. The document defines performance, functions and feature for systems which provide windshear warning and escape guidance commands for detection of the aircraft's presence in such phenomenon. It is not applicable to systems that look ahead to sense windshear conditions before the phenomenon is encountered not to systems that use atmospheric and/or other data to predict the likelihood of a windshear alert. Also, the proposed TSO incorporates Radio Technical Commission for Aeronautics (RTCA) Document Nos. DO-160B, "Environmental Conditions and Test Procedures for Airborne Equipment," dated July 1984, for the environmental standards, and DO-178a, "Software Considerations in Airborne Systems and Equipment Certification," dated March 1985, for the computer software requirements.

How to Obtain Copies

A copy of the proposed TSO–C117 may be obtained by contacting "For Further Information Contact." TSO–C117 references RTCA/DO–160B for the environmental, standard, and RTCA/DO–178A for the computer software requirements; RTCA documents may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street, NW., Washington, DC 20005.

Issued in Washington, DC on August 7, 1989.

Daniel P. Salvano,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 89–18919 Filed 8–11–89; 8:45 am]

BILLING CODE 4910–13–M

Aircraft Fabric Grade A; Availability of Technical Standard Order

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO–C15d prescribes the minimum performance standards that aircraft fabric, grade A must meet to be identified with the marking "TSO–C15d".

DATE: Comments must identify the TSO file number and be received on or before November 24, 1989.

ADDRESS: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C15d, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Or deliver comments to: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date. In room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW, Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, view, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Aircraft Certification Service before issuing the final TSO.

Background

Proposed TSO–C15d will permit the use of snythetic fabric materials, in particular polyester, as well as cotton fabric for the external covering of aircraft surfaces. The synthetic "Airplane Cloth" must be shown to have certain properties equivalent to cotton cloth. The proposed TSO references the Society of Automotive Engineers, Inc. (SAE), Aerospace Material Specification (AMS) 3806C, "Cloth Airplance, Cotton, Mercerized, 810b (855N) Breaking Strength," dated April 15, 1980, for the minimum performance standards.

How to Obtain Copies

A copy of the proposed TSO–C15d, may be obtained by contracting the person under "For Further Information Contact." SAE Aerospace Material Specification 3806C my be purchased from the Society of Automotive Engineers, Inc., Department 331, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096.

Issued in Washington, DC, on August 8, 1989.

Daniel P. Salvano,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 89–18920 Filed 8–11–89; 8:45 am]

BILLING CODE 4910–13–M

Aircraft Fabric Intermediate Grade; Availability of Technical Standard Order

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO–C14b prescribes the minimum performance standards that aircraft fabric, intermediate grade must meet to be identified with the marking "TSO–C14b".

DATE: Comments must identify the TSO file number and be reached on or before November 24, 1989.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C14b, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Or deliver comments to: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Aircraft Certification Service before issuing the final TSO.

Background

Proposed TSO–C14b will permit the use of synthetic fabric materials, in particular polyester, as well as cotton fabric for the external covering of aircraft surfaces. The synthetic "Airplane Cloth" must be shown to have certain properties equivalent to cotton cloth. The proposed TSO references the Society of Automotive Engineers, Inc. (SAE), Aerospace Material Specification (AMS) 3804C, "Cloth, Airplane, Cotton, Mercerized, 651b (290N) Breaking Strength," dated January 1, 1984, for the minimum performance standards.

How to Obtain Copies

A copy of the proposed TSO–C14b, may be obtained by contacting the person under "For Further Information Contact." SAE Aerospace Material Specification 3804C may be purchased from the Society of Automotive Engineers, Inc., Department 331, 400 Commonwealth Drive, Warrendale, Pennsylvania.

Issued in Washington, DC, on August 8, 1989.

Daniel P. Salvano,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 89–18921 Filed 8–11–89; 8:45 am]

BILLING CODE 4910–13–M

Tires; Availability of Technical Standard Order

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO–C62d prescribes the minimum performance standards that tires must meet to be identified with the marking "TSO–C62d."

DATE: Comments must identify the TSO file number and be received on or before November 24, 1989.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C62d, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Or deliver comments to: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Aircraft Certification Service Director before issuing the final TSO.

Background

The FAA recently completed a review of airworthiness criteria and approval procedures for lightweight nonretreadable and retreadable tires in airline service and concluded that TSO–C62 should be revised to address certain issues including design criteria, design changes, and installation approvals for such articles.

Under existing regulations and procedures, a tire approved as part of a type design (original type certificate, amended type certificate, or supplemental type certificate) or under a parts manufacturer approval (PMA) is approved for installation on a specific aircraft model. A tire approved solely under TSO procedures is approved for design and production only, and not for installation on an aircraft model. A separate approval is required for the installation of that tire on a specific aircraft model. It is the responsibility of the aircraft owner or operator to ensure that a tire installed as a replacement or modification for an original tire approved as part of a type design is FAA approved. The revisions proposed for TSO–C62 call attention to the approval procedures under existing regulations, and address other aspects of design criteria and design changes. A number of minor editorial changes are also proposed.

How to Obtain Copies

A copy of the proposed TSO–C62d may be obtained by contacting the person under "For Further Information Contact."

Issued in Washington, DC, on August 8, 1989.

Daniel P. Salvano,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 89–18922 Filed 8–11–89; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Commercial Driver's License Supplemental Grant Program Funding Distribution for Fiscal Years (FYs) 1990 and 1991

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of eligibility and distribution of grant funds.

SUMMARY: The FHWA is issuing a notice to publish the administrative formula for the distribution of the Commercial Driver's License (CDL) Supplemental Grant funds for Fiscal Years (FYs) 1990 and 1991 under the Commercial Motor Vehicle Safety Act of 1986 (Title XII of Pub. L. 99–570, 100 Stat. 3207–170), section 12005(d)(2). The amount of funds available for FYs 1990 and 1991 will be $3 million each year, which is subject to the obligation ceiling placed on the Motor Carrier Safety Assistance Program [MCSAP]. Most States should be eligible to receive a minimum of $30,000 in each fiscal year. The FHWA administrative formula will use the number of knowledge and skills tests administered and the number of CDLs issued to determine the States' total Supplemental Grant funding.

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Torbik, Office of Planning, (202) 366–0233, Ms. Jill Hochman, Office of Motor Carrier Standards, (202) 366–4001 or Mr. Paul Brennan, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 am to 4:15 pm. EDT, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Commercial Driver's License (CDL) Supplemental Grant Program was established by the Commercial Motor Vehicle Safety Act of 1986 (the Act) (Title XII of Pub. L. 99–570, 100 Stat. 3207–170) and signed into law by the President on October 27, 1986. Section 12005(d) of the Act gives the Secretary of Transportation the authority to make Supplemental Grants to eligible States in FYs 1990 and 1991 for the purpose of testing operators of commercial motor vehicles. Funds under this grant program shall be distributed among the eligible States on the basis of the number of knowledge (written or oral) and skills (driving) tests administered and the number of commercial driver's licenses (CDL) issued in the preceding fiscal year (FY 1989 data for FY 1990 funds and FY 1990 data for FY 1991 funds). Funding will consist of $3 million each fiscal year, which is subject to the obligation ceiling placed on the MCSAP Program. This notice is being issued pursuant to section 6(b)(1) of OMB Circular No. A–102 (revised) (3/11/88) (53 FR 8028).

Eligibility

As required by section 12005(c) to become eligible for the Commercial Driver's License (CDL) Supplemental Grant program in FYs 1990 and 1991, a State must agree: (1) To adopt and administer in such fiscal year a testing program in accordance with the Commercial Driver Testing and Licensing Standards (49 CFR Part 383) issued on July 15, 1988, (2) to require commercial vehicle drivers to pass

knowledge and skills tests which comply with 49 CFR Part 383, (3) to have in effect and enforce a law which provides that any person with a blood alcohol concentration (BAC) of 0.10 percent or greater when operating a commercial motor vehicle is deemed to be driving while under the influence of alcohol, and (4) to maintain the expenditure of non-Federal funds for CDL testing at a level which does not fall below the average of the last two fiscal years prior to October 27, 1986. A State must agree to all of the above requirements to become eligible to receive Supplemental Grant funds in FYs 1990 and 1991.

For the purpose of this grant program, a State will be considered to be in compliance with requirement (1) above and eligible to receive Supplemental Grant funds in FYs 1990 and 1991, if the State is involved in activities that are directly related to "adopting and administering" the testing program. Therefore, if a State did not administer any tests in the previous year but is performing other activities directly related to "adopting and administering" a testing program in accordance with 49 CFR Part 383 they would be eligible to receive grant funds. Other eligible activities include: (1) Acquisition of equipment, (2) employing and training personnel to conduct tests, (3) computer system redesign and programming, (4) use of outside resources for activities relating to testing, and (5) compliance and verification procedures. General development activities such as studies of existing laws, resource needs, legislative and economic impacts, facilities needs, etc. will not be eligible uses of grant funds under this phase of the grant program.

Distribution of Funds

In FYs 1990 and 1991, Supplemental Grant funds will be made available to the States under a two part formula. Under part I of the formula, $36,000 will be made available to each eligible State. An eligible State which has administered no tests or issued no licenses in the previous FY would be included in this category. Under part II, the balance of funds will be distributed to eligible states based on the ratio that the number of skills and knowledge tests administered and CDLs issued in the previous FY in each eligible State bears to the national total for the previous FY (see hypothetical example in Appendix).

States are encouraged to develop and administer knowledge and skills tests in accordance with 49 CFR Part 383 even if they are unable to currently participate in the Commercial Driver's License Information System (CDLIS). If a State is not participating in the CDLIS, but is administering tests in accordance with 49 CFR, Part 383, then the State's portion of the Supplemental Grant funds will be allocated on the basis of the number of tests administered in accordance with 49 CFR Part 383.

Grant Application

Funds allocated to a State are available to that State for obligation until the last day of the fiscal year. Any funds not obligated before the last day of the fiscal year will no longer be available to that State for obligation and become available to the Secretary to use in carrying out the CDL Program.

To receive the funds allocated to it under the two part formula, a State must submit a grant application to FHWA, which includes a work plan that describes the activities to be undertaken and the estimated costs. Upon approval of the grant application, the State will execute a Supplemental Grant Agreement form; the execution of this grant agreement constitutes an obligation of the funds.

To ensure full utilization of the obligation ceilings that will be imposed on the MCSAP program for FYs 1990 and 1991, FHWA will canvass States that have not applied for their allocations by September 1 of each year to determine if they intend to apply for them. If any States indicate that they do not intend to apply for their funds, FHWA will initiate actions to determine other appropriate uses of the funds in carrying out the CDL Program. This may include canvassing the States that received funds under Part II of the formula to determine if they could use additional funds.

In order to provide adequate time for processing the grant applications, all applications for funds must be received by the local FHWA division office by September 15. The FHWA will proceed with the development of plans to reallocate any funds that States have not applied for by September 15. This is necessary to ensure that all the funds can be obligated prior to the end of the FY (September 30).

Issued on August 8, 1989.

R.D. Morgan,

Executive Director.

Appendix

EXAMPLE OF DISTRIBUTION OF SUPPLEMENTAL GRANT FUNDS FOR FYs 1990 AND 1991

Eligible State	Data Collection: Knowledge tests	Skills tests	CDLs issued	Total
1. State A	215	50	0	265
2. State B	50	0	0	50
3. State C	0	0	0	0
4. State D	2,000	800	200	3,000
National total				3,315

Ratio for Part II (State Total/National Total)			Distribution Formula Balance
1. State A = (265/3,315)	=	.08	Available Funding = $3,000,000
2. State B = (50/3,315)	=	.02	Part I Distribution
3. State C =		0	
			(51×30,000) = $1,530,000
4. State D = (3,000/3,315)	=	.90	
		1.00	Part II Distribution $1,470,000

ALLOCATION TO STATES

Part I Minimum Base	Part II Distribution Formula			
1. State A $30,000 +	($1,470,000×.08) =	$117,600	=	$147,600
2. State B $30,000 +	($1,470,000×.02) =	$29,400	=	$59,400
3. State C $30,000 +	0		=	$30,000

ALLOCATION TO STATES—Continued

Part I Minimum Base	Part II Distribution Formula			
4. State D $30,000 +	($1,470,000×.90) =	$1,323,000	=	$1,353,000
Remaining 47 States = $30,000 each	+0		=	$1,410,000
				$3,000,000

[FR Doc. 89-16990 Filed 8-11-89; 8:45 am]
BILLING CODE 4910-22-M

Research and Special Programs Administration, Office of Hazardous Materials Transportation

Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATE: Comments must be received on or before September 13, 1989.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10225-N	Atochem, Inc., Glen Rock, NJ	49 CFR 173.119	To authorize shipment of dimethylethylamine, classed as a flammable liquid in non-DOT steel drums overpacked in 16 gauge steel salvage drums. (mode 1)
10226-N	Jaco Waterproofing, Inc., Hamilton, OH	49 CFR 173.119	To authorize shipment of a resin solution, classed as a flammable liquid, in a non-DOT specification cargo tank. (mode 1)
10227-N	Minnesota Valley, Engineering, Inc., New Prague, MN.	49 CFR 173.316, 178.57	To authorize manufacture, marking and sale of a model stroller 1.3 liter low pressure liquid oxygen dewar for shipment of liquid oxygen classed as a nonflammable gas. (mode 1)
10228-N	Koch Industries, Inc., Wichita, KS	49 CFR 173.119, 173.304, 173.315	To authorize transportation of flammable liquids and gases in meter provers having nominal water capacities between 15 and 1000 gallons. (mode 1)
10229-N	United States Can Company, Oak Brook, IL	49 CFR 173.302, 173.304, 178.33-2(b), 175.3	To authorize manufacture, marking and sale of non-DOT specification aerosol cans for flammable and nonflammable compressed gases. (modes 1, 2, 3, 4)
10230-N	Georgia Box, Inc., Jackson, GA	49 CFR 173.126, 173.132, 173.266, Part 173 Subpart F.	To authorize manufacture, marking, and sale of a non-DOT single-trip blow molded high density polyethylene portable tank having a wood pallet, foam transtion base, corrugated cover for hydrogen peroxide solution classed as oxidizer, various corrosive materials and flammable liquids. (modes 1, 2, 3)
10231-N	Degussa Corporation, Ridgefield Park, NJ	49 CFR 173.245b	To authorize shipment of Sodium tetrasulfide, classed as a corrosive material, in IMO type I tanks. (modes 1, 2, 3)
10232-N	Sexton Can Company, Inc., Cambridge, MA	49 CFR 173.304, 175.3	To authorize shipment of refrigerant gases, n.o.s., classed as nonflammable gas and other nonflammable gases specifically identified to, and approved by the OHMT in non-DOT specification aerosol containers similar to the DOT 2Q container. (modes 1, 2, 3, 4, 5)
10233-N	Schutz Werke GmbH & Co., KG, D-5418 Selters, Germany.	49 CFR 173 Subpart D, E, F and H, 178.224	To authorize manufacture, marking and sale of a non-DOT specification fiber drum with top and bottom of 48 mm steel for shipment of those materials authorized for shipment in 21C fiber drum. (modes 1, 2, 3)
10234-N	Gottlieb Duttenhoefer, GmbH & Co. KG, 6733 Hasaloch, Germany.	49 CFR 173.346, 178.116	To authorize manufacture, marking and sale of a non-DOT specification 0.7 mm thick sheet steel drum similar to the DOT 17E steel drum for toulene diisocyanate, classed as a poison B. (modes 1, 2)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10235–N	U.S. Department of Defense, Falls Church, VA	49 CFR 173.276, 173.31(a), 173.336	To authorize use of a non-DOT specification stainless steel, ASTM A240 Type 304L pressure tank car for transportation of nitrogen tetroxide, liquid, classed as a Poison A and methylhydrazine, anhydrous hydrazine, unsymmetrical dimethylhydrazine, classed as flammable liquids. (mode 2)
10236–N	Northern Energy, Inc., Spokane, WA	49 CFR 173.31(c)	To authorize movement of railcar, containing residue propane fumes, classed as flammable gas, without required retesting. (mode 2)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on August 7, 1989.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89–18992 Filed 8–11–89; 8:45 am]

BILLING CODE 4910–60–M

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATE: Comments must be received on or before August 29, 1989.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
4607–X	Armstrong Laboratories, Inc., West Roxbury, MA.	4607
4932–X	Federal Laboratories, Inc., Saltsburg, PA.	4932
5923–X	Unigas Inc., Mercedita, PR.	5923
5923–X	Linde Gases of Southern California, Inc., Santa Ana, CA.	5923
6250–X	McDonnell Douglas Corporation, St. Louis, MO.	6250
6325–X	Atlas Powder Company, Dallas, TX.	6325
6530–X	National Welders, Charlotte, NC.	6530
6530–X	Messer Griesheim Industries, Inc., Valley Forge, PA.	6530
6530–X	Liquid Carbonic Industrial/Medical Corporation, Chicago, IL.	6530
6530–X	Liquid Carbonic Specialty Gas Corporation, Chicago, IL.	6530
6765–X	Messer Griesheim Industries, Inc., Valley Forge, PA.	6765
6765–X	Airco Industrial Gases, Murry Hill, NJ.	6765
7052–X	NASA (National Aeronautics & Space Administration), Washington, DC.	7052
7052–X	Duracell Inc., Bethel, CT.	7052
7607–X	I.T. Corporation (International Technology Corp.), Torrance, CA.	7607
8156–X	Liquid Carbonic Specialty Gas Corporation, Chicago, IL.	8156
8175–X	The Norac Company, Inc., Azusa, CA.	8175
8248–X	AT&T Technologies, Inc., Greensboro, NC.	8248
8269–X	Fort Worth Fabrication, Inc., Fort Worth, TX.	8269
8287–X	Rohm and Haas Company, Philadelphia, PA.	8287
8354–X	Compaignie Des Containers Reservoirs, Paris, France.	8354
8386–X	J.J. Mauget Company, Los Angeles, CA.	8386
8445–X	Waste Conversion, Inc., Hatfield, PA.	8445
8445–X	E&K Hazardous Waste Services, Inc., Sheboygan, WI.	8445
8554–X	Thermex Energy Corporation, Dallas, TX.	8554
8567–X	Environmental Oil, Inc., Syracuse, NY.	8567
8579–X	Nitram, Inc., Tampa, FL.	8579
8650–X	Ethyl Corporation, Baton Rouge, LA.	8650
8723–X	Atlas Powder Company, Dallas, TX (See Footnote 1).	8723
8732–X	Chemcentral, Inc., Chicago, IL.	8732
8732–X	The Dow Chemical Company, Midland, MI.	8732
8888–X	Nalco Chemical Company, Naperville, IL.	8888
8901–X	Douglas Chemical Company, Liberty, MO.	8901
8986–X	Cook Slurry Company, Salt Lake City, UT.	8986
8988–X	Vann Systems, Houston, TX.	8988
9016–X	Van Leer Verpackungen GmbH, Kaln, West Germany.	9016
9066–X	Volvo Cars of North America Rockleigh, NJ (See Footnote 2).	9066

Application No.	Applicant	Renewal of exemption
9130–X	Bio/Lab, Incorporated, Decatur, GA.	9130
9130–X	Calgon Vestal Laboratories, St. Louis, MO.	9130
9150–X	Hoover Group, Inc., Beatrice, NE.	9150
9162–X	Sun Pipe Line Company, Longview, TX.	9162
9393–X	Sexton Can Company, Inc., Cambridge, MA (See Footnote 3).	9393
9490–X	National Refrigerants, Inc., Plymouth Meeting, PA.	9490
9498–X	C–I–L Inc., North York, Ont., Canada.	9498
9505–X	The Norac Company, Inc., Azusa, CA.	9505
9722–X	Russell-Stanley Corporation, Red Bank, NJ.	9722
9723–X	Aqua-Tech, Inc., Port Washington, WI.	9723
9747–X	Aerosol Services Company, Inc., City of Industry, CA.	9747
9758–X	Camping Gaz Int'l (nee Application des Gez S.A.) Paris, France (See Footnote 4).	9758
9759–X	Rollins Chempak, Inc., Wilmington, DE.	9759
9918–X	Hughes Aircraft Company, Tucson, AZ.	9918
9968–X	Moli Energy, Limited, Burnaby, B.C., Canada (See Footnote 5).	9968
10175–X	Phillips Container, Cleveland, OH (See Footnote 6).	10175
10184–X	Union Carbide Industrial Gases Inc. (UCIG), Danbury, CT (See Footnote 7).	10184

(1) To authorize the addition to an IMO Type 1 Portable tank for shipment of certain blasting agents, n.o.s.

(2) To renew and modify section 7 paragraph A to include DOT–12B fiberboard box identified as Volvo 2.

(3) To authorize the addition of an alternate style cylinder with a pressure release bottom, for shipment of certain nonflammable gases.

(4) To modify the exemption to include an additional type container Ferno 5000 identical to the C–206 presently authorized for shipment of certain flammable gases.

(5) To authorize motor vehicle, rail freight, cargo vessel, and cargo aircraft as additional modes of transportaion.

(6) To authorize the addition of certain flammable liquids and to add rail freight and cargo vessel as modes of transportation.

(7) To authorize DOT Specification 4B or 4A cylinders retested in accordance with 49 CFR 173.34(e)(9) and (10) for shipment of a copressed gas, n.o.s.

Application No.	Applicant	Parties to exemption
7052–P	LO–KATA Communication Electronics, Cornwall, England.	7052
7607–P	Metcalf & Eddy, Inc., Santa Clara, CA.	7607
8445–P	Heritage Transport, Inc., Indianapolis, IN.	8445
8445–P	Merrell Dow Research, Indianapolis, IN.	8445
8554–P	Dole Explosives, Inc., Rosemount, MN.	8554
8718–P	U.S. Department of Defense, Falls Church, VA.	8718
8859–P	Eastman Kodak Company, Rochester, NY.	8859
8862–P	ARC Chemical Division Baicham Corporation, Slate Hill, NY.	8862
9332–P	Chromalloy R & T Division, Orangeburg, NY.	9332
9723–P	Heritage Transport, Inc., Indianapolis, IN.	9723
10001–P	Airco, The BOC Group, Inc., Murray Hill, NJ.	10001

This notice of receipt of applications for renewal exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on August 9, 1989.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89–18993 Filed 8–11–89; 8:45 am]

BILLING CODE 4910–60–M

Compliance With Federal Requirements for Reporting Releases and Transporting Hazardous Materials; Joint Workshop With the Environmental Protection Agency

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of jointly sponsored workshop.

SUMMARY: This notice advises interested persons that the Department of Transportation (DOT) and Environmental Protection Agency (EPA) will jointly sponsor a workshop on complying with federal requirements for reporting releases of hazardous substances and transporting hazardous materials.

DATE: DOT/EPA Workshop—A one day workshop will be held October 24 and 26, 1989, 7:30 a.m.–5:00 p.m., at the Holiday Inn, Inner Harbor in Baltimore, MD. You may register for either date. Every effort will be made to accommodate your preference. If space is not available on that day, you will be notified. Attendance is limited, so please register early. Those who do not register in advance will be able to attend only on a space available basis. This workshop is being offered free of charge and is open to anyone who wants to attend.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe, Research and Special Programs Administration (DHM–51), 400 Seventh Street, SW., Washington, DC 20590: (202) 366–2229, or Pamela Harris, Environmental Protection Agency, OS–210, 401 M Street, SW., Washington, DC 20460; (202) 475–9815. To register, call the Workshop Coordinator at (202) 475–9814.

ADDITIONAL INFORMATION: This workshop will provide practical information to assist regulated firms in complying with release reporting and transportation requirements. Specifically the workshop will address:

- What is required to report releases of hazardous substances
- What substances are subject to reporting requirements
- What kinds of releases must be reported
- What exemptions from reporting requirements are provided
- What kinds of report-related information will be requested
- What penalties may be assessed for failure to report releases
- How to properly classify hazardous materials for transportation
- How to properly package, label and prepare shipping papers for transporting hazardous materials
- What mechanisms exist for enforcement of violations of the transportation requirements
- How to comply with hazardous waste manifest requirements
- What is the Hazardous Materials Information Exchange (HMIX) and how to use it
- What are the EPA and OSHA worker protection standards

Issued in Washington, DC on August 9, 1989, under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 89–18991 Filed 8–11–89; 8:45 am]

BILLING CODE 4910–60–M

BEST COPY AVAILABLE

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 23-89]

Treasury Bonds of 2019

Washington, August 3, 1989.

I. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,750,000,000 of United States securities, designated Treasury Bonds of 2019 (CUSIP No. 912810 ED 6), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Bonds and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Bonds may be issued to Federal Reserve Banks for their own account in exchagne for maturing Treasury securities. Additional amounts of the Bonds may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Bonds will be dated August 15, 1989, and will accrue interest from that date, payable on a semiannual basis on February 15, 1990, and each subsequent 6 months on August 15 and February 15 through the date that the principal becomes payable. They will mature August 15, 2019, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Bonds will be issued only in book-entry form, and in denominations of $1,000 $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Bonds offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC. 20239–1500, prior to the 1:00 p.m., Eastern Daylight Saving time, Thursday, August 10, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, August 9, 1989, and received no later than Tuesday, August 15, 1989.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yie'1.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 92.500. That stated rate of interest will be paid on all of the Bonds. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the

offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7 Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1 The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Bonds specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, August 15, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, August 11, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Bonds allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, August 15, 1989. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completely timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Bond being purchased. In any such case, that tender form used to place the Bonds allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3 For a Bond to be separated into the components described in Section 5.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semi-annual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Bond may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Bonds. Once a Bond has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7 Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9 Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their compenents.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of their circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promptly provided.

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Governemnt is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4 Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Bonds of August 15, 2019, Cusip No. 912810 ED 6

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) 2019 due August 15, 2019, CUSIP No. 912803 AR 4.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury interest (TINT) due:	
February 15, 1990	BF 6
August 15, 1990	BG 4
February 15, 1991	BH 2
August 15, 1991	BJ 8
February 15, 1992	BK 5
August 15, 1992	BL 3
February 15, 1993	BM 1
August 15, 1993	BN 9
February 15, 1994	BP 4
August 15, 1994	BQ 2
February 15, 1995	BR 0
August 15, 1995	BS 8
February 15, 1996	BT 6
August 15, 1996	BU 3
February 15, 1997	BV 1
August 15, 1997	BW 9
February 15, 1998	BX 7
August 15, 1998	BY 5
February 15, 1999	BZ 2
August 15, 1999	CA 6
February 15, 2000	CB 4
August 15, 2000	CC 2
February 15, 2001	CD 0
August 15, 2001	CE 8
February 15, 2002	CF 5
August 15, 2002	CG 3
February 15, 2003	CH 1
August 15, 2003	CJ 7
February 15, 2004	CK 4
August 15, 2004	CL 2
February 15, 2005	CM 0
August 15, 2005	CN 8
February 15, 2006	CP 3
August 15, 2006	CQ 1
February 15, 2007	CR 9
August 15, 2007	CS 7
February 15, 2008	CT 5
August 15, 2008	CU 2
February 15, 2009	CV 0
August 15, 2009	CW 8
February 15, 2010	CX 6
August 15, 2010	CY 4
February 15, 2011	CZ 1
August 15, 2011	DA 5
February 15, 2012	DB 3
August 15, 2012	DC 1
February 15, 2013	DD 9
August 15, 2013	DE 7
February 15, 2014	DF 4
August 15, 2014	DG 2
February 15, 2015	DH 0
August 15, 2015	JT 6
February 15, 2016	KG 4
August 15, 2016	KJ 8
February 15, 2017	KL 3
August 15, 2017	KN 9
February 15, 2018	KQ 2
August 15, 2018	KS 8
February 15, 2019	KU 3
August 15, 2019	KW 9

Attachment B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000

Coupon (percent)	Minimum face	Interest payment
5.000	$40,000	$1,000
5.125	1,600,000	41,000
5.250	800,000	21,000
5.375	1,600,000	43,000
5.500	400,000	11,000
5.625	320,000	9,000
5.750	800,000	23,000
5.875	1,600,000	47,000
6.000	100,000	3,000
6.125	1,600,000	49,000
6.250	32,000	1,000
6.375	1,600,000	51,000
6.500	400,000	13,000
6.625	1,600,000	53,000
6.750	800,000	27,000
6.875	320,000	11,000
7.000	200,000	7,000
7.125	1,600,000	57,000
7.250	800,000	29,000
7.375	1,600,000	59,000
7.500	800,000	3,000
7.625	1,600,000	61,000
7.750	800,000	31,000
7.875	1,600,000	63,000
8.000	25,000	1,000
8.125	320,000	13,000
8.250	800,000	33,000
8.375	1,600,000	67,000
8.500	400,000	17,000
8.625	1,600,000	69,000
8.750	160,000	7,000
8.875	1,600,000	71,000
9.000	200,000	9,000
9.125	1,600,000	73,000
9.250	800,000	37,000
9.375	64,000	3,000
9.500	400,000	19,000
9.625	1,600,000	77,000
9.750	800,000	39,000
9.875	1,600,000	79,000
10.000	20,000	1,000
10.125	1,600,000	81,000
10.250	800,000	41,000
10.375	1,600,000	83,000
10.500	400,000	21,000
10.625	320,000	17,000
10.750	800,000	43,000
10.875	1,600,000	87,000
11.000	200,000	11,000
11.125	1,600,000	89,000
11.250	160,000	9,000
11.375	1,600,000	91,000
11.500	400,000	23,000
11.625	1,600,000	93,000
11.750	800,000	47,000
11.875	320,000	19,000
12.000	50,000	3,000
12.125	1,600,000	97,000
12.250	800,000	49,000
12.375	1,600,000	99,000
12.500	16,000	1,000
12.625	1,600,000	101,000
12.750	800,000	51,000
12.875	1,600,000	103,000
13.000	200,000	13,000
13.125	320,000	21,000
13.250	800,000	53,000
13.375	1,600,000	107,000
13.500	400,000	27,000
13.625	1,600,000	109,000
13.750	160,000	11,000
13.875	1,600,000	111,000
14.000	100,000	7,000

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000—Continued

Coupon (percent)	Minimum face	Interest payment
14.125	1,600,000	113,000
14.250	800,000	57,000
14.375	320,000	23,000
14.500	400,000	29,000
14.625	1,600,000	117,000
14.750	800,000	59,000
14.875	1,600,000	119,000
15.000	40,000	3,000
15.125	1,600,000	121,000
15.250	800,000	61,000
15.375	1,600,000	123,000
15.500	400,000	31,000
15.625	64,000	5,000
15.750	800,000	63,000
15.875	1,600,000	127,000
16.000	25,000	2,000
16.125	1,600,000	129,000
16.250	160,000	13,000
16.375	1,600,000	131,000
16.500	400,000	33,000
16.625	1,600,000	133,000
16.750	800,000	67,000
16.875	320,000	27,000
17.000	200,000	17,000
17.125	1,600,000	137,000
17.250	800,000	69,000
17.375	1,600,000	139,000
17.500	80,000	7,000
17.625	1,600,000	141,000
17.750	800,000	71,000
17.875	1,600,000	143,000
18.000	100,000	9,000
18.125	320,000	29,000
18.250	800,000	73,000
18.375	1,600,000	147,000
18.500	400,000	37,000
18.625	1,600,000	149,000
18.750	32,000	3,000
18.875	1,600,000	151,000
19.000	200,000	19,000
19.125	1,600,000	153,000
19.250	800,000	77,000
19.375	320,000	31,000
19.500	400,000	39,000
19.625	1,600,000	157,000
19.750	800,000	79,000
19.875	1,600,000	159,000
20.000	10,000	1,000
20.125	1,600,000	161,000
20.250	800,000	81,000

[FR Doc. 89-19053 Filed 8-10-89; 10:24 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 22-89]

Treasury Notes of August 15, 1999, Series C-1999

Washington, August 3, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,750,000,000 of United States securities, designated

Treasury Notes of August 15, 1999, Series C-1999 (CUSIP No. 912827 XW 7), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated August 15, 1989, and will accrue interest from that date, payable on a semiannual basis on February 15, 1990, and each subsequent 6 months on August 15 and February 15 through the date that the principal becomes payable. They will mature August 15, 1999, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest components is set forth in section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Daylight Saving time Wednesday, August 9, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, August 8, 1989, and received no later than Tuesday, August 15, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Tuesday, August 15, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, August 11, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, August 15, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3 For a Note to be separated into the components described in Section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Note may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Notes. Once a Note has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5 Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconsitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

7.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Notes of August 15, 1989, Series C–1989, CUSIP No. 912827 XW 7

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series C–1989 due August 15, 1999, CUSIP No. 912820 AT 4.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury interest (TINT) due:	
February 15, 1990	BF 8
August 15, 1990	BG 4
February 15, 1991	BH 2
August 15, 1991	BJ 8
February 15, 1992	BK 5
August 15, 1992	BL 3
February 15, 1993	BM 1
August 15, 1993	BN 9
February 15, 1994	BP 4
August 15, 1994	BQ 2
February 15, 1995	BR 0
August 15, 1995	BS 8
February 15, 1996	BT 6
August 15, 1996	BU 3
February 15, 1997	BV 1
August 15, 1997	BW 9
February 15, 1998	BX 7
August 15, 1998	BY 5
February 15, 1999	BZ 2
August 15, 1999	CA 6

Attachment B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000

Coupon (percent)	Minimum face	Interest payment
5.000	$40,000	$1,000
5.125	1,600,000	41,000
5.250	800,000	21,000
5.375	1,600,000	43,000
5.500	400,000	11,000
5.625	320,000	9,000
5.750	800,000	23,000
5.875	1,600,000	47,000
6.000	100,000	3,000
6.125	1,600,000	49,000
6.250	32,000	1,000
6.375	1,600,000	51,000
6.500	400,000	13,000
6.625	1,600,000	53,000
6.750	800,000	27,000
6.875	320,000	11,000
7.000	200,000	7,000
7.125	1,600,000	57,000
7.250	800,000	29,000
7.375	1,600,000	59,000
7.500	80,000	3,000
7.625	1,600,000	61,000
7.750	800,000	31,000
7.875	1,600,000	63,000
8.000	25,000	1,000
8.125	320,000	13,000
8.250	800,000	33,000
8.375	1,600,000	67,000
8.500	400,000	17,000
8.625	1,600,000	69,000
8.750	160,000	7,000
8.875	1,600,000	71,000
9.000	200,000	9,000
9.125	1,600,000	73,000
9.250	800,000	37,000
9.375	64,000	3,000
9.500	400,000	19,000
9.625	1,600,000	77,000
9.750	800,000	39,000
9.875	1,600,000	79,000
10.000	20,000	1,000
10.125	1,600,000	81,000

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000—Continued

Coupon (percent)	Minimum face	Interest payment
10.250	800,000	41,000
10.375	1,600,000	83,000
10.500	400,000	21,000
10.625	320,000	17,000
10.750	800,000	43,000
10.875	1,600,000	87,000
11.000	200,000	11,000
11.125	1,600,000	89,000
11.250	160,000	9,000
11.375	1,600,000	91,000
11.500	400,000	23,000
11.625	1,600,000	93,000
11.750	800,000	47,000
11.875	320,000	19,000
12.000	50,000	3,000
12.125	1,600,000	97,000
12.250	800,000	49,000
12.375	1,600,000	99,000
12.500	16,000	1,000
12.625	1,600,000	101,000
12.750	800,000	51,000
12.875	1,600,000	103,000
13.000	200,000	13,000
13.125	320,000	21,000
13.250	800,000	53,000
13.375	1,600,000	107,000
13.500	400,000	27,000
13.625	1,600,000	109,000
13.750	160,000	11,000
13.875	1,600,000	111,000
14.000	100,000	7,000
14.125	1,600,000	113,000
14.250	800,000	57,000
14.375	320,000	23,000
14.500	400,000	29,000
14.625	1,600,000	117,000
14.750	800,000	59,000
14.875	1,600,000	119,000
15.000	40,000	3,000
15.125	1,600,000	121,000
15.250	800,000	61,000
15.375	1,600,000	123,000
15.500	400,000	31,000
15.625	64,000	5,000
15.750	800,000	63,000
15.875	1,600,000	127,000
16.000	25,000	2,000
16.125	1,600,000	129,000
16.250	160,000	13,000
16.375	1,600,000	131,000
16.500	400,000	33,000
16.625	1,600,000	133,000
16.750	800,000	67,000
16.875	320,000	27,000
17.000	200,000	17,000
17.125	1,600,000	137,000
17.250	800,000	69,000
17.375	1,600,000	139,000
17.500	80,000	7,000
17.625	1,600,000	141,000
17.750	800,000	71,000
17.875	1,600,000	143,000
18.000	100,000	9,000
18.125	320,000	29,000
18.250	800,000	73,000
18.375	1,600,000	147,000
18.500	400,000	37,000
18.625	1,600,000	149,000
18.750	32,000	3,000
18.875	1,600,000	151,000
19.000	200,000	19,000
19.125	1,600,000	153,000

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000—Continued

Coupon (percent)	Minimum face	Interest payment
19.375	320,000	31,000
19.500	400,000	39,000
19.625	1,600,000	157,000
19.750	800,000	79,000
19.875	1,600,000	159,000
20.000	10,000	1,000
20.125	1,600,000	161,000
20.250	800,000	81,000

[FR Doc. 89–19054 Filed 8–10–89; 10:24 am]

BILLING CODE 4810–40–M

[Department Circular—Public Debt Series—No. 21–89]

Treasury Notes of August 15, 1992, Series T–1992, Washington, August 3, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximatley $10,000,000,000 of United States securities, designated Treasury Notes of August 15, 1992, Series T–1992 (CUSIP No. 912827 XV 9), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated August 15, 1989, and will accrue interest from that date, payable on a semiannual basis on February 15, 1990, and each subsequent 6 months on August 15 and February 15, through the date that the principal becomes payable. They will mature August 15, 1992, and will not be subject to call for redemption prior to

maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000 and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Daylight Saving time, Tuesday, August 8, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, August 7, 1989, and received no later than Tuesday, August 15, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10 percent. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Tuesday, August 15, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, August 11, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, August 15, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR. Doc. 89–19055 Filed 8–10–89 10:25 am]

BILLING CODE 4810–40–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on September 13, 1989.

By direction of the Secretary.

Dated: August 2, 1989.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Revision

1. Veterans Benefits Administration
2. Certification of Delivery of Advance Payment and Enrollment (Chapters 30, 32, 34, and 35, Title 38, U.S.C.; Chapter 106, Title 10, U.S.C.; and Section 903, Public Law 96–342)
3. VA Form 22–1999v
4. This form is used by educational institutions' certifying officials to certify delivery of advance payment and to report any changes in enrollment status. The information is used by VA to adjust benefits and, if necessary, to remove a bar to the future payment of benefits.
5. On occasion
6. State or local governments; non-profit institutions; small businesses or organizations
7. 38,500 responses
8. ⅛ hour
9. Not applicable.

Extension

1. Veterans Benefits Administration
2. Enrollment Certification (Under Chapters 30, 32, 34, or 35, Title 38, U.S.C. or Chapter 106, 10 U.S.C.)
3. VA Forms 22–1999, 22–1999–1, 22–1999–2
4. These forms are used by schools and employers to report the enrollment of veterans, servicepersons, selected reservists, and other eligible persons in approved programs of education or training. The data requested is necessary to determine the correct rate of payment.
5. On occasion and for a school term or semester
6. Individuals or households; State or local governments; farms; businesses or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations
7. 9,587 responses.
8. ⅛ hour
9. Not applicable.

[FR Doc. 89–18928 Filed 8–11–89; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Environmental Hazards; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463, section 10(a)(2), that a meeting of a subcommittee of the Veterans' Advisory Committee on Environmental Hazards will be held at the Department of Veterans Affairs Central Office, 810 Vermont Avenue NW., Washington, DC 20420 on September 8, 1989. The purpose of the meeting is to assist the Department in the development of Agency policy with respect to veterans' claims for compensation based upon exposure to herbicides containing dioxin compatible with the decision of the court in Nehmer v. Veterans Administration, et al.

The meeting will convene at 9:00 a.m. until 6:00 p.m. in Room 119. This meeting will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Ms. Sylvia Arrington, Veterans Affairs Central Office (phone 202/233–2115) prior to September 1, 1989.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, Special Assistant to the General Counsel, Room 1034, Veterans Affairs Central Office. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to

clarify submitted material prior to consideration by the Committee.

By direction of the Secretary.

Dated: August 4, 1989.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 89-18929 Filed 8-11-89; 8:45 am]

BILLING CODE 8320-01-M

Small Business Competitiveness Demonstration Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) has been selected to participate in the Office of Federal Procurement Policy (OFPP) and Small Business Administration (SBA) interim policy directive and test plan implementing title VII of the "Business Opportunity Development Reform Act of 1988."

DATES: Written comments must be received on or before September 13, 1989. Comments will be available for public inspection until September 25, 1989.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this proposal to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 at the above address, between the hours of 8:00 and 4:30 p.m., Monday through Friday (except holidays), until September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Mildred C. Shields, Acquisition Policy Staff, Department of Veterans Affairs, (202) 233-4339.

SUPPLEMENTARY INFORMATION: Title VII of the "Business Opportunity Development Reform Act of 1988" (Pub. L. 100-656 (53 FR 52889)) seeks to test the effectiveness of eliminating set-asides in certain industry groups through the establishment of a new program entitled the "Small Business Competitiveness Demonstration Program." The program has two primary objectives: (1) To demonstrate whether small business firms in certain industry groups can compete successfully on an unrestricted basis for Federal contracts; and (2) to demonstrate whether targeted goaling and management techniques can expend Federal contract opportunities for small business in industry categories where such opportunities historically have been low despite adequate numbers of small business contractors in the economy. VA has been identified as a participant in the demonstration.

For purposes of the expansion portion of the demonstration program, VA has targeted the following industries:

Code	Description	(Includes FSS) previous FY total amount (000)	Amount to SB (000)	Percent to SB	Targeted increase (per FY)
(6733)	Medical research	$1,101	$85	7	1%
(7373)	Automated information system design and integration services (Formerly R302)	70	0	0	5%
(7371)	ADP acquisition support services		New category		2.5%
(6531)	Real property appraisal services	$1,381	3	.2	2.5%
(7334)	Other photographic mapping and printing services	220	10	4	5%
(7377/7372)	Lease of general purpose ADPE, software, etc.	$1,520	47	3	2.5%
(7359)	Lease of office machines and visible record equipment	838	48	5	2.5%
(7699)	Maintenance of special industry machinery	524	27	5	2.5%
(3842)	Protective clothing: (1) Removal of hazardous materiels (2) Against infectious disease (3) Gloves, patient exam (4) Gloves, surgical.	22,697	414	1	2.5%
(7872)	Film, processed	627	35	5	2.5%

The Director, Office of Small and Disadvantaged Business Utilization will assist procuring activities in locating additional sources through contacts with other Federal agencies, the U.S. Small Business Administration Procurement Automated Source System, trade journals, and attendance at local and Federal procurement conferences. To accomplish the expansion program, acquisitions in excess of $25,000 shall be set-aside for exclusive Small Business participation.

Approved: August 4, 1989.

Edward J. Derwinski,

Secretary.

[FR Doc. 89-18930 Filed 8-11-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 54, No. 155

Monday, August 14, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL TRANSPORTATION SAFETY BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 54, No. 147/Wednesday, August 2, 1989/31917-31918.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Tuesday, August 8, 1989.

CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. Item 4. Opinion and Order: Administrator v. Janka and Newman, Dockets SE-8144 and SE-8159; disposition of the Administrator's appeal and Item 5. Opinion and Order: Administrator v. Godwin, Docket SE-8397; disposition of respondent's appeal were removed from the agenda and Public Hearing: Recommendation for No Hearing re Harrison Road Bridge Collapse in Miamitown, Ohio, May 26, 1989, was added to the agenda as Item 4.

FOR MORE INFORMATION, CONTACT: Bea Hardesty, (202) 382-6525.

Dated: August 8, 1989.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 89-19034 Filed 8-9-89; 4:44 pm]

BILLING CODE 7533-01-M

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1419)

TIME AND DATE: 10 a.m. (EDT), August 16, 1989.

PLACE: TVA Chattanooga Office Complex Auditorium, 1101 Market Street, Chattanooga, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on July 26, 1989.

Old Business

1. Final Rate Review.

ACTION ITEMS

New Business

A—Budget and Financing

*A1. Call for Early Redemption of TVA Bonds Held by the Federal Financing Bank.

A2. Adoption of Supplemental Resolution Authorizing 1989 Series B Bonds.

A3. Modification to the Capital Budget Financed from Power Proceeds and Borrowings for FY89—Gallatin Fossil Plant Unit 4 for Replacement of Waterwall Tubes.

A4. Modification to the Capital Budget Financed from Power Proceeds and Borrowings for FY89—Paradise Fossil Plant Unit 3 to Rehabilitate Expansion Joints.

B—Purchase Awards

B1. Invitation HE-89659A for 161-kV Main Power Transformer for Bull Run Fossil Plant.

B2. Requisition 75—Short-term Coal for John Sevier Fossil Plant.

B3. Contracts 68P-84-T1 and 71P65-89-1—Fuel Supply for Sequoyah and Watts Bar Nuclear Plants.

C—Power Items

C1. Agreement Covering Arrangements for Purchase of Power from Oberon Resources Corporation.

C2. Replacement Energy Service Schedule Under Interconnection Agreement with Mississippi Power & Light Company.

C3. Revision to 5-percent Interruptible Power Arrangements.

C4. Revised Arrangements for TVA's Financial Support of Regional Industrial Development Associations.

E—Real Property Transactions

E1. Sale of Permanent Easement Affecting Approximately 0.57 Acre of Land on Norris Reservoir in Campbell County, Tennessee.

E2. Transfer of Custody of Approximately 822 Acres of Land on Pickwick Reservoir in Tishomingo County, Mississippi.

F—Unclassified

*F1. Implementation of a Before-Tax Payment Plan for Employee Medical and Dental Contributions.

F2. Supplement No. 2 to Contract No. TV-69085A with Olin Chemicals for Stream Gage Monitoring Assistance.

F3. Supplement No. 1 to Contract No. TV-76008A with U.S. Department of the Army, Corps of Engineers, for the Development of Digital Database for Beaver Lake Water Quality Study.

F4. Contract No. TV-79140T with Tennessee-Tombigbee Waterway Development Council in Columbus, Mississippi.

F5. Filing of a Condemnation Case.

F6. Cooperative Agreement No. TV-78293T with the Electric Power Research Institute.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Coordinator, Governmental and Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479-4412.

Dated: August 8, 1989.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 89-19045 Filed 8-10-89; 9:11 am]

BILLING CODE 8120-01-M

* Items approved by individual Board members. This would give formal ratification to the Board's action.

federal register

Monday
August 14, 1989

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 484

Medicare Program; Home Health Agencies: Conditions of Participation and Reduction in Recordkeeping Requirements; Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 484

[BERC-476-IFC]

RIN # 0938-AD45

Medicare Program; Home Health Agencies: Conditions of Participation and Reduction in Recordkeeping Requirements

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: These regulations add to the current conditions of participation for home health agencies (HHAs). Specifically, the regulations specify requirements for protecting and promoting patient rights; training and competency of home health aides; notifying State entities responsible for the licensing or certification of HHAs of changes in ownership of the agency or management of the agency; including an individual's plan of care as part of the individuals' clinical records; and operating and furnishing services in compliance with applicable Federal, State, and local laws and regulations and with accepted professional standards and principles that apply to professionals furnishing home health services.

Most of the provisions of these regulations implement section 930 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499), section 4021 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), and section 411(d) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360).

These regulations also implement, in part, a proposed rule that was published on December 31, 1986 (51 FR 47286) to reduce the information collection and recordkeeping requirements for the conditions of participation for HHAs.

DATES: *Effective date:* These regulations are effective on July 1, 1989 and, except as otherwise provided, apply to services furnished by home health agencies after June 30, 1989. The requirement that HHAs establish a competency evaluation program for home health aides (§ 484.36(b)) is not effective until February 14, 1990, because we recognize that the delay in the promulgation of this interim final rule, without an extension in the effective date, would impose an unacceptable burden on home health agencies and State survey agencies. The requirement that an HHA may only use as a home health aide an individual who has successfully completed a training and competency evaluation program or a competency evaluation program as provided in § 484.36 is effective for home health aide services furnished after August 14, 1990. States are not required to comply with the information collection and reporting requirements in the sections listed in "**SUPPLEMENTARY INFORMATION**" under the heading "Collection of Information Requirements" until the Office of Management and Budget approves them.

Comment period: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on October 13, 1989.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-476-IFC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC,

or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile. (FAX) copies of comments.

In commenting, please refer to file code BERC-476-IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

If you wish to submit comments on the information collection requirements contained in these regulations, you may submit comments to: Allison Herron, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION, CONTACT: Thomas Hoyer, (301) 966-4607.

SUPPLEMENTARY INFORMATION:

I. General Legislative Background

Home health services are furnished to the elderly and disabled under Medicare. They include an array of services such as professional nursing care, physical and occupational therapy, speech pathology, medical social services, home health aide services, and medical supplies and equipment. These services are delivered singly, or in combination, to aid in the recovery from an acute illness or to improve a patient's health status.

The Medicare statute limits payment for home health services to providers of services who have qualified for a Medicare provider agreement as a home health agency (HHA). HHAs must meet all State and local licensure requirements as well as the Medicare conditions of participation. These conditions of participation apply to an HHA as an entity. In addition, as indicated in section 4021 of Public Law 100-203, they also apply to each individual under the care of the HHA, unless a condition is specifically limited to Medicare beneficiaries.

Currently, there are about 5,680 HHAs participating in the Medicare program. The majority of HHAs are visiting nurse associations, other charitable organizations, and State and local public health departments, which had been furnishing home health services to the public before the enactment of Medicare in 1965. With the provision of Medicare financing for these services, several new types of providers entered the home health services field. These new providers include private nonprofit agencies that are organized and operated by individuals, but which have achieved and maintained a tax-exempt status; and proprietary agencies that are privately owned, profit-making agencies.

The growth in the number of HHAs participating in the Medicare program has resulted in the practice of some HHAs hiring personnel who have no prior training or experience in caring for the medical needs of the aged and disabled. Congress found this situation to be particularly prevalent in the case of those HHAs that do not directly employ home health aides, but contract out for those services, sometimes with personnel agencies that supply general temporary help. (See H.R. Rep. No. 1167, 96th Cong., 2d Sess. 369 (1980).) Section 930(l) of the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499), amended section 1861(m)(4) of the Social Security Act (the Act) by modifying the previous definition of the home health benefit that covers services furnished by a home health aide. As amended, section 1861(m)(4) of the Act requires that for Medicare to cover home health aide services, home health aides, whether employed directly by an HHA or made available through contract with another entity, must successfully complete a training program approved by the Secretary.

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) was enacted. Section 4021(a) of Public Law 100-203 amended section 1861(o)(6) of the Act by requiring that HHAs meet the conditions of participation specified in section 1891(a) of the Act that was added by section 4021(b) of Public Law 100-203. As added, section 1891(a) requires an HHA to meet the following conditions:

- Protect and promote the rights of each individual under its care.
- Notify the State entity responsible for the licensing or certification of the agency of a change in ownership, and management of the agency.
- After December 31, 1989, use as a home health aide only individuals who have been determined to be competent to furnish home health aide care.
- Use individuals that meet minimum training standards established by the Secretary to use or demonstrate durable medical equipment.
- Include an individual's plan of care required under section 1861(m) of the Act as part of the individual's clinical records described in section 1861(o)(3) of the Act (currently appears as a condition of participation in 42 CFR 405.1228).
- Operate and furnish services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1124 of the Act) and with accepted professional standards and principles that apply to professionals furnishing services in an HHA (currently appears as a condition of participation in 42 CFR 405.1220).

Section 1891(a)(3)(D)(i) of the Act requires the Secretary to establish minimun standards for home health aide training and competency evaluation programs by October 1, 1988.

Section 1891(b) of the Act requires the Secretary to assure that the conditions of participation and requirements specified in or in accordance with sections 1861(o) and 1891(a) of the Act and the enforcement of these conditions and requirements are adequate to protect the health and safety of individuals under the care of an HHA and to promote the effective and efficient use of public moneys.

Section 4039(g) of Public Law 100-203 authorizes the Secretary to issue regulations (on an interim or other basis) as may be necessary to implement the provisions of section 4021 of Public Law 100-203.

On July 1, 1988, Congress enacted the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360). Section 411(d) of Public Law 100-360 amended section 4021 of Public Law 100-203 by—

- Including physical or occupational therapy assistants in the definition of a licensed health professional; and
- Removing from section 1891 of the Act the training standards for the demonstration and use of durable medical equipment and imposing these standards as coverage requirements in section 1861(n) of the Act.

II. Redesignation Table for 42 CFR Part 405, Subpart L

In addition to the other provisions of this regulation, we have redesignated the conditions of participation for HHAs (42 CFR Part 405, Subpart L) as new Part 484. In the preamble to this rule, we refer to the redesignated sections (that is, Part 484) in our discussions of the regulation changes. We have provided below a table for cross-referencing the old and new sections.

Old section	New section
405.1201	484.1
405.1202	484.2
405.1220	484.10
405.1221	484.12
405.1222	484.14
405.1223	484.16
405.1224	484.30
405.1225	484.32
405.1226	484.34
405.1227	484.36
405.1228	484.48
405.1229	484.52
405.1230	484.40

Additionally, we are consolidating the changes to the conditions of participation for HHAs made by section 4021 of Pub. L. 100-203 in this final rule with comment period because we believe that it will be less confusing than the issuance of several different final rules on the conditions of participation for HHAs. The changes for the reduction of information collection and recordkeeping requirements made in response to the proposed rule of December 31, 1986, however, are not subject to formal public comment. We are requesting public comment only on the changes made in response to the Omnibus Budget Reconciliation Act of 1987.

III. Recent Statutory Provisions and Implementing Regulation Requirements

A. Patient Rights Requirements

Section 1891(a)(1) of the Act, as added by section 4021(b) of Pub. L. 100-203, specifies the conditions of participation regarding patient rights that HHAs must meet. HHAs must protect and promote the rights of each individual under their care, including each of the following rights:

- The right to be fully informed in advance about the care and treatment to be furnished by the HHA, to be fully informed in advance of any changes in the care or treatment to be furnished by the agency that may affect the individual's well-being, and (except with respect to an individual determined to be incompetent) to participate in planning care and treatment or changes in care or treatment.
- The right to voice grievances without discrimination or reprisal for voicing grievances with respect to treatment or care that is (or fails to be) furnished.
- The right to confidentiality of the clinical records described in section 1861(o)(3) of the Act.
- The right to have one's property treated with respect.
- The right to be fully informed orally and in writing (in advance of coming under the care of the agency) of:
  - All items and services furnished by (or under arrangements with) the agency for which payment may be made under Medicare;
  - The coverage available for items and services under Medicare, Medicaid, and any other Federal program of which the agency is reasonably aware;
  - Any charges for items and services not covered under Medicare and any charges the individual may have to pay regarding items and services furnished by (or under arrangements with) the agency; and
  - Any changes in the charges or items and services for which the individual may be liable.
- The right to be fully informed in writing (in advance of coming under the care of the agency) of the individual's rights and obligations under Medicare.
- The right to be fully informed of the availability of the State HHA hotline established under section 1864(a) of the Act.

1. *Standard:* Providing notice of rights and documenting observance.

We will require HHAs to—

- Provide patients with written notice of their rights under this condition of participation in advance of furnishing care to patients or during the initial evaluation visit but before treatment is given (§ 484.10(a)(1)).
- Maintain documentation that shows that they have complied with their obligations to notify patients of their rights (§ 484.10(a)(2)). This requirement is necessary so that State surveyors will be able to determine if HHAs are complying with these requirements.

2. *Standard:* Exercise of rights and respect for property.

The regulations—

• Specify that patients have the right to exercise their rights as patients of HHAs (§ 484.10(b)(1)).

• Permit a patient's family or guardian to exercise the patient's rights when a patient has been judged incompetent (§ 484.10(b)(2)). The Report of the Committee on the Budget, House of Representatives that accompanied Pub L. 100–203 (H.R. Rep. No. 391, 100th Congress, 1st Session 411 (1987)) indicates that it is the intent of Congress that a patient's family or guardian be permitted to exercise his or her rights if the patient is judged incompetent.

• Specify that patients have the right to have their property treated with respect (§ 484.10(b)(3)).

• Provide patients the right to voice grievances regarding treatment or care that is (or fails to be) furnished, or regarding the lack of respect for property by anyone who is furnishing services on behalf of an HHA without discrimination or reprisal for doing so (§ 484.10(b)(4)).

• Require HHAs to investigate complaints made by a patient or the patient's family or guardian regarding treatment or care that is (or fails to be) furnished, or regarding the lack of respect for a patient's property by anyone furnishing services on behalf of the HHA. HHAs also must document both the existence of complaints and resolutions (§ 484.10(b)(5)). We believe that it is the intent of Congress that HHAs both protect patients from retribution if they voice grievances about the care being furnished by an agency (or an entity under arrangement with an agency), and act to resolve any complaints lodged by patients about their care, or treatment of property. The Report of the Committee on the Budget, House of Representatives that accompanied Public Law 100–203 (H.R. Rep. No. 391, 100th Congress, 1st Session 412 (1987)) indicates that Congress believes that patients should be encouraged to voice their opinions on quality of care issues, as a means of ensuring the delivery of quality home health services. Congress also intended to place the responsibility for ensuring patients' rights to have their property treated with respect on HHAs furnishing services. Hence it appears that Congress intended that HHAs be responsible for resolving complaints made by patients regarding care and treatment or a lack of respect for a patient's property by someone furnishing services on behalf of an HHA.

3. *Standard:* Right to be informed and to participate in planning care and treatment.

The regulations—

• Provide that patients have the right to be informed orally and in writing in advance about the care and treatment to be furnished, and to be informed in advance of any changes in the care and treatment to be furnished (§ 484.10(c)(1)).

• Require HHAs to advise patients, in advance of furnishing treatment or services, of the disciplines that will furnish care, and the frequency of visits proposed to be furnished (§ 484.10(c)(1)(i)). We believe that this requirement meets the intent of Congress as expressed in the committee report language. Specifically, the Report of the Committee on the Budget, House of Representatives that accompanied Public Law 100–203 (H.R. Rep. No. 391, 100th Congress, 1st Session 411 (1987)) indicates with respect to the beneficiary's right to receive a full and complete explanation of care and treatment to be delivered, that:

> Such an explanation is to be provided by the HHA with whom a beneficiary has contracted for services and is to be given before treatment is scheduled to begin and before any recommended changes in care are put into place. It is the Committee's intent that an adequate explanation to a beneficiary include, at a minimum, a description of the services to be provided, a proposed service delivery schedule, and a discussion of any options that may be available for an alternative course of action that is in compliance with the physician's plan of care but may better meet the specific needs of the individual.

• Require HHAs to advise patients of any planned changes to the care or treatment being furnished before the changes occur (§ 484.10(c)(1)(ii)). We believe that this requirement also is intended by the Congress to be included in these regulations as evidenced by the previous cited committee language.

• Specify that patients have the right to be informed, before receiving care or treatment that they may participate in the planning of care or treatment and that HHAs must advise patients of that right. The regulation also permits patients to participate in planning changes in care or treatment (§ 484.10(c)(2)).

4. *Standard:* Confidentiality of medical records.

The regulations—

• Specify that patients have the right to confidentiality of the clinical records maintained by HHAs (§ 484.10(d)).

• Require that HHAs advise patients of an agency's policies and procedures regarding disclosure of clinical records (§ 484.10(d)).

5. *Standard:* Notification of liability for payment.

The regulations specify that patients have the right to be advised, and that HHAs must advise patients—

• Orally and in writing of the extent to which payment can be expected to be made for items or services to be furnished to patients by Medicare, Medicaid, and any other program in the State that is funded all or in part with Federal funds of which an HHA is reasonably aware (§ 484.10(e)(1)).

• Orally and in writing of the amount of charges for items and services that an HHA expects will not be covered by Medicare and the amount of any charges the individual may have to pay regarding services furnished by (or under arrangements with) an HHA (§ 484.10(e)(2)).

• Of any changes that occur in the information provided to patients under this standard as soon as possible but no later than 15 working days after an HHA becomes aware of a change (§ 484.10(e)(3)). While section 1891(a)(1)(E)(iv) of the Act requires that patients be informed of any changes in the charges for services, we are specifically requiring that notice of changes be made within 15 days since we believe that that timeframe is reasonable for HHAs to meet. We considered providing a longer timeframe for notification of changes. However, we were concerned that a longer timeframe would increase the potential beneficiary liability for charges that the patient had previously been advised would be covered. A longer timeframe also might increase significantly the liability of a patient for charges that may be increased after the patient's start of care (for example, a general increase in charges for all patients that occurs after the initial notice of charges). We also considered imposing no timeframe. However, this alternative also would have increased the potential of patient liability since agencies would be able to delay advising patients of changes indefinitely. We request specific public comment on this timeframe.

6. *Standard:* State home health hotline.

The regulations specify that all patients have the right to be advised of the number of the HHA hotline in the State and require that at the time HHAs accept patients for treatment or care, HHAs must advise patients in writing of the telephone number of the HHA hotline established by the State, the hours of its operation, and its purpose (§ 484.10(f)). While section 1891(a)(1)(G) of the Act specifies that patients have the right to be informed of the availability of the State HHA hotline, the Report of the Committee on the Budget, House of Representatives that accompanied Public Law 100–203 (H.R. Rep. No. 391, 100th Congress, 1st Session 414 (1987)) states "that agencies inform beneficiaries of the availability of the hotline, including the actual number of the hotline and the hours during which it is in service. Agencies should also explain the purpose of the hotline so that beneficiaries can make appropriate use of it."

B. Home Health Aide Training and Competency Requirements

Section 4021(b) of Public Law 100–203, adds section 1891(a)(3) to the Act and specifies that—

• Beginning January 1, 1990, HHAs must not use as home health aides (on a full-time, temporary, per diem, or other basis), individuals to furnish home health services, unless the individuals have completed a training and competency evaluation program or a competency evaluation program, that meets the minimum standards established by the Secretary under 1891(a)(3)(D) of the Act, and are competent to furnish home health services. If the individual has not been employed as a home health aide for a continuous period of 24 consecutive months since completing a program, then the individual is not considered to have completed either a training and competency evaluation program, or a competency evaluation program (sections 1891(a)(3) (A) and (C)).

• HHAs must provide a competency evaluation program and necessary preparation for home health aides employed as of July 1, 1989 to complete the program by January 1, 1990 (section 1891(a)(3)(B)(i)).

• HHAs must provide regular performance reviews and in-service education to assure the competency of home health aides (section 1891(a)(3)(B)(ii)).

• The Secretary must establish minimum standards for training and competency evaluation programs by October 1, 1988, that address the content of the curriculum, minimum hours of training, qualification of instructors, and procedures for determination of competency (sections 1891(a)(3)(D) (i) and (ii)). The standards may permit approval of programs offered by or in HHAs (if they have not been out of compliance with any condition of participation in the last two years), as well as outside agencies (including employee organizations), and of programs in effect on December 22, 1987, which met the standards established by the Secretary (section 1891(a)(3)(D)(iii)). Individuals completing a training and competency evaluation program before July 1, 1989 will be deemed to have completed a program approved by the Secretary if the Secretary determines that the program meets the Secretary's standards (section 1891(a)(3)(D)(iv)).

1. *Definition of "home health aide".* We have revised § 484.4 to define the term "home health aide" as any individual who has successfully completed a training program that meets the requirements of § 484.36(a) and a competency evaluation program that meets the requirements of § 484.36(b), or a competency evaluation program that meets the requirements of § 484.36(b). We believe that Congress intended that to function as a home health aide, an individual must meet the requirements of section 1891(a)(3) of the Act.

Section 1891(a)(3) of the Act states specifically, that a "home health aide" is any individual who has successfully completed a training and competency evaluation program *or* a competency evaluation program that meets the requirements established by the Secretary. Hence, as long as an individual has successfully completed a competency evaluation program that meets the requirements established for those programs in § 484.36(b), the individual is considered to be a "home health aide", regardless of whether he or she has also completed a training program that meets the requirements of § 484.36(a). However, any training offered by an HHA or any other entity that is designed to enable an individual to successfully complete the competency evaluation program must meet the requirements of § 484.36(a) to be considered to be approved by the Secretary.

2. *Condition of participation:* Home health aide services.

Section 484.36 is revised to require that HHAs may not use (on any basis, directly or under arrangements with another organization), any individual who does not meet the definition of "home health aide" in § 484.4 to furnish home health aide services after August 14, 1989.

3. *Standard:* Home health aide training.

The regulations specify—

• The requirements that a home health aide training program must meet (§ 484.36(a)).

• The content requirements for home health aide training programs (§ 484.36).

• That an aide training program must, at a minimum, include 75 hours of a combination of classroom and supervised practical training as described in § 484.36(a)(1). The classroom training may be conducted in an HHA; we are not requiring that the classroom training be provided in an academic setting. The training program must contain no fewer than 16 hours of supervised practical training. The individual being trained must have completed at least 16 hours of classroom training before beginning supervised practical training (§ 484.36(a)(1)).

We have established a requirement for 75 hours of total training to conform to the statutory requirement regarding hours of training for nurses' aides in Medicare and Medicaid certified nursing facilities of various types. Sections 1819(f)(2)(A)(i)(II) and 1919(f)(2)(A)(i)(II) of the Act require that nurses' aides must have received a minimum of 75 hours of initial training in order to function as nurses' aides in these facilities. We adopted the statutory standard for hours of training for nurses' aides in these facilities because we believe that it is appropriate to require the same amount of training for home health aides as for nurses' aides in these facilities. Nurses' aides in these facilities furnish essentially the same services to inpatients and residents of these facilities as home health aides furnish to patients in their homes. Since the statute specifies 75 hours as the minimum amount of training for nurses' aides, we believe that this amount of training is equally applicable to home health aides.

In addition, we have required that at least 16 hours of training be supervised practical training because we believe that hands-on experience is essential to learning how to furnish these services. We have defined "supervised practical training" as meaning training in a laboratory or other setting in which the trainee performs tasks on an individual under the direct supervision of a registered nurse or licensed practical nurse. Supervised practical training could occur in the course of furnishing services to patients as long as the trainee was accompanied and observed by a registered nurse or a licensed practical nurse who retained responsibility for the services being furnished.

• That the home health aide training program must include each of the following subject areas:

Communication skills.
Observation, reporting, and documentation of patient status and the care or services furnished.
Reading and recording temperature, pulse, and respiration.
Basic infection control procedures.
Basic elements of body function and changes in body function that must be reported to an aide's supervisor.
Maintenance of a clean, safe, and

healthy environment.
Recognizing emergencies and knowledge of emergency procedures.
The physical, emotional, and developmental characteristics of the populations served by the HHA, including the need for respect for the patient, his or her privacy, and his or her property.
Appropriate and safe techniques in personal hygiene and grooming, including: bed bath; sponge, tub, or shower bath; shampoo, sink tub, or bed; nail and skin care;. oral hygiene.
Safe transfer techniques and ambulation.
Normal range of motion and positioning.
Adequate nutrition and fluid intake.
Any other task that the HHA may choose to have the home health aide perform (§ 484.36(a)(1)).

We believe that these topics must be addressed for an individual to be able to function appropriately as a home health aide. These subject areas are a composite of the areas included in the home health aide training standards of the Joint Commission for Accreditation of Health Organizations (freestanding home care standards for 1988), the model curriculum of the National Homecaring Council (now under the auspices of the Foundation for Home Care), and the National League for Nursing (standards for accredited HHAs). Thus, we believe that these areas represent, to the degree possible, the current industry standards regarding the curriculum that is necessary to ensure a minimum level of quality of home health aide services. HHAs are, of course, free to instruct aides in additional areas of concern to them and to provide training of a duration that exceeds the mimimum required by these regulations.

- That a home health aide training program may be offered by any organization (for example, an HHA) except as specified in § 484.36(a)(2)(iii) (§ 484.36(a)(2)(i)).
- The qualifications for instructors of home health aide training and supervision (§ 484.36(a)(2)(ii)).
- That home health aide training programs that are offered by or in an HHA that has been determined to be out of compliance with one or more conditions of participation within any of the 24 months prior to the start of the training program do not meet the training program requirements (§ 484.36(a)(2)(i)).

These provisions are supported by section 1891(a)(3)(D)(iii) of the Act and the legislative history. The Report of the Committee on Energy and Commerce, House of Representatives that accompanied Public Law 100-203 (H.R. Rep. No. 391, 100th Congress, 1st Session 416 (1987)) further states that—"It should be emphasized that the Committee intends for these agencies to have been in compliance with all—not most—the conditions of participation. Medicare certification—which can be awarded even when an agency has not met all the participation requirements—alone, is [n]ot sufficient to grant recognition of a training program offered by or in that agency."

Therefore, we believe that it is the intent of Congress that the only entities restricted from furnishing home health aide training are HHAs that have been out of compliance with one or more conditions of participation at any point within the previous two year period. Those HHAs are limited to hiring home health aides that already meet the training standards or arranging for training of home health aides through contracts with organizations to which the HHAs are not directly or indirectly related as defined in regulations at § 413.17.

While the statute and the committee reports preclude acceptance of home health aide training programs provided "by or in" HHAs that have been out of compliance with any of the conditions of participation, we do not believe that it was the intent of Congress to preclude HHAs from arranging for training and competency evaluation programs that meet these standards through contracts with entities to which they are not related. The effect of a prohibition against use of a contract to acquire training may be the loss of access to home health aide services if HHAs are unable to hire aides who are already trained.

- That the training of home health aides and the supervision of home health aides during the supervised practical portion of the training be performed by or under the general supervision of a registered nurse who possesses a minimum of 2 years of nursing experience. At least 1 year of nursing experience must be in the provision of home health care, and the registered nurse must have had at least 6 months experience supervising home health aide services (§ 484.36(a)(2)(ii)).

We believe that this level of expertise is necessary as a minimum requirement for the individual who will be responsible for the training of home health aides. We believe that only a registered nurse with this level of experience and expertise will be able to oversee properly the training of home health aide trainees due to the nature and diversity of the curriculum.

The regulations, however, permit the use of individuals to supplement the instruction as long as they function under the supervision of a qualified instructor. For example, a licensed practical nurse could provide the home health aide training under the supervision of a registered nurse who has 2 years experience in home health care and at least 6 months experience in training home health aides. In addition, § 484.36(b)(5)(iv) permits licensed practical nurses, as well as registered nurses, to supervise home health aide candidates in the course of the supervised practical training required by § 484.36(a)(1). However, a registered nurse must maintain overall responsibility for the training of all home health aide candidates, and is required by § 484.36(b)(3)(ii) to perform the competency evaluation of home health aides.

- That HHAs must maintain documentation that the requirements relating to the training program are met (§ 484.36(a)(4)). We believe that this documentation is necessary for the Medicare State surveyor and the Secretary to determine if the home health aides used by an HHA meet the requirements of these regulations.

A home health aide will be considered to have completed a training and competency evaluation program that was approved by the Secretary if the home health aide has successfully completed a training and competency evaluation program that the Secretary determines met the requirements of this standard and the competency evaluation standard at § 484.36(b) at the time the aide completed it. Therefore, home health aides who have already complied with these requirements need not be retrained and reevaluated to be considered to be "home health aides." However, HHAs must document that all of these requirements were met by the training and competency evaluation programs that aides successfully completed. In making these determinations, past in-service training and supervisory evaluation visits that occurred when the supervisor observed the aide furnishing care, can be considered "supervised practical training."

3. *Standard:* Competency evaluation procedures.

These regulations—

- Address the frequency of competency evaluations (§ 484.36(b)(1)).
- Specify that individuals may furnish home health aide services on behalf of an HHA only after they have successfully completed a competency evaluation program. HHAs are responsible for ensuring that the individuals who furnish home health aide services on their behalf meet the competency requirements (§ 484.36(b)(1)(i)).

This requirement implements the intent of Congress that home health aides must be found to be competent before they may furnish home health aide services, and that HHAs are responsible for using only competent home health aides. Specifically, the Report of the Committee on the Budget, House of Representatives that accompanied Public Law 100-203 (H.R. Rep. No. 100-391, 100th Congress, 1st Session 417 (1987)) states that—

"It is the Committee's intent that such determinations of competency are to be made before an aide can be allowed to provide a particular type of care or service."

Moreover, page 416 of the Report states that—

"As the Committee amendments state, home health agencies themselves are responsible for ensuring that their aides are, in fact, trained and competent."

- Require that HHAs complete a performance review of each home health aide no less frequently than every 12 months. The performance review must meet each of the requirements for the competency evaluation as set forth in § 484.36(b) (§ 484.36(b)(1)(ii)).

Section 1891(a)(3)(B)(ii) requires that there be periodic performance evaluation of home health aides. We chose to require that this review occur no less than every 12 months because we understand that annual performance reviews are the norm for entities that currently perform these reviews, and we believe that annual reviews are adequate to assess competency. We expect that periodic performance reviews will be completed once per year based on the information that supervisors gather in the course of performing supervisory visits throughout the year, and by interviewing home health aides about areas that aides may not have had to demonstrate competency during the year, such as emergency procedures.

- Provide that a home health aide competency evaluation program may be offered by any organization except in an HHA that has been determined to be out of compliance with one or more of the requirements of part 484 within any of the 24 months before the training program is to begin (§ 484.36(b)(3)(i)).

Section 1891(a)(3)(D)(iii) of the Act and the Committee language that apply to when HHAs may not train home health aides, as discussed in reference to § 484.36(a)(2)(i), also apply to competency evaluation programs for home health aides. Therefore, HHAs that are precluded from training their home health aides are also precluded from conducting competency evaluations for those aides.

- Specify that home health aide competency evaluation programs that are offered by or in HHAs that have been determined to be out of compliance with one or more of the conditions of participation within any of the 24 months prior to the competency evaluation do not meet the requirements of these regulations (§ 484.36(b)(3)(iii)).
- Require that competency evaluations be performed by a registered nurse. We believe that only a registered nurse is capable of determining if an aide is competent to furnish care.
- Require HHAs to maintain documentation that the requirements relating to competency evaluation are met (§ 484.36(b)(5)(i)). We believe this documentation is necessary in order for the Medicare State surveyor and the Secretary to determine if home health aides used by HHAs meet the requirements of these regulations.
- Require that a registered nurse must evaluate the competency of each aide with respect to the topics identified in § 484.36(a)(1) (ii) through (xiii) and any other task an agency chooses to have an aide perform after observation of an aide's performance of the task with a patient (§ 484.36(b)(5)(ii)). We believe that, to protect patient health and safety, it is essential that a home health aide's competency be demonstrated in each task that an HHA would have the home health aide perform. Moreover, we believe that it is necessary that a registered nurse perform evaluations by observing a home health aide performing the task for which the aide is being evaluated. We do not believe that written examinations alone can satisfactorily determine whether aides are competent to furnish patient care. We believe that these requirements comply with the stated intent of Congress. Specifically, the Report of the Committee on the Budget, House of Representatives that accompanied Public Law 100-203 (H.R. Rep. No. 391, 100th Congress, 1st Session 417 (1987)) states that—

"Among the key issues that must be addressed is the level of competency that is to be determined before services can be provided. In setting such standards, however, it should be made clear that the Committee does not intend to require that all home health aides be competent to provide all types of home health services. It does intend, however, that each individual aide be qualified to deliver each individual service or perform each individual task for which he or she is responsible. For example, an aide who, among other things, is expected or required to turn patients who are confined to bed, must be determined to be competent in that job in order for this requirement to be met. Similarly, this mandate would require that an aide who also is responsible for assisting in transferring patients from their bed to a wheelchair or for helping to bathe them must be determined to be competent in those tasks. It is the committee's intent that such determinations of competency are to be made before an aide can be allowed to provide a particular type of care or service."

- Specify that home health aides must not be considered to have successfully passed competency evaluations if the aides are determined by a qualified individual performing the evaluation to be unsatisfactory in more than one of the topics evaluated (§ 484.36(b)(4)(ii)). We believe that the establishment of a certain minimal level of competency is not inconsistent with Congress' intent that only competent persons provide home health aide services. We recognize that an unsatisfactory showing in only one of the areas does not necessarily prevent an aide from being competent to furnish services for which he or she has demonstrated competence. However, section 1891(a)(3)(A) of the Act specifies that the agency must use as home health aides only individuals who have "completed a training and competency evaluation program, or a competency evaluation program, that meets minimum standards established by the Secretary * * * and is competent to provide such items and services." We believe that a minimum standard of satisfactory completion of the competency program is necessary in order to determine if an individual who has completed a competency evaluation program is competent to furnish services. We considered specifying topic areas that would have to be satisfactorily completed for the aide to be determined competent to function. However, we chose to impose a requirement that any individual who is found unsatisfactory in more than one of the required topics will not be considered to have completed a competency evaluation program until he or she has been found satisfactory in at least 11 of the required topics. We request specific public comment regarding this minimum standard of completion of the program.
- Require that home health aides cannot be considered competent in any task for which they are evaluated as "unsatisfactory," and may not perform that task as home health aides without direct supervision of a licensed nurse

until they receive remedial training and have passed with a subsequent evaluation of satisfactory (§ 484.36(b)(5)(iv)).

Section 1891(a)(3)(C) of the Act precludes the use of home health aides who have not demonstrated competency in the services that they furnish. Moreover, we believe that this restriction is clearly the intent of Congress as reflected in the committee report language quoted with regard to § 484.36(b)(4)(i) and (ii) above. The requirement, however, permits the use of a licensed nurse (that is, a registered nurse, a licensed practical nurse, or a licensed vocational nurse) to accompany a home health aide candidate in the provision of hands on care as part of the 16 hours of supervised practical training required for a home health aide training program to meet the Federal requirements at § 484.36(a).

- Require home health aides to receive no less than 3 hours of in-service training per calendar quarter. This in-service training must be provided by a qualified instructor as defined in § 484.36(a)(2)(ii) and may occur while an aide is furnishing care to patients (§ 484.36(b)(7)). Section 1891(a)(3)(B)(ii) of the Act also requires that there be regular in-service training of home health aides. We believe that 3 hours of in-service training per calendar quarter is the minimum that could effectively meet the intent of Congress. HHAs have considerable latitude in determining when this in-service training can occur.
- Require HHAs to implement a competency evaluation program that meets the requirements of these regulations no later than February 14, 1990, and provide preparation as may be necessary for an individual to successfully complete a program after August 14, 1990 (§ 484.36(b)(5)). After August 14, 1990, home health aide services must be furnished by a home health aide as defined in § 484.2. We have extended these statutory effective dates by 6 months each because of the delay in promulgating this interim final rule.

When home health aides have successfully completed an initial competency evaluation program before February 14, 1990, that the Secretary determines met the requirements of § 484.36(b) at the time the aides successfully completed it, then the home health aides will be considered to have successfully completed an initial competency evaluation program approved by the Secretary. Therefore, home health aides who have already complied with a competency evaluation program that meets the requirements of this standard need not complete another initial competency evaluation to be considered to be home health aides.

C. Plan of Treatment

Section 1891(a)(5) of the Act, as added by section 4021(b) of Public Law 100–203, requires HHAs to include "an individual's" plan of care required under section 1861(m) of the Act as part of the patients' clinical records. Section 405.1223 (now recodified at § 484.16) requires that care follow a plan of treatment established and reviewed periodically by a physician, and defines the minimum content of the plan of treatment. The content and periodic physician review requirements governing the "plan of treatment", which are required by the conditions of participation at § 484.16, are identical to the content and periodic physician review requirements of the plan, which section 1861(m) requires be present for the services to be covered. The effect of the statutory provisions is, therefore, to rename the "plan of treatment" as "plan of care". This is not to be confused with the nursing care plan, which is sometimes called a "plan of care". The conditions of participation do not require that an HHA develop or maintain a "nursing care plan".

Consequently, we have changed the term "plan of treatment" to "plan of care" to comply with section 4021 of Public Law 100–203. As revised, § 484.48 requires that plans of care as described in § 484.18(a) be included in patients' clinical records.

D. Federal, State, and Local Laws and Regulations and Accepted Standards of Practice

Section 1891(a)(6) of the Act, as added by section 4021(b) of Public Law 100–203, requires HHAs to operate and furnish services in compliance with all applicable Federal, State, and local laws and regulations, and with accepted professional standards and principles that apply to professionals furnishing home health services. Section 1891(a)(2) of the Act requires HHAs to notify State survey agencies of changes in the persons with an ownership or control interest; the persons who are officers, directors, agents, or managing employees (as defined in section 1126(b) of the Act); and the corporation, association, or other company responsible for the management of an HHA. We have implemented these statutory requirements in § 484.12, which previously was limited to compliance with Federal, State, and local laws and regulations.

These regulations implement the statute by—

- Requiring HHAs and their staff to operate and furnish services in compliance with all applicable Federal, State, and local laws and regulations. If State or applicable local laws provide for licensure of HHAs, HHAs not subject to licensure must be approved by the licensing authority as meeting the standards established for licensure (§ 484.12(a)).
- Requiring HHAs to comply with the requirements of part 420, subpart C (§ 484.12(b)). (Subpart C implements section 1124 of the Act).
- Requiring that HHAs disclose the information specified in § 484.12(b) (i) through (iii) to State survey agencies at an HHA's initial request for certification, and at the time of any change in this information (§ 484.12(b)). The Report of the Committee on Energy and Commerce, House of Representatives that accompanied Public Law 100–203 (H.R. Rep. No. 391, 100th Congress, 1st Session 414 (1987)) indicated that Congress intended that HHAs notify State survey agencies of these changes at the time they take place (page 414 of that Report). Moreover, section 1891(a)(2) of the Act specifically states that this notice must be given "at the time of the change".
- Requiring HHAs to notify State agencies of the names and addresses of all persons with an ownership or control interest in an HHA as defined in §§ 420.201, 420.202, and 420.206 (§ 484.12(b)(1)). Regulations at §§ 420.201, 420.202, and 420.206 implement section 1124(a)(3) of the Act and therefore have been cross referenced here.
- Requiring HHAs to notify State survey agencies of the names and addresses of each person who is an officer, a director, an agent, or a managing employee of an HHA as defined in §§ 420.201, 420.202, and 420.206 (§ 484.12(b)(2)). Regulations at §§ 420.201, 420.202, and 420.206 implement section 1126(b) of the Act and therefore have been cross referenced here.
- Requiring HHAs to notify State survey agencies of the names and addresses of the corporation, association, or other company that is responsible for managing an HHA, and the names and addresses of the chief executive officer and the chairpersons of the boards of directors of that corporation, association, or other company responsible for managing an HHA (§ 484.12(b)(iii)). We believe that these requirements are necessary to clearly identify where the responsibility for the management of HHAs lies. In our experience, there are frequently extremely complex corporate arrangements, involving multiple layers of ownership and management, which cause it to be extremely difficult to identify the entity that is legally responsible for the management of a provider. We believe it is the intent of Congress that the licensing entity be advised of the names and addresses of the individuals who are ultimately responsible for the management of an HHA so that they have the information necessary to evaluate the HHA before licensing. We believe that the names and addresses of the chief executive officer and the chairperson of the board of directors of the corporation, association, or other company that is responsible for managing an HHA are necessary to this review. We believe that this requirement is supported by the Report of the Committee on Energy and Commerce, House of Representatives that accompanied Public Law. 100–203 (H.R. Rep. No. 391, 100th Congress, 1st Session 414 (1987)), which states that—

> The Committee believes these new requirements must be established in order to provide licensing agencies with important and relevant information that should be considered as part of the licensing process. With the number of home health agencies growing at an annual rate of some 20 to 25 percent, there is an increasing need for licensing officials to have access to information about who owns and manages agencies that serve a vulnerable population and that receive public dollars. The backgrounds of individuals who have, for example, been convicted of fraud or fined for violating program strictures in the past should be reviewed carefully before a license to operate is granted or renewed. Similar action should be taken with regard to the records of organizations or companies that have owned or managed home health agencies (or other health facilities such as a nursing home) that have been previously decertified from participation in either the Medicare or Medicaid program. But unless licensing bodies receive notice of changes in ownership or management, such investigations are more difficult to undertake.

- Requiring that HHAs and their staff comply with accepted professional standards and principles that apply to professionals furnishing items and services in HHAs. The Report of the Committee on Energy and Commerce, House of Representatives that accompanied Public Law 100–203 (H.R. Rep. No. 391, 100th Congress, 1st Session 415 (1987)), states that—

> The Committee intends such standards and principles to include those that are applicable to the delivery of professional services in a home health care setting, as well as the more general standards and principles with which a member of a particular health profession is expected to comply.

F. Deletion of Addenda to § 405.1221(d)

We have deleted from the appendix to the home health conditions of participation, the addenda to § 405.1221(d) that identifies specific State requirements that States had imposed upon HHAs as Federal conditions of participation because they were considered to be higher than the Federal requirements. This appendix is being deleted because section 1891(a)(2) of the Act, as amended by Public Law 100–203, requires that HHAs comply with all applicable Federal, State, and local laws and regulations. We believe that the specified State requirements contained in the appendix are all requirements of State or local laws and regulations that apply to HHAs. Therefore, section 1891(a)(2) of the Act, as amended by Public Law 100–203, requires that the more stringent requirements contained in the appendix (as well as applicable State or local laws and regulations that have not been published in the appendix) must be met by HHAs so that they can be certified to participate in the Medicare program. Hence, there is no need to publish them in an appendix to the conditions of participation.

IV. Reduction in Information Collection and Recordkeeping Requirements

A. Background

Regulations at 5 CFR 1320.14 implement the requirement of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) that authorizes the Office of Management and Budget (OMB) to review all information collection and recordkeeping requirements in Federal regulations. On December 31, 1986, we published a proposed rule (51 FR 47286) that responded to OMB's request for changes to reduce or simplify recordkeeping requirements within the conditions of participation for HHAs, independent laboratories, providers of outpatient physical therapy, physical therapists in independent practice, and providers of outpatient speech therapy. The proposed rule also solicits public comments on those changes as well as on all recordkeeping requirements contained in 42 CFR part 405, subparts L, M, and O.

B. Analysis of Comments Received on December 31, 1986 Proposed Rule

Each condition of participation and standard identified in the proposed rule contains requirements other than the paperwork burden reduction requirements on which the proposed rule was based. There were many comments regarding issues that were not related to reducing the paperwork burden requirements. While we have taken these other comments under advisement, we have not adopted them in this final rule, nor have we responded to them in this preamble. We are unable to adopt the commenters' suggestions on requirements other than those that we specifically addressed in the proposed rule because to do so would be to adopt them without providing an opportunity for public comment. We will, however, consider the recommendations of the commenters before proposing future changes to the conditions of participation.

Concerning the reduction of information collection and recordkeeping requirements for the conditions of participation for HHAs, we received comments from 69 commenters, which included professional organizations and associations, HHAs, physical therapists, rehabilitation agencies, public health departments, State governmental agencies, universities, and private individuals. We have summarized below the major provisions of the proposed rule that relate to the conditions of participation for HHAs and for which comments were received. A summary of those comments and our responses follow an explanation of each provision.

1. *Condition of participation:* Organization, services, administration.—Standard: Personnel policies and records (§ 405.1221(e)).

Section 405.1221(e) requires that HHA personnel records include current job descriptions, qualifications, evidence of licensure (if applicable), performance evaluations, and health examinations. We proposed to revise these requirements to require that HHA personnel records retain only qualifications and evidence of State licensure (if applicable).

Comments: —Many commenters supported the reduction of this information, however other commenters objected to this reduction. Those who objected stated that elimination of these requirements would minimize an HHA's control over individuals who furnished services under arrangements with an HHA. They indicated that the elimination of these requirements would result in the use of less qualified personnel and that patient outcomes could suffer as a result. Commenters also stated that evidence of health examinations is important to increasing the likelihood that persons furnishing home health care are free from disease that could be communicated to patients.

Response: We have decided to revise the current requirements as we had proposed. We expect that the emphasis

BEST COPY AVAILABLE

of both HHAs and surveyors will be on the outcome of patient care, rather than on the content of personnel files. We are requiring that personnel records include only qualifications and licensure information because we believe that only those records directly impact the quality of patient care.

2. *Condition of participation:* Organization, services, administration—Standard: Personnel under hourly or per visit contracts (§ 405.1221(f)).

Section 405.1221(f)(1) specifies that, if personnel under hourly or per visit contract are used by an HHA, a written contract must exist between the two parties that designates clearly:

(i) That patients are accepted for care only by the primary HHA;

(ii) The services that are to be provided;

(iii) The need to conform to all applicable agency policies including personnel qualifications;

(iv) The responsibility for participating in developing plans of treatment;

(v) The manner in which services will be controlled, coordinated, and evaluated by the primary HHA;

(vi) The procedures for submitting clinical and progress notes, scheduling of visits, periodic patient evaluation; and

(vii) The procedures for determining charges and payment.

Section 405.1221(h) specifies the requirements to be met by an HHA that furnishes services under an arrangement with another entity. Specifically, there must be a written contract between an HHA and another entity that meets the requirements of § 405.1221(f)(1) and section 1861(w) of the Act. Therefore, any revisions to the requirements of § 405.1221(f)(1) also revise the content of the contracts between an HHA and an entity that provides services on behalf of the HHA under arrangements in accordance with section 1861(w)(2) of the Act.

We proposed to revise § 405.1221(f) by removing the explicit contractual requirements, such as the designation of the procedures for submission of clinical records, and the manner in which the services would be controlled, coordinated, and evaluated by the agency. We proposed to require that personnel under contract be held accountable for meeting the same agency requirements as salaried personnel as set forth in subpart L. (§ 405.1221(f)(3), 51 FR 42781).

Comments: Several commenters requested that we delete any specifications for these contracts. Other commenters requested that we retain § 405.1221(f)(1)(v) because in the commenters' opinions, it is essential that a contract address the manner in which care is controlled, coordinated, and evaluated since the contract provisions apply to services provided under arrangements with another entity. Other commenters opposed the requirement at § 405.1221(f)(a)(vii) that the contracts address "procedures for determining charges and reimbursement". Another commenter objected to the requirement in § 405.1221(f)(1)(iii) that the personnel conform to all applicable agency personnel policies, because the commenter believes it is often difficult to do so. Another commenter recommended that we consult with the Department of Labor and the Internal Revenue Service (IRS) to avoid conflict with labor laws and IRS laws for contract workers. However, this commenter did not specify any conflicts caused by these regulations.

Response: Upon reconsideration, we have not removed any of the contract requirements between an HHA and personnel paid on a per hour or per visit basis (§ 405.1221(f)) and between an HHA and entities that furnish services under arrangements on behalf of an HHA (§ 405.1221(h) through its reference to § 405.1221(f)(1)). We chose not to eliminate these requirements as a result of the OIG study of home health aide services described earlier. This study revealed widespread problems in the provision of home health aide services, and found a significantly disproportionate share of the problems with the services of home health aides who furnish services under an arrangement between an HHA and another entity.

The most frequently occurring problem is that home health aides who are not employees of an HHA do not perform all of the tasks that a physician orders the aides to perform. OIG found that the supervision of these aides, in particular, is inadequate, and that patients are not likely to recover as quickly or easily as they might, had the services ordered been furnished. Clearly, there are weaknesses in the provision of home health aide services that impact adversely upon patient care. We believe that deleting those aspects of the required content of these contracts that address most specifically patient care (such as the control, coordination, and evaluation of care furnished under contract and the submission of clinical record information) will exacerbate those weaknesses, since the OIG study found that the problems with patient care occurred because of inadequate control, and inadequate coordination and evaluation of care furnished under the contract. Therefore, we are retaining the current requirements while we seek ways to resolve the problems that OIG identified with home health aide services provided under contract.

We do, however, recognize that the language in § 486.1221(f)(1)(vii), which requires "procedures for determining charges and reimbursement" could be better stated as "payment for services furnished under the contract". While this contract requirement does not impact specifically on the care furnished, it is essential to a determination of whether the services are furnished under an arrangement that meets the requirement of section 1861(w)(1) of the Act that an arrangement provides that Medicare payment to an HHA is payment in full for the services furnished under the contract.

We do not believe that it is necessary to consult with the Department of Labor or IRS regarding their laws for "contract employees". The commenter presented no substantial conflict that needs to be resolved by consulting with the Department of Labor or IRS.

3. *Condition of participation:* Organization, services, administration—Standard: Coordination of patient services (§ 405.1221(g)).

This standard requires that the clinical record support an HHA's attempts to assure a free exchange of information among all personnel furnishing services. We proposed only clarifying changes to the language of this requirement.

Comment: Most commenters supported our proposal. However, one commenter asked whether the requirement that all personnel who furnish services maintain liaison to support the objectives of the plan of treatment applied to all services furnished by an HHA or only to those on the plan of treatment.

Response: Section 405.1223 requires that the plan of treatment contain the services that an HHA furnishes to a patient during the period covered by the plan of treatment. Therefore, the coordination of services required by § 405.1221(g) encompasses all services furnished by an HHA to a patient.

Comment: One commenter suggested that HCFA Form 486 (Medicare's medical information form and update) be sent to a physician every 60 days in lieu of a summary report on a patient's condition, which is required by § 405.1221(g).

Response: HCFA Form 486 is prepared only for Medicare beneficiaries when an HHA bills Medicare for care. It is not completed ordinarily for non-Medicare patients, as is the summary report that is required by § 405.1221(g). An HHA may, if it chooses, use a completed HCFA Form 486 as the summary report, as long as it summarizes adequately the patient's condition. However, we do not believe that any useful purpose would be served by requiring its use for all patients in lieu of any other summary report an HHA may now prepare and send to physicians every 60 days.

Comment: One commenter suggested that we revise § 405.1221(g) to require that a written summary report of a patient's condition be sent to a physician no less frequently than every 62 days, rather than 60 days as currently required.

Response: We have revised the regulation to permit the submission of the summary report no less often than every 62 days (rather than every 60 days) to conform the timeframe to the revision we have made to the frequency of physician review (§ 405.1223(b), redesignated as § 484.16) and signature (§ 405.1633) on the plan of care.

4. *Condition of participation:* Organization, services, administration—Standard: Institutional planning (§ 405.1221(i)).

This standard requires that an HHA conform to certain broad requirements relating to the formulation of an annual operating budget and an agency generated three-year capital expenditure program for anticipated expenditures that exceed a set dollar amount. We proposed to increase this amount from $100,000 to $600,000 in accordance with sections 1122(g) and 1861(z) of the Act, as amended by section 607 of the Social Security Amendments of 1983, Pub. L. No. 98–21. The other provisions are required explicitly by section 1861(z) of the Act or are necessary for purposes of determining whether the threshold amount has been exceeded.

Comment: Commenters supported this statutory change.

Response: As proposed, we have revised § 405.1221(i)(2) to reflect the increase in the threshold amount from $100,000 to $600,000.

5. Condition of participation: Acceptance of patients, plan of treatment, medical supervision—Standard: Plan of treatment (§ 405.1223(a)).

This standard requires that care follow a plan of treatment established and reviewed periodically by a physician, and defines the minimum content of the plan of treatment. We proposed to retain this standard without change. However, we requested comments on the continued need for these requirements.

As explained in section III. D. of this preamble, we have changed the term "plan of treatment" to "plan of care" to comply with section 4021(b) of Pub. L. 100–203.

Comment: One commenter recommended that when speech therapy services are furnished, the speech therapist should be allowed to establish an HHA plan of treatment without physician consultation or approval.

Response: Section 1861(m) of the Act requires a physician to establish and periodically review a plan of care, and section 1891(a)(4) of the Act requires HHAs to include in their clinical records a plan of care as required under section 1861(m)(4) of the Act. Therefore, the statute requires that HHAs have a plan of care that is established and approved by a physician for each individual served by the agency.

Comment: One commenter requested that we revise § 405.1223(a) to permit a physician to order an initial assessment of the need for home care through a hospital discharge planner or the physician's office staff, and that the plan of care established as a result of that initial assessment be reviewed by the physician only if there are additions or modifications to the original plan.

Response: Acceptance of the commenter's suggestion would violate section 1891(a)(4) of the Act that requires a plan of care, established and reviewed periodically by the physician, be included in the patient's clinical records.

Comment: One commenter believes that the inclusion of orders for specific procedures and modalities of therapy services (specifically amount, frequency, and duration of these services) for a period of 60 days is inappropriate since a patient's response can vary from day to day, and the amount, frequency, and duration of treatments may need to be changed more frequently than every 60 days.

Response: We believe that it is important to patient health and safety that this level of specificity be included in the plan of care so that any professional who must care for the patient is aware of the services ordered by the physician for the patient. While the plan of care must be reviewed no less than every 62 days (as revised by these regulations at § 405.1221(g)), health professionals are encouraged to contact the physician to acquire changes in orders whenever changes appear appropriate to the patient's treatment.

Comment: Several commenters believe that a physician should sign only for those activities within the plan of treatment for which the physician is responsible. One commenter mentioned specifically that a physician should not be responsible for a nurse's plan of care.

Response: We believe that a physician is responsible for all services that are ordered when he or she approves a plan of care in the same way that the physician is responsible for all services he or she orders in a hospital or in a skilled nursing facility. An HHA is (and always has been) found to be out of compliance with these regulations if it furnishes any care that is not included in a plan of care that a physician has established and approved.

The purpose of a plan of care is to provide the information essential for the provision of quality care. It is the only care plan that an HHA is required by these regulations to keep, and therefore, it must contain sufficient information to permit staff who are not familiar with the patient to provide quality care. If an HHA desires to also develop a "nurse's plan of care", it is certainly free to do so to the degree that it does not cause information necessary to the care of a patient to be deleted or omitted from the plan of care that must be established and reviewed periodically by a physician.

6. *Condition of participation:* Acceptance of patients, plan of treatment, medical supervision—Standard: Periodic review of plan of treatment (§ 405.1223(b)).

This standard requires that the status of each patient be reviewed no less frequently than every 60 days by HHA staff and the attending physician. We proposed to retain the requirement for physician and HHA staff review, but to require that the status of each patient be reviewed no less frequently than every 62 days to conform this requirement to the physician certification requirement (§ 405.1633).

Comments: Many commenters supported the proposed conforming change. One commenter requested that the requirement for periodic physician review of the plan of treatment be eliminated because the physician must also sign a physician certification every two months and receive a summary report every 60 days. Another commenter suggested that we require that an HHA provide the physician who signed the plan of care with a summary report of a patient's condition no less frequently than every 62 days also, to conform it to the physician certification, and plan of care signature requirements.

Response: We have retained the requirement for the physician review and signature on the plan of care because, as we have explained with respect to the initial physician plan of care signature, we believe it is

necessary to ensure patient health and safety, and we believe that it is necessary to implement section 1891(a)(9) of the Act, which incorporates section 1861(m) of the Act by reference. As proposed, we revised the timeframe to require that the review be completed no less frequently than every 62 days (§ 405.1223(b)). Moreover, we have adopted the suggestion that a summary report that an HHA sends to a physician be sent no less frequently then every 62 days (§ 405.1221(g)). We believe that conforming these timeframes to one another will be less confusing to HHAs and Medicare State surveyors and more efficient.

7. *Condition of participation:* Skilled nursing service—Standard: Duties of the registered nurse (§ 405.1224(a)) and Standard: Duties of the licensed practical nurse (§ 405.1224(b)).

These standards describe the duties of registered nurses (RNs) and licensed practical nurses (LPNs) including their responsibilities to prepare clinical notes and progress notes. We did not propose to revise the requirements regarding clinical notes and progress notes since we believe that these requirements are consistent with accepted professional standards of practice and therefore should not be burdensome.

Comment: Commenters agreed that the writing of clinical notes and progress notes are accepted professional responsibilities of RNs and LPNs. The other comments on this section addressed issues that we did not raise in the proposed rule and to which we are not responding in this final rule.

Response: We have not revised the regulations with respect to RN and LPN completion of clinical notes and progress notes.

8. *Condition of participation*—Therapy services—Standard: Supervision of physical therapy assistant and occupational therapy assistant (§ 405.1225(a)).

This section sets forth standards for the preparation of clinical and progress notes by physical therapy assistants and occupational therapy assistants. We proposed no changes to the supervision standard because we believe that the requirements are consistent with accepted professional standards of practice and that, therefore, virtually no recordkeeping burden is imposed. However, we requested comments on it.

Comment: Commenters generally did not object to the requirements regarding the completion of clinical and progress notes by physical therapy assistants and occupational therapy assistants. The other comments addressed aspects of the section that were not the subject of the proposed rule.

Response: We have retained without change the requirements with regard to clinical and progress notes.

I. Condition of participation: Medical social services (§ 405.1226).

This section contains requirements regarding medical social worker and medical social work assistant completion of clinical and progress notes on the patient's condition and assisting in the development of the plan of treatment. We proposed no specific changes to these requirements because we believe that the requirements for completion of clinical notes and progress notes are consistent with accepted professional standards for medical social work and therefore impose no recordkeeping burden.

Comment: Commenters did not oppose the current requirements regarding social worker and social work assistant completion of progress and clinical notes. The other comments on this section addressed issues that we did not raise in the proposed rule and to which we are not responding in thi final rule.

Response: We have retained without change the requirements with regard to clinical and progress notes.

9. Condition of participation: Clinical records (§ 405.1228).

This section contains specific requirements for maintaining, retaining, and protecting clinical records for every patient receiving services from an HHA. We proposed to keep the current requirements, but to make a technical change to the existing language of the regulation.

Comment: Several commenters suggested requirements beyond those imposed by the current regulations that the commenters believe are necessary to ensure patient health and safety.

Response: We are not making changes other than the proposed technical change. We will consider the commenters' suggestions before we propose future rulemaking.

Comment: Several commenters objected to the requirement that clinical notes be kept on all patients. They requested that we revise § 405.1228 (redesignated as § 484.48) to require that these notes be maintained only for Medicare patients.

Response: We have not accepted this comment. Section 1861(a) of the Act requires that in order to be considered an "HHA", an entity must maintain clinical records on its patients. As with other conditions of participation, this requirement is not limited to Medicare patients, but rather applies to all patients and must be met before an HHA can be certified to participate in the Medicare program. The clinical note is the most essential element of a patient's clinical records since it describes the services furnished to the patient, the patient's response to treatment and current status. This information is essential to ensure the quality of the care being furnished by an HHA.

Comment: Several commenters requested that we clarify that the terms "progress notes" and "clinical notes" are identical and may be used interchangeably.

Response: We have not made this change because, as defined in the conditions of participation at § 405.1202 (redesignated as § 484.2), clinical notes and progress notes differ. A clinical note must be prepared for each visit to a patient on the date of the visit, and must include a description of signs and symptoms, treatment and or drug given, the patient's reaction and any changes in the patient's physical or emotional condition. In contrast, a progress note is a dated written notation by a member of the health team that summarizes facts about the care and the patient's response over a specified period of time. Thus, the progress note is a summary of the clinical notes for a specific period of time.

Comment: Commenters objected to the requirement that medical records be retained for five years after the month that the applicable cost report is filed unless State law requires that they be retained for a longer period of time. One commenter suggested that the retention period be reduced to three years.

Response: We have kept the current record retention requirement because we believe that retention of the records for this period of time is necessary to ensure that the records needed to verify the appropriateness of Medicare payment are available. The clinical records provide the only evidence that an HHA furnished services for which it has claimed payment.

HHAs do not submit cost reports to which the services relate until three months after the year in which the services were furnished (or for an additional three months if an extension is granted). Moreover, the services included in a cost report may have been furnished in the last three months of the previous year. Since the Federal government may perform an audit of agency records any time until three years after submission of the cost report (or later if there is evidence of program fraud), the records must be retained for at least four years and nine months after submission of a cost report. Otherwise, there would be no evidence of the total number of visits furnished and of the number of visits furnished to Medicare patients if audit of the source information is needed to settle an HHA's cost report.

Comment: One commenter stated that nurses should be able to carry clinical records with them when visiting a patient's home since practicing without them is unsafe and duplicating them is expensive and burdensome. Section 405.1226(b) (redesignated as § 484.48) requires that clinical records be safeguarded against loss or unauthorized use.

Response: Medicare regulations do not prohibit the removal of clinical records for use by a nurse when furnishing care. Nevertheless, an HHA may impose policies and procedures it believes will ensure that clinical records are safeguarded against loss or unauthorized use.

10. *Condition of participation:* Evaluation—Standard: Policy and administrative review (§ 405.1220(a)).

This standard requires an HHA to assess the overall status of its patient care programs. One method of furthering this evaluation is to collect patient care and related data. This standard suggests selected data that an HHA might find useful in the course of its evaluation. We proposed to delete the detailed list of suggested data items from this section because, upon reconsideration, we believe that an HHA should have the flexibility to tailor the data collected to its unique characteristics.

Comment: Some commenters supported this proposed change. Several commenters opposed this proposed change. One commenter indicated that the entire list should be retained. Another commenter requested that the information on the number of patient visits made by an HHA and the records of staff time be retained. Those who suggested that this information be kept were concerned that this information would not be available for use in determining appropriate Medicare payment if these regulations did not include this list. The other comments on this section addressed issues that we did not address in the proposed rule and to which we are not responding in this final rule.

Response: As proposed, we have deleted the list of data that the regulations suggested be collected. We believe that an HHA is able to determine which data elements will facilitate its review without Federal regulations on this aspect of its operation. Notwithstanding the elimination of this list from these regulations, an HHA will continue to be required, under separate statutory authority, to maintain the data necessary to substantiate the information on its Medicare cost report.

11. *Condition of participation:* Evaluation—Standard: Clinical record review (§ 405.1220(b)).

We did not propose to revise this section of the regulations nor did we receive any comments. However, we have extended the period that may be covered by the review of clinical records from 60 days to 62 days to conform to the changes we have made with respect to the frequency of physician review of a plan of care, and the period of time to be covered by a summary report of a patient's condition. Since we are extending the period, rather than reducing it, and since we are making the change to conform it to other requirements, we believe that we are reducing, rather than adding to the burden imposed by these regulations.

B. Regulation Provisions

1. *Condition of participation:* Organization, services, administration—Standard: Coordination of patient services (§ 405.1221(g)).

We have revised § 405.1221(g) to permit the submission of the summary report no less than every 62 days (rather than every 60 days) to conform the timeframe to the revision we have made to the frequency of physician review (§ 405.1223(b) and signature (§ 405.1633) on the plan of care.

2. *Condition of participation:* Organization, services, administration—Standard: Institutional planning (§ 405.1221(i)).

We have revised § 405.1221(i)(2) to reflect the increase in the threshold amount (for anticipated expenditures within an agency's generated three-year capital expenditure program) from $100,000 to $600,000.

3. *Condition of participation:* Acceptance of patients, plan of treatment, medical supervision—Standard: Plan of treatment (§ 405.1223(a)).

We have changed the term "plan of treatment" to read "plan of care" to comply with section 4021 of Public Law 100-203.

4. *Condition of participation:* Acceptance of patients, plan of treatment, medical supervision-Standard: Periodic review of plan of treatment (§ 405.1223(b)).

We retained the requirement for physician and HHA staff review, with one change. The status of each patient must be reviewed no less frequently than every 62 days (rather than 60 days) to conform this requirement to the physician certification requirement (§ 405.1633).

5. *Condition of participation:* Evaluation—Standard: Policy and administrative review (§ 405.1220(a)).

We have deleted the list of selected data that an HHA might find useful in the course of evaluating its patient care programs.

6. *Condition of participation:* Evaluation—Standard: Clinical record review (§ 405.1220(b)).

We extended the period that may be covered by the review of clinical records from 60 days to 62 days to conform to the changes we have made with respect to the frequency of physician review of a plan of care, and the period of time to be covered by a summary report of a patient's condition.

V. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

This final rule implements section 1861(o)(6) of the Act, as amended by section 4021(b) of Public Law 100-203; section 1891(a) of the Act, as added by section 4021(b) of Public Law 100-203; and certain changes in recordkeeping requirements that had been previously proposed on December 31, 1986 (51 FR 47266). As described in section I of this document, section 4021(b) of Public Law 100-203 requires that an HHA meet the following conditions:

- Protect and promote the rights of each individual under its care.
- Notify the State entity responsible for the licensing or certification of the agency of a change in ownership, and management of the agency.
- After December 31, 1988, use as a home health aide only individuals who have been determined to be competent to furnish part-time or intermittent home health aide care.
- Use individuals that meet minimum training standards established by the Secretary to use or demonstrate durable

medical equipment when furnishing services.

• Include an individual's plan of care required under section 1861(m) of the Act as part of the individual's clinical records described in section 1861(o)(3) of the Act (currently appears as a condition of participation in 42 CFR 405.1228).

• Operate and furnish services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1124 of the Act) and with accepted professional standards and principles that apply to professionals furnishing services in an HHA (currently appears as a condition of participation in 42 CFR 405.1220).

With the exception of those regulations implementing section 1891(a)(3) of the Act that require the Secretary to establish minimum standards of competency for home health aides who are providing services to Medicare patients either under contract to an HHA or are employed directly by an HHA, we believe that the other provisions of this rule that are required by section 4021(b) of Public Law 100–203 are largely conforming changes to the statute. In those instances in which our regulations go beyond a strict reading of the statute in implementing the patients' rights provisions of the Act, we believe the regulations serve to clarify the intent of Congress by specifying procedures to be followed in implementing the law. The discretion we have exercised in detailing technical requirements, we believe, will not impose a significant burden on HHAs. We do recognize that the provisions requiring HHAs to protect Medicare patients rights may impose some additional costs on those HHAs that do not already have such policies. However, we view these effects as resulting from the statute rather than from this rule.

With respect to the changes in recordkeeping requirements that we proposed in the December 31, 1986 Federal Register and which are being implemented by this rule we consider the changes to be minor and believe they will have little effect on the operations of HHAs.

Section 1891(a)(3) of the Act, requiring the establishment of competency and training standards for home health aides, gives the Secretary broad latitude in specifying competency standards and curricula for training aides. We expect that most home health aides currently employed by HHAs will achieve the required level of competency through their work experience by the time the new standards become effective. Thus, we do not expect that most aides currently working in HHAs will require formal training to meet the competency standards, and as a result, the cost of training the present work force of HHA aides should be minimal.

It should be noted that several States already have some training and certification requirements as a condition of employment for home health aides. Although we cannot determine whether the training requirements in these States are sufficient to meet the competency standards being promulgated under this rule, we expect that HHAs operating in these States have already adjusted their operations to meet the State requirements. Furthermore, we are aware that some States have legislation pending that would require home health aide competency certification as a condition of licensing HHAs. Thus, we do not expect this rule to have a significant effect on HHAs operating in those States that either already require aide training and certification or will promulgate such standards in the near future.

Moreover, the renewed emphasis on HHA accreditation by the National League of Nurses under its long-standing program, and the recent adoption by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) of new standards for the accreditation of home health care providers will, we believe, encourage many HHAs to adopt voluntarily many of the provisions set forth in this rule. In addition, many HHAs use the National Homecaring Council's model curriculum and evaluation program for home health aide training and evaluation. This program also contains many of the elements of these regulations. We believe that voluntary compliance with these industry standards will reduce significantly the impact of these Federal regulations on most HHAs. We anticipate that most HHAs will seek to comply with private industry standards to ensure that they are not placed at a competitive disadvantage. Therefore, these Federal regulations will affect most agencies only to the limited extent that the requirements of the Federal regulations exceed those of the private standards.

In conclusion, for all the reasons discussed above, we believe that the overall effect of this rule will be small. We do not expect this rule to have an annual effect on the economy of $100 million or more, nor do we expect it to meet any of the other criteria of a major rule under E.O. 12291. Therefore we have not prepared a regulatory impact analysis.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all HHAs are treated as small entities.

For the reasons outlined in our discussion of E.O. 12291, we do not expect HHAs to experience significant adverse effects from this rule. Therefore, we have determined, and the Secretary certifies that this rule will not have a significant impact on a substantial number of HHAs.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies that this final rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

VI. Waiver of Proposed Rulemaking

Section 4039(g) of Public Law 100–203 provides that, if necessary, we may issue regulations to implement certain provisions of that law, including the HHA provisions of these regulations and other Medicare reforms, on an interim final basis. Congress, in Public Law 100–203, charged the agency with developing and implementing several significant and complex payment reforms. Congress recognized, however, that the agency may not be able both to develop the regulations necessary to implement these reforms and to engage in the time- and resource-consuming process entailed by the usual notice and comment procedure before the effective dates which it prescribed. Indeed, in the case of the modifications to the HHA conditions of participation contained in section 4021(b) of Public Law 100–203 (enacted December 22, 1987), Congress intended for the Secretary to make use of interim final rules by imposing, in section 4021(c), a July 1, 1989 effective date on the HHA conditions of participation modifications. The usual notice and comment procedures could not have been completed in the time allowed.

The Secretary believes it necessary to exercise his option, under section 4039(g), to issue these provisions as an interim final rule in order to allow HHAs sufficient time to comply the new guidelines, which statutorily become effective on July 1, 1989.

Although this rule is being issued as an interim final rule, we are interested in comments and advice regarding changes that should be made to this issuance. Therefore, we are providing a 60-day comment period for public comment.

VII. Response to Comments

Because of the large number of comments we receive on interim final regulations, we cannot acknowledge or respond to them individually. However, if we decide to change the regulations, we will publish an additional Federal Register rule and respond to the major issues in the preamble to that rule.

VIII. Collection of Information Requirements

Section 484.10 and its implementing patient rights notification and §§ 484.12, 484.14, 484.16, 484.18, 484.30, 484.32, 484.34, 484.36, 484.48, and 484.52 of this rule contain information collection requirements that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3504, et seq.). These requirements will not be effective until OMB approval is received. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official whose name appears in the "ADDRESS" section of this preamble.

List of Subjects in 42 CFR Part 484

Administrative practice and procedure, Health facilities, Health professions, Home health agencies, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV is amended as set forth below:

A. Part 405, subpart L is redesignated as Part 484 and revised to read as follows:

PART 484—CONDITIONS OF PARTICIPATION: HOME HEALTH AGENCIES

Subpart A—General Provisions

Sec.

484.1 Basis and scope.
484.2 Definitions.
484.4 Personnel qualifications.

Subpart B—Administration

484.10 Condition of participation: Patient rights.
484.12 Condition of participation: Compliance with Federal, State, and local laws, disclosure and ownership information, and accepted professional standards and principles.
484.14 Condition of participation: Organization, services, administration.
484.16 Condition of participation: Group of professional personnel.
484.18 Condition of participation: Acceptance of patients, plan of care, medical supervision.

Subpart C—Furnishing of Services

484.30 Condition of participation: Skilled nursing services.
484.32 Condition of participation: Therapy services.
484.34 Condition of participation: Medical social services.
484.36 Condition of participation: Home health aide services.
484.38 Condition of participation: Qualifying to furnish outpatient physical therapy or speech pathology services.
484.48 Condition of participation: Clinical records.
484.52 Condition of participation: Evaluation of the agency's program.

Authority: Secs. 1102, 1861, 1871 and 1891 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395hh, and 1395bbb).

Subpart A—General Provisions

§ 484.1 Basis and scope.

This part implements the requirements of sections 1861(o) and 1891(a) of the Act for HHA services and also sets forth the additional requirements considered necessary to ensure the health and safety of patients.

§ 484.2 Definitions.

As used in this part, unless the context indicates otherwise—*"Bylaws or equivalent"* means a set of rules adopted by an HHA for governing the agency's operation.

"Branch office" means a location or site from which a home health agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the home health agency and is located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the branch independently to meet the conditions of participation as a home health agency.

"Clinical note" means a notation of a contact with a patient that is written and dated by a member of the health team, and that describes signs and symptoms, treatment and drugs administered and the patient's reaction, and any changes in physical or emotional condition.

"HHA" stands for home health agency.

"Nonprofit agency" means an agency exempt from Federal income taxation under section 501 of the Internal Revenue Code of 1954.

"Parent home health agency" means the agency that develops and maintains administrative controls of subunits and/or branch offices.

"Primary home health agency" means the agency that is responsible for the services furnished to patients and for implementation of the plan of care.

"Progress note" means a written notation, dated and signed by a member of the health team, that summarizes facts about care furnished and the patient's response during a given period of time.

"Proprietary agency" means a private profit-making agency licensed by the State.

"Public agency" means an agency operated by a State or local government.

"Subdivision" means a component of a multi-function health agency, such as the home care department of a hospital or the nursing division of a health department, which independently meets the conditions of participation for HHAs. A subdivision that has subunits or branch offices is considered a parent agency.

"Subunit" means a semi-autonomous organization that—

(1) Serves patients in a geographic area different from that of the parent agency; and

(2) Must independently meet the conditions of participation for HHAs because it is too far from the parent agency to share administration, supervision, and services on a daily basis.

"Summary report" means the compilation of the pertinent factors of a patient's clinical notes and progress notes that is submitted to the patient's physician.

"Supervision" means authoritative procedural guidance by a qualified person for the accomplishment of a function or activity. Unless otherwise specified in this part, the supervisor must be on the premises to supervise an individual who does not meet the qualifications specified in § 484.4.

§ 484.4 Personnel qualifications.

Staff required to meet the conditions set forth in this part are staff who meet the qualifications specified in this section.

"Administrator, home health agency". A person who:

(a) Is a licensed physician; or

(b) Is a registered nurse; or

(c) Has training and experience in health service administration and at least 1 year of supervisory or administrative experience in home health care or related health programs.

"*Audiologist*". A person who:

(a) Meets the education and experience requirements for a Certificate of Clinical Competence in audiology granted by the American Speech-Language-Hearing Association; or

(b) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.

"*Home health aide*". Effective for services furnished after August 14, 1990, a person who has successfully completed a State-established or other training program that meets the requirements of § 484.36(a) and a competency evaluation program or State licensure program that meets the requirements of § 484.36(b), or a competency evaluation program or State licensure program that meets the requirements of § 484.36(b). An individual is not considered to have completed a training and competency evaluation program, or a competency evaluation program if, since the individual's most recent completion of this program(s), there has been a continuous period of 24 consecutive months during none of which the individual furnished services described in § 409.40 of this chapter for compensation.

"*Occupational therapist*". A person who:

(a) Is a graduate of an occupational therapy curriculum accredited jointly by the Committee on Allied Health Education and Accreditation of the American Medical Association and the American Occupational Therapy Association; or

(b) Is eligible for the National Registration Examination of the American Occupational Therapy Association; or

(c) Has 2 years of appropriate experience as an occupational therapist, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as an occupational therapist after December 31, 1977.

"*Occupational therapy assistant*". A person who:

(a) Meets the requirements for certification as an occupational therapy assistant established by the American Occupational Therapy Association; or

(b) Has 2 years of appropriate experience as an occupational therapy assistant, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as an occupational therapy assistant after December 31, 1977.

"*Physical therapist*". A person who is licensed as a physical therapist by the State in which practicing, and

(a) Has graduated from a physical therapy curriculum approved by:

(1) The American Physical Therapy Association, or

(2) The Committee on Allied Health Education and Accreditation of the American Medical Association, or

(3) The Council on Medical Education of the American Medical Association and the American Physical Therapy Association; or

(b) Prior to January 1, 1966,

(1) Was admitted to membership by the American Physical Therapy Association, or

(2) Was admitted to registration by the American Registry of Physical Therapist, or

(3) Has graduated from a physical therapy curriculum in a 4-year college or university approved by a State department of education; or

(c) Has 2 years of appropriate experience as a physical therapist, and has achieved a satifactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking qualification as a physical therapist after December 31, 1977; or

(d) Was licensed or registered prior to January 1, 1966, and prior to January 1, 1970, had 15 years of full-time experience in the treatment of illness or injury through the practice of physical therapy in which services were rendered under the order and direction of attending and referring doctors of medicine or osteopathy; or

(e) If trained outside the United States,

(1) Was graduated since 1928 from a physical therapy curriculum approved in the country in which the curriculum was located and in which there is a member organization of the World Confederation for Physical Therapy,

"*Physical therapy assistant*". A person who is licensed as a physical therapist assistant, if applicable, by the State in which practicing, and

(1) Has graduated from a 2-year college-level program approved by the American Physical Therapy Association; or

(2) Has 2 years of appropriate experience as a physical therapist assistant, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that these determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as a physical therapist assistant after December 31, 1977.

"*Physician*". A doctor of medicine, osteophathy or podiatry legally authorized to practice medicine and surgery by the State in which such function or action is performed.

"*Practical (vocational) nurse*". A person who is licensed as a practical (vocational) nurse by the State in which practicing.

"*Public health nurse*". A registered nurse who has completed a baccalaureate degree program approved by the National League for Nursing for public health nursing preparation or postregistered nurse study that includes content aproved by the National League for Nursing for public health nursing preparation.

"*Registered nurse (RN)*". A graduate of an approved school of professional nursing, who is licensed as a registered nurse by the State in which practicing.

"*Social work assistant*". A person who:

(1) Has a baccalaureate degree in social work, psychology, sociology, or other field related to social work, and has had at least 1 year of social work experience in a health care setting; or

(2) Has 2 years of appropriate experience as a social work assistant, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that these determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as a social work assistant after December 31, 1977.

"*Social worker*". A person who has a master's degree from a school of social work accredited by the Council on Social Work Education, and has 1 year of social work experience in a health care setting.

"*Speech pathologist*". A person who:

(1) Meets the education and experience requirements for a Certificate of Clinical Competence in (speech pathology or audiology) granted by the American Speech-Language-Hearing Association; or

(2) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.

Subpart B—Administration

§ 484.10 Condition of participation: Patient rights.

The patient has the right to be informed of his or her rights. The HHA must protect and promote the exercise of these rights.

(a) *Standard: Notice of rights.* (1) The HHA must provide the patient with a written notice of the patient's rights in advance of furnishing care to the patient or during the initial evaluation visit before the initiation of treatment.

(2) The HHA must maintain documentation showing that it has complied with the requirements of this section.

(b) *Standard: Exercise of rights and respect for property and person.* (1) The patient has the right to exercise his or her rights as a patient of the HHA.

(2) The patient's family or guardian may exercise the patient's rights when the patient has been judged incompetent.

(3) The patient has the right to have his or her property treated with respect.

(4) The patient has the right to voice grievances regarding treatment or care that is (or fails to be) furnished, or regarding the lack of respect for property by anyone who is furnishing services on behalf of the HHA and must not be subjected to discrimination or reprisal for doing so.

(5) The HHA must investigate complaints made by a patient or the patient's family or guardian regarding treatment or care that is (or fails to be) furnished, or regarding the lack of respect for the patient's property by anyone furnishing services on behalf of the HHA, and must document both the existence of the complaint and the resolution of the complaint.

(c) *Standard: Right to be informed and to participate in planning care and treatment.* (1) The patient has the right to be informed, in advance about the care to be furnished, and of any changes in the care to be furnished.

(i) The HHA must advise the patient in advance of the disciplines that will furnish care, and the frequency of visits proposed to be furnished.

(ii) The HHA must advise the patient in advance of any change in the plan of care before the change is made.

(2) The patient has the right to participate in the planning of the care. The HHA must advise the patient in advance of the right to participate in planning the care or treatment and in planning changes in the care or treatment.

(d) *Standard: Confidentiality of medical records.* The patient has the right to confidentiality of the clinical records maintained by the HHA. The HHA must advise the patient of the agency's policies and procedures regarding disclosure of clinical records.

(e) *Standard: Patient liability for payment.* (1) The patient has the right to be advised, before care is initiated, of the extent to which payment for the HHA services may be expected from Medicare of other sources, and the extent to which payment may be required from the patient. Before the care is initiated, the HHA must inform the patient, orally and in writing, of—

(i) The extent to which payment may be expected from Medicare, Medicaid, or any other Federally funded or aided program known to the HHA;

(ii) The charges for services that will not be covered by Medicare; and

(iii) The charges that the individual may have to pay.

(2) The patient has the right to be advised orally and in writing of any changes in the information provided in accordance with paragraph (e)(1) of this section when they occur. The HHA must advise the patient of these changes orally and in writing as soon as possible, but no later than 15 working days from the date that the HHA becomes aware of a change.

(f) *Standard: Home health hotline.* The patient has the right to be advised of the availability of the toll-free HHA hotline in the State. When the agency accepts the patient for treatment or care, the HHA must advise the patient in writing of the telephone number of the home health hotline established by the State, the hours of its operation, and that the purpose of the hotline is to receive complaints or questions about local HHAs.

§ 484.12 Condition of participation: Compliance with Federal, State, and local laws, disclosure and ownership information, and accepted professional standards and principles.

(a) *Standard: Compliance with Federal, State, and local laws and regulations.* The HHA and its staff must operate and furnish services in compliance with all applicable Federal, State, and local laws and regulations. If State or applicable local law provides for the licensure of HHAs, an agency not subject to licensure is approved by the licensing authority as meeting the standards established for licensure.

(b) *Standard: Disclosure of ownership and management information.* The HHA must comply with the requirements of Part 420, Subpart C of this chapter. The HHA also must disclose the following information to the State survey agency at the time of the HHA's initial request for certification, for each survey, and at the time of any change in ownership or management:

(1) The name and address of all persons with an ownership or control interest in the HHA as defined in §§ 420.201, 420.202, and 420.206 of this chapter.

(2) The name and address of each person who is an officer, a director, an agent or a managing employee of the HHA as defined in §§ 420.201, 420.202, and 420.206 of this chapter.

(3) The name and address of the corporation, association, or other company that is responsible for the management of the HHA, and the name and address of the chief executive officer and the chairman of the board of directors of that corporation, association, or other company responsible for the management of the HHA.

(c) *Standard: Compliance with accepted professional standards and principles.* The HHA and its staff must comply with accepted professional standards and principles that apply to professionals furnishing services in an HHA.

[FR Doc. 89-18761 Filed 8-10-89; 8:45 am]
BILLING CODE 4120-01-M

§ 484.14 Condition of participation: Organization, services, administration.

Organization, services furnished, administrative control, and lines of authority for the delegation of responsibility down to the patient care level are clearly set forth in writing and are readily identifiable. Administrative and supervisory functions are not delegated to another agency or organization and all services not furnished directly, including services provided through subunits are monitored and controlled by the parent agency. If an agency has subunits, appropriate administrative records are maintained for each subunit.

(a) *Standard: Services furnished.* Part-time or intermittent skilled nursing services and at least one other therapeutic service (physical, speech, or occupational therapy; medical social services; or home health aide services)

are made available on a visiting basis, in a place of residence used as a patient's home. An HHA must provide at least one of the qualifying services directly through agency employees, but may provide the second qualifying service and additional services under arrangements with another agency or organization.

(b) *Standard: Governing body.* A governing body (or designated persons so functioning) assumes full legal authority and responsibility for the operation of the agency. The governing body appoints a qualified administrator, arranges for professional advice as required under § 484.16, adopts and periodically reviews written bylaws or an acceptable equivalent, and oversees the management and fiscal affairs of the agency.

(c) *Standard: Administrator.* The administrator, who may also be the supervising physician or registered nurse required under paragraph (d) of this section, organizes and directs the agency's ongoing functions; maintains ongoing liaison among the governing body, the group of professional personnel, and the staff; employs qualified personnel and ensures adequate staff education and evaluations; ensures the accuracy of public information materials and activities; and implements an effective budgeting and accounting system. A qualified person is authorized in writing.

(d) *Standard: Supervising physician or registered nurse.* The skilled nursing and other therapeutic services furnished are under the supervision and direction of a physician or a registered nurse (who preferably has at least 1 year of nursing experience and is a public health nurse). This person, or similarly qualified alternate, is available at all times during operating hours and participates in all activities relevant to the professional services furnished including the development of qualifications and the assignment of personnel.

(e) *Standard: Personnel policies.* Personnel practices and patient care are supported by appropriate, written personnel policies. Personnel records include qualifications and licensure that are kept current.

(f) *Standard: Personnel under hourly or per visit contracts.* If personnel under hourly or per visit contracts are used by the HHA, there is a written contract between those personnel and the agency that specifies the following:

(1) That patients are accepted for care only by the primary home health agency.

(2) The services to be furnished.

(3) The necessity to conform to all applicable agency policies including personnel qualifications.

(4) The responsibility for participating in developing plans of care.

(5) The manner in which services will be controlled, coordinated, and evaluated by the primary agency.

(6) The procedures for submitting clinical and progress notes, scheduling of visits, periodic patient evaluation, and

(7) The procedures for payment for services furnished under the contract.

(g) *Standard: Coordination of patient services.* All personnel furnishing services maintain liaison to assure that their efforts are coordinated effectively and support the objectives outlined in the plan of care. The clinical record or minutes of case conferences establish that effective interchange, reporting, and coordination of patient care does occur. A written summary report for each patient is sent to the attending physician at least every 62 days.

(h) *Standard Services under arrangements.* Services furnished under arrangements are subject to a written contract conforming with the requirements specified in paragraph (f) of this section and with the requirements of section 1861(w) of the Act (42 U.S.C. 1395x(w)).

(i) *Standard: Institutional planning.* The HHA under the direction of the governing body, prepares an overall plan and budget that includes an annual operating budget and a capital expenditure plan.

(1) *Annual operating budget.* There is an annual operating budget that includes all anticipated income and expenses related to items that would, under generally accepted accounting principles, be considered income and expense items. However, it is not required that there be prepared, in connection with any budget, an item by item identification of the components of each type of anticipated income or expense.

(2) *Capital expenditure plan.* (i) There is a capital expenditure plan for at least a 3-year period, including the operating budget year. The plan includes and identifies in detail the anticipated sources of financing for, and the objectives of, each anticipated expenditure of more than $600,000 for items that would, under generally accepted accounting principles, be considered capital items. In determining if a single capital expenditure exceeds $600,000, the cost of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, modernization, expansion, or replacement of land, plant, building, and equipment are included. Expenditures directly or indirectly related to capital expenditures, such as grading, paving, broker commissions, taxes assessed during the construction period, and costs involved in demolishing or razing structures on land are also included. Transactions that are separated in time but are components of an overall plan or patient care objective are viewed in their entirety without regard to their timing. Other costs related to capital expenditures include title fees, permit and license fees, broker commissions, architect, legal, accounting, and appraisal fees; interest, finance, or carrying charges on bonds, notes and other costs incurred for borrowing funds.

(ii) If the anticipated source of financing is, in any part, the anticipated payment from title V (Maternal and Child Health and Crippled Children's Services) or title XVIII (Medicare) of title XIX (Medicaid) or the Social Security Act, the plan specifies the following:

(A) Whether the proposed capital expenditure is required to conform, or is likely to be required to conform, to current standards, criteria, or plans developed in accordance with the Public Health Service Act or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963.

(B) Whether a capital expenditure proposal has been submitted to the designated planning agency for approval in accordance with section 1122 of the Act (42 U.S.C. 1320a–1) and implementing regulations.

(C) Whether the designated planning agency has approved or disapproved the proposed capital expenditure if it was presented to that agency.

(3) *Preparation of plan and budget.* The overall plan and budget is prepared under the direction of the governing body of the HHA by a committee consisting of representatives of the governing body, the administrative staff, and the medical staff (if any) of the HHA.

(4) *Annual review of plan and budget.* The overall plan and budget is reviewed and updated at least annually by the committee referred to in paragraph (i)(3) of this section under the direction of the governing body of the HHA.

§ 484.16 Condition of participation: Group of professional personnel.

A group of professional personnel, which includes at least one physician and one registered nurse (preferably a public health nurse), and with appropriate representation from other professional disciplines, establishes and annually reviews the agency's policies governing scope of services offered, admission and discharge policies, medical supervision and plans of care, emergency care, clinical records, personnel qualifications, and program evaluation. At least one member of the group is neither an owner (§ 484.14(b)) nor an employee of the agency.

(a) *Standard: Advisory and evaluation function.* The group of professional personnel meets frequently to advise the agency on professional issues, to participate in the evaluation of the agency's program, and to assist the agency in maintaining liaison with other health care providers in the community and in the agency's community information program. The meetings are documented by dated minutes.

§ 484.18 Condition of participation: Acceptnce of patients, plan of care, medical supervision.

Patients are accepted for treatment on the basis of a reasonable expectation that the patient's medical, nursing, and social needs can be met adequately by the agency in the patient's place of residence. Care follows a written plan of care established and periodically reviewed by a doctor of medicine, osteopathy, or podiatric medicine.

(a) *Standard: Plan of care.* The plan of care developed in consultation with the agency staff covers all pertinent diagnoses, including mental status, types of services and equipment required, frequency of visits, prognosis, rehabilitation potential, functional limitations, activities permitted, nutritional requirements, medications and treatments, any safety measures to protect against injury, instructions for timely discharge or referral, and any other appropriate items. If a physician refers a patient under a plan of care that cannot be completed until after an evaluation visit, the physician is consulted to approve additions or modifications to the original plan. Orders for therapy services include the specific procedures and modalities to be used and the amount, frequency, and duration. The therapist and other agency personnel participate in developing the plan of care.

(b) *Standard: Periodic review of plan of care.* The total plan of care is reviewed by the attending physician and HHA personnel as often as the severity of the patient's condition requires, but at least once every 62 days. Agency professional staff promptly alert the physician to any changes that suggest a need to alter the plan of care.

(c) *Standard: Conformance with physician's orders.* Drugs and treatments are administered by agency staff only as ordered by the physician. The nurse or therapist immediately records and signs oral orders and obtains the physician's countersignature. Agency staff check all medicines a patient may be taking to identify possibly ineffective drug therapy or adverse reactions, significant side effects, drug allergies, and contraindicated medication, and promptly report any problems to the physician.

Subpart C—Furnishing of Services

§ 484.30 Condition of participation: Skilled nursing services.

The HHA furnishes skilled nursing services by or under the supervision of a registered nurse and in accordance with the plan of care.

(a) *Standard: Duties of the registered nurse.* The registered nurse makes the initial evaluation visit, regularly reevaluates the patient's nursing needs, initiates the plan of care and necessary revisions, provides those services requiring substantial and specialized nursing skill, initiates appropriate preventive and rehabilitative nursing procedures, prepares clinical and progress notes, coordinates services, informs the physician and other personnel of changes, in the patient's condition and needs, counsels the patient and family in meeting nursing and related needs, participates in inservice programs, and supervises and teaches other nursing personnel.

(b) *Standard: Duties of the licensed practical nurse.* The licensed practical nurse furnishes services in accordance with agency policies, prepares clinical and progress notes, assists the physician and registered nurse in performing specialized procedures, prepares equipment and materials for treatments observing aseptic technique as required, and assists the patient in learning appropriate self-care techniques.

§ 484.32 Condition of participation: Therapy services.

Any therapy services offered by the HHA directly or under arrangement are given by a qualified therapist or by a qualified therapist assistant under the supervision of a qualified therapist and in accordance with the plan of care. The qualified therapist assists the physician in evaluating level of function, helps develop the plan of care (revising as necessary), prepares clinical and progress notes, advises and consults with the family and other agency personnel, and participates in inservice programs.

(a) *Standard: Supervision of physical therapist assistant and occupational therapist assistant.* Services furnished by a qualified physical therapist assistant or qualified occupational therapy assistant may be furnished under the supervision of a qualified physical or occupational therapist. A physical therapist assistant or occupational therapy assistant performs services planned, delegated, and supervised by the therapist, assists in preparing clinical notes and progress reports, and participates in educating the patient and family, and in inservice programs.

(b) *Standard: Supervision of speech therapy services.* Speech therapy services are furnished only by or under supervision of a qualified speech pathologist or audiologist.

§ 484.34 Condition of participation: Medical social services.

If the agency furnishes medical social services, those services are given by a qualified social worker or by a qualified social work assistant under the supervision of a qualified social worker, and in accordance with the plan of care. The social worker assists the physician and other team members in understanding the significant social and emotional factors related to the health problems, participates in the development of the plan of care, prepares clinical and progress notes, works with the family, uses appropriate community resources, participates in discharge planning and inservice programs, and acts as a consultant to other agency personnel.

§ 484.36 Condition of participation: Home health aide services.

Home health aides are selected on the basis of such factors as a sympathetic attitude toward the care of the sick, ability to read, write, and carry out directions, and maturity and ability to deal effectively with the demands of the job. They are closely supervised to ensure their competence in providing care. For home health services furnished (either directly or through arrangements with other organizations) after August 14, 1990, the HHA must use individuals who meet the personnel qualifications specified in § 484.4 for "home health aide".

(a) *Standard: Home health aide training.*—(1) *Content and duration of training.* The aide training program must address each of the following subject areas through classroom and supervised practical training totalling at least 75 hours, with at least 16 hours devoted to supervised practical training. The individual being trained must complete at least 16 hours of classroom training

before beginning the supervisied practical training.

(i) Communications skills.

(ii) Observation, reporting and documentation of patient status and the care or service furnished.

(iii) Reading and recording temperature, pulse, and respiration.

(iv) Basic infection control procedures.

(v) Basic elements of body functioning and changes in body function that must be reported to an aide's supervisor.

(vi) Maintenance of a clean, safe, and healthy environment.

(vii) Recognizing emergencies and knowledge of emergency procedures.

(viii) The physical, emotional, and developmental needs of and ways to work with the populations served by the HHA, including the need for respect for the patient, his or her privacy and his or her property.

(ix) Appropriate and safe techniques in personal hygiene and grooming that include—

(A) Bed bath.

(B) Sponge, tub, or shower bath.

(C) Shampoo, sink, tub, or bed.

(D) Nail and skin care.

(E) Oral hygiene.

(F) Toileting and elimination.

(x) Safe transfer techniques and ambulation.

(xi) Normal range of motion and positioning.

(xii) Adequate nutrition and fluid intake.

(xiii) Any other task that the HHA may choose to have the home health aide perform.

"Supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or licensed practical nurse.

(2) *Conduct of training*—(i) *Organizations.* A home health aide training program may be offered by any organization except an HHA that has been determined to be out of compliance with one or more of the requirements of this part within any of the 24 months before the training program is to begin.

(ii) *Qualifications for instructors.* The training of home health aides and the supervision of home health aides during the supervised practical portion of the training must be performed by or under the general supervision of a registered nurse who possesses a minimum of 2 years of nursing experience, at least 1 year of which must be in the provision of home health care, and who has supervised home health aide services for at least 6 months. Other individuals may be used to provide instruction under the supervision of a qualified registered nurse.

(3) *Documentation of training.* The HHA must maintain sufficient documentation to demonstrate that the requirements of this standard are met.

(b) *Standard: Competency evaluation and in-service training*—(1) *Applicability.* An individual may furnish home health aide services on behalf of an HHA only after that individual has successfully completed a competency evaluation program as described in this paragraph. The HHA is responsible for ensuring that the individuals who furnish home health aide services on its behalf meet the competency evaluation requirements of this section.

(2) *Content and frequency of evaluations and amount of in-service training.* (i) The competency evaluation must address each of the subjects listed in paragraph (a)(1) (ii) through (xiii) of this section.

(ii) The HHA must complete a performance review of each home health aide no less frequently than every 12 months.

(iii) The home health aide must receive at least 3 hours of in-service training per calendar quarter. The in-service training may be furnished while the aide is furnishing care to patients.

(3) *Conduct of evaluation and training*—(i) *Organizations.* A home health aid competency evaluation program and the in-service training may be offered by any organization except as specified in paragraph (a)(2)(i) of this section.

(ii) *Evaluators and instructors.* The competency evaluation must be performed by a registered nurse, and the in-service training generally must be supervised by a registered nurse who possesses a minimum of 2 years of nursing experience at least 1 year of which must be in the provision of home health care and who has supervised home health aide services for at least 6 months.

(iii) *Subject areas.* The subject areas listed at paragraphs (a)(1) (iii), (ix), (x), and (xi) of this section must be evaluated after observation of the aide's performance of the tasks with a patient. The other subject areas in paragraph (a)(1) of this section may be evaluated through written examination, oral examination, or after observation of a home health aide with a patient.

(4) *Competency determination.* (i) A home health aide is not considered competent in any task for which he or she is evaluated as "unsatisfactory". The aide must not perform that task without direct supervision by a licensed nurse until after he or she receives training in the task for which he or she was evaluated as "unsatisfactory" and passes a subsequent evaluation with "satisfactory".

(ii) A home health aide is not considered to have successfully passed a competency evaluation if the aide has an "unsatisfactory" rating in more than one of the required areas.

(5) *Documentation of competency evaluation.* The HHA must maintain documentation which demonstrates that the requirements of this standard are met.

(6) *Effective date.* The HHA must implement a competency evaluation program that meets the requirements of this paragraph before February 14, 1990, and must provide the preparation necessary for the individual to successfully complete a program after August 14, 1990.

(c) *Standard: Assignment and duties of the home health aide.* The home health aide is assigned to a particular patient by a registered nurse. Written instructions for patient care are prepared by a registered nurse or therapist as appropriate. Duties include the performance of simple procedures as an extension of therapy services, personal care, ambulation and exercise, household services essential to health care at home, assistance with medications that are ordinarily self-administered, reporting changes in the patient's conditions and needs, and completing appropriate records.

(d) *Standard: Supervision.* The registered nurse makes a supervisory visit to the patient's residence at least every 2 weeks, either when the aide is present to observe and assist, or when the aide is absent, to assess relationships and determine whether goals are being met. If a patient is receiving only skilled therapy services and home health aide services, a skilled therapist may make the supervisory visits at least every 2 weeks, in lieu of a registered nurse.

§ 484.33 Condition of participation: Qualifying to furnish outpatient physical therapy or speech pathology services.

An HHA that wishes to furnish outpatient physical therapy or speech pathology services must meet all the pertinent conditions of this part and also meet the additional health and safety requirements set forth in §§ 405.1717 through 405.1719, 405.1721, 405.1723, and 405.1725 of this chapter to implement section 1861(p) of the Act.

§ 484.48 Condition of participation: Clinical records.

A clinical record containing pertinent past and current findings in accordance with accepted professional standards is maintained for every patient receiving home health services. In addition to the plan of care, the record contains appropriate identifying information; name of physician; drug, dietary, treatment, and activity orders; signed and dated clinical and progress notes; copies of summary reports sent to the attending physician; and a discharge summary.

(a) *Standards: Retention of records.* Clinical records are retained for 5 years after the month the cost report to which the records apply is filed with the intermediary, unless State law stipulates a longer period of time. Policies provide for retention even if the HHA discontinues operations. If a patient is transferred to another health facility, a copy of the record or abstract is sent with the patient.

(b) *Standards: Protection of records.* Clinical record information is safe-guarded against loss or unauthorized use. Written procedures govern use and removal of records and the conditions for release of information. Patient's written consent is required for release of information not authorized by law.

§ 484.52 Condition of participation: Evaluation of the agency's program.

The HHA has written policies requiring an overall evaluation of the agency's total program at least once a year by the group of professional personnel (or a committee of this group), HHA staff, and consumers, or by professional people outside the agency working in conjunction with consumers. The evaluation consists of an overall policy and administrative review and a clinical record review. The evaluation assesses the extent to which the agency's program is appropriate, adequate, effective, and efficient. Results of the evaluation are reported to and acted upon by those responsible for the operation of the agency and are maintained separately as administrative records.

(a) *Standard: Policy and administrative review.* As a part of the evaluation process the policies and administrative practices of the agency are reviewed to determine the extent to which they promote patient care that is appropriate, adequate, effective, and efficient. Mechanisms are established in writing for the collection of pertinent data to assist in evaluation.

(b) *Standard: Clinical record review.* At least quarterly, appropriate health professionals, representing at least the scope of the program, review a sample of both active and closed clinical records to determine whether established policies are followed in furnishing services directly or under arrangement. There is a continuing review of clinical records for each 62-day period that a patient receives home health services to determine adequacy of the plan of care and appropriateness of continuation of care.

(Catalog of Federal Domestic Assistance Program, No. 13.773, Medicare Hospital Insurance; No. 13.774, Medicare Supplementary Medical Insurance)

Dated: October 31, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: December 30, 1988.

Otis R. Bowen,

Secretary.

This Regulation was officially submitted to the Office of the Federal Register on August 7, 1989 by Charlotte E. Lewis for publication in the Federal Register.

[FR Doc. 89-18762 Filed 8-11-89; 8:45 am]

BILLING CODE 4120-01-M

federal register

Monday
August 14, 1989

Part III

Environmental Protection Agency

40 CFR Parts 264, 265, and 270
Delay of Closure Period for Hazardous Waste Management; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265 and 270

[FRL-3578-2]

RIN 2050-AB71

Delay of Closure Period for Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today amending portions of the closure requirements under subtitle C of the Resource Conservation and Recovery Act (RCRA) applicable to owners and operators of certain types of hazardous waste facilities. Today's final rule allows, under limited circumstances, a landfill, surface impoundment, or land treatment unit to remain open after the final receipt of hazardous wastes in order to receive non-hazardous wastes in that unit. This final rule details the circumstances under which a unit may remain open to receive non-hazardous wastes and describes the conditions applicable to such units.

EFFECTIVE DATE: November 13, 1989.

ADDRESSES: The public docket for this rulemaking is available for public inspection in Room S-201, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The docket number is F-88-DCPP-FFFFF. The public must make an appointment to review docket materials by calling (202) 475-9327. The public may copy materials at the cost of $.15 per page. Charges under $15.00 are waived.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424-9346 (toll free) or (202) 382-3000 in Washington, DC, or Permits Branch, Office of Solid Waste (OS-341) U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4740.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Background
III. Summary of Today's Rule
IV. Section-by-Section Analysis
A. Applicability
1. Surface Impoundments Not Meeting Liner and Leachate Collection System Requirements
2. Landfills
3. Land Treatment Units
4. Other Treatment and Storage Facilities
B. Part 264 Standards
1. General Conditions for Delay of Closure (§ 264.113(d))
a. Demonstrations for Extensions to Closure Deadlines (§ 264.113(d)(1))
(1) Design Capacity
(2) Receipt of Non-Hazardous Waste Within One Year
(3) Compatibility of Wastes
(4) Incompatibility of Closure with Continued Operations
b. Continued Compliance with Subtitle C Requirements
c. Changes to Facility Plans (§ 264.113(d)(2))
d. Exposure Assessment Information
e. Permit Revisions (§ 264.113(d)(4))
2. Additional Requirements for Surface Impoundments that do not Meet Liner and Leachate Collection System Requirements (§ 264.113(e))
a. Contingent Corrective Measures Plan (§ 264.113(e)(1))
b. Alternatives
(1) Alternative 1—Removal of Hazardous Wastes (§ 264.113(e)(2))
(a) Liquid and sludge removal
(b) Relationship to the mixture rule
(2) Alternative 2—Flushing Hazardous Wastes
(3) Alternative 3—Leaving Hazardous Wastes in Place
c. Corrective Action Requirements (§§ 264.113(e)(4) and (5))
(1) Corrective Action Trigger (§§ 264.113(e)(4))
(2) Other Media
(3) Additional Corrective Measures Requirements
d. Evaluating the Progress of Corrective Action (§ 264.113(e) (5), (6), and (7))
3. Notification of Closure (§ 264.112(d)(2))
C. Part 270 Permit Modification Requests (§ 270.42)
D. Conforming Changes
1. Conforming Changes to Part 265 Interim Status Requirements
a. Eligibility
b. Ground-Water Monitoring and Corrective Action
c. Applicability to New Interim Status Units
V. State Authorization
A. Applicability of Rules in Authorized States
B. Effect of Rule on State Authorizations
VI. Executive Order 12291
VII. Paperwork Reduction Act
VIII. Regulatory Flexibility Act

I. Authority

These regulations are issued under the authority of sections 1006, 2002(a), 3004, 3005, and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, 6925 and 6926).

II. Background

Section 3004 of the Resource Conservation and Recovery Act (RCRA) requires the Administrator of EPA to promulgate regulations establishing such performance standards applicable to owners and operators of hazardous waste treatment, storage, or disposal facilities (TSDFs), as may be necessary to protect human health and the environment. Section 3005 requires the Administrator to promulgate regulations requiring each person owning or operating a TSDF to have a permit, and to establish requirements for permit applications. Recognizing that a period of time would be required to issue permits to all facilities, Congress created "interim status" in section 3005(e) of RCRA. Owners and operators of existing hazardous waste TSDFs who qualify for interim status will be treated as having been issued permits until EPA takes final administrative action on their permit applications. The privilege of carrying on operations during interim status carries with it the responsibility of complying with appropriate portions of the section 3004 standards.

EPA has issued several sets of regulations to implement these RCRA requirements. These regulations include part 264 (which provides standards for owners and operators of TSDFs that have been issued RCRA permits) and part 265 (which provides standards for owners and operators of interim status TSDFs) of title 40 of the Code of Federal Regulations (CFR). Subpart G within these two parts addresses requirements for closing TSDFs and maintaining them after closure if necessary. The subpart G requirements in both of these parts, particularly the closure deadlines found in §§ 264.112, 265.112, 264.113, and 265.113, will be affected by the promulgation of today's final rule.

The requirements of §§ 264.113 and 265.113 were last amended on May 2, 1986 (51 FR 16422). In the May 1986 rulemaking, the Agency made conforming changes to the requirements in §§ 264.113 (a) and (b) and 265.113 (a) and (b) requiring that closure be completed within 180 days after the final receipt of hazardous wastes rather than after the final receipt of wastes (51 FR 16422). After promulgation of the May 2, 1986 amendments, lawsuits were filed challenging the requirement that closure be completed within 180 days after the final receipt of hazardous waste. The litigants, Union Carbide Corporation (Union Carbide) and the Chemical Manufacturers Association (CMA), contended that this change was inconsistent with the Congressional intent evidenced in the legislative history of the Hazardous and Solid Waste Amendments (HSWA) which amended RCRA in 1984 regarding closure of surface impoundments. Further, the litigation contended that the change was unnecessary to protect human health and the environment, and that it would discourage waste minimization and other goals Congress expressed in HSWA. EPA entered into settlement discussions with the litigants. To date, no settlement of the case has been reached.

On June 6, 1988 (53 FR 20738), the Agency proposed a rule amending the parts 264 and part 265 closure requirements to allow owners and operators of landfills and surface impoundments meeting specific eligibility criteria to delay closure of their facilities to receive non-hazardous waste following the final receipt of hazardous waste. The rule proposed general requirements for surface impoundments and landfills wishing to remain open to receive non-hazardous wastes and additional requirements for surface impoundments that did not meet the part 264 liner and leachate collection system requirements.

The Agency received 24 comment letters in response to the June 6, 1988 proposal. The comments received were filed in Docket #F-88-DCPP-FFFFF and are available for public review. Additionally, the Agency has prepared a summary of these comments and the Agency's response in a document entitled "Response to Comments to June 6, 1988 Proposed Rule to Allow Delay of Closure Following the Final Receipt of Hazardous Wastes (53 FR 20738)." This document is available for public review at the EPA RCRA Docket (Room 2427), 401 M Street, Washington, DC 20460.

In brief, most commenters supported allowing certain hazardous waste management units the opportunity to delay closure to receive only non-hazardous wastes. These commenters felt that the proposal provided owners and operators of these hazardous waste management units with needed flexibility in their management operations. These commenters also agreed with the Agency position that the proposed requirements would provide adequate protection of human health and the environment.

Commenters opposed to the proposal generally objected to its applicability to surface impoundments not satisfying the liner and leachate collection aspects of the minimum technology requirements (MTR). Commenters expressed concern that these units could not be operated in a manner that would be adequately protective of human health and the environment. These commenters also contended that the Agency did not have the authority to allow these units to remain open, since RCRA section 3005(j) required them either to be retrofitted to meet MTR, or to cease the receipt of hazardous waste on November 8, 1988. The Agency has carefully considered the comments received and is today finalizing the proposal with a number of changes which are discussed further in later sections of this preamble.

III. Summary of Today's Rule

Today the Agency is promulgating requirements amending 40 CFR 264.113 and 265.113, that will allow certain landfills, surface impoundments, and land treatment units to be eligible to delay closure to receive only non-hazardous waste after the final receipt of hazardous waste. The Agency believes that these units, including surface impoundments that do not meet the part 264 liner and leachate collection system elements of the minimum technological requirements (MTR) specified by RCRA section 3004(o), but from which hazardous wastes have been removed, can operate in an environmentally protective manner by meeting the requirements set forth in this rule. The requirements promulgated in today's rule specify general conditions applicable to all surface impoundments, landfills and land treatment units delaying closure, with additional conditions imposed on surface impoundments that do not meet part 264 liner and leachate collection system requirements.

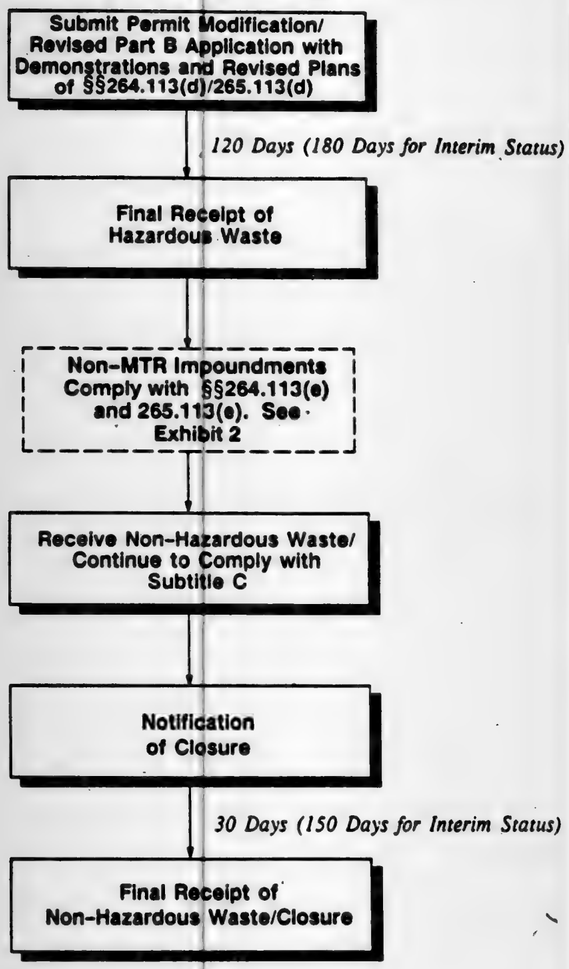
Owners and operators of facilities delaying closure under today's rule will be required to operate under the full permit requirements of 40 CFR part 264 (or part 265 requirements until a permit is issued), including corrective action requirements. In addition, surface impoundments not in compliance with liner and leachate collection system requirements will be required to remove all hazardous waste to the extent practicable. Facilities currently in interim status that meet the requirements of today's rule may delay closure while the permit application is being reviewed.

The general requirements in §§ 264.113(d) and 265.113(d) applicable to all owners and operators wishing to delay closure are being finalized as proposed with a few minor clarifying changes. These requirements are illustrated in Exhibit 1. Owners and operators wishing to delay closure under today's final rule must request a permit modification at least 120 days prior to final receipt of hazardous wastes, or, if the facility is in interim status, submit an amended part B application (or a part B application if one has not been previously submitted) at least 180 days prior to the final receipt of hazardous wastes. Owners or operators of units that received their final volume of hazardous wastes before promulgation of today's rule may delay closure if they submit the required demonstrations and permit modification (or amended part B application) within 90 days of today's Federal Register notice. Facilities which lost interim status prior to today's notice are ineligible to delay closure. These units may, of course, submit permit applications, which, if approved, could allow them to receive non-hazardous wastes pursuant to the applicable requirements of today's rule.

BILLING CODE 6560-50-M

Exhibit 1

Requirements Applicable to All Facilities Wishing to Defer Closure



* Note: If a permit or permit modification is denied at any time, or interim status terminated for the affected unit, closure pursuant to §§ 264.113(a) and (b) or 265.113(a) and (b) must be initiated.

S95096-1

BILLING CODE 6560-50-C

The request for a permit modification or the amended part B application must include demonstrations that the unit has the existing design capacity to manage non-hazardous waste, and that the non-hazardous wastes are not incompatible with any hazardous or non-hazardous wastes remaining in the unit. In addition, certain facility information including the waste analysis plan, ground-water monitoring plans, closure and post closure plans and cost estimates, financial assurance demonstrations and the human exposure assessment information required under RCRA section 3019, must be updated as necessary to account for receipt of only non-hazardous waste.

Owners and operators of units remaining open under today's rule must also continue to comply with all applicable part 264 permit requirements (or part 265 requirements until a permit is issued). Units may not remain open to receive only non hazardous wastes if the Regional Administrator determines that continued operation of the unit or facility cannot be conducted in accordance with these requirements ensuring the protection of human health and the environment. Finally, units must be closed in accordance with the approved closure plan and the subpart G regulations applicable to hazardous waste management units, including notification of the Agency in accordance with the deadlines specified in §§ 264.112(d)(1) and 265.112(d)(1).

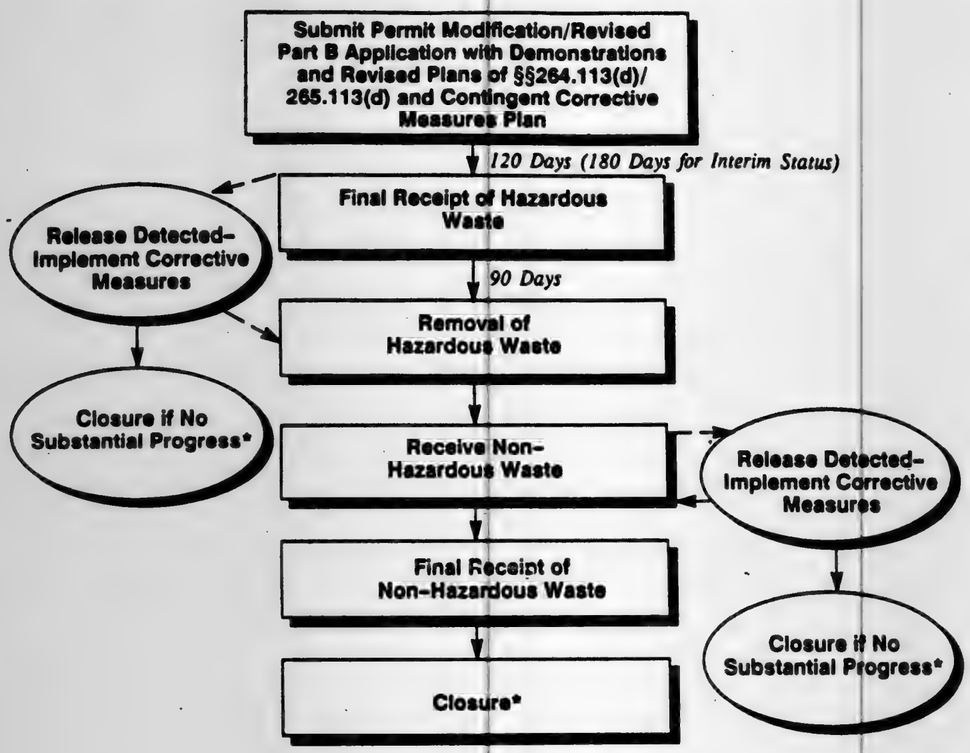
Additionally, the owner or operator must initiate closure under the following circumstances: A request to modify the permit to manage only non-hazardous wastes is denied; the permit is terminated or is revoked at any time; a RCRA permit is denied for interim status facilities; or interim status is otherwise terminated. Closure must be conducted in accordance with the approved closure plan and the deadlines currently in § 264.113 (a) and (b) or § 265.113 (a) and (b).

Today's rule also establishes additional requirements applicable to surface impoundments that do not satisfy the liner and leachate collection system requirements specified under RCRA section 3005(j) or have not received a waiver from these requirements, but wish to delay closure to receive non-hazardous waste. These additional requirements, including removal of hazardous waste, accelerated corrective measures, and strict limitations on continued operations following detection of a release from the unit, will ensure that these units are adequately protective of human health and the environment. The specific requirements are illustrated in Exhibit 2 and summarized briefly below.

BILLING CODE 6560-50-M

Exhibit 2

Surface Impoundment/Waste Removal Alternative



** Unit continues to be subject to corrective action requirements, if applicable.*

BILLING CODE 6560-50-C

Owners and operators of surface impoundments not meeting liner and leachate collection system requirements must prepare and submit a contingent corrective measures plan with their request to modify their permit (or for interim status facilities, with their amended part B application). The plan must include a description of corrective measures that can be implemented quickly if a release is detected and, if waste may continue to be received, a demonstration that continued receipt of wastes following detection of a release will not impede implementation of the corrective measures. (The contents of the plan are discussed in more detail in IV.B.2.a of today's preamble).

Under the final rule, owners and operators of surface impoundments not meeting double liner and leachate collection system requirements and who wish to delay closure must remove all hazardous liquids and remove all sludges from the impoundment to the extent practicable. If a release is detected either prior to or after final receipt of hazardous wastes at a surface impoundment from which hazardous wastes have been removed, corrective measures must be implemented within one year from the date of release. Continued receipt of non-hazardous wastes while corrective measures are being implemented may occur only if the owner or operator already has an approved contingent corrective measures plan (or a full corrective action plan) that accounts for the continued receipt of non-hazardous wastes and demonstrates that such continued receipt of wastes will not impede the progress of the corrective action. If the corrective measures plan has not been approved, receipt of waste must cease until such a corrective measures plan has been approved.

If an owner or operator fails to make substantial progress in conducting corrective action, either by failure to initiate actual remediation or containment activities within the first year and/or subsequently failing to implement actions leading to substantial progress towards achieving the facility's ground-water protection standard (GWPS) or background levels, if applicable, he must initiate closure of the impoundment in accordance with the requirements of subpart G of part 264 or 265. Substantial progress towards achieving the facility's GWPS or background levels will be determined on a case-by-case basis. The achievement of substantial progress will be measured by whether the owner or operator has corrective action measures in place within one year, and has met significant plan milestones or deadlines in the compliance schedule, permit, or enforcement order that establishes timeframes for achieving the facility's GWPS, or background levels. Today's rule also includes administrative procedures providing opportunity for public comment on the Regional Administrator's decision that substantial progress has not been made and that closure of the unit is therefore required.

IV. Section-by-Section Analysis

The following sections of this preamble address the major issues raised by commenters on the proposed rule and present the Agency's response to these major issues and rationale for changes to the proposed rule. The preamble is arranged in a section-by-section sequence for ease of reference. Section A addresses the applicability of the rule. Section B discusses the part 264 technical requirements applicable to permitted facilities. The part 270 procedural requirements applicable to permitting are addressed in section C. Section D discusses the conforming changes to 265 interim status standards. The requirements proposed in parts 264 and 265 are substantively identical, but have slightly different procedural requirements.

A. Applicability

Today's rule is restricted to permitted and interim status landfill, land treatment, and surface impoundment units that: (1) Are in compliance with applicable permit or interim status requirements (except double liner requirements); (2) cease to receive hazardous wastes; and (3) will subsequently receive only non-hazardous waste. The proposed rule did not extend the option to delay closure to land treatment units, but specifically requested comments on whether the option should be available to such units. After considering public comments received, the Agency has decided to allow land treatment units to delay closure if they satisfy the eligibility criteria in § 264.113(d) or § 265.113(d). This change is discussed in greater detail in section IV.A.3. below.

The rule does not extend the option to delay closure to units that lost interim status. Today's rule also does not extend the option to delay closure to manage only non-hazardous wastes to storage or treatment tanks, container storage areas, waste piles, or incinerators. If owners or operators of such units wish to receive non-hazardous wastes after the final receipt of hazardous wastes, they must first comply with the current closure requirements. The Agency believes that the activities necessary to close storage units and incinerators (e.g., waste removal and decontamination) are compatible with the future use of the unit and therefore requiring these units to conduct closure prior to receiving only non-hazardous wastes will not impose an undue burden on owners or operators.

1. Surface Impoundments Not Meeting Liner and Leachate Collection System Requirements

The proposal required surface impoundments not meeting the MTR liner and leachate collection system standards to meet the general conditions applicable to all units (§§ 264.113(d) and 265.113(d)) as well as additional requirements (§§ 264.113(e) and 265.113(e)). The proposed rule (Option 3, § 264.113(e)(3)) allowed impoundments in which wastes remained in place (i.e., disposal impoundments) to delay closure only if they were not leaking at the time of the final receipt of hazardous waste. As described below, the requirements of §§ 264.113(e) and 265.113(e) have been modified in the final rule in response to comments received on the proposal.

Many commenters favored the provision of the proposal allowing non-MTR surface impoundments to delay closure and provided anecdotal information in support of it. Other commenters opposed the proposal, expressing concern that it would adversely impact human health and the environment. Those commenters asserted that the proposed rule would violate the requirements in RCRA section 3005(j) which require that surface impoundments that have not met MTR cease receipt, storage, and treatment of hazardous wastes on November 8, 1988. Commenters further argued that because all hazardous wastes would not be removed from the impoundment (for instance, under one of the options, no hazardous wastes were required to be removed), and because the facility would not cease activities that involve the management of the remaining hazardous wastes, the unit should be considered an active hazardous waste surface impoundment and therefore would be in violation of section 3005(j) of RCRA. These commenters further asserted that the proposal violates RCRA section 1003(a)(5) because the proposal achieves protection of human health and the environment by remediating releases, rather than by preventing releases, which they argued is required by the statute.

BEST COPY AVAILABLE

One of these commenters also questioned the Agency's technical judgment in allowing hazardous waste to remain in surface impoundments lacking double liners and leak detection systems. The commenter noted that the Agency previously has been unwilling to rely solely on ground-water monitoring and corrective action to detect and cleanup releases, favoring instead a combination of design and operating requirements to minimize the potential for releases. The commenter also pointed out that the Agency had not presented any data with this rulemaking indicating that the Agency now found that ground-water monitoring and corrective action were more effective than it believed in the past. Finally, the commenter expressed concern that placing additional liquid non-hazardous wastes into a surface impoundment containing hazardous wastes could increase the pressure head and, consequently, increase the chances that hazardous constituents from the hazardous wastes would escape into the environment.

The Agency is not persuaded by the commenters' legal arguments based on section 3005(j). The Agency does not believe that the use of the term "storage" in RCRA section 3005(j) bars the continued receipt of non-hazardous wastes by impoundments that may contain hazardous wastes. The statute clearly requires that non-MTR surface impoundments cease receiving hazardous wastes by November 8, 1988, and all non-retrofitted impoundments must comply with this requirement. The statute does not itself require closure of these units. In a colloquy clarifying statutory language, Senators Randolph and Chafee indicated that the intent of the provision was not to require retrofitting for hazardous waste impoundments that receive or store hazardous waste prior to November 8, 1988, but cease to receive hazardous waste after that date, and that requiring such closure would not be necessary if continued waste management in the impoundment were conducted in a manner ensuring continued protection of human health and the environment (130 Cong. Rec. S9182 daily ed. July 25, 1984).

The Agency does, however, agree with the commenters that section 1003(a)(5) establishes the goal of managing hazardous waste properly in the first place, "thereby reducing the need for corrective action at a future date." However, the Agency believes that Congress intended to allow the Agency to determine the type of regulatory controls needed to provide "proper management" for each type of hazardous waste management unit. This provision does not prohibit non-retrofitted surface impoundments from delaying closure to receive non-hazardous wastes. Closure of these units need not be required if the Agency determines that the wastes in the impoundments can still be managed in such a way as to reduce the need for future corrective action.

The Agency has re-evaluated the proposal in light of the technical and policy concerns raised in the comments. Upon reconsideration, the Agency has determined that only those non-retrofitted impoundments that meet the removal requirements described in Option 1 of the proposal will be eligible to delay closure. Surface impoundments from which wastes are not removed will not be permitted to delay closure. Further, flushing of impoundments to achieve only a 95 percent volume displacement is not sufficient under the final rule as evidence of waste removal.

EPA, as noted by the commenters, generally has adopted regulatory requirements which impose both prevention and detection and remediation requirements for land disposal units. This position was first articulated in the Agency's July 26, 1982 rulemaking establishing standards for land disposal facilities (47 FR 32274). The 1982 rule promulgated two sets of standards for landfills, surface impoundments, waste piles, and land treatment units. The design and operating standards were intended to minimize the formation and migration of leachate and thus reduce the likelihood of releases, while the ground-water monitoring and response requirements were promulgated to ensure that releases would be detected and corrective action measures implemented in the event of a release. The Agency reiterated its position on these dual goals of prevention and protection in its May 2, 1986 rule establishing additional closure, post-closure care, and financial responsibility requirements for hazardous waste facilities. In the preamble to the 1986 final rule, the Agency stated that "the hazardous waste regulations incorporate a two-part 'prevention and care' system whose overall goal is to minimize the formation and migration of leachate to the adjacent subsurface soil, ground water, or surface water." (51 FR 16432) The Agency also relied on this position in the May 28, 1987 (52 FR 2218), proposal to extend double liner and leachate collection standards to certain new, replacement, and expansion landfills and surface impoundments not required to meet these standards under section 3004(o).

The Agency also agrees with the commenters that proposed Options 2 and 3 failed to require measures sufficient to prevent releases from impoundments. Consistent with previous policies, EPA is not willing to rely solely on detection and remediation to provide protection for human health and the environment at non-retrofitted impoundments which retain significant amounts of liquid. Under both of these options, particularly Option 3, significant amounts of hazardous liquids would remain in surface impoundments that lack liners and leachate collection systems or have liners that do not meet the standards that EPA would require for new units. EPA shares the commenter's concern that adding additional non-hazardous liquids could increase the pressure level in these impoundments thereby increasing the potential for releases of the remaining hazardous wastes from these impoundments. On re-examination the Agency no longer believes that the enhancements to the remediation process that the Agency had proposed (such as accelerated corrective action) are sufficient to mitigate the possibility that a release may escape early detection and prompt remediation. Consequently, the Agency believes that protection of human health and the environment requires prompt closure of impoundments retaining significant amounts of hazardous waste. Closure will supply necessary "preventative" measures by requiring the owner or operator to either remove all hazardous wastes and waste constituents or to eliminate all free liquids and install an impermeable cap to reduce the potential for future releases of hazardous constituents.

The Agency continues to believe that proposed Option 1 does, however, require sufficient preventative measures to ensure continued protection of human health and the environment. Under this option, the owner or operator must remove all liquid hazardous wastes and remove hazardous sludges to the extent practicable. The Agency believes that the significant reduction in the quantity of waste in the unit will reduce the threat posed by any release to the environment. While some small amount of hazardous sludges may remain, the required removal activity significantly decreases the likelihood that a release of hazardous constituents, leached from the sludge at levels presenting a threat to human health and the environment, will occur.

To further ensure continued environmental protection, the Agency has retained the requirements it proposed to expedite the detection and remediation process. Units delaying closure will be required to receive permits and to operate under part 264 standards including ground-water monitoring standards. These units will therefore be subject to the same ground-water monitoring requirements as units meeting all MTR. Further, to ensure prompt response and remediation in the event of a release, accelerated corrective action and/or closure of units is required.

Surface impoundments not meeting liner and leachate collection systems requirements must submit a contingent corrective measures plan describing interim measures for handling a release if it occurs and promptly implement this plan if a release is detected. Detection of releases will be determined using either background levels or the ground-water protection standard (GWPS) if one has been established. Further, owners and operators will not be allowed to delay implementation of corrective measures while a GWPS is being established.

The Agency therefore continues to believe that the combination of waste removal and stricter detection and remediation requirements of §§ 264.113(e) and 265.113(e) will protect human health and the environment and be consistent with the objectives and specific requirements of RCRA. Accordingly, the Agency is finalizing revised requirements in §§ 264.113(e) and 265.113(e) which allow surface impoundments not meeting liner and leachate collection system requirements to delay closure if hazardous wastes are first removed and other eligibility and operating criteria are met. Section IV.B.2 discusses in more detail how the proposed requirements have been modified in response to comments.

2. Landfills

The proposed rule would allow landfills that meet the general requirements set forth in §§ 264.113(d) and 265.113(d) to delay closure. One commenter opposed allowing landfills not meeting MTR to delay closure. The commenter contended that landfills not meeting MTR would pose risks of release similar to those posed by non-retrofitted surface impoundments.

The Agency has considered the commenter's concerns, but is promulgating the final rule as proposed allowing landfills to delay closure if they meet the requirements in § 264.113(d). Existing landfills are not subject to the provisions of Section 3005(j) of RCRA that require surface impoundments to retrofit or cease receipt of hazardous waste by November 8, 1988. Existing landfills are, however, subject to the requirements of section 3004(o) of RCRA. Under section 3004(o) existing landfills must retrofit to meet MTR or cease receipt of hazardous waste only if they are laterally expanded, or otherwise trigger the replacement or new unit definitions.

The Agency believes that since existing landfills not satisfying MTR may remain in operation to handle hazardous wastes, they should be allowed to delay closure to receive only non-hazardous wastes if they meet the requirements of § 264.113(d) or § 265.113(d), as applicable. The Agency also disagrees with the commenter's view of the risks presented by receipt of non-hazardous waste at landfills. When evaluating a request to delay closure of an existing landfill, the Agency will carefully consider the compatibility of the hazardous and non-hazardous waste to be managed in the landfill in addition to all other requirements in §§ 264.113(d) and 265.113(d). Requiring landfills to comply with §§ 264.113(e) and 265.113(e) would result in units receiving only non-hazardous wastes being subject to more stringent requirements than landfills receiving hazardous wastes. Accordingly, under today's rule, landfills are subject only to the requirements in §§ 264.113(d) and 265.113(d) to delay closure.

3. Land Treatment Units

The proposed rule did not extend the option to delay closure to land treatment units. The Agency did, however, specifically request comment on whether the proposal should be extended to land treatment units.

The majority of commenters on this issue supported extending the option to delay closure to land treatment units. Comments favoring the option pointed out that many land treatment facilities already manage both hazardous and non-hazardous waste streams. Commenters further asserted that land treatment units pose a lower risk to ground water than surface impoundments and landfills because hazardous constituents are degraded and immobilized as part of treatment, and that the destruction efficiency of a land treatment unit may be improved when non-hazardous wastes are combined with hazardous wastes. One commenter who opposed allowing land treatment units to delay closure stated that increased pressure and potential explosive and subsidence hazards could be caused by the acceptance of non-hazardous wastes.

The Agency has considered these comments and has expanded the final rule to allow land treatment units to delay closure if they satisfy the eligibility criteria of §§ 264.113(d) and 265.113(d). The Agency believes that land treatment units can delay closure and operate in a manner that is protective of human health and the environment. All land treatment units that delay closure will continue to be subject to all subtitle C requirements for land treatment units and the requirements of §§ 264.113(d) and 265.113(d) of today's rule. Existing subtitle C regulations require owners and operators of land treatment units to demonstrate that the hazardous constituents in the subtitle C wastes will be completely degraded, transformed or immobilized in the treatment zone. As part of the permit or permit modification (or amended Part B application for interim status facilities) required to delay closure, these owners and operators will be required to demonstrate that receipt of non-hazardous waste will not inhibit the degradation, transformation or immobilization of the hazardous wastes in the treatment zone. These factors, together with the other requirements of §§ 264.113(d) and 265.113(d) will ensure that land treatment units delaying closure are adequately protective of human health and the environment.

4. Other Treatment and Storage Facilities

The proposed rule would not allow storage units (i.e., storage and treatment tanks, container storage areas, or waste piles) or incinerators to delay closure. In the preamble to the proposal, the Agency stated that if these units wanted to delay closure in order to receive only non-hazardous waste, they would first be required to close in compliance with the requirements of subpart G. The requirements for closure of these units involve removal or decontamination of all wastes and waste residues, containers, liners, bases and contaminated soils, equipment and other containment system components (40 CFR 264.178, 264.197, 264.258, 264.351, 265.197, and 265.351). These closure requirements are not incompatible with the reuse of these units for receipt of only non-hazardous waste. Once the unit has been emptied of all hazardous wastes and decontaminated, it could receive non-hazardous waste as a subtitle D facility, without being subject to the stricter provisions of today's rule.

Only one commenter recommended that tanks and container storage areas be allowed to delay closure. The Agency

continues to believe that because the activities which would be necessary to delay closure are so similar to activities required to close these units, prohibiting storage units from delaying closure under today's rule will not impose an undue burden on the owners and operators of these units. Therefore, the final rule is promulgated as proposed and is not applicable to storage and treatment tanks, container storage areas, waste piles and incinerators.

B. Part 264 Standards

The Agency proposed to amend §§ 264.112(d) and 264.113 (a), (b), and (c), and to add new paragraphs (d) and (e) to § 264.113. Sections 264.113 (a) and (b) require a facility owner or operator to treat, dispose, or remove all hazardous wastes within 90 days and to complete closure activities within 180 days of the final receipt of hazardous wastes. Further, § 264.112(d) establishes that the date the owner or operator expects to begin closure, which triggers the notification requirements, is no later than 30 days after the receipt of the last known volume of hazardous wastes. Under §§ 264.113 (a) and (b) and 265.113 (a) and (b), extensions to the closure period may be granted in certain limited circumstances. Today's rule provides an additional justification for an extension of the closure period to allow for management of only non-hazardous wastes. Additionally, a conforming change is being made to §§ 264.112(d) and 264.113(c) to address deadlines for closure of units that qualify to delay closure. The changes to § 264.113 being promulgated today supplement existing part 264 standards and provide assurance that public health and the environment will be adequately protected at units delaying closure.

1. General Conditions for Delay of Closure (§ 264.113 (d))

Section 264.113(d) of today's rule establishes the general requirements applicable to all units delaying closure to receive non-hazardous wastes after the final receipt of hazardous wastes. These requirements supplement existing subtitle C requirements. The § 264.113(d) requirements are discussed in turn below.

a. *Demonstrations for Extensions to Closure Deadlines (§ 264.113(d)(1)).* Section 264.113(d)(1) of the proposed rule required owners and operators of facilities wishing to delay closure to demonstrate as part of their permit application or modification that: (1) The unit(s) has adequate existing design capacity to continue to receive waste; (2) there is a reasonable likelihood that non-hazardous wastes will be received in the unit within one year of the final receipt of hazardous waste; (3) non-hazardous wastes received will be compatible with any other wastes remaining in the unit; (4) closure of the unit is incompatible with continued operation of the facility; and (5) the facility will continue to be operated in compliance with all applicable permit or interim status requirements.

The Agency received a number of comments regarding these demonstrations. Most commenters recommended that the required demonstrations be modified or deleted from the final rule. The Agency continues to believe, however, that the demonstrations required in the proposal are necessary to ensure that units delaying closure to receive only non-hazardous waste remain adequately protective of human health and the environment. In many cases, the required demonstrations are the same as those currently required under §§ 264.113(b) and 265.113(b) for units wishing to temporarily suspend hazardous waste management activities. The Agency's rationale for retaining each of the demonstrations is presented below.

(1) *Design Capacity.* One commenter recommended that the option to delay closure not be restricted to a facility's original design capacity. The Agency continues to believe that it is prudent to restrict the option to delay closure to the existing design capacity. In proposing these changes to the closure requirements, the Agency recognized that closure of a unit while the unit has remaining capacity to receive non-hazardous wastes could disrupt facility operations or impose substantial economic burdens on the facility owner or operator. Where existing capacity can be utilized to manage non-hazardous wastes in a manner that remains protective of human health and the environment, extensions to the closure period may be allowed. The Agency believes that it is unwise to allow the expansion of subtitle C units for managing non-hazardous wastes, thus resulting in large units subject to subtitle C. Finally, the Agency does not believe that many owners and operators would want to expand their subtitle C units or facilities simply to receive more non-hazardous waste, since such lateral expansion of surface impoundments and landfills would trigger the liner and leachate collection system requirements of RCRA section 3004(o). The Agency recommends that if additional non-hazardous waste capacity is needed, a facility choose to construct a unit designed to handle non-hazardous wastes in accordance with Subtitle D requirements.

(2) *Receipt of Non-Hazardous Waste Within One Year.* A commenter suggested that the required demonstration that wastes will be received within one year of the final receipt of hazardous waste be documented (e.g., through submission of contracts indicating anticipated receipt of non-hazardous waste) and that the time period within which non-hazardous wastes must be received should be shortened to three months. The Agency does not believe that such changes are necessary. The provision allowing a unit to remain open if it receives additional wastes within one year of the final receipt of hazardous wastes is consistent with the provisions allowing continued receipt of hazardous waste. In implementing §§ 264.112(d)(2) and 265.112(d)(2), the Agency currently determines on a case-by-case basis the documentation that best supports the claim that additional wastes will be received and that sufficient design capacity is remaining. In evaluating these submissions, the Regional Administrator generally takes into account a number of factors including those suggested by the commenter, such as: (1) Unit or facility characteristics, including capacity and operating conditions; (2) demand for the facility; (3) the owner or operator's business plans; and (4) the history of facility operations (OSWER Policy Directive #9476.00-5, January 1987, pp. 3-16 and 3-17). Finally, the eligibility requirements, including the requirements to continue to comply with all permit conditions or interim status standards, if applicable, will ensure that units remaining open following the final receipt of hazardous waste are protective of human health and the environment.

(3) *Compatibility of Wastes.* The Agency received comments on the compatibility demonstration (§§ 264.113(d)(1)(iv) and 265.113(d)(1)(iv)) only with respect to landfill units. Several commenters challenged the Agency's suggestion in the preamble that it would be difficult to demonstrate that municipal solid wastes would be compatible with hazardous wastes remaining in landfill units, and therefore it would be unlikely that receipt of municipal solid wastes would be allowed. The Agency continues to believe that, in most cases, it will be difficult to demonstrate that municipal solid wastes will be compatible with hazardous wastes remaining in a unit delaying closure. Problems which are anticipated include subsidence, settlement of the cap, or leachate and methane gas production. The Agency acknowledges, however, that some units have been specifically designed to co-manage both hazardous and municipal solid wastes. For these types of units, the Agency agrees with the commenter that it may not be difficult to demonstrate that the continued receipt of non-hazardous wastes will be compatible with the design of the unit and with the hazardous wastes remaining in the unit. In cases where the unit has not been designed specifically to handle hazardous and non-hazardous wastes, however, the Agency still believes that it will be difficult to demonstrate that the addition of non-hazardous wastes will be compatible with the remaining wastes in the unit and with the facility design and operating requirements of part 264. The requirements of §§ 264.113(d)(1)(iv) and 265.113(d)(1)(iv) therefore remain unchanged. These requirements are applicable to all types of units eligible to delay closure.

(4) *Incompatibility of Closure With Continued Operations.* A few commenters expressed confusion about the requirement that owners and operators demonstrate that closure of the unit would be incompatible with continued operation of the facility.

After considering the commenters' concerns, the Agency has decided to retain the requirement that owners and operators of units delaying closure demonstrate that closure of the unit would be incompatible with continued operation of the facility (§ 264.113(d)(1)(iv)). This requirement is consistent with existing requirements for requesting an extension to the deadlines to begin closure for owners or operators wishing to receive additional hazardous wastes, and has not proved to be an implementation concern to date. This demonstration can be supported by submission of information showing the role of the unit in the facility's overall waste management scheme. The practical, rather than economic, disruptions which closure of the unit with remaining capacity would have on facility operations should be evidenced.

b. *Continued Compliance With Subtitle C Requirements.* A few commenters asserted that the Agency does not have the authority to require continued compliance with Subtitle C permitting requirements because units delaying closure would be managing only non-hazardous wastes. One commenter recommended that the Agency not require compliance with both State and local regulations in addition to Subtitle C requirements to avoid duplicate and potentially conflicting requirements. Finally, one commenter suggested that the Agency clarify that surface impoundments not meeting liner and leachate collection system requirements need not comply with the permit requirements for retrofitting.

RCRA provides the Agency ample authority to regulate any units that received hazardous waste after November 19, 1980. Units wishing to delay closure are currently regulated under Subtitle C and remain regulated as long as hazardous constituents from those wastes remain in the units, unless the owner or operator obtains a delisting or satisfies clean closure requirements.

In specifying in the preamble to the proposal that units comply with applicable State and local regulations, the Agency was merely restating existing requirements. Currently, an owner or operator is subject to all applicable State and local regulations in addition to applicable Federal requirements.

Finally, one commenter pointed out that the requirement for surface impoundments not designed to satisfy the MTR liner and leachate collection system requirements to comply with all part 264 permit requirements could cause confusion. The Agency wishes to clarify that the MTR liner and leachate collection requirements are not applicable permit requirements for surface impoundments operating under a § 264.113(e) and § 265.113(e) extension. It should be noted that lateral expansion of units delaying closure pursuant to §§ 264.113(d) and (e) is not allowed. Lateral expansion of such units would trigger the MTR requirements of § 3004(o) as well as constitute a violation of today's regulation.

c. *Changes to Facility Plans (§ 264.113(d)(2)).* Section 264.113(d)(2) proposed that owners and operators submit with their permit modification request, necessary and appropriate changes to the waste analysis plan, ground-water monitoring plan and response plan, closure and post-closure plans and cost estimates, and demonstrations of financial assurance required elsewhere in part 264. These requirements parallel existing requirements that facility plans be revised to reflect substantial changes in the types of hazardous wastes being handled or the hazardous waste management practices employed. Similarly, the Agency believes that to ensure proper management of units receiving non-hazardous wastes, selected plans should be revised to reflect changes in unit operations for managing only non-hazardous wastes.

The Agency received very few comments on the proposed requirement to modify the ground-water monitoring plan, closure and post-closure plans and cost estimates, and financial assurance demonstrations (responses to these comments appear in the Comment Response Document). However, a number of commenters objected to the requirement to revise the waste analysis plan. One commenter stated that modifying the waste analysis plan is unnecessary because waste compatibility already will have been demonstrated under the requirements of § 264.113(d)(1)(iii). In addition, this commenter stated that the Subtitle C waste analysis program cannot be adapted to municipal solid wastes because of the difficulty of obtaining the necessary data. Under Subtitle C, generators of hazardous wastes must prepare a manifest identifying the contents of each shipment of waste. In contrast, generators of municipal solid wastes are not required to compile the data necessary to characterize their wastes. Thus, municipalities and commercial trash collectors would be unable to provide the TSDFs with data on the exact content of municipal solid waste (generally household wastes) which would be necessary to comply with the waste analysis plan requirements.

The Agency continues to believe that revision of the waste analysis plan is necessary and practicable in most cases. Such information will be required to support the compatibility demonstration in § 264.113(d)(1)(iii). The Agency would expect the compatibility demonstration required in § 264.113(d)(1)(iii) to cross-reference the waste analysis plan as evidence that non-hazardous waste streams are compatible with previously managed hazardous wastes.

It should be noted, however, that the final rule requires that the waste analysis plan be revised "as necessary and appropriate" to account for the addition of additional or new non-hazardous waste streams. The Agency acknowledges that in some cases the Subtitle C procedures for conducting physical and chemical waste analyses and the requirements to prepare a waste analysis plan describing these procedures may be difficult to apply to municipal solid wastes. For example, generators of municipal trash (e.g., households) do not have the data necessary to characterize the wastes. In such cases, the Agency may allow the owner or operator to use his own knowledge about the waste streams to

make the required compatibility demonstration (e.g., local ordinances that prohibit certain types of wastes from being disposed in the trash or visual inspections of truckloads). This flexible approach is consistent with current Agency practices.

d. *Exposure Assessment Information.* Section 264.113(d)(4) of the proposed rule would have required owners and operators wishing to delay closure to submit the human exposure assessment required under RCRA section 3019(a) with the request to delay closure. This section further would have required that if the Regional Administrator determined that the unit posed a substantial risk to human health, then the unit would not be eligible to delay closure.

One commenter recommended that the Regional Administrator determine that continued use of the unit to receive only nonhazardous waste would not pose a substantial risk to human health. Another commenter argued that the requirement was stated in excessively vague language and provided no opportunity for administrative appeal. Finally, a third commenter stated that section 3019 information must be submitted only upon submission of a final part B permit application, and that resubmission of the data should not be a condition of delaying closure.

The Agency has considered the commenters' recommendations and agrees that resubmission of the human exposure assessment information required under RCRA section 3019(a) (40 CFR 270.10(j)) may not always be necessary to demonstrate that a unit can operate in a manner protective of human health and the environment. The purpose of the information gathered under the authority of RCRA section 3019 is to assist in the evaluation that a unit delaying closure can continue to operate in a manner protective of human health and the environment. Therefore, the Agency is modifying the final rule to clarify that the information will only be required to be updated "as necessary and appropriate" to account for the receipt of non-hazardous wastes following final receipt of hazardous wastes. The Agency is also including the requirement to submit or revise the § 3019 information with the other plans and information updates required under § 264.113(d)(2) rather than as a separate requirement in § 264.113(d)(4). As a result of this change, proposed § 264.113(d)(4) has been deleted and § 264.113(d)(5) has been renumbered § 264.113(d)(3).

e. *Permit Revisions (§ 264.113(d)(4)).* Under § 264.113(d)(5), the proposed rule required that the permit modification include revisions to the affected conditions of the permit, as appropriate, to account for the management of only non-hazardous waste in the unit delaying closure. No comments were received on this section of the proposal and the Agency is finalizing the requirement as proposed. Because of other changes to the proposal that have resulted in a renumbering of some sections, this section is being promulgated today as § 264.113(d)(3).

2. Additional Requirements for Surface Impoundments that do not Meet Liner and Leachate Collection System Requirements (§ 264.113(e))

The Agency proposed under § 264.113(e) additional requirements applicable to surface impoundments that do not meet MTR liner and leachate collection system requirements. These additional requirements were established to ensure that these units are operated in a manner that is as protective of human health and the environment as surface impoundments in full compliance with MTR.

All surface impoundments not meeting MTR liner and leachate collection system requirements must comply with the requirements of both § 264.113(d) and § 264.113(e). Comments received on the proposed § 264.113(e) requirements and the Agency's final position are discussed below.

It must be noted that these units must continue to comply with section 3005(j) which explicitly prohibits non-retrofitted surface impoundments from receiving hazardous wastes after the November 8, 1988 retrofit deadline. Receipt of some non-hazardous wastes also may not be permitted in these units. Certain non-hazardous liquids (e.g., electroplating wastewaters) generate a listed hazardous sludge. In a June 30, 1988, **Federal Register** notice clarifying the retrofitting requirements, the Agency stated that it interpreted the section 3005(j) requirement that receipt of hazardous waste cease after November 8, 1988 to mean "that no additional hazardous wastes or waste that generates a hazardous sludge shall be placed in the unit (53 FR 24718)." In order to remain in compliance with section 3005(j), therefore, non-retrofitted surface impoundments delaying closure under today's rule will not be permitted to receive a non-hazardous waste if that waste generates a hazardous sludge.

a. *Contingent Corrective Measures Plan (§ 264.113(e)(1)).* In addition to the demonstrations and requirements described in IV.B.1 above, the Agency proposed to require owners or operators of surface impoundments that do not satisfy liner and leachate collection system requirements to include a contingent corrective measures plan with the request to modify the permit as a condition of delaying closure, unless a corrective action plan has already been submitted. The purpose of the plan is to ensure that corrective action can be implemented quickly if a release is detected. Since the exact extent and type of release will not be known, the contingent corrective measures plan should describe a range of possible remedies for likely release scenarios. The preparation of this plan does not relieve the owner or operator from any existing or future requirements of a corrective action program or schedules of compliance in a RCRA section 3008(h) corrective action order or any other order incorporating corrective action requirements.

The Agency received only three comments on this requirement. One commenter stated that the requirement is "overly burdensome" and duplicative of corrective action provisions in § 264.100, and indicated that since facilities delaying closure will still be subject to the permitting process, a separate mechanism for implementing corrective action is not necessary. A second commenter argued that the amount of detail required for the plan is beyond what could reasonably be known prior to actually having a release. Another commenter questioned whether the corrective measures plan would include "meaningful corrective measures."

The Agency is finalizing the requirement of § 264.113(e)(1)(i) for the contingent corrective measures plan as proposed because of the importance of ensuring that surface impoundments not meeting liner and leachate collection system standards continue to be managed in a manner most protective of human health and the environment. Requiring a contingent corrective measures plan in advance of a detection of a release will ensure prompt implementation of remedial measures to prevent further contamination, contain any existing contamination, and remediate contaminated ground water. In general, the Agency believes that this plan can readily be prepared using the data submitted as part of the Part B application (e.g., types of constituents at the facility, hydrogeologic conditions, location of ground-water monitoring wells, and available remedial technologies). In fact, some States already require a contingent corrective measures plan.

Further, the Agency believes that the measures required in the contingent corrective measures plan will be "meaningful" and timely. The Agency believes that it is practical to anticipate many of the actions that may be necessary to remediate releases to ground water. The measures outlined in the contingent corrective measures plan will often be the same types of measures required under the full corrective action plan. Among the measures discussed by the Agency in the preamble to the proposed rule that might be included in the plan were extrapolation of future contaminant movement, a discussion of the likely contaminants of concern, and a description of measures that can be installed quickly to address releases of different types of constituents or releases at variable rates, and plumes of different size and depth. In many cases these actions will constitute interim measures, such as alternate water supplies, stabilization and repair of side walls, dikes, and liners, or reduction of head. Such interim measures would prevent and contain releases and complement any longer-term corrective measures that may be required following a detailed evaluation. The plan should also describe in detail the range of corrective measures that might be used, including the equipment and physical components required.

Finally, the owner or operator must address whether continued receipt of wastes would impede the progress of corrective action and establish criteria or milestones to ensure that substantial progress in remediating the release is achieved. As discussed further in section IV.B.2.c.3 of today's preamble, the owner or operator of a non-retrofitted surface impoundment must cease the receipt of waste upon detection of release unless he has an approved contingent corrective measures plan which demonstrates that continued waste receipt will not impede the progress of the required corrective measures.

b. *Alternatives.* Today's final rule requires owners or operators of surface impoundments that do not meet liner and leachate collection system requirements to remove all hazardous liquids and sludges to the extent practicable as a precondition of delaying closure to receive non-hazardous wastes. As part of the demonstrations required in the request to delay closure, an owner or operator must include a plan for complying with this waste removal requirement. Two alternatives originally proposed have not been finalized. The following section summarizes the comments received on the alternatives and describes the Agency's final position.

(1) *Alternative 1—Removal of Hazardous Wastes (§ 264.113(e)(2)).* The proposal offered owners and operators, as a primary alternative, the option to remove all hazardous liquids and sludges from the surface impoundment prior to receipt of non-hazardous waste. This option appears in today's final rule as Section 264.113(e)(2). This section discusses comments received on this option, as well as the applicability of the mixture rule to impoundments removing hazardous wastes.

(a) *Liquid and sludge removal.* Under the first alternative, proposed as § 264.113(e)(2)(i), the Agency proposed that an owner or operator of a surface impoundment remove all hazardous liquids and hazardous sludges, to the extent practicable without damaging the liner, from the impoundment prior to the receipt of non-hazardous waste.[1] In the preamble, the Agency noted that for unlined units (i.e., units with natural clay liners), the hazardous wastes must be removed down to the underlying and adjacent soil. In addition, the proposal specified that, in the event of a release to ground water, the facility would have to comply with the corrective action requirements of proposed § 264.113(e)(5) and discussed in section IV.B.2.c below.

The Agency also proposed that owners or operators choosing this alternative remove hazardous wastes (liquid and sludges) no later than 90 days after the final receipt of hazardous waste. The proposal allowed the Regional Administrator to approve a request for a longer period of time based on need (e.g., due to adverse weather conditions or specific operating practices), and on a demonstration that an extension would not pose a threat to human health and the environment. The deadline and criteria for requesting an extension to the 90-day deadline in the proposal were consistent with the current provisions in § 264.113(a) for removing all hazardous wastes at closure and for requesting an extension to that deadline.

The Agency received one comment on this proposed alternative requesting clarification of whether natural clay-lined units should remove the clay liners along with the sludge. The requirement to remove sludge from unlined units "down to the underlying and adjacent soil" excludes the liner in naturally-clay lined units. Removal need only be completed to the clay. This clarification does not affect the amount of materials that may be required to be removed from the unit at the time of final closure. No other comments were received and the provision is finalized as proposed.

(b) *Relationship to the mixture rule.* In the preamble to the proposed rule, the Agency discussed the applicability of the "mixture rule" in the context of owners or operators who treat wastes in a series of surface impoundments. In that discussion, the Agency stated that in most cases, the mixture rule would not apply because mixing of hazardous sludge with non-hazardous influent would be unlikely. Therefore, a non-retrofitted surface impoundment delaying closure under the proposed rule could discharge into a non-retrofitted downstream surface impoundment, because the discharged wastes would not be considered hazardous. The Agency received several comments on this interpretation of the "mixture rule." (53 FR 20750) While several commenters supported the Agency's interpretation, other commenters argued that this position is inconsistent with previous Agency interpretations. The commenters who disagreed stated that when a non-hazardous waste and a listed hazardous waste are co-mingled and co-managed in the same unit under any circumstances, the entire mixture is considered a listed hazardous waste and must be managed appropriately.

The Agency maintains that the discussion of the mixture rule contained in the preamble to the proposal is consistent with previous Agency actions. The Agency has consistently interpreted the mixture rule *not* to apply where a non-listed waste is discharged to a unit (i.e., surface impoundment) even if that liquid generates a hazardous sludge, unless the sludge is in some way "mixed" with the liquid (e.g., scoured as a result of operations in the unit). If the Agency did not interpret the mixture rule in this manner, there would be no point in carefully limiting listings to include sludges but exclude wastewaters. The alternate mixture rule interpretation suggested by several commenters would make the wastewater hazardous as soon as the listed sludge was generated.

EPA believes that the opportunity for mixing of hazardous sludges and hazardous liquids from impoundments where all hazardous liquids and sludges have been removed to the extent practicable as required by §§ 264.113(e)(2) and 265.113(e)(2) will be minimal. Opportunities for mixing will be further diminished as additional non-

[1] The draft RCRA Guidance Document, "Minimum Technology Guidance on Single Liner Systems for Landfills, Surface Impoundments and Waste Piles, Design, Construction and Operation," issued May 24, 1988, for example, suggests that a minimum of 18 inches of protective soil or equivalent is appropriate to protect liners from damage when mechanical equipment is used to remove sludge or contents of the impoundments.

hazardous sludge is generated. Were any mixing to occur, it would be confined to the liquid/sludge interface. Levels of hazardous constituents escaping from the hazardous sludge to the non-hazardous liquid are not likely to pose an appreciable risk to human health and the environment. Should the impoundment be subsequently dredged so that scouring or other physical mixing occurs, the mixture rule would come into effect. (This rationale is discussed further in 46 FR 56582, November 17, 1981).

Once all hazardous liquids and hazardous sludges have been removed to the extent practicable, free liquids from such impoundments may be discharged to non-MTR units because the liquids would not be considered to be hazardous wastes. Additionally, as discussed earlier, to remain in compliance with section 3005(j), non-retrofitted impoundments wishing to delay closure may not receive a non-hazardous waste that generates a hazardous waste or sludge.

(2) *Alternative 2—Flushing Hazardous Wastes.* The proposal offered owners or operators the second option of flushing or displacing liquid hazardous wastes and removing hazardous sludges. For reasons discussed below, the Agency is not finalizing this alternative.

The proposed "flushing" alternative (proposed § 264.113(e)(2)(ii)) would have allowed an owner or operator to delay closure of a surface impoundment subject to § 264.113(e) if he removed the hazardous sludges and also removed the liquid hazardous waste and suspended solids by flushing the unit with non-hazardous influent until 95 percent of the hazardous liquid had been removed. In addition, the owner or operator would have been required to demonstrate that the remaining liquid waste and suspended solids did not exhibit a characteristic of hazardous wastes as defined in subpart C of part 261. Testing for listed hazardous constituents, however, was not required. The Agency intended this alternative to apply primarily to owners or operators of biological treatment impoundments who demonstrated that it would be infeasible or impracticable to drain the impoundment to remove all hazardous wastes.

Comments received on this alternative were varied. Several commenters argued that the displacement alternative was inappropriate for impoundments containing listed hazardous wastes and recommended removal of hazardous wastes to at least delisting levels. Other commenters asserted that the Agency was improperly allowing for dilution of hazardous wastes as a substitute for adequate treatment. Commenters in favor of the displacement alternative stated that the alternative is a reasonable standard and would eventually result in the removal of all hazardous waste in the unit.

The Agency is concerned that many commenters misunderstood the flushing alternative, particularly the relationship of the 95 percent volume displacement requirements and the requirements for delisting of hazardous wastes (40 CFR 260.22). The Agency may have contributed to this confusion by referring to testing for characteristics only and by describing the mixture rule only in terms of the interface between the non-hazardous influent and the sludge remaining in the bottom of the impoundment. If the liquid itself is a listed hazardous waste, the remaining 5 percent volume of that liquid would continue to be hazardous waste. Therefore, if an impoundment retained 5 percent liquid hazardous wastes, all new non-hazardous influent would become hazardous wastes as a result of the "mixture rule," unless the original hazardous waste was listed solely because it exhibited one or more characteristics and the mixture no longer exhibited the characteristic (40 CFR 261.3). Therefore, while the impoundment that removed 95 percent of its liquid could delay closure without retrofitting, if it discharged to another impoundment downstream, the second impoundment would be receiving hazardous wastes and would therefore be subject to the retrofit requirements in RCRA section 3005(j).

Furthermore, in light of the commenters' concerns, the Agency has decided to re-evaluate this option. The Agency is uncertain that the option to delay closure is warranted for any impoundment that retains up to 5 percent liquid hazardous waste. For the reasons discussed above and in section IV.A.1 of this preamble, the Agency has decided to delete this option from the final rule. The Agency points out, however, that owners and operators who remove all liquids under Alternative 1 may use flushing as a removal method. The owner or operator would have to demonstrate the complete removal of hazardous liquids. Tracer studies as described in the proposed Alternative 2 (53 FR 20750), or modeling studies may be used.

(3) *Alternative 3—Leaving Hazardous Wastes In Place.* The third alternative proposed in § 264.113(e)(3) would have allowed owners or operators of impoundments who intend to leave hazardous wastes in place at closure to delay closure under limited circumstances. This option also has not been finalized in today's rule. Because hazardous wastes would not have been removed prior to the receipt of non-hazardous wastes, the Agency proposed more stringent requirements for these impoundments than for impoundments at which hazardous wastes would have been removed. This alternative would have been available only to those units that had not detected a release at or prior to the final receipt of hazardous wastes. In addition, if a release had been detected after the final receipt of hazardous wastes, the owner or operator would have been required to initiate closure of the disposal impoundment in accordance with the approved closure plan no later than 30 days after the detection of the release and implement the corrective measures specified in the contingent corrective measures plan no later than one year after the release had been detected.

One commenter recommended that impoundments which have not removed hazardous wastes (impoundments using proposed Alternative 3) not be allowed to delay closure. This commenter felt that these impoundments are more likely to leak and would pose an excessive threat to human health and the environment. As discussed in section IV.A.1 above, the Agency is not finalizing this alternative. Upon reconsideration, the Agency has determined that surface impoundments from which hazardous wastes are not removed present a greater threat of release of hazardous constituents. Therefore, these impoundments cannot remain open to receive non-hazardous waste and achieve the Agency's dual goals of release prevention and protection of human health and the environment. The Agency believes that only the closure of these surface impoundments will provide adequate protection.

c. *Corrective Action Requirements (§§ 264.113(e) (4) and (5)).* Under the proposed rule, units that delayed closure would remain subject to all applicable part 264 corrective action requirements. In addition, surface impoundments not meeting the liner and leachate collection system requirements would be subject to more stringent requirements in the event of a release. The following section summarizes the comments received and the Agency's final position on the proposed trigger for corrective action, reliance on ground-water monitoring data to detect releases, and additional corrective action requirements applicable to surface impoundments not meeting liner and leachate collection system requirements.

(1) *Corrective Action Trigger (§§ 264.113(e)(4)).* The Agency proposed in §§ 264.113(e)(5), (6), (7), and (8) that surface impoundments not meeting liner and leachate collection system requirements implement corrective measures (and close, if wastes have been left in place) if contamination is detected. Detection occurs when there is contamination that is statistically greater than (or less than in the case of pH) background levels for detection monitoring parameters or hazardous constituents specified in the permit, or is in excess of the GWPS, if one has been established, at the point of compliance. (For more information on the Agency's final Ground-Water Monitoring Statistical Rule, see October 11, 1988, 53 FR 39720.)

A number of commenters disagreed with these requirements and argued that facilities should be allowed to establish a GWPS before corrective measures are required to be implemented. These commenters contended that the proposed trigger for corrective action (and closure for impoundments that have left waste in place) would be too sensitive and that temporary fluctuations in the levels of hazardous constituents would trigger unnecessary corrective action (or closure). One commenter requested clarification of the manner in which a background level would be established.

After consideration of the commenters' recommendations, the Agency has decided to retain the corrective action trigger as originally proposed. (Because the Agency is not finalizing proposed Alternative 3, the corrective action trigger no longer acts as a closure trigger for surface impoundments that have not removed hazardous wastes as a condition of delaying closure.) However, because the corrective action requirements have been modified somewhat (see section IV.B.2.c.3), these requirements have been renumbered and promulgated in § 264.113(e)(4).

The Agency believes that the trigger for corrective action is a necessary element of today's regulations. The delayed closure regulations will allow non-retrofitted surface impoundments to remain open after November 8, 1988 (as well as those surface impoundments which become subject to section 3005(j)(1) after the date of enactment of HSWA due to the promulgation of additional listings or characteristics for the identification of hazardous waste under section 3001), and the requirements must therefore provide sufficient continued protection of health and the environment. The Agency has provided for this protection through strict eligibility and operating criteria and more stringent corrective measures provisions, including requirements for the submission of a contingent corrective measures plan and implementation of corrective action if a release over background levels is detected at units without a GWPS.

The Agency does not believe that allowing units without a GWPS to obtain one before requiring corrective action will provide adequate protection since a delay in remediation of a release that might occur if corrective measures were not implemented until after a GWPS was obtained could pose an additional threat. Modeling data comparing the relative performance of clay liners and synthetic liners satisfying the liner and leachate collection system requirements suggest that a non-retrofitted surface impoundment may have releases that are faster and larger than from a surface impoundment meeting the liner and leachate collection system requirements. Therefore, it is critical that releases from units not meeting liner and leachate collection system requirements be addressed as quickly as possible. The requirements for a contingent corrective measures plan combined with the more sensitive trigger will ensure prompt release containment and remediation.

It should be noted, however, that an owner or operator who has filed a Part B permit application may request a GWPS at any time before or after corrective measures have been initiated. A facility may request and obtain a GWPS in advance of a release during the permit approval process, or at the time that the release is detected. The Regional Administrator, in § 264.91(b), has the authority to include in the facility permit a combination of subpart F monitoring and response programs in order to protect human health and the environment. This provision gives the Regional Administrator the discretion to set a GWPS before a release has occurred. The GWPS can be established at background or maximum contaminant levels, or at alternate concentration limits on a case-by-case basis. Alternate concentration limits set at acceptable health exposure levels using Agency values should not be difficult to establish prior to a release being detected.

If no GWPS has been established, the Agency will continue to require that initial corrective measures be implemented in accordance with the contingent corrective measures plan after a release over background levels is detected. Background levels are to be determined as described in §§ 264.97 and 265.91. The Agency recognizes that in some circumstances a release over background levels may not require extensive corrective measures. If a GWPS is established in accordance with the procedures in § 264.94 during or after interim measures have been implemented, an owner or operator will be allowed to demonstrate that no further corrective action measures are necessary. Finally, it is noted that these requirements are anticipated to be consistent with forthcoming changes to 40 CFR subpart F. The delayed closure provisions may be amended at a later date to account for these new subpart F provisions.

(2) *Other Media.* The proposed rule required that EPA base the initial determination of whether expedited corrective action is required at surface impoundments subject to the requirements of § 264.113(e) on ground-water monitoring data. The unit, however, would remain subject to all corrective action requirements for all media. The Agency requested comments on this approach and whether other options may be appropriate.

One commenter agreed with the proposal and noted that it is consistent with the Agency's approach to all regulated land disposal units. Furthermore, the use of ground-water monitoring data should be adequate to detect most releases to other media. Another commenter, however, asserted that reliance on ground-water monitoring alone is inadequate because results may be affected by poorly placed wells and local hydrologic conditions that control plume migration. This commenter also felt that contamination to media other than ground water may not be expeditiously detected.

The Agency continues to believe that ground-water monitoring is an adequate tool for determining whether the accelerated corrective action requirements of today's rule are necessary for releases to ground water. The provision of § 264.113(e)(5) and (6) has been finalized as proposed. Ground-water monitoring has been traditionally and successfully used to monitor contaminant detection and plume migration. Forthcoming corrective action regulations will address releases to all other media. The provisions in today's rule supplement existing and any future regulation addressing corrective action requirements for all media.

(3) *Additional Corrective Measures Requirements.* The Agency's proposal included additional corrective measures requirements that would apply to surface impoundments not meeting liner

and leachate collection system requirements and which have removed (or will remove) hazardous waste in order to delay closure. The proposed requirements differed, depending on whether a release had been detected before or after the final receipt of hazardous wastes. Under the proposal, units found to be leaking at or prior to the final receipt of hazardous wastes would be required to cease the receipt of all wastes until corrective measures have been implemented (§ 264.113(e)(5) and (6)). Units found to be leaking after the final receipt of hazardous waste could continue to receive non-hazardous waste only if corrective measures were implemented within one year of the detection of a release, and if continued receipt of the non-hazardous waste would not pose a threat to human health or the environment (§ 264.113(e)(7)). The Agency requested comments on whether the requirements should differ depending on the timing of the release, and on the one-year deadline for implementing the corrective measures.

Some argued that the Agency provided no justification for imposing stricter requirements on owners or operators who detected a release at or prior to the final receipt of hazardous waste. Others contended that ceasing receipt of waste until corrective measures are implemented would be unduly disruptive to facility operations. Nearly all comments on this issue recommended that the same corrective action requirements apply in cases of releases detected before and after the final receipt of hazardous waste. Two commenters recommended that all surface impoundments with releases, regardless of when the releases were detected, be required to cease the receipt of wastes until corrective measures are implemented. Another commenter recommended that the Regional Administrator be allowed to grant one-year extensions to the proposed deadline for implementing corrective measures on a case-by-case basis.

The Agency has carefully considered the commenters' suggestions, and has decided to modify the requirements applicable to the continued receipt of wastes after the detection of a release. The final rule under § 264.113(e)(5) allows the owner or operator to continue to receive wastes after detection of a release, regardless of when the release is detected, only in those cases where a contingent corrective measures plan (or full corrective action plan) has been approved. In addition to a description of the corrective measures to be implemented, if receipt of wastes is to continue, the plan must fully account for the impact of receipt of non-hazardous wastes on corrective measures by demonstrating that continued receipt of wastes will not adversely affect the implementation of corrective measures and the achievement of substantial progress in achieving the facility's GWPS. The Agency believes that these effects must be considered before receipt of non-hazardous wastes is allowed. Once EPA has approved the contingent corrective measures plan that demonstrates that continued receipt of non-hazardous waste will not adversely affect the progress of the corrective action, receipt of non-hazardous wastes may resume.

As stated in the preamble to the proposed rule, the Agency continues to believe that temporarily ceasing receipt of wastes until corrective measures have been implemented should not be overly disruptive to facility owners or operators. Many units will have already triggered compliance monitoring and/or be engaged in corrective action under Subpart F. Therefore, in those cases where waste receipt must be halted, there should not be an extensive delay in implementing corrective action and allowing the unit to resume receipt of wastes. The Agency also anticipates that since these units have detected releases, they will receive priority in obtaining approval for corrective action plans.

The Agency is finalizing the one-year deadline for implementing corrective measures under § 264.113(e)(4) as proposed. The Agency believes one year from the time of release detection or plan approval whichever is later, is sufficient time to begin implementing corrective measures. As discussed in the preamble to the proposed rule (53 FR 20752), the Agency intends that actual containment or remediation measures be implemented within one year. The actions required to be accomplished within this one year will be negotiated during the corrective measures approval process. In addition, the Regional Administrator has the option to require implementation of corrective measures earlier than one year after a release is detected if necessary for the protection of human health and the environment. Established procedures for adjusting such permit schedules of compliance will be available. Therefore, specific authority to allow the Regional Administrator to grant extensions is unnecessary and could lead to unacceptable delays in closing a unit should the owner or operator fail to take timely action to initiate the implementation of remedial action.

d. *Evaluating the Progress of Corrective Action (§§ 264.113(e) (5), (6), and (7)).* The proposed rule required owners or operators to demonstrate "substantial progress" in implementing corrective action and achieving the facilities' GWPS or background level if the facility has not yet established a GWPS. If the Regional Administrator determined that an owner or operator had failed to make substantial progress in implementing the required corrective measures, the owner or operator would be required to initiate closure of the leaking unit (§ 264.113(e)(10)). The proposed rule did not define "substantial progress" because the Agency believed that the determination should be made on a case-by-case basis. In the preamble to the proposal, however, the Agency did provide examples of situations that illustrated a failure to make substantial progress. Examples included failure to comply with the requirements of section (e)(5) for implementing corrective measures within one year or subsequent failure to comply with significant deadlines in the approved corrective measures plan, schedule of compliance, the permit, or other enforcement orders establishing timeframes for achieving the facility's GWPS. The Agency also specified that semi-annual corrective action progress reports required under § 264.113(e)(9) would be considered in making the determination, but that compliance with only these procedural or reporting requirements would not alone constitute substantial progress.

The proposed rule also established an accelerated set of procedures for initiating closure under § 264.113(e)(11). The procedures included notification of the owner or operator, public notice of the decision, and a 20-day comment period. These proposed procedures did not allow administrative appeals of final decisions regarding closure.

Several commenters expressed concern that the term "substantial progress" was too vague and subjective. One commenter felt that hearings should be allowed to determine whether substantial progress has been made. Another commenter recommended that the Agency allow administrative appeals of decisions to require closure.

The Agency has considered the commenters' recommendations, but continues to believe that a specific definition of "substantial progress" is both unnecessary and undesirable. Establishing a rigid standard of substantial progress would prevent a Regional Administrator from considering site-specific factors in the determination of whether progress in corrective action is being made. Because corrective action measures are tailored to specific sites, this lack of flexibility could result in a standard that in some cases is inadequately protective of human health and the environment, and in other cases is unnecessarily burdensome to owners and operators. The Agency believes that its description of actions considered to constitute substantial progress provides adequate guidance to both owners and operators and Regional Administrators. EPA notes that, while commenters were dissatisfied that a definition of substantial progress was not included in the rule, they did not suggest alternative definitions. Therefore, the Agency is finalizing the rule as proposed (with the reporting requirement and substantial progress requirement renumbered as § 264.113(e) (5) and (6)) .

Finally, the Agency has retained the expedited procedural requirements in §§ 264.113(e)(11) and 265.113(e)(11) for determining whether substantial progress has been achieved (renumbered as §§ 264.113(e)(7) and 265.113(e)(7) for the final rule). The Agency continues to believe that these procedures afford owners and operators adequate protection of any due process rights and that hearing and administrative appeals are neither appropriate nor required. The objective of the procedures is to reduce delays in initiating closure, while still providing owners and operators and the public with notice and comment opportunities. As discussed elsewhere in today's preamble, the requirement to implement effective corrective measures in the event a release is detected is an essential component of the controls imposed on surface impoundments not meeting the liner and leachate collection system requirements. EPA believes that the harm potentially caused to human health and the environment by impoundments unable to promptly remediate releases outweighs any potential burdens imposed on owners and operators. Furthermore, it must be remembered that owners and operators are not authorized generally under this rule to delay closure; rather the authorization to delay closure is an exception to the general Subpart G requirements and is expressly conditioned upon meeting the substantial progress demonstration when and if applicable. Although this provision is itself self-implementing and need not be accompanied by further notice and comment opportunities, the Agency has afforded such an opportunity through the procedures in §§ 264.113(e)(7) and 265.113(e)(7). The further delay that might result from a hearing provision or administrative appeals cannot be justified in light of the importance of timely response actions. Nor would such additional procedures be likely to present any information for decisionmaking that could not be provided by notice and the opportunity to provide written comment.

In addition, with respect to permitted facilities, receipt of approval for this action and establishment of specific milestones defining "substantial progress" are determined through a permit issuance or modification process. This administrative process includes all procedural protections necessary to meet statutory and Constitutional requirements. Thus, a conditional authorization to delay closure as a permit provision and the automatic expiration for failure to comply with the permit requirement to make substantial progress in remediating releases will have already been subject to notice and opportunities for comment and administrative appeals. Accordingly, further process is unnecessary.

To provide analogous procedural protections for facilities which may still be in interim status at the time of the Regional Administrator's determination, parallel procedures appear in § 265.113(e)(7). As with permitted facilities, the conditional authorization to delay closure is also accompanied by an opportunity for notice and comment. This occurs through the procedures for closure plan approval or modification in § 265.112(d). Accordingly, further procedures such as hearings and administrative appeals are not necessary and have not been added to the final rule.

3. *Notification of Closure (§ 264.112(d)(2)).* The proposed rule amended § 264.112(d)(2) to specify that for units delaying closure, the "expected date of closure" is no later than 30 days after the final receipt of non-hazardous wastes. No comments were received on this proposed change, and therefore the final rule is promulgated as proposed.

C. *Part 270 Permit Modification Requirements (§ 270.42).* The proposed rule designated the request to modify the permit to delay closure to receive non-hazardous wastes after the final receipt of hazardous waste as a Class 2 modification, in accordance with the recently finalized rule establishing three classes of permit modifications (September 28, 1988, 53 FR 37912).

Two commenters recommended that permit modifications to delay closure be considered Class 3 modifications rather than Class 2 modifications. One commenter felt that the time allowed for submitting the request to modify the permit under § 264.113(d), or for submitting a part B or revised part B application under § 265.113(d), is unrealistically short considering the amount of information to be included in the requests. Another commenter suggested that specific criteria be identified as necessary to support a Regional Administrator's denial of a request to delay closure. Another commenter recommended that time be allowed for a facility to construct an alternative waste management unit for closure if the Regional Administrator denies the request to delay closure. Finally, one commenter suggested that an owner or operator be allowed to receive non-hazardous waste during the time the permit modification is being reviewed.

The Agency has taken these comments into consideration but has decided to promulgate the final rule as proposed. Class 2 modifications are defined as modifications in the types and quantities of waste managed under the facility permit, including authorizations to treat or store new wastes that do not require different unit design or management practices (53 FR 37915). Delaying closure to receive only non-hazardous waste does not change the basic purpose and use of the unit but only alters the type of waste being managed (wastes will continue to be regulated under the subtitle C permitting requirements). Furthermore, the Class 2 modification allows the Agency to require that the major permit modification procedures be followed if the proposed change raises significant interest or concern (40 CFR 270.42(b)). Therefore, the Agency believes that classification of the permit modification as Class 2 is adequate. It should be noted that, in those States which have not adopted the new permit modification classification rule, a permit modification to delay closure will be considered a major modification.

The Agency also believes that the amount of time allowed in the proposed rule (§ 264.113(d)(3)) for submitting permit modification information is adequate. These timeframes are consistent with the current timeframes for submitting permitting and closure plan information (40 CFR 270.42(b)). In addition, most changes that must be made to the permit or permit application are not substantial and therefore should not require additional time to complete.

The Agency does not believe that specific criteria need to be established to support the Regional Administrator's

decision to deny a request to delay closure. Therefore, no changes to the final rule have been made. As discussed in section IV.B.2.d of today's preamble, the requirement to close in accordance with an approved closure plan is subject to judicial review. Additionally, facilities must submit an amended part B application or a request for a permit modification. The denial of either is subject to the administrative requirements provided for in 40 CFR Part 124. Finally, for interim status facilities, the extension of the closure period is generally processed together with closure plan approval. The closure plan approval process includes an opportunity for comment by the owner or operator (see § 264.112(a)). Such existing procedures provide the owner or operator with ample opportunity to review the basis for the denial decision.

Furthermore, the Agency does not believe that additional time should be allowed to construct alternative units to handle wastes if the request to delay closure is denied. (The delay of closure option is an exception to general closure requirements and extends closure timeframes only temporarily.) Owners and operators of facilities will have had adequate notice that their units will have to close, and therefore will have had time to plan alternatives in the event that the permit modification is denied.

Finally, the Agency wishes to clarify that non-hazardous waste may be received during the time when a permitted facility's permit modification to delay closure is under review. As discussed in the preamble to the proposed rule, interim status units would be allowed to receive non-hazardous waste while the Agency reviewed the part B application (with certain exceptions for surface impoundments as discussed in section IV.B.2.c). Similarly, it was intended that permitted facilities that are awaiting the Agency's decision on their permit modification to delay closure be allowed to receive non-hazardous waste during this period of Agency review. In either case, facilities must continue to comply with all applicable subtitle C requirements to ensure continued protection of human health and the environment.

D. Conforming Changes

The Agency proposed conforming changes to the interim status standards in part 265 that parallel the technical requirements in part 264 for delaying closure to receive only non-hazardous waste. The interim status requirements are substantially the same as those for permitted units. These requirements have been finalized incorporating changes parallel to those discussed above for permitted units. This section addresses only those comments or regulatory changes unique to the part 265 requirements.

1. Conforming Changes to Part 265 Interim Status Requirements

The sections below describe comments received on the proposed conforming changes to part 265 interim status requirements, including eligibility of interim status facilities to delay closure, ground-water monitoring and corrective action implementation, and eligibility to delay closure of units receiving interim status as a result of new regulations.

a. *Eligibility.* The proposed rule would allow owners or operators of interim status facilities to remain open to receive nonhazardous waste if they meet the requirements of § 265.113 (d) and (e), if applicable, including submission of a part B application or a revised part B application. Part B applications are required because the Agency does not believe that a facility should be allowed to remain open to receive non-hazardous waste while remaining indefinitely in interim status. During the period prior to receipt of the permit, the owner or operator must comply with applicable requirements in § 265.113 (d) and (e), if applicable, and continue to conduct operations in accordance with all other applicable part 265 requirements. The Agency believes that the criteria in § 265.113(d), combined with the technical and any other requirements of part 265 for delaying closure, are sufficient to preclude any increased threat to human health and the environment during the permit review period. If the permit is denied, the part 265 closure requirements become effective immediately.

One commenter requested clarification of whether interim status surface impoundments that had chosen to close (in lieu of obtaining a permit) would be allowed to delay closure. The Agency would allow such units to delay closure if they meet the criteria of §§ 265.113(d) and 265.113(e), if applicable, including submission of a part B permit application. If the unit is in the process of closing, Agency approval to delay closure would depend on how far along the unit is in the closure process. Since many of the closure activities (e.g., the removal of waste) are compatible with the requirements for delaying closure, requests to delay closure could, in some cases be considered. If the surface impoundment has certified clean closure, and its interim status is subsequently terminated, it could receive non-hazardous waste as a Subtitle D facility following closure and would not need to avail itself of today's rule. However, if it is to be closed with hazardous waste in place and the unit has already been capped, the cap may only be disturbed under the conditions specified in §§ 264.117(c) and 265.117(c). This provision requires that the Regional Administrator find that the disturbance: (1) Is necessary to the proposed use of the property and will not increase the potential hazard to human health or the environment; or (2) is necessary to reduce a threat to human health and the environment.

b. *Ground-Water Monitoring and Corrective Action.* The Agency proposed that the corrective action requirements in § 265.113(e) applicable to non-retrofitted surface impoundments be triggered by a statistically significant increase in hazardous constituents over background levels (or decrease in pH levels) for interim status facilities that have not yet established a GWPS. Units not in compliance with liner and leachate collection system requirements are subject to accelerated corrective action requirements consistent with § 264.113(e)(6) requirements.

Several commenters objected to the provisions allowing interim status units to delay closure. These commenters argued that interim status ground-water monitoring requirements do not sufficiently protect human health and the environment because they do not accurately detect hazardous waste releases. These commenters also argued that corrective action provisions for interim status facilities under delayed closure are inadequately protective of human health and the environment because there is no regulatory authority to trigger corrective action.

The Agency believes that the requirements of § 265.113 (d) and (e) in combination with the other applicable part 265 requirements are adequately protective. These provisions require that units in interim status must apply for a permit as a condition of delaying closure, and that upon permit issuance these units will be subject to the stricter part 264 requirements for ground-water monitoring. Additionally, owners or operators of surface impoundments that do not meet MTR liner and leachate collection system requirements who wish to delay closure must comply with corrective action requirements specified in § 265.113(e) even in the absence of a RCRA § 3008(h) order. Further, contingent corrective measures plans can be incorporated into subsequent section 3008(h) orders if necessary.

c. *Applicability to New Interim Status Units.* The Agency proposed that the option to delay closure be made available to owners or operators of units that receive interim status as a result of new regulations. The Agency indicated in the preamble to the proposed rule that proposed deadlines for submitting revised part B applications would be adequate because these owners or operators would be given sufficient notice that they will become subject to Subtitle C requirements.

One commenter recommended that the delay of closure option be available to owners or operators of units that have become classified as hazardous waste management units as a result of regulatory interpretation by the EPA. As discussed above, this is allowed if the unit meets the requirements of § 265.113 (d) and (e). The rule has therefore been finalized as proposed.

V. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under RCRA sections 3008, 7003, and 3013, although authorized States have primary enforcement responsibility.

Prior to HSWA, a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in a State where the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements and prohibitions apply in authorized States in the interim.

B. Effect of Rule on State Authorizations

Today's rule promulgates standards that are not effective in authorized States since the requirements are not imposed pursuant to HSWA. Thus, the requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

In general, 40 CFR 271.21(e)(2) requires States that have final authorization to modify their programs to reflect Federal program changes and to subsequently submit the modifications to EPA for approval. It should be noted, however, that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs (See 40 CFR 271.1(i)). The standards promulgated today are less stringent than or reduce the scope of the existing Federal requirements. Therefore, authorized States are not required to modify their programs to adopt requirements equivalent or substantially equivalent to the provisions promulgated above. If the State does modify its program, EPA must approve the modification for the State requirements to become subtitle C RCRA requirements. States should follow the deadlines of 40 CFR 271.21(e)(2) if they desire to adopt this less stringent requirement.

VI. Executive Order 12291

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. The regulatory amendments being promulgated today are designed to reduce the burden of the RCRA regulations and are not likely to result in a significant increase in costs. Thus, this final rule is not a major rule; no Regulatory Impact Analysis has been prepared.

VII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must estimate the paperwork burden created by any information collection request contained in the proposed or final rule.

The information collection requirements in this final rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and have been assigned OMB control Number 2050–0008. Reporting and recordkeeping burden on the public for this collection is estimated at 320 hours for the 4 respondents, with an average of 80 hours per response. These burden estimates include all aspects of the collection effort and may include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, etc.

If you wish to submit comments regarding any aspect of this collection of information, including suggestions for reducing the burden, or if you would like a copy of the information collection request (please reference ICR #0607), contact Rick Westlund, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460 (202–382–2745); and Marcus Peacock, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC. 20503.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), Federal agencies must, in developing regulations, analyze their impact on small entities (small businesses, small government jurisdictions, and small organizations). The amendments promulgated today are more flexible than the existing regulations and thus result in no additional costs. The viability of small entities, thereby, should not be adversely affected.

Accordingly, I certify that this regulation will not have a significant impact on a substantial number of small entities.

Dated: August 2, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, it is proposed that 40 CFR, chapter I be amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. In § 264.13 is amended by revising paragraphs (a)(1), (a)(3)(i), and (b)(1) to read as follows:

§ 264.13 General waste analysis

(a)(1) Before an owner or operator treats, stores, or disposes of any hazardous wastes, or non-hazardous wastes if applicable under § 264.113(d), he must obtain a detailed chemical and physical analysis of a representative sample of the wastes.

* * * * *

(3) The analysis must be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis must be repeated:

(i) When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous wastes, or non-hazardous wastes if applicable under § 264.113(d), has changed; and

* * * * *

(b) * * *

(1) The parameters for which each hazardous waste, or non-hazardous waste if applicable under § 264.113(d), will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with paragraph (a) of this section);

* * * * *

3. In § 264.112, is amended by revising paragraph (d)(2) to read as follows:

§ 264.112 Closure plan; amendment of plan.

* * * * *

(d) * * *

(2) The date when he "expects to begin closure" must be either:

(i) No later than 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. If the owner or operator of a hazardous waste management unit can demonstrate to the Regional Administrator that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the Regional Administrator may approve an extension to this one-year limit; or

(ii) For units meeting the requirements of § 264.113(d), no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of non-hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional non-hazardous wastes, no later than one year after the date on which the unit received the most recent volume of non-hazardous wastes. If the owner or operator can demonstrate to the Regional Administrator that the hazardous waste management unit has the capacity to receive additional non-hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the Regional Administrator may approve an extension to this one-year limit.

* * * * *

4. Section 264.113 is amended by revising paragraphs (a) introductory text, (a)(1)(ii)(A), (b) introductory text, (b)(1)(ii)(A), and (c) and adding paragraphs (d) and (e) to read as follows:

§ 264.113 Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at a hazardous waste management unit or facility, the owner or operator must treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Regional Administrator may approve a longer period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(1) * * *

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes if the owner or operator complies with paragraphs (d) and (e) of this section; and

* * * * *

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at the hazardous waste management unit or facility. The Regional Administrator may approve an extension to the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(1) * * *

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes if the owner or operator complies with paragraphs (d) and (e) of this section; and

* * * * *

(c) The demonstrations referred to in paragraphs (a)(1) and (b)(1) of this section must be made as follows:

(1) The demonstrations in paragraph (a)(1) of this section must be made at least 30 days prior to the expiration of the 90-day period in paragraph (a) of this section; and

(2) The demonstration in paragraph (b)(1) of this section must be made at least 30 days prior to the expiration of the 180-day period in paragraph (b) of this section, unless the owner or operator is otherwise subject to the deadlines in paragraph (d) of this section.

(d) The Regional Administrator may allow an owner or operator to receive only non-hazardous wastes in a landfill, land treatment, or surface impoundment unit after the final receipt of hazardous wastes at that unit if:

(1) The owner or operator requests a permit modification in compliance with all applicable requirements in parts 270 and 124 of this title and in the permit modification request demonstrates that:

(i) The unit has the existing design capacity as indicated on the part A application to receive non-hazardous wastes; and

(ii) There is a reasonable likelihood that the owner or operator or another person will receive non-hazardous wastes in the unit within one year after the final receipt of hazardous wastes; and

(iii) The non-hazardous wastes will not be incompatible with any remaining wastes in the unit, or with the facility design and operating requirements of the unit or facility under this part; and

(iv) Closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(v) The owner or operator is operating and will continue to operate in compliance with all applicable permit requirements; and

(2) The request to modify the permit includes an amended waste analysis plan, ground-water monitoring and response program, human exposure assessment required under RCRA section 3019, and closure and post-closure plans, and updated cost estimates and demonstrations of financial assurance for closure and post-closure care as necessary and appropriate, to reflect any changes due to the presence of hazardous constituents in the non-hazardous wastes, and changes in closure activities, including the expected year of closure if applicable under § 264.112(b)(7), as a result of the receipt of non-hazardous wastes following the final receipt of hazardous wastes; and

(3) The request to modify the permit includes revisions, as necessary and appropriate, to affected conditions of the permit to account for the receipt of non-hazardous wastes following receipt of the final volume of hazardous wastes; and

(4) The request to modify the permit and the demonstrations referred to in paragraphs (d)(1) and (d)(2) of this section are submitted to the Regional Administrator no later than 120 days prior to the date on which the owner or operator of the facility receives the known final volume of hazardous wastes at the unit, or no later than 90 days after the effective date of this rule in the state in which the unit is located, whichever is later.

(e) In addition to the requirements in paragraph (d) of this section, an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system requirements in 42 U.S.C. 3004(o)(1) and 3005(j)(1) or 42 U.S.C. 3004(o) (2) or (3) or 3005(j) (2), (3), (4) or (13) must:

(1) Submit with the request to modify the permit:

(i) A contingent corrective measures plan, unless a corrective action plan has already been submitted under § 264.99; and

(ii) A plan for removing hazardous wastes in compliance with paragraph (e)(2) of this section; and

(2) Remove all hazardous wastes from the unit by removing all hazardous liquids, and removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if any.

(3) Removal of hazardous wastes must be completed no later than 90 days after the final receipt of hazardous wastes. The Regional Administrator may approve an extension to this deadline if the owner or operator demonstrates that the removal of hazardous wastes will, of necessity, take longer than the allotted period to complete and that an extension will not pose a threat to human health and the environment.

(4) If a release that is a statistically significant increase (or decrease in the case of pH) over background values for detection monitoring parameters or constituents specified in the permit or that exceeds the facility's ground-water protection standard at the point of compliance, if applicable, is detected in accordance with the requirements in subpart F of this part, the owner or operator of the unit:

(i) Must implement corrective measures in accordance with the approved contingent corrective measures plan required by paragraph (e)(1) of this section no later than one year after detection of the release, or approval of the contingent corrective measures plan, whichever is later;

(ii) May continue to receive wastes at the unit following detection of the release only if the approved corrective measures plan includes a demonstration that continued receipt of wastes will not impede corrective action; and

(iii) May be required by the Regional Administrator to implement corrective measures in less than one year or to cease the receipt of wastes until corrective measures have been implemented if necessary to protect human health and the environment.

(5) During the period of corrective action, the owner or operator shall provide semi-annual reports to the Regional Administrator that describe the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

(6) The Regional Administrator may require the owner or operator to commence closure of the unit if the owner or operator fails to implement corrective action measures in accordance with the approved contingent corrective measures plan within one year as required in paragraph (e)(4) of this section, or fails to make substantial progress in implementing corrective action and achieving the facility's ground-water protection standard or background levels if the facility has not yet established a ground-water protection standard.

(7) If the owner or operator fails to implement corrective measures as required in paragraph (e)(4) of this section, or if the Regional Administrator determines that substantial progress has not been made pursuant to paragraph (e)(6) of this section he shall:

(i) Notify the owner or operator in writing that the owner or operator must begin closure in accordance with the deadlines in paragraphs (a) and (b) of this section and provide a detailed statement of reasons for this determination, and

(ii) Provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than 20 days after the date of the notice.

(iii) If the Regional Administrator receives no written comments, the decision will become final five days after the close of the comment period. The Regional Administrator will notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, must be submitted within 15 days of the final notice and that closure must begin in accordance with the deadlines in paragraphs (a) and (b) of this section.

(iv) If the Regional Administrator receives written comments on the decision, he shall make a final decision within 30 days after the end of the comment period, and provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. If the Regional Administrator determines that substantial progress has not been made, closure must be initiated in accordance with the deadlines in paragraphs (a) and (b) of this section.

(v) The final determinations made by the Regional Administrator under paragraphs (e)(7) (iii) and (iv) of this section are not subject to administrative appeal.

4a. A parenthetical is added at the end of the last section in Subpart G of Part 264 to read as follows:

(The information collection requirements in Subpart G are approved by the Office of Management and Budget under control number 2050-0008)

5. Section 264.142 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 264.142 Cost estimate for closure.

(a) * * *

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes if applicable under § 264.113(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes if applicable under § 264.113(d), that might have economic value.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

6. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

7. Section 265.13 is amended by revising paragraphs (a)(1), (a)(3)(i), and (b)(1) to read as follows:

§ 265.13 General waste analysis.

(a)(1) Before an owner or operator treats, stores or disposes of any hazardous wastes, or non-hazardous wastes if applicable under § 265.113(d), he must obtain a detailed chemical and physical analysis of a representative sample of the wastes.

* * * * *

(3) The analysis must be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis must be repeated:

(i) When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous wastes or non-hazardous wastes, if applicable, under §265.113(d) has changed; and

* * * * *

(b) * * *

(1) The parameters for which each hazardous waste, or non-hazardous waste if applicable under §265.113(d), will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with paragraph (a) of this section);

* * * * *

8. Section 265.112 is amended by revising paragraph (d)(2) to read as follows:

§ 265.112 Closure plan; amendment of plan.

* * * * *

(d) * * *

(2) The date when he "expects to begin closure" must be either:

(i) Within 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. If the owner or operator of a hazardous waste management unit can demonstrate to the Regional Administrator that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, the Regional Administrator may approve an extension to this one-year limit; or

(ii) For units meeting the requirements of § 265.113(d), no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of non-hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional non-hazardous wastes, no later than one year after the date on which the unit received the most recent volume of non-hazardous wastes. If the owner or operator can demonstrate to the Regional Administrator that the hazardous waste management unit has the capacity to receive additional non-hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, the Regional Administrator may approve an extension to this one-year limit.

* * * * *

9. Section 265.113 is amended by revising paragraphs (a) introductory text, (a)(1)(ii)(A), (b) introductory text, (b)(1)(ii)(A), and (c) and adding paragraphs (d) and (e) to read as follows:

§ 265.113 Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later, the owner or operator must treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Regional Administrator may approve a longer period if the owner or operator demonstrates that:

(1) * * *

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes if the facility owner or operator complies with paragraphs (d) and (e) of this section; and

* * * * *

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at the hazardous waste management unit or facility, or 180 days after approval of the closure plan, if that is later. The Regional Administrator may approve an extension to the closure period if the owner or operator demonstrates that:

(1) * * *

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes if the facility owner or operator complies with paragraphs (d) and (e) of this section; and

* * * * *

(c) The demonstrations referred to in paragraphs (a)(1) and (b)(1) of this section must be made as follows:

(1) The demonstrations in paragraph (a)(1) of this section must be made at least 30 days prior to the expiration of the 90-day period in paragraph (a) of this section; and

(2) The demonstration in paragraph (b)(1) of this section must be made at least 30 days prior to the expiration of the 180-day period in paragraph (b) of this section, unless the owner or operator is otherwise subject to the deadlines in paragraph (d) of this section.

(d) The Regional Administrator may allow an owner or operator to receive non-hazardous wastes in a landfill, land treatment, or surface impoundment unit after the final receipt of hazardous wastes at that unit if:

(1) The owner or operator submits an amended part B application, or a part B application, if not previously required, and demonstrates that:

(i) The unit has the existing design capacity as indicated on the part A application to receive non-hazardous wastes; and

(ii) There is a reasonable likelihood that the owner or operator or another person will receive non-hazardous wastes in the unit within one year after the final receipt of hazardous wastes; and

(iii) The non-hazardous wastes will not be incompatible with any remaining wastes in the unit or with the facility design and operating requirements of the unit or facility under this part; and

(iv) Closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(v) The owner or operator is operating and will continue to operate in compliance with all applicable interim status requirements; and

(2) The part B application includes an amended waste analysis plan, ground-water monitoring and response program, human exposure assessment required under RCRA section 3019, and closure and post-closure plans, and updated cost estimates and demonstrations of financial assurance for closure and post-closure care as necessary and appropriate to reflect any changes due to the presence of hazardous constituents in the non-hazardous wastes, and changes in closure activities, including the expected year of closure if applicable under § 265.112(b)(7), as a result of the receipt of non-hazardous wastes following the final receipt of hazardous wastes; and

(3) The part B application is amended, as necessary and appropriate, to account for the receipt of non-hazardous wastes following receipt of the final volume of hazardous wastes; and

(4) The part B application and the demonstrations referred to in paragraphs (d)(1) and (d)(2) of this section are submitted to the Regional Administrator no later than 180 days prior to the date on which the owner or operator of the facility receives the known final volume of hazardous wastes, or no later than 90 days after the effective date of this rule in the state in which the unit is located, whichever is later.

(e) In addition to the requirements in paragraph (d) of this section, an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system requirements in 42 U.S.C. 3004(o)(1) and 3005(j)(1) or 42 U.S.C. 3004(o)(2) or (3) or 3005(j) (2), (3), (4) or (13) must:

(1) Submit with the part B application:

(i) A contingent corrective measures plan; and

(ii) A plan for removing hazardous wastes in compliance with paragraph (e)(2) of this section; and

(2) Remove all hazardous wastes from the unit by removing all hazardous liquids and removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if any.

(3) Removal of hazardous wastes must be completed no later than 90 days after the final receipt of hazardous wastes. The Regional Administrator may approve an extension to this deadline if the owner or operator demonstrates that the removal of hazardous wastes will, of necessity, take longer than the allotted period to complete and that an extension will not pose a threat to human health and the environment.

(4) If a release that is a statistically significant increase (or decrease in the case of pH) in hazardous constituents over background levels is detected in accordance with the requirements in subpart F of this part, the owner or operator of the unit:

(i) Must implement corrective measures in accordance with the approved contingent corrective measures plan required by paragraph (e)(1) of this section no later than one year after detection of the release, or approval of the contingent corrective measures plan, whichever is later;

(ii) May receive wastes at the unit following detection of the release only if the approved corrective measures plan includes a demonstration that continued receipt of wastes will not impede corrective action; and

(iii) May be required by the Regional Administrator to implement corrective measures in less than one year or to cease receipt of wastes until corrective measures have been implemented if necessary to protect human health and the environment.

(5) During the period of corrective action, the owner or operator shall provide semi-annual reports to the Regional Administrator that describe the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

(6) The Regional Administrator may require the owner or operator to commence closure of the unit if the owner or operator fails to implement corrective action measures in accordance with the approved contingent corrective measures plan within one year as required in paragraph (e)(4) of this section, or fails to make substantial progress in implementing corrective action and achieving the facility's background levels.

(7) If the owner or operator fails to implement corrective measures as required in paragraph (e)(4) of this section, or if the Regional Administrator determines that substantial progress has not been made pursuant to paragraph (e)(6) of this section he shall:

(i) Notify the owner or operator in writing that the owner or operator must begin closure in accordance with the deadline in paragraphs (a) and (b) of this section and provide a detailed statement of reasons for this determination, and

(ii) Provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than 20 days after the date of the notice.

(iii) If the Regional Administrator receives no written comments, the decision will become final five days after the close of the comment period. The Regional Administrator will notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, must be submitted within 15 days of the final notice and that closure must begin in accordance with the deadlines in paragraphs (a) and (b) of this section.

(iv) If the Regional Administrator receives written comments on the decision, he shall make a final decision within 30 days after the end of the comment period, and provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. If the Regional Administrator determines that substantial progress has not been made, closure must be initiated in accordance with the deadlines in paragraphs (a) and (b) of this section.

(v) The final determinations made by the Regional Administrator under paragraphs (e)(7) (iii) and (iv) of this section are not subject to administrative appeal.

9a. A parenthetical is added at the end of the last section in subpart G of Part 265 to read as follows:

(The information collection requirements in Subpart G are approved by the Office of Management and Budget under control number 2050–0008)

10. In § 265.142 is amended by revising paragraph (a)(3) and (a)(4) to read as follows:

§ 265.142 Cost estimate for closure.

(a) * * *

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes if applicable under § 265.113(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes if applicable under § 265.113(d), that might have economic value.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

11. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

12. In § 270.42, the list of permit modifications in Appendix I is amended by adding D.1.f. to read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

Appendix I to § 270.42—Classification of Permit Modifications

Modifications	Class
* * * * *	
D. * * *	
1. * * *	

Modifications	Class
f. Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive non-hazardous wastes after final receipt of hazardous wastes under § 264.113 (d) and (e)	2
* * * * *	

[FR Doc. 89-18690 Filed 8-11-89; 8:45 am]
BILLING CODE 6560-50-M

federal register

Monday
August 14, 1989

Part IV

Environmental Protection Agency

40 CFR Parts 795 and 799
Tributyl Phosphate; Final Test Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 795 and 799

[OPTS-42100B; FRL-3627-4]

Tributyl Phosphate; Final Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final test rule under section 4 of the Toxic Substances Control Act (TSCA) requiring manufacturers and processors of tributyl phosphate (TBP, CAS No. 126-73-8) to perform testing for health effects (oncogenicity, neurotoxicity, reproductive and developmental toxicity, mutagenicity, dermal sensitization, and oral/dermal pharmacokinetics), environmental effects (acute effects on algae, fish and aquatic invertebrates, and triggered chronic effects on fish and aquatic invertebrates and sediment bioassay), and chemical fate (vapor pressure, Koc, and hydrolysis rate). This rule is in response to the TSCA Interagency Testing Committee's (ITC) designation of TBP for priority health effects, chemical fate, and environmental effects testing.

DATES: This rule shall become effective on September 27, 1989. For purposes of judicial review, in accordance with 40 CFR 23.5, this rule shall be promulgated at 1 p.m. eastern (standard or daylight as appropriate) time on August 28, 1989. The incorporation by reference in this rule is approved by the Director of the Federal Register as of September 27, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is promulgating a final test rule under section 4(a) of TSCA requiring health effects, environmental effects and chemical fate testing of TBP.

I. Introduction

A. Test Rule Development Under TSCA

This final rule is part of the overall implementation of section 4 of TSCA (Pub. L. 94-469, 90 Stat. 2003 et seq., 15 U.S.C. 2601 et seq.), which authorizes EPA to require the development of data relevant to assessing the risk to health and the environment posed by exposure to particular chemical substances or mixtures (chemicals).

Under section 4(a) of TSCA, EPA must require testing of a chemical to develop data if the Administrator makes certain findings as described in TSCA under section 4(a)(1)(A) or (B). Detailed discussions of the statutory section 4 findings are provided in the EPA's first and second proposed test rules published in the Federal Register of July 18, 1980 (45 FR 48510) and June 5, 1981 (46 FR 30300).

B. Regulatory History

The ITC recommended TBP with intent-to-designate in its eighteenth report published in the Federal Register of May 19, 1986 (51 FR 18368), and designated TBP for priority testing consideration in its nineteenth report published in the Federal Register of November 18, 1986 (51 FR 41417). In response to this designation, EPA issued a proposed test rule in the Federal Register of November 12, 1987 (52 FR 43346) which would require that manufacturers and processors of TBP test the chemical for various health and environmental effects, under sections 4(a)(1)(A) and (B) of TSCA.

II. Response to Comments

EPA received written comments on the TBP proposed test rule from the Tributyl Phosphate Task Force (TBPTF) of the Synthetic Organic Chemical Manufacturers Association (SOCMA) on January 12, 1988 (Ref. 1). The TBPTF also requested a public meeting on their comments which was held on April 7, 1988. The comments received by EPA in response to the proposed rule for TBP are given below.

A. Exposure

1. *TBPTF exposure survey.* The TBPTF commented that the exposure information available to EPA was insufficient to support a finding of significant or substantial human exposure since the data were merely suggestive. The TBPTF proposed to do an industry-wide survey of U.S. sites distributing, processing, and using TBP and products containing TBP to determine the uses, use conditions, and potential worker exposure associated with TBP. EPA agreed to consider the study results in its deliberations for a final rule. TBPTF commissioned Temple, Barker, Sloane, Inc., to conduct and validate the survey. On April 7, 1988, the TBPTF presented EPA with the first part of a report, "1987 U.S. Survey of Tributyl Phosphate Users, Potential Exposure and Safety Procedures" (Ref. 2). The report did not contain an estimate of the number of workers potentially exposed to aircraft hydraulic fluid, a product that accounts for a major part of TBP usage (80 percent by volume). After a public meeting with the TBPTF, EPA granted TBPTF a brief period to estimate the numbers and extent of potential worker exposure to aircraft hydraulic fluid containing TBP from survey and additional data. On July 11, 1988, TBPTF submitted a report to EPA on estimated exposure to TBP-containing aircraft hydraulic fluid (Ref. 3).

The TBPTF reported that the greatest number of workers potentially exposed was in the use of aircraft hydraulic fluid. The three primary uses include aircraft manufacturing, hydraulic system component manufacturing, and commercial airline operations (passenger and freight). The TBPTF reported each type of user exposure in terms of estimated numbers of employees potentially exposed on an infrequent basis (less than once per week for less than one hour) and on a more frequent or routine basis. On the basis of confidential discussions with two major aircraft manufacturers, TBPTF estimates that 740 workers in this industry may be infrequently exposed to fluid, and 241 workers may be frequently exposed to hydraulic fluid containing TBP. On the basis of survey responses from aircraft component manufacturers, the TBPTF estimates that 176 employees in this industry may be frequently exposed to aircraft hydraulic fluid containing TBP, and 411 employees may be infrequently exposed. On the basis of confidential estimates by one of the major airlines, TBPTF estimates that 2,200 employees in this industry are routinely exposed to aircraft hydraulic fluid containing TBP and approximately 43,000 aircraft mechanics at some time could be exposed to aircraft hydraulic fluid. The activities potentially causing exposure include: Venting of pressurized systems at service sites, removal and repair of components, and testing and inspection of components. Aircraft manufacturers report that they require mechanics to use protective equipment (gloves, aprons, sleeve shields, goggles/face shields).

In the survey, the other two types of hydraulic fluid users report these and other methods of protection. However, the survey report indicates that in practice, aircraft mechanics only take minimal precautions to prevent contact even though they are aware of the irritating properties of hydraulic fluid. Also, according to the survey, aircraft mechanics do not wear protective gloves.

Survey respondents reported that 100 distributor workers for 296 worker-hours per year and 200 processor workers for 108,358 worker-hours per year have direct exposure to TBP.

An estimated total of 245 distributor workers (estimated from survey respondents and non-respondents) are potentially exposed for 502 worker-hours per year according to the survey. An estimated total of 345 processor workers (estimated from survey respondents and non-respondents) are potentially exposed for 183,382 worker-hours per year.

Other uses of TBP involve partially enclosed or open operations, and the concentration of TBP in these products is under 10 percent. Of these miscellaneous uses, paint spraying operations represent the most likely exposure potential, but spray booths are often used and the paint is used only by original equipment manufacturers, suggesting that exposure is limited to manufacturing use.

2. *EPA's response to TBPTF's exposure survey.* EPA reviewed the exposure survey performed by the TBPTF and finds the conclusions regarding potential occupational exposure to TBP to be reasonable. EPA has concerns about the completeness and accuracy of the survey but these do not interfere with the adequacy of the study for present purposes (Refs. 4 and 5). The survey results simply confirm EPA's earlier conclusion that potential human exposure to TBP is substantial.

B. Testing

1. *Genotoxicity.* The TBPTF commented that studies of gene mutation in mammalian cells in culture and in vivo cytogenetics, specifically the mouse micronucleus test, should be conducted to determine potential clastogenic effects, and that a program review of the entire genotoxicity data base should precede any considerations for further genotoxicity testing.

EPA agrees that a study of gene mutation in somatic cells in culture is necessary as an early tier teset for gene mutation effects of TBP. However, EPA believes that an in vitro mammalian cytogenetics test and in vivo mammalian bone marrow cytogenetics chromosomal analysis test are necessary early tier tests for cytogenetics effects. EPA is reviewing the mouse micronucleus test as a potential alternative test for cytogenetic effects in future test rules.

2. *Pharmacokinetics.* The TBPTF commented that the rat oral and dermal absorption, distribution and excretion pharmacokinetics, and oral metabolism studies should be performed as proposed. However, the TBPTF recommended dermal absorption testing in the pig (mini-pig or weanling swine) rather than the guinea pig, because pig skin is a better model for human skin than guinea pig skin.

EPA has reviewed the evidence the TBPTF has submitted to support testing the pig over the guinea pig and EPA agrees that the pig (mini-pig or weanling pig) is an acceptable substitute testing model for the guinea pig for dermal absoprption testing (Refs. 6 through 9).

3. *Oncogenicity.* The TBPTF commented that, because potential worker exposure is significant only by the dermal route as indicated by the exposure survey, a pilot 28-day dermal study in the rat should be conducted first to evaluate the feasibility of performing chronic efforts and oncogenicity studies by that route. The TBPTF believes that a decision regarding oncogenicity studies should be deferred pending results of the proposed pilot dermal studies and the completion of pharmacokinetics studies.

EPA reported in the proposed rule that the available data suggest TBP may have oncogenic potential. EPA is requiring an oncogenicity study by the oral route because the comparative oral/dermal pharmacokinetics data will allow analysis of effects related to differences in route of administration. Protocol design for dermal bioassays present many problems including: Selection of appropriate species; estimation and demonstration of absorbed versus applied dose; criteria for defining the maximum tolerated dose, e.g., whether based on skin or systemic effects. EPA is assessing the literature on this subject and has sponsored a workshop on dermal carcinogenesis bioassay problems and protocol development. In the near future EPA hopes to publish a generic protocol for dermal bioassays and publish guidelines on when testing should be done by that route.

4. *Dermal sensitization.* TBPTF commented that additional dermal sensitization testing is unnecessary because a mixture containing TBP has been tested in a human study and no sensitization occurred. TBPTF believes that if TBP were a sensitizer, some reaction would have occurred and results of (any) human study should take precedence over those obtained in animal (guinea pig) studies (Ref. 1).

EPA is requiring a dermal sensitization study because photosensitization was not evaluated in the available human study, and the exact TBP concentration in the test mixture was unknown and may have been too low (reported as "less than 25 percent") to have elicited a reaction.

5. *Developmental toxicity.* TBPTF comments that because the exposure survey indicates there is insignificant exposure potential for women of child-bearing age and because of irritant warning properties and low exposure levels, developmental toxicity testing should not be required.

For purposes of requiring testing under section 4 of TSCA, EPA is not required to take into account gender-specific exposure patterns in its deliberations. EPA does not assume that gender-specific exposure patters will persist. Because there is a potential for substantial human exposure to TBP, developmental toxicity testing is required.

6. *Reproductive toxicity.* TBPTF comments that reproductive testing should be triggered by more general indications of reproductive toxicity such as in vivo genotoxicity tests (*Drosophila* and in vivo cytogenetics) because there are very low levels of exposure of both males and females to TBP. In addition, two long-term studies, an 18-week study by Laham et al. and a 13-week study by FMC, showed no effect on gonadal tissues.

While EPA recognizes that there are situations where short-term tests may be appropriate to screen for reproductive effects, EPA does not agree that in the present situation the in vivo genotoxicity tests are adequate to screen for the reproductive toxicity of TBP. And although the two studies mentioned by TBPTF do not show reproductive effects, they are not adequate by themselves to determine whether TBP has reproductive toxicity. It is well documented that there are effects on reproduction that are not detectable by simple histopathological analysis, i.e. effects on reproductive performance, hormones, outcomes of pregnancy, growth and maturation of offspring postnatally. Therefore testing specific for reproductive toxicity is required.

7. *Neurotoxicity.* The TBPTF suggested a tiered approach consisting of an acute functional observational battery and motor activity screen to be followed by a subchronic behavioral evaluation if required after program reveiw. The TBPTF commented that neurotoxicity testing should be by the dermal route if this route proves feasible from the results of the 28-day study. The TBPTF believes that because available studies conclusively show that TBP is not a delayed neurotoxicant (organophosphorus induced delayed neurotoxicity (OPIDN) is the primary mechanism by which organophosphates act directly on the nerves) a further concern for neuropathy is unwarranted

BEST COPY AVAILABLE

and requirements for in situ perfusion should be removed from the test rule.

EPA does not agree with TBPTF's tiered approach. Both acute and subchronic tests are necessary because EPA is concerned about acute effects as well as the potential effects following repeated exposure. EPA encourages use of the relevant route of administration when possible. Although the dermal route of administration is theoretically acceptable, there are a number of practical problems which must be addressed before a dermal study would be acceptable. First, there must be a demonstration that a sufficient dose of the compound can be absorbed to produce neurobehavioral changes. Without such a high dose level effect, negative results would not be conclusive. Second, dermal application may interefere with satisfactory interpretation of neurobehavioral information. Dermal application can serve as a stress inducer and produce alterations in various neurobehavioral parameters. To account for this possible confounding effect it would be necessary to use a positive control which can also be applied dermally (e.g., acrylamide). Because these problems have not been addressed, neurotoxicity testing by the oral route is required.

EPA believes that, although available studies indicate that under the conditions tested, TBP does not produce organophosphorus-induced delayed neuropathy (OPIDN), other available literature provides evidence of neurobehavioral changes following exposure to TBP, and a standard battery of tests is still indicated (Refs. 10 through 13).

8. *Environmental effects.* The TBPTF commented that EPA's proposed environmental effects testing is generally reasonable and supportable. TBPTF raised the following points. First, TBP argued that the chronicity ratio of 24- to 96-hour LC50 for fish and certain aquatic invertebrates (e.g., *Gammarus*) or the ratio of the 24- to 48-hour LC50 for daphnid of 2 or greater is extremely stringent and should be modified. Second, TBPTF believes there is no clear need for plant translocation tests because there is no or low level exposure for this environment, as TBP is shown to be readily biodegradable in the OECD screening test, by semi-continuous activated sludge, in a river die-away test and in ultimate biodegradation. Third, with respect to specific guidelines, the TBPTF believes that ascertaining whether the test material is in solution does not require analysis of both the total and filtered concentrations of the test material. The concentration in only a filtered sample should be required except in the algal test, where measurements of the amount of test material associated with the algal cells is required. Centrifuging the samples is better because filtration may trap TBP in the filter medium. Requiring analysis of both total and filtered or centrifuged test medium will double analysis costs without any real need. Fourth, the time allotted (9 months) for the completion of the flow-through acute tests may not be adequate. Flow-through tests with analytical measurement of test solutions tend to experience more problems than simple static tests; 12 months from official notification to final report would be a more reasonable estimate.

EPA does not agree with the TBPTF that the chronicity ratio for fish and invertebrates is too stringent because historical data confirm the predictive capability of this decision criterion. EPA agrees with TBPTF that the plant translocation test is unnecessary and EPA is not requiring this test because human exposure from plant dietary uptake does not appear to be of concern. EPA is considering whether it should propose the early seedling growth test to determine the toxicity of TBP to plants. EPA does not agree that only the filtered sample should require analysis and supports the testing guidelines which require analysis of both total and filtered samples. Testing both the total and filtered samples is necessary to know how much dissolved test substance is available during aquatic toxicity tests. EPA is not requiring that both the total and dissolved chemical be measured for every sample. If the dissolved test substance being measured is consistently greater than or equal to 80 percent of total measured test substance, for all test substance concentrations, then it is necessary to measure only the dissolved or total test substance not both. EPA does not agree with TBPTF that 9 months is inadequate to conduct acute flow-though testing because the TBPTF does not provide adequate evidence to the contrary.

C. Economic Issues

1. *Comment:* The TBPTF has estimated the cost of the testing program at about $2.4 million. The information to be developed by the testing program is not a capital asset; and therefore the cost involved must be treated as current expenses. Using the EPA estimated production volume range of 6 to 9 million pounds during an approximate 2-year test program, the cost of the testing proposed per pound would be $0.15 and $0.20 per pound of TBP produced. TBPTF does not believe this is an inconsequential amount.

Response: EPA's estimate of the test cost is between $1.3 million and $1.7 million. TBPTF's estimate of the oncogenicity test is roughly double EPA's estimate, and accounts for the largest portion of the difference. Some of the other estimates submitted by the TBPTF range from 2 to almost 10 times greater than EPA's estimates.

EPA has developed detailed test cost information for each test included in the rule. TBPTF has provided no such information nor any documentation regarding their test cost estimates. In addition, TBPTF has not addressed the method used by EPA to estimate test cost or any of the detailed estimates. Without any such information, EPA cannot address the estimates provided by TBPTF.

Also, TBPTF confuses the procedures used to determine reimbursement for testing costs under section 4 of TSCA with the analysis used to determine economic impacts of the rule. TBPTF looks at the accounting method used to pay for the costs associated with testing, while EPA's economic analysis employs cost recovery analysis to estimate the likelihood of adverse economic impact. In the economic analysis, test costs are annualized over the assumed market life of the product to estimate the amount which firms will have to increase price of the product to recover the costs associated with testing. This estimate of product price increase, as explained in the economic analysis, is used as an indicator of the potential for adverse economic impact. EPA's analysis method is fully explained in the economic analysis document accompanying the proposed rule.

2. *Comment:* Domestic TBP, and TBP-based end-use products, effectively compete in the international market. Aircraft hydraulic fluids containing TBP are used by every major airline in the free world, and more than one-half of the fluid produced domestically is exported. While these fluids are currently only available from domestic sources, excessive testing requirements and associated costs can only encourage the entry of non-domestic suppliers, thus placing an unfair competitive burden on domestic manufacturers and processors of TBP.

Response: As the TBPTF has indicated, fluids containing TBP are used by every major commercial airline in the free world and there are only U.S. sources of these fluids. TBPTF has not demonstrated that a price increase of 1.4 percent to 2.0 percent to cover the costs of testing will be a great enough

incentive for companies outside of the U.S. to begin production of TBP. In addition, any person who begins to import TBP from the effective date of the rule through the reimbursement period would also be subject to the test rule and therefore would be subject to reimbursement of the test costs.

3. *Comment:* TBPTF comments further that conclusions regarding the burden of testing, which are based on fixed assumptions in the inexact field of economic theory, must be seriously and thoroughly evaluated. The ability to pass through costs under conditions of inelastic demand and stable market conditions may be true, but dramatically increased costs at only some producers or processors creates unstable conditions from both supply and consumption dynamics. In a world-wide market, domestic producers and processors of TBP could be placed at an unfair disadvantage. Even if domestic suppliers were able to pass through costs to domestic customers, it is less likely that such pass-through could be successful in foreign markets, putting a double burden on the domestic marketplace. It is economically more prudent and more realistic to assume demand for TBP to be elastic with little probability of increasing price enough to cover costs of testing in a reasonable time. These increased costs, under such assumptions, will directly impact the profitability of TBP production and may ultimately eliminate one or more producers, or even the product, from the market.

Response: TBPTF has not demonstrated that an increase in price of 1.4 percent to 2.0 percent qualifies as "dramatically increased costs". Moreover, as the TBPTF has indicated, there are no foreign sources of TBP-containing fluids. As a result, all producers of TBP would incur these increased costs. EPA has not been able to identify any viable substitutes for TBP in its largest use. Producers of TBP should be able to pass along the cost of testing to all of these customers and not just to domestic customers.

III. Final Test Rule

EPA is basing its final health and environmental effects testing for TBP on the authority of sections 4(a)(1) (A) and (B) of TSCA.

A. Findings

Under section 4(a)(1)(A), EPA finds that the manufacturing, processing, distribution, use, and disposal of TBP in aircraft hydraulic fluid and other uses may present an unreasonable risk of adverse oncogenic effects, neurotoxic effects, and dermal sensitization. These findings are based on the available toxicity data discussed in Unit II of this preamble and in Unit II.F. of the preamble to the proposed rule (52 FR 43346).

Under section 4(a)(1)(B), EPA finds that TBP is produced in substantial quantities and that there is or may be substantial human exposure to TBP in its manufacture, processing, distribution, use, and disposal. The estimated 1985 production capacity of TBP is 6 to 9 million pounds per year (Ref. 14). Potentially 43,000 aircraft mechanics and another roughly 3000 aircraft industry employees at some time could be exposed to aircraft hydraulic fluid containing TBP (Ref. 3). The exposure of mechanics is mainly dermal exposure from removing and repairing components, venting pressurized systems at service sites, and the testing and visual and manual inspection of components. There is also potential of mainly dermal exposure to TBP of approximately 500 TBP manufacturing, processing, and distribution workers from such operations as handling, transfer and packaging of products, equipment repair, cleaning equipment and spill cleanups. There is also potential limited dermal exposure to users of other TBP-containing products (less than 10 percent concentration representing in total 28 percent of TBP volume) including use in original equipment, paints and coatings, inks, leather finishing, liquid fluorescent penetrant, sewage treatment, vinyl floor finish for commercial and industrial applications, and stripping agents.

Under section 4(a)(1)(B), EPA finds that TBP is produced in substantial quantities, and that it enters or may reasonably be anticipated to enter the environment in substantial quantities as a result of its manufacture, processing, distribution, use, and disposal as indicated by its presence in surface water, sediment and groundwater. As stated in the proposed rule, TBP is expected to enter the environment as a result of wastewater release from sites where it is made or used and from leachate releases from landfills (see Unit II.D. of the proposed rule). EPA believes that the low concentrations of TBP detected in or released to the environment at numerous and widely dispersed locations suggest that the total release is substantial under section 4(a)(1)(B) of TSCA.

1. *Health effects.* EPA finds that the available data for insufficient to reasonably determine or predict the oncogenicity, neurotoxicity, dermal sensitization, developmental toxicity, reproductive and fertility effects, mutagenicity, and oral/dermal pharmacokinetics of TBP resulting from exposure during manufacturing, processing, distribution, use, and disposal. EPA finds that testing is necessary to develop these data. EPA believes that the data resulting from this testing will be relevant to a determination as to whether the manufacturing, processing, distribution, use, or disposal of TBP does or does not present an unreasonable risk of injury to human health.

2. *Environmental effects and chemical fate.* EPA believes that, for chemicals that have substantial production and substantial environmental release, reliable data should be developed to assess their toxicity and persistence. Available data are insufficient to reasonably determine or predict TBP's acute toxicity to algae, fish, and aquatic invertebrates, and chronic toxicity to fish and aquatic invertebrates (free swimming and in sediment). Available data are insufficient to reasonably determine or predict TBP's vapor pressure data at 25°C, Koc, and hydrolysis rate. Vapor pressure data at 25°C are needed to estimate a reliable Henry's Law Constant (Hc) for TBP. Data on Koc are needed to estimate the sorption of TBP to soil and sediments. Finally, hydrolysis rate data, which complement the available biodegradation data, are needed to estimate the persistence of TPB in aquatic systems. EPA finds that testing is necessary to develop environmental effects data and chemical fate data, and believes that the data resulting from these test requirements will be relevant to a determination that the manufacturing, processing, use and disposal of TBP does or does not present an unreasonable risk of injury to the environment.

B. Required Testing, Test Standards and Reporting Requirements

On the basis of these findings EPA is requiring that chemical fate, environmental effects and health effects testing be conducted for TBP in accordance with specific test guidelines set forth in 40 CFR parts 796, 797 and 798, or other published test methods as specified in this test rule as listed in the following table.

REQUIRED TESTING, TEST STANDARDS, AND REPORTING REQUIREMENTS FOR TRIBUTYL PHOSPHATE

Test	Test standard 40 CFR citation	Reporting deadline for final rule [1]	Number interim (6-mo) reports required
Chemical fate:			
Vapor pressure	§ 796.1950	6	0
Hydrolysis rate at 25 °C	§ 796.3500	6	0
Sediment and soil adsorption isotherm	§ 796.2750	9	0
Environmental effects:			
Gammarid acute toxity	§ 795.120	9	0
Selenastrum acute toxicity	§ 797.1050	9	0
Rainbow trout acute toxicity	§ 797.1400	9	0
Daphnid acute toxicity	§ 797.1300	9	0
Daphnid chronic toxicity	§ 797.1330	21	1
Fish early life stage	§ 797.1600	21	1
Sediment invertebrate bioassay	Adams et al. (Ref. 15)	21	1
Health effects:			
Oral/dermal pharmacokinetics	§ 798.228	12	1
Oncogenicity	§ 798.3300	53	8
Reproduction and fertility effects (oral)	§ 798.4700	29	4
Developmental toxicity (oral)	§ 798.4900	12	1
Dermal sensitization	§ 798.4100	6	0
Functional observation battery (acute and subchronic)	§ 798.6050	18	2
Motor activity (acute and subchronic)	§ 798.6200	18	2
Neuropathology	§ 798.6400	18	2
Mammalian cells in culture	§ 798.5300	10	1
Drosophila sex-linked recessive lethal	§ 798.5275	22	1
In vitro cytogenetics	§ 798.5375	10	1
In vivo cytogenetics	§ 798.5385	24	1
Dominant lethal assay	§ 798.5450	36	5
Heritable translocation assay	§ 798.5460	[2] 25	3

[1] Number of months after effective date, except as indicated.
[2] Figure indicates the reporting deadline, in months, calculated from the date of notification of the test sponsor by certified letter or FEDERAL REGISTER notice that following public review of all the existing data for TBP, the Agency has determined that required testing must be performed.

Although the major occupational exposure route for TBP is dermal, EPA is requiring that testing for oncogenicity, neurotoxicity, development toxicity, reproductive and fertility effects shall be by the oral route because (1) the skin irritating effects of TBP could confound the results of dermal testing, (2) existing supporting studies have been done by the oral route, and (3) there are technical problems conducting dermal tests. EPA is also requiring oral/dermal pharmacokinetics. EPA is specifying that the Sprague-Dawley rat be used for both oncogenicity and pharmacokinetics testing because existing data presented in the proposed rule show this species to be sensitive to TBP.

EPA requires that all data developed under this rule be reported in accordance with its TSCA Good Laboratory Practice (GLP) Standards, in 40 CFR part 792.

In accordance with 40 CFR part 790, under single-phase rulemaking procedures, test sponsors are required to submit individual study plans at least 45 days before initiation of each test.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. Final testing requirements, test standards and reporting requirements for this TBP test rule are summarized in the preceding table. Interim progress reports for the tests shall be provided to EPA at 6-month intervals after the effective date of this rule until the final report is submitted to EPA.

TSCA section 14(b) governs EPA disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, EPA will publish a notice of receipt in the **Federal Register** as required by section 4(d).

Persons who export a chemical which is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR part 707. In brief, as of the effective date of this test rule, an exporter of TBP must report to EPA the first annual export or intended export of TBP to each country. EPA will notify the foreign country concerning the test rule for TPB.

For the purpose of this test rule, these guidelines are the test standards that must be met by the test sponsors. The route of administration of TBP for all tests shall be oral unless otherwise specified. Data resulting from these tests will assist EPA in conducting health and environmental risk assessments for TBP. The TSCA test guidelines, proposed modifications, and other cited test guidelines discussed in the following paragraphs in III.B. specify generally accepted minimal conditions for determining toxicities and properties of substances such as TBP to which human and aquatic life are expected to be exposed. Conducting the required studies in accordance with these TSCA guidelines will help ensure that the test results are reliable and adequate.

The oral/dermal pharmacokinetics test guideline in the proposed rule has been revised based upon public comments and is promulgated as § 795.228 Oral/dermal pharmacokinetics test.

EPA periodically reviews the TSCA Test Guidelines, according to the process described at 47 FR 41857 (September 22, 1982).

1. *Health effects.* The neurotoxicity testing required will consist of an acute and subchronic functional observation battery specified in § 798.6050, as modified in § 799.4360(c)(1)(i)(A)(*2*), an acute and subchronic motor activity test specified in § 798.6200, as modified in § 799.4360(c)(1)(i)(B)(*2*), and a subchronic neuropathologic evaluation of tissues perfused in situ specified in § 798.6400, as modified in § 799.4360(c)(1)(i)(C)(*2*).

To assess the developmental effects of TBP, EPA is requiring that testing be conducted by gavage according to § 798.4900, as modified in § 799.4360(c)(2)(i)(B).

To assess the reproductive and fertility effects of TBP, EPA is requiring that testing be conducted according to § 798.4700, as modified in § 799.4360(c)(3)(i)(B) (i)(B).

To assess the mutagenic effects of TBP, EPA is requring that testing be conducted in tiers. First-tier testing will consist of the detection of gene mutation in somatic cells in culture using the test guideline § 798.5300, an in vitro mammalian cytogenetics test using the test guideline in § 798.5375, and an in vivo mammalian bone marrow cytogenetics chromosomal analysis test using the test guideline in § 798.5385, as modified in § 799.4360(c)(5)(i)(B)(*2*). Unless the results of the gene mutation in somatic cells in culture are negative, a sex-linked recessive lethal test in *Drosophila melanogaster* will be required. Second-tier testing will consist of a sex-linked recessive lethal assay in *Drosophila melanogaster* using the test guideline in § 798.5275, as modified in § 799.4360(c)(4)(i)(B)(*2*), and a rodent dominant lethal test using the test guideline in § 798.5450; third-tier testing will consist of a rodent heritable translocation test using the test guidelines in § 798.5460, and as modified in § 799.4360(c)(5)(i)(D)(*2*).

In the proposed rule, EPA would have required third-tier testing consisting of a mouse visible specific locus test using the test guideline in § 798.5200 as modified. Positive results in the sex-linked recessive lethal test may have triggered the requirement for conducting a mouse visible specific locus (MVSL) test. EPA believes that the MVSL may be necessary, when these lower-tier tests are positive, to establish definitively whether a substance is capable of eliciting heritable gene mutations. Under the approach proposed, EPA would have considered the positive results in the lower-tier tests in a public program review, together with other relevant information, during which interested persons would be able to give their views to EPA. If, after the review, EPA had determined that the MVSL was still appropriate, EPA would have notified the test sponsors by letter or **Federal Register** notice that they must conduct the test. If EPA had determined that the test was no longer necessary, EPA would have amended the rule to delete the test requirement.

The final test rule for TBP includes requirements to conduct the lower-tier tests for gene mutation. However, EPA is not promulgating the requirement for the MVSL for TBP at this time. EPA has based its proposal to require the MVSL, in part, on information and assumptions about the cost of conducting the test and the availability of laboratories capable of performing the test. The information and assumptions have since proven to be incorrect. Accordingly, EPA is in the process of reexamining the MVSL requirement for all those chemical substances for which the MVSL has been required or proposed to be required. In particular, EPA is reviewing whether any laboratories are available to perform the MVSL for industry in accordance with the TSCA Good Laboratory Practice Standards at 40 CFR part 792 and the cost of such testing, EPA is also reviewing possible alternative tests to the MVSL for which costs may be lower or laboratory availability may be more certain.

EPA has published a notice in the **Federal Register** concerning the MVSL for TBP and other substances subject to proposed and final TSCA section 4 test rules (53 FR 51897). This notice provides up-to-date information on the cost of MVSL testing, availability of laboratories to perform the MVSL, and possible alternative tests to the MVSL together with their costs and laboratory availability. The notice also addresses EPA's intentions about any changes to the MVSL requirements in the various test rules and provides an opportunity for public comment. If, after this proposed rule is finalized and if after lower tier mutagenicity testing of TBP, EPA concludes that the MVSL is appropriate for TBP, EPA will amend this rule to include the MVSL requirements with any appropriate modifications.

Should the gene mutation in somatic cells test prove negative, no further gene-mutation tests will be required. If the sex-linked recessive lethal test is negative, no further gene-mutation test will be required of TBP.

If the results of the in vitro mammalian cytogenetics test are negative, an in vivo mammalian bone marrow cytogenetics, chromosomal analysis test will be required. Unless the results of the in vivo test are negative, a rodent dominant lethal test will be required. A positive result in the rodent dominant lethal test will trigger the requirement that a heritable translocation test be conducted. Should the in vivo mammalian cytogenetics test results prove negative, no further chromosomal effects testing will be required. If the dominant lethal test is negative, no further chromosomal effects testing will be required for TBP.

Under this final rule, if the result of the second-tier rodent dominant lethal test is positive, EPA will hold a public program review before industry will be required to initiate the third-tier heritable translocation test. The public will participate in this program review either by submitting written comments or commenting during a public meeting. A request for public comment or notification of public meeting will be published in the **Federal Register**. Should EPA determine, from the available weight of evidence, that proceeding to the heritable translocation test is no longer warranted, EPA will propose to repeal this testing requirement and, after public comment, issue a final amendment to rescind this requirement. EPA will notify the test sponsors by certified letter or **Federal Register** notice, following the public program review of all the then-existing data for TBP, if the heritable translocation test must be performed. EPA will also conduct internal program reviews of the reports of the gene mutations in somatic cells in culture assay, the in vitro mammalian bone marrow cytogenetics test, and the in vivo mammalian bone marrow cytogenetics test and other available mutagenicity data to evaluate whether the sex-linked recessive lethal and the rodent dominant lethal tests have been triggered.

For a more detailed discussion of mutagenicity tiered testing and public program review procedures, see EPA's final test rule for the C9 aromatic hydrocarbon fraction published in the **Federal Register** of May 17, 1985 (50 FR 20662).

To assess the oncogenic effects of TBP, EPA is requiring that testing be conducted according to § 798.3300 in Sprague-Dawley rats and in mice via the oral route of administration.

To assess the dermal sensitization effects of TBP, EPA is requiring that testing be conducted according to § 798.4100.

To compare the oral route of administration of TBP in § 798.3300 and the dermal route, in § 798.4100 which is thought to be a primary route of-human exposure, EPA is requiring an oral/dermal pharmacokinetic test with TBP to examine absorption, distribution, metabolism, and excretion. EPA is requiring that testing be conducted according to § 798.7485. The decision to require most testing of TBP by the oral route is based on the results of dermal irritation tests showing TBP effects to range from irritating to corrosive (Unit II.F.1. of preamble to proposed rule). Moreover, dermal application of the corrosive TBP could stress the test animals, which may distort test results. TBP is well tolerated by the oral route (Unit II.F. of preamble to proposed rule).

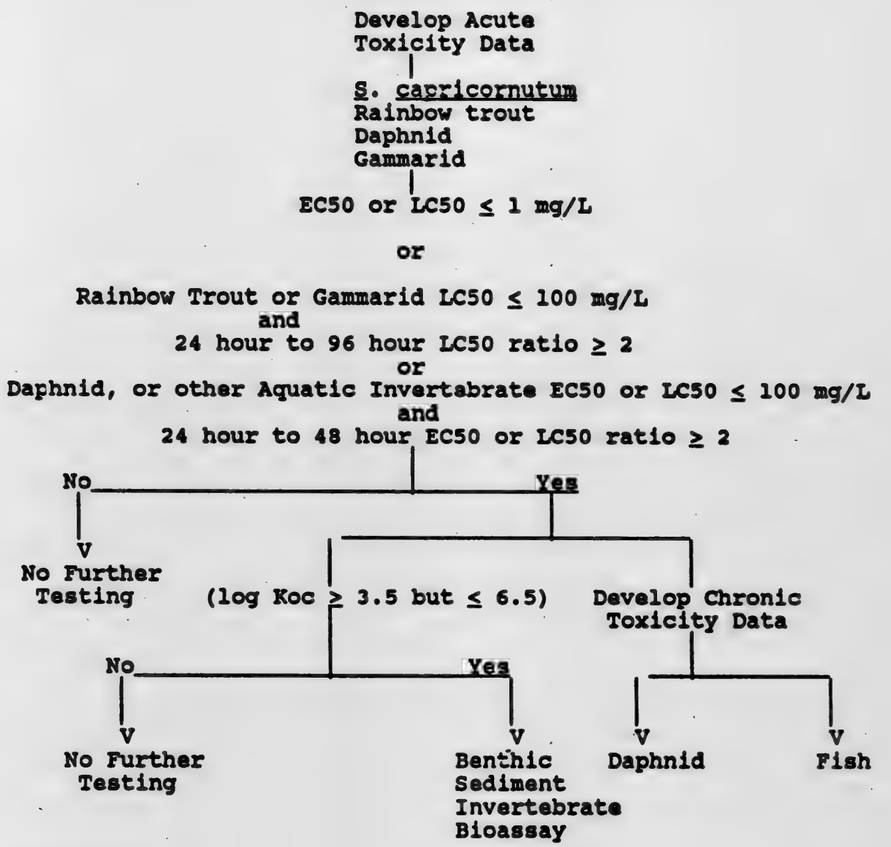
EPA is not requiring the renal effects test recommended by the ITC. Acute and subacute oral studies by Mitomo et al. (Ref. 16) showed kidney tubule damage in rats and mice. However, two oral subchronic rats studies of 90 days and 126 days showed no kidney damage even at dosages higher than the Mitomo studies (Refs. 17 and 18). EPA believes that there are adequate data available to assess the effects of TBP on kidney tubules.

2. *Environmental effects.* EPA is requiring the following environmental effects testing to determine the toxicity of TBP to an alga, a fish, and aquatic invertebrates: (1) *Selenastrum capricornutum,* in accordance with § 797.1050 as modified in § 799.4360(d)(1)(i)(B); (2) rainbow trout in accordance with § 797.1400, as modified in § 799.4360(d)(2)(i)(B); (3) daphnids in accordance with § 797.1300, and as modified in § 799.4360(d)(3)i)(B); and (4) gammarids in accordance with § 795.120, as modified in § 799.4360(d)(4)(i)(B). Only one test species, rainbow trout, is required for the fish acute toxicity test because an acute test for the fathead minnow is available and adequate in combination with the testing required for the rainbow trout for purposes of assessing the acute toxicity of TBP of fish (see Unit II.G.). All the acute aquatic toxicity data from these tests will be used to determine whether chronic aquatic testing is necessary according to the testing scheme presented in the following figure:

BILLING CODE 6560-50-M

-32-

Figure--DECISION LOGIC FOR DEVELOPING ENVIRONMENTAL EFFECTS DATA



BILLING CODE 6560-50-C

EPA believes that, for chemicals with substantial production and ubiquitous environmental distribution, reliable data should be developed to assess their toxicity and persistence. EPA also believes that, for widely distributed chemicals such as TBP, hazard-based decision criteria should be applied to the data to determine the need to conduct further testing (see Figure). EPA believes it is inappropriate to use integrated decision criteria (i.e., criteria based on predicted environmental concentrations) for these chemicals because the widespread occurrence of these chemicals may make it very difficult to calculate reliable predicted environmental concentrations.

Therefore, if any of the results of acute aquatic toxicity tests satisfy the criteria specified in the Figure, the following chronic tests shall be conducted: (1) The invertebrate *Daphnia* life-cycle test in accordance with § 797.1330, as modified in § 799.4360(d)(5)(i)(B); (2) early-life stage toxicity to fish using the fish with the lower LC50 value in accordance with § 797.1600, as modified in § 799.4360(d)(6)(i)(B); and (3) a benthic sediment invertebrate bioassay with the midge, *Chironomous tentans* (if TBP's measured log Koc satisifies the log Koc criterion in Figure), using three different TBP—containing clean, freshwater sediments having low, medium, and high organic carbon content, using the benthic sediment bioassay method by Adams et al. (Ref. 16) as specified in § 799.4360(d)(7)(i)(B). This incorporation by reference is approved by the Director of the Federal Register. The log Koc criterion is TBP-specific.

3. *Chemical fate.* EPA is requiring measuring the vapor pressure of TBP at 25° C in accordance with § 796.1950, measuring the sediment and soil adsorption isotherm and calculating log Koc in accordance with § 796.2750 (EPA will provide two soil and two sediment samples), and measuring the hydrolysis rate in accordance with § 796.3500.

C. Test Substance

EPA is requiring that TBP of at least 99 percent purity shall be used as the test substance. TBP of such purity is commercially available.

D. Persons Required to Test

Section 4(b)(3)(B) specifies that the activities for which EPA makes section 4(a) findings (manufacture, proceeding, distribution in commerce, use, and/or disposal) determine who bears the responsibility for testing a chemical. Manufacturers and persons who intend to manufacture the chemical are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors and persons who intend to process the chemical are required to test if the findings are based on processing. Manufacturers and processors and persons who intend to manufacture and process the chemical are required to test if the exposures giving rise to the potential risk occur during distribution in commerce, use, or disposal of the chemical.

Because EPA has found that there are insufficient data and experience to reasonably determine or predict the effects resulting from manufacturing, processing, distribution, use and disposal of TBP, EPA is requiring that persons who manufacture or process, or who intend to manufacture to process TBP, other than as an impurity, at any time from the effective date of the final test rule to the end of the reimbursement period are subject to the testing requirements contained in this final rule. The end of the reimbursement period will be 5 years after the last final report is submitted or an amount of time equal to that which was required to develop data, whichever is later.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the test and submit data on their behalf. Section 4(c) provides that any persons required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR part 790.

Manufacturers (including importers) subject to this rule are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the final test rule or if manufacture commences 30 days after the effective date of the rule but before the end of the reimbursement period, by the date manufacture begins. The required procedures for submitting such letters and applications are described in 40 CFR part 790. Although EPA has not identified any individuals who manufacture TBP as a byproduct, such persons will be subject to the requirements of this test rule.

Processors rule to this subject, unless they are also manufacturers, will not be required to submit letters of intent or exemption applications, or to conduct testing, unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. EPA expects that the manufacturers will pass an appropriate portion of the costs of testing on to processors through the pricing of their products or other reimbursement mechanisms. If manufacturers perform all the required tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, EPA will publish a separate notice in the **Federal Register** to notify processors to respond; this procedure is described in 40 CFR part 790.

EPA is not requiring the submission or equivalence data as a condition for exemption from the required testing for TBP. As noted in Unit III.C, EPA is interested in evaluating the effects attributable to TBP and has specified a relatively pure substance for testing.

Manufacturers and processors subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR Part 790 for single-phase rulemaking.

E. Enforcement Provisions

EPA considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by TSCA or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by TSCA section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce * * *" EPA considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by designated representatives of EPA for the purpose of determining compliance with the final rule for TBP. These inspections may be conducted for purposes which include verification that testing has begun, schedules are being met, and reports accurately reflect the underlying raw data, interpretations, and evaluations, and to determine compliance with TSCA GLP standards and the test standards established in this rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and to include such other requirements as are necessary to provide such assurance. EPA maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provisions of section 16 of TSCA, any person who violates section 15 of TSCA could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers that fail to submit a letter of intent or an exemption request and that continue manufacturing after the deadlines for such submissions. This provision would also apply to processors that fail to submit a letter of intent or an exemption application and continue processing after EPA has notified them of their obligation to submit such documents (see 40 CFR 790.28(b)). Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation, imprisonment for up to 1 year, or both. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as the other factors listed in TSCA section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

IV. Economic Analysis of Final Rule

To assess the potential economic impact of this final rule, EPA has prepared an economic analysis that evaluates the potential for significant economic impacts on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential costs by examining four market characteristics of TBP: (1) Price sensitivity of demand, (2) industry cost characteristics, (3) industry structure, and (4) market expectations. If these indications are negative, no further economic analysis is performed. However, if the first level of analysis indicates a potential for significant economic impact, a more comprehensive and detailed analysis is conducted which more precisely predicts the magnitude and distribution of the expected impact.

Total testing costs for the testing of TBP are estimated to range from $1.3 to $1.7 million. To predict the financial decision-making practices of manufacturing firms, these costs have been annualized. Annualized costs are compared with annual revenue as an indication of potential impact. The annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period to finance the testing expenditure in the first year.

The annualized test costs (using a cost of capital of 7 percent over a period of 15 years) range from $140,400 to $186,700. Based on 1986 production of 6 million pounds, the unit test costs range from $0.02 to $0.03 per pound. In relation to the selling price of $1.60 per pound for TBP, these costs are equivalent to 1.46 to 1.95 percent of the price.

Though the annualized unit costs of the tests relative to the product price of TBP appear to be high, EPA believes that the potential for adverse economic impact is low. This conclusion is based on the following observations:

1. The demand for TBP appears to be inelastic with respect to price in its largest use, primarily because of the current lack of viable substitutes.

2. The market for TBP appears to be stable.

Refer to the economic analysis which is contained in the public record for this rulemaking for a complete discussion of test costs estimation and potential for economic impact resulting from these costs.

V. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule". Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by this section 4 test rule (Ref. 19). Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (PB-82-140773). On the basis of this study, EPA believes that there will be available test facilities and personnel to perform the testing specified in this rule.

EPA has reviewed the availability of contract laboratory facilities to conduct the required neurotoxicity tests (Ref. 20) and believes that facilities will be available for the tests. The laboratory review indicates that few laboratories are currently conducting these tests according to the TSCA test guidelines and TSCA GLP Standards. However, the barriers faced by testing laboratories to conduct these tests are not formidable. Laboratories will have to invest in testing equipment and personnel training but EPA believes that these investments will be recovered as the neurotoxicity testing program under TSCA section 4 continues. EPA's expectations of laboratory availability were borne out under the testing requirements of the C9 aromatic hydrocarbon fraction test rule (50 FR 20675; May 17, 1985). Pursuant to that rule, manufacturers were able to contract with a laboratory to conduct the testing according to TSCA test guidelines and TSCA GLP Standards.

VI. Rulemaking Record

EPA has established a record for this rulemaking (Docket Number OPTS-42100B). This record contains the basic information considered by EPA in developing this proposal and appropriate **Federal Register** notices.

This record includes:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice containing the ITC's intent to designate TBP to the Priority List (51 FR 18368; May 19, 1986), and the designation of TBP to the Priority List (51 FR 41417; November 14, 1986).

(b) Rules requiring TSCA section 8(a) and 8(d) reporting on TBP (51 FR 18323; May 19, 1986).

(c) TSCA test guidelines cited as test standards for this rule.
(2) Economic Impact Analysis of Proposed Test Rule for Tributyl Phosphate.
(3) Communications consisting of: (a) Written public comments and letters.
(b) Contact reports of telephone conversations.
(c) Meeting summaries.
(4) Reports—published and unpublished factual materials.

B. References

(1) TBPTF. Tributyl Phosphate Task Force of the Synthetic Organic Chemicals Manufacturers Association. Washington, DC. Comments on EPA's proposed test rule for tributyl phosphate. (January 11, 1988).
(2) TBPTF. 1987 U.S. Survey of Tributyl Phosphate Users, Potential Exposure and Safety Procedures, conducted by Temple, Barker, Sloan Inc. (1987).
(3) TBPTF. Letter from J. Kneiss, Managing Director of the Tributyl Phosphate Task Force to M. McCommas, Office of Toxic Substances, U.S. Environmental Protection Agency, July 11, 1988.
(4) USEPA. U.S. Environmental Protection Agency. Exposure Tech Team notes on TBPTF's exposure survey from S. Shapley to M. McCommas, Office of Toxic Substances (1988).
(5) USEPA. Tributyl Phosphate (TBP) task force exposure estimates for populations handling aircraft hydraulic fluids containing TBP. Memo from V. Rodriguez to M. McCommas. Office of Toxic Substances (1988).
(6) Ainsworth, M. "Methods for measuring percutaneous absorption." *Journal of the Society of Cosmetic Chemistry* 11:69–78 (1960).
(7) Marzulli, F.N., Callahan, J.F., and Brown, D.W.C. "Chemical structure and skin penetrating capacity of a short series of organo phosphates and phosphoric acid." *Journal of Investigative Dermatology* 44:339–344 (1965).
(8) Tregar, R. "The permeability of mammalian skin to ions." *Journal of Investigative Dermatology* 46:16–23 (1966).
(9) Marzulli, F.N. et al. "Techniques for studying skin penetration." *Toxicology and Applied Pharmacology* Supplement 2, 3:76–83 (1969).
(10) Robertson, D.G., Mattson, A.M., Bestervelt, L.L., Richardson, and R.J., Anderson, R.J., "Time course of electrophysiological effects induced by di-n-butyl-2,2-dichlorovinyl phosphate (DBCV) in the adult hen." *Journal of Toxicology and Environmental Health* 23:283–294 (1988).
(11) Roberts, D.V. "A longitudinal electromyographic study of six men occupationally exposed to organophosphorus compounds." *International Archives of Occupational and Environmental Health* 38:221–229 (1977).
(12) Brown, D.R. and Murphy, S.D. "Factors influencing dimethoate and trimethyl phosphate-induced narcosis in rats and mice." *Toxicology and Applied Pharmacology* 18:895–906 (1971).
(13) Deichmann, W.B. and Witherup, S. "Observations on the effects of trimethyl phosphate upon experimental animals." *Journal of Pharmacology and Experimental Therapeutics* 88:338–347 (1946).
(14) USEPA. Aggregated production volume for CASRN 128–73–8, 1985. U.S. Environmental Protection Agency, Confidential Data Branch, Office of Toxic Substances, Washington, DC (1987).
(15) Adams, W.J., Kimmerle, R.A., and Mosher, R.G. "Aquatic safety assessment of chemicals sorbed to sediments." Published in Aquatic Toxicology and Hazard Assessment Seventh Symposium, ASTM STP 854, American Society for Testing and Materials, Philadelphia, PA pp. 429–453 (1985).
(16) Mitomo, L, Ito, T., Ueno, Y., and Terao, K. "Toxicological studies on tributyl phosphate. I. Acute and Subacute Toxicities." *Journal of Toxicological Services* 5:270–271 (1969).
(17) Laham, S., Long, G., and Broxup, B. "Induction of urinary bladder hyperplasia in Sprague–Dawley rats orally administered tri-n-butyl phosphate." *Archives of Environmental Health* 40:301–306 (1985).
(18) FMC Corporation. TSCA 8(d) submission 86800000106, Thirteen week feeding study of tributyl phosphate in rats. Office of Toxic Substances, U.S. EPA, Washington, DC (1986).
(19) NTIS. National Technical Information Service. Chemical Testing Industry: Profile of Toxicological Testing (PB 82–140773). Springfield, VA (1986).
(20) USEPA. Evaluation of TSCA test guidelines for neurotoxicity testing. Mathtech, Inc. Contract Number 68–02–4235. Regulatory Impact Branch. Office of Toxic Substances, Washington, DC. (April 4, 1987).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Room G–004, NE Mall, 401 M Street, SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday except legal holidays.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in costs or prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprise to compete with foreign enterprises.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA responses to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule will not have a significant impact on a substantial number of small businesses because: (1) They are not likely to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor costs, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3502 *et seq.* and have been assigned OMB control number 2070–0033.

Public reporting burden for this collection of information is estimated to average 486 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Parts 795 and 799

Chemicals, Environmental protection, Hazardous substances, Testing, Laboratories, Recordkeeping and reporting requirements, Incorporation by reference.

Dated: August 3, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Chapter I, Subchapter R is amended as follows:

PART 795—[AMENDED]

1. In part 795:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603.

b. Section 795.228 is added to subpart D, to read as follows:

§ 795.228 *Oral/dermal pharmacokinetics.*

(a) *Purpose.* The purpose of these studies are to: (1) Ascertain whether the pharmacokinetics and metabolism of a chemical substance or mixture ("test substance") are similar after oral and dermal administration.

(2) Determine bioavailability of a test substance after oral and dermal administration.

(3) Examine the effects of repeated dosing on the pharmacokinetics and metabolism of the test substance.

(b) *Definitions.* (1)"Bioavailability" refers to the rate and relative amount of administered test substance which reaches the systemic circulation.

(2) "Metabolism" means the study of the sum of the processes by which a particular substance is handled in the body and includes absorption, tissue distribution, biotransformation, and excretion.

(3) "Percent absorption" means 100 times the ratio between total excretion of radioactivity following oral or dermal administration and total excretion following intravenous administration of test substance.

(4) "Pharmacokinetics" means the study of the rates of absorption, tissue distribution, biotransformation, and excretion.

(c) *Test procedures*—(1) *Animal selection*—(i) *Species.* The rat shall be used for pharmacokinetics testing because it has been used extensively for metabolic and toxicological studies. For dermal bioavailability studies, the rat and the mini-pig shall be used.

(ii) *Test animals.* For pharmacokinetics testing and dermal studies, adult male and female Sprague–Dawley rats, 7 to 9 weeks of age, shall be used. For dermal studies, young adult mini-pigs shall also be used. The animals should be purchased from a reputable dealer and shall be identified upon arrival at the testing laboratory. The animals shall be selected at random for the test groups and any animal showing signs of ill health shall not be used. In all studies, unless otherwise specified, each test group shall contain at least 4 animals of each sex for a total of at least 8 animals.

(iii) *Animal care.* (A) The animals shall be housed in environmentally controlled rooms with at least 10 air changes per hour. The rooms shall be maintained at a temperature of 24 ± 2 °C and humidity of 50 ± 20 percent with a 12-hour light/dark cycle per day. The animals shall be kept in a quarantine facility for at least 7 days prior to use and shall be acclimated to the experimental environment for a minimum of 48 hours prior to administration of the test substance.

(B) During the acclimatization period, the animals shall be housed in suitable cages. All animals shall be provided with certified feed and tap water *ad libitum*. The mini-pig diet shall be supplemented with adequate amounts of ascorbic acid in the drinking water.

(2) *Administration of test substance*—(i) *Test substance.* The use of a radioactive test substance is required for all studies. Ideally, the purity, radioactive and nonradioactive, is greater than 99 percent. The radioactive and nonradioactive test substances shall be chromatographed separately and together to establish purity and identity. If the purity is less than 99 percent or if the chromatograms differ significantly, EPA should be consulted.

(ii) *Dosage and treatment*—(A) *Intravenous.* The low dose of test substance, in an appropriate vehicle, shall be administered intravenously to groups of rats and mini-pigs of each sex. If feasible, the same low dose should be used for intravenous, oral, and dermal studies.

(B) *Oral.* Two doses of text substance shall be used in the oral study, a low dose and a high dose. The high dose should ideally induce some overt toxicity, such as weight loss. The low dose should correspond to a no–observed effect level. The oral dosing shall be accomplished by gavage or by administering the encapsulated test substance. If feasible, the same high and low doses should be used for oral and dermal studies.

(C) *Dermal.* (*1*) Dermal treatment. For dermal treatment, two doses, comparable to the low and high oral doses, shall be dissolved in a suitable vehicle and applied in volumes adequate to deliver comparable doses. The backs of the animals should be lightly shaved with an electric clipper 24 hours before treatment. The test substance shall be applied to the intact shaven skin (approximately 2 cm^2 for rats, 5 cm^2 for mini-pigs). The dosed areas shall be protected with a suitable porous covering which is secured in place, and the animals shall be housed separately.

(*2*) Washing efficacy study. Before initiation of the dermal absorption studies, an initial washing efficacy experiment shall be conducted to assess the removal of the applied low dose of the test substance by washing the exposed skin area with soap and water and an appropriate organic solvent. The low dose shall be applied to 4 rats and 4 mini-pigs in accordance with paragraph (c)(2)(ii)(C)(*1*) of this section. After application (5 to 10 minutes), the treated areas of 2 rats and 2 mini-pigs shall be washed with soap and water and the treated areas of the remaining rats and pigs shall be washed with an appropriate solvent. The amounts of test substance recovered in the washings shall be determined to assess efficacy of its removal by washing.

(iii) *Dosing and sampling schedule*—(A) *Rat studies.* After administration of the test substance, each rat shall be placed in a metabolic unit to facilitate collection of excreta. For the dermal studies, excreta from the rats shall also be collected during the 6 hour exposure periods. At the end of each collection period, the metabolic units shall be cleaned to recover any excreta that might adhere to them. All studies, except the repeated dosing study, shall be terminated at 7 days or after at least 90 percent of the radioactivity has been recovered in the excreta, whichever occurs first.

(*1*) *Intravenous study.* Group A shall be dosed once intravenously at the low dose of test substance.

(*2*) *Oral study.* (*i*) Group B shall be dosed once per os with the low dose of test substance.

(*ii*) Group C shall be dosed once per os with the high dose of test substance.

(*3*) *Dermal studies.* Unless precluded by corrosivity, the test substance shall be applied and kept on the skin for a minimum of 6 hours. At the time of removal of the porous covering, the treated area shall be washed with an appropriate solvent to remove any test substance that may be on the skin surface. Both the covering and the washing shall be assayed to recover residual radioactivity. At the termination of the studies, each animal shall be sacrificed and the exposed skin area removed. An appropriate section of the skin shall be solubilized and assayed for radio-activity to ascertain if the skin acts as a reservoir for the test substance. Studies on the dermal absorption of corrosive test substances should be discussed with EPA prior to initiation.

(*i*) Group D shall be dosed once dermally with the low dose of test compound.

(*ii*) Group E shall be dosed once dermally with the high dose of the test substance.

(*4*) *Repeated dosing study.* Group F shall receive a series of single daily oral low doses of nonradioactive test substance over a period of at least 7 days. Twenty-four hours after the last nonradioactive dose, a single oral low dose of radioactive test substance shall be administered. Following dosing with

the radioactive substance, the rats shall be placed in individual metabolic units as described in paragraph (c)(2)(iii) of this section. The study shall be terminated at 7 days after the last dose, or after at least 90 percent of the radioactivity has been recovered in the excreta, whichever occurs first.

(B) *Mini-Pig studies.* For all mini-pig studies, the test groups shall consist of four young adult animals. After administration of the test substance, each mini-pig shall be kept in a metabolic unit to facilitate collection of excreta. At the end of each collection period, the metabolic units are to be cleaned to recover any excreta that might adhere to them. All studies shall be terminated at 7 days, or after at least 90 percent of the radio-activity has been recovered in the excreta, whichever occurs first.

(1) *Intravenous study.* Group G is to be dosed once intravenously at the low dose of the test substance.

(2) *Dermal studies.* Following the experimental guidance described in (c)(2)(iii)(A)(*3*) of this section:

(*i*) Group H shall be dosed once dermally with the low dose of test substance.

(*ii*) Group I shall be dosed once dermally with the high dose of the test substance.

(3) *Types of studies*—(i) *Pharmacokinetics studies*—(A) *Rat studies.* Groups A through F shall be used to determine the kinetics of absorption of the test substance. In the group administered the test substance by intravenous routes, (i.e., Group A), the concentration of radioactivity in blood and excreta shall be measured following administration. In groups administered the test substance by the oral and dermal route (i.e., Groups B, C, D, E and F), the concentration of radioactivity in blood and excreta shall be measured at selected time intervals during and following the exposure period.

(B) *Mini-Pig studies.* Groups G, H, and I shall be used to determine the extent of dermal absorption of the test substance. The amount of radioactivity in excreta shall be determined at selected time intervals.

(ii) *Metabolism studies—Rat studies.* Groups A through F shall be used to determine the metabolism of the test substance. Urine, feces, and expired air shall be collected for identification and quantification of the test substance and metabolites.

(4) *Measurements*—(i) *Pharmacokinetics.* Four animals from each group shall be used for these purposes.

(A) *Rat studies*—(*1*) *Bioavailability.* The levels of radioactivity shall be determined in whole blood, blood plasma or blood serum at 15 and 30 minutes and at 1, 2, 8, 24, 48, and 96 hours after initiation of dosing.

(*2*) *Extent of absorption.* The total quantities of radioactivity shall be determined for excerta collected daily for 7 days or until at least 90 percent of the radioactivity has been recovered in the excreta.

(*3*) *Excretion.* The quantities of radioactivity eliminated in the urine, feces, and expired air shall be determined separately at appropriate time intervals. The collection of carbon dioxide may be discontinued when less than one percent of the dose is found to be exhaled as radioactive carbon dioxide in 24 hours.

(*4*) *Tissue distribution.* At the termination of each study, the quantities of radioactivity in blood and in various tissues, including bone, brain, fat, gastrointestinal tract, gonads, heart, kidney, liver, lungs, muscle, skin, and residual carcass of each animal shall be determined.

(*5*) *Changes in pharmacokinetics.* Results of pharmacokinetics measurements (i.e., bioavailability and extent of absorption, tissue distribution, and excretion) obtained in rats receiving the single low oral dose of the test substance (Groups B and C) shall be compared to the corresponding results obtained in rats receiving repeated oral doses of the test substance (Group F).

(B) *Mini-Pig studies—Extent of absorption.* The total quantities of radioactivity shall be determined for excreta daily for 7 days or until at least 90 percent of the test substance has been excreted.

(ii) *Metabolism.* Four animals from each group shall be used for these purposes.

(A) *Rat studies*—(*1*) *Biotransformation.* Appropriate qualitative and quantitative methods shall be used to assay urine, feces, and expired air collected from rats. Efforts shall be made to identify any metabolite which comprises 5 percent or more of the administered dose and the major radioactive components of blood.

(*2*) *Changes in biotransformation.* Appropriate qualitative and quantitative assay methodology shall be used to compare the composition of radioactive compounds in excreta from rats receiving a single oral dose (Groups B and C) with those in the excreta from rats receiving repeated oral doses (Group H).

(d) *Data and reporting.* The final test report shall include the following:

(1) *Presentation of results.* Numerical data shall be summarized in tabular form. Pharmacokinetic data shall also be presented in graphical form. Qualitative observations shall also be reported.

(2) *Evaluation of results.* All quantitative results shall be evaluated by an appropriate statistical method.

(3) *Reporting results.* In addition to the reporting requirements as specified in 40 CFR part 792, the following specific information shall be reported:

(i) Species and strains of laboratory animals.

(ii) Chemical characterization of the test substance, including:

(A) For the radioactive test substances, information on the site(s) and degree of radiolabeling, including type of label, specific activity, chemical purity, and radiochemical purity.

(B) For the nonradioactive compound, information on chemical purity.

(C) Results of chromatography.

(iii) A full description of the sensitivity, precision, and accuracy of all procedures used to generate the data.

(iv) Percent of absorption of test substance after oral and dermal exposures to rats and dermal exposure to mini-pigs.

(v) Quantity and percent recovery of radioactivity in feces, urine, expired air, and blood. In dermal studies on rats and mini-pigs, include recovery data for skin, skin washings, and residual radioactivity in the covering as well as results of the washing efficacy study.

(vi) Tissue distribution reported as quantity of radioactivity in blood and in various tissues, including bone, brain, fat, gastrointestinal tract, gonads, heart, kidney, liver, lung, muscle, skin and in residual carcass of rats.

(vii) Materials balance developed from each study involving the assay of body tissues and excreta.

(viii) Biotransformation pathways and quantities of test substance and metabolites in excreta collected after administering single high and low doses to rats.

(ix) Biotransformation pathways and quantities of the test substance and metabolites in excreta collected after administering repeated low doses to rats.

(x) Pharmacokinetics model(s) developed from the experimental data.

PART 799—[AMENDED]

2. In part 799:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. Section 799.4360 is added to subpart B to read as follows:

§ 799.4360 Tributyl phosphate.

(a) *Identification of test substance.* (1) Tributyl phosphate (TBP, CAS No. 126–73–8) shall be tested in accordance with this section.

(2) TBP of at least 99 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture (including import and byproduct manufacture) or process or intend to manufacture or process TBP, other than as an impurity, from the effective date of the final rule to the end of the reimbursement period shall submit letters of intent to conduct testing, submit study plans, conduct tests, and submit data, or submit exemption applications as specified in this section, subpart A of this part, and part 790 of this chapter for single-phase rulemaking.

(c) *Health effects testing*—(1) *Neurotoxicity*—(i) *Required testing.* (A)(*1*) An acute and subchronic functional observational battery shall be conducted with TBP in accordance with § 798.6050 of this chapter except for the provisions of paragraphs (d) (5) and (6) of § 798.6050.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Animal selection.* Testing shall be performed in laboratory rats.

(*ii*) *Duration of testing.* For the acute testing, the substance shall be administered over a period not to exceed 24 hours; for the subchronic testing, test species shall be exposed daily for at least 90 days.

(*iii*) *Route of exposure.* Animals shall be exposed to TBP orally.

(B)(*1*) An acute and subchronic motor activity test shall be conducted with TBP in accordance with § 798.6200 of this chapter except for the provisions of paragraphs (d) (5) and (6) of § 798.6200.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Animal selection.* Testing shall be performed in laboratory rats.

(*ii*) *Duration of testing.* For the acute testing, the substance shall be administered over a period not to exceed 24 hours; for the subchronic testing, test species shall be exposed daily for at least 90 days.

(*iii*) *Route of administration.* Animals shall be exposed to TBP orally.

(C)(*1*) A neuropathology test shall be conducted with TBP in accordance with § 798.6400 of this chapter except for the provision of paragraphs (d)(1)(i) (5) and (6) of § 798.6400.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Animal selection.* Testing shall be performed in laboratory rats.

(*ii*) *Duration of testing.* Animals shall be exposed for at least a 90-day period.

(*iii*) *Route of administration.* Animals shall be exposed to TBP orally.

(*ii*) *Reporting requirements*—(A) The neurotoxicity tests required under paragraph (c)(1)(i) (A), (B), and (C) of this section shall be completed and final reports submitted to EPA within 18 months of the effective date of the final rule.

(B) An interim progress report for these neurotoxicity tests shall be submitted to EPA 6 months after the effective date of the final rule.

(2) *Developmental toxicity*—(i) *Required testing.* (A) A developmental toxicity study shall be conducted with TBP in accordance with § 798.4900 of this chapter, except for the provisions of paragraph (e)(5) of § 798.4900.

(B) for the purpose of this section, the following provision also applies:

(*1*) *Route of administration.* The animals shall be exposed to TBP by gavage.

(*2*) [*Reserved*]

(ii) *Reporting requirements.* (A) The developmental toxicity study required under paragraph (c)(2) of this section shall be completed and a final report submitted to EPA within 12 months of the effective date of the final rule.

(B) An interim progress report shall be submitted to EPA 6 months after the effective date of the final rule.

(3) *Reproductive and fertility*—(i) *Required testing.* (A) A reproduction and fertility study shall be conducted with TBP in accordance with § 798.4700 of this chapter, except for the provisions of paragraph (c)(5)(i)(A) of § 798.4700.

(B) for the purpose of this section, the following provisions also apply:

(*1*) *Route of administration.* Animals should be exposed to TBP by gavage.

(*2*) [*Reserved*]

(ii) *Reporting requirements.* (A) The reproduction and fertility effects study required under paragraph (c)(3) of this section shall be completed and a final report submitted to EPA within 29 months of the effective date of the final rule.

(B) Interim program reports shall be submitted to EPA at 6 month intervals, beginning 6 months after the effective date of the final rule, until the final report is submitted to EPA.

(4) *Mutagenic effects—Gene mutation*—(i) *Required testing.* (A) A detection of gene mutation in somatic cells in culture test shall be conducted with TBP in accordance with § 798.5300 of this chapter.

(B)(*1*) If TBP produces a positive result in the assay conducted pursuant to paragraph (c)(4)(i)(A) of this section, a sex-linked recessive lethal test in *Drosophila melanogaster* shall be conducted with TBP in accordance with § 798.5275 of this chapter, except for the provisions of paragraph (d)(5)(iii) of § 798.5275.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Route of administration.* Animals shall be exposed to TBP orally.

(*ii*) [Reserved]

(*iii*) *Reporting requirements.* (*A*) The somatic cells in culture assay shall be completed and the final report submitted to EPA, within 10 months after the effective date of the final rule. If required, the *Drosophila* sex-linked recessive lethal assay shall be completed and the final report submitted to EPA within 22 months after the effective date of the final rule.

(*B*) Interim progress reports shall be submitted to EPA at 6 month intervals beginning 6 months after initiation of the sex-linked recessive lethal test in *Drosophila* until the applicable final reports are submitted to EPA.

(5) *Mutagenic effects—Chromosomal aberration*—(i) *Required testing.* (A) An in vitro mammalian cytogenetics test shall be conducted with TBP in accordance with § 798.5375 of this chapter.

(B)(*1*) If TBP produces a negative result in the in vitro cytogenetics test conducted pursuant to paragraph (c)(5)(i)(A) of this section, an in vivo mammalian bone marrow cytogenetics test shall be conducted with TBP in accordance with § 798.5385 of this chapter, except for the provisions of paragraph (d)(5)(iii) of § 798.5385.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Route of administration.* Animals shall be exposed to TBP orally.

(*ii*) [*Reserved*]

(C)(*1*) If TBP produces a positive result in either the in vitro or the in vivo cytogenetics test conducted pursuant to paragraphs (c)(5)(i) (A) and (B) of this section, a rodent dominant-lethal assay shall be conducted with TBP in accordance with § 798.5450 of this chapter, except for the provisions of paragraph (d)(5)(iii) of § 798.5450.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Route of administration.* Animals shall be exposed orally to TBP.

(*ii*) [*Reserved*]

(D)(*1*) A rodent heritable translocation assay shall be conducted with TBP if the dominant-lethal assay conducted for TBP pursuant to paragraph (c)(5)(i)(C) of this section produces a positive result, and if, after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test

sponsor specifying that the testing shall be initiated. This test shall be conducted in accordance with § 798.5460 of this chapter except for the provisions of paragraph (d)(5)(iii) of § 798.5460.

(2) For the purpose of this section, the following provisions also apply:

(*i*) *Route of administration.* Animals shall be exposed to TBP orally.

(*ii*) [*Reserved*]

(ii) *Reporting requirements.* (A)(*1*) The in vitro mammalian cytogenetics test shall be completed and the final report submitted to EPA within 10 months after the effective date of the final rule.

(*2*) If required, the in vivo mammalian bone-marrow cytogenetics test shall be completed and the final report submitted to EPA within 24 months after the effective date of the final rule.

(*3*) If required, the dominant lethal assay shall be completed and the final report submitted to EPA within 36 months after the effective date of the final rule.

(*4*) If required, the heritable translocation assay shall be completed and the final report submitted to EPA within 25 months after the date of EPA's notification of the test sponsor under paragraph (c)(5)(i)(D) of this section that testing shall be initiated.

(B) Interim progress reports shall be submitted to EPA at 6 month intervals beginning 6 months after initiation of the rodent dominant lethal assay and the rodent heritable translocation assay respectively, if required, until the applicable final reports are submitted to EPA.

(6) *Oncogenicity*—(i) *Required testing.* (A) An oncogenicity test shall be conducted with TBP in accordance with § 798.3300 of this chapter except for the provisions of paragraphs (b) (1)(i) and (6)(i) of § 798.3300.

(B) For the purpose of this section, the following provisions also apply:

(*1*) *Animal selection.* TBP shall be tested in Sprague-Dawley rats and in mice.

(*2*) *Route of administration.* Animals shall be exposed to TBP orally.

(ii) *Reporting requirements.* (A) The oncogenicity test required under paragraph (c)(6) of this section shall be completed and a final report submitted to EPA within 53 months of the effective date of the final rule.

(B) Interim progress reports shall be submitted to EPA at 6 month intervals beginning 6 months after the effective date of the final rule, until the final report is submitted to EPA.

(7) *Dermal sensitization*—(i) *Required testing.* A dermal sensitization test shall be conducted with TBP in accordance with § 798.4100 for this chapter.

(ii) *Reporting requirements.* The dermal sensitization test shall be completed and the final report submitted to EPA within 6 months of the effective date of the final rule.

(8) *Oral/Dermal Pharmacokinetics*—(i) *Required testing.* A pharmacokinetics test shall be conducted with TBP in accordance with § 795.228 of this chapter.

(ii) *Reporting requirements.* (A) The pharmacokinetics test required in paragraph (c)(6)(i) of this section shall be completed and the final report submitted to EPA within 12 months of the effective date of the final rule.

(B) An interim progress report shall be submitted to EPA 6 months after the effective date of the final rule.

(d) *Environmental effects testing*—(1) *Algal acute toxicity*—(i) *Required testing.* (A) Algal acute toxicity testing shall be conducted with TBP using *Selenastrum capricornutum* in accordance with § 797.1050 of this chapter except for the provisions of paragraphs (c)(6)(i)(A),(B), and (ii) of § 797.1050.

(B) For the purpose of this section, the following provisions also apply:

(*1*) *Summary of the test.* The algal cells at the end of 24, 48, and 72 hours shall be enumerated.

(*2*) *Chemical measurement.* The final separation of the algal cells from the test solution shall be done using an ultrafiltration (e.g., 0.45 micrometer pore size) technique. The total and dissolved (e.g., filtered) concentrations of the test substance shall be measured in each test chamber and the delivery chamber before the test and in each test chamber at 0 and 96 hours.

(ii) *Reporting requirements.* The algal acute toxicity test required in paragraph (d)(1) of this section shall be completed and the final report submitted to EPA within 9 months of effective date of the final rule.

(2) *Fish acute toxicity*—(i) *Required testing.* (A) Fish acute toxicity testing shall be conducted with TBP using *Salmo gairdneri* (rainbow trout) in accordance with § 797.1400 of this chapter.

(B) For the purpose of this section, the following provisions also apply:

(*1*) *Chemical measurement.* The total and dissolved (e.g., filtered) concentrations of the test substance shall be measured in each test chamber delivery chamber before the test. If the dissolved test substance concentration is greater than 80 percent of total test substance concentration, then only total or dissolved test concentration shall be measured in each chamber at 0, 48, and 96 hours. If the dissolved test substance concentration is less than or equal to 80 percent of total test substance, then total and dissolved test substance concentration shall be measured at 0, 48 and 96 hours.

(*2*) *Test procedures.* The test shall be performed under flow-through conditions.

(ii) *Reporting requirements.* The fish acute toxicity test shall be completed and the final report submitted to EPA within 9 months of the effective date of the final rule.

(3) *Daphnid acute toxicity*—(i) *Required testing.* (A) Daphnid acute toxicity testing shall be conducted with TBP using *Daphnia magna* or *D. pulex* in accordance with § 797.1300 of this chapter.

(B) For the purpose of this section, the following provisons also apply:

(*1*) *Chemical measurement.* The total and dissolved (e.g., filtered) concentrations of the test substance shall be measured in each test chamber and the delivery chamber before the test. If the dissolved test substance concentration is greater than 80 percent of total test substance concentration, then only total or dissolved test concentration shall be measured in each chamber at 0, 24, and 48 hours. If the dissolved test substance concentration is less than or equal to 80 percent of total test substance, then total and dissolved test substance concentration shall be measured at 0, 24, and 48 hours.

(*2*) *Test procedures.* The test shall be performed under flow-through conditions.

(ii) *Reporting requirements.* The daphnid acute toxicity test shall be completed and the final report submitted to EPA within 9 months of the effective date of the final rule.

(4) *Gammarid acute toxicity*—(i) *Required testing.* (A) *Gammarid* acute toxicity testing shall be conducted with TBP using *Gammarus lacustris, G. fasciatus,* or *G. pseudolimnaeus* in accordance with § 795.120 of this chapter.

(B) For the purpose of this section, the following provisons also apply:

(*1*) *Chemical measurement.* The total and dissolved (e.g., filtered) concentrations of the test substance shall be measured in each test chamber and the delivery chamber before the test. If the dissolved test substance concentration is greater than 80 percent of total test substance concentration, then only total or dissolved test concentration shall be measured in each chamber at 0, 48, and 96 hours. If the dissolved test substance concentration is less than or equal to 80 percent of total test substance, then total and dissolved test substance concentration shall be measured at 0, 48, and 96 hours.

(*2*) *Test procedures.* The test shall be performed under flow-through conditions.

(ii) *Reporting requirements.* The *Gammarid* acute toxicity test shall be completed and the final report submitted to EPA within 9 months of the effective date of the final rule.

(5) *Daphnid chronic toxicity*—(i) *Required testing.* (A) Daphnid chronic toxicity testing shall be conducted with TBP using *Daphnia magna* or *D. pulex* in accordance with § 797.1330 of this chapter, if the algal EC50, the rainbow trout LC50, the daphnid EC50, or the gammarid LC50 determined in accordance with paragraphs (d)(1), (2), (3) and (4) of this section satisfy the following criteria: Any such value is < 1 mg/L; or any fish or aquatic invertebrate EC50 or LC50 is < 100 mg/L and either the rainbow trout or gammarid 24-hour to 96-hour LC50 ratio > 2, or the daphnid 24-hour to 48-hour EC50 or LC50 ratio is > 2.

(B) For the purpose of this section, the following provisions also apply:

(*1*) *Chemical measurement.* The total and dissolved (e.g., filtered) concentrations of the test substance shall be measured in each test chamber and the delivery chamber before the test. If the dissolved test substance concentration is greater than 80 percent of total test substance concentration, then only total or dissolved test substance concentration shall be measured in each test chamber at 0, 7, 14, and 21 days. If the dissolved test substance concentration is less than or equal to 80 percent of total test substance concentration, then total and dissovled test substance concentration shall be measured at 0, 7, 14, and 21 days.

(*2*) *Test procedures.* The test shall be performed under flow-through conditions.

(ii) *Reporting requirements.* (A) The daphnid chronic toxicity test, if required, shall be completed and the final report submitted to EPA within 21 months of the effective date of the final rule.

(B) An interim progress report shall be submitted to EPA 6 months after the initiation of the test.

(6) *Fish early-life stage toxicity*—(i) *Required testing.* A fish early-life stage toxicity test shall be conducted with TBP in accordance with § 797.1600 of this chapter, using the fish with the lower LC50 value (either the rainbow trout (*Salmo gairdneri*) or the fathead minnow (*Pimephales promelas*)), if the algal EC50, the rainbow trout LC50, the gammarid LC50 or the daphnid EC50 determined in accordance with paragraphs (d)(1), (2), (3), and (4) of this section satisfy the following criteria: Any such value is < 1 mg/L; or any fish or aquatic invertebrate EC50 or LC50 is < 100 mg/L and either the rainbow trout or gammarid 24 hour to 96 hour LC50 ratio > 2, or the daphnid 24-hour to 48-hour EC50 ratio is > 2.

(ii) *Reporting requirements.* (A) The fish early-life stage flow-through toxicity test shall be completed and the final report submitted to EPA within 21 months of the effective date of the final rule.

(B) An interim progress report shall be submitted to EPA 6 months after the initiation of the test.

(7) *Benthic sediment invertebrate bioassay*—(i) *Required testing.* (A) A benthic sediment invertebrate bioassay shall be conducted on TBP with the midge (*Chironomus tentans*) if chronic toxicity testing is required pursuant to paragraph (d)(5) of this section and if the log Koc calculated according to paragraph (e)(2)(B)(*1*) of this section is greater than or equal to 3.5 but less than or equal to 6.5. The total aqueous sediment concentrations and interstitial water concentrations of the test substance shall be measured in each test chamber at 0, 4, 7, 10, and 14 days. The aqueous concentrations of the test substance in the delivery chamber shall be measured at 0, 4, 7, 10, and 14 days. TBP-spiked clean freshwater sediments containing low, medium, and high organic carbon content shall be used.

(B) The benthic sediment invertebrate bioassay shall be conducted according to the test procedure specified in the American Society for Testing and Materials, Special Technical Publication 854 (ASTM STP 854) entitled, "Aquatic Safety Assessment of Chemicals Sorbed to Sediments," by W.J. Adams, R.A. Kimerle, and R.G. Mosher, published in *Aquatic Toxicity and Hazard Assessment: Seventh Symposium,* ASTM STP 854, pp. 429–453, R.D. Caldwell, R. Purdy, and R.C. Bahner, Eds., 1985 which is incorporated by reference. This published procedure is available for public inspection at the Office of Federal Register, Room 8301, 1100 L St., NW., Washington, DC 20408, and copies may be obtained from the EPA TSCA Public Docket Office in Rm. G–004, NE Mall, 401 M St., SW., Washington, DC 20460. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 522(a) and 1 CFR part 51. The method is incorporated as it exists on the effective date of this rule and a notice of any change to the method will be published in the **Federal Register.**

(ii) *Reporting requirements.* (A) The benthic sediment invertebrate bioassay, if required, shall be completed and the final report submitted to EPA within 21 months of the effective date of the final rule.

(B) An interim progress report shall be submitted to EPA for the benthic sediment invertebrate bioassy 6 months after the initiation of the test.

(e) *Chemical fate testing*—(1) *Vapor pressure*—(i) *Required testing.* Vapor pressure testing shall be conducted with TBP in accordance with § 796.1950 of this chapter.

(ii) *Reporting requirements.* The vapor pressure test required in paragraph (d)(1) of this section shall be completed and the final report submitted to EPA within 6 months of the effective date of the final rule.

(2) *Sediment and soil adsorption isotherm*—(i) *Required testing.* Sediment and soil absorption isotherm testing shall be conducted with TBP in accordance with § 796.2750 of this chapter and EPA will provide two soil and two sediment samples.

(ii) *Reporting requirements.* (A) The sediment and soil absorption isotherm test required under paragraph (d)(2) of this section shall be completed and the final report submitted to EPA within 6 months of the effective date of the final rule.

(B) For the purpose of this section, the following provisions also apply:

(*1*) A Koc value shall be calculated for each test sediment using the equation Koc=K/ (percent of organic carbon in test sediment).

(*2*) [*Reserved*]

(3) *Hydrolysis as a function of pH at 25°C*—(i) *Required testing.* Hydrolysis testing shall be completed with TBP in accordance with § 796.3500 of this chapter.

(ii) *Reporting requirements.* The hydrolysis test required under paragraph (e)(3) of this section shall be completed and the final report submitted to EPA within 6 months of the effective date of the final rule.

(f) *Effective date.* (1) The effective date of the final rule is September 27, 1989.

(2) The guidelines and other test methods cited in this section are referenced here as they exist on September 27, 1989.

(Information collection requirements have been approved by the Office of Management and Budget under Control Number 2070–0033.)

[FR Doc. 89–18850 Filed 8–11–89; 8:45 am]

BILLING CODE 6560–50–M

federal register

Monday
August 14, 1989

Part V

Environmental Protection Agency

40 CFR Parts 116, 117, and 302
Reportable Quantity Adjustments; Delisting of Ammonium Thiosulfate; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[SW H-FRL 3281-8]

Reportable Quantity Adjustments

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Sections 103(a) and (b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, require that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than their reportable quantities (RQs) immediately notify the National Response Center of the release. Section 102(b) sets an RQ of one pound for hazardous substances, except those substances for which different RQs have been established pursuant to section 311(b)(4) of the Clean Water Act (CWA). In addition to these reporting requirements section 304 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) Title III requires that releases of hazardous substances in quantities equal to or greater than their RQs (or one pound if a reporting trigger is not established by regulation) be reported to State and local authorities.

Section 102(a) of CERCLA authorizes the U.S. Environmental Protection Agency (EPA or "the Agency") to adjust RQs for hazardous substances and to designate as hazardous substances those substances that, when released into the environment, may present substantial danger to the public health or welfare or the environment. Currently there are 725 CERCLA hazardous substances.[1] In this rulemaking, EPA is promulgating the RQ adjustments for six of the 273 hazardous substances whose RQs were proposed to be adjusted in a March 16, 1987 Notice of Proposed Rulemaking (NPRM). These six substances are: 1,4-dioxane, 2-ethoxyethanol, ethylene oxide, 2-nitropropane, perchloroethylene, and saccharin. By making the adjustments contained in this rulemaking, the Agency will be able to focus its resources on those releases which are most likely to pose potential threats to public health or welfare or the environment. In addition, by making these adjustments, EPA will relieve the regulated community of the burden of reporting releases which are unlikely to pose such threats.

EFFECTIVE DATE: August 14, 1989.

ADDRESSES: The toll-free telephone number of the National Response Center is 1–800/424–8802; in the Washington, DC metropolitan area the number is 1–202/267–2675.

Docket: Copies of materials relevant to this rulemaking are contained in Room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 (Docket Number 102 RQ–273C). The docket is available for inspection between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays. To review docket materials, you may make an appointment by calling 1–202/382–3046. The public may copy a maximum of 50 pages from any regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: Ivette O. Vega, Response Standards and Criteria Branch, Emergency Response Division, U.S. Environmental Protection Agency (OS–210), 401 M Street, SW, Washington, DC 20460, or the RCRA/Superfund Hotline at 1–800/424–9346; in the Washington, DC metropolitan area at 1–202/382–3000.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
  A. Statutory Authority
  B. Background of this Rulemaking
II. Reportable Quantity Adjustments
  A. Introduction
  B. Reportable Quantity Adjustment Methodology
    1. Summary of the Methodology
    2. Responses to Comments Received on the Methodology
      a. Carcinogen Hazard Ranking Methodology and the 100–Pound Maximum RQ
      b. Use of NTP and IARC Determinations
      c. Application of EPA's Carcinogen Assessment Guidelines
  C. Substances for Which RQs Are Adjusted
    1. Summary
    2. Response to Comments
III. Summary of Supporting Analyses
  A. Executive Order No. 12291
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act
List of Subjects

I. Introduction

A. Statutory Authority

Section 102(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Pub. L. 96–510), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499), establishes reportable quantities (RQs) of one pound for releases of hazardous substances, except for hazardous substances whose RQs were established at a different level pursuant to section 311 of the CWA. Section 102(a) of CERCLA authorizes EPA to adjust all of these RQs by regulation.

Sections 103(a) and (b) of CERCLA require that the person in charge of a vessel or facility notify the National Response Center immediately when there is a release of a hazardous substance in an amount equal to or greater than the RQ for that substance. This notification requirement serves as a trigger for informing the government of a release so that Federal personnel can evaluate the need for a Federal removal or remedial action and undertake any necessary action in a timely fashion. Under section 104 of CERCLA, the Federal government may respond whenever there is a release or substantial threat of a release of a hazardous substance into the environment. Responses are to be taken, to the extent practicable, in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300), which was originally developed under the CWA and which has been revised to reflect the responsibilities and authority created by CERCLA.

[1] EPA proposed RQ adjustments for the hazardous substances whose RQs are promulgated in this final rule on March 16, 1987. As of that date, there were 717 CERCLA hazardous substances. Changes to the list of CERCLA hazardous substances since March 16, 1987 are described below. Four hazardous waste streams (K123, K124, K125, and K126) were added in a final rule (51 FR 37725) that became effective on April 24, 1987, bringing the total number of CERCLA hazardous substances to 721. EPA removed iron dextran and strontium sulfide from the list in two final rules (53 FR 43878 and 53 FR 43881) effective October 31, 1988, thus reducing the number of CERCLA hazardous substances to 719. Six hazardous substances (waste streams K084, K085, K086, K088, K090, and K091) were added to the CERCLA list in a final rule (53 FR 35412) that became effective on March 13, 1989, increasing the number of CERCLA hazardous substances to 725, which is the current total. Lastly, based on a final rule published elsewhere in today's **Federal Register**, ammonium thiosulfate will be removed from the CERCLA list 60 days from today's date, thus reducing the number of CERCLA hazardous substances to 724.

If a release meets certain statutory criteria set out in CERCLA section 103(f)(2), the release may be subject to more limited reporting requirements. Specifically, a release is subject to these limited requirements if the release: (1) Is continuous and stable in quantity and rate, and is from a facility for which notification has been given under CERCLA section 103(c), or (2) is a release for which notification has been given under CERCLA sections 103(a) and (b) for a period sufficient to establish continuity, quantity, and regularity of the release. Notification must still be given annually and when there is a statistically significant increase in the release. In addition, CERCLA section 103 provides a reporting exemption for federally permitted releases. The definition of federally permitted release in CERCLA section 101(10) specifically identifies releases permitted under certain other Federal or State programs. Several commenters claimed that their particular releases are subject to continuous and/or federally permitted release treatment. EPA published proposed regulations to clarify the reduced reporting requirement for continuous releases on April 19, 1988 (53 FR 12868). EPA also clarified the reporting exemption for federally permitted releases in proposed regulations published on July 19, 1988 (53 FR 27288). Comments on continuous and federally permitted release issues submitted in response to the March 16, 1987 NPRM will be addressed in the upcoming final rules for continuous and federally permitted releases.

In addition to the reporting requirements established by CERCLA, section 304 of SARA Title III requires the owners and operators of certain facilities to report releases of CERCLA hazardous substances to State and local authorities. SARA Title III section 304 notification must be given immediately after the release of an RQ or more (one pound or more if a reporting trigger is not established by regulation) to the community emergency coordinator for each local emergency planning committee for any area likely to be affected by the release, and to the State emergency response commission of any State likely to be affected by the release. These notification requirements apply only to releases that have potential for off-site exposure and that are from facilities at which a "hazardous chemical" (defined by regulations under the Occupational Safety and Health Act of 1970 (29 CFR 1910.1200(c)) and section 311 of SARA Title III) is produced, used, or stored.

Section 109 of CERCLA and section 325 of SARA Title III authorize EPA to assess civil penalties for failure to report releases of hazardous substances that equal or exceed their RQs. Section 103 of CERCLA, as amended, authorizes EPA to seek criminal penalties for submitting false or misleading information in a notification made pursuant to CERCLA section 103, and increases the maximum penalties and years of imprisonment for violation of the CERCLA section 103 reporting requirement.

B. Background of This Rulemaking

On May 25, 1983, EPA proposed a rule (48 FR 23552) to clarify procedures for reporting releases of CERCLA hazardous substances and to adjust RQs for 387 of the then 696 hazardous substances.[2] In the May 25, 1983 Notice of Proposed Rulemaking (NPRM) EPA also compiled for the first time the list of "hazardous substances" defined under section 101(14) of CERCLA. In the preamble to that NPRM, EPA discussed in detail the CERCLA notification provisions, the methodology and criteria used to adjust the RQ levels, and the RQ adjustments proposed under section 102 of CERCLA and under section 311 of the CWA. EPA promulgated final RQ adjustments for 340 hazardous substances in an April 4, 1985 final rule (50 FR 13456) and for an additional 102 substances in a September 29, 1986 final rule (51 FR 34534). In an NPRM published on March 16, 1987 (52 FR 8140), EPA proposed RQ adjustments for 273 hazardous substances. The March 16, 1987 **Federal Register** also contained an NPRM in which EPA proposed RQ adjustments for radionuclides.[3] In addition, in an NPRM published on March 2, 1988 (53 FR 6762), EPA reproposed RQ adjustments for lead metal and four lead compounds, and proposed to delist ammonium thiosulfate as a CERCLA hazardous substance.

This rulemaking finalizes the RQ adjustments for six of the 273 hazardous substances whose RQs were proposed for adjustment in the March 16, 1987 NPRM. This rule contains EPA's responses to all issues raised by the commenters relating to the RQ adjustment methodology for potential carcinogenicity, except those methodology issues not relevant to the six RQ adjustments promulgated in this final rule (for further discussion, see Section II.B.2 of this preamble). This rule also contains responses to public comments received on the specific RQ adjustments for the hazardous substances in this rulemaking. Comments were received on the proposed RQ adjustments for only three hazardous substances (1,4-dioxane, perchloroethylene, and saccharin) of the six hazardous substances for which RQ adjustments are promulgated in this rule.

RQ adjustments for 258 hazardous substances, including 254 of the 273 hazardous substances whose RQs were proposed for adjustment in the March 16, 1987 NPRM, are contained in a final rule published elsewhere in today's **Federal Register**. As explained in Section II.C.2.i of the preamble to the other final RQ adjustment rule published in today's **Federal Register**, EPA will address the RQs for the remaining 13 substances of the 273 substances that were the subject of the March 16, 1987 NPRM in a future action.

Section 306(a) of CERCLA, as amended by SARA section 202, requires the U.S. Department of Transportation (DOT) to list and regulate CERCLA hazardous substances as hazardous materials under the Hazardous Materials Transportation Act. Pursuant to this requirement, DOT promulgated on November 21, 1986, a final rule (51 FR 42174) providing that, when a hazardous substance is shipped in a quantity equal to or greater than its RQ, it must be identified as such in shipping papers and by package markings. This rule became effective on July 1, 1987 (51 FR 46672). The rule requires shippers of hazardous substances in quantities at or above their RQs to place the notation "RQ" and the name of the substance on shipping papers and package markings.

RQs for many of the hazardous substances proposed for adjustment in the March 16, 1987 NPRM (including the six substances whose adjusted RQs are being promulgated today) were proposed to be adjusted upward from their statutory RQs. The estimated production volume for the six hazardous substances whose adjusted RQs are being promulgated today is 4.6 billion

[2] Since the May 25, 1983 NPRM, 31 substances have been added and two substances have been deleted from the CERCLA list, bringing the total number of CERCLA hazardous substances to 725. The 31 substances added to the list are: waste stream F024 (49 FR 5308); coke oven emissions (49 FR 38560); waste streams F020, F021, F022, F023, F026, F027, and F028 (50 FR 1978); waste streams K111, K112, K113, K114, K115, and K116, o-toluidine and p-toluidine (50 FR 42936); waste streams K117, K118, and K136 (51 FR 5327); 2-ethoxyethanol (51 FR 6537); waste streams K123, K124, K125, and K126 (51 FR 37725); and waste streams K084, K085, K086, K088, K090, and K091 (53 FR 35412). The two substances deleted from the list are: iron dextran (53 FR 43878) and strontium sulfide (53 FR 43881).

[3] RQ adjustments for radionuclides were promulgated in a final rule published on May 24, 1989 (54 FR 22524).

pounds annually. Because this amount represents a relatively large proportion of the total production volume of all 273 hazardous substances proposed for RQ adjustment in the March 16, 1987 NPRM, many shippers would be subject to a regulatory burden that is not justified by the hazards that these substances pose to human health and the environment. Once final RQ adjustments are promulgated for these six hazardous substances, shippers of less than the adjusted RQ of a substance will not be subject to DOT regulations relating to shipping papers and package markings. Accordingly, EPA is expediting the promulgation of a final rule adjusting RQs for these substances by making this rule effective immediately upon promulgation. Because this rule "grants or recognizes an exemption or relieves a restriction" under section 553(d)(1) of the Administrative Procedure Act (APA), the APA requirement that final rules become effective no less than 30 days after publication does not apply.

In finalizing these RQ adjustments, this rule amends Table 302.4 of 40 CFR Part 302. Section II of this preamble discusses the RQ adjustments promulgated in this rulemaking and the methodology used in making these adjustments. Section II also includes EPA's responses to public comments on the March 16, 1987 NPRM that are relevant to the six RQ adjustments made in this rule and to the RQ adjustment methodology on which these six adjustments are based. Section III provides a summary of the analyses supporting this rulemaking.

II. Reportable Quantity Adjustments

A. Introduction

In this rulemaking, the Agency adjusts RQs based upon specific scientific and technical criteria that relate to the possibility of harm from the release of a hazardous substance at certain levels. The quantity released is but one factor considered by the government when assessing the need to respond to such a release. Other factors, assessed on a case-by-case basis, include but are not limited to: (1) The location of the release; (2) its proximity to drinking water supplies or other valuable resources; and (3) the likelihood of exposure or injury to nearby populations. The RQ adjustments made today will enable the Agency to focus its resources on those releases that are most likely to pose potential threats to public health or welfare or the environment. These adjustments will also relieve the regulated community and emergency response personnel from the burden of making and responding to reports of releases that are unlikely to pose such threats.

In this final rule, the Agency is adjusting RQs for 1,4-dioxane, 2-ethoxyethanol, ethylene oxide, 2-nitropropane, perchloroethylene, and saccharin. With the exception of 2-ethoxyethanol (which was not identified as a potential carcinogen under the identification methodology discussed in Section II.B. below), all of these hazardous substances have been evaluated for potential carcinogenicity as well as other primary criteria. The final RQ adjustments promulgated today are based on the results of this evaluation. In the case of 2-ethoxyethanol, its final RQ adjustment is based on the primary criterion of chronic toxicity (see the discussion below).

B. Reportable Quantity Adjustment Methodology

1. Summary of the Methodology

The Agency has wide discretion in adjusting the statutory RQs for hazardous substances under CERCLA. Administrative feasibility and practicality are important considerations. The Agency's methodology for adjusting RQs begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each hazardous substance. The intrinsic properties examined—called "primary criteria"—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity,[4] and potential carcinogenicity.

The Agency ranks hazardous substances for each intrinsic property (except potential carcinogenicity) on a five-tier scale, associating a specific range of values on each scale with a particular RQ value.[5] This five-tier scale uses the five RQ levels of one, 10, 100, 1000, and 5000 pounds, originally established pursuant to CWA section 311 (see 40 CFR 117 and 44 FR 50776). For hazardous substances evaluated for potential carcinogenicity, each substance is assigned a hazard ranking of "high," "medium," or "low." These hazard rankings correspond to RQ levels of one, 10, and 100 pounds, respectively (see below). Each hazardous substance evaluated under the various primary criteria is assigned several tentative RQ values based on its particular properties as data allow. The lowest of the tentative RQs becomes the "primary criteria RQ" for that substance. After the primary criteria RQs are assigned, substances are further evaluated for their susceptibility to certain degradative processes, which are used as secondary adjustment criteria. These natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP). For further discussion of BHP, see Section II.B.2.a of the preamble to the final rule in which EPA promulgates RQ adjustments for 258 hazardous substances, published elsewhere in today's **Federal Register**.

If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes,[6] its RQ (as determined by the primary RQ adjustment criteria) is raised one level. This adjustment is made because the relative potential for harm to public health or welfare or the environment posed by the release of such a substance is reduced by these degradative processes. Conversely, if a hazardous substance degrades to a more hazardous product after its release, the original substance is assigned an RQ equal to the RQ for the more hazardous substance, which may be one or more levels lower than the RQ for the original substance. The downward adjustment is appropriate because the hazard posed by the release of the original substance is increased as a result of BHP.

To identify those CERCLA hazardous substances that may be potential carcinogens, EPA reviewed four sources of human epidemiologic and/or animal bioassay data on hazardous substances that suggest possible carcinogenic effect. These sources are: (1) The Annual Reports on Carcinogens of the National Toxicology Program (NTP), U.S. Department of Health and Human Services; (2) the Monographs of the International Agency for Research on Cancer (IARC); (3) final Agency determinations published in the **Federal Register** identifying substances as potential carcinogens; and (4) ongoing determinations by the Agency's Office of Health and Environmental

[4] EPA is aware that some chronic effects result from acute (short-term) exposures and considers such data in the chronic toxicity evaluations. The Agency is further evaluating data on chronic effects resulting from acute exposures to ensure that such data receive adequate consideration in the RQ adjustment process.

[5] All of the RQs promulgated in this rulemaking are subject to the Agency's review of the most recent systemic (i.e., relating to a particular organ system) toxicity data. These RQs will be revised, if necessary, in a future rulemaking based on the results of this review.

[6] The specific thresholds for the application of BHP to hazardous substances are discussed in the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 1, March 1985, available for inspection at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

Assessment that substances may be potential carcinogens, based on either published or unpublished data.[7] The Agency compared the list of substances derived from these four sources with the list of the CERCLA hazardous substances to determine which hazardous substances should be evaluated for potential carcinogenicity.

Not all of the substances so identified are subsequently ranked for potential carcinogenicity. Only those substances that fall within the Agency's weight-of-evidence Groups A, B, or C discussed below (i.e., known, probable, or possible human carcinogens) are ranked and assigned tentative RQs based on potential carcinogenicity.

The evaluation of hazardous substances for potential carcinogenicity initially involves a qualitative assessment of the available scientific literature on the substance. The data are reviewed to determine the degree of certainty or weight of evidence that a particular hazardous substance is a human carcinogen. The substance is then classified in an overall weight-of-evidence category (A, B, C, D, or E).

A hazardous substance is placed in Group A (known human carcinogen) only if "sufficient" evidence from human epidemiologic studies supports a causal connection between exposure to the hazardous substance and cancer. Group B (probable human carcinogen) is divided into two subgroups, B1 and B2. Group B1 includes hazardous substances for which the weight of evidence of human carcinogenicity based on epidemiologic studies is "limited." Group B2 includes hazardous substances for which there is "no data," "inadequate evidence," or "no evidence" of human carcinogenicity from epidemiologic studies, but for which the weight of evidence of carcinogenicity based on animal studies is "sufficient." Group C (possible human carcinogen) includes hazardous substances with "limited" evidence of carcinogenicity in animals and "inadequate evidence," "no data," or "no evidence" from human epidemiologic studies. As mentioned in the March 16, 1987 NPRM (52 FR 8144), Group D substances (not classifiable for human carcinogenicity) and Group E substances (evidence of noncarcinogenicity for humans) are not considered potential carcinogens for purposes of this rulemaking.

The evaluation of hazardous substances for potential carcinogenicity also involves a quantitative assessment of the available data to calculate the relative strength of a hazardous substance to elicit a carcinogenic response (i.e., the "potency factor").[8] This quantitative assessment allows the Agency to rank potential carcinogens on a numerical scale by identifying the most potent substances as the most hazardous. Group 1 includes those hazardous substances with the highest potencies. Other potential carcinogens with medium and low potencies are placed in Groups 2 and 3, respectively.

The final step in the hazard ranking procedure is to combine the qualitative weight-of-evidence groups and the quantitative potency factor groups using a matrix to yield a relative hazard ranking for each substance. Thus, hazard rankings are based on two factors—weight of evidence and potency—that the Agency believes are important in describing carcinogenic hazards. The following is the matrix used to assign hazard rankings to potential carcinogens in today's two final rules:

HAZARD RANKING

Weight-of-evidence group	Potency group		
	1 (highest)	2	3 (lowest)
A	High	High	Medium.
B	High	Medium	Low.
C	Medium	Low	Low.
D	No hazard ranking is made. The other primary criteria are used to assign the RQ.		
E	No hazard ranking is made. The other primary criteria are used to assign the RQ.		

The matrix is used to group the potential carcinogens into "high," "medium," and "low" hazard categories, and is arranged so that as the weight of evidence and the potency decrease, the hazard ranking also decreases. RQ levels are then assigned to the hazard rankings as follows: high—one-pound RQ; medium—10-pound RQ; and low—100-pound RQ.

For a more detailed discussion of the RQ adjustment methodology based on the primary criterion of potential carcinogenicity, see the preamble to the March 16, 1987 NPRM (52 FR 8140) and the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 3, available for inspection at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

EPA stated in the March 16, 1987 NPRM (see 52 FR 8146) that it was reviewing its position on consideration of benign tumors and pooling of tumor sites and types, as set forth in the Agency's Guidelines for Carcinogen Risk Assessment.[9] The effect of this review on RQs for potential carcinogens is discussed in the preamble to the final rule published elsewhere in today's **Federal Register** in which EPA promulgates RQ adjustments for 258 hazardous substances.

2. Responses to Comments Received on the Methodology

The Agency received 35 comment letters on the March 16, 1987 NPRM (52 FR 8140). Ten of these letters contain comments that address the RQ adjustment methodology proposed in that NPRM for evaluating CERCLA hazardous substances for potential carcinogenicity. The comments on the RQ adjustment methodology are grouped into five categories: (1) Carcinogen hazard ranking methodology and the 100-pound maximum RQ; (2) the use of NTP and IARC publications in the Agency's identification methodology; (3) the Agency's use of its Guidelines for Carcinogen Risk Assessment to derive RQs; (4) the application of the secondary RQ adjustment criteria of BHP to potential carcinogens; and (5) the application of the CWA mixture rule to hazardous waste streams. Because none of the six hazardous substances that are the subject of this final rule meets the criteria for applying BHP and none are hazardous waste streams, the following discussion focuses on the first three comment categories. Comments that fall within the last two categories are addressed in a final rule published elsewhere in today's **Federal Register** that promulgates RQ adjustments for 254 of the 273 hazardous substances proposed for adjustment in the March 16, 1987 NPRM.

[7] In addition to this application of unpublished data to identify potential carcinogens, EPA intends to use such data for the purpose of ranking potential carcinogens under the CERCLA RQ methodology. Currently, the Agency is evaluating unpublished data received on the weight of evidence and potency of certain potential carcinogens and will present the results of this evaluation, along with any RQ adjustments, in a future rulemaking.

[8] For an explanation of how potency factors are calculated, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 3, available for inspection at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[9] As discussed in Section II.B.2.c below, the Guidelines provide that benign tumors should be considered along with malignant tumors unless there is evidence that the benign tumors do not have the potential to progress to malignancies of the same histogenic origin. The Agency pools tumor sites and types when each site or type, viewed separately, shows a tumor incidence that is elevated significantly above the incidence in control animals (51 FR 33992, September 24, 1986).

BEST COPY AVAILABLE

a. Carcinogen Hazard Ranking Methodology and the 100-Pound Maximum RQ. In the March 16, 1987 NPRM (52 FR 8140), EPA proposed RQ adjustments for potential carcinogens of one, 10, and 100 pounds. Several commenters objected to the proposed 100-pound maximum RQ for potential carcinogens. The commenters recommended that hazardous substances with no greater than "inadequate" evidence of cancer in humans and "limited" evidence of cancer in animals receive 1000- or 5000-pound RQs.

EPA disagrees with the commenters for the reasons discussed below. First, as stated in the March 16, 1987 NPRM, although cancer is a unique health effect with its own special properties, it is also a type of chronic effect. EPA, therefore, has determined that reference to the Agency's chronic toxicity methodology is appropriate in assigning RQs to potential carcinogens. Under the chronic toxicity methodology, each substance is assigned two rating values, one based on the dose that causes a particular effect, and one based on the severity of the effect. The dose ratings range from one to 10, with 10 representing the most toxic substances. The effect ratings also range from one to 10, with 10 representing the most severe effect. The product of the dose and effect ratings for each substance yields a composite ranking score between one and 100. Because cancer is a life-threatening effect, the effect rating for cancer would be 10 if cancer were ranked on the chronic toxicity scale. Therefore, the composite score for any potential carcinogen would be at least 10. A composite score of 10 corresponds to an RQ of 1000 pounds. Thus, a 5000-pound RQ for a potential carcinogen would be inappropriate based on the Agency's chronic toxicity scale (see 52 FR 8145).

Two commenters stated that this analogy between chronic toxicity and potential carcinogenicity is not valid because chronic toxicants have *known* human health effects, whereas the human health effects of potential carcinogens are often determined by speculation based on animal data. EPA believes that these commenters have exaggerated the distinction between the data for chronic toxicity and the data for potential carcinogenicity. The human health effects of both chronic toxicants and potential carcinogens are based to a large degree on observation of health effects in experimental animals. Therefore, the Agency believes that reference to its chronic toxicity methodology in determining the RQ levels for potential carcinogens is appropriate.

Second, EPA believes that the special properties of potential carcinogens are important in assigning RQ levels to these substances. These special properties are: (1) The lack of a demonstrated threshold level below which a potential carcinogen presents no risk of cancer; (2) the cumulative nature of cancer risks; and (3) the fact that cancer has a latent period that does not allow direct observation of carcinogenic risks from substances newly released into the environment (52 FR 8145, March 16, 1987).

These three special properties of potential carcinogens suggest a conservative approach by the Agency in assigning RQ levels to these substances. Where a potential carcinogen does not have a threshold level of exposure below which it presents no risk of cancer, each individual exposure, regardless of amount, may cause irreversible health effects. The lack of demonstrated threshold levels for potential carcinogens also means that an individual may develop cancer (an irreversible health effect) at doses that cause no other physical effects. The cumulative nature of cancer risks means that each additional exposure, at any dose, further increases the likelihood of a carcinogenic response. Additionally, for substances that have a latent period that does not allow direct observation of carcinogenic risks, the Agency has greater reason to be conservative in assessing the health risks accompanying exposure at any dose. In particular, the latent period of cancer, when taken together with the fact that cancer may develop from doses too small to cause other physical effects, means that individuals may not be aware that they need to leave release sites at which they may be exposed to dangerous levels of potential carcinogens. The Agency, therefore, has determined that the special properties of potential carcinogens justify assigning lower RQs (i.e., one, 10, and 100 pounds) to potential carcinogens than the RQs that are assigned to other hazardous substances (i.e., one, 10, 100, 1000, and 5000 pounds).

In summary, a 100-pound maximum RQ for potential carcinogens is retained because (1) reference to the Agency's chronic toxicity scale shows that a 5000-pound RQ would be inappropriate for any potential carcinogen; and (2) the Agency believes that the special properties of potential carcinogens justify a more conservative approach in setting RQ levels for these substances than for other hazardous substances.

Several commenters objected to the fact that the Agency assigns the same "low" hazard ranking (and resultant 100-pound RQ) to weight-of-evidence Group C, potency Group 3 potential carcinogens that it assigns to weight-of-evidence Group B2, potency Group 3 potential carcinogens. Thus, the commenters disagreed with the proposed 100-pound maximum RQ for potential carcinogens. The commenters recommended that hazardous substances with no greater than "inadequate" evidence of cancer in humans and "limited" evidence of cancer in animals (i.e., weight-of-evidence Group C) receive 1000- or 5000-pound RQs.

At this time, EPA has decided to retain the 100-pound maximum RQ for potential carcinogens. However, EPA plans to evaluate the RQ adjustment methodology for potential carcinogens, particularly the weight-of-evidence Group C, potency Group 3 substances.[10] The results of this evaluation will be addressed in a future Agency action. Note that this continuing investigation does not alter today's determination that these substances be assigned RQs of no more than 100 pounds.

b. Use of NTP and IARC Determinations. Several commenters suggested that the Agency not rely on NTP and IARC determinations as a basis for RQ rulemakings and recommended that EPA independently evaluate the qualitative evidence of carcinogenicity for each hazardous substance. In the March 16, 1987 NPRM (52 FR 8143), the Agency proposed a procedure for screening the list of CERCLA hazardous substances to identify hazardous substances that might require assessment for potential carcinogenicity. The NTP annual reports and IARC monographs are used only as an initial screen for substances to be evaluated for potential carcinogenicity by the Agency. The conclusions reached by IARC or NTP on specific chemicals do not determine directly whether a hazardous substance is considered a potential carcinogen for purposes of establishing RQs. Rather, EPA follows

[10] Five individual hazardous substances are in this category: 5-nitro-o-toluidine; saccharin; p-toluidine; 1,1,1,2-tetrachloroethane; and 1,1,2-trichloroethane. EPA is promulgating an RQ adjustment of 100 pounds for saccharin in this final rule. RQ adjustments of 100 pounds for the other four weight-of-evidence Group C, potency Group 3 substances are promulgated in a final rule published elsewhere in today's Federal Register. In that same final rule, EPA also promulgates RQ adjustments for seven waste streams (F032, K071, K088, K099, K112, K113, and K114) that contain one or more of the five weight-of-evidence Group C, potency Group 3 substances.

the procedures set out in its Guidelines for Carcinogen Risk Assessment to make this determination.

c. Application of EPA's Carcinogen Assessment Guidelines. EPA's methodology for adjusting RQs for potential carcinogens is derived from the Agency's Guidelines on Carcinogen Risk Assessment. The comments addressed in this section are directed toward the Guidelines' classification of potential carcinogens. Although the discussion of these issues below is not an independent defense of the Guidelines, the Agency's responses to public comments in this rulemaking are fully consistent with EPA's response to comments received during preparation of the final Guidelines.

Two commenters objected to the Agency's lack of distinction between the B1 and B2 weight-of-evidence Groups for hazard ranking purposes. These commenters suggested that weight-of-evidence Groups B1 and B2 be distinguished by assigning B2 potential carcinogens hazard rankings one level higher than the hazard rankings for B1 potential carcinogens.

As discussed in Section II.B.1 above, the Agency has divided weight-of-evidence Group B into two subgroups, B1 and B2. Where there is limited evidence of carcinogenicity from epidemiologic studies, a hazardous substance usually is placed in Group B1. Hazardous substances for which there is "sufficient" evidence from animal studies and "inadequate" evidence or "no data" from human epidemiologic studies are usually placed in Group B2. The decision to divide Group B into two subgroups reflects only the type of evidence of carcinogenicity, not a judgment that B2 substances are of lesser concern than B1 substances. Furthermore, because it is reasonable to treat hazardous substances for which there is sufficient evidence of carcinogenicity in animals (Group B2) as if they present a carcinogenic risk to humans, such substances, along with other substances for which there is limited evidence from human epidemiologic studies (Group B1), are classified as probable human carcinogens (Group B). Thus, the Agency believes that, for RQ adjustment purposes, no distinction in levels of concern is warranted between Group B1 and Group B2 substances.

Two commenters suggested that the Agency not count benign tumors equally with malignant tumors when there is no evidence that the benign tumors are precursors of malignant tumors or are life threatening. EPA agrees with the commenters that benign tumors should not be treated equally with malignant tumors if there is no evidence that the benign tumors will progress to malignancies of the same histogenic origin. It is recognized, however, that benign tumors frequently induce malignant tumors and that benign tumors often progress to malignant tumors (see 51 FR 33992, 33994, citing Interdisciplinary Panel on Carcinogenicity, 1984, Science 225:686, note 4). In such cases, the Agency's consideration of benign tumor data in assessing potential carcinogenicity is appropriate.

Several commenters disagreed with the Agency's use of body surface area ratios for deriving human potency values from animal potency calculations and recommended the use of body-weight ratios instead. The commenters argued that the use of body surface area as an interspecies scaling factor is based on data relating to the noncarcinogenic effects of drugs. The Agency's use of body surface area to extrapolate from animals to humans was discussed in the response to comments on the Proposed Guidelines for Carcinogen Risk Assessment. In that response, the Agency concluded that the choice of the body surface area scaling factor could be justified by the data on effects of drugs in various species, and that EPA would continue to use this scaling factor unless data on a specific agent suggests that a different scaling factor is justified. Furthermore, because RQs are based on a relative ranking of substances, the consistent application of scaling factors to all substances should not have a material effect on the relative rankings.

Two commenters objected to the Agency's policy of pooling tumors at different sites. The Agency pools tumor sites, however, only when each site, viewed separately, shows a significant elevated tumor incidence. EPA believes that pooling of tumor sites is justified in these limited circumstances because an agent that induces cancer in two locations is of greater concern than an agent that induces cancer in only one location.

The same two commenters objected to the Agency's use of effective dose (which takes into account absorption, distribution, metabolism, and excretion of potential carcinogens) to calculate potency. The commenters argued that administered dose (the actual experimental dose) should be used to estimate relative carcinogenic potency for purposes of assigning RQs. The commenters acknowledged that effective dose is appropriate for estimating absolute measures of risk. The commenters failed to demonstrate, however, that effective dose is inappropriate for measuring relative risk. As a practical matter, for most hazardous substances (approximately 90 percent), EPA uses administered dose because the Agency lacks information necessary to distinguish between administered dose and effective dose. Nevertheless, where such information is available, the Agency prefers to use effective dose rather than administered dose, because the former is more appropriate for measuring relative levels of risk (e.g., RQ levels). Effective dose is used to determine carcinogenic potency only when a substance has undergone extensive studies that have been subject to peer review.

One commenter stated that the Agency proposed to regulate animal carcinogens in the same manner as known human carcinogens and that regulation should focus on exposures to substances with known human health effects. This commenter is mistaken in believing that the RQ adjustment methodology treats animal and human carcinogens equally. The hazard ranking methodology used to establish RQs for potential carcinogens assigns lower RQs to known human carcinogens of the same potency as known animal carcinogens for which the human evidence is limited or inadequate. Moreover, EPA does not believe that its regulation of potential carcinogens should be limited to those which have *known* human health effects, because the Agency strongly believes that animal data are relevant to predict the potential for a carcinogenic response at some dose in humans.

One commenter argued that extrapolation from continuous low-dose exposure studies to effects of one-time releases cannot be made. The Agency acknowledges that estimating the absolute effect of one-time releases from experimental data is difficult. However, the establishment of RQs is not based on an assessment of absolute effects, and the Agency believes that the Guidelines for Carcinogen Risk Assessment (which were followed in this rulemaking) provide a reasonable basis for determining a relative ranking of potential carcinogens. These guidelines have been peer reviewed and revised based on public comments and therefore provide a reasonable basis for carcinogenic assessment. Furthermore, the commenter failed to note certain implications of the relationship between one-time releases and one-time exposures. One-time releases can contaminate water or soil, resulting in continuous low-dose exposures over a period of years. Thus, the Agency's extrapolation from continuous low-dose

exposure studies to effects of one-time releases is reasonable.

This commenter also noted that there are significant uncertainties involved in low-dose extrapolation. EPA agrees and, therefore, has developed an RQ methodology that does not use low-dose extrapolation. The methodology relies instead on the ED10, that is, the dose that causes an increased cancer incidence of 10 percent. Use of the ED10 is advantageous because it eliminates the issue of low-dose extrapolation for RQ adjustment purposes.

The same commenter argued that low doses of certain heavy metals are essential to human health, and that low exposures to suspected carcinogens may not pose significant incremental risks. Thus, according to the commenter, extrapolation over a wide range of doses may not be appropriate.

EPA agrees with the commenter that certain substances can have both beneficial effects at low doses and toxic effects at high doses. In addition, low doses can have both beneficial and toxic effects simultaneously. The question of whether a particular release will cause exposed individuals to experience toxic effects, however, is a question of risk assessment to be made by the Federal On-Scene Coordinator (OSC) based on all available information pertinent to the particular release. As stated earlier, the establishment and adjustment of RQs is intended to be a reporting trigger rather than a risk assessment.

For the reasons discussed above, EPA has decided at this time that no changes to the Agency's Guidelines for Carcinogen Risk Assessment are necessary. Nevertheless, the Agency continually reviews the Guidelines; if new information or procedures become available, the Agency will consider whether revisions are warranted.

C. Substances for Which RQs Are Adjusted

1. Summary

Today's final rule adjusts the RQs for six of the 273 hazardous substances whose RQs were proposed to be adjusted in the March 16, 1987 NPRM. These six RQ adjustments are shown in the following table:

Hazardous substance	Statutory RQ	Proposed and final RQ adjustment
1,4-Dioxane	1	100
2-Ethoxyethanol	1	1000
Ethylene oxide	1	10
2-Nitropropane	1	10
Perchloroethylene	1	100
Saccharin and salts	1	100

EPA has promulgated the proposed RQ adjustments without change for each of these six substances. For the reasons discussed in Section I.B. of this preamble, the Agency has decided to expedite the promulgation of RQ adjustments for these six substances.

2. Response to Comments

Public comments on the March 16, 1987 NPRM addressed proposed RQ adjustments for three of the six hazardous substances in this rulemaking: 1,4-dioxane, saccharin, and perchloroethylene. No comments were received on the proposed RQ adjustments for 2-ethoxyethanol, ethylene oxide, and 2-nitropropane.

Two commenters supported adjusting the RQ for 1,4-dioxane from the one-pound statutory level to 100 pounds. One commenter supported the proposed RQ adjustment of 100 pounds for saccharin because, the commenter suggested, the new reporting level would be consistent with public health concerns in general, and with the lack of hazard posed by a potential release of between one and 100 pounds of saccharin during transportation. The Agency agrees that the one-pound statutory RQ for saccharin does not appropriately reflect its carcinogenic potential. Saccharin is a weight-of-evidence Group C, potency Group 3 substance which therefore receives a low hazard ranking and a 100-pound RQ.

Three commenters recommended that perchloroethylene should be classified as a weight-of-evidence Group C substance, rather than as a Group B2 substance as proposed in the March 16, 1987 NPRM. The available rat tumor data and mouse tumor data, when considered together, support the Agency's current position that perchloroethylene should fall into the B2 category based on sufficient animal evidence of carcinogenicity (see Addendum to Health Assessment Document for Tetrachloroethylene (Perchloroethylene), External Review Draft, April 2, 1986; NTIS #PB86-174489). EPA's position on this issue is consistent with the IARC classification of perchloroethylene. However, it is important to note that EPA's B2 classification for perchloroethylene is based on a draft carcinogenicity assessment that has not yet been finalized. If this classification changes based on the final assessment, and the change warrants an adjustment of the RQ for perchloroethylene, the RQ will be adjusted in a future rulemaking. Pending the results of the Agency's final carcinogenicity assessment, the B2 classification and 100-pound RQ adjustment for perchloroethylene will be maintained in this final rule.

In a final rule published elsewhere in today's **Federal Register**, the Agency responds to public comments on 254 of the 273 RQ adjustments proposed in the March 16, 1987 NPRM. As explained in Section II.C.2.i of the preamble to that final rule, EPA will address the RQs for the remaining 13 substances that were the subject of the March 16, 1987 NPRM in a future action.

III. SUMMARY OF SUPPORTING ANALYSES

A. Executive Order No. 12291

Executive Order (E.O.) 12291 requires that regulations be classified as major or nonmajor for purposes of review by the Office of Management and Budget (OMB). According to E.O. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

An economic analysis performed by the Agency, available for inspection at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460, shows that today's final rule is nonmajor, because the rule will result in estimated net cost savings of $1.5 million annually. The annual net cost savings of all RQ adjustments promulgated or proposed to date (including those contained in this final rule) is estimated to be $34.7 million. It should be noted that these net cost savings reflect only those effects of the RQ adjustments that are: (1) Readily quantifiable in dollars; and (2) associated with the notification requirements under CERCLA section 103 and SARA section 304 (including the associated activities of recordkeeping, notification processing, monitoring, and response).

This final rule has been submitted to OMB for review, as required by E.O. No. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." To determine whether a Regulatory Flexibility Analysis was necessary for today's final rule, a preliminary analysis was conducted using a computer model that simulated the typical operation of a small U.S. chemical company.

The results of the simulation indicate that the upper-bound total cost of compliance to small firms is negligible. See the Regulatory Impact Analysis of Reportable Quantity Adjustments Under Sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act, Volume I, March 1985, available for inspection at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460. Therefore, because today's final rule is not expected to have a significant impact on small entities, EPA certifies that no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

EPA requires an Information Impact Analysis for all rules that impose a paperwork burden on the public. This analysis estimates the burden imposed on parties outside EPA for activities such as notification or recordkeeping. Today's final rule will provide a decrease in the paperwork burden imposed on the regulated community for information collection associated with fewer releases being reportable. Because the effect of this final rule on the paperwork burden is a reduction, EPA has determined that no further Information Impact Analysis need be performed.

The information collection requirements contained in this rule have been approved by the OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. Section 3501 *et seq.*, and have been assigned OMB control number 2050-0046.

The public reporting burden for this collection of information is estimated to vary from 8 to 11 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Oil pollution, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: June 26, 1989.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, 40 CFR Part 302 is amended as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for Part 302 is revised to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

§ 302.4 [Amended]

2. Section 302.4 is amended by revising the following entries in Table 302.4 and Appendix A to read as set forth below. The note preceding Table 302.4 is republished without change.

* * * * *

Note: The numbers under the column headed "CASRN" are the Chemical Abstracts Service Registry Numbers for each hazardous substance. Other names by which each hazardous substance is identified in other statutes and their implementing regulations are provided in the "Regulatory Synonyms" column. The "Statutory RQ" column lists the RQs for hazardous substances established by section 102 of CERCLA. The "Statutory Code" column indicates the statutory source for designating each substance as a CERCLA hazardous substance: "1" indicates that the statutory source is section 311(b)(4) of the Clean Water Act, "2" indicates that the source is section 307(a) of the Clean Water Act, "3" indicates that the source is section 112 of the Clean Air Act, and "4" indicates that the source is RCRA section 3001. The "RCRA Waste Number" column provides the waste identification numbers assigned to various substances by RCRA regulations. The column headed "Category" lists the code letters "X," "A," "B," "C," and "D," which are associated with reportable quantities of 1, 10, 100, 1000, and 5000 pounds, respectively. The "Pounds (kg)" column provides the reportable quantity adjustment for each hazardous substance in pounds and kilograms.

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code†	Statutory RCRA waste No.	Final RQ Category	Final RQ Pounds (Kg)
1,2-Benzisothiazolin-3-one,1,1-dioxide, and salts	81072	Saccharin and salts	1*	4	U202	B	100 (45.4)
1,4-Diethylene dioxide	123911	1,4-Dioxane	1*	4	U108	B	100 (45.4)
1,4-Dioxane	123911	1,4-Diethylene dioxide	1*	4	U108	B	100 (45.4)
Ethene, 1,1,2,2-tetrachloro-	127184	Perchloroethylene Tetrachloroethene Tetrachloroethylene	1*	2,4	U210	B	100 (45.4)
2-Ethoxyethanol	110805	Ethylene glycol monoethyl ether	1*	4	U359	C	1000 (454)
Ethylene glycol monoethyl ether	110805	2-Ethoxyethanol	1*	4	U359	C	1000 (454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code†	Statutory RCRA waste No.	Final RQ Category	Final RQ Pounds (Kg)
Ethylene oxide	75218	Oxirane	1*	4	U115	A	10 (4.54)
2-Nitropropane	79469	Propane, 2-nitro-	1*	4	U171	A	10 (4.54)
Oxirane	75218	Ethylene oxide	1*	4	U115	A	10 (4.54)
Perchloroethylene	127184	Ethene, 1,1,2,2-tetrachloro- Tetrachloroethene Tetrachloroethylene	1*	2,4	U210	B	100 (45.4)
Propane, 2-nitro-	79469	2-Nitropropane	1*	4	U171	A	10 (4.54)
Saccharin and salts	81072	1,2-Benzisothiazolin-3-one,1,1-dioxide, and salts	1*	4	U202	B	100 (45.4)
Tetrachloroethene	127184	Ethene, 1,1,2,2-tetrachloro- Perchloroethylene Tetrachloroethylene	1*	2,4	U210	B	100 (45.4)
Tetrachloroethylene	127184	Ethene, 1,1,2,2-tetrachloro- Perchloroethylene Tetrachloroethene	1*	2,4	U210	B	100 (45.4)

†—indicates the statutory source as defined by 1, 2, 3, or 4 below:
1—indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 311(b)(4)
2—indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 307(a)
3—indicates that the statutory source for designation of this hazardous substance under CERCLA is CAA Section 112
4—indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001
1*—indicates that the 1-pound RQ is a CERCLA statutory RQ

Appendix A

SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES

CASRN	Hazardous substance
75218	Ethylene oxide Oxirane
79469	Propane, 2-nitro- 2-Nitropropane
81072	1,2-Benzisothiazolin-3-one,1,1-dioxide, and salts Saccharin and salts
110805	Ethylene glycol monoethyl ether 2-Ethoxyethanol
123911	1,4-Diethylene dioxide 1,4-Dioxane
127184	Ethene, 1,1,2,2-tetrachloro- Perchloroethylene Tetrachloroethene Tetrachloroethylene

[FR Doc. 89-15745 Filed 8-11-89; 8:45 am]
BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 116, 117, and 302

[SW H-FRL 3372-8]

Reportable Quantity Adjustments; Delisting of Ammonium Thiosulfate

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Sections 103(a) and (b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, require that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than their reportable quantities (RQs) immediately notify the National Response Center of the release. Section 102(b) sets an RQ of one pound for hazardous substances, except those substances for which different RQs have been established pursuant to section 311(b)(4) of the Clean Water Act (CWA). In addition to these reporting requirements, section 304 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) Title III requires that releases of hazardous substances in quantities equal to or greater than their RQs (or one pound if a reporting trigger is not established by regulation) be reported to State and local authorities.

Section 102(a) of CERCLA authorizes the U.S. Environmental Protection Agency (EPA or "the Agency") to adjust RQs for hazardous substances and to designate as hazardous substances those substances that, when released into the environment, may present substantial danger to the public health or welfare or the environment. Currently, there are 725 CERCLA hazardous substances.[1] In this rulemaking, EPA is promulgating final RQ adjustments for 258 hazardous substances. Of these 258 hazardous substances, 254 had RQs proposed for adjustment by EPA in a Notice of Proposed Rulemaking (NPRM) published on March 16, 1987 (52 FR 8140).[2] RQs for four additional hazardous substances that were not proposed for adjustment in the March 16, 1987 NPRM are also included in this final rule. These four hazardous substances are waste streams that were listed as hazardous under section 3001 of the Resource Conservation and Recovery Act (RCRA) (and, therefore, were designated as hazardous under CERCLA) after the March 16, 1987 proposal was published.[3]

By making the adjustments contained in this rulemaking, the Agency will be able to focus its resources on those releases that are most likely to pose potential threats to public health or welfare or the environment. In addition, by making these adjustments, EPA will relieve the regulated community of the burden of reporting releases that are unlikely to pose such threats.

EFFECTIVE DATE: October 13, 1989.

ADDRESSES: The toll-free telephone number of the National Response Center is 1-800/424-8802; in the Washington, DC metropolitan area the number is 1-202/267-2675.

Docket: Copies of materials relevant to this rulemaking are contained in Room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Docket Number 102 RQ-273C). The docket is available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, you may make an appointment by calling 1-202/382-3046. The public may copy a maximum of 50 pages from any regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: Ivette O. Vega, Response Standards and Criteria Branch, Emergency Response Division, U.S. Environmental Protection Agency (OS-210), 401 M Street, SW., Washington, DC 20460, or the RCRA/Superfund Hotline at 1-800/424-9346; in the Washington, DC metropolitan area at 1-202/382-3000.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Introduction
A. Statutory Authority
B. Background of this Rulemaking
II. Reportable Quantity Adjustments
A. Introduction
B. Reportable Quantity Adjustment Methodology
1. Summary of the Methodology
2. Responses to Comments Received on the Methodology
a. Application of BHP to Potential Carcinogens
b. Application of CWA Mixture Rule to Hazardous Waste Streams
C. Substances for Which RQs Are Adjusted
1. Summary
2. Responses to Comments on Proposed RQs for Specific Substances
a. Acrylonitrile
b. Arsenic
c. Asbestos
d. Bis(2-ethylhexyl)phthalate
e. Carbon tetrachloride
f. Chloroform
g. Chromium and chromium compounds
h. Hexachlorobutadiene
i. Lead and lead compounds
j. Methyl chloride
k. Nickel and nickel compounds
l. Polychlorinated biphenyls
m. Trichloroethylene
n. Vinyl chloride
o. Waste streams
D. Update on Methyl Isocyanate
III. RQ Adjustments Under CWA Section 311
IV. Delisting of Ammonium Thiosulfate as a Hazardous Substance
V. Replacement of the Registered Trademark, "Kelthane," with the Generic Name, Dicofol
VI. List of Hazardous Substances and Adjusted RQs
VII. Summary of Supporting Analyses
A. Executive Order No. 12291
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
List of Subjects

I. Introduction

A. Statutory Authority

Section 102(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Pub. L. 96-510), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499), establishes reportable quantities (RQs) of one pound for releases of hazardous substances, except for hazardous substances whose RQs were established at a different level pursuant to section 311 of the Clean Water Act (CWA). Section 102(a) of CERCLA authorizes the Administrator of the U.S. Environmental Protection Agency (EPA or "the Agency") to adjust all of these RQs by regulation.

Sections 103(a) and (b) of CERCLA require that the person in charge of a vessel or facility notify the National Response Center immediately when there is a release of a hazardous substance in an amount equal to or greater than the RQ for that substance. This notification requirement serves as a trigger for informing the government of a release so that Federal personnel can evaluate the need for a Federal removal or remedial action and undertake any necessary action in a timely fashion. Under section 104 of CERCLA, the Federal government may respond whenever there is a release or a substantial threat of a release of a hazardous substance into the environment. Response activities are to be taken, to the extent practicable, in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300), which was originally developed under the CWA and which has been revised to reflect the responsibilities and authority created by CERCLA.

If a release meets certain statutory criteria set forth in CERCLA section 103(f)(2), the release may be subject to more limited reporting requirements. Specifically, a release is subject to these limited requirements if the release: (1) Is continuous and stable in quantity and rate, and is from a facility for which notification has been given under CERCLA section 103(c), or (2) is a release for which notification has been given under CERCLA sections 103(a) and (b) for a period sufficient to establish the continuity, quantity, and regularity of the release. Notification must still be given annually and when there is a statistically significant increase in the release. In addition, CERCLA section 103 provides a reporting exemption for federally permitted releases. The definition of federally permitted release in CERCLA section 101(10) specifically identifies releases permitted under certain other Federal or State programs. Several commenters claimed that their particular releases are subject to continuous and/or federally permitted release treatment. EPA published proposed regulations to clarify the reduced reporting requirement for continuous releases on April 19, 1988 (53 FR 12868). EPA also clarified the reporting exemption for federally permitted releases in proposed regulations published on July 19, 1988 (53 FR 27288). Comments on continuous and federally permitted release issues submitted in response to the March 16, 1987 NPRM will be addressed in the upcoming final rules for continuous and federally permitted releases.

In addition to the reporting requirements established by CERCLA, section 304 of SARA Title III requires the owners or operators of certain facilities to report releases of CERCLA hazardous substances to State and local authorities. SARA Title III section 304 notification must be given immediately after the release of an RQ or more (one pound or more if a reporting trigger is not established by regulation) to the community emergency coordinator for each local emergency planning committee for any area likely to be affected by the release, and to the State emergency response commission of any State likely to be affected by the release. These notification requirements apply

[1] See Note 1 at the end of the text of this preamble.
[2] See Note 2 at the end of the text of this preamble.
[3] See Note 3 at the end of the text of this preamble

only to releases that have potential for off-site exposure and that are from facilities at which a "hazardous chemical" (defined by regulations under the Occupational Safety and Health Act of 1970 (29 CFR 1910.1200(c)) and section 311 of SARA Title III) is produced, used, or stored.

Section 109 of CERCLA and section 325 of SARA Title III authorize EPA to assess civil penalties for failure to report releases of hazardous substances that equal or exceed their RQs. Section 103 of CERCLA, as amended, authorizes EPA to seek criminal penalties for submitting false or misleading information in a notification made pursuant to CERCLA section 103, and increases the maximum penalties and years of imprisonment for violation of the CERCLA section 103 reporting requirement.

B. Background of this Rulemaking

On May 25, 1983, EPA proposed a rule (48 FR 23552) to clarify procedures for reporting releases of CERCLA hazardous substances and to adjust RQs for 387 of the then 696 hazardous substances.[4] In the May 25, 1983 NPRM, EPA also compiled for the first time the list of "hazardous substances" defined under section 101(14) of CERCLA. In the preamble to that NPRM, EPA discussed in detail the CERCLA notification provisions, the methodology and criteria used to adjust the RQ levels, and the RQ adjustments proposed under section 102 of CERCLA and under section 311 of the CWA. EPA promulgated final RQ adjustments for 340 hazardous substances in an April 4, 1985 final rule (50 FR 13456) and for an additional 102 hazardous substances in a September 29, 1986 final rule (51 FR 34534). In an NPRM published on March 16, 1987 (52 FR 8140), EPA proposed RQ adjustments for 273 hazardous substances. The March 16, 1987 **Federal Register** also contained an NPRM in which EPA proposed RQ adjustments for radionuclides.[5] In addition, in an NPRM published on March 2, 1988 (53 FR 6762), EPA reproposed RQ adjustments for lead metal and four lead compounds, and proposed to delist ammonium thiosulfate as a CERCLA hazardous substance.

In this rulemaking, EPA is promulgating final RQ adjustments for 258 hazardous substances, including 254 of the 273 substances proposed for adjustment in the March 16, 1987 NPRM.[6] EPA promulgates final RQ adjustments for six of these 273 hazardous substances elsewhere in today's **Federal Register**. As explained in Section II.C.2.i below, EPA will address RQ adjustments for the remaining 13 of the 273 hazardous substances in a future action.

Section II of this preamble discusses the RQ adjustments promulgated in this rulemaking and the methodology used in making these adjustments. Section I also includes EPA's responses to public comments on the March 16, 1987 NPRM that are relevant to the 258 RQ adjustments made in this rule and to the RQ adjustment methodology on which these 258 adjustments are based. Section III discusses RQ adjustments made under section 311 of the CWA. In finalizing these RQ adjustments, this rule amends Table 302.4 of 40 CFR Part 302 and Table 117.3 of 40 CFR Part 117. Section IV explains the delisting of ammonium thiosulfate as a hazardous substance. Section V discusses the replacement of the registered trademark, "Kelthane," with the generic name, dicofol. In making these changes concerning ammonium thiosulfate and dicofol, this rule amends Tables 116.4A and 116.4B of 40 CFR Part 116. Section VI provides a summary of the analyses supporting this rulemaking.

II. Reportable Quantity Adjustments

A. Introduction

In this rulemaking, the Agency adjusts RQs based upon specific scientific and technical criteria that relate to the possibility of harm from the release of a hazardous substance at certain levels. The quantity released is but one factor considered by the government when assessing the need to respond to such a release. Other factors, assessed on a case-by-case basis, include but are not limited to: (1) The location of the release; (2) its proximity to drinking water supplies or other valuable resources; and (3) the likelihood of exposure or injury to nearby populations. The RQ adjustments made today will enable the Agency to focus its resources on those releases that are most likely to pose potential threats to public health or welfare or the environment. These adjustments will also relieve the regulated community and emergency response personnel from the burden of making and responding to reports of releases that are unlikely to pose such threats.

B. Reportable Quantity Adjustment Methodology

1. Summary of the Methodology

The Agency has wide discretion in adjusting the statutory RQs for hazardous substances under CERCLA. Administrative feasibility and practicality are important considerations. The Agency's methodology for adjusting RQs begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each hazardous substance. The intrinsic properties examined—called "primary criteria"—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity,[7] and potential carcinogenicity.

The Agency ranks hazardous substances for each intrinsic property (except potential carcinogenicity) on a five-tier scale, associating a specific range of values on each scale with a particular RQ value.[8] This five-tier scale uses the five RQ levels of one, 10, 100, 1000, and 5000 pounds, originally established pursuant to CWA section 311 (see 40 CFR 117 and 44 FR 50776). For hazardous substances evaluated for potential carcinogenicity, each substance is assigned a hazard ranking of "high," "medium," or "low." These hazard rankings correspond to RQ levels of one, 10, and 100 pounds, respectively (see Section II.B.2.a of the preamble to the final RQ adjustment rule published elsewhere in today's **Federal Register**). Each hazardous substance evaluated under the various primary criteria is assigned several tentative RQ values based on its particular intrinsic properties as data allow. The lowest of the tentative RQs becomes the "primary criteria RQ" for that substance. After the primary criteria RQs are assigned, substances are further evaluated for their susceptibility to certain degradative processes, which are used as secondary RQ adjustment criteria. These natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP). (For discussion of the application of BHP to potential carcinogens, see Section II.B.2.a of this preamble.)

If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes,[9] its RQ (as determined by the primary RQ adjustment criteria) is raised one level. This adjustment is made because the relative potential for harm to public health or welfare or the environment posed by the release of such a substance is reduced by these degradative processes. Conversely, if a hazardous substance degrades to a more hazardous product after its release, the original substance is assigned an RQ equal to the RQ for the more hazardous substance, which may be one or more levels lower than the RQ for the original substance. The downward adjustment is appropriate because the hazard posed by the release of the original substance is increased as a result of BHP.

To identify those CERCLA hazardous substances that may be potential carcinogens, EPA reviewed four sources of human epidemiologic and/or animal bioassay data on hazardous substances that suggest possible carcinogenic effect. These sources are: (1) The Annual Reports on Carcinogens of the National Toxicology Program (NTP), U.S. Department of Health and Human Services; (2) the Monographs of the International Agency for Research on Cancer (IARC); (3) final Agency determinations published in the **Federal Register** identifying substances as potential carcinogens; and (4) ongoing determinations by the Agency's Office of Health and Environmental Assessment that substances may be potential carcinogens, based on either published or unpublished data.[10] The Agency compared the list of substances derived from these four sources with the list of CERCLA hazardous substances to determine which hazardous substances should be evaluated for potential carcinogenicity.

Not all of the substances so identified are subsequently ranked for potential carcinogenicity. Only those substances that fall within the Agency's weight-of-evidence Groups A, B, or C discussed below (i.e., known, probable, or possible human carcinogens) are ranked and assigned tentative RQs based on potential carcinogenicity.

The evaluation of hazardous substances for potential carcinogenicity initially involves a qualitative assessment of the available scientific literature on the substance. The data are reviewed to determine the degree of certainty or weight of evidence that a particular hazardous substance is a human carcinogen. The substance is then classified in an overall weight-of-evidence category (A, B, C, D, or E).

A hazardous substance is placed in Group A (known human carcinogen) only if "sufficient" evidence from human epidemiologic studies supports a causal connection between exposure to the hazardous substance and cancer. Group B (probable human carcinogen) is divided into two subgroups, B1 and B2. Group B1 includes hazardous substances for which the weight of evidence of human carcinogenicity based on epidemiologic studies is "limited." Group B2 includes hazardous substances for which there is "no data," "inadequate evidence," or "no evidence" of human carcinogenicity from epidemiologic studies, but for which the weight of evidence of carcinogenicity based on animal studies is "sufficient." Group C (possible human carcinogen) includes hazardous substances with "limited" evidence of carcinogenicity in animals and "inadequate evidence," "no data," or "no evidence" from human epidemiologic studies. As mentioned in the March 16, 1987 NPRM (52 FR 8144), Group D substances (not classifiable for human carcinogenicity) and Group E substances (evidence of noncarcinogenicity for humans) are not considered potential carcinogens for purposes of this rulemaking.

The evaluation of hazardous substances for potential carcinogenicity also involves a quantitative assessment of the available data to calculate the relative strength of a hazardous substance to elicit a carcinogenic response (i.e., the "potency factor").[11] This quantitative assessment allows the Agency to rank potential carcinogens on a numerical scale by identifying the most potent substances as the most hazardous. Group 1 includes those hazardous substances with the highest potencies. Other potential carcinogens with medium and low potencies are placed in Groups 2 and 3, respectively.

The final step in the hazard ranking procedure is to combine the qualitative weight-of-evidence groups and the quantitative potency factor groups using a matrix to yield a relative hazard ranking for each substance. Thus, hazard rankings are based on two factors—weight of evidence and potency—that the Agency believes are important in describing carcinogenic hazards. The hazard ranking matrix (see Section II.B.1 of the final RQ adjustment rule published elsewhere in today's **Federal Register**) is used to group the potential carcinogens into "high," "medium," and "low" hazard categories. The matrix is arranged so that as the weight of evidence decreases and the potency factors decrease, the hazard ranking also decreases. RQ levels for potential carcinogens are then assigned to the hazard rankings as follows: high—one-pound RQ; medium—10-pound RQ; and low—100-pound RQ. See Section II.B.2.a of this preamble for a discussion of the application of BHP to potential carcinogen RQs.

For a more detailed discussion of the RQ adjustment methodology based on the primary criterion of potential carcinogenicity, see the preamble to the March 16, 1987 NPRM (52 FR 8140) and the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 3, available for inspection at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460. For a discussion of the Agency's response to public comments on the proposed one-, 10-, and 100-pound RQs for potential carcinogens, see Section II.B.2.a of the preamble to the final RQ adjustment rule published elsewhere in today's **Federal Register**.

EPA stated in the March 16, 1987 NPRM (see 52 FR 8146) that it was reviewing its position on consideration of benign tumors and pooling of tumor sites and types, as set forth in the Agency's Guidelines for Carcinogen

---

[4] Since the May 25, 1983 NPRM, 31 substances have been added and two substances have been deleted from the CERCLA list, bringing the total number of CERCLA hazardous substances to 725. The 31 substances added to the list are: waste stream F024 (49 FR 5308); coke oven emissions (49 FR 36560); waste streams F020, F021, F022, F023, F026, F027, and F028 (50 FR 1978); waste streams K111, K112, K113, K114, K115, and K116, o-toluidine and p-toluidine (50 FR 42936); waste streams K117, K118, and K136 (51 FR 5327); 2-ethoxyethanol (51 FR 6537); waste streams K123, K124, K125, and K126 (51 FR 37725); and waste streams K084, K085, K086, K088, K090, and K091 (53 FR 35412). The two substances deleted from the list are: iron dextran (53 FR 43878) and strontium sulfide (53 FR 43881).

[5] RQ adjustments for radionuclides were promulgated in a final rule published on May 24, 1988 (54 FR 22524).

[6] For an explanation of the four additional substances in this final rulemaking, see the "Summary" above.

[7] EPA is aware that some chronic effects result from acute (short-term) exposures and considers such data in the chronic toxicity evaluations. The Agency is further evaluating data on chronic effects resulting from acute exposures to ensure that such data receive adequate consideration in the RQ adjustment process.

[8] All of the RQs promulgated in this rulemaking are subject to the Agency's review of the most recent systemic (i.e., relating to a particular organ system) toxicity data. These RQs will be revised, if necessary, in a future rulemaking based on the results of this review.

[9] The specific thresholds for the application of BHP to hazardous substances are discussed in the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 1, March 1985, available for inspection at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[10] In addition to this application of unpublished data to identify potential carcinogens, EPA intends to use such data for the purpose of ranking potential carcinogens under the CERCLA RQ methodology. Currently, the Agency is evaluating unpublished data received on the weight of evidence and potency of certain potential carcinogens and will present the results of this evaluation, along with any RQ adjustments, in a future rulemaking.

[11] For an explanation of how potency factors are calculated, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 3, available for inspection at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

Risk Assessment.[12] This process is now complete, and one substance (1,2-propylenimine) will have its final RQ (one pound) different from its proposed level (10 pounds) as a result of the review (see Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 3, and Evaluation of the Potential Carcinogenicity of 1,2-Propylenimine, available for inspection at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460).[13]

2. Responses to Comments Received on the Methodology

The Agency received 35 comment letters on the March 16, 1987 NPRM (52 FR 8140). Ten of these letters contained comments that address the RQ adjustment methodology proposed in that NPRM for evaluating CERCLA hazardous substances for potential carcinogenicity. The comments on the RQ adjustment methodology are grouped into five categories: (1) Carcinogen hazard ranking methodology and the 100-pound maximum RQ; (2) the use of NTP and IARC publications in the Agency's identification methodology; (3) the Agency's use of its Guidelines for Carcinogen Risk Assessment to derive RQs; (4) the application of the secondary RQ adjustment criteria of BHP to potential carcinogens; and (5) the application of the CWA mixture rule to hazardous waste streams. Public comments on the first three of these categories are addressed in a final rule published elsewhere in today's **Federal Register**. In that final rule, EPA promulgates RQ adjustments for six of the 273 hazardous substances whose RQs were proposed to be adjusted in the March 16, 1987 NPRM, and addresses all public comments relevant to those six RQ adjustments, including the first three comment categories mentioned above.

In the final rule published elsewhere in today's **Federal Register**, the Agency promulgates a carcinogen hazard ranking methodology that assigns 100-pound RQs to substances in weight-of-evidence Group C and potency Group 3.[14] However, as mentioned in Section II.B.2.a of the preamble to that final rule, the Agency plans to evaluate the RQ adjustment methodology for potential carcinogens, particularly the weight-of-evidence Group C, potency Group 3 substances. The results of this evaluation will be addressed in a future action.

The following discussion contains Agency responses to public comments on the application of BHP to potential carcinogens and the application of the CWA mixture rule to hazardous waste streams.

a. Application of BHP to Potential Carcinogens. In the March 16, 1987 NPRM, sufficient data were available to justify a one-level RQ increase, based on BHP, for six hazardous substances identified as potential carcinogens (bis(chloromethyl)ether, chloromethyl methyl ether, dimethyl sulfate, formaldehyde, 2-naphthalenamine, and waste stream K017). No comments were received on these proposed adjustments and, therefore, the RQs of these six hazardous substances are increased to 10, 10, 100, 100, 10, and 10 pounds, respectively, in this final rule. These increases are from the one-level-lower primary criteria RQs.

In the March 16, 1987 NPRM, however, the Agency proposed not to apply BHP to certain substances that had been identified as potential carcinogens. Specifically, an upward RQ adjustment based on BHP was not applied to any potential carcinogen with a primary criteria RQ of 100 pounds. In other words, the proposed 100-pound maximum RQ level for potential carcinogens was retained, regardless of the rate of degradation of potential carcinogens in the environment.

Several commenters on the March 16, 1987 NPRM stated that EPA's proposal to apply BHP to potential carcinogens with one- and 10-pound primary criteria RQs, but to preclude application of BHP to those potential carcinogens with primary criteria RQs of 100 pounds, appeared "illogical" because in the commenters' view the decision was not sufficiently explained. The commenters argued that potential carcinogens with 100-pound primary criteria RQs should be eligible for a one-level RQ increase to 1000 pounds based on BHP.

EPA disagrees with the commenters that BHP should be applied to increase RQs for potential carcinogens from 100 to 1000 pounds. Such an approach conflicts with the Agency's decision to not apply BHP to raise the RQ of any substance above the maximum level permitted to be assigned to that substance by the RQ adjustment methodology (i.e., 100 pounds for potential carcinogens and 5000 pounds for other hazardous substances). Thus, just as BHP is not applied to increase RQs for substances other than potential carcinogens above 5000 pounds (see 50 FR 13469, April 4, 1985), BHP is not applied to raise the RQs of potential carcinogens above 100 pounds. The Federal On-Scene Coordinator (OSC) should be notified of releases of 100 pounds or more of potential carcinogens.[15] The OSC can then decide whether a response to releases of these substances should be taken. If the OSC determines that a release of a potential carcinogen at or above the 100-pound RQ level has degraded to a less hazardous, noncarcinogenic substance, and therefore the special properties of potential carcinogens do not apply, the OSC may decide that a Federal response is unnecessary. Accordingly, the Agency has not applied BHP to adjust upward the 100-pound primary criteria RQs of potential carcinogens.

In this final rule, BHP has been applied to raise the primary criteria RQs of the following substances for which BHP was not proposed to be applied in the March 16, 1987 NPRM: acrylonitrile; compounds, waste streams, and unlisted hazardous wastes containing chromium (VI); and 3,3'-dimethoxybenzidine. BHP has been applied to compounds, waste streams, and unlisted hazardous wastes containing chromium (VI) as a result of public comments on the March 16, 1987 NPRM. BHP has been applied to acrylonitrile and 3,3'-dimethoxybenzidine for reasons independent of public comment.[16] For further discussion of the reasons for applying BHP to these substances in this final rule, see Sections II.C.1 and II.C.2.

[12] The Guidelines provide that benign tumors should be considered along with malignant tumors unless there is evidence that the benign tumors do not have the potential to progress to malignancies of the same histogenic origin. The Agency pools tumor sites and types when each site or type, viewed separately, shows a tumor incidence that is elevated significantly above the incidence in control animals (51 FR 33992, September 24, 1986).

[13] EPA announced the RQ revision for 1,2-propylenimine, along with the reasons for the revision, in a supplement to the March 16, 1987 NPRM (see 53 FR 11880, April 11, 1988). Public comments on that supplement do not affect the RQ adjustment for this hazardous substance. Therefore, the RQ for 1,2-propylenimine is promulgated at one pound, as stated in the April 11, 1988 supplement.

[14] Five individual hazardous substances are in this category: 5-nitro-o-toluidine; saccharin; p-toluidine; 1,1,1,2-tetrachloroethane; and 1,1,2-trichloroethane. EPA is promulgating an RQ adjustment of 100 pounds for saccharin in the final rule published elsewhere in today's **Federal Register**. RQ adjustments of 100 pounds for the other four weight-of-evidence Group C, potency Group 3 substances are promulgated in this final rule. EPA also promulgates RQ adjustments in this final rule for seven waste streams (F002, K073, K095, K096, K112, K113, and K114) that contain one or more of the five weight-of-evidence Group C, potency Group 3 substances. The RQ adjustments promulgated in this final rule are discussed in Section II.C of this preamble.

[15] Section II.B.2.a of the preamble to the final RQ adjustment rule published elsewhere in today's **Federal Register** contains the reasons for this determination.

[16] The change in the proposed RQ for acrylonitrile as a result of applying BHP was announced in a supplement to the proposed rule published on April 11, 1988 (53 FR 11890).

One commenter suggested that end products should determine the RQ of a parent hazardous substance, even when the RQ of a substance would be increased more than one level based on the characteristics of the end products. The Agency considered this possibility before deciding to raise by only one level the RQs of those substances that transform in the environment to less hazardous substances (see 50 FR 13470, April 4, 1985). The Agency selected the one-level upward adjustment because BHP processes are not instantaneous and, while degradation is in process, a large quantity of the more hazardous parent substance may pose a threat to public health or welfare or the environment. The Agency believes that the OSC should have the opportunity to decide whether to respond to the release of a hazardous substance that may persist long enough to pose such a threat before degrading to a less hazardous substance.

b. Application of CWA Mixture Rule to Hazardous Waste Streams. Under 40 CFR 302.6, if a person in charge of a vessel or facility knows the percentage composition of a waste stream, the CWA mixture rule may be applied. The CWA mixture rule provides that "[d]ischarges of mixtures and solutions are subject to [regulation] only where a component hazardous substance of the mixture or solution is discharged in a quantity equal to or greater than its RQ" (44 FR 50767, August 29, 1979). The RQs for different hazardous substances are not additive under the mixture rule, so that the release of a mixture containing half an RQ of one hazardous substance and half an RQ of another hazardous substance does not trigger the CERCLA section 103 reporting requirements (see 50 FR 13463, April 4, 1985). Reporting is required, however, if the concentrations of all of the hazardous constituents present in the mixture are not known and the total quantity released exceeds the RQ of the hazardous constituent within the mixture that has the lowest RQ.

One commenter supported the Agency's application of the CWA mixture rule. Another commenter expressed the understanding that the RQs for waste streams F001 through F005 would be based on the hazardous constituents present in the waste streams. Thus, according to this commenter, if the only hazardous constituent in an F001 waste stream were perchloroethylene, the applicable RQ would be the 100-pound RQ for perchloroethylene rather than the 10-pound RQ for waste stream F001.

This commenter is correct, provided that perchloroethylene is the only hazardous constituent in the waste stream. It should be emphasized, however, that if the person in charge does not know the constituents contained in the waste stream and, pursuant to 40 CFR 261, the waste is identified as waste stream F001, the 10-pound RQ for waste stream F001 would apply.

In response to these comments and to several other inquiries, the Agency is revising 40 CFR 302.6 in this final rule to clarify reporting requirements for mixtures and solutions (e.g., hazardous waste streams).

C. Substances for Which RQs Are Adjusted

1. Summary

In this final rule, EPA adjusts RQs for 258 hazardous substances, including 254 substances whose RQs were proposed to be adjusted in the March 16, 1987 NPRM. EPA in this rule lowers the RQs of 54 hazardous substances, raises the RQs of 121 hazardous substances, and leaves the RQs of 83 hazardous substances at their statutory levels. The hazardous substances include 187 individual hazardous substances and 71 hazardous waste streams.

The bases for the adjusted RQs of the 187 individual hazardous substances are as follows: 133 on the basis of potential carcinogenicity alone, 23 on the basis of potential carcinogenicity and at least one other primary criterion, and 31 on the basis of criteria other than potential carcinogenicity. The primary criteria RQs for 18 of the 187 individual hazardous substances were adjusted upward one level by applying BHP.

Of the 71 waste streams for which RQs are being adjusted in this rule, 67 were proposed for RQ adjustment in the March 16, 1987 NPRM. The four other hazardous waste streams for which RQs are promulgated in this rulemaking (K123, K124, K125, and K126) were listed as hazardous under section 3001 of RCRA in a final rule that became effective on April 24, 1987 (51 FR 37725, October 24, 1986). Therefore, these hazardous waste streams became CERCLA hazardous substances after publication of the March 16, 1987 NPRM, and their RQs consequently were not proposed for adjustment in that NPRM.

As stated in the October 24, 1986 final rule, if a waste stream contains only one constituent of concern, the RQ for the waste stream will be the same as the RQ for that constituent. The only constituent of concern present in waste streams K123, K124, K125, and K126 is ethylene thiourea (ETU). The Agency retained the statutory one-pound RQ for ETU in the April 4, 1985 final rule (50 FR 13487), pending completion of the Agency's analysis of ETU for potential carcinogenicity. In the March 16, 1987 NPRM, EPA proposed to readjust the RQ for ETU to 10 pounds based on potential carcinogenicity. No comments were received on this proposed RQ adjustment and EPA is promulgating a 10-pound RQ adjustment for ETU in this final rule. Because the RQ for a hazardous waste stream with only one hazardous constituent is the RQ for that constituent, the Agency today also is promulgating RQ adjustments of 10 pounds for waste streams K123, K124, K125, and K126.

In addition to individual hazardous substances and hazardous waste streams, EPA today adjusts RQs for five of the constituents used to determine the RCRA characteristic of extraction procedure (EP) toxicity for unlisted hazardous wastes.[17] Five of the constituents used to determine EP toxicity have been assigned RQs as follows: one pound for arsenic, 10 pounds for hexavalent chromium, and 10 pounds for cadmium, each on the basis of potential carcinogenicity; and one pound for lindane and toxaphene on the basis of aquatic toxicity. An unlisted hazardous waste that exhibits EP toxicity has the RQ stated in Table 302.4 for the contaminant on which the characteristic of EP toxicity is based. The RQ applies to the unlisted waste itself, not merely to the toxic contaminant used as a reference substance for RQ purposes. The RQ for the metal constituents is based on the RQ for soluble metal salts, and not the metal itself.

The final RQ adjustments for 18 hazardous substances have changed from those proposed in the March 16, 1987 NPRM for reasons independent of public comment. These hazardous substances are listed below in Table 1.

TABLE 1.—PROPOSED AND FINAL RQS

Hazardous Substance	Proposed RQ (lbs.)	Final RQ (lbs.)
Acetamide, N-9H-fluoren-2-yl	10	1
Acrylonitrile	10	100
Azaserine	10	1
Benz(c)acridine	10	100
Benzotrichloride	1	10
Chrysene	10	100

[17] Under 40 CFR 302.4(b), a solid waste as defined in 40 CFR 261.4(b) is a CERCLA hazardous substance if (1) it is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b), and (2) it exhibits any of the characteristics identified in 40 CFR 261.20 through 261.24. EP toxicity is one of these characteristics (see 40 CFR 261.24).

TABLE 1.—PROPOSED AND FINAL RQs—Continued

Hazardous Substance	Proposed RQ (lbs.)	Final RQ (lbs.)
1,2-Dibromo-3-chloropropane	10	1
P-dimethylaminoazobenzene	1	10
3,3'-Dimethylbenzidine	100	10
N-nitroso-N-ethylurea	10	1
1,2 Propylenimine	10	1
Vinyl chloride	10	1
F002	100	10
K019	10	1
K020	10	1
K028	10	1
K029	10	1
K096	10	100

The availability of the data on which these adjusted RQs are based was announced in a supplement to the proposed rule published on April 11, 1988 (53 FR 11890). The RQ revisions for 15 of these 16 hazardous substances are based on consideration of new weight-of-evidence and potency studies, and revisions to the original potency calculations.[18] The revised RQ profiles for these 15 hazardous substances are available for inspection in the public docket for the March 16, 1987 NPRM. The docket is contained in Room M2427, U.S. EPA, 401 M Street, SW, Washington, DC 20460 (Docket Number 102 RQ–273C). An explanation of the reasons for the potency and weight-of-evidence changes and citations to the studies relied on by the Agency for these changes are provided in the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 3, available for inspection at the same location.

RQs for two of the hazardous substances listed in Table 1 (waste streams F002 and K096) have been revised for technical reasons. The Agency today is promulgating an adjusted RQ of 10 pounds for waste stream F002. Although a 100-pound RQ adjustment was proposed for F002 in the March 16, 1987 NPRM, the final RQ adjustment of 10 pounds is consistent with EPA's revised definition of waste stream F002. In a final rule promulgated on December 31, 1985, EPA broadened the definition of F002 to include (in addition to the wastes already listed as constituents of F002) "* * * all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more" of the substances listed in waste streams F001, F004, and F005 (50 FR 53319). In effect, the Agency provided in the December 31, 1985 rule that all substances listed as constituents of waste streams F001, F004, and F005 are included as constituents of waste stream F002 when they are components of these spent solvent mixtures.[19]

Carbon tetrachloride is explicitly listed under waste stream F001, and benzene and 2-nitropropane are explicitly listed under waste stream F005.[20] Thus, under the policy announced in the December 31, 1985 rule, these three hazardous substances are considered part of the definition of waste stream F002. In this final rule, the Agency is promulgating 10-pound adjusted RQs for carbon tetrachloride, benzene, and 2-nitropropane, as proposed in the March 16, 1987 NPRM. The adjusted RQ for these three substances (10 pounds), therefore, becomes the RQ for waste stream F002.

Although a 10-pound RQ adjustment was not proposed for waste stream F002 in the March 16, 1987 NPRM, 10-pound RQ adjustments were proposed for benzene, carbon tetrachloride, and 2-nitropropane. The public has had an opportunity to comment on the proposed RQ adjustments for these three constituents of waste stream F002, and on the RQ for F002 in the supplement to the proposed rule (53 FR 11890). No comments were received on the proposed 10-pound RQ for benzene and 2-nitropropane, and the comments received on carbon tetrachloride did not warrant a change in the proposed RQ (see Section II.C.2.e). EPA, therefore, is promulgating an adjusted RQ of 10 pounds for waste stream F002 in this final rule.

As a result of the December 31, 1985 final rule and the RQ adjustments for benzene, carbon tetrachloride, and 2-nitropropane in this final rule, the RQs for waste streams F001, F003, F004, and F005 must also be adjusted to 10 pounds. The RQ for waste stream F001 is promulgated at 10 pounds, as proposed, in this final rule. RQ adjustments for waste streams F003, F004, and F005 (100, 1000, and 100 pounds, respectively) were promulgated in previous RQ rulemakings (see 50 FR 13501, April 4, 1985, and 51 FR 34544, September 29, 1986). The RQs for these three waste streams will be adjusted to 10 pounds in a future rulemaking.

The RQ for waste stream K096 was erroneously proposed to be adjusted to 10 pounds in the March 16, 1987 NPRM. The lowest RQ of any of the hazardous constituents present in this waste stream is 100 pounds. Therefore, a 100-pound RQ adjustment for waste stream K096 is promulgated in this final rule.

The Agency has decided that available data support application of BHP to acrylonitrile, the remaining substance whose RQ has been revised independent of public comment. The RQ for acrylonitrile was proposed to be adjusted to 10 pounds based on potential carcinogenicity, but its RQ is being promulgated at 100 pounds in this rulemaking due to the application of BHP. Although comments were received on the original 10-pound proposed RQ for acrylonitrile in the March 16, 1987 NPRM, the comments did not address the BHP issue. The final RQ adjustment for acrylonitrile is discussed further in Section II.C.2.a of this preamble.

In addition to these 16 hazardous substances, there is one substance (3,3'-dimethoxybenzidine) for which the basis for the RQ, but not the RQ level, has changed from the proposed to the final rule for reasons independent of public comment.

Although BHP is applied in this rule to raise by one level the RQ for 3,3'-dimethoxybenzidine, the RQ for this substance remains at its proposed 100-pound level because its primary criteria RQ has been lowered from 100 pounds to 10 pounds based on a potency factor recalculation. After reviewing the studies concerning 3,3'-dimethoxybenzidine, EPA has decided that a different study should be used to estimate the potency for this hazardous substance, yielding a medium (10-pound RQ) rather than a low (100-pound RQ) hazard ranking, as proposed. However, 3,3'-dimethoxybenzidine meets the Agency's criteria for applying BHP. With the application of the secondary RQ adjustment criteria of BHP, the final RQ adjustment for this substance is raised one level from its primary criteria level of 10 pounds to 100 pounds.

[18] These 15 hazardous substances are: acetamide, N-6H-fluoren-2-yl; azaserine; benz(c)acridine; benzotrichloride; chrysene; 1,2-dibromo-3-chloropropane; p-dimethylaminoazobenzene; 3,3'-dimethylbenzidine; N-nitroso-N-ethylurea; 1,2-propylenimine; vinyl chloride; and waste streams K019, K020, K028, and K029.

[19] The change made by the December 31, 1985 rule to the definition of F002, as well as similar changes to the definitions of F001, F003, F004, and F005, allows EPA to regulate more comprehensively certain solvent mixtures. Previously, only high-concentration solvents before use (i.e., pure, technical grade, and practical grade) were covered. For a detailed discussion of the significance of this change and the scope of the revised definitions of waste streams F001, F002, F003, F004, and F005, see 50 FR 53315, December 31, 1985.

[20] Benzene and 2-nitropropane were added to waste stream F005 by a final rule published on February 25, 1986 (51 FR 9537). The February 25, 1986 rule also added 1,1,2-trichloroethane to F002 and 2-ethoxyethanol to F005, but these two substances are not discussed above because their proposed RQs (100 and 1000 pounds, respectively) do not affect the RQ for waste stream F002.

2. Responses to Comments on Proposed RQs for Specific Substances

a. Acrylonitrile. Two commenters stated that the proposed 10-pound RQ for acrylonitrile should be adjusted upward to 100 pounds, based on assertions that a 10-pound release of acrylonitrile would not result in a government response, and that more recent data on the potential carcinogenicity of acrylonitrile support a 100-pound RQ. The commenters also cited the standard of the Occupational Safety and Health Administration (OSHA) for worker exposure to acrylonitrile of two parts per million (ppm) on an eight-hour time-weighted average.

One of these commenters also argued that the 10-pound proposed RQ for acrylonitrile is contrary to law as interpreted by the U.S. Supreme Court. This commenter stated that the Court's decisions in *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980) (the Benzene case) and *American Textile Manufacturers* v. *Donovan*, 452 U.S. 490 (1981) (the Cotton Dust case) require that health and safety standards for toxic substances, including potential carcinogens, be designed to alleviate a truly significant risk of harm.

The decisions cited by the commenter are based on the Supreme Court's interpretation of the Occupational Safety and Health Act of 1970 (OSH Act) which requires OSHA to promulgate standards for toxic chemicals that reduce material health impairment to the extent feasible. These decisions do not apply to all Federal regulations that set standards for toxic chemicals. In requiring EPA to promulgate RQ adjustments for hazardous substances under section 102(a) of CERCLA, for example, Congress established a standard for toxic chemical regulations different from the OSHA standard. The CERCLA RQ standard requires EPA to establish a reporting trigger for each hazardous substance, the release of which may present a substantial danger to public health and welfare and the environment. Thus, RQs are relative rankings of the hazards associated with releases of hazardous substances, rather than determinations of absolute levels of risk or permanent health and safety standards (e.g., the OSHA standards). Thus, EPA is required to adjust RQs under the standards set by CERCLA and not those established by the OSH Act.

The Agency also disagrees with the commenter's position that the most recent data on acrylonitrile support a 100-pound RQ based on the primary RQ adjustment criterion of potential carcinogenicity. The commenter provided no support for this position nor for the assertion that a 10-pound release of acrylonitrile would not result in a government response. An RQ is merely a trigger for notification of a release to the OSC, who then decides whether a government response is necessary. The OSC may or may not decide that such a response is needed to protect public health and welfare and the environment from a release of acrylonitrile, depending on the circumstances of the release. As mentioned in Section II.B.2.a of this preamble and in the supplement to the proposed rule (53 FR 11891, April 11, 1988), however, EPA has decided that the data do support application of the secondary RQ adjustment criterion of BHP, resulting in a final RQ adjustment of 100 pounds for acrylonitrile. One commenter on the supplement to the proposed rule supported the 100-pound RQ adjustment for acrylonitrile as consistent with the Agency's BHP methodology and the degradation data on this hazardous substance.

b. Arsenic. One commenter stated that no direct evidence exists that arsenic compounds other than arsenic trioxide and potassium arsenite are carcinogenic. Therefore, according to this commenter, the proposal to treat all arsenic compounds as carcinogenic may be inappropriate.

In the literature on inorganic arsenic, positive tumor incidence is shown in several studies.[21] The Agency has determined that sufficient evidence exists to implicate arsenic and its inorganic compounds as known human carcinogens. Because arsenic is chemically convertible among the various forms, all inorganic forms of arsenic are of equal concern. Accordingly, ranking all hazardous substances containing arsenic on the basis of potential carcinogenicity is appropriate to protect human health and welfare and the environment.

c. Asbestos. One commenter stated that the proposed one-pound RQ for asbestos is "unrealistically low." The commenter argued that because a 24-hour period is used to determine whether an RQ or more had been released (see 50 FR 13463, April 4, 1985), it would be impossible to determine whether the RQ for asbestos had been exceeded under many circumstances. Moreover, the commenter argued, every asbestos cleanup effort, such as in schools or public buildings, would be subject to reporting if a one-pound RQ for asbestos were promulgated. Finally, the commenter claimed that quarry operations that encounter asbestos formations would be adversely affected by a one-pound RQ.

The Agency recognizes that the detection of a release of one pound or more of asbestos over a 24-hour period may be difficult, given asbestos' fibrous nature and the current state of detection technology. Qualified asbestos contractors conducting abatement activities in conformance with EPA regulations (see 52 FR 15675, April 30, 1987), however, should be able to avoid such releases. Therefore, the Agency does not agree with the assertion that response activities involving asbestos in schools or public buildings routinely will involve releases of asbestos in quantities that will require Federal notification. At the same time, if such releases of asbestos occur, the OSC should have the opportunity to determine whether a Federal response action may be required.

As stated in previous rulemakings, CERCLA itself does not impose any requirement to test for the release of a hazardous substance (see 50 FR 13463, April 4, 1985). Nevertheless, persons in charge should be aware that failure to test does not mean that there is no requirement to report if the person in charge knows that asbestos has been released in an amount equal to or greater than one pound.

Concerning the possible adverse effect of a one-pound RQ for asbestos on quarry operations, it should be noted that the Agency does not establish different RQs on the basis of different release circumstances. If "continuous" and "stable in quantity and rate," however, releases from quarry operations may qualify for reduced reporting under CERCLA section 103(f)(2) (for further discussion of these reduced reporting requirements, see 53 FR 12868, April 19, 1988).

It should be noted that the RQ for asbestos applies only to releases from friable asbestos-containing materials; releases from nonfriable materials are not subject to the reporting requirements of section 103 of CERCLA.

d. Bis(2-ethylhexyl)phthalate. One commenter stated that because bis(2-ethylhexyl)phthalate (DEHP) is nongenotoxic, its RQ should be based on criteria other than potential carcinogenicity. The commenter also suggested that if the RQ for DEHP is based on potential carcinogenicity, the linear model should not be used to estimate potency (i.e., the dose that would produce an excess risk of cancer)

[21] See Health Assessment Document for Inorganic Arsenic, Final Report, EPA 600/8-83-021F, March 1984.

because a threshold dose is required to cause cancer. The commenter supported these assertions by submitting the 1985 report of the Chronic Hazard Advisory Panel (CHAP) commissioned by the Consumer Product Safety Commission.

Whether or not a substance is genotoxic is considered by the Agency in establishing RQs. The evidence submitted by the commenter, however, does not establish conclusively the nongenotoxicity of DEHP. The CHAP report found that "[t]he evidence for tumor initiating activity is inadequate for conclusions to be drawn. Because oral administration of DEHP to rats and mice produces tumors by *some* mechanism, DEHP or its metabolites must be presumed to have both *initiating and promoting* activity" (emphasis added). Thus, the commenter's contention that DEHP is nongenotoxic is at odds with the report cited by the commenter. Moreover, DEHP has been shown conclusively to induce tumors in animals, acting either alone or as a synergist. Accordingly, the Agency has determined that the establishment of an RQ for DEHP on the basis of potential carcinogenicity is appropriate.

The Agency also disagrees with the contention that a linear model should not be applied in establishing the RQ for DEHP based on potential carcinogenicity. Since publication of the March 16, 1987 NPRM, EPA invited scientists from other Federal agencies to discuss interpretation of the potential carcinogenicity studies of DEHP. These government scientists all agreed that a linear model should be applied to DEHP.[33] Moreover, the Guidelines for Carcinogen Risk Assessment state that, "[w]hen data and information are limited * * * and when much uncertainty exists regarding the mechanism of carcinogenic action, models or procedures that incorporate low-dose linearity are preferred when compatible with the limited information." (51 FR 33992, September 24, 1986). Because the data on DEHP are limited and are consistent with a linear model, the application of such a model is appropriate, as provided in the Guidelines.

The commenter also stated that BHP should be applied to raise the RQ for DEHP above its primary criteria level of 100 pounds. As discussed above in Section II.B.2.a of this preamble, however, the Agency has decided not to apply BHP to adjust upward the RQs of potential carcinogens that are assigned primary criteria RQs of 100 pounds. Therefore, the RQ for DEHP will remain at 100 pounds, as proposed.

e. Carbon tetrachloride. One commenter objected to the proposed 10-pound RQ for carbon tetrachloride, arguing that it would result in a requirement to report a release of less than one gallon of this CERCLA hazardous substance. The commenter noted that EPA's risk estimate for exposure to potential carcinogens normally assumes a 70-year lifetime exposure, whereas the exposure to a 10-pound release of a volatile hazardous substance is acute rather than chronic. The commenter claimed that carbon tetrachloride is a low-potency animal carcinogen and poses "no risk to the public health" in amounts between one and 10 pounds.

EPA disagrees with the commenter that exposure to a hazardous substance resulting from episodic releases is acute rather than chronic, because one-time releases can result in chronic exposure through long-term contamination of environmental media such as ground water. In addition, although the commenter is correct that EPA's analysis assumes a 70-year lifetime exposure, the purpose of the analysis is to establish a relative ranking, not to assess absolute risk, as the commenter mistakenly implies. This analysis is performed in accordance with the Agency's Guidelines for Carcinogen Risk Assessment. Uniform application of these Guidelines is necessary to establish valid relative rankings for all potential carcinogens. After a re-examination of the Agency's analysis of carbon tetrachloride, EPA remains convinced that this hazardous substance was properly classified; therefore, the final RQ adjustment for carbon tetrachloride is being promulgated at 10 pounds, as proposed. Likewise, the final RQ adjustment for waste stream F002, which contains carbon tetrachloride as a constituent, is being promulgated today at 10 pounds (see Section II.C.1 of this preamble).

f. Chloroform. Three commenters stated that the proposed 10-pound RQ for chloroform would result in frequent and burdensome reporting of small releases of chloroform incidental to normal manufacturing operations. The commenters urged retention of the statutory 5000-pound RQ. One of these commenters stated that because millions of gallons of process wastewater are handled at bleached paper facilities in the course of their normal manufacturing operations, reportable quantities of chloroform would be released every day that such facilities are in operation.

Congress has provided for reduced reporting of releases of an RQ or more of a hazardous substance that are continuous and stable in quantity and rate. The commenter may wish to evaluate whether the releases of chloroform-containing wastewater qualify for this reduced reporting under CERCLA section 103(f)(2). If the releases meet the criteria set forth in that section (see Section I.A of this preamble for a summary of the criteria), the commenter need only report its releases annually or when there is a statistically significant increase in the amount released. A proposed rule published on April 19, 1988 (53 FR 12868) describes the reduced reporting requirements for continuous releases in greater detail.

The same commenter claimed that EPA data contained in Volume 3 of the Technical Background Document overstate the risks associated with chloroform because: (1) The Agency erroneously relied on a National Cancer Institute (NCI) mouse study where chloroform was administered through corn oil, despite data showing that corn oil alters absorption and metabolism of the test substance and acts independently as a tumor promoter; and (2) EPA used a 95-percent upper confidence limit generated by a linearized multi-stage model even though the weight of the evidence indicates that chloroform is not genotoxic and, therefore, nonlinearity should be used in modeling procedures.

The Agency acknowledges that data exist indicating that corn oil may enhance the tumor yield of specific chemical agents in certain cases. In this case, however, the increased tumor incidence in the chloroform-treated animals far exceeded any tumor-promoting effect that reasonably can be ascribed to corn oil. Furthermore, use of corn oil to administer chloroform may have a beneficial effect for predicting human responses, because the corn oil helps to spread the daily chloroform doses over a longer duration which more closely correlates with anticipated human exposure patterns. Accordingly, the Agency believes that it appropriately considered the NCI study noted above in assessing the potential carcinogenicity of chloroform.

The mechanism of chloroform carcinogenicity has not been determined conclusively. Likewise, there is insufficient evidence to conclude that chloroform is nongenotoxic. The Agency disagrees with the assertion that use of a linear model to predict the potency of chloroform is inappropriate for the same reasons stated above in the response to a similar comment regarding DEHP.

[33] U.S. EPA "Workshop on DEHP Risk Assessment," Bethesda, MD, April 19–20, 1988.

One commenter argued that chloroform "is extremely biodegradable" and, therefore, should receive a 100-pound RQ based on the application of BHP. The Agency, however, has not identified data on chloroform that support the commenter's assertion, nor did the commenter provide such data.

g. Chromium and chromium compounds. Several commenters objected to the Agency's classification of chromium metal and any form of chromium other than hexavalent chromium as a potential carcinogen. The commenters claimed that the Agency provided insufficient justification for its decision not to differentiate between hexavalent chromium compounds and other chromium compounds. The commenters also claimed that the Agency improperly failed to distinguish between potentially airborne forms of hexavalent chromium and other forms because the predominant evidence supporting the carcinogenicity of hexavalent chromium is based on inhalation studies. Commenters also questioned the potential for exposure to hexavalent chromium. For instance, commenters argued that EPA concluded in its own technical background document for chromium that hexavalent chromium (i.e., chromium (VI)) is readily reduced in the environment to trivalent chromium (i.e., chromium (III)).

The Agency agrees that the carcinogenic chromium (VI) is rapidly reduced to the more innocuous chromium (III) when exposed to the environment. Thus, as mentioned in Section II.B.2.a, the proposed one-pound RQ adjustment for chromium (VI) compounds has been raised to 10 pounds in this final rule based on the application of the secondary RQ adjustment criterion of BHP. This change affects the final RQs for 10 hexavalent chromium compounds,[33] seven waste streams that contain such compounds as constituents,[34] and unlisted hazardous wastes that are EP toxic by virtue of their chromium (VI) constituents, all of whose proposed one-pound RQs have been raised to 10 pounds in this final rule. EPA disagrees, however, with the commenter's suggestion that the Agency should distinguish between potential exposure to chromium (VI) compounds through air and through other media. EPA establishes a single RQ for each hazardous substance, regardless of the medium into which the substance is released.

After reviewing the comments and the technical basis for proposing a one-pound RQ adjustment for chromium metal, the Agency has determined that there is no evidence implicating chromium metal as a potential carcinogen. The Agency also has determined that chromium metal is biologically inert. Accordingly, the final RQ adjustment for chromium metal is being promulgated today at 5000 pounds.

h. Hexachlorobutadiene. One commenter stated that the proposed one-pound RQ for hexachlorobutadiene (HCBD) was inconsistent with the RQ profile document for this substance, which indicated an RQ of 100 pounds. The commenter stated that the RQs for HCBD and waste streams K016 and K030 (both of which contain HCBD) should also be adjusted to 100 pounds. The Agency disagrees that the RQ for HCBD should be 100 pounds. Although the RQ profile for HCBD does indicate a 100-pound RQ based on potential carcinogenicity, the aquatic toxicity data for HCBD support a one-pound RQ. The Agency therefore is promulgating final RQ adjustments of one pound for HCBD and waste streams K016 and K030 based on the lowest primary criteria RQ for these substances.

i. Lead and lead compounds. In the March 16, 1987 NPRM (52 FR 8140), EPA proposed 10-pound RQs for lead acetate and lead phosphate based on potential carcinogenicity. As discussed in a second NPRM published on March 2, 1988 (53 FR 6762), the Agency reproposed the RQs for these two substances from 10 pounds to 100 pounds based on additional evaluation of the carcinogenicity of lead metal and lead compounds by the Agency's Human Health Assessment Group, or HHAG (formerly the Carcinogen Assessment Group, or CAG). On November 30, 1988, EPA's Science Advisory Board (SAB) formally requested the opportunity to review the basis for the HHAG's determination that lead and lead compounds are potential carcinogens. EPA has decided to retain the statutory RQs for lead acetate and lead phosphate (5000 pounds and one pound, respectively) pending the completion of SAB review. Final RQ adjustments for these two substances, as well as the public comments on the proposed RQ adjustments for these substances, will be addressed in a future action.

RQ adjustments for three other hazardous substances—lead metal, lead stearate, and lead sulfide—also were proposed in the March 2, 1988 NPRM. SAB review of the potential carcinogenicity of lead and lead compounds may affect the RQ adjustments for these three substances as well as the RQ adjustments for lead acetate and lead phosphate. Therefore, the statutory RQ for lead metal (one pound), the current adjusted RQ for lead stearate (5000 pounds), and the current adjusted RQ for lead sulfide (5000 pounds) will remain in effect pending completion of SAB review (lead stearate and lead sulfide were assigned final RQ adjustments of 5000 pounds in the September 29, 1988 final rule). The final RQ adjustment for lead metal, the RQ readjustments for lead stearate and lead sulfide, and the public comments on the RQ adjustments for these three substances will be addressed in the future action mentioned above.

In addition, 11 waste streams (K002, K003, K005, K048, K049, K051, K061, K062, K069, K086, and K100)[35] may contain as constituents lead metal and the four lead compounds (lead acetate, lead phosphate, lead stearate, and lead sulfide) whose existing (i.e., statutory or final adjusted) RQs are being retained in this final rule. The existing RQs for two of these substances—lead metal and lead phosphate—are one pound. Because the RQ for a waste stream is the lowest RQ of any of its constituents, the one-pound existing RQs for lead metal and lead phosphate result in one-pound RQs for the 11 waste streams that may contain these substances as constituents. Thus, the Agency is retaining the one-pound statutory RQs for these 11 waste streams pending the completion of SAB review of the potential carcinogenicity of lead and lead compounds. Final RQ adjustments for these 11 waste streams will be addressed in the future action mentioned above.

j. Methyl chloride. One commenter objected to the proposed 100-pound RQ for methyl chloride on the basis of both ignitability and potential carcinogenicity. The commenter stated that there is no reasonable possibility that a release of 100 pounds of methyl chloride could create an ignitable condition because this substance diffuses rapidly. The commenter also stated that a Federal response to such a release would never be warranted.

The Agency disagrees. Although it is true that methyl chloride diffuses

[33] These 10 compounds are: ammonium bichromate, ammonium chromate, calcium chromate, chromic acid, lithium chromate, potassium bichromate, potassium chromate, sodium bichromate, sodium chromate, and strontium chromate.

[34] These seven waste streams are: waste streams F006, F019, K004, K006, K007, K008, and K062.

[35] Comments on the RQs proposed in the March 16, 1987 NPRM for three of these waste streams—K048, K049, and K051—are addressed in Section II.C.2.c of this preamble.

rapidly, as it dissipates it mixes with air, thus increasing the probability of ignition. The Agency also cannot agree that a release of less than 1000 pounds of methyl chloride would never warrant a Federal response. As stated earlier, the likelihood of such a response depends on the circumstances of a release. Accordingly, the Agency is promulgating a final RQ adjustment of 100 pounds for methyl chloride based on both ignitability and, as discussed below, potential carcinogenicity.

The commenter further stated that methyl chloride is nongenotoxic and, therefore, should be ranked for RQ adjustment based on criteria other than potential carcinogenicity. The data cited by the commenter as demonstrating that methyl chloride is not genotoxic, however, do not support the commenter's conclusion. Rather, the data indicate that methyl chloride is a weak genotoxicant that causes a degree of genetic damage. Moreover, methyl chloride has been shown conclusively to induce tumors in animals, acting either alone or as a synergist. Accordingly, the Agency has determined that promulgating an RQ for methyl chloride on the basis of potential carcinogenicity is appropriate.

The commenter also suggested that, if the RQ for methyl chloride is based on potential carcinogenicity, the linear model should not be applied because a minimum dose is required to cause cancer. The Agency disagrees with the argument that use of a linear model to predict the potency of methyl chloride is inappropriate for the same reasons stated above in the response to a similar comment regarding DEHP.

k. Nickel and nickel compounds. In the March 16, 1987 NPRM, the Agency proposed the following RQ adjustments from the statutory RQs for nickel metal and nickel compounds:

Substance	Statutory RQ	Proposed RQ
Nickel metal	1	1
Nickel ammonium sulfate	5000	100
Nickel carbonyl	1	10
Nickel chloride	5000	100
Nickel cyanide	1	10
Nickel hydroxide	1000	10
Nickel nitrate	5000	100
Nickel sulfate	5000	100

The Agency received no comments on the proposed RQ adjustments for nickel carbonyl and nickel cyanide but received several comments on the proposed RQ adjustments for nickel metal, nickel ammonium sulfate, nickel chloride, nickel nitrate, nickel sulfate, and nickel hydroxide. For the reasons that follow, the Agency is promulgating final RQ adjustments as proposed for all nickel compounds, but is raising the RQ adjustment for nickel metal from the proposed one-pound level to 100 pounds.

Several commenters asserted that the Agency erred in characterizing nickel metal as a potential carcinogen on the basis of epidemiological data from studies of nickel refinery dust because nickel metal, if present at all, is only a minor component of nickel refinery dust.

The proposed one-pound RQ for nickel metal was based on an epidemiological study of nickel refinery workers that indicated a weight-of-evidence Group A classification. The Agency agrees with the commenters that it would be inappropriate to base the RQ for nickel metal on this study because the carcinogenic effects observed can be attributed primarily to nickel compounds such as nickel subsulfide. Therefore, after reviewing its Health Assessment Document for nickel metal, EPA has decided to revise the weight-of-evidence classification of nickel metal from Group A to Group C based on limited animal evidence and inadequate human evidence of nickel metal's carcinogenicity. This change results in a 100-pound final RQ for nickel metal.[36]

In the March 16, 1987 NPRM, the Agency proposed to adjust the RQs of nickel ammonium sulfate, nickel chloride, nickel nitrate, and nickel sulfate to 100 pounds on the basis of potential carcinogenicity. These compounds are soluble nickel salts that contain nickel (II) ion, which has been implicated as a potential carcinogen on the basis of experimental data from studies of nickel acetate.

One commenter stated that the Agency improperly relied upon the nickel ion hypothesis as the basis for proposing RQ adjustments for these four nickel compounds. The commenter asserted that the hypothesis is speculative and that the data on the carcinogenicity of the nickel (II) ion relied upon by the Agency to establish its potential carcinogenicity are similar to data on the ions of other metals (e.g., copper, zinc, iron, manganese, cobalt, lead, and mercury) that were not implicated as potential carcinogens. Other commenters stated that no data exist directly implicating soluble nickel salts as potential carcinogens.

The Agency disagrees. Although not all soluble nickel salts have been tested for animal carcinogenicity, there is limited evidence to support the carcinogenicity of nickel acetate. EPA believes that the solubility of nickel compounds affects cellular uptake of the nickel ion, which in turn affects carcinogenesis because the nickel ion is believed to be the ultimate carcinogenic form of nickel, and because (as the commenter acknowledges) the nickel compounds whose RQs are adjusted in this rule all are relatively soluble. In addition, the solubilities of these nickel compounds are not necessarily compound-specific.[37] The Agency, therefore, believes that the evidence on nickel acetate supports the hypothesis that the nickel ion is carcinogenic, which in turn justifies the treatment of other soluble nickel compounds as potential carcinogens. The Agency believes that for nickel ammonium sulfate, nickel chloride, nickel nitrate, and nickel sulfate (all soluble nickel salts), there is "limited" evidence of animal carcinogenicity and "inadequate" evidence of human carcinogenicity; these hazardous substances are therefore placed in weight-of-evidence Group C. Because there are no data on which to base potency calculations, they are classified as potency Group 2, providing a hazard ranking of "low." Thus, the RQs of these soluble nickel salts, based on potential carcinogenicity (as well as chronic toxicity), are adjusted to 100 pounds in this rule.

In the March 16, 1987 NPRM, the Agency proposed a 10-pound RQ for nickel hydroxide, a nickel compound that is only slightly water soluble, on the basis of chronic toxicity. There are no chronic toxicity data on this substance; thus, the Agency relied on an analogous substance to adjust the statutory one-pound RQ. The surrogate substance chosen was nickel subsulfide, which is slightly less water-soluble than nickel hydroxide. One commenter indicated that the solubility of substances in water is not necessarily analogous to the solubility of substances in body fluids, and that it is the solubility of a compound in biological fluids, not in water, that affects absorption of a compound. The Agency agrees. In the absence of data to the contrary (which is the case here), however, the Agency's policy is to use the closest possible analogy. The Agency, therefore, is basing the 10-pound final RQ adjustment for nickel hydroxide on data from studies of nickel subsulfide.

[36] This final RQ for nickel metal, which is based on potential carcinogenicity, is subject to change pending the Agency's analysis of the most recent ignitability data for this hazardous substance.

[37] This is in contrast to insoluble nickel compounds, for which the Agency believes that carcinogenicity and other forms of toxicity are compound-specific.

l. Polychlorinated biphenyls. In the March 16, 1987 NPRM, EPA proposed to lower the statutory 10-pound RQ for polychlorinated biphenyls (PCBs) to one pound, based on aquatic toxicity (see 52 FR 8147). Several commenters objected to the proposed one-pound RQ adjustment for PCBs on both technical and policy grounds.

Several commenters suggested that a one-pound RQ for PCBs is inconsistent with other EPA regulations and policies. For instance, commenters argued that a one-pound RQ is duplicative of requirements under the Toxic Substances Control Act (TSCA) for reporting of spills of PCBs in amounts greater than 50 ppm (see 40 CFR 761). These commenters stated that a one-pound RQ for PCBs would increase significantly the reporting burden without promoting the Agency's goal of environmental protection. The commenters further claimed that in the PCB regulations under TSCA, the Agency has acknowledged that the normal operation of PCB-containing electrical equipment (which includes routine leaks) does not present an unreasonable risk to human health or the environment.

Reporting of PCB releases under both CERCLA and TSCA is not duplicative because the cleanup authority under the two statutory schemes is different: CERCLA reporting authorizes and ensures timely cleanup of releases by or under the supervision of the Federal government, whereas no explicit Federal cleanup authority exists under TSCA.[38] Furthermore, reporting under both CERCLA and TSCA is required very rarely and only with respect to the most serious releases. Under TSCA, spills of more than 10 pounds of *PCB-containing material* must be reported to the appropriate EPA Regional Administrator (40 CFR 761.125). This reporting requirement is limited to spills of material containing PCBs at concentrations of 50 ppm or greater. Under CERCLA, a release of one pound or more of *pure PCBs* must be reported to the National Response Center. For CERCLA notification purposes, the CWA mixture rule may be applied. Thus, for example, a release of 15 pounds of transformer fluid known to contain 50 ppm PCBs is generally reportable under TSCA but not under CERCLA. In order for a release of transformer fluid containing PCBs at a concentration of 50 ppm to be reportable under CERCLA, assuming a one-pound RQ for PCBs, the release generally would have to be equal to or greater than 20,000 pounds. Under these extreme circumstances, the Agency does not view a requirement to notify both the National Response Center and the appropriate EPA Regional Administrator as an undue burden.

It is true that, when the concentration of PCBs is unknown, TSCA (as well as CERCLA) requires that a substance be treated as pure PCBs. However, EPA believes that in most cases users of PCB-containing equipment are aware of its PCB concentration levels. Because the use of PCB-containing electrical equipment is authorized only when such equipment contains certain specified concentrations of PCBs (see 40 CFR 761.30), users of such equipment must know its PCB concentrations in order to avail themselves of exemptions from the ban against the use of PCBs (see TSCA section 6(e)) that would otherwise apply. Thus, owners or operators of PCB-containing equipment should have the information necessary to apply the CWA mixture rule when determining whether a release of PCBs requires reporting under CERCLA. Because most PCB-containing equipment contains PCBs in concentrations much lower than 100 percent, the Agency believes that a one-pound RQ for PCBs will not result in a significant overlap in reporting under CERCLA and TSCA.

In addition, EPA does not believe that its decision to permit the use of PCB-containing equipment that leaks under normal operating conditions, if the concentration of PCBs is 50 ppm or less, is equivalent to a determination that PCBs do not pose a hazard to human health and welfare and the environment. The regulations promulgated under TSCA balance the need to minimize exposure to PCBs with the costs of removing PCB-containing equipment from service. Although it is true that these regulations (40 CFR 761.30(e)) authorize the use of PCBs in hydraulic systems, such authorization is limited to equipment containing PCBs in concentrations of 50 ppm or less and includes strict handling requirements. Under no circumstances does EPA allow the use of equipment that leaks under normal operating conditions if the equipment contains more than 50 ppm PCBs.

For the reasons discussed above, the Agency has determined that the serious hazards that PCBs pose to human health, welfare, and the environment warrant the one-pound reporting requirement established by this rule.

Several commenters argued that, because PCBs rarely are released directly into surface water, aquatic toxicity is an inappropriate basis for establishing the RQ for PCBs. Moreover, according to these commenters, should such releases occur, there is little chance that PCB concentrations in natural aquatic systems would ever approach levels that are found in the laboratory to be acutely toxic to fish, because of the adsorption of PCBs to sediments and organic matter. Alternatively, commenters suggested that the Agency consider establishing one RQ for releases of PCBs into surface water and a higher RQ for other releases of PCBs.

The Agency disagrees with the assertion that, because releases of PCBs into surface water are rare, the RQ for PCBs should be based on criteria other than aquatic toxicity. Even if most PCB releases occur on land, releases of PCBs into surface water also occur. In addition, PCB releases onto land often are mobilized by surface runoff and flow into water bodies. Such releases also can be carried into ground water and eventually reach sources of drinking water. Moreover, RQs are not intended to reflect the most likely release scenario or the degree of hazard associated with a particular release. Rather, RQ levels serve as threshold levels of notification that, once exceeded, enable the Federal government to determine whether a response is warranted.

The Agency also disagrees with the argument that one RQ should be established for releases of PCBs into surface water and another RQ for releases of PCBs into other media. A single RQ for PCBs will provide a relatively simple reporting system that does not unduly burden either EPA or the regulated community. It should be noted that CERCLA section 102(a) expressly authorizes the Agency to establish a single RQ for each hazardous substance. The legislative history cites simplicity and administrative convenience as reasons why this approach is preferred.[39] Moreover, the Agency lacks the resources necessary to obtain the vast quantity of technical data that would be required to tailor RQs to each release situation and, at the same time, to ensure that RQs are consistent, equitable, and sufficiently protective of human health and welfare and the environment.

[38] The Agency's PCB spill cleanup policy under TSCA, however, provides that Agency-imposed penalties can be avoided if a spill is cleaned up in accordance with the standards set in the policy (see 40 CFR 761.125).

[39] See Senate Report No. 848, 96th Congress, 2d Session 29 (1980).

EPA also disagrees with the statement that concentrations of PCBs lethal to fish achieved in a laboratory setting cannot occur in the environment. One study used by the Agency to establish the RQ for PCBs used raw Lake Superior water. This study therefore duplicated a naturally-occurring environment in the laboratory, including the presence of suspended solids, and still produced toxicity values supporting a one-pound RQ for PCBs.[30]

The Agency further believes that the commenters' statements regarding the low water solubility of PCBs and the mitigating effects of adsorption to organic matter and sediments do not invalidate the proposed one-pound RQ. EPA agrees with the commenters that PCBs may adsorb to the surface of organic and inorganic particles. The literature clearly shows that PCBs are strongly adsorbed to certain solid surfaces, including glass and metal surfaces in laboratory apparatus and soils, sediments, and particulates in the environment. PCBs' properties of low water solubility and adsorption do not affect toxicity, however, because it is likely that stable emulsions of PCBs (i.e., stable suspensions of finely dispersed PCBs in water) are created in the environment through the action of naturally occurring emulsifiers (i.e., organic sediments). Such emulsions may be just as threatening to aquatic life forms as PCBs in true solution. Because stable emulsions of PCBs at concentrations that are lethal to newly-hatched fish have been created in the laboratory without emulsifiers, it is likely that such emulsions could form in the environment where natural emulsifiers are present.

Several commenters objected to the studies cited by the Agency in support of the proposed one-pound RQ for PCBs, claiming that they were poorly designed and that they overestimate toxicity because they use acetone, which contributes to toxicity, as a carrier solvent. Commenters cited an aquatic toxicity study to show that when acetone is employed as a carrier for PCBs, it has a confounding effect on efforts to interpret the results from studies of PCB toxicity.[31] The primary purpose of the study cited by the commenters, however, was to determine how the presence of acetone affects the growth and uptake of PCBs by lake trout, rather than how acetone might influence the toxicity of PCBs. The investigators concluded that statistical analyses revealed no significant differences in mortality in the following four treatment groups: (1) A control group; (2) a group that received acetone only; (3) a group that received acetone and PCBs; and (4) a group that received only PCBs.

Because this study found no difference in mortality between groups of fish exposed to PCBs dissolved in acetone and fish exposed to PCBs alone, and because there are data that support the proposed one-pound RQ for PCBs that were derived without using acetone or any other solvent as a carrier,[32] the data the Agency used to assign a one-pound RQ for PCBs are not invalidated by the commenters' argument regarding the use of acetone as a carrier solvent in studies of the aquatic toxicity of PCBs.

One commenter asserted that inadequate data were provided in the studies regarding the actual concentrations of PCBs used in the testing and that the reported concentrations appear to be the result of a single analysis. The Agency disagrees that the data were inadequate. In fact, in the studies, duplicate samples for each test concentration were collected and then analyzed for their PCB concentrations.

Several commenters asserted that most data on aquatic toxicity support a 10-pound RQ for PCBs. The reason that the greater quantity of data, viewed in isolation, appears to support a 10-pound RQ is that more tests have been performed on life stages of fish that are less susceptible to the toxic effects of PCBs than on life stages that are more sensitive. Indeed, *all* of the data from tests performed on newly-hatched fish support a one-pound RQ.

Several commenters disputed the Agency's reliance on data from tests using early life stages because these stages represent a relatively small portion of a fish's life. Commenters claimed that the Agency incorrectly applied EPA's 1985 National Water Quality Guidelines by using the most sensitive life stage when adjusting the RQ for PCBs. The commenters stated that the Guidelines only require data concerning effects on the most resistant life stage (in this case adult fish) to be rejected when the effects differ by a factor of two or more from effects on the most sensitive life stage (juvenile fish), and that this does not appear to be the case with PCBs.

EPA disagrees with the argument that the RQ for PCBs should not be based on the most sensitive life stage of fish. From the standpoint of population survival, the individuals of greatest value are those that have not yet reached reproductive maturity and those that are capable of reproducing. Individuals no longer capable of reproducing do not significantly influence the survival of the species or the local population. On the other hand, early life stage individuals will mature into reproductive adults and produce new generations. Therefore, protection of the juvenile life stages of fish is of critical importance to the environment.

Moreover, in the Guidelines, EPA states the circumstances under which data from tests using the most resistant life stages should *not* be used. The Guidelines allow the use of data from tests using the least resistant life stage even when such data differ by less than a factor of two from other data on the same species. In fact, in the Guidelines, the Agency encourages the use of data from tests using sensitive species and sensitive life stages (see the Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses, pp. 24 and 29, NTIS Document #PB85–227049, January 1985). In addition, the acute aquatic toxicity literature on PCBs does, in fact, contain at least one study that meets the Guidelines' criteria for rejecting the most resistant life-stage data (i.e., the data indicate that toxicity values are two times greater for the most sensitive life stage than for the most resistant).[33]

One commenter argued that it is inappropriate to base the RQ for PCBs, in part, on the fact that PCBs are bioaccumulative insoluble sinkers. This commenter also stated that recent data indicate that PCBs are dechlorinated in sediments by anaerobic bacteria, rendering them less hazardous. Another commenter argued that not only is the proposed downward RQ adjustment for PCBs inappropriate on the basis that PCBs are bioaccumulative insoluble sinkers, but these properties actually make releases of PCBs *less* hazardous. This commenter's statement is premised upon the claimed tendency of bioaccumulative insoluble sinkers "to adsorb to particulates and sediments, * * * [to] have low bioavailability to organisms from the dissolved phase, and * * * [to] remain with the sediments, even if spilled as pure compounds." Therefore, according to this commenter, "the fact that PCBs are insoluble sinkers

[30] See Nebeker et al., 1974. Effect of Polychlorinated Biphenyl Compounds on Survival and Reproduction of the Fathead Minnow and Flagfish, *Trans. Am. Fish. Soc.* 103:562.

[31] See Mac, M.J. et al., 1981. Potential Influence of Acetone in Aquatic Bioassays Testing the Dynamics and Effects of PCBs. *Bull. Env. Contam. Toxicol.* 27:359.

[32] Birge, W.J. et al., 1979. Toxicity of Organic Chemicals to Embryo-Larval Stages of Fish, Ecological Research Service, EPA 560/11–79–007.

[33] Ibid.

acts as a *protective mechanism* compared to chemicals that are more soluble in water" (emphasis in original). Furthermore, the commenter argued, the tendency of PCBs to bioaccumulate also results from the fact that PCBs generally are metabolized relatively slowly. Therefore, bioaccumulation per se does not represent an adverse health effect and is not predictive of adverse health effects on aquatic organisms.

The Agency disagrees. An insoluble chemical that sinks in water (such as PCBs) can accumulate in a way that slowly contaminates the surrounding water, perhaps over a period of years. Therefore, a release of PCBs that is not remedied could cause gradual long-term environmental damage. The dechlorination data cited by the commenter and mentioned above provide no information concerning the rate at which dechlorination of PCBs occurs in the environment. In the absence of data indicating that PCBs degrade at a rate sufficient to meet the criteria for application of BHP, the Agency will not apply BHP to raise the RQ for PCBs. The degree of hazard posed by the bioaccumulation of PCBs contributed to the Agency's decision to rely on data from studies of early life stages, in accordance with the Agency's 1985 National Water Quality Guidelines mentioned above. The primary basis for the RQ of PCBs, however, is toxicity to aquatic organisms. For these reasons, the Agency does not agree with the commenter that the physical properties of PCBs will serve to protect the environment in all release circumstances.

None of the public comments received on the proposed one-pound RQ adjustment for PCBs warrants a different final RQ adjustment. Accordingly, the Agency is promulgating a final adjusted RQ of one pound for PCBs in this rule.

m. Trichloroethylene. Two commenters stated that EPA's classification of trichloroethylene as a potential carcinogen is contrary to the findings of the Agency's Science Advisory Board (SAB) that the bioassay data for this substance constitute only limited evidence of animal carcinogenicity and are inadequate for the evaluation of human cancer risk.

In March 1988, the SAB, commenting on EPA's 1987 risk assessment for trichloroethylene, stated that the weight of evidence for male mouse hepatocellular carcinoma indicates a range between Group C and Group B2.

In the Technical Background Document for the March 16, 1987 NPRM (Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 3, December 1986), EPA noted that trichloroethylene was classified as a weight-of-evidence Group B2 substance because of "sufficient" evidence of carcinogenicity from animal studies. Because of its Group 3 potency ranking, trichloroethylene received a low hazard ranking and a 100-pound proposed RQ. The Agency's most recent draft updated assessment for trichloroethylene (June 1987) provides additional support for a Group B2 classification. This B2 classification is consistent with the SAB's finding that the weight of evidence for trichloroethylene indicates a range between Group C and Group B2. However, it is important to note that EPA's classification for trichloroethylene is based on a draft carcinogenicity assessment that has not yet been finalized. If this classification changes based on the final assessment, and the change warrants an adjustment of the RQ for trichloroethylene, the RQ will be adjusted in a future rulemaking. Pending the results of EPA's final carcinogenicity assessment, a 100-pound RQ for trichloroethylene is promulgated in this rule based on a weight-of-evidence Group *B2*, potency Group 3 determination.

n. Vinyl chloride. The 10-pound RQ for vinyl chloride originally proposed in the March 16, 1987 NPRM was revised to one pound in a supplement to the proposed rule published on April 11, 1988 (53 FR 11890). One commenter on the supplement to the proposed rule suggested that EPA promulgate a 10-pound rather than a one-pound RQ for vinyl chloride because the epidemiological studies that support the one-pound RQ used "extremely high concentrations" of vinyl chloride. The commenter also noted that since the studies were performed, workplace exposure to vinyl chloride has been lowered substantially. The commenter further claimed that the lower one-pound reporting trigger is unjustified because plant personnel who should be free to clean up small releases of vinyl chloride will instead be required to spend time discussing these releases on the telephone.

EPA disagrees with the commenter on each of these points. Vinyl chloride has been shown to produce a significantly increased incidence of brain, lung, liver, and kidney tumors in studies of three different animal species. Similar carcinogenic effects have been observed in epidemiological studies of workers exposed to vinyl chloride. Although evidence of the carcinogenic effect of vinyl chloride in humans has come from studies of workers exposed to high doses of vinyl chloride, there is no evidence of an exposure level below which no increased risk of cancer would occur in humans.[34] Thus, neither the high doses during the period over which these epidemiological studies were performed nor any subsequent reduction in these doses negates the positive carcinogenic effects of vinyl chloride. EPA also disagrees with the commenter's suggestion that the requirement to notify the National Response Center by telephone of a release of vinyl chloride in an amount equal to or greater than one pound interferes with any efforts the person in charge may make to prevent a further release. EPA encourages plant personnel to take any appropriate measures to minimize releases of hazardous substances. While skilled personnel are working to stop a release, the management of the organization may designate any other employee to communicate information about the release to the National Response Center. As a practical matter, then, the obligation to make a telephone report of the release of an RQ or more of a hazardous substance should not divert resources from cleaning up an existing release or preventing a further release.

o. Waste streams. One commenter stated that an error was made in the Agency's derivation of RQs for the pentachlorophenol-containing waste streams F021, F027, and F028, because the Agency wrongly indicated that 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD) is present in these waste streams. The commenter stated that this dioxin isomer does not occur in the production of pentachlorophenol and, therefore, would not be present in these waste streams.

The Agency disagrees. Although studies analyzed by the Agency do not indicate that 2,3,7,8-TCDD is contained in waste stream F021, isomers of a closely related substance, hexachlorodibenzo-p-dioxin, are hazardous constituents of this waste stream as set forth in Appendix VII of 40 CFR 261. The Agency has determined that when there are hazardous constituents of a RCRA waste stream that are not CERCLA hazardous substances, an RQ should be developed for these constituents in order to assign an appropriate RQ to the waste stream (see 48 FR 23565, May 25, 1983). In other words, the Agency derives the RQ for waste streams based upon the lowest RQ of all of the hazardous constituents,

[34] IARC Monograph on the Evaluation of the Carcinogenic Risk of Chemicals to Humans, 1979, Volume 19, pp. 377–437, cited in the Fourth Annual NTP Report (1985).

regardless of whether they are CERCLA hazardous substances. The "reference RQ" developed for non-CERCLA substances is for ranking purposes only; no releases of such substances need to be reported to the National Response Center. Isomers of hexachlorodibenzo-p-dioxin would have an RQ of one pound based on their mammalian toxicity. Accordingly, the RQ of waste stream F021 is adjusted to one pound in this final rule.

Waste stream F027 and waste stream F028 contain 2,3,7,8-TCDD as well as hexachlorodibenzo-p-dioxins and tetrachlorodibenzofurans. The latter substance is not a CERCLA hazardous substance but is assigned a reference RQ of one pound as a means of assigning an RQ to these waste streams. Accordingly, even if 2,3,7,8-TCDD were not present in any particular waste identified as F027 or F028, the RQ for the waste streams would still be one pound based on one or more other hazardous constituents present in the waste.

One commenter disputed the Agency's proposal to assign an adjusted RQ of one pound to waste streams K016 and K030. Relying on the potential carcinogenicity profile for hexachlorobutadiene (a constituent of these waste streams), the commenter stated that the "low" hazard ranking for this substance corresponds to an RQ of 100 pounds. Therefore, the commenter suggested, the RQ of these waste streams should be adjusted to 100 pounds.

The Agency disagrees. The RQ for hexachlorobutadiene is based on aquatic toxicity data that support a one-pound RQ. Because hexachlorobutadiene has the lowest RQ of all the constituents in these waste streams, the adjusted RQs for waste streams K016 and K030 are being promulgated today at one pound.

Another commenter stated that the proposed one-pound RQs for waste streams K048, K049, K050, and K051 are unnecessarily low, because a release of 2000 pounds of these waste streams would have to occur before the RQ of one pound for chromium (VI) or lead metal (the constituents on which the RQs for these waste streams are based, according to the commenter) would be exceeded. The commenter suggested that EPA establish an RQ of 1000 pounds for these four waste streams. The Agency disagrees with the suggestion that the proposed one-pound RQs for these waste streams should be raised to 1000 pounds.

With respect to waste stream K050, the commenter is mistaken that the RQ is partially based on the RQ for lead metal: the Agency has determined that waste stream K050 does not contain lead metal or lead compounds. Rather, the RQ for this waste stream is based solely on the RQ for chromium (VI) compounds. Because the RQ for chromium (VI) compounds is being raised from the proposed one-pound level to 10 pounds in this final rule (see Section II.B.2.a of this preamble), the RQ for waste stream K050 also is promulgated at 10 pounds. Following the CWA mixture rule, if the concentration of chromium (VI) compounds in this waste stream is known, reporting is required when a quantity of 10 pounds or more of chromium (VI) compounds is released. In the absence of such knowledge, reporting is required when an RQ (10 pounds) or more of waste stream K050 is released.

With respect to waste streams K048, K049, and K051, EPA disagrees that the proposed RQs for these waste streams were based on the RQs for lead metal and lead compounds. Rather, the RQs for these waste streams were proposed at one pound in the March 16, 1987 NPRM based on the proposed one-pound RQ for chromium (VI) compounds. As explained in Section II.B.2.a of this preamble, the final RQ for chromium (VI) compounds has been adjusted upward one level to 10 pounds based on the application of BHP.

Also, as explained in Section II.C.2.i of this preamble, EPA has decided since publication of the March 16, 1987 NPRM to retain the current adjusted RQs for lead stearate and lead sulfide (5000 pounds) and the statutory RQs for lead metal (one pound), lead phosphate (one pound), and lead acetate (5000 pounds). Therefore, the Agency has decided to retain the statutory one-pound RQs for waste streams K048, K049, and K051 along with the other eight waste streams that contain lead metal or lead compounds.[35]

Of course, if the concentrations of the constituents of the waste stream are known, the CWA mixture rule may be applied. The commenter has stated that 2000 pounds of waste streams K048, K049, and K051 would have to be released before an RQ of chromium (VI) compounds is reached. Thus, the commenter apparently knows the concentrations of chromium (VI) compounds in these waste streams. If the concentrations of the constituents of a waste stream are known, reporting is required only when an RQ (e.g., 10 pounds for chromium (VI) compounds) or more of one of these constituents is released. If the concentrations of the constituents are not known, reporting is required when an RQ or more of the waste stream is released (one pound for waste streams K048, K049, and K051).

One commenter believed that the 10-pound RQ for waste stream F002 proposed in the April 11, 1988 supplement (see 53 FR 11890 and the discussion in Section II.C.1 above) represents an incorrect interpretation of EPA's December 31, 1985 final rule (50 FR 53315). The commenter stated that the Agency had rejected the approach of consolidating waste streams F001, F002, F004, and F005 into a single listing in that rule.

EPA disagrees that the Agency's interpretation of the reporting requirements for waste stream F002 discussed in the April 11, 1988 supplement (and summarized in Section III.C.1 above) is incorrect. On April 30, 1985 (50 FR 18378), EPA proposed to delete waste streams F002 through F005 and to modify waste stream F001 to include all hazardous constituents previously listed under waste streams F001 through F005. The purposes of this proposed action were to simplify recordkeeping and avoid confusion regarding the appropriate waste number to use for reporting solvent mixtures containing several listed solvents.

Commenters on the April 30, 1985 proposed rule indicated that the proposed change would increase compliance costs and cause confusion in recordkeeping. As a result, the Agency retained the original listings for waste streams F001–F005, but modified their definitions to include mixtures containing, before use, one or more of the solvents listed under the other waste numbers.

When assigning an RQ to a waste stream, the Agency considers the RQ of the constituents of the waste stream (48 FR 23565, May 25, 1983). The Agency determines the RQ of each waste stream constituent and assigns the lowest of these to the waste stream itself. Because, by virtue of the December 31, 1985 final rule, the definitions of waste streams F001–F005 now include mixtures of solvents that contain one or more solvents listed under the other waste numbers, the Agency must consider the RQs of these other solvents when determining the RQs for waste streams. To determine the appropriate RQ for waste stream F002, the Agency considers not only RQs of the solvents listed under F002, but also the RQs of those solvents listed under waste streams F001, F004, and F005. Because waste streams F001 and F005 contain solvents that have 10-pound RQs, the RQ for waste stream F002 is 10 pounds.

[35] These eight waste streams are: K002, K003, K005, K061, K062, K069, K086, and K100.

If the concentrations of the hazardous constituents of waste stream F002 are unknown, reporting is required when 10 pounds or more of F002 is released. If the concentrations of all of the constituents are known, reporting is required only when an RQ or more of one of the individual constituents is released.

The commenter further suggested that when a waste contains constituents listed under more than one waste stream, the waste has "dual listing status." The commenter used as an example of a spent solvent containing five percent benzene and five percent chlorobenzene. The commenter claimed that such a waste "would have both F005 and F002 listing status," and therefore would have an RQ of 10 pounds. The Agency agrees that the waste described by the commenter would have a 10-pound RQ, but disagrees with the commenter's reasoning. First, a single waste cannot be listed under more than one waste number (e.g., F002 and F005). If the person in charge knows the concentrations of two constituents in a waste, as in the example provided, the CWA mixture rule should be applied to determine the appropriate RQ. Because benzene has a 10-pound final RQ and chlorobenzene has a 100-pound final RQ, reporting is required when 10 pounds or more of benzene or 100 pounds or more of chlorobenzene is released.

After promulgation of this final rule, the RQs for the five mixed solvent waste streams will be: F001—10 pounds, F002—10 pounds, F003—100 pounds, F004—1000 pounds, and F005—100 pounds. As described above in Section III.C.1, the Agency intends to adjust RQs for waste streams F003, F004, and F005 to 10 pounds in a future rulemaking. When 10-pound RQs are promulgated for all of these waste streams, releases of mixtures of any of the solvent constituents will be required at or above the 10-pound level when the concentrations of the solvents are unknown.

D. Update on Methyl Isocyanate.

EPA initially proposed to adjust the statutory one-pound RQ for methyl isocyanate (MIC) to 100 pounds in the May 25, 1983 NPRM. After the December 3, 1984 release of MIC in Bhopal, India and the resultant loss of human life, EPA withdrew this proposed RQ adjustment in the April 4, 1985 final rule (50 FR 13456) and retained the statutory one-pound RQ, pending further analysis of the data on MIC.

In a March 2, 1988 proposed rule (53 FR 6765), the Agency announced that it had obtained additional toxicological data on MIC, including new animal studies documented in *Environmental Health Perspectives*, Volume 72, and that it was awaiting human toxicological and epidemiological data associated with the release of MIC in Bhopal. The Agency stated in the March 2, 1988 NPRM that it has decided to retain the statutory one-pound RQ for MIC pending completion of this analysis, rather than propose an RQ adjustment without first completing a thorough evaluation of the human toxicity data.

III. RQ Ajustments Under CWA Section 311

In the April 4, 1985 final rule (50 FR 13456), EPA amended 40 CFR 117.3 to make RQs adjusted under CERCLA the applicable RQs for notification of discharges of hazardous substances pursuant to CWA section 311. Thus, the RQ adjustments contained in this rulemaking apply to both CERCLA and CWA section 311 RQs. Of the 187 individual hazardous substances in this rulemaking, 87 were originally listed as hazardous substances and assigned RQs under section 311 of the CWA. The final RQ adjustments promulgated today lower the statutory CWA RQs of 52 of these substances, raise the statutory RQs of two of the substances, and leave the RQs of 13 of the substances at the statutory level. RQs under both CERCLA and the CWA are set forth in Table 302.4. Where there is a release of a hazardous substance into navigable waters, a single report to the National Response Center by the person in charge will satisfy the notification requirements of both statutes. For further discussion of the relationship between CERCLA RQs and CWA section 311 RQs, see the preambles to the May 25, 1983 proposed rule (48 FR 23569) and the April 4, 1985 final rule (50 FR 13473).

IV. Delisting of Ammonium Thiosulfate as a Hazardous Substance

On March 7, 1986, Kerley Industries, Inc. filed a petition requesting the Agency to delist ammonium thiosulfate as a hazardous substance under section 311 of the CWA, and, as a result, also under section 101(14) of CERCLA. Kerley Industries stated that the classification of ammonium thiosulfate as a hazardous substance under the CWA was based on aquatic toxicity by inference from an inappropriate reference compound, ammonium sulfite. Kerley further claimed that the toxicological test data on other more closely related alkali metal thiosulfate salts indicate that the thiosulfate chemical family is physiologically innocuous.

Based on the available information, the Agency in the March 2, 1988 NPRM (see 53 FR 6765) determined that ammonium thiosulfate does not meet the listing criteria for aquatic toxicity, and, therefore, proposed to delist ammonium thiosulfate as a hazardous substance under section 311 of the CWA, 40 CFR 116.4, and 40 CFR 117.3. As a result of the delisting under section 311, the substance would be a "hazardous substance" under section 101(14) of CERCLA only by virtue of its designation under section 102 of CERCLA (section 101(14)(B)). In the March 2, 1988 NPRM, EPA solicited public comments with supporting data on whether ammonium thiosulfate should be delisted as a hazardous substance under the CWA and CERCLA.

All of the commenters who addressed the ammonium thiosulfate issue supported EPA's proposed delisting of ammonium thiosulfate as a hazardous substance. Five commenters stated that the current classification of ammonium thiosulfate as a hazardous substance has resulted in increased insurance costs to transport this substance. Four commenters suggested that toxicological data derived from tests conducted on ammonium thiosulfate demonstrate that the LC_{50} for the substance is well above the 500 mg/l for aquatic toxicity—the threshold listing criterion under the CWA. EPA agrees with the commenters that ammonium thiosulfate does not meet the listing criteria for aquatic toxicity. In addition, the Agency has analyzed ammonium thiosulfate under the primary criteria other than aquatic toxicity and determined that there is no independent basis for listing this substance as hazardous under CERCLA section 102. Therefore, EPA is revoking in this rule its listing of ammonium thiosulfate under CWA section 311, 40 CFR 116.4, and 40 CFR 117.3 and its designation as a CERCLA hazardous substance under section 102(a) of CERCLA and 40 CFR 302.4(a).

V. Replacement of the Registered Trademark, "Kelthane," With the Generic Name, Dicofol

In response to a July 28, 1987 petition from Rohm and Haas Company, EPA today is changing the registered trademark, "Kelthane," to the generic name, dicofol in Table 116.4 of 40 CFR Part 116, Table 117.3 of 40 CFR Part 117, and Table 302.4 of 40 CFR Part 302. The term Kelthane is on these lists because it originally was listed as a hazardous substance under section 311 of the CWA. Kelthane has been assigned a final adjusted RQ of 10 pounds (50 FR

BEST COPY AVAILABLE

13480, April 4, 1985). The Agency believes that listing this hazardous substance by its generic or chemical name is appropriate because there are companies other than Rohm and Haas that manufacture or generate dicofol. This listing by generic name (dicofol) should reduce the likelihood that Rohm and Haas would be considered liable under section 107(a) of CERCLA for releases of this hazardous substance into the environment for which it is not responsible.

VI. List of Hazardous Substances and Adjusted RQs

The following table lists the RQ adjustments for the hazardous substances whose RQs are being adjusted in this final rule.

TABLE 2.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous Substance	CASRN	Final RQ Pounds (Kg)
Acetaldehyde, trichloro-	75876	5000 (2270)
Acetamide, N-(4-ethoxyphenyl)-	62442	100 (45.4)
Acetamide, N-9H-fluoren-2-yl	53963	1 (0.454)
2-Acetylaminofluorene	53963	1 (0.454)
Acrylonitrile	107131	100 (45.4)
Aldrin	309002	1 (0.454)
Amitrole	61825	10 (4.54)
Ammonium bichromate	7789095	10 (4.54)
Ammonium chromate	7788989	10 (4.54)
Aroclor 1016	12674112	1 (0.454)
Aroclor 1221	11104282	1 (0.454)
Aroclor 1232	11141165	1 (0.454)
Aroclor 1242	53469219	1 (0.454)
Aroclor 1248	12672296	1 (0.454)
Aroclor 1254	11097691	1 (0.454)
Aroclor 1260	11096825	1 (0.454)
Arsenic ††	7440382	1 (0.454)
Arsenic acid	1327522	1 (0.454)
	7778394	
Arsenic acid H3AsO4	1327522	
	7778394	1 (0.454)
Arsenic disulfide	1303328	1 (0.454)
Arsenic oxide As2O3	1327533	1 (0.454)
Arsenic oxide As2O5	1303282	1 (0.454)
Arsenic pentoxide	1303282	1 (0.454)
Arsenic trichloride	7784341	1 (0.454)
Arsenic trioxide	1327533	1 (0.454)
Arsenic trisulfide	1303339	1 (0.454)
Arsine, diethyl-	692422	1 (0.454)
Arsinic acid, dimethyl	75605	1 (0.454)
Arsonous dichloride, phenyl-	696286	1 (0.454)
Asbestos †††	1332214	1 (0.454)
Auramine	492808	100 (45.4)
Azaserine	115026	1 (0.454)
Aziridine	151564	1 (0.454)
Aziridine, 2-methyl-	75558	1 (0.454)
Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione,6-amino-8-[[(aminocarbonyl)oxy]methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, [1aS-(1aalpha, 8beta,8aalpha,8balpha)]-	50077	10 (4.54)
Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	56495	10 (4.54)
Benz[c]acridine	225514	100 (45.4)
Benz[a]anthracene	56553	10 (4.54)
1,2-Benzanthracene	56553	10 (4.54)
Benz[a]anthracene, 7,12-dimethyl-	57976	1 (0.454)
Benzenamine, 4,4'-carbonimidoylbis (N,N-dimethyl-	492808	100 (45.4)
Benzenamine, 4-chloro-2-methyl-, hydrochloride	3165933	100 (45.4)
Benzenamine, 2-methyl-	95534	100 (45.4)
Benzenamine, 4-methyl-	106490	100 (45.4)
Benzenamine, 4,4'-methylenebis(2-chloro-	101144	10 (4.54)
Benzenamine, 2-methyl-, hydrochloride	636215	100 (45.4)
Benzenamine, 2-methyl-5-nitro-	99558	100 (45.4)
Benzenamine, N,N-dimethyl-4-(phenylazo)-	60117	10 (4.54)
Benzene	71432	10 (4.54)
Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-,ethyl ester	510156	10 (4.54)
Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-	305033	10 (4.54)
Benzene, chloromethyl-	100447	100 (45.4)
Benzenediamine, ar-methyl-	95807	
	496720	
	823405	
	25376458	10 (4.54)
1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	117817	100 (45.4)
Benzene,1,1'-(2,2-dichloroethylidene)bis[4-chloro-	72548	1 (0.454)
Benzene, hexachloro-	118741	10 (4.54)
Benzene, 1-methyl-2,4-dinitro-	121142	10 (4.54)
Benzene, 2-methyl-1,3-dinitro-	606202	100 (45.4)
Benzene, pentachloronitro-	82688	100 (45.4)
Benzene,1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-	50293	1 (0.454)
Benzene, (trichloromethyl)-	98077	10 (4.54)

TABLE 2.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Final RQ Pounds (Kg)
Benzidine	92875	1 (0.454)
Benzo[a]anthracene	56553	10 (4.54)
1,3-Benzodioxole, 5-(2-propenyl)-	94587	100 (45.4)
1,3-Benzodioxole, 5-(1-propenyl)-	120581	100 (45.4)
1,3-Benzodioxole,5-propyl-	94586	10 (4.54)
Benzo[b]fluoranthene	205992	1 (0.454)
Benzo(k)fluoranthene	207089	5000 (2270)
Benzo[rst]pentaphene	189559	10 (4.54)
Benzo[a]pyrene	50328	1 (0.454)
3,4-Benzopyrene	50328	1 (0.454)
Benzotrichloride	98077	10 (4.54)
1,2-Benzphenanthrene	218019	100 (45.4)
Benzyl chloride	100447	100 (45.4)
Beryllium [1]	7440417	10 (4.54)
Beryllium chloride	7787475	1 (0.454)
Beryllium dust [1]	7440417	10 (4.54)
Beryllium fluoride	7787497	1 (0.454)
Beryllium nitrate	13597994	
	7787555	1 (0.454)
alpha—BHC	319846	10 (4.54)
beta—BHC	319857	1 (0.454)
gamma—BHC	58899	1 (0.454)
2,2'Bioxirane	1464535	10 (4.54)
(1,1'-Biphenyl)-4,4'diamine	92875	1 (0.454)
(1,1'-Biphenyl)-4,4'diamine,3,3'dichloro-	91941	1 (0.454)
(1,1'-Biphenyl)-4,4'diamine,3,3'dimethoxy-	119904	100 (45.4)
(1,1'Biphenyl)-4,4'-diamine,3,3'-dimethyl-	119937	10 (4.54)
Bis(2-chloroethyl) ether	111444	10 (4.54)
Bis(2-ethylhexyl) phthalate	117817	100 (45.4)
1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	87683	1 (0.454)
1-Butanamine, N-butyl-N-nitroso-	924163	10 (4.54)
2-Butenoic acid, 2-methyl-, 7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*,3R*),7aalpha]]-	303344	10 (4.54)
Cacodylic acid	75605	1 (0.454)
Cadmium [1]	7440439	10 (4.54)
Cadmium acetate	543908	10 (4.54)
Cadmium bromide	7789426	10 (4.54)
Cadmium chloride	10108642	10 (4.54)
Calcium arsenate	7778441	1 (0.454)
Calcium arsenite	52740166	1 (0.454)
Calcium chromate	13765190	10 (4.54)
Camphene, octachloro-	8001352	1 (0.454)
Carbamic acid, ethyl ester	51796	100 (45.4)
Carbamic acid, methylnitroso-, ethyl ester	615532	1 (0.454)
Carbamic chloride, dimethyl-	79447	1 (0.454)
Carbamothioic acid, bis(1-methylethyl)-, S(2,3-dichloro-2-propenyl) ester	2303164	100 (45.4)
Carbon tetrachloride	56235	10 (4.54)
Chloral	75876	5000 (2270)
Chlorambucil	305033	10 (4.54)
Chlordane	57749	1 (0.454)
Chlordane, alpha & gamma isomers	57749	1 (0.454)
Chlordane, technical	57749	1 (0.454)
Chlornaphazine	494031	100 (45.4)
Chlorobenzilate	510156	10 (4.54)
Chloroform	67663	10 (4.54)
Chloromethyl methyl ether	107302	10 (4.54)
4-Chloro-o-toluidine, hydrochloride	3165933	100 (45.4)
		10(4.54)
Chromic acid	11115745	
	7738945	
Chromic acid H2CrO4, calcium salt	13765190	10 (4.54)
Chromium ††	7440473	5000 (2270)
Chrysene	218019	100 (45.4)
Coke Oven Emissions	N.A.	1 (0.454)
Creosote	8001589	1 (0.454)
Cupric acetoarsenite	12002038	1 (0.454)
Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)-	58899	1 (0.454)
1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	77474	10 (4.54)
Cyclophosphamide	50180	10 (4.54)
Daunomycin	20830813	10 (4.54)
DDD	72548	1 (0.454)
4,4'-DDD	72548	1 (0.454)
DDE	72559	1 (0.454)
4,4'-DDE	72559	1 (0.454)
DDT	50293	1 (0.454)
4,4'-DDT	50293	1 (0.454)
Diallate	2303164	100 (45.4)
Dibenz[a,h]anthracene	53703	1 (0.454)
1,2:5,6-Dibenzanthracene	53703	1 (0.454)

TABLE 2.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Final RQ Pounds (Kg)
Dibenzo[a,h]anthracene	53703	1 (0.454)
Dibenzo[a,i]pyrene	189559	10 (4.54)
1,2-Dibromo-3-chloropropane	96128	1 (0.454)
3,3'-Dichlorobenzidine	91941	1 (0.454)
1,2-Dichloroethane	107062	100 (45.4)
1,1-Dichloroethylene	75354	100 (45.4)
Dichloroethyl ether	111444	10 (4.54)
Dichloromethyl ether	542881	10 (4.54)
Dichlorophenylarsine	696286	1 (0.454)
Dicofol	115322	10 (4.54)
Dieldrin	60571	1 (0.454)
1,2:3,4-Diepoxybutane	1464535	10 (4.54)
Diethylarsine	692422	1 (0.454)
N,N'-Diethylhydrazine	1615801	10 (4.54)
Diethylstilbestrol	56531	1 (0.454)
Dihydrosafrole	94586	10 (4.54)
1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-10-hexachloro-1,4,4a,5,8,8a-hexahydro-,(1alpha,4alpha,4abeta,5alpha,8alpha,8beta)-	309002	1 (0.454)
2,7:3,6-Dimethanonaphth[2,3-b]oxirene,3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octa-hydro-, (1aalpha,2beta,2aalpha,3beta,6beta,6aalpha,7beta,7aalpha)-	60571	1 (0.454)
3,3'-Dimethoxybenzidine	119904	100 (45.4)
Dimethylaminoazobenzene	60117	10 (4.54)
7,12-Dimethylbenz[a]anthracene	57976	1 (0.454)
3,3'-Dimethylbenzidine	119937	10 (4.54)
Dimethylcarbamoyl chloride	79447	1 (0.454)
1,1-Dimethylhydrazine	57147	10 (4.54)
1,2-Dimethylhydrazine	540738	1 (0.454)
Dimethyl sulfate	77781	100 (45.4)
Dinitrotoluene	25321146	10 (4.54)
3,4-Dinitrotoluene	610399	
2,4-Dinitrotoluene	121142	10 (4.54)
2,6-Dinitrotoluene	606202	100 (45.4)
1,2-Diphenylhydrazine	122667	10 (4.54)
Di-n-propylnitrosamine	621647	10 (4.54)
Epichlorohydrin	106898	100 (45.4)
Ethanamine, N-ethyl-N-nitroso-	55185	1 (0.454)
Ethane, 1,2-dibromo-	106934	1 (0.454)
Ethane, 1,2-dichloro-	107062	100 (45.4)
Ethane, hexachloro-	67721	100 (45.4)
Ethane, 1,1'-oxybis[2-chloro-	111444	10 (4.54)
Ethane, pentachloro-	76017	10 (4.54)
Ethane, 1,1,1,2-tetrachloro-	630206	100 (45.4)
Ethane, 1,1,2,2-tetrachloro-	79345	100 (45.4)
Ethanethioamide	62555	10 (4.54)
Ethane, 1,1,2-trichloro-	79005	100 (45.4)
Ethanol, 2,2'-(nitrosoimino)bis-	1116547	1 (0.454)
Ethenamine, N-methyl-N-nitroso-	4549400	10 (4.54)
Ethene, chloro-	75014	1 (0.454)
Ethene, 1,1-dichloro-	75354	100 (45.4)
Ethene, trichloro-	79018	100 (45.4)
Ethyl carbamate (urethane)	51796	100 (45.4)
Ethylene dibromide	106934	1 (0.454)
Ethylene dichloride	107062	100 (45.4)
Ethylenethiourea	96457	10 (4.54)
Ethylenimine	151564	1 (0.454)
Ethyl methanesulfonate	62500	1 (0.454)
Formaldehyde	50000	100 (45.4)
D-Glucose, 2-deoxy-2-[[(methylnitrosoamino)carbonyl]amino]-	18883664	1 (0.454)
Glycidylaldehyde	765344	10 (4.54)
Guanidine, N-methyl-N'-nitro-N-nitroso-	70257	10 (4.54)
Heptachlor	76448	1 (0.454)
Heptachlor epoxide	1024573	1 (0.454)
Hexachlorobenzene	118741	10 (4.54)
Hexachlorobutadiene	87683	1 (0.454)
Hexachlorocyclohexane (gamma isomer)	58899	1 (0.454)
Hexachlorocyclopentadiene	77474	10 (4.54)
Hexachloroethane	67721	100 (45.4)
Hydrazine	302012	1 (0.454)
Hydrazine, 1,2-diethyl-	1615801	10 (4.54)
Hydrazine, 1,1-dimethyl-	57147	10 (4.54)
Hydrazine, 1,2-dimethyl-	540738	1 (0.454)
Hydrazine, 1,2-diphenyl-	122667	10 (4.54)
2-Imidazolidinethione	96457	10 (4.54)
Indeno[1,2,3-cd]pyrene	193395	100 (45.4)
Isosafrole	120581	100 (45.4)
Kepone	143500	1 (0.454)
Lasiocarpine	303344	10 (4.54)
		1 (0.454)

TABLE 2.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Final RQ Pounds (Kg)
Lead arsenate	7784409	
	7645252	
	10102484	
Lead, bis(acetato-O)tetrahydroxytri-	1335326	100 (45.4)
Lead subacetate	1335326	100 (45.4)
Lindane	58899	1 (0.454)
Lithium chromate	14307358	10 (4.54)
Melphalan	148823	1 (0.454)
Methanamine, N-methyl-N-nitroso-	62759	10 (4.54)
Methane, chloro-	74873	100 (45.4)
Methane, chloromethoxy-	107302	10 (4.54)
Methane, iodo-	74884	100 (45.4)
Methane, isocyanato-	624839	# #
Methane, oxybis(chloro-	542881	10 (4.54)
Methanesulfonic acid, ethyl ester	62500	1 (0.454)
Methane, tetrachloro-	56235	10 (4.54)
Methane, trichloro-	67663	10 (4.54)
1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-	143500	1 (0.454)
4,7-Methano-1H-indene,1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76448	1 (0.454)
4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	57749	1 (0.454)
Methyl chloride	74873	100 (45.4)
3-Methylcholanthrene	56495	10 (4.54)
4,4'-Methylenebis(2-chloroaniline)	101144	10 (4.54)
Methyl iodide	74884	100 (45 4)
Methyl isocyanate	624839	# #
Methylthiouracil	56042	10 (4.54)
Mitomycin C	50077	10 (4.54)
MNNG	70257	10 (4.54)
5,12-Naphthacenedione, 8-acetyl-10-[3-amino-2,3,6-trideoxy)-alpha-L-]oxy-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-	20830813	10 (4.54)
1-Naphthalenamine	134327	100 (45.4)
2-Naphthalenamine	91598	10 (4.54)
Naphthalenamine, N,N'-bis(2-chloroethyl)-	494031	100 (45 4)
2,7-Naphthalenedisulfonic acid,3,3'-[(3,3'-dimethyl-[1,1'-biphenyl]-4,4'-diyl)-bis(azo)]bis[5-amino-4-hydroxy-,tetrasodium salt	72571	10 (4.54)
alpha-Naphthylamine	134327	100 (45.4)
beta-Naphthylamine	91598	10 (4.54)
Nickel ††	7440020	100 (45.4)
Nickel ammonium sulfate	15699180	100 (45.4)
Nickel carbonyl	13463393	10 (4.54)
Nickel carbonyl Ni(CO)4, (T-4)-	13463393	10 (4.54)
		100 (45.4)
Nickel chloride	7718549	10 (4.54)
	37211055	
Nickel cyanide	557197	
Nickel cyanide Ni(CN)2	557197	10 (4.54)
Nickel hydroxide	12054487	10 (4.54)
Nickel nitrate	14216752	100 (45.4)
Nickel sulfate	7786814	100 (45.4)
N-Nitrosodi-n-butylamine	924163	10 (4.54)
N-Nitrosodiethanolamine	1116547	1 (0.454)
N-Nitrosodiethylamine	55185	1 (0.454)
N-Nitrosodimethylamine	62759	10 (4.54)
N-Nitroso-N-ethylurea	759739	1 (0.454)
N-Nitroso-N-methylurea	684935	1 (0.454)
N-Nitroso-N-methylurethane	615532	1 (0.454)
N-Nitrosomethylvinylamine	4549400	10 (4.54)
N-Nitrosopiperidine	100754	10 (4.54)
N-Nitrosopyrrolidine	930552	1 (0.454)
5-Nitro-o-toluidine	99558	100 (45.4)
1,2-Oxathiolane, 2,2-dioxide	1120714	10 (4.54)
2H-1,3,2-Oxazaphosphorin,2-amine,N,N-bis(2-chloroethyl)tetrahydro-,2-oxide	50180	10 (4.54)
Oxiranecarboxyaldehyde	765344	10 (4.54)
Oxirane, (chloromethyl)-	106898	100 (45.4)
Parathion	56382	10 (4.54)
Pentachloroethane	76017	10 (4.54)
Pentachloronitrobenzene (PCNB)	82688	100 (45.4)
Pentachlorophenol	87865	10 (4.54)
Phenacetin	62442	100 (45.4)
Phenol,4,4'-(1,2-diethyl-1,2-ethenediyl)bis-,(E)-	56531	1 (0.454)
Phenol, pentachloro-	87865	10 (4.54)
Phenol, 2,4,5-trichloro-	95954	10 (4.54)
Phenol, 2,4,6-trichloro-	88062	10 (4.54)
L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-	148823	1 (0.454)
1,10-(1,2-Phenylene)pyrene	193395	100 (45.4)
Phosphorothioic acid, 0,0-diethyl 0-(4-nitrophenyl) ester	56382	10 (4.54)
Piperidine, 1-nitroso-	100754	10 (4.54)
Polychlorinated Biphenyls (PCBs)	1336363	1 (0.454)
Polychlorinated Biphenyls (PCBs)	12674112	1 (0.454)
Polychlorinated Biphenyls (PCBs)	11104282	1 (0.454)

TABLE 2.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Final RQ Pounds (Kg)
Polychlorinated Biphenyls (PCBs)	11141165	1 (0.454)
Polychlorinated Biphenyls (PCBs)	53469219	1 (0.454)
Polychlorinated Biphenyls (PCBs)	12672296	1 (0.454)
Polychlorinated Biphenyls (PCBs)	11097691	1 (0.454)
Polychlorinated Biphenyls (PCBs)	11096825	1 (0.454)
Potassium arsenate	7784410	1 (0.454)
Potassium arsenite	10124502	1 (0.454)
Potassium bichromate	7778509	10 (4.54)
Potassium chromate	7789006	10 (4.54)
1-Propanamine, N-nitroso-N-propyl-	621647	10 (4.54)
Propane, 1,2-dibromo-3-chloro-	96128	1 (0.454)
1,3-Propane sultone	1120714	10 (4.54)
1-Propanol, 2,3-dibromo-, phosphate (3:1)	126727	10 (4.54)
2-Propenenitrile	107131	100 (45.4)
1,2-Propylenimine	75558	1 (0.454)
2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-	66751	10 (4.54)
4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	56042	10 (4.54)
Pyrrolidine, 1-nitroso-	930552	1 (0.454)
Safrole	94597	100 (45.4)
Selenium sulfide	7488564	10 (4.54)
Selenium sulfide SeS2	7488564	10 (4.54)
L-Serine, diazoacetate (ester)	115028	1 (0.454)
Sodium arsenate	7631892	1 (0.454)
Sodium arsenite	7784465	1 (0.454)
Sodium bichromate	10588019	10 (4.54)
Sodium chromate	7775113	10 (4.54)
Streptozotocin	18883664	1 (0.454)
Strontium chromate	7789062	10 (4.54)
Sulfuric acid, dimethyl ester	77781	100 (45.4)
TDE	72548	1 (0.454)
2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)	1746016	1 (0.454)
1,1,1,2-Tetrachloroethane	630206	100 (45.4)
1,1,2,2-Tetrachloroethane	79345	100 (45.4)
Thioacetamide	62555	10 (4.54)
Thiourea	62566	10 (4.54)
Toluenediamine		10 (4.54)
	95807	
	496720	
	823405	
	25376458	
o-Toluidine	95534	100 (45.4)
p-Toluidine	106490	100 (45.4)
o-Toluidine hydrochloride	636215	100 (45.4)
Toxaphene	8001352	1 (0.454)
1H-1,2,4-Triazol-3-amine	61825	10 (4.54)
1,1,2-Trichloroethane	79005	100 (45.4)
Trichloroethene	79016	100 (45.4)
Trichloroethylene	79016	100 (45.4)
Trichlorophenol	25167822	10 (4.54)
2,3,4-Trichlorophenol	15950660	
2,3,5-Trichlorophenol	933788	
2,3,6-Trichlorophenol	933755	
2,4,5-Trichlorophenol	95954	10 (4.54)
2,4,6-Trichlorophenol	88062	10 (4.54)
3,4,5-Trichlorophenol	609198	
2,4,5-Trichlorophenol	95954	10 (4.54)
2,4,6-Trichlorophenol	88062	10 (4.54)
Tris(2,3-dibromopropyl) phosphate	126727	10 (4.54)
Trypan blue	72571	10 (4.54)
Unlisted Hazardous Wastes Characteristic of EP Toxicity	N.A.	
Arsenic D004	N.A.	1 (0.454)
Cadmium D006	N.A.	10 (4.54)
Chromium D007	N.A.	10 (4.54)
Lindane D013	N.A.	1 (0.454)
Toxaphene D015	N.A.	1 (0.454)
Uracil mustard	66751	10 (4.54)
Urea,N-ethyl-N-nitroso-	759739	1 (0.454)
Urea, N-methyl-N-nitroso-	684935	1 (0.454)
Vinyl chloride	75014	1 (0.454)
Vinylidene chloride	75354	100 (45.4)
F001	N.A.	10 (4.54)
F002	N.A.	10 (4.54)
F003	N.A.	10 (4.54)
F019	N.A.	10 (4.54)
F020	N.A.	1 (0.454)
F021	N.A.	1 (0.454)
F022	N.A.	1 (0.454)
F023	N.A.	1 (0.454)
F024	N.A.	1 (0.454)

TABLE 2.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Final RQ Pounds (Kg)
F026	N.A.	1 (0.454)
F027	N.A.	1 (0.454)
F028	N.A.	1 (0.454)
K001	N.A.	1 (0.454)
K004	N.A.	10 (4.54)
K006	N.A.	10 (4.54)
K007	N.A.	10 (4.54)
K008	N.A.	10 (4.54)
K009	N.A.	10 (4.54)
K010	N.A.	10 (4.54)
K011	N.A.	10 (4.54)
K013	N.A.	10 (4.54)
K015	N.A.	10 (4.54)
K016	N.A.	1 (0.454)
K017	N.A.	10 (4.54)
K018	N.A.	1 (0.454)
K019	N.A.	1 (0.454)
K020	N.A.	1 (0.454)
K021	N.A.	10 (4.54)
K022	N.A.	1 (0.454)
K025	N.A.	10 (4.54)
K027	N.A.	10 (4.54)
K028	N.A.	1 (0.454)
K029	N.A.	1 (0.454)
K030	N.A.	1 (0.454)
K031	N.A.	1 (0.454)
K032	N.A.	10 (4.54)
K033	N.A.	10 (4.54)
K034	N.A.	10 (4.54)
K035	N.A.	1 (0.454)
K036	N.A.	10 (4.54)
K040	N.A.	10 (4.54)
K041	N.A.	1 (0.454)
K042	N.A.	10 (4.54)
K043	N.A.	10 (4.54)
K050	N.A.	10 (4.54)
K060	N.A.	1 (0.454)
K073	N.A.	10 (4.54)
K084	N.A.	1 (0.454)
K085	N.A.	10 (4.54)
K095	N.A.	100 (45.4)
K096	N.A.	100 (45.4)
K097	N.A.	1 (0.454)
K098	N.A.	1 (0.454)
K099	N.A.	10 (4.54)
K101	N.A.	1 (0.454)
K102	N.A.	1 (0.454)
K104	N.A.	10 (4.54)
K105	N.A.	10 (4.54)
K111	N.A.	10 (4.54)
K112	N.A.	10 (4.54)
K113	N.A.	10 (4.54)
K114	N.A.	10 (4.54)
K115	N.A.	10 (4.54)
K116	N.A.	10 (4.54)
K117	N.A.	1 (0.454)
K118	N.A.	1 (0.454)
K123	N.A.	10 (4.54)
K124	N.A.	10 (4.54)
K125	N.A.	10 (4.54)
K126	N.A.	10 (4.54)
K136	N.A.	1 (0.454)

†† No reporting of releases of this hazardous substance is required if the diameter of the pieces of the solid metal released is equal to or exceeds 100 micrometers (0.004 inches).

††† The RQ for asbestos is limited to friable forms only.

The Agency may adjust the RQs for these hazardous substances in a future rulemaking; until that time the statutory RQ will be retained.

N.A.—Not applicable.

VII. Summary of Supporting Analyses

A. Executive Order No. 12291

Executive Order (E.O.) No. 12291 requires that regulations be classified as major or nonmajor for purposes of review by the Office of Management and Budget (OMB). According to E.O. No. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

As demonstrated by an economic analysis performed by the Agency, available for inspection at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460, this final rule is nonmajor, because the rule will result in estimated net cost savings of $15.4 million annually. The annual net cost savings of all RQ adjustments promulgated or proposed to date (including those contained in this final rule) are estimated to be $34.7 million. These net cost savings reflect only those effects of RQ adjustments that are: (1) Readily quantifiable in dollars; and (2) associated with the release notification requirements under CERCLA section 103 and SARA section 304 (including the associated activities of recordkeeping, notification processing, monitoring, and response).

This final rule has been submitted to OMB for review, as required by E.O. No. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." To determine whether a Regulatory Flexibility Analysis is necessary for this final rule, a preliminary analysis was conducted using a computer model that simulated the typical operation of a small U.S. chemical company.

The results of the simulation indicate that the upper-bound total cost of compliance to small firms is negligible. See the "Regulatory Impact Analysis of Reportable Quantity Adjustments Under Sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act," Volume I, March 1985, available for inspection at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460. Therefore, because this final rule is not expected to have a significant impact on small entities, EPA certifies that no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

EPA requires an Information Impact Analysis for all rules that impose a paperwork burden on the public. This analysis estimates the burden imposed on parties outside EPA for activities such as notification or recordkeeping. This final rule will provide a decrease in the paperwork burden imposed on the regulated community for information collection associated with fewer releases being reportable. Because the effect of this final rule on the paperwork burden is a reduction, EPA has determined that no further Information Impact Analysis need be performed.

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2050–0046.

The public reporting burden for this collection of information is estimated to vary from eight to 11 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

Notes

Note 1: EPA proposed RQ adjustments for most of the hazardous substances whose RQs are promulgated in this final rule on March 16, 1987. As of that date, there were 717 CERCLA hazardous substances. Changes to the list of CERCLA hazardous substances since March 16, 1987 are described below. Four hazardous waste streams (K123, K124, K125, and K126) were added in a final rule (51 FR 37725) that became effective on April 24, 1987, bringing the total number of CERCLA hazardous substances to 721. EPA removed iron dextran and strontium sulfide from the list in two final rules (53 FR 43878 and 53 FR 43881) effective October 31, 1988, thus reducing the number of CERCLA hazardous substances to 719. Six hazardous substances (waste streams K064, K065, K066, K088, K090, and K091) were added in a final rule (53 FR 35412) that became effective on March 13, 1989, increasing the number of CERCLA hazardous substances to 725, which is the current total. Lastly, based on this final rule, ammonium thiosulfate will be removed from the CERCLA list 60 days from today's date, thus reducing the number of CERCLA hazardous substances to 724.

Note 2: RQs for 273 hazardous substances were proposed for adjustment on March 16, 1987 in a Notice of Proposed Rulemaking (NPRM). RQs for 254 of these 273 hazardous substances are being promulgated in this rule. RQs for six of these 273 hazardous substances are promulgated elsewhere in today's Federal Register. These six hazardous substances are: 1,4-dioxane, 2-ethoxyethanol, ethylene oxide, 2-nitropropane, perchloroethylene, and saccharin. As explained in Section II.C.2.i of this preamble, EPA will also address the RQs for the remaining 13 of the 273 hazardous substances in a future action.

Note 3: These four hazardous substances (waste streams K123, K124, K125, and K126) were listed in a final rule that became effective on April 24, 1987 (see 51 FR 37725, October 24, 1986). Although RQs for these four waste streams were not proposed in the March 16, 1987 NPRM, the RQ for the only hazardous substance in these waste streams (ethylene thiourea), which determines the RQ for the waste streams themselves, was proposed for adjustment in the March 16, 1987 NPRM. For further discussion of the RQ adjustments for these four hazardous waste streams, see Section II.C.1 of this preamble.

List of Subjects

40 CFR Part 116

Hazardous substances, Penalties, Water pollution control.

40 CFR Part 117

Hazardous substances, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Oil pollution, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: June 26, 1989.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for Part 302 is revised to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

2. Section 302.4 is amended by revising Table 302.4 and Appendix A to Table 302.4 to read as set forth below. The appropriate footnotes to Table 302.4 are republished without change and footnote "# #" is revised as set forth below. Included in these amendments to Table 302.4 and Appendix A to Table 302.4 is the removal of the entry for "Ammonium thiosulfate," CASRN 7783188, as well as the removal of the term "Kelthane," CASRN 115322, and the insertion in its place of the term "Dicofol." The note preceding Table 302.4 is republished without change.

§ 302.4 [Amended]

* * * * *

Note—The numbers under the column headed "CASRN" are the Chemical Abstracts Service Registry Numbers for each hazardous substance. Other names by which each hazardous substance is identified in other statutes and their implementing regulations are provided in the "Regulatory Synonyms" column. The "Statutory RQ" column lists the RQs for hazardous substances established by section 102 of CERCLA. The "Statutory Code" column indicates the statutory source for designating each substance as a CERCLA hazardous substance: "1" indicates that the statutory source is section 311(b)(4) of the Clean Water Act, "2" indicates that the source is section 307(a) of the Clean Water Act, "3" indicates that the source is section 112 of the Clean Air Act, and "4" indicates that the source is RCRA section 3001. The "RCRA Waste Number" column provides the waste identification numbers assigned to various substances by RCRA regulations. The column headed "Category" lists the code letters "X," "A," "B," "C," and "D," which are associated with reportable quantities of 1, 10, 100, 1000, and 5000 pounds, respectively. The "Pounds (kg)" column provides the reportable quantity adjustment for each hazardous substance in pounds and kilograms.

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Acenaphthene	83329		1*	2		B	100 (45.4)
Acenaphthylene	208968		1*	2		D	5000 (2270)
Acetaldehyde	75070	Ethanal	1000	1,4	U001	C	1000 (454)
Acetaldehyde, chloro-	107200	Chloroacetaldehyde	1*	4	P023	C	1000 (454)
Acetaldehyde, trichloro-	75876	Chloral	1*	4	U034	D	5000 (2270)
Acetamide, N-(aminothioxomethyl)-	591082	1-Acetyl-2-thiourea	1*	4	P002	C	1000 (454)
Acetamide, N-(4-ethoxyphenyl)-	62442	Phenacetin	1*	4	U187	B	100 (45.4)
Acetamide, 2-fluoro-	640197	Fluoroacetamide	1*	4	P057	B	100 (45.4)
Acetamide, N-9H-fluoren-2-yl-	53963	2-Acetylaminofluorene	1*	4	U005	X	1 (0.454)
Acetic acid	64197		1000	1		D	5000 (2270)
Acetic acid (2,4-dichlorophenoxy)-	94757	2,4-D Acid 2,4-D, salts and esters	100	1,4	U240	B	100 (45.4)
Acetic acid, lead(2+) salt	301042	Lead acetate	5000	1,4	U144		#
Acetic acid, thallium(1+) salt	563688	Thallium(I) acetate	1*	4	U214	B	100 (45.4)
Acetic acid, (2,4,5-trichlorophenoxy)	93765	2,4,5-T 2,4,5-T acid	100	1,4	U232	C	1000 (454)
Acetic acid, ethyl ester	141786	Ethyl acetate	1*	4	U112	D	5000 (2270)
Acetic acid, fluoro-, sodium salt	62748	Fluoroacesic acid, sodium salt	1*	4	P058	A	10 (4.54)
Acetic anhydride	108247		1000	1		D	5000 (2270)
Acetone	67641	2-Propanone	1*	4	U002	D	5000 (2270)
Acetone cyanohydrin	75865	Propanenitrile, 2-hydroxy-2-methyl-2-Methyllactonitrile	10	1,4	P069	A	10 (4.54)
Acetonitrile	75058		1*	4	U003	D	5000 (2270)
Acetophenone	98862	Ethanone, 1-phenyl-	1*	4	U004	D	5000 (2270)
2-Acetylaminofluorene	53963	Acetamide, N-9H-fluoren-2-yl-	1*	4	U005	X	1 (0.454)
Acetyl bromide	506967		5000	1		D	5000 (2270)
Acetyl chloride	75365		5000	1,4	U006	D	5000 (2270)
1-Acetyl-2-thiourea	591082	Acetamide, N-(aminothioxomethyl)-	1*	4	P002	C	1000 (454)
Acrolein	107028	2-Propenal	1	1,2,4	P003	X	1 (0.454)
Acrylamide	79061	2-Propenamide	1*	4	U007	D	5000 (2270)
Acrylic acid	79107	2-Propenoic acid	1*	4	U008	D	5000 (2270)
Acrylonitrile	107131	2-Propenenitrile	100	1,2,4	U009	B	100 (45.4)
Adipic acid	124049		5000	1		D	5000 (2270)
Aldicarb	116063	Propanal, 2-methyl-2-(methylthio)-,O-[(methylamino)carbonyl]oxime	1*	4	P070	X	1 (0.454)
Aldrin	309002	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha, 4alpha,4abeta,5alpha,8alpha,8abeta)-	1	1,2,4	P004	X	1 (0.454)
Allyl alcohol	107186	2-Propen-1-ol	100	1,4	P005	B	100 (45.4)
Allyl chloride	107051		1000	1		C	1000 (454)
Aluminum phosphide	20859738		1*	4	P006	B	100 (45.4)
Aluminum sulfate	10043013		5000	1		D	5000 (2270)
5-(Aminomethyl) 3-isoxazolol	2763964	Muscimol 3(2H)-Isoxazolone, 5-(aminomethyl)-	1*	4	P007	C	1000 (454)
4-Aminopyridine	504245	4-Pyridinamine	1*	4	P008	C	1000 (454)
Amitrole	61825	1H-1,2,4-Triazol-3-amine	1*	4	U011	A	10 (4.54)
Ammonia	7664417		100	1		B	100 (45.4)
Ammonium acetate	631618		5000	1		D	5000 (2270)
Ammonium benzoate	1863634		5000	1		D	5000 (2270)
Ammonium bicarbonate	1066337		5000	1		D	5000 (2270)
Ammonium bichromate	7789095		1000	1		A	10 (4.54)
Ammonium bifluoride	1341497		5000	1		B	100 (45.4)
Ammonium bisulfite	10192300		5000	1		D	5000 (2270)
Ammonium carbamate	1111780		5000	1		D	5000 (2270)
Ammonium carbonate	506876		5000	1		D	5000 (2270)
Ammonium chloride	12125029		5000	1		D	5000 (2270)
Ammonium chromate	7788989		1000	1		A	10 (4.54)
Ammonium citrate, dibasic	3012655		5000	1		D	5000 (2270)
Ammonium fluoborate	13826830		5000	1		D	5000 (2270)
Ammonium fluoride	12125018		5000	1		B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Ammonium hydroxide	1336216		1000	1		C	1000 (454)
Ammonium oxalate	6009707		5000	1		D	5000 (2270)
	5972736						
	14258492						
Ammonium picrate	131748	Phenol, 2,4,6-trinitro-, ammonium salt	1*	4	P009	A	10 (4.54)
Ammonium silicofluoride	16919190		1000	1		C	1000 (454)
Ammonium sulfamate	7773060		5000	1		D	5000 (2270)
Ammonium sulfide	12135761		5000	1		B	100 (45.4)
Ammonium sulfite	10196040		5000	1		D	5000 (2270)
Ammonium tartrate	14307438		5000	1		D	5000 (2270)
	3164292						
Ammonium thiocyanate	1762954		5000	1		D	5000 (2270)
Ammonium vanadate	7803556	Vanadic acid, ammonium salt	1*	4	P119	C	1000 (454)
Amyl acetate	628637		1000	1		D	5000 (2270)
iso-Amyl acetate	123922						
sec-Amyl acetate	626380						
tert-Amyl acetate	625161						
Aniline	62533	Benzenamine	1000	1,4	U012	D	5000 (2270)
Anthracene	120127		1*	2		D	5000 (2270)
Antimony ††	7440360		1*	2		D	5000 (2270)
ANTIMONY AND COMPOUNDS	N.A.		1*	2			**
Antimony pentachloride	7647189		1000	1		C	1000 (454)
Antimony potassium tartrate	28300745		1000	1		B	100 (45.4)
Antimony tribromide	7789619		1000	1		C	1000 (454)
Antimony trichloride	10025919		1000	1		C	1000 (454)
Antimony trifluoride	7783564		1000	1		C	1000 (454)
Antimony trioxide	1309644		5000	1		C	1000 (454)
Argentate(1-), bis(cyano-C)-, potassium	506616	Potassium silver cyanide	1*	4	P099	X	1 (0.454)
Aroclor 1016	12674112	POLYCHLORINATED BIPHENYLS (PCBs)	10	1,2		X	1 (0.454)
Aroclor 1221	11104282	POLYCHLORINATED BIPHENYLS (PCBs)	10	1,2		X	1 (0.454)
Aroclor 1232	11141165	POLYCHLORINATED BIPHENYLS (PCBs)	10	1,2		X	1 (0.454)
Aroclor 1242	53469219	POLYCHLORINATED BIPHENYLS (PCBs)	10	1,2		X	1 (0.454)
Aroclor 1248	12672296	POLYCHLORINATED BIPHENYLS (PCBs)	10	1,2		X	1 (0.454)
Aroclor 1254	11097691	POLYCHLORINATED BIPHENYLS (PCBs)	10	1,2		X	1 (0.454)
Aroclor 1260	11096825	POLYCHLORINATED BIPHENYLS (PCBs)	10	1,2		X	1 (0.454)
Arsenic ††	7440382		1*	2,3		X	1 (0.454)
Arsenic acid	1327522	Arsenic acid H3AsO4	1*	4	P010	X	1 (0.454)
	7778394						
Arsenic acid H3AsO4	1327522	Arsenic acid	1*	4	P010	X	1 (0.454)
	7778394						
ARSENIC AND COMPOUNDS	N.A.		1*	2			**
Arsenic disulfide	1303328		5000	1		X	1 (0.454)
Arsenic oxide As2O3	1327533	Arsenic trioxide	5000	1,4	P012	X	1 (0.454)
Arsenic oxide As2O5	1303282	Arsenic pentoxide	5000	1,4	P011	X	1 (0.454)
Arsenic pentoxide	1303282	Arsenic oxide As2O5	5000	1,4	P011	X	1 (0.454)
Arsenic trichloride	7784341		5000	1		X	1 (0.454)
Arsenic trioxide	1327533	Arsenic oxide As2O3	5000	1,4	P012	X	1 (0.454)
Arsenic trisulfide	1303339		5000	1		X	1 (0.454)
Arsine, diethyl-	692422	Diethylarsine	1*	4	P038	X	1 (0.454)
Arsinic acid, dimethyl-	75605	Cacodylic acid	1*	4	U136	X	1 (0.454)
Arsonous dichloride, phenyl-	696286	Dichlorophenylarsine	1*	4	P036	X	1 (0.454)
Asbestos †††	1332214		1*	2,3		X	1 (0.454)
Auramine	492808	Benzenamine, 4,4'-carbonimidoylbis (N,N-dimethyl-	1*	4	U014	B	100 (45.4)
Azaserine	115026	L-Serine, diazoacetate (ester)	1*	4	U015	X	1 (0.454)
Aziridine	151564	Ethylenimine	1*	4	P054	X	1 (0.454)
Aziridine, 2-methyl-	75558	1,2-Propylenimine	1*	4	P067	X	1 (0.454)
Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione,6-amino-8-[[(aminocarbonyloxy]methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-,[1aS-(1aalpha,8beta,8aalpha,8balpha)]-	50077	Mitomycin C	1*	4	U010	A	10 (4.54)
Barium cyanide	542621		10	1,4	P013	A	10 (4.54)
Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	56495	3-Methylcholanthrene	1*	4	U157	A	10 (4.54)
Benz[c]acridine	225514		1*	4	U016	B	100 (45.4)
Benzal chloride	98873	Benzene, dichloromethyl-	1*	4	U017	D	5000 (2270)
Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	23950585	Pronamide	1*	4	U192	D	5000 (2270)
Benz[a]anthracene	56553	Benzo[a]anthracene 1,2-Benzanthracene	1*	2,4	U018	A	10 (4.54)
1,2-Benzanthracene	56553	Benz[a]anthracene Benzo[a]anthracene	1*	2,4	U018	A	10 (4.54)
Benz[a]anthracene, 7,12-dimethyl-	57976	7,12-Dimethylbenz[a]anthracene	1*	4	U094	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Benzenamine	62533	Aniline	1000	1,4	U012	D	5000 (2270)
Benzenamine, 4,4'-carbonimidoylbis (N,N-dimethyl-	492808	Auramine	1*	4	U014	B	100 (45.4)
Benzenamine, 4-chloro-	106478	p-Chloroaniline	1*	4	P024	C	1000 (454)
Benzenamine, 4-chloro-2-methyl-, hydrochloride	3165933	4-Chloro-o-toluidine, hydrochloride	1*	4	U049	B	100 (45.4)
Benzenamine, N,N-dimethyl-4-(phenylazo-)	60117	p-Dimethylaminoazobenzene	1*	4	U093	A	10 (4.54)
Benzenamine, 2-methyl-	95534	o-Toluidine	1*	4	U328	B	100 (45.4)
Benzenamine, 4-methyl-	106490	p-Toluidine	1*	4	U353	B	100 (45.4)
Benzenamine, 4,4'-methylenebis(2-chloro-	101144	4,4'-Methylenebis(2-chloroaniline)	1*	4	U158	A	10 (4.54)
Benzenamine, 2-methyl-, hydrochloride	636215	o-Toluidine hydrochloride	1*	4	U222	B	100 (45.4)
Benzenamine, 2-methyl-5-nitro-	99558	5-Nitro-o-toluidine	1*	4	U181	B	100 (45.4)
Benzenamine, 4-nitro-	100016	p-Nitroaniline	1*	4	P077	D	5000 (2270)
Benzene	71432		1000	1,2,3,4	U109	A	10 (4.54)
Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester	510156	Chlorobenzilate	1*	4	U038	A	10 (4.54)
Benzene, 1-bromo-4-phenoxy-	101553	4-Bromophenyl phenyl ether	1*	2,4	U030	B	100 (45.4)
Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-	305033	Chlorambucil	1*	4	U035	A	10 (4.54)
Benzene, chloro-	108907	Chlorobenzene	100	1,2,4	U037	B	100 (45.4)
Benzene, chloromethyl-	100447	Benzyl chloride	100	1,4	P028	B	100 (45.4)
Benzenediamin, ar-methyl-	95807	Toluenediamine	1*	4	U221	A	10 (4.54)
	496720						
	823405						
1,2-Benzenedicarboxylic acid, dioctyl ester	117840	Di-n-octyl phthalate	1*	2,4	U107	D	5000 (2270)
1,2-Benzenedicarboxylic acid, [bis(2-ethylhexyl)]-ester.	117817	Bis (2-ethylhexyl)phthalate Diethylhexyl phthalate	1*	2,4	U028	B	100 (45.4)
1,2-Benzenedicarboxylic acid, dibutyl ester	84742	Di-n-butyl phthalate Dibutyl phthalate n-Butyl phthalate	100	1,2,4	U069	A	10 (4.54)
1,2-Benzenedicarboxylic acid, diethyl ester	84662	Diethyl phthalate	1*	2,4	U088	C	1000 (454)
1,2-Benzenedicarboxylic acid, dimethyl ester	131113	Dimethyl phthalate	1*	2,4	U102	D	5000 (2270)
Benzene, 1,2-dichloro-	95501	o-Dichlorobenzene 1,2-Dichlorobenzene	100	1,2,4	U070	B	100 (45.4)
Benzene, 1,3-dichloro-	541731	m-Dichlorobenzene 1,3-Dichlorobenzene	1*	2,4	U071	B	100 (45.4)
Benzene, 1,4-dichloro-	106467	p-Dichlorobenzene 1,4-Dichlorobenzene	100	1,2,4	U072	B	100 (45.4)
Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro-	72548	DDD TDE 4,4' DDD	1	1,2,4	U060	X	1 (0.454)
Benzene, dichloromethyl-	98873	Benzal chloride	1*	4	U017	D	5000 (2270)
Benzene, 1,3-diisocyanatomethyl-	584849	Toluene diisocyanate	1*	4	U223	B	100 (45.4)
	91087						
	26471625						
Benzene, dimethyl	1330207	Xylene (mixed)	1000	1,4	U239	C	1000 (454)
m-Benzene, dimethyl	108383	m-Xylene					
o-Benzene, dimethyl	95476	o-Xylene					
p-Benzene, dimethyl	106423	p-Xylene					
1,3-Benzenediol	108463	Resorcinol	1000	1,4	U201	D	5000 (2270)
1,2-Benzenediol,4-[1-hydroxy-2-(methylamino)ethyl]-	51434	Epinephrine	1*	4	P042	C	1000 (454)
Benzeneethanamine, alpha,alpha-dimethyl-	122098	alpha,alpha-Dimethylphenethylamine	1*	4	P046	D	5000 (2270)
Benzene, hexachloro-	118741	Hexachlorobenzene	1*	2,4	U127	A	10 (4.54)
Benzene, hexahydro-	110827	Cyclohexane	1000	1,4	U056	C	1000 (454)
Benzene, hydroxy-	108952	Phenol	1000	1,2,4	U188	C	1000 (454)
Benzene, methyl-	108883	Toluene	1000	1,2,4	U220	C	1000 (454)
Benzene, 2-methyl-1,3-dinitro-	606202	2,6-Dinitrotoluene	1000	1,2,4	U106	B	100 (45.4)
Benzene, 1-methyl-2,4-dinitro-	121142	2,4-Dinitrotoluene	1000	1,2,4	U105	A	10 (4.54)
Benzene, 1-methylethyl-	98828	Cumene	1*	4	U055	D	5000 (2270)
Benzene, nitro-	98953	Nitrobenzene	1000	1,2,4	U169	C	1000 (454)
Benzene, pentachloro-	608935	Pentachlorobenzene	1*	4	U183	A	10 (4.54)
Benzene, pentachloronitro-	82688	Pentachloronitrobenzene (PCNB)	1*	4	U185	B	100 (45.4)
Benzenesulfonic acid chloride	98099	Benzenesulfonyl chloride	1*	4	U020	B	100 (45.4)
Benzenesulfonyl chloride	98099	Benzenesulfonic acid chloride	1*	4	U020	B	100 (45.4)
Benzene, 1,2,4,5-tetrachloro-	95943	1,2,4,5-Tetrachlorobenzene	1*	4	U207	D	5000 (2270)
Benzenethiol	108985	Thiophenol	1*	4	P014	B	100 (45.4)
Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-	50293	DDT 4,4'DDT	1	1,2,4	U061	X	1 (0.454)
Benzene, 1,1'-(2,2,2-trichloroethylidene) bis[4-methoxy-	72435	Methoxychlor	1	1,4	U247	X	1 (0.454)
Benzene, (trichloromethyl)-	98077	Benzotrichloride	1*	4	U023	A	10 (4.54)
Benzene, 1,3,5-trinitro-	99354	1,3,5-Trinitrobenzene	1*	4	U234	A	10 (4.54)
Benzidine	92875	(1,1'-Biphenyl)-4,4'diamine	1*	2,4	U021	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide	81072	Saccharin and salts	1*	4	U202	B	100 (45.4)
Benzo[a]anthracene	56553	Benz[a]anthracene 1,2-Benzanthracene	1*	2,4	U018	A	10 (4.54)
Benzo[b]fluoranthene	205992		1*	2		X	1 (0.454)
Benzo(k)fluoranthene	207089		1*	2		D	5000 (2270)
Benzo[j,k]fluorene	206440	Fluoranthene	1*	2,4	U120	B	100 (45.4)
1,3-Benzodioxole, 5-)1-propenyl)-	120581	Isosafrole	1*	4	U141	B	100 (45.4)
1,3-Benzodioxole,5-(2-propenyl)-	94597	Safrole	1*	4	U203	B	100 (45.4)
1,3-Benzodioxole, 5-propyl-	94586	Dihydrosafrole	1*	4	U090	A	10 (4.54)
Benzoic acid	65850		5000	1		D	5000 (2270)
Benzonitrile	100470		1000	1		D	5000 (2270)
Benzo [rst]pentaphene	189559	Dibenz[a,i]pyrene	1*	4	U064	A	10 (4.54)
Benzo[ghi]perylene	191242		1*	2		D	5000 (2270)
2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, & salts, when present at concentrations greater than 0.3%	81812	Warfarin, & salts, when present at concentrations greater than 0.3%	1*	4	P001	B	100 (45.4)
Benzo[a]pyrene	50328	3,4-Benzopyrene	1*	2,4	U022	X	1 (0.454)
3,4-Benzopyrene	50328	Benzo[a]pyrene	1*	2,4	U022	X	1 (0.454)
p-Benzoquinone	106514	2,5-Cyclohexadiene-1,4-dione	1*	4	U197	A	10 (4.54)
Benzotrichloride	98077	Benzene, (trichloromethyl)-	1*	4	U023	A	10 (4.54)
Benzoyl chloride	98884		1000	1		C	1000 (454)
1,2-Benzphenanthrene	218019	Chrysene	1*	2,4	U050	B	100 (45.4)
Benzyl chloride	100447	Benzene, chloromethyl-	100	1,4	P028	B	100 (45.4)
Beryllium ††	7440417	Beryllium dust ††	1*	2,3,4	P015	A	10 (4.54)
BERYLLIUM AND COMPOUNDS	N.A.		1*	2			**
Beryllium chloride	7787475		5000	1		X	1 (0.454)
Beryllium dust ††	7440417	Beryllium ††	1*	2,3,4	P015	A	10 (4.54)
Beryllium fluoride	7787497		5000	1		X	1 (0.454)
Beryllium nitrate	13597994		5000	1		X	1 (0.454)
	7787555						
alpha—BHC	319846		1*	2		A	10 (4.54)
beta—BHC	319857		1*	2		X	1 (0.454)
delta—BHC	319868		1*	2		X	1 (0.454)
gamma—BHC	58899	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1alpha, 2alpha,3beta,4alpha,5alpha,6beta)- Hexachlorocyclohexane (gamma isomer) Lindane	1	1,2,4	U129	X	1 (0.454)
2,2'-Bioxirane	1464535	1,2:3,4-Diepoxybutane	1*	4	U085	A	10 (4.54)
(1,1'-Biphenyl)-4,4'diamine	92875	Benzidine	1*	2,4	U021	X	1 (0.454)
[1,1'-Biphenyl]-4,4'diamine,3,3'dichloro-	91941	3,3'-Dichlorobenzidine	1*	2,4	U073	X	1 (0.454)
[1,1'-Biphenyl]-4,4'diamine,3,3'dimethoxy-	119904	3,3'-Dimethoxybenzidine	1*	4	U091	B	100 (45.4)
[1,1'Biphenyl]-4,4'-diamine,3,3'-dimethyl-	119937	3,3'-Dimethylbenzidine	1*	4	U095	A	10 (4.54)
Bis (2-chloroethyl) ether	111444	Dichloroethyl ether Ethane,1,1'-oxybis[2-chloro-	1*	2,4	U025	A	10 (4.54)
Bis(2-chloroethoxy) methane	111911	Dichloromethoxy ethane Ethane, 1,1'-[methylenebis(oxy)]bis(2-chloro-	1*	2,4	U024	C	1000 (454)
Bis (2-ethylhexyl)phthalate	117817	Diethylhexyl phthalate 1,2-Benzenedicarboxylic acid, [bis(2-ethylhexyl)] ester	1*	2,4	U028	B	100 (45.4)
Bromoacetone	598312	2-Propanone, 1-bromo-	1*	4	P017	C	1000 (454)
Bromoform	75252	Methane, tribromo-	1*	2,4	U225	B	100 (45.4)
4-Bromophenyl phenyl ether	101553	Benzene, 1-bromo-4-phenoxy-	1*	2,4	U030	B	100 (45.4)
Brucine	357573	Strychnidin-10-one, 2,3-dimethoxy-	1*	4	P018	B	100 (45.4)
1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	87683	Hexachlorobutadiene	1*	2,4	U128	X	1 (0.454)
1-Butanamine, N-butyl-N-nitroso-	924163	N-Nitrosodi-n-butylamine	1*	4	U172	A	10 (4.54)
1-Butanol	71363	n-Butyl alcohol	1*	4	U031	D	5000 (2270)
2-Butanone	78933	Methyl ethyl ketone (MEK)	1*	4	U159	D	5000 (2270)
2-Butanone peroxide	1338234	Methyl ethyl ketone peroxide	1*	4	U160	A	10 (4.54)
2-Butanone, 3,3-dimethyl-1-(methylthio)-, O[(methylamino)carbonyl] oxime.	39196184	Thiofanox	1*	4	P045	B	100 (45.4)
2-Butenal	123739 4170303	Crotonaldehyde	100	1,4	U053	B	100 (45.4)
2-Butene, 1,4-dichloro-	764410	1,4-Dichloro-2-butene	1*	4	U074	X	1 (0.454)
2-Butenoic acid, 2-methyl-, 7[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*,3R*),7aalpha]]-	303344	Lasiocarpine	1*	4	U143	A	10 (4.54)
Butyl acetate	123864		5000	1		D	5000 (2270)
iso-Butyl acetate	110190						
sec-Butyl acetate	105464						
tert-Butyl acetate	540885						

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
n-Butyl alcohol	71363	1-Butanol	1*	4	U031	D	5000 (2270)
Butylamine	109739		1000	1		C	1000 (454)
iso-Butylamine	78819						
sec-Butylamine	513495						
	13952846						
tert-Butylamine	75649						
Butyl benzyl phthalate	85687		1*	2		B	100 (45.4)
n-Butyl phthalate	84742	Di-n-butyl phthalate Dibutyl phthalate 1,2-Benzenedicarboxylic acid, dibutyl ester	100	1,2,4	U069	A	10 (4.54)
Butyric acid	107926		5000	1		D	5000 (2270)
iso-Butyric acid	79312						
Cacodylic acid	75605	Arsinic acid, dimethyl-	1*	4	U136	X	1 (0.454)
Cadmium ††	7440439		1*	2		A	10 (4.54)
Cadmium acetate	543906		100	1		A	10 (4.54)
CADMIUM AND COMPOUNDS	N.A.		1*	2			**
Cadmium bromide	7789426		100	1		A	10 (4.54)
Cadmium chloride	10108642		100	1		A	10 (4.54)
Calcium arsenate	7778441		1000	1		X	1 (0.454)
Calcium arsenite	52740166		1000	1		X	1 (0.454)
Calcium carbide	75207		5000	1		A	10 (4.54)
Calcium chromate	13765190	Chromic acid H2CrO4, calcium salt	1000	1,4	U032	A	10 (4.54)
Calcium cyanide	592018	Calcium cyanide Ca(CN)2	10	1,4	P021	A	10 (4.54)
Calcium cyanide Ca(CN)2	592018	Calcium cyanide	10	1,4	P021	A	10 (4.54)
Calcium dodecylbenzenesulfonate	26264062		1000	1		C	1000 (454)
Calcium hypochlorite	7778543		100	1		A	10 (4.54)
Camphene, octachloro-	8001352	Toxaphene	1	1,2,4	P123	X	1 (0.454)
Captan	133062		10	1		A	10 (4.54)
Carbamic acid, ethyl ester	51796	Ethyl carbamate (urethane)	1*	4	U238	B	100 (45.4)
Carbamic acid, methylnitroso-, ethyl ester	615532	N-Nitroso-N-methylurethane	1*	4	U178	X	1 (0.454)
Carbamic chloride, dimethyl-	79447	Dimethylcarbamoyl chloride	1*	4	U097	X	1 (0.454)
Carbamodithioic acid, 1,2-ethanediylbis, salts & esters	111546	Ethylenebisdithiocarbamic acid, salts & esters	1*	4	U114	D	5000 (2270)
Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester	2303164	Diallate	1*	4	U062	B	100 (45.4)
Carbaryl	63252		100	1		B	100 (45.4)
Carbofuran	1563662		10	1		A	10 (4.54)
Carbon disulfide	75150		5000	1,4	P022	B	100 (45.4)
Carbon oxyfluoride	353504	Carbonic difluoride	1*	4	U033	C	1000 (454)
Carbon tetrachloride	56235	Methane, tetrachloro-	5000	1,2,4	U211	A	10 (4.54)
Carbonic acid, dithallium(1+) salt	6533739	Thallium(I) carbonate	1*	4	U215	B	100 (45.4)
Carbonic dichloride	75445	Phosgene	5000	1,4	P095	A	10 (4.54)
Carbonic difluoride	353504	Carbon oxyfluoride	1*	4	U033	C	1000 (454)
Carbonochloridic acid, methyl ester	79221	Methyl chlorocarbonate Methyl chloroformate	1*	4	U156	C	1000 (454)
Chloral	75876	Acetaldehyde, trichloro-	1*	4	U034	D	5000 (2270)
Chlorambucil	305033	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-	1*	4	U035	A	10 (4.54)
Chlordane	57749	Chlordane, alpha & gamma isomers Chlordane, technical 4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	1	1,2,4	U036	X	1 (0.454)
CHLORDANE (TECHNICAL MIXTURE AND METABOLITES)	N.A.		1*	2			**
Chlordane, alpha & gamma isomers	57749	Chlordane Chlordane, technical 4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	1	1,2,4	U036	X	1 (0.454)
Chlordane, technical	57749	Chlordane Chlordane, alpha & gamma isomers 4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	1	1,2,4	U036	X	1 (0.454)
CHLORINATED BENZENES	N.A.		1*	2			**
CHLORINATED ETHANES	N.A.		1*	2			**
CHLORINATED NAPHTHALENE	N.A.		1*	2			**
CHLORINATED PHENOLS	N.A.		1*	2			**
Chlorine	7782505		10	1		A	10 (4.54)
Chlornaphazine	494031	Naphthalenamine, N,N'-bis(2-chloroethyl)-	1*	4	U026	B	100 (45.4)
Chloroacetaldehyde	107200	Acetaldehyde, chloro-	1*	4	P023	C	1000 (454)
CHLOROALKYL ETHERS	N.A.		1*	2			**
p-Chloroaniline	106478	Benzenamine, 4-chloro-	1*	4	P024	C	1000 (454)
Chlorobenzene	108907	Benzene, chloro-	100	1,2,4	U037	B	100 (45.4)
Chlorobenzilate	510156	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester	1*	4	U038	A	10 (4.54)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory RQ	Statutory Code †	Statutory RCRA Waste Number	Final RQ Category	Final RQ Pounds (Kg)
4-Chloro-m-cresol	59507	p-Chloro-m-cresol	1*	2,4	U039	D	5000 (2270)
p-Chloro-m-cresol	59507	Phenol, 4-chloro-3-methyl- Phenol, 4-chloro-3-methyl- 4-Chloro-m-cresol	1*	2,4	U039	D	5000 (2270)
Chlorodibromomethane	124481		1*	2		B	100 (45.4)
Chloroethane	75003		1*	2		B	100 (45.4)
2-Chloroethyl vinyl ether	110758	Ethene, 2-chloroethoxy-	1*	2,4	U042	C	1000 (454)
Chloroform	67663	Methane, trichloro-	5000	1,2,4	U044	A	10 (4.54)
Chloromethyl methyl ether	107302	Methane, chloromethoxy-	1*	4	U046	A	10 (4.54)
beta-Chloronaphthalene	91587	Naphthalene, 2-chloro- 2-Chloronaphthalene	1*	2,4	U047	D	5000 (2270)
2-Chloronaphthalene	91587	beta-Chloronaphthalene Naphthalene, 2-chloro-	1*	2,4	U047	D	5000 (2270)
2-Chlorophenol	95578	o-Chlorophenol Phenol, 2-chloro-	1*	2,4	U048	B	100 (45.4)
o-Chlorophenol	95578	Phenol, 2-chloro- 2-Chlorophenol	1*	2,4	U048	B	100 (45.4)
4-Chlorophenyl phenyl ether	7005723		1*	2		D	5000 (2270)
1-(o-Chlorophenyl)thiourea	5344821	Thiourea, (2-chlorophenyl)-	1*	4	P026	B	100 (45.4)
3-Chloropropionitrile	542767	Propanenitrile, 3-chloro-	1*	4	P027	C	1000 (454)
Chlorosulfonic acid	7790945		1000	1		C	1000 (454)
4-Chloro-o-toluidine, hydrochloride	3165933	Benzenamine, 4-chloro-2-methyl-, hydrochloride	1*	4	U049	B	100 (45.4)
Chlorpyrifos	2921882		1	1		X	1 (0.454)
Chromic acetate	1066304		1000	1		C	1000 (454)
Chromic acid	11115745 7738945		1000	1		A	10 (4.54)
Chromic acid H2CrO4, calcium salt	13765190	Calcium chromate	1000	1,4	U032	A	10 (4.54)
Chromic sulfate	10101538		1000	1		C	1000 (454)
Chromium ††	7440473		1*	2		D	5000 (2270)
CHROMIUM AND COMPOUNDS	N.A.		1*	2			**
Chromous chloride	10049055		1000	1		C	1000 (454)
Chrysene	218019	1,2-Benzphenanthrene	1*	2,4	U050	B	100 (45.4)
Cobaltous bromide	7789437		1000	1		C	1000 (454)
Cobaltous formate	544183		1000	1		C	1000 (454)
Cobaltous sulfamate	14017415		1000	1		C	1000 (454)
Coke Oven Emissions	N.A.		1*	3		X	1 (0.454)
Copper cyanide CuCN	544923	Copper cyanide	1*	4	P029	A	10 (4.54)
Copper ††	7440508		1*	2		D	5000 (2270)
COPPER AND COMPOUNDS	N.A.		1*	2			**
Copper cyanide	544923	Copper cyanide CuCN	1*	4	P029	A	10 (4.54)
Coumaphos	56724		10	1		A	10 (4.54)
Creosote	8001589		1*	4	U051	X	1 (0.454)
Cresol(s)	1319773	Cresylic acid Phenol, methyl-	1000	1,4	U052	C	1000 (454)
m-Cresol	108394	m-Cresylic acid					
o-Cresol	95487	o-Cresylic acid					
p-Cresol	106445	p-Cresylic acid					
Cresylic acid	1319773	Cresol(s) Phenol, methyl-	1000	1,4	U052	C	1000 (454)
m-Cresol	108394	m-Cresylic acid					
o-Cresol	95487	o-Cresylic acid					
p-Cresol	106445	p-Cresylic acid					
Crotonaldehyde	123739 4170303	2-Butenal	100	1,4	U053	B	100 (45.4)
Cumene	98828	Benzene, 1-methylethyl-	1*	4	U055	D	5000 (2270)
Cupric acetate	142712		100	1		B	100 (45.4)
Cupric acetoarsenite	12002038		100	1		X	1 (0.454)
Cupric chloride	7447394		10	1		A	10 (4.54)
Cupric nitrate	3251238		100	1		B	100 (45.4)
Cupric oxalate	5893663		100	1		B	100 (45.4)
Cupric sulfate	7758987		10	1		A	10 (4.54)
Cupric sulfate, ammoniated	10380297		100	1		B	100 (45.4)
Cupric tartrate	815827		100	1		B	100 (45.4)
CYANIDES	N.A.		1*	2			**
Cyanides (soluble salts and complexes) not otherwise specified	57125		1*	4	P030	A	10 (4.54)
Cyanogen	460195	Ethanedinitrile	1*	4	P031	B	100 (45.4)
Cyanogen bromide	506683	Cyanogen bromide (CN)Br	1*	4	U246	C	1000 (454)
Cyanogen bromide (CN)Br	506683	Cyanogen bromide	1*	4	U246	C	1000 (454)
Cyanogen chloride	506774	Cyanogen chloride (CN)Cl	10	1,4	P033	A	10 (4.54)
Cyanogen chloride (CN)Cl	506774	Cyanogen chloride	10	1,4	P033	A	10 (4.54)
2,5-Cyclohexadiene-1,4-dione	106514	p-Benzoquinone	1*	4	U197	A	10 (4.54)
Cyclohexane	110827	Benzene, hexahydro-	1000	1,4	U056	C	1000 (454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory RQ	Statutory Code †	Statutory RCRA Waste Number	Final RQ Category	Final RQ Pounds (Kg)
Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha, 6beta)-	58899	gamma—BHC Hexachlorocyclohexane (gamma isomer) Lindane	1	1,2,4	U129	X	1 (0.454)
Cyclohexanone	108941		1*	4	U057	D	5000 (2270)
2-Cyclohexyl-4,6-dinitrophenol	131895	Phenol, 2-cyclohexyl-4,6-dinitro-	1*	4	P034	B	100 (45.4)
1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	77474	Hexachlorocyclopentadiene	1	1,2,4	U130	A	10 (4.54)
Cyclophosphamide	50180	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-,2-oxide	1*	4	U058	A	10 (4.54)
2,4-D Acid	94757	Acetic acid (2,4-dichlorophenoxy)-2,4-D, salts and esters	100	1,4	U240	B	100 (45.4)
2,4-D Ester	94111 94791 94804 1320189 1928387 1928616 1929733 2971382 25168267 53467111		100	1		B	100 (45.4)
2,4-D, salts and esters	94757	Acetic acid (2,4-dichlorophenoxy)-2,4-D Acid	100	1,4	U240	B	100 (45.4)
Daunomycin	20830813	5,12-Naphthacenedione, 8-acetyl-10-[3-amino-2,3,6- trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10- tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-	1*	4	U059	A	10 (4.54)
DDD	72548	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro- TDE 4,4' DDD	1	1,2,4	U060	X	1 (0.454)
4,4' DDD	72548	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro- DDD TDE	1	1,2,4	U060	X	1 (0.454)
DDE	72559	4,4' DDE	1*	2		X	1 (0.454)
4,4' DDE	72559	DDE	1*	2		X	1 (0.454)
DDT	50293	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro- 4,4'DDT	1	1,2,4	U061	X	1 (0.454)
4,4'DDT	50293	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro- DDT	1	1,2,4	U061	X	1 (0.454)
DDT AND METABOLITES	N.A.		1*	2			**
Diallate	2303164	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester	1*	4	U062	B	100 (45.4)
Diazinon	333415		1	1		X	1 (0.454)
Dibenz[a,h]anthracene	53703	Dibenzo[a,h]anthracene 1,2:5,6-Dibenzanthracene	1*	2,4	U063	X	1 (0.454)
1,2:5,6-Dibenzanthracene	53703	Dibenz[a,h]anthracene Dibenzo[a,h]anthracene	1*	2,4	U063	X	1 (0.454)
Dibenzo[a,h]anthracene	53703	Dibenz[a,h]anthracene 1,2:5,6-Dibenzanthracene	1*	2,4	U063	X	1 (0.454)
Dibenz[a,i]pyrene	189559	Benzo[rst]pentaphene	1*	4	U064	A	10 (4.54)
1,2-Dibromo-3-chloropropane	96128	Propane, 1,2-dibromo-3-chloro-	1*	4	U066	X	1 (0.454)
Dibutyl phthalate	84742	Di-n-butyl phthalate n-Butyl phthalate 1,2-Benzenedicarboxylic acid, dibutyl ester	100	1,2,4	U069	A	10 (4.54)
Di-n-butyl phthalate	84742	Dibutyl phthalate n-Butyl phthalate 1,2-Benzenedicarboxylic acid, dibutyl ester	100	1,2,4	U069	A	10 (4.54)
Dicamba	1918009		1000	1		C	1000 (454)
Dichlobenil	1194656		1000	1		B	100 (45.4)
Dichlone	117806		1	1		X	1 (0.454)
Dichlorobenzene	25321226		100	1		B	100 (45.4)
1,2-Dichlorobenzene	95501	Benzene, 1,2-dichloro- o-Dichlorobenzene	100	1,2,4	U070	B	100 (45.4)
1,3-Dichlorobenzene	541731	Benzene, 1,3-dichloro m-Dichlorobenzene	1*	2,4	U071	B	100 (45.4)
1,4-Dichlorobenzene	106467	Benzene, 1,4-dichloro p-Dichlorobenzene	100	1,2,4	U072	B	100 (45.4)
m-Dichlorobenzene	541731	Benzene, 1,3-dichloro 1,3-Dichlorobenzene	1*	2,4	U071	B	100 (45.4)
o-Dichlorobenzene	95501	Benzene, 1,2-dichloro 1,2-Dichlorobenzene	100	1,2,4	U070	B	100 (45.4)
p-Dichlorobenzene	106467	Benzene,1,4-dichloro 1,4-Dichlorobenzene	100	1,2,4	U072	B	100 (45.4)
DICHLOROBENZIDINE	N.A.		1*	2			**
3,3'-Dichlorobenzidine	91941	[1,1'-Biphenyl]-4,4'diamine,3,3'dichloro-	1*	2,4	U073	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Dichlorobromomethane	75274		1*	2		D	5000 (2270)
1,4-Dichloro-2-butene	764410	2-Butene, 1,4-dichloro-	1*	4	U074	X	1 (0.454)
Dichlorodifluoromethane	75718	Methane, dichlorodifluoro-	1*	4	U075	D	5000 (2270)
1,1-Dichloroethane	75343	Ethane, 1,1-dichloro- Ethylidene dichloride	1*	2,4	U076	C	1000 (454)
1,2-Dichloroethane	107062	Ethane, 1,2-dichloro- Ethylene dichloride	5000	1,2,4	U077	B	100 (45.4)
1,1-Dichloroethylene	75354	Ethene, 1,1-dichloro- Vinylidene chloride	5000	1,2,4	U078	B	100 (45.4)
1,2-Dichloroethylene	156605	Ethene, 1,2-dichloro- (E)	1*	2,4	U079	C	1000 (454)
Dichloroethyl ether	111444	Bis (2-chloroethyl) ether Ethane, 1,1'-oxybis[2-chloro-	1*	2,4	U025	A	10 (4.54)
Dichloroisopropyl ether	108601	Propane, 2,2'-oxybis[2-chloro-	1*	2,4	U027	C	1000 (454)
Dichloromethoxy ethane	111911	Bis(2-chloroethoxy) methane Ethane, 1,1'-[methylenebis(oxy)]bis(2-chloro-	1*	2,4	U024	C	1000 (454)
Dichloromethyl ether	542881	Methane, oxybis(chloro-	1*	4	P016	A	10 (4.54)
2,4-Dichlorophenol	120832	Phenol, 2,4-dichloro-	1*	2,4	U081	B	100 (45.4)
2,6-Dichlorophenol	87650	Phenol, 2,6-dichloro-	1*	4	U082	B	100 (45.4)
Dichlorophenylarsine	696286	Arsonous dichloride, phenyl-	1*	4	P036	X	1 (0.454)
Dichloropropane	26638197		5000	1		C	1000 (454)
1,1-Dichloropropane	78999						
1,3-Dichloropropane	142289						
1,2-Dichloropropane	78875	Propane, 1,2-dichloro- Propylene dichloride	5000	1,2,4	U083	C	1000 (454)
Dichloropropane—Dichloropropene (mixture)	8003198		5000	1		B	100 (45.4)
Dichloropropene	26952238		5000	1		B	100 (45.4)
2,3-Dichloropropene	78886						
1,3-Dichloropropene	542756	1-Propene, 1,3-dichloro-	5000	1,2,4	U084	B	100 (45.4)
2,2-Dichloropropionic acid	75990		5000	1		D	5000 (2270)
Dichlorvos	62737		10	1		A	10 (4.54)
Dicofol	115322		5000	1		A	10 (4.54)
Dieldrin	60571	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2aalpha,3beta,6beta,6aalpha,7beta,7aalpha)-	1	1,2,4	P037	X	1 (0.454)
1,2:3,4-Diepoxybutane	1464535	2,2'-Bioxirane	1*	4	U085	A	10 (4.54)
Diethylamine	109897		1000	1		B	1000 (45.4)
Diethylarsine	692422	Arsine, diethyl-	1*	4	P038	X	1 (0.454)
1,4-Diethyleneoxide	123911	1,4-Dioxane	1*	4	U108	B	100 (45.4)
Diethylhexyl phthalate	117817	Bis (2-ethylhexyl)phthalate 1,2-Benzenedicarboxylic acid, [bis(2-ethylhexyl)] ester	1*	2,4	U028	B	100 (45.4)
N,N'-Diethylhydrazine	1615801	Hydrazine, 1,2-diethyl-	1*	4	U086	A	10 (4.54)
O,O-Diethyl S-methyl dithiophosphate	3288582	Phosphorodithioic acid, O,O-diethyl S-methyl ester	1*	4	U087	D	5000 (2270)
Diethyl-p-nitrophenyl phosphate	311455	Phosphoric acid, diethyl 4-nitrophenyl ester	1*	4	P041	B	100 (45.4)
Diethyl phthalate	84662	1,2-Benzenedicarboxylic acid, diethyl ester	1*	2,4	U088	C	1000 (454)
O,O-Diethyl O-pyrazinyl phosphorothioate	297972	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	1*	4	P040	B	100 (45.4)
Diethylstilbestrol	56531	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)	1*	4	U089	X	1 (0.454)
Dihydrosafrole	94586	1,3-Benzodioxole, 5-propyl-	1*	4	U090	A	10 (4.54)
Diisopropylfluorophosphate	55914	Phosphorofluoridic acid, bis(1-methylethyl) ester	1*	4	P043	B	100 (45.4)
1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5alpha,8alpha, 8abeta)-1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro, (1alpha,4alpha,4abeta,5abeta,8beta, 8abeta)-2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2aalpha,3beta,6beta, 6aalpha,7beta,7aalpha)-2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octa-hydro-, (1aalpha,2beta,2abeta,3alpha,6alpha, 6abeta,7beta,7aalpha)-Dimethoate	309002	Aldrin	1	1,2,4	P004	X	1 (0.454)
	465736	Isodrin	1*	4	P060	X	1 (0.454)
	60571	Dieldrin	1	1,2,4	P037	X	1 (0.454)
			1	1,2,4	P051	X	1 (0.454)
	72206	Endrin Endrin, & metabolites					
	60515	Phosphorodithioic acid, O,O-dimethyl S-[2(methylamino)-2-oxoethyl] ester	1*	4	P044	A	10 (4.54)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
3,3'-Dimethoxybenzidine	119904	[1,1'-Biphenyl]-4,4'diamine,3,3'dimethoxy-	1*	4	U091	B	100 (45.4)
Dimethylamine	124403	Methanamine, N-methyl-	1000	1,4	U092	C	1000 (454)
p-Dimethylaminoazobenzene	60117	Benzenamine, N,N-dimethyl-4-(phenylazo-)	1*	4	U093	A	10 (4.54)
7,12-Dimethylbenz[a]anthracene	57976	Benz[a]anthracene, 7,12-dimethyl-	1*	4	U094	X	1 (0.454)
3,3'-Dimethylbenzidine	119937	[1,1'Biphenyl]-4,4'-diamine,3,3'-dimethyl-	1*	4	U095	A	10 (4.54)
alpha,alpha-Dimethylbenzylhydroperoxide	80159	Hydroperoxide, 1-methyl-1-phenylethyl-	1*	4	U096	A	10 (4.54)
Dimethylcarbamoyl chloride	79447	Carbamic chloride, dimethyl-	1*	4	U097	X	1 (0.454)
1,1-Dimethylhydrazine	57147	Hydrazine, 1,1-dimethyl-	1*	4	U098	A	10 (4.54)
1,2-Dimethylhydrazine	540738	Hydrazine, 1,2-dimethyl-	1*	4	U099	X	1 (0.454)
alpha,alpha-Dimethylphenethylamine	122098	Benzeneethenamine, alpha,alpha-dimethyl-	1*	4	P046	D	5000 (2270)
2,4-Dimethylphenol	105679	Phenol, 2,4-dimethyl-	1*	2,4	U101	B	100 (45.4)
Dimethyl phthalate	131113	1,2-Benzenedicarboxylic acid, dimethyl ester	1*	2,4	U102	D	5000 (2270)
Dimethyl sulfate	77781	Sulfuric acid, dimethyl ester	1*	4	U103	B	100 (45.4)
Dinitrobenzene (mixed)	25154545		1000	1		B	100 (45.4)
m-Dinitrobenzene	99650						
o-Dinitrobenzene	528290						
p-Dinitrobenzene	100254						
4,6-Dinitro-o-cresol and salts	534521	Phenol, 2-methyl-4,6-dinitro-	1*	2,4	P047	A	10 (4.54)
Dinitrophenol	25550587		1000	1		A	10 (4.54)
2,5-Dinitrophenol	329715						
2,6-Dinitrophenol	573568					A	
2,4-Dinitrophenol	51285	Phenol, 2,4-dinitro-	1000	1,2,4	P048	A	10 (4.54)
Dinitrotoluene	25321146		1000	1,2		A	10 (4.54)
3,4-Dinitrotoluene	610399						
2,4-Dinitrotoluene	121142	Benzene, 1-methyl-2,4-dinitro-	1000	1,2,4	U105	A	10 (4.54)
2,6-Dinitrotoluene	606202	Benzene, 2-methyl-1,3-dinitro-	1000	1,2,4	U106	B	100 (45.4)
Dinoseb	88857	Phenol, 2-(1-methylpropyl)-4,6-dinitro	1*	4	P020	C	1000 (454)
Di-n-octyl phthalate	117840	1,2-Benzenedicarboxylic acid, dioctyl ester	1*	2,4	U107	D	5000 (2270)
1,4-Dioxane	123911	1,4-Diethylenedioxide	1*	4	U108	B	100 (45.4)
DIPHENYLHYDRAZINE	N.A.		1*	2			**
1,2-Diphenylhydrazine	122667	Hydrazine, 1,2-diphenyl-	1*	2,4	U109	A	10 (4.54)
Diphosphoramide, octamethyl-	152169	Octamethylpyrophosphoramide	1*	4	P085	B	100 (45.4)
Diphosphoric acid, tetraethyl ester	107493	Tetraethyl pyrophosphate	100	1,4	P111	A	10 (4.54)
Dipropylamine	142847	1-Propanamine, N-propyl-	1*	4	U110	D	5000 (2270)
Di-n-propylnitrosamine	621647	1-Propanamine, N-nitroso-N-propyl-	1*	2,4	U111	A	10 (4.54)
Diquat	85007		1000	1		C	1000 (454)
	2764729						
Disulfoton	298044	Phosphorodithioic acid, o,o-diethyl S-[2-(ethylthio)ethyl]ester	1	1,4	P039	X	1 (0.454)
Dithiobiuret	541537	Thioimidodicarbonic diamide [(H2N) C(S)]2NH	1*	4	P049	B	100 (45.4)
Diuron	330541		100	1		B	100 (45.4)
Dodecylbenzenesulfonic acid	27176870		1000	1		C	1000 (454)
Endosulfan	115297	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide	1	1,2,4	P050	X	1 (0.454)
alpha - Endosulfan	959988		1*	2		X	1 (0.454)
beta - Endosulfan	33213659		1*	2		X	1 (0.454)
ENDOSALFAN AND METABOLITES	N.A.		1*	2			**
Endosulfan sulfate	1031078		1*	2		X	1 (0.454)
Endothall	145733	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid	1*	4	P088	C	1000 (454)
Endrin	72208	Endrin, & metabolites 2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9 -hexachloro-1a,2,2a,3,6,6a,7,7a-octa-hydro-, (1aalpha, 2beta,2abeta,3alpha,6alpha, 6abeta,7beta, 7aalpha)-	1	1,2,4	P051	X	1 (0.454)
Endrin aldehyde	7421934		1*	2		X	1 (0.454)
ENDRIN AND METABOLITES	N.A.		1*	2			**
Endrin, & metabolites	72208	Endrin 2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octa-hydro-, (1aalpha, 2beta,2abeta,3alpha,6alpha, 6abeta,7beta, 7aalpha)-	1	1,2,4	P051	X	1 (0.454)
Epichlorohydrin	106898	Oxirane, (chloromethyl)-	1000	1,4	U041	B	100 (45.4)
Epinephrine	51434	1,2-Benzenediol,4-[1-hydroxy-2-(methylamino)ethyl]-	1*	4	P042	C	1000 (454)
Ethanal	75070	Acetaldehyde	1000	1,4	U001	C	1000 (454)
Ethanamine, N-ethyl-N-nitroso-	55185	N-Nitrosodiethylamine	1*	4	U174	X	1 (0.454)
1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-	91805	Methapyrilene	1*	4	U155	D	5000 (2270)
Ethane, 1,2-dibromo-	106934	Ethylene dibromide	1000	1,4	U067	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Ethane, 1,1-dichloro-	75343	Ethylidene dichloride	1*	2,4	U076	C	1000 (454)
		1,1-Dichloroethane					
Ethane, 1,2-dichloro-	107062	Ethylene dichloride	5000	1,2,4	U077	B	100 (45.4)
		1,2-Dichloroethane					
Ethanedinitrile	460195	Cyanogen	1*	4	P031	B	100 (45.4)
Ethane, hexachloro-	67721	Hexachloroethane	1*	2,4	U131	B	100 (45.4)
Ethane, 1,1'-[methylenebis(oxy)]bis(2-chloro-	111911	Bis(2-chloroethoxy) methane Dichloromethoxy ethane	1*	2,4	U024	C	1000 (454)
Ethane, 1,1'-oxybis-	60297	Ethyl ether	1*	4	U117	B	100 (45.4)
Ethane, 1,1'-oxybis[2-chloro-	111444	Bis (2-chloroethyl) ether Dichloroethyl ether	1*	2,4	U025	A	10 (4.54)
Ethane, pentachloro-	76017	Pentachloroethane	1*	4	U184	A	10 (4.54)
Ethane, 1,1,1,2-tetrachloro-	630206	1,1,1,2-Tetrachloroethane	1*	4	U208	B	100 (45.4)
Ethane, 1,1,2,2-tetrachloro-	79345	1,1,2,2-Tetrachloroethane	1*	2,4	U209	B	100 (45.4)
Ethanethioamide	62555	Thioacetamide	1*	4	U218	A	10 (4.54)
Ethane, 1,1,1-trichloro-	71556	Methyl chloroform	1*	2,4	U226	C	1000 (454)
		1,1,1-Trichloroethane					
Ethane, 1,1,2-trichloro-	79005	1,1,2-Trichloroethane	1*	2,4	U227	B	100 (45.4)
Ethanimidothioic acid, N-[[(methylamino)carbonyl]oxy]-, methyl ester	16752775	Methomyl	1*	4	P066	B	100 (45.4)
Ethanol, 2-ethoxy-	110805	Ethylene glycol monoethyl ether	1*	4	U359	C	1000 (454)
Ethanol, 2,2'-(nitrosoimino)bis-	1116547	N-Nitrosodiethanolamine	1*	4	U173	X	1 (0.454)
Ethanone, 1-phenyl-	98862	Acetophenone	1*	4	U004	D	5000 (2270)
Ethene, chloro-	75014	Vinyl chloride	1*	2,3,4	U043	X	1 (0.454)
Ethene, 2-chloroethoxy-	110758	2-Chloroethyl vinyl ether	1*	2,4	U042	C	1000 (454)
Ethene, 1,1-dichloro-	75354	Vinylidene chloride	5000	1,2,4	U078	B	100 (45.4)
		1,1-Dichloroethylene					
Ethene, 1,2-dichloro- (E)	156605	1,2-Dichloroethylene	1*	2,4	U079	C	1000 (454)
Ethene, tetrachloro-	127184	Perchloroethylene	1*	2,4	U210	B	100 (45.4)
		Tetrachloroethene					
		Tetrachloroethylene					
Ethene, trichloro-	79016	Trichloroethene	1000	1,2,4	U228	B	100 (45.4)
		Trichloroethylene					
Ethion	563122		10	1		A	10 (4.54)
Ethyl acetate	141786	Acetic acid, ethyl ester	1*	4	U112	D	5000 (2270)
Ethyl acrylate	140885	2-Propenoic acid, ethyl ester	1*	4	U113	C	1000 (454)
Ethylbenzene	100414		1000	1,2		C	1000 (454)
Ethyl carbamate (urethane)	51796	Carbamic acid, ethyl ester	1*	4	U238	B	100 (45.4)
Ethyl cyanide	107120	Propanenitrile	1*	4	P101	A	10 (4.54)
Ethylenebisdithiocarbamic acid, salts & esters	111546	Carbamodithioic acid, 1,2-ethanediylbis, salts & esters	1*	4	U114	D	5000 (2270)
Ethylenediamine	107153		1000	1		D	5000 (2270)
Ethylenediamine-tetraacetic acid (EDTA)	60004		5000	1		D	5000 (2270)
Ethylene dibromide	106934	Ethane, 1,2-dibromo-	1000	1,4	U067	X	1 (0.454)
Ethylene dichloride	107062	Ethane, 1,2-dichloro-	5000	1,2,4	U077	B	100 (45.4)
		1,2-Dichloroethane					
Ethylene glycol monoethyl ether	110805	Ethanol, 2-ethoxy-	1*	4	U359	C	1000 (454)
Ethylene oxide	75218	Oxirane	1*	4	U115	A	10 (4.54)
Ethylenethiourea	96457	2-Imidazolidinethione	1*	4	U116	A	10 (4.54)
Ethylenimine	151564	Aziridine	1*	4	P054	X	1 (0.454)
Ethyl ether	60297	Ethane, 1,1'-oxybis-	1*	4	U117	B	100 (45.4)
Ethylidene dichloride	75343	Ethane, 1,1-dichloro-	1*	2,4	U076	C	1000 (454)
		1,1-Dichloroethane					
Ethyl methacrylate	97632	2-Propenoic acid, 2-methyl-, ethyl ester	1*	4	U118	C	1000 (454)
Ethyl methanesulfonate	62500	Methanesulfonic acid, ethyl ester	1*	4	U119	X	1 (0.454)
Famphur	52857	Phosphorothioic acid, O,[4-[(di- methylamino) sulfonyl] phenyl] O,O-dimethyl ester	1*	4	P097	C	1000 (454)
Ferric ammonium citrate	1185575		1000	1		C	1000 (454)
Ferric ammonium oxalate	2944674		1000	1		C	1000 (454)
	55488874						
Ferric chloride	7705080		1000	1		C	1000 (454)
Ferric fluoride	7783508		100	1		B	100 (45.4)
Ferric nitrate	10421484		1000	1		C	1000 (454)
Ferric sulfate	10028225		1000	1		C	1000 (454)
Ferrous ammonium sulfate	10045893		1000	1		C	1000 (454)
Ferrous chloride	7758943		100	1		B	100 (45.4)
Ferrous sulfate	7720787		1000	1		C	1000 (454)
	7782630						
Fluoranthene	206440	Benzo[j,k]fluorene	1*	2,4	U120	B	100 (45.4)
Fluorene	86737		1*	2		D	5000 (2270)
Fluorine	7782414		1*	4	P056	A	10 (4.54)
Fluoroacetamide	640197	Acetamide, 2-fluoro-	1*	4	P057	B	100 (45.4)
Fluoroacetic acid, sodium salt	62748	Acetic acid, fluoro-, sodium salt	1*	4	P058	A	10 (4.54)
Formaldehyde	50000		1000	1,4	U122	B	100 (45.4)
Formic acid	64186		5000	1,4	U123	D	5000 (2270)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Fulminic acid, mercury(2+)salt	628864	Mercury fulminate	1*	4	P065	A	10 (4.54)
Fumaric acid	110178		5000	1		D	5000 (2270)
Furan	110009	Furfuran	1*	4	U124	B	100 (45.4)
Furan, tetrahydro-	109999	Tetrahydrofuran	1*	4	U213	C	1000 (454)
2-Furancarboxaldehyde	98011	Furfural	1000	1,4	U125	D	5000 (2270)
2,5-Furandione	108316	Maleic anhydride	5000	1,4	U147	D	5000 (2270)
Furfural	98011	2-Furancarboxaldehyde	1000	1,4	U125	D	5000 (2270)
Furfuran	110009	Furan	1*	4	U124	B	100 (45.4)
Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-	18883664	D-Glucose, 2-deoxy-2-[[(methylnitrosoamino)-carbonyl]amino] Streptozotocin	1*	4	U206	X	1 (0.454)
D-Glucose, 2-deoxy-2-[[(methylnitrosoamino)-carbonyl]amino]-.	18883664	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-	1*	4	U206	X	1 (0.454)
		Streptozotocin					
Glycidylaldehyde	765344	Oxiranecarboxyaldehyde	1*	4	U126	A	10 (4.54)
Guanidine, N-methyl-N'-nitro-N-nitroso-	70257	MNNG	1*	4	U163	A	10 (4.54)
Guthion	86500		1	1		X	1 (0.454)
HALOETHERS	N.A.		1*	2			**
HALOMETHANES	N.A.		1*	2			**
Heptachlor	76448	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	1	1,2,4	P059	X	1 (0.454)
HEPTACHLOR AND METABOLITES	N.A.		1*	2			**
Heptachlor epoxide	1024573		1*	2		X	1 (0.454)
Hexachlorobenzene	118741	Benzene, hexachloro-	1*	2,4	U127	A	10 (4.54)
Hexachlorobutadiene	87683	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	1*	2,4	U128	X	1 (0.454)
HEXACHLOROCYCLOHEXANE (all isomers).	608731		1*	2			**
Hexachlorocyclohexane (gamma isomer)	58899	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha, 6beta)-gamma-BHC	1	1,2,4	U129	X	1 (0.454)
		Lindane					
Hexachlorocyclopentadiene	77474	1,3-Cyclopentadiene,1,2,3,4,5,5-hexachloro-	1	1,2,4	U130	A	10 (4.54)
Hexachloroethane	67721	Ethane, hexachloro-	1*	2,4	U131	B	100 (45.4)
Hexachlorophene	70304	Phenol, 2,2'-methylenebis[3,4,6-trichloro-	1*	4	U132	B	100 (45.4)
Hexachloropropene	1888717	1-Propene, 1,1,2,3,3,3-hexachloro-	1*	4	U243	C	1000 (454)
Hexaethyl tetraphosphate	757584	Tetraphosphoric acid, hexaethyl ester	1*	4	P062	B	100 (45.4)
Hydrazine	302012		1*	4	U133	X	1 (0.454)
Hydrazine, 1,2-diethyl-	1615801	N,N'-Diethylhydrazine	1*	4	U086	A	10 (4.54)
Hydrazine, 1,1-dimethyl-	57147	1,1-Dimethylhydrazine	1*	4	U098	A	10 (4.54)
Hydrazine, 1,2-dimethyl-	540738	1,2-Dimethylhydrazine	1*	4	U099	X	1 (0.454)
Hydrazine, 1,2-diphenyl-	122667	1,2-Diphenylhydrazine	1*	2,4	U109	A	10 (4.54)
Hydrazine, methyl-	60344	Methyl hydrazine	1*	4	P068	A	10 (4.54)
Hydrazinecarbothioamide	79196	Thiosemicarbazide	1*	4	P116	B	100 (45.4)
Hydrochloric acid	7647010	Hydrogen chloride	5000	1		D	5000 (2270)
Hydrocyanic acid	74908	Hydrogen cyanide	10	1,4	P063	A	10 (4.54)
Hydrofluoric acid	7664393	Hydrogen fluoride	5000	1,4	U134	B	100 (45.4)
Hydrogen chloride	7647010	Hydrochloric acid	5000	1		D	5000 (2270)
Hydrogen cyanide	74908	Hydrocyanic acid	10	1,4	P063	A	10 (4.54)
Hydrogen fluoride	7664393	Hydrofluoric acid	5000	1,4	U134	B	100 (45.4)
Hydrogen sulfide	7783064	Hydrogen sulfide H2S	100	1,4	U135	B	100 (45.4)
Hydrogen sulfide H2S	7783064	Hydrogen sulfide	100	1,4	U135	B	100 (45.4)
Hydroperoxide, 1-methyl-1-phenylethyl-	80159	alpha,alpha-Dimethylbenzylhydroperoxide	1*	4	U096	A	10 (4.54)
2-Imidazolidinethione	96457	Ethylenethiourea	1*	4	U116	A	10 (4.54)
Indeno(1,2,3-cd)pyrene	193395	1,10-(1,2-Phenylene)pyrene	1*	2,4	U137	B	100 (45.4)
1,3-Isobenzofurandione	85449	Phthalic anhydride	1*	4	U190	D	5000 (2270)
Isobutyl alcohol	78831	1-Propanol, 2-methyl-	1*	4	U140	D	5000 (2270)
Isodrin	465736	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro, (1alpha,4alpha,4abeta,5beta, 8beta,8abeta)-	1*	4	P060	X	1 (0.454)
Isophorone	78591		1*	2		D	5000 (2270)
Isoprene	78795		1000	1		B	100 (45.4)
Isopropanolamine dodecylbenzenesulfonate	42504461		1000	1		C	1000 (454)
Isosafrole	120581	1,3-Benzodioxole, 5-)1-propenyl)-	1*	4	U141	B	100 (45.4)
3(2H)-Isoxazolone, 5-(aminomethyl)-	2763964	Muscimol	1*	4	P007	C	1000 (454)
		5-(Aminomethyl)-3-isoxazolol					
Kepone	143500	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlor-octahydro-	1	1,4	U142	X	1 (0.454)
Lasiocarpine	303344	2-Butenoic acid, 2-methyl-, 7[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z), 7(2S*,3R*),7aalpha]]-	1*	4	U143	A	10 (4.54)
Lead ††	7439921		1*	2			*

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Lead acetate	301042	Acetic acid, lead(2+) salt	5000	1,4	U144		#
LEAD AND COMPOUNDS	N.A.		1*	2			**
Lead arsenate	7784409		5000	1		X	1 (0.454)
	7645252						
	10102484						
Lead, bis(acetato-O)tetrahydroxytri	1335326	Lead subacetate	1*	4	U146	B	100 (45.4)
Lead chloride	7758954		5000	1		B	100 (45.4)
Lead fluoborate	13814965		5000	1		B	100 (45.4)
Lead fluoride	7783462		1000	1		B	100 (45.4)
Lead iodide	10101630		5000	1		B	100 (45.4)
Lead nitrate	10099748		5000	1		B	100 (45.4)
Lead phosphate	7446277	Phosphoric acid, lead(2+) salt (2:3)	1*	4	U145		#
Lead stearate	7428480		5000	1		D	5000# (2270)
	1072351						
	52652592						
	56189094						
Lead subacetate	1335326	Lead, bis(acetato-O)tetrahydroxytri	1*	4	U146	B	100 (45.4)
Lead sulfate	15739807		5000	1		B	100 (45.4)
	7446142						
Lead sulfide	1314870		5000	1		D	5000# (2270)
Lead thiocyanate	592870		5000	1		B	100 (45.4)
Lindane	58899	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)-	1	1,2,4	U129	X	1 (0.454)
		Hexachlorocyclohexane (gamma isomer)					
Lithium chromate	14307358		1000	1		A	10 (4.54)
Malathion	121755		10	1		B	100 (45.4)
Maleic acid	110167		5000	1		D	5000 (2270)
Maleic anhydride	108316	2,5-Furandione	5000	1,4	U147	D	5000 (2270)
Maleic hydrazide	123331	3,6-Pyridazinedione, 1,2-dihydro-	1*	4	U148	D	5000 (2270)
Malononitrile	109773	Propanedinitrile	1*	4	U149	C	1000 (454)
Melphalan	148823	L-Phenylalanine, 4-[bis(2-chloroethyl) aminol]	1*	4	U150	X	1 (0.454)
Mercaptodimethur	2032657		100	1		A	10 (4.54)
Mercuric cyanide	592041		1	1		X	1 (0.454)
Mercuric nitrate	10045940		10	1		A	10 (4.54)
Mercuric sulfate	7783359		10	1		A	10 (4.54)
Mercuric thiocyanate	592858		10	1		A	10 (4.54)
Mercurous nitrate	10415755		10	1		A	10 (4.54)
	7782867						
Mercury	7439976		1*	2,3,4	U151	X	1 (0.454)
MERCURY AND COMPOUNDS	N.A.		1*	2			**
Mercury, (acetate-O)phenyl-	62384	Phenylmercury acetate	1*	4	P092	B	100 (45.4)
Mercury fulminate	628864	Fulminic acid, mercury(2+)salt	1*	4	P065	A	10 (4.54)
Methacrylonitrile	126987	2-Propenenitrile, 2-methyl-	1*	4	U152	C	1000 (454)
Methanamine, N-methyl-	124403	Dimethylamine	1000	1,4	U092	C	1000 (454)
Methanamine, N-methyl-N-nitroso-	62759	N-Nitrosodimethylamine	1*	2,4	P082	A	10 (4.54)
Methane, bromo-	74839	Methyl bromide	1*	2,4	U029	C	1000 (454)
Methane, chloro-	74873	Methyl chloride	1*	2,4	U045	B	100 (45.4)
Methane, chloromethoxy-	107302	Chloromethyl methyl ether	1*	4	U046	A	10 (4.54)
Methane, dibromo-	74953	Methylene bromide	1*	4	U068	C	1000 (454)
Methane, dichloro-	75092	Methylene chloride	1*	2,4	U080	C	1000 (454)
Methane, dichlorodifluoro-	75718	Dichlorodifluoromethane	1*	4	U075	D	5000 (2270)
Methane, iodo-	74884	Methyl iodide	1*	4	U138	B	100 (45.4)
Methane, isocyanato-	624839	Methyl isocyanate	1*	4	P064		**
Methane, oxybis(chloro-	542881	Dichloromethyl ether	1*	4	P016	A	10 (4.54)
Methanesulfenyl chloride, trichloro-	594423	Trichloromethanesulfenyl chloride	1*	4	P118	B	100 (45.4)
Methanesulfonic acid, ethyl ester	62500	Ethyl methanesulfonate	1*	4	U119	X	1 (0.454)
Methane, tetrachloro-	56235	Carbon tetrachloride	5000	1,2,4	U211	A	10 (4.54)
Methane, tetranitro-	509148	Tetranitromethane	1*	4	P112	A	10 (4.54)
Methane, tribromo-	75252	Bromoform	1*	2,4	U225	B	100 (45.4)
Methane, trichloro-	67663	Chloroform	5000	1,2,4	U044	A	10 (4.54)
Methane, trichlorofluoro-	75694	Trichloromonofluoromethane	1*	4	U121	D	5000 (2270)
Methanethiol	74931	Methylmercaptan	100	1,4	U153	B	100 (45.4)
		Thiomethanol					
6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide	115297	Endosulfan	1	1,2,4	P050	X	1 (0.454)
1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlor-octahydro-	143500	Kepone	1	1,4	U142	X	1 (0.454)
4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76448	Heptachlor	1	1,2,4	P059	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	57749	Chlordane	1	1,2,4	U036	X	1 (0.454)
		Chlordane, alpha & gamma isomers					
		Chlordane, technical					
Methanol	67561	Methyl alcohol	1*	4	U154	D	5000 (2270)
Methapyrilene	91805	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-	1*	4	U155	D	5000 (2270)
Methomyl	16752775	Ethanimidothioic acid, N-[[(methylamino)carbonyl]oxy]-, methyl ester	1*	4	P066	B	100 (45.4)
Methoxychlor	72435	Benzene, 1,1'-(2,2,2-trichloroethylidene) bis[4-methoxy-	1	1,4	U247	X	1 (0.454)
Methyl alcohol	67561	Methanol	1*	4	U154	D	5000 (2270)
Methyl bromide	74839	Methane, bromo-	1*	2,4	U029	C	1000 (454)
1-Methylbutadiene	504609	1,3-Pentadiene	1*	4	U186	B	100 (45.4)
Methyl chloride	74873	Methane, chloro-	1*	2,4	U045	B	100 (45.4)
Methyl chlorocarbonate	79221	Carbonochloridic acid, methyl ester	1*	4	U156	C	1000 (454)
		Methyl chloroformate					
Methyl chloroform	71556	Ethane, 1,1,1-trichloro-	1*	2,4	U226	C	1000 (454)
		1,1,1-Trichloroethane					
Methyl chloroformate	79221	Carbonochloridic acid, methyl ester	1*	4	U156	C	1000 (454)
		Methyl chlorocarbonate					
3-Methylcholanthrene	56495	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	1*	4	U157	A	10 (4.54)
4,4'-Methylenebis(2-chloroaniline)	101144	Benzenamine, 4,4'-methylenebis(2-chloro-	1*	4	U158	A	10 (4.54)
Methylene bromide	74953	Methane, dibromo-	1*	4	U068	C	1000 (454)
Methylene chloride	75092	Methane, dichloro-	1*	2,4	U080	C	1000 (454)
Methyl ethyl ketone (MEK)	78933	2-Butanone	1*	4	U159	D	5000 (2270)
Methyl ethyl ketone peroxide	1338234	2-Butanone peroxide	1*	4	U160	A	10 (4.54)
Methyl hydrazine	60344	Hydrazine, methyl-	1*	4	P068	A	10 (4.54)
Methyl iodide	74884	Methane, iodo-	1*	4	U138	B	100 (45.4)
Methyl isobutyl ketone	108101	4-Methyl-2-pentanone	1*	4	U161	D	5000 (2270)
Methyl isocyanate	624839	Methane, isocyanato-	1*	4	P064		**
2-Methyllactonitrile	75865	Acetone cyanohydrin	10	1,4	P069	A	10 (4.54)
		Propanenitrile, 2-hydroxy-2-methyl-					
Methylmercaptan	74931	Methanethiol	100	1,4	U153	B	100 (45.4)
		Thiomethanol					
Methyl methacrylate	80626	2-Propenoic acid, 2-methyl-, methyl ester	5000	1,4	U162	C	1000 (454)
Methyl parathion	298000	Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester	100	1,4	P071	B	100 (45.4)
4-Methyl-2-pentanone	108101	Methyl isobutyl ketone	1*	4	U161	D	5000 (2270)
Methylthiouracil	56042	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	1*	4	U164	A	10 (4.54)
Mevinphos	7786347		1	1		A	10 (4.54)
Mexacarbate	315184		1000	1		C	1000 (454)
Mitomycin C	50077	Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione,6-amino-8-[[(aminocarbonyl)oxy]methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, [1aS-(1aalpha, 8beta, 8aalpha, 8balpha)]-	1*	4	U010	A	10 (4.54)
MNNG	70257	Guanidine, N-methyl-N'-nitro-N-nitroso-	1*	4	U163	A	10 (4.54)
Monoethylamine	75047		1000	1		B	100 (45.4)
Monomethylamine	74895		1000	1		B	100 (45.4)
Muscimol	2763964	3(2H)-Isoxazolone, 5-(aminomethyl)- 5-(Aminomethyl)-3-isoxazolol	1*	4	P007	C	1000 (454)
Naled	300765		10	1		A	10 (4.54)
5,12-Naphthacenedione, 8-acetyl-10-[3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-	20830813	Daunomycin	1*	4	U059	A	10 (4.54)
1-Naphthalenamine	134327	alpha-Naphthylamine	1*	4	U167	B	100 (45.4)
2-Naphthalenamine	91598	beta-Naphthylamine	1*	4	U168	A	10 (4.54)
Naphthalenamine, N,N'-bis(2-chloroethyl)-	494031	Chlornaphazine	1*	4	U026	B	100 (45.4)
Naphthalene	91203		5000	1,2,4	U165	B	100 (45.4)
Naphthalene, 2-chloro-	91587	beta-Chloronaphthalene 2-Chloronaphthalene	1*	2,4	U047	D	5000 (2270)
1,4-Naphthalenedione	130154	1,4-Naphthoquinone	1*	4	U166	D	5000 (2270)
2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl-(1,1'-biphenyl)-4,4'-diyl)-bis(azo)]bis(5-amino-4-hydroxy)-, tetrasodium salt.	72571	Trypan blue	1*	4	U236	A	10 (4.54)
Naphthenic acid	1338245		100	1		B	100 (45.4)
1,4-Naphthoquinone	130154	1,4-Naphthalenedione	1*	4	U166	D	5000 (2270)
alpha-Naphthylamine	134327	1-Naphthalenamine	1*	4	U167	B	100 (45.4)
beta-Naphthylamine	91598	2-Naphthalenamine	1*	4	U168	A	10 (4.54)
alpha-Naphthylthiourea	86884	Thiourea, 1-naphthalenyl-	1*	4	P072	B	100 (45.4)
Nickel ††	7440020		1*	2		B	100 (45.4)

BEST COPY AVAILABLE

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Nickel ammonium sulfate	15699180		5000	1		B	100 (45.4)
NICKEL AND COMPOUNDS	N.A.		1*	2			**
Nickel carbonyl	13463393	Nickel carbonyl Ni(CO)4, (T-4)-	1*	4	P073	A	10 (4.54)
Nickel carbonyl Ni(CO)4, (T-4)-	13463393	Nickel carbonyl	1*	4	P073	A	10 (4.54)
Nickel chloride	7718549		5000	1		B	100 (45.4)
	37211055						
Nickel cyanide	557197	Nickel cyanide Ni(CN)2	1*	4	P074	A	10 (4.54)
Nickel cyanide Ni(CN)2	557197	Nickel cyanide	1*	4	P074	A	10 (4.54)
Nickel hydroxide	12054487		1000	1		A	10 (4.54)
Nickel nitrate	14216752		5000	1		B	100 (45.4)
Nickel sulfate	7786814		5000	1		B	100 (45.4)
Nicotine, & salts	54115	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-	1*	4	P075	B	100 (45.4)
Nitric acid	7697372		1000	1		C	1000 (454)
Nitric acid, thallium (1+) salt	10102451	Thallium (I) nitrate	1*	4	U217	B	100 (45.4)
Nitric oxide	10102439	Nitrogen oxide NO	1*	4	P076	A	10 (4.54)
p-Nitroaniline	100016	Benzenamine, 4-nitro-	1*	4	P077	D	5000 (2270)
Nitrobenzene	98953	Benzene, nitro-	1000	1,2,4	U169	C	1000 (454)
Nitrogen dioxide	10102440	Nitrogen oxide NO2	1000	1,4	P078	A	10 (4.54)
	10544726						
Nitrogen oxide NO	10102439	Nitric oxide	1*	4	P076	A	10 (4.54)
Nitrogen oxide NO2	10102440	Nitrogen dioxide	1000	1,4	P078	A	10 (4.54)
	10544726						
Nitroglycerine	55630	1,2,3-Propanetriol, trinitrate-	1*	4	P081	A	10 (4.54)
Nitrophenol (mixed)	25154556		1000	1		B	100 (45.4)
m-Nitrophenol	554847					B	100 (45.4)
o-Nitrophenol	88755	2-Nitrophenol					
p-Nitrophenol	100027	Phenol, 4-nitro- 4-Nitrophenol					
o-Nitrophenol	88755	2-Nitrophenol	1000	1,2		B	100 (45.4)
p-Nitrophenol	100027	Phenol, 4-nitro- 4-Nitrophenol	1000	1,2,4	U170	B	100 (45.4)
2-Nitrophenol	88755	o-Nitrophenol	1000	1,2		B	100 (45.4)
4-Nitrophenol	100027	p-Nitrophenol Phenol, 4-nitro-	1000	1,2,4	U170	B	100 (45.4)
NITROPHENOLS	N.A.		1*	2			**
2-Nitropropane	79469	Propane, 2-nitro-	1*	4	U171	A	10 (4.54)
NITROSAMINES	N.A.		1*	2			**
N-Nitrosodi-n-butylamine	924163	1-Butanamine, N-butyl-N-nitroso-	1*	4	U172	A	10 (4.54)
N-Nitrosodiethanolamine	1116547	Ethanol, 2,2'-(nitrosoimino)bis-	1*	4	U173	X	1 (0.454)
N-Nitrosodiethylamine	55185	Ethanamine, N-ethyl-N-nitroso-	1*	4	U174	X	1 (0.454)
N-Nitrosodimethylamine	62759	Methanamine, N-methyl-N-nitroso-	1*	2,4	P082	A	10 (4.54)
N-Nitrosodiphenylamine	86306		1*	2		B	100 (45.4)
N-Nitroso-N-ethylurea	759739	Urea, N-ethyl-N-nitroso-	1*	4	U176	X	1 (0.454)
N-Nitroso-N-methylurea	684935	Urea, N-methyl-N-nitroso-	1*	4	U177	X	1 (0.454)
N-Nitroso-N-methylurethane	615532	Carbamic acid, methylnitroso-, ethyl ester	1*	4	U178	X	1 (0.454)
N-Nitrosomethylvinylamine	4549400	Vinylamine, N-methyl-N-nitroso-	1*	4	P084	A	10 (4.54)
N-Nitrosopiperidine	100754	Piperidine, 1-nitroso-	1*	4	U179	A	10 (4.54)
N-Nitrosopyrrolidine	930552	Pyrrolidine, 1-nitroso-	1*	4	U180	X	1 (0.454)
Nitrotoluene	1321126		1000	1		C	1000 (454)
m-Nitrotoluene	99081						
o-Nitrotoluene	88722						
p-Nitrotoluene	99990						
5-Nitro-o-toluidine	99558	Benzenamine, 2-methyl-5-nitro-	1*	4	U181	B	100 (45.4)
Octamethylpyrophosphoramide	152169	Diphosphoramide, octamethyl-	1*	4	P085	B	100 (45.4)
Osmium oxide OsO4 (T-4)-	20816120	Osmium tetroxide	1*	4	P087	C	1000 (454)
Osmium tetroxide	20816120	Osmium oxide OsO4 (T-4)-	1*	4	P087	C	1000 (454)
7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid	145733	Endothall	1*	4	P088	C	1000 (454)
1,2-Oxathiolane, 2,2-dioxide	1120714	1,3-Propane sultone	1*	4	U193	A	10 (4.54)
2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide	50180	Cyclophosphamide	1*	4	U058	A	10 (4.54)
Oxirane	75218	Ethylene oxide	1*	4	U115	A	10 (4.54)
Oxiranecarboxyaldehyde	765344	Glycidylaldehyde	1*	4	U126	A	10 (4.54)
Oxirane, (chloromethyl)-	106898	Epichlorohydrin	1000	1,4	U041	B	100 (45.4)
Paraformaldehyde	30525894		1000	1		C	1000 (454)
Paraldehyde	123637	1,3,5-Trioxane, 2,4,6-trimethyl-	1*	4	U182	C	1000 (454)
Parathion	56382	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester	1	1,4	P089	A	10 (4.54)
Pentachlorobenzene	608935	Benzene, pentachloro-	1*	4	U183	A	10 (4.54)
Pentachloroethane	76017	Ethane, pentachloro-	1*	4	U184	A	10 (4.54)
Pentachloronitrobenzene (PCNB)	82688	Benzene, pentachloronitro-	1*	4	U185	B	100 (45.4)
Pentachlorophenol	87865	Phenol, pentachloro-	10	1,2,4	U242	A	10 (4.54)
1,3-Pentadiene	504609	1-Methylbutadiene	1*	4	U186	B	100 (45.4)
Perchloroethylene	127184	Ethene, tetrachloro- Tetrachloro- ethene Tetrachloroethylene	1*	2,4	U210	B	100 (45.4)
Phenacetin	62442	Acetamide, N-(4-ethoxyphenyl)-	1*	4	U187	B	100 (45.4)
Phenanthrene	85018		1*	2		D	5000 (2270)
Phenol	108952	Benzene, hydroxy-	1000	1,2,4	U188	C	1000(454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Phenol, 2-chloro-	95578	o-Chlorophenol 2-Chlorophenol	1*	2,4	U048	B	100 (45.4)
Phenol, 4-chloro-3-methyl-	59507	p-Chloro-m-cresol 4-Chloro-m-cresol	1*	2,4	U039	D	5000 (2270)
Phenol, 2-cyclohexyl-4,6-dinitro-	131895	2-Cyclohexyl-4,6-dinitrophenol	1*	4	P034	B	100 (45.4)
Phenol, 2,4-dichloro-	120832	2,4-Dichlorophenol	1*	2,4	U081	B	100 (45.4)
Phenol, 2,6-dichloro-	87650	2,6-Dichlorophenol	1*	4	U082	B	100 (45.4)
Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)	56531	Diethylstilbestrol	1*	4	U089	X	1 (0.454)
Phenol, 2,4-dimethyl-	105679	2,4-Dimethylphenol	1*	2,4	U101	B	100(45.4)
Phenol, 2,4-dinitro-	51285	2,4-Dinitrophenol	1000	1,2,4	P048	A	10 (4.54)
Phenol, methyl-	1319773	Cresol(s) Cresylic acid	1000	1,4	U052	C	1000 (454)
m-Cresol	108394	m-Cresylic acid					
o-Cresol	95487	o-Cresylic acid					
p-Cresol	106445	p-Cresylic acid					
Phenol, 2-methyl-4,6-dinitro-	534521	4,6-Dinitro-o-cresol and salts	1*	2,4	P047	A	10 (4.54)
Phenol, 2,2'-methylenebis[3,4,6-trichloro-	70304	Hexachlorophene	1*	4	U132	B	100 (45.4)
Phenol, 2-(1-methylpropyl)-4,6-dinitro	88857	Dinoseb	1*	4	P020	C	1000 (454)
Phenol, 4-nitro-	100027	p-Nitrophenol 4-Nitrophenol	1000	1,2,4	U170	B	100 (45.4)
Phenol, pentachloro-	87865	Pentachlorophenol	10	1,2,4	U242	A	10 (4.54)
Phenol, 2,3,4,6-tetrachloro-	58902	2,3,4,6-Tetrachlorophenol	1*	4	U212	A	10 (4.54)
Phenol, 2,4,5-trichloro-	95954	2,4,5-Trichlorophenol	10	1,4	U230	A	10 (4.54)
Phenol, 2,4,6-trichloro-	88062	2,4,6-Trichlorophenol	10	1,2,4	U231	A	10 (4.54)
Phenol, 2,4,6-trinitro-, ammonium salt	131748	Ammonium picrate	1*	4	P009	A	10 (4.54)
L-Phenylalanine, 4-[bis(2-chloroethyl) amino]	148823	Melphalan	1*	4	U150	X	1 (0.454)
1,10-(1,2-Phenylene)pyrene	193395	Indeno(1,2,3-cd)pyrene	1*	2,4	U137	B	100 (45.4)
Phenylmercury acetate	62384	Mercury, (acetato-O)phenyl-	1*	4	P092	B	100 (45.4)
Phenylthiourea	103855	Thiourea, phenyl-	1*	4	P093	B	100 (45.4)
Phorate	298022	Phosphorodithioic acid, O,O-diethyl S-(ethylthio), methyl ester	1*	4	P094	A	10 (4.54)
Phosgene	75445	Carbonic dichloride	5000	1,4	P095	A	10 (4.54)
Phosphine	7803512		1*	4	P096	B	100 (45.4)
Phosphoric acid	7664382		5000	1		D	5000 (2270)
Phosphoric acid, diethyl 4-nitrophenyl ester	311455	Diethyl-p-nitrophenyl phosphate	1*	4	P041	B	100 (45.4)
Phosphoric acid, lead(2+) salt (2:3)	7446277	Lead phosphate	1*	4	U145		*
Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl]ester	298044	Disulfoton	1	1,4	P039	X	1 (0.454)
Phosphorodithioic acid, O,O-diethyl S-(ethylthio), methyl ester	298022	Phorate	1*	4	P094	A	10 (4.54)
Phosphorodithioic acid, O,O-diethyl S-methyl ester	3288582	O,O-Diethyl S-methyl dithiophosphate	1*	4	U087	D	5000 (2270)
Phosphorodithioic acid, O,O-dimethyl S-[2(methylamino)-2-oxoethyl] ester	60515	Dimethoate	1*	4	P044	A	10 (4.54)
Phosphorofluoridic acid, bis(1-methylethyl) ester	55914	Diisopropylfluorophosphate	1*	4	P043	B	100 (45.4)
Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester	56382	Parathion	1	1,4	P089	A	10 (4.54)
Phosphorothioic acid, O,[4-[(dimethylamino) sulfonyl]phenyl]O,O-dimethyl ester	52857	Famphur	1*	4	P097	C	1000 (454)
Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester	298000	Methyl parathion	100	1,4	P071	B	100 (45.4)
Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester.	297972	O,O-Diethyl O-pyrazinyl phosphorothioate	1*	4	P040	B	100 (45.4)
Phosphorus	7723140		1	1		X	1 (0.454)
Phosphrous oxycloride	10025873		5000	1		C	1000 (454)
Phosphorus pentasulfide	1314803	Phosphorus sulfide Sulfur phosphide	100	1,4	U189	B	100 (45.4)
Phosphorus sulfide	1314803	Phosphorus pentasulfide Sulfur phosphide	100	1,4	U189	B	100 (45.4)
Phosphorus trichloride	7719122		5000	1		C	1000 (454)
PHTHALATE ESTERS	N.A.		1*	2			**
Phthalic anhydride	85449	1,3-Isobenzofurandione	1*	4	U190	D	5000 (2270)
2-Picoline	109068	Pyridine, 2-methyl-	1*	4	U191	D	5000 (2270)
Piperidine, 1-nitroso-	100754	N-Nitrosopiperidine	1*	4	U179	A	10 (4.54)
Plumbane, tetraethyl-	78002	Tetraethyl lead	100	1,4	P110	A	10 (4.54)
POLYCHLORINATED BIPHENYLS (PCBs)	1336363		10	1,2		X	1 (0.454)
Aroclor 1016	12674112	POLYCHLORINATED BIPHENYLS (PCBs)					
Aroclor 1221	11104282	POLYCHLORINATED BIPHENYLS (PCBs)					
Aroclor 1232	11141165	POLYCHLORINATED BIPHENYLS (PCBs)					
Aroclor 1242	53469219	POLYCHLORINATED BIPHENYLS (PCBs)					
Aroclor 1248	12672296	POLYCHLORINATED BIPHENYLS (PCBs)					
Aroclor 1254	11097691	POLYCHLORINATED BIPHENYLS (PCBs)					
Aroclor 1260	11096825	POLYCHLORINATED BIPHENYLS (PCBs)					
POLYNUCLEAR AROMATIC HYDROCARBONS.	N.A.		1*	2			**
Potassium arsenate	7784410		1000	1		X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Potassium arsenite	10124502		1000	1		X	1 (0.454)
Potassium bichromate	7778509		1000	1		A	10 (4.54)
Potassium chromate	7789006		1000	1		A	10 (4.54)
Potassium cyanide	151508	Potassium cyanide K (CN)	10	1,4	P098	A	10 (4.54)
Potassium cyanide K(CN)	151508	Potassium cyanide	10	1,4	P098	A	10 (4.54)
Potassium hydroxide	1310583		1000	1		C	1000 (454)
Potassium permanganate	7722647		100	1		B	100 (45.4)
Potassium silver cyanide	506616	Argentate (1-), bis(cyano-C)-, potassium	1*	4	P099	X	1 (0.454)
Pronamide	23950585	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	1*	4	U192	D	5000 (2270)
Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime	116063	Aldicarb	1*	4	P070	X	1 (0.454)
1-Propanamine	107108	n-Propylamine	1*	4	U194	D	5000 (2270)
1-Propanamine, N-propyl-	142847	Dipropylamine	1*	4	U110	D	5000 (2270)
1-Propanamine, N-nitroso-N-propyl-	621647	Di-n-propylnitrosamine	1*	2,4	U111	A	10 (4.54)
Propane, 1,2-dibromo-3-chloro-	96128	1,2-Dibromo-3-chloropropane	1*	4	U066	X	1 (0.454)
Propane, 2-nitro-	79469	2-Nitropropane	1*	4	U171	A	10 (4.54)
1,3-Propane sultone	1120714	1,2-Oxathiolane, 2,2-dioxide	1*	4	U193	A	10 (4.54)
Propane, 1,2-dichloro-	78875	Propylene dichloride 1,2-Dichloropropane	5000	1,2,4	U083	C	1000 (454)
Propanedinitrile	109773	Malononitrile	1*	4	U149	C	1000 (454)
Propanenitrile	107120	Ethyl cyanide	1*	4	P101	A	10 (4.54)
Propanenitrile, 3-chloro-	542767	3-Chloropropionitrile	1*	4	P027	C	1000 (454)
Propanenitrile, 2-hydroxy-2-methyl-	75865	Acetone cyanohydrin 2-Methyllactonitrile	10	1,4	P069	A	10 (4.54)
Propane, 2,2'-oxybis[2-chloro-	108601	Dichloroisopropyl ether	1*	2,4	U027	C	1000 (454)
1,2,3-Propanetriol, trinitrate-	55630	Nitroglycerine	1*	4	P081	A	10 (4.54)
1-Propanol, 2,3-dibromo-, phosphate (3:1)	126727	Tris(2,3-dibromopropyl) phosphate	1*	4	U235	A	10 (4.54)
1-Propanol, 2-methyl-	78831	Isobutyl alcohol	1*	4	U140	D	5000 (2270)
2-Propanone	67641	Acetone	1*	4	U002	D	5000 (2270)
2-Propanone, 1-bromo-	598312	Bromoacetone	1*	4	P017	C	1000 (454)
Propargite	2312358		10	1		A	10 (4.54)
Propargyl alcohol	107197	2-Propyn-1-ol	1*	4	P102	C	1000 (454)
2-Propenal	107028	Acrolein	1	1,2,4	P003	X	1 (0.454)
2-Propenamide	79061	Acrylamide	1*	4	U007	D	5000 (2270)
1-Propene, 1,1,2,3,3,3-hexachloro-	1888717	Hexachloropropene	1*	4	U243	C	1000 (454)
1-Propene, 1,3-dichloro-	542756	1,3-Dichloropropene	5000	1,2,4	U084	B	100 (45.4)
2-Propenenitrile	107131	Acrylonitrile	100	1,2,4	U009	B	100 (45.4)
2-Propenenitrile, 2-methyl-	126987	Methacrylonitrile	1*	4	U152	C	1000 (454)
2-Propenoic acid	79107	Acrylic acid	1*	4	U008	D	5000 (2270)
2-Propenoic acid, ethyl ester	140885	Ethyl acrylate	1*	4	U113	C	1000 (454)
2-Propenoic acid, 2-methyl-, ethyl ester	97632	Ethyl methacrylate	1*	4	U118	C	1000 (454)
2-Propenoic acid, 2-methyl-, methyl ester	80626	Methyl methacrylate	5000	1,4	U162	C	1000 (454)
2-Propen-1-ol	107186	Allyl alcohol	100	1,4	P005	B	100 (45.4)
Propionic acid	79094		5000	1		D	5000 (2270)
Propionic acid, 2-(2,4,5-trichlorophenoxy)-	93721	Silvex (2,4,5-TP) 2,4,5-TP acid	100	1,4	U233	B	100 (45.4)
Propionic anhydride	123626		5000	1		D	5000 (2270)
n-Propylamine	107108	1-Propanamine	1*	4	U194	D	5000 (2270)
Propylene dichloride	78875	Propane, 1,2-dichloro- 1,2-Dichloropropane	5000	1,2,4	U083	C	1000 (454)
Propylene oxide	75569		5000	1		B	100 (45.4)
1,2-Propylenimine	75558	Aziridine, 2-methyl-	1*	4	P067	X	1 (0.454)
2-Propyn-1-ol	107197	Propargyl alcohol	1*	4	P102	C	1000 (454)
Pyrene	129000		1*	2		D	5000 (2270)
Pyrethrins	121299		1000	1		X	1 (0.545)
	121211						
	8003347						
3,6-Pyridazinedione, 1,2-dihydro-	123331	Maleic hydrazide	1*	4	U148	D	5000 (2270)
4-Pyridinamine	504245	4-Aminopyridine	1*	4	P008	C	1000 (454)
Pyridine	110861		1*	4	U196	C	1000 (454)
Pyridine, 2-methyl-	109068	2-Picoline	1*	4	U191	D	5000 (2270)
Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-	54115	Nicotine, & salts	1*	4	P075	B	100 (45.4)
2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-	66751	Uracil mustard	1*	4	U237	A	10 (4.54)
4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	56042	Methylthiouracil	1*	4	U164	A	10 (4.54)
Pyrrolidine, 1-nitroso-	930552	N-Nitrosopyrrolidine	1*	4	U180	X	1 (0.454)
Quinoline	91225		1000	1		D	5000 (2270)
RADIONUCLIDES	N.A.		1*	3			§
Reserpine	50555	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy-, methyl ester (3beta, 16beta,17alpha,18beta,20alpha)-	1*	4	U200	D	5000 (2270)
Resorcinol	108463	1,3-Benzenediol	1000	1,4	U201	D	5000 (2270)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Saccharin and salts	81072	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide	1*	4	U202	B	100 (45.4)
Safrole	94597	1,3-Benzodioxole, 5-(2-propenyl)-	1*	4	U203	B	100 (45.4)
Selenious acid	7783008		1*	4	U204	A	10 (4.54)
Selenious acid, dithallium (1+) salt	12039520	Thallium selenite	1*	4	P114	C	1000 (454)
Selenium ††	7782492		1*	2		B	100 (45.4)
SELENIUM AND COMPOUNDS	N.A.		1*	2			**
Selenium dioxide	7446084	Selenium oxide	1000	1,4	U204	A	10 (4.54)
Selenium oxide	7446084	Selenium dioxide	1000	1,4	U204	A	10 (4.54)
Selenium sulfide	7488564	Selenium sulfide SeS2	1*	4	U205	A	10 (4.54)
Selenium sulfide SeS2	7488564	Selenium sulfide	1*	4	U205	A	10 (4.54)
Selenoureas	630104		1*	4	P103	C	1000 (454)
L-Serine, diazoacetate (ester)	115026	Azaserine	1*	4	U015	X	1 (0.454)
Silver ††	7440224		1*	2		C	1000 (454)
SILVER AND COMPOUNDS	N.A.		1*	2			**
Silver cyanide	506649	Silver cyanide Ag (CN)	1*	4	P104	X	1 (0.454)
Silver cyanide Ag (CN)	506649	Silver cyanide	1*	4	P104	X	1 (0.454)
Silver nitrate	7761888		1	1		X	1 (0.454)
Silvex (2,4,5-TP)	93721	Propionic acid, 2-(2,4,5-trichlorophenoxy)- 2,4,5-TP acid	100	1,4	U233	B	100 (45.4)
Sodium	7440235		1000	1		A	10 (4.54)
Sodium arsenate	7631892		1000	1		X	1 (0.454)
Sodium arsenite	7784465		1000	1		X	1 (0.454)
Sodium azide	26628228		1*	4	P105	C	1000 (454)
Sodium bichromate	10588019		1000	1		A	10 (4.54)
Sodium bifluoride	1333831		5000	1		B	100 (45.4)
Sodium bisulfite	7631905		5000	1		D	5000 (2270)
Sodium chromate	7775113		1000	1		A	10 (4.54)
Sodium cyanide	143339	Sodium cyanide Na (CN)	10	1,4	P106	A	10 (4.54)
Sodium cyanide Na (CN)	143339	Sodium cyanide	10	1,4	P106	A	10 (4.54)
Sodium dodecylbenzenesulfonate	25155300		1000	1		C	1000 (454)
Sodium fluoride	7681494		5000	1		C	1000 (454)
Sodium hydrosulfide	16721805		5000	1		D	5000 (2270)
Sodium hydroxide	1310732		1000	1		C	1000 (454)
Sodium hypochlorite	7681529		100	1		B	100 (45.4)
	10022705						
Sodium methylate	124414		1000	1		C	1000 (454)
Sodium nitrite	7632000		100	1		B	100 (45.4)
Sodium phosphate, dibasic	7558794		5000	1		D	5000 (2270)
	10039324						
	10140655						
Sodium phosphate, tribasic	7601549		5000	1		D	5000 (2270)
	7758294						
	7785844						
	10101890						
	10124568						
	10361894						
Sodium selenite	10102188		1000	1		B	100 (45–4)
	7782823						
Streptozotocin	18883664	D-Glucose, 2-deoxy-2-[[(methylnitrosamino)-carbonyl]amino]- Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-	1*	4	U206	X	1 (0.454)
Strontium chromate	7789062		1000	1		A	10 (4.54)
Strychnidin-10-one	57249	Strychnine, & salts	10	1,4	P108	A	10 (4.54)
Strychnidin-10-one, 2,3-dimethoxy-	357573	Brucine	1*	4	P018	B	100 (45.4)
Strychnine, & salts	57249	Strychnidin-10-one	10	1,4	P108	A	10 (4.54)
Styrene	100425		1000	1		C	1000 (454)
Sulfur monochloride	12771083		1000	1		C	1000 (454)
Sulfur phosphide	1314803	Phosphorus pentasulfide Phosphorus sulfide	100	1,4	U189	B	100 (45.4)
Sulfuric acid	7664939		1000	1		C	1000 (454)
	8014957						
Sulfuric acid, dithallium (1+) salt	7446186	Thallium (I) sulfate	1000	1,4	P115	B	100 (45.4)
	10031591						
Sulfuric acid, dimethyl ester	77781	Dimethyl sulfate	1*	4	U103	B	100 (45.4)
2,4,5-T acid	93765	Acetic acid, (2,4,5-trichlorophenoxy) 2,4,5-T	100	1,4	U232	C	1000 (454)
2,4,5-T amines	2008460		100	1		D	5000 (2270)
	1319728						
	3813147						
	6369966						
	6369977						

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
2,4,5-T esters	93798		100	1		C	1000 (454)
	1928478						
	2545597						
	25168154						
	61792072						
2,4,5-T salts	13560991		100	1		C	1000 (454)
2,4,5-T	93765	Acetic acid, (2,4,5-trichlorophenoxy) 2,4,5-T acid	100	1,4	U232	C	1000 (454)
TDE	72548	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro- DDD 4,4' DDD	1	1,2,4	U060	X	1 (0.454)
1,2,4,5-Tetrachlorobenzene	95943	Benzene, 1,2,4,5-tetrachloro-	1*	4	U207	D	5000 (2270)
2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)	1746016		1*	2		X	1 (0.454)
1,1,1,2-Tetrachloroethane	630206	Ethane, 1,1,1,2-tetrachloro-	1*	4	U208	B	100 (45.4)
1,1,2,2-Tetrachloroethane	79345	Ethane, 1,1,2,2-tetrachloro-	1*	2,4	U209	B	100 (45.4)
Tetrachloroethene	127184	Ethene, tetrachloro- Perchloroethylene Tetrachloroethylene	1*	2,4	U210	B	100 (45.4)
Tetrachloroethylene	127184	Ethene, tetrachloro- Perchloroethylene Tetrachloroethene	1*	2,4	U210	B	100 (45.4)
2,3,4,6-Tetrachlorophenol	58902	Phenol, 2,3,4,6-tetrachloro-	1*	4	U212	A	10 (4.54)
Tetraethyl lead	78002	Plumbane, tetraethyl-	100	1,4	P110	A	10 (4.54)
Tetraethyl pyrophosphate	107493	Diphosphoric acid, tetraethyl ester	100	1,4	P111	A	10 (4.54)
Tetraethyldithiopyrophosphate	3689245	Thiodiphosphoric acid, tetraethyl ester	1*	4	P109	B	100 (45.4)
Tetrahydrofuran	109999	Furan, tetrahydro-	1*	4	U213	C	1000 (454)
Tetranitromethane	509148	Methane, tetranitro-	1*	4	P112	A	10 (4.54)
Tetraphosphoric acid, hexaethyl ester	757584	Hexaethyl tetraphosphoate	1*	4	P062	B	100 (45.4)
Thallic oxide	1314325	Thallium oxide Tl2O3	1*	4	P113	B	100 (45.4)
Thallium ‡	7440280		1*	2		C	1000 (454)**
Thallium and compounds	N.A.		1*	2			**
Thallium (I) acetate	563688	Acetic acid, thallium(1+) salt	1*	4	U214	B	100 (45.4)
Thallium (I) carbonate	6533739	Carbonic acid, dithallium(1+) salt	1*	4	U215	B	100 (45.4)
Thallium (I) chloride	7791120	Thallium chloride TlCl	1*	4	U216	B	100 (45.4)
Thallium chloride TlCl	7791120	Thallium(I) chloride	1*	4	U216	B	100 (45.4)
Thallium (I) nitrate	10102451	Nitric acid, thallium (1+) salt	1*	4	U217	B	100 (45.4)
Thallium oxide Tl2O3	1314325	Thallic oxide	1*	4	P113	B	100 (45.4)
Thallium selenite	12039520	Selenious acid, dithallium(1+) salt	1*	4	P114	C	1000 (454)
Thallium (I) sulfate	7446186	Sulfuric acid, dithallium(1+) salt	1000	1,4	P115	B	100 (45.4)
	10031591						
Thioacetamide	62555	Ethanethioamide	1*	4	U218	A	10 (4.54)
Thiodiphosphoric acid, tetraethyl ester	3689245	Tetraethyldithiopyrophosphate	1*	4	P109	B	100 (45.4)
Thiofanox	39196184	2-Butanone, 3,3-dimethyl-1-(methylthio)-, O[(methylamino)carbonyl] oxime	1*	4	P045	B	100 (45.4)
Thioimidodicarbonic diamide [(H2N)C(S)] 2NH.	541537	Dithiobiuret	1*	4	P049	B	100 (45.4)
Thiomethanol	74931	Methanethiol Methylmercaptan	100	1,4	U153	B	100 (45.4)
Thioperoxydicarbonic diamide [(H2N)C(S)] 2S2, tetramethyl-.	137268	Thiram	1*	4	U244	A	10 (4.54)
Thiophenol	108985	Benzenethiol	1*	4	P014	B	100 (45.4)
Thiosemicarbazide	79196	Hydrazinecarbothioamide	1*	4	P116	B	100 (45.4)
Thiourea	62566		1*	4	U219	A	10 (4.54)
Thiourea, (2-chlorophenyl)-	5344821	1-(o-Chlorophenyl)thiourea	1*	4	P026	B	100 (45.4)
Thiourea, 1-naphthalenyl-	86884	alpha-Naphthylthiourea	1*	4	P072	B	100 (45.4)
Thiourea, phenyl-	103855	Phenylthiourea	1*	4	P093	B	100 (45.4)
Thiram	137268	Thioperoxydicarbonic diamide [(H2N)C(S)] 2S2, tetramethyl-	1*	4	U244	A	10 (4.54)
Toluene	108883	Benzene, methyl-	1000	1,2,4	U220	C	1000 (454)
Toluenediamine	95807	Benzenediamine, ar-methyl-	1*	4	U221	A	10 (4.54)
	496720						
	823405						
	25376458						
Toluene diisocyanate	584849	Benzene, 1,3-diisocyanatomethyl-	1*	4	U223	B	100 (45.4)
	91087						
	26471625						
o-Toluidine	95534	Benzenamine, 2-methyl-	1*	4	U328	B	100 (45.4)
p-Toluidine	106490	Benzenamine, 4-methyl-	1*	4	U353	B	100 (45.4)
o-Toluidine hydrochloride	636215	Benzenamine, 2-methyl-, hydrochloride	1*	4	U222	B	100 (45.4)
Toxaphene	8001352	Camphene, octachloro-	1*	1,2,4,	P123	X	1 (0.454)
2,4,5-TP acid	93721	Propionic acid, 2-(2,4,5-trichlorophenoxy)- Silvex (2,4,5-TP)	100	1,4	U233	B	100 (45.4)
2,4,5-TP esters	32534955		100	1		B	100 (45.4)
1H-1,2,4-Triazol-3-amine	61825	Amitrole	1*	4	U011	A	10 (4.54)
Trichlorfon	52686		1000	1		B	100 (45.4)
1,2,4-Trichlorobenzene	120821		1*	2		B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
1,1,1-Trichloroethane	71556	Ethane, 1,1,1-trichloro- Methyl chloroform	1*	2,4	U226	C	1000 (454)
1,1,2-Trichloroethane	79005	Ethane, 1,1,2-trichloro-	1*	2,4	U227	B	100 (45.4)
Trichloroethene	79016	Ethene, trichloro- Trichloroethylene	1000	1,2,4	U228	B	100 (45.4)
Trichloroethylene	79016	Ethene, trichloro- Trichloroethene	1000	1,2,4	U228	B	100 (45.4)
Trichloromethanesulfenyl chloride	594423	Methanesulfenyl chloride, trichloro-	1*	4	P118	B	100 (45.4)
Trichloromonofluoromethane	75694	Methane, trichlorofluoro-	1*	4	U121	D	5000 (2270)
Trichlorophenol	25167822		10	1		A	10 (4.54)
2,3,4-Trichlorophenol	15950660						
2,3,5-Trichlorophenol	933788						
2,3,6-Trichlorophenol	933755						
2,4,5-Trichlorophenol	95954	Phenol, 2,4,5-trichloro-	10*	1,4	U230	A	10 (4.54)
2,4,6-Trichlorophenol	88062	Phenol, 2,4,6-trichloro-	10*	1,2,4	U231	A	10 (4.54)
3,4,5-Trichlorophenol	609198						
2,4,5-Trichlorophenol	95954	Phenol, 2,4,5-trichloro-	10*	1,4	U230	A	10 (4.54)
2,4,6-Trichlorophenol	88062	Phenol, 2,4,6-trichloro-	10	1,2,4	U231	A	10 (4.54)
Triethanolamine dodecylbenzenesulfonate	27323417		1000	1		C	1000 (454)
Triethylamine	121448		5000	1		D	5000 (2270)
Trimethylamine	75503		1000	1		B	100 (45.4)
1,3,5-Trinitrobenzene	99354	Benzene, 1,3,5-trinitro-	1*	4	U234	A	10 (4.54)
1,3,5-Trioxane, 2,4,6-trimethyl-	123637	Paraldehyde	1*	4	U182	C	1000 (454)
Tris(2,3-dibromopropyl) phosphate	126727	1-Propanol, 2,3-dibromo-, phosphate (3:1)	1*	4	U235	A	10 (4.54)
Trypan blue	72571	2,7-Naphthalenedisulfonic acid, 3,3'-3,3'-dimethyl-(1,1'-biphenyl)-4,4'-diyl-bis(azo))bis(5-amino-4-hydroxy)-tetrasodium salt	1*	4	U236	A	10 (4.54)
Unlisted Hazardous Wastes Characteristic of Corrosivity.	N.A.		1*	4	D002	B	100 (45.4)
Unlisted Hazardous Wastes Characteristic of EP Toxicity.	N.A.		1*	4			
Arsenic D004	N.A.		1*	4	D004	X	1 (0.454)
Barium D005	N.A.		1*	4	D005	C	1000 (454)
Cadmium D006	N.A.		1*	4	D006	A	10 (4.54)
Chromium D007	N.A.		1*	4	D007	A	10 (4.54)
Lead D008	N.A.		1*	4	D008		#
Mercury D009	N.A.		1*	4	D009	X	1 (0.454)
Selenium D010	N.A.		1*	4	D010	A	10 (4.54)
Silver D011	N.A.		1*	4	D011	X	1 (0.454)
Endrin D012	N.A.		1	1,4	D012	X	1 (0.454)
Lindane D013	N.A.		1	1,4	D013	X	1 (0.454)
Methoxychlor D014	N.A.		1	1,4	D014	X	1 (0.454)
Toxaphene D015	N.A.		1	1,4	D015	X	1 (0.454)
2,4-D D016	N.A.		100	1,4	D016	B	100 (45.4)
2,4,5-TP D017	N.A.		100	1,4	D017	B	100 (45.4)
Unlisted Hazardous Wastes Characteristic of Ignitability.	N.A.		1*	4	D001	B	100 (45.4)
Unlisted Hazardous Wastes Characteristic of Reactivity.	N.A.		1*	4	D003	B	100 (45.4)
Uracil mustard	66751	2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-	1*	4	U237	A	10 (4.54)
Uranyl acetate	541093		5000	1		B	100 (45.4)
Uranyl nitrate	10102064		5000	1		B	100 (45.4)
	36478769						
Urea, N-ethyl-N-nitroso-	759739	N-Nitroso-N-ethylurea	1*	4	U176	X	1 (0.454)
Urea, N-methyl-N-nitroso	684935	N-Nitroso-N-methylurea	1*	4	U177	X	1 (0.454)
Vanadic acid, ammonium salt	7803556	Ammonium vanadate	1*	4	P119	C	1000 (454)
Vanadium oxide V2O5	1314621	Vanadium pentoxide	1000	1,4	P120	C	1000 (454)
Vanadium pentoxide	1314621	Vanadium oxide V2O5	1000	1,4	P120	C	1000 (454)
Vanadyl sulfate	27774136		1000	1		C	1000 (454)
Vinyl chloride	75014	Ethene, chloro-	1*	2,3,4	U043	X	1 (0.454)
Vinyl acetate	108054	Vinyl acetate monomer	1000	1		D	5000 (2270)
Vinyl acetate monomer	108054	Vinyl acetate	1000	1		D	5000 (2270)
Vinylamine, N-methyl-N-nitroso-	4549400	N-Nitrosomethylvinylamine	1*	4	P084	A	10 (4.54)
Vinylidene chloride	75354	Ethene, 1,1-dichloro- 1,1-Dichloroethylene	5000	1,2,4	U078	B	100 (45.4)
Warfarin, & salts, when present at concentrations greater than 0.3%.	81812	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, & salts, when present at concentrations greater than 0.3%	1*	4	P001	B	100 (45.4)
Xylene (mixed)	1330207	Benzene, dimethyl	1000	1,4	U239	C	1000 (454)
m-Benzene, dimethyl	108383	m-Xylene					
o-Benzene, dimethyl	95476	o-Xylene					
p-Benzene, dimethyl	106423	p-Xylene					

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Xylenol	1300716		1000	1		C	1000 (454)
Yohimban-16-carboxylic acid,11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester (3beta,16beta,17alpha, 18beta, 20alpha)-	50555	Reserpine	1*	4	U200	D	5000 (2270)
Zinc ‡	7440666		1*	2		C	1000 (454)
ZINC AND COMPOUNDS	N.A.		1*	2			**
Zinc acetate	557346		1000	1		C	1000 (454)
Zinc ammonium chloride	52628258 14639975 14639986		5000	1		C	1000 (454)
Zinc borate	1332076		1000	1		C	1000 (454)
Zinc bromide	7699458		5000	1		C	1000 (454)
Zinc carbonate	3486359		1000	1		C	1000 (454)
Zinc chloride	7646857		5000	1		C	1000 (454)
Zinc cyanide	557211	Zinc cyanide Zn(CN)2	10	1,4	P121	A	10 (4.54)
Zinc cyanide Zn(CN)2	557211	Zinc cyanide	10	1,4	P121	A	10 (4.54)
Zinc fluoride	7783495		1000	1		C	1000 (454)
Zinc formate	557415		1000	1		C	1000 (454)
Zinc hydrosulfite	7779864		1000	1		C	1000 (454)
Zinc nitrate	7779886		5000	1		C	1000 (454)
Zinc phenolsulfonate	127822		5000	1		D	5000 (2270)
Zinc phosphide	1314847	Zinc phosphide Zn3P2, when present at concentrations greater than 10%	1000	1,4	P122	B	100 (45.4)
Zinc phosphide Zn3P2, when present at concentrations greater than 10%.	1314847	Zinc phosphide	1000	1,4	P122	B	100 (45.4)
Zinc silicofluoride	16871719		5000	1		D	5000 (2270)
Zinc sulfate	7733020		1000	1		C	1000 (454)
Zirconium nitrate	13746899		5000	1		D	5000 (2270)
Zirconium potassium fluoride	16923958		5000	1		C	1000 (454)
Zirconium sulfate	14644612		5000	1		D	5000 (2270)
Zirconium tetrachloride	10026116		5000	1		D	5000 (2270)
F001			1*	4	F001	A	10 (4.54)
The following spent halogenated solvents used in degreasing; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.							
(a) Tetrachloroethylene	127184		1*	2,4	U210	B	100 (45.4)
(b) Trichloroethylene	79016		1000	1,2,4	U228	B	100 (45.4)
(c) Methylene chloride	75092		1*	2,4	U080	C	1000 (454)
(d) 1,1,1-Trichloroethane	71556		1*	2,4	U226	C	1000 (454)
(e) Carbon tetrachloride	56235		5000	1,2,4	U211	A	10 (4.54)
(f) Chlorinated fluorocarbons	N.A.					D	5000 (2270)
F002			1*	4	F002	A	10 (4.54)
The following spent halogenated solvents; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.							
(a) Tetrachloroethylene	127184		1*	2,4	U210	B	100 (45.4)
(b) Methylene chloride	75092		1*	2,4	U080	C	1000 (454)
(c) Trichloroethylene	79016		1000	1,2,4	U228	B	100 (45.4)
(d) 1,1,1-Trichloroethane	71556		1*	2,4	U226	C	1000 (454)
(e) Chlorobenzene	108907		100	1,2,4	U037	B	100 (45.4)
(f) 1,1,2-Trichloro-1,2,2-trifluoroethane	76131					D	5000 (2270)
(g) o-Dichlorobenzene	95501		100	1,2,4	U070	B	100 (45.4)
(h) Trichlorofluoromethane	75694		1*	4	U121	D	5000 (2270)
(i) 1,1,2-Trichloroethane	79005		1*	2,4	U227	B	100 (45.4)
F003			1*	4	F003	B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
The following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and a total of ten percent or more (by volume) of one or:							
(a) Xylene (mixed)	1330207		1000	1,4	U239	C	1000 (454)
(b) Acetone	67641		1*	4	U002	D	5000 (2270)
(c) Ethyl acetate	141786		1*	4	U112	D	5000 (2270)
(d) Ethylbenzene	100414		1000	1,2		C	1000 (454)
(e) Ethyl ether	60297		1*	4	U117	B	100 (45.4)
(f) Methyl isobutyl ketone	108101		1*	4	U161	D	5000 (2270)
(g) n-Butyl alcohol	71363		1*	4	U031	D	5000 (2270)
(h) Cyclohexanone	108941		1*	4	U057	D	5000 (2270)
(i) Methanol	67561		1*	4	U154	D	5000 (2270)
F004			1*	4	F004	C	1000 (454)
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:							
(a) Cresols/Cresylic acid	1319773		1000	1,4	U052	C	1000 (454)
(b) Nitrobenzene	98953		1000	1,2,4	U169	C	1000 (454)
F005			1*	4	F005	B	100 (45.4)
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:							
(a) Toluene	108883		1000	1,2,4	U220	C	1000 (454)
(b) Methyl ethyl ketone	78933		1*	4	U159	D	5000 (2270)
(c) Carbon disulfide	75150		5000	1,4	P022	B	100 (45.4)
(d) Isobutanol	78831		1*	4	U140	D	5000 (2270)
(e) Pyridine	110861		1*	4	U196	C	1000 (454)
F006			1*	4	F006	A	10 (4.54)
Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum, (2) tin plating on carbon steel, (3) zinc plating (segregated basis) on carbon steel, (4) aluminum or zinc-aluminum plating on carbon steel, (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel, and (6) chemical etching and milling of aluminum.							
F007			1*	4	F007	A	10 (4.54)
Spent cyanide plating bath solutions from electroplating operations.							
F008			1*	4	F008	A	10 (4.54)
Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.							
F009			1*	4	F009	A	10 (4.54)
Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.							
F010			1*	4	F010	A	10 (4.54)
Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.							
F011			1*	4	F011	A	10 (4.54)
Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations (except for precious metals heat treating spent cyanide solutions from salt bath pot cleaning).							
F012			1*	4	F012	A	10 (4.54)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.							
F019			1*	4	F019	A	10 (4.54)
Wastewater treatment sludges from the chemical conversion coating of aluminum.							
F020			1*	4	F020	X	1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri-or-tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of hexachlorophene from highly purified 2,4,5-trichlorophenol.)							
F021			1*	4	F021	X	1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives.							
F022			1*	4	F022	X	1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions.							
F023			1*	4	F023	X	1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- and tetrachlorophenols. (This listing does not include wastes from equipment used only for the production or use of hexachlorophene from highly purified 2,4,5-trichlorophenol.)							
F024			1*	4	F024	X	1 (0.454)
Wastes, including but not limited to distillation residues, heavy ends, tars, and reactor cleanout wastes, from the production of chlorinated aliphatic hydrocarbons, having carbon content from one to five, utilizing free radical catalyzed processes. (This listing does not include light ends, spent filters and filter aids, spent dessicants(sic), wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in Section 261.32.)							
F026			1*	4	F026	X	1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions.							
F027			1*	4	F027	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.)							
F028			1*	4	F028	X	1 (0.454)
Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.							
K001			1*	4	K001	X	1 (0.454)
Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.							
K002			1*	4	K002		#
Wastewater treatment sludge from the production of chrome yellow and orange pigments.							
K003			1*	4	K003		#
Wastewater treatment sludge from the production of molybdate orange pigments.							
K004			1*	4	K004	A	10 (4.54)
Wastewater treatment sludge from the production of zinc yellow pigments.							
K005			1*	4	K005		#
Wastewater treatment sludge from the production of chrome green pigments.							
K006			1*	4	K006	A	10 (4.54)
Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).							
K007			1*	4	K007	A	10 (4.54)
Wastewater treatment sludge from the production of iron blue pigments.							
K008			1*	4	K008	A	10 (4.54)
Oven residue from the production of chrome oxide green pigments.							
K009			1*	4	K009	A	10 (4.54)
Distillation bottoms from the production of acetaldehyde from ethylene.							
K010			1*	4	K010	A	10 (4.54)
Distillation side cuts from the production of acetaldehyde from ethylene.							
K011			1*	4	K011	A	10 (4.54)
Bottom stream from the wastewater stripper in the production of acrylonitrile.							
K013			1*	4	K013	A	10 (4.54)
Bottom stream from the acetonitrile column in the production of acrylonitrile.							
K014			1*	4	K014	D	5000 (2270)
Bottoms from the acetonitrile purification column in the production of acrylonitrile.							
K015			1*	4	K015	A	10 (4.54)
Still bottoms from the distillation of benzyl chloride.							
K016			1*	4	K016	X	1 (0.454)
Heavy ends or distillation residues from the production of carbon tetrachloride.							
K017			1*	4	K017	A	10 (4.54)
Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.							
K018			1*	4	K018	X	1 (0.454)
Heavy ends from the fractionation column in ethyl chloride production.							
K019			1*	4	K019	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production. K020			1*	4	K020	X	1 (0.454)
Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production. K021			1*	4	K021	A	10 (4.54)
Aqueous spent antimony catalyst waste from fluoromethanes production. K022			1*	4	K022	X	1 (0.454)
Distillation bottom tars from the production of phenol/acetone from cumene. K023			1*	4	K023	D	5000 (2270)
Distillation light ends from the production of phthalic anhydride from naphthalene. K024			1*	4	K024	D	5000 (2270)
Distillation bottoms from the production of phthalic anhydride from naphthalene. K025			1*	4	K025	A	10 (4.54)
Distillation bottoms from the production of nitrobenzene by the nitration of benzene. K026			1*	4	K026	C	1000 (454)
Stripping still tails from the production of methyl ethyl pyridines. K027			1*	4	K027	A	10 (4.54)
Centrifuge and distillation residues from toluene diisocyanate production. K028			1*	4	K028	X	1 (0.454)
Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane. K029			1*	4	K029	X	1 (0.454)
Waste from the product steam stripper in the production of 1,1,1-trichloroethane. K030			1*	4	K030	X	1 (0.454)
Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene. K031			1*	4	K031	X	1 (0.454)
By-product salts generated in the production of MSMA and cacodylic acid. K032			1*	4	K032	A	10 (4.54)
Wastewater treatment sludge from the production of chlordane. K033			1*	4	K033	A	10 (4.54)
Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane. K034			1*	4	K034	A	10 (4.54)
Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane. K035			1*	4	K035	X	1 (0.454)
Wastewater treatment sludges generated in the production of creosote. K036			1*	4	K036	X	1 (0.454)
Still bottoms from toluene reclamation distillation in the production of disulfoton. K037			1*	4	K037	X	1 (0.454)
Wastewater treatment sludges from the production of disulfoton. K038			1*	4	K038	A	10 (4.54)
Wastewater from the washing and stripping of phorate production. K039			1*	4	K039	A	10 (4.54)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate. K040			1*	4	K040	A	10 (4.54)
Wastewater treatment sludge from the production of phorate. K041			1*	4	K041	X	1 (0.454)
Wastewater treatment sludge from the production of toxaphene. K042			1*	4	K042	A	10 (4.54)
Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T. K043			1*	4	K043	A	10 (4.54)
2,6-Dichlorophenol waste from the production of 2,4-D. K044			1*	4	K044	A	10 (4.54)
Wastewater treatment sludges from the manufacturing and processing of explosives. K045			1*	4	K045	A	10 (4.54)
Spent carbon from the treatment of wastewater containing explosives. K046			1*	4	K046	B	100 (45.4)
Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds. K047			1*	4	K047	A	10 (4.54)
Pink/red water from TNT operations. K048			1*	4	K048		#
Dissolved air flotation (DAF) float from the petroleum refining industry. K049			1*	4	K049		#
Slop oil emulsion solids from the petroleum refining industry. K050			1*	4	K050	A	10 (4.54)
Heat exchanger bundle cleaning sludge from the petroleum refining industry. K051			1*	4	K051		#
API separator sludge from the petroleum refining industry. K052			1*	4	K052	A	10 (4.54)
Tank bottoms (leaded) from the petroleum refining industry. K060			1*	4	K060	X	1 (0.454)
Ammonia still lime sludge from coking operations. K061			1*	4	K061		#
Emission control dust/sludge from the primary production of steel in electric furnaces. K062			1*	4	K062		#
Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332). K064			1*	4	K064		##
Acid plant blowdown slurry/sludge resulting from thickening of blowdown slurry from primary copper production. K065			1*	4	K065		##
Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities. K066			1*	4	K066		##

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Sludge from treatment of process wastewater and/or acid plant blowdown from primary zinc production.							
K069			1*	4	K069		#
Emission control dust/sludge from secondary lead smelting.							
K071			1*	4	K071	X	1 (0.454)
Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.							
K073			1*	4	K073	A	10 (4.54)
Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.							
K083			1*	4	K083	B	100 (45.4)
Distillation bottoms from aniline extraction.							
K084			1*	4	K084	X	1 (0.454)
Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.							
K085			1*	4	K085	A	10 (4.54)
Distillation or fractionation column bottoms from the production of chlorobenzenes.							
K086			1*	4	K086		#
Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.							
K087			1*	4	K087	B	100 (45.4)
Decanter tank tar sludge from coking operations.							
K088			1*	4	K088		#
Spent potliners from primary aluminum reduction.							
K090			1*	4	K090		#
Emission control dust or sludge from ferrochromiumsilicon production.							
K091			1	4	K091		#
Emission control dust or sludge from ferrochromium production.							
K093			1*	4	K093	D	5000 (2270)
Distillation light ends from the production of phthalic anhydride from ortho-xylene.							
K094			1*	4	K094	D	5000 (2270)
Distillation bottoms from the production of phthalic anhydride from ortho-xylene.							
K095			1*	4	K095	B	100 (45.4)
Distillation bottoms from the production of 1,1,1-trichloroethane.							
K096			1*	4	K096	B	100 (45.4)
Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.							
K097			1*	4	K097	X	1 (0.454)
Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.							
K098			1*	4	K098	X	1 (0.454)
Untreated process wastewater from the production of toxaphene.							
K099			1*	4	K099	A	10 (4.54)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Untreated wastewater from the production of 2,4-D.							
K100			1*	4	K100		#
Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.							
K101			1*	4	K101	X	1 (0.454)
Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.							
K102			1*	4	K102	X	1 (0.454)
Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.							
K103			1*	4	K103	B	100 (45.4)
Process residues from aniline extraction from the production of aniline.							
K104			1*	4	K104	A	10 (4.54)
Combined wastewater streams generated from nitrobenzene/aniline production.							
K105			1*	4	K105	A	10 (4.54)
Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.							
K106			1*	4	K106	X	1 (0.454)
Wastewater treatment sludge from the mercury cell process in chlorine production.							
K111			1*	4	K111	A	10 (4.54)
Product washwaters from the production of dinitrotoluene via nitration of toluene.							
K112			1*	4	K112	A	10 (4.54)
Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.							
K113			1*	4	K113	A	10 (4.54)
Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.							
K114			1*	4	K114	A	10 (4.54)
Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.							
K115			1*	4	K115	A	10 (4.54)
Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.							
K116			1*	4	K116	A	10 (4.54)
Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.							
K117			1*	4	K117	X	1 (0.454)
Wastewater from the reaction vent gas scrubber in the production of ethylene bromide via bromination of ethene.							
K118			1*	4	K118	X	1 (0.454)
Spent absorbent solids from purification of ethylene dibromide in the production of ethylene dibromide.							
K123			1*	4	K123	A	10 (4.54)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.							
K124			1*	4	K124	A	10 (4.54)
Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.							
K125			1*	4	K125	A	10 (4.54)
Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts.							
K126			1*	4	K126	A	10 (4.54)
Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts.							
K136			1*	4	K136	X	1 (0.454)
Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.							

† Indicates the statutory source as defined by 1, 2, 3, or 4 below.

‡ No reporting of releases of this hazardous substance is required if the diameter of the pieces of the solid metal released is equal to or exceeds 100 micrometers (0.004 inches).

††† The RQ for asbestos is limited to friable forms only.

1—Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 311(b)(4).

2—Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 307(a).

3—Indicates that the statutory source for designation of this hazardous substance under CERCLA is CAA Section 112.

4—Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.

#*—Indicates that the 1-pound RQ is a CERCLA statutory RQ.

Indicates that the RQ is subject to change when the assessment of potential carcinogenicity is completed.

The Agency may adjust the statutory RQ for this hazardous substance in a future rulemaking; until then the statutory RQ applies.

‡—The adjusted RQs for radionuclides may be found in Appendix B to this table.

*—Indicates that no RQ is being assigned to the generic or broad class.

APPENDIX A—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES

CASRN	Hazardous substance
50000	Formaldehyde.
50077	Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione,6-amino-8-[[(aminocarbonyl)oxy]methyl]-1,1a,2,8,8a, 8b-hexahydro-8a-methoxy-5-methyl-, [1aS-(1aalpha, 8beta,8aalpha,8balpha)]-.
	Mitomycin C.
50180	Cyclophosphamide.
	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide.
50293	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-.
	DDT.
	4,4'DDT.
50328	Benzo[a]pyrene.
	3,4-Benzopyrene.
50555	Reserpine.
	Yohimban-16-carboxylic acid,11,17-dimethoxy-18-[(3 ,4,5-trimethoxybenzoyl)oxy]-, methyl ester (3beta, 16beta,17alpha,18beta,20alpha)-.
51285	Phenol, 2,4-dinitro-.
	2,4-Dinitrophenol.
51434	Epinephrine.
	1,2-Benzenediol,4-[1-hydroxy-2-(methylamino) ethyl]-.
51796	Carbamic acid, ethyl ester.
	Ethyl carbamate (urethane).
52686	Trichlorfon.
52857	Famphur.
	Phosphorothioic acid, O,[4-[(dimethylamino) sulfonyl]phenyl]O,O-dimethyl ester.
53703	Dibenz[a,h]anthracene.
	Dibenzo[a,h]anthracene.
	1,2:5,6-Dibenzanthracene.
53963	Acetamide, N-9H-fluoren-2-yl-.
	2-Acetylaminofluorene.
54115	Nicotine, & salts.
	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-.
55185	Ethanamine, N-ethyl-N-nitroso-.
	N-Nitrosodiethylamine.
55630	Nitroglycerine.
	1,2,3-Propanetriol, trinitrate-.
55914	Diisopropylfluorophosphate.
	Phosphorofluoridic acid, bis(1-methylethyl) ester.
56042	Methylthiouracil.
	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-.
56235	Carbon tetrachloride.
	Methane, tetrachloro-.
56382	Parathion.
	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester.
56495	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-.
	3-Methylcholanthrene.
56531	Diethylstilbestrol.
	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E).
56553	Benz[a]anthracene.
	Benzo[a]anthracene.
	1,2-Benzanthracene.
56724	Coumaphos.
57125	Cyanides (soluble salts and complexes) not otherwise specified.
57147	Hydrazine, 1,1-dimethyl-.
	1,1-Dimethylhydrazine.
57249	Strychnidin-10-one.
	Strychnine, & salts.
57749	Chlordane.
	Chlordane, alpha & gamma isomers.
	Chlordane, technical.
	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro- 2,3,3a,4,7,7a-hexahydro-.
57976	1,2-Benzanthracene, 7,12-dimethyl-.
	7,12-Dimethylbenz[a]anthracene.
58899	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha, 6beta)-.
	gamma - BHC.
	Hexachlorocyclohexane (gamma isomer).
	Lindane.

APPENDIX A—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
58902	Phenol, 2,3,4,6-tetrachloro-.
	2,3,4,6-Tetrachlorophenol.
59507	p-Chloro-m-cresol.
	Phenol, 4-chloro-3-methyl-.
	4-Chloro-m-cresol.
60004	Ethylenediamine-tetraacetic acid (EDTA).
60117	Benzenamine, N,N-dimethyl-4-(phenylazo-).
	p-Dimethylaminoazobenzene.
60297	Ethane, 1,1'-oxybis-.
	Ethyl ether.
60344	Hydrazine, methyl-.
	Methyl hydrazine.
60515	Dimethoate.
	Phosphorodithioic acid, O,O-dimethyl S-[2(methylamino)-2-oxoethyl] ester.
60571	Dieldrin.
	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2, 2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2aalpha,3beta,6beta, 6aalpha,7beta, 7aalpha)-.
61825	Amitrole.
	1H-1,2,4-Triazol-3-amine.
62384	Mercury, (acetato-O)phenyl-.
	Phenylmercury acetate.
62442	Acetamide, N-(4-ethoxyphenyl)-.
	Phenacetin.
62500	Ethyl methanesulfonate.
	Methanesulfonic acid, ethyl ester.
62533	Aniline.
	Benzenamine.
62555	Ethanethioamide.
	Thioacetamide.
62566	Thiourea.
62737	Dichlorvos.
62748	Acetic acid, fluoro-, sodium salt.
	Fluoroacetic acid, sodium salt.
62759	Methanamine, N-methyl-N-nitroso-.
	N-Nitrosodimethylamine.
63252	Carbaryl.
64186	Formic acid.
64197	Acetic acid.
65850	Benzoic acid.
66751	Uracil mustard.
	2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl) amino]-.
67561	Methanol.
	Methyl alcohol.
67641	Acetone.
	2-Propanone.
67663	Chloroform.
	Methane, trichloro-.
67721	Ethane, hexachloro-.
	Hexachloroethane.
70257	Guanidine, N-methyl-N'-nitro-N-nitroso-.
	MNNG.
70304	Hexachlorophene.
	Phenol, 2,2'-methylenebis[3,4,6-trichloro-.
71363	n-Butyl alcohol.
	1-Butanol.
71432	Benzene.
71556	Ethane, 1,1,1-trichloro-.
	Methyl chloroform.
	1,1,1-Trichloroethane.
72208	Endrin.
	Endrin, & metabolites.
	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octa-hydro-, (1aalpha,2beta,2abeta,3alpha,6alpha, 6abeta,7beta,7aalpha)-.
72435	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4- methoxy-.
	Methoxychlor.
72548	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro-.
	DDD.
	TDE.
	4,4' DDD.
72559	DDE.
	4,4' DDE.
72571	Trypan blue.
	2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl-(1,1'-biphenyl)-4,4'-diyl)-bis(azo)]bis(5-amino-4-hydroxy)-tetrasodium salt.
74839	Methane, bromo-.
	Methyl bromide.
74873	Methane, chloro-.
	Methyl chloride.
74884	Methane, iodo-.
	Methyl iodide.
74895	Monomethylamine.
74908	Hydrocyanic acid.
	Hydrogen cyanide.
74931	Methanethiol.
	Methylmercaptan.
	Thiomethanol.
74953	Methane, dibromo-.
	Methylene bromide.
75003	Chloroethane.
75014	Ethene, chloro-.
	Vinyl chloride.
75047	Monoethylamine.
75058	Acetonitrile.
75070	Acetaldehyde.
	Ethanal.
75092	Methane, dichloro-.
	Methylene chloride.
75150	Carbon disulfide.
75207	Calcium carbide.
75218	Ethylene oxide.
	Oxirane.
75252	Bromoform.
	Methane, tribromo-.
75274	Dichlorobromomethane.
75343	Ethane, 1,1-dichloro-.
	Ethylidene dichloride.
	1,1-Dichloroethane.
75354	Ethene, 1,1-dichloro-.
	Vinylidene chloride.
	1,1-Dichloroethylene.
75365	Acetyl chloride.
75445	Carbonic dichloride.
	Phosgene.
75503	Trimethylamine.
75558	Aziridine, 2-methyl-.
	1,2-Propylenimine.
75569	Propylene oxide.
75605	Arsinic acid, dimethyl-.
	Cacodylic acid.
75649	tert-Butylamine.
75694	Methane, trichlorofluoro-.
	Trichloromonofluoromethane.
75718	Dichlorodifluoromethane.
	Methane, dichlorodifluoro-.
75865	Acetone cyanohydrin.
	Propanenitrile, 2-hydroxy-2-methyl-.
	2-Methyllactonitrile.
75876	Acetaldehyde, trichloro-.
	Chloral.
75990	2,2-Dichloropropionic acid.
76017	Ethane, pentachloro-.
	Pentachloroethane.
76448	Heptachlor.
	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-.
77474	Hexachlorocyclopentadiene.
	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-.
77781	Dimethyl sulfate.
	Sulfuric acid, dimethyl ester.
78002	Plumbane, tetraethyl-.
	Tetraethyl lead.
78591	Isophorone.
78795	Isoprene.
78819	iso-Butylamine.
78831	Isobutyl alcohol.
	1-Propanol, 2-methyl-.
78875	Propane, 1,2-dichloro-.
	Propylene dichloride.
	1,2-Dichloropropane.
78886	2,3-Dichloropropene.
78933	Methyl ethyl ketone (MEK).
	2-Butanone.
78999	1,1-Dichloropropane.
79005	Ethane, 1,1,2-trichloro-.
	1,1,2-Trichloroethane.
79016	Ethene, trichloro-.
	Trichloroethene.
	Trichloroethylene-.
79061	Acrylamide.
	2-Propenamide.
79094	Propionic acid.
79107	Acrylic acid.
	2-Propenoic acid.
79196	Hydrazinecarbothioamide.
	Thiosemicarbazide.
79221	Carbonochloridic acid, methyl ester.
	Methyl chlorocarbonate.
	Methyl chloroformate.
79312	iso-Butyric acid.
79345	Ethane, 1,1,2,2-tetrachloro-.
	1,1,2,2-Tetrachloroethane.
79447	Carbamic chloride, dimethyl-.
	Dimethylcarbamoyl chloride.
79469	Propane, 2-nitro-.
	2-Nitropropane.
80159	alpha,alpha-Dimethylbenzylhydroperoxide.
	Hydroperoxide, 1-methyl-1-phenylethyl-.
80626	Methyl methacrylate.
	2-Propenoic acid, 2-methyl-, methyl ester.
81072	Saccharin and salts.
	1,2-Benziesothiazol-3(2H)-one, 1,1-dioxide.
81612	Warfarin, & salts, when present at concentrations greater than 0.3%.
	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl -butyl)-, & salts, when present at concentrations greater than 0.3%.
82688	Benzene, pentachloronitro-.
	Pentachloronitrobenzene (PCNB).
83329	Acenaphthene.
84662	Diethyl phthalate.
	1,2-Benzenedicarboxylic acid, diethyl ester.
84742	Di-n-butyl phthalate.
	Dibutyl phthalate.
	n-Butyl phthalate.
	1,2-Benzenedicarboxylic acid, dibutyl ester.
85007	Diquat.
85018	Phenanthrene.
85449	Phthalic anhydride.
	1,3-Isobenzofurandione.
85687	Butyl benzyl phthalate.
86306	N-Nitrosodiphenylamine.
86500	Guthion.
86737	Fluorene.
86884	alpha-Naphthylthiourea.
	Thiourea, 1-naphthalenyl-.
87650	Phenol, 2,6-dichloro-.
	2,6-Dichlorophenol.
87683	Hexachlorobutadiene.

APPENDIX A—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-.
87865	Pentachlorophenol.
	Phenol, pentachloro-.
88062	Phenol, 2,4,6-trichloro-.
	2,4,6-Trichlorophenol.
88722	o-Nitrotoluene.
88755	o-Nitrophenol.
	2-Nitrophenol.
88857	Dinoseb.
	Phenol, 2-(1-methylpropyl)-4,6-dinitro.
91087	Benzene, 1,3-diisocyanatomethyl-.
	Toluene diisocyanate.
91203	Naphthalene.
91225	Quinoline.
91587	beta-Chloronaphthalene.
	Naphthalene, 2-chloro-.
	2-Chloronaphthalene.
91598	beta-Naphthylamine.
	2-Naphthalenamine.
91805	Methapyrilene.
	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'- (2-thienylmethyl)-.
91941	[1,1'-Biphenyl]-4,4'diamine,3,3'dichloro-.
	3,3'-Dichlorobenzidine.
92875	(1,1'-Biphenyl)-4,4'diamine.
	Benzidine.
93721	Propionic acid, 2-(2,4,5-trichlorophenoxy)-.
	Silvex (2,4,5-TP).
	2,4,5-TP acid.
93765	Acetic acid, (2,4,5-trichlorophenoxy).
	2,4,5-T.
	2,4,5-T acid.
93798	2,4,5-T esters.
94111	2,4-D Ester.
94586	Dihydrosafrole.
	1,3-Benzodioxole, 5-propyl-.
94597	Safrole.
	1,3-Benzodioxole, 5-(2-propenyl)-.
94757	Acetic acid (2,4-dichlorophenoxy)-.
	2,4-D Acid.
	2,4-D, salts and esters.
94791	2,4-D Ester.
94804	2,4-D Ester.
95476	o-Benzene, dimethyl.
	o-Xylene.
95487	o-Cresol.
	o-Cresylic acid.
95501	Benzene, 1,2-dichloro-.
	o-Dichlorobenzene.
	1,2-Dichlorobenzene.
95534	Benzenamine, 2-methyl-.
	o-Toluidine.
95578	o-Chlorophenol.
	Phenol, 2-chloro-.
	2-Chlorophenol.
95807	Benzenediamine, ar-methyl-.
	Toluenediamine
95943	Benzene, 1,2,4,5-tetrachloro-.
	1,2,4,5-Tetrachlorobenzene.
95954	Phenol, 2,4,5-trichloro-.
	2,4,5-Trichlorophenol.
96128	Propane, 1,2-dibromo-3-chloro-.
	1,2-Dibromo-3-chloropropane.
96184	1,2,3-Trichloropropane.
96457	Ethylenethiourea.
	2-Imidazolidinethione.
97632	Ethyl methacrylate.
	2-Propenoic acid, 2-methyl-, ethyl ester.
98011	Furfural.
	2-Furancarboxaldehyde.
98077	Benzene, (trichloromethyl)-.
	Benzotrichloride.
98099	Benzenesulfonic acid chloride.
	Benzenesulfonyl chloride.
98828	Benzene, 1-methylethyl-.
	Cumene.
98862	Acetophenone.
	Ethanone, 1-phenyl-.
98873	Benzal chloride.
	Benzene, dichloromethyl-.
98884	Benzoyl chloride.
98953	Benzene, nitro-.
	Nitrobenzene.
99081	m-Nitrotoluene.
99354	Benzene, 1,3,5-trinitro-.
	1,3,5-Trinitrobenzene.
99558	Benzenamine, 2-methyl-5-nitro-.
	5-Nitro-o-toluidine.
99650	m-Dinitrobenzene.
99990	p-Nitrotoluene.
100016	Benzenamine, 4-nitro-.
	p-Nitroaniline.
100027	p-Nitrophenol.
	Phenol, 4-nitro-.
	4-Nitrophenol.
100254	p-Dinitrobenzene.
100414	Ethylbenzene.
100425	Styrene.
100447	Benzene, chloromethyl-.
	Benzyl chloride.
100470	Benzonitrile.
100754	N-Nitrosopiperidine.
	Piperidine, 1-nitroso-.
101144	Benzenamine, 4,4'-methylenebis(2-chloro-.
	4,4'-Methylenebis(2-chloroaniline).
101553	Benzene, 1-bromo-4-phenoxy-.
	4-Bromophenyl phenyl ether.
103855	Phenylthiourea.
	Thiourea, phenyl-.
105464	sec-Butyl acetate.
105679	Phenol, 2,4-dimethyl-.
	2,4-Dimethylphenol.
106423	p-Benzene, dimethyl.
	p-Xylene.
106445	p-Cresol.
	p-Cresylic acid.
106467	Benzene, 1,4-dichloro-.
	p-Dichlorobenzene.
	1,4-Dichlorobenzene.
106478	Benzenamine, 4-chloro-.
	p-Chloroaniline.
106490	Benzenamine, 4-methyl-.
	p-Toluidine.
106503	Phenylenediamine (para-isomer).
106514	p-Benzoquinone.
	2,5-Cyclohexadiene-1,4-dione.
106898	Epichlorohydrin.
	Oxirane, (chloromethyl)-.
106934	Ethane, 1,2-dibromo-.
	Ethylene dibromide.
107028	Acrolein.
	2-Propenal.
107051	Allyl chloride.
107062	Ethane, 1,2-dichloro-.
	Ethylene dichloride.
	1,2-Dichloroethane.
107108	n-Propylamine.
	1-Propanamine.
107120	Ethyl cyanide.
	Propanenitrile.
107131	Acrylonitrile.
	2-Propenenitrile.
107153	Ethylenediamine.
107186	Allyl alcohol.
	2-Propan-1-ol.
107197	Propargyl alcohol.
	2-Propyn-1-ol.
107200	Acetaldehyde, chloro-.
	Chloroacetaldehyde.
107302	Chloromethyl methyl ether.
	Methane, chloromethoxy-.
107493	Diphosphoric acid, tetraethyl ester.
	Tetraethyl pyrophosphate.
107926	Butyric acid.
108054	Vinyl acetate.
	Vinyl acetate monomer.
108101	Methyl isobutyl ketone.
	4-Methyl-2-pentanone.
108247	Acetic anhydride.
108316	Maleic anhydride.
	2,5-Furandione.
108383	m-Benzene, dimethyl.
	m-Xylene.
108394	m-Cresol.
	m-Cresylic acid.
108463	Resorcinol.
	1,3-Benzenediol.
108601	Dichloroisopropyl ether.
	Propane, 2,2'-oxybis[2-chloro-.
108883	Benzene, methyl-.
	Toluene.
108907	Benzene, chloro-.
	Chlorobenzene.
108941	Cyclohexanone.
108952	Benzene, hydroxy-.
	Phenol.
108985	Benzenethiol.
	Thiophenol.
109066	Pyridine, 2-methyl-.
	2-Picoline.
109739	Butylamine.
109773	Malononitrile.
	Propanedinitrile.
109897	Diethylamine.
109999	Furan, tetrahydro-.
	Tetrahydrofuran.
110009	Furan.
	Furfuran.
110167	Maleic acid.
110178	Fumaric acid.
110190	iso-Butyl acetate.
110758	Ethane, 2-chloroethoxy-.
	2-Chloroethyl vinyl ether.
110805	Ethanol, 2-ethoxy-.
	Ethylene glycol monoethyl ether.
110827	Benzene, hexahydro-.
	Cyclohexane.
110861	Pyridine.
111444	Bis (2-chloroethyl) ether.
	Dichloroethyl ether.
111548	Carbamodithioic acid, 1,2-ethanediylbis, salts & esters.
	Ethylenebisdithiocarbamic acid, salts & esters.
111911	Bis(2-chloroethoxy) methane.
	Dichloromethoxy ethane.
115026	Azaserine.
	L-Serine, diazoacetate (ester).
115297	Endosulfan.
	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a- hexahydro-, 3-oxide.
115322	Dicofol.
116063	Aldicarb.
	Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime.
117806	Dichlone.
117817	Bis (2-ethylhexyl)phthalate.
	Diethylhexyl phthalate.
	1,2-Benzenedicarboxylic acid, [bis(2-ethylhexyl)]ester.
117840	Di-n-octyl phthalate.
	1,2-Benzenedicarboxylic acid, dioctyl ester.

APPENDIX A—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
118741	Benzene, hexachloro-.
	Hexachlorobenzene.
119904	[1,1'-Biphenyl]-4,4'diamine,3,3'dimethoxy-.
	3,3'-Dimethoxybenzidine.
119937	[1,1'Biphenyl]-4,4'-diamine,3,3'-dimethyl-.
	3,3'-Dimethylbenzidine.
120127	Anthracene.
120581	Isosafrole.
	1,3-Benzodioxole, 5-)1-propenyl)-.
120821	1,2,4-Trichlorobenzene.
120832	Phenol, 2,4-dichloro-.
	2,4-Dichlorophenol.
121142	Benzene, 1-methyl-2,4-dinitro-.
	2,4-Dinitrotoluene.
121211	Pyrethrins.
121299	Pyrethrins.
121448	Triethylamine.
121755	Malathion.
122098	alpha,alpha-Dimethylphenethylamine.
	Benzeneethanamine, alpha,alpha-dimethyl-.
122394	Diphenylamine.
122667	Hydrazine, 1,2-diphenyl-.
	1,2-Diphenylhydrazine.
123331	Maleic hydrazide.
	3,6-Pyridazinedione, 1,2-dihydro-.
123626	Propionic anhydride.
123637	Paraldehyde.
	1,3,5-Trioxane, 2,4,6-trimethyl-.
123739	Crotonaldehyde.
	2-Buteral.
123864	Butyl acetate.
123911	1,4-Diethylenedioxide.
	1,4-Dioxane.
123922	iso-Amyl acetate.
124049	Adipic acid.
124403	Dimethylamine.
	Methanamine, N-methyl-.
124414	Sodium methylate.
124481	Chlorodibromomethane.
126727	Tris(2,3-dibromopropyl) phosphate.
	1-Propanol, 2,3-dibromo-, phosphate (3:1).
126987	Methacrylonitrile.
	2-Propenenitrile, 2-methyl-.
126998	2-Chloro-1,3-butadiene.
127184	Ethene, tetrachloro-.
	Perchloroethylene.
	Tetrachloroethene.
	Tetrachloroethylene.
127822	Zinc phenolsulfonate.
129000	Pyrene.
130154	1,4-Naphthalenedione.
	1,4-Naphthoquinone.
131113	Dimethyl phthalate.
	1,2-Benzenedicarboxylic acid, dimethyl ester.
131748	Ammonium picrate.
	Phenol, 2,4,6-trinitro-, ammonium salt.
131895	Phenol, 2-cyclohexyl-4,6-dinitro-.
	2-Cyclohexyl-4,6-dinitrophenol.
133062	Captan.
134327	alpha-Naphthylamine.
	1-Naphthalenamine.
137268	Thioperoxydicarbonic diamide ([H2N)C(S)]2S2, tetramethyl-.
	Thiram.
140885	Ethyl acrylate.
	2-Propenoic acid, ethyl ester.
141786	Acetic acid, ethyl ester.
	Ethyl acetate.
142289	1,3-Dichloropropene.
142712	Cupric acetate.
142847	Dipropylamine.
	1-Propanamine, N-propyl-.
143339	Sodium cyanide.
	Sodium cyanide Na(CN).
143500	Kepone.
	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-.
145733	Endothall.
	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid.
148823	L-Phenylalanine, 4-[bis(2-chloroethyl) amino].
	Melphalan.
151508	Potassium cyanide.
	Potassium cyanide K(CN).
151564	Aziridine.
	Ethylenimine.
152169	Diphosphoramide, octamethyl-.
	Octamethylpyrophosphoramide.
156605	Ethene, 1,2-dichloro- (E).
	1,2-Dichloroethylene.
189559	Benzo [rst]pentaphene.
	Dibenz[a,i]pyrene.
191242	Benzo[ghi]perylene.
193395	Indeno(1,2,3-cd)pyrene.
	1,10-(1,2-Phenylene)pyrene.
205992	Benzo[b]fluoranthene.
206440	Benzo[j,k]fluorene.
	Fluoranthene.
207089	Benzo(k)fluoranthene.
208968	Acenaphthylene.
218019	Chrysene.
	1,2-Benzphenanthrene.
225514	Benz[c]acridine.
297972	O,O-Diethyl O-pyrazinyl phosphorothioate.
	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester.
298000	Methyl parathion.
	Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester.
298022	Phorate.
	Phosphorodithioic acid, O,O-diethyl S-(ethylthio), methyl ester.
298044	Disulfoton.
	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl]ester.
300765	Naled.
301042	Acetic acid, lead(2+) salt.
	Lead acetate.
302012	Hydrazine.
303344	Lasiocarpine.
	2-Butenoic acid, 2-methyl-, 7[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*,3R*),7aalpha]]-.
305033	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-.
	Chlorambucil.
309002	Aldrin.
	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-10-hexachloro-1,4,4a,5,8,8a-hexahydro-(1alpha,4alpha,4abeta,5alpha,8alpha,8abeta)-.
311455	Diethyl-p-nitrophenyl phosphate.
	Phosphoric acid, diethyl 4-nitrophenyl ester.
315184	Mexacarbate.
319846	alpha—BHC.
319857	beta—BHC.
319868	delta—BHC.
329715	2,5-Dinitrophenol.
330541	Diuron.
333415	Diazinon.
353504	Carbon oxyfluoride.
	Carbonic difluoride.
357573	Brucine.
	Strychnidin-10-one, 2,3-dimethoxy-.
460195	Cyanogen.
	Ethanedinitrile.
465736	Isodrin.
	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro (1alpha, 4alpha,4abeta,5beta,8beta,8abeta)-.
492808	Auramine.
	Benzenamine, 4,4'-carbonimidoylbis (N,N-dimethyl(N,N-D,methyl-)-.
494031	Chlornaphazine.
	Naphthalenamine, N,N'-bis(2-chloroethyl)-.
496720	Benzenediamine, ar-methyl-.
	Toluenediamine.
504245	4-Aminopyridine.
	4-Pyridinamine.
504609	1-Methylbutadiene.
	1,3-Pentadiene.
506616	Argentate(1-), bis(cyano-C)-,potassium.
	Potassium silver cyanide.
506649	Silver cyanide.
	Silver cyanide Ag(CN).
506683	Cyanogen bromide.
	Cyanogen bromide (CN)Br.
506774	Cyanogen chloride.
	Cyanogen chloride (CN)Cl.
506876	Ammonium carbonate.
506967	Acetyl bromide.
509148	Methane, tetranitro-.
	Tetranitromethane.
510156	Benzeneacetic acid,4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester.
	Chlorobenzilate.
513495	sec-Butylamine.
528290	o-Dinitrobenzene.
534521	Phenol, 2-methyl-4,6-dinitro-.
	4,6-Dinitro-o-cresol and salts
540738	Hydrazine, 1,2-dimethyl-.
	1,2-Dimethylhydrazine.
540885	tert-Butyl acetate.
541093	Uranyl acetate.
541537	Dithiobiuret.
	Thioimidodicarbonic diamide [(H2N)C(S)]2NH.
541731	Benzene, 1,3-dichloro-.
	m-Dichlorobenzene.
	1,3-Dichlorobenzene.
542621	Barium cyanide.
542756	1-Propene, 1,3-dichloro-.
	1,3-Dichloropropene.
542767	Propanenitrile, 3-chloro-.
	3-Chloropropionitrile.
542881	Dichloromethyl ether.
	Methane, oxybis(chloro)-.
543908	Cadmium acetate.
544183	Cobaltous formate.
544923	Copper cyanide CuCN.
	Copper cyanide.
554847	m-Nitrophenol.
557197	Nickel cyanide.
	Nickel cyanide Ni(CN)2.
557211	Zinc cyanide.
	Zinc cyanide Zn(CN)2.
557346	Zinc acetate.
557415	Zinc formate.
563122	Ethion.
563868	Acetic acid, thallium(1+) salt.
	Thallium(I) acetate.
573568	2,6-Dinitrophenol.
584849	Benzene, 1,3-diisocyanatomethyl-.
	Toluene diisocyanate.

APPENDIX A—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
591082	Acetamide, N-(aminothioxomethyl)-.
	1-Acetyl-2-thiourea.
592018	Calcium cyanide.
	Calcium cyanide Ca(CN)2.
592041	Mercuric cyanide.
592858	Mercuric thiocyanate.
592870	Lead thiocyanate.
594423	Methanesulfenyl chloride, trichloro-.
	Trichloromethanesulfenyl chloride.
596312	Bromoacetone.
	2-Propanone, 1-bromo-.
606202	Benzene, 1-methyl-1,3-dinitro-.
	2,6-Dinitrotoluene.
608731	HEXACHLOROCYCLOHEXANE (all isomers).
608935	Benzene, pentachloro-.
	Pentachlorobenzene.
609198	3,4,5-Trichlorophenol.
610399	3,4-Dinitrotoluene.
615532	Carbamic acid, methylnitroso-, ethyl ester.
	N-Nitroso-N-methylurethane.
616239	α-2,3 Dichloropropenol.
621647	Di-n-propylnitrosamine.
	1-Propanamine, N-nitroso-N-propyl-.
624839	Methane, isocyanato-.
	Methyl isocyanate.
625161	tert-Amyl acetate.
626380	sec-Amyl acetate.
626837	Amyl acetate.
628864	Fulminic acid, mercury(2+)salt.
	Mercury fulminate.
630104	Selenourea.
630206	Ethane, 1,1,1,2-tetrachloro-.
	1,1,1,2-Tetrachloroethane.
631618	Ammonium acetate.
636215	Benzenamine, 2-methyl-, hydrochloride.
	o-Toluidine hydrochloride.
640197	Acetamide, 2-fluoro-.
	Fluoroacetamide.
684935	N-Nitroso-N-methylurea.
	Urea, N-methyl-N-nitroso.
692422	Arsine, diethyl-.
	Diethylarsine.
696286	Arsonous dichloride, phenyl-.
	Dichlorophenylarsine.
757584	Hexaethyl tetraphosphate.
	Tetraphosphoric acid, hexaethyl ester.
759739	N-Nitroso-N-ethylurea.
	Urea, N-ethyl-N-nitroso-.
764410	1,4-Dichloro-2-butene.
	2-Butene, 1,4-dichloro-.
765344	Glycidylaldehyde.
	Oxiranecarboxyaldehyde.
815827	Cupric tartrate.
823405	Benzenediamine, ar-methyl-.
	Toluenediamine.
924163	N-Nitroso-N-n-butylamine.
	1-Butanamine, N-butyl-N-nitroso-.
930552	N-Nitrosopyrrolidine.
	Pyrrolidine, 1-nitroso-.
933755	2,3,6-Trichlorophenol.
933788	2,3,5-Trichlorophenol.
959988	alpha-Endosulfan.
1024573	Heptachlor epoxide.
1031078	Endosulfan sulfate.
1066304	Chromic acetate.
1066337	Ammonium bicarbonate.
1072351	Lead stearate.
1111780	Ammonium carbamate.
1116547	Ethanol, 2,2'-(nitrosoimino)bis-.
	N-Nitrosodiethanolamine.
1120714	1,2-Oxathiolane, 2,2-dioxide
	1,3-Propane sultone.
1185575	Ferric ammonium citrate.
1194656	Dichlobenil.
1300716	Xylenol.
1303282	Arsenic oxide As2O5.
	Arsenic pentoxide.
1303328	Arsenic disulfide.
1303339	Arsenic trisulfide.
1309644	Antimony trioxide.
1310583	Potassium hydroxide.
1310732	Sodium hydroxide.
1314325	Thallic oxide.
	Thallium oxide Tl2O3.
1314521	Vanadium oxide V2O5.
	Vanadium pentoxide.
1314803	Phosphorus pentasulfide.
	Phosphorus sulfide.
	Sulfur phosphide.
1314847	Zinc phosphide.
	Zinc phosphide Zn3P2, when present at concentrations greater than 10%.
1314870	Lead sulfide.
1319728	2,4,5-T amines.
1319773	Cresol(s).
	Cresylic acid.
	Phenol, methyl-.
1320189	2,4-D Ester.
1321126	Nitrotoluene.
1327522	Arsenic acid.
	Arsenic acid H3AsO4.
1327533	Arsenic oxide As2O3.
	Arsenic trioxide.
1330207	Benzene, dimethyl.
	Xylene (mixed).
1332076	Zinc borate.
1332214	Asbestos.
1333831	Sodium bifluoride.
1335326	Lead subacetate.
	Lead, bis(acetato-O)tetrahydroxytri.
1336216	Ammonium hydroxide.
1336363	Polychlorinated Biphenyls (PCBs).
1338234	Methyl ethyl ketone peroxide.
	2-Butanone peroxide.
1338245	Naphthenic acid.
1341497	Ammonium bifluoride.
1464535	1,2:3,4-Diepoxybutane.
	2,2'-Bioxirane.
1563662	Carbofuran.
1615801	Hydrazine, 1,2-diethyl-.
	N,N'-Diethylhydrazine.
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD).
1762954	Ammonium thiocyanate.
1863634	Ammonium benzoate.
1888717	Hexachloropropene.
	1-Propene, 1,1,2,3,3,3-hexachloro-.
1918009	Dicamba.
1928387	2,4-D Ester.
1928478	2,4,5-T esters.
1928616	2,4-D Ester.
1929733	2,4-D Ester.
2008460	2,4,5-T amines.
2032657	Mercaptodimethur.
2303164	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester.
	Diallate.
2312358	Propargite.
2545597	2,4,5-T esters.
2763964	Muscimol.
	3(2H)-Isoxazolone, 5-(aminomethyl)-.
	5-(Aminomethyl)-3-isoxazolol.
2764729	Diquat
2921882	Chlorpyrifos.
2944674	Ferric ammonium oxalate.
2971382	2,4-D Ester.
3012655	Ammonium citrate, dibasic.
3164292	Ammonium tartrate.
3165933	Benzenamine, 4-chloro-2-methyl-, hydrochloride.
	4-Chloro-o-toluidine, hydrochloride.
3251238	Cupric nitrate.
3288582	O,O-Diethyl S-methyl dithiophosphate.
	Phosphorodithioic acid, O,O-diethyl S-methyl ester.
3486359	Zinc carbonate.
3689245	Tetraethyldithiopyrophosphate.
	Thiodiphosphoric acid, tetraethyl ester.
3813147	2,4,5-T amines.
4170303	Crotonaldehyde.
	2-Butenal.
4549400	N-Nitrosomethylvinylamine.
	Vinylamine, N-methyl-N-nitroso-.
5344821	Thiourea, (2-chlorophenyl)-.
	1-(o-Chlorophenyl)thiourea.
5893663	Cupric oxalate.
5972736	Ammonium oxalate.
6009707	Ammonium oxalate.
6369966	2,4,5-T amines.
6369977	2,4,5-T amines.
6533739	Carbonic acid, dithallium(1+) salt.
	Thallium(I) carbonate.
7005723	4-Chlorophenyl phenyl ether.
7421934	Endrin aldehyde.
7428480	Lead stearate.
7439921	Lead.
7439976	Mercury.
7440020	Nickel.
7440224	Silver.
7440235	Sodium.
7440280	Thallium.
7440360	Antimony.
7440382	Arsenic.
7440417	Beryllium.
	Beryllium dust.
7440439	Cadmium.
7440473	Chromium.
7440508	Copper.
7440666	Zinc.
7446084	Selenium dioxide.
	Selenium oxide.
7446142	Lead sulfate.
7446186	Sulfuric acid, dithallium(1+) salt.
	Thallium(I) sulfate.
7446277	Lead phosphate.
	Phosphoric acid, lead(2+) salt (2:3).
7447394	Cupric chloride.
7488564	Selenium sulfide.
	Selenium sulfide Se§2.
7558794	Sodium phosphate, dibasic.
7601549	Sodium phosphate, tribasic.
7631892	Sodium arsenate.
7631905	Sodium bisulfite.
7632000	Sodium nitrite.
7645252	Lead arsenate.
7646857	Zinc chloride.
7647010	Hydrochloric acid.
	Hydrogen chloride.
7647189	Antimony pentachloride.
7664382	Phosphoric acid.
7664393	Hydrofluoric acid.
	Hydrogen fluoride.
7664417	Ammonia.
7664939	Sulfuric acid.
7681494	Sodium fluoride.
7681529	Sodium hypochlorite.
7697372	Nitric acid.
7699458	Zinc bromide.
7705080	Ferric chloride.
7718549	Nickel chloride.
7719122	Phosphorus trichloride.
7720787	Ferrous sulfate.
7722647	Potassium permanganate.
7723140	Phosphorus.
7733020	Zinc sulfate.
7738945	Chromic acid.
7758294	Sodium phosphate, tribasic.
7758943	Ferrous chloride.
7758954	Lead chloride.

APPENDIX A—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
7758987	Cupric sulfate.
7761888	Silver nitrate.
7773060	Ammonium sulfamate.
7775113	Sodium chromate.
7778394	Arsenic acid.
	Arsenic acid H3As04.
7778441	Calcium arsenate.
7778509	Potassium bichromate.
7778543	Calcium hypochlorite.
7779864	Zinc hydrosulfite.
7779886	Zinc nitrate.
7782414	Fluorine.
7782492	Selenium.
7782505	Chlorine.
7782630	Ferrous sulfate.
7782823	Sodium selenite.
7782867	Mercurous nitrate.
7783008	Selenious acid.
7783064	Hydrogen sulfide.
	Hydrogen sulfide H2S.
7783359	Mercuric sulfate.
7783462	Lead fluoride.
7783495	Zinc fluoride.
7783508	Ferric fluoride.
7783564	Antimony trifluoride.
7784341	Arsenic trichloride.
7784409	Lead arsenate.
7784410	Potassium arsenate.
7784465	Sodium arsenite.
7785844	Sodium phosphate, tribasic.
7786347	Mevinphos.
7786814	Nickel sulfate.
7787475	Beryllium chloride.
7787497	Beryllium fluoride.
7787555	Beryllium nitrate.
7788989	Ammonium chromate.
7789006	Potassium chromate.
7789062	Strontium chromate.
7789095	Ammonium bichromate.
7789426	Cadmium bromide.
7789437	Cobaltous bromide.
7789619	Antimony tribromide.
7790945	Chlorosulfonic acid.
7791120	Thallium chloride TlCl.
	Thallium(I) chloride.
7803512	Phosphine.
7803556	Ammonium vanadate.
	Vanadic acid, ammonium salt.
8001352	Camphene, octachloro-
	Toxaphene.
8001589	Creosote.
8003198	Dichloropropane—Dichloropropene (mixture).
8003347	Pyrethrins.
8014957	Sulfuric acid.
10022705	Sodium hypochlorite.
10025873	Phosphorus oxychloride.
10025919	Antimony trichloride.
10026116	Zirconium tetrachloride.
10028225	Ferric sulfate.
10031591	Sulfuric acid, dithallium(1+) salt.
	Thallium(I) sulfate.
10039324	Sodium phosphate, dibasic.
10043013	Aluminum sulfate.
10045893	Ferrous ammonium sulfate.
10045940	Mercuric nitrate.
10049055	Chromous chloride.
10099748	Lead nitrate.
10101538	Chromic sulfate.
10101630	Lead iodide.
10101890	Sodium phosphate, tribasic.
10102064	Uranyl nitrate.
10102188	Sodium selenite.
10102439	Nitric oxide.
	Nitrogen oxide NO.
10102440	Nitrogen dioxide.
	Nitrogen oxide NO2.
10102451	Nitric acid, thallium(1+) salt.
	Thallium(I) nitrate.
10102484	Lead arsenate.
10108642	Cadmium chloride.
10124502	Potassium arsenite.
10124568	Sodium phosphate, tribasic.
10140655	Sodium phosphate, dibasic.
10192300	Ammonium bisulfite.
10196040	Ammonium sulfite.
10361894	Sodium phosphate, tribasic.
10380297	Cupric sulfate, ammoniated.
10415755	Mercurous nitrate.
10421484	Ferric nitrate.
10544726	Nitrogen dioxide.
	Nitrogen oxide NO2.
10588019	Sodium bichromate.
11096825	Aroclor 1260.
	Polychlorinated Biphenyls (PCBs).
11097691	Aroclor 1254.
	Polychlorinated Biphenyls (PCBs).
11104282	Aroclor 1221.
	Polychlorinated Biphenyls (PCBs).
11115745	Chromic acid.
11141165	Aroclor 1232.
	Polychlorinated Biphenyls (PCBs).
12002038	Cupric acetoarsenite.
12039520	Selenious acid, dithallium(1+) salt.
	Thallium selenite.
12054487	Nickel hydroxide.
12125018	Ammonium fluoride.
12125029	Ammonium chloride.
12135761	Ammonium sulfide.
12672296	Aroclor 1248.
	Polychlorinated Biphenyls (PCBs).
12674112	Aroclor 1016.
	Polychlorinated Biphenyls (PCBs).
12771083	Sulfur monochloride.
13463393	Nickel carbonyl.
	Nickel carbonyl Ni(CO)4, (T-4)-.
13560991	2,4,5-T salts.
13597994	Beryllium nitrate.
13746899	Zirconium nitrate.
13765190	Calcium chromate.
	Chromic acid H2CrO4, calcium salt.
13814965	Lead fluoborate.
13826830	Ammonium fluoborate.
13952846	sec-Butylamine.
14017415	Cobaltous sulfamate.
14216752	Nickel nitrate.
14258492	Ammonium oxalate.
14307358	Lithium chromate.
14307436	Ammonium tartrate.
14639975	Zinc ammonium chloride.
14639986	Zinc ammonium chloride.
14644612	Zirconium sulfate.
15699180	Nickel ammonium sulfate.
15739807	Lead sulfate.
15950580	2,3,4-Trichlorophenol.
16721805	Sodium hydrosulfide.
16752775	Ethanimidothioic acid, N-[[(methylamino)carbonyl] oxy]-, methyl ester.
	Methomyl.
16871719	Zinc silicofluoride.
16919190	Ammonium silicofluoride.
16923958	Zirconium potassium fluoride.
18883664	D-Glucose, 2-deoxy-2-[[(methylnitrosoamino)-carbonyl]amino]-.
	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-.
	Streptozotocin.
20816120	Osmium oxide OsO4 (T-4)-.
	Osmium tetroxide.
20830813	Daunomycin.
	5,12-Naphthacenedione, 8-acetyl-10-[3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-,(8S-cis)-.
20859738	Aluminum phosphide.
23950585	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-.
	Pronamide.
25154545	Dinitrobenzene (mixed).
25154556	Nitrophenol (mixed).
25155300	Sodium dodecylbenzenesulfonate.
25167822	Trichlorophenol.
25168154	2,4,5-T esters.
25168267	2,4-D Ester.
25321146	Dinitrotoluene.
25321226	Dichlorobenzene.
25376458	Benzenediamine, ar-methyl-.
	Toluenediamine.
25550587	Dinitrophenol.
26264062	Calcium dodecylbenzenesulfonate.
26471625	Benzene, 1,3-diisocyanatomethyl-.
	Toluene diisocyanate
26628228	Sodium azide.
26638197	Dichloropropene.
26952238	Dichloropropene.
27176870	Dodecylbenzenesulfonic acid.
27323417	Triethanolamine dodecylbenzene sulfonate.
27774136	Vanadyl sulfate.
28300745	Antimony potassium tartrate.
30525894	Paraformaldehyde.
32534955	2,4,5-TP esters.
33213659	beta - Endosulfan.
36478769	Uranyl nitrate.
37211055	Nickel chloride.
39196184	Thiofanox
	2-Butanone, 3,3-dimethyl-1-(methylthio)-, O[(methylamino)carbonyl] oxime.
42504461	Isopropanolamine dodecylbenzenesulfonate.
52628258	Zinc ammonium chloride.
52652592	Lead stearate.
52740166	Calcium arsenite.
53467111	2,4-D Ester.
53469219	Aroclor 1242.
	Polychlorinated Biphenyls (PCBs)
55488674	Ferric ammonium oxalate.
56189094	Lead stearate.
61792072	2,4,5-T esters.

3. Section 302.6 is amended by revising paragraph (b)(1) and the parenthetical phrase at the end of the section to read as follows:

§ 302.6 Notification requirements.

* * * * *

(b) **Releases of mixtures or solutions (including hazardous waste streams) of**

(1) **Hazardous substances, except for radionuclides, are subject to the following notification requirements:**

(i) if the quantity of all of the hazardous constituent(s) of the mixture or solution is known, notification is

BEST COPY AVAILABLE

required where an RQ or more of any hazardous constituent is released; or

(ii) if the quantity of one or more of the hazardous constituent(s) of the mixture or solution is unknown, notification is required where the total amount of the mixture or solution released equals or exceeds the RQ for the hazardous constituent with the lowest RQ.

* * * * *

(Approved by the Office of Management and Budget under control numbers 2050-0046 and 2115-0137)

PART 116—LIST OF HAZARDOUS SUBSTANCES

1. The authority citation for Part 116 continues to read as follows:

Authority: 33 U.S.C. 1321 and 1361.

§ 116.4 [Amended]

2. Section 116.4 is amended by removing the entire entry for "Ammonium thiosulfate, CASRN 7783188," and by removing the term "Kelthane," CASRN 115322, and inserting in its place the term "Dicofol" in the list of hazardous substances in both Table 116.4A and Table 116.4B.

PART 117—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 1321 and 1361, and Executive Order 11735.

§ 117.3 [Amended]

2. Section 117.3 is amended by revising Table 117.3 to read as set forth below. Included in these amendments to Table 117.3 is the removal of the entry for "ammonium thiosulfate," CASRN 7783188, as well as the removal of the term "Kelthane," CASRN 115322, and the insertion in its place of the term "Dicofol." The note preceding Table 117.3 is republished without change.

* * * * *

Note—The first number under the column headed "RQ" is the reportable quantity in pounds. The number in parentheses is the metric equivalent in kilograms. For convenience, the table contains a column headed "Category" which lists the code letter "X," "A," "B," "C," and "D" associated with reportable quantities of 1, 10, 100, 1000, and 5000 pounds, respectively.

TABLE 117.3.—REPORTABLE QUANTITIES OF HAZARDOUS SUBSTANCES DESIGNATED PURSUANT TO SECTION 311 OF THE CLEAN WATER ACT

[Note: The first number under the column headed "RQ" is the reportable quantity in pounds. The number in parentheses is the metric equivalent in kilograms. For convenience, the table contains a column headed "Category" which lists the code letters "X," "A," "B," "C," and "D" associated with reportable quantities of 1, 10, 100, 1000, and 5000 pounds, respectively]

Material	Category	RQ in pounds (kilograms)
Acetaldehyde	C	1,000 (454)
Acetic acid	D	5,000 (2,270)
Acetic anhydride	D	5,000 (2,270)
Acetone cyanohydrin	A	10 (4.54)
Acetyl bromide	D	5,000 (2,270)
Acetyl chloride	D	5,000 (2,270)
Acrolein	X	1 (0.454)
Acrylonitrile	B	100 (45.4)
Adipic acid	D	5,000 (2,270)
Aldrin	X	1 (0.454)
Allyl alcohol	B	100 (45.4)
Allyl chloride	C	1,000 (454)
Aluminum sulfate	D	5,000 (2,270)
Ammonia	B	100 (45.4)
Ammonium acetate	D	5,000 (2,270)
Ammonium benzoate	D	5,000 (2,270)
Ammonium bicarbonate.	D	5,000 (2,270)
Ammonium bichromate.	A	10 (4.54)
Ammonium bifluoride	B	100 (45.4)
Ammonium bisulfite	D	5,000 (2,270)
Ammonium carbamate.	D	5,000 (2,270)
Ammonium carbonate	D	5,000 (2,270)
Ammonium chloride	D	5,000 (2,270)
Ammonium chromate	A	10 (4.54)
Ammonium citrate dibasic.	D	5,000 (2,270)
Ammonium fluoborate	D	5,000 (2,270)
Ammonium fluoride	B	100 (45.4)
Ammonium hydroxide	C	1,000 (454)
Ammonium oxalate	D	5,000 (2,270)
Ammonium silicofluoride.	C	1,000 (454)
Ammonium sulfamate	D	5,000 (2,270)
Ammonium sulfide	B	100 (45.4)
Ammonium sulfite	D	5,000 (2,270)
Ammonium tartrate	D	5,000 (2,270)
Ammonium thiocyanate.	D	5,000 (2,270)
Amyl acetate	D	5,000 (2,270)
Aniline	D	5,000 (2,270)
Antimony pentachloride.	C	1,000 (454)
Antimony potassium tartrate.	B	100 (45.4)
Antimony tribromide	C	1,000 (454)
Antimony trichloride	C	1,000 (454)
Antimony trifluoride	C	1,000 (454)
Antimony trioxide	C	1,000 (454)
Arsenic disulfide	X	1 (0.454)
Arsenic pentoxide	X	1 (0.454)
Arsenic trichloride	X	1 (0.454)
Arsenic trioxide	X	1 (0.454)
Arsenic trisulfide	X	1 (0.454)
Barium cyanide	A	10 (4.54)
Benzene	A	10 (4.54)
Benzoic acid	D	5,000 (2,270)
Benzonitrile	D	5,000 (2,270)
Benzoyl chloride	C	1,000 (454)
Benzyl chloride	B	100 (45.4)
Beryllium chloride	X	1 (0.454)
Beryllium fluoride	X	1 (0.454)
Beryllium nitrate	X	1 (0.454)
Butyl acetate	D	5,000 (2,270)
Butylamine	C	1,000 (454)
n-Butyl phthalate	A	10 (4.54)
Butyric acid	D	5,000 (2,270)
Cadmium acetate	A	10 (4.54)
Cadmium bromide	A	10 (4.54)
Cadmium chloride	A	10 (4.54)
Calcium arsenate	X	1 (0.454)
Calcium arsenite	X	1 (0.454)
Calcium carbide	A	10 (4.54)
Calcium chromate	A	10 (4.54)
Calcium cyanide	A	10 (4.54)
Calcium dodecylbenzene-sulfonate.	C	1,000 (454)
Calcium hypochlorite	A	10 (4.54)
Captan	A	10 (4.54)
Carberyl	B	100 (45.4)
Carbofuran	A	10 (4.54)
Carbon disulfide	B	100 (45.4)
Carbon tetrachloride	A	10 (4.54)
Chlordane	X	1 (0.454)
Chlorine	A	10 (4.54)
Chlorobenzene	B	100 (45.4)
Chloroform	A	10 (4.54)
Chlorosulfonic acid	C	1,000 (454)
Chlorpyrifos	X	1 (0.454)
Chromic acetate	C	1,000 (454)
Chromic acid	A	10 (4.54)
Chromic sulfate	C	1,000 (454)
Chromous chloride	C	1,000 (454)
Cobaltous bromide	C	1,000 (454)
Cobaltous formate	C	1,000 (454)
Cobaltous sulfamate	C	1,000 (454)
Coumaphos	A	10 (4.54)
Cresol	C	1,000 (454)
Crotonaldehyde	B	100 (45.4)
Cupric acetate	B	100 (45.4)
Cupric acetoarsenite	X	1 (0.454)
Cupric chloride	A	10 (4.54)
Cupric nitrate	B	100 (45.4)
Cupric oxalate	B	100 (45.4)
Cupric sulfate	A	10 (4.54)
Cupric sulfate, ammoniated.	B	100 (45.4)
Cupric tartrate	B	100 (45.4)
Cyanogen chloride	A	10 (4.54)
Cyclohexane	C	1,000 (454)
2,4-D Acid	B	100 (45.4)
2,4-D Esters	B	100 (45.4)
DDT	X	1 (0.454)
Diazinon	X	1 (0.454)
Dicamba	C	1,000 (454)
Dichlobenil	B	100 (45.4)
Dichlone	X	1 (0.454)
Dichlorobenzene	B	100 (45.4)
Dichloropropane	C	1,000 (454)
Dichloropropene	B	100 (45.4)
Dichloropropene-Dichloropropane (mixture).	B	100 (45.4)
2,2-Dichloropropionic acid.	D	5,000 (2,270)
Dichlorvos	A	10 (4.54)
Dicofol	A	10 (4.54)
Dieldrin	X	1 (0.454)
Diethylamine	B	100 (45.4)
Dimethylamine	C	1,000 (454)
Dinitrobenzene (mixed).	B	100 (45.4)
Dinitrophenol	A	10 (45.4)
Dinitrotoluene	A	10 (4.54)
Diquat	C	1,000 (454)
Disulfoton	X	1 (0.454)
Diuron	B	100 (45.4)
Dodecylbenzenesulfonic acid.	C	1,000 (454)
Endosulfan	X	1 (0.454)
Endrin	X	1 (0.454)
Epichlorohydrin	B	100 (45.4)
Ethion	A	10 (4.54)
Ethylbenzene	C	1,000 (454)
Ethylenediamine	D	5,000 (2,270)
Ethylenediaminetetracetic acid (EDTA).	D	5,000 (2,270)
Ethylene dibromide	X	1 (0.454)
Ethylene dichloride	B	100 (45.4)
Ferric ammonium citrate.	C	1,000 (454)
Ferric ammonium oxalate.	C	1,000 (454)
Ferric chloride	C	1,000 (454)
Ferric fluoride	B	100 (45.4)
Ferric nitrate	C	1,000 (454)
Ferric sulfate	C	1,000 (454)
Ferrous ammonium sulfate.	C	1,000 (454)
Ferrous chloride	B	100 (45.4)
Ferrous sulfate	C	1,000 (454)
Formaldehyde	B	100 (45.4)
Formic acid	D	5,000 (2,270)
Fumaric acid	D	5,000 (2,270)
Furfural	D	5,000 (2,270)
Guthion	X	1 (0.454)
Heptachlor	X	1 (0.454)
Hexachlorocyclopentadiene.	A	10 (4.54)
Hydrochloric acid	D	5,000 (2,270)
Hydrofluoric acid	B	100 (45.4)
Hydrogen cyanide	A	10 (4.54)
Hydrogen sulfide	B	100 (45.4)
Isoprene	B	100 (45.4)
Isopropanolamine dodecylbenzenesulfonate.	C	1,000 (454)
Kepone	X	1 (0.454)
Lead acetate	D	5,000 (2,270)
Lead arsenate	X	1 (0.454)
Lead chloride	B	100 (45.4)
Lead fluoborate	B	100 (45.4)
Lead fluoride	B	100 (45.4)
Lead iodide	B	100 (45.4)
Lead nitrate	B	100 (45.4)
Lead stearate	D	5,000 (2,270)
Lead sulfate	B	100 (45.4)
Lead sulfide	D	5,000 (2,270)
Lead thiocyanate	B	100 (45.4)
Lindane	X	1 (0.454)
Lithium chromate	A	10 (4.54)
Malathion	B	100 (45.4)
Maleic acid	D	5,000 (2,270)
Maleic anhydride	D	5,000 (2,270)
Mercaptodimethur	A	10 (4.54)
Mercuric cyanide	X	1 (0.454)
Mercuric nitrate	A	10 (4.54)
Mercuric sulfate	A	10 (4.54)
Mercuric thiocyanate	A	10 (4.54)
Mercurous nitrate	A	10 (4.54)
Methoxychlor	X	1 (0.454)
Methyl mercaptan	B	100 (45.4)
Methyl methacrylate	C	1,000 (454)
Methyl parathion	B	100 (45.4)
Mevinphos	A	10 (4.54)
Mexacarbate	C	1,000 (454)
Monoethylamine	B	100 (45.4)
Monomethylamine	B	100 (45.4)
Naled	A	10 (4.54)
Naphthalene	B	100 (45.4)
Naphthenic acid	B	100 (45.4)
Nickel ammonium sulfate.	B	100 (45.4)
Nickel chloride	B	100 (45.4)
Nickel hydroxide	A	10 (4.54)
Nickel nitrate	B	100 (45.4)
Nickel sulfate	B	100 (45.4)
Nitric acid	C	1,000 (454)
Nitrobenzene	C	1,000 (454)
Nitrogen dioxide	A	10 (4.54)
Nitrophenol (mixed)	B	100 (45.4)
Nitrotoluene	C	1,000 (454)
Paraformaldehyde	C	1,000 (454)
Parathion	A	10 (4.54)
Pentachlorophenol	A	10 (4.54)
Phenol	C	1,000 (454)
Phosgene	A	10 (4.54)
Phosphoric acid	D	5,000 (2,270)
Phosphorus	X	1 (0.454)
Phosphorus oxychloride.	C	1,000 (454)
Phosphorus pentasulfide.	B	100 (45.4)
Phosphorus trichloride.	C	1,000 (454)
Polychlorinated biphenyls.	X	1 (0.454)
Potassium arsenate	X	1 (0.454)
Potassium arsenite	X	1 (0.454)
Potassium bichromate.	A	10 (4.54)
Potassium chromate	A	10 (4.54)
Potassium cyanide	A	10 (4.54)
Potassium hydroxide	C	1,000 (454)
Potassium permanganate.	B	100 (45.4)
Propargite	A	10 (4.54)
Propionic acid	D	5,000 (2,270)
Propionic anhydride	D	5,000 (2,270)
Propylene oxide	B	100 (45.4)
Pyrethrins	X	1 (0.454)
Quinoline	D	5,000 (2,270)
Resorcinol	D	5,000 (2,270)
Selenium oxide	A	10 (4.54)
Silver nitrate	X	1 (0.454)
Sodium	A	10 (4.54)
Sodium arsenate	X	1 (0.454)
Sodium arsenite	X	1 (0.454)
Sodium bichromate	A	10 (4.54)
Sodium bifluoride	B	100 (45.4)
Sodium bisulfite	D	5,000 (2,270)
Sodium chromate	A	10 (4.54)
Sodium cyanide	A	10 (4.54)
Sodium dodecylbenzene-sulfonate.	C	1,000 (454)
Sodium fluoride	C	1,000 (454)
Sodium hydrosulfide	D	5,000 (2,270)
Sodium hydroxide	C	1,000 (454)
Sodium hypochlorite	B	100 (45.4)
Sodium methylate	C	1,000 (454)
Sodium nitrite	B	100 (45.4)
Sodium phosphate, dibasic.	D	5,000 (2,270)
Sodium phosphate, tribasic.	D	5,000 (2,270)
Sodium selenite	B	100 (45.4)
Strontium chromate	A	10 (4.54)
Strychnine	A	10 (4.54)
Styrene	C	1,000 (454)
Sulfuric acid	C	1,000 (454)
Sulfur monochloride	C	1,000 (454)
2,4,5-T acid	C	1,000 (454)
2,4,5-T amines	D	5,000 (2,270)
2,4,5-T esters	C	1,000 (454)
2,4,5-T salts	C	1,000 (454)
TDE	X	1 (0.454)
2,4,5-TP acid	B	100 (45.4)
2,4,5-TP acid esters	B	100 (45.4)
Tetraethyl lead	A	10 (4.54)
Tetraethyl pyrophosphate.	A	10 (4.54)
Thallium sulfate	B	100 (45.4)
Toluene	C	1,000 (454)
Toxaphene	X	1 (0.454)
Trichlorfon	B	100 (45.4)
Trichloroethylene	B	100 (45.4)
Trichlorophenol	A	10 (4.54)
Triethanolamine dodecylbenzene-sulfonate.	C	1,000 (454)
Triethylamine	D	5,000 (2,270)
Trimethylamine	B	100 (45.4)
Uranyl acetate	B	100 (45.4)
Uranyl nitrate	B	100 (45.4)
Vanadium pentoxide	C	1,000 (454)
Vanadyl sulfate	C	1,000 (454)
Vinyl acetate	D	5,000 (2,270)
Vinylidene chloride	B	100 (45.4)
Xylene (mixed)	C	1,000 (454)
Xylenol	C	1,000 (454)
Zinc acetate	C	1,000 (454)
Zinc ammonium chloride.	C	1,000 (454)
Zinc borate	C	1,000 (454)
Zinc bromide	C	1,000 (454)
Zinc carbonate	C	1,000 (454)
Zinc chloride	C	1,000 (454)
Zinc cyanide	A	10 (4.54)
Zinc fluoride	C	1,000 (454)
Zinc formate	C	1,000 (454)
Zinc hydrosulfite	C	1,000 (454)
Zinc nitrate	C	1,000 (454)
Zinc phenolsulfonate	D	5,000 (2,270)
Zinc phosphide	B	100 (45.4)
Zinc silicofluoride	D	5,000 (2,270)
Zinc sulfate	C	1,000 (454)
Zirconium nitrate	D	5,000 (2,270)
Zirconium potassium fluoride.	C	1,000 (454)

TABLE 117.3.—REPORTABLE QUANTITIES OF HAZARDOUS SUBSTANCES DESIGNATED PURSUANT TO SECTION 311 OF THE CLEAN WATER ACT—Continued

[Note: The first number under the column headed "RQ" is the reportable quantity in pounds. The number in parentheses is the metric equivalent in kilograms. For convenience, the table contains a column headed "Category" which lists the code letters "X," "A," "B," "C," and "D" associated with reportable quantities of 1, 10, 100, 1000, and 5000 pounds, respectively]

TABLE 117.3.—REPORTABLE QUANTITIES OF HAZARDOUS SUBSTANCES DESIGNATED PURSUANT TO SECTION 311 OF THE CLEAN WATER ACT—Continued

[Note: The first number under the column headed "RQ" is the reportable quantity in pounds. The number in parentheses is the metric equivalent in kilograms. For convenience, the table contains a column headed "Category" which lists the code letters "X," "A," "B," "C," and "D" associated with reportable quantities of 1, 10, 100, 1000, and 5000 pounds, respectively]

Material	Category	RQ in pounds (kilograms)
Zirconium sulfate	D	5,000 (2,270)
Zirconium tetrachloride	D	5,000 (2,270)

[FR Doc. 89-15746 Filed 8-11-89; 8:45 am]

BILLING CODE 6560-50-M

federal register

Monday
August 14, 1989

Part VI

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

August 1, 1989.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of August 1, 1989 of six rescission proposals and 14 deferrals contained in the first four special messages of FY 1989. These messages were transmitted to the Congress on September 30 and November 29, 1988, and January 9 and April 18, 1989.

Rescissions (Table A and Attachment A)

As of August 1, 1989, there are no funds being withheld related to rescission proposals.

Deferrals (Table B and Attachment B)

As of August 1, 1989 $2,753.8 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1989.

Information from Special Messages

The special messages containing information on the rescission proposals and deferrals covered by this cumulative report are printed in the **Federal Registers** listed below:

Vol. 53, FR p. 39879, Wednesday, October 12, 1988
Vol. 53, FR p. 49530, Wednesday, December 7, 1988
Vol. 54, FR p. 1650, Friday, January 13, 19898
Vol. 54, FR p, 18234, Thursday, April 27, 1989

Richard G. Darman,
Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1989 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by President Reagan.....	143.1
Accepted by the Congress as of August 1, 1989....	2.1
Funding made available.....	121.0
Funding never withheld.....	20.0

****

TABLE B

STATUS OF 1989 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President.....	9,156.2
Routine Executive releases through August 1, 1989.. (OMB/Agency releases of $6,408.9 million and cumulative adjustments of $6.5 million)	-6,402.4
Overturned by the Congress.....	0
Currently before the Congress.....	2,753.8

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1989

As of August 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs:								
Subsidized housing programs.....	R89-1	20,000		1-9-89		(See note below.)		
Community Planning and Development:								
Urban development action grants.....	R89-2	51,651		1-9-89		51,651	2-28-89	
DEPARTMENT OF THE INTERIOR								
Fish and Wildlife Service:								
Land acquisition.....	R89-3	30,000		1-9-89		30,000	2-28-89	
National Park Service:								
Land acquisition and State assistance.....	R89-4	35,000		1-9-89		35,000	2-28-89	
DEPARTMENT OF JUSTICE								
Office of Justice Programs:								
Justice assistance.....	R89-5	5,000		1-9-89	2,053	2,947	3-16-89	P.L. 101-45
DEPARTMENT OF LABOR								
Employment Standards Administration:								
Black lung disability trust fund.....	R89-6	1,445		1-9-89		1,445	3-16-89	
TOTAL, RESCISSIONS.....		143,096	0		2,053	121,043		

NOTES. - The $20 million proposed for rescission in Rescission Proposal No. 89-1 was never withheld from obligation. Therefore, there was no need to release the funds.

- On March 16, the entire $5 million included in Rescission proposal No. R89-5 was made available for obligation. However, P.L. 101-45 subsequently rescinded $2,053,000, leaving $2,947,000 available of the funds proposed for rescission.

Attachment B - Status of Deferrals - Fiscal Year 1989

As of August 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congressionally Required Releases (-)	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 8-1-89
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Foreign military sales credit	D89-11	4,122,750		11-29-88	3,467,750				655,000
Economic support fund	D89-01	592,760		09-30-88					
	D89-01A		2,054,000	11-29-88	1,999,313			471	647,918
Military assistance	D89-12	457,000		11-29-88	326,950				130,050
International military education and training	D89-13	37,400		11-29-88	37,400				0
Agency for International Development									
International disaster assistance	D89-14	18,125		11-29-88	15,164				2,961
Special Assistance for Central America									
Promotion of stability and security in Central America	D89-2	1,000		09-30-88	1,000				0
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D89-3	144,649		09-30-88	751				143,898
Cooperative work	D89-4	335,263		09-30-88					
	D89-4A		172,737	04-18-89	508,000				0
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D89-5	1,212		09-30-88					
	D89-5A		227	04-18-89	56				1,383
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Southwestern Power Administration, Operation and maintenance	D89-6	2,800		09-30-88					
	D89-6A		5,600	04-18-89					8,400

Attachment B - Status of Deferrals - Fiscal Year 1989

As of August 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congressionally Required Releases (-)	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 8-1-89
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses (construction)	D89-7	6,745		09-30-88					
	D89-7A		80	04-18-89					6,824
DEPARTMENT OF JUSTICE									
Office of Justice Programs									
Crime victims fund	D89-8	90,000		09-30-88					
	D89-8A		35,000	04-18-89					125,000
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive	D89-9	26,135		09-30-88					
	D89-9A		27,000	11-29-88	52,492			6,001	6,644
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)	D89-10	823,608		09-30-88					
	D89-10A		202,084	11-29-88					1,025,692
TOTAL, DEFERRALS		6,659,446	2,496,728		6,408,876	0		6,472	2,753,770

[FR Doc. 89-18983 Filed 8-11-89; 8:45 am]
BILLING CODE 3110-01-C

federal register

Monday
August 14, 1989

Part VII

Department of Education

Patricia Roberts Harris Fellowships Program; Notice

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.094B and 84.094C]

Patricia Roberts Harris Fellowships Program

AGENCY: Department of Education.

ACTION: Combined notice inviting applications under the Patricia Roberts Harris Fellowships Program. New Grant Awards for Graduate and Professional Study Fellowships and Public Service Education Fellowships for Fiscal Year 1990.

PURPOSE OF PROGRAM: Applications are invited for new grant awards under the Patricia Roberts Harris Fellowships Program for Fiscal Year 1990. This program has two components, the Graduate and Professional Study Fellowships and the Public Service Education Fellowships.

The Graduate and Professional Study Fellowship grants are awarded to institutions of higher education to support fellowships for graduate and professional study to students who demonstrate financial need and are from minority groups which are traditionally underrepresented in graduate and professional study areas.

The Public Service Education Fellowships grants are awarded to institutions of higher education to support fellowships for graduate and professional study to students who demonstrate financial need and who plan to pursue a career in public service. Public Service Education Fellowships are intended to provide opportunities for qualified students, particularly individuals from minority groups which are traditionally underrepresented in the graduate area of study or profession for which a fellowship is awarded.

OFFICE OF POSTSECONDARY EDUCATION

CFDA No.	Program title	Applications available	Deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards	Project period (months)
84.094B	Patricia Roberts Harris Fellowships Program—Graduate & Professional Study Fellowship.	09/06/89	10/13/89	12/15/89	$6,667–$261,333	$87,809	185	9–12
84.094C	Patricia Roberts Harris Fellowships Program—Public Service Education Fellowships.	10/20/89	12/15/89	02/16/90	$16,000–$112,000	$47,420	70	9–12

Note: The Department is not bound by any estimates in this notice.

DATES: The deadline dates for transmitting applications under this notice are listed in the chart above.

ELIGIBLE APPLICANTS: For these two programs, eligible applicants are institutions of higher education as defined in section 1201(a) of the Higher Education Act of 1965, as amended.

APPLICABLE REGULATIONS: (a) The Patricia Roberts Harris' Program Regulations at 34 CFR Part 649, and (b) The Education Department General Administrative Regulations (EDGAR) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), and Part 85 (Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

FOR APPLICATIONS OR INFORMATION CONTACT: Dr. Charles H. Miller, Program Manager, or Mrs. Barbara J. Harvey, Education Program Specialist, U.S. Department of Education, Division of Higher Education Incentive Programs, 400 Maryland Avenue, SW., Room 3022, ROB–3, Washington, DC 20202–5251, telephone (202) 732–4395 or (202) 732–4863, respectively.

Program Authority: 20 U.S.C. 1134d–1134f.

Dated: August 8, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89–18925 Filed 8–11–89; 8:45 am]

BILLING CODE 4000–01–M

Reader Aids

Federal Register
Vol. 54, No. 155
Monday, August 14, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–5237
Machine readable documents	523–5237

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3408
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Library	523–5240
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the deaf	523–5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

31645–31796.....1
31797–31932.....2
31933–32034.....3
32035–32332.....4
32333–32432.....7
32433–32628.....8
32629–32784.....9
32785–32950.....10
32951–33182.....11
33183–33492.....14

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6002.....31794
6003.....31931
6004.....31933
6005.....32033
6006.....32783

Executive Orders:
12685.....31796
12688.....32629

5 CFR
1620.....32785

7 CFR
29.....31797
58.....31646
301.....32788
910.....32035, 32951
917.....32794
945.....31798
947.....32433
1076.....31799
1126.....32951
1864.....32953

Proposed Rules:
1e.....32985
51.....32419
911.....31843
929.....31844
967.....31845
993.....31846

8 CFR

Proposed Rules:
210.....31966

9 CFR
51.....32434
92.....31800

10 CFR
2.....33168
7.....31646
26.....33148

Proposed Rules:
Ch. I.....32653
430.....32349, 32744

12 CFR
33.....31835
207.....31646
220.....31646
221.....31646
224.....31646
226.....32953
229.....32035
262.....33183
545.....32954
574.....32958, 33183

Proposed Rules:
4.....32820
12.....32853
226.....32089
584.....33235

14 CFR
39.....31649, 31651–31653, 31803–31809, 31935, 32435–32437, 32796, 33186
71.....31654, 31936, 31937, 32439, 32440, 32803, 32797–32800
73.....31655, 32800
75.....31937
217.....31810
241.....31810
1221.....32963

Proposed Rules:
39.....31693, 31694, 31847, 32824, 32828, 33235, 33237
43.....32563
65.....32563
71.....31696–31704, 31966, 32452, 32827
75.....31705, 31967
145.....32563

15 CFR
773.....31812

16 CFR
305.....32631

Proposed Rules:
4.....32654

17 CFR
140.....31814
211.....32333, 32334
270.....31850, 32048
274.....32048
275.....32048, 32441
279.....32048

Proposed Rules:
230.....32226, 32993
239.....32226, 32993
240.....31850, 32229
249.....32226
260.....32226
269.....32226
270.....32993, 33027
274.....32993

18 CFR
35.....32802
270.....32805
271.....31938, 32805

Proposed Rules:
37.....31706

803.....33036

19 CFR

4.....33187, 33188
10.....33189
177.....32742, 32810
Proposed Rules:
355.....33238

20 CFR

Proposed Rules:
208.....32163
219.....31939
220.....32163
230.....32163
260.....32163
327.....31968
404.....33238
416.....31656, 33238

21 CFR

133.....32050
179.....32335
510.....32632
520.....32336
522.....32632
524.....32632
556.....32633
558.....32633–32634, 32963
Proposed Rules:
Ch. I.....32610
133.....32091
522.....31949
556.....31949
1308.....31815, 31855
1310.....31657
1313.....31657
1316.....31669

22 CFR

60.....31815
61.....31815
62.....31815
63.....31815
64.....31815
65.....31815
514.....32964

23 CFR

659.....32967

24 CFR

200.....32059, 32968
203.....32968
204.....32968
206.....32059
213.....32968
220.....32968
221.....32968
222.....32968
226.....32968
227.....32968
235.....32968
237.....32968
240.....32968
570.....31670
Proposed Rules:
Ch. I.....31858
200.....33039
205.....33039

26 CFR

1.....31672, 31816
602.....31672
Proposed Rules:
1.....31706, 32453

28 CFR

31.....32618
523.....32027
544.....32026

29 CFR

524.....32920
525.....32920
529.....32920
1600.....32061
1601.....32061
1610.....32061
1611.....32061
1620.....32061
1626.....32061
1691.....32061
1910.....31765, 31970
2589.....32635
Proposed Rules:
503.....32985
1910.....31858

30 CFR

934.....32063
Proposed Rules:
250.....31768, 32316, 32563, 33042
906.....32628
917.....32093
920.....33042
925.....32094
931.....32095, 32096
946.....32097, 32098

31 CFR

500.....32064

32 CFR

286.....33190
706.....31825

33 CFR

100.....31826, 32066, 32441–32442
110.....32419
117.....31827
146.....32971
162.....32419
165.....32419, 32443
Proposed Rules:
100.....31859, 31860, 32453, 32659
162.....32661

34 CFR

206.....32936
345.....32770
755.....32946

35 CFR

Proposed Rules:
133.....32099
135.....32099

36 CFR

1153.....32337–32342
1155.....32337–32342
1202.....32067
1250.....32067
1254.....32067
Proposed Rules:
1206.....32455

37 CFR

1.....32637
2.....32637
301.....32810
309.....32810

38 CFR

3.....31828, 31950
21.....31829, 31950–31952, 32070

39 CFR

111.....32071

40 CFR

52.....31953, 32072, 32073, 32637, 32971
60.....32444, 32972
61.....32444
80.....33218
81.....32078, 33219
85.....32566
116.....33426
117.....33426
167.....32638
180.....31674, 31830–31836
264.....33376
265.....33376
270.....33376
271.....32973
302.....33418, 33426
795.....33400
796.....33148
797.....33148
799.....33148, 33400
Proposed Rules:
52.....32101, 33245, 33247
81.....31860, 31971, 31972
85.....32598
180.....31971, 31972, 33044
185.....31836
186.....31832–31836
228.....32351–32356
261.....31675, 32320, 32662
302.....32320, 32671
355.....32671
704.....31680
799.....32829

41 CFR

101–47.....32445

42 CFR

50.....32446
484.....33354
Proposed Rules:
5.....32459

43 CFR

Public Lands Orders:
6741.....32812
6742.....32812

44 CFR

64.....32813, 32814, 33220, 33222
80.....31681
83.....31681
352.....31920
Proposed Rules:
335.....32359

45 CFR

232.....32284
302.....32284
303.....32284
304.....32284
306.....32284
307.....32284
1632.....31954

46 CFR

Proposed Rules:
10.....33045
15.....33045

47 CFR

Chapter I.....33224
2.....32339
15.....32339
25.....33226
73.....31685, 31686, 31838, 31960, 32340, 32639–32641, 33227
80.....31839
Proposed Rules:
2.....32630
73.....32361, 32362, 32672–32676, 33249, 33250
94.....32362

48 CFR

203.....32161
208.....32161
209.....32161
212.....32161
213.....32161
214.....32161
215.....32161, 32975
216.....32161
217.....32161
219.....32161
222.....32161
223.....32161
226.....32161
242.....32161
245.....32161
252.....32161
253.....32161
273.....32161
801.....31961
Proposed Rules:
44.....32422
45.....32424
51.....32424
52.....32424
205.....33045
970.....33251

49 CFR

190.....32342
191.....32342
192.....32344, 32641
195.....32342, 32344
210.....33227
215.....33227
216.....33227
217.....33227
225.....33227
228.....33227
229.....33227
231.....33227
232.....33227
383.....33230
571.....31687, 32345
Proposed Rules:
571.....32830

50 CFR

17.....32326
20.....32975
23.....33231
215.....32346

217.....32815
226.....32085
227.....32085, 32815
611.....32642, 32819
661.....31241
663.....31688
672.....32819
675.....31842, 32642
Proposed Rules:
17.....32833
263.....32362
267.....32362
611.....31861
620.....31861
649.....32834
655.....31862
672.....31861
675.....31861

LIST OF PUBLIC LAWS

Last List August 11, 1989

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.J. Res. 281 / Pub. L. 101–74

To approve the designation of the Cordell Bank National Marine Sanctuary, to disapprove a term of that designation, to prohibit the exploration for, or the development or production of, oil, gas, or minerals in any area of that sanctuary, and for other purposes. (Aug. 9, 1989; 103 Stat. 554; 1 page) Price: $1.00

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
*1, 2 (2 Reserved)	$10.00	Apr. 1, 1989
3 (1988 Compilation and Parts 100 and 101)	21.00	[1] Jan. 1, 1989
4	15.00	Jan. 1, 1989
5 Parts:		
*1–699	15.00	Jan. 1, 1989
*700–1199	17.00	Jan. 1, 1989
1200–End, 6 (6 Reserved)	13.00	Jan. 1, 1989
7 Parts:		
0–26	15.00	Jan. 1, 1989
27–45	12.00	Jan. 1, 1989
46–51	17.00	Jan. 1, 1989
52	23.00	[2] Jan. 1, 1988
53–209	18.00	Jan. 1, 1989
210–299	22.00	Jan. 1, 1988
300–399	12.00	Jan. 1, 1989
*400–699	19.00	Jan. 1, 1989
700–899	22.00	Jan. 1, 1988
900–999	26.00	Jan. 1, 1988
1000–1059	16.00	Jan. 1, 1989
1060–1119	13.00	Jan. 1, 1989
1120–1199	11.00	Jan. 1, 1989
1200–1499	17.00	Jan. 1, 1988
1500–1899	10.00	Jan. 1, 1989
1900–1939	11.00	Jan. 1, 1989
1940–1949	21.00	Jan. 1, 1988
1950–1999	18.00	Jan. 1, 1988
2000–End	9.00	Jan. 1, 1989
8	11.00	Jan. 1, 1988
9 Parts:		
1–199	20.00	Jan. 1, 1989
*200–End	18.00	Jan. 1, 1989
10 Parts:		
0–50	19.00	Jan. 1, 1989
*51–199	17.00	Jan. 1, 1989
200–399	13.00	[3] Jan. 1, 1987
400–499	14.00	Jan. 1, 1989
500–End	28.00	Jan. 1, 1989
11	10.00	[2] Jan. 1, 1988
12 Parts:		
1–199	12.00	Jan. 1, 1989
*200–219	11.00	Jan. 1, 1989
220–299	14.00	Jan. 1, 1988
300–499	15.00	Jan. 1, 1989
500–599	18.00	Jan. 1, 1988
*600–End	14.00	Jan. 1, 1989
13	22.00	Jan. 1, 1989
14 Parts:		
1–59	21.00	Jan. 1, 1988
60–139	19.00	Jan. 1, 1988
140–199	10.00	Jan. 1, 1989
200–1199	21.00	Jan. 1, 1989
*1200–End	12.00	Jan. 1, 1989
15 Parts:		
0–299	12.00	Jan. 1, 1989
300–399	20.00	Jan. 1, 1988
800–End	14.00	Jan. 1, 1989
16 Parts:		
0–149	12.00	Jan. 1, 1989
150–999	14.00	Jan. 1, 1989
1000–End	19.00	Jan. 1, 1989
17 Parts:		
1–199	14.00	Apr. 1, 1988
200–239	14.00	Apr. 1, 1988
240–End	21.00	Apr. 1, 1988
18 Parts:		
1–149	15.00	Apr. 1, 1988
150–279	12.00	Apr. 1, 1988
280–399	13.00	Apr. 1, 1988
400–End	9.00	Apr. 1, 1988
19 Parts:		
1–199	27.00	Apr. 1, 1988
200–End	5.50	Apr. 1, 1988
20 Parts:		
1–399	12.00	Apr. 1, 1988
400–499	23.00	Apr. 1, 1988
500–End	25.00	Apr. 1, 1988
21 Parts:		
1–99	12.00	Apr. 1, 1988
100–169	14.00	Apr. 1, 1988
170–199	16.00	Apr. 1, 1988
200–299	5.00	Apr. 1, 1988
300–499	26.00	Apr. 1, 1988
500–599	20.00	Apr. 1, 1988
600–799	7.50	Apr. 1, 1988
800–1299	16.00	Apr. 1, 1988
*1300–End	6.50	Apr. 1, 1989
22 Parts:		
1–299	20.00	Apr. 1, 1988
300–End	13.00	Apr. 1, 1988
23	16.00	Apr. 1, 1988
24 Parts:		
0–199	15.00	Apr. 1, 1988
200–499	26.00	Apr. 1, 1988
500–699	9.50	Apr. 1, 1988
700–1699	19.00	Apr. 1, 1988
1700–End	15.00	Apr. 1, 1988
25	24.00	Apr. 1, 1988
26 Parts:		
§§ 1.0–1–1.60	13.00	Apr. 1, 1988
§§ 1.61–1.169	23.00	Apr. 1, 1988
§§ 1.170–1.300	17.00	Apr. 1, 1988
§§ 1.301–1.400	14.00	Apr. 1, 1988
§§ 1.401–1.500	24.00	Apr. 1, 1988
§§ 1.501–1.640	15.00	Apr. 1, 1988
§§ 1.641–1.850	17.00	Apr. 1, 1988
§§ 1.851–1.1000	28.00	Apr. 1, 1988
§§ 1.1001–1.1400	16.00	Apr. 1, 1988
§§ 1.1401–End	21.00	Apr. 1, 1988
2–29	19.00	Apr. 1, 1988
30–39	14.00	Apr. 1, 1988
40–49	13.00	Apr. 1, 1988
50–299	15.00	Apr. 1, 1988
300–499	15.00	Apr. 1, 1988
500–599	8.00	[4] Apr. 1, 1980
600–End	6.00	Apr. 1, 1988
27 Parts:		
1–199	23.00	Apr. 1, 1988
200–End	13.00	Apr. 1, 1988
28	25.00	July 1, 1988

Title	Price	Revision Date
29 Parts:		
0–99	17.00	July 1, 1988
100–499	6.50	July 1, 1988
500–899	24.00	July 1, 1988
900–1899	11.00	July 1, 1988
1900–1910	29.00	July 1, 1988
1911–1925	8.50	July 1, 1988
1926	10.00	July 1, 1988
1927–End	24.00	July 1, 1988
30 Parts:		
0–199	20.00	July 1, 1988
200–699	12.00	July 1, 1988
700–End	18.00	July 1, 1988
31 Parts:		
0–199	13.00	July 1, 1988
200–End	17.00	July 1, 1988
32 Parts:		
1–39, Vol. I	15.00	[5] July 1, 1984
1–39, Vol. II	19.00	[5] July 1, 1984
1–39, Vol. III	18.00	[5] July 1, 1984
1–189	21.00	July 1, 1988
190–399	27.00	July 1, 1988
400–629	21.00	July 1, 1988
630–699	13.00	[6] July 1, 1986
700–799	15.00	July 1, 1988
800–End	16.00	July 1, 1988
33 Parts:		
1–199	27.00	July 1, 1988
200–End	19.00	July 1, 1988
34 Parts:		
1–299	22.00	July 1, 1988
300–399	12.00	July 1, 1988
400–End	26.00	July 1, 1988
35	9.50	July 1, 1988
36 Parts:		
1–199	12.00	July 1, 1988
200–End	20.00	July 1, 1988
37	13.00	July 1, 1988
38 Parts:		
0–17	21.00	July 1, 1988
18–End	19.00	July 1, 1988
39	13.00	July 1, 1988
40 Parts:		
1–51	23.00	July 1, 1988
52	27.00	July 1, 1988
53–60	28.00	July 1, 1988
61–80	12.00	July 1, 1988
81–99	25.00	July 1, 1988
100–149	25.00	July 1, 1988
150–189	24.00	July 1, 1988
190–299	24.00	July 1, 1988
300–399	8.50	July 1, 1988
400–424	21.00	July 1, 1988
425–699	21.00	July 1, 1988
700–End	31.00	July 1, 1988
41 Chapters:		
1, 1–1 to 1–10	13.00	[7] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[7] July 1, 1984
3–6	14.00	[7] July 1, 1984
7	6.00	[7] July 1, 1984
8	4.50	[7] July 1, 1984
9	13.00	[7] July 1, 1984
10–17	9.50	[7] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[7] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[7] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[7] July 1, 1984
19–100	13.00	[7] July 1, 1984
1–100	10.00	July 1, 1988
101	25.00	July 1, 1988
102–200	12.00	July 1, 1988
201–End	8.50	July 1, 1988
42 Parts:		
1–60	15.00	Oct. 1, 1988
61–399	5.50	Oct. 1, 1988
400–429	22.00	Oct. 1, 1988
430–End	22.00	Oct. 1, 1988
43 Parts:		
1–999	15.00	Oct. 1, 1988
1000–3999	26.00	Oct. 1, 1988
4000–End	11.00	Oct. 1, 1988
44	20.00	Oct. 1, 1988
45 Parts:		
1–199	17.00	Oct. 1, 1988
200–499	9.00	Oct. 1, 1988
500–1199	24.00	Oct. 1, 1988
1200–End	17.00	Oct. 1, 1988
46 Parts:		
1–40	14.00	Oct. 1, 1988
41–69	14.00	Oct. 1, 1988
70–89	7.50	Oct. 1, 1988
90–139	12.00	Oct. 1, 1988
140–155	12.00	Oct. 1, 1988
156–165	13.00	Oct. 1, 1988
166–199	14.00	Oct. 1, 1988
200–499	20.00	Oct. 1, 1988
500–End	10.00	Oct. 1, 1988
47 Parts:		
0–19	18.00	Oct. 1, 1988
20–39	18.00	Oct. 1, 1988
40–69	9.00	Oct. 1, 1988
70–79	18.00	Oct. 1, 1988
80–End	19.00	Oct. 1, 1988
48 Chapters:		
1 (Parts 1–51)	28.00	Oct. 1, 1988
1 (Parts 52–99)	18.00	Oct. 1, 1988
2 (Parts 201–251)	18.00	Oct. 1, 1988
2 (Parts 252–299)	18.00	Oct. 1, 1988
3–6	20.00	Oct. 1, 1988
7–14	25.00	Oct. 1, 1988
15–End	26.00	Oct. 1, 1988
49 Parts:		
1–99	13.00	Oct. 1, 1988
100–177	24.00	Oct. 1, 1988
178–199	20.00	Oct. 1, 1988
200–399	19.00	Oct. 1, 1988
400–999	24.00	Oct. 1, 1988
1000–1199	18.00	Oct. 1, 1988
1200–End	18.00	Oct. 1, 1988
50 Parts:		
1–199	17.00	Oct. 1, 1988
200–599	13.00	Oct. 1, 1988
600–End	13.00	Oct. 1, 1988
CFR Index and Findings Aids	29.00	Jan. 1, 1989
Complete 1989 CFR set	620.00	1989
Microfiche CFR Edition:		
Complete set (one-time mailing)	125.00	1984
Complete set (one-time mailing)	115.00	1985
Subscription (mailed as issued)	185.00	1987
Subscription (mailed as issued)	185.00	1988
Subscription (mailed as issued)	188.00	1989

Title	Price	Revision Date
Individual copies	2.00	1989

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan.1, 1988 to Dec.31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

Order Now!

The United States Government Manual 1988/89

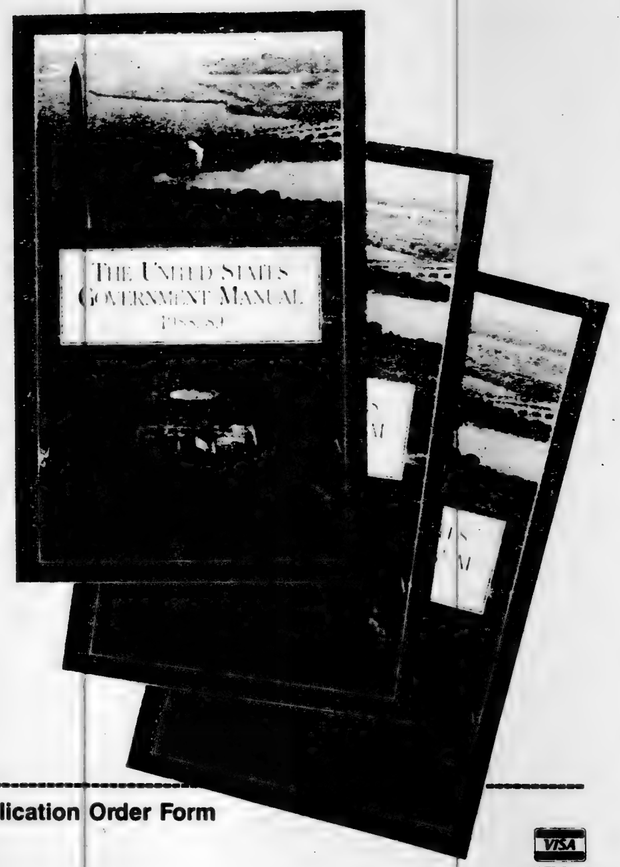
As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$20.00 per copy



Publication Order Form

Order processing code: *6450

VISA MasterCard

☐ **YES,** please send me the following indicated publications:

_____ copies of THE UNITED STATES GOVERNMENT MANUAL, 1988/89 at $20.00 per copy. S/N 069-000-00015-1.

1. The total cost of my order is $_____ International customers please add 25%. All prices include regular domestic postage and handling and are good through 3/89. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. Please choose method of payment:
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA, or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

(Rev. 8-88)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9325

L

S

G

4

39

1

OL
4
SS
1
5
6
G
5
89
MI

8-15-89
Vol. 54 No. 156

federal register

Tuesday
August 15, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 89 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

8-15-89
Vol. 54 No. 156
Pages 33493-33664

federal register

Tuesday
August 15, 1989

BEST COPY AVAILABLE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 54, No. 156
Tuesday, August 15, 1989

Agricultural Marketing Service
RULES
Potatoes (Irish) grown in—
Colorado, 33494
NOTICES
Agency information collection activities under OMB review, 33588

Agriculture Department
See Agricultural Marketing Service; Federal Crop Insurance Corporation

Arctic Research Commission
NOTICES
Meetings, 33590

Army Department
See also Engineers Corps
NOTICES
Senior Executive Service:
Performance Review Board; membership, 33594

Blackstone River Valley National Heritage Corridor Commission
NOTICES
Meetings; Sunshine Act, 33658

Centers for Disease Control
NOTICES
Grant and cooperative agreement awards:
Arizona Health Services Department, 33614

Commerce Department
See also Export Administration Bureau; National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 33590
(2 documents)

Committee for the Implementation of Textile Agreements
NOTICES
Export visa requirements; certification, waivers, etc.:
Thailand, 33590
United Arab Emirates, 33591
Textile consultation; review of trade:
United Arab Emirates, 33592

Defense Department
See also Army Department; Engineers Corps
RULES
Banking offices on DOD installations; operating procedures, 33505
Credit unions on DOD installations; operating procedures, 33516
Financial institutions on DOD installations; operating procedures, 33512
Organization, functions, and authority delegations:
Under Secretary of Defense for Policy, 33521
NOTICES
Agency information collection activities under OMB review, 33593
(2 documents)
Meetings:
Defense Manufacturing Board; high definition systems, 33594
Organization, functions, and authority delegations:
Comptroller et al.; Federal information processing standards; waiver authority, 33594

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Applied Science Labs, 33624
Mallinckrodt, Specialty Chemicals Co., 33625
Minn-Dak Growers Ltd., 33625
Sunshine Pharmacy, 33625

Employment and Training Administration
NOTICES
Grant and cooperative agreement awards:
Job Training Partnership Act—
Brandeis University, 33626
National Youth Employment Coalition, 33626
Trade adjustment assistance for workers program:
Financial policies and procedures; general administration letter, 33627

Energy Department
See also Energy Information Administration; Federal Energy Regulatory Commission
NOTICES
Meetings:
Natonal energy strategy; development, 33594
Natural gas exportation and importation:
Niagara Mohawk Power Corp., 33605

Energy Information Administration
NOTICES
Agency information collection activities under OMB review, 33595
(2 documents)
Forms; availability, etc.:
Residential energy consumption survey, 33596

Engineers Corps
PROPOSED RULES
Danger zones and restricted areas:
Pensacola Bay, FL, 33584

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Iowa, 33526, 33528
(2 documents)
Nebraska; correction, 33530
Ohio, 33531
Air quality implementation plans; approval and promulgation; various States; and air quality planning purposes; designation of areas:
Iowa, 33536

PROPOSED RULES
Water pollution control:
Ocean dumping; site designations—
Atlantic Ocean offshore New Jersey and Long Island, NY; correction, 33585
NOTICES
Agency information collection activities under OMB review, 33607
Meetings:
Science Advisory Board, 33607
Small business competitiveness demonstration program; targeted industry categories expansion, 33607
Water pollution control:
Disposal site determinations—
Ware Creek, James City County, VA, 33608

Equal Employment Opportunity Commission
RULES
Age discrimination in employment:
Private party litigation; one-year tolling provision, 33501

Export Administration Bureau
RULES
Export licensing:
Commodity control list—
Electronic computers and related equipment, 33662

Federal Aviation Administration
RULES
Control zones, 33496
Standard instrument approach procedures, 33497
Transition areas, 33495, 33496
(2 documents)
PROPOSED RULES
Rulemaking petitions; summary and disposition, 33577
VOR Federal airways, 33579

Federal Communications Commission
RULES
Common carrier services:
Public mobile services—
Cellular services; facilities construction after filing Form 401 but before authorization, 33551
PROPOSED RULES
Common carrier services:
Access charges—
Interstate telecommunications devices for the deaf (TDD) relay service, 33585

Federal Crop Insurance Corporation
RULES
Crop insurance regulations:
General provisions, etc., 33493
Crop insurance; various commodities:
Nursery crops, 33493
PROPOSED RULES
Crop insurance endorsements, etc.:
Cotton, 33557, 33562
(2 documents)
Grapes, 33560
Soybeans, 33566
Crop insurance regulations:
General provisions, etc., 33559
Tomatoes, fresh market; minimum value option, 33565
Crop insurance; various commodities:
Peaches, 33567

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 33648
(2 documents)

Federal Emergency Management Agency
RULES
Flood insurance program:
Substantial improvement, new construction, development, etc. (definitions); coastal high hazard areas; and special flood hazard areas, map changes, 33541
NOTICES
Grants and cooperative agreements; availability, etc.:
Emergency public information challenge grants program, 33609

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Jacobson Hydro No. 1, 33597
Natural gas certificate filings:
ANR Pipeline Co. et al., 33597
Natural gas companies:
Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend, 33603
(2 documents)
Applications, hearings, determinations, etc.:
El Paso Natural Gas Co., 33604
Northern States Power Co., 33604
San Diego Gas & Electric Co. et al., 33605

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Washington County, OR, 33655

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
S.T.S. International, Inc., et al., 33609

Federal Trade Commission
NOTICES
Prohibited trade practices:
Oklahoma State Board of Veterinary Medical Examiners, 33610
Premerger notification waiting periods; early terminations, 33609

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Razorback sucker, 33586
NOTICES
Environmental statements; availability, etc.:
Back Bay National Wildlife Refuge, VA, 33620

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Poloxalene, 33501
PROPOSED RULES
Food for human consumption:
Lactose; identity standard, 33582

General Services Administration
RULES
Acquisition regulations:
Buy American Act-Trade Agreements Act-Balance of Payment Program, 33554

Health and Human Services Department
See also Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration; Health Resources and Services Administration; Public Health Service
NOTICES
Organization, functions, and authority delegations:
Agency for Toxic Substances and Disease Registry, 33617
Civil Rights Office, 33613

Health Care Financing Administration
NOTICES
Medicaid:
State plan amendments, reconsideration; hearings—
Washington, 33615

Health Resources and Services Administration
See also Public Health Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Childhood Vaccines Advisory Commission, 33616

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; National Park Service
NOTICES
Exxon Valdez oil spill, Prince William Sound, AK; natural resource damage assessment plan and restoration strategy; draft availability, 33618

Interstate Commerce Commission
RULES
Motor carriers:
Property motor carriers—
Accounting and reporting requirements, 33555
NOTICES
Rail carriers:
Passenger train operation—
Florida East Coast Railway Co., 33621
Railroad operation, acquisition, construction, etc.:
Missouri Pacific Railroad Co., 33622
Rio Grande Industries, Inc., et al., 33622

Justice Department
See also Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
Monticello, AR, 33623
Moore American Graphics, 33624

Labor Department
See Employment and Training Administration; Mine Safety and Health Administration

Land Management Bureau
NOTICES
Meetings:
Grand Junction District Advisory Council, 33619
Mineral interest applications:
Arizona, 33619
Withdrawal and reservation of lands:
Colorado, 33619

Legal Services Corporation
NOTICES
Grant awards:
Law school civil clinical programs, 33634

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
East Franklin Coal Co., 33633
U.S. Energy/Crested Corp., 33633
U.S. Steel Mining Co., Inc., 33634
Westerman Coal Co., Inc., 33633

National Highway Traffic Safety Administration
NOTICES
Motor vehicle theft prevention standard; exemption petitions, etc.:
General Motors Corp., 33655

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 33556

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 33620

Nuclear Regulatory Commission
PROPOSED RULES
Production and utilization facilities; domestic licensing:
Nuclear power plants—
Education and experience requirements for senior reactor operators and supervisors; withdrawn, 33568
Special nuclear materials; physical protection requirements, 33570
NOTICES
Environmental statements; availability, etc.:
ALARON Regional Service Facility, 33635
Federal Aviation Administration, 33636
Meetings; Sunshine Act, 33658
Production and utilization facilities; domestic licensing:
Nuclear power plants—
Education and experience requirements for senior reactor operators and supervisors; policy statement, 33639
Regulatory guides; issuance, availability, and withdrawal, 33641
Senior Executive Service:
Performance Review Board; membership, 33641

Pension Benefit Guaranty Corporation
RULES
Multiemployer plans:
Valuation of plan benefits and plan assets following mass withdrawal—
Interest rates, 33505
Single-employer plans:
Valuation of plan benefits—
Interest rates and factors, 33504

Postal Rate Commission
RULES
Practice and procedure rules:
Third-class bulk mail; cost evidence production, 33525

Postal Service
RULES
Domestic Mail Manual:
Etiologic agents; nonmailability, 33523

Public Health Service
See also Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration
NOTICES
Organization, functions, and authority delegations:
Alcohol, Drug Abuse, and Mental Health Administration et al., 33618

Research and Special Programs Administration
NOTICES
Meetings:
Hazardous materials transportation training, 33657

Securities and Exchange Commission
RULES
Organization, functions, and authority delegations:
General Counsel, 33500
NOTICES
Self-regulatory organizations; proposed rule changes:
Options Clearing Corp., 33642

Selective Service System
NOTICES
Health Care Personnel Delivery System; development, 33644

State Department
NOTICES
Foreign assistance determinations:
Peru, 33655

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See also Federal Aviation Administration; Federal Highway Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration
RULES
Air carrier agreements review, 33498
PROPOSED RULES
Airline mail transportation and mail rates, interstate, overseas, and foreign; establishment; withdrawn, 33580
Aviation proceedings:
Air carrier agreements, mergers, acquisitions, etc., review; exemption from prior approval; withdrawn, 33581
Air carriers; non-smoking area provisions aboard aircraft; airline ticket notices; withdrawn, 33580
Foreign air carriers:
Licenses; continuance of expired authorizations pending Board action on renewal requests; withdrawn, 33582
Rulemaking petitions:
Harris, Theodore P.; airline default protection; denied, 33577
Transamerica Airlines, 33578

Separate Parts In This Issue

Part II
Department of Commerce, Export Administration Bureau, 33662

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
401.....33493
406.....33493
948.....33484
Proposed Rules:
401 (6 documents).....33557–33568
403.....33567

10 CFR
Proposed Rules:
50.....33568
55.....33568
70.....33570
72.....33570
73.....33570
75.....33570

14 CFR
71 (3 documents).....33495–33496
97.....33497
303.....33498
Proposed Rules:
Ch. I.....33557
Ch. II (2 documents).....33577–33578
71.....33579
233.....33580
252.....33580
253.....33580
302.....33580
303.....33581
377.....33582

17 CFR
200.....33500
230.....33500
260.....33500

21 CFR
520.....33501
Proposed Rules:
168.....33582

29 CFR
1626.....33501
2619.....33504
2676.....33505

32 CFR
230.....33505
231.....33512
231a.....33516
385.....33521

33 CFR
Proposed Rules:
334.....33584

39 CFR
111.....33523
3001.....33525

40 CFR
52 (5 Documents).....33526, 33528–33536
81.....33536
228.....33585

44 CFR
59.....33541
60.....33541
65.....33541

47 CFR
22.....33551
Proposed Rules:
64.....33585
69.....33585

48 CFR
525.....33554

49 CFR
1207.....33555
1249.....33555

50 CFR
672.....33556
Proposed Rules:
17.....33586

Rules and Regulations

Federal Register
Vol. 54, No. 156
Tuesday, August 15, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 50; Doc. No. 7185S]

General Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on Thursday, May 11, 1989, at 54 FR 20368. The interim rule amended the indemnity section of the Sunflower Seed Endorsement to add a quality adjustment based on seed damage. The intended effect of this rule is to provide a quality adjustment feature based on seed damage not presently included in the endorsement.

EFFECTIVE DATE: August 15, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is February 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Thursday, May 11, 1989, FCIC published an interim rule in the **Federal Register** at 54 FR 20368, amending the Sunflower Seed Endorsement by adding a quality adjustment feature based on seed damage, not presently included in the endorsement.

Written comments were solicited by FCIC for 60 days after publication of the rule in the **Federal Register**, and the rule was scheduled for review so that any amendments made necessary by public comment could be published in the **Federal Register** as quickly as possible.

No comments were received, therefore, the interim rule is hereby adopted as final.

List of Subjects in 7 CFR Part 401

Crop Insurance, Sunflower seed.

Final Rule

Accordingly, the interim rule published in the **Federal Register** on Thursday, May 11, 1989, at 54 FR 20368, is hereby adopted as final.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC, on August 7, 1989.

John Marshall,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-19004 Filed 8-14-89; 8:45 am]
BILLING CODE 3410-08-M

7 CFR Part 406

[Amdt. No. 1; Doc. No. 6902S]

Nursery Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Nursery Crop Insurance Regulations (7 CFR part 406), effective for the 1989 and succeeding crop years, to clarify the reference to reinsured companies in the Good Faith Reliance on Misrepresentation provisions. The intended effect of this rule is to clarify a reference to reinsured companies in the provisions of good faith reliance on misrepresentation; provisions to make clear that the reinsured companies make determinations for their policies.

EFFECTIVE DATE: August 15, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is June 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or

the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities. This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC amends the Nursery Crop Insurance Regulations (7 CFR part 406) to clarify the reference to reinsured companies in the good faith reliance on misrepresentation section. The Good Faith Reliance on Misrepresentation provisions provide relief in those cases where an agent or employee of FCIC or a reinsured company misrepresented material facts of the insurance program, took an erroneous action, or gave erroneous advice and the insured relied thereon in good faith.

FCIC, uses two systems of delivery of the program, one is direct sale through an Agency Sales and Service Contract, and the other through policies sold under a Reinsurance Agreement. FCIC exercises jurisdiction over Agency Sales and Service contractors and their agents and FCIC employees, therefore, good faith reliance determinations in these instances are appropriate.

However, FCIC does not make determinations arising from good faith reliance matters for reinsured companies. The reinsured companies make good faith reliance determinations in connection with their policies.

Since this rule is only for the purposes of clarification of the rule and does not change the effect of the regulations, good cause is shown for publishing this rule without the opportunity for public notice and comment.

List of Subjects in 7 CFR Part 406

Crop insurance, Nursery crop.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Nursery Crop Insurance Regulations (7 CFR part 406), to be effective for the 1989 and succeeding crop years, as follows:

1. The authority citation for 7 CFR part 406 is revised to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 406.5 is amended by revising the last sentence to read as follows:

§ 406.5 Good faith reliance on misrepresentation.

* * * Request for relief under this section must be submitted, in writing, to the Corporation or to the Reinsured Company, whichever is applicable.

* * * * *

Done in Washington, DC, on August 7, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-19005 Filed 8-14-89; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV-89-073]

Irish Potatoes Grown in Colorado Area 2; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 948 for the 1989–90 fiscal period. Authorization of this budget will allow the Colorado Potato Administrative Committee, San Luis Valley Office (Area 2) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: September 1, 1989 through August 31, 1990.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-447-5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR part 948) regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of Colorado Area 2 potatoes under this marketing order, and approximately 290 potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989-90 fiscal year was prepared by the Colorado Potato Administrative Committee, San Luis Valley Office (Area 2) (committee), the agency responsible for local administration of the order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of Colorado Area 2 potatoes. They are familiar with the committee's needs and with the costs of goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of potatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on June 15, 1989, and unanimously recommended a 1989-90 budget of $50,477. This year's budget is $8,925 more than last year's due to increases in expenditures for additional staff, compliance, employee benefits, insurance and office expenses. The committee also recommended an assessment rate of $0.004 per hundredweight, compared to last year's rate of $0.0035. This rate, when applied to anticipated fresh market potato shipments of 11,800,000 hundredweight, will yield $47,200 in assessment revenue which, when added to $3,277 from reserve funds, will be adequate to cover budgeted expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on July 20, 1989 (54 FR 30394). That document contained a proposal to add § 948.203 to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through July 31, 1989. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses. The 1989-90 fiscal period begins on September 1, 1989, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 948

Marketing agreements and orders, Potatoes, Colorado.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR Part 948 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. A new § 948.203 is added to read as follows:

Note: This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations.

§ 948.203 Expenses and assessment rate.

Expenses of $50,477 by the Colorado Potato Administrative Committee, San Luis Valley Office (Area 2) are authorized, and an assessment rate of $0.004 per hundredweight of potatoes is established for the fiscal period ending August 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: August 10, 1989.

William J. Doyle,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 89-19104 Filed 8-14-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASO-21]

Amendment to Transition Area, Clemson, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Clemson, SC, Transition Area provides additional controlled airspace for protection of Instrument Flight Rules (IFR) aircraft executing a new Runway 25 Standard Instrument Approach Procedure (SIAP) based on the Foothills VHF Omnidirectional Range/Tactical Air Navigation (VORTAC). The existing transition area is being increased from a 5- to a 6.5-mile radius of the Clemson-Oconee County Airport and the width of the arrival area extension, east of the airport, is being increased from 6 to 9 miles.

EFFECTIVE DATE: 0901 u.t.c., September 21, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On May 22, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Clemson, SC, Transition Area (54 FR 21971). The proposed amendment would increase the radius of the existing transition area from 5 to 6.5 miles and increase the width of the arrival area extension east of the Clemson-Oconee County Airport from 6 to 9 miles. This action would be necessary to provide controlled airspace protection for IFR aircraft executing a new Runway 25 SIAP based on the Foothills VORTAC. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of part 71 of the Federal Aviation Regulations were republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations enlarges the Clemson, SC, Transition Area. A new SIAP has been developed for Runway 25 at the Clemson-Oconee County Airport. In order to provide controlled airspace protection for IFR aircraft executing the new SIAP, the existing radius of the transition area is being increased from 5 to 6.5 miles and the width of the arrival area extension, east of the airport, is being increased from 6 to 9 miles.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Clemson, SC [Amended]

By changing the phrase in the existing description, "* * * within a 5-mile radius of Clemson-Oconee County Airport * * *" to read, "* * * within a 6.5-mile radius of Clemson-Oconee County Airport * * *" and by changing the phrase, "within 3 miles each side of the 099° bearing from the Clemson RBN * * *" to read, "within 4.5 miles each side of the 099° bearing from the Clemson RBN * * *"

Issued in East Point, Georgia, on August 3, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-19048 Filed 8-14-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-30]

Revision to Control Zone, Vero Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Vero Beach, FL, Control Zone. A nondirectional radio beacon (NDB) is being installed and a standard instrument approach procedure (SIAP) has been developed based on the NDB. This revision adds an arrival area extension to the existing control zone to provide controlled airspace for aircraft executing the new NDB SIAP. Also, a minor correction is made to the geographic position coordinates of the Vero Beach Municipal Airport.

EFFECTIVE DATE: 0901 u.t.c. September 21, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On June 28, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Vero Beach, Florida, Control Zone (54 FR 27185). An arrival area extension would be added to the existing control zone to provide controlled airspace for aircraft executing a new NDB SIAP planned for the airport. Also, a minor correction would be made to the geographic position coordinates on the Vero Beach Municipal Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Vero Beach, FL, Control Zone by adding an arrival area extension to the existing control zone. This extension is required for controlled airspace protection for aircraft executing a new NDB standard instrument approach procedure planned for the airport. Also, a minor correction is being made to the geographic position coordinates of the Vero Beach Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Vero Beach, FL [Revised]

Within a 5-mile radius of Vero Beach Municipal Airport (latitude 27°39'16" N., longitude 80°24'58" W.); within three miles each side of the 261° bearing from the Vero Beach NDB (latitude 27°39'50" N., longtitude 80°25'11" W.) extending from the 5-mile radius area to 8.5 miles west of the NDB.

Issued in East Point, Georgia, on August 1, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-19049 Filed 8-14-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-28]

Designation of Transition Area, Philadelphia, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Philadelphia, MS, transition area. A standard instrument approach procedure (SIAP) has been developed to serve the Philadelphia Municipal Airport and the additional controlled airspace is needed for protection of instrument flight rules (IFR) aeronautical operations. This action lowers the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. Concurrent with the publication of the SIAP, the operating status of the airport will change from visual flight rules (VFR) to IFR.

EFFECTIVE DATE: 0901 u.t.c., October 19, 1989.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Patterson, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On June 28, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to designate the Philadelphia, MS, transition area (54 FR 27187). The proposed action would lower the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the Philadelphia Municipal Airport. A SIAP was being developed for the airport and the controlled airspace was required for protection of IFR aeronautical operations. The operating status of the airport would change from VFR to IFR concurrent with publication of the SIAP. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations designates the Philadelphia, MS, transition area. Controlled airspace in the vicinity of the Philadelphia Municipal Airport will be lowered from 1,200 to 700 feet above the surface. A SIAP has been developed for the airport and the controlled airspace is required for protection of IFR aeronautical operations. Concurrent with publication of the SIAP, the operating status of the airport will change from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Philadelphia, MS [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Philadelphia Municipal Airport (Lat. 32°47'55" N., Long. 89°07'30" W.); within 3.5 miles each side of the 001° bearing from the Philadelphia NDB (Lat. 32°47'54" N., Long. 89°07'28" W.), extending from the 6.5-mile radius area to 11.5 miles north of the NDB.

Issued in East Point, Georgia, on August 1, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-19050 Filed 8-14-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 25987; Amdt. No. 1406]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment established, amends, suspends or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATE: An effective date for each SIAP is specified in the amendatory provisions: Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of al SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) prescribes new, amended, suspended, or revoke Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, space, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further,

airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in the amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule under Executive Order 1229; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on August 4, 1989.

Robert L. Goodrich,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective September 21, 1989*

Phoenix, AZ—Phoenix Sky Harbor Intl, VOR RWY 26L, Amdt. 21
Phoenix, AZ—Phoenix Sky Harbor Intl, LOC BC RWY 26L, Amdt. 5
Fernandina Beach, FL—Fernandina Beach Muni, RADAR-1, Amdt. 3
Jacksonville, FL—Craig Muni, VOR RWY 14, Amdt. 2
Jacksonville, FL—Craig Muni, VOR RWY 32, Amdt. 2
Sarasota/Bradenton, FL—Sarasota-Bradenton, NDB RWY 32, Amdt. 5
McRae, GA—Telfair-Wheeler, NDB RWY 20, Amdt. 6
Kahului, HI—Kahului, NDB RWY 2, Orig.
Fort Wayne, IN—Fort Wayne Muni/Baer Field, NDB RWY 32, Amdt. 23
Fort Wayne, IN—Fort Wayne Muni/Baer Field, ILS RWY 32, Amdt. 26
Tipton, IA—Mathews Memorial, VOR RWY 11, Orig.
Kalispell, MT—Glacier Park Intl, VOR RWY 30, Amdt. 8
Kalispell, MT—Glacier Park Intl, ILS RWY 2, Amdt. 4
Teterboro, NJ—Teterboro, VOR/DME-B, Amdt. 2
New York, NY—John F. Kennedy Intl, ILS RWY 31L, Amdt. 7
Athens, TX—Athens Muni, NDB RWY 35, Amdt. 3
Lancaster, TX—Lancaster, NDB RWY 31, Orig.
Mesquite, TX—Phil L. Hudson Muni, LOC/DME (BC) RWY 35, Orig.
Abingdon, VA—Virginia Highlands, NDB RWY 24, Orig., CANCELLED
Richmond, VA—Richmond Intl (Byrd Field), MLS RWY 2, Amdt. 1, CANCELLED
Tangier, VA—Tangier Island, VOR/DME RWY 2, Amdt. 6

** * * Effective August 24, 1989*

Fort Pierce, FL—St Lucie County Intl, NDB RWY 9, Orig.
Orlando, FL—Orlando Intl, ILS RWY 17, Orig.
Orlando, FL—Orlando Intl, ILS RWY 18R, Amdt. 4
Orlando, FL—Orlando Intl, ILS RWY 35, Orig.
Orlando, FL—Orlando Intl, ILS RWY 36R, Amdt. 5
Tifton, GA—Henry Tift Myers, NDB RWY 33, Orig.
Tifton, GA—Henry Tift Myers, NDB RWY 33, Amdt. 12, CANCELLED
Tifton, GA—Henry Tift Myers, ILS RWY 33, Orig.
Cedar Rapids, IA—Cedar Rapids Muni, VOR RWY 9, Amdt. 16
Cedar Rapids, IA—Cedar Rapids Muni, VOR RWY 27, Amdt. 11
Cedar Rapids, IA—Cedar Rapids Muni, NDB RWY 9, Amdt. 11
Cedar Rapids, IA—Cedar Rapids Muni, ILS RWY 9, Amdt. 15
Cedar Rapids, IA—Cedar Rapids Muni, ILS RWY 27, Amdt. 4
Cedar Rapids, IA—Cedar Rapids Muni, RNAV RWY 13, Amdt. 7
Cedar Rapids, IA—Cedar Rapids Muni, RNAV RWY 31, Amdt. 7
Ardmore, OK—Ardmore Muni, VOR RWY 4, Amdt. 17
Ardmore, OK—Ardmore Muni, LOC RWY 30, Amdt. 1, CANCELLED
Ardmore, OK—Ardmore Muni, NDB RWY 30, Amdt. 2
Ardmore, OK—Ardmore Muni, ILS RWY 30, Orig.

** * * Effective July 27, 1989*

Colorado Springs, CO—City of Colorado Springs Muni, ILS RWY 35, Amdt. 34
Raleigh/Durham, NC—Raleigh/Durham, ILS RWY 23R, Amdt. 5

[FR Doc. 89-19051 Filed 8-14-89; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Part 303

[Docket Nos. 42825 and 42802; Amdt. 303-2]

RIN 2105-AB48

Review of Air Carrier Agreements

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule; removal.

SUMMARY: This action revises procedural rules regarding the processing of aviation-related agreements, mergers, interlocking relationships, and requests for antitrust immunity. Due to termination of statutory authority, certain provisions are no longer in effect.

EFFECTIVE DATE: September 14, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence Myers, Office of the Assistant General Counsel for International Law, U.S. Department of Transportation, 400 Seventh Street, SW., 20590, (202) 366-2972.

SUPPLEMENTARY INFORMATION: The Department of Transportation (DOT), on July 31, 1985, issued final procedural rules (50 FR 31134) implementing sections 408, 409, 412 and 414 of the Federal Aviation Act of 1958, as amended ("the Act"). These rules, set forth in 14 CFR Part 303, Review of Air Carrier Agreements, Mergers, Acquisitions of Control, Consolidations and Interlocking Relationships, consolidated and restructured former Civil Aeronautics Board regulations regarding the processing of certain aviation-related agreements, mergers, interlocking relationships, and requests for antitrust immunity.

Section 408 of the Act prohibited airline consolidations, mergers and acquisitions of control absent prior approval by DOT. Section 409 of the Act prohibited certain interlocking relationships without DOT approval. As of January 1, 1989, pursuant to the Civil Aeronautics Board Sunset Act of 1984, both statutory sections ceased to be in effect. These airline transactions are now subject to the antitrust procedures and standards applicable to comparable transactions in unregulated industries.

Section 412 concerns carrier agreements between air carriers and provides standards for determining whether such agreements should be approved or disapproved. Section 414 allows DOT to grant antitrust immunity to an approved section 408, 409 or 412 transaction. Pursuant to Sunset Act provisions, DOT's authority under sections 412 and 414 to approve and grant antitrust immunity to air carrier agreements relating to interstate and overseas air transportation, terminated as of January 1, 1989. In Order 88-12-11, DOT determined that the antitrust immunity previously granted to agreements relating to interstate and overseas air transportation also terminated on January 1, 1989. However, DOT still has authority under sections 412 and 414 to approve and grant antitrust immunity to agreements affecting foreign air transportation. We are therefore removing those provisions and references in part 303 which have been rendered obsolete by these statutory changes. Because these changes merely conform our rules to changes in our legal authority, we find that notice and comment are unnecessary.

List of Subjects in 14 CFR Part 303

Air carriers, Antitrust, Administrative practices and procedures, Reporting and recordkeeping requirements.

1. The authority citation is revised to read as follows:

Authority: 49 U.S.C. 1301, 1302, 1303, 1324, 1371, 1377, 1382, 1383, 1384, 1386, 1388, 1551.

PART 303—REVIEW OF AIR CARRIER AGREEMENTS

2. The title of part 303 is revised to read as set forth above.

3. Section 303.01 is revised to read as follows:

§ 303.01 Purpose.

These regulations set forth the procedures by which applications may be made to the Department of Transportation under sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions.

§ 303.02 [Amended]

4. Section 303.02 is amended by removing and reserving paragraphs (f), (g), and (i):

* * * * *

(f) [Reserved]
(g) [Reserved]
(h) * * *
(i) [Reserved]

5. Section 303.03 is revised to read as follows:

§ 303.03 Requirement to file application.

A person who seeks approval of a section 412 transaction must file with the Documentary Services Division an application that conforms to the requirements set forth in §§ 303.04 and 303.05 of this part.

§ 303.04 [Amended]

6. In § 303.04, paragraphs (a), (b) and (c) are revised to read as follows:

(a) Unless specifically exempted by these regulations or by an order of the Assistant Secretary, a person filing an application pursuant to § 303.03 of this part shall prepare and file the application in the manner specified in this section. The application shall also contain the information required by subpart D of this part. An application may be deemed incomplete if it is not in substantial compliance with these requirements.

(b) The parties to the transaction may file either separate applications or one joint application so long as all the information required herein is submitted for each party to the transaction. The Assistant Secretary or Administrative Law Judge, if the matter has been assigned to a judge, upon his or her initiative or upon application, may order the target company or other persons to submit some or all of the information required by this subpart, or other information under 14 CFR 302.19.

(c) Each page of the application and each document submitted with the application shall be marked with the name, initials, or some other identifying symbol of the applicant. The application shall also indicate the date of preparation and the name and corporate position of the preparer.

* * * * *

§ 303.05 [Amended]

7. Section 303.05 is amended by removing and reserving (b) to read as follows:

* * * * *

(b) [Reserved]

* * * * *

8. Section 303.06 is revised to read as follows:

§ 303.06 Review of antitrust immunity.

The Assistant Secretary may initiate a proceeding to review any antitrust immunity previously conferred by the Civil Aeronautics Board or the Department in any section 412 transaction. The Assistant Secretary may terminate or modify such immunity if the Assistant Secretary finds after notice and hearing that the previously conferred immunity is not consistent with the provisions of section 414. In any proceeding to review such immunity, the proponents of the immunity will have the burden of justifying the continuation of previously conferred immunity under the provisions of section 414.

9. Section 303.07 is revised to read as follows:

§ 303.07 Transitional rule.

If a section 412 application or a request for antitrust immunity under section 414 is pending on the date this part is amended, such application or request shall be deemed made pursuant to the provisions of this part, as amended.

§§ 303.10-303.19 (Subpart B) [Removed and reserved]

10. Subpart B is removed and reserved.

§§ 303.20-303.24 (Subpart C) [Removed and reserved]

11. Subpart C is removed and reserved.

§ 303.43 [Amended]

12. Section 303.43 is amended by removing and reserving (a) and revising (b) as follows:

(a) [Reserved]

(b) *Section 412 applications.* After the period for which comments, requests for a hearing or responses to an order to show cause are due concerning a section 412 application, the Assistant Secretary may proceed by order requesting further information or justification or by order of approval or disapproval or, in appropriate cases, may proceed by order to show cause or by order instituting a full evidentiary hearing.

* * * * *

§§ 303.50–303.57 (Subpart F) [Removed]

13. Subpart F is removed.

Issued under authority delegated in 49 CFR 1.56(i) and 1.56(j)(2)(ii).

Issued in Washington D.C. on August 8, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–19017 Filed 8–14–89; 8:45 am]

BILLING CODE 4910-62-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 230, and 260

[Rel. Nos. 33–6843; 34–27096; 35–24934; 39–2218; IA–1185; IC–17096]

Delegation of Authority to the Office of General Counsel

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission has made certain changes to the General Counsel's delegated authority to approve non-expert, non-privileged, factual staff testimony, and the production of non-privileged documents, by present and former Commission employees pursuant to validly-issued subpoenas.

EFFECTIVE DATE: August 15, 1989.

FOR FURTHER INFORMATION CONTACT: Colleen P. Mahoney, Assistant General Counsel, 272–2871, Thomas G. Sheehan, Special Counsel, 272–3071.

SUPPLEMENTARY INFORMATION: The Commission has amended the existing delegation of authority to the General Counsel to add the authority to approve present and former Commission employees' non-expert, non-privileged testimony, and the production of non-privileged documents, when validly subpoenaed in government (other than Commission) litigation. Previously, the General Counsel's delegated authority extended only to subpoenas issued in private litigation. In addition, the Commission has amended the General Counsel's delegated authority to make clear that the General Counsel may authorize both present and former employees' testimony in response to such subpoenas. The existing delegation does not clearly encompass the testimony of former Commission employees. Finally, these amendments make certain technical and conforming changes to the General Counsel's authority in these areas.

The Commission finds, in accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(3)(A)), that this revision relates solely to agency organization, procedures, or practices. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice and opportunity for comment. Accordingly, it is effective upon publication in the **Federal Register**.

Lists of Subjects

17 CFR Part 200

Administrative practice and procedure, Freedom of information, Privacy, Securities.

17 CFR Parts 230 and 260

Reporting and recordkeeping requirements, Securities.

Text of Amendments

Title 17, Chapter II of the Code of Federal Regulations is hereby amended as follows:

PART 200—ORGANIZATIONS; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200, subpart A continues to read in part as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855 (15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11), unless otherwise noted. * * * § 200.30–14 also issued under Pub. L. 94–29, 89 Stat. 163, Pub. L. 87–592, 76 Stat. 395, 15 U.S.C. 78d–1, 78d–2, 5 U.S.C. 552a(d)(2)(B)(ii).

2. Section 200.30–14 is amended by revising paragraph (f) as follows:

§ 200.30–14

Delegation of authority to the General Counsel.

* * * * *

(f) Approve non-expert, non-privileged, factual testimony by present or former staff members, and the production of non-privileged documents, when validly subpoenaed.

3. The authority citation for part 200, subpart M continues to read as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855 (15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11; E.D. 11222); 3 CFR 1964–65 Comp., 5 CFR 735.104, unless otherwise noted.

4. Section 200.735–3 is amended by revising paragraphs (b)(7)(ii) and (b)(7)(iii) as set forth below. Footnote 6 which appears in the current codification of 17 CFR 200.735–3(b)(7)(iii) is not being amended, and consequently has not been reproduced here.

§ 200.735–3 General provisions.

* * * * *

(b) * * *

(7) * * *

(ii) Except where the Commission or the General Counsel, pursuant to delegated authority, has previously granted approval or in relation to a Commission administrative proceeding or a judicial proceeding in which the Commission, or a present or former Commissioner, or present or former member of the staff, represented by Commission counsel, is a party, any officer, employee or former officer or employee who is served with a subpoena requiring the disclosure of confidential or non-public information or documents shall, unless the Commission or the General Counsel, pursuant to delegated authority, authorizes the disclosure of such information or documents, respectfully decline to disclose the information or produce the documents called for, basing his or her refusal on this paragraph.

(iii) Any member, employee or former member or employee who is served with such a subpoena not covered by the exceptions in paragraph (b)(7)(ii) of this section shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability in the public interest of making available such information or documents.[6] The Commission or the General Counsel, pursuant to delegated authority, shall authorize the disclosure of non-expert, non-privileged, factual staff testimony and the production of non-privileged documents when validly subpoenaed.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

5. The authority citation for part 230, §§ 230.100 through 230.215, continues to read as follows:

Authority: Sec. 19, 48 Stat. 85, as amended; 15 U.S.C. 77s, unless otherwise noted.

6. The fourth sentence of § 230.122 is revised to read as follows:

§ 230.122 Nondisclosure of information obtained on the course of examinations and investigations.

* * * Any officer or employee who is served with such a subpoena shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear on the desirability of making available such information or documents.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

7. The authority citation for part 260 continues to read as follows:

Authority: Secs. 305, 307, 314, 319, 53 Stat. 1154, 1156, 1167, 1173; 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, unless otherwise noted.

8. The second sentence of § 260.0–6 is revised to read as follows:

§ 260.0–6 Nondisclosure of information obtained in the course of examinations and investigations.

* * * Except as provided by 17 CFR 203.2, officers and employees are hereby prohibited from making such confidential information or documents or any other non-public records of the Commission available to anyone other than a member, officer or employee of the Commission, unless the Commission or the General Counsel, pursuant to delegated authority, authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest.
* * *

By the Commission.

Dated: August 4, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–19068 Filed 8–14–89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Poloxalene

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Purina Mills, Inc., providing for use of a molasses, medicated feed block containing 6.6 percent poloxalene for controlling legume (alfalfa, clover) and wheat pasture bloat in cattle.

EFFECTIVE DATE: August 15, 1989.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: Purina Mills, Inc., P.O. Box 66812, St. Louis, MO 63166–6812, filed NADA 140–869 which provides for use of a molasses, medicated feed block containing 6.6 percent poloxalene for control of legume (alfalfa, clover) and wheat pasture bloat in cattle. The NADA is approved and the regulations are amended by adding new 21 CFR 520.1840 (c)(4) and (d)(4) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(vi) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 520.1840 is amended by adding new paragraphs (c)(4) and (d)(4) to read as follows:

§ 520.1840 Poloxalene.

* * * * *

(c) * * *

(4) See No. 017800 in 510.600(c) of this chapter for sponsor of the usage provided by paragraph (d)(4) of this section.

(d) * * *

(4) For control of legume (alfalfa, clover) and wheat pasture bloat in cattle. Administer in molasses block containing 6.6 percent poloxalene, at the rate of 0.8 ounce of block (1.5 grams of poloxalene) per 100 pounds of body weight per day. Provide access to blocks at least 7 days before exposure to bloat-producing conditions.

Dated: August 8, 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89–19067 Filed 8–14–89; 8:45 am]

BILLING CODE 4160-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1626

Procedures; Age Discrimination in Employment Act

AGENCY: Equal Employment Opportunity Commission (EEOC, Commission).

ACTION: Notice of final rule.

SUMMARY: The Commission hereby publishes notice of a final rule under section 9 of the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. 621 *et seq.*, amending its procedural regulations by providing that the one-year tolling provision of section 7(e)(2) of the ADEA, 29 U.S.C. 626(e)(2), applies to private party litigation.

EFFECTIVE DATE: September 14, 1989.

FOR FURTHER INFORMATION CONTACT: John K. Light, Office of Legal Counsel, EEOC, 1801 L Street NW., Washington, DC 20507 (202) 663–4690.

SUPPLEMENTARY INFORMATION: Section 7(e)(2) of the ADEA, 29 U.S.C. 626(e)(2), provides for tolling the statute of limitations codified in section 6 of the Portal-to-Portal Act of 1947, 255,[1] for up to one year while the Commission "is attempting to effect voluntary compliance with the requirements of this Act through informal methods of conciliation, conference, and persuasion pursuant to subsection (b)." Subsection (b) of section 7 is the provision that requires the Commission to engage in conciliation, conference, and persuasion efforts before it can institute court actions under the ADEA.

In a Notice of Proposed Rulemaking (NPRM) piublished in the **Federal Register** of Thursday, March 9, 1989 (54 FR 10025), the Commission expressed its belief that Congress neither required nor intended that the one-year tolling period provided by section 7(e)(2) be applied only to suits brought by the government. This position was taken after thoroughly considering the language of the statutory provision, the overall statutory scheme favoring voluntary compliance, its legislative background and the court discussions on the subject of section 7(e)(2) tolling. Following the publication of the NPRM, several comments were received from individuals and organizations. Although a majority of the comments submitted opposed the NPRM position, the Commission continues to believe that once section 7(b) conciliation, conference, and persuasion have been commenced by the EEOC, the period of tolling applies regardless of whether the Commission or a private party files ar. ADEA suit after the attempt at informal resolution fails.

None of the comments raised arguments not already considered in the NPRM. The comments who opposed the position put forward in the NPRM believed generally that the statutory language and legislative history argued for application of section 7(e)(2) exclusively to Commission lawsuits. These commenters also generally felt that the Commission's position would, in effect, act to extend the Act's statute of limitations without this having been intended by Congress. In addition, some of these commenters expressed a view that the court decisions cited and discussed in the NPRM were more persuasive for a limitation of tolling to government actions than for application to private lawsuits. Lastly, one commenter urged that the 1979 letter of Assistant Labor Secretary Elisburg (noted in the NPRM at footnote 6), opining that section 7(e)(2) tolling applies only to government suits, was more contemporaneous with the 1978 ADEA amendments which added that section and more persuasive in its reasoning and conclusion.

The Commission has carefully considered these arguments and continues to believe that the application of tolling to private lawsuits as well as government actions is most consistent with Congress' express preference in the ADEA for voluntary settlement of age discrimination claims. This view also recognizes the fact that unsuccessful section 9(b) conciliation may not always result in the Commission filing suit. As we stated in the NPRM, limiting tolling during section 7(b) conciliation to the government's right of action encourages charging parties to file protective suits, thereby derailing the voluntary settlement process, and may also reward employers for not engaging in prompt or serious conciliation efforts.[2]

Thus, an interpretation applying section 7(e)(2) tolling to private as well as government actions is fully consistent with the ADEA's statutory scheme.

There is nothing in the statutory language of section 7(e)(2) or its legislative history which would contradict or prohibit an interpretation applying tolling to private litigants. The Conference Committee report stated that:

> The Senate amendment amends section 7(e) of the act to provide that the statute of limitations as provided in section 6 of the Portal-to-Portal Act of 1947 shall be tolled (for a period not exceeding 2 years [conference agreement substituted 1 year]) during the period in which the Secretary of Labor [now EEOC] is attempting to effect voluntary compliance pursuant to section 7(b). This amendment does not apply to conciliation required by section 7(d). House Conf. Report No. 95-950, p. 13, reprinted in 1978 U.S. Code Cong. and Admin. News, p. 534.[3]

This discussion does not limit the benefits of section 7(b) tolling exclusively to an action filed by the enforcement agency, it simply requires 7(b), as opposed to 7(d), conciliation efforts as a prerequisite for tolling.[4] As

---

[1] Section 6 of the Portal-to-Portal Act is made applicable by section 7(e)(1) of the ADEA, 29 U.S.C. 626(e)(1), to all age discrimination litigation whether brought by the Commission or by private individuals.

Similarly, section 7(b), 29 U.S.C. 626(b), specifically provides for enforcement of the ADEA in accordance with section 16 of the Fair Labor Standards Act, 29 U.S.C. 216, which grants litigation authority for both employee suits section 16(b)) and government suits (section 16(c)). Thus, section 7(b) provides both a government and private right of action.

[2] For example, there may be persons with meritorious claims who, at some point beyond the applicable statute of limitations but within the 1-year tolling period, learn that the government is not going to litigate on their behalf. It would not be in keeping with simple notions of fairness, nor with the concept that aggrieved individuals act as "private attorneys general" under the ADEA to interpret section 7(e) as tolling the time frames solely for government suits.

As one commenter emphasized:

> The ADEA, like Title VII, was designed to promote joint enforcement efforts between the government and private litigants. This complimentary scheme of government enforcement and private "attorneys general" works best when the conciliation mandated by the ADEA applies with equal force, and with like consequences, to all litigants.

The extension of section 7(e)(2) tolling to private litigants is important for several practical reasons. During conciliation, plaintiffs are unlikely to file suit for two reasons. First, they justifiably hope that the matter can be resolved short of expensive litigation. Second, they continue to hope that if conciliation fails, the Commission will initiate suit on their behalf. The extension of the tolling provision to private litigants maximizes the potential benefits of section 7(b) conciliation by giving the Commission an uninterrupted chance at voluntary resolution. However, in many cases, the Commission's conciliation efforts under section 7(b) extend beyond the two year statute of limitations for filing a private suit. Unfortunately, if the Commission decides not to file suit after the two year statute of limitations has run, the aggreived parties are out of luck.

On the other hand, the absence of tolling impairs both effective conciliation and the overall enforcement of the ADEA. Private litigants faced with the expiration of the two-year statute of limitations have two unpalatable alternatives. They can initiate a "protective suit," but in so doing may undermine the conciliation efforts of the Commission. An employer may be unwilling to resolve a matter with the Commission upon which private litigation is pending. At the same time, a "protective suit" may deprive the Commission of its prosecutorial discretion. Commission practice has been to generally avoid government suits which duplicate previously initiated private actions.

[3] One commenter argued that some legislative history indicated otherwise:

> During the debate prior to House agreement to the Conference Report, Representative Albert H. Quie, ranking minority member of the Committee on Education and Labor, which reported H. 5383, and a member of the conference committee, explained the Senate amendment to the House. Representative Quie explained that "[t]he combined effect of [the] conciliation requirement and the limitations statute is to require the Secretary to fulfill his responsibility to achieve conciliation before legal action is begun." 124 Cong. Rec. H 2272 (March 21, 1978). Representative Quie must have been speaking of a legal action by the Secretary (now EEOC), since as the NPRM explained, § 7(d) conciliation cannot delay a private suit.
>
> Representative Quie's subsequent statements made it clear that the Senate amendment was directed solely towards suits filed by the government. He explained that in large cases such as complex class actions, it is difficult if not impossible to complete conciliation within the given time limit. He went on to say, "*The Secretary* thus may be forced into court prematurely simply to protect his right of action. This tolling provision helps to alleviate this problem by allowing *the Secretary* up to an additional year before having to file suit." *Id.* (emphasis supplied).

[4] Section 7(d) conciliation simply requires the EEOC, upon receiving a charge, to promptly notify all persons named as prospective defendants and to promptly seek to eliminate any alleged unlawful practice by informal methods of conciliation,

Continued

was articulated as dictum in *Fulton* v. *NCR Corp.*, 472 F. Supp. 377, 382 (W.D. Va. 1979):

> The Court does not necessarily read this limitation as saying that a period of section 7(b) conciliation attempts will never work to toll the period of limitations for bringing private actions under section 7(c) (for which the prior period of conciliations attempts under section 7(d) is required). It may mean only that section 7(d) conciliation will work to toll the limitations period for no ADEA action, while section 7(b) conciliations may work to toll the limitations period for any ADEA suit, whether brought under section 7(b) [by the government] or section 7(c) [by a private litigant]. (Emphasis in original) [5]

Four courts, including one court of appeals, have reached a different conclusion, but without a thorough analysis of the question. In *Heiar* v. *Crawford County*, 746 F.2d 1190, 1196 (7th Cir. 1984), *cert. denied*, 472 U.S. 1027 (1985), the court, in an opinion by Judge Posner, stated, in *dictum*:

> The conciliation referred to [in section 79e)(2)]—conciliation under section [7](b)—is that preceding suits by the EEOC. Conciliation in private actions is provided for separately in section [7](d) * * *. The point is not that there are different forms of conciliation, it is that only the EEOC can use the period of conciliation to toll the statute of limitations.

In *Leite* v. *Kennecott Copper Corp.*, 558 F. Supp. 1170, 1172–73 (D.Mass.), *aff'd without opinion*, 720 F.2d 658 (1st Cir. 1983), the court held that, notwithstanding the Commission's advice that its conciliation efforts would extend the statute of limitations for a charging party's private suit, tolling was inapplicable. According to the court, the Commission's advice "misstate[d] the law" because sec. 7(e)(2)'s "reference to [sec 7](b) makes clear [that] this tolling provision applies only to the conciliation provision efforts preceding the institution of legal action by the [government], not to those that might precede a private civil action." 558 F. Supp. 1173 & n.1. Finally, in *Hovey* v. *Lutheran Medical Center*, 516 F. Supp. 554, 556 (E.D.N.Y. 1981), the court, in holding that tolling was not available in a private suit, stated that "the tolling provision of [sec. 7](e)(2) applies only to the conciliatory efforts required by [sec. 7](b) preceding the institution of legal action by the Secretary [; it] does not refer to conciliation before a private civil action." [6] *See also Taylor* v. *Battelle Columbus Laboratories*, 680 F. Supp. 1165 (E.D. Ohio, 1988) (citing *Heiar*).

The Commission believes that these decisions are unpersuasive and incorrect on the issue of tolling.[7] The decisions discussed the issue, largely in dicta, only in a brief and conclusory manner without articulated reasoning and using as authority the same legislative history discussed above that clearly does not mandate that tollling only applies to government actions. To the contrary, the Commission views the legislative history and general structure of the ADEA enforcement scheme as evidencing Congress' understanding that section 7(b) conciliation and section 7(e)(2) tolling may occur in cases where the Commission does not ultimately bring suit. A clear indication of this fact is the statement in the Conference Committee Report that tolling under section 7(e)(2) "begin[s] when the Department of Labor [now EEOC] states, in a letter to the prospective defendant(s) that it is prepared to commence conciliation pursuant to section 7(b) of the act." H.R. Conf. Rep. No. 950, 95 Cong., 2d Sess. 13 (1978). Had Congress intended section 7(e)(2) tolling to be limited to the government, it could easily have said so. Instead of such a limitation, Congress stated in that section that "the statute of limitations," which applies to both private and government actions, "shall be tolled."[8]

Therefore, the Commission believes that Congress intended the one-year tolling period provided by section 7(e)(2) to apply to both Commission and private litigation. Such a view is consistent with effective and efficient enforcement of the ADEA. Thus, the Commission hereby provides notice that it is modifying its procedural regulation at 29 CFR 1626.15(b) to add the following statement at the conclusion of this subsection:

This tolling period pursuant to section 7(e)(2) is applicable to both Commission and private party litigation.

I. Impact Analysis—Classification-Executive Order 12291

The rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Similarly, the Chairman of the EEOC certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this amendment will not result in a significant impact on a substantial number of small employers.

List of Subjects in 29 CFR Part 1626

Aged, Equal employment opportunity.

Accordingly, the Commission proposes to amend 29 CFR 1626.15(b) as follows:

PART 1626—[AMENDED]

1. The authority citation for part 1626 is revised to read as follows:

Authority: Sec. 9, 81 Stat. 605, 29 U.S.C. 628; Sec. 2, Reorg. Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

2. By adding a new sentence at the end of paragraph (b) to read as follows:

§ 1626.15 Commission enforcement.

* * * * *

(b) * * * The tolling period pursuant to section 7(e)(2) is applicable to both Commission and private party litigation.

* * * * *

---

conference and persuasion. It is the informal predetermination action that promptly follows the filing of a charge and in no event can delay a private suit by more than 60 days.

Section 7(b) conciliation follows written notice from the EEOC to prospective defendant(s) that it is prepared to commence conciliation pursuant to that section of the Act and is required before the Commission itself can file suit. Commission regulations provide that section 7(b) conciliation may be commenced whenever the Commission has a reasonable basis to conclude that a violation of the ADEA has occurred or will occur (ordinarily issued in the form of a Letter of Determination), 29 CFR 1626.12(b). *See also* H.R. Conf. Rep. No. 950, 95th Cong., 2d Sess. 13 (1978), (tolling under section 7(e)(2) "begin(s) when the Department of Labor [now EEOC] states in a letter to prospective defendant(s) that it is prepared to commence conciliation pursuant to section 7(b) of the act.")

[5] Two other courts have stated in *dicta* in private ADEA actions that tolling under section 7(e)(2) was available for the time spent in conciliation. *See Miller* v. *International Telephone and Telegraph Co.*, 755 F.2d 20, 24 (2d Cir. 1985), *cert. denied*, 474 U.S. 1015 (1985); and *Vuksta* v. *Bethlehem Steel Corp.*, 540 F. Supp. 1276, 1280 n.13 (E.D. Pa. 1982), *aff'd without opinion*, 707 F.2d 1405 (3d Cir. 1983), *cert. denied*, 464 U.S. 835 (1983).

[6] *Hovey and Leite* cite to and erroneously rely upon the decision in *Fulton* v. *NCR. Corp.*, discussed earlier, which supports the opposite view, i.e., that tolling is available in a private action.

[7] By letter dated February 28, 1979, the Department of Labor, then responsible for ADEA enforcement, expressed the view that section 7(e) tolling was limited to the government's right of action. For the reasons discussed in the text, the Commission rejects this view.

[8] As one commentator noted, where the statute is clear on its face, there is no need to resort to legislative history to decipher congressional intent. *See, e.g., United Air Lines* v. *McMann*, 434 U.S. 192, 198–99 (1977); *Brennan* v. *Taft Broadcasting company*, 500 F.2d 212, 216–17 (5th Cir. 1974).

Signed on 12th day of July 1989 at Washington, DC for the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 89-19035 Filed 8-14-89; 8:45 am]

BILLING CODE 6570-06-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning September 1, 1989. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after September 1, 1989, and will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8824 (202 778-8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The recent amendments to title IV made by the Pension Protection Act ("PPA"), a part of the Omnibus Budget Reconciliation Act of 1987, increase the amount of plan benefits for which an employer is responsible upon plan termination. These new termination rules apply to plan terminations with respect to which the 60-day advance notice to affected parties (the notice of intent to terminate) is issued after December 17, 1987. (For more detail, see the PBGC's Notice of Revised Termination Rules, 53 FR 1905 (January 22, 1988).) However, the PPA does not change the title IV valuation rules.

Under amended ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619. Plans terminating in a standard termination may, for purposes of the notice given to the PBGC, use these formulas to value benefit liabilities, although this is not required. (Such plans may value benefit liabilities that are payable as annuities on the basis of a qualifying bid obtained from an insurer.

Plans that terminate on or after January 1, 1988 (the effective date of the Single-Employer Pension Plan Amendments Act of 1986) and issued notices of intent to terminate prior to December 18, 1987, or against which the PBGC instituted involuntary termination proceedings before that date, shall continue to be responsible for benefit commitments under the plan and to value guaranteed benefits and/or benefit commitments.

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since August 1, 1989 (54 FR 29703 (July 14, 1989)). This amendment adds to appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after September 1, 1989, which set reflects a decrease of ¼ percent in the immediate interest rate to 7¼ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after September 1, 1989, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, part 2619 of chapter XXVI, title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362, as amended by secs. 9312-13, Pub. L. 100-203, 101 Stat. 1330.

§ Appendix B [Amended]

2. Rate Set 79 of appendix B is revised and Rate Set 80 of appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Cy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_{31}, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date: On or after	Before	Immediate annuity rate (percent)	Deferred annuities: k_1	k_2	k_3	n_1	n_2
•	•	•	•	•	•	•		
79	8-1-89	9-1-89	7.50	1.0675	1.0550	1.0400	7	8
80	9-1-89		7.25	1.0650	1.0525	1.0400	7	8

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty, Corporation.

[FR Doc. 89-19063 Filed 8-14-89; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of September 1989.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202-778-8820, (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

(c) *Interest rates.*

For valuation dates occurring in the month—	The values of i_t are— i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_{16}
•	•		•		•		•		•		•					
September 1989	.0625	.08	.0775	.075	.0725	.07	.07	.07	.07	.07	.065	.065	.065	.065	.065	.05875

Issued at Washington, DC, on this 10th day of August 1989.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89-19158 Filed 8-14-89; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 230

[DoD Instruction 1000.12]

RIN 0790-AA52

Procedures Governing Banking Offices on DoD Installations

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: A proposed rule to modify various procedures covering the operation of banking offices on DoD installations was published in the **Federal Register** on February 22, 1989 (54 FR 7551). The following revisions were made as a result of reviewing comments received from the notice. At Military Department request, a proposed provision was eliminated that would have authorized commanders with available funds to consider proposals to acquire automated teller machines. A provision covering the process for consideration of a second banking

BEST COPY AVAILABLE

institution on a DoD installation was expanded to include both FDIC- and FSLIC-insured institutions. A proposed provision that would have permitted installation commanders, on a one-time basis, to renegotiate existing fair market rental real property leases under new nominal rental provisions was limited to extensions of such leases. Finally, the revised rule accepts clarifying and editorial changes suggested in response to the notice.

EFFECTIVE DATE: July 26, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. R. Adolphi, Office of the Comptroller, Department of Defense, Room 1A658, the Pentagon, Washington, DC 20301, telephone (202) 697-8281.

SUPPLEMENTARY INFORMATION

List of Subjects in 32 CFR Part 230

Armed forces; Banks and banking; Federal buildings and facilities; Savings and loan associations.

Accordingly, 32 CFR part 230 is revised as follows:

PART 230—PROCEDURES GOVERNING BANKING OFFICES ON DOD INSTALLATIONS

Sec.

230.1 Purpose.
230.2 Applicability and scope.
230.3 Definitions.
230.4 Responsibilities.
230.5 General operating policies and procedures.

Appendix A—Procedures for Establishing, Supporting, and Terminating On-base Banking Offices.

Appendix B—Operations of On-base Banking Offices

Authority: 10 U.S.C. 136.

§ 230.1 Purpose.

This part reissues DoD Instruction 1000.12 [1] (32 CFR part 230) and provides procedural guidance to supplement DoD Directive 1000.11 [2] (32 CFR part 231) concerning relations with banking offices serving on DoD installations.

§ 230.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense (OSD), the Military Departments, the Joint Chiefs of Staff (JCS), the Joint Staff and supporting Joint Agencies, the Unified and Specified Commands, the Inspector General of the Department of Defense (IG, DoD), the Uniformed Services University of the Health Sciences (USUHS), the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "DoD Components").

(b) All banking institutions and military exchange outlets that operate on DoD installations.

§ 230.3 Definitions.

Terms used in this Instruction are defined in 32 CFR Part 231.

§ 230.4 Responsibilities.

(a) The Comptroller of the Department of Defense (C, DoD), or designee, the Deputy Comptroller [Management Systems) (DC(MS)], shall:

(1) Coordinate the DoD domestic and overseas banking programs, consulting on aspects that pertain to the morale and welfare of DoD personnel with the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)).

(2) In coordination with affected DoD Components, authorize the specific types of banking services that will be provided by overseas banking facilities and specify the charges or fees, or the basis for these, to be levied on users of these services.

(3) Coordinate with the Fiscal Assistant Secretary of the Treasury on the designation of domestic and overseas banking facilities as depositaries and financial agents of the U.S. Government.

(4) Maintain liaison, as necessary, with Federal and equivalent State bank regulatory agencies as defined in 32 CFR part 231.

(5) Designate a technical representative to provide policy direction for the procuring and administrative contracting officer(s) responsible under the Federal Acquisition Regulation (FAR) for acquiring banking services required at overseas DoD installations.

(6) Serve as principal liaison with banking institutions having offices on overseas DoD installations. In this capacity, monitor banking facility managerial and operational policies, procedures, and operating results and take action as appropriate.

(7) Coordinate on DoD Component actions that contemplate a banking institution's removal for cause from an installation before final decision and referral to the appropriate regulatory agency.

(8) As necessary, negotiate government-to-government agreements for the provision of banking services on overseas DoD installations, in accordance with DoD Directive 5530.3.[3]

(9) Take final action on requests for exception to this part.

(b) The *Assistant Secretary of Defense (Production and Logistics)* (ASD(P&L)) shall carry out responsibilities outlined in subsection F.2. of DoD Directive 1000.11.

(c) The *Assistant Secretary of Defense (Force Management and Personnel)* (ASD(FM&P)) shall carry out responsibilities outlined in subsection F.3. of DoD Directive 1000.11.

(d) The *Secretaries of the Military Departments and Directors of Defense Agencies* shall:

(1) Prescribe procedures for soliciting banking institutions to establish banking offices on respective domestic DoD installations. Such procedures shall prohibit DoD personnel from subjecting banking institutions to any form of coercion either while banking arrangements are under consideration or after banking offices are established.

(2) Review proposals to establish banking offices on respective domestic DoD installations, select the banking institution making the best offer, and recommend designation of that institution to the appropriate regulatory agency.

(3) Forward proposals to establish banking facilities to the DC(MS) for determination in conjunction with the Fiscal Assistant Secretary of the Treasury.

(4) Provide for liaison to banking institutions operating banking offices on respective domestic DoD installations.

(5) Supervise the use of banking offices on respective DoD installations within the guidance contained herein and in DoD Directive 1000.11.

(6) Evaluate the services provided by banking offices to ensure that they fulfill the requirements upon which establishment and retention of those services were justified.

(7) Monitor practices and procedures of respective on-base banking offices to ensure that the welfare and interests of DoD personnel as consumers are protected.

(8) Assist respective on-base banking offices in developing and expanding necessary services for DoD personnel consistent with this part.

(9) Determine the level of logistic support to be provided to respective domestic banking institutions that submit reports reflecting nonself-sustaining status.

(10) Encourage the conversion of existing domestic banking facilities on respective installations to independent or branch bank status where feasible.

(11) Provide logistic support to overseas banking facilities under terms and conditions identified in respective contracts.

(12) Ensure that the recommendations of the Unified or Specified Command concerned are considered before processing requests for overseas banking service or related actions emanating from Component commands overseas.

(13) Refer matters requiring policy decisions or proposed changes to this part or DoD Directive 1000.11 to the DC(MS).

(e) The Commanders of Unified and Specified Commands, or designees, shall ensure the appropriate coordination of requests to:

(1) Establish banking offices in countries not presently served. Such requests shall include a statement that the requirement has been coordinated with the U.S. Chief of Diplomatic Mission or U.S. Embassy and that the host country will permit the operation.

(2) Totally eliminate banking offices in a country. Such requests shall include a statement that the U.S. Chief of Diplomatic Mission has been informed and that appropriate arrangements to coordinate local termination announcements and procedures have been made with the U.S. Embassy.

(3) Monitor and coordinate military banking operations within the command area. Personnel assigned to security assistance positions shall not perform this function without the prior approval of the Director, Defense Security Assistance Agency (DSAA).

§ 230.5 General operating policies and procedures.

(a) *Limitation on service.* Under singular circumstances, more than one banking institution may be permitted to operate on a DoD installation to ensure that personnel on the installation receive adequate financial services.

(1) If a particular installation demonstrably needs more services, the existing banking office shall first be given the opportunity to meet those needs.

(2) When conditions warrant consideration of a second banking institution on the installation, a request providing full details shall be forwarded through channels to the DoD Component headquarters concerned for evaluation and appropriate action. All interested institutions near the installation that are insured by the Federal Deposit Insurance Corporation (FDIC) or Federal Savings and Loan Insurance Corporation (FSLIC) should be given the opportunity to offer a proposal. After coordination with the DC(MS), the Head of the DoD Component or designee may select an institution and notify the appropriate regulatory agency.

(b) *Uniformity of service.* Financial services provided on DoD installations shall be as uniform as possible for all DoD personnel. Similarly, service charges and fee schedules shall, wherever possible, be uniform at overseas DoD installations.

(c) *Establishing banking offices.* (1) Banking offices on domestic DoD installations shall be established only with prior approval of the DoD Component concerned and the appropriate regulatory agency. Specific procedures are identified in Appendix A of this part. No commitment may be made to any banking institution regarding its proposal until a designation is made by the appropriate regulatory agency.

(2) Only banking institutions insured by the FDIC or the FSLIC shall operate on domestic DoD installations.

(3) Except under singular circumstances, DoD Components may establish banking facilities only overseas and in those States that prohibit branch banking.

(4) Where domestic DoD installations are unable to obtain on-base banking services, the DoD Component concerned may contact the financial community about installing automated teller machines (ATMs).

(i) Proposals that offer shared-access ATMs shall receive preference.

(ii) The financial institution selected must secure regulatory agency approval, where necessary, before commencing ATM service.

(iii) Action taken in response to such proposals shall be exempt from the limitation in paragraph (a) of this section. The availability of ATM service shall not prevent the later establishment of a banking office if conditions on an installation should change.

(5) The provision of banking services by means other than duly chartered public sector banking offices or ATM service is subject to prior review and approval by the DC(MS).

(d) *Operating agreements.* An operating agreement, conforming to the guidelines set forth herein, shall be executed and maintained between each installation (community) commander and on-base banking institution. A sample format is contained in DoD 4000.19-R [4]. At a minimum, each agreement shall include the following provisions:

(1) Services to be rendered and the conditions therefor. To the extent feasible, full financial services shall be provided; however, agreements entered into under this provision may not restrict the banking institution's right to adjust services and fees to maintain consistency with competing institutions or the banking institution's branch-wide service offerings and fee schedules.

(2) Banking institution agreement to:

(i) Comply with this part, DoD Directive 1000.11 and DoD Component regulations that implement these issuances.

(ii) Indemnify and hold harmless the U.S. Government from (and against) any loss, expense, claim, or demand to which the Government may be subjected as a result of death, loss, destruction, or damage in conjunction with the use and occupancy of premises of the DoD Component caused in whole or in part by agents or employees of the banking institution.

(iii) Accommodate, whenever possible, local command requests for lecturers and printed materials for consumer credit education programs. Banking office personnel invited to participate in such programs shall not use the occasion to promote the exclusive services of a particular financial institution.

(3) Agreement that neither the DoD Component concerned nor its representatives shall be responsible or liable for the financial operation of the banking office or for any loss (including criminal losses), expense, or claim for damages arising from banking office operation.

(4) Installation (community) commander's agreement to provide support as specified in Appendix A of this part.

(e) *Liaison officers.* In the interest of maintaining effective lines of communication, each commander of an installation with an on-base banking office shall appoint a bank liaison officer as defined in enclosure 2 of DoD Directive 1000.11.

(1) The bank liaison officer's name and duty telephone number shall be displayed in the lobby of each on-base banking office.

(2) The liaison officer shall maintain regular contact with the banking office manager to confer, help resolve customer complaints, and discuss quantitative and qualitative improvements in the services provided. However, neither liaison officers nor their superiors shall become involved in

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1053, 5801 Tabor Avenue, Philadelphia, PA 19120

[2] See footnote 1 to § 230.1.

[3] See footnote 1 to § 230.1

[4] Copies may be obtained, at cost, from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

the internal operations of the banking office.

(3) No one on the board of directors or serving the banking institution in another official capacity may serve as bank or credit union liaison officer.

(f) *DoD personnel as directors of banking institutions.* (1) DoD personnel may not serve as directors of banking institutions that operate on installations where they are currently assigned.

(2) Members of DoD Reserve components called to active duty while serving as directors of banking institutions with on-base banking offices need not resign those directorships because of their changed status.

(g) *Complaints processing*— (1) *Discrimination.* Any installation commander who suspects discrimination or receives complaints of discrimination by the on-base banking institution shall try to resolve any such problem by negotiation. Failing this, in accordance with implementing DoD Component regulations, a written request for investigation shall be forwarded to the appropriate regulatory agency. The request must document the problem and command efforts toward resolution. Information copies of all related correspondence shall be sent through channels to the DoD Component concerned for transmittal to the DC(MS).

(2) *Malpractice.* The installation commander shall report to the appropriate regulatory agency evidence suggesting malpractice by banking office personnel, in accordance with implementing DoD Component regulations.

(3) *Followup.* A DoD Component unsatisfied with action taken by the appropriate regulatory agency shall submit a full report with recommendations to the DC(MS). The DC(MS) shall pursue the matter with the appropriate regulatory agency and apprise the respective DoD Component of progress or resolution.

(h) *Logistic support*—(1) *Categories of domestic banking offices.* For the purpose of authorizing logistic support, banking offices are categorized either as self-sustaining or nonself-sustaining.

(i) A domestic banking office is considered to be self-sustaining until, based upon financial data provided by the banking institution, the DoD Component concerned determines it to be nonself-sustaining. Payment of rent for space and reimbursement for utilities furnished shall be required from self-sustaining banking offices. Nonself-sustaining banking offices may receive building space and utilities free of charge under procedures prescribed by the DoD Component concerned.

(ii) Normally, a domestic banking office shall have nonself-sustaining status for at least 4 consecutive calendar quarters before qualifying for logistic support. Conversely, a nonself-sustaining banking office would not be designated as self-sustaining until it had experienced 4 consecutive quarters of profitable operation.

(2) *Detailed procedures.* Details of required and authorized support for on-base banking offices are provided in Appendix A to this part.

(i) *Termination of banking service*— (1) *Termination of operations by the banking institution.* An on-base banking office planning to terminate its operations should notify the installation commander at least 90 days before the closing date. This notification should precede any public announcement of the planned closure. When appropriate, the commander shall attempt to negotiate an agreement permitting the banking office to continue operations until the installation has made other arrangements. Immediately upon notification of a closing, the commander shall advise the DoD Component headquarters concerned. If it is determined that continuation of banking services is justified, action to establish another banking office shall be taken in accordance with paragraph (c) of this section.

(2) *Termination for cause.* Installation commanders should ensure that on-base banks are providing services in the best interest of DoD personnel. If, after discussion with banking institution officials, the installation commander determines that the operating policies of the banking office are inconsistent with this Instruction, a recommendation for termination of logistic support and space arrangements may be made through DoD Component channels. Removal of a banking office from the installation shall be made only with approval by the DoD Component headquarters, after coordination with the DC(MS) and the appropriate regulatory agency.

Appendix A—Procedures for Establishing, Supporting, and Terminating On-base Banking Offices

A. Establishing Banking Offices

1. General

DoD Components shall review banking institution proposals and recommend selections in accordance with § 230.5(c). Banking institutions selected for domestic on-base operations must obtain authority from the appropriate regulatory agency before commencing such operation.

a. In the case of State-chartered institutions that are members of the Federal Reserve System, approval shall also be obtained from the Federal Reserve Bank for the district in which the proposed banking office is located.

b. In the case of State-chartered savings associations, approval shall be obtained from appropriate State regulatory agencies.

c. In the case of federally chartered savings associations, the determination shall be made by the Federal Home Loan Bank Board or its principal supervisory agent for the district in which the association does business.

2. Domestic Banking Offices

a. Each DoD Component shall develop internal instructions that govern the submission and justification of requests to establish banking facilities on respective installations. The following information shall be included in requests to the DoD Component headquarters for banking facility establishment:

(1) Justification for establishment of a banking facility as opposed to another type of banking office.

(2) Such other supporting data as deemed necessary by the DoD Component concerned.

b. Proposals received by installation commanders to establish an independent or branch bank or a savings association office shall be forwarded through channels to the DoD Component headquarters concerned, together with recommendations for acceptance or rejection.

c. The DoD Component headquarters concerned shall evaluate each proposal to establish such offices and, if acceptable, recommend designation by the appropriate regulatory agency.

(1) If there is no existing banking office on the installation and it is determined that one is needed, the DoD Component concerned shall solicit proposals from other nearby banking institutions before making a determination.

(2) If a banking office other than a banking facility already is operating on the DoD installation, the provisions of § 230.5(a)(1) apply.

(3) If the proposal offers to replace an existing banking facility with an independent or branch bank, the DoD Component concerned shall offer the banking institution currently operating the facility an opportunity to submit a proposal to convert the facility.

(4) With respect to a proposed independent or branch bank, preference shall be given to the banking institution that has operated the banking facility, provided that prior banking service has been satisfactory and that the institution's proposal is deemed adequate.

(5) DoD Component selections of banking facility operators shall be forwarded to the DC(MS) for coordination with the Fiscal Assistant Secretary of the Treasury.

3. Conversions of Domestic Banking Facilities to Independent or Branch Banks.

DoD Components shall encourage banking institutions that operate banking facilities to convert them to independent or branch banks, if consistent with State law. Proposals from a banking institution to convert an existing banking facility to an independent or branch bank shall be forwarded to the DoD Component headquarters concerned for its approval after coordination with the DC(MS) and Treasury Department.

4. Domestic Automated Teller Machine (ATM) Service

a. ATMs may be used to augment service provided by an on-base banking office.

(1) An on-base banking facility may be authorized to site ATMs on the installation if it conforms to the requirements of paragraphs A.4.b. and A.4.c. Further approval by the Treasury Department is not required.

(2) An on-base branch or independent bank may site ATMs on the installation after obtaining the approval of the appropriate regulatory agency, if required to do so by the regulations of that agency, and by conforming to the requirements of paragraphs A.4.b. and A.4.c.

b. A banking institution proposing to augment on-base banking office service by installing one or more ATMs shall:

(1) Coordinate the ATM proposal through the installation commander according to DoD Component regulations.

(2) Provide a statement that the cost of ATM installation and maintenance shall be borne by the banking institution alone or in conjunction with other financial institutions.

(3) Provide for access through debit and credit cards.

c. Upon approval, appropriate leases shall be negotiated in accordance with this part.

(1) No lease is needed to site an ATM within the existing banking office.

(2) When a banking office requests up to 100 square feet of additional floor space in an existing structure, and the banking office agrees to bear all expenses for modifying the structure, a lease providing for nominal rental, i.e., $1.00 for the term of the lease shall be locally negotiated and approved. This lease provision also shall be offered if the banking office requests up to 250 square feet of land to construct, at its expense, a kiosk or other structure to house an ATM. In either case, the cost of any maintenance, utilities, and services provided by the installation shall be borne by the banking office.

(3) Leases pertaining to other situations shall be negotiated in accordance with section C., of this Appendix.

5. Overseas Banking Facilities Operated under Contract

a. In implementing this Instruction, each DoD Component shall develop internal instructions governing the submission of requests justifying the need for banking facilities proposed for particular overseas installations. Upon favorable review by the DoD Component headquarters concerned, such requests shall be submitted to the DC(MS) with a recommendation for inclusion in the appropriate contract, subject to the following conditions.

b. As a general rule, banking facilities may be established when the installation (community) population meets the following criteria:

(1) *Full-time banking facility.* Except in unusual circumstances, a total of at least 1,000 permanent party military personnel and DoD civilian employees is necessary to qualify for a full-time banking facility.

(2) *Part-time banking facility.* Except in unusual circumstances, a total of at least 250 permanent party military personnel and DoD civilian employees is necessary to qualify for a part-time banking facility.

c. If the population at certain remote areas is not sufficient to qualify under the criteria for full- or part-time banking facilities, the installation (community) commander shall explore all other alternatives for acquiring limited banking services (such as check-cashing and accommodation exchange service by disbursing officers and their agents) before requesting establishment of a banking facility as an exception to these provisions.

d. The data used to justify establishment of overseas banking facilities shall include but not be limited to:

(1) The approximate number of DoD personnel at the installation and any other persons who may be authorized to use the banking facility.

(2) The distances between the installation and the nearest banking facility and credit union offices, the operators of those institutions, and the installations (military communities) at which they are located.

(3) The availability of official and public transportation between the installation and the nearest banking facility and credit union office.

(4) The approximate loss of duty time as a result of DoD personnel leaving the installation to obtain banking services.

(5) The number of DoD personnel in duty assignments that confine them to the installation or who cannot obtain transportation (such as hospital patients).

(6) Source(s) from which the military disbursing officer presently obtains operating and payroll cash, the frequency of these cash acquisitions, and the approximate dollar value obtained monthly.

(7) The name and location of the depositary now being used by the military disbursing officer to make official deposits for credit to the U.S. Treasury's General Account.

(8) The estimated savings to the military disbursing officer if a banking facility is established on the installation.

(9) A list of organizational and nonappropriated fund accounts, the name(s) and location(s) of the banking institution where presently deposited, and the average daily activity and balance of each account.

(10) A written description and photographs or drawings of the space proposed for banking facility use. The extent and approximate cost of required alterations, including the construction of counters and teller cages, shall be included.

(11) A statement detailing the requirements of the proposed banking facility for safes, a vault, or both appropriate alarm systems and camera surveillance equipment, where deemed necessary. The statement shall include the costs of such equipment and the manner in which it will be acquired.

(12) In countries without U.S. contractor-operated banking facilities, a statement as required by § 230.4(e)(1).

e. Establishment of an overseas banking facility is predicated upon:

(1) Designation of the facility contractor as a depositary and financial agent of the U.S. Government by the Fiscal Assistant Secretary of the Treasury.

(2) The availability of proposed banking contractors able and willing to bid for the operation of the facility, and the reasonableness of such proposals.

(3) The availability of appropriated funds to underwrite such banking services.

6. Other Overseas Banking Offices

The banking and currency control laws of certain host countries do not permit U.S. banking institutions to operate banking facilities on DoD installations.

a. Commanders of installations (communities) in such countries where there is a demonstrated need for additional banking service and the population meets the criterion in paragraph A.5.b., shall forward requests for banking services, or unsolicited proposals from local banks, through command channels with supporting data as required in paragraph A.5.d., of this Appendix.

b. If the DoD Component concerned concurs in the request, it shall be forwarded to the DC(MS) for approval and coordination with the Fiscal Assistant Secretary of the Treasury for designation of the parent banking institution as a depositary and financial agent of the U.S. Government.

c. Overseas banking facilities shall become operational only after Treasury designation of the parent banking institution and an indication of the institution's willingness and ability to provide collateral backing for any official and nonappropriated fund U.S. dollar deposits in a form acceptable to the DC(MS) and the Fiscal Assistant Secretary of the Treasury.

B. Support of On-Base Banking Offices

1. General

DoD Component regulations that implement this Instruction shall provide for installation support to all on-base banking offices, including:

a. Military or civilian guards (the latter to be used within the installation only), military police, or other protective services to accompany shipments of money from the parent banking institution or other source when such monies are primarily for use by the military disbursing officer, on paydays, and when required to avoid undue risks or insurance costs on the part of the on-base banking office. In this regard, overall security precautions normally present shall be considered.

b. Central locator service, under conditions identified in enclosure 3 of DoD Directive 1000.11, when requested by on-base banking offices. This service shall be provided at no cost in accordance with DoD Instruction 7230.7.

c. Debt processing assistance in accordance with DoD Directive 1344.9, as limited by the Privacy Act guidelines set forth in enclosure 3 of DoD Directive 1000.11. If delinquent loans or dishonored checks are not recouped within 48 hours, banking institutions operating on DoD installations may bring them to the attention of the local commander, bank liaison officer, or other designee for assistance in effecting restitution of the amount due, if not otherwise prohibited by law.

d. Clearance procedures for military personnel departing their installations that provide the on-base banking office with adequate notice of its customers' impending

departure. Clearance involves reporting a change of address, reaffirming allotments or notes payable, and arranging for counseling, if appropriate. Clearance shall not be denied to facilitate the collection of debts or the resolution of disputes between the financial institution and its departing customers. Where administratively feasible, similar clearance procedures shall be used for departing DoD civilian personnel.

e. Prohibition of traveler's check and money order sales by organizations other than the on-base banking office, post office, and credit union during times when the banking office is open for business.

2. Domestic Nonself-Sustaining Banking Offices

When a DoD Component determines that a banking office has nonself-sustaining status, it may furnish logistic support without charge, as provided in paragraph B.2.d.

a. Through no-cost permits or licenses, a nonself-sustaining banking office may be provided space on a DoD installation at one or more locations for up to 5 years, as prescribed in DoD Directive 4165.6. The cumulative total of space authorized for one or more locations is subject to the limitations contained in MIL–HDBK–1190.

b. All space assigned by the GSA, whether leased or in Federal office buildings, is reimbursable to the GSA at the current GSA rental rates under Public Law 92–313. Consequently, the GSA shall charge the benefiting DoD Component for any GSA space assigned for banking office operations.

c. In those exceptional cases when a nonself-sustaining banking office is authorized to construct its own building or use its funds to expand, modify, or renovate Government-owned space, a no-cost permit or license may be provided. Duration of the permit or license shall be commensurate with the extent of the improvements as determined by the DoD Component concerned. It shall be effective until the agreed date of expiration or until the banking office is determined to be self-sustaining, whichever occurs first. The provisions of section C. in this Appendix apply in the latter case.

d. The term "logistic support" shall include:

(1) Customer and work areas, in accordance with MIL–HDBK–1190 (reference (i)). It is important that the banking office be housed in a building accessible to most DoD personnel on the installation, in a location permitting maximum security.

(2) Steel bars, grillwork, security doors, a vault or safe (or both), burglar alarm system, other security features normally used by banking institutions, construction of counters and teller cages, and other necessary modifications and alterations to existing buildings subject to the procedures and fiscal limits in DoD Directive 4270.24.

(3) Utilities, custodial and janitorial services, and intrastation telephone service. The banking office shall pay costs for long-distance toll calls, however.

(4) Air-conditioning, which is considered a normal utility for banking offices located on installations qualifying for air-conditioning under DoD Component regulations. Banking space is classified as administrative space on DoD installations.

(5) When available from local stock, lease of the following at nominal cost; i.e., $1.00 per year, under authority of 10 U.S.C. 2667: typewriters, adding machines, other office equipment, and office furniture.

e. All maintenance, repair, rehabilitation, alterations, or construction for on-base banking offices shall comply with DoD Instruction 4165.64.

f. Upon determination that a banking office has become self-sustaining, its no-cost lease or permit shall be canceled and a lease negotiated in accordance with section C., of this appendix.

3. Additional Support in Overseas Areas

a. *Banking facilities operated under contract.* In addition to the logistic support identified in paragraph B.2.d., the following shall be made available to banking facilities operating under DoD contract at overseas installations:

(1) U.S. Military Postal Service under DoD Directive 4525.6. Use of the free intra-theater delivery system (IDS) is authorized for all routine mail sent and received between Army Post Offices (APOs) and Fleet Post Offices (FPOs) within a theater.

(2) Access to DoD voice and data telecommunication systems as granted by the Defense Communications Agency on a case-by-case basis.

(3) Certificates of nonavailability, if required by the designated property administrator, when items of office equipment or furniture requested by the banking facility are unavailable for loan on memorandum receipt.

(4) Vehicle registration and purchase of fuel from Government-owned facilities for bank-operated vehicles if not in conflict with host-country agreements. Vehicle registrations shall be subject to normal fees.

(5) DoD housing on a rental basis to key banking facility personnel unable to find suitable, reasonably priced housing in the vicinity of the DoD installation, subject to the assignment procedures and other requirements of DoD 4165.63–M.

(6) Travel of U.S.-based banking institution officials to their overseas on-base offices as set forth in DoD Directive 4000.6. Invitational travel orders that authorize travel at no expense to the U.S. Government may be issued by the local commander for official onsite visits.

(7) Other support as required under the terms and conditions established during annual contract negotiations and confirmed in respective contracts. Suggestions for change may be forwarded through military channels to the DC(MS).

b. *Other overseas banking offices.* (1) Logistic support shall be negotiated with the parent banking institution and the resulting provisions incorporated into written operating agreements.

(2) Logistic support should not exceed that provided to banking offices in the United States. Whenever possible, parent banking institutions shall reimburse the DoD Component concerned for logistic support.

C. Leases of Government Real Property

1. *Government-Owned Buildings*

The lease of an existing structure to house a self-sustaining banking office shall be at appraised fair market rental value under the following terms and considerations:

a. The lease term shall not exceed 5 years, subject to renewal by mutual agreement, with the head of the DoD Component concerned reserving the right to terminate the lease under conditions specified in paragraph C.2.a., of this appendix. The banking institution shall reimburse the DoD Component concerned for GSA-assigned space at the current GSA rental rates.

b. When the banking institution uses its own funds to modify or renovate Government building space, a lease may be negotiated for a period not to exceed 25 years. Duration of the lease shall be commensurate with the extent of the improvements as determined by the DoD Component concerned.

c. The lessee shall perform any required interior alteration and maintenance and shall pay for utilities and custodial, janitorial, and other services furnished.

2. Government-Owned Land

a. Except as provided in paragraph B.2.c. of this Appendix land required for approved building construction at bank expense shall be made available by real estate lease, at minimal charge; e.g., $1.00 per year. Once determined, the charges shall be applicable for the term of the lease.

b. When a banking institution participates in the construction of a complex, such as an installation shopping mall, it shall be provided a lease covering only underlying land for the specific space to be occupied by the banking office.

c. If determined, in accordance with 10 U.S.C. 2667, to be in the Government's interest, an existing lease of land may be extended before expiration of its term. Passage of title to facilities shall be deferred until all extensions have expired. Such extensions shall be for periods not to exceed 5 years. The banking institution shall continue to maintain the premises and pay for utilities and services furnished in accordance with DoD Instruction 7230.7.

d. Once determined, the rental charge under any lease granted at fair market value is applicable for the term of the lease. However, an extension of any such existing lease may provide for nominal rental, i.e., $1.00 for the term of the lease extension.

e. When, under the terms of a lease, title to improvements passes to the Government, arrangements shall normally be made:

(1) By no-cost permit or license for the continued occupancy of those improvements by a nonself-sustaining banking office if it continues to be nonself-sustaining. When the square footage involved exceeds that authorized in MIL–HDBK–1190, the banking office shall be given first choice to continue occupying the excess space under a lease that provides for nominal rental for the land underlying that excess space; or

(2) By lease for continued occupancy of those improvements by a self-sustaining banking office at nominal rental only for the land associated therewith. The lessee shall continue to maintain the premises and pay the cost of utilities and services furnished, in accordance with DoD Instruction 7230.7.

3. Other Lease Considerations

a. The term of a lease may exceed 5 years only when a Military Department Secretary, or designee, determines that such an extended term will promote the national defense or be in the public interest, under 10 U.S.C 2667(b)(1).

b. Leases shall include the provision that, in the event of national emergency or the following events, at the option of the Government, structures and other improvements erected thereon shall be conveyed to the Government without reimbursement or removed and the land restored to its original condition:

(1) Installation inactivation, closing, or other disposal action;

or

(2) Termination of the banking institution's lease under § 230.5(i) of this part.

c. Leases executed before this part takes effect shall not be altered unless a lessee specifically requests a renegotiation under these provisions. No lease contract may be negotiated or renegotiated, nor may any rights thereunder be waived or surrendered, without compensation to the Government, except as provided in § 230.5(h).

D. Construction of Bank Buildings

Banking institution proposals to finance construction of buildings on domestic DoD installations must be processed in accordance with DoD Instruction 7700.18. In support of each construction proposal, the banking institution shall provide written assurance that:

1. Management understands its potential loss of the building in the event of installation closure or other delimiting condition identified in paragraph C.3.b., of this appendix.

2. The proposed building shall serve only the needs of the banking office and shall not be used to house other activities.

3. Management accepts financial responsibility for and shall reimburse the U.S. Government for all costs of construction and maintenance, utilities, and other services furnished. Rates shall be established under DoD Directive 4000.6 and confirmed by a written agreement between the DoD installation and the banking institution.

E. Banking Office Termination

1. Domestic Banking Facilities

a. The installation commander shall notify the DoD Component headquarters concerned when a banking facility has been placed in an inactive status and when personnel reductions at the DoD installation have reduced banking facility operations to below a justifiable level. The DoD Component shall advise the DC(MS) and the Fiscal Assistant Secretary of the Treasury so that the banking institution's authority to operate the banking facility may be terminated.

b. In general, the parent banking institution may close a banking facility after sending written notification to the Treasury Department and the installation commander not less than 90 days before the closing date. The Treasury Department shall then terminate the banking institution's authority to operate the banking facility, and the DoD Component concerned shall determine the feasibility of requesting another banking institution to operate at the installation.

2. Other Domestic Banking Offices

a. Requests for termination for cause shall be processed in accordance with § 230.5(i)(2).

b. Banking offices other than banking facilities may be terminated by the parent banking institution provided written notice is furnished to the installation commander not less than 90 days before the closing date.

3. Overseas Banking Facilities Operated Under Contract

a. The installation (community) commander shall, through DoD Component channels, notify the DC(MS) when personnel reductions or other situations at the DoD installation (military community) have reduced banking facility activity to below a level justifying continued operation.

b. Such notifications shall indicate whether a part-time facility should be established and the number of hours and days per week that such an operation is justified.

4. Other Overseas Banking Offices.

Terminations shall be effected under termination clauses in respective operating agreements. Notice of intent to terminate, including the closing date, shall be forwarded by the overseas component commander in accordance with DoD Component implementing instructions. The DoD Component shall so notify the DC(MS) and Fiscal Assistant Secretary of the Treasury so that the banking institution's authority as a depositary and financial agent of the U.S. Government may be revoked.

F. Notification of Banking Offices

Each DoD Component shall ensure that every banking institution with an office at its installations receives a copy of the document that implements this Instruction and DoD Directive 1000.11.

Appendix B—Operations of On-Base Banking Offices

A. Services Rendered

1. To Individuals and Nonappropriated Fund Instrumentalities

a. Normally, banking offices shall provide the same services at DoD installations as available locally. Service charges or fees levied for such services may not exceed those customary for the banking institution that operates the banking office, with the following exceptions:

(1) Treasury checks shall be cashed for all DoD personnel and there will be no charge to the banking office's account holders.

(2) A reasonable charge may be made for cashing personal checks; however, checks drawn on the banking institution operating the banking office shall be cashed without charge provided sufficient collected funds are on deposit to cover such checks.

b. Counseling service shall be made available without charge to individual account holders. Such services shall include helping customers to budget and solve financial problems. Military members in junior enlisted grades or newly married couples who apply for loans shall receive special attention and counseling.

c. In accordance with accepted banking practice, policies on loans to individuals are expected to be as liberal as possible while remaining consistent with the overall interests of the banking institution and its stockholders.

(1) On-base banking offices must strive to provide the best possible service to all customers. Offices that evidence a policy of discrimination in their loan services are in violation of this Instruction. In resolving complaints of discrimination, the installation commander shall follow procedures specified in § 230.5(g)(1).

(2) On-base banking offices shall conform to the Standards of Fairness principles as set forth in DoD Directive 1344.9 before executing loan or credit agreements. Should an on-base banking office refer a prospective borrower to an off-base office of the same institution, it shall advise the latter office that the DoD requires compliance with the Standards of Fairness before executing the loan or credit agreement.

2. To Disbursing Officers

a. Banking offices are expected to provide payroll cash to military disbursing offices, upon request. Local operating funds may be expended if the banking office requests reimbursement for costs incurred.

b. When so authorized, banking offices shall accept deposits for credit to the Treasury's General Account.

B. Staffing

1. On-base banking offices are expected to be adequately staffed commensurate with banking industry standards for similar numbers of account holders and financial services rendered. Staffing at overseas banking facilities operated under contract shall be maintained within negotiated ceilings.

2. Remote service locations at the same installation may be staffed with one person alone, provided that there is a direct courier or message service to the main on-base banking office.

3. All staffing shall fully comply with the spirit and intent of the DoD equal employment opportunity policies and programs, in accordance with DoD Directive 1440.1.

4. Neither active duty military personnel nor DoD civilian employees may be detailed to duty or employment with an on-base banking office. However, off-duty DoD personnel may be employed by a banking office if approved by the installation commander following a determination that such employment will not interfere with the full performance of the individual's official duties.

C. Hours of Operation

1. General

On-base banking offices may conduct operations during normal duty hours provided they do not disrupt the performance of official duties. Banking offices should set operating hours that meet the needs of all concerned. ATMs may be used to provide expanded service and operating hours.

2. Overseas Banking Facilities Operated Under Contract

Although respective contracts limit the number of operating hours per week, installation (community) commanders and banking facility managers are encouraged to agree on the specific days and hours of operation that best meet local needs.

a. Operating days negotiated locally may include Saturdays, and operating hours may include evening hours when necessary to complement or parallel other retail services available to DoD personnel, provided the contractor agrees to provide such service at no additional cost to the Government.

b. When cost implications are involved, the installation (community) commander shall forward his request for expanded or modified days or hours of operation, with a justification therefor, through military channels for consideration by the DC(MS).

D. Deposit Insurance

Domestic on-base banking offices must provide insurance coverage by the FDIC (for commercial banks and certain savings banks) or FSLIC (for certain savings banks and all other savings associations as defined in DoD Directive 1000.11. A banking office not maintaining such insurance shall be suspended from on-base operation.

E. Allotments of Pay

DoD personnel may use their allotment of pay privileges as authorized by DoD Directives 7330.1 and 1418.4 to establish sound credit and savings practices through on-base banking offices.

1. The banking institution shall credit customer accounts not later than the value date of the allotment check or electronic funds transfer.

2. Under no circumstances shall the initiation of an allotment of pay become a prerequisite for loan approval or disbursement to the banking office's customer. Allotments voluntarily consigned to a banking office shall continue at the option of the allotter.

F. Advertising

1. Advertising of on-base banking services shall be in harmony with applicable policies continued in DoD Directive 1344.7.

2. Advertising in official Armed Forces newspapers and periodicals (DoD Instruction 5120.4 and DoD Directive 5120.43) is prohibited with the exception of insert advertising in the *Stars and Stripes* overseas.

3. DoD Directive 5120.20 prevents use of the Armed Forces Radio and Television Service to promote a specific financial institution.

4. An on-base banking office may use the unofficial section of that installation's daily bulletin, provided space is available, to inform DoD personnel of financial services and announce seminars, consumer information programs, and other matters of broad general interest. Announcements of free financial counseling services are encouraged. Such media may not be used for competitive or comparative advertising of, for example, specific interest rates on savings or loans.

5. An on-base banking office may use that installation's information bulletin boards for announcements of a broad general nature that complement the installation's financial counseling and thrift promotion programs. An on-base banking office may, with moderation, use that installation's message center services to distribute announcements for display on informational bulletin boards, provided this does not overburden the distribution system.

6. Installations, to include military exchange outlets or concessionaires, shall not permit the distribution of competitive literature from other banking institutions at locations served by on-base banking offices. This does not prevent:

a. A banking institution from using mail, telecommunications, or commercial advertising to serve its customers.

b. Exchange Services from distributing literature on affinity credit cards centrally acquired through competitive solicitation.

G. Supplemental Conditions for Overseas Operation

1. General

Overseas banking facilities shall operate under terms and conditions established at the time of annual contract negotiations and confirmed in respective contracts or contracting officer determinations.

2. Authorized Customers

Respective banking contracts specify personnel authorized to receive service. Additionally, overseas major commanders may approve banking services for other individuals and organizations that qualify for individual logistic support under the regulations of the DoD Component concerned, provided that use of banking services is not prevented by status of forces agreement, other intergovernmental agreement, or local law.

3. Services Rendered

Services to be rendered and related charges shall be specified in respective contracts. Suggestions for expansion or modification of authorized services, fees, or charges may be forwarded through military channels to the DC(MS). Proposals for any new service must be coordinated with the appropriate Unified Commander and U.S. Chief of Diplomatic Mission or U.S. Embassy to make certain that the proposal does not conflict with status of forces agreements or host-country law.

4. Acceptance of Services Rendered

DoD Component regulations implementing this Instruction shall require each commander for an installation (military community) with a banking facility, or designee, to:

a. Review monthly income, expense, and activity statements provided by full-time banking facilities.

b. Report to the banking facility manager within 7 calendar days of discovering any deficiency in the delivery of contractual banking services. If the deficiency is not remedied within 30 calendar days, the commander shall report the matter through military channels to the DC(MS).

5. Other Operating Conditions

a. Both the banking facility contractor and DoD disbursing officers shall ensure that cash management practices minimize the cash required to conduct business.

b. Banking facility provision of foreign currencies shall be in accordance with DoD Directive 7360.11.

c. When military payment certificates are prescribed for the area in which the overseas banking facility is operating, they shall be used in accordance with DoD Directive 7360.5 and any DoD Component regulations implementing that issuance.

d. Overseas major commanders shall cooperate with banking facilities contractors in planning for the provision or termination of banking services in the event of hostilities or other emergencies.

6. Other Overseas Banking Offices

a. Operating agreements executed under § 230.5(d) of this part shall specify authorized customers, services rendered and related charges, and conditions of operation. To the extent feasible, services and charges shall be negotiated to parallel those provided by banking facilities operated under the DoD banking contracts.

b. Before such agreements are executed, they shall be coordinated with the Unified Commander, or designee, and the DoD Component concerned. Upon approval, copies shall be provided to the DC(MS).

Dated: August 9, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-19032 Filed 8-14-89; 8:45 am]

BILLING CODE 3810-01-M

---

32 CFR Part 231

[DoD Directive 1000.11]

RIN 0790-AA51

Financial Institutions on DoD Installations

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: A proposed rule to modify various policies covering relationships with financial institutions on DoD installations was published in the **Federal Register** on February 22, 1989 (54 FR 7558). This revised rule accepts clarifying and editorial changes suggested in response to the notice. In addition, the rule cites a new DoD policy that encourages the installation of automated teller machines (ATMs) on DoD installations that are connected to national ATM networks and provides guidance supporting that policy.

EFFECTIVE DATE: July 26, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. R. Adolphi, Office of the Comptroller, Department of Defense, Room 1A658, the Pentagon, Washington, DC 20301, telephone (202) 697-8281.

SUPPLEMENTARY INFORMATION

List of Subjects in 32 CFR Part 231

Armed forces; Credit Unions, Federal buildings and facilities.

Accordingly, 32 CFR part 231 is revised as follows:

PART 231—FINANCIAL INSTITUTIONS ON DOD INSTALLATIONS

Sec.

231.1 Purpose.
231.2 Applicability.
231.3 Definitions.
231.4 Policy.
231.5 Responsibilities.

Appendix A—Guidelines for Application of the Privacy Act to Financial Institutions on DoD Installations

Authority: 10 U.S.C. 136.

§ 231.1 Purpose.

This part:

(a) Reissues DoD Directive 1000.11[1] (32 CFR Part 231) and updates policies and responsibilities for financial institutions that serve DoD personnel on DoD installations worldwide.

Associated procedures are contained in DoD Instruction 1000.10 [2] (32 CFR part 231a) and DoD Instruction 1000.12 [3] (32 CFR Part 230).

(b) Ensures that arrangements for the provision of services by financial institutions are consistent among DoD Components, and that financial institutions operating on DoD installations provide, and are provided, support consistent with the policies stated herein.

§ 231.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Joint Chiefs of Staff (JCS), the Joint Staff and the supporting Joint Agencies, the Unified and Specified Commands, the Inspector General of the Department of Defense (IG, DoD), the Uniformed Services University of the Health Sciences (USUHS), the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "DoD Components").

§ 231.3 Definitions.

Automated Teller Machine (ATM). An electronic machine that dispenses cash, and may perform such other functions as funds transfers among a customer's various accounts and acceptance of deposits. Equipment generally is activated by a plastic card in combination with a personal identification number (PIN). Shared access refers to ATMs that may be used by cardholders of more than one financial institution.

Bank and/or Credit Union Liaison Officer. A commissioned officer or DoD civilian employee of equivalent grade appointed by an installation (military community) commander to work with officials of the servicing financial institution and its clients. A noncommissioned officer may be appointed if he or she is the senior financial management official at the installation.

Banking Facility. A banking office located on a DoD installation and operated by a financial institution that the Treasury Department has specifically authorized, under its designation as a "depository and financial agent of the U.S. Government," to provide certain banking services at the installation. Such offices may be either self-sustaining or nonself-sustaining. Also known as a military (or community) banking facility.

Banking Institution. The organization that is chartered to operate a banking office on a DoD installation. For purposes of this Directive and DoD Instructions 1000.10 and 1000.12, the term also includes savings associations as defined herein.

Banking Office. A banking facility, branch bank, or independent bank operated by a banking institution on a DoD installation. Also includes savings associations and their branches operated on a DoD installation.

Branch Bank. A separate unit chartered to operate at an on-base location geographically remote from its parent banking institution.

Credit Union. A cooperative nonprofit association, incorporated under the Federal Credit Union Act, 12 U.S.C. 1751 et seq., or similar State statute, for the purposes of encouraging thrift among its members and creating a source of credit at a fair and reasonable rate of interest.

Credit Union Branch. A subsidiary office of an existing full-service credit union.

Credit Union Facility. A facility employing a communications system with the parent credit union to conduct business at remote locations where a full-service credit union or credit union branch is impractical. Credit union facilities need not provide cash transaction services, but must disburse loans and shares via check or draft and provide competent financial counseling during normal working hours.

Defense Credit Union. A State or federally chartered credit union with a field of membership composed primarily of DoD personnel.

Discrimination. Any differential treatment in provision of services, including loan services, by a financial institution to DoD personnel and their dependents on the basis of race, color, religion, national origin, sex, marital status, age, rank, or grade. However, if uniformly applied, the amount of credit extended may be directly based upon an applicant's total income.

DoD Personnel. All military personnel; civil service employees; other civilian employees, including special Government employees of all offices, Agencies, and Departments performing functions on a DoD installation (including nonappropriated fund instrumentalities); and their dependents. On domestic DoD installations, retired U.S. military personnel and their dependents are included.

Domestic DoD Installation. A military installation located within a State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Fair Market Rental. A reasonable charge for on-base land, buildings, or building space (i.e., property). Rental is determined by a Government appraisal, based on comparable properties in the local civilian economy. However, the appraiser shall consider that on-base property may not always be comparable to similar property in the local commercial geographic area; for example, limitation of usage and access to the financial institution by persons other than those on the installation, proximity to the community center or installation business district, the Government's right to terminate the lease or take title to improvements constructed at the financial institution's expense, and the limited consumer environment of a DoD installation.

Federal Credit Union. A credit union established and operated under authority granted by the Federal Credit Union Act, 12 U.S.C. 1751 et seq., and chartered, supervised, and periodically examined by the National Credit Union Administration.

Field of Membership. The group of people entitled to credit union membership because of a common bond of occupation or association; or employment or residence within a well-defined neighborhood, community, or rural district. The field of membership is defined in the credit union's charter by the Federal or State regulatory agency.

Financial Institution. This term encompasses any banking institution, credit union, and subordinate office or facility, each as separately defined herein.

Financial Services. Those services commonly associated with financial

---

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1053, 5801 Tabor Avenue, Philadelphia, PA 19120

[2] See footnote 1 to § 231.1

[3] See footnote 1 to § 231.1

institutions in the United States, such as checking, share and savings accounts; funds transfers; sales of official checks, money orders, and travelers checks; loan services; safe deposit boxes; trust services; sale and redemption of U.S. Savings Bonds; and acceptance of utility payments.

Full-Service Credit Union. A credit union that provides full-time counter transaction services, to include cash operations, and is staffed during normal working hours by a loan officer, a person authorized to sign checks, and a qualified financial counselor. In overseas areas, "full service" includes cash operations where not prevented by:

(a) Host-country law or regulation, or

(b) Physical security requirements that cannot be resolved by the credit union or local command.

Full-Time. Refers to a banking facility or credit union branch that operates at least 5 days a week.

Independent Bank. A bank specifically chartered to operate on a DoD installation, whose directors and officers usually come from the local business and professional community. Such operations are thus differentiated from countywide or statewide branch systems consisting of a head office and one or more geographically separate branch offices.

Malpractice. Any unreasonable lack of skill or fidelity in fiduciary duties, or the intentional violation of an applicable law or regulation, or both, that governs the operations of the financial institution. A violation shall be considered intentional if the responsible officials know that an action or inaction violated a law or regulation.

National Bank. An association approved and chartered by the Comptroller of the Currency to operate a banking business.

On-base. Refers to physical presence on a domestic or overseas DoD installation.

Operating Agreement. A mutual agreement between the DoD installation commander and on-base financial institution regarding their relationships.

Overseas DoD Installation. A military installation (or community) located outside the States of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Part-Time. Refers to a banking facility or credit union branch that operates fewer than 5 days a week, exclusive of additional payday service.

Regulatory Agency. Includes the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Federal Home Loan Bank Board; the several Federal Reserve Banks and the Board of Governors of the Federal Reserve System; the National Credit Union Administration; the various State agencies and commissions that oversee financial institutions; and, for banking facilities, the Fiscal Assistant Secretary of the Treasury.

Savings Association. A State or federally chartered mutual or stock savings institution, to include savings and loan associations, building and loan associations, homestead associations, and savings banks.

Share Draft. A negotiable or nonnegotiable draft or other order prepared by a credit union member and used to withdraw shares from a share draft account, normally through the commercial banking system.

State Bank. An institution, organized and chartered under the laws of a State of the United States, to operate a banking business within that State.

State Credit Union. An institution, organized and chartered under the laws of a State of the United States, that operates under the same general principles as a Federal credit union and is supervised and examined by a State regulatory agency or commission.

§ 231.4 Policy.

(a) Duly chartered financial institutions may be authorized to provide services, where demonstrated and justified needs exist, to facilitate the administration of public and quasi-public monies and enhance the morale and welfare of DoD personnel.

(b) Financial institutions shall be established on DoD installations only after approval by the appropriate regulatory agency and the DoD Component concerned.

(1) Independent or branch banks, full-service credit unions, and savings associations are the preferred sources of on-base service at domestic installations.

(2) Banking facilities shall be established on DoD installations only when a demonstrated and justified need cannot be met through other means. Normally, banking facilities shall be used only at overseas locations and in States that prohibit branch banking. In times of mobilization, it may become necessary to designate additional banking facilities as an emergency measure. Upon recommendation by a DoD Component, banking facilities are designated by the Treasury Department under 12 U.S.C. 265.

(3) The extension of banking facility and credit union services overseas is encouraged, consistent with the policies stated herein and with pertinent status of forces agreements, bilateral arrangements, and local laws.

(4) Retail banking operations shall not be performed by DoD activities. DoD Components shall rely on commercially available sources in accordance with DoD Directive 4100.15[*] (32 CFR part 169). However, proposals to seek the provision of financial services by institutions off the installation, when such services are available from existing on-base institutions, shall be approved by the DoD Component headquarters only after consultation with the Comptroller, Department of Defense (C, DoD).

(c) Financial institutions authorized to locate on DoD installations shall be provided logistic support as set forth in DoD Instructions 1000.10 and 1000.12.

(d) Military disbursing offices, nonappropriated fund instrumentalities, and other DoD installation activities shall use on-base financial institutions to the maximum extent feasible and consistent with sound management practice.

(e) DoD personnel who tender uncollectible checks, overdraw their accounts, or fail to meet their financial obligations in a proper and timely manner damage their credit reputation and affect the public image of all DoD personnel. Furthermore, losses sustained by financial institutions on DoD installations as a result of these actions increase operating costs and may reduce the institutions' viability. Such added operating costs must be borne by other customers and, in some cases, may increase the cost to the Government of providing on-base financial services. Military financial counselors or legal advisors shall recommend workable repayment plans that avoid further endangering credit ratings and careers of affected personnel. Counselors shall ensure that such personnel are aware of the stigma associated with bankruptcy and shall recommend its use only as a last resort, when no other alternative will alleviate the situation.

(f) It is DoD policy to support the delivery of retail financial services on DoD installations via automated teller machines (ATMs) that have connectivity to national networks; e.g., the Armed Forces Financial Network.

(1) Each on-base financial institution is encouraged to offer ATM service with network connectivity. Proposals to install ATMs from on-base financial institutions shall be considered under provisions stated in DoD Instructions 1000.10 and 1000.12.

(2) Proposals to install ATMs from other than on-base financial institutions may be considered under the following circumstances:

(i) If the proposal offers ATM service with network connectivity, the installation commander shall determine whether the existing ATM(s) on the installation has network connectivity.

(ii) If the existing ATM(s) provides network connectivity, no further action is appropriate. If the existing ATM(s) does not provide network connectivity, the on-base financial institution shall be given up to 6 months to provide such connectivity.

(iii) If ATM service is unavailable or if existing on-base ATM service does not provide network connectivity within the 6-month period, the installation commander may seek ATM service with network connectivity from another financial institution. Lease of space for ATM installation would be under terms as stated in DoD Instructions 1000.10 and 1000.12.

(g) The termination of operations by an on-base financial institution shall be initiated by a DoD Component only under one of the following conditions:

(1) The mission of the installation has changed, or is scheduled to be changed, thereby eliminating or substantially reducing the requirement for financial services.

(2) Active military operations prevent continuation of on-base financial services.

(3) The performance of the financial institution in providing services is not satisfactory according to standards ordinarily associated with the financial services industry or is inconsistent with the procedures prescribed in DoD Instructions 1000.10 and 1000.12. Termination actions begun on the basis of inadequate performance shall be substantiated by sufficient evidence. Such actions shall be coordinated with the appropriate regulatory agency and the Comptroller of the Department of Defense before being carried out.

§ 231.5 Responsibilities.

(a) The *Comptroller of the Department of Defense* (C, DoD) shall:

(1) Develop and monitor policies and procedures governing establishment, operation, and termination of financial institutions on DoD installations.

(2) Monitor industry trends, conduct studies and surveys, and facilitate appropriate dialogues on banking and credit union arrangements and cost-benefit relationships, coordinating as necessary with DoD Components, financial institutions, and trade associations.

(3) Maintain liaison, as appropriate, with financial institution regulatory agencies at Federal and State levels.

(4) Maintain liaison with financial institution trade associations, leagues, and councils in order to interpret DoD policies toward respective memberships and to aid in resolving mutual concerns affecting provision of financial services.

(5) Coordinate with the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) on all aspects of morale and welfare and with the Assistant Secretary of Defense (Production and Logistics) (ASD(P&L)) on all aspects of logistic support for on-base financial institutions.

(6) Take final action on requests for exceptions to this part.

(b) The *Assistant Secretary of Defense (Production and Logistics)* (ASD(P&L)) shall develop and monitor policies and procedures governing logistic support furnished to financial institutions on DoD installations, including the use of DoD real property and equipment.

(c) The *Assistant Secretary of Defense (Force Management and Personnel)* (ASD(FM&P)) shall advise the C, DoD, on all aspects of on-base financial institution services that affect the morale and welfare of DoD personnel.

(d) The *Heads of DoD Components* shall:

(1) Take action on requests to establish or terminate financial institution operations on respective installations subject to DoD Instructions 1000.10 and 1000.12.

(2) Supervise and encourage the use of financial institutions on DoD installations as a means to:

(i) Facilitate convenient, effective management of the appropriated, nonappropriated, and private funds of on-base activities.

(ii) Assist DoD personnel in managing their personal finances by participating in direct deposit programs and regular savings plans. Use of on-base financial institutions shall be on a voluntary basis and should not be urged in preference to, or to the exclusion of, other financial institutions.

(3) Recognize the right of military personnel and civilian employees to organize and join credit unions formed under duly constituted authority, and encourage the application and expansion of the principles of the credit union movement throughout the DoD establishment.

(4) Encourage and assist duly chartered financial institutions to provide complete financial services on DoD installations where there is a demonstrated need for such services.

(5) Establish liaison, as appropriate, with Federal and State regulatory agencies and financial institution trade associations, leagues, and councils.

(6) Provide debt processing assistance to on-base financial institutions in accordance with the Privacy Act guidelines in Appendix to this part.

Appendix A—Guidelines for Application of the Privacy Act to Financial Institutions on DoD Installations

A. The following guidelines govern application of DoD Directive 5400.11 to those financial institutions that operate under this part:

1. Financial institutions and their branches and facilities operating on DoD military installations do not fall within the purview of 5 U.S.C. 552 et seq.

a. These financial institutions do not fit the definition of "agency" to which the Privacy Act applies: "* * * any executive department, Military Department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or an independent regulatory agency" (5 U.S.C. 552(e) and 552a(a)(1)).

b. Nor are they "government contractors" within the meaning of section 552a(m) of reference (h), as they do not operate a system of records on behalf of an agency "* * * to accomplish an agency function." According to the Office of Management and Budget Privacy Act Guidelines, the provision relating to Government contractors applies only to systems of records "* * * actually taking the place of a Federal system which, but for the contract, would have been performed by an agency and covered by the Privacy Act." Clearly, the subject institutions do not meet these criteria.

c. Since the Act does not apply to them, these financial institutions are not required to comply with section 552a(e)(3) of Title 5, United States Code, in obtaining and making use of personal information in their relationships with personnel authorized to use such institutions. Thus, these institutions are not required to inform individuals from whom information is requested of the authority for its solicitation, the principal purpose for which it is intended to be used, the routine uses that may be made of it, or the effects of not providing the information. There also is no requirement to post information of this nature within on-base banking and credit union offices.

2. The financial institutions concerned hold the same position and relationship to their account holders, members, and to the Government as they did before enactment under OMB Circular A-108. Within their usual business relationships, they still are responsible for safeguarding the information provided by their account holders or members and for obtaining only such information as is reasonable and necessary to conduct business. This includes credit information and proper identification, which may include social security number, as a precondition for the cashing of checks.

[*] See footnote 1 to § 231.1.

3. Financial institutions may incorporate the following conditions of disclosure of personal identification in all contracts, including loan agreements, account signature cards, certificates of deposit agreements, and any other agreements signed by their account holders or members:

I hereby authorize the Department of Defense and its various Components to verify my social security number or other identifier and disclose my home address to authorized (name of financial institution) officials so that they may contact me in connection with my business with (name of financial institution). All information furnished will be used solely in connection with my financial relationship with (name of financial institution).

When the financial institution presents such signed authorizations, the Military Commands or installations shall provide the appropriate information.

4. Even though the agreement described in subsection A.3., above, has not been obtained, the Department of Defense may provide these financial institutions with salary information and, when pertinent, the length or type of civilian or military appointment, consistent with DoD Directives 5400.11 and 5400.7. Some examples of personal information pertaining to DoD personnel that can normally be released without creating an unwarranted invasion of personal privacy are name, rank, date of rank, salary, present and past duty assignments, future assignments that have been finalized, office phone number, source of commission, and promotion sequence number.

5. When DoD personnel with financial obligations are reassigned and fail to inform the financial institution of their whereabouts, they should be located by contacting the individual's last known commander or supervisor at the official position or duty station within that particular DoD Component. That commander or supervisor shall either furnish the individual's new official duty location address to the financial institution, or shall forward, through official channels, any correspondence received pertaining thereto to the individual's new commander or supervisor for appropriate assistance and response. Correspondence addressed to the individual concerned at his or her last official place of business or duty station shall be forwarded as provided by postal regulations to the new location, but the individual may choose not to respond. However, once an individual's affiliation with the Department of Defense is terminated through separation or retirement, the locator assistance the Department may render in the disclosure of home address is severely curtailed unless the public interest dictates disclosure of the last known home address. The Department of Defense may, at its discretion, forward correspondence to the individual's last known home address. The individual may choose not to respond; and the Department may not act as an intermediary for private matters concerning former DoD personnel who are no longer affiliated with it.

B. Questions concerning this guidance should be forwarded through channels to the Deputy Comptroller (Management Systems) (DC(MS)), Office of the Comptroller of the Department of Defense, Pentagon, Washington, DC 20301-1100.

August 9, 1989.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-19030 Filed 8-14-89; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 231a

[DoD Instruction 1000.10]

RIN 0790-AA53

Procedures Governing Credit Unions on DoD Installations

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: A proposed rule to modify various procedures covering the operation of credit unions on DoD installations was published in the Federal Register on February 22, 1989 [54 FR 7561]. The following revisions were made as a result of reviewing comments received from the notice. At Military Department request, a proposed provision was eliminated that would have authorized commanders with available funds to consider proposals to acquire automated teller machines. Provisions were clarified that govern overseas Defense credit union fields of membership and limitations in granting real estate loans. For purposes of qualifying for no-cost office space and other real property under section 124 of the Federal Credit Union Act, Defense credit unions now will be able to include retired military personnel in the credit union's field of membership. A proposed provision that would have permitted installation commanders, on a one-time basis, to renegotiate existing fair market rental real property leases under new nominal rental provisions was limited to extensions of such leases. Finally, the revised rule accepts clarifying and editorial changes suggested in response to the notice.

EFFECTIVE DATE: July 26, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. R. Adolphi, Office of the Comptroller, Department of Defense, Room 1A858, the Pentagon, Washington, DC 20301, telephone (202) 697-8281.

SUPPLEMENTARY INFORMATION

List of Subjects in 32 CFR Part 231a

Armed forces; Credit Unions; Federal buildings and facilities.

Accordingly, 32 CFR part 231a is revised as follows:

PART 231a—PROCEDURES GOVERNING CREDIT UNIONS AND DOD INSTALLATIONS

Sec.

231a.1 Purpose.
231a.2 Applicability and scope.
231a.3 Definitions.
231a.4 Responsibilities.
231a.5 General operating policies and procedures.

Appendix A—Operations of Defense Credit Unions

Authority: 10 U.S.C. 136.

§ 231a.1 Purpose.

This document reissues DoD Instruction 1000.10[1] (32 CFR Part 230) and provides procedural guidance to supplement DoD Directive 1000.11[2] (32 CFR part 231) concerning relations with credit unions serving on DoD installations.

§ 231a.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense (OSD), the Military Departments, the Joint Chiefs of Staff (JCS), the Joint Staff and the supporting Joint Agencies, the Unified and Specified Commands, the Inspector General of the Department of Defense (IG, DoD), the Uniformed Services University of the Health Sciences (USUHS), the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "DoD Components").

(b) All credit unions and military exchange outlets that operate on DoD installations.

§ 231a.3 Definitions.

Terms used in this Instruction are defined in 32 CFR part 231.

§ 231a.4 Responsibilities.

(a) The Comptroller of the Department of Defense (C, DoD), or designee, the Deputy Comptroller (Management Systems) (DC(MS)), shall:

(1) Coordinate the DoD credit union program, consulting on aspects that pertain to the morale and welfare of DoD personnel with the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)).

(2) Maintain liaison, as necessary, with the National Credit Union Administration (NCUA) and equivalent State regulatory agencies.

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1053, 5801 Tabor Avenue, Philadelphia, PA 19120.

[2] See footnote 1 to § 231a.1.

(3) Coordinate on DoD Component actions that propose a credit union's removal for cause from an installation before final decision and referral to the appropriate regulatory agency.

(4) Take final action on requests for exception to this part.

(b) The Assistant Secretary of Defense (Production and Logistics) (ASD(P&L)) shall carry out responsibilities outlined in subsection F.2. of DoD Directive 1000.11.

(c) The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) shall carry out responsibilities outlined in subsection F.3. of DoD Directive 1000.11.

(d) The Secretaries of the Military Departments and Directors of Defense Agencies shall:

(1) Supervise the use of credit unions on respective DoD installations within the guidance contained herein and DoD Directive 1000.11.

(2) Assist respective on-base credit unions in developing and expanding necessary services for DoD personnel, consistent with this part.

(3) Encourage DoD personnel to serve on credit union boards and committees on a voluntary basis, without compensation, when neither conflict of duty nor conflict of interest is involved, as stated in DoD Directive 5500.7 [3] (32 CFR part 40). Such personnel may be allowed to attend credit union conferences and meetings in accordance with DoD Directive 1327.5,[4] Civilian Personnel Manual (CPM) Supplement 990-2, and Comptroller General Decision B-212457.

(4) Ensure that the recommendations of the Unified or Specified Command concerned are considered before processing requests for overseas credit union service or related actions emanating from overseas component commands.

(5) Refer matters requiring policy decisions or proposed changes to this part or 32 CFR part 231 to the DC(MS).

(e) The Commanders of Unified and Specified Commands, or designees, shall:

(1) Ensure the appropriate coordination of requests to:

(i) Establish credit union service in countries not presently served. Such requests shall include a statement that the requirement has been coordinated with the U.S. Chief of Diplomatic Mission or U.S. Embassy and that the host country will permit the operation.

(ii) Totally eliminate credit union service in a country. Such requests shall include a statement that the U.S. Chief of Diplomatic Mission has been informed and that appropriate arrangements to coordinate local termination announcements and procedures have been made with the U.S. Embassy.

(2) Monitor and coordinate credit union operations within the command area. Personnel assigned to security assistance positions shall not serve in this capacity without the prior approval of the Director, Defense Security Assistance Agency (DSAA).

§ 231a.5 General operating policies and procedures.

(a) *General.* Given their role in promoting morale and welfare, credit unions operating on DoD installations shall be recognized and assisted by DoD Components at all levels. These credit unions shall provide services to DoD personnel of all ranks and grades within their respective fields of membership.

(b) *Limitation on service.* (1) Only one credit union shall establish a branch or facility on a DoD installation, and its field of membership normally shall include all assigned DoD personnel. On installations where more than one credit union already exists, each is entitled to the benefits defined in this part.

(2) Except as authorized in section G., appendix to this part, commanders of installations served by on-base credit unions shall ensure that installation activities do not disseminate literature from competing credit unions.

(c) *Establishing domestic credit union service.* (1) A demonstrated need for credit union services may be addressed by establishing a new full-service credit union or by opening a branch office or facility of an existing credit union under the common bond principle.

(2) Each DoD Component shall develop internal instructions, consistent with the following, that govern the submission and justification of requests to establish credit unions on respective installations:

(i) DoD personnel seeking to establish a new full-service credit union or a branch or facility of an existing credit union shall submit a proposal to the installation commander. Such proposals shall be forwarded through channels to the DoD Component headquarters concerned, together with recommendations for acceptance or rejection.

(ii) The DoD Component shall notify credit unions that operate on DoD installations of the need for service; review the specific proposals of interested credit unions; coordinate with its field commands as appropriate; and recommend for approval the designation of a credit union to the appropriate regulatory agency, providing an information copy to the DC(MS). No specific NCUA approval is required for a Federal credit union to open a branch office.

(iii) No commitment may be made to a credit union regarding its proposal until the appropriate regulatory agency has announced a selection.

(d) *Establishing overseas credit union service.* (1) When the installation (community) commander determines that credit union services are needed at a location within an existing geographic franchise (see subsection H.2., appendix to this part), and the DoD Component headquarters concurs, the commander shall contact the servicing Defense credit union and request that a branch or facility be established. The basic decision concerning such extensions of service rests with the servicing credit union. If a field of membership has not previously been granted by NCUA to encompass a DoD designated geographic franchise, the DoD Component shall canvass federally-chartered Defense credit unions for proposals to service the solicited region.

(2) In addition to the requirements stated in paragraph (c)(2) of this section, installation commanders shall provide the following information in support of requests to their DoD Component headquarters for overseas credit union service:

(i) In countries not presently served, a statement concurred in by the Unified Commander that the requirement has been coordinated with the U.S. Chief of Diplomatic Mission or U.S. Embassy and that the host country will permit the operation, with any conditions imposed by the host country identified.

(ii) The name and location of the nearest credit union branch or facility.

(iii) The distance between the installation and the nearest credit union branch or facility and the availability of any official or public transportation.

(iv) The number of DoD personnel in duty assignments that confine them to the installation, or who cannot obtain transportation (such as hospital patients).

(3) In reviewing proposals received from Federal Defense credit unions under paragraph (c)(2) of this section, the DoD Component shall give preference to proposals for full-service credit union operations. After coordination with the DC(MS), the DoD Component shall recommend designation of the selected credit union to the NCUA.

(4) A proposed amendment to the federally-chartered credit union's charter must be submitted to the NCUA

[3] See footnote 1 to § 231a.1.

[4] See footnote 1 to § 231a.1.

for approval of service to new groups or geographic areas. Recommendations to the NCUA shall include identification of the primary installation from which the proposed branch would operate and the geographical territory in which any additional branches, facilities, or mobile outlets would operate.

(5) No commitment may be made to a credit union regarding its proposal until the NCUA announces its selection. The DoD Component then shall notify the DC(MS) of NCUA approval and arrange for operations to begin.

(e) *Operating agreements.* An operating agreement, conforming to the guidelines set forth herein, shall be executed and maintained between each installation (community) commander and the on-base credit union.

(1) Each agreement shall be confined to basic relationships and mutual support activities and may not involve internal operations of the credit union. The installation commander shall agree to provide support as specified in this part. A sample format is contained in DoD 4000.19–R.[5]

(2) Each credit union operating on a DoD installation shall agree to:

(i) Comply with this part, DoD Directive 1000.11, and DoD Component regulations that implement these issuances.

(ii) Keep the installation commander advised of credit union operations.

(iii) Give the installation commander a copy of its monthly financial report and other local credit union publications.

(iv) Invite command representatives to attend its annual meetings and other appropriate functions.

(v) Indemnify and hold harmless the U.S. Government from (and against) any loss, expense, claim, or demand to which the Government may be subjected as a result of death, loss, destruction, or damage in conjunction with the use and occupancy of premises of the DoD Component in any way caused by agents or employees of the credit union.

(vi) Maintain physical security of cash and negotiable items in a manner consistent with the requirements of the credit union's fidelity insurer. A copy of these requirements shall be provided to the installation commander upon request.

(vii) Accommodate, whenever possible, local command requests for lecturers and printed materials for consumer credit education programs. Credit union personnel invited to participate in such programs shall not use the occasion to promote the exclusive services of a particular financial institution.

(viii) Provide that neither the DoD Component concerned nor its representatives shall be responsible for the financial operation of a credit union or for any expense, loss (including criminal losses), or claim for damages arising from credit union operations.

(ix) Operate in accordance with the guidelines at Appendix to this part and comply with other provisions of this part, with DoD Directive 1000.11, and with their DoD Component implementing documents.

(f) *Liaison officers.* To maintain effective lines of communication, each commander of an installation with an on-base credit union shall appoint a credit union liaison officer as defined in enclosure 2 of DoD Directive 1000.11.

(1) The credit union liaison officer's name and duty telephone number shall be displayed in the lobby of each on-base credit union location.

(2) The liaison officer shall maintain regular contact with the credit union manager to confer, help resolve member complaints, and discuss quantitative and qualitative improvements in the services provided. However, neither liaison officers nor their superiors shall become involved in the internal operations of the credit union.

(3) No one on the board of directors serving the credit union in another official capacity may serve as the credit union or bank liaison officer.

(g) *Complaints processing*—(1) *Discrimination.* Any installation commander who suspects or receives complaints of discrimination by the on-base credit union shall try to resolve any such problem by negotiation. The installation commander should consider using the credit union's supervisory committee in resolving the complaint. Failing resolution, and in accordance with DoD Component implementing regulations, a written request for investigation shall be forwarded to the appropriate regulatory agency. The request must document the problem and local command efforts toward resolution. Information copies of all related correspondence shall be sent through channels to the DoD Component concerned for transmittal to the DC(MS).

(2) *Malpractice.* The installation commander shall report to the appropriate regulatory agency any evidence suggesting malpractice by credit union personnel, in accordance with DoD Component regulations.

(3) *Followup.* A DoD Component unsatisfied with action taken by the appropriate regulatory agency shall submit a full report with recommendations to the DC(MS). The DC(MS) shall pursue the matter with the appropriate regulatory agency and apprise the respective DoD Component of progress or resolution.

(h) *Logistic support*—(1) *Membership criterion.* (i) In accordance with section 124 of the Federal Credit Union Act, the provision of no-cost office space and other real property is limited to credit unions having a membership at least 95 percent of which is composed of individuals who are, or who were at the time of admission into the credit union, military personnel or Federal employees, retired military personnel in the credit union's field of membership, or members of their families. This percentage criterion applies to the total credit union membership, not just to members who use the on-base office.

(ii) Before renewal of each no-cost lease or license, the credit union shall provide a written certification, prepared on credit union letterhead and signed either by its president or general manager, that the credit union continues to meet the 95 percent criterion. A certification also is required whenever there is a merger, takeover, or significant change in a field of membership. This certification shall serve as justification and documentation for the continued allocation of free Government office space and other real property.

(2) *Criteria for use of space in Government-owned buildings.* (i) A credit union may be provided space on a DoD installation at one or more locations by no-cost permits or licenses for periods not to exceed 5 years. The cumulative total of space authorized at one or more locations is subject to the limitations contained in MIL–HDBK–1190.

(ii) A credit union that fails to meet the 95 percent criterion shall be charged fair market rent for space provided. No credit union whose field of membership excludes any DoD personnel assigned on the installation shall receive free Government space. This latter limitation is waived in cases when an installation is served by more than one credit union.

(iii) All space assigned by the GSA, whether leased or in Federal office buildings, is reimbursable to the GSA at the current GSA rental rates under Pub. L. 92–313. Consequently, the GSA shall charge the benefiting DoD Component for any space assigned for credit union operations. Such space is then subject to the provisions of paragraphs (h)(i) and (ii) of this section.

(iv) When a credit union that meets the 95 percent criterion uses its own funds to expand, modify, or renovate

[5] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Government-owned space, it may be provided a no-cost permit or license for a period not to exceed 25 years. Duration of the permit or license shall be commensurate with the extent of the improvements as determined by the DoD Component concerned. It shall be effective until the agreed date of expiration or until the credit union ceases to satisfy the 95 percent criterion. In this latter case, the no-cost permit shall be cancelled in favor of a lease immediately negotiated at fair market value under the provisions of paragraph (h)(2)(ii) of this section. If the credit union desires, this lease at fair market value may extend through the period identified in the original license, or 5 years, whichever is greater.

(v) Similarly, a credit union not meeting the 95 percent criterion that uses its own funds to expand, modify, or renovate Government-owned space, may be provided a lease at the fair market value for a period not to exceed 25 years. Duration of this lease shall be commensurate with the extent of the improvements as determined by the DoD Component concerned.

(3) *Utilities, base services, and equipment*—(i) When available, janitorial services, utilities (such as air-conditioning, heat, and light), fixtures, and maintenance shall be furnished at no cost to a credit union occupying free space in a Government building. The credit union shall pay for other services, such as telephone lines, long-distance toll calls, and space alterations. Should a credit union fail to meet the 95 percent membership criterion, any logistic support furnished shall be on a reimbursable basis.

(ii) When available from local stock, typewriters, adding machines, other office equipment, and office furniture may be leased to an on-base credit union at nominal cost; i.e., $1.00 per year, under authority of 10 U.S.C. 2667.

(iii) Central locator service shall be provided under conditions identified in enclosure 3 of DoD Directive 1000.11 when requested by Defense credit unions. This service shall be provided at no cost, in accordance with DoD Instruction 7230.7 [6] (32 CFR part 288).

(iv) DoD Components shall provide debt processing assistance to Defense credit unions, in accordance with DoD Directive 1344.9 [7] (32 CFR part 43a), as limited by the Privacy Act Guidelines set forth in enclosure 3 of DoD Directive 1000.11. Unless otherwise prohibited, Defense credit unions seeking restitution for delinquent loans or dishonored checks may request the assistance of local commanders, credit union liaison officers, or other officials.

(v) DoD Components shall prescribe clearance procedures for departing military personnel that provide the on-base credit union with adequate notice of such membership changes. Clearance involves reporting a change of address, reaffirming allotments or notes payable, and arranging for counseling, if appropriate. Clearance shall not be denied to facilitate the collection of debts or the resolution of disputes between the credit union and its departing members. Where administratively feasible, similar clearance procedures shall be used for departing DoD civilian employees.

(4) *Additional support in overseas areas.* In addition to the logistic support identified in paragraphs (h)(1) through (3) of this section, the following may be made available to Defense credit unions operating at overseas installations:

(i) Military postal service may be authorized, in accordance with DoD Directive 4525.6[8]. For full service credit unions, as defined in DoD Directive 1000.11, use of the free intra-theater delivery system (IDS) is authorized for all routine mail sent and received between Army Post Offices (APOs) and Fleet Post Offices (FPOs) within a theater. To qualify, the credit union must certify to the appropriate postal official that all its full-time overseas offices provide "full service" or equivalence to full service, i.e., the availability of cash through ATMs at non-full service locations.

(ii) Access to DoD voice and data telecommunication systems as granted by the Defense Communication Agency on a case-by-case reimbursable basis.

(iii) Travel of U.S.-based credit union officials to their overseas offices shall be as set forth in DoD Directive 4000.6 [9] Invitational travel orders that authorize travel at no expense to the U.S. Government may be issued by the local commander for official onsite visits.

(iv) For full service credit unions, as defined in DoD Directive 1000.11, logistical support shall include steel bars, grillwork, security doors, a vault or safe (or both), burglar alarm system, other security features normally used by credit unions, construction of teller cages, and other necessary modifications and alterations to existing buildings to facilitate cash operations, subject to the procedures and fiscal limits in DoD Directive 4270.24 [10].

(i) *Construction of credit union buildings.* (1) Credit union proposals to finance construction of buildings on domestic DoD installations at their own expense must be processed in accordance with DoD Instruction 7700.18 [11]. In support of each construction proposal, the credit union shall provide written assurance that:

(i) Management understands its potential loss of the building in the event of installation closure or other delimiting condition specified in paragraph (j)(1)(i) of this section;

(ii) The proposed building shall serve only the needs of the credit union and shall not be used to house other activities;

(iii) Management accepts financial responsibility and shall reimburse the U.S. Government for all costs of construction and any maintenance, utilities, and other services furnished. Rates shall be established in accordance with DoD Instruction 7230.7 and confirmed by a written agreement between the DoD installation and the credit union.

(2) Credit unions that finance building construction at their own expense do not have to meet the space criteria contained in MIL–HDBK–1190.

(j) *Leases of Government land.* (1) Except as provided in paragraphs (h)(2)(iv) and (v) of this section, land required for approved building construction at credit union expense shall be made available by real estate lease at minimal charge; e.g., $1.00 per year.

(i) Leases shall include the provision that, in the event of national emergency or any other event cited in paragraph (l)(3) of this section, and at the option of the Government, structures and other improvements erected thereon shall be conveyed to the Government without reimbursement or removed and the land restored to its original condition.

(ii) Once determined, the rental charge under any lease granted at fair market rental is applicable for the term of the lease. However, an extension of any such existing lease may provide for nominal rental, e.g., $1.00 for the term of the lease extension.

(2) When a credit union participates in the construction of a complex, such as an installation shopping mall, it shall be provided a lease at nominal rental covering only underlying land for the specific space to be occupied by the credit union.

(3) If determined, in accordance with 10 U.S.C. 2667, to be in the Government's interest, an existing lease of land may be extended before to

[6] See footnote 1 to § 231a.1.
[7] See footnote 1 to § 231a.1.
[8] See footnote 1 to § 231a.1.
[9] See footnote 1 to § 231a.1.
[10] IOSee footnote 1 to § 231a.1.
[11] See footnote 1 to § 231a.1.

expiration of its term. Passage of title to facilities shall be deferred until all extensions have expired. Such extensions shall be for periods not to exceed 5 years. The credit union shall continue to maintain the premises and pay for utilities and services furnished in accordance with DoD Instruction 7230.7.

(4) When, under the terms of a lease or extension, title to improvements passes to the Government, the credit union shall be given first choice to continue occupying those improvements under a facility lease.

(i) The lease shall require the credit union to maintain the premises and pay for utilities and services furnished in accordance with DoD Instruction 7230.7.

(ii) In addition, the lease for a credit union not qualifying under the 95 percent criterion cited in paragraph (h)(1) of this section, shall require that the credit union pay fair market rental for land underlying the improvements.

(k) *Automated teller machine (ATM) service.* (1) ATMs may be used to augment service provided by an on-base credit union.

(2) An on-base credit union that proposes to augment its service by installing one or more ATMs shall:

(i) Coordinate the ATM proposal through the installation commander under provisions of applicable DoD Component regulations.

(ii) Provide a statement that the cost of ATM installation and maintenance shall be borne by the credit union alone or in conjunction with other financial institutions.

(iii) Provide for access through debit and credit cards.

(3) Before service begins, regulatory agency approval, as necessary, must be obtained, and leases must be negotiated in accordance with this part.

(i) No lease is needed to site an ATM within an existing credit union office.

(ii) When a credit union requests up to 100 square feet of additional floor space in an existing structure and the credit union agrees to bear all expenses for modifying the structure, a lease providing for nominal rental, i.e., $1.00 for the term of the lease, shall be locally negotiated and approved. This lease provision also shall be offered if a credit union requests up to 250 square feet of land to construct, at its expense, a kiosk or other structure to house an ATM. In either case, the charge for any maintenance, utilities, and services shall be consistent with that applied to the on-base credit union office.

(iii) Leases pertaining to other situations shall be negotiated in accordance with paragraphs (h)(2) and (j) of this section.

(l) *Termination of credit union service.*—(1) *Termination of operations by the credit union.* An on-base credit union planning to terminate its operations should notify the installation commander at least 90 days before the closing date. This notification should precede public announcement of the planned closure. When appropriate, the commander shall attempt to negotiate an agreement permitting the credit union to continue operations until the installation has made other arrangements. Immediately upon notification of a closing, the commander shall advise the DoD Component headquarters concerned. If it is determined that continuation of credit union services is justified, action to establish another credit union shall comply with paragraph (c) or (d) of this section.

(2) *Termination for cause.* Installation commanders should ensure that on-base credit unions are providing services in the best interest of DoD personnel. If, after discussion with credit union officials, the installation commander determines that the operating policies of the credit union are inconsistent with this part, a recommendation for termination of logistic support and space arrangements may be made through DoD Component channels. A credit union shall be removed from the installation only with approval by the DoD Component headquarters, after coordination with the DC(MS) and the appropriate regulatory agency.

(3) *Termination in interest of national defense.* At the option of the Government, leases may be terminated in the event of national emergency or as a result of installation inactivation, closing, or other disposal action.

Appendix A—Operations of Defense Credit Unions

A. Staffing

1. Full services shall be provided by on-base credit unions that are staffed by:

a. A loan officer authorized to act for the credit committee;

b. An individual authorized to sign checks; and

c. A qualified financial counselor available to serve members during operating hours.

2. Exceptions to subsection A.1., above, may be approved by the DoD Component concerned in the case of newly organized credit unions.

3. When an on-base credit union can support only minimum staffing, one of the other positions required in subsection A.1., above, may be subsumed under the counselor duties.

4. Remote service locations at the same installation may be staffed with one person alone, provided that a direct courier or message service links them to the credit union's on-base main office.

5. All staffing shall fully comply with the spirit and intent of DoD equal employment opportunity policies and programs, in accordance with DoD Directive 1440.1.

6. Neither active duty military personnel nor DoD civilian employees may be detailed to duty or employment with an on-base credit union. However, off-duty DoD personnel may be employed by a credit union if approved by the installation commander following a determination that such employment will not interfere with the full performance of the individual's official duties.

B. Counseling

Members of Defense credit unions shall have access to free counseling service. Members (particularly youthful or inexperienced personnel and young married families) shall receive help in budgeting and solving financial problems. Military members in junior enlisted grades who apply for loans shall receive special attention.

C. Lending

1. In accordance with accepted credit union practice, lending policies are expected to be as liberal as possible while remaining consistent with the best interests of the overall credit union membership. Credit unions must strive to provide the best possible service to all members.

2. Defense credit unions evidencing a policy of discrimination in their loan services, as defined in DoD Directive 1000.11, are in violation of this Instruction. In resolving complaints of discrimination, the installation commander shall follow procedures specified in paragraph E.7.a. of this DoD Instruction 1000.10.

3. Defense credit unions shall conform to the Standards of Fairness principles set forth in DoD Directive 1344.9 before executing loan or credit agreements. Should an on-base credit union branch refer a prospective borrower to an off-base office of the same credit union, it shall advise the latter office that the Department of Defense requires compliance with the Standards of Fairness.

D. Hours of Operation

On-base credit unions may conduct operations during normal duty hours provided they do not disrupt the performance of official duties. Credit unions should set operating hours that meet the needs of all concerned. ATMs may be used to provide expanded service and operating hours.

E. Share Insurance

Credit unions serving on DoD installations must maintain adequate share insurance. Any share insurance that is at least equal to that required by the NCUA for Federal credit unions may be obtained through the NCUA, a State-sponsored insurance program, or a private insurance plan to satisfy this requirement. A credit union not maintaining share insurance shall be suspended from on-base operations.

F. Allotments of Pay

DoD personnel may use their allotment of pay privileges as authorized by DoD Directives 7330.1 and 1418.4 to establish sound credit and savings practices through Defense credit unions.

1. The credit union shall credit member accounts not later than the value date of the allotment check or electronic funds transfer.

2. Under no circumstances shall the initiation of an allotment of pay become a prerequisite for loan approval or disbursement to the credit union member. Allotments voluntarily consigned to a credit union shall continue at the option of the member.

G. Advertising

1. Advertising of on-base credit union services shall be in accordance with policies set forth in DoD Directive 1344.7.

2. Advertising in official Armed Forces newspapers and periodicals (DoD Instruction 5120.4 and DoD Directive 5120.43) is prohibited, with the exception of inserts in the "Stars and Stripes" overseas.

3. DoD Instruction 5120.20 prevents use of the Armed Forces Radio and Television Service to promote a specific credit union.

4. An on-base credit union may use the unofficial section of that installation's daily bulletins, provided space is available, to inform DoD personnel of financial services and announce membership meetings, seminars, consumer information programs, and other matters of broad general interest. Announcement of free financial counseling services is encouraged. Such media may not be used for competitive or comparative advertising of, for example, specific interest rates on savings or loans.

5. An on-base Defense credit union may use that installation's information bulletin boards for announcements of membership meetings and promotional materials generally complementing the installation's financial counseling and thrift promotion programs. An on-base credit union may, with moderation, use that installation's message center services to distribute announcements for display on informational bulletin boards, provided this does not overburden the distribution system.

6. Installations, to include military exchange outlets or concessionaires, shall not permit the promotion of competing credit union relationships or the distribution of competitive literature from other credit unions at locations served by on-base credit unions. This does not prevent:

a. A credit union from using mail, telecommunications, or commercial advertising to serve its field of membership in another credit union's area, or

b. Exchange Services from distributing literature on affinity credit cards centrally acquired through competitive solicitation.

H. Overseas Operations

1. An overseas credit union branch or facility shall be limited to on-base operations. It shall confine its field of membership to individuals or organizations eligible by law or regulation to receive services and benefits from the installation, not prevented from receiving these services by intergovernmental agreement or host-country law.

2. Credit unions shall serve overseas only within a DoD-designated geographic franchise. However, any credit union may continue to serve its members stationed overseas by mail or telecommunications.

3. Any proposal for a new service must be coordinated with the appropriate Unified Commander and U.S. Chief of Diplomatic Mission or U.S. Embassy to ensure that it does not conflict with status of forces agreements or host-country law.

4. Cash Operations. a. Credit unions that operate full service branches, as defined in DoD Directive 1000.11, shall have U.S. currency and coin available for member transactions. In areas served by currency custody accounts, transactional U.S. currency and coins shall be made available from the servicing Military Banking Facility (MBF) with no direct or analysis charge to the credit union, provided settlement is made via a local MBF account or equivalent arrangements are made with the MBF.

b. Credit unions may purchase foreign currency from the servicing MBF at the bulk rate when used for internal vendor or payroll payments. The rate of exchange for sales to individuals must be no more favorable than that available from the MBF, in accordance with DoD Directive 7360.11.

c. Overseas credit unions operating in military payment certificate areas shall comply with DoD Directive 7360.5 and any DoD Component regulations implementing that issuance.

5. The operations of all federally-chartered Defense credit unions are subject to regulation by NCUA. Thus, NCUA Rules and Regulations, procedural forms, reports, and manuals directly apply to all Defense credit union branches and facilities operating overseas.

6. NCUA Rules and Regulations prohibit Federal credit unions from granting long-term (in excess of 15 years) first mortgage loans on any type of residence in any country outside the United States, its territories and possessions, or the Commonwealth of Puerto Rico.

7. Funds shall be deposited and invested in accordance with the authority applicable to federal credit unions. Overseas Defense credit union branches and facilities shall deposit funds in accordance with instructions issued by the NCUA, giving full consideration to using the servicing MBFs.

8. Operation of overseas Defense credit union branches and facilities shall be reviewed by the NCUA during examination of the parent credit union or as the NCUA determines necessary.

I. Notification of Credit Unions

Each DoD Component shall ensure that every credit union with an office at its installations receives a copy of the document that implements this Instruction and DoD Directive 1000.11.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 9, 1989.

[FR Doc. 89-19031 Filed 8-14-89; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 385

[DoD Directive 5111.1]

Under Secretary of Defense for Policy

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This revision of 32 CFR part 385, "Under Secretary of Defense for Policy," updates the roles, functions, responsibilities, and authorities of the USD(P); places the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict under the direction, authority, and control of the USD(P); and assigns to the USD(P) responsibility for assisting the Secretary of Defense in preparing written policy guidance for the preparation and review of operational and contingency plans, including those for nuclear and conventional forces (including Special Operations Forces), and in reviewing such plans.

EFFECTIVE DATE: March 13, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. R. Furtner, Office of the Director of Administration and Management, Washington, DC 20301-1155, 202-695-4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 385

Organization and function (government agencies).

Accordingly, 32 CFR part 385 is revised to read as follows:

PART 385—UNDER SECRETARY OF DEFENSE FOR POLICY

Sec.

385.1 Purpose.
385.2 Definition.
385.3 Responsibilities and functions.
385.4 Relationships.
385.5 Authorities.

Authority: 10 U.S.C. 134.

§ 385.1 Purpose.

The document revises 32 CFR part 385 and updates, pursuant to Title 10, United States Code, and consistent with Defense Management Report to the President, June 1989, the position of Under Secretary of Defense for Policy (USD(P)) with assigned responsibilities, functions, relationship, and authorities as prescribed herein.

§ 385.2 Definition.

DoD components. The Office of the Secretary of Defense, (OSD), the Military Departments, the Joint Chiefs of Staff (JCS), the Joint Staff, the Unified and Specified Commands, the Defense Agencies, and the DoD Field Activities.

§ 385.3 Responsibilities and functions.

The Under Secretary of Defense for Policy is the Principal Staff Assistant and advisor to the Secretary of Defense for all matters concerning the integration of DoD plans and policies with overall national security objectives. In the exercise of this responsibility, the USD(P) shall:

(a) Represent the Department of Defense, as directed, in matters involving the National Security Council (NSC), Department of State (DoS), and other Departments, Agencies, and interagency groups with responsibilities in the national security area.

(b) Develop policies and coordinate implementation of arms control negotiations, including DoD positions on arms reductions and other defense-related international negotiations.

(c) Develop policies and oversee their implementation with respect to the counterintelligence and security activities of the Department of Defense; provide program management to the Foreign Counterintelligence Program and to the Security and Investigative Activities Program; and carry out the responsibilities of the Secretary for the administration of National Disclosure Policy, and his responsibilities as the U.S. Security Authority for North Atlantic Treaty Organization (NATO).

(d) Develop policies and coordinate implementation of DoD political-military affairs, including: nuclear weapons policy and strategy; special operations forces and low-intensity conflict; law of the sea; foreign military rights; strategic offensive and defensive forces; theater nuclear matters; general purpose forces; and the relationship between strategic and theater force planning, programs, and budgets.

(e) Review evaluations and develop recommendations to the Secretary of Defense concerning plans and requirements for, and capabilities of, existing or proposed United States or foreign forces and their deployment, with particular attention to performance of missions which are or may be critical in the consideration of U.S. national security policy.

(f) Assist the Secretary of Defense in preparing written policy guidance for the preparation and review of operational and contingency plans, including those for nuclear and conventional forces (including Special Operation Forces), and in reviewing such plans.

(g) Provide oversight of all DoD activities related to the NATO, East-West economic policy, including East-West trade, and technology transfer.

(h) Develop policies, plans, and procedures for the discharge of DoD functions for emergency planning and preparedness, crisis management, defense mobilization and expansion in emergency situations, military support of civil authorities, and continuity of operations and continuity of government; provide support, as required, to the Department of Defense and other U.S. Government or State agencies on these as well as civil defense and related matters.

(i) Develop policies, coordinate DoD participation, exercise OSD management oversight, and provide appropriate OSD approval process for DoD involvement in national security special activities, sensitive support to non-DoD agencies, and other uniquely sensitive national security programs. Provide special support to the Secretary of Defense in connection with his participation in related NSC activities.

(j) Plan and conduct net assessments for the Secretary of Defense.

(k) Negotiate and monitor agreements with foreign governments and defense alliances to which the United States is a party. Develop DoD policies and coordinate plans and programs undertaken in cooperation with foreign governments and military establishments, and represent the Department of Defense, as directed, in the conduct of defense relationships.

(l) Provide policy direction for defense security assistance matters; monitor Military Assistance Advisory Groups and other missions pertaining to security assistance; and negotiate and monitor security assistance agreements with foreign governments.

(m) Develop DoD policy and coordinate actions relating to humanitarian assistance support.

(n) Develop DoD space policy priorities, and review and evaluate programs, plans, and systems requirements relating to the use of outer space, including participation in outer space activities of the NSC and other interagency fora, consistent with the provisions of DoD Directive 3500.1.[1]

(o) Serve as the Secretary's and Deputy Secretary's principal advisor for the planning phase of the DoD Planning, Programming and Budgeting System (PPBS), to include the lead role in developing overall policy, defense strategy, and force and resource planning; serve as a key participant in programming and budgeting decisions as well. Coordinate the development and approval of the Defense Planning Guidance.

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1053, 5801 Tabor Avenue, Philadelphia, PA 19120.

(p) Develop DoD policies and program concerning psychological operations.

(q) Develop DoD policy guidance for DoD participation in international activities supporting U.S. information programs.

(r) Perform such other functions as the Secretary of Defense may prescribe.

§ 385.4 Relationships.

(a) In the performance of assigned functions and responsibilities, the USD(P) shall:

(1) Exercise direction, authority, and control over:

(i) The Assistant Secretary of Defense (International Security Affairs).

(ii) The Assistant Secretary of Defense (International Security Policy).

(iii) The Assistant Secretary of Defense (Special Operations and Low-Intensity Conflict).

(iv) The Principal Deputy Under Secretary of Defense (Strategy and Resources).

(v) The Deputy Under Secretary of Defense (Security Policy).

(vi) The Deputy Under Secretary of Defense (Trade Security Policy).

(vii) The Director, Net Assessment.

(viii) The Defense Security Assistance Agency.

(ix) The Defense Technology Security Administration.

(x) The Defense Investigative Service.

(2) Coordinate and exchange information with other DoD and Federal organizations having collateral or related functions.

(3) Use existing facilities and services, whenever practicable, to achieve maximum efficiency and economy.

(b) DoD Components and organizations shall coordinate all matters concerning the responsibilities and functions cited in § 358.3 with the USD(P).

§ 385.5 Authorities.

The USD(P) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda in assigned fields of responsibility, consistent with the provisions of DoD 5025.1–M. Instructions to the Military Departments shall be issued through the Secretaries of those Departments or their designees. Instructions to Unified or Specified Commands shall be issued through the Chairman of the Joint Chiefs of Staff (JCS).

(b) Obtain such reports, information, advice and assistance, as necessary, consistent with the policies and criteria of DoD Directive 7750.5.[2]

[2] See footnote 1 to § 385.3(n).

(c) Communicate directly on policy matters with heads of DoD organizations, including the Secretaries of the Military Departments, the CJCS, the JCS, the Directors of Defense Agencies, and, through the CJCS, the Commanders of the Unified and Specified Commands.

(d) Communicate with other government agencies, representatives of the Congress, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

Dated: August 9, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–19029 Filed 8–14–89; 8:45 am]

BILLING CODE 3810–01–M

POSTAL SERVICE

39 CFR Part 111

Mailability of Etiologic Agents

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: On June 24, 1988 and March 23, 1989, the Postal Service published in the **Federal Register** successive proposals dealing with the mailing of potentially disease-causing materials which are required to bear an Etiologic Agents/Biomedical Material label under Department of Transportation and Department of Health and Human Services rules. Because of a prospect of significant increases of some of these materials in the mail, the Postal Service initially considered that the potential harm from spills and leakage warranted a proposal to prohibit the mailing of all such materials.

After reviewing the numerous comments (almost 600) on this first proposal, however, and after consultation with the Centers for Disease Control of the U.S. Department of Health and Human Services, and the Office of Hazardous Materials Transportation, U.S. Department of Transportation, the Postal Service proposed to continue to accept most such material under more restricted conditions. These restrictions related to the purpose of the mailings, quantity allowed, and packaging method.

Nineteen comments were received on the second proposal, as a result of which further refinements have been made to the rule, now adopted in final form. The refinements are primarily in the area of (1) incorporating the substance of the International Civil Aviation Organization's packing rules and some of the terminology, and (2) modifying the packaging requirements for clinical specimens and biological products that amount to 50 ml or less. Further details and explanations of the comments and their resolution are contained in the Supplementary Information below.

EFFECTIVE DATE: December 17, 1989.

FOR FURTHER INFORMATION CONTACT: F.E. Gardner, (202) 268–5178.

SUPPLEMENTARY INFORMATION: On March 23, 1989, the Postal Service published in the **Federal Register** for comment (54 FR 11970) its second proposal, as explained in the Summary. Interested persons were invited to submit comments concerning the proposal by May 22, 1989.

As noted, the Postal Service received 19 letters of comment. Three commenters approved the proposal as written. Nine others also concurred, but said that clinical specimens and biological products should not be subjected to the same packaging requirement as applies to the more hazardous materials. After review of the methods of packaging and quantities normally mailed, the Postal Service has changed 124.383b of the rule so that fiberboard or equivalent containers will be required for clinical specimens and biological products only for amounts exceeding 50 ml.

A commenter representing a union local requested that the same limits apply to clinical specimens as apply to etiologic agent preparations. This would have the effect of limiting all clinical specimens and biological products to 50 ml and having all such material labeled as containing etiologic agents. The Postal Service considers that adding the quantity limitation for these materials is not justified in view of the lesser risk involved. Moreover, labeling all such material as hazardous when it is not thought to be so would conflict with the letter and intent of other Federal rules and carrier tariffs on hazardous materials marking.

A commenter who represents air carriers requested (1) that International Civil Aviation Organization (ICAO) terminology and rules be included because domestic transportation standards are considered to be insufficient and some carriers follow the ICAO standards domestically, (2) that the term "clinical specimen" not be used or the definition narrowed, since the term is not currently used in other Federal rules and the definition is too broad, and (3) that the language used for medical waste rules be clarified. The Postal Service has accepted the recommendation to incorporate ICAO rules, and to make the requirements for medical waste more specific. The substance of relevant ICAO rules and some of the terminology have been incorporated. The regulation concerning medical waste, 124.384, is amended to refer specifically to the kinds of medical waste (sharps and unsterilized containers and devices) that are likely to be mailed and to refer to a section of the Environmental Protection Agency's interim final rule on the tracking and management of medical waste, which became effective June 22, 1989 (54 FR 12326, March 24, 1989) for a description of the term "sharps". The recommendation that the Postal Service not use the term "clinical specimen" is not adopted, since the term was suggested by the U.S. Department of Health and Human Services (HHS), the Centers for Disease Control (CDC) and the U.S. Department of Transportation (DOT), Office of Hazardous Materials Transportation in consultation with the Postal Service as being consistent with their forthcoming regulatory terminology. We are, however, adopting the commenter's suggestion to narrow the breadth of the definition of clinical specimen by expressly excluding from it commercially produced animal materials.

A commenter representing an airline pilots association expressed concern that the proposal did not address acceptance and handling procedures, and that shipments of etiologic agents, which may in the future require shipping documentation, will not be able to be placed in mail bags for air transportation. Acceptance and handling procedures are not part of the proposed rule, but are covered under other postal rules and procedures. Hazardous materials, such as etiologic agent preparations, must be tendered to air carriers as "outsides", which means that they are not to be enclosed in mail bags.

Two commenters representing state hygienic laboratories objected to the proposed rules being more stringent than those of HHS, which are published in title 42, CFR, and those of DOT, published in title 49, CFR. A number of comments urged that the Government seek greater uniformity in its various technical standards and regulations, through greater consultation and consensus reflecting sound scientific advice. The rule has been developed in consultation with, among others, the Centers for Disease Control and DOT, taking into account their plans for forthcoming changes in their own rules and definitions. In addition, the Postal Service must take into account air carrier tariff rules, which are in some

cases more restrictive than existing Federal rules, since the air carriers can, and do, refuse to carry mail containing dangerous goods not prepared in accordance with their tariffs. Furthermore, the Postal Service has the responsibility to set its own acceptance rules for dangerous goods based on its experience, the requirements of commercial carriers, and the technical advice of experts, such as the Centers for Disease Control. We think the further revisions made in this final rule serve to standardize our regulations with other requirements as much as we practically can at this time.

A commenter objected to proposed 124.386b, which required mailers to identify the contents of clinical specimens and biological products by marking the outside shipping container, on the grounds that it is unnecessary and would invade the privacy of persons submitting clinical specimens to a laboratory where their name and return address would be plainly visible. This marking requirement is not a new regulation. Section 124.21 of the Domestic Mail Manual presently requires that "the identity or nature of contents of anything mailed under any of the provisions of 124 (with certain exceptions not relevant here) must be stated plainly on the outside of the parcel as a condition of mailing." This has been a postal regulation at least since 1971. See 39 CFR 124.8(a) (1971). In deference to the commenter's objection, however, we have modified this section to permit identifying the contents of these parcels "with the proper shipping name", giving as examples the simple identification of "Clinical Specimen" or "Unsterilized Medical Devices".

A commenter representing a packaging material manufacturer objected to the definitions for clinical specimens and biological products and said that the packaging standards are inadequate in that all bodily fluids and tissues should be regarded as potentially contaminated and treated as if they are infectious. Another commenter, representing the Centers for Disease Control of the Public Health Service, also recommended a more detailed definition for biological products (See 124.382(d)) and more definitive packaging requirements (See 124.383) in line with its forthcoming rules. We are adopting, with minor differences, the changes recommended by the Centers for Disease Control.

Another commenter recommended adoption of (1) a modified packaging performance test for clinical specimens and biological products, similar to that now required for etiologic agents and compliance marking, indicating that a package meets the performance test requirements; (2) a statement including all etiologic agents as opposed to those now listed in 42 CFR part 72; and (3) revised requirements for medical waste. We are extending the rule to include all etiologic agents, and, as previously noted, have revised the provisions on medical waste, based on provisions in EPA's interim final rule. As to performance tests, we have decided that when a performance test is specified for clinical specimens and biological products by the Department of Transportation it will be incorporated in postal rules.

We are also making the following minor, clarifying amendments:

124.381—an amendment to permit the mailing of etiologic agent preparations when they are intended for veterinary use. This is consistent with the definition of etiologic agents.

124.383a(1)—an amendment to define "outage" as space for liquid expansion.

After careful consideration of the comments received, the Postal Service adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Amend 124.38 of the Domestic Mail Manual to read as follows:

124 NONMAILABLE MATTER—ARTICLES AND SUBSTANCES; SPECIAL MAILING RULES

* * * * *

124.3 Hazardous Matter

* * * * *

.38 Etiologic Agent Preparations, Clinical Specimens, and Biological Products

.381 General. Etiologic agent preparations, clinical specimens, and biological products are nonmailable, except when they are intended for medical or veterinary use, research, or laboratory certification related to public health, and when it is determined that such items are properly prepared for mailing to withstand shocks, pressure changes, and other conditions incident to ordinary handling in transit.

.382 Definitions.

a. Etiologic agent means a microbiological agent or its toxin that causes, or may cause, human or animal disease.

b. Etiologic agent preparation means a culture or suspension of an etiologic agent and includes purified or partially purified spores or toxins that are themselves etiologic agents.

c. Clinical specimen means any human or animal material including, but not limited to, excreta, secreta, blood and its components, tissue, and tissue fluids, but excluding animal materials, such as leather goods and poultry eggs, that are produced commercially.

d. Biological product means a biological product known or presumed to contain an etiologic agent that is subject to preparation and manufacture in accordance with the provisions of 9 CFR part 102 (Licensed Veterinary Biological Products), 9 CFR part 103 (Biological Products for Experimental Treatment of Animals), 9 CFR part 104 (Imported Biological Products), 21 CFR parts 312 (Investigational New Drug Application), or 21 CFR parts 600–680 (Biologics) and that, in accordance with such provisions, may be shipped in interstate commerce.

124.383 Packaging. a. Etiologic Agent Preparations.

(1) All etiologic agent preparations must conform to 42 CFR 72.3(a), meet the packaging requirements of 49 CFR 173.387(b), and must not exceed 50 milliliters (ml) (1.666 fluid ounces) per outside package. Sufficient outage (space for liquid expansion) must be provided so that the primary container will not be liquid full at 130 F (55 C).

(2) The material must be packaged in a securely sealed and watertight primary container (test tube, vial, etc.) enclosed in a second sealed and watertight durable container (secondary container). Several primary containers may be enclosed in a single secondary container if there is adequate shock-absorbent material between them to prevent breakage during ordinary handling while in transit and if the total liquid volume of all the enclosed primary containers does not exceed 50 ml.

(3) The space at the top, bottom, and sides between the primary and secondary containers must contain sufficient absorbent material to absorb the entire contents of the primary container(s) in case of breakage or leakage.

(4) Each set of the primary and secondary containers must be enclosed in an outer shipping container constructed of fiberboard or other material that complies with the standards specified in 49 CFR 173.387(b).

(5) Each package containing an etiologic agent preparation must be designed and constructed so that, if it were subjected to the environmental and test conditions prescribed in 49 CFR 173.387(b), there would be no release of the contents to the environment, and no significant reduction in the effectiveness of the packaging.

(6) To expedite delivery and reduce handling, a mail parcel containing material required by 42 CFR 72.3(d) to bear an Etiologic Agents/Biohazard Material label must be sent by First-Class Mail, Priority Mail, or Express Mail.

b. Clinical Specimens and Biological Products.

(1) A biological product such as polio vaccine, or a clinical specimen that is not reasonably believed to contain an etiologic agent, such as a urine and blood specimen used in drug testing programs or for insurance purposes, must be packaged in a securely sealed primary container(s) with sufficient absorbent material to take up the contents in case of leakage, and in an outer shipping container with secondary leakproof material so that, if there should be leakage of the primary container during shipment, the contents will not escape from the outer shipping container. Shock resistant material shall be used to withstand conditions incident to ordinary handling in transit, including but not limited to shock and pressure changes. Clinical specimens and biological products exceeding 50 ml per parcel must also meet the packaging requirements of 124.383a(4).

(2) Single primary containers must not contain more than 1,000 ml (1 quart) of material. Two or more primary containers whose combined volumes do not exceed 1,000 ml may be placed in a single secondary container.

(3) The maximum amount of clinical specimens which may be enclosed in a single outer shipping container is 4,000 ml (4 quarts).

124.384 Sharps and Unsterilized Containers. a. Sharps, such as syringes, needles and surgical blades, as further described in item (4) in the table following 40 CFR 259.30(a) (54 FR 12328, 12374, March 24, 1989), must be packaged in rigid, lead-resistant and puncture resistant containers with sufficient absorbent material to take up any residual fluids. If the primary container(s) cannot be sealed to prevent leakage, it must be placed in a plastic bag or other leak-resistant container that can be sealed to prevent leakage. These containers must be placed in an outer fiberboard shipping container.

b. Unsterilized containers or devices used in laboratory or surgical procedures containing or reasonably expected to contain an etiologic agent must be packaged in accordance with 124. 383a. Containers or devices not containing or not reasonably expected to contain an etiologic agent must be packaged in accordance with 124.383b.

124.385 Improperly Prepared and Damaged Mailings. Refuse nonmailable materials in accordance with 124.126. Report improperly prepared packages or damaged mailings in accordance with 124.127 and 124.128.

124.386 Marking & Labeling. a. When applicable, the outer containers must have required labels affixed, e.g., the Etiologic Agents/Biohazard Material label and Clinical Specimen/Biological Products-Biohazard label, required by 42 CFR 72.3(d) or, if the material is to be transported by air, the infectious substances label specified in 135.4 of the International Mail Manual, the proper shipping name and UN number as well as a shipper's declaration for dangerous goods. The UN number for etiologic agents affecting humans is 2814. The UN number for etiologic agents affecting animals only is 2900.

b. The outside container of clinical specimens, biological products and unsterilized containers or devices must be marked to identify the contents with the proper shipping name, e.g., Clinical Specimens, Unsterilized Medical Devices, etc.

c. Each exterior package containing sharps must be marked with the words "Infectious Waste," Medical Waste," or a label displaying the universal biohazard symbol.

d. Generally, all outside containers containing more than 5 pounds of dry ice (carbon dioxide solid) that are eligible for air transportation must have a shipper's declaration for dangerous goods attached in triplicate. See 124.24 and 124.392. (Upon fulfillment of the conditions in 124.386d(1)–(3) below, the marking "ORM–A UN 1845 Carbon Dioxide Solid" or "Dry Ice" is not required. See 49 CFR 173.615 and 175.10(a)(13)). A shipper's declaration for dry ice is also not required if:

(1) The weight of the dry ice in the package does not exceed 5 pounds and the net weight of the dry ice is marked on the package;

(2) The dry ice is a refrigerant for a material being used for diagnostic or treatment purposes, e.g., Frozen Medical Specimens, and the material is so marked on the package; and

(3) The package is marked "Carbon Dioxide Solid' or "Dry Ice".

Note: Packages containing dry ice must be designed and constructed to permit the release of carbon dioxide gas to prevent a build-up of pressure that could rupture the packaging.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the Federal Register as provided by 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89-19059 Filed 8-14-89; 8:45 am]

BILLING CODE 7710-12-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM89-1]

Amendment to Subpart C of the Rules of Practice and Procedure

Issued: August 9, 1989.

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: This final rule amends § 3001.54(j) of the Commission's rules of practice to require the Postal Service to provide in rate cases third-class volume data by ounce increment and shape. This action is being taken to ensure these data are available in rate cases.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: David P. Stover, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268 (telephone: 202/789–6820).

SUPPLEMENTARY INFORMATION: On May 3, 1989, the Postal Rate Commission invited comments on its proposal to add subsection (7) to Rule 54(j) of our rules of practice (39 CFR 3001.54(j)) to require the Postal Service to provide in rate cases bulk third-class volume data by ounce increment and shape. The Commission is adopting the amendment to its rules of practice with one modification suggested by Direct Marketing Association.

The purpose of amending Rule 54(j) to require provision in rate cases of bulk third-class volume data by ounce increment and shape is twofold. Improved analyses of third-class cost behavior require the production of third-class costs and volume data by ounce increment and shape. At this time, data relating to volume of permit imprint mail by ounce increment and shape are

BEST COPY AVAILABLE

available from mailing statement data filed on Form 3602. The same volume data relating to third-class metered and stamped mail can be obtained from Form 3602–PC. In contrast to the availability of volume data, comments filed by the Service on May 17, 1989, in Docket No. RM89–1 indicate that the Service's technical staff is presently examining the feasibility, within the Service's budgetary constraints, of collecting third-class cost data by shape, and possibly by other cost driving factors.

Second, volume data by ounce increment and presort level are necessary to estimate test year bulk third-class revenues. The calculation of third-class revenue is dependent upon the distribution of third-class mail by weight and level of presortation. Provision of current data indicating the distribution of third-class mail volume by ounce increment and presortation level will improve the Commission's ability to develop third-class rates which will generate sufficient revenue to cover third-class costs.

In response to the Notice of Proposed Rulemaking, comments were filed by the American Newspaper Publishers Association, the Postal Rate Commission's Office of the Consumer Advocate, Direct Marketing Association, and Warshawsky and Company in support of the proposed addition of subsection 54(j)(7). Warshawsky suggests that subsection 54(j)(7) not be subject to subsection 54(a)(1). Subsection 54(a)(1) excuses the Postal Service from complying with the requirements of Rule 54 upon a showing of undue burden. Subsection 54(a)(2) requires the Service to explain why the required material cannot be provided without undue burden. If necessary upon review of the explanation, the Commission can act to compel production of the material. We think that this is a reasonable approach to handle problems of undue burden and we will continue to follow this approach for subsection 54(j)(7).

The OCA proposes that in addition to requiring the production of volume and shape data, the Service be required to provide third-class container volume data by class, presort level, shape, weight and container type. In addition, the OCA suggests that subsection 54(j)(7) be expanded to require information on type of entry facility. These data are also available from Forms 3602 and 3602–PC. At this time, we are not convinced that this quantity of information will be needed for all omnibus rate cases. Until such time, we believe the discovery process represents the appropriate procedure for obtaining this information rather than incorporating into our rules of practice a requirement that this information be provided.

Direct Marketing Association suggests that the language originally proposed be modified to make it clear that the data provided pursuant to this rule is suitable for cross tabulation. To avoid ambiguity, we have incorporated the suggestion of Direct Marketing Association into the final rule.

The Postal Service filed comments opposing the proposed amendment. With regard to the portion of the rule requiring volume data by ounce increment, the Service states that these data "will be generated in conjunction with a data collection effort to be conducted as part of our examination of the effect of shape on costs." With regard to the portion of the rule requiring volume data by shape, the Service is presently examining the cost differences between letters and flats and the effect of shape on costs. This examination will produce volume data by shape. The Service states that a procedural rule compelling production of volume data by weight and shape is unnecessary and the Commission should wait and evaluate the results of this inquiry before deciding whether to require production of third-class weight and shape volume data.

The Commission believes that no purpose will be served by further delay. As indicated above, volume data by weight is necessary in connection with the existing rate structure which uses weight as the rate basis. The third-class rate structure—whether it be a weight-based rate structure, a shape-based rate structure or some sort of hybrid structure—has been an issue before the Commission in all the recent omnibus rate cases; and based on experience, we feel certain it will continue to be an issue. The production of volume data by shape will enhance the evaluation of this rate structure. Inasmuch as the Service acknowledges that it will in any event produce the information covered by this amendment, there is no reason for not incorporating this data requirement into our rules of practice, thereby having the Service provide this information with its initial filing.

Finally, in its comments the Postal Service suggests that it not be required to provide a separate breakout of volumes of irregular parcels and parcels because of their relative insignificance in terms of volumes and costs. Since the data forms contain this information, we do not perceive any significant burden for the Service to provide this information. Because of the strong likelihood that these shapes have different cost characteristics which may surface during the course of an omnibus rate case, we believe it worthwhile for the Service to provide this information in its initial filing. Thus, we are not modifying our proposed rule in this connection.

After consideration of the comments received, the Postal Rate Commission adopts the following changes to the Commission's rules of practice.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

Part 3001—RULES OF PRACTICE AND PROCEDURE

Subpart C—Applicable to Requests for Changes in Rates or Fees

1. The authority citation for 39 CFR part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662, 84 Stat. 759–762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

2. Section 3001.54 is amended by adding paragraph (j)(7) to read as follows:

§ 3001.54 [Amended]

* * * * *

(j) * * *

(7) For third-class bulk mail, subject to paragraph (a)(2) of this section, every formal request shall set forth separately for regular and preferred, by presort level, the base year volume by ounce increment for each shape (lettersize, flat, irregular parcels, parcels).

* * * * *

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 89–19041 Filed 8–14–89; 8:45 am]

BILLING CODE 7710–FW–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3627–5]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On February 3, 1988, the Iowa Department of Natural Resources (IDNR) submitted a revised ordinance pertaining to permits and permit fees adopted by the Linn County, Iowa, Board of Health for inclusion in the Iowa state implementation plan (SIP). This ordinance is applicable only in Linn County, Iowa. Approval of the county permit rules will enable EPA to enforce those permit rules.

EFFECTIVE DATE: The effective date of this rulemaking is October 16, 1989, unless someone notifies EPA that they wish to make adverse or critical comments by September 14, 1989. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101; the Iowa Department of Natural Resources, 900 East Grand, Des Moines, Iowa 50319; and the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor at (913) 236–2893; FTS 757–2893.

SUPPLEMENTARY INFORMATION: On February 3, 1988, the IDNR submitted revised ordinance 31–10–1986 adopted by the Linn County, Iowa, Board of Health on September 2, 1987, pertaining to permits for construction of new or modified sources of air pollutants. The procedures followed by the Linn County Board of Health in adopting the revised ordinance satisfied the notification and hearing requirements of 40 CFR 51.102.

Air pollution control activities in Linn County, Iowa, are the responsibility of the Linn County Health Department. The Health Department operates the air pollution control program under a letter of agreement with the IDNR. The state retains concurrent authority. This includes prevention of significant deterioration (PSD) permits; permits pertaining to new source performance standards (NSPS); and national emission standards for hazardous air pollutants insofar as such authority has been delegated to the state.

The Iowa Department of Natural Resources is processing new source permit applications for Linn County until EPA approves the county's permit rules. For that reason, Linn County cannot collect new source permit fees. The state does not have a permit fee system. Approval of the county permit rules will enable it to comply with the requirements of section 110(a)(2)(K) of the Clean Air Act, as amended.

Review of Ordinance Provisions

Section 10.1 contains definitions applicable to the air pollution control ordinance. The following discussion pertains to the major items defined. Air pollution means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is or may reasonably tend to be injurious to human, plant, or animal life, or to property, or which unreasonably interferes with the enjoyment of life and property. This is approvable.

The ordinance defines air pollution alert, air pollution emergency, air pollution episode, air pollution forecast, and air pollution warning. These terms are used in conjunction with air pollution episode planning which is required as part of the state plans under the 1970 Clean Air Act. The terms relate to pollutant concentrations and meteorological conditions conducive to air stagnation which would contribute to increasing pollutant concentrations and increasing health risks to the general public. The definitions used are approvable.

The county's definition of emission limitation and emission standard is compatible with EPA's definition at 40 CFR 51.100(z) and is approvable. Fugitive dust means any airborne solid particulate matter from any source other than a flue or stack. This is acceptable. Major stationary source means any stationary source which emits or has a potential to emit 100 tons per year (TPY) of any regulated pollutant, or any physical change that would by itself constitute a major source. A major source of volatile organic compounds (VOC) is defined as a major source of ozone. This is approvable. A major modification is any physical change in the method of operation of a major stationary source that would result in a significant net emissions increase of any regulated contaminant. This definition is consistent with the EPA regulations. Particulate matter means any material except uncombined water that exists in a finely divided form as a solid or liquid at standard conditions. This definition is acceptable as a definition of total suspended particulate (TSP) matter; however, this definition should be revised to be consistent with EPA's PM_{10} definition at 40 CFR 51.100(oo). The ordinance definition of significant is consistent with EPA's regulations except that it does not contain an emission rate for PM_{10}. This definition should be revised to be completely consistent with EPA's definition. The stationary source definition is consistent with EPA requirements and is approvable.

Section 10.2 of the ordinance establishes the Air Pollution Agency as a division of the Linn County Health Department. This is approvable.

Section 10.3 contains permit requirements for new and modified sources and annual operating permits. Section 10.3(2) identifies the basic information required for a permit to install (or construct). A 30–day notice of intent to issue a new source permit is required under the ordinance and provides for an opportunity for public hearing. This is approvable.

Annual operating permit requirements are contained in section 10.3(3). This section provides for annual inspections to assure that a source continues to operate within the applicable emission rate. EPA is approving the county's operating permit program with the provision that any permit which changes any requirement of the Iowa SIP, including requirements in any construction permit, must be submitted to EPA, and approved, as a SIP revision. Section 10.3(4) requires action on a permit application within a reasonable time. Permit denials are provided for in section 10.3(5). Written notice is required on denials. Steps needed for application reconsiderations are also outlined. This is approvable. Section 10.3(6) requires posting permits in a prominent location near the permitted equipment or device. Section 10.3(7) prohibits the transfer of permits.

Section 10.3(8) requires the air pollution control officer to certify upon request of a permittee that the required control equipment was purchased and/or installed as required.

Section 10.3(9) requires that a permit holder maintain testing facilities that were required by the permit to install or operate.

Section 10.3(10) allows exemptions from the installation and operating permits. These are generally gas-fired units less than 50 million Btu heat input; coal-, oil-, or wood-fired units less than one million Btu heat input; and mobile sources. This is approvable.

Section 10.3(11) adopts provisions for emission offsets for nonattainment areas contained in the state rule 567–22.5(455B) by reference. The state's rule was approved by EPA as part of the Iowa Part D SIP on September 12, 1985 (50 FR 37177). This is approvable.

Section 10.3(12) adopts the Iowa stack height regulations in State Rule 567–23.1(4)(455B) by reference. This is approvable. EPA approved this state regulation on October 24, 1988 (53 FR 41600).

Section 10.4 provides for permit fees. Fees are required for new source

construction or modification, as well as annual permit renewals. The permit fee provisions are consistent with the requirements of section 110(a)(2)(K) of the Clean Air Act, as amended.

As noted previously, certain definitions should be revised to be consistent with the PM_{10} requirements. The state committed to the revision of the Linn County ordinance definitions of particulate matter and significant for consistency with the definitions promulgated by EPA on July 1, 1987 (52 FR 24712). Under terms of the authority granted by the state, the county air program operates as an agent of the state and enforces state regulations. The state revised its SIP in a manner consistent with EPA's PM_{10} promulgation of July 1, 1987. EPA is approving the state's PM_{10} SIP revision elsewhere in the Federal Register. Until the local agency adopts the required PM_{10} revisions and those revisions are approved by EPA, the state will remain responsible for approving permits relating to PM_{10} emission sources in Linn County.

ACTION: EPA approves the permit regulations contained in Chapter 10 of the Linn County Ordinance, Air Pollution Control. This includes the purpose, definitions, and permit requirements. EPA is approving the county's operating permit program with the provision that any permit which changes any requirement of the Iowa SIP, including requirements in any construction permit, must be submitted to EPA, and approved, as a SIP revision.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective October 16, 1989, unless, within 30 days of its publication, notice is received that someone wishes to make adverse or critical comments. If such notice is received, this action will be withdrawn and two subsequent notices will be published prior to the effective date. One notice will withdraw final action and another will begin a new rulemaking by announcing a proposal of action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective October 16, 1989.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Clean Air Act, as amended, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of the date of publication. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, and Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Iowa was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 25, 1989.

William Rice,

Acting Regional Administrator.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

Subpart Q—Iowa

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.820 is amended by adding paragraph (c)(50) to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

(50) Revised Linn County, Iowa, Chapter 10 Ordinance "Air Pollution Control" submitted as a SIP revision by the Iowa Department of Natural Resources on February 3, 1988. EPA approves these regulations with the provision that any operating permit which changes any requirement of the Iowa SIP, including requirements in any construction permit, must be submitted to EPA, and approved, as a SIP revision. In the absence of such approval, the enforceable requirements shall be those in the Iowa SIP.

(i) Incorporation by reference

(A) Linn County Chapter 10 Ordinance "Air Pollution Control" adopted by the Linn County Board of Supervisors on September 2, 1987.

(ii) Additional material

(A) None.

[FR Doc. 89-18996 Filed 8-14-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3627-6]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On February 3, 1988, the Iowa Department of Natural Resources (IDNR) submitted permit regulations adopted by the Polk County, Iowa, Board of Supervisors to be approved as part of the Iowa State Implementation Plan (SIP). Today's action approves the Polk County, Iowa, permit rules as part of the Iowa SIP. Approval of these rules would make the county rules enforceable by the EPA and will cure a plan deficiency.

EFFECTIVE DATE: This rulemaking will become effective October 16, 1989 unless someone notifies EPA that they wish to make adverse or critical comments by September 14, 1989. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Documents relevant to this action are available at the Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, during normal business hours. Copies are also available at the Iowa Department of Natural Resources, 900 East Grand, Des Moines, Iowa 50319; the Polk County Physical Planning Department, 5895 N.E. 14th Street, Des Moines, Iowa 50313–1296; and the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor at (913) 236–2893; FTS 757–2893.

SUPPLEMENTARY INFORMATION: On February 3, 1988, the IDNR submitted revised permit regulations adopted by the Polk County Board of Supervisors to EPA for inclusion in the Iowa SIP.

Included with the regulations was evidence that the hearing requirements of 40 CFR 51.102 had been met by the county. Additionally, the IDNR provided an opportunity for public comment and hearing concerning the state's intent to submit the Polk County rules as part of the Iowa SIP.

Air pollution control activities in Polk County, Iowa, are a function within the Polk County Physical Planning Department. The county air program operates under a letter of agreement with the IDNR. This letter of agreement is renewed annually.

The letter of agreement authorizes the local agency to enforce its rules within the city of Des Moines and Polk County. The local agency is required to maintain rules consistent with the state rules. The Polk County agency acts as an agent of the state and is responsible for reviewing new source permit applications following IDNR construction permit guidance. Additionally, the Polk County agency is responsible for inspections of major facilities, tracking emissions data, air quality monitoring, and compliance at major and minor facilities within its area of jurisdiction.

The revised Polk County permit rules submitted by the IDNR on February 3, 1988, are the most recent revisions adopted by the Polk County Board of Supervisors. The revisions were adopted to make the county's permit rules approvable by EPA. When approved as part of the applicable Iowa SIP, these rules would become enforceable by EPA. The revised ordinance was adopted after the third reading of the ordinance on September 29, 1987. Two previous readings were made on September 15, 1987, and September 22, 1987. The revised ordinance became effective after the third reading.

Article I of the ordinance contains the definitions applicable to the county rules. The definitions listed in section 5–2 include a glossary of abbreviations, i.e., ASME, ASTM, and Btu, as well as definitions of terms. The more significant definitions are discussed below. Air Pollution is defined as the presence in the atmosphere of air contaminants which are or tend to be injurious to public health, safety, or welfare. This is approvable. The county's definition of construction is a combination of EPA's definitions of "construction" and "modification" found at 40 CFR 52.01 (c) and (d). This is approvable. The county's definitions of emission limitation and emission standard are identical to EPA's definition at 40 CFR 51.100(z) and are approvable.

Major stationary source is defined as one which emits or has the potential to emit 100 tons per year of any regulated contaminant, or any physical change that would constitute a major stationary source. A major stationary source of volatile organic compounds (VOC) is considered a major source for ozone. This is approvable.

The county's definition of particulate matter is acceptable for total suspended particulate matter, but should be revised to be consistent with the definition promulgated on July 1, 1987. EPA's definition of particulate matter is found at 40 CFR 51.100(oo) and means airborne finely divided solid or liquid material with a mean aerodynamic diameter smaller than 10 micrometers.

The county's definition of start-up is consistent with the EPA regulations. The county's definition of volatile organic compound is consistent with EPA's model definition for VOC.

Article II describes the duties, authority, and responsibility of the health officer.

Article X contains permit requirements for new and modified sources. Section 5–28 in Article X prohibits construction or modification of an air pollutant source without the proper permit. Section 5–29 identifies the basic information needed in a permit application and makes an allowance for the health officer to request additional information that may be necessary to carry out the duties of that office. Section 5–30 provides for notification of applicants whether or not an application is approvable. Notification must be no later than 60 days after application is made. The health officer is also required to publish a notice of intent to issue a permit to construct to a major source in a newspaper 30 days prior to issuing the permit. This is approvable.

Section 5–31 provides for issuance of permits after the agency determines that the source can be reasonably expected to comply with the appropriate emission limits. The ordinance prohibits emission limits based upon stack heights which exceed good engineering practice or any other dispersion technique. The Polk County agency adopted the Iowa stack height regulations by reference. EPA approved the state's stack height rules on October 24, 1988 (53 FR 41600). Section 5–32 provides for denial of permit applications.

Section 5–33 provides for exemption of certain sources from the permit requirements except where permits are required under the state's prevention of significant deterioration regulations. Exempted sources include indirect heating fuel-burning equipment of less than 50 million Btu per hour heat input which burn natural gas or liquefied petroleum gas exclusively. Fuel-burning equipment using No. 1 or No. 2 fuel oil exclusively and less than one million Btu per hour heat input are exempted. This is approvable.

Section 5–34 prohibits any county political subdivision from issuing any permit for erection, construction, reconstruction, alteration, or occupancy or any building or structure until the health officer has approved any fuel-burning or refuse-burning device to be included in such building or structure. Section 5–34.1 contains a schedule of fees for filing permit applications and a review fee. An appropriate fee is charged if the county is required to perform a modeling analysis for the applicant. This is consistent with section 110(a)(2)(K) of the Clean Air Act, as amended.

Section 5–35 provides for annually renewable permits, permit fees, and inspections. The permit fee schedule is consistent with the requirements of section 110(a)(2)(K) of the Clean Air Act, as amended. EPA is approving the county's operating permit program with the provision that any permit which changes any requirement of the Iowa SIP, including requirements in any construction permit, must be submitted to EPA, and approved, as a SIP revision.

Section 5–39 exempts certain sources from permit requirements. These are typically small fuel combustion sources such as gas-fired units less than 50 million Btu, No. 1 or No. 2 fuel oil-burning units less than 1 million Btu, and single- or two-family dwellings.

Section 5–40 establishes a maximum time period for returning annual permit renewal applications. Section 5–41 provides for permit denial. Section 5–42 states that permits are not a license to pollute. Annual inspections are required by Section 5–43. Section 5–44 provides for permit suspensions when a source is found violating the permit terms and conditions. Reinstatement of permits is provided for in Section 5–45. The health officer is authorized by Section 5–47 to request additional information of a source, not specifically included in an application, which is needed to perform the duties of that office. Section 5–48 prohibits installation of devices which are intended to circumvent an emission limit rather than reduce actual emissions.

Polk County adopted by reference state rule 567–22.5(455B), Special requirements for nonattainment areas, in Section 5–50.1. That regulation was adopted by the state of Iowa to satisfy the requirements of part D of the Clean

Air Act, as amended. The state's rule was approved by EPA on September 12, 1985 (50 FR 37177). The county's adoption is approvable.

The Polk County permit rules are not yet revised to include the particulate matter definitions promulgated by EPA on July 1, 1987 (52 FR 24634) pertaining to PM_{10}. The state of Iowa and Polk County provided written assurances that the local permit rules will be revised in a manner consistent with EPA's promulgation. Under terms of the authority granted by the state, the county air program operates as an agent of the state and enforces state regulations. The state revised its SIP in a manner consistent with EPA's PM_{10} promulgation of July 1, 1987. EPA is approving the state's PM_{10} SIP revision elsewhere in the **Federal Register**. Until the local agency adopts the required PM_{10} revisions and those revisions are approved by EPA, the state will remain responsible for approving permits relating to PM_{10} emissions sources in Polk County.

ACTION: EPA approves the Polk County, Iowa, permit regulation submitted by the IDNR as part of the Iowa SIP. This includes the purpose, definitions, authority, and permit requirements. EPA is approving the county's operating permit program with the provision that any permit which changes any requirement of the Iowa SIP, including requirements in any construction permit, must be submitted to EPA, and approved, as a SIP revision.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. The public should be advised that this action will be effective October 16, 1989. However, if EPA receives notice within 30 days that someone wishes to make adverse or critical comments, this action will be withdrawn and two subsequent notices will be published prior to the effective date. One notice will withdraw final action and another will begin a new rulemaking by announcing a proposal of action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective October 16, 1989.

Nothing in this action should be construed as permitting, or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from date of publication. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, and Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Iowa was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: June 20, 1989.

William Rice,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

Subpart Q—Iowa

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.820 is amended by adding paragraph (c)(49) to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

(49) Revised Polk County, Iowa, Board of Health Rules and Regulations, Chapter V, Air Pollution, submitted by the Iowa Department of Natural Resources on February 3, 1988. EPA approves these regulations with the provision that any operating permit which changes any requirement of the Iowa SIP, including requirements in any construction permit, must be submitted to EPA, and approved, as a SIP revision. In the absence of such approval, the enforceable requirements shall be those in the Iowa SIP.

(i) Incorporation by reference

(A) Ordinance No. 28, Amendment to Polk County Board of Health Rules and Regulations, Chapter V, Air Pollution, adopted by the Polk County Board of Supervisors on September 15, 1987.

(ii) Additional material

(A) None.

[FR Doc. 89–18997 Filed 8–14–89; 8:45am]

BILLING CODE 6560–50–M

40 CFR Part 52

[FRL–3628–1]

Approval and Promulgation of Implementation Plans; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting errors in the **Federal Register** final rule on May 16, 1989 (54 FR 21062) approving the Nebraska PM_{10} State Implementation Plan (SIP) revision.

EFFECTIVE DATE: August 15, 1989.

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor at (913) 236–2893 (FTS 757–2893).

SUPPLEMENTARY INFORMATION: EPA is correcting errors which appeared in § 52.1431, Attainment dates for national standards, that was published in the **Federal Register** on May 16, 1989 (54 FR 21062). Section 52.1431 was published as § 52.143. Section 52.1431 is a table showing attainment dates for pollutants controlled by the Nebraska SIP. Footnote *a* was neither italicized as indicated in Note: 1, nor was *a* italicized in the secondary particulate matter column and the secondary sulfur oxides column. Footnote f was printed as "(three years from date of rulemaking)" instead of July 17, 1992. The table that follows contains the corrections.

Dated: August 1, 1989.

Morris Kay,

Regional Administrator.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

Subpart CC—Nebraska

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1431 is amended by revising the table to read as follows:

§ 52.1431 Attainment dates for national standards.

* * * * *

Air quality control region	Pollutant: Particulate matter, Primary	Particulate matter, Secondary	Sulfur oxides, Primary	Sulfur oxides, Secondary	Nitrogen dioxide	Carbon monoxide	Photochemical oxidants (hydrocarbons)	Lead	PM_{10}
Metropolitan Omaha-Council Bluffs Interstate	d	d	b	*a*	c	c	c	e	f
Lincoln–Beatrice–Fairbury Interstate	b	*a*	c	c	c	c	c	c	c
Metropolitan Sioux City Interstate	c	c	c	c	c	c	c	c	c
Nebraska Intrastate	d	d	c	c	c	c	c	c	f

Note: 1: Dates or footnotes which are italicized are prescribed by the Administrator because the plan does not provide a specific date.
a. July 1975.
b. Air quality levels presently below primary standards.
c. Air quality levels presently below secondary standards.
d. December 31, 1987
e. February 1, 1988.
f. July 17, 1992.

Note: 2: Sources subject to plan requirements and attainment dates established under Section 110(a)(2)(A) of the Act prior to the 1977 Clean Air Act amendments remain obligated to comply with these requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR 52.1431.

Only portions of those AQCRs with attainment dates after July 1975 have new attainment dates under the 1977 Clean Air Act Amendments. The reader is referred to 40 CFR Part 81 for identification of the designated areas under section 107(d) of the Act.

[FR Doc. 89–18994 Filed 8–14–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[FRL–3628–3]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: In a November 2, 1987, **Federal Register** (53 FR 42019) notice of proposed rulemaking, USEPA proposed to disapprove a site-specific revision to the Ohio State Implementation Plan (SIP) for ozone. This revision is a relaxation from the existing emission limits and is in the form of an alternative emission control plan (bubble) for volatile organic compounds (VOC) involving the Morgan Adhesives Company's (Morgan Adhesives) 12 paper coating lines (K001–K012) and one vinyl casting line (K013). This facility is located in Summit County, Ohio, an area designated as nonattainment for ozone.

In today's final rulemaking, USEPA is disapproving this SIP revision because the State has not demonstrated that this SIP revision requires the application of reasonably available control technology (RACT), and the SIP revision does not comply with USEPA's Emissions Trading Policy.

EFFECTIVE DATE: This final rulemaking becomes effective on September 14, 1989.

ADDRESSES: Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Uylaine E. McMahan, (312) 886–6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, Columbus, Ohio 43216.

A copy of today's revision to the Ohio SIP is available for inspection at:

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: On March 18, 1983, the Ohio Environmental Protection Agency (OEPA) submitted a site-specific VOC revision to its ozone SIP for Morgan Adhesives's 12 paper coating lines (K001–K012) and one vinyl casting line, which are located at Morgan Adhesives's facility in Summit County, Ohio. The SIP revision consists of a bubble for all 13 lines, and is based on RACT[1] for Morgan Adhesives's paper coating lines. The proposal is not approvable because it does not satisfy the emissions trading policy and the allowable emissions are determined on a volume (as opposed to a solids) basis and as such are not consistent with RACT.

I. Emission Limits

A. Paper Coating Line

Under the existing federally approved SIP, each paper coating line (K001–K012) at Morgan Adhesives is subject to the control requirement, which is contained in OAC Rule 3745–21–09(F), of 2.9 pounds of VOC/gallon of coating. OAC Rule 3745–21–04–(C)(5) requires final compliance by April 1, 1982.

B. Vinyl Casting Line

Under the existing federally approved SIP, each vinyl casting line (K013) at Morgan Adhesives is currently subject to the control requirements contained in OAC Rule 3745–21–07(G), which limits the "photochemically reactive" solvent content in coatings. This rule, however, does not require RACT level VOC emission limitations for surface coating operations. Final compliance with the rule was required by April 15, 1974. The paper coating line (K012) is also permitted to operate as a vinyl casting line.

[1] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator for Air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

II. Alternative Emission Control Program (Bubble)

A. USEPA's Emission Trading Policy

The criteria for evaluating bubbles are contained in USEPA's December 4, 1986, emissions trading policy statement (ETPS, 51 FR 43814). The ETPS requires that all emission reductions be surplus, enforceable, permanent and quantifiable in order to be creditable.

In order to determine the quantity of surplus emissions, a baseline must be established. Baseline emissions for any source are the product of three factors: (1) Emission rate, (2) capacity utilization, and (3) hours of operation.

For a source located in a nonattainment area which lacks an approved attainment demonstration of primary NAAQS (e.g., Summit County), surplus reductions consist of an emission reduction from each source's baseline equivalent to the lowest of actual, SIP-allowable, or RACT-allowable emissions, plus an additional emissions reduction, generally of at least 20 percent. Use of past shutdowns, curtailments or other reductions which occurred before application for credit is essentially eliminated from the baseline calculations.

A source's baseline emissions for bubble purposes is determined from the lower of actual, SIP-allowable, or RACT-allowable values for each of three baseline factors. These three baseline factors are described in the following paragraph. Actual values for these factors are normally determined based upon the source's average historical values for the factors for the 2-year period preceding the source's application to trade emission reduction credits.

For bubbles, a source's "baseline" emissions are equal to the product of its: (1) Emission rate ("ER"), specified in terms of mass emissions per unit of production or throughput (e.g., pounds of sulfur dioxide (SO_2) per million British Thermal Units (BTU) or pounds of VOC per weight of solids applied); (2) average hourly capacity utilization ("CU") (e.g., millions of BTU per hour or weight of solids applied per hour); and (3) number of hours of operation ("H") during the relevant time period. In sum, baseline emissions = ER X CU X H. Net baseline emissions for a bubble are the sum of the baseline emissions of all sources involved in the trade.

Bubble Evaluation

The bubble VOC emission limitation is specified within the special terms and conditions of the variances for coating lines K001(B), K002(C), K003(D), K006(G), K007(H), K008(J), K009(K), and K012(R) and their permits to operate for coating lines K004(E), K010(M), K020(M), K011(N) and K013(V). This limitation is presented below.

The allowable daily emission limitation (A_d) for VOC from coating lines B through H, J, K, M, N, R and V shall be determined by the following equation

$$A_d = \sum_{i=1}^{n} V_i L_i$$

where

A_d = pounds of volatile organic compound [VOC] emissions allowed for the day;
V = volume of surface coating applied for the day, in gallons (excluding water);
L = 2.9 pounds of VOC per gallon of coating applied, excluding water, for paper coatings, 3.7 pounds of VOC per gallon of coating applied, excluding water, for urethane casting coatings; and 6.0 pounds of VOC per gallon of coating applied, excluding water, for vinyl castings coatings;
i = subscript denoting a specific surface coating employed; and
n = total number of surface coatings employed.

Table A[2], was provided by OEPA and is the only emission information submitted with this proposed SIP revision. Table A, which is based upon 1975 production levels, shows that 3404.6 tons VOC per year would be allowed from paper coaters under this bubble, as proposed (calculated in a volume basis). Table A also shows that only 1309 tons of VOC per year would be allowed (based upon 1977 production levels) if the calculations were performed on a solids basis as required by USEPA policy. Therefore, the allowable emissions proposed for the paper coaters under the bubble are 2.6 times the emissions that would be allowed if the calculations were performed on a solids basis. Approving this proposed revision using volume-based calculations would result in a relaxation of 2,096 tons per year from the current SIP allowable emissions for paper coaters. The requirement that equivalency calculations be on a solids basis is contained in USEPA's May 5, 1980, memorandum from Richard Rhoads, former Director of the Control Programs Development Division. In addition, the Technical Issues Document (of the final ETPS) states that VOC trading must require that surface coating emissions be calculated on a solids applied basis.

TABLE A[2]

	Hydrocarbon emissions (tons/per yr.)		
	1975 baseline	RACT on solid basis	Revision on Volume basis
Original SIP (includes paper coating lines and vinyl casting line)	7093	4207	

TABLE A[2]—Continued

	Hydrocarbon emissions (tons/per yr.)		
	1975 baseline	RACT on solid basis	Revision on Volume basis
Corrected SIP:			
(12) Paper coating lines	5648.5	1309.0 [1](1202.0)	3404.6 [1](3339.7)
(1) Vinyl casting line	756.9	[3]756.9	[3]756.9
13 Coating lines bubbles being proposed as facility-specific RACT revision to SIP	6405.4	2065.9	4161.5

[1] Adjusted value based on maintaining the existing VOC content for any coating material which has a VOC content already below the RACT presumptive norm of 2.9 pounds of VOC per gallon, excluding water.
[2] RACT for the vinyl casting line is based on maintaining the existing VOC content for the current coating materials which comply with the requirements of paragraph (G) of OAC rule 3745-21-07. (See the November 2, 1987, proposed FEDERAL REGISTER on RACT discussion).
Table A is provided for informational purposes only and USEPA is not using the information to determine the approvability of this bubble.
(*Note:* The above hydrocarbon emissions are based on 1975 production and do not include any growth projections.)

Moreover, this bubble is not approvable since this proposed revision is not based upon baseline levels which reflect the lower of actual or SIP allowable or RACT allowable emissions for each line, which is a requirement of the ETPS.

The State submittal indicates that certain emission reduction technologies may have been put in place prior to the application for the bubble. If so, credit cannot be given for such emission reduction. In addition, this bubble does not provide production information for the 2 years prior to submittal of this bubble. This information is required by the ETPS. In this case, production information for the 2-year period of 1978 and 1979 would be required to support the bubble.

In addition, this revision does not provide an additional 20 percent emission reduction credit. The ETPS requires that bubbles in areas that lack approved attainment demonstrations produce a net reduction in emissions, generally by generating at least an additional 20 percent emission reduction credit (over what would otherwise be required). Akron (Summit County) currently lacks an approved attainment demonstration.

III. USEPA's RACT Policy

USEPA's May 5, 1980, policy memorandum, "Procedures to Calculate Equivalency with the CTG Recommendations for Surface Coating" from Richard Rhoads, Director of the Control Programs Development, contains USEPA's policy on VOC equivalency calculations. This policy requires, *inter alia*, all VOC equivalency calculations be done on a solids applied basis.

RACT Evaluation

The daily weighted average, volume-based emission limit cannot be considered to be RACT, without additional technical support. Although OEPA believes that the emission limits represent a facility-specific RACT determination in the form of a bubble control strategy, documentation has not been provided which supports the proposed limits as RACT. On October 6, 1988, USEPA informed OEPA that USEPA was not aware of any information that would support the proposed limits as RACT.

V. Proposed SIP Revision

In November 2, 1987, **Federal Register** (52 FR 42019) notice, USEPA proposed to disapprove a revision to Ohio's ozone SIP, which would allow a relaxation from existing limits and a bubble for Morgan Adhesives, because this SIP revision does not represent the application of RACT, nor does it comply with USEPA's Emission Trading Policy.

VI. Comments and USEPA's Response

Comments on this notice of proposed rulemaking were received from the Natural Resources Defense Council, Morgan Adhesives, and OEPA. These comments and USEPA's response are provided below.

A. OEPA's Comments

(1) VOC Data Needed for Two-Year Period (1978 and 1979)

The data in Table A should be considered representative of 1977–78, instead of 1975. This is based upon a review of the original background information provided by Morgan Adhesives Company on September 20, 1978, that was used to calculate actual and RACT-allowable VOC emissions for both (a) the 1979 ozone SIP for Akron and (b) the VOC bubble for Morgan Adhesives Company. That data was obtained from a 1982 quarterly VOC emission report by Morgan Adhesives Company, and it is representative of the following actual VOC emissions in tons per year: 1108 tons per year value for paper coating is less than the solids-basis allowable in Table A. Since it may be impossible or impractical at this time to obtain additional VOC emissions data for the 1978-79 period, USEPA should consider the acceptance of alternative years or a single one-year period. The final Emissions Trading Policy Statement, which was issued on December 4, 1986, surely allows reasonable alternatives, especially for any situation which was not clearly stated in the proposed version of April 7, 1982.

USEPA Response. The December 4, 1986, final Emissions Trading Policy Statement (ETPS) states:

> In nonattainment areas needing but lacking approved demonstrations of attainment, sources involved in a bubble must use "lowest-of-actual-SIP-allowable-or-RACT-allowable" emissions baselines. The Emission Rate (ER) factor for such baselines is based on the actual emission rate, the SIP or other federally enforceable emission limit, or a RACT emission limit, whichever is lower, as of the time of the sources's application to bank or trade whichever is earlier. The "average hourly capacity utilization" (CU) and "number of hours of operation" (H) factors for such baselines are based on the lower of actual or allowable values for those factors. Actual values for CU and H must be determined using the source's average historical values for the 2 year period preceding the source's application to bank or trade unless another 2 year period is shown to be more representative of typical operations.

The data in Table A, which is stated to be for 1977–78 instead of 1975 (as it was originally labelled) provides annual VOC emission levels. Annual VOC emissions are not equivalent to CU or H which are required by the ETPS to correctly establish the baseline. Furthermore, data for 1977–78 can only be used if Morgan Adhesives applied to Ohio for this bubble at or around January 1, 1979, or 1977–78 can be shown to be more representative of typical operations then the 2 year period preceding Morgan Adhesives's bubble application (which appears to be around the end of 1979). Therefore, this comment is not relevant.

(2) RACT for Vinyl Casting

OEPA included vinyl casting as a major non-CTG RACT category for rulemaking. Since the vinyl casting line K013 is permanently shut down (dismantled), a RACT engineering study is not contemplated at this time. Using technology transfer from the paper coating RACT, an emissions reduction of 81 percent can be considered RACT for vinyl casting. Has USEPA approved a RACT limitation for vinyl casting elsewhere?

USEPA Response. Dismantling the vinyl casting line eliminates the deficiencies associated with this line. It should be noted that a construction permit would need to be issued before vinyl casting is performed at Morgan Adhesives. Region V is not aware of any USEPA approved RACT limitations for vinyl casting.

(3) Additional 20 percent Emission Reduction Credit

If USEPA would approve the post-1982 ozone SIP for Akron (originally submitted on July 7, 1985, with additional information provided on May 11, 1988, in response to USEPA comments of March 3, 1986), the additional 20 percent credit would not be needed. In the event such credit is still needed, the vinyl casting shutdown should be available as a credit. Also, the inclusion of the cleanup solvent in the bubble can be a credit. This VOC bubble was submitted under the 1979 ozone SIP and, as such, should be grandfathered without the need for an additional 20 percent reduction.

USEPA Response. OEPA is correct in stating that an additional 20 percent credit would not be needed if the post-1982 ozone SIP for Akron were approved. However, it has not been approved. A revised bubble would be required before any additional credits can be considered. The additional 20 percent reduction is required because, as stated in the notice of proposed rulemaking (footnote 2 of 52 FR 42020):

> It should be noted that this is not a "pending bubble" under the final ETPS because it is inadequate under the 1982 proposed bubble policy [e.g., due to the use of volume applied basis in the calculation of allowable emissions]. USEPA, Region V, notified OEPA that this proposed SIP revision is not approvable in letters dated May 23, 1983, September 1, 1983, and February 28, 1985.

(4) VOC Equivalence Calculations Based on Solids Employed

Use of solids employed in equivalence calculations can go beyond RACT. This was stated in an October 17, 1980, memorandum by Richard Rhoads, which clarified his memorandum of May 5, 1980. Coatings with a solids content below five percent by volume that were used for Table A had the following VOC emissions: 958.0 TPY actual and 26.7 TPY allowable, solids basis. A reduction of 97.2 percent would be needed from those coatings to meet a solids employed equivalence; however, such reduction would go beyond RACT. If such low solids coatings are included in a VOC bubble, they would provide an additional emission reduction credit.

USEPA Response. USEPA will consider any alternative RACT limits (on a case-by-case basis as stated in the October 13, 1980, memorandum) for special low solids coatings. However, no

such demonstration has been made by Ohio with respect to any of Morgan Adhesives's coatings.

(5) VOC Bubble on Solids Employed Basis

OEPA is reviewing a VOC bubble for Morgan Adhesives Company that has a solids employed basis. Because of concerns regarding low solids coatings and past usage of 100 percent solids coatings (hot melt), that type of VOC bubble can be difficult to implement in a reasonable manner.

USEPA Response. If submitted, USEPA will review a revised Morgan Adhesives's bubble.

B. Morgan Adhesives's Comments

Comment 1. Morgan Adhesives states that the history of its bubble application demonstrates that outright USEPA disapproval would be unreasoanble. It states that during the 4½ years that its bubble has been pending before USEPA, USEPA's policies have been in considerable flux. Morgan Adhesives further states that it has taken major steps to reduce VOCs.

Morgan Adhesives states that, on May 24, 1984, and May 16, 1985, it requested that Ohio modify its bubble to be consistent with USEPA policies (including the bubble policy). Morgan Adhesives adds that it complied immediately with both modifications.

Another point raised by Morgan Adhesives is that the November 3, 1987, notice addresses only the original bubble application, ignoring the 1984 and 1985 modifications which Ohio has not submitted to USEPA. Morgan Adhesives also raises the point that, although there is not an approved attainment demonstration for Summit and Portage Counties, Ohio has submitted a demonstration for these areas to USEPA.

USEPA Response. USEPA's proposed disapproval is based upon policies in effect at the time of proposal of rulemaking (November 2, 1987). USEPA is unable to take action on Morgan Adhesives's modified bubbles because they have not been formally submitted to USEPA by Ohio.

Morgan Adhesives's actual VOC emissions are not relevant to whether the SIP revision submitted by Ohio complies with USEPA policies.

The provisions of the bubble policy which apply are for areas which lack an approved attainment demonstration. The fact the Ohio has submitted an attainment demonstration is not sufficient. The attainment demonstration must be approved by USEPA before less stringent portions of the bubble policy are applicable to this bubble.

Comment 2. USEPA's evaluation of Morgan Adhesives's bubble under the 1986 policy is inconsistent with USEPA policy and violates due process of law. Morgan Adhesives argues that it is not appropriate to evaluate a bubble submitted on March 19, 1983, with a December 1986 policy.

Moreover, even in the 1986 policy, USEPA acknowledged that fairness requires grandfathering the pending applications. At 51 FR 43840, USEPA stated that pending bubbles would be processed under the 1982 policy with slight modifications regarding baseline. The November 2, 1987, proposal states that this is not a pending bubble because the agency had notified OEPA the bubble was not approvable under the 1982 policy (52 FR 42020 (November 2, 1987)). This is an invalid position for three reasons:

First, the basis for USEPA's objection in September 1983 was that bubbles could not be approved in nonattainment areas. This is no longer Agency policy, and was not stated in the 1982 policy. Second, USEPA objected that the bubble was not a solids basis bubble. As discussed below, this is not a proper basis for disapproval, and, in any case, Morgan Adhesives has submitted modifications to meet USEPA's objections. Finally, the approvability of a bubble under the 1982 policy has no rational relationship to the question of whether a bubble was "pending" or not. The fact is that USEPA had not acted on the bubble when the 1986 policy came out, and it was pending at that time.

Had USEPA treated the Morgan Adhesives' bubble as pending, it would not have required a 20 percent reduction from RACT, and Morgan Adhesives would have been given the opportunity to revise the baseline or make a showing that the baseline in acceptable as stated at 51 FR 43840. Thus, disapproving the bubble because it was not pending, did not require a 20 percent reduction from RACT, and used the wrong baseline, is an unjustified legal position.

USEPA Response. USEPA's final bubble policy dated December 4, 1986, must be used as a basis for reviewing any bubbles which are before it on or after that time. However, the bubble policy does provide special consideration for bubbles which were pending at the time the bubble policy was finalized.

Morgan Adhesives stated three reasons why it believed USEPA's position, that the Morgan Adhesives's revision is not a pending bubble, is invalid USEPA agrees with Morgan Adhesives' first point. That is, lack of an approved attainment demonstration is not a sufficient basis for disapproving a bubble. It, therefore, is not a sufficient reason for stating that a bubble is not considered pending. However, USEPA disagrees with Morgan Adhesives about the requirement for equivalency calculations to be on a solids basis. This point will be discussed more fully as part of Morgan Adhesives's Comment Number 3. Morgan Adhesives's third point is that the approvability of a bubble under the 1982 bubble policy has no rational relationship to the question of whether a bubble was "pending" or not. The final ETPS clearly states that "Bubble applications which were submitted to USEPA Regions by States, but which were withdrawn (or rejected) as inadequate under the 1982 policy, are not pending." As stated previously in the response to Ohio's Comment Number 3, this bubble is not approvable under the 1982 policy.

Comment 3. The fact that the original application did not calculate emissions on a solids basis is not a valid reason for disapproving Morgan Adhesives's bubble.

Because the solids basis principle enunciated in the November 2, 1987, notice is not a part of the duly promulgated law under the Clean Air Act, USEPA cannot disapprove a bubble for not implementing that principle. A RACT limit, as set forth in Ohio's OAC rule 3745–21–09(F) for paper coating operations, is expressed in terms of 2.9 lb. VOC per gallon of coating applied, excluding water. This RACT limit was federally approved, and was applied in Morgan Adhesives's original bubble. USEPA cannot lawfully take the position that this limitation is not RACT unless it is calculated according to a formula found only in internal USEPA memoranda (Richard Rhoads memo of May 5, 1980). Both due process of law and the Administrative Procedure Act, 5 U.S.C. 553, require that legally binding rules be promulgated by notice and comment procedures rather than through agency fiat.

In any case, even if USEPA applied the solids basis policy, it should not disapprove the Morgan Adhesive's bubble, but should give OEPA and Morgan Adhesives the opportunity to submit a revision. This is the only reasonable course in light of the fact that Morgan Adhesives submitted a solids basis bubble as a modification to this bubble almost 4 years ago on May 24, 1984, and has calculated compliance with the bubble (and has complied) ever since that time.

USEPA Response. USEPA disagrees with Morgan Adhesives's position, which is that USEPA lacks the authority for equivalency calculations to be on a solids basis. As stated in the November 2, 1987, notice of proposed rulemaking (NPR):

> The requirement that equivalency calculations be on a solids basis is contained in USEPA's May 5, 1980, memorandum from Richard Rhoads, former Director of the Control Programs Development Division. In addition, the Technical Issues Document [of the final ETPS] states that VOC trading must require that surface coating emissions be calculated on a solids applied basis.

It should be noted, however, that the requirement for performing calculations on a solids basis is not merely a policy decision but rather a requirement for the calculations to be technically correct. For example, if coatings with 5.8 lbs. VOC/gallon were being used, the formula in the Morgan Adhesives's bubble would specify a 50 percent reduction in daily VOC emissions if only the paper coating lines (with a SIP limit of 2.9 lbs. VOC/gallon) were in operation. However, in fact, if only a 50 percent reduction in VOC emissions was achieved, the coatings would have a VOC content of greater than 2.9 lbs. VOC/gallon. This nonlinear relationship, between the percent reduction in VOC emissions and percent reduction in the VOC content of the coatings (in lbs. VOC/gallon of coatings (excluding water)) occurs because the formula used in the Morgan Adhesives's bubble does not recognize the fact that as the VOC content of a coating goes down, the volume of coating used will also go down. The volume of coating goes down because there is less organic solvent used and water is not counted toward the volume of coating used. Morgan Adhesives states that a RACT emission limit for paper coating is set forth in Ohio's SIP as 2.9 lbs of VOC per gallon and that this RACT limit was applied in Morgan Adhesives's original bubble. However, the formula in Morgan Adhesives's bubble significantly modifies the requirement for 2.9 lbs of VOC per gallon coatings to be used. Therefore, this is not an adequate basis for dismissing the requirement that equivalency calculations be performed on a solids basis.

Ohio has had the opportunity to submit a revised bubble at any time.

Comment 4. The lack of a 20 percent reduction from RACT emissions is not a valid basis for disapproving Morgan Adhesives's bubble. Morgan Adhesives cites three reasons why USEPA cannot lawfully disapprove Morgan Adhesives's bubble on the grounds that it does not require a reduction 20 percent beyond the RACT allowable level.

First, as discussed above, the Morgan Adhesives's bubble should be evaluated as a pending bubble under the 1982 policy, which did not require such a 20 percent reduction.

Second, the 1986 Policy does not require 20 percent reductions beyond RACT in non-attainment areas with approved demonstrations of attainment. The only reason the area is regarded as requiring a 20 percent reduction is because of USEPA's delay in approving OEPA's SIP attainment demonstration for that area. The Clean Air Act specifically requires that USEPA act within 4 months on SIPs submitted by States.

Accordingly, for USEPA to impose burdensome requirements on Morgan Adhesives which would not apply had the Agency acted promptly on the pending OEPA proposals, would be unreasonable, arbitrary and capricious.

Third, Morgan Adhesives has sought to meet USEPA's desire to impose a 20 percent reduction beyond RACT by requesting a modification in May 1985. Morgan Adhesives continues to calculate compliance with its bubble as if this modification had been fully approved, and continues to meet this criterion. It would be unreasonble for USEPA to disapprove the bubble as if this history had not occurred. Like the delay in action on OEPA's SIP revision and redesignation request, it is government interaction, or the failure thereof, which has caused the 20 percent reduction not to be included formally in the bubble under review by USEPA.

USEPA Response. USEPA disagrees with Morgan Adhesives's position that it should be evaluated as a pending bubble under the 1982 policy. This issue is discussed in the response to Morgan Adhesives's comment number 2. USEPA has no choice but to require an additional 20 percent reduction because this requirement is specifically stated in the final ETPS for areas that lack an approved attainment demonstration, and Summit County lacks an approved attainment demonstration.

Although section 110(a)((2) of the Clean Air Act establishes a 4 month requirement for original State plans submitted pursuant to section 110(a)(1), subsequent revisions are governed by section 110(a)(3)(A), which imposes no statutory deadline. In light of the absence of a mandatory review deadline for such revisions, the Agency contends that its obligation under the Act is to act within a reasonable time, as determined by the Administrator. Because the 4 month time period raised by the commenter is not applicable, the issue of policy developed after that period is not relevant. In any case, USEPA clarification of current Agency policy generally is applicable to all SIP revision requests on which USEPA has yet to take final action.

Morgan Adhesives's statement that it sought to meet USEPA's desire to impose a 20 percent reduction beyond RACT by requesting a modification in May 1985, and that it complies with this modification, is not relevant. Under the 1986 ETPS, USEPA informed the public that bubbles currently under review would be required to meet the basic provision of that policy.

Comment 5. The baseline used in the Morgan Adhesives's bubble is not a valid reason for disapproval. USEPA cannot reasonably disapprove the Morgan Adhesives's bubble because of the baseline, for two reasons.

First, the Morgan Adhesives's bubble as originally submitted is consistent with the 1982 policy, which was in effect when the bubble was submitted to USEPA for approval. That policy required that net baseline emissions in nonattainment areas not be increased. That baseline was defined as the emissions assumed by the State in its emissions inventory.

Second, even if USEPA applies the 1986 policy, the grandfathering criteria of that policy give Morgan Adhesives the opportunity either to demonstrate that the baseline is acceptable or to modify the baseline as needed. *See* 51 FR 43840 and 43855. In this case, USEPA would regard the years 1978 and 1979 as the baseline period, the 2 years prior to Morgan Adhesives's original 1980 application. An adjustment to the baseline can easily be made by using the mechanism proposed by Morgan Adhesives in its 1985 modification request: Subtract from allowable emissions the VOCs attributable during 1979 to paper coating by hot-melt technology, which was a reducing measure in effect in 1979 that had resulted from installing hot-melt production. This meets the 1986 policy's requirement that the baseline include the lower of actual or allowable emissions.

To determine the emission limits, Morgan Adhesives takes all coatings used during a day on paper coating lines, and calculates the RACT allowable pounds (solids basis formula) under OAC rules for paper coating; then does the same for vinyl castings; adds those together; multiplies by 0.80; and subtracts 1279 lbs. This sets the limit with which Morgan Adhesives must comply on a daily average basis.

To make a tons per year comparison of current emissions under the bubble with the 1978–1979 period, we can compare the volume of coatings compounded in 1978 and 1979 to the

volume of coatings compounded in 1987, adjusted to dry gallons and using the allowable amounts under the bubble. Morgan Adhesives states that this comparison clearly projects reductions greater than 20 percent below the lower of RACT or actual for the baseline period on a tons-per-year basis.

USEPA Response. The Morgan Adhesives's bubble is not consistent with the 1982 policy for the previously stated reasons (the use of a volume applied basis in the calculation of allowable emissions). Furthermore, consistency with the 1982 policy is not relevant, because bubbles must now comply with the December 4, 1986, final ETPS.

A time period different from 1978 and 1979, may be used for certain baseline purposes (establishing CU and H) if another time period is deemed more representative of typical operations. As stated previously, USEPA will consider any revised proposals with modified baselines.

Morgan Adhesives is incorrect in stating that to determine 20 percent reduction all that is required is to multiply the RACT limit by 0.80. The 20 percent reduction is from the lowest-of-actual-SIP-allowable or RACT-allowable emissions baselines. The baseline emissions are equal to the product of its emissions rate, average hourly capacity utilization, and the number of hours of operation.

Morgan Adhesives goes on, in its comment, to show how its current emissions compare with "RACT allowable in 1978–79." This comment does not appear to be relevant because it does not relate to the formally submitted bubble proposal.

Comment 6. The Morgan bubble is not a relaxation. USEPA erroneously stated in the November 2, 1987, notice that the Morgan Adhesives's bubble is a relaxation and, therefore, cannot be approved. It is not a relaxation. USEPA erroneously reached its conclusion by comparing the volume-based VOC limit with a solids basis calculation. Not only is this an improper comparison of apples and oranges; but it also reduces USEPA's point to an objection that the bubble is not calculated on a solids basis. This point was dealt with above in section 3. Finally, if USEPA allows for updating the bubble, as contemplated by Morgan Adhesives's two modification requests, the emission limits will be even tighter.

USEPA Response. As stated previously, the formula in the Morgan Adhesives's bubble is not on a solids basis and is, therefore, a relaxation. This issue has been previously addressed in the discussion of Comment 3.

Morgan Adhesives summarized its comments as follows. Morgan Adhesives has in place a bubble that is more stringent than the one USEPA proposed on November 2, 1987, to disapprove. It is a bubble that was intended to meet USEPA's changing criteria for approval during the years that this bubble application has been pending before USEPA. It results in emissions that are much lower than the strictest criteria for approval of bubbles that USEPA has ever published. Moreover, Morgan Adhesives is meeting the limits of this new bubble, rather than those of the bubble originally submitted to USEPA in 1983 for approval. USEPA, on the other hand, proposed to disapprove Morgan Adhesives's bubble as though it were just as originally submitted, ignoring the intervening history. USEPA's criteria for disapproval would treat the bubble as if it were not a pending bubble, and would apply new criteria published years after the bubble was first submitted to USEPA.

Morgan Adhesives believes that, if correctly analyzed, this bubble is approvable under the properly applicable policy, the April 7, 1982, policy, and the USEPA should approve it. In the alternative, USEPA should refrain from acting on its proposed disapproval and give OEPA and Morgan Adhesives the opportunity to submit to USEPA Morgan Adhesives's two modification requests of May 1984 and May 1985; postponing final action on the bubble until action can be taken on the bubble that is actually being met by Morgan Adhesives. Any other action by USEPA would be unreasonable and unlawful, and would penalize Morgan Adhesives unfairly despite its responsible efforts to comply.

USEPA Response. USEPA can only act on the bubble application which is before it; that application does not comply with USEPA's December 4, 1986, bubble policy. This bubble is not a "pending" bubble because the formula which establishes the bubble is not on a solids basis.

There is no basis for waiving the requirement that this bubble comply with the final ETPS, as opposed to the April 7, 1982, proposed policy. USEPA can refrain from acting on this bubble only if it is withdrawn by Ohio, and it has not been. Furthermore, as previously stated, Ohio has the opportunity to submit Morgan Adhesives's modified requests at any time.

C. The Natural Resources Defense Council Made the Fallowing Comment

We are writing in support of USEPA's proposed disapproval of the Ohio State Implementation Plan revision to relax the emissions limitation for volatile organic compound releases from the Morgan Adhesives Company. Relaxation of the emission limitation through use of a "bubble" will exacerbate air quality problems in Summit County, which is still out of attainment with the basic health standards for ozone.

USEPA Response. It should be noted that USEPA would approve any bubbles which meet the final ETPS policy.

Conclusion and Recommendation

The only change in USEPA's position, based upon these comments, is that the deficiencies specifically relating to the vinyl casting line are no longer relevant because this line has been dismantled. More specifically, a RACT-allowable emissions baseline for the vinyl casting line does not need to be established.

USEPA is disapproving this SIP revision for Morgan Adhesives because it does not represent the application of RACT nor does it comply with USEPA's Emission Trading Policy.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 16, 1989. This action may not be challenged later in proceedings to enforce its requirements. (*See* 307(b)(2).)

Under Executive Order 12291, today's action is not "Major." It has not been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Environmental Protection, Air pollution control, Ozone, Carbon monoxide, Hydrocarbon, Intergovernmental offices.

Dated: August 2, 1989.

Basil G. Constantelos,

Acting Regional Administrator.

[FR Doc. 89–18995 Filed 8–14–89; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Parts 52 and 81

[FRL-3627-7]

Approval and Promulgation of Implementation Plans; and Designation of Areas for Air Quality Purposes; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's rulemaking takes final action approving the Iowa particulate matter (PM_{10}) State Implementation Plan (SIP) revision and redesignating areas of Iowa "unclassifiable" with respect to particulate matter. Today's rulemaking is in response to requests by the state. The state's SIP submittal is in response to EPA's promulgation of new PM_{10} standards on July 1, 1987 (52 FR 24634). As a result of today's action, the state of Iowa will have an approved PM_{10} SIP, and all areas of the state will be unclassifiable or attainment with respect to the air quality standard for particulate matter.

EFFECTIVE DATE: This rulemaking will become effective October 16, 1989 unless someone notifies EPA that they wish to make adverse or critical comments by September 14, 1989. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Iowa Department of Natural Resources, 900 East Grand, Des Moines, Iowa 50319.

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor at (913) 236–2893 (FTS 757–2893).

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1987 (52 FR 24634), EPA promulgated a new national ambient air quality standard (NAAQS) for particulate matter. The new standard only applies to particles with a nominal aerometric mean diameter of 10 micrometers or less (PM_{10}). This new standard replaces total suspended particulates (TSP) as an ambient air quality standard.

In order to regulate PM_{10}, states must make certain changes in their rules and regulations and in the SIPs. The changes in the rules and the SIPs must ensure that the PM_{10} NAAQS are attained and maintained; that new and modified sources which emit PM_{10} are reviewed; that PM_{10} is one of the pollutants to trigger alert, warning, and emergency actions; and that the states' monitoring network be designed to include PM_{10} monitors. These changes must be made regardless of the existing levels of PM_{10} in any area of the state.

Where preliminary monitoring data indicate that it is likely PM_{10} standards are being exceeded in an area, a control strategy is required to show how PM_{10} emissions will be reduced to provide for attainment and maintenance of the PM_{10} NAAQS. This is called a group I area.

If data show that the PM_{10} standards could possibly be met in an area, but there is some uncertainty, the states are required to commit to perform additional PM_{10} monitoring in such an area and to prepare a control strategy if the data show with certainty that the standards are being exceeded. This is called a group II area. The commitments must be submitted in the form of a SIP revision and are termed a "committal" SIP.

Where available particulate matter data indicate the PM_{10} air quality is better than the standards, EPA presumes that the existing SIP is adequate to demonstrate attainment and maintenance of the PM_{10} standards. This is called a group III area. Preconstruction review and emergency episode provisions are the only PM_{10} rule revisions required for group III areas. The regulations require submission of PM_{10} SIPs nine months after the federal regulations became effective on July 31, 1987. Because of the burdensome administrative requirements for adoption of rules in some states, they were given some flexibility in the scheduling of their SIP submissions.

PM_{10} Attainment Status in Iowa

Existing TSP and PM_{10} air quality data show there are no group I areas in Iowa. There are three group II areas in the state. These are Cedar Rapids, Des Moines, and Mason City. Based on available data and in accordance with the Clean Air Act and EPA regulations, Iowa must meet the following requirements so that EPA may approve its PM_{10} SIP: (1) Adopt acceptable revisions to its preconstruction review rules; (2) submit a committal SIP for the group II areas of Cedar Rapids, Des Moines, and Mason City; (3) revise the emergency episode rules to incorporate PM_{10}; and (4) ensure that the monitoring plan provides for sampling PM_{10}.

The Iowa PM_{10} SIP Submittal

The Iowa Department of Natural Resources submitted its PM_{10} SIP revision on October 28, 1988. The submittal contains: (1) The committal SIP for the three group II areas; (2) documentation of proper notice and public hearings; (3) revised new source review procedures; and (4) revisions to the emergency episode rules adding PM_{10} action levels.

EPA reviewed the Iowa submittal to determine if it meets the requirements of the Clean Air Act, EPA regulations, and applicable policies. The regulations most pertinent to this rulemaking are found in the July 1, 1987, **Federal Register** (52 FR 24672). EPA's PM_{10} SIP Development Guideline (EPA–450/2–86–001) dated June 1986 and a supplement to that guideline dated June 1988 amplify the regulations promulgated July 1, 1987.

Review of the Iowa PM_{10} Submittal

Administrative Requirements

The state's notification and public hearing on its PM_{10} SIP revision satisfy the requirements of 40 CFR 51.102.

The local air pollution control agencies received notice and attended the public hearings. Development of the Iowa PM_{10} SIP required no new significant intergovernmental planning activities and none are required for SIP implementation. The SIP submittal contains no new information concerning 40 CFR part 51, Subpart M, Intergovernmental Consultation.

The state resources necessary to implement the PM_{10} SIP for Iowa are included in the annual State/EPA Agreement (SEA) signed by the Director of the Iowa Department of Natural Resources and the Regional Administrator of EPA Region VII. There are no group I areas in Iowa. Initial implementation of the PM_{10} SIP requires no new control strategy for particulate matter. The required control strategy includes continued enforcement of existing particulate matter emission regulations; review of new sources for PM_{10} and TSP emissions; and operation of an air monitoring network composed of TSP and PM_{10} samplers. The state also monitors PM_{10} in the group II areas as required and if violations of the standard are documented in any of those areas, a control strategy will be developed as described in the state's committal SIP. These are activities included in the SEA.

Legal Authority

Iowa rule 21.1(5) requires that all emissions data are made available for public review. Rule 21.1(6) requires source owners and operators to maintain records of emissions and submit such data to the state upon request. These regulations are currently a part of the approved Iowa SIP. Chapter 25 contains provisions requiring continuous emissions monitoring and requires submittal of such emissions data.

Chapter 27 of the Iowa regulations provides for local air pollution control programs. These local agencies operate under authority granted by the state through a certificate of authority. The local agencies must have ordinances which are consistent with state

regulations. However, the state retains concurrent authority for issuing new source permits and enforcement activities. The particulate matter control strategy presently part of the approved Iowa SIP is based on controlling emissions in accordance with state rules. This strategy does not depend upon additional particulate matter reductions provided by local agency rules.

PM_{10} Air Quality Standards

Iowa adopted all of the 40 CFR part 50 regulations as amended through July 1, 1987, by reference. Thus, the state adopted the NAAQS for PM_{10} including the requirements of appendix J and appendix K to part 50.

Definitions

The Iowa rules contain a definition of particulate matter which is consistent with EPA's definition at 40 CFR 51.100(oo). The state adopted definitions consistent with EPA's definitions for PM_{10} and TSP at 40 CFR 51.100 (qq) and (ss), respectively.

The state did not adopt definitions of particulate matter emissions or PM_{10} emissions. However, the Iowa Environmental Quality Act—Division II—Air Quality, Section 455B.131 contains definitions which include "emission." "Emission" means a release of one or more air contaminants into the outside atmosphere. It is clear that combining Iowa's definition of "PM_{10}" and "particulate matter" with "emissions" results in definitions comparable to EPA's definitions at 40 CFR 51.100 (pp) and (vv). EPA believes Iowa's definitions in its PM_{10} submittal are acceptable.

NSR Requirements

Iowa's SIP is currently approved as satisfying the requirements of 40 CFR part 51 for review of new and modified sources. This includes the requirements of 40 CFR 51.165, Permit requirements, and 40 CFR 51.166, Prevention of significant deterioration of air quality (PSD).

Iowa's PSD requirements are in rule 22.4. This rule adopts by reference 40 CFR 52.21 as amended July 1, 1987, except for deletions and revisions recommended by EPA for SIP-approved state PSD programs. Iowa's PSD rules were approved on June 28, 1987 (52 FR 23981). The state adopted subrule 22.4(4) to satisfy the requirements of 40 CFR 51.165(b). Section 165(b) enables states under their NSR procedures to establish emission offset programs for major new or modified sources proposing to locate in an attainment or unclassified area for any pollutant whose emissions would cause or contribute to air pollution exceeding the NAAQS in any area. This is acceptable.

Emergency Episode Plans

Iowa revised its Chapter 26—Prevention of Air Pollution Emergency Episodes, for consistency with 40 CFR part 51, appendix L. There are no group I areas in Iowa, so new contingency plans for emergency episodes have not been developed. Chapter 26 contains provisions which direct air pollutant sources to take certain actions at various episode levels. These actions are consistent with the curtailment Tables I, II, and III, in 40 CFR part 51, appendix L. Iowa's PM_{10} emergency episode plan is acceptable.

PM_{10} Monitoring

Iowa's monitoring SIP was originally approved on April 12, 1982 (47 FR 15583). The monitoring SIP is termed a strategy and is generic for all pollutants without listing specific pollutants by name. The state's strategy commits the state to meet all requirements of 40 CFR part 58 and does not reference a specific date. EPA believes the monitoring SIP is sufficiently broad to include PM_{10} without a revision.

EPA Action: EPA approves the Iowa revised rules and regulations pertaining to PM_{10} adopted by the Iowa Environmental Protection Commission and became effective on December 21, 1988. The amendments are found in Chapter 20, "Scope of Title—Definitions—Rules of Practice;" Chapter 22, "Controlling Pollution;" Chapter 26, "Prevention of Air Pollution Emergency Episodes;" and Chapter 28, "Ambient Air Quality Standards," Iowa Administrative Code.

Area Redesignations

The final rulemaking promulgating EPA's PM_{10} SIP requirements published on July 7, 1987 (52 FR 24682) discussed an Area Redesignation Policy with respect to TSP. The EPA encouraged states to submit requests to redesignate TSP nonattainment areas to unclassifiable for TSP at the time the PM_{10} control strategy is submitted. The rulemaking stated that when EPA approves the control strategy as sufficient to attain and maintain the PM_{10} NAAQS, it will also approve the redesignation. An area designation for TSP must be retained until EPA promulgates PM_{10} increments, because Section 163 PSD increments depend upon the existence of Section 107 designations. Section 107 does not provide for PM_{10} area designations. (See 52 FR 24682.)

The state of Iowa requested TSP redesignations to unclassifiable in a letter dated October 20, 1988. The identified TSP nonattainment areas are as follows:

Portions of Waterloo and Black Hawk County,
Portions of Mason City and Cerro Gordo County,
Portions of Clinton,
Portions of Cedar Rapids,
Portions of Marshalltown,
Portions of Muscatine,
Portions of Des Moines and Polk County,
Portions of Council Bluffs and Carter Lake,
Portions of Davenport, Buffalo, Bettendorf, and Riverdale,
Portions of Fort Dodge, and
Portions of Sioux City.

Action: EPA approves Iowa's request to redesignate TSP nonattainment areas from nonattainment to unclassifiable.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments.

This action will be effective October 16, 1989. However, if notice is received within 30 days that someone wishes to make adverse or critical comments, this action will be withdrawn and two subsequent notices will be published prior to the effective date. One notice will withdraw final action and another will begin a new rulemaking by announcing a proposal of action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective October 16, 1989.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under 5 U.S.C. 605(b), I certify that this rulemaking will not have a significant impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Act, as amended, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 16, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Air pollution control, Incorporation by reference, and Particulate matter.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Note: Incorporation by reference of the State Implementation Plan for the state of Iowa was approved by the director of the Federal Register on July 1, 1982.

Dated: June 20, 1989.

William Rice,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

Subpart Q—Iowa

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.920 is amended by adding paragraph (c)(51) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(51) Revised Iowa regulations pertaining to PM_{10} were submitted by the state on October 28, 1988. These rules became effective on December 21, 1988.

(i) Incorporation by reference

(A) Amended Iowa Administrative Code pertaining to the prevention, abatement, and control of air pollution: Chapter 20, "Scope of Title—Definitions—Forms—Rules of Practice;" Chapter 22, "Controlling Pollution;" Chapter 26, "Prevention of Air Pollution Emergency Episodes;" and Chapter 28, "Ambient Air Quality Standards," effective December 21, 1988.

(ii) Additional information

(A) None.

3. The table in § 52.827, Attainment dates for national standards, is revised to read as follows:

§ 52.827 Attainment dates for national standards.

* * * * *

Air quality control region	Pollutant							
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Ozone	PM_{10}
	Primary	Secondary	Primary	Secondary				
Metropolitan Omaha, Council Bluffs Interstate:								
a. Council Bluffs	a	c	b	a	c	c	c	c
b. Remainder of AQCR	a	a	b	a	c	c	c	c
Metropolitan Sioux Falls Interstate	b	a	c	c	c	c	c	c
Metropolitan Sioux City Interstate:								
a. Sioux City	b	c	c	c	c	c	c	c
b. Remainder of AQCR	b	a	c	c	c	c	c	c
Metropolitan Dubuque Interstate:								
a. Dubuque	a	a	d	d	c	c	c	c
b. Remainder of AQCR	a	a	c	c	c	c	c	c
Metropolitan Quad Cities Interstate:								
a. Davenport	d	f	c	c	c	c	c	c
b. Clinton	a	e	c	c	c	c	c	c
c. Muscatine	a	e	c	c	c	c	c	c
d. Remainder of AQCR	a	a	c	c	c	c	c	c
Burlington-Keokuk Interstate:								
a. Keokuk	a	e	a	a	c	c	c	c
b. Remainder of AQCR	a	a	a	a	c	c	c	c
Northwest Iowa Intrastate	c	c	c	c	c	c	c	c
North Central Iowa Intrastate:								
a. Fort Dodge	a	e	c	c	c	c	c	c
b. Mason City	d	f	c	c	c	c	c	g
c. Remainder of AQCR	a	a	c	c	c	c	c	c
Northeast Iowa Intrastate:								
a. Cedar Rapids	d	f	c	c	c	c	c	g
b. Waterloo	a	e	c	c	c	c	c	c
c. Remainder of AQCR	a	a	c	c	c	c	c	c
Southwest Iowa Intrastate	c	c	c	c	c	c	c	c
South Central Iowa Intrastate:								
a. Des Moines	d	f	c	c	c	c	a	g
b. Marshalltown	a	e	c	c	c	c	a	c
c. Remainder of AQCR	a	a	c	c	c	c	a	c
Southeast Iowa Intrastate	c	c	c	c	c	c	c	c

NOTE: Dates of footnotes which are italicized are prescribed by the Administrator because the plan did not provide a specific date or the date provided was not acceptable.

a. July 1975.
b. Air quality levels presently below primary standards.
c. Air quality levels presently below secondary standards.
d. December 31, 1982.
e. January 1, 1985.
f. January 1, 1995.
g. (Three years from effective date of rulemaking.)

4. A new § 52.823 is added as follows:

§ 52.823 PM_{10} State Implementation Plan Development in Group II Areas

The Iowa Department of Natural Resources commited to comply with the PM_{10} regulations as set forth in 40 CFR Part 51. In a letter to Morris Kay, EPA, dated October 28, 1988, Mr. Larry J. Wilson, Director, Iowa Department of Natural Resources, stated:

Three groups within the State of Iowa have been classified as Group II areas for fine particulate (PM_{10}) State Implementation Plan (SIP) development purposes. This includes portions of the cities of Des Moines, Mason City, and Cedar Rapids. The specific

boundaries of these areas were identified in a letter of October 13, 1987, from Peter R. Hamlin to Carl Walter. The remainder of the State was classified as Group III.

In accordance with the SIP development procedures identified in the preamble of the PM–10 regulations for implementing Revised Particulate Matter Standards, promulgated July 1, 1987, the State of Iowa commits to perform the following activities in these three Group II areas of the state:

(a) Gather ambient PM–10 data, to an extent consistent with minimum EPA requirements (note the network description contained in a letter of January 26, 1988, from Peter R. Hamlin to John Helvig).

(b) Analyze and verify the ambient PM–10 data and report exceedances of the 24-hour PM–10 National Ambient Air Quality Standards (NAAQS) to the Regional Office within 60 days of each exceedance.

(c) Immediately notify the Regional Office:

(1) Upon the availability of an appropriate number of verifiable 24-hour NAAQS exceedances to indicate a violation (see Section 2.0 of the PM–10 SIP development guideline) or

(2) when an annual arithmetic mean (AAM) above the annual PM–10 NAAQS becomes available.

(d) Within thirty (30) days of any notification of the Regional Office pursuant to (c) above (or upon collection of thirty-six (36) months of PM–10 ambient air quality data acceptable to EPA, whichever comes first) determine whether the measures in the existing SIP will assure timely attainment and maintenance of the primary PM–10 NAAQS and immediately notify the Regional Office of the results of this determination.

(e) Within six (6) months of any notification pursuant to (d) above, adopt and submit to EPA a PM–10 control strategy that assures attainment as expeditiously as practicable but not later than three (3) years from approval of the Committal SIP.

Because of the uncertainty about when the determination can be made pursuant to (d) above, it is difficult to determine if that control strategy could provide for the attainment of the PM–10 NAAQS within three years from the date EPA approves this Committal SIP. Therefore, I reserve the right to request a two-year extension of the attainment date as provided in Section 110(e) of the Clean Air Act, if and when the State of Iowa submits a SIP revision for any of these areas of the state.

The State of Iowa also commits to develop a PM–10 emission inventory for the areas submitted as part of any PM–10 SIP pursuant to items (c), (d), and (e) above. If the PM–10 NAAQS are not violated, the State of Iowa will proceed with this inventory for the three Group II areas in accordance with the following schedule:

October 1, 1988—Request special assistance funds from EPA to perform the inventory.

October 1, 1989—Initiate inventory.

August 1, 1990—Complete inventory.

October 31, 1990*—Submit inventory as part of a determination of adequacy that the current SIP will attain and maintain the PM–10 NAAQS.

40 CFR part 81, subpart C, is amended as follows:

PART 81—[AMENDED]

Subpart C—Iowa

1. The authority section for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 81.316, Iowa, is amended by revising the attainment status designation table for TSP to read as follows:

*Presuming that sufficient ambient data acceptable to EPA are collected by July 31, 1990, and available by September 30, 1990.

§ 81.316 Iowa. IOWA TSP

Designated Area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Central portion of Waterloo			x	
Cedar Falls Township			x	
East Waterloo Township			x	
Remainder of Black Hawk County				x
Mason City—A portion of Cerro Gordo County contained entirely within sections 27, 28, 29, 32, 33, 34, and 35 of T97N R20W and sections 2, 3, 4, and 5 of T96N R20W			x	
Mason City—two seperate portions of Cerro Gordo County contained entirely within sections 13, 24, and 25 of T97N R21W; sections 18, 19, 20, 21, 30, 31, and 35 of T97N R20W; and sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, and 17 of T96N R20W			x	
Falls Township			x	
Lake Township			x	
Lincoln Township			x	
Remainder of Cerro Gordo County				x
An area around downtown Clinton			x	
Comanche Township			x	
Remainder of Clinton County				x
Burlington Township			x	
Remainder of Des Moines County				x
Iowa City Township			x	
Remainder of Johnson County				x
An area in and near Keokuk			x	
Jackson Township			x	
Jefferson Township			x	
Madison Township			x	
Remainder of Lee County				x
Cedar Rapids—a portion of Linn County contained entirely within T 82 N., R 7 W.; and T 83 N., R 7 W.			x	
Bertram Township			x	
Clinton Township			x	
College Township			x	
Fairfax Township			x	
Marion Township			x	
Monroe Township			x	
Putnam Township			x	
Remainder of Linn County				x

IOWA TSP—Continued

Designated Area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
The central portion of Marshalltown			x	
Remainder of Marshall County				x
The central and southern portions of Muscatine			x	
Fruitland Township			x	
Sweetland Township			x	
Montpelier Township			x	
Remainder of Muscatine County				x
An area of central Des Moines east of U.S. Highway 65 & 69 (E. 14th Street)			x	
Portions of Polk County contained entirely within T 78 N. R 23 W.; T 78 N. R 24 W.; T 78 N. R 25 W.; T 80 R 24 W.; T 79 N. R 23 W.; T 79 N. R 24 W.; and T 79 R 25 W			x	
Clay Township			x	
Douglas Township			x	
Jefferson Township			x	
Remainder of Polk County				x
The western portion of Council Bluffs and Carter Lake			x	
Lake Township			x	
Lewis Township			x	
Remainder of Pottawatomie County				x
Portions of Buffalo, Davenport, Bettendorf and Riverdale			x	
Remainder of Scott County				x
Center Township			x	
Remainder of Wapello County				x
The central portion Ft. Dodge			x	
Otho Township			x	
Remainder of Webster County				x
The central and southern portions of Sioux City			x	
Liberty Township			x	
Woodbury Township			x	
Remainder of Woodbury County				x
Remainder of State				x

* * * * *

[FR Doc. 89–18998 Filed 8–14–89; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59, 60, and 65

RIN 3067–AB32

National Flood Insurance Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule revises the National Flood Insurance Program (NFIP) definitions of "substantial improvement", "new construction", and "development"; revises regulations dealing with variances, enclosed areas below the lowest floor, and wind loading values in coastal high hazard areas; and creates definitions for "alluvial fan flooding", "apex" (as it pertains to alluvial fans), "historic structure", and "substantial damage". The final rule also clarifies NFIP regulations pertaining to procedures for map revisions and amendments and establishes standards and procedures for the types of supporting data needed when map changes are requested involving Special Flood Hazard Areas (SFHAs) where alluvial fan flooding occurs.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Federal Emergency Management Agency, Federal Insurance Administration, 500 C. Street SW., Washington, DC 20472; telephone number (202) 646–3422.

SUPPLEMENTARY INFORMATION: On March 7, 1989, FEMA published for comment in the **Federal Register** (54 FR 9523) a proposed rule containing revisions to the NFIP. These revisions were the result of a continuing reappraisal of the NFIP from the standpoint of achieving greater administrative and fiscal effectiveness and encouraging sound flood plain management so that reductions in the loss of life and property and in disaster expenditures could be realized.

In response to the proposed rule, 38 comments were received. Of these comments, eight dealt with flood plain management issues, 30 with flood hazard identification issues.

Flood Plain Management Provisions

The revisions to NFIP flood plain management criteria are intended to clarify or further explain provisions in those criteria or to liberalize certain requirements. Since this is the case, communities participating in the NFIP are not required to amend their flood plain management regulations to incorporate the revised language. However, in communities where administration of provisions in the past has been inconsistent or contrary to any of the revisions, those communities are encouraged to amend their regulations accordingly.

Of the eight responses received addressing flood plain management issues, four were from State governments, three from national associations, and one from local government. Most of the comments were in support of the intent of the flood plain management rule changes and agreed with them in principle. These respondents did, however, offer recommendations to improve or further clarify the language or make the proposed requirements more restrictive. Two of the respondents were in opposition to one or more of the proposed changes.

Analysis of the comments resulted in minor changes to some provisions and the inclusion of additional language in one definition to bring about consistency with language proposed for another provision.

Within the eight responses, comments were also made about flood plain management provisions not specifically addressed in the proposed rule. These

comments were also analyzed and are discussed herein under the heading of "Miscellaneous Comments on Substantial Improvement". However, no action is being taken on these comments in the final rule since there would be no opportunity to allow for public comment. FEMA will consider these comments in their evaluation of issues for inclusion in future rule making.

Substantial Improvement

In the proposed rule, FEMA included a number of revisions to the definition of "substantial improvement" in § 59.1 which are intended to clarify portions of that definition. The proposed revisions addressed the following three areas that have been identified as being in need of clarification: substantially damaged structures, historic structures, and cost exemptions for correcting health, safety, and sanitary code related violations.

The creation of a separate definition for substantial damage in the proposed rule resulted from problems communities were having interpreting the substantial improvement definition in cases where a building was substantially damaged and either not fully repaired, or repaired using discounted or donated materials and labor. The new definition codifies FEMA's policy interpretation that a building is substantially damaged, and thus a substantial improvement, when it sustains damage from any cause, whereby the cost of fully restoring the structure to its pre-damaged condition equals or exceeds 50 percent of the market value of the structure before damage occurred, regardless of the actual repair work performed.

Two associations and two States commented in support of the substantial damage definition. However, one State suggested that the definition of substantial improvement be modified to read "the term includes structures which have incurred substantial damage, as defined herein, regardless of the value of or actual costs of repair work performed." Placement of the term substantial damage in quotation marks in the substantial improvement definition directly references the term as defined in § 59.1 of the regulations. Thus there is no need to use the term defined herein as suggested.

FEMA does not agree that the suggested additional language value of or * * * costs of should be added to the substantial improvement definition, because the intent of the requirement is apparent in the language as proposed.

The same State called for clarification in the case of improvements made to substantially damaged structures costing less than 50 percent. The respondent was concerned that the regulations do not explicitly state that such improvements must meet elevation and other NFIP requirements. FEMA notes that regardless of the level of repairs made to the structure once it is substantially damaged, the structure immediately becomes a substantial improvement and must comply with all of the applicable flood plain management requirements in § 60.3. FEMA believes that these conditions are clear in the definitions of substantial improvement and substantial damage and the references to substantial improvement in § 60.3 of the NFIP regulations.

FEMA points out that the enforcement of the substantial improvement requirements should occur at the time the initial permit for repair is submitted, regardless of the amount of repairs called for in the permit. In the majority of cases, substantially damaged structures will be condemned by the local building code department, necessitating repairs prior to reoccupancy. This should not only prevent unpermitted improvements from being made to substantially damaged structures, but also should ensure that when required repairs are made (regardless of the level), that the substantial improvement requirements in § 60.3 are enforced.

One State questioned the rationale for requiring substantially damaged structures, for which less than 50 percent repairs are made, to meet the requirements of substantial improvement. FEMA's rationale is based on post-flood experience gained through FEMA Regional NFIP and Hazard Mitigation activities. Experience has shown that substantially damaged structures initially repaired to less than 50 percent, are, over time, fully repaired and many times even improved beyond the value of the structure prior to damage. Minimal or partial repairs are often made initially to substantially damaged structures to allow for reoccupancy as required by safety or building codes, or because of the limited monies available to many victims immediately after a flood. However, in subsequent years as monies become available or as other conditions permit, these structures are ultimately fully repaired, and in many cases further improved. The substantial damage definition was thus created to reduce the amount of unprotected investment in flood hazard areas due to these situations. FEMA points out that in some form, the Federal Government (the NFIP, various disaster assistance programs, etc.) would likely be obligated to pay a significant portion of the future damages to these unprotected structures.

The proposed rule also modified the substantial improvement definition to explicitly state that the costs required to remedy code deficiencies are deductible from the cost of the improvement for the purpose of determining substantial improvement only if (1) and appropriate regulatory official such as a building official, code enforcement officer, fire marshal, or health officer was informed about and knew the extent of the code related deficiencies; (2) the deficiencies were in existence prior to the repair or improvement and not triggered solely by the fact that the structure is being improved; and (3) it is the minimum necessary to bring the deficiencies into conformance with code requirements.

One State wrote in support of the new language covering deductions for code related deficiencies, but also expressed concern that the cost of implementing flood damage reduction (floodproofing or retrofitting) measures for structures would be counted toward substantial improvement and that this is contrary to sound flood plain management.

However, this has not been a common problem. Because of the infrequent situations where the additional cost of floodproofing measures has triggered the substantial improvement requirement, FEMA does not believe that an additional exclusionary provision for floodproofing measures in the substantial improvement definition is necessary at this time.

The same respondent also raised concern that local officials would object to the added responsibility of documenting all substandard conditions in structures prior to their improvement and that this is not an everyday practice of building officials. FEMA understands that local building officials do not make a practice of surveying structures in order to document all items not compliant with the local building code. FEMA is not suggesting that local officials assume such a responsibility. The burden of documenting and proving that certain improvements are deductible because they are needed to fix substandard conditions rests with the permittee (owner or contractor).

Miscellaneous Comments on Substantial Improvement

Comments from two associations and one State supported the substantial improvement rule changes, but recommended that the present 50 percent threshold be reduced or that a fixed monetary sum or square footage measurement be used instead. The issue of changing the substantial improvement threshold was not addressed in the proposed rule and therefore no action is being taken on it in the final rule since there would be no opportunity to allow for public comment. Also, any changes made to the threshold, either by increasing or decreasing the percentage or by changing to a fixed monetary or square footage criteria, would require flood plain management ordinance revisions for the nearly 18,000 communities participating in the NFIP. FEMA does not wish to require ordinance revisions at this time due to the burden it would place on communities, NFIP State Coordinating Offices, and FEMA Regional Offices.

FEMA notes that the substantial improvement threshold of 50 percent was initially chosen because it generally conformed with established zoning standards for non-conforming uses and some national building code requirements that also use a 50 percent threshold.

In its ongoing evaluation of the substantial improvement requirement, FEMA has concluded that, at this time, the promotion of more effective enforcement of the present requirement, through technical assistance, guidance and education, is a more practical first approach for mitigating flood losses, as opposed to making the requirement more restrictive.

Another State indicated that there is an inequity in the relative size and value of improvements that can be made to structures of different size and value. It was stated that very large and costly improvements can be made to very large and costly structures without triggering the substantial improvement requirement. Whereas, very small improvements can often trigger substantial improvement requirements on low valued structures. To remedy this situation, it was suggested that a square footage increase instead of a monetary percentage be used as a threshold.

FEMA notes that a square footage criteria can also create inequities. For instance, it may preclude making additions to large industrial or commercial structures. In addition, the exclusive use of a square footage criteria would not address those improvements such as rehabilitations that do not involve an increase in a structure's surface area.

One State addressed the situation where several incremental improvements, each less than 50 percent, are made to a structure, such that cumulatively, over time, these improvements exceed 50 percent. It was mentioned that these incremental improvements are not covered by the current definition of substantial improvement which evaluates improvements on an individual, or improvement-by-improvement basis.

This issue was not addressed in the proposed rule and therefore is not being considered in the final rule. FEMA does note, however, that one difficulty in implementing a national standard for tracking permits over the life of a structure is that many smaller or more rural communities do not have the capability and expertise to inspect and keep accurate records of cumulative improvements. In addition, there are a number of administrative problems and equity issues in requiring such an approach.

Many communities across the country have chosen to adopt a more restrictive substantial improvement requirement that requires the cumulative tracking of permits. FEMA encourages the adoption of these more restrictive standards in a community's ordinance and recognizes the precedence that these standards have over the minimum NFIP requirements.

One State recommended that FEMA define the term market value in the regulations and provide guidance and technical assistance documents on its use in determining substantial improvement. FEMA recognizes that there is some confusion about what the market value of a structure is and how it should be determined for the purposes of substantial improvement. FEMA also recognizes that there is a need to provide clarification to communities on how market value is to be determined in ways acceptable to FEMA.

However, many States and communities already have market value defined in State zoning enabling legislation or property taxation legislation. FEMA believes that it is more desirable at this time not to impose a potentially conflicting definition on states or communities, but to provide them with the flexibility to use their own definition. In addition, the issue of market value was not addressed in the proposed rule. It would not be appropriate to establish a definition of market value in a final rule without first giving the public a chance to comment.

Therfore, FEMA has chosen not to define market value in the regulations at this time. It should be noted that for the purposes of determining substantial improvement for the NFIP, the market value of a structure includes only the value of the structure in question—not the land, landscaping, detached accessory structures, or the geographic location of the structure. In determining substantial improvement, the value of the land must always be subtracted.

Various appraisal and real estate associations have different versions of the definition of market value. However, these definitions do not vary a great deal and a general definition of market value reads as follows: The most probable price for which the appraised property (in this case just the structure in question) will sell in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest and assuming that neither is under duress.

It should be noted that FEMA has distributed a document entitled "Questions & Answers: Substantial Improvement & Substantially Damaged Structures in Post Disaster Situations". A part of this document addresses the use of market value and provides acceptable alternatives to estimate it. In the near future FEMA will publish this document in final form. Also in the near future, FEMA will publish a substantial improvement guidance document for local permit officials. A significant portion of that document will discuss acceptable ways to determine substantial improvement, including techniques for estimating, and sources for obtaining or verifying, both market value and cost of improvements.

Historic Structures

The proposed rule included a separate definition in § 59.1 for "historic structure" which is consistent with the Department of the Interior (DOI) definition of "certified historic structure". In addition, language was proposed for § 60.6(a) to clarify that variances granted to historic stuctures (1) should be only the minimum deviation from NFIP criteria that is necessary to assure that the historic character and design of the structure is not destroyed (i.e., the minimum necessary to afford relief) and (2) must not preclude the continued designation of a structure as a historic structure as defined by the NFIP.

The intent of the proposed modification was to clarify the current definition of substantial improvement and the procedures covering variances as they relate to the exclusions of historic structures. Also, through the use of objective identification criteria of the DOI, the intent was to help reduce the number of non-historic structures that were mistakenly exempted from NFIP requirements due to confusion about what constituted a historic structure. The new definition should help promote more effective identification and verification of historic structures because the new NFIP criteria are

consistent with DOI criteria. In addition, communities will now be able to fully utilize existing Federal and State listings for historic structures. Under the new definition, another benefit will be that if an alteration made to a structure results in a loss of DOI status, the structure will also lose its NFIP status as a Historic Structure. If that alteration constitutes a substantial improvement the structure must comply with NFIP requirements for new construction.

One State and one association suggested that the rule change as proposed would create a conflict between the exclusion of historic structures in the substantial improvement definition and the treatment of historic structures in the variance provisions (the substantial improvement definition as proposed did not provide "minimum necessary to afford relief" language and a safeguard statement to ensure that alterations to a structure do not preclude its continued designation as a historic structure). It was suggested that the reference to historic structures in the variance section be deleted because it would always be superseded by the language in the substantial improvement definition.

Some communities have adopted ordinances that require variances for improvements to historic structures and do not exclude such improvements from the substantial improvement definition. These communities must follow the variance criteria which contains a clause for the "minimum necessary to afford relief". FEMA agrees that as proposed there is potential for confusion between the variance and substantial improvement procedures because the variance criteria is somewhat more restructive on the treatment of historic structures. Although the two procedures differ on this matter, communities have the option of using either procedure.

Rather than delete the requirements in the variance section as suggested by one association, FEMA will also add the safeguard provision proposed for the variance provisions to the substantial improvement definition, which will help ensure that structures do not lose their DOI designation. This condition is already implicit in the existing substantial improvement definition and constitutes a clarification, rather than an expansion of the definition.

FEMA is not at this time adding a "minimum necessary to afford relief" clause to the substantial improvement definition. The treatment of historic structures in the variance criteria can be amended without changing ordinances to address the "minimum necessary to afford relief" issue, because it is already in the variance criteria. However, a similar provision can not be added to the substantial improvement definition without requiring ordinance revisions because it would be more restrictive than the current definition.

One association expressed concern that the inclusion of local certified historic structures in the definition could lead to abuse of the substantial improvement exclusionary provisions for historic structures. The new NFIP definition of "historic structure" includes structures individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved State program or directly by the Secretary of the Interior. FEMA notes that many of these locally certified structures are already on the National Register of Historic Places and that the total number of structures exempted by this requirement should increase very little. In fact, as previously mentioned, the more objective identification criteria of the DOI will help reduce the number of non-historic structures that were mistakenly excluded from the substantial improvement requirement in the past due to confusion. As already noted, under the new definition, another benefit will be that if an alteration made to a structure results in a loss of DOI status, the structure will also lose its NFIP status as a "Historic Structure". If that alteration constitutes a substantial improvement the structure must comply with NFIP requirements for new construction.

Start of Construction

The proposed rule modified the definitions of "substantial improvement" and "start of construction" by adding the terms "rehabilitations" and "additions", and removing the term "reconstruction". FEMA felt that the terms "rehabilitation" and "addition" better describe the types of improvements that actually occur to structures and are terms more commonly used in the building industry. However, one State suggested that the term "reconstruction" not be deleted because it more adequately describes those cases where an entire structure is demolished and a new one is built on the old foundation or slab.

FEMA agrees and will retain the term "reconstruction" in the definitions of "start of construction" and "substantial improvement" while leaving the terms "additions" and "rehabilitations" as proposed.

Development

In the definition of development, the proposed rule added "storage of equipment and materials" to the examples of activities subject to community permit requirements. The intent of the modification was to clarify the existing definition so that communities would understand that continuous storage operations such as lumber yards and automobile junk yards are development and are subject to permit requirements and the "no rise" floodway (§ 60.3(d)(3)) and one-foot rise flood plain (§ 60.3(c)(10)) encroachment provisions.

One State favored the addition of the term "storage of materials and equipment" to the definition, but suggested that the terms "extraction" or "deposition" of materials also be added. The terms "mining", "dredging" and "filling" in the present definition are generally applicable to the suggested terms "extraction" and "deposition". Therefore, FEMA thinks that adding these additional terms is unnecessary. All earth moving activities that alter the landscape have always been included in the definition of development and should be regulated by a community.

One local and one State government opposed the additional language, arguing that it would cause confusion and add an unnecessary and extra burden on local permit officials, and that they would have to regulate even the smallest and most temporary storage activities. FEMA makes a distinction between the very temporary storage of materials and equipment in flood hazard areas and those storage activities associated with continuous or seasonal businesses, construction operations, or other commercial and industrial enterprises. Transient activities such as the short term parking of heavy equipment on a construction site in a flood hazard area or the brief roadside storage of sand and salt piles in anticipation of impending winter storms would constitute temporary storage. FEMA does not consider these to be examples of "development", but temporary activities that a community should be aware of, but not necessarily subject to flood plain permit requirements. The permanent or seasonal operation of storage yards for pieces of disabled or unemployed heavy equipment or the continuous but fluctuating storage of thousands of board feet of lumber associated with logging or saw mill operations are examples of "development". Such storage is subject to local permit

requirements including the regulations under § 60.3(c)(10) and (d)(3).

It is a community's responsibility to make a prudent and reasonable distinction between types of storage activities. This distinction should be based on considerations such as the length of storage time, nature of the materials or equipment, physical characteristics of the flood plain, and characteristics of the flood flows. As a guide, the smaller the flood hazard area and longer the storage time, the more concerned a community should become with the placement of materials and equipment and the impact it would have on storage and conveyance of flood waters.

FEMA believes that most communities have always required permits for the storage of equipment and materials. The addition of the term "storage of equipment and materials" is simply a clarification, not an expansion, of the "development" definition and should not significantly affect the permit requirements of a community. The essential point is that equipment or material permanently or seasonally stored on a site (regardless of whether the total volume of the storage seasonally fluctuates) represent an encroachment which may increase flood levels during the base flood.

One State specifically objected to the inclusion of the term "storage of equipment and materials", arguing that the development definition has always been interpreted to pertain exclusively to construction activities. It was stated that some communities have enacted single purpose flood plain management ordinances or base their ordinances on building codes and thus can only regulate the construction of buildings. FEMA emphasizes that communities must have provisions in their ordinances, regardless of whether they are single purpose or based on building codes, to regulate land use through the permitting of those development activities which do not entail the construction of buildings. Ordinances which do not have such provisions are deficient and will not allow a community to properly enforce the minimum requirements of the NFIP. Many activities besides the construction of buildings, including the "storage of equipment and materials", can cause increases in floodflows and exacerbate a community's flood problems, and must be regulated.

FEMA will finalize the definition as proposed and believes that most communities will continue to be able to make responsible determinations about the storage of materials and equipment without unnecessarily burdening their permit procedures. However, at the suggestion of one association to provide further guidance to ensure that the added language does not cause confusion, FEMA will distribute policy guidance to its Regional Offices.

New Construction

In the proposed rule, the definition of "new construction" in § 59.1 was modified to affirm FEMA's interpretation that the term also includes any subsequent improvements to a structure that already meets the definition of "new construction". In explaining this modification in the supplementary information of the proposed rule, FEMA stated that the "substantial improvement" definition applies to existing structures, and that once a structure meets the definition of "new construction", any further improvements to that structure must meet "new construction" requirements. While this is true, FEMA would like to clarify, based on comments received from one State and one association, that substantial improvement applies to two different types of structures: (1) All existing structures; i.e., structures built prior to the adoption of a Flood Insurance Rate Map (FIRM) by a community and (2) "New Construction" (Post-FIRM structures) in communities that have undergone map revisions resulting in areas with more restrictive zone designations (e.g., A-Zone to V-Zone) of increased Base Flood Elevations. Substantially improved post-FIRM structures located in areas affected by map revisions must be brought into compliance with regulations applicable for the revised zone designations and BFEs which became effective after the structure was built.

Over time, this distinction will become more important, as more FIRMs are revised and more post-FIRM structures become subject to substantial improvement requirements. Therefore, FEMA cannot change the definition to strictly apply to existing structures as suggested by one State and one association.

Enclosures Below the Lowest Floor

Paragraph (c)(5) of § 60.3 was revised in the proposed rule to make it clear that the openings requirement in that paragraph applies only to enclosures that are usable solely for vehicle parking, building access or storage. The intent of this change was strictly for convenience purposes and eliminates the need to refer back to the definition of "lowest floor". One association expressed concern that this clause would not include structures that have unusable enclosures such as crawl spaces below the lowest floor, and that this may result in a failure to apply the openings requirement to these crawl spaces.

It has always been FEMA's interpretation that the inclusion of unusable enclosed areas below the lowest floor such as crawl spaces is implicit in the defintion of "lowest floor". The lowest floor definition contains a clause which limits use for enclosures. Not using a space meets this limitation on use. In addition, although the definition does not explicitly reference unusable areas, few problems to date have arisen from misinterpretation. FEMA notes that many crawl spaces are in fact used to access utilities or for limited storage. FEMA does not envision a problem because of this clarification and does not believe that it is necessary to modify the rule as proposed.

Flood Hazard Identification Provisions

Of the 30 responses received addressing flood hazard identification issues, 18 were from local governments, six from national or state associations, three from regional agencies, two from state governments, and one from a private firm. The majority of the comments received were directed to that portion of the proposed rule dealing with the use of alternative hydrologic and hydraulic computer models in the submission of map revision requests. It was the consensus of these respondents that portions of the proposed rule were too restrictive and they suggested that it be expanded. The final rule contains language which amends a portion of the proposed rule to reflect these comments. The remainder of the comments received were on that portion of the proposed rule involving alluvial fans. Several varied concerns were discussed. As a result of some of these concerns, minor changes were made to the proposed provisions covering alluvial fans.

Use of Alternative Hydrologic or Hydraulic Computer Programs

When a map revision requestor is seeking to revise effective base flood elevations the existing NFIP regulations require the requestor to the same computer model that was used to develop the effective base flood elevations unless it can be demonstrated that the original computer model is unavailable or its use is inappropriate. In order for an alternative computer model to be accepted by FEMA, the program must be accepted for general use by a governmental agency or

BEST COPY AVAILABLE

notable scientific body, must be well-documented including a user's and programmer's manual and must be available to the general user.

The proposed rule expanded this portion of the NFIP regulations by providing clarification of the criteria for acceptable computer programs submitted to FEMA as supporting data for a request to revise base flood elevation determinations. Specifically, the proposed rule included an explanation of "governmental agency", "notable scientific body" and the requirement that the alternative computer program be available to the general user.

"Governmental agency" was defined by the proposed rule as being an agency of the Federal government that was responsible for water resource activities. "Notable scientific body" was limited by definition to the National Academy of Sciences or comparable organizations and specifically excluded individual universities and colleges. The requirement that the alternative computer program be available to the general user was interpreted to mean that the program source code will be sent to FEMA free of charge with fully documented permission from the owner that FEMA may release this information and the user's manual to whomever requests it.

The changes in the regulations advanced by the proposed rule were thought to be necessary to: Eliminate confusion regarding the terms used; ensure adherence to the same engineering standards applied in the preparation of the original map and FIS report; assure that information based on alternative computer models is scientifically and technically correct and; guarantee the availability of the data and methodology documentation to ensure that the right of the community and other property owners to review and appeal the new analysis, or to submit subsequent map revision requests based on the new analysis, is not infringed upon.

The bulk of the comments received were directed to that portion of the proposed rule dealing with the use of alternative hydrologic and hydraulic computer models in the submission of map revision requests (19 of the 30 correspondents commented in this regard). Three of the respondents were National or State associations, two were state agencies, three were regional agencies and eleven were local government agencies.

It was the consensus of 16 of these respondents that the proposed definition of "government agency" was too restrictive and they suggested that it be expanded to include the NFIP's state coordinating agencies and other organizations engaged exclusively or predominantly in flood and stormwater management activities. They commented that Federal agency methodologies are notably deficient in their treatment of certain flow conditions and/or types of localized storms and rainfall patterns and that locally available programs can provide superior solutions to these problems. They also contended that standards and methods developed by local agencies with operating responsibilities are far more likely to be locally correct in application. Further, they posited that securing a Federal agency's endorsement of a non-Federal agency activity is not reasonable because of the Federal agency's bias in the performance of flood-related analyses and assessments. They expressed the opinion that, "* * * the NFIP is a community program and that study methodology for flood risk analyses must be characteristic to the affected community and not limited to Federal ideology and scope." They also voiced concern that one major Federal agency has recently stopped supporting its computer programs and given the current funding situation other Federal agencies are likely to follow suit. Finally, they noted that there is no regulatory substitute for the judgment of an experienced and knowledgeable engineer familiar with local conditions and methodologies.

Only one respondent stated that the restriction described in the proposed rule would result in a uniform approach to problem-solving which is clearly a bonus to the local communities.

Four of the respondents stated the opinion that the requirement for computer programs to be in the public domain would eliminate the incentive for computer program development and would stifle a source of innovation that is many times larger than that available within the Federal agencies. They pointed out that NFIP studies, restudies and map revisions represent the potential market for many Ph.D. theses aimed at improving the science of hydrology through the development of new computer programs and expressed concern that individuals producing such theses could not hope for an economic return on their research if the research results were to be made available to the public at virtually no cost. One commentator also noted that "approved" Federal computer programs are remarkably antiquated, many still retaining their "batch process" orientation from their original 20-year old formats.

Three respondents favored the requirement that computer programs be in the public domain. One of these stated that it supported the clarification of the phrase "available to the general user," a second remarked that it has no problem with the requirement that the alternative methodology be available to the general user, while the third endorsed the concept because it would result in a uniform approach to problem-solving, which is clearly a bonus to local communities.

The 18 respondents that took exception with the requirement of the proposed rule, that an alternative computer program be approved by an agency of the Federal government before being accepted for use in processing a map revision request, raised several concerns that have merit.

It was not the intent of the proposed rule to require Federal methods to be used for local flood control design or local regulatory programs, nor was it the intent to require local agencies to adopt methodologies that were nonresponsive to unique and localized phenomena. Rather the language of the proposed rule was developed to assure that there was adherence to the same engineering standards applied in the preparation of the original map and FIS report and that when requesting changes to NFIP maps and FIS reports, adequate supporting data and documentation be submitted to allow FEMA to review and evaluate the requests and to carry out its responsibility to ensure that the information to be presented is scientifically and technically correct. Also, an underlying intent in attempting to clarify guidance as to which computer programs would be acceptable is to ensure consistency between the original analysis and the analysis performed for the map revision request so as to prevent the introduction of discrepancies that may be attributable solely to model differences. FEMA was also concerned with the proliferation of computer programs and the role of the Agency in reviewing, testing, and verifying such programs when they were submitted as the basis for flood insurance map revisions.

Locally adopted and sponsored methodologies that are alternatives to federally endorsed and sponsored methodologies may have been used in preparing the original map and FIS reports. Therefore, the Agency has no objection to the use of these same alternative methodologies when revisions to the original map and FIS reports are requested. However, when such methodologies, or newly developed methodologies have been incorporated into a computer program, FEMA needs to assure that the program has been adequately reviewed and tested and that it is available for further review and testing by those parties who have a right to appeal flood map changes based upon its use.

The final rule contains language which amends the pertinent portion of the proposed rule to reflect this view and to specify when a computer program that has not been previously accepted by an agency of the Federal government may be used to request a map revision. In general, the final rule provides for the use of computer programs which have been reviewed, tested, and accepted by Federal, state or local government agencies with responsibility for flood control or flood plain land use regulation.

FEMA believes it has a strong obligation and a public trust to assure that the data and methodology documentation is available to communities and property owners likely to be impacted by the map revision and that the right of the community and property owners to review and appeal the new analysis is not infringed upon. Also, a similar guarantee of access to the data and methodology to impacted property owners is necessary to assure that the updating of base flood elevations and maps will occur in a consistent and efficient manner as hydrologic or hydraulic conditions change in the future.

The proposed rule contained language that may have caused the respondents to have misconceptions as to who would be provided copies of the methodology documentation (e.g. computer program source codes) and data. The final rule has been reworded to make it clear that only those present and future parties impacted by flood insurance mapping developed or amended through the use of the computer program will be entitled to this consideration.

Mapping and Revision of Areas Subject to Alluvial Fan Flooding

The revisions to §§ 59.1 and 65.13, setting forth FEMA's policy for issuing map revisions for SFHAs on alluvial fans, are necessary because of the high-hazard environment on active alluvial fans, the current level of interest in their development, and an increasing demand for map changes for areas on alluvial fans.

Alluvial fans are geomorphic features characterized by cone- or fan-shaped deposits of boulders, gravel, sand, and fine sediments that have been eroded from mountain slopes, transported by floodwater draining upstream watersheds, and then deposited on the adjacent valley floor. Active alluvial fans are areas of extreme hazard subject to flash floods and high-velocity flows. Unlike riverine flooding, which is associated with permanent channels and identifiable floodplains, or shallow flooding characterized by slow-moving sheetflows, flooding that occurs on active alluvial fans is characterized by fast-moving debris and sediment-laden shallow flows. The paths followed by these flows are prone to lateral migration and sudden relocation to other portions of the fan. In addition, these fast-moving flows present hazards associated with erosion, debris flow, and sediment transport.

Alluvial fans occur in a variety of environments, particularly in arid, semi-arid, or seasonally dry regions, where the sediment supply is large enough that deposition can occur. Such locations are particularly common along faulted or tectonic mountain fronts in California, Colorado, Nevada, Utah, Oregon, Texas, Arizona, Idaho, New Mexico, Wyoming, Montana, and Washington; however, alluvial fans are also found in Alaska, West Virginia, Kentucky, and Tennessee. Some of the fastest-developing areas of the United States are in the arid and semi-arid southwestern regions, where alluvial fans occupy a large portion of the land area.

For flood insurance purposes, FEMA has chosen the 100-year flood as the base flood for the determination and mitigation of flood hazards and for setting insurance rates. However, the technology of mathematically modeling the hydrodynamics of water and debris flows on alluvial fans is still in the early development stage. Therefore, the estimation of the values of the various hazard parameters associated with the base flood is highly uncertain for alluvial fans.

Further research is needed to provide better understanding of the factors that affect alluvial fan flooding, including: the hydrology of the watersheds above and below the apex; the effects of alluvial fan geometric characteristics, sediment source, and quantity; the effect of sediment on channel avulsion; the stability of flood channels on alluvial fans; the location and extent of the distinct hydraulic zones on the fan; the determination of the stability of existing man-made structures during major flood events; and the effects of those structures on the natural alluvial fan boundaries.

In addition, the state of the art for the design and construction of other than major structural projects (i.e., whole fan protection projects) is not well developed. The efficacy of more localized projects in providing protection from fan hazards is not well-known or readily assessable. Further research is also needed to investigate construction techniques and to assess design parameters for the construction of flood mitigation structures on fans. Unfortunately, the needed research will take time to complete.

Given the present interest in development on alluvial fans, the high-hazard environment that is present on active alluvial fans, and the increasing demand for Flood Insurance Rate Map (FIRM) changes for such areas, FEMA has identified the need to develop a policy for issuing map revisions for SFHAs in such areas. FEMA believes that it is prudent to take a conservative stance concerning the removal of the SFHA designation, and its associated lender notification and mandatory insurance purchase requirements, from active alluvial fans. FEMA will, therefore, consider as a basis for map revisions involving active alluvial fans only major structural flood mitigation measures that are supported by appropriate engineering analyses.

Such measures should be designed to mitigate all hazards associated with active alluvial fan flooding, which include inundation, erosion, scour around structures, and debris and sediment flow and accumulation, in addition to aggradation and degradation of the conveyance systems. In addition, the short- and long-range effects of such measures on adjacent properties must be considered. Major mitigation structures may include, but are not restricted to, diversion dikes, flood walls, detention basins, and diversion channels with inlet and outlet systems.

Several communities employ special construction standards and zoning regulations for flood mitigation in developments on alluvial fans. While such approaches are encouraged, their efficacy in the control of floodwaters on alluvial fans is uncertain. Therefore, FEMA will not generally recognize such approaches by themselves as an adequate basis for map revision.

Because of the complexities associated with the many variables affecting flooding on alluvial fans and the lack of information with which to quantify the major fan hazards and provide the appropriate construction techniques for structures on alluvial fans, the creation of an overall development master plan of flood control, drainage maintenance, and floodplain management is encouraged by FEMA. Such plans allow for strategic management of alluvial fans at the early stage of development. At this stage, the

community is afforded a number of alternatives for dedicating specific portions of the fan to both structural and nonstructural measures that will address the unique hazards associated with alluvial fan flooding.

Eleven of the responses on the proposed rule commented on the part involving alluvial fans. These respondents included seven local governments, one private engineering firm, two associations, and the National Wildlife Federation (also writing on behalf of the Coast Alliance and the Natural Resources Defense Council).

The primary issue addressed by several respondents was that not all alluvial fans or similar landforms (or parts thereof) are subject to the types of flood hazards assumed by the proposed rule. They expressed a concern that if an area of special flood hazard is on an alluvial fan that is no longer active (i.e., not subject to aggradation by sediment or shifting flow paths), it could be removed from the FIRM only as a result of structural flood mitigation measures, even though data may exist that demonstrate that the area is not subject to the flood hazards assumed by the proposed rule. To remedy this apparent shortcoming, the respondents suggested that the proposed definition of alluvial fan be revised by including a description of landforms that are similar to alluvial fans but not subject to the same type of flood hazards and a description of the processes of alluvial fan formation that result in parts of the alluvial fan being isolated from those flood hazards.

In reviewing these responses, FEMA recognized that the language in the proposed rule identified a particular landform (i.e., alluvial fan) and not a particular type of flood hazard. The purpose of the proposed rule was to establish the design criteria and data submittal requirements for crediting, on a FIRM, a structural flood-control measure with protecting an area identified as being subject to alluvial fan flooding—not an area simply identified as being on an alluvial fan. Therefore, rather than defining an active alluvial fan, the final rule defines the type of flooding (i.e., alluvial fan flooding) to which it applies. Note that the final rule does not preclude FIRM revisions based on improved hydrologic, hydraulic, or topographic data or on technical data identifying errors in the original flood analysis. Data requirements and submission procedures for those types of requests are described in § 65.6.

One respondent expressed a concern that the proposed definition of apex may not be adequate when applied to the analysis required in the proposed rule (in § 65.13(c)(1)). In particular, he pointed out that, on some alluvial fans, entrenched channels exist that convey floodwaters from the mountain front to some point farther down the alluvial fan.

In such cases, the apex is not the point of highest elevation on the alluvial fan, but rather is the point at which the entrenched channel terminates and flood flows emerge onto the unentrenched fan surface. Because "apex" was referred to in the proposed rule at the point at which certain analyses are to apply, the definition has been replaced with one that lends itself to flood hazard analyses. On "younger" alluvial fans, whose drainage basins offer an abundant sediment source, the apex is typically at the mountain front. On "older" alluvial fans, an entrenched channel may exist that isolates the upper portions of the fan from all but the rarest of flood events, thus rendering those portions "inactive." The apex on the "older" alluvial fans is typically at the downstream end of the entrenched channel.

On some alluvial fans, entrenchment may not have evolved to such an extent that the entrenched channel has the capacity to convey all flood flows relevant to flood insurance applications. In that case, a point analogous to an apex may exist at the downstream end of the entrenched channel (applicable for flood flows whose magnitudes are less than the channel capacity) along with the apex at the mountain front (applicable for flood flows whose magnitudes are greater than the channel capacity).

Five respondents expressed concern that § 65.13(b) of the proposed rule excluded areas subject to alluvial fan flooding from the provisions of Part 70, which is the vehicle to remove parcels of land that have been inadvertently included in an area of special flood hazard. Because of the additional flood hazards associated with alluvial fan flooding, elevation data, as required under part 70, may not be enough to show that a parcel of land has been inadvertently included in a SFHA. In addition, because community involvement is not necessary for map amendments processed under part 70 and because FEMA wishes to encourage community involvement in the development of areas subject to alluvial fan flooding, requests for FIRM revisions in such areas are more appropriately processed under part 65 (specifically, § 65.5). Nevertheless, an appellant could submit technical data demonstrating that his or her property is not subject to active alluvial fan flooding and, therefore, falls within the conditions provided for in part 70.

One respondent expressed concern with a statement in § 65.13(b) of the proposed rule excluding the provisions of § 65.5 regarding map revisions based on the placement of fill. Specifically, this respondent suggested that the following statement was unclear: "In general, topographic alterations alone, by fill or other means, will not serve as a basis for removing SFHA designations from alluvial fans."

The "Supplementary Section" of the proposed rule did contain information which would have helped the respondent understand the context of the referenced portion of the proposed rule. Summarized, this information states, "FEMA will, therefore, consider as a basis for map revisions involving alluvial fans only major structural flood mitigation measures that are supported by appropriate engineering analyses." These structural flood mitigation measures may involve topographic alterations. However, because of the extremely erosive nature of high-velocity flood-flows on alluvial fans and their capacity to carry large sediment loads, the placement of fill, by itself, does not preclude the undermining and flooding of structures elevated in this manner. Therefore, individual structures or parcels of land that have been identified as subject to alluvial fan flooding will not be excluded from SFHAs only by means of topographic alterations unless these alterations occur in conjunction with structural flood-control measures that are supported by appropriate engineering analyses. Hence § 65.13(b) contains language to recognize that while topographic alterations may occur, they in general, will not serve as a basis for removing areas subject to alluvial fan flooding from SFHAs.

One respondent pointed out that because of the uncertainty associated with the flood flow path in alluvial fan flooding, the design discharge described in § 65.13(c)(1) may have less than a one-percent probability of impacting any particular point downfan from the apex. He suggested that this uncertainty be taken into consideration when defining the design discharge for flood-control measures.

FEMA recognizes that the probability of flooding by a particular discharge event occurring at a fan apex generally decreases as the fan widens. This decrease in flooding probability is taken into consideration by FEMA in establishing the downstream limits of the SFHAs on alluvial fans. Although the precise location of a flood path in a particular event may be unpredictable, the one-percent-annual-chance (100-year) discharge event at the apex will be experienced, once every 100 years, on the long-term average, somewhere within the SFHA. If the SFHA were spanned by individual structural flood-protection measures designed to alleviate flood hazards only up to those with a 100-year return interval defined at the specific site (i.e., considering the uncertainty in the flood flow path), then the 100-year flood defined at the apex, when realized, would exceed the design of all individual measures; thus, 100-year flood protection would not be achieved on the alluvial fan as a whole. Therefore, prudence dictates that a structural flood-control measure, in order to be credited on a FIRM with affording protection from alluvial fan flooding, should be designed to protect against the hazard associated with the 100-year flood defined at the apex.

One respondent recommended that § 65.13(c) be expanded to require analyses showing that a proposed development project "will not exacerbate the flood, erosion, or landslide hazards on the alluvial fan or areas up or downstream from it."

As discussed previously, FEMA believes that the creation of an overall master plan that balances flood control and drainage needs with those of the planned development is the responsibility of the community. This responsibility is addressed, in part, under the flood plain management program regulations specified in part 60. By requiring that the impact of any flood-control measures be assessed and approved by the community and other agencies with jurisdiction over the placement of flood-control structures, the final rule assures that the community and other agencies are afforded the opportunity to exercise this responsibility. FEMA is responsible for accurately depicting the flood hazards as they exist. The community and other responsible agencies have the obligation and authority to assess any adverse impacts caused by flood-control measures. Therefore, FEMA must depict the effects, regardless of their nature, of such flood-control measures.

Two respondents expressed the opinion that, contrary to FEMA's determination, the proposed rule has a significant economic impact and should undergo a regulatory flexibility analysis.

FEMA believes that the rule does not have a significant impact because the rule only defines the criteria for crediting, on a FIRM, a structural flood-control measure with protecting areas subject to alluvial fan flooding. If such credit is not sought, the rule has no impact. The mapping of an area subject to alluvial fan flooding as a SFHA does not prohibit or limit development of a site. Also, the insurance cost by itself does not have a significant impact. While this designation does subject the site to insurance purchase requirements, minimal elevation (usually 3 feet or less in AO Zones) of new construction yields rates that are lower than those associated with most other areas subject to these requirements.

Seven respondents agreed with FEMA that further research is needed to provide better understanding of the factors that affect alluvial fan flooding. Four of those correspondents questioned the adequacy of current technology to address the analyses required under § 65.13 (c) and (d). Several respondents expressed the opinion that the rule should not be promulgated until the basic research is completed or a list of approved techniques is developed, and called for Federal funding to support a program of research and technology development. FEMA considers the current technology, in combination with appropriate factors of safety, adequate to produce designs of flood-control measures that protect an area from the hazards of alluvial fan flooding. FEMA has reviewed several approaches used to support requests for FIRM revisions that adhered to and met the objectives of § 65.13 and resulted in the requested revisions.

To allow for the utilization of advances in technology without continual adjustments to the regulations, FEMA remains flexible in defining techniques that can be used to satisfy the requirements of § 65.13 (c) and (d) in accordance with § 65.6(e) of its existing regulations, whereby improved methodologies resulting from ongoing research may be utilized to effect map changes. FEMA therefore believes that it is not prudent to specify methodology in the regulations.

With reference to the suggestion that rule promulgation be delayed until the state of the art is more advanced, FEMA believes it must respond with a rulemaking at this time to meet the increasing demand for FIRM revisions for areas subject to alluvial fan flooding. An alternative would be to retain the designation of alluvial fan flooding regardless of the extent of flood protection installed. Such an approach would be unfair to those local jurisdictions with heavy investments in adequately designed flood-control measures. This rulemaking has the flexibility to incorporate new technology as research continues and fulfills the aforementioned demand.

The final rule adds definitions for "Alluvial Fan Flooding" and "Apex." Additionally, the final rule amends part 65 to add a new section to establish the policies, principles, and data requirements for mapping and revising alluvial fan SFHAs.

FEMA has determined, based upon an Environmental Assessment, that the final rule does not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

The final rule does not have a significant economic impact on a substantial number of small entities and has not undergone regulatory flexibility analysis.

The final rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, and hence, no regulatory analysis has been prepared.

The information collection requirements contained in part 65 of this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 3067–0147.

List of Subjects in 44 CFR Parts 59, 60 and 65

Flood insurance, Flood plains.

Accordingly, 44 CFR Chapter I, Subchapter B is amended as follows:

PART 59—GENERAL PROVISIONS

1. The authority citation for part 59 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 59.1 [Amended]

2. Section 59.1 is amended as follows:

a. By adding alphabetically, a definition of "alluvial fan flooding" to read as follows:

* * * * *

Alluvial fan flooding means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and, unpredictable flow paths.

* * * * *

b. By adding, alphabetically, a definition of "Apex" to read as follows:

* * * * *

Apex means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

* * * * *

c. By adding to the definition of "development" after the word "operations" the words "or storage of equipment or materials".

d. By adding, alphabetically, a definition of "Historic structure" to read as follows:

* * * * *

Historic Structure means any structure that is:

(a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(1) By an approved state program as determined by the Secretary of the Interior or

(2) Directly by the Secretary of the Interior in states without approved programs.

* * * * *

e. By revising the definition of "New Construction" to read as follows:

* * * * *

New construction means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

* * * * *

f. By adding to the definition of "start of construction" after the word "reconstruction," the words "rehabilitation, addition", and by adding the following sentence at the end of the definition: "For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building."

g. By adding, alphabetically, a definition of "Substantial Damage" to read as follows:

* * * * *

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

* * * * *

h. By revising the definition of "Substantial Improvement" to read as follows:

* * * * *

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or

(2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

* * * * *

PART 60—CRITERIA FOR LAND USE MANAGEMENT AND USE

3. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 60.3 [Amended]

4. Section 60.3 is amended as follows:

a. By adding in paragraph (c)(5) between the words "that" and "are" the phrase "are usable solely for parking of vehicles, building access or storage in an area other than a basement and which".

b. By removing the sentence in paragraph (e)(4) that begins with the word "Wind" and adding in its place "Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable State or local building standards."

c. By removing the sentence in paragraph (e)(5)(ii) that begins with the word "Maximum" and adding in its place "Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable State or local building standards."

§ 60.6 [Amended]

5. Section 60.6 is amended by removing in paragraph (a) the sentence "Variances may be issued by a community for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or a State Inventory of Historic Places, without regard to the procedures set forth in this section", and adding in its place "Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure."

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

6. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001, *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 65.6 [Amended]

7. Section 65.6 is amended by revising paragraph (a)(6) to read as follows:

* * * * *

(a) * * *

(6) Any computer program used to perform hydrologic or hydraulic analyses in support of a flood insurance map revision must meet all of the following criteria:

(i) It must have been reviewed and accepted by a governmental agency responsible for the implementation of programs for flood control and/or the regulation of flood plain lands. For computer programs adopted by non-Federal agencies, certification by a responsible agency official must be provided which states that the program has been reviewed, tested, and accepted by that agency for purposes of design of flood control structures or flood plain land use regulation.

(ii) It must be well-documented including source codes and user's manuals.

(iii) It must be available to FEMA and all present and future parties impacted by flood insurance mapping developed or amended through the use of the program. For programs not generally available from a Federal agency, the source code and user's manuals must be sent to FEMA free of charge, with fully-documented permission from the owner that FEMA may release the code and user's manuals to such impacted parties.

* * * * *

§ 65.14 [Redesignated from § 65.13]

8. Part 65 is amended by the redesignation of § 65.13 as § 65.14 and the addition of a new § 65.13 to read as follows:

§ 65.13 Mapping and map revisions for areas subject to alluvial fan flooding.

This section describes the procedures to be followed and the types of information FEMA needs to recognize on a NFIP map that a structural flood control measure provides protection from the base flood in an area subject to alluvial fan flooding. This information must be supplied to FEMA by the community or other party seeking recognition of such a flood control measure at the time a flood risk study or restudy is conducted, when a map revision under the provisions of part 65 of this subchapter is sought, and upon request by the Administrator during the review of previously recognized flood control measures. The FEMA review will be for the sole purpose of establishing appropriate risk zone determinations for NFIP maps and shall not constitute a determination by FEMA as to how the flood control measure will perform in a flood event.

(a) The applicable provisions of §§ 65.2, 65.3, 65.4, 65.6, 65.8 and 65.10 shall also apply to FIRM revisions involving alluvial fan flooding.

(b) The provisions of § 65.5 regarding map revisions based on fill and the provisions of part 70 of this chapter shall not apply to FIRM revisions involving alluvial fan flooding. In general, elevations of a parcel of land or a structure by fill or other means, will not serve as a basis for removing areas subject to alluvial fan flooding from an area of special food hazards.

(c) FEMA will credit on NFIP maps only major structural flood control measures whose design and construction are supported by sound engineering analyses which demonstrate that the measures will effectively eliminate alluvial fan flood hazards from the area protected by such measures. The provided analyses must include, but are not necessarily limited to, the following:

(1) Engineering analyses that quantify the discharges and volumes of water, debris, and sediment movement associated with the flood that has a one-percent probability of being exceeded in any year at the apex under current watershed conditions and under potential adverse conditions (e.g., deforestation of the watershed by fire). The potential for debris flow and sediment movement must be assessed using an engineering method acceptable to FEMA. The assessment should consider the characteristics and availability of sediment in the drainage basin above the apex and on the alluvial fan.

(2) Engineering analyses showing that the measures will accommodate the estimated peak discharges and volumes of water, debris, and sediment, as determined in accordance with paragraph (c)(1) of this section, and will withstand the associated hydrodynamic and hydrostatic forces.

(3) Engineering analyses showing that the measures have been designed to withstand the potential erosion and scour associated with estimated discharges.

(4) Engineering analyses or evidence showing that the measures will provide protection from hazards associated with the possible relocation of flow paths from other parts of the fan.

(5) Engineering analyses that assess the effect of the project on flood hazards, including depth and velocity of floodwaters and scour and sediment deposition, on other areas of the fan.

(6) Engineering analyses demonstrating that flooding from scources other than the fan apex, including local runoff, is either insignificant or has been accounted for in the design.

(d) Coordination. FEMA will recognize measures that are adequately designed and constructed, provided that: evidence is submitted to show that the impact of the measures on flood hazards in all areas of the fan (including those not protected by the flood control measures), and the design and maintenance requirements of the measures, were reviewed and approved by the impacted communities, and also by State and local agencies that have jurisdiction over flood control activities.

(e) Operation and Maintenance Plans and Criteria. The requirements for operation and maintenance of flood control measures on areas subject to alluvial fan flooding shall be those specified under § 65.10, paragraphs (c) and (d), when applicable.

(f) Certification Requirements. Data submitted to support that a given flood control measure complies with the requirements set forth in paragraphs (c) (1) through (6) of this section must be certified by a registered professional engineer. Also, certified as-built plans of the flood control measures must be submitted. Certifications are subject to the definition given at § 65.2.

(Approved by the Office of Management and Budget under control number 3067-0147.)

Dated: August 7, 1989.

Harold T. Duryee,

Federal Insurance Administrator.

[FR Doc. 89-18945 Filed 8-14-89; 8:45 am]

BILLING CODE 6718-05-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 88-475; FCC 89-160]

Public Land Mobile Services; Cellular Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has revised § 22.43(a)(1) of its rules, and has added a new section, § 22.43(d). These changes will allow Public Land Mobile Service (PLMS) and cellular applicants to begin construction of facilities after filing FCC Form 401 but prior to receiving an authorization, as long as certain conditions are met. Under the previous rule, applicants could not begin construction until they received an authorization. The revised rule will allow applicants to provide service to the public more efficiently and will eliminate an unnecessary regulation.

EFFECTIVE DATE: September 18, 1989.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Pamela Gerr, Mobile Services Division, Common Carrier Bureau, (202) 632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order adopted May 17, 1989 and released August 2, 1989. The full text of this action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this action may also be purchased from the Commission's copy contractors,

International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. Section 319(d) of the Communications Act of 1934, 47 U.S.C. 319(d), provides that construction permits shall not be required for common carriers unless the Commission finds that such permits are in the public interest. Section 22.43(a)(1) of the Commission's rules required all part 22 applicants to obtain Commission authorization prior to beginning construction of facilities. The Commission has now determined that, at least in the case of cellular and Public Land Mobile Service (PLMS) applicants, the pre-construction authorization requirement no longer serves the public interest. This order revises § 22.43(a)(1) of the rules, and adds a new section, § 22.43(d), thereby allowing PLMS and cellular applicants to begin construction after they file their application (FCC Form 401) and a prescribed waiting period has passed, as long as certain requirements specified in the rules are met.

2. The order addresses the seven conditions in the rule which bar an applicant from commencing construction prior to authorization. An applicant may not construct prior to receiving an authorization as long as the following conditions persist: (1) There is a mutually exclusive application or petition to deny; (2) the applicant has requested a waiver of a Commission rule pursuant to section 22.19 of the rules; (3) the application proposes a *de minimis* extension of a Cellular Geographic Service Area beyond the borders of the cellular market pursuant to § 22.903; (4) where required, the applicant has not filed a notice of proposed construction with the FAA, or has not received a determination from the Commission as to any required antenna structure marking and lighting specifications; (5) the applicant has not considered whether the proposed facility will have a significant environmental effect pursuant to §§ 1.1301 through 1.1319 of the rules, determined that the proposed facility will not have such an effect and indicated this determination on the Form 401; (6) for a PLMS applicant, the proposed facility will be located between line A and the United States-Canadian border, or a facility to be operated in the 931–932 MHz band will be located in any of the areas indicated in Note C of the new § 22.43(d); and (7) for a cellular applicant (or tentative selectee), the proposed facility's 39 dBu contour will extend into Mexico.

3. The order also provides that applicants must wait a certain number of days from the time the application appears on public notice before starting to construct. The general rule provides that applicants may begin to construct after they file their Form 401 application, and 90 days have passed since the application was listed on public notice, as long as none of the conditions listed in paragraph 2 *supra* is present. The cellular applicant or tentative selectee for the initial wireline and non-wireline authorizations to be awarded in each market are given a sixty day waiting period. The same sixty day waiting period is applied to the sole eligible or sole surviving wireline applicant for a particular market since in this instance there is no public interest reason for treating wireline and non-wireline applicants differently. Cellular applications for a major modification of an existing system during the five year fill-in period, *see* § 22.31(a)(1)(i), will be subject to a forty-five day waiting period.

4. After the fill-in period, applications to expand an existing CGSA will be subject to competing applications and a ninety day waiting period will apply. Applications for an initial authorization to serve an as yet unserved area of a cellular market will also be permitted and will be subject to competing applications. Rules regarding the processing of these applications have not yet been adopted. In the present rulemaking the Commission sets a ninety day waiting period but reserves the right to modify this time period once final rules for processing such applications are adopted.

List of Subjects in 47 CFR Part 22

Communications common carriers. Public mobile services.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Section—Amendments to Part 22 of the Commission's Rules

Title 47, part 22 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 22.43 is amended by revising paragraph (a)(1) and adding a new paragraph (d) to read as follows:

§ 22.43 Period of construction.

(a)(1) *General rule.* Except as otherwise provided in § 22.43(d), a radio station authorization shall specify the date of grant as the earliest date for commencement of construction.

* * * * *

(d) *Commencing construction prior to grant of a radio station authorization*—(1) *Scope.* Section 22.43(d) applies to the following Public Land Mobile Service (PLMS) applicants and Domestic Public Cellular Radio Telecommunications Service (cellular) applicants and tentative selectees:

(i) Applicants for an initial station authorization in the PLMS;

(ii) Applicants for a non-permissive change, *see* § 22.9 of the rules, of an existing station authorization in the PLMS;

(iii) Applicants who have filed applications or amendments which request expansion of the reliable service area of a PLMS base station facility by less than one mile. *Cf.* § 22.23(c)(2) of the rules;

(iv) Cellular tentative selectees seeking the initial Block A (non-wireline) or Block B (wireline) authorization awarded in a cellular market;

(v) The sole eligible wireline applicant, or sole surviving wireline applicant after a full market settlement, to apply for the initial Block B (wireline) authorization in a cellular market;

(vi) Applicants seeking authorization to expand an existing Cellular Geographic Service Area (CGSA) pursuant to § 22.9 of the rules, both during the exclusive five year fill-in period, *see* § 22.31 (a)(1), (f) of the rules, and after the fill-in period has expired *Id.*; and

(vii) Applicants seeking an initial cellular authorization after the exclusive five year fill-in period has expired. *See* § 22.31(a)(1), (f) of the rules.

(2)(i) *General rule.* Once the applicant has filed a Form 401 with the Commission, and 90 days have elapsed from the date of the public notice listing the application as acceptable for filing, the applicant may commence construction provided that the requirements of § 22.43 (d)(3) have been met.

(ii) Notwithstanding any provision of § 22.43(d), if the Commission for any reason determines that construction should not be commenced or should be stopped pending the grant of an authorization the applicant shall cease construction upon receiving notification from the Commission. Notification may be made in writing or orally followed with a written confirmation. The notification of cessation of construction may be revoked in writing once the reason for making such notification no longer exists.

(3) *Conditions.* An applicant may not commence construction prior to the grant of an authorization as long as any of the following conditions persist:

(i) The application is mutually exclusive with another application or a petition to deny has been filed;

(ii) The applicant requests a waiver of a Commission rule pursuant to § 22.19 of the rules;

(iii) The application proposes a *de minimis* extension of a CGSA beyond the borders of the cellular market, *see* § 22.903 of the rules;

(iv) The applicant, where required, has not filed a notice of proposed construction with the FAA, or has not received a determination from the Commission as to any required antenna structure marking and lighting specifications;

(v) The applicant (or cellular tentative selectee) has not taken all of the following steps: (A) Considered whether the proposed facility may have a significant environmental effect pursuant to §§ 1.1301 through 1.1319 of the rules; (B) determined that the proposed facility will not have such an effect; and (C) indicated this determination on the Form 401;

(vi) For a PLMS applicant, the proposed facility will be located between line A and the United States-Canadian border, *See* §§ 1.955, 22.117(b)(2) of the rules; or a facility to be operated in the 931–932 MHz band will be located in any of the areas indicated in Note C, *infra;* and

(vii) For cellular applicants (or tentative selectees) the proposed facility's 39 dBu contour will extend into Mexico.

(4) *Exceptions to the general rule*—(i) *Cellular applications for the initial wireline and non-wireline authorizations to be awarded in each cellular market.* Cellular tentative selectees seeking the initial wireline or non-wireline radio station authorization to be awarded in a cellular market, *see* § 22.43(d)(1)(iv), and the sole eligible wireline applicant, or sole surviving wireline applicant after a full market settlement, to apply for the initial wireline authorization in a cellular market, *see* § 22.43(d)(1)(v) shall not be subject to the general rule set out in § 22.43(d)(2)(i). Rather, once 60 days have elapsed from the date of public notice announcing the tentative selectee, or the sole eligible or sole surviving wireline applicant, the tentative selectee, or applicant, may commence construction provided that the requirements of § 22.43(d)(3) have been met, except that in these circumstances the fact that mutually exclusive applications are pending shall not bar construction by the cellular tentative selectee.

(ii) *Applications to expand an existing CGSA during the fill-in period.* Cellular applications to expand an existing CGSA during the fill-in period, *see* § 22.43(d)(1)(vi), shall not be subject to the general rule set out in § 22.43(d)(2)(i). Rather, once the applicant has filed a Form 401 with the Commission, and 45 days have elapsed from the date of the public notice listing the application as acceptable for filing, the applicant may commence construction provided that the requirements of § 22.43(d)(3) have been met.

(iii) *Applications and amendments to expand the reliable service area of a PLMS base station by less than one mile.* Applications and amendments which request expansion of the reliable service area of a PLMS base station facility by less than one mile, *see* § 22.43(d)(1)(iii), shall not be subject to the general rule set out in § 22.43(d)(2)(i). Rather, once the applicant has mailed the Form 401 to the Commission, the applicant may commence construction provided that the requirements of § 22.43(d)(3) have been met.

(5) *Assumption of risk.* Applicants who commence construction prior to receiving an authorization pursuant to § 22.43(d), shall assume the risk of and have no recourse against the United States on account of:

(i) Not receiving an authorization;

(ii) Errors and time lags in the public notice system;

(iii) Having to alter, relocate or dismantle the facility; and

(iv) Incurring whatever costs may be necessary to bring the facility into compliance with applicable laws.

(6) *Commencing operation.* Applicants constructing facilities without prior Commission authorization pursuant to § 22.43(d), shall not commence operating such facilities until after the Commission issues an authorization and the applicant complies with the notification requirements of § 22.9(b)(1) of the rules.

Note A: Pursuant to an agreement between the Commission and the Department of Communications in Canada, Commission authorizations issued for cellular facilities built within forty-five miles of the U.S. Canadian border shall have the following condition attached:

This authorization is subject to the condition that, in the event that cellular systems using the same frequency block as granted herein are authorized in adjacent territory in Canada, coordination of any of your transmitter installations which are within 45 miles of the U.S.-Canadian border shall be required to eliminate any harmful interference that might otherwise exist and to insure continuance of equal access to the frequency block by both countries.

Note B: Pursuant to an agreement between the United States and Mexico, Commission authorizations issued for cellular facilities built within forty-five miles of the United States-Mexican border, or whose 39 dBu contour extends into Mexico, shall have the following condition attached:

This authorization is subject to the condition that, in the event cellular systems using the same frequencies granted herein are authorized in adjacent territory in Mexico, coordination of your transmitter installations which are within 72 kilometers (45 miles) of the United States-Mexico border shall be required to eliminate any harmful interference that might otherwise exist and to ensure continuance of equal access to the frequencies by both countries. The operator of this system shall not contract with customers in Mexico and further, users of the system must be advised that operation of a mobile unit in Mexico is not permitted at this time without the express permission of the Mexican government. The above conditions are subject to modification pending further notice from the Commission.

Note C: In the case of PLMS facilities to be operated on the 931–932 MHz band, pre-authorization construction will not be allowed if the proposed station is to be located within any of the following areas.

(1) Stations located within the area between line A or line C, as defined in § 1.955 of the rules, and the United States-Canadian border.

(2) Stations located within 100 miles of the coordinates listed below.

(3) Stations located within 250 miles of the Canadian border receive station coordinates listed below and within ±30 degrees of the given azimuth (from the Canadian station).

CANADIAN TERRESTRIAL MICROWAVE RECEIVERS REQUIRING PROTECTION

Geographic coordinates		Azimuth from true north (degrees)
North latitude	West longitude	
62°35'40"	140°55'36"	173.2°
61°15'13"	138°48'12"	312.2°
49°33'50"	90°21'15"	205.5°
49°07'07"	93°55'30"	265.4°
48°48'17"	123°17'06"	255.4°
48°58'18"	86°16'24"	221.7°
48°45'36"	92°37'03"	259.5°
48°19'11"	84°04'12"	192.5°
48°27'56"	81°18'14"	238.5°
47°55'06"	69°23'06"	222.1°
45°16'35"	74°06'06"	75.1°

[FR Doc. 89-18884 Filed 8-14-89; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 525

[Acquisition Circ. AC-89-3]

General Services Administration Acquisition Regulation; Deviation From Trade Agreements Act

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary rule with request for comments.

SUMMARY: Section 525.402 of the General Services Administration Acquisition Regulation (GSAR), chapter 5 (APD 2800.12A), is temporarily amended by revising paragraph (a), redesignating paragraph (b) as (c), and adding a new paragraph (b) to authorize GSA contracting activities to deviate from FAR clause 52.225–9. The deviation authorizes contracting officers to modify paragraphs (b) and (c) of the clause in order to delete the requirement to insert the Trade Agreements Act threshold in paragraph (b) and require the policies and procedures at FAR 25.402(a)(1) be used to evaluate offers in procurements subject to the Trade Agreements Act. The intended effect is to alleviate the potential for interpretation of the FAR clause requirement in a manner that is inconsistent with the policy at FAR 25.402.

DATES: Effective date: August 15, 1989. Expiration date: July 31, 1990. Comments should be submitted to the Office of GSA Acquisition Policy at the address shown below on or before October 16, 1989, to be considered in the final rule.

ADDRESS: Comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy (VP), 18th and F Streets NW., Room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward McAndrew, Office of GSA Acquisition Policy, (202) 566–1224.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Regulation (FAR) was amended by Federal Acquisition Circular (FAC) 84–38 to implement changes to the Agreement on Government Procurement concerning, among other things, the application of the Trade Agreements Act to a particular acquisition. However, the FAR clause at 52.225–9 was not revised and paragraphs (b) and (c) of the clause could be interpreted in a manner inconsistent with the revised policy at FAR 25.402. GSA is temporarily revising the GSAR pending a revision to the FAR in order to authorize GSA contracting officers to deviate from the FAR clause in acquisitions subject to the Trade Agreements Act. A recommendation to revise the FAR to provide consistency in FAR 25.402 and the clause at 52.225–9 has already been made and is being considered by the FAR councils.

B. Determination To Issue a Temporary Regulatory

A determination has been made to issue the regulation in GSAR as a temporary rule. This action is necessary to authorize a deviation to an existing FAR clause to ensure consistency with the revised policy on the application of the Trade Agreement Act coverage in FAC 84–38. However, pursuant to Public Law 98–577 and FAR 1.501, public comments are solicited and will be considered in formulating a final rule.

C. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

D. Regulatory Flexibility Act

This temporary rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it authorizes a deviation to a FAR clause that will resolve an inconsistency with current FAR policy that has been previously incorporated into procurement process. Therefore, an Initial Regulatory Flexibility Analysis has not been prepared.

E. Paperwork Reduction Act

This temporary rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501).

List of Subjects in 48 CFR Part 525

Government procurement.

1. The authority citation for 48 CFR part 525 continues to read as follows:

Authority: 40 U.S.C 486(c).

2. 48 CFR part 525 is amended by the following Acquisition Circular:

General Services Administration Acquisition Regulation Acquisition Circular (AC–89–3)

To: All GSA contracting activities.
Subject: Deviation to FAR clause 52.225–9, Buy American Act—Trade Agreements Act—Balance of Payment Program.

1. *Purpose.* This Acquisition Circular authorizes GSA contracting activities to deviate from the FAR clause 52.225–9, Buy American Act—Trade Agreements Act—Balance of Payment Program, in the manner prescribed in this Acquisition Circular.

2. *Background.* The Federal Acquisition Regulation (FAR) was amended by FAC 84–38, effective August 19, 1988, to implement a change to Subpart 25.4 concerning the application of the Trade Agreements Act coverage to a particular acquisition. Specifically, the determination on whether a particular acquisition is subject to the Trade Agreements Act is now based on the total estimated value of the entire procurement rather than the dollar value of offers received. This change was based on the revision to the Agreement on Government Procurement that was effective February 14, 1988. FAC 84–38, although it revised various FAR parts and subparts to implement the revisions to the Agreement on Government Procurement, did not revise FAR clause 52.225–9. As a result, paragraphs (b) and (c) of the FAR clause could be interpreted in a manner inconsistent with the revised policy at FAR 25.402 on the application of the Trade Agreements Act to a particular procurement. Consequently, a class deviation has been approved for GSA contracting activities to modify the FAR clause as prescribed below.

3. *Effective date.* August 15, 1989.

4. *Expiration date.* This Acquisition Circular expires July 31, 1990, unless cancelled earlier.

5. *Reference to regulation.* Section 525.402 of the GSAR.

6. *Explanation of change.* Section 525.402 is amended by revising paragraph (a), redesignating paragraph (b) as (c), and by adding a new paragraph (b) to read as follows:

PART 525—[AMENDED]

Subpart 525.4—Purchases Under the Trade Agreements Act of 1979

525.402 Policy.

(a) Under FAR 25.402(a), when the estimated value of all items or products (exclusive of any item or product within any of the exceptions described in FAR 25.403) listed in the solicitation exceeds the Trade Agreements Act threshold, the contracting officer shall evaluate offers without regard to the restrictions of the Buy American Act or the Balance of Payment Program. The Trade Agreements Act threshold is $156,000.

(b) In order to remove the inconsistency between paragraphs (b) and (c) of FAR clause 52.225–9 and the policy at FAR 25.402, contracting officers are authorized to deviate from the FAR clause at 52.225–9, Buy American Act—Trade Agreements Act—Balance of Payment Program, in solicitations and contracts that are subject to the Trade Agreements Act by modifying paragraphs (b) and (c) of the FAR clause as follows:

(1) Revise the last sentence of paragraph (b) to read: "Contractors may not supply a foreign end product unless the foreign end product is a designated country end product or a Caribbean Basin country end product (see FAR 25.401) or unless a waiver is granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c))."

(2) Revise paragraph (c) to read: "Offers will be evaluated in accordance with the policies and procedures of FAR 25.402(a)(1)."

* * * * *

Dated: August 9, 1989.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 89–19058 Filed 8–14–89; 8:45 am]

BILLING CODE 6820–61–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1207 and 1249

[Ex Parte No. MC–190]

Elimination of Accounting and Reporting Requirements for Private Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting new accounting and reporting regulations at 49 CFR Part 1207 and 49 CFR Part 1249 governing the classification of Class I and Class II common and contract motor carriers of property to exclude certain private carrier operating revenues from annual carrier operating revenues (ACOR). ACOR is used to determine motor carrier classification. Class I and Class II motor carriers are subject to Commission accounting and periodic reporting (*see* Instruction I, 49 CFR 1207.2). This revision will ensure that only those private motor carriers with regulated for-hire revenues of $1 million or more are required to follow Commission accounting and reporting requirements. Further, excluded private revenues will be reported in new account 3990 to assure that these revenues will be segregated and disregarded when computing a carrier's ACOR for classification purposes.

DATES: This revision is effective August 15, 1989, and shall be used for the reporting year beginning January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder or William F. Moss III, (202) 275–7510 or (202) 275–7510. (TDD for hearing impaired: (202) 275–1721)

SUPPLEMENTARY INFORMATION: Specifically, this decision will exclude revenues from the classification process derived from the performance of private interstate and/or intrastate carriage, compensated intercorporate hauling (CIH), and leasing of vehicles with drivers to private carriers. These revenues are derived from activities which would not normally create an accounting and reporting obligation to the Commission if private carriers did not also possess interstate common or contract motor carrier authority.

This proceeding was initiated by Notice of Proposed Rulemaking (NPR) (53 FR 39119, published October 5, 1988) served October 4, 1988, in response to petitions from the National-American Wholesale Grocers' Association and the Private Truck Council of America, Inc. In addition to seeking to exclude various private revenue categories from ACOR, the petitioners also sought to change the annual reporting period provided in 49 CFR 1207 from a calendar year or an accounting year of thirteen 4-week periods ending on one of the last 7 days of the calendar year, to a thirteen 4-week period whose final day may be any day of any month, commonly called a fiscal year.

We have declined to incorporate any change in the annual reporting period. We continue to believe the calendar year basis is necessary to ensure the uniformity in accounting instructions and facilitate the summarization of annual report data reported to the Commission. The changes are set forth below.

To purchase a copy of the full decision, write, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Energy and Environmental

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility

We certify that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects

49 CFR Part 1207

Motor carriers, Uniform system of accounts.

49 CFR Part 1249

Motor Carriers, Reporting and recordkeeping requirements.

Decided: August 4, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1207 and 1249 of the Code of Federal Regulations are amended as follows:

PART 1207—CLASS I AND CLASS II COMMON AND CONTRACT MOTOR CARRIERS OF PROPERTY

1. The authority citation for part 1207 continues to read as follows:

Authority: 49 U.S.C. 10321, 10751, 11142 and 11145; 5 U.S.C. 553.

§ 1207.1 [Amended]

2. Section 1207.1, Instruction 1(b)(1), under *Class I and Class II Motor Carriers Instructions,* is revised to read as follows:

1. *Classification of carriers.*

* * * * *

(b)(1) The class to which any carrier belongs shall be determined by annual carrier operating revenues (excluding revenues from private carriage, compensated intercorporate hauling, and leasing vehicles with drivers to private carriers Account 3990) after applying the revenue deflator formula in Note A. Upward and downward reclassification will be effected as of January 1 of the year immediately following the third consecutive year of revenue qualification.

* * * * *

3. New account 3990 is added to Revenue Account Explanations to read as follows:

3990 Private Carriage, Compensated Intercorporate Hauling, and Leasing Vehicles with Drivers to Private Carriers

This account shall include all private carriage and compensated intercorporate revenues, both interstate and/or intrastate. This account shall also include revenue generated from leasing vehicles with drivers to private carriers. Revenues generated from

private carriage, compensated intercorporate hauling, and leasing vehicles with drivers to private carriers shall not be included in accounts 3100–3900.

PART 1249—REPORTS OF MOTOR CARRIERS

4. The authority citation for part 1249 continues to read as follows:

Authority: 49 U.S.C. 11142 and 11145; 5 U.S.C. 553.

5. Section 1249.2(b)(1) is revised to read as follows:

§ 1249.2 Classification of carriers—motor carriers of property, household goods carriers, and dual property carriers.

* * * * *

(b)(1) The class to which any carrier belongs shall be determined by annual carrier operating revenues (excluding revenues from private carriage, compensated intercorporate hauling, and leasing vehicles with drivers to private carriers, Account 3990) after applying the revenue deflator formula in Note A. Upward and downward reclassification will be effected as of January 1 of the year immediately following the third consecutive year of revenue qualification.

* * * * *

[FR Doc. 89–19100 Filed 8–14–89; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 81132-9033]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure; request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the portion of the total allowable catch (TAC) of sablefish allocated to trawl gear in the Western Regulatory Area of the Gulf of Alaska has been reached. The Secretary of Commerce is prohibiting further retention of sablefish by trawl vessels fishing in this district from 12:00 noon, Alaska Daylight Time (A.d.t.), on August 10, 1989, through December 31, 1989.

DATES: This notice is effective from 12:00 noon, A.d.t., on August 10, until midnight, A.s.t., December 31, 1989. Comments are invited until August 25, 1989.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Resource Management Specialist, NMFS, 907–586–7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR part 672. Section 672.20(a) of the regulations establishes an optimum yield range of 116,000–800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. The TACs for target species and species groups are specified annually and apportioned among the regulatory areas and districts.

Section 672.24(b)(2) restricts the trawl catch of sablefish in the Western Regulatory Area to 20 percent of the TAC. The 1989 TAC specified for sablefish in the Western Regulatory Area is 3,770 mt (54 FR 6524, February 13, 1989); 20 percent of the TAC is 750 mt. Under § 672.24(b)(3)(ii), if the share of the sablefish TAC assigned to any type of gear for any area or district is reached, further catches of sablefish must be treated as prohibited species by persons using that type of gear for the remainder of the year.

The Regional Director reports that 630 mt of sablefish have been harvested by vessels using trawl gear in the Western Regulatory Area through July 29, 1989. Current daily catch rates per vessel are as high as 3.5 mt. At this catch rate, the balance of the 750 mt allocated to trawl vessels in the Western Regulatory Area will be harvested by 12:00 noon, A.d.t., August 10, 1989.

Therefore, pursuant to § 672.24(b)(3)(ii), the Secretary is prohibiting further retention of sablefish caught with trawl gear in the Western Regulatory Area effective 12:00 noon, A.d.t. August 10, 1989. After that date, any sablefish caught with trawl gear in the Western Regulatory Area must be treated as prohibited species and discarded at sea.

Classification

This action is taken under §§ 672.22 and 672.24, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: August 9, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–19114 Filed 8–10–89; 2:17 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 156
Tuesday, August 15, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 52; Doc. No. 6955S]

General Crop Insurance Regulations; Cotton Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR part 401), effective for the 1990 and succeeding crop years, by revising and reissuing 7 CFR 401.119, the Cotton Endorsement. The intended effect of this rule is to provide cotton insureds a unit division by share, section, and practice (irrigated and non-irrigated) instead of the previous unit division based on Agricultural Stabilization and Conservation (ASCS) Farm Serial Number.

DATES: Written comments, data, and opinions on this proposed rule should be received not later than September 14, 1989, to be sure of consideration.

ADDRESSES: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulator Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to amend the General Crop Insurance Regulations (7 CFR part 401), by revising and reissuing 7 CFR 401.119, the Cotton Endorsement, effective for the 1990 and succeeding crop years, to provide cotton insureds a unit division by share, section, and practice (irrigated and non-irrigated) instead of the previous unit division based on (ASCS) Farm Serial Number.

Minor editorial changes have been made to improve compatibility with the General Crop Insurance Policy. These changes do not affect meaning or intent of the provisions. In revising and reissuing the Cotton Endorsement, FCIC proposes to make other changes in the provisions for insuring cotton as follows:

1. Section 3—Add language to allow for a premium adjustment for insureds with good experience. The applicable premium adjustment percentage will be shown on the actuarial table.

2. Section 5—Change unit division language to allow division by share, section, and practice (irrigated-nonirrigated). Cotton insureds were previously allowed unit division only by ASCS Farm Serial Number. The new unit division language for cotton will now be identical to the methods used for wheat, corn, etc.

3. Section 7—Change language to correspond with the way the Agriculture Marketing Service (AMS) identifies and reports spot cotton prices as codified in the Code of Federal Regulations (7 CFR part 27).

4. Section 10—Add definition of "Growth Area" as the geographic area designated by the Secretary of Agriculture for the purpose of reporting cotton prices.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comment should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance; Cotton.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR part 401) by revising and reissuing the Cotton Endorsement (7 CFR 401.119), proposed to be effective for the 1990 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 401.119 is revised to read as follows:

§401.119 Cotton endorsement.

The provisions of the Cotton Crop Insurance Endorsement for the 1990 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Cotton Endorsement

1. Insured Crop and Acreage

a. The crop insured will be American Upland lint cotton.

b. The acreage insured of skip-row cotton will be the acreage occupied by the rows of cotton after eliminating the skipped-row portions.

c. In addition to the cotton not insurable under section 2 of the general crop insurance policy, we do not insure any cotton:

(1) Which is not irrigated and, in the same calendar year, is grown:

(a) Where a hay crop was harvested; or

(b) Where a small grain crop reached the heading stage.

(2) Planted in excess of any mandatory acreage limitations applicable to the farm by any program administered by the United States Department of Agriculture; or

(3) Destroyed, or put to another use in order to comply with other United States Department of Agriculture programs.

d. In lieu of subsection 2.e.(7) of the general crop insurance policy, we do not insure any cotton planted with another spring planted crop.

e. A late planting agreement will be available for cotton.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;

b. Fire;

c. Insects;

d. Plant disease;

e. Wildlife;

f. Earthquake;

g. Volcanic eruption; or

h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times any applicable premium adjustment percentage for which you may qualify as shown in the actuarial table.

4. Insurance Period

a. In lieu of subsection 7.b. of the general crop insurance policy (harvest of the unit), insurance will end upon removal of the cotton from the field.

b. The calendar dates for the end of the insurance period are as follows:

(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson counties, Texas, and all Texas counties lying South thereof..... September 30;

(2) Arizona, California, New Mexico, Oklahoma, and all other Texas counties..... January 31;

(3) All other states..... December 31.

5. Unit Division

Cotton acreage that would otherwise be one unit, as defined in Section 17 of the general crop insurance policy, may be divided into more than one optional unit, if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. Acreage planted to insured cotton is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in Florida), the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The cotton is planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

c. The acreage planted to the insured cotton is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Cotton planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damaze or Loss

For purposes of Section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of cotton to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

b. The total production to be counted for a unit will include:

(1) All harvested production; and

(2) All appraised production which will include:

(a) Mature and potential production on unharvested acreage;

(b) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good cotton farming practices;

(c) Not less than the applicable guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(d) Not less than 25 percent of the production guarantee per acre for any acreage of cotton that is immature when we determine that harvest of cotton becomes general in the county.

(e) Appraised production on insured acreage for which we have given written consent to be put to another use, unless such acreage is:

(i) Not put to another use before harvest of cotton becomes general in the county and is reappraised by us;

(ii) Further damaged by an insured cause and is reappraised by us; or

(iii) Harvested; and

(f) Appraised production of not less than the harvested guarantee on acreage where the stalks have been destroyed without our written consent.

c. When mature cotton (harvested or unharvested) has been damaged solely by insured causes, the production to count will be reduced if, on the date the final notice of loss is given by the insured, the price quotation for cotton of like quality (price quotation "A") for the applicable growth area is less than 75 percent of price quotation "B." Price quotation "B" will be that day's growth area price quotation for the same area for cotton of the grade, staple length, and micronaire reading shown by the actuarial table for this purpose. The pounds of production to be counted will be determined by multiplying the number of pounds (harvested and appraised) of mature cotton by price quotation "A" and dividing the result by 75 percent of price quotation "B."

8. Cancellation and Termination Dates

The cancellation and termination dates are:

State and county	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	February 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	March 31.

State and county	Cancellation and termination dates
All other Texas counties and all other states.	April 15.

9. Contract Changes

The date by which contract changes will be available in your service office is December 31 preceding the cancellation date for counties with an April 15 cancellation date and November 30 preceding the cancellation date for all other Counties.

10. Meaning of Terms

a. *Cotton* means only American Upland Cotton.

b. *Crop year* means the period beginning at planting and extending through the end of the insurance period shown in section 4 and is designated by the calendar year in which the crop is normally planted.

c. *Harvest* means the removal of the seed cotton on each acre from the open cotton boll or the severance of the open cotton boll from the stalk by either manual or mechanical means.

d. *Mature cotton* means cotton which can be harvested either manually or mechanically and will include both unharvested and harvested cotton.

e. *Skip-row* means planting patterns consisting of alternating rows of cotton and fallow rows or rows of another crop as defined by ASCS (if non-cotton rows are occupied by another crop any yield factor normally applied for skip-row cotton will not be applicable).

f. *Growth area* means a geographic area designated by the Secretary of Agriculture for the purpose of reporting cotton prices.

Done in Washington, DC, on August 7, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-19008 Filed 8-14-89; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 401

[Amdt. No. 37; Doc. No. 6958S]

General Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR part 401), effective for the 1990 and succeeding crop years, to: (1) Clarify the time limit for an insured producer to submit a report or a notice to FCIC; and (2) modify the restriction against insuring land which has been strip mined. The intent of this rule is to provide language allowing the insured producer to submit required notices or reports on the next business day if the reporting or notification date falls on a weekend or Federal holiday, or if the insured's service office is, for any reason, closed on such reporting or notification date, and to provide crop insurance on land which has been strip mined by written agreement between the insured and FCIC.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than October 16, 1989, to be sure of consideration.

ADDRESSES: Written comments should be sent to the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Thursday, July 30, 1987, FCIC published a final rule in the Federal Register at 52 FR 28443, providing the regulations for insuring crops under the General Crop Insurance Policy.

Throughout the General Crop Insurance Regulations and Policy are references to important dates which must be adhered to by the insured under the policy, including required reports which must be filed to comply with insurance provisions, and special notices which must be submitted to FCIC in order to be eligible for the program's benefits.

Subsection 20 of 7 CFR part 401, titled "Notices", provides that all notices required to be given by the insured must be in writing and received by the service office within the designated time, unless otherwise provided by the notice requirement. When immediate notice is required, it may be given by telephone or in person and confirmed in writing. The time of the notice is determined by the time of FCIC's receipt of the written notice.

Subsection 21, titled "Dates, Reports, and Notices", cautions the insured that, in order to preserve his/her rights under the policy, the insured is required to file a number of reports and notices to FCIC by certain dates.

While it is common business practice to extend the date for a specific action to the next business day if such date is not a regular business day, that is not set out in the General Crop Insurance Policy.

Section 2.e.(12) of the General Crop Insurance Policy provides that FCIC does not insure any acreage which has been strip mined. Some strip mined acreage is sufficiently reclaimed back to agricultural productivity. FCIC has determined that this restriction should be modified to allow crop insurance by written agreement between the insured and FCIC.

Accordingly, FCIC proposes to clarify the time limit for an insured producer to submit a report or a notice to FCIC, and modify the restriction against insuring land which has been strip mined to provide crop insurance by written agreement between the insured and FCIC.

Written comments are solicited by FCIC for 60 days following publication

of this rule in the Federal Register. Written comments, data, and opinions on the rule should be sent to Peter F. Cole Secretary, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All comments received pursuant to this notice will be available for public inspection and copying in the Office of the Manager at the above address, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance, General crop insurance policy.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR part 401), proposed to be effective for the 1990 and succeeding crop years, in the following instances:

PART 401—GENERAL CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 401.8(d) is amended by revising paragraphs 2.e.(12) and 20 of the General Crop Insurance Policy to read as follows:

§ 401.8 The application and policy.

* * * * *

(d) * * *

2. Crop, acreage, and share insured.

* * * * *

e. * * *

(12) Which has been strip mined unless we agree in writing to insure such acreage.

* * * * *

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice. If the date by which you are required to submit a report or notice falls on a Saturday, Sunday, or Federal holiday, or, if your service office is, for any reason, not open for business on the date you are required to submit such notice or report, such notice or report must be submitted on the next business day.

* * * * *

Done in Washington, DC, on August 7, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 19006 Filed 8-14-89; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 401

[Amdt. No. 21; Doc. No. 6920S]

General Crop Insurance Regulations; Grape Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR part 401), effective for the 1990 and succeeding crop years, by adding a new section, 7 CFR 401.130, the Grape Endorsement. The intended effect of this rule is to provide the provisions of crop insurance protection on grapes in an endorsement to the general crop insurance policy.

DATE: Written comments, data, and opinions on this proposed rule should be received not later than September 14, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 151Z-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to add to the General Crop Insurance Regulations (7 CFR part 401), a new section to be known as 7 CFR 401.130, the Grape Endorsement, effective for the 1990 and succeeding crop years in California (1991 and succeeding crop years in all other states), to provide the provisions for insuring grapes. The earliest date by which changes in the contract must be filed in the service offices in California is October 31, 1989. The earliest filing date for all other states is August 31, 1990.

Upon publication of 7 CFR 401.130 as a final rule, the provisions for insuring grapes contained therein will supersede those provisions contained in 7 CFR part 411, the Grape Crop Insurance Regulations, effective in California only, with the beginning of the 1990 crop year. The present policy contained in 7 CFR part 411 for all states except California will be in effect for the 1990 crop year; terminated at the end of the 1990 crop year; and later removed and reserved. FCIC will propose to amend the title of 7 CFR part 411 by separate document so that the provisions therein are effective only as outlined above.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Grape Endorsement to 7 CFR part 401, FCIC makes other changes in the provisions for insuring grapes as follows:

1. Subsection 1.—Change language to allow an insured to elect the varieties to be insured in California only. Add language regarding the insurable age of grafted vines.

2. Subsection 2.—Remove reference to direct Mediterranean Fruit Fly damage as an insured cause of loss. This insect is more easily controlled than many other grape pests and since we do not cover insect damage in general, this cause should not be included.

3. Subsection 4.—Add language to prevent adverse selection via coverage levels or price election levels for individual varieties.

4. Subsection 7.—Change insurance period dates for Idaho and Oregon to match the dates in Washington. These two states previously fell into the "all other states" category. Add an end-of-insurance date of October 10 for new county programs in Mississippi. Revise language to allow insurance coverage for acreage acquired after sales closing date in all states. Previous language allowed this only in certain states.

5. Subsection 8.—Revise unit division language to include provisions for California to establish as policy units each variety insured and to permit optional unit division only for noncontiguous land.

6. Subsection 10.—Add language to clarify that quality adjustment applies to both harvested and unharvested production. Change language to include quality adjustment for all high value special use grapes. Previously language included only grapes which were harvested before normal maturity.

7. Subsection 11.—Change cancellation and termination dates for Idaho and Oregon to match the dates in Washington.

8. Subsection 13.—Modify the definition of "harvest" to include both mechanical and manual means of removing grapes from the vines. Replace the definition of "contiguous land" with the definition of "noncontiguous land". The term noncontiguous land is used in Subsection 8.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comment should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance; Grape endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR part 401), proposed to be effective for the 1990 and succeeding crop years in California, and for the 1991 and succeeding crop years for all other states, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 401 is amended to add a new § 401.130 to read as follows:

§ 401.130 Grape endorsement.

The provisions of the Grape Crop Insurance Endorsement for the 1990 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Grape Endorsement

1. Insured Crop.

a. The crop insured;

(1) For California only, will be any insurable variety of grapes you elect which are grown for wine, juice, raisins or canning.

(2) For all other states, will be all insurable varieties of grapes which are grown for wine, juice, raisins or canning.

b. In addition to the grapes not insurable under section 2 of the General Crop Insurance policy, we do not insure any grapes:

(1) If the producing vines, after being set out or grafted, have not reached the number of growing seasons designated by the actuarial table;

(2) If the producing vines have not produced an average of two (2) tons of grapes per acre; or

(3) Produced by vines where there is less than a ninety percent (90%) stand of bearing vines based on the current planting pattern;

unless inspected by us and we agree, in writing, to insure such grapes.

2. Causes of Loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption; or

(6) If applicable, failure of the irrigation water supply;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against under section 1 of the General Crop Insurance policy, we will not insure against any loss of production due to fire if weeds and other forms of undergrowth have not been controlled or vine pruning debris has not been removed from the vineyard. We also specifically do not insure against the inability to market the grapes as a direct result of quarantine, boycott, or refusal of any entity to accept production, unless production has actual physical damage due to a cause specified in subsection 2.a.

3. Report of Acreage, Share, Practice, and Type (Acreage Report)

In addition to the information required by Section 3 of the General Crop Insurance policy, you must report the crop type and variety.

4. Coverage Levels and Price Elections

Only one coverage level (50%, 65%, or 75%) and only one price election set (high, medium, or low) will be applicable to all your insurable grapes.

5. Production Reporting and Production Guarantees

In addition to the information required in Section 4 of the General Crop Insurance policy, you must report:

a. The number of bearing vines; and

b. Any vine damage or change in farming practices which may reduce yields from previous levels.

6. Annual Premium

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches, times any applicable premium adjustment percentage for which you may qualify as shown in the actuarial table.

7. Insurance Period

a. The calendar date on which insurance attaches is:

(1) November 21 in Idaho, Oregon, and Washington;

(2) February 1 in California; and

(3) December 11 in all other states.

b. The date harvest should have started on any acreage which is not harvested, is added to section 7 of the General Crop Insurance policy as one of the items which ends the insurance period.

c. The calendar date for the end of the insurance period is:

(1) October 10 in Mississippi;

(2) November 10 in California, Idaho, Oregon, and Washington; and

(3) December 10 in all other states.

d. If you acquire an insurable share in any insurable acreage on or before the acreage reporting date of any crop year and if we inspect, consider acceptable, and agree in writing, to insure such acreage, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period. If you relinquish your insurable interest on any

acreage of grapes on or before the acreage reporting date of any crop year insurance will not be considered to have attached to such acreage for that crop year unless a transfer of right to an indemnity is entered into by all parties and the service office is notified in writing of such transfer prior to the acreage reporting date.

8. Unit Division

a. In California only, in addition to units as defined in section 17 of the General Crop Insurance policy, each grape variety will be a separate unit. Grape acreage that would otherwise be one unit, as provided herein may be divided into more than one optional unit if you agree to pay an additional premium as required by the actuarial table and if for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for a least the previous crop year; production reports based on those records are filed to obtain an insurance guarantee; and the insured grapes are located on land owned by you which is noncontiguous. Land rented by you for cash, a fixed commodity payment or any consideration other than a share in the insured crop will be considered owned by you.

b. In all other states, grape acreage that would otherwise be one unit as defined in section 17 of the General Crop Insurance policy may be divided into more than one optional unit if you agree to pay an additional premium as required by the actuarial table and if for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year; production reports based on those records are filed to obtain an insurance guarantee; and

(1) The insured grapes are designated in the actuarial table as separate group A or group B varieties;

(2) The insured grapes are located on noncontiguous land;

(3) The acreage of insured grapes is located in separate, legally identifiable sections or, in the absence of section descriptions, the land is identified by separate ASCS Farm Serial Numbers, provided:

(a) The boundaries of the section or ASCS Farm Serial Number are clearly identified and the insured acreage can be easily determined; and

(b) The grapes are planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

(4) The acreage of insured grapes is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(a) Grapes planted on irrigated acreage do not continue into nonirrigated acreage in the same rows or planting pattern; and

(b) Farming practices are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

c. If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

9. Notice of Damage or Loss

In addition to the notices required in section 8 of the General Crop Insurance policy, and if you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours:

a. After total destruction of the grapes on the unit;

b. After discontinuance of harvest on the unit; or

c. Before harvest would normally start if any acreage on the unit is not to be harvested.

If notice is given under this subsection, the notice requirement under subsection S.a.(4) of the General Crop insurance policy is not applicable.

10. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Multiplying this product by the price election;

(3) Subtracting the dollar amount obtained by multiplying the total production to be counted (see subsection 9.c.) by the price election; and

(4) Multiplying this result by your share.

b. If a unit contains acreage to which more than one price election applies, the dollar amount of insurance and the dollar amount of production to be counted will be determined separately for such acreage and then added together to determine the total amount for the unit.

c. The total production (tons) to be counted for a unit will include all harvested and appraised production:

(1) Grapes which, due to insurable causes, have a value less than 75 percent of the average market price of undamaged grapes of the same variety will be eligible for quality adjustment. In California, the average market price will be the price shown by the Federal State Market News California Wine Report for the same week in which the damaged grapes were valued. In all other states, the average market price will be determined by averaging the prices being paid by usual marketing outlets for the area during the week in which the damaged grapes were valued. Damaged production will be adjusted by:

(a) Dividing the value per ton of the grapes by the highest price election available for such grapes; and

(b) Multiplying the result (not to exceed 1) by the number of tons of such grapes.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good grape management practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our consent; and

(c) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Further damaged by an insured cause and reappraised by us; or

(b) Harvested.

(4) If any grapes are harvested before or after normal maturity or for a special use (such as champagne or Botrytis affected grapes), the production of such grapes will be increased by the factor obtained by dividing the price per ton received for such grapes by the price per ton for fully matured grapes of the type for which the claim is being made.

11. Cancellation and Termination Dates

a. The cancellation date in:

(1) California is January 31 of the calendar year in which the crop normally blooms;

(2) Idaho, Oregon, and Washington is November 20 of the calendar year prior to the year of normal bloom; and

(3) All other states is December 10 of the calendar year prior to the year of normal bloom.

b. The termination date in:

(1) California is January 31 of the calendar year following the year of normal bloom;

(2) Idaho, Oregon, and Washington is November 20 of the calendar year in which the crop normally blooms; and

(3) All other states is December 10 of the calendar year in which the crop normally blooms.

12. Contract Changes

The date by which contract changes will be available in your service office is August 31 preceding the cancellation date for states with a November 20 or December 10 cancellation date, and October 31 preceding the cancellation date for California.

13. Meaning of Terms

a. *"Crop Year"* means the period beginning with the date insurance attaches to the grape crop and extending through normal harvest time, and will be designated by the calendar year in which the grapes are normally harvested.

b. *"Harvest"* means the mechanical or manual removal of grapes from the vines.

c. *"Noncontiguous Land"* means any land, whose boundaries do not touch at any point. Land which is separated by a public or private right-of-way, waterway or irrigation canal will be considered to be touching (contiguous).

d. *"Ton"* means 2000 pounds.

Done in Washington, DC on August 7, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-19011 Filed 8-14-89; 8:45 am]

BILLING CODE 3410-08-M

---

7 CFR Part 401

[Amdt. No. 53; Doc. No. 7151S]

General Crop Insurance Regulations; ELS Cotton Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1990 and succeeding crop years, by revising and reissuing 7 CFR 401.121, the ELS Cotton Endorsement. The intended effect of this rule is to: (1) Provide cotton insureds a unit division by share, section, and practice (irrigated and non-irrigated) instead of the previous unit division based on Agricultural Stabilization and Conservation (ASCS) Farm Serial Number; and, (2) remove a reference to Late Planting Agreement Option being available.

DATE: Written comments, data, and opinions on this proposed rule should be received not later than September 14, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is June 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), by revising and reissuing 7 CFR 401.121, the ELS Cotton Endorsement, effective for the 1990 and succeeding crop years, to provide cotton insureds a unit division by share, section, and practice (irrigated and non-irrigated) instead of the previous unit division based on (ASCS) Farm Serial Number.

Minor editorial changes have been made to improve compatibility with the General Crop Insurance Policy. These changes do not affect meaning or intent of the provisions. In revising and reissuing the ELS Cotton Endorsement, FCIC proposes to make other changes in the provisions for insuring ELS cotton as follows:

1. Section 1—Remove the reference to Late Planting Agreement Option. This reference was included in error in the current regulations. A Late Planting Agreement Option will not be offered on this crop.

2. Section 5—Change unit division language to allow division by share, section, and practice (irrigated-nonirrigated). ELS Cotton insureds were previously allowed unit division only by ASCS Farm Serial Number. The new unit division language for cotton will now be identical to the methods used for wheat, corn, etc.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register.** Written comment should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance; ELS cotton.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR part 401) by revising and reissuing the ELS Cotton Endorsement (7 CFR 401.121), proposed to be effective for the 1990 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 401.121 is revised to read as follows:

§ 401.121 ELS cotton endorsement.

The provisions of the ELS Cotton Crop Insurance Endorsement for the 1990 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Extra Long Staple Cotton Endorsement

1. Insured Crop and Acreage

a. The crop insured will be Extra Long Staple cotton ("ELS") and American Upland lint cotton ("AUP") if the acreage was first planted in the crop year to ELS cotton.

b. The acreage of skip-row cotton insured will be the acreage occupied by the rows of cotton after eliminating the skipped-row portions.

c. In addition to the cotton not insurable in section 2 of the general crop insurance policy, we do not insure any cotton:

(1) Which is not irrigated if it is grown:

(a) where a hay crop was harvested in the same calendar year; or

(b) where a small grain crop reached the heading stage in the same calendar year;

(2) Planted in excess of any mandatory acreage limitations applicable to the farm by any program administered by the United States Department of Agriculture; or

(3) Destroyed, or put to another use in order to comply with other United States Department of Agriculture programs.

d. In lieu of subsection 2.e.(7) of the general crop insurance policy, we do not insure any cotton planted with another spring planted crop.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

4. Insurance Period

a. In lieu of subsection 7.(b) of the general crop insurance policy (harvest of the unit), insurance will end upon removal of the cotton from the field.

b. The calendar date for the end of the insurance period is January 31,

5. Unit Division

Cotton acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one optional unit, if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. Acreage planted to insured cotton is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in all of Florida), the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The cotton is planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

c. The acreage planted to the insured cotton is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Cotton planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing, and harvesting are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss

In addition to the provisions in section 8 of the general crop insurance policy:

a. You may not destroy any cotton on which an indemnity will be claimed until we give consent.

b. You must give us notice if you are going to replant any acreage originally planted to ELS cotton to AUP cotton.

c. For purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of cotton to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

b. The total production to be counted for a unit will include all harvested and appraised production.

(1) Any mature ELS cotton production will be reduced when, due solely to insured causes, the quality of the ELS cotton produced is such that the price quotation for ELS cotton of like grade, staple length, and micronaire reading (price A) is less than 75 percent of price B. Price B is defined as the market price quotation for ELS cotton of the grade, staple length, and micronaire reading designated in the actuarial table for this purpose. The price quotations for prices A and B will be the market price quotations at the recognized market closest to the unit on the earlier of the day the loss is adjusted or the day the damaged ELS cotton is sold. In the absence of a price quotation on such date, the price quotations for the nearest prior date for which an ELS cotton price quotation was listed for both prices A and B will be used. The pounds of production to be counted will be determined by multiplying the number of pounds of mature production by price A and dividing the result by 75 percent of price B.

(2) Any AUP cotton harvested from acreage originally planted to ELS cotton in the same growing season will be reduced by the factor obtained by dividing the price of the AUP cotton by the price of ELS cotton of the grade, staple length, and micronaire reading shown in our actuarial table. The prices will be determined at the closest recognized market to the insured unit on the earlier of the date the loss is adjusted or the date the AUP cotton was sold.

(3) Appraised production to be counted will include:

(a) Mature and potential production on unharvested acreage;

(b) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good cotton farming practices;

(c) Not less than the applicable guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(d) Not less than 25 percent of the production guarantee per acre for any acreage of cotton that is immature when we determine that harvest of cotton becomes general in the county.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of cotton becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

(5) Any appraisal of the AUP cotton on acreage originally planted to ELS cotton will be reduced by the factor determined in section 7.b.(2) above. If prices are not yet available, the previous year's season average price will be used.

(6) The cotton stalks must not be destroyed on any acreage for which an indemnity is claimed, until we give consent. An appraisal of not less than the guarantee may be made on acreage where the stalks have been destroyed without our consent.

8. Cancellation and Termination Dates

The cancellation and termination dates are:

States	Cancellation and Termination Dates
New Mexico	April 15.
All other states	March 31.

9. Contract Changes

The date by which contract changes will be available in your service office is November 30 preceding the cancellation date.

10. Meaning of Terms

a. Cotton means Extra Long Staple cotton and acreage replanted to American Upland Cotton after ELS was destroyed by an insured cause.

b. ELS Cotton means Extra Long Staple cotton (also called Pima Cotton and American-Egyptian Cotton).

c. Harvest means the removal of the seed cotton on each acre from the open cotton boll or the severance of the open cotton boll from the stalk by either manual or mechanical means.

d. Mature cotton means ELS cotton which can be harvested either manually or mechanically and will include both unharvested and harvested cotton.

e. Replanted means performing the cultural practices necessary to replant acreage to AUP cotton after ELS cotton was destroyed by an insured cause in the same growing season.

f. Skip-row means planting patterns consisting of alternating rows of cotton and fallow rows as defined by ASCS (if non-cotton rows are occupied by another crop any yield factor normally applied for skip-row cotton will not be applicable).

Done in Washington, DC on August 7, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-19009 Filed 8-14-89; 8:45 am]

BILLING CODE 3410-08-M

---

7 CFR Part 401

[Amdt. No. 29; Doc. No. 7013S]

General Crop Insurance Regulations; Fresh Market Tomato Minimum Value Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR part 401), effective for the 1991 and succeeding crop years, by adding a new section, 7 CFR 401.137, the Fresh Market Tomato Minimum Value Option. The intended effect of this rule is to provide the provisions of crop insurance protection on minimum value tomatoes as an option to the Fresh Market Tomato Endorsement to the general crop insurance policy.

DATES: Written comments, data, and opinions on this proposed rule should be received not later than September 14, 1989 to be sure of consideration.

ADDRESSES: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4080, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as May 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to add to the General Crop Insurance Regulations (7 CFR part 401), a new section to be known as 7 CFR 401.137, the Fresh Market Tomato Minimum Value Option, effective for the 1991 and succeeding crop years, to provide the provisions for insuring minimum value tomatoes.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the Federal Register. Written comment should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance; Fresh market tomato minimum value option.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR part 401), proposed to be effective for the 1991 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 401 is amended to add a new § 401.137 to read as follows:

§ 401.137 Fresh market tomato minimum value option.

The provisions of the Fresh Market Tomato Minimum Value Option for the 1991 and subsequent crop years are as follows:

BEST COPY AVAILABLE

Federal Crop Insurance Corporation

Fresh Market Tomato Minimum Value Option

(This is a continuous option. Refer to section 15 of the General Crop Insurance Policy.)

Insured's Name _____
Address _____
Contract No. _____
Crop Year _____
Identification No. _____
SSN _____
TAX _____

It is hereby agreed to amend the Dollar Plan of Fresh Market Tomato Endorsement in accordance with the following terms and conditions.

1. This option must be submitted to us on or before the final date for accepting applications for the initial crop year in which you wish to insure your tomatoes under this Option.

2. You must have a Federal Crop Insurance General Policy and Dollar Plan Fresh Market Tomato Endorsement ("basic policy") in force.

3. You must select either Option I or II below by marking the appropriate space below. All insurable acreage in which you have a share in the county will be covered under the option you select.

[ ] Option I:

(a) Upon purchase of this option, subsection 9.b.(1)(a) of the Dollar Plan of Fresh Market Tomato Endorsement will be amended to change the reference from $3.00 to $2.00 in determining the total value of harvested production to count.

(b) The premium rate for this option will be an additional 30 percent of your premium for basic coverage.

[ ] Option II:

(a) Upon purchase of this option, subsection 9.b.(1)(a) of the Dollar Plan Fresh Market Tomato Endorsement will not apply to your tomato acreage. The total value of harvested production will be the dollar amount obtained by multiplying the number of 25-pound cartons of tomatoes sold by the price received minus allowable costs as contained in the actuarial table; however, such price must not be less than zero for any carton.

(b) The premium rate for this option will be an additional 50 percent of your premium for basic coverage.

4. All provisions of the General Policy and Dollar Plan of Fresh Market Tomato Endorsement not in conflict with this Option are applicable.

5. All determinations under this Option will be made by us.

6. This Option may be cancelled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date provided by the "basic policy," preceding such crop year.

Insured's Signature _____
Date _____
Corporation Representative's Signature and Code Number _____
Date _____

Done in Washington, DC, on August 7, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-19010 Filed 8-14-89; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 401

[Amdt. No. 31; Doc. No. 6997S]

General Crop Insurance Regulations; Soybean Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR part 401), effective for the 1990 and succeeding crop years, by amending the Soybean Endorsement (7 CFR 401.117) with respect to removing restrictions in existing unit division language to standardize the unit structure across commodity program crops and soybeans.

DATE: Written comments, data, and opinions on this proposed rule should be received not later than September 14, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis waa prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to amend the Soybean Endorsement (7 CFR 401.117) to remove restrictions in existing unit division language to standardize the unit structure for soybeans.

FCIC proposes to issue an amendment to the Soybean Endorsement to standardize the unit definition.

Changes being proposed herein serve to allow standard policy units currently in existence for all soybean program counties.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comment should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance; Soybeans.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR part 401), proposed to be effective for the 1990 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 401.117 is amended by revising paragraph 5. to read as follows:

§ 401.117 [Amended]

* * * * *

5. Unit Division.

Soybean acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if for each proposed unit:

a. You maintain written verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. Acreage planted to the insured soybeans is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in Florida) the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the section or ASCS Farm Serial Number are clearly identified and the insured acreage is easily determined; and

(2) The soybeans are planted in such a manner that the planting pattern does not continue into an adjacent section or ASCS Farm Serial Number; or

c. The acreage planted to the insured soybeans is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and non-irrigated practices are carried out, provided:

(1) Soybeans planted on the irrigated acreage do not continue into non-irrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good irrigated and non-irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined. If your soybean acreage is not in a divided unit as provided above, your premium will be reduced as provided on the actuarial table.

* * * * *

Done in Washington, DC on August 7, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-19012 Filed 8-14-89; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 403

[Amdt. No. 2; Doc. No. 7091S]

Peach (Fresh) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Peach (Fresh) Crop Insurance Regulations (7 CFR part 403), effective for the 1990 and succeeding crop years, to provide that crop insurance will be available on peach orchards with a "pick your own" operation. The intended effect of this rule is to allow insurance coverage on this type of operation where adequate records have been amassed to permit the establishment of a guarantee.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than September 14, 1989, in order to assure consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Peach (Fresh) Crop Insurance Regulations (7 CFR part 403), an insured was unable to obtain crop insurance coverage on a "pick your own" operation whereby members of the public, for a fee, would be permitted to enter the orchard and pick peaches for home consumption.

While FCIC was aware of this type of operation in several peach producing states, adequate records of production necessary to establish a guarantee were, until recently, unavailable. FCIC has determined that it has now amassed sufficient production records on the "pick your own" operations to establish a guarantee and proposes to amend the Peach Crop Insurance Regulations (7 CFR part 403) to permit this operation to be covered under the terms of the peach insurance policy.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comment should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 403

Crop insurance; Peaches.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Peach (Fresh) Crop Insurance Regulations (7 CFR Part 403), proposed to be effective for the 1990 and succeeding crop years, in the following instances.

PART 403—[AMENDED]

1. The authority citation for 7 CFR Part 403 is amended to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 403.7(d) is amended by revising paragraph 2.d.(2) of the Peach Crop Insurance Policy to read as follows:

§ 403.7 The application and policy.

* * * * *

(d) * * *

2. Crop, Acreage, and Share Insured.

* * * * *

d. * * *

(2) From which the peaches are harvested directly by the public, unless approved by us in writing.

* * * * *

Done in Washington, DC on August 7, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-19007 Filed 8-14-89; 8:45 am]

BILLING CODE 3410-08-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 55

RIN 3150-AC26

Education and Experience Requirements for Senior Reactor Operators and Supervisors at Nuclear Power Plants; Withdrawal of Proposed Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a notice of proposed rulemaking published in the **Federal Register** on December 29, 1988 (53 FR 52716), in which comments were solicited on two proposed alternative amendments to its regulations. The alternatives proposed in the **Federal Register** notice would have imposed additional education and experience requirements for either senior operators or control room supervisors. In consideration of the comments received on the proposed rule and the status of industry initiatives to enhance the education level of its operating personnel, the Commission concludes that it should withdraw the proposed rule published December 29, 1988. The Commission is publishing a policy statement that presents its views concerning education for senior operators and shift supervisors at nuclear power plants.

FOR FURTHER INFORMATION CONTACT: M.R. Fleishman, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3794.

SUPPLEMENTARY INFORMATION: On May 30, 1986, the NRC published an advance notice of proposed rulemaking (ANPR) (51 FR 19561) to solicit public comments on a Commission proposal to increase the current level of engineering expertise on shift, and to ensure that senior operators have operating experience on a commercial nuclear reactor operating at greater than twenty percent power. Two hundred letters were received in response to the ANRP; most of them were opposed to a degree requirement for senior operators.

Although comments received on the ANPR were generally opposed to a degree requirement, the Commission believed that it would be beneficial to obtain additional public comment on two alternative amendments to its regulations. The proposed rule—Education and Experience Requirements for Senior Reactor Operators and Supervisors at Nuclear Power Plants—was published in the **Federal Register** on December 29, 1988 (53 FR 52716) for a 60 day public comment period, which was later extended to March 29, 1989. The alternatives proposed in the **Federal Register** notice would have imposed additional education and experience requirements for either senior operators (Alternative 1) or contol room shift supervisors [1] (Alternative 2).

A total of 25 comment letters were received on the proposed rule. All of the comments have been reviewed and evaluated. (Copies of the comment letters are available for public inspection and copying for a fee at the NRC Public Document Room at 2120 L Street NW., Lower Level, Washington, DC). Of the *250* comments received, *244* (approximately 98 percent) were from people who are part of or associated with the regulated industry. Of the remaining six comments, five came from people associated with educational institutions and one came from a citizen's group. A total of 237 commenters (approximately 95 percent), were opposed to both Alternative 1 and Alternative 2 of the proposed rule. While no utilities favored the rule, about ten commenters, who either indicated that they were or appeared to be operators, were in favor of one or both alternatives. The educational groups generally offered comments regarding implementation of the proposed alternatives and were divided on whether or not the rule should be made effective. The citizen's group preferred Alternative 2 to Alternative 1 and also believed that an NRC administered examination should be used to measure the qualifications of the shift supervisors and ensure uniform standards in the industry.

Because of the comments received on the proposed rule, the progress being made by utilities to voluntarily obtain engineering expertise on shift, and INPO initiatives both to increase professionalism of the operating staff and to review the adequacy of training and education requirements for shift supervisors, the Commission has concluded that it should withdraw the proposed rule published December 29, 1988.

We have included below a summary of comments that provides a general description of the type and tone of comments received. This summary describes the most prevalent comments as well as some comments that present unusual insights. The comments and responses to them are as follows:

1. *Comment:* Every organization that has studied the issue has concluded that there is no valid reason for a degree requirement—these include the NRC Advisory Committee on Reactor Safeguards (ACRS), the NRC Committee to Review Generic Requirements, the Reactor Operator Qualifications Peer Review Panel, the American Nuclear Society, the Institute of Nuclear Power Operations (INPO), the Nuclear Management and Resources Council, Inc., the Professional Reactor Operator Society and the National Research Council of the National Academy of Sciences. There is no evidence to indicate that an operator with a degree would perform better than one without a degree during either normal or abnormal situations.

Response: While the Commission has concluded that it is unnecessary to mandate specific degree requirements

[1] The term "shift supervisor" is being used to refer to that person holding a senior operator license for all fueled units at the site who is assigned responsibility for overall plant operation at all times there is fuel in any unit. When a single operator does not hold a senior operator license on all fueled units at the site, a licensee must have at the site two or more senior operators, who in combination are licensed as senior operators on all fueled units.

for senior operators or shift supervisors, we continue to believe the presence of individuals with a degree in the control room is beneficial to safe operations. The question is not whether an operator with a degree performs better than one without a degree. Instead, the question is whether, under unanticipated circumstances, a group of operators, as a team, would perform better if some of them had technical and academic knowledge provided by a college degree. We are not aware of any relevant technical data that could answer this question. However, most organizations acknowledged a need for "engineering knowledge" on shift. The Commission believes that the safety of commercial power reactors is enhanced by having on each shift a team of NRC-licensed professionals that combine technical and academic knowledge with plant-specific training and substantial hands-on operating experience.

2. *Comment:* There have been many improvements in design, organization, procedures, and operator training since the Three Mile Island (TMI) accident so that the rule is not needed.

Response: There have been many improvements in design, organization, and procedures since the TMI accident but these do not alleviate the need for high quality technical knowledge on the operating shift. However, we have withdrawn the rulemaking in favor of a policy statement.

3. *Comments:* (A) The ability to deal with unanticipated situations requires site specific systems knowledge acquired through hands-on, site specific, experience and training.

(B) Operators are already getting training in basic engineering principles, detailed nuclear design, and detailed knowledge of nuclear plant operations, as well as diagnostics and communications, and are generally well-prepared to deal with unexpected situations.

Response: We agree that operators are getting required basic training and that site specific systems knowledge and hands-on operating experience are necessary to deal with unanticipated situations. However, a good operator must have the ability to assimilate and integrate knowledge of multiple systems to assess the causes of events not covered in trainng sessions and direct the appropriate response. We believe education in a technical discipline can equip an operator with knowledge in scientific and engineering fundamentals and can better prepare an operator to handle situations not covered by training.

4. *Comment:* If the Commission believes that more knowledge is needed, such as might be obtained from a bachelor's degree program, the knowledge should be identified, the material should be incorporated into operator training programs, and the NRC should test operators for that knowledge.

Response: The NRC staff is considering this comment with respect to operator training programs. However, although some specific areas for improved training may be identified, education, as discussed above, should also be emphasized.

5. *Comment:* The fundamentals exam, currently being considered for both Boiling Water Reactors (BWRs) and Pressurized Water Reactors (PWRs), could be used as an initial step in reactor operator licensing. This exam, which could be oriented to nuclear operations and engineering fundamentals, would be more suitable than would an engineer-in-training (EIT) exam, professional engineer (PE) license, or a bachelor's degree.

Response: The effectiveness of the fundamentals exam in improving the level of operator training is still being assessed. The development of this exam is underway and we will continue to monitor its effectiveness.

6. *Comment:* Nuclear Utilities Management and Review Committee (NUMARC) commented that the results of a survey they performed indicated that 72 percent of the utilities report that they are already promoting operators without degrees into management positions above the shift supervisor position.

Response: This is very encouraging, and is one of the reasons we have decided not to proceed with the rule. However, while utilities may be promoting some operators without degrees into management positions above the shift supervisor position, e.g., maintenance manager, it is not yet clear that these operators are getting into all phases of upper management. The Commission believes that programs which encourage experienced nuclear professionals to obtain college degrees and personnel with degrees to obtain a senior operator license and hands-on operating experience create an important source of management talent for the industry. These individuals are more likely to be selected for management positions and, because of their understanding of the unique operational problems associated with nuclear power plant operation, are in a better position to enhance nuclear safety by fostering a strong safety culture within their organization.

7. *Comment:* It would be desirable to retain the independent assessment capability of the Shift Technical Advisor (STA). The STA provides a valuable contribution to the operating staff and is effective because the STA is not responsible for procedural matters during a transient.

Response: We agree; however, we believe that there is also a benefit to be derived from having operations expertise and engineering knowledge in the same individual. In its policy statement on education for senior operators and shift supervisors published elsewhere in this issue, the Commission reaffirms its position regarding the presence of an STA on shift and reemphasizes its desire that all licensees move toward a dual role senior operator/shift technical advisor (SO/STA) position.

8. *Comments:* (A) It would be very difficult for a worker on a rotating shift to attend college on a part-time basis. Furthermore, programs accredited by the Accreditation Board for Engineering and Technology (ABET) are generally not very accessible to operating plant personnel.

(B) Ongoing on-site programs leading to a bachelor's degree in Nuclear Science, that have been initiated by utilities in response to perceived Commission desires, will be jeopardized since they are not ABET accredited.

(C) The detailed requirements related to the ABET accredited degree are too prescriptive. A bachelor's degree in any scientific discipline from a regionally accredited program, plus a senior operator license with its associated site specific training in accident diagnostics and engineering fundamentals, is equivalent to a bachelor's degree in engineering.

Response: We agree that it is very difficult to work full-time on shift as an operator and obtain a college degree. Several utilities have been offering programs leading to a degree that accommodates shift work, but while many people have entered the programs, few have actually completed the programs and obtained degrees. The Commission believes that these programs should be encouraged because the opportunity should be made available for highly motivated individuals to overcome institutional barriers and obtain a degree; furthermore, the demands of shift work are not the same at every utility. We continue to believe that it is important the degrees obtained be from accredited institutions to provide confidence concerning the quality of the education and the value of the degree.

9. *Comment:* The bachelor's degree requirement should include the applied

sciences along with engineering, engineering technology, and the physical sciences.

Response: Education is the important focus here. While many degrees may be acceptable, certain degrees are preferred as providing better preparation for operators. The policy statement indicates that degrees in physical science, engineering, or engineering technology are preferable.

10. *Comments:* (A) Negotiated labor agreements with unions do not have a requirement for a senior operator to have a bachelor's degree. The unions indicate that they would go to court to fight the requirement for a bachelor's degree since no need for the requirement has been demonstrated.

(B) It will be difficult for people with degrees to get the required reactor operator experience in some union plants since the reactor operator position is filled by union people and people with degrees are generally not in the union but are considered part of management.

Response: We do not believe labor agreements or practices should lead to actions which would inhibit the career development of union or non-union members or be a disincentive to continued safe operation of facilities.

11. *Comments:* (A) The rule will reduce the career potential for operators without degrees who now view the senior operator and shift supervisor positions as a desirable, long term career objective. The rule imposition will result in the hiring of people with degrees who generally view shift-work as an interim step in their career. This will create a higher turnover rate and a resulting reduction in the overall experience level.

(B) Training, education, and experience are not enough for a good operator; it is essential that operators remain highly motivated. This has been accomplished by incentives for operators to progress through the various steps in the operating organization. The proposed rule will disrupt this arrangement.

Response: The Commission has decided not to adopt a rule requiring a degree. We believe that it is desirable for licensees to have in the control room individuals with a mix of education, training and experience in plant operations. Therefore, utilities should continue to develop reactor operators and senior operators who have a significant amount of hands-on experience. It is desirable to have senior operators on shift who have progressed through the various steps in the operating organization.

12. *Comment:* Alternative 2 overlooks the fact that the shift supervisor has many non-technical duties to perform during the early period following an accident that precludes the shift supervisor from getting involved in the technical aspects of the plant response.

Response: We agree that this is important and should not be overlooked. If the shift supervisor is the only person on shift with engineering expertise, then the licensee should take this into account in the assignment of shift supervisor responsibilities. We expect that this issue will also be addressed by Institute for Nuclear Power Operations (INPO) in the effort it has underway to review the adequacy of training and education requirements for the shift supervisor position. The Commission intends to follow this effort closely and will participate as appropriate to ensure successful closure of this issue.

13. *Comment:* The proposed requirement to serve as a reactor operator for one year would upset the common practice of having management personnel take the senior operator licensing exam. This practice is worthwhile since it brings operating expertise into management and engineering managers get to learn about a plant's details.

Response: Because the Commission has decided not to adopt the proposed rule it will not impact the practice of allowing management personnel to become senior operators if these persons meet all NRC requirements for licensing.

The NRC Advisory Committee on Reactor Safeguards (ACRS) also considered the proposed requirement for degrees and discussed it at several meetings in 1986 and 1987. The ACRS again discussed the issue in 1989 in relation to the issuance of a policy statement as opposed to a rule. The ACRS strongly supported the concept of having engineering expertise on each shift. However, the ACRS did not agree that requiring a degree for senior operators was the best approach, though it agreed that specific technical knowledge should be required. The ACRS believed that, because of the concern about adverse effects raised by many knowledgeable individuals, a proposed rule requiring degrees for senior operators should be reconsidered. The ACRS supported the issuance of a policy statement regarding education for senior operators and shift supervisors.

Many utilities have provided opportunities for members of their operating staff to further their education. INPO has developed, in cooperation with many nuclear utilities, "Principles for Enhancing Professionalism of Nuclear Personnel," dated March 1, 1989, which INPO encourage utilities to implement. These principles reflect much of the Commission's philosophy and are endorsed by the Commission in the policy statement. In addition, INPO has an effort underway to review the adequacy of the training and education requirements for shift supervisors which the NRC is following with interest.

In view of all of these considerations, the Commission has concluded that it should not proceed with adoption of the rule. Therefore, the proposed rule is withdrawn.

Dated at Rockville, Maryland, this 9th day of August, 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-18999 Filed 8-14-89; 8:45 am]

BILLING CODE 7590-01-M

---

10 CFR Parts 70, 72, 73, and 75

RIN 3150-AD03

Minor Amendments to the Physical Protection Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations that cover the physical protection of special nuclear material. These amendments will: (1) Add definitions for common terms not currently defined but frequently used, (2) make the definitions sections easier to use by arranging the terms in alphabetical order, (3) delete action dates that no longer apply, (4) correct outdated terms and cross references, (5) clarify wording that is susceptible to differing interpretations, (6) correct typographical errors, and (7) make other minor changes. The proposed amendments are necessary to reflect the results of a systematic review of NRC's safeguards regulations.

DATE: Comments must be received on or before September 29, 1989. Comments received after this date will be considered if it is practical to do so, but only those comments received on or before this date can be assured of consideration.

ADDRESSES: Comments or suggestions regarding the proposed amendments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received will be available in the NRC Public Document Room at 2120 L Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Dr. Stanley L. Dolins, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-3745 and Priscilla Dwyer, Domestic Safeguards and Regional Oversight Branch, Division of Safeguards and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-0478.

SUPPLEMENTARY INFORMATION:

The Safeguards Interoffice Review Group at the NRC has been conducting a systematic review of the agency's safeguards regulations and guidance documents. This review has identified areas in the regulations that are out of date, inconsistent within the regulation or between related regulations, susceptible to differing interpretations, and in need of other changes. In addition, the staff has identified other areas in the regulations where minor changes are warranted. In response to these efforts, the NRC is proposing specific amendments to the regulations in the way of minor corrections and changes. The proposed changes are summarized here with a brief discussion.

(1) Paragraphs (b), (c), and (d) of 10 CFR 73.40 substantively are being moved to appendix C to 10 CFR part 73 and combined with the plan specifications already there. A requirement for having a safeguards contingency plan is also included in the specific security requirements section for each class of affected licensees.

(2) The commonly used terms Category I, Category II, and Category III, as qualified, are added for reference purposes to existing definitions in the definitions sections of 10 CFR parts 70 and 73.

Category I quantity of material, if unirradiated, is equivalent to a formula quantity; Category II quantity of material, if unirradiated, is equivalent to special nuclear material of moderate strategic significance; and Category III quantity of material, if unirradiated, is equivalent to special nuclear material of low strategic significance. In the current regulations, the terms are included in the regulations without category designations. However, the category designations are frequently used, particularly in international safeguards, and appear in some NRC documents because they save time and space. To avoid possible confusion, references to these shorter terms are being added to the definitions.

(3) The definitions in 10 CFR part 70 are alphabetized without paragraph designation.

Locating a specific term will be easier with alphabetized definitions. When new terms are added, they will be placed in the proper alphabetical order. Because the paragraph designations are removed, other parts of the regulations are modified to eliminate any reference to a specific numbered paragraph in the definitions section.

(4) The general requirements for auditing the safeguards contingency plans and the physical security programs of Category I transportation and fuel cycle licensees are made compatible.

The record retention period for results of the audits is made consistent at three years in both cases. The content and resulting action on audited findings is also made consistent. At this same time, the general requirements for auditing the safeguards contingency plans (10 CFR 73.40(b), (c) and (d)) are being moved to appendix C to 10 CFR part 73 and combined with the plan specifications already there. A requirement for having a safeguards contingency plan is also included in the specific security requirements section for each class of affected licensees.

(5) An inadvertently omitted provision that addresses access to vital areas at power reactors is being reinserted into the regulation. The restoration of the requirement in 10 CFR 73.55(d)(7) is being proposed to insure no erroneous views are held by licensees that the deletion of the sentence was a "signal" that vital areas could be "opened up" to "public sightseeing tours" or "open house visits" without close licensee oversight. This language is already reflected in most licensees security plans and it was intact in 10 CFR part 73 in 1986 (and for a number of years preceding 1986). Correcting this inadvertent omission does not signal any change in Commission policy on past practices in this regard. Licensees are assigned the responsibility for making final vital area access decisions in accord with the past practices and provisions under the approved security plans.

(6) The remainder of the proposed changes are of a very minor nature. A definition for the term "contiguous sites" is added to 10 CFR parts 70 and 73. Action dates that have passed are eliminated. Use of the outdated term "industrial sabotage" is changed to the current term "radiological sabotage." References to parts of the regulations that have been moved or deleted are corrected. Several areas in the regulations are clarified where the wording was susceptible to differing interpretations. The notification requirement for changes to the safeguards contingency plan that do not decrease the plan's effectiveness is being revised to require that the original be sent to the NRC headquarters office with a copy to the regional office instead of vice versa. Finally, typographical errors are corrected.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion in 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved under the Office of Management and Budget approval number 3150-0009 for part 70, approval number 3150-0132 for part 72, approval number 3150-0002 for part 73, and approval number 3150-0055 for part 75.

Regulatory Analysis

With the exception of the proposed amendment to 10 CFR 73.55(d)(7), these minor amendments impose no new restrictions or requirements, and therefore, have no significant impact. Accordingly, a regulatory analysis is not considered necessary.

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The amendments being proposed are very minor in nature and care has been taken to ensure that the impact on any licensee is minimal. In the matter of reporting certain changes to the security program, the amendments merely reverse who receives the original and who receives the copy. The other changes are of an administrative nature and therefore do not alter the current implementation of the regulations by a licensee.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule with the possible exception of the amendment to

10 CFR 73.55(d)(7). Here we are addressing the material and relevant parts of 10 CFR 50.109 to ensure that there are no particular questions raised by the reinsertion of the inadvertently omitted language. A backfit analysis is not required for these minor amendments because they do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1). The following analysis is in support of the amendment to 10 CFR 73.55(d)(7).

1. Statement of the Specific Objectives that the Proposed Backfit is Designed to Achieve

The proposed amendment to 10 CFR 73.55(d)(7) would restore a sentence that had been inadvertently dropped when the regulations were amended August 4, 1986 (51 FR 27817). The restored provision would require licensees to limit visitor access to vital areas of nuclear power plants for the purpose of general familiarization and other nonwork-related activities except for good cause.

2. General Description of the Activity that Would be Required By the Licensee or Applicant in Order to Complete the Backfit

The proposed requirement was codified in 10 CFR 73.55(d)(7) until September 3, 1986. Therefore most nuclear power plant licensees' current approved security plans and implementing procedures already meet the requirements. However, reinstatement of the requirement could, in concept, affect licensees whose security plans were or will be approved after September 3, 1986, and licensees who subsequently changed their approved security plans and implementing procedures to relax controls on access to vital areas. Affected licensees potentially may be required to reinstate procedural controls that limit nonwork-related access to vital areas.

3. Potential Change in the Risk to the Public From the Accidental Offsite Release of Radioactive Material

Vital areas of nuclear power plants contain equipment, systems, devices or material, the failure, destruction, or release of which could directly or indirectly endanger the public health and safety by exposure to radiation. Therefore, by limiting nonwork-related access to vital areas, licensees reduce the potential risk to the public from the accidental off-site release of radioactive material.

4. Potential Impact on Radiological Exposure of Facility Employees

By limiting nonwork-related access to vital areas of nuclear power plants, licensees also reduce the potential risk to facility employees from accidental radiological exposure.

5. Installation and Continuing Costs Associated With the Backfit, Including the Cost of Facility Downtime or the Cost of Construction Delay

The proposed amendment to 10 CFR 73.55(d)(7) would reinstate a procedural requirement that licensees limit nonwork-related access to vital areas of nuclear power plants. There are no installation or continuing costs associated with this requirement.

6. The Potential Safety Impact of Changes in Plant or Operational Complexity Including the Relationship to Proposed and Existing Regulatory Requirements.

The proposed amendment to 10 CFR 73.55(d)(7) does not alter the plant or operational complexity. It does not involve a reduction in a margin of safety since neither plant design nor reactor operating procedures are changed. In addition, it does not alter any safety related design basis of the facility. Therefore, the proposed amendment neither creates the possibility of a new or different kind of accident nor does it involve an increase in the probability or consequence of an accident previously evaluated.

7. The Estimated Resource Burden on the NRC Associated With the Proposed Backfit and the Availability of Such Resources

The proposed amendment has no significant resource implications for the NRC.

8. The Potential Impact of Differences in Facility Type, Design or Age on the Relevancy and Practicality of the Proposed Backfit

The proposed amendment is uniformly relevant and applicable to all licensed nuclear power plants without regard to type, design or age.

9. Whether the Proposed Backfit is Interim or Final and, if Interim, the Justification for Imposing the Proposed Backfit on an Interim Basis

The proposed backfit is final.

List of Subjects

10 CFR Part 70

Hazardous materials - transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 73

Hazardous materials - transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 75

Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 70, 72, 73, and 75.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1 (c) and 70.20a (b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.19(c), 70.21(c), 70.22(a), (b), (d)-(k), 70.24 (a) and (b), 70.32(a)(3),(5),(6),(d), and (i), 70.36, 70.39 (b) and (c), 70.41(a), 70.42 (a) and (c), 70.56, 70.57 (b), (c), and (d), 70.58 (a)-(g)(3), and (h)-(j) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 70.7, 70.20a (a) and (d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32 (a)(6), (c), (d), (e), and (g), 70.36, 70.51 (c)-(g), 70.56, 70.57 (b) and (d), and 70.58 (a)-(g)(3) and (h)-(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.5, 70.9, 70.20b (d) and (e), 70.38, 70.51 (b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58 (g)(4), (k) and (l), 70.59, and 70.60 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 70.4 is amended by removing all alphabetical designators and arranging all definitions into alphabetical sequence, adding a definition for "Contiguous sites" in proper alphabetical sequence, and revising the definition of "formula quantity," paragraph (2) of the definition "plutonium processing and fuel fabrication plant," the introductory text of the definition "special nuclear material of moderate strategic significance," and the introductory text and paragraph (1) of the definition "special nuclear material of low strategic significance" to read as follows:

§ 70.4 Definitions.

* * * * *

"Contiguous sites" means locations, in close proximity to each other, for the possession, use, or storage of special nuclear material where the same licensee or contractor security measures and/or organizational elements, including the alarm station and response personnel, are used to provide the capabilities necessary to satisfy the applicable security requirements.

* * * * *

"Formula quantity" (in unirradiated form this class of material is sometimes referred to as a Category I quantity of material) means strategic special nuclear material in any combination in a quantity of 5000 grams or more computed by the formula, grams = (grams contained U-235) + 2.5 (grams U-233 + grams plutonium).

* * * * *

"Plutonium processing and fuel fabrication plant"* * *

(2) research and development activities involving any of the operations described in paragraph (1) of this definition except for research and development activities utilizing unsubstantial amounts of plutonium.

* * * * *

"Special nuclear material of low strategic significance" (in unirradiated form this class of material is sometimes referred to as a Category III quantity of material) means:

(1) Less than an amount of special nuclear material of moderate strategic significance, as defined in this section, but more than 15 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope) or 15 grams of uranium-233 or 15 grams of plutonium or the combination of 15 grams when computed by the equation, grams = (grams contained U-235) + (grams plutonium) + (grams U-233), or

* * * * *

"Special nuclear material of moderate strategic significance" (in unirradiated form this class of material is sometimes referred to as a Category II quantity of material) means:

* * * * *

3. In § 70.19, paragraph (a)(2) is revised to read as follows:

§ 70.19 General license for calibration or reference sources.

(a) * * *

(2) Any Government agency, as defined in § 70.4, which holds a specific license issued by the Commission or the Atomic Energy Commission which authorizes it to receive, possess, use and transfer byproduct material, source material, or special nuclear material; and

* * * * *

4. In § 70.22, paragraphs (h)(1), and (k) are revised to read as follows:

§ 70.22 Contents of applications.

* * * * *

(h)(1) Each application for a license to possess or use at any site or contiguous sites subject to control by the licensee a formula quantity of strategic special nuclear material as defined under § 70.4, other than a license for possession or use of this material in the operation of a nuclear reactor licensed pursuant to part 50 of this chapter, must include a physical security plan, consisting of two parts. Part I must address vital equipment, vital areas, and isolation zones, and must demonstrate how the applicant plans to meet the requirements of §§ 73.20, 73.40, 73.45, 73.46, 73.50, 73.70, and 73.71 of this chapter in the conduct of the activity to be licensed, including the identification and description of jobs as required by § 11.11(a) of this chapter. Part II must list tests, inspections, and other means to demonstrate compliance with such requirements.

* * * * *

(k) Each application for a license to possess or use at any site or contiguous sites subject to control by the licensee special nuclear material of moderate strategic significance or 10 kg or more of special nuclear material of low strategic significance as defined under § 70.4 other than a license for possession or use of this material in the operation of a nuclear power reactor licensed pursuant to part 50 of this chapter, must include a physical security plan that demonstrates how the applicant plans to meet the requirements of § 73.67(d), (e), (f), and (g), as appropriate, of part 73 of this chapter. The licensee shall retain a copy of this physical security plan as a record for the period during which the licensee possesses the appropriate type and quantity of special nuclear material requiring this record under each license and each change to the plan for three years after the change.

* * * * *

5. In § 70.32, paragraph (c)(3) is removed and paragraph (g) is revised to read as follows:

§ 70.32 Conditions of licenses.

* * * * *

(g) The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with appendix C to part 73 of this chapter for effecting the actions and decisions contained in the Responsibility Matrix of its safeguards contingency plan. The licensee shall retain a copy of the safeguards contingency plan procedures as a record for the period during which the licensee possesses the appropriate type and quantity of special nuclear material requiring this record under each license for which the procedures were developed and each change to the plan for three years from the effective date of the change. The licensee may not make a change that would decrease the safeguards effectiveness of the first four categories of information (Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix) contained in any licensee safeguards contingency plan prepared pursuant to §§ 70.22(g), 70.22(j), 72.184, 73.20(c), 73.26(e)(1), 73.46(h)(1), or 73.50(g)(1) of this chapter without the prior approval of the Commission. A licensee desiring to make such a change shall submit an application for an amendment to its license pursuant to § 70.34. The licensee may make changes to the licensee safeguards contingency plan without prior Commission approval if the changes do not decrease the safeguards effectiveness of the plan. The licensee shall maintain each change to the plan made without prior approval as a record during the period for which possession of a formula quantity of special nuclear material is authorized under a license and retain the superseded material for three years from the effective date of the change and shall furnish a report containing a description of each change within 60 days after the change is made to the Director of Nuclear Material Safety and Safeguards, with a copy to the Regional Administrator of the appropriate NRC

Regional Office as specified in appendix A to part 73 of this chapter.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

6. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68, Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273): §§ 72.6, 72.22, 72.24, 72.28, 72.28(d), 72.30, 72.32, 72.44(a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.72(b), (c), 72.74(a), (b), 72.76, 72.78, 72.104, 72.108, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c), 72.148, 72.154, 72.156, 72.160, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.184, 72.186, are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 72.10(a), (e), 72.22, 72.24, 72.28, 72.28, 72.30, 72.32, 72.44.(a),(b)(1), (4), (5), (c), (d)(1),(2),(e), (f), 72.48(a), 72.50(a), 72.52(b), 72.90(a)-(d), (f), 72.92, 72.94, 72.96, 72.100, 72.102(c), (d), (f), 72.104, 72.108, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c), 72.142, 72.144, 72.146, 72.148, 72.150, 72.152, 72.154, 72.156, 72.158, 72.160, 72.162, 72.164, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.182, 72.184, 72.186, 72.190, 72.192, 72.194 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 72.10(e), 72.11, 72.16, 72.22, 72.24, 72.28, 72.28, 72.30, 72.32, 72.44(b)(3), (c)(5), (d)(3), (e), (f), 72.48(b), (c), 72.50(b), 72.54(a), (b), (c), 72.56, 72.70, 72.72, 72.74(a), (b), 72.78(a), 72.78(a), 72.80, 72.82, 72.92(b), 72.94(b), 72.140 (b), (c), (d), 72.144(a), 72.146, 72.148, 72.150, 72.152, 72.154 (a), (b), 72.156, 72.160, 72.162, 72.168, 72.170, 72.172, 72.174, 72.176, 72.180, 72.184, 72.186, 72.192 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

7. In § 72.184, paragraph (a) is revised to read as follows:

§ 72.184 Safeguards contingency plan.

(a) The requirements of the licensee's safeguards contingency plan for dealing with threats and radiological sabotage must be as defined in appendix C to part 73 of this chapter. This plan must include Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix, the first four categories of information relating to nuclear facilities licensed under part 50 of this chapter. (The fifth category of information, Procedures, does not have to be submitted for approval.)

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

8. The authority citation for part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); secs. 201 as amended 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241, (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99-399, 100 Stat. 876 (42 U.S.C. 2169).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273): §§ 73.21, 73.37(g), and 73.55 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 73.20, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, and 73.67 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 73.20(c)(1), 73.24(b)(1), 73.26(b)(3), (h)(6), and (k)(4), 73.27(a) and (b), 73.37(f), 73.40(b) and (d), 73.46(g)(6) and (h)(2), 73.50(g)(2), (3)(iii)(B), and (h), 73.55(h)(2) and (4)(iii)(B), 73.57, 73.70, 73.71, and 73.72 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

9. Section 73.2 is amended by revising the definition of "Formula quantity," the introductory text of the definition "Special nuclear material of low strategic significance," and the introductory text of the definition "Special nuclear material of moderate strategic significance," and adding a definition for "Contiguous sites" in proper alphabetical sequence to read as follows:

§ 73.2 Definitions.

* * * * *

"Contiguous sites" means locations, in close proximity to each other, for the possession, use, or storage of special nuclear material where the same licensee or contractor security measures and/or organizational elements, including the alarm station and response personnel, are used to provide the capabilities necessary to satisfy the applicable security requirements.

* * * * *

"Formula quantity" (in unirradiated form this class of material is sometimes referred to as a Category I quantity of material) means strategic special nuclear material in any combination in a quantity of 5000 grams or more computed by the formula, grams = (grams contained U-235) + 2.5 (grams U-233 + grams plutonium).

* * * * *

"Special nuclear material of low strategic significance" (in unirradiated form this class of material is sometimes referred to as a Category III quantity of material) means:

* * * * *

"Special nuclear material of moderate strategic significance" (in unirradiated form this class of material is sometimes referred to as a Category II quantity of material) means:

* * * * *

10. In § 73.20, paragraph (b)(3) is redesignated as paragraph (b)(4), a new paragraph (b)(3) is added and paragraphs (b)(2) and (c) are revised to read as follows:

§ 73.20 General performance objective and requirements.

* * * * *

(b) * * *

(2) Is designed with sufficient redundancy and diversity to assure maintenance of the capabilities described in §§ 73.25 and 73.45;

(3) Includes a safeguards contingency capability that can meet the criteria in appendix C, "Licensee Safeguards Contingency Plans" to this part; and

* * * * *

(c) Each licensee subject to the requirements of paragraphs (a) and (b) of this section shall establish, maintain and follow NRC-approved safeguards physical protection and safeguards contingency plans that describe how the licensee will comply with the requirements of paragraphs (a) and (b) of this section.

11. In § 73.26, paragraph (h)(6) is revised to read as follows:

§ 73.26 Transportation physical protection systems, subsystems, components, and procedures.

* * * * *

(h) Test and Maintenance Programs. * * *

* * * * *

(6) The transportation security program must be reviewed at least every 12 months and prior to each use by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program.

The review must include a review and audit of security procedures and practices, evaluation of the effectiveness of the physical protection system, an audit of the physical protection system testing and maintenance program, and an audit of commitments established for response by local law enforcement authorities. The results of the review and the audit along with recommendations for improvements and corrections must be documented, reported to the responsible organization management, and kept available for inspection for a period of three years.

* * * * *

§ 73.40 [Amended]

12. In § 73.40, paragraphs (b), (c), and (d) are removed.

13. In § 73.46, paragraphs (g)(6) and (h)(1) are revised to read as follows:

§ 73.46 Fixed site physical protection systems, subsystems, components, and procedures.

* * * * *

(g) Test and Maintenance Programs. * * *

* * * * *

(6) The security program must be reviewed at least every 12 months by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. The review must include a review and audit of security procedures and practices, evaluation of the effectiveness of the physical protection system, an audit of the physical protection system testing and maintenance program, and an audit of commitments established for response by local law enforcement authorities. The results of the review, audit, and evaluation along with recommendations for improvements and corrections if any, must be documented and reported to the licensee's plant management and to corporate management at least one level higher than that having responsibility for the day-to-day plant operations. The reports must be kept available at the plant for inspection for a period of three years.

(h) Contingency and response plans and procedures. (1) The licensee shall establish, maintain, and follow a safeguards contingency plan for dealing with threats, thefts, and radiological sabotage related to the strategic special nuclear material and nuclear facilities subject to the provisions of this section. Safeguards contingency plans must be in accordance with the criteria in appendix C, "Licensee Safeguards Contingency Plans" to this part. Contingency plans must include, but not be limited to, the response requirements in paragraphs (h)(2) through (h)(5) of this section. The licensee shall retain a copy of the current safeguards contingency plan as a record until the Commission terminates the license and, if any portion of the plan is superseded, retain the superseded material for three years after each change.

* * * * *

14. In § 73.50, paragraphs (g)(1) and (h) are revised to read as follows:

§ 73.50 Requirements for physical protection of licensed activities.

* * * * *

(g) Response requirement. (1) The licensee shall establish, maintain, and follow a safeguards contingency plan for dealing with threats, thefts, and radiological sabotage related to the special nuclear material and nuclear facilities subject to the provisions of this section. Safeguards contingency plans must be in accordance with the criteria in appendix C, "Licensee Safeguards Contingency Plans," to this part. The licensee shall retain a copy of the current safeguards contingency plan and each change to the plan as a record until the Commission terminates the license and, if any portion of the plan is superseded, retain the superseded material for three years after each change.

* * * * *

(h) Each licensee shall establish, maintain, and follow an NRC approved training and qualifications plan outlining the processes by which guards, watchmen, armed response persons, and other members of the security organization will be selected, trained, equipped, tested, and qualified to ensure that these individuals meet the requirements of paragraph (a)(4) of this section.

15. In § 73.55, paragraphs (b)(4)(ii), (d)(7)(i) introductory text, (g)(4), and (h)(1) are revised to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

* * * * *

(b) * * *

(4) * * *

(ii) Each licensee shall establish, maintain, and follow an NRC-approved training and qualifications plan outlining the processes by which guards, watchmen, armed response persons, and other members of the security organization will be selected, trained, equipped, tested, and qualified to ensure that these individuals meet the requirements of this paragraph. The licensee shall maintain a current copy of the training and qualifications plan as a record until the Commission terminates the license for which the plan was developed and, if any portion of the plan is superseded, retain the material that is superseded for three years after each change. The training and qualifications plan must include a schedule to show how all security personnel will be qualified two years after the submitted plan is approved. The training and qualifications plan must be followed by the licensee 60 days after the submitted plan is approved by the NRC.

* * * * *

(d) * * *

(7) * * *

(i) Establish an access authorization system to limit unescorted access to vital areas during nonemergency conditions to individuals who require access in order to perform their duties. Access to vital areas for the purpose of general familiarization and other nonwork-related activities shall not be authorized except for good cause shown to the licensee. To achieve this the licensee must:

* * * * *

(g) * * *

(4) The security program must be reviewed at least every 12 months by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. The review must include a review and audit of security procedures and practices, evaluation of the effectiveness of the physical protection system, an audit of the physical protection system testing and maintenance program, and an audit of commitments established for response by local law enforcement authorities. The results of the review audit and evaluation along with recommendations for improvements and corrections, if any, must be documented and reported to the licensee's plant management and to corporate management at least one level higher than that having responsibility for the day-to-day plant operation. The reports must be kept available at the plant for inspection for a period of three years.

(h) Response requirement. (1) The licensee shall establish, maintain, and follow a safeguards contingency plan for dealing with threats, thefts, and radiological sabotage related to the nuclear facilities subject to the provisions of this section. Safeguards contingency plans must be in accordance with the criteria in appendix C, "Licensee Safeguards Contingency Plans," to this part.

* * * * *

16. In § 73.60, the introductory paragraph and paragraph (e) are revised to read as follows:

§ 73.60 Additional requirements for the physical protection of special nuclear material at nonpower reactors.

Each nonpower reactor licensee who, pursuant to the requirements of part 50 possesses at any site or contiguous sites subject to control by the licensee uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233, or plutonium alone or in any combination in a quantity of 5,000 grams or more computed by the formula, grams = (grams contained in U-235) + 2.5 (grams U-233 + grams plutonium) shall protect the special nuclear material from theft or diversion pursuant to the requirements of § 73.67(a), (b), (c), and (d) and as follows, except that a licensee is exempt from the requirements of paragraphs (a), (b), (c), (d), and (e) of this section to the extent that it possesses or uses special nuclear material which is not readily separable from other radioactive material and which has a total external radiation dose rate in excess of 100 rems per hour at a distance of three feet from any accessible surface without intervening shielding.

* * * * *

(e) Response requirement. Each licensee shall establish, maintain and follow an NRC-approved safeguards contingency plan for dealing with threats, thefts, and radiological sabotage related to the special nuclear material and nuclear facilities subject to the provisions of this section. Safeguards contingency plans must be in accordance with the criteria in appendix C, "Licensee Safeguards Contingency Plans," to this part.

17. In § 73.67, the introductory text of paragraphs (c), (d), and (f) and paragraph (c) (2) are revised to read as follows:

§ 73.67 Licensee fixed site and in-transit requirements for the physical protection of special nuclear material of moderate and low strategic significance.

* * * * *

(c) Each licensee who possesses, uses, transports or who delivers to a carrier for transport special nuclear material of moderate strategic significance or 10 kg or more of special nuclear material of low strategic significance shall:

* * * * *

(2) Within 30 days after the plan(s) submitted pursuant to paragraph (c)(1) of this section is approved or when specified by the NRC in writing, implement the approved security plan.

(d) Fixed site requirements for special nuclear material of moderate strategic significance. Each licensee who possesses, stores, or uses quantities and types of special nuclear material of moderate strategic significance at a site or contiguous sites, except those who are licensed to operate a nuclear power reactor pursuant to part 50 or except as allowed by paragraph (b)(2) of this section shall:

* * * * *

(f) Fixed site requirements for special nuclear material of low strategic significance. Each licensee who possesses, stores, or uses special nuclear material of low strategic significance at a fixed site or contiguous sites, except those who are licensed to operate a nuclear power reactor pursuant to part 50, shall:

* * * * *

18. In § 73.70, paragraph (c) is revised as follows:

§ 73.70 Records.

* * * * *

(c) A register of visitors, vendors, and other individuals not employed by the licensee pursuant to §§ 73.46(d)(13), 73.55(d)(6), or § 73.60. The licensee shall retain this register as a record for three years after the last entry is made in the register.

* * * * *

19. In appendix B to part 73, the "Introduction" is revised as follows:

Appendix B—General Criteria for Security Personnel

* * * * *

Introduction

Security personnel who are responsible for the protection of special nuclear material on site and in transit and for the protection of the facility or shipment vehicle against radiological sabotage should, like other elements of the physical security system, be required to meet minimum criteria to ensure that they will effectively perform their assigned security-related job duties. In order to ensure that those individuals responsible for security are properly equipped and qualified to execute the job duties prescribed for them, the NRC has developed general criteria that specify security personnel qualification requirements.

These general criteria establish requirements for the selection, training, equipping, testing, and qualification of individuals who will be responsible for protecting special nuclear materials, nuclear facilities, and nuclear shipments.

When required to have security personnel that have been trained, equipped, and qualified to perform assigned security job duties in accordance with the criteria in this appendix, the licensee must establish, maintain, and follow a plan that shows how the criteria will be met. The plan must be submitted to the NRC for approval. The plan must be implemented within 30 days after approval by the Commission unless otherwise specified by the Commission in writing.

* * * * *

20. In appendix C to part 73, the Introduction is revised and a new section on Audit and Review is added as follows:

Appendix C—Licensee Safeguards Contingency Plans

Introduction

A licensee safeguards contingency plan is a documented plan to give guidance to licensee personnel in order to accomplish specific, defined objectives in the event of threats, thefts, or radiological sabotage relating to special nuclear material or nuclear facilities licensed under the Atomic Energy Act of 1954, as amended. An acceptable safeguards contingency plan must contain (1) a predetermined set of decisions and actions to satisfy stated objectives, (2) an identification of the data, criteria, procedures, and mechanisms necessary to effect efficiently the decisions and actions, and (3) a specification of the individual, group, or organizational entity responsible for each decision and action.

The goals of licensee safeguards contingency plans for dealing with threats, thefts, and radiological sabotage are (1) to organize the response effort at the licensee level, (2) to provide predetermined, structured responses by licensees to safeguards contingencies, (3) to ensure the integration of the licensee response with the responses by other entities, and (4) to achieve a measurable performance in response capability. Licensee safeguards contingency planning should result in organizing the licensee's resources in such a way that the participants will be identified, their several responsibilities specified, and the responses coordinated. The responses should be timely and internally consistent among themselves.

It is important to note that a licensee's safeguards contingency plan is intended to be complementary to any emergency plans developed pursuant to appendix E to part 50 of this chapter or to § 70.22(i) of part 70 of this chapter.

When so required in this chapter, each licensee shall establish, maintain and follow a safeguards contingency plan in accordance with the criteria set forth in this appendix. The safeguards contingency plan must include plans for dealing with threats, thefts, and radiological sabotage, as applicable. The first four categories of information contained in the safeguards contingency plan must be submitted to the NRC for approval. (The first four categories of information, as set forth in this appendix, are Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix. The fifth category of information, Procedures, does not have to be submitted for approval.) The plan becomes effective 30 days after approval by the Commission unless otherwise specified by the Commission in writing. When the plan becomes effective, the licensee shall have: (1) All safeguards capabilities specified in its safeguards contingency plan available and functional, (2) detailed procedures developed according to this appendix available at the licensee's site, and (3) all appropriate personnel trained to respond to safeguards incidents as outlined in the plan and specified in the detailed procedures.

Audit and Review

The licensee shall provide for the implementation, revision, and maintenance of its safeguards contingency plan. To this end, at intervals not to exceed 12 months, the licensee shall provide for a review of the safeguards contingency plan by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. The review must include a review and audit of safeguards contingency procedures and practices and a test of the safeguards system along with commitments established for response by local law enforcement authorities.

The licensee shall document and report the results of the review and audit, along with recommendations for improvements and corrections, if any, to the licensee's corporate and plant management at least one level higher than that having responsibility for the day-to-day operation of the plant. The report must be kept available at the plant for inspection for a period of three years.

* * * * *

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL - IMPLEMENTATIONOF US/IAEA AGREEMENT

21. The authority citation for part 75 continues to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201; sec. 201, 88 Stat. 1242 as amended, (42 U.S.C. 5841).

Section 75.4 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), the provisions of this part issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

22. In § 75.4, paragraph (f)(l) is revised to read as follows:

§ 75.4 Definitions.

* * * * *

(f)"Effective kilogram" means a unit used in safeguarding nuclear material. The quantity is:

(1) For special nuclear material: The amount specified in § 70.4 of this chapter.

* * * * *

Dated at Rockville, Maryland this 31st day of July 1989.

For the Nuclear Regulatory Commission.

James M. Taylor,

Acting Executive Director for Operations.

[Doc. 89-18907 Filed 8-14-89; 8:45 am]

BILLING CODE 7590-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-89-9]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before October 16, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 9, 1989.

Deborah Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 25959
Petitioner: Air Line Pilots Association
Regulation Affected: 14 CFR parts 23, 25, 121, and 135
Description of Petition: To establish a minimum level of safety relative to those aircraft systems which utilize fluids or substances that are toxic or may be considered hazardous to health.
Petitioner's Reason for the Petition: There is a concern among many pilots that a hazardous condition exists within aircraft systems which utilize potentially toxic fluids or other substances which may be considered hazardous to health. ALPA believes that it is necessary for FAA to establish minimum safety standards relating to the design, certification, operation and maintenance of these systems.

[FR Doc. 89-19047 Filed 8-14-89; 8:45 am]

BILLING CODE 4910-8-M

Office of the Secretary

14 CFR Ch. II

[Docket No. 44304; Notice 89-10]

RIN Number 2105-AB26

Airline Default Protection Petition of Theodore P. Harris

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of denial of petition for rulemaking.

SUMMARY: Mr. Theodore P. Harris filed a petition for rulemaking to establish a plan to guarantee refunds to passengers with pre-paid tickets whose airline ceases operations. The proposed rule would require carriers to keep all advance payments in escrow until the transportation is performed, or to post a bond sufficient to cover such "unearned revenue." In a study requested by Congress, the Department has concluded that there is insufficient justification for such a mandatory government-imposed system of "default protection." Consistent with that finding, Mr. Harris' petition is being denied.

DATES: This denial is effective August 15, 1989.

FOR FURTHER INFORMATION CONTACT: Timothy Kelly, Consumer Affairs

Division, I-25, 400 Seventh Street SW., Washington, DC 20590, or by phone at (202) 366-5957.

SUPPLEMENTARY INFORMATION: On August 27, 1986, Mr. Theodore P. Harris, an aviation consultant, filed a petition for rulemaking with the Department on his own behalf. He proposed that air carriers be required to segregate "unearned transportation revenues" (money collected for flights that have not yet been performed) and to keep these funds in escrow until the flight operates. Alternatively, he proposed requiring carriers to post a bond or similar surety instrument in an amount sufficient to have the same effect, and he suggest 150 percent of average unearned revenues. Mr. Harris also proposed to exempt carriers that cooperate in a revival of the industry's defunct Default Protection Plan (which provided transportation on other carriers instead of refunds), and carriers that develop other effective ticket insurance plans.

Mr. Harris cited the default of Frontier Airlines in describing the need for such a rule. He asserted that at any given point in time there are billions of dollars in unearned transportation revenue in the hands of the airlines. He argued that a default protection system would not be a barrier to entry as had been claimed in the past, but on the contrary would restore consumer and investor confidence in new airlines, thus enhancing competition. Mr. Harris also contended that the proposal would protect the concept of deregulation from loss of public and congressional support.

There was one comment, a travel agent who supported the petition. No Notice of Proposed Rulemaking has been issued.

In October 1986, Congress directed the Department to conduct a study on methods for protecting airline passengers from carrier bankruptcies (Conference Report 99-976, p.8). This study was released in January 1988. It examined past defaults, past and current private default plans, the financial exposure of passengers, and options for default protection. The study concluded that the facts do not support the need for any mandatory government-imposed system of default protection. Sixty-two percent of all airline tickets at that time (65 percent currently) are credit card purchases that are generally refundable under federal credit laws. Some other tickets are protected by private default plans and insurance. Nearly half of all airline tickets are purchased for business trips, not personal travel. Other airlines frequently honor default-carrier tickets on a standby basis.

The number of airline defaults has declined in every year since 1984, the study found, and complaints to DOT about defaults are also decreasing. Payments collected before the flight by carriers that subsequently default are a fraction of one percent of total industry revenue. The effect of airline defaults on passengers has been declining in relative terms as average fares have declined. "New entrant" carriers account for a disproportionate share of defaults, but the number of new carriers being certificated is down sharply. Commuter airlines, which account for 75 percent of all scheduled-airline defaults, are moving into marketing alliances with certificated carriers that provide special ticketing protections.

Eastern Air Lines recently filed a Reorganization Plan calling for full cash refunds with interest for all ticketholders. The same offer was made in the last major airline bankruptcy, that of Continental Air Lines.

Government-imposed default protection may actually harm consumers by imposing restrictions and other costs on carriers which would increase fares and possibly make routine non-default refunds more difficult to obtain. It could also harm the competitive process by insulating carriers from the operation of market forces.

Consistent with the Department's findings and conclusions in its 1988 study, the petition of Theodore Harris, which was reviewed during the course of the study, is denied. A copy of the study has been placed in the docket.

Issued in Washington, DC on August 8, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-19021 Filed 8-14-89; 8:45 am]

BILLING CODE 4910-62-M

---

14 CFR Ch. II

[Docket No. 42368; Notice 89-11]

RIN Number 2105-AA96

Airline Default Protection; Petition of Transamerica Airlines

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of denial of petition for rulemaking.

SUMMARY: Transamerica Airlines filed a petition to establish a mandatory plan to provide refunds to passengers with pre-paid tickets whose airline ceases operations. In a study requested by Congress, the Department has concluded that there is insufficient justification for such a mandatory government-imposed system of "default protection." Consistent with that finding, Transamerica's petition is being denied.

DATES: This denial is effective August 15, 1989.

FOR FURTHER INFORMATION CONTACT: Timothy Kelly, Consumer Affairs Division, I-25, 400 Seventh Street SW., Washington, DC 20590, or by phone at (202) 366-5957.

SUPPLEMENTARY INFORMATION: On July 25, 1984, Transamerica Airlines filed a petition for rulemaking with the Civil Aeronautics Board (CAB) and requested an investigation to devise a method to reimburse funds paid in advance by airline passengers whose carrier subsequently defaults on its service obligation. Transamerica noted that the industry's voluntary Default Protection Plan unraveled after Continental Airlines continued to operate after filing for bankruptcy in 1983. Airline bankruptcies were continuing to occur, the petitioner argued. Transamerica said that the proposed requirement could be imposed as a rule or as a condition on airline operating authority, and that the details of the protection plan could be worked out during the investigation.

The Air Transport Association filed an Answer to Transamerica's petition. (ATA is the trade association of most of the larger U.S. airlines.) ATA opposed the proposal as an intense form of regulation and an attempt to roll back airline deregulation. The organization said that there is no reason that the recourse of a disaffected customer should be different in the airline indusry than in other industries. ATA also said the plan would harm competition by discouraging entry by new carriers. Three comments from individuals were received, all of which favored Transamerica's petition.

The CAB took no action on the petition. Upon the "sunset" of that agency, the docket transferred to DOT.

In October 1986, Congress directed the Department to conduct a study of methods for protecting airline passengers from carrier bankruptcies (Conference Report 99-976, p. 8). This study was released in January 1988. It examined past defaults, past and current private default plans, the financial exposure of passengers, and options for default protection. The study concluded that the facts do not support the need for any mandatory government-imposed system of default protection. Sixty-two percent of all airline tickets at that time (65 percent currently) are credit card purchases that are generally refundable under federal credit laws. Some other tickets are protected by private default plans and insurance. Nearly half of all airline tickets are purchased for business trips, not personal travel. Other airlines frequently honor default-carrier tickets on a standby basis.

The number of airline defaults has declined in every year since 1984, the study found, and complaints to DOT about defaults are also decreasing. Payments collected before the flight by carriers that subsequently default are a fraction of one percent of total industry revenue. The effect of airline defaults on passengers has been declining in relative terms as average fares have declined. "New entrant" carriers account for a disproportionate share of defaults, but the number of new carriers being certificated is down sharply. Commuter airlines, which account for 75 percent of all scheduled-airline defaults, are moving into marketing alliances with certificated carriers that provide special ticketing protections.

Eastern Air Lines recently filed a Reorganization Plan calling for full cash refunds with interest for all ticketholders. The same offer was made in the last major airline bankruptcy, that of Continental Air Lines.

Government-imposed default protection may actually harm consumers by imposing restrictions and other costs on carriers which would increase fares and possibly make routine non-default refunds more difficult to obtain. It could also harm the competitive process by insulating carriers from the operation of market forces.

Consistent with the Department's findings and conclusions in its 1988 study, the petition of Theodore Harris, which was reviewed during the course of the study, is denied. A copy of the study has been placed in the docket.

Issued in Washington, DC, on August 8, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-19020 Filed 8-14-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWP-1]

Proposed Alteration of VOR Federal Airway V-562; Arizona

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V-562 between Drake, AZ, and Salt River, AZ. The alteration of V-562 would provide an additional route to the Phoenix terminal area. This action would aid in improving the traffic flow for aircraft arriving at airports within the Phoenix terminal area.

DATES: Comments must be received on or before September 25, 1989.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Air Traffic Division, AWP-500, Docket No. 89-AWP-1, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, envirionmental, and energy respects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AWP-1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of VOR Federal Airway V-562 between Drake, AZ, and Salt River, AZ. This airway would provide an additional route to the Phoenix terminal area. Also, this airway would be used to segregate dissimilar types of aircraft desiring to land at airports located within Phoenix terminal area airspace. Altering this airway would eliminate the adverse congestion of air traffic on V-105. This action would benefit controllers and pilots by enhancing the procedures currently used in this area. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant

economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-562 [Amended]

By removing the words "From Drake, AZ;" and substituting the words "From Salt River, AZ; via INT Salt River 006°T(352°M) and Drake, AZ, 181°T(117°M) radials; Drake;"

Issued in Washington, DC, on August 2, 1989.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-19052 Filed 8-14-89; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Parts 233 and 302

[Docket No. 36497; Notice 89-12]

RIN 2105-AA44

Airline Mail Rates

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Proposed rule; termination of proceeding.

SUMMARY: This action terminates the Civil Aeronautics Board proceeding that proposed to add a new 14 CFR Part 233 and revoke Subpart C of Part 302 of the regulations. The proposed rule sought to modify the procedures by which interstate, overseas and foreign service mail rates are established. The rulemaking proposal has become moot due to statutory changes and the general acceptance of mail rate updating procedures established in various orders.

EFFECTIVE DATE: September 14, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence Myers, Office of International Law, 400 7th Street SW., Room 10105, Washington, DC 20590; (202) 366-9183.

SUPPLEMENTARY INFORMATION: On September 7, 1979, the Civil Aeronautics Board (CAB) published a Notice of Proposed Rulemaking, 44 FR 52248, which sought to modify the procedures by which the CAB established interstate, overseas and foreign service mail rates under section 406 of the Federal Aviation Act of 1958, as amended. The proposed rule sought to establish zones for each category of mail, defined by maximum and minimum rates, with zone ceilings corresponding to existing prescribed rate levels updated by cost changes. Within these limits all service mail rates would be deemed to be fair and reasonable. The U.S. Postal Service could than contract for the carriage of mail at any price within each zone without CAB review. Contracts outside the zones would be reviewed by the Board.

Comments criticizing various aspects of the proposal were filed by most U.S. carriers and the Postal Service. The carriers generally criticized the proposal's continuation of the ability of the USPS to compel mail service at the zone ceiling rates, arguing that such rates were cost averages and would not compensate carriers for high cost markets. On December 16, 1980, the Board published a Supplemental Notice of Proposed Rulemaking, 45 FR 83510, clarifying the means by which carriers could raise compelled-carriage rates and presenting zone structures providing for greater upward contracting flexibility in high-cost situations. Numerous comments were again filed regarding the feasibility of the proposed procedures and their economic impact.

The proposed rules were largely designed to ease the transition to the more competitive system contemplated by the Airline Deregulation Act of 1978 (Pub. L. 95-504, October 24, 1978). Under the Deregulation Act, on January 1, 1985, the CAB's domestic postal ratemaking function ended (except within Alaska) and the U.S. Postal Service assumed the authority to determine interstate and overseas service mail rates directly, either through negotiation or competitive bidding. The statutory change in mail rate procedures eliminated the primary impetus for the rulemaking proposal.

At the same time, statutory changes reflected in the CAB Sunset Act of 1984 (Pub. L. 96-443, October 4, 1984) suggested that Congress wanted the prescription of mail rates to continue within Alaska. And, in the case of international mail rates, the procedure for periodically updating the base rate structure for unit cost changes (see, e.g., Orders 78-12-150 and 78-7-17)* has appeared to find acceptance among the carriers and the Postal Service.

Accordingly, because of the statutory changes providing for the carriage of domestic mail negotiated through private contracts, and because no interest has been shown in substantially amending the present method for determining international mail rates, the Department of Transportation is terminating this rulemaking proceeding, without prejudice to a reexamination of the merits of some or all aspects of the proposal should future circumstances suggest the need.

Issued under authority delegated in 49 CFR 1.56(i) and 1.56(j)(2)(ii).

Issued in Washington, DC on August 8, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-19019 Filed 8-14-89; 8:45 am]

BILLING CODE 4910-62-M

---

14 CFR Parts 252 and 253

[Docket No. 41009; Notice 89-8]

RIN 2105-AA72

Smoking Aboard Aircraft; Notice to Passengers

AGENCY: Office of the Secretary, DOT.

ACTION: Proposed rulemaking; Termination of Proceeding.

SUMMARY: 14 CFR part 252 guarantees airline passengers a right to a seat in the no-smoking section if they check in on time. The Civil Aeronautics Board proposed to require a notice on airline tickets advising airline passengers about this right. The Department of Transporation (the Board's successor) is terminating this proceeding because subsequent events have greatly reduced the need for such a notice. These events include a recent ban on smoking on flights of two hours or less, which affects over 80 percent of all domestic flights, as well as greater public awareness concerning the rights of non-smokers on airline flights.

EFFECTIVE DATE: August 15, 1989.

FOR FURTHER INFORMATION CONTACT: Timothy Kelly, Consumer Affairs Division, I-25, 400 Seventh Street, SW., Washington, DC 20590, or by phone at (202) 366-5967.

SUPPLEMENTARY INFORMATION: 14 CFR part 252, "Smoking Aboard Aircraft," states that air carriers must provide a seat in a no-smoking section to every passenger who meets the airline's check-in deadline and requests such a seat. On September 27, 1982, the Civil Aeronautics Board, on its own initiative, issued a Notice of Proposed Rulemaking suggesting a ticket notice concerning smoking rights (47 FR 52190, November 19, 1982). The primary proposal was to add a new § 252.5 to the smoking rule to require a notice stating "Every passenger who meets the airline's check-in requirements has a right to a seat in a non-smoking section." As an alternative, the Board proposed amending § 253.5(b)(4) of its rule "Notice of Terms of Contract of Carriage" by adding the word "smoking" to the summary list of significant contract-of-carriage terms to which carriers must make reference on tickets.

Both the primary and alternative proposals were opposed in comments filed by the Air Transport Association (the trade association of the major airlines) and by Republic, Transamerica and Southwest Airlines. They said that the smoking rule has worked for ten years without a notice requirement, and that most passengers are aware of the rule. Southwest said that the recent proliferation of ticket notices has diluted the impact of each notice. Republic commented that an airline ticket should not serve as a mini—Federal Register.

Comments supporting the primary proposal were filed by the Aviation Consumer Action Project, the Coalition on Smoking or Health, The New York Department of Transportation, Californians for Nonsmokers' Rights, and three individuals. Several of these commenters contended that most passengers are aware that there are smoking and no-smoking sections, but many are not aware of their legal right to a seat in the no-smoking section. ACAP and Californians for Nonsmokers' Rights pointed out that the notice would alert passengers to their rights before they arrive at the gate, which they said would lessen the likelihood of disputes. Southwest Airlines, on the other hand, said that notifying passengers of their rights in this area "will interfere with the boarding process."

The Association of Flight Attendants said that it "does not oppose the intent" of the proposed rule, but that carriers should comply with the obligation to provide a no-smoking seat before passenger boarding, so that flight attendants will not be faced with angry or non-complying passengers on board. The CAB took no further action. When that agency "sunsetted," this proceeding transferred to the Department.

This rulemaking was begun nearly seven years ago. Since then a number of events have occurred which we believe mitigate the need for such a rule. Non-smoking airline passengers' awareness of their rights have been increased by a highly-publicized proceeding in 1984 in which the CAB considered banning smoking on short flights, by a 1986 National Academy of Sciences study that recommended a smoking ban on airliners, and by an initiative by the state of California to ban smoking on flights within that state. On April 23, 1988, a federal ban on smoking on domestic flights of two hours or less went into effect, eliminating separate smoking and no-smoking sections (the subject of the proposed notice) on those flights. This ban covers more than 80 percent of all domestic flights; that percentage has been increased even further by certain voluntary airline initiatives (e.g. Northwest banned smoking on all of its flights in North America, and United banned smoking on all flights under 1,000 miles). A rule issued by the Federal Aviation Administration to implement this two-hour smoking ban also requires for the first time that carriers brief passengers taking flights lasting more than two hours about the provisions of the rule on smoking and no-smoking sections on those flights.

Complaints to the Department about specific instances in which a passenger was unable to secure a seat in a desired section or about a failure of a carrier to enforce the rule have consistently constituted less than three percent of the complaints we receive, and even this low figure has been generally declining:

Year	Smoking as percent of total
1984	2.8
1985	2.7
1986	2.7
1988	2.7
1987	2.3
1988	2.5

We are concerned that passengers be aware of their rights. However, we have seen no evidence that passengers are routinely denied nonsmoking seats as a result of inadequate notice about their rights. A notice about seating in a "nonsmoking section" would be irrelevant for passengers on an overwhelming majority of domestic flights as a result of the new two-hour ban. After consideration, we have decided that the limited benefits of this proposal do not justify issuance of a rule, and we are terminating this proceeding.

Issued on the 8th day of August, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-19023 Filed 8-14-89; 8:45 am]

BILLING CODE 4910-62-M

---

*Not published in Federal Register.

14 CFR Part 303

[Docket No. 44015; Notice 89-6]

RIN 2105-AB20

Exemption From Prior Approval Requirements

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Proposed rulemaking; termination of proceeding.

SUMMARY: This action terminates the proceeding that proposed to amend the aviation merger procedural regulations to allow certain transactions to go forward without prior approval by the Department of Transportation. The rulemaking proposal has become moot due to the termination of statutory authority.

EFFECTIVE DATE: August 15, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence Myers, Office of the Assistant General Counsel for International Law, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2972.

SUPPLEMENTARY INFORMATION: On May 13, 1988, the Department of Transportation (DOT) issued a Notice of Proposed Rulemaking (51 FR 17490) proposing to amend the procedural regulations in 14 CFR Part 303, *Review Of Air Carrier Agreements, Mergers, Acquisitions of Control, Consolidations and Interlocking Relationships,* governing the approval of certain airline mergers and acquisitions under section 408 of the Federal Aviation Act of 1958, as amended.

Two amendments to Part 303 were proposed. The first would have established expedited procedures to permit an acquisition of an air carriers by another air carrier. The second proposal would have exempted air carrier from section 408 to the extent necessary to allow them to acquire the voting securities of another air carrier, without obtaining prior DOT approval.

We received five comments. Most addressed the first proposed amendment. The Air Line Pilots Association, the Airline Employees Association, and the Association of Flight Attendants contended that the expedited procedures would preclude interested persons from meaningful participation in a section 408 proceeding before the exemption was granted. The Attorneys General of New York and Massachusetts argued that the amendment would accord special treatment to the airline industry by imposing a higher standard of proof upon parties opposed to an airline merger than is imposed upon parties challenging mergers in unregulated industries. They also contended that the period of time allotted merger opponents was unreasonably short; that injured parties would be denied redress for damages incurred during the period of control; and that the proposal was contrary to congressional intent. The International Brotherhood of Teamsters agreed that the proposal disregarded Congress' plan for gradual deregulation of the airline industry. They also argued that the proposal did not afford procedural due process to parties using the expedited procedures and that it ignored the impact of carrier mergers on representation issues governed by the Railway Labor Act.

Two commenters supported the proposed amendments with a few modifications. Texas Air Corporation suggested that DOJ approval of an acquisition should be the basis for final approval by exemption and that the 25 percent limitation on voting trust stock purchases should be modified to 51 percent. The Department of Justice (DOJ) suggested that procedures for obtaining an exemption should be fully integrated with existing provisions governing the availability of an exemption. DOJ also was concerned that allowing an acquisition of up to 25 percent of an air carrier's voting securities might have anticompetitive effects and suggested that purchases should be limited to 15 percent.

We are terminating the rulemaking proceeding because both proposals are now moot. Pursuant to the Civil Aeronautics Board Sunset Act of 1984 (Pub. L. 98–443, October 4, 1984), which amended the Airline Deregulation Act (Pub. L. No. 95–504, October 24, 1978), as of January 1, 1989, section 408 of the Federal Aviation Act ceased to be in effect. Accordingly, DOT's authority under this section to review and approve certain air carrier consolidations, mergers, acquisitions of control has been terminated.

We find good cause to make this termination notice effective on less than 30 days because we have no underlying authority to make the changes

Issued under authority delegated in 49 CFR 1.56(i) and 1.56(j)(2)(ii).

Issued in Washington, DC on August 8, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–19022 Filed 8–14–89; 8:45 am]

BILLING CODE 4910–62–M

14 CFR Part 377

[OST Docket No. 41497; Notice No. 89–13]

RIN 2105–AA68

Effect of Expiration of a Bilateral on Foreign Air Carrier Authority

AGENCY: Office of the Secretary. Department of Transportation.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Department has decided to withdraw a rulemaking begun by the Civil Aeronautics Board that proposed to reverse its policy that a foreign air carrier's permit or exemption authority may continue after the underlying bilateral air service agreement expires, by virtue of section 558(c) of the Administrative Procedure Act.

EFFECTIVE DATE: Augutst 15, 1989.

FOR FURTHER INFORMATION CONTACT: Richard M. Loughlin or William M. Bertram, Licensing Division, Office of International Aviation, P–45, Department of Transportation, 400 7th Street SW., Washington, DC, 20590, (202) 366–2388.

SUPPLEMENTARY INFORMATION:

Background

This document withdraws the Civil Aeronautics Board's (CAB) notice of proposed rulemaking that appeared in the Federal Register on June 3, 1983 (SPDR–89, Docket 41497, (48 FR 24923)). The notice proposed to amend 14 CFR Part 377, which automatically extends certain expiring air transportation licenses, pending renewal. The amendment would have provided that foreign air carriers' licenses would expire upon the happening of an event, such as the expiration of a bilateral air service agreement, notwithstanding the timely filing of a proper renewal application. It had been the purpose of the proposed rule to strengthen the U.S. negotiating position in international aviation negotiations. Responsibility for this rulemaking transferred to the Department at CAB sunset (49 U.S.C. 1501). The proposed rule was opposed by the U.S. Departments of State and Transportation as adverse to the conduct of U.S. foreign relations and implementation of U.S. international transportation policy. Eight foreign air carriers also objected (Czechoslovak Airlines, Empresa Ecuatoriana, British Airways, LOT-Polish Airlines, Japan Air Lines Company, Singapore Airlines, Varig Brazilian Airlines, and SABENA). Two U.S. air carriers (The Flying Tiger Line, and Northwest Orient) filed comments supporting the proposal.

Withdrawal of Proposed Rule

After review of written comments from both the private and public sectors, the Department has determined that the contemplated change is unwarranted, since it is unclear that the proposed rule would be beneficial to U.S. foreign relations in the aviation area, in the manner the CAB intended, and could indeed be detrimental, and thus would not be in the public interest.

In view of the foregoing, the proposed amendment to 14 CFR Part 377 relating to the continuance of a foreign air carrier's permit and exemption authority after expiration of an underlying bilateral air services agreement, and published in the Federal Register on June 3, 1983 (48 FR 24923), is withdrawn.

Issued in Washington, DC on August 8, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–19018 Filed 8–14–89; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 168

[Docket No. 86P–0101/CP]

Lactose; Standard of Identity

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the standard of identity for lactose to change the required lactose content and pH range, to provide for a new method of analysis for lactose content, and to make editorial changes. The proposed amendments are in response to a petition submitted by the American Dairy Products Institute (ADPI), formerly known as the Whey Products Institute. The amendments

will, to the extent practicable, achieve consistency with current industry practice and will promote honesty and fair dealing in the interest of consumers.

DATES: Comments by October 16, 1989. The agency proposes that any final rule that may issue based upon this proposal become effective 60 days after the date of publication of the final rule in the Federal Register.

ADDRESSES: Written comments, data, or information to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Arthur R. Johnson, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0112.

SUPPLEMENTARY INFORMATION: The American Dairy Products Institute, 130 North Franklin St., Chicago, IL 60606, submitted a petition dated February 25, 1986, requesting that FDA amend the standard of identity for lactose (21 CFR 168.122) to (1) reduce the required minimum lactose content from not less than 99.0 percent, mass over mass (m/m), calculated on a dry basis, to not less than 98.0 percent, m/m, calculated on a dry basis; (2) change the pH range from not less than 4.5 nor more than 7.0 to not less than 5.0 nor more than 7.5; and (3) make editorial changes to cite the newly adopted official method of the Association of Official Analytical Chemists (AOAC), now preferred for the determination of lactose purity, and to update the referenced method for the determination of loss on drying at 120 °C. ADPI stated that the requested amendments were technical rather than substantive.

1. ADPI pointed out that the proposal to reduce the required minimum lactose content (the lactose purity) from 99.0 to 98.0 percent simply reflects the AOAC adoption of, and the industry use of, a newer and more precise method of analysis for the determination of lactose. For a particular sample, this new AOAC method gives a slightly lower value for lactose content than does the method currently prescribed by the standard of identity. The present method in § 168.122(d)(1)(i) is from the "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 31.061—Lactose in Sugars and Sirups, Lane-Eynon General Volumetric Method. The new, proposed method is from the AOAC 14th Ed. (1984), sections 31.064 to 31.071—Purity of Lactose, Liquid Chromatographic Method (high performance liquid chromatography).

In support of the requested amendment, ADPI provided data from a collaborative study in which three laboratories participated. Thirty samples were analyzed by each of the two AOAC methods cited. In all cases where the high performance liquid chromatography method of analysis found a percentage of lactose of less than 99 percent for a particular sample, the Lane-Eynon general volumetric method found a percentage of lactose of 99 percent or greater for that sample.

ADPI asserted that its proposed change in the standard would not result in the sanctioning of an inferior or "less pure" product. It argued that instead, the proposed change merely recognizes that there are slight, but statistically significant, differences in results, depending upon which method of analysis is utilized.

FDA acknowledges that the proposed liquid chromatographic method yields slightly lower values than the currently required method. However, collaborative studies have shown that the proposed liquid chromatographic method is more reliable because it has excellent repeatability and reproducibility (Refs. 1 and 2). These studies have demonstrated that this method also has excellent precision. It was recently adopted by the AOAC as "Official Final Action" (Ref. 3). Therefore, FDA believes that the proposed change in the method cited in the standard of identity is appropriate and has included it in the regulation set forth below.

2. ADPI also requested a higher permitted range for the pH of lactose because industry experience, using current good manufacturing practices, demonstrates that such a higher range is reasonable. The petitioner noted that the whey used in lactose production often results from commingling wheys of varying pH levels from multiple sources. ADPI stated that although manufacturing methods have not changed substantially, the use of safe and suitable pH adjusting agents in whey processing, in accordance with 21 CFR 184.1979, results in a whey with a slightly higher pH. This whey, when used as the basic constituent in lactose production, in turn results in lactose with a slightly higher pH, thereby necessitating the requested change.

FDA believes that the request from ADPI is reasonable. Based on the data presented in the ADPI petition, FDA tentatively concludes that the higher permitted pH range will not affect the quality, safety, or functionality of the product. The requested change in the standard reflects current good manufacturing practice and is the result of several years of experience for the whey products industry.

3. For consistency with the proposed new method for lactose determination, ADPI also suggested that the citation for the determination of loss on drying at 120 °C to be changed to reference the 14th edition of the AOAC instead of the U.S. Pharmacopeia. The procedure is the same on both references.

FDA believes that the proposed change to reference the AOAC method has merit because it eliminates the need for a second reference text. The agency notes that the AOAC method in section 31.070 includes the method for the determination of loss on drying in the U.S. Pharmacopeia. FDA has renumbered the paragraphs in § 168.122(d) and incorporated the AOAC method in § 168.122(d)(4) (formerly § 168.122(d)(2)). For further consistency, FDA is proposing to update the other referenced methods of analysis in the standard to reflect the 14th edition of the AOAC and the new address for the AOAC office.

4. The agency believes that the requests from ADPI are reasonable, and that the proposed changes will promote honesty and fair dealing in the interest of consumers. The proposed new method for the determination of lactose purity will permit the use of state-of-the-art analytical methodology, leading to more precise analytical results in a more expeditious and confident manner. FDA does not believe that this change in procedure, or the shift in pH of lactose, will in any way affect the quality of the standardized food. Accordingly, FDA is proposing to amend the standard of identity for lactose in 21 CFR 168.122 as set forth below.

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Saucerman, J. R., and C. E. Winstead, "Liquid Chromatographic Determination of Lactose Purity: Collaborative Study," Journal of the Association of Official Analytical Chemists, 67, No. 5, 899–901, 1984.

2. "Purity of Lactose, Liquid Chromatographic Method, First Action," Official Methods of Analysis of the Association of Official Analytical Chemists, 14th Ed., sections 31.064–31.071, 1984.

3. "31. Sugars and Sugar Products—(1)(a) Purity of Lactose," Changes in Official Methods of Analysis, 4th Supplement, p. 212, 1988, to the "Official Methods of Analysis of the Association of Official Analytical Chemists, 14th Ed., 1984.

Economic Impact

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601), FDA has reviewed this proposed rule to determine the impact on small businesses. The proposed rule provides for a shift in the pH range for consistency with current good manufacturing practice, provides for a new, more precise method of analysis for lactose content, and changes the product specifications to accommodate the new methodology. The proposed changes are nonsubstantive and will not affect the production or marketing of lactose. Therefore, FDA certifies that this action will not have a significant economic impact on small entities.

Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Request for Comments

Interested persons may, on or before October 16, 1989, submit to the Dockets Management Branch (address above) written comments regarding the proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 168

Food grades and standards, Incorporation by reference, Sugar.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that 21 CFR part 168 be amended as follows:

PART 168—SWEETENERS AND TABLE SIRUPS

1. The authority citation for 21 CFR part 168 is revised to read as follows:

Authority: Secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)); 21 CFR 5.10 and 5.61.

2. Section 168.122 is amended by revising paragraphs (b)(1), (b)(3), and (d) to read as follows:

§ 168.122 Lactose

* * * * *

(b) * * *

(1) The lactose content is not less than 98.0 percent, mass over mass (m/m), calculated on a dry basis.

* * * * *

(3) The pH of a 10 percent, m/m, solution is not less than 5.0 nor more than 7.5

* * * * *

(d) The methods of analysis to be used to determine whether the food meets the requirements of paragraphs (b)(1), (2), (3), and (4) of this section are the following methods in "Official Methods of Analysis of the Association of Official Analytical Chemists," 14th Ed. (1984), which is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies may be obtained from the Association of Official Analytical Chemists, 2200 Wilson Blvd., Suite 400, Arlington, VA 22201–3301, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC.

(1) Lactose content, sections 31.064 to 31.071, Purity of Lactose, Liquid Chromatographic Method, First Action.

(2) Sulfated ash content, section 31.014, Ash of Sugars and Sirups, Final Action, Sulfated Ash.

(3) pH, section 14.022, pH of Flour, Potentiometric Method, Final Action, except that a 10-percent, m/m, solution of lactose in water is used for the determination.

(4) Loss on drying at 120 °C, section 31.070.

Dated: August 2, 1989.

Richard J. Ronk,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–19003 Filed 8–14–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Areas, Pensacola Bay, FL

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Proposed rulemaking.

SUMMARY: The Corps of Engineers proposes to promulgate regulations in 33 CFR 334.775 to establish two naval restricted areas in the waters of Pensacola Bay, Florida, to provide safety for persons and craft during naval training operations and/or exercises conducted in the area.

DATES: Written comments must be submitted on or before September 14, 1989.

ADDRESSES: HQUSACE, CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph T. Eppard at (202) 272–1783 or Ms. Shirley Stokes at (904) 791–1668.

SUPPLEMENTARY INFORMATION: The Commanding Officer, Naval Air Station, Pensacola, Florida, has requested the establishment of two restricted areas in Pensacola Bay. The Navy uses these areas during training for a school they conduct for undergraduate navigation officer training, undergraduate naval enlisted air crew training and para-swimmer training. The areas are not closed to the public. However, during those times that missions, exercises or training operations are being conducted, U.S. Naval vessels and/or other vessels essential to the operations shall have the right-of-way and no vessel shall approach within 300 yards of those vessels. Mariners must exercise extreme caution while transiting the areas and be on the lookout for swimmers, small craft and helicopters while operations are in progress. The presence of helicopters and/or military craft in the area shall indicate that operations are in progress.

Economic Assessment and Certification

This proposed rule is submitted with respect to a military function of the Defense Department and the provisions of E.O. 12291 do not apply. I hereby certify that if adopted, this regulation will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Restricted areas.

In consideration of the above, the Corps of Engineers is proposing to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.775 is added to read as follows:

§ 334.775 Pensacola Bay, Pensacola and Gulf Breeze, Florida; naval restricted areas.

(a) *The areas.* (1) Area "A"—Bounded by a line drawn in the direction of 180°T from position 30°20'44" N/087°17'18" W to position 30°20'09" N/087°17'18" W, thence 094°T to position 30°20'07" N/087°16'41" W, thence 049°T to position 30°20'37" N/087°16'01" W (southwest end of Lexington finger pier), thence along the shoreline to point of origin. Area "A" will normally be in use Monday thru Wednesday between 8:00 a.m. and 4:00 p.m. and one evening 4:00 p.m.–8:00 p.m. every other week.

(2) Area "B"—Bounded by a line drawn in the direction of 000°T from position 30°19'19" N/087°15'46" W, thence 080°T to position 30°20'00" N/087°14'00" W, thence 180° to position 30°19'20" N/087°14'00" W, thence along the shoreline to the point of origin. Area "B" will normally be in use Thursday and Friday between 8:00 a.m. and 4:00 p.m.

(b) *The regulations.* (1) During those times when specific missions, exercises, or training operations are being conducted, the U.S. Navy vessels and/or craft designated as essential to the operation(s) by proper U.S. Navy authority, shall have the right-of-way. All other vessels and crafts are required to keep clear of and remain 300 yards from all naval vessels engaged in said operations. Approaching within 300 yards of vessels and/or crafts while they are engated in operations and/or training exercises is prohibited.

(2) Vessel traffic through the described areas will remain open during said operations and/or exercises, however, mariners shall exercise extreme caution and be on the lookout for swimmers, small craft, and helicopters when transiting within the areas. It should be presumed by all mariners that Navy operations and/or exercises, herein described, are being conducted whenever military crafts and/or helicopters are operating within the described areas.

(3) Any problems encountered regarding Navy operations/exercises within the described areas should be addressed to "Navy Pensacola Control" Channel 16 (156.8 MHZ) for resolution and/or clarification.

(4) The regulations of this section shall be enforced by the Commander of the Naval Air Station, Pensacola, Florida, and such agencies he/she may designate.

Dated: July 27, 1989

Wilber T. Gregory, Jr.,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 89–19073 Filed 8–14–89; 8:45 am]

BILLING CODE 3710–92–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–3628–8]

Ocean Dumping; Proposed Designation of Sites Located Offshore of New Jersey and Long Island, NY

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule; Correction and Extension of Comment Period.

SUMMARY: The Federal Register publication on June 1, 1988, 53 FR 19934, of a Proposed Rule to designate eight Dredged Material Disposal Sites located off the coast of New Jersey and Long Island, New York is hereby corrected. This correction applies to the Final Environmental Impact Statement (FEIS) as well as the preamble to the proposed rule. In that publication and in the FEIS, EPA inadvertently stated that, in the case of *Chemical Waste Management* v. *U.S. Department of Commerce, et al.*, Civil Action No. 86–624, the United States District Court for the District of Columbia determined that neither the Coastal Zone Management Act (CZMA) nor the National Oceanic and Atmospheric Administration (NOAA) regulations implementing the CZMA authorize a State to impose conditions unilaterally on EPA as part of the consistency determination. In fact, no decision was rendered in the case because it was ultimately dismissed by stipulation of the parties without any court determination. The Proposed Rule should have stated that in the above case, the U.S. Department of Commerce and Department of Justice took the position that the CZMA did not apply. However, in voluntary compliance with section 307 of the CZMA and 15 CFR part 930, EPA has issued determinations that the proposed designations would be consistent with the CZMA policies of the States of New York and New Jersey and has transmitted these determinations to the respective States. In these determinations, EPA informed the States that it would not take final action regarding site designations until 90 days after the issuance of the respective determinations. The comment period for the proposed rule will be extended thirty days from the date of publication of this notice of correction.

DATES: Comments must be received on or before September 14, 1989.

ADDRESSES: Send comments to: Mario P. Del Vicario, Chief, Marine and Wetlands Protection Branch, EPA Region II, 26 Federal Plaza, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Mario P. Del Vicario, (212) 264–5170.

Dated: August 3, 1989.

William J. Muszynski,

Acting Regional Administrator, Region II, U.S. Environmental Protection Agency.

[FR Doc. 89–19080 Filed 8–14–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64 and 69

[CC Docket No. 87–124; FCC 89–242]

Interstate TDD Relay Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; completion of inquiry.

SUMMARY: The Commission proposes to amend Part 64 or Part 69 of its rules to require the provision of interstate relay service for users of Telecommunications Device for the Deaf (TDDs). The subject rule modifications are being proposed to comply with the Commission's congressional mandate specified in sections 151 and 154(i) of the Communications Act of 1934, as amended (Act), that it take actions to ensure that all Americans have reasonable access to telecommunications services and equipment, and with section 710 of the Act which requires Commission action ensuring the hearing impaired reasonable access to the telephone network.

DATES: Comments must be received on or before September 29, 1989, and reply comments on or before October 27, 1989.

ADDRESSES: Comments shall be filed with the Federal Communications Commission, Washington, DC 20554, as prescribed in §§ 1.414–1.419 of the Commission's rules.

FOR FURTHER INFORMATION CONTACT: Robert James, (202) 634–1831.

SUPPLEMENTARY INFORMATION: This is a summary of the Order Completing Inquiry and Providing Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 87–124 adopted by the Commission July 21, 1989, and released on July 27, 1989 (FCC 89–242). The full text of the item may be examined in the Commission's Docket Branch, Room 230, 1919 M Street NW., Washington, DC, during regular business hours or purchased from the Commission's

BEST COPY AVAILABLE

duplicating contractor, International Transcription Services, 2100 M Street NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800.

FNPRM: This proceeding was initiated primarily to address complaints by the hearing impaired that the Commission's rules did not go far enough to comply with the mandate of section 710(a) of the Communications Act. That section provides: "The Commission shall establish such regulations as are necessary to ensure reasonable access to telephone service by persons with impaired hearing." In response, the Commission, in CC Docket No. 87–124, sought to gather information on what, if any, additional rules or rule revisions are needed. In response to the comments the Commission released an order on March 29, 1988 (53 FR 12546, April 15, 1988), consisting of two parts: a Notice of Proposed Rulemaking (NPRM) and a Further Notice of Inquiry (FNOI).

In the NPRM, the Commission proposed specific changes in its regulations to increase the ability of the hearing impaired to access telephone service by expanding the definition of "essential" telephones that must be compatible with hearing aids equipped with telecoils. Subsequently, Congress amended section 710 of the Act to require that essentially all new corded telephones be hearing aid compatible, and ordered the Commission to enact regulations within one year. On May 11, 1989, the Commission released a First Report and Order, FCC 89–137 (54 FR 21429, May 18, 1989), adopting the rules mandated by Congress.

The FNOI responded to requests that the Commission help establish an interstate relay system for users of TDDs. Relay systems are primarily operator services that translate TDD messages into voice or vice versa. Because section 710(e) of the Act requires the Commission to engage in a cost/benefit analysis before it promulgates rules in this area, the Commission urged interested parties to submit for analysis specific proposals for implementing an interstate TDD relay system that would enable hearing and speech impaired persons to carry on real-time interstate conversations with voice telephone users. Those submitting proposals were requested to include data regarding the technical, economic and regulatory parameters required for such a system. Parties were urged to work cooperatively to develop consensus proposals.

Comments were also sought on (a) whether public pay stations should be modified to provide TDD services; (b) whether 25 percent of public pay stations should be amplified; (c) whether modifications should be ordered to public pay stations to facilitate wheelchair access; and (d) whether additional informational initiatives by the Commission are necessary. Although unsolicited, comments were submitted on whether an advisory committee should be established.

The FNPRM notes that the Commission's cost/benefit analysis indicates that providing approximately 181,000 TDD users the same interstate communications opportunities as users of the voice network is a substantial benefit. Although the near term costs may be $30,000,000 per year, the benefits outweigh the costs. In addition, the Commission concludes it has jurisdiction to require an interstate TDD relay system, and offers two approaches to implement and provide interstate relay service. One approach relies on interexchange carriers subject to section 69.116(a) of the rules to either individually or jointly develop and operate an interstate TDD relay system within two years of the adoption of final rules. Under this alternative, the system costs would be recovered through the interexchange carriers' interstate services. The second approach would require amending Section 69.603 of the rules to include the management and operation of the system among the functions of the National Exchange Carrier Association (NECA). System costs under this approach would be recovered through the Universal Service Fund by NECA, from eligible interexchange carriers. Under either approach, users of the relay service would pay only for their telephone calls at the same rate as any other caller.

With respect to the other proposals to assist the disabled, the Commission concludes that the record does not indicate that the benefits of these proposals outweigh the costs. It also declines to establish an advisory committee as urged by some. Rather, it concludes that its rulemaking processes are an adequate means of addressing the needs of the disabled. The Commission does, however, encourage formation of informal groups to consider matters of importance to the disabled and asks that they submit appropriate suggestions in support thereof.

In accordance with 5 U.S.C. 603(a), the Federal Communications Commission concludes that the proposed rules will not have a significant adverse economic impact on small entities.

Comments on the proposed rules are sought.

List of subjects

47 CFR Part 64

Communications common carriers, Handicapped, Interstate TDD relay service, Telephone.

47 CFR Part 69

Communications common carriers, Interstate TDD relay service fund, Association functions, Telephone.

Legal Basis

This FNPRM seeking to amend Part 64 or Part 69 of the Commission's rules is issued pursuant to authority contained in Sections 1, 4(i) and 710(a) of the Communications Act of 1934, as amended.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–18889 Filed 8–14–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Findings on a Petition To List the Razorback Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day petition finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petitioner presented substantial information that listing the razorback sucker (*Xyrauchen texanus*) may be warranted. Formal review of the status of the razorback sucker is in progress.

DATES: The finding announced in this notice was made in June 1989. To receive full consideration in the Service's 12-month petition finding comments should reach the Service by December 15, 1989.

ADDRESSES: Questions or comments concerning this finding should be sent to: State Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104–5110. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the above address and at the Service's Denver Regional Office, 134 Union Boulevard, Lakewood, Colorado (mailing address: P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225).

FOR FURTHER INFORMATION CONTACT: Donald L. Archer at the Salt Lake City address (801/524–4430 or FTS 588–4430).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.), requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species. A status review is in progress, and the Service seeks information until December 15, 1989.

The Service has received and made a 90-day finding on the following petition:

A petition dated March 14, 1989, was received from Sierra Club, National Audubon Society, The Wilderness Society, Colorado Environmental Coalition, Southern Utah Wilderness Alliance, and Northwest Rivers Alliance on March 15, 1989. The petition requested the Service to list the razorback sucker (*Xyrauchen texanus*) as an endangered species.

The petition stated that the razorback sucker, native of the Colorado River Basin, has suffered a considerable population decline along with three other fishes endemic to the Colorado River during the past decades. The Colorado squawfish (*Ptychocheilus lucius*), the humpback chub (*Gila cypha*) and the bonytail chub (*Gila elegans*) have been previously listed as endangered and though the razorback sucker is rarer than the Colorado squawfish, it has not been listed as endangered. The petition presents information that demonstrates that the sucker's numbers have declined dramatically throughout its former range and that natural recruitment has not been documented in recent times though much research has been ongoing for the past decade.

The petition attributed the razorback sucker's decline to predation by exotic fish and dams and other water development projects and diversions that have partitioned the once free-flowing river system into disjunct impoundments and tailwaters.

After a review of the petition, accompanying documentation, and references cited therein, the Service found the petition presented substantial information that the requested action may be warranted. Within one year from the date the petition was received, a finding as to whether the petitioned action is warranted is required by section 4(b)(3)(B) of the Act.

Author

This notice was prepared by Donald L. Archer, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104–5110 (801/524–4430).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825) Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: July 21, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–19024 Filed 8–14–89; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 54, No. 156
Tuesday, August 15, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV-89-211]

Emergency Request for OMB Approval Relating to the Information Collection Requirements of the Fresh Apples Diversion Program for 1988 Crop Apples

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Agricultural Marketing Service (AMS) has requested emergency review and approval of a new information collection requirement from the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB). The requirement is needed in order to divert fresh 1988 crop apples from the normal channels of trade and commerce under the Fresh Apples Diversion Program (Program).

FOR FURTHER INFORMATION CONTACT: Donald A. Thibeault, Chief, Commodity Procurement Branch, F&V, AMS, USDA, Room 2548-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-6391.

SUPPLEMENTARY INFORMATION: Recent USDA statistics indicate that as of May 1, 1989, the national supply of fresh 1988 crop apples was 53 percent greater than the previous three-year average. Based on these statistics and other market factors the Secretary has determined that fresh 1988 crop apples are in surplus supply and that the domestic consumption of such apples will be encouraged by using up to $15 million dollars of section 32 funds to divert the apples from the normal channels of trade and commerce under the Program.

AMS will make payments to parties that possess fresh 1988 crop apples and divert such apples by August 31, 1989, to nontraditional outlets. Through this program, AMS is soliciting bids from those who possess fresh 1988 crop apples for the diversion of such apples to nontraditional channels of commerce. Payments for the diversion of such apples will be made on a competitive basis. Those parties which summit the lowest bids to divert qualifying apples will be accepted until the fund of $15,000,000 of section 32 funds is exhausted. An OMB determination of July 25, 1989, is requested.

Following is a copy of APHIS Form 71 reflecting the burdens which will be imposed during this process:

BILLING CODE 3410-02-M

INSTRUCTIONS: Use this form when a single information collection document involves multiple reporting and recordkeeping requirements. The totals of the figures in cols. (D), (F), (H), (I) and (K) should be entered in items 17 & 18 of SF 83. For cols. (E), (G), and (J), the averages of the totals shall be computed, as follows, and then entered on the SF 83

(F) Total / (D) Total = (E) Average; (H) Total / (F) Total = (G) Average; (K) Total / (I) Total = (J) Average

TITLE OF INFORMATION COLLECTION DOCUMENT: The Fresh Apples Diversion Program for 1988 Crop Apples

OMB NO. 0581-

DATE PREPARED: July 1989

PAGE: 1 OF 1

IDENTIFICATION OF REPORTING OR RECORDKEEPING REQUIREMENT			ANNUAL BURDEN							
			REPORTS					RECORDS		
SECTION OF REGS. (A)	DESCRIPTION (B)	FORM NO(S). (If "none", so state) (C)	NO. OF RESPONDENTS (D)	NO. OF RESPONSES PER RESPONDENT (E)	TOTAL ANNUAL RESPONSES (Col. D x E) (F)	HOURS PER RESPONSE (G)	TOTAL HOURS (Col. F x G) (H)	NO. OF RECORDKEEPERS (I)	ANNUAL HOURS PER RECORDKEEPER (J)	TOTAL RECORDKEEPING HOURS (Col. I x J) (K)
7 CFR										
81.4(a)	Applications	None	50	1	50	.17	8.5			
81.6	Recordkeeping							25	.02	.5
81.5(2)	Federal State Inspection Service Certificate	FV-184-2	500	1	500	.08	40.0			
81.5(3)	Consignee Receipt	None	500	1	500	.04	20.0			

AD-HIS FORM 71 (AUG 87) SUMMARY OF INFORMATION COLLECTIONS USDA-AMS

BILLING CODE 3410-02-C

Authority: 49 Stat. 750, 774; 7 U.S.C. 612c.

Dated: August 10, 1989.

Charles R. Breder,

Director, Fruit and Vegetable Division.

[FR Doc. 89-19102 Filed 8-14-89; 8:45 am]

BILLING CODE 3410-02-M

ARCTIC RESEARCH COMMISSION

Meeting

Notice is hereby given that the United States Arctic Research Commission will hold its 19th Meeting in Fairbanks, AK, on September 12–13, 1989. The meeting will start at 9:00 AM on both September 12th and 13th in the Rasmuson Library at the University of Alaska Fairbanks. Agenda items include: (1) Chairman's Report; (2) Comments from the Interagency Arctic Research Policy Committee; (3) Comments from the Alaska Congressional Delegation; (4) Comments from the Alaska Governor's Office; (5) Comments from the Polar Research Board; (6) Presentation by Alaska Science and Technology Foundation (ASTF); (7) Presentation by ARCUS; (8) Followup on Implementation of Past Initiatives; (9) Review and Recommendations on the Environmental Impact Assessment process; (10) Consideration of new initiatives for next year; (11) Status of an International Arctic Science Committee; (12) Consideration of initial efforts of ASTF; (13) Consideration of 1990's Arctic Research Agenda, and (14) Consideration of conferences and Commission schedule.

At the conclusion of regular business on September 13th, the Commission will meet in Executive Session.

Contact Person for More Information: Philip L. Johnson, Executive Director, U.S. Arctic Research Commission (202) 371–9631.

Philip L. Johnson,

Executive Director, U.S. Arctic Research Commission.

[FR Doc. 89-19072 Filed 8-14-89; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Managment and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Applications and Reports for Registration as Tanner or Agent.

Form Number: None; OMB–0648–0179.

Type of Request: Request for extension of OMB approval of a currently cleared collection.

Burden: 35 respondents; 70 reporting hours; average hours per response—2 hours.

Needs and Uses: Alaskan natives are allowed to take marine mammals for subsistence or to create and sell native handicrafts. Possession of such items before final sale is limited to natives and registered tanners or agents. Persons wishing to register must submit applications. Registered tanners or agents must file annual reports on their related activities.

Affected Public: Individuals or households, Business or other for profit, Small businesses or organizations.

Frequency: On occasion, annual.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Russell Scarato, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 8, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-19015 Filed 8-14-89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: National Estuarine Research Reserve System.

Form Number: None; OMB–0648–0121.

Type of Request: Request for extension of OMB approval of a currently cleared collection.

Burden: 104 respondents; 12,612 reporting hours; average hours per response—32.9 hours.

Needs and Uses: Grant monies are available to states to establish estuarine research reserves. Grants are also given for research in those reserves. Grant applications are needed to show eligibility, and performance reports are required to document grant progress and ensure compliance with grant conditions.

Affected Public: Individuals, state or local governments, non-profit institutions.

Frequency: On occasion, quarterly.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Russell Scarato, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 8, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-19016 Filed 8-14-89; 8:45 am]

BILLING CODE 3510-CW-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension and Amendment of Coverage of Export Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

August 9, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending and amending coverage of export visa requirements.

EFFECTIVE DATE: August 21, 1989.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Coverage of the current export visa arrangement between the Governments of the United States and Thailand is being extended to include textiles and textile products in certain part categories, produced or manufactured in Thailand and exported on and after August 21, 1989.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988). Also see 47 FR 46732, published on October 20, 1982.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 9, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on October 14, 1982, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. This directive concerns an export visa arrangement for certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Thailand.

Effective on August 21, 1989, the current coverage of Category 369–O [1] is being amended to "other than dishtowels and luggage" in Category 369–O [2] for goods produced or manufactured in Thailand and exported on and after August 21, 1989. Merchandise in Category 369, exported before August 21, 1989, may be visaed as 369–O (other than luggage).

You are directed to amend further the October 14, 1982 directive to require export visas for cotton and man-made fiber textile products in the following part-categories, produced or manufactured in Thailand and exported from Thailand on and after August 21, 1989:

Category	HTS Nos.
369–D (cotton dishtowels).	Only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[1] In Category 369–O, all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000 in Category 369–L.

[2] In Category 369–O, all HTS numbers except 6302.60.0010, 6302.91.0005 and 6302.91.0045 in Category 369–D; and 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000 in Category 369–L.

Category	HTS Nos.
369–O (other than dishtowels and luggage).	All HTS numbers except 6302.60.0010, 6302.91.0005 and 6302.91.0045 in Category 369–D; and 4202.12.4060, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000 in Category 369–L.
607–P (poly/cotton yarn).	Only HTS numbers 5509.53.0030 and 5509.53.0060.
607–O (other than poly/cotton yarn).	All HTS numbers except 5509.53.0030 and 5509.53.0060 in Category 607–P.

Merchandise in Categories 369–D, 369–O (other than dishtowels and luggage), 607–P and 607–O, produced or manufactured in Thailand, which has been exported prior to August 21, 1989 shall not be denied entry for lack of the aforementioned part-category visa.

Shipments of products in Categories 369–D, 369–O (other than dishtowels and luggage), 607–P and 607–O, produced or manufactured in Thailand and entered or withdrawn from warehouse for consumption and exported from Thailand on and after August 21, 1989, which are not accompanied by an appropriate export visa shall be denied entry and a visa waiver or a new correct visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-19084 Filed 8-14-89; 8:45 am]

BILLING CODE 3510-DR-M

Extension of Coverage of Export Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates

August 9, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending coverage of export visa requirements.

EFFECTIVE DATE: August 15, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Coverage of the current export visa agreement between the Governments of the United States and the United Arab Emirates is being extended to include certain merged and part categories, produced or manufactured in the United Arab Emirates and exported on and after May 20, 1989.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 52463, published on December 28, 1988.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 9, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 2, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. You were directed to prohibit entry and withdrawal from warehouse for consumption in the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the United Arab Emirates for which the Government of the United Arab Emirates has not issued an appropriate export visa.

Effective on August 15, 1989, the directive of December 22, 1988 is amended to include cotton and man-made fiber textile products in the following part and merged categories, produced or manufactured in the United Arab Emirates and exported from the United Arab Emirates on and after May 20, 1989:

Merged and Part Categories

338/339 [1]

338–S/339–S [2]

[1] In Categories 338/339, all HTS numbers in Categories 338 and 339 except those in Categories 338–S and 339–S.

[2] In Categories 338–S/339–S, only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0035, 6110.20.1025, 6110.20.2045, 6110.20.2065, 6110.90.0068, 6112.11.0030, and 6114.20.0005 in Category 338–S; and , 6104.22.0060, 6104.29.2049, 6106.10.0040, 6106.10.0050, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6109.90.1068, 6112.39.0045, 6113.20.2078, 6113.90.5078, 6113.11.0048, 6114.20.0048 and 6117.90.0022 in Category 339–S.

340/640
341/641
347/348 [3]
347-T/348-T [4]

Shipments entered or withdrawn from warehouse on or after May 20, 1989 and exported on and after May 20, 1989 which are not accompanied by an appropriate export visa shall be denied entry and a visa waiver must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-19065 Filed 8-14-89; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Requests for Bilateral Textile Consultations With the Government of the United Arab Emirates

August 10, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On July 29, 1989, the Government of the United States requested consultations with the Government of the United Arab Emirates regarding man-made fiber textile products in Categories 638/639 and 647/648, produced or manufactured in the United Arab Emirates.

The purposes of this notice is to advise the public that, if no solution is agreed upon in consultations with the United Arab Emirates, the Committee for the Implementation of Textile Agreements may later establish limits for the entry withdrawal from warehouse for consumption of man-made fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on July 29, 1989 and extends through July 28, 1990, at levels of 76,052 dozen (Categories 638/639) and 54,207 dozen (Categories 647/648).

Summary market statements concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 638/639 and 647/648, or to comment of domestic production or availability of products included in the categories, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Further comments may be invited regarding particlar comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 638/639 and 647/648. Should such a solution be reached in consultations with the Government of the United Arab Emirates, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

United Arab Emirates—Market Statement Man-Made Fiber Knit Shirts and Blouses (Category 638/639)

July 1989

Summary and Conclusions

U.S. imports of man-made fiber knit shirts and blouses (Category 638/639) from the United Arab Emirates reached 76,052 dozen during the year ending April 1989, seven times the 10,916 dozen imported a year earlier. Imports of man-made fiber knit shirts and blouses from the U.A.E. for the first four months of 1989 were 47,938 dozen, almost eleven times the 4,537 dozen imported during the same period in 1988 and 47 percent higher than the 32,651 dozen imported during calendar year 1988. The U.S. Government regards with serious concern an alarming increase, over a short period of time in a sensitive category, of imports from an uncontrolled supplier.

Further, man-made fiber knit shirts and blouses from the United Arab Emirates enter the U.S. market on average 55 percent below the value of domestically produced man-made fiber knit shirts and blouses and on average 32 percent below the price of other major foreign suppliers of man-made fiber knit shirts and blouses to the United States market.

The levels reached by U.S. imports of man-made fiber knit shirts and blouses from the U.A.E. during the first four months of 1989, if maintained throughout the current year, will reach an annualized level of 143,814 dozen. The U.S. market for these products has been disrupted. The sharp and substantial growth of imports of these products from the United Arab Emirates at prices 55 percent below the domestic price contributes to this disruption, particularly if the annual level of imports reaches the annualized amount indicated by the first four months of data.

At this level, the United Arab Emirates' imports will approach the import limits for these products established with major suppliers which are participants in the Arrangement Regarding International Trade in Textiles (the MFA). The U.S.Government is concerned that rapidly rising imports from an uncontrolled non-MFA supplier will frustrate and undermine U.S. efforts to maintain orderly growth of imports through bilateral agreemnts negotiated under auspices of the MFA.

U.S. Production, Import Penetration and Market Share

Between 1982 and 1988 U.S. production of man-made fiber knit shirts and blouses declined 30 percent, falling from 57,668,000 dozen to 40,318,000 dozen. During this same period imports increased from 21,075,000 to 25,002,000, an increase of 19 percent. U.S. man-made fiber knit shirt and blouse imports are growing at a record setting pace through the first four months of 1989, up 37 percent over the January-April 1988 level. The ratio of imports to domestic production in Category 638/639 increased to 62 percent in 1988, up from 37 percent in 1982. The U.S. manufacturers' share of this market declined from 73 percent in 1982 to 62 percent in 1988.

Duty-Paid Value and U.S. Producers' Price

Approximately 70 percent of Category 638/639 imports from the United Arab Emirates during the first four months of 1989 entered under HTSUSA numbers 6105.20.2010—men's or boys' man-made fiber shirts, knitted or crocheted and containing 23% or more of wool or fine animal hair by weight; 6109.90.1015—men's man-made fiber tank tops, knitted or crocheted; 6109.90.1040—men's man-made fiber shirts other than T-shirts, tank tops and singlets, knitted or crocheted; 6106.20.2010—women's man-made fiber shirts and blouses knitted or crocheted. These garments entered the U.S. at landed duty-paid values on average 55 percent below U.S. producers' prices for comparable garments.

Man-Made Fiber Trousers, Slacks and Shorts (Category 647/648)

July 1989

Summary and Conclusions

U.S. imports of man-made fiber trousers, slacks and shorts (Category 647/648) from the United Arab Emirates reached 54,207 dozen during the year ending April 1989, nearly 90 times the 611 dozen imported a year earlier. Imports of man-made fiber trousers, slacks and shorts from the U.A.E. for the first four months of 1989 were 41,927 dozen, 190 times the 219 dozen imported during the same period in 1988 and over 3 times the 12,499 dozen imported during calendar year 1988. The U.S. Government regards with serious concern an alarming increase, over a short period of time in a sensitive category, of imports from an uncontrolled supplier.

Further, man-made fiber trousers, slacks and shorts from the United Arab Emirates enter the U.S. market at an average value of 63 percent below the value of domestically produced man-made fiber trousers, slacks and shorts and on average 44 percent below the price of other major foreign suppliers of man-made fiber trousers, slacks and shorts to the United States market.

The levels reached by U.S. imports of man-made fiber trousers, slacks and shorts from the U.A.E. during the first four months of 1989, if maintained throughout the current year, will reach an annualized level of 125,781 dozen. The U.S. market for these products has been disrupted. The sharp and substantial growth of imports of these products from the United Arab Emirates at prices on average 63 percent below the domestic price contributes to this disruption, particularly if the annual level of imports reaches the annualized amount indicated by the first four months of data.

At this level, the United Arab Emirates' imports will approach the import limits for these products established with major suppliers which are participants in the Arrangement Regarding International Trade in Textiles (the MFA). The U.S. Government is concerned that rapidly rising imports from an uncontrolled non-MFA supplier will frustrate and undermine U.S. efforts to maintain orderly growth of imports through bilateral agreements negotiated under auspices of the MFA.

U.S. Production and Market Share

U.S. production of man-made fiber trousers, slacks and shorts (Category 647/648) remained relatively flat from 1982 to 1986, averaging 40,901,000 dozen per year. U.S. production has been declining since 1986. Production fell to 32,599,000 dozen in 1988, 12 percent below the 1987 level and 20 percent below the 1982-86 average. The domestic manufacturers' share of the U.S. market dropped 15 percentage points in just six years, falling from 76 percent in 1982 to 61 percent in 1988.

Imports and Import Penetration

U.S. imports of man-made fiber trousers, slacks and shorts (Category 647/648) increased 58 percent from 13,163,000 dozen in 1982 to 20,766,000 in 1988. Imports during the year ending April 1989 reached 22,119,000 dozen, 15 percent above the 19,227,000 dozen imported during the same period a year earlier. Imports are up 19 percent in the first four months of 1989 over the same period in 1988. The ratio of imports to domestic production has doubled during the past six years, rising from 32 percent in 1982 to 64 percent in 1988.

Duty-Paid Value and U.S. Producers' Price

Approximately 75 percent of Category 647/648 imports from the United Arab Emirates during the first four months of 1989 entered under HTSUSA numbers 6104.63.2030—women's man-made fiber shorts, knitted or crocheted; 6204.63.3532—women's woven shorts of synthetic fibers; 6204.69.2540—women's woven shorts of artificial fibers. These shorts entered the U.S. at landed duty-paid values on average 63 percent below U.S. producers' prices for comparable shorts.

[FR Doc. 89-19066 Filed 8-14-89; 8:45 am]

BILLING CODE 3510-DR-M

[3] In Categories 347/348, all HTS numbers in Categories 347 and 348 except those in categories 347-T and 348-T.

[4] In Categories 347-T/348-T, only HTS numbers 6103.19.2015, 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0035, 6203.19.1020, 6203.19.4030, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020, 6210.40.2030, 6211.20.1520, 6211.20.3010 and 6211.32.0040 in Category 347-T; and 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.52.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0040, 6117.90.0042, 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.29.4034, 6204.52.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2030, 6211.20.1550, 6211.20.3010, 6211.42.0030 and 6217.90.0050 in Category 348-T.

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Survivor Benefit Plan—Minimum Income Claim, DD Form 1885, OMB Control Number 0704-0059.

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Average Burden Hours/Minutes Per Response: 3 hours.

Frequency of Response: 1.

Number of Respondents: 50.

Annual Burden Hours: 150.

Annual Responses: 50.

Needs and Uses: Public Law 92-425 provides that certain surviving spouses of retired service members may be entitled to a monthly annuity under certain conditions of limited income. DD Form 1885 must be completed and submitted by the surviving spouse to the Uniformed Services' Finance Center to establish entitlement to payments and determine the amount of the annuity.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondents Obligation: Voluntary/Required to obtain or retain a benefit.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

Patricia A. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-19027 Filed 8-14-89; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Application for Annuity Under the Retired Serviceman's Family Protection Plan (RSFPP) and/or Survivor Benefit Plan (SBP), DD Fm 1884, OMB Control Number 0704-0058.

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Average Burden Hours/Minutes Per Response: 1 hour.

Frequency of Response: 1.

Number of Respondents: 12,000.

Annual Burden Hours: 12,000.

Annual Responses: 12,000.

Needs and Uses: Public Law 92–425 provides for an annuity, as determined by the retiree, to be paid to widows/widowers, dependent children and other natural interest persons. The DD 1884 collects information necessary to establish an annuity to the eligible beneficiary of a deceased retired member. The form must be completed by the surviving beneficiary of a member to enable the Uniformed Services Finance Center to ascertain eligibility and determine other conditions affecting entitlement to an annuity.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondents Obligation: Voluntary/Required to obtain or retain a benefit.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Patricia A. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–19028 Filed 8–14–89; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Organization, Functions, and Authority Delegations; Federal Information Processing Standards; Waiver Authority

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of delegation of Federal Information Processing Standards (FIPS) waiver authority.

SUMMARY: DoD hereby gives notice that the Secretary delegated authority to the Comptroller of the Department of Defense, DoD's senior official designated pursuant to section 3506(b) of Title 44 of the U.S. Code, the authority to waiver, under conditions specified by the Secretary of Commerce, previously issued and all subsequent FIPS that are mandatory for Federal agency use in the acquisition and management of information processing resources.

Further, within DoD, the Comptroller of the Department of Defense has redelegated authority to the senior officials, designated pursuant to section 3506(b) of title 44 of the U.S. Code, of each of the Military Departments of the Department of Defense, the authority to waive, under conditions specified by the Secretary of Commerce, previously issued and all subsequent FIPS that are mandatory for Federal agency use in the acquisition and management of information processing resources.

EFFECTIVE DATE: The delegation was effective January 9, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Belkis Leong-Hong, Director for Policies and Standards, Office of the Deputy Comptroller (Information Resources Management), Washington, DC 20301–1100, (202) 693–2874.

Dated: August 9, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–19026 Filed 8–14–89; 8:45 am]

BILLING CODE 3810–01–M

Defense Manufacturing Board; Meeting

AGENCY: Under Secretary of Defense (Acquisition).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Office of the Under Secretary of Defense for Acquisition announces a forthcoming planning meeting for a Defense Manufacturing Board project on High Definition Systems.

DATE: August 22, 1989, 0900–1530.

ADDRESS: Department of Commerce, 14th and Constitution, Room 6808, Washington, DC.

The agenda for the meeting will include a revew of federal agency initiatives in high definition systems as well as a general review of current initiatives into high definition systems.

FOR FURTHER INFORMATION CONTACT: Ms. Grace Shiragian of the DMB Secretariat, (202) 697–0957.

Dated: August 10, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–19091 Filed 8–14–89; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Performance Review Boards

ACTION: Notice.

SUMMARY: Notice is given of the names of an additional member of the Peformance Review Board for the Department of the Army.

FOR FURTHER INFORMATION CONTACT: Robert C. Zenda, Senior Executive Service Office, Direcorate of Cvilian Personnel, Headquarters, Department of the Army, the Pentagon, Washington, DC 20310.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The additional member of the Performace Review Board for the Chief of Staff of the Army is: Mr. Arthur R. Keltz, Assistant Director for Transportation, Office, Deputy Chief of Staff for Logistics.

Dated: August 10, 1989.

Robert C. Zenda,

Personnel Management Specialist, Senior Executive Service Office.

[FR Doc. 89–19249 Filed 8–14–89; 8:45 am]

BILLING CODE 3710–01–M

DEPARTMENT OF ENERGY

Office of the Secretary

Public Hearings To Solicit Views From Public Officials and the General Public on the Development of a National Energy Strategy

AGENCY: Office of the Secretary, DOE.

ACTION: Notice of meetings to invite public officials and the general public to provide comments on the development of a National Energy Strategy.

SUMMARY: This is the third in a series of public hearings being conducted throughout the country by the Departemnt of Energy soliciting comments from interested parties on a wide range of energy issues and recommended solutions.

DATES AND PROCEDURES: The public hearing is scheduled for August 23, 1989, from 8:30 a.m. to 12:00 Noon and 12:45 p.m. to 3:45 p.m., at the Bosie City Hall, 150 North Capital Boulevard, Council Chambers, Les Bois Room (351), Boise, Idaho. Persons wishing to submit testmony to DOE in conjunction with this hearing should forward written comments to William H. Hatch, Office of Policy, Planning and Analysis, Department of Energy, Forrestal Building, Room 7H–034, 1000 Independence Avenue, SW., Washington, DC 20585. Persons unable to testify may submit their comments for the record. All testimony received will be compiled and made available to the public.

Individuals interested in testifying at this hearing should contact William H. Hatch, Office of Policy, Planning and Anaylsis, Department of Energy at (202) 586–4767 no later than 4:00 p.m., Friday, August 18, 1989.

The fourth hearing in this series has been scheduled for August 28, 1989, in Seattle, Washington. The fifth hearing has been scheduled in Louisville, Kentucky on September 8, 1989. As soon as information is available regarding the specific locations and times, it will be announced.

FURTHER INFORMATION CONTACT: For further information, please write or call William H. Hatch, Office of Policy, Planning and Analysis, Department of Energy, Forrestal Building, Room 7H–034, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4767.

Linda G. Stuntz,

Deputy Under Secretary, Office of Policy, Planning and Analysis, U.S. Department of Energy.

[FR Doc. 89–19200 Filed 8–11–89; 12:22 pm]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 et seq.).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, or management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within September 14, 1989.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–73), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–2171.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission Office of Chief Accountant.
2. FERC–523.
3. 1902–0043.
4. Application for Authorization of the Issuance of Securities or the Assumption of Liabilities.
5. Extension.
6. On occasion.
7. Mandatory.
8. Businesses or other for-profit.
9. 60 respondents.
10. 75 responses.
11. 120 hours per response.
12. 9,000 hours (total).
13. Applies to any issuance of a security or assumption of obligation or liability by public utility or licensee for which approval must be obtained from this Commission.

Statutory Authority: Secs. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Yvonne M. Bishop,

Director, Statistical Standards Energy Information Administration.

[FR Doc. 89–19117 Filed 8–14–89; 8:45 am]

BILLING CODE 6450–01–M

Agency Information Collections Under Review by the Office of Mangement and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 et seq.).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should

advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed above.)

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI-70), Energy Information Administration, M.S. 1H-023, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA-28.
3. 1905-0149.
4. Financial Reporting System.
5. Revision—These modifications relate to a revision to Schedule 5130 of the form, and to re-evaluation of the selection criteria for the group of companies required to file the form.
6. Annually.
7. Mandatory.
8. Businesses or other for profit.
9. 23 respondents.
10. 23 responses annually.
11. The estimated average hours per response for each of the respondents is 1,069 burden hours.
12. The estimated total reporting hours are 25,050.
13. The Form EIA-28 provides data to evaluate the energy industry competitive environment and to analyze energy industry resource development, supply, distribution, and profitability issues. Survey results from 23 major energy producers are published annually for both the private and public sector use.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Public Law No. 93-275, Federal Energy Administration Act of 1974, as amended, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, August 9, 1989.

Douglas R. Hale,

Acting Director, Statistical Standards Energy Information Administration.

[FR Doc. 89-19118 Filed 8-14-89; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration Forms EIA-457A-G, "Residential Energy Consumption Survey (RECS)"

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the Proposed Revision and Extension of the Forms EIA-457A-G, "Residential Energy Consumption Survey," and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. 3501 et seq.), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed extension to the Forms EIA-457A-G, "Residential Energy Consumption Survey (RECS)."

DATE: Written comments must be submitted within 30 days of the publication of this notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESS: Send comments to Wendel Thompson, EI-651, U.S. Department of Energy, Mail Stop 1H-053, (202) 586-1119.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORMS AND INSTRUCTIONS: Requests for additional information or copies of the forms and instructions should be directed to Wendel Thompson at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Department of Energy Organization Act (Pub. L. 95-91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information related to energy resources, reserves, production, demand, and technology, and related economic and statistical information. The program will also include data and information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

To meet this responsibility, as well as internal DOE requirements that are dependent on accurate data, the EIA has developed an ongoing program of national sample surveys on energy consumption in the manufacturing, commercial, residential and residential transportation sectors.

The RECS has been designed by EIA to collect data on energy consumption in the residential sector. Information about the housing unit is collected through voluntary personal interviews with a representative national sample of approximately 5,600 households. Through these personal interviews, data are collectd on energy use within the home including the use of heating fuels, appliance usage, and conservation practices. Data are also collected on household demographics (income, size, origin) and the housing unit's physical characteristics. Data on actual energy consumption and expenditures are obtained from energy billing records maintained by the households' fuel suppliers. The RECS has been conducted in 1980, 1981, 1982, 1984 and 1987. Beginning with the 1987 survey, the RECS will be conducted on a triennial basis.

II. Current Actions

For the 1990 RECS, the EIA proposes several minor changes to the existing collection. The extension from the currently approved OMB expiration date has been proposed for three years. Several questions are to be removed from the present forms, and several questions are to be added.

The questions to be eliminated from the 1990 RECS refer to the (1) thermostat setting of homes in the summer; (2) some conservation measures undertaken; and (3) special classification of glass sliding doors.

Questions to be added to the collection pertain to the (1) respondent's intention of remaining in the present home; (2) size of the heat pump; (3) number of rooms air conditioned; (4) presence of portable, exhaust or basement ventilation fans; (5) presence of air conditioners in vehicles; (6) for each refrigerator, its size and special features; (7) inclusion of additional appliances such as personal computers, sump pumps, well water pumps, and number of water-bed heaters; (8) the addition or replacement of a furnace in the past three years; and (9) more detail on floorspace in the house such as the presence of a garage, whether attached or not and information in regard to floor level.

More details were added to the survey to ascertain an awareness and source of knowledge about the Low Income Home Energy Assistance Program administered by the Family Support Administration in the U.S. Department of Health and Human Services. (RECS carries a number of other questions related to this program).

Also, some adjustments were made in the income questions to try to obtain more complete data in order to overcome the negative bias in the RECS estimates of household income.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed extension. The following general guidelines are provided to assist in the preparation of responses. Please indicate to which form (s) each comment applies.

As a potential respondent:

A. Are the instruction and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden for this collection is estimated to average 1 minute per housing unit for Form EIA-457A; 1 hour per household for Form EIA-457B; 15 minutes per response for Form EIA-457C; 30 minutes per form for Form EIA-457D; 30 minutes per form for Form EIA-457E; 30 minutes per form for Form EIA-457F and 30 minutes per form for Form EIA-457G. Forms EIA-457A and B are completed during the personal interview with the households, Form EIA-457C is answered by rental agents during a telephone interview, and Forms EIA-457D through G are completed by the energy suppliers (electric and natural gas utilities, fuel oil, kerosene and bottled gas suppliers) on mailed survey forms. As a potential recipient of a form, how much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form?

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should indicate all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are the deficiencies and/or strengths?

EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the residential survey.

Comments submitted in response to this notice will be summarized and/or included in the requests for OMB approval of the survey; they also will become a matter of public record.

Authority: Sections 5(a), 5(b), and 52 of Public Law 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b) and 790a.

Yvonne M. Bishop,

Director, Statistical Standards Energy Information Administration.

[FR Doc. 89-19119 Filed 8-14-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 4515-003 Colorado]

Jacobson Hydro No. 1; Availability of Environmental Assessment

August 8, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Jacobson Hydro No. 1 Project located on the Colorado River in Mesa County, near Palisade, Colorado, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-19038 Filed 8-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1869-000, et al.]

ANR Pipeline Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP89-1869-000]

August 1, 1989.

Take notice that on July 27, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed with the Commission in Docket No. CP89-1869-000 a request pursuant to § 157.205 and § 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-532-000 pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is open to public inspection.

ANR proposes to transport gas on an interruptible basis for Consolidated Fuel Corporation (Consolidated). ANR states that service commenced May 20, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3953. ANR also states that the peak day quantity would be 5,000 dekatherms, the average daily quantity would be 5,000 dekatherms, and that the annual quantity would be 1,825,000 dekatherms. ANR states that it would receive the natural gas at ANR's existing receipt points in Louisiana, offshore Louisiana, Michigan, and offshore Texas, and redeliver the gas at existing interconnections in Michigan.

Comment date: September 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Western Gas Processors, Ltd.

[Docket No. CP89-1718-000]

August 2, 1989.

Take notice that on June 29, 1989, Western Gas Processors, Ltd. (Western Gas), Suite 609, 10701 Melody Drive, Denver, Colorado 80234, filed in Docket No. CP89-1718-000 a petition under Rule 207 of the Commission's Rules of

Practice and Procedure (18 CFR 385.207) for a declaratory order requesting that the Commission disclaim jurisdiction over certain natural gas pipeline, compression, and processing facilities located in Glasscock, Midland, Reagan and Upton Counties, Texas (collectively referred to as the Midkiff System), currently owned by El Paso Natural Gas Company (El Paso), which El Paso is concurrently seeking to abandon by conveyance to Western Gas. Western Gas requests that once such facilities are abandoned by El Paso and acquired and operated by Western Gas, the Commission determine that they will constitute non-jurisdictional gathering and processing facilities under Section 1(b) of the Natural Gas Act (NGA).

It is stated that El Paso currently operates the Midkiff System which was constructed to gather and process casinghead gas produced from oil wells located in the Sprayberry Field of west Texas for El Paso's own system supply. Western Gas further states that currently, natural gas from more than 1000 casinghead gas wells is gathered into the Midkiff System. The Midkiff System consists of the following facilities: (i) The Pembrook Station, with five field compressor units totaling 6,750 ISO horsepower located in Upton County, Texas; (ii) the Driver Station, with three field compressor units totaling 6,000 ISO horsepower located in Midland County, Texas; (iii) the Midkiff Station, with thirteen field compressor units totaling 23,760 ISO horsepower located in Reagan County, Texas; (iv) the Midkiff Dehydration Plant, with a design inlet capacity of 136,000 Mcf per day (Mcfd), located in Reagan County, Texas; (v) The Midkiff Gasoline Extraction Plant, with a design inlet capacity of 168,000 Mcfd, located in Reagan County, Texas; (vi) the Upton to TNG Pembrook Line, with approximately 12.8 miles of 12¾" O.D. pipeline, and approximately 1.6 miles of 6⅝" O.D. pipeline, and necessary appurtenances and connecting well-tie lines, beginning at the Upton County Line and terminating at the retired TNG Pembrook Plant also located in Upton County, Texas; (vii) the Pembrook to Midkiff Line, with approximately 0.1 miles of 24" O.D. pipeline and 12.7 miles of 16" O.D. pipeline, and necessary appurtenances, beginning at the Pembrook Station and terminating at the Midkiff Plant; (viii) the Driver to Midkiff Line, with approximately 6.3 miles of 26" O.D. pipeline, and necessary appurtenances, beginning at the Driver Station and terminating at the Midkiff Plant; (ix) the TNG Pembrook to Midkiff Line, with approximately 7.5 miles of 10¾" O.D. pipeline, and necessary appurtenances, beginning at the retired TNG Pembrook Plant and terminating at the Midkiff Plant; and (x) the Sprayberry Gathering System, with approximately 185 miles of gathering and well-tie pipelines, ranging in size from 2⅜" O.D. to 30" O.D. Western Gas states that the Sprayberry Gathering System also includes approximately 875 miles of non-jurisdictional and non-certificated gathering lines which connect the over 1000 casinghead gas wells in the Sprayberry Field into the presently certificated facilities in the system.

Western Gas submits that an examination of the Midkiff System facilities clearly discloses that their exclusive function is to gather and process natural gas, a non-jurisdictional activity under the NGA. It is also stated that the throughput in the Midkiff System is no longer primarily dedicated to El Paso's system supply, but instead is sold directly to others.[1] Thus, according to Western Gas, the utilization of these facilities as providing El Paso a source of system supply has changed dramatically since their construction. It is stated that the Midkiff System can no longer be viewed simply as an extension of interstate pipeline supply facilities into a production area. Rather, Western Gas states that the Midkiff System may be viewed as a regional gathering and processing system which can provide residue gas and salable liquids to markets far beyond the reach of the El Paso system.

Western Gas states that following the abandonment of these facilities by El Paso, Western Gas intends to operate the Midkiff System as an independent gathering and processing system much like the facilities Western Gas currently owns and operates in other regions. While Western Gas states it will provide gathering and processing services for El Paso's remaining system gas supplies behind the system, as previously indicated, the bulk of these supplies is no longer dedicated to El Paso. As a result, for the system to become an economically viable venture, Western Gas states it will be necessary for it to attract as many additional users in the area as possible, and this task is made more difficult by the existence of competing non-jurisdictional gatherers and processors, such as Phillips Petroleum Company and Union Oil Company of California, which are currently operating in the Sprayberry Field. Western Gas states that other non-jurisdictional gatherers and processors which are currently operating in the area of the Sprayberry Field include: Getty Gas Gathering, Inc., Inerfin Gas Processing Corp., Tipperary Gathering Inc., Davis Gas Processors, Inc., Tri-Star Energy, Inc., Texaco, Inc., Adobe Oil & Gas Corp., Amax Oil & Gas Corp. and OXY USA, Inc.

Western states it intends to meet this competition through the infusion of additional investment into the aging Midkiff Plant and related facilities. By modernizing and automating existing equipment, Western Gas states it will minimize fuel and other costs and increase the efficiencies of current extraction operations. Western further states that it is currently discussing these plans in negotiations with a number of behind-the-plant producers in the area in order to ensure that their production will be committed to the Midkiff System, thereby maximizing both Midkiff throughput and the economies of its gas processing operations. According to Western Gas, its acquisition and operation of the Midkiff System facilities as a non-jurisdictional, independent gathering and processing system will result in the provision of more efficient services than are currently being provided in the area, and will enhance regional competition, thus benefitting the current users of these services and hopefully attracting additional production investment into this area.

Comment date: August 23, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

[1] See El Paso application to abandon the Midkiff System in Docket No. CP89-1722-000.

3. Texas Gas Transmission Corporation

[Docket No. CP89-1878-000]

August 2, 1989.

Take notice that on July 31, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1878-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Conoco, Inc. (Conoco), under Texas Gas's blanket certificate issued in Docket No. CP88-686-000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a gas transportation agreement dated April 20, 1989, it proposes to receive up to 20 billion Btu of natural gas from Conoco at specified points located in offshore and onshore Louisiana, Texas, Indiana, Kentucky, Illinois, Arkansas, and Ohio, and redeliver the gas at three specified points in Louisiana. Texas Gas estimates that the peak day, average day, and annual volumes would be 20,000 million Btu, 10,000 million Btu, and 3,650,000 million Btu respectively. It is stated that on June 23, 1989, Texas Gas initiated a 120-day transportation service for Conoco under § 284.223(a) as reported in Docket No. ST89-4064-000.

Texas Gas further states that no facilities need be constructed to implement the service. Texas Gas states that the term would continue on a month-to-month basis until terminated on thirty days written notice by either party. Texas Gas proposes to charge the rates and abide by the terms and conditions of its Rate Schedule IT.

Comment date: September 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP89-1874-000]

August 2, 1989.

Take notice that on July 28, 1989, United Gas Pipe Line Company, (United) P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1874-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of PSI, Inc. (PSI), under its blanket authorization issued in Docket No. CP88-6-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United would perform the proposed interruptible transportation service for PSI, a marketer of natural gas, pursuant to a gas transportation agreement dated May 9, 1989 (contract no. T1-21-2163/03376, Ref. #5128). The term of the transportation agreement is for a primary term of one month from the date of first delivery and shall continue for successive one month terms thereafter until terminated. United proposes to transport on a peak day up to 103,000 MMBtu; on an average day up to 103,000 MMBtu; and on an annual basis 37,595,000 MMBtu for PSI. United proposes to receive the subject gas from exiting points of receipt on its system for transportation and redelivery to PSI at an existing point of delivery. The proposed rate to be charged is a monthly rate of 31.91 cents per MMBtu, such other charges as specified in United's currently effective ITS rate schedule, or such other rates as may be just and reasonable and acceptable to United. It is alleged that United would have no obligation to make refunds to PSI unless that maximum rate ultimately established by the FERC for the proposed service is less than the rate paid by PSI.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. United commenced such self-implementing service on July 13, 1989, as reported in Docket No. ST89-4172-000.

Comment date: September 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP89-1867-000]

August 2, 1989.

Take notice that on July 26, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1867-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to provide interruptible transportation service on behalf of Centran Corporation, a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to Section 7 of the Natural Gas act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it would transport 10,039 MMBtu on a peak and average day and 3,664,235 MMBtu on an annual basis.

United further states that it has commenced service on May 26, 1989, under the 120-day automatic authorization and reported such service in Docket No. ST89-4171, pursuant to § 284.223(a) of the Regulations.

Comment date: September 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Texas Gas Transmission Corporation

[Docket No. CP89-1862-000]

August 2, 1989.

Take notice that on July 25, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1862-000, a request pursuant to § 157.205 and § 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for PSI, Inc. (PSI) under the blanket certificate issued in Docket No. CP88-686-000 under Section 7 of the Natural Gas Act, all as more fully set forth with the Commission and open to public inspection.

Texas Gas states that it proposes to transport on a peak day up to 100,000 MMBtu of natural gas for PSI, with an estimated average daily quantity of 50,000 MMBtu and an annual basis of 18,250,000 MMBtu.

Texas Gas also states it commenced their service June 13, 1989, as reported in Docket No. ST89-4053-000.

Comment date: September 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Colorado Interstate Gas Company

[Docket No. CP89-1868-000]

August 2, 1989.

Take notice that on July 27, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-1868-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Marathon Oil Company (Marathon), a producer, under CIG's blanket certificate issued in Docket No. CP88-589-000, *et al.* pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG states that it would transport up to 60,000 Mcf per day, for Marathon, pursuant to a Transportation Service Agreement dated May 1, 1989, between CIG and Marathon. CIG further states that it would receive the natural gas from various existing points of receipt on its system in the states of Colorado, Kansas, Oklahoma, Texas and Wyoming, and would redeliver the natural gas, less fuel gas and unaccounted-for gas, for the account of Marathon in Sweetwater County, Wyoming. CIG indicates that the estimated average daily and annual quantities would be 40,000 Mcf and 14,600,000 Mcf, respectively.

CIG states that it commenced the transportation of natural gas for Marathon on June 1, 1989, as reported in Docket No. ST89-4113-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: September 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Southern Natural Gas Company

[Docket No. CP89-1875-000]

August 2, 1989.

Take notice that on July 28, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No.

CP89–1875–000, a request pursuant to §§ 157.205 and 284.233(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Texaco, Inc. (Texaco), a producer, under its blanket certificate issued in Docket No. CP88–316–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that the maximum daily, average daily and annual quantities that it would transport for Texaco would be 100,000 MMBtu equivalent of natural gas, 6,301 MMBtu equivalent of natural gas and 2,300,000 MMBtu equivalent of natural gas, respectively.

Southern states that it would transport natural gas for Texaco from various receipt points in Louisiana, offshore Louisiana, Texas, Mississippi, Alabama, and offshore Texas to several delivery points in Georgia and South Carolina.

Southern indicates that in a filing made with the Commission in Docket No. ST89–3907, it reported that transportation service for Texaco commenced on June 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: September 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–1876–000]

August 2, 1989.

Take notice that on July 28, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, a request pursuant to §§ 157.205 and 157.212 (18 CFR 157.205 and 157.212) (18 CFR 157.205 and 157.212) of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate an additional sales meter station for an existing customer Public Service Electric and Gas Company (PSE&G) Gloucester County, New Jersey, pursuant to Transco's blanket certificate issued under the Natural Gas Act in Docket No. CP82–426–000 on September 2, 1982, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco proposes to construct and operate a new delivery point consisting of a tap, sales meter and regulator together with related appurtenant facilities, located at approximately milepost 15.54 on Transco's Woodbury lateral in Gloucester County, New Jersey. Transco estimates the cost of the facility to be $198,000, plus if needed $20,000 for the installation of a gas scrubber. Transco states that pursuant to a service agreement dated May 1, 1988, and another agreement dated March 2, 1988, PSE&G has a Rate Schedule CD–3 Contract Demand of 227,952 Mcf per day and a firm transportation entitlement of 183,575 Mcf per day and another firm transportation entitlement of 6,222 Mcf per day, respectively. Transco states that PSE&G's total sales and firm transportation allocation would not be changed from current authorized levels. It is further stated that the addition of the new delivery point will not effect Transco's peak day or annual volumetric deliveries to PSE&G or any other of Transco's customers.

Comment date: September 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Texas Gas Transmission Corporation

[Docket No. CP89–1873–000]

August 2, 1989.

Take notice that on July 28, 1989, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42303, filed in Docket No. CP89–1873–000 a request pursuant to § 157.216 of the Commission's Regulations to abandon by removal 5 former sales taps, under the blanket certificate issued in Docket No. CP82–407–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to abandon by removal the 5 sales taps at the request of its municipal local distribution customers, Brownsville Utility Department, City of Brownsville, Tennessee (Brownsville), and the Jackson Utility Division, City of Jackson, Tennessee (Jackson). It is stated that Brownsville and Jackson have requested the subject abandonments because such taps are currently inactive and would not be needed in the future. Texas Gas indicates that the taps are currently located at various points on its Ripley-Jackson 8-inch pipeline in Haywood and Madison Counties, Tennessee. The details of such tap are as follows.

Name	LDC	Original authority	Reason for abandonment
F. Sanders	Brownsville	Docket No. G–855	House abandoned and demolished
N.P. Thornton	Brownsville	Section 2.55(c)	House abandoned and demolished
N.P. Thornton	Brownsville	Section 2.55(c)	Agricultural tap not needed
E. Brown	Brownsville	Docket No. G–855	Agricultural tap not needed
O.B. Taylor	Jackson	Docket No. G–855	Agricultural tap not needed

Comment date: Septemer 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Natural Gas Pipeline Company of America

[Docket No. CP89–1872–000]

August 2, 1989.

Take notice that on July 28, 1989, Natural Gas Pipeline Company of America (Natural), 701 at 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89–1872–000 a request pursuant to the notice procedure in §§ 157.205 and 284.223(b) of the Commission's Regulations for authorization to transport, on an interruptible basis, up to a maximum of 300,000 MMBtu (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) for Phibro Distributors Corporation (Phibro), a marketer of natural gas. The receipt points are located in New Mexico, Texas, Offshore Texas, Oklahoma, Illinois, Louisiana, Offshore Louisiana, Arkansas, Kansas and Iowa and the delivery points are located in Texas, Offshore Texas, Louisiana, Offshore Louisiana, Illinois, Oklahoma, Missouri, Arkansas, Iowa, Kansas and Nebraska. Transportation would be performed under Natural's blanket certificate issued in Docket No. CP86–582–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural commenced the transportation of natural gas for Phibro in June 1, 1989 at Docket No. ST89–4307–000 for a one hundred and twenty (120) day period ending September 29, 1989, pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86–582–000. Natural proposes to continue this service in accordance with §§ 284.221 and 284.223(b).

Comment date: September 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Southern Natural Gas Company

[Docket No. CP89–1848–000]

August 2, 1989.

Take notice that on July 20, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP89–1848–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct, install and operate certain facilities, under Southern's blanket certificate issued in Docket No. CP82–406–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern states that it provides natural gas service to Atlanta Gas Light Company (Atlanta) at the point of delivery referred to as the Marietta Meter Station (Marietta) in the currently-effective Exhibit A to the Service Agreement dated September 23, 1969. It is indicated that in order to avoid certain operational problems in delivering the gas to Atlanta at Marietta, Southern would install a regulator station at Marietta to control the delivery pressure at which gas flows into Atlanta's distribution system. Southern estimates the cost of the construction and installation at $147,820.

Souther further states that there would be no increase in Atlanta's contract demand at the Marietta Meter Station associated with the proposed installation of facilities. In addition, Southern states there would be no impact on its peak day and annual deliveries and that the facility modification is not prohibited by Southern's tariff.

Comment date: September 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Texas Gas Transmission Corporation

[Docket No. CP89–1882–000]

August 2, 1989.

Take notice that on July 31, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–1882–000 a request pursuant to §§ 157.205 and 284.223 of the Commission"s Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Manville Sales Corporation (Manville) under Texas Gas' blanket certificate issued in Docket No. CP88–686–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 20,000 MMBtu of natural gas equivalent on behalf of Manville pursuant to a gas transportation agreement dated February 10, 1989, between Texas Gas and Manville. Texas Gas would receive the gas at various existing points of receipt on its system in Louisiana and offshore Louisiana and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at three existing delivery points in Louisiana.

Texas Gas further states that the estimated average daily and annual quantities would be 10,000 MMBtu and 3,650,000 MMBtu, respectively. Service under § 284.223(a) commenced on June 22, 1989, as reported in Docket No. ST89–4066–00, it is stated.

Comment date: September 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Trunkline Gas Company

[Docket No. CP89–1844–000]

August 2, 1989.

Take notice that on July 20, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1844–000 a request pursuant to § 157.205 of the Commission"s Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Unified Natural Gas Group, Limited Partnership (Unified Gas) a marketer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86–586–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Pursuant to a transportation agreement dated May 11, 1989, Trunkline requests authority to transport up to 6,000 Dt. per day, on an interruptible basis, on behalf of Unified Gas. Trunkline states that the agreement provides for Trunkline to receive the gas from various existing points of receipt along its system and redeliver such gas, less fuel and unaccounted for line loss, to Consumers Power Company in Elkart, Indiana. Trunkline further states that the average daily and annual transportation quantities are estimated to be 1,300 Dt. and 474,500 Dt., respectively. Trunkline advises that this service commenced on June 1, 1989, as reported in Docket No. ST89–4059, pursuant to § 284.223 of the Commission's Regulations.

Comment date: September 18, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. El Paso Natural Gas Company

[Docket No. CP89–1879–000]

August 8, 1989.

Take notice that on July 31, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 779978, filed in Docket No. CP89–1879–000 a request pursuant to section 157.205 of the Commission"s Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport interruptible transportation service for Hadson Gas Systems, Inc. (Hadson), a shipper of natural gas, under El Paso's blanket certificate issued in Docket No. CP88–433–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso proposes to transport 105,500 MMBtu on a peak day, 105,500 MMBtu on an average day, and 38,507,000 MMBtu on an annual basis for Hadson from any points of receipt on El Paso's system to various delivery points in the state of Arizona. El Paso states that transportation service under Section 284.223(a) commenced on July 1, 1989, as reported in Docket No. ST89–4209–000.

Comment date: September 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. United Gas Pipe Line Company

[Docket No. CP89–1897–000]

August 8, 1989.

Take notice that on August 2, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1897–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Phoenix Gas Pipeline Company (Phoenix), an intrastate pipeline company, under the blanket certificate issued in Docket No. CP88–6–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with

the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated December 8, 1988, as amended, under its Rate Schedule ITS, it proposes to transport up to 103,500 MMBtu per day equivalent of natural gas for Phoenix. United states that it would transport the gas from multiple receipt points as shown in Exhibit "A" of the transportation agreement and would deliver the gas to multiple delivery points shown in Exhibit "B" of the agreement.

United advises that service under § 284.223(a) commenced June 29, 1989, as reported in Docket No. ST89-4173-000 (filed July 13, 1989). United further advises that it would transport 198,000 MMBtu on an average day and 37,595,000 MMBtu annually.

Comment date: September 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Northwest Pipeline Corporation

[Docket No. CP89-1908-000]

August 8, 1989.

Take notice that on August 3, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1908-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for ARCO Oil and Gas Company (ARCO), a producer of natural gas, under Northwest's blanket certificate [issued by the Commission's Order No. * * *, pursuant to Section 7 of the Natural Gas Act] issued in Docket No. CP86-578-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport 100,000 MMBtu on a peak day, 2,000 MMBtu on an annual basis of natural gas for ARCO pursuant to a Transportation Agreement dated February 10, 1989. Northwest states that it would transport subject gas through its system from any transportation receipt point on its system to any transportation delivery point on its system, and that service under § 284.223(a) commenced July 1, 1989, as reported in Docket No. ST89-4215-000 (filed July 18, 1989).

Comment date: September 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. ANR Pipeline Company

[Docket No. CP89-1888-000]

August 8, 1989.

Take notice that on August 1, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1888-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of SEMCO Energy Services (SEMCO), a marketer, under ANR's blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR requests authorization to transport, on an interruptible basis, up to a maximum of 54,777 dt of natural gas per day for SEMCO from receipt points located in Louisiana, offshore Louisiana, Michigan and offshore Texas to delivery points located in Michigan. ANR anticipates transporting, on an average day 18,250 dt until October 31, 1989, and 54,777 dt thereafter and an annual volume of 19,993,605 dt.

ANR states that the transportation of natural gas for SEMCO commenced June 1, 1989, as reported in Docket No. ST89-4143-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to ANR in Docket No. CP88-532-000.

Comment date: September 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. United Gas Pipe Line Company

[Docket No. CP89-1911-000]

August 7, 1989.

Take notice that on August 4, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1911-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Graham Energy Marketing Corp. (Graham), a marketer, under the blanket certificate issued in Docket No. CP88-6-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated November 9, 1988, as amended, under its Rate Schedule ITS, it proposes to transport up to 123,600 MMBtu per day equivalent of natural gas for Graham. United states that it would transport the gas from multiple receipt points as shown in Exhibit "A" of the transportation agreement and would deliver the gas to multiple delivery points shown in Exhibit "B" of the agreement.

United advises that service under § 284.223(a) commenced May 24, 1989, as reported in Docket No. ST89-4030-000 (filed June 29, 1989). United further advises that it would transport 123,600 MMBtu on an average day and 45,114,000 MMBtu annually.

Comment date: September 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19040 Filed 8-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-10620-001, et al.]

Oryx Energy Co., et al.; Applications for Certificates and Abandonment of Service [1]

August 8, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before August 24, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-10620-001, E, 7-25-89	Oryx Energy Co., P.O. Box 2880, Dallas, TX 75221-2880.	El Paso Natural Gas Company, Various Fields, Coke and Nolan Counties, Texas.	Acreage acquired 5-1-88 from West Lake Natural Gasoline Company.
G-14830-001, E, 7-27-89	Swift Energy, Inc., 16825 Northchase Dr., Houston, TX 77060.	Natural Gas Pipeline Company of America, *et al.*, Various Fields, Wise and Pecos Counties, Texas.	Acreage acquired 1-1-89 from Union Pacific Resources Company.
CI85-429-001, B, 4-17-89	Maxus Exploration Co., 717 N. Harwood Street, Dallas, TX 75201.	Trunkline Gas Company, Riceville Field, Vermilion Parish, Louisiana.	The well was plugged on July 22, 1988.
CI89-368-000, (G-11600), B, 4-17-89.	BHP Petroleum Co., 5847 San Felipe, Suite 3600, Houston, TX 77057.	Colorado Interstate Gas Company, Mocane Field, Beaver County, Oklahoma.	All leases have expired.
CI89-486-000, (CI63-429), F, 7-24-89.	Anadarko Petroleum Corp., P.O. Box 1330, Houston, TX 77251-1330.	Natural Gas Pipeline Company of America, Camrick Field, Beaver County, Oklahoma.	Acreage acquired 11-1-86 from Maxus Exploration Company.

Filing code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

[Docket No. G-9490-001, et al.]

Union Pacific Resources et al.; Applications for Termination or Amendment of Certificates [1]

August 8, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before August 24, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-9490-001, D, 3-27-89	Union Pacific Resources Co., P.O. Box 7, Fort Worth, TX 76101.	Colorado Interstate Gas Co., Greenfield Field, Morton County, KS.	Assigned 11-12-87 to Texaco Producing Inc.
G-13552-002, D, 7-28-89	Texas Inc., P.O. Box 52332, Houston, TX 77052-2332.	Texas Eastern Transmission Corp., Hidalgo Field, Hidalgo County, TX.	Assigned 3-1-89 to Vernon E. Faulconer Inc.
CI63-459-003, D, 12-14-88.	Chevron U.S.A. Inc., P.O. Box 2100, Houston, TX 77252.	ANR Pipeline Co., Quinlan N. W. Field, Woodward County, OK.	Assigned 10-1-88 to Mesa Operating Limited Partnership.
CI75-747-003, D, 4-3-89	Tenneco Oil Co., P.O. Box 2511, Houston, TX 77252.	Tennessee Gas Pipeline Co., Eugene Island 342 and 343, Area Field, Offshore LA.	Assigned 3-15-85 to Huffco Petroleum Corporation and 7-15-86 to Plumb Offshore, Inc.
CI77-286-004, D, 7-24-89	Union Pacific Resources Co	Mississippi River Transmission Corp., Little Wasita Field, Grady County, OK.	Assigned 3-22-89 to Swift Energy Co.
CI85-68-001, D, 4-28-89	Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052.	Northwest Pipeline Corp., Ignacio Blanco Field, La Plata County, CO.	Assigned 6-1-88 to Meridian Oil Production Inc.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI89-342-000 (CI88-399), D, 3-13-89.	Union Pacific Resources Co	K N Energy, Inc., Bradshaw Field, Hamilton, KS.	Assigned 6-12-87 to K M Resources, Inc.
CI89-378-000 (G-19036), D, 4-24-89.	ARCO Oil & Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221.	Northern Natural Gas Co., Division of Enron Corp., Perryton Field, OK and Ochiltree Counties, TX.	Assigned 2-27-87 to Hondo Oil & Gas Co. and OTC Petroleum Corp.
CI89-485-000 (CI83-432), D, 7-24-89.	ARCO Oil & Gas Co., Division of Atlantic Richfield Co.	Tennessee Gas Pipeline Co., West Delta Block 83, Offshore Louisiana.	Assigned 12-1-86 to FMP Operating Co.
CI89-487-000 (CI88-1227), D, 7-25-89.	Marathon Oil Co., P.O. Box 3128, Houston, TX 77253-3128.	K N Energy, Inc., West Sidney Area, Cheyenne County, NE.	Sold 10-1-88 to Central Resources, Inc.
CI89-488-000 (G-14223), D, 7-24-89.	Mobil Oil Corp., 12450 Greenspoint Drive, Houston, TX 77060-1991.	Colorado Interstate Gas Co., Keyes Field, Cimarron County, OK.	Assigned 8-1-88 to Maynard Oil Co.
CI89-492-000 (CI61-952), D, 7-25-89.	Texaco Inc	Texas Gas Transmission Corp., Bay Junop Field, Terrebonne Parish, LA.	Assigned 12-1-86 to Energy Properties, Inc.
CI89-493-000 (CI88-824), D, 7-26-89.	Mobile Oil Exploration and Producing Southeast Inc., 12450 Greenspoint Drive, Houston, TX 77060-1991.	Texas Gas Transmission Corp., Calhoun Field, Ouachita Parish, LA.	Assigned 8-1-87 to Rockbridge Oil & Gas, Inc.

Filing code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

[FR Doc. 89-19036 Filed 8-14-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP88-332-004]

El Paso Natural Gas Co.; Complaint and Petition to Show Cause

August 9, 1989.

Take notice that on August 1, 1989, Indicated Shippers filed in Docket No. CP88-332-004 a complaint, petition for an order to show cause and motion for expedited relief against El Paso Natural Gas Company (El Paso) pursuant to Rules 206, 207 and 212, respectively, of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, 385.207 and 385.212 (1985). Indicated Shippers asks the Commission to enforce compliance with the conditions set forth in the Commission's order of November 29, 1988, in Docket No. CP88-332-000, 45 FERC ¶ 61,322 (1988), all as more fully set forth in the above pleadings on file with the Commission and open to public inspection.

By order dated November 29, 1988, the Commission issued a certificate of public convenience and necessity under section 7(c) of the NGA authorizing a new interruptible sales service by El Paso. To mitigate concerns over the potential for undue discrimination by El Paso in rendering such service, the Commission conditioned its grant to require that El Paso report all interruptible sales and deliveries, including the price charged and the WACOG included in the price, and offer discounted interruptible sales rates correlative to its interruptible transportation rates. These conditions were left intact in the Commission's Order Amending and Clarifying Certificate, and Granting and Denying Rehearing issued on April 28, 1989, in Docket No. CP88-332-001, 47 FERC ¶ 61,139 (1989).

Indicated Shippers state that El Paso's Initial Report of the Interruptible Sale and Delivery of Natural Gas, dated June 30, 1989 and filed on July 3, 1989, concerning the sale and delivery of natural gas by El Paso to the City of Long Beach, California, deleted the price charged by El Paso in the discounted interruptible sales transaction, and the WACOG included in that rate, in violation of the Commission's November 29 order. Indicated Shippers complain that they are deprived of the opportunity to scrutinize potentially anticompetitive and discriminatory action involving El Paso's interruptible sales service. Indicated Shippers therefore request that the Commission issue, on an expedited basis, an order requiring El Paso to show cause why it is not in violation of the Commission's order and to file the information deleted from the public version of the Initial Report, as required by the Commission's November 29 order, and also a public version of all subsequent initial reports containing all information required by said order.

Any person desiring to be heard or to make any protest with reference to said complaint and petition for order to show cause should on or before *September 8, 1989*, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwod A. Watson, Jr.,
Acting Secretary.
[FR Doc. 89-19037 Filed 8-14-89; 8:45 am]
BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Project No. 2610-002]

Northern States Power Co.; Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

The license for the Saxon Falls Project No. 2610 located on the Montreal River in Iron County, Wisconsin, and Gogebic County, Michigan, expires on December 31, 1990. An application for relicense has been filed as follows:

Project No.	Applicant	Contact
P-2610-002	Northern States Power Company, 100 N. Barstow St., P.O. Box 8, Eau Claire, WI 54702-0008.	Mr. William J. Madden, Jr., Bishop, Cook, Purcell, & Reynolds, 1400 L Street NW., Washington, DC 20005-3502.

Pursuant to section 15(c)(1) of the Federal Power Act the deadline for applicant to file final amendments, if any, to its application is September 1, 1989.

The following dates and procedures will be used in processing the application.

Date	Action
Mar. 2, 1989	Commission notified applicant of the need for additional information, if any, and the date information is due.
Mar. 10, 1989	Commission issued public notice of application and establishing dates for filing interventions, public comments, agency recommendations, an fish and wildlife terms and conditions.

Upon receipt of all additional information and the information filed in response to the pubilc notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action of the application.

Any questions concerning this notice should be directed to Joseph Michael Dees at (202) 376-9414.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 89-19039 Filed 8-14-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. EL89-42-000]

City of San Diego, California v. San Diego Gas & Electric Co.; et al.; Filing

August 7, 1989.

Take notice that on August 1, 1989, the City of San Diego California (San Diego) filed a Complaint, pursuant to Section 306 of the Federal Power Act, (FPA), 16 U.S.C. 825e, and 18 CFR 385.206 against San Diego Gas & Electric Company (SDG&E) and Southern California Edison Company (Edison) for violations of Sections 205(c) and 205(d) of the FPA, 16 U.S.C. 824d(c) and 824(d), and the Commission's implementing regulations at 18 CFR part 35.

San Diego alleges that SDG&E and Edison violated Section 205(c) of the FPA by failing to file certain written agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 6, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the complaint shall be due on or before September 6, 1989.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 89-19033 Filed 8-14-89; 8:45 am]
BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 89-33-NG]

Niagara Mohawk Power Corp.; Application To Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for long-term authority to import Canadian natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 6, 1989, of an application filed by Niagara Mohawk Power Corporation (Niagara Mohawk) for authorization to import from TransCanada PipeLines Limited (TransCanada) up to 51,000 Mcf per day of Canadian natural gas on a firm basis and additional interruptible volumes of up to 105,000 Mcf per day over a term of 15 years beginning the latter of November 1, 1990, or the date all regulatory approvals are received and new facilities made available. Niagara Mohawk proposes to construct an extension of its distribution system between Watertown, New York, and TransCadada's facilities at the international border near Gananoque, Ontario, at which point the gas would enter the U.S. Niagara Mohawk has applied to the Federal Energy Regulatory Commission (FERC) for a Presidential Permit (Docket No. CP89-1571-000) for the extension.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than September 14, 1989.

FOR FURTHER INFORMATION CONTACT:
Robert M. Stronach, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9622.
Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Niagara Mohawk, a New York corporation with its principal place of business in Syracuse, New York, engages in the local distribution of gas to approximately 450,000 customers within the central, northern and eastern regions of the State of New York.

On January 4, 1989, Niagara Mohawk and TransCanada entered into a precedent agreement and agreed, subject to certain conditions, to execute a gas purchase contract whereby TransCanada would export, sell, and deliver and Niagara Mohawk would import, purchase and receive certain quantities of natural gas on a firm and interruptible basis. The gas would be transported in the United States over a 27.4 mile extension of Niagara Mohawk's distribution system (Trans York Extension) that would connect with TransCanada's facilities near Gananoque, Ontario. In the event the Trans York Extension is not certificated, the agreement contemplates alternate deliveries from TransCanada on a best-efforts basis at the Niagara or Iroquois delivery points.

TransCanada would be obligated to deliver 51,000 Mcf per day on a firm basis, an annual contract quantity equal to the sum of the daily quantities, and a 15-year quantity of 279,225 MMcf. Niagara Mohawk would not be obligated to take or pay for any volume

BEST COPY AVAILABLE

of gas; TransCanada's sole remedy, in the event Niagara Mohawk purchases less than a portion of the annual contract quantity, for a two-year period, is an option to reduce permanently its future obligation to deliver the daily contract quantity. In addition to the firm volumes, Niagara Mohawk may purchase excess gas to the extent it is available. The Trans York Extension would have adequate capacity to deliver up to 105,000 Mcf per day of excess gas.

Niagara Mohawk will pay for firm volumes of gas in accordance with a two-part, demand/commodity rate structure. Under the proposed contract, the demand charge, separately determined for each month, is calculated by multiplying the sum of the daily contract quantities in effect for the month by the demand charge rate (DCR). The DCR is the sum of the monthly demand toll per Mcf on TransCanada's system, the demand charge per Mcf billed to TransCanada by NOVA Corporation of Alberta, and a fixed administrative charge of $1.53 per Mcf.

The proposed contract sets the commodity charge for firm sales at a level competitive with Niagara Mohawk's other long-term firm gas supplies. The commodity charge is calculated by subtracting the daily amount of the monthly demand charge from the adjusted base price. The adjusted base price is determined each month by multiplying the base price by a fraction, the numerator of which is the current weighted average 100 percent load factor rate under Niagara Mohawk's other long-term firm supply contracts, and the denominator of which is $3.1516, CNG Transmission Corporation's 100 percent load factor rate on September 15, 1988. The base price provided in the agreement is $2.24 per MMBtu for the first 60 percent of the monthly contract quantity and $2.19 per MMBtu for the remainder. As of June 1, 1989, if the gas were flowing, the 100 percent load factor price would have been $2.3749. The parties may also agree on a price that is lower than the contract price. The proposed contract provides for price renegotiation and arbitration if the price differs substantially from the parties' expectations at the time of negotiations. The price for excess gas volumes will be negotiated by Niagara Mohawk and TransCanada.

In support of its application, Niagara Mohawk states that the agreement ensures that TransCanada's price will remain competitive with and comparable to the prices of major competing natural gas supply sources in the market served by Niagara Mohawk, and will enhance its ability to meet system requirements. Niagara Mohawk notes that it is now served directly by only one interstate pipeline and the proposed import would provide it with an additional source of firm, secure, long-term supplies. In addition, Niagara Mohawk projects that its arrangement with TransCanada will reduce customer gas costs by approximately five percent.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters that may be considered in making a public interest determination include need for gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issue of competitiveness and need for the gas as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest because it is competitive and its gas source will be secure. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), (42 U.S.C. 4321 *et seq.*), requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. The FERC is currently performing an environmental review of the impacts of constructing and operating the proposed facilities related to this project. The DOE will independently review the results of the FERC environmental evaluation of this project in the course of making its own environmental determination. No final decision will be issued in DOE's proceeding until the DOE has met its obligation under NEPA.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m., e.d.t., September 14, 1989.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided, if no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Niagara Mohawk's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 9, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-19116 Filed 8-14-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3629-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before September 14, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Abstract Reaction Records and Reporting—TSCA Section 8(c) (EPA ICR #1031.03; OMB #2070-0017). This is a currently approved collection.

Abstract: Under section 8(c) of the Toxic Substances Control Act (TSCA), chemical manufacturers and processors must maintain records of significant adverse reactions to health or the environment allegedly caused by their products. EPA periodically requires submission of an abstract of these records when contemplating regulatory action with respect to a chemical.

Burden Statement: The public reporting burden for this collection of information is estimated to average 11 and a half hours per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Chemical manufacturers and processors.

Estimated No. of Respondents: 500.

Estimated Total Annual Burden on Respondents: 55,722 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503. (Telephone (202) 395-3084)

Dated: August 3, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89-19084 Filed 8-14-89; 8:45 am]

BILLING CODE 6560-50-M

Science Advisory Board; Environmental Engineering Committee Municipal Waste Combustion Ash Subcommittee; Open Meeting—September 18-19, 1989

Under Public Law 92-463, notice is hereby given that the Science Advisory Board's Environmental Engineering Committee (EEC), Municipal Waste Combustion Ash Subcommittee, will meet September 18-19, 1989 in the North Conference Room Number 1 at the Waterside Mall, 401 M Street, SW., Washington, DC 20460. The meeting will begin at 9:30 a.m. on Monday and 8:30 a.m. on Tuesday and adjourn no later than 5:00 p.m. on Monday and 12:30 p.m. on Tuesday.

The purpose of the meeting is to review the EPA's Municipal Waste Combustion Ash Solidification/Stabilization Research Program. Information concerning the EPA Municipal Waste Combustion Ash Solidification/Stabilization/Treatment Research Program is available from Mr. Carlton C. Wiles, Chief of the Stabilization Section, EPA Risk Reduction Engineering Laboratory (RREL), 26 West Martin Luther King Drive, Cincinnati, Ohio 45268. Telephone 513/569-7795).

The meeting is open to the public. Any member of the public wishing further information on the meeting or those who wish to submit written comments should contact Dr. K. Jack Kooyoomjian, Executive Secretary, or Mrs. Marie Miller, Secretary, Science Advisory Board (A101-F), U.S. Environmental Protection Agency, Washington, DC 20460, at 202/382-2552 by September 11, 1989. Seating at the meeting will be on a first come basis.

Date: August 2, 1989.

A. Robert Flaak,

Acting Director, Science Advisory Board.

[FR Doc. 89-19063 Filed 8-14-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3626-5]

Small Business Competitiveness Demonstration Program; Plan for Expansion in Targeted Industry Categories

AGENCY: Environmental Protection Agency.

ACTION: Final notice.

SUMMARY: On June 23, 1989, EPA's proposed plan for the subject program appeared in the **Federal Register** (54 FR 26416) for a thirty day comment period ending on July 24, 1989. Since no comments were received, the plan becomes final.

FOR FURTHER INFORMATION CONTACT: Margie A. Wilson, Senior Program Officer, OSDBU (A-149C), (703) 557-7305.

SUPPLEMENTARY INFORMATION: Title VII of the "Business Opportunity Development Reform Act of 1988" seeks to demonstrate whether targeted goaling and management techniques can expand Federal contract opportunities for small business in industry categories where such opportunities historically have been low despite adequate numbers of small business contractors in the economy. EPA has been identified as a participant in the demonstration program. For purposes of expansion of the demonstration program, EPA has targeted the following industries:

Description	Product/service code
(1) ADP Facilities Management Service	R301
(2) Other ADP Service	R399
(3) Other Environmental Services, Studies & Analytical Support	F999
(4) Other Research & Development	A211
(5) Water Pollution Research & Development	AH31
(6) Water Quality Support Services	F103
(7) Other Natural Resources Management Service	F099
(8) Air Quality Support Services	F101
(9) Other Management Support Services	R799
(10) Other Business Consultant Services	R421

EPA's Plan is to expand small business participation in 10 industry categories. EPA plans to increase small business participation in the 10 selected categories through its outreach efforts which include the following:

—Selecting the ten (10) industry categories amendable to increase small business participation.
—Developing an instructional program to train the Agency's procurement personnel in their roles and responsibilities in implementing the provision under the law.
—Deemphasizing, within the technical evaluation criteria, the corporate history requirement, and substituting technical and professional qualifications whenever possible.
—Breaking out requirements to allow more participation by small business in areas where their participation has been historically low or nonexistent.
—Making sure that copies of solicitations are mailed directly to small businesses.
—Developing outreach programs to help small businesses become more competitively involved in the Agency's acquisition activities.

Dated: August 7, 1989.

John M. Ropes,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 89-19062 Filed 8-14-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3628-7]

Water Pollution Control; Final Determination of the Assistant Administrator for Water Pursuant to section 404(c) of the Clean Water Act Concerning the Proposed Ware Creek Water Supply Impoundment in James City County, VA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of decision to restrict the designation of waters of the United States on Ware Creek in James City County, Virginia, as discharge sites for the placement of fill material.

SUMMARY: This is notice of EPA's final determination pursuant to section 404(c) of the Clean Water Act to restrict the designation of approximately 425 acres of waters of the United States in James City County, Virginia as a discharge site for dredged or fill material. EPA's determination is based upon a finding that the placement of fill material associated with implementation of the proposed Ware Creek local water supply impoundment would result in unacceptable adverse impacts to wildlife.

EFFECTIVE DATE: The effective date of the final determination is July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Charles K. Stark, Office of Wetlands Protection, US Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-7799.

Copies of EPA's Final Determination are available for inspection in the EPA Headquarters Public Information Reference Unit, EPA Library, Room M2904, 401 M Street, SW., Washington DC and the EPA Region III Wetlands and Marine Policy Section (3ES42), US EPA Region 3, 841 Chestnut St., Philadelphia, PA 19107.

Section 404(c) of the Clean Water Act (33 U.S.C. 1251 *et seq.*) provides that, if the Administrator of the U.S. Environmental Protection Agency (EPA) determines, after notice and opportunity for public comment, that unaccepable adverse effects on municipal water supplies, shellfish beds, fishery areas (including spawning and breeding areas), wildlife, or recreational areas would result from the discharge of dredged or fill material, he may exercise his authority to withdraw or prohibit the specification, or deny, restrict or withdraw the use for specification, of any defined area as a disposal site for dredged or fill material. Before making such a determination, the Administration must consult with the Chief of the Army Corps of Engineers (Corps), the property owner(s), and the applicant where there has been an application for a section 404 permit. The procedures for implementation of section 404(c) are set forth in the Code of Federal Regulations, 40 CFR part 231.

EPA's regulations for implementing section 404(c) establish procedures to be followed in exercising the Administrator's authority pursuant to that Section. Three major milestones in the process are: (1) The Regional Administrator's proposed decision to withdraw, deny, restrict or prohibit the use of a site (Proposed Determination); (2) the Regional Administrator's recommendation to the Administrator to withdraw, deny, restrict or prohibit the use of a site (Recommended Determination); and (3) the Administrator's final decision to affirm, modify, or rescind the Regional recommendation (Final Determination). The Administrator has delegated the authority to make final decisions under section 404(c) to the Assistant Administrator for Water, who is EPA's national Clean Water Act § 404 program manager.

EPA's Final Determination concerns the proposed placement of dredged or fill material for the purpose of creating a local water supply impoundment on Ware Creek in James City County, Virginia.

EPA Region III's Regional Administrator recommended prohibition of specification of the disposal site necessary for construction of any dam, lake or reeservoir in the subject waters. Region III's Regional Administrator based the recommendations upon his finding that the discharge of materials in connection with the above described activities would have an unacceptable adverse effect on wildlife, recreational areas and fishing areas.

The Final Determination is based on consideration of the record developed by EPA and by the Corps in this case, including public comment submitted in response to the Regional Proposed Determination, comment received at the public hearing and comments from other Federal and State agencies. This Final Determination also reflects comment and information received during EPA Headquarters' consultation pursuant to § 231.6 of the Clean Water Act section 404(c) regulations.

As described in the Final Determination, it is the finding of EPA that the proposed Ware Creek project would result in the destruction and loss of diverse vegetated wetland habitat that is of vital importance to wildlife in the Ware Creek wetlands systems and associated area and contributes to the overall environmental integrity of the York River and Chesapeake Bay. Further, EPA has determined that these impacts are avoidable because there are practicable alternatives available to the County to meet its projected water supply needs. These findings led to the conclusion that the discharge of dredged or fill material in connection with the proposed Ware Creek project would result in unacceptable adverse impacts to wildlife. The Final Determination therefore modifies the Regional Recommended Determination and restricts the designation of the subject waters of the United States as discharge sites for dredged or fill material. EPA's section 404(c) action is based on adverse impacts of activities associated with creation of a local water supply impoundment on described waters, including wetlands, of Ware Creek, and as such prohibits the placement of fill for that purpose. The Final Determination does not pertain to other types of filling activities. Other proposals involving the discharge of dredged or fill material on the wetland sites at issue will be evaluated on their merits within the Corps of Engineers' § 404 regulatory program.

Dated: August 8, 1989.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 89-19061 Filed 8-14-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Competitive Challenge Grants; Intent of Award of Project Grants

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

It is the intent of the Federal Emergency Agency (FEMA), under the Civil Defense Act of 1950, to award an estimated ten (10) project grants under Request for Assistance (RFA) EMW-89-R-3212 under the Emergency Public Information Challenge Grants Program, to stimulate the development of effective emergency public information strategies at state and local levels.

In fiscal year 1989, FEMA will fund up to 75 percent of a project, if the prospective grantee can demonstrate a 25 percent financial commitment from another source.

The program is limited to state and local agencies, public and private nonprofit organizations in all ten (10) FEMA Regions, encompassing all fifty (50) States, the District of Columbia, and the United States territories.

The goal of the program is to increase public awareness of natural and manmade hazards, including nuclear attack preparedness to help decrease the losses of lives and property that currently result from emergency situations. It is also intended to stimulate preparedness measures for communities, households, business and industry, schools, and the like. By publicizing the program and providing wide exposure to the model projects and techniques generated, FEMA intends to raise the profile of the emergency public information function as a critical factor in life safety.

The application package will contain a set of criteria which will be used in the review and selection process. Applications for Assistance must be requested in writing and addressed as follows: Federal Emergency Management Agency, Mitigation & Recovery Division, Office of Acquisition Management, 500 C Street, SW., Room 726, Washington, DC 20472, Attn: Gregory Steigerwald, Contract Specialist, EMW-89-R-3212.

Please include a self-addressed mailing label with the request.

It is estimated that ten (10) project grants of approximately $15,000 each will be awarded as a result of this request, and it is expected that this will entail one in each region of competition. However, FEMA reserves the right to award in any number or location as it deems to be in its best interest. Applications must be received by September 8, 1989, in order to award the project grants on or before September 30, 1989. Proposers may request funding for a second year option, which will be subject to availability of funding, and which will require a 50 percent match.

August 8, 1989.

Peg Maloy,

Assistant Associate Director of External Affairs, Office of Public & Intergovernmental Affairs.

[FR Doc. 89-19071 Filed 8-14-89; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Reissuance of Ocean Freight Forwarder Licenses Reissuance of Licenses

Notice is hereby given that the following ocean freight forwarder licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License No.	Name/Address	Date reissued
2915-R	S.T.S. International, Inc., 4219 Richmond Street, Philadelphia, PA 19137	July 27, 1989.
1208-R	Hamilton Brothers, Inc., 622 13th Street, P.O. Box 1500, Tampa, FL 33601	Aug. 3, 1989.

Robert G. Drew,

Director Bureau of Domestic Regulations.

[FR Doc. 89-19056 Filed 8-14-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action by published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 072489 AND 080489

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Kaiser Foundation Hospitals/Kaiser Foundat. Health Plan, Daughters of Charity National Health Systems, Inc., French Hospital and Health Plan Corporation	89-2115	07/24/89
Ashland Oil, Inc., Mr. Lawson W. Hamilton, Hansford Coal Company	89-2147	07/24/89

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 072489 AND 080489—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Automated Security (Holdings) PLC, Steward A. Resnick, American Protection Industries, Inc	89-2190	07/24/89
Univar Corporation, CIBA-GEIGY Limited, Hambtet & Hayes Co	89-2191	07/24/89
Glyn T.H. Ing, Brock C. Rowley, American Bridge Company	89-2234	07/24/89
The News Corporation Limited, Mr. Gerry M. Ritterman, Network Publishing Corporation	89-2132	07/25/89
Paul J. Phelan, Dunkin' Donuts Incorporated, Dunkin' Donuts Incorporated	89-2202	07/25/89
AFP Group PLC, Chase Corporation Limited, Hanimex Corporation Limited of Canberra House	89-2224	07/25/89
Hudson's Bay Far Sales Canada Inc., Hudson's Bay Company, Hudson's Bay New York, Inc	89-2226	07/25/89
American Express Company, Newmont Mining Corporation," Peabody Holding Company Inc	89-2235	07/25/89
Salomon Inc., Newmont Mining Corporation," Peabody Holding Company, Inc	89-2239	07/25/89
Oy Tampella Ab, Baker Hughes Incorporated, Envirotech Corporation, Emico Coal Machinery Inc	89-2322	07/25/89
Kamori Kanko Co., Ltd., Steamboat Ski Corporation, Steamboat Ski Corporation	89-2158	07/26/89
VF Corporation, Kingstree Knits, Inc., Kingstree Knits, Inc	89-2240	07/26/89
Fibreboard Corporation, Ronald C. Yanke, seven subsidiaries	89-2163	07/27/89
The Atlantic Foundation, Pansophic Systems, Incorporated, Pansophic Systems, Incorporated	89-2185	07/27/89
Copley Investors Limited Partnership, Villa Marina Partners, Villa Marina Partners	89-2326	07/27/89
Fertilizer Industries, Inc., Equity Holdings Limited, Phoenix Chemical Company and Vigoro Industries, Inc	89-2176	07/28/89
ITT Corporation, Crown Pacific, Ltd., Crown Pacific, Ltd	89-2236	07/28/89
Roxboro Investments (1976) Ltd., Mobil Corporation, Redwood Shores, Inc., South Shores, Inc	89-2252	07/28/89
Kenneth R. Thomson, Mellon Bank Corporation, Mellon InvestData Corporation	89-2262	07/28/89
Alexander Vik, Durham Corporation, State Capital Insurance Company	89-2264	07/28/89
Oryx Energy Company, Mobil Corporation, Mobil Producing Texas & New Mexico, Inc	89-2270	07/28/89
Mobil Corporation, Oryx Energy Company, Sun Operating Limited Partnership	89-2271	07/28/89
Swissair, Delta Air Lines, Inc., Delta Air Lines, Inc	89-2274	07/28/89
Thomas H. Lee, Lee-GN Holding Corp., Lee-GN Holding Corp	89-2275	07/28/89
Thomas H. Lee, General Nutrition, Incorporated, General Nutrition, Incorporated	89-2276	07/28/89
Gordon S. Lang, Hi-Port Industries, Inc., Hi-Port Industries, Inc	89-2277	07/28/89
Yuichiro Inomata, A. Cal Rossi, Jr., Cannery Row Plaza Associates	89-2284	07/28/89
Subaru of America, Inc., Jack Guenther and Valerie Guenther, Subaru South, Inc	89-2292	07/28/89
King County Medical Blue Shield, Snohomish County Physicians Corporation, Snohomish County Physicians Corporation	89-2293	07/28/89
The Prudential Insurance Company of America, Thomson McKinnon Inc., Thomson McKinnon Inc	89-2304	07/28/89
United Services Automobile Association, USAA Income Properties Limited Partnership, USAA Income Properties Limited Partnership	89-2307	07/28/89
Chiyoda Finance, Inc., CIGNA Corporation, CIGNA Corporation	89-2309	07/28/89
Gordon S. Lang, Hi-port Industries, Inc., Hi-Port Industries, Inc	89-2332	07/28/89
Mairite Communicaions Group, Inc., Mairite Guaranteed Broadcast Partners Ltd. Partnership, Mairite Guaranteed Broadcast Partners Ltd. Partnership	89-2255	07/31/89
Universal American Ventures Corporation, Marine Transport Lines, Inc., Marine Transport Lines, Inc	89-2266	07/31/89
Diamond Shamrock R&M, Inc., Belvieu Enterprises Company, Xral Storage and Terminaling Company	89-2281	07/31/89
McLean Industries, Inc. Employee Stock Ownership Plan, Neoex, Inc., Fairfield Manufacturing Company, Inc	89-2303	07/31/89
Unione Manifatture-Societa Per Azioni, Quaker Fabric Corporation, Quaker Fabric Corporation	89-2305	07/31/89
Charterhouse Equity Partners, L.P., Fleer Corp., Fleer Corp	89-2278	08/01/89
Page Mill Holdings, L.P., c/o Merrill Lynch Capital, Aqua Fab Industries, Inc., Aqua Fab Industries, Inc	89-2317	08/01/89
Newell Co., Vermont American Corporation, Vermont American Corporation	89-2177	08/02/89
Grand Metropolitan Public Limited Company, CNC Holding Corporation, Eyelab, Inc	89-2195	08/02/89
Hanson PLC, Newmont Mining Corporation, Newmont Mining Corporation	89-2227	08/02/89
Wyco, Inc., New Haven Terminal, Inc., New Haven Terminal, Inc	89-2267	08/02/89
Wyco, Inc., Wyatt, Incorporated, Wyatt, Incorporated	89-2279	08/02/89
Maxwell Communication Corporation plc, Maxwell Communication Corporation plc, Tendclass Investments	89-2323	08/02/89
Waste Management, Inc., National Seal Company, National Seal Company	89-2313	08/03/89
Lucas Industries, Inc., Smiths Industries Public Limited Company, SLI International Corp	89-2233	08/04/89
R. Emmett Boyle, Ohio River Associates, Inc., Ohio River Associates, Inc	89-2250	08/04/89
Willy R. Strothotte, Ohio River Associates, Inc., Ohio River Associates, Inc	89-2253	08/04/89
Charles E. Bradley, Ohio River Associates, Inc., Ohio River Associates, Inc	89-2254	08/04/89
Frontenac Venture V Limited Partnership, Bill F. Cook, Chalk-Line, Inc	89-2311	08/04/89
Media/Communications Partners Limited Partnership, John H. Dingeman and Ruth E. Dingeman, Dingeman Advertising, Inc	89-2319	08/04/89
David T. Chase, BMA Corporation, Centennial Broadcasting Corporation	89-2320	08/04/89
Thyssen Aktiengesellschaft, Amerford International Corporation, Amerford International Corporation	89-2330	08/04/89
Welsh, Carson, Anderson & Stowe V, Automatic Data Processing, Inc., ADP-BIS, Inc	89-2343	08/04/89
General Electric Company, Contel Corporation, Contel Credit Corporation	89-2362	08/04/89
Angeles Corporation, Angeles Finance Trust, Angeles Finance Trust	89-2370	08/04/89

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-19090 Filed 8-14-89; 8:45 am]
BILLING CODE 6750-01-M

[File No. 051 0047]

Oklahoma State Board of Veterinary Medical Examiners; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of fedeal law prohibiting unfair acts and practives and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the five member board, that is the sole licensing authority for veterinarians in Oklahoma, from restricting any veterinarian from being partners with, employed by non-veterinarians or otherwise associating with non-veterinarians or veterinarians licensed in other states. Respondent would also be prohibited from restricting any veterinarian from providing testimonials or making endorsements regarding veterinary products and services.

DATE: Comments must be received on or befoe October 16, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC. 20580.

FOR FURTHER INFORMATION CONTACT:
Tom Carter or Jim Elliott, Dallas Regional Office, Federal Trade Commission, 100 N. Central Expressway, Suite 500, Dallas, TX 75201. (214) 767-5503.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Agreement Containing Consent Order to Cease and Desist

In the matter of Oklahoma State Board of Veterinary Medical Examiners.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Oklahoma State Board of Veterinary Medical Examiners (hereafter sometimes referred to as "proposed respondent") and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between the Oklahoma State Board of Veterinary Medical Examiners, by its duly authorized officers and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent is organized, exists, and transacts business under and by virtue of the laws of the State of Oklahoma. The Board's principal office and place of business is located at 5629 North Pennsylvania, Oklahoma City, Oklahoma 73112.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusion of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, both it and the draft of complaint contemplated thereby will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public with respect hereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to-order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any rights it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order. It understands that once the order contemplated thereby has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered, That for the purposes of this Order, the following definitions shall apply:

A. "Board" shall mean the Oklahoma State Board of Veterinary Medical Examiners, its members, officers, agents, representatives, employees, successors, and assigns.

B. "Disciplinary action" shall mean: (1) A refusal to grant, or the revocation or suspension of, a license to practice veterinary medicine in Oklahoma; (2) a refusal to admit a person to examination for a license to practice veterinary medicine; (3) the issuance of a formal or informal warning, reprimand, censure, or cease and desist order against any person or organization; (4) the imposition of a fine, probation, or other penalty or condition; or (5) the initiation of an administrative, criminal, or civil court proceeding against any person.

C. "Person" shall mean any natural person, corporation, partnership, governmental entity, association, organization, or other entity.

D. "Veterinary product" shall mean any remedy, instrument, equipment, or food that is sold by veterinarians or utilized by veterinarians in the care or treatment of animals.

II

It is further ordered, That the Board, directly or indirectly, or through any device, in connection with its activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Prohibiting, restricting, impeding or discouraging any person from displaying, offering, publishing or advertising any testimonial or endorsement with respect to any veterinary product. The practices from which the Board shall cease and desist include, but are not limited to:

(1) Adopting or maintaining any rule, regulation, policy, or course of conduct that prohibits or seeks to prohibit

advertising information about any veterinary product;

(2) Taking or threatening to take any disciplinary action against any person for advertising information about any veterinary product; or

(3) Declaring it to be an illegal, unethical, unprofessional, or otherwise improper or questionable practice for any person to advertise information about any veterinary product.

B. Prohibiting, restricting, impeding, or discouraging any veterinarian from associating with, being employed by or forming and maintaining a partnership with any non-veterinarian. The practices from which the Board shall cease and desist include, but are not limited to:

(1) Adopting or maintaining any rule, regulation, policy, or course of conduct that prohibits or seeks to prohibit any veterinarian from associating with, being employed by or forming a partnership with any non-veterinarian;

(2) Taking or threatening to take any disciplinary action against any veterinarian for associating with, being employed by or forming a partnership with any non-veterinarian; or

(3) Declaring it to be an illegal, unethical, unprofessional, or otherwise improper or questionable practice for any veterinarian to associate with, be employed by or form a partnership with any non-veterinarian.

C. Inducing, urging, encouraging or assisting any nongovernmental person to take any action that if taken by the Board would be prohibited by part IIA or B above.

Provided, That nothing contained in this part shall prohibit the Board from formulating, adopting, disseminating and enforcing reasonable rules or taking disciplinary or other action to prohibit advertising that the Board reasonably believes to be false, misleading or deceptive within the meaning of 59 Okla. Stat. §§ 698.7[9] and 698.1(A)(6), as limited by the First and Fourteenth Amendments to the United States Constitution.

III

It is further ordered, That the Board shall:

A. Distribute by first-class mail a copy of the announcement attached hereto as appendix A, a copy of this Order, and a copy of the accompanying Complaint in the following manner:

(1) Within thirty (30) days after the date this Order becomes final, to each person licensed to practice veterinary medicine in Oklahoma as of the date this Order becomes final and to each person whose application for, or a request for reinstatement of, a license is pending on such date; and

(2) For five (5) years after the date this Order becomes final, to each person who applies for a license to practice veterinary medicine in Oklahoma within (30) days after the Board received such application;

B. Within thirty (30) days after the date this Order becomes final, revise, repeal or revoke rules 6, 8, and 20 of the Rules of the Board; revise, repeal or revoke rule 7 of the Rules of the Board or issue an interpretation of rule 7 of the rules of the Board that is consistent with Part II of this Order; an revise, repeal or revoke any other provisions of the Rules of the Board and any policy statement or guideline, provision, interpretation or statement that is inconsistent with part II of this Order;

C. For a period of five (5) years after the date this Order becomes final, maintain and upon request make available to the Federal Trade Commission (or its staff), for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with any activity covered by Part II of this Order relating to advertising or the business arrangements under which veterinarians may practice, including but not limited to written communications and any summaries of oral communications to or from the Board regarding the displaying, offering, publishing or advertising of information about any veterinary product or regarding the business arrangements under which veterinarians may practice;

D. Notify the Federal Trade Commission at least thirty (30) days in advance if possible, or otherwise as soon as possible, of any change in the Board's authority to regulate the practice of veterinary medicine in Oklahoma that may affect compliance obligations arising out of this Order, such as the complete or partial assumption of that authority by another governmental entity, or the dissolution of (or other relevant change in) the Board; and

E. Within sixty (60) days after the date of service of this Order, submit to the Federal Trade Commission a written report setting forth in detail the manner and form in which the Board has complied and is complying with this Order.

Appendix A—Announcement

As you may be aware, the Federal Trade Commission has issued a consent order against Oklahoma State Board of Veterinary Medical Examiners that became final on [date]. The order provides that the Board may not prohibit veterinarians from engaging in truthful, nondeceptive advertising about veterinary products or restrict the business arrangements under which veterinarians may practice.

As a result of the order, the Board may not (1) adopt or maintain rules, regulations or policies that prohibit truthful, nondeceptive advertising about veterinary products or restrict the business arrangements under which veterinarians may practice; (2) take or threaten disciplinary action against any person or organization that so advertises or practices; or (3) declare it to be illegal, unethical, unprofessional, or otherwise improper or questionable for persons to engage in truthful, nondeceptive advertising about veterinary products or to practice under any business arrangement. The order also prohibits the Board from encouraging any person or organization to take action that the order prohibits the Board from taking.

The order does not affect the Board's authority to prohibit advertising about veterinary products that is likely to deceive or mislead the public, nor does the order prevent the Board from disciplining licensees for engaging in such advertising.

For more specific information, you should refer to the FTC order itself. A copy of the order and accompanying complaint is enclosed.

(Title)
Oklahoma State Board of Veterinary Medical Examiners

Oklahoma State Board of Veterinary Medical Examiners

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Oklahoma State Board of Veterinary Medical Examiners ("the Board").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Description of the Complaint

A complaint prepared for issuance by the Commission along with the proposed order alleges that the Board has acted as a combination of its members to place unreasonable restraints on competition among veterinarians in Oklahoma by prohibiting veterinarians from being partners with or employed by non-veterinarians or veterinarians licensed in other states and from providing endorsements and testimonials of veterinary products.

The Board is composed of five members, all of whom are practicing veterinarians who have practiced veterinary medicine for at least three years before becoming a Board member. Thus, the Board's members compete in a general sense with each other and with the veterinarians they regulate.

The Board is the sole licensing authority for veterinarians in Oklahoma. The Board may adopt rules and regulations, and it may refuse

a license to, or suspend or revoke an existing license of, any person found guilty of a violation of the Board's Rules. The State of Oklahoma has no articulated policy to restrict veterinarians from being partners with or employed by non-veterinarians or veterinarians licensed in other states, or to prohibit veterinarians from providing endorsements and testimonials.

The Board has restrained competition among veterinarians in Oklahoma by adopting, maintaining, and enforcing rules that restrict veterinarians from being partners with or employed by non-veterinarians or veterinarians licensed in other states, and from providing endorsements and testimonials.

The Board also interprets one of its rules in a broad and anticompetitive manner. The Rule prohibits veterinarians from being controlled by any lay agency. The Board has enforced this Rule not merely to prevent lay interference with veterinary practice, but broadly to prevent veterinarians from associating in their professional practices with non-veterinarians.

The Board's conduct has prevented veterinarians from offering veterinary care to the public in innovative ways that may be more efficient, and prevented sellers of veterinary products and services from disseminating truthful information about such products and services to consumers. The Board's Rules, and the manner in which the Board has interpreted and enforced them, have deprived consumers of the benefits of vigorous competition and of certain truthful, non-deceptive information about veterinary products and services.

Description of the Proposed Consent Order

The proposed consent order would require the Board to cease and desist from restricting any veterinarian from being partners with, employed by non-veterinarians or otherwise associating with non-veterinarians or veterinarians licensed in other states. Additionally, the proposed consent order would require the Board to cease and desist from restricting any veterinarian from providing testimonials or making endorsements regarding veterinary products and services. Thus, the order would require the Board to repeal prohibitions against veterinarians associating in their professional practices with non-veterinarians or veterinarians licensed in other states and from providing testimonials or endorsements of veterinary products and services. In addition, the Board must clarify that its Rule governing lay control of veterinary practice does not prohibit association with non-veterinarians or veterinarians licensed in other states. The order would further prohibit the Board from inducing or assisting others to take any action that the order prohibits.

The proposed order provides, however, that the Board may adopt and enforce reasonable rules and take disciplinary action to prohibit advertising that the Board reasonably believes to be false, misleading, or deceptive within the meaning of Oklahoma state law.

The proposed order would require that within thirty (30) days after the order becomes final the Board distribute a copy of the order and an explanatory announcement notifying all licensees, as well as all persons with license applications pending, of the existence and terms of the consent agreement. The proposed order would also require the Board to send the same notice to each person who applied for a license during the five (5) year period thereafter. To ensure that the proposed order is obeyed, the proposed order would require the Board to file a written report with the Commission setting forth the manner and form of its compliance within sixty (60) days after the order becomes final and, for a period of five (5) years, to make its records available to the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 89-19089 Filed 8-14-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Civil Rights; Statement of Organization, Functions, and Delegations of Authority

Part A. Chapter AT Office for Civil Rights, (OCR), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services as last amended at 51 FR 41154 (November 13, 1986) is being amended to reflect the transfer of the Office of the Regional Manager from the Office of Director to the Office of Program Operations (OPO). Specifically, the change will amend the functional statements for OPO and the Office of the Regional Manager to show that the Associate Deputy Director for Program Operations will have full supervisory authority over the ten Regional Managers.

The changes are as follows:

A. Section AT.10 Organization, delete in its entirety and replace with the following:

The Office for Civil Rights is under the supervision of the Director who reports to the Secretary. The Director also serves as the Secretary's Special Assistant for Civil Rights and is responsible for overall coordination of the Department's civil rights activities. The Office is comprised of the following headquarters and regional components.

Office of the Director. Policy and Special Projects Staff. Executive Secretariat. EEO/Affirmative Action Coordinator.

Office of Management Planning and Evaluation. Office of the Associate Deputy Director of Management Planning and Evaluation. Quality Assurance and Internal Control Division. Budget and Administrative Services Division. Management Analysis and Information Division.

Office of Program Operations. Office of the Associate Deputy Director for Program Operations. Office of the Regional Manager. Voluntary Compliance and Outreach Division. Investigations Division. Program Development and Training Division.

B. Section AT.20 Functions, delete paragraph C in its entirety and replace with the following:

C. Office of Program Operations

Manages a national program of civil rights complaints investigations and voluntary compliance and outreach activities. Serves as principal adviser to the Director on enforcement and voluntary compliance activities. Has direct supervisory authority over regional offices; oversees the conduct of compliance reviews, complaint investigations, and other enforcement activities: ensures that regulations, guidelines, and standards are implemented in a uniform, effective, and timely manner. Provides regional offices with necessary headquarters assistance concerning substantive program matters. Recommends operational resources and organizational adjustments and improvements to increase regional office management efficiency and effectiveness. Oversees the development of performance standards for regional managers and monitors their implementation.

C. Section AT.20 Functions, renumber paragraph 1 Office of the Regional Manager as paragraph 4; and insert the following sentence at the beginning of the paragraph:

The Regional Managers report directly to the Associate Deputy Director for Program Operations.

D. Section AT.20 Functions, paragraph 4, renumber paragraphs 1 and 2 as A and B respectively.

Dated: July 31, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89-19013 Filed 8-14-89; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

[Announcement 929]

Cooperative Agreement With Arizona Department of Health Services; Availability of Funds for Fiscal Year 1989

Introduction

The Centers for Disease Control (CDC) announces the availability of funds to assist in studies to determine if there are environmental hazards, the incidence rate of childhood cancer, and the incidence rate of birth defects in Maricopa County, Arizona.

Authority

This program is authorized under sections 301 (42 U.S.C. 241) and 317(k)(3) (42 U.S.C. 247b) of the Public Health Service Act as amended.

Eligible Applicant

This cooperative agreement will be awarded to the Arizona Department of Health Services (ADHS). The ADHS is requesting assistance from CDC to provide funds for the design and conduct of epidemiologic research and surveillance programs. These activities will be carried out in an attempt to determine if exposure to environmental hazards in Maricopa County are related to the elevated incidence rates of childhood cancer and birth defects in that county. Two previous studies have been conducted by ADHS to determine the cancer incidence in Maricopa county. A mortality study showed that there were statistically significant elevated rates of childhood leukemia deaths in west central Phoenix during periods 1970 to 1986 and in east central Phoenix during the period 1970 to 1981. In west central Phoenix from 1970 to 1981, 24 children died with diagnosis of leukemia, whereas only 12.5 would have been expected to die with this diagnosis. From 1982 to 1986, eight deaths occurred, whereas only 3.8 were expected. In east central Phoenix during the period 1982 to 1986, 26 deaths occurred, whereas, only 13.9 deaths were predicted to occur. No other applications are solicited or will be accepted.

It is proposed that the cooperative agreement be negotiated with ADHS for the following reasons:

A. The ADHS has the ultimate responsibility for protecting the public health of the citizens of the State of Arizona. Therefore, it has a vested interest in assessing the impact of the environment on the health of children in Maricopa County.

B. The ADHS shares legal and oversight responsibilities and has mandated ongoing working relationships with the other state agencies which oversee the operation and management of superfund sites and other potential environmental contamination problems in Maricopa County.

C. The ADHS has ongoing working relationships with other state agencies, the community, numerous local health care providers, and an extensive medical research community who will most likely be involved in providing support for these studies.

D. THE ADHS has unique access to vital records and the population statistics data which are important components of the proposed project.

Availability of Funds

Approximately $48,375 is available in Fiscal Year 1989 to fund this award. The award is expected to begin on or about September 1, 1989, for a 12-month budget period in a 1 to 2 year project period. Funding estimates may vary and are subject to change. A continuation award within the project period will be made on the basis of satisfactory performance and the availability of funds.

Purpose

The purpose of this cooperative agreement is to provide assistance to the ADHS to determine if there are environmental hazards or elevated incidence rates of childhood cancer and birth defects in Maricopa County. The specific objectives are:

A. To conduct an incidence study of all cancers during the period 1965–1986 among the resident population, age 0–19, of Maricopa County, and to determine if incidence rates were elevated in west central Phoenix.

B. To develop and implement a Statewide birth defects monitoring program to determine if the incidence rate of birth defects is elevated.

C. To develop and implement a Statewide cancer surveillance system to determine if the incidence rate of newly occurring cancers is elevated.

D. To review air, soil, water, pesticide, data provided to identify and document any environmental hazards which may be related to the incidence of health effects.

Program Requirements

A. Recipient Activities

1. Design a protocol(s) and implement a study(s) to determine if the incidence of all cancers in persons 0–19 years of age is elevated in Maricopa County.

2. Design and implement a Statewide birth defects monitoring program.

3. Design and implement a Statewide cancer surveillance program.

4. Review air, soil, water, pesticide, data provided to determine if any environmental hazards are identified.

5. Maintain the confidentiality of all subjects involved in these projects.

6. Collaborate in the development of these projects, the interpretation of the data, and the presentations of the findings from these projects.

Projects funded through this Cooperative Agreement that involve collection of information from 10 or more individuals will be subject to review under the Paperwork Reduction Act.

B. Centers for Disease Control Activities

1. Provide technical assistance in the design of study protocols, implementation of the projects, and the analysis of data.

2. Collaborate in the interpretation, presentation, and reporting of the findings.

3. Collaborate with recipient and provide technical assistance in organizing and conducting a peer review of the results of the study prior to publication and submission of the final report.

Application Content and Evaluation Criteria are set forth in the request for Application (RFA) Program Announcement.

EO 12372 Review

Application is not subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

CFDA Number

The Catalog of Federal Domestic Assistance number is 13.283.

Application Submission and Deadline

The Arizona Department of Health Services has submitted an original and two copies of application form PHS 5161–1 (Rev. 3/89) to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300 (E–14), Atlanta, Georgia, 30305.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 929 and contact the following:

Business: Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300 (E–14), Atlanta, Georgia 30305, Telephone: (404) 842–6630 or FTS 236–6630.

Technical: Edwin M. Kilbourne, M.D. (F–28) Chief, Health Studies Branch, Center for Environmental Health and Injury Control, Centers for Disease Control, Atlanta, Georgia 30333, Telephone: (404) 488–4682 or FTS 236–4682.

Dated: August 9, 1989.

Glenda S. Cowart,

Director, Office of Program Support, Centers for Disease Control.

FR Doc. 89–19044 Filed 8–14–89; 8:45 am]

BILLING CODE 4160–18–M

Health Care Financing Administration

Hearing: Reconsideration of Disapproval of Washington State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on October 3, 1989 in Seattle, Washington to reconsider our decision to disapprove Washington State Plan Amendment 88–5.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk on or before August 30, 1989.

FOR FURTHER INFORMATION, CONTACT: Docket Clerk, HCFA Hearing Staff, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207; Telephone: (301) 966–4471.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Washington State plan amendment number 88–5.

Section 1116 of the Social Security Act and 42 CFR Part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Washington SPA 88–5 includes four income and resource policies which the State believes are moral liberal than those of the Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI) programs, and a post-eligibility policy more liberal than permitted under section 1902(a)(17) of the Social Security Act (the Act). The State submitted these policies for protection under the moratorium provision of section 2373(c) of the Deficit Reduction Act of 1984. The issues in this matter are: (1) Whether the proposed income policies exceed the Federal financial participation (FFP) limits established under section 1903(f) of the Act; (2) whether moratorium protection would not be cnsistent with sections 1902(a)(4) and 1902(a)(19) of the Act; (3) whether the eligibility provisions of the amendment otherwise qualify for moratorium protection; (4) whether the proposed post-eligiblity policy is protected by the moratorium; and (5) whether the amendment is protected by the decision of the Ninth Circuit Court of Appeals in *Washington* v. *Bowen*.

Subject to certain specified FFP limits under section 1903(f) of the Act, States may use income and resource eligibility methods which are more liberal than those used under the most closely related cash assistance program (Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI)). This option is available under section 2373(c) of the Deficit Reduction Act of 1984 for policies in effect during the period October 1, 1981 to February 17, 1989. Because FFP limits contained in section 1903(f) remain unchanged, HCFA has determined that application of more liberal income methods under color of the moratorium to those eligibility groups which are subject to section 1903(f) limits can result impermissibly in these limits being exceeded.

The State proposed that the following policies be protected under the moratorium:

- An income disregard in an amount equal to the maintenance needs of an ineligible spouse not to exceed the one person medically needy income standard;
- An income disregard (or, eclusion from income) of fees charged by guardians to reimburse themselves for required services provided under court orders; and
- A method of treating community income received in the name of an ineligible spouse, living in a separate residence, which results in excluding a portion of it for purposes of determining the applicant/recipient's eligibility. The policy considers as unavailable to the applicant/recipient any amount of the ineligible spouse's income which exceeds the community income received in the name of the applicant/recipient.

Moratorium protection was disapproved for these policies because HCFA determined that the FFP limits could be exceeded. Disapproval authority is found under section 1902(a)(4) and (19) of the Act. Under section 1902(a)(4), a State's plan must provide such methods of administration as are found by the Secretary to be necessary for the proper and efficient operation of the plan. HCFA believes that if a State has a policy which could potentially result in violations of the FFP limits and uses its resources to make case-by-case determinations, it will be administering its plan in an inefficient manner. Under section 1902(a)(19), the plan must provide safeguards that are necessary to ensure that eligiblity for care and services under the plan will be determined, and such care and services will be provided, in a manner consistent with simplicity of administration and the best interest of recipients. HCFA believes that the decision to disapprove policies, rather than implement costly audits, is in the best interest of recipients as program dollars will not be diverted for purposes of such audits.

The State also proposed a post-eligibility policy for protection under the moratorium. This policy would allow deduction of all of the income disregards described above in the post-eligibility determination of the amount institutionalized person will contribute to their costs for institutional services.

HCFA determined that moratorium protection does not apply to the post-eligibility process. The post-eligibility process is distinct and separate from the eligibility process covered by the moratorium. The authority for post-eligibility flows from section 1902(a)(17) of the Act, while moratorium protection applies to section 1902(a)(1) income and resource eligibility methods. The

purpose of the post-eligibility process is to count income which is clearly available to individuals to offset the costs of institutional care and alternative care provided under home and community-based waivers. Regulations implementing post-eligibility require States to count income which has been disregarded in the eligibility process. Thus, even if HCFA could approve for moratorium protection the State's proposed more liberal income deductions, they would still not be permitted in the post eligibility process.

HCFA determined that one policy proposed by the State was a community property provision protected by the Ninth Circuit decision in *Washington* v. *Bowen*, rather than under authority of the moratorium. This policy allows one-half of the total resources held jointly by the husband and wife, or held separately by the applicant/recipient to be owned by each spouse. The States has indicated, however, its belief that the amendment as a whole is protected by the Ninth Circuit's decision in *Washington* v. *Bowen*.

The notice to Washington announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Mr. Ron Kero,
Director, Division of Medical Assistance, HB-41, Department of Social and Health Services, Olympia, Washington 98504-0255.

Dear Mr. Kero: I am advising you that your request for reconsideration of the decision to disapprove Washington State plan amendment 88-5 was received on July 10, 1989.

The plan amendment includes four income and resource policies which the State believes are more liberal than those of the Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI) programs and a post-eligibility policy more liberal than permitted under section 1902(a)(17) of the Social Security Act (the Act). Washington submitted this amendment for consideration under the Medicaid moratorium provision of section 2373(c) of the Deficit Reduction Act of 1984.

The issues in this matter are: (1) whether the proposed income policies exceed the Federal financial participation (FFP) limits established under section 1903(f) of the Act; (2) whether moratorium protection would not be consistent with sections 1902(a)(4) and 1902(a)(19) of the Act; (3) whether the eligibility provisions of the amendment otherwise qualify for moratorium protection; (4) whether the proposed post-eligibility policy is protected by the moratorium; and (5) whether the amendment is protected by the decision of the Ninth Circuit Court of Appeals in *Washington* v. *Bowen*.

I am scheduling a hearing on your request to be held on October 5, 1989, at 10:00 a.m. in Room 206, 2201 Sixth Avenue, Seattle, Washington. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed in 42 CFR Part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966-4471.

Sincerely,

Louis B. Hays,
Acting Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: August 9, 1989.

Louis B. Hays,
Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-19043 Filed 8-14-89; 8:45 am]
BILLING CODE 4120-03-M

Public Health Service

Health Resources and Services Administration; Advisory Commission on Childhood Vaccines Request for Nominations for Voting Members

AGENCY: Health Resources and Services Administration.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill three vacancies on the Advisory Commission on Childhood Vaccines. The Commission advises the Secretary, HHS, and was established by Title XXI of the Public Health Service Act, enacted by Public Law 99-660 and amended by Public Law 100-203.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary Havill, Commission Principal Staff Liaison at (301) 443-6593.

DATES: Nominations are to be submitted by September 15, 1989.

ADDRESSES: All nominations are to be submitted to the Administrator, Vaccine Injury Compensation Branch, Office of Quality Assurance and Liability Management, Bureau of health Professions, Health Resources and Services Administration (HRSA), Room 4-101, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

SUPPLEMENTARY INFORMATION: Under the authorities that established the Advisory Commission on Childhood Vaccines, viz., the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463) and section 2119 of the Public Health Service Act, 42 U.S.C. 300aa-19, as added by Public Law 99-660 and amended by Public Law 100-203, HRSA is requesting nominations for three voting members of the Commission.

The Commission advises the Secretary on the implementation of the National Vaccine Injury Compensation Program; on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table; advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions; surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines; and recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

The Commission consists of nine members appointed by the Secretary as follows: three health professionals, who are not employees of the United States, and who have expertise in the health care of children, the epidemiology, etiology, and prevention of childhood diseases, and the adverse reactions associated with vaccines, of whom two are pediatricians; three members from the general public, of whom two are legal representatives of children who have suffered a vaccine-related injury or death; and three attorneys, one of whom is an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death and one of whom is an attorney whose specialty includes representation of vaccine manufacturers. In addition, the Director of the National Institutes of Health, the Assistant secretary for Health, the Director of the Centers for Disease Control, and the Commissioner of Food and Drugs (or the designees of such officials), serve as non-voting ex officio members.

Specifically, HRSA is requesting nominations for three voting members of the Commission representing (1) a health professional with special experience in childhood disease; (2) a member form the general public who is a legal representative of a child who has suffered a vaccine-related injury or death; and (3) an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death. Nominees will be invited to serve three-year terms beginning January 1, 1990, and ending December 31, 1992.

Interested persons may nominate one or more qualified persons for membership on the Advisory Commission. Nominations shall state that the nominee is willing to serve as a member of the Commission and appears to have no conflict of interest that would preclude Commission membership. Potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest. A curriculum vitae should be submitted with the nomination.

The Department has special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory bodies and therefore extends particular encouragemnt to nominations for appropriately qualified female, minority or physically handicapped candidates.

Dated: August 9, 1989.

John H. Kelso,
Acting Administrator.

[FR Doc. 89-19002 Filed 8-14-89; 8:45 am]
BILLING CODE 4160-15-M

Agency for Toxic Substances and Disease Registry; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HT (Agency for Toxic Substances and Disease Registry) of the Statement of Organizations, Functions, and Delegations of Authority of the Department of Health and Human Services (50 FR 25129-25130, dated June 17, 1985), is hereby amended to reflect new responsibilities mandated by the Superfund Amendments and Reauthorization Act of 1986. Specific changes include (a) revision of the mission statement, (2) revision of the functional statements for the Office of the Administrator and the Office of the Associate Administrator, and (3) change in the title of the Office of the Assistant Administrator.

Delete in their entirety the headings and functional statements for *Section HT-A, Mission, Office of the Administrator (HTA)*, and *Office of the Associate Administrator (HTB)*, and substitute the following:

Section HT-A, Mission. The mission of the Agency for Toxic Substances and Disease Registry (ATSDR) is to prevent or mitigate the adverse human health effects and diminished quality of life that result from exposure to hazardous substances in the environment. The ATSDR responsibilities are specified in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended in the Superfund Amendments and Reauthorization Act of 1986 and in amendments (Hazardous and Solid Waste Amendments of 1984) to the Resource Conservation and Recovery Act (RCRA). ATSDR works closely with State, local, and other Federal agencies to reduce or eliminate illness, disability, and death that result from exposure of the public and workers to toxic substances at spill and waste disposal sites. Through additional laws, ATSDR provides environmental support to other national efforts, such as the disposal of medical wastes.

To carry out its CERCLA mission, ATSDR (1) evaluates data and information on the release of hazardous substances into the environment to assess any current or future impact on public health, develops health advisories or other health recommendations, and identifies studies or actions needed to evaluate and mitigate or prevent adverse human health effects; (2) summarizes and interprets available data on the health effects of hazardous substances in consultation with the Environmental Protection Agency (EPA) and other programs and agencies of PHS, and in cooperation with the National Toxicology Program (NTP), initiates toxicologic research to determine the health effects of designated hazardous substances, where needed; (3) provides health-related support in public health emergencies, including public health advisories involving exposure to hazardous substances; (4) establishes and maintains a registry of persons exposed to hazardous substances and a registry of serious diseases and illnesses in persons exposed to toxic substances as a result of environmental exposure; (5) expands knowledge of the relationship between exposure to hazardous substances and adverse human health effects, through epidemiologic, toxicologic, laboratory, and other studies on hazardous substances; (6) develops and disseminates to physicians and other health care providers informational materials on the health effects of toxic substances; (7) establishes and maintains a publicly accessible inventory on hazardous substances; (8) assists service and research programs in occupational safety and health to protect workers at Superfund sites and workers who respond to emergency releases of hazardous substances; (9) maintains a nationwide list of sites that are closed or restricted to the public because of contamination by hazardous substances.

To carry out its RCRA mission, ATSDR (1) provides immediate or short-term assistance to EPA regional and headquarters staff to provide health advice and health effect information about releases of hazardous substances at landfills and surface impoundments; (2) conducts health assessment when a landfill or surface impoundment has been found to pose a substantial potential risk to human health.

Office of the Administrator (HTA). (1) Directs and evaluates the programs and activities of the Agency; (2) provides leadership for implementing statutory responsibilities; (3) approves the Agency's goals and objectives; (4) provides overall policy direction to the scientific/medical program; (5) plans, promotes, and coordinates an ongoing program to assure equal employment opportunities; (6) provides leadership for and assessment of administrative management activities; (7) assures coordination with appropriate PHS staff offices and other relevant agencies for administrative and program matters, such as coordinating emergency response activities that involve action at the PHS level.

Office of the Assistant Administrator (HTB). (1) Develops, manages, coordinates, and evaluates all the health-related program activities of ATSDR that are mandated by CERCLA and other statutes; (2) provides overall leadership in health-related activities for hazardous waste sites and chemical releases; (3) provides overall coordination for the research programs and science policies of the Agency; (4) provides management for the ATSDR Board of Scientific Counselors; (5) provides management for the ATSDR regional operations; (6) provides overall policy formulation, budgetary and human resource management, and administrative support; (7) maintains liaison with other Federal, State, and local agencies, institutions, and organizations having Superfund responsibilities; (8) directs and coordinates activities in support of the Department's Equal Employment Opportunity program and employee development.

Dated: July 31, 1989.
Louis W. Sullivan,
Secretary.
[FR Doc. 89-19014 Filed 8-14-89; 8:45 am]
BILLING CODE 4160-70-M

Anti-Drug Abuse Act of 1988; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of May 26, 1989, under Titles II and III of the Anti-Drug Abuse Act of 1988, Public Law 100-690, from the Secretary of Health and Human Services to the Assistant Secretary for Health, I have delegated these authorities as follows:

1. To the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, with authority to redelegate, all the authorities vested in the Secretary under title II, section 2071, and title III, section 3521 of the Anti-Drug Abuse Act of 1988, Public Law 100-690, as amended hereafter. This delegation excludes the authority to promulgate regulations and to submit reports to Congress.

2. To the Director, Office of Management, without authority to redelegate, the authority under title II, section 2073 of the Anti-Drug Abuse Act of 1988, Public Law 100-690, as amended hereafter. This delegation excludes the authority to promulgate regulations and to submit reports to Congress. Both delegations of authority became effective on August 4, 1989. I have affirmed and ratified any actions taken by the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration or his subordinates which, in effect, involved the exercise of the authorities delegated prior to the effective date of the delegation.

Dated: August 4, 1989.
James O. Mason,
Assistant Secretary for Health.
[FR Doc. 89-19088 Filed 8-14-89; 8:45 am]
BILLING CODE 4160-20-M

DEPARTMENT OF THE INTERIOR

Draft Natural Resource Damage Assessment Plan and Restoration Strategy for the Exxon Valdez Oil Spill

AGENCY: Department of the Interior.
ACTION: Notice of availability of draft natural resource damage assessment plan and restoration strategy for the Exxon Valdez oil spill.

SUMMARY: This notice announces the availability on August 18, 1989, of the draft assessment plan prepared by the Trustee Council, composed of representatives of the federal and State natural resource damage trustees, in response to the Exxon Valdez oil spill of March 24, 1989. The draft plan describe the studies that will be used to investigate the extent of natural resource injuries and the corresponding damages to be sought from the potentially responsible parties, including the costs of restoring, replacing, or acquiring the equivalent of those injured resources. The State of Alaska and three federal agencies (the Departments of Agriculture and the Interior and the National Oceanic and Atmospheric Administration (NOAA) are the responsible trustees to protect and assess injuries to natural resources as provided by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Clean Water Act (CWA), and have jointly prepared this plan.

DATE: Comments must be received at the following address by September 30, 1989: Trustee Council, Box 20892, Juneau, Alaska 99702.

ADDRESS: A copy of the draft assesement plan may be obtained by contacting the Trustee Council at one of the following addresses: Trustee Council, P.O. Box 20792, Juneau, Alaska 99802 (telephone (907) 276-3550), or Trustee Council, c/o Deputy Director, U.S. Fish and Wildlife Service, Room 3340, 18th and C Streets, NW., Washington, DC 20240 (telephone (202) 343-8286).

FOR FURTHER INFORMATION CONTACT: Mary Fitzgerald-Jones or Barbara Hyder (907) 276-3550.

SUPPLEMENTARY INFORMATION: The March 24, 1989, grounding of the Tanker Exxon Valdez in Alaska's Prince William Sound caused the largest oil spill in U.S. history. Approximately 11 million gallons of North Slope crude moved through the southwestern portion of the Sound and along the coast of the Western Gulf of Alaska, causing extensive harm to natural resources.

The draft plan that is the subject of today's Notice describes the process by which that harm will be evaluated so that compensation can be sought from those potentially responsible for the spill. The State of Alaska and three federal agencies (the Departments of Agriculture and the Interior and NOAA) are the responsible trustees to protect and assess injuries to natural resources as provided by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Clean Air Act (CWA). The Environmental Protection Agency (EPA) is a consultant to the Trustee Council. The Trustees, through representatives on the Trustee Council, have prepared a draft Natural Resource Damage Assessment Plan and Restoration Strategy, and following public review, will adopt a final plan and implement it.

The studies in this draft plan have been designed to assess the extent of current and potential damages to natural resources and to develop a strategy for restoration of the affected areas. The Natural Resource Trustees note that they have approved funding of the studies constituting the Plan only until February 28, 1990. Additional studies will be funded only upon a finding that a study is required to support assessment of legally recoverable natural resource damages, is fully justified scientifically, and is consistent with the ultimate objective of restoration of the ecology of the affected area.

Because of the need to act expeditiously in the wake of the accident, the trustee agencies have commenced virtually all of the studies outlined in the draft natural resource damage assessment plan, and the studies are well underway. Field data gathering will cease in the mid to late September due to weather, and data analysis will occur until February 28, 1990.

From now through February, the Trustees will consider comments received pursuant to this Notice and will evaluate carefully the studies, and subject them to technical peer review, as well as policy and legal review, to assure that the damage assessment plan and its component studies meet the Administration's goal of expeditious restoration of the ecology of the affected area, and are necessary to support assessment of legally recoverable natural resource damages. The Trustees also will review the data collected and analyzed in the first year to determine the usefulness of the studies as conducted and the need for further studies.

The assessment process has three components: (1) Determination and quantification of injury, (2) determination of damages, and (3) development of a restoration strategy. Determination of injury involves documenting the exposure of the resources to oil from the Exxon Valdez, and identifying which resources were adversely affected by that exposure. Quantification of the injury involves measuring the amount of adverse effect upon each resource. Determination of damages involves putting a price tag on those adverse effects. The total amount of those "damages" then can be claimed as compensation for the cumulative injury sustained by all natural resources. The trustees, with the assistance of EPA, will develop and, after public review, approve and implement a restoration plan to ensure that the recovered damages will be used to restore, replace, or acquire the equivalent of the injured natural resources as appropriate.

The studies described in the draft plan fall into nine categories: (1) Coastal Habitat; (2) Air/Water; (3) Fish/Shellfish; (4) Marine Mammals; (5) Terrestrial Mammals; (6) Birds; (7) Technical Services (including chemistry, histopathology, and an integrated geographic information system, complete with mapping) to support the resource studies; (8) Economics, (9) Restoration Activities. The studies will be performed in accordance with the quality assurance/quality control plan described in appendix A of the draft plan. The studies are coordinated within each group and across groups to determine and quantify injury and to support the damage determination.

Comments are being solicited to ensure that: Important resource concerns are not omitted from the assessment; the methodologies are given an independent review and that the appropriate methodologies are chosen for the assessment; and that the costs of assessment are reasonable.

Dated: August 11, 1989.
Ralph W. Tarr,
Counselor to the Solicitor.
[FR Doc. 89-19236 Filed 8-14-89; 8:45 am]
BILLING CODE 4310-10-M

Bureau of Land Management

[CO-070-09-4410-10-2410]

Grand Junction District Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of the Interior.
ACTION: Notice of meeting of Grand Junction District Advisory Council.

SUMMARY: Notice is hereby given that a meeting of the Grand Junction District Advisory Council will be held on Thursday, September 21, 1989. The meeting will convene in the conference room at the Bureau of Land Management Office, 764 Horizon Drive, Grand Junction, Colorado at 9 a.m.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include: (1) Introductions; (2) opening remarks by District Manager; (3) Glenwood Springs Resource Area update; (4) Grand Junction Resource Area update; (5) field tour of selected project areas; and (6) public presentation.

The meeting is open to the public. Interested persons may make oral statements to the Council between 4 and 4:30 p.m. to file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506 by September 15, 1989. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the Council meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) after thirty (30) days following the meeting.

Further information on the meeting may be obtained at the above address, or by calling 303-243-6552.

Bruce Conrad,
District Manager, Grand Junction District.
[FR Doc. 89-19076 Filed 8-14-89; 8:45 am]
BILLING CODE 4310-JB-M

[AZ 020-41-5410-ZADJ; A-22822]

Receipt of Conveyance of Mineral Interest Application

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Space Biospheres Ventures has applied to amend their application for conveyance of the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 10 S., R. 14 E.,
Sec. 12, SE¼
T. 10 S., R. 15 E.,
Sec. 5, lots, 4, 8, 9;
Sec. 7, lots 1, 2, 3, 4;
Sec. 8, lot 2.
T. 8 S., R. 16 E.,
Sec. 31, lots 1, 2, 3, 4, E½, E½W½.

Containing approximately 956 acres. Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, July 28, 1989, whichever occurs first.

Dated: August 4, 1989.
Charles Frost,
Associate District Manager.
[FR Doc. 89-19074 Filed 8-14-89; 8:45 am]
BILLING CODE 4310-32-M

[CO-932-09-4214-10; C-28586]

Notice of Proposed Withdrawal; Opportunity for Public Meeting; Colorado

August 7, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Land Management, proposes to withdraw and transfer administrative jurisdiction of 73.92 acres of public land near Leadville, Colordao, to the U.S. Fish and Wildlife Service for 40 years to protect improved facilities used in conjunction with the Leadville Fish Hatchery. This notice closes the land to surface entry and mining for up to two years. The land remains open to mineral leasing.

DATE: Comments or requests for public meeting on this proposed withdrawal must be received on or before November 13, 1989.

ADDRESS: Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, (303) 236-1752.

SUPPLEMENTARY INFORMATION: On August 2, 1989, the Under Secretary of the Interior approved an application to withdraw the following described public land from settlement, sale, location or entry under the general land laws, including the mining laws, subject to valid existing rights, and transfer administrative jurisdiction to the U.S. Fish and Wildlife Service:

6th Principal Meredian

T. 9 S., R. 81 W.,
Sec. 35, lot 3;
Sec. 36, lots 17, 18, 21, 22, and 24.

The area described aggregates approximately 73.92 acres of public land in Lake County, Colorado.

The purpose of this withdrawal is to protect constructed facilities which are a part of the Leadville Fish Hatchery.

For a period of 90 days from the date of publication of this notice, persons who wish to submit comments in connection with this action or persons who desire to be heard at a meeting on this matter should submit their

comments or requests in writing to the Colorado State Director at the address shown above. If it is determined that a public meeting should be held, notice of the time and location of this meeting will be published in the **Federal Register** at least 30 days prior to the date of the meeting.

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. Temporary uses which may be allowed during this period will be those discretionary uses that do not conflict with operation of the Leadville Fish Hatchery.

John H. Lancelot,

Acting Chief, Branch of Realty Programs.

[FR Doc. 89–19075 Filed 8–14–89; 8:45 am]

BILLING CODE 4310–JB–M

Fish and Wildlife Service

Availability of a Finding of No Significant Impact on the Service's Proposal To Expand the Boundary of Back Bay National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Finding of No Significant Impact on the Proposal to Expand the Boundary of the Back Bay National Wildlife Refuge in Virginia Beach, Virginia is available for public review. This notice is made available in conformance with 40 CFR 1501.4(e)(2), in which the agency shall make the finding of No Significant Impact available for public review for 30 days before the agency makes its final determination whether to prepare an environmental impact statement.

A draft Environmental Assessment on the proposal was previously released for a six-month public review and comment period on December 6, 1988. A final Environmental Assessment was made available for a 30-day public review period beginning on June 22, 1989.

DATES: Written comments on the Finding of No Significant Impact are requested.

ADDRESS: Comments should be addressed to: Regional Director (RE), U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

FOR FURTHER INFORMATION CONTACT: Ms. Joann Raducha, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158, (617) 965–5100, extension 410.

Individuals wishing copies of this Finding of No Significant Impact for review should immediately contact the above individual.

Dated: August 9, 1989.

James Gillett,

Regional Director.

[FR Doc. 89–19046 Filed 8–14–89; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 5, 1989 Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 30, 1989.

Carol D. Shull,

Chief of Registration, National Register.

Connecticut

Fairfield County

Greenwich Avenue Historic District, Roughly bounded by Railroad, Arch, Field Point, W. Elm, Greenwich, Putnam, Mason, Havemeyer, and Bruce, Greenwich, 89001215

District of Columbia

District of Columbia

MacFeely, Gen. Robert, House, 2015 I St., NW., Washington, 89001214

Georgia

Cobb County

Whitlock Avenue Historic District, Roughly bounded by McCord St., Oakmont St., Whitlock Ave., Powder Springs Rd., Trammel St., Maxwell Ave., and Hazel St., Marietta, 89001218

Toombs County

Smith, Jim, House, Rt. 3/Toombs County Rd. 18, Lyons vicinity, 89001213

Wayne County

Carter, Leonard, House, 311 S. Wayne St., Jesup, 89001212

Illinois

Cook County

Sunderlage Farm Smokehouse, 1775 Vista Walk, Hoffman Estates, 89001210

Louisiana

St. John The Baptist Parish

Dugas House, LA 18, Edgard vicinity, 89001211

Massachusetts

Middlesex County

Adams, Charles—Woodbury Locke House (Somerville MPS), 178 Central St., Somerville, 89001240

Adams–Magoun House (Somerville MPS), 438 Broadway, Somerville, 89001239

Bacon, Clifton, House (Somerville MPS), 27 Chester St., Somerville, 89001244

Barnes, Walter S. and Melissa E., House (Somerville MPS), 140 Highland Ave., Somerville, 89001266

Brackett, S. E., House (Somerville MPS), 63 Columbus Ave., Somerville, 89001252

Broadway Winter Hill Congregational Church (Somerville MPS), 404 Broadway, Somerville, 89001238

Brooks, James H., House (Somerville MPS), 61 Columbus Ave., Somerville, 89001251

Central Library (Somerville MPS), 79 Highland Ave., Somerville, 89001274

Cliff, Z.E., House (Somerville MPS), 29 Powderhouse Terr., Somerville, 89001280

Cook, Thomas, House (Somerville MPS), 21 College Hill Rd., Somerville, 89001250

Cooper—Davenport Tavern Wing (Somerville MPS), 81 Bustis St., Somerville, 89001257

Crowell, C. C., House (Somerville MPS), 85 Benton Rd., Somerville, 89001236

Downer Rowhouses (Adams Street) (Somerville MPS), 55 Adams St., Somerville, 89001225

Downer Rowhouses (Central Street) (Somerville MPS),192—200 Central St., Somerville, 89001241

First Unitarian Church (Somerville MPS), 130 Highland Ave., Somerville, 89001284

First Universalist Church (Somerville MPS), 125 Highland St., Somerville, 89001282

Foster, Alexander, House (Somerville MPS), 45 Laurel St., Somerville, 89001270

Gaut, Samuel, House (Somerville MPS), 137 Highland Ave., Somerville, 89001285

Grandview, The (Somerville MPS), 82 Munroe St., Somerville, 89001275

Highland, The (Somerville MPS), 86 Highland St., Somerville, 89001280

Hollander Blocks (Somerville MPS), Walnut St. and Pleasant Ave., Somerville, 89001296

Hopkins, Elisha, House (Somerville MPS), 237 School St., Somerville, Somerville, 89001284

House at 10 Arlington Street (Somerville MPS), 10 Arlington St., Somerville, 89001230

House at 14 Chestnut Street (Somerville MPS), 14 Chestnut St., Somerville, 89001245

House at 16—18 Preston Road (Somerville MPS), 16–18 Preston Rd., Somerville, 89001279

House at 197 Morrison Avenue (Somerville MPS), 197 Morrison Ave., Somerville, 89001273

House at 21 Dartmouth Street (Somerville MPS), 21 Dartmouth St., Somerville, 89001255

House at 25 Clyde Street (Somerville MPS), 25 Clyde St., Somerville, 89001247

House at 29 Mt. Vernon Street (Somerville MPS), 29 Mt. Vernon St., Somerville, 89001302

House at 343 Highland Avenue (Somerville MPS), 343 Highland Ave., Somerville, 89001267

House at 35 Temple Street (Somerville MPS), 35 Temple St., Somerville, 89001288

House at 42 Vinal Avenue (Somerville MPS), 42 Vinal Ave., Somerville, 89001290

House at 49 Vinal Avenue (Somerville MPS), 49 Vinal Ave., Somerville, 89001292

House at 5 Prospect Hill (Somerville MPS), 5 Prospect Hill, Somerville, 89001281

House at 6 Kent Court (Somerville MPS), 6 Kent Ct., Somerville, 89001289

House at 72R Dane Street (Somerville MPS), 72R Dane St., Somerville, 89001254

House at 81 Pearl Street (Somerville MPS), 81 Pearl St., Somerville, 89001277

Houses at 28–36 Beacon Street (Somerville MPS), 28–36 Beacon St., Somerville, 89001232

Ireland, Samuel, House (Somerville MPS), 117 Washington, Somerville, 89001299

Keyes, Amos, House (Somerville MPS), 12 Adams St., Somerville, 89001224

Knight, R.A.-Eugene Lacount House (Somerville MPS), 34 Day St., Somerville, 89001256

Langmaid Building (Somerville MPS), 48–52 Highland Ave., Somerville, 89001259

Langumaid Terrace (Somerville MPS), 359–365 Broadway, Somerville, 89001237

Lockhardt, Charles H., House (Somerville MPS), 88 College Ave., Somerville, 89001249

Loring, George, House (Somerville MPS), 76 Highland Ave., Somerville, 89001283

Lovejoy, A.L., House (Somerville MPS), 30 Warren Ave., Somerville, 89001297

Mt. Vernon Street Historic District (Somerville MPS), 8–24 Mt. Vernon St., Somerville, 89001223

Munroe, Robert, House (Somerville MPS), 37 Walnut St., Somerville, 89001294

Mystic Water Works (Somerville MPS), Alewife Brook Pky. and Capen St., Somerville, 89001227

Nichols, John F., House (Somerville MPS), 17 Summit St., Somerville, 89001285

Miles, Louville U., House (Somerville MPS), 97 Munroe St., Somerville, 89001276

Miles, Louville, House (Somerville MPS), 45 Walnut St., Somerville, 89001295

Old Cemetery (Somerville MPS), Somerville Ave. and School St., Somerville, 89001301

Otis-Wyman House (Somerville MPS), 67 Thurston St., Somerville, 89001289

Parker-Burnett House (Somerville MPS), 48 Vinal Ave., Somerville, 89001291

Prescott, Gustavus G., House (Somerville MPS), 65–67 Perkins St., Somerville, 89001276

Russell, Philemon, House (Somerville MPS), 25 Russell St., Somerville, 89001282

Russell, Susan, House (Somerville MPS), 58 Sycamore St., Somerville, 89001286

Schuebeler, Charles, House (Somerville MPS), 384 Washington St., Somerville, 89001298

Snow, Laurel, Jr., House (Somerville MPS), 81 Benton Rd., Somerville, 89001234

Somerville High School (Somerville MPS), 93 Highland St., Somerville, 89001261

Somerville Journal Building (Somerville MPS), 8–10 Walnut St., Somerville, 89001300

Spring Hill Historic District (Somerville MPS), Roughly bounded by Summer, Central, Atherton, and Spring, Somerville, 89001222

Tufts, Peter and Oliver, House (Somerville MPS), 78 Sycamore St., Somerville, 89001287

Warren, H., House (Somerville MPS), 205 School St., Somerville, 89001283

West Somerville Branch Library (Somerville MPS), 40 College Ave., Somerville, 89001248

Westwood Road Historic District (Somerville MPS), Roughly bounded by Summer St., Benton Rd., Westwood Rd., and Central St., Somerville, 89001221

Williams, Charles, House (Somerville MPS), 108 Cross St., Somerville, 89001253

Williams, Charles, Jr., House (Somerville MPS), 1 Arlington St., Somerville, 89001228

Williams, F. G., House (Somerville MPS), 37 Albion St., Somerville, 89001226

Worthen, Daniel, House (Somerville MPS), 8 Mt. Pleasant St., Somerville, 89001272

Wright House (Somerville MPS), 54 Vinal Ave., Somerville, 89001293

Wyatt, George, House (Somerville MPS), 33 Beacon St., Somerville, 89001233

New Hampshire

Cheshire County

Gilsum Stone Arch Bridge, Surry Rd. over the Ashuelot River W of jct. NH 10, Gilsum, 89001207

Strafford County

Sawyer Woolen Mills, 1 Mill St., Dover, 89001208

New Jersey

Somerset County

Somerset Courthouse Green, Roughly E. Main St. from Grove St. to N Bridge St., Somerville, 89001216

New Mexico

Lea County

Laguna Plata Archeological District, Address Restricted, Hobbs vicinity, 89001209

New York

Tompkins County

Cornell Heights Historic District, Roughly bounded by Kline Rd., Highland Ave., Brock Ln., Triphammer Rd., Fall Creek, Stewart Ave., and Needham Pl., Ithaca, 89001205

Pennsylvania

Lancaster County

North Charlotte Street Historic District, Roughly N. Charlotte St. from Harrisburg Pike to W. James St., Lancaster, 89001206

Rhode Island

Newport County

President's House, Naval War College, Naval Education and Training Center on Coasters Harbor Island, Newport, 89001219

Tennessee

Blount County

Federal Building (Blount County MPS), 201 E. Broadway, Maryville, 89001217

The 15-day commenting period has been waived for the following property in order to assist in its preservation:

Rhode Island

Newport County

Taylor-Chase-Smythe House, Chase Ln., Naval Education and Training Center, Newport, 89001220

The following properties were printed in previous lists under the incorrect counties. The following corrections apply:

California

Los Angeles County

Van Buren Place Historic District, 2620–2657 Van Buren Pl., Los Angeles, 89001103

Georgia

Bulloch County

South Main Street Residential Historic District, (Downtown Statesboro MPS), Roughly bounded by College Ln., Southern Railway right-of-way, Walnut, Mikell, and S. Main Sts., Statesboro, 89001161

[FR Doc. 89–19115 Filed 8–14–89; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Passenger Train Operation; Florida East Coast Railway Company

[I.C.C. Order No. P–102]

The National Railroad Passenger Corporation (AMTRAK) has established through passenger train service between New York, New York and Miami, Florida, Train No.s 91 & 92, the Silver Star. These train operations require the use of tracks and other facilities of CSX Transportation, Inc. (CSXT). A portion of the CSXT tracks near Auburndale, Florida are temporarily out of service because of a derailment. An alternate route is available via the Florida East Coast Railway Company (FEC) between West Palm Beach, Florida and a connection with the CSXT at Jacksonville, Florida.

It is the opinion of the Commission that such an operation is necessary in the interest of the public and the commerce of the people; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by Section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), Florida East Coast Railway Company is directed to operate trains of the National Railroad Passenger Corporation between West Palm Beach, Florida and a connection with CSX Transportation, Inc. at Jacksonville, Florida.

(b) In executing the provisions of this order, the common carriers involved shall proceed even if no agreements or arrangements may now exist between them with reference to the compensation terms and conditions applicable to said operations. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) *Effective date.* This order shall become effective at 6:15 p.m., (e.d.t.), July 25, 1989.

(e) *Expiration date.* The provisions of this order shall expire at 6:15 p.m., (e.d.t.), July 26, 1989, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Florida East Coast Railway Company and the National Railroad Passenger Corporation, and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, July 25, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-19286 Filed 8-14-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31506]

Missouri Pacific Railroad Co.—Joint Project for Relocation of a Line of Railroad Exemption—Burlington Northern Railroad Co.

On July 10, 1989, Missouri Pacific Railroad Company (MP) filed a notice of exemption for a joint project involving the relocation of a line of railroad. This project involves the acquisition of overhead trackage rights over the line of the Burlington Northern Railroad Company (BN) between BN milepost G-428.0, at Tulsa, OK, and BN milepost E-482.35, at Henryetta, OK, a distance of approximately 58.35 miles in Okmulgee and Tulsa Counties, OK. The trackage rights were to be consummated on or after July 15, 1989.

The joint project involves the relocation of a line of railroad that does not disrupt service to shippers and the incidental abandonment of MP's existing 44-mile line, the Oklahoma Subdivision, from milepost 130.0 near Muskogee, to the end of the line at milepost 174.0 near Henryetta, in Muskogee, Okmulgee and McIntosh Counties, OK. The Commission will assume jurisdiction over the abandonment and discontinuance components of a relocation project only in cases where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in existing competitive situations. *See, generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation Over BN,* 4 I.C.C.2d 95 (1987). Under these standards, the abandonment of the involved line is not subject to the Commission's jurisdiction. The remainder of the joint relocation project, involving the acquisition of overhead trackage rights, qualifies under the class exemption procedures at 49 CFR 1180.2(d) (5) and (7).

Use of this exemption will be conditioned on appropriate labor protection. Any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transition. Pleadings must be filed with the Commission and served on:

Joseph D. Anthofer, Missouri Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 68179.

Dated: August 8, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-19288 Filed 8-14-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31522]

Rio Grande Industries, Inc., et al.—Purchase and Trackage Rights—Chicago, Missouri and Western Railway Company Between St. Louis, MO and Chicago, IL.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of standards and procedures.

SUMMARY: Pursuant to an order of the bankruptcy court exercising its authority under the Bankruptcy Code, 11 U.S.C. 1172(b), the Commission has been given 30 days to review the anticipated application in this proceeding. The Commission is establishing the procedures and schedule to be followed. The application is expected to be filed on or about August 25, 1989.

DATES: Notices of intent to participate must be filed and served on applicants by August 18, 1989. Concurrently with their filing of the application with the Commission, applicants shall serve a copy of the application upon parties which file notice of intent to participate. Written comments on the application must be filed within 10 days of the filing of the application; replies to the comments will be due 7 days thereafter. The Commission will prepare and serve a service list on all parties filing notices of intent to participate. A copy of all comments and replies shall be served on each participant on the service list.

ADDRESSES: Send notices of intent to participate and an original and 10 copies of comments to:

Office of the Secretary, Case Control Branch, ATTN: 31522, Room 1324, Interstate Commerce Commission, Washington, DC 20423

Also send copies of notices of intent to participate and any comments to:

Applicants' representatives: George W. Mayo, Jr., Hogan & Hartson, 555 Thirteenth Street, NW., Washington, DC 10004-1109

John H. Broadley, Jenner & BLock, 21 DuPont Circle, NW., Washington, DC 20036

Representative of Amtrak: T. Michael Kerrine, Deputy General Counsel, Amtrak, 60 Massachusetts Avenue, NE., Washington, DC 20002

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7336. (TDD for hearing impaired: (202) 475-1721).

SUPPLEMENTARY INFORMATION: On August 4, 1989, Rio Grande Industries and its subsidiary carriers [1] (RGI) and Daniel R. Murray, Trustee of the Chicago, Missouri & Western Railway Company (Trustee), notified the Commission of their intent to file applications under 49 U.S.C. 11341-11345 and 11103 for a newly formed subsidiary of RGI (RGI sub) to acquire: (1) a Chicago, Missouri & Western Railway Company (CMW) rail line between East St. Louis, IL and Chicago, IL (except for a portion between Godfrey, IL and East St. Louis, IL in which CMW will retain an undivided 50 percent interest); and (2) CMW trackage rights related to the line. In the notice, the parties state that they expect to file their application on or about August 25, 1989. The notice identifies the purchase as a "significant transaction" under 49 CFR 1180.2(b),[2] and anticipates filing the section 11341-45 application pursuant to those rules.

The application will be filed pursuant to Order No. 145 issued by Chief Judge John D. Schwartz of the United States Bankruptcy Court, Northern District of Illinois, Eastern Division dated August 3, 1989, *In the Matter of Chicago Missouri & Western Railway Company, an Illinois Corporation, EIN 36-342191, Proceedings for a Railroad Reorganization Under Chapter 11 of the Bankruptcy Code No. 88 B 05141.*

That order states in part:

4. The Court, pursuant to 11 U.S.C. § 1172(b), hereby directs the ICC to act on the Application of the SP for Approval of the SP Sale within 30 days from the submission of the application. If the ICC fails to act on the SP's application by that date, the application shall be deemed approved.

Section 1172(b) provides in part,

(b) If, except for the pendency of the case under this chapter, transfer of, or operation of or over, any of the debtor's rail lines by an entity other than the debtor or a successor to the debtor under the plan *would require aproval by the Commission under a law of the United States,* then a plan may not propose such a transfer of such operation unless the proponent of the plan initiates *an appropriate application* for such transfer or such operation with the Commission * * *. (Emphasis added.)

CMW is a Class II railroad. Accordingly, the decisional criteria for the section 11341-11345 aspects of the transaction are those set forth in 11344(d), which states:

(d) In a proceeding under this section which does not involve the merger or control of at least two class I railroads, as defined by the Commission, the Commission shall approve such an application unless it finds that—

(1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restgraint of trade in freight surface transporation in any region of the United States; and

(2) the anticompetitive effects of the transaction outweigh the public interest in mecting significant transportation needs.

Our assessment of competitive harm under section 11344(d) requires a showing that any adverse competitive impact be both "Likely" and "substantial." Such adverse impacts might be higher rail rates or deteriorated rail service levels as a result of a transaction.

The bankruptcy court has given the Commission only 30 of the allowable 180 days to rule on the application. If a decision is not issued within this time, the application will be deemed approved by the court. 11 U.S.C. 1172(b). Given this time constraint, we have undertaken a preliminary analysis of the transaction under the section 11344(d) criteria. Our tantative conclusions at this juncture are that the contained availability of this CMW service, including the intercity rail passenter service provided by Amtrak, is in the public interest, and there is not reason to believe the RGI parties could not provide that service. This transfer would be an end-to-end transaction and, therefore, would not be expected to have any adverse competitive impacts under 49 U.S.C. 11344(d)(1); harm to competitors is not equivalent to harm to competition. Any party seeking disapproval of the proposed transaction under section 11344(d) must submit evidence sufficient to overcome the above preliminary conclusions.

The order of the bankruptcy court requires that we render a decision in this proceeding by September 25, 1989 assuming the applicants file the application on August 25, 1989. This extermely short period of time to consider the application requires that we establish and adhere to a tight procedural schedule. Time will not be available to undertake discovery, and none will be permitted. For the same reason, no interlocutory appeals will be entertained.

However, any confidential information in the application or in any evidence submitted in this case shall be made available to any requesting party under a confidentiality agreement. A protective order in this proceeding containing confidentiality terms has been issued.

Comments on the application are due 10 days after the application is filed, and replies thereto are due 17 days after the application is filed.[3] Any person intending to file comments in this proceeding shall notify us within 3 days after publication of this notice and send a copy of that notice to the applicants' representatives. Confidentiality agreements should be entered into before the application is filed. The applicants must serve a copy of the applciation upon all parties submitting notices of intent to participate, and include confidential information to the extent confidentiality agreements have been reached.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: August 11, 1989.

By the Commission, Charman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-19289 Filed 8-14-89; 8:45 am]

BILLING CODE 7035-01-M

[1] Southern Pacific Transportation Company, the Denver and Rio Grande Western Railroad Company, and St. Louis Southwestern Railway Company.

[2] By petition for waiver or clarification dated August 8, 1989, applicants seek to have our rules at 49 CFR 1180.20 *et seq.* applied, rather than those at 1180 *et seq.* We grant this request. The 1180.20 rules are more appropriate. Accordingly, applicants correctly amended their characterization of the transaction to that of a "major" transaction, consistent with 49 CFR 1180.20. Other requests in that petition for waiver of rules at 49 CFR 1180.20 *et seq.* well be addressed in a separate decision.

[3] Applicants' proposed schedule, set forth in their August 8th petition for waiver and clarification, is not adopted.

DEPARTMENT OF JUSTICE

Lodging of Proposed Consent Decree Under the Clean Water Act

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that on July 28, 1989, a proposed Consent Decree in *United States* v. *City of Monticello, Arkansas,* Civil Action No. PB-C-89-403 (E.D. Ar.) was lodged with the Eastern District of Arkansas, Pine Bluff Division. The complaint filed by the United States alleged several violations of the Clean Water Act by the City of Monticello, Arkansas. The complaint sought to impose injunctive relief and civil penalties. The proposed Consent Decree imposes injunctive relief and civil penalties for past violations.

The Department of Justice will review for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division,

Department of Justice, Washington, DC 20530, and should refer to the *United States* v. *City of Monticello, Arkansas*, Civil Action No. PB-C-89-403 (E.D. Ar.), D.J. #90-5-1-1-2861.

The proposed Consent Decree may be examined at the Clerk's Office of the United States Court for the Eastern District of Arkansas, Pine Bluff Division, Room 3103, Post Office and U.S. Courthouse, 100 East Eight, Pine Bluff, Arkansas, 71601, and at the Region VI Office of the Environmental Protection Agency, Allied Bank Tower, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 2630, Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice at a cost of $.10 per page, for a total of $1.80.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-19108 Filed 8-14-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 12, 1989, a proposed Modified Consent Decree in *United States* v. *Moore American Graphics*, Civil Action No. 84 C 6547, was lodged with the United States District Court for the Northern District of Illinois (Eastern Division). This action, brought under Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), arose from Moore's use of materials in its paper coating processes that emit Volatile Organic Compounds ("VOC") into the ambient air.

This action was settled by a Consent Decree entered in March 1987. The Modified Decree, except as limited by its terms, would replace the March 1987 Decree. Specifically, the Modified Decree: (1) Incorporates defendant's current method for effecting compliance with the Clean Air Act (limiting VOC usage to 25 tons per year), (2) subjects defendant to stipulated penalties if that compliance method fails, (3) resolves defendant's pending motion to modify the existing Consent Decree, and (4) preserves for decision by the Court the United States of America's pending motion to collect stipulated penalties for alleged violations that occurred during time periods covered by the existing Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Moore American Graphics, Inc.*, Ref. No. 90-5-2-1-694A.

The proposed Modified Decree may be examined at the Office of the United States Attorney, Civil Division, 219 S. Dearborn Street, Chicago, Illinois 60604; at the United States Environmental Protection Agency (Region V), Office of Regional Counsel, 111 West Jackson Street, 3rd Floor, Chicago, Illinois 60604; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 9th Street and Pennsylvania Avenue NW., Washington, DC 20503. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-19109 Filed 8-14-89; 8:45 am]

BILLING CODE 4410-01-M

Durg Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 16, 1989, Applied Science Labs, Division of Alltech Associates Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4-methylenedioxyamphetamine (7400)	I
3,4-methylenedioxy-n-ethylamphetamine (7404)	I
3,4-methylenedioxymethamphetamine (7405)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Ethylamine analog of phencyclidine (7455)	I
Pyrrolidine analog of phencyclidine (7458)	I
Thiopene analog of phencyclidine (7470)	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
cis-4-methylaminorex	I
N-ethylamphetamine (1475)	I
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100)	II
Methamphetamine, its salts, isomers, and salts of its isomers (1105)	II
1-phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-piperidinocyclohexanecarbonitrile (PCC) (8603)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Oxymorphone (9652)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than September 14, 1989.

Dated: August 3, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement, Drug Enforcement Administration.

[FR Doc. 89-19113 Filed 8-14-89; 8:45 am]

BILLING CODE 4410-09-M

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 12, 1989, Mallinckrodt, Specialty Chemicals Company, Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Raw opium (9600)	II
Opium poppy (9650)	II
Poppy straw concentrate (CPS) (9670)	II
Coca leaves (9040)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: July 26, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-19111 Filed 8-14-89; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances; Registration

By Notice dated March 30, 1989, and published in the Federal Register on April 12, 1989, (54 FR 14692), Minn-Dak Growers Limited, Highway 81 North, P.O. Box 1276, Grand Rapids, North Dakota 58206-1276, made application to the Drug Enforcement Administration to be registered as an importer of marihuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as an importer of the basic class of controlled substance listed above is granted.

Dated: July 26, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-19110 Filed 8-14-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-46]

Sunshine Pharmacy; Revocation of Registration

On March 31, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Sunshine Pharmacy (Respondent), 6301 Torresdale, Avenue, Philadelphia, Pennsylvania, proposing to revoke its DEA Certificate of Registration, AS3023734. The Order to Show Cause alleged that the Pharmacy's continued registration was inconsistent with the public interest based upon an audit shortage of over 3,000 Dilaudid tablets in a 16-month period, the pharmacy's filling of at least 150 forged prescriptions for Dilaudid tablets, and the violative history of Arnold Benjamin, current owner of Sunshine Pharmacy.

Respondent, through counsel, requested a hearing by letter dated April 19, 1988. The matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held in Philadelphia, Pennsylvania on September 20, 1988. On March 24, 1989, the Administrative Law Judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. On April 13, 1989, counsel for the Government filed exceptions to the Administrative Law Judge's opinion and recommended ruling. On May 8, 1989, the Administrative Law Judge transmitted the record of these proceedings, including the Government's exceptions, to the Administrator. The Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

Prior to the hearing in this matter, Respondent filed a memorandum with the Administrative Law Judge objecting to the use of facts in this proceeding which occurred prior to October 1984. Respondent's argument was predicated upon the fact that the public interest grounds for an Order to Show Cause were an amendment to the Controlled Substances Act in October 1984. The Administrative Law Judge found that the consideration of conduct which occurred prior to the statute's 1984 amendment in determining the public interest does not constitute an impermissible *ex post facto* application of the law. The Administrator adopts the Administrative Law Judge's recommended holding regarding this matter.

The Administrator finds that in 1976, Arnold Benjamin was one of two co-owners of Key Pharmacy in Philadelphia. An investigation and audit of Schedule II controlled substances at Key Pharmacy conducted by DEA Investigators in October 1976, revealed the pharmacy's failure to account for 134 DEA order forms and, after verification with suppliers, shortages of several Schedule II controlled substances were noted. As a co-owner of the pharmacy Mr. Benjamin was responsible for these violations. A subsequent investigation and audit at Key Pharmacy in 1979 revealed continuing recordkeeping problems. This audit, however, was conducted after the pharmacy operation had closed, creditors had foreclosed, and Mr. Benjamin was no longer associated with the pharmacy. It does reveal, however, that the pharmacy had not corrected the previously noted violations.

The Administrator further finds that Mr. Benjamin has had an ownership interest in Respondent pharmacy since

BEST COPY AVAILABLE

January 1985 and, in December 1986, became its sole owner. He is also a pharmacist. In August of 1986, DEA began an investigation of the pharmacy because of its unusually large purchases of amphetamines. An audit of selected Schedule II controlled substances for the period April 1985 through August 13, 1986, indicated a shortage of over 3,000 tablets of Dilaudid, a Schedule II narcotic controlled substance. Included in the audit figures was a theft of Dilaudid. Although Mr. Benjamin reported the theft as 100 Dilaudid 4 mg. tablets, the DEA Investigator credited the loss as 500 tablets, the amount Mr. Benjamin told them was actually taken. The over 3,000 tablet shortage was 20% of the Dilaudid for which the pharmacy was accountable.

During the August 1986 investigation, DEA Investigators removed a number of Dilaudid prescriptions from the pharmacy for verification. Eleven physicians provided an Investigator with statements that prescriptions for Dilaudid written in their names were not, in fact, written or authorized by them. There were 152 of these forged Dilaudid prescriptions accounting for over 10,000 dosage units of Dilaudid. Sixty of these forged prescriptions were written in the name of one individual.

Mr. Benjamin testified at the hearing that he routinely verified prescriptions and two physicians also told an Investigator that they received numerous requests from Respondent for verifications. Mr. Benjamin did not have any explanation for why, if he routinely verified prescriptions, the files of the pharmacy contained 152 forged prescriptions for the highly abused Schedule II narcotic drug, Dilaudid. Nor did Respondent present any evidence to suggest that the 152 prescriptions were not forged or that they were verified by the pharmacy with the physicians whose names appeared on them.

The Administrative Law Judge concluded that based upon the record as a whole, the revocation of Respondent's DEA registration would be unjust and unwarranted. The Administrator does not agree with the opinion and recommended decision of the Administrative Law Judge.

The Administrator concludes that Respondent pharmacy was responsible for the diversion of more than 13,000 dosage units of Dilaudid in a 16-month period. This was 85 percent of the Dilaudid for which the pharmacy was accountable. Dilaudid is a highly abused drug which can be sold for a tremendous profit on the street. Mr. Benjamin was aware of this fact. The filling of 152 forged Dilaudid prescriptions indicates a pattern and a repeated course of conduct rather than a few isolated instances. A pharmacist clearly has a corresponding liability when filling prescriptions for controlled substances. This responsibility is clearly stated in the DEA regulations at 21 CFR 1306.04. Mr. Benjamin and the pharmacists employed by him at Respondent pharmacy should have questioned the number and frequency of Dilaudid prescriptions, and failed to exercise their professional responsibility by not doing so.

The continued registration of Respondent pharmacy is inconsistent with the public interest. The Administrator has considered the factors listed in 21 U.S.C. 823(f) which are to be considered in determining the public interest and finds that Respondent's past experience in dispensing controlled substances and its failure to comply with Federal law relating to the handling of controlled substances by permitting the diversion of substantial quantities of a highly abused narcotic drug, require the revocation of its DEA registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AS3023734, previously issued to Sunshine Pharmacy, be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of the registration, be, and they hereby are, denied. This order is effective September 14, 1989.

Dated: August 4, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89-19112 Filed 8-14-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Announcement of Proposed Noncompetitive Grant Awards

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of intent to award a noncompetitive grant.

SUMMARY: The Employment and Training Administration (ETA) announces its intent to award a grant on a noncompetitive basis to National Youth Employment Coalition for the provision of Specialized Services under the authority of the Job Training Partnership Act (JTPA).

DATES: It is anticipated that this grant agreement will be executed by August 31, 1989, and will be funded for one year. Submit comments by 4:45 p.m. (Eastern Time), on August 30, 1989.

ADDRESS: Submit comments regarding the proposed assistance award to: U.S. Department of Labor, Employment and Training Administration, Room C-4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Charlotte Adams; Reference FR-DAA-101.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) announces its intent to award a noncompetitive grant to the National Youth Employment Coalition. The proposed grantee will promote development of coalitions at the local level among training and employment service providers and private sector employers, to identify and test more effective cooperative approaches and strategies for enhancing long-term training and job opportunities for youth. Funds for this activity are authorized by the Job Training Partnership Act (JTPA), as amended, Title IV—Federally Administered Programs. The proposed funding is approximately $98,230 and the project will be completed in one year.

Signed at Washington, DC, on August 7, 1989.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 89-19096 Filed 8-14-89; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act; Announcement of Proposed Noncompetitive Grant Awards

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of intent to award noncompetitive grants.

SUMMARY: The Employment and Training Administration [ETA] announces its intent to award a grant on a noncompetitive basis to Brandeis University for the provision of specialized job training and placement services under the authority of the Job Training Partnership Act (JTPA).

DATES: It is anticipated that this grant agreement will be executed by August 28, 1989, and will be funded for one year. Submit comments by 4:45 p.m. (Eastern Time), on August 30, 1989.

ADDRESS: Submit comments regarding the proposed assistance award to: U.S. Department of Labor, Employment and Training Administration, Room C-4305, 200 Constitution Avenue, N.W., Washington, DC 20210, Attention: Betty Koonce; Reference FR-DAA-100.

SUPPLEMENTAL INFORMATION: The Employment and Training Administration (ETA) announces its intent to award a noncompetitive grant to Brandeis University. The proposed grantee will help the JTPA system to improve and expand services for at-risk youth by providing local and state practitioners with training, technical assistance and information on exemplary systems and practices in youth employment and education. Particular emphasis will be on the implementation of key elements of youth programming such as assessment and competency systems. Funds for this activity are authorized by the Job Training Partnership Act (JTPA), as amended, Title IV—Federally Administered Programs. The proposed funding is approximately $311,210 and the project will be completed in one year.

Signed at Washington, DC, on August 7, 1989.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 89-19097 Filed 8-14-89; 8:45 am]

BILLING CODE 4510-30-M

Trade Adjustment Assistance for Workers; Financial Process for the Revised Trade Adjustment Assistance for Workers Program

AGENCY: Employment and Training Administration.

ACTION: Final publication of Change 1 to general administration letter no. 4-89.

SUMMARY: The Department of Labor publishes in final form, Change 1 to General Administration Letter (GAL) No. 4-89, to inform States and cooperating State agencies of additional financial policies and procedures for the revised Trade Adjustment Assistance Program, except Trade Readjustment Allowances.

FOR FURTHER INFORMATION CONTACT: Jim Giuliano, Employment and Traning Administration, Office of the Comptroller, Room C-5317, 200 Constitution Ave. NW., Washington, DC 20210, (202) 535-8767; this is not a toll free telephone number.

SUPPLEMENTARY INFORMATION: On August 23, 1988 the President signed into law the "Omnibus Trade and Competitiveness Act of 1988." Part 3—Trade Adjustment Assistance, of Subtitle D of Title I of the Act concerns trade adjustment assistance for workers and firms.

The Department of Labor has issued operating instructions to the States and State agencies concerning trade adjustment assistance for workers. General Administration Letter (GAL) No.s 7-88, Change 1 and 2 to 7-88, and 4-89, Traning and Employment Information Notice (TEIN) Nos. 6-88, Change 1 to 6-88, and 17-88, and a proposed rule amending the regulations at 20 CFR Part 617 have been published in the Federal Register.

The purpose of Change 1 to GAL No. 4-89 published with this notice is to transmit additional national financial policies and procedures with which these trade adjustment assistance activities will be administered. The policies and procedures set forth in this Change 1 supersede the policies and procedures in GAL No. 4-89 to the extent that the prior policies and procedures are not consistent with those in this Change 1.

Discussion of Comments

No comments were received on Change 1 to GAL No. 4-89 during the 30-day comment period which ended on July 20, 1989.

For this reason, Change 1 to GAL No. 4-89 is published in final form below, together with Change 1 to Training and Employment Information Notice No. 17-88.

Signed at Washington, DC on August 9, 1989.

Roberts T. Jones,

Assistant Secretary of Labor.

BILLING CODE 4510-30-M

[FR Doc. 89-19101 Filed 8-14-89; 8:45 am]

U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION TAA
	CORRESPONDENCE SYMBOL TSCS
	DATE June 15, 1989

DIRECTIVE : GENERAL ADMINISTRATION LETTER NO. 4-89, CHANGE 1

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : DONALD J. KULICK
Administrator
Office of Regional Management

SUBJECT : Financial Process for the Revised Trade Adjustment Assistance (TAA) Program

1. Purpose. To clarify ETA policy on TAA administrative costs, explain the recently-financed TAA Coordinator positions and to outline the process for assessing State needs for additional TAA administrative funds.

2. References. Training and Information Notice No. 17-88 and General Administration Letter No. 4-89, dated January 9, 1989, and 54 FR 11580-11586, dated March 21 1989.

3. Background. The recent revisions to the TAA program, required by the Omnibus Trade and Competitiveness Act of 1988, provide for a new emphasis on TAA training. The 1988 amendments made training an entitlement and participation in training a requirement in order to receive trade readjustment allowances (TRA), unless waived. Remedial education was added as approvable training under Section 236 of the Act and States are not only allowed but strongly encouraged to obtain free training and to combine TAA funds with those from other Federal, State or private sources. Use of non-ETA funds for training along with delivery of training from non-TAA sources should necessarily be the result of the development and/or strengthening of existing linkages with Wagner-Peyser, JTPA Title III/EDWAA or other sources.

At training sessions on the 1988 amendments held earlier this year, DOL indicated that it would consider changes to its method of distributing administrative funds if experience warranted. On the basis of this experience ETA has recognized that recent legislative changes may warrant a review of the adequacy of existing resources and possible need for additional administrative funds.

RESCISSIONS	EXPIRATION DATE September 30, 1990

DISTRIBUTION

4. Policy and Procedures. (Note: The policies and procedures set forth in this Change 1 supersede the policies and procedures in GAL No. 4-89 to the extent that the prior policies and procedures are not consistent with those in this Change 1.)

In response to the administrative changes referenced above, the following measures are being taken.

a. Clarification of TAA Administrative Cost Charging. To ensure full and proper use of all funds available for TAA administrative activities, a clarification of administrative activity costs and their chargeable fund sources is provided below.

1) Costs Charged to JTPA, Wagner-Peyser and Other Program Funds. The costs of the basic employment services of initial intake, testing, counseling, assessment and placement should be charged to the Employment Service Allotment-to-States, Job Training Partnership Act allotments or other available funds. Section 235 of the Trade Act indicates that these services should be "...provided for under any other Federal law... through agreements with the States". The FY 1989 DOL Appropriation Act, which provides the resources available for Trade Act programs, does not authorize either State UI Contingency or Trade Act training funds to be used for these costs.

2) Costs Charged to UI Contingency. The costs of the TAA Training Coordinator position, processing TRA claims (initial, continued, nonmonetary, appeals and support), TRA benefit payment control, notification to workers of TAA benefits eligibility, and newspaper notices should be financed with UI Contingency funds. These types of services are referenced in Sections 225, 231-234, 243 and 244 of the Trade Act.

3) Costs Charged to Training, Job Search and Relocation Allowances Administration. The costs of developing training plans, contracts and agreements, referral to training, application for and payment administration of Job Search and Relocation allowances, the administration and control of TAA training and allowance payments, and the issuing, reviewing and revoking of training waivers should be charged to the TAA administration funds. These services are referenced in Sections 231 and 236-238 of the Trade Act.

4) Costs Charged to JTPA Title III/EDWAA. The costs of administration and training JTPA-eligible TAA claimants enrolled in JTPA training should be

charged to JTPA Title III/EDWAA.

b. TAA Coordinator. Each State has received additional FY 1989 UI Contingency funds to support a TAA Coordinator position. This position is being provided to strengthen each State's overall administration of TAA training and other adjustment services, to improve program coordination with Employment Service (ES), Unemployment Insurance (UI) and JTPA Title III/EDWAA programs, to ensure the ability to maintain a basic TAA administrative capability and to help defray costs of additional services provided to TAA eligibles.

c. Supplemental Budget Request (SBR) for Additional Administrative Funds. In addition to the UI Contingency-funded Coordinator position described above, additional administrative funds may be made available to States where individual circumstances warrant. While the 15% limit on administrative expenditures is being retained, DOL may provide up to an additional 5% in administrative funds in those instances where need can be completely documented. An FY 1989 supplemental request for an additional $34.6 million of TAA funds is now pending before Congress. The availability of additional TAA administrative funds is contingent upon enactment of this supplemental appropriation and State need documented through the procedures listed below.

Admin. SBRs for TAA program funds issued in FY 1989 or in future quarterly advance or supplemental funding procedures may be submitted. Should sufficient funds be available to permit quarterly advances, administrative funds equal to 15% of the program funds will be routinely provided, as previously announced in GAL 4-89. If additional administrative funds are required, Admin. SBRs may be submitted for up to an additional 5%. Supplemental fund requests submitted for additional program funding (with 15% administrative funds issued simultaneously) may be accompanied by Admin. SBRs for up to an additional 5% in administrative funds. If approved, TAA administrative funding will equal up to 20% of the program funds issued.

Admin. SBRs for up to an additional 5% in administrative funds will be considered for the funding of administrative shortfall of FY 1989 TAA financed activity based upon the exhaustion of all of the 15% TAA administrative funds received with 1989 program funds. These Admin. SBRs should include information which documents that: 1) all FY 1989 TAA administrative funds are being properly expended and assigned per the cost charging criteria stated above, 2) the TAA Coordinator position and inter-program linkages have been developed and utilized to the fullest extent possible, and 3) if spending continues at the present rate, all FY 1989 TAA administrative funds received will be expended before the end of the year.

For all Admin. SBRs, the draft "Supplemental Budget Request (SBR) for Additional Administrative Funds", attached to this General Administration Letter must be completed to document the need for additional TAA administrative funds and should be prepared with the most current information available. (OMB approval of this draft Admin. SBR form is expected by September 1, 1989.) Decisions to fund these Admin. SBRs will be made to the extent that funds are available, based on the ETA Regional Office's recommendations and based on documented need for additional funds in the Admin. SBR. Documentation of need should be contained in "Part III - Narrative and Other Information", questions number 4 and 6, in the attached Admin. SBR, and should include an explanation, with supporting documentation, of the following items:

- o that administrative costs have been appropriately charged as defined above,
- o that the TAA Coordinator position and inter-program linkages have been fully developed and utilized and,
- o that, even though compliance with the preceeding two requirements is affirmed, the level of the revised TAA program still necessitates additional financing in order to properly administer the required activities.

5. State Action. All Admin. SBRs should be submitted to the appropriate Regional Office: 1) as soon as possible following the receipt of funds from the related quarterly advance, 2) along with the related supplemental requests for TAA program funds, and 3) as soon as possible in the case of Admin. SBRs requesting FY 1989 administrative shortfall funding.

Also, States should ensure that the designated TAA program operating agency is promptly informed of the policy guidance contained in this Change 1 to General Administration Letter No. 4-89.

6. Inquiries. State questions should be directed to the appropriate Regional Office.

7. Attachment.
Draft "Supplemental Budget Request (SBR) for Additional Administrative Funds" (to be transmitted under separate cover)

U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION TAA
	CORRESPONDENCE SYMBOL TSCS
	DATE June 15, 1989

TRAINING AND EMPLOYMENT INFORMATION NOTICE NO. 17-88, Change 1

TO : ALL STATE JTPA LIAISONS
STATE WAGNER-PEYSER ADMINISTERING AGENCIES
WORKER ADJUSTMENT LIAISONS

FROM : ROBERTS T. JONES
Assistant Secretary of Labor

SUBJECT : Financial Policy for the Revised Trade Adjustment Assistance (TAA) Program

1. Purpose. To announce Change 1 to General Administration Letter No. 4-89, which clarifies ETA policy on TAA administrative costs, explains the recently-financed TAA Coordinator positions and outlines the process for assessing State needs for additional TAA administrative funds.

2. Reference. Training and Information Notice No. 17-88 and General Administration Letter No. 4-89, dated January 9, 1989, and 54 FR 11580-11586, dated March 21, 1989.

3. Background. As a result of the Omnibus Trade and Competitiveness Act (OTCA) of 1988 amending the Trade Act and the issuance of other regulatory changes, several revisions to the financial operation of the TAA program were required. Now that the revised program has operated for a number of months, States have accumulated experience on the resultant changes in administrative workload. In many cases, those changes require administrative policy and resources in addition to those which were initially provided.

The measures taken to provide needed relief for these workload changes are contained in the attached Change 1 to General Administration Letter No. 4-89.

4. Action. The attached information should be provided to appropriate staff as soon as possible.

5. Inquiries. Inquiries should be directed to the appropriate Regional Office.

6. Attachment. Change 1 to General Administration Letter No. 4-89.

RESCISSIONS	EXPIRATION DATE Continuing

DISTRIBUTION

BILLING CODE 4510-30-C

Mine Safety and Health Administration

[Docket No. M-89-108-C]

East Franklin Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

East Franklin Coal Company, 245 2nd Street, Joliett-Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Middle Split Slope (I.D. No. 36-07896) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity is required to be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantitites of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Requiring extremely high velocities in small cross-sectional airways and manways in friable anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangersous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

(a) The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

(b) The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

(c) The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 14, 1989. Copies of the petition are available for inspection at that address.

Dated: August 7, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-19092 Filed 8-14-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-106-C]

Westerman Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Westerman Coal Company, Inc., P.O. Box 134, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Sue No. 2 Mine (I.D. No. 15-16614) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. No methane has been detected in the mine.

3. The three-wheel tractors are permissible DC-powered machines, without hydraulics. Approximately 30-40% of the coal is hand loaded into a drag-type bucket. Approximately 20% of the time that the tractor is in use, it is used as a mantrip and supply vehicle.

4. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors. In further support of this request, petitioner states that:

(a) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continuous monitor;

(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modifications would be made in addition to the manufacturer's specifications.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 14, 1989. Copies of the petition are available for inspection at that address.

Dated: August 7, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-19093 Filed 8-14-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-8-M]

U.S. Energy/Crested Corp.; Petition for Modification of Application of Mandatory Safety Standard

U.S. Energy/Crested Corp., 877 North 8th West, Riverton, Wyoming 82501 has filed a petition to modify the application of 30 CFR 57.19023 (examinations) to its Sheep Mountain Operations Mine (I.D. No. 48-00989) located in Fremont County, Wyoming. The petition is filed

under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that at least once every 14 calendar days, each wire rope in service be visually examined along its entire active length for visual structural damage, corrosion, and improper lubrication or dressing.

2. As an alternate method, petitioner proposes a bimonthly check of the hoist ropes in lieu of every 14 calendar days.

3. In support of this request, petitioner states that—

(a) The mine is currently on a non-operating, stand-by status;

(b) The mine would operate two shafts during this period of non-production for water pump checks and repairs;

(c) The mine would operate one shift per day, five days per week with pump checks estimated at two times per week; and

(d) The reduced usage and almost no load situation on the hoist ropes would guarantee the safety of the employees.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 14, 1989. Copies of the petition are available for inspection at that address.

Dated: August 7, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-19094 Filed 8-14-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-109-C]

U.S. Steel Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

U.S. Steel Mining Company, Inc., 600 Grant Street, Room 2705, Pittsburgh, Pennsylvania 15230 has filed a petition to modify the application of 30 CFR 75.1107 to its Maple Creek Mine (I.D. No. 36-00970) located in Washington County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that fire suppression devices meeting specifications prescribed by the Secretary be installed on unattended underground equipment and suitable fire-resistant hydraulic fluids approved by the Secretary be used in the hydraulic systems of such equipment.

2. A Butterly underground coal storage bunker is located at the junction of the two longwall section belts with the main belt. The purpose of the bunker is to compensate for surges of coal coming off the section belts. The bunker is trammed hydraulically by a power pack consisting of a motor, pump, and associated controls; the bunker is fully automated. The hydraulic pump is a variable volume, high speed pistion pump and contains hydraulic fluid. The available approved fire-resistant hydraulic fluids are not compatible with the system, resulting in poor performance, excessive heat generation, and premature failure of the system.

3. As an alternate method, petitioner proposes to:

(a) Continue to maintain an automatic fire suppression system in accordance with the standard;

(b) Install a carbon monoxide sensor directly above the power pack. The sensor is connected to the mine-wide carbon monoxide monitoring system approved by MSHA;

(c) Install a closed circuit television camera in the bunker area to provide continuous monitoring of the bunker area by a dispatcher located at the monitoring control center on the surface; and

(d) In the event of monitoring system failure, the bunker area would be manned by an attendant until the system is restored.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 14, 1989. Copies of the petition are available for inspection at that address.

Dated: August 7, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-19095 Filed 8-14-89; 8:45 am]

BILLING CODE 4510-43-M

LEGAL SERVICES CORPORATION

Grant Awards for Expansion and Development of Law School Civil Clinical Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant awards.

SUMMARY: The Legal Services Corporation (LSC) hereby announces its intention to award grants to eighteen (18) law school clinical programs to assist LSC-eligible clients with their civil legal cases. Pursuant to the Corporation's announcement of funding availability in Volume 54, No. 90, pages 20454 and 20455 of the **Federal Register** of May 11, 1989, a total of $1,005,766 will be awarded to the following schools:

Name of school	Amount
1. Syracuse University	$61,000
2. SUNY at Buffalo Law School	53,320
3. North Carolina Central	46,500
4. Loyola of New Orleans	56,641
5. Tulane University	74,676
6. Northwestern University	74,735
7. Villanova University	42,500
8. Southern Illinois University	55,956
9. University of Michigan	62,000
10. St. Louis University	75,000
11. Texas Southern University	35,850
12. University of North Dakota	38,569
13. University of Nebraska	26,719
14. University of Iowa	71,606
15. University of Wisconsin	70,956
16. University of California/Berkeley	50,000
17. Thomas J. Colley (Sixty-Plus)	63,438
18. Valparaiso University	46,300
Total	$1,005,766

These one-year grants are awarded pursuant to authority conferred by sections 1006(a)(1)(B) and 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued pursuant to section 1007(f) of this Act, with a request for comments and recommendations within a period of thirty (30) days from date of publication of this notice. Grant awards will not become effective and grant funds will not be distributed prior to expiration of this thirty-day period.

DATE: All comments and recommendations must be received by the Office of Field Services of the Legal Services Corporation on or before September 15, 1989.

FOR FURTHER INFORMATION CONTACT: Charles T. Moses, III, Associate Director, or Victoria O'Brien, Counsel to the Director, Legal Services Corporation, Office of Field Services, 400 Virginia Avenue SW. Washington, DC 20024-2751 (202) 863-1837.

SUPPLEMENTARY INFORMATION: These grants are issued to support the law schools' provision of legal services to eligible clients through clinical programs. By funding the development and expansion of law school clinics, the Corporation educates law students to the legal problems of poor persons. These clinics encourage future lawyers to become interested in the provision of legal services to poor persons, acting either as legal aid attorneys or through *pro bono* or reduced fee efforts as members of the private bar.

Dated: August 9, 1989.

Ellen J. Smead,

Acting Director, Office of Field Services.

[FR Doc. 89-18951 Filed 8-14-89; 8:45 am]

BILLING CODE 7050-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030-30666]

Environmental Assessment and Finding of No Significant Impact Related to Amendment of Materials License 37-20828-01;

AGENCY: Nuclear Regulatory Commission.

ACTION: NRC is considering an amendment to NRC License No. 37-20828-01, issued to ALARON Regional Service Facility, Wampum, Pennsylvania, to accept dry, active waste (DAW) for compaction operations.

FOR FURTHER INFORMATION CONTACT: Cynthia Jones, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-0613.

ENVIRONMENTAL ASSESSMENT:

Identification of the Proposed Action

ALARON, under its current license issued by the NRC, is permitted to receive radioactively contaminated metals in the form of equipment, components, structural steel, and other similar items for the purpose of decontamination for unrestricted release. ALARON is currently licensed to use a drum compactor at its warehouse, to package waste resulting from currently licensed decontamination activities and to prepare for shipment to a licensed radioactive waste disposal site. On February 27, 1987, ALARON applied for an amendment to this license, to perform low-level radioactive waste (LLWS) brokerage operations: to receive, to open, to temporarily store and to compact LLW packaged in drums or other Department of Transportation (DOT)-approved containers from various licensed users of radioactive byproduct material.

The amendment would consist of changes to the license and would authorize the facility to receive DAW as a mixture of compactible trash (i.e., plastics, paper, cardboard, etc.) primarily from the nuclear power plant industry.

The Need for the Proposed Action

In recent years, there has been much uncertainty about the availability of the three existing LLW disposal sites, as States proceed with plans to develop regional LLW disposal sites in accordance with the Low-Level Radioactive Waste Policy Act of 1980 (Public Law 96-573; 42 U.S.C. 2021b, *et seq.*). This uncertainty has sensitized generators of radioactive wastes to the need to minimize the amount of LLW held awaiting disposal. ALARON has realized an increased demand for a LLW brokerage service. Thus, ALARON has requested the capability to accept and repackage LLW from other licensees that generated radioactive waste. This would allow ALARON to decrease the overall LLW volume of radioactive materials requiring burial in disposal sites.

Environmental Impacts of the Proposed Action

The Environmental Assessment concluded that the environmental impacts of operating the ALARON waste brokerage facility for acceptance and compaction of DAW are expected to be negligible. Operation of the waste reduction, decontamination and compactions activities are consistent with local land-use patterns. ALARON is already located within an existing industrial development complex, and there are no anticipated construction activities that would disrupt the flow of traffic.

The environmental impacts from potential radiological releases from compactor operations were assessed for a mix of 75 percent reactor wastes and 25 percent industrial/institutional wastes. Calculation of offsite radiological doses and air concentrations are based on extended compactor operations of 20 hours a day, 5 days per week, for 50 weeks per year. Process effluents were assessed based on: 0.01 percent of a drum's activity released to the stack exhaust system; 99.9 percent particulate removal efficiency (decontamination factor (DF)=1000) for the high efficiency particulate air (HEPA) filter in the exhaust system; and no removal of tritium or carbon-14 by the exhaust filter system. Atmospheric dispersion evaluations were based on meterological data in the "Final Safety Analysis Report, Beaver Valley Power Station Unit-2, Shippingport Borough, Pennsylvania (Docket No. 050-00412)" (approximately 20 miles southwest of ALARON).

For all nuclides, the plant-site boundary nuclide concentrations resulting from normal operations were calculated to be far below the maximum permissible concentrations (MPCs) listed in appendix B, 10 CFR part 20. The estimated whole body dose for the maximally exposed individual (due to compactor operations) for all pathways was calculated to be less than 2E-06 mrem per year. This does is a small fraction of the dose limit (500 mrem/yr) for unrestricted areas specified in 10 CFR 20.105(a) of the Commission's regulations, and is also a small fraction of the limits for release specified by the Environmental Protection Agency (EPA) in its regulation, 10 CFR part 61, subpart I (25 mrem/yr for whole body and 75 mrem/yr for body organs).

Radiation doses to workers were assessed. In operating the compactor, a conservative estimate for the increase in personnel exposure (assuming current staffing) is an additional 10 mrem per month. The estimated annual exposure for the workers would be 27 person-rem. The maximally exposed person from normal transportation activities would receive an annual exposure of 1.4E-04 mrem per year. The estimated total effective dose equivalent rate for various sources of natural background radiation for this area is approximately 300 millirem per year (National Council on Radiation Protection and Measurements (NCRP) Report 94).

For the purposes of environmental analysis, the impact from a postulated accidental fire in stored waste was assessed. This accident was assessed because it has the greatest potential for release and would bound a spectrum of potential accidents that could occur. For this postulated accident, the total radioactive inventory is not involved, and only 0.3 percent (or about one trailer load) is assumed to be ignited and to release radioactive effluent. This

fraction was chosen because a sequence of events that would result in the complete combustion of all the wastes is unlikely. The dose from an accidental fire to the maximally exposed individual is estimated to be about 0.45 mrem for a fire. Such a dose does not exceed EPA Protective Action Guides (PAGs) of one rem whole-body dose and five rem thyroid dose. Although the dose estimates would not necessitate offsite protective actions, ALARON has implemented fire protection and emergency-preparedness plans.

The potential for radiological exposure to transport workers and to members of the general public in the United States due to routine transportation was assessed in NUREG-0170. Based on the total volume of waste received each month, an estimated one shipment per month would be required to ship waste to and from ALARON's warehouse. The dose to a maximally exposed individual from the passage of a truck traveling at a speed of 25 miles per hour once a month was calculated at a distance of 25 and 100 meters. No credit was taken for shielding by structures. Under these conditions, the maximum individual dose due to transportation would be about 3.4E-05 mrem per year.

Conclusions

Based on the foregoing assessment, the NRC staff concludes that the environmental effects of normal compaction operations for the increased volumes of DAW are expected to be extremely small. For all radionuclides, the maximum unrestricted area concentrations are calculated to be well below the maximum permissible concentrations specified in 10 CFR 20.106 and 10 CFR part 20, appendix B.

Alternatives to the Proposed Action

The principal alternative to the proposed action is that of no action. Since the proposed action will not result in any significant impact, choosing the aforementioned alternative over the proposed action is not justified.

Alternative Use of Resources

Because the proposed action does not involve any changes in the scope or type of operation presently authorized, there are no alternative uses of resources other than those previously assessed.

Agencies and Persons Contacted

No persons or agencies outside the Pennsylvania Department of Environmental Resources or the NRC were contacted in connection with the preparation of this Environmental Assessment.

Finding of No Significant Impact

NRC's Office of Nuclear Material Safety and Safeguards has prepared an Environmental Assessment dated July 31, 1989, related to the amendment of Materials License No. 37-20826-01, entitled "Environmental Assessment for ALARON Corporation." On the basis of this assessment, NRC has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

For further details of this action, see the application for license amendment dated February 27, 1987, and other related correspondence. These documents (in Docket Number 030-30686), the Final Environmental Assessment, and the supporting, but not yet published, NUREG report may be examined or copied for a fee in the Commission's Region I Public Document Room, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this amendment may file a rquest for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the Federal Register; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the applicant [ALARON Corporation, Point Industrial Park, RD #2, Route #18, New Beaver Boro., Wampum, PA 16157]; and must comply with the requirements set forth in the Commission's regulation, 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Material Licensing Proceedings." subpart L of 10 CFR part 2, which became effective March 30, 1989, was published in the Federal Register on February 28, 1989.

Dated at Rockville, Maryland, this 10th day of August, 1989.

For the Nuclear Regulatory Commission.

John E. Glenn,

Chief, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 89-19081, Filed 8-14-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-30955]

Environmental Assessment and Finding of No Significant Impact Related to Amendment of Materials License No. 29-13141-05; Department of Transportation, Federal Aviation Administration

AGENCY: Nuclear Regulatory Commission.

ACTION: NRC is considering an amendment to NRC License No. 29-13141-05, issued to the Federal Aviation Administration (FAA), to use thermal neutron activation explosive detection systems (EDS) to screen airline baggage for explosives in airports in the U.S.

FOR FURTHER INFORMATION CONTACT: Cynthia Jones, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-0613.

Environmental Assessment

Background

Since the establishment of the Government-Industry Steering Committee on Airline Sabotage in 1962, FAA has been involved with developing explosive detection systems. A major conclusion of this group was that an intensive research and development program would need to be established to address the problem of explosives detection, and that FAA would be responsible for such an effort. Due to a rash of hijacking incidents during the early 1970's, the U.S. Congress recognized the need to increase overall security of the U.S. airport system. As a result, FAA sponsored several programs to investigate and develop the possibility of using thermal neutron technology in an EDS to detect plastic explosives in airline baggage. As a result of these efforts, a contract was awarded in 1985 to Science Applications International Corporation (SAIC) of Santa Clara, California, to develop and operate these systems as a contractor to FAA. Since that time, three thermal neutron activation (TNA) devices have been developed.

The TNA devices use thermal neutrons from californium-252 to activate nitrogen atoms in plastic explosives. When radiation from the decay of activated nitrogen atoms in an explosive is detected, a computer attached to the system gives a warning signal that explosives in luggage are being smuggled onto an airplane. Because some activition of materials in both the baggage and baggare contents may occur, both workers and the public

may be exposed to the radiation emitted during the decay of the induced radioactivity. Radiation exposure, either internal or external, constitutes the major perceived impact of the system.

In May 1987, the State of California, upon receiving the request from SAIC for a temporary site license to test the device, requested technical assistance from NRC in evaluating the first prototype, Model EDS-2. NRC performed an Environmental Assessment, and issued a Finding of No Significant Impact in September 1988. Based on the results of the Environmental Assessment, the State of California issued a temporary site permit to SAIC to perform initial testing of the EDS-2. Since the manufacturer was located in California, the device review as performed by the California Department of Health Services. On January 31, 1989, California completed its review, entered a device sheet into the Registry of Radioactive Sealed Sources and Devices, and concluded that the EDS-2 was acceptable for licensing purposes.

Currently, the FAA is the licensee, and its Technical Center Headquarters is in Atlantic City, New Jersey. Thus, the technical review and completed licensing actions were performed in NRC's Region 1. On February 8, 1980, Region I issued FAA a license to use the EDS-2 on the ramp level (near the plane) of international airports located in this country. Although a license was issued to use the prototype device, the FAA and SAIC had concluded that the EDS-2 was a one-of-a-kind prototype, and would not be used for future routine operational baggage scanning.

Based on the foregoing conclusion, a second, straight-through device (EDS-3) was developed and completed earlier this year, and FAA has submitted an amendment to NRC to have this device licensed for operational use in airports throughout the U.S. NRC Headquarters and the State of California have jointly evaluated the EDS-3, and on August 2, 1989, California issued a device sheet, which concluded that the EDS-3 was acceptable for licensing purposes.

Identification of the Proposed Action

The proposed action is an amendment to Materials License No. 29-13141-05, to authorize FAA to install and operate Model EDS-3 units in baggage or cargo-handling ramp (near the plane) areas at airports anywhere in the U.S., provided that these areas are remotely located from passenger ticketing and processing areas. The Environmental Assessment includes the evaluation of impacts from operations in the baggage or cargo-handling areas at airports anywhere in the U.S.

The Need for the Proposed Action

The need for improved baggage security persists. In recent years, there has been an increase in the sophistication of the type of explosive devices used in terrorist activities, resulting in the loss of many lives. As part of its efforts, on July 10, 1989, FAA published a proposal for rulemaking in the Federal Register that would require U.S. air carriers to use explosive detection systems to screen checked baggage (54 FR 28866; July 10, 1989). The recent events involving air piracy and terrorism against civil aviation demonstrate the need for explosives detection systems that would help to protect the security of passengers, aircraft and crew members aboard U.S. air carriers.

Environmental Impacts of the Proposed Action

For the EDS-3, each installation is in an airport baggage-handling area, generally in the lower level of an airport. It is estimated that a space allocation of approximately 25 m^2 (270 ft^2) would be required for the EDS-3 plus ancillary operations. The heavy weight of the unit (=10 tons) might, in some cases, require construction of additional structural support; however, because it is anticipated that the EDS-3 would usually be located on the ground floor, this would probably not be necessary. Because the baggage-handling areas are at the ramp level (the level at which aircraft are parked), no significant impact on routine terminal passenger flow or airport traffic flow is expected.

The NRC staff has previously assessed the environmental impacts of the EDS-2 in the "Environmental Assessment for Explosive Detection Systems Using Thermal Neutron Activation for Airline Baggage Inspection," September 1988. Calculation of radiological doses resulting from potential activation of baggage contents were based on the following considerations: (1) The system is located in a baggage-handling area where access is controlled; (2) the californium used in the EDS-3 will always be a sealed source, which will be doubly encapsulated and seal-welded in stainless steel Zircaloy; (3) the only exposure pathway considered for normal and accident scenarios is the direct radiation path; ingestion or inhalation are not considered because the source remains intact (even in the explosion scenarios); (4) the approximate screening time per bag is six seconds; (5) an extremely conservative estimate for mass of one kilogram (2.2 pounds) was used in determining the dose rates for various elements; and (6) passengers will not have access to checked luggage for at least one hour after it passes through the EDS-3. Although the thermal neutron fluence of the EDS-3 is 3.6E05 neutrons/cm^2, the original (EDS-2) thermal neutron fluence of 8.0E05 neutrons-cm^2 was used as an upper bound for the amount of activation products that could be induced by the neutron radiation.

The environmental assessment thoroughly investigated potential exposure pathways to workers and passengers, and concluded that after a minimum one-hour decay time, neutron activation of elements and contents in suitcases does not contribute significantly to natural background radiation exposure. In view of the National Council on Radiation Protection and Measurements (NCRP) and the International Commission on Radiological Protection (ICRP) recommendations regarding the quality factor, it was assumed that neutron quality factors will be increased by a factor of two. Therefore, neutron dose rates and doses from external exposure to neutrons presented in this assessment used the higher projected quality factors which were calcualted for both workers (normal and accident scenarios) and passengers (accident scenarios only).

Radiation doses to workers were assessed. Two to five individuals per shift operate or work on the EDS, which typically, will include one operator and one baggage handler. In operating the EDS-3, there are three major pathways for EDS exposure: (1) Exposure during normal operation, due to attenuated radiation penetrating the shield around the californium source in the immediate vicinity of the EDS and from handling the baggage that has been irradiated; (2) exposure, with the source in the safe position during maintenance or to clear baggage jams; and (3) exposure during source transer operations to or from a shipping cask. A conservative estimate for annual doses to operational workers would be less than 200 mrem from the direct radiation exposure. The estimated total effective dose equivalent rate from various sources of natural background radiation for the continental U.S. is approximately 300 millirem per year (NCRP Report 94).

Potential radiation doses to passengers were also assessed. The two major pathways to the public during normal operations are: (1) Direct radiation exposure of passengers to beta or gamma fields from reclaimed luggage and (2) internal dose to passengers or

other members of the public who consume a food or other irradiated item that was contained in reclaimed luggage. The largest remaining exposures from a one kilogram mass of various elements one hour after passing through the EDS are from In-116m (0.019 millirem per our) and Eu-152m (0.005 millirem per hour), both of which are very unlikely to be found in luggage. Neutron activation of elements in clothing (carbon, hydrogen, nitrogen, oxygen) does not lead to significant amounts of residual activity in suitcases. Activation of the components of typical accessories is also small.

Potential exposures due to a malfunction of the EDS were also studied, because a baggage jam would produce a longer irradiation time. The potential dose from a 40-gram gold medallion that had passed through the EDS was evaluated. The potential beta particle dose at a depth of 0.007 cm beneath the skin next to the jewelry was estimated to be about 0.7 millirad, if the item were worn continuously for approximately 10 days after claiming the luggage. The ICRP has assigned a risk weighting factor for skin of 0.01, so the effective dose equivalent would be about 0.007 Millirem. If 0.5 percent of passengers carry gold medallions in their luggage and subsequently wear them for an extended period, the effective collective dose from this scenario for operation of ten luggage-inspection systems would be about 0.4 person-rem in one year.

To assess the second pathway (internal dose), it was assumed that a one-day supply of food was packed in a suitcase, screened by the EDS, and then claimed by the passenger after a short domestic flight. The time from EDS screening to consumption of food was taken to be one hour. The total effective dose equivalent from the average daily intake of the ten elements (using ICRP Publication 23, Reference Man.) contributing the largest doses was determined. The dose values are the weighted committed doses for these nuclides taken from ICRP 30, and summed over the target organs or tissues. The results show that salt is the principal source of radiation exposure from consumption of food items that have passed through the EDS, contributing about 90 percent of the effective dose equivalent. It was assumed that if one percent of passengers carry food items in their luggage, consume it within one hour of reclaiming their luggage (after being screened by the EDS), the annual collective dose to an estimated one-million passengers is 3E-04 person-rem/year.

For the purposes of environmental analysis, the impacts from several different accident scenarios were assessed. The scenario involving a plane crash and subsequent fire accident was assessed because it has the greatest potential for release and would bound a spectrum of other potential accidents that could occur. For this postulated accident, the total amount of californium-252 was assumed to be ignited and released as radioactive effluent. The dose to the maximally exposed individual is estimated to be less than 300 millirem for a fire. Such a dose does not exceed U.S. Environmental Protection Agency (EPA) Protective Action Guides (PAGs) of one rem whole-body dose and five rem thyroid dose. Although the dose estimates would not necessitate offsite protection actions, FAA has implemented fire-protection and emergency-preparedness plans.

The potential for radiological exposure to transport workers and to members of the general public in the U.S., due to routine transportation, was assessed in NUREG-0170. Based on the total amount of californium-252 to be shipped, an estimated one shipment per year would be required to maintain the appropriate neutron fluence rate levels.

Conclusion

Based on the foregoing assessment, the NRC staff concludes that the environmental effects of normal EDS-3 operations, when located in the baggage ramp area of an airport, are expected to be extremely small. For all radionuclides, the maximum unrestricted area concentrations are calculated to be well below the maximum permissible concentrations specified in 10 CFR 20.106 and 10 CFR part 20, Appendix B.

Alternatives to the Proposed Action

The principal alternative to the proposed action is that of no action or to individually hand-search all checked luggage or cargo. In view of the foregoing conclusion that the proposed action will not result in any significant impact, to prefer this alternative over the proposed action is not justified.

Agencies and Persons Contacted

In performing this assessment, staff used the environmental report dated February 1988, an environmental assessment for the EDS-2 dated September 1988, the licensee's application dated October 31, 1988, and the licensee's amendment application dated April 19, 1989.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the amendment of Materials License No. 29-13141-05, entitled "Environmental Assessment for Explosive Detection Systems Using Thermal Neutron Activation for Airline Baggage Inspection." On the basis of this assessment, NRC has concluded that the environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

For further technical details with respect to this action, see the application for license application dated October 31, 1988, amendment dated April 19, 1989, and other related correspondence. These documents (in Docket Number 030-30885), the Final Environmental Assessment, and the supporting but not yet published NUREG report, may be examined or copied for a fee in the Commission's Region I Public Document Room, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this amendment may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the Federal Register, be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the applicant (Department of Transportation, Federal Aviation Administration Technical Center, ACT-360, Building 210, Atlantic City, NJ, 08405); and must comply with the requirements set forth in the Commission's regulation, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Material Licensing Proceedings." Subpart L of 10 CFR part 2, which became effective March 30, 1989, was published in the Federal Register on February 28, 1989.

Dated at Rockville, Maryland, this 9th day of August 1989.

For the Nuclear Regulatory Commission.

John E. Glenn,

Chief, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 89-19060 Filed 8-14-89; 8:45 am]

BILLING CODE 7590-01-M

Education for Senior Reactor Operators and Shift Supervisors at Nuclear Power Plants; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: This policy statement presents the policy of the NRC regarding education for senior operators and shift supervisors at nuclear power plants. The Commission believes that the safety of commercial power reactors is enhanced by having on each shift a team of NRC licensed professionals that combine technical and academic knowledge with plant-specific training and substantial hands-on operating experience. The Commission believes the licensed reactor operator, senior operator, and shift supervisor positions are very important to the safe and reliable operation of nuclear power plants and therefore encourages the utilities to continue their efforts to sustain and increase, where appropriate, the professionalism of these positions.

EFFECTIVE DATE: August 15, 1989.

FOR FURTHER INFORMATION CONTACT: M.R. Fleishman, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3794.

SUPPLEMENTARY INFORMATION:

Background

Since the Three Mile Island Unit 2 (TMI-2) accident on March 28, 1979, to which human error was a major contributor, the issue of academic requirements for reactor operators has been a major concern of the Nuclear Regulatory Commission. In July 1979, the NRC issued NUREG-0578, "TMI-2 Lessons Learned Task Force Status Report and Short-Term Recommendations," [1] which contained specific recommendations for a shift technical advisor (STA) to provide engineering and accident assessment expertise during other than normal operating conditions. On October 30, 1979, the NRC notified all operating nuclear power plant licensees that STAs should be on shift by January 1980, and that they should be fully trained by January 1981. In November 1980, NUREG-0737, "Clarification of TMI Action Plan Requirements," provided further details to licensees regarding implementation of the STA requirement. It identified the STA as a temporary measure pending a Commission decision regarding long range upgrading of reactor operator and senior operator capabilities.

The qualifications of operators were also addressed in 1979 by NUREG-0585, "Lessons Learned Task Force"; in the 1980 Rogovin Report, "Three Mile Island: A Report to the Commissioners and to the Public", (NUREG/CR-1240); and in SECY-82-162, "Report of the Peer Advisory Panel and the Nuclear Regulatory Commission on Operator Qualifications", [2]. Although the 1982 Peer Advisory Panel report recommended against imposition of a degree requirement, the consensus among these reports was that technical and academic knowledge among shift operating personnel greater than existed at that time would be beneficial to the safety of nuclear power plants.

On October 28, 1985, the NRC published in the Federal Register (50 FR 43621) a Final Policy Statement on Engineering Expertise on Shift, which described two alternatives for providing the necessary technical and academic knowledge to the shift crew. Option 1 of the policy statement permits an individual to serve in the combined senior operator/shift technical advisor (SO/STA) role if that individual holds either a bachelor's degree in engineering technology, or physical science from an accredited institution, or a professional engineer's license. Option 2 permits continuation of the separate STA, on each shift, who holds a bachelor's degree or equivalent, and meets the criteria as stated in NUREG-0737. The Commission also encouraged the shift supervisor to serve in the dual-role position and the STA to take an active role in shift activities.

On May 30, 1986, the NRC published an Advance Notice of Proposed Rulemaking (ANPR) (51 FR 19561). The purpose of the ANPR was to solicit public comments on a Commission proposal to extend the current level of engineering expertise on shift and to ensure that senior operators have operating experience on a commercial nuclear reactor operating at greater than twenty percent power. Two hundred letters were received in response to the ANPR; most of them were opposed to a degree requirement for Senior Operators.

Although comments received on the ANPR were generally opposed to a degree requirement, the Commission believed that it would be beneficial to obtain additional public comment on two alternative proposals. On December 29, 1988, (53 FR 52716) the Commission published a proposed rule for degree requirements for shift personnel, with two alternate approaches—additional education and experience requirements for either senior operators or shift supervisors.[3]

Approximately 95% of the comment letters received are opposed to any rule. As described elsewhere in this issue of the Federal Register, the Commission has decided to terminate the rulemaking.

Development of Final Policy Statement

In deciding not to proceed with the rulemaking, the Commission carefully considered the comments received on the proposed rule and the status of industry initiatives to enhance the education level of its operating personnel. In particular, the Commission noted that many utilies have provided opportunities for members of their operating staff to further their education. Where programs are in place, they have included:

1. Financial assistance for taking college courses off-site;

2. Development of programs, in conjunction with universities and colleges, that provide college level courses and degrees—including arrangements that provide appropriate credit for nuclear power plant training courses and work experience; and

3. On-site programs that provide college level courses and degrees for members of the operating staff.

The Institute of Nuclear Power Operations (INPO), in cooperation with

[1] Copies of all NUREGs referenced may be purchased through the U.S. Government Printing Office by calling (202) 275-2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection or copying for a fee in the NRC Public Document Room, 2120 L Street, Lower Level, NW., Washington, DC.

[2] The documents with SECY designators are available at the NRC Public Document Room at 2120 L Street, Lower Level, NW., Washington, DC.

[3] The term "shift supervisor" is being used to refer to that person holding a senior operator license for all fueled units at the site who is assigned responsibility for overall plant operation at all times there is fuel in any unit. Where a single senior operator does not hold a senior operator license on all fueled units at the site, a licensee must have at the site two or one more senior operators, who in combination are licensed as senior operators on all fueled units. The Commission recognizes that persons may have a different title than "shift supervisor" at different utilities.

many nuclear utilities, has developed "Principles for Enhancing Professionalism of Nuclear Personnel", dated March 1, 1989. INPO encourages utilities to implement these principles. Among other important matters, these principles directly address developing management personnel and managing operations department personnel. In particular, they encourage that:

Management development and selection practices reflect the fact that work in plant operation provides the broad, integrated view of plant activities needed by nuclear managers. Individuals with experience in day-to-day plant operations are considered as an important source of management talent. The policies and practices that govern career development ensure that individuals are aware of the opportunity to develop into management positions and that selected individuals are encouraged and provided with opportunities to pursue this career path.

Promotion and management development practices seek a balance between career operations individuals and others who obtain operations experience as part of their career development. Operations personnel with the potential to fill key management positions are provided an opportunity for acquiring experience in other groups. Also, other personnel with the potential to fill key management positions are provided an opportunity for obtaining an SRO (Senior Reactor Operator) license or certification and operations experience. Engineers who hold bachelors degrees in technical fields are considered a key source of such personnel

* * *

While a college degree in a technical field is not a necessary requirement for operations positions, operators with bachelors degrees in technical subjects have a greater likelihood of promotion to and success in management positions. Management practices ensure that an appropriate number of personnel with such degrees, or the potential and desire for acquiring such degrees, are selected for operations positions. In addition, management assists and encourages selected operators who have the potential to acquire bachelors degrees; programs that lead to degrees in technical subjects are given preference. To assist in accomplishing this, college credits may be sought for successful completion of utility training programs.

In addition, INPO has an effort underway to review the training and education requirements for shift supervisors, with the goal of ensuring that shift supervisors have the necessary knowledge, skills, understanding, and the education to supervise the safe operation of a nuclear power plant.

The NRC monitors the level of technical knowledge of licensed operating personnel with its licensing and requalification examinations and inspection programs to ensure that personnel holding these important positions are receiving the training needed, and are otherwise qualified, to meet the requirements of the jobs. The Commission is convinced that the existing level of technical knowledge of licensed personnel is sufficient to safely operate nuclear power plants and ensure the protection of the health and safety of the public.

However, since the level of technical knowledge of the shift operating staff has a direct bearing on the safety of nuclear power plants, the Commission continues to look for measures that can further improve the capability of the shift operating staff. The following policy statement presents our views concerning education for senior operators and shift supervisors.

Policy Statement

The Commission believes that the level of engineering and technical knowledge of shift operating personnel has a direct bearing on the safety of nuclear power plants. Accordingly, the Commission believes that the safety of commercial power reactors is enhanced by having on each shift a team of NRC-licensed professionals [4] that combine technical and academic knowledge with plant-specific training and substantial hands-on operating experience.

The Commission's position is predicated on the fact that, even though reactor licensees try to anticipate and address in training programs and reactor operating procedures all conceivable situations which could arise during normal and off-normal operation, there will always be the potential for situations to arise which are not covered through training or operating procedures. The Commission is persuaded that there is a need for some individuals on each nuclear power plant operating shift who have an innate understanding of the systems-level performance of a nuclear power plant. The types of knowledge that are needed are scientific and engineering fundamentals and the basic scientific principles that govern the behavior of electrical, mechanical, and other engineered systems. This is precisely the type of knowledge that academic institutions develop and convey well and that forms the basis of an academic degree program in a technical discipline. A program of scientific and engineering studies should provide plant operating personnel an enhanced capacity for reasoning and judgement, as well as enhanced confidence, to perform better during both normal and off-normal operation, but particularly in the stressful and complex environment surrounding reactor transients and accidents which may arise in the course of reactor operations. Individuals with such education can utilize their in-depth knowledge when called upon to assess the causes of a novel incident and determine the appropriate responses.

The Commission further believes that programs which encourage experienced nuclear professionals to obtain college degrees and personnel with degrees to obtain a senior operator license and hands-on operating experience create an important source of management talent for the industry. Such individuals are more likely to be selected for management positions and, because of their understanding of the unique operational problems associated with nuclear power plant operation, are in a better position to enhance nuclear safety by fostering a strong safety culture within their organization.

For there reasons, the Commission endorses the INPO "Principles for Enhancing Professionalism of Nuclear Personnel" dated March 1, 1989, for implementation at each nuclear utility.

Specifically, the Commission encourages nuclear plant licensees to continue to develop and implement programs that permit operating personnel to obtain college degrees from accredited institutions. Those persons with ability and desire should be given every opportunity to further their education in order to best serve the interest of nuclear safety.

Additionally, the Commission encourages nuclear plant licensees to hire college graduates for positions on the operating staff. Licensees should actively work to make operating staff positions, including the plant specific training and development programs, attractive to college graduates with technical or science degrees in relevant disciplines from accredited institutions. The Commission particularly encourages the recruitment of graduates with physical science, engineering, or engineering technology degrees from accredited institutions which have accredited programs.

Utilities should continue to develop reactor operators and senior operators who have a significant amount of hands-on operational experience. It is desirable to have senior operators on shift who have progressed through the typical experience path, including the auxiliary operator and reactor operator positions.

The Commission recognizes the necessity for licensees to provide operators on shift with a strong background of plant-specific, hands-on experience, regardless of whether those individuals have obtained college degrees. At the same time, the Commission believes that it is desirable for licensees to ensure that they have in the control room individuals with academic training as well. Ideally, licensees should strive to have in the control room individuals with a mix of education, training, and experience in plant operations. This should be the goal during the coming years.

The Commission encourages nuclear plant licensees to provide opportunities for licensed operators and others with nuclear power plant operating experience to assume positions of increased management responsibility. In the same vein, policies and programs which provide principal and cooperate nuclear managers with meaningful knowledge and experience in nuclear plant operations, including sufficient training and operational experience to qualify for and pass the NRC examination for a senior operator license, are valuable and should be encouraged.

The shift supervisor occupies a unique position. Besides interacting directly with the operating staff, the shift supervisor must also interact with upper management, and every effort should be made to ensure that the shift supervisor is an effective member of the facility management team. The Commission believes that the highest priority should be given to assuring that shift supervisors, and other individuals with similar decision-making authority on each shift, have appropriate levels of education in technical fundamentals, training on the particular systems, and operating experience. The Commisison encourages INPO to complete the effort to review the adequacy of training and education requirements for the shift supervisor position in a timely manner. The Commission understands that this effort is being coordinated with the industry accreditation program and the National Academy for Nuclear Training and supports this concept. The Commission intends to follow this effort closely and will participate as appropriate to ensure successful closure of this issue.

The Commission reaffirms its position, set forth in the Policy Statement on Engineering Expertise on Shift (50 FR 43621), that it is important to have engineering and accident assessment expertise available to the operating crew at all nuclear power plants. The STA has proven to be a worthwhile addition to the operating staff by providing an independent engineering and accident assessment capability, and we support continuation of this position. However, the Commission wishes to reemphasize its preference for the STA to have a senior operator license, in order to enhance the STA's operational knowledge and experience and to provide him or her greater credibility with the other members of the operating staff. It remains the Commission's preference that all licensees continue to move toward the dual role (SO/STA) position. For those licensees who continue to use the STA as a "stand-alone" position, the Commission reemphasizes its position that this individual should assume an active role in shift activities. The STA should maintain a continuing awareness of plant configuration and changes in plant status and be an integral part of the operating shift.

The licensed reactor operator, senior operator, and shift supervisor positions are very important to the safe and reliable operation of nuclear power plants. Therefore, utilities should continue their efforts to sustain and increase, where appropriate, the professionalism of these positions. These positions should be filled with individuals of the highest caliber and should command respect and status both inside and outside the operational organization.

Dated at Rockville, Maryland this 9th day of August, 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-19000 Filed 8-14-89; 8:45 am]

BILLING CODE 7590-01-M

[4] The term "professionals" is being used to refer to persons who have demonstrated competence to operate a nuclear power plant and who adhere to the highest technical and ethical standards for reactor operations. These persons may or may not hold an academic degree.

Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued revisions to three guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.84, Revision 26, "Design and Fabrication Code Case Acceptability, ASME Section III, Division 1," and Regulatory Guide 1.85, Revision 26, "Materials Code Case Acceptability, ASME Section III, Division 1," list those code cases that are generally acceptable to the NRC staff for implementation in the licensing of light-water-cooled nuclear power plants. Revision 7 to Regulatory Guide 1.147, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1," lists those code cases that are generally acceptable to the NRC staff for implementation in the inservice inspection of light-water-cooled nuclear power plants. These three guides are periodically revised to update the listings of acceptable code cases and to include the results of public comment and additional staff review.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publication Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides and available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 31st day of July 1989.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 89-19062 Filed 8-14-89; 8:45 am]

BILLING CODE 7590-01-M

Appointments to Performance Review Board Panel for Senior Executive Service

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointment to performance review board panel for senior executive service.

SUMMARY: The Nuclear Regulatory Commission (NRC) has announced the following new appointment to the NRC

Performance Review Board (PRB) Panel. The PRB Panel was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members.

New Appointment

Edward L. Jordan, Director, Office for Analysis and Evaluation of Operational Data

In addition to the above new appointment, the following individuals will continue to serve on the PRB Panel:

Harold R. Denton, Director, Office of Governmental and Public Affairs

Hugh L. Thompson, Jr., Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, Office of the Executive Director for Operations

All appointments are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

EFFECTIVE DATE: August 15, 1989.

FOR FURTHER INFORMATION CONTACT: James M. Taylor, Acting Chairman, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492-1705.

Dated at Rockville, Maryland, this 2nd day of August, 1989.

For the Nuclear Regulatory Commission.

James M. Taylor,

Acting Chairman Executive Resources Board.

[FR Doc. 89-19001 Filed 8-14-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-27104; File No. SR-OCC-87-22]

Self-Regulatory Organizations, Options Clearing Corporation; Order Approving a Proposed Rule Change

On December 11, 1987, Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") under section 19(b) of the Securities Exchange Act of 1934 ("Act") the proposed rule change described below. The proposal would provide OCC with greater flexibility in dealing with financially troubled clearing members and in responding to clearing member insolvencies. The Commission published notice of the proposal on April 19, 1988.[1] No comments were received. On August 3, 1989, OCC amended the proposal to clarify when borrowing from OCC's clearing funds will trigger *pro-rata* assessment of OCC clearing member clearing fund contributions.[2] This Order approves the proposal.

I. Description of the Proposal

The proposed rule change would specify alternatives available to OCC in dealing with clearing members that are experiencing financial or operational difficulties and would provide OCC with greater flexibility in dealing with clearing member failures, particularly in extraordinary market conditions. Specifically, the proposal would amend OCC Rule 305 regarding restrictions on certain transactions and positions, and Rules 1104 and 1106 dealing with suspension of a clearing member. Additionally, the proposal would amend Article VIII, section 5 of OCC's By-Laws with respect to application of OCC's clearing funds.

The proposed amendments to Rule 305 would clarify OCC's authority in dealing with clearing members that are experiencing financial or operational difficulties. Currently, under Rule 305, OCC's Chairman or President can restrict those members' opening transactions and require such clearing members to reduce or eliminate uncovered short positions.[3] The proposal, among other things, would specify that OCC's authority extends to unsegregated long positions [4] and any short positions, whether covered or uncovered.[5] The proposal also clarifies that OCC can require financially troubled clearing members to hedge unsegregated long positions or uncovered short positions as an alternative to liquidation of those positions. Additionally, the proposed change to Rule 305 authorizes OCC to require a financially troubled clearing member to transfer to another clearing member certain customer accounts (*e.g.*, market-makers or specialist accounts).

The proposed changes to Rule 1104 also provide OCC with greater flexibility in dealing with suspended clearing members in extraordinary market conditions. Generally, in the event of OCC's suspension of an OCC clearing member, OCC would promptly convert all of the clearing member's margin deposits to cash. In extraordinary market conditions, it might not be possible to convert some types of margin deposits (*e.g.*, common stocks) to cash in an orderly manner. Therefore, proposed Rule 1104(b) would enable OCC to defer liquidation of a suspended member's margin deposits.

The proposed changes to Rule 1106 concern options positions maintained for a suspended clearing member. Currently, under Rule 1106, OCC's policy is to effect an immediate liquidation of a failed firm's options positions. Because of the size and nature of a suspended clearing member's options positions or a lack of market liquidity, liquidation could be difficult and it might be advisable to maintain the positions. Thus, proposed Rule 1106(d) would authorize the Chairman or President of OCC to determine to maintain positions that would otherwise be closed out.[6]

[1] Securities Exchange Act Release No. 25676 (April 11, 1988), 53 FR 12462.

[2] *See* Letter from James C. Yong, Assistant Vice President and Deputy General Counsel, OCC, to Jonathan Kallman, Assistant Director, SEC, dated August 1, 1989.

[3] Such action must be based on a determination by OCC's President or Chairman that the financial or operational condition of the member makes such action necessary or advisable for the protection of OCC, other OCC members, or the general public. OCC's Interpretations and Policies list nine non-exclusive situations that would justify action under Rule 305. *See also* Chicago Board Options Exchange Rules 4.10 and 13.3, and New York Stock Exchange Rule 709, which authorize restrictions on exchange members' options activity. OCC's Rule 305(b) enables an affected member to appeal to OCC's Margin Committee.

[4] Although certain long positions represent assets rather than liabilities, unsegregated long positions can reduce OCC's margin requirements. If a troubled clearing member carried large concentrations of unsegregated long positions in volatile options, a decrease in the value of those positions might create a margin deficiency that the clearing member would be unable to satisfy with other forms of margin.

[5] Although covered short positions generally pose no direct risk to OCC, the maintenance of such positions for the accounts of margin customers could pose a risk to a financially troubled clearing member, because customers would be exposed to margin calls which they might not be able to meet in the event of a decline in the value of the underlying asset (*e.g.*, corporate equity securities or U.S. Treasury securities). OCC states in its filing that it would not anticipate using the authority under the proposal for covered short positions carried in cash accounts.

[6] Action under Rule 1106(d) could affect the timing and outcome of a liquidation by the Securities Investor Protection Corporation ("SIPC") where a suspended clearing member has public customers. OCC states in its filing that in response to a request by SIPC staff, the proposal provides that OCC would apply proposed Rule 1106(d) only in cases where OCC determines that an outright liquidation of a suspended clearing member's positions would likely result in a loss to OCC.

The proposal would clarify the authority of OCC's President or Chairman to execute hedge transactions to protect OCC against a decline in the value of margin deposits or open positions OCC had elected to maintain (*e.g.*, valued securities, unsegregated long positions or short positions).[7] The proposal also would broaden the range of hedging transactions that OCC may engage in. In addition to current authority to hedge positions consisting of options relating to the same underlying interest, proposed amendments to OCC Rule 1106(e) would authorize OCC to hedge positions in options on similar underlying interests, as well as to hedge positions in the underlying interest and futures contracts on the same or similar underlying interests. Hedging transactions could include the establishment of variable hedges that would be adjusted from time to time during the life of the hedged positions. All hedging transactions would be required to be reported to OCC's Margin Committee on a daily basis. Moreover, because a single hedging position may relate to positions in more than one account, Rule 1106(e) would authorize OCC to allocate, on a reasonable basis, among a suspended clearing member's costs, gains, and losses associated with hedging transactions.

The proposed rule change also would amend Article VIII, Section 5 of OCC's By-Laws regarding application of OCC's clearing funds. Specifically, the proposal would eliminate the current 24-hour waiting period between the time when a loss is charged to a defaulting clearing member's clearing fund deposit and the time when any excess may be charged *pro rata* against the clearing fund deposits of non-defaulting clearing members. The proposal also would permit OCC to borrow against the clearing funds to finance hedging transactions.

II. OCC's Rationale for the Proposal

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act. OCC states in its filing that the proposed rule change would serve the public interest by providing OCC with greater flexibility in dealing with financially troubled clearing members and responding to clearing member insolvencies.

Generally, OCC believes that the preferred response to clearing member failure is to close out the firm's short positions and liquidate assets. OCC believes, however, that in extraordinary circumstances a close-out or liquidation could be difficult or inadvisable. OCC believes that an effective hedge at a reasonable cost, either in options, the underlyig interests or futures contracts, could, in such circumstances, be a viable alternative to liquidation. Moreover, with respect to clearing members experiencing financial or operational difficulties, OCC believes the proposal would provide it with needed flexibility by enabling OCC to require a financially troubled clearing member to: (1) Reduce or eliminate unsegregated long positions as well as covered or uncovered short positions; or (2) hedge unsegregated long positions or uncovered short positions as an alternative to liquidation.

OCC also believes that the proposed amendments concerning use of the OCC clearing funds are appropriate. Currently, OCC must wait 24 hours before a loss in excess of a defaulter's clearing fund and margin deposits may be charged *pro rata* against the clearing fund deposits of non-defaulting Clearing members. OCC believes this waiting period creates unnecessary delay and should be eliminated. OCC states that the waiting period was probably intended to provide a defaulting clearing member time in which to respond to OCC's demand to make up the deficiency in its clearing fund deposit. OCC, however, believes that the likelihood that a defaulting clearing member would be able to cure its default within 24 hours is small. Moreover, the 24-hour delay could impair OCC's ability to pay non-defauting clearing members.

OCC also believes it is appropriate to borrow against the clearing funds to finance hedging transactions without reference to OCC's ability to realize on a suspended firm's margin and clearing fund deposits. OCC believes that in any case where OCC has the authority to hedge it is preferable to finance hedging transactions by borrowing against the clearing fund than by making a *pro rata* charge. OCC states in its filing that the ultimate outcome of the hedging program, and thus the final amount of any *pro rata* charge could not be determinable until all open positions of the suspended clearing member and all hedge positions are closed out.

III. Discussion

As discussed below, the Commission believes that the proposal is consistent with the Act and Section 17A in particular. The Commission believes that events in October 1987 highlighted that circumstances such as dramatic market volume and volatility can create unusual and unanticipated situations in the financial markets.[8] High volatility also tends to strain financial resources of market participants and increase the likelihood of defaults on financial obligations. The Commission believes that OCC's proposal is designed appropriately to enable OCC to respond flexibly to clearing member defaults in extraordinary circumstances to minimize risk of loss to OCC and its members, and avoid contributing unnecessarily to market stress.

In the event of a clearing member suspension by OCC, OCC generally must liquidate assets of the suspended member in order to statisfy the clearing member's obligations to OCC and OCC's obligations to other clearing members. Those assets could include options positions; margin in the form of cash, government securities, valued securities, and letters of credit; escrow receipts for equity securities; and clearing fund deposits. The markets for OCC-cleared options and other assets held by OCC to secure member obligations generally are accessible and liquid. The Commission continues to believe that the preferred response by OCC to member insolvency is for OCC promptly to liquidate open positions and other collateral and determine whether any loss must be charged to OCC's retained earnings or clearing funds.[9] As described below, however, such a prompt liquidation in extraordinary market conditions could be unwise.

In situations where members for OCC-controlled collateral are closed or chaotic, OCC could be unable to determine whether collateral could be liquidated and at what price. Similarly, if OCC held substantial concentrations

[7] The proposal would require that any action taken pursuant to Rules 1104(b), 1106(d) or 1106(e) be reported to OCC's Board of Directors within 24 hours.

[8] For example, on October 20, 1987, options and futures exchanges halted trading during certain periods, and trading in 145 New York Stock Exchange securities was interrupted due to order imbalances. Moreover, during the week of October 19, 1987, options and futures price volatility and the discounts at which stock index futures traded to the cash market reached unprecedented levels. *See* Division of Market Regulation, The October 1987 Market Break (February 1988) ("Market Break Report") at A-23–A-43. At the same time, the Fedwire bank payment system in Chicago was closed for several hours during the trading day. *Id* at 10-42.

[9] If OCC charges a loss *pro rata* to the OCC clearing funds, OCC members must promptly make good any deficiencies in their required clearing fund contributions. *See* OCC By-Laws, Article VIII, Section G. At the same time, liquidation of clearing members assets at distress prices because of unusual market conditions could increase OCC losses, force OCC to assess members, *pro rata*, to cover those losses, and create severe liquidity problems for solvent clearing members attempting to meet OCC's clearing fund contribution requirements with respect to their own open options positions.

of volatile options positions, liquidation could be uncertain and, moreover, could contribute to market instability. Nevertheless, if OCC was unable to liquidate collateral or forced to liquidate in a chaotic market, OCC would be exposed to loss due to a decrease in collateral value. The proposal addresses those problems.

Under the proposal, OCC would be authorized specifically to defer collateral or position liquidation and to hold any collateral or options positions not liquidated. To protect against a change in the value of collateral or options positions, OCC would be authorized to execute hedging transactions including the purchase or sale of underlying interests and the purchase or sale of securities options or futures positions.[10] The proposal also would authorize OCC to borrow funds from its clearing funds to finance such protective or hedging transactions.[11]

[10] For example, OCC could purchase underlying equity securities to hedge exposure on short options positions and could buy or sell stock index futures contracts to hedge exposure from short stock index options. OCC also could engage in stock options transactions to hedge against a decline in value of equity securities held as margin deposits.

[11] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920. In setting out the standards to be used by the Division of Market Regulation ("Division") in reviewing and making recommendations with respect to the registration of clearing agencies, the Division has stated that, in addition to the defaults of participants, the clearing fund should be used to protect the clearing agency from losses (not including day-to-day operating expenses) such as losses of securities not covered by insurance or other resources of the clearing agency. The Release specifically provides for temporary use of a limited portion of the clearing fund to meet unexpected and unusual clearing agency requirements for funds. The Release however, further suggests that a portion of the clearing fund may be used for a legitimate purpose for a longer period of time, provided that: (1) The funds are properly protected; (2) the funds are used to facilitate the process of clearance and settlement; and, (3) participants and the Commission specifically approve such use during registration proceedings. *Id.*, 45 FR at 41929. Nevertheless, in an Order concerning the structure of National Securities Clearing Corporation's ("NSCC") clearing fund, the Commission recognized that the universe of permissible uses is larger than unanticipated uses and specifically approved certain other uses. In that Order, the Commission approved NSCC's short-term pledge of clearing fund assets other than cash as collateral for loans to satisfy temporary losses or liabilities incident to its clearance and settlement business. In NSCC's program, the pledge of clearing fund assets, if not repaid within 30 days, results in the pledge being deemed a clearing fund assessment under NSCC's rules. Securities Exchange Act Release No. 19230 (November 10, 1982), 47 FR 51966.

On August 3, 1989, OCC amended the proposal, and Article VIII of OCC's By-laws, to provide that any borrowing by OCC against OCC's clearing funds, if outstanding for more than thirty days, will be considered an actual loss and immediately allocable to clearing members as a pro-rata assessment. *See* Letter from James C. Yong, Assistant Vice President and Deputy General Counsel, OCC, to Jonathan Kallman, Assistant Director, SEC, dated August 1, 1989; Revised OCC By-law Article VIII, Section 5(f), File No. SR–OCC–87–22.

under the proposal, OCC management must inform OCC's Board of Directors within 24 hours of any determination to authorize hedging transactions.[12]

The Commission notes that any exercise by OCC of the authority granted by the proposal could have implications for OCC, its members, those members' customers, and financial markets generally. OCC's use of its clearing funds, without a *pro rata* assessment of OCC's members, would decrease available OCC clearing fund assets, but generally not affect adversely assets available to clearing members.[13] OCC'S deferral of option position liquidation would alter current expectations of immediate liquidation, but could minimize liquidation losses to customers of a suspended OCC member. Liquidation deferral also would affect the timing and nature of asset liquidation in underlying markets and the effects of such a liquidation on those markets. Moreover, delayed liquidation and hedging activity by OCC could affect liquidity demands and responsibilities applicable to market participants.

The Commission believes, that prudent and thoroughly-considered use by OCC of the authority granted by the proposal should enable OCC to avoid potentially harsh and uncertain consequences that could result from a forced, immediate liquidation in extraordinary circumstances of the assets and positions of a suspended OCC member. In this regard, the Commission notes that OCC has represented that it would consult, if feasible and prudent under the circumstances, with the Commission and appropriate authorities prior to or contemporaneous with exercise of its authority under the proposal. Those authorities, based on the circumstances, could include SIPC, registered securities exchanges, the National Association of Securities Dealers, OCC clearing banks, the Commodity Futures Trading Commission, and futures contract markets. The Commission believes that such consultation would place OCC in the best position to analyze the overall effects of its actions concerning liquidation and hedging activity.

Nevertheless, the Commission recognizes that in some situations prompt action by OCC may be necessary and consultation infeasible.

[12] Under the proposal, a deferral of liquidation or execution of hedging transactions must be based upon a determination by OCC's Chairman or President, taking into account the size and nature of a suspended clearing member's margin deposits and options positions, the market conditio prevailing at the time, the potential market effects of liquidating transactions that might be directed by OCC, and such other circumstances as much officer deems relevant, that the conversion to cash of some or all of the suspended clearing member's margin deposits or the closing out of some or all of the suspended member's unsegregated long positions or short positions would not be in the best interests of OCC, other OCC clearing members, or the general public.

[13] OCC clearing members' contributions to the OCC clearing funds constitute net capital for the purposes of Rule 15c3–1 under the Act. In the event of an OCC *pro rata* assessment of its members' clearing fund deposits, clearing members must restore their clearing fund contributions with other assets or face suspension by OCC and a potential capital deficit under Rule 15C3–1.

The Commission expects OCC to use its concentration monitoring system to analyze the ability of its clearing members to pay to OCC on a *pro rata* basis the amount of any loan from the clearing fund and will consider scheduled assessments or special requirements for clearing members who do not reasonably appear able to meet those obligations in light of their open options positions and trading activity.

IV. Conclusion

For the reasons discussed above, the Commission finds the proposal is consistent with the Act and Section 17A in particular.

Accordingly, *It is therefore ordered*, under section 19(b)(2) of the Act, that the proposal (SR–OCC–87–22) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 8, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–19070 Filed 8–14–89; 8:45 am]

BILLING CODE 8010–01–M

SELECTIVE SERVICE SYSTEM

Proposed Health Care Personnel Delivery System (HCPDS)

AGENCY: Selective Service System.

ACTION: Request for comments.

SUMMARY: The Selective Service System seeks public comments on the development of its Health Care Personnel Delivery System (HCPDS).

DATE: Comments from the public should be submitted in writing no later than September 29, 1989.

ADDRESS: Send comments to Richard S. Flahavan, Associate Director for Operations, Selective Service System, 1023 31st Street, NW., Washington, DC 20435, telephone (202) 724–0851.

SUPPLEMENTARY INFORMATION: Section 10(h) Military Selective Service Act, as amended by section 715, Pub. L. 100–180, approved December 4, 1987, in pertinent part, provides:

"The Selective Service System shall be maintained as an active standby organization with (1) a complete registration and classification structure capable of immediate operation in the event of a national emergency (including a structure for registration and classification of persons qualified for practice or employment in a health care occupation essential to the maintenance of the Armed Forces) * * *."

The Health Care Personnel Delivery System (HCPDS), when implemented, will enable the Selective Service System to fullfill its statutory responsibility.

Samuel K. Lessey, Jr.,

Director of Selective Service.

Health Care Personnel Delivery System—(HCPDS)

Part I—Introduction

1. *General.* Section 715 of Public Law 100–180, signed by the President on December 4, 1987, directed the Selective Service System (SSS) to develop a system, capable of immediate operation in the event of a national emergency, for the postmobilization registration and delivery of health care personnel to the Department of Defense (DOD) in the required number, mix, and time frame.[1] This paper recommends an operational concept for a standby Health Care Personnel Delivery System (HCPDS) as prescribed by that law. This operational concept will be the basis for developing detailed implementing policies and procedures, including an automated data processing (ADP) functional description. A system flow chart which presents a graphic overview is at Annex A. Subsequent implementation will include development of an HCPDS mobilization timetable, prototype forms, reports, operational manual policies and procedures, and other specific details and products as required. Although the operational concept presented is consistent with the latest position of DOD and selected Federal agencies, it remains subject to change as:

May be directed by Selective Service leadership.

Progress is made in obtaining more definitive delivery schedules from DOD.

DOD initiatives directed at reducing wartime military health care personnel shortfalls reduce mobilization requirements.

May be required upon receipt of comments from DOD and outside sources, including health care personnel associations.

2. *Scenario.* Selective Service was charged to develop a postmobilization system. Accordingly, the HCPDS components covered here are those which are crucial to responding to DOD's initial mobilization requirements in a worst case, conventional conflict scenario involving little or no warning. Maximum effort is being devoted to ensuring that the initial postmobilization components are operational as soon as practicable within the constraints imposed. Within that context, this paper provides for those crucial HCPDS components.

3. *Definition of Terms.* See Annex B, Definitions, Abbreviations, and Acronyms.

4. *Objectives.* This operational concept is based upon the following objectives and characteristics: rapid response, equity, flexibility, simplicity, workability, acceptability, balancing military and civilian needs, paralleling the procedures of the Registrant Information and Management System (RIMS) where practicable, and interfacing with RIMS.

5. *Facts*—a. *Congressional and presidential authorization required.* No Selective Service processing of health care personnel (registration, classification, selection, or issuance of induction orders) can be undertaken until the Congress provides statutory authority and the President directs such processing.

b. *Legislation.* A standby legislative package was coordinated previously with DOD, including the Joint Chiefs of Staff (JCS) and the military services. That legislative package, when enacted, would provide the authority to process health care personnel for induction upon mobilization. The Office of the Assistant Secretary of Defense for Force Management and Personnel (OASD–FM&P) now has this legislative package and plans to include it in a DOD Emergency Actions Packet. The HCPDS concept was developed within the framework of that proposed legislation. Changes to this legislation have been developed and submitted to DOD by letter to ensure full compatibility with the HCPDS.

c. *Inability to meet DOD requirements.* DOD understands that Selective Service cannot meet DOD's "worst-case scenario" mobilization requirements for health care personnel. Selective Service will be reviewing options to ensure that time frames are as realistic and short as possible. The speed with which Selective Service can implement HCPDS and begin making first health care personnel deliveries is dependant upon the level of preliminary preparation authorized and achieved. Technical advancements and improved contingency agreements will be reviewed to reduce time frames.

d. *Continued DOD recruiting.* DOD plans to undertake a major health care personnel recruiting effort upon any mobilization and continue recruiting from among health care registrants at least through M+90, the same as DOD plans for recruiting untrained manpower from among regular registrants. Selective Service will not accept and process health care personnel as volunteers for induction during that period at mobilization. A proposed revision to the Military Selective Service Act (MSSA) provides authority for the addition of a volunteer program by regulation should the need arise.

e. *Inclusion of females.* No question exists that Congress will make the final decision at the proper time, whether to include females with males, and the mix, if other than on a full share basis, in any health care personnel draft. This concept envisions including females without restriction. To be prepared for any contingency, the HCPDS will be constructed to accommodate males alone or any mix of the two as prescribed by proper authority.

6. *DOD Mobilization Requirements.* DOD continues to refine the numbers of health care personnel needed for mobilization. Annex D shows DOD's requirements by individual titles of specialties provided to Selective Service. These requirements listed shortfalls of 109,948 health care personnel which could require delivery starting at D+10 in a worst case scenario. The mobilization requirements are based on assumptions and computer modeling and subject to change. The HCPDS will be flexible enough to respond to such changes, i.e. in specialties, numbers, and/or delivery times.

7. *Use of RIMS Methods.* RIMS, the system designed to process regular registrants, has been evaluated in many mobilization exercises. The system has been enhanced and has proven an effective registrant processing system. Portions of the HCPDS concept are modeled on some of the tested operational and ADP methods, forms, and reports where practicable. Functionally, HCPDS will perform many RIMS tasks and operations, but the "how" and "when" of actually performing these operational and ADP tasks in many instances are quite different. The integration of the health care system with current systems and procedures enables Selective Service to accelerate development, conserve resources, and provide for ease of administration vs. a "standing start." Besides annotating the records of dual registrants, discussed later herein, this integration of systems may very well impact the existing regular registrant RIMS in some other ways.

BEST COPY AVAILABLE

8. *Follow-on Developmental Efforts.* Selective Service follow-on efforts will include the development of additional HCPDS components, a "steady-state" operating system, logistical support plans and agreements, and plans for exercising and, if necessary, refining the system components.

a. *HCPDS components.* Additional HCPDS components, not critical to meeting the initial requirements, include the induction of overseas registrants, a Compliance System Component, and an Alternative Service System Component. These important components will be added later and utilize as much of the existing systems as practicable.

b. *"Steady-state" system.* After any postmobilization activation and initial operations, Selective Service expects a transition to a "steady-state" operating system for health care registrants similar to that being developed for regular registrants. To the extent practicable, HCPDS emergency procedures will be designed for the transaction to a steady-state HCPDS operation.[3]

9. *Coordination and Approval.*—a. *General.* Selective Service has informally coordinated this paper with other Federal agencies. Approval of an operational concepts for HCPDS by the Director is required before finalizing a detailed functional description and building an automated system.

b. *Coordination with DOD.* Coordination with DOD is required on proposed legislation, the registration proclamation, requirements, and proposed induction policies and procedures.

c. *Coordination with other Government agencies.* Coordination with several other government agencies is also required. There are many agencies with mobilization authorities, responsibilities, and plans which relate to this project. Interagency factors will be identified and addressed to make HCPDS an integral part of overall national policies and plans. The following agencies have roles which interface with the Selective Service System in the development of the HCPDS procedures.

(1) Policy planning agencies

Office of Management and Budget (OMB)[4]
Department of Health and Human Services (DHHS)
Federal Emergency Management Agency (FEMA)
Veterans Administration (VA)

(2) Support agencies

U.S. Postal Service (USPS)
Department of State (DOS)
Internal Revenue Service (IRS)
Social Security Administration (SSA)
Government Printing Office (GPO)
Department of Justice (DOJ)
Other agencies as required.

d. *Interface with health care associations.* This HCPDS concept has been the subject of informal discussion with several health care associations.[4] Additional such coordination with these associations is planned as the concept is further refined.

e. *Public comment.* Publication in The Federal Register is planned.

10. *Maintenance of System.* A completed and tested HCPDS plan would go "on the shelf" and be periodically reviewed, updated, and tested to keep it viable for implementation.

Part II—Registration

1. *General.*—a. *Who.* The registration of civilian health care personnel will be required as specified in a Presidential Proclamation. Active duty military personnel and lawfully admitted nonimmigrant aliens are exempt from registration as provided by the MSSA. Those registered will include only individuals who are professionally qualified, or who later become so qualified, and who are age 20 through 44 inclusive.[5] Males already registered as regular registrants are required to register again as health care personnel. Both their regular registrant records and HCPDS records will be annotated.[6] A registrant will be registered in no more than one medical specialty at a time, the specialty with the highest education and/or experience requirements, with due consideration being given to skill specialties considered in critically short supply.

b. *Where.* Registration sites now used for regular registrants will be used. The current sites for regular registration are U.S. Postal Service (USPS) classified sites within the States, possessions, and territories, and Department of State (DOS) posts overseas. Additional registration sites will be used if required.[7]

c. *How.* Registration of health care personnel will be conducted in two major phases: an initial mass registration followed by continuous registration. Special supplemental registration(s) of additional health care personnel would be conducted if dictated by the developing situation. Registration procedures will parallel those currently used for regular registrants where possible. Where necessary, existing procedures will be modified or new procedures developed.

d. *Support.* Rapid collection of registration information requires ADP support by outside agencies and/or contractors because regular registrant induction processing would utilize fully the available processing capability. Forms and materials will be distributed initially by the printing contractor, in predetermined size packs, using USPS and DOS distribution plans. Replacement USPS stocks will be positioned at USPS Management Sectional Centers (MSC) until adequate stocks are placed in the two USPS Supply Centers. DOS replacement stocks will be positioned at Selective Service National Headquarters.

e. *Flow chart.* See the system flow chart, annex A.

2. *Initial Mass Registration.* Persons who are of registration age on the base date established and who are qualified as health care specialists will be required to register in the mass registration. The base date will be a date about six months in advance of the first day of the mass registration. Both these dates will be established in the registration proclamation. This registration will last approximately seven days including weekends in order to accomplish the anticipated 3.4 million registrations.

3. *Continuous Registration.* Continuous registration commences two weeks after the end of the initial mass registration. The following persons will be required to register: Those becoming newly qualified as health care specialists required to register; Those qualified health care personnel of an age and of a health care occupation required by a registration proclamation to be registered; [8] Those required to register previously who failed to do so.

4. *Special Mass Registration.* To cover additional specialities and/or age groups, special mass registrations could be conducted, but will be avoided if at all possible.[9]

5. *Registration Material Production and Distribution*—a. *Items for registration sites.* Stocks of the following items required to implement health care personnel registration will be printed and delivered to each using site in the Continental United States (CONUS): Registration Forms; Instruction/Information sheets for the persons completing registration forms; Instruction sheets for registration site personnel; Mailing/control forms for use by registration site personnel.[10]

b. *Advance arrangements.* Camera ready prototypes of each item will be prepared in enough copies to satify printing at regionally located contractor sites. Emergency requisition will be placed with UNICOR,[11] or other GPO approved printing facilities, in advance for expedited action on M-Day, or earlier, in event authority to print should be received prior to M-Day. Requisitions will specify various sized packages of the items for direct delivery to the using sites. Electronic delivery of prototype forms and materials for use at DOS posts is being explored.

c. *Distribution.*

(1) *USPS.* Shipments to USPS sites will be presorted by the contractor into MSC groupings and addressed to the ultimate registration site.

(2) *DOS.* Predetermined sized packages will go forward to each DOS post via Air Pouch to ensure the most reasonable delivery time if a program of electronic transmission cannot be implemented.

(3) *Other possibilities.* Additional means of providing registration forms to registrants will be explored as backup for supplemental methods of facilitating the registration of health care personnel, such as by direct mail or as stuffers in health care oriented newspapers or periodicals (involving a mail-in registration form), or through the use of registrars who would report to facilities having large concentrations of health care personnel to be registered.

6. *Collection of Registration Information*—a. *USPS Sites*—(1) *Initial mass registration.* Initially, each individual registration site will forward completed forms on a daily basis to a predesignated control and processing point for counting, batching, keying, and microfilming/indexing during the mass registration period where practicable. That facility will accomplish the stated control measures before forwarding the source documents to the selected input points for collection and initial processing of the registration input. IRS, SSA, UNICOR, and/or other agencies may be used in this regard. Input will be collected and transmitted to the Selective Service Data Management Center (DMC) on a daily basis. After collection of the registration input, original source documents would be forwarded to Selective Service as established in Memoranda of Understanding.

(2) *Continuous registration.* During continuous registration, forms will be forwarded every Friday. The input center(s) will forward input results to the DMC, which will consolidate and process the input from all registration sites. The DMC will produce listings and resolve abnormal file conditions utilizing available resources. In each instance tape or other appropriate backup will be provided to SSS along with the original source document(s).

b. *DOS.* State Department posts will return completed forms to the single designated Selective Service control processing point on a weekly basis using Air Mail or Air Pouch. Further processing would be identical to that shown in 6a above.

c. *Transmittal and control.* Control/report forms will be mailed each time a site forwards completed registration forms or transmitted registration data. One copy will be enclosed with the mailing. If transmitted electronically or by magnetic tape, a header will contain information normally included on the hard copy control/report form mailed with completed forms.

7. *Error Correction.* Error correction and/or data base editing will be accomplished by SSS primarily using written contact with the registrant.

8. *Registration Acknowledgments.* Official registration acknowledgments will be mailed in the same manner as for regular registrants.

Part III—Selection and Induction

1. *General.* The proposed selection and induction portion of the HCPDS Induction, Claims, and Appeals automated system parallels, inasmuch as practicable, the current version of the RIMS Manual which describes regular registrant procedures that are ready to become operational in the event of a full-scale military mobilization; it is essentially a one-step combined examination/induction process.

2. *PSG–M Assignment.* The first step in the induction process is the assignment of a Random Sequence Number (RSN) and Priority Selection Group—Medical (PSG–M) to each registrant record. Health care personnel registering in the initial mass registration will have their registration records established in the HCPDS data base as a group on the same date and will be assigned RSN's from a Selectvie Service lottery held upon mobilization. All registrants from the initial mass registration will be assigned to the First Priority Selection Group-Medical (PSG–M) for 365 consecutive days, which period constitutes their year of prime vulnerability. The clock will start on the same day for all initial mass registrants. The first priority group will also include other health care personnel, either late mass registrations or continuous registrants who register later, using their accession date as a start date. Each of these registrants will remain in the first priority for an individual 365 day period, starting with the establishment of a valid registration record in the data base. An RSN from a lottery table will be assigned to each new record.

3. *Selection.* Selection of health care registrants for induction within their specialty is based upon: Priority Selection Group-Medical; Year of Birth (YOB), within the PSG–M,[12] from youngest to oldest; Random Sequence Number within each individual YOB group.

If registrants are depleted in the First Priority Selection Group, selection continues from the second and then progressively lower selection groups.

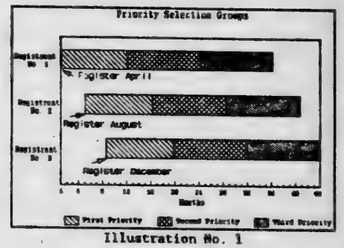


Illustration No. 1

This illustration shows three registrants: the first registered at the completion of the initial mass registration in month 1 (e.g. April); the second and third registered later when they became qualified as health care personnel, one in month 4 (August), and the other during month 8 (December). From months 8 through 12 (December through March) all are in the First PSG–M together. If none of the three are reached for induction, Registrant No. 1 moves to the second priority group in month 13 (i.e. the next April), Registrant No. 2 moves to second priority the next August, and registrant No. 3 the next December.

4. *Overcall.* In order to ensure that DOD requirements are met, enough registrants must be ordered for induction to cover losses due to postponement, deferment and exemption requests, failures to report, and disqualifications by DOD.

a. *DOD rejection rates.* Under the former "doctors' draft," registrants practicing their professions in the private sector were considered able to do the same in a military health care environment notwithstanding physical conditions which would cause rejection as a regular registrant. If similar standards are applied under an HCPDS scenario, the DOD rejection rate for health care personnel should be significantly lower than that estimated for regular registrants.

b. *Other fall-out rates.* It is likely that the overcall rate will vary depending upon the specialty called and the demographics of the population being

ordered. Registrants in the technical level specialties will have different postponement, deferment, and exemption rates than will physicians. Populations which are principally female, such as nurses or dental technicians, may have many mothers who could request hardship deferments.

Estimates of the expected fall-out rate will be made using the best historical and demographic data available. These losses will then be converted to an overcall factor and this factor applied to each specialty required by DOD in order to determine the PSG, YOB, and RSN cut off number used to select the registrants to be called for induction.

5. *Sequence of Processing.* The sequence of SSS actions for selection and induction follows:

a. Receive specific requisition from DOD.

b. Calculate the number of registrants to be ordered for induction by specialty to meet the DOD requirement and set PSG–M/YOB/RSN cut-off for each specialty.

c. Select and order registrants for induction by specialty according to the order of call shown below.

d. Process registrant claims for postponement, deferment, and/or exemption.

6. *Order of Call.* Registrants will be selected for induction in the following sequence:

a. Registrants whose claims have been denied, registrants whose "reexamination believed justified" dates have expired, and registrants who have been classified 1–A–OM.

b. Registrants whose postponements have expired in the order of the date of expiration of the postponement. If necessary, the RSN shall be used as a tie breaker for registrants in a postponement expired status.

c. Registrants whose deferments have expired or who no longer qualify for exemption in RSN sequence. Selection will begin with registrants from the youngest YOB groups, then by RSN.

d. Registrants in the First Priority Selection Group—Medical. Selection will begin with registrants from the youngest YOB group, then by RSN.

e. Registrants in the Second and succeedingly lower Priority Selection Groups—Medical in the same manner as above.

7. *Induction.* a. *Assignment to local board and area office.* Assignment to a Local Board and Area Office will be made at the time the registrant is initially selected for induction based on the registrant's permanent address. The ZIP Code Assignment File will be used to determine the local board/area office covering the registrant's permanent address ZIP Code.

b. *Scheduling to MEPS and issuance of induction order.* Registrants will be scheduled to a MEPS on the basis of their permanent address ZIP Code in accord with the ZIP Code Assignment File. An alternate MEPS, as specified in the file, will be used to adjust for overfill/underfill at the individual MEPS. The first induction notice will be mailed to the current address. Registrants will be ordered by mailgram to report to the MEPS on a date not earlier than 10 days from the date of mailing of the order. The orders will specify the documentation required to determine professional qualifications and thus each will be tailored to the specialty called. Registrants initially ordered for induction will be issued an "Order to Report for Induction." Previously ordered registrants will be issued either an "Order to Report for Induction" or a "Notice of Rescheduled Induction Reporting Date" depending on their current status. Procedures will be the same as those which exist in RIMS. Registrants residing overseas will be issued orders by letter and will be scheduled to report to an overseas military location.

c. *MEPS processing.* When an ordered registrant appears at the MEPS, he is examined to determine physical, moral, and professional/technical qualifications. The results of this processing are entered into the MEPS reporting system and transmitted to SSS via MEPCOM.

8. *Information for registrants.* A publication similar to the current Information for Registrants booklet will be available to the public at Post Offices and all Selective Service Offices to provide additional information on induction and claims processing.

9. *Dual Registrants.* Dual registrants are those who register both as regular and as health care registrants. As mentioned in Part II—Registration, records of dual registrants will be annotated to denote inclusion in both data bases. Once a record is annotated on the RIMS data base, processing as a regular registrant ceases and further processing takes place under HCPDS procedures from the HCPDS data base.[19]

Part IV—Classification, Claims, and Appeals

1. *General.* Classification is the exercise of the authority to determine claims or questions on inclusion or exemption from training and service under the MSSA. The narrative in this Part and the flow chart at Annex A describe the proposed classification, claims, and appeals component of the HCPDS concept. This component is crucial to ensuring the protection of all registrants' rights. The basic classification structure established for RIMS will be used for health care registrant processing. Where practicable, this system will incorporate current regular registrant processing procedures contained in RIMS.

2. *Classification Structure.* The various classification bodies and the authority of each are as follows:

a. Upon activation of HCPDS, the Director of Selective Service assigns classification 1–HM (not currently subject to induction processing) to all health care registrants. Upon receipt of a requisition for health care personnel from the Secretary of Defense, all health care registrants selected for induction are assigned to Class 1–AM (available for unrestricted military service). In addition, the Director will classify a health care registrant into an appropriate class when the Secretary of Defense has certified the registrant to be a member of the Armed Forces, active or reserve, or the registrant has been found disqualified for service.

b. The Director will authorize Area Offices to classify a health care registrant who has been ordered to report for induction into any administrative classification for which he has filed a claim and documented his eligibility. Area Office personnel will initially decide administrative claims. Claims denied by Area Office personnel are subject to Local Board review, when requested by the registrant.

c. A Local Board may classify a health care registrant into any judgmental class that he has requested and for which he is eligible. Claims denied by a Local Board are subject to appeal when requested by the registrant, the State Director, or the Director.

d. A District Appeal Board may classify a health care registrant into any class that he requested and for which he is eligible when a Local Board denial of a claim is appealed.

e. The National Appeal Board may classify a health care registrant into any class that he requested and for which he is eligible when a Distict Appeal Board denial of a claim is appealed to the President (National Appeal Board).

3. *Classifications—Deferments—Exemptions*—a. *Classification categories.* To expedite the classification process and reduce the volume of claims to be decided by the Local Board, the classification categories have been divided into two groups: administrative and judgmental. Administrative classification claims are established on the basis of official documents required for each classification. Judgmental claims for reclassification are those requiring a Local Board to determine whether the evidence submitted meets the criteria established for the requested classification. Administrative and judgmental classifications are identified in annex E. Health care registrant classifications will contain an "M" suffix for prompt identification and for statistical purposes.

b. *Registrant's responsibility.* Upon issuance of an Order to Report for Induction, a registrant may file a written claim for postponement of induction and/or reclassification with any Selective Service Area Office. The registrant's induction date is automatically delayed by the submission of a claim, pending resolution of the claim. A registrant must file concurrently all claims for classes for which he believes he is eligible, within the time period designated on his induction order. Any registrant who files a claim must document his eligibility to the satisfaction of the Area Office or the Local Board depending on the type of claim filed. The registrant may submit a statement as well as statements of other persons to prove the factual basis of his claim, in addition to any specific form(s) or other type of documentation required for the classification requested. Registrants, who do not file claims or whose claims are denied, are expected to report for induction as ordered.

Health care registrants are required to report changes in their status on which a claim is based to Selective Service within 10 days of the date such change occurs.

4. *Postponements.* Postponement does not cancel an induction order, but results in a rescheduled induction reporting date. Postponement is a statutory or administrative delay of a registrant's induction reporting date. Health care registrants will be eligible for postponements the same as regular registrants and for the same reasons as prescribed in RIMS. Each postponement shall be granted to a specific date but may be terminated at any time prior to the expiration date if the reason for which it was granted ceases to exist. At the expiration or termination of a postponement, the health care registrant will be rescheduled for induction.

a. *Types of postponements.* There are two types of postponements, statutory and administrative.

Statutory postponements are those authorized by the MSSA to permit satisfactory, full-time students to complete the term or semester in which they are enrolled at the time they are ordered for induction. If the registrant is in the last academic year, the postponement may be granted until the end of that academic year.

Administrative postponements are those specifically authorized by Selective Service regulations. A health care registrant may be granted an administrative postponement for the reasons and periods prescribed in RIMS when: there is a family emergency beyond the registrant's control; the registrant incurs an illness or injury; the registrant is scheduled for a state or national examination to be eligible to practice his profession or occupation; the registrant has been accepted at a military service academy or for one of the specified Reserve Officer Training Corps programs; or, the registrant is scheduled to be inducted on a religious holiday observed historically by the registrant's recognized church, religious sect, or organization.

b. *Postponing authorities.* Registrants who believe they qualify for postponement at the time they are ordered for induction should file a claim with the Area Office and furnish the required documentation. Area Office personnel will decide the claim based on the documentation submitted by the registrant. When a claim for student postponement is denied by the Area Office, the registrant may request the Local Board to review his claim. Other postponement denials are not subject to review or appeal. The MEPS Liaison Officer (MLO) who represents Selective Service at the MEPS is authorized to grant a postponement of not more than ten days to a registrant when an emergency occurs while the registrant is enroute to, or during processing at the MEPS.

5. *Basic Claims and Appeals Process.* Health care registrants will be eligible to file claims for all postponements, deferments, and exemptions available to regular registrants. The filing of a claimn will delay the registrant's reporting date until the claim is decided.

a. *Claims.* Claims for postponements and administrative classifications, to include documented separations from military service because of hardship or conscientious objection, will be initially decided by Area Office personnel, with denials of student postponements and administrative classifications subject to Local Board review when requested by the registrant.

(1) Claims for judgmental classifications, i.e., community essentiality, occupational deferment, hardship, conscientious objection, ministerial and ministerial student status, must be decided by the registrant's Local Board. Conscientious objector claimants are required to appear personally before the Local Board unless previously separated from military service for reasons of conscientious objection. Other judgmental claimants and registrants requesting Local Board review of Area Office denials may ask to appear before the Local Board to discuss the claim. Persons appearing before a Local Board are permitted to present up to three witnesses, use an interpreter if one is required, be accompanied by an advisor, and submit additional written or oral information to support their claim. Registrants may not be represented at their personal appearance by anyone acting as an attorney or legal counsel.

(2) Registrants are eligible for deferment or exemption only so long as the reason for the deferment or exemption exists. Upon expiration of a registrant's deferment or termination of a deferment or exemption, the registrant will be returned to the available pool and ordered for induction with the next call for the specialty involved before those not previously ordered are selected.

b. *Appeals.* The HCPDS appeals process corresponds to the appeals system established by RIMS for regular registrants. Health care registrants will be offered the opportunity to request the Local Board to review and decide any claim for student postponement or administrative classification denied by the Area Office. A Local Board decision to deny an administrative classification may be appealed to the District Appeal Board when the denial decision is not unanimous. Any Local Board decision to deny a claim for judgmental reclassification may be appealed to the District Appeal Board. A District Appeal Board claim denial may be appealed to the President (National Appeal Board) if the vote to deny is not unanimous. The decision of the National Appeal Board is final and is not subject to further review or appeal.

A health care registrant may appear personally before a District Appeal Board or the National Appeal Board, as applicable, to discuss his claim. A person appearing before an appeal board may use an interpreter if one is required, be accompanied by an advisor, and submit additional written or oral information to support his claim. Registrants may not present witnesses or be represented at their personal appearance by anyone acting as an attorney or legal counsel.

6. *Special Health Care Personnel Provisions*—a. *Special health care personnel deferments.* In addition to all

deferments and exemptions available to regular registrants under RIMS, two new classes are provided under this system:

(1) *Community essentiality deferments.* A Class 2-EM (community essentiality deferment) is being added to the judgmental classification category for the health care registrants determined essential to the health care within their own communities. To qualify, health care registrants must be engaged in direct patient care. Class 2-EM will apply only to health care registrants.

(2) *Occupational deferments.* Eligibility for occupational deferment may be extended at the direction of the National Security Council to those staffing certain health care facilities, performing health care in a civilian capacity related to war activities, teaching in medical schools, or engaged in research and development relating to long term public health. Class 2-AM is designated for this type deferment, if and when authorized.

b. *Health care advisory boards*—(1) *State and local health care advisory boards.* While both types of these claims will be decided by the Local Board, it is important for the Local Board to have an advisory board, fully cognizant of the civilian community health care needs, to recommend on the validity of grounds for deferment. These boards will make recommendations to the Local Boards on the advisability of granting deferments. Section 10(b)(3) of the MSSA authorizes the creation of such boards. Specific criteria for establishing these review boards will be included in Selective Service regulations. These boards will review only the two types of deferment claims specified in 6a(1) and 6a(2) above.[14]

(2) *National health care personnel advisory committee.* A National Health Care Personnel Advisory Committee will be established by regulation. The purpose of this committee will be to advise the Director on the administration of those portions of the MSSA pertaining to the induction of health care personnel. Members of the committee will be appointed by the Director from among persons who are outstanding in the health occupations or who have extensive knowledge or background in health care matters.

c. *No advance DOD examinations.* SSS will adjudicate all claims prior to claimants' DOD examination and acceptance.[15]

d. *Forms and reports.* Many existing RIMS forms and management reports will be modified and used for HCPDS. Materials and publications pertaining only to health care registrant processing will be identified and developed as the need arises.

e. *Area office terminal system (AOTS).* A modified AOTS will be used to transmit data to the DMC to update health care registrant records.

7. *Area Office Operational and Administrative Procedures.* The Local Boards, Appeal Boards, and Area Offices designed to function under RIMS will perform like duties for Health Care Personnel. The Area office is responsible for all administrative and operational support for the one or more Local Boards within its jurisdiction. The Area Office Manager is in immediate charge of the Area Office and responsible for carrying out the functions of that office.

a. Area Offices are responsible to: assist registrants in filing claims; receive claims; accomplish postponements and administrative classification actions; prepare registrant files for Local Board Classification actions; schedule personal appearances before Local Boards; assist Local Boards in the conduct of their meetings; record official board actions; transmit registrant information to the DMC to update the registrant data base; and, respond to inquiries from registrants, the media, and the public.

b. Upon receipt of a registrant's claim for postponement or reclassification, Area Office personnel will verify that the registrant has been ordered to report for induction and, if so, prepare an individual Registrant File Folder. The File Folder will be used for filing all documents pertaining to the registrant and for recording official actions relative to the registrant's claim(s) or circumstances.

c. Health care registrant file folders will be maintained in the Area Office in a file system separate from that of regular registrants. The HCPDS filing system will parallel the regular registrant structure, but must provide for specialty categories and priority selection group divisions where required.

Annex Description

A System Flow Chart
B Definitions, Abbreviations, and Acronyms
C Amendment to MSSA of December 4, 1987
D DOD Mobilization Shortfall Requirements Beginning at D+10
E SSS Classifications

Footnotes

1. The amendment to the law and "legislative intent" materials are at Annex C. Although the wording of the amendment calls for a Selective Service Health care Personnel Delivery System (HCPDS) on the same basis as the system for delivering regular registrants, specific constraints were included in the legislative intent materials which preclude peacetime registration. No additional funds have been appropriated to carry out this new requirement.

2. During the initial days of mobilization, with inductees required as soon as possible, the Nation cannot afford the extra time required to classify and examine registrants before forwarding them for induction. The RIMS emergency procedures necessary to provide inductees as quickly as possible lead to the development of the "one-step" process at MEPS, examination and immediate induction of those registrants found qualified. These procedures, although suitable for use during the early stages of an emergency, are not intended for long term, steady state operation. Selective Service can only estimate reporting rates because of the uncertainty regarding the number of registrants who will file claims for deferment or exemption. Registrants will not know when they report for induction whether or not they will be found qualified and inducted or disqualified and sent home. Therefore, transition to a system which provides for more orderly scheduling and flow of registrants to MEPS will occur as soon as practicable. Procedures will call for "two-step" processing whereby registrants will receive a preinduction examination and have their claims for deferment or exemption processed before being ordered to report for induction. Such a system will eliminate many of the show rate uncertainties inherent in the emergency procedures and provide greater registrant convenience. The steady state system is intended for implementation as a follow on to the emergency induction procedures. However, it could be implemented directly if advance warning were available during a slow build up scenario.

3. At the appropriate time, OMB would be involved in the coordination of the proposed health care personnel legislation with other interested agencies.

4. The following organizations have requested and received a briefing at Selective Service (or materials by mail in lieu thereof at their request):

American Medical Association
American Nurses Association
American Association of Nurse Anesthetists
Service Employees' International Union
American Osteopathic Association
American Academy of Family Physicians
American Academy of Physicians Assistants
American Physical Therapy Association
American Dental Association
National Medical Association

5. The proposed revision to the MSSA calls for liability for registration and service to age 55 to provide a margin of additional registrants, if needed, but the proposed proclamation will call for registration of only those age 20 through 44, as DOD's requirements would likely be met by this age group.

6. As a part of the registration record processing, the HCPDS registration records will be compared to the records in the regular registrant data base. Whenever a "match" is achieved, both records would be flagged to indicate inclusion of the registrant on both data bases. Additonal processing of the regular registrant record would not occur, but that record would be retained in an inactive status.

7. For example, the feasibility of having registrars visit facilities with large concentrations of health care personnel will be explored as backup methods of facilitating the registration of health care personnel.

8. Registration under continuous registration would be required within 15 days of the date the person became liable. In the case of immigrant aliens entering the country, this would be 15 days after such entry is otherwise required to register.

9. If the situation required it, another proclamation would be issued to require the registration of health care personnel in additional age groups and/or specialties, as required.

10. The control form could prove to be similar to the SSS Form 6 currently used by registration sites to control and submit regular registration forms to the DMC.

11. UNICOR is a part of the Department of Justice, Bureau of Prisons, and is involved in production work by prisoners which has proven to be of good quality.

12. Year of birth has been included as the second factor on which records would be sorted in the selection procedure in order to ensure that a youngest first order of induction is maintained. A youngest first selection order has several benefits. Younger registrants generally will be less critical to the continued maintenance of an adequate level of health care services in their communities. They also will have had less time to establish practices resulting in fewer claims for community essentiality and postponements to settle business affairs. Reduced claim rates will speed deliveries to DOD. There should be minimal increase in financial hardship claims because health care registrants are to enter military service as commissioned officers, as warrant officers, or in advanced enlisted grades as determined by the DOD. This may be offset, however, by an increased claim rate from younger people having younger children and thereby more frequently claiming family hardship.

13. Men who would be required to register both as regular registrants and as health care registrants represented a potential problem area. In a future draft, unless special provision were made, a man between age 20 and age 26 qualified in a health care occupation would have two Selective Service records: one in RIMS and one in HCPDS. He could be reached for induction and processed under either system, in effect giving him double exposure to the draft until age 26. Female health care registrants would not be subject to induction under the regular registrant system and male registrants 26 and older would not be subject to induction under both systems at the same time. Additionally, induction of health care registrants as regular registrants would deplete the pool of much needed health care personnel. In an effort to eliminate potential problems, this concept calls for processing all health care registrants under HCPDS procedures only.

14. Advisory Committees, composed of representatives of health care professions, were used in the past and were effctive in reviewing and making recommendations to Local Boards on such claims.

15. The primary reason for the provision in RIMS to examine regular registrants prior to considering their judgmental claims was to reduce the Local Board workload by eliminating claim processing for registrants who would be rejected at the MEPS. Historically, the rejection rate of personnel in the "doctors' draft" was extremely low compared to the rate for regular registrants, resulting in no significant reduction in the number of claims requiring Local Board adjudication. Another factor that influenced this decision is the MEPS workload at the time health care registrants would begin reporting for processing. MEPS capacities could be strained by adding health care personnel processing to the ongoing processing of regular registrants. Judgmental claims processing by Local Boards prior to examination would eliminate MEPS processing of those who would eventually be granted deferments or exemptions.

BILLING CODE 8015-01-M

ANNEX A - SYSTEM FLOW CHART

OVERVIEW OF HCPDB - Annex A

BILLING CODE 8015-01-C

Annex B—Definitions, Abbreviations, and Acronyms

Base Date. A date selected in advance, and incorporated into the initial registration proclamation, on which any given person would have been practicing or performing his specialty. This date will be used in determining an individual's eligibility and liability to register as a health care specialist registrant.

Class. A category designated by Selective Service for grouping and processing registrants according to estalished criteria (also called "classification").

Classification. (1) The initial exercise of the authority to determine a registrant's claims or questions with respect to a registrant's inclusion into a specific class for, or exemption from, training and service under the Military Selective Service Act (MSSA), by the official act of designating a registrant's class; and/or,

(2) The subsequent exercise of aforementioned authority by designating a new class for a registrant (i.e., reclassification).

(3) A category designated by Selective Service for grouping and processing registrants according to established criteria (also called "class").

Community Essentiality. The providing of direct health care services essential to the maintenance of national health, safety, and interest in a community, and which cannot be provided by anyone other than the health care registrant applying for Class 2–EM (Registrant Deferred Because of Community Essentiality).

CONUS Continental United States (in this paper includes the fifty States, the District of Columbia, and all off-shore possessions, territories, and protectorates).

Continuous Registration. Ongoing registration of persons liable for registration as prescribed in a Presidential Proclamation and implementing Selective Service Regulations.

Credentialing. The verification process of reviewing licenses, diplomas, training certificates and related materials for professional qualification of health care personnel. Credentialing will be accomplished by medical department personnel from the uniformed services in support of The Military Entrance and Processing Command (MEPCOM).

D-Day. The day hostilities commence.

Health Care Personnel. Persons who are qualified or become qualified for practice or employment in an occupation to provide health care, to humans or animals, which has been deemed essential by the President to meet the needs of the Armed Forces, without regard to whether such persons meet standards prescribed by the Secretary of Defense.

Health Care Registrant. A person registered under authority of (proposed) Section 3(a)(2) of the Military Selective Service Act, (i.e., a person qualified for practice or employment in an occupation to provide health care to humans or animals).

Health Care Advisory Board. A group of not less than three civilian members appointed by the Director to review health care personnel claims for deferment from induction base upon reasons of community essentially or occupation. It makes recommendations to Local Boards.

M-Day. The day SSS commences mobilization.

Mass Registration. Regi: 'ration of specific categories of persons over a specified, limited period of time as set forth in a Presidental Proclamation.

MSSA. The Military Selective Service Act, as amended (50 U.S.C. App. 451 *et seq.*).

National Health Care Personnel Advisory Committee. A committee, to be authorized by Selective Service Regulations and appointed by the Director, to provide advice to the Director of Selective Service on selection, classification, induction, and related policies pertaining to health care personnel.

Regular Registrants. Registrants currently registered under RIMS.

RIMS. The Selective Service System's Registrant Information and Management System, which represents the policies, procedures, and automated data systems for processing regular registrants for induction or alternative service.

Annex C—Amendment to MSSA of December 4, 1987

Public Law 100–180, section 715, National Defense Authorization Act for Fiscal Year 1988/1989, December 4, 1987, amended section 10(h) of the MSSA. Section 10(h) now reads as follows:

SEC 10(h). The Selective Service System shall be maintained as an active standby organization with (1) a complete registration and classification structure capable of immediate operation in the event of a national emergency *(including a structure for registration and classification of persons qualified for practice or employment in a health care occupation essential to the maintenance of the Armed Forces)* and (2) personnel adequate to reinstitute immediately the full operation of the System, including military reservists who are trained to operate such System and who can be ordered to active duty for such purpose in the event of a national emergency.

Italic portion shows language added by amendment.

Also attached are excerpts from the House and Senate Committee Reports on this legislation.

Section 715—Standby Capability for Selective Service Registration of Health Care Personnel

Although the committee has proposed a number of provisions to increase the number of health professionals with critical combat skills in the active and reserve forces during peacetime, the committee believes that a back-up system for the rapid registration of health care professionals after the declaration of a national emergency should be implemented. The committee, therefore, recommends authorizing the Selective Service System to implement a system for the post-mobilization registration of health care professionals.

Specifically, the committee envisions that the Selective Service System would perform the following tasks under this authority: (1) design a computer program to facilitate registration in the event of a national emergency—no names or lists would be included; (2) develop adjudication procedures for claims and appeals in the event of registration; and (3) produce sample forms for registration but not distribute them unless registration is authorized in the future.

The committee emphasizes that this authority neither encompasses a peacetime draft nor a peacetime registration system: rather, it would only permit the Selective Service System to develop a structure for the possible registration and classification of health care professionals to be implemented after the President declares a national emergency and after Congress passes legislation providing specific registration and conscription authority.

The committee believes that a system for the post mobilization registration of health care professionals would help address medical readiness personnel shortfalls as well as provide a safeguard against disaster in the event that major hostilities erupt before voluntary initiatives produce adequate numbers and kinds of military health professionals. The committee emphasizes however, that the Department of Defense must actively pursue other medical readiness initiatives and work closely with professional health associations to attract and retain health professionals committee to military service because effective voluntary programs are the first line of defense.

(Committee on Armed Services, U.S. House of Representatives, House Report 100–58, p. 213)

TITLE VII—HEALTH CARE PROVISIONS

Post-Mobilization Registration of Health Care Professionals

The Selective Service has requested authority to spend funds to design and develop a standby system to prepare for the post-mobilization registration and classification of persons with essential health

care delivery skills. This standby system will reduce the time it would require Selective Service to call up health care personnel in the event of war or national emergency.

The provision recommended by the committee (sec. 703) provides authority for Selective Service to expend funds to develop such a standby system. This provision does not grant authority to Selective Service to register or to induct medical personnel.

(Committee on Armed Services, U.S. Senate, Senate Report 100–57, p. 149)

Annex D—DOD Mobilization Shortfall Requirements Beginning at D+10

DOD requirements include the following numbers and specialties:

Numbers: (Source: DOD FY '88–'92 Program Objective Memoranda)

Manpower category	D+10	D+30	D+60	D+90	D+180
Physicians	4,867	690	259	144	74
Nurses	25,091	3,905	581	789	561
Medical enlisted	41,826	23,444	5,364	1,328	1,025
Total:	71,784	28,039	6,204	2,261	1,660

Job Categories:

Physicians
Aerospace Medicine
Thoracic Surgery
Orthopedic Surgery
Occupational Medicine
Anesthesiology
General Surgery
Neurosurgery
Urology
Otolaryngology
Psychiatry
Allergy
Neurology
Dermatology
Radiology
Colon-Rectal Surgery
Pathology
Ophthalmology
Internal Medicine
Emergency Medicine

Dentists
Oral Surgery
Prosthodontics
Periodontics
Endocrinology
Gen Dentistry

Miscellaneous

Allied Specialists
Physiology
Entomology
Clinical Psychology
Medical Technology
Audiology/Speech Therapy
Environmental Health
Podiatry
Dietetics
Physical Therapy

Registered Nurses
Medical/Surgical Nursing
Surgical Nursing
Certified Registered Nurse Anesthetist
Mental Health Nursing

Medical Care Technicians

Licensed Practical/Vocational Nursing and Other

Medical Care and Treatment Personnel

Other Specialists/Technicians
Dental Laboratory
Medical Administration
Radiology
Respiratory Therapy
Medical Laboratory
Dental Assistance
Operating Room
Pharmacy
Dietetic
Medical Supply
Medical Equip Repair
Psychiatric
Physical Therapy
Environmental Health
Orthopedic
Veterinary
Occupational Therapy
Optical
Ophthalmology
Optometry

Annex E—SSS Classifications

This Attachment set forth Selective Service Classifications which would be assigned to health care registrants under HCPDS, using the suffic "M" to designate them as a separate group. These classes would be assigned at such time as authorized and necessary to do so in connection with their processing under HCPDS.

Administrative Classifications

Classification	Description
1-AM:	Registrat Available for Unrestricted Military Service.
1-CM	Member of the Armed Forces of the United States, the National Oceanic and Atmospheric Administration, or the Public Health Service.
1-D-DM:	Deferment for Certain Members of a Reserve Component or Student Taking Military Training.
1-D-EM:	Exemption of Certain Members of a Reserve Component or Student Taking Military Training.
1-HM:	Registrant Not Currently Subject to Processing for Induction or Alternative Service.
1-O-SM:	Conscientious Objector to All Military Service (Separated).
1-WM:	Conscientious Objector Ordered to Perform Alternative Service in Lieu of Induction.
3-A-SM:	Registrant Deferred Because of Hardship to Dependents (Separated).
4-AM:	Registrant Who Has Completed Military Service.
4-A-AM:	Registrant Who Has Performed Military Service for a Foreign Nation.
4-BM:	Official Deferred by Law.
4-CM:	Alien or Dual National.
4-FM:	Registrant Not Acceptable for Military Service.
4-GM:	Registrant Exempted from Service Because of Death of Parent or Sibling While Serving in the Armed Forces or Whose Parent or Sibling is in a Captured or Missing in Action Status.
4-TM:	Treaty Alien.
4-WM:	Registrant Who Has Completed Alternative Service.
1-A-OM:	Conscientious Objector Available for Noncombatant Military Service Only.
1-OM:	Conscientious Objector to all Military Service.
2-AM	Registrant Deferred Because of Occupation.
2-EM:	Registrant Deferred Because of Community Essentiality.
2-DM:	Registrant Deferred Because of Study Preparing for the Ministry.
3-AM:	Registrant Deferred Because of Hardship to Dependents.
4-DM:	Minister of Religion.

[FR Doc. 89–19025 Filed 8–14–89; 8:45 am]

BILLING CODE 8015-01-M

DEPARTMENT OF STATE

[Public Notice 1129]

Determination Under FAA § 620(q); Assistance to Peru

Pursuant to the authority vested in me by Section 620(q) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163, and the Department of State Delegation of Authority No. 145, I hereby determine that the furnishing of assistance under the Act to Peru is in the national interest of the United States.

This determination shall be reported to the Congress as required by law.

This determination shall be published in the Federal Register.

Date: August 4, 1989.

James A. Baker III,

Secretary of State.

[FR Doc. 89–19107 Filed 8–14–89; 8:45 am]

BILLING CODE 4710-29-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intent to Issue

Environmental Impact Statement

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a corridor-level environmental impact statement will be prepared for a new transportation improvement called the "Westside Bypass" in Washington County, Oregon.

FOR FURTHER INFORMATION CONTACT: Elton Chang, Environmental Coordinator and Safety Programs Engineer, Federal Highway Administration, Equitable Center, Suite 100, 530 Center NE, Salem, Oregon 97301. Telephone: (503) 399–5749.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oregon Department of Transportation, will prepare an environmental impact statement (EIS) ona proposal to define a corridor for a transportation improvement to accommodate traffic demands between Interstate 5 near Wilsonville, Oregon and U.S. 26 between Highway 217 and Hillsboro, Oregon. The project is based an transportation needs generated by land use plans acknowledged by the Oregon Land Conservation and Development Commission, and on analysis and conclusions contained in the Southwest Corridor Study prepared by the Metropolitan Service District.

The project is located in eastern Washington County, adjacent to the Portland Metropolitan area, and in the most rapidly growing county in Oregon. The proposed improvement is considered necessary to provide for the existing and projected traffic demand, with a safe and efficient facility meeting modern design standards.

Alternatives to be considered include: (1) Development of a new limited access, four-lane circumferential rural/urban highway section with local arterial access at major arterial road crossings; (2) improvement to existing facilities to accommodate projected demand, including widening of Highway 217 and U.S. 26; (3) other transportation modes in conjunction with roadway improvements; and (4) taking no action.

This is the first tier of a two-tier EIS process. This corridor-level EIS will define a general corridor for the proposed improvement. The second tier effort will be preparation of a design EIS to select a specific alignment within the selected corridor.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. Public meetings will be held during project development, and a public hearing will be held. A formal scoping meeting will not be held at the outset of the project.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on August 4, 1989.

Elton H. Chang,

Environment Coordinator/Safety Program Engineer, Oregon Division, Salem, Oregon.

[FR Doc. 89–19077 Filed 8–14–89; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant in part of petition for exemption.

SUMMARY: This notice grants in part the petition by General Motors Corporation (GM) for exemption from the parts marking requirements of the vehicle theft prevention standard for the Chevrolet Camaro (Camaro) and Pontiac Firebird (Firebird) carlines for Model Year (MY) 1990, pursuant to 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard*, for MY 1990 and beyond. GM is required to mark only the engine and transmission of the exempted carlines.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Kurtz, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Ms. Kurtz's telephone number is (202) 366–4806.

SUPPLEMENTARY INFORMATION: On December 7, 1988, GM submitted a petition for exemption from the theft prevention standard for its Camaro and Firebird carlines, pursuant to 49 CFR part 543, *Exemtion from Vehicle Theft Prevention Standard*, for MY 1990 and beyond. GM supplemented that petition on December 21, 1988, by providing the results of its reliability and durability evaluation on the theft deterrent system to be installed. The agency reviewed both submissions.

To aid in analyzing the petition, the agency requested that GM provide additional information on the Vehicle Identification Numbers (VINs) on the MY 1988 Pontiac Firebird Trans Am GTAs that have "Vehicle Antitheft Systems" (VATS) installed as original equipment. These numbers were needed to enable the agency to compare theft rates for Firebirds with and without VATS.

Since GM submitted material constituting a complete petition, as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6, the agency has analyzed the petition and is issuing this notice to announce its determination.

GM has installed the same theft deterrent system as standard equipment in both the Camaro and Firebird. The system is identified by GM as the Personalized Automotive Security System (PASS KEY). This antitheft system is currently installed as standard equipment on the Chevrolet Camaro and Pontiac Firebird carlines for MY 1989. The process for activating the PASS KEY system is described below.

The PASS KEY theft deterrent system utilizes an ignition key, an ignition lock cylinder and a decoder module. The conventional mechanical code permits the key to release the steering wheel and transmission shift lever locks. Before the vehicle can be started, the electrical resistance of a pellet embedded in the shank of the key must be sensed by provisions in the lock cylinder and its value compared to a

fixed resistance in the decoder module located in the instrument panel in the passenger compartment. If the key pellet has the proper resistance, the starter enable relay is energized and a discrete signal is transmitted to the electronic control module. Recognition of the signal by the electronic control module allows fuel injector pulses to begin. If a key other than the one with proper resistance for that vehicle is inserted, the decoder module will shut down for a period of two to four minutes. The time period for shut down is controlled by a timer located within the module. Variability in the length of time that the decoder is shut down is a function of the components preselected by GM for a specific timer and is not a programmable feature by the owner/operator. GM claims that any process of trial and error using various keys with different resistance pellets will cause the timer to recycle and begin again with each failed attempt to match resistance values of the key and the decoder.

The components are located in the passenger compartment behind the instrument panel, with the exception of the starter solenoid/starter motor combination which is physically located in the engine compartment. The remaining components are inside the passenger compartment behind the instrument panel. Unlike many other theft deterrent systems, removing and subsequently reapplying vehicle power does not alter PASS KEY performance.

In order to draw attention to improper use of a key to start the vehicle, GM has installed a yellow "Security" light inside the passenger compartment. This light is designed to activate if the proper key with a dirty or contaminated resistor pellet is used and the vehicle does not start. The "Security" light should also illuminate if a key with the proper mechanical but improper electrical code is used to try and start the vehicle.

GM states that a premise for the design of any theft deterrent system in its products has been that a failure in such a system would not affect a running vehicle. It may not be possible to restart a vehicle after such a failure but that failure should not stop an engine that has been started. That requirement has been met in PASS KEY. Once an "Engine Running" signal has been identified by the engine control module, a PASS KEY failure will not cause the engine to stop.

GM's analysis of the failure mode effects of the PASS KEY system indicated that the component with the highest probability for failure was the ignition lock cylinder with its key, wiring, contacts, and rotational motion. A 52,500 cycle automated bench test of the key, ignition lock cylinder, wiring, and PASS KEY electronics module was conducted over a temperature range of approximately −40 degrees Farenheit to +120 degrees Farenheit. For the Camaro and Firebird installation, a total of 18 such tests were run initially. Seventeen were completed successfully and one was terminated by a failure at 30,000 cycles. The total of 915,000 cycles with one failure is equivalent to 2.57 defects per thousand vehicles and a one-year reliability of 0.987. Subsequently, 4 additional tests were conducted with the following results: (1) 675,000 cycles with no faults; (2) 657,000 cycles with no faults; (3) 520,000 cycles with no faults; and (4) 474,000 cycles with one fault. The one fault was a failure in the automated test equipment which bent a key as it was inserting it into the lock cylinder.

The MY 1987 Corvette "Vehicle Antitheft System" (VATS) is identical to the PASS KEY system. GM provided the theft data available on the MY's 1986 and 1987 VATS equipped Corvette as a basis for the Camaro's and Firebird's PASS KEY effectiveness. The MY 1987 Corvette was granted a parts-marking exemption on June 16, 1986 (51 FR 21823) for an antitheft system which included the VATS and an alarm function (identified as a theft deterrent system (TDS)). Both systems (VATS/PASS KEY) consist of one functional element, which is the starter interrupt function. The MY 1986 and 1987 Corvette antitheft system also included an audible alarm (TDS) connected to the doors, rear hatch, and roof panel openings. This TDS feature will not be available on the MY 1990 Camaro and Firebird. GM provided the theft data for the MY 1986 and 1987 "VATS/TDS" equipped Corvette as a basis for demonstrating the PASS KEY effectiveness in the Camaro and the Firebird. GM stated that, based on the **Federal Register** theft data, the Corvette VATS system was substantially more effective for MYs 1986 and 1987 (with theft rates of 10.9429 per thousand vehicles and 9.5793 per thousand vehicles, respectively) than the theft deterrent system used on the MYs 1984 and 1985 models (with theft rates of 12.6237 per thousand vehicles and 14.3917 per thousand vehicles, respectively). Specifically, GM states that the theft rate for the MY 1986 cars is 24 percent less than that for the MY 1985 cars, and that the rate for the MY 1987 cars is 36 percent below that for the MY 1985 cars. The rate for the MY 1986 cars is 19 percent less than the average rate for MY 1984/1985 cars. For MY 1987 models, the decrease from that average rate is 29 percent.

To further amplify its statements on theft system effectiveness, GM provided comparable theft data as reported by the National Automobile Theft Bureau (NATB). This data also disclosed a decrease in theft rates for the Corvette. (The agency's official source of theft data is the National Crime Information Center (NCIC) for theft data. See 50 FR 46666, dated November 12, 1985.) In addition, GM referenced the results of the Highway Loss Data Institute's (HLDI) Insurance Theft Report T86–1 (dated May 1987). The report stated that "the relative average loss payment per insured vehicle year for 1986 Corvettes (440) represented a reduction of 45 percent from the 1985 result (795)." GM also cited American Automobile Association (AAA) of Michigan's announcement of a 10 percent discount being offered for the comprehensive coverage portion of insurance premiums on GM's MY 1986 and later Corvettes as a result of the reduction in thefts due to the VATS system.

In its December 7, 1988, submission, GM acknowledged that the preceding Corvette data presented is for vehicles that were equipped with a theft deterrent system (TDS) alarm, which will not be on the MY 1990 Camaro and Firebird, as well as the VATS/PASS KEY system. They asserted, however, that the absence of an alarm would not adversely affect the theft deterrent effectiveness of the VATS/PASS KEY system. GM further stated that if an exemption for the Camaro and Firebird were granted, it would continue to mark the engines and transmissions.

In support of its assertion about the absence of an alarm, GM provided theft data regarding certain "F" cars. The "F" car is the platform upon which both the Camaro and Firebird are built. GM stated that late in MY 1988 the production of the "F" car PASS KEY application began, with its installation on approximately 8,000 Pontiac Firebird Trans Am GTA models. However, supplementary information from GM indicated that 6,440 vehicles were installed with the PASS KEY system. The application was expanded to all "F" car models at the start of the MY 1989 production.

According to GM, in MY 1988, 56,085 Pontiac Firebirds were produced. GM's data shows that of all MY 1988 Firebird models produced, 49,645 models (Firebirds/Trans Ams/GTAs) were produced without the PASS KEY system. Of these models, 1,551 were stolen, which is a theft rate of 31.2 per thousand vehicles. In MY 1988, 6,440 GTA models were produced with the PASS KEY system; of those, 106 were stolen which is a theft rate of 16.7 per thousand vehicles. According to GM, there were 3,325 GTAs produced without the PASS KEY system; of those, 221 were stolen, which is a theft rate of 66.4 per thousand vehicles. (It is unknown what the effect of the TDS would be on the likelihood of the affected motor vehicles to be likely to be as effective as parts marking.)

NHTSA believes that based upon the preceding substantial evidence, the antitheft system to be installed as standard equipment will likely be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of the theft prevention standard (49 CFR part 541). This determination is based on the information GM submitted with its petition and on other available information. The agency believes that the device will provide all but one of the types of performance listed in § 543.6(a)(3); promoting activation; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device. The single exception is that the device lacks an alarm which would attract attention to unauthorized entries.

As required by section 605(b) of the statute and 49 CFR 543.6(a)(4), the agency also finds that GM has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information GM provided on its device. This information included a description of reliability and functional tests conducted by GM for the antitheft system and its components. GM presented extensive data on the life cycle test results of the PASS KEY ignition lock system.

Based on the foregoing, the agency has decided to grant the petition of GM in part. The petition is granted in part, instead of in whole, because although the agency believes that the system would likely be as effective as parts marking, it differs from other devices for which exemptions have been granted in that it lacks an alarm to attract attention to unauthorized entries. GM will be required to mark only the engines and transmission of MY 1990 Camaros and Firebirds. Those parts were chosen since they are among the most interchangeable of the 14 parts for which labeling is required. The agency notes that GM has already notified the agency that regardless of the decision of the agency on GM's petition to be exempted from parts marking, it will continue to mark at least the engines and transmissions of MY 1990 Camaros and Firebirds.

If GM decides not to use the partial exemptions for the Camaro and Firebird carlines, it should formally notify the agency. If this is the case, these carlines must be fully marked according to the requirements under 49 CFR 541.6 and 541.5 (marking of major component parts and replacement parts.)

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs make it difficult at this stage of the theft standard's implementation to compare the effectiveness of compliance with the theft prevention standard. The statute clearly invites such a comparison, which the agency has made on the basis of the limited data available.

NHTSA notes that if GM wishes in the future to modify the device on which this partial exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this Part and equipped with the antitheft device on which the line's exemption was based. Further, § 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to it differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimus*. Therefore, NHTSA suggests that if GM contemplates making any changes the effects of which might be characterized as *de minimus* then the company should consult the agency before preparing and submitting a petition to modify.

(15 U.S.C. 2025, delegation of authority at 49 CFR 1.50)

Issued on August 10, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89-19078 Filed 8-14-89; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

[Docket No. HM-126F]

Training for Hazardous Materials Transportation; Public Hearing

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public hearing.

SUMMARY: This notice is to confirm that a public hearing is scheduled to begin at 9:30 a.m. on October 3, 1989 (and October 4, if necessary) in Salt Lake City, Utah, and to request that persons planning to present comments at the hearing advise RSPA of such intention before September 11, 1989. The public hearing will address the merits of a notice of proposed rulemaking under Docket HM-126F entitled "Training for Hazardous Materials Transportation" [54 FR 31144]. To enable RSPA to determine if there will be a need for an extension of the hearing into a second day, an early indication of intention to present comments will be appreciated.

Special lodging rates are being provided at the location of the hearing which is the Doubletree Inn, 215 W.S. Temple Street, Salt Lake City, Utah 84101, telephone (801) 531-7500. Requests for the special lodging rate must specifically refer to the DOT public hearing and must be made before September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Carl V. Strombom, Standards Division, Office of Hazardous Materials Transportation, RSPA, Department of Transportation, 400 Seventh Street SW., Washington, DC. 20590, telephone (202) 366-4488.

Issued in Washington, DC on August 9, 1989 under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 89-19079 Filed 8-14-89; 8:45 am]

BILLING CODE 4910-60-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 156
Tuesday, August 15, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Tuesday, August 22, 1989.

The Commission was established pursuant to Public law 99-647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 P.M. at the Millville Fire Station, Main Street (Route 122), Millville, Massachusetts for the following reasons:

1. Discussion and Commission's adoption of "Priority Actions" section of the Cultural Heritage and Land Management Plan for the Blackstone.

2. Discussion and Adoption of the Cultural Heritage and Land Management Plan for the Blackstone River Valley National Heritage Corridor as provided in accordance with Public Law 99-647.

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: James Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 34, Uxbridge, MA 01569. Telephone (508) 278-9400 or (508) 278-5124.

Further information concerning this meeting may be obtained from James Pepper, Executive Director of the Commission at the address below.

Shirley Cleaves,

Acting Executive Director, Blackstone River Valley National Heritage Corridor Commission.

[FR Doc. 89-19183 Filed 8-11-89; 10:55 am]

BILLING CODE 4310-70-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 1:00 p.m. on Wednesday, August 9, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in open session to consider the following matters:

Regulations establishing savings association insurance logo and prescribing its use by banks and savings associations.

A resolution directing the negotiation of procedures pursuant to which the Federal Deposit Insurance Corporation ("FDIC") will be reimbursed by the Resolution Trust Corporation ("RTC") for the FDIC's costs and expenses in managing the RTC.

An amendment of the FDIC's Bylaws to establish the Office of the Director of the Division of the RSLIC Operations and delegations of authority with respect to the management of the FSLIC Resolution Fund.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director M. Danny Wall (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public and that no earlier notice of the meeting was practicable.

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, D.C.

Dated: August 10, 1989.

FEDERAL DEPOSIT INSURANCE CORPORATION.

Robert E. Feldman,

Deputy Excutive Secretary.

[FR Doc. 89-19232 Filed 8-11-89; 1:51 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 1:30 p.m. on Wednesday, August 9, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters regarding the Corporation's corporate and supervisory activities; and (2) personnel matters.

In calling the meeting, the Board determined on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director M. Danny Wall (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of sections (c)(2), (c)(6), (c)(9)(A)(i), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6), (c)(9)(A)(i), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Date: August 10, 1989.

FEDERAL DEPOSIT INSURANCE CORPORATION.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-19233 Filed 8-11-89; 1:51 pm]

BILLING CODE 6714-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 14, 21, 28, and September 4, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 14

Tuesday, August 15

8:30 a.m.—Collegial Discussion of Items of Commissioner Interest (Public Meeting)

10:00 a.m.—Periodic Briefing on EEO Program (Public Meeting)

Wednesday, August 16

10:00 a.m.—Briefing on Status of Calvert Cliffs (Public Meeting)

11:30 a.m.—Affirmative/Discussion and Vote (Public Meeting):

a. Motion by Joseph J. Macktal for Disqualification of Commissioners from Further Consideration of Matters Relating to Him

b. Petition to Intervene in Limerick Remand Proceeding and Request for Stay of Low-Power Operation of Limerick Unit 2

c. Response to Limerick Ecology Actions' Motion for Reconsideration

Thursday, August 17

10:00 a.m.—Discussion of Full Power Operating License for Limerick-2 (Public Meeting)

Week of August 21 (Tentative)

There are no meetings scheduled for the Week of August 21.

Week of August 28 (Tentative)

There are no meetings scheduled for the Week of August 28.

Week of September 4 (Tentative)

Friday, September 8

11:30 a.m.—Affirmative/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (recording)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Andrew L. Bates,

Office of the Secretary.

August 10, 1989.

[FR Doc. 89-19256 Filed 8-14-89; 2:31 pm]

BILLING CODE 7590-01-M

federal register

Tuesday
August 15, 1989

Part II

Department of Commerce

Bureau of Export Administration

15 CFR Part 799
Electronic Computers and Related Equipment; Revisions Based on COCOM Review; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 90129-9184]

RIN 0694-AA04

Electronic Computers and Related Equipment; Revisions Based on COCOM Review

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule makes a number of revisions to Export Control Commodity Number (ECCN) 1565A of the CCL, which controls electronic computers and related equipment. These revisions have resulted from a review of strategic controls maintained by the U.S. and certain allied countries in cooperation with the Coordinating Committee (COCOM). Such multilateral controls restrict the availability of strategic items to controlled countries. These revisions are made pursuant to the provisions of section 5 of the Export Administration Act of 1979, as amended.

In addition, ECCN 6565G, which covers personal computers excepted from export controls under ECCN 1565A, is amended to reflect that the personal computers removed from 1565A remain subject to validated license requirements for exports to destinations in Country Group S or Z and to certain consignees in South Africa and Namibia.

EFFECTIVE DATE: This rule is effective August 15, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph Young, Computer Systems Technology Center, Bureau of Export Administration, Telephone: (202) 377-2279.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Export Administration (BXA) maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. Export Control Commodity Number (ECCN) 1565A of the CCL controls electronic computers and related equipment.

On July 18, 1989, BXA issued an interim rule amending ECCN 1565A, in accordance with a determination of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended. Under that rule, validated licensing requirements were removed for exports to most Western countries of certain personal computers (those with characteristics specified in the *Validated License Required* paragraph of ECCN 1565A).

This final rule removes national security based validated licensing requirements on exports of certain personal computers to all destinations and supersedes the interim rule published in the **Federal Register** on July 18, 1989 (54 FR 30011). BXA is issuing this final rule based on a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). Comments are invited on a continuing basis, including comments on the interim rule of July 18. However, the Department does not at this time anticipate making additional changes because this decontrol is based on multilateral agreement.

COCOM's latest review of strategic controls has resulted in agreement to decontrol certain types of personal computers. Those personal computers described in a new paragraph (h)(2)(vii) of ECCN 1565A now require a validated license for foreign policy reasons for exports to destinations in Country Groups S and Z and to certain consignees in South Africa and Namibia. The Department of Commerce has determined that this rule is consistent with the provisions of the Export Administration Act of 1979, as amended.

Pursuant to multilateral agreement, this rule also amends three ECCN 1565A Advisory Notes:

(a) Advisory Note 7 is amended to clarify that "minimum quantities" means "a reasonable quantity not exceeding a 6-month supply" for purposes of shipping certain electronic computer spare parts;

(b) Advisory Note 9 is amended to extend eligibility to certain digital computers or related equipment with 16 bit systems that are portable or ruggedized; and

(c) Advisory Note 16 is amended to reflect the removal of certain personal computers from control under ECCN 1565A, by defining "personal computer."

ECCN 6565G, which covers controls on personal computers excepted from export controls under ECCN 1565A, is amended to reflect that validated licenses continue to be required for exports of personal computers removed from ECCN 1565A to destinations in Country Groups S and Z and to certain consignees in South Africa and Namibia.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The effect will be to reduce the paperwork burden on exporters of these personal computers. This collection has been approved by the Office of Management and Budget under control number 0694-0005.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is being issued in final form. However, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations, 15 CFR Part 799, are amended as follows:

PART 799—[AMENDED]

1. The authority citation for Part 799 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985, and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1 to § 799.1 [Amended]

2. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), Export Control Commodity Number 1565A is amended by revising the *Validated License Required* paragraph; by adding paragraph (h)(2)(vii); by revising paragraph (b)(2) of Advisory Note 7; by revising paragraphs (a)(6)(ii), (a)(6)(iii), and (b)(1)(i) of Advisory Note 9; and by adding a definition of "personal computer" to Note 16, as set forth below.

1565A Electronic computers, "related equipment," equipment or systems containing electronic computers, and specially designed components and accessories therefor.

* * * * *

Validated License Required: Country Groups QSTVWYZ. However, a validated license is not required to destinations in Country Groups T and V, excluding the People's Republic of China and Afghanistan for low-level machine-vision systems controlled under paragraph (h) that do not exceed any of the following:

(1) Total number of image elements—65,536;

(2) Shades of gray—256 (no colors); or

(3) Frames per second—3.3.

* * * * *

List of Electronic Computers and Related Equipment Controlled by ECCN 1565A

* * * * *

(h) * * *

(2) EXCEPT:

* * * * *

(vii) "Personal computers" and "related equipment" therefor, not excluded from control by other sub-paragraphs of (h)(2), provided they meet *all* the following conditions:

(a) They are not described in paragraph (h)(1) of this List;

(b) They are shipped as complete systems;

(c) They are not stand-alone graphic workstations exceeding the limits of paragraph (a)(7) of Advisory Note 9;

(d) They are not ruggedized above the level required for a normal commercial/office environment;

(e) They do not include a central processing unit implemented with more than two microprocessor or microcomputer microcircuits; (*Note:* This restriction does not apply to any dedicated microprocessor or microcomputer microcircuit used solely for display, keyboard or input/output control, or any bit-slice microprocessor microcircuit.)

(f) They do not include a microprocessor or microcomputer microcircuit with a principal operand (data) word length of more than 16 bit or a bus architecture with more than 32 bit;

(g) "Total connected capacity" of "main storage" not exceeding 39 million bit (usually referred to as 4 MByte);

(h) Displays or monitors not exceeding the limits of paragraph (b)(8) of Advisory Note 9;

(i) *Reserved;*

(j) They do not include analog-to-digital or digital-to-analog converter microcircuits exceeding the limits of ECCN 1568A; (*Note:* This restriction does not apply to direct driven video monitors for normal commercial television.)

(k) Central processing unit—the "total processing data rate" does not exceed 69 million bit/s;

(l) I/O control unit—drum or disk drive combinations;

(a) A "total transfer rate" not exceeding 10.3 million bit/s;

(b) A total connected "net capacity" not exceeding 1320 Mbits (equivalent to 140 MBytes);

(c) A "total access rate" not exceeding 80 accesses per second, with a maximum of 40 accesses per second for any one drive;

(m) They do not include equipment controlled for export by ECCN 1519A(a)(2) or by ECCN 1567A;

* * * * *

Advisory Note 7: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY *and the People's Republic of China* of spare parts for exported electronic computers or "related equipment", provided that:

* * * * *

(b) The parts:

(1) * * *

(2) Are shipped in the minimum quantities (*i.e.*, a reasonable quantity not exceeding a six-month supply) necessary for the types and quantities of exported equipment being serviced; *and*

* * * * *

Advisory Note 9: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of "digital computers" or "related equipment" therefor controlled by paragraph (h), provided that:

(a) * * *

(6) Do not have any of the following characteristics:

(i) * * *

(ii) They fall within the scope of paragraph (h)(1)(ii)(A) *and* are systems based upon "microprocessor microcircuits" having:

(A) A word length of more than 16 bit; *or*

(B) An arithmetic logic unit (ALU) with a bus architecture of more than 32 bit; *or*

(iii) They are ruggedized above the level required for a normal commercial/civil environment, but not necessarily up to the levels specified in paragraph (f), *and* are systems based upon "microproocessor microcircuits" having:

(A) A word length of more than 16 bit; *or*

(B) An arithmetic logic unit (ALU) with a bus architecture of more than 16 bit;

* * * * *

(b) * * *

(1) Central processing unit—"main storage" combinations:

(i) "Total processing data rate"—54 million bit/s;

* * * * *

Note 16: The following are definitions of terms used in ECCN 1565A:

* * * * *

Other Peripheral Device—* * *

Personal Computer—A microprocessor based "digital computer" that is:

(1) Designed for a commercial/office environment;

(2) Designed and announced by the manufacturer for personal, home or business use; and

(3) Available for purchase over the counter at retail stores.

* * * * *

Principal Element—* * *

3. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), Export Control Commodity Number 6565G is amended by revising the heading to read as follows:

6565G Personal computers excepted from control under ECCN 1565A because they meet the specifications of paragraphs (h)(2)(iii) and (vii) of 1565A.

* * * * *

Dated: August 11, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-19259 Filed 8-14-89; 11:01 am]

BILLING CODE 3510-DT-M

Reader Aids

Federal Register
Vol. 54, No. 156
Tuesday, August 15, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

31645-31796	1
31797-31932	2
31933-32034	3
32035-32332	4
32333-32432	7
32433-32628	8
32629-32784	9
32785-32950	10
32951-33182	11
33183-33492	14
33493-33664	15

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6002 ... 31794
6003 ... 31931
6004 ... 31933
6005 ... 32033
6006 ... 32783

Executive Orders:
12685 ... 31796
12686 ... 32629

5 CFR

1620 ... 32785

7 CFR

29 ... 31797
58 ... 31646
301 ... 32788
401 ... 33493
406 ... 33493
910 ... 32035, 32951
917 ... 32794
945 ... 31798
947 ... 32433
948 ... 33484
1076 ... 31799
1126 ... 32951
1864 ... 32953

Proposed Rules:
1e ... 32985
51 ... 32419
401 ... 33557, 33566
403 ... 33567
911 ... 31843
929 ... 31844
967 ... 31845
993 ... 31846

8 CFR

Proposed Rules:
210 ... 31966

9 CFR

51 ... 32434
92 ... 31800

10 CFR

2 ... 33168
7 ... 31646
26 ... 33148

Proposed Rules:
Ch. I ... 32653
50 ... 33568
55 ... 33568
70 ... 33570
72 ... 33570
73 ... 33570
75 ... 33570
430 ... 32349, 32744

12 CFR

33 ... 31935
207 ... 31646
220 ... 31646
221 ... 31646
224 ... 31646
226 ... 32953
229 ... 32035
262 ... 33183
545 ... 32954
574 ... 32959, 33183

Proposed Rules:
4 ... 32820
12 ... 32653
226 ... 32089
584 ... 33235

14 CFR

39 ... 31649, 31651-31653, 31803-31809, 31935, 32435-32437, 32796, 33186
71 ... 31654, 31936, 31937
73 ... 31655, 32800
75 ... 31937
97 ... 33497
217 ... 31810
241 ... 31810
303 ... 32439, 32440, 32603, 32797-32800, 33496
1221 ... 32963

Proposed Rules:
Ch. I ... 33557
Ch. II ... 33577, 33578
39 ... 31693, 31694, 31847, 32824, 32826, 33235, 33237
43 ... 32563
65 ... 32563
71 ... 31698-31704, 31966, 32452, 32827, 33579
75 ... 31705, 31967
145 ... 32563
233 ... 33580
252 ... 33580
253 ... 33580
302 ... 33580
377 ... 33582

15 CFR

773 ... 31812

16 CFR

305 ... 32631

Proposed Rules:
4 ... 32654

17 CFR

140 ... 31814
200 ... 33500
211 ... 32333, 32334
230 ... 33500
260 ... 33500

270.....31850, 32048
274.....32048
275.....32048, 32441
279.....32048
Proposed Rules:
230.....32226, 32993
239.....32226, 32993
240.....31850, 32229
249.....32226
260.....32226
269.....32226
270.....32993, 33027
274.....32993

18 CFR

35.....32802
270.....32805
271.....31938, 32805
Proposed Rules:
37.....31706
803.....33096

19 CFR

4.....33187, 33188
10.....33189
177.....32742, 32810
Proposed Rules:
355.....33238

20 CFR

Proposed Rules:
208.....32163
219.....31939
220.....32163
230.....32163
260.....32163
327.....31968
404.....33238
416.....31656, 33238

21 CFR

133.....32050
179.....32395
510.....32632
520.....32396, 33501
522.....32632
524.....32632
556.....32633
558.....32633–32634, 32963
Proposed Rules:
Ch. I.....32610
133.....32091
168.....33582
522.....31949
556.....31949
1308.....31815, 31855
1310.....31657
1313.....31657
1316.....31669

22 CFR

60.....31815
61.....31815
62.....31815
63.....31815
64.....31815
65.....31815
514.....32964

23 CFR

659.....32967

24 CFR

200.....32059, 32968
203.....32968
204.....32968
206.....32059
213.....32968
220.....32968
221.....32968
222.....32968
226.....32968
227.....32968
235.....32968
237.....32968
240.....32968
570.....31670
Proposed Rules:
Ch. I.....31856
200.....33039
205.....33039

26 CFR

1.....31672, 31816
602.....31672
Proposed Rules:
1.....31708, 32453

28 CFR

31.....32618
523.....32027
544.....32026

29 CFR

524.....32920
525.....32920
529.....32920
1600.....32061
1601.....32061
1610.....32061
1611.....32061
1620.....32061
1626.....32061, 33501
1691.....32061
1910.....31765, 31970
2589.....32635
2619.....33504
2676.....33505
Proposed Rules:
503.....32985
1910.....31858

30 CFR

934.....32063
Proposed Rules:
250.....31768, 32316, 32563, 33042
906.....32828
917.....32093
920.....33042
925.....32094
931.....32095, 32096
946.....32097, 32098

31 CFR

500.....32064

32 CFR

231.....33512
231a.....33516
385.....33521
286.....33190
706.....31825

33 CFR

100.....31826, 32066, 32441–32442
110.....32418
117.....31827
148.....32971
162.....32419
165.....32419, 32443
Proposed Rules:
100.....31859, 31860, 32453, 32659
162.....32661
334.....33584

34 CFR

208.....32936
345.....32770
755.....32946

35 CFR

Proposed Rules:
133.....32099
135.....32099

36 CFR

1153.....32337–32342
1155.....32337–32342
1202.....32067
1250.....32067
1254.....32067
Proposed Rules:
1206.....32455

37 CFR

1.....32637
2.....32637
301.....32810
309.....32810

38 CFR

3.....31828, 31950
21.....31829, 31950–31952, 32070

39 CFR

111.....32071, 33523
3001.....33525

40 CFR

52.....31953, 32072, 32073, 32637, 32971, 33526, 33528–33536
60.....32444, 32972
61.....32444
80.....33218
81.....32078, 33219, 33536
85.....32566
116.....33426
117.....33426
167.....32638
180.....31674, 31830–31836
228.....33585
264.....33376
265.....33376
270.....33376
271.....32973
302.....33418, 33426
795.....33400
796.....33148
797.....33148
799.....33148, 33400
Proposed Rules:
52.....32101, 33245, 33247
81.....31860, 31971, 31972
85.....32598
180.....31971, 31972, 33044
185.....31836
186.....31832–31836
228.....32351–32356
261.....31675, 32320, 32662
302.....32320, 32671
355.....32671
704.....31680
799.....32829

41 CFR

101–47.....32445

42 CFR

50.....32446
484.....33354
Proposed Rules:
5.....32459

43 CFR

Public Lands Orders:
6741.....32812
6742.....32812

44 CFR

59.....33541
60.....33541
64.....32813, 32814, 33220, 33222
65.....33541
80.....31681
83.....31681
352.....31920
Proposed Rules:
335.....32359

45 CFR

232.....32284
302.....32284
303.....32284
304.....32284
306.....32284
307.....32284
1632.....31954

46 CFR

Proposed Rules:
10.....33045
15.....33045

47 CFR

Chapter I.....33224
2.....32339
15.....32339
22.....33551
25.....33226
73.....31685, 31686, 31838, 31960, 32340, 32639–32641, 33227
80.....31839
Proposed Rules:
2.....32830
64.....33585
69.....33585
73.....32361, 32362, 32672–32676, 33249, 33250
94.....32362

48 CFR

203.....32161
208.....32161
209.....32161
212.....32161
213.....32161
214.....32161
215.....32161, 32975
216.....32161
217.....32161
219.....32161
222.....32161
223.....32161
226.....32161
242.....32161

245.....32161
252.....32161
253.....32161
273.....32161
525.....33554
601.....31961
Proposed Rules:
44.....32422
45.....32424
51.....32424
52.....32424
205.....33045
970.....33251

49 CFR

190.....32342
191.....32342
192.....32344, 32641
195.....32342, 32344
210.....33227
215.....33227
216.....33227
217.....33227
225.....33227
228.....33227
229.....33227
231.....33227
232.....33227
383.....33230
571.....31687, 32345
1207.....33555
1249.....33555
Proposed Rules:
571.....32830

50 CFR

17.....32326
20.....32975
23.....33231
215.....32346
217.....32815
226.....32085
227.....32085, 32815
611.....32642, 32819
661.....31841
663.....31688
672.....32819
675.....31842, 32642
Proposed Rules:
17.....32833, 33556
263.....32362
267.....32362
611.....31861
620.....31861
649.....32834
655.....31862
672.....31861
675.....31861

List of Public Laws: August 15, 1989

Last List August 14, 1989

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

S.J. Res. 136 / Pub. L. 101–75

Designating August 8, 1989, as "National Neighborhood Crime Watch Day." (Aug. 10, 1989; 103 Stat. 555; 1 page) Price: $1.00

Order Now!

The United States Government Manual 1988/89

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$20.00 per copy



Publication Order Form

Order processing code: *6450

☐ **YES,** please send me the following indicated publications:

_____ copies of THE UNITED STATES GOVERNMENT MANUAL, 1988/89 at $20.00 per copy. S/N 069-000-00015-1.

1. The total cost of my order is $_____ International customers please add 25%. All prices include regular domestic postage and handling and are good through 3/89. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. Please choose method of payment:
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA, or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

(Rev. 8-88)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9325

L

S

G

5

39

1

OL
4
SS
5
7
G
6
89
MI

8-16-89
Vol. 54 No. 157

federal register

Wednesday
August 16, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 89 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

8-16-89
Vol. 54 No. 157
Pages 33865-33852

federal register

Wednesday
August 16, 1989

BEST COPY AVAILABLE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 54, No. 157
Wednesday, August 16, 1989

Agricultural Marketing Service
RULES
Pears, plums, and peaches grown in California, 33667
PROPOSED RULES
Lemons grown in California and Arizona, 33704
Milk marketing orders:
Middle Atlantic et al., 33709
Pears (fresh Bartlett) grown in Oregon and Washington, 33706
Potatoes (Irish) grown in—
Idaho and Oregon, 33707
NOTICES
Meetings:
Cotton Marketing Advisory Committee, 33741

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Federal Grain Inspection Service; Forest Service

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Ports of embarkation and export inspection facilities—
Chicago, IL, 33668
Plant-related quarantine, foreign:
Pink bollworm, 33665
NOTICES
Environmental statements; availability, etc.:
Genetically engineered plants; field test permits—
Alfalfa, 33741
Rice; bacterium, 33742
Tobacco, 33743

Army Department
NOTICES
Federally funded research and development centers:
Armament research, development, and engineering center; electromechanics and hypervelocity testing, 33759

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Bicentennial of the United States Constitution Commission
See Commission on the Bicentennial of the United States Constitution

Coast Guard
RULES
Regattas and marine parades:
Fresh Water Kilo Trials, 33679
West Coast Outboard Championship Hydro Races, 33680

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration

Commission on the Bicentennial of the United States Constitution
NOTICES
Grants and cooperative agreements; availability, etc.:
Constitution bicentennial educational program, 33754

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Mexico, 33755

Commodity Credit Corporation
NOTICES
Loan and purchase programs:
Price support levels—
Cotton, 33744

Comptroller of the Currency
PROPOSED RULES
National banks:
Corporate activities—
Payment of dividends, 33711

Customs Service
RULES
Customs bonds:
Customs bonds structure; correction, 33672

Defense Department
See also Army Department; Navy Department
NOTICES
Agency information collection activities under OMB review, 33755
Global Positioning System satellites; civil use restricted, 33755
Meetings:
Electron Devices Advisory Group, 33756
Privacy Act:
Systems of records, 33756

Drug Enforcement Administration
RULES
Manufacturers, distributors, and dispensers of controlled substances; registration, etc.:
Potent animal immobilizing agents storage, 33674

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Grants to institutions to encourage minority participation in graduate education program, 33816
Meetings:
Educational Intergovernmental Advisory Council, 33759

Employment Standards Administration
See Wage and Hour Division

Energy Department
See also Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
Hunter College, 33760

Interstate Oil Compact Commission, 33760

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Heptachlor, 33690
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Wisconsin, 33717
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Cyfluthrin, 33718
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 33846
NOTICES
Air pollution control:
Grants—
Houston, TX; reduced maintenance of effort level (1987 and 1988 FYs), 33766
Committees; establishment, renewal, termination, etc.:
FIFRA Scientific Advisory Panel, 33767
Pesticide programs:
Registration standards—
Availability, etc., 33771
Senior Executive Service:
Performance Review Board; membership, 33771
Toxic and hazardous substances control:
Chemical testing—
Data receipt, 33772
Premanufacture exemption approvals, 33773
(2 documents)

Equal Employment Opportunity Commission
RULES
Age discrimination in employment:
Private rights; non-EEOC supervised waivers; congressional action, 33675

Executive Office of the President
See Trade Representative, Office of United States

Federal Communications Commission
RULES
Radio stations; table of assignments:
New Mexico, 33699
Texas, 33700
PROPOSED RULES
Radio stations; table of assignments:
California, 33719
Illinois, 33720
Oregon, 33720
Texas, 33721

Federal Deposit Insurance Corporation
RULES
Membership; advertisement, 33669
PROPOSED RULES
Membership; advertisement, 33716

Federal Emergency Management Agency
RULES
Flood evaluation determinations:
Connecticut et al., 33693
NOTICES
Agency information collection activities under OMB review, 33774

Federal Energy Regulatory Commission
NOTICES
Natural gas certificate filings:
ANR Pipeline Co. et al., 33760
Applications, hearings, determinations, etc.:
Kentucky West Virginia Gas Co., 33765
Pacific Gas Transmission Co., 33766

Federal Grain Inspection Service
PROPOSED RULES
Soybean oil and protein testing and reporting requirements; withdrawn, 33702

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Milwaukee and Waukesha Counties, WI, 33810

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 33812
(2 documents)
Applications, hearings, determinations, etc.:
Casey, John P., Jr., et al., 33775
First Community Bancorp, Inc., et al., 33775
Griebel, Paul C, et al., 33775
Tate, James M., et al.; correction, 33776
Village Financial Services, Ltd., et al., 33776

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 33812

Federal Trade Commission
NOTICES
Prohibited trade practices:
Adolph Coors Co., 33776
Structural Engineers Association of Northern California, Inc., 33779

Fish and Wildlife Service
PROPOSED RULES
Migratory bird hunting:
Seasons, limits, and shooting hours; establishment, etc., 33721

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Ivermectin tablets and chewable cubes
Correction, 33814
Selenium, 33673
Sponsor name and address changes—
Norbrook Laboratories, Ltd., 33672
Sterile procaine penicillin G aqueous suspension (injectable), 33673

Forest Service
NOTICES
Environmental statements; availability, etc.:
Lewis and Clark National Forest, MT, 33746
Wallowa-Whitman National Forest, OR, 33747

Health and Human Services Department
See also Food and Drug Administration

NOTICES
Federal claims collection; interest rates on overdue debts, 33781

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Reclamation Bureau

International Trade Administration
NOTICES
Antidumping:
Portable electric typewriters from Japan, 33748
Tapered roller bearings four inches or less in outside diameter and components from Japan, 33749
Countervailing duties:
Carbon steel wire rod from—
New Zealand, 33750
Leather wearing apparel from Uruguay, 33751
Short supply determinations:
Seamless oil well casing, 33753

International Trade Commission
NOTICES
Import investigations:
Generic cephalexin capsules from Canada, 33782
Novelty teleidoscopes, 33783
Self-inflating mattresses, 33782
Telephone systems and subassemblies from Japan, Korea, and Taiwan, 33783
Meetings; Sunshine Act, 33812, 33813
(3 documents)

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Staten Island Railway Corp., 33785

Justice Department
See Drug Enforcement Administration

Labor Department
See Occupational Safety and Health Administration; Wage and Hour Division

Land Management Bureau
RULES
Public land orders:
Idaho, 33693
NOTICES
Meetings:
Burley District Grazing Advisory Board, 33781
Organization, functions, and authority delegations:
Utah State Office; public room hours, 33781
Survey plat filings:
Idaho, 33782

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities under OMB review, 33785

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic surf clam and ocean quahog, 33700
Gulf of Alaska groundfish, 33701
PROPOSED RULES
Fishery conservation and management:
Atlantic Coast striped bass; exclusive economic zone, 33735
Gulf of Alaska, and Bering Sea and Aleutian groundfish, 33737

National Science Foundation
NOTICES
Meetings:
Ocean Sciences Research Advisory Panel, 33786

Navy Department
NOTICES
Meetings:
Chief of Naval Operations Executive Panel Advisory Committee, 33759

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Consumers Power Co., 33786
Southern California Edison Co. et al., 33787
Regulatory guides; issuance, availability, and withdrawal, 33787
Applications, hearings, determinations, etc.:
Public Service Electric & Gas Co., 33788
Virginia Electric & Power Co., 33788

Occupational Safety and Health Administration
PROPOSED RULES
Safety and health standards:
Personal protective equipment for general industry, 33832

Office of United States Trade Representative
See Trade Representative, Office of United States

Personnel Management Office
NOTICES
National Institute of Standards and Technology; alternative personnel management system; demonstration project, 33790

Postal Rate Commission
RULES
Practice and procedure rules:
Express mail rates; market response filings, 33681

Public Health Service
See Food and Drug Administration

Reclamation Bureau
NOTICES
Contract negotiations:
Quarterly status tabulation of water service and repayment, 33782

Research and Special Programs Administration
NOTICES
Meetings:
Technical Pipeline Safety Standards Advisory Committee et al., 33811

Resolution Trust Corporation
NOTICES
Meetings; Sunshine Act, 33813
(2 documents)

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Depository Trust Co., 33790
Midwest Securities Trust Co., 33791
National Association of Securities Dealers, Inc., 33792–33794
(3 documents)
Options Clearing Corp., 33795
Pacific Stock Exchange, Inc., 33796
Philadelphia Stock Exchange, Inc., 33797, 33798
(2 documents)
Applications, hearings, determinations, etc.:
Life Insurance Co. of Virginia et al., 33799
Lifetime Corp., 33801
Public utility holding company filings, 33805
Security First Life Insurance Co. et al., 33806, 33807
(2 documents)
UBS Mortgage Securities, Inc., 33801

Small Business Administration
NOTICES
Disaster loan areas:
New Jersey et al., 33809
Applications, hearings, determinations, etc.:
LRF Capital, L.P., 33809

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
Unfair trade practices, petitions, etc.:
Argentina; intellectual property protection for pharmaceuticals, 33809

Transportation Department
See Coast Guard; Federal Highway Administration; Research and Special Programs Administration

Treasury Department
See also Comptroller of the Currency; Customs Service
RULES
Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation—
Domestic currency transactions; geographic reporting, 33675

Wage and Hour Division
RULES
Fair Labor Standards Act:
Disabled workers; employment under special certificates
Correction, 33814

Separate Parts In This Issue

Part II
Department of Education, 33816

Part III
Department of Labor, Occupational Safety and Health Administration, 33832

Part IV
Environmental Protection Agency, 33846

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
319.....33665
917.....33667
Proposed Rules:
800.....33702
910.....33704
931.....33706
932.....33706
945.....33707
1001.....33709
1002.....33709
1004.....33709
1005.....33709
1006.....33709
1007.....33709
1011.....33709
1012.....33709
1013.....33709
1030.....33709
1032.....33709
1033.....33709
1036.....33709
1040.....33709
1046.....33709
1049.....33709
1050.....33709
1064.....33709
1065.....33709
1068.....33709
1076.....33709
1079.....33709
1089.....33709
1093.....33709
1094.....33709
1096.....33709
1097.....33709
1098.....33709
1099.....33709
1106.....33709
1108.....33709
1120.....33709
1124.....33709
1126.....33709
1131.....33709
1132.....33709
1134.....33709
1135.....33709
1137.....33709
1138.....33709
1139.....33709

9 CFR
91.....33668

12 CFR
328.....33669
Proposed Rules:
5.....33711
7.....33711
328.....33716

19 CFR
113.....33672

21 CFR
510.....33672
520.....33814
540 (2 documents).....33672, 33673
573.....33673
1301.....33674
1305.....33674

29 CFR
524.....33814
525.....33814
529.....33814
1627.....33675
Proposed Rules:
1910.....33832

31 CFR
103.....33675

33 CFR
100 (2 documents).....33679, 33680

39 CFR
3001.....33681

40 CFR
180.....33690
Proposed Rules:
52.....33717
180.....33718
185.....33718
300.....33846

43 CFR
Public Land Order:
6743.....33693

44 CFR
67.....33693

47 CFR
73 (2 documents).....33699, 33700
Proposed Rules:
73 (4 documents).....33719–33721

50 CFR
652.....33700
672.....33701
Proposed Rules:
20.....33721
Ch. VI.....33735
672.....33737
675.....33737

Rules and Regulations

Federal Register
Vol. 54, No. 157
Wednesday, August 16, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 88-215]

Importation of Okra From the Dominican Republic

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule allows okra produced in the Dominican Republic to be entered into the United States without treatment for the pink bollworm, with the following restrictions: The untreated okra may not be moved into California during March 16 through December 31, inclusive; or into Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Nevada, North Carolina, South Carolina, Tennessee, or any part of Illinois, Kentucky, Missouri, or Virginia south of the 38th parallel during May 16 through November 30, inclusive. Under these conditions, the okra will not present a pest risk because the areas into which the okra may be moved are either already generally infested with the pink bollworm or will not have the host material to sustain an infestation. This action relieves unnecessary restrictions on the importation of okra produced in the Dominican Republic.

EFFECTIVE DATE: August 16, 1989.

FOR FURTHER INFORMATION CONTACT: Frank Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, Room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-8393.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 prohibit or restrict the importation of certain fruits and vegetables, as well as plants and portions of plants used as packing materials, into the United States because of the risk that they could introduce injurious insects.

Okra produced in the Dominican Republic presents a risk of introducing the pink bollworm (*Pectinophora gossypiella* (Saunders)). The pink bollworm is one of the most serious pests of cotton. Pink bollworms can cause extensive damage to cotton by feeding inside the squares and bolls. Okra is probably the preferred host after cotton.

Before the effective date of this rule, the regulations in § 319.56-2p (referred to below as the regulations) allowed okra from the Dominican Republic to be imported into the United States without restriction as to destination only with treatment for the pink bollworm. Treatment consists of fumigation with methyl bromide. Okra produced in the Dominican Republic could be entered into the United States without treatment for the pink bollworm only if the okra was entered into the United States through a North Atlantic port with approved treatment facilities and was destined to Alaska, Colorado, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, or the District of Columbia, or any part of Illinois, Kentucky, Missouri, or Virginia that is north of the 38th parallel.

On October 24, 1988, we published in the **Federal Register** (53 FR 41604-41607, Docket 87-168) a proposal to allow okra produced in the Dominican Republic to be moved into additional areas of the United States without treatment for the pink bollworm, with the following restrictions: The untreated okra would not be allowed into California during March 16 through December 31, inclusive; or into Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Nevada, North Carolina, South Carolina, Tennessee, or any part of Illinois, Kentucky, Missouri, or Virginia south of 38th parallel during May 16 through November 30, inclusive. This proposal was based on our assessment that the pink bollworm would not present a pest risk in these additional areas, as restricted, because the areas are either already generally infested with the pink bollworm or would not have the host material to sustain an infestation.

We invited written comments on the proposed rule, which, to be considered, had to be postmarked or received on or before December 23, 1988. We received one comment, from the California Department of Food and Agriculture, which agreed with our analysis concerning pink bollworm, but expresed concern that okra produced in the Dominican Republic might introduce other harmful insect pests if allowed into California without fumigation during January 1 through March 15. Twenty-two types of insect pests that the commenter thought could be introduced into California by the okra were listed. The commenter requested that we either continue to require fumigation of okra produced in the Dominican Republic and moved into California, or, if fumigation is not required, that we inspect the okra for insect pests before it leaves the Dominican Republic and then carefully monitor the shipments of okra as they arrive in the United States.

We have carefully reviewed U.S. Department of Agriculture pest interception records for okra produced in the Dominican Republic and imported into the United States from 1971 through 1988. The records show 910 interceptions because of insect pests during this 18-year period, nearly all for pink bollworm. Insect pests listed by the commenter have been found only 9 times. In five of these instances, the insect pests were ants or beetles; one interception was for *Diaphania* sp. (Pyralidae); and the other three were for fruit flies (*Anastrepha* sp. and sp. of Tephritidae). We believe the occurrence of *Anastrepha* sp. and sp. of Tephritidae on okra produced in the Dominican Republic to be rare: okra is not listed in scientific literature as a host of these fruit flies, and there have been only three interceptions of these pests, in personal baggage, out of thousands of shipments of okra imported into the United States from the Dominican Republic over the past 18 years. The other pests can be readily detected by visual inspection at the port of arrival

For these reasons, neither the current fumigation requirements for okra produced in the Dominican Republic nor a pre-export inspection program appear to be necessary. We are, therefore, adopting our proposed rule without change.

Effective Date

The Administrator, Animal and Plant Health Inspection Service, has determined that this rule should be made effective upon publication in the **Federal Register**. This rule relieves unnecessary restrictions on the entry, into the United States, of okra produced in the Dominican Republic. One importer has expressed interest in moving okra produced in the Dominican Republic into the United States in accordance with the rule, and we find no reason to delay granting this request.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because of the proximity of the Dominican Republic to the Southeastern United States, this rule may provide importers in these states a convenient second source of untreated okra during the late fall, winter, and early spring. However, we know of only one entity interested in moving okra produced in the Dominican Republic into the United States without treatment for the pink bollworm. Importers in Arizona, New Mexico, Oklahoma, Texas, California, and Nevada will probably continue to buy most of their okra from Mexico. We do not expect this rule to affect the total amount of okra imported into the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Imports, Incorporation by reference, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 319.56–2p [Amended]

2. In § 319.56–2p, paragraph (a)(3) is amended by removing "and" before "(ii)"; removing the period after "Agriculture" and adding in its place a semicolon; and adding paragraphs (a)(3)(iii)–(vii) to read as follows:

(a) * * *

(3) * * * (iii) "Enter into the United States" means to introduce into the commerce of the United States after release from government detention; (iv) "Import into the United States" means to bring within the territorial limits of the United States; (v) "Port of arrival" means the first place at which a carrier containing okra stops to unload cargo after coming within the territorial limits of the United States; (vi) "Permit" means a document issued for an article by Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture, stating that the article is eligible for importation into the United States; and (vii) "United States" means the several states of the United States, the District of Columbia, the Northern Mariana Islands, Puerto Rico, and all other territories and possessions of the United States."

§ 319.56–2p [Amended]

3. In § 319.56–2p, paragraph (b)(1), the phrase "(Pectinophoragossypiella (Saund.)" is revised to read "(*Pectinophora gossypiella* (Saunders)".

§ 319.56–2p [Amended]

4. In § 319.56–2p, paragraph (b)(6), "as a condition of importation will be limited to entry" is revised to read "for the pink bollworm may be imported into the United States only"; and "as a condition of importation will be enterable" is revised to read "for the pink bollworm may be imported into the United States".

§ 319.56–2p [Amended]

5. In § 319.56–2p, paragraph (c) is revised to read as follows:

* * * * *

(c) *Importations of okra without treatment from Mexico and the Dominican Republic.* Okra produced in Mexico or the Dominican Republic may be entered into the United States without treatment for the pink bollworm only if:

(1) The okra is imported from the Dominican Republic or Mexico under permit;

(2) The okra is made available for examination by an inspector at the port of arrival and remains at the port of arrival until released by an inspector;

(3) During March 16 through December 31, inclusive, the okra is not moved into California; and

(4) During May 16 through November 30, inclusive, the okra is not moved into Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Nevada, North Carolina, South Carolina, Tennessee, or any part of Illinois, Kentucky, Missouri, or Virginia south of the 38th parallel.

* * * * *

§ 319.56–2p [Amended]

6. In § 319.56–2p, paragraph (d), the paragraph designation "(1)" is removed; "may enter" is revised to read "may be imported into"; "port of entry" is revised to read "port of arrival"; "fumigation" is revised to read "treatment"; "except as provided in paragraph (d)(2) of this section" is revised to read "for the pink bollworm"; and paragraph (d)(2) is removed.

§ 319.56–2p [Amended]

7. In § 319.56–2p, paragraph (e), "may enter" is revised to read "may be imported into"; "fumigation" is revised to read "treatment"; "port of entry" is revised to read "port of arrival"; and the last sentence is removed.

§ 319.56–2p [Amended]

8. In § 319.56–2p, a new paragraph (f) is added to read as follows:

* * * * *

(f) *Treatment of okra for pests other than pink bollworm.* If, upon examination of okra imported in accordance with paragraphs (c), (d), or (e) of this section, an inspector at the port of arrival finds injurious insects, other than the pink bollworm, that do not exist in the United States or are not widespread in the United States, the okra will remain eligible for entry into the United States only if it is treated for the injurious insects in the physical presence of an inspector in accordance with the Plant Protection and Quarantine Treatment Manual. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. See § 300.1 of this chapter, "Materials incorporated by reference." If the treatment authorized by the Plant Protection and Quarantine Treatment Manual is not available, or if no authorized treatment exists, the okra may not be entered into the United States.

Done in Washington, DC, this 11th day of August 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–19240 Filed 8–15–89; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 917

[Docket No. FV–89–083FR]

Expenses and Assessment Rate for Marketing Order Covering Fresh Pears, Plums, and Peaches Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate for the Pear Commodity Committee (Committee) established under Marketing Order 917 for the 1989–90 fiscal year. It also authorizes the carry over of unexpended funds. The action is needed for the Committee to incur reasonable operating expenses during the 1989–90 fiscal year and to collect funds during that year to pay those expenses. This will facilitate program operations. Funds to administer this program are derived primarily from assessments on handlers.

EFFECTIVE DATE: Section 917.253 is effective for the period March 1, 1989, through February 28, 1990.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone: (202) 475–3919.

SUPPLEMENTARY INFORMATION: The final rule is issued under Marketing Agreement and Marketing Order No. 917 (7 CFR part 917) regulating the handling of fresh pears, plums, and peaches grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatability.

There are approximately 45 handlers of California pears under this marketing order, and approximately 300 pear producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

Marketing Order 917, administered by the Department of Agriculture (Department), requires that the assessment rate for a particular fiscal year shall apply to all assessable pears handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of the regulated commodity. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas, and are thus in a position to formulate an appropriate budget. The 1989–90 budget was formulated and discussed in public meetings. Thus, all directly affected persons had an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of the commodity (36-pound carton or equivalent). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The budget and rate of assessment were recommended by the Committee after the season began, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approvals must be expedited so that the Committee will have authority to incur reasonable expenses and have funds to pay its expenses.

The Committee met on June 28, 1989, and unanimously recommended 1989–90 fiscal year expenditures of $912,390 and an assessment rate of $0.22 per 36-pound carton or equivalent of assessable pears shipped under M.O. 917. For comparison, 1988–89 fiscal year expenditures were $698,719 and the assessment rate was $0.22 per carton or equivalent.

The major expenditure item this year is $733,800 for advertising, promotion, and food safety compared to $556,737 in 1988–89. The remaining expenses, which are primarily for program administration, are budgeted at about last year's amounts. A total of $10,000 is included for uncollected assessment accounts.

Estimated total income for 1989–90 will amount to $800,060, including assessment income of $786,060 based on shipments of 3,573,000 cartons of fresh pears, $2,000 from the California Department of Food and Agriculture, and $12,000 from other sources such as interest earned on the reserve fund. The reserve fund of $249,095 would be sufficient to cover the anticipated deficit.

Notice of this action was published in the **Federal Register** on July 20, 1989 (54 FR 30392). Comments were invited until July 31, 1989. No comments were received.

While this action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have

a significant economic impact on a substantial number of small entities.

After consideration of all relevant information provided including the Committee's recommendation, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This final rule should be implemented promptly because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting. Therefore, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 917

California, Marketing agreements and orders, Peaches, Pears, Plums.

For the reasons set forth in the preamble, § 917.253 should be added as follows:

Note: This section will not be published in the annual *Code of Federal Regulations.*

1. The authority citation for 7 CFR part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

2. New § 917.253 is added to read as follows:

§ 917.253 Expenses and assessment rate.

Expenses of $912,390 by the Pear Commodity Committee are authorized, and an assessment rate of $0.22 per 36-pound box or equivalent of assessable pears is established, for the fiscal year ending February 28, 1990. Unexpended funds may be carried over as a reserve.

Dated: August 11, 1989.

William J. Doyle,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 89–19235 Filed 8–15–89; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket 89–085]

Ports Designated for Exportation of Animals, Chicago, IL

AGENCY: Animal and Plant Health Inspection Service, USDA

ACTION: Final rule.

SUMMARY: We are amending the "Inspection and Handling of Livestock for Exportation" regulations by adding the Knief Quarantine Facility as an export inspection facility for the port of Chicago. This action will add an additional inspection facility for the port. This facility meets the requirements of the regulations for inclusion in the list of export inspection facilities.

EFFECTIVE DATE: September 15, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. George O. Winegar, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, Room 761, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 435–8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations) prescribe conditions for exporting animals from the United States.

On March 7, 1989, we published in the **Federal Register** (54 FR 9459–9460, Docket Number 89–003), a document proposing to amend § 91.14 of the regulations by adding the Knief Quarantine Facility as an export inspection facility for the port of Chicago. Our proposal invited the submission of written comments. In the "DATE" section of that document, we inadvertently omitted the words "Consideration will be given only to comments received on or before" preceding the closing date for receipt of comments (May 8, 1989). This omission may have resulted in some confusion concerning the closing date for receiving written comments. Therefore, to ensure that interested persons were adequately advised of the opportunity to comment, we reopened and extended the comment period to June 15, 1989. We did this in a document published in the **Federal Register** (54 FR 23218–23219, Docket Number 89–089) on May 31, 1989. We did not receive any comments. Based on the rationale set forth in the proposal, we are adopting the provisions of the proposal as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There is now only one export inspection facility currently approved in the Chicago area. There are fewer than 50 exporters using this facility. Most of these are considered small entities. This rule will allow exporters the option of an additional export inspection facility for the port of Chicago, Illinois, with minimal economic effect.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (4 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program activity is listed in the Catalog of Federal Domestic assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock and livestock products, Transportation.

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

Accordingly, 9 CFR Part 91 is amended as follows:

1. The authority citation for Part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618, 46 U.S.C. 466a, 466b, 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 91.14 is amended by adding a new paragraph (a)(4)(i)(B) to read as follows:

§ 91.14 [Amended]

(a) * * *

(4) *Illinois.*

(i) * * *

(B) Knief Quarantine Facility, 11 N 470 Chapman Road, Box 305, Burlington, Illinois 60109, (312) 683–3873.

* * * * *

Done in Washington, DC, this 11th day of August 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–19241 Filed 8–15–89; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 328

RIN 3064–AA95

Advertisement of Membership

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulation regarding advertisement of membership to require each insured savings association to display at each station or window where insured deposits are usually and normally received in its principal place of business a prescribed sign notifying the public of deposit insurance coverage. The FDIC is also amending its regulation to authorize insured banks to display the official sign presently prescribed by regulation ("bank sign") or, in the alternative, to display the sign prescribed for insured savings associations by this amendment ("savings association sign"). These actions are necessary in order to comply with the requirements of section 221 of the Financial Institutions Reform, Recovery and Enforcement Act ("FIRRE") of 1989.

EFFECTIVE DATE: August 16, 1989.

FOR FURTHER INFORMATION CONTACT: Valerie Jean Best, Attorney, Legal Division, (202) 898–3812, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) are contained in this Notice. Consequently, no information has been submitted to the Office of Management and Budget for review.

Reason for Adoption Without Prior Notice and Comment

Immediate adoption of this final rule is necessary to comply with the requirements of section 221 of FIRRE. The FDIC is required to prescribe regulations to carry out the purposes of section 221 of FIRRE, including regulations governing the manner of display or use of the bank sign and the savings association sign. Section 221 provides that initial regulations under that section shall be prescribed on the date of enactment of FIRRE. This final rule prescribes the savings association sign. In order to be consistent with current regulations applicable to banks, and in order to assure depositors as to the safety of their insured deposits upon the abolishment of the Federal Savings and Loan Insurance Corporation, the final rule requires that the savings association sign be displayed at each station or window where insured deposits are usually and normally received in a savings association's principal place of business and in all of its branches. Due to the statutory time constraints, the FDIC finds that application of the notice and public participation provisions of the Administrative Procedure Act (5 U.S.C. 553) to this action would be impracticable and contrary to the public interest. The FDIC finds that good cause exists for dispensing with the 30-day delayed effective date requirement. Since the FDIC has had to move so rapidly to implement the requirements of FIRRE, the FDIC has established only those requirements that are considered to be the minimum necessary to comply with FIRRE. Consequently, additional changes to the FDIC's regulation governing advertisement of membership are being considered, and comments are invited through an "Advance Notice of Proposed Rulemaking" published elsewhere in this issue.

Background

Section 221 of FIRRE amends section 18(a) of the Federal Deposit Insurance Act (12 U.S.C. 1828(a)). Section 221 requires each insured savings association to display at each place of business maintained by the association a prescribed sign notifying the public of deposit insurance coverage. More specifically, the prescribed sign must contain only the following items, each of which is to be accorded substantially equal prominence: a statement that insured deposits are backed by the full faith and credit of the United States Government; a statement that deposits are federally insured to $100,000; and the symbol of an eagle. The sign may not contain any reference to a Government agency.

FIRRE provides that, not later than 30 days after the enactment of FIRRE, each insured bank shall display at each place of business maintained by such bank a sign notifying the public of deposit insurance coverage. FIRRE gives insured banks the option of displaying the official bank sign required by FDIC regulation in effect on January 1, 1989, or the official savings association sign which insured savings associations must display.

The FDIC is required to prescribe regulations to carry out the purposes of section 221 of FIRRE, including regulations governing the manner of display or use of such signs, except that the size of the savings association sign shall be similar to the bank sign. Accordingly, the FDIC is issuing this final rule to prescribe the sign insured savings associations must display and the locations where the sign must be displayed. The final rule gives insured banks the option of displaying the official bank sign or the official savings association sign prescribed for savings associations. Insured savings associations are authorized to display the official savings association sign created by FIRRE but not the official bank sign.

The FDIC regulation presently in effect requires an insured bank to display an official sign at each station or window where insured deposits are usually and normally received in its principal place of business and in all its branches. This requirement has not been changed by this final rule except that banks may now display the official bank sign or the official savings association sign prescribed for insured savings associations. This final rule requires an insured savings association to display the sign prescribed by FIRRE at each station or window where insured deposits are usually and normally received in its principal place of business and in all its branches.

Prior to the enactment of FIRRE, section 18 of the Federal Deposit Insurance Act specifically required an insured bank to include in advertisements a statement to the effect that its deposits were insured by the FDIC. FIRRE does not retain this specific requirement. It appears the FDIC has the authority to retain its regulation requiring insured banks to include the currently prescribed statement in advertisements and to extend similar requirements to insured savings associations. Since section 18 of the Federal Deposit Insurance Act as amended by FIRRE no longer mandates a statement of insurance coverage in advertisements, however, the FDIC believes it is appropriate at this time to review the benefits and costs of such a requirement. In conjunction therewith, the FDIC notes that section 222 of FIRRE

adds a new section 28 to the Federal Deposit Insurance Act. This newly enacted section provides that any savings association the deposits of which are not insured by the FDIC shall disclose clearly and conspicuously in periodic statements of account and in all advertising that the savings association's deposits are not federally insured. This final rule, therefore, retains the advertising requirements applicable to insured banks but does not extend them to insured savings associations. The FDIC invites comment on this issue through a separately published "Advance Notice of Proposed Rulemaking" published elsewhere in this issue.

This final rule eliminates the reference to the "Official Catalogue of Insured Bank Signs" since this catalogue is no longer published.

Regulatory Flexibility Analysis

Because no notice of proposed rulemaking is required under section 553 of the Administrative Procedure Act or any other law, the Regulatory Flexibility Act (5 U.S.C. 601–602) does not apply.

List of Subjects in 12 CFR Part 328

Advertising, Bank deposit insurance, Banks, Banking, Savings and loan associations, Savings associations, Signs and symbols.

PART 328—ADVERTISEMENT OF MEMBERSHIP

1. The authority citation for part 328 is revised to read as follows:

Authority: 12 U.S.C. 1819; 12 U.S.C. 1828(a), as amended by sec. 221, Pub. L. No. 101–73, 103 Stat. 183.

2. Section 328.0 is revised to read as follows:

§ 328.0 Scope.

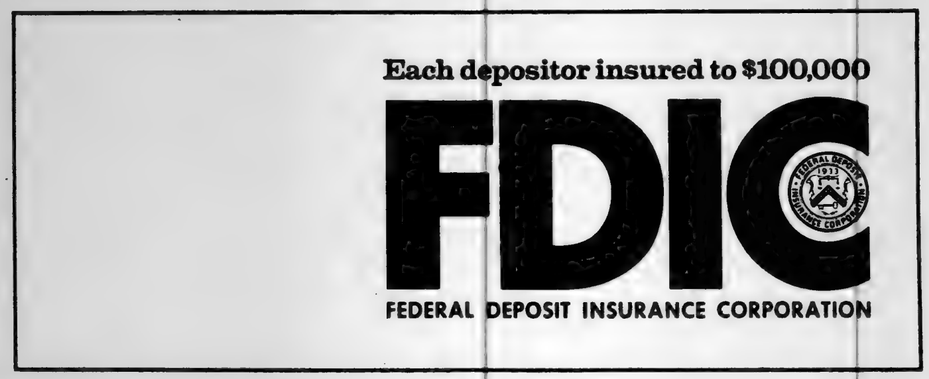
The regulation contained in this part describes the official signs of the FDIC and prescribes their use by insured depository institutions. It also prescribes the official advertising statement insured banks must include in their advertisements. Insured banks which maintain offices that are not insured in foreign countries are not required to include the advertising statement in advertisements published in foreign countries. For purposes of this part 328, the term "insured bank" includes a foreign bank having an insured branch.

§§ 328.2 and 328.3 [Redesignated from §§ 328.1 and 328.2 respectively]

3. Sections 328.1 and 328.2 are redesignated as §§ 328.2 and 328.3 respectively and a new § 328.1 is added to read as follows:

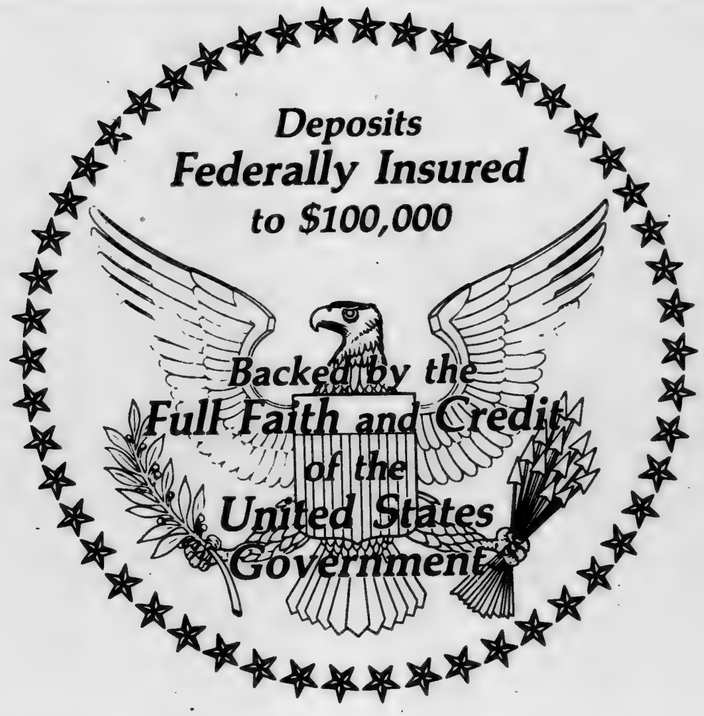
§ 328.1 Official signs.

(a) *Official bank sign.* The official sign referred to in this paragraph ("bank sign") shall be 7" by 3" in size and of the following design:



The "symbol" of the Corporation shall be that portion of the official bank sign represented by the letters and the Corporation seal contained upon the official bank sign.

(b) *Official savings association sign.* The official sign referred to in this paragraph ("savings association sign") shall be 5¼" in diameter and of the following design:



4. Newly redesignated § 328.2 is revised to read as follows:

§ 328.2 Mandatory requirements with regard to the official sign and its display by banks.

(a) *Insured banks to display official sign.* Each insured bank shall continuously display an official bank sign or an official savings association sign at each station or window where insured deposits are usually and normally received in its principal place of business and in all its branches, except on automatic service facilities including automated teller machines, cash dispensing machines, point-of-sale terminals, and other electronic facilities where deposits are received. However, no bank becoming an insured bank shall be required to display such an official sign until twenty-one (21) days after its first day of operation as an insured bank. An official sign may be displayed by an insured bank prior to the date display is required. Additional bank signs or savings association signs may be displayed in other locations within an insured bank in other sizes, colors, or materials. An insured bank may display an official sign at a remote service facility, provided that if there are any noninsured institutions which share in the remote service facility, any insured bank which displays the official bank sign must clearly show that the sign refers only to a designated insured bank or banks.

(b) *Obtaining official signs.* (1) Any insured bank may procure official bank signs with black letters on a gold background or official savings association signs with black letters, stars, and eagle, on a gold background, from the Corporation for official use at no charge. The Corporation shall furnish to banks an order blank for use in procuring the official signs. Any bank which promptly, after the receipt of the order blank, fills it in, executes it, and properly directs and forwards it to the Federal Deposit Insurance Corporation, Washington, DC 20429, shall not be deemed to have violated this regulation on account of not displaying an official sign, or signs, unless the bank shall omit to display such official sign or signs after receipt thereof.

(2) Official signs or signs reflecting variations in size, colors, or materials may be procured by insured banks from commercial suppliers.

(c) *Receipt of deposits at same teller's station or window as noninsured bank or institution.* An insured bank is forbidden to receive deposits at any teller's station or window except a remote service facility as defined in paragraph (a) of § 303.14, where any noninsured insitution receives deposits or similar liabilities.

(d) *Required changes in official sign.* The Corporation may require any insured bank, upon at least 30 days' written notice, to change the wording of its official signs in a manner deemed necessary for the protection of depositors or others.

5. The heading of newly redesignated § 328.3 is revised to read as follows:

§ 328.3 Mandatory requirements with regard to the official advertising statement and manner of use by banks.

6. A new § 328.4 is added to read as follows:

§ 328.4 Mandatory requirements with regard to the display of the official savings association sign by insured savings associations.

(a) *Insured savings associations to display official savings association sign.* Each insured savings association shall continuously display an official savings association sign at each station or window where insured deposits are usually and normally received in its principal place of business and at all of its branches, except on automatic service facilities including automated teller machines, cash dispensing machines, point-of-sale terminals, and other electronic facilities where deposits are received. However, no savings association becoming an insured savings association as a result of the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 or otherwise, shall be required to display an official savings association sign until twenty-one (21) days after its first day of operation as an insured savings association. The official savings association sign may be displayed by any insured savings association prior to the date display is required. Additional savings association signs in other sizes, colors, or materials, may be displayed in other locations within an insured savings association. An insured savings association may display the official savings association sign at a remote service facility, provided that if there are any noninsured institutions which share in the remote service facility, any insured savings association which displays the sign must clearly show that the official savings association sign refers only to a designated insured savings association or associations.

(b) *Obtaining official savings association signs.* (1) Any insured savings association may procure official savings association signs with black letters, stars, and eagle, on a gold background from the Corporation for official use at no charge. The Corporation shall furnish to savings associations an order blank for use in procuring the official savings association sign. Any savings association which promptly, after the receipt of the order blank, fills it in, executes it, and properly directs and forwards it to the Federal Deposit Insurance Corporation, Washington, DC 20429, shall not be deemed to have violated this regulation on account of not displaying an official savings association sign, or signs, unless the savings association shall omit to display such official sign or signs after receipt thereof.

(2) Official savings association signs or signs reflecting variations in size, colors, or materials may be procured by insured savings associations from commercial suppliers.

(c) *Receipt of deposits at same teller's station or window as noninsured institution.* An insured savings association is forbidden to receive deposits at any teller's station or window except a remote service facility as defined in paragraph (a) of § 303.14, where any noninsured institution receives deposits or similar liabilities.

(d) *Required changes in official sign.* The Corporation may require any insured savings association upon at least 30 days' written notice, to change the wording of its official signs in a manner deemed necessary for the protection of depositors or others.

(e) *Display of official bank sign by insured savings association prohibited.* An insured savings association shall not display the bank sign at its principal place of business or at any of its branches.

By order of the Board of Directors.

Dated at Washington, DC, this ninth day of August, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-19220 Filed 8-15-89; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 113

[T.D. 88-72]

Customs Regulation Amendment Relating to Customs Bonds; Correction

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule, correction.

SUMMARY: A document was published in the Federal Register as T.D. 88-72 (53 FR 45901) on November 15, 1988, amending part 113, Customs Regulations (19 CFR Part 113) as they relate to Customs Bonds. This document corrects a paragraph designation in that document which was incorrect.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, Regulations and Disclosure Law Branch, (202) 566-8237.

SUPPLEMENTARY INFORMATION:

Background

A document, published in the Federal Register as T.D. 88-72 (53 FR 45901) on November 15, 1988, amended Part 113, Customs Regulations relating to Customs Bonds. A different document, published earlier in the year had also amended that part and redesignated certain paragraphs of that part. When T.D. 88-72 was published, one of the paragraphs in the regulation it amended was misidentified. This document corrects that error by properly identifying the paragraph which was amended by T.D. 88-72.

Correction

On page 45902 of the document, in the Amendment to the Regulation portion, in the third column, the reference to § 113.63(g)(1) should be changed to read § 113.63(h)(1).

Dated: August 10, 1989.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89-19135 Filed 8-15-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 540

Animal Drugs, Feeds, and Related Products; Change of Sponsor; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA), in amending the sponsor entries on April 7, 1988 (53 FR 11492), in 21 CFR 510.600(c) (1) and (2) and a sponsor change in 21 CFR 540.274b(c)(3)(ii), used an incorrect drug labeler code for Norbrook Laboratories, Ltd. This document corrects those errors.

EFFECTIVE DATE: August 16, 1989.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 7, 1988 (53 FR 11492), FDA amended the list of sponsors of approved NADA's in 21 CFR 510.600(c) (1) and (2) to add an entry for Norbrook Laboratories, Ltd., Station Works, Newry BT35 6JP, Northern Ireland, drug labeler code "055558". This document removes drug labeler code "055558" and replaces it with "055529."

In addition, in providing for an NASA sponsor change to Norbrook Laboratories in 21 CFR 540.274b(c)(3)(ii), the incorrect drug labeler code "055558" was used. This document also removes that drug labeler code and replaces it with "055529".

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 540

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, parts 510 and 540 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table of paragraph (c)(1) in the entry "Norbrook Laboratories, Ltd.," and in the table of paragraph (c)(2) under the heading "Drug labeler code", by removing the entry "055558", and replacing it with "055529".

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

3. The authority citation for 21 CFR part 540 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 540.274b [Amended]

4. Section 540.274b *Procaine penicillin G aqueous suspension* is amended in paragraph (c)(3)(ii) by removing the number "055558" and replacing it with "055529".

Dated: August 8, 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89-19187 Filed 8-15-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 540

Animal Drugs, Feeds, and Related Products; Sterile Procaine Penicillin G Aqueous Suspension (Injectable)

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplement provides for reduction of the milk discard period from 72 hours to 48 hours following treatment of cattle with sterile injectable procaine penicillin G aqueous suspension.

EFFECTIVE DATE: August 16, 1989.

FOR FURTHER INFORMATION CONTACT: Myron C. Rosenberg, Center for Veterinary Medicine (HFV-133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42nd St., New York, NY 10017, is sponsor of NADA 65-110 which provides for injectable use of sterile procaine penicillin G aqueous suspension to treat cattle, sheep, swine, and horses. The supplement provides for reduction of the milk discard period after treating lactating cattle from 72 hours (6 milkings) to 48 hours (4 milkings). The supplement is approved and 21 CFR 540.274b(c) is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 540

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 540 is amended as follows:

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR part 540 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 540.274b is amended by revising paragraphs (c)(3)(ii) and (c)(5)(i) to read as follows:

§ 540.274b Procaine penicillin G aqueous suspension.

* * * * *

(c) * * *

(3) * * *

(ii) *Sponsor.* See No. 055529 in § 510.600(c) of this chapter.

* * * * *

(5)(i) *Sponsor.* See Nos. 000069 and 010515 in § 510.600(c) of this chapter.

* * * * *

Dated: August 9, 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89-19188 Filed 8-15-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 573

[Docket No. 86F-0060]

Selenium; Environmental Impact; Opportunity for Comment; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Opportunity for comment on tentative responses to certain objections to final rule; extension of comment period.

SUMMARY: The Food and Drug Administration's (FDA's) Center for Veterinary Medicine is extending the comment period of its tentative responses to certain environmentally based objections to the agency's final rule of April 6, 1987 (52 FR 10887), raising the level of selenium permitted in animal feeds. The opportunity for comment on those responses is to assist FDA in determining whether to grant a formal evidentiary public hearing on objections received in the formal rulemaking proceeding.

DATES: Written comments by September 11, 1989.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, identified with the docket number found in brackets in the heading of this document. Copies of the environmental impact analysis report, the finding of no significant impact, the objections, the references cited in initial notice, and any comments received are available for public examination at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Woodrow M. Knight, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3390.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 11, 1989 (54 FR 29019). FDA's Center for Veterinary Medicine (CVM) published a notice providing an opportunity for interested parties to comment on its tentative responses to certain environmentally based objections to the agency's rule of April 6, 1987 (52 FR 10887), raising the level of selenium permitted to be added to animal feed. A comment period of 30 days was provided to August 10, 1989.

A request has been received for an extension of the comment period for an additional 30 days to permit completion of certain relevant studies, and consultation with scientific experts on the subject. Good cause having been shown, CVM is extending the comment period as requested. (The 30th day falling on a Saturday, the comment period will conclude on September 11, 1989.)

Interested persons may, on or before September 11, 1989, submit to the Dockets Management Branch (address above) written comments regarding the agency's tentative responses. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

Dated: August 10, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–19184 Filed 8–11–89; 10:53 am]

BILLING CODE 4160–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1305

Registration of Manufacturers, Distributors and Dispensers of Controlled Substances and Order Forms

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: This final rule amends DEA regulations concerning the storage of potent animal immobilizing agents to include a recently controlled substance subject to this classification.

EFFECTIVE DATE: August 16, 1989.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537. Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: On April 21, 1989, a notice of proposed rulemaking was published in the **Federal Register** (54 FR 16130–16131) amending 21 CFR parts 1301 and 1305 to include the recently controlled substance carfentanil in the class of extremely potent narcotic substances approved for use as an immobilizing agent in veterinary medicine. Carfentanil is said to be several thousand times as potent as morphine. Because of the potency and potential hazard this drug poses to humans, DEA proposed that the additional security and recordkeeping requirements currently required for etorphine hydrochloride and diprenorphine also apply to carfentanil. The proposed rule provided the opportunity for interested parties to submit comments or objections on these proposed amendments on or before May 21, 1989. No comments or objections were received.

The Deputy Assistant Administrator of the Office of Diversion Control hereby certifies that these matters will have no significant negative impact upon small businesses within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This rule is not a major rule for purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to sections 3(e)(3) and 3(e)(2)(C) of E.O. 12291, this rule has been submitted for review to the Office of Management and Budget. This action has been analyzed in accordance with the principals and criteria contained in E.O. 12612, and it has been determined that the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Pursuant to the authority vested in the Attorney General by 21 U.S.C. 821 and 871(b), delegated to the Administrator of the Drug Enforcement Administration, and redelegated to the Deputy Assistant Administrator of the Office of Diversion Control by 28 CFR 0.1000 and 0.104, the Deputy Assistant Administrator hereby amends 21 CFR part 1301 and 21 CFR part 1305 as follows:

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug Enforcement Administration, drug traffic control, security measures.

21 CFR Part 1305

Drug Enforcement Administration, drug traffic control, reporting requirements.

PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS AND DISPENSERS OF CONTROLLED SUBSTANCES

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

§ 1301.74 [Amended]

2. 21 CFR 1301.74(g) is amended by inserting the word "carfentanil", before the words "etorphine hydrochloride".

§ 1301.75 [Amended]

3. 21 CFR 1301.75(d) is amended by inserting the word "carfentanil", at the beginning of the sentence.

PART 1305—ORDER FORMS

1. The authority citation for part 1305 continues to read as follows:

Authority: 21 U.S.C. 821, 828, 871(b).

§ 1305.06 [Amended]

2. 21 CFR 1305.06 (b) is amended by inserting the word "carfentanil" before the words "etorphine hydrochloride".

§ 1305.13 [Amended]

3. 21 CFR 1305.13 (d) is amended by inserting the word "carfentanil" before the words "etorphine hydrochloride".

§ 1305.16 [Amended]

4. 21 CFR 1305.16 (a) is amended by inserting the word "carfentanil" before the words "etorphine hydrochloride".

5. 21 CFR 1305.16 (b)(1) is amended by inserting the word "carfentanil" before the words "etorphine hydrochloride".

Dated: July 28, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89–19134 Filed 8–15–89; 8:45 am]

BILLING CODE 4410–09–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1627

Congressional Action Concerning the Commission's Final Rule Allowing for Non-EEOC Supervised Waivers Under the Age Discrimination in Employment Act (ADEA)

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of congressional action regarding final rule on ADEA waivers.

SUMMARY: On July 30, 1987 the Equal Employment Opportunity Commission voted to approve a final rule creating a legislative regulation and administrative exemption allowing for non-EEOC supervised waivers of private rights under the Age Discrimination in Employment Act (under section 9 of the ADEA and 29 CFR 1627.15). This final rule was published in the **Federal Register** of Thursday, August 27, 1987 (52 FR 32293).

On October 1, 1988 the President signed Public Law 100–459 (appropriations for fiscal year 1989) which includes the following language:

Provided, That the final rule regarding unsupervised waivers under the Age Discrimination in Employment Act, issued by the Commission on August 27, 1987 (29 CFR 1627.16(c)(1)–(3), shall not have effect during fiscal year 1989; Provided further, That none of the funds may be obligated or expended by the Commission to give effect to any policy or practice pertaining to unsupervised waivers under the Age Discrimination in Employment Act, except that this proviso shall not preclude the Commission from investigating or processing claims of age discrimination, and pursuing appropriate relief in Federal court, regardless of whether an unsupervised waiver of rights has been sought or signed.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: John K. Light, Attorney-Advisor, ADEA Division, Coordination and Guidance Services, Office of Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507, (202) 663–4690.

Signed this 10th day of August 1989, at Washington, DC.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 89–19138 Filed 8–15–89; 8:45 am]

BILLING CODE 6570–06–M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendment to the Bank Secrecy Act Regulations Relating to Geographic Reporting of Certain Domestic Currency Transactions

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: Section 6185(c) of Title VI of the Anti-Drug Abuse Act of 1988, Pub. L. 100–690, November 18, 1988, permits the Secretary of the Treasury to issue an order to require financial institutions or groups of financial institutions in certain geographic locations to report currency transactions in amounts less than $10,000 for a limited period of time. This Final Rule establishes the procedures that Treasury would follow in issuing such an order.

DATE: This final rule is effective September 15, 1989.

ADDRESS: Amy G. Rudnick, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Scott, Attorney Advisor, Office of the Assistant General Counsel (Enforcement), (202) 566–9947.

SUPPLEMENTARY INFORMATION: Section 6185(c) of title VI of the Anti-Drug Abuse Act of 1988 added a new section 5326 to the Bank Secrecy Act, 31 U.S.C. 5311–5326.

Section 5326. Records of Certain Domestic Coin and Currency Transactions

(a) *In general.* If the Secretary of the Treasury finds, upon the Secretary's own initiative or at the request of an appropriate Federal or State law enforcement official, that reasonable grounds exist for concluding that additional recordkeeping and reporting requirements are necessary to carry out the purposes of this subtitle and prevent evasions thereof, the Secretary may issue an order requiring any domestic financial institution or group of domestic financial institutions in a geographic area—

(1) To obtain such information as the Secretary may describe in such order concerning—

(A) Any transaction in which such financial institution is involved for the payment, receipt, or transfer of United States coins or currency (or such other monetary instruments as the Secretary may describe in such order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe; and

(B) Any other person participating in such transaction;

(2) To maintain a record of such information for such period of time as the Secretary may require; and

(3) To file a report with respect to any transaction described in paragraph (1)(A) in the manner and to the extent specified in the order.

(b) *Maximum effective period for order.*—No order issued under subsection (a) shall be effective for more than 60 days unless renewed pursuant to the requirements of subsection (a).

The practical effect of this amendment is to permit the Secretary to lower the currency transaction reporting threshold of § 103.22(a) for some or all types of currency transactions, for some or all types of customers, for a financial institution or a group of financial institutions in a specified geographic area of the United States for a limited period of time. This reporting requirement would be in addition to the present requirement in 31 U.S.C. 5313 and 31 CFR 103.22(a) that requires financial institutions to report currency transactions over $10,000. The reason that Congress amended the Bank Secrecy Act to permit the lowering of the current currency reporting threshold was because of its concern with schemes involving the structuring of currency transactions below $10,000 to avoid the Bank Secrecy Act reporting requirements in certain areas of the country. *See* H. Rep. No. 100–716, 100th Cong., 2d Sess. 8.

Notice of Proposed Rulemaking

On March 24, 1989, Treasury published a Notice of Proposed Rulemaking in which it proposed procedures and limitations to govern the issuance of an order under section 5326(a). 54 FR 12238. Under the proposed rule, prior to selecting an area of the country for targeted reporting, Treasury would be required to make a determination that there may exist a significant level of drug money laundering or other illegal activity being conducted in that geographic area at levels below the current $10,000 currency reporting threshold. Treasury then would identify the affected financial institution or institutions in the geographic area that would receive the targeting order. In the preamble to the proposed regulation, Treasury stated that, at least initially, geographic areas subject to the enhanced reporting

requirement could be as small as a few city blocks or as large as a major metropolitan area.

Under the proposed regulation, each financial institution in a targeted area would receive an order requiring it to keep a record of specified currency transactions at or above a specified monetary limit for a certain period of time (not to exceed 60 days), with respect to all or certain types of cutomers, and to file a report as prescribed by Treasury on those transactions and the individuals involved in those transactions beginning on a date designated in the order. The proposed regulation further provided that the order would set forth all the information required to be reported, instructions on how and where to file the reports (not necessarily the Detroit Computing Center), and the length of time that the records generated in response to an order issued under section 5326 were to be retained. Treasury notes that there may be variations in the orders received by the targeted financial institutions within a specific geographic area.

Treasury stated that it would be as specific as possible in delineating what would be expected of a financial institution served with a section 5326 geographic targeting order and that it would consider the amount of time necessary to implement the order. In addition, Treasury stated that it would make every effort to work with the targeted financial institutions to ensure maximum compliance with the targeting order at a minimum burden to the financial institutions. For this reason, Treasury said that the name of a Treasury contact would be provided for assistance if needed.

In the proposed rule, Treasury emphasized that in complying with a geographic targeting order, financial institutions would not be required to purchase additional computer hardware or software. However, Treasury encouraged, but indicated that it would not require, financial institutions, when feasible, to adjust any existing computerized aggregation systems that they had in place in order to capture the information specified in the order. Treasury also stated that it did not expect financial institutions with manual aggregation systems to have any problems adjusting their manual systems in order to capture the data required to be reported. Treasury emphasized, however, that if a financial institution had knowledge through other means, *e.g.*, the personal knowledge of a bank employee, that there were aggregated transactions falling within the limits described in the order, the financial institution would be required to report those aggregated transactions, regardless of whether the existing system at the financial institution was able to identify the aggregated transactions. Finally, Treasury said that it would make every effort to work with financial institutions filing magnetically who received a section 5326 order so as not to disrupt the magnetic media filing process.

Treasury stated that geographic targeting orders would not be published in the **Federal Register**, but would be issued only to the affected financial institutions. Treasury made clear that issuance of a section 5326 order to a financial institution would not exempt that institution from its duty to report all over-$10,000 currency transactions.

In the preamble, Treasury explained that the Right to Financial Privacy Act, 12 U.S.C. Chapter 35, would not apply to geographic targeting orders because that information is required to be reported by law. 12 U.S.C. 3413. Therefore, targeted financial institutions would not be required to notify customers of their temporarily enhanced reporting requirements. In order to ensure proper use of the order, Treasury stated that it would normally request targeted financial institutions not to notify the public of the enhanced reporting requirement limit.

Treasury further proposed that in order to comply with a section 5326 order, financial institutions generally would be required to use IRS Form 4789, the Currency Transaction Report ("CTR"), which currently is used by financial institutions to report currency transactions over $10,000. In addition, Treasury explained that, in general, unless otherwise specified in the order, all the provisions of 31 CFR Part 103 relating to the reporting of currency transactions in excess of $10,000 would apply to reports filed on transactions falling within the scope of a section 5326 order, and that, unless otherwise noted in the order, existing exemptions granted by a targeted bank under 31 CFR 103.22(B) prior to the time it received the order could continue to be utilized in complying with a section 5326 order. However, Treasury emphasized that no new exemptions could be granted to businesses that have regular and frequent currency transactions in amounts either above or below $10,000, without the approval of Treasury. Finally, while the legislation gives Treasury the authority to include other monetary instrument transaction reporting in such an order, Treasury indicated that it anticipated that, as a general rule, it would use section 5326 orders to require reporting on currency transactions only.

Discussion of Comments

Thirty-three comments were received on the above-described Notice of Proposed Rulemaking. These comments have been considered carefully in drafting the final rule. A discussion of the major comments follows.

Systems Issues

Most commenters stated that they would not be able to use their computer systems if only one branch of a financial institution were targeted for the lower reporting requirement. As a result, they explained that they would be forced to adopt a temporary manual system for processing the reports, which possibly could lessen the accuracy of reports and pose additional problems for the financial institution. Many also sought guidance in handling aggregated transactions conducted by or on behalf of the same person when the transactions took place at branches both in and outside of the targeted area.

After carefully considering these issues, Treasury has decided that it will require reporting of currency transactions at or below $10,000 only for those transactions that occur at the branch of the financial institution that is targeted. Thus, only those transactions occurring at the targeted branch should be aggregated for purposes of complying with a geographic targeting order. If a financial institution aggregates transactions among its branches, it should report transactions in currency conducted by or on behalf of the same person that exceed $10,000 in the normal manner, *i.e.*, on a CTR to the Detroit Computing Center. Only aggregated transactions resulting solely from the targeted branch which exceed the lowered reporting threshold should be sent or made available in accordance with the order. The order may also specify that photocopies of forms filed with the Detroit Computing Center also be sent to the address specified in the order or otherwise be made available as instructed in the order.

Financial institutions may, but are not required to, change their computer systems to accommodate a lower reporting threshold at a targeted branch. If a financial institution's computer system cannot accommodate the lowering of the currency transaction reporting threshold over $10,000 for one or more of its branches, the financial institution will be required to use a manual system for completing the reports.

Procedural Issues

The comments raised numerous procedural issues. Many commenters requested that Treasury set forth in the final rule the minimum amount of time that financial institutions will be given to implement a geographic targeting order. Commenters estimated that they needed between 10 to 90 days advance notice of the imposition of an enhanced reporting requirement. After reviewing these comments and considering the different circumstances in which a targeting order may be issued, Treasury has concluded that it would be detrimental to define in advance, and without reference to particular facts, how much time should be given to implement an order. Treasury, however, will give as much time as feasible to implement a section 5326 order, and will work with each financial institution to ensure maximum compliance with an order.

Several commenters recommended that Treasury establish a dollar limit below which it would not target currency transactions. The specific recommendations asked for limits of between $3,000 and $5,000. After considering the comments, Treasury has decided that in order to be able to respond to changing law enforcement needs, it cannot set a dollar amount below which Treasury will not target currency transactions for special reporting. Treasury, however, notes that before granting a request for a targeting order and establishing reporting limits, it will consider the law enforcement need for the information.

A few commenters suggested that Treasury specifically provide in the regulations exactly who in the financial institution will be served with a geographic targeting order. Various suggestions were made as to who would be served, including the Chief Executive Officer ("CEO"), the manager of the targeted branch, or the Bank Secrecy Act compliance officer. Because Treasury believes that these suggestions have merit, it has amended the proposal to specify that the CEO of a targeted financial institution be served with a geographic targeting order. Treasury has selected the CEO as the person to be served because it believes that by serving the CEO, senior officials at the targeted financial institution will be informed of the issuance of the order.

Ordinarily, Treasury will serve a targeting order by sending it by certified or registered mail, return receipt requested. In addition, in order to ensure that the order has been received and is being implemented, in most cases, Treasury will contact the institution a few days after it has been sent.

Other issues that were raised by the comments concerned the actual filing of the reports: where to file, what type of report to file, and the time deadlines for filing. With respect to the place of filing, the final regulation provides that the order will indicate the specific place the reports are to be sent or will indicate that the reports are to be made available for pick up by designated individuals. If a financial institution that files CTR's by magnetic media is targeted, and the financial institution would like to report transactions for the targeted branch of the financial institution on magnetic tape, Treasury will work with the financial institution to determine where and how to file the reports.

As for the format of the report, Treasury has decided generally to require financial institutions to use the CTR form to file the information on transactions targeted below $10,000. Treasury made this decision because financial institutions are familiar with the CTR form and their employees know how to complete these forms. The regulation, however, provides Treasury with the ability to order targeted financial institutions to use a different format if the circumstances necessitate it. A geographic targeting order will specify the format in which the reports will be required to be filed.

Finally, with respect to the time required to file these reports, Treasury has decided that it will specify in each section 5326 order when the reports must be filed. Generally, however, Treasury anticipates that in most instances it will require the filing of these reports soon after the date of the transaction and no more than 15 days from the date of the transaction, as is required now for filing CTR's.

A few comments asked about the types of transactions in currency that would be targeted. One commenter requested that Treasury not differentiate among different types of transactions (*e.g.*, targeting only purchases of money orders and cashier's checks), while another asked that cash withdrawals not be included in targeting orders. Because each order will depend on the specific facts and circumstances surrounding the request for the targeting order, Treasury is not able to delineate in advance the types of transactions to be included in the order. In many cases, not all types of transactions in currency may be included in the order; in other cases, all types of currency transactions may be targeted. In some cases, only the currency transactions of certain types of customers may be targeted.

One commenter noted that any revisions to the original order should be made in writing. Treasury agrees with that comment and accordingly has included in the final regulation a provision that revisions to a geographic targeting order will not be effective until made in writing. This will ensure that a formal record is kept of all changes made to the original targeting order. It is anticipated that, in some cases, Treasury and the financial institution initially will discuss any revisions to the order, and that these revsions will be reduced to writing by Treasury later.

Several commenters requested that the regulation provide a limit on the number of times a section 5326 order may be renewed. Because there may be instances where an extended targeted period may be necessary, Treasury has decided not to put a limit on the number of times an order may be renewed. However, Treasury notes that in order to renew an order it must make a determination that there may be a significant level of drug money laundering or other illegal activity may be occurring in that area at levels below $10,000, keeping in mind Congress' admonition that these orders be of "limited duration."

Finally, many banks asked to be permitted to continue utilizing existing exemptions at the targeted branches of the banks and to be able to add new unilateral exemptions at exemption limits below $10,000. In the Notice of Proposed Rulemaking, Treasury had stated that banks would be able to continue to use their existing exemptions, unless otherwise indicated in the order, and that banks could not add new exemptions either above or below $10,000 unless approved by Treasury. Because Treasury wants to closely scrutinize currency transactions taking place at targeted financial institutions, it is standing by this position and is incorporating it into the final rule. Thus, unless otherwise noted in an order, during the course of a targeted reporting period, a targeted bank may not grant new exemptions, either above or below $10,000, but it may continue to use the exemptions it already has in place.

Customer Relations Issues

In the Notice of Proposed Rulemaking, Treasury indicated that generally it would request the targeted financial institution not to disclose the existence and specifics of an order to persons not employed at the financial institution. Many commenters had questions about such a requirement, including what potential penalties were applicable if

BEST COPY AVAILABLE

the financial institution made a disclosure, what specific guidelines to follow in handling customer inquiries, and whether therefore financial institutions could raise a good faith defense if information were disclosed. Treasury has considered these issues carefully. Treasury realizes that financial institutions may have difficulties with customers who will not be satisfied with a response that the information is required by Federal regulation, and that they will continue to press the financial institution as to why the information is required. Treasury has balanced this against the real probability that information disclosed by the financial institution, either upon request or voluntarily by an employee of the financial institution, could interfere with the ability of law enforcement to obtain useful information on drug money laundering and other illegal activities occurring in the targeted area. Treasury fears that once criminals learn of the enhanced reporting requirements and where they are applicable, criminals merely will move on to another non-targeted branch.

In light of these concerns, Treasury has decided to retain its initial proposal that the specifics of a geographic targeting order not be disclosed outside the targeted institution. Thus, an order issued under section 5326 will request that the existence of the order not be disclosed to anyone outside the financial institution. Treasury recommends that financial institutions tell customers who ask why the information is required only that they are required to fill out the report pursuant to a Federal regulation. Treasury further recommends that the financial institution notify Treasury in the event of any disclosure of the existence or specifics of an order to persons outside the targeted branch. Finally, Treasury recommends that if the customer's conduct raises the suspicions of the financial institution, that the financial institution report that activity to the Treasury contact person listed in the order.

Miscellaneous Issues

Several miscellaneous issues were raised in the comments. One nonbank financial institution with branches nation-wide requested that a financial institution be subject to no more than one section 5326 order at a time. While Treasury cannot guarantee that a financial institution will have to comply with only one order at a time, it does anticipate that initially targeting orders generally will be issued consecutively, and not concurrently, in order to assess their success.

Several commenters recommended that the regulation specify the maximum amount of time that the reports generated in response to a section 5326 order must be retained. Treasury agrees with these comments and, accordingly, the final rule provides that the maximum retention period for the reports and records of reports generated by a targeting order will be no more than five years, the current maximum retention period in the Bank Secrecy Act regulations.

Some commenters wanted to know what they should do if they observe suspicious activity at a targeted branch and whether the activity should be reported to the local office of the Internal Revenue Service Criminal Investigation Division pursuant to Bank Secrecy Act Administrative Ruling 88-1. If suspicious activity occurs at a targeted branch, Treasury would prefer the financial institution to report the activity to the Treasury employee named in the geographic targeting order as the contact person. As stated above, once an area has been targeted for enhanced reporting, Treasury will closely scrutinize all activity occurring in the targeted area, including reports of suspicious activity.

Finally, several commenters asked what the potential penalties were for failing to comply with a geographic targeting order. The penalties in 31 U.S.C. 5321 and 5322 that are applicable to failures to comply with the Bank Secrecy Act and its implementing regulations will be applicable to failures to comply with a section 5326 order. Civil penalties may be imposed up to the greater of the amount invoved in the transaction, if any, (not to exceed $100,000) or $25,000. Any person who willfully violates these provisions also would be subject to criminal penalties of not more than $250,000 or imprisonment of not more than 5 years, or both.

Conclusion

After careful consideration of the comments received in response to the Notice of Proposed Rulemaking, Treasury is adopting the regulation as proposed, with the changes noted above.

Executive Order 12291

This Final Rule is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. A Regulatory Impact Analysis therefore is not required.

Regulatory Flexibility Act

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this Final Rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The estimated average burden associated with the collections of information contained in this Final Rule is a reporting burden of 100 hours per respondent (250 estimated annual responses per respondent times .40 hour estimated time per response) and a recordkeeping burden of 20 hours per recordkeeper. Comments concerning the accuracy of this burden should be directed to the Office of Financial Enforcement at the address noted above or to the Office of Management and Budget, Paperwork Reduction Project (1505-0063), Washington, DC 20503.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). However, personnel from other offices participated in its development.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Amendment

For the reasons set forth below in the preamble, 31 CFR Part 103 is amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: Pub. L. 91-508, Title I, 84 Stat. 1114 (12 U.S.C. 1730d, 1829b and 1951-1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91-508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311-5326).

2. Part 103 is amended by redesignating §§ 103.26 and 103.27 as §§ 103.27 and 103.28 respectively, and by adding a new § 103.26 to read as follows:

§ 103.26 Reports of certain domestic coin and currency transactions.

(a) If the Secretary of the Treasury finds, upon the Secretary's own initiative or at the request of an appropriate Federal or State law enforcement official, that reasonable grounds exist for concluding that additional recordkeeping and/or reporting requirements are necessary to carry out the purposes of this Part and to prevent persons from evading the reporting/recordkeeping requirements of this Part, the Secretary may issue an order requiring any domestic financial institution or group of domestic financial institutions in a geographic area and any other person participating in the type of transaction to file a report in the manner and to the extent specified in such order. The order shall contain such information as the Secretary may describe concerning any transaction in which such financial institution is involved for the payment, receipt, or transfer of United States coins or currency (or such other monetary instruments as the Secretary may describe in such order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe.

(b) An order issued under paragraph (a) of this section shall be directed to the Chief Executive Officer of the financial institution and shall designate one or more of the following categories of information to be reported: Each deposit, withdrawal, exchange of currency or other payment or transfer, by, through or to such financial institution specified in the order, which involves all or any class of transactions in currency and/or monetary instruments equal to or exceeding an amount to be specified in the order.

(c) In issuing an order under paragraph (a) of this section, the Secretary will prescribe:

(1) The dollar amount of transactions subject to the reporting requirement in the order;

(2) The type of transaction or transactions subject to or exempt from a reporting requirement in the order;

(3) The appropriate form for reporting the transactions required in the order;

(4) The address to which reports required in the order are to be sent or from which they will be picked up;

(5) The starting and ending dates by which such transactions specified in the order are to be reported;

(6) The name of a Treasury official to be contacted for any additional information or questions;

(7) The amount of time the reports and records of reports generated in response to the order will have to be retained by the financial institution; and

(8) Any other information deemed necessary to carry out the purposes of the order.

(d)(1) No order issued pursuant to paragraph (a) of this section shall prescribe a reporting period of more than 60 days unless renewed pursuant to the requirements of paragraph (a).

(2) Any revisions to an order issued under this section will not be effective until made in writing by the Secretary.

(3) Unless otherwise specified in the order, a bank receiving an order under this section may continue to use the exemptions granted under section 103.22 of this Part prior to the receipt of the order, but may not grant additional exemptions.

(4) For purposes of this section, the term "geographic area" means any area in one or more States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, the territories and possessions of the United States, and/or political subdivision or subdivisions thereof, as specified in an order issued pursuant to paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1505-0063)

3. It is proposed to amend § 103.33 to add at the end a new paragraph (d) to read as follows:

§ 103.33 Records to be made and retained by financial institutions.

* * * * *

(d) A record of such information for such period of time as the Secretary may require in an order issued under § 103.26(a), not to exceed five years.

* * * * *

4. It is proposed to amend § 103.38 by adding in paragraph (d), after the first sentence, a new sentence to read as follows:

§ 103.38 Nature of records and retention period.

* * * * *

(d) * * * Records or reports required to be kept pursuant to an order issued under § 103.26 of this part shall be retained for the period of time specified in such order, not to exceed five years.* * *

* * * * *

Dated: August 8, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89-19199 Filed 8-15-89; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-89-04]

Special Local Regulations: Fresh Water Kilo Trials, Buffalo Outer Harbor, Buffalo, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Fresh Water Kilo Trials. This event will be held on the Buffalo Outer Harbor on 9 September 1989 from 11:00 a.m. e.d.s.t. to 3:00 p.m. e.d.s.t. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective and terminate on 9 September 1989.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: On 16 May 1989, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (54 FR 21074). Interested persons were requested to submit comments and no comments were received.

This event has not been held in the past, but is being held in conjunction with an event that has been conducted in the past and no objections were received from either cargo or passenger vessel operators during the public comment period.

Drafting Information

The drafters of this regulation are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Office of Search and Rescue and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unecessary. This event will draw a large number of

spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35–0904 to read as follows:

§ 100.35–0904 Fresh Water Kilo Trials, Buffalo Outer Harbor, Buffalo, NY.

(a) *Regulated area:* The Buffalo Outer Harbor, including the Northern, Middle, and Southern channels, and the Outer Harbor Turning Basin. Any vessel with a verifiable need to pass will be allowed to do so between individual trials with permission from the Coast Guard Patrol Commander.

(b) *Special local regulations:* (1) The above area will be closed to navigation or anchorage from 11:00 a.m. e.d.s.t. until 3:00 p.m. e.d.s.t. on 9 September 1989.

(2) The Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(7) This section is effective from 11:00 a.m. e.d.s.t. to 3:00 p.m. e.d.s.t. on 9 September 1989.

Dated: July 27, 1989.

D. H. Ramsden,

Capt. U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. 89–19159 Filed 8–15–89; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD13 89–07]

Special Local Regulations: Richland, WA, 1989 West Coast Outboard Championship Hydro Races

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Richland, Washington 1989 West Coast Championship Hydro Race to be held on the waters of the Columbia River in Richland, Washington. This event will be held on August 18, 19, and 20, 1989; 9:00 a.m. PDT until 6:00 p.m. PDT. The regulations are needed to promote the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on August 18, 19, and 20, 1989 at 6:00 a.m. PDT and terminate at 6:00 p.m. on August 18, 19, and 20, 1989 or upon completion of each event.

FOR FURTHER INFORMATION CONTACT: BMC F.L. Casanova, Coast Guard Marine Safety Office, Portland, Oregon, (503) 240–9319.

SUPPLEMENTARY INFORMATION: On 12 July 1989, the Coast Guard published a Notice of Proposed Rulemaking in the Federal Register for these regulations (54 FR 29348). Interested persons were requested to submit comments. None were received.

Drafting Information

The drafters of this notice are BMC F.L. Casanova, USCG, Project Officer, USCG Marine Safety Office, Portland, Oregon, and Lt. Deborah Schram, USCG, Project Attorney, Thirteenth Coast Guard District Legal Office, Seattle, Washington.

Discussion of Regulations

The Sunfest West Coast Championships is sponsored by the Seattle Outboard Association and Richland Sunfest Association and this rulemaking is undertaken at the request of the City of Richland, Washington, the host city. The event is a series of outboard hydroplane races covering a 2-mile long course in front of the Howard Amon Park on the Columbia River in Richland, Washington. This three day event is expected to draw more than 100 participants and a huge crowd of spectators to the waters of the Columbia River. To promote the safety of the participants and spectators, special local regulations are required. The economic impact of this regulation is expected to be minimal as it affects a small section of the Columbia River with no commercial traffic and will only be in effect for approximately twelve hours each day on August 18, 19, and 20, 1989.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. These regulations will affect a short section of the Columbia River which experiences no commercial traffic. The regulations will be in effect for only three days and two of those days are Saturday and Sunday. The Coast Guard Patrol Commander will allow any commercial traffic to transit the area between races.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Regattas and marine parades.

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continutes to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33, CFR 100.35.

2. A temporary § 100.35T1302 is added to read as follows:

§ 100.35T1302 Richland, WA, 1989 West Coast Outboard Championship Hydro Races.

(a) *Regulated area:* By this regulation, the Coast Guard will restrict general navigation and anchorage on the waters of the Columbia River between Mile 337 and Mile 339. This restricted area includes all waters between the above mile marks in Richland, Washington and is approximately 2 miles long.

(b) *Special local regulations:* (1) This event will take place from 6:00 a.m. PDT to approximately 6:00 p.m. PDT on August 18, 19, and 20, 1989, in the described waters of the Columbia River, Richland, Washington.

(2) No person or vessel may enter or remain in the regulated area except for participants in the event, supporting personnel, vessels registered with the event organizer, and personnel or vessels authorized by the Coast Guard Patrol Commander.

(3) Patrol of the described area will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander is empowered to control the movement of vessels in the regulated area and adjoining waters during the hours these regulations are in effect.

(4) A succession of sharp, short signals by whistle, siren, or horn, from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels or persons signaled shall stop and shall comply with the orders of the patrol vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(c) *Effective times and dates:* These regulations become effective on August 18, 19, and 20, 1989, at 6:00 a.m. PDT and terminate on August 18, 19, and 20, 1989 at 6:00 p.m. PDT or upon completion of each event.

Dated: August 4, 1989.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District DOT—U.S. Coast Guard.

[FR Doc. 89–19160 Filed 8–15–89; 8:45 am]

BILLING CODE 4910–14–M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM88–2]

Establishment of Special Rules of Practice and Procedure for Use in Consideration of Express Mail Market Response Filings

Issued: August 10, 1989.

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: In response to a petition filed by the Postal Service, the Postal Rate Commission initiated this rulemaking to consider whether to adopt special rules of practice and procedure for use in proceedings to consider Postal Service requests for changes in Express Mail rates prompted by developments in the market. Interested persons were invited to participate. 53 FR 16885–86 (May 12, 1988). After considering presentations of the participants, the Commission fashioned a set of procedural rules and published them for public comment. 54 FR 11394–413 (March 20, 1989). After reviewing the thoughtful comments which presented a wide diversity of views, the Commission modified its set of proposed rules and published them for public comment. 54 FR 25132–42 (June 13, 1989). The Commission has made further modifications to the rules, and is adopting the set of rules published here as final.

This set of rules compresses, to the extent consistent with due process, the time necessary for the procedural steps in an Express Mail Market Response case. The rules make provision for automatic intervention, and describe filing requirements. They are subject to a 5-year "Sunset" provision to provide a convenient time for reviewing whether they have functioned as anticipated and making any appropriate changes.

DATES: These rules will become effective for a trial period beginning upon publication in the Federal Register and ending 5 years thereafter if not re-enacted by the Commission after the provision of an opportunity for public comment.

ADDRESS: Correspondence should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H Street NW., Suite 300, Washington, DC 20268 (telephone: 202/789–6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, 1333 H Street NW., Suite 300, Washington, DC 20268 (telephone: 202/789–6820).

SUPPLEMENTARY INFORMATION:

Introduction and Summary

The Postal Rate Commission is amending its rules of practice (39 CFR part 3001) to provide for expedited proceedings on certain requests by the Postal Service for changes in rates for its Express Mail service. This rulemaking was initiated following a request by the Postal Service, which included a draft of suggested rules. The Commission established Docket No. RM88–2 and invited interested persons to participate. 53 FR 16885–86 (May 12, 1988). After considering testimony and other presentations by interested parties,[1] the Commission published a Second Notice of Proposed Rulemaking which invited comments on a proposed set of rules. 54 FR 11394–413 (March 20, 1989).

The Postal Service, the Commission's Office of the Consumer Advocate (OCA), Federal Express Corporation (Federal Express) and United Parcel Service (UPS) filed comments in response to the Second Notice. Having considered these comments, we incorporated some of the suggestions from each commenter into a set of proposed rules which we offered for public comment. The Third Notice was published at 54 FR 25132–42 (June 13, 1989). Federal Express, United Parcel Service and the Postal Service filed comments.[2]

[1] The Postal Service presented direct and rebuttal testimony. A trial-type hearing was held on the rebuttal testimony. The Commission's Office of the Consumer Advocate and the staff of the Bureau of Economics of the Federal Trade Commission offered alternative suggestions. The American Newspaper Publishers Association suggested a modification. Other parties active in this phase of the rulemaking were Federal Express and United Parcel Service.

[2] The parties' comments we refer to in this text are those filed in response to the Third Notice unless otherwise designated. Any reference to comments filed in response to the Second Notice are so described.

Background Information

In the first phase of this rulemaking, the Postal Service presented considerable information on the need for an accelerated method for changing Express Mail rates in response to changes in the expedited delivery market. The Postal Service presented sufficient information to support the conclusion that a set of rules for expediting such proceedngs might help the Commission in carrying out its statutory obligations. Therefore, the Commission decided that it was appropriate to fashion a set of rules that might answer the Postal Service's concerns while protecting the due process rights of interested parties. Because of the uncertainties involved, the Commission has decided that the rules would be subject to a 5-year "Sunset" provision. They will expire at the end of 5 years after implementation if not re-enacted.

These rules are designed to promote expedition in the type of cases the Postal Service had described. In our final rules, the two primary methods for shortening the proceedings are (1) compressing procedural schedules as much as is consistent with due process and (2) clearly setting out information requirements before the filing of the first Express Mail Market Response case.

General Comments

In response to the Third Notice, both Federal Express and UPS restate their position that the Commission should not adopt any rules for the expedited consideration of Express Mail Market Response cases. They do not offer any arguments which have not been previously presented to the Commission and considered. The Commission's treatment of this issue can be found at 54 FR 11398. The Commission considered the Postal Service's uncontroverted presentation on the workings of the expedited delivery market and Express Mail's position in it. Then the Commission decided that it is appropriate to develop a set of procedural rules for a trial period in response to the asserted need for speed in changing rates when the market changes. We find that our reasoning in the Second Notice remains valid.

The Postal Service believes that the Commission could have fashioned—consistent with due process—rules which meet the goal of expedition through the methods of issue limitation and reliance on prior decisions, rather than the methods adopted in the Second and Third Notice. Postal Service Comments at 3.

As we stated in the Second Notice (54 FR 11400–03), the Postal Service's approach as shown in its initial suggested rules does not meet the due process requirements found in the statute. Similarly, the Commission pointed out due process problems within the set of suggested rules which the Postal Service filed in response to the Second Notice. 54 FR 25134–38. However, the compression of the procedural schedules and establishment of information requirements to shorten the initial stages of the proceeding found in our final rules are consistent with the due process rights the statute provides.

We turn now to a discussion of the comments as they pertain to specific rules published in the Third Notice.

Rule 3001.57(a), purpose of rules and description of proposals. Stating that the detailed explanations of the rules which we have provided in this rulemaking can provide valuable guidance, the Postal Service requests that the Commission make a formal reference to these explanations. Postal Service Comments at 23. We have included the reference in this section. We agree that participants in these cases may find these explanations helpful by giving a more detailed description of what is meant by the rules which necessarily contain less detail.

Federal Express suggests that the Postal Service be prohibited from filing an Express Mail Market Response case until it has at least two full postal quarters of experience with the rates and classifications established in the most recent omnibus rate case. Federal Express explains that the Postal Service could file a case under the new rules the day after Express Mail rates recommended in the rate case are established—even though the Commission and the parties may have expended a significant amount of time and effort in the development of the recommendations. Federal Express adds that, in those circumstances, it would be impossible to judge the accuracy of the projections made in the omnibus rate case. Federal Express Comments at 2–3.

We are not adding the restriction suggested by Federal Express. We agree that filing an Express Mail Market Response case immediately after new rates and classifications are implemented could undermine any thorough assessment of the omnibus rate case's assumptions and projections. However, the availability of expedited consideration under the rules for express Mail Market Response cases is explicitly conditioned on the Postal Service's showing of a change in the market which threatens the contribution Express Mail makes to institutional costs. Rules 57(a) and 57a(h).

The Postal Service does not control the timing of changes made by competitors in the market. Therefore, it would not be appropriate to deny the authority to file a case under these rules for a period which could be longer than 6 months from the time competitors brought about a change in the market. A change of the magnitude which would support the filing of an Express Mail Market Response case could also very well discredit the reliability of the projections made in the omnibus rate case in any event, since it would not have been taken into account in making the necessary projections.

Rule 3001.57a(b), incorporation of rule 3001.54 filing requirements. UPS argues that the rules should require the Postal Service to file information on all of the Express Mail subclasses, even if it proposes to change rates for only one of them. UPS points out that a request for a change in rates for Post Office to Addressee service—the most likely subclass to be the subject of such a filing—would necessarily affect the other subclasses. According to UPS, requiring that information at the outset would eliminate the need for some discovery and possibly motion practice. UPS Comments at 2–3. In a footnote, UPS also states that the Commission has recognized "the clear link between Express Mail costing and Priority Mail costs." *Id.* at fn. 1.

The citation UPS gives for that conclusion concerns the Second Notice's discussion of the breakdown required by rule 57a(j) for the types of mail using the hub network. That discussion dealt with a specific instance in which a pool of costs must be attributed between Express Mail and Priority Mail. There was no general finding of a "clear link" between Express Mail costing and Priority Mail costs.

We are not including the requirement for data on the subclasses of Express Mail for which the Postal Service does not request a rate change in Market Response cases. While a case meeting the description provided by the Postal Service in this rulemaking has yet to be filed, we believe that the present makeup of Express Mail would permit adequate consideration of the case without the additional filing requirement suggested by UPS.

If the Postal Service wished to change rates only for the Post Office to Addressee subclass, which currently dominates the class, information concerning the subclass can be expected to provide an adequate foundation. If the Postal Service wished to change

rates for the other subclasses, we believe that focusing on data concerning them would be sufficient. For a further discussion of this issue, see 54 FR 25135.

If it appears that the data on all four Express Mail subclasses should be required in the rules, we will have a convenient opportunity to consider that issue when reviewing our experience with the rules in accordance with the Sunset provision. If a problem appears before then, we can consider amending the rules at that time.

Rule 57a(d), filing of changes to regulations. The Postal Service opposes any requirement of filing the Domestic Mail Manual (DMM) changes it intends to make if the Commission recommends its proposal in an Express Mail Market Response case. The Postal Service points out that the Commission has no jurisdiction over the DMM, and adds that it does not know what might be gained by having contemplated DMM language in the record. Finally, the Postal Service states that it ordinarily does not formulate DMM language until after the Commission has issued its recommended decision. Postal Service Comments at 15–16.

We are eliminating this requirement. The cases contemplated by these rules are most likely to be simple rate adjustments with no more than minor classification changes. In these circumstances, the Postal Service's preliminary DMM language might not make a large contribution to the understanding of the case—unlike proposals where significant classification changes are contemplated.

Rule 57a(f), notice of important operational changes. The Postal Service raises a number of objections to providing a description of those operational changes which have an important effect on Express Mail costs, as well as an analysis estimating the extent of that impact. Postal Service Comments at 17–18.

We are retaining this requirement. The Postal Service's first objection is that providing a description of the change would intrude upon the power of the Board of Governors to manage the Postal Service. Postal Service Comments at 17. The Postal Service further states that it does not want to provide its competitors with sensitive commercial information. *Id.* The Postal Service, however admits that the Commission may require information on changes in attributable costs. *Id.* at 17. Requiring a description of the operational change that brought about a cost change is simply a corollary to that authority. If the Postal Service were to present greatly changed costs for Express Mail, but no explanation of how those changes occurred, the record so developed would not be sufficient to support a recommendation for changing rates.

These rules do not contemplate trenching on the discretion of the Board of Governors to manage the Postal Service. They only require that an analysis of the effects of the exercise of the Board's power be presented when the Postal Service wishes to change rates. Similarly, the rules do not require a minute detailing of the operational changes. Rather, the rule contemplates a more general description of the change. The level of detail need be no greater than that presented with regard to the hub network in Docket No. R87–1. *See* PRC Op. R87–1, paras. 3625–51.

The Postal Service's assertion that only the costs in the Cost Revenue Analysis (CRA) would be available is not an adequate reason for eliminating this requirement. The Postal Service itself notes that information on the operational change taken into account in Docket No. R87–1 was made available to the Commission even though not yet reflected in the CRA. Furthermore, the Postal Service cannot be expected to make an operational change in Express Mail that would have an important impact on costs without making projections of the costs affected. The Postal Service should be able to use those projections to provide the analysis required.

We understand the Postal Service's problem with regard to the exact definition of "important impact." Postal Service Comments at 18. However, these rules are designed to handle an entire category of cases, and we have not been given information on what type of operational changes the expedited delivery industry, and the Postal Service, might make in the future. In these circumstances, we can do no more than write the rule in plain language with the expectation that the Postal Service and the parties will give it a reasonable interpretation.

In our Second Notice (54 FR 25136), we provided specific examples of what would and would not be considered an operational change having an important impact on costs. In general, operational changes that have only a local impact would not be included. Nationwide changes should be considered for inclusion based on the extent of their use and the magnitude of their effect on costs. A recent example of an operational change that would be covered by this rule is the reported significant change in contractor, price and size of the hub air transportation network.

Rule 57a(h), change in market and identification of needs of customers. The Postal Service's complaint with regard to this rule deals with the requirement of describing the market segments which have been affected by the change in the market and would be affected by the Postal Service's proposal. The Postal Service foresees that other parties would introduce delay into the proceeding by raising detailed questions concerning the market Express Mail serves, and by presenting analyses using novel segmentation of the market as permitted under rule 57b(d). Postal Service Comments at 19. The Postal Service also is concerned that the rule might require it to provide sensitive commercial information, if the level of detail is too great. The Postal Service recommends substitution of the more general provision it offered in response to the Commission's Second Notice. *Id.* The difference found in the Postal Service's language is the omission of any mention of the customers and market segment that might react to the change in the market and the Postal Service's response to that change. *See* Postal Service Comments to Second Notice at 28.

We are retaining the requirement that the Postal Service address the customer needs in its requests to change rates in response to developments in the market. This requirement is not onerous, because before a firm offering a service changes its prices, it should consider what its various customers want, need, are willing to pay for, and can obtain elsewhere.

We also believe that the Postal Service's fear that the rule will require it to release proprietary information is misplaced. In previous cases involving Express Mail, the Postal Service has discussed expedited delivery market segments without jeopardizing its legitimate interests in keeping commercial secrets. *See* Docket No. R87–1, USPS–T–18 at 33–38. Indeed, the Postal Service's witness in Docket No. R87–1 discussed the detailed information that could be obtained regarding customers' aspects such as "shipment size, characteristics, mode selection, preferred carriers and other shipping attributes such as discounts and reasons for selecting carriers." USPS–RT–15 at 18. Taking into account the type of information which is publicly available, the Postal Service should be able to meet the requirements of rule 57a(h) without difficulty while maintaining its legitimate business secrets. We note that the rule does not call for anything as detailed as a list of customers or a marketing plan the Postal

Service might use if it obtains its requested rates.

The Postal Service's concerns about the potential for delay do not override the importance of an understanding of the market in question in these cases. With the expertise the Postal Service gains from operating in this market, we are confident that it will be able to describe the market so that no party could delay the proceeding by attacking the sufficiency of the description. Similarly, we believe that the option of providing analyses using a different—and we hope more refined—market segmentation offers the possibility of making a contribution to the proceeding that outweighs its potential to cause delay. If a more refined analysis is presented, the Postal Service will benefit from both the potential for a better recommended decision and a greater understanding of the market in which it operates.

Rule 57a (i), before-and-after estimates. The Postal Service says that, in principle, it has no objection to this provision. However, the Postal Service cautions that providing the information with the degree of reliability generally expected by the Commission may prove difficult. Postal Service Comments at 19–20. As the Postal Service points out, the Commission has previously addressed the degree of refinement expected in the analyses to be filed with these requests. The Commission is not requiring a higher level of precision with this section of rule 57a than for the other sections of our rules of practice.

UPS suggests a word change which it says will assure that the test period cost information will be presented in accordance with the attributable cost methodology adopted by the Commission in the most recent omnibus rate case. We are making this change.

Rule 57b (b), conditions for proposed rates. The Postal Service opposes the restrictions that the proposed rates not be lower than the average attributable cost as calculated in the most recent omnibus rate case or the most recent fiscal year available. The higher figure is to be used. The other restriction the Postal Service opposes is that the proposed rate for any cell not be lower than the estimated cost of providing service for that cell.

We address the restriction regarding the average attributable cost threshold first. The Postal Service acknowledges that the rules it suggested when asking the Commission to initiate this proceeding contained this restriction. Postal Service Comments at 5. The Postal Service, however, offers the explanation that this threshold was linked to suggested reductions in data filing requirements and limitations on issues. *Id.* at 5. We note, however, that the Postal Service's rules suggested in response to the Second Notice also contained the attributable cost threshold even though the Postal Service was offering an alternative "modeled upon the Commission's approach." Postal Service Comments to Second Notice at 3 and 31.

The Postal Service says that it sees no logical justification for retaining this requirement, and states that it would be contrary to its statutory authority to submit those proposed rate changes it deems suitable. Postal Service Comments at 5. The Postal Service is also concerned that the requirement might cause delay if other parties challenge the reliability of the figures presented. Id. at 6.

In considering this question, it is important to remember the unusual, historic relationship between the Express Mail rate schedule and its per piece attributable cost—which is simply the attributable costs for the class divided by the number of pieces. All Express Mail rates in Docket No. R87–1 were set well above Express Mail's per piece attributable cost of $7.40. *See* PRC Op. R87–1, App. G, Schedule 1. This situation was merely a continuation of consistent, past practice for Express Mail.

Per piece attributable costs might not be an appropriate threshold requirement for proposed rate changes for some of the other classes of mail. The rate schedules of some classes regularly include rates below that figure. For example, the Docket No. R87–1 per piece attributable cost for parcel post was $2.93, while its rate schedule contains a number of rates below that figure. *See* PRC Op. R87–1, App. G. Schedule 1. However, we are attempting to fashion a set of rules only for Express Mail proposals brought under certain, specified conditions, and whether this threshold test might be appropriate for other classes is not at issue.

Express Mail's per piece attributable cost has been lower than every rate in its schedules because of the light weight of the typical piece and its traditionally high cost coverage. Continuation of this situation in Express Mail Market Response cases—in which the effect on other classes is expected to be kept to such a minimum that the case can be considered on a record focusing only on Express Mail—is one reason to retain the per piece attributable cost requirement. It will provide one indication that the relationships among the classes of mail—in terms of contribution to institutional costs—are disturbed as little as possible. Those relationships are established following the consideration of the record in the most recent omnibus rate case.

As the usual relationship is for every rate which the Postal Service proposes to be higher than the per piece attributable cost, the argument that the provision would prohibit it from requesting rates below that figure even for rate cells in which the cost of service is lower than the per piece attributable cost appears to have theoretical, rather than practical, significance. For example, the lowest individual Express Mail rate proposed by the Postal Service in Docket No. R87–1 was $7.75, which is higher than the per piece attributable cost as initially calculated by the Postal Service as well as that figure after adjustment by the Commission. The Postal Service's request for speed in considering its requests can best be achieved in cases in which it does not attempt to introduce novel relationships between costs and proposed Express Mail rates.

The Postal Service's present opposition to this provision is unexpected. We had assumed that it was acceptable to the Postal Service, since both sets of rules it suggested included the requirement. The per piece attributable cost threshold was a reasonable requirement under the Postal Service's two sets of suggested rules for expedited consideration of certain cases with limited impact on the other mail classes. It remains reasonable with our rules, which have been designed to eliminate the due process problems found in the Postal Service's suggestions.

In its Petition [3] requesting that the Commission initiate this rulemaking, the Postal Service included its first discussion of this requirement. The attributable costs to be used would be either those developed by the Commission in the most recent omnibus rate case, or those adjusted for changes in Postal Service costs for the most recent fiscal year for which data are available. Postal Service Petition at 9. The Postal Service assured the Commission and interested parties that "proposals under the proposed rules would also reflect all criteria previously

[3] In its Petition, the Postal Service also offered examples of regulatory agencies which had made provision for expedited procedures for rate changes as well as adopting other modifications to their ratemaking proceedings to take advantage of a competitive market's ability to set appropriate prices. In the examples described with some detail, the pricing flexibility was given only for changes that meet specific, previously established limitations. Postal Service Petition at 6–8.

considered by the Commission in the last omnibus rate case." *Id.* at 12.

If the Postal Service were to file an Express Mail Market Response case without information showing that the proposed rates were higher than the per piece attributable cost, serious questions would be raised concerning the consistency of the proposal with the statute, particularly, section 3622(b)(3). We can reasonably predict that a considerable amount of time at the initial stage of the proceeding would be taken up by the Postal Service defending the propriety of proposing such rates against challenges from parties that the proposal should not be considered under rules established in a docket in which interested parties had been led to believe that only Express Mail concerns would be considered.

We expect that any one who did not wish the Postal Service to change its Express Mail rates would argue, with apparent justification, that the case should be heard under the regular rules for a rate change, because of the implications for all other classes of mail. As the Postal Service explained in its Petition, the purpose of the attributable cost requirement is to eliminate the risk that new Express Mail rates would be a burden on other classes of mail. *Id.* at 11. If this assurance is eliminated, the limitation of information concerning other classes of mail and the possible effect on them would be inappropriate.

In fashioning these rules, we have used the description of the potential cases presented by the Postal Service in an effort to eliminate potentially time consuming issues whenever possible. We have tried, to the extent possible in the absence of an actual proposal, to develop rules which identify those proposals which can indeed be considered—consistent with the statute—with the narrow focus that promotes expedition. For example, following the Postal Service's suggestion, these rules are to be available only in the situation in which the market has changed because of the actions of competitors. Rule 57(a).

If we are to be successful in our attempt to develop rules which meet due process standards and can be used to expedite cases to the extent requested by the Postal Service, those cases must be kept within well-defined limits. With regard to the Postal Service's argument that the threshold could be considered a limitation on its statutory discretion to make the rate proposals it chooses, we note that the Postal Service would be able to make such a proposal for consideration under the Commission's regular rules for changing rates. If the Postal Service wishes to file cases including novel proposals, the potential for focusing consideration within the limitations that these rules necessarily imply will be lost. Our rules are based upon the idea that the Postal Service and the parties should know what will be expected of them even before the first case is filed, including what information and other filing requirements will apply, as well as the schedule under which the Commission intends to proceed.

When considering this requirement, one should remember that UPS argued that the threshold should be set at a level higher than the per piece attributable cost test the Postal Service first proposed. UPS argued that the rules should require proposed rates to be above that figure multiplied by a pre-determined cost coverage. However, the Commission decided to use the Postal Service's suggested limitation in order to eliminate a potential controversy, since the Postal Service should have no difficulty in demonstrating that it has met this requirement. 54 FR 25138.

This development of procedural rules has been a process of refining the rules to meet the Postal Service's, the Commission's and the parties' needs with regard to cases which might be filed some time in the future. If future developments show that the per piece attributable cost requirement poses a particular problem, or that it is otherwise not necessary in these cases because of some change in the future, we will be able to eliminate it. Consideration of that change would come either when the Commission reviews these rules before the end of the 5-year period, or sooner, if problems are evident.

At this stage of the rulemaking, to re-examine the propriety of a position that the Postal Service had put forth and supported until this time would be time consuming without being particularly helpful. The Postal Service has stated that it would like to have the Commission bring this proceeding to an end by issuing a final rule. Postal Service Comments at 23. Our acceptance of its late-stated opposition to the attributable cost requirement, however, would delay considerably the completion of this proceeding. The parties and the Commission have relied on the Postal Service's apparent agreement that proposed rates should not be lower than reported attributable costs. Therefore, the focus has been on the reliability of the figures to be used for attributable costs rather than whether that requirement should be included. At this point, to eliminate the threshold would necessitate another round of comments to permit parties to address the fundamental change in position espoused by the Postal Service.

Particularly in light of the Postal Service's stated hope that the Commission issue a final set of rules for expedited consideration of Express Mail Market Response cases, the Postal Service's current opposition to a provision that it first put forward is not an appropriate reason to change the requirement.

The Postal Service also objects to the requirement that its proposed rates for the various cells be higher than the estimated costs of providing service to those cells. Postal Service Comments at 8. The Postal Service says there is no statutory basis for such a filing requirement, and it would impose an unprecedented limitation on the Postal Service's legal authority. *Id.* at 9. Pointing out the difficulty of developing estimates of costs by rate cell, the Postal Service fears delay caused by litigation over the details of its distribution of costs by cell. *Id.* at 11–14.

With the exception of the idea that the requirement had been part of the formulation of the rules being considered from the beginning of this rulemaking, much of what we have said about the per piece attributable cost threshold is also applicable to stricture that the proposed rates be higher than the estimated cost for serving the various rate cells.

In addressing this requirement, the Commission does not expect the Postal Service to present a distribution of costs to the various rate cells which is more elaborate than that accepted in the most recent omnibus rate case. We recognize the difficulty of attaining precision in such distributions, especially in classes such as Express Mail, where there is very little volume in particular rate cells. To meet this requirement, the Postal Service should find guidance in the most recent omnibus rate case.

We turn now to the Postal Service's argument that there is no statutory basis for such a filing requirement.[4] While no

[4] Other filing requirements to which the Postal Service does not object are also not found in the statute. Some of these requirements can be said to limit the Postal Service's authority regarding proposed changes to a much greater degree than the requirement that the proposed rate cells be shown to cover their attributable costs. For example, the Postal Service may not file a case under these rules in the absence of a change in the market which may adversely affect Express Mail's contribution to institutional costs. Rule 57(a). The principle that the Postal Service's request must fall within certain pre-determined limits if it is to take advantage of expedited rules developed for Market Response cases is the same for these requirements unopposed by the Postal Service.

explicit directive appears in the statute, it does list as one of the factors to be considered, "the establishment and maintenance of a fair and equitable schedule." 39 U.S.C. 3622(b)(1). The tracking of costs through the rates in the schedule has been—and remains—an important goal in postal ratemaking. Accepting this goal and moving toward it is consistent with the overall intent of the Postal Reorganization Act that rates apportion the costs "to all users of the mail on a fair and equitable basis." 39 U.S.C. 101(d).

While the Commission does not require, in its omnibus rate cases, blind adherence to a concept that the Postal Service must demonstrate that each rate in every rate schedule recovers the cost for serving that cell, the relationship between individual rates and costs remains very important. A fair and equitable rate schedule does not disregard this relationship—since the result might otherwise be mailers of one particular type of mail believe that they are subsidizing the costs of other types of mail paying rates from the same schedule.

The Commission's goal is to have rates track costs through the rate schedule to the extent that is practicable, given the information available. For example, in accepting the Postal Service's proposal for an Express Mail letter rate in Docket No. R87–1, the Commission pointed out that the new rate cell would "more reasonably reflect cost incurrence." PRC Op. R87–1, para. 6007. At other places in the decision, the Commission recommended rate schedules which reflect patterns of cost incurrence. *E.g., id.*, paras. 5408–09, 5909.

If the Postal Service, in the absence of this prohibition, proposed rate schedules which did not appear to recover costs for according service to the various rate cells, we would expect that intervenors would raise strenuous objections, which would require more time for consideration than the rules for market response cases permit. The Postal Service, if it believes a good reason exists, may propose a rate schedule in which this requirement is not met. However, such a request should be handled under the normal rules of procedure, not rules which have been specifically designed for a type of case in which the issues raised and decided have been kept to a minimum in order to further the expedition which the Postal Service says is necessary under certain circumstances.

In its Comments, the Postal Service points to examples which it says demonstrate the difficulty it might have in adhering to this requirement. The Postal Service says that aberrations in cost patterns might make the costs for a heavier package traveling from New York to Chicago lower than for a lighter package from New York to Boston. The Postal Service goes on to say that the effects of any such cost differences are now subsumed in the averaging and distribution process. Postal Service Comments at 13.

We understand that particular cost configurations can cause apparent anomalies if one focuses on the service required for individual parcels. However, this rule does not anticipate such a level of detail. We are not requiring cost distributions more detailed than those the Postal Service has experience with from the omnibus rate cases. The rule refers to the costs for rate cells, which already incorporate the averaging used to take into account the cost differences for providing service to a variety of parcels falling within one rate cell.

The Postal Service's examples, moreover, address the difficulty in distributing costs over a distance-based schedule. However, in Docket No. R87–1, in response to the Postal Service's request, the Commission recommended unzoned rate schedules for Express Mail. PRC Op. R87–1, para. 6011–17. Therefore, the distance-related differences have been averaged out, and the Postal Service's showing regarding the cost/rate cell relationship is limited to the weight categories for each rate schedule.

The Postal Service also says that there is some doubt as to the definition for "rate cell" as used in the rule. The Postal Service notes that the structure of rate schedules is often influenced by historical and statutory considerations, as well as cost behavior. Postal Service Comments at fn. 4. Rate cell, as used in rule 57b(b)(2), has its common meaning of the grouping of mail to which an individual rate is assigned by the rate schedule. *E.g.*, PRC Op. R87–1, para. 6014. As the Express Mail rate schedule currently exists, those cells are defined in terms of weight. The first cell on each schedule is that for letter mail—pieces weighing up to 8 ounces. The rule contemplates that the Postal Service's demonstration be consistent with the rate cells then in effect.

The Postal Service says that the rule has economic and costing implications that have not, and could not, be addressed in this rulemaking procedure. The Postal Service believes those unexplored implications made it inappropriate to impose this requirement. Postal Service Comments at 14. The Postal Service, however, has long been aware that the Commission attempts to track costs and reflect their patterns to the greatest extent practicable in its recommendations. *E.g.*, PRC Op. R80–1, paras. 1139–49.

In addition, this provision was included in the rules published for public comment in the Second Notice. 54 Fed. Reg. 11412. The Postal Service addressed the rule in terms of the reliability of the distribution of costs to the rate cells, arguing that its burden of proof should not be greater than that borne in an omnibus rate case. Postal Service Comments to Second Notice at 24. As we have previously explained, the rule does not contemplate a showing more precise than what was used in the most recent rate case.

Rule 57b(d), costing and market demand. UPS suggests that the words "in a manner consistent with" be replaced by "in accordance with" when requiring that Express Mail costs be calculated using the methods adopted by the Commission in the most recent omnibus rate case. UPS Comments at 3–4. We are making this editorial change.

Rule 57b(e)(4), discovery disputes. The Postal Service opposes the method proposed to accelerate resolution of discovery disputes. The Commission proposed that a party who believed it had good grounds to refuse to answer an interrogatory file a Motion to Excuse from Answering, which would include all of its reasons. The party filing the interrogatory could then file a response, and the matter would be ready for the Presiding Officer to issue a Ruling.

The Postal Service points out the difficulties a party might have giving a complete presentation of why the interrogatory need not be answered—particularly in situations where the meaning of the interrogatory is not clear without further explanation from the party writing the interrogatory. The Postal Service describes how courts currently encourage—or even require—informal negotiations to settle such disputes. The Postal Service adds that the Commission would be required to rule on every objection. The Postal Service offers as an alternative, reducing the time periods for the usual steps in discovery disputes. Postal Service Comments at 20–23.

In reponse to the Postal Service's suggestion, we are adding a statement of the Commission's intent and expectation that counsel will communicate with each other about discovery problems in an effort to resolve them without any need for motion practice. A party has 10 days in which to file a Motion to Excuse from Answering. That period should be sufficient for a party's counsel to contact the counsel for the party writing the interrogatory and to receive whatever further explanation might be available, as well as to settle those disputes which can be resolved without the Commission's involvement.

We encourage attempts to resolve discovery disputes through these informal methods. If the parties conscientiously pursue attempts at informal settlement, the amount of motion practice should be reduced. With regard to those disputes which are not settled before a party files a Motion to Excuse from Answering, the rules do not compel the party writing the interrogatory to file a Response. In some instances the reasoning in the Motion to Excuse from Answering may persuade that party to abandon pursuit of the answer to the interrogatory. Only in a very unusual situation would the Presiding Officer deny a Motion to Excuse from Answering which was unopposed by the party submitting the interrogatory.

We understand that this method for dealing with discovery disputes is untested in our cases. However, if we are to achieve the expedition that the Postal Service has said it requires, we must try every means consistent with due process that might speed the proceedings. If this rule proves unworkable in practice, we will change it at the end of the five year test period, or sooner. In this set of rules, we are adopting a number of innovative procedures. This means for settling discovery disputes is one more that should be given an opportunity to operate in an actual case to see whether it can provide the benefits expected.

UPS suggests that discovery should be permitted only on the Postal Service from the day the case is filed, rather than all the participants. UPS notes that other participants will not have filed any testimony at that time. UPS also points out that all the participants could not be identified on the day the case if filed, since the rules provide 28 days for those not registered for automatic intervention to become parties, and parties may withdraw. UPS Comments at 4–5. UPS did not offer any suggestion regarding when discovery directed to participants should begin.

We are retaining the provision allowing discovery directed to the participants from the beginning of the case. The Commission's current rules allow discovery beginning at the time a party files a notice of intervention. Discovery is permitted notwithstanding that other parties may subsequently intervene, or that in previous cases parties have decided to withdraw.[5]

[5] 39 CFR 3001.20(e), 3001.25(a). *E.g.*, PRC Order Nos. 761 and 777.

Under our regular rules, therefore, the circumstances with regard to identification of participants are similar to the reasons UPS has put forward for changing the proposed rule. Nevertheless, UPS has not shown how altering our usual practice might improve the procedure, nor has it pointed to any problems in its use in other cases. This rule may help the parties to develop, at an early stage, an accurate understanding of the change in the market for expedited delivery service which causes the Postal Service to submit its request.

Rule 57b, schedule. UPS states that it continues to believe that the procedural schedule published in the Second and Third Notices is unworkable. UPS again suggests the schedule it recommended in response to the Second Notice. UPS Comments at 5. For the test period, we are retaining the schedule found in the Second and Third Notice. The reasons for selecting that schedule remain as previously described. 54 FR 11410; 54 FR 25136.

Periodic reporting. UPS asserts that the Commission should bring back the periodic reporting requirement contained in the Second Notice, arguing that having that information would help the Commission and the participants facilitate the expedition requested by the Postal Service. UPS asserts that the Postal Service did not show how a competitor could use that information to the Postal Service's detriment. UPS Comments at 5–6.

In the Second Notice, the Commission proposed certain periodic information requirements for Express Mail. Having this information would give the Commission and the parties a "head start" in understanding the factual basis used to support the cases that the Postal Service might file. 54 FR 11410–11. The Postal Service pointed out that periodic reports showing volume and revenue by weight cells could be used to track the results of various marketing strategies. Postal Service Comments to Second Notice at 8.

After considering the argument against filing the material on a periodic basis, the Commission accepted the Postal Service's suggestion that such information be provided only when the Postal Service wishes to change Express Mail rates. 54 FR 25136–37. Taking into account the level of detail required by that proposal, we continue to believe the potential for competitive harm outweighs the assistance having that periodic information would provide.

Impact of changes. Pursuant to Executive Order 12291, the Commission finds that this rule change does not constitute a "major rule." It affects only rules of practice governing hearing procedures, not the substance of the proceeding. Its economic impact will be negligible, including its impact on the costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. Additionally, the procedural rule change will have no measurable effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The above analysis that the rule change does not constitute a major rule applies, as well, to the Regulatory Flexibility Act.

The rule change does not contain policies with Federalism implications, and therefore does not warrant preparation of a Federalism assessment under E.O. 12612.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal service.

For the reasons set forth in the preamble, 39 CFR Part 3001 is amended as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

Subpart B—Rules Applicable to Requests for Changes in Rates or Fees

1. The authority citation for 39 CFR Part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662, 84 Stat. 759–762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

2. Sections 3001.57, 3001.57a, 3001.57b, and 3001.57c are added to Subpart B to read as follows:

§ 3001.57 Market response rate requests for express mail service—purpose and duration of rules.

(a) This section and §§ 3001.57a through 3001.57c only apply in cases in which the Postal Service requests an expedited recommended decision pursuant to section 3622 of the Postal Reorganization Act on changes in rates and fees for Express Mail service, where the proposed changes are intended to respond to a change in the market for expedited delivery services for the purpose of minimizing the loss of Express Mail contribution to institutional costs recommended in the most recent omnibus rate case. These rules set forth the requirements for filing data in support of such rate proposals

and for providing notice of such requests, and establish an expedited procedural schedule for evaluating Market Response Rate Requests. These rules may not be used when the Postal Service is requesting changes in Express Mail rates as part of an omnibus rate case. Further explanation concerning these rules can be found at 54 FR 11394–413 (March 20, 1989), 54 FR 25132–42 (June 13, 1989) and PRC Order No. 636.

(b) This section and §§ 3001.57a through 3001.57c are initially to be effective for the limited period of five years from the date of their adoption by the Commission. During that period the Commission will continue to analyze the need for these rules to enable the Postal Service to respond to changes in the market for expedited delivery services, and the impact of these procedures on the ability of participants to review and comment on Postal Service proposals. These rules will cease to be effective at the end of this period unless they have been reissued by the Commission following a Notice of Proposed Rulemaking published in the Federal Register which provides an appropriate opportunity for public comments.

§ 3001.57a Market response rate requests—data filing requirements.

(a) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by such information and data as are necessary to inform the Commission and the parties of the nature and expected impact of the change in rates proposed. Except for good cause shown, the information specified in paragraphs (c) through (f) shall also be provided with each request.

(b) Except as otherwise expressly provided in this section, the information required by 3001.54(b) through (r) must be filed only for those subclasses and services for which the Postal Service requests a change in rates or fees. Test period volume, cost, and revenue estimates presented in satisfaction of rule 57a shall be for four postal quarters beginning after the filing date of the request. The cost roll-forward may be developed by extending the cost forecasting model used in the last omnibus rate case (utilizing available actual data). Volume and revenue estimates required by these rules shall utilize, to the extent practicable, the factors identified in rule 54 (j)(6), and must be fully explained, with all available supporting documentation supplied, but they need not be econometrically derived.

(c) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall contain an explanation of why the change proposed by the Postal Service is a reasonable response to the change in the market for expedited delivery services to which it is intended to respond.

(d) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by the then effective Domestic Mail Classification Schedule sections which would have to be altered in order to implement the changes proposed by the Postal Service, and, arranged in a legislative format, the text of the replacement Domestic Mail Classification Schedule sections the Postal Service proposes.

(e) In addition to the required test period cost estimates, every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a statement of the attributable costs by segment and component for Express Mail service determined in accordance with the attibutable cost methodology adopted by the Commission in the most recent omnibus rate case, for the base year used in that case, and for each fiscal year thereafter for which cost data is available. If the Postal Service believes that an adjustment to that methodology is warranted it may also provide costs using alternative methodologies as long as a full rationale for the proposed changes is provided.

(f) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall include a description of all operational changes, occurring since the most recent omnibus rate case, having an important impact on the attributable cost of Express Mail. Postal Service shall include an analysis and estimate of the cost impact of each such operational change.

(g) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a statement of the actual Express Mail revenues of the Postal Service from the then effective Express Mail rates and fees for the most recent four quarters for which information is available.

(h) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a complete description of the change in the market for expedited delivery services to which the Postal Service proposal is in response, a statement of when that change took place, the Postal Service's analysis of the anticipated impact of that change on the market, and a description of characteristics and needs of customers and market segments affected by this change which the proposed Express Mail rates are designed to satisfy.

(i) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall include estimates, on a quarterly basis, of test period volumes, revenues, and attributable costs determined in accordance with the attributable cost methodology adopted by the Commission in the most recent omnibus rate case for each Express Mail service for which rate changes are proposed assuming:

(1) Rates remain at their existing levels, and

(2) Rates are changed after 90 days to the levels suggested in the request.

(j)(1) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by the following information, for each quarter following the base year in the most recent omnibus rate case:

(i) Estimated volume by rate cell, for each Express Mail service;

(ii) Total postage pounds of Express Mail rated at:

(A) Up to ½ pound,

(B) ½ pound up to 2 pounds,

(C) 2 pounds up to 5 pounds; and

(iii) Total pounds of Express Mail and of each other subclass of mail carried on hub contracts.

(2) In each instance when rates change based on a proceeding under the provisions of §§ 3001.57 through 3001.57c the Postal Service shall provide, one year after the conclusion of the test period, the data described in § 3001.57a(j)(1) (i)–(iii), for each of the four quarters of the test period.

(k) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall include analyses to demonstrate:

(1) That the proposed rates are consistent with the factors listed in 39 U.S.C. 3622(b),

(2) That the proposed rate changes are in the public interest and in accordance with the policies and applicable criteria of the Act, and

(3) That the proposed rates will preserve, or minimize erosion of, the Express Mail contribution to institutional costs recommended in the most recent omnibus rate case.

(l) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a certificate that service of the filing in accordance with § 3001.57b(c) has been made.

§ 3001.57b Market response rate requests—expedition of public notice and procedural schedule.

(a) The purpose of this section is to provide a schedule for expediting proceedings when a trial-type hearing is required in a proceeding in which the Postal Service proposes to adjust rates for Express Mail service in order to respond to a change in the market for expedited delivery services.

(b) The Postal Service shall not propose for consideration under the provisions of §§ 3001.57 through 3001.57c rates lower than:

(1) The average per piece attributable cost for Express Mail service determined in the most recent omnibus rate case, or

(2) The average per piece attributable cost for Express Mail service as determined by the Postal Service in accordance with § 3001.57a(e) for the most recent fiscal year for which information is available, whichever is higher. Neither shall the Postal Service propose a rate for any rate cell which is lower than the estimated test period attributable cost of providing that rate cell with service.

(c)(1) Persons who are interested in participating in Express Mail Market Response Rate Request cases may register at any time with the Secretary of the Postal Rate Commission, who shall maintain a publicly available list of the names and business addresses of all such Express Mail Market Response Registrants. Persons whose names appear on this list will automatically become parties to each Express Mail Market Response rate proceeding. Other interested persons may intervene pursuant to § 3001.20 within 28 days of the filing of a formal request made under the provisions of §§ 3001.57 through 3001.57c. Parties may withdraw from the register or a case by filing a notice with the Commission.

(2) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.57c it shall on that same day effect service by hand delivery of the complete filing to each Express Mail Market Response Registrant who maintains an address for service within the Washington metropolitan area and serve the complete filing by Express Mail service on all other Registrants. Each Registratnt is responsible for insuring that his or her address remains current.

(3) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.57c, it shall on that same day send by Express Mail service to all participants in the most recent omnibus rate case a notice which briefly describes its proposal. Such notice shall indicate on its first page that it is a notice of an Express Mail Market Response Rate Request to be considered under §§ 3001.57 through 3001.57c, and identify the last day for filing a notice of intervention with the Commission.

(d) In the absence of a compelling showing of good cause, the Postal Service and parties shall calculate Express Mail costs in accordance with the methodologies used by the Commission in the most recent omnibus rate case. In the analysis of customers' reactions to the change in the market for expedited delivery services which prompts the request, the Postal Service and parties may estimate the demand for segments of the expedited delivery market and for types of customers which were not separately considered when estimating volumes in the most recent omnibus rate case.

(e)(1) In the event that a party wishes to dispute as an issue of fact whether the Postal Service properly has calculated Express Mail costs or volumes (either before or after its proposed changes), or wishes to dispute whether the change in the market for expedited delivery services cited by the Postal Service has actually occurred, or wishes to dispute whether the rates proposed by the Postal Service are a reasonable response to the change in the market for expedited delivery services or are consistent with the policies of the Postal Reorganization Act, that party shall file with the Commission a request for a hearing within 28 days of the date that the Postal Service files its request. The request for hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position.

(2) The Commission will not hold hearings on a request made pursuant to §§ 3001.57 through 3001.57c unless it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve this issue.

(3) Whether or not a hearing is held, the Commission may request briefs and/or argument on an expedited schedule, but in any circumstance it will issue its recommended decision as promptly as is consistent with its statutory responsibilities.

(4) In order to assist in the rapid development of an adequate evidentiary record, all participants may file appropriate discovery requests on other participants as soon as an Express Mail Market Response Rate Request is filed. Answers to such discovery requests will be due within 10 days. Objections to such discovery requests must be made within 10 days in the form of a Motion to Excuse from Answering, with service on the questioning participant made by hand, facsimile, or expedited delivery. Responses to Motions to Excuse from Answering must be submitted within seven days, and should such a motion be denied, the answers to the discovery in question are due within seven days of the denial thereof. It is the Commission's intention that parties resolve discovery disputes informally between themselves whenever possible. The Commission, therefore, encourages the party receiving discovery requests considered to be unclear or objectionable to contact counsel for the party filing the discovery requests whenever further explanation is needed, or a potential discovery dispute might be resolved by means of such communication.

(5) If, either on its own motion, or after having received a request for a hearing, the Commission concludes that there exist one or more genuine issues of material fact and that a hearing is needed, the Commission shall expedite the conduct of such record evidentiary hearings to meet both the need to respond promptly to changed circumstances in the market and the standards of 5 U.S.C. 556 and 557. The procedural schedule, subject to change as described in paragraph (e)(6) of this section, is as follows: Hearings on the Postal Service case will begin 35 days after the filing of an Express Mail Market Response Rate Request; parties may file evidence either in support of or in opposition to the Postal Service proposal 49 days after the filing; hearings on the parties' evidence will begin 56 days after the filing; briefs will be due 70 days after the filing; and reply briefs will be due 77 days after the filing.

(6) The Presiding Officer may adjust any of the schedule dates prescribed in paragraph (e)(5) of this section in the interests of fairness, or to assist in the development of an adequate evidentiary record. Requests for the opportunity to present evidence to rebut a submission by a participant other than the Postal Service should be filed within three working days of the receipt of that material into the evidentiary record, and should include a description of the evidence to be offered and the amount of time needed to prepare and present it. Requests for additional time will be reviewed with consideration as to whether the requesting participant has exercised due diligence, and whether the requesting participant has been unreasonably delayed from fully understanding the proposal.

§ 3001.57c Express mail market response—rule for decision.

The Commission will issue a recommended decision in accordance with the policies of 39 U.S.C., and which it determines would be a reasonable response to the change in the market for

expedited delivery services. The purpose of §§ 3001.57 through 3001.57c is to allow for consideration of Express Mail Market Response Rate Requests within 90 days, consistent with the procedural due process rights of interested persons.

By the Commission. Chairman Steiger not participating. Commissioner LeBlanc dissenting.

Charles L. Clapp,

Secretary.

[FR Doc. 89-19108 Filed 8-15-89; 8:45 am]

BILLING CODE 7710-FW-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300125A; FRL-3628-5]

Revocation of Heptachlor Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document (1) revokes all interim tolerances and permanent tolerances for residues of the insecticide heptachlor (1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-4,7-methanoindene) and its oxidation product heptachlor epoxide (1,4,5,6,7,8,8-heptachloro-2,3-epoxy-2,3,3a,4,7,7a-hexahydro-4,7-methanoindene); (2) lists the action levels EPA is recommending to the Food and Drug Administration (FDA) and to the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture (USDA) to replace the revoked tolerances; and (3) lists EPA's recommendations to FDA, and to FSIS and the Agricultural Marketing Service (AMS) of USDA regarding existing action levels for commodities for which tolerances had not been established. EPA initiated this rule to remove pesticide tolerances for which related registered uses have been cancelled.

EFFECTIVE DATE: Effective on August 16, 1989.

ADDRESSES: Written objections, identified by the document control number [OPP-300125A], may be submitted to the Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Critchlow, Registration Division (H-7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-557-1806.

SUPPLEMENTARY INFORMATION: EPA issued a proposal, published in the Federal Register of December 11, 1985 (50 FR 50643), which proposed the revocation of all tolerances in 40 CFR 180.104 and the interim tolerances in 40 CFR 180.319 for residues of the insecticide heptachlor and its oxidation product heptachlor epoxide.

The December 11, 1985 Federal Register proposal also listed the action levels which EPA intended to recommend to FDA and USDA to replace the tolerances once the rule revoking the tolerances is final. The action levels would pertain to unavoidable pesticide residues which can continue to occur in the food and feed commodities for which tolerances had been established because of the persistence of the pesticide in the environment. The proposal also listed EPA's intended recommendations to FDA and USDA regarding existing action levels for food and feed commodities for which tolerances had not been established and which may contain unavoidable residues of the pesticide because of environmental contamination.

No requests for referral to an advisory committee were received in response to the notice of proposed revocation.

Two comments were received in response to the notice of proposed revocation.

The Platte Chemical Co. expressed concern that, with the final revocation of the heptachlor tolerances, remaining stocks of its heptachlor seed treater already in the distribution system might not be allowed to be sold or used; these stocks were in existence prior to the manufacturing cut-off date of March 6, 1978. Platte referred to a pesticide notice (PR Notice 78-2) issued by EPA on March 28, 1978, which discussed the cancellation and phase-out of products containing heptachlor. Platte pointed out that the PR Notice stated that sale and use of existing stocks of registered end-use products which were in existence on March 6, 1978, may be continued until such stocks are exhausted, provided that the product is not used inconsistently with its label.

The issue of the distribution of the remaining existing stocks of Platte's heptachlor seed treatment product is independent from this tolerance revocation action. However, the Agency does not expect residues of heptachlor to occur in crops grown from seeds which have been treated with heptachlor in accordance with its labeling. Therefore, the revocation of the heptachlor tolerances would not prevent the sale and distribution of any crops grown from any allowable use of heptachlor-treated seeds. EPA considers it appropriate to proceed with this revocation action in order to eliminate any implied sanctioning of the presence of heptachlor residues in food and feed commodities.

The National Food Processors Association (NFPA) requested that the recommended replacement action level of 0.02 part per million (ppm) residues of heptachlor and heptachlor epoxide on pumpkins be increased to 0.05 ppm. The Agency has reviewed the information submitted by the NFPA in support of this request and concludes that the current action level recommendation of 0.02 ppm is appropriate for residues of heptachlor and heptachlor epoxide in or on pumpkins.

Summarized below are the Agency's conclusions on the three general reasons NFPA gave as necessitating an increase in the action level for residues of heptachlor and heptachlor epoxide on pumpkins.

First, NFPA felt that no correlation exists between soil residues in pumpkin fields and residues in the pumpkins grown in these fields; therefore, residues in pumpkins are likely to be unpredictable and erratic and, therefore, could exceed the currently recommended action level of 0.02 ppm.

Based on its review of available data, EPA agrees with NFPA that there seems to be no correlation between soil residues of heptachlor in pumpkin fields and residues of heptachlor in the pumpkins grown in these fields. However, the Agency also believes, from statistical analyses of these residue data, that it is very unlikely that residues in pumpkins will exceed 0.02 ppm. This determination is based on the fact that each pumpkin sample comprising the residue data analyzed was from a field which had tested positive for soil residues of heptachlor during the same time period; statistical skewing was avoided by not including any pumpkin samples from fields which had been negative for detectable residues during this period.

Second, NFPA pointed out that heptachlor residues in soil do not appear to decline in a predictable fashion; in fact, residues measured in certain fields showed increases from one year to the next.

EPA agrees that the data NFPA submitted do show that soil residue values remain constant or even increase in some fields. However, EPA also agrees with NFPA's earlier statement that there seems to be no correlation between these soil residue increases and the residues being found in pumpkins. Therefore, since available residue data suggest that it is unlikely that residues of heptachlor in pumpkins will exceed 0.02 ppm, the increase in soil residues in some fields is not considered significant at the present time.

Third, NFPA stated that fields containing soil residues of heptachlor greater than 0.02 ppm are rejected for the growing of pumpkins on the basis that, if pumpkins were grown in these fields, residues of heptachlor in the pumpkins would be likely to exceed the recommended action level of 0.02 ppm. NFPA did not identify who is responsible for rejecting these fields, the individual pumpkin growers or NFPA itself, nor who formulated the guidance to be followed to determine which fields of reject.

EPA concludes from its review of the available residue data that it is not evident that residues of heptachlor would be expected to exceed 0.02 ppm in pumpkins which are grown in fields containing soil residues of heptachlor greater than 0.02 ppm. No correlation is evident, in the studies submitted by NFPA, between soil residues up to 0.021 ppm and residues in the pumpkins. Therefore, this consideration does not support and increase in the proposed recommended action level.

Based on the information considered by the Agency and discussed in detail in the December 11, 1985, proposal and in this final rule, the Agency is hereby: (1) Revoking all tolerances for residues of heptachlor and heptachlor epoxide listed in 40 CFR 180.104, and (2) revoking the interim tolerances listed in 40 CFR 180.319 specifically for residues of heptachlor.

The tables which follow show the current tolerances (Table 1), interim tolerances (Table 2), and action levels (Table 3) for heptachlor, and the Agency's current recommendations for replacement action levels. Also included in these tables are the action levels which were previously recommended, based on older monitoring data, and published in the December 11, 1985, proposed rule.

Recommendations for individually listed commodities are incorporated into crop groups as described in 40 CFR 180.34(f) whenever possible. EPA has addressed all crop groupings for which there are residue monitoring samples, whether or not there are existing tolerances or action levels for a particular crop group.

EPA is recommending to FDA and FSIS that the following action levels for the sum of residues of heptachlor and heptachlor epoxide, expressed in parts per million (ppm), replace the tolerances for heptachlor and its oxidation product heptachlor epoxide, which are being revoked:

TABLE 1.—Current Tolerances and Recommended Replacement Action Levels for Heptachlor (Plus Heptachlor Epoxide)

Commodities	Current tolerances (ppm)	Previous recommended replacement action levels (ppm)	Current recommended replacement action levels (ppm)
Alfalfa	[1] 0(0.05)	0.02	[3] 0.01
Apples	[1] 0(0.05)	0.02	[3] 0.01
Barley	[1] 0(0.03)	0.02	[4] 0.01
Beans, lima	[1] 0(0.03)	0.02	[5, 4] 0.01
Beans, snap	0.1	0.02	[5, 4] 0.01
Beets	[1] 0(0.05)	0.02	[5, 7] 0.01
Beets, sugar	[1] 0(0.05)	0.02	[5, 7] 0.01
Blackeyed peas	[1] 0(0.05)	0.02	[5, 8] 0.01
Brussels sprouts	[1] 0(0.05)	0.02	[8] 0.01
Cabbage	0.1	0.02	[8] 0.01
Carrots	[1] 0(0.05)	0.02	[5, 7] 0.01
Cauliflower	[1] 0(0.05)	0.02	[8] 0.01
Cherries	[1] 0(0.05)	0.02	[9] 0.01
Clover	[1] 0(0.05)	0.02	[3] 0.01
Clover, sweet	[1] 0(0.05)	0.02	[3] 0.01
Corn	[1] 0(0.05)	0.02	[4] 0.01
Cottonseed	[1] 0(0.05)	0.02	0.01
Cowpeas	[1] 0(0.05)	0.02	[5, 4] 0.01
Grapes	[1] 0(0.05)	0.02	[10] 0.01
Grass (pasture)	[1] 0(0.05)	0.02	[5, 11] 0.01
Grass (range)	[1] 0(0.05)	0.02	[5, 11] 0.01
Kohlrabi	[1] 0(0.05)	0.02	[8] 0.01
Lettuce	0.1	0.02	[12] 0.01
Meat	0	0.2	[13] 0.2 (fat basis)
Milk	[1] 0(0.1) (fat basis	0.1 (fat basis)	0.1 (fat basis)
Oats	[1] 0(0.03)	0.02	[4] 0.01
Onions	[1] 0(0.05)	0.02	[14] 0.01
Peaches	0(0.05)	0.02	[9] 0.01
Peanuts	[1] 0(0.05)	0.02	0.01
Peas	[1] 0(0.05)	0.02	[5, 8] 0.01
Pineapple	[1] 0(0.05)	0.02	0.02
Potatoes	[1] 0(0.05)	0.02	[5, 7] 0.01
Radishes	[1] 0(0.05)	0.02	[5, 7] 0.01
Rutabagas	0.1	0.02	[5, 7] 0.01
Rye	[1] 0(0.03)	0.02	[4] 0.01
Sorghum, grain (milo)	[1] 0(0.03)	0.02	[4] 0.01
Sugarcane	[1] 0(0.03)	0.02	[8] 0.01
Sweet potatoes	[1] 0(0.05)	0.02	[5, 7] 0.01
Tomatoes	[15] 0(0.02)	0.02	[5, 15] 0.01
Turnips (including tops)	[1] 0(0.05)	0.02	[5, 7] 0.01
Wheat	[1] 0(0.03)	0.02	[4] none

[1] The limit shown in parentheses was previously used by FDA to enforce the "zero tolerance."

[2] This commodity is included under the action level recommendation for the crop group "Non-grass animal feeds."

[3] This commodity is included under the action level recommendation for the crop group "Pome fruits."

[4] This commodity is included under the action level recommendation for the crop group "Cereal grains."

[5] The recommended action level is at or near the analytical method limit of detection (0.01 ppm for combined residues of heptachlor plus heptachlor epoxide).

[6] This commodity is included under the action level recommendation for the crop group "Legume vegetables."

[7] This commodity is included under the action level recommendation for the crop group "Root and tuber vegetables."

[8] This commodity is included under the action level recommendation for the crop group "Brassica (cole) leafy vegetables."

[9] This commodity is included under the action level recommendation for the crop group "Stone fruits."

[10] This commodity is included under the action level recommendation for the crop group "Small fruits and berries."

[11] This commodity is included under the action level recommendation for the crop group "Grassy forage, fodder, and hay."

[12] This commodity is included under the action level recommendation for the crop group "Leafy vegetables (except *Brassicae*)."

[13] This commodity is included under the action level recommendation for "Fat, meat, and meat byproducts from cattle, goats, horses, sheep, swine, poultry, and rabbits."

[14] This commodity is included under the action level recommendation for the crop group "Bulb vegetables."

[15] The limit shown in parentheses in the current interim tolerance in tomatoes. This limit was previously used by FDA to enforce the "zero" tolerance.

[16] This commodity is included under the action level recommendation for the crop group "Fruiting vegetables (except cucurbits)."

The limits in parentheses shown in Table 1 above have been modified from the limits which were listed in Table 1 of the proposed rule to agree with the limits curently being used by FDA for enforcement of the "zero" tolerances. FDA has improved the analytical capability of their multi-residue method since the limits were set. The limits in parentheses which were listed in the proposed rule represented the improved analytical capability of the multi-residue method at that time and also reflected the action levels which EPA intended to recommend to FDA at that time to replace the tolerances being revoked. Further improvements is analytical capability are now reflected in lower recommended action levels for many commodities.

EPA is recommending to FDA the action levels listed below for the sum of residues of heptachlor and heptachlor epoxide, expressed in ppm, to replace the following interim tolerances for residues of heptachlor, listed in 40 CFR 180.319, which are being revoked.

TABLE 2.—CURRENT INTERIM TOLERANCES AND RECOMMENDED REPLACEMENT ACTION LEVELS FOR HEPTACHLOR (PLUS HEPTACHLOR EPOXIDE)

Commodities	Current interim tolerances (ppm)	Previous recommended replacement action levels (ppm)	Current recommended replacement action levels (ppm)
Blackberries	0.01	0.02	[1] 0.01
Blueberries	0.01	0.02	[1] 0.01
Boysenberries	0.01	0.02	[1] 0.01
Dewberries	0.01	0.02	[1] 0.01
Peppers	0.1	0.02	[2, 3] 0.01
Raspberries	0.01	0.02	[1] 0.01
Tomatoes	0.02	0.02	[2, 4] 0.01

[1] This commodity is included under the action level recommendation for the crop group "Small fruits and berries."

[2] The recommended action level is at or near the analytical method limit of detection (0.01 ppm for combined residues of heptachlor plus heptachlor epoxide).

[3] This commodity is included under the action level recommendation for the crop group "Fruiting vegetables (except cucurbits)."

EPA is recommending to FDA, FSIS, and AMS the following action levels for the sum of residues of heptachlor and heptachlor epoxide, expressed in ppm, to replace the existing action levels. Individually listed commodities have been incorporated into crop groupings as described in 40 CFR 180.34(f) whenever possible; action levels are being recommended in terms of the crop when possible and for individual commodities for those commodities not included in crop groupings.

TABLE 3—CURRENT ACTION LEVELS AND RECOMMENDED REPLACEMENT ACTION LEVELS FOR HEPTACHLOR (PLUS HEPTACHLOR EPOXIDE)

Commodities	Current action level (ppm)	Previous recommended replacement action levels (ppm)	Current recommended replacement action levels (ppm)
Animal feed, processed	0.03		[1] 0.01
Artichokes	0.05	0.02	0.01
Asparagus	0.05	0.02	0.01
Beans, except snap beans	0.05	0.02	[1,2] 0.01
Brassica (cole) leafy vegetables [2,4]		0.02	0.01
Bulb vegetables [3]			0.01
Cereal grains [3]			0.01
Citrus fruits [3]	0.05	0.02	0.01
Cucumbers	0.05	0.02	[5] 0.02
Cucurbit vegetables [3]			0.02
Eggplant	0.05	0.02	[1,6] 0.01
Eggs	0.03	0.02	[1] 0.01
Fat, meat, and meat byproducts from cattle, goats, horses, sheep, swine, poultry, and rabbits	0.3 (fat basis)	0.2 (fat basis)	0.2 (fat basis)
Figs	0.05	0.02	[1] 0.01
Fish	0.3	0.3	[7]
Fruiting vegetables [3] except cucurbits			[1] 0.01
Grass forage, fodder, and hay [3]			[1] 0.01
Leafy vegetables [4]	0.05		[4] 0.01
Leafy vegetables (except *Brassica*) [4]		0.02	0.01
Legume vegetables [3]			[1] 0.01
Melons	0.05	0.02	[5] 0.02
Non-grass animal feeds [3]			0.01
Okra	0.05	0.02	[1,6] 0.01
Pears	0.05	0.02	[5] 0.01
Pimentoes	0.05	0.02	[1,6] 0.01
Pome fruits [3]			0.01
Pumpkins	0.05	0.02	[5] 0.02
Quinces	0.05	0.02	[5] 0.02
Rice, grain	0.03	0.02	[5] 0.01
Root and tuber vegetables [3]			[1] 0.01
Salsify tops [4]		0.02	[4] 0.01
Small fruits	0.05		[10] 0.01
Small fruits [3] and berries		0.02	0.01
Squash (summer or winter)	0.05	0.02	[5] 0.02
Stone fruits [3]	0.05	0.02	0.01

[1] The recommended action level is at or near the analytical method limit of detection (0.01 ppm for combined residues of heptachlor plus heptachlor exposide).

[2] This commodity is included under the action level recommendation for the crop group "Legume vegetables."

[3] The commodities included in this crop group are listed in 40 CFR 180.34(f).

[4] Most of the commodities included under the old crop group "Leafy vegetables" are now included under one of the two crop groups "Leafy vegetables except *Brassica*" or "*Brassica* (cole) leafy vegetables." An exception to this is salsify tops which will be examined separately (not as part of a crop grouping) for heptachlor action level evaluation (although it is now considered part of the crop group "Leaves of root and tuber vegetables").

[5] This commodity is included under the action level recommendation for the crop group "Cucurbit vegetables."

[6] This commodity is included under the action level recommendation for the crop group "Fruiting vegetables (except cucurbits)."

[7] The action level for residues of heptachlor in fish will not be reevaluated at this time, but will be examined as part of an ongoing fish action level reevaluation for several chlorinated pesticides. Refer to *Revocation of DDT and TDE Tolerances* Final Rule (51 FR 46658; December 24, 1986) for background information.

[8] This commodity is included under the action level recommendation for the crop group "Pome fruits."

[9] This commodity is included under the action level recommendation for the crop group "Cereal grains."

[10] This commodity is included under the action level recommendation for the crop group "Small fruits and berries."

The December 1985 proposed rule included references to action levels for the commodity "Fat of meat from cattle, goats, hogs, horses, sheep, poultry, and rabbits." In this final rule, the commodity is referred to as "Fat, meat, and meat byproducts from cattle, goats, horses, sheep, swine, poultry, and rabbits" to agree with the commodity definition currently used by FSIS. Tables 1 and 3 in the 1985 proposed rule listed the replacement action level recommended for this commodity incorrectly as 0.02 ppm; it should have been 0.2 ppm at that time. A correction notice was published in the **Federal Register** on December 31, 1985 (50 FR 53346).

In the 1985 proposed rule, EPA discussed Codex Maximum Residue Limits and indicated which of the action levels being recommended at that time were consistent with the Codex limits. Since that proposed rule was published, the Agency has acquired and evaluated more recent residue surveillance monitoring data (1983–1988) which reflect a general decrease in residues.

The action levels now being recommended to replace the tolerances upon their revocation are lower than the Codex Maximum Residue Limit for the same commodity, except for the action level recommended for pineapples. Compatibility is not expected since most of the Codex limits were set before 1978 to reflect residues resulting from actual application of the pesticide, whereas the recommended action levels are based on current unavoidable residues resulting primarily from past uses of the pesticide. Where no residues are expected, the action level is recommended at the limit of detection of the currently available analytical (enforcement) methodology.

Any person adversely affected by this regulation revoking the tolerance may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issue for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

This action has been reviewed by the Office of Management and Budget as required under section 3 of Executive Order 12291.

In order to satisfy requirements for analysis as specified by the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of the revocation for heptachlor. This analysis is available for public inspection in Room 246, CM #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202.

Executive Order 12291

As explained in the proposal published December 11, 1985, the Agency determined, pursuant to the requirements of Executive Order 12291, that the revocation of these tolerances will not cause adverse economic impacts on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the December 11, 1985 proposal.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recordkeeping and reporting requirements.

Dated: July 21, 1989.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 180.104 [Removed]

2. By removing § 180.104 *Heptachlor and heptachlor epoxide; tolerances for residues.*

§ 180.319 [AMENDED]

3. By removing § 180.319 *Interim tolerances*, by removing the entry for heptachlor from the table therein.

[FR Doc. 89–19088 Filed 8–15–89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6743

[ID–943–09–4214–10; I–26703]

Jurisdiction Transfer, Hagerman Fossil Beds National Monument; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order transfers jurisdiction of 3,787.62 acres of public lands located within the boundaries of the Hagerman Fossil Beds National Monument from the Bureau of Land Management to the National Park Service. The monument was established by Congress through Public Law 100–696. However, Public Law 100–696 did not specifically transfer jurisdiction of the lands. This order is to clarify the administrative record.

EFFECTIVE DATE: September 15, 1989.

FOR FURTHER INFORMATION CONTACT:

William E. Ireland, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1597.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

Jurisdiction of the public lands within the boundaries of Hagerman Fossil Beds National Monument, which was established by Public Law 100–696, is hereby transferred to the National Park Service. The lands are described as follows:

Boise Meridian

T. 7 S., R. 13 E.,
Sec. 9, SE¼SW¼, NE¼SE¼, and S½SE¼;
Sec. 10, lots 3 and 6, SW¼, and NW¼SE¼;
Sec. 15, lot 4;
Sec. 17, NE¼NE¼, S½NE¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 20, E½E½;
Sec. 21, lots 2, 3, 4, 7, and 8, W½NW¼, SE¼NW¼, N½SW¼, and SW¼SW¼;
Sec. 28, lots 2, 3, 6, and 7, and NW¼NW¼;
Sec. 29, E½NE¼, S½SW¼, and SE¼;
Sec. 30, E½E½SE¼SE¼;
Sec. 31, E½E½E½E½;
Sec. 32,
Sec. 33, lots 2, 3, 6, and 7, and SW¼SW¼.
T. 8 S., R. 13 E.,
Sec. 3, lot 7 and SW¼;
Sec. 4, lots 2, 3, 7, 8, and 9, S½NW¼, and S½;
Sec. 5, lots 1 to 4, inclusive, and S½N½.

The area described contains 3,787.62 acres in Twin Falls County.

Dated: August 4, 1989.

Frank A. Bracken,

Under Secretary of the Interior.

[FR Doc. 89–19194 Filed 8–15–89; 8:45 am]

BILLING CODE 4310-GG-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

Final Flood Elevation Determinations; Connecticut et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT:

John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the

Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CONNECTICUT	
Cheshire (town), New Haven County (FEMA Docket No. 6946)	
Quinnipiac River:	
Downstream side of Cheshire Street Bridge	*111
At upstream corporate limits	*124
Mill River:	
Approximately 50 feet upstream of Mansion Road	*158
At downstream side of Williamsburg Drive	*209
Willow Brook:	
Approximately 50 feet upstream of downstream crossing of Higgins Road	*147
Upstream side of Ives Row Road	*180
Maps available for inspection at the Town Planning Department, Town Hall, Cheshire, Connecticut.	
FLORIDA	
Bradford County (unincorporated areas) (FEMA Docket No. 6951)	
Santa Fe River:	
At County Boundary	*75
At Little Santa Fe Lake outlet	*144
Little Santa Fe Lake: Along shoreline	*144
Santa Fe Lake: Along shoreline	*144
Maps available for inspection at the Planning and Zoning Department, County Courthouse, Starke, Florida.	
Brooker (city), Bradford County (FEMA Docket No. 6951)	
Santa Fe River: Within community	*89
Maps available for inspection at the City Hall, Brooker, Florida.	
Hampton (city), Bradford County (FEMA Docket No. 6951)	
Santa Fe River: Within community	*140
Maps available for inspection at the City Hall, Hampton, Florida.	
GEORGIA	
Fitzgerald (city), Ben Hill County (FEMA Docket No. 6956)	
Seattle Creek Tributary:	
Just downstream of Colony City Industrial Drive	*337
About 1,900 feet upstream of Colony City Industrial Drive	*343
Turkey Creek:	
Just upstream of Industrial Drive	*316
Just upstream of North Merrimac Drive	*350
Turkey Creek Tributary No. 1:	
About 950 feet downstream of West Roanoke Drive	*329
Just upstream of Lincoln Avenue	*339
Turkey Creek Tributary No. 1A:	
Just upstream of mouth	*336
Just upstream of Lynn Road	*348
Willacoochee Creek:	
About 1,750 feet downstream of Irwinville Highway	*325
About 350 feet downstream of Irwinville Highway	*326
Maps available for inspection at the Building Inspector's Office, Municipal Building, Fitzgerald, Georgia.	
ILLINOIS	
Dowell (village), Jackson County (FEMA Docket No. 6951)	
South Tributary:	
Just downstream of Roosevelt Street	*395
Just downstream of Illinois Central Gulf Railroad	*397
Just downstream of Town Road	*403
North Tributary:	
At mouth	*403
Just downstream of Town Road	*406
Maps available for inspection at the Village Hall, Dowell, Illinois.	
Muddy (village), Saline County (FEMA Docket No. 6951)	
Middle Fork Saline River: Within community	*370
Maps available for inspection at the Village Hall, Muddy, Illinois.	
INDIANA	
Carroll County (unincorporated areas) (FEMA Docket No. 6951)	
Tippecanoe River:	
At southern county boundary	*545
Just downstream of Oakdale Dam	*579
Maps available for inspection at the Planning Commission, County Courthouse, Delphi, Indiana.	
KANSAS	
Jackson County (unincorporated areas) (FEMA Docket No. 6956)	
Elk Creek:	
About 4.1 miles downstream of State Highway 16	*965
About 1.1 miles upstream of U.S. Highway 75	*1,048
Parsons (city), Labette County (FEMA Docket No. 6956)	
Labette Creek:	
About 0.71 mile downstream of Southern Avenue	*864
About 400 feet upstream of 21st Street	*885
Little Labette Creek:	
About 1,450 feet downstream of Missouri-Kansas-Texas Railroad	*854
Just downstream of Missouri-Kansas-Texas Railroad	*865
Just upstream of Missouri-Kansas-Texas Railroad	*870
About 3,850 feet upstream of 32nd Street	*881
Maps available for inspection at the City Hall, Parsons, Kansas.	
LOUISIANA	
Thibodaux (city), Lafourche Parish (FEMA Docket No. 6956)	
Lateral B:	
Southwestern corner of community at South Barbier Drive	*5
At downstream corporate limits	*9
Approximately 125 feet upstream of Bayou Lane	*10
Maps available for inspection at 1309 Canal Boulevard, Thibodaux, Louisiana.	
MAINE	
Canton (town), Oxford County (FEMA Docket No. 6946)	
Androscoggin River:	
Approximately 400 feet downstream of Riley Dam	*375
At upstream corporate limits	*403
Whitney Brook:	
At confluence with Androscoggin River	*395
Approximately 220 feet upstream of State Route 108	*397
Maps available for inspection at the Town Clerk's Office, Town Hall, Canton, Maine.	
Jay (town), Franklin County (FEMA Docket No. 6951)	
Androscoggin River:	
Downstream corporate limits	*331
Approximately 1,300 feet upstream of Riley Dam	*382
Sevenmile Stream:	
Confluence with Androscoggin River	*371
Approximately 8,050 feet upstream of Morse Hill Road Bridge	*386
Meadow Brook:	
At confluence with Sevenmile Stream	*371
Approximately 4,150 feet upstream of State Route 17 Bridge	*373
Maps available for inspection at the Code Enforcement Officer's Vault, 99 Main Street, Jay, Maine.	
Millinocket (town), Penobscot County (FEMA Docket No. 6941)	
Millinocket Stream:	
Approximately 150 feet downstream of Granite Street bridge	*346
At upstream corporate limits	*354
Little Smith Brook:	
At confluence with Millinocket Stream	*352
At upstream corporate limits	*364
Ledge Cut Brook:	
At confluence with Little Smith Brook	*362

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At upstream corporate limits	*404
Maps available for inspection at the Planning Department Town Hall, Millinocket, Maine.	
Noblesboro (town), Lincoln County (FEMA Docket No. 6951)	
Damariscotta Lake: Entire shoreline within corporate limits	*56
Pemaquid Pond: Entire shoreline within corporate limits	*81
Duckpuddle Pond: Entire shoreline within corporate limits	*81
Salt Bay: Entire shoreline within corporate limits	*10
Maps available for inspection at Town Clerk's Office, Route 1, Nobleboro, Maine.	
MICHIGAN	
Brooks (township), Newaygo County (FEMA Docket No. 6951)	
Muskegon River:	
About 1.0 mile upstream of State Highway 37	*648
About 4.5 miles upstream of State Highway 37	*664
Maps available for inspection at 46 North State Street, Newaygo, Michigan.	
Manistee (township), Manistee County (FEMA Docket No. 6951	
Bar Lake Outlet:	
At mouth	*584
Just upstream of U.S. Highway 110	*585
Manistee River:	
About 1100 feet downstream of CSX railroad	*584
About 450 feet upstream of State Highway 55	*584
Lake Michigan: Along shoreline	*584
Bar Lake: Along shoreline	*585
Maps available for inspection at the Township Hall, 4100 Holden, Manistee, Michigan.	
MISSISSIPPI	
Columbus (city), Lowndes County (FEMA Docket No. 6932)	
Tombigbee River:	
About 1.0 mile downstream of Illinois Central Gulf Railroad	*170
About 1.3 miles upstream of Columbus Lock and Dam	*176
Luxapalila Creek:	
About 1.0 mile downstream of Illinois Central Gulf Railroad	*170
About 1.8 miles upstream of U.S. Highway 82	*184
Vernon Branch:	
Just downstream of Illinois Central Gulf Railroad	*180
About 3000 feet upstream of Illinois Central Gulf Railroad	*182
Magby Creek:	
At mouth	*177
Just downstream of Lehmbeig Road	*188
Maps available for inspection at the City Hall, Columbus, Mississippi.	
MISSOURI	
Bolivar (city), Polk County (FEMA Docket No. 6917)	
Town Branch:	
About 850 feet downstream of East Broadway Street	*981
Just downstream of East Broadway Street	*984
Just upstream of East Broadway Street	*999
Just downstream of South Springfield Avenue	*1028
Just upstream of South Springfield Avenue	*1031
About 1275 feet upstream of Burlington Northern railroad	*1069
South Tributary:	
About 0.5 mile downstream of South Springfield Avenue	*1024
Just downstream of South Springfield Avenue	*1047
Maps available for inspection at the City Hall, 116 East Jefferson Street, Bolivar, Missouri.	
NEW YORK	
Amenia (town), Dutchess County (FEMA Docket No. 6946)	
Wassaic Creek:	
Approximately 950 feet above confluence with the Tenmile River	*420
At confluence of Amenia Stream	*542
Webatuck Creek:	
Approximately 700 feet above confluence with Tenmile River	*420
Approximately 80 feet below County Route 2	*488
Amenia Stream:	
At confluence with Wassaic Creek	*452
Approximately 850 feet above State Route 343	*549
Tributary to Amenia Stream:	
At confluence with Amenia Stream	*543
Approximately 910 feet above upstream end of State Route 343 culvert	*550
Maps available for inspection at the Town Hall, Amenia, New York.	
Greenport (Town), Columbia County (FEMA Docket No. 6936)	
Cleverack Creek:	
At downstream corporate limits	*122
Approximately .5 mile upstream of Webb Road	*137
Hudson River:	
Approximately 1.8 miles downstream of most upstream corporate limits	*12
At most upstream corporate limits	*12
Maps available for inspection at the Town Hall, Hudson, New York	
NORTH CAROLINA	
Aberdeen (town), Moore County (FEMA Docket No. 6951)	
Aberdeen Creek:	
About 1,000 feet downstream of U.S. Route 1	*321
About 1,800 feet upstream of Pages Dam	*334
Maps available for inspection at the Town Hall, Aberdeen, North Carolina.	
Moore County (unincorporated areas) (FEMA Docket No. 6951)	
Bear Creek:	
About 0.9 mile downstream of State Road 705	*353
About 2,800 feet upstream of Bear Creek Dam	*363
Crane Creek:	
At mouth	*204
Just downstream of Wood Lake Dam	*214
Jackson Creek:	
About 1.4 miles downstream of State Road 73	*392
About 1,300 feet upstream of State Road 73	*414
Jackson Creek Tributary:	
At mouth	*407
Just downstream of Jackson Creek Tributary Dam	*415
Just upstream of Jackson Creek Tributary Dam	*422
Just downstream of State Road 73	*450
Just upstream of State Road 73	*457
About 850 feet upstream of State Road 73	*457
Little River:	
About 2.5 miles downstream of Little River Dam	*200
About 1,500 feet upstream of Morrison Road	*209
About 3.3 miles downstream of SR 1802	*283
Just downstream of Thaggards Lake Dam	*285
Just upstream of Thaggards Lake Dam	*292
Just downstream of Farm Road	*325
Woods Lake	
Along shoreline	*229
Wads Creek:	
At mouth	*315
About 2,200 feet upstream of Wads Creek Farm Road	*326
Aberdeen Creek:	
At CSX railroad	*284
Just downstream of Loch Dornoch Dam	*341
Just upstream of Loch Dornoch Dam	*348
Just downstream of St. Andrews Drive East	*349
Just upstream of St. Andrews Drive East	*356
Just downstream of Morganton Road	*364
Aberdeen Creek Tributary:	
About 3,100 feet downstream of Aberdeen Tributary Dam	*358
Just downstream of Aberdeen Tributary Dam	*359
Just upstream of Aberdeen Tributary Dam	*366
Just upstream of U.S. Route 15	*372
Maps available for inspection at the Planning Office, County Courthouse, Carthage, North Carolina.	
Pinebluff (town), Moore County (FEMA Docket No. 6951)	
Aberdeen Creek:	
Just downstream of SR 1102	*231
About 1.2 miles downstream of Sandhill Boulevard	*314
Maps available for inspection at the Town Hall, Pinebluff, North Carolina.	
Pinehurst (village), Moore County (FEMA Docket No. 6951)	
Aberdeen Creek:	
Just upstream of Morganton Road	*365
About 550 feet upstream of Morganton Road	*366
Maps available for inspection at the Village Hall, Pinehurst, North Carolina.	
Robbins (town), Moore County (FEMA Docket No. 6951)	
Bear Creek:	
About 700 feet downstream of State Road 705	*356
About 300 feet downstream of Bear Creek Dam	*361
Maps available for inspection at the Town Hall, Robbins, North Carolina.	
Southern Pines (town), Moore County (FEMA Docket No. 6951)	
Aberdeen Creek Tributary:	
Just upstream of U.S. Route 15	*372
Just downstream of Pinecrest School Road	*375
Just upstream of Pinecrest School Road	*386
About 2,450 feet upstream of Pinecrest School Road	*386
Aberdeen Creek:	
Just upstream of Morganton Road	*365
About 550 feet upstream of Morganton Road	*366
Maps available for inspection at the Town Hall, Southern Pines, North Carolina.	
Swain County (unincorporated areas) (FEMA Docket No. 6956)	
Tuckasegee River:	
About 0.6 mile downstream of confluence of Watons Branch	*1712
About 0.3 mile upstream of confluence of Buckner Branch	*1717
Just downstream of confluence of Kirkland Creek	*1753
Just downstream of U.S. Route 19	*1761
Just upstream of U.S. Route 19	*1767
At confluence of Oconaluftee River	*1796
Oconaluftee River:	
At mouth	*1796
Just downstream of Bryson Dam	*1805
Just upstream of Bryson Dam	*1839
About 1.0 mile upstream of confluence of Raven Fork	*2056
Raven Fork:	
At mouth	*2021
About 1.8 miles upstream of mouth	*2066
Deep Creek:	
At mouth	*1741
About 1.2 miles upstream of Deep Creek Church Road	*1739

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the County Manager's Office, County Courthouse, Bryson City, North Carolina.	
Whispering Pines (village), Moore County (FEMA Docket No. 6951)	
Little River:	
About 2.0 mile downstream of SR 1502	*271
Just downstream of Theggards Lake Dam	*285
Just upstream of Theggards Lake Dam	*292
Just downstream of SR 1838	*304
Maps available for inspection at the Village Hall, Pine Ridge Road, Whispering Pines, North Carolina.	
OHIO	
Allen County (unincorporated areas) (FEMA Docket No. 6951)	
Dug Run:	
About 1,080 feet downstream of Pioneer Road	*790
About 4,000 feet upstream of Eastown Road	*888
Dug Run Tributary:	
At mouth	*816
Just downstream of Eastown Road	*824
Lost Creek:	
Just upstream of Reservoir Road	*865
Just downstream of Drop Structure	*881
Just upstream of Drop Structure	*891
About 2,000 feet upstream of Drop Structure	*894
Little Ottawa River:	
Just upstream of Fort Amanda Road	*827
Just downstream of Shawnee Road	*859
Freed Ditch:	
Just upstream of McClain Road	*851
Just downstream of Interstate 75	*863
Tributary A:	
At mouth	*831
About 2,600 feet upstream of mouth	*839
Tributary B:	
At mouth	*840
About 300 feet upstream of Hall Drive	*846
Tributary D:	
Just upstream of McClain Road	*881
About 1,050 feet downstream of Breese Road	*886
Riley Creek:	
Just upstream of Putnam Road	*794
About 1.2 miles upstream of Bentley Road	*815
Ottawa River:	
Just upstream of Adgate Road	*639
About 2,100 feet upstream of Conrail	*640
Pike Run:	
About 1,450 feet downstream of Brower Road	*832
Just downstream of Brower Road	*837
Lost Creek Tributary:	
About 0.9 mile downstream of 9th Street	*862
Just downstream of 9th Street	*867
Maps available for inspection at the Lima/Allen County Regional Planning Commission, 212 North Elizabeth Street, Lima, Ohio.	
Butler (village), Richland County (FEMA Docket No. 6951)	
Clear Fork Mohican River:	
About 0.6 mile downstream of State Route 95	*1069
About 0.4 mile upstream of State Route 95	*1071
Maps available for inspection at the Village Hall, 33 Elm Street, Butler, Ohio.	
Paulding County (unincorporated areas) (FEMA Docket No. 6951)	
Auglaize River:	
About 1.21 miles downstream of State Route 637	*702
About 1.40 miles upstream of State Route 637	*704
Flatrock Creek:	
About 0.55 mile downstream of confluence of Opossum Run	*714
About 0.96 mile upstream of County Route 107	*723
About 950 feet downstream of Norfolk Southern Railway	*726

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
About 1.02 mile upstream of State Route 49	*745
Maps available for inspection at the County Commissioner's Office, County Courthouse, Paulding, Ohio.	
Sabina (village), Clinton County (FEMA Docket No. 6951)	
Wilson Creek:	
About 1100 feet downstream of Plymouth Pike	*1032
About 1400 feet upstream of Polk Road	*1040
Mary's Fork:	
Just upstream of CSX railroad	*1043
Just upstream of Howard Street	*1047
Maps available for inspection at the Municipal Building, 99 North Howard Street, Sabina, Ohio.	
OKLAHOMA	
Guthrie (city), Logan County (FEMA Docket No. 6951)	
Cottonwood Creek:	
Approximately 528 feet downstream of College Avenue	*931
Approximately 860 feet downstream of confluence of Cottonwood Creek cut-off channel	*935
Deer Creek:	
Approximately 1 mile upstream of confluence with Cottonwood Creek	*992
Approximately 1.2 miles upstream of confluence of Cottonwood Creek	*993
Chisholm Creek:	
Approximately 1.2 miles upstream of crossing of county road	*992
Approximately 1.4 miles upstream of crossing of county road	*993
Maps available for inspection at the City Hall, 101 North 2nd, Guthrie, Oklahoma.	
Logan County (unincorporated areas) (FEMA Docket No. 6951)	
Cottonwood Creek:	
Confluence with Cimarron River	*926
Upstream side of Industrial Road	*947
Downstream side of State Route 74	*995
Bird Creek:	
Confluence with Cottonwood Creek	*929
Approximately .8 mile upstream of Interstate Route 35	*995
Deer Creek:	
Confluence with Cottonwood Creek	*991
Downstream of 3rd upstream crossing of County Road	*1,009
Chisholm Creek:	
Confluence with Cottonwood Creek	*984
Downstream of 4th upstream crossing of County Road	*1,015
Maps available for inspection at the Logan County Courthouse, 301 E. Harrison, Guthrie, Oklahoma.	
OREGON	
Burns (city), Harney County (FEMA Docket No. 6951)	
Drainage D:	
Approximately 1,300 feet south and 250 feet west of the intersection of West Pierce Street and South Nevada Avenue	None
Approximately 100 feet west of a point located 50 feet northeast along Seginaw Avenue from the southern corporate limits	None
Maps available for inspection at the City Recorder's Office, City Hall, 242 South Broadway, Burns, Oregon.	
Hines (city), Harney County (FEMA Docket No. 6951)	
Drainage D:	
Approximately 110 feet downstream of King Avenue Culvert	*4,196

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately 120 feet upstream of King Avenue Culvert	*4,200
Approximately 640 feet upstream of King Avenue Culvert (at Western Corporate limits)	*4,206
Approximately 300 feet North of the intersection of King Avenue and Tennyson Avenue	#1
Drainage D Split to King Avenue:	
At Seginaw Avenue	*4,181
Approximately 100 feet upstream of Tennyson Avenue	*4,198
Maps available for inspection at the City Recorder's Office, City Hall, 101 East Barnes, Hines, Oregon.	
Lake County (unincorporated areas) (FEMA Docket No. 6951)	
North Goose Lake Basin:	
Approximately 26,900 feet downstream of Stock Drive Road	*4,710
Approximately 770 feet upstream of Stock Drive Road	*4,730
Approximately 15,900 feet upstream of State Highway 66	*4,767
Chewaucan River:	
Approximately 2,250 feet downstream of State Highway 31	*4,346
Approximately 1,875 feet upstream of State Highway 31	*4,375
Approximately 400 feet upstream of Mill Street	*4,401
Maps available for inspection at the Lake County Courthouse, 513 Center Street, Lakeview, Oregon.	
PENNSYLVANIA	
Ashville (Borough), Cambria County (FEMA Docket No. 6951)	
Clearfield Creek:	
At downstream corporate limits	*1,614
Approximately .2 mile upstream of State Route 36	*1,626
Maps available for inspection at the Borough Building, Hickory Street, Ashville, Pennsylvania.	
Choconut (township), Susquehanna County (FEMA Docket No. 6938)	
Choconut Creek:	
At downstream corporate limits	*1,039
At upstream side of State Route 289	*1,129
Approximately 530 feet upstream from State Route 267	*1,271
Maps available for inspection at the Choconut Municipal Building, Choconut, Pennsylvania.	
Conneaut (township), Erie County (FEMA Docket No. 6951)	
East Branch Conneaut Creek:	
At abandoned railroad	*840
At confluence of Crane Creek	*871
Crane Creek:	
At confluence with East Branch Conneaut Creek	*871
At corporate limits	*878
Temple Creek:	
At confluence with East Branch Conneaut Creek	*861
At corporate limits	*869
Maps available for inspection at the Conneaut Municipal Building, Conneaut, Pennsylvania.	
Creekside (borough), Indiana County (FEMA Docket No. 6951)	
Crooked Creek:	
At downstream corporate limits	*1,033
At upstream corporate limits	*1,037
McKee Run:	
At confluence with Crooked Creek	*1,036
At upstream corporate limits	*1,036

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at Mr. Shaffer's home, Box 254, Creekside, Pennsylvania.	
Green (township), Indiana County (FEMA Docket No. 6951)	
North Branch Two Licks Creek:	
Approximately 1,440 feet downstream of confluence with Pompey Run	*1,336
Approximately 0.7 mile upstream of State Route 240	*1,417
Dixon Run:	
Downstream corporate limits	*1,261
Upstream corporate limits	*1,322
Maps available for inspection in care of Ms. Ruth Batik, Township Secretary, R.D. 2, Cherrytree, Pennsylvania.	
Hyndman (borough), Bedford County (FEMA Docket Nos. 6941 and 6956)	
Wills Creek:	
Approximately 60 feet downstream of CSX Transportation Railroad Bridge	*897
Approximately 0.3 mile upstream of upstream corporate limits	*906
Little Wills Creek:	
At confluence with Wills Creek	*893
At corporate limits	*936
Unnamed Tributary to Wills Creek:	
Approximately 200 feet upstream of CSX Transportation	*907
Approximately 240 feet downstream at corporate limits	*935
Maps available for inspection at the Hyndman Senior Citizen Building, Water Street, Hyndman, Pennsylvania.	
Irvona (borough), Clearfield County (FEMA Docket No. 6951)	
Clearfield Creek:	
At downstream corporate limits	*1,329
Approximately 180 feet upstream of upstream corporate limits	*1,376
Maps available for inspection at the Borough Building, Berwind Street, Irvona, Pennsylvania.	
Lower Towamensing (township), Carbon County (FEMA Docket No. 6951)	
Aquashicola Creek:	
At downstream corporate limits	*418
Approximately 0.55 mile upstream of S.R. 2009	*454
Buckwha Creek:	
At confluence with Aquashicola Creek	*444
Approximately 0.34 mile upstream of Chestnut Ridge Railway	*474
Mill Creek:	
At confluence with Aquashicola Creek	*410
Approximately 0.38 mile upstream of S.R. 2001	*814
Maps available for inspection at the Municipal Building, R.D. 32, Box 1211A, Palmerton, Pennsylvania.	
Morris (township), Clearfield County (FEMA Docket No. 6956)	
Moshannon Creek:	
At Conrail Bridge	*1,415
At upstream corporate limits	*1,422
Maps available for inspection at the Municipal Building, Oak Grove Road, Montadale, Pennsylvania.	
New Ringgold (borough), Schuylkill County (FEMA Docket No. 6951)	
Little Schuylkill River:	
At downstream corporate limits	*548
At upstream corporate limits	*573
Maps available for inspection at the Borough Hall, New Ringgold, Pennsylvania.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
North Manheim (township), Schuylkill County (FEMA Docket No. 6951)	
Mahoney Creek:	
At Meeder Drive (T-964)	*489
Approximately 0.45 mile upstream of State Route 443	*594
Schuylkill River:	
At downstream corporate limits	*488
Approximately 1.2 miles upstream of State Route 183	*553
Maps available for inspection at the Township Municipal Building, North Manheim, Pennsylvania.	
Petrolia (borough), Butler County (FEMA Docket No. 6951)	
South Branch Bear Creek:	
Downstream corporate limits	*1,152
Approximately 150 feet upstream corporate limits	*1,178
Maps available for inspection at Mr. Steel's residence, Box 90, Petrolia, Pennsylvania.	
Port Matilda (borough), Centre County (FEMA Docket No. 6945)	
Bald Eagle Creek:	
At downstream corporate limits	*977
At upstream corporate limits	*987
Laurel Run:	
At confluence with Bald Eagle Creek	*983
Approximately 125 feet upstream of upstream corporate limits	*1,018
Maps available for inspection at the Borough Building, 460 South High Street, Port Matilda, Pennsylvania.	
Shelocta (borough), Indiana County (FEMA Docket No. 6951)	
Crooked Creek:	
Approximately 0.15 mile downstream of State Route 156	*995
Approximately 0.36 mile upstream of State Route 156	*1,000
Maps available for inspection at the Indiana County Courthouse, Indiana, Pennsylvania.	
Unionville (borough), Centre County (FEMA Docket No. 6946)	
Bald Eagle Creek:	
Approximately 895 feet downstream of Chestnut Street	*771
Approximately 950 feet upstream of upstream corporate limits	*780
Dewitt Run:	
At confluence with Bald Eagle Creek	*774
Approximately 25 feet upstream of corporate limits	*812
Maps available for inspection at the Fleming Post Office, Route 220, Fleming, Pennsylvania.	
Walker (Township), Schuylkill County (FEMA Docket No. 6951)	
Little Schuylkill River:	
Approximately 0.6 mile downstream of confluence with Sheehy Run	*935
Approximately 1.5 miles upstream of State Route 443	*748
Maps available for inspection at the Walker Township Municipal Building, Tamaqua, Pennsylvania.	
Washington (township), Cambria County (FEMA Docket No. 6941)	
Bear Rock Run:	
At downstream corporate limits	*1,986

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately 880 feet upstream of the confluence of Burgoon Run	*1,982
Burgoon Run:	
At the confluence with Bear Rock Run	*1,986
Approximately 1,100 feet upstream of the confluence with Bear Rock Run	*1,990
Maps available for inspection at the Township Building, Jones Street, Extension, Lilly, Pennsylvania.	
Weatherly (borough), Carbon County (FEMA Docket No. 6951)	
Hazle Creek:	
Approximately 980 feet upstream of confluence with Black Creek and Quakake	*1,032
Approximately 0.5 mile upstream of Main Street (SR 4010)	*1,153
Maps available for inspection at the Municipal Building, 10 Wilbur Street, Weatherly, Pennsylvania.	
TENNESSEE	
Maury County (unincorporated areas) (FEMA Docket No. 6951)	
Rutherford Creek:	
At mouth	*681
About 1.2 miles upstream of Warren Road	*714
Little Bigby Creek:	
At mouth	*577
Just downstream of Nesby Hollow Road	*671
Lytle Creek:	
At mouth	*587
Just upstream of Iron Bridge Road	*598
Just downstream of State Route 50	*626
Just upstream of State Route 50	*634
Just downstream of CSX railroad	*638
Just upstream of CSX railroad	*643
Just downstream of Mooresville Pike	*651
Aaron Creek:	
At mouth	*661
About 0.8 mile upstream of Port Royal Road	*691
Carters Creek:	
At mouth	*595
Just downstream of Carters Creek Pike	*674
Grassy Branch:	
At mouth	*672
About 500 feet upstream of Port Royal Road	*684
Greenlick Creek:	
Just upstream of Hicks Lane	*598
At confluence of Greenlick Creek Tributary	*626
Greenlick Creek Tributary:	
At mouth	*620
About 1.5 miles above mouth	*648
McCormack Branch:	
At mouth	*686
Just upstream of Beech Grove Road	*736
McCutcheon Creek:	
At mouth	*665
About 0.3 mile upstream of Duplex Road	*709
Duck River:	
About 1.6 miles downstream of Industrial Park Drive	*575
At confluence of Bear Creek	*589
Sugar Fork:	
About 0.85 mile downstream of confluence of Quality Creek	*608
About 0.75 mile downstream of confluence of Quality Creek	*689
Sugar Creek:	
About 400 feet upstream of confluence of Quality Creek	*619
About 700 feet upstream of Arrow Lake Road	*664
Maps available for inspection at the County Courthouse, Columbia, Tennessee.	
TENNESSEE	
Williamson County (unincorporated areas) (FEMA Docket No. 6951)	
Harpeth River:	
About 1.0 mile downstream of CSX Railroad	*634

BEST COPY AVAILABLE

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Just downstream of Douglas Street	*846
West Harpeth River:	
Just downstream of confluence of Leipers Fork	*647
Just downstream of Interstate 65	*752
Rutherford Creek:	
At county boundary	*714
Just downstream of Bethesda Road	*763
Aaron Creek:	
At county boundary	*691
About 1,300 feet upstream of Duplex Road	*704
Murfrees Fork:	
At mouth	*657
Just downstream of Evergreen Road	*752
Grassy Branch:	
At county boundary	*694
About 0.4 mile upstream of Duplex Road	*711
Five Mile Creek:	
At mouth	*648
About 0.8 mile upstream of Goose Creek Bypass	*679
McCutcheon Creek:	
At county boundary	*708
About 1.5 miles upstream of county boundary	*743
Leipers Fork:	
At mouth	*647
Just downstream of Bailey Road	*670

Maps available for inspection at the County Courthouse, 1320 West Main Street, Suite 125, Franklin, Tennessee.

TEXAS

Dayton Lakes (city), Liberty County (FEMA Docket No. 6961)

Trinity River	
Downstream corporate limits	*36
Approximately 1 mile upstream of upstream corporate limits	*36

Maps available for inspection at the grocery store on Trinity Road and County Engineers Office, Dayton Lakes, Texas.

Poteet (city), Atascosa County (FEMA Docket No. 6946)

Rutledge Hollow Creek:	
Approximately 1,850 feet downstream of Seventh Street	*422
Approximately 500 feet upstream of upstream corporate limits	*441
Tributary A:	
At confluence with Rutledge Hollow Creek	*424
At Avenue F	*444
Tributary B:	
Approximately 75 feet downstream of downstream corporate limits	*455
At upstream corporate limits	*469
Tributary C:	
Approximately 1,600 feet downstream of Boyd Street	*444
Approximately 350 feet upstream of Boyd Street	*460

Maps available for inspection at the City Hall, 409 Avenue H, Poteet, Texas.

Sulphur Springs (city) Hopkins County (FEMA Docket No. 6951)

Root Creek:	
Approximately 0.9 mile downstream of confluence of Gena Creek	*421
Approximately 600 feet upstream of Holiday Drive	*478
Town Branch:	
Approximately 850 feet downstream of Loop 301	*443
At downstream side of Pulman Street	*484
Gena Creek:	
At FM 1870	*440
Approximately 1.2 miles upstream of FM 1870	*457
South Town Branch:	
Downstream corporate limits	*466
Approximately 80 feet upstream of Gilmer Street	*491

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Coleman Creek:	
Approximately 0.5 mile downstream of State Route 19	*436
Approximately 1,200 feet downstream of Interstate Route 30 & U.S. Route 67	*529
Turtle Creek:	
At State Route 11	*481
Approximately 2,400 feet upstream of Loop 313	*500

Maps available for inspection at the City Hall, Sulphur Springs, Texas.

VIRGINIA

Harrisonburg (city) (FEMA Docket No. 6946)

Tributary No. 1:	
At confluence with Blacks Run	*1,265
Approximately 0.53 mile upstream from Route 974	*1,452
Tributary No. 2:	
At confluence with Tributary No. 1	*1,267
Approximately 0.63 mile upstream from Deer Run Road	*1,381
Tributary No. 3:	
At confluence with Tributary No. 1	*1,307
Approximately 1.21 miles upstream from Interstate 81	*1,416
Tributary No. 4:	
At confluence with Tributary No. 1	*1,407
Approximately 340 feet upstream from Keezletown Road	*1,440
Blacks Run:	
Approximately 550 feet downstream from State Route 998	*1,194
Approximately 1.09 miles upstream from State Route 753 (North Liberty Street)	*1,381
Sunset Heights Branch:	
Approximately 500 feet downstream of State Route 726	*1,264
Approximately 0.45 mile upstream from confluence of West Fork Sunset Heights Branch	*1,337
West Fork Sunset Heights Branch:	
At confluence with Sunset Heights Branch	*1,306
At upstream corporate limits	*1,359

Maps available for inspection at the Office of the City Engineer, Municipal Building, 345 South Main Street, Harrisonburg, Virginia.

Purcellville (town), Loudoun County (FEMA Docket No. 6951)

South Fork Catoctin Creek:	
Approximate 375 feet downstream of downstream corporate limits	*485
Approximately 125 feet upstream of upstream corporate limits	*518

Maps available for inspection at the Town Office, 141 E. Main Street, Purcellville, Virginia.

Urbanna (town), Middlesex County (FEMA Docket No. 6927)

Rappahannock River:	
Entire shoreline within community	*7
Shoreline at the confluence of Urbanna Creek and Rappahannock River	*7

Maps available for inspection at the Town Hall, Urbanna, Virginia.

Wise County (unincorporated areas) (FEMA Docket No. 6939)

Callahan Creek:	
Approximately 1.02 miles upstream of confluence with Powell River	*1,660
Approximately 1.11 miles upstream of confluence with Powell River	*1,667
Downstream side of State Route 78	*1,733
Looney Creek:	
Approximately 0.16 mile upstream of confluence with Pigeon Creek	*1,624
Approximately 0.09 mile upstream of Southern Switchyard Road	*1,630

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Powell River:	
Approximately 0.9 mile downstream of Cadet School Bridge	*1,460
Approximately 1.4 miles upstream of Cadet School Bridge	*1,466
Approximately 4.05 miles upstream of Cadet School Bridge	*1,497
Approximately 0.75 mile upstream of Southern Railway	*1,611
South Fork Powell River:	
Approximately 0.09 mile upstream of downstream crossing of State Route 613	*1,495
Approximately 0.26 mile downstream of downstream crossing of Southern Railway	*1,507
Butcher Fork:	
At confluence with South Fork Powell River	*1,513
Approximately 1.2 miles upstream of State Route 683	*1,554

Maps available for inspection at the County Administrator's Office, County Courthouse, Wise, Virginia.

WASHINGTON

Clallam County (unincorporated areas) (FEMA Docket NO. 6961)

Jimmycomelately Creek:	
At the confluence with Sequim Bay	*8
Approximately 3,600 feet upstream of State Highway 101	*60
Clallam River:	
Approximately 1,950 feet upstream of West Road	*21
Just downstream of State Highway 112	*34
Approximately 1,350 feet upstream of 3rd Crossing of Highway 112	*62
Soleduck River:	
Approximately 6,800 feet downstream of Quillayute Road	*147
Just downstream of Quillayute Road	*160
Dungeness River:	
Approximately 2,500 feet downstream of Marine Drive	*5
Just downstream of Marine Drive	*19
Approximately 300 feet upstream of Marine Drive	*21
Approximately 3,200 feet upstream of the confluence with Matriotti Creek	*41
Approximately 50 feet downstream of Woodcock Gaskell Road	*82
Just downstream of Old Olympic Highway	*109
Approximately 60 feet upstream of Old Olympic Highway	*112
Approximately 50 feet upstream of Chicago, Milwaukee, St. Paul & Pacific Railroad	*205
Approximately 150 feet downstream of the confluence with Bear Creek	*312
Approximately 6,400 feet upstream of the confluence with Carsco Creek	*665
Elwha River:	
Approximately 7,700 feet downstream from the divergence of Elwha River Overflow	*7
Approximately 5,700 feet downstream from the divergence of Elwha River Overflow	*12
Approximately 2,100 feet downstream from the divergence of Elwha River Overflow	*24
Strait of Juan De Fuca (at Bullman Beach):	
Approximately 1,850 feet west along the shoreline from the crossing of Highway 112 over Bullman Creek	*16
Approximately 250 feet north of the crossing of Highway 112 over Bullman Creek	*10
Approximately 1,750 feet east along shoreline from the crossing of Highway 112 over Bullman Creek	*14
Strait of Juan De Fuca (at Clallam Bay):	
Approximately 1,250 feet north of the intersection of Front Street with Washington Street	*16
Approximately 1,450 feet north along shoreline from the intersection of Division Street and Front Street	*13
Approximately 250 feet east of the intersection of Front Street with Washington Street	*8

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately 700 feet south along shoreline from the intersection of Division Street and Front Street	*13
Approximately 100 feet north of the crossing of Slip Point Road over Falls Creek	*12
Approximately 2,600 feet east along shoreline from crossing of Slip Point Road over Falls Creek	*14
Approximately 3,250 feet east along shoreline from crossing of Falls Creek and Slip Point Road	*8
Approximately 700 feet north of intersection of Slip Point Road with Begashiel Street	*10
Approximately 250 feet north of the intersection of Salt Air Street with Fisherman Street	*12
Approximately 2,000 feet north along shoreline from the intersection of Salt Air Street with Fisherman Street	*15
Strait of Juan De Fuca (at Crescent Bay):	
Approximately 2,600 feet due north of the intersection of ACI Park Access Road and Crescent Beach Road	*12
Approximately 1,400 feet along shoreline north of the intersection of ACI Park Access Road and Crescent Beach Road	*9
Approximately 175 feet north of the intersection of Crescent Beach Road and ACI Park Access Road	*8
Approximately 1,200 feet along shoreline east of the intersection of ACI Park Access Road and Crescent Beach Road	*10
Approximately 600 feet north of the crossing of Crescent Beach Road over Salt Creek	*8
Approximately 1,800 feet north along the shoreline from the crossing of Crescent Beach Road over Salt Creek	*12
Strait of Juan De Fuca (at Angeles Point):	
On the shoreline approximately 500 feet northwest from the intersection of Place Road and Dan Kelly Road	*10
Approximately 2,375 feet north of the intersection of Charles Road and Elwha Road	*9
On the shoreline approximately 1,600 feet northeast from the intersection of a private road with Lower Elwha Road	*10
Strait of Juan De Fuca (at Morse Creek):	
Approximately 2,200 feet west of the mouth of Morse Creek	*11
At the mouth of Morse Creek	*9
On the shoreline approximately 2,000 feet east from the mouth of Morse Creek	*11
Strait of Juan De Fuca (at Dungeness Bay):	
Approximately 4,800 feet west along the shoreline from the intersection of Three Crabs Road and Dungeness Road	*8
Just east of the intersection of Three Crabs Road with Golden Sands Place	*5
Approximately 350 feet east from the intersection of Golden Sands Place with Three Crabs Road	*3
At the mouth of Cassalery Creek	*5
Strait of Juan De Fuca (at Washington Harbor):	
On the shoreline about 2,000 feet north of the entrance to Sequim Bay	*8
Strait of Juan De Fuca (at Diamond Point):	
Approximately 375 feet north of the intersection of Diamond Point Road with Diamond Point Boulevard	*9
Approximately 800 feet north of the intersection of Diamond Point Road with Diamond Point Boulevard	*8
Approximately 1,050 feet southeast of the intersection of Diamond Point Road with Diamond Point Boulevard	*5

Maps available for inspection at the Clallam County Courthouse, 223 East Fourth Street, Port Angeles, Washington.

Wisconsin

Eleva (village), Trempealeau County (FEMA Docket No. 6961)

Adams Creek:	
At mouth	*865
Just downstream of Eleva Pond Dam	*867
Just upstream of Eleva Pond Dam	*868
Just downstream of Eau Claire Road	*869
Just upstream of Eau Claire Road	*874
Buffalo River:	
About 550 feet downstream of Main Street	*850
About 625 feet upstream of Chimney Rock Road	*855

Maps available for inspection at the Village Hall, Eleva, Wisconsin.

Park Falls, (city), Price County (FEMA Docket No. 6956)

Flambeau River:	
About 0.2 mile downstream of Lower Dam	*1,452
Just downstream of Lower Dam	*1,453
Just upstream of Lower Dam	*1,466
Just downstream of Upper Dam	*1,473
Just upstream of Upper Dam	*1,487
About 1.2 miles upstream of Upper Dam	*1,496

Maps available for inspection at the City Hall, 400 4th Avenue South, Park Falls, Wisconsin.

Price County (unincorporate areas) (FEMA Docket No. 6951)

South Fork Flambeau River:	
About 1.6 miles downstream of County Highway F	*1,396
About 700 feet upstream of Balsam Road	*1,442

Maps available for inspection at the County Zoning Department, Lake Avenue, Phillips, Wisconsin.

Shawano (city), Shawano County (FEMA Docket No. 6951)

Wolf River:	
About 0.6 mile downstream of Lieg Avenue	*797
Just downstream of Shawano Dam	*798
Just upstream of Shawano Dam	*804
At confluence of Shawano Creek	*804
Shawano Creek: Within community	*804
Shawano Lake: Within community	*804

Maps available for inspection at the Building Department, City Hall, 213 East Green Bay Street, Shawano, Wisconsin.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

WEST VIRGINIA

Grant County (unincorporated areas) (FEMA Docket No. 6941)

South Branch Potomac River:	
Approximately 2,900 feet downstream of confluence of Mill Creek	*825
Approximately 3.4 miles upstream of the Town of Petersburg corporate	*868

Maps available for inspection at the County Assessor's Office, County Courthouse, 5 Highland Avenue, Petersburg, West Virginia.

Issued: August 10, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-19192 Filed 8-15-89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-589; RM-6462]

Radio Broadcasting Services; Taos, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Taos Communications Corp., substitutes Channel 268C2 for Channel 269A at Taos, New Mexico, and modifies the license of Station KTAO to specify operation on the higher powered channel. Channel 268C2 can be allotted to Taos in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.1 kilometers (11.9 miles) south to accommodate petitioner's desired transmitter site. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-589, adopted July 18, 1989, and released August 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73.

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Taos, New Mexico, is amended to add Channel 268C2 and remove Channel 269A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-19127 Filed 8-15-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-31; RM-6479]

Radio Broadcasting Services; Comfort, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 236C2 to Comfort, Texas, as that community's first local FM service, at the request of Comfort Broadcasting Company, Inc. See 54 FR 8220, February 27, 1989. The channel allotment requires a site restriction of 4.8 kilometers (3.0 miles) west of the community, at coordinates 29–57–53 and 98–57–54. Additionally, Mexican concurrence has been obtained for Channel 236C2 at Comfort. With this action, this proceeding is terminated.

DATES: Effective September 25, 1989; the window period for filing applications will open on September 26, 1989, and close on October 26, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–31, adopted July 20, 1989, and released August 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table FM of Allotments is amended under Texas, by adding Comfort, Channel 236C2.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–19128 Filed 8–15–89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 90690–9190]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce has determined that it is necessary to close a portion of the New England Area known as Georges Bank, defined as the fishing grounds east of 69° W. longitude, to fishing for surf clams. This area is closed for a period of 90 days from the effective date of this rule. This closure is implemented because of adverse environmental conditions that have resulted in high concentrations of paralytic shellfish poison (PSP) in surf clams from this area. These adverse environmental conditions preclude the harvest of healthful food products from this affected environment.

EFFECTIVE DATE: August 11, 1989 through November 9, 1989.

ADDRESSES: Copies of the environmental assessment may be obtained from John G. Terrill, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: John G. Terrill, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298, telephone 508–281–9252.

SUPPLEMENTARY INFORMATION: This emergency action is taken by the Secretary of Commerce (Secretary) in response to the discovery of high levels of PSP in surf clams (*Spisula solidissima*) from the Georges Bank Area. The Massachusetts Department of Public Health reported results from five PSP tests on surf clams taken from the Georges Shoals area of Georges Bank, a traditional surf clam fishing ground. The tests determined PSP levels of between 384 and 533 micrograms/100 grams (μg/100g), which are significantly in excess of the 80 μg/100g maximum safe level. Ingestion of PSP toxin is known to cause severe illness or death in humans. For this reason, the PSP levels reported indicate a severe adverse environmental condition that warrants immediate closure of the Georges Bank Area.

Section 652.23 of the Surf Clam and Ocean Quahog regulations established three areas closed to fishing because of environmental degradation and adverse environmental conditions. That section authorizes additional closures by notice from the Secretary after a public hearing is held to determine the effects of the closure.

The emergency nature of the adverse environmental condition now occurring in the Georges Bank Area renders a public hearing contrary to the public interest. Consequently the emergency action authority vested in the Secretary under section 305(e) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1855(e), is invoked to dispense with the public hearing requirement.

This closure will prohibit surf clam fishing in the Georges Bank Area for 90 days, beginning on August 11, 1989. An extension of the closure, if warranted, is possible for an additional 90 days under the Secretary's emergency rulemaking authority. The occurrence of PSP wanes in the winter months. Therefore, the period during which the area may be closed under the Secretary's emergency authority should provide protection until PSP returns to a safe level.

During any extension of this emergency closure, NMFS will hold a public hearing in accordance with 50 CFR 652.23. Following the public hearing, a notice to close the area pursuant to that section may be published in the **Federal Register**. Such notice would supplant this action.

Classification

The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) has determined that this action is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds that, due to the severe adverse environmental conditions that exist in the area, it is impracticable and contrary to the public interest to provide notice and opportunity for comment, or to delay for 30 days the effective date of this rule under section 553 (b) and (d) of the Administrative Procedure Act.

The Assistant Administrator has determined that this action does not directly affect the coastal zone of any State with an approved coastal zone management program.

This emergency rule is exempt from normal review procedures of Executive Order 12291 as provided in section (8)(a)(1) of that Order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator finds no potential negative impact on the surf clam resource in the Georges Bank Area as a result of this change. An environmental assessment is available at the address above (see **ADDRESSES**) that explains the projected effects of the rule and the impact on the human environment under the National Environmental Policy Act.

This action does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This emergency action is exempt from the procedures of the Regulatory Flexibility Act because it is being issued without opportunity for prior public comment.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 652

Fisheries.

Dated: August 11, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 652 is amended as follows:

PART 652—ATLANTIC SURF CLAM AND OCEAN QUAHOG FISHERIES

1. The authority citation for part 652 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 652.23, effective from August 11, 1989, through November 9, 1989. A new paragraph (a)(4) is added to read as follows:

§ 652.23 Closed areas.

(a) * * *

(4) *Georges Bank.* That portion of the New England area that is located east of 69° W. longitude is closed to fishing. This closure does not affect fishing for ocean quahogs.

* * * * *

[FR Doc. 89–19219 Filed 8–11–89; 12:30 pm]

BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 81132–9033]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of revision of the formula for determining mortality of Pacific halibut; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) announces revision to the formula for determining Pacific halibut mortality in the groundfish fishery in the Gulf of Alaska. The action is intended to carry out management objectives contained in the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Effective August 11, 1989. Comments are invited through August 28, 1989.

ADDRESS: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker, Fishery Management Biologist, 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

Section 672.20(f)(2)(i) specifies a framework procedure for setting prohibited species catch (PSC) limits for Pacific halibut. This procedure requires that the Secretary, after consultation with the North Pacific Fishery Management Council (Council), publish a notice in the **Federal Register** to establish PSC limits for Pacific halibut. For 1989, PSC limits were established by a notice published at 54 FR 6524 (February 13, 1989). The PSC limit for Pacific halibut was set at a level which would result in a mortality of no more than 2,000 metric tons (mt) of halibut. In determining this level, that notice announced certain theoretical assumptions to be used in the formula to calculate halibut mortality.

Halibut mortality was to be determined inseason by multiplying groundfish catches by assumed halibut mortality and halibut bycatch rates, all of which were published in the same notice. The Council recognized that the mix of initial groundfish apportionments would arithmetically result in a mortality in excess of the PSC limit of 2,000 mt if available groundfish total allowable catch (TAC) amounts were fully harvested. Rather than reduce groundfish TAC amounts, the Council recommended that the Regional Director manage the overall harvest to accomplish the Council's objective relative to the mortality goal for halibut. This procedure would allow the Secretary to more accurately determine the appropriate Pacific halibut bycatch and mortality amounts during the season based upon observed and reported harvesting activity.

Revision to Formula for Determining Pacific Halibut Bycatch and Mortality Amounts

The Secretary finds the assumptions published in the notice at 54 FR 6527 (February 13, 1989) are incorrect. These include gear shares of target species and the distribution of mid-water pollock catch between the Western and Central regulatory areas of the Gulf. The Secretary announces that the Regional Director will use a new formula for determining the mortality of Pacific halibut based on actual data rather than the assumptions announced in that notice. These data are derived from actual groundfish catches by gear and area as reported by DAP fishermen to the Alaska Department of Fish and Game and to NMFS each week. The revised formula, when applied to current groundfish catches, results in a halibut mortality estimate almost identical to that produced by the original formula. However, when expected annual total groundfish catches are considered, the revised formula produces a significantly lower estimate of halibut mortality than the amount predicted by the original formula.

Classification

This action is taken under § 672.22 and is in compliance with Executive Order 12291. Public comments on the necessity for and appropriateness of this action are invited for a period of 15 days.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 11, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–19252 Filed 8–11–89; 1:59 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 157
Wednesday, August 16, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

General Regulations; Soybean Oil and Protein

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final action and notice of withdrawal of proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) will offer soybean oil and protein testing as official criteria effective September 4, 1989. FGIS will use approved near-infrared spectroscopy (NIRS) equipment in performing these tests and report the results to the nearest tenth of a percent on a 13 percent moisture basis. Further, FGIS is withdrawing the proposal to amend the regulations to require the reporting of soybean oil and protein on official inspection certificates for grade effective September 2, 1991.

DATES: This withdrawal is effective September 4, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC, 20090–6454. Telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION:

Final Action

On February 23, 1989, FGIS proposed in the **Federal Register** (54 FR 7778) to offer soybean oil and protein testing as official criteria effective September 4, 1989. FGIS also proposed revising § 800.162(a) of the regulations to require the reporting of soybean oil and protein results on official soybean inspection certificates for grade effective September 2, 1991. Further, FGIS requested comments on the preferred constant moisture basis for reporting soybean oil and protein results.

FGIS received a total of 31 comments during the 60-day comment period. The comments were submitted from all segments of the soybean industry including processing firms, oilseed/grain handlers, producer and trade associations, foreign buyers, university professors and researchers, soybean producers, official inspection agencies, and a seed company.

On the basis of these comments and other available information, FGIS has decided to offer soybean oil and protein testing as official criteria effective September 4, 1989. FGIS will use approved NIRS equipment in performing these tests and will report the results to the nearest tenth of a percent on a 13 percent moisture basis.

Official Criteria Status

Twenty-six commentors were in favor of soybean oil and protein testing. Of those 26, 23 commentors specifically addressed the official criteria status and were in support of the FGIS proposal to offer soybean oil and protein testing as official criteria effective September 4, 1989. In addition, three other commentors favored soybean oil and protein testing in general. Only two commentors representing marketing and soybean processing interests were not in favor of this proposal. The opposition ranged from concern about the effect of soybean oil and protein testing on producers to concern about the accuracy of the NIRS equipment.

FGIS conducted a study to evaluate soybean oil and protein testing procedures under field conditions. The study results were shared with industry representatives at a public meeting held on May 10, 1989, in Kansas City, Missouri. Notice of that meeting was published in the **Federal Register** on April 25, 1989. The purpose of the meeting was to review with the industry and interested persons information concerning research data, proposed analytical procedures, NIRS calibration data and procedures, field test data, equipment type—evaluation data and the program and inspection procedures, if soybean oil and protein testing were adopted.

Based upon available information, including the comments received, FGIS has determined that including soybean oil and protein testing as official criteria under the United States Grain Standards Act (USGSA) will provide a simple, timely, repeatable and cost effective means of determining oil and protein content in soybeans. Expanding official criteria to include such testing will provide information concerning intrinsic properties which relate to user economics. Such information will be of benefit to the industry as a whole including soybean producers. Further, FGIS will continually monitor the soybean oil and protein testing program.

Accordingly, FGIS will expand official criteria under the USGSA to include soybean oil and protein testing, upon request, beginning September 4, 1989.

Moisture Basis

Twenty-three commentors suggested a moisture basis to be used in reporting soybean oil and protein results. Nineteen of the 23 commentors supported using a constant moisture basis for reporting oil and protein results. Opinions differed, however, as to what moisture level should serve as the constant. Nine supported a 13 percent constant level. Three would support any level from 12 to 13 percent, and four supported a "dry matter" basis. The four remaining commentors expressed preference for an "as is" moisture basis over a constant moisture basis for reporting oil and protein results.

Those in favor of using an "as is" reporting basis generally believe that the "as is" basis would better represent the value of the oil and protein within a specific lot of soybeans. Those in favor of using a constant moisture basis were of the view that the marketing of soybeans is dependent upon the market's ability to compare oil and protein results between soybean lots. Further more, reporting on a constant basis would also enable producers to more easily differentiate between two varieties with different chemical composition.

Oil an protein quantities of soybeans with different moisture contents cannot easily be compared when reported on an "as is" moisture basis. Soybean oil and protein content are inversely related to moisture content. Reporting oil and protein on a constant moisture basis will provide data which may be easily compared. A constant moisture basis will require adjusting the reported percentage of oil and protein when compared to an "as is" moisture basis. However, this adjustment is solely mathematical.

Noting the advantages and disadvantages of given moisture levels. FGIS requested comments in the February 23, 1989, proposal as to the preferred constant moisture basis (e.g. dry matter, 12 percent or 13 percent) to be used for reporting soybean oil and protein testing results. Concerning the dry matter basis, it noted that oil and protein percentages reported on a dry matter basis would be higher than other constant of "as is" moisture bases. However, excessively dry soybeans would have a potentially negative effect on storability by increasing the number of soybean splits. With respect to a 12 percent or 13 percent basis, it was noted that (1) reporting oil and protein on a moisture basis between 12–13 percent more closely reflects the actual oil/protein content of soybeans introduced into domestic and foreign markets; (2) the average moisture levels of soybeans marketed during the calendar years 1986 and 1987 in domestic and foreign markets was 12.55 percent and 12.75 percent, respectively; (3) reporting oil and protein on a 13 percent moisture basis might encourage producers to deliver soybeans with excessive moisture levels; and (4) a 12.5 percent moisture content is considered safe for long-term storage.

The majority of those supporting a constant moisture basis preferred a 13 percent level, because this level is the standard moisture level used in the current marketing of soybeans. That is, discounts generally are assesed for moisture levels above 13 percent to cover drying and weight loss costs. These discounts should address any excessive moisture level concerns. The commentors also believed that adopting 13 percent as the constant basis would minimize confusion within the market. One commentor who recommended 12 percent as the constant moisture level explained that such a level would more closely reflect the crop average and would encourage producers to deliver soybeans close to the average. However, the average moisture levels of soybeans marketed during the calendar years 1986, 1987, and 1988 were 12.55, 12.75, and 12.86 percent, respectively. Three of those that preferred the dry matter basis offered no explanation for their position. The fourth commentor in favor of dry matter stated, ". . . the dry matter basis may provide the preferable reporting basis since there would be no further downward adjustments in oil and protein results." However, in the proposal, the possible excessive drying of soybeans if a dry matter basis were adopted was raised.

Based upon all information available including the comments received, FGIS has determined that it will use a constant moisture basis when reporting soybean oil and protein results and that the 13 percent moisture basis will best serve the needs of the national inspection system and will minimize any confusion in the marketplace.

Additional Comments

Cleaned vs. Uncleaned Samples

Several commentors expressed concern as to whether oil and protein tests should be run before or after a sample is cleaned. Three commentors suggested that oil and protein tests be run on soybean samples after cleaning. Two other commentors, however, recommended that oil and protein tests be run on soybean samples before cleaning. The reasons given for testing an uncleaned sample were (1) that it would serve as an incentive for shippers to clean soybeans to achieve higher oil and protein results, and (2) that it would allow buyers to determine more closely how much protein and oil can be extracted from a given tonnage of soybeans.

The decision on whether to use a cleaned or uncleaned sample is governed by the testing methodology used. FGIS study results show that the varying percentage of foreign material found in soybean samples would make it virtually impossible to establish standard calibration equations for the NIRS equipment. As a result, this would create uncertainty as to the accuracy of oil and protein test results. Therefore, FGIS testing procedures as described in the FGIS instructions will require that the test samples be cleaned.

Reporting Increment

Five commentors expressed an opinion on the increments used to report soybean oil and protein results. Three individuals were in favor of reporting oil and protein results to the nearest tenth of a percent as long as the NIRS equipment is that accurate or market participants understand the inherent variability of soybean oil and protein testing. One commentor stated that, "The reporting increment used should be no tighter than the repeatability that the equipment and techniques will support." Another commentor suggested that results be reported to the nearest half of a percent.

Reporting results to the nearest half of a percent would introduce a larger rounding bias into the inspection system. Therefore, such a procedure could hamper the inspection system's ability to provide buyer and seller with precise information concerning protein and oil content in soybeans.

The soybean oil and protein results should be reported to the nearest tenth of a percent along with the standard error of performance (SEP). Existing data indicate that the SEP between NIRS measurements and the standard reference methods for soybean oil and protein is 0.5 and 0.6 percentage points, respectively. For example, an NIRS protein value of 40 percent will agree within 0.6 percentage points of the Kjeldahl value, two thirds of the time. The expected difference between NIRS measurements is approximately the same. When one NIRS oil or protein result is compared with another NIRS result, the values will agree within 0.6 percentage points, two thirds of the time. Therefore, an appeal inspection of a 40 percent original inspection result would theoretically test between 39.4 and 40.6 percent, two thirds of the time and between 38.8 and 41.2 percent, 95 percent of the time.

The industry has expressed concern in the past with reporting the SEP and average result due to the potential confusion caused by more than one result appearing on the certificate. Therefore, FGIS has determined that reporting oil and protein results to the nearest tenth of a percent is in the best interest of the inspection system.

FGIS will certify soybean oil and protein results to the nearest tenth of a percent. Further, FGIS will publish in its instructions that the SEP between NIRS measurements is 0.5 percentage points for oil and 0.6 percentage points for protein. The variation in results relates directly to inherent sampling variability, testing variability, and the distribution of the oil and protein within the soybean sample.

Shiplot Inspection Plan

Two commentors offered their views on whether soybean oil and protein should be included under the shiplot inspection plan. Both commentors suggests that FGIS collect soybean oil and protein data when the program begins before further action is taken. After data analysis, one commentor suggested that FGIS would then be able to establish soybean oil and protein parameters for inclusion within the shiplot inspection plan. The other commentor, however, was not in favor of including soybean oil and protein tolerances in the shiplot inspection plan and suggested that FIGS simply review the entire soybean oil and protein program in 1991.

FGIS will not establish inspection tolerances for soybean oil and protein

under the shiplot inspection plan at this time because of the need to develop standard deviations upon which are based breakpoints. Field test results are needed over a period of time to develop information concerning the formulation of standard deviations and breakpoints. Upon development of this information, FGIS will then consider including inspection tolerances for soybean oil and protein under the shiplot inspection plan. However, upon request, inspection personnel will test each sublot for the percentage of oil and protein and certificate the average of the sublot results for the shiplot. Limits on individual sublots will not be applied unless the contract specifies that no sublot shall fall below or exceed a given oil and/or protein value. In such cases, each sublot must meet the contract specification. Any sublot not meeting the specification would be considered a material portion under the plan.

Proposal Withdrawn

1991 Reporting Requirements

In the February 23, 1989, issue of the **Federal Register** (54 FR 7778), FGIS also proposed to amend § 800.162(a) of the regulations to require the reporting of soybean oil and protein on official soybean inspection certificates for grade effective September 2, 1991. Public comments were solicited on the proposal.

Nine commenters representing producer and trade associations, processing firms, and oilseed/grain handlers opposed the proposal. Those opposed to the proposal suggested that FGIS wait until further data was available on the actual field application of soybean oil and protein testing before deciding whether to require the reporting of soybean oil and protein results. In addition, another oilseed/grain handler suggested that mandatory oil and protein testing be deferred until that time when a thorough review indicates that such testing would be needed. Two additional commenters representing processing firms and oilseed/grain handlers did not address this specific issue. However, they did oppose all soybean oil and protein testing by FGIS.

A total of eight commenters were in favor of the proposal. The eight comments were from two producer associations, a foreign buyer, two State farm bureaus, and three individuals involved with soybean research at universities. Another foreign buyer was in favor of mandatory nongrade determining testing as long as FGIS gives a 1 year advance notice of when such testing would begin. Three additional commenters representing two foreign buyers and one domestic oilseed/grain handler merely referenced the issue without expressing an opinion.

The overall consensus of those in favor of the proposal was that the inspection system should use oil and protein content as a factor for assessing soybean quality. This would be accomplished by reporting the percentage of soybean oil and protein content on official inspection certificates for grade.

FGIS recognizes the importance of including tests for intrinsic properties in the official U.S. Grain Standards and/or as part of the national inspection system. However, the comments received reflect a disagreement within the industry as to whether and when to require oil and protecin content as factors on official certificates for grade. FGIS believes that providing soybean oil and protein content as official criteria under the USGSA will provide the industry, on a request basis, with information concerning intrinsic properties as would be required on official certificates for grade. Such information also will provide FGIS with additional data concerning soybean oil and protein testing for future evaluation.

Based upon all information including the comments received, FGIS has determined that the proposed amendment to require the reporting of soybean oil and protein on official inspection certificates for grade effective September 2, 1991, should be withdrawn. The withdrawal of this proposal, however, does not preclude FGIS from reproposing this action at a later date. Throughout the duration of the program that begins September 4, 1989, FGIS will monitor the number of requests for soybean oil and protein testing. At a later date, FGIS may resolicit public comments on the need for and feasibility of mandatory soybean oil and protein testing.

Accordingly, the proposal to amend § 800.162(a) of the regulations to require the reporting of soybean oil and protein on official soybean inspection certificates for grade effective September 2, 1991, is hereby withdrawn.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: August 4, 1989.

W. Kirk Miller,
Administrator.

[FR Doc. 89–19245 Filed 8–15–89; 8:45 am]
BILLING CODE 3410–EN–M

Agricultural Marketing Service

7 CFR Part 910

[FV–89–085]

Lemons Grown in California and Arizona

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of marketing policy.

SUMMARY: This notice sets forth a summary of the 1989–90 marketing policy for lemons grown in California and Arizona. The marketing policy was discussed and approved on July 11, 1989, by the Lemon Administrative Committee, which locally administers the marketing order regulating the handling of California-Arizona lemons. The marketing policy contains information on crop and market prospects for the 1989–90 season.

DATES: Written suggestions, views, or pertinent information relative to the marketing of the 1989–90 California-Arizona lemon crop will be considered if received by September 15, 1989.

ADDRESSES: Interested persons are invited to submit written statements in triplicate to: Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861. Growers and handlers of lemons may obtain a copy of the marketing policy directly from the Lemon Administrative Committee. Their office is located at 117 West Ninth Street, Room 905, Los Angeles, California 90015. Copies of the marketing policy are also available from Ms. Rodriguez.

SUPPLEMENTARY INFORMATION: The marketing order regulating the handling of lemons grown in California and Arizona (7 CFR part 910) is effective under the Agricultural Marketing Agreement Act of 1937 (the "Act," 7 U.S.C. 601–674), as amended. The order authorizes volume and size regulations applicable to fresh shipments of lemons to domestic markets including Canada. Regulation of export shipments of lemons and lemons utilized in the production of processed lemon products is not authorized under the order.

Pursuant to § 910.50 of the marketing order, the Committee is required to hold a marketing policy meeting each year, no later than August 15 of the fiscal year (or such later date as the Committee may establish with the approval of the Secretary). After the marketing policy meeting, the Committee must submit to the Secretary its marketing policy for the fiscal year, and the marketing policy will continue in force until revised or superseded by the adoption of a new marketing policy. The marketing policy must contain the following information: (a) The available supplies of lemons in each prorate district, including estimated quality and composition of size; (b) the estimated utilization of the crop, showing the quantity and percentages of the crop that will be marketed in domestic, export, and by-product channels, together with quantities otherwise to be disposed of; (c) a schedule of estimated weekly shipments to be recommended to the Secretary during the fiscal year; (d) the level and trend of consumer income; (e) estimated supplies of competitive citrus commodities; and (f) any other pertinent factors bearing on the marketing of lemons. In the event that it becomes advisable to substantially modify the marketing policy, the Committee is required to submit to the Secretary a revised marketing policy or a new marketing policy setting forth the information as required in this section.

Marketing policies for California-Arizona lemons are intended to apply to a 12-month period beginning on August 1 and ending on the following July 31. This 12-month period contains a full production cycle in all of the districts established under the order and serves to define an annual marketing season.

The Committee adopted its marketing policy for the 1989–90 fiscal year at its July 11, 1989, meeting. Industry representative were present at these meetings. The marketing policy is intended to inform the Secretary and persons in the industry of the Committee's evaluation of supply and demand factors expected during the upcoming marketing season. This information is essential to the review and evaluation of any Committee recommendations for the issuance of volume regulations. The Committee evaluates prospective market conditions and may make recommendations to the Secretary as to the quantity of lemons that can be shipped each week to domestic outlets during the season without disrupting markets. However, during the season, each weekly recommendation may vary from the schedule depending on prevailing market conditions. Under certain conditions, the Committee may also recommend modification or suspension of size regulations applicable to fresh domestic shipments.

In addition to providing the Secretary with information specified in the marketing order about crop and marketing conditions, the policy statement affords an opportunity for growers and handlers to gain a broad perspective of the industry as it relates to all districts and provides a view of the anticipated economic environment in which the total crop will be marketed.

The Committee identified several general considerations in forming its 1989–90 marketing policy. It indicated that a satisfactory supply-demand relationship is necessary for a satisfactory price structure for any product. However, the California-Arizona lemon industry, which produces more than 90 percent of the U.S. supply, is faced with unique problems and challenges that distinguish it from other perishable food industries. The Committee pointed out that, unlike other fruits, lemons are generally not consumed independently but are used for flavoring or decorative purposes. These characteristics contribute to a highly inelastic demand for fresh lemons.

The Committee also called attention to the seasonality of demand for fresh lemons which peaks when supplies are traditionally lowest. According to the Committee, the California-Arizona lemon industry expanded into different geographic areas with different climatic production patterns in order to offset this marketing paradox but has experienced a surplus production capacity in part as a result of this expansion. The Committee pointed out that the California-Arizona lemon industry has dealt with the overproduction problem by reducing acreage from a maximum or more than 90,000 acres 13 years ago to approximately 64,000 acres currently, and that such adjustments are an ongoing process. However, it is the Committee's contention that further acreage reduction is not a complete solution to the industry's supply problem. The Committee cites sharp weather-related variations in output in the past several years and states that use of the marketing order to stabilize supplies is vital to the survival of the current California-Arizona lemon industry.

In its 1989–90 marketing policy, the Committee projects the California-Arizona lemon crop at 39,324 cars (1,000 cartons per car with a net weight of 38 pounds per carton). This compares with an estimated total production of 41,759 cars in 1988–89 and 43,465 cars reported by the Committee for 1987–88.

The production area is divided into three districts. The Committee estimates that the production in District 1, Central California, will be 3,800 cars compared to the 4,989 cars produced last year. In District 2, Southern California, production is expected to be 25,455 cars compared to the 23,672 cars produced last year. In District 3, Arizona and the Desert area of California, the production estimate is 10,069 cars compared to the 13,098 cars produced in 1988–89.

The Committee estimates that 1989–90 shipments to domestic fresh market outlets, including Canada, may total 16,500 cars. This would be the same level of shipments that occurred during the 1988–89 season. The Committee estimates that 8,500 cars will be exported in 1989–90 compared to 8,200 cars in 1988–89. Processing and other disposition is forecast at 14,324 cars in 1989–90 compared to 16,000 cars in 1988–89.

In terms of total corp utilization, the Committee expects 42 percent of the 1989–90 crop to be accounted for in domestic fresh markets compared with 41 percent in 1988–89. Fresh exports are projected at 22 percent of total 1989–90 crop utilization compared with 19 percent in 1988–89. Processed and other uses would account for the residual 36 percent compared with 39 percent of the 1988–89 crop.

The Committee projects that the fruit sizes in the 1989–90 fiscal year will fall within normal ranges and that approximately 80 to 85 percent of the 1989–90 crop will average size 165 (2.13 inches in diameter) or larger. Current regulations limit domestic fresh market shipments of lemons to size 235 (1.82 inches in diameter) and larger in all three districts. The Committee estimates that less than 3 percent of the projected 1989–90 production will be smaller than this size and that the most efficient utilization of such small sized fruit is in product outlets.

The market for California-Arizona fresh lemons is influenced by the availability of substitute commodities. Fresh lemons face competition from lemon juice, lemonade, and a number of soft drink products in domestic markets. Moreover, the California-Arizona lemon crop is also in direct competition with Florida and foreign lemons. Florida shipments of lemons are estimated at 600 to 700 cars for 1989–90. These shipments are expected to be confined

to late July through October 1989. The potential for import competition is much greater both in quantity and seasonal availability. However, imports during the last five years have accounted for less than 4 percent of total domestic consumption.

Based on the most data available, the 1988–89 season-to-date average fresh equivalent on-tree parity price for California-Arizona lemons through June 1989 is $7.14 per carton, about 104 percent of the fresh equivalent on-tree parity price for the season through June. The projected season average parity price for the 1989–90 season is $7.73 per carton. The 1989–90 season average on-tree price for fresh lemons is not expected to exceed the estimated 1989–90 season average parity equivalent price.

In discussing the possible need for proprate regulation early in the season, the Committee indicated in its marketing policy that it intends to utilize the tentative shipping schedule only as a guideline in Committee deliberations and determinations. If actual volume recommendations are submitted to the Secretary during the upcoming season, these recommendations shall be based on current supply and demand conditions in order to achieve an orderly market.

Section 910.51(b) of the marketing order identifies factors which the Committee shall consider in recommending volume regulations. These factors are: (1) Quantity of lemons in storage; (2) lemons on hand in, and en route to, the principal markets; (3) trend in consumer income; (4) present and predicted weather conditions; (5) present and prospective prices of lemons; and (6) other relevant factors.

In order to provide an opportunity for public input, the Department will accept written views and information pertient to the marketing policy and the need for, or level of, regulation for the 1989–90 season. Comments are invited on the appropriate levels of fresh lemons which can be made available to the fresh domestic market for the 1989–90 season and the intraseasonal dispersion of shipments. Interested persons are also invited to comment on the possible regulatory and informational impact on small businesses of this marketing policy and any subsequent Committee recommendation for volume regulations.

Publication of this summary of the marketing policy is to provide information as to potential regulations. This action does not create any legal obligations or rights, either substantive or procedural.

Authority. Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: August 10, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–19147 Filed 8–15–89; 8:45 am]

BILLING CODE 3410–02–M

---

7 CFR Parts 931 and 932

[Docket No. FV–89–066 PR]

Expenses and Assessment Rate for Marketing Order Covering Fresh Bartlett Pears Grown in Oregon and Washington; Increase in Expenses for Marketing Order Covering Olives Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 931 for the 1989–90 fiscal period which began July 1. The proposal is needed for the Northwest Fresh Bartlett Pear Marketing Committee established under M.O. 931 to incur operating expenses during the 1989–90 fiscal period and to collect funds during that period to pay those expenses. This will facilitate program operations. The proposed rule would also authorize an increase in expenditures for the California Olive Committee established under Marketing Order No. 932 for the 1989 fiscal year. This increase is needed to cover increased production research costs. Funds to administer these programs are derived from assessments on handlers.

DATES: Comments must be received by August 28, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Marketing Order No. 931 [7 CFR Part 931] regulating the handling of fresh Bartlett pears grown in Oregon and Washington and Marketing Agreement and Marketing Order No. 932 [7 CFR Part 932] regulating the handling of olives grown in California. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximatley 72 handlers of fresh Bartlett pears and seven handlers of California olives regulated under their respective marketing orders, and approximately 1,390 olive producers in California and 1,900 Bartlett pear producers in Washington and Oregon. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers of Bartlett pears may be classified as small entities. Most, but not all, of the olive producers and none of the olive handlers may be classifed as small entities.

Each marketing order administered by the Department of Agriculture (Department) requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department for approval. The members of the administrative committees are handlers and producers of the regulated commodities. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas, and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing the anticipated expenses by the expected shipments of the commodity (i.e., pounds, tons, boxes, cartons, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Northwest Fresh Bartlett Pear Marketing Committee met July 10, 1989, and unanimously recommeded 1989–90 fiscal period expenditures of $81,386 and an assessment rate of $0.015 per standard box or equivalent of assessable pears shipped under M.O. 931. In comparison, 1988–89 fiscal period budgeted expenditures were $53,800 and the assessment rate was the same as recommended for the 1989–90 fiscal period. These expenditures are primarily for program administration. The increase in the budget from 1988–89 is due to a $7,980 increase in salaries and a $15,451 increase in contingencies for unexpected expenditures. Other budget categories were increased or decreased slightly.

Assessment income for the 1989–90 fiscal period is expected to total $38,758 based on the shipment of 2,583,855 packed boxes of pears at $0.015 per standard box or equivalent. Other available funds include a reserve of $40,628 carried into this fiscal period, and $2,000 in miscellaneous income, primarily from interest bearing accounts. The reserve is within the limits authorized under the marketing order.

A final rule establishing expenses in the amount of $1,883,290 for the California Olive Committee for the fiscal year ending December 31, 1989, was published in the **Federal Register** on February 6, 1989 [54 FR 5585]. That action also fixed an assessment rate of $25.39 per ton of assessable olives received by handlers under M.O. 932 during the 1989 fiscal year.

At a meeting held on July 11, 1989, the California Olive Committee voted unanimously to increase its budget of expenses from $1,883,290 to $1,902,322. The proposed $19,032 increase is needed to cover increased production research costs and the cost of printing and disseminating the results of a completed research project.

No change in the assessment rate was recommended by the olive committee. Adequate funds are available to cover the increase in expenses proposed by this action. While the expenses and assessment rate authorized under M.O. 931 and the increase in expenses authorized under M.O. 932 would impose some additional costs on Bartlett pear and olive handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operatioin of the marketing orders. Therefore, the Administrator of the AMS has determined that these actions would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because approval of the budget and assessment rate for the pear program and the budget increase for the olive program need to be expedited. The committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis.

List of Subjects

7 CFR Part 931

Marketing agreements and orders, Bartlett pears, Oregon, and Washington.

7 CFR Part 932

Marketing agreements and orders, olives, California.

For the reasons set forth in the preamble, it is proposed that a new § 931.224 be added and that § 931.223 be amended as follows:

1. The authority citation for 7 CFR Parts 931 and 932 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

2. New § 931.224 is added to read as follows:

§ 931.224 Expenses and assessment rate.

Expenses of $81,386 by the Northwest Fresh Bartlett Pear Marketing Committee are authorized, and an assessment rate of $0.015 per standard box or equivalent of assessable pears is established, for the fiscal period ending June 30, 1990. Unexpended funds from the 1989–90 fiscal period may be carried over as a reserve.

PART 932—OLIVES GROWN IN CALIFORNIA

§ 931.223 [Amended]

3. Section 932.223 is amended by changing "$1,883,290" to "$1,902,322".

Dated: August 11, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–19237 Filed 8–15–89; 8:45 am]

BILLING CODE 3410–02–M

---

7 CFR Part 945

[Docket No. FV–89–066]

Irish Potatoes Grown in Idaho and Eastern Oregon; Proposed Rule to Require Positive Lot Stamping on Containers of Lot-Inspected Potatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would require positive lot stamping on containers of lot-inspected potatoes. After inspection, if an entire lot is not immediately loaded on a truck or rail car but instead placed in a warehouse, it later becomes difficult to associate that lot, or a portion of it, with an inspection certificate. Lot stamping would positively identify the containers in each lot as having been inspected and certified, thus eliminating unnecessary reinspection and its cost.

DATES: Comments must be received by September 5, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, Telephone 202–447–2431.

SUPPLEMENTARY INFORMATION:

This rule is proposed under Marketing Agreement No. 98 and Marketing Order No. 945 [7 CFR Part 945], both as amended, regulating the handling of Irish potatoes grown in certain counties in Idaho and Malheur County, Oregon. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of Idaho-Eastern Oregon potatoes subject to regulation under the marketing order, and approximately 3,100 producers in the production area. The Small Business Administration [13 CFR 121.2] has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The great majority of the handlers and producers of Idaho and Eastern Oregon potatoes may be classified as small entities.

Fresh market shipments of potatotes grown in Idaho and Eastern Oregon are currently required to meet minimum quality and size standards, as well as pack specifications. They are also required to be inspected and certified as meeting those quality, size and pack standards by the Idaho or Oregon Federal-State Inspection Service.

This proposal would require that containers of lot-inspected potatoes be stamped with a Federal or Federal-State approved positive lot number. This action was unanimously recommended by the Idaho-Eastern Oregon Potato Committee (committee), which is responsible for local administration of the marketing order program, at its May 25, 1989, annual meeting.

Potatoes for shipment to fresh market outlets are inspected in one of two ways. One method, in-line inspection, calls for the inspector to be present while the potatoes are being graded, sorted and packed in the packinghouse. The inspector follows the flow of the product from the beginning, when the potatoes are dumped, to the end, when the bagged or boxed potatoes are palletized and loaded on trucks or rail cars. During this process, the inspector periodically removes samples to test for compliance with grade, size, and other handling requirements. Since the inspector is present when the potatoes are loaded for shipment, the inspection certificate issued reflects the specific rail car number of truck license number, thus providing a positive identification for each load.

The second method, lot inspection, is used for about 10 percent of fresh shipments. The lot inspection procedure was originally set up for weekends and periods of relatively low shipping volume. Under this procedure, the inspector may not be present at the time of packing or loading. He or she generally arrives at the packing shed after a lot has been packed; inspects and certifies that lot; and leaves prior to loading and shipment.

According to the committee, one problem with this system is that the certificates issued for lot-inspected potatoes are not associated with a trailer license or rail car number, since the inspector may not be present during loading. In the event of a rejection or other problem at receiving point, it is difficult to determine when or if the lot was inspected and the number of the applicable inspection certificates. Moreover, there is some movement of lot-inspected potatoes between shippers, who buy from each other when their own stocks are insufficient to complete an order.

Under the lot inspection procedure, once a lot or specified number of containers has been inspected, the lot typically remains in the packing facility or a nearby warehouse until shipment. Inspectors generally are not present to observe the loading process. Therefore, except for any identifying marks that may be written on the containers by the shipper's personnel, there is no way to identify the lot or associate it with a particular inspection certificate. As a result, when the potatoes are later shipped, with no evidence of inspection, they may be reinspected by the receiver. This results in unnecessary handling costs.

In addition to these problems, the lack of identifying marks on the containers in a lot occasionally results in more potatoes being shipped than were inspected. This is the result of loading personnel confusing one group of containers from an inspected lot with another from an uninspected lot.

The committee believes that these problems would be eliminated by the use of positive lot stamping. Under this procedure, the inspector would stamp the containers in the inspected lot with a number that positively identifies the lot and associates it with a particular inspection certificate. When lots or partial lots are shipped between handlers, the stamped or tagged sacks or cartons would serve as proof of inspection, removing any question about the necessity for reinspection.

Most of the shippers and growers at the committee meeting were small business representatives, and they unanimously agreed that this proposal would be of benefit to them by helping to prevent the previously described problems and reducing costs. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

The shipping season begins in early August. To be of maximum benefit to the industry, this regulation, if adopted, should cover as many shipments as possible during the season. Therefore, it is determined that a comment period of 20 days is appropriate.

List of Subjects in 7 CFR Part 945

Marketing agreements and orders, Potatoes, Idaho, Oregon.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 945 be amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR Part 945 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 945.341 is amended by adding a new paragraph (d)(5) to read as follows:

§ 945.341 Handling regulation.

* * * * *

(d) * * *

(5) Containers shall be marked with a Federal or Federal-State lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except those that are being loaded directly onto a carrier under the supervision of the Federal or Federal-State Inspection Service.

* * * * *

Dated: August 11, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–19239 Filed 8–15–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1120, 1124, 1126, 1131, 1132, 1134, 1135, 1137, 1138, 1139

[Docket Nos. AO–160–A65–R01, etc.; DA–89–020]

Milk in the Middle Atlantic and Certain Other Marketing Areas; Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Part	Marketing area	AO Nos.
1004	Middle Atlantic	AO–160–A65–RO1
1001	New England	AO–14–A62–RO1
1002	New York-New Jersey.	AO–71–A77–RO1
1005	Carolina	AO–388–A1–RO1
1006	Upper Florida	AO–356–A27
1007	Georgia	AO–366–A30
1011	Tennessee Valley	AO–251–A33
1012	Tampa Bay	AO–347–A30
1013	Southeastern Florida.	AO–286–A37
1030	Chicago Regional	AO–361–A26
1032	Southern Illinois-Eastern Missouri.	AO–313–A37
1033	Ohio Valley	AO–166–A56
1036	Eastern Ohio-Western Pennsylvania.	AO–179–A53
1040	Southern Michigan	AO–225–A40
1046	Louisville-Lexington-Evansville.	AO–123–A59
1049	Indiana	AO–319–A36
1050	Central Illinois	AO–355–A25
1064	Greater Kansas City.	AO–23–A58
1065	Nebraska-Western Iowa.	AO–86–A45
1068	Upper Midwest	AO–178–A42
1076	Eastern South Dakota.	AO–260–A28
1079	Iowa	AO–295–A39
1093	Alabama-West Florida.	AO–366–A8
1094	New Orleans-Mississippi.	AO–103–A50
1096	Greater Louisiana	AO–257–A37
1097	Memphis, Tennessee.	AO–219–A44
1098	Nashville, Tennessee.	AO–184–A53
1099	Paducah, Kentucky	AO–183–A43
1106	Southwest Plains	AO–210–A49
1108	Central Arkansas	AO–243–A40
1120	Lubbock-Plainview, Texas.	AO–328–A27
1124	Pacific Northwest	AO–368–A17
1126	Texas	AO–231–A57
1131	Central Arizona	AO–271–A27
1132	Texas Panhandle	AO–262–A37
1134	Western Colorado	AO–301–A20
1135	Southwestern Idaho-Eastern Oregon.	AO–380–A7
1137	Eastern Colorado	AO–326–A28
1138	Rio Grande Valley	AO–335–A24
1139	Great Basin	AO–309–A33

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals that would change the manner in which the Class II milk price is determined and announced in most Federal milk marketing orders. The hearing was requested by the Milk Industry Foundation and the International Ice Cream Association, which represent fluid milk processors and ice cream makers throughout the United States.

Currently, tentative Class II milk prices are established based on a formula provided in the orders. These prices are announced on the 15th day of each month as a tentative Class II price for the following month. Final Class II prices are determined and announced for the preceding month on the fifth day of the following month. For example, the tentative Class II prices for June were announced on May 15. The final Class II prices for June were announced on July 5. The final Class II price may not be less than the Minnesota-Wisconsin manufacturing grade milk price (M–W price) for the month (June in the example). Thus, the final Class II price may be higher than the tentative price.

The proposals included in this notice would provide a different procedure for determining the Class II prices such that once announced they would not change. However, the Class II prices would continue to be announced in advance. Under one proposal, the current formula for computing the tentative Class II prices would continue to be used. Under another proposal, an entirely new method of computing the Class II prices is proposed.

The proponents consider these proposed amendments to be necessary to eliminate uncertainty in the raw product cost and thus in pricing Class II products to their customers.

DATES: The hearing will convene at 9:30 a.m. local time on August 22, 1989.

ADDRESSES: The hearing will be held at the Ramada Hotel-Old Town, 901 N. Fairfax Street, Alexandria, Virginia, 22314, (703) 683–6000.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Ramada Hotel-Old Town, 901 N. Fairfax Street, Alexandria, Virginia, 22314, beginning at 9:30 a.m., on August 22, 1989, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

This hearing represents a reopening for the limited purposes stated herein of the public hearings previously held with respect to the orders regulating the handling of milk in the New England (Docket No. AO–14–A62), New York-New Jersey (Docket No. AO–71–A77) and Middle Atlantic (Docket No. AO–160–A65; DA–88–105) marketing areas. It also represents reopening for the limited purposes stated herein of a public hearing previously held with respect to a proposal to adopt a new order for the Carolina marketing area (Docket No. AO–388–A1; DA–88–123).

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Public Law 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purposes of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a

milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 21 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1120, 1124, 1126, 1131, 1132, 1134, 1135, 1137, 1138, 1139

Dairy products, Milk, Milk marketing orders.

The authority citation for 7 CFR Parts 1004, 1001, 1002, 1005 through 1040, 1046 through 1068, 1076 through 1099, and 1106 through 1139 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by the Milk Industry Foundation/International Ice Cream Association:

Proposal No. 1

For The Federal Milk Marketing Orders listed below, delete the first paragraph of § —.50(b) and all of § —.53, and substitute the following:

§ —.50(b) Class II price.

An advance Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The advance Class II price shall be the basic Class II formula computed pursuant to § —.51(a) for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section. The advance Class II price shall be the final Class II price except that: If the advance Class II price for the month is less than the Class III price, the difference in increments of 25 cents per hundredweight or less shall be added to the advance Class II price in subsequent months until the difference is made up. Any difference of 25 cents per hundredweight or less in one month shall be added to the next month's advance Class II price. These differences may be cumulative from month to month.

§ —.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month calculated pursuant to § —.50(b).

For ease of presentation, the marketing orders affected by this proposal have been grouped as follows:

Group A

1005 Carolina
1007 Georgia
1011 Tennessee Valley
1030 Chicago Regional
1032 Southern Illinois—Eastern Missouri
1033 Ohio Valley
1036 Eastern Ohio—Western Pennsylvania
1040 Southern Michigan
1046 Louisville—Lexington—Evansville
1049 Indiana
1050 Central Illinois
1064 Greater Kansas City
1065 Nebraska—Western Iowa
1068 Upper Midwest
1076 Eastern South Dakota
1079 Iowa
1093 Alabama—West Florida
1094 New Orleans—Mississippi
1096 Greater Louisiana
1097 Memphis, Tennessee
1098 Nashville, Tennessee
1099 Paducah, Kentucky
1106 Southwest Plains
1108 Central Arkansas
1120 Lubbock—Plainview, Texas
1126 Texas
1131 Central Arizona
1132 Texas Panhandle
1134 Western Colorado
1135 Southwestern Idaho—Eastern Oregon
1137 Eastern Colorado
1138 Rio Grande Valley
1139 Great Basin

Group B

1006 Upper Florida
1012 Tampa Bay
1013 Southeastern Florida

Group C

1124 Pacific Northwest

Group D [1]

1001 New England
1002 New York-New Jersey
1004 Middle Atlantic

With respect to the New England, New York-New Jersey and Middle Atlantic orders, the section numbers and paragraph numbers may be different than as indicated above. With respect to these three orders and a proposed new order for North Carolina and South Carolina, the evidence received with respect to proposals No. 1 and No. 2 will be limited to the question of whether any action that results from this hearing should also be applicable to the pricing provisions for an intermediate classification in each order, if an intermediate Class II ultimately is adopted based on evidence at the earlier hearings.

Proposed by The Milk Foundation of Indiana:

Proposal No. 2

For all the orders included in this notice, the Class II price for any month shall be the Minnesota-Wisconsin Series price for the second preceding month plus 10 cents (or 15 cents or 25 cents as the orders now provide), adjusted by the average of the difference in the previous three years between the Minnesota-Wisconsin Series price for the second preceding month and the current month. Such price would be announced on or before the fifth of the month for the following month.

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 3

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, of each of the aforesaid specified marketing areas, or from the Hearing Clerk, Room 1083, South Building, United States Department Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Offices of all the Market Administrators

[1] Inclusion of this group or orders was requested by Eastern Milk Producers Cooperatives Association.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on: August 10, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89.19238 Filed 8–15–89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 5 and 7

[Docket No. 89–11]

Rules, Policies, and Procedures for Corporate Activities; Payment of Dividends

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend two of its interpretive rulings in 12 CFR Part 7, and transform them into regulations as part of 12 CFR Part 5. The amendments are needed to revise and clarify certain OCC interpretations of statutes that principally govern the payment of dividends by national banks (12 U.S.C. 56 & 60). The intended effect is to make the calculation of national banks' dividend-paying capacity consistent with generally accepted accounting principles (GAAP). In this regard, the allowance for loan and lease losses will not be considered an element of either "undivided profits then on hand" or "net profits". Further, a national bank may be able to use a portion of its capital surplus account as "undivided profits then on hand," depending on the composition of that account. In addition, the proposed amendments would clarify that dividends on preferred stock are not subject to the limitations of 12 U.S.C. 56, while explicitly making such dividends subject to the constraints of 12 U.S.C. 60. The amendments do not diminish or impair a well-capitalized bank's ability to make cash payments to its shareholders in the form of a return of capital. Moreover, some banks may be able to take remedial measures to restore their ability to pay a dividend either by consummating a quasi-reorganization or issuing preferred stock not subject to the dividend limitation of 12 U.S.C. 56.

DATE: Comments must be received by October 16, 1989.

ADDRESS: Comments should be directed to: Communications Division, 5th Floor, 490 L'Enfant Plaza East, SW., Washington, DC 20219; Attention: Jacqueline England; Docket No. 89–11. Components will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Larry Senter, National Bank Examiner, Supervision Policy/Research Division, (202) 447–1164; Ronald Shimabukuro, Attorney, Legal Advisory Services Division, (202) 447–1880; or Doug Burr, Accounting Fellow, Bank Accounting Division, (202) 447–0471, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The OCC believes capital adequacy is critically important to the safety and soundness of national banks. A major contributor to a bank's capital is the quality of its earnings, and the amount of earnings that are retained and added to capital. Earnings that are paid out to stockholders in the form of cash dividends reduce the level of a bank's capital support. There are two sections of the National Bank Act that must be satisfied before a national bank can declare a dividend—12 U.S.C. 56 & 60.

While both place a limit on a bank's ability to pay a cash dividend, these two sections serve different functions. Section 56 is a capital impairment limitation and provides, in pertinent part, as follows:

> No association * * * shall, during the time it shall continue its banking operations, withdraw, or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. If losses have at any time been sustained by any such association, equal to or exceeding its undivided profits then on hand, no dividend shall be made; and no dividend shall ever be made by any association * * * to an amount greater than its net profits then on hand * * *.

In addition to the capital limitation, the National Bank Act contains an earnings limitation by providing, in § 60(b):

> The approval of the Comptroller of the Currency shall be required if the total of all dividends declared by such association in any calendar year shall exceed the total of its net profits of that year combined with its retained net profits of the preceding two years, less any required transfers to surplus * * *.

Thus, sections 56 and 60 set up a two-part test for determining the extent to which national banks may pay dividends. If a proposed dividend would violate the provisions of section 56, the constraints imposed by section 60 are irrelevant, because section 56 is an absolute bar to the payment of dividends that would exceed the bank's "net profits then on hand." If a bank has the requisite unimpaired capital under section 56, only then must it be concerned with the recent-earnings test of section 60. Furthermore, if a proposed dividend is payable under Section 56, but fails the test of section 60, the bank may still be allowed to pay the dividend, but only with "the approval of the Comptroller of the Currency."

The OCC has issued interpretive rulings dealing with both sections 56 and 60. Interpretative Ruling 7.6125 (12 CFR 7.6125) interprets the provisions of 12 U.S.C. 56, and focuses exclusively on so-called "statutory bad debt." (section 56 requires that a bank deduct "its lossess and bad debts" from its "net profits then on hand.") The statute gives some guidance as to what assets are to be considered bad debts, but I.R. 7.6125 provides much more explanation as to what constitutes, for example, a debt that is "well secured and in the process of collection." Interpretive Ruling 7.6100 (12 CFR 7.6100) is primarily a recitation of 12 U.S.C. 60; however, it also deals with portions of 12 U.S.C. 51b and 1828(b).

Both sections 56 and 60 were passed as part of the National Bank Act of 1864. In the time since it was enacted, section 56 has never been amended. Section 60 was amended in 1935 and again in 1959.[1] In addition to Interpretive Rulings 7.6100 and 7.6125, the OCC has issued a number of interpretations of sections 56 and 60 in the 125 years since they became law. These interpretations have been both formal and informal. Furthermore, not all of these interpretations have been consistent in their opinions.

Purpose

The purpose of this notice of proposed rulemaking ("NPRM") is to formalize the OCC's opinions in the area of the payment of dividends by national banks and to communicate these views to the national banking community. In addition to the need for consistent interpretation of the relevant statutory provisions, the OCC is amending Interpretive Rulings 7.6100 and 7.6125 to conform to GAAP. Furthermore, the OCC is transforming these interpretive rulings into regulations, the violation of which would be the basis for an enforcement action. Thus, these dividend regulations will be legally binding on both the agency and the industry. The new

[1] *See* Act of August 23, 1935, c. 614, 315, 49 Stat. 712; and Pub. L. 86–230, 21(a), 73 Stat. 465.

regulations will be contained in the corporate activities provisions of the OCC's exsiting regulations—12 CFR Part 5.

Issues

The issue of when a bank can legally pay a dividend, and the amount of that dividend, is complicated by an antiquated statutory scheme. Sections 56 and 60 were enacted long before the creation of today's accrual accounting system, with its allowance for loan and lease losses (ALLL). The terminology used in these statutes is not precise in the context of today's accounting principles. As a result, there is ambiguity and uncertainty concerning several accounting issues when applying these statutes to specific fact situations. Accordingly, the NPRM deals with the following issues:

1. What portion of a bank's "capital surplus" account should be available for the payment of dividends?
2. How should the ALLL be treated for purposes of calculating a national bank's dividend-paying capacity?
3. Should dividends on a bank's preferred stock be subject to the same limitations as dividends on its common stock?

With respect to payments of dividends to holders of common stock, these issues can be summarized in two questions: (a) For pruposes of section 56, what is included in "undivided profits then on hand"; and (b) for purposes of section 60, are provisions made to the ALLL part of "net profits"? For preferred stock dividends, one must initially determine whether section 56 and/or section 60 are applicable. To the extent either section is applicable, the issues outlined above must also be considered with respect to dividends on preferred stock.

I. Capital Surplus

A bank that sustains losses in excess of its undivided profits then on hand, and then returns to profitability, often begins to look for ways to legally pay dividends out of current earnings, notwithstanding a negative balance in its historical retained earnings account. If a bank's surplus fund were considered part of "undivided profits then on hand," [3] many of these banks could legally pay a dividend since their surplus funds would, in most cases, more than offset their negative retained earnings.[3]

Pursuant to 60(a), a national bank's "surplus fund (must) equal its common capital." Most banks have surplus in excess of the amount required by 60(a), because there was a time in the OCC's history when retained earnings (or undivided profits) did not qualify as capital for such things as computing the total amount a bank could lend to one borrower. A national bank, in order to increase its lending limit, had to transfer retained earnings to the surplus fund. The portion of the surplus fund in excess of what is required by 60(a) has become known as "surplus surplus."

The OCC has a number of options for dealing with the question of what part of the surplus fund qualifies as undivided profits. The two extremes are to interpret section 56 to say either none or all of the surplus fund is included in undivided profits. Because of section 60(a)'s required transfers to surplus, it is reasonable to conclude that, for purposes of section 56, "capital" includes not only common and preferred stock but also the portion of the surplus fund that is equal to common capital. Thus, it would seem an appropriate interpretation is somewhere between the two extremes. In this middle ground, there are at least two possibilities: (a) All surplus surplus is included in undivided profits; or (b) only the portion of surplus surplus that came from the earnings of prior periods qualifies as undivided profits.

The *Digest of Opinions of the OCC*, No. 6305 (1960 ed.) states, "[T]he following capital-structure accounts constitute a bank's profits which are legally available for the payment of dividends:

1. That portion, if any, of the surplus account which is in excess of the amount of the common capital account (; and)
2. The undivided-profits account."

This Opinion was not carried forward into the Comptroller's Manual for National Banks and has never been adopted as an interpretive ruling. Furthermore, Opinion No. 6305 has not been cited by the OCC in a public document for over 25 years. Nonetheless, it provides authority for saying that at least a portion of the surplus fund should be included in undivided profits when calculating dividend-paying capacity.[4]

Rather than following Opinion No. 6305 and saying that all of a bank's surplus surplus (even the portion that was paid in by shareholders or created through other means, *e.g.*, a stock dividend) is legally available for the payment of dividends, this NPRM adopts an approach whereby only earned surplus surplus qualifies as "undivided profits than on hand." This would prevent a bank from paying dividends out of its paid-in capital—something that would be a return of capital requiring OCC and shareholder approval under 12 U.S.C. 59. In addition, this NPRM proivdes that OCC approval must be obtained before a bank can "unbundle" its surplus surplus by transferring any portion back to undivided profits. Thus, before a bank can move a portion of its earned surplus to undivided profits through the process described in this NPRM, the bank must seek and obtain OCC approval of the transaction.

Accordingly, some banks may be able to eliminate their deficit or negative undivided profits by an approved transfer of earned "suprlus surplus" and, as a result, be repositioned to resume the payment of dividends out of current earnings. Moreover, a national bank that is profitable and well-capitalized, but is precluded from paying a dividend under section 56, may be able to pay cash to its common shareholders through a return of capital under 12 U.S.C. 59. However, this can only be done with the approval of both the OCC and two-thirds of the bank's shareholders. It should be noted that the OCC's approval is not likely to be forthcoming unless the bank has: adequate capital, high-quality earnings and future prospects that ensure its continued profitability. Other methods by which the bank's shareholders may be able to receive a return on their investment are through a quasi-reorganization or the use of preferred stock. OCC approval must be obtained before a bank can transfer unearned surplus to undivided profits—*e.g.*, through the process of a quasi-reorganization or other corporate restructuring.

II. The Allowance for Loan and Lease Losses

Determining the appropriate treatment for provisions made to the ALLL is pertinent to calculating dividend-paying capacity under both sections 56 and 60. For purposes of section 56, the question is: Should a bank be allowed to include its ALLL when calculating its undivided profits then on hand? Pursuant to section 60, a similar question exists: Wheat is the appropriate treatment for provisions to the ALLL when determining the amount of a bank's net profits?

A. 12 U.S.C. 56

As stated previously, Section 56 is a capital impairment test and is based on a bank's capital and retained earnings)—*i.e.*, a bank cannot pay a dividend if its capital is impaired or if the payment of the dividend would impair its capital. Under GAAP, provisions to the ALLL are charged against earnings and are not part of undivided profits; therefore, pursuant to GAAP, the ALLL is not available for the payment of dividends. Furthermore, including the ALL in undivided profits then on hand can produce some undesirable results—*e.g.*, a bank with a negative balance in undivided profits then on hand could legally pay a dividend.[5]

In addition, the ALLL is a contra-asset account reflecting the losses inherent (but unidentified) in the loan and lease portfolio. The OCC believes that provisions to the ALLL should be available when the losses are identified or actually realized and, therefore, should not be considered available for distribution to the bank's shareholders in the form of cash dividends. This NPRM prohibits national banks from adding the ALLL to its undivided profits then on hand when calculating the amount of dividends it can pay under 12 U.S.C. 56.

One potential concern with this interpretation arises from the requirement in section 56 that a bank deduct its "losses and bad debts" from its undivided profits then on hand. It is arguable that this "statutory bad debt" provision was Congress' proxy for the ALLL. At the time section 56 was enacted, the ALLL used under today's accounting principles did not exist. Further, banks did not always charge off losses which had been identified.

To ameliorate the effects of requiring banks to deduct their statutory bad debt from their undivided profits then on hand, without first allowing them to add their ALLL to undivided profits then on hand, the OCC is proposing to permit banks to net statutory bad debts against the ALLL. To the extent a bank has statutory bad debts in excess of its ALLL, the excess will be deducted from undivided profits then on hand. However, a bank with an ALLL greater than its statutory bad debts may not include this excess ALLL in its undivided profits then on hand.

B. 12 U.S.C. 60

The issue of whether the ALLL should be considered part of "net profits" is more complicated in the earnings test of section 60, since that section provides:

> For the purpose of this section the term "net profits" shall mean the remainder of all earnings from current operations plus actual recoveries on loans and investments and other assets, after decucting from the total thereof all current operating expenses, actual losses, accrued dividends on preferred stock, if any, and all Federal and State taxes.
> 12 U.S.C. 60(c).

Upon initial review, this definition would not seem to leave room for much interpretation. However, because it was written at a time when a majority of banks were on a cash basis of accounting, rather than an accrual basis, there was no mention of the ALLL.[6] The question then becomes: How should provisions, charge offs and recoveries recorded in a bank's ALLL be treated in determining its dividend-paying capacity under the earnings test of 12 U.S.C. 60? According to GAAP, provisions to the ALLL are charged against current earnings, as a current operating expense, and do not represent net income available to shareholders. Further, actual losses and recoveries do not directly affect the earnings of a bank, only its ALLL—*i.e.*, the ALLL is decreased when actual loan losses are incurred and increased when actual recoveries are made.

This NPRM interprets section 60 in a manner consistent with GAAP. Accordingly, loan loss provisions charged to earnings by a bank are not added back to earnings when computing "net profits". In addition, net charge offs—*i.e.*, actual losses minus actual recoveries—are not deducted from "net profits".

By adding provisions made to its ALLL back to net profits, a bank can significantly increse the amount of cash dividends it can legally pay to its shareholders without regulatory approval, something which may be considered an unsafe and unsound banking practice. The ALLL represents losses inherent in the loan and lease portfolio and, as such, the OCC believes provisions to it should not be considered as available to shareholders for cash dividends. This is not to say that a national bank is legally barred from paying dividends in excess of its retained net income for the year to date plus the prior two years. However, before a bank can pay such a dividend, the OCC should have the opportunity to review carefully the bank's financial condition and future prospects, and determine whether such a dividend is appropriate.

III. Preferred Stock

Since section 56 and 60 are not limited by their terms to common stock dividends, it is arguable that the limitations of those sections are also applicable to preferred stock dividends. However, 12 U.S.C. 51b provides, in relevant part:

> (a) Notwithstanding any other provision of law, whether relating to restriction upon the payment of dividends upon capital stock or otherwise, the holders of such preferred stock shall be entitled to receive such cumulative dividends * * * as may be provided in the articles of association with the approval of the Comptroller of the Currency * * *.
> (b) No dividends shall be declared or paid on common stock until the cumulative dividends on the preferred stock shall have been paid in full * * *.

Thus, the plain words of section 51b(a) indicate that cumulative dividends on preferred stock are not restricted by the terms of sections 56 and 60. Nonetheless, when the provisions of section 51b are read in the context of the overall statutory scheme they become ambiguous. Furthermore, it is the opinion of the OCC that the policies behind sections 51b, 56, and 60 dictate a result that is contrary to what might be suggested by a literal reading of 12 U.S.C. 51b(a).

Section 51b was contained in the Emergency Banking Act of 1933, which was intended to rehabilitate banks with impaired capital by authorizing them to issue preferred stock to the public or the Reconstruction Finance Corporation (RFC). (Before the passage of this Act, national banks could not issue preferred stock.) This provision was immediately amended in June of 1933, and the legislative history to this amendment provides some insight as to the intent of the drafters.

As originally enacted, section 51b read, in pertinent part, as follows:

---

[3] Although 12 U.S.C. 56 uses the terms "undivided profits then on hand" and "net profits then on hand" in the same sentence, the OCC has, for a number of years, considered them to be interchangeable. *See Digest of Opinions of the OCC*, No. 6305 (1960 ed.). There is no case law that defines or distinguishes these terms, and the legislative history to the National Bank Act provides no instruction as to their meaning. Furthermore, "net profits" as used in Section 60 has a different meaning from "net profits then on hand" as used in Section 56. Thus, in this NPRM, when discussing Section 56, the OCC will use the term "undivided profits then on hand."

[3] *See, e.g.*, OCC No Objection Letter No. 88-10, December 8, 1988, reprinted in *Fed. Banking L. Rep.* ¶ ——— (CCH 1989).

[4] *See also* Letter from Justin Watson to Robert Ellyson, January 29, 1987 (OCC does not actively encourage banks to retransfer excess surplus, but it is within the prudent judgment of the board of directors to do so).

[5] In such a situation, GAAP would not preclude a bank from paying out cash to its shareholders; however, the payment would be return of capital, not a dividend. For national banks, such a return of capital would require shareholder and OCC approval. *See* 12 U.S.C. 59.

[6] Section 60(c) was added in 1959 by Pub. L. 86-230; however, because most banks did not use the accrual method of accounting at that time, the legislative history does not shed any light on how the ALLL is to be treated. *See* 1959 U.S. Code Cong. and Adm. News, p. 2232.

The holders of such preferred stock shall be entitled to cumulative dividends at a rate not exceeding 6 per centum per annum * * *. Notwithstanding any other provision of law, the holders of such preferred stock shall have such voting rights, and such stock shall be subject to such retirement in such manner and on such terms and conditions, as may be provided in the articles of association with the approval of the Comptroller of the Currency.

Emergency Banking Act, March 9, 1933, ch. 1, Title III Section 302, 48 Stat. 5.

According to the RFC, this provision put it "in the position of either having to refuse assistance (to banks whose common stock was impaired), or having to take preferred stock * * * with no possibility of receiving." [7] Thus, at the behest of the RFC, the provisions of the Emergency Banking Act that dealt with preferred stock and its dividends were rearranged so that the payment of cumulative dividends was authorized "[n]otwithstanding any other provision of law."

A. 12 U.S.C. 56

In spite of the language of section 51b and its legislative history, some prior OCC opinions have argued that dividends on preferred stock cannot be made if the bank has sustained losses in excess of "its undivided profits then on hand." While some of these arguments are persuasive, the OCC now believes that the better interpretation is that preferred stock dividends are not subject to the limitations of 12 U.S.C. 56. According to the legislative history, the RFC was concerned that section 56 would prevent it from getting a return on its investment (of Government funds) in a bank that had current earnings, unless section 51b was amended specifically to override the limitations of section 56. In other words, the RFC had injected new funds into an otherwise insolvent institution and wanted to receive dividends out of the earnings that had been generated from its investment—something that may have been prohibited by section 56 prior to the June 1933 amendments to section 51b. Thus, the OCC does not believe that it would be correct to interpret section 56 as being applicable to cash dividends on preferred stock.

B. 12 U.S.C. 60

As mentioned previously, section 60 has been amended twice since it was enacted as part of the National Bank Act of 1864. It is the legislative history of these amendments, when read in conjunction with the legislative history of the June 1933 amendments to section 51b, that supports the OCC's conclusion that the recent-earnings limitation of 12 U.S.C. 60(b) applies to preferred stock dividends.

The legislative history of the 1959 amendments to section 60 is particularly important. Although preferred stock is not mentioned as being expressly covered by the provisions of the section, the amendments added the recent-earnings limitation for "(t)he purpose of * * * prevent(ing) excessive dividends to shareholders where such payments would result in the dissipation of needed capital funds * * *." [8] The clear Congressional intent of the 1959 amendments to section 60 is served by applying the recent-earnings test to preferred stock dividends.

Furthermore, this interpretation of section 60 is consistent with the policy and legislative history of section 51b. When section 51b was enacted, section 60 did not limit dividends based on a bank's recent earnings; thus, it is not surprising that the legislative history of section 51b does not mention the provision's effect on section 60. Additionally, it is reasonable to conclude that the RFC was seeking dividends only from current earnings, because it made statements to the effect that the March 1933 version of section 51b prevented the payment of dividends "even though current earnings are sufficient for such payment." S. Rep. No. 43 at 2.

The OCC invites public comment on all aspects of this NPRM, but specifically seeks responses to the following questions:

1. What portion of a bank's "capital surplus" account should be available for the payment of dividends?

2. How should the allowance for loan and lease losses be treated for purposes of calculating a national bank's dividend-paying capacity?

3. Should dividends on a bank's preferred stock be subject to the same limitations as dividends on its common stock?

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that these amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, a preliminary Regulatory Flexibility Analysis is not required.

Executive Order 12291

It is certified that this proposed rule does not constitute a "major rule" and, therefore, does not require the preparation of a preliminary regulatory impact analysis.

Paperwork Reduction Act

The collections of information contained in §§ 5.61 and 5.62 of this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)).

Comments concerning these collections of information should be directed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Treasury Desk Officer, with a copy to the Legislative and Regulatory Analysis Division, Office of the Comptroller of the Currency, Washington, DC 20219.

This information is required by the OCC to ensure the continued safety and soundness of national banks. This information will be used by the OCC to evaluate specific applications by national banks and to prevent potentially unsafe and unsound practices. The likely respondents are national banks, possibly including some small national banks.

Section 5.61(c)(4)(ii) Burden Information

This is a usual and customary recordkeeping practice affirmed by the regulation. The OCC has assigned one recordkeeping burden hour to this requirement only to show that it was reviewed by OMB.

Section 5.61(d)(3)(iii) Burden Information

[This is a new collection of information and is being added to existing OMB control number 1557–0155.)

The estimated number of respondents is 100 for the first year and 20 per year thereafter, with each respondent submitting one response per year.

The estimated annual burden per response will vary, based on the length of time the bank has been in operation and the number of transactions in its surplus account over those years. However, most of the material needed to prepare the request for approval will be available through usual and customary records. The OCC estimates that the average time required for a typical response will be 10 burden hours.

100 (year one)+20 (year two)+20 (year three) divided by 3 years=an estimated average of 47 respondents per year.

47 respondents×1 response=47 annual responses.

47 responses×10 burdens hours=470 estimated annual burden hours.

Section 5.62(e) Burden Information

[This collection of information was formerly contained in § 7.6100, approved by OMB under control number 1557–0155.)

The inclusion of preferred stock dividends has increased the original estimated 115 responses and 115 burden hours by an estimated 30 responses and 30 burden hours.

The total estimated number of respondents is 145 with one response per year.

The estimated annual burden per response may vary, depending on individual circumstances, however, since all of the material needed to prepare the request for approval of the Deputy Comptroller will be available through usual and customary records, the OCC estimates the average burden to prepare the letter request is approximately one hour.

145 responses×1 burden hour=145 estimated annual burden hours.

Total Burden

192(47+145) respondents×1 response=192 annual responses.

192 annual responses×3.2 burden hours per response=615 estimated annual reporting burden hours.

1 recordkeeper at 1 hour=1 annual recordkeeping burden hour attributable to § 5.61(d)(4)(iii).

List of Subjects in 12 CFR Parts 5 and 7

National banks, reporting and requirements, securities.

Authority and Issuance

For the reasons set forth in the preamble, parts 5 and 7 of chapter I of title 12 of the Code of Federal Regulations are proposed to be amended as set forth below:

PART 5— RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

1. The authority citation for Part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93(a).

2. Section 5.61 is added to read as follows:

§ 5.61 Payment of dividends; capital limitation.

(a) *Law.* 12 U.S.C. 56 provides:

No association, or any member thereof, shall, during the time it shall continue its banking operations, withdraw, or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. If losses have at any time been sustained by any such association, equal to or exceeding its undivided profits then on hand, no dividend shall be made; and no dividend shall ever be made by an association, while it continues its banking operations, to an amount greater than its net profits then on hand, deducting therefrom its losses and bad debts. All debts due to any association, on which interest is past due and unpaid for a period of six months, unless the same are well secured, and in the process of collection, shall be considered bad debts within the meaning of this section. But nothing in this section shall prevent the reduction of the capital stock of the association under section 59 of this title.

(b) *Rules of general applicability.* The rules of general applicability contained in subpart A of this part do not apply to applications under this section.

(c) *Statutory bad debt.* Pursuant to 12 U.S.C. 56, bad debts must be deducted from net profits then on hand in computing funds available for the payment of dividends on common stocks. Bad debts, as that term is used in the statute, means matured obligations due a national bank on which interest is past due and unpaid for six months unless the debts are well secured and in the process of collection. Every type of overdue indebtedness owing to the bank must be considered, including loans and investment securities. The six month period of default of interest may begin at any time, regardless of when the debt matures.

(1) *Matured debt.* Whether a debt has matured for purposes of the statute usually will be determined by applicable contract law. Generally, a debt is matured when all or part of the principal is due and payable as the result of demand, arrival of the stated maturity date, acceleration by contract or by operation of law. Nevertheless, any demand debt on which the payment of interest is six months past due will be considered matured even though payment of the debt has not been demanded. Installment loans on which any payment is six months past due will be considered matured even though acceleration of the total debt may not have occurred.

(2) *Well secured debt.* A debt is well secured within the meaning of the statute if it is secured by collateral in the form of liens on, or pledges of, real or personal property, including securities, having realizable value sufficient to discharge the debt in full, or by the guaranty of a financially responsible party. In the event that the loan is partially secured, only that portion not properly secured will be considered a statutory bad debt.

(3) *Debt in the process of collection.* A debt is in the process of collection if collection of the debt is proceeding in due course, either through legal action, including judgment enforcement procedures, or, in appropriate circumstances, through collection efforts not involving legal action which are reasonably expected to result in repayment of the debt or in its restoration to current status. In any case, the bank should have a plan of collection setting forth the reasons for the selected method of collection, the responsibilities of the bank and the borrower, and the expected date of repayment of the debt or its restoration to current status.

(4) *Miscellaneous.*—(i) *Debts of bankrupt or deceased debtors.* A claim duly filed against the estate of a bankrupt or deceased debtor is considered as being in the process of collection. The obligation will be considered well secured if it meets the criteria set forth in paragraph (b)(2) of this section; or the claim of the bank against the estate has been duly filed, the statutory period for filing has expired and the assets of the estate are adequate to discharge all obligations in full.

(ii) *Documentation.* The bank must maintain in its files documentation to support its evaluation of the security. In addition, the bank must retain, at a minimum, monthly progress reports on its collection efforts, noting and explaining any deviation from the collection plan.

(d) *Undivided profits.* For purposes of 12 U.S.C. 56, the terms "undivided profits then on hand" and "net profits then on hand" shall be considered to have the same meaning, and shall be referred to herein as undivided profits then on hand.

(1) *Allowance for loan and lease losses.* When calculating the amount of dividends a bank can legally pay under 12 U.S.C. 56, the bank is not permitted to add the balance in its allowance for loan and lease losses account to its undivided profits then on hand.

(2) *Statutory bad debt.* When deducting its statutory bad debt from its undivided profits then on hand, a bank is allowed first to net the sum of its statutory bad debts against the balance in its allowance for loan and lease losses account. If the sum of a bank's statutory bad debts is greater than its allowance for loan and lease losses, the excess statutory bad debt is then to be deducted from the bank's undivided profits then on hand.

[7] S. Rep. No. 43, 73rd Cong., 1st Sess. 1–3 (1933).

[8] 105 Cong. Rec. 15396, August 24, 1959 (statements of Representative Brown of Georgia).

(3) *Surplus surplus.* Pursuant to the provisions of 12 U.S.C. 60(a), a national bank's surplus fund must equal its common capital. To the extent a bank has capital surplus in excess of what is required by section 60(a), this amount, commonly known as "surplus surplus", shall be considered undivided profits then on hand and available for the payment of dividends, provided the following conditions are met:

(i) The bank can demonstrate that the surplus surplus came from the earnings of prior periods, excluding the effect of any stock dividend;

(ii) The bank's board of directors must approve the transfer of the funds from capital surplus to undivided profits then on hand; and

(iii) The bank must request and receive the approval of the OCC before transferring funds from capital surplus to undivided profits then on hand. Requests for the OCC's approval should be submitted to the appropriate District Deputy Comptroller or the Deputy Comptroller for Multinational Banking.

(e) *Preferred stock.* The provisions of 12 U.S.C. 56 are not applicable to dividends on preferred stock.

(Approved by the Office of Management and Budget under control number 1557-0155)

3. Section 5.62 is added to read as follows:

§ 5.62 Payment of dividends; earnings limitation.

(a) *Law.* 12 U.S.C. 60 provides:

(A) The directors of any national banking association may, quarterly, semiannually or annually, declare a dividend of so much of the net profits of the association as they shall judge expedient, except that until the surplus fund of such association shall equal its common capital, no dividends shall be declared unless there has been carried to the surplus fund not less than one-tenth part of the association's net profits of the preceding half year in the case of quarterly or semiannual dividends, or not less than one-tenth part of its net profits of the preceding two consecutive half-year periods in the case of annual dividends: *Provided,* That for the purposes of this section, any amounts paid into a fund for the retirement of any preferred stock of any such association out of its net profits for such period or periods shall be deemed to be additions to its surplus if, upon the retirement of such preferred stock, the amounts so paid into such retirement fund may then be properly carried to surplus. In any such case the association shall be obligated to transfer to surplus the amounts so paid into such retirement fund on account of the preferred stock as such stock is retired.

(b) The approval of the Comptroller of the Currency shall be required if the total of all dividends declared by such association in any calendar year shall exceed the total of its net profits of that year combined with its retained net profits of the preceding two years, less any required transfers to surplus or a fund for the retirement of any preferred stock.

(c) For the purpose of this section the term "net profits" shall mean the remainder of all earnings from current operations plus actual recoveries on loans and investments and other assets, after deducting from the total thereof all current operating expenses, actual losses, accrued dividends on preferred stock, if any, and all Federal and State taxes.

(b) *Rules of general applicability.* The rules of general applicability contained in subpart A of this part do not apply to applications under this section.

(c) *Allowance for loan and lease losses.* When computing its "net profits" for purposes of 12 U.S.C. 60, a national bank must use generally accepted accounting principles, and may not add back provisions made to its allowance for loan and lease losses. Furthermore, a national bank should not deduct net charge offs from its earnings for purposes of computing net profits.

(d) *Preferred stock.* The recent-earnings limitations set forth in 12 U.S.C. 60 are applicable to dividends on preferred stock.

(e) *Approval of dividends.* A bank must request and receive the approval of the OCC before declaring a dividend if the amount of all dividends (common and preferred), including the proposed dividend, declared by the bank in any calendar year exceeds the total of the bank's net profits of that year to date combined with its retained net profits of the preceding two years, less any required transfers to surplus or a fund for the retirement of any preferred stock. Requests for the OCC's approval should be submitted to the appropriate District Deputy Comptroller or the Deputy Comptroller for Multinational Banking.

(Approved by the Office of Management and Budget under control number 1557-0155)

PART 7—INTERPRETIVE RULINGS

4. The authority citation for Part 7 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*

§ 7.6100 [Removed]

5. Section 7.6100 is removed.

§ 7.6125 [Removed]

6. Section 7.6125 is removed.

Dated: August 11, 1989.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 89-19208 Filed 8-15-89; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 328

RIN 3064-AA95

Advertisement of Membership

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The FDIC has issued a final rule amending its regulation regarding advertisement of membership in order to comply with the requirements of section 221 of the Financial Institutions Reform, Recovery and Enforcement Act ("FIRRE") of 1989. The final rule is published elsewhere in this issue. The final rule was issued to satisfy the mandate of section 221 which requires the FDIC to prescribe initial regulations under that section of the date of enactment of FIRRE. Because the FDIC acted under a statutory deadline, the final rule established only those requirements that were considered to be the minimum necessary to comply with FIRRE.

The FDIC is considering additional amendments to its regulation regarding advertisement of membership. More specifically, the FDIC is considering requiring each insured savings association to display a statement in its advertisements to the effect that its deposits are federally insured. In the alternative, the FDIC is considering eliminating its current regulation which requires an insured bank to display an official advertising statement in its advertisement. Comment is invited on the extension or the elimination of this requirement. In addition, comment is invited on the need for regulations implementing section 222 of FIRRE. Section 222 of FIRRE provides that any savings association, the deposits of which are not insured by the FDIC, shall disclose clearly and conspicuously in periodic statements of account and in all advertising that the savings association's deposits are not federally insured.

DATES: Comments must be submitted on or before October 16, 1989.

ADDRESS: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to Room 6108 on business days between 8:30 a.m. and 5:00 p.m. Comments may also be inspected in Room 6108 between 8:30 a.m. and 5:00 p.m. on busines days. (Fax number: (202) 347-2773 or 2775.)

FOR FURTHER INFORMATION CONTACT: Valerie Jean Best, Attorney, Legal Division, (202) 898-3812, FDIC, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

Section 221 of FIRRE amends section 18(a) of the Federal Deposit Insurance Act (12 U.S.C. 1828(a)). Section 221 requires each insured savings association to display at each place of business maintained by the association a prescribed sign notifying the public of deposit insurance coverage ("savings association sign"). FIRRE provides that, not later than 30 days after the date of enactment of FIRRE, each insured bank shall display at each place of business maintained by such bank a sign notifying the public of deposit insurance coverage. Insured banks have the option of displaying the official sign ("bank sign") required by FDIC regulation in effect on January 1, 1989, or the savings association.

The FDIC is required to prescribe regulations to carry out the purposes of section 221 of FIRRE, including regulations governing the manner of display or use of such signs. Accordingly, the FDIC has issued a final rule published elsewhere in this issue prescribing the sign insured savings associations must display and the locations where the sign must be displayed. The final rule provides that insured banks must display the official bank sign or the official savings association sign prescribed for savings associations. Insured savings associations are not permitted to display the bank sign.

Official Advertising Statement

Prior to the enactment of FIRRE, section 18 of the Federal Deposit Insurance Act specifically required an insured bank to include in advertisements a statement to the effect that its deposits were insured by the FDIC. FIRRE does not retain this specific requirement. It appears the FDIC has the authority to retain its regulation requiring insured banks to include the currently prescribed statement in advertisements and to extend similar requirements to insured saving associations. Since section 18 of the Federal Deposit Insurance Act as amended by FIRRE no longer mandates a statement of insurance coverage in advertisements, however, the FDIC believes it is appropriate at this time to review the benefits and costs of such a requirement. The FDIC therefore invites comments on the benefits of requiring insured savings associations to display a notice of deposit insurance coverage in advertisements as insured banks are currently required to do by regulation or, in the alternative, eliminating the current requirement for insured banks.

Advertisement of Uninsured Savings Associations

Section 222 of FIRRE adds a new section 28 to the Federal Deposit Insurance Act. Subsection (h) of section 28 provides that any savings association the deposits of which are not insured under the Federal Deposit Insurance Act shall disclose clearly and conspicuously in periodic statements of account and in all advertising that the savings association's deposits are not federally insured. Since the FDIC is considering the merits of an official advertising statement of deposit insurance for insured depository institutions, it is appropriate to consider the need for regulations implementing subsection 28(h). Comment is therefore solicited on the need for, and the proper scope of, regulations implementing subsection 28(h).

(12 U.S.C. 1819; 12 U.S.C. 1828(a); sec. 222 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989)

By order of the Board of Directors.

Dated at Washington, DC, this ninth day of August, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-19221 Filed 8-15-89; 8:45 am]

BILLING CODE 6714-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3629-6]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA proposes to approve a submission by the State of Wisconsin as a revision to the Wisconsin State Implementation Plan (SIP) for ozone. The existing rule applies reasonably available control technology (RACT) requirements to both conveyorized vapor degreasers and conveyorized non-vapor degreasers. This submission would redefine the RACT requirements for conveyorized non-vapor degreasers.

USEPA today is proposing to approve this SIP revision because the State has demonstrated that the existing requirements impose emission control requirements for conveyorized non-vapor degreasers which are unreasonable and the revised requirements assure a RACT level of control.

DATE: Comments on this revision and on the proposed USEPA action must be received by September 15, 1989.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886-6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26) Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR-26) Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 1988, the Wisconsin Department of Natural Resources (WDNR) submitted a revision to redefine the RACT requirements for Wisconsin Sections Natural Resources (NR) 423.02(04); 423.03 (1), (2)(a), (2)(a)2., (2)(e), (5), and (5)(e). These have been revised to distinguish between vapor and non-vapor conveyorized degreasers. The State created new Sections NR 423.02(3m), 423.03 (2)(f) and (6) to define conveyorized non-vapor degreasers, to specify the applicability of the control requirements, and to establish control requirements and a compliance schedule for conveyorized non-vapor degreasers.

Description of the Rules and USEPA's Evaluation

Sections NR 423.02(4), 423.03(1), 423.03(2)(a), 423.03(2)(a)2., 423.03(2)(e), 423.03(5), 423.03(5)(e), and 423.02(3m)

These sections do not constitute substantive changes to Wisconsin's ozone SIP. The purpose of these sections is to distinguish between non-vapor and

BEST COPY AVAILABLE

vapor conveyorized degreasers and to establish appropriate requirements for these two types of degreasers. Therefore, USEPA is proposing these sections for approval.

Section NR 423.03(2)(f)

This section states that the requirements of subparagraph (6)(a)2., do not apply to: (1) conveyorized non-vapor degreasers with a horizontal solvent-air interface smaller than 2.0 square meters (21.6 square feet), where such an interface exists, or (2) conveyorized non-vapor degreasers which are located outside the Counties of Brown, Calumet, Dane, Dodge, Fond du Lac, Jefferson, Kenosha, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Rock, Sheboygan, Walworth, Washington, and Winnebago. Subparagraph (6)(a)2. otherwise requires 95 percent control of volatile organic compounds (VOC) emissions for these sources.

The exemption for degreasers with a solvent-air interface less than 2.0 square meters (21.6 square feet) is consistent with the control techniques guidelines (CTG) for this source category and represents RACT. Therefore, the first basis for exemption is proposed for approval.

In addition, USEPA currently does not require RACT controls in attainment areas. All the counties exempted from the rule under the second basis are designated attainment for ozone. 40 CFR 81.350. As part of an accommodative ozone SIP,[1] Wisconsin has adopted RACT regulations for major sources in its ozone attainment areas. Presently, two conveyorized non-vapor degreasers are located in the exempt counties.[2] Both of these sources are minor VOC sources, i.e., sources which emit less than 100 tons of VOC per year. Therefore, the second exemption is proposed for approval because it applies only to attainment counties that do not include any major sources of conveyorized non-vapor degreasers.

[1] An accommodative ozone SIP for areas classified as attainment/unclassifiable requires RACT-level controls on existing sources, in lieu of requiring new major sources of VOCs to do preconstruction monitoring. This monitoring would normally be required on new major sources in attainment/unclassifiable areas under USEPA's Prevention of Significant Deterioration (PSD) regulations. The rationale behind this trade off is that the "extra" emission reductions obtained from these additional RACT controls would accommodate new source growth in these attainment/unclassifiable areas.

[2] The two sources are Northern Engraving Corporation located in Monroe County and Metallica, Inc., located in LaCrosse County. Both Monroe and LaCrosse Counties are designated attainment for ozone. 40 CFR 81.350.

Sections NR 423.03(6)(a)1. and 37

These sections contain the control requirements that are consistent with those previously approved for conveyorized vapor degreasers. USEPA is proposing these sections for approval.

Section NR 423.03(6)(a)2

This section states that the owner or operator of a conveyorized non-vapor degreaser shall install and operate a carbon adsorption system demonstrated to have at least a 95 percent control efficiency, or a system demonstrated to have an equivalent control efficiency that is approved by the WDNR.

The 95 percent control efficiency requirement is sufficiently high to be considered RACT. USEPA is proposing this section for approval.

Section NR 423.03(6)(b)

This section contains a compliance schedule that requires final compliance with the requirements of Section NR 423.30(6)(a)2. by May 1, 1988. The final compliance date is 3 months from the effective date of the rule and is expeditious. Therefore, USEPA is proposing this section for approval.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

Date: August 23, 1988.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 89–19223 Filed 8–15–89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 180 and 185

[PP 9E3747 and FAP 9H5580/P486; FRL–3630–3]

Pesticide Tolerances for Cyfluthrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for residues of the insecticide cyfluthrin in or on the raw agricultural commodity fresh hops and the food commodity dried hops. The proposed regulations to establish a maximum permissible level for residues of the insecticide was requested pursuant to petitions by Mobay Corp., Agricultural Chemicals Division.

DATE: Comments, identified by the document control number [PP 9E3747 and FAP 9H5580/P486], must be received on or before September 15, 1989.

ADDRESS: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (TS–757C), Office of Pesticide Programs.

In person, bring comments to: Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 15, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2400.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of May 19, 1989 (54 FR 21663), which announced that Mobay Corp., Agricultural Chemicals Division, P.O. Box 9413, Kansas City, MO 64120–0013, had submitted pesticide petition (PP) 9E3747 proposing to establish a tolerance for the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate) in or on the raw agricultural commodity (RAC) fresh hops imported from Germany at 4.0 parts per million (ppm) and food additive petition (FAP) 9H5580 proposing to amend 40 CFR 185.1250 by establishing a tolerance for cyfluthrin in or on dried hops at 20.0 ppm.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances include a 12-month oral toxicity study on dogs with a no-observed-effect level (NOEL) of 4.0 mg/kg/day; 24-month rat and mouse chronic feeding studies with systemic NOEL's of 2.5 mg/kg/day in the rat and 7.5 mg/kg/day in the mouse with no oncogenic effects observed under the conditions of the studies at dose levels up to and including 22.5 and 120 mg/kg/day, the highest dose levels tested for rats and mice, respectively. No teratogenic effects were observed in rats at dose levels up to and including 30 mg/kg/day, or in rabbits at levels up to and including 45 mg/kg/day (the highest dose levels tested). The following genotoxicity tests were negative: a gene mutation assay (CHO/HGPRT), a sister chromatic exchange assay, and an unscheduled DNA synthesis assay.

The acceptable daily intake (ADI), based on a NOEL of 2.5 mg/kg body weight/day from a 2-year rat feeding study and a safety factor of 100, is 0.025 mg/kg body weight/day.

Establishment of these tolerances based on the Tolerance Assessment System analysis, which estimated the average U.S. population dietary exposure, will result in a theoretical maximum residue contribution (TMRC) from the proposed tolerances of 0.000075 mg/kg body weight/day; this is equivalent to about 0.3 percent of the ADI. The total TMRC for published tolerances plus this on hops would be 0.001095 mg/kg/day, or 4.4% of the ADI.

Meat and milk tolerances are currently established at 0.05 ppm and 0.10 ppm, respectively. Although spent hops are a cattle feed, no increases in the current tolerances are necessary. Thus, the established meat and milk tolerances for cyfluthrin are adequate for this use. Hops are not a poultry feed item; therefore, secondary residues in eggs and poultry are not likely to occur from this use.

There are no regulatory actions pending against registration of the insecticide, nor are there any other relevant considerations involved in establishing the proposed tolerances. The metabolism of cyfluthrin in plants and animals is adequately understood for this use, and an adequate analytical method, gas liquid chromatography with an electron capture detector, is available for enforcement purposes.

Prior to publication in the *Pesticide Analytical Manual*, Vol. II, the enforcement methodology is being made available in the interim; to anyone who is interested in pesticide enforcement when requested from: By mail: Calvin Furlow, Public Information Branch (H–7506C), Field Operations Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 242, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–4432.

Based on the above information and data considered, the Agency concludes that the tolerances are useful for the purposes for which they are sought and they will protect the public health. Therefore, the tolerances are established as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 9E3747 and FAP 9H5580/P486]. All written comments filed in response to this document will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 185

Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Recording and recordkeeping requirements.

Dated: August 2, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, it is proposed that Chapter I of Title 40 of the Code of Federal Regulations be amended as follows:

PART 180—[AMENDED]

1. In Part :180:

a. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.436 in the table therein by adding and alphabetically inserting the commodity hops, fresh, to read as follows:

§ 180.435 Cyfluthrin, tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Hops, fresh	4.0
* * * * *	

PART 185—[AMENDED]

2. In Part 185:

a. The authority citation for Part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 185.1250, by adding new paragraph (d), to read as follows:

§ 185.1250 Cyfluthrin.

* * * * *

(d) A tolerance of 20.0 parts per million is established for residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate) in or on dried hops resulting from application of the insecticide to hops.

[FR Doc. 89–19225 Filed 8–15–89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–345, RM–6849]

Radio Broadcasting Services; Barstow, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Hub Broadcasting, Inc., permittee of Station KXXZ(FM), Channel 240A, Barstow, Calfiornia, seeking the substitution of FM Channel 240B1 for channel 204A and modification of its permit accordingly, to provide that community with its first wide coverage area FM service. Coordinates for this proposal are 34–58–15 and 117–02–21.

DATES: Comments must be filed on or before October 2, 1989, and reply comments on or before October 17, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Ann K. Ford and Scott R. Flick, Esqs., Fisher, Wayland, Cooper and Leader, 1255–23d St., NW., Suite 800, Wash., DC 20037–1125.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–345, adopted July 18, 1989, and released August 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–19130 Filed 8–15–89; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 89–347, RM–6721]

Radio Broadcasting Services; Illinois City, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Martin F. Beckey, proposing the allotment of Chanel 223A to Illinois City, Illinois, as that community's first local FM service. The coordinates for the proposed allotment are North Latitude 41–21–49 and West Longitude 90–51–39.

DATES: Comments must be filed on or before October 2, 1989, and reply comments on or before October 17, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In additional to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Martin F. Beckey, P.O. Box 269, Muscatine, IA 52761 (petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–347, adopted July 20, 1989, and released August 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–19131 Filed 8–15–89; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 89–346, RM–6742]

Radio Broadcasting Services; Gold Beach, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by St. Marie Communications, Inc. seeking the substitution of Channel 224C1 for Channel 224A at Gold Beach, Oregon, and the modification of its license for Station KGBR(FM) to specify the higher powered channel. Channel 224C1 can be allotted to Gold Beach in compliance with the Commission's minimum distance separation requirements and can be used at the station's present transmitter site. The coordinates for this allotment are North Latitude 42–23–50 and West Longitude 124–21–50. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of the channel at Gold Beach or require the petitioner to demonstrate the availability of an additional equivalent class channel prior to modifying petitioner's license, should Channel 224C1 ultimately be allotted to Gold Beach.

DATES: Comments must be filed on or before October 2, 1989, and reply comments on or before October 17, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lester W. Spillane, Esq., 1040 Main Street, P.O. Box 670, Napa, California 94559 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–346, adopted July 20, 1989, and released August 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–19132 Filed 8–15–89; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[Docket No. 89–348, RM–6717]

Radio Broadcasting Services; Mirando City, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Alderete Communications, permittee of Station KZZQ(FM), Channel 265A, Mirando City, Texas, proposing the substitution of Channel 263C2 for Channel 265A at Mirando City, and modification of its construction permit to specify operation on the higher class channel. The proposal could provide the community with its first wide coverage area FM service. A site restriction 21.2 kilometers (13.2 miles) southwest of the city has been specified by the permittee. The coordinates are 27–21–35 and 99–11–46. The proposal also requires concurrence of the Mexican government since the community is located within 320 kilometers of the U.S.-Mexican border.

DATES: Comments must be filed on or before October 2, 1989, and reply comments on or before October 17, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James M. Weitzman, Esquire, Kaye Scholer, Fierman, Hays & Handler, The McPherson Building, 901 Fifteenth Street, NW., Suite 1100, Washington, DC 20005 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–348 adopted July 20, 1989, and released August 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which invoilve channel allotments. See 27 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–19133 Filed 8–15–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AA24

Migratory Bird Hunting; Proposed Frameworks for Late Season Migratory Bird Hunting Regulation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter the Service) is proposing to establish the 1989–90 late-season hunting regulations for certain migratory game birds. The Service prescribes frameworks or outer limits for dates and times when hunting may occur and the number of birds that may be taken and possessed in late seasons. These frameworks are necessary to allow State selections of final seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

DATES: The comment period for late-season proposals will close on August 28, 1989.

ADDRESSES: Comments should be mailed to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634–Arlington Square, Washington, DC 20240. Comments received on this supplemental proposed rulemaking will be available for public inspection during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Byron K. Williams, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 634–Arlington Square, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION: On March 27, 1989, the Service published for public comment in the **Federal Register** (54 FR 12534) a proposal to amend 50 CFR part 20, with comment periods ending July 23, 1989, for early-season proposals; and August 28, 1989, for the late-season proposals. The March 27 document dealt with the establishment of hunting seasons, hours, areas and limits for migratory game birds under § 20.101 through 20.107, 20.109 and 20.110 of subpart K. On June 6, 1989, the Service published in the **Federal Register** (54 FR 24290) a second document consisting of a supplemental proposed rulemaking dealing with both the early- and late-season frameworks. On July 13, 1989, the Service published for public comment in the **Federal Register** (54 FR 29640) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early-season migratory bird hunting regulations. On August 11, 1989, the Service published a fourth document (54 FR 32975) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico and the Virgin Islands selected early-season hunting dates, hours, areas and limits for 1989–90. This document is the fifth in the series and deals specifically with proposed frameworks for the 1989–90 late-season migratory bird hunting regulations. Before September 1, 1989, the Service intends to publish in the

Federal Register a sixth document consisting of a final rule amending subpart K of 50 CFR part 20 to set hunting seasons, hours, areas and limits for mourning, white-winged and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sea ducks in certain defined areas of the Atlantic Flyway; September teal; experimental September duck seasons in identified States; experimental and special September Canada goose seasons in portions of identified States; sandhill cranes in the Central and Pacific Flyways; doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. This fifth document specifically deals with late-season regulations. Late seasons generally commence about or after October 1 and include most waterfowl seasons.

Review of the Duck Situation

The decade of the 1980's has been hard on ducks and their habitat across large areas of North America. During this decade, 4 of the 6 lowest May pond counts were recorded in Prairie Canada. Continued widespread drought and agricultural impacts on wetland in Canada and the north-central United States led to record low duck breeding populations. These agricultural impacts on marshes and surrounding habitats accelerated because of the drought and seriously reduced the capability of traditional prairie habitats to produce ducks. Many areas once important to breeding ducks have been permanently affected.

During 1988, the drought intensified and habitat destruction continued. The problem is not one of a single year of severe drought. Some important breeding areas have been extremely dry since 1980. Though some areas received above or near normal precipitation in 1989, much of the additional precipitation only replenished soil-moisture so there was little runoff and no improvement in pond numbers. However, increased soil-moisture did promote a significant improvement in vegetative growth. Several years of good climatic conditions will be required before many drought stricken areas recover.

Breeding population estimates were 8 percent below the 1988 level and 24 percent below the long-term average. Nine of the 10 indicator species decreased during the last year; pintails, bluewings, and scaup are at record lows; and mallards are 25 percent below their long-term average. However, the decline in the breeding population appears to have been somewhat offset by increases in late nesting indices and, in some areas, improvements in production. The result is a fall flight index of ducks slightly lower than last year.

Although hunting is not the cause of the decline in duck numbers, it is one influence that we can regulate. Restrictive hunting regulations during 1985–87, in combination with low number of ducks, reduced the harvest by 25 percent, in comparison to that of the 1980–84 period, with nearly equal reduction in each of the four flyways. Harvest rates on mallards were reduced significantly for all sex and age classes. Regulations were further restricted during the 1988–89 hunting season and reduced the harvest by an additional 50 percent. Restrictive regulations have been in effect since 1985. Survival rates have increased in recent years for all sex and age cohorts of mallards. Sacrificing some hunting opportunity may protect duck populations at low levels.

In consideration of multiple years of drought conditions and the slow recovery expected for habitat and duck populations, maintenance of basic breeding populations is a primary objective. High harvest rates on populations with poor recruitment are not in the interest of the resource or the future of waterfowl hunting. Further, the Service believes that the drought impacts will persist for some time and that recovery will require several years of good climatic conditions. For these reasons, the Service is proposing hunting season frameworks similar to those of 1988–89 to maintain duck breeding stocks.

Review of Comments Received at Public Hearing

Sixteen statements were offered at the August 3, 1989, public hearing. Portions of some of these statements were related to matters outside the purpose of the hearing. Each statement is summarized below and was considered in the development of these proposed late-seasons frameworks. Responses to the public hearing comments are deferred and will be incorporated into responses to written comments received in reply to this document and published with the final frameworks for late seasons.

Doug Inkley, representing the National Wildlife Federation, described the importance of wetlands to waterfowl as well as to numerous other wildlife species and to social needs. He urged the Service to redouble its efforts to protect wetlands. He believed it would be appropriate to continue the conservative regulations implemented in 1988–89 and made the following specific regulatory recommendations: (1) Continue the nationwide closure on canvasbacks that was in place last year, noting the canvasback population rose only slightly since last year; (2) maintain restricted framework dates, with a closing date of January 7 for ducks in all flyways to minimize the harvest on adult ducks and those with a high probability of breeding; (3) implement a nationwide closure on pintails in view of the new record low level of breeding pintails and the very low age ratio observed last year in the harvest, noting that the pintail regulations allowed last year, which were more liberal in the Pacific Flyway, cannot be justified; (4) cautiously supported a return to shooting hours of one-half hour before sunrise to sunset, suggesting there is no evidence that opening hours have a significant impact on total harvest; (5) continue the closed season on cackling Canada geese and Pacific brant in the Pacific Flyway until these populations have recovered to population objectives; and (6) continuation of a conservative expansion of tundra swan hunting in the Atlantic Flyway, noting the expansion of tundra swan hunts to several additional States in that flyway in 1988 was successful and swan populations remain stable.

Mr. Gary Myers, representing The Wildlife Society, reviewed the 1988 waterfowl status, regulations and harvests. He supported conservative duck regulations again in 1989 to protect breeding stocks, liberalized regulations for goose populations whose status is improved in 1989, and continuation of hunting opportunity on swans. He stated that a combination of regulations, enforcement, and habitat improvement will be necessary to achieve the population objectives of the North American Waterfowl Management Plan.

Mr. Charles Potter, representing the North American Wildlife Foundation, expressed concern that the stated harvest objectives cannot be achieved with the regulations being considered, and he does not believe that reopening of a canvasback season can be justified. He suggested that hunting pressure should be reduced if at all possible, and quoted former noted waterfowl biologist Al Hochbaum as saying the management agencies should be the protector of the resource and not the provider. Mr. Potter noted that, despite a significant increase in the number of ponds in southern Alberta this spring, the number of breeding ducks were significantly lower, indicating that a return of better water conditions will not, alone, restore duck populations. He predicted that a return to shooting hours of one-half hour before sunrise to sunset would insure an increased duck kill, increased identification problems, a greater kill of hens and more crippled ducks, and would confuse hunters. He noted that the Manitoba Farmers Union, traditionally opposed to having more ducks, voted this year to close the duck season out of concern about low populations. He indicated that the voluntary restrain program would be in full force this year and that he would encourage hunters to buy State and Federal licenses and duck stamps to help habitat programs. He believed we should not allow duck breeding populations to fall any lower.

Mr. Frank Anderson, representing the Concerned Coastal Sportsmen's Association, Mr. John Sawyer, representing the Western Massachusetts Duck Hunters Association, Mr. Jerry Woodmansee, representing the Andover Sportsman's Club, Inc., and Mr. Jim Yoos, representing the New Jersey Waterfowl Association, expressed support for restoring one-half hour before sunrise shooting hours, an increase in season length to 40 days, continuation of the zone concept, and a bonus bag of 2 green-winged teal for 9-consecutive days during the regular duck season. In general, they argued that the Atlantic Flyway has not received proper consideration since populations breeding in the northeastern States and in eastern Canada have not declined and are more productive than western populations which have been severely affected by drought. They maintain that more liberal harvest regulations are justified by reports and by common knowledge about the derivation of duck harvests. Messrs. Anderson, Sawyer, and Woodmansee requested additional hunting days in compensation for days lost due to State prohibitions against Sunday hunting, asked that special consideration be given to the growing numbers of nuisance Canada geese in Massachusetts by offering a 90-day goose season statewide. They suggested that the Service consider a special, experimental 50-day season on red-breasted and common mergansers to reduce impacts on fisheries programs in the northeast United States. Mr. Yoos cited improved winter populations indices and better age ratios in the harvest of Atlantic Flyway ducks as evidence that these ducks did not warrant similar protection being directed towards those from more western areas and expressed concern for loss of duck stamp revenues to support habitat programs.

Mr. Bert Jones, representing the Louisiana Wildlife and Fisheries Commission, urged the reinstatement of one-half hour before sunrise to sunset shooting hours, stating that much of the 1988 decline in duck stamp sales in Louisiana was attributed to the sunrise opening of shooting hours. He requested that a 3-day September teal season be offered in 1990, citing the benefits of incentives for habitat preservation and stating that low band recovery rates indicate that hunting is not the cause of the decline in blue-winged teal. He applauded the Service for not further reducing hunting opportunity, in 1989.

Mr. Randy Wheeler, representing the Wetlands Habitat Alliance of Texas, asserted that maintaining the same restrictive regulations as those of 1988 would be deterimental to duck populations. He encouraged reinstatement of the point system with changes that would provide an incentive to hunters to direct their harvest toward more abundant species. He noted that teal are active during the pre-sunrise period and that teal populations are less stressed than other species. He described an outbreak of avian chlorea in the upper coast of Texas in December of 1988 that he believed would not have occurred if there had been a September teal season last year. Such a season would have provided an incentive to landowners and others to flood habitat early in the fall, thus providing more habitat for waterfowl. He recommended reinstatement of (1) the point system, (2) shooting hours to one-half hour before sunrise, and (3) the September teal season.

Mr. Mike Berger, representing Ducks Unlimited, Inc., presented comment on this spring's habitat conditions, lower duck breeding populations and expected low production, and concluded that several years of good water and good recruitment are needed to bring about a full recovery in duck populations. He urged private organizations and public agencies to coordinate management efforts through the North American Waterfowl Management Plan. He stated that duck hunters are willing to take a conservative approach to harvest but that harvest regulations should be based on sound biology and may differ in each flyway. He felt decisions should not be based on politics as they were last year.

Mr. George Reiger, an editor for Field & Stream magazine, expressed strong concern about the status of ducks and the relatively poor data base on which regulations are set. He suggested that we should err on the side of caution in setting regulations. He made a specific recommendation for a bag limit of 2 ducks daily, a 20-day season (except 25 days in States that prohibit Sunday hunting), and that shooting hours of one-half hour before sunrise to sunset be restored if the season and bag limit recommended above are implemented. He believed that, with this set of regulations, hunter satisfaction would increase and total duck harvest would be reduced. He expressed strong dissatisfaction with restoration of the point system, describing his experiences in many States during which provisions of the point system were never honored, even by enforcement agents and other public servants. He believed that reordering under the point system is a prelude to an extra duck in the bag, noting that he was once an avid supporter of the point system until he observed most hunters disregarding the rules. He recommended against reopening of a canvasback season due to ambiguities in the population data and he urged the Service to encourage Mexico and Canada to close their seasons on canvasbacks as well. He noted a need to liberalize the season on mergansers along the east coast to reduce problems of predation on fish. He urged caution about using more liberalized goose regulations to offset restrictions on ducks, citing the lower breeding potential of geese. He believed that high limits on birds degrade the birds and suggested that geese should be promoted as trophy birds with lower bag limits.

Mr. Leon Kirkland, representing the Atlantic Flyway Council, argued that the majority of ducks harvested in the Atlantic Flyway originate from areas where populations are stable and have better age-ratios. Also, he stated that many ducks species were above the most recent 10-year average in the mid-winter survey. Based on this information he maintained that eastern ducks are in better shape than western populations and that regulations are more restrictive than necessary in the Atlantic Flyway. He asked to restore shooting hours to one-half hour before sunrise, increase seasons to 40 days, continue liberal October bag limits on wood ducks, add a bonus of 2 green-winged teal for 9 days and strongly urged the Service to gather more data on eastern waterfowl.

Mr. John M. Anderson, speaking on behalf of the National Audubon Society, urged maintaining all of the restrictions that were in effect during 1988. He said that the one-half hour before sunrise should not be reinstated until it can be shown to have no adverse impact on the harvest of hen mallards and black ducks. He opposed the use of the point system option because the prohibition

against reordering was impossible to enforce. He supported continuation of those regulations for swans and geese that had been used in 1988. He said that consideration should be given to controlling feral mute swans which detrimentally compete with native swans and with ducks.

Mr. John Grandy, representing the Humane Society of the United States, supported the closed season on harlequin duck throughout the Atlantic Flyway, commended the Service on the mangitude of harvest reductions in the 1988 season, but was opposed to maintaining the same regulations as last year because they would not be sufficiently restrictive to meet either the needs of waterfowl or the Service's legislated responsibilities. He proposed that shooting time begin one-half hour after sunrise because of regulations requiring hunters to identify certain ducks before shooting and that mergansers and coots be included in the duck limits in all flyways. He endorsed continuation of a nationwide closed season on canvasbacks and supported a nationwide closed season on pintails. Observing that black duck populations continue to be low, he said it was the Service's duty to not maintain regulations that keep these populations at such low levels. He recommended that duck seasons should be closed in the lower 48 States this season. He was distressed by requests for liberalized seasons but pleased by attitudes of those supporting further restrictions. He rhetorically asked were regulations driven by restoration of populations or the opening of hunting seasons.

Mr. Jim Phillips, writer and duck hunter, described declines in certain duck populations and believed that current waterfowl management would not allow recovery of those populations. He proposed: A 21-day season; one-half hour before sunrise to sunset shooting hours; and a "3, 2, 1" limit, where only 3 ducks could be taken, but no more than 2 of any species, except only 1 hen mallard, or 1 black duck or 1 redhead, and the season would be closed on canvasbacks and pintails.

Mr. John H. Vizer, III, representing the Berry B. Brooks Foundation, stated that in a survey of hunters in Tennessee, Arkansas, and Louisiana, most respondents favored a complete closure of duck hunting. He indicated such a closure may not be generally accepted and he urged that the 1988 restrictive regulations be maintained in 1989. He stated that if we err, it should be done on the side of conservation.

Written Comments Received

The preliminary proposed rulemaking which appeared in the **Federal Register** dated March 27, 1989, (54 FR 12534), opened the public comment period for late-season migratory game bird hunting regulations. As of August 3, 1989, the Service had received 186 comments, 163 of these specifically addressed late-season related issues. Several of these were previously addressed in the supplemental proposed rulemaking which appeared in the **Federal Register** dated June 6, 1989, (54 FR 24290). These late-season comments are summarized below and numbered in the order used in the March 27, 1989, **Federal Register**. Only the numbered items pertaining to late-season written comments are included.

1. Shooting Hours

The Service received 145 comments, of which 139 were judged to relate to late-season shooting hours. Of this group of 139,134 were opposed to restrictive shootings and include: The Atlantic, Central and Pacific Flyway Councils; the Lower Region Regulations Committee of the Mississippi Flyway Council; the State wildlife agencies of Arizona, Arkansas, California, Colorado, Louisiana, Missouri, Montana, New York, Oklahoma, and South Carolina; the California Fish and Game Commission; the North Dakota Tourism Promotion; the Texas Agricultural Extension Service; Ducks Unlimited; the Louisiana Wildlife Federation; the Alaska, California, and South Carolina Waterfowl Associations; the Sportsmen Conservationists of Texas; 5 local organizations; 1 member of Congress from Texas; and 108 individuals. In addition, 4 of the comments from individuals contained a total of 195 signatures opposing restrictive shooting hours. Some of the arguments against the proposed regulations included:

a. Shooting hours are basic regulations which dictate the time to hunt and should not be used to regulate harvest.

b. The change to sunrise shooting complicates regulations and will likely increase violations.

c. Sunrise shooting will shift the harvest away from species such as wood ducks to other species of concern, i.e., mallards and pintails.

d. The pre-sunrise period is an aesthetic and traditional part of waterfowling.

e. Sunrise shooting will erode hunter participation and decrease funds for habitat acquisition.

f. Shooting hours were unnecessary to achieve desired reductions in harvest.

The State of Wisconsin and 3 individuals supported restrictive shooting hours. A hunting club from Texas supported restrictive shooting hours but expressed mixed emotion since they believe it reduces teal harvest. They recommend, as an alternative, shooting hours beginning at 15 minutes before sunrise. Several commenters recommended alternatives involving shooting hours that end earlier than sunset. The Service is proposing shooting hours that begin at one-half hour before sunrise and end at sunset for all migratory game birds unless other restricted.

2. Frameworks for Ducks in the Conterminous United States—Outside Dates, Season Length, and Bag Limits

a. Harvest strategy—Many of the comment received that oppose restrictive shooting hours stated that other restrictions, such as season length and bag limits, would be preferable. These comments are considered to be related to shooting hours and not related to a desire to restrict other frameworks, and are, therefore, summarized under item 1. *Shooting Hours*.

b. Framework dates—The States of Missouri and Wisconsin supported the restrictive framework dates set in 1988–89. An individual from Texas and one from Virginia suggested delaying the opening and closing framework dates. The Central Flyway Council and the State of Colorado recommended floating framework dates opening on the Saturday nearest October 1 and closing on the Sunday nearest January 20. The Service is proposing to set the annual framework dates for 1989–90 to open on October 7 and close on January 7.

c. Season length—The State of New York, the New York State Conservation Council, the California Waterfowl Association, and local organization, and 3 individuals were opposed to the restrictive season length. The States of Missouri and Wisconsin supported this restriction. One individual from Idaho suggested a further restriction in season length. The Service is proposing to continue with the same season lengths as were in effect in 1988–89.

d. Closed seasons—Four individuals suggested a temporary closed season if it were needed to protect breeding stocks of ducks in 1989–90. The Service took this view into consideration, but is proposing to allow duck hunting, with restrictive regulations, in 1989–90.

e. Bag limits—(i) The State of Wisconsin supported restrictive bag limits and, if needed, further restrictions in the bag limit. Two individuals suggested further decreasing the bag limit. The States of Colorado, Minnesota and Missouri, and 3 individuals also supported restrictive bag limits. The State of California and 8 individuals from Texas suggested increased bag limits for certain species only; while the State of New York, the California Waterfowl Association, 3 local organizations, and 3 individuals suggested increasing the bag limit for all ducks. The Service is proposing similar bag limits to those in effect during the 1988–89 season.

ii. One member of Congress from Texas, 3 flyway councils, 5 State agencies, 3 local organizations, and 60 individuals commented on the point system of bag limits. The Congressman from Texas, on behalf of his constituents, favored a return to the point system to redirect hunting pressure away from species of greatest concern. The Central and Pacific Flyway Councils recommended that the point system option be reinstated as a way of directing harvest toward more abundant species and away from those needing more protection. The Atlantic Flyway Council made no specific recommendation but indicated it is reviewing information on the point system. The State wildlife agencies of Colorado, Missouri and Oklahoma, and the Texas Agricultural Extension Service all recommended that the point system option be reinstated. They cited the greater ability of that system over the conventional bag limit in reducing harvest on species of greatest concern, such as mallards and pintails, while redirecting harvest toward species such as green-winged teal which exhibit better status. The Wisconsin Bureau of Wildlife Management recommended that, with continuing low populations of ducks, the strongly conservative frameworks initiated in 1988 be maintained. Three local organizations from Texas commented on the point system, with one recommending against its reinstatement due to the "reordering" problem and the other two recommending that it be reinstated, indicating that the conventional bag limit places more pressure on species of greatest concern. Fifty-eight individuals, all from Texas, recommended that the point system be reinstated, generally citing the reasons as did agencies noted above. One individual recommended against reinstatement of the point system and one described how the system is more conservative but did not make a specific recommendation. The Service is proposing to allow the point system option in the Mississippi and Central Flyways for 1989–90. Point values that are no more liberal than the conventional bag limit have been proposed.

3. American Black Ducks

A representative from the New York State Conservation Council supported continuation of the one black duck bag limit.

4. Wood Ducks

Nine individuals from Texas recommended that the bag limit on wood ducks in that State be liberalized, with some specifying a change to allow 3 instead of 2 wood ducks in the bag. The rationale for making the request was that wood ducks in east Texas appear to be very abundant. The Service is proposing to suspend the liberal October wood duck option.

7. Extra Teal Option

Both the Central and Pacific Flyway Councils reviewed the issue of bonus teal and other bonus ducks in the bag limit and both recommended that options for bonus ducks, including teal, be offered when the status of the species involved warrant additional harvests. The New York Division of Fish and Wildlife supported bonus teal options, indicating that the State was unfairly restricted in 1988 when bonus ducks were suspended. The South Carolina Wildlife and Freshwater Fisheries Division recommended that bonus green-winged teal be reinstated in the bag limit, citing the relatively healthy status of this species and the need to take advantage of these species by providing additional hunting opportunity on those species when the status of other species is poor. The Wisconsin Bureau of Wildlife Management recommended against allowing bonus teal, citing the poor status of duck populations in general. Two conservation organizations recommended that bonus teal options be reinstated in the Atlantic Flyway. Eight individuals, all but one from Texas, made general recommendations for more liberal limits on teal.

9. Special Scaup Season

The State of Wisconsin supported the suspension of the special scaup season. An organization from New York requested reinstatement of the special scaup season for New York.

10. Extra Scaup Option

The New York Division of Fish and Wildlife, the New York State Conservation Council, one local organization and one individual from New York requested reinstatement of the bonus bag limit on scaup. The Wisconsin Bureau of Wildlife Management supported the suspension for bonus scaup.

11. Mergansers

The Wisconsin Bureau of Wildlife Management recommended that regulations for mergansers be the same as last year. The Minnesota Department of Natural Resources supported separate bag limits for mergansers in the conventional option for the regular duck season.

12. Canvasback and Redhead Ducks

The Wisconsin Bureau of Wildlife Management supported continuation of seasons and limits on redheads and the closed season on canvasback as occurred last year. A regional representative for the New York State Conservation Council proposed a daily bag limit that would include one canvasback because that species was numerous in his region.

13. Duck Zones

The Pacific Flyway Council provided an elevation of the effects of zoning and split seasons on harvest and recommended on April 4, 1989, to continue using existing zones and to continue a moratorium on new zones; however, on July 28, 1989, the Council rescinded its earlier recommendation for a moratorium and proposed as an option for States to establish one new zone. The Central Flyway Council recommended that zoning be an option available to all States as long as certain evaluation criteria were met. The Wisconsin Bureau of Wildlife Management concurred that the use of zones and splits should be reviewed and their continued use be reconsidered if populations do not show significant improvements. Either unqualified support for continued use of existing zones or opposition to any suspensions of their use was given by the New York Division of Fish and Wildlife, three local organizations, and a regional representative for the New York State Conservation Council. Idaho Fish and Game requested that the State be zoned into two large zones because of markedly different altitudinal and climatic conditions affecting availability of birds and opportunities for hunters. Support for the Idaho zones was given by the Pacific Flyway Council, and an Idaho hunter (allegedly representing 5,000 waterfowlers in Idaho). A Texas hunter recommended that Texas be allowed to create a third, new zone for that State.

The Pacific Flyway Council provided an evaluation of the effects of zoning and split seasons on harvest and recommended retention of the option to split seasons into two segments. The Central Flyway Council and the Southern Region Regulations Committee of the Mississippi Flyway Council recommended that States be allowed to split their regular season into three segments in lieu of zoning. The Wisconsin Bureau of Wildlife Management concurred that the use of zones and splits should be reviewed and their continued use be reconsidered if populations do not show significant improvements. Either unqualified support for continued use of split seasons or opposition to any suspension of its usage was given by the New York Division of Fish and Wildlife, one local organization, and a regional representative for the New York State Conservation Council. One hunter recommended a multiple season of Saturday, Sunday, and Wednesday hunting but with fewer overall days of potential hunting.

14. Frameworks for Geese and Brant in the Conterminous United States—Outside Dates, Season Length and Bag Limits

Atlantic Flyway

One individual from New York supported the 90-day Canada goose season, one individual from Virginia supported the 2 Canada geese per day limit, and one local organization from Massachusetts suggested increasing the Canada goose season length from 70 to 90 days statewide. The Pennsylvania Game Commission recommended a bag increase from 2 to 3 Canada geese in 4 Pennsylvania counties. The Atlantic Flyway Council did not approve Pennsylvania's recommendation.

The Atlantic Flyway Council rescinded its recommendation for an increase in the Atlantic brant bag limit but continued to recommend an increase in the greater snow goose bag limit, an expansion of the special Delaware area, and establishment of a special late-season in Georgia.

Mississippi Flyway

The Upper Region Regulations Committee of the Mississippi Flyway Council and the Wisconsin Department of Natural Resources endorsed a change in the boundary of Iowa's Southwest Goose Zone. The Upper Region Regulations Committee also endorsed a request from the Indiana Department of Natural Resources to split its goose season within existing zones into 3 segments. The Arkansas Game and Fish Commission requested that the State be permitted to have a Canada goose season again in 1989–90. The Wisconsin Department of Natural Resources supported recommendations from the Mississippi Flyway Council for increased harvest of Mississippi Valley Population Canada geese in 1989. One individual supported more liberal bag limits for geese.

Pacific Flyway

One individual from California requested a 21-day season with a bag limit increase from 1 to 2 white-fronted geese for the Kamath Basin. The Pacific Flyway Council and the California Fish and Game Department recommended lifting restrictions on hunting large Canada geese in the Sacramento and San Joaquin goose closure zones. Another individual from California questioned the need for these restrictive areas.

15. Tundra Swans

The States of Montana and Nevada offered a correction to the preliminary proposals presented in the **Federal Register** of March 27, 1989 (54 FR 12534). The June 6, 1989, **Federal Register** (54 FR 24290) presented the corrected proposals (a) that permits in the Pacific Flyway portion of Montana would be valid in Teton, Cascade, Toole, Liberty, Hill, and Pondera counties; and (b) that tundra swan hunts in the Central Flyway portion of Montana would run concurrent with the goose season. The Atlantic and Pacific Flyway Councils supported the proposal for tundra swan hunts. The Wildlife Information Center, Inc., recommended a ban on the hunting of tundra swans. They believe there are negative impacts to behavior and ecology of swans as a result of hunting and that alternative methods should be developed to reduce crop damage. The Service is proposing swan frameworks as they existed in 1988–89.

17. Coots

The Wisconsin Bureau of Wildlife Management supported the proposed frameworks for coots. The California Department of Fish and Game proposed that frameworks for seasons on coots be separated from those for ducks in the Pacific Flyway.

20. Common Snipe

The Wisconsin Bureau of Wildlife Management supported the proposed frameworks for common snipe. The California Department of Fish and Game proposed that frameworks for seasons on common snipe be separate from those for ducks in the Pacific Flyway.

Public Comment Invited

Based on the results of migratory game bird studies now in progress and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours and bag and possession limits for designated migratory game birds in the United States.

The Service intends that adopted final rules be as responsive as possible to all concerned interests and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time which the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on the one hand, to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms, and, on the other hand, the unavailability before mid-June of specific, reliable data on this year's status of some waterfowl, and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified earlier is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634-Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

All relevant comments on these late-season proposals received no later than August 28, 1989, will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

Nontoxic Shot Regulations

In the April 13, 1989, **Federal Register** (54 FR 14814), the Service published a final rule describing zones in which lead shot is prohibited for hunting waterfowl, coots and certain other species in the 1989–90 season. Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). The "Final Supplemental Environmental Impact Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)" was completed and filed with the Environmental Protection Agency on June 9, 1988, and a Notice of Availability was published in the June 16, 1988, **Federal Register** (53 FR 22582). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

On June 22, 1989, the Division of Endangered Species and Habitat Conservation concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats.

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for inspection in the Office of Endangered Species and Habitat Conservation and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634, Arlington Square, 4401 North Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

In the **Federal Register** dated March 27, 1989 (54 FR 12534), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634–Arlington Square, Department of the Interior, Washington, DC 20240. These proposed regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the **Federal Register** dated August 11, 1989 (54 FR 32975).

Authorship

The primary author of this proposed rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Byron K. Williams, Acting Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1989–90 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 701–708); the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712); and the Alaska Game Act of 1925 (43 Stat. 739; as amended, 54 Stat. 1103–04).

Proposed Regulations Frameworks for 1989–90 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved proposed frameworks for season lengths, shooting hours, bag and possession limits and outside dates within which States may select seasons for hunting waterfowl and coots. Frameworks are summarized below.

General

Split Season: States in all Flyways may split their season for ducks, geese or brant into two segments. States in the Atlantic and Central Flyways may, in lieu of zoning, split their season for ducks or geese into three segments. Exceptions are noted in appropriate sections.

Shooting Hours: From one-half hour before sunrise to sunset daily, for all species and seasons, including falconry seasons.

Deferred Season Selections: States that did not select rail, woodcock, snipe, sandhill cranes, common moorhens and purple gallinules and sea duck seasons in July should do so at the time they make their waterfowl selections.

Frameworks for open seasons and season lengths, bag and possession limit options, and other special provisions are listed below by Flyway.

Atlantic Flyway

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia and West Virginia.

Ducks, Coots and Mergansers

Hunting Seasons and Duck Limits:

Outside Dates: Between October 7, 1989, and January 7, 1990.

Hunting Season: Not more than 30 days.

Canvasbacks: The season on canvasbacks is closed.

Harlequin Ducks: The season on harlequin ducks is closed.

Duck Limits: The daily bag limit is 3 and may include no more than 1 hen mallard, 2 wood ducks, 2 redheads, 1 black duck, 1 mottled duck, 1 pintail, and 1 fulvous tree duck. The possession limit is twice the daily bag limit.

Merganser Limits: Throughout the Flyway the daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

Coot Limits: Throughout the Flyway daily bag and possession limits of coots are 15 and 30, respectively.

Zoning

New York: New York may, for the *Long Island Zone*, select season dates and daily bag and possession limits which differ from those in the remainder of the State.

Upstate New York (excluding the Lake Champlain zone) may be divided into three zones (West, North, South) for the purpose of setting separate duck, coot and merganser seasons. A 2-segment split season may be selected in each zone.

The *West Zone* is that portion of Upstate New York lying west of a line commencing at the north shore of the Salmon River and its junction with Lake Ontario and extending easterly along the north shore of the Salmon River to its intersection with Interstate Highway 81, then southerly along Interstate Highway 81 to the Pennsylvania border.

The *North* and *South Zones* are bordered on the west by the boundary described above and are separated from each other as follows: starting at the intersection of Interstate Highway 81 and State Route 49 and extending easterly along State Route 49 to its junction with State Route 365 at Rome, then easterly along State Route 365 to its junction with State Route 28 at Trenton, then easterly along State Route 28 to its junction with State Route 29 at Middleville, then easterly along State Route 29 to its intersection with Interstate Highway 87 at Saratoga Springs, then northerly along Interstate Highway 87 to its junction with State Route 9, then northly along State Route 9 to its junction with State Route 149, then easterly along State Route 149 to its junction with State Route 4 at Fort Ann, then northerly along State Route 4 to its intersection with the New York/Vermont boundary.

Connecticut may be divided into two zones as follows:

a. *North Zone*—That portion of the State north of Interstate 95.

b. *South Zone*—That portion of the State south of Interstate 95.

Maine may be divided into two zones as follows:

a *North Zone*—Game Management Zones 1 through 5.

b. *South Zone*—Game Management Zones 6 through 8.

New Hampshire—Coastal Zone—That portion of the State east of a boundary formed by State Highway 4 beginning at the Maine-New Hampshire line in Rollinsford west to the city of Dover, south to the intersection of State Highway 108, south along State Highway 108 through Madbury, Durham and Newmarket to the junction of State Highway 85 in Newfields, south to State Highway 101 in Exeter, east to State Highway 51 (Exeter-Hampton Expressway), east to Interstate 95 (New Hampshire Turnpike) in Hampton, and south along Interstate 95 to the Massachusetts line.

Inland Zone—That portion of the State north and west of the above boundary.

West Virgina may be divided into two zones as follows:

a. *Allegheny Mountain Upland Zone*—The eastern boundary extends south along U.S. Route 220 through Keyser, West Virginia, to the intersection of U.S. Route 50; follows U.S. Route 50 to the intersection with State Route 93; follows State Route 93 south to the intersection with State Route 42 and continues south on State Route 42 to Petersburg; follows State route 28 south to Minnehaha Springs; then follows State route 39 west to U.S. Route 219; and follows U.S. Route 219 south to the intersection of Interstate 64. The southern boundary follows I–64 west to the intersection with U.S. Route 60, and follows Route 60 west to the intersection of U.S. Route 19. The western boundary follows: Route 19 north to the intersection of I–79, and follows I–79 north to the intersection of U.S. Route 48. The northern boundary follows U.S. Route 48 east to the Maryland State line and the State line to the point of beginning.

b. Remainder of the State—That portion outside the above boundaries.

Zoning Experiments

Vermont may continue a Lake Champlain Zone. The Lake Champlain Zone of New York must follow the waterfowl season, daily bag and possession limits, and shooting hours selected by Vermont. *Massachusetts, New Jersey,* and *Pennsylvania,* may continue zoning experiments now in progress as shown in the sections that follow. *Massachusetts* and *New Jersey* may be divided into three zones, *Pennsylvania* into four zones and *Vermont* into two zones all on an experimental basis for the purpose of setting separate duck, coot and merganser seasons. A two-segment split season without penalty may be selected. The basic daily bag limit of ducks in each zone and the restrictions applicable to the regular season for the Flyway also apply.

Zone Definitions

Massachusetts—Western Zone—That portion of the State west of a line extending from the Vermont line at Interstate 91, south to Route 9, west on Route 9 to Route 10, south on Route 10 to Route 202, south on Route 202 to the Connecticut line.

Central Zone—That portion of the State east of the Western Zone and west of a line extending from the New Hampshire line at Interstate 95 south to Route 1, south on Route 1 to I–93, south on I–93 to Route 3, south on Route 3 to Route 6, west on Route 6 to Route 28, west on Route 28 to I–195, west to the Rhode Island line. *Except* the waters, and the lands 150 yards along the high-water mark, of the Assonit River to the Route 24 bridge, and the Taunton River to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone—That portion of the State east and south of the Central Zone.

New Jersey—Coastal Zone—That portion of New Jersey seaward of a continuous line beginning at the New York State boundary line in Raritan Bay; then west along the New York boundary line to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with the Garden State Parkway; then south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware boundary in Delaware Bay.

North Zone—That portion of New Jersey west of the Coastal Zone and north of a boundary formed by Route 70 beginning at the Garden State Parkway west to the New Jersey Turnpike, north on the turnpike to Route 206, north on Route 206 to Route 1, Treaton, west on Route 1 to the Pennsylvania State boundary in the Delaware River.

South Zone—That portion of New Jersey not within the North Zone or the Coastal Zone.

Pennsylvania—Lake Erie Zone—The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

North Zone—That portion of the State north of I–80 from the New Jersey State line west to the junction of State Route 147; then north on State Route 147 to the junction of Route 220, then west and/or south on Route 220 to the junction of I–80, then west on I–80 to its junctions with the Allegheny River, and then north along but not including the Allegheny River to the New York border.

Northwest Zone—That portion of the State bounded on the north by the Lake Erie Zone and the New York line, on the east by and including the Allegheny River, on the south by Interstate Highway I–80, and on the west by the Ohio line.

South Zone—The remaining portion of the State.

Vermont—Lake Champlain Zone—Includes the United States portion of Lake Champlain and those portions of New York and Vermont which includes that part of New York lying east and north of boundary running south from the Canadian border along New York Route 9B to New York Route 9 south of Champlain, New York; New York Route 9 to New York Route 22 south of Keesville; along New York Route 22 to South Bay, along and around the shoreline of South Bay to New York Route 22, along New York Route 22 to U.S. Highway 4 at Whitehall; and along U.S. Highway 4 to the Vermont border. From the New York border at U.S. Highway 4, along U.S. Highway 4 to Vermont Route 22A at Fair Haven; Route 22A to U.S. Highway 7 at Vergennes; U.S. Highway 7 to the Canadian border.

Interior Vermont Zone—The remaining portion of the State.

Sea Ducks: The daily bag and possession limit for sea ducks in special sea duck areas is in addition to the limits applying to other ducks during the regular duck season. In all areas outside of special sea duck areas, sea ducks are included in the regular duck season daily bag and possession limits.

Canada Geese

Outside Dates, Season Lengths, and Limits: Between October 1, 1989, and January 20, 1990, Maine, New Hampshire, Vermont, Massachusetts, Pennsylvania, and West Virginia may select 70-day seasons for Canada geese with a daily bag and possession limit of 3 and 6 geese, respectively, except in Pennsylvania Counties of Erie, Mercer, Butler, and Crawford, where the daily bag and and posession limits are 2 and 4, respectively. In Maryland, Delaware and Virginia (except Back Bay) the Canada goose season may be 60 days with an opening date of October 31, 1989, and a closing date of January 20, 1990, with 2 geese daily and 4 in possession. In New York (including Long Island), New Jersey, and that portion of Pennsylvania lying east and south of a boundary beginning at Interstate Highway 83 at the Maryland border and extending north to Harrisburg, then east on I–81 to Route 443, east on 443 to Leighton, then east via 208 to Stroudsburg, then east on I–80 to the New Jersey line, the Canada goose season length may be 90 days with the opening framework date of October 1, 1989, and the closing framework date extended to January 31, 1990. In addition, that portion of the Susquehanna River from Harrisburg north to the confluence of the west and north branches at Northumberland, including a 25-yard zone of land adjacent to the waters of the river, is included in the 90-day zone. The daily bag and possession limits within this area will be 1 and 2, respectively through October 15, 1989, and 3 and 6, respectively thereafter. In Rhode Island, and Connecticut (North Zone) season length will be 90 days between October 1, 1989, and January 31, 1990, with a daily bag and possession limit of 3 and 6, respectively. In the South Zone of Connecticut (that portion south of Interstate 95), the Canada goose season length may be 90 days with the closing framework date extended to February 5, 1990. The daily bag limit and possession limit will be 3 and 6, respectively, through January 14, and 5 and 10, respectively from January 15 to February 5, 1990. This season in the South Zone of Connecticut is experimental. The Back Bay of Virignia, North Carolina (that portion south of Interstate Highway 95), and South Carolina may select an 11-day season for Canada geese within a January 20–31, 1990, framework; the daily bag and possession limits are 1 and 2 Canada geese, respectively. In the Coastal Zone of Massachusetts, a special resident Canada goose season may be held during January 21, 1990, to February 5, 1990; the daily bag and possession limits are 5 and 10, respectively. In Georgia, on specific areas (as described in State regulations), a special resident Canada goose season may be held between January 13 and January 20, 1990, with a limit of 1 per hunter per season.

Closures on Canada geese: The season for Canada geese is closed in Florida.

Snow Geese

Outside Dates, Season Lengths, and Limits: Between October 1, 1989, and January 31, 1990, States in the Atlantic Flyway may select a 90-day season for snow geese (including blue geese); the daily bag and possession limits are 5 and 10, respectively. Between October 16, 1989, and October 28, 1989, a special snow goose season may be held in Delaware on Bombay Hook National Wildlife Refuge, Little Creek GMA, and immediate area (as described in State regulations) at the discretion of the Refuge Manager. Daily bag and possession limits are 5 and 10, respectively. This season is in addition to the 90-day regular season.

Atlantic Brant

Outside Dates, Season Lengths, and Limits: Between October 1, 1989, and January 20, 1990, States in the Atlantic Flyway may select a 50-day season for Atlantic brant; the daily bag and possession limits are 2 and 4 brant, respectively.

Tundra Swans

In New Jersey, Virginia and North Carolina an experimental season for tundra swans may be selected with 200, 600 and 6,000 permits, respectively, subject to the following conditions: (a) The season may be 90 days and must run concurrently with the snow goose season; (b) the State agency must issue permits and obtain harvest and hunter participation data; and (c) each permittee is authorized to take one tundra swan per season.

Mississippi Flyway

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee and Wisconsin.

Ducks, Coots, and Mergansers

Outside Dates; Between October 7, 1989, and January 7, 1990, in all States.

Hunting Season: Not more than 30 days.

Canvasbacks: The season on canvasbacks is closed.

Limits: The daily bag limit of ducks is 3, and may include no more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 1 pintail, 2 wood ducks, and 1 redhead. The possession limit is twice the daily bag limit.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is twice the daily bag limit.

Coot Limits. The daily bag and possession limits are 15 and 30, respectively.

Point-System Option: As an alternative to conventional big limits for ducks, a 30-day season with point-system bag and possession limits may be selected within the framework dates prescribed. Point values for species and sexes taken are as follows: The female mallard, pintail, black duck, redhead, and hooded merganser count 100 points each; the male mallard and wood duck count 50 points each; all other species of ducks and mergansers count 35 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

Pymatuning Reservoir Area, Ohio: The waterfowl seasons, limits and shooting hours in the Pymatuning Reservoir area of Ohio will be the same as those selected by Pennsylvania. The area includes Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 known as Woodward Road, on the west by

Pymatuning Lake Road, and on the south by U.S. Highway 322.

Zoning: Alabama, Illinois, Indiana, Iowa, Louisiana, Michigan, Missouri, Ohio, Tennessee, and *Wisconsin* may select hunting seasons for ducks, coots and mergansers by zones described as follows:

Alabama: South Zone—Mobile and Baldwin Counties. North Zone—The remainder of Alabama. The season in the South Zone may be split into two segments.

Illinois: North Zone—That portion of the State north of a line running east from the Iowa border along Illinois Highway 92 to I–280, east along I–280 to I–80, then east along I–80 to the Indiana border. Central Zone—That portion of the State between the North and South Zone boundaries. South Zone—That portion of the State south of a line running east from the Missouri border along the Modoc Ferry route to Randolph County Highway 12, north along Highway 12 to Illinois Highway 3, north along Illinois Highway 3 to Illinois Highway 150, north along Illinois Highway 150 to Illinois Highway 161, east along Illinois Highway 161 to Illinois Highway 4, north along Illinois Highway 4 to I–70, then east along I–70 to the Indiana border.

Indiana: North Zone: That portion of the State north of a line extending east from the Illinois border along State Highway 18 to U.S. Highway 31, then north along U.S. 31 to U.S. Highway 24, then east along U.S. 24 to Huntington, then southeast along U.S. Highway 224 to the Ohio border. Ohio River Zone: That portion of Indiana south of a line extending east from the Illinois border along Interstate 64 to New Albany, then east along State Highway 62 to State Highway 56, then east along State Highway 56 to Vevay, then on State Highway 156 along the Ohio River to North Landing, then north along State Highway 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border. South Zone: That portion of the State between the North and Ohio River Zone boundaries. The season in each zone may be split into two segements.

Iowa: North Zone—That portion of Iowa north of a line running west from the Illinois border along I–80 to U.S. 59, north along U.S. 59 to State Highway 37, northwest along State Highway 37 to State Highway 175, then west along State Highway 175 to the Nebraska border. South Zone—the remainder of the State.

Louisiana: West Zone—That portion of the State west of a boundary beginning at the Arkansas-Louisiana border on Louisiana Highway 3, then south along Louisiana Highway 3 to Bossier City, east along Interstate 20 to Minden, south along Louisiana Highway 7 to Ringgold, east along Louisiana Highway 4 to Jonesboro, south along U.S. Highway 167 to Layfatte, southeast along U.S. Highway 90 to Houma, south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass. East Zone—The remainder of Louisiana. The season in each zone may be split into two segments.

Michigan: North Zone—The Upper Peninsula. South Zone—That portion of the State south of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and east and south along the south shore of, Stony Creek to Webster Road, east and south on Webster Road to Stony Lake Road, east on Stony Lake and Garfield Roads to M–20, east on M–20 to U.S.–10B.R. in the city of Midland, east on U.S.–10B.R. to U.S.–10, east on U.S.–10 and M–25 to the Saginaw River, downstream along the thread of the Saginaw River to Saginaw Bay, then on a northeasterly line, passing one-half mile north of the Corps of Engineers confined disposal island offshore of the Carn powerplant, to a point one mile north of the Charity islands, then continuing northeasterly to the Ontario border in Lake Huron. Middle Zone—The remainder of the State. Michigan may split its season in each zone into two segments.

Missouri: North Zone—That portion of Missouri north of a line running east from the Kansas border along U.S. Highway 54 to U.S. Highway 65, south along U.S. 65 to State Highway 32, east along State Highway 32 to State Highway 72, east along State Highway 72 to State Highway 21, south along State Highway 21 to U.S. Highway 60, east along U.S. 60 to State Highway 51, south along State Highway 51 to State Highway 53, south along State Highway 53 to U.S. Highway 62, east along U.S. 62 to I–55, north along I–55 to State Highway 34, then east along State Highway 34 to the Illinois border. South Zone—The remainder of Missouri. Missouri may split its season in each zone into two segments.

Ohio: North Zone—The counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking, Muskingam, Guernsey, Harrison and Jefferson and all counties north thereof. In addition, the North Zone also includes that portion of the Buckeye Lake area in Fairfield and Perry Counties bounded on the west by State Highway 37, on the south by State Highway 204, and on the east by State Highway 13. Ohio River Zone—The counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs. South Zone—That portion of the State between the North and Ohio River Zone boundaries. Ohio may split its season in each zone into two segments.

Tennessee: Reelfoot Zone—Lake and Obion Counties, or a designated portion of that area. State Zone—The remainder of Tennessee. Seasons may be split into two segments in each zone.

Wisconsin: North Zone—That portion of the State north of a line extending northerly from the Minnesota border along the center line of the Chippewa River to State Highway 35, east along State Highway 35 to State Highway 25, north along State Highway 25 to U.S. Highway 10, east along U.S. Highway 10 to its junction with the Manitowoc Harbor in the City of Manitowoc, then easterly to the eastern State boundary in Lake Michigan. South Zone—The remainder of Wisconsin. The season in the South Zone may be split into two segments.

Geese

Definition: For the purpose of hunting regulations listed below, the term "geese" also includes brant.

Note: The various zones and areas indentified in this section are described in the respective States' regulations.

Outside Dates, Season Lengths and Limits: Between September 30, 1989, and January 21, 1990 (January 31 in Kentucky, Arkansas, Tennessee, Mississippi, and Alabama), States may select seasons for geese not to exceed 70 days for Canada and white-fronted geese and 80 days for snow (including blue) geese. The daily bag limit is 7 geese, to include no more than 3 Canada and 2 white-fronted geese. The possession limit is 14 geese, to include no more than 6 Canada and 4 white-fronted geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Outside Dates and Limits on Snow and White-fronted Geese in Louisiana: Between September 30, 1989, and February 14, 1990, Louisiana may hold 80-day seasons on snow (including blue) geese and 70-day seasons on white-fronted geese by zones established for duck hunting seasons. Daily bag and possession limits are as described above.

Minnesota. In the:

(a) West Central Goose Zone—The season for Canada geese may extend for 30 days. In the Lac Qui Parle Goose Zone the season will close after 30 days or when 4,000 birds have been harvested, whichever occurs first.

Throughout the 5-county area, limits are 1 Canada goose daily and 2 in possession.

(b) Southeast Goose Zone—The season for Canada geese may extend for 70 consecutive days. Limits are 2 Canada geese daily and 4 in possession. In selected areas of the Metro Goose Management Block and in Olmsted County, experimental 10-day late seasons may be held during December to harvest Giant Canada geese. During these seasons, limits are 2 Canada geese daily and 4 in possession.

(c) Remainder of the State—The season for Canada geese may extend for 40 days. Limits are 1 Canada goose daily and 2 in possession.

Iowa: The season may extend for 45 consecutive days. Limits are 2 Canada geese daily and 4 in possession. The season for geese in the Southwest Goose Zone may be held at a different time than the season in the remainder of the State.

Missouri. In the:

(a) Swan Lake Zone—The season for Canada geese closes after 40 days or when 10,000 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 4 in possession.

(b) Southeast Zone—A 50-day season on Canada geese may be selected, with limits of 2 Canada geese daily and 4 in possession.

(c) Remainder of the State—The season for Canada geese may extend for 40 days in the respective duck hunting zones. Limits are 1 Canada goose daily and 4 in possession.

Wisconsin: The framework opening date for all geese is September 23. The total harvest of Canada geese in the State will be limited to 93,700 birds. In the:

(a) Horicon Zone—The harvest of Canada geese is limited to 62,000 birds. The season may not exceed 76 days. All Canada geese harvested must be tagged and the total number of tags issued will be limited so that the quota of 62,000 birds is not exceeded. Limits are 2 Canada geese daily and 4 in possession.

(b) Theresa Zone—The harvest of Canada geese is limited to 5,000 birds. The season may not exceed 70 days. Limits are 1 Canada goose per permittee per 7-day period and 4 for the entire season.

(c) Pine Island Zone—The harvest of Canada geese is limited to 1,700 birds. The season may not exceed 70 days. All Canada geese harvested must be tagged. Limits are 2 Canada geese daily and 4 for the entire season.

(d) Collins Zone—The harvest of Canada geese is limited to 2,700 birds. The season may not exceed 70 days. All Canada geese harvested must be tagged. Limits are 2 Canada geese daily and 4 for the entire season.

(e) Exterior Zone—The harvest of Canada geese is limited to 22,300 birds. The season may not exceed 70 days, except as noted below. Limits are 1 Canada goose daily and 2 in possession through October 31, and 2 daily and 4 in possession thereafter, except as noted below. In the Mississippi River Subzone, the season for Canada geese may extend for 70 days. Limits are 1 Canada goose daily and 2 in possession through October 31, and 2 daily and 4 in possession thereafter. In the Brown County Subzone, a special late season to control local populations of giant Canada geese may be held during December 1–31. The daily bag and possession limits during this special season are 3 and 6 birds, respectively. In the Rock Prairie Subzone, a special late season to harvest giant Canada geese may be held between November 5 and December 10. During this late season, limits are 1 Canada goose daily and 2 in possession.

In Wisconsin, the progress of the Canada goose harvest must be monitored in the exterior zone, and that zone's season closed, if necessary, to insure that the harvest does not exceed the quota stated above.

Illinois: The total harvest of Canada geese in the State will be limited to 103,500 birds. In the:

(a) Southern Illinois Quota Zone—The season for Canada geese will close after 56 days or when 51,750 birds have been harvested, which ever occurs first. Limits are 2 Canada geese daily and 10 in possession through December 31, and 3 daily and 10 in possession thereafter.

(b) Rend Lake Quota Zone—The season for Canada geese will close after 56 days or when 15,500 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 10 in possession through December 31, and 3 daily and 10 in possession thereafter.

(c) Tri-County Zone—The season for Canada geese may not exceed 50 days. Limits are 2 Canada geese daily and 10 in possession.

(d) Remainder of State—Seasons for Canada geese up to 60 days may be selected by zones established for duck hunting seasons. Limits are 2 Canada geese daily and 10 in possession.

Michigan: The total harvest of Canada geese in the State will be limited to 89,400 birds. In the:

(a) North Zone:

(1) West of Forest Highway 13—the framework opening date for all geese is September 23 and the season for Canada geese may extend for 53 days, except in the Superior Counties Goose Management Area (GMA), where the season will close after 53 days or when 11,000 birds have been harvested, whichever occurs first. Limits are 3 Canada geese daily and 6 in possession.

(2) Remainder of North Zone—the framework opening date for all geese is September 26 and the season for Canada geese may extend for 50 days. Limits are 2 Canada geese daily and 4 in possession.

(b) Middle Zone—The season for Canada geese may extend for 50 days. Limits are 2 Canada geese daily and 4 in possession through November 22, and 3 daily and 6 in possession thereafter.

(c) South Zone:

(1) Allegan County GMA—the season for Canada geese will close after 55 days or when 5,500 birds have been harvested, whichever occurs first. Limits are 1 Canada goose daily and 2 in possession.

(2) Muskegon Wastewater GMA—the season for Canada geese will close after 50 days or when 700 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 4 in possession.

(3) Saginaw County GMA—the season for Canada geese will close after 50 days or when 4,500 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 4 in possession.

(4) Fish Point GMA—the season for Canada geese will close after 50 days or when 2,500 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 4 in possession.

(5) Remainder of South Zone.

(i) West of U.S. Highway 27/127—the season for Canada geese may extend for 50 days. Limits are 2 Canada geese daily and 4 in possession.

(ii) East of U.S. Highway 27/127—the season for Canada geese may extend for 40 days. Limits are 2 Canada geese daily and 4 in possession.

(d) Southern Michigan GMA—a late Canada goose season of up to 30 days may be held between January 6 and February 4, 1990. Limits are 2 Canada geese daily and 4 in possession.

Ohio: Canada goose limits are 2 daily and 4 in possession.

Indiana: The total harvest of Canada geese in the State will be limited to 39,700 birds. In:

(a) Posey County—The season for Canada geese will close after 70 days or when 11,500 birds have been harvested, whichever occurs first. Limits are 3 Canada geese daily and 6 in possession. The season may extend to January 31, 1990.

(b) Remainder of the State—The season for Canada geese may extend for 70 days. Limits are 2 Canada geese daily and 4 in possession.

Kentucky: In the:

(a) Western Zone—The season for Canada geese may extend for 70 days, and the harvest will be limited to 31,000 birds. Of the 31,000-bird quota, 20,000 birds will be allocated to the Ballard Reporting Area and 6,000 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 70-day season, the season in that reporting area will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 70 days. The season in Fulton County may extend to February 15, 1990. Limits are 3 Canada geese daily and 6 in possession.

(b) Remainder of the State—The season may extend for 70 days. Limits are 2 Canada geese daily and 4 in possession.

Tennessee: In the:

(a) Northwest Tennessee Zone—The season for Canada geese may extend for 70 days, and the harvest will be limited to 12,400 birds. Of the 12,400 bird quota, 8,600 birds will be allocated to the Reelfoot Quota Zone. If the quota in the Reelfoot Quota Zone is reached prior to completion of the 70-day season, the season in the quota zone will be closed. If this occurs, the season in the remainder of the Northwest Tennessee Zone may continue for an additional 7 days, not to exceed a total of 70 days. The season may extend to February 15, 1990. Limits are 3 Canada geese daily and 6 in possession.

(b) Southwest Tennessee Zone—The season for Canada geese may extend for 30 days, and the harvest will be limited to 700 birds. Limits are 2 Canada geese daily and 4 in possession.

(c) Remainder of the State—The season for Canada geese may extend for 70 days. Limits are 2 Canada geese daily and 4 in possession.

Arkansas: The season for Canada geese may extend for 70 days. Limits are 3 Canada geese daily and 6 in possession.

Louisiana: The season for Canada geese is closed.

Mississippi: The season for Canada geese may extend for 70 days. Limits are 3 Canada geese daily and 6 in possession.

Alabama: Canada goose limits are 2 daily and 4 in possession.

Missouri, Illinois, Indiana, Kentucky and Tennessee Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Rend Lake Quota Zone in Illinois, the Swan Lake Zone in Missouri, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky and the Reelfoot Subzone in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Shipping Restriction: In Illinois and Missouri and in the Kentucky counties of Ballard, Hickman, Fulton and Carlisle, geese may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

Central Flyway

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the entire Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas and Wyoming (east of the Continental Divide).

Ducks (Including Mergansers) and Coots

Outside Dates: October 7, 1989, through January 7, 1990.

Canvasbacks: The season on canvasbacks is closed.

Hunting Season: Seasons in the Low Plains Unit may include no more than 39 days. Seasons in the High Plains Mallard Management Unit may include no more than 51 days, provided that the last 12 days may start no earlier than December 9, 1989. The High Plains Unit, roughly defined as that portion of the Central Flyway which lies west of the 100th meridian, shall be described in State regulations.

States may split their seasons into 2 or, in lieu of zoning, 3 segments.

Daily Bag and Possession Limits: The daily bag limit is 3 ducks, including no more than 2 mallards, no more than 1 of which may be a female, 1 mottled duck, 1 pintail, 1 redhead, 1 hooded merganser, and 2 wood ducks. The possession limit is twice the daily bag limit. Daily bag and possession limits for coots are 15 and 30, respectively.

States in the Central Flyway may, as an alternative to the conventional bag limit for ducks, select a point system of bag and possession limits. Point categories will be as follows:

100 points—female mallard, pintail, redhead, hooded merganser, mottled duck

50 points—male mallard, wood duck

35 points—All other ducks and mergansers

Under the point system, the daily bag limit is reached when the point value of the last bird taken, added to the sum of point values of all other ducks already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of ducks that legally could have been taken in 2 days.

Zoning: Duck and coot hunting seasons may be selected independently in existing zones as described in the following States:

Montana (Central Flyway portion):

Experimental Zone 1. The counties of Bighorn, Blaine, Carbon, Daniels, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Richland, Roosevelt, Sheridan, Stillwater, Sweetgrass, Valley, Wheatland and Yellowstone.

Experimental Zone 2. The counties of Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Treasure and Wibaux.

Nebraska (Low Plains portion):

Zone 1. Keya Paha County east of U.S. Highway 183 and all of Boyd County including the adjacent waters of the Niobrara River.

Zone 2. The area bounded by designated highways and political boundaries starting on U.S. 73 at the State Line near Falls City; north to N–67; north through Nemaha to U.S. 73–75; north to U.S. 34; west to the Alvo Road; north to U.S. 6; northeast to N–63; north and west to U.S. 77; north to N–92; west to U.S. 81; south to N–66; west to N–14; south to I–80; west to U.S. 34; west to N–10; south to the State Line; west to U.S. 283; north to N–23; west to N–47; north to U.S. 30; east to N–14; north to N–52; northwesterly to N–91; west to U.S. 281; north to Wheeler County and including all of Wheeler and Garfield Counties and Loup County east of U.S. 183; east on N–70 from Wheeler County to N–14; south to N–39; southeast to N–22; east to U.S. 81; southeast to U.S. 30; east to U.S. 73; north to N–51; east to the State Line; and south and west along the State Line to the point of beginning.

Zone 3. The area, excluding Zone 1, north of Zone 2.

Zone 4. The area south of Zone 2.

New Mexico: Experimental Zone 1. The Central Flyway portion of New Mexico north of Interstate Highway 40 and U.S. Highway 54.

Experimental Zone 2. The remainder of the Central Flyway portion of New Mexico.

Oklahoma: Zone 1. That portion of northwestern Oklahoma, except the Panhandle, bounded by the following highways: starting at the Texas-Oklahoma border, OK 33 to OK 47, OK 47 to U.S. 183, U.S. 183 to I–40, I–40 to U.S. 177, U.S. 177 to OK 33, OK 33 to I–35, I–35 to U.S. 60, U.S. 60 to U.S. 64, U.S. 64 to OK 132, and OK 132 to the Oklahoma-Kansas State line.

Zone 2. The remainder of the Low Plains.

South Dakota (Low Plains portion):

South Zone. Bon Homme, Yankton and Clay Counties south of S.D. Highway 50; Charles Mix County south and west of a line formed by S.D. Highway 50 from Douglas County to Geddes, Highways CFAS 6198 and FAS 6516 to Lake Andes, and S.D. Highway 50 to Bon Homme County; Gregory County; and Union County south and west of S.D. Highway 50 and Interstate Highway 29.

North Zone. The remainder of the Low Plains.

Geese

Definitions: In the Central Flyway, "geese" includes all species of geese and brant, "dark geese" includes Canada and white-fronted geese and black brant, and "light geese" includes all others.

Outside Dates: September 30, 1989, through January 21, 1990, for dark geese and September 30, 1989, through February 18, 1990 (February 28, 1990, in New Mexico), for light geese.

Possession Limits: Goose possession limits are twice the daily bag limits.

Hunting Seasons: Seasons in States, and independently in described goose management units within States, may be as follows:

Colorado: No more than 95 days with a daily limit of 5 geese that may include no more than 2 dark geese.

Kansas: For dark geese, no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 26 and no more than 1 Canada goose and 1 white-fronted goose during the remainder of the season.

For Light Goose Unit 1 (that area east of U.S. 75 and north of I–70), no more than 100 days with a daily limit of 5.

For Light Goose Unit 2 (the remainder of Kansas), no more than 100 days with a daily limit of 5.

Montana: No more than 95 days with daily limits of 2 dark geese and 3 light geese in Sheridan County and 3 dark geese and 3 light geese in the remainder of the Central Flyway portion of the State.

Nebraska: For Dark Goose Unit 1 (Boyd, Cedar west of U.S. 81, Keya Paha east of U.S. 183, and Knox Counties), no more than 79 days with daily limits of 1 Canada goose and 1 white-fronted goose through November 17 and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For Dark Goose Unit 2 (the remainder of the State east of the following highways starting at the South Dakota line; U.S. 183 to NE 2, NE 2 to U.S. 281, and U.S. 281 to Kansas), no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 19 and no more than 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For Dark Goose Unit 3 (that part of the State west of Units 1 and 2), no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 19 and no more than 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For light geese, no more than 100 days with a daily limit of 5.

New Mexico: For dark geese, no more than 95 days with a daily limit of 2.

For light geese in the Rio Grande Valley Unit (the Central Flyway portion of New Mexico in Socorro and Valencia Counties), no more than 107 days with a daily limit of 5 and a possession limit of 10.

For light geese in the remainder of the Central Flyway portion of New Mexico, no more than 95 days with a daily limit of 5.

North Dakota: For dark geese, no more than 72 days with daily limits of 1 Canada goose and 1 white-fronted goose or 2 white-fronted geese through November 4 and no more than 2 dark geese during the remainder of the season.

For light geese, no more than 100 days with a daily limit of 5.

Oklahoma: For dark geese, no more than 72 days with a daily limit of 2 Canada geese or 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 100 days with a daily limit of 5.

South Dakota: For dark geese in the Missouri River Unit (the Counties of Bon Homme, Brule, Buffalo, Campbell, Charles Mix, Corson east of SD Highway 65, Dewey, Gregory, Haakon north of Kirley Road and East of Plum Creek, Hughes, Hyde, Lyman north of Interstate 90 and east of U.S. Highway 183, Potter, Stanley, Sully, Tripp east of U.S. Highway 183, Walworth, and Yankton west of U.S. Highway 81), no more than 79 days with daily limits of 1 Canada goose and 1 white-fronted goose through November 17 and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For dark geese in the remainder of the State, no more than 72 days with a daily limit of 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 100 days with a daily limit of 5.

Texas: West of U.S. 81, no more than 95 days with a daily limit of 5 geese which may include no more than 2 dark geese.

For dark geese east of U.S. 81, no more than 72 days with a daily limit of 1 Canada goose and 1 white-fronted goose.

For light geese east of U.S. 81, no more than 100 days with a daily limit of 5.

Wyoming: No more than 95 days with a daily limit of 2.

Tundra Swans

The following States may issue permits authorizing each permittee to take no more than one tundra swan, subject to guidelines in the current, approved Hunt Plan for the Eastern Population of Tundra Swans, and specified conditions as follows:

Montana (Central Flyway portion): no more than 500 permits with the season dates concurrent with the season for taking geese.

North Dakota: no more than 1,000 permits with the season dates concurrent with the season for taking light geese.

South Dakota: no more than 500 permits with the season dates concurrent with the season for taking light geese.

Pacific Flyway

The Pacific Flyway includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington and Wyoming (west of the Continental Divide including the Great Divide Basin).

Ducks, Coots, and Common Moorhens

Outside Dates: Between October 7, 1989, and January 7, 1990.

Hunting Seasons: Seasons may be split into two segments. Concurrent 59-day seasons on ducks (including mergansers), coots, and common moorhens (gallinules) may be selected as subsequently noted. In the Oregon counties of Morrow and Umatilla and in Washington all areas lying east of the summit of the Cascade Mountains and east of the Big White Salmon River in Klickitat County, the seasons may be an additional 7 days.

Duck Limits: The basic daily bag limit is 4 ducks, including no more than 3 mallards, no more than 1 of which may be a female, 1 pintail, 1 canvasback, and 2 redheads but no more than 1 canvasback and 1 redhead in combination. The possession limit is twice the daily bag limit.

Coot and Common Moorhen (Gallinule) Limits: The daily bag and possession limit of coots and common moorhens is 25 singly or in the aggreate.

California—Waterfowl Zones: Season dates for the Colorado River Zone of California must coincide with season dates slected by Arizona. Season dates for the Northeastern and Southern Zones of California may differ from those in the remainder of the State.

Idaho—Waterfowl Zones: Duck and goose season dates for Zone 1 and Zone 2 may differ. Zone 1 includes all lands and waters within the Fort Hall Indian Reservation and Bannock County; Bingham County except that portion within the Blackfoot Reservoir drainage; and Power County east of State Highway 37 and State Highway 39. Zone 2 includes the remainder of the State.

Nevada—Clark County Waterfowl Zone: Season dates for Clark County may differ from those in the remainder of Nevada.

Geese (including Brant)

Outside dates, season lengths and limits on geese (including brant): Seasons may be split into two segments. Between September 20, 1989, and January 21, 1990, a 93-day season on geese (except brant in Washington, Oregon and California) may be selected, except as subsequently noted. The basic daily bag and possession limit is 6, provided that the daily bag limit includes no more than 3 white geese (snow, including blue, and Ross' geese) and 3 dark geese (all other species of geese). In Washington and Idaho, the daily bag and possession limits are 3 and 6 geese, respectively. Washington, Oregon and California may select an open season for brant with daily bag and possession limits of 2 and 4 brant, respectively. Brant seasons may not exceed 16-consecutive days in Washington and Oregon and 30-consecutive days in California.

Aleutian Canada goose closure: There will be no open season on Aleutian Canada geese. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

California, Oregon, Washington—Cackling Canada goose closure: There wil be no open season on cackling Canada geese in California, Oregon and Washington.

California—Canada goose and dark goose closures: two areas in California, described as follows, are restricted in the hunting of certain geese:

(1) In the counties of Del Norte and Humboldt there will be no open season for Canada geese.

(2) In the Sacramento Valley in that area bounded by a line beginning at Willows in Glenn County proceeding south on Interstate Highway 5 to the junction with Hahn Road north of Arbuckle in Colusa County; then easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes on the Sacramento River; then southerly on the Sacramento River to the Tisdale By-pass; then easterly on the Tisdale By-pass to where it meets O'Banion Road; then easterly on O'Banion Road to State Highway 99; then northerly on State Highway 99 to its junction with the Gridley-Colusa Highway in Gridley in Butte County; then westerly on the Gridley-Colusa Highway to its junction with the River Road; then northerly on the River Road to the Princeton Ferry; then westerly across the Sacramento River to State Highway 45; then northerly on State Highway 45 to its junction with State Highway 162; then continuing northerly on State Highway 45-162 to Glenn; then westerly on State Highway 162 to the point of beginning in Willows. In this area, the season on white-fronted geese must end on or before November 30, 1989, and Canada geese may not be taken west of the Sacramento River.

California (Northeastern Zone)—geese: In the Northeastern Zone of California the season may be from October 7, 1989, to Januray 7, 1990, except that white-fronted geese may be taken only during October 7 to October 31, 1989. Limits will be 3 geese per day and 6 in possession, of which not more than 1 white-fronted goose or 2 Canada geese shall be in the daily limit and not more than 2 white-fronted geese and 4 Canada geese shall be in possession.

California (Balance of the State Zone)—geese: In the Balance of the State Zone the season may be from October 28, 1989, through Januray 14, 1990, except that white-fronted geese may be taken only during October 28, 1989, to December 31, 1989. Limits shall be 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2 provided that they are Canada geese (except Aleutian and cackling Canada geese for which the season is closed).

Western Oregon: In those portions of Coos and Curry Counties lying west of U.S. Highway 101 and that portion of Western Oregon west and north of a line starting at Oregon-Washington State line on the Columbia River; south on Interstate Highway 5 to its junction with State Highway 22 at Salem; east on State Highway 22 to the Stayton cutoff; south on the Stayton cutoff through Stayton and straight south the Santiam River; west (downstream) on the Santiam River to Interstate Highway 5; south on Interstate Highway 5 to State Highway 126 at Eugene; west on State Highway 126 to State Highway 36; north on State Highway 36 to Forest Road 5070 at Brickerville; west and south on Forest Road 5070 to State Highway 126; west on State Highway 126 and ending at the Oregon coast, except for designated areas, there shall be no open season on Canada geese. In the remainder of Western Oregon, the season and limits shall be the same as those for the Pacific Flyway, except the seasons in the designated area must end upon attainment of their individual quotas which collectively equal 210 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a state-issued permit authorizing them to do so.

Oregon (Lake and Klamath Counties)—geese: In the Oregon counties of Lake and Klamath the season on white-fronted geese will not open before November 1.

Washington and Oregon (Columbia Basin Portions)—geese: In the Washington counties of Adams, Benton, Douglas, Franklin, Grant, Kittitas, Klickitat, Lincoln, Walla Walla and Yakima, and in the Oregon counties of Gilliam, Morrow, Sherman, Umatilla, Union, Wallowa and Wasco, the goose season may be an additional 7 days.

Western Washington: In Clark, Cowlitz, Wahkiakum, and Pacific Counties, except for areas to be designated by the State, there shall be no open season on Canada geese. For designated areas the seasons must end upon attainment of individual quotas which collectively will equal 90 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a state-issued permit authorizing them to do so.

Idaho, Oregon and Montana—Pacific Population of Canada geese: In that portion of Idaho lying west of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Higwhay 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border (except Boundary, Bonner, Kootenai, Benewah, Shoshone, Latah, Nez Perce, Lewis, Clearwater and Idaho Counties); in the Oregon counties of Baker and Malheur; and in Montana (Pacific Flyway portion west of the Continental Divide), the daily bag and possession limits are 2 and 4 Canada geese, respectively; and the season for Canada geese may not extend beyond January 7, 1990.

Montana and Wyoming—Rocky Mountain Population of Canada Geese: In Montana (Pacific Flyway portion east of the Continental Divide) and Wyoming the season may not extend beyond January 14, 1990. In Lincoln, Sweetwater and Sublette Counties, Wyoming, the combined special sandhill crane-Canada goose seasons and the regular goose season shall not exceed 93 days.

Idaho, Colorado and Utah: In that portion of Idaho lying east of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border; in Colorado; and in Utah, except Washington County, the daily bag and possession limits are 2 and 4 Canada geese, respectively, and the season for Canada geese may be no more than 88 days and may not extend beyond January 14, 1990.

Nevada: Nevada may designate season dates on geese in Clark County and in Elko County and that portion of White Pine County within Ruby Lake National Wildlife Refuge differing from those in the remainder of the State. In Clark County the season on Canada geese may be no more than 86 days. Except for Clark County the daily bag and possession limits are 2 and 4 Canada geese, respectively. In Clark County the daily bag and possession limits are 2 Canada geese.

Arizona, California, Utah and New Mexico: In California, the Colorado River Zone where the season must be the same as that selected by Arizona and the Southern Zone; in Arizona; in New Mexico; and in Washington County, Utah; the season for Canada geese may be no more than 88 days. The daily bag and possession limit is 2 Canada geese except in that portion of California Department of Fish and Game District 22 within the Southern Zone (i.e. Imperial Valley) where the daily bag and possession limits for Canada geese are 1 and 2, respectively.

Tundra Swans

In Utah, Nevada and Montana, an open season for tundra swans may be selected under the following conditions: (a) between September 30, 1989, and January 21, 1990, a 93-day season may be selected, and seasons may be split into two segments; (b) appropriate State agency must issue permits and obtain harvest and hunter participation data; (c) in Utah, no more than 2,500 permits may be issued, authorizing each permittee to take 1 tundra swan; (d) in Nevada, no more than 650 permits may be issued, authorizing each permittee to take 1 tundra swan in either Churchill, Lyon, or Pershing Counties; (e) in Montana, no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan in either Teton, Cascade, Hill, Liberty, Toole or Pondera Counties.

Common Snipe

Outside dates: Between September 1, 1989, and February 28, 1990.

Hunting Seasons and Daily Bag and Possession Limits: Seasons may not exceed 107 days. Bag and possession limits are 8 and 16, respectively.

Special Falconry Frameworks

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length for the extended season, regular season, and any special seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dotes: Seasons must fall between September 1, 1989 and March 10, 1990.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special seasons, and regular hunting seasons in all States, including those that do not select an extended season.

Regulations Publication: Each State selecting the special season must inform the Service of the dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons and hunting hours apply to falconry in each State listed in 50 CFR 21.29(k). Regular season bag and possession limits do not apply to falconry.

Note: Total season length for all hunting methods combined shall not exceed 107 days for any species or group of species in one geographical area. The extension of this framework to include the period September 1, 1989–March 10, 1990, and the option to split the extended falconry season into a maximum of 3 segments are considered tentative, and will be evaluated in cooperation with States offering such extensions after a period of several years.

Dated: August 4, 1989.

Susan Recce Lamson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-19173 Filed 8-15-89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Ch. VI

[Docket No. 90650-9150]

RIN 0648-AB25

Atlantic Coast Striped Bass Regulations in the Exclusive Economic Zone

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NOAA issues this advance notice of proposed rulemaking (ANPR) to make the public aware of a proposal to implement regulations on fishing for Atlantic striped bass in the exclusive economic zone (EEZ) 3–200 miles (4.8–321.9 km) offshore. The ANPR is in response to the Atlantic Striped Bass Conservation Act (Pub. L. 100–589) which requires the Secretary of Commerce, after making certain determinations, to promulgate regulations on fishing for striped bass in the Atlantic EEZ. By this action, NOAA Fisheries is soliciting public comment on options presented to regulate fishing for striped bass in the EEZ on the Atlantic Coast. In addition, comments on any other options are welcomed and encouraged.

DATE: Written comments must be received on or before September 15, 1989.

ADDRESSES: Send comments on this ANPR to Richard H. Schaefer, Director,

Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: David G. Deuel or Austin R. Magill, 301–427–2347.

SUPPLEMENTARY INFORMATION:

Background

Section 6 of the Atlantic Striped Bass Conservation Act (Act), reauthorized in November 1988 (Pub. L. 100–589) requires that "the Secretary of Commerce shall promulgate regulations on fishing for Atlantic striped bass in the EEZ that the Secretary determines to be consistent with the national standards in section 301 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265 as amended) and necessary and appropriate to (1) ensure the effectiveness of state regulations or a federal moratorium on fishing for Atlantic striped bass within the coastal waters of a coastal state and (2) to achieve conservation and management goals for the Atlantic striped bass resource." Indeveloping the regulations, the Secretary shall consult with the Atlantic States Marine Fisheries Commission (ASMFC), the appropriate Regional Fishery Management Councils, and each affected Federal, state and local government entity. Section 6 also states that the appropriate Regional Fishery Management Councils may prepare a Fishery Management Plan for striped bass in the EEZ, which if approved and implemented, would supersede any regulations promulgated by the Secretary.

The Atlantic striped bass occurs predominately in internal state waters and the territorial sea. Historically, only about 7 percent of commercial landings have been taken seaward of 3 miles (4.8 km) from the coastline. Management responsibility for striped bass resides primarily with the coastal states, and management occurs through the Atlantic State Marine Fisheries Commission's Interstate Fisheries Management Plan for the Striped Bass (ASMFC Plan). This Plan was adopted in 1981 by the coastal states from Maine through North Carolina in responsee to a severe decline in commercial landings and in juvenile production in Maryland. Increasingly strict state regulations have been imposed by amendments to the Plan since 1981 to restrict further the harvest of striped bass by recreational and commercial fisheries and allow rebuilding of the stocks. A draft Fishery Management Plan was prepared by the Mid-Atlantic Regional Fishery Management Council in 1984 for the EEZ to complete the ASMFC Plan but was not adopted.

Limited commercial catches of striped bass were made in the EEZ off Maryland in 1987 (24,000 pounds or 10.9 mt) and 1988 (27,000 pounds or 12.2 mt). Maryland's regulations, incuding a moratorium on the harvest of striped bass in certain internal Maryland waters, did not prevent the landing of these fish in Maryland for trans-shipment to other states. These landings and the absence of regulations in the EEZ prompted concern for a potential increase in harvest from the EEZ and resulted in section 6 of the Act.

Relevant Activities Pursuant to Section 6

In response to Section 6 of the Act, NOAA Fisheries has considered several regulatory options for the EEZ, and consulted with the ASMFC Striped Bass Management Board and the New England and Mid-Atlantic Fishery Management Councils. Four options for regulating striped bass fishing in the EEZ were identified and discussed with the above groups. A brief discussion of these options is presented below. Since these meetings, Option 1 has been split into Option 1A and 1B.

Option 1A—Prohibition on the Harvest and the Possession of Striped Bass in the EEZ

This approach, prohibiting the harvest (catch and retention) and possession of striped bass from the EEZ, represents a strong conservation position, is easy to understand and easy to enforce. This option eliminates the excuse "I caught it in the EEZ" for fishermen in state waters. This option would be consistent with the national standards of Magnuson Act and supportive of the objectives of the ASMFC Plan.

Option 1B—Prohibition on the Harvest of Striped Bass in the EEZ

This option, while prohibiting the harvest (catch and retention) of striped bass in the EEZ, allows possession, while in the EEZ, of striped bass caught legally in state waters. Similar to Option 1A, this option represents a strong conservation position and would be consistent with the national standards of the Magnuson Act. This option also eliminates the excuse "I caught it in the EEZ" for fishermen in state waters. Additionally, a no-harvest provision is similar to many of the state regulations and supportive of the ASMFC Plan. It would be harder to enforce than Option 1A, because it would allow a fisherman to claim he had caught the fish legally in state waters and that he was merely in transit across the EEZ.

Option 2—Application of State Regulations to Fish Caught in the EEZ

Under this option, regulations of the state where the fish are landed would apply to fish caught in the EEZ. This essentially imposes a Federal landing law that reinforces ASMFC-approved regulatory schemes, or extends a state's management regime into the EEZ, based on dockside enforcement. This approach would require that regulations in each state be reviewed and found consistent with the national standards set forth in section 301 of the Magnuson Act. Becaue the states' management regimes differ, issues of discrimination between residents of different states (National Standard 4) and use of best scientific information (National Standard 2) are encountered. Each time a state regulation changes, consistency with the Magnuson Act would have to be reexamined. Option 2 would allow for the taking of striped bass in the EEZ in quantities and sizes consistent with the regulations in the state of landing. However, this approach does not address the issue of fishermen harvesting from the EEZ and landing in a non-participatory state, where laws might be less restrictive or non-existent. Enforcement is linked to entry into a state's waters, and this approach allows fishermen legally to possess striped bass in the EEZ, because the applicable enforcement regime is only identified upon a fishermen's entry into coastal state waters and/or landing there. Thus, this option would not prohibit retention of striped bass of any size or number taken while in the EEZ. Such fish might be illegal in all participatory states, e.g., smaller than the lowest minimum size limit.

Option 3—Imposition of Specific Federal Regulations on Striped Bass Fishing in the EEZ

Numerous regulations could be implemented under this Option, including provisions for daily limits, possession limits, gear restriction, seasons and size limits. For example, one fish possession limit with a minimum size equal to the ASMFC recommended minimum size could be implemented in the EEZ. Any such Federal regulation, however, would supersede existing state regulations governing Atlantic striped bass caught in the EEZ. Pursuant to this regulation, a fisherman could legally land in Maryland one fish at or above the minimum size taken from the EEZ even though Maryland has a moratorium on striped bass fishing and a prohibition on possession of fish taken in Maryland waters. This option would likely increase the total harvest of striped bass, because the allowed catch under Federal regulations would be in addition to the catch allowed by State regulations.

Option 4—Status Quo or Take no Action

Option 4 would be to take no action at this time. Section 6 of the Act requires the Secretary of Commerce to promulgate regulations that are "necessary and appropriate". Effective January 9, 1989, Maryland enacted legislation that prohibits the landing in Maryland of striped bass taken in the EEZ. The primary reason for Section 6 of the Act was the "loophole" that allowed fish taken in the EEZ to be landed in Maryland and trans-shipped to other states. The action by Maryland appears to eliminate the need for any action by the Secretary of Commerce at this time, because there are no other known landings of striped bass of any magnitude from the EEZ.

Discussion

Recent contacts with representatives of each coastal state from Maine through North Carolina did not identify any significant regulatory problem related to the harvest of striped bass from the EEZ that would be solved by imposing Federal regulations based on section 6 of the Act. The landings laws and other state regulations in place appear adequate to regulate the landing of striped bass harvested from the EEZ.

The option initially preferred by NOAA Fisheries was Option 1A. The ASMFC Striped Bass Management Board did not vote on this proposed action, but deferred a decision to the two involved Fishery Management Councils. However, concern was expressed that a no-take provision (Option 1B) would be more acceptable than Option 1A, based on the example of the need to traverse the EEZ to reach the mainland with fish legally caught at Block Island, Rhode Island. Support was also expressed for Option 2, but the impracticability of determining the consistency of each state's regulations and the issue of discrimination were identified as nearly insurmountable constraints.

In the absence of a fishery management plan for striped bass in the EEZ, NOAA Fisheries determined that implementation of either a no harvest and no possession or a no harvest provision would require about 10 months, based on the need for required documents and public comment periods under the Administrative Procedure Act, the National Environment Policy Act, and Executive Order 12291. This, coupled with the lack of regulatory problems in the coastal states, prompted NOAA Fisheries to then support Option 4, i.e., take no action. Presentations were made to the New England and Mid-Atlantic Fishery Management Councils with this as the preferred option. The New England Council voted unanimously to support Option 4, while the Mid-Atlantic Council voted to support Option 1A. Based on these divergent views, NOAA Fisheries is now proposing, as its preferred option, Option 1B, a prohibition on the harvest of striped bass from the EEZ on the Atlantic Coast, as a compromise position.

Option 1B does not prohibit possession of striped bass in the EEZ. Fish legally taken from state waters may be transported through the EEZ. The no-harvest option would prevent development of a significant fishery in the EEZ. This option is consistent with the National Standards of the Magnuson Act and, while more restrictive than regulations in some states, is supportive of the restoration objectives of the ASMFC Plan. If Option 1B is implemented, the regulations would be effective through September 30, 1991, the expiration date of the Atlantic Striped Bass Conservation Act.

NOAA Fisheries has determined that a full record of comment is necessary before determining whether to proceed with the proposed rule. Therefore, through this ANPR, NOAA Fisheries invites comments from all interested parties on the options presented to regulate fishing for striped bass in the Atlantic EEZ. In addition, comments on any other options are welcomed and encouraged.

Dated: August 10, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–19163 Filed 8–15–89; 8:45 am]

BILLING CODE 3510–22–M

---

50 CFR Parts 672 and 675

[Docket No. 90640–9140]

RIN 0648–AC81

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce (Secretary) proposes a rule which (1) authorizes the Secretary to regulate directed fishing in the Gulf of Alaska (GOA) to accommodate incidental harvest requirements; (2) authorizes the Secretary to reopen a prematurely closed fishery; (3) requires fishermen to mark buoys used in the pot and hook-and-line fisheries; and (4) specifies 12:00 noon Alaska local time as the starting and ending time for groundfish fishing seasons. The Secretary also proposes other changes to clarify or update existing regulations. These changes are necessary to optimize groundfish yields from the GOA groundfish fishery, facilitate enforcement in the GOA and BSAI groundfish fisheries, and clarify existing regulations they are intended to futher the goals and objectives contained in fishery management plans that govern these fisheries.

DATES: Comments are invited until September 14, 1989.

ADDRESSES: Comments may be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the same address. Comments on the environmental assessment are particularly requested.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the Gulf of Alaska and Bering Sea and Aleutian Islands areas are managed by the Secretary under the Fishery Management Plans (FMPs) for Groundfish of the Gulf of Alaska and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR parts 672 and 675.

At its January 16–19, 1989, meeting, the Council reviewed more than forty recommendations submitted by various interested parties for possible amendments to the FMPs or to implementing regulations. Four of the suggestions for regulatory changes were

BEST COPY AVAILABLE

adopted by the Council. The first was to establish authority in the GOA to close directed fisheries prior to the total allowable catches (TACs) for such fisheries being reached to accommodate incidental catch needs. This authority has already been established in the BSAI. The second, third, and fourth suggestions are relevant to both the GOA and BSAI. The second measure would amend regulatory text at § 672.22(a) and (b) and § 675.20(e) to provide for reopening fisheries that have been closed prematurely if available catch data show that allowable harvest levels have not been reached. The third measure would amend regulatory text at § 672.23 and establish a new § 675.23 to specify 12:00 noon Alaska local time as the starting and ending time for all fishing seasons. The fourth measure would amend regulatory text at § 672.24 and establish a new § 675.24 to require fishermen to mark their gear used in the pot and hook-and-line fisheries. Minor changes to regulations are described below under "Other regulatory changes." Descriptions of, and reasons for, the proposed measures are described below.

Authority to Halt Directed Fishing Before a Species' TAC Is Reached

Nine target species including the "other species" category, are managed under regulations implementing the GOA FMP. For each of these target species, TACs are specified by the Secretary by means detailed in the regulations. When the TAC for any target species in any regulatory area or district had been reached, the Secretary prohibits the retention of that species therein, and requires that such species be treated as a prohibited species under § 672.20(e). Except for sable fish under § 672.24(b)(3), no authority exists under 50 CFR part 672 allowing the Secretary to close a fishery for a target species or "other species" prior to the TAC being reached to preserve a portion of the TAC to support incidental catches in other target fisheries.

To date, reaching TACs prematurely has only been a problem in the "other rockfish" and sablefish fisheries. However, the Gulf of Alaska groundfish industry is expanding rapidly with new catching and processing capacity. The sum of TACs available for harvest in 1989 is 231,966 metric tons (mt), which represents an increase of 34 percent over the total 1988 harvest of 153,882 mt. The likelihood that TACs for other species will be reached early in the fishing year is increasing.

Setting aside certain amounts of TACs as bycatch to support other target fisheries may be necessary to avoid waste. Authority is needed to allow the secretary to close target fisheries early to avoid reaching TACs for those species/species groups that are caught incidentally in other directed fisheries. Otherwise, the Secretary must allow the TACs to be reached and declare additional catches as prohibited species to be discarded at sea as waste. The Secretary proposes, therefore, to allow closure of a fishery for a target species or the "other species" category prior to its TAC being reached if deemed appropriate to accommodate bycatch requirements. The amount of TAC left uncaught by the target fishery would then be available to support bycatch needs in directed fisheries for other groundfish species. The Secretary expects the amount set aside to be sufficient to allow further bycatches during the remainder of the fishing year without actually causing the TAC for the bycatch species/species group to be reached. The Secretary's decision shall be based upon the following considerations.

(1) The risk of biological harm to the groundfish species being retained.

The purpose of this factor is to consider effects on the well-being of a groundfish species if amounts were to be set aside for bycatch. If a fisherey is allowed to harvest the entire TAC for a species prior to the end of the fishing year, additional catches are treated as prohibited species and discarded at sea. In allowing this, the Secretary must conclude that mortality in excess of TAC is consistent with the goals and objectives of the GOA FMP and will not exceed ABC for that species.

(2) Whether a bycatch set aside is required.

The purpose of this factor is to consider the level of natural catch rates. In some cases, natural bycatch rates are sufficiently low, resulting in insignificant amounts of bycatch and thus minimal discard. Setting aside bycatch would be unnecessary. In other cases, where natural bycatch rates are high, significant amounts of bycatch may be taken thus compelling another conclusion.

(3) The socioeconomic impact of allocation to bycatch needs.

This factor considers the allocative effects of setting aside bycatch. Except for sablefish, GOA groundfish are currently available to all users without regard to need. Setting aside bycatch redistributes fishery rights. amounts of bycatch that could have been targeted on by some users might be denied to them as a result of a bycatch only declaration. All determinations about setting aside bycatch will be consistent with the goals and objectives of the GOA FMP and reasonably calculated to promote conservation.

Authority to Reopen Fisheries to Allow Full Utilization of TACs or Gear Shares

Regulations for the GOA and BSAI FMPs provide that a fishery will be closed when the TAC or gear share of a TAC for that fishery is reached. Current regulations do not specifically provide authority for the Secretary to reopen a fishery if subsequent catch data show the closure was premature. Premature closures would preclude attainment of optimum yield and thwart efforts to maximize economic returns from the fishery. The Secretary has determined that if fisheries have been closed based on projected catch data not substantiated by actual catch data, then the fisheries should be reopened. The Secretary, therefore, proposes regulations to specifically provide authority to reopen a fishery that had been closed prematurely.

New Requirement for Making Hook-and-Line and Pot Gear

Enforcement officers must be able to identify the owners of setline or skate gear, including hook-and-line and pot gear, to effectively enforce various fishery regulations and locate and return lost or stolen gear. The Secretary, therefore, proposes to require fishermen who are using setline or skate gear to mark the buoys for such gear to aid in its identification.

Openings and Closures of Fishing Seasons at 12:00 Noon Alaska Local Time

Except for the GOA sablefish hook-and-line fishery, which starts at 12:00 noon, Alaska local time, the GOA and BSAI groundfish fisheries start at 1 minute after midnight on January 1 and are allowed to proceed, subject to time/area closures until midnight, December 31 of any fishing year. Night time openings are not desirable for two reasons. Competition within the fishing fleet, especially in fisheries that might be prosecuted in a short time frame, causes safety problems for fishermen who initiate fishing operations concurrent with a midnight opening and are burdened by darkness. Bad weather during darkness will worsen the safety conditions. Also, agency enforcement of the starting and ending times is not practical during darkness, because such enforcement is usually conducted with aircraft to cover as much of the fishing area as possible. The Secretary, therefore, proposes to make 12:00 noon, Alaska local time as the starting and ending time for all fishing seasons.

Other Regulatory Changes

Certain other regulatory changes are proposed to clarify regulations or to bring regulatory sections up to date with other regulatory changes. These changes are as follows:

(1) In § 672.2, the terms "setline" and "skate" are defined.

(2) In paragraph (a)(1) of §§ 672.5 and 675.5, the phrase, "to which a permit has been issued under this part" is deleted to remove the link between permit requirements and reporting requirements. As written, a vessel operator who did not have a permit and who also had not complied with requirements to submit fish tickets would only be in violation of not having a permit. By removing the phrase, he would also be in violation of the fish ticket requirement.

(3) Paragraph (b) of § 672.23 is revised to delete reference to sablefish pots, since sablefish pots are no longer a legal gear in the GOA and this regulation serves no purpose.

(4) In § 672.24, paragraph (a), *Biodegradable escape panels required for all sablefish pots*, is deleted for the same reason.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary for the conservation and management of the groundfish fishery off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an EA for this rule that discusses the impact on the human environment that will occur as a result of this rule. You may obtain a copy of the EA/RIR/IRFA from the Regional Director at the address above.

The Under Secretary for Oceans and Atmosphere, NOAA, (Under Secretary) determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the socioeconomic impacts discussed in the EA/RIR/IRFA prepared by the Alaska Region, NMFS.

The General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration, that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The effects that have been identified, would in general, be positive. Authority to close a fishery before a TAC is reached to provide for subsequent incidental catch amounts in other target fisheries is superior to the status quo because it would reduce unnecessary waste of valuable resources by allowing the retention of species that would otherwise have to be discarded; and would minimize total fishing mortality and promote fishery conservation of groundfish resources by accounting for incidental catch amounts within established TACs. Authority to allow reopening of fisheries that had been closed prematurely is superior to the status quo, since Secretarial direction would be clearly specified and provision for fully utilizing available TACs would be fostered. A requirement that fishermen mark their setline and skate gear is superior to the status quo, because owners could be informed about lost gear and enforcement of closed fishing areas could be facilitated. A 12:00 noon opening and closing time for all groundfish fisheries is superior to the status quo, because fishermen would be working under safer conditions during daylight and enforcement of openings and closures would be facilitated.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

NOAA has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under Section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive order 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Recordkeeping and reporting requirements.

Dated: August 11, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, the terms *setline* and *skate* are added to read as follows:

§ 672.2 Definitions.

* * * * *

Setline means one or more stationary, buoyed, and anchored lines with hooks attached.

Skate means all or part of a longline or setline.

* * * * *

3. In § 672.5, the first sentence of the introductory text of paragraph (a)(1) is revised to read as follows:

§ 672.5 Recordkeeping and reporting.

(a) * * *

(1) The operator of any fishing vessel (including catcher/processor vessels) that catches groundfish in any of the Gulf of Alaska regulatory areas, the territorial sea adjacent to any regulatory area, or internal waters of the State of Alaska, shall be responsible for the submission to ADF&G of an accurately completed State of Alaska fish ticket or an equivalent document containing all of the information required on an Alaskan fish ticket. * * *

* * * * *

4. In § 672.20, paragraph (c)(2) is redesignated as (c)(3) and a new paragraph (c)(2) is added to read as follows:

§ 672.20 General limitations.

(c) * * *

(2) *Notices of bycatch.* (i) When the Regional Director determines that the amount of the any target species or of the "other species" category that has not been caught during the fishing year is necessary for bycatch in fisheries for other groundfish species during the remainder of the fishing year, the Secretary will publish a notice in the **Federal Register** prohibiting directed fishing for that species on the "other species" category for the remainder of the fishing year.

(ii) *Data.* All information relevent to one or more of the following factors may be considered in making the determinations under paragraph (c)(2) of this section:

(A) The risk of biological harm to the groundfish species being retained;

(B) Whether a bycatch set-aside is required; and

(C) Socioeconomic impact of allocation to bycatch needs.

(iii) *Procedure.* (A) No notice issued under this paragraph will take effect until:

(1) The Secretary has failed the proposed notice for public inspection with the Office of the Federal Register. and

(2) The Secretary has published the proposed notice in the **Federal Register** for public comment for a period of 30

days before it is made final, unless the Secretary finds for good cause that such notice and public procedure is impracticable, unnecessary, or contrary to the public interest.

(B) If the Secretary decides, for good cause, that setting aside bycatch is necessary without affording a prior opportunity for public comment, public comments on the necessity for, and extent of, the bycatch declaration will be received by the Regional Director for a period for 15 days after the effective date of the notice.

(C) During any such 15-day period, the Regional Director will make available for public inspection, during business hours, the aggregate data upon which an adjustment was based.

(D) If written comments are received during any such 15-day period which oppose or protest a notice of bycatch issued under this section, the Secretary will reconsider the necessity for the adjustment and, as soon as practicable after that reconsideration, will either:

(1) Publish in the Federal Register a notice of continued effectiveness of the notice of bycatch responding to comments received; or

(2) Modify or rescind the notice.

(E) Notices issued by the Secretary under paragraph (c)(2)(i) of this section will include the following information:

(1) A description of the notice;

(2) The reasons for and the determinations required under paragraph (c)(2) of this section; and

(3) The effective date and any termination date of such notice. If no termination date is specified, the notice will terminate on the last day of the fishing year.

* * * * *

5. In § 672.22, add "; or " after paragraphs (a)(2)(i)(B) and (a)(2)(ii)(C).

6. In § 672.22, paragraphs (a)(2)(i)(C) and (a)(2)(ii)(D) are added as follows:

§ 672.22 Inseason adjustments.

(a) * * *

(2) * * *

(i) * * *

(C) The underharvest of a TAC or gear share of a TAC for any ground fish species when catch information indicates that the TAC or gear share has not been reached.

(ii) * * *

(D) Reopening of a management area or season to achieve the TAC or gear share of a TAC for any of the target species or the "other species" category.

* * * * *

7. Section 672.23 is revised to read as follows:

§ 672.23 Seasons.

(a) Fishing for groundfish in the regulatory areas and districts of the Gulf of Alaska is authorized from January 1 to December 31, subject to other provisions of this part, except as provided in paragraph (c) of this section.

(b) The time of all openings and closures of fishing seasons is 12:00 noon Alaska local time.

(c) Directed fishing for sablefish with hook-and-line gear in the regulatory areas and districts of the Gulf of Alaska is authorized from April 1 through December 31, subject to the other provisions of this part.

8. In § 672.24, paragraph (a) is revised to read as follows:

§ 672.24 Gear limitations.

(a) *Marking of gear.* (1) All setline or skate marker buoys carried aboard or used by any vessel regulated under this part shall be marked with one of the following:

(i) The vessel's name; and

(ii) The vessel's Federal permit number; or

(iii) The vessel's registration number.

(2) Markings shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water line and shall be maintained in good condition.

* * * * *

PART 675—GROUNDFISH OF THE BERING SEA AND THE ALEUTIAN ISLANDS AREA

9. In § 675.5, the first sentence of the introductory text of paragraph (a)(1) is revised to read as follows:

§ 675.5 Recordkeeping and reporting.

(a) * * *

(1) The operator of any fishing vessel (including catcher/processor vessels) that catches groundfish in the Bering Sea and Aleutian Islands Management Area or either subarea, the territorial sea adjacent to either subarea, or internal waters of the State of Alaska, will be responsible for the submission to ADF&G of an accurately completed State of Alaska fish ticket or an equivalent document containing all of the information required on an Alaska fish ticket. * * *

* * * * *

10. In § 675.20, add "; or" after paragraph (e)(2)(ii) and (e)(3)(iii).

11. In § 675.20, paragraphs (e)(2)(iii) and (e)(3)(iv) are added to read as follows:

§ 675.20 General limitations.

(e) * * *

(2) * * *

(iii) The underharvest of a TAC or gear share of a TAC for any groundfish species when catch information indicates that the TAC has not been reached.

(3) * * *

(iv) Reopening of a management area or season to achieve the TAC or gear share of a TAC for any of the target species or the "other species" category.

* * * * *

12. A new § 675.23 is added to read as follows:

§ 675.23 Seasons.

(a) Fishing for groundfish in the subareas and statistical areas of the Bering Sea and Aleutian Islands is authorized from January 1 to December 31, subject to other provisions of this part.

(b) The time of all openings and closures of fishing seasons is 12:00 noon Alaska local time.

13. A new § 675.24 is added to read as follows:

§ 675.24 Gear limitations.

(a) *Marking of gear.* All setline or skate marker buoys carried aboard or used by vessels regulated under this part shall be marked with one of the following:

(1) The vessel's name; and

(2) The vessel's Federal permit number; or

(3) The vessel's registration number.

(b) Markings shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water line and shall be maintained in good condition.

[FR Doc. 89-19253 Filed 8-15-89; 8:45 am]
BILLING CODE 3510-22

Notices

Federal Register
Vol. 54, No. 157
Wednesday, August 16, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[CN-89-003]

Advisory Committee on Cotton Marketing Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Advisory Committee on Cotton Marketing will meet on Wednesday, August 30, 1989, beginning at 8:00 a.m. at the Peabody Hotel, 149 Union Avenue, Memphis, Tennessee. The purpose of the meeting, the third held by the committee, will be to continue a review of prominent marketing system issues.

Tentative agenda items include recommendations from the subcommittee of the Advisory Committee on Cotton Marketing, which met on January 17 and April 25, 1989, in Memphis, Tennessee, regarding the use of additional quality factors in classifying cotton and their incorporation into the price support loan schedule. This meeting is open to the public, and written comments may be submitted in advance or following the meeting to Jesse F. Moore, Director, Cotton Division. Time, however, will be inadequate to permit lengthy public comment on the day of the meeting.

FOR FURTHER INFORMATION CONTACT: Jesse F. Moore, Director, Cotton Division, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-3193.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Cotton Marketing was established by the U.S. Department of Agriculture to review the cotton marketing system and to recommend ways of improving its efficiency. Notice of this meeting is provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. 92-463).

Dated: August 14, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-19424 Filed 8-15-89; 9:12 am]
BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

[Docket No. 89-136]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Alfalfa Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Northrup King Company, to allow the field testing in the State of Minnesota of alfalfa plants genetically engineered to express a gene from *Streptomyces viridochromogenes*, which provides resistance to the glufosinate-class of herbicides. The assessment provides a basis for the conclusion that the field testing of these genetically engineered alfalfa plants will not present a risk of introduction of dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Quentin B. Kubicek, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6774. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 89-038-01.

SUPPLEMENTARY INFORMATION:

The regulations in 7 CFR part 340 regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22908).

The Northrup King Company, of Stanton, Minnesota, has submitted an application for a permit for release into the environment, to field test alfalfa plants genetically engineered to express a gene from *Streptomyces viridochromogenes*, which provides resistance to the glufosinate-class of herbicides. The field trial will take place in Stanton, Minnesota.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the alfalfa plant under the conditions described in the Northrup King Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by the Northrup King Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene from *Streptomyces viridochromogenes* has been inserted into an alfalfa chromosome. The expression of this gene provides resistance to the glufosinate-class of herbicides. In nature, genetic material contained in a chromosome is generally transferred to another sexually compatible plant by cross-pollination. In this field trial, no introduction gener can spread to another plant by cross-pollination, because the genetically engineered alfalfa plants will be mowed to prevent flower formation. Thus, no pollen will be produced by any alfalfa plant in this experiment.

2. Neither the glufosinate acetyl transferase gene itself nor its gene product confers on alfalfa any plant pest characteristic.

3. The bacterium *Streptomyces viridochromogenes*, from which the glufosinate acetyl transferase gene was isolated, is not a plant pest.

4. The vector used to transfer the glufosinate acetyl transferase gene to alfalfa plant cells has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from the DNA of a tumor inducing (Ti) plasmid with known plant pathogenic potential, has been disarmed; that is, genes that are necessary for pathogenicity have been removed from the vector. The vector has been tested and shown to be not pathogenic to any susceptible plant.

5. The vector agent *Agrobacterium tumefaciens*, a phytopathogenic bacterium, was used to deliver the vector DNA and the glufosinate acetyl transferase gene into alfalfa plant cells. The vector agent has been chemotherapeutically eliminated and shown to be no longer associated with any regenerated alfalfa plant.

6. Horizontal movement or gene transfer of the glufosinate acetyl transferase gene is not possible. The vector acts by delivering and inserting the gene into an alfalfa chromosome (i.e., chromosomal DNA). The vector does not survive in or on any transformed alfalfa plant. No mechanism for horizontal movement is known to exist in nature to move an inserted gene from a chromosome of a transformed plant to any other organism.

7. The size of the field test plot is small and will be located on a private research farm in a rural area, which will provide good security.

The environmental assessment and finding of no signicant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 11th day of August 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–19242 Filed 8–15–89; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 89–125]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Bacterium; Clavibacter xyli subsp. cynodontis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Crop Genetics International, to allow the field testing in the State of Maryland of *Clavibacter xyli* subsp. *cynodontis*, a bacterium genetically engineered to express the delta-endotoxin gene of *Bacillus thuringiensis* var. *kurstaki*, another bacterium, in rice. The assessment provides a basis for the conclusion that the field testing of genetically engineered *Clavibacter xyli* subsp. *cynodontis* will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Sally McCammon, Biotechnologist, Biotechnology Permit Unit, Biotechnology Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 845, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8761. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 89–053–01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Crop Genetics International, of Hanover, Maryland, has submitted an application for a permit for release into the environment, to field test the bacterium *Clavibacter xyli* subsp. *cynodontis*, genetically engineered to express the delta-endotoxin gene of *Bacillus thuringiensis* var. *kurstaki* in rice. The field trial will take place in Queen Annes County, Maryland.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the *Clavibacter xyli* subsp. *cynodontis* bacterium under the conditions described in the Crop Genetics International application. APHIS concluded that the field test will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Crop Genetics International, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. The delta-endotoxin gene from *Bacillus thuringiensis* was inserted into the *Clavibacter xyli* subsp. *cynodontis* genome. The gene is lost from the bacterium at the rate of once in every 12,500 bacterial cells per generation *in vitro*. Both the revertant (which has lost the delta-endotoxin gene) and the naturally occurring bacterial strains grow faster (14 percent growth rate differential in laboratory medium) than the recombinant bacterium. In the field, using corn, revertant bacteria can make up to 6 percent of the population of the bacterium, depending on the plant part, by the end of the growing season. Thus, the delta-endotoxin gene will eventually be lost from the recombinant bacterium.

2. The genetic alterations are not expected to enhance any plant pathogenic property of the recombinant bacterium as compared to the parental strain of *Clavibacter xyli* subsp. *cynodontis* that is already present in the State of Maryland where the test plot is located.

3. Although *Clavibacter xyli* subsp. *cynodontis* is transferred by mechanical means; e.g., cutting tools, to other plants, it is not transferred easily by other mechanisms in the field. Transfer to other plants by mechanical transfer will be minimized in the field plot designs and field plot protocols, which include buffer zones and tool disinfestation. The bacterium does not appear to proliferate outside the host plant. In addition, regular monitoring for the recombinant bacterium will ensure that if it spreads to plants at the edge of the test plots, it will be detected.

4. Dissimination of *Clavibacter xyli* subsp. *cynodontis* does not occur in rice seed, although it has been shown to occur in corn. However, all seed not used for research purposes (in containment) will be destroyed, preventing transfer by this mechanism.

5. Data have been provided by the company to demonstrate that the probability of transfer of the delta-endotoxin gene from the recombinant bacterium to other micro-organisms is extremely remote.

6. The recombinant bacterium has a relatively low order of toxicity to susceptible insects. The field test plot is very small. Therefore, the introduction of the recombinant bacterium poses no significant impact on susceptible insect populations.

7. There were no listed (January 1, 1989, 50 CFR 17.11 and 17.12) threatened or endangered insect species present in the test site in Maryland, so the introduction of the recombinant bacterium poses no risk to these threatened insects.

8. The inherent properties of *Clavibacter xyli* subsp. *cynodontis* and the recombinant bacterium indicate that there are no human health risks. The bacterium does nt grow at human body temperature. The bacterium has been shown not to be pathogenic or toxic in mammalian tests. In addition, all crops will be used for research purposes or destroyed so that there will be no dietary exposure to humans.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 11th day of August 1989.

James W. Glosser,

Administrator, Animal and Plant Inspection Service.

[FR Doc. 89–19243 Filed 8–15–89; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 89–138]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Tobacco Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to BioTechnica Agriculture, Inc., to allow the field testing in the State of Wisconsin of genetically engineered tobacco plants modified to express a dihydropicolinic acid synthase gene (DHDPS) which provides increased nutrient value to the plant. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tobacco plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6774. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 89–116–20.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 control and direct the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

BioTechnica Agriculture, Inc., Cambridge, Massachusetts, has submitted an application for a permit for release into the environment to field test genetically engineered tobacco plants modified to express a dihydropicolinic

acid synthase gene (DHDPS), which provides increased nutrient value to the plant. The field trial is to take place in Dane County, Wisconsin.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the tobacco plants under the conditions described in the BioTechnica Agriculture, Inc., application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by BioTechnica Agriculture, Inc. as well as a review of other relevant literature, provide the public with documentation of APHIS's review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS's finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A DHDPS gene from *E. Coli* has been inserted into a tobacco chromosome. In this field trial none of the introduced genes can spread to any other plant, because the test plants will not be allowed to flower. In nature, the genetic material contained in a chromosome can only be transferred to another sexually compatible plant by cross-pollination and fertilization.

2. Neither the DHDPS gene nor its gene product, confers on tobacco any plant pest characteristics.

3. The DHDPS gene does not provide the transformed tobacco plants with any measurable selective advantage over nontransformed tobacco plants in their ability to be disseminated or to become established in the environment.

4. The vector used to transfer the DHDPS gene to tobacco plants has been evaluated for its use in this specific experiment, and does not pose a plant pest risk. The vector, although derived from a DNA sequence with known plant pathogenic potential, has been disarmed; that is, the genes that are necessary for pathogenicity have been removed. The vector also has been tested and shown to be not pathogenic to a susceptible plant.

5. The vector agent, the phytopathogenic bacterium that was used to deliver the vector DNA carrying the DHDPS gene into tobacco plant cells, was eliminated and is no longer associated with the transformed tobacco plants.

6. Horizontal movement of genetic material after insertion into the plant genome (i.e., into chromosomal DNA) has not been demonstrated. After delivering and inserting the DNA to be transferred into the tobacco genome, the vector does not survive in or on the transformed plant. No mechanism is known to exist in nature to move an inserted gene horizontally from a chromosome of a transformed plant to any other organism.

7. The field test plot will be 9,000 square feet in size, and the test plants will be located approximately 1 mile from any other tobacco plants.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 11th day of August 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-19244 Filed 8-15-89; 8:45 am]

BILLING CODE 3410-34-M

Commodity Credit Corporation

Proposed Determinations With Regard to the 1990 Upland Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1990 crop of upland cotton: (a) Whether Plan A or Plan B should be implemented and the loan repayment level to be in effect under the chosen Plan; (b) whether first handler certificates should be issued and, if so, what restrictions should be placed on the use of such certificates; (c) whether loan deficiency payments should be made available, and, if so, whether such payments should be made available in cash only or in cash and commodity certificates; (d) the percentage reduction under the acreage reduction program (ARP); (e) whether an optional land diversion program should be established and, if so, the percentage of diversion required under such a program; (f) whether to implement the inventory reduction or "half-ARP" provision; (g) whether a seed cotton recourse loan program should be implemented and, if so, the appropriate loan level and the method of adjustment to a lint basis; and (h) other related determinations.

These determinations are to be made in accordance with the Agricultural Act of 1949, as amended (the "1949 Act"), and the Commodity Credit Corporation (CCC) Charter Act, as amended.

EFFECTIVE DATE: Comments must be received on or before October 16, 1989 in order to be assured of consideration.

ADDRESS: Bruce R. Weber, Director, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA–ASCS, Room 3758 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7954. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed determination and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major." It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The titles and numbers of the Federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies are:

Titles	Numbers
Commodity Loans and Purchases	10.051
Cotton Production Stabilization	10.052

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

On April 5, 1989 (FR Vol. 54, No. 64), a notice of proposed determinations was published which set forth provisions common to the 1990 feed grains, wheat, upland cotton, extra long staple (ELS) cotton, and rice price support and production adjustment programs.

Accordingly, the following program determinations are proposed to be made by the Secretary with respect to the 1990 crop of upland cotton:

a. *Plan A/Plan B and Loan Repayment Level.* Section 103A(a)(5) of the 1949 Act provides that if the Secretary determines that the prevailing world market price for upland cotton (adjusted to United States quality and location) is below the loan level determined under Section 103A(a)(1) and (2), then, in order to make United States upland cotton competitive in world markets, the Secretary shall implement the provisions of Plan A or Plan B.

If the Secretary elects to implement Plan A, the Secretary shall permit a producer to repay a loan made for the 1990 crop at a level determined and announced by the Secretary at the same time the Secretary announces the 1990 loan level. Such payment level for the 1990 crop shall not be less than 80 percent of the 1990 loan level. Such repayment level, once announced for the crop, shall not thereafter be changed.

Section 103A(a)(5) further provides that if the Secretary elects to implement Plan B, the Secretary shall permit a producer to repay a loan made for the 1990 crop at the lesser of (1) the 1990 loan level; or (2) the prevailing world market price for upland cotton (adjusted to United States quality and location), as determined by the Secretary. Section 103A(a)(5) further provides that for the 1990 crop of upland Cotton, if the prevailing world market price for cotton (adjusted to United States quality and location) as determined by the Secretary, is less than 80 percent of the 1990 loan level, the Secretary may permit a producer to repay the 1990 loan at such a level (not in excess of 80 percent of the 1990 loan level) as the Secretary determines will (1) minimize potential loan forfeitures; (2) minimize the accumulation of cotton stocks by the Federal Government; (3) minimize the cost incurred by the Federal Government in storing cotton; and (4) allow cotton produced in the United States to be marketed freely and competitively, both domestically and internationally.

Comments are requested on whether Plan A or Plan B should be implemented and the level of the loan repayment rate.

b. *First Handler Certificates.* Section 103A(a)(5)(D) of the 1949 Act provides for the Secretary to make payments to first handlers in the form of negotiable marketing certificates if the Secretary determines that a loan program carried out in accordance with Plan A or Plan B fails to make upland cotton fully competitive in world markets and that the prevailing world market price of upland cotton (adjusted to United States quality and location) is below the current loan repayment rate. CCC may assist any person receiving such negotiable marketing certificates in the redemption of such certificates for cash, or marketing or exchange of such certificates for upland cotton owned by CCC or, if CCC and the person agree other agricultural commodities or the products therof owned by the CCC at such times, in such manner, and at such price levels as CCC determines will best effectuate the purposes of the first handler program.

Comments are requested with respect to (1) whether first handler certificates should be issued, (2) what restrictions should be placed on the use of such certificates.

c. *Loan Deficiency Payments.* Section 103A (b)(1)–(5) of the 1949 Act provides that, for the 1990 crop of upland cotton, the Secretary may make payments available to producers who, although eligible to obtain a loan, agree to forgo obtaining such loan in return for such payments. Pursuant to that section, payments shall be computed by multiplying (1) the loan payment rate, by (2) the quantity of upland cotton the producer is eligible to place under loan. The section provides that the loan payment rate shall be the amount by which the loan level exceeds the loan repayment rate and that the quantity of upland cotton eligible to be placed under loan may not exceed the product obtained by multiplying the individual farm program acreage for the crop by the farm program payment yield established for the farm. Section 103A(b) further provides that the Secretary may make up to one-half the amount of such payment in the form of negotiable marketing certificates.

Comments are requested on whether loan deficiency payments should be made available and, if so, the percentage of each loan deficiency payment to be made available in the form of negotiable marketing certificates.

d. *Acreage Reduction Program.* Section 103A(f) of the 1949 Act provides that, with respect to the 1990 crop of upland cotton, if the Secretary determines the total supply of upland cotton, in the absence of an acreage reduction program (ARP), will be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency, the Secretary may provide for an acreage reduction program.

If the Secretary elects to put an ARP into effect for 1990, the Secretary shall announce the program not later than November 1, 1989. The Secretary shall, to the maximum extent practicable, carry out an ARP for the 1990 crop of upland cotton in a manner that will result in a carryover of 4 million bales of upland cotton.

If an upland cotton ARP is announced, such reduction shall be achieved by applying a uniform percentage reduction not to exceed 25 percent to the upland cotton crop acreage base for the crop for each upland cotton-producing farm. Producers who knowingly produce upland cotton in excess of the permitted upland cotton acreage for the farm shall be ineligible for loans and payments with respect to that farm. Acreage on the farm to be devoted to conservation uses shall be determined by dividing (1) the product obtained by multiplying the number of acres required to be withdrawn from the production of upland cotton times the number of acres planted to upland cotton by (2) the number of acres authorized to be planted to such commodity under the limitation established by the Secretary. This acreage is referred to as "reduced acreage."

Comments are requested on whether an ARP should be implemented and, if so, the appropriate percentage level of such limitation.

e. *Land Diversion Program.* Section 103A(f)(4)(A) of the 1949 Act provides that the Secretary may make land diversion payments to producers of upland cotton, whether or not an ARP is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of upland cotton to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into with the Secretary.

The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may

prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted. The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to affect adversely the economy of the county or local community.

Any additional acreage reduction, beyond the ARP, under a land diversion program would be at a producer's option.

Comments are requested with respect to the need for an optional land diversion program as well as the provisions of such program.

f. *Inventory Reduction Program.* Section 103A(g) of the 1949 Act provides that the Secretary may make payments available to producers who: (1) Agree to forgo obtaining a loan; (2) agree to forgo receiving deficiency payments; and (3) do not plant upland cotton for harvest in excess of the crop acreage base reduced by one-half of any acreage required to be diverted from production under the announced acreage reduction program. Such payments shall be made in the form of upland cotton which is owned by CCC and shall be subject to the availability of such upland cotton. Payments under this program shall be determined by multiplying (a) the loan payment rate (loan rate minus loan repayment rate) by (b) the quantity of upland cotton the producer is eligible to place under loan.

Comments are requested on whether the inventory reduction program would be implemented for the 1990 crop of upland cotton.

g. *Loan Level for Seed Cotton.* Consideration is being given as to whether recourse loans should be made available to producers of seed cotton for the 1990 crop pursuant to the authority of the Charter Act and, if so, the level at which such loans should be made available for seed cotton under the 1990 program.

Comments are requested on whether a seed cotton recourse loan program should be implemented and, if so, the appropriate loan level for seed cotton and the method of adjustment to a lint basis for the purpose of determining the seed cotton loan value.

h. *Other Related Provisions.* A number of other determinations must be made in order to carry out the upland cotton loan program such as: (1) Premiums and discounts for grades, staples, and other qualities; (2) establishment of base loan rates by warehouse location; and (3) such other provisions as may be necessary to carry out the program.

Consideration will be given to any data, views and recommendations that may be received relating to these issues.

Authority: 7 U.S.C. 1444–1, and 1445b–4; 15 U.S.C. 714b and 714c.

Signed at Washington, DC on August 7, 1989.

John Stevenson,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89–19120 Filed 8–15–89; 8:45 am]

BILLING CODE 3410–05–M

Forest Service

Spring Creek Timber Harvest Lewis and Clark National Forest, Meagher County, MT

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts associated with implementation of actions scheduled in the Lewis & Clark National Forest Land and Resource Management Plan of June, 1986, for the Spring Creek Geographic Unit (LB–11). Included in these actions are timber harvesting and road construction and reconstruction.

Preliminary scoping has been done for this analysis by an interdisciplinary team from the Lewis and Clark National Forest. The following issues have been identified in relation to the proposed actions:

1. What are the effects on wildlife and fisheries resources, with emphasis on elk habitat effectiveness, and on old growth dependent and snag dependent species?

2. What are the opportunities for converting stagnant stands to healthy growing stands, reducing impact of insect and disease, creating vegetation diversity, and providing commercial timber sales?

3. What is the relative cost efficiency of alternatives including the proposed action?

4. What are the effects on the existing Forest road and trail system and how will the existing and new system need to be managed?

5. What are the effects on water quality and quantity, and the effects on the riparian areas?

6. What are the effects on recreation and land uses in the area, especially on visual quality, recreation setting, cultural resources, roadless values, snowmobiling, outfitter and guide operations, existing elk hunter opportunity, and mining activity?

7. What are the effects on the range vegetation resource and existing grazing allotments in regards to forage availability, livestock use/distribution, noxious weeds, and sensitive plants?

The Forest Service is seeking information and comments from Federal, State, and local agencies and individuals or organizations who may be interested in or affected by the proposed actions. The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed. This information will be used in preparing the draft environmental impact statement (DEIS). This proceeds includes:

1. Identification of potential issues related to the proposed action.

2. Identification of issues to be analyzed in depth.

3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.

4. Identification of alternatives to the proposed action.

5. Identification of potential environmental effects of the alternatives.

6. Determination of potential cooperating agencies and task assignments.

DATES: Comments concerning the scope of the analysis should be received on or before September 15, 1989, to receive timely consideration in the preparation of the DEIS.

ADDRESSES: Send written comments to Carl Fager, District Ranger, Musselshell Ranger District, 809 2 NW., P.O. Box F. Harlowton, MT 59036.

FOR FURTHER INFORMATION CONTACT: David Wanderaas, Spring Creek Interdisciplinary Team Leader, Musselshell Ranger District, (406) 632–4391.

SUPPLEMENTARY INFORMATION: This EIS will tier to the Lewis and Clark National Forest Land and Resource Management Plan of June, 1986, which provides goals and objectives. Forest-wide management standards and management area prescriptions are identified in the Plan to provide overall guidance and management practices in achieving these goals and objectives. The primary purpose and need for the proposed action is to begin harvesting of timber that is mature and overmature and/or in a state of high risk from insect and/or disease, and to help supply commercial demands for timber on a long term sustained yield basis. These stands of timber are proposed for harvest at this time because of the poor condition and mortality occurring in them. Timber sales were projected in the Forest Plan in the Spring Creek and Whitetail Creek areas.

The proposed projects are within the Spring Creek Geographic Unit (LB–11) as defined by the Forest Plan, and the Spring Creek Roadless Area (identified in the RARE II process). The analysis will consider timber stands within an area that is bounded on the north by the District Boundary, on the east by Daisy Dean Creek and Forest Trail 619, on the south and southwest by the Forest boundary, and on the west by the westerly drainage divide of Whitetail Creek and on the southwest by a line from Elephant Rock to the Forest Boundary.

The areas of proposed harvest for the Spring Creek project are within Management Areas B and C of the Lewis and Clark Forest Plan (p. 4–75). Management Area B emphasizes timber management and provides for moderate levels of livestock production while minimizing impacts to other resources. Management Area C emphasizes maintenance or enhancement of existing elk habitat by maximizing habitat effectiveness. Emphasis is also directed toward management for habitat diversity to support a variety of native wildlife species. Commodity resource management is practiced in Management Area C where it is compatible with wildlife habitat management objectives.

The analysis will consider a range of alternatives. One of these will be the "no-action" alternative, in which all harvest and regeneration activities are deferred. Other alternatives will examine various levels and locations of treatment and regeneration to emphasize differing mixes of timber and non-timber resource values.

The analysis will disclose the environmental effects of alternative ways of implementing management direction outlined in the Forest Plan and in addressing the identified issues. The Forest Service will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives. In addition, the EIS will disclose site specific mitigation measures and the effectiveness of each proposed mitigation measure.

The public is invited to visit with Forest Service officials at any time during the EIS preparation prior to the issuance of the Record of Decision. However, two periods of time are identified for the receipt of formal comments on the analysis. The two public comment periods are during the scoping process (through one month following publication date for this notice) and during the formal review period of the draft EIS (estimated February–April, 1990).

The DEIS is estimated to be filed with the Environmental Protection Agency (EPA) and available for public review in February, 1990. At that time the EPA will publish a notice of availability of the DEIS in the **Federal Register**. The comment period on the DEIS will be for 45 days from that date of publication.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by June, 1990. The Forest Service will respond in the FEIS to the comments received on the DEIS. John D. Gorman, Forest Supervisor for the Lewis and Clark National Forest, the responsible official for this EIS, will make a decision regarding this proposal after considering the comments, responses and environmental consequences discussed in the FEIS as well as applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Dated: August 9, 1989.

John D. Gorman,

Forest Supervisor, Lewis and Clark National Forest.

[FR Doc. 89–19248 Filed 8–15–89; 8:45 am]

BILLING CODE 3410–11–M

Exemption From Appeal of Tepee Butte Recovery Project, Wallowa-Whitman National Forest, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decision from administrative appeal.

SUMMARY: Between August 25, 1988 and September 9, 1988, the Tepee Butte Fire burned approximately 54,100 acres of the Hells Canyon National Recreation Area (NRA) on the Wallowa-Whitman National Forest. This proposed recovery project consists of rehabiliation of National Forest System (NFS) lands damaged by the wildfire and the recovery of dead and dying timber which is still merchantable. Due to the length of time its has taken to develop an acceptable recovery program and to properly evaluate its effects, the time remaining for implementation has become critical. Any additional delay will result in significant loss of the salvable resources; therefore, the decision to rehabilitate the Wallowa-Whitman National Forest lands and offer salvage timber for sale in the Tepee Butte project area will not be subject to administrative appeal pursuant to 36 CFR 217.4(a)(11).

FOR FURTHER INFORMATION CONTACT: Questions about this notice should be directed to Bruce McMillan, Environmental Coordinator, Wallowa-Whitman National Forest, P.O. Box 907, Baker, Oregon 97814, Phone (503) 523–6391.

SUPPLEMENTARY INFORMATION: On August 25, 1988 a lightning storm moved through the region and ignited a fire. Due to favorable burning conditions and strong winds, the fire moved rapidly, consuming over 14,000 acres in the first eight hours. During this time, it moved onto the Hells Canyon NRA of the Wallowa-Whitman National Forest. The

fire was finally declared controlled on September 8, 1988, after burning approximately 54,100 acres. In the aftermath of the Tepee Butte Fire the Forest Service had to decide if it should leave the burned area to recover naturally, rehabilitate the burned area, and/or provide the opportunity to salvage some of the fire-killed or severely damaged trees.

Determining whether to rehabilitate the burned area involved decisions on how to do so, which part of the burned area should be rehabilitated, and determination of whether to provide the opportunity to salvage, what type of logging to use, and whether roads should be built.

In order to assist the Forest Service in making these difficult decisions, a site-specific, project environmental impact statement (EIS) was prepared. On October 7, 1988, the Wallowa-Whitman National Forest published in the **Federal Register** a Notice of Intent to prepare an EIS for this recovery project (53 FR 39492). Concurrent with the decision to initiate an EIS, was the Forest Service's commitment to fully involve the public in the decision making process. In order to facilitate public involvement, the Forest Supervisor solicited public comment with a general mailer, in newspaper ads, and in four public scoping meetings. Over 2,700 letters inviting public participation on the recovery project were mailed in October. Meetings with environmental groups, timber industry, local, state, and Federal agencies and representatives were also held.

Written comments were solicited through November 18, 1988. From the hundreds of opinions voiced and from written comments received, major issues emerged.

Because of the area's unique character and sensitive ecosystems, some special-interest groups have opposed developments such as roads, trails, and timber harvest sites. Some of the groups have maintained that either additional areas be designated as wilderness or the area be redesignated as a National Park. In contrast, other groups believe part of the NRA should be managed to produce high level of commodities, especially wood products.

Development of the draft EIS resulted in considerable public and media interest. The Notice of Availability of the draft EIS was published in the May 5, 1989, **Federal Register** (54 FR 19425) and made available to the public.

During the 45-day review period, which ended June 19, 1989, several public meetings were held in which Forest Service personnel were available to answer questions and gather public input. News releases were issued to increase public awareness of the project and to encourage participation by all interested parties. Open houses were held to allow the public to view planning alternatives and ask questions of the planning staff and interdisciplinary team. Meetings took place between Forest Service personnel and industry coalitions, environmental groups, chambers of commerce, and elected officials.

The draft EIS has been reviewed and modified as a result of additional analysis and public comment received on the draft during the 45-day comment period. A timeline has been set and closely adhered to for the completion of the final EIS.

An important factor in this project planning is the deterioration of fire-killed timber. The project area contains large amounts of fire-killed and severely damaged softwood timber. Affected timber begins to deteriorate as soon as it is dead. Weathering, insects, and decay of fire-killed or severely damaged timber causes a rapid depreciation in soundness and selling value. The desire to minimize this loss was one of the primary reasons the Tepee Butte Recovery Project was undertaken and why the final EIS was completed under a relatively short timeline. The importance of this factor has been further emphasized by recent court orders restraining federal timber sales, thus substantially reducting the normal flow of timber from Forest Service and Bureau of Land Management Lands in Oregon and Washington. Prompt availability of Tepee Butte Fire damaged timber can help alleviate the economic situation brought about by the constricted timber supply.

The Tepee Butte Recovery final EIS is scheduled to be released September, 1989. This final EIS discloses the environmental effects of all the alternatives considered. Some environmental effects are probable with the implementation of any of the alternatives. These effects relate to recreation resources, visual resources, water quality/fisheries, wildlife habitat, long-term site productivity, vegetation management, the transportation system, rapid timber recovery, and social and economic factors.

The earliest possible implementation of the Tepee Butte Recovery Project decision will minimize losses in value of the timber resource on the site, allow for the most timely rehabilitation and reforestation of the site, and maximize the return to the Treasury for timber affected by the fire. Processing administrative appeals can cause significant delays in implementing the decision. For example, it could take 45 days to file an appeal, and additional 100 days or more to complete the administrative review and possibly another 15 to 45 to complete a discretionary review. If a Stay were granted during the pendency of the appeal, project implementation could be delayed approximately six months. A six-month delay would essentially mean that no activities would commence during the current logging season. Since the timber sales being proposed in the final EIS will have two year contracts, it is possible that a large portion of the timber volume will not be removed until the third logging season following the decision. Studies indicate that significant deterioration will occur by then and the value of the recovered timber will greatly diminish.

Pursuant to 36 CFR 217.4(a)(11), I have exempted this fire recovery project from administrative appeal. The decision to rehabilitate lands and resources of the Wallowa-Whitman National Forest and to offer salvage timber for sale in the Tepee Butte project area will hereby not be subject to administrative appeal.

Results of the environmental analysis for this fire recovery project are documented in the Tepee Butte Recovery Project final EIS available at the Supervisor's Office, Wallowa-Whitman National Forest, P.O. Box 907, Baker, Oregon 97814, Phone (503) 523-6391.

Dated: August 9, 1989.

John E. Lowe,

Acting Regional Forester.

[FR Doc. 89-19137 Filed 8-15-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-087]

Portable Electric Typewriters From Japan; Amendment to Final Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of amendment of final results of administrative review of antidumping duty order.

SUMMARY: As result of a remand from the United States Court of International Trade the Department of Commerce is amending its final results of administrative review published in the *Federal Register* on September 9, 1983. We will direct the U.S. Customs Service to appraise and liquidate all entries of portable electric typewriters produced by Silver Seiko, Ltd. and sold during the period April 1, 1980 through March 31, 1981.

EFFECTIVE DATE: August 16, 1989.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Laurie A. Lucksinger, Office of Antidumping Duty Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5222/5253.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 40761) the final results of its administrative review of the antidumping duty order on portable electric typewriters from Japan (45 FR 30618, May 9, 1980). The review covered three exporters and various periods through May 20, 1981. The results of that review were challenged in the United Sates Court of International Trade ("the Court") by Silver Seiko Ltd. and Silver Reed America ("Silver") in *Silver Reed America, Inc. and Silver Seiko, Ltd.* v. *United States* (Court No. 83-10-01522).

On January 12, 1988 and March 18, 1988, the Court remanded the final results of administrative review to the Department to correct errors regarding its deduction of imputed exchange rate losses from exporter's sales price and possible "double counting" of certain expenses. The Court also directed the department to reconsider Silver's claim for a level of trade adjustment. On June 16, 1988 the Department issued remand results that amended the final results of review on portable electric typewriters from Japan. On October 7, 1988, the remand results were affirmed in all respects, with the exception of the denial of a level of trade adjustment. On April 4, 1989, theCourt agreed that the Department properly exercised its discretion in rejecting Silver's claim for a level of trade adjustment.

Results of Remand

In accordance with the Court's order, we are directing the Customs Service, effective the date of publication of this notice in the **Federal Register**, to appraise and liquidate all entries of this merchandise produced by Silver Seiko, Ltd. and sold during the period April 1, 1980 through March 31, 1981.

Dated: August 7, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-19121 Filed 8-15-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-054]

Tapered Roller Bearing Four Inches or Less in Outside Diameter and Certain Components Thereof From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner and the respondents, the Department of Commerce has conducted an administrative review of the antidumping finding on tapered roller bearings four inches or less in outside diameter and certain components thereof from Japan. The review covers six manufacturers/exporters of this merchandise to the United States and the period August 1, 1986 through July 31, 1987. The review indicates the existence of dumping margins for certain firms.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 16, 1989.

FOR FURTHER INFORMATION CONTACT: Maura Kim or Laurie A. Lucksinger, Office of Antidumping Duty Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 8976) the final results of its last administrative review of the antidumping finding on tapered roller bearings (41 FR 34974, August 18, 1976). The Timken Company, the petitioner, Koyo Seiko, Isuzu Motors, Nissan Motor Company, and Toyota Motor Company, respondents, requested in accordance with 19 CFR 353.53a that we conduct the administrative review. We published a notice of initiation of the antidumping duty administrative review on September 21, 1987 (52 FR 35487). The Department has now conducted the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act")

Scope of the Review

Imports covered by the review are shipments of tampered roller bearings ("TRBs") four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. During the review period such merchandise was classifiable under items 680.3932, 680.3934, and 680.3938 of the Tariff Schedules of the United States Annotated ("TSUSA"). This merchandise is currently classifiable under Harmonized Tariff Schedule ("HTS") HTS items 8482.20.00 and 8482.99.30. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers six manufacturers/exporters of TRBs and the period August 1, 1986 through July 31, 1987.

United States Price

In calculating United States price the Department used purchase price and exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act, as appropriate. Purchase price and ESP were based on the packed, delivered price to unrelated purchasers in the United States. We made adjustments, where applicable, for foreign inland freight, ocean freight and insurance, brokerage and handling, U.S. inland freight, and U.S. duty. For ESP transactions we also made adjustments, were applicable, for packing of merchandise after importation, inventory carrying cost, warehouse transfer freight expense, rebates and discounts, export inspection fees, credit expense, U.S. commissions, and indirect selling expenses.

Foreign Market Value

In calculating foreign market value ("FMV") the Department used home market price, as defined in section 773(a) of the Tariff Act, or constructed value, as defined in section 773(e).

Petitioner alleged that home market sales by Nippon Seiko K.K. ("NSK") and Koyo Seiko were made at less than the cost of production. When we found that below cost sales had been made over an extended period of time and in substantial quantities, and were not at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade, we excluded them and used the remaining sales to calculate FMV. Where foreign market value was based on home market sales, we calculated FMV in accordance with section 773(a) of the Tariff Act. FMV was based on the packed, F.O.B. factory or delivered price

to unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight, freight insurance, credit, discounts, home market commissions and differences in physical characteristics between the home market and U.S. models. In addition, we adjusted for the difference between home market packing and export packing of the merchandise. For comparison to purchase price sales, we adjusted for the difference between home market and U.S. credit by adding U.S. credit expense to FMV. For comparison to ESP sales, we adjusted for indirect selling expenses by limiting the amount of indirect selling expenses incurred on home market sales by the amount of the indirect selling expenses incurred for sales in the United States. Where there were commissions in the home market and none in ESP sales, we adjusted FMV by the sum of commission and indirect selling expenses, limited to the amount of U.S. indirect selling expenses. NSK's early payment discount claim was not allowed because the company was not able to substantiate during verification the total amount paid for early payment discounts. Koyo claimed a level of trade adjustment in accordance with 19 CFR 353.19, basing its claim on comparisons between home market prices at two levels of trade. However, the home market prices reported as the basis of Koyo's claim differed substantially from the prices in the home market sales listing which we verified. Therefore, Koyo did not adequately establish its entitlement to a level of trade adjustment and we disallowed the claim. No other adjustments were claimed or allowed.

Where there were insufficient home market sales above the cost of production, or where there were no contemporaneous sales in the home market of such or similar merchandise, FMV was based on constructed value for NSK and Koyo Seiko. Where FMV was based on constructed value, we calculated constructed value in accordance with section 773(e) of the Tariff Act. We included cost of materials, labor, and factory overhead in our calculations. Koyo Seiko's actual selling, general, and administrative ("SG&A") expenses were less than the statutory minimum of ten percent of the cost of manufacture so we used the statutory minimum for our determination of SG&A expenses. NSK's actual SG&A expenses were greater than ten percent, so we used the actual SG&A expense figure. For both Koyo Seiko and NSK, we calculated constructed value based on the statutory profit rate of eight percent since profit figures for both companies were less than the statutory minimum of eight percent of the cost of manufacture and general expenses.

We deducted all home market direct selling expenses from constructed value. We adjusted constructed value for the difference between home market and U.S. indirect selling expenses by deducting from constructed value an amount for indirect selling expenses limited by the amount of the indirect selling expenses incurred on sales in the United States. Finally, we added U.S. packing to the constructed value.

For those U.S. sales for which we lacked adequate information to determine FMV, we relief on best information otherwise available. Koyo Seiko did not submit cost of manufacture information for constructed value for certain models. We were missing cost information which we required in order to calculate the differences in physical characteristics adjustment and constructed value for NSK. For Toyota we were unable to match certain U.S. models with an idential contemperaneous home market comparison model and information on selecting similar home market comparison models was not submitted. For Nissan we used best information otherwise available only for certain U.S. sales for which we could not find a similar home market comparison model. Isuzu did not respond to the Department's supplemental questionnaire. Best information otherwise available was the highest weighted average margin for a responding firm.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period August 1, 1986 through July 31, 1987:

Manufacturer/Exporter	Margin (percent)
Isuzu Motors Company	67.40
Koyo Seiko	67.40
Nachi-Fujikoshi	18.07*
Nippon Seiko	33.62
Nissan Motor Company	2.95
Toyota Motor Company	1.20

*No shipments during the period; margin from last review in which there were shipments.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttal comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments after July 31, 1987 and who is unrelated to any of the reviewed firms, or any previously reviewed firms, a cash deposit of 67.40 percent shall be required. For any shipments of this merchandise produced or exported by the remaining known producers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for those firms (49 FR 8976, March 9, 1984).

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.22 of our antidumping regulations published in the Federal Register on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.22).

Dated: August 8, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-19122 Filed 8-15-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-504]

Carbon Steel Wire Rod From New Zealand; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on carbon steel wire rod from New Zealand. Because there were no shipments during the review period, we preliminarily determine the total bounty or grant for the period January 1, 1987 through September 30, 1987 to be 25.69 percent *ad valorem*, the rate established in the final determination. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: August 16, 1989.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Ilene Hersher, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1988, the Department of Commerce ("the Department") published in the Federal Register (51 FR 7971) a countervailing duty order on carbon steel wire rod from New Zealand. On March 31, 1988, Pacific Steel Limited requested an administrative review of the order. We published the initiation on April 27, 1988 (53 FR 15083). The Department has now conducted that administrative review in accordance with section 751(a) of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States, under the auspeces of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is not classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of New Zealand coiled, semi-finished, hot-rolled carbon steel wire rod of approximately round solid cross-section, not under 0.20 inch in diameter, nor over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. During the review period, such merchandise was classifiable under items 607.1400, 607.1710, 607.1720, 607.1730, 607.2300, and 607.2300 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS items 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7213.41.60, 7213.49.00 and 7213.50.00.

The review covers the period January 1, 1987 through September 30, 1987, one known manufacturer/exporter of this merchandise, Pacific Steel Limited (PSL), and 14 programs:

A. Export Performance Taxation Incentive (EPTI);
B. Export Market Development Taxation Incentive (EMDTI);
C. Sales Tax Exemptions or Refunds on Imported Capital Equipment and Machinery;
D. Crown Loans;
E. Technical Assistance from the Building Research Association of New Zealand;
F. Export Marketing Assistance from the Department of Trade and Industry;
G. Preferential Treatment of Exporters in Granting Export Licenses;
H. Research and Development Incentives;
I. Export Credits and Development Financing from the Development Finance Corporation;
J. Export Suspensory Loan Scheme;
K. Export Programme Suspensory Loan Scheme;
L. Export Marketing Assistance from the New Zealand Export-Import Corporation;
M. Technical Assistance from the Standards Association of New Zealand; and
N. Technical Help to Exporters.

There were no known shipments of this merchandise to the United States by PSL during the review period. The United States Customs Service confirmed that the only shipment of carbon steel wire rod entering the United States during the review period was exported from New Zealand by New Zealand Steel Limited, a firm not included in the countervailing duty order.

Preliminary Results of Review

As a result of our review, we determine that no shipments of the subject merchandise were exported to the United States during the review period by firms subject to the countervailing duty order. Because there were no shipments, we preliminarily determine the total bounty or grant to be 25.69 percent *ad valorem*, the rate established in the final determination.

The Department intends to instruct the Customs Service to continue the suspension of liquidation on all shipments of the merchandise that are subject to the order and to collect a cash deposit of estimated countervailing duties of 25.69 percent of the f.o.b. invoice price on all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) § 355.22 of the Commerce Regulations published in the Federal Register on December 27, 1988 (53 FR 52354) (to be codified at 19 CFR 355.22).

Date: August 8, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-19123 Filed 8-15-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-355-001]

Leather Wearing Apparel From Uruguay; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminarily results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on leather wearing apparel from Uruguay. We preliminary determine the net subsidy to be *de minimis* for nine firms and 2.10 percent *ad valorem* for all other firms for the period January 1, 1988 through December 31, 1988. For the period January 1, 1987 through December 31, 1987, we preliminarily determine the net

subsidy to be *de minimis* for 12 firms and 3.21 percent *ad valorem* for all others. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: August 16, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone. (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 168) the final results of its last administrative review of the countervailing duty order on leather wearing apparel from Uruguay (47 FR 31032; July 16, 1982). We received requests from the Amalgamated Clothing and Textile Workers Union, AFL–CIO, a domestic interested party, and the Government of Uruguay, that we conduct administrative reviews of this order. We published the initiation on August 19, 1987 (52 FR 31056) for the period January 1, 1986 through December 31, 1986, and on August 30, 1988 (53 FR 33163) for the period January 1, 1987 through December 31, 1987. The Department has now conducted its review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of Uruguayan leather wearing apparel and parts and pieces thereof. During the period of review, such merchandise was classifiable under item numbers 791.7620, 791.7640 and 791.7660 of the Tariff Schedules of the United States Annotated. These products are currently classifiable under HTS item numbers 4203.10.4030, 4203.10.4060 and 4203.10.4090. The written description remains dispositive.

The review covers the period January 1, 1986 through December 31, 1987, and four programs.

Analysis of Programs

(1) Export Tax Refunds ("ETRs")

On July 25, 1983, the Government of Uruguay instituted a system of indirect tax refunds on exports of leather wearing apparel (Decree 289/983) for all shipments of the merchandise exported on or after January 1, 1983. Until May 24, 1984, the amounts of these refunds, which are issued in the form of tax certificates, ranged from 1.7 to 2.9 percent of the f.o.b. value of the merchandise, depending on the type of leather used in the garment. The Government of Uruguay suspended this program from May 25, 1984 (Decree 200/984) until July 10, 1985, when it was reinstated with the same or slightly lower (1.7 to 2.6 percent) refund rates (Decree 309/985).

In our review of the period April 17, 1982 through December 31, 1983, we established the requisite linkage between the payment of ETRs and the incidence of indirect taxes. In that review and in our last review, we verified that the total indirect tax incidence of leather wearing apparel exports to the United States was higher than the rebate rates. There were no changes in this program or in the amounts of the ETRs during the period of review. Accordingly, we preliminary determine that there were no overrebates under this program during the review period.

(2) Bonification Payments

Bonification payments are export rebates of 22 percent of the value of the processed wool portion of the leather wearing apparel. Because these payments are limited to exporters and not linked to the payment of indirect taxes, we preliminarily determine that this program confers a subsidy.

The Uruguayan government made such payments on shipments to the United States from one exporter in both 1986 and 1987. Although the weighted-average country-wide benefit from this program was greater than *de minimis*, the aggregate benefit from all programs was *de minimis* for nine of the ten known exporters of the subject merchandise during the period January 1, 1986 through December 31, 1986, and 12 of the 13 known exporters during the period January 1, 1987 through December 31, 1987. Therefore, we calculated company-specific rates in accordance with § 355.22(d)(3)(ii) of the Commerce Department's regulations, published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22).

Because these payments can be tied to specific shipments, we calculated the benefit by dividing the amount received by the recipient firm on U.S. shipments in each year by the total value of its exports from Uruguay to the United States in that year. On this basis, we preliminarily determine the benefits udner this program to be zero for nine firms and 2.10 percent *ad valorem* for all other firms for the period January 1, 1986 through December 31, 1986. For the period January 1, 1987 through December 31, 1987, we preliminarily determine the benefits to be zero for 12 firms and 3.21 percent *ad valorem* for all others.

(3) Uncollected Social Security Taxes

On May 11, 1982, the Government of Uruguay notified the Department that it had ceased its efforts to collect social security taxes that the leather wearing apparel industry had not paid in 1980.

Because the Government of Uruguay was not able to collect these taxes, we consider the uncollected taxes to be a grant given on the date the government officially declared the taxes uncollectable. We consider the amount of the grant to be the total amount of the uncollected taxes plus the interest which would have accrued from June 16, 1981 (the date on which the Uruguayan government agreed to eliminate all benefits on leather wearing apparel exports to the United States) to May 11, 1982. We used as our benchmark interest rate the prime rate available in Uruguay in 1981.

To calculate the benefit, we used a declining balance methodology. We allocated the grant over 11 years, the average useful life of assets in the leather wearing apparel industry, according to the Asset Guideline Classes of the Internal Revenue Service. We used as the discount rate the short-term 1982 interest rate, as published by the Central Bank of Uruguay, because we have no information on long-term interest rates or on the weighted cost of capital in the leather wearing apparel industry for that year.

We allocated the benefit attributable to each year of the review period over total Uruguayan production of the merchandise for that year. On this basis, we preliminarily determine the benefit from this program to be 0.003 percent *ad valorem* for the period January 1, 1986 through December 31, 1986, and 0.001 percent *ad valorem* for the 1987 period.

(4) Preferential Export Financing

Central Bank Circular No. 1.229 of July 5, 1985, instituted a system of short-term preferential rate loans for "non-traditional" exports. Leather wearing apparel is considered a non-traditional export. However, Article 3 of Decree 309/985 of July 10, 1985 (the Decree which reinstituted the ETRs), prohibited these loans on certain specified exports, including leather wearing apparel.

Accordingly, we preliminarily determine that this program was not used by Uruguayen leather wearing apparel exporters during the review period.

Firms Not Receiving Benefits

A. We preliminarily determine that the following nine firms received *de minimis* benefits during the period January 1, 1986 through December 31, 1986:

1. Cubalan, S.A.
2. Osami, S.A.
3. Orolon, S.A.
4. Ness, LTDA
5. Fair Play, LTDA
6. Sirfil, S.A.
7. Modur, S.A.
8. Laren, S.A.
9. Paris New York, S.A.

B. We preliminarily determine that the following twelve firms received *de minimis* benefits during the period January 1, 1987 through December 31, 1987:

1. Cubalan, S.A.
2. Osami, S.A.
3. Orolon, S.A.
4. Ness, LTDA
5. Exportador Esporadico
6. Cleson, S.A.
7. Orwix, S.R.L.
8. Modur, S.A.
9. Union Euroamericana, S.A.
10. Raulin, S.A.
11. Ladibel, S.A.
12. Bicron, S.A.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 0.003 percent for nine firms and 2.10 percent *ad valorem* for all other firms for shipments of Uruguayan leather wearing apparel exported to the United States during the period January 1, 1986 through December 31, 1986. For the period January 1, 1987 through December 31, 1987, we preliminarily determine the net subsidy to be 0.001 percent for 12 firms and 3.21 percent ad valorem for all other firms. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the nine firms listed in section A above and to assess countervailing duties of 2.10 percent of the f.o.b. invoice price on all other shipments of the merchandise exported from Uruguay on or after January 1, 1986 and on or before December 31, 1986. The Department also intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the 12 firms listed in section B above and to assess countervailing duties of 3.21 percent of the f.o.b. invoice price for all shipments exported on or after January 1, 1987 and on or before December 31, 1987.

Further, the Department intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from the 12 firms listed in section B above and to collect cash deposits of estimated countervailing duties of 3.21 percent of the f.o.b. invoice price on shipments of this merchandise from all other firms which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days from the date of publication or the first workday thereafter. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, must be filed not later than 37 days after the date of publication.

Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the new Commerce Regulations.

Dated: August 8, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration

[FR Doc. 89–19124 Filed 8–15–89; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Oil Well Casing; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products and paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain seamless oil well casing.

DATE: Comments must be submitted no later than August 28, 1989.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTAL INFORMATION: Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provide that if the U.S. determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the USA for a particular product, (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors) an additional tonnage shall be allowed for such product or products.

We have received a short-shpply request for the following quantity of two types of seamless oil well casing in R–3 lengths for delivery in the third quarter of 1989: (a) 315 joints of grade L–80 with an outside diameter of 10¾ inches and weighing 60.70 pounds per foot; and (b) 71 joints of grade S–90 with an outside diameter of 16 inches and weighing 84.00 pounds per foot.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than August 28, 1989. Commests should focus on the economic factors

involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file wil be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Dated: August 7, 1989.

Lisa B. Barry,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 89-19125 Filed 8-15-89; 8:45 am]

BILLING CODE 3510-DS-M

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

[CFDA No. 90.001]

Notice Inviting Applications for New Awards for FY 1990 Bicentennial Educational Grant Program

AGENCY: Commission on Bicentennial of the United States Constitution.

ACTION: Notice inviting applications and providing application forms for Bicentennial Educational Grant Program for fiscal year 1990.

SUMMARY: The Commission on Bicentennial of the United States Constitution announces its application deadlines for FY 1990 funding from its Constitution Bicentennial Educational Grant Program. The Commission is soliciting grant applications for the development of instructional materials and programs on the Constitution and Bill of Rights which are designed for use by elementary or secondary school students. This grant program notice informs all interested individuals and organizations about the closing dates for the receipts of applications for funding. The application conditions are based on the law and regulation which contain the key requirements for all applicants to follow in seeking funding from the Commission.

DATES: The closing date for the receipt of applications in the fall competition is November 13, 1989. Applications for the spring competition will be accepted from April 15, 1990 and no later than May 21, 1990 at 5:30 pm. Applications by mail must be postmarked no later than May 21, 1990.

ADDRESS: For further information contact: Anne A. Fickling, Associate Director of Educational Programs, Commission on Bicentennial of the U.S. Constitution, 808 17th Street, NW., Suite 800, Washington, DC, 20006, (202) 653-5110.

SUPPLEMENTARY INFORMATION: The objective of this program is to help elementary and secondary school teachers develop a better understanding of the history and development of the U.S. Constitution and Bill of Rights and to provide them with materials and methods so they will become more able to teach the Constitution to young learners. Programs designed to affect students directly are also encouraged. Programs designed for adult learners in an elementary or secondary school environment are also eligible. The Commission continues to encourage proposals from non-traditional educational organizations and those concerned with ethnic and minority interests, people for whom English is a second language, and other special interest organizations such as those concerned with the learning disabled and the physically handicapped.

Available funds anticipated: Approximately $1.8 million per competition.

Estimated range of awards: $3,000-$125,000.

Estimated number of awards: 25-35.

Project period: No longer than 24 months, beginning no later than September 1, 1991.

Priority areas for funding: The Program Announcement and Final Rule governing the Bicentennial Educational Grant Program were published in the **Federal Register** on August 14, 1987. Specifically, the Commission encourages proposals which focus on themes paralleling those of the Commission's five-year plan and the development of the three branches of government. In the fall competition of the 1990 Educational Grant Program, the Commission's focus is on the Judiciary and its historical development in the 200 years since the first session of the Supreme Court and, for those projects to be implemented during the 1990-1991 school year, the Commission welcomes proposals which focus on the Bill of Rights and subsequent Amendments. The emphasis in the spring competition shifts to the Bill of Rights and subsequent Amendments. The focus of any proposal, therefore should be dictated to some extent by when the project will go into effect.

Limited funding is available for expanding, replicating, or continuing highly successful educational programs which effectively link the Constitution to civic literacy and responsibility today. A significant aspect of any such program would be the inclusion of a co-curricular activity and/or community involvement component. The Commission encourages applications for funding these exemplary projects from schools, school districts, or organizations. A well-developed dissemination plan should be included in any proposal for funding under this initiative.

Selection criteria: The Commission has developed the following criteria as general guidelines for judging all project proposals:

1. The project is designed to strengthen teachers' capacity to understand and teach the Constitution, its antecedents, provisions, structure, and history, while benefitting students in an academically sound way appropriate for the age group toward which it is directed. (15 points)

2. The project has potential to make effective and appropriate use of existing and proven curricular materials, including those made available through Commission sponsorship and the Bicentennial Educational Grant Program. (5 points)

3. The project is cost-effective in that expenditures are reasonable and appropriate for the scope of the project. (5 points)

4. The project must demonstrate the potential for affecting a much wider audience than the immediate project participants. (10 points)

5. The project represents an improvement upon existing teaching methods. (5 points)

6. Applications have the capacity to carry out the project as evidenced by:

a. Academic and administrative qualifications of the project personnel;

b. Quality of project design;

c. Soundness of project management plan. (10 points)

The decision to award grant funding is solely within the discretion of the Commission based upon its judgment of how best to fulfill the statutory purposes of the grant program.

Applicable regulations: 45 CFR 2010 as published in the August 14, 1987 **Federal Register** (52 FR 30582). The Commission's program announcement was also published together with the grant regulation.

Interested applicants are invited to call or write to the Commission for a copy of the printed version of the program announcement and application forms.

Authority: Title V of Pub. L. 99-194; 45 CFR part 2010.

Herbert M. Atherton,

Deputy Staff Director and Director of Education.

[FR Doc. 89-19162 Filed 8-15-89; 8:45 am]

BILLING CODE 6360-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

August 11, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9481. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority

Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of the United Mexican States requested an increase in the current Special Regime limit for categories 359-C/659-C. Recognizing the special circumstances concerning the availability of Special Regime quota for coveralls, the United States Government agreed to the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 52461, published on December 28, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

August 11, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends but does not cancel, the directive issued to you on December 22, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns, among other things, imports of cotton and man-made fiber textiles and textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on August 18, 1989, the directive of December 22, 1988 is amended further to increase the limit for Categories 359-C/659-C, as follows:

Category	Amended twelve-month limit [1]
359-C/659-C [2]	1,164,691 kilograms
Non-Special Regime Category Sublimit	
359-C/659-C	180,880 kilograms

[1] The limit has not been adjusted to account for any imports exported after December 31, 1988.

[2] In Categories 359-C/659-C, only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, and 621.42.0010 in Category 359-C; and 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010 in Category 659-C.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-19185 Filed 8-15-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice. The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Signature and Tally Record; DD Form 1907; and OMB Control Number 0702-0027

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 2 minutes.

Frequency of Response: On Occasion.

Number of Respondents: 48,000.

Annual Burden Hours: 1,600.

Annual Responses: 48,000.

Needs and Uses: Signature and Tally Record is an integral part of the Defense Transportation System to provide continuous accountability and custody of classified and sensitive material when using commercial carriers. Form records the shipment transfer from one carrier to another from pickup point to delivery to the consignee.

Affected Public: Businesses or other for-profit; Small businesses or organizations.

Frequency: On Occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Dr. J. Timothy Sprehe. Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at the Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison. Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

August 10, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-19140 Filed 8-15-89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Use of the Global Positioning System (GPS)

AGENCY: Command, Control, Communications, and Intelligence (C³I), Office of the Secretary, DoD.

ACTION: Use of the Global Positioning System (GPS).

SUMMARY: This announcement notifies all civil users that the Global Positioning System (GPS) satellites should not be used during the period 20 September 1989 through 4 October 1989. The GPS satellites will be set "unhealthy" as an additional precautionary measure.

The Department of Defense (DoD) is working to establish a fully operational GPS satellite constellation. As noted in previous notices in the **Federal Register**,

until a 21-satellite constellation is achieved, the GPS satellites will transmit signals which are intended primarily for military purposes and are subject to change without prior notice. All civil users have been advised that the use of GPS for positioning, navigation, time transfer, or any other purpose, will be at their own risk.

However, to minimize impacts to the civil community, DoD will, where possible, provide advance notice when the GPS satellites should not be used. This advance notice will be distributed by the US Coast Guard (USCG). Within the USCG, the Office of Navigation Safety and Waterway Services is the primary point of contract for GPS users. Beyond this initial notification, DoD will not use the Federal Register for this purpose.

ADDRESS: Office of the Assistant Secretary of Defense, Command Control, Communications, and Intelligence, Room 3D174, The Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Jules McNeff, telephone (202) 695-6123, for general information on GPS.

August 10, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-19141 Filed 8-15-89; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devies (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, 24 August 1989.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 93-463, as amended (5 U.S.C. App. II, 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: August 11, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-19250 Filed 8-15-89; 8:45 am]

BILLING CODE 3810-01-M

Privacy Act of 1974, Systems of Records Notice

AGENCY: Office of the Secretary, DOD.

ACTION: Deletion of one and addition of three new systems of records notices for public comment.

SUMMARY: The Office of the Secretary of Defense proposes to delete one system and add three new systems of records to its inventory of systems of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a). The deletion and record systems notices for the three new systems are set forth below.

DATES: The deletion will be effective upon August 16, 1989. The new systems will be effective September 15, 1989 unless comments are received which would result in a contrary determination.

ADDRESS: Dan Cragg, OSD Privacy Act Officer, OSD Records Management and Privacy Act Branch, Room 5C315, Pentagon, Washington, DC 20301-1155.

FOR FURTHER INFORMATION CONTACT: Dan Cragg, OSD Privacy Act Officer. Telephone: (202) 695-0970, Autovon: 225-0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a), have been published in the Federal Register as follows:

50 FR 22090, 29 May 1985 (Compilation, changes follow)
50 FR 47087, 14 Nov 1985
51 FR 11807, 7 Apr 1986
51 FR 11863, 7 Apr 1986
51 FR 17568, 13 May 1986
51 FR 23573, 30 Jun 1986
51 FR 44668, 11 Dec 1986
51 FR 44672, 11 Dec 1986
51 FR 44670, 11 Dec 1986
51 FR 44665, 11 Dec 1986
52 FR 4645, 13 Feb 1987
52 FR 11849, 13 Apr 1987
52 FR 23334, 19 Jun 1987
52 FR 16431, 5 May 1987
52 FR 22637, 16 Jun 1987
53 FR 15868, 4 May 1988
53 FR 27894, 25 Jul 1988

The proposed deletion is not within the purview of the provisions of 5 U.S.C. 552a(r), which requires the submission of a new or altered system report. The new systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act were submitted on August 8, 1989, to the Committee on Governmental Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

Dated: August 10, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion

DPA DXA.B 08

SYSTEM NAME:

Contact Files (50 FR 22090, May 29, 1985).

REASON:

This system will be incorporated into DWHS P43, entitled, "Emergency Personnel Locator Records".

NEW SYSTEMS OF RECORDS DWHS P43

SYSTEM NAME:

Emergency Personnel Locator Records.

SYSTEM LOCATION:

Segments are maintained within the Office of the Secretary of Defense (OSD), the Joint Staff, and all other activities deriving administrative support from Washington Headquarters Services (WHS).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees and military personnel, and in some instances, their dependents, consultants, contractors, both in and out of government, with whom the Office of the Secretary of Defense, the Joint Staff, and all other activities deriving administrative support from Washington Headquarters Services (WHS) conduct official business. Inclusion is at the discretion of the maintaining office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's Social Security Number and/or name, organizational address, home address or unit of assignment, work and home telephone numbers and related information. Emergency personnel rosters, contact listing files, organizational telephone directories, and listings of office personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133 and Executive Order 9397.

PURPOSE(S):

Records support agency requirements for emergency notification of personnel, establishment of locator listings, and all other official management functions where personnel and organizational point of contact information is required.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the Office of the Secretary of Defense (OSD) "Blanket Routine Uses" set forth at the beginning of OSD's listing of systems notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders, index cards, Rolodex-type files, loose-leaf and bound notebooks. Computer files are maintained on magnetic tape, diskette, or other machine-readable media.

RETRIEVABILITY:

Files are retrieved by Social Security Number and/or name of employee or individual.

SAFEGUARDS:

Facilities where the systems are maintained are locked when not occupied. Paper records are kept in filing cabinets and other storage places which are locked when office is not occupied. Electronic records are on computer terminals in supervised areas using a system with software access control safeguards. Only persons on a need-to-know basis and trained in the handling of information protected by the Privacy Act have access to the system.

RETENTION AND DISPOSAL:

Retained until information is no longer current and then destroyed. Obsolete paper information is destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Obsolete computer records are erased or overwritten.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Secretary of Defense (OSD) Privacy Act Officer, OSD Records Management and Privacy Act Branch, Washington Headquarters Services, Room 5C315, Pentagon, Washington, DC 20301-1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Office of the Secretary of Defense (OSD) Privacy Act Officer, OSD Records Management and Privacy Act Branch, Washington Headquarters Services, Room 5C315, Pentagon, Washington, DC 20301-1155. The individual should make reference to the office where he/she is/was assigned or affiliated and include address and telephone number applicable to the period during which the record was maintained. Social Security Number should be included in the inquiry for positive identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Office of the Secretary of Defense (OSD) Privacy Act Officer, OSD Records Management and Privacy Act Branch, Washington Headquarters Services, Room 5C315, Pentagon, Washington, DC 20301-1155. The individual should make reference to the office where he/she is/was assigned or affiliated and include address and telephone number applicable to the period during which the record was maintained. Social Security Number should be included in the inquiry for positive identification.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records and for contesting contents and appealing initial OSD determinations are published in OSD Administrative Instruction No. 81, "OSD Privacy Program"; 32 CFR part 286b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the subject individual, and official personnel office documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DWHS P41

SYSTEM NAME:

OSD/JS Drug-Free Workplace Files

SYSTEM LOCATION:

Office of the Secretary of Defense, Directorate for Personnel and Security, Washington Headquarters Services, Room 3B347, Pentagon, Washington, DC 20301-1155.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of, and applicants for positions in, the Office of the Secretary of Defense (OSD), the Joint Staff (JS), and all other activities deriving administrative support from Washington Headquarters Services (WHS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the selection, notification, and testing of employees and applicants for illegal drug abuse; collection authentication and chain of custody documents; and laboratory test results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7301; Pub. L. 100-71; Executive Order 12564, "Drug-Free Federal Workplace"; and Executive Order 9397.

PURPOSE(S):

The system is used to maintain Drug Program Coordinator records on the selection, notification, and testing (i.e., urine specimens, drug test results, chain of cutody records, etc.) of employees and applicants for illegal drug abuse.

Records contained in this system are also used by the employee's Medical Review Official; the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating; and supervisory or management officials within the employee's agency having authority to take adverse personnel action against such employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In order to comply with provisions of 5 U.S.C. 7301, the Office of the Secretary of Defense "Blanket Routine Uses" do not apply to this system of records.

To a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders. Electronic records exists on

BEST COPY AVAILABLE

magnetic tape, diskette, or other machine-readable media.

RETRIEVABILITY:

Records are retrieved by employee or applicant name, Social Security Number, agency name, collection site and date of testing.

SAFEGUARDS:

Paper records are stored in file cabinets that are locked when not being used. Electronic records are accessed on computer terminals in supervised areas using a system with password access safeguards. All employee and applicant records are maintained and used with the highest regard for employee and applicant privacy. Only persons on a need-to-know basis and trained in the handling of information protected by the Privacy Act have access to the system.

RETENTION AND DISPOSAL:

Files on applicants for positions are maintained for a period not to exceed six months.

Files on employees are retained for two years. In instances of a positive test finding resulting in the reassignment or separation of an employee, files are destroyed two years after case is closed.

Destruction of records is accomplished by shredding or burning of paper records. Electronic records are erased or overwritten.

SYSTEM MANAGER(S) AND ADDRESS:

OSD/JS Drug Program Coordinator, Directorate for Personnel and Security, Washington Headquarters Services, Room 3B345, Pentagon, Washington, DC 20301–1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the OSD/JS Drug Program Coordinator, Directorate for Personnel and Security, Washington Headquarters Services, Room 3B347, Pentagon, Washington, DC 20301–1155. The request should contain the full name, Social Security Number, and the notarized signature of the subject individual.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the OSD/JS Drug Program Coordinator, Directorate for Personnel and Security, Washington Headquarters Services, Room 3B347, Pentagon, Washington, DC 20301–1155. The request should contain the full name, Social Security Number, and the notarized signature of the subject individual.

CONTESTING RECORD PROCEDURE:

The Office of the Secretary of Defense (OSD) rules for accessing records and for contesting contents and appealing initial OSD determinations by the individual concerned are published in OSD Administrative Instruction No. 81, "OSD Privacy Program"; 32 CFR part 286b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The test subject, Medical Review Officials, collection personnel and others on a case-by-case basis.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DHA 03

SYSTEM NAME:

Pentagon Employee Referral Service (PERS) Counseling Records.

SYSTEM LOCATION:

Pentagon Employee Referral Service, c/o Civilian Employees Health Services Clinic, Room 1E356, Pentagon, Washington, DC 20310–6800.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian DoD employees assigned to duty in the Pentagon and environ who are referred by management for, or voluntarily request, counseling assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on patients which are generated in the course of professional counseling. Records consist of information on condition, current status, progress and prognosis for patients who have personal, emotional, alcohol or drug dependency problems, including admitted or urinalysis-detected illegal drug abuse.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 43; 5 U.S.C. 310; 5 U.S.C. 7301; 10 U.S.C. 3012; 42 U.S.C. 290dd–3 and 290ee–3; 42 U.S.C. 4582; Pub. L. 100–71; Executive Order 12564, "Drug-Free Federal Workplace"; and Executive Order 9397.

PURPOSE(S):

To record counselor's observations concerning patient's condition, current status, progress prognosis and other relevant treatment information regarding patients in an employee assistance treatment facility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In order to comply with provisions of 5 U.S.C. 7301 and 42 U.S.C. 290dd–3 and 290ee–3, the Office of the Secretary of Defense "Blanket Routine Uses" do not apply to this system of records.

Records in this system may not be disclosed without the prior written consent of such patient, unless the disclosure would be:

To medical personnel to the extent necessary to meet a bona fide medical emergency;

To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner; and

If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders are stored in filing cabinets. Extracts of treatment records are entered into an electronic database on a microcomputer.

RETRIEVABILITY:

Manual and automated records are retrieved by patient's last name, Client Case Number, and Social Security Number.

SAFEGUARDS:

Paper records are maintained in file cabinets that are locked when the office is not occupited by authorized personnel. The automated database files are on a password-protected, stand alone microcomputer. All patient records are maintained and used with the highest regard for patient privacy. Only persons on a need-to-know basis and trained in the handling of information protected by the Privacy Act have access to the system.

RETENTION AND DISPOSAL:

Paper records are destroyed five years after termination of counselling. Destruction is by shredding, pulping, macerating, or burning.

Electronic records are purged of identifying data five years after termination of counselling. Aggregate data without personal identifiers is maintained for management/statistical purposes until no longer required.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Pentagon Employee Referral Service, Room 1E356, Pentagon, Washington, DC 20310–6800.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Pentagon Employee Referral Service, Room 1E356, Pentagon, Washington, DC 20310–6800. The request should contain the full name, address, Social Security Number and the notarized signature of the subject individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Pentagon Employee Referral Service, Room 1E356, Pentagon, Washington, DC 20310–6800. The request should contain the full name, address, Social Security Number and the notarized signature of the subject individual.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense (OSD) rules for accessing records and for contesting contents and appealing initial OSD determinations by the individual concerned are published in OSD Administrative Instruction No. 81, "OSD Privacy Program"; 32 CFR part 286b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Patient, counselors, supervisors, co-workers or other agency or contractor-employee personnel; private individuals to include family members of patient and outside practitioners.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 89–19142 Filed 8–15–89; 8:45 am]
BILLING CODE 3810–01–M

Department of the Army

Federally Funded Research and Development Center (FFRDC)

AGENCY: United States Army, Armament, Munitions and Chemical Command, Armament Research, Development and Engineering Center.

SUMMARY: Notice is hereby given that, in accordance with OFPP Policy Letter 84–1, Appendix III, 4 April 1984, the U.S. Army intends to establish a Federally Funded Research and Development Center (FFRDC) for a long term research program to advance the state-of-the-art in areas of electromechanics and hypervelocity testing as applicable to future weapons systems. This is the third and final notice.

Program Requirements: This program will include basic research, analysis, design, fabrication, experimentation and training in these and related areas. The electromechanics area will include but not be limited to compact pulse power supplies, advanced electric launchers and related materials research. Hypervelocity testing research will include but be limited to compatible launch package design and interface, impact characterization, test planning, instrumentation, impact testing, data reduction/analysis and related materials research. An FFRDC is an activity that is operated, managed and/or administered by either a university or consortium of universities, other nonprofit organization or industrial firm as an autonomous organization or as an identifiable separate operating unit of a parent organization.

ADDRESS: Send inquiries to Commander, U.S. Army AMCCOM, ATTN: AMSMC–PCW–D(D), Robert Wisser, Picatinny Arsenal, New Jersey 07806–5000. The due date for proposals is 22 August 1989.

FOR FURTHER INFORMATION CONTACT: Robert Wisser, Contract Specialist, Research, Development and Engineering Center on (201) 724–4674.

Kenneth L. Denton,

Department of the Army Alternate Liaison Officer With the Federal Register.

[FR Doc. 89–19193 Filed 8–15–89; 8:45 am]
BILLING CODE 3710–08–M

Department of the Navy

CNO Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee on Superconductivity will meet September 5–6, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the development and application of both cryogenic and high temperature superconductivity to naval systems and related intelligence, particularly that related to integrated ship power and combat systems. The entire agenda of the meeting will consist of discussions of key issues regarding research requirements and risks, the ability of the industrial base, both here and abroad, to support these requirements and field prototype systems, and related intelligence analyses. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268, Phone (703) 756–1205.

Dated: August 7, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–19178 Filed 8–15–89; 8:45 am]
BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

AGENCY: Intergovernmental Advisory Council on Education.

ACTION: Notice of Meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the Intergovernmental Advisory Council on Education and its Executive Committee. This notice also describes the functions of the Council. Notice of these meetings is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to atttend.

DATES: September 14–15, 1989.

ADDRESSES: Room 3000, 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Gwen A. Anderson, Executive Director, Intergovernmental Advisory Council on Education, Room 3036, 400 Maryland Avenue, SW., Washington, DC, 20202–7576, 202–732–3844.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education was established under Section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council was established to provide assistance and make recommendations to the Secretary and the President concerning

intergovernmental policies and relations pertaining to education.

On September 14, the Executive Committee of the Intergovernmental Advisory Council on Education will meet from 9:00 a.m. to 4:00 p.m. (hours are tentative). Interested parties may call the information contact on September 13 for the exact hours. The meeting is open to the public. The proposed agenda of the meeting includes discussion of items for the full Council meeting agenda, a budget review, and other matters pertaining to the Executive Committee's responsibilities.

On September 15, the full Council will meet from 9:00 a.m. to 4:30 p.m. The meeting is open to the public. The proposed agenda of the meeting includes discussion of the Council's work plans, selection of topics for the Council's conference, planning for the 1989 conference, and administrative issues that are related to the operation of the Council.

Records are kept of all Council proceedings, and are available for public inspection at the Office of the Intergovernmental Advisory Council on Education, 400 Maryland Avenue, SW., Room 3036, Washington, DC 20202–7576, from the hours of 9:30 a.m. to 5:00 p.m.

Dated: August 11, 1989.

Michelle Easton,

Deputy Under Secretary for Intergovernmental and Interagency Affairs

[FR Doc. 89–19254 Filed 8–15–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent To Award Grant to Hunter College

AGENCY: U.S. Department of Energy.

ACTION: Notice of Unsolicited Financial Assistance Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE–FG01–89CE34023 to Hunter College.

Scope: The funding for this grant will support research in the area of biological effects of electro-magnetic fields and will allow Hunter College to study the interaction of such fields with basic genetic material.

Eligibility: Based on acceptance of an unsolicited application, eligibility of this grant award is being limited to Hunter College, who has high qualifications in research exploring alteration in genetic structure after exposure to electromagnetic fields. The project will allow Hunter College to continue its research and investigate the effects of electric and magnetic fields on genetic transcription and translation.

The term of this grant will be two years from effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Calvin Lee, MA–453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director Contract Operations Division "B" Office of Procurement Operations.

[FR Doc. 89–19201 Filed 8–15–89; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award a Grant to the Interstate Oil Compact Commission

AGENCY: U.S. Department of Energy.

ACTION: Acceptance of an unsolicited application for a grant award.

SUMMARY: The Department of Energy (DOE), Bartlesville Project Office announces that pursuant to 10 CFR 600.14, it intends to make an award based on an unsolicited application submitted to the Bartlesville Project Office, Bartlesville, OK. The title of this application is "Evaluation of the Oil Resource and the Economic Recovery of Mobile and Immobile Light Oil".

Scope: The objective of this grant project is to conduct a study of "Advanced Oil Recovery and the States". The project is for the assessment of the economic producibility of unrecovered mobile and immobile light oil. The primary goals include the complete evaluation on the technical and economic potential of the known domestic oil resource, and the identification of the recovery methods and financial and technical alternatives for maximizing this potential. The intended research will (1) continue to consolidate and supplement ongoing reservoir data collection and updates to characterize the remaining resources in various states, (2) apply TORIS data base for analyses which will provide comprehensive assessment of the potential for recovery of the remaining known oil resources in various states, and (3) transfer the learned technologies to the oil operators through publications and workshops.

The Interstate Oil Compact Commission will make available to this research project the states well records, geological data archives, well samples, petrographic equipment, and computer resources.

In accordance with 10 CFR 600.14, the IOCC has been selected as the grant recipient. This activity would be conducted by the IOCC based on the meritorious application of the general evaluation. DOE support of the activity would enhance the public benefits to be derived by allowing more thorough coverage of the states' reservoirs. This activity represents an unique idea and a method which would not be eligible for financial assistance under solicitation, and, as determined by DOE, a competitive solicitation would be inappropriate.

The term of the grant is for a one-year period at an estimated value of $730,000.00 to DOE. There is no cost sharing with the Interstate Oil Compact Commission.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236, Attn: Dona G. Sheehan, Telephone: AC 412/892–5918.

Dated: July 18, 1989.

Gregory J. Kawalkin,

Director, Acquisition and Assistance Division Pittsburgh Energy Technology Center.

[FR Doc. 89–19202 Filed 8–15–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP89–1686–000, et al.]

ANR Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Co.

[Docket No. CP89–1686–000]

August 8, 1989.

Take notice that on August 1, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–1686–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Dekalb Energy Canada Ltd. (Dekalb), a marketer, under ANR's blanket certificate issued in Docket No. CP88–532–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states that pursuant to a transportation agreement dated May 19, 1989, it proposes to receive up to 38,600 dt equivalent of natural gas per day from Dekalb at a specified point located in Wood County, Wisconsin and redeliver the gas at other specified points located in Wisconsin. ANR estimates that the peak day and average day volumes would be 38,600 dt equivalent of natural gas and that the annual volumes would be 14,089,000 dt equivalent of natural gas. It is stated that on June 1, 1989, ANR initiated a 120-day transportation service for Dekalb under § 284.223(a) as reported in Docket No. ST89–4150–000.

ANR further states that no facilities need be constructed to implement the service. ANR indicates that the primary term of the transportation agreement would expire on December 31, 1989, but that the service would continue on a month-to-month basis until terminated by either party on 30 days written notice. ANR proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: September 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. El Paso Natural Gas Co.

[Docket No. CP89–1677–000]

August 8, 1989.

Take notice that on July 31, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP89–1677–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Meridian Oil Trading Inc. (Meridian), a broker, under the blanket certificate issued in Docket No. CP88–433–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that pursuant to a transportation service agreement dated October 20, 1988, amended and restated as of March 17, 1989, under its Rate Schedule T–1, it proposes to transport up to 158,250 MMBtu per day equivalent of natural gas for Meridian. El Paso states that it would transport the gas from any receipt point on its system, as provided in Exhibit "A" of the transportation agreement, and would deliver the gas to delivery points in the states of Oklahoma and Texas, as shown in Exhibit "B" of the agreement.

El Paso advises that service under § 284.102(a) commenced November 2, 1988, as reported in Docket No. ST89–1099 (filed December 1, 1988). El Paso further advises that it would transport 52,750 MMBtu on an average day and 19,253,750 MMBtu annually.

Comment date: September 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline

[Docket No. CP89–1653–000]

August 8, 1989.

Take notice that on July 25, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–1653–000 an application pursuant to Section 7(c) of the Natural Gas Act Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the construction and operation of 9.87 miles of 36 inch pipeline looping its main transmission line in Kentucky. Tennessee also requests permission to abandon 25.4 miles of mainline transmission pipeline that is obsolete and badly deteriorated also in Kentucky, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that the 25.4 miles of 26-inch pipeline from mainline valve (MLV) 102–2 to MLV 105–2 in its Line 100–2, located in Garrard, Madison and Clark Counties, Kentucky, was constructed in 1948 without coating or cathodic protection, is badly deteriorated and needs to be replaced. Tennessee proposes to replace the capacity of the aging pipeline with 9.87 miles of 36 inch pipeline loop from MLV 873–2 to Mile Post 873–2+9.87 on its higher pressure 800 System in Lincoln County, Kentucky. Tennessee states that both of its 100 and 800 systems deliver gas into Station 106 in Clay County, Kentucky, hence a shift of capacity from one system to the other will not affect the operational capabilities of the network. Tennessee estimates the proposed construction and abandonment will cost $12,029,000.

Comment date: August 29, 1989, in accordance with Standard Paragraph F at the end of this notice.

4. Colorado Interstate Gas Co.

[Docket No. CP85–381–006]

August 8, 1989.

Take notice that on July 26, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85–381–006 a petition to amend the order issued in Docket No. CP85–381 pursuant to section 7(c) of the Natural Gas Act, as amended, so as to authorize CIG to change the General Daily Entitlement and Total Annual Entitlement for a Jurisdictional Sales Customer, Questar Pipeline Company (Questar). CIG proposes to change Questar's General Daily Entitlement from 15,000 Mcf to 1,500 Mcf and the Total Annual Entitlement from 3,056,000 Mcf to 547,000 Mcf effective July 14, 1987, through October 1, 1992, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Prior to the filing in this proceeding, CIG twice filed Section 4 rate proceedings in Docket Nos. RP85–122–000 and RP87–30–000 wherein CIG's cost allocation and rate design were based on Questar purchasing 15,000 mcf of natural gas per day from CIG. CIG's Section 4 in Docket No. RP–85–122–000 also proposed to reclassify Questar and other CIG customers serviced under Rate Schedules P–1 and G–1, that purchased more than 25 percent of their requirements from suppliers other than CIG, as PR–1 customers. Questar objected to the PR–1 classification and CIG's cost/design calculation based on a requirement to purchase 15,000 mcf per day instead of 1,500 Mcf daily. Under a partial offer of settlement CIG withdrew Rate Schedule RP–1, effective September 25, 1985, and was directed to file a Section 7 to request Questar's change in entitlements. Therefore, Questar executed a service agreement for 15,000 Mcf per day from September 28, 1985, through July 13, 1987; and for 1,500 Mcf per day from July 14, 1987, through October 1, 1992.

Comment date: August 29, 1989, in accordance with Standard Paragraph F at the end of this notice.

5. El Paso Natural Gas Co.

[Docket No. CP89–1681–000]

August 8, 1989.

Take notice that on July 31, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP89–1681–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas on behalf Union Pacific Resources Company (Union Pacific), a shipper of natural gas, under El Paso's blanket certificate issued in Docket No. CP88–433–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso proposes to transport, on an interruptible basis, up to 52,750 MMBtu equivalent of natural gas on a peak day, 52,750 MMBtu equivalent on an average day, and 19,253,750 MMBtu equivalent on an annual basis for Union Pacific. It is stated that El Paso would receive the

gas for Union Pacific's account at any point on El Paso's system and would deliver equivalent volumes at designated points on El Paso's system at the border between Arizona and California and in Colorado, New Mexico, Oklahoma and Texas. It is indicated that the transportation service would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the service commenced July 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4206.

Comment date: September 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. ANR Pipeline Co.

[Docket No. CP89-1889-000]

August 8, 1989.

Take notice that on August 1, 1889, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1889-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas, for Chevron U.S.A., Inc. (Chevron), a marketer of natural gas, under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to transport on an interruptible basis up to 3,000 dt equivalent of natural gas on a peak day, 3,000 dt equivalent on an average day and 1,095,000 dt equivalent on an annual basis for Chevron. ANR states that it would perform the transportation service for Chevron under ANR's Rate Schedule ITS. ANR indicates that it would transport the gas from receipt points in Louisiana, Oklahoma, and the offshore Louisiana and Texas gathering areas, to delivery points located in Iowa.

It is explained that the service commenced June 1, 1989, under the automatic authorizaiton provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4149. ANR indicates that no new facilities would be necessary to provide the subject service.

Comment date: September 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. ANR Pipeline Co.

[Docket No. CP89-1890-000]

August 8, 1989.

Take notice that on August 1, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1890-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Inland Steel Co. (Inland), under ANR's blanket certificate issued in Docket No. CP88-532-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR requests authorization to transport, on an interruptible basis, up to a maximum of 15,000 dt of natural gas per day for Inland from receipt points located in Louisiana, offshore Louisiana, Michigan and offshore Texas to delivery points located in Indiana and Michigan. ANR anticipates transporting, on an average day 5,025 dt until October 31, 1989, and 15,000 dt thereafter and an annual volume of 5,475,000 dt.

ANR states that the transportation of natural gas for Inland commenced June 2, 1989, as reported in Docket No. ST89-4155-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to ANR in Docket No. CP88-532-000.

Comment date: September 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Columbia Gulf Transmission

[Docket No. CP89-1892-000]

August 8, 1989.

Take notice that on August 1, 1989, Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama, Houston, Texas 77027, filed in Docket No. CP89-1892-000 a request pursuant to the notice procedure in §§ 157.205 and 284.223 under the Natural Gas Act for authorization to transport, on an interruptible basis, on behalf of Tejas Power Corporation (Tejas), a marketer of natural gas, under Columbia Gulf's blanket certificate issued in Docket No. CP86-239-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia Gulf states that pursuant to a gas transportation service agreement dated February 21, 1989, it proposes to receive up to 100,000 MMBtu of natural gas from Tejas at specified points in Rapides, St. Landry and Acadia Parishes, Louisiana and to redeliever the gas at specified points in Davidson County, Tennessee, Alcorn County, Mississippi, and Acadia Parish, Louisiana. The volume anticipated to be transported on a peak day is 100,000 MMBtu, on an average day approximately 10,000 MMBtu, and approximately 3,650,000 MMBtu on an annual basis. Columbia Gulf further states that on July 1, 1989, Columbia Gulf commenced a 120-day service for Tejas under § 284.223(a), as reported in Docket Number ST89-4198-000.

Columbia Gulf further states that no facilities need to be constructed to implement the service. Columbia Gulf proposes to charge rates and abide by the terms and conditions of its Rate Schedule FTS-2.

Comment date: September 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. ANR Pipeline Co.

[Docket No. CP89-1887-000]

August 8, 1989.

Take notice that on August 1, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed with the Commission in Docket No. CP89-1887-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide transport natural gas under the blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is open to public inspection.

ANR proposes to transport gas on an interruptible basis for Grace Petroleum Corporation (Grace). ANR states that service commenced June 9, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-4148. ANR also states that the peak day quantity would be 5,000 dekatherms, the average daily quantity would be 5,000 dekatherms, and that the annual quantity would be 1,825,000 dekatherms. ANR states that it would receive the natural gas at ANR's existing receipt points in Wyoming and redeliver the gas for Grace's account at existing interconnections in Wyoming.

Comment date: September 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. ANR Pipeline Co.

[Docket No. CP89-1891-000]

August 9, 1989.

Take notice that on August 1, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1891-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Unifield Natural Gas Group, Limited Partnership (Unifield), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that it would receive the gas at existing points of receipt in Louisiana, Michigan, offshore Texas and offshore Louisiana and would redeliver the gas for the account of Unifield at existing interconnections located in Wisconsin and Michigan.

ANR further states that the maximum daily and average daily quantities that it would transport for Unifield would be 1,000 dt equivalent of natural gas until October 31, 1989, and 2,985 dt equivalent of natural gas thereafter. ANR states that the annual quantities that it would transport for Unifield would be 1,089,525 dt equivalent of natural gas.

ANR indicates that in a filing made with the Commission in Docket No. ST89-4154, it reported that transportation service for Unifield commenced on June 23, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Tennessee Gas Pipeline Co.

[Docket No. CP89-1901-000]

August 9, 1989.

Take notice that on August 2, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1901-000 a request pursuant to § 284.223 (18 CFR 284.223) of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation service for Entrade Corporation (Entrade), a marketer, under Tennessee's blanket transportation certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes the interruptible transportation of gas for Entrade pursuant to agreements dated March 20, 1987 and March 18, 1988, as amended, from points of receipt located principally offshore Texas and offshore Louisiana and the states of Alabama, Connecticut, Kentucky, Louisiana, Massachusetts, Mississippi, New York, Pennsylvania and Texas to multiple delivery points off Tennessee's system in the states of Alabama, Connecticut, Delaware, Georgia, Indiana, Illinois, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia and Wisconsin.

Tennessee states that the proposed transportation service replaces the former section 311 terminated services retaining the scheduling priority that existed under the agreements previously authorized under section 311 of the Natural Gas Policy Act. Tennessee states that the maximum daily quantity and average day deliveries to be 350,000 dekatherms and estimates that the annual deliveries will be 127,750,000 dekatherms. It is further stated that transportation service under § 284.223(a) of the Commission's Regulations commenced on June 15, 1989, as reported to the Commission in Docket No. ST89-4300-000 on July 28, 1989.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP89-1899-000]

August 9, 1989.

Take notice that on August 2, 1989, Arkla Energy Resources, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP89-1899-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to construct and operate three sales taps and related jurisdictional facilities necessary to deliver natural gas from its jurisdictional system for resale by Arkansas Louisiana Gas Company, a division of Arkla, Inc. (ALG), under Arkla's blanket certificate issued in Docket No. CP82-384-000 and CP82-384-001, and pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Arkla specifically proposes (1) to construct and operate a sales tap on its Line KM-43 in Section 14, T9S, R11W, Cleveland County, Arkansas, to deliver natural gas to ALG for service to Tyson Foods Valmac Hatchery (Tyson), an industrial customer who would use approximately 15,000 Mcf per year; (2) to construct and operate a sales tap on its Line F-4-F in Section 28, T21N, R7W, Claiborne Parish, Louisiana, to deliver natural gas to ALG for service to Curtis Nelson (Nelson), a domestic customer who would use approximately 65 Mcf per year; and (3) to construct and operate a sales tap for service on its Line 6 in Section 20, T33S, R1E, Sumner County, Kansas, to deliver natural gas to ALG for service to Loue Farley (Farley), a domestic customer who would use approximately 140 Mcf per year.

Arkla states that Tyson is an existing customer who is presently being served from a 1-inch tap on the same line and whose annual gas consumption runs between 7,000 and 8,000 Mcf. Arkla states that Tyson has expanded its hatchery operations and, as a result, the installation of a 2-inch tap is necessary to handle the increased gas load. It is stated that the proposed jurisdictional facilities will cost approximatley $5,470 to install. It is also stated that Nelson's and Farley's facilities will cost approximately $1,825 each to install.

Arkla states that the gas would be delivered from its general system supply, which is adequate to provide the service. Additionally, Arkla states that the gas will be billed at ALG's applicable retail rates as filed and effective with the state regulatory authority from time to time.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Altamont Gas Transportation Project

[Docket No. CP89-1851-000]

August 9, 1989.

Take notice that on July 21, 1989, Altamont Gas Transportation Project (Altamont), 111 5th Avenue, SW., 11th Floor, Calgary, Alberta T2P 3E3, filed an application in Docket No. CP89-1851-000, seeking a certificate of public convenience and necessity under section 7(c) the Natural Gas Act and Subpart A of Part 157 of the Commission's Regulations, for authorization to construct and operate interstate pipeline facilities and to transport natural gas in interstate commerce, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Altamont seeks authorization to construct and operate a new natural gas pipeline from a point on the U.S./Canada international border near Wild Horse, Montana, through the states of Montana and Wyoming to a terminus near Opal, Wyoming. The proposed pipeline would interconnect with the proposed facilities of the Kern River Gas Transmission Company (Kern River GTC), (See Notice of Application in Docket No. CP85-552-000, published in

the Federal Register on July 2, 1985, (50 FR 27,245)).

Altamont's pipeline would have a transportation capacity of 700,000 Mcf of Natural gas per day. Altamont proposes to transport natural gas for shippers through the new pipeline system for ultimate delivery to customers in California via Kern River GTC. Altamont states it will act solely as a transporter and that supply arrangements and export/import regulatory authorizations will be the responsibility of individual shippers.

Altamont further states it will be established as a partnership, joint venture or corporation prior to acceptance of the requested Commission certificate. The participants in Altamont will be U.S. affiliates of Amoco Canada Petroleum Company, Ltd., Petro-Canada Inc. and Shell Canada Limited. Altamont states that the purpose of the project is to provide natural gas consumers in California access to new and diverse natural gas supplies.

The proposed pipeline will consist of 620 miles of 30" diameter pipe starting from a point of interconnection with the NOVA Corporation of Alberta system near Wild Horse, Montana. The proposed pipeline will traverse through the states of Montana and Wyoming to a terminus near Opal, Wyoming, and interconnect with proposed pipeline facilities of Kern River GTC.

An initiating compressor station near Wild Horse, Montana, will consist of four 12,600 Hp turbine/centrifugal compressor units and aerial coolers to decrease the discharge temperature. Five intervening compressor stations, each consisting of a single 12,600 Hp unit will be located near; (1) Denton, Montana, (2) Rapelje, Montana, (3) Greybull, Wyoming, (4) Lost Cabin/Shoshoni, Wyoming, and (5) Farson, Wyoming. One meter station would be required for the proposed interconnection with Kern River GTC. The estimated cost of the completed project is $580 million. The planned in-service date is November 1, 1993.

Altamont requests authorization to provide firm transportation on behalf of those shippers which enter into firm transportation contracts in the form appended to Altamont's FERC Tariff under Rate Schedule FTS. Firm service will be an annual service sold under a two-part rate, consisting of a monthly demand charge of $8.9146 per Mcf and a maximum commodity charge of 13.4 cents per Mcf and a minimum commodity charge of 1 cent per Mcf. To the extent capacity is available, Altamont will provide interruptible service in addition to firm service under Rate Schedule ITS. The maximum rate for interruptible service will be 42.7 cents per Mcf and the minimum rate will be 1 cent per Mcf.

The maximum rates in each case are designed to recover, on a unit basis only those costs allocated to each service, and minimum rates in each case are based on the average variable costs allocated to each service. Rates for both services are based on projected units of service of 700,000 Mcf per day. All of the pipeline's cost would be recovered by providing the projected levels of service projected at the proposed maximum rates. The rate design for the Altamont project is based on the expectation that the construction will be financed 25% by equity contributions, with a 15% return and 75% by non-recourse debt financing at 11% interest. Altamont also proposes to use a graduated/levelized depreciation schedule over a proposed 20-year project life.

Comment date: August 30, 1989 in accordance with Standard Paragraph F at the end of the notice.

14. Columbia Gas Transmission Corp.

[Docket No. CP89–1900–000]

August 9, 1989.

Take notice that on August 2, 1989, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP89–1900–000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) to construct and operate facilities for 24 additional delivery points for existing wholesale customers under Columbia's blanket certificate issued in Docket No. CP83–76–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate interconnecting facilities in order to make deliveries of the volumes of gas to the existing wholesale customers as detailed below:

	Customer	Number of delivery points	Volume (dt equivalent) peak day
Annual			
Columbia Gas of Kentucky, Inc	2	3.0	300
Columbia Gas of Maryland, Inc	1	1.5	150
Columbia Gas of Ohio, Inc	5	8.4	985
Columbia Gas of Pennsylvania, Inc	3	6,122	465,150
Commonwealth Gas Services, Inc	1	1.5	150
Dayton Power & Light Company	2	11.1	1,116
Mountaineer Gas Company	10	15.0	1,500

Columbia states that the proposed deliveries would be within all customers' currently authorized daily and annual entitlements and would have no impact on peak day and annual deliveries to the existing customers. It is stated that the gas would be used for residential, commercial and industrial service. It is further stated that the sales at the proposed delivery points would be made under Columbia's Rate Schedule CDS.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Northwest Pipeline Corp.

[Docket No. CP89–1903–000]

August 9, 1989.

Take notice that on August 3, 1989, Northwest Pipeline Corporation, (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84108 filed in Docket No. CP89–1903–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Kimball Energy Corporation (Kimball), under its blanket authorization issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest would perform the proposed interruptible transportation service for Kimball, a marketer of natural gas, pursuant to a transportation agreement dated January 18, 1989, as amended January 18, 1989, May 1, 1989, and May 30, 1989, under its Rate Schedule TI–1. The term of the transportation agreement is from February 1, 1989, and shall remain in full force and effect until February 1, 1994, and month to month thereafter, subject to termination upon 30 business days written notice by either party. Northwest proposes to transport on a peak day up to 5,000 MMBtu; on an average day up to 2,000 MMBtu; and on an annual basis 730,000 MMBtu for Kimball. Northwest proposes to transport the subject gas through its system from wells located in Rio Blanco, Garfield, and La Plata Counties, Colorado; San Juan, and Rio Arriba Counties, New Mexico; Sweetwater, Sublette, and Lincoln Counties, Wyoming; and Grand and Uintah Counties, Utah to various delivery points on Northwest's system in Colorado, Wyoming, New Mexico, and Utah. Northwest avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Northwest commenced such self-implementing service on June 28, 1989, as reported in Docket No. ST89–4214–000.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–19143 Filed 8–15–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ89–1–46–019]

Kentucky West Virginia Gas Co.; Second Amendment to Compliance Filing

August 9, 1989.

Take notice that on August 3, 1989, Kentucky West Virginia Gas Company (Kentucky West) filed a second amendment to its March 30, 1989 compliance filing so as to extend the proposed effective date for the proposed tariff sheets to November 1, 1989.

Kentucky West states that the tariff sheets filed March 30, 1989, were filed in compliance with the Commission's "Order Rejecting Compliance Filing" issued in the referenced proceedings on March 15, 1989, and in accordance with the mandate of the United States Court of Appeals of the Fifth Circuit, issued in *Kentucky West Virginia Gas Co.* vs. *FERC*, 780 F.2d 1231 (5th Cir. 1986).

Kentucky West states that, under the tariff sheets filed March 30, 1989, it would bill its customers directly for the difference between (1) the amounts each such customer paid during the period in which Kentucky West was required to price certain of its company production at cost of service rather than Natural Gas Policy Act (NGPA) rates; and (2) the amounts each such customer would have paid if Kentucky West, during such time period, had not been denied the right to price its pipeline production at NGPA prices, plus interest calculated in accordance with the Commission's regulations. Kentucky West states further that its customers are given the option of paying the direct billing amounts either: (1) By a lump-sum payment to be made by May 1, 1989; (2) in monthly installments of direct billing amounts, plus interest, to be paid over a period not to exceed 84 months; or (3) by a lump-sum payment during the installment period.

Kentucky West states that, based upon preliminary settlement discussions, on April 13, 1989, it filed an amendment to its March 30, 1989 filing changing the proposed effective date to September 1, 1989. Kentucky West also requested the deadline for interventions or protests be August 14, 1989.

In its August 3, 1989 amendment to the compliance filing, Kentucky West states that it has made substantial progress in settlement discussions. Kentucky West states that since the issues involved are complex and relate to a period of time over 6 years old, it requires further negotiations. To facilitate settlement discussions, Kentucky West has filed to further amend the proposed effective date of the tariff sheets to November 1, 1989, and requests waiver of the Commission's regulations so that the time for filing protests or requests for hearing may be extended until October 16, 1989. Kentucky West states that it will extend its waiver of interest concerning the direct billing amounts involved so as to encompass the months of May through October, 1989.

Kentucky West states that it has contacted all parties to these proceedings and the Commission Staff, and no party nor the Commission Staff have any objection to this extension.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before October 16, 1989. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-19144 Filed 8-15-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-200-001]

Pacific Gas Transmission Co.; Compliance Filing

August 9, 1989.

Take notice that on August 2, 1989, Pacific Gas Transmission Company PGT] filed First Revised Sheet No. 46 to its FERC Gas Tariff, Original Volume No. 1-A, to be effective August 1, 1989.

PGT states that this filing is in compliance with the Commission's order issued July 28, 1989. PGT states that this tariff sheet reflects that pre-October 9, 1985 contracts must be currently in effect so as to receive priority status under open access transportation.

In addition, PGT requests the Commission clarify and confirm that PGT is authorized to provide transportation for Pacific Interstate Transmission Company (PITCO), commencing August 1, 1989, on the basis that PGT and PITCO have a pre-October 9, 1985 transportation agreement which is currently in effect.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, (1988)). All such protests should be filed on or before August 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-19145 Filed 8-15-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3629-8]

Air Pollution Control Grants; Maintenance of Effort for FY 1987 and 1988—City of Houston, Health and Human Services Department, Bureau of Air Quality Control

AGENCY: Environmental Protection Agency.

ACTION: Notice and opportunity for public hearing.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces an opportunity for public hearing and comment on a tentative determination that the City of Houston, Health and Human Services Department (HHSD), Bureau of Air Quality Control (BAQC) should be allowed a reduced Maintenance of Effort (MOE) level for FY 87 and FY 88, consistent with section 105(b) of the Clean Air Act (CAA).

Hearing Opportunity: If written requests for a public hearing are received by September 15, 1989 the agency will hold a hearing in Houston, Texas.

FOR FURTHER INFORMATION CONTACT: Joan E. Brown, State Programs Section, Air, Pesticides and Toxics Division, EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 655-7208, (FTS) 255-7208.

SUPPLEMENTARY INFORMATION: Section 105(b) of the CAA, 42 U.S.C. § 7405(b), specifies that "No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than nonrecurrent expenditures for Air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year, unless the Administrator, *after notice and opportunity for public hearing,* determines that a reduction in expenditures is attributable to a non-selective reduction in expenditures in the programs of all executive branch agencies of the applicable unit of government * * *" [Emphasis added.] This statutory requirement is repeated in EPA's "State and Local Assistance" regulations at 40 CFR 35.210(a).

In the FY 87 and FY 88 grant applications, the City of Houston's Health and Human Services Department projected expenditures for the Bureau of Air Quality Control sufficient to meet the MOE requirements of the CAA. However, the City experienced budget reductions subsequent to the submittal of the applications which caused the BAQC to experience difficulty meeting the MOE requirements for both FY 87 and FY 88. The HHSD has provided documentation to EPA reflecting the Mayor's declaration of a public emergency mandating a decrease in salaries by 3 percent in FY 87 and again in FY 88. In addition, further budget reductions were experienced by the HHSD and the BAQC as a result of layoffs, privatization of certain support services, a moratorium on longevity pay increases, inability to fill vacancies through attrition and reduced pay scales, and by a freeze on hiring. The cumulative effect of these budget reductions resulted in a 9.450 percent reduction in the total expenditures of the City of Houston's Health and Human Service Department in FY 87 and a further 9.236 percent reduction in FY 88.

The City of Houston initially attempted to comply with the MOE requirements in FY 87 by returning Federal grant funds to maintain the level of expenditures in City funds rather than requesting a formal non-selective budget reduction and a reduced MOE level. This resulted in the reduced expenditure of Federal grant funds for FY 87, but did not reduce the MOE level which the City of Houston was required to meet for FY 88. Realizing that the previously established MOE level could not be met with the additional budget cuts experienced in FY 88, the City of Houston's Health and Human Service Department requested a determination from EPA that the BAQC is entitled to a reduced MOE level under the non-selective reduction criteria provided in § 105(b) of the CAA.

Based on financial documentation provided by the Health and Human Services Department, EPA has made a preliminary determination that the City of Houston's BAQC is entitled to a reduced MOE level for both FY 87 and FY 88. The documentation provided appears to support a 9.450 percent reduction for FY 87 below FY 86 and an additional 9.236 percent reduction for FY 88 below the reduced FY 87 level. Houston's budget reductions meet the CAA criteria as non-selective since they were part of broader economy measures taken because of loss of City revenues. Further, the Health and Human Services Department and the Bureau of Air Quality Control were not singled out in the budget reductions.

The BAQC's established MOE level for FY 86 was $1,837,334. The reduced MOE levels, if approved, would be $1,663,706 and $1,510,040 for FY 87 and FY 88, respectively. These amounts represent a 9.450 percent reduction in FY 87 of the FY 86 established MOE level, and an additional 9.236 percent reduction in FY 88 of the reduced FY 87 amount. The financial documentation provided by the Health and Human Service Department appears to support the above reductions.

During each of these fiscal years, the BAQC has substantially met all of its air pollution control program commitments, despite the difficulties of reduced budgets.

This notice provides an opportunity for a public hearing as required by the CAA. EPA will hold the hearing only upon receipt of a written request for a public hearing. Unless written requests for a hearing on the City of Houston's request for an authorized reduction in the MOE level for FY 87 and FY 88 are received by EPA, Region 6 (Dallas) by September 15, 1989, we will proceed to make a determination as indicated.

Dated: August 9, 1989.

Robert E. Layton, Jr.,

Regional Administrator.

[FR Doc. 89-19227 Filed 8-15-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00279; FRL-3630-6]

Nominations to the Scientific Advisory Panel; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice provdes the names, addresses, professional affiliations, and selected biographical data of persons nominated to serve on the Scientific Advisory Panel established under section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Under FIFRA, the statutory Panel terminated on September 30, 1987. The Panel was administratively reestablished on October 1, 1987, in accordance with the requirements of the Federal Advisory Committee Act, until reauthorized as a statutory Panel by amendment to the FIFRA, dated October 25, 1988. Public comment on the nominations is invited. Comments will be used to assist the Agency in selecting nominees to comprise the Panel and should be so oriented.

DATES: Comments must be postmarked not later than September 15, 1989.

ADDRESSES: By mail, submit comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 220, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION: By mail: Robert B. Jaeger, Executive Secretary, FIFRA Scientific Advisory Panel (H7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 816G, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-4369/2244).

SUPPLEMENTARY INFORMATION:

I. Background

Amendments to FIFRA enacted November 28, 1975, added among other things, a requirement set forth in section 25(d) that notices of intent to cancel or reclassify pesticide registrations pursuant to section 6(b)(2), as well as proposed and final forms of rulemaking pursuant to section 25(a), be submitted to a Scientific Advisory Panel prior to being made public or issued to a registrant. In accordance with section 25(d), the Scientific Advisory Panel is to have an opportunity to comment on the health and environmental impact of such actions.

II. Charter

A Charter for the FIFRA Scientific Advisory Panel has been issued in accordance with the requirements of section 9(c) of the Federal Advisory Committee Act, Public Law 92-463, 86 Stat. (5 U.S.C. App I). The qualifications as provided by the Charter follow.

A. Qualifications of Members

Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. No person shall be ineligible to serve on the Panel by reason of his membership on any other advisory committee to a Federal department or agency or his employment by a Federal department or agency (except the Environmental Protection Agency). The Administrator appoints individuals to serve on the Panel for staggered terms of 4 years. Panel members are subject to the provisions of 40 CFR Part 3, Subpart F—Standards of Conduct for Special Government Employees, which include rules regarding conflicts-of-interest. An officer and/or employee of an organization producing, selling, or distributing pesticides and any other person having a substantial financial interest (as determined by the Administrator) in such an organization, as well as an officer or employee of an organization representing pesticide users shall be excluded from consideration as a nominee for membership on the Panel. Each nominee selected by the Administrator shall be required, before being formally appointed, to submit a Confidential Statement of Employment and Financial Interests, which shall fully disclose the nominee's sources of research support, if any.

In accordance with section 25(d) of FIFRA, the Administrator shall require all nominees to the Panel to furnish information concerning their professional qualifications, including information on their educational background, employment history, and scientific publications. Section 25(d) of FIFRA requires the Administrator to issue for publication in the **Federal Register** the name, address, and professional affiliations of each nominee.

B. Applicability of Existing Regulations

With respect to the requirement of section 25(d) that the Administrator promulgate regulations regarding conflicts of interest, the Charter provides that EPA's existing regulations applicable to special government employees, which include advisory committee members, will apply to the members of the Scientific Advisory Panel. These regulations appear at 40 CFR Part 3, Subpart F. In addition, the Charter provides for open meetings with opportunities for public participation.

C. Process of Obtaining Nominees

In accordance with the provisions of section 25(d), EPA, in June 1989, requested the National Institutes of Health (NIH) and the National Science Foundation (NSF) to nominate scientists to fill one vacancy occurring on the SAP. NIH responded by letter dated June 29, 1989, enclosing a list of 17 nominees; NSF responded by letter dated July 3, 1989, with a list of 10 nominees.

III. Nominees

The following are the names, addresses, professional affiliations, and selected biographical data on nominees being considered for membership on the FIFRA Scientific Advisory Panel to fill two vacancies occurring during the calendar year 1989.

Ames, Bruce Nathan, Department of Biochemistry, University of California, Berkeley, California. Expertise: Biochemical genetics. Education: Cornell University, BA, 1950; California Institute

of Technology, Ph.D (biochemistry) 1953. Professional experience: USPHS fellow, NIH, 1953–54; biochemist, National Institute of Arthritis and Metabolic Disorders, 1954–67; Professor of biochemistry, University of California, Berkeley, 1968 to present. Honors and Awards: Eli Lilly Award, 1964; Arthur Flemming Award, 1968; Lewis Rosenstiel Award, 1976; Federation of American Society of Experimental Biology/3M Award, 1976; ERDA Distinguished Associate Award, 1976; Environmental Mutagen Society Award, 1976; John Scott Medal, 1979; Bolton L. Carson Medal, 1980; Wadsworth Award, 1981. Societies: National Academy of Sciences; American Society of Biological Chemists; National Cancer Advancement Board; American Academy of Arts and Sciences; American Chemical Society. Research: mutagens and mutations; bacterial biochemical genetics; environmental carcinogens and mutagens.

Anderson, Elizabeth L., Clement Associates Inc., Fairfax, Virginia (consulting group with special expertise in hazard assessment for toxic chemicals). Expertise: organic chemist. Education: College of William and Mary, BS, 1962; University of Virginia, MS, 1964; American University, Ph.D (organic chemistry) 1970. Professional experience: Director EPA risk assessment program for 10 years. Established the Carcinogen Assessment Group at EPA in 1976. It formed the core for the new office, the Office of Health and Environmental Assessment, which Dr. Anderson also directed. President, Clement Associates, Inc., 1985 to present. Consultant for the World Health Organization and the Pan American Health Organization. Lectured and published widely on risk assessment methods and the use of risk assessment in the management of toxic chemicals. Honors: Kappa Kappa Gamma National Achievement Award, 1974; EPA Gold Medal for Exceptional Service, 1976; SES Bonus, 1984. Societies: American Association for the Advancement of Science (AAAS); New York Academy of Sciences; Society for Risk Analysis.

Birecka, Helena M., Department of Biological Science, Union College, Schenectady, New York. Expertise: Plant physiology; biochemistry. Educational background: University Perm, MS, 1944; Timiriazev Academy, Moscow, Ph.D (plant physiology), 1948. Professional experience: Professor agricultural chemistry, Agriculture University, Warsaw, Poland, 1949–51, Professor plant physiology, 1953–61, chairman of the department, 1954–66, Professor, 1961–66; Professor agricultural chemistry, University of Poznan, 1951–53; consultant, International Atomic Energy Agency, Vienna, Austria, 1966–69; research associate plant physiology, Yale University, 1968–70; Professor plant physiology and biochemistry, 1970–74, Professor biosciences, Union College, 1974 to present. Concurrent positions: head plant metabolism laboratory, Polish Academy of Science, 1960–66; Professor, Isotope Laboratory, Institute of Plant Cultivation, Warsaw, Poland, 1961–66; chairman of the Committee, Use of Isotopes and Nuclear Energy in Agriculture and Biological Sciences, 1962–66; Food and Agriculture Organization Fellow, 1964. Societies: Polish Botanical Society; Polish Biochemical Society; American Society Plant Physiology; American Society Agronomy. Research: mineral nutrition of plants; alkaloid biosynthesis and metabolism; photosynthesis; long distance translocation in plants; enzyme biosynthesis and activity as related to hormone action.

Brattsten, Lena B., Department of Entomology, Cook College, Rutgers University, New Brunswick, New Jersey. Expertise: biochemical toxicology. Educational background: University of Illinois, Ph.D (insecticide biochemistry/toxicology), 1971. Professional experience: Fellow biochemistry, Cornell University, 1971–72, research associate, 1972–77; assistant professor biochemistry and ecology, University of Tennessee, 1977. Societies: Sigma Xi; AAAS; Entomology Society of America. Research: biochemistry and physiology of microsomal drug metabolizing enzymes in insects and of mitochondrial enzymes related to foreign compound metabolism.

Crosby, Donald Gibson, Department of Environmental Toxicology, University of California, Davis, California. Expertise: environmental chemistry/pesticide chemistry. Educational background: Pomona College, BA, 1950; California Institute of Technology, Ph.D (chemistry), 1954. Professional experience: Chemist, Union Carbide Chemical Company, 1954–55; group leader biological chemistry, 1956–61, associate toxicologist, 1961–62, toxicologist, lecturer food science and technology, 1962–1969, chairman of the Agriculture Toxicology and Residue Research Laboratory, 1962–66, and Regional Research Project W–45, 1968–70, Professor Environmental Toxicology, University of California, 1969 to present; Toxicologist, Experimental Station, 1963 to present. Concurrent positions: Committee on pesticide chemistry, International Union of Pure and Applied Chemistry, 1974 to present; Material Hazards Advisory Committee, Environmental Protection Agency, 1975–79; Editor, Journal of Agriculture and Food Chemistry, 1979 to present. Societies: AAAS; American Chemical Society; Oceanic Society. Research: chemistry of natural products; nutritional and food chemistry; pesticide chemistry and metabolism; chemical ecology; environmental chemistry; marine environmental toxicology.

Dungworth, Doland L., Department of Pathology, School of Veterinary Medicine, University of California, Davis, California. Expertise: veterinary pathology. Educational background: University of Liverpool, BVSc, 1956; University of California, Davis, Ph.D (veterinary pathology), 1961; American College of Veterinary Pathologists diplomate, 1963. Professional experience: Lecturer veterinary pathology, University of California, Davis, 1959–61 and University of Bristol, 1961–62; Professor, 1962–70, associate dean of research and graduate education, 1973–77, professor and Chairman of Veterinary Pathology, School of Veterinary Medicine, University of California, Davis, 1970 to present. Concurrent positions: WHO fellow, Institute of Diseases of the Chest, London, England, 1968–69; Fulbright fellow Wallaceville Research Center, New Zealand, 1977–78. Societies: Royal College of Veterinary Surgeons; International Academy of Pathology; American Association of Pathologists; American Thoracic Society. Research: Pulmonary pathology, especially effect of air pollution; inhalation toxicology.

Elashoff, Robert M., Biostatistics Department, School of Medicine and School of Public Health, University of California, Los Angeles, California. Expertise: Biostatistics. Educational Background: Suffolk University, BS, 1953; Boston University, AM, 1955; Harvard University, Ph.D, 1963. Professional experience: Teaching fellow, biostatistics, Harvard University, 1955–1958; researcher, gerontology, Harvard Medical School, 1959–1960; researcher, statistics, Harvard University, 1960–1961; researcher, psychiatry, Massachusetts Mental Health Center, 1961–1963; teaching fellow, mathematics, statistics, Harvard University, 1961–1963; researcher, computer, MIT, 1957–1958; researcher, biostatistics, UCLA, 1963; statistics/biostatistics, University of California, Berkeley, 1963–1964; Professor, biostatistics and research systems, University of California, San Francisco, 1963–1975; Professor, Biomathematics, Biostatistics, University of California, Los Angeles, School of Medicine, 1975 to present. Concurrent positions: National Study of Prostatic Cancer, 1966–1967; Diabetes Research Program, Kaiser Hospital, 1964–1965; ASA/NCMT Program of Statistics and Probability, 1969–1970; Bay Area Biostatistics Colloquium, 1972–1973; Stanford—VA Study on Drug Abuse, 1974 to present; National Cancer Institute, NIH, Carcinogenesis Bioassay Program, 1975; Site Reviewer, NCI, 1975–1986; Consultant, Biometrics, FDA, 1976–1977; Site Reviewer, National Eye Institute, 1977; Study Section, National Institute of Dental Health, 1977–1978; Incomplete Data Panel, NAS, 1977–1978; National Toxicology Program, NIH, 1981–1983; Special Projects Study Section, NIH, 1981–1983; NIEHS Peer Review, 1982; Consultant, Rand Corporation, 1983 to present; Ad hoc Study Section, Biostatistics, NIEHS, 1984, 1986; President Gardner's Subcommittee on Melanoma at the Lawrence Livermore Laboratory, 1985 to present; University of Arizona Cancer Center, 1986; Site Reviewer, NIEHAS, 1987; Visitor's Committee, University of California, Riverside, 1988. Societies: American Statistical Association; Institute of Mathematical Statistics; Biometric Society; Sigma Xi; AAAS; American Society of Preventive Oncology; American Public Health Association; Bernoulli Society for Mathematical Statistical Probability; Society for Epidemiologic Research; International Biometric Society; International Statistician Institute. Research: Biostatistics, cancer control, AIDS Clinical Trial Group.

Garman, Robert Harvey, Research Scientist in Pathology, Bushy Run Research Center, Pennsylvania. Expertise: Veterinary pathology. Educational background: Cornell University, BA, 1963, DVM, 1966. Professional experience: Veterinarian, general veterinary practice, 1966–67; Veterinary Officer in Public Health Service, NIH, 1967–68; fellow pathology School of Medicine and Dentistry, University of Rochester, 1968–71, instructor 1971–73, assistant professor pathology and toxicology, 1973–78; senior scientist pathology Carnegie-Mellon Institute Research Center, 1978–80; research scientist pathology, Bushy Run Research Center, 1980 to present. Concurrent positions: adjunct associate professor University of Pittsburgh, 1981 to present. Societies: American Veterinary Medical Association; American College Veterinary Pathologists; International Academy of Pathology; American Association of Neuropathology; Society of Toxicology Pathologists; New York Academy of Sciences. Research: spontaneous diseases of animals and models of human disease; toxicologic pathology, including the testing of chemicals for acute, subchronic and chronic effects in animals.

Gatzy, John Thomas, Department of Pharmacology and Toxicology, University of North Carolina Medical School, Chapel Hill, North Carolina. Expertise: pharmacology and toxicology. Education: Pennsylvania State University, BS, 1958; University of Rochester School of Medicine and Dentistry, Ph.D. (pharacology) 1963. Professional experience: Professor of Pharmacology and Toxicology, University of North Carolina, 1973–1982; Director of Graduate Studies, Department of Pharmacology, 1981–1984; Professor of Pharmacology and Toxicology, 1982 to present. Dartmouth Medical School, Assistant Professor of Pharmacology, 1967–73; Instructor in Pharmacology, 1962–67. Graduate Research Associate in the Atomic Energy Project, University of Rochester, 1958–62. Societies: American Society for Pharmacology and Experimental Therapeutics. Research: Effects of saccharin feeding on bioelectric properties and ion transport, permeability and content of the epithelium of rat urinary bladder; HL 34322 Program Project, Pulmonary epithelia in health and disease.

Goodman, Dawn G., PATHCO, Inc., Gaithersburg, Maryland. Expertise: veterinary pathology. Education: George Washington University, BS, 1965; University of Pennsylvania, VMD, 1969; Johns Hopkins University School of Medicine (postdoctoral fellowship certificate in comparative pathology) 1972; Board Certified Diplomate, American College of Veterinary Pathologists, 1974. Professional experience: Veterinary Pathologist, National Cancer Institute, NIH, Bethesda, Maryland, concurrent positions from 1972–1978; Director of Pathology, Clement Associates, Inc., Washington, DC, 1978–1981; Associate Scientist and Senior Pathologist, Clement Associates, Inc., Arlington, Virginia, 1981–1983; Adjunct Assistant Professor, Department of Pathology, University of Maryland School of Medicine, Baltimore, Maryland, 1982 to present; President and Senior Pathologist PATHCO, Inc., Gaithersburg, Maryland, 1983 to present. Honors and Awards: Society of Phi Zeta; USPHS, NIH Special Research Fellowship. Societies: American College of Veterinary Pathologists; AAAS; American Veterinary Medical Association; Association of Women Veterinarians; DC Academy of Veterinary Medicine; United States and Canadian Academy of Pathology; Mid-Atlantic Comparative Pathology Colloque; Society of Toxicologic Pathologists; Society of Toxicology; Veterinary Cancer Society.

Hildebrandt, Paul K., PATHCO, Inc., Gaithersburg, Maryland. Expertise: Pathologist. Education: Colorado A&M College, BS, 1955; Colorado State University, DVM, 1959; Residency, Armed Forces Institute of Pathology, 1962–1964. Board Certified Diplomate, American College of Veterinary Pathologists, 1966. Professional experience: Veterinary Clinician, Ft. Detrick, Maryland, 1959–1962; Director, Division of Pathology, Walter Reed Army Institute of Research, 1971–1978; Military consultant to U.S. Department of Agriculture, 1978–1980; Consultant to the Surgeon General on Veterinary Pathology, 1972–1980; Veterinary Pathologist, Tracor Jitco, Inc., 1980–1985; Vice President, Senior Pathologist, PATHCO, Inc., 1985 to present. Honors and awards: Commendation for presentation at American Veterinary Medical Association, July 1972; Legion of Merit, Oak Leaf Cluster, 1980 Legion of Merit, 1978. Societies: American Veterinary Medical Association Council on Research; DC Veterinary Medical Association; American College of Veterinary Pathologists; American Registry of Pathology, American College of Veterinary Pathologists; United States and Canadian Academy of Pathology; Federation of American Societies for Experimental Biology; Society of Tropical Medicine and Hygiene; Washington DC Society of Pathologists; Society of Tropical Veterinary Medicine; Veterinary Flying Association.

Lijinsky, William, Director, Chemical Carcinogenesis Program, Cancer Research Facility, Frederick, Maryland. Expertise: biochemist. Educational background: University of Liverpool, BS, 1949; Ph.D, 1951. Professional experience: Professor biochemistry, Chicago Medical School, 1955–66; Professor of biochemistry, University of Nebraska Medical School, 1966–71; group leader carcinogenesis program, Oak Ridge National Laboratory, 1971–76; director chemical carcinogenesis program, Cancer Research Facility, NCI, 1976 to present. Societies: Biochemical Society; American Chemical Society; American Association in Cancer Research; American Society of Biological Chemists; Environmental Mutagen Society; Society of

Occupational and Environmental Health; Sigma Xi.

McConnell, Ernest Eugene, consultant, NIEHS/NTP, Research Triangle Park, North Carolina. Expertise: pathology an toxicology. Educational background: Ohio State University, DVM, 1961; Michigan State University, MS 1966; American College of Veterinary Pathologists diplomate, 1968; American Board of Toxicologists diplomate, 1980. Professional experience: Base Veterinarian, Hill Air Force Base, Utah, 1961–64; resident pathologist at Armed Forces Institute of Pathology, 1965–67 and Aerospace Pathology Division, 1967–69; researcher Onderstepoort Veterinary Institute, South Africa, 1968–72; Pathology Branch Chief, Inhalation Toxicology Laboratory, Wright-Patterson Air Force Base, 1972–74; researcher, 1974–80, branch chief, 1980–83, and Director, Toxicological Research Testing Program, NIEHS, NTP, 1983 to present. Concurrent positions: consultant Zoological Park, North Carolina, 1967–71; Biohazards Safety Committee, NIH, 1976–79; National Cancer Institute, 1977–80; Professor veterinary science, NC State University, 1977 to present; Agent Orange Working Group, Veteran's Administration, 1982 to present; National Research Council/NAS; American Board of Toxicology; Animals as Sentinels/Chemical Exposure, NAS. Societies: American College of Veterinary Pathologists; American Veterinary Medical Association; Society of Toxicological Pathologists; Society of Toxicology. Awards: Commendation Medal USPHS, 1978; Outstanding Service Medal, NIH, 1985. Research: pathology of toxic chemicals of environmental interest, especially halogenated hydrocarbons; spontaneous diseases of primates; asbestos; veterinary medicine.

Paulson, Glenn, Center for Hazardous Waste Management, Chicago, Illinois. Expertise: Environmental toxicology. Educational Experience: Northwestern University, BA, 1963; Rockefeller University, Ph.D (pesticide toxicity in mammals), 1971; Long Island University, ScD, 1972. Professional experience: staff scientist, Natural Resources defense Council, Inc., 1971–73; administrator Science Support Program, 1973–74, Assistant Commissioner Science and Research, New Jersey Department Environmental Protection, 1974–79; vice-president Science and Sanctuaries, National Audubon Society, 1979–84; senior vice-president, 1984–85, vice-president Technical review and Compliance, Clean Sites, Inc., 1984–1988. Concurrent positions: member board of directors NY Scientists Committee for Public Information, 1965–74; Scientists Institute for Public Information, 1970–78; professor State University of New York, 1971–73; distinguished lecturer Southhampton College, 1972; City College of New York, 1973–74; Rene Dubos Center for Human Environment, 1985 to present; Societies: AAAS; American Chemical Society; Signa Xi; Society for Environmental Toxicology and Chemistry; American Institute of Chemists. Research: environmental toxicology, toxic chemcials; air and water pollution; environmental policy (national and international).

Stegeman, John J., Department of Biology, Woods Hole Oceanographic Institution, Woods Hole, Massachusetts. Expertise: biology/biochemistry. Education: St. Mary's College, BA, 1966; Northwestern University, Ph.D (biology/biochemistry) 1972. Professional experience: NSF pre-doctoral fellow, Northwestern University, 1966–1967; Northwestern University assistanceship, 1967–1968; NIH pre-doctoral fellow, 1968–1971; post-doctoral fellow, Woods Hole Oceanographic Institution, 1971–1972; Scientist, Woods Hole Oceanographic Institution, 1972 to present. Societies: AAAS; American Society for Pharmacology and Experimental Therapeutics; American Society of Zoologists; International Society for Study of Xenobiotics; Sigma Xi; Society for Protection of Old Fishes. Concurrent positions: NATO Study visit, 1982; Exxon fellowship, Bermuda Biological Station, 1982; MIT/Woods Hole Oceanographic Institution joint doctoral program; Toxicology Study Section, NIH; Site review and Special Study Sections, NIEHS; serves on editorial boards of Aquatic Toxicology, Marine Environmental Research and Zenobiotica; reviews for NSF, NIH, Seagrant, EPA, Department of the Interior and FDA. Research: non-mammalian foreign compound metabolism and cytochrome P–50.

Travis, Curtis, Director, Office of Risk Analysis, Health and Safety Research Division, Oak Ridge National Labortory, Oak Ridge, Tennessee. Expertise: Health risk assessment. Education: California State University, Fresno, BA, 1966; California State University, Fresno, MA, 1967; University of California, Davis, Ph.D (applied mathematics) 1971. Professional experience: Research Engineer, Jet Propulsion Laboratory, California Institute of Technology, 1966–1968; Professor, mathematics, Vanderbilt University, 1971–1974; Professor, University of Tennessee, mathematics, 1974–1976; Oak Ridge National Laboratory, 1976 to present. Honors and awards: Distinguished Service Award, Society for Risk Analysis. Professional activities: Editor, Risk Analysis, 1983 to present; Health and Environmental Toxicology, 1989; Chairman, Office of Science and Technology Policy Task Force on Risk Analysis, 1985 to present; Co-Director, Pan American Health Organization Workshop on Environmental Risk Analysis, Havana, Cuba, 1988; Co-Director, Pan American Health Organization Workshop on Risk in Developing Countries, Mexico City, Mexico; President, East Tennessee Chapter of the Society for Risk Analysis, 1988; Co-Director, NATO Advanced Study Institute on Risk Assessment for Environmental Applications of Biotechnology, 1987.

Vore, Mary Edith, Department of Pharmacology, College of Medicine, University of Kentucky. Expertise; Pharmacology. Educational background: Asbury College, BA, 1968; Vanderbilt University, Ph.D (pharmacology), 1972. Professional experience: Biochemistry and Drug Metabolism, Hoffman-LaRoche, Inc., 1972–74; Professor toxicology, Department of Pharmacology, University of California Medical Center, 1974–78; Professor, pharmacology, 1978 to present, College of Medicine, University of Kentucky, 1981 to present. Societies: American Society for Pharmacology and Experimental Therapeutics; Society of Toxicology; American Association for the Study of Liver Diseases. Research: mechanisms by which estrogen and estrogen glucuonides induce cholestasis and to define the substrate specificities of the carriers for the bile acids and organic ions.

Wilson, John T., Pediatrics and Pharmacology Department, School of Medicine, Louisiana State University. Expertise: Medicine; pharmacology; pediatrics. Educational background: Tulane University, BS, 1960, MS and MD, 1963. Professional experience: research, clinical pediatrics, Palo Alto-Stanford Medical Center, 1963–65; research biochemistry and pharmacology, University of Iowa, 1965–66; research, bio-chemistry, pharmacology and endrocrinology, National Institute Child Health and Human Development, 1966–68; attending pediatrician and Laboratory Director, Children's Hospital, San Francisco, 1969–70; Professor Medical School, Vanderbilt University, 1970–77; Professor Pediatrics and Pharmacology; Chief, Clinical Pharmacology, School of Medicine, Louisiana State University, 1978 to present. Concurrent positions: Neonatal Medicine and Laboratory Director Children's Hospital, San Francisco, 1968–69; NIH Research Career Development Award, 1969 and 1970; lecturer Medical Center, University of California, San Francisco, 1969–70; Researcher, J.F. Kennedy Center, 1970 to present; World Health Organization Task Force on Drugs on Breast Milk. Societies: AAAS; Society of Pediatric Research; American Society Pharmacology and Experimental Therapeutics; American Society of Clinical Pharmacology and Therapeutics; American Academy of Pediatricians. Research: pediatric clinical pharmacology, drug metabolism.

Dated: August 9, 1989.

Charles L. Elkins,

Acting Assistant Administrator, for Pesticides and Toxic Substances.

[FR Doc. 89-19247 Filed 8-15-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36166; FRL-3629-3]

Pesticide Registration Standard; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft standard for comment.

SUMMARY: This notice announces the availability of a draft pesticide Registration Standard document for comment. The Agency has completed a review of the listed pesticide and is making available a document describing its regulatory conclusions and actions.

DATE: Written comments on the Registration Standard should be submitted on or before October 16, 1989.

ADDRESSES: Three copies of comments identified with the docket number listed with the Registration Standard should be submitted to: By mail: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this notice maybe claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: To request a copy of a Registration Standard, contact the Public Information Branch, in Rm. 246 at the address given above (703–557–2805). Requests should be submitted no later than September 15, 1989 to allow sufficient time for receipt before the close of the comment period.

For technical questions related to the Registration Standard, contract the Review Manager listed for that Standard, at the phone number given.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency conducts a systematic review of pesticides to detemine whether they meet the criteria for continued registration under section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). That review culminates in the issuance of a Registration Standard, a document describing the Agency's regulatory conclusions and positions on the continued registrability of the pesticide. In accordance with 40 CFR 155.34(c), before issuing certain Registration Standards, the Agency makes the draft document available for public comment.

A draft Registration Standard for the following pesticide is now available:

Name of pesticide	Docket No.	Contract person
Chlorpyrifos	2921-88-2	Joanne Edwards, 703-557-9069.

A copy of the Registration Standard may be obtained from the Agency at the address listed under **FOR FURTHER INFORMATION CONTRACT.** Because of the length of the Standard and the limited number of copies available for distribution, only one copy can be provided by mail to any one individual or organization. The Registration Standard is also available for inspection and copying in EPA Regional offices at the addresses listed below after September 15, 1989.

List of EPA Regional Offices

Pesticides and Toxic Substances Branch, EPA–Region I, JFK Federal Building, Boston, MA 02203, contact person: Marvin Rosenstein.

Pesticides and Toxic Substances Branch, EPA–Region II, Woodbridge Avenue, Edison, NJ 08837, contract person: Ernest Regna.

Toxic and Pesticides Branch, EPA–Region III, 841 Chestnut St., 7th Fl., Philadelphia, PA 19107, contract person: Larry Miller.

Pesticides and Toxic Substances Branch, EPA–Region IV, 345 Courtland St., NE, Atlanta, GA 30365, contract person: Richard BuBose.

Pesticides and Toxic Substances Branch, EPA–Region V, 230 South Dearborn St., Chicago, IL 60604, contract person: Phyllis Reed.

Pesticide and Toxic Substances Branch, (6T–PT), EPA–Region VI, 1445 Ross Avenue, Dallas, TX 75270, contract person: Robert Murphy.

Pesticide and Toxic Substances Branch, EPA–Region VII, 726 Minnesota Ave., Kansas City, Kan. 66101, contract person: Leo Alderman.

Toxic Substances Branch, EPA–Region VIII, 999 18th St., Suite, 500, Denver, CO 80202, contract person: C. Alvin Yorke.

Pesticides and Toxics Branch, (T–5–1), EPA–Region IX, 215 Fremont St., San Francisco, CA 94105, Contract person: Davis Bernstein.

Pesticides and Toxic Substances Branch, EPA–Region X, 1200 6th Ave., Seattle, WA 98101, contract person: Jon Heller.

Dated: August 2, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-19085 Filed 8-15-89; 8:45 am]

BILLING CODE 6560-50-M

[FRC-3629-9]

Senior Executive Service Performance Review Board Membership

AGENCY: President's Council on Integrity and Efficiency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the membership of the PCIE Performance Review Board.

DATE: August 8, 1989.

FOR FURTHER INFORMATION CONTACT: Individual Offices of Inspector General.

SUPPLEMENTARY INFORMATION: Section 4314(C)(1) through (5) of Title 5, U.S.C., requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. This board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Members of the President's Council on Integrity and Efficiency Performance Review Board are:

Members	Title
Agency for International Development	
James B. Durnil	Deputy Inspector General & Asst. Inspector General for Audit
Gene Richardson	Assistant Inspector General for Investigations
Department of Commerce	
J. Steven Sadler	Deputy Assistant Inspector General For Regional Audits
Department of Defense	
June Gibbs Brown	Inspector General
Derek J. Vander Schaaf.	Deputy Inspector General
Donald Mancuso	Assistant Inspector General for Investigations
Nicholas T. Lutsch	Assistant Inspector General for Administration and Information Management
Miriam F. Browning.	Deputy Assistant Inspector General for Administration and Information Management
Robert J. Lieberman.	Assistant Inspector General for Analysis and Followup
Morris B. Silverstein.	Assistant Inspector General for Criminal Investigations Policy and Oversight
Stephen A. Trodden.	Assistant Inspector General for Auditing
Michael R. Hill	Assistant Inspector General for Audit Policy and Oversight
Stephen A. Whitlock.	Assistant Inspector General for Special Programs
Nancy L. Butler	Director, Financial, Manpower and Security Assistance Programs, OAIG, AUD
Edward Jones	Deputy Assistant Inspector General for Auditing
William F. Thomas	Director, Intelligence, Communications and Related Programs, OAIG, AUD
David A. Brinkman	Director, Acquisition Support Programs, OAIG-AUD
Donald E. Reed	Director, Major Acquisition Programs, OAIG-AUD
Terry L. Brendlinger.	Director, Contract Audit Programs, OAIG-AUD
Katherine A. Brittan.	Deputy Assistant Inspector General for Inspections
Department of Energy	
Gordon W. Harvey	Assistant Inspector General for Audits
Lanny L. VanCamp.	Assistant Inspector General for Investigations
M. Thomas Abruzzo.	Deputy Assistant Inspector General for Investigations
Gregory H. Friedman.	Director, Audit Management Division
Stanley R. Sulak	Director, Program Development and Technical Support Division
Department of Health and Human Service	
Michael Mangano	Assistant Inspector General for Analysis and Inspections
Joseph Vengrin	Deputy Assistant Inspector General for Audits
Department of Housing and Urban Development	
John J. Connors	Deputy Inspector General
Department of Labor	
Joseph Fisch	Deputy Assistant Inspector General for Audit
Gustave Schick	Asst. Inspector General for Labor Racketeering
Department of State	
John C. Payne	Assistant Inspector General for Audits
Katheleen J. Charles.	Assistant Inspector General for Policy, Planning and Management
Milton McDonald	Deputy Assistant Inspector General for Audit
Department of the Treasury	
Robert P. Cesca	Deputy Inspector General
Jay M. Weinstein	Assistant Inspector General for Audit
Gary L. Whittington.	Assistant Inspector General, Policy, Planning and Resources
Charles D. Fowler III.	Assistant Inspector General for Investigations
Department of Transportation	
Raymond J. DeCarli.	Assistant Inspector General for Auditing
H. Rae Scott	Assistant Inspector General for Investigations
Department of Veterans Affairs	
Jack H. Kroll	Assistant Inspector General, Policy, Planning & Resources
Michael G. Sullivan.	Acting Assistant Inspector General for Audits
Environmental Protection Agency	
John E. Barden	Assistant Inspector General for Investigations
Railroad Retirement Board	
William J. Doyle III	Inspector General
Charles R. Sekarak.	Assistant Inspector General for Investigations
Small Business Administration	
Daniel B. Peyser	Deputy Inspector General & Council to the Inspector General
United States Information Agency	
J. Richard Berman	Assistant Inspector General for Audits

Dated: August 9, 1989.

John C. Martin,

Inspector General, Environmental Protection Agency, and Chairman, PCIE Committee on Administration, Inspections, and Special Reviews.

[FR Doc. 89-19228 Filed 8-15-89; 8:45 a.m.]

BILLING CODE 6560-50-M

[OPTS-44535; FRL-3630-1]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on methyl chloride (CAS No. 74-87-3), parachlorobenzotrichloride (CAS No. 5216-25-1), and p-nitrophenol (CAS No. 100-02-7), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). This notice also announces the receipt of test data on methyl tert-butyl ether (MTBE) (CAS No. 1634-04-4), Aniline (CAS No. 62-53-3), and 2-chloroaniline (CAS No. 95-51-2), submitted pursuant to a consent order under TSCA. Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St. SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of SCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for methyl chloride was submitted by the Methyl Chloride Industry Association (MCIA) pursuant to a test rule at 40 CFR 799.5055. It was received by EPA on July 31, 1989. The submission describes the hydrolysis of methyl chloride as a function of pH. Hydrolysis testing is required by this test rule.

Test data for parachlorobenzotrichloride was submitted by Occidental Chemical Corporation pursuant to a test rule at 40 CFR 799.5055. It was received by EPA on July 26, 1989. The submission describes a 90 day oral toxicity study of parachlorobenzotrichloride in rats. Oral toxicity testing is required by this test rule.

Test data for p-nitrophenol was submitted by Monsanto pursuant to a test rule at 40 CFR 799.5055. It was received by EPA on July 27, 1989. The submission describes a subchronic toxicity study in rats. Subchronic testing is required by this test rule.

Test data for methyl tert-butyl ether was submitted by the Methyl Tertiary Butyl Ether Committee (MTBE Health Effects Testing Task Force) on behalf of: Amoco Corporation, ARCO Chemical Company, Exxon Chemical Company—a division of Exxon Corporation, Sun Refining and Marketing Company, and Texaco Chemical Company pursuant to a consent order at 40 CFR 799.5000. It was received by EPA on July 26, 1989. The submission describes a developmental toxicity study of inhaled MTBE in CD-1 mice. Developmental toxicity testing is required by this consent order.

Test data from aniline was submitted by Synthetic Organic Chemical Manufacturers Association, Inc., pursuant to a consent order at 40 CFR 799.5000. It was received by EPA on July 28, 1989. The submission describes the chronic toxicity of aniline to daphnia magna. Chronic toxicity testing is required by this consent order.

Test data for 2-chloroaniline was submitted by Synthetic Organic Chemical Manufacturers Association, Inc., pursuant to a consent order at 40 CFR 799.5000. It was received by EPA on July 28, 1989. The submission describes the toxicity of 2-chlorobenzenamine to daphnia magna. Chronic toxicity testing is required by this consent order.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44535). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: August 8, 1989.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89-19229 Filed 8-15-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59260B; FRL-3630-4]

Certain Chemicals; Approval of a Modification to a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of a modification of the test marketing period for a test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA designated the original test marketing applications as TME-88-12. The test marketing conditions are described below.

EFFECTIVE DATES: August 9, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Wright, III, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613, 401 M St. SW., Washington, DC 20460, (202) 382-7800.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves the modification of the test marketing period for TME-88-12. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application and modification request, and for the modified time period specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the original Notice of Approval of Test Marketing Application must be met.

T-88-12

Date of Receipt of Original Application: May 2, 1988.

Notice of Approval of Original Application: July 12, 1988 (53 FR 26307).

Modified Test Marketing Period: Six months, commencing on the date of approval of this modification, as indicated below.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which case significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: August 9, 1989.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 89-19230 Filed 8-15-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59271; FRL-3630-2]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of applications for text marketing exemptions (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated these applications as TME-89-12, TME-89-13, TME-89-14, TME-89-15, and TME-89-16. The test marketing conditions are described below.

EFFECTIVE DATE: August 9, 1989.

FOR FURTHER INFORMATION CONTACT: Rona Birnbaum, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460, (202) 245-4142.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test

marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–89–12, TME–89–13, TME–89–14, TME–89–15, and TME–89–16. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–89–12, TME–89–13, TME–89–14, TME–89–15, and TME–89–16. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substances produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substances.

T–89–12

Date of Receipt: May 22, 1989.
Notice of Receipt: June 6, 1989 (54 FR 24257).
Applicant: Confidential
Chemical: (G) Polyphenylene/polyamide alloy.
Use: (G) Resin for molding.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: 1 year, commencing on first day of importation.
Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

T–89–13

Date of Receipt: May 22, 1989.
Notice of Receipt: June 6, 1989 (54 FR 24257).
Applicant: Confidential
Chemical: (G) Polyphenylene/polyamide alloy.
Use: (G) Resin for molding.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: 1 year, commencing on first day of importation.
Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

T–89–14

Date of Receipt: May 22, 1989.
Notice of Receipt: June 6, 1989 (54 FR 24257).
Applicant: Confidential
Chemical: (G) Polyphenylene/polyamide alloy.
Use: (G) Resin for molding.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: 1 year, commencing on first day of importation.
Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

T–89–15

Date of Receipt: May 22, 1989.
Notice of Receipt: June 6, 1989 (54 FR 24257)
Applicant: Confidential.
Chemical: (G) Polyphenylene/polyamide alloy.
Use: (G) Resin for molding.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: 1 year, commencing on first day of importation.
Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

T–89–16

Date of Receipt: May 22, 1989.
Notice of Receipt: June 6, 1989 (54 FR 24257)
Applicant: Confidential.
Chemical: (G) Polyphenylene/polyamide alloy.
Use: (G) Resin for molding.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: 1 year, commencing on first day of importation.
Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: August 9, 1989.

John W. Melone,

Director, Chemical Control Division Office of Toxic Substances.

[FR Doc. 89–19231 Filed 8–15–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0103
Title: FEMA Nuclear Power Plant Alert and Notification System: Public Telephone Survey
Abstract: The Federal Emergency Management Agency (FEMA) shall randomly telephone survey the residents within the Emergency Planning Zone (EPZ) of 3 nuclear power plants as stipulated in Appendix 3 of NUREG0654/FEMA–REP–1, Rev. 1. From an approximate sample of 2500 households, between 250 and 385 residences will be voluntarily surveyed following the attached standardized questionnaire
Type of Respondents: Individuals or households
Estimate of Total Annual Reporting and Recordkeeping Burden: 44
Number of Respondents: 5526
Estimated Average Burden Hours per Response: .008
Frequency of Response: Other: Per survey.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Pamela Barr, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: August 10, 1989.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 89–19190 Filed 8–15–89; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in parapgraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 30, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *John P. Casey, Jr.*, Baton Rouge, Louisiana; William P. Delaune, Sr., Prairieville, Louisiana; Earl D. Dixon, Prairieville, Louisiana; D. Dale Gaudet, Baton Rouge, Louisiana, Leon S. Geismar, Gonzales, Louisiana; Roy M. Marchand, Jr., Gonzales, Louisiana; Audrey B. Waggensack, Gonzales, Louisiana; and C. Penrose St. Amant, Bay St. Louis, Mississippi; to acquire 22.03 percent of the voting shares of Bank of Gonzales Holding Company, Inc., Gonzales, Louisiana, and thereby indirectly acquire Bank of Gonzales, Gonzales, Louisiana.

Board of Governors of the Federal Reserve System, August 10, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–19167 Filed 8–15–89; 8:45 am]

BILLING CODE 6210–01–M

First Community Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 1, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *First Community Bancorp, Inc.*, Cartersville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First Community Bank & Trust, Cartersville, Georgia, a *de novo* bank.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Marine Corporation*, Springfield, Illinois; to acquire 100 percent of the voting shares of Central Financial Group, Inc., Monticello, Illinois, and thereby indirectly acquire National Bank of Monticello, Monticello, Illinois, and Deland State Bank, Deland, Illinois.

Board of Governors of the Federal Reserve System, August 10, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–19169 Filed 8–15–89; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control Notices; Acquisitions of Shares of Banks of Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 29, 1989.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Paul C. Griebel*, Eagan, Minnesota, and Alan Kluis, Mankato, Minnesota; to acquire 100 percent of the voting shares of First American Bancshares of Blooming Prairie, Inc., Eagan, Minnesota, and thereby indirectly acquire First Prairie Bank, Blooming Prairie, Minnesota.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoening, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Michael B. Athey*, Enid, Oklahoma, to acquire an additional 16.75 percent of the voting shares of Security Financial Services Corp., Enid, Oklahoma, for a total of 36.61 percent, and thereby indirectly acquire Security National Bank, Enid, Oklahoma.

2. *Otis Guy Bacon*, Ardmore, Oklahoma; to acquire an additional 0.6 percent of the voting shares of Ardmore Financial Corporation, Ardmore, Oklahoma, for a total of 10.9 percent, and thereby indirectly acquire American National Bank, Ardmore, Oklahoma.

3. *Michael N. McGowan*, McAlester, Oklahoma; to acquire an additional 11.07 percent for a total of 22.22 percent, and E.L. Oliver Testamentary Trust A., Michael N. McGowan, Trustee, to acquire an additional 29.63 percent for a total of 37.04 percent, of the voting shares of NBM Corporation, McAlester, Oklahoma. and thereby indirectly acquire The Bank, N.A., McAlester, Oklahoma.

4. *V. Paul Moltz*, and Rhonda Moltz both of Cody, Wyoming; to acquire an additional 20 percent of the voting shares of Collegiate Peaks Bancorporation, Inc., Buena Vista, Colorado, and thereby indirectly acquire Collegiate Peaks Bank, Buena Vista, Colorado.

5. *Ward Sauvage*, and Janice Sauvage, both of Oberlin, Kansas; to acquire an additional 19.08 of the voting shares of Dakota Banchares, Inc., St. Joseph,

Missouri, for a total of 41.87 percent, and thereby indirectly acquire Dakota County State Bank, South Sioux City, Nebraska.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *George A. Carrithers*, Brady, Texas; to acquire 11.39 percent of the voting shares of Brady National Holding Company, Inc., Brady, Texas, and thereby indirectly acquire The Brady National Bank, Brady, Texas.

Board of Governors of the Federal Reserve System, August 10, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-19168 Filed 8-15-89; 8:45 am]

BILLING CODE 6210-01-M

Correction

This notice corrects a previous Federal Register notice (FR Doc. 89-16414) published at page 29620 of the issue for Thursday, July 13, 1989.

Under the Federal Reserve Bank of Dallas, the entry for James M. Tate is amended to read as follows:

1. *James M. Tate*, Abilene, Texas, to acquire 12.45 percent; and Harold L. Smith, Abilene, Texas, to acquire 10.96 percent of the voting shares of Security Shares, Inc., Abilene, Texas and thereby indirectly acquire Security State Bank, Abilene, Texas.

Comments on this application must be received by August 31, 1989.

Board of Governors of the Federal Reserve System, August 10, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-19171 Filed 8-15-89; 8:45 am]

BILLING CODE 6210-01-M

Village Financial Services, Ltd., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments, regarding each of these applications must be received not later than September 1, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045.

1. *Village Financial Services, Ltd.*, Port Chester, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Village Savings Bank, Port Chester, New York.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Alexis Bancorp, Inc.*, Carol Stream, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Alexis, Alexis, Illinois.

2. *HTB, Inc.*, Osage, Iowa; to become a bank holding company by acquiring 88.71 percent of the voting shares of The Home Trust and Saving Bank, Osage, Iowa.

3. *Fourth St. Financial Corporation*, Pekin, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Herget Financial Corp., Pekin, Illinois, and thereby indirectly acquire The Herget National Bank, Pekin, Illinois.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *West Point Bancorp*, St. Joseph, Missouri; to acquire an additional 16.76 percent of the voting shares of Dakota Bancshares, Inc., St. Joseph, Missouri, and thereby indirectly acquire Dakota County State Bank, South Sioux City, Nebraska.

Board of Governors of the Federal Reserve System, August 10, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-19170 Filed 8-15-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[Dkt. 8845]

Adolph Coors Co.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission's order issued on February 4, 1975 [40 FR 14894], by deleting provisions that prohibited respondent from imposing certain territorial and customer restrictions on its distributors.

DATES: Order issued February 4, 1975.* Modifying Order issued Agusut 1, 1989.

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S-2115, Washington, DC 20580. (202) 2687.

SUPPLEMENTARY INFORMATION: In the Matter of Adolph Coors Company. A portion of the prohibited trade practices and/or corrective actions, as set forth at 40 FR 14894, is deleted.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Commissioners: Daniel Oliver, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr., Margot E. Machol.

Order Granting in Part and Denying in Part Petition To Reopen and Modify Order

Adolph Coors Company ("Coors"), has filed, on April 3, 1989, a "Petition to Modify Order" ("Petition"), pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51. The Petition asks the Commission to reopen the proceeding and set aside the modified cease and desist order entered by the Commission on February 4, 1975, in Docket No. 8845, 85 F.T.C. 187, "except insofar as the Order prohibits price fixing or resale price maintenance." Petition at 2. Specifically, Coors requests that the Commission set aside in their entirety paragraphs 4(c), 5, 6, 7, 8, and 11 of the order, which prohibit Coors from, among other things, imposing non-price vertical restraints on distributors of Coors' beer products.[1] In support of its request, Coors argues that the order modification is warranted by changed conditions of law. Petition at 2-3. The Petition was placed on the public record for thirty days, pursuant to § 2.51(c) of the Commission's Rules, and one comment was received. For the reasons discussed below, the Commission has determined that Coors has not shown a changed condition of law requiring reopening the order but that Coors has shown that granting the request, with one exception, would be in the public interest. The Commission has therefore reopened and modified the order.

* Decision issued July 24, 1973 (38 FR 23399).

[1] In addition to prohibiting Coors from refusing to deliver beer to distributors selling outside their designated territory, Paragraph 7 of the order also prohibits Coors from refusing to deliver beer to distributors who sell beer at prices, markups or profits lower than those approved by Coors. 85 F.T.C. at 188.

I

The Commission's complaint, issued on June 7, 1971, 83 F.T.C. 32, alleges that Coors violated section 5 of the Federal Trade Commission Act by, among other things, fixing wholesale and retail prices, imposing territorial and customer restrictions on its distributors, and using unfair short-term termination provisions in its contracts with distributors. Following extensive evidentiary hearings, the Administrative Law Judge ("ALJ") ordered the dismissal of the complaint against Coors. 83 F.T.C. at 174. On appeal from the ALJ's Initial Decision, the Commission substituted its findings for those of the ALJ and issued its order on July 24, 1973. 83 F.T.C. at 211. The Commission condemned Coors' territorial restraints as *per se* unlawful because they were part of an unlawful resale price maintenance scheme. Coors appealed the Commission's order to the United States Court of Appeals for the Tenth Circuit, which upheld all of the provisions of the Commission's order, except those dealing with the notice and arbitration requirement in the event of a distributor's termination. The court also held that Coors' territorial restraints were themselves *per se* unlawful under *United States* v. *Arnold, Schwinn & Co., et al.*, 388 U.S. 365 (1967). *See Adolph Coors Company* v. *FTC*, 497 F.2d 1178 (10th Cir. 1974), *cert. denied*, 419 U.S. 1105 (1975).

Consequently, the Commission issued its final order on February 4, 1975. The order, among other things, prohibits Coors from engaging in wholesale and retail price fixing, imposing certain non-price vertical restrictions on its distributors, including territorial restraints, and requiring exclusive draught accounts. 85 F.T.C. 187.

II

Coors requests that the Commission reopen the proceeding and set aside in their entirety paragraphs 4(c), 5, 6, 7, 8, and 11, of the order. Paragraph 4(c) of the order prohibits Coors from refusing to sell beer to any Coors distributor or terminating any Coors distributor because the distributor sold Coors beer to another distributor or retailer located outside of the territory granted to the Coors distributor. 85 F.T.C. at 188. Paragraph 5 prohibits Coors from restricting "the territory in which or the persons to whom a distributor may sell Coors beer." [2] *id.* at 189. Paragraph 6 prohibits Coors from allocating Coors beer among its distributors "in times of beer shortage at the Coors brewery," by any means not equitably related to their proportionate purchases of Coors beer during "the last three months before the allocation * * *." *Id.* Paragraph 7 prohibits Coors from refusing to deliver all of a distributor's order because the distributor made sales outside of his assigned territory or because the distributor is selling Coors beer at "unapproved" prices or markups. *Id.* Paragraph 8 of the order prohibits Coors from prohibiting its distributors from selling Coors beer for "central warehouse delivery." [3] *Id.* Finally, paragraph 11 generally prohibits Coors from hindering, suppressing or eliminating competition between or among distributors or retailers handling Coors beer. *Id.* at 189-90.[4]

Coors argues that these provisons of the order, expecially in the context of Coors' unique brewing method, and experience with the unauthorized distribution of its products in expansion markets, have "placed Coors at a competitive disadvantage and [have] been harmful." Petition at 9. Among other things, Coors beer distributors are required to maintain Coors' beer products in refrigerated warehouses. Additionally, the distributors must monitor the age of their Coors inventory and are responsible for closely monitoring product shelf-life and ensuring that only fresh product is available to consumers. Petition at 5. Coors believes that its ability to restrict its distributors' territories and impose other non-price vertical restraints is necessary because such restrictions would allow Coors to (1) monitor better its distributors' performance, (2) provide incentives to distributors to invest the resources and provide services necessary to comply with Coors' quality control requirements, and (3) compete better against other beer brewers.

Coors asserts that the relief it seeks is required by a change in law. Specifically, Coors argues that the order provisions it is asking the Commission to set aside were predicated upon the *Schwinn* doctrine, which the Supreme Court overruled in *Continental T.V., Inc.* v. *GTE-Sylvania, Inc.*, 433 U.S. 36 (1977). Consequently, according to Coors, Coors' non-price vertical restraints "were never put to * * * the 'market power' analysis currently used in vertical, non-price restraint cases." Petition at 12. Coors asserts that it does not have sufficient market power [5] to raise its prices significantly without materially and adversely affecting it business, and suggest that Coors' non-price vertical restraints would be judged under a rule of reason analysis today.

III

Section 5(b) of the FTC Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" require such modification. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition. *Louisiana-Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4.

The Commission may also modify an order pursuant to Section 5(b) when, although changed circumstances would not require reopening, the Commission determines that the public interest requires such action. Therefore, § 2.51 of the Commission's Rules of Practice invites respondents in petitions to reopen to show how the public interest warrants the requested modification. In

[2] A proviso to paragraph 5 states, however, that the order does not prohibit Coors from "complying with the requirements of any state law." *Id.*

[3] Coors, however, is not prohibited from establishing refrigeration standards for the central warehouses "which are substantially similar to those established for distributors." 85 F.T.C. at 189.

[4] Paragraph 1 of the order prohibits Coors from fixing the prices at which distributors sell Coors beer to retailers or the prices at which retailers sell Coors beer to consumers. Paragraphs 2 and 3 of the order (prohibiting Coors from suggesting prices or mark-ups for its distributors) expired by their own terms in 1978. Subparagraphs 4 (a), (b) and (d) prohibit Coors from terminating any distributor because the distributor either sold beer or advertised at prices different from those approved by Coors, or because the distributor has distributed the product of another brewer. Paragraph 9 prohibits Coors from requiring that retailers serve Coors draught beer as their only light-colored draught beer. Paragraph 10 prohibits Coors from requiring its distributors to eliminate or refrain from obtaining and handling rival brands of beer in order to become or remain a Coors distributor. 85 F.T.C. at 187-90. Coors does not seek relief from these remaining operative order provisions. Petition at 16.

[5] Coors' national market share is less than eight percent and it no longer holds the leading position in any state. Petition at 4.

BEST COPY AVAILABLE

the case of a request for modification based on this latter ground, a petitioner must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 29, 1983), at 2. For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order." *Damon Corp.*, Docket No. C-2916, 101 F.T.C. 689 (1983). If the showing of need is made, the Commission will balance the reasons favoring the requested modification against any reasons not to make the modification. Damon Letter at 2. The Commission will also consider whether the particular modification sought is appropriate to remedy the identified harm.

The language of section 5(b) plainly anticipates that the burden is on the petitioner to make the requisite satisfactory showing. The petitioner must make a "satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes it clear that the petitioner has the burden of showing, other than by conclusory statements, why an order should be modified.[6] If the Commission determines that the petitioner has made the required showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. The petitioner's burden is not a light one given the public interest in the finality of Commission orders. *See Federated Department Stores, Inc.* v. *Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

IV

Based on the information provided by Coors, and other available information, the Commission has determined that Coors has not made a satisfactory showing that changes in law require reopening the proceeding and setting aside the order provisions prohibiting Coors from imposing upon its distributors certain non-price vertical restraints, including territorial restrictions. However, the Commission has concluded that Coors has made a satisfactory showing that reopening the order and setting aside the non-price vertical restraints provisions is in the public interest.

The Commission's 1973 decision in this case, after finding that Coors engaged in unlawful resale price maintenance, called the territorial restraints "an obvious adjunct to Coors' efforts to control the prices at which its distributors and their retail accounts dispose of the product". 83 F.T.C. at 192. Consequently, the Commission condemned Coors' territorial restraints as *per se* unlawful because they were part of the unlawful RPM scheme, but determined that it was not necessary to conclude that the restrictions in themselves were unlawful *per se*.[7] The court of appeals held the restraints in themselves *per se* unlawful, citing *Schwinn*, albeit with substantial criticism. 497 F.2d 1178 at 1186–87.

Sylvania, which was decided shortly after the Commission issued the final order in this case, recognized that exclusive territories and other non-price vertical restraints are not inherently anticompetitive and must thus be judged under the rule of reason.[8] *Sylvania* replaced the *per se* test for non-price vertical customer and territorial restraints outside RPM with a rule of reason test, but the Court did not change the *per se* rule for non-price vertical restraints that are part of a RPM scheme. *See Monsanto Co.* v. *Spray-Rite Service Corp.*, 465 U.S. 752, 760, n. 6 (1984). *Sylvania*, therefore, is not a change in law as to the order in this matter.

Although non-price vertical restraints are still *per se* unlawful as part of a RPM scheme, Coors does not request elimination of the order's prohibitions on RPM. Therefore, any territorial or other non-price vertical restrictions imposed as part of a resale price maintenance scheme would be *per se* unlawful and would violate this order even if modified as Coors requests. The non-price provisions of the order, apart from the RPM provisions, are thus best viewed as fencing-in provisions, intended to prevent the recurrence of research price fixing. Coors has shown that the benefits of those provisions, when viewed under the rule of reason approach in *Sylvania*, are outweighed by the costs they impose, and may now be set aside in the public interest.

V

Coors has made a threshold showing that the order provisions it requests be set aside impede and deter Coors (in states that do not permit or require territorial restrictions) from correcting impaired distribution problems and from adopting efficiency-maximizing distribution arrangements that would intensify interbrand competition.[9] These arrangements are available to Coors' competitors, and these order provisions therefore injure Coors' ability to compete effectively with other breweries.

Setting aside the non-price vertical restraints provisions of the order would enable Coors to employ distribution methods that likely would be reasonable under the rule of reason standard, because Coors lacks the necessary market power to raise its prices to supracompetitive levels. It would also allow Coors to take advantage of certain efficiencies in the distribution of its products, which, in turn, would promote interbrand competition. *Sylvania, supra*, at 54–55.

Allowing Coors to use what it considers the most efficient and cost effective distribution of its products, including agreeing with distributors in certain states to dedicate their sales efforts to designated geographic areas, would put Coors on an equal footing with other brewers and should make Coors and its distributors more effective competitors. This is consistent with the recognition that in competitive markets consensual non-price vertical arrangements can benefit both competition and the consumer. Coors' inability to impose non-price vertical restraints that its competitors are using places Coors at a competitive disadvantage. Because of the competitive nature of the beer industry, the costs of the prohibitions on non-price vertical restraints outweigh the continued need for these provisions. That balancing therefore supports modifying the order in the public interest.

VI

With respect to Coors' request that the Commission set aside paragraph 11 of the order, the Commission has concluded that that paragraph's general prohibition against Coors "[h]indering, suppressing or eliminating competition * * * between or among distributors * * *," 85 F.T.C. at 189–90, overly restrictive and broad. This language may have a chilling effect on Coors' ability to take advantage of certain efficiencies in the distribution of its products. Moreover, in view of the current legal framework for analyzing vertical restraints, and the retention of the order's resale price maintenance prohibitions, paragraph 11 is no longer necessary to fence-in Coors' conduct concerning non-price vertical restraints it may impose upon its distributors.

Finally, the Commission has also concluded that Coors has not made a satisfactory showing that changed conditions of fact or law or the public interest require that the Commission set aside the part of paragraph 7 of the order that concerns conduct involving resale price maintenance. Setting aside this part of paragraph 7 would be inconsistent with Coors' request that the Commission set aside "the Order * * * except insofar as that Order prohibits price fixing or resale price maintenance." Petition at 3.[10] Additionally, retention of the resale price maintenance part of paragraph 7 is consistent with the primary objective of the order.

VII

Accordingly, *it is ordered* That this matter be reopened and that the Commission's order in Docket No. 8845, issued on February 4, 1975, be, and it hereby is, modified, as of the date of service of this order, by setting aside paragraphs 4(c), 5, 6, 8, and 11, and by modifying paragraph 7 to read:

7. Refusing to deliver all of a distributor's order because the distributor or the distributor's customer is selling Coors beer at prices, markups or profits lower than those approved by respondent.

By the Commission, Commissioner Strenio not participating.

Donald S. Clark,

Secretary.

[FR Doc. 89-19180 Filed 8-15-89; 8:45 am]

BILLING CODE 6750-01-M

[6] The Commission may properly decline to reopen an order if a request is "merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order." S. Rep. No. 96-500, 96th Cong., 1st Sess. 9-10 (1979).

[7] The Commission noted that "[a]s the Court in *Schwinn* recognized, whatever the status of vertical restrictions unaccompanied by price-fixing, the presence of price-fixing as part and parcel of a system of territorial restrictions renders the entire package illegal *per se*." *Id.* at 194.

[8] *See Beltone Electronics Corporation*, 100 F.T.C. 68 (1982).

[9] For example, any steps Coors might take to increase distributor emphasis on providing a consistently fresh, quality product to the consuming public or to improve geographic market coverage may subject Coors to the risk of being accused of violating the order and, consequently, the risk of a civil penalty suit and judgment. By not being able to correct these distribution problems effectively, Coors is injured in its competition with other brewers. In fact, this order may injure Coors more than it would other brewers, because of Coors' unique brewing and distribution methods. *See* Bureau of Economics, Federal Trade Commission, *The Brewing Industry* at 111–13 (1978).

[10] Coors has not asked to be relieved from subparagraphs 4 (a) and (b), which prohibit Coors from terminating a distributor because that distributor or its customers resell at other than approved prices.

[File No. 881 0081]

Structural Engineers Association of Northern California, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an association of approximately 1,000 engineers from restricting truthful advertising, price competition, and services to clients of other engineers.

DATE: Comments must be received on or before October 16, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 995-5220.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Structural Engineers Association of Northern California, Inc. ("SEAONC"), a corporation, and it now appearing that SEAONC, a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between SEAONC, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. SEAONC is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal business address located at 217 Second Street, San Francisco, California 94105.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service.

Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It Is Ordered That, for purposes of this Order, "SEAONC" means the Structural Engineers Association of Northern California, Inc., and its board of directors, committees, officers, delegates, representatives, agents, employees, successors, and assigns.

II

It Is Further Ordered That SEAONC shall cease and desist, directly or through any corporate or other device, in connection with its activities, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, from:

A. Restricting, regulating, impeding, declaring unethical, interfering with or advising against truthful, non-deceptive advertising;

B. Restricting, regulating, impeding, declaring unethical, interfering with or advising about the consideration offered or provided to any engineer in return for the sale or purchase of his or her professional services; and

C. Restricting, regulating, impeding, declaring unethical, interfering with or advising against any engineer providing or offering to provide services to persons or entities that are the clients of other engineers.

Provided, however, that nothing contained in this Order shall prohibit SEAONC from formulating, adopting, disseminating to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to: (1) representations, including unsubstantiated representations, that SEAONC reasonably believes would be false or deceptive within the meaning of section 5 of the Federal Trade Commission Act; and (2) the notice to be provided to an engineer prior to any review of his work by another engineer.

III

It Is Further Ordered That SEAONC shall:

A. Within thirty (30) days after this Order becomes final, remove from its canons of ethics, and from any other existing policy statement or guideline of SEAONC, any provision, interpretation or policy statement which is inconsistent with the provisions of Part II of this Order;

B. Within sixty (60) days after this Order becomes final, publish in the *Structural Engineers Association of Northern California News* or in any successor publication the revised versions of such documents, statements, or guidelines, and a copy of this Order;

C. Within sixty (60) days after this Order becomes final, file a verified report with the Federal Trade Commission setting forth in detail the manner and form in which it has complied with this Order;

D. For a period of five (5) years after this Order becomes final, maintain and make available to the Commission staff for inspection and copying, upon reasonable notice, all documents that relate to the manner and form in which SEAONC has complied, and is complying with this Order; and

E. Notify the Commission at least thirty (30) days prior to any proposed change in SEAONC, such as dissolution, reorganization, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from the Structural Engineers Association of Northern California ("SEAONC" or "proposed respondent"). SEAONC is a professional association comprised of California-lincensed structural engineers and civil engineers who provide structural engineering services. SEAONC is one of four regional associations that make up the state-level Structural Engineers Association of California. The agreement with the proposed respondent would settle charges by the Federal Trade Commission that it violated section 5 of the Federal Trade Commission Act by restricting or attempting to restrict its members from: (1) Soliciting business by truthful advertising; (2) engaging in price competition; and (3) providing services to pesons or entities that are the clients or other engineers.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

The Complaint

A complaint has been prepared for issuance by the Commission along with the proposed order. It alleges that SEAONC is a voluntary professional association of structural engineers who comprise over 70% of the Northern California-licensed structural engineers and civil servants who perform structural engineering. It also alleges that SEAONC's members compete among themselves and with other structural engineers. The complaint alleges that the propsoed respondent acted as a combination of its members or has conspired with at least some of its members to restrict competition. In particular, it alleges that SEAONC has restricted its members from: (1) Soliciting business by truthful advertising; (2) engaging in price competition; and (3) providing services to the clients of other engineers.

According to the complaint, the proposed respondent enacted and published canons of ethics that: (1) Prohibit its members from advertising their work or merit in a self-laudatory manner (2) require that its members when engaging in engineering work uphold the principle of appropriate and adequate compensation for engineers and for employees in subordinate capacities; and (3) prohibit its members from reviewiing the work performed by another engineer for the same client except with reason to believe that the other engineer's contract for services is not in contention.

The complaint further alleges that the restraints injured consumers in the following ways, among others: (1) By depriving consumers of truthful information; (2) by restraining price competition; (3) by preventing consumers from obtaining an expert second opinion of a structural engineer's work; and (4) by hindering competition among structural engineers.

The Proposed Consent Order

Part I of the proposed order provides a definition of SEAONC. Part II prohibits SEAONC from restricting, regulating, impeding, declaring unethical, or interfering with: (1) Truthful, non-deceptive advertising; (2) the consideration offered or provided to any engineer in return for the sale or purchase of his or her professional services; and (3) any engineer providing or offering to provide services to persons or entities that are the clients of other engineers.

Part II of the propsed order does not prohibit SEAONC from adopting reasonable ethical guidelines governing the conduct of its members with respect to: (1) Representations, including unsubstantiated representations, that SEAONC reasonably believes would be false or deceptive within the meaning of section 5 of the Federal Trade Commission Act;[1] and (2) the notice to be provided to an engineer prior to any review of this work by another engineer.

Part III of the proposed order requires SEAONC to remove provisions from its canons of ethics that are inconsistent with the proposed order, and to publish in its newsletter a revised version of its canons of ethics and a copy of the order. Part III of the proposed order also requires SEAONC to file a compliance report within 60 days after the order becomes final, and for five years to permit Commission staff access to proposed respondent's records for compliance purposes. Finally, Part III of the proposed order requires that the proposed respondent notify the Commission prior to a change in the association which may affect compliance with the order.

The purpose of this analysis is to facilitate public comment of the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify its terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 89-19161 Filed 8-15-89; 8:45 am]

BILLING CODE 6750-01-M

[1] The copy of the consent agreement of the public record does not contain the signatures usually found on an original document. This is because the agreement as presented to the Commission did not include the phrase "SEAONC reasonably believes" in section (1) of the proviso in Part II of the order. The Commission determined to insert that phrase before accepting the agreement for comment. See the amended order in the matter of the American Medical Ass'n, et al., Dkt. 9084, 99 F.T.C. 440, 441 (1982).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Service's claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rate with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register.**

The Secretary of the Treasury has certified a rate of 15.625% for the quarter ended June 30, 1989. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: August 11, 1989.

Dennis J. Fischer,

Deputy Assistant Secretary, Finance.

FR Doc. 89-19251 Filed 8-15-89; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-020-09-4322-12]

Meeting and Agenda for Burley District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting and agenda for Burley District Grazing Advisory Board.

SUMMARY: Notice is hereby given that the Burley District Grazing Advisory Board will meet on September 15, 1989.

The meeting will convene at 9:30 a.m. on September 15, 1989 in the conference room of the Bureau of Land Management Office at 200 South Oakley Highway, Burley, Idaho.

Agenda items for the meeting will include: (1) Range improvement maintenance requirements; (2) Status of Broom Snakeweed control project. (3) Secretary/Treasurer's report; (4) Drought impacts. (5) Review proposed range improvements for FY-90. (6) Information items—Land Pool Exchange Concept.

The public is invited to attend the meeting. Interested persons may make an oral statement to the Board beginning at 10:30 a.m. or they may file written statements for the Board's consideration. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager. Anyone wishing to make an oral statement or file a written statement must contact the District Manager by September 14, 1989 for inclusion in the meeting schedule.

Detailed minutes of the Board meeting will be maintained in the District Office, 200 South Oakley Highway, Burley, Idaho, and will be available for public inspection during regular business hours, (7:45 a.m. to 4:30 p.m., Monday thru Friday) within 30 days following the meeting.

DATE: September 15, 1989.

ADDRESS: Bureau of Land Management, Burley District Office, 200 South Oakley Highway. Burley, Idaho 83318.

FOR FURTHER INFORMATION CONTACT: Gerald L. Quinn, District Manager, (208) 678-5514.

Dated: August 8, 1989.

Marvin R. Bagley,

Associate District Manager.

[FR Doc. 89-19195 Filed 8-15-89; 8:45 am]

BILLING CODE 4310-GG-M

Public Room Hours

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Utah State Office, Bureau of Land Management, Department of the Interior, 324 South State Street, Salt Lake City, Utah 84111-2303, announces that effective September 4, 1989, the Public Room will be opened to the public from 7:45 am to 4:30 pm for reviewing records and conductng other official business.

Dated: August 8, 1989.

W.R. Papworth,

Deputy State Director, Operations.

FR Doc. 89-19172 Filed 8-15-89; 8:45 am]

BILLING CODE 4310-DQ-M

[ID-943-89-4730-12]

Idaho: Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., August 8, 1989.

The plat representing the dependent resurvey of portions for the south, east, west and north boundaries and subdivisional lines; the subdivision of certain sections and the survey of lot 5 in section 30, T. 44 N., R. 4 W., Boise Meridian, Idaho, Group No. 670, was accepted August 2, 1989.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: August 8, 1989.

Jerrold E. Knight,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 89-19196 Filed 8-15-89; 8:45 am]

BILLING CODE 4310-GG-M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Amended notice of proposed contractual actions.

The Bureau of Reclamation amends its Notice of Proposed Contractual Actions as published in Vol. 54, No. 145, Federal Register, page 31588, July 31, 1989, item number 6 to read as follows:

6. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Second round negotiations of a water service contract for sale of the regulatory capacity of Ruedi Reservoir including an agreement with the Colorado Water Conservation Board and other proposed entities for release of up to 10,000 acre-feet of water annually for the protection of threatened and endangered fish in the Upper Colorado River Basin.

Dated: August 9, 1989.

Darrell D. Mack,

Acting Commissioner of Reclamation.

FR Doc. 89-19138 Filed 8-15-89; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-423 (Final)]

Generic Cephalexin Capsules from Canada

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Canada of generic cephalexin capsules,[2] provided for in subheading 3004.20.00 of the Harmonized Tariff Schedule of the United States (previously item 411.76 of the Tariff Schedules of the United States), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective April 12, 1989, following a preliminary determination by the Department of Commerce that imports of generic cephalexin capsules from Canada were being sold at LTFV within the meaning of section 731 of the act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of May 4, 1989 (54 FR 19251). The hearing was held in Washington, DC, on June 28, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 10, 1989. The views of the Commission are contained in USITC Publication 2211 (August 1989), entitled "Generic Cephalexin Capsules from Canada: Determination of the Commission in Investigation No. 731-TA-423 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: August 11, 1989.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-19207 Filed 8-15-89; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] The imported products covered by this investigation are generic cephalexin capsules from Canada. Generic cephalexin capsules are cephalexin monohydrate in capsule form. Cephalexin monohydrate is a semisynthetic cephalosporin antibiotic intended for oral administration. Its chemical formula is $C_{16}H_{17}N_3O_4S·H_2O$. Generic cephalexin capsules contain not less than 90 percent and not more than 120 percent of the labeled amount of cephalexin monohydrate. The capsule is made of a water soluble gelatin, designed to facilitate swallowing and a phased release of the drug into the user's digestive system.

[Investigation No. 337-TA-302]

Investigation; Self-Inflating Mattresses

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 10, 1989, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Cascade Designs, Inc., 4000 1st Avenue South, Seattle, Washington 98134. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain self-inflating mattresses by reason of alleged infringement of claims 1, 3, 4, and 5 of U.S. Letters Patent 4,025,974, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

FOR FURTHER INFORMATION CONTACT: Deborah Kline, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1576.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 8, 1989, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain self-inflating mattresses by reason of alleged infringement of claims 1, 2, 4, or 5 of U.S. Letters Patent 4,025,974, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Cascade Designs, Inc., 4000 1st Avenue South, Seattle, Washington 98134.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Goodway Corporation, Room 6A, Taiwan Glass Building, No. 261, Nanking E. Road, Sec. 3, Taipei, Taiwan

Gymwell Corporation, 10 Silverbit Lane, Rolling Hills Estates, California 90274

(c) Deborah J. Kline, Esq., Office of Unfair, Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401M, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057, 33063 (Aug. 29, 1988). Pursuant to § 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 53 FR 33034, 33059 (Aug. 29, 1988)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: August 10, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-19206 Filed 8-15-89; 8:45 am]

BILLING CODE 7020-02-M

[Inv. No. 337-TA-295]

Commission Decision Not To Review an Initial Determination Amending the Complaint and Notice of Investigation To Add Two Additional Respondents; Novelty Teleidoscopes

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 6) issued by the presiding administration law judge (ALJ) granting the motions of complainant Homespun Imports, Inc. d/b/a Silver Deer, Ltd., to add two respondents to the above-captioned investigation. The ID amends the complaint and notice of investigation by adding as respondents China Toy and Novelty Company and ABC Cosmos Trading Co., Ltd., both of Taiwan.

ADDRESSES: Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: George Thompson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1090.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: On July 14, 1989, the presiding ALJ issued an ID amending the complaint and notice of investigation to add the two firms as respondents. No petitions for review of the ID or government agency comments were received. These actions are taken under authority of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 210.53(h).

By order of the Commission.

Issued: August 7, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-19205 Filed 8-15-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-426-428 (Final)]

Certain Telephone Systems and Subassemblies thereof from Japan, Korea, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-426-428 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan, Korea, and Taiwan of small business telephone systems,[1]

[1] For the purposes of these investigations, "small business telephone systems and subassemblies thereof" are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total nonblocking ports capacities of between 2 and 256 ports, and discrete subassemblies thereof designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are: control and switching equipment, circuit cards and modules, and telephone sets and consoles.

provided for in subheadings 8504.40.00, 8517.10.00, 8517.30.20, 8517.30.25, 8517.30.30, 8517.81.00, 8517.90.10, 8517.90.15, 8517.90.30, 8517.90.40, and 8518.30.10 of the Harmonized Tariff Schedule of the United States (previously reported under items 682.60, 684.57, 684.58, and 684.59 of the Tariff Schedules of the United States), and that have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Unless the investigations are extended, Commerce will make its final LTFV determinations on or before October 10, 1989, and the Commission will make its final injury determinations within 45 days of notification of Commerce's final determinations (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), as amended by 53 FR 33034 (August 29, 1988) and 54 FR 5220 (February 2, 1989), and part 201, subparts A through E (19 CFR part 201) as amended by 54 FR 13672 (April 5, 1989).

EFFECTIVE DATE: August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202–252–1192), Office of Investigations, U.S. International Trade Commission, 500 E. Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of small business telephone systems from Japan, Korea, and Taiwan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in a petition filed on December 28, 1988, by American Telephone & Telegraph Co., Parsippany, NJ, and Comdial Corp., Charlottesville, VA. In response to that petition, the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (54 FR 7891, February 23, 1989).

Participation in the investigations. Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), as amended by 53 FR 33039 (August 29, 1988) and 54 FR 5220 (February 2, 1989), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order. Pursuant to section 207.7(a) of the Commission's rules (19 CFR 207.7(a)), as amended by 53 FR 33039 (August 29, 1988) and 54 FR 5220 (February 2, 1989), the Secretary will make available business proprietary information gathered in these final investigations to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff report. The prehearing staff report in these investigations will be placed in the nonpublic record on October 13, 1989, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing. The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on October 31, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on October 20, 1989. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on October 25, 1989, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is October 24, 1989. Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with section 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 6, 1989. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before November 6, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of § 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7), *as amended* by 53 FR 33034 (August 29, 1988), 54 FR 5220 (February 2, 1989), and 54 FR 13672 (April 5, 1989).

Parties that obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), as amended by 53 FR 33034 (August 29, 1988) and 54 FR 5220 (February 2, 1989), may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than November 13, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: August 11, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–19246 Filed 8–15–89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–283 (Sub-No. 1X)]

Staten Island Railway Corp.—Abandonment Exemption—In Richmond County, NY

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 3.8-mile line of railroad between milepost 3.8 at or near John Street, Port Richmond, to the end of the line at or near St. George, in the Borough of Staten Island, Richmond County, NY.[1]

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 15, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 28, 1989.[4] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by September 5, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Michael F. Armani, Staten Island Railway Corporation, 1 Railroad Avenue, Cooperstown, NY 13326.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 21, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219), Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 10, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–19203 Filed 8–15–89; 8:45 am]

BILLING CODE 7035-01-M

[1] The Port Authority of New York and New Jersey filed a comment expressing concern about operations at the Howland Hook Terminal, which it operates under lease from the City of New York, but does not specifically oppose this abandonment since the line does not connect with the terminal.

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

[4] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by September 15, 1989.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the revision of a currently approved collection of information. This entry is

issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Museum Program FY 1991 Guidelines.

Frequency of Collection: One-time.

Respondents: Individuals or households; State or local governments; Non-profit institutions.

Use: Affected public includes non-profit organizations, educational institutions, and state and local governments. Federal aid is provided in the form of grants for arts and education oriented projects. Guideline instructions and applications elicit relevant information from applicants who apply for funding under specific Museum Program categories. This information is necessary for a thorough and fair consideration of competing proposals in the peer panel review process.

Estimated Number of Respondents: 787.

Average Burden Hours per Response: 18.

Total Estimated Burden: 22,377.

Anne C. Doyle,

Administrative Services Division, National Endowment for the Arts.

[FR Doc. 89-19191 Filed 8-15-89; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Division of Ocean Sciences: Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Ocean Sciences Research.

Date and Time: August 22-24, 1989 8:30-5:00

Place: American Association for the Advancement of Science, 1333 H Street, NW., Washington, DC 20005, First Floor Auditorium-A (Biological Ocean.), First Floor Auditorium-B (MG&G), Eighth Floor Conference Room (Phy. Ocean.), Eleventh Floor Conference Room (Chem. Ocean.)

Type of Meeting: Closed.

Contact Person: Dr. Michael R. Reeve, Head, Ocean Sciences Research Section, Room 609, National Science Foundation, Washington, DC 20550, Telephone (202) 357-9601.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in oceanography.

Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Reason for Late Notice: Administrative Oversight.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-19179 Filed 8-15-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-155]

Consumers Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. DPR-6 issued to the Consumers Power Company (the licensee), for the operation of Big Rock Point Plant, located in Charlevoix County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specification (TS) sections 6.2 and 6.5 of the Administrative Controls to reflect the change from the Nuclear Safety Board (NSB) to the Nuclear Safety Services Department (NSSD) and elimination of the Independent Safety Engineering Group (ISEG).

The proposed action is in accordance with the licensee's application for amendment dated September 22, 1988 and supplemented on January 17, and April 12, 1989.

The Need for the Proposed Action

The proposed change to the Technical Specifications provides an independent safety review function to be carried out by a full-time organization rather than a committee. This change increases the total resources committed to safety reviews and provides more timely reviews. The independent safety engineering function was eliminated because it was not required by the NRC at Big Rock Point.

Environmental Impact of the Proposed Action

The proposed organizational changes do not increase the risk of facility accidents. Thus, the proposed organizational changes do not involve any increase in the likelihood of the release of radioactive or non-radioactive effluents from those already determined, nor does the proposed action have other environmental impacts. Therefore, the Commission concludes that there are no measurable radiological or non-radiological environmental impacts associated with the proposed organizational changes.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on March 29, 1989 (54 FR 12977). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission has concluded there are no measurable environmental impacts associated with the organizational change, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative should be to deny the requested amendment. The proposed organizational changes do not increase the risk of facility accidents. Thus, the proposed organizational changes do not involve any increase in the release of radioactive or non-radioactive effluents from the plant.

Alternative Use of Resources

This action does not involve the use of resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Contacted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact

statement for the proposed application for amendment.

For further details with respect to this action, see the licensee's application dated September 22, 1988, as supplemented January 17, and April 12, 1989, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Dated at Rockville, Maryland this 10th day of August 1989.

For the Nuclear Regulatory Commission.

Lawrence A. Yandell,

Acting Director, Project Directorate III-1, Division of Reactor Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-19215 Filed 8-15-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co. et al; San Onofre Nuclear Generating Station, Units 2 and 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses No. NPF-10 and No. NPF-15 issued to Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise Technical Specification 3/4.6.1.7, "Containment Ventilation System." This specification permits each 8-inch containment purge supply and exhaust isolation valve to be open for less than or equal to 1000 hours (3000 hours for Unit 3 prior to the third refueling outage) per 365 days, and requires each 42-inch containment purge supply and exhaust isolation valve to be sealed closed, in operational modes 1, 2, 3 and 4. The proposed change would revise Specification 3.6.1.7 to allow blind flanging the 8-inch or 42-inch containment purge supply and exhaust isolation valves as an acceptable method to close and/or seal closed the valves. In addition, the proposed change would revise the current allowable period that the 8-inch containment purge supply and exhaust isolation valves may be open, to permit unrestricted valve operation as required for specific safety related purposes. These purposes would be defined as containment pressure control, ALARA and respirable air quality for personnel entry, and surveillance tests. The proposed change would also revise Action Statement 'a' of Specification 3.6.1.7 to increase the allowable time to close or blind flange an open valve from 1 hour to 4 hours. Finally, the proposed change would exempt blind flanges on the containment purge supply and exhaust lines from the 31-day inspection requirement and would include these blind flanges in the quarterly leakage rate test of the purge supply and exhaust isolation valves.

The Need for the Proposed Action

The proposed amendments are required to limit the purposes for which the 8-inch containment purge supply and exhaust isolation valves may be opened during power operation, to provide flexibility in the methods of sealing the penetrations, and to clarify the surveillance requirements of the 42-inch valves.

Environmental Impacts of the Proposed Action

The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendments do not significantly affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendments. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendments do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the Federal Register on May 4, 1989 (54 FR 19271). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives of the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Units 2 and 3, dated April 1981 and its Errata date June 1981.

Agencies and Persons Consulted

The NRC staff has reviewed the licensees' request that supports the proposed amendments. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated May 25, 1988, and the revision to that request dated April 4, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 9th day of August, 1989.

For The Nuclear Regulatory Commission.

George W. Knighton,

Director Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-19218 Filed 8-15-89; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This

series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–3001 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Records Important for Decommissioning for Licensees Under 10 CFR Parts 30, 40, 70, and 72" and is intended for Division 3, "Fuels and Materials Facilities." This guide is being developed to provide guidance on the specific information that should be kept and maintained in the decommissioning records on the radiological conditions at the facility that could affect occupational and public health and safety during decommissioning.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on the guide, including any implementation schedule. Comments should be accompanied by supporting data. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by October 6, 1989.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Request for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution listed for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Authority: 5 U.S.C. 552(a).

Dated at Rockville, Maryland, this 7th day of August 1989.

For the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 89–19222 Filed 8–15–89; 8:45 am]

BILLING CODE 7590–01–M

Public Service Electric and Gas Co.; Issuance of Amendment to Facility Operating License

[Docket No. 50–354]

The U.S. Nuclear Regulatory Commission has issued Amendment No. 30 to Facility Operating License No. NPF–57, issued to Public Service Electric and Gas Company, which revised the Technical Specifications for operation of the Hope Creek Generating Station, located in Salem County, New Jersey. The amendment was effective as of the date of issuance.

The amendment changed the Technical Specifications concerning the Reactor Building Filtration, Recirculation, and Ventilation System (FRVS) and the Control Room Emergency Filtration System (CREFS). It provided separate Technical Specification sections for the Ventilation and Recirculation subsystems of the FRVS, changed the acceptance criterion for testing the charcoal absorbent in the FRVS Recirculation System, and changed the definition of situations where tests of the FRVS need to be performed. In addition, there are minor clarifications for the FRVS and CREFS.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendments and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on February 10, 1988 (53 FR 3967). No request for a hearing or petition for leave to intervene was filed following this notice. The Bureau of Nuclear Engineering (BNE) staff of the State of New Jersey submitted comments in a letter dated April 5, 1988 and those comments are addressed in the safety evaluation issued with this amendment.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (54 FR 29119).

For further details with respect to the action see (1) the application for amendment dated November 25, 1987, as supplemented on April 17, 1989, (2) Amendment No. 30 to License No. NPF–57, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 7th day of August 1989.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–19216 Filed 8–15–89; 8:45 am]

BILLING CODE 7510–01–M

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–32 and DPR–37 issued to Virginia Electric and Power Company (the licensee) for operation of the Scurry Nuclear Power Station, Units 1 and 2 located in Surry County, Virginia.

The proposed amendment would modify the Technical Specifications (TS) on an interim basis to permit the replacement of two service water (SW) lines. There are currently two six-inch SW lines that provide cooling water to the charging pumps' lube oil coolers and intermediate seal coolers and to the three control room/switchgear room air conditioning chiller units. The licensee has proposed to amend the TS, on an interim basis, to facilitate the replacement of the two six-inch SW lines with three eight-inch SW lines. Implementation of these modifications requires the use of action statements allowed by TS 3.23.C and the use of the proposed interim TS 3.14.C.1. The use of these action statements would allow the licensee to remove a SW line from service provided that a temporary SW supply line is installed and is capable of providing the required cooling water flowrate to one control room/switchgear room chiller SW pump.

This temporary SW pipe will be placed in service prior to removing the SW line from service and the dependence on the temporary line will be limited to 24 hour intervals that may be repeated until the modifications are completed. If construction difficulties are encountered which require an early termination of the planned activities, the SW system will be restored to an operable condition and the action statement exited. The interim TS, if granted, would expire March 31, 1990.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendments involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has reviewed the proposed change in accordance with the requirements of 10 CFR 50.92 and has determined that the request does not involve significant hazards considerations because operation of the facility in accordance with the proposed TS change using the alternate service water flow path would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of a loss of service water to the control and relay room chiller service water pump is not significantly increased since the temporary line will be installed and operated in accordance with the compensatory measures identified in [the licensee's submittal] which establishes relative equivalence for the temporary line.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The possibility for accidents or malfunctions created by these activities has been evaluated in the UFSAR. Flooding of safety-related components due to failure in the circulating water system has been evaluated in the UFSAR. The flooding source which would result from a crack in the temporary line is bounded by the current evaluation. The temporary service water line does not generate any new or unreviewed accident precursors.

3. Involve a significant reduction in a margin of safety.

The temporary line will be used only for short periods of time (less than 24 hours) and be controlled by the proposed action statement. Operation of the temporary line under the conditions imposed will provide sufficient service water flow to meet the design basis requirement for two unit operation without any reduction in Technical Specification margin.

Construction and operations of the temporary line will be accomplished in accordance with applicable station procedures to ensure that plant safety is maintained.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene are discussed below.

By September 15, 1989, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendments involves no significant hazards considerations, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If a final determination is that the amendments involve significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances changes during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission. U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 3426700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a) (1)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated August 2, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Local Public Document Room located at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 10th day of August 1989.

For the Nuclear Regulatory Commission.

Bart C. Buckley,

Senior Project Manager, Project Directorate II-2, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-19217 Filed 8-15-89; 8:45 am]

BILLING CODE 7590-01-D

OFFICE OF PERSONNEL MANAGEMENT

Personnel Management Demonstration Project: Alternative Personnel Management System at the National Institute of Standards and Technology

AGENCY: Office of Personnel Management.

ACTION: Final notice.

SUMMARY: This action provides for the approval of amendments to the final project plan published October 2, 1987 (52 FR 37082). The amendments were published on May 17, 1989 [54 FR 21331], as proposed changes, with a 30 day comment period. Changes were to be made final unless any compelling objections were raised. Representatives of the local bargaining units and all other employees covered by the project plan were notified of the proposed changes and the comment period. There were no requests to bargain and only two letters were received, neither of which contained comments addressing the proposed amendments.

EFFECTIVE DATE: August 16, 1989.

FOR FURTHER INFORMATION CONTACT: Allen Cassday (301) 975-3031, at the National Institute of Standards and Technology; Paul Thompson, (202) 632-6164, at OPM.

U.S. Office of Personnel Management.

Constance B. Newman,

Director.

[FR Doc. 89-19136 Filed 8-15-89; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[34-27109]; [File No. DTC-89-14]

August 8, 1989.

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Depository Truet Company Relating to Changes in its Fee Schedule for Services

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 24, 1989 the Depository Trust Company ("DTC") filed with the Securities Exchange Commission ("Commission") the proposed rule change as described below (SR-DTC-89-14). The Commission is publishing this notice to solicit comments by interested persons on the proposed rule change.

I. Description of the Proposed Rule Change

The following is the proposed schedule of charges for DTC's interface service with the National Securities Clearing Corporation's ("NSCC") Mutual Fund Settlement, Entry and Registration Verification Service ("Fund/SERV"),[2] as set forth by DTC in its filing:

Service	Fee
For each Mutual Fund Order Entry, Settlement, and Registration.	$0.70 per settled transaction.
Usage Charge	$50.00 monthly.

[1] 15 U.S.C. 78s(b)(1) (1981).

[2] On July 24, 1989 the Commission approved DTC's proposed interface service with NSCC's Fund/SERV. *See* Securities Exchange Act Release No. 27036 (July 24, 1989), 54 Fed. Reg. 31,752 (August 1, 1989).

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The Commission has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

According to the Self-Regulatory Organization, the purpose of the proposed rule change is to recover DTC's costs for providing the Fund/SERV Interface service. In its filing DTC states that the proposed rule change was adopted pursuant to section 17A(b)(3)(D) of the Act, which, according to the filing, authorizes DTC to adopt reasonable fees for the services it provides.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The rule filing states that DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

DTC represented in the filing that comments were not solicited or received regarding the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act [3] and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[3] 15 U.S.C. 78s(b)(3) (1981).

IV. Solicitation of Comments

You are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW. Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at DTC's principal office. All submissions should refer to File number SR-DTC-89-14 and should be submitted by September 6, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19149 Filed 8-15-89; 8:45 am]

BILLING CODE 8010-01-M

[34-27121 SR-MSTC-89-4]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Securities Trust Company ("MSTC") Relating to Fees Revisions Imposed To Cover the Costs of Additional Reports Available Through MSTC's File Transmission Service ("FTS")

August 9, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 18, 1989, the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the Midwest Securities Trust Company's ("MSTC") proposed fee revisions imposed to cover the costs of additional reports available through its File Transmission Service ("FTS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish fees for the addition of new files to FTS. FTS is a CPU to CPU interface between MSTC and the computers of Participatns or their service bureuas. FTS makes processing smoother and more efficient by replacing tape handling and decreasing processing times.

The proposed rule change establishes fees for the following files which are being added to FTS:

Accommodation Transfer
Bond Comparison
Dividend Announcements

The revised fee schedule is consistent with section 17A of the Securities Exchange Act of 1934 (the "Act") in that it provides for the equitable allocation of reasonable dues, fees and other charges among MSTC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Midwest Securities Trust Company does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor recieved.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of

the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation on Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of SR-MSTC-89-4 will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 6, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

EXHIBIT A

(Additional Italicized; [Deletions Bracketed])

	Daily	Weekly	Monthly*	Upon request (testing)
R-Activity	$165.99	N/A	N/A	$75.00
R-Net Position	165.00	125.00	75.00	75.00
R-Net Position/Activity	275.00	N/A	N/A	75.00
B-Net Position/Activity	275.00	200.00	75.00	75.00
Purchase & Sales	165.00	N/A	N/A	75.00
ACATS Activity	165.00	N/A	N/A	75.00
R-Masterfile Updates	165.00	N/A	N/A	75.00
R & B Masterfile (FTP)	N/A	200.00	75.00	75.00
NIDS	165.00	N/A	N/A	75.00
Accommodation Transfer	*165.00*	*125.00*	*75.00*	*75.00*
Bond Comparison	*165.00*	*N/A*	*N/A*	*75.00*
Dividend Announcements	165.00	N/A	N/A	*75.00*

* Includes settlement month end, calendar month end.

[FR Doc. 89-19211 Filed 8-15-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27105; File No. SR-NASD-89-26]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Proposed Rule Change Relating to Notice and Availability to Membership and Press of Suspensions, Expulsions, Revocations and Monetary Sanctions

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 28, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change to Article VI of the Rules of Fair Practice would permit the NASD to provide notice of disciplinary actions and all suspensions and cancellations of membership in Notices to Members, rather than in the NASD Manual,[1] and would require members to distribute such list within the firm as may be necessary. The proposed rule change to Article IV, Section 1 of the Rules of Fair Practice would require that the NASD Manual be maintained in each branch office of a member.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Article VI of the Rules of Fair Practice requires the Secretary of the Association to furnish every office of every member of the Association with a list of all members of the Association and, by amendments to the list, to keep every office of every member advised of all new members and of all suspensions and cancellations of membership. This list has been provided to members of the Association in monthly updates to the Manual. Members are entitled to rely on this list as last amended for purposes of complying with Article III, Section 25 of the Rules of Fair Practice.

The proposed rule change to Article VI of the Rules of Fair Practice would require that the list be provided to each member, but would require the member to make such distribution within the firm as may be necessary, and would also allow the NASD to provide notice to its members and the press of suspensions, expulsions, revocations, and monetary sanctions, by means other than Changes to the List of Members in the Manual. This would include the Notice to Members mechanism. Under the proposed rule change to Article VI of the rules of Fair Practice, publication of these matters in Notices to Members will substitute for inclusion in NASD Manual updates and will provide the membership with more timely notification of disciplinary actions.

Article IV, Section 1 of the Rules of Fair Practice requires that the NASD Manual be maintained in "every office" of a member. In light of the new definition of "branch office," effective on April 13, 1989, the NASD is proposing to amend this provision to state that the NASD Manual will be required to be maintained in each *branch* office of the member.

In addition, a Resolution of the Board of Governors that follows Article V, Section 1 of the Rules of Fair Practice that requires the NASD to provide notice to the membership and releases to the press of disciplinary actions resulting in suspensions, bars or monetary sanctions in excess of $10,000, also contemplates the inclusion of this information in the Changes to the List of Members section of the NASD Manual. The proposed conforming rule change to this Resolution of Governors will permit these notifications to the membership and releases to the press to be disseminated by way of Notices to Members.

The NASD believes that the proposed rule changes are consistent with the provisions of section 15A(b)(2) of the Act, in that they will enable the NASD to more effectively enforce compliance with its rules by permitting the NASD to provide its membership with more timely notice of disciplinary actions and requiring each branch office of a member to maintain an NASD Manual.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

[1] A conforming amendment is also being proposed to the Resolution of the Board of Governors at Article V, Section 1 of the Rules of Fair Practice.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-89-26 and should be submitted by September 6, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: August 8, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19150 Filed 8-15-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27111; File No. SR-NASD-89-30]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to the Examination Specifications and Study Outline for the Financial and Operations Principal ("Series 27") Examination

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 12, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD" or the "Association"), hereby submits amendments to the examination specifications and study outline for the Financial and Operations Principal ("Series 27") qualifications examination. The amendments update existing material pertaining to the Insider Trading and Securities Fraud Enforcement Act of 1988 and general NASD regulations. In addition, the relative weighting of the various categories was modified as a result of a review of NASD disciplinary proceedings to determine areas that warranted additional coverage to prevent regulatory problems. Finally, the material pertaining to the Rules of the Municipal Securities Rulemaking Board ("MSRB") has been segregated into a separate section in order to facilitate the MSRB's access to the questions.

The above-described amendments do not result in any textual changes to the NASD By-Laws, Schedules to the By-Laws, Rules, practices or procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Pursuant to Section 15A(g)(3) of the Securities Exchange Act of 1934 (the "Act"), the NASD is authorized to prescribe standards of training,

experience, and competence for persons associated with NASD members. To this end, the NASD has developed examinations that it administers to establish that such persons have attained the requisite levels of knowledge and competence. The NASD periodically reviews the content of the examinations to determine whether amendments are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

The NASD believes the proposed rule change is consistent with the provisions of Section 15A(g)(3) of the Securities Exchange Act of 1934, which authorizes the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the amendments to the Series 27 examination specifications and study outline impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 6, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: August 9, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19151 Filed 8-15-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27119; File No. SR-NASD-89-31]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to the Examination Specifications and Study Outline for the Investment Company/Variable Contracts Products Representative ("Series 6") Examination

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 12, 1989 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD" or the "Association") hereby submits amendments to the examination specifications and study outline for the Investment Company/Variable Contracts Products Representative ("Series 6") qualifications examination. The amendments update the sections on taxation, retirement plans, and industry regulations, add material covering new regulations and products, including variable life insurance and Section 12b-1 contingent/deferred sales charges, and segregate material pertaining to advertising rules into one section. The number of test selection categories was expanded; however, the number of questions per test remains at 100 and the testing time is still 135 minutes.

The above-described amendments do not result in any textual changes to the NASD By-Laws, Schedules to the By-Laws, Rules, practices or procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Pursuant to section 15A(g)(3) of the Securities Exchange Act of 1934 (the "Act"), the NASD is authorized to prescribe standards of training, experience, and competence for persons associated with NASD members. To this end, the NASD has developed examinations that it administers to establish that such persons have attained the requisite levels of knowledge and competence. The NASD periodically reviews the content of the examinations to determine whether amendments are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

The NASD believes the proposed rule change is consistent with the provisions of section 15A(g)(3) of the Securities Exchange Act of 1934, which authorizes the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the amendments to the Series 6 examination specifications and study outline impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 6, 1989.

For the Commission, by the Division of Market Regulation, Pursuant to delegated authority, 17 CFR 200.30-3(a)(12)

Dated: August 9, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19213 Filed 8-15-89; 8:45 am]

BILLING CODE 8010-01-M

[34-27105; File No. OCC-89-05]

August 8, 1989.

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Options Clearing Corporation Relating to Changes in Its Fee Schedule for Certain Clearing Member Services

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 28, 1989 the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described below (SR-OCC-89-09). The Commission is publishing this notice to solicit comments by interested persons on the proposed rule change.

I. Description of the Rule Change

As set forth in the filing, OCC's proposal would enable it to alter its calculation of the microfiche fee, eliminating the current $.03 per frame charge and replacing it with a $1.10 per card charge and an additional $.10 for duplicate cards.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The Commission has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

According to the Self-Regulatory Organization, the current calculation of its microfiche fees dates back to 1985. At that time, OCC believed that a per frame cost would be the best way to distribute OCC's cost of microfiching reports. OCC now claims that its analysis of the present methodology shows that the per frame cost was only advantageous to the smaller clearing members. According to OCC, larger clearing members were paying $8.10 per card, and were, in effect subsidizing the cost for smaller members. In its filing, OCC states that by re-working its calculation it will be able to equitably distribute the cost of microfiching among all its clearing members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The rule filing states that OCC does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

OCC represented in the filing that comments were not solicited or received regarding the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act [2] and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

You are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at OCC's principal office. All submissions should refer to File number SR-OCC-89-09 and should be submitted by September 6, 1989.

---

[1] 15 U.S.C. 78s(b)(1) (1981).

[2] 15 U.S.C. 78s(b)(3) (1981).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19152 Filed 8-11-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27110; File No. SR-PSE-89]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating To Appeal of Floor Citations

On May 12, 1989, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend PSE Rule XX, Section 11 to clarify the precise procedures by which floor citations are reviewed, and to facilitate the systematic, complete, and orderly operation of the reivew proceedings.

The proposed rule change was noticed in Securities Exchange Act Release No. 26944 (June 19, 1989), 54 FR 26872 (June 26, 1989). No comments were received on the proposed rule change.

The proposed rule change describes two different procedures by which a person aggrieved by an Exchange action imposed via the issuance of a floor citation ("applicant") can obtain review of the complained of action. Specifically, the proposal clarifies that applicants have the right to request that their appeal of floor citations be reviewed via oral presentation ("request for hearing") or based on written documentation ("review on the papers").

The proposed rule change also more clearly describes the procedures to be followed during the review process. In particular, the procedures, as modified, are as follows. First, the Exchange shall supply the applicant with notification of disciplinary action. The notification shall state the specific grounds for the action taken, and notify the applicant of its right to make a request either for a hearing or a review on the papers. In order to obtain a review of the citation, an applicant must file and application with the PSE Compliance Department indicating whether it desires a hearing or a review on the papers, within five days of receipt of the notification. In a hearing review, each of the parties is permitted to make an opening statment, present witnesses and documentary evidence, cross-examine witnesses, and present closing arguments. In a review on the papers, an applicant can choose to proceed only upon the existing written materials that were the basis for the Exchange's initial decision, or it can decide to submit any additional documents or materials in support of its position.

Second, the Exchange committee responsible for the complained of action shall appoint a panel ("Panel") to conduct the hearing and/or review on the papers ("initial review"). Parties to the proceedings shall be notified of the composition of the Panel, and any objection to the Panel's composition must be submitted within five business days of receipt of the notification regarding the composition. Within fifteen business days after receipt of the notification of the Panel's composition the applicant, if the application is for a review on the papers, shall submit to the Panel any additional documents, statements, arguments, or other materials. The Exchange will then have fifteen days to submit to the Panel any additional documents, statements, arguments, or other materials in response to the applicant's submission. If the application is for a hearing, each party shall furnish to the Panel and to the other parties, not less than five business days in advance of the scheduled hearing date, copies of all documentary evidence such party intends to present at the hearing. Parties shall be given at least 15 business days notice of the time and place of the hearing.

Third, the initial review is conducted under the authority of the Panel. In this regard, proposed new paragraph (c)(3) provides that whether the proceeding is a hearing or a review on the papers, the Panel shall determine all questions concerning the admissibility of evidence, and shall otherwise regulate the conduct of the initial review. The formal rules of evidence shall not apply. As previously mentioned, in the event of a hearing, each of the parties shall be permitted to make an opening statement, present witnesses and documentary evidence, cross-examine witnesses, and present closing arguments. The Panel shall have the right to question all parties and witnesses to the initial reivew proceedings, and may also request the production evidence and witnesses. No member, person associated with a member, or employee of the Exchange shall refuse to furnish relevant testimony, documentary materials or other information requested by the Panel. A transcript of any hearing held shall be made and shall become part of the record. Within 30 days after the date of the hearing or the review on the papers, the Panel shall render its decision. The Panel may confirm, reverse, or modify, in whole or in part, the decision of the Exchange committee, and may make any findings or conclusions which in its judgment are proper. The Panel's decision shall be in writing, shall contain a concise statement setting forth the specific findings and conclusions of the Panel and the reasons in support thereof, and shall be sent to the parties to the initial review proceedings.

The proposed rule change also distinguishes between the initial review held before the Panel and a second review, termed a "Board Review," conducted by an Appellate Review Panel ("ARP") appointed by the Exchange's Board of Governors ("Board"). The decision of the Panel shall be subject to appellate review by the Board either on the Board's own motion, within thirty days of issuance of the Panel's decision, or upon the written petition of any party to the initial review filed within fifteen business days after the Panel's decision. Subsequent to the filing of petitions for Board Review or the Board's motion to review the matter, parties may submit a written statement to the Board, and may request an opportunity to make an oral presentation. The Board, in its discretion, may grant or deny such a request. In addition, in the absence of a request for an oral presentation, or at any time, the Board may require an oral presentation. A transcript shall be made of any oral presentation and shall become part of the record. The decision of the ARP shall be in writing and shall contain a concise statement of the findings and conclusions of the ARP and the reasons in support thereof.

The PSE states that the proposed rule change is designed to clarify the procedures by which floor citations are reviewed, and to facilitate the systematic, complete, and orderly operation of the review proceedings. The PSE believes that the proposed amendments distinguishing the two levels of review (*i.e.*, initial review v. Board Review) and delineating the manner in which both reviews are conducted should help eliminate PSE member confusion regarding the floor citation review process. The PSE also believes that it is logical to amend section 11(c)(2) to provide the Exchange with the opportunity to respond to a submission made on the papers. The PSE notes that because the Exchange operates in the capacity of a respondent to the applicant's appeal, it should have an opportunity to respond to the applicant's submission made on the papers, because to do otherwise would require the Exchange to rebut arguments which may not be raised by the applicant.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6.[3] Specifically, the Commission believes that the proposed rule change is consistent with the requirements of section 6(d)(1) of the Act [4] because adoption of the proposed rule change will improve the efficiency of the PSE's appeal process by clarifying the precise procedures by which floor citations are reviewed and facilitiating the systematic, complete, and orderly operation of the review proceedings. In this regard, the Commission agrees with the PSE's assertion that the proposed amendments to Section 11 should help eliminate PSE member confusion regarding the floor citation review process by distinguishing between the two levels of review and delineating the manner in which both reviews are conducted. The Commission also agrees with the PSE's assertion that it is logical to provide the Exchange with the opportunity to respond to a submission made on the papers because the Exchange operates in the capacity of a respondent to the applicant's appeal. To do otherwise would require the PSE to rebut arguments which may not be raised by the applicant.

In addition, the Commission believes that proposed new paragraph (c)(3), providing the Panel with, among other things, the power to call and question parties and witnesses, demand the production of documents, and rule on the admissibility of evidence, will facilitate the Panel's ability to obtain all relevant facts necessary for it to reach a well-informed decision when reviewing floor citations. At the same time, the Commission believes that the proposal is not inconsistent with the Exchange's maintenance of a fair hearings and review process for its members. Moreover, the Commission previously approved a similar rule change submitted by the Chicago Board Options Exchange, Inc. that gave its hearings and review panel the express power to compel the production of documentary evidence and witnesses, and that also distinguished between the two different levels of review.[5]

Finally, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(7) of the Act [6] because it should ensure adherence to just and equitable principles of trade and protect investors and the public interest by improving the disciplinary process of the PSE. The procedures proposed by the PSE are fair and provide an applicant with an adequate opportunity to appeal a floor citation.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR-PSE-89-09) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: August 9, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19153 Filed 8-11-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27107; File No. SR-Phlx-89-25]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Allocation Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) notice is hereby given that on August 3, 1989, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. (the "PHLX" or the "Exchange") pursuant to Rule 19b-4, hereby proposes the following rule change respecting allocation of new equity books or option classes. (Italics indicate additions, brackets indicate deletions.)

Allocation, Reallocation and Transfer of Issues

* * * * *

Rule 506 (a) No change.

(b) No change.

[(c) At least five days before an allocation meeting, the Committee shall provide reasonable notice to all floor members of the security to be allocated and its applicants.]

[(d)] *(c)* The Committee shall hold allocation meetings as appropriate. The Department of Securities shall provide Committee members data on the securities to be allocated, copies of the applications, the most recent specialist performance evaluation ratings, and any other information that the Committee may deem to be relevant. Applicants may make and the Committee may request personal appearances.

[(e)] *(d)* Allocation decisions shall be in writing and shall be distributed to all floor members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

Under the PHLX's allocation rules, when new equity books or option classes are to be allocated, the Committee distributes notice of the proposed allocation to all floor members, at least five days prior to the meeting. The notice includes details about the new issue and the names of all applicants. The purpose of the provision was to afford an opportunity to the members on the floor to provide input to the Committee regarding any special qualifications of particular applicants for particular new issues, or regarding factors of which the Committee might not otherwise by aware, that would make particular applicants unsuitable to be specialists in those issues. Since this was adopted in October, 1982, there have been hundreds of new issues allocated. Not once in

---

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] 15 U.S.C. 78f (1982).

[4] 15 U.S.C. 78f(d)(1) (1982). In pertinent part, Section 6(d)(1) requires that "[in] any proceeding by a national securities exchange to determine whether a member or person associated with a member should be disciplined . . . the exchange shall bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record."

[5] *See, e.g.*, CBOE Rules 19.4 and 19.5.

[6] 15 U.S.C. 78f(b)(7) (1982).

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30-3(a)(12) (1988).

BEST COPY AVAILABLE

those seven years has the Committee received such special input pursuant to this provision.

The practical impact of the rule has been to add an unnecessary delay to the allocation and listing process. This delay has been especially harmful with respect to new over-the-counter options which are subject to multiple trading by other exchanges. When allocating these new options, it is critical to preserve the confidentiality of new selections until they are ready to be introduced by the Exchange and to streamline the selection and allocation process as much as possible in order to improve the competitive posture of the Exchange. It has been shown in the past that the Exchange which trades an issue first, ultimately gets a significant share of the order flow. Once a new over-the-counter option which is subject to multiple trading has been selected by the Exchange for listing, it is important to solicit applications from specialists, allocate the option and start trading as soon as possible. This rule change will facilitate this goal and thereby encourage competition, all without impairing the integrity of the allocation process.

The proposed rule change is consistent with Section 6(b)(5) of the Exchange Act in that it will help perfect the mechanism of a free and open market market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments on this proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PHLX consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 8, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-19154 Filed 8-15-89; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-27123; File No. SR-Phlx-89-30]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Persons To Serve as Trustees of the Stock Exchange Fund

On May 26, 1989, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend its By-Law Article IX, section 9-1 to permit up to five partners, officers, directors or persons employed by or associated with a member of member organization to serve, if appointed, as Trustees of the Stock Exchange Fund.[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 26922 (June 13, 1989), 54 FR 26129 (June 21, 1989). No comments were received on the proposed rule change.

In its filing, the Exchange stated that the purpose of the rule change is to allow the Exchange to maximize the utilization and contribution of persons associated with members and member organizations for the benefit of the entire Exchange community. The Exchange note that the expanded eligibility, as proposed in the rule change, will allow the Chairman to recommend and the Board to appoint persons who are not members but who possess significant investment advisory expertise to the position of Trustee of the Stock Exchange Fund.[4]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular the requirements of section 6(b)(3) of the Act.[5] The Commission believes that the proposal is consistent with the section 6(b)(3) requirement that "the rules of the exchange assure a fair representation of its member in the * * * administration of its affairs * * *". In this regard, the Commission notes that the rule change only will expand the eligibility of persons able to serve as a Trustee of the Stock Exchange Fund to those persons affiliated with member organizations. The Commission believes that the investment advisory expertise of member affiliate Trustees may help the Trustees of the Stock Exchange Fund to discharge their responsibilities, as described in Article IX, sec. 9-3.[6]

[1] 15 U.S.C. 78s(b)(1) (1982).
[2] 17 CFR 240.19b-4 (1988).

[3] Article IX, Sec. 9-1 currently provides that there shall be no less than six nor more than eight trustees of the Stock Exchange Fund, composed of the Chairman of the Board of Governors, two Vice-Chairman of the Board of Governors, and up to five members of the corporation. The proposed rule change would permit up to five members and/or member affiliates to serve as trustees. Each member of and/or member affiliated trustee appointed by the Board will serve for three years or until his successor is appointed.

[4] Article IX, Sec. 9-3 of the Exchange's By-Laws, which describes the duties of the trustees of the Stock Exchange Fund, provides that "[t]he Trustees * * * shall hold such securities and other property of the Corporation, seal or personal, as shall be vested in them by order of the Board of Governors, with full power to invest the same and to sell and re-invest the proceeds of such sales, as they may deem proper, without being limited in investments to so-called "legal investments."

[5] 15 U.S.C. 78f (1982).

[6] *See* note 4, *supra*.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[7] that the purposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: August 10, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 19212 Filed 9-15-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-17102; File No. 812-7334]

The Life Insurance Company of Virginia, et al.

August 8, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

Applicants: The Life Insurance Company of Virginia ("Life of Virginia"); Life of Virginia Separate Account II ("Account II"); Life of Virginia Separate Account III ("Account III"); and Life of Virginia Separate Account 4 ("Account 4") (each "Account" or the "Accounts").

Relevant 1940 Act Section: Order requested under section 26(b).

Summary of Application: Applicants seek an order to approve the substitution of securities issued by certain management investment companies and held by Account II and Account III to fund variable life insurance contracts and by Account 4 to fund variable annuity contracts.

Filing Date: The application was filed on May 30, 1989 and amended on August 3, 1989.

Hearing or Notification of Hearing: If no hearing is ordered the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on August 31, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

[7] 15 U.S.C. 78s (b)(2) (1982).
[8] 17 CFR 200.30-3(a)(12) (1988).

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, The Life Insurance Company of Virginia, 6610 West Broad Street, Richmond, Virginia 23230.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst at (202) 272-2058 or Clifford E. Kirsch, Acting Assistant Director at (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is the summary of the applicaton; the complete application is available for a fee from either the SEC's Public Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. Life of Virginia is a stock life insurance company operating under a charter granted by the Commonwealth of Virginia on March 21, 1871.

Account II was established by Life of Virginia as a separate investment account on August 21, 1986 to fund certain flexible premium variable life insurance contracts. Account II is organized and registered under the Act as a unit investment trust. Account II currently has twenty subdivisions, each of which invest exclusively in the shares of an investment portfolio of one of four series management investment companies described below.

Account III was established by Life of Virginia as a separate investment account on February 10, 1987 to fund certain flexible premium variable life insurance contracts. Account III is also organized and registered under the Act as a unit investment trust. Account III currently has twenty-three subdivisions, each of which invest exclusively in the shares of the same investment portfolios of the four series investment companies whose shares are held by Account II as well as in shares issued by three portfolios of a fith series company.

Account 4 was established by Life of Virginia as a separate investment account on August 26, 1987 to fund certain variable annuity contracts. Account 4 is organized and registered under the Act as a unit investment trust. Account 4 currently has twenty subdivisions, each of which invest exclusively in the shares of the same investment portfolios as does Account II.

2. The flexible premium variable life insurance contracts and the variable annuity contracts (the "Contracts") permit contract owners to allocate purchase payments among as many as seven subdivisions at one time as long as each subdivision has at least 10% of a Contract's cash value. Owners of variable life insurance contracts issued through Account III and variable annuity contracts issued through Account 4 may transfer cash values at any time among the sub-divisions available at the time of a transfer request. The first transfer in any calendar month is free; otherwise each transfer costs $10.00. Owners of variable life insurance contracts issued by Account II may make up to twelve transfers each calendar year with the first transfer being made without charge and those thereafter having a $10.00 charge.

3. Four open-end diversified management investment companies of the series type offer shares of their various investment portfolios to corresponding subdivisions of each of the Accounts while a fifth company offer shares of its portfolios to Account III but not to Accounts II and 4. The companies, which are all registered with the Commission on Form N-1A, are: American Life/Annuity Series (the "AL Series"); Life of Virginia Series Fund, Inc. (the "LOV Series"); Oppenheimer Variable Account Funds (the "Oppenheimer Funds"); Variable Insurance Products Fund (the "Fidelity Fund"); and Zero Coupon Bond Fund (the "Fidelity ZCB Fund"). The application relates to a substitution involving only shares of the AL Series and the LOV Series.

The AL Series was organized as a Massachusetts Business Trust in 1986 and has five portfolios: The Cash Management Fund, the High-Yield Bond Fund, the Growth-Income Fund, the Growth Fund, and the U.S. Government Guaranteed/AAA Rated Securities Fund.

The LOV Series was organized as a Virginia corporation on May 14, 1984 and currently has four portfolios: the Commond Stock Portfolio, the Bond Portfolio, the Money Market Portfolio, and the Total Return Portfolio.

4. On March 16, 1989 Life of Virginia received written notice that the AL Series' Board of Trustees decided, at a meeting held on March 6, 1989, to cease operations of the AL Series because of the Series' relatively small asset size and high level of expenses. The notice stated that AL Series' investment adviser, Capital Research and Management Company, was exercising its right to terminate participation agreements between the AL Series and the Accounts and that the AL Series will discontinue offering shares of its investment portfolios to the Accounts on December 15, 1989. By a supplement dated April 17, 1989 to the prospectuses for the Accounts, all contract owner

(and all prospective investors) received notice of the Series' intent to cease business.

5. Applicants propose to substitute shares of three portfolios of the LOV Series for shares of the five portfolios of the AL Series by transferring the cash values of contract owners from the subdivisions of each Account holding shares of the AL Series to subdivisions of each Account holding shares of the LOV Series. Applicants propose to do this by redeeming shares of the various AL Series portfolios and purchasing with the proceeds shares of an appropriate portfolio of the LOV Series as follows:

For shares of the AL Series	Shares of LOV Series
Cash Management Fund	Money Market Portfolio.
High-Yield Bond Fund	Bond Portfolio.
Growth-Income Fund	Common Stock Portfolio.
Growth Fund	Common Stock Portfolio.
Gov't Guar./AAA Rated Fund.	Bond Portfolio.

The subdivisions investing in shares of the AL Series would then be eliminated.

6. The substitution would take place at simple relative net asset value with no change in the amount of any contract owner's cash value or in the dollar value of his or her investment in an Account or underlying portfolio. Contract owners will not incur any fees or charges as a result of the substitution nor will their rights or Life of Virginia's obligations under any variable annuity or variable life insurance contract be altered in any way. All expenses incurred in effecting the proposed substitution, including legal, accounting and other fees and expenses, will be paid by Life of Virginia. In addition, the proposed substitution will not impose any tax liability on contract owners. The substitution will not be treated as a transfer for the purpose of assessing transfer charges. All current and prospective contract owners will receive notice in the form of a supplement to the May 1, 1989 prospectuses for the Accounts that Life of Virginia is seeking an order from the SEC approving the substitution.

7. The prospectus supplement sent to contract owners will also inform them that they may, at any time prior to the proposed substitution, transfer their cash values from subdivisions investing in the AL Series to any of the remaining subdivisions not investing in the AL Series without incurring any transaction fees and without the transfer counting as the one free transfer permitted annually in Account II or the one free transfer permitted monthly in Accounts III and 4. In addition, shortly after the substitution, Life of Virgina will notify, in writing, all contract owners who had remaining cash values transferred from the AL subdivision of their right to make "free transfers" for another thirty days.

8. The Contracts reserve to Life of Virginia the right, subject to SEC approval, to substitute shares of another management investment company for shares of any management investment company held by a subdivision of the Accounts or to add or eliminate one or more subdivisions. The prospectuses for the Accounts clearly discloses this under the caption "Addition, Deletion, or Substitution of Investments." Life of Virginia reserved this right of substitution and elimination to protect itself and its contract owners in precisely the type of circumstances it faces now: Unilateral election (for any reason) by a management investment company to cease operations.

9. Because of the relatively small amount of assets, expenses incurred by the AL Series have remained relatively high even after reimbursement of advisory fees. A large portion of each portfolio's expenses remain fixed and, consequently, the expenses remain high as a percent of average daily net assets. The expense ratio will presumably become considerably less favorable in several months when the separate accounts of two other life insurance companies redeem their shares of the AL Series for the same reasons. Life of Virginia has therefore determined that it is in the best interests of contract owners to replace the investment portfolio of the AL Series with alternative investment vehicles.

The investment portfolios of the LOV Series have somewhat lower investment advisory fee structures than, and current expense ratios similar to, their companions in the AL Series. Applicants anticipate that this consolidation will modestly increase economies of scale and lead to a reduction of administrative expenses in the LOV Series.

10. Applicants state that the investment objectives of the LOV Series portfolios make them suitable and appropriate as investment vehicles for contract owners currently invested in the AL Series. Two of the AL Series portfolios, the Cash Management Fund and the Growth Fund, have investment objectives that are substantially identical to their LOV Series counterparts. The remaining three, the Growth-Income Fund, the High-Yield Bond Fund and the Government Guaranteed/AAA Rated Fund, have investment objectives that are compatible with those of the their LOV Series substitutes, and pursue their objectives by investing in the same general types of securities as those invested in by their LOV Series substitutes.

11. Two of the AL Series portfolios, the Growth-Income Fund and the High-Yield Bond Fund, may find a closer match of investment objectives with portfolios of the Fidelity Fund or the Oppenheimer Funds. However, Life of Virginia cannot predict, with funds managed by an unaffiliated organization, the future occurrence of disruptive unilateral events such as the one that occasioned the proposed substitution. Life of Virginia believes that the LOV Series, in contrast, which is managed by its affiliate Aon Advisors, Inc. and which only sells its shares to the Accounts, is much less likely to experience such a disruptive event in the foreseeable future than are funds managed by unaffiliated organizations. Moreover, Life of Virginia does not want to appear to be endorsing one or more of the investment options managed by unaffiliated advisers over other options managed by unaffiliated advisers. Consequently, Life of Virginia believes that contract owners should only invest with unaffiliated advisers at their own initiative by exercising their right to make free transfers of their cash value to any subdivision of the Accounts. In addition, if contract owners prefer to invest in one or more portfolios managed by the same investment adviser then substituting the investment portfolios of two or three different investment advisers would not be consistent with this preference.

12. The proposed automatic substitution will be only temporary in character because contract owners may always exercise their own judgement as to the most appropriate alternative investment vehicle. All contract owners may at any time before the substitution transfer their cash value to any other subdivision, and for thirty days after the substitution transfer to any of the remaining fourteen (or in the case of Account III seventeen) subdivisions of the Accounts without any cost or other disadvantage. The application states that, in this regard, the proposed substitution is not the type of substitution which Section 26(b) was designed to govern. The proposed substitution will not, therefore, result in the type of costly forced redemption which Section 26(b) was intended to guard against. No sales load deductions will be made beyond those already provided for in the Contracts and the substitutions will be effected at relative net assets value without the imposition of any transfer or other charges.

13. The application states that, for all the reasons stated above, the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19155 Filed 8-15-89; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; Lifetime Corporation, Common Stock, Par Value $0.01 (File No. 1-8204)

August 8, 1989.

Lifetime Corporation ("Company"), has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange ("AMEX"). The Company's Common Stock is also listed on the New York Stock Exchange, Inc. ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following: In making the decision to withdraw its Common Stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Common Stock on the NYSE and AMEX. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its Common Stock.

Any interested person may, on or before August 29, 1989, submit by letter to the Secretary of the Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19150 Filed 8-15-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17104; 812-7257]

UBS Mortgage Securities, Inc.; Notice of Application

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: UBS Mortgage Securities, Inc. ("UBS" or "Applicant"), on behalf of itself and all owner trusts (each, a "Trust") it may establish in the future (collectively "Applicants" or "Issuers").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the Act.

Summary of Application: Applicants seek a conditional exemptive order to permit each Issuer to issue and sell one or more series of bonds collateralized by certain Mortgage Collateral (defined below), issue and sell residual interests in certain of the Issuers, and elect status as a "real estate mortgage investment conduit" (REMIC) under the Internal Revenue Code of 1986, as amended.

Filing Date: The application was filed on February 28, 1989 and amended on June 6 and August 8, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 31, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, UBS Mortgage Securities, Inc., 299 Park Avenue, New York, New York 10171.

FOR FURTHER INFORMATION CONTACT: Stuart Horwich, Staff Attorney (202) 272-3009 or Karen L. Skidmore, Branch Chief (202) 272-3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant, a Delaware corporation, is a direct wholly-owned limited purpose subsidiary of UBS Securities Inc. UBS Securities Inc. is a New York corporation, a registered broker-dealer, and a direct wholly-owned subsidiary of Union Bank of Switzerland. Applicant was formed for the purpose of engaging in asset-backed financing, including issuing and selling, or establishing Trusts to issue and sell, series of bonds ("Bonds"), and of purchasing, owning and depositing with such Trusts mortgage collateral (the "Mortgage Collateral") and pledging, or causing such Trusts to pledge, such Mortgage Collateral to a Trustee (as described below) to secure a series of Bonds.[1]

2. Applicant will not engage in any business or investment activities unrelated to such purpose; however, Applicant may also issue securities, or form other trusts or pools that may issue securities secured by other types of collateral in such a way that Applicant or such other trusts or pools would be excepted from the Act's definition of an investment company pursuant to section 3(c)(5)(C).

3. Each series of Bonds will be issued by the Issuer pursuant to an indenture (the "Indenture") between an independent trustee (the "Trustee") and

[1] Each series of Bonds for which an order is requested will be separately secured by collateral (the "Mortgage Collateral") consisting primarily of mortgage pass-through certificates ("GNMA Certificates") which are fully guaranteed as to principal and interest by the Government National Mortgage Association ("GNMA"), Mortgage Participation Certificates ("FHLMC Certificates") issued and guaranteed by the Federal Home Loan Mortgage Corporation ("FHLMC"), or Guaranteed Mortgage Pass-Through Certificates ("FNMA Certificates") issued and guaranteed by the Federal National Mortgage Association ("FNMA") (collectively, "Agency Certificates"), funding agreements ("Funding Agreements") entered into with various limited purpose entities affiliated with a concern engaged in the homebuilding or mortgage lending business (each a "Participant"), and which are secured by Agency Certificates and Mortgage Loans, and the Agency Certificates and Mortgage Loans securing such Funding Agreements. Applicants will neither issue nor own stripped mortgage-backed securities as described in the Application. Agency Certificates pledged to secure a series of Bonds or a Funding Agreement may or may not represent the entire beneficial interest in the mortgage pool related to such Agency Certificates.

the Issuer consisting of a Series Indenture for such series incorporating by reference a set of standard indenture provisions. Each Indenture will be qualified under the Trust Indenture Act of 1939. The Applicant anticipates that the Mortgage Collateral securing each series of Bonds will be acquired by the Issuer thereof using the net proceeds of the sale of such Bonds.

4. Trusts will be created pursuant to an agreement (the "Trust Agreement") between Applicant, acting as depositor, and a bank, trust company or other fiduciary, acting as owner trustee (the "Owner Trustee"). Under the terms of each Trust Agreement, the Applicant will convey the Mortgage Collateral and any "Other Collateral" to the related Trust in return for Trust Certificates. When the Issuer is a Trust, the Owner Trustee will not purchase any Trust Certificates but will function as a legal stakeholder for the assets of the Trust. Applicant contemplates that the Owner Trustee will enter into an agreement with respect to each Trust whereby UBS Securities Inc., another affiliate of Applicant, or an independent company will provide certain management services in connection with the issuance of the Bonds.

5. If the Issuer elects REMIC status, one class of the Bonds of the Series issued by such Issuer may be designated as the "residual interest" in the REMIC and will be the "Residual Bonds." If a REMIC election is made, all other classes of Bonds of such Series will be designated as the "regular interests" in the REMIC and will be referred to as "Regular Bonds." All Bonds of a Series for which no REMIC election is made will also be included in the term "Regular Bonds." Residual Bonds will be entitled to the excess cash flow remaining after payment of principal of and interest on all Bonds of such Series, together with any remaining value in the Mortgage Collateral after payment in full of all of Bonds of such Series. Such Residual Bonds and Trust Certificates are referred to as the "Residual Interests."

6. Each series of Bonds will consist of one or more classes of Bonds, including one or more classes of current interest Bonds, compound interest Bonds, zero coupon Bonds, or capital appreciation Bonds; reduced volatility Bonds, such as planned amortization class Bonds and targeted amortization class Bonds; fixed rate Bonds, including step-up Bonds by which the interest rate changes from one fixed rate to another fixed rate on a date certain, or Floating Rate Bonds; and Residual Bonds. Current interest Bonds will pay interest on the payment dates specified in the prospectus or other offering document for the Bonds. Compound interest Bonds are Bonds upon which interest accrues and is compounded, added to the principal of the Bond, and is not paid until all classes with an earlier stated maturity have been paid in full or until a stated date. Compound interest Bonds may provide that after a certain date they will cease to accrue compound interest and will become current interest Bonds. Zero coupon and capital appreciation Bonds bear no interest and are sold at a discount. The principal amount of a zero coupon Bond will be payable on or before the maturity date. The principal amount of a capital appreciation Bond would be paid only on the maturity date; if a capital appreciation Bond were to be paid before the maturity date, the amount payable would be a compounded or accreted value calculated in the manner specified in the prospectus or private placement memorandum for the Bonds. For reduced volatility Bonds, such as planned amortization class Bonds and targeted amortization class Bonds, there will be established a schedule of payment for various payment dates, and payments on the underlying Mortgage Collateral will be directed first to meet these payments and then to the other classes of Bonds. Floating Rate Bonds bear interest at rates which vary in relation to an index specified in the related prospectus. The maximum and minimum interest rates may vary from period to period, but there will always be an overall maximum and minimum rate that cannot be exceeded during the life of the Bonds. All allocations of principal will be consistent with, and will provide for, retirement of each class not later than the stated maturity date for each class.

7. The collateral pledged to secure the Bonds will include, in addition to the Mortgage Collateral, a separate collection account for each series of Bonds and may include a debt service reserve fund or other reserve fund as specified in the prospectus supplement for a particular series. Amounts in the Collection Account for each series will be invested by the Trustee in certain investments permitted under the Indenture, including obligations of the United States or any agency thereof backed by the full faith and credit of the United States, certificates of deposit of, demand and time deposits in, and bankers' acceptances issued by, eligible depository institutions or trust companies, and certain repurchase agreements in respect of obligations of the United States and certain agencies thereof with eligible depository institutions or trust companies (collectively "Eligible Investments"). Eligible Investments will mature on or before the next payment date for the series, and will thus be available to make required payments on the Bonds of such series.

8. Amounts remaining in the Collection Account following the payment of principal of an interest on the Bonds on a payment date will be used for the payment of expenses and distribution of "excess cash flow" to either the Residual Bond Holders or the Issuer. In connection with the sale of Bonds secured only by Agency Certificates or Funding Agreements secured by Agency Certificates, the Applicant may sell Residual Interests, subject to specified conditions. Holders of Residual Interests will be entitled to receive distributions of excess cash flow from each Issuer only after payment of all expenses, taxes, and other liabilities, including Owner Trustee fees in the case of a Trust Issuer.

9. For each series of Bonds: (a) Each Issuer will hold no substantial assets other than the Mortgage Collateral (except to the extent UBS may hold Residual Interests); (b) payments on the mortgage loans underlying the Mortgage Collateral securing the Bonds will be the primary source of funds for payments of principal and interest due on such Bonds; (c) the Mortgage Collateral will have a collateral value determined under the Indenture, at the time of issuance and following each payment date, equal to or greater than the outstanding principal balance of the Bonds; (d) scheduled available principal and interest payments on the Mortgage Collateral securing the Bonds (together with any required payments from any reserve funds with respect to the Bonds) plus income received thereon at the assumed reinvestment rate will be sufficient to make the interest payments on and amortize the principal of such Bonds by their stated maturities; and (e) the Mortgage Collateral will be pledged in their entirety by each Issuer to the Trustee and will be subject to the lien of the related Indenture.

10. Certain series of Bonds may provide for mandatory redemptions to the extent that principal payments on the Mortgage Collateral cannot be invested at a rate that will provide sufficient income to pay interest on the Bonds. Other series of Bonds may provide for optional redemptions by the holders of such Bonds or for mandatory redemption by the Issuer, in each case to the extent payments on the underlying Mortgage Collateral and related reserve funds are available to pay the principal of, and interest on, the Bonds so redeemed. Except in limited circumstances arising upon an event of default of the Bonds under the Indenture, Bondholders cannot liquidate Mortgage Collateral to redeem the Bonds before maturity. Until such Bonds are paid, the Mortgage Collateral pledged to secure a series of Bonds will not be released from the lien of the Indenture, except in certain limited circumstances.

11. Neither the Issuer, the Residual Interest Holders, the Trustee nor the Owner Trustee will be able to impair the security afforded by the Mortgage Collateral to the Regular Bondholders because, without the consent of each affected Bondholder, neither the Issuer, nor the Residual Interest Holders nor the Trustee will be able to: (1) Change the stated maturity on any Bond; (b) reduce the principal amount, or the rate of interest on any Bond; (c) change the priority of repayment on any class of any series of Bonds; (d) impair or adversely affect the Mortgage Collateral securing a series of Bonds; (e) permit the creation of a lien ranking before or on a parity with the lien of the related Indenture with respect to the Mortgage Collateral; or (f) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

12. The sale of Residual Interests will not alter the payment of cash flows under any Indenture, including the amounts to be deposited in the collection account or any reserve fund created pursuant to an Indenture to support payments of principal and interest on the Bonds. The interests of the Regular Bondholders will not be compromised or impaired by the ability of an Insurer to sell Residual Interests, and there will not be a conflict of interest between the Regular Bondholders and the Residual Interest Holders as: (a) The Mortgage Collateral that will be deposited to secure each series of Bonds will not be speculative in nature; (b) the Bonds will be issued only if an independent nationally recognized statistical rating agency has rated such Regular Bonds in one of its two highest rating categories, which by definition means that the capacity of the Issuer to repay principal and interest on the Regular Bonds is extremely strong; (c) the relevant Indenture subjects the Mortgage Collateral, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such collateral to a first priority perfected security interest the name of the Trustee on behalf of the Bondholders;[3] and (d) the Residual Interest Holders are entitled to receive only current distributions representing the residual payments on the collateral. Furthermore, unless the Issuer makes a REMIC election, the Issuer, including the Trust Certificate Holders of a particular series of Bonds, will be liable for the administrative expenses in respect of such series of Bonds (other than the principal and interest on such Bonds) to the extent not previously paid from the trust estate.

13. The choice of the form of Issuer and the identity of the Residual Interest Holders will not alter the payments to be made to Bondholders, which payments are governed by the Indenture. The aggregate interests of each Insurer (including Residual Interest Holders) in the Mortgage Collateral and the expected returns earned by them will be far less than the payments made to Regular Bondholders. The Applicant does not intend to deposit, in respect to any series of Bonds, Mortgage Collateral with a collateral value that exceeds 120% of the aggregate principal amount of the related Bonds.

14. Except for the limited right to substitute Mortgage Collateral, it will not be possible for the Issuers including the Residual Interest Holders to alter the initial Mortgage Collateral, and, in no event will such right to substitute Mortgage Collateral result in a diminution in the value or quality of such collateral. Therefore, although substituted Mortgage Collateral may have a different prepayment experience than the original collateral, the interests of the Bondholders will not be impaired because: (a) The prepayment experience of any collateral will be determined by market conditions beyond the control of the Issuers and Residual Interest Holders, which market conditions are likely to affect all Mortgage Collateral or similar payment terms and maturities in a similar fashion; (b) the interest of the Residual Interest Holders will not be different from those of the Bondholders with respect to collateral prepayment experience; and (c) with respect to Trust Issuers, to the extent that the Trust Certificate Holders can cause the substitution of Mortgage Collateral which has a different prepayment experience than the original Mortgage Collateral, this situation is no different for the Bondholders than the traditional collateralized mortgage obligation structure where bonds are listed by an entity that is a single purpose finance subsidiary.

[3] The Indenture further specifically provides that no amounts may be released from the lien of the Indenture to be remitted to the Issuer (and any Residual Interest Holder) until (i) the Trustee has made the scheduled payments of principal and interest on the Bonds, (ii) the Trustee has received all fees currently owed to it, and (iii) deposits have been made to certain reserve funds. Each Issuer is obligated to collect or cause to be collected all amounts released from the lien of the Indenture by the Trustee and to pay or cause to be paid all expenses of the Trust, including its own fees. For Trust Issuers, once amounts have been released from the lien of the Indenture, each Trust Agreement provides that the Owner Trustee has a lien superior to that of the Trust Certificate Holders in and to the remaining cash flow.

Applicants' Legal Conclusions

15. The requested order is necessary and appropriate in the public interest because: (a) The Issuers should not be deemed to be entities to which the provisions of the Act were intended to be applied; (b) the Issuers' activities are intended to serve a recognized and critical public need; (c) granting the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration provisions of the Securities Act and thereafter by the Trustee representing their interests under the Indenture; and (d) any Residual Interests will be held entirely by the Applicant or offered only to a limited number of sophisticated institutional investors or accredited noninstitutional investors through private placements.

Applicants' Conditions

Applicant agrees that if an order is granted it may be expressly conditioned on the following conditions:

A. General Conditions

(1) Each series of Regular Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act or because such series of Bonds is offered and sold outside the United States or to non-United States persons in reliance upon an opinion of United States counsel that registration is not required. No single offering of Regular Bonds sold both within and outside the United States will be made without registration of all such Bonds under the 1933 Act without obtaining a noaction letter permitting such offering or otherwise complying with applicable standards then governing such offerings. In all cases, Applicant will adopt agreements and procedures reasonably designed to prevent such Bonds from being offered or sold in the United States or to United States persons (except as United States counsel may then revise is permissible). Disclosure provided to purchasers located outside the United States will be substantially the same as that provided to United

States investors in United States offerings.

(2) The Regular Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. In addition, the collateral directly securing the Bonds will be GNMA Certificates, FNMA Certificates, FHLMC Certificates, Funding Agreements (and the Agency Certificates and Mortgage Loans securing such Funding Agreements) or any combination thereof.

(3) If new Mortgage Collateral is substituted for Mortgage Collateral initially pledged as security for a series of Bonds, the substitute Mortgage Collateral must: (i) Be of equal or better quality then the Mortgage Collateral replaced; (ii) have similar payment terms and cash flow as the Mortgage Collateral replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Collateral replaced; and (iv) meet the conditions set forth in Conditions A(2) and A(4). New Funding Agreements may be substituted for initial Funding Agreements only if the substitution of the Mortgage Collateral securing such Funding Agreements would be permitted under this condition. In addition, new Mortgage Collateral will not be substituted for more than 40% of the aggregate face amount of the Mortgage Collateral initially pledged as Mortgage Collateral. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral.

(4) All Mortgage Collateral securing a series of Bonds will be held by the Trustee or on behalf of the Trustee by an independent custodian. Neither the Trustee nor the custodian will be an "affiliate" (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Applicant, any Issuer, any Owner Trustee, or any Participant. The Trustee will be provided with a first priority perfected security or lien interest in and to all Mortgage Collateral.

(5) The master servicer of the mortgage loans underlying Funding Agreements securing a series of Bonds may not be an affiliate of the Trustee or of any custodian. If there is no master servicer for the mortgage loans underlying Funding Agreements securing a series of Bonds, no servicer of those mortgage loans may be an affiliate of the Trustee. In addition, any master servicer and any servicer of a mortgage loan underlying Funding Agreements will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential mortgage loans. The agreement governing the servicing of mortgage loans underlying Funding Agreements shall obligate the servicer to provide substantially the same services with respect to such mortgage loans as it is then currently required to provide in connection with the servicing of mortgage loans insured by FHA, guaranteed by VA or eligible for purchase by FNMA or FHLMC.

(6) Each series of Regular Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with any Issuer. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the Act.

(7) So long as applicable law requires, at least annually, an independent public accountant will audit the books and records of each Issuer and, in addition, will report on whether the anticipated payments of principal and interest on the Mortgage Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Trustee.

B. Conditions Relating to Floating Rate Bonds

(1) The interest rate for each class of Floating Rate Bonds will have set maximum interest rates (interest rate caps), which may vary from period to period, but which will always be subject to an overall maximum interest rate, and the method of calculating the interest rate will always be specified in the related prospectus or other offering document; each class of Floating Rate Bonds will be secured by Mortgage Collateral to the same extent as any other class of Bonds.

(2) At the time of the acquisition of the Mortgage Collateral by the Applicant or the deposit of the Mortgage Collateral with the issuing Trust, as the case may be, as well as during the life of the Bonds, all Mortgage Collateral deposited with the Trustee and pledged to secure the Bonds, plus reinvestment income thereon, and reserve funds and other collateral, if any, pledged to secure the Bonds (as described in the Application) will be sufficient for the full and timely payment of all principal and interest on the Bonds then outstanding, assuming the maximum interest rate on each class of Floating Rate Bonds. Such Mortgage Collateral will be paid down as the mortgages comprising or underlying the Mortgage Collateral are repaid, but will not be released from the lien of the Indenture before the payment of the Bonds.[8]

[8] In the case of a Series of Bonds that contains a class or classes of Floating Rate Bonds, a number of mechanisms exist to ensure that the representations above will be valid notwithstanding subsequent potential increases in the interest rate applicable to the Floating Rate Bonds. Procedures that have been identified to date for achieving this result include the use of (i) interest rate caps for the Floating Rate Bonds; (ii) "inverse" Floating Rate Bonds (which pay a lower rate of interest as the rate increase on the corresponding "normal" Floating Rate Bonds); (iii) floating rate collateral to secure the Bonds); (iv) interest rate swap agreements [under which the issuer of the Bonds would make periodic payments to a counterparty at a fixed rate of interest based on a stated principal amount, such as the principal amount of Bonds in the floating rate class, in exchange for receiving corresponding periodic payment from the counterparty at a variable rate of interest based on the same principal amount]; (v) hedge agreements (including interest rate futures and option contracts under which the issuer of the Bonds would realize gains during periods of rising interest rates sufficient to cover the higher interest payments that would become due during such periods on the floating rate class of Bonds); and (vi) structuring the Bonds so that the weighted average interest rate on the entire Series of Bonds is equal to or less than the weighted average pass-through rate on the Mortgage Certificates securing such Series. It is expected that other mechanisms may be identified in the future. Whatever method is used for a particular Series, the collateral structure for each Series of Bonds will be reviewed independently by the agency or agencies rating the Bonds (as well as by the independent accountants for the Applicant issuing such series) in order to ensure, for the appropriate rating, that the Mortgage Collateral is sufficient to meet all scheduled payments, as stated above. In all cases, these mechanisms will be adequate to ensure the accuracy of the representations set forth above. In the event that other mechanisms to ensure the accuracy of the representations set forth above are used by the Applicant, the Applicant will notify the Securities and Exchange Commission by letter of the use of any such additional mechanisms and shall give the SEC an opportunity to comment on such mechanisms before they are used in order to give the SEC an opportunity to raise any questions as to the appropriateness of their use. No Bonds will be issued for which this is not the case.

C. Conditions Relating to REMIC Election

(1) A REMIC election by an Insurer will have no effect on the level of the expenses that would be incurred by any such Issuer. If such REMIC election is made, the Issuer making the REMIC election will provide that all administrative fees and expenses in connection with the administration of the trust estate will be paid or provided for in a manner satisfactory to the agency or agencies rating the Bonds. Each such Issuer will provide for the payment of administrative fees and expenses in connection with the issuance of the Bonds and the administration of the trust estate by one or more of the methods described in the Application (*i.e.*, guaranty of fees and expenses, reserve fund, excess collateral, and personal liability).

(2) Each Issuer will ensure that the anticipated level of fees and expenses will be adequately provided for regardless of which or all of the methods (which methods may be used in combination) are selected by such Issuer to provide for the payments of such fees and expenses.

D. Conditions Relating to the Sale of Residual Interests

(1) Residual Interests will be sold pursuant to this Application only where the related Bonds are collateralized by one or more of the following: GNMA Certificates, FNMA Certificates, FHLMC Certificates or Funding Agreements secured by one or more of the foregoing Agency Certificates. Certificates will be offered and sold only to no more than 100 (i) institutional investors or (ii) non-institutional investors which are "accredited investors" as defined in Rule 501(a) of the 1933 Act. Institutional investors will have such knowledge and experience in financial and business matters as to be able to evaluate the risks of purchasing Residual Interests and understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests therein. Non-institutional accredited investors will be limited to not more than 15, be required to purchase at a minimum $200,000 (measured by market value at the time of purchase) of such Residual Interests and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing Residual Interests and will have direct, personal and significant experience in making investments in mortgage-related securities. Holders of Residual Interests will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, real estate investment trusts or other institutions or non-institutional investors as described above which customarily engage in the purchase or origination of mortgages and other types of mortgage-related securities.

(2) Residual Interests will be sold only in transactions not involving any public offering within the meaning of Section 4(2) of the 1933 Act.

(3) Transfers of Residual Interests will be prohibited in any case where, as a result of the proposed transfer, there would be more than 100 Residual Interest Holders of any series of Bonds at any time.

(4) Each purchaser of a Residual Interest will be required to represent that it is not purchasing for distribution and that it will hold such Residual Interest in its own name or for accounts as to which it exercises some investment discretion. Each purchaser of a Residual Interest will be required to agree that it will not resell such Residual Interest unless (i) the subsequent purchaser would have been eligible to purchase the Residual Interest directly from Applicant under the terms of Conditions D(1), (ii) after the sale there would be no more than one hundred Residual Interest Holders, and (iii) the subsequent purchaser agrees to be subjected to the same representations and undertakings as are applicable to the reselling purchaser.

(5) No Residual Interest Holder may be affiliated with the Trustee, the custodian of the Mortgage Collateral or the rating agency rating the Bonds of the relevant series.

(6) No holder of a controlling interest in the Applicant (as the term "control" is defined in Rule 405 under the 1933 Act) will be affiliated with either (a) any custodian which may hold the Mortgage Collateral on behalf of the Trustee or (b) any rating agency rating the Bonds.

E. Other Conditions

(1) If the sale of the Residual Interests or an equity interest results in the transfer of control (as the term "control" is defined in Rule 405 under the 1933 Act) of a Trust Issuer, the relief afforded by any Order granted on the Application would not apply to subsequent bond offerings by that Trust Issuer. If the sale of the Residual Interests or an equity interest results in the transfer of control (as the term "control" is defined in Rule 405 under the 1933 Act) of Applicant, the relief afforded by an order granted on the Application would not apply to subsequent Bond offerings by Applicant or any of the Trusts.

(2) For those transactions in which the Applicant is the Issuer, the Applicant will only sell Bonds, including Residual Bonds sold in accordance with the "Conditions Relating to the Sale of Residual Interests" set forth above, and will not sell any equity or residual interests in the excess cash flow from the Mortgage Collateral remaining after all payments are made on the Bonds, including such Residual Bonds.

For the Commission, by the Division of Investment Management, pursuant to delegate authority.

Dated: August 9, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19157 Filed 8-15-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24837]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 10, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 5, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

EUA Cogenex Corporation (70-7865)

EUA Cogenex Corporation ("Cogenex"), P.O. Box 2333, Boston, Massachusetts 02107, a wholly owned subsidiary company of Eastern Utilities Associates ("EUA"), a registered holding company, has filed an application-declaration under sections 6(b) and 12(c) of the Act and Rules 42(a) and 50(a)(5) thereunder.

By order dated April 26, 1988 (HCAR No. 24628) ("April 1988 Order"), Cogenex was authorized to effect, from time-to-time during the period ending December 31, 1989, up to $15 million of short-term borrowings from lending institutions and up to $15 million in short-term loans and/or capital contributions from its parent, EUA. As of June 1, 1989, Cogenex had short-term borrowings of $15 million from banks, the maximum amount authorized, and $9,023,000 from EUA. As of June 1, 1989, Cogenex had received no capital contributions from EUA.

Cogenex now proposes to issue and sell, through December 31, 1989, pursuant to an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder, up to $25 million aggregate principal amount of unsecured or secured long-term notes ("Notes") and/or first mortgage bonds ("Bonds"). Cogenex further requests authorization to begin negotiating terms of the Notes and Bonds with institutional investors, or to engage a placement agent to negotiate with and place the Notes and Bonds with institutional purchasers. Cogenex may do so.

The $30 million of short-term borrowings and capital contributions authorized in the April 1988 Order, together with the $25 million of long-term Notes and Bonds now proposed, would result in an aggregate amount of $55 million in borrowings authorized through December 31, 1989.

The Notes and Bonds will mature in not less than three nor more than 30 years. The Notes may be unsecured or secured and, if secured, may be secured, as the Bonds, by a lien on substantially all or a portion of Cogenex's assets. The net proceeds of the sale of the Notes and Bonds will be applied to pay or reduce outstanding short-term borrowings from banks, to pay or reduce outstanding short-term loans from EUA, for the acquisition of tangible assets of Cogenex, and for general corporate purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19214 Filed 8-15-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17106/File No. 812-7318]

Security First Life Insurance Co., et al.

Date: August 10, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an order under the Investment Company Act of 1940 (the "Act").

Applicants: Security First Life Insurance Company ("Security First"), Security First Life Separate Account A (the "SFL Account"), The Capitol Life Insurance Company ("Capitol Life"), Capitol Life Separate Account A ("CL Account") and Security First Financial, Inc. ("First Financial").

Relevant 1940 Act Sections: Section 11.

Summary of Application: Applicants seek an order pursuant to Section 11 of the Act approving an exchange offer to be made in connection with an agreement between Security First and Capitol pursuant to which certain group variable annuity contracts issued by the CL Account will be reinsured by Security First.

Filing Dates: The Application was filed on May 11, 1989, and an amendment was filed on July 26, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 4, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20459. Applicants, c/o Routier and Johnson, P.C., 1725 K Street, NW., Suite 500, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy M. Rappa, Staff Attorney (202) 272-2622, or Clifford E. Kirsch, Acting Assistant Director (202) 272-2081 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Security First is a stock life insurance company organized under the laws of the State of Delaware. At December 31, 1988 its total consolidated assets were approximately $948.2 million and consolidated retained earnings were approximately $15.5 million. Security First is the depositor of the SFL Account.

2. The SFL Account is a separate account of Security First established as a facility for the issuance of individual and group variable annuity contracts. The SFL Account has been registered under the Act as a unit investment trust since 1982.

3. Capitol Life is a stock life insurance company organized under the laws of the state of Colorado in 1905. At December 31, 1988, Capital Life had total assets of approximately $2,297,259 and retained earnings of approximately $41,216,000. Capitol Life is the depositor of the CL Account.

4. The CL Account is a separate account of Capitol Life established on September 20, 1973 for the purpose of funding certain group deferred variable annuity contracts, including contracts issued in connection with plans qualifying under Section 457 of the Internal Revenue Code ("Code"). The CL Account is registered under the Act as a unit investment trust. The CL Account is composed of five "series" (Series M, B, G, T, and P), and the assets of each series are invested in shares of one of the following diversified, open-end management investment companies ("Funds") registered under the Act: The Money Market Series of Security First Trust, the Bond Series of Security First Trust, the Growth and Income Series of Security First Trust, T. Rowe Price Growth Stock Fund, and T. Rowe Price Prime Reserve Fund, Inc., corresponding respectively to the aforementioned series.

5. It is proposed that variable annuity contracts funded in the CL Account for employees of the State of Florida and certain other Florida county and local governmental agencies (the "Contracts") be reinsured by security First. A registration statement under the Securities Act of 1933 on Form N-4 relating to the offer to reinsure and the assumption reinsurance of the Contracts has been filed with the SEC (File No. 33-28823).

6. First Financial is the principal underwriter for the CL Account contracts. First Financial is also the principal underwriter for the SFL Account contracts.

7. Security First and Capitol Life have entered into an agreement pursuant to which the Contracts issued by the CL Account will be reinsured by Security First. On the effective date of the agreement, all Fund shares and other assets held by Capitol Life in the CL Account attributable to the Contracts will be transferred to Security First and will be allocated to the SFL Account. Thereafter, Security First will be responsible for all obligations, including pre-existing claims, under the Contracts, and the state of Florida and the other Florida county and local governmental agencies will look solely to Security First for the performance of such obligations. The CL Account will continue to fund group variable annuity contracts including those issued in connection with plans qualifying under sections 401, 403(b), 408, and 457 of the Code. Only the Florida Section 457 contracts from the CL Account will be reinsured by Security First.

8. In effect, the only change resulting from the assumption reinsurance of the Contracts is a change in the insurance company responsible for the performance of contractual obligations. Security First has substantial assets and retained earnings to assure the performance of its obligations under the Contracts.

9. The application states that the only reason the Applicants may not rely on Rule 11a-2 under the Act is because that rule requires that an exchange be made by separate accounts having the same or affiliated insurance company depositors or sponsors. Security First and Capitol are not affiliated insurance companies; therefore, Rule 11a-2 is unavailable for the exchange offer associated with their reinsurance proposal. However, Applicants represent that the terms of their exchange offer meet all other conditions of Rule 11a-2, including the conditions concerning administrative fees and sales loads.

10. The agreement as to each of the Contracts will not become effective without the approval of the assumption reinsurance proposal by the State of Florida and each of the Florida county or local governmental agenices. In connection with the reinsurance proposal, each of the Contract owners (the State of Florida and certain of its county governments) have been given the right to choose whether they will accept the transfer to Security First, or remain with Capitol in accordance with its existing agreement.

11. No change in any terms of the Contracts, including the charges provided for thereunder, will be made by Security First in connection with its reinsurance of the Contracts. No charges, including sales or administrative charges, will be imposed upon the transfer of the Contracts to Security First. The aggregate value of accumulation units credited to an individual's account will not be changed as a result of the Contracts' reinsurance by Security First. In view of the fact that Fund shares held by the CL Account will be transferred to Security First and the SFL Account on the date the assumption reinsurance is effective, no interruption of investment performance is anticipated.

12. No charge, including sales or administrative charges, will be assessed by Security First or any other person in connection with the assumption reinsurance of the Contracts. The costs and expenses Security First incurs in connection with the assumption reinsurance transaction will be borne by its general account and will not affect the interests of Contract owners or participants.

13. The application states that because each Contract owner will not have to accept Security First's assumption of its Contract, in that it will be given the right to remain with Capitol, the proposed assumption reinsurance arrangement may be deemed to be an offer of exchange of Contracts issued by the SFL Account for Contracts issued by the CL Account to which Section 11 is applicable.

14. No charge will be imposed in connection with the assumption reinsurance, and none of the terms of the Contracts will change upon their being reinsured. The Contract owner will have the same opportunity as it currently has to invest in the same underlying Funds, and no interruption in its investment in such Funds is anticipated. In addition, the Account value at the time of the reinsurance of the contracts will be the same value that would have existed if the reinsurance has not taken place.

15. The application states that, for the above-stated reasons, the offer of exchange involved in the proposed assumption reinsurance arrangement should be approved under Section 11 of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19209 Filed 8-15-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17105/File No. 812-7319]

Security First Life Insurance Co., et al.

Date: August 10, 1989.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for amended order under the Investment Company Act of 1940 ("1940 Act").

Applicants: Security First Life Insurance Company ("Security First"), Security First Life Separate Account A (the "SFL Account") and Security First Financial, Inc. ("First Financial").

Relevant 1940 Act Sections: Exemptions requested pursuant to section 6(c) of the 1940 Act from sections 26(a)(2)(C) and 27(c)(2) thereof.

Summary of Application: Applicants seek an amended order to permit the deduction of mortality and expense risk charges in connection with the issuance of certain group annuity contracts issued by the Capitol Life Insurance Company and proposed to be reinsured by Security First Life Insurance Company.

Filing Dates: The Application was filed on May 11, 1989 and amended on July 19, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 4, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Routier and Johnson, P.C., 1725 K Street, NW., Suite 500, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Nancy M. Rappa, (202) 272-2622, or Acting Assistant Director Clifford E. Kirsch, (202) 272-2081 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. By prior application, Applicants sought an order pursuant to section 6(c) of the Act for exemptions from the provisions of sections 26(a)(2)(C) and 27(c)(2) to allow Security First to deduct from the SFL Account the mortality and expense risk charge equal to .89% on an annual basis imposed under certain group annuity contracts. On May 28, 1982, the Commission issued an Order granting the requested relief (Investment Company Act Release No. 12450). By Order dated December 4, 1986 (Investment Company Act Release No. 15453), the Order issued in 1982 was amended to raise the mortality and expense risk charge to 1.25% on an annual basis and to include certain individual payment deferred annuity contracts in the relief previously granted pursuant to sections 26(a)(2)(C) and 27(c)(2).

2. The purpose of the application is to amend the most recent amended Order of December 4, 1986 to include additional group flexible payment

annuity contracts ("Contracts") in the exemptions from section 26(a)(2)(C) and 27(c)(2) previously granted. The Contracts are group flexible payment deferred annuity contracts which are identical in terms to variable annuity contracts issued by Capitol Life Separate Account A and The Capitol Life Insurance Company ("Capitol Life"). The variable annuity contracts issued by the Capitol Life Separate Account A are the subject of an exemptive order pursuant to Section 6(c) issued on August 28, 1981 (Investment Company Act Release No. 11923) granting exemptions from sections 26(a)(2)(C) and 27(c)(2) of the Act to allow the imposition of the mortality and expense risk charge of .85% on an annual basis imposed under the Capitol Life contracts. Certain Capitol Life contracts are proposed to be reinsured by Security First Life pursuant to a registration statement filed on Form N-4 under the Securities Act of 1933 ("1933 Act") (File No. 33-28823). All terms of the Capitol Life Contracts will remain the same, including the level of the mortality and expense risk charge.

3. Security First is a stock life insurance company organized under the laws of the state of Delaware.

4. The SFL Account, a separate account of Security First, issues certain group variable annuity contracts. The Separate Account is registered under the Act as a unit investment trust.

5. The SFL Account consists of five Series: Series M, B, G, T and P, which respectively invest solely in the shares of the Money Market Series of Security First Trust, the Bond Series of Security First Trust, the Growth and Income Series of Security First Trust, T. Rowe Price Growth Stock Fund, Inc. and T. Rowe Price Prime Reserve Fund, Inc. ("Funds"). Each of the funds is an open-end diversified management investment company registered under the Act.

6. The Contracts are designed for issuance to plans qualifying for special tax treatment under sections 401, 408 and 403(b) of the Internal Revenue Code ("Code") or section 457 deferred compensation plans. Purchase payments under the Contracts are made to the general account of Security First, and then transferred to the SFL Account. The minimum monthly purchase payment is $20, with an annual minimum premium of $240. Certain charges and deductions will be made to the Contract value.

7. No deduction for sales charges will be made from purchase payments received under the Contracts; however, a sales charge may be imposed upon transfers to the Separate Account. If elected by the participant, a portion of the resulting general account values may be transferred to the Separate Account to provide variable annuity benefits. Each transfer of amounts from the general account to the Separate Account is treated as a surrender from the general account, and as such is subject to the following charge (which may be deemed a sales charge):

7% on payments surrendered in calendar year of payment.
6% on payments surrendered in calendar year following the payment.
5% on payments surrendered in 2nd calendar year following the payment.
4% on payments surrendered in 3rd calendar year following the payment.
3% on payments surrendered in 4th calendar year following the payments.
0% on payments surrendered in 5th and subsequent years following year of payment.

If the sales charge imposed upon surrenders from the general account is insufficient to cover the costs of distributing the Contracts, the deficiency will be met from Security First Life's general account, which may include amounts derived from the mortality and expense risk charge. If a participant elects to apply his general account and Separate Account values to provide either fixed or variable annuity payments under any available annuity option, Security First will recompute the general account value of his interest in the Contract to restore any sales charge imposed upon transfers to the Separate Account (including interest that would have accumulated at rates that are used to determine the general account annuity values, but excluding any premium taxes that may have been deducted) imposed on the amounts previously transferred from the general account to the Separate Account.

8. Subject to restrictions that may be imposed by the Code, a participant may make partial or complete surrenders from the general account or the SFL Account Series cash values. Surrenders from the general account will be subject to the sales charge discussed above, as well as the $10 fixed surrender charge.

9. At the end of each Contract or certificate year, or on the date that an individual's account is cancelled as a result of a complete redemption (should such redemption occur prior to the end of such year), Security First has the right to deduct an administrative charge equal to $27.50, plus $2.50 for each Series for which there are accumulation units included in the value of that individual's account. Thus, the annual administrative charge will range from a minimum of $30.00 to a maximum of $40.00. The administrative charge is designed to cover the actual costs of administering the Contracts.

10. In addition, a daily deduction not to exceed .002465% (equivalent to .85% annually) is assessed against the deducted from the assets of each Separate Account Series. This deduction is Security First's fee for providing a minimum death benefit and accepting the mortality and expense risks under the Contracts. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on Security First. Conversely, if the charge is more than sufficient to cover costs, any excess will be a profit to Security First.

11. Applicants represent that the mortality risk is assumed by virtue of annuity rates contained in the Contracts; the annuity rates cannot be changed after issuance of the certificates. If the mortality risk charge or the administrative charge plus the expense risk charge is insufficient to cover actual costs, Security First Life will bear the loss. To the extent that the charges exceed actual costs, Security First Life, at its discretion, may use the excess to offset losses when the charges are insufficient to cover expenses.

12. Applicants assert that the mortality and expense risk charge of .85% is reasonable in relation to the risks assumed by Security First Life under the Contracts, is consistent with the protection of investors insofar as it is designed to be competitive while not exposing Security First to undue risk of loss, and falls within the range of similar charges imposed under competitive variable annuity products. Applicants represent that the mortality and expense risk charge is reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants state that this representation is based on their analysis of publicly available information about similar industry practices, taking into consideration such factors as current charge levels and the existence of expense charge guarantees and guaranteed annuity rates. Applicants further represent that Security First will maintain at its home office a memorandum, available to the Commission, setting forth in detail the products analyzed in the course of, and the methodology and results of, Security First's comparative survey.

13. Applicants acknowledge that any profit realized from the mortality and expense risk charge may be viewed by the Commission as being offset by distribution expenses not reimbursed by the sales charge. Security First has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Separate Account and the Contractowners. The basis for such conclusion is set forth in a memorandum which will be maintained by Security First at its administrative offices and will be made available to the Commission.

14. Security First also represents that the Separate Account will only invest in management investment companies that undertake, in the event such company adopts a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve such plan under Rule 12b-1.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-19210 Filed 8-15-89; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

(Declaration of Disaster Loan Areas #2372 and #2374)

New Jersey; Declaration of Disaster Loan Area; (And Contiguous Counties in the State of Pennsylvania)

Burlington County and the contiguous counties of Camden, Atlantic, Ocean, Monmouth and Mercer in the State of New Jersey and the contiguous counties of Bucks and Philadelphia in the State of Pennsylvania, constitute a disaster area as a result of damages from severe rain storms and flooding which occurred on July 5th and 6th, 1989. Applications for loans for physical damage may be filed until close of business on October 9, 1989, and for economic injury until the close of business on May 8, 1990, at the following address: Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, NJ 07410, or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Businesses and non-profit organizations (EDL) without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.125

The numbers assigned to this disaster are 237308 for physical damage and 661800 for economic injury for the State of New Jersey, and 237406 and 661900 for the State of Pennsylvania.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: August 8, 1989.

Susan Engeleiter,
Administrator.

[FR Doc. 89-19184 Filed 8-15-89; 8:45 am]
BILLING CODE 8025-01-M

LRF Capital L.P.; Filing of an Application for a License to Operate as a Small Business Investment Co.

[Application No. 01/01-0247]

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) by LRF Capital, L.P., 189 Wells Avenue, Newton, Massachusetts 02159, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. *et. seq.*), and the Rules and Regulations promulgated thereunder.

The formation and licensing of a limited partnership SBIC is subject to the provisions of § 107.4 of the Regulations.

The initial investors and their percent of ownership of the Applicant are as follows:

	Direct percent of ownership
General partner:	
LRF Capital Corp., 189 Wells Avenue, Newton, Massachusetts 02159	10.0
Limited partners:	
LRF Investments, Inc., 189 Wells Avenue, Newton, Massachusetts 02159	60.0
JJJ Investment Company, 189 Wells Avenue, Newton, Massachusetts 02159	30.0

LRF Capital, L.P. will be managed by LRF Investments, Inc. The officers and directors of LRF Investments are:

Name	Percentage of ownership
Joseph M. Linsey, 189 Wells Avenue, Newton, Massachusetts 02159	37.5
Alfred S. Ross, 189 Wells Avenue, Newton, Massachusetts 02159	37.5
Joseph J. Freeman, 189 Wells Avenue, Newton, Massachusetts 02159	25.0

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Newton, Massachusetts.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies.)

Date: August 9, 1989.

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

[FR Doc. 89-19185 Filed 8-15-89; 8:45 am]
BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-68]

Request for Comments on Determination Under Section 304 of the Trade Act of 1974, as Amended, Relating to Argentina's Policies and Practices With Respect To Providing Adequate and Effective Intellectual Property Rights Protection for Pharmaceuticals

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for written comments on determinations under section 304 of the Trade Act of 1974 (the "Trade Act"), as amended, 19 U.S.C. 2414.

EFFECTIVE DATE: August 14, 1989.

SUMMARY: Pursuant to section 304(a)(2) of the Trade Act, 19 U.S.C. 2414, as amended by section 1301 of the Omnibus Trade and Competitiveness

Act of 1988, the United States Trade Representative ("USTR") is required to determine on or before September 23, 1989, whether the Argentina practices at issue are unreasonable and burden or restrict U.S. commerce, within the meaning of section 301(a)(1)(B)(ii) or 301(b)(1), 19 U.S.C. 2411(a)(1)(B)(ii) and 19 U.S.C. 2411(b)(1), respectively. The Trade Representative is also considering appropriate action (subject to the specific direction, if any, of the President) in response to Argentina's practices. The USTR welcomes written comments regarding such determinations with respect to the subject Argentine government practices.

DATES: Written comments from interested persons are due by noon on September 12, 1989, at the Office of the U.S. Trade Representative, Executive Office of the President, Room 223, 600 17th Street, NW., Washington, DC 20506.

ADDRESS: Comments should be addressed to the Chairman, Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th St., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Jon Huenemann, Director of Brazil and Southern Cone Affairs, Office of the United States Trade Representative, at (202) 395–5190, or Catherine Field, Associate General Counsel, Office of the United States Trade Representative, at (202) 395–3432.

SUPPLEMENTARY INFORMATION: On August 10, 1988, the Pharmaceutical Manufacturers Association (PMA) filed a petition under section 302 of the Trade Act of 1974, as amended, requesting USTR to initiate an investigation of Argentina's acts, policies and practices related to the denial of product patent protection for pharmaceuticals and pharmaceutical product registration practices which PMA believes are unreasonable and burden or restrict U.S. commerce.

In addition to the complaint concerning Argentina's denial of the product patent protection for pharmaceuticals, PMA's petition complains about the following matters: (1) A provision in the Argentina patent law providing that patents lapse, i.e. protection ends, if the invention is not worked in Argentina within two years after grant of the patent; (2) lack of injunctive relief for patent infringement and inadequate monetary fines; (3) failure to shift the burden of proof that a particular process does not infringe a process patent; and (4) a combination of regulations on pharmaceutical registration that allegedly discriminate against U.S. firms that invent pharmaceuticals and permit copiers to enter the market before the inventor in some cases and market pharmaceuticals at prices that do not reflect the cost of developing and marketing the pharmaceutical.

On September 23, 1988, the U.S. Trade Representative initiated an investigation of the Argentina government's policies and practices related to providing adequate and effective intellectual property protection for pharmaceuticals. USTR requested consultations with the Government of Argentina as required by section 303(a) of the Omnibus Trade and Competitiveness Act of 1988. Bilateral consultations were held with Argentina during the course of the investigation. Pursuant to 19 U.S.C. 2414, as amended by section 1301 of the Omnibus Trade and Competitiveness Act of 1988, the USTR is required to determine whether such practices of the Government of Argentina are unreasonable and burden or restrict U.S. commerce. The USTR is also considering appropriate action (subject to the specific direction, if any, of the President) in response to Argentina's practices.

Public Comment

The public is invited to comment on: (1) Whether the Argentina policies and practices at issue are actionable under section 301; (2) the burden or restriction on U.S. commerce caused by Argentina's practices; and (3) appropriate action to be taken in response to Argentina's practices. The comments submitted will be considered in determining actionability under section 301 and in recommending any action under section 301 to the USTR. All written submissions must be filed in accordance with 15 CFR Part 2006.8. Submissions are to be submitted in twenty (20) copies, in English, by noon on September 12, 1989 to Chairman, Section 301 Committee, Office of the U.S. Trade Representative, Room 223, 600 17th Street, NW., Washington, DC 20506.

Joshua B. Bolten,

General Counsel.

[FR Doc. 89–19373 Filed 8–15–89; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Milwaukee and Waukesha Counties, Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Milwaukee and Waukesha Counties, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Lawton, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905. Telephone (608) 264–5967.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve the highway and street network in the northwestern portion of Milwaukee County. Specifically, improvements are being considered for the Zoo Freeway (USH 45) from Lilly Road to Florist Avenue, the Fond du Lac Freeway (STH 145) from Lilly Road to North 99th Street, West Good Hope Road from Lilly Road to North 99th Street, North 107th Street from Appleton Avenue to Greenwood Terrace, Bradley Road from 91st Street through 124th Street to Leon Road, North 124th Street from West Good Hope Road to West Brown Deer Road, the proposed Metro Centre and Park Place Roads, relocated 114th Street from Mill Road to Metro Centre, and relocated 115th Street from Appleton Avenue to 124th Street at Fond du Lac Avenue.

The proposed action is considered necessary to provide for existing and future projected traffic demand. Alternatives under consideration include: (1) Taking no action; (2) widening the existing two-lane roads to four-lane divided sections (with and without parking); (3) widening the existing two-lane roads to four-lane undivided sections (with and without parking). Alternatives 2 and 3 also include access to the proposed Metro Centre development and improvements to the existing highway access ramps. Design variations of grade and alinement will be incorporated into and studied with the various build alternatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. A series of public meetings will be held in Milwaukee County during 1989 and 1990. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting is not planned at this time.

To ensure that a full range of issues related to this proposed action are addressed, and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 7, 1989.

Frank M. Mayer,

Division Administrator Madison, Wisconsin.

[FR Doc. 89–19127 Filed 8–15–89; 8:45 am]

BILLING CODE 4910–22–M

Research and Special Programs Administration

Meetings of Pipeline Safety Advisory Committees

In the Federal Register issue of Thursday, July 27, 1989, page 31279, notice was published of upcoming meetings of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee. The schedules and agendas for the meetings given in that notice have been revised. The present notice sets forth the revised schedules and agendas. Each meeting will be in Room 4234–4236, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

On September 12, 1989, at 9:00 a.m., the Technical Pipeline Safety Standards Committee will meet to discuss and vote on the technical feasibility, reasonableness, and practicability of proposed rules regarding:

- Determining the Extent of Corrosion on Gas Pipelines (54 FR 27091, June 27, 1989)
- Gas Gathering Line Definition
- Pipeline Inventory
- Gas Detection and Monitoring in Compressor Station Buildings.

In addition, the committee will informally discuss an Advance Notice of Proposed Rulemaking regarding transportation of hydrogen sulfide by gas pipelines (54 FR 24361, June 7, 1989), and studies in progress regarding the use of internal inspection and flow restriction devices (54 FR 20945 and 20948, May 15, 1989).

On September 13, 1989, at 9:00 a.m., the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee will meet jointly. The joint meeting will adjourn at noon. The Administrator of the Research and Special Programs Administration will lead a general discussion of the following topics and of suggestions from committee members to enhance the pipeline safety program:

- Roles of pipeline advisory committees
- Electric resistance weld report
- Regulatory issues regarding customer-owned gas service lines, terminal tanks, and hazardous liquid pipelines operating at 20 percent or less of the specified minimum yield strength
- H.R. 2417 and H.R. 2430
- Hydrostatic testing certain hazardous liquid pipelines.

On September 14, 1989, at 9:00 a.m., the Technical Hazardous Liquid Pipeline Safety Standards Committee will meet to discuss and vote on the technical feasibility, reasonableness, and practicability of proposed rules regarding:

- Transportation of Carbon Dioxide by Pipeline
- Operation and Maintenance Procedures for Pipelines
- Pipeline Inventory.

In addition, the committee will informally discuss studies in progress regarding the use of internal inspection and flow restriction devices (54 FR 20945 and 20948, May 15, 1989).

Each meeeting will be open to the public, but attendance will be limited to the space available. With approval of the Executive Director of the Committees, members of the public may present oral statements on the subjects. Due to the limited time available, each person who wants to make an oral statement must notify Linda Craver, Room 8417, Nassif Building, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366–1640, not later than September 8, 1989, of the topics to be addressed and the time requested to address each topic. The presiding officer may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the committees before or after any meeting.

(Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463)).

Dated: August 11, 1989.

Cesar De Leon,

Executive Director of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee.

[FR Doc. 89–19196 Filed 8–15–89; 8:45 am]

BILLING CODE 4910–60–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 157
Wednesday, August 16, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 9:30 a.m., Monday, August 21, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Consideration of request by Citicorp, New York, New York, for relief from conditions imposed on tandem operations between Citicorp's savings association subsidiaries and its other subsidiaries. (Proposed earlier for public comment; Docket No. R-0663)

Discussion Agenda

2. Consideration of issues under the Primary Dealers Act of 1988. (Proposed earlier for public comment; Docket No. R-0658)
3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: August 14, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-19338 Filed 8-14-89; 11:03 am]
BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Monday, August 21, 1989, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of computer equipment within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 14, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-19339 Filed 8-14-89; 11:03 am]
BILLING CODE 6210-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., August 21, 1989.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of last meeting.
2. Thrift Savings Plan activities report by the Executive Director.
3. Quarterly review of investment performance.
4. Review of loan subsystem audit report.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523-5660.

Dated: August 14, 1989.

Francis X. Cavanaugh,
Executive Director Federal Retirement Thrift Investment Board.

[FR Doc. 89-19300 Filed 8-14-89; 10:37 am]
BILLING CODE 6760-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

USITC SE-89-28

TIME AND DATE: Thursday, August 24, 1989 at 11:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratification
4. Petitions and Complaints
5. Inv. No. 731-TA-424 (F) (Martial Arts Uniforms from Taiwan)—briefing and vote.
6. Inv. No. 701-TA-297 (F) and 731-TA-422 (F) (New Steel Rails from Canada)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: August 9, 1989.

Kenneth R. Mason,
Secretary.

[FR Doc. 89-19297 Filed 8-14-89; 10:34 a.m.]
BILLING CODE 7020-02-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

USITC SE-89-29

TIME AND DATE: Monday, August 28, 1989 at 11:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Inv. 701-TA-298 (F) (Fresh, Chilled, or Frozen Pork from Canada)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: August 10, 1989.

Kenneth R. Mason,
Secretary.

[FR Doc. 89-19298 Filed 8-14-89; 10:34 a.m.]
BILLING CODE 7020-02-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

USITC SE-89-30

TIME AND DATE: Wednesday, August 30, 1989 at 3:00 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratification
4. Petitions and Complaints
5. Inv. No. 701-TA-300 (P) and 731-TA-438 (P) (Limousines from Canada)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: August 10, 1989.

Kenneth R. Mason,
Secretary.

[FR Doc. 89-19299 Filed 8-14-89; 10:34 a.m.]
BILLING CODE 7020-02-M

RESOLUTION TRUST CORPORATION

Agency Meeting

[0003-RTC]

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:12 p.m. on Wednesday, August 9, 1989, the Board of Directors of the Resolution Trust Corporation met in closed session to consider: (1) Delegations of authority with respect to RTC matters; (2) matters relating to the resolution of certain depository institutions placed in conversatorship under the joint regulatory oversight program; and (3) matters regarding RTC's supervisory activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director M. Danny Wall (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that RTC business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: August 10, 1989.

Resolution Trust Corporation.

Robert E. Feldman,
Acting Executive Secretary.

[FR Doc. 89-19396 Filed 8-14-89; 3:24 p.m.]
BILLING CODE 6714-01-M

RESOLUTION TRUST CORPORATION

[0002-RTC]

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that its organizational meeting held at 2:01 p.m. on Wednesday, August 9, 1989, the Board of Directors of the Resolution Trust Corporation ("RTC") met in open session to consider the following matters:

Bylaws and a corporate seal for the RTC.
Resolutions with respect to the following:

a. Establishing the organizational structure of the RTC.

b. Directing the negotiation of the procedures pursuant to which the RTC will reimburse the Federal Deposit Insurance Corporation ("FDIC") for the FDIC's costs and expenses in managing the RTC.

c. Authorizing the establishment of an account with the Federal Reserve Bank of New York for the purpose of transacting the business of the RTC.

d. Adopting, the RTC employees, pending the adoption of final regulations implementing section 21A(p) of the Federal Home Loan Bank Act, as added by section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the ethical standards of conduct prescribed by Part 336 of Title 12 of the Code of Federal Regulations for employees of the FDIC.

At that same meeting, the Board also recognized officers of the RTC assigned by the FDIC as exclusive manager and designated C.C. Hope, Jr., as the RTC's Board's liaison with the RTC Oversight Board.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director M. Danny Wall (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that RTC business required its consideration of the matters on less than seven days' notice to the public and that no earlier notice of the meeting was practicable.

The meeting was held in the Amphitheater of the RTC Building located at 801 17th Street, NW., Washington, DC.

Dated: August 10, 1989.

Resolution Trust Corporation.

Robert E. Feldman,
Acting Executive Secretary.

[FR Doc. 89-19399 Filed 8-14-89; 3:24 p m.]
BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 54, No. 157
Wednesday, August 16, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Ivermectin Tablets and Chewable Cubes

Correction

In rule document 89-18310 beginning on page 32336 in the issue of Monday, August 7, 1989, make the following correction:

On page 32337, in the first column, the **EFFECTIVE DATE** should read "August 7, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Division

29 CFR Parts 524, 525, and 529

RIN 1215-AA34

Employment of Workers With Disabilities Under Special Certificates

Correction

In rule document 89-18668 beginning on page 32920 in the issue of Thursday, August 10, 1989, make the following corrections:

1. On page 32920, in the first column, under **SUMMARY**, in the second complete paragraph, in the ninth line, "support" should read "supportive".

2. On the same page, in the third column, in the first complete paragraph, in the last line, "provisions" was misspelled.

3. On page 32922, in the first column, in the seventh line from the bottom, 'personnal" should read "personal".

4. On the same page, in the 3rd column, under *Section 525.6 Compensable Time*, in the 2nd complete paragraph, in the 15th line, "education" was misspelled; and in the 16th line, "The" should read "These".

5. On page 32923, in the first column, the heading "*Section 525.7 Application for Certification*" should read "*Section 525.7 Application for Certificates*".

6. On page 32926, in the second column, under *Section 525.20 Relation to Other Laws*, in the second complete paragraph, in the second line, "adopted" should read "adopt".

7. On the same page, in the third column, in the third complete paragraph, in the sixth line, "state" should read "states".

BILLING CODE 1505-01-D

federal register

Wednesday
August 16, 1989

Part II

Department of Education

Grants to Institutions To Encourage Minority Participation in Graduate Education Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.203]

Grants to Institutions To Encourage Minority Participation in Graduate Education Program; Notice Inviting Applications for New Awards for Fiscal Year 1990

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program, and the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this competition.

Currently funded grantees are eligible to apply for new awards under this competition.

Purpose of Program: To provide grants to enable institutions of higher education to make available fellowship aid to talented undergraduate students who demonstrate financial need and are from minority groups that are traditionally underrepresented in graduate education in order to provide those students with effective preparation for graduate study.

Deadline for Transmittal of Applications: October 9, 1989.

Deadline for Intergovernmental Review: December 8, 1989.

Available Funds: $3,594,000.

Estimated Range of Awards: $29,150–$120,000.

Estimated Average Size of Awards: $79,866.

Estimated Number of Awards: 45.

Note: The Department is not bound by any estimates in this notice.

Project Period: 6 weeks to 1 Year.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), and Part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)).

Description of Program: The Grants to Institutions to Encourage Minority Participation in Graduate Education Program is authorized by Part A of Title IX of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986 (20 U.S.C. 1134–1134b). Grants under this program are designed to enable institutions of higher education to identify, recruit, and make available fellowship aid to talented undergraduate students who demonstrate financial need and are from minority groups which are traditionally underrepresented in graduate education; in order to provide those students with an opportunity to participate in a program of research and scholarly activities designed to provide them with effective preparation for graduate study. The program of study must consist of summer research internships augmented by seminars and other educational experiences. All funds received under this program must be used for direct fellowship aid. Fellowships should provide an opportunity for fellows to spend from six to ten weeks during the summer on a grantee's campus participating in research and scholarly activities in an environment that is encountered in graduate and professional programs.

Note: For guidance purposes only, the Secretary suggests that applicants consider "minority" to mean American Indian, Alaskan Native, Black (not of Hispanic origin), Hispanic (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), Pacific Islander, or other ethnic groups, that have traditionally been underrepresented in graduate education.

Eligibility: (a) An institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, as amended (HEA), is eligible to apply for a grant to conduct a fellowship program.

(b) An individual is eligible to apply for a fellowship if the individual—

(1) Is a talented undergraduate student;

(2) Demonstrates financial need;

(3) Is from a minority group that has traditionally been underrepresented in graduate education; and

(4)(i) Is a citizen or national of the United States;

(ii) Is a permanent resident of the United States;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than temporary purposes with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Republic of Palau or the Commonwealth of the Northern Mariana Islands.

(c) The institution of higher education is responsible for making accurate determinations concerning the criteria in paragraph (b) of this section of the notice.

(d) Additional eligibility requirements may be established by the institution of higher education.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of Part A of Title IX of the HEA, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of Part A of Title IX of the HEA.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in Part A of Title IX of the HEA, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (28 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

Note: The Part A of Title IX of the HEA requires that fellowship awards be made to talented students from minority groups traditionally underrepresented in graduate education.

(4) *Quality of key personnel.* (7 points) (i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director [if one is to be used];

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.

(7) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Note: The Part A of Title IX of the HEA provides that all funds received under this program be used for direct fellowship aid.

(c) *Additional considerations required by the statute.* (1) In making awards under this program, the Secretary shall consider the quality of an applicant's plan for recruiting students, and the quality of the program of study and of the research in which the students will be involved.

(2) The Secretary will ensure an equitable geographic distribution among public and private institutions of higher education.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.203, Washington, DC 20202–4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC, time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.203, Room 2021, Regional Office Building #3, 7th and D Streets SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424) (Rev. 4–88) and instructions.

Part II: Budget Information Form and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS-009) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS-009) and instructions.

Note: ED Form GCS-009 is intended for the use of grantees and should not be transmitted to the Department.

Certification Regarding Drug-Free Workplace Requirements: Grantees Other than Individuals (ED 80–0004).

Certification Regarding Drug-Free Workplace Requirements: Grantees who Are Individuals (ED 80–0005).

An applicant may submit information on a photostatic copy of the application and budget form, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

Please limit the Application Narrative to no more than 25 double-spaced, typed pages or less (on one side only).

FOR FURTHER INFORMATION CONTACT: Mr. Walter T. Lewis, Program Manager, or Mrs. Barbara J. Harvey, U.S. Department of Education, Division of Higher Education Incentive Programs, Mail Stop 5338, 400 Maryland Avenue, SW., Room 3022, ROB–3, Washington, DC 20202–5251. Telephone: (202) 732–4393 or 732–4863, respectively.

Program Authority: 20 U.S.C. 1134–1134b.

Dated: August 8, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

Appendix

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the purpose of the program, description of the program and the Selection Criteria the Secretary uses to evaluate applications. Applicants should address the selection criteria in the order the criteria are listed in this application notice.

The narrative should encompass each function or activity for which funds are being requested.

BEST COPY AVAILABLE

1. Begin with a one-page Abstract; that is, a summary of the proposed project.

2. Include information regarding (a) the program of study to take the form of summer research internships, seminars, and other educational experiences; (b) the institution's plan for identifying and recruiting talented minority undergraduates; (c) the participation of faculty in the program and a detailed description of the research in which the students will be involved; and (d) a plan for the evaluation of the effectiveness of the program.

3. Application should include a description of the financial need analysis system or method to be used in determining the level of each fellow's financial need-based stipends, room and board costs, transportation costs, and tuition for courses for which credit is given.

4. Applications should include information regarding the number of students you propose to recruit to participate in the program from each minority group that is "traditionally underrepresented" in graduate education.

5. Include any other pertinent information that might assist the Secretary in reviewing the application.

Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average four hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1840–0603, Washington, DC 20503.

(Information collection approved under OMB control number 1840–0603. Expiration date: March, 1990)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

FORM APPROVED: 5/89
OMB NO.: 1840-0603
EXPIRATION DATE: 3/90

PART II
BUDGET INFORMATION

GRANTS TO INSTITUTIONS TO ENCOURAGE MINORITY PARTICIPATION IN GRADUATE EDUCATION PROGRAM

AWARDS MADE TO INSTITUTIONS UNDER THIS PROGRAM MUST BE USED EXCLUSIVELY TO PROVIDE DIRECT FELLOWSHIP AID. INCLUDE BELOW THE BREAKDOWN OF FEDERAL FUNDS REQUESTED FOR STUDENT EXPENSES:

	TOTAL COSTS
STUDENTS COST:*	
A. ROOM AND BOARD	
B. TRANSPORTATION	
C. TUITION	
D. OTHER APPLICABLE EXPENSES	
TOTAL FEDERAL REQUEST	
TOTAL NUMBER OF FELLOWSHIPS REQUESTED	
NUMBER OF WEEKS OF SEMINAR/INSTITUTE	

LIST ACADEMIC AREA or AREAS:
BEGINNING AND END DATES OF STUDENTS' FELLOWSHIP ACTIVITIES
INSTRUCTION:

* CALCULATE EACH STUDENT'S NEED-BASED STIPEND FOR APPLICABLE EXPENSES, INCLUDING ROOM AND BOARD, TRANSPORTATION AND TUITION FOR COURSES FOR WHICH CREDIT IS GIVEN, FOLLOWING THE PROCEDURES USED BY THE APPLICANT'S STUDENT FINANCIAL AID OFFICE. THE STUDENTS' NEED SHOULD BE CALCULATED PURSUANT TO PART F OF TITLE IV OF THE HIGHER EDUCATION ACT OF 1965, AS AMENDED.

INDICATE WITHIN THE TOTAL COST OF THE STUDENTS COST THE AMOUNTS CHARGED FOR EACH OF THE SPECIFIC CATEGORIES LISTED ABOVE.

B. TRANSPORTATION COSTS MAY INCLUDE THE COST OF ONE ROUND-TRIP FROM THE STUDENT'S RESIDENCE TO CAMPUS AND RETURN, IF APPLICABLE, AND OTHER TRAVEL REQUIRED AS PART OF THE PROGRAM OF STUDY.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name | PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature | Date

ED Form GCS-008, (REV.12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

ED Form GCS-008, (REV. 12/88)

Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name	PR/Award Number or Project Name
Name and Title of Authorized Representative	
Signature	Date

ED Form GCS-009, (REV. 12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

ED Form GCS-009, (REV. 12/88)

Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name _____ PR/Award Number or Project Name _____

Name and Title of Authorized Representative _____

Signature _____ Date _____

ED 80-0004

Certification Regarding Drug-Free Workplace Requirements
Grantees Who Are Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that their conduct of grant activity will be drug-free. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

Organization Name (As Appropriate) _____ PR/Award Number or Project Name _____

Printed Name _____

Signature _____ Date _____

ED 80-0005

[FR Doc. 89-18924 Filed 8-15-89; 8:45 am]
BILLING CODE 4000-01-C

federal register

Wednesday
August 16, 1989

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Personal Protective Equipment for General Industry; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-060]

RIN 1218-AA71

Personal Protective Equipment for General Industry

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to revise portions of the general industry safety standards addressing personal protective equipment. The standards proposed for revision regulate the design, selection, and use of personal protective equipment (eye, face, head and foot protection).

The existing personal protective equipment (PPE) standards (29 CFR part 1910) apply to all general industry places of employment. Many of these standards are design restrictive, and/or outdated, and must be supplemented by administrative action to permit the use of more recently developed PPE which provide equivalent or better protection. In addition, the existing standards do not always provide clear requirements for the selection and use of PPE.

OSHA would delete, where appropriate, existing specification provisions and use performance-oriented provisions to address hazards to the eyes, face, head and foot. The Agency would also update the general industry PPE standards, where appropriate, to provide clearer requirements and guidance for the selection and use of PPE. The proposal would also add non-mandatory appendices A and B to this subpart to address PPE for eye, face, head, and foot hazards.

DATES: Comments on this proposed rulemaking and requests for a hearing must be postmarked by October 16, 1989.

ADDRESS: Written comments and requests for hearing should be sent to the Docket Officer, Docket No. S-060, U.S. Department of Labor, Room N-2634, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Division of Information and Consumer Affairs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 523-8151.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1910.132 through 1910.138 of subpart I, Personal Protective Equipment, were adopted by OSHA in 1971 from established Federal standards and national consensus standards under section 6(a) of the Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 655(a)). Subpart I covers the use of personal protective equipment (PPE), in general, and contains specific requirements and criteria for eye and face protection, respiratory protection, head protection, foot protection, and electrical protective devices. OSHA believes that the existing standards for PPE in subpart I are outdated. The Agency is addressing the need to update the regulation of respiratory protection and electrical protective devices in separate rulemakings. The present rulemaking is intended to update the requirements for eye, face, head and foot protective devices. The existing standards reflect the knowledge and practices regarding PPE as they existed in the late 1960's through early 1970's. They specify very restrictive design criteria (thus limiting the use of new technology), and contain gaps in coverage.

OSHA is concerned that restraints on innovation make it more difficult for employers either to increase acceptance of PPE or to provide more protective PPE. Indeed, recognizing this likelihood, the Agency has already established a process under which OSHA has accepted, on a case-by-case basis, the use of eye protection which, while not designed to satisfy the existing standards, has been demonstrated through testing to provide equivalent or superior worker protection. However, the Agency believes that this process cannot keep pace with the development of improved PPE. Therefore, OSHA is concerned that, unless the PPE standards are revised to be more performance-oriented, employers and product manufacturers will be discouraged from improving their equipment and providing improved protection to workers.

Since 1971, the American National Standards Institute (ANSI) has revised its consensus standards for head, foot, and eye and face protection. OSHA proposes to use the most recent revisions of these standards as part of the basis for its rulemaking. For instance, OSHA has based its proposed revision of the requirements for foot protection on ANSI Z41-1983, Personnel Protection—Protective Footwear. This ANSI Standard, unlike the existing OSHA foot protection standard, covers foot protection for women as well as for men. This proposed change would address a serious gap in coverage under the existing standards. In addition, OSHA has obtained injury data and technical reports which show that injuries are occurring to employees who are not wearing PPE, as well as to some employees who are wearing PPE. This would indicate that significant improvements in PPE design and acceptance are needed. OSHA believes that the record developed in the course of this rulemaking will enable the Agency to promulgate revised standards for PPE that are more clearly written, more comprehensive, and more accurately reflect available technology. OSHA expects that compliance with the proposed revisions will substantially reduce the risks to workers from the pertinent hazards.

II. Hazards Involved

OSHA has determined that workers in a wide range of occupations are exposed to a significant risk of death or serious injury from being struck by various objects in the workplace. OSHA's accident data indicate that a significant portion of all work related injuries and fatalities involve workers being struck in the eyes, face, head or feet by foreign objects. Among the references which document this problem are the Bureau of Labor Statistics (BLS) work injury reports on eye, face, head and foot injuries; the BLS Supplementary Data System information, the National Safety Council *Accident Facts*; the National Institute for Occupational Safety and Health (NIOSH) studies of accident data; and, articles in trade journals and safety magazines (References 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22). While these sources differ as to the number and kind of injuries, they are consistent in pointing out the high incidences and severity of these accidents, and provide clear evidence of a significant risk to workers.

In 1981, disabling occupational injuries and illnesses to the head, eyes, face, and feet account for over 14 percent of the disabling occupational injuries reported through the Bureau of Labor Statistics Supplementary Data System. The BLS estimated that these disability injuries included 116,000 eye injuries, 40,000 face injuries, 46,800 head injuries, and 156,400 foot and toe injuries (Reference 5).

The 1988 edition of *Accident Facts* estimated that, in 1987, there were 70,000 eye injuries, 70,000 head and face injuries, and 110,000 foot and toe injuries. Those injuries constituted 13.8 percent of the estimated 1,800,000 total disabling work injuries for 1987 (Reference 15).

The Injury Surveillance Branch, Division of Safety Research, National Institute for Occupational Safety and Health (NIOSH), relying on data received through the U.S. Consumer Product Safety Commission, National Electronic Injury Surveillance System, reported 333,272 occupational eye injuries for 1985 (Reference 8). The National Society to Prevent Blindness estimates that 2,500 eye injuries occur in the workplace every working day, and that the cost to employers is $130 million per year (including medical costs and wage compensation) (Reference 9).

A BLS Supplementary Data System (SDS) tabulation (all industries) of 18 states reported that in 1983 37,379 injuries to the eyes, 16,366 injuries to the face, 13,844 injuries to the head, and 59,970 injuries to the feet were recorded as worker compensation cases. OSHA notes that each state has its own requirements for the minimum number of days (ranging from one to eight days) that a worker must be disabled before an injury gives rise to a worker compensation case. OSHA believes that this factor accounts for the apparent minor discrepancy between the 1983 BLS data and the other estimates for eye injuries. These injuries represent 12.7 percent of the total injuries reported (999,703) (Reference 10).

OSHA has used the Bureau of Labor Statistics Work Injury Reports (WIR) on eye, face, foot and head injuries in determining what sorts of PPE-related injuries workers experience (References 11, 12, 13, 14). (See injury tables, below. These tables are based on BLS surveys of injured workers, and do not reflect the universe of non-injured workers.)

EYE INJURIES BY TYPE OF ACCIDENT, SELECTED STATES

[July-August 1979]

Item	All workers (100%)		Workers wearing eye protection (41%)	
	No.	Percent	No.	Percent
Total	1,052	100	435	100
Flying or falling object struck worker	727	69	365	82
Struck non-moving object	21	2	5	1
Liquid or chemical injured worker	216	21	59	14
Occurred in another way	88	8	16	4

(Workers not wearing eye protection = 59 percent).

NOTE: This table does not reflect workers whose eye protection prevented injuries.

FACE INJURIES BY TYPE OF ACCIDENT, SELECTED STATES

[July-November 1979]

Item	No. of workers	Percent of workers
Total	774	100
Flying or falling objects struck worker	344	44
Struck non-moving object	48	6
Liquid or chemical injured worker	35	5
Swinging object struck face	154	20
Object or tool was pulled into face	114	15
Powered tool kicked back into face	33	4
Occurred in other way	46	6

NOTE: This table does not reflect workers whose face protection prevented injuries.

FOOT INJURIES BY DESCRIPTION OF ACCIDENT, SELECTED STATES

July-August 1979

Item	All workers (100%)		Workers wearing safety shoes (23%)	
	Number	Percent	Number	Percent
Total	1,251	100	283	100
Stepped on sharp object	194	16	24	8
Struck by falling object	721	58	191	67
Object rolled onto or over foot	169	13	36	13
Squeezed between	59	5	13	5
Struck foot against object	28	2	3	1
Occurred in another way	81	6	16	6

Note: This table does not reflect workers whose foot protection prevented injuries.

HEAD INJURIES BY DESCRIPTION OF ACCIDENT, SELECTED STATES

July-September 1979

Item	All workers (100%)		Workers wearing hard hats (16%)	
	Number	Percent	Number	Percent
Total	1,023	100	170	100
Head struck non-moving object	209	20	21	12
Swinging object struck	196	19	44	26
Falling object struck head	371	36	62	36
Flying object struck head	120	12	34	20
Occurred in another way	45	4	9	5

Note: This table does not reflect workers whose head protection prevented injuries.

A Work Injury Report (WIR) on eye injuries conducted by the BLS shows that three-fifths of the injured workers surveyed (1,052) were not wearing eye protection. Where injured workers were wearing eye protection, in 94 percent of the incidents, the harm was caused by materials which went around or under the protector (Reference 11).

Similar results are reported in the BLS WIR on face injuries. Virtually all of the injured workers (774) had not worn face protection. Of the nine workers in the survey who were wearing face protection, five were injured by materials which went around or under the protector, and in three cases the protector was knocked off the worker by the impact of the object which caused the injury. The typical face injury was caused by flying or falling blunt metal objects (Reference 12).

The BLS WIR on head injuries shows that 84 percent of the injured workers studied (1,033) were not wearing head protection. Where workers were wearing PPE, almost 70 percent received blows to an unprotected part of the head. Over one-third of the accidents resulted from falling objects striking the head. Three-tenths of the accidents occurred when workers struck a nonmoving object and one-fifth occurred when a swinging object such as a steel bar, struck the head (Reference 13).

Regarding foot injuries, the BLS WIR indicates that fewer than one-fourth of the injured workers (1,251) were wearing safety shoes or boots at the time of the accident. Nearly three-fifths of the accidents resulted from falling objects striking the foot. Stepping on a sharp object, such as a nail, caused 16 percent of the injuries, and another 13 percent occurred when an object rolled over the foot (Reference 14).

These BLS work injury reports on eye, face, head, and foot injuries (Report Numbers 597, 604, 605, and 626) identify two major factors concerning these types of injuries. Personal protective equipment is not being worn the vast majority of the time, and when the protective equipment is worn, it does not fully protect the worker. For instance, objects go around the protector or strike an area for which the protector does not provide protection.

OSHA believes that the proposal will address the problems identified in the BLS reports by allowing new innovative designs through the use of performance-oriented language, by providing information for selecting the proper protection, and by improving the protection afforded by the equipment. (For example, the current OSHA foot protection standard does not address penetration resistance through the sole of a safety shoe, nor protection of areas of the foot other than the toe. OSHA intends through its new standards, to gain an improvement in worker acceptance of wearing protective equipment by allowing better and more comfortable designs not presently permitted by the current standards, and by providing information on selecting the proper equipment for the job.

III. Summary and Explanation of the Proposal

OSHA proposes to revise subpart I of 29 CFR part 1910 to replace, where appropriate, existing specification provisions with performance-oriented criteria for eye, face, foot and head protection. OSHA would update the design requirements for PPE by revising the standards so they reference the current edition of the pertinent ANSI standards. Requirements for PPE selection, care, use and training would appear in the body of the revised standard. As noted above, the proposed standard includes criteria for women's protective footwear, so that all protective footwear is covered. In addition, protection for the sole of the foot would be required when there is a risk of objects piercing the sole. Such protection is not provided in the current OSHA PPE standards. Provisions have been added which address the selection of PPE, defective and damaged equipment, reissued equipment, and training.

The requirements of proposed subpart I, like those of current subpart I, would apply to all general industry places of employment. The proposal would add several general requirements to § 1910.132; would revise §§ 1910.133, 1910.135 and 1910.136; would reserve §§ 1910.138, 1910.139, and 1910.140; and would add appendices A and B to subpart I.

The proposed format of part 1910, subpart I, would contain the following sections:

1910.132—General requirements
1910.133—Eye and face protection
1910.134—Respiratory protection
1910.135—Head protection
1910.136—Foot protection
1910.137—Electrical protective devices
1910.138—Incorporation by reference
[reserved]
1910.139—[Reserved]
1910.140—[Reserved]

Appendix A—References for further information

Appendix B—Compliance guidelines for hazard assessment and personal protective equipment selection

The provisions of the current subpart I standards, §§ 1910.132 through 1910.140, would be revised, deleted or retained as set forth in the following table:

Current standard	Proposed standard
§ 1910.132(a)	§ 1910.132(a)*
§ 1910.132(b)	§ 1910.132(b)*
§ 1910.132(c)	§ 1910.132(c)*
§ 1910.133(a)(1)	§ 1910.133(a)(1)
§ 1910.133(a)(2)(i)	§ 1910.133(b)
§ 1910.133(a)(2)(ii)	§ 1910.133(a)(2)
§ 1910.133(a)(2)(iii)	§ 1910.133(a)(2)
§ 1910.133(a)(2)(iv)	§ 1910.133(b)
§ 1910.133(a)(2)(v)	§ 1910.133(f)
§ 1910.133(a)(2)(vi)	§ 1910.133(f)
§ 1910.133(a)(2)(vii)	§ 1910.133(e)
§ 1910.133(a)(3)(i)	§ 1910.133(a)(4)
§ 1910.133(a)(3)(ii)	§ 1910.133(a)(4)
§ 1910.133(a)(3)(iii)	§ 1910.133(a)(4)
§ 1910.133(a)(4)	§ 1910.133(b)(1)
§ 1910.133(a)(5)	§ 1910.132(g)
§ 1910.133(a)(6)	§ 1910.133(b)
§ 1910.134	§ 1910.134*
§ 1910.135	§ 1910.135(b)
§ 1910.136	§ 1910.136(b)
§ 1910.137	§ 1910.137*
§ 1910.138	None (reserved)
§ 1910.139	None (reserved)
§ 1910.140	None (reserved)

*The current requirements for these paragraphs and sections are not proposed for revision in this proposal and will remain unchanged by this rulemaking.

In addition to these sections, OSHA proposes to add non-mandatory appendices A and B, which provide references for further information for compliance assistance, and information for hazard assessment and PPE selection, respectively.

As discussed previously, the existing PPE standards reference obsolete national consensus standards. In their place, OSHA has referenced the current national consensus standards in the proposed standard. In the years since the Agency promulgated part 1910, OSHA's general policy has been to use its rulemaking proceedings to delete any references to national consensus standards and to incorporate, where appropriate, the pertinent regulatory text into the OSHA standards. OSHA has set this policy because the Agency believes that the compliance burden is most reasonable when employers and employees have all of the requirements which apply to them in the body of the OSHA standards as published by the Agency, without having to track down referenced documents. However, OSHA notes that in the case of PPE design requirements, neither employers nor employees are directly concerned with the detailed design requirements or test methods. They are concerned only that the equipment satisfies the pertinent OSHA Standards. OSHA further notes that it is universal practice for PPE manufacturers to determine (usually by testing) that their equipment meets the ANSI design requirements and, then, to advertise and mark their products as meeting the applicable standard.

OSHA has determined that compliance with the design requirements in the current editions of the national consensus standards for head, foot, eye and face protection would provide a proper level of protection. Therefore, OSHA proposes to incorporate by reference those standards for the PPE design requirements since, as discussed previously, these requirements are not normally used by employers or employees, but rather by manufacturers of PPE. The provisions affected by these incorporations by reference, §§ 1910.133(a)(6), 1910.135, and 1910.136, are discussed in more detail below. OSHA proposes to include the provisions that address PPE selection, care, use and training with the revised regulatory text.

In the early 1970's, the National Institute for Occupational Safety and Health tested various types of personal protective equipment and found that a number of them did not meet the OSHA Standards (by failing to meet the design and test requirements in the referenced American National Standards). This identified a possible need for third-party certification similar to that required in the OSHA Standards for respirators (NIOSH Certification), and electrical equipment (UL listing). More recently, the Safety Equipment Institute has met with OSHA to explain the benefits of their third-party certification program, and has encouraged OSHA to consider a requirement for certification of PPE.

There are advantages and disadvantages to third-party certification. The main disadvantage is that it could result in substantial costs to manufacturers since they would normally have to contract for services from a recognized testing laboratory. However, one advantage is that PPE which is advertised as meeting certain criteria would be tested (and certified) to ensure that the PPE does, in fact, meet that criteria.

Another advantage is that third-party certification would include a follow-up inspection service to periodically test PPE to ensure continued compliance with specified criteria.

OSHA requests comments and information on whether or not OSHA should include a requirement in the PPE standards that employers obtain third-party certification that their PPE meets the applicable OSHA requirements. While the current OSHA standards do not require certification, there are several certification programs currently in place (such as those administered by the Safety Equipment Institute and the Footwear Industries of America) which are being utilized by equipment manufacturers. Is certification of PPE necessary to ensure that head, foot, eye and face PPE meets OSHA standards? What would be the costs and benefits of certification, if such a requirement were added?

In accordance with paragraph 6(b)(8) of the OSH Act (29 U.S.C. 655), the Agency has reviewed the various national consensus standards that cover working conditions addressed in this proposal. OSHA has incorporated appropriate provisions from those national consensus standards as part of this proposal. OSHA believes that the proposed standard will better effectuate the purposes of the Occupational Safety and Health Act of 1970 than the national consensus standards which have not been made a part of this proposal, because this proposal is more comprehensive, provides greater flexibility in its requirements for safety, and provides for public participation and comment.

The revision of these general industry PPE Standards will be coordinated with efforts to revise parallel provisions in the Shipyard Employment and Construction Standards so that consistent coverage of hazards which are encountered in these industry sectors can be provided.

The following discussion provides a more detailed explanation of the proposed provisions related to personal protective equipment.

Section 1910.132 General Requirements

Existing paragraphs (a) through (c) of § 1910.132 are not proposed for revision in this rulemaking. Existing paragraph (a) requires that protective equipment be provided, used and maintained in sanitary and reliable condition, as necessary, to protect employees from workplace hazards. Existing paragraph (b) requires that, where employees provide their own equipment, the employer assure the adequacy, including the proper maintenance and sanitation, of such equipment. Existing paragraph (c) requires that all personal protective equipment be of safe design and construction for the work to be performed.

Proposed paragraph (d) of § 1910.132 would be added to address the selection of personal protective equipment (PPE). The current standards do not contain a similar provision. This proposed provision would require employers to select the PPE for their employees based on an assessment of the hazards in the workplace and the hazards which employees are likely to encounter.

Because OSHA is aware that some employees are responsible for obtaining their own PPE, the proposed provision requires employers to inform their employees of the selection decisions and ensure, regardless of who obtains it, that the correct PPE is, in fact, obtained. This provision is based on current § 1910.133(a)(1), which covers eye and face protection, but the provision has been expanded so that it covers selection of all personal protective equipment.

Proposed paragraph (e), a new requirement, prohibits the use of defective or damaged PPE. This provision is based, in part, on § 1910.133(a)(2)(vii) of the existing standard, which states that protectors should be kept clean and in good repair. Under the proposed paragraph, this requirement would cover all PPE.

Proposed paragraph (f) is a new requirement that would require employees to be trained in the proper use of their personal protective equipment. This paragraph is based on existing § 1910.134(b)(3) that requires training for respirator use and has been expanded to cover all PPE. OSHA proposes this requirement because the Bureau of Labor Statistics Work Injury Reports indicated that a significant number of the employees injured had not received training in the proper use of PPE (References 11, 12, 13, and 14).

Section 1910.133 Eye and Face Protection

Under proposed paragraph (a)(1), employers must ensure that employees use appropriate eye and face protection when they are exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, chemical gases or vapors, or potentially injurious light radiation. The only significant difference between proposed paragraph (a)(1) and existing paragraph (a)(1) is that the term "liquids" would be replaced by the terms "molten metal" and "liquid chemicals" in the list of hazards for which eye and face protection are required. OSHA believes it is appropriate to specify that molten metal is covered to prevent confusion over whether or not molten metal is a "liquid."

Also, proposed paragraph (a)(1) replaces the general requirement for "suitable" eye protection with the requirement that eye protection used by employees provide both front and side protection from flying objects. OSHA notes, for example, that eye protection with side shields or molded wrap-around lenses and frames, would satisfy this requirement. The proposed revision

is based on the Bureau of Labor Statistics Work Injury Report on eye injuries which identified that in cases where eye protection was used, 94 percent of the incidents occurred when an object (or chemical) went around the protection (Reference 11). OSHA requests comments on the need for this revision, including information on the extent to which employers are already providing eye protection which satisfies the proposed requirement and any additional costs which would be involved in obtaining eye protection which meets the proposed requirement.

Existing § 1910.133 is based on ANSI Z87.1–1968, section 4. Existing paragraph (a)(1) of § 1910.133 contains a general provision to require eye and face protection where such use could prevent probable injuries. This provision is so general that it is difficult to determine what is required. Therefore, we are proposing to make §1910.133(a)(1) more specific to better clarify when eye and face protection are required. Existing § 1910.133(a)(1) also requires that suitable eye and face protection be made conveniently available; and, that unprotected persons not be knowingly subjected to hazards. These two provisions are being deleted from proposed § 1910.133(a)(1) since they are already addressed elsewhere in this proposed standard (existing § 1910.132(a) and proposed § 1910.132(d)).

Proposed paragraph (a)(2), requires that eye and face protective equipment fit employees properly. The proposed requirement is based on existing § 1910.133 (a)(2)(ii) and (a)(2)(iii), as well as on ANSI Z87.1–1989, section 7.4. OSHA believes that the proposed simplified requirement will provide employers with the appropriate guidance so they can assure good vision and proper eye protection for employees. The Agency has not retained existing paragraph (a)(2)(i) in the proposed rule, because that provision's requirement for PPE which provides "adequate protection" would be covered by proposed paragraph (a)(1).

In addition, existing § 1910.133(a)(2)(iv), which requires protectors to "be durable", is proposed to be removed since the intent of the existing provision is now covered by proposed § 1910.132(e), which prohibits defective or damaged PPE from being used, and by proposed § 1910.133(b), which covers the design requirements for eye and face protection.

Existing § 1910.133 (a)(2)(v) and (a)(2)(vi) which require protectors to "be capable of being disinfected" and "be easily cleanable," are proposed to be removed since they are redundant to duties already imposed by § 1910.132(a) of the existing standard.

Existing § 1910.133(a)(2)(vii), which recommends that protectors "be kept clean and in good repair," is proposed to be removed since it is not a mandatory requirement and does not belong in the standard. The intent of the recommendations is covered by proposed § 1910.132(e).

Proposed paragraph (a)(3) adds a new requirement—that workers who pass from well-lit to dimly-lit areas not wear protectors with tinted, or variable tinted lenses. This provision would reduce the likelihood that extreme lighting changes will temporarily impair an employee's vision, such as when a forklift operator drives a forklift from the outdoors into a poorly lit warehouse. OSHA solicits comments regarding the need for and suitability of this proposed requirement, with emphasis on the extent to which wearing tinted lenses in these situations actually adds to the recognized vision problem caused by dim lighting.

Proposed paragraph (a)(4), which is based on existing § 1910.133(a)(3), requires that employees who wear prescription lenses be protected by eye protection that incorporates the prescription in its design or by eye protection that can be worn over prescription lenses without interfering with the prescription lenses such that vision becomes impaired, or when protection is not fully provided because of interference.

Existing § 1910.133(a)(4), which requires that "every protector shall be distinctly marked to facilitate identification only of the manufacturer," is proposed to be removed since a marking to identify the manufacturer of eye and face protection does not add or detract from the safety afforded by the protector. ANSI Z87.1–1989, which is proposed to be incorporated by reference, contains this same requirement. However, the deletion of this requirement by the proposal, would supersede this ANSI requirement.

Existing § 1910.133(a)(5), which requires that "limitations or precautions" provided by the manufacturer "be transmitted to the user and care be taken to see that such limitations and precautions are strictly observed," is proposed to be removed. The intent of the existing provision is now covered by proposed § 1910.132(f), which requires employees to be trained in the proper use of their PPE, and by proposed appendix B which provides compliance guidelines for selection of PPE.

Proposed paragraph (a)(5), a new provision, requires that employees potentially exposed to injurious radiant energy, such as that produced by welding, use eye protection with filter lenses which have a shade number appropriate for the work being performed. In addition, this proposed provision includes a list of the proper shade numbers for various operations. Existing § 1910.133(a)(1) requires protection from potentially injurious light radiation. OSHA has determined, however, that the proposed provision states the requirements more clearly.

In paragraph (b), OSHA proposes that the design requirements for eye and face protection comply with the provisions of ANSI Z87.1–1989, or be of a design that provides equivalent protection.

Currently, the requirements for the design of eye and face protection are found in § 1910.133(a)(6), which references the 1968 edition of ANSI Z87.1. Proposed paragraph (b) merely updates the ANSI reference for the design of eye and face protection to reflect the current (1989) edition. The design criteria contained in the 1989 edition of ANSI Z87.1 are much more performance-oriented than those in the existing OSHA standard, and can be met by eye and face protection currently in use in general industry.

The 1989 edition of ANSI Z87.1 that OSHA proposes to incorporate by reference contains design criteria for plano spectacles, as well as criteria and test methods for: Optical performance; transmittance impact, flammability; corrosive resistance for metal parts; and, cleanability.

Section 1910.135 Head Protection

Proposed paragraph (a)(1), mandates that employers require their employees wear protective helmets when they are working where there is a potential for injury to the head from falling or moving objects. This language, based on existing § 1910.132(a), has been revised to clarify when head protection is required.

Proposed paragraph (a)(2) requires that employees who are near exposed energized conductors which their heads could contact must wear helmets designed for protection from electrical shock hazards. This provision, based on existing §§ 1910.132(a) and 1910.135, would clarify when electrical protective type helmets must be worn.

Proposed paragraph (b) requires that the design of protective helmets comply with the provisions of ANSI Z89.1–1986, "Requirements for Protective Headwear for Industrial Workers," [Reference 2) or be of a design that provides equivalent protection. ANSI Z89.1–1986 covers impact resistance, penetration protection, flammability, water absorption resistance, electrical insulation and maximum weight. The existing OSHA standard for head protection, § 1910.135, references ANSI Z89.1–1969 (Reference 20). This earlier edition, except insofar as it addresses electrical insulation for Class B helmets, sets essentially the same requirements as would apply through the proposed paragraph (b) reference to ANSI Z89.1–1986. A significant difference between the helmet provisions referenced in proposed paragraph (b) and the present OSHA requirements involves the relevant testing for helmets used for protection against live electrical conductors. The testing requirements in the 1986 ANSI standard are somewhat more stringent for "Class B" helmets than those referenced in the current OSHA standards. However, OSHA believes that helmets currently used for protection against electrical contact in general industry meet the electrical insulation requirements in ANSI Z89.1–1986. The effect of this change in testing requirements involves only a small number of employees, primarily linemen and tree trimmers, who generally wear helmets which are classified under the ANSI standard as "Class B" helmets. The Agency solicits comments and information on helmets presently used for electrical protection in general industry, and whether such helmets would comply with the proposed OSHA standards.

Currently, OSHA does not have any requirements for "bump caps" (a type of headwear that is intended to provide head protection from minor impact and protection from cuts and scrapes). Should OSHA include requirements for the use and design of "bump caps"? Are there any voluntary or consensus standards for "bump caps"? What would be the economic and safety impact if OSHA added requirements for the use and design of "bump caps"? How should OSHA target the use of bump caps to determine when or when not they are needed?

Section 1910.136 Foot Protection

Proposed paragraph (a) requires employers to ensure that their employees wear protective footwear when they are working in areas where there is a danger of foot injuries due to falling and rolling objects, or objects piercing the sole. In substance, the same general requirement is contained in existing § 1910.132(a). This proposed language, however, clarifies the circumstances where foot protection would be required. The current OSHA standard for foot protection, § 1910.136, references ANSI Z41.1–1967, which has been superseded by ANSI Z41–1983. The 1967 edition of ANSI Z41.1 did not set requirements for sole puncture resistance, whereas the current ANSI Z41–1983 standard does. The Bureau of Labor Statistics' Work Injury Report (WIR) on foot injuries (Reference 14) indicates that objects piercing the sole accounted for 16 percent of foot injuries to all workers in the survey, and eight percent for those workers in the survey who were wearing safety shoes. Therefore, OSHA is proposing that footwear, in addition to protecting employees from falling or rolling objects, protect them from sole punctures. The Agency solicits comments and information on the extent to which employers or employees are arranging for the availability and use of protective footwear which meets the proposed requirement. OSHA also seeks information on any additional costs involved in obtaining foot protection which meets the proposed requirement.

In paragraph (b), OSHA proposes that the design of protective footwear comply with the provisions of ANSI Z41–1983 (Reference 3) or be of a design that provides equivalent protection. The provisions in ANSI Z41–1983 cover compression resistance, impact resistance and puncture resistance. Existing § 1910.136, through its reference to the 1967 edition, sets compression and impact requirements, which are the same as those in ANSI Z41–1983. However, as noted above, the 1967 edition applied only to men's protective footwear. ANSI Z41–1983 covers both men's and women's protective footwear, thus filling a gap in the current OSHA standard for protective footwear. OSHA believes that protective footwear which complies with the ANSI Z41.1–1967 standard would also comply with the ANSI Z41–1983 requirements for compression and impact resistance. As discussed above, puncture resistance was not covered in the ANSI Z41.1–1967 standard.

Appendices A and B to Subpart I

As discussed above, OSHA proposes to add non-mandatory appendices A and B to subpart I to provide a list of references for further information which may be useful in implementing this standard, and to provide compliance guidelines on hazard assessment and personal protective equipment selection.

IV. References

1. American National Standards Institute (ANSI). *American National Standard Practice for Occupational and Educational Eye and Face Protection.* (ANSI Z87.1–1989). New York, NY: ANSI, 1989.

2. American National Standards Institute (ANSI). *American National Standard Safety Requirements for Protective Headwear for Industrial Workers.* (ANSI Z89.1–1986). New York, NY: ANSI, 1981.

3. American National Standards Institute (ANSI). *American National Standard for Personnel Protection-Protective Footwear.* (ANSI Z41–1983). New York, NY: ANSI, 1983.

4. American National Standards Institute (ANSI). *Proposed ANSI Z87.1–198X, Occupational and Educational Eye and Face Protection Standard,* Draft V. New York, NY: ANSI, August 1986.

5. Bureau of Labor Statistics (BLS). "National Estimates of the Number of Disabling Occupational Injuries and Illnesses by Part of Body Affected in the Private Sector, 1980 and 1981," U.S. Department of Labor, Washington, DC.

6. National Safety Council. "Accident Facts 1981 Edition," Chicago, IL: 1981.

7. National Safety Council. "Accident Facts 1986 Edition," Chicago, IL: 1986.

8. Injury Surveillance Branch, Division of Safety Research, National Institute for Occupational Safety and Health (NIOSH). Unpublished summary analysis, "Frequencies of Selected Occupational Conditions by Data Source, 1980–1985," Morgantown, WV: NIOSH, 1986.

9. National Society to Prevent Blindness. "Disabling Eye Injuries in the Workplace—A Descriptive Overview," Chicago, IL: November 1984.

10. Bureau of Labor Statistics (BLS): SDS Table 102. Part of Body Affected: Number and Percent Distribution of Cases, All Workers."; "SDS Table 122. Part of Body Affected: Number and Percent Distribution of Cases, By Indemnity Compensation and Medical Payments, All Workers."; "SDS Table 102. Part of Body Affected: Number and Percent Distribution of Cases, All Workers. Cases Involving Medical Treatment," Washington, DC: BLS 1987.

11. Bureau of Labor Statistics (BLS). "Accidents Involving Eye Injuries," Washington, DC: BLS, 1980.

12. Bureau of Labor Statistics (BLS). "Accidents Involving Face Injuries," Washington, DC: BLS, 1980.

13. Bureau of Labor Statistics (BLS). "Accidents Involving Head Injuries," Washington, DC: BLS, 1980.

14. Bureau of Labor Statistics (BLS). "Accidents Involving Foot Injuries," Washington, DC: BLS, 1981.

15. National Safety Council. "Accident Facts 1988 Edition", Chicago, Illinois: 1987.

16. Lancianese, Frank W. "Special Report: How Two Companies Combat Eye, Face, and Head Hazards,"

BEST COPY AVAILABLE

Occupational Hazards, Cleveland, Ohio: February 1984.

17. McCree, Mary Jacobs. "Identification of Eye Hazards in the Workplace," Department of Health, Education, and Welfare, Public Health Service, Food and Drug Administration, Dermal and Ocular Toxicology Branch, Washington, DC: Memorandum, October 23, 1978.

18. Kamin, Jeff I. "NIOSH Research Program . . . Developing Safety Standards for Eye and Face Protection," *National Safety News*, Chicago, IL: October 1974.

19. McKenzie, Leisa. "The Eyes Have It * * * But Not Without Personal Protective Equipment," *Ohio Monitor*, Columbus, Ohio, September 1985.

20. Crapnell, Stephen G. "Eye, Head, and Face Injuries: Prevention, Protection, and Payoff," *Occupational Hazards*, Cleveland, Ohio, July 1983.

21. Kendall, Richard M. "Pfizer Formula Prevents Eye, Face, and Head Injuries," *Occupational Hazards*, Cleveland, Ohio, November 1986.

22. Nemec, Margaret M. "Head, Eye and Face Protection at Republic Steel," *Occupational Hazards*, Cleveland, Ohio, February 1980.

23. American National Standards Institute (ANSI). *Proposed ANSI Z87.1–198X, Occupational and Educational Eye and Face Protection Standard*, Draft VI. New York, NY: ANSI, August 1987.

24. Kaufman, Joel G. *Letter to Mr. Edward Hall dated September 6, 1985, Impact Testing of Lenses*. Glendale Optical Company, September 1985.

25. King, J.H. et al. "Norton Panalens 180 Project Report," Norton Company Safety Products Division, December 8, 1980.

26. American National Standards Institute (ANSI). *American National Standard Safety Requirements for Industrial Head Protection*. (ANSI Z89.1–1969). New York, NY: ANSI, 1969.

V. Preliminary Regulatory Impact Assessment and Regulatory Flexibility Analysis

Introduction

OSHA adopted its current standards for personal protective equipment (PPE) from National Consensus Standards under section 6(a) of the OSH Act. In the nearly two decades that have passed since these standards were developed, a number of advances have been made in PPE technology. Thus, OSHA is proposing to revise this workplace standard in order to reflect these improved means of hazard prevention.

Executive Order 12291 (46 FR 13197) requires that a regulatory impact analysis be prepared for any proposed regulation that meets the criteria for a "major rule"; that is, that would be likely to result in an annual impact on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, the Regulatory Flexibility Act (5 U.S.C. 60, *et seq.*) requires an analysis of whether a regulation will have a significant economic impact on a substantial number of small entities.

Consistent with these requirements, OSHA has prepared this Preliminary Regulatory Impact and Regulatory Flexibility Analysis for the proposed revisions to the PPE standard. As a result of this analysis OSHA has made a preliminary determination that the proposed revision to the PPE regulations will not constitute a major rule.

Affected Industries and Current Use

Based on a preliminary report prepared by Eastern Research Group [1] OSHA has determined that virtually all industries covered by the General Industry Standards will be affected by these revisions. The extent of the impact will vary by industry depending on the hazards, the types of occupations and the current practice regarding PPE use. The U.S. Bureau of Labor Statistics (BLS) groups employment into seven major occupational categories, of which two: (1) Construction, operating, maintenance and material handling and (2) agriculture, forestry, fishing and related activities are assumed to include most of the occupations covered by this proposal. These two employment groups have been used as an estimate of the population-at-risk. Table I-1 presents estimates of the number of establishments, total employment and population-at-risk, by affected industry.

TABLE I-1.—ESTABLISHMENTS AND EMPLOYMENT OF AFFECTED INDUSTRIES

	SIC code industry	Establishments(a)	Employment(b) (000)	Employment per establishment	Population-at-risk (000)
	Agriculture (c)	163,598	441.8	2.7	390.8
078	Landscape and horticultural services	31,128	178.0	5.7	160.2
	Forestry:				
08	Forestry	1,656	16.4	9.9	14.8
	Fishing, hunting, and trapping				
09	Fishing, hunting, and trapping	1,916	8.6	4.5	0.8
09	Commercial fishing(d)	129,000	236.6	1.9	214.9
	Mining:				
13	Oil and Gas Extraction	25,042	457.4	18.3	242.4
	Manufacturing:	347,922	18,097.1	54.8	12,448.8
20	Food and kindred products	21,589	1,619.9	75.1	1,198.2
21	Tobacco products	164	58.3	361.6	42.0
22	Textile mill products	6,221	705.3	113.4	585.1
23	Apparel and other textile products	23,837	1,106.5	47.8	925.3
24	Lumber and wood products	32,271	710.5	22.8	688.3
25	Furniture and fixtures	10,812	467.1	46.8	394.2
26	Paper and allied products	6,324	674.3	106.6	498.7
27	Printing and publishing	56,137	1,457.1	26.0	648.9
28	Chemicals and allied products	12,077	1,022.8	84.7	511.3
29	Petroleum and coal products	2,389	169.8	72.6	84.7
30	Rubber and misc. plastics products	13,969	788.5	56.5	612.7
31	Leather and leather products	2,442	161.2	61.9	121.8
32	Stone, clay, and glass products	16,189	596.8	36.3	451.1
33	Primary metal industries	6,961	752.5	108.7	583.2
34	Fabricated metal products	35,380	1,431.1	40.4	1,050.4
35	Industrial machinery and equipment	50,703	2,058.7	40.6	1,172.0
36	Electric and electronic equipment	17,392	2,123.0	122.1	1,154.9
37	Transportation equipment	8,488	2,015.1	212.2	1,229.2
38	Instruments and related equipment	5,294	706.8	95.2	344.2
39	Miscellaneous manufacturing industries	15,924	362.0	22.7	246.2
	Transportation, communication, utilities	184,197	4,150.0	22.5	2,075.2
41	Local and interurban passenger transit	14,042	281.5	20.0	198.7
42	Trucking and warehousing	89,061	1,382.2	15.5	1,031.1
47	Transportation services	33,836	283.8	8.4	35.2
48	Communication	29,513	1,278.8	43.3	359.3
49	Electric, gas and sanitary services	17,725	923.7	52.1	450.8
	Wholesale Trade	432,278	5,734.0	13.3	1,894.7
50	Durable goods	266,948	3,383.0	12.6	923.6
51	Non-durable goods	165,330	2,351.0	14.4	771.1
	Retail Trade	1,393,820	17,645.0	12.8	2,019.3
52	Building materials and garden supplies	68,517	701.1	10.2	174.6
53	General merchandise stores	35,265	2,362.9	67.0	139.4
54	Food stores	182,725	2,872.9	15.7	249.9
55	Automotive dealers and service station	200,942	1,942.7	9.7	883.5
56	Apparel and accessory stores	139,293	1,070.4	7.7	46.0
57	Furniture and home furnishings stores	98,001	770.6	7.9	174.2
58	Eating and drinking places	351,323	5,878.8	16.7	70.5
59	Miscellaneous retail	317,754	2,245.8	7.1	260.7
	Finance, insurance and real estate	485,806	6,477.1	13.3	462.8
60	Banking	52,215	1,736.0	33.2	8.7
61	Credit agencies other than banks	61,145	831.0	13.6	0.0
62	Security, commodity brokers and service	18,843	392.4	20.8	2.4
63	Insurance carriers	34,630	1,364.2	39.4	146.0
64	Insurance agents, brokers and service	99,282	580.7	6.0	0.0
65	Real estate	198,460	1,187.3	6.0	296.1
66	Combined real estate, insurance, etc.	4,973	192.2	38.6	9.8
67	Holding and other investment offices	19,258	193.3	10.0	8.9
	Services	1,706,018	22,280.5	13.1	2,639.4
70	Hotels and other lodging places	48,017	1,401.1	29.2	110.7
72	Personal services	175,171	1,104.2	6.3	297.0
73	Business services	256,387	4,781.0	18.5	693.2
75	Auto repair, services, and parking	127,836	762.1	6.0	536.5
76	Miscellaneous repair services	56,869	320.0	5.6	217.0
78	Motion pictures	18,206	226.5	12.4	28.1
79	Amusement and recreation services	80,210	915.0	15.2	120.9
80	Health services	390,223	8,550.5	16.8	229.3
81	Legal services	125,706	747.7	5.9	0.0
82	Educational services	30,093	1,428.0	47.5	91.4
83	Social services	88,098	1,457.0	16.5	131.1
84	Museums, botanical, zoological gardens	2,005	46.2	23.0	5.9
86	Membership organizations	175,977	1,262.0	7.2	125.8
89	Miscellaneous services	149,620	1,279.2	8.5	43.5

NA—Not available.
Sources: Eastern Research Group [1].
(a) U.S. Department of Commerce, Bureau of the Census, County Business Patterns, 1985.
(b) U.S. Department of Labor, Bureau of Labor Statistics, Employment and Earnings.
(c) National Arborists' Assoc. and ERG estimates.
(d) National Marine Fisheries Services. 1987. Fisheries of the United States, 1986. April, ERG considered each vessel to be an establishment.

Most types of PPE have been in widespread use in most industries for many years. There are, however, very little statistical data available that would allow a determination of the number of employees who either are using PPE, or who should be wearing PPE by virtue of the hazards to which they are exposed.

OSHA's inspection data shows that approximately 3.5 percent of all planned safety inspections result in a citation under the existing PPE standard. What is not shown by these data is the degree of hazard present at these workplaces, the number of workers exposed to the hazard, or the type of PPE required.

Several Work Injury Report (WIR) published by the BLS cover a number of specific industries or types of injuries. These reports, which examine only those cases where a worker was injured, indicate that many workers are not wearing PPE or are wearing inadequate PPE. Of the approximately 22 million workers at risk, OSHA estimates that about 12.8 percent or 2.8 million workers are not wearing the appropriate PPE (See chapter II of full analysis). OSHA also estimates that relatively few firms have performed a formal hazard assessment of the potential hazards in their workplace. Also, OSHA assumes that many workers are not wearing PPE or are wearing inadequate PPE due to a lack of training regarding the importance of using this equipment.

Nonregulatory Environment

The primary objective of OSHA's proposed revisions to the PPE standard is to reduce the number of employee injuries and deaths resulting from nonuse of PPE or use of inappropriate PPE. OSHA believes that the present risk to employees is too high and that the proposed revisions will prevent a substantial number of these injuries and fatalities. OSHA examined the nonregulatory approaches for promoting

adequate levels of PPE are inhibiting (1) economic forces generated by the private market system, (2) incentives created by Workers' Compensation programs or the threat of private suits, and (3) related activities of private agencies. As a result of this review, OSHA has determined that the need for government regulation arises from the significant risk of job-related injury or death caused by the inadequate rate of optimal private hazard-abatement expenditure. Private markets fail to provide enough safety and health resources due to the lack of risk information, the immobility of labor, and the externalization of part of the social costs of worker injuries and deaths.

Workers' Compensation systems do not offer an adequate remedy because the premiums do not reflect specific workplace risk, and liability claims are restricted by state statutes preventing employees from suing their employers. While certain voluntary standards exist, their scope and approach fail to provide adequate protection for all workers. Thus, OSHA has determined that a federal standard is necessary.

Costs of Compliance

Under both the existing and proposed standards there are requirements to provide PPE wherever there are hazards present in the workplace. OSHA estimates that the incremental cost to comply with the revised rule would be approximately $28.3 million annually. The annualized cost of training in the proper use of PPE is expected to be $13.8 million per year and the annualized cost of the requirement to conduct a hazard assessment is estimated to be $13.8 million per year assuming a reassessment is conducted once every five years. Using alternative assumptions regarding the frequency of the reassessment of either an initial assessment followed by annual reassessments or a reassessment every ten years resulted in estimated costs of $19.4 and $9.8 million respectively.

Table I–2 presents the aggregate cost estimates by provision for each major industry group.

TABLE I–2.—SUMMARY OF AGGREGATE COMPLIANCE COSTS

Major industry group	1910.132(a)	1910.132(d)	1910.132(g)	1910.133(a)(1)	Total compliance costs		
	Provision of PPE	Hazard assessment	PPE training	Sideshields	Proposed standard	Existing standard	Incremental costs
Landscape and horticulural services, forestry, and fisheries	$1,090,011	$1,021,816	$419,036	$8,093	$2,538,957	$1,090,011	$1,448,946
Oil and gas extraction	1,860,095	168,111	91,507	4,845	1,925,359	1,660,095	265,263
Manufacturing	40,723,673	4,671,986	6,910,023	433,721	52,739,412	40,723,673	12,015,739
Transportation, communication, utilities	6,637,128	1,712,609	1,469,490	72,300	9,891,526	6,637,128	3,254,398
Wholesale trade	4,890,008	4,381,144	1,130,399	14,761	10,416,310	4,890,008	5,526,304
Retail trade	3,836,204	749,492	1,583,219	10,563	5,979,487	3,636,204	2,343,283
Finance, insurance, real estate	833,375	249,101	250,396	2,419	1,335,291	833,375	501,915
Services	5,808,593	823,291	2,036,008	13,783	8,681,666	5,808,593	2,873,093
Totals	65,279,087	13,778,560	13,890,077	560,264	93,508,006	65,278,087	29,226,921

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

Assessment of Hazards and Benefits

Full compliance with the existing or proposed standards is expected to reduce the incidence of certain types of workplace injuries and fatalities. OSHA's injury analysis has focused primarily on head, eye, face, hand and foot injuries as the ones most likely to be affected by PPE use. OSHA estimates that, annually, there are approximately 411,000 non-fatal injuries that may be related to PPE use among the population of workers covered by the standard. Based on a review of the available data, OSHA estimates that approximately 82,200 could be prevented by full compliance with the existing standard and that an additional 41,000 could be prevented by full compliance with the proposed standard. In addition, OSHA estimates that 6 fatalities per year, which result from head injuries, could be prevented by full compliance with either the existing or proposed standards.

The standard has performance-oriented provisions which address eye, face, head and foot hazards and allows employers to adopt the most up-to-date PPE for use in their establishments. The flexibility to substitute new material and technologies should produce more comfortable and protective PPE. An increase in worker acceptance and use of PPE will translate into additional benefits. While the improvement in the level of benefits is difficult to quantify, the expectation is that increased use of better equipment will prevent or lessen the severity of many accidents to the eye, face, head or foot.

Economic Impact and Regulatory Flexibility Analysis

OSHA has assessed the potential economic impact of the proposed PPE standard and has made a preliminary determination that none of the major industry groups would experience a significant economic burden as a result of the proposed standard. If all of the costs are passed through to the consumer, OSHA estimates that the average price increase would be 0.001 percent, based on the ratio of compliance costs to the value of industry shipments. The maximum price increase in any industry would be 0.06 percent.

On the other hand, if all costs were absorbed by the affected firms, OSHA estimates that the maximum reduction in profits would be less than 0.03 percent. OSHA, therefore, expects that the proposed standard will not have a significant economic impact. OSHA also determined that the proposed standard would not have a significant impact on a substantial number of small firms.

References

1. Eastern Research Group. *Economic Analysis of the Revised General Industry Personal Protection Equipment Standard (CFR 1910.132 through 1910.140)* Prepared for the U.S. Department of Labor, Occupational Safety and Health Administration under Contract No. J–9–F–0057. Arlington, MA. October 1988.

2. OSHA IMIS data covering 1985, 1986, 1987.

3. U.S. Department of Labor, Bureau of Labor Statistics. Work Injury Reports.

VI. Environmental Assessment

Finding of No Significant Impact

This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Guidelines of the Council on Environmental Quality (40 CFR parts 1500 through 1517), and the Department of Labor's NEPA Procedures (29 CFR part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

The proposed revisions and additions to 29 CFR part 1910, Subpart I—Personal Protective Equipment, focus on the reduction of accidents or injuries by means of personal protective equipment, proper selection and use, and training. The proposal also contains language, and format changes. These revisions do not impact on air, water, or soil quality, plant or animal life, the use of land, or other aspects of the environment. Therefore, these revisions are categorized as excluded actions according to subpart B, section 11.10, of the DOL NEPA regulations.

VII. Recordkeeping

This proposal contains no recordkeeping requirements.

VIII. Federalism

This proposed standard has been reviewed in accordance with Executive Order 12612 (52 FR 41685, Oct. 30, 1987) regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of state law only if there is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act), expresses Congress' clear intent to preempt state laws relating to issues with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act, a state can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards.

The federally proposed personal protective equipment standard is drafted so that employees in every state would be protected by general, performance-oriented standards. To the extent that there are state or regional peculiarities caused by the terrain, the climate, or other factors, states with occupational safety and health plans approved under section 18 of the OSH Act would be able to develop their own state standards to address any special problems. Moreover, the performance nature of this proposed standard, of and by itself, allows for flexibility by states and employers to provide as much safety as possible using varying methods consonant with conditions in each state.

In short, there is a clear national problem related to occupational safety and health related to personal protective equipment. While the individual states, if all acted, might be able collectively to deal with the safety problems involved, most have not elected to do so in the seventeen years since the enactment of the OSH Act. Those states which have elected to participate under section 18 of the OSH Act would not be preempted by this proposed regulation, and would be able to address special, local conditions within the framework provided by this performance-oriented standard, while ensuring that their standards are at least as effective as the Federal standard. State comments are invited on this proposal, and will be fully considered prior to promulgation of a final rule.

IX. Public Participation

Interested persons are requested to submit written data, views and arguments with respect to this proposal. These comments must be postmarked by October 16, 1989, and submitted in quadruplicate to the Docket Office, Docket No. S–060, U.S. Department of Labor, Room N–2634, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of this proceeding.

In addition, under section 6(b)(3) of the OSH Act and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Office at the above address and must comply with the following conditions:

1. The objections and hearing requests must include the name and address of the individual or organization making the objection or request;

2. The objections and hearing requests must be postmarked by October 16, 1989.

3. The objections and hearing requests must specify with particularity the provisions of the proposed rule to which objection is taken or about which the hearing request is made, and must state the grounds; therefore

4. Each objection and hearing request must be separately stated and numbered; and

5. The objections and hearing requests must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may, of course, make these objections or recommendations in their comments; OSHA will fully consider them. There is only need to file formal "objections" separately if the interested person desires to request an oral hearing.

OSHA recognizes that there may be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

X. State Plan Standards

The 25 states and territories having OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of a final standard. These 25 are: Alaska, Arizona, California, Connecticut (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for state and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a state standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate.

XI. List of Index Terms

29 CFR part 1910: Eye protection; Face protection; Foot protection; Footwear; Hard hats; Head protection; Incorporation by reference; Occupational safety and health; Occupational Safety and Health Administration; Personal protective equipment; Safety glasses; Safety shoes.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for

Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Accordingly, pursuant to sections 4(b), 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR part 1911, it is proposed to amend 29 CFR part 1910, subpart I, as set forth below.

Signed at Washington, DC, this 8th day of August 1989.

Alan C. McMillan,

Acting Assistant Secretary of Labor.

Part 1910 of title 29 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for subpart I of part 1910 would be revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR part 1911.

2. Section 1910.132 would be amended by adding new paragraphs (d) through (f); §§ 1910.133, 1910.135 and 1910.136 would be revised; §§ 1910.138, 1910.139 and 1910.140 would be removed; and appendices A and B would be added to subpart I of part 1910 to read as follows:

Subpart I—Personal Protective Equipment

§ 1910.132 General requirements.

* * * * *

(d) *Selection.* Based on an assessment of the workplace hazards relative to personal protective equipment (PPE), employers shall select the types of PPE which will protect employees from the particular occupational hazard(s) they are likely to encounter. Such selection decisions shall be communicated to employees and followed by them if employees obtain their own equipment.

(e) *Defective and damaged equipment.* Defective or damaged personal protective equipment shall not be used.

(f) *Training.* Employees shall be trained in the proper use of their personal protective equipment.

§ 1910.133 Eye and face protection.

(a) *General requirements.* (1) Employers shall ensure that employees use appropriate eye or face protection when they are exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acid and caustic liquids, chemical gases or vapors, or potentially injurious light radiation. Eye protection used by employees shall provide both front and side protection from flying objects.

(2) Eye and face protection shall properly fit employees.

(3) Protectors with tinted or variable tinted lenses shall not be worn when an employee must pass from a brightly lighted area, such as outdoors, into a dimly lighted area, such as a warehouse.

(4) Employees who wear prescription lenses while engaged in operations that involve eye hazards shall wear eye protection that incorporates the prescription in their design, or shall be protected by eye protection that can be worn over prescription lenses without disturbing the proper position of the prescription or protective lenses.

(5) Employees shall use equipment with filter lenses which have a shade number appropriate for the work being performed for protection from potentially injurious light radiation. The following is a listing of appropriate shade numbers for various operations.

FILTER LENSES FOR PROTECTION AGAINST RADIANT ENERGY

Operation	Shade No.
Soldering	2
Light Cutting, up to one inch	3 or 4
Medium Cutting, one to six inches	4 or 5
Heavy Cutting, over six inches	5 or 6
Light Gas Welding, up to ½ inch	4 or 5
Medium Gas Welding, ½–½ inch	5 or 6
Heavy Gas Welding, over ½ inch	6 or 8
Shielded Metal-Arc Welding	
1/16 to 5/32 inch electrodes	10
Inert-Gas Metal-Arc Welding (non-ferrous)	
1/16 to 5/32 inch electrodes	11
Inert-Gas Metal-Arc Welding (ferrous)	
1/16 to 5/32 inch electrodes	12
Shielded Metal-Arc Welding	
5/32 to ¼ inch electrodes	12
5/32 to 5/16 inch electrodes	14
Atomic Hydrogen Welding	10 to 14
Carbon Arc Welding	14

Note: If filter lenses are used in goggles worn under a helmet which has a lens, the shade number of the lens in the helmet may be reduced so that the sum of the shade numbers of the two lenses will equal the value as shown in the above listing.

(b) *Acceptable designs.* Eye and face protection shall comply with the design requirements for eye and face protection in American National Standard, ANSI Z87.1–1989, "Practice for Occupational and Educational Eye and Face Protection", which is incorporated by reference, or shall be of a design which has been demonstrated to be equally effective.

§ 1910.135 Head protection.

(a) *General requirements.* (1) Employers shall ensure that employees wear protective helmets when working in areas where there is a potential for injury to the head from falling or moving objects.

(2) Protective helmets designed to reduce electrical shock hazard shall be worn by employees where they are near exposed electrical conductors which could be contacted by the protective helmets.

(b) *Acceptable designs.* The design of protective helmets shall comply with the requirements of American National Standard, ANSI Z89.1–1986, "Requirements for Protective Headwear for Industrial Workers," which is incorporated by reference or shall be of a design which has been demonstrated to be equally effective.

§ 1910.136 Foot protection.

(a) *General requirements.* Employers shall ensure that employees wear protective footwear when working in areas where there is a danger of foot injuries due to falling and rolling objects, or objects piercing the sole.

(b) *Acceptable designs.* The design of protective footwear shall comply with the requirements of American National Standard, ANSI Z41.1–1983, "Personal Protection-Protective Footwear," which is incorporated by reference or shall be of a design which has been demonstrated to be equally effective.

Appendix A to Subpart I—References for Further Information

This appendix neither adds nor detracts from requirements proposed by the standards in subpart I.

Documents 1–3 merely restate the titles of the ANSI standards which contain the requirements for the design of head, foot, eye and face protection and which are incorporated by reference in §§ 1910.133, 1910.135, and 1910.136. The remaining documents in this appendix A provide additional information which may be helpful in understanding and implementing these standards.

1. American National Standards Institute (ANSI). *American National Standard Practice for Occupational and Educational Eye and Face Protection.* (ANSI Z87.1–1989). New York, NY: ANSI, 1989.

2. American National Standards Institute (ANSI). *American National Standard Safety Requirements for Protective Headwear for Industrial Workers* (ANSI Z89.1–1986). New York, NY: ANSI, 1986.

3. American National Standards Institute (ANSI). *American National Standard for Personnel Protection-Protective Footwear.* (ANSI Z41–1983). New York, NY: ANSI, 1983.

4. Bureau of Labor Statistics (BLS). "Accidents Involving Eye Injuries." Report 597, Washington, DC: BLS, 1980.

5. Bureau of Labor Statistics (BLS). "Accidents Involving Face Injuries." Report 604, Washington, DC: BLS, 1980.

6. Bureau of Labor Statistics (BLS). "Accidents Involving Head Injuries." Report 605, Washington, DC: BLS, 1980.

7. Bureau of Labor Statistics (BLS). "Accidents Involving Foot Injuries." Report 626, Washington, DC: BLS, 1981.

8. National Safety Council. "Accident Facts", Annual edition, Chicago, IL: 1981.

9. Bureau of Labor Statistics (BLS). "Supplementary Data System (SDS) Tables of Injuries involving the eyes, face, head, and feet by Occupation and Industry." Washington, DC: BLS, for various years.

10. Bureau of Labor Statistics (BLS). "Occupational Injuries and Illnesses in the United States by Industry," Annual edition, Washington, DC: BLS.

11. National Society to Prevent Blindness. "A Guide for Controlling Eye Injuries in Industry," Chicago, IL: 1982.

12. Plummer, R.W. and Stobbe, T.J., "Recommended Use of Personal Protective Equipment in Selected Occupational Codes and Job Activities," Washington, DC: OSHA, 1984.

13. Plummer, R.W., Stobbe, T.J., et al. "Personal Protective Equipment and Welders," Washington, DC: OSHA, 1982.

14. Plummer, R.W., Stobbe, T.J., et al. "Collection of Data and Information on the Appropriate Personal Protective Equipment to be Used by Petrochemical Workers," Washington, DC: OSHA, 1984.

15. Plummer, R.W., Stobbe, T.J., et al. "Collection of Data and Information on the Appropriate Personal Protective Equipment to be Used by Foundry Workers," Washington, DC: OSHA, 1983.

Appendix B—Non Mandatory Compliance Guidelines for Hazard Assessment and Personal Protective Equipment Selection

1. *Controlling hazards.* PPE devices alone should not be relied on to provide protection against hazards, but should be used in conjunction with guards, engineering controls, and sound manufacturing practices.

2. *Assessment and selection.* It is necessary to consider certain general guidelines for assessing the foot, head, eye and face hazard situations that exist in an occupational or educational operation or process, and to match the protective device to the particular hazard. It should be the responsibility of the safety officer to apply common sense and fundamental technical principles to accomplish these tasks. This process is somewhat subjective by nature, because of the infinite variety of situations where PPE may be required.

3. *Assessment guidelines.* In order to assess the need for PPE the following steps should be taken:

a. *Survey.* Conduct a walk-through survey of the areas in question. The purpose of the survey is to identify sources of hazards to the feet, head, eyes and face of workers and co-workers. Consideration should be given to the basic hazard categories:

(a) Impact
(b) Penetration
(c) Compression (roll-over)
(d) Chemical
(e) Heat
(f) Harmful dust
(g) Light (optical) radiation

b. *Sources.* During the walk-through survey the safety officer should observe: (a) Sources of motion; i.e., machinery or processes where any movement of tools, machine elements or particles could exist, or movement of personnel that could result in collision with stationary objects; (b) sources of high temperatures that could result in burns, eye injury or ignition of protective equipment, etc.; (c) types of chemical exposures; (d) sources of harmful dust; (e) sources of light radiation, i.e., welding, brazing, cutting, furnaces, heat treating, high intensity lights, etc.; (f) sources of falling objects or potential for dropping objects; (g) sources of sharp objects which might pierce the feet; (h) sources of rolling or pinching objects which could crush the feet; (i) layout of workplace and location of co-workers; and (j) any electrical hazards. In addition, injury/accident data should be reviewed to help identify problem areas.

c. *Organize data.* Following the walk-through survey, it is necessary to organize the data and information for use in the assessment of hazards. The objective is to prepare for an analysis of the hazards in the environment to enable proper selection of protective equipment.

d. *Analyze data.* Having gathered and organized data on a workplace, an estimate of the potential for foot, head, eye and face injuries should be made. Each of the basic hazards (paragraph 3.a.) should be reviewed and a determination made as to the type and level of risk from each of the hazards found in the area. The possibility of exposure to several hazards simultaneously should be considered.

4. *Selection guidelines.* After completion of the procedures in paragraph 3, the general procedure for selection of protective equipment is to: (a) Become familiar with the potential hazards and the type of protective equipment that is available, and what it can do; i.e., splash protection, impact protection, etc.; (b) compare the hazards associated with the environment; i.e., impact velocities, masses, projectile shape, radiation intensities, with the capabilities of the available protective equipment; (c) select the protective equipment which ensures a level of protection greater than the minimum required to protect employees from the hazards; and (d) fit the user with the protective device and give instructions on care and use of the PPE. It is very important that end users be made aware of all warning labels for and limitations of their PPE.

5. *Fitting the device.* Consideration must be given to comfort and fit. PPE that fits poorly will not afford the necessary protection. Continued wearing of the device is more likely if it fits the wearer comfortably. Protective devices are generally available in a variety of sizes. Care should be taken to ensure that the right size is selected.

Devices with adjustable features. Adjustments should be made on an individual basis for a comfortable fit that will maintain the protective device in the proper position. Particular care should be taken in fitting devices for eye protection against dust and chemical splash to ensure that the devices are sealed to the face. In addition, proper fitting of hard hats is important to ensure that the hard hat will not fall off during work operations. In some cases a chin strap may be necessary to keep the hard hat on an employee's head. (Chin straps should break at a reasonably low force, however, so as to prevent a strangulation hazard.) Where manufacturer's instructions are available, they should be followed carefully.

6. *Reassessment of hazards.* It is the responsibility of the safety officer to reassess the workplace hazard situation as necessary, by identifying and evaluating new equipment and processes, reviewing accident records, and reevaluating the suitability of previously selected PPE.

7. *Selection chart guidelines for eye and face protection.* Some occupations (not a complete list) for which eye protection should be considered are: Carpenters, electricians, machinists, mechanics and repairers, millwrights, plumbers and pipefitters, sheet metal workers and tinsmiths, assemblers, sanders, grinding machine operators, lathe and milling machine operators, sawyers, welders, laborers, chemical process operators and handlers, and timber cutting and logging workers. The following chart provides general guidance for the proper selection of eye and face protection to protect against hazards associated with the listed hazard "source" operations.

SELECTION CHART

Source	Assessment	Protection
Impact:		
Chipping, grinding, machining, masonry work, woodworking, sawing, drilling, chiseling, powered fastening, riveting, and sanding.	Flying fragments, objects, large chips, particles, sand, dirt, etc.	Spectacles with side protection, goggles, faceshields. See notes (1), (3), (5), (6), (10). For severe exposure, use faceshields.
Heat:		
Furnace operations, pouring, casting, hot dipping, and welding.	Hot sparks	Faceshields, goggles, spectacles with side protection. For severe exposure use faceshield. See notes (1), (2), (3).
	Splash from molten metals	Faceshields worn over goggles. See notes (1), (2), (3).

SELECTION CHART—Continued

Source	Assessment	Protection
Chemical:		
Acid and chemicals handling, degreasing plating	High temperature exposure	Screen faceshields, reflective faceshields. See notes (1), (2), (3).
	Splash	Goggles, eyecup and cover types. For severe exposure, use faceshield. See notes (3), (11).
	Irritating mists	Special purpose goggles.
Dust:		
Woodworking, buffing, general dusty conditions	Nuisance dust	Goggles, eyecup and cover types. See note (8).
Light Radiation:		
Welding:		
Electric arc	Optical radiation	Welding helmets or welding shields. Typical shades: 10–14. See notes (9), (12).
Gas	Optical radiation	Welding goggles or welding faceshield. Typical shades: gas welding 4–8, cutting 3–6, brazing 3–4. See note (9).
Cutting		
Torch brazing		
Torch soldering	Optical radiation	Spectacles or welding faceshield. Typical shades, 1.5–3. See notes (3), (9).
Glare	Poor vision	Spectacles with shaded or special purpose lenses, as suitable. See notes (9), (10).

Notes to Selection Chart Table

(1) Care should be taken to recognize the possibility of multiple and simultaneous exposure to a variety of hazards. Adequate protection against the highest level of each of the hazards should be provided. Protective devices do not provide unlimited protection.

(2) Operations involving heat may also involve light radiation. As required by the standard, protection from both hazards must be provided.

(3) Faceshields should only be worn over primary eye protection (spectacles or goggles).

(4) As required by the standard, filter lenses shall meet the requirements for shade designations in § 1910.133(a)(5). Tinted and shaded lenses are not filter lenses unless they are marked or identified as such.

(5) As required by the standard, persons whose vision requires the use of prescription (Rx) lenses shall wear either protective devices fitted with prescription (Rx) lenses or protective devices designed to be worn over regular prescription (Rx) eyewear.

(6) As required by the standard, wearers of contact lenses shall also be required to wear appropriate eye and face protection devices in a hazardous environment. It should be recognized that dusty and/or chemical environments may represent an addition hazard to contact lens wearers.

(7) Caution should be exercised in the use of metal frame protective devices in electrical hazard areas.

(8) Atmospheric conditions and the restricted ventilation of the protector can cause lenses to fog. Frequent cleansing may be necessary.

(9) Welding helmets or faceshields should be used only over primary eye protection (spectacles or goggles).

(10) Non-sideshield spectacles are available for frontal protection only, but are not acceptable eye protection for the sources and operations listed for "impact."

(11) Ventilation should be adequate, but well protected from splash entry. Eye and face protection should be designed and used so that it provides both adequate ventilation and protects the wearer from splash entry.

(12) Protection from light radiation is directly related to filter lens density. See note (4). Select the darkest shade that allows task performance.

8. *Selection guidelines for foot protection.* Safety shoes and boots which meet the ANSI Z41 Standard provide both impact and compression protection. Where necessary, safety shoes can be obtained which provide puncture protection. In some work situations, metatarsal protection should be provided, and in other special situations electrical conductive or insulating safety shoes would be appropriate.

Safety shoes or boots with impact protection would be required for carrying or handling of materials such as packages, objects, parts or heavy tools, which could be dropped, and for other activities where objects might fall onto the feet. Safety shoes or boots with compression protection would be required for work activities involving skid trucks (manual material handling carts) around bulk rolls (such as paper rolls) and around heavy pipes, all of which could potentially roll over an employee's feet. Safety shoes or boots with puncture protection would be required where sharp objects such as nails, wire, tacks, screws, large staples, scrap metal etc., could be stepped on by employees causing an injury.

Some occupations (not a complete list) for which foot protection should be considered are: shipping and receiving clerks, stock clerks, carpenters, electricians, machinists, mechanics and repairers, plumbers and pipe fitters, structural metal workers, assemblers, drywall installers and lathers, packers, wrappers, craters, punch and stamping press operators, sawyers, welders, laborers, freight handlers, gardeners and groundskeepers, timber cutting and logging workers, stock handlers and warehouse laborers.

9. *Selection guidelines for head protection.* All head protection (hardhats) is designed to provide protection from impact and penetration hazards caused by falling objects. Head protection is also available which provides protection from electric shock and burn. When selecting head protection, knowledge of potential electrical hazards is important. Class A helmets, in addition to impact and penetration resistance, provide electrical protection from low-voltage conductors (they are proof tested to 2,200 volts). Class B helmets, in addition to impact and penetration resistance, provide electrical protection from high-voltage conductors (they are proof tested to 20,000 volts). Class C helmets provide only impact and penetration resistance (they are usually made of aluminum which conducts electricity), and should not be used around electrical hazards.

Where falling object hazards are present, head protection must be worn. Some examples include: working below other workers who are using tools and materials which could fall; working around or under conveyor belts which are carrying parts or materials; working below machinery or processes which might cause material or objects to fall; and working on exposed energized conductors.

Some occupations (not a complete list) for which head protection should be considered are: carpenters, electricians, linemen, mechanics and repairers, plumbers and pipefitters, assemblers, packers, wrappers, sawyers, welders, laborers, freight handlers, timber cutting and logging, stock handlers, and warehouse laborers.

[FR Doc. 89–18947 Filed 8–15–89; 8:45 am]
BILLING CODE 4510-26-M

federal register

Wednesday
August 16, 1989

Part IV

Environmental Protection Agency

40 CFR Part 300

National Priorities for Uncontrolled Hazardous Waste Sites; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3630-5]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency ("EPA") is proposing an update to the National Priorities List ("NPL"). The NPL is Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), which was promulgated on July 16, 1982, pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"). CERCLA has since been amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA") and is implemented by Executive Order 12580 (52 FR 2923, January 29, 1987). CERCLA requires that that NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States, and that the list be revised at least annually. The NPL, initially promulgated on September 8, 1983 (48 FR 40658), constitutes this list.

This update proposes to add two new sites to the NPL, the Radium Chemical Company Site, in Woodside, Queens, New York, and the Forest Glen Mobile Home Subdivision Site in Niagara Falls, New York. Both are proposed for the NPL on the basis of § 300.66(b)(4) of the NCP (50 FR 37624, September 18, 1985). Section 300.66(b)(4) provides that, in addition to those releases identified by their Hazard Ranking System (HRS) scores as candidates for the NPL, EPA may identify for inclusion on the NPL any other release that the Agency determines is a significant threat to public health, welfare or the environment. This notice provides the public with an opportunity to comment on placing the Radium Chemical Company Site and the Forest Glen Mobile Home Subdivision Site on the NPL.

This proposed rule brings the number of proposed NPL sites to 337, 74 of them in the Federal section; 889 sites are on the final NPL, 41 of them in the Federal section. Final and proposed sites now total 1,226.

DATE: Comments must be submitted on or before September 15, 1989.

ADDRESSES: Comments may be mailed, in triplicate, to Larry Reed, Acting Director, Hazardous Site Evaluation Division (Attn: NPL Staff), Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460. Addresses for the Headquarters and Region 2 dockets are provided below. For further details on what these dockets contain, see the Public Comment Section, Section I, of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

Tina Maragousis, Headquarters, U.S. EPA CERCLA Docket Office, Waterside Mall, 401 M Street, SW., Washington, DC 20460, 202/382-3046.

U.S. EPA, Region 2, Document Control Center Superfund Docket, 26 Federal Plaza, 7th Floor, Room 740, New York, NY 10278, Latchmin Serrano, 212/264-5540, Ophelia Brown, 212/264-1154.

FOR FURTHER INFORMATION CONTACT: Martha Otto, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424-9346 (382-3000 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION:

Table of Contents:

I. Introduction
II. Purpose and Implementation of the NPL
III. NPL Update Process
IV. Contents of this NPL Update
V. Regulatory Impact Analysis
VI. Regulatory Flexibility Act Analysis

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601-9657 ("CERCLA" or "the Act") in response to the dangers of uncontrolled or abandoned hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99-499, stat. 1613 *et seq.* To implement CERCLA, the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP, further revised by EPA on September 16, 1985 (50 FR 37624), and November 20, 1985 (50 FR 47912), sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. On December 21, 1988 (53 FR 51394), EPA proposed revisions to the NCP in response to SARA.

Section 105(a)(8)(A) of CERCLA, as amended by SARA, requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, take into account the potential urgency of such action for the purpose of taking removal action." Removal action involves cleanup or other actions that are taken in response to emergency conditions or on a short-term or temporary basis (CERCLA) section 101(23)). Remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA are included in the Hazard Ranking Systems ("HRS"), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982). On December 23, 1988 (53 FR 51962), EPA proposed revisions to the HRS in response to CERCLA section 105(c), added by SARA.

In addition to the applications of the HRS, there are two other mechanisms by which EPA prioritizes sites for the purpose of taking remedial action. Under CERCLA section 105(a)(8)(B) each State may designate a single site as its top priority, regardless of the HRS score. Under the third mechanism, included in the NCP at 40 CFR 300.66(b)(4), the Agency may address sites as which the Agency for Toxic Substances and Disease Registry (ATSDR) recommends dissociation of individuals from the release, at which EPA determines that the release poses a significant public health threat, and for which EPA anticipates that it would be more cost effective to use remedial rather than removal authorities for cleanup. The three mechanisms are described in more detail in the NPL Update Process section, Section III, of the Supplementary Information portion of this preamble.

Based on these criteria, and pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA prepared a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is Appendix B of the NCP, is the National Priorities List ("NPL"). CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site can undergo CERCLA-financed remedial action only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.66(c)(2) and 300.68(a).

An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on March 31, 1989 (54 FR 13296). The Agency also has published a number of proposed rulemakings to add sites to the NPL, most recently Update #9 on July 14, 1989 (54 FR 29820).

EPA may delete sites from the NPL where no further response is appropriate, as explained in the NCP at 40 CFR 300.66(c)(7). To date, the Agency has deleted 27 sites from the final NPL, most recently on May 31, 1989 (54 FR 23212), when Voortman Farm, Upper Saucon Township, Pennsylvania, was deleted.

Pursuant to the NCP at 40 CFR 300.66(b)(4), this notice proposes to add two sites to the NPL. Adding these two sites to the 335 sites previously proposed brings the total number of proposed sites to 337. The final NPL contains 889 sites, for a total of 1,226 final and proposed sites.

EPA may include on the NPL sites at which there are or have been releases or threatened releases of hazardous substances, pollutants, or contaminants. The discussion below may refer to "releases or threatened releases" simply as "releases," "facilities," or "sites."

Public Comment Period

This **Federal Register** notice opens the formal 30-day comment period for this NPL Update. Comments may be mailed to Larry Reed, Acting Director, Hazardous Site Evaluation Division (Attn: NPL staff), Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The Headquarters and Region 2 public dockets for the NPL (see **ADDRESSES** portion of this notice) contain documents relating to the scoring of these proposed sites. The dockets are available for viewing, by appointment only, after the appearance of this notice. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding Federal holidays. The hours of operation for the Region 2 docket are from 8:00 a.m. to 5:00 p.m., Monday through Friday excluding Federal holidays.

The Headquarters docket for the two sites proposed in this NPL Update contain HRS score sheets, a Documentation Record describing the information used to compute the score, a list of documents referenced in the Documentation Record, the public health advisory issued by the Agency for Toxic Substances and Disease Registry, and EPA memoranda supporting the findings that the release poses a significant threat to public health and that it would be more cost-effective to use remedial rather than removal authorities at the sites.

The Regional docket includes all information available in the Headquarters docket, as well as the actual reference documents, which contain the data EPA relied upon in calculating or evaluating the HRS score for these sites. These reference documents are available only in the Region 2 docket.

An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any of these documents.

EPA considers all comments received during the formal comment period. During the comment period, comments are available to the public only in the Headquarters docket. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes. Comments received after the comment period closes will be available in the Headquarters docket and in the Regional Office docket on an "as received" basis. An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any comments. After considering the relevant comments received during the comment period, EPA will add these sites to the NPL if they continue to meet requirements set out in the NCP. EPA will read all comments received on these sites, including late comments. In past rules, EPA responded even to late comments. However, given the need to make final decisions on all currently proposed sites prior to the date that the revised HRS takes effect, EPA will not be able to respond to all late comments received for sites in this rule. However, the Agency has routinely responded to late comments that result from EPA correspondence that provided commenters with more recent data or requested that the commenters be more specific in their comments.

Early Comments

In certain instances, interested parties have written to EPA concerning sites that were not, at that time, proposed to the NPL. Because such submissions were not set to EPA during a formal comment period on the sites of concern, they are not considered to be formal comments. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if they still consider them appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to formal proposal generally will not be included in the docket.

Comments Lacking Specificity

EPA anticipates that some comments will consist of or include additional studies or supporting documentation, e.g., hydrogeology reports, lab data, and previous site studies. Where commenters do not indicate what specific scoring issues the supporting documentation addresses, or what they want EPA to evaluate in the supporting documentation, EPA can only attempt to respond to such documents as best it can. Any commenter submitting additional documentation should indicate what specific points in that documentation that it would like for EPA to consider. As the U.S. Court of Appeals for the District of Columbia Circuit noted in *Northside Sanitary Landfill* v. *Thomas & EPA*, 849 F. 2d 1516, 1520 (D.C. Cir. 1988) *cert. denied*, 109 S. Ct. 1528 (1989), during notice-and-comment rulemaking a commenter must explain with some specificity how any documents submitted are relevant to issues in the rulemaking.

II. Purpose and Implementation of the NPL

Purpose

The primary purpose of the NPL is stated in the legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d Sess. 60 (1980)):

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement action will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to

determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation.

Implementation

EPA has limited, by regulation, the expenditure of Trust Fund monies for remedial actions to those sites that have been placed on the final NPL, as outlined in the NCP at 40 CFR 300.66(c)(2) and 300.68(a). However, EPA may take enforcement actions under CERCLA or other applicable statutes against responsible parties regardless of whether the site is on the NPL, although, as a practical matter, the focus of EPA's CERCLA enforcement actions has been and will continue to be on NPL sites. Similarly, in the case of CERCLA removal actions, EPA has the authority to act at any site, whether listed or not, that meets the criteria of the NCP at 40 CFR 300.65–67.

EPA's policy is to pursue cleanup of NPL sites using the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. Listing a site will serve as notice to any potentially responsible party that the Agency may initiate CERCLA-financed remedial action. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities, proceed directly with CERCLA-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for Superfund-finance response action and/or enforcement action through both State and Federal initiatives. These determinations will take into account which approach is more likely to most expeditiously accomplish cleanup of the site while using CERCLA's limited resources as efficiently as possible.

Remedial response actions will not necessarily be funded in the same order as a site's ranking on the NPL. Most sites are listed in the order of their HRS scores, and the Agency has recognized that the information collected to develop HRS scores is not sufficient in itself to determine either the extent of contamination or the appropriate response for a particular site. EPA relies on further, more detailed studies in the remedial investigation/feasibility study (RI/FS) to address these concerns.

The RI/FS determines the nature and extent of the threat presented by the contamination (40 CFR 300.68(d)). It also takes into account the amount of contaminants in the environment, the risk to affected populations and environment, the cost to correct problems at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of action to be taken at these sites are made in accordance with the criteria contained in Subpart F of the NCP. After conducting these additional studies, EPA may conclude that it is not desirable to initiate a CERCLA remedial action at some sites on the NPL because of more pressing needs at other sites, or because a private party cleanup is already underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant remedial action.

III. NPL Update Process

There are three mechanisms for placing sites on the NPL. The principal mechanism is the application of the HRS. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to cause human health or safety problems, or ecological or environmental damage. The HRS score represents an estimate of the relative "probability and magnitude of harm to the human population or sensitive environment from exposure to hazardous substances as a result of the contamination of ground water, surface water, or air (47 FR 31180, July 16, 1982). Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under the second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism is provided by section 105(a)(8)(B) of CERCLA, as amended by SARA, which requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.66(b)(4) (50 FR 37624–28, September 16, 1985), allows certain sites with HRS scores below 28.50 to be eligible for the NPL if all of the following occur:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Department of Health and Human Services has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

This third mechanism was added to the NCP by rulemaking, during which the Agency explained that there are certain types of sites for which the risk may not be fully reflected in the HRS score. For example, direct contact scores are not included in calculating the total HRS score, and thus some sites involving direct contact to residents may pose a serious threat but not receive a sufficiently high score to qualify for the NPL. Similarly, where a small number of people are exposed to a hazardous substance, the site may fail to qualify for listing due to the low targets score. After accepting and responding to public comment, EPA issued a regulation that would allow the Agency to list sites where the ATSDR issues a health advisory, EPA determines that the site poses a significant health threat, and the Agency finds that it would be more cost-effective to use remedial rather than removal authority to respond to the release (50 FR at 37624–25).

The two sites proposed for the NPL today are proposed under the third mechanism for adding sites to the NPL. The specific application of the criteria for this mechanism to the Radium Chemical Company Site and the Forest Glen Mobile Home Subdivision Site is discussed in Section IV of this notice.

States have the primary responsibility for identifying non-Federal sites, computing HRS scores, and submitting candidate sites to the EPA Regional Offices. EPA Regional Offices conduct a quality control review of the States' candidate sites, and may assist in investigating, sampling, monitoring, and scoring sites. Regional Offices also may consider candidate sites in addition to those submitted by States. EPA Headquarters conducts further quality assurance audits to ensure accuracy and consistency among the various EPA and State offices participating in the scoring. The Agency then proposes the sites that meet one of the three criteria for listing (and EPA's listing requirements) and solicits public comment on the proposal. Based on these comments and further review by EPA, the Agency determines final HRS scores and places those sites that still qualify on the final NPL.

IV. Contents of This Proposed NPL Update

The Radium Chemical Company (RCC) Site, in Woodside, Queens Borough, New York City, New York and the Forest Glen Mobile Home Subdivision Site in Niagara Falls, New York are being proposed for the NPL on the basis of section 300.66(b)(4) of the NCP (50 FR 37584, September 16, 1985). Section 300.66(b)(4) provides that, in addition to those releases identified by their HRS scores as candidates for the NPL, EPA may identify for the NPL any other release that the Agency determines is a significant threat to public health, welfare, or the environment. EPA may make such a determination when ATSDR has issued a health advisory as a consequence of the release.

Radium Chemical Company

The site consists of a one-story brick building located in a densely populated residential and commercial area of New York City. Established in Manhattan in 1913, RCC transferred operations to Woodside in the late 1950s. A separate manufacturing company, which is unrelated to the RCC operation, occupies part of the same building and shares a common wall with RCC.

Initially, RCC produced luminous paint for watch dials and instruments. Later, it manufactured radium-containing needles and other sealed medical devices, largely for cancer therapy.

In 1963, the State suspended RCC's operating license because of various disposal and safety infractions, and in 1966, the company was denied permission to resume operations. In 1967, the State ordered RCC to remove the radium and decontaminate the building. In 1967, the facility was abandoned, leaving a large number of radium-containing sealed containers at the site, some of which were suspected of releasing radium and radon gas. The amount of radium–226 at the site was estimated to be 110 curies. Also on the site were hundreds of containers of laboratory chemicals, many of which were reactive, corrosive, flammable, and/or potentially shock sensitive.

The State formally requested that EPA secure the plant and remove the radioactive materials. In July 1986, EPA undertook a limited removal action using CERCLA emergency funds. EPA provided 24–hour security and took measures to stabilize the site. In April 1989, EPA began to remove the radioactive and hazardous materials and transport them to approved disposal facilities.

Elevated levels of radiation have been measured inside certain areas of the building. On February 10, 1989, ATSDR issued an advisory warning that the RCC Site poses a significant threat to public health because of the potential for the release of radium–226.

The advisory discusses two concerns. One is that an intruder might enter the RCC Site from the adjoining manufacturing facility (as has happened in the past) and remove radioactive materials. The second concern relates to the potential for release of radioactive materials to the ambient environment as a result of physical disturbance to the building. The RCC building is located approximately 15 feet from the Brooklyn-Queens Expressway, a major highway used extensively for commercial trucking. The U.S. Department of Energy's Lawrence Livermore Laboratory has modelled scenarios involving a gasoline tanker accident on the Brooklyn-Queens Expressway in the vicinity of the site, and has determined that the estimated 27,000 people who live within 1 mile of the site could be exposed to radiation if any were released in the event of a major accident.

As a result of these concerns, ATSDR has recommended dissociation of the radioactive materials from individuals in the community. (*See* "Public Health Advisory for Radium Chemical Company, Woodside, Queens, New York," issued by the ATSDR, February 10, 1989. This advisory is included in the Superfund docket for this proposed rule.)

EPA's assessment is that the site poses a significant threat to human health and the environment, and EPA anticipates that it will be more cost-effective to use remedial authority than to use removal authority to respond to the site. This finding is set out in a memorandum dated March 17, 1989, from Timothy Fields, Jr., Director, Emergency Response Division to Larry Reed, Acting Director of the Hazardous Site Evaluation Division, both in the Office of Solid Waste and Emergency Response. This memorandum is available in the Superfund docket for this proposed rule. Based on this information, and the references in support of the proposal, EPA believes that the Radium Chemical Site is appropriate for the NPL pursuant to 40 CFR 300.66(b)(4).

Forest Glen Mobile Home Subdivision Site

The Forest Glen Mobile Home Subdivision Site is located in Niagara Falls, Niagara County, New York. The 21–acre site consists of 52 mobile homes and two permanent residences. Approximately 150 residents live in the area. Surface and subsurface soils at the site are contaminated with a variety of chemicals.

Prior to the 1950's the area was wooded wetland. During the 1950's the area was cleared, and in the early 1970's, the area was filled with unspecified materials. The area was developed into a mobile home community in the 1970's. Analysis of soil samples collected from the site in 1988 and 1989 identified polyaromatic hydrocarbons, aniline, phenothiazine, benzothiazine, and mercaptobenzothiazole.

On July 21, 1988, ATSDR issued a preliminary Health Assessment, and on July 31, 1989 ATSDR issued a final Health Advisory recommending the dissociation of the residents of the community from the wastes and contaminated soil at the site. The advisory was based on the concern that residents of the community may be exposed to hazardous substances as a result of dermal contact with the soil (i.e. gardening, playing), through ingestion of produce growth in the soil, or as a result of inhalation of concentrated vapors collected in poorly ventilated, confined areas such as the space under the skirt of the mobile homes. In addition, the advisory expressed concern regarding the physical stability of the disposal area beneath the site, and the potential for contamination of the public water supply.

(*See* "Public Health Advisory for the Forest Glen Mobile Home Park, Niagara Falls, New York," issued by the ATSDR, on July 31, 1989. This document is included in the Superfund docket for this proposed rule.)

EPA's assessment is that the site poses a significant threat to human health and the environment, and EPA anticipates that it will be more cost-effective to use remedial authority than to use removal authority to respond to the site. This finding is set out in a memorandum dated August 3, 1989, from Stephen Luftig, Director of the Region II Emergency and Remedial Response Division to Larry Reed, Acting Director of the Hazardous Site Evaluation Division. This memorandum is available in the Superfund docket for this proposed rule.

Based on this information, and the references in support of the proposal, EPA believes that the Forest Glen Mobile Home Subdivision Site is appropriate for listing on the NPL pursuant to 40 CFR 300.66(b)(4).

Table 1 following this preamble lists the two sites proposed for the NPL in this update. The entry contains the names and locations of the sites.

Each proposed site is placed by HRS score in a group corresponding to groups

of 50 sites presented within the final NPL. For example, a site in Group 8 of the proposed update has a score that falls within the range of scores covered by the eighth group of 50 sites on the final NPL. The NPL is arranged by HRS scores and is presented in groups of 50 to emphasize that minor differences in scores do not necessarily represent significantly different levels of risk. Since these two sites have proposed HRS scores of less than 28.50, they are included in the group of sites with the lowest HRS scores.

V. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to listing on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of the economic implications of today's proposal to add two new sites, and finds that the kinds of economic effects associated with this proposed revision are generally similar to those identified in the regulatory impact analysis (RIA) prepared in 1982 for revisions to the NCP pursuant to section 105 of CERCLA (47 FR 31180, July 16, 1982) and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). This rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Costs

EPA has determined that this proposed rulemaking is not a "major" regulation under Executive Order 12291 because inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to the sites included in this proposed rulemaking.

The major events that follow the proposed listing of a site on the NPL are a search for potentially responsible parties and a remedial investigation/feasibility study (RI/FS) to determine if remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may bear some or all the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs.

The State cost share for site cleanup activities has been amended by section 104 of SARA. For privately-owned sites, as well as at publicly-owned but not publicly-operated sites, EPA will pay for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs associated with remedial action. The State will be responsible for 10% of the remedial action. For publicly-operated sites, the State cost share is at least 50% of all response costs at the site, including the RI/FS and remedial design and construction of the remedial action selected. After the remedy is built, costs fall into two categories:

- For restoration of ground water and surface water, EPA will share in startup costs according to the criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.
- For other cleanups, EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional. After that, the State assumes full responsibilities for O&M.

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average per site and total cost basis. EPA will continue with this approach, using the most recent (1988) cost estimates available; these estimates are presented below. However, there is wide variation in costs for individual sites, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site [1]
RI/FS	1,100,000
Remedial Design	750,000
Remedial Action	[2] 13,500,000
Net present value of O&M [3]	[2] 3,770,000

[1] 1988 U.S. Dollars.
[2] Includes State cost-share.
[3] Assumes cost of O&M over 30 years, $400,000 for the first year and 10% discount rate.
Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA.

Costs to States associated with today's proposed rule arise from the required State cost-share of: (1) 10% of remedial actions and 10% of first-year O&M costs at privately-owned sites and sites that are publicly-owned but not publicly-operated; and (2) at least 50% of the remedial planning (RI/FS and remedial design), remedial action, and first-year O&M costs at publicly-operated sites. The State will assume the cost for O&M after EPA's period of participation. The Radium Chemical Company Site and the Forest Glen Mobile Home Subdivision Site are both privately-owned. Therefore, using the budget projections presented above, the cost to the State of undertaking Federal remedial planning and actions, but excluding O&M costs, would be approximately $2.5 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known if these sites will require this treatment and for how long. However, based on past experience, EPA believes a reasonable estimate is that it will share startup costs for up to 10 years at 25% of sites.

Proposing a hazardous waste site for the NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this proposed amendment to the NCP are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this proposal on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The benefits associated with today's proposal to place the Radium Chemical Company Site and the Forest Glen Mobile Home Site on the NPL are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL can accelerate privately-financed, voluntary cleanup efforts. Proposing sites as national priority targets also may give States increased support for funding responses at particular sites.

As a result of additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate in advance of completing the RI/FS at this site.

VI. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While this rule proposes revisions to the NCP, they are not typical regulatory changes since the revisions do not authomatically impose costs. Proposing sites on the NPL does not in itself require any action by any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, it is hard to predict impacts on any group. A site's proposed inclusion on the NPL could increase the likelihood that adverse impacts to responsible parties (in the form of cleanup costs) will occur, but EPA cannot identify the potentially affected business at this time nor estimate the number of small businesses that might be affected.

The Agency does expect that certain industries and firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impacts from the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would only occur through enforcement and cost-recovery actions, which are taken at EPA's discretion on a site-by-site basis. EPA considers many factors when determining what enforcement actions to take, including not only the firm's contribution to the problem, but also the firm's ability to pay.

The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatement and disposal, Water pollution control, Water supply.

Dated: August 10, 1989.

Robert L. Duprey,
Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

PART 300—[AMENDED]

It is proposed to amend 40 CFR Part 300 as follows:

1. The authority citation for Part 300 continues to read as follows:

Authority: 42 U.S.C. 9605; 42 U.S.C. 9620; 33 U.S.C. 1321(c)(2); E.O. 11735 (38 FR 21243); E.O. 12580 (52 FR 2923).

Appendix B [Amended]

2. It is proposed to add the following two sites by group to the first table in Appendix B of Part 300:

NATIONAL PRIORITIES LIST PROPOSED UPDATE, AUGUST 1989

NPL GR [1]	EPA Reg	State	Site Name	City-County
17	02	NY	Radium Chemical Co.	Woodside.
17	02	NY	Forest Glen Mobile Home Subdivision.	Niagara Falls.

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.
Number of Sites Proposed for listing: 2.

[FR Doc. 89-19224 Filed 8-15-89; 8:45 am]
BILLING CODE 6560-50-M

Reader Aids

Federal Register
Vol. 54, No. 157
Wednesday, August 16, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

31645–31796.....1
31797–31932.....2
31933–32034.....3
32035–32332.....4
32333–32432.....7
32433–32628.....8
32629–32784.....9
32785–32950.....10
32951–33182.....11
33183–33492.....14
33493–33664.....15
33665–33852.....16

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6002.....31794
6003.....31931
6004.....31933
6005.....32033
6006.....32783

Executive Orders:
12685.....31796
12686.....32629

5 CFR
1620.....32785

7 CFR
29.....31797
58.....31648
301.....32788
319.....33665
401.....33493
406.....33493
910.....32035, 32951
917.....32794, 33667
945.....31798
947.....32433
948.....33484
1076.....31799
1126.....32951
1864.....32953

Proposed Rules:
1e.....32985
51.....32419
401.....33557, 33566
403.....33567
800.....33702
910.....33704
911.....31843
929.....31844
931.....33706
932.....33706
945.....33707
967.....31845
993.....31846
1001.....33709
1002.....33709
1004.....33709
1005.....33709
1006.....33709
1007.....33709
1011.....33709
1012.....33709
1013.....33709
1030.....33709
1032.....33709
1033.....33709
1036.....33709
1040.....33709
1046.....33709
1049.....33709
1050.....33709
1064.....33709
1065.....33709
1068.....33709
1076.....33709
1079.....33709
1089.....33709
1093.....33709
1094.....33709
1096.....33709
1097.....33709
1098.....33709
1099.....33709
1106.....33709
1108.....33709
1120.....33709
1124.....33709
1126.....33709
1131.....33709
1132.....33709
1134.....33709
1135.....33709
1137.....33709
1138.....33709
1139.....33709

8 CFR

Proposed Rules:
210.....31966

9 CFR
51.....32434
91.....33668
92.....31800

10 CFR
2.....33168
7.....31646
26.....33148

Proposed Rules:
Ch. I.....32653
50.....33568
55.....33568
70.....33570
72.....33570
73.....33570
75.....33570
430.....32349, 32744

12 CFR
33.....31935
207.....31646
220.....31646
221.....31646
224.....31646
226.....32953
229.....32035
262.....33183
328.....33669
545.....32954
574.....32959, 33183

Proposed Rules:
4.....32620

5.....33711
7.....33711
12.....32653
226.....32089
328.....33716
584.....33235

14 CFR

39.....31649, 31651-31653, 31803-31809, 31935, 32436-32437, 32796, 33166
71.....31654, 31936, 31937
73.....31655, 32800
75.....31937
97.....33497
217.....31610
241.....31610
303.....32439, 32440, 32803, 32797-32800, 33496
1221.....32963

Proposed Rules:

Ch. I.....33557
39.....31693, 31694, 31847, 32824, 32826, 33235, 33237
43.....32563
65.....32563
71.....31696-31704, 31966, 32452, 32827, 33578
75.....31705, 31967
145.....32563
Ch. II.....33577, 33578
233.....33560
252.....33560
253.....33560
302.....33560
377.....33582

15 CFR

773.....31812

16 CFR

305.....32631

Proposed Rules:

4.....32654

17 CFR

140.....31614
200.....33500
211.....32333, 32334
230.....33500
260.....33500
270.....31650, 32048
274.....32048
275.....32048, 32441
279.....32048

Proposed Rules:

230.....32226, 32993
239.....32226, 32993
240.....31650, 32229
249.....32226
260.....32226
269.....32226
270.....32993, 33027
274.....32993

18 CFR

35.....32602
270.....32605
271.....31938, 32605

Proposed Rules:

37.....31706
803.....33036

19 CFR

4.....33187, 33188
10.....33189
113.....33672
177.....32742, 32810

Proposed Rules:

355.....33238

20 CFR

Proposed Rules:

208.....32163
219.....31939
220.....32163
230.....32163
260.....32163
327.....31968
404.....33238
416.....31656, 33238

21 CFR

133.....32050
179.....32335
510.....32632, 33672
520.....32336, 33501, 33814
522.....32632
524.....32632
540.....33672, 33673
556.....32633
558.....32633-32634, 32963
573.....33673
1301.....33674
1305.....33674

Proposed Rules:

Ch. I.....32610
133.....32091
168.....33582
522.....31949
556.....31949
1308.....31815, 31855
1310.....31657
1313.....31657
1316.....31669

22 CFR

60.....31815
61.....31815
62.....31815
63.....31815
64.....31815
65.....31815
514.....32964

23 CFR

659.....32967

24 CFR

200.....32059, 32968
203.....32968
204.....32968
206.....32059
213.....32968
220.....32968
221.....32968
222.....32968
226.....32968
227.....32968
235.....32968
237.....32968
240.....32968
570.....31670

Proposed Rules:

Ch. I.....31856
200.....33039
205.....33039

25 CFR

1.....31672, 31816
602.....31672

Proposed Rules:

1.....31708, 32453

26 CFR

31.....32618
523.....32027
544.....32026

29 CFR

524.....32920, 33814
525.....32920, 33814
529.....32920, 33814
1600.....32061
1601.....32061
1610.....32061
1611.....32061
1620.....32061
1626.....32061, 33501
1627.....33675
1691.....32061
1910.....31765, 31970
2589.....32635
2619.....33504
2676.....33505

Proposed Rules:

503.....32985
1910.....31858, 33832

30 CFR

934.....32063

Proposed Rules:

250.....31768, 32316, 32563, 33042
906.....32628
917.....32093
920.....33042
925.....32094
931.....32095, 32096
946.....32097, 32098

31 CFR

103.....33675
500.....32064

32 CFR

231.....33512
231a.....33516
385.....33521
286.....33190
706.....31825

33 CFR

100.....31826, 32066, 32441-32442, 33679, 33680
110.....32419
117.....31827
146.....32971
162.....32419
165.....32419, 32443

Proposed Rules:

100.....31859, 31860, 32453, 32659
162.....32661
334.....33584

34 CFR

208.....32936
345.....32770
755.....32946

35 CFR

Proposed Rules:

133.....32099
135.....32099

36 CFR

1153.....32337-32342
1155.....32337-32342
1202.....32067
1250.....32067
1254.....32067

Proposed Rules:

1206.....32455

37 CFR

1.....32637
2.....32637
301.....32810
309.....32810

38 CFR

3.....31826, 31950
21.....31829, 31950-31952, 32070

39 CFR

111.....32071, 33523
3001.....33525, 33681

40 CFR

52.....31953, 32072, 32073, 32637, 32971, 33526, 33528-33536
60.....32444, 32972
61.....32444
80.....33218
81.....32078, 33219, 33536
85.....32566
116.....33426
117.....33426
167.....32638
180.....31674, 31830-31836, 33690
228.....33585
264.....33376
265.....33376
270.....33376
271.....32973
302.....33418, 33426
795.....33400
796.....33148
797.....33148
799.....33148, 33400

Proposed Rules:

52.....32101, 33245, 33247, 33717
81.....31860, 31971, 31972
85.....32596
180.....31971, 31972, 33044, 33718
185.....31836
186.....31832-31836
228.....32351-32356
261.....31675, 32320, 32662
300.....33846
302.....32320, 32671
355.....32671
704.....31680
799.....32829

41 CFR

101-47.....32445

42 CFR

50.....32446
484.....33354

Proposed Rules:

5.....32459

43 CFR

Public Lands Orders:

6741.....32812
6742.....32812
6743.....33693

44 CFR

59.....33541
60.....33541
64.....32813, 32814, 33220, 33222
65.....33541
67.....33693
80.....31681
83.....31681
352.....31920

Proposed Rules:

335.....32359

45 CFR

232.....32284
302.....32284
303.....32284
304.....32284
306.....32284
307.....32284
1632.....31954

46 CFR

Proposed Rules:

10.....33045
15.....33045

47 CFR

Chapter I.....33224
2.....32339
15.....32339
22.....33551
25.....33226
73.....31685, 31686, 31838, 31960, 32340, 32639-32641, 33227, 33699, 33700
80.....31839

Proposed Rules:

2.....32630
64.....33585
69.....33585
73.....32361, 32362, 32672-32676, 33249, 33250, 33719-33721
94.....32362

48 CFR

203.....32161
208.....32161
209.....32161
212.....32161
213.....32161
214.....32161
215.....32161, 32975
216.....32161
217.....32161
219.....32161
222.....32161
223.....32161
226.....32161
242.....32161
245.....32161
252.....32161
253.....32161
273.....32161
525.....33554
801.....31961

Proposed Rules:

44.....32422
45.....32424
51.....32424
52.....32424
205.....33045
970.....33251

49 CFR

190.....32342
191.....32342
192.....32344, 32541
195.....32342, 32344
210.....33227
215.....33227
216.....33227
217.....33227
225.....33227
228.....33227
229.....33227
231.....33227
232.....33227
383.....33230
571.....31687, 32345
1207.....33555
1249.....33555

Proposed Rules:

571.....32830

50 CFR

17.....32326
20.....32975
23.....33231
215.....32348
217.....32815
226.....32085
227.....32085, 32815
652.....33700
611.....32642, 32819
681.....31841
663.....31688
672.....32819, 33701
675.....31842, 32642

Proposed Rules:

17.....32833, 33556
20.....33721
263.....32362
267.....32362
Ch. VII.....33735
611.....31861
620.....31861
649.....32834
655.....31862
672.....31861, 33737
675.....31861, 33737

contributions to the Federal employees health benefits program shall be computed for 1990 or 1991 if no Government-wide indemnity benefit plan participates in that year. (August 11, 1989; 103 Stat. 556; 2 pages) Price: $1.00

H.J. Res. 363/Pub. L. 101-77

To designate 1989 as "United States Customs Service 200th Anniversary Year." (August 11, 1989; 103 Stat. 558; 1 page) Price: $1.00

S.J. Res. 78/Pub. L. 101-78

To designate the month of November 1989 and 1990 as "National Hospice Month." (August 11, 1989; 103 Stat. 559; 1 page) Price: $1.00

S.J. Res. 126/Pub. L. 101-79

Commemorating the bicentennial of the United States Coast Guard. (August 11, 1989; 103 Stat. 560; 1 page) Price: $1.00

S.J. Res. 127/Pub. L. 101-80

Designating Labor Day weekend, September 2 through 4, 1989, as "National Drive for Life Weekend." (August 11, 1989; 103 Stat. 561; 2 pages) Price: $1.00

LIST OF PUBLIC LAWS

Last List August 15, 1989

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 2705/Pub. L. 101-75

Relating to the method by which Government

Order Now!

The United States Government Manual 1988/89

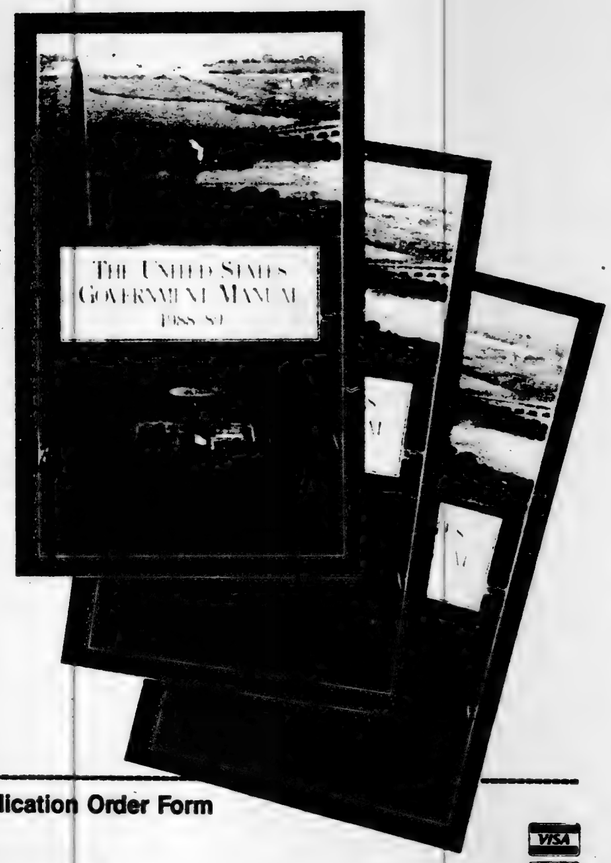
As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$20.00 per copy



Publication Order Form

Order processing code: *6450

VISA MasterCard

☐ **YES,** please send me the following indicated publications:

_____ copies of THE UNITED STATES GOVERNMENT MANUAL, 1988/89 at $20.00 per copy. S/N 069-000-00015-1.

1. The total cost of my order is $_____ International customers please add 25%. All prices include regular domestic postage and handling and are good through 3/89. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐

☐ VISA, or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

(Rev. 8-88)

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9325

L

4

S

G

6

39

11

OL
4
SS
S
3
G
7
89
MI

8-17-89
Vol. 54 No. 158

federal register

Thursday
August 17, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 89 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

8-17-89
Vol. 54 No. 158
Pages 33853-34118

federal register

Thursday
August 17, 1989

BEST COPY AVAILABLE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 54, No. 158
Thursday, August 17, 1989

Agriculture Department
See also Animal and Plant Health Inspection Service; Farmers Home Administration; Food Safety and Inspection Service; Rural Electrification Administration; Soil Conservation Service
NOTICES
Agency information collection activities under OMB review, 33952
Grant and cooperative agreement awards:
Florida A&M University, 33952
Old Dominion University, 33953
University of Arkansas, 33952
University of Georgia Research Foundation, 33952

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 33956

Animal and Plant Health Inspection Service
PROPOSED RULES
Exportation and importation of animals and animal products:
Rinderpest and foot-and-mouth diseases; disease status change for Chile, 33918

Antitrust Division
NOTICES
National cooperative research notifications:
Bell Communications Research, Inc., 33895
Unix International, Inc., 33895

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Commerce Department
See Export Administration Bureau; National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
RULES
Futures commission merchants, introducing brokers, etc.; exchange of futures for cash commodities or of futures in connection with cash commodity transactions, 33878

Defense Department
See also Air Force Department
NOTICES
Agency information collection activities under OMB review, 33955
(2 documents)
Privacy Act:
Systems of records, 33956
Senior Executive Service:
Performance Review Boards; membership, 33956

Education Department
NOTICES
Agency information collection activities under OMB review, 33957
Grants and cooperative agreements; availability, etc.:
National Center for Research and Development in Education of Gifted and Talented Children and Youth, 34076

Energy Department
See also Energy Information Administration; Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
Texas, 33958
(2 documents)
Uni-Frac, Inc., 33959
Senior Executive Service:
Performance Review Board; membership, 33959

Energy Information Administration
NOTICES
Reporting and recordkeeping requirements, 33959

Environmental Protection Agency
RULES
Air pollution; standards of performance for new stationary sources:
Fluid catalytic cracking unit regenerators, 34006
Air quality implementation plans; approval and promulgation; various States:
Indiana, 33894
Pesticide programs:
Federal Insecticide, Fungicide, and Rodenticide Act; good laboratory practice standards, 34052
Toxic substances:
Toxic Substances Control Act; good laboratory practice standards, 34034
PROPOSED RULES
Hazardous waste:
Identification and listing—
1,1-dimethylhydrazine production; wastes generated, 33942

Executive Office of the President
See Presidential Documents

Export Administration Bureau
RULES
Export licensing:
Commodity control list—
COCOM review; ECCNs 1203A, 1359A, and 1528A amended, 33876

Farmers Home Administration
PROPOSED RULES
Program regulations:
Debt settlement—
Community and business programs, 33917
NonProgram loans; uniform handling, 33906

Federal Aviation Administration
RULES
Airworthiness directives:
British Aerospace, 33873, 33874
(2 documents)

Schweizer, 33875
PROPOSED RULES
Airworthiness directives:
Boeing, 33934–33938
(4 documents)
Airworthiness standards:
Transport category airplanes—
Landing gear aural warning, 34116
VOR Federal airways, 33941

Federal Communications Commission
RULES
Common carrier services:
Mobile satellite services; spectrum allocations, 33898
Radio services, special:
Private land mobile services—
Offset channels in 150 MHz band, 33902
Radio stations; table of assignments:
Arkansas, 33900
Louisiana, 33900
Virginia, 33901
Television stations; table of assignments:
Arkansas, 33901
PROPOSED RULES
Radio stations; table of assignments:
Kentucky, 33946
NOTICES
Agency information collection activities under OMB review, 33966
Rulemaking proceedings; petitions filed, granted, denied, etc., 33966

Federal Election Commission
RULES
Contribution limitations, earmarked contributions, prohibitions, etc., 34098
NOTICES
Meetings; Sunshine Act, 34005

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Colorado et al., 33987
Florida et al., 33986
PROPOSED RULES
Flood elevation determinations:
Arkansas et al., 33943

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.
Idaho Power Co. et al. , 33961
Applications, hearings, determinations, etc.:
El Paso Natural Gas Co., 33964
Kentucky West Virginia Gas Co., 33964
North Penn Gas Co., 33964
Northern Natural Gas Co., 33965
Northwest Pipeline Corp., 33965
West Texas Gas, Inc. , 33965

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Franklin and Vance Counties, NC, 34002

Federal Home Loan Bank Board
RULES
Federal Savings and Loan Insurance Corporation:
Equity-risk investments, 33870
Federal savings and loan system:
Customer financial records, release by Federal associations, 33859
PROPOSED RULES
Federal Savings and Loan Insurance Corporation:
Insured institutions; capital distributions, 33926
Insured institutions; divestiture of control; capital maintenance obligation, 33923
NOTICES
Applications, hearings, determinations, etc.:
Waldoboro Bank, F.S.B., 33966

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Norwest Corp., 33967

Fish and Wildlife Service
PROPOSED RULES
Endangered, threatened, and other depleted marine mammals; incidental takings; U.S. citizen, definition, 33949
Importation, exportation, and transportation of wildlife:
Fish or fish eggs; injurious wildlife, 33947

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Maduramicin ammonium with roxarsone, 33884
NOTICES
Human drugs:
Patent extension; regulatory review period determinations—
Suprax, 33968
Meetings:
Advisory committees, panels, etc., 33969

Food Safety and Inspection Service
PROPOSED RULES
Meat and poultry inspection:
Rapid analytical, diagnostic, and microbiological tests; review and approval, 33920

Health and Human Services Department
See Food and Drug Administration; Health Resources and Services Administration; Human Development Services Office; Public Health Service

Health Resources and Services Administration
See also Public Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Health careers opportunity program, 33970

Human Development Services Office
NOTICES
Agency information collection activities under OMB review, 33972

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; Reclamation Bureau; Surface Mining Reclamation and Enforcement Office

NOTICES
Middle Fork of Vermilion River, IL; approval for inclusion in National Wild and Scenic Rivers system, 33974

International Trade Commission
RULES
Practice and procedure:
Trade remedy assistance, 33881
NOTICES
Import investigations:
Strip lights, 33983

Justice Department
See also Antitrust Division; Prisons Bureau
NOTICES
Joint newspaper operating agreements; Las Vegas Sun and Review-Journal, 33984
Pollution control; consent judgments:
Connecticut Transportation Department, 33984
Senior Executive Service:
Performance Review Board; membership, 33985

Labor Department
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Management framework plans, etc.:
California, 33974
Meetings:
Battle Mountain District Advisory Council, 33975
Burns District Advisory Council, 33976
Canon City District Grazing Advisory Board, 33975
Lakeview District Advisory Council, 33975
Mineral interest applications:
North Dakota, 33976
Opening of public lands:
California, 33976
Realty actions; sales, leases, etc.:
California, 33974
Colorado, 33977
Recreation management restrictions, etc.:
Albuquerque District, NM, 33977
Survey plat filings:
New Mexico, 33979
Withdrawal and reservation of lands:
Washington, 33979
Washington; correction, 33979

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 34005

Minerals Management Service
NOTICES
Meetings:
Royalty Management Advisory Committee, 33980
Outer Continental Shelf; development operations coordination:
Elf Aquitaine Operating, Inc., 33980
Flash Gas & Oil Southwest, Inc., 33981
Walter Oil & Gas Co., 33981

National Aeronautics and Space Administration
NOTICES
Federal Information Processing Standards (FIPS):
Waiver request, 33986

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities Panel, 33987

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
High seas salmon off Alaska, 33904
PROPOSED RULES
Endangered, threatened, and other depleted marine mammals; incidental takings; U.S. citizen, definition, 33949

Nuclear Regulatory Commission
NOTICES
Meetings:
Special Committee to Review Severe Accident Risks Report, 33987
Regulatory guides; issuance, availability, and withdrawal, 33988
(2 documents)
Reports; availability, etc.:
Nuclear power plants; standard review plan for review of safety analysis reports, 33989
Applications, hearings, determinations, etc.:
Arkansas Power & Light Co., 33989

Pension and Welfare Benefits Administration
NOTICES
Meetings:
Employee Welfare and Pension Benefit Plans Advisory Council, 33986

Presidential Documents
PROCLAMATIONS
Special observances:
Library Card Sign-Up Month, National (Proc. 6008), 33855
Senior Citizens Day, National (Proc. 6007), 33853
Wilderness Week, National (Proc. 6009), 33857

Prisons Bureau
PROPOSED RULES
Inmate control, custody, care, etc:
Smoking/No Smoking areas regulations, 34094

Public Health Service
See also Food and Drug Administration; Health Resources and Services Administration
NOTICES
National vaccine injury compensation program; petitions received, 33973

Railroad Retirement Board
NOTICES
Agency information collection activities under OMB review, 33989

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Central Valley Project/State water project water conveyance and purchase contract, CA, 33981

Rural Electrification Administration
NOTICES
Environmental statements; availability, etc.:
Associated Electric Cooperative, Inc., 33953

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Boston Stock Exchange, Inc., 33989, 33991
(2 documents)
Midwest Clearing Corp., 33992
Midwest Securities Trust Co., 33993
National Association of Securities Dealers, Inc., 33996
New York Stock Exchange, Inc., 33998, 34000
(2 documents)
Applications, hearings, determinations, etc.:
ML-Lee Acquisitions Fund II, L.P., et al., 33994

Small Business Administration
NOTICES
Applications, hearings, determinations, etc.:
Norwest Equity Partners IV, 34001

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Brashears Creek Watershed, KY, 33954
Green Knoll, NJ, 33954
Warren Township Middle School, NJ, 33954

State Department
NOTICES
Meetings:
International Telegraph and Telephone Consultative Committee, 34002

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities under OMB review, 33983

Transportation Department
See also Federal Aviation Administration; Federal Highway Administration; Urban Mass Transportation Administration
NOTICES
Aviation proceedings:
Hearings, etc.—
U.S.-Japan service case, 34003
Standard time zone boundaries:
Burlington Northern Railroad; operating exception removed, 34002

Treasury Department
NOTICES
Agency information collection activities under OMB review, 34003
(2 documents)

Urban Mass Transportation Administration
NOTICES
Grants; UMTA sections 3 and 9 obligations, 34052

Veterans Affairs Department
RULES
Vocational rehabilitation and education:
Veterans education—
Dependents' educational assistance and benefits under Vietnam Era GI Bill, 33885

Separate Parts In This Issue

Part II
Environmental Protection Agency, 34008

Part III
Environmental Protection Agency, 34034

Part IV
Environmental Protection Agency, 34052

Part V
Department of Education, 34076

Part VI
Department of Justice, Bureau of Prisons, 34094

Part VII
Department of Transportation, Urban Mass Transportation Administration, 34096

Part VIII
Federal Election Commission, 34098

Part IX
Department of Transportation, Federal Aviation Administration, 34116

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6007.....33853
6008.....33855
6009.....33857

7 CFR
Proposed Rules:
1900.....33906
1910.....33906
1951.....33906
1955.....33906
1956.....33917
1962.....33906
1965.....33906

9 CFR
Proposed Rules:
94.....33918
309.....33920
310.....33920
318.....33920

11 CFR
100.....34098
102.....34098
110.....34098
114.....34098
9034.....34098

12 CFR
545.....33859
563.....33870
Proposed Rules:
563 (2 documents).....33923–33926
563b.....33926

14 CFR
39 (3 documents).....33873–33875
Proposed Rules:
25.....34116
39 (4 documents).....33934–33938
71.....33941
121.....34116
125.....34116

15 CFR
799.....33876

17 CFR
1.....33878

19 CFR
213.....33881

21 CFR
558.....33884

28 CFR
Proposed Rules:
551.....34094

38 CFR
21.....33885

40 CFR
52.....33894
60.....34008
160.....34052
792.....34034
Proposed Rules:
261.....33942

44 CFR
65.....33896
67.....33897
Proposed Rules:
67.....33943

47 CFR
2.....33898
22.....33898
25.....33898
73 (4 documents).....33900, 33901
90.....33902
Proposed Rules:
73.....33946

50 CFR
674.....33904
Proposed Rules:
16.....33947
18.....33949
228.....33949

Federal Register
Vol. 54, No. 158
Thursday, August 17, 1989

Presidential Documents

Title 3—

The President

Proclamation 6007 of August 14, 1989

National Senior Citizens Day, 1989

By the President of the United States of America

A Proclamation

Our Nation's senior citizens are men and women who have helped make the 20th century the American Century. Over the years, these men and women have made great sacrifices to defend the cause of freedom around the world and to build strong families and communities here at home.

Today, our Nation continues to rely upon the knowledge, strength, and energy of our senior citizens. These men and women are grandparents who enrich our families with their love and guidance; they are neighbors who support our churches, schools, and local charities as volunteers; and they are veterans who remind us that peace and freedom are great yet precious blessings, won at a very high price and kept by the vigilant and the brave.

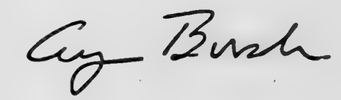
Millions of older Americans are also valuable members of our Nation's work force. Today, many seniors are working well past the traditional "retirement age" as both they and their employers recognize the benefits of their seasoned wisdom and years of experience.

All senior citizens—whether actively involved in business and community affairs or quietly devoted to their families and neighbors—deserve our gratitude and respect. They have shared with us the acquired wisdom of the ages, and they have shown us the meaning of faith, courage, and love of country.

In recognition of our Nation's senior citizens and the many contributions they have made to our society, the Congress, by House Joint Resolution 225, has requested that the President issue a proclamation designating the third Sunday of August 1989 as "National Senior Citizens Day."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim Sunday, August 20, 1989, as National Senior Citizens Day. I call upon the people of the United States to observe that day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of August, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-19547
Filed 8-15-89; 4:07 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6006 of August 14, 1989

National Library Card Sign-Up Month, 1989

By the President of the United States of America

A Proclamation

Our Nation's fourth President, James Madison, once observed that "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives." President Madison knew that only an educated and informed public can keep a free and democratic government.

Throughout our Nation's history, libraries have been recognized as an invaluable educational tool. Whether located in community buildings, schools, or other academic institutions, libraries are an ideal way to share both the collected wisdom of the ages and recently acquired technical and scientific knowledge. Repositories of literature, information, and ideas, libraries serve as centers of culture and learning in every community.

At their local library, children as well as adults can find books and materials to meet their special needs and interests. Whether reading for pleasure or studying for a particular purpose, a young scholar can discover a wealth of information—and hours of enjoyment—at the library. Libraries also provide books suitable for parents to share with little ones who are still unable to read by themselves. In fact, reading together holds rewards for the entire family.

Parents should introduce their children to their local library and encourage them to visit it often. They should ensure that their children sign up for a library card, and they should set a positive example by using their own.

If knowledge can be considered the greatest of all riches, then a library card is a key to a lasting treasure.

In recognition of our Nation's libraries and the importance of owning and using a library card, the Congress, by House Joint Resolution 231, has designated September 1989 as "National Library Card Sign-Up Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim September 1989 as National Library Card Sign-Up Month. I call upon the libraries, schools, and people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of August, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-19548
Filed 8-15-89; 4:06 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6009 of August 14, 1989

National Wilderness Week, 1989

By the President of the United States of America

A Proclamation

When our Nation was founded, much of the land that eventually became part of the United States was unspoiled wilderness, teeming with wildlife and rich in natural resources. But after just 100 years, much of the American frontier had virtually disappeared. Railroads crisscrossed the continent, inviting settlement and industry. The rush for land and resources led to almost unchecked development.

The end of the 19th century, however, marked a turning point in the management of America's natural resources. For the benefit of the entire country, the U.S. Government began to reserve selected public land as National Parks, National Forests, and National Wildlife Refuges. In 1924, the Gila National Forest in New Mexico became the first public land allocated specifically for the purpose of preserving the ecological, geological, scientific, and historic value of the wilderness. Forty years later, the desire to protect our Nation's wilderness resource was codified with the signing of the Wilderness Act on September 3, 1964.

This year marks the 25th anniversary of that Act, which established the National Wilderness Preservation System. This System was the first of its kind in the world. Managed by the Departments of Agriculture and the Interior, the System now includes more than 90 million acres of wilderness in 44 States. The Wilderness Act directs that these acres be managed to "secure for the American people of present and future generations the benefits of an enduring resource of wilderness . . . unimpaired for future use and enjoyment." It requires that these areas be "devoted to the public purposes of recreation, scenic, scientific, educational, conservation and historical use."

When the Wilderness Act was passed, many assumed that simply designating an area as wilderness would assure its preservation. However, experience has shown us that preserving these beautiful, untamed lands requires a lasting commitment and cooperation from the public. Every American can demonstrate that commitment by supporting the careful management and protection of our wilderness.

In recognition of the values of wilderness, the Congress by Senate Joint Resolution 67, has designated the week of September 3 through September 9, 1989, as "National Wilderness Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of September 3 through September 9, 1989, as National Wilderness Week. I call upon all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of August, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-19549
Filed 8-15-89; 4:09 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 54, No. 158
Thursday, August 17, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 545

[No. 89-2350]

RIN 3068-AA86

Release of Customer Financial Records by Federal Associations

Date: August 8, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board (the "Bank Board" or "Board") is amending its regulations governing the release of customer financial records by federally chartered savings and loan associations and savings banks ("Federal associations" or "associations"). This final rule would generally authorize a Federal association, whether chartered as a mutual association ("Federal mutual association"), or as a stock association ("Federal stock association"), to disclose, unless the customer objects, the names and addresses of its customers and their savings or loan records ("customer information") to any wholly-owned subsidiary of the Federal association or to other persons if the information to be disclosed is limited to the customers' names and addresses ("customer identification") or is recorded in the public records. The regulation also authorizes a Federal association to disclose to persons other than wholly-owned service corporations customer information that is not recorded in the public records on the prior condition that the Federal association obtains the affirmative consent of the customer prior to the disclosure. Specific exceptions are provided to authorize the release of customer information to third persons under various situations prohibited by the general rule. The amendment would replace the current requirement that Federal mutual associations obtain the prior approval of either the Board or a Supervisory Agent before releasing customer information. Through this amendment, the Board seeks to balance the legitimate business interests of Federal associations in disclosing customer information with reasonable customer expectations of privacy.

EFFECTIVE DATE: December 15, 1989.

FOR FURTHER INFORMATION CONTACT: Jeffrey Ross Williams, Attorney, (202) 906-6559, Jerome Edelstein, Deputy Director, (202) 906-7057, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552; or Ben F. Dixon, Policy Analyst, (202) 331-4599, Policy Division, Federal Home Loan Bank System, 801 17th Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Current Regulations and Office of General Counsel Interpretations

Section 545.131(a) of the Board's regulations sets forth limitations on public disclosure by a Federal mutual association of its "membership list." As used in § 545.131, a "membership list" includes a list of the names of the members of the association, their addresses, their savings account or loan account records, or any data from which information reasonably could be constructed. 12 CFR 545.131(a) (1988). Section 545.131(a)(2) generally prohibits Federal mutual associations from disclosing membership lists without the prior written approval of the Board. The regulation contains exceptions for disclosure to officers of the association and to those persons employed by them in the usual course of the association's business. Section 545.131(a) permits a Supervisory Agent to approve or disapprove an application by a Federal mutual association to release such lists and to specify any terms or conditions for such release. *Id.* § 545.131(a)(3). Section 545.131(b) gives a member of a Federal mutual association the right to inspect only those records of the association pertaining to his or her own savings or loan accounts.[1]

In construing the provisions of § 545.131, the Board's Office of General Counsel ("OGC") has interpreted the regulation to permit disclosure to an "agent" of the association, pursuant to a written agency agreement, where the agent acts as the functional equivalent of an officer or employee conducting the business of the association in its usual course. Disclosure also has been permitted to an association's wholly owned service corporations or its wholly owned subsidiaries, when such release been approved by the Supervisory Agent. Under the authority of Supervisory Agents to specify the terms and conditions of such approval, approval has been conditioned primarily upon the membership list being released to the service corporation or subsidiary pursuant to a written agreement that would protect the members' privacy. *See, e.g.*, OGC Ops. by R. Stewart (Feb. 27, 1985); J. Williams (March 17, 1986) and J. Williams (March 21, 1986). While no Board regulation specifically applies to the release of customer lists by a Federal stock association, other than 12 CFR 552.11(d) prohibiting release of depositor lists to stockholders, the Office of General Counsel has by interpretive opinion applied to Federal stock associations the same limitations concerning release of customer lists as are applied to Federal mutual associations. *Id.*

B. Description of the Proposed Rule

On January 29, 1989, the Board proposed for public comment a revision of the regulation governing the release of membership lists by Federal associations, giving much consideration to the competing interests of customer privacy and the business needs and practices of Federal associations. *See* 54 FR 5629 (February 6, 1989) ("proposed rule").

The proposed rule applied to customers, defined as depositors in, borrowers from, or other patrons of both Federal stock associations and Federal

[1] Section 545.131(c) gives members of a Federal mutual association the right to communicate with other members of the association only in the manner prescribed in paragraph (d). Paragraph (d) of § 545.131 establishes procedures for communications between members of a Federal mutual association. Finally, § 545.131(e) defines the term "improper communications" for purposes of paragraph (d) of that section. Section 544.5(b)(6) contained in part 544, concerning the charter and bylaws of Federal mutual associations, provides that communications between members shall be consistent with § 545.131. These sections are not altered by the regulations adopted herein.

mutual associations. It addressed the issue of the release of information about customers but distinguished between two types of such information: "Customer identification," defined as a list of the names and addresses of customers; and "customer records," which also encompassed information about the contents and particulars of their savings or loan accounts or other financial transactions with the association.

The proposed rule can be summarized in the following manner: (a) With certain enumerated exceptions, only a customer of a Federal association, and no other person or entity, had the right to inspect or obtain a customer's own customer records; (b) Unless a customer affirmatively and in writing prohibits release of the customer identification, a Federal association may, in its discretion, voluntarily release customer identification to any person or entity; provided that any release of customer identification shall consist only of a complete list of all customers who have not objected to the release of their customer identification. Under the proposed rule, Federal associations could not, therefore, release a partial or incomplete list of customer identification, such as, for example, a list of only depositors, or borrowers, or customers with account balances over $50,000; and (c) With certain enumerated exceptions, a Federal association would be prohibited from releasing its customer records, other than customer identification, unless the Federal association procured from the customer written authorization for such release. The obligation to inform the customer of his or her right to object to the release of customer identification and to obtain written authorization from the customer to release customer records was specifically imposed upon the Federal association. While the Board specifically requested comment on the methods available to Federal associations to implement this affirmative responsibility, the Board proposed the following procedure:

As to the release of customer identification, the proposed rule required that associations, in a timely manner, must notify customers of the association's intent to release customer identification. In this context, the Board described "timely" as allowing a customer sufficient time to receive the notice, review it, consider the alternatives, and decide whether to object to the disclosure of his or her customer identification. Federal associations desiring to release customer identification would be required to provide the notice to new customers at the time an account is opened, before a loan is made, or other financial transaction is entered into. The proposal required that written notice containing the opportunity to object to the release of customer identification must be provided to existing customers along with a self-addressed envelope needing no postage in which the customer could return his or her objection to the Federal association. Federal associations would then be authorized to release customer identification no sooner than thirty (30) days after providing existing customers with such notice and opportunity to object to the release of customer identification. If notice was mailed, the thirty days would begin from the date of mailing. In any event, Federal associations would not be authorized to release customer identification for those customers that objected in writing to the release.

As to customer records, the Board proposed to require an association to procure a customer's informed consent before customer records could be released. No release of customer records would be permitted unless a customer whose records were intended to be released was provided notice that release was contemplated, that the customer need not approve the release and that without the customer's express written authorization for release, the association would not disclose customer records, except in certain enumerated circumstances. Furthermore, the association must receive and retain a copy of the customer's authorization for its records. In this way, the proposal would permit associations to sell or make publicly available their customer records, and third parties would be able to conduct direct mail solicitations aimed at customers of a Federal association in a manner that respects the privacy of its customers.

Accordingly, the Board proposed that associations could use a standardized printed notice and authorization form to solicit the consent to release customer records before such records would be released. This document would be separate from any and all other documents that are provided to customers pursuant to law or regulation.

The Board's proposed rule would have required associations desiring to release customer records to provide such document to the customer at the time an account is opened, before the customer becomes obligated for a loan, or at the time the customer enters into another form of transaction with the association. Federal associations that currently release customer records or that desire to release customer records pertaining to existing customers would be required to provide the notice to each existing customer and to receive that customer's authorization before that customer's records could be released. While the Board noted that there may be various methods available to accomplish this requirement, it believed that a mailing to all customers, including a self-addressed envelope needing no postage, would be the most expedient method. Such a document, for example, may be provided to the customer with the customer's monthly account statement. The Board specifically sought comment on the cost of compliance with this requirement by Federal associations, on the effect such costs would have on the ability of Federal associations to disclose customer identification or records for business purposes or for a fee, and on the comparative effects such costs would have on large and small associations.

In proposing these requirements, the Board stated that circumstances may change in regard to the release of customer records, both from the perspective of the Federal association and of the customer. Therefore, the Board proposed that at least every two years after the initial provision of the notice to customers, Federal associations desiring to release customer identification and records shall mail to each customer new consent forms for the purpose of giving customers the opportunity to object to the release of customer identification and of obtaining reauthorization for the release of customer records. If reauthorization from the customer for release of customer records was not received, the Federal association could no longer continue to release such customer records. Of course, associations could provide such notice more frequently than every two years.

The proposed rule also reflected the Board's belief that customers must be informed not only of the consequences of their decision to consent to the release of customer records, but also of the intended use of such records. The proposal noted that there were several methods available to achieve this requirement, such as requiring the disclosure of the names of the intended recipients of customer records, or requiring a general disclosure that the Federal association intends to release customer records to third parties. The Board proposed that an appropriate balance between these two alternatives is that Federal associations should specify in the notice document the type or nature of business(es) that may receive customer records from the Federal association, e g., insurance companies, credit card companies, department stores, or marketing agencies.

The Board stated that it was aware that alternatives to these approaches exist. For example, associations could be required to procure a customer's informed consent to the release of customer records each time the association intends to release such records and could be required to identify the intended recipient, the purpose of the release, and the date the records would be released. The Board specifically requested comment on this approach. The Board also sought comment on whether the notice should be provided to each customer each time they enter into a transaction with the association (*e.g.*, each time the customer opens a deposit account or takes out a loan) or whether one notice would be sufficient to cover all records of the customer during the stated time period.

The proposed rule also set out various exceptions to the general non-disclosure rule. In addition to disclosure to the customer or to those authorized by the customer, disclosure would be permitted to those employees or agents of Federal associations responsible for preparing or handling customer records; officials, employees, or agents of the Board, the Federal Savings and Loan Insurance Corporation, or a Federal Home Loan Bank in the exercise of their official duties; other financial institutions or consumer credit reporting agencies as part of a regular exchange of credit information; federal government agencies or entities requiring such information, reports, or returns pursuant to law; those parties who must be informed concerning the dishonor of a negotiable instrument; appropriate law enforcement authorities when an association reasonably believes it has been the victim of a crime; persons making demand pursuant to a lawful subpoena; and the association's bond or insurance company relative to a claim under the association's liability policy.

The proposed rule also provided that release of customer records to any person not enumerated in the rule was permissible only after the association received the prior written approval of the Board. The Board believed that this exception should only apply in unusual and highly exceptional circumstances in which the ability to release customer lists was not contemplated by any other exception to the non-disclosure rule. The Board specifically asked for comment on the need to include this exception and, if included, on whether it should apply to the release of customer identification and records, where the customer has acted to prohibit release, or whether it should only apply to the release of customer records where the customer, while not objecting to the release, had not affirmatively authorized release.

Because the continued confidentiality of customer records following release to the aforementioned excepted parties cannot always be assured, the proposed rule provided that the following parties must execute confidentiality agreements prior to the release of customer records: (1) Parties to whom a customer has authorized such release; (2) officers, employees or agents of the Federal association responsible for preparing and handling customer records; (3) other financial institutions or credit reporting agencies; and (4) the association's bond or insurance companies. These confidentiality agreements would have to contain a statement of the specific use to be made of the records and prohibit disclosure by the third party except as required by law or in accordance with the exceptions set out in paragraphs (e)(3), (e)(5), (e)(7)–(8) of the proposed rule as if these paragraphs applied directly to the recipient of the records.

Additionally, the Board requested comments with respect to whether an exception to the nondisclosure rule should exist for the disclosure of customer records when state law, not otherwise preempted by Federal law or regulations, requires such disclosure to state governmental authorities in the lawful exercise of such governmental authority over the customer or other third party.

Finally, in order to avoid conflict with or repetition of current regulatory provisions dealing with the confidentiality and release of customer records, the Board proposed to delete such conflicting or repetitive provisions. Specifically, the proposed rule would delete paragraphs (a) and (b) of § 545.131 dealing with the disclosure of membership lists by a Federal mutual association and the right of inspection of a member's own records. It proposed to delete paragraph (d) of § 552.11, which contains a prohibition against release to stockholders of Federal stock associations of confidential depositor information. It also proposed to amend paragraph (d) of § 545.141 to reflect the adoption of the disclosure procedures and limitations of § 545.132.

C. Discussion of the Comments

Comments on the proposed rule were solicited during the 60-day period that expired on April 7, 1989. Numerous comments were received by the Board after that date. These comments were accepted and reviewed and are included in this discussion of the comments.

A total of 156 comments were received by the Board in response to the proposal. One hundred eleven were submitted by Federal associations; and 2 were submitted by state-chartered thrift institutions. Of the remainder, 28 were submitted by insurance companies, most of which were wholly-owned subsidiaries of Federal associations, 8 were submitted by savings and loan trade associations, 6 were submitted by law firms, 2 were submitted by data processing companies, and 1 comment was received from a consumer credit reporting agency. No consumers or consumer groups commented.

By the number of 155 to 1, the commenters were overwhelmingly and vigorously opposed to the proposal, with almost all of the commenters citing the enormous costs necessary to comply with the proposal's notification requirements. The commenters generally claimed that the proposal would, if adopted, effectively foreclose the continued marketing of financial services and products by the associations or their service corporations, further eroding industry efforts to decrease operating costs and increase profits. Many commenters argued that the financial, administrative and operating costs of compliance would be so onerous that service corporations would have to be closed or their operations severely curtailed. The lone favorable comment only addressed the Board's decision to impose upon Federal associations a uniform Federal standard governing the release of customer lists. The major points raised by the commenters are summarized below.

I. Economic Burden To Comply With the Proposed Rule

A. Discussion of Comments

1. Industry Practice

Almost every commenter emphasized that it is a necessary, common, effective, and accepted practice throughout the retail financial services industry to use customer lists as a source of prospects for additional products and services developed by financial institutions and their service corporations. The commenters stated that customer records constitute a valuable corporate asset, but that compliance with the proposed notification procedure to obtain approval for the release of customer records would be an

administrative and financial burden that would exceed any benefits the Federal association would receive from compliance. Commenters uniformly noted that the cost of printing the notices and envelopes, mailing the required notices, the recordkeeping resources needed to monitor and update the customer lists, and the costs required to integrate and develop computer data would be exorbitant and would exceed the revenues that could be generated from the proposed rule's limited use of customer records. Moreover, the commenters argued that the rate of response from mailing requests is rarely greater than 3 percent. They concluded that such a low rate of response would not justify the cost of providing the notification and, additionally, would not justify the introduction by service corporations of new products or services developed for existing customers of the Federal association.[2]

2. Release of Customer Lists to Wholly-Owned Service Corporations

Many commenters specifically expressed alarm at the proposed rule's imposition of administrative and financial costs on Federal associations that desire to disclose customer lists to their wholly-owned service corporations. One hundred twenty-two commenters argued against the Board's proposal to require that, as a condition of releasing customer records to wholly-owned service corporations, the association must comply with a costly and time-consuming notification and consent requirement.

Moreover, ninety-one commenters stated that to protect Federal associations from the risk of engaging in certain business activities, many activities are required to be conducted and services provided through service corporations, rather than directly by the associations. These commenters felt it unfair that the board, having required associations to conduct activities through service corporations, would then prevent service corporations from having access to marketing information that the association itself could use were it able to directly offer the product or service. To compete effectively and profitably with third-party providers of various financial services or products, wholly-owned service corporations must take advantage of information available within their corporate family, commenters argued.

Additionally, one hundred three commenters argued that the sharing of information with wholly-owned service corporations does not breach the reasonable privacy expectations of depositors or borrowers. They stressed that, in fact, the opposite is the case—depositors and borrowers expect and trust that the association will provide them with information concerning available new services and innovative products appropriate to their financial needs.

3. Release of Public Record Information

One hundred twenty-two commenters argued that most of the information that is classified in the proposed rule as "customer records" and that is essential to the marketing efforts of Federal associations is information recorded in the public records of the county or other locality. It is illogical, they argued, to restrict or limit the disclosure of this type of information to any recipient based upon a privacy rationale, when every borrower should understand that his or her mortgage, deed of trust, financing statement, or other secured loan document will be recorded in the public records of a particular jurisdiction.

4. 30-day Waiting Period

The proposed rule also contained a 30-day waiting period after an association provides a customer with the required notice and opportunity to object to the release of customer identification before the association can release the customer list. One hundred three commenters complained that the 30-day waiting period would hamper an association's efforts to provide new customers with essential services, such as hazard and life insurance, for example. These commenters claimed that such a delay would result in damaged customer relations and, for example, present real concerns regarding the possibility that the Federal association, as mortgagee or lienholder, will be left uninsured, since a delay in soliciting and contracting for insurance that protects the association from financial loss is directly affected. Additionally, commenters claimed that the sooner the association can solicit the customer, the more likely the customer will purchase the product from the association's subsidiary rather than from a competitor of the association. The commenters argued that the 30-day delay greatly limits the business competitiveness of the association and its service corporations, since no other Federal banking regulatory agency imposes a similar requirement.

5. Database Marketing

One hundred thirty-seven commenters noted that under the proposed rule, only a complete list of all customers' customer identification can be released, even though only a fraction of the customers on the list may be interested in, or even eligible for, the service or product being offered. These commenters argued that the proposed rule would effectively prevent Federal associations from continuing to engage in database, or target, marketing of their products and services.

Ninety-seven commenters argued, for example, that the entire customer base of a Federal association would have to receive solicitations from the association's mortgage insurance subsidiary, when only those customers with existing mortgages might be eligible for the coverage. The same logic would apply to, among other examples, offers of catastrophic health care insurance for the elderly and credit-card accounts for depositors that have a minimum average deposit balance. Commenters questioned why an association must suffer the expense of providing its entire customer base with notice of available products and services when only a distinct portion of the association's customers would reasonably be interested.

To adopt the rule as proposed, they argued, would force Federal associations to suffer severe economic loss as a result of the inability to efficiently market their service corporation's products or services. These commenters believed that associations should be permitted to continue to release pre-selected lists of customers for target marketing of financial services and products.

B. Response to Comments

Upon reflection, the Board now believes that the cost of compliance with the proposed rule could impair the financial condition of Federal associations at a time when capital preservation should be encouraged. For this reason, the Board has revised its proposal, as hereafter described, with regard to the type of information to be released and the notification requirements in a manner that it believes strikes a more reasonable balance between the privacy concerns of the customers and the business needs of Federal associations.

The Board agrees with those commenters who argued that the sharing of information with a Federal

[2] We emphasize that neither the rule as proposed or this final rule would impact a Federal association's ability to market its own financial services and products through third party agents or direct mail specialists. Special exceptions contained in the rule permit associations to continue to use such persons to assist in the marketing of the association's own services and products.

association's wholly-owned service corporations does not breach the privacy expectations of depositors or borrowers and that the requirement in the proposal regarding release of information by Federal associations to their wholly-owned service corporations was unnecessarily burdensome. It is reasonable to assume that depositors and borrowers, who have voluntarily established a business relationship with the association, expect that the association will provide them with information concerning new services and innovative products appropriate to their banking needs. For these reasons, the Board has decided to permit the release of any customer information to wholly-owned service corporations of a Federal association, provided that the customers of the association have been provided with written notice of their right to object to the release of their customer information, and are given a reasonable time to notify the association of their objection.

The Board also agrees with those commenters who urged that any restriction on the release of information that is contained in the public records, and that is based upon a privacy rationale, is unnecessarily burdensome. As to the disclosure to third parties of non-public customer information or information constructed from non-public customer information, the Board adopts the notification requirement applied in the proposed rule to the release of customer records, with one change. A Federal association may disclose non-public customer information to third parties provided that the association notifies the customer of its intent to disclose such information, provides the customer with a printed form explaining the customer's right to object to the disclosure, and provides the customer a reasonable time to object to the disclosure. Unlike the proposed rule, the final rule does not contain the requirement that the association provide the customer with a self-addressed envelope needing no postage in which to return the objection.

The Board has revised the proposed rule to authorize a Federal association to release customer identification and public customer information to third persons other than wholly-owned service corporations of the association, provided that the association has provided notice to the customer of the intent to release public customer identification or public customer information, and has provided the customer with a reasonable opportunity to object to the release. We make special note that the notification requirement established for the release of customer identification and public customer information to third persons is the same as the requirement established for the release of any customer information to a wholly-owned service corporation of a Federal association.

With regard to the 30-day waiting period, the Board has decided to retain a waiting period to provide the customer with a reasonable opportunity to object to the release of customer information. The Board is, however, shortening the waiting period to fifteen days, but is convinced that this time period affords the customer a reasonable opportunity to notify the association of any objection to the release of customer information. The Board believes that this rule will not hamper a subsidiary's efforts to offer various insurance or other products and services to the association's customers and will not cause the association to suffer economic harm.

With regard to the comments concerning database or target marketing, the Board believes that the changes to the proposed regulation discussed above address most of the concerns raised by the commenters. As discussed, Federal associations will be able to release all customer information to wholly-owned service corporations, absent objection by the customer. Consequently, lists of selected customers can be provided to a wholly-owned service corporation based on any distinctions the service corporation deems appropriate.

Similarly, Federal associations will be permitted to release customer identification and public customer information to third parties, absent objection by the customer. Thus, lists of selected customers can be provided to third parties based on any distinction contained in the public records. The only limitation would be that lists made available to third parties other than wholly-owned service corporations cannot be based on non-public information unless the customer has consented to the disclosure of the non-public information on which the list is based.

II. Exceptions to the Rule

a. Agents, Independent Contractors, and Providers of Professional Services

Eighty-one commenters urged the Board to clarify its treatment of the disclosure of customer information to third persons who perform functions that permit Federal associations to perform their day-to-day operations. Commenters argued that associations must continue to be permitted to contract with specialized entities to provide marketing services and related operational expertise that would be cost-prohibitive to develop in-house. This is particularly imperative, many indicated, for smaller associations that cannot perform such printing, data processing, and other related marketing operations in-house. Furthermore, many commenters argued that the proposed rule was ambiguous as to the release of customer information to third persons that provide professional services to the association, such as attorneys and accountants.

The Board has given much consideration and attention to the competing interests of customer privacy and the business needs of Federal associations raised by the comments to the proposed rule. In the proposed rule, the Board provided an exception for agents of an association. The Board did not, however, recognize that many associations use independent contractors for similar tasks. The Board now understands that a Federal association cannot conduct its day-to-day business operations without freely releasing certain customer records to agents or third party independent contractors, such as those that print checks and process customer mailings, or to data processing and other entities that provide services pursuant to a contractual agreement. Most frequently, third party vendors or service providers are hired to perform such services. With observance of methods to safeguard customer confidentiality, as discussed below, the Board believes that customer information must be released to such third parties. Accordingly, the Board has provided an exception to the notification requirement authorizing Federal associations to disclose customer information to agents, independent contractors, and professional service providers that provide services to the Federal association in the ordinary course of the association's business.

b. Credit-Related Information

Fifty-nine commenters urged that the exception permitting release of "credit related" customer records to financial institutions, commercial enterprises, and credit reporting agencies should be expanded to include "deposit related" information as well. Commenters noted that deposit related information is frequently provided to report involuntarily closed checking accounts due to overdrafts, confirmations as to account balances when the customer writes large checks, on credit cards and other credit products, and in similar circumstances.

The Board believes that the exception in the proposed rule permitting the release of "credit related" customer information to commercial enterprises, credit reporting agencies, and financial institutions in the general and ordinary course of business is intended to cover most of the situations described by these commenters. The Board has clarified the regulatory language to make it clear that any information relevant to the credit standing of the customer can be disclosed under this exception. In the event that a merchant or other third person desires to confirm a customer's account balance for the purpose of accepting a check, the Board believes that the merchant can require as a condition of accepting the check that a customer expressly authorize the association to disclose the customer's customer information to the merchant. Such authorization can be requested and obtained on a case-by-case basis. For this reason, we believe an exception for the release of "deposit-related" information is not warranted.

c. Secondary Market Transactions

Twenty-nine commenters were concerned that the proposed rule would interfere with an association's secondary market transactions. These commenters argued that the proposal failed to consider the need by potential buyers of loans, portfolios, and mortgage servicing rights to inspect the loan files prior to consummating a purchase. The inability to sell a portfolio consisting of loans with specific payment characteristics may, according to several commenters, have the unintended consequence of paralyzing an association's asset/liability, or interest rate risk, management, since the sale of loans is used as a method of managing that risk.

The Board agrees that an exception to the disclosure limitations is appropriate in this case to ensure that the restrictions on the disclosure of customer information do not interfere with secondary market transactions by Federal associations. Accordingly, the final rule includes an exception for the release of customer information in the ordinary course of undertaking a secondary market transaction in loans, portfolios, mortgage servicing rights, and related secondary market transactions.

III. Other Comments

a. Purpose of the Rule

A substantial number of commenters contended that the Board, prior to the publication of the proposed rule, never intimated to the industry that the release of customer information was a problem demanding regulatory revision. One hundred twenty-eight commenters questioned the motivation behind the Board's proposal to restrict the use of customer lists, stating that the Board presented no evidence in the proposed rule that the release of such lists by Federal associations was in any manner being abused. The comments noted that financial institutions already take great care to avoid unauthorized disclosure of customer information and recognize that, being a valuable corporate asset, the release of customer lists is always preceded by requiring the recipient of customer lists to enter into a confidentiality agreement with the association. The use of the confidentiality agreement, they noted, has been uniformly required by Supervisory Agents pursuant to the authority in § 545.131 that Supervisory Agents "may specify terms and conditions of approval" of the release of membership lists. *See* 12 CFR 545.131(a)(3) (1988).

Additionally, commenters claimed that the proposed rule is incompatible with recent statutory declarations and the Board's own regulatory pronouncements. Forty-four commenters criticized the proposal as inconsistent and violative of the spirit and substance of the Competitive Equality Banking Act of 1987 ("CEBA") (Pub. L. No. 100-86, 101 Stat. 552) and regulations promulgated by the Board thereunder. Noting that while the thrust of CEBA was to bring thrifts closer to the regulatory standards and practices governing Federal banking agencies, the commenters argued that the proposed rule puts Federal associations on an "unequal playing field" as a result of the restrictions placed on the ability of service corporations to market products and services to their parent's customers. Furthermore, a significant number of commenters argued that the proposed rule clashes with the legislation known as the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") that is intended to restructure the thrift industry. These commenters stated that the Administration's plan, as well as that of the Congress, is to impose upon thrifts "a level playing field" with the standards of the Federal banking regulators. These commenters concluded that since the proposed rule would give banks and other financial service companies an advantage over associations, it is inconsistent with the spirit of FIRREA.

The Board notes that the disclosure of customer information has been regulated by the Board for many years. This amendment of the long-standing regulatory section governing the disclosure of membership lists is not a new or sudden concern of the Board. Rather, the Board's consideration of the matter and the reasons for the regulatory revision date back to the Board's proposed changes to the Board's regulations regarding corporate governance of Federal associations. *See* 50 FR 52482 (December 24, 1985) and 52 FR 25870 (July 9, 1987). Moreover, as described in the proposed rule, the current regulatory scheme requiring approval of release of customer identification and information by supervisory authorities has resulted in inconsistent pronouncements by the regional Federal Home Loan Banks concerning the requirements and procedures for the release of customer information. As a result, the need for the adoption of a uniform Federal standard for the treatment of customer information is advisable and reflects the Board's understanding that customer information has become a valuable corporate asset.

The final rule also expands the ability of Federal associations to disclose customer information without seeking prior approval. As adopted by the Board, the rule authorizes Federal associations to release any customer information to their wholly-owned service corporations and public record customer information to other third persons, subject to compliance with a simple notification requirement. Release of non-public customer information to third persons also is authorized, subject to compliance with a more comprehensive notification requirement. Moreover, a list of thirteen exceptions to the notification requirement is adopted whereby disclosure is permitted with no notification requirement or prior approval by the Board.

b. Examination of Customer's Own Records

Various commenters also suggested that the right to obtain a customer's own records be distinguished from an association's right to release such records voluntarily and also expressed concern about the scope of information that a customer could review. The Board is of the view that the right to obtain and inspect customer information belongs only to a customer, and not to third parties. The Board has determined to retain in this final rule the principle that the prerogative to obtain and inspect a customer's own confidential records resides with the customer. The decision to release customer records over the objection of customers or

without their consent is left to the Federal associations under specific circumstances. The Board, however, concludes that the customer's right does not extend to the association's own confidential business records, to communications or correspondence between the association and its attorneys or accountants, or to memoranda or other records of the board of directors of the Federal association that may relate to the customer.

D. The Final Rule

After carefully reviewing the comments received, and after thorough consideration of the costs and burdens that would be imposed on Federal associations, the Board has determined to adopt the proposed rule with several significant modifications as discussed below.

Until now, the Board's rules concerning the confidentiality and disclosure of customer records have been separately applicable to Federal stock associations and Federal mutual associations. As stated in the proposed rule, the Board has made the determination that it is more efficacious for these rules to appear in one regulatory section, applicable to all Federal associations. This determination accords with the OGC opinions, previously mentioned, that, with regard to the release of customer information, the interests of Federal mutual associations and Federal stock associations are similar as are the interests of depositors in stock associations and members of mutual associations.

In publishing the proposed regulation, the Board proposed that the exclusive standard for release of customer information should be the nature of the information intended to be released. This was the reasoning for the distinction between, and the different procedures for the release of, customer identification and customer records. The final rule does not contain this distinction. Rather, the final rule focuses on the relationship of the Federal association to the recipient of the customer information and, with regard to release to third persons other than wholly-owned service corporations whether the customer information intended to be released is in public records. In place of the terms used in the proposed rule, the final rule establishes the categories of "customer identification," defined to mean a customer's name and address, and "customer information," defined to mean a customer's name, address, telephone number, savings or loan account records, and any information constructed from those records relating to the customer's relationship with the association. In general, customer identification is only relevant when the disclosure is to a third person other than a wholly-owned service corporation. Disclosure of non-public record customer information to third persons requires the association to procure the affirmative consent of the customer.

In balancing the business concerns of the association with the privacy concerns of the customers, the Board is adopting the following compromise: a Federal association may release "customer information" in the following manner:

(a) Only a customer of a Federal association, and no other person or entity, has the right to inspect and obtain a customer's own customer information; (b) Unless a customer affirmatively and in writing prohibits the release of customer information, a Federal association may, in its discretion, voluntarily release customer information to (i) wholly-owned service corporations; and (ii) any other persons or entities if the customer information intended to be released consists only of customer identification and/or is recorded in, or could be constructed from, public records; (c) Federal association's may release to third persons, other than the association's wholly-owned service corporations, customer information that is *not* contained in public records, provided that the association procures the consent of the customer after providing the customer with notice of its intent to release the customer's customer information and the right of the customer to prevent such release, and supplying a plainly worded form that the customer may use to provide such consent; and (d) in certain situations set forth in the regulation the association may release customer information regardless of consent or objection by the customer.

Each association must notify customers in a timely manner of its intent to release customer information. In this context, the Board views "timely" as allowing a customer sufficient time to receive the notice, review it, consider the alternatives, and decide whether to object to the disclosure of his or her customer information. Federal associations desiring to release customer information may provide the notice to new customers at the time an account is opened, at the time a loan application is submitted, or other transaction is entered into, and are authorized to release customer information no sooner than fifteen (15) days thereafter. Written notice must be provided to existing customers in a timely and conspicuous manner, although a separate mailing or document is not required. A Federal association may, for example, include with or in a monthly account statement, periodic statement, or other mailing a short but conspicuous statement that (a) the association intends to release customer information, (b) that any customer that objects must provide written notice of objection to the association, and (c) the address to which a customer may write to register the customer's objection. Federal associations may release customer information pertaining to existing customers no sooner than fifteen (15) days after providing existing customers with such notice and opportunity to object to the release of customer information. If notice is mailed, the fifteen days would begin from the date of mailing. In any event, Federal associations may not release customer information for those customers that have provided written objection to such release unless otherwise permitted by the regulation. The Board notes that this procedure is a substantial deviation from the notification procedure described in the proposed rule that required the association to obtain the affirmative consent of the customer prior to releasing the customer's customer records. The final rule maintains the Board's intent to provide a mechanism for customers to ensure their privacy by informing associations of their objections to the release of customer information. The Board believes that this revised procedure is much less burdensome and costly than the proposed procedure and respects the business interests of Federal associations as well as customers' privacy expectations.

As to the responsibility of Federal associations to obtain a customer's authorization for the intended release of non-public customer information to a third person other than a wholly-owned service corporation, the Board is adopting certain procedures requiring an association to procure a customer's informed consent before customer information is released. No release to a third person of non-public customer information is permitted unless a customer whose records the association intends to release is given a printed form stating that release is contemplated, that the customer may object to the release, and that without the customer's express written authorization for release the association

BEST COPY AVAILABLE

will not disclose customer information, except in certain limited circumstances. Furthermore, the association must receive and retain a copy of the customer's authorization for its records. In this way, associations may sell or make publicly available non-public customer information, and third parties can conduct direct mail solicitations aimed at customers of Federal associations in a manner that respects the privacy expectations of customers of Federal associations. This procedure implements the suggestion of a great many commenters that release of non-public customer information to third persons may be treated differently than when customer information is shared with a member of the same corporate family.

More specifically, the Board adopts the notification procedure described in the proposed rule that was applicable to the release of customer records and suggests that associations use a standardized notice and authorization form to solicit the consent to release non-public record customer information to third persons before such information is released. This document would be separate from any and all other documents that are provided to customers pursuant to law or regulation. Such a document would contain, for example, the following:

1. The definition of customer information;

2. A statement that the customer has the right, with certain exceptions, to withhold consent to the release of his or her non-public customer information by the Federal association along with a summary of those exceptions;

3. A description of the types of businesses, organizations, or other persons or entities to whom non-public customer information may be disclosed and the time period, not to exceed two years, in which such disclosures may be made;

4. A statement that if the Federal association intends to release non-public customer information after the expiration of the two year period, or if release is contemplated to types of recipients other than those for which authorization is sought, the association shall notify the customer of the customer's prior consent to release such information, and remind the customer of the customer's continuing right to object to the release at any time.

5. A statement that the customer may at any time provide the Federal association with written notice withdrawing the customer's prior consent to release non-public customer information and how and to whom such notice must be given;

6. A statement authorizing the release of non-public record customer information; and

7. A space for the customer's signature and for the date the document was executed.

The final rule permits associations desiring to release non-public record customer information to third persons to provide this document to the customer at the time an account is opened, at the time a loan application is made, or at the time the customer enters into another form of financial transaction with the association. While the Board notes that there may be various methods available to accomplish this requirement, such a document, for example, may be provided to the customer with the customer's monthly account statement.

The Board believes that the notification requirements established in this final rule apply to each customer, rather than to each transaction by a customer with the association (*e.g.*, one notice regardless of how many deposit accounts or loan accounts a customer has with a particular association). Of course, in its discretion, an association may tailor its notice to what it intends to release. For instance, an association only seeking to release non-public loan information to third parties would not be required to seek authorization to release deposit information, or an association seeking only to release names and addresses to its wholly-owned service corporations could limit its notice to those facts.

The Board also believes that to assure the confidentiality of disclosed customer information, the intended recipient of the customer information and the association should enter into a written confidentiality agreement containing a statement of the specific use to be made of the information, and prohibiting disclosure of the information by the recipient except as required by law or pursuant to the exceptions set out in the final rule.

In adopting these notification requirements, the Board recognizes that circumstances may change in regard to the release of customer information, both from the perspective of the Federal association and of the customer. Therefore, the Board is requiring that at least every two years after the initial provision of notice to customers, Federal associations desiring to continue to release either customer information to wholly-owned service corporations or public customer information and customer identification to third persons must provide written notice to such customers explicitly reminding each customer of the customer's nonobjection or prior consent to release customer information and of the customer's continuing right to prohibit such release at any time. The notice must contain an address where the customer may register such withdrawal of consent. If the customer prohibits such release, the Federal association shall no longer continue to release customer information except when otherwise authorized by law or regulation. Associations may provide such notice more frequently than every two years.

As to the release of non-public customer information to third persons, the two year renewal notification procedure has been revised from the proposed rule. Rather than require the association to affirmatively procure the customer's express authorization again, the final rule simply requires associations to remind the customer that he or she has previously authorized the release of non-public customer information to third persons, and remind the customer that he or she may withdraw such consent at any time. Federal associations may comply with this requirement, for example, by providing the customer with a preprinted and self-addressed form with which the customer may withdraw the authorization. The Board provides in § 545.132(f)(5) of the final rule an example of a renewal notice that would be considered to be in compliance with this requirement. Associations may, however, develop their own renewal notices for the release of non-public customer information to third persons provided that the equivalent information is contained in the notice.

The final rule sets out the exceptions to the general disclosure rules described above and as described in the proposed rule, with three new exceptions hereafter described. In instances covered by the exceptions, associations could release customer information without complying with the notice requirements set out by this regulation. In addition to disclosure to the customer or to persons or entities authorized by the customer, disclosure would be permitted to those directors, officers, and employees of Federal associations responsible for preparing or handling customer records in the ordinary course of the association's business; and to agents of the Federal association, that, pursuant to an agency agreement, perform activities or transactions for the benefit of the association. The Board notes that whether an agency relationship exists will be defined under applicable state law. Additionally, disclosure is permitted to officials, employees or agents of the Board, the Federal Savings and Loan Insurance Corporation, a Federal Home Loan Bank, or the Federal Deposit Insurance Corporation in the exercise of their official duties; other financial institutions or consumer credit reporting agencies as defined by the Fair Credit Reporting Act (15 U.S.C. 1681 et seq. (1980 & Supp. VIII 1988)) as part of a regular exchange of information relevant to the credit-worthiness of the customer in the ordinary course of the association's business; federal government agencies or entities requiring such information, reports, or returns pursuant to law; those parties who must be informed concerning the dishonor of a negotiable instrument; appropriate law enforcement authorities when an association reasonably believes it has been the victim of a crime; persons making demand pursuant to a lawful subpoena; the association's bond or insurance company relative to a claim under the association's liability policy; and when required to complete a secondary market transaction.

The final rule also provides that release of customer information to any person not expressly enumerated in this section is permissible only after the association receives the prior written approval of the Board. The Board believes that this exception should only apply in unusual and highly exceptional circumstances.

Many commenters also suggested that an exception is needed for release of customer information to third party vendors of services to the association, such as those providers of data processing services, printing services, and other services ordinarily provided by independent contractors, as well as professional service providers such as attorneys and accountants. The Board agrees and has added an exception for persons who provide services to the association in the ordinary course of the association's business.

Commenters also urged that an exception be created to cover the review of loan files and records for secondary market transactions. As a result, an exception has been added to assist those persons undertaking a secondary market transaction in loans, portfolios, or mortgage servicing rights.

Further, the Board is adding an exception for the release of customer information in connection with civil investigations and proceedings, including forfeitures, conducted by the United States Department of Justice. This exception would, among other things, apply in connection with the exercise of civil authorities granted to the Department of Justice including the assessment of civil money penalties for violations of 18 U.S.C. 657 and 1014 in accordance with amendments currently being considered to such sections.

Because of the need for continued confidentiality of customer information following release to the aforementioned excepted parties, the final rule provides, as did the proposed rule, that certain parties must execute written confidentiality agreements prior to the release of customer information: parties to whom a customer has authorized such release; agents and contractors of a Federal association responsible for preparing, handling, or processing customer information; other financial institutions or credit reporting agencies; the association's bond or insurance companies, and persons engaged in secondary market transactions. These confidentiality agreements must contain a statement of the specific use to be made of the records and prohibit disclosure by the third party except as required by law or in accordance with the exceptions set out in paragraphs (e)(5), (e)(7), (e)(9)–(10) of the regulation as if these sections applied directly to the recipient of the customer information.

The Board has decided, as originally proposed, to preempt state law concerning the release of customer information by Federal associations.[3] The Board has extensively reviewed state law concerning these related issues and has concluded that it varies widely. Moreover, state laws do not, for the most part, address the Board's concern about the need to balance customer privacy against the business requirements of Federal associations. Consequently, pursuant to its authority to regulate the operations of Federal associations, the Board is adopting the following regulations to preempt state law and exclusively govern the operations of Federal associations in this regard. *See* 12 U.S.C. 1464(a) (1980 and Supp. VIII 1988); 12 CFR 545.1 (1988); *see, —e.g., Fidelity Fed. Sav. and Loan Ass'n* v. *de la Cuesta*, 458 U.S. 141, 164 (1983).

The Board is also amending section § 545.131 to reflect the creation of new § 545.132 governing the release of customer information. Section 545.131 continues to govern the right of a member of a Federal mutual association to communicate with other members, and establishes the procedures for conducting such communication.

Finally, the Board is amending § 545.141 pertaining to remote service units. That section authorizes a Federal association to disclose account data to various entities that operate, share, or participate in remote service units. The final rule amends § 545.141(d) to permit a Federal association to release remote service unit account data to persons other than the Board in accordance with new § 545.132.

The effective date of this regulation is 120 days after its publication in the **Federal Register**. The Board believes that this delay provides Federal associations with a reasonable time to develop procedures and materials necessary for compliance with the final rule.

[3] The Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 *et seq.*, provides a federal standard with respect to the release of customer records to federal governmental authorities.

Final Regulatory Flexibility Analysis:

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604 (1982), the Board is providing the following final regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the final rule.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION** section.

2. *Small entities to which the final rule would apply.* The final rule would apply to all Federal associations without regard to size.

3. *Impact of the final rule on small entities.* The final rule would clarify the circumstances under which all Federal associations may disclose customer identification and records for business purposes and for a fee.

4. *Overlapping or conflicting federal rules.* As explained in the **SUPPLEMENTARY INFORMATION** section, the final rule is intended to streamline the Board's regulations governing a Federal association's release of its customer records. Other than the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 et seq. (1982 and Supp VI 1988), which is expressly considered in this final rule, there are no other known federal rules that duplicate, overlap, or conflict with this rule.

5. *Alternatives to the final rule.* As alternatives to the final rule, the Board could retain the present requirement of prior Board or supervisory approval contained in § 545.131 for the release of customer records, or the Board could adopt the revisions to §§ 545.131, 543.9–3, and 544.9–2 as proposed in the Corporate Governance proposals.

List of Subjects in CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, and Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends part 545, subchapter C, chapter V, title 12 Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows.

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Amend § 545.131 by removing paragraphs (a) and (b); by redesignating existing paragraphs (c), (d) and (e) as the new paragraphs (a), (b) and (c); and by revising the newly redesignated paragraphs (a) and (b)(5)(ii) to read as follows:

§ 545.131 Communications between members of a Federal mutual association.

(a) *Right of communication with other members.* A member of a Federal mutual association has the right to communicate, as prescribed in paragraph (b) of this section, with other members of the association regarding any matter related to the association's affairs, except for "improper" communications, as defined in paragraph (c) of this section. The association may not defeat that right by redeeming a savings member's savings account in the association.

(b) *Member communication procedures.* * * *

(5) * * *

(ii) Notification that the association has determined not to mail the communication because it is "improper" as defined in paragraph (c) of this section;

* * * * *

3. Amend part 545 by adding a new § 545.132 to read as follows:

§ 545.132 Disclosure of customer records.

(a) *Definitions.* For purpose of this section:

(1) The term "Agent" means any person authorized to transact business for a principal, as defined by the laws of the appropriate jurisdiction.

(2) The term "Customer" means a depositor in, borrower from, and any other person patronizing a Federal savings association and utilizing its services.

(3) The term "Customer identification" means the original or any copy or summary of any document, including any evidence of a transaction conducted by electronic terminal, that contains the name and/or address of any customer of a Federal savings association, or any data from which such information could be constructed.

(4) The term "Customer information" means the original or any copy or summary of any document, including any evidence of a transaction conducted by means of an electronic terminal, that contains a customer's customer identification and any information concerning a customer's individual savings or loan accounts or the details of other types of transactions between the customer and the association, or any data from which such information could be constructed.

(5) The term "Financial institution" means any office of a bank, savings bank, savings association, industrial loan company, trust company, savings and loan, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any state or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(6) The term "Person" includes, an individual, partnership, corporation, association, trust, or any other legal entity organized under the laws of any state or of the United States, or of any foreign state.

(7) The term "Public record" means a written document that is filed and recorded in the official public records of a governmental unit and which is available for public inspection.

(8) The term "Service corporation" has the meaning provided in 12 CFR 545.74 (1988), and includes its wholly-owned subsidiaries.

(9) The term "Third person" means a person other than the customer, the Federal savings association, or its wholly-owned service corporation, to whom disclosure is restricted by this regulation.

(b) *Right to obtain and inspect customer's own customer information.* A customer of a Federal association or his duly authorized agent has the right to obtain and inspect customer information pertaining solely to the customer's own savings account(s) or loan account(s) records, or information pertaining to other financial transactions with the association. A customer does not have the right under this section to obtain internal business papers, memoranda, or other confidential correspondence or communications between the association and others including its attorneys, accountants, and board of directors that may relate to the customer.

(c) *Disclosure of customer identification and customer information.* (1) A Federal association may disclose a customer's customer information to:

(i) A wholly-owned service corporation of the Federal association, or

(ii) To third persons if the customer information intended to be released is limited to information recorded in the public records and/or a customer's customer identification, provided that in either case the Federal association has given written notice to the customer of the intent of the Federal association to release such information, and that the customer has the right to prohibit the release of this information by notifying the association in writing of his or her objection, or

(iii) To third persons if the customer information to be disclosed is customer information not contained in a public record provided that the Federal association has complied with paragraph (f) of this section.

(2) Any disclosure pursuant to paragraph (c)(1) (i) and (ii) of this section may be made no sooner than fifteen (15) days after the customer received the notice, if the notice was given in person, or fifteen days after the notice was mailed to the customer, and shall be limited to those customers of the Federal association who have not objected to the release of his or her customer information pursuant to those provisions.

(3) At least once every two years after a Federal association releases a customer's customer information pursuant to paragraph (c)(1) of this section, a Federal association that desires to continue to release customer information shall provide written notice to such customers reminding them that the association may release such customer information and of the customer's continuing right to withdraw such authorization at any time.

(d) *Exceptions.* Notwithstanding paragraph (c) of this section, a Federal association may disclose its customer information to the following:

(1) Any person to whom the customer has affirmatively authorized such disclosure in writing;

(2) Any director, officer, or employee of a Federal association having the duty to prepare, examine, handle, maintain, or process customer information in the ordinary course of conducting the association's business;

(3) Any agent of the association, any independent contractor providing a service to the association in the ordinary course of the association's business, or any person providing professional services to the association, including, but not limited to, an accountant engaged by the association to prepare an independent audit or an attorney performing a service on behalf of the association;

(4) Any officer, employee, or agent of the Board, the Federal Savings and Loan Insurance Corporation, a Federal Home Loan Bank, or the Federal Deposit Insurance Corporation for use solely in the exercise of his or her duties;

(5) A financial institution, commercial enterprise, or credit reporting agency, when such disclosure is part of an exchange in the regular course of business of information pertaining to the credit-worthiness of the customer between a Federal association and another financial institution or commercial enterprise, directly or through a credit reporting agency;

(6) Persons to whom reports or returns must be made or information disclosed pursuant to Federal law or regulations including, but not limited to, the Internal Revenue Service, or any government authority acting pursuant to the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 *et seq.*, or the Bank Secrecy Act, 31 U.S.C. 5311 *et seq.*

(7) Persons to whom information is permitted to be disclosed under state law concerning the dishonor of a negotiable instrument;

(8) An appropriate law enforcement authority when the Federal association reasonably believes, pursuant to § 563.18(d) of this chapter, that it has been the victim of a crime or has a known factual basis for a belief that a crime has been committed;

(9) Persons making demand pursuant to a lawful subpoena, summons, warrant, or court order or in response to a subpoena from a federal or state grand jury served upon the Federal association;

(10) The association's bond or insurance companies when the association has information relative to a claim pursuant to its bond or director's and officer's liability insurance policy or other insurance coverage;

(11) Any person for the purpose of engaging in a secondary market transaction;

(12) Representatives of the United States Department of Justice conducting civil investigations, pursuing civil actions for the purpose of assessing civil money penalties, or pursuing forfeitures for violations of financial institution criminal statutes.

(13) Any person not expressly permitted by this section if the association receives the prior written approval of the Board, which may establish the terms and conditions governing such release.

(e) *Confidentiality agreement.* Prior to the release by a Federal association of its customer information authorized by paragraphs (c)(1) of this section or by exceptions (d)(1), (d)(3), (d)(5), (d)(10)–(11) of this section, the association shall require intended recipients of customer information to execute an agreement stating at a minimum the specific use to be made of the customer information and prohibiting subsequent disclosure of the customer information to a third party, except if such disclosure is required by law or pursuant to the circumstances set forth in paragraphs (d)(4), (d)(6), (d)(8)–(9), and (d)(11) of this section, and, if the recipient of the customer information is a credit reporting agency, subsequent disclosures may be made in the regular course of the credit reporting agency's business.

(f) *Informed consent form and procedure.* (1) Before releasing any customer information pursuant to paragraph (c)(1)(iii) of this section, an institution shall:

(i) Provide a copy of an "Informed Consent Form" to all new and existing customers of the association whose customer information is not contained in the public records intended to be disclosed to third persons. The consent form shall contain:

(A) A definition of customer information not contained in a public record ("non-public customer information");

(B) A statement that the customer has the right to withhold consent to the release of his or her non-public customer information by the Federal association;

(C) A description of the types of businesses, organizations, or other persons or entities to whom non-public customer information may be disclosed and the time period, not to exceed two years, in which such disclosures may be made;

(D) A statement that the Federal association may seek to release non-public customer information for a longer period than two years, and if an extension is sought, the association shall provide a notice explicitly reminding the customer of the customer's prior authorization and the customer's continuing right to withdraw that authorization.

(E) A statement that if release is contemplated to types of recipients other than those for which authorization is sought the association must obtain new authorization for the release;

(F) A statement that the customer may at any time provide the Federal association with written notice withdrawing the customer's prior consent to release non-public customer information and how and to whom such notice must be given;

(G) A statement that non-public customer information may be released pursuant to statute or regulation even when not authorized by the customer;

(H) A statement authorizing the release of non-public customer information; and

(I) A space for the customer's signature and for the date the document was executed.

(ii) Receive a signed and dated consent form from the customer; and

(iii) Retain a copy of each consent form in an appropriate file maintained for the customer providing the authorization.

(2) A Federal association shall fulfill the requirement that it obtain consent from its customers before disclosing customer information not contained in a public record under paragraph (c)(1)(iii) of this section by providing a clear and conspicuous document containing the information set forth in paragraph (f)(1) of this section. The following complies with this requirement, but associations are permitted to develop their own forms containing the required information:

Authorization to Disclose Customer Information

[Customer Name]

[Account/Loan Number(s)]

Under applicable Federal law and regulations [name of institution] must obtain your consent to disclose non-public information concerning your account balances, loans, or other financial activities to various entities. This information that pertains to your financial transactions is known as non-public customer information.

[Name of institution] desires to disclose such information during the next [period of time not to exceed two years] to [insert types of persons or entities to which the customer records are intended to be disclosed]. These persons or entities may contact you to offer you a product or service. These persons or entities have agreed, or will be required to agree, not to disclose this information to any other person or business, except as permitted by law and regulation, and have agreed that non-public customer information shall remain confidential. [Name of institution] may receive a fee for the release of customer records. In the event that the association wishes to disclose such information to persons or entities not described above, the association will seek reauthorization. In the event the association wishes to disclose this information beyond two years, it will provide you with notice.

Without your consent, [Name of institution] cannot disclose your non-public customer information except as provided for by law and regulation.

If you provide your consent to disclose this information now or in the future, you may withdraw your consent at any time. You may withdraw your consent by writing [name of institution] at the following address:

[Name of institution]

[Address of institution]

[Attn:]

If, after reading the following statement, you consent to the release of non-public customer information, sign your name on the space provided and return this form to [name of institution].

AUTHORIZATION

I hereby provide my consent to [name of institution] to release my non-public customer information to third persons, and understand that I may withdraw such consent at any time. I have been informed of my right to withhold my consent for [name of institution] to release my non-public customer information and I have read the information printed above.

Name of customer

Date

(3) Federal associations shall not release any person's non-public customer information and shall take such affirmative steps as may be necessary to insure that such customer information is not released:

(i) If the customer has not authorized the disclosure of such information;

(ii) If at any time, the Federal association receives written notification of a customer's withdrawal of consent to release customer information pursuant this section.

(4) A customer may, at any time, withdraw the consent by writing to the Federal association and informing it of the withdrawal of consent.

(5) For the purpose of compliance with the renewal notice requirement of paragraph (c)(3) of this section for release of non-public customer information to third persons, the following notice will be considered to be in compliance with that section, but associations may develop their own notices provided that the equivalent information is contained therein:

Renewal Notice for Release of Non-Public Information

[Name of customer]

[Account/Loan number(s)]

You previously gave [name of association] your consent to disclose non-public information concerning your account balances, loans, or other financial activities to [types of persons or entities to which the customer information has been disclosed]. This information that pertains to your financial transactions is known as non-public customer information.

[Name of association] is required by law or regulation to inform you at least every two years of your right to withdraw your consent at any time. If you decide to withdraw your consent, your non-public customer information will no longer be disclosed once we receive a written notice withdrawing your consent. You may withdraw your consent by writing to the following address:

[Name of association]

[Address of association]

Attn: [appropriate employee of association]

4. Section 545.141(d) is revised to read as follows:

§ 545.141 Remote Service Units (RSUs).

* * * * *

(d) *Privacy of account data.* A Federal association shall allow accountholders to obtain any information concerning their RSU accounts. Except for generic data or data necessary to identify a transaction, no Federal association may disclose account data to third parties other than the Board or its representatives except in accordance with § 545.132 of this part. Information disclosed to the Board will be kept in a manner to ensure compliance with the Privacy Act, 5 U.S.C. 552a. A Federal association may operate an RSU according to an agreement with a third party or shared computer systems, communications facilities, or services or another financial institution only if such third party or institution agrees to abide by this section as to information concerning RSU accounts in the Federal association.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-19276 Filed 8-16-89; 8:45 am]

BILLING CODE 6720-01-M

---

12 CFR Part 563

[No. 89-2327]

RIN 3068-AA 74

Equity-Risk Investments

Dated: August 7, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board (the "Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is amending 12 CFR 563.9–8, its regulation governing investments by institutions the deposits of which are insured by the FSLIC ("insured institutions") in equity securities, real estate, service corporations, operating subsidies, certain land loans, and nonresidential construction loans ("equity-risk investments").

Today's final rule eliminates the exclusion from the definition of "equity security" in 12 CFR 563.9–8(b)(2) for stock issued by the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") purchased by insured institutions after December 14, 1988. *See* Board Res. No. 89–1318 (Apr. 12, 1989), 54 FR 15426 (Apr. 18, 1989); Board Res. No. 88–1393 (Dec. 22, 1988), 54 FR 155 (Jan. 4, 1989). The final rule grandfathers such investments, however, in a manner consistent with the savings clause of the current equity-risk investment regulation, *see* 12 CFR 563.9–8(f) (1988). Such grandfathering covers both the threshold and diversification requirements of the equity-risk investment rule. *See* 12 CFR 563.9–8(c)(2), (e)(1) (1988). The rule also adds such investments to the list of permissible equity-risk investments.

Legislation currently pending before Congress may, if enacted, affect the ability of certain insured institutions to invest in equity-risk investments. Nevertheless, these anticipated changes do not affect the need for the substantive amendments made by this rule.

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Richard M. Schwartz, Attorney, (202) 906–6897; Deborah Dakin, Regulatory Counsel, (202) 906–6445; Karen Solomon, Associate General Counsel, (202) 906–7240, Regulations and Legislation Division, Office of General Counsel; Carol Wambeke, Financial Economist, (202) 906–6758, Financial Analysis Division, Office of Policy and Economic Research, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; Ben F. Dixon, Policy Analyst, (202) 331–4599, Office of Regulatory Activities, Federal Home Loan Bank System, 801 17 Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Board's equity-risk investment regulation establishes thresholds for investments by insured institutions in certain assets, including equity securities. *See* 12 CFR 563.9–8(c)(2). Institutions wishing to invest more heavily in such assets are required to obtain prior supervisory approval. *See* 12 CFR 563.9–8(g)(1). The definitional section of the regulation, 12 CFR 563.9–8(b), sets forth which types of assets are included in, or excluded from, such investments and thus counted toward the thresholds. On December 23, 1988, the Board proposed to remove the exclusion from the definition of "equity security" in 12 CFR 563.9–8(b)(2) for stock issued by Fannie Mae and Freddie Mac purchased by insured institutions on or after December 14, 1988. 54 FR at 158. All stock purchased prior to that date would have continued to be excluded in full, i.e., not counted in any way toward an insured institution's equity-risk investment threshold, as set forth at 12 CFR 563.9–8(c)(2). 54 FR at 157.

Moreover, under the proposal, stock issued by those instrumentalities, as well as by other, similar, United States government-sponsored corporations would be expressly authorized as investments for purposes of the equity-risk investment rule, pursuant to 12 CFR 563.9–8(d)(1). *Id.* at 156–57. Such express authorization would allow an insured institution to invest in those securities without having to acquire the approval of its Principal Supervisory Agent ("PSA"), assuming independent authorization to make such an unapproved purchase.

On April 12, 1989, the Board issued a reproposal treating investments in Fannie Mae and Freddie Mac stock in a manner consistent with the savings clause of the current equity-risk investment regulation, 12 CFR 563.9–8(f). *See* 54 FR at 15427 (April 18, 1989). Under this treatment, all investments in Fannie Mae and Freddie Mac stock—regardless of when purchased—would be considered equity-risk investments, but the Board would "grandfather"—rather than exclude—those investments in Fannie Mae and Freddie Mac stock made on or before December 14, 1988 for purposes of applying the regulation. As such, an institution whose holdings of Fannie Mae and Freddie Mac stock pushed the institution over its equity-risk investment threshold, as set at 12 CFR 563.9–8(c)(2), would not have to divest itself of such holdings solely for that reason; nevertheless, the institution could not make any additional equity-risk investment without PSA approval or divestment. The Board believed that this grandfathering treatment was necessary because it continued to consider the risks inherent in investment in such stock equally concrete for stock purchased on or before December 14, 1988, as for stock purchased afterward.

For the reasons set forth in the preambles to the original proposal and the reproposal, and those discussed in the following section, the Board continues to believe that Fannie Mae and Freddie Mac stock deserve inclusion as "equity securities," and therefore, as equity-risk investments. *See* 54 FR at 15427–28; 54 FR at 156–57.

The Board today is adopting the final regulation substantially in the form of the reproposal, with a modification in the treatment of previously held Fannie Mae and Freddie Mac stock for purposes of the diversification requirement of the equity-risk investment regulation. The following section discusses the comments received on the reproposal and the Board's response.

Summary of Comments and Board Response

The Board received three comment letters in response to the April reproposal.[1] One of the comments was from an insured institution and two were from trade associations.[2] One of the comment letters supported the reproposal as drafted. This commenter reiterated its comment to the original proposal, stating that there was no basic distinction between the risk inherent in publicly traded Fannie Mae and Freddie Mac stock and "the stock of other reputable companies traded on public exchanges."

Two commenters disputed the premise of both the original proposal and the reproposal by stating that the risk inherent in investments in Fannie Mae and Freddie Mac stock does not rise to the level of other equity-risk investments. One of these commenters maintained that the reproposal is "unfair" because it does not take into account the change in risk to an institution with the passage of time, based on the "changing relationship between carrying value and price." The commenter also contended that the recent upswing in values of Fannie Mae and Freddie Mac stock indicate "a high degree of profitability and moderate market risk." The commenter argued that such holdings were important to a balanced thrift portfolio and characterized them as having a "counter-risk investment effect" to fluctuations in interest rates. That commenter also questioned whether the Board could regulate retroactively to cover investments made on or after December 14, 1988. It also argued that if the Board decides to go forward with its reproposal, the Board should also grandfather the covered investments in Fannie Mae and Freddie Mac stock with respect to the equity-risk investment diversification requirement, 12 CFR 563.9–8(e), in addition to the proposed grandfathering of the rule's threshold requirements. The other opposing commenter reiterated the point it had raised in its comment on the original proposal that classification of Fannie Mae and Freddie Mac stock as both equity-risk investments and components of the Board's "Qualified Thrift Lender" ("QTL") test would be "operational[ly] inconsistent."

Inclusion of Fannie Mae and Freddie Mac Stock as Equity-Risk Investments/ Grandfathering Equity-Risk Thresholds

The Board is unpersuaded by the arguments that Fannie Mae and Freddie Mac stock are inherently less risky than all other equity securities currently included as equity-risk investments. First, while the recent market performance of Fannie Mae and Freddie Mac stock has been impressive and both entities have been managed effectively, this *recent* performance is by no means a guarantee of future market performance.[3] Instead, it represents a period where the Standards & Poors 500 index has itself shown a rapid rise.[4] One commenter asserts, without supporting empirical data, that other equity-risk investments are "much riskier" than the stock at issue in today's rule. The commenter's case for excluding Fannie Mae and Freddie Mac stock from the "equity security"

---

[1] Two of those commenters had also commented on the Board's original proposal.

[2] The Board received six comment letters in response to its original proposal. *See* 54 FR at 15427. Those comments were discussed in the preamble to the Board's reproposal. *Id.*

[3] The Board similarly finds unpersuasive the argument raised by one commenter that Fannie Mae and Freddie Mac stock are critical to a well balanced portfolio because they demonstrated "a counter-risk investment effect" to changes in interest rates. The Board believes that while the limited time frame chosen by the commenter for its analysis may lead to this conclusion, a different scenario is certainly possible where an increase in interest rates may not coincide with an increase in the equity securities markets, as has occurred in the past.

[4] The period chosen by the commenter to demonstrate the stellar performance in stock issued by Fannie Mae and the Student Loan Marketing Association ("Sallie Mae") was from December 1987 until June 1989. On December 1, 1987, the S&P 500 was at 232.00; on June 1, 1989, the index stood at 321.97. Similarly, the S&P 500 has shown a marked rise since January 1, 1988, the day Freddie Mac preferred stock became publicly traded.

Conspicuously absent from the commenter's analysis is any discussion of the performance of Fannie Mae, or for that matter Sallie Mae, stock during a downturn in the market in general. We believe that it is significant that the commenter chose to begin its analysis in December 1987, the period where the equity securities markets were just beginning to recover from the crash of October 19, 1987, popularly known as "Black Monday". A review of the week leading up to the October 19 downturn will demonstrate that the stocks at issue in today's final rule are, in fact, directly affected by market conditions. Specifically, in that week, Fannie Mae common stock fell from a high of 41⅛ to a fifty-two week low of 28¼. Later that month the stock was trading as low as 27. Sallie Mae common stock lost over ten percent of its value on Black Monday alone.

definition could be made for many other equity securities using the same limited time frame. *See* nn. 3, 4, *supra*. A very different case could be made if a different, but similarly limited, time frame, including October, 1987, were selected. *See also* 54 FR 15427–28. In sum, there are no guarantees that all equity securities, including Fannie Mae and Freddie Mac stock, will not fluctuate considerably over time along with changes in the markets. The Board is, therefore, not dissuaded from its belief that Fannie Mae and Freddie Mac stock have characteristics that represent risks similar to those presented by other high-quality equity securities.

One commenter faults the Board for failure to take into account the change in the riskiness of Fannie Mae and Freddie Mac stock based upon the changing relationship between carrying value and price over time. While market-value accounting has merit, it is not appropriate to use that method in the context of the equity-risk investment regulation for certain assets, such as the stock at issue today, but not for others. For the purposes of today's rule, the Board believes that the best course of action is to treat the equity securities at issue consistently with other equity-risk investments.[5]

This commenter also contends that the Board should change the reproposal to grandfather all investments made as of the effective date of the regulatory change, rather than as of December 14, 1988. Without this change, the commenter argues, the Board would be regulating retroactively. The Board remains of the view expressed in its original proposal that it is imperative to eliminate any incentive for institutions to increase their equity-risk investments in anticipation of any final rule. The Board believes this concern still to be valid, and consequently has determined to retain the proposed grandfathering date of December 14, 1988. It notes that this is consistent with the treatment of former additions to the list of equity-risk investments. *See* 12 CFR 563.9–8(f).

Another commenter reiterated an assertion made in response to the Board's original proposal that the Board's proposal to make Fannie Mae and Freddie Mac stock equity-risk investments was inconsistent with the Board's previous ruling that such investments satisfied an insured institution's Qualified Thrift Lender ("QTL") requirements.[6] The Board responded to this comment in the preamble to the reproposal and, upon review, adheres to its earlier analysis. *See* 54 FR at 15428. As discussed in that preamble, the Board believes that the QTL and equity-risk investment tests were designed for different purposes and are not mutually exclusive, finding no support for the commenter's assertion that "Congress implied that the housing-related benefits of owning these agency stocks outweighed any potential risks of such ownership."

Grandfathering Equity-Risk Investment Rule Diversification Requirement

In addition to any other limitation placed on an insured institution's equity-risk investments by the threshold provision at 12 CFR 563.9–8(c)(2), the equity-risk investment regulation also contains a diversification limitation on the purchase of equity securities. *See* 12 CFR 563.9–8(e)(1). Specifically, that provision states that except as otherwise provided, "no insured institution shall at any time own, control, or hold with power to vote for its own account more than 25 percent of any one class of the outstanding equity securities of any one issuer nor an amount of all classes of the outstanding equity and debt securities of such issuer which, when aggregated with loans to such issuer, are greater than the institution's 'regulatory capital' * * * ." *Id.*

One commenter contends that failure to grandfather the foregoing provision as part of today's rule could effectively nullify the Board's action of grandfathering Fannie Mae and Freddie Mac stock for purposes of the equity-risk investment threshold. The commenter further states that failure to grandfather Fannie Mae and Freddie Mac stock holdings for purposes of diversification would be especially troubling because the diversification provision contains a limitation on an insured institution's holdings of the "equity *and debt* securities" of the issuing instrumentality. Upon review, the Board believes that these contentions have merit. Thus, the final regulation includes an express grandfathering of such investments from the requirements of subsection (e)(1). The Board did not intend to create a back-door limitation on stock holdings otherwise properly grandfathered. Many insured institutions have substantial holdings in relatively risk-free Fannie Mae and Freddie Mac debt securities. Upon reconsideration, the Board believes no useful purpose would be served by, in effect, penalizing such institutions for holding debt instruments not otherwise within the realm of concern of the equity-risk investment regulation. While today's final rule covers only those two U.S. government-sponsored instrumentalities, the Board may revisit the issue with respect to all privately issued debt securities at a later date.

Equity Securities of U.S. Government-Sponsored Corporations as Pre-Authorized Equity-Risk Investments

Commenters on the reproposal did not address the addition of Fannie Mae and Freddie Mac stock to the list of permissible equity security investments for equity-risk purposes, pursuant to 12 CFR 563.9–8(d)(1).[7] This section does not, in and of itself, provide the authority for an insured institution to invest in the listed equity securities. It merely provides that when such investments are otherwise within the institution's authority, supervisory preapproval of such investments for purposes of the equity-risk investment regulation is not required. Fannie Mae and Freddie Mac stock are expressly authorized investments for Federal associations pursuant to section 5(c)(1)(F) of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464(c)(1)(F) (1982). As discussed above, investment in such securities appears no more or less risky than the other investments currently authorized as equity-risk investments in 12 CFR 563.9–8(d). Moreover, the Board has seen no data that indicates that the stock of any United States government sponsored corporation should not be such a preapproved investment.[8] Therefore, investments in equity securities issued by all United States government-sponsored corporations, including Class A common stock recently issued by the Federal Agricultural Mortgage Corporation ("Farmer Mac") have been added to the list of permissible investments.

[5] The commenter argues that the Board's position would "prevent" an institution from swapping a greater than threshold amount of Freddie Mac stock for an equal amount of Fannie Mae stock, thus "freezing [the] institution into a larger (and more risky) than desired position in Freddie Mac." Notwithstanding the commenter's inconsistent assertions that Freddie Mac stock should not be classified as an equity-risk investment because it is not risky and that his insured institution should get out of its admittedly large position in such stock because it was "unduly risky," the Board is not persuaded by the commenter's point regarding a need for the free ability to swap excess "grandfathered" Freddie Mac stock for Fannie Mae stock. The stock of each organization has its own characteristics and risks. Nevertheless, the commenter's institution is not prevented from making the swap; instead, it is free to do so with PSA approval, in compliance with the equity-risk investment regulation.

[6] The key component of the QTL test, enacted in the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. No. 100–86, 101 Stat. at 571–73, § 104(c)(1) (1987), was that insured institutions were required to hold at least 60 percent of their tangible assets in certain "qualified thrift investments" in order to qualify for favorable QTL treatment. *See* 53 FR 312 (Jan. 6, 1988). Stock issued by Fannie Mae and Freddie Mac were among the investments approved by the Board as housing-related investments. *Id.* at 313, 322 (codified at 12 CFR 563.27(c)(6) (1988)).

[7] This provision of the regulation provides that an insured institution could invest in Fannie Mae and Freddie Mac stock up to otherwise authorized thresholds, without having to acquire the approval of the institution's PSA.

[8] Stock issued by the Student Loan Marketing Association is already included on that list.

Effective Date of the Final Rule

Although today's final regulation will not be administered until the "effective date" listed above, the regulation should be considered "in effect" as of the date of publication in the **Federal Register** for the purpose of transferring the regulatory changes made in this rule to any successor agency, following enactment of the banking legislation.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objections and legal basis underlying the final rule.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION** regarding the reproposal.

2. *Small entities to which the final rule would apply.* The final rule would apply to all insured institutions.

3. *Impact of the final rule on small entities.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). The final rule treats all institutions identically regardless of their size for the reasons discussed in the **SUPPLEMENTARY INFORMATION** set forth above.

4. *Overlapping or conflicting federal rules.* There are no known rules that duplicate, overlap or conflict with this final rule.

5. *Alternative to the rule.* There are no alternatives that would be less burdensome than the final rule in addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set forth above.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Currency, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

According, the Federal Home Loan Bank Board amends part 563, subchapter D, chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–1948 Comp., p. 1071.

2. Amend § 563.9–8 by revising paragraphs (b)(2)(i) and (d)(1)(iv); and by adding a new paragraph (f)(4) to read as follows:

§ 563.9–8. Regulation of equity risk investment in equity securities, real estate, service corporations, operating subsidiaries, certain land loans, and nonresidential construction loans.

* * * * *

(b) *Definitions.* * * *

(2) * * * (i) Stock issued by a Federal Home Loan Bank or a corporation authorized to be created pursuant to Title IX of the Housing and Urban Development Act of 1968; * * *.

* * * * *

(d) *Equity-security investments*—(1) *Permissible investments.* * * * (iv) Equity securities issued by any United States government-sponsored corporation, including the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Student Loan Marketing Association, and the Federal Agricultural Mortgage Corporation; * * *.

* * * * *

(f) *Savings clause.* * * *

(4) An institution whose aggregate actual or prospective equity-risk investments on December 14, 1988 were in compliance with its applicable thresholds on that date, including compliance as a result of applying the savings clauses of paragraphs (f)(1) through (3) of this section or of securing PSA approval of otherwise nonconforming levels of investment, but would exceed those thresholds because of the inclusion of investments in stock issued by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association, shall not be prohibited solely for that reason from maintaining its full investment in such stock made as of December 14, 1988; nor shall an institution be required to divest any investments solely because of a subsequent change in its assets or its regulatory capital; nor shall an institution be in violation of paragraph (e)(1) of this section solely by maintaining its full investment in such stock made as of December 14, 1988: Provided, That additional equity-risk investments may be made only in compliance with the provisions of this section. Nothing in this paragraph (f), however, shall limit the authority otherwise granted to Principal Supervisory Agents to prohibit equity-risk investments or to require the reduction of aggregate equity-risk investment or the divestiture of specific equity-risk investments.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–19175 Filed 8–16–89; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–53–AD; Amdt. 39–6298]

Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to British Aerospace Model BAC 1–11 200 and 400 series airplanes, which requires inspection of the thrust reverser cables, and replacement, if necessary. This amendment is prompted by reports of inadvertent operation of the thrust reverser due to improper routing of the thrust reverser cable. This condition, if not corrected, could lead to an uncommanded thrust reverser selection, either on the ground or immediately prior to touchdown when the throttles are closed.

EFFECTIVE DATE: September 21, 1989.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletin, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane

Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to British Aerospace Model BAC 1-11 200 and 400 series airplanes, which requires inspection of the thrust reverser cables, and replacement, if necessary, was published in the Federal Register on May 10, 1989 (54 FR 20142).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

All of the commenters supported the rule; however, one commenter objected to a statement in the Summary section of the preamble that indicated the thrust reverser cables were incorrectly routed during production. After further review of the data, the FAA acknowledges that there is no evidence to substantiate that the incorrect rerouting occurred during production. Accordingly, the words "during production" have been deleted from the Summary section.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 80 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,400.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1-11 200 and 400 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent uncommanded thrust reverser selection, accomplish the following:

A. Prior to the accumulation of 1,500 landings or within 3 months after the effective date of this AD, whichever occurs first, inspect the thrust reverser cables to determine correct installation, in accordance with British Aerospace Alert Service Bulletin 76-A-PM5978, Issue No. 1, dated November 14, 1988.

B. If thrust reverser cables are found to be worn or damaged, or if cables are found to be incorrectly routed, replace prior to further flight, in accordance with the maintenance manual refereaced in British Aerospace Alert Service Bulletin 76-A-PM5978, Issue No. 1, dated November 14, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington. This amendment becomes effective September 21, 1989.

Issued in Seattle, Washington, on August 7, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19287 Filed 8-16-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-167-AD; Amdt. 39-6297]

Airworthiness Directives; British Aerospace Model BAe/DH/BH/HS 125 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace BAe/DH/BH/HS 125 series airplanes, which requires inspection of the elevator mass balance side plate assembly and spigot for corrosion, and repair, if necessary; the application of corrosion protection treatment; and installation of corrosion resistant monel rivets in the elevator balance weight structure. This amendment is prompted by reports of corrosion on the elevator mass balance side plate assembly and the balance weight spigot. This condition, if not corrected, could lead to displacement of the side plate which could cause control surface interference and jamming of flight controls.

EFFECTIVE DATE: September 21, 1989.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to British Aerospace Model BAe/DH/BH/HS 125 series airplanes, which requires an inspection of the elevator mass balance side plate assembly spigot for corrosion, and repair, if necessary; the application of corrosion protection treatment; and installation of corrosion resistant monel rivets in the elevator balance weight structure, was published in the Federal Register on June 14, 1989 (54 FR 24289).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 420 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $168,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace (BAe), PLC: Applies to Model BAe/DH/BH/HS 125 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent control surface interference and jamming of the flight controls, accomplish the following:

A. Within 3 years since date of airplane manufacture or within 60 days after the effective date of this AD, whichever occurs later, accomplish the following:

1. Inspect the elevator mass balance weight side plate assembly and balance weight spigot for corrosion in accordance with BAe Service Bulletin 27-142, Revision 2, dated June 10, 1987. Any corrosion detected as a result of this inspection must be repaired prior to further flight, in accordance with the service bulletin.

2. Apply corrosion protection treatment and install Monel Rivets, Part Number MS9318-052, or British Standard Specification SP 88-304 rivets in the elevator balance weight structure, in accordance with BAe Service Bulletin 27-142, Revision 2, dated June 10, 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 21, 1989.

Issued in Seattle, Washington, on August 7, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19288 Filed 8-16-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-CE-15-AD; Amdt. 39-6300]

Airworthiness Directives; Schweizer Model G-164 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) applicable to Schweizer Model G-164 series airplanes which requires a visual inspection for corrosion and cracks on the forward and aft elevator push-pull rod assemblies. This amendment is prompted by a recent in-flight failure of the aft elevator push-pull rod assembly which resulted in the loss of the airplane, and by four previous reports of extensive corrosion and cracking. The actions specified in this AD will detect and correct this condition and preclude loss of the aiplane.

DATES: *Effective Date:* September 15, 1989.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Schweizer Service Bulletin No. 85, dated June 1, 1989, applicable to this AD may be obtained from Schweizer Aircraft Corporation, Post Office Box 147, Elmira, New York 14902. This information may also be examined at the Rules Docket, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Al Maila, Aerospace Engineer, New York Aircraft Certification Office, ANE-172, FAA, New England Region, 181

South Franklin Avenue, Valley Stream, New York 11581; Telephone (516) 791–6220.

SUPPLEMENTARY INFORMATION: As a result of a number of field reports of cracks occurring at the ends on the aft push rod assembly of the elevator control system on Schweizer Model G–164 series airplanes, the manufacturer issued AG–CAT Service Letter No. 32, dated January 27, 1982, advising AG–CAT operators to program regular and frequent cleaning operations of the airplane. The chemicals dispensed by operators, together with maintenance procedures used, have a bearing on the failures of the push rod assemblies which were caused by corrosion. As a result, the FAA published a General Aviation Alert, AC No. 43–16, Alert No. 57, dated April 1983, pertaining to a Schweizer Model G–164D push rod assembly noting that during annual inspection, corrosion was noted around the through-bolts which attached to the end fitting. On June 12, 1984, Transport Canada informed the FAA that an operator had found moisture and corrosion in the forward end of the aft elevator push rod assembly. Also, another operator in Canada, with five Grumman Model G–164 airplanes, had found moisture but no corrosion in the elevator control push-pull rods. As a result of a recent in-flight failure due to corrosion damage, the manufacturer has issued Service Bulletin No. 85, dated June 1, 1989, which describes procedures for inspection, repair, and replacement of the elevator control system push-pull rod assemblies. Due to the nature of the reported failures and the non-routine nature of the inspections and maintenance specified in this service information, the FAA has determined that AD action is warranted. Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring visual inspections of the forward and aft elevator push-pull rod assemblies for corrosion and cracks and the repair or replacement of the defective assemblies on all Schweizer Model G–164 series airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days. The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of 14 CFR part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Schweizer (Grumman): Applies to Model G–164 (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated in the body of the AD, unless previously accomplished.

To prevent the failure of the forward and aft elevator control system push-pull rods and end fittings, accomplish the following:

(a) Within the next 30 calendar days after the effective date of this AD, and thereafter at intervals not to exceed 12 calendar months, visually inspect the forward and aft elevator push-pull rod assemblies and end fittings for corrosion and cracks in accordance with the Procedure Section in Schweizer Service Bulletin No. 85, dated June 1, 1989.

(b) If corrosion or cracks are found, prior to further flight, replace or repair the defective assembly in accordance with the Procedure Section of Schweizer Service Bulletin No. 85, dated June 1, 1989, utilizing the replacement parts specified in Figure 1 or 2 thereto, as applicable, and continue the repetitive inspections specified in paragraph (a) of this AD.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902, or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on September 15, 1989.

Issued in Kansas City, Missouri, on August 8, 1989.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–19289 Filed 8–14–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 90788–9168]

Revisions to the Commodity Control List Based on Coordinating Committee Review

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule amends three Export Control Commodity Numbers (ECCNs) on the CCL: 1203A, 1359A, and 1528A. These revisions have resulted from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability of strategic items to controlled countries.

The revisions to ECCN 1203A correct errors contained in the entry, thereby

bringing it into compliance with current COCOM controls. The rule amends ECCN 1528A to reduce the number of items subject to validated license controls. This change will reduce the paperwork burden on the public by decreasing the number of license applications that must be submitted. ECCN 1359A is amended to conform with the revisions to ECCN 1528A.

EFFECTIVE DATE: This rule is effective August 17, 1989.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature on ECCN 1203A, call Larry Hall, Office of Technology and Policy Analysis, Telephone: (202) 377–8550.

For questions of a technical nature on ECCNs 1359A and 1528A, call Joe Westlake, Office of Technology and Policy Analysis, Telephone: (202) 377–0730.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0005.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is being issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 799 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

PART 799—[AMENDED]

1. The authority citation for 15 CFR part 799 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as effected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1 to § 799.1 [Amended]

2. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 2 (Electrical and Power-Generating Equipment), ECCN 1203A is amended by removing (Advisory) Note 1, and by redesignating (Advisory) Note 2 for the People's Republic of China as "(Advisory) Note 3 for the People's Republic of China", as follows:

1203A Electric furnaces, specially designed components and controls therefor.

* * * * *

List of Electric Vacuum Furnaces Controlled by ECCN 1203A

* * * * *

(d) * * *

(2) * * *

Note 1: * * *

Note 2: * * *

(Advisory) Note 3 for the People's Republic of China:

* * * * *

3. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1359A is amended by revising the phrase "ECCN 1528(f)" to read "ECCN 1528(e)" in the heading and in the Advisory Note for the People's Republic of China.

4. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1528A is amended by revising the *"GFW Eligibility"* paragraph;

By removing paragraph (b) and the Note that follows paragraph (b);

By redesignating paragraph (c) as new paragraph (b);

By adding the word *"or"* immediately following newly redesignated paragraph (b)(1);

By redesignating paragraphs (d), (e), and (f) as new paragraphs (c), (d), and (e);

By revising Notes 1 and 2 following newly redesignated paragraph (e);

By revising (Advisory) Note 4; and

By adding a new (Advisory) Note 5 for the People's Republic of China, as follows:

1528A Optical fibers, optical cables and other cables and components and accessories.

Controls for ECCN 1528A

* * * * * *

GFW Eligibility: Commodities that meet the technical specifications described in sub-paragraphs (b) (1), (2) and (3) and paragraph (e) of the List of Cable controlled under this entry regardless of end-use, subject to the prohibitions contained in § 771.2(c).

List of Commodities Controlled by ECCN 1528A

* * * * *

(e) * * *

Note 1: Sub-paragraph (d) of ECCN 1528A does not control cable that is "armored" by only either a tough outer sheath or an electromagnetic screen.

Note 2: Associated equipment for sub-paragraphs (a), (b), and (c), and specially designed components therefor, are covered under ECCN 1519A.

Note 3: * * *

(Advisory) Note 4: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of silica-based optical fibers and optical cable, other cable, connectors and couplers controlled by sub-paragraphs (a), (b)(1) to (b)(4), or (e) of ECCN 1528A, provided that:

(a) The cable, optical fibers, connectors or couplers are for a specific civil end-use;

(b) The quantities of cable, optical fibers, connectors or couplers are normal for the purpose;

(c) The optical fibers specially designed for the underwater use:

(i) Are not controlled by sub-paragraph (b)(1) of ECCN 1528A; and

(ii) Have performance characteristics inferior to those described in sub-paragraphs (b)(2) or (b)(3); *and*

(d) Connectors and couplers controlled by sub-paragraph (e) are not:

(i) Fiber-optic bulkhead or hull penetration connectors, specially designed for use in ships or vessels; *or*

(ii) Wavelength division multiplex type fiber-optic couplers.

(Advisory) Note 5 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of optical fibers controlled by sub-paragraph (c)(2), when exported for identifiable civil applications, having all of the following characteristics:

(a) Not fabricated to be nuclear radiation sensitive;

(b) A "beat length" of more than 50 cm (low birefringence); *and*

(c) Not optimized for operation at any wavelength exceeding 1,370 nm.

Dated: August 11, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-19268 Filed 8-16-89; 8:45 am]

BILLING CODE 3510-DT-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Exchange of Futures for Cash Commodities or in Connection With Cash Commodity Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final Rule.

SUMMARY: The Commodity Futures Trading Commission has adopted final Regulation 1.35(a-2), 17 CFR 1.35(a-2), which requires futures commission merchants ("FCMs"), introducing brokers ("IBs"), and other contract market members to request from their customers, upon request of the Commission, the United States Department of Justice, or a contract market, documentation of cash transactions underlying exchanges of futures for cash commodities or exchanges of futures in connection with cash commodity transactions.[1] Final Regulation 1.35(a-2) also requires customers to create, retain, and produce such documentation to the requesting body. The final regulation defines documentation as "those documents customarily generated in accordance with cash market practices." Final Regulation 1.35(a-2) also requires that all contract markets adopt, as necessary, corresponding rules requiring members to provide such documentation to the contract market, the Commission, or the United States Department of Justice upon request.

EFFECTIVE DATE: New Commission Regulation 1.35(a-2) becomes effective November 15, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia C. Apfelbaum, Assistant Director, or Elizabeth A. Patterson, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Notice

The total public reporting burden for the collection of information which includes this final regulation is estimated to average 80.83 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the entire collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581; and to Office of Management and Budget, Paperwork Reduction Project (3038-0022), Washington, DC 20503.

II. Introduction

On November 16, 1988, the Commission published a proposal to amend Commission Regulation 1.35 by adding a new paragraph (a-2) which would have required FCMs, IBs, and other contract market members to request from their customers, upon request of the Commission, the United States Department of Justice, or a contract market, documentation of cash transactions underlying EFPs. 53 FR 46089. Proposed Regulation 1.35(a-2) would have required customers to create, retain, and produce such documentation to the requesting body via the FCM, IB, or contract market member. The proposed regulation defined documentation as "those documents customarily generated in accordance with cash market practices." The Commission also proposed to amend Regulation 1.35 to require that all contract markets adopt, as necessary, corresponding rules requiring members to provide such documentation to the contract markets, the Commission, or the United States Department of Justice upon request.

In proposing to add new paragraph (a-2) to Regulation 1.35, the Commission noted that ensuring the availability of records of cash transactions underlying EFPs is essential to the success of exchange surveillance programs for monitoring EFPs and determining whether they are bona fide. 53 FR 46090. The Commission further noted that access to such records is "necessary to the Commission's ability to monitor the effectiveness of the exchanges' surveillance programs with respect to EFPs and to the Commission's ability to review such trades in the course of routine trade practice surveillance or specific investigations." Id. Records of these cash transactions should allow the Commission and the exchanges to verify the occurrence of the cash transaction and to review the prices and other terms of those transactions in connection with any inquiry into the legitimacy of an EFP. Finally, the Commission stated its belief in the appropriateness of requiring "customers, who are parties to cash transactions and therefore have the best access to the requested documents, to produce those documents for examination." Id.

III. Comments and Commission Response

The Commission requested comment on the proposed amendments and received eleven written responses.[2] Although the majority of the commenters did not dispute the appropriateness of collecting and reviewing customer cash transaction documentation,[3] the commenters did raise a number of questions and criticisms related to specific aspects of the Regulations. The Commission has carefully reviewed the comments received, and has adopted the rule essentially as proposed, with certain modifications and clarifications. The comments are discussed below in the context of each subparagraph of final Regulation 1.35(a-2).

A. Subparagraph (a-2)(1)—Collection of Customer Documentation by FCMs, IBs, and Members of Contract Markets

In the November 16, 1988, Federal Register release, the Commission proposed to amend Regulation 1.35 by adding a new subparagraph (a-2)(1) which would have required FCMs, IBs, and members of contract markets, upon request of the exchange, the Commission, or the United States Department of Justice, "to obtain from [their] customers and to provide to the requesting body" documentation of cash transactions underlying EFPs. Six commenters stated that proposed subparagraph (a-2)(1) inappropriately placed the burden of production of customer-held documents on FMCs, IBs, and contract market members by requiring that such entities "obtain" and "provide" customer cash documentation. The commenters contended that the proposed subparagraph would have created a new regulatory liability (and a corresponding potential for sanction) for an FCM, IB, or contract market member which requested cash documentation, but failed to receive it from the customer.

Although the Commission did not intend that subparagraph (a-2)(1) be so read, the Regulation, as drafted, could be so interpreted. Accordingly, the Commission has determined to revise subparagraph (a-2)(1) to make clear that FCMs, IBs, and contract market members are required to act as intermediaries for document production between customers and the requesting body. Thus, subparagraph (a-2)(1) of Regulation 1.35, as adopted, states that each FCM, IB, and contract market member "shall request from its customers and, upon receipt thereof, provide to the requesting body" customer cash documentation.

In connection with revising this language, the Commission reminds FCMs, IBs, and contract market members that their role as conduit between the customer and the contract market, the Commission, or the United States Department of Justice is not without attendant duties. First, upon request of one of the foregoing bodies, the FCM, IB, or contract market member must promptly request that the customer provide cash documentation. Second, after receiving the requested customer documents, the FCM, IB, or contract market member must expeditiously forward the documents to the requesting body. Finally, if the documents are not forthcoming, the FCM, IB, or contract market member must so inform the requesting body, in order that the contract market, the Commission, or the United States Department of Justice may take appropriate action. Of course, FCMs, IBs, and contract market members remain responsible for their document retention and production duties under Regulation 1.38(b), 17 CFR 1.38(b), Regulation 1.35(a), 17 CFR 1.35(a), and Regulation 18.05, 17 CFR 18.05.

B. Subparagraph (a-2)(2)—Customer Production of Documentation Upon Request

Proposed subparagraph (a-2)(2) would have required all customers of FCMs, IBs, and contract market members to create, retain, and produce upon request of the FCM, the IB, the contract market member, the exchange, the Commission, or the United States Department of Justice documentation of the cash transactions underlying EFPs. Customers would have been required to retain the documents for five years, pursuant to Regulation 1.31(a)(1), 17 CFR 1.31(a)(1), and to produce the documents to the specified entities promptly upon request.

One commenter noted that the proposed language "was so broad as to allow an FCM, IB, or contract market member to require documentation in the ordinary course of business without such demand being based upon a request from one of the regulatory authorities." The commenter argued that the proposed language could allow firms access to customer records for purposes other than the transmission of documents from the customer to the requesting body. The Commission found merit in this comment and, accordingly, determined to revise subparagraph (a-2)(2) by deleting FCMs, IBs, and contract market members from the list of "requesting bodies."

Several commenters also expressed concern about the confidentiality of customer records under the Regulation as proposed. The commenters asserted that the proposed Regulation would have permitted a firm (*e.g.*, an FCM) to discover, by virtue of its role as a transmitter of documents, the terms on which, and the parties with whom, its customers were conducting business. The commenters asserted that this intermediary role of FCMs, IBs, and contract market members potentially could harm customers because such firms may be competitors of customers in the cash market. Given those commenters' concerns, the Commission has decided that customers, if they so desire, may provide documents directly to the requesting body, bypassing the FCM, IB, or contract market member which relayed the request. In this connection, to avoid unnecessary duplication of efforts, firms may wish to require that their customers notify them of any document production made directly to the requesting entity by the customer.

C. Subparagraph (a-2)(3)—Requirement that Contract Markets Adopt Rules Pertaining to Document Production

The language of final subparagraph (a-2)(3) is identical to that originally proposed by the Commission. The subparagraph requires each contract market to adopt rules mandating that its members produce documentation of cash transactions underlying EFPs.

One commenter asserted that subparagraph (a-2)(3) is unnecessary because exchanges already have the right to demand that their members produce documents that underlie EFP cash transactions. Although the Commission does not dispute the accuracy of the commenter's statement, the Commission nevertheless believes that each exchange should set forth the EFP document production requirement affirmatively in the interest of fully notifying market participants of their obligations and in order to promote consistent treatment of all transactions by all exchanges. Of course, as the Commission indicated in its original proposal, only those exchanges which do not have such an affirmative provision need take regulatory action in order to comply with new Regulation 1.35(a-2). 53 FR 46091.

D. Subparagraph (a-2)(4)—Definition of "Documentation"

Finally, the Commission has adopted subparagraph (a-2)(4) as proposed. The subparagraph states that documentation, as defined in Regulation 1.35(a-2), consists of those documents "customarily generated in accordance with cash market practices which demonstrate the existence and nature of the cash transactions, including, but not limited to, contracts, confirmation statements, telex printouts, invoices, and warehouse receipts or other documents of title."[4]

---

[1] These transactions are referred to in section 4c(a) of the Commodity Exchange Act ("Act"), 7 U.S.C. 6c(a), and Regulation 1.38(b), 17 CFR 1.38(b), as exchanges of futures for cash commodities or exchanges of futures in connection with cash commodity transactions, but are more commonly known as exchanges of futures for physicals ("EFPs").

[2] This request elicited written comment from: (1) Kansas City Board of Trade; (2) Coffee, Sugar & Cocoa Exchange, Inc.; (3) New York Mercantile Exchange; (4) Chicago Mercantile Exchange; (5) Futures Industry Association; (6) National Grain and Feed Association; (6) Geldermann, Inc.; (8) Salomon Brothers, Inc.; (9) Walters Trading and Investment Company; (10) Cargill, Inc.; and (11) The Wright-Lorenz Grain Co., Inc.

[3] Two commenters voiced their disapproval of the proposed amendments as "unnecessary regulation."

[4] As previously noted, the Commission understands that commercial practices in the markets in which EFPs are transacted contemplate that some documentation of the cash transaction will be created. 53 FR 46091. The Commission has stated further that "* * * a customer's inability to produce such documentation would create a strong inference that an EFP is not bona fide." 53 FR 46090.

Several commenters expressed concern that the Commission intended to require that customers submit documentation generated by or in the custody of independent third parties. The commenters stated that documentation in the hands of third parties might be inaccessible to customers, so that customers might be held liable for non-production of documents which were beyond their physical control. The Commission intends that customers retain and produce those documents which are "customarily generated in accordance with cash market practices" and which customers ordinarily would possess or to which they would have access. Thus, the rule would not impose liability on a customer for failure to produce documents which were retained beyond the customer's control.

IV. Implementation Time of Regulation 1.35(a–2)

Final Commission Regulation 1.35(a–2) will beome effective 90 days after the date of publication of the final rule. The delayed effective date should provide ample time for the affected entities to adopt compliance procedures and for exchanges, as necessary, to adopt and submit to the Commission, pursuant to section 5a(12) of the Act, rules consistent with the requirements of Regulation 1.35(a–2)(3).

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 et seq., requires that agencies, in proposing rules, consider the impact of the rules on small businesses. Regulation 1.35(a–2), as promulgated, would affect contract markets, FCMs, IBs, contract market members, and the customers of FCMs, IBs, and contract market members. The Commission previously has determined that contract markets are not "small entities" for the purposes of the RFA, and that the Commission need not, therefore, consider the effect of proposed amendments on contract markets in relation to the RFA. 47 FR 18618, 18619, April 30, 1982. The Commission has also determined that FCMs should be excluded from the definition of "small entity" based upon the fiduciary nature of the FCM/customer relationships as well as the fact that FCMs must meet minimum financial requirements. 47 FR 18618, 18619, April 30, 1982.

With respect to IBs, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all IBs should be considered small entities and, if so, to analyze the economic impact on such entities at that time. 48 FR 34248, 35275–78, August 3, 1983. Final Regulation 1.35(a–2) will have little effect on IBs, regardless of size. Pursuant to existing Commission Regulation 1.57, 17 CFR 1.57, IBs will never handle customer EFPs independently. Regulation 1.57 requires that IBs open and carry customer accounts with FCMs on a fully-disclosed basis and that they transmit customer orders to FCMs. Given this fact, the FCMs, not the IBs, would have primary responsibility for customer document transmission. As a practical matter, an IB would be approached for customer documents only if an FCM failed to request and forward customer documents and the requesting entity determined not to request documents directly from the customer. Thus, IBs of any size should not be burdened significantly by the final rules.

Like IBs, non-FCM members seldom will be called upon to request and provide documentation of customer EFPs. Non-FCM members generally transact EFPs for their own accounts. In those instances where non-FCM contract market members may act as brokers to arrange EFPs between customers, those members will handle both the cash and the futures portions of the trade and will be acting as IBs. In some circumstances, however, the member may act as broker between customers only as to a cash transaction, which becomes part of an EFP cleared through an FCM. In such cases, which are likely to occur infrequently, the member only would be approached for the cash documentation if the FCM clearing the EFP failed to request and forward customer documents and if the requesting entity chose not to request documentation directly from the customer. Therefore, the final rules should not place a significant burden on non-FCM members of any size.

Finally, the Commission does not believe that final Regulation 1.35(a–2) significantly will affect customers of FCMs, IBs, or contract market members that are also small businesses. For most EFPs, an FCM or contract market member will take the opposite side of the customer transaction and thus will be required to create and retain documentation and to report those transactions under existing Regulation 1.35(a). For most EFPs, then, the participating FCM or contract market member will be the primary source for obtaining documentation of the cash transaction.[6]

In most markets, customers using EFPs generally will be large entities such as commercial market participants (producers, users, etc.), trade houses, institutions, banks, pension funds, and dealers. EFP users in the currency and metals markets are also primarily large entities (i.e., banks, bullion dealers, etc.) However, some participants, although not a substantial number—particularly professional traders, small trade houses, small corporations and other businesses—may be "small entities." To the extent that any small entities do fall within the purview of the final Regulation 1.35(a–2), the recordkeeping required to those entities will be relatively minor. First, the rule requires only that customers create, retain, and produce those documents customarily generated in accordance with cash market practices.[6] Customers presumably create and retain these documents in the normal course of business for general business, financial, and tax reasons. Second, the records of only a small number of transactions will be requested annually so the temporal and monetary impacts of document production on any single entity should be minimal.

Accordingly, pursuant to section 3(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1168 (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, has certified that this rule, as promulgated, will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq., imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act the Commission previously submitted this rule in proposed form and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with this rule on January 6, 1989, and assigned OMB control number 3038–0022 to the rule. The burden associated with this entire collection, including this final rule is as follows:

Average burden hours per response. 80.83
Number of respondents..... 470
Frequency of response..... On occasion

The portion of the OMB control number 3038–0022 public reporting burden specifically related to the collection of information pursuant to final Regulation 1.35(a–2) is estimated to average one-half hour per response for each of the 24 FCMs, IBs, or contract market members expected to be required to collect documents from customers transacting EFPs at nonreportable levels during a year.[7] This estimate includes time to request, obtain, organize, and provide documents to the Commission, the contract market, or the United States Department of Justice. Each of the estimated 24 customers transacting EFPs at nonreportable levels who are asked to provide documentation annually will spend an estimated one hour per response in locating, photocopying, and providing requested documents through an FCM, IB, or contract market member to the contract market, the Commission, or the United States Department of Justice. Finally, each of the estimated 570 other customers who would be required to maintain documents solely under Regulation 1.35(a–2) are expected to devote two hours to filing documents annually. The total annual public burden related to Regulation 1.35(a–2) is estimated to be 1,176 hours.

Copies of the OMB approved information collection package associated with this rule may be obtained from Gary Waxman, Office of Management and Budget, Room 3220, NEOB, Washington, DC 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 1

Commodity futures, Contract markets, Customers, Exchanges of futures for physicals, Futures commission merchants, Introducing brokers, Members of contract markets, Noncompetitive trading, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4, 4c, 4g, 5, 5a, 8, and 8a thereof, 7 U.S.C. 6, 6c, 6g, 7, 7a, 12, and 12a, the Commission hereby amends part 1 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, 23, and 24, unless otherwise stated.

2. Section 1.35 is amended by adding paragraph (a–2) to read as follows:

§ 1.35 Records of cash commodity, futures, and option transactions.

* * * * *

(a–2)(1) *Futures commission merchants, introducing brokers, and members of contract markets.* Upon request of the contract market, the Commission, or the United States Department of Justice, each futures commission merchant, introducing broker, and member of a contract market shall request from its customers and, upon receipt thereof, provide to the requesting body documentation of cash transactions underlying exchanges of futures for cash commodities or exchanges of futures in connection with cash commodity transactions.

(2) *Customers.* Each customer of a futures commission merchant, introducing broker, or member of a contract market shall create, retain, and produce upon request of the contract market, the Commission, or the United States Department of Justice documentation of cash transactions underlying exchanges of futures for cash commodities or exchanges of futures in connection with cash commodity transactions.

(3) *Contract markets.* Every contract market shall adopt rules which require its members to provide documentation of cash transactions underlying exchanges of futures for cash commodities or exchanges of futures in connection with cash commodity transactions upon request of the contract market.

(4) *Documentation.* For the purposes of this paragraph, documentation means those documents customarily generated in accordance with cash market practices which demonstrate the existence and nature of the underlying cash transactions, including, but not limited to, contracts, confirmation statements, telex printouts, invoices, and warehouse receipts or other documents of title.

* * * * *

Issued in Washington, DC on August 11, 1989 by the Commission.

Jean A. Webb,

Secretary.

[FR Doc. 89–15314 Filed 8–16–89; 8:45 am]

BILLING CODE 6351–01–M

[6] As noted above, however, the Commission intends that customers create, retain, and produce, upon request, those documents which are "customarily generated in accordance with cash market practices" and which customers ordinarily would possess or to which they would have access.

[6] Document retention under final Regulation 1.35(a–2) would fall within the five-year retention requirement of Commission Regulation 1.31(a), 17 CFR 1.31(a). Regulation 1.31(a) provides:

Section 1.31 Books and Records; Keeping and Inspection. (a)(1) All books and records required to be kept by the Act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the 2 years of the 5-year period. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice.

[7] Commission regulation 18.05 currently requires that each trader holding or controlling reportable positions keep records of all futures and cash commodity positions and transactions.

INTERNATIONAL TRADE COMMISSION

19 CFR Part 213

Trade Remedy Assistance

AGENCY: U.S International Trade Commission.

ACTION: Notice of final rulemaking.

SUMMARY: This notice sets forth final rules that the U.S. International Trade Commission has adopted to revise part 213 of the Commission's Rules of Practice and Procedure. Part 213 sets forth the rules governing trade remedy assistance provided by the Commission through the Trade Remedy Assistance Office.

Notice of proposed rulemaking was published in the **Federal Register** on December 21, 1988 (53 FR 51281) and interested persons were given until February 6, 1989, to submit comments. None were submitted.

The revisions to part 213 conform the rules to the changes made in section 339 of the Tariff Act of 1930 (19 U.S.C. 1339) by section 1614 of the Omnibus Trade and Competitiveness Act of 1988 ("the Omnibus Trade Act"). The amendments provide that an office to be known as the Trade Remedy Assistance Office ("Office") is established in the Commission; that the Office shall provide advice and assistance concerning remedies and procedures under the trade laws identified in section 339 of the Tariff Act of 1930; and that the Office, in coordination with other agencies administering trade laws, shall provide technical assistance to eligible small businesses to assist them in seeking relief under the identified trade laws. Technical assistance shall be available to assist eligible small businesses in preparing complaints or petitions for relief and in any consequent administrative review or appeal to the administering agency.

The final rules adopted closely follow those proposed and published in the **Federal Register** of December 21, 1988 with the exception of (1) non-

substantive or grammatical changes to reduce redundant explanations and to make the final rules easier to understand; (2) the addition of a requirement that trade associations applying for technical assistance from the Trade Remedy Assistance Office provide a listing of members; (3) the removal of the application form for technical assistance from the rules themselves. The added requirement that trade associations applying for technical assistance provide a listing of members is intended to enable the Commission to verify the eligibility of such applicants. The application form for technical assistance was removed from the rules because the form itself does not affect the substantive requirements for obtaining technical assistance from the Trade Remedy Assistance Office.

EFFECTIVE DATE: September 18, 1989.

ADDRESSES: Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC, 20436.

FOR FURTHER INFORMATION CONTACT: Gary L. Kaplan, Director, Trade Remedy Assistance Office, U.S. International Trade Commission, telephone (202) 252–2200 or 1–800–343–9822. Hearing impaired individuals may obtain further information on this matter by contacting the Commission's TDD terminal at (202) 252–1810.

SUPPLEMENTARY INFORMATION: The Commission has determined that the revisions do not constitute a "major rule" within the meaning of Executive Order 12291 (Improving Government Relations) and do not exert a "significant economic impact on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Explanation of Revisions to 19 CFR Part 213

Section 213.1

Section 213.1 is amended to refer to the new statutory provisions in the Omnibus Trade Act, to identify the Trade Remedy Assistance Office, to incorporate the statutory requirement of assisting and advising interested parties concerning remedies and procedures under the trade laws listed in § 213.2(b) of this part, and to indicate that the Trade Remedy Assistance Office, in coordination with the other agencies responsible for administering these trade laws, shall provide technical assistance to eligible small businesses seeking relief under these trade laws.

Section 213.2

Existing § 213.2 has been deleted, because it is duplicative of the requirements for assistance set forth in existing § 213.4, renumbered as § 213.3.

Section 213.3

Section 213.3 is renumbered § 213.2. Section 213.3(a) is renumbered § 213.2(a) and amended to reflect the replacement of the "Trade Remedy Assistance Center" by the "Trade Remedy Assistance Office," to include and to correct the Office's address which appears in existing rule § 213.4, to incorporate the new statutory requirement of advising and assisting interested parties concerning remedies and procedures, and to provide that technical assistance, as defined § 213.2(d), is to be coordinated with the other agencies responsible for administering the trade laws listed in § 213.2(b).

Section 213.3(b) is renumbered § 213.2(b) and amended to replace the words "Trade Remedy Laws" with the term "Trade Laws," which appears in section 339 of the Tariff Act of 1930, and to list each of the trade laws in the statute since the Office is now required to provide technical assistance regarding all of these laws. Prior to passage of the Omnibus Trade Act, the Trade Remedy Assistance Center was responsible for providing technical assistance only with regard to those trade remedy laws administered by the Commission. Section 406 of the Trade Act of 1974 (19 U.S.C. 2436, relating to market disruption investigations) is also included in the list of trade laws in § 213.2(b). Although section 406 is not included in the trade laws listed in section 339 of the Tariff Act of 1930, it is administered by the Commission, it provides for relief similar to that which may be obtained under section 201 of the Trade Act of 1974, (19 U.S.C. 2251) and it is included in the list of "Trade Remedy Laws" appearing in existing § 213.3(b).

A new § 213.2(c) is added to define the term "administering agency" as used in these proposed rules and to identify the agency or agencies responsible for administering each of the trade laws listed in § 213.2(b)

Existing § 213.3(c) is renumbered § 213.2(d) and adds language indicating that technical assistance is available during administrative review or appeals to the administering agency. Under the prior law and the existing rule, technical assistance was limited to the period "up to the date of the filing of a petition or complaint at the Commission." Language has been added to reflect that technical assistance, which includes informal legal advice and assistance, does not include legal representation of an eligible small business or advocacy on its behalf, and that the receipt of such assistance does not ensure that the recipient will prevail in any trade remedy proceeding. *See* H.R. Rep. No. 40, 100th Cong., 1st Sess. 172–173 (1987). Language also has been added to this section to indicate that, as had been the practice of the Trade Remedy Assistance Center, the staff of the Office may consult with other Commission personnel when provding technical assistance.

Existing § 213.3(d) is renumbered § 213.2(e), but is otherwise without substantive change. Existing § 213.3(e) is renumbered § 213.2(f) and amended to refer to SBA size standards as the basis for determining the eligibility of a small business for technical assistance.

Section 213.4

Section 213.4 is renumbered § 213.3. Section 213.4(a) is renumbered § 213.3(a), retitled more appropriately "Application for Technical Assistance from Small Businesses," and amended to delete the Office's address and to add language that an application for assistance is available from the Office. Otherwise this section is substantively the same as existing § 213.4(a). Section 213.4(b) is renumbered § 213.3(b) and retitled more appropriately "Application for Technical Assistance from Joint Applicants, Trade Associations and Unions," but is substantively unchanged from existing § 213.4(b), except for the new requirement that trade associations must provide a list of members to be eligible for technical assistance. Sections 213.4(c) is renumbered § 213.3(c), retitled more appropriately "Determination of Eligibility and Notification of Determination," and amended to recite that the Office will make a determination of eligibility. Section 213.4(d) is renumbered § 213.3(d), but is not substantively changed from existing § 213.4(d).

Section 213.5

Section 213.5 is renumbered § 213.4 and amended to add the requirement that an eligible small business that has received technical assistance from the Office must disclose that fact in any petition, application or complaint filed with any other agency which administers the trade law under which remedies or benefits are sought. In the existing rule, such disclosure was only required for petitions or complaints filed with the Commission. This change is consistent with the requirement in the Omnibus Trade Act that the Office shall now provide technical assistance regarding all the listed trade laws.

Section 213.6

Section 213.6 is renumbered § 213.5, but is not substantively changed from existing § 213.6.

Section 213.7

Section 213.7 is renumbered § 213.6, but is not substantively changed from existing § 213.7.

Appendix A

Appendix A, which set forth an application form for obtaining technical assistance, has been deleted from the rules, because the form itself does not affect the substantive requirements for obtaining technical assistance from the Office.

List of Subjects in 19 CFR Part 213

Administrative practice and procedure, Imports, Small businesses, Trade remedy assistance.

19 CFR part 213 is revised as follows:

PART 213—TRADE REMEDY ASSISTANCE

Sec.

213.1 Purpose and applicability of part.
213.2 Definitions.
213.3 Determination of small business eligibility.
213.4 Disclosure of receipt of technical assistance.
213.5 Access to Commission resources.
213.6 Information concerning assistance.

Authority: Sec. 339 of the Tariff Act of 1930 (19 U.S.C. 1339), as added by sec. 221, Trade and Tariff Act of 1984 (Pub. L. 98–573, approved Oct. 30, 1984; 90 Stat. 2989), and as amended by sec. 1614, Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, approved Aug. 23, 1988; 102 Stat. 110); sec. 335, Tariff Act of 1930 (72 Stat 680; 19 U.S.C. 1335).

§ 213.1 Purpose and applicability of part.

(a) Section 339 of the Tariff Act of 1930, as amended, establishes in the Commission an office known as the Trade Remedy Assistance Office and directs the Commission to provide general information to the public, upon request, and, to the extent feasible, assistance and advice to interested parties concerning the remedies and benefits available under the trade laws identified in § 213.2(b) and the procedures to be followed and appropriate filing dates in investigations under the trade laws. In coordination with other agencies administering the trade laws, the Trade Remedy Assistance Office also shall provide technical assistance, as defined in § 213.2(d), to eligible small businesses seeking to obtain the remedies and benefits available under the trade laws.

(b) The rules in this Part govern the establishment of the Trade Remedy Assistance Office, its function, small business eligibility for technical assistance and procedures for obtaining such assistance. Members of the public seeking general information from the Trade Remedy Assistance Office are not subject to the application procedures set forth in this Part.

§ 213.2 Definitions.

(a) *Office.* The Trade Remedy Assistance Office (hereinafter "Office") provides general information to the public, upon request, and, to the extent feasible, assistance and advice to interested parties concerning the remedies and benefits available under the trade laws identified in § 213.2(b) and the procedures to be followed and appropriate filing dates in investigations under those trade laws. In coordination with other agencies responsible for administering the trade laws listed in § 213.2(b), the Office also provides technical assistance, as defined in § 213.2(d) to eligible small businesses that seek to obtain remedies and benefits under the trade laws. The Office's address is Trade Remedy Assistance Office, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

(b) *Trade laws.* The trade laws (with respect to which general information and technical assistance are available) are defined as:

(1) Chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq., relating to injury caused by import competition);

(2) Chapters 2 and 3 of such title II (relating to adjustment assistance for workers and firms);

(3) Chapter 1 of title III of the Trade Act of 1974 (19 U.S.C. 2411 et seq., relating to relief from foreign import restrictions and export subsidies);

(4) Title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq., relating to the imposition of countervailing duties and antidumping duties);

(5) Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862, relating to the safeguarding of national security);

(6) Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337, relating to unfair practices in import trade); and

(7) Section 406 of the Trade Act of 1974 (19 U.S.C. 2436, relating to market disruption).

(c) *Administering agencies.* Administering agency refers to the agency or agencies responsible for administering a particular trade law. The trade laws relating to injury caused by import competition, unfair practices in import trade and market disruption are administered by the Commission. The trade laws relating to countervailing and antidumping duties are jointly administered by the Commission and the Department of Commerce. The trade laws relating to adjustment assistance for firms and safeguarding national security are administered by the Department of Commerce. The trade law relating to adjustment assistance for workers is administered by the Department of Labor. The trade law relating to relief from foreign import restrictions and export subsidies is administered by the United States Trade Representative.

(d) *Technical Assistance.* Technical assistance is informal advice and assistance, including informal legal advice, intended to enable eligible small businesses to determine the appropriateness of pursuing particular trade remedies, to prepare petitions and complaints (other than those which are frivolous in the opinion of the agency) and to seek to obtain the remedies and benefits available under the trade laws identified in § 213.2(b). Technical assistance is available to eligible small businesses at any time until the completion of administrative review or of an appeal to the administering agency regarding proceedings under the trade laws listed in § 213.2(b). Technical assistance does not include legal representation of an eligible small business or advocacy on its behalf and receipt of technical assistance does not ensure that the recipient will prevail in any trade remedy proceeding. The Office provides such technical assistance independently of other Commission staff but may consult with other staff as appropriate.

(e) *Applicant.* An applicant is an individual, partnership, corporation, joint venture, trade or other association, cooperative, group of workers, or certified or recognized union, or other entity that applies for techincal assistance under this part.

(f) *Eligible small business.* An eligible small business is an applicant that the Office has determined to be entitled to technical assistance in accordance with the SBA size standards and the procedures set forth in this part.

(g) *SBA size standards.* SBA size standards are the small business size standards of the Small Business Administration set forth in 13 CFR 121.2. The SBA size standards categorize business concerns according to the Standard Industrial Classification ("SIC") code of the Bureau of the Census and base the size determination upon the number of employees or annual receipts of the business concern in the appropriate SIC category.

§ 213.3 Determination of small business eligibility.

(a) *Application for technical assistance from small businesses.* An applicant for technical assistance must certify that it qualifies as a small business under the appropriate size standard(s) and that it is an independently owned and operated company. An application for technical assistance is available from the Office. The application must be signed under oath by an officer or principal of the applicant. The completed application should be submitted to the Office at the address set forth in § 213.2(a).

(b) *Application for technical assistance from joint applicants, trade associations and unions.* If several businesses jointly or simultaneously from the same industry apply for technical assistance, each business must meet the appropriate SBA size standard(s) and so certify. If a trade association applies for technical assistance, an officer of the trade association must certify that eighty (80) percent of the trade association's members are companies that meet the appropriate size standard(s) and provide a listing of members of the association. If a union applies for technical assistance, an officer of the union must certify that the union has less than ten thousand (10,000) members within the industry for which trade relief is being sought. Applications for trade associations or for unions to request technical assistance are available from the Office. Applications must be signed under oath by an officer of the association or union and completed applications should be submitted to the Office as set forth in § 213.2(a).

(c) *Determination of eligibility and notification of determination.* The Office shall determine whether the applicant is eligible for technical assistance and notify the applicant of the determination within ten (10) days of receipt of a properly completed application. Pursuant to 19 U.S.C. 1339(c)(1), the Office's determination of eligibility is not reviewable by any other agency or by any court.

(d) *Notification to administering agencies.* When an applicant seeks technical assistance on matters involving the trade laws, and the Office determines that the applicant is eligible for technical assistance, the Office shall:

(1) Promptly notify the appropriate administering agency or agencies of the Office's determination that the applicant is eligible to receive technical assistance; and

(2) Consult with the administering agency or agencies as to the provision of technical assistance to that applicant.

§ 213.4 Disclosure of receipt of technical assistance.

An eligible small business that has received technical assistance from the Office must state that it has received technical assistance from the Trade Remedy Assistance Office in any resulting petition, complaint or application which is filed with the Commission or any other agency which administers the trade law under which remedies or benefits are sought.

§ 213.5 Access to Commission resources.

Commission resources, in addition to the Office's resources, are available to an eligible small business to the same extent as those resources are available to members of the general public. No special rights of access to Commission resources shall be accorded to an eligible small business.

§ 213.6 Information concerning assistance.

Any person may contact the Office with questions regarding eligibility for technical assistance. Summaries of the trade laws and the SBA size standards can be obtained by writing to the Trade Remedy Assistance Office, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

By order of the Commission.

Issued: August 10, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-19204 Filed 8-16-89; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Maduramicin Ammonium With Roxarsone

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by American Cyanamid Co. The application provides for the use of currently approved maduramicin ammonium 1 percent Type A articles and roxarsone 10, 20, 50, or 80 percent Type A articles to make combination drug Type C broiler feeds. The feeds are for the prevention of coccidiosis and for increased rate of weight gain and improved feed efficiency.

EFFECTIVE DATE: August 17, 1989.

FOR FURTHER INFORMATION CONTACT: James F. McComack, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Berdan Ave., Wayne, NJ 07470, is the sponsor of NADA 140-821. The NADA provides for combining Cygro™ (maduramicin ammonium) 1 percent Type A articles with 3-Nitro™ (roxarsone) 10, 20, 50, or 80 percent Type A articles to make Type C broiler feeds containing 4.54 to 5.45 grams of maduramicin ammonium and 22.7 to 45.4 grams of roxarsone per ton of feed. The Type C broiler feeds are for the prevention of coccidiosis caused by *Eimeria acervulina, E. tenella, E. brunetti, E. maxima, E. necatrix,* and *E. mivati,* for increased rate of weight gain and for improved feed efficiency. The NADA is approved and 21 CFR 558.340(c) and 558.530(d)(3) are amended to reflect the approval.

Maduramicin ammonium and roxarsone are new animal drugs used in Type A articles to make combination drug Type C feeds. They are Category II drugs which, as provided for in 21 CFR 558.4(e), require an approved form FD-1900 for making a Type C feed from a Type A article as in this NADA as approved and in the regulations in 21 CFR 558.340 as amended.

In accordance with the freedom of information provisions of Part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animals feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.340 is amended by adding new paragraph (c)(4) to read as follows:

§ 558.340 Maduramicin ammonium.

* * * * *

(c) * * *

(4) *Amount.* 4.54 to 5.45 grams per ton (5 to 6 parts per million) with roxarsone 22.7 to 45.4 grams per ton (0.0025 to 0.005 percent).

(i) *Indications for use.* For prevention of coccidiosis caused by *Eimeria ccervulina, E. tenella, E. brunetti, E. maxima, E. necatrix,* and *E. mivati;* for increased rate of weight gain and improved feed efficiency.

(ii) *Limitations.* For broiler chickens only. Feed continuously as sole ration. Do not feed to laying hens. Drug overdose or lack of water may result in leg weakness. Withdraw 5 days before slaughter. As sole source of organic arsenic. As roxarsone provided by No. 017210 in § 510.600(c) of this chapter. As maduramicin ammonium provided by No. 010042 in § 510.600(c) of this chapter.

3. Section 558.530 is amended by adding new paragraph (d)(3)(xxiv) to read as follows:

§ 558.530 Roxarsone.

* * * * *

(d) * * *

(3) * * *

(xxiv) Maduramicin ammonium as in § 558.340.

* * * * *

Dated: August 10, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-19305 Filed 8-16-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AC76

Veterans Education; Implementation of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 contains several provisions which affect the administration of dependents' educational assistance and benefits provided under the Vietnam-era GI bill. The most important provisions include a change to the way in which the Department of Veterans Affairs (VA) must measure certain courses which do not lead to a standard college degree; a change in the way the eligibility period is determined for some spouses eligible to receive Dependents' Educational Assistance; and a change to the provision governing receipt of benefits under the Vietnam-era GI bill and other education programs administered by VA. These final regulations will better acquaint the public with the way in which VA intends to administer these provisions of law.

EFFECTIVE DATE: October 28, 1986.

FOR FURTHER INFORMATION CONTACT: Alan Zoeckler (225), Acting Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 7785 through 7794 of the **Federal Register** of February 23, 1989, there was published a notice of intent to amend part 21 in order to implement some provisions of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986. Interested people were given 30 days to submit comments, suggestions or objections. VA received no comments, suggestions or objections. Accordingly, VA is making these amended regulations final.

VA finds that good cause exists for making these regulations, like the sections of the law they implement, retroactively effective on October 28, 1986. To achieve the maximum benefit of this legislation for the affected individuals, it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to it.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these regulations are 64.111 and 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: July 21, 1989.

Edward J. Derwinski,

Secretary.

38 CFR part 21, Vocational Rehabilitation and Education, is amended as follows:

PART 21—[AMENDED]

1. In § 21.1022 paragraph (b) is revised and paragraph (c) is removed to read as follows:

§ 21.1022 Nonduplication—programs administered by the VA.

* * * * *

(b) *Chapter 34 and other programs administered by VA.* An individual may not receive educational assistance allowance under 38 U.S.C. chapter 34 concurrently with benefits under any of the provisions of law listed in this paragraph. If a veteran is eligible for educational assistance under 38 U.S.C. chapter 34 and any of the provisions of law listed in this paragraph, he or she must elect which benefit he or she wishes to receive for the program of

BEST COPY AVAILABLE

education the veteran wishes to pursue. These provisions of law are:

(Authority: 38 U.S.C. 1781; Pub. L. 99–576)

(1) 38 U.S.C. chapter 31,
(2) 38 U.S.C. chapter 35,
(3) 10 U.S.C. chapter 107,
(4) Section 903 of the Department of Defense Authorization Act, 1981,
(5) The Hostage Relief Act of 1980,
(6) 10 U.S.C. chapter 106, or
(7) 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 1781; Pub. L. 99–576)

2. Section 21.3022 is revised to read as follows:

§ 21.3022 Nonduplication—programs administered by the VA.

A person who is eligible for educational assistance under 38 U.S.C. chapter 35 and is also eligible for assistance under any of the provisions of law listed in this paragraph cannot receive such assistance concurrently. The eligible person must elect which benefit he or she will receive for the particular period or periods during which education or training is to be pursued. The election is subject to the conditions specified in § 21.4022 of this part. The provisions of law are:

(a) 38 U.S.C. chapter 30,
(b) 38 U.S.C. chapter 31,
(c) 38 U.S.C. chapter 32,
(d) 38 U.S.C. chapter 34,
(e) 10 U.S.C. chapter 106,
(f) 10 U.S.C. chapter 107,
(g) Section 903 of the Department of Defense Authorization Act, 1981, or
(h) The Hostage Relief Act of 1980.

(Authority: 38 U.S.C. 1781; Pub. L. 99–576)

3. Section 21.3046 is revised to read as follows:

§ 21.3046 Periods of eligibility; spouses and surviving spouses.

This section states how VA will compute the beginning date, the ending date and the length of a spouse's or surviving spouse's period of eligibility. The period of eligibility of a spouse computed under the provisions of paragraph (a) of this section will be recomputed under the provisions of paragraph (b) of this section if her or his status changes to that of surviving spouse.

(Authority: 38 U.S.C. 1712(b))

(a) *Beginning date of eligibility period-spouses.* (1) If the permanent total rating is effective before December 1, 1968, the beginning date of the 10-year period of eligibility is December 1, 1968.

(2) The beginning date of eligibility—

(i) Shall be determined as provided in paragraph (a)(2) of this section when—

(A) The permanent total rating is effective after November 30, 1968, or the notification to the veteran of the rating was after that date, and

(B) Eligibility does not arise under § 21.3021(a)(3)(ii) of this part.

(ii) For spouses for whom VA made a final determination of eligibility before October 28, 1986, shall be—

(A) The effective date of the rating, or

(B) The date of notification, whichever is more advantageous to the spouse.

(iii) For spouses for whom VA made a final determination of eligibility after October 27, 1986, shall be—

(A) The effective date of the rating, or

(B) The date of notification, or

(C) Any date between the dates specified in paragraphs (a)(2)(iii) (A) and (B) of this section as chosen by the eligible spouse.

(iv) May not be changed once a spouse has chosen it as provided in paragraph (a)(2)(iii) of this section.

(3) If eligibility arises under § 21.3021(a)(3)(ii) of this part, the beginning date of the 10-year eligibility period is—

(i) December 24, 1970, or

(ii) The date the member of the Armed Forces on whose service eligibility is based was so listed by the Secretary concerned, whichever last occurs.

(Authority: 38 U.S.C. 1701(a); Pub. L. 99–576)

(b) *Beginning date of eligibility period-surviving spouses.* (1) If VA determines before December 1, 1968, that the veteran died of a service-connected disability, the beginning date of the 10-year period is December 1, 1968.

(Authority: 38 U.S.C. 1712)

(2) If the veteran's death occurred before December 1, 1968, but VA does not determine that the veteran died of a service-connected disability until after November 30, 1968, the beginning date of the 10-year period is the date on which VA determines that the veteran died of a service-connected disability.

(3) If the veteran's death occurred before December 1, 1968, while a total, service-connected disability evaluated as permanent in nature was in existence, the beginning date of the 10-year period is December 1, 1968.

(4) If the veteran's death occurred after November 30, 1968, and VA makes a final decision concerning the surviving spouse's eligibility for dependents' educational assistance before October 28, 1986, the beginning date of the 10-year period is—

(i) The date of death of the veteran who dies while a total, service-connected disability evaluated as permanent in nature was in existence, or

(ii) The date on which VA determines that the veteran died of a service-connected disability.

(5) If the veteran's death occurred after November 30, 1968, and VA makes a final decision concerning the surviving spouse's eligibility for dependents' educational assistance after October 27, 1986, the beginning date of the 10-year period is—

(i) The date of death of the veteran who dies while a total, service-connected disability evaluated as permanent in nature was in existence, or

(ii) The date on which VA determines that the veteran died of a service-connected disability, or

(iii) Any date between the dates specified in paragraphs (b)(5)(i) and (b)(5)(ii) of this section as chosen by the surviving spouse.

(6) Once a surviving spouse has chosen a beginning date of eligibility as provided in paragraph (b)(5) of this section, the surviving spouse may not revoke that choice.

(Authority: 38 U.S.C. 1712(b); Pub. L. 99–576)

(c) *Ending date of eligibility period.* (1) The period of eligibility cannot exceed 10 years and can be extended only as provided in paragraphs (d) and (e) of this section.

(2) If eligibility arises before October 24, 1972, educational assistance based on a course of apprentice or other on-job training or correspondence approved under the provisions §§ 21.4258, 21.4261, and 21.4262 of this part will not be afforded later than October 23, 1982, unless the eligible spouse or surviving spouse qualifies for the extended period of eligibility provided in paragraph (d) of this section.

(Authority: 38 U.S.C. 1712)

(d) *Extension to ending date.* (1) The ending date of a spouse's period of eligibility may be extended when the spouse is enrolled and eligibility ceases for one of the following reasons:

(i) The veteran is no longer rated permanently and totally disabled;

(ii) The spouse is divorced from the veteran without fault on the spouse's part; or

(iii) The spouse no longer is listed in any of the categories of § 21.3021(a)(3)(ii) of this part.

(2) If the spouse is enrolled in a school operating on a quarter or semester system, VA will extend the period of eligibility to the end of the quarter or semester, regardless of whether the spouse has reached the midpoint of the quarter, semester or term.

(3) If the spouse is enrolled in a school not operating on a quarter or semester system, VA will extend the period of eligibility to the earlier of the following:

(i) The end of the course, or

(ii) 12 weeks.

(4) If the spouse is enrolled in a course pursued exclusively by correspondence, VA will extend the period of eligibility to whichever of the following will result in the lesser expenditure:

(i) The end of the course, or

(ii) The total additional amount of instruction that $1,053 will provide.

(Authority: 38 U.S.C. 1711(b))

(5) VA will not extend the period of eligibility when the spouse is pursuing training in a training establishment as defined in § 21.4200(c) of this part.

(6) An extension may not—

(i) Exceed maximum entitlement, or

(ii) Extend beyond the delimiting date specified in paragraph (a) or (e) of this section, as appropriate.

(Authority: 38 U.S.C. 1711(b), 1712(b), 1732, 1788)

(e) *Extended period of eligibility due to physical or mental disability.* A spouse or surviving spouse shall receive an extended period of eligibility when he or she applies for it and meets the criteria of § 21.1043(a) of this part. All other provisions of § 21.1043 of this part concerning commencing dates and length of extended periods of eligibility and discontinuance of educational assistance also apply to spouses and surviving spouses who qualify for extended periods of eligibility.

(Authority: 38 U.S.C. 1712(b))

4. In § 21.4022 paragraph (a) is revised to read as follows:

§ 21.4022 Nonduplication-programs administered by the VA.

(a) *Election.* A veteran or eligible person who is eligible for education or training benefits under more than one of the provisions of law listed in this paragraph based on his or her own service or based on the service of another person cannot receive such benefits concurrently. The individual must elect which benefit he or she will receive for the particular period or periods during which education or training is to be pursued. Except for an election between 38 U.S.C. chapters 32 and 34 which is irrevocable once a check has been negotiated, the person may reelect at any time.

(1) 38 U.S.C. chapter 30,
(2) 38 U.S.C. chapter 31,
(3) 38 U.S.C. chapter 32,
(4) 38 U.S.C. chapter 34,
(5) 38 U.S.C. chapter 35,
(6) 10 U.S.C. chapter 106,
(7) 10 U.S.C. chapter 107,
(8) Section 903 of the Department of Defense Authorization Act, 1981, or
(9) The Hostage Relief Act of 1980.

(Authority: 38 U.S.C. 1781; Pub. L. 99–576)

* * * * *

5. In § 21.4100 paragraph (c) is revised to read as follows:

§ 21.4100 Counseling.

* * * * *

(c) *Provision of counseling.* VA shall provide counseling as needed for the purposes identified in paragraphs (a) and (b) of this section upon the request of the veteran or eligible person. VA shall provide counseling as needed for the purposes identified in § 21.4101 of this part following either the veteran's initial application for benefits or any communication from the veteran or guardian indicating that the veteran wishes to change his or her program. VA shall take appropriate steps (including notification where feasible) to acquaint all eligible veterans with the availability and advantages of counseling services.

(Authority: 38 U.S.C. 1663; Pub. L. 99–576)

6. Section 21.4101 is revised to read as follows:

§ 21.4101 Counseling-38 U.S.C. Chapter 34.

(a) *Required counseling.* (1) In any case in which VA has rated the veteran as being incompetent, the veteran must be counseled before selecting a program of education or training. The requirement that counseling be provided is met when—

(i) The veteran has had one or more personal interviews with the counselor;

(ii) The counselor has jointly developed with the veteran recommendations for selecting a program;

(iii) These recommendations have been reviewed with the veteran.

(2) The veteran may follow the recommendations developed in the course of counseling, but is not required to do so.

(b) *Other counseling.* Counseling is not required for veterans and servicepersons receiving benefits under 38 U.S.C. chapter 34 for any purpose other than that described in paragraph (a) of this section.

(Authority: 38 U.S.C. 1663; Pub. L. 99–576)

7. Section 21.4103 is revised to read as follows:

§ 21.4103 Failure to cooperate.

VA will take no further action on the application of a veteran or eligible person for assistance under 38 U.S.C. chapter 34 or chapter 35 when he or she—

(a) Fails to report;

(b) Fails to cooperate in the counseling process; or

(c) Does not complete counseling to the extent required under § 21.4101(a) of this part.

(Authority: 38 U.S.C. 1663; Pub. L. 99–576)

8. In § 21.4104 paragraph (a) is revised to read as follows:

§ 21.4104 Travel expenses.

(a) *General.* VA shall determine and pay the necessary expense of travel to and from the place of counseling for a veteran or eligible person who is required to receive counseling if—

(1) VA determines that the veteran or eligible person is unable to defray the cost based upon his or her annual declaration and certification; or

(2) The individual has a service-connected disability.

(Authority: 38 U.S.C. 111)

* * * * *

9. In § 21.4136 footnote 3 to the table in paragraph (a) and paragraph (i)(2)(ii) are revised to read as follows:

§ 21.4136 Rates; educational assistance allowance; 38 U.S.C. Chapter 34.

(a) * * * [3]

(Authority: 38 U.S.C. 1788; Pub. L. 99–576)

* * * * *

(i) * * *

(2) * * *

(ii) All hours of the veteran's related training which occurred during the standard workweek and for which the veteran received wages. (See footnote 5 to § 21.4270(c) of this part as to the requirements for full-time training.)

(Authority: 38 U.S.C. 1787(b)(3))

* * * * *

10. In § 21.4137 footnote 1 to the table in paragraph (a) and paragraph (f)(2)(ii) are revised to read as follows:

§ 21.4137 Rates; educational assistance allowance—38 U.S.C. Chapter 35.

(a) * * * [1]

(Authority: 38 U.S.C. 1788; Pub. L. 99–576)

* * * * *

(f) * * *

(2) * * *

(ii) All hours of the eligible person's related training which occurred during the standard workweek and for which the eligible person received wages. (See footnote 5 to § 21.4270(c) of this part as

[3] See footnote 5 of § 21.4270(c) of this part for measurement of full time and paragraph (i) of this section for proportionate reduction in award for completion of less than 120 hours per month.

[1] See footnote 5 of § 21.4270(c) of this part for measurement of full time and paragraph (f) of this section for proportionate reduction in award for completion of less than 120 hours per month.

to the requirements for full time training.)

(Authority: 38 U.S.C. 1787(b)(3))

* * * * *

11. In § 21.4138 paragraph (b) and paragraph (f)(2)(i) are revised to read as follows:

§ 21.4138 Certifications and release of payments.

* * * * *

(b) *Other lump-sum payments.* Such a certification by an institution will be sufficient to release the payment of a lump-sum to or on behalf of the individual for the entire quarter, semester or term not later than the last day of the month following receipt of the certification by VA provided the individual is:

(Authority: 38 U.S.C. 1780(f); Pub. L. 99-576)

* * * * *

(f) * * *

(2) * * *

(i) The Director of the VA field station of jurisdiction may authorize payment to be made for breaks, including intervals between terms, within a certified period of enrollment during which the school is closed under an established policy based upon an order of the President or due to an emergency situation.

(A) If the Director has authorized payment due to an emergency school closing resulting from a strike by the faculty or staff of the school, and the closing lasts more than 30 days, the Director, Vocational Rehabilitation and Education Service will decide if payments may be continued. The decision will be based on a full assessment of the strike situation. Further payments will not be authorized if in his or her judgment the school closing will not be temporary.

(B) A school which disagrees with a decision made under this paragraph by a Director of a VA field station, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the VA field station where the decision was made. The Director, Vocational Rehabilitation and Education Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Vocational Rehabilitation and Education Service has the authority either to affirm or reverse a decision of the Director of a VA field station.

(Authority: 38 U.S.C. 1780(a))

* * * * *

12. In § 21.4203 paragraphs (a), (b), the introductory text of paragraph (c), the introductory text of paragraph (d), paragraph (d)(1), and paragraph (e) are revised, the introductory text of paragraph (f) is added and paragraph (f)(1)(i), and the introductory text of paragraph (h) are revised to read as follows:

§ 21.4203 Reports—requirements.

(a) *General.* All the reports required by this paragraph shall be in a form specified by the Secretary.

(1) Except as provided in paragraph (a)(2) of this section each educational institution, veteran and eligible person shall report without delay such information on enrollment, entrance, reentrance, change in the hours of credit or attendance, pursuit, interruption and termination of attendance of each veteran or eligible person enrolled in an approved course as the Secretary may require and using a form specified by the Secretary. See paragraphs (b) through (h) of this section.

(2) An educational institution may delay in reporting the enrollment or reenrollment of a veteran or an eligible person until the end of the term, quarter, or semester when—

(i) The veteran or eligible person is enrolled in a program of independent study;

(ii) The veteran or eligible person is pursuing the program on a less than half-time basis;

(iii) The educational institution has asked the Director of the VA field station of jurisdiction in writing for permission to delay in making the report; and

(iv) The Director of the VA field station of jurisdiction has determined that it is not feasible for the educational institution to monitor interruption or termination of the veteran's or eligible person's pursuit of the program.

(3) An educational institution which disagrees with a decision of a Director of a VA field station as to whether it may delay reporting enrollments or reenrollments as provided in paragraph (a)(2) of this section may ask to have that decision reviewed by the Director, Vocational Rehabilitation and Education Service. That request must be made in writing to the Director of the VA field station within one year of the date of the letter notifying the educational institution of the original decision.

(4) An educational institution which, under paragraph (a)(2) of this section, is delaying the reporting of the enrollment or reenrollment of a veteran shall provide the veteran with notice of the delay at the time that the veteran enrolls or reenrolls.

(5) In addition, educational institutions must—

(Authority: 38 U.S.C. 1785; Pub. L. 99-576)

(i) Verify enrollment for each veteran and eligible person receiving an advance payment; and

(ii) Verify the delivery of advance payment check and education loan check for each veteran and eligible person receiving an advance payment or loan.

(6) Nothing in this section or in any section in 38 CFR part 21 shall be construed as requiring any institution of higher learning to maintain daily attendance records for any course leading to a standard college degree.

(Authority: 38 U.S.C. 1780(d), 1784, 1785, 1796; Pub. L. 95-202, Pub. L. 96-466; Pub. L. 99-576)

(b) *Certifications of enrollment.* All the reports required by this paragraph shall be in a form specified by the Secretary.

(1) VA requires that educational institutions report all entrances and reentrances on a certification of enrollment.

(2) All educational institutions, regardless of the way in which they are organized, must clearly specify the course in which the veteran or eligible person is enrolled.

(3) Schools organized on a term, quarter or semester basis—

(i) May report enrollment for the term, quarter, semester, ordinary school year plus the following summer term.

(ii) May not report enrollment for a period that exceeds the ordinary school year plus the following summer term.

(iii) Must report the dates for the break between terms if—

(A) The certification covers two or more terms, and a term ends and the following term does not begin in the same or the next calendar month;

(B) The veteran or eligible person elects not to be paid for the intervals between terms;

(C) The certification covers two or more summer sessions; or

(D) The certification covers at least one summer session and at least one term which is not a standard semester or quarter.

(iv) Must submit a separate enrollment certification for each term, quarter or semester if the student—

(A) Is a veteran or eligible person pursuing a program on a less than half-time basis, or

(B) Is a serviceperson.

(Authority: 38 U.S.C. 1784(a); Pub. L. 99-576)

(v) Where a veteran or an eligible person, who is pursing a course leading to a standard college degree, transfers between consecutive school terms from one approved institution to another approved institution, for the purpose of enrolling in, and pursuing, a similar course at the second institution, the veteran or eligible person shall, for the purpose of entitlement to the payment of educational assistance allowance be considered to be enrolled at the first institution during the interval, if the interval does not exceed 30 days, following the termination date of the school term of the first institution.

(Authority: 38 U.S.C. 1780)

(c) *Nonpunitive grade.* A school may assign a nonpunitive grade for a course or subject in which the veteran or eligible person is enrolled even though the veteran or eligible person does not withdraw from the course or subject. When this occurs, the school must report the assignment of the nonpunitive grade in a form specified by the Secretary in time for VA to receive it before the earlier of the following dates is reached:

* * * * *

(d) *Interruptions, terminations and changes in hours of credit or attendance.* When a veteran or eligible person interrupts or terminates his or her training for any reason, including unsatisfactory conduct or progress, or when he or she changes the number of hours of credit or attendance, this fact must be reported to VA by the school in a form specified by the Secretary.

(1) If the change in status or change in number of hours of credit of attendance occurs on a day other than one indicated by paragraph (d) (2) or (3) of this section, the school will initiate a report of the change in time for the VA to receive it within 30 days of the date on which the change occurs. If the course in which the veteran or eligible person is enrolled does not lead to a standard college degree, and attendance must be certified for the course, the school may include the information on the monthly certification of attendance.

(Authority: 38 U.S.C. 1784(a), 1788(a); Pub. L. 99-576)

* * * * *

(e) *Correspondence courses.* Where the course in which a veteran is enrolled under 38 U.S.C. Chapter 34 or a spouse or surviving spouse is enrolled under 38 U.S.C. Chapter 35 is pursued exclusively by correspondence, the school will report by an endorsement on the veteran's or eligible spouse's or surviving spouse's certification the number of lessons completed by the veteran, spouse or surviving spouse and serviced by the school. Such reports will be submitted quarterly in a form specified by the Secretary.

(Authority: 38 U.S.C. 1780)

(f) *Certification.* All reports required by this paragraph must be in a form specified by the Secretary.

(1) *Courses not leading to a standard college degree.*

(i) Except as provided in this paragraph VA requires that a certification of attendance be submitted monthly for each veteran or eligible person enrolled in a course not leading to a standard college degree. The fact that the course may be pursued on a quarter, semester or term basis will not relieve the veteran or eligible person and the school of this requirement. Unless exempted by this paragraph this requirement also applies to courses measured on a credit-hour basis. This requirement does not apply to—

(A) Courses measured on a credit-hour basis pursuant to footnote 6 of § 21.4270(a),

(B) A course pursued on a less than one-half-time basis,

(C) A course pursued by a serviceperson while on active duty, or

(D) A correspondence course which must meet the requirements of paragraph (e) of this section.

(Authority: 38 U.S.C. 1780(a)(2), 1788(a)(7); Pub. L. 99-576)

* * * * *

(h) *Unsatisfactory progress or conduct.* At times the unsatisfactory progress or conduct of a veteran or eligible person is caused by or results in his or her interruption or termination of training. If this occurs, the interruption or termination shall be reported in accordance with paragraph (d) of this section. If the veteran or eligible person continues in training despite making unsatisfactory progress, the fact of his or her unsatisfactory progress must be reported to VA, if such a report is required, within the time allowed by paragraph (h)(1) and (2) of this section in a form specified by the Secretary.

(Authority: 38 U.S.C. 1674)

* * * * *

13. In § 21.4204, paragraph (a) is revised to read as follows:

§ 21.4204 Periodic certification.

(a) *Reports by schools, veterans and eligible persons.* (1) Except as provided in paragraph (a)(2) of this section VA will require verification of continued enrollment in and pursuit of a course for the entire enrollment period for—

(i) A veteran or eligible person enrolled in a course which leads to a standard college degree; and

(ii) A veteran or eligible person pursuing a course not leading to a standard college degree which qualifies for credit-hour measurement pursuant to § 21.4270(a), footnote 6, of this part.

(2) The provisions of paragraph (a)(1) of this section do not apply to a veteran or eligible person who—

(i) Is on active duty, or

(ii) Is pursuing his or her program of education on a less than half-time basis.

(3) Verification of continued enrollment will be made at least once per year, and in the last month of enrollment if the enrollment period ends more than 3 months after the last verification. In the case of a veteran or eligible person who completed, interrupted or terminated his or her course, any communication from the student or other authorized person notifying VA of the veteran's or eligible person's completion of the course as scheduled or of an earlier termination date, will be accepted to terminate payments accordingly. Reports by other veterans and eligible persons will be submitted in accordance with § 21.4203(e), (f) or (g) of this part.

(Authority: 38 U.S.C. 1780(a)(7), 1780(g); Pub. L. 99-576)

* * * * *

14. In § 21.4230, paragraph (e) is revised to read as follows:

§ 21.4230 Requirements.

* * * * *

(e) *Selection-chapter 35.* VA will approve a program of educational assistance selected by an eligible person if—

(1) It meets the requirements of paragraphs (a) and (b) or (c) of this section, and

(2) The individual is not already qualified for the objective of the program of education.

(Authority: 38 U.S.C. 1721; Pub. L. 99-576)

* * * * *

§ 21.4231 [Removed]

15. Section 21.4231 is removed.

16. In § 21.4232, paragraph (a)(3) is revised to read as follows:

§ 21.4232 Specialized vocational training-38 U.S.C. chapter 35.

(a) * * *

(3) Both the counseling psychologist and the Vocational Rehabilitation Panel will assist in developing the program, if the counseling psychologist has previously determined that the course is in the eligible person's best interest.

(Authority: 38 U.S.C. 1721, 1736; Pub. L. 99-576)

* * * * *

17. In § 21.4233 paragraphs (a)(1) and (b)(1) and (2) are revised, and paragraphs (b)(3) through (b)(5) are added to read as follows:

§21.4233 Combination.

* * * * *

(a) * * *

(1) That the alternate in-school periods of the course are at least as long as the alternate periods in the business or industrial establishment; in determining this relationship between the two components of the course, training received in a business or industrial establishment during a vacation or officially scheduled school break period shall be excluded from the calculation; where the course is approved as continuous part-time work and part-time study in combination, it shall be measured on the basis of the ratio which each portion of the training bears to full time as defined in § 21.4270(c) of this part. The institutional portion must be at least equivalent to one-half time training and must be combined with a job training portion sufficient for the combined training to equal full time.

(Authority: 38 U.S.C. 1682(a)(2) and 1732(b))

(b) * * *

(1) Where the standards for measurement of the courses pursued concurrently in the two schools are different, VA will measure the veteran's or eligible person's enrollment by converting the units of measurement for courses in the second school to the equivalent in value expressed in units of measurement required for the courses in the program of education which the veteran or eligible person is pursuing at the primary institution. This conversion will be accomplished as follows.

(i) If VA measures the course at the primary institution on a credit-hour basis, including a course which does not lead to a standard college degree, which is being measured on a credit-hour basis as provided in § 21.4270(a), footnote 6 of this part, and—

(A) VA measures the course in the second school on a mixed basis as provided in § 21.4270(b) of this part, VA will add to the credit hours the veteran or eligible person is pursuing at the primary institution the credit hours attributable to any course the veteran or eligible person is pursuing at the second school which VA could measure on a credit-hour basis. The clock hours attributable to the other courses pursued at the second school will be converted to credit hours;

(B) VA measures the courses at the second school on a clock-hour basis, the clock hours will be converted to credit hours.

(ii) If VA measures the course at the primary institution on a mixed basis as provided in § 21.4270(b) of this part and—

(A) VA measures the course at the second school on a credit-hour basis, the credit hours pursued at the second school will be added to the credit hours the veteran or eligible person is pursuing at the primary institution and the resulting credit hours will be used in making the calculations required by § 21.4270(b) of this part;

(B) VA measures the courses at the second school on a clock-hour basis, the clock hours being pursued at the second school will be added to those pursued at the primary institution before making the calculations required by § 21.4270(b) of this part.

(iii) If VA measures the courses pursued at the primary institution on a clock-hour basis, and

(A) VA measures the courses pursued at the second school on a mixed basis, the courses pursued at the second school which VA can measure on a credit-hour basis for at least one program at the second school will be converted to clock hours and the resulting clock hours added to determine the veteran's or eligible person's training time; or

(B) VA measures the courses pursued at the second school on a credit-hour basis, including courses which qualify for credit-hour measurement on the basis of § 21.4270(a), footnote 6, of this part, VA will convert the credit hours to clock hours to determine the veteran's training time.

(2) If the provisions of paragraph (b)(1) of this section require VA to convert clock hours to credit hours, it will do so by—

(i) Dividing the number of credit hours which VA considers to be full-time at the educational institution whose courses are measured on a credit-hour basis by the number of clock hours which are full-time at the educational institution whose courses are measured on a clock-hour basis; and

(ii) Multiplying each clock hour of attendance by the decimal determined in paragraph (b)(2)(i) of this section. VA will drop all fractional hours.

(3) If the provisions of paragraph (b)(1) of this section require VA to convert credit hours to clock hours, it will do so by—

(i) Dividing the number of clock hours which VA considers to be full-time at the educational institution whose courses are measured on a clock-hour basis by the number of credit hours which are full-time at the educational institution whose courses are measured on a credit-hour basis; and

(ii) Multiplying each credit hour by the number determined in paragraph (b)(3)(i) of this section. VA will drop all fractional hours.

(4) Where the standards for measurement of the courses pursued concurrently in the two schools are the same, VA will measure the veteran's or eligible person's enrollment by adding together the units of measurement for the courses in the second school to the units of measurement for the courses in the primary institution. The standard for full time will be the full-time standard for the courses at the primary institution. If courses at both schools are measured on a mixed basis so that the provisions of § 21.4270(b) of this part must be applied to the enrollment, VA will separately add the credit hours and the clock hours first, and then apply the provisions of § 21.4270(b) of this part. In applying those provisions, VA will use the standard for full time at the primary institution.

(5) Periodic certifications of training will be required from the veteran and each of the schools where concurrent enrollment is approved in a course which does not lead to a standard college degree and to which the measurement provisions of § 21.4270(a), footnote 6, of this part do not apply. (See §§ 21.4203 and 21.4204.)

(Authority: 38 U.S.C. 1788)

* * * * * * * *

18. In § 21.4264 paragraph (c)(2) is revised to read as follows:

§ 21.4264 Farm cooperative courses.

* * * * *

(c) * * *

(2) The time involved in field trips and individual and group instruction, sponsored and conducted by the educational institution offering farm cooperative courses may be counted toward meeting the clock-hour requirements. See § 21.4270(c) of this part for measurement of farm cooperative courses.

(Authority: 38 U.S.C. 1682, 1732)

* * * * *

19. In § 21.4270, the table entitled "Courses" in paragraph (a) is revised; new paragraph (c) is added; the table titled "Courses" in paragraph (b) is moved to the newly added paragraph (c) and the remaining portion of paragraph (b) is revised to read as follows:

§ 21.4270 Measurement of courses.

(a) * * *

Courses

Kind of school	Kind of course	Full time	¾ time	½ time	Less than ½ time more than ¼ time	¼ time or less
Trade or technical-nonaccredited (includes college courses not leading to a standing and degree.) [1]	Shop practice an integral part of course.[7]	30 clock hours attendance with not more than 2½ hours rest period allowance and not more than 5 hours of supervised study.	22 through 29 clock hours attendance with not more than 2 hours rest period allowance and not more than 3¾ hours of supervised study.	15 through 21 clock hours attendance with not more than 1¾ hours rest period allowance and not more than 2½ hours of supervised study.	8 through 14 clock hours attendance with not more than ¾ hour rest period allowance and not more than ¼ hour of supervised study.	1 through 7 clock hours attendance.
	Theory and class instruction predominates.[2,7]	25 clock hours net instruction and not more than 5 hours of supervised study.	18 through 24 clock hours net instruction and not more than 3¾ hours of supervised study.	12 through 17 clock hours net instruction and not more than 2½ hours of supervised study.	7 through 11 clock hours net instruction and not more than 1¼ hours of supervised study.	1 through 6 clock hours net instruction.
Trade or technical-accredited (includes college courses not leading to a standard degree). [1]	Shop practice an intregal part of course.[2,6,7]	22 clock hours attendance with not more than 2½ hours rest period allowance.	16 through 21 clock hours attendance with not more than 2 hours rest period allowance.	11 through 15 clock hours attendance with not more than 1¼ hours rest period allowance.	6 through 10 clock hours attendance with not more than ¾ hour rest period allowance.	1 through 5 clock hours attendance.
	Theory and class instruction predominates.[2,3,4,7]	16 clock hours net instruction.	13 through 17 clock hours net instruction.	9 through 12 clock hours net instruction.	5 through 8 clock hours net instruction.	1 through 4 clock hours net instruction.
High school nonaccredited.	High school diploma or equivalent.[2,5]	25 clock hours net instruction and not more than 5 hours of supervised study or 4 units per year or equivalent.	18 through 24 clock hours net instruction and not more than 3¾ hours of supervised study or 3 units per year or equivalent.	12 through 17 clock hours net instruction and not more than 2½ hours of supervised study or 2 units per year or equivalent.	7 through 11 clock hours net instruction and not more than 1¼ hours of supervised study or 1 unit per year.	1 through 6 clock hours net instruction.
High school accredited.	High school diploma or equivalent.[2,4]	16 clock hours net instruction or 4 units per year or equivalent.	13 through 17 clock hours net instruction or 3 units per year or equivalent.	9 through 12 clock hours net instruction or 2 units per year or equivalent.	5 through 8 clock hours net instruction or 1 unit per year or equivalent.	1 through 4 clock hours net instruction.
Elementary school nonaccredited.[1]	High school preparatory.[8]	25 clock hours net instruction and not more than 5 hours of supervised study.	18 through 24 clock hours net instruction and not more than 3¾ hours of supervised study.	12 through 17 clock hours net instruction and not more than 2½ hours of supervised study.	7 through 11 clock hours net instruction and not more than ¾ hour of supervised study.	1 through 6 clock hours net instruction.
Elementary school accredited.[1]	.....do[8].....	16 clock hours net instruction.	13 through 17 clock hours net instruction.	9 through 12 clock hours net instruction.	5 through 8 clock hours net instruction.	1 through 4 clock hours net instruction.

[1] An educational institution offering courses not leading to a standard college degree may measure such courses on a quarter- or semester-hour basis as indicated for collegiate undergraduate courses in paragraph (b) of this section for an enrollment or reenrollment which begins before May 20, 1968, provided: (1) The academic portions of such courses require outside preparation and are measured on a minimum of 50 minutes net of instruction per week for each quarter or semester hour of credit, (2) the laboratory portions of such courses are measured on a minimum of 2 hours of attendance per week for each quarter or semester hour of credit, and (3) the shop portions of such courses are measured on a minimum of 3 hours of attendance per week for each quarter or semester hour of credit. An educational institution offering courses not leading to a standard college degree may measure such courses on a quarter- or semester-hour basis as indicated for collegiate undergraduate courses in paragraph (b) of this section for an enrollment or reenrollment which begins after May 19, 1968, provided: (1) The academic portions of such courses require outside preparation and are measured on a minimum of 50 minutes net of instruction per week for each quarter or semester hour of credit, (2) the laboratory portions of such courses are measured on a minimum of 2 hours (or two 50-minute periods) of attendance per week for each quarter or semester hour of credit, and (3) the shop portions of such courses are measured on a minimum of 3 hours of attendance per week for each quarter or semester hour of credit. In no event shall such courses be considered a full-time course when less than 22 hours per week of attendance is required. Not more than 2 hours rest period shall be allowed per week for courses in which shop practice is an integral part of full time courses; 1½ hours for three-quarter-time courses of 16–21 clock hours; 1 hour for one-half-time courses of 11–15 clock hours; or ½ hour for less than half-time courses of 6–10 clock hours; no rest period shall be allowed for courses of less than 6 clock hours of attendance.

(Authority: 38 U.S.C. 1788; Pub. L. 100–322)

[2] In measuring net instruction there will be included customary intervals not to exceed 10 minutes between classes. Shop practice and rest periods are excluded. Supervised instruction periods in school's shops, in farm cooperative programs and the time involved in field trips and individual and group instruction may be included in computing the clock hour requirements.

[3] Supervised study must be excluded.

[4] Diploma course or equivalent based on completion of 16 instruction units. If student is pursuing a course at a rate which would result in an accredited academic high school diploma at the end of 4 ordinary school years, he or she is considered in full-time training. High school diploma courses or equivalent available only for Chapters 32 and 34 and eligible spouses and surviving spouses under Chapter 35.

[5] Diploma course or equivalent based on completion of 16 instruction units. High school diploma courses or equivalent are available only for Chapters 32 and 34 and eligible spouses and surviving spouses under Chapter 35.

[6] VA will measure the veteran's or eligible person's enrollment in a course not leading to a standard college degree on a credit hour basis whenever all the conditions listed in this footnote are met. The veteran or eligible person is enrolled in a course which is offered during the school year by a fully accredited institution of higher learning in residence on a standard quarter or semester hour basis, and the course is approved pursuant to 38 U.S.C. 1775. A majority of the total credits required for the course is derived from unit courses or subjects offered by that institution of higher learning as part of the course, approved pursuant to 38 U.S.C. 1775, leading to a single standard college degree. When all of the conditions of this footnote are met the VA will measure the veteran's or eligible person's enrollment in the same manner as collegiate undergraduate courses are measured in paragraph (c) of this section (including footnote 2 to that paragraph). VA will apply the provisions of § 21.4272(e) of this part and measure these courses as though they were undergraduate courses using the "normal method," when appropriate. VA will apply the provisions of § 21.4272(f) of this part if one or more of the veteran's or eligible person's courses have insufficient standard class sessions; and VA will apply § 21.4272(g) of this part if one or more of the veteran's or eligible person's courses are offered during a nonstandard term.

(Authority: 38 U.S.C. 1788(a)(7); Pub. L. 99–576)

[7] VA will measure the veteran's or eligible person's enrollment as provided in paragraph (b) of this section when the provisions of that paragraph are met.

(Authority: 38 U.S.C. 1788(e); Pub. L. 99–576)

(b) *Mixed credit-hour and clock-hour measurement.* (1) When a course not leading to a standard college degree in which the veteran or eligible person is enrolled cannot qualify for credit-hour measurement under either footnote 1 or footnote 6 of paragraph (a) of this section, VA will measure the course on a combined clock-hour and credit-hour basis when the provisions of this paragraph are met.

(i) The course in which the veteran or eligible person is enrolled—

(A) Is offered by an institution of higher learning, and

(B) Does not lead to a standard college degree; and

(ii) The institution of higher learning requires as part of the reservist's program of education one or more unit subjects for which credit is granted toward a standard college degree; and

(2) VA will apply—

(i) The provisions of paragraph (c) of this section and the provisions § 21.4272 (e), (f) and (g) of this part, where appropriate, to the portion of the veteran's or eligible person's enrollment consisting of the unit subject or subjects described in paragraph (b)(1)(ii) of this section measured on a credit-hour basis, and

(ii) The provisions of paragraph (a) of this section to the portion of the veteran's or eligible person's enrollment which is being measured on a clock-hour basis.

(3) For a veteran or eligible person enrolled in a school where 12 credit hours are normally full-time, and where the courses which must be measured on a clock-hour basis would normally require 18 clock hours net instruction because the course is accredited and theory and class instruction predominate as provided in paragraph (f)(2) of this section, VA will measure enrollment as provided in the following table. Clock hours in the table include customary intervals not to exceed 10 minutes between classes. Shop practices and rest periods are excluded. Supervised instruction periods in schools' shops and the time involved in field trips and individual and group instruction may be included in computing the clock-hour requirements. Credit hours in this table refer to credit hours pursued during a semester or quarter as defined in § 21.4200(b) of this part. If the semester or quarter is not one which meets the definition of § 21.4200(b) of this part, before using the table VA will convert the credit hours being pursued by the veteran or eligible person to equivalent credit hours using the procedure found in § 21.4272(g) of this part. If there are insufficient class sessions to support the credit hours in which the veteran or eligible person is enrolled, VA will use the class sessions as a basis for measurement as described in § 21.4272(f)(2) of this part.

Credit hour enrollment	Required clock hours for each training time				
	Full time	3/4 time	1/2 time	Less than 1/2 but more than 1/4 time	1/4 time
1 credit hour	16 or more clock hours net instruction.	11 to 15 clock hours net instruction.	7 to 10 clock hours net instruction.	3 to 6 clock hours net instruction.	0 to 2 clock hours net instruction.
2 credit hours	15 or more clock hours net instruction.	10 to 14 clock hours net instruction.	6 to 9 clock hours net instruction.	2 to 5 clock hours net instruction.	0 to 1 clock hours net instruction.
3 credit hours	13 or more clock hours net instruction.	9 to 12 clock hours net instruction.	4 to 8 clock hours net instruction.	1 to 3 clock hours net instruction.	0 clock hours.
4 credit hours	12 or more clock hours net instruction.	7 to 11 clock hours net instruction.	3 to 6 clock hours net instruction.	0 to 2 clock hours net instruction.	(1)
5 credit hours	10 or more clock hours net instruction.	6 to 9 clock hours net instruction.	1 to 5 clock hours net instruction.	0 clock hours	(1)
6 credit hours	9 or more clock hours net instruction.	4 to 8 clock hours net instruction.	0 to 3 clock hours net instruction.	(1)	(1)
7 credit hours	7 or more clock hours net instruction.	3 to 6 clock hours net instruction.	0 to 2 clock hours net instruction.	(1)	(1)
8 credit hours	6 or more clock hours net instruction.	1 to 5 clock hours net instruction.	0 clock hours	(1)	(1)
9 credit hours	4 or more clock hours net instruction.	0 to 3 clock hours net instruction.	(1)	(1)	(1)
10 credit hours	3 or more clock hours net instruction.	0 to 2 clock hours net instruction.	(1)	(1)	(1)
11 credit hours	1 or more clock hours net instruction.	0 clock hours	(1)	(1)	(1)

[1] Not applicable.

(4) For a veteran or eligible person enrolled in a school where 12 credit hours are normally full-time, and where the courses which must be measured on a clock-hour basis would normally require 22 clock hours net instruction because the course is accredited and shop practice predominates, VA will measure enrollment as provided in the following table. Supervised study is excluded from the clock hours included in this table. Credit hours in this table refer to credit hours pursued during a semester or quarter as defined in § 21.4200(b) of this part. If the semester or quarter is not one which meets the definition of § 21.4200(b) of this part, before using the table, VA will convert the credit hours being pursued by the veteran of eligible person to equivalent credit hours using the procedure found in § 21.4272(g) of this part. If there are insufficient class sessions to support the credit hours in which the veteran or eligible person is enrolled, VA will use the class sessions as a basis for measurement as described in § 21.4272(f)(2) of this part.

Credit hour enrollment	Required clock hours for each training time				
	Full time	¾ time	½ time	Less than ½ but more than ¼ time	¼ time
1 credit hour	20 or more clock hours attendance with not more than 2½ hours rest period allowance.	14 to 19 clock hours attendance with not more than 1¾ hours rest period allowance.	9 to 13 clock hours attendance with not more than 1 hour rest period allowance.	4 to 8 clock hours attendance with not more than ½ hour rest period allowance.	0 to 3 clock hours attendance
2 credit hour	18 or more clock hours attendance with not more than 2 hours rest period allowance.	12 to 17 clock hours attendance with not more than 1½ hours rest period allowance.	7 to 11 clock hours attendance with not more than ¾ hour rest period allowance.	3 to 6 clock hours attendance with not more than ¼ hour rest period allowance.	0 to 2 clock hours attendance instruction
3 credit hour	16 or more clock hours attendance with not more than 1¾ hours rest period allowance.	11 to 15 clock hours attendance with not more than 1½ hours rest period allowance.	5 to 10 clock hours attendance with not more than ¾ hour rest period allowance.	1 to 4 clock hours attendance with not more than ¼ hour rest period allowance.	0 clock hours
4 credit hour	15 or more clock hours attendance with not more than 1¾ hours rest period allowance.	9 to 14 clock hours attendance with not more than 1¼ hours rest period allowance.	4 to 8 clock hours attendance with not more than ½ hour rest period allowance.	0 to 3 clock hours attendance.	(1)
5 credit hour	13 or more clock hours attendance with not more than 1⅝ hours rest period allowance.	7 to 12 clock hours attendance with not more than 1 hour rest period allowance.	2 to 6 clock hours attendance with not more than ½ hour rest period allowance.	0 to 1 clock hour attendance.	(1)
6 credit hour	11 or more clock hours attendance with not more than 1¼ hours rest period allowance.	5 to 10 clock hours attendance with not more than ¾ hour rest period allowance.	0 to 4 clock hours attendance.	(1)	(1)
7 credit hour	9 or more clock hours attendance with not more than 1 hour rest period allowance.	3 to 8 clock hours attendance with not more than ½ hour rest period allowance.	0 to 2 clock hours attendance.	(1)	(1)
8 credit hour	7 or more clock hours attendance with not more than ¾ hour rest period allowance.	2 to 6 clock hours attendance with not more than ¼ hour rest period allowance.	0 to 1 clock hours attendance.	(1)	(1)
9 credit hour	5 or more clock hours attendance with not more than ½ hour rest period allowance.	0 to 4 clock hours attendance.	(1)	(1)	(1)
10 credit hour	4 or more clock hours attendance with not more than ½ hour rest period allowance.	0 to 3 clock hours attendance.	(1)	(1)	(1)
11 credit hour	2 or more clock hours attendance with not more than ¼ hour rest period allowance.	0 to 1 clock hours attendance.	(1)		(1)

[1] Not applicable.

(5) VA will measure an enrollment as provided in this paragraph when the provisions of paragraph (b)(1) of this section apply to the enrollment, but neither the provisions of paragraph (b)(3) nor (4) apply. This may occur when either the courses which must be measured on a clock-hour basis normally require neither 18 clock hours attendance nor 22 clock hours net instruction, or 12 credit hours are not normally full-time at the school, or both. Credit hours in this paragraph refer to credit hours pursued during a semester or quarter as defined in § 21.4200(b) of this part. If the semester or quarter is not one which is defined in § 21.4200(b) of this part, before using the procedure in this paragraph VA will convert the credit hours being pursued by the veteran or eligible person to equivalent credit hours using the procedure found in § 21.4272(g) of this part. If there are insufficient class sessions to support the credit hours in which the veteran or eligible person is enrolled, VA will use the class sessions as a basis for measurement as decribed in § 21.4272(f)(2) of this part. VA will—

(i) Divide the number of credit hours in which the veteran or eligible person is enrolled by the number of credit hours normally considered full time at the school;

(ii) Multiply the percentage determined in paragraph (b)(5)(i) of this section by the number of clock hours of attendance or net instruction, as appropriate, which paragraph (a) of this section requires for each training time;

(iii) Subtract the result determined in paragraph (b)(5)(ii) of this section from the minimum number of clock hours of attendance or net instruction, as appropriate, which paragraph (a) of this section requires for each training time (rounding to the nearest clock hour and dropping fractions of one-half hour to the next lower clock hour).

(iv) Multiply the length of time (if any) provided in paragraph (a) of this section for a rest period allowance by the percentage determined in paragraph (b)(5)(i) of this section;

(v) Subtract the length of time determined in paragraph (b)(5)(iv) of this section from the length of time determined in paragraph (f) of this section for a rest period allowance (rounding to the nearest quarter-hour and dropping fractions of 7½ minutes to the next lower quarter-hour); and

(vi) Measure the enrollment on the basis of the greatest training time permitted by the number of clock hours in which the veteran or eligible person is enrolled and the length of his or her rest period allowance.

(Authority: 38 U.S.C. 1788(e); Pub. L. 99-576)

(c) *Collegiate graduate, professional and on-the-job training courses.* Collegiate graduate, professional and on-the-job training courses shall be

measured as stated in this table. This shall be used for measurement of collegiate undergraduate courses subject to all the measurement criteria of § 21.4272. Clock hours and sessions mentioned in this table mean clock hours and class sessions per week.

(Authority: 38 U.S.C. 1682, 1732, 1777, 1787, 1788)

20. In § 21.4271 paragraphs (a) and (b) are revised to read as follows:

§ 21.4271 Trade or technical—high schools.

(a) *Shop practice predominates.* Except as provided in § 21.4270(a), footnotes 1, 6 and 7 of this part, trade or technical courses which include shop practice as an integral part of the course, will be measured on a basis of clock hours of attendance per week. This includes such courses under the supervision of a college or university where credit is not given towards a standard college degree.

(Authority: 38 U.S.C. 1788(a), 1788(e); Pub. L. 99-576)

(b) *Theoretical or classroom instruction predominates.* Except as provided in § 21.4270(a), footnotes 1, 6 and 7 of this part, a technical course in which theoretical or classroom instruction constitutes more than 50 percent of the required hours per week, will be measured on the basis of clock hours of net instruction per week. This includes such courses given by a college or university for which credit is not granted towards a standard college degree.

(Authority: 38 U.S.C. 1788(a), 1788(e); Pub. L. 99-576)

* * * * *

21. In § 21.4272, paragraph (c) is removed and reserved, paragraphs (d), (e), (f)(2)(i), (f)(3)(iii), (g)(3), (i)(1)(i), and (i)(1)(iii) are revised to read as follows:

§ 21.4272 Collegiate course measurement.

* * * * *

(d) *Course measurement general.* When an undergraduate course qualifies for credit-hour measurement, VA will measure it according to the table contained in § 21.4270(c) of this part.

(Authority: 38 U.S.C. 1788(a); Pub. L. 99-576)

(e) *Course measurement normal method.* VA will use the table in § 21.4270(c) of this part for measurement of a collegiate undergraduate course without adjusting the credit hours assigned by a school when the course is one of the following.

* * * * *

(f) *Course measurement; insufficient standard class sessions.*

* * * * *

(2) * * *

(i) VA will determine training time for those weeks by using the table in § 21.4270(c) of this part without adjustment when the published accrediting standards of the accrediting agency that accredits the course or the educational institution offering the course permit a class session which is somewhat shorter than that stated in § 21.4200(g) of this part while requiring an overall level of educational pursuit that approximates the level required by courses offered on a standard quarter- or semester-basis.

(Authority: 38 U.S.C. 1788(b); Pub. L. 99-576)

* * * * *

(3) * * *

(iii) Considering the standard class sessions to be the same as credit hours for the purpose of using the table in § 21.4270(c) of this part to determine training time for the week.

(Authority: 38 U.S.C. 1788(b); Pub. L. 99-576)

* * * * *

(g) * * *

(3) The quotient resulting from the use of the formula is called equivalent credit hours. VA treats equivalent credit hours as credit hours for measurement purposes. If there is at least one regularly scheduled standard class session per equivalent credit hour each week, VA will use the number of equivalent credit hours to compute educational assistance allowance using the criteria of § 21.4270(c) of this part of the criteria of footnote 2 of that paragraph, whichever is appropriate. If a week contains less than one standard class session per equivalent credit hour, VA will determine training time according to the provisions of paragraph (f)(2) of this section.

(Authority: 38 U.S.C. 1788(b); Pub. L. 99-576)

* * * * *

(i) * * *

(1) * * *

(i) If the independent study credit hours the veteran or eligible person is pursuing would equal half time or more, according to the table in § 21.4270(c) of this part, VA shall convert them to the highest number of hours considered to be less than half time training. If the independent study is not measured on a credit-hour basis, VA will assign a credit-hour evaluation to independent study based on the highest number of credit hours considered to be less than half-time training.

(Authority: 38 U.S.C. 1788(b); Pub. L. 99-576)

* * * * *

(iii) VA will use the total hours computed in paragraph (i)(1)(i) of this section to determine the training time based upon the measurement criteria found in § 21.4270(c) of this part.

(Authority: 38 U.S.C. 1788(b); Pub. L. 99-576)

22. In § 21.4275 paragraph (a) is revised to read as follows:

§ 21.4275 Practical training course; measurement.

(a) *Medical and dental residencies and osteopathic internships and residencies.* VA will measure medical and dental residencies, and osteopathic internships and residencies as provided in § 21.4270(c) of this part if they are accredited and approved in accordance with § 21.4265(a) of this part.

(Authority: 38 U.S.C. 1788(b); Pub. L. 99-576)

* * * * *

[FR Doc. 89-19186 Filed 8-16-89; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3629-7]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final Rulemaking.

SUMMARY: On April 19, 1988 (53 FR 12896), the USEPA published a Notice of Final Rulemaking (NFR) approving Indiana's State Implementation Plan (SIP) for lead, which included the Hammond Lead Products, Incorporated (Hammond Lead), lead plant in Hammond, Indiana. USEPA's approval was based on the stipulation that Indiana and Hammond Lead further investigate fugitive emissions, and, if necessary, develop and submit to USEPA a revised control strategy for these emissions.

On March 29, 1989 (53 FR 12927), USEPA published in the **Federal Register** a notice proposing approval of a site-specific SIP revision to the Indiana lead plan which pertains to Hammond Lead Products, Inc.

During the public comment period, USEPA received one comment from a lead source. USEPA has reviewed the comment and determined the Hammond Lead portion of the Indiana lead plan is approvable.

EFFECTIVE DATE: This final rulemaking becomes effective on September 18, 1989.

ADDRESSES: Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Anne E. Tenner, at (312) 353-3849 before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Office of Air Management, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206-6015.

A copy of today's revision to the Indiana SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC. 20460.

SUPPLEMENTARY INFORMATION: On April 19, 1988 (53 FR 12896), USEPA approved most of Indiana's SIP for lead, including 326 IAC 15-1, which contained a plan for Hammond Lead's lead plant. This plan contains the stipulation that Indiana and Hammond Lead would further investigate fugitive emissions at the lead plant, and, if necessary, develop and submit to USEPA a revised control strategy for these sources.

In response to this requirement, on June 9, 1987, Hammond Lead committed to Indiana to perform certain analyses and make certain changes to its facility. Indiana reviewed the changes needed, and incorporated them into a revised regulation, 326 IAC 15-1-2(a)(6), which it submitted to USEPA for "parallel processing," on January 18, 1989, along with dispersion modeling.

The revised rule reads as follows:

Source	Facility description	Emission Limitation lbs./hr.
(6) Hammond Lead Products, Inc. HLP-Lead Plant.	Stack No. (1-S-54).	0.09
	Stack No. (4A-S-8).	.09
	Stack No. (14-S-16).	.09
	Stack No. (1-S-2)	.09
	Stack No. (1-S-26).	.09
	Stack No. (16-S-56).	.13
	Stack No. (1-S-52).	.18
	Stack No. (1-S-27).	.09
	Stack No. (4-S-35).	.09
	Stack No. (6-S-33).	.09
	Stack No. (4B-S-34).	.09
	Stack No. (6-S-47).	.09
	Vermilator Control System—North Building (Stack Nos. N-V-1, N-V-2, N-V-3, N-V-4, and N-V-5).	[1].002
	—South Building (Stack Nos. S-V-1, S-V-2, S-V-3, S-V-4, and S-V-5).	[1].002
	—Vent 11	.006

[1] Each.

(A) Compliance with the above emission limitations shall be achieved upon the effective date of this rule except for the limitations for Stack No. 1-S-52 and the Ventilator Control Systems.

(B) Hammond Lead Products shall submit a plan and schedule by June 30, 1989, for installation of the Ventilator Control Systems. The plans shall include the engineering design for each Ventilator Control System and shall identify the necessary steps to accomplish each phase of the Ventilator Control System construction. The schedule for installation of each Ventilator Control System shall be as expeditious as practicable and shall provide that the final installation for all Ventilator Control Systems shall be achieved no later than July 31, 1990. Each Ventilator Control System shall consist of a fan with a constant flow rate that draws air from the building through a [High Efficiency Particulate Air] HEPA filter which vents to the atmosphere through a stack. The HEPA filters shall be maintained and operated in order to achieve maximum control efficiency. In addition to the requirements contained in subsection (c) of this section, Hammond Lead Products shall submit an operation and maintenance plan by July 31, 1990, which incorporates good housekeeping practices for the Ventilator Control Systems. This operation and maintenance plan shall be incorporated into the operating permits for Hammond Lead Products and submitted to USEPA as a revision to Indiana's lead State Implementation Plan by December 31, 1990. The Ventilator Control Systems shall be designed such that process fugitive emissions will not routinely escape the buildings except as vented through the Ventilator Control Systems. The compliance test method specified in section 4(a) of this rule shall be used to determine compliance with the emission limitations for the Ventilator Control System stacks.

(C) The emission limitation in this subdivision for the Stack No. 1-S-52 shall be achieved by December 31, 1989. Until December 31, 1989, lead emissions from processes vented through the existing Main Dracco (Stack No. 1-S-1) shall not exceed 0.56 pounds per hour.

(D) By December 31, 1989, the stack heights for all processes except Stack No. 16-S-56, Stack No. 1-S-52 and the Ventilator Control Systems shall be no less than 60 feet above grade; the stack heights for Stack No. 16-S-56 and Stack No. 1-S-52 shall be no less than 82 feet above grade; and the stack height for Vent 11 shall be no less than 35 feet above grade. By July 31, 1990, the stack heights for the other Ventilator Control Systems shall be no less than 60 feet above grade.

(E) By July 31, 1990, Hammond Lead shall submit to the department a schedule for installation of HEPA filters at:

Stack No. 1-S-54
Stack No. 4A-S-8
Stack No. 14-S-16
Stack No. 1-S-2
Stack No. 1-S-26
Stack No. 16-S-56
Stack No. 1-S-52
Stack No. 1-S-27
Stack No. 4-S-35
Stack No. 6-S-33
Stack No. 4B-S-34
Stack No. 6-S-47

and a revised set of emission limitations for each stack identified in this clause. The schedule shall specify a date for installation of each HEPA filter such that installation at four stacks is complete by December 31, 1990; installation at eight stacks is complete by December 31, 1991; and installation for all stacks is complete by December 31, 1992. The revised emission limitation for each process shall not exceed the limitation specified in this subdivision for such process, unless accompanied by a demonstration using procedures acceptable to the commissioner that the lead air quality standard will be attained and maintained. If any one revised emission limitation exceeds the limitation specified in this subdivision, the revised limitation will be submitted to USEPA as a revision to the lead State Implementation Plan. The sum of all the revised emission limitations shall not exceed 0.912 pounds per hour. Compliance with the revised set of emission limitations shall be achieved by December 31, 1992.

On March 29, 1989 (54 FR 12927), USEPA published a notice of proposed rulemaking proposing to approve this revised plan.

USEPA received only one comment on the notice, from Hammond Lead.

1. *Comment:* Each stack of the ventilator control system on the North building (N–V–1 thru N–V–5) and the South building (S–V–1 thru S–V–5) has an allowable emission rate of 0.002 lb/hr. per stack. The column in the **Federal Register** notice containing the various emission limits should reflect that the limit is per stack, not per building.

Response: The emission limit of 0.002 lb/hr for the North and South building is for each stack. The **Federal Register** notice was in error.

2. *Comment:* The emission limit of vent 11 is 0.006 lb/hr. The entry in the emission column on page 12928 of the **Federal Register** notice would appear to assign emission limits of 0.006 lb./hr to S–V–2, S–V–3, S–V–4 and S–V–5 which is not the case. The emission limit for each of these stacks is 0.002 lb./hr.

Response: The **Federal Register** notice was in error. It should have indicated that the emission limit of vent 11 is 0.006 lb/hr and the emission limit for each of the stacks (S–V–2, S–V–3, S–V–4, and S–V–5) is 0.002 lb/hr.

3. *Comment:* Paragraph (D) on page 12928 of the **Federal Register** notice identifies Vent 11 as Vent II due to a typing error.

Response: The **Federal Register** notice was in error as the comment indicates.

4. *Comment:* Part of the third sentence in paragraph (E) on page 12928 of the **Federal Register** notice is missing. The sentence should read: "The revised emission limitation for each process shall not exceed the limitation specified in this subdivision for such process, unless accompanied by a demonstration using procedures acceptable to the Commissioner that the lead air quality standard will be attained and maintained."

Response: The missing paragraph was inadvertently omitted.

Conclusion

USEPA has reviewed Rule 326 IAC–15–1–2(a)(6) and has determined that the revised lead emission limits which pertain to Hammond Lead Products' lead plant are adequate to demonstrate attainment and maintenance of the lead NAAQS. The modeling demonstration submitted by the State to USEPA, based on the review emission limitations and the proposed control strategy showed that the total maximum predicted quarterly average lead concentration is 1.495 $\mu g/m^3$. The value demonstrates attainment of the ambient lead standard (1.50 $\mu g/m^3$).

On April 5, 1989, the Indiana Air Pollution Control Board adopted a revised 326 IAC 15–1, Lead Emission Limitations, which includes (1) revised requirements for the HLP-Lead Plant, (2) corrections of minor typographical errors in Indiana's earlier rule, and (3) minor, non-substantive wording changes. The State promulgated this rule on June 14, 1989, and submitted it to USEPA as a revision to its lead plan on June 23, 1989. This revised 326 IAC 15–1 was published in the Indiana Register on July 1, 1989. Today, USEPA is approving the rule, as published on July 1, 1989.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 16, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Lead.

Note: Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 3, 1989.

William K. Reilly,

Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.770 is amended by adding new paragraph (c)(78) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(78) On January 18, 1989, and June 23, 1989, Indiana submitted its revised lead plan for the HLP-Lead Plant of Hammond Lead Products, Inc. in Hammond Indiana. Additionally, minor changes were made to Indiana's overall lead rule, 326 IAC 15–1, Lead Emission Limitations.

(i) Incorporation by reference.

(A) Title 326—Air Pollution Control Board—Indiana Administrative Code (326 IAC) 15–1, as published in the Indiana Register (IR) on July 1, 1989, at 1850. This rule was effective for State purposes on July 14, 1989.

* * * * *

§ 52.797 [Amended]

(3) Section 52.797 is amended by removing and reserving paragraph (b).

[FR Doc. 89–19292 Filed 8–16–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–6963]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Interim Rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

PART 65—[Amended]

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1967, E.O. 12127.

§ 65.4 [Amended]

Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Orange	Unincorporated areas	Aug. 17, 1989 and Aug. 24, 1989, "The Orlando Sentinel".	Hon. Thomas Dorman, Chairman, County Board of Commissioners, P.O. Box 1393, Orlando, Florida 32802.	Aug. 7, 1989	120179
Illinois: Cook and Lake	Village of Buffalo Grove	Apr. 13, 1989 and Apr. 20, 1989, "The Daily Herald".	Hon. William R. Balling, Village Manager, Village of Buffalo Grove, 51 Raupp Boulevard, Buffalo Grove, Illinois 60090.	Apr. 4, 1989	170056
Michigan: Berrien	Township of Coloma	July 19, 1989 and July 26, 1989, "Tri-City Record".	Hon. Rodney Krieger, Supervisor, Township of Coloma, 4919 Paw Paw Lake Road, Coloma, Michigan 49038.	July 10, 1989	260034
Berrien	Township of Watervliet	July 19, 1989 and July 26, 1989, "Tri-City Record".	Hon. Merle Bujack, Supervisor, Township of Watervliet, P.O. Box 384, Watervliet, Michigan 49098.	July 10, 1989	260048
Missouri: St. Louis	City of Bellefontaine Neighbors.	Aug. 4, 1989 and Aug. 11, 1989, "Suburban Journal".	Hon. Joseph Berger, Mayor, City of Bellefontaine Neighbors, City Hall, 9641 Bellefontaine Road, Bellefontaine Neighbors, Missouri 63137.	July 24, 1989	290330
North Carolina: Wake	Town of Knightdale	July 27, 1989 and Aug. 3, 1989 "Gold Leaf Farmer".	Hon. W.A. Wilder, Jr., Mayor, Town of Knightdale, 207 Main Street, P.O. Box 640, Knightdale, North Carolina 27545.	July 17, 1989	370241
Texas: Matagorda	Unincorporated areas	July 31, 1989 and Aug. 7, 1989, "The Daily Tribune".	Hon. Burt O'Connell, Matagorda County Judge, P.O. Box 1331, Bay City, Texas 77414–1331.	July 18, 1989	485469

Issued: August 10, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89–19348 Filed 8–16–89; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency

Management Agency, Washington, DC 20472 [202] 646–2757.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD), Modified
COLORADO	
Commerce City (city), Adams County (FEMA Docket No. 6852)	
South Platte River:	
At Franklin Street (Southern Corporate Limits)	*5141
At Burlington Ditch Diversion	*5137
Approximately 50 feet upstream of York Street	*5128
At Chicago Rock Island and Pacific Railroad	*5125
At Interstate Highway 270	*5114
Approximately 700 feet downstream of I-270	*5113
At East 70th Avenue (Northern Corporate Limits)	*5106
Maps are available for review at the Department of Community Development, 5291 East 60th Avenue, Commerce City, Colorado.	
Durango (city), La Plata County (FEMA Docket No. 6856)	
Animas River:	
Approximately 3,050 feet downstream of U.S. Highway 160 (New Bridge)	*6,463
Approximately 1,320 feet downstream of U.S. Highway 160 (New Bridge)	*6,473
Approximately 690 feet downstream of U.S. Highway 160 (New Bridge)	*6,482
Just downstream of U.S. Highway 160 (New Bridge)	*6,483
Approximately 1,900 feet upstream of U.S. Highway 160 (New Bridge)	*6,490
Maps are available for review at the Community Development Department, 949 Second Avenue, Durango, Colorado.	
KENTUCKY	
Coal Run (village), Pike County (FEMA Docket No. 6857)	
Levisa Fork:	
About 1.2 miles downstream of CSX railroad	*670
About 400 feet upstream of CSX railroad	*671
Maps available for inspection at the Village Clerk's Office, 339 Main Street, Pikeville, Kentucky.	
NEW JERSEY	
Bordentown (township), Burlington County (FEMA Docket No. 6855)	
Delaware River:	
At confluence of Crosswicks Creek	*15
At downstream corporate limits	*13
Crosswicks Creek:	
At U.S. Route 130	*16
At confluence of Blacks Creek	*15
Blacks Creek:	
Approximately 600 feet downstream of U.S. Route 206	*15
At confluence of Crosswicks Creek	*15
Maps available at the Township Building, Municipal Drive, Bordentown, New Jersey.	
Trenton (city), Mercer County (FEMA Docket No. 6845)	
Delaware River:	
Approximately 400 feet downstream of CONRAIL Bridge	*21
Downstream corporate limits	*19
Maps available for inspection at the City Hall, 319 East State Street, Trenton, New Jersey.	
WEST VIRGINIA	
Huntington (City), Cabell and Wayne Counties (FEMA Docket No. 6852)	
Ohio River:	
At downstream corporate limits	*562
Maps available for inspection at the City Hall, 800 5th Avenue, Huntington, West Virginia.	

Issued: August 10, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89–19347 Filed 8–15–89; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 22, and 25

[General Docket No. 84–1234, RM–4247; FCC 89–161]

Allocation Spectrum for, and To Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Mobile Satellite Service for the Provision of Various Common Carrier Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; Petition for reconsideration.

SUMMARY: The Commission released a Report and Order (R&O) on September 26, 1986 (51 FR 37398, October 22, 1986), allocating 27 MHz in the L-band for the mobile-satellite service (MSS) to be shared with the aeronautical mobile-satellite (R) service (AMSS(R)). An additional 1 MHz of spectrum was left available exclusively for AMSS(R). Eight petitions for reconsideration of the R&O were filed concerning the L-band allocation to MSS and AMSS(R). In response the Commission affirmed its L-band allocation and denied the petitions for reconsideration on November 9, 1987 (52 FR 44985, November 24, 1987). Later in 1987 a World Administrative Radio Conference (Mobile WARC) convened and adopted an L-band allocation different from our domestic MSS L-band allocation. The Aviation Parties have petitioned the Commission for further reconsideration of our L-band allocations decision requesting that we conform the U.S. MSS allocation to the Mobile WARC L-band allocation. The American Mobile Satellite Corporation (AMSC) has filed an Opposition to the Petition for further Reconsideration requesting that we affirm our earlier L-band allocation decision. Reply comments were also submitted by the Aviation Parties. Also, a comment was filed by GTE Airfone, Inc. The intent of this action is to affirm our L-band allocation and to deny the Petition for Reconsideration.

EFFECTIVE DATE: May 31, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Raymond LaForge, telephone (202) 653–8117.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (MO&O), Adopted: May 31, 1989, Released: August 4, 1989.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 233), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice

1. The Commission released an R&O on September 26, 1986 allocating 27 MHz in the L-band for MSS to be shared with AMSS(R) and left 1 MHz of spectrum available exclusively for AMSS(R). Thus, the Commission allocated two 4.5 MHz band segments (1545.0–1549.5/1646–1651.0 MHz) for AMSS(R) on a primary basis with MSS permitted on a secondary basis; two 9 MHz segments for co-primary shared use by AMSS(R) and MSS (1549.5–1558.5/1651.0–1660.0 MHz) with a footnote indicating that AMSS(R) will have priority access over MSS use; and two 0.5 MHz segments (1558.5–1559.0/1660.0–1660.5 MHz) available for AMSS(R) on a primary basis were left unchanged. The Aviation Parties petitioned the Commission for reconsideration and the Commission released a Memorandum Opinion and Order (MO&O) on November 9, 1987 denying the petition and affirming the U.S. MSS L-band allocation. However, a Mobile WARC convened in September-October 1987 and allocated the L-band into separate blocks for maritime, aeronautical, and land mobile-satellite services. Thus, the international allocations for L-band differ from our domestic L-band allocations. The U.S. took a reservation to the Mobile WARC L-band allocation. As a result the Aviation Parties have filed a Petition for Reconsideration requesting that we conform our U.S. MSS L-band allocation to that adopted internationally at the Mobile WARC.

2. The Aviation Parties generally argue that our reservation to the 1987 Mobile WARC did not provide the legal or policy justification necessary to implement our U.S. MSS L-band allocations. The Aviation Parties claim that at the very least we were bound by the earlier 1989 Mobile WARC allocation decision which resulted in the entire 28 MHz being made available to the U.S. for aeronautical safety communications. Further, the Aviation Parties believe that the U.S. allocation will result in harmful interference to other international AMSS(R) systems and that the domestic L-band allocation can not be readily coordinated. AMSC contends that the U.S. can implement its domestic allocation on a non-conforming basis and that the generic U.S. MSS system will not cause harmful interference to dedicated AMSS(R) systems. AMSC believes that coordination with other satellite systems can be readily achieved.

3. We continue to believe that our domestic L-band allocations adopted in this proceeding will best serve the public interest. We believe that a multitude of technical and operational factors are available for avoiding mutual interference and that the U.S. MMS L-band allocation can be implemented successfully within the existing agreement. While the international allocation divides the various services into blocks of spectrum, our domestic allocation is a dynamic approach wherein spectrum is shared by the two services and thus, the U.S. MSS system can be responsive to the actual demands of these services as they develop. In our view, the U.S. allocation provides a more efficient means of balancing the needs of the AMSS(R) and MSS. In fact, we believe that the flexibility of our domestic alocation will enhance our ability to coordinate the L-band spectrum internationally.

4. The Aviation Parties also contend that the R&O excluded aircraft public correspondence (APC) from the AMSS(R) without adequate notice and comment and they maintain that the Commission's interpretation that APC is not permitted internationally in the AMSS(R) is incorrect. AMSC contends that during the Notice of Proposed Rule Making (NPRM) stage of this proceeding the Commission provided sufficient information that we were considering APC to be a service within the MSS. AMSC disputes the Aviation Parties claim that APC had not been excluded from the AMSS(R) by the international Radio Regulations.

5. We disagree with the Aviation Parties' contention that the Commission's holding that APC is not encompassed within the AMSS(R) was adopted without adequate notice and opportunity to comment. The purpose of this proceeding from the beginning has been to allocate the spectrum in the L-band between the MSS and AMSS(R) services. Determining the scope of these services goes to the very heart of the allocation issues. We have consistently held that the AMSS(R) includes only safety related services. Thus, we indicated in the NPRM that the AMSS(R) band has been allocated for distress and safety operations. We stressed that aircraft traffic control (ATC) is the principal safety service in this band. We also noted that the MSS might provide APC. We believe all parties had clear notice that the AMSS(R) services would encompass safety and related ATC services but not APC.

6. The Aviation Parties also contend that the Commission, in its MO&O, modified footnote US308 and adopted substantive provisions governing the provision of AMSS(R) without the requisite notice and opportunity to comment. The Aviation Parties argue that the footnote US308 as modified gives the ultimate MSS licensee a certain portion of the aviation traffic, namely, any of the AMSS(R) traffic that overflows the 10 MHz of exclusive AMSS(R) spectrum (1545.0–1549.5/1646.5–1651.0 and 1558.5–1559.0/1660.0–1660.5 MHz). The Aviation Parties also claim that the concept of interoperability is flawed in that the U.S. MSS system will not be capable of being interoperable with all foreign systems. On the other hand, AMSC points out that the underlying principle of interoperability is that if AMSS(R) traffic requires spectrum beyond the 10 MHz it must be accommodated by real-time preemptive access on the MSS system in the shared 18 MHz. AMSC points out that this was discussed at length in this proceeding and in footnote US308, which was the subject of vigorous debate in the reconsideration portion of this proceeding. AMSC also rejects the argument that interoperability will be unworkable. AMSC states that the requirement for an MSS system to provide priority access to AMSS(R) communications does not extend to all foreign systems.

7. We believe that our modification of footnote US308 at the reconsideration stage was a logical outgrowth of the sharing and allocations issues explored in this proceeding. In fact unless sharing were accomplished in the manner set forth on reconsideration, the entire MSS system should be required to shut down in order to accommodate the relatively small amounts of AMSS(R) communications that are anticipated. We believe that the notice requirements in this proceeding were adequate to allow all interested parties an opportunity to comment or file a competing application. We also disagree that the footnote US308 requirements

are unworkable. It was never our intention to require that our domestic MSSj system be interoperable with all foreign systems for the provision of all mobile-satellite services. Our requirement for interoperability with international systems extends only to those mobile-satellite systems providing AMSS(R) service. We believe that this can be achieved by having the U.S. licensee of the domestic MSS service incorporate into its overall system design whatever minimum requirements for AMSS(R) systems that are endorsed by the International Civil Avionics Organization and by establishing appropriate arrangements for handing off AMSS(R) traffic between its system and others, such as Canada's and INMARSAT's.

8. The Aviation Parties also contend that the allocation decisions adopted in the MO&O are contrary to the Commission's efforts to promote competition and deregulation. They point out that the new rules preclude competition and instead give a sole market share to the MSS licensee. AMSC states that the Commission's general policy is not the fostering of competition for its own sake; rather, its goal is the protection of the public interest, and in pursuit of that goal the FCC tries to foster competition wherever that is the best means of serving the public interest. GTE Airfone also commented that the U.S. MSS licensee will not have a monopoly on air-ground type services, contrary to the assertions of the Aviation Parties. GTE Airfone points out that they are offering air-ground service on an experimental basis in the 900 MHz band and hope to become a permanent licensee of that service. GTE points out that passenger communications will also be provided by British Telecom's Skyphone system and by INMARSAT.

9. We do not consider the policies adopted in this proceeding to be anti-competitive. We are determined to provide the MSS licensee with sole direct access to the co-primary spectrum in order to ensure that such a system will be viable. We believe that adequate competition exists such that the MSS licensee will not have a monopoly over aircraft passenger communications. While an additional provider would certainly be welcome, we believe that the limited spectrum in the L-band makes the option infeasible in this instance.

10. Accordingly, *It is ordered*, That the Petition for Further Reconsideration of the Aviation Parties is denied.

11. *It is ordered*, That the Motion to Accept submitted by Arinc and the Air Transport Association seeking to have the Commission admit into the record of this proceeding the Petition to Deny the Joint Amendment to the MSS applications filed by AMSC is denied. These issues are relevant to a separated proceeding and will be handled there.

12. *It is ordered*, That the Motion to Accept Supplemental Comments filed by Arinc and Air Transport Association of America is accepted. We find that the issues raised here, with the exception of the feasibility of coordination, raise no new issues that pertain to this proceeding.

List of Subjects

47 CFR Part 2

Radio, Frequency allocations

47 CFR Part 22

Communications common carriers, Radio, Frequencies

47 CFR Part 25

Communications common carriers, Radio, Satellites.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-18886 Filed 8-16-89; 8:45 am]

BILLING CODE 6712-01-M

---

47 Part 73

[MM Docket No. 88-463; RM-6350]

Radio Broadcasting Services; Wilson, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 279A to Wilson, Arkansas, as that community's first local broadcast service, in response to a petition for rulemaking filed by Clarence Medlin. See 53 FR 39614, October 11, 1988. Coordinates utilized for Channel 279A at Wilson are 35-32-36 and 90-07-10. With this action, the proceeding is terminated.

DATES: Effective September 25, 1989. The window period for filing applications on Channel 279A at Wilson, Arkansas, will open on September 26, 1989, and close on October 26, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-463, adopted July 26, 1989, and released August 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Arkansas, by adding Wilson, Channel 279A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-19311 Filed 8-16-89; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 88-47, RM-5877, RM-6148, RM-6364, RM-6365]

Radio Broadcasting Services; Oakdale, Tioga and West Monroe, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 252C2 for Channel 252A at West Monroe, Louisiana, and modifies the license of Station KYEA(FM) to specify operation on the higher class co-channel, at the request of Phoenix Broadcasting Company. The community could receive its first wide coverage area FM service. A site restriction of 16.3 kilometers (10.1 miles) northeast of the city is required. The coordinates are 32-37-28 and 92-01-37. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Second Report and Order, MM Docket No. 87-485, adopted July 26, 1989, and released August 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Louisiana, by removing Channel 252A and adding Channel 252C2 at West Monroe.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-19310 Filed 8-16-89; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 88-520; RM-6516, RM-6585, RM-6551, RM-6652, RM-6653]

Radio Broadcasting Services; Woodstock, VA et al

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 277A to New Market, Virginia, as that community's first local FM service, at the request of Charles B. Johnson. In addition, this action: (1) Substitutes Channel 229B1 for Channel 240A at Woodstock and modifies the permit of Station WAZR(FM) at Woodstock to specify operations on the higher class channel, at the request of Ruarch Associates; (2) substitutes Channel 226A for Channel 228A at Staunton and modifies the license for Station WSGM(FM) at Staunton (See 53 FR 46099, November 16, 1988); (3) substitutes Channel 241B1 for Channel 238A at Broadway and modifies the permit for Station WLTK(FM) at Broadway, as requested by Massanutten Broadcasting Co., Inc.; (4) substitutes Channel 245B1 for Channel 245A at Mount Jackson and modifies the permit for Station WSIG(FM) at Mount Jackson, at the request of Shenandoah County Broadcasting Corporation; (5) substitutes Channel 255A for Channel 244A at Orange and modifies the license of Station WVJZ(FM); and (6) substitutes Channel 244B1 for Channel 244A at Buena Vista and modifies the license for Station WVLI(FM) to specify operation on the higher class station at the request of Equus Communications, Inc. The communities of Buena Vista, Broadway, Mount Jackson and Woodstock could receive a first wide coverage area FM service. With this action, this proceeding is terminated.

DATES: Effective September 25, 1989; The window period for filing applications on Channel 277A at New Market, Virginia, will open on September 26, 1989, and close on October 26, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-520, adopted July 26, 1989, and released August 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Channel 277A at New Market, Virginia, requires a site restriction of 0.7 kilometer (0.4 mile) west of the city, at coordinates 38-38-00 and 78-42-42. Channel 229B1 at Woodstock, Virginia, requires a site restriction of 21.8 kilometers (13.5 miles) west of the city, at coordinates 38-48-18 and 78-44-18. A site restriction of 7.6 kilometers (4.7 miles) west of Mount Jackson is required for Channel 245B1. The coordinates are 38-44-41 and 78-43-51. Channel 241B1 at Broadway, Virginia, requires a site restriction of 38-38-31 and 78-54-07. Channel 244B1 at Buena Vista requires a site restriction of 11.6 kilometers (7.2 miles) east of the city at coordinates 37-43-22 and 79-13-23. The foregoing allotments must comply with the notification requirements of § 73.1030(a) of the Commission's Rules.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Virginia, by adding New Market, Channel 277A; by adding Channel 241B1 and removing Channel 238A at Broadway; by adding Channel 244B1 and removing Channel 244A at Buena Vista; by adding Channel 245B1 and removing Channel 245A at Mount Jackson; by adding Channel 255A and removing Channel 244A at Orange; by adding Channel 226A and removing Channel 228A at Staunton; and by adding Channel 229B1 and removing Channel 240A at Woodstock.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-19309 Filed 8-16-89; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 88-380; RM-6264]

Television Broadcasting Services; Jonesboro, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF television Channel 48 to Jonesboro, Arkansas, as that community's second local commercial television broadcast service, in response to a petition for rule making filed by Outlaw Broadcasting. See 53 FR 30853, August 16, 1988. Coordinates used for Channel 48 at Jonesboro are 35-50-12 and 90-42-24.

Although the Commission has imposed a freeze on TV allotments or applications therefor in specified metropolitan areas, pending the outcome of an inquiry into the uses of advanced television systems (ATV) in broadcasting, this proposal is not affected thereby. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-380, adopted July 26, 1989, and released August 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments for Arkansas, is amended, by adding Channel 48+ at Jonesboro.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-19313 Filed 8-16-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 88-373; FCC 89-231]

Private Land Mobile Radio Services; Offset Channels in the 150 MHz Band

AGENCY: Federal Communications Commission

ACTION: Final Rule.

SUMMARY: In response to the Notice of Proposed Rule Making, the Commission adopted the Report and Order. This action allowed use on a nationwide basis of existing 15 kHz offset channels in the 150 MHz band by both the Business Radio Service and the Taxicab Radio Service in the continental United States. In Puerto Rico and the Virgin Islands, the Commission provided for Business Radio use of new offset channels as well as additional high power paging channels. This action will promote more intensive use of available land mobile spectrum in this congested band. In the same document, the Commission declined to allow additional high power paging in the continental United States and reaffirmed the use of the 1950 Census data in licensing Business and Taxicab Radio eligibles on shared offset frequencies.

EFFECTIVE DATE: September 18, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden and Eugene Thomson, Land Mobile and Microwave Division, Private Radio Bureau (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, in PR Docket No. 88-373, FCC 89-231, adopted July 13, 1989, and released July 27, 1989.

The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this Report and Order may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

Summary of Report and Order

1. A *Notice of Proposed Rule Making* (53 FR 35339, September 13, 1988) was adopted in this proceeding to promote more intensive use of available private land mobile spectrum in the congested 150 MHz band. A number of options were proposed concerning the use of offset channels in the continental United States, as well as in Puerto Rico and the Virgin Islands. The Commission also raised issues regarding high power paging and the continued use of the 1950 census data for licensing Business and Taxicab Radio eligibles.

2. After reviewing the record in this proceeding, the Commission came to the conclusion that the public interest would be served by providing opportunities for nationwide use of twelve offset channels in the 150 MHz band to both the Business and Taxicab Radio Services in the continental United States. These frequencies consisting of six pairs, are as follows: 152.285 MHz/157.545 MHz, 152.315 MHz/157.575 MHz, 152.345 MHz/157.605 MHz, 152.375 MHz/157.635 MHz, 152.405 MHz/157.665 MHz and 152.435 MHz/157.695 MHZ. These frequencies are adjacent on one side to channels assigned nationwide to the Taxicab Radio Service. On the other side, these offset channels are assigned to both the Taxicab Radio Service for use inside of the SMAs with populations greater than 50,000 and to the Business Radio Service outside of the SMAs. They are currently utilized by eligibles in the Taxicab Radio Service inside the Standard Metropolitan Areas (SMAs), but are not available for use outside the SMAs.

3. Because coordination has been implemented for the Business Radio Service (since 1986), the Commission was able to permit the use of the 12 subject offset frequencies on a nationwide basis in the continental United States. Both the Taxicab and Business Radio eligibles have demonstrated that greater use of these offsets is needed for private communications in this congested segment of the spectrum. Expanded use of these offsets should help alleviate some of the congestion of the 150 MHz band currently experienced in many areas.

4. The Commission concluded that because Business and Taxicab Radio eligibles use different modes of communication, requiring them to share spectrum might prove to be an unproductive means of satisfying either of their spectrum requirements. (Taxicab licensees operate in two-frequency simplex mode, whereas Business users operate only on one channel.) To provide eligibles in both services some relief from congestion on the 150 MHz band, the Commission decided to assign specific offset channels outside the SMAs for use by eligibles in each service. Because the Business Radio Service has significantly more users than the Taxicab Radio Service, the Commission provided the Taxicab Radio Service with four frequencies (152.315, 152.345, 157.575, and 157.605 MHz) and the Business Radio Service with eight frequencies (152.285, 152.375, 152.405, 152.435, 157.545, 157.635, 157.665 and 157.695 MHz). This not only allows Taxicab Radio eligibles to pair these frequencies in the same manner as their eight nationwide frequencies, but the four frequencies designated for taxicab use in this proceeding are adjacent to existing nationwide Taxicab frequencies. This will facilitate coordination of these channels by the Taxicab Radio Service's frequency coordinator.

5. In view of the congestion of the 150 MHz band, the Commission explored the possibility of creating new offset frequencies adjacent of Business Radio channels. It concluded, however, that it would not be beneficial to do so in the continental United States. The Commission recognized the limitations imposed by interference concerns regarding the existing use of 30 kHz channels, as well as interference to narrowband operations. Assignment of these frequencies for land mobile use could severely restrict future assignment of narrowband frequencies 2.5, 7.5 and 12.5 kHz removed, thus inhibiting application of this spectrum-efficient technology to private land mobile communications.

6. Because there now is a frequency coordination requirement for the Business Radio Service in the 150 MHz band, and the 150 MHz band in Puerto Rico and the Virgin Islands is much less congested than in the continental United States, the Commission made available in these areas 21 offset frequencies that are adjacent to Business Radio channels. The use of these offset channels by Business radio eligibles will not affect any other radio services because their adjacent channels already are assigned to the Business Radio Service. The Commission noted that no need has been demonstrated, nor

interest taken, by any other land mobile service in utilizing these offset frequencies. Furthermore, use of these offsets may be of actual benefit to eligibles in these areas because the 150 MHz band is significantly less congested in Puerto Rico and the Virgin Islands than in the continental United States.

7. After reviewing the record in this proceeding, the Commission determined that establishing high power paging frequencies 15 kHz adjacent to the Taxicab Radio channels in the 150 MHz band was inadvisable. Such action would likely degrade the use of the Taxicab Radio channels in that segment of the spectrum because of the disensitization of Taxicab mobile receivers in the vicinity of high power paging channels. In addition to the receiver problem, mobile unit transmitters operating in the vicinity of adjacent channel, high power paging base stations could suffer interference. In view of the potential interference not only to adjacent channel users, but others in the land mobile services, the Commission declined to allow the use of any of the existing offset channels in the continental United States for high power paging.

8. The Commission also rejected a proposal to allow high power paging on the 13 new offset channels that would have been adjacent to channels already assigned to the Business Radio Service because of serious interference concerns. Furthermore, no compelling need was indicated to warrant creating another potential for interference in this congested band. In view of other options available to meet paging needs (the use of 450 MHz and 900 Mhz paging frequencies), increasing the potential for interference in the 150 MHz band appears risky at best.

9. The Commission also rejected the proposal to allow an increase in the permitted maximum power to 350 watts on three frequencies already reserved for paging. The proximity of channel 157.740 MHz to non-Business frequencies, as well as to a common carrier channel used for mobile purposes, militates against allowing an increase in permitted power from 75 to 350 watts for that particular frequency. As to the other two paging channels (154.625 MHz and 158.460 MHz), any increase in power would cause harmful interference to land mobile operations in the 150 MHz band. Therefore, the Commission decided to retain its current prohibition on the power (20 watts) permitted on these two frequencies.

10. The Commission concluded that none of the above concerns regarding the interference potential of high power paging operation in the continental United States was not a serious concern in Puerto Rico and the Virgin Islands. Any new paging frequencies will be adjacent to existing, less-congested business channels in these areas. The frequency coordination process can therefore control the location as well as the assigned frequencies to minimize adjacent channel interference. The Commission also concluded that such paging could likely be conducted without creating harmful interference to narrowband operations. Therefore, the Commission allowed five of the 21 offset channels in Puerto Rico and the Virgin Islands to be utilized for high power paging.

11. Finally, the Commission decided to retain the list of cities based on the 1950 Census data for making assignments in the Taxicab and Business Radio Services. The use of different data would be inadvisable and, as a consequence of our providing additional nationwide taxicab frequencies, is unwarranted. In licensing Taxicab and Business users on the subject 150 MHz channels, the Commission has consistently relied on a single list of cities. Updating this list whenever new census data become available would cause a constantly changing, haphazard pattern of spectrum allotments between the two services.

Authority Citation

12. Authority for the action taken is contained in sections 4(i), 303(r) and 307(b) of the Communication Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 307(b)

List of Subjects in 47 CFR Part 90

Private land mobile radio services.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

47 CFR part 90 is amended as follows:

PART 90—[AMENDED]

1. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. In 47 CFR 90.75, the frequency table in paragraph (b) is amended by adding the frequencies 150.830, 150.860, 150.890, 150.920, 150.950, 151.010, 151.040, 151.070, 151.100, 151.130, 151.160, 151.190, 151.220, 151.250, 151.280, 151.310, 151.340, 151.370, 151.400, 151.430, 151.460, 152.285, 152.375, 152.405, 152.435, 157.545, 157.635, 157.665, and 157.695, together with their associated limitations, to read as follows:

§ 90.75 Business radio service.

* * * * *

(b) * * *

BUSINESS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
150.830	Base	8,10,12
150.860	Base	8,10,12
150.890	Base	8,10,12
150.920	Base	8,10,12
150.950	Base	8,10,12
151.010	do	8
151.040	do	8
151.070	do	8
151.100	do	8
151.130	do	8
151.160	do	8
151.190	do	8
151.220	do	8
151.250	do	8
151.280	do	8
151.310	do	8
151.340	do	8
151.370	do	8
151.400	do	8
151.430	do	8
151.460	do	8
152.285	do	9
152.375	do	9
152.405	do	9
152.435	do	9
157.545	Base or mobile	9
157.635	do	9
157.665	do	9
157.695	do	9

3. In 47 CFR 90.93, the frequency table in paragraph (b) is amended by changing the limitations for the frequencies 152.285, 152.315, 152.345, 152.375, 152.405, 152.435, 157.545, 157.575, 157.605, 157.635, 157.665, and 157.695 to read as follows:

§ 90.83 Taxicab radio service.

* * * * *

(b) * * *

TAXICAB RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * *	* * *	* * *
152.285	do	1,2
152.315	do	
152.345	do	
152.375	do	1,2
152.405	do	1,2
152.435	do	1,2
157.545	do	1,2
157.575	do	
157.605	do	
157.635	do	1,2
157.665	do	1,2
157.695	do	1,2
* * *	* * *	* * *

4. In 47 CFR 90.555, the frequency table in paragraph (b) is amended by changing service and limitation entries for the frequencies 150.830, 150.860, 150.890, 150.920, 150.950, 151.010, 151.040, 151.070, 151.100, 151.130, 151.160, 151.190, 151.220, 151.250, 151.280, 151.310, 151.340, 151.370, 151.400, 151.430, 151.460, 152.285, 152.315, 152.345, 152.375, 152.405, 152.435, 157.545, 157.575, 157.605, 157.635, 157.665, and 157.695 to read as follows:

§ 90.555 Combined frequency listing.

* * * * *

(b) * * *

Frequency	Services	Special limitations
* * *	* * *	* * *
150.830	IB,LA	Do, paging only.
150.860	IB,LA	Do, paging only.
150.890	IB,LA	Do, paging only.
150.920	IB,LA	Do, paging only.
150.950	IB,LA	Do, paging only.
151.010	IB,PH	Do.
151.040	IB,PH	Do.
151.070	IB,PH	Do.
151.100	IB,PH	Do.
151.130	IB,PH	Do.
151.160	IB,PO	Do.
151.190	IB,PO	Do.
151.220	IB,PO	Do.
151.250	IB,PO	Do.
151.280	IB,PO	Do.
151.310	IB,PO	Do.
151.340	IB,PO	Do.
151.370	IB,PO	Do.
151.400	IB,PO	Do.
151.430	IB,PO	Do.
151.460	IB,PO	Do.
152.285	IB,LX	IB outside, LX inside SMAs over 50,000 pop.
152.315	LX	
152.345	LX	
152.375	IB,LX	Do.
152.405	IB,LX	IB outside, LX inside SMAs over 50,000 pop.
152.435	IB,LX	Do.
157.545	IB,LX	IB outside, LX inside SMAs over 50,000 pop.
157.575	LX	
157.605	LX	
157.635	IB,LX	Do.
157.665	IB,LX	IB outside, LX inside SMAs over 50,000 pop.
157.695	IB,LX	Do.

[FR Doc. 89-19257 Filed 8-16-89; 8:45am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

[Docket No. 90652-9152]

High Seas Salmon Fishery off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice closing for 10 days the U.S. Exclusive Economic Zone off Southeast Alaska to commercial fishing for all salmon species. This action is necessary to stop the harvest of coho salmon by the troll fishery and is intended to ensure that the coho salmon stocks are not overharvested and the various groups of fishermen share the harvest equitably.

DATES: This notice is effective at 0001 hours Alaska Daylight Time (A.D.T.), Monday, August 14, 1989, and will expire at 2359 hours A.D.T., Wednesday, August 23, 1989. Public comments are invited until September 14, 1989.

ADDRESSES: Send comments to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668. During the 30-day public comment period, the data upon which this notice is based will be available for public inspection from 0800 through 1630 hours A.D.T. Monday through Friday at the NMFS Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Aven M. Anderson (Fishery Management Biologist, NMFS) 907-586-7228.

SUPPLEMENTARY INFORMATION: Salmon fishing in the U.S. Exclusive Economic Zone (EEZ) off Alaska is managed under the Fishery Management Plan for the High Seas Salmon Fishery Off the Coast of Alaska East of 175 Degrees East Longitude (FMP). This FMP was developed and amended by the North Pacific Fishery Management Council (Council) and is implemented by NOAA through regulations appearing at 50 CFR part 674.

The FMP also implements provisions of the Pacific Salmon Treaty and the Pacific Salmon Treaty Act (16 U.S.C. 3631 *et seq.*). Article III of the treaty requires that each Party conduct its fisheries to prevent overfishing of the salmon stocks subject to the treaty. The coho stocks being protected by this action are stocks subject to the treaty (article I (a) and 1988 amendment of annex, IV, chapter 5).

The troll fishery in the EEZ off Alaska and in Alaskan outside coastal waters is the first fishery to intercept the returning coho salmon. As of August 12, this fishery has harvested 1.1 million coho; a number 222 percent above the 1971-1980 average harvest of 345 thousand by this date. In contrast, the harvests by the fisheries in the internal waters of Southeast Alaska have done less well, with the cumulative gillnet catch being 65% above the average and the Ketchikan and Juneau sport fisheries having cumulative catch-per-unit of efforts of 33 percent to 42 percent below average. Few coho have entered spawning streams at this date.

In 1980, the Council amended section 8.3.1.4 of the FMP to provide for an area-wide closure of the entire troll fishery for 10 days to stabilize or reduce coastal and offshore fishing effort on coho salmon unless an evaluation of the coho runs and harvests indicated a "well above average magnitude and good movement inshore." The Council took this action in cooperation with the Alaska Board of Fisheries (Board) so that the troll fishery in the EEZ and in State waters would be under consistent management. The Council intended that if the State issued a closure for coho, a similar closure should be instituted for the EEZ, under the procedures outlined in section 8.3.1.5. of the FMP and specified at 50 CFR 674.23.

Further, regulations implementing the FMP (at 50 CFR 674.23(a)) also provide that the Secretary of Commerce (Secretary) may modify the fishing times and areas based on a determination by the Regional Director that the condition of any salmon species in any part of the management area is substantially different from the condition anticipated in the FMP. In making such a determination, he may consider the following factors:

(1) The effect of overall fishing effort within any part of the management area;

(2) The catch per unit of effort and the rate of harvest;

(3) The relative abundance of salmon stocks within the management area;

(4) The condition of salmon stocks throughout their ranges;

(5) Any other factors relevant to the conservation of salmon.

Alaska has similar criteria for the fisheries in its waters. In the spring of 1989, the Board established the following historical percentages as guidelines for the coho harvest by each type of commercial gear in Southeast Alaska: Troll (61), purse seine (19), drift gill net (13), set gill net (7). The Board stated that its intention was that these allocation guidelines be met as closely as possible over the long term, and authorized the Alaska Department of Fish and Game to adjust fishing times and areas to attempt to achieve these long-term allocation guidelines.

Based on the harvests to date by the various commercial and recreational fisheries, the Alaska Department of Fish and Game is closing the troll fishery in State waters for 10 days beginning at 0001 hours on August 14 to ensure adequate migration of coho from coastal waters to internal waters and the spawning streams and to address allocation of coho salmon between the offshore troll fishery and the troll, net, and recreational fisheries of the internal waters of Alaska.

The Regional Director, having reviewed the evidence of the coho harvests and being aware of Alaska's proposed action, has determined that the effect of overall fishing effort, the catch per unit of effort, and the well-above-average rate of harvest by the outside troll fleet requires a closure of the troll fishery in the EEZ.

On Friday, August 11, 1989, the Alaska Department of Fish and Game and the NMFS issued a joint announcement that the commercial troll fishery would close for 10 days, beginning at 0001 hours ADT on August 14, 1989, and the Secretary is implementing the 10-day closure prescribed by this action. The closure will become effective after this notice has been filed for public inspection with the Office of the Federal Register and the closure has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game.

Other Matters

The Assistant Administrator for Fisheries, NOAA, has determined that the coho salmon stocks harvested in Southeastern Alaska will be subject to harm unless this notice takes effect promptly. He finds, therefore, that it would be impracticable and contrary to the public interest to provide advance notice and a prior opportunity for public comment or to delay for 30 days the effective date of this notice under the provisions of 5 U.S.C. 553(b) and (d). However, 50 CFR 674.23(b)(3) requires the Secretary to accept and consider public comments for 30 days after the effective date of this notice. The aggregated data upon which this closure is based are available for public inspection at the address given above. If comments are received, the Secretary will reconsider the necessity of this action and will publish another notice in the **Federal Register** either confirming the notice's continued effect, modifying it, or rescinding it, unless the notice has already expired or been rescinded.

This action is authorized by 50 CFR part 674 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 674

Fisheries, Fishing, International organizations, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 3631 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: August 11, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management National Marine Fisheries Service.

[FR Doc. 89-19279 Filed 8-11-89; 4:58 pm]

BILLING CODE 3510-22-M

BEST COPY AVAILABLE

Proposed Rules

Federal Register
Vol. 54, No. 158
Thursday, August 17, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

7 CFR Parts 1900, 1910, 1951, 1955, 1962, and 1965

RIN 0575-AA39

NonProgram Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to implement regulations for NonProgram (NP) loans and revise several FmHA Instructions to reference the new NP regulation. This action is necessary since NP loans are not eligible for program supervision and servicing and NP debtors are not eligible for program benefits and entitlements. They cannot, therefore, be made, managed, collected, and liquidated in the same manner as program loans. In the past, there have been a relatively small number of NP loans, which are on more stringent terms than program loans and an extension of credit for the convenience of the Government. The intended effect is to have a regulation for the uniform handling of NP loans.

DATES: Comments must be submitted on or before October 16, 1989.

ADDRESSES: Submit written comments in duplicate to the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this publication will be available for public inspection during work hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jean F. Leavitt, Loan Specialist, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, South Agriculture Building, Room 5309, Washington, DC 20250, telephone: (202) 382-1452.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been classified as "nonmajor." It will not result in an annual effect on the economy of $100 million or ore; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Background Information

7 CFR part 1951, subpart J—Management and Collection of Nonprogram (NP) Loans is a new regulation which establishes procedures for the making, management, servicing, and liquidation of nonprogram (NP) loans. Nonprogram (NP) loans are an extension of credit for the convenience of the Government to facilitate loan servicing actions or assist with the sale of acquired property. Program credit is not provided because the property either does not meet current program requirements and/or the applicant does not meet current loan program eligibility requirements. An NP loan is made on more stringent terms than a program loan. Previously, guidance on handling NP loans was dispersed through various regulations including subparts A and C of part 1965 and subpart C of part 1955. The new regulation will combine those portions of these regulations of NP loans into one regulation and provide for guidance that was not previously and/or explicitly provided in existing regulations. This will make it easier for FmHA personnel and the general public to ascertain our regulations on NP loans.

The major issues in subpart J of part 1951 which are clarified, established, or vary from that contained in existing FmHA regulations are as follows:

1. Reiterates and clarifies that NP loans are eligible for program supervision or management, and NP debtors are not entitled to program benefits and entitlements such as interest credit, moratorium, reamortization, rescheduling, consolidation, deferral, limited resource assistance or appeal rights.

2. Establishes a nonrefundable application fee, which will change periodically, to process an application for NP credit. The application fee is exclusive of any required credit report fee. Proposes to intially set the fee at $100.

3. Reduces downpayment requirements on NP credit sales of farm real estate. Currently, a 10% downpayment is required on NP credit sales, while the downpayment for a NP transfer and assumption is only 5%. The downpayment requirements, regardless of whether the property is sold from FmHA inventory or by a debtor through transfer and assumption, will be 5% for consistency.

4. Establishes a collection policy consistent with conventional lenders on the servicing and collection of overdue payments. Program servicing regulations and authorities are not authorized.

5. Establishes policy concerning accepting a voluntary conveyance of NP property only when voluntary liquidation cannot be accomplished and it is in the Government's best interests. The State Director is the only FmHA field official authorized to accept a voluntary conveyance from a NP borrower.

6. Clarifies that acceleration letters to NP borrowers will not contain appeal rights, but will provide rights to have the decision reviewed by the next level supervisor to determine if the loan is not in default.

7. Provides detailed guidance on debt settlement of NP debts.

8. Provides that NP debtors will not be released from liability unless the NP debt is satisfied in full.

The major revisions in other regulations which are incorporated in this rulemaking are as follows:

1. Section 1951.314(a)(9) is added to allow the remaining balance of the account to be reamortized when the total FmHA debt is not assumed.

2. Section 1951.612(a)(1)(iii) is revised to remove the authority to enter into an accelerated repayment agreement.

3. Section 1965.26(f) is revised to provide the authority to voucher for authorized selling expenses for which there are insufficient equity proceeds for payment at closing.

4. Section 1965.125(a)(3) is revised to remove authority to permit accelerated repayment agreements.

5. Section 1965.126(b)(3) is revised to provide that the remaining debt of the transferor's account will be reamortized in accordance with Subpart G of Part 1951 of this chapter.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance (CFDA) under Nos:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing and Water Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facilities Loans
10.427 Rural Rental Assistance Payments

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR part 3015, subpart V, the following programs are excluded from the scope of Executive Order 12372 which requires Intergovernmental consultation with State and local officials: 10.404—Emergency Loans, 10.406—Farm Operating Loans, 10.407—Farm Ownership Loans, 10.410—Low Income Housing Loans, 10.416—Soil and Water Loans, and 10.417—Very Low Income Housing Repair Loans and Grants. The following programs are subject to intergovernmental consultation with State and local officials: 10.405—Farm Labor Housing Loans and Grants, 10.411—Rural Housing Site Loans, 10.414—Resource Conservation and Development Loans, 10.415—Rural Rental Housing Loans, 10.418—Water and Waste Disposal Systems for Rural Communities, 10.419—Watershed Protection and Flood Prevention Loans, 10.421—Indian Tribes and Tribal Corporation Loans, 10.422—Business and Industrial Loans, 10.423—Community Facility Loans, and 10.427—Rural Rental Assistance Payments.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91-90, an Environmental Impact Statement is not required.

List of Subjects

7 CFR Part 1900

Appeals, Credit, Loan programs—housing and community development.

7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1951

Account Servicing, Low and moderate income housing loans—Servicing, Foreclosure, Government acquired property, Sale of government acquired property, Surplus government property, Rural areas, Administrative practice and procedure, Mortgages, Accounting.

7 CFR Part 1955

Foreclosure, Government acquired property, Sale of government acquired property, Surplus government property.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Administrative practice and procedure, Foreclosure, Loan programs—Agriculture, Loan programs—Housing and Community development, Low and moderate income housing—Rental, Mortgages, Rural areas.

Therefore, as proposed, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1900—GENERAL

1. The authority citation for part 1900 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Adverse Decisions and Administrative Appeals

2. Section 1900.51 is amended by adding a sentence to the end of paragraph (b) to read as follows:

§ 1900.51 General.

* * * * *

(b) * * * The provisions of this subpart do not apply to decisions involving nonprogram (NP) loans.

§ 1900.55 [Amended]

3. Section 1900.55 is amended by removing paragraph (a)(13) and redesignating (a)(14) as (a)(13).

PART 1910—GENERAL

4. The authority citation for part 1910 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Receiving and Processing Applications

5. Section 1910.1 is amended in the introductory text by adding a sentence at the end of the paragraph to read as follows:

§ 1910.1 General.

* * * Receiving and processing applications for nonprogram (NP) loan(s) will be handled in accordance with subpart J of part 1951 of this chapter.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

6. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301; 7 CFR 2.23 and 7 CFR 2.70.

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

7. Section 1951.301 is amended by revising the fourth and fifth sentences to read as follows:

§ 1951.301 Purpose.

* * * It does not apply to borrowers who assumed RH loans, or have

purchased inventory housing by credit sale, on Nonprogram (NP) terms unless refinanced in accordance with § 1951.315 of this subpart. NP loans will be served in accordance with subpart J of part 1951 of this chapter. * * *

8. Section 1951.314 is amended by adding paragraph (a)(9) to read as follows:

§ 1951.314 Reamortizations.

* * * * *

(a) * * *

(9) When only a portion of the security property is being transferred and the total FmHA debt is not being assumed. The remaining balance will be reamortized for a period not to exceed 10 years or the final due date of the note being rescheduled, whichever is sooner.

* * * * *

9. Subpart J of part 1951 is added to read as follows:

Subpart J—Management and Collection of Nonprogram (NP) Loans

Sec.

1951.451 General.
1951.452 Policy.
1951.453 [Reserved]
1951.454 NP loan making for single family housing and farm property (real and chattel).
1951.455–1951.457 [Reserved]
1951.458 Payments.
1951.459 Preservation of security.
1951.460 Release of security property or sale or lease of related property rights.
1951.461 Release of valueless FmHA lien without monetary consideration.
1951.462 Deceased borrower.
1951.463 Transfer of security and assumption of indebtedness.
1951.464–1951.467 [Reserved]
1951.468 Liquidation.
1951.469 Actions after liquidation of property.
1951.470–1951.478 [Reserved]
1951.479 Pilot projects.
1951.480 [Reserved]
1951.481 FmHA Instructions.
1951.482–1951.499 [Reserved]
1951.500 OMB control number.

Subpart J—Management and Collection of Nonprogram (NP) Loans

§ 1951.451 General.

This subpart sets forth policies and procedures of the Farmers Home Administration (FmHA) for making, managing, collecting, liquidating and settling loans on nonprogram (NP) terms, except those on properties which secure(d) Community and Business Program (C&BP) loans or Multi-Family Housing (MFH) loans. Community and Business Program (C&BP) NP and MFH/NP transactions involving transfer of the security property will be authorized and guidance given on individual cases by the National Office. The sale of C&BP and MFH inventory property to NP purchasers will be handled in accordance with subpart C of part 1955 of this chapter. Borrowers who have program and NP loans will have their loan accounts serviced and liquidated in accordance with the applicable program regulations. However, even though the NP loan will not be eligible for program servicing benefits or entitlements, the borrower is not precluded from receiving assistance on the program loan (e.g., having an NP farm loan should not preclude a borrower from being considered for debt restructuring assistance in the form of a deferral, rescheduling , consolidation, etc., on a FP program loan). An NP loan is a loan on terms more stringent that terms for a program loan and it is an extension of credit for the convenience of the Government because the applicant does not qualify for program assistance or the property to be financed is not suited for program purposes. Such loans are made or continued only when it is in the best interest of the Government. NP loans include:

(a) Sale of inventory property on nonprogram terms;

(b) Assumption of a program loan on nonprogram terms;

(c) Loan converted to NP status as a result of receipt of unauthorized assistance;

(d) Sale of the real property of a Farmer Program (FP) borrower under the leaseback/buyback program on nonprogram terms;

(e) Sale of the real property of a Farmer Program (FP) borrower under the Homestead Protection program; or

(f) FP accounts rescheduled under an accelerated repayment agreement.

§ 1951.452 Policy.

Nonprogram credit is extended for the convenience of the Government in servicing an existing loan or to facilitate sale of inventory property. Where a borrower has both program and NP loans outstanding, servicing will be according to the regulation applicable to the program loan(s). NP borrowers are not eligible for program benefits or entitlements such as subsidy, moratorium, reamortization, rescheduling, consolidation, deferral, limited resource assistance, or appeal rights under subpart B of part 1900 of this chapter. Neither are they subject to occupancy/operation requirements, graduation or other similar requirements imposed on program borrowers. NP borrowers are required to adequately maintain the security, pay real estate taxes and/or assessment when due, and keep buildings insured according to the promissory note and mortgage or security agreement, but may lease all or a portion of the security without FmHA's consent, except as provided in § 1951.460(b) of this subpart.

§ 1951.453 [Reserved]

§ 1951.454 NP loan making for single family housing and farm property (real and chattel).

(a) *Application for NP credit.* Applications for credit on NP terms are made at the FmHA County Office serving the area where the property is located or through an approved packager or real estate broker if so instructed by FmHA county office personnel. An application must contain sufficient documentation to allow FmHA to determine that the applicant possesses financial stability, creditworthiness, and repayment ability for the requested credit. Standard forms used to process program applications may be utilized or comparable documentation may be accepted from the purchaser with the loan approval official having discretion to determine what information in required to support approval of the loan, except that, for property purchased under the leaseback/buyback program and Homestead Protection program, the information required to support approval of the loan will be in accordance with § 1951.907(h) of subpart S of part 1951 of this chapter. A nonrefundable application fee must be submitted with the application, in addition to a credit report fee if required by FmHA. The amounts of these fees change periodically; current fees will be quoted by FmHA county office personnel upon request. The application is not complete until all information requested by FmHA is received. A borrower whose loan is reclassified as NP because unauthorized assistance was received or FP accounts rescheduled under an accelerated repayment agreement will not be required to submit an application or pay the application fee. Additionally, in accordance with the Food Security Act of 1985 (Pub. L. 99–198), after December 23, 1985, if farm property is being purchased or the debt assumed, and an individual or member, stockholder, partner, or joint operator or an entity transferee or purchaser is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR part 1308, which is exhibit C to subpart A of part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the approval of the credit sale or assumption in any crop year, the individual or entity shall be ineligible for a credit sale or assumption for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Purchasers will attest on the application form used that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985.

(b) [Reserved]

(c) *Downpayment.* A downpayment will be collected at closing and remitted in accordance with subpart B of part 1951 of this chapter (available in any FmHA office). The minimum downpayment will be based on the purchase price for a credit sale and the current market value (less any prior liens for chattel property) or the debt, whichever is lower, for an assumption. Downpayment requirements vary from time to time and vary by type of property. Current downpayment requirements will be provided by FmHA county office personnel upon request.

(d) *Interest rate.* Interest rates change periodically and vary by type of property. Current interest rates will be provided by FmHA county office personnel upon request.

(e) *Terms.* The purchase price for credit sales or the FmHA debt being assumed, less the downpayment amount, will be amortized as follows, except the term will never be longer than the period for which the property will serve as adequate security:

(1) *Single family residence.* For owner/occupant, the term will not exceed 30 years. For investor/nonoccupant, the term will not exceed 10 years; a 20-year amortization factor with balloon payment due not later than 10 years from the closing date may be authorized if FmHA determines it is necessary to facilitate the sale. For a property purchased by a presently indebted NP owner/occupant which the purchaser intends to occupy, the term may be for a period not to exceed 30 years on the condition that the existing loan is reamortized for a period not to exceed 10 years less the number of years the loan has been outstanding. If the existing loan has been outstanding for more than 10 years the loan must be paid off.

(2) *Farm real estate and CONACT residential property classified as surplus.* The term will not exceed 15 years, unless FmHA determines extension up to 25 years is in the Government's best interest.

(3) *Farm chattels.* The term will not exceed 5 years.

(4) *Farm real estate (Leaseback/Buyback).* The term will not exceed 25 years.

(5) *Homestead protection.* The term will not exceed 35 years.

(f) [Reserved]

(g) *Security.* The security requirements for an NP loan on a single family residence will be in accordance with subpart A of part 1944 of this chapter. The security requirements for NP loans on farm real estate will be in accordance with subpart A of part 1943 of this chapter and NP loans on chattel security will be in accordance with subpart A of part 1941 of this chapter.

(h) *Closing.* Title clearance, preparation of deeds, loan closing and property insurance requirements are the same as for an FmHA program loan on the same type property, except the purchaser must pay his/her own closing costs.

§§ 1951.455–1951.457 [Reserved]

§ 1951.458 Payments.

(a) [Reserved]

(b) *Payments not received when due.* NP borrowers are expected to make scheduled payments when due. FmHA personnel are not required to provide program supervision, servicing, management or credit counseling. To ensure consistency, a series of collection letters will be used to service delinquent accounts. All actions taken, agreements reached and recommendations made in the servicing of the borrower's account are to be documented. When appropriate, FmHA may work out a reasonable agreement with an NP borrower to cure a delinquency; however, such an agreement will not usually exceed 1 year. Failure to make payments as agreed will result in actions determined by FmHA to best protect the Government's interest. Collection of a delinquency from an Internal Revenue Service (IRS) refund will be considered to the extent permitted by law.

§ 1951.459 Preservation of security.

(a) *Inspections of NP security property.* FmHA reserves the right to inspect the security as necessary to protect its security interest.

(b) *Subordination.* Subordination is not authorized where an NP borrower only owes FmHA an NP loan(s). Subordination of a mortgage may be permitted to refinance, extend, reamortize, increase the amount of an existing prior lien, or to permit a prior lien only when the security for the NP loan is also security for an FmHA program loan, the request for the subordination meets all the requirements for the subordination of the FmHA program loan and is in the best interest of the Government.

(c) *Delinquent real estate taxes and/or assessments.* An NP borrower is expected to pay real estate taxes and/or assessments (which are or become prior liens on the security property) before they become delinquent. Nonpayment of taxes and/or assessments is a default under the security instrument. If it becomes necessary for FmHA to pay these obligations to protect its security interest, liquidation of the account is required, by voluntary means if possible.

(d) *Bankruptcy.* NP loans on single family residences will be serviced in accordance with subpart C of part 1965 of this chapter, farm (real estate) in accordance with subpart A of part 1965, and farm (chattel) in accordance with subpart A of part 1962 of this chapter.

§ 1951.460 Release of security property or sale or lease of related property rights.

(a) *Partial release.* Release of a portion of the security property may be made when the borrower requests it and FmHA determines the release will not adversely affect the Government's interest. Release may be approved when payment is received by FmHA in the amount of the market value, as determined by FmHA, of the property to be released. Proceeds from such transactions (less related expenses authorized by FmHA) must be applied to the FmHA debt as an extra payment or to prior liens in order of lien priority.

(b) *Easements, right-of-ways, and lease of mineral rights or other rights.* Consent may be given by FmHA for the borrower to grant an easement or lease mineral rights when it is determined by FmHA the action will not adversely affect the Government's interest. The granting of an easement or right-of-way and lease of mineral rights may be approved when payment is received by FmHA in the amount of the market value, as determined by FmHA, for rights granted or benefits are derived which are equal to or greater than the value of the property being disposed of. Proceeds from these transactions (less related expenses authorized by FmHA) will be applied to the FmHA debt as an extra payment or to prior liens in order of lien priority.

(c)–(d) [Reserved]

§ 1951.461 Release of valueless FmHA lien without monetary consideration.

Release of an FmHA lien without monetary consideration may be granted when it is determined by FmHA to have no present or prospective value or when enforcement would be ineffectual or

uneconomical. This does not include judgment liens or statutory redemption rights except with the consent of OGC.

§ 1951.462 Deceased borrower.

When an NP borrower dies, FmHA will determine whether or not arrangements can be effected for continuation of the loan under one of the provisions of this section. If not, the loan may be liquidated according to § 1951.468 of this subpart.

(a) *General.* The servicing actions and the circumstances under which they may be considered are outlined in paragraphs (a)(1) through (a)(4) of this section.

(1) *Continue with jointly liable borrower.* If a jointly liable borrower will repay the loan and fulfill other obligations of the loan, FmHA will take no action to liquidate the loan.

(2) *Assumption by spouse not liable for the FmHA loan.* The spouse of a deceased borrower who is not liable for the FmHA loan and who wishes to assume the loan may do so in accordance with § 1951.463(d)(1) of this subpart.

(3) *Continue with joint tenant, tenant by the entirety, or other person.* When a joint tenant, tenant by the entirety, or other person who inherits title to (or an interest in) the security property, on which the principal residence is located, by devise, descent, or operation of law upon the death of a borrower makes payments as scheduled in the promissory note (or assumption agreement), FmHA may not take action to liquidate the loan as long as the property is adequately maintained, real estate taxes and assessments are paid when due, and the dwelling is not known to be uninsured. The loan may be assumed in accordance with § 1951.463(d) of this subpart; however, assumption of the indebtedness is not required. Continuation with a joint tenant, tenant by the entirety, or other person under this paragraph applies only to the transfer of title resulting from death of the borrower; it does not apply to any subsequent transfer of title by the inheritor(s) except by devise, descent, or operation of law upon the death of the inheritors or sale of interest among inheritors to consolidate title. Any other subsequent transfer of title will be treated as a sale and is subject to the requirements of § 1951.463 of this subpart.

(4) *Assumption by person, other than the spouse, who is not liable for the FmHA loan.* A person other than the deceased borrower's spouse who wishes to assume the loan for the benefit of persons who were dependent on the deceased borrower at the time of death, without receiving title to the property, may do so in accordance with § 1951.463(d)(1) of this subpart provided:

(i) The residence will continue to be occupied by one or more persons who were dependent on the borrower at the time of death; and

(ii) There is reasonable prospect for orderly repayment of the loan and other obligations of the loan will be met.

§ 1951.463 Transfer of security and assumption of indebtedness.

When a borrower proposes to sell security property, assumption of the indebtedness may be approved on program or nonprogram terms, as applicable, subject to the provisions of paragraphs (c) and (d) of this section. Assumptions under paragraphs (b)(2), (b)(3), (b)(4), (b)(5), and (d) of this section only are authorized on existing terms. When security property is sold (or title is otherwise conveyed), whether by full conveyance or by land contract, contract-for-deed, or other similar instrument, and the FmHA debt is not assumed by the purchaser (new owner) or paid in full, the conveyance will not be approved, except as provided in paragraphs (b)(2) and (b)(5) of this section of § 1951.462 of this subpart. If the conveyance is not approved the loan must be liquidated unless FmHA determines it is not in the Government's best interest. If FmHA decides to continue with the loan, the account will be serviced in the borrower's name and the borrower will remain liable under the terms of the security instrument.

(a) [Reserved]

(b) *General.* The following paragraphs apply to all transfers and assumptions under this subpart:

(1) *Amount of assumption.* Except for transfers covered in paragraphs (b)(2), (b)(3), (b)(4), (b)(5) and (d) of this section, the transferee will assume the lesser of the indebtedness, or current market value as determined by FmHA, less any prior liens and the downpayment.

(2) *Conveyance of security property by borrower to spouse or child.* When a borrower conveys security property to his/her spouse or child (children), assumption of the indebtedness is not required and FmHA may not take action to liquidate the loan as long as payments are made and other obligations of the loan are met. In the event the transferee(s) wishes to assume the indebtedness, it may be assumed on the terms outlined in paragraph (d)(1) of this section as applicable to the circumstances.

(3) *Withdrawal of jointly liable borrower.* When a stockholders/members/partners/joint operator of an entity who is personally liable on the note withdraws from the entity or dies, and all of the remaining individuals are not personally liable on the note(s), the loan must be assumed by all remaining parties.

(4) *Addition of new transferee(s).* When new stockholder/member/partner/joint operators enter an entity, assumption of the indebtedness is required, however, the indebtedness may be assumed on existing terms. A downpayment from the new party based on the unpaid balance of the loan is required when the assumption is closed.

(5) *Conveyance of security property into an intervivos trust.* When the borrower conveys security property into an intervivos trust, whereby the borrower does not transfer rights of occupancy in the property, FmHA may not take action to liquidate the loan as long as payments ar made as scheduled and other obligations of the loan are met.

(c) *Program assumption.* A NP loan may be assumed by an eligible program applicant if the property meets the eligibility requirements for a currently authorized program (single family housing, farm ownership, etc.). In such cases, the assumption will be at the interest rate and up to the maximum term in effect for the type loan involved at the time the assumption is approved. After assumption on program terms, the loan will be reclassified as an RH, FO, etc., as applicable.

(d) *NP assumption.* The rates and terms for a NP assumpton will be as provided in § 1951.454 of this subpart. A loan may be assumed on existing terms only in the situations outlined in paragraphs (b)(2), (b)(3), (b)(4), (b)(5) and (d)(1), (d)(2) and (d)(3) of this section. An individual not liable for the loan who acquired title to or an interest in the security by means of one of the situations mentioned may assume the indebtedness on existing terms or current terms if more favorable, in which case a downpayment based on the unpaid balance would be required. The interest rate, final due date, payment date, account status (current, delinquent, ahead of schedule) will not be changed by virtue of an assumption on existing terms. After assumption compliance with loan conditions is required. Situations where these terms are authorized are:

(1) An individual who acquires title to or an interest in the security property by virtue of death, divorce, or deed from a spouse or parent but is not liable for the debt and who wishes to assume the loan may do so. Any subsequent transfer of title, except between inheritors to consolidate title, will be treated as a sale and is not covered by these provisions. Individuals in this category are:

(i) A deceased borrower's spouse.

(ii) A divorced borrower's spouse.

(iii) A joint tenant with right of survivorship or relative of a deceased borrower.

(2) The spouse of child of a living borrower to whom title to the security property has been conveyed by spouse or parent.

(3) A person other than the deceased borrower's spouse who wishes to continue with the loan under conditions outlined in § 1951.462(a)(4) of this subpart may do so.

(e) *County Committee actions on Farmer Program assumptions.* On program assumptions the County Committee must certify the transferee's eligibility for the type of loan to be assumed.

(f) *Title clearance and loan closing.* Title clearance and closing will be the same as for any program loan of the same type.

(g) *Release from liability.* Release from liability of NP borrowers is not authorized.

§§ 1951.464–1951.467 [Reserved]

§ 1951.468 Liquidation.

When it is determined an NP borrower cannot or will not successfully repay the loan, FmHA will attempt to have the borrower liquidate voluntarily.

(a) *Voluntary.* If an NP borrower in default is willing to voluntarily liquidate, other liquidation action by FmHA may be delayed for a reasonable period, usually not to exceed 120 days for real estate, if the borrower is earnestly seeking other financing, or has the security property listed or offered for sale and it is being actively marketed at a reasonable price. Voluntary conveyance of real property to FmHA will not be considered unless voluntary liquidation cannot be accomplished by other means and it is determined to be in the Government's best interest. FmHA generally does not consider accepting voluntary conveyance of chattels; chattels should normally be sold and the proceeds applied to the NP loan. Release of the borrower from liability is not authorized.

(b) *Foreclosure.* If an NP borrower in default (monetary or nonmonetary) does not cure the default and is not willing to voluntarily liquidate, the servicing official will refer the case to the next level supervisor with a recommendation for further action. If foreclosure is approved, the account will be accelerated. NP borrowers do not have appeal rights under subpart B of part 1900 of this chapter; however, the NP borrower may request a review of the decision to foreclose by the next level supervisor to consider evidence that the loan is not in default. If the borrower fails to satisfy the account during the period specified in the demand letter, FmHA will proceed with foreclosure without further notice or extension of time.

(c) *Consent to sale of real estate security when the FmHA loan and authorized selling expense exceed market value.* If a NP borrower proposes to sell real estate security for an amount which is insufficient to pay the FmHA debt, prior lien(s) if any, and sale expenses authorized by FmHA, an appraisal will be completed and FmHA may consent to the sale if the proposed sale price is not less than the market value. In no case will the borrower (seller) will receive any cash proceeds from the sale. Release from liability is not authorized.

§ 1951.469 Actions after liquidation of property.

(a) [Reserved]

(b) *Unsatisfied account.* When application of sale proceeds does not satisfy an NP loan; or if FmHA has accepted voluntary conveyance and credit of the market value less prior liens and estimated inventory handling expenses does not satisfy the debt, FmHA will normally seek a deficiency judgment for the remaining debt including expenses paid by FmHA.

(c) [Reserved]

§§ 1951.470–1951.478 [Reserved]

§ 1951.479 Pilot projects.

From time to time FmHA conducts pilot projects to test concepts related to the management and/or sale of SFH inventory property which may deviate from the provisions of this subpart, but will not be inconsistent with provisions of the authorizing statutes, or other Acts affecting FmHA's loan programs. Prior to initiation of a pilot project, FmHA will publish in the Federal Register a Notice outlining the nature, scope, and duration of the pilot. The pilot projects may be handled by FmHA employees and/or under contract with persons, firms, or other entities in the private sector.

§ 1951.480 [Reserved]

§ 1951.481 FmHA Instructions.

Detailed FmHA Instructions for administering this subpart are available in any FmHA office [FmHA Instruction 1951–J].

§§ 1951.482–1951.499 [Reserved]

§ 1951.500 OMB Control Number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget (OMB) and assigned OMB control number ———

Subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing

10. Section 1951.612 is amended by removing paragraph (a)(1)(iii) and redesignating paragraph (a)(1)(iv) as (a)(1)(iii); and by revising the newly designated paragraph (a)(1)(iii) introductory text and (a)(1)(iii)(A) and (D) to read as follows:

§ 1951.612 Servicing options in lieu of liquidation or legal action to collect.

* * * * *

(a) * * *

(1) * * *

(iii) If the recipient was not eligible for a loan, or the loan was approved for unauthorized purposes as outlined in paragraph (a)(1)(iv) of § 1951.604 of this subpart, or the case is not serviced according to paragraphs (a)(1)(i) or (ii) of this section, continuation with the loan on the existing terms is authorized, after which the loan will be serviced as an authorized loan, except that, if interest credit is granted in a case where continuation is authorized under the provisions of this paragraph, all subsidy granted will be recaptured to the extent proceeds are available when the property is sold, allowing a deduction for authorized selling expenses only. Where interest credit is granted in cases of this type, the following actions must be taken:

(A) The borrower must agree in writing to the recapture of subsidy as outlined in paragraph (a)(1)(iii) of this section executing an agreement in the format of exhibit E of this subpart (available in any FmHA office).

* * * * *

(D) If the borrower refuses to execute the agreement prescribed in paragraph (a)(1)(iii)(A) of this section, interest credit will not be granted on the loan.

* * * * *

§ 1951.618 [Amended]

11. Section 1951.618 is amended by removing paragraph (a)(1)(ii) and by redesignating paragraph (a)(1)(iii) as (a)(1)(ii); by removing paragraph (a)(8)(i)(B) and by redesignating paragraph (a)(8)(i)(C) as (a)(8)(i)(B).

Subpart S—Farmer Programs Account Servicing Policies

12. Section 1951.909 is amended by revising the second sentence of paragraph (e)(2) to read as follows:

§ 1951.909 Processing Primary Loan Service Programs requests.

* * * * *

(e) * * *

(2) * * * Farmer program nonprogram (NP) loan borrowers are not eligible to receive any program benefits including reamortization (see subpart J of part 1951 of this chapter). * * *

* * * * *

13. Section 1951.911 is amended by removing paragraphs (b)(10), (b)(12) and (c) and redesignating paragraph (b)(11) as (b)(10) and revising paragraphs (a)(7)(iii), (iv) and (b)(9) to read as follows:

§ 1951.911 Preservation loan service programs.

(a) * * *

(7) * * *

(iii) The property will be offered on eligible terms (if the purchaser is eligible in accordance with subpart A of part 1943 of this chapter) and a credit sale processed in accordance with subpart C of part 1955 of this chapter or nonprogram (NP) terms in accordance with subpart J of part 1951 of this chapter. The interest rate will be the current rate set forth in exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(iv) If the purchaser is an eligible applicant (in accordance with subpart A of part 1943 of this chapter) and the value of the property is greater than $200,000, the property may be financed with a $200,000 credit sale on eligible terms and the remainder with the applicant's own resources and/or with participating credit as set forth in subpart A of part 1943 of this chapter. If the value of the farm property is greater than $200,000 and the eligible applicant is NOT able to arrange the necessary financing for the balance over $200,000, FmHA may finance the purchase of the property with a credit sale on NP terms in accordance with subpart J of part 1951 of this chapter. A credit sale on eligible terms and the remaining balance on ineligible terms will NOT be made to the same applicant to purchase farm property.

* * * * *

(b) * * *

(9) *Rates and terms for a credit sale.* Terms for a credit sale of Homestead Protection property when the lessee is exercising the option to purchase will be in accordance with subpart J of part 1951 of this chapter.

* * * * *

PART 1955—PROPERTY MANAGEMENT

14. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Liquidation of Loans Secured By Real Estate and Acquisition of Real and Chattel Property

15. Section 1955.2 is amended by revising the last sentence to read as follows:

§ 1955.2 Policy.

* * * Nonprogram loan borrowers will be liquidated as provided in subpart J of part 1951 of this chapter, unless specifically referenced in this subpart.

Subpart C—Disposal of Inventory Property

16. Section 1955.101 is amended by adding a sentence at the end of the section to read as follows:

§ 1955.101 Purpose.

* * * The sale of inventory property to nonprogram (NP) purchasers will be handled in accordance with subpart J of part 1951 of this chapter, except Community and Business Programs and Multi-Family Housing which will be handled in accordance with this subpart.

17. Section 1955.107 is amended by revising the third sentence of paragraph (e)(2) to read as follows:

§ 1955.107 Sale of suitable property (CONACT).

* * * * *

(e) * * *

(2) * * * Any credit sale of a suitable farm larger than a family size farm would be at ineligible rates and terms, in accordance with subpart J of part 1951 of this chapter. * * *

18. Section 1951.108 is amended by revising paragraph (a) to read as follows:

§ 1951.108 Sale of surplus property (CONACT).

* * * * *

(a) *Rates and terms.* Rates and terms for Homestead Protection and Leaseback/Buyback will be in accordance with subpart S of part 1951 of this chapter. Except for Business and Industrial and Community Program properties, all surplus property will be offered for cash or on ineligible terms in accordance with subpart J of part 1951 of this chapter. Business and Industrial and Community Program surplus property will be offered for cash or on ineligible terms of not less than ten percent (10%) downpayment with the remaining balance amortized over a period not to exceed 25 years. The State Director will determine the loan terms for surplus property within these limitations. The interest rate for Business and Industrial property will be the established insured B&I rate for profit corporations plus ½ percent; the Community Programs interest rate will be the current market rate for Community Programs. A credit sale will be closed at the interest rate in effect at the time the credit sale was approved. At the request of the State Director, the Administrator may permit more favorable rates and terms on surplus property offered for sale where extensive sales efforts have been made but no acceptable offer has been received. A credit sale on ineligible terms will be identified as an NP loan.

* * * * *

19. Section 1955.109 is amended by revising paragraphs (a), (c), (h) and (i) to read as follows:

§ 1955.109 Processing and closing (CONACT).

(a) *Determining repayment ability and creditworthiness.* If a credit sale is involved, the applicant must furnish necessary financial information to assist in determining repayment ability and creditworthiness. Form FmHA 431–2, "Farm and Home Plan," should be used for all eligible applicants unless the applicant has furnished all required information in another acceptable format. Information regarding eligibility, planned development and total operations will be provided the same as for the respective type of Farmer Program loan. Purchasers requesting credit on NP terms, except for C&BP, will be handled in accordance with subpart J of part 1951 of this chapter. For C&BP, information will be provided which is similar to an application including financial information required for the respective loan program to establish financial stability, creditworthiness and repayment ability.

* * * * *

(c) *Form of payment.* Payments at closing will be in the form of cash, cashier's check, certified check, postal or bank money order, or bank draft made payable to FmHA and handled in accordance with subpart B of part 1951 of this chapter.

* * * * *

(h) *Classification.* Credit sales on ineligible terms for C&BP will be classified as NP loans and serviced accordingly.

(i) *State supplements.* A State supplement specifying modifications to be made in note and mortgage instruments as pertinent to a credit sale to an ineligible purchaser for C&BP will be issued with the advice and approval of OGC.

20. Section 1955.114 is amended by revising the second sentence in paragraph (a)(5) to read as follows:

§ 1955.114 Sales steps for program property (housing).

* * * * *

(a) * * *

(5) * * * Cash sales will be handled in accordance with § 1955.118 of this subpart and credit sales on NP terms will be made in accordance with subpart J of part 1951 of this chapter.

* * * * *

21. Section 1955.115 is amended by revising the first sentence of the introductory text of paragraph (a) to read as follows:

§ 1955.115 Sales steps for nonprogram (NP) property (housing).

* * * * *

(a) *Single family housing.* Sales steps will be the same as for program properties as provided in § 1955.114(a) of this subpart, except that sales must be for cash in accordance with § 1955.118 or credit on NP terms as provided in subpart J of part 1951 of this chapter. * * *

* * * * *

22. Section 1955.118 is amended by revising the heading and paragraphs (d), (e), (f), (h)(3) and (j) to read as follows:

§ 1955.118 Processing cash sales or MFH credit sales on NP terms.

* * * * *

(d) *Downpayment.* A downpayment of not less than 10 percent of the purchase price is required at closing and will be remitted by the servicing official according to FmHA Instruction 1951–B (available in any FmHA office).

(e) *Interest rate.* The section 515 RRH interest rate plus ½ percent will be charged on all types of housing credit sales, except SFH. Refer to exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for interest rates. Loans made on NP terms will be closed at the interest rate which was in effect at the time the loan was approved.

(f) *Term of note.* The note amount will be amortized over a period not to exceed 10 years. If the State Director determines more favorable terms are necessary to facilitate the sale the note amount may be amortized using a 30-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing. In no case will the term be longer than the period for which the property will serve as adequate security.

* * * * *

(h) * * *

* * * * *

(3) The County Supervisor or District Director will provide the closing agent with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions for all MFH sales.

* * * * *

(j) *Classification.* MFH credit sales on NP terms will be classified as NP loans and serviced accordingly.

23. Section 1955.119 is amended by adding a sentence at the end of the section to read as follows:

§ 1955.119 Payment of points (housing).

* * * These payments will be handled in accordance with FmHA Instruction 1951–B (available in any FmHA office).

24. Section 1955.123 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1955.123 Sale procedures (chattel).

(a) *Credit sales.* Although cash sales are preferred in the sale of chattels, credit sales may be used advantageously in the sale of chattels to eligible purchasers and to facilitate sales of high-priced chattels. Credit sales to eligible purchasers will be in accordance with the provisions of this chapter for the appropriate program for which a loan would otherwise be made including eligibility determinations. Preference will be given to a cash offer which is at least * percent of the highest offer requiring credit. (*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.) Credit sales to NP purchasers will be in accordance with subpart J of part 1951 of this chapter. For Farmer Programs, County Supervisors, District Directors, and State Directors are authorized to approve or disapprove credit sales on eligible terms in accordance with the respective loan approval authorities in Exhibit C of FmHA Instruction 1901–A (available in any FmHA office). The determination of eligibility of applicants or eligible applicants that have their application disapproved will be notified of the opportunity to appeal in accordance with subpart B of part 1900 of this chapter.

(b) *Receipt of payment.* Payment will be by cashier's check, certified check, postal or bank money order, or personal check (not in excess of $500) made payable to FmHA. Cash may be accepted if it is not possible for one of these forms of payment to be used. Third party checks are not acceptable. Payments will be handled in accordance with FmHA Instruction 1951–B (available in any FmHA office). If full payment is not received at the time of sale, the offer will be documented by Form FmHA 1955–45 and where the chattel is sold jointly with real estate by regular sale.

* * * * *

PART 1962—PERSONAL PROPERTY

25. The authority citation for part 1962 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Servicing and Liquidation of Chattel Security

26. Section 1962.1 is amended by adding a sentence to the end of the text to read as follows:

§ 1962.1 Purpose.

* * * Security servicing for nonprogram (NP) loan(s) on farm property will be according to subpart J of part 1951 of this chapter.

27. Section 1962.34 is amended by removing paragraphs (b)(3)(i) and (b)(3)(ii) and revising the last phrase of paragraph (b)(3) which begins with the words "Interest rates" to read as follows:

§ 1962.34 Transfer of chattel security and EO property and assumption of debts.

* * * * *

(b) * * *

(3) * * * The nonprogram (NP) farmer program interest rate for chattel property, in effect at the time of loan approval, will be charged.

* * * * * * *

PART 1965—REAL PROPERTY

28. The authority citation for part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

29. Section 1965.1 is revised to read as follows:

§ 1965.1 Purpose.

This subpart delegates authority and prescribes policies and procedures for servicing real estate, leasehold interests

and certain note-only cases for Farmers Home Administration (FmHA) Farmer Program loans. Security servicing for borrowers who have both FmHA Farmer Program and Single Family Housing (excluding Technical Assistance Grants and Site loans) (SFH) loans, will be according to this subpart. Security servicing for borrowers who are indebted for SFH loans only, will be according to subpart C of part 1965 of this chapter. Security servicing for nonprogram (NP) loan(s) on farm real estate and chattel property will be according to subpart J of part 1951 of this chapter. Security servicing for borrowers who have both a Farmer Program and NP loan will be according to the applicable program regulations. This subpart does not apply to FmHA guaranteed loans, Rural Rental Housing (RRH) loans, Labor Housing (LH) loans, Business and Industrial (B&I) loans, Community Programs (CP) loans, Shift-in-Land-Use (Grazing Association) loans, or loans to Indian Tribes and tribal corporations.

§ 1965.7 [Amended]

30. Section 1965.7 is amended by removing paragraph (i) and redesignating paragraphs (j), (k) and (l) as (i), (j) and (k), respectively.

§ 1965.12 [Amended]

31. Section 1965.12 is amended by removing the first sentence of the introductory text and the last sentence of paragraph (g).

32. Section 1965.13 is amended by revising the first sentence of the introductory text to read as follows:

§ 1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.

See subpart S of part 1951 of this chapter when a combination of NP, ST and other FP loans are involved. * * *

* * * * *

§ 1965.17 [Amended]

33. Section 1965.17 is amended by removing paragraph (c) and redesignating paragraph (d) as (c).

34. Section 1965.26 is amended by redesignating paragraph (a)(1) introductory text as the introductory text to paragraph (a) and revising it and removing paragraph (a)(2); by redesignating paragraph (a)(1) (i), (ii), (iii) and (iv) as paragraphs (a) (1), (2), (3) and (4), respectively; by removing the heading for (e)(4)(i); by removing paragraph (e)(4)(ii) and redesignating paragraph (e)(4)(i) (A), (B), and (C) as (e)(4) (i), (ii), and (iii), respectively; by revising paragraph (f); and redesignating paragraph (g) as (h); by adding a new paragraph (g) and revising the newly designated paragraph (h) to read as follows:

§ 1965.26 Liquidation action.

(a) *Voluntary liquidation.* Before any cash sale, farmer program borrowers must be sent Attachment 1 of exhibit A of subpart S of part 1951 of this chapter. When a borrower contacts FmHA and asks about voluntarily liquidating security, the borrower will be told that liquidation can be accomplished by:

* * * * *

(f) *Cash sales.* When a cash sale of the mortgaged real estate will be insufficient to pay the secured FmHA debt(s), prior lien(s), if any, and authorized selling expenses, paragraph (f)(1) will be followed. In addition to the authorized selling expenses mentioned in paragraph (f)(1)(i), authorized costs can include those specified in § 1965.13 (f)(2) of this subpart. Applicable requirements of subpart G of part 1940 of this chapter must be met.

(1a) *Consent to sale of real estate security when the FmHA debt and authorized selling expenses exceed market value.* If a borrower proposes to sell real estate security for an amount which will be insufficient to pay the FmHA debt, prior lien(s), if any, and authorized selling expenses, an appraisal will be completed by an authorized FmHA employee in accordance with subpart A of part 1809 of this chapter (FmHA Instruction 422.1) and the County Supervisor may consent to the sale if the proposed sale price is not less than the market value. If a qualified FmHA appraiser is not available, the State Director may contract for an appraisal in accordance with FmHA Instruction 2024–A (available in any FmHA office). If a current financial statement is not in the case file, a financial statement on Form FmHA 431–2, "Farm and Home Plan," will be taken to determine if the borrower has the ability to pay all or a substantial portion of the authorized selling expenses taking into account the borrower's moving/relocation expenses and the Government's prospects of acquisition of the property by voluntary conveyance or foreclosure.

(i) *Authorized selling expenses.* Authorized selling expenses are those which the seller customarily or legally must pay to convey title and include but are not limited to: A real estate broker's commission which does not exceed the most typical rate for the sale of similar property in the area, no more than three points to enable the buyer to obtain credit from another lender provided it is customary in the area for the seller to pay points and they are not being paid to reduce the purchase's interest rate, real estate taxes, preparation of the deed, abstract and/or title fees, termite and/or other related inspections, title insurance, surveys, and deed or other revenue stamps. Junior liens may also be settled in the same manner as outlined in § 1955.10(c)(2) of subpart A of part 1955 of this chapter; however, the State Director must approve settlement of the junior lien regardless of the amount.

(ii) *Closing the transaction.* In no case will the borrower (seller) receive any cash proceeds from the sale. Distribution of funds will be as follows:

(A) Where there are sufficient cash proceeds at closing, the entire sale proceeds, minus prior lien(s), if any, and authorized selling expenses must be applied to the FmHA debt.

(B) Where cash proceeds are not available (such as in the case of an assumption) or are insufficient to pay authorized selling expenses, FmHA may pay said expenses necessary to consummate the transaction by preparation of Standard Form 1034, "Public Voucher For Purchases And Services Other Than Personal," and submission of Form FmHA 2024–1, "Miscellaneous Payment System," according to FmHA Instruction 2024–P (available in any FmHA office) and the respective Forms Manual Insert (FMI). Expenses will only be vouchered when the County Supervisor has determined that it is in FmHA's financial interest to pay such selling expenses instead of the prospects of accepting a voluntary conveyance or foreclosure, taking into account the estimated additional costs which would arise were the property to be acquired and sold from inventory. Any real estate taxes due from the transferor and authorized selling expenses for which there are insufficient equity proceeds for payment at closing will be charged to the borrower's account prior to loan closing. A subsequent loan may be processed for any equity (market value "as is" minus FmHA indebtedness) in the property and/or the amount of any needed repairs (amount of repairs or the difference between the market value "as-improved" and market value "as-is", whichever is lower). Amounts for seller's equity and/or repairs will not be vouchered and charged to the borrower's account. Authorized selling expenses will not be considered or included in the amount assumed. See Exhibit E of this subpart (available in any FmHA office) for examples on how to determine amounts for vouchers, subsequent loans, and/or assumption agreements.

(iii) *Release of security instruments.* When sale proceeds are insufficient to pay the FmHA debt, the County Supervisor is authorized to release the FmHA security instrument(s). When necessary to comply with a State law, a State supplement approved by OGC will prescribe procedures for releasing security instruments when the debt evidenced therein is not satisfied in full.

(iv) *Release from liability.* Release from liability for the deficiency is covered in § 1965.26(g) of this section.

(g) *Release from liability.* In cases where the borrower (and co-signer, if any) is released from liability, and the loan is not being assumed, the note(s) will be stamped "Satisfied For Less Than Indebtedness—Borrower Released From Liability." The County Committee must recommend release of liability before the borrower (and co-signer, if any) can be considered for this action. The following comment will be shown on the County Committee Certification:

In our opinion (*Name of Borrower(s) and co-signer*) does not have reasonable ability to pay all or a substantial part of the balance of the debt owed after the cash sale, taking into consideration his or her assets and income at the time of the conveyance. The borrower has cooperated in good faith, used due diligence to maintain property against loss, and has otherwise fulfilled the covenant incident to the loan to the best of his or her ability. Therefore, we recommend that the borrower and any cosigner be released from personal liability for any balance due on the secured indebtedness upon completion to the transaction.

(1) The State Director is authorized to approve release of liability when the account balance does not exceed $150,000; otherwise the Administrator or designee will approve the release from liability. All cases requiring a release of liability will be submitted for review in accordance with exhibit A of subpart B of part 1956 of this chapter (available in any FmHA office).

(2) Release from liability will be accomplished by preparing and distributing Form FmHA 1965–8, "Release From Personal Liability."

(h) *Account balance.* When security property is sold for an amount not less than the market value as authorized in § 1965.26 (f)(1) of this subpart or assumption of an amount equal to the market value is approved as authorized in § 1965.27 of this subpart, the account balance will be handled as follows:

(1) When the seller or transferor (and co-signer, if any) is released from liability, the account will be satisfied in the records of the Finance Office when one of the following is processed:

(i) In a sale outside the FmHA program, Form FmHA 1965–8 will be given to the borrower and otherwise distributed in accordance with the Forms Manual Insert.

(ii) Form FmHA 1965–22, "Information On Assumption On New Terms Or Other Change Of Terms," indicating the transferor is released from liability.

(2) When the seller or transferor (and co-signer, if any) is not released from liability, the borrower will be sent a letter similar to exhibit F of subpart A of part 1955 of this chapter (available in any FmHA office). The County Supervisor will meet with the borrower within 30 days to assist the borrower in the development of a debt settlement offer in accordance with subpart B of part 1956 of this chapter or the account will be reclassified to collection-only.

§ 1965.26 [Amended]

35. Newly redesignated §1965.26 (e)(4)(iii) is amended in the last sentence by changing the reference "(A) or (B)" to read "(i) or (ii)".

36. Section 1965.27 is amended by revising the fifth sentence of the introductory text which begins "If an NP loan . . ."; by removing paragraphs (b)(4) and (d) and redesignating paragraphs (b)(5) through (b)(21) as (b)(4) through (b)(20) and paragraphs (e) and (f) as (d) and (e); by removing the last sentence of paragraph (c)(1)(ii); by revising paragraph (c)(1)(iii)(C); by revising the first sentence of the newly designated paragraph (d); by revising the newly designated paragraph (e); by adding a new paragraph (f); and by revising paragraph (g)(4) to read as follows:

§ 1965.27 Transfer of real estate security.

* * * Sale or transfer with assumption of real estate security on NP terms will be in accordance with subpart J of part 1951 of this chapter. * * *

* * * * *

(c) * * *

(1) * * *

(iii) * * *

(C) On ineligible rates and terms and serviced in accordance with subpart J of part 1951 of this chapter.

* * * * *

(d) *Consent of FmHA not required to transfer.* When the FmHA mortgage(s) does not require the Government's consent to the sale of the security and the borrower conveys or proposes to convey the security to a person who is ineligible or unwilling to assume the FmHA debt in accordance with paragraph (c) of this section or subpart J of part 1951 of this chapter, the Government will not consent to the sale. * * *

(e) *Release of liability.* When all the real estate security is transferred and the total debt is assumed the borrower (and co-signer, if any) will be released from liability by the County Supervisor. Release from liability will be handled in accordance with § 1965.26 (g) when consent under § 1965.28 (f)(1) is given. When a portion of the real estate is transferred and the total SFH debt is assumed, a release may be granted under paragraph (b)(6) of this section provided the transferee is an eligible SFH applicant. When only that portion of the debt equal to the market value of the security is assumed and the borrower is to be released from liability, the transferee must be an eligible SFH applicant in order for the transferor to be released from liability on the RH debt and the conditions in § 1965.26 (g) must be met. If the transferee of the SFH debt is not an eligible RH applicant, any proposed release of the transferor from liability must be submitted to the National Office. For a SFH loan involving a co-signer, the transferor may be released from liability only if the co-signer also can be released (see § 1965.129 of subpart C of this part). The official approving the transfer of SFH loans must also execute a memorandum containing the statement in § 1965.26 (g), normally signed by the County Committee.

(f) *Account balance.* Account balances will be handled in accordance with § 1965.26 (h) of this subpart.

(g) * * *

(4) *Farm Home plans and financial statements.* When an assumption will be for less than the amount of the indebtedness and a release of liability is involved, a current financial and income statement of the transferor will be obtained on Forms FmHA 1944–3 or FmHA 431–2 or other plan of operation acceptable to FmHA.

* * * * *

§ 1965.27 [Amended]

37. Section 1965.27(b)(3) is amended in the second sentence by changing the reference "§ 1965.26(a)(2)" to read "§ 1965.26(f)(1)."

38. Section 1965.27(g)(6)(ii) is amended by removing the words "or (d)" and by changing the reference "paragraph (f)" to read "paragraph (e)."

39. Section 1965.27(h)(2)(ii) is amended in the second sentence by changing the reference "paragraph (f)" to read "Paragraph (e)."

§ 1965.34 [Removed and Reserved]

40. Section 1965.34 is removed and reserved.

41. Exhibit E is added to part 1965, subpart A as follows:

Exhibit E—Examples of How To Determine the Amounts of Vouchers and/or Assumption When Consent To Sale Is Authorized Under § 1965.27(b)(3) for farm real estate.

Note.—Exhibit E, referenced in this subpart, is available in any FmHA office.

Subpart C—Security Serving for Single Family Rural Housing Loans

42. Section 1965.101 is amended by adding a sentence at the end of paragraph to read as follows:

§ 1965.101 Purpose.

* * * Security servicing for nonprogram (NP) loan(s) on a single family residence will be according to subpart J of part 1951 of this chapter.

43. Section 1965.104 is amended by revising the last sentence of paragraph (c)(2) to read as follows:

§ 1965.104 Preservation of security and protection of liens.

* * * * *

(c) * * *

(2) *Junior lien foreclosure.* * * * When a junior lienholder foreclosure does not result in payment in full of the FmHA debt but the property is sold subject to the FmHA lien, the account may be assumed by the purchaser on program terms subject to the provisions of § 1965.128(c) of NP terms as provided in subpart J of part 1951 of this chapter; otherwise the FmHA loan will be liquidated.

* * * * *

§ 1965.105 [Amended]

44. Section 1965.105(b)(1) is amended in the first sentence by changing the reference "paragraph (e)" to read "paragraph (d)."

45. Section 1965.105 is amended by removing paragraph (d) and redesignating paragraph (e) as (d).

46. Section 1965.125 is amended by removing paragraph (a)(3); and by redesignating (a)(2)(iii) as (a)(2)(iv); adding a new (a)(2)(iii); revising (a)(2)(ii)(B) and the newly designated (a)(2)(iv) to read as follows:

§ 1965.125 Liquidation.

(a) * * *

(2) * * *

(ii) *Closing the transaction.* * * *

(A) * * *

(B) Where cash proceeds are not available (such as in the case of an assumption) or are insufficient to pay authorized selling expenses, FmHA may pay said expenses necessary to consummate the transaction by preparation of Standard Form 1034, "Public Voucher For Purchases And Expenses Other Than Personal," and submission of Form FmHA 2024–1, "Miscellaneous Payment System," according to FmHA Instruction 2024–P (available in any FmHA office) and the respective Forms Manual Insert (FMI). Expenses will only be vouchered when the County Supervisor has determined that it is in FmHA's financial interest to pay such selling expenses instead of the prospects of accepting a voluntary conveyance or foreclosure, taking into account the estimated additional costs which would arise were the property to be acquired and sold from inventory. Any real estate taxes due from the transferor and authorized selling expenses for which there are insufficient equity proceeds for payment at closing will be charged to the borrower's account prior to loan closing. A subsequent loan will be processed for any equity (market value "as-is" minus FmHA indebtedness) in the property and/or the amount of any needed repairs (amount of repairs or the difference between the market value "as-improved and market value "as-is", whichever is lower). Amounts for the seller's equity and/or repairs will not be vouchered and charged to the borrower's account. Authorized selling expenses will not be considered or included in the amount assumed. See exhibit C of this subpart (available in any FmHA office) for examples on how to determine amounts for vouchers, subsequent loans, and/or assumption agreements.

(iii) *Release of security instruments.* When sale proceeds are insufficient to pay the FmHA debt, the County Supervisor is authorized to release the FmHA security instrument(s). When necessary to comply with a State law, a State supplement approved by OGC will prescribe procedures for releasing security instruments when the debt evidenced therein is not satisfied in full.

(iv) *Release from liability.* Release of the borrower from liability for the deficiency is covered in § 1965.127(a) (3) and (b) of this subpart. In cases where the borrower is released from liability, and the loan is not being assumed, the note(s) will be stamped "Satisfied For Less Than Indebtedness—Borrower Released From Liability."

* * * * *

47. Section 1965.126 is amended by revising the introductory text; by removing paragraph (d) and redesignating paragraphs (e) and (f) as (d) and (e); by revising the last phase of the introductory paragraph (b)(1) which begins "The following loans . . .."; by revising paragraph (b)(3); and by revising the second sentence of introductory paragraph (b)(4)(ii) to read as follows:

§ 1965.126 Transfer of property with assumption of indebtedness.

When a borrower proposes to sell real estate security, assumption of the loan(s) may be approved on program or nonprogram (NP) terms, as applicable. Approval on program terms will be subject to the provisions of paragraph (c) of this section and NP terms will be as provided in Subpart J of Part 1951 of this chapter. Assumptions under paragraphs (b)(12) and (c)(2) of this section only are authorized on existing terms without considering the assuming party's eligibility for program assistance. When security property is sold (or title is otherwise conveyed), whether by full conveyance or by land contract, contract-for-deed, or other similar instrument, and the FmHA account is not assumed by the purchaser (or new owner), the loan must be liquidated except as provided in paragraph (b)(12) of this section or § 1965.116 of this subpart.

* * * * *

(b) * * *

(1) *Loan classification and/or changes.* * * * The following loans may be assumed on program terms under paragraph (c) of this section or NP terms in accordance with subpart J of part 1951 of this chapter:

* * * * *

(3) *Dwelling situated on more than a minimum-adequate site.* If the property to be transferred with assumption consists of a dwelling on more than a minimum-adequate site as defined in subpart A of part 1944 of this chapter, a determination must be made as to whether the excess land can serve as a minimum-adequate site for another dwelling. It is not intended to exclude a property currently in the program from being transferred to a program applicant simply because it is situated on more than a minimum-adequate site. Consideration must be given to such things as local zoning requirements, road or street access, and marketability of portions separately if subdivided. If it is determined that the excess property cannot be sold separately as a minimum-adequate site for another dwelling, the facts must be documented and the property may be retained in the SFH program, provided the entire property is modest in cost compared to a similar house on a minimum-adequate site in the area. When all of the security property is not being transferred to the party assuming the FmHA debt and the balance of the FmHA debt is not paid in full when the assumption is closed, the remaining debt of the transferor will be reamortized in accordance with subpart G of part 1951 of this chapter. OGC will be requested to advise how to retain the appropriate security interest on each portion of the security property. When the balance of the transferor's debt is paid, or when only a portion of the security property was transferred which adequately secures the debt assumed by the transferee, and it is necessary to release the remaining portion of the security property, OGC will be requested to prepare the release document.

(4) * * *

(ii) * * * In those instances, assumption may only be on NP terms in accordance with subpart J of part 1951 of this chapter. * * *

* * * * *

Dated: June 21, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–19103 Filed 8–16–89; 8:45 am]

BILLING CODE 3410–07–M

7 CFR Part 1956

Debt Settlement; Community and Business Programs

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) is proposing to amend the Agency's policies and procedures governing the debt settlement of loans serviced by the Community Programs and Business and Industry Divisions. The proposed rule is necessary to comply with section 1369 of the Food Security Act of 1985, Public Law (Pub. L.) 99–198. This proposed action is needed to clarify debt settlement regulations and to include the process of settlement of debts where FmHA does not have the independent statutory authority to settle debt, and must process debt settlement in accordance to the Federal Claims Collection Act Joint Standards. The intended effect is to make FmHA regulations on debt settlement coherent and more responsive to the needs of the agency and the public.

DATES: Comments must be received on or before September 18, 1989.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Blanche G. Hamilton, Loan Officer, Loan Servicing Branch, Business and Industry Division, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, Washington, DC 20250; telephone (202) 475–3802.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor. The proposed action is not likely to result in any of the following: (a) An annual effect on the economy of $100 million or more, (b) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Intergovernmental Review

The proposed action affects the following FmHA programs listed in the Catalog of Federal Domestic Assistance:

Sec.
10.414 Resource, Conservation and Development Loans.
10.418 Water and Waste Disposal Systems for Rural Communities.
10.419 Watershed and Flood Prevention Loans.
10.421 Indian Tribes and Tribal Corporations.
10.422 Business and Industry Loans.
10.423 Community Facility Loans.
10.424 Industrial Development Grants
10.434 Nonprofit National Corporation Loan and Grant
10.438 Intermediary Relending Program Loans

All of the above programs are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials, except Indian Tribes and Tribal Corporations.

Regulatory Flexibility Act

FmHA has determined that this action will not have a significant economic impact on a substantial number of small entities, because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

Background

Debt settlement for Community and Business Programs is governed by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1921–1998). Additionally, FmHA, CBP administers numerous programs which are not governed by the CONACT and, therefore, does not have the independent statutory authority to settle debt and must process debt in accordance with the Federal Claims Collection Standards, 4 CFR parts 101 through 105. These debts include Economic Opportunity Cooperative Loans, claims against third party converters, non program loans, Industrial Development Grants, Rural Development Loan Fund Loans, Intermediary Relending Program Loans, Nonprofit National Corporation Loan and Grant Program debts, and 601 Energy Impact Assistance Grants.

The proposed action will amend the present regulations to clarify which programs will settle debt in accordance with the Federal Claims Collection Standards and the procedure to be used to comply with the Standards. The changes will result in more efficient service to the public, while continuing protection of the Government's interest.

List of Subjects in 7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas.

Accordingly, FmHA proposes to amend Chapter XVIII, Title 7, Code of Federal Regulations, to read as follows:

PART 1956—DEBT SETTLEMENT

1. The authority citation for Part 1956 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 31 U.S.C. 3711, 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Debt Settlement—Community and Business Programs

2. Section 1956.101 is revised to read as follows:

§ 1956.101 Purpose.

This subpart delegates authority and prescribes policies and procedures for debt settlement of Water and Waste Disposal System loans; Community Facility loans; Association Recreation loans, Watershed loans and advances; Resource, Conservation and Development loans; Rural Renewal loans; and insured Business and Industry loans; Irrigation and Drainage loans; Shift-in-land-use loans and Indian Tribal Land Acquisition loans. Settlement of Economic Opportunity Cooperative Loans, Claims Against Third Party Converters, Nonprogram Loans, Industrial Development Grants, Rural Development Loan Fund Loans, Intermediary Relending Program Loans, Nonprofit National Corporations Loans and Grants, and 601 Energy Impact Assistance Grants, is not authorized under independent statutory authority and settlement under these programs is handled pursuant to the Federal Claims Collection Standards, 4 CFR Parts 101–105 as described in § 1956.147 of this subpart.

3. Section 1956.147 is added to read as follows:

§ 1956.147 Debt Settlement under the Federal Claims Collection Act.

The U.S. Department of Justice (DOJ) and the General Accounting Office are charged with the responsibility for implementing the Federal Claims Collection Act and have promulgated the Federal Claims Collection Act Joint Standards (FCCAJS) (4 CFR parts 101–105) to inform Government Agencies on how to settle debts and claims which the Agency does not have independent statutory authority to settle. With the exception of loans and claims with outstanding balances of $20,000 or less, exclusive of interest, penalties, and administrative costs, settlements must be submitted to and approved by the United States Attorney or the DOJ. Debt Settlement of Economic Opportunity Cooperative Loans, Claims Against Third Party Converters, Nonprogram Loans, Industrial Development Grants, Rural Development Loan Fund Loans, Intermediary Relending Program Loans, Nonprofit National Corporations Loans and Grants, and 601 Energy Impact Assistance Grants are programs that must be settled under the FCCAJS.

(a) Debt settlement of the subject loans and claims falls in the following categories:

(1) Settlement of loans and claims may be approved by the Administrator when the outstanding balance of the indebtedness involved in the settlement is $20,000 or less, exclusive of interest, penalties, and administrative costs. These loans and claims will be submitted to the National Office of Form FmHA 1956–1, "Application for Settlement of Indebtedness," for debt settlement. Subsequent to approval, Form FmHA 1956–1 will be distributed in accordance with the Forms Manual Insert (FMI).

(2) Loans and claims with an outstanding balance of $200,000 or less inclusive of interest, penalties, and administrative costs, but with an outstanding balance greater than $20,000, exclusive of interest, penalties, and administrative costs, after approval by the State Director will be referred to your Regional Office of the General Counsel (OGC) for referral to the United States Attorney in whose judicial district the debtor can be found. The form to be used is the Claims Collection litigation Report (CCLR). This form should be available through the U.S. Attorney. A memorandum from the State Dirctor should be attached to the CCLR recommending acceptance of the debt settlement. If the State Director after reviewing the CCLR does not recommend acceptance, the State Director has the authority to reject the debt settlement.

(3) Loans and claims with an outstanding balance over $200,000, inclusive of interest, penalties, and administrative costs, will be referred to the Administrator and will include the following:

(i) The case file(s).
(ii) A completed CCLR.
(iii) Copies of the notes, security agreements, and mortgages.
(iv) A current appraisal of any security owned by the borrower.
(v) A narrative which will include:
(A) Recommendation for the acceptance of the debt settlement.
(B) Why the borrower failed.
(C) Steps taken to collect the loan(s).
(D) An analysis of the debtor's future repayment ability.
(E) Why acceptance of the debt settlement offer is in the best interest of the Government.

If the Administrator concurs with the recommendation for the debt settlement, it will be referred to the FmHA National Office OGC for referral to the Commercial Litigation Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530.

(b) When a debtor has a Community Programs or Business and Industry loans(s) as defined in this subpart, these loan(s) will be debt settled under the authority of the Consolidated Farm and Rural Development Act. In such cases, the subject loans and claims should be listed under part II(B) on Form FmHA 1956–1, as other debts owed FmHA. Normally, all the security for the subject loans and claims should be disposed of prior to the submission for debt settlement.

(c) It is not necessary to obtain approval of the United States Attorney of the DOJ (as the case may be) in cases where FmHA decides not to settle a loan or claim.

Dated: July 26, 1989.

Neal Sox Johnson,

Acting Adminstrator, Farmers Home Administration.

[FR Doc. 89–19275 Filed 8–16–89; 8:45am]

BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 88–216]

Change in Disease Status of Chile Because of Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations by adding Chile to the list of countries declared to be free of rinderpest and foot-and-mouth disease. No outbreaks of rinderpest have ever occurred in Chile, and we have determined that foot-and-mouth disease has been eradicated there. We are also proposing to add Chile to the list of countries that, although declared free of rinderpest and foot-and-mouth disease, are subject to special restrictions on the importation of their meat and other animal products into the United States. This proposed revision would relieve certain prohibitions and restrictions on the importation into the United States, from Chile, of ruminants and swine, and fresh, chilled, and frozen meats of these animals.

However, Chile is not included in the lists of countries declared to be free of hog cholera and swine vesicular disease. Therefore, even if this proposal is adopted, the restrictions imposed on the importation of swine because of these diseases would remain in effect for Chile.

DATE: Consideration will be given only to comments received on or before October 16, 1989.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88–216. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Jr., Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, Room 759, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) regulate, among other things, the importation into the United States of certain animals, meat, and other animal products. These regulations are designed, among other things, to prevent the introduction into the United States of rinderpest, foot-and-mouth disease, African swine fever, hog cholera, swine vesicular disease, and viscerotropic velogenic Newcastle disease.

Section 94.1(a)(1) of the regulations provides notice that rinderpest or foot-and-mouth disease exist in all countries of the world, except those listed in § 94.1(a)(2), which are declared to be free of these diseases. We are proposing to add Chile to this list.

Rinderpest has never existed in Chile, and the last outbreak of foot-and-mouth disease was eradicated there in August 1987. Since that time, no outbreaks of foot-and-mouth disease have been discovered in Chile by animal health officials there. In addition, Chile has adequate controls to prevent the introduction and spread of rinderpest and foot-and-mouth disease.

We declare a country to be free of rinderpest and foot-and-mouth disease if there have been no cases of these diseases reported there for the previous 1-year period. Based on the information submitted to us by Chile's animal health authorities, we have concluded that Chile qualifies for listing in § 94.1(a)(2) of the regulations as a country declared to be free of rinderpest and foot-and-mouth disease.

Special Restrictions

We also propose to add Chile to the list in § 94.11(a) of countries free of rinderpest and foot-and-mouth disease that are subject to special restrictions on the importation of their meat and other animal products into the United States. The countries listed in § 94.11(a) are subject to these special restrictions because they (1) supplement their national meat supply by importing fresh, chilled, or frozen meat of ruminants or swine from countries in which rinderpest or foot-and-mouth disease exists; or (2) have a common land border with countries in which rinderpest or foot-and-mouth disease exists; or (3) import ruminants or swine from countries in which rinderpest or foot-and-mouth disease exists under conditions less restrictive than would be acceptable for importation into the United States.

Chile has a common land border with Peru, Bolivia, and Argentina, which are designated in § 94.1(a)(1) as countries in which rinderpest or foot-and-mouth disease exists. In addition, Chile imports live ruminants and swine from countries not recognized as free of foot-and-mouth disease under conditions less restrictive than would be acceptable for importation into the United States. Further, Chile supplements its national meat supply by the importation of fresh, chilled, and frozen meat of ruminants and swine from countries designated in § 94.1(a)(1) as countries in which rinderpest or foot-and-mouth disease exists. Thus, even though we propose to designate Chile as free of rinderpest and foot-and-mouth disease, the meat and other animal products produced in Chile may be commingled with the meat and other animal products from a country in which rinderpest or foot-and-mouth disease exists, resulting in an undue risk of introducing rinderpest or foot-and-mouth disease into the United States.

Therefore, we are proposing that meat and other animal products of ruminants and swine, and the ship stores, airplane meals, and baggage containing these meat or animal products imported into the United States from Chile be subject to the restrictions specified in § 94.11 of the regulations.

Restrictions on Swine, Pork or Pork Products

Because Chile is not recognized as being free of hog cholera and swine vesicular disease, swine and pork or pork products offered for importation into the United States from Chile would continue to be subject to the prohibitions and restrictions imposed in Part 94 because of those diseases.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We expect that the amount of cattle, sheep and other ruminants, except for llamas and alpacas, imported from Chile as a result of this proposed rule would be negligible. We also expect that the amount of fresh, chilled, or frozen meats of ruminants imported from Chile as a result of this proposed rule would be negligible.

During the previous periods when Chile was recognized as being free of foot-and-mouth disease, no cattle, sheep, or goats, or fresh, chilled, or frozen meats obtained from these animals were imported from Chile. Further, there is little or no demand in the United States for these animals or products from Chile. This proposed rule would therefore have little or no impact on the small entities in the United States that deal with these products.

There is a demand in the United States for llamas and alpacas. These animals have attained a great deal of popularity during the last several years. The main impact of this proposed rule would be to increase the number of llamas and alpacas imported from Chile. This would have an economic impact on those entities in the United States who import these animals for financial gain. Most of these entities are small ones.

Currently, llamas and alpacas to be entered into the United States from Chile must undergo an embarkation quarantine prior to entry into the United States, as well as a 90-day quarantine at the Harry S Truman Animal Import Center in Florida. No facility other than the Harry S Truman Animal Import Center can be used to import llamas and alpacas into the United States from Chile. Due to the quarantine costs and the logistical problems associated with importations through the Harry S Truman Animal Import Center, the number of llamas and alpacas imported has not been sufficient to satisfy the demand for these animals in the United States.

If we add Chile to the list of countries declared to be free of rinderpest and foot-and-mouth disease, then llamas and alpacas would be allowed to be quarantined at any one of USDA's other

animal import centers, making importations easier.

In addition, USDA veterinarians would no longer be required to supervise the isolation and testing of these animals prior to arrival of the animals in the United States. These functions would be performed, instead, by Chilean veterinary officials. This change would eliminate the cost of paying USDA for its supervision services prior to arrival of the animals in the United States, thus reducing importation costs for importers.

These factors would make it possible for importers to import and sell more llamas and alpacas then they have in the past.

Thousands of animal importers do business in the United States. We are aware of only 228 who have expressed an interest in importing llamas and alpacas from Chile. Approximately 10 of these are large operations; the remainder are small entities. These entities would benefit economically should our proposed rule go into effect, but these economic benefits would be diffused by several factors.

First, the quarantine space available at various import locations in the United States would allow only approximately 1,600 llamas and alpacas to be imported from Chile during the first year following the effective date of the rule.

Second, it is unlikely that this many llamas and alpacas would be imported from Chile into the United States, since a number of other countries are also interested in obtaining these animals. We therefore estimate that no more than 1,200 llamas and alpacas would be available for export from Chile to the United States in any one year.

Third, we expect that most of the llamas and alpacas imported during the first several years would be kept by importers for breeding purposes, and not sold for immediate financial gain.

Fourth, we expect that the scarcity and value of these animals in the United States would diminish steadily as more and more are imported from Chile and other countries.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this proposal contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, African swine fever, Exotic newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Rinderpest, Swine vesicular disease.

Accordingly, 9 CFR part 94 would be amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) would be amended by adding "Chile," immediately after "Channel Islands,".

§ 94.11 [Amended]

3. In § 94.11, paragraph (a) would be amended by adding "Chile," immediately after "Channel Islands,".

Done in Washington, DC, this 14th day of August 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-19345 Filed 8-16-89; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Inspection Service

9 CFR Parts 309, 310 and 318

[Docket No. 88-022N]

Rapid Analytical, Diagnostic, and Microbiological Test Approvals

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Advanced Notice of Policy and Proposed Rulemaking; Request for Comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is establishing a formal process and general criteria for reviewing and approving rapid analytical, diagnostic and microbiological tests. The purpose of these formal procedures is to expedite the Agency's test review and approval process without compromising scientific standards. The Agency is requesting specific comments on the review process and on the test information and criteria to be used for evaluting tests for approval.

DATE: Comments must be received on or before: November 15, 1989.

ADDRESS: Written comments should be submitted to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under Supplementary Information.).

FOR FURTHER INFORMATION CONTACT: Dr. David Berkowitz, Director, Technology Transfer and Assessment Staff, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 447-8623.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit written comments concerning this notice. Written comments should be sent to the Policy Office and should refer to the docket number that appears in the heading of this document. Any person desiring an opportunity for oral presentation of views as provided under the Poultry Products Inspection Act must make such request to Dr. David Berkowitz so that arrangements may be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this action will be made available for public inspection in the Policy Office between 9 a.m. and 4 p.m., Monday through Friday.

Background

On March 30, 1988, a task force was established by the Administrator, FSIS, to study how FSIS currently reviews and approves rapid analytical diagnostic, and microbiological tests, and to make recommendations to improve the process.

Currently, there is no established formal procedure for reviewing and approving tests in FSIS. Each test is reviewed on an individual basis by the appropriate Agency division. Under this procedure, there is a potential for

duplicating some efforts of other government agencies and for applying nonuniform criteria.

The task force recommended that the Agency establish a formal process to review testing systems submitted for approval. The task force also recommended that the Agency establish review and approval criteria for tests.

New developments, particularly in biotechnology, have made tests available that allow for diagnostic and residue testing in slaughter plants and on farms. As part of the Agency's effort to incorporate scientific tests, FSIS would like to continue to integrate these new technologies into the inspection process. The Agency wants to encourage the development of rapid tests suitable for regulatory screening, and to facilitate the test review and aproval process for such testing systems without compromising scientific standards.

The proposed test review and approval process is discussed below in terms of organizational structure, review process, and information required for review and approval. The final sections discuss proprietary information, approval by other agencies, markets for tests, expiration of approvals, redundant applications, and false statements. Comments are solicited on any or all of these points.

Organizational Structure

The Deputy Administrator for Technical Services would have the responsibility for the entire test review and approval process. All official decisions on tests would be communicated to the applicant by the Deputy Administrator. The review process would be coordinated by the Technology Transfer and Assessment Staff, a part of Technical Services. The director of Technology Transfer and Assessment would be the Coordinator for the test review process.

The organizational structure for the test review process would include a Coordinator, a Test Review Steering Committee, and Techical Reviewers. The Coordinator would oversee the operations of the review process and would serve as the executive secretariat to the Test Review Steering Committee. The Coordinator would be responsible for gathering, organizing, and assessing any information required for the review process, making recommendations to the Steering Committee, and to the Deputy Administrator, and assuring that all participants in the review of a test are informed and have access to the required information. The Coordinator would also be responsible for the exchange of information between FSIS and the applicant and between FSIS and other agencies when concurrent reviews are necessary.

The Test Review Steering Committee would consider the Agency priority of proposed tests, safety and policy questions related to the test results, and would be advisory to the Deputy Administrator who would chair the committee. The permanent members would include representatives from the Meat and Poultry Inspection Operations and Science programs and the Test Review Coordinator. Additional people with special expertise would be asked to participate as *ad hoc* members as required by the circumstances related to the test being considered.

A Technical Reviewer would be appointed by the Coordinator for each test reviewed. The Technical Reviewer would assemble a committee of subject matter experts, including a statistician, to review the technical performance of the test. The Technical Reviewer would make formal written recommendations to the Coordinator.

The Review Process

The FSIS review and approval process would have four major milestones. The first would be the Deputy Administrator's decision to review the test. The second would be the approval of the report on the laboratory performance of the test by the Coordinator. The third would be the acceptance of the collaborative study by the Coordinator, and the fourth would be the final consideration by the Steering Committee and the decision by the Deputy Administrator to approve the test. Applicants would be required to contact the Coordinator to prepare for each milestone. The laboratory performance phase of the test would have to be acceptable before the collaborative study is initiated.

When a test application is received, the Coordinator would refer the application to the Test Review Steering Committee for an evaluation of Agency interest. The Steering Committee would make a recommendation to the Deputy Administrator. If the test is not likely to be incorporated into Agency programs in the future, the Deputy Administrator would return the application to the sender. If there is Agency interest, the Deputy Administrator would inform the applicant, and the Coordinator would send the application to a Technical Reviewer. The Agency intends to complete this first phase of the process within 60 days of the receipt of the application.

A Technical Reviewer may be in FSIS, in another Agency, or in a non-government organization. The Technical Reviewer would review the submitted material with the committee of experts and, based on the criteria for test performance, make a recommendation to the Coordinator for or against test approval. The Coordinator would take into consideration the recommendation of the Technical Reviewer as well as other information assembled for the Steering Committee and recommend approval or non-approval of the test to the Committee. The Steering Committee would consider factors such as human safety, Agency policy, and the availability of money and personnel. After consulting with the Steering Committee, the Deputy Administrator would approve or reject the test, and inform the applicant of the decision.

Information Required for Review and Approval

The Agency is eager to apply new technologies to improve food safety in the inspection program. The rate at which FSIS can do this is limited by the availability of money and staff, forcing FSIS to ignore many excellent tests simply because they are not among the Agency's highest priorities. Resources will not be committed to the review of testing systems unless they are likely to be used as a basis for Agency regulatory decisions; e.g., the results of the test will be used to retain product or to grant special status to a group of animals. Tests unlikely to be incorporated into regulatory programs in the foreseeable future will not be reviewed. This decision reflects the legal restriction on the Agency that permits expenditures only for the conduct of the meat and poultry inspection program.

To approve a test, FSIS must have a high level of assurance that the test will measure what it is expected to measure and will perform as described. Agency approval of a test must mean that the test results can be used as a basis for Agency decisionmaking, when the quality control and quality assurance measures are part of the test and when the test is performed by trained analysts. This document describes the general kinds of information that would be required in an application for this assurance and the format for applications. The Technical Reviewer would provide more detailed criteria for each specific test. The Reviewer and Coordinator would consult on special problems, and to be certain that the criteria for any given test are in line with the criteria for similar tests.

The Agency would require a clear, well-organized, and thorough presentation of the information for review. Applications for test approval

would have to be prepared in the format of a scientific paper. (Those who have published or are planning to publish their work could submit the manuscript or a reprint. The additional information which would be required by FSIS, of the type not likely to be included in a paper for publication, could be attached as an appendix.) The scope of the information proposed to be required by FSIS is outlined below in the order in which it would usually appear in a scientific paper. This is followed by a list of the information FSIS would need that is not likely to be included in the usual scientific paper describing a test.

The application should begin with summary statements about the purpose of the test, the matrices, the intended species, the potential uses, and the significance of the test. The principle on which the assay is based, the unique features of the assay and characteristic parameters such as lowest limit of detection, limit of reliable measurement, a measure of the precision or, for "yes/no" tests, false positive and false negative rates should be given.

More detailed introductory statements should provide a framework for evaluating the test. The problem the test was designed to solve should be described. The applicant should explain the advantage of this test over other tests and technologies currently available.

The second section should describe the equipment, reagents, and the method with enough details so that a peer could repeat the work without recourse to the authors. The preparation or sources of reagents and equipment would have to be described. The properties of equipment or complex reagents, the criteria which make them acceptable, the workable operating temperature range, and the stability and shelf-life for reagents, standards, and media would also have to be described.

The third section would present laboratory data describing the characteristics of the test. Using the intended matrix, the data should include a representative plot of the test response versus the concentration of analyte, including standard deviations, across the range of interest. For nonquantitative screening tests, points slightly above and below the decision points are especially important and should have more replicates. For quantitative assays, concentrations near the tolerance or other decision points should also be stressed. Whenever possible, the test response versus concentration curve should be directly compared with the curve produced by an existing accepted method. The values given in the summary would have to be supported with data. The laboratory characterization would also include analyses of samples taken from the field. Field samples may reveal problems with an analytical method that can only be discovered by gathering information from the targeted test population. Where insufficient field samples are available, animals should be experimentally treated (administered drugs or chemicals or be experimentally infected with pathogens) to approximate the field situation.

The results of a designed ruggedness test would be presented as part of the test description. Special attention should be given to likely interferences such as dust or temperature conditions likely to be encountered in the environment of the intended use of the test.

Specificity is a major concern. The potential for detecting compounds other than the compound of interest should be tested. Special emphasis would be given to those compounds likely to be present, for example, closely related metabolites, antigens, or other substances. The specificity of serological tests is usually established by examining test performance on panels of known positive and negative sera. Criteria for the selection of panels of serum for establishing the false negative and false positive rates of serological tests should be presented. The composition of the test panel should be related to what is known about the composition of the targeted test population.

The applicants should assume that the submitted material would be reviewed by people who have no prior knowledge of the assay. The data should be clearly presented so the reviewers have the opportunity to reach the same conclusions as the applicant. The reviewers should not have to make assumptions about what was done or what the units of measurement are. All tables and graphs should have numbers, titles, and legends. Tables, graphs, and figures would have to be able to stand alone. The inclusion of copies of key references will facilitate the review process. The applicant would be asked to provide raw data for particular experiments if the Technical Reviewer considers it helpful.

The discussion should interpret the results, relate them to the intended purpose of the test, to previous methods, and to current literature on the same technology. Logical implications for the extension of the testing system to other applications or suggestions for improvements would be helpful.

FSIS would require additional information that may not be included in a scientific publication in sufficient detail. Some of these kinds of information are discussed below.

Approval would require a detailed presentation of the planned FSIS use of the test. This would be worked out with the Coordinator (who would consult with the Steering Committee) and be described with supporting reasoning for the agreed-upon plan. If FSIS personnel are to purchase and use the test, the plan would have to include estimates of the cost per test at various levels of usage as well as the initial and maintenance costs of equipment and reagents. The applicant would have to assure a 1-year supply of special reagents such as standard sera or antibodies. This supply would have to be estimated from projections of the proposed use of the test. The proposal should identify the employment categories of those who would carry out the test, the frequency at which testing must be done, and the action required by positive and negative tests.

Complete protocols written in a form understandable to the proposed test users would have to be part of the package. If the test is to be performed by non-FSIS personnel, plans for analyst training and certification would have to be described. The need for strict protocol adherence would have to be emphasized. In all cases, adequate directions for the conduct of the test must be provided. If the test is to be performed by farm personnel, inspectors, or others not previously familiar with analytical techniques, extensively illustrated directions may be helpful. This test information would be required in considerably more detail than would be required for laboratory personnel.

Any testing system would have to include quality control (QC) and quality assurance (QA) plans so the Agency can be confident that the system is performing as intended. QA/QC programs would be required for kit and reagent production as well as for the testing process itself.

The final data-collection step in the approval process would be a collaborative study. The Agency defines collaborative study as a procedure to verify test performance characteristics using a representative group of analysts and test locations. The results of the collaborative study would be used as a measure of accuracy and bias, precision (reproducibility and repeatability), and the completeness of the test. Completeness is the percentage of data actually collected relative to the total amount of data planned, i.e., a 100 percent complete test has no outliers or aborted runs. The laboratory characterization of the test would have to be reviewed before the collaborative study is initiated. When a collaborative study is to be conducted in establishments or elsewhere by FSIS personnel, the Coordinator would be responsible for making these arrangements with Meat and Poultry Inspection Operations, FSIS, and other affected staffs. The applicant would be responsible for planning, executing, and bearing the cost of the entire test development process, except in special cases requiring FSIS inspection personnel.

The Agency specifically seeks comments on the use of field-based collaborative studies and on the approval point in the test characterization sequence. We are aware that conducting a collaborative study in the field increases the variables and may shed an unfavorable light on a technology that could have been improved by laboratory adjustments. The Agency is also aware that approving a test after the collaborative study may prove premature if subsequent field studies uncover problems with the test. The 1-year expiration date for approvals is designed to eliminate tests found unsatisfactory during field testing.

Proprietary Information

All submissions considered by the applicant to be exempt from the provisions of the Freedom of Information Act (FOIA) (5 U.S.C. 552) would have to be accompanied by a statement describing specific adverse effects of disclosure of any portion of the submission. The applicant's statement should include the following two sentences: "It is our position that this submission contains confidential commercial information and should not be released to a third party. Additionally, Executive Order 12600 requires that you notify us should a determination be made to release this material over our objection here stated." Exemption would then be determined on a case by case basis by FSIS. If more than one section of the application is considered proprietary, the applicant must submit a document marked "FOIA" containing all the necessary information for the review, and a second document containing only releasable material.

Approval by the Animal and Plant Health Inspection Service (APHIS) or Other Agencies

If an applicant is seeking approval by FSIS and licensing by APHIS, with the permission of the applicant, the Agencies would share data and conduct the reviews concurrently. Exemption from FOIA would be sustained. The Coordinator would attempt to make similar arrangements with other agencies as the need arises so the exempt status is not changed.

Market for Commercial Tests

Neither the decision by the Deputy Administrator to review a test, nor the approval of a test by the Deputy Administrator, would infer or guarantee the implementation of the test or a regulatory situation that encourages a market for the test. Regulatory priorities and the commercial test market may change during the course of test development and approval, so the market for the test would not be guaranteed. Problems not detected by the review process may be discovered during implementation field tests, and if these problems are serious, the Agency would discontinue further consideration or the use of the test in spite of the decision to consider or the approval.

This notice would not restrict the prerogative of the Agency to respond in emergency situations. If an approved test is not available, or if a test has not been approved for a required use, the Agency would use the most suitable test available to fulfill its regulatory responsibility in the interest of public health.

After the approval of a test, the Agency would reserve the right to require the use of other tests which are more suitable or to purchase other tests available at a lower price if the performance is demonstrated to be equally able to fulfill Agency needs.

Expiration of Approvals

All approvals will automatically expire 1 year after the date of the original approval. Approvals will be reissued when data are presented to the Test Review system demonstrating the satisfactory use of the test in a regulatory program and a record of compliance with the requirements of the Agency's accredited laboratory program.

Redundant Applications

If the Agency receives more than one application for the same test, the first application approved would be reviewed as described above. Subsequent applicants would be asked to provide evidence that their test is at least equivalent to the first approved test. The details of equivalency would be agreed upon with the Technical Reviewer.

False Statements

Applicants would be subject to the provisions of 18 U.S.C. 1001, which provide penalties for knowingly and willingly providing false information to a government entity.

The preamble to any proposed regulations which are issued in this matter will include a discussion of the comments received in response to this Notice.

Done at Washington, DC on: August 10, 1989.

Lester M Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89-19234 Filed 8-16-89; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 89-2329]

Divestiture of Control of Certain Insured Institutions

Date: August 7, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is proposing to adopt a regulation that would require persons or companies that control an insured institution, and are subject to some form of capital maintenance obligation with respect to such institution, to provide the Board with notice prior to divesting control of the institution in order that the Board may ascertain, before the divestiture, whether the controlling person or company should infuse additional capital into the institution to satisfy the capital maintenance obligation. Under the proposed regulation, acquirors required to provide the Board with notice would be able to complete a proposed divestiture upon paying, or guaranteeing to pay, any amount due under a capital maintenance obligation.

DATE: Comments must be received on or before September 18, 1989.

ADDRESS: Send comments to the Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 801 17th Street NW., Washington, DC 20006. Comments will be available for inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Kevin A. Corcoran, Deputy Director for Corporate Transactions, (202) 906-6962;

V. Gerard Comizio, Director, (202) 906–6411; or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 906–6549, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: For a number of years, the Federal Home Loan Bank Board has conditioned approval of applications by companies to acquire control of insured institutions or savings and loan holding companies on the acquiror's maintaining the capital of the subsidiary institution at or above required levels and infusing capital into the institution if the institution's capital fell below the required level.[1] In addition, capital maintenance obligations are currently imposed on individuals seeking to acquire an insured institution and also have been imposed on controlling shareholders of *de novo* insured institutions.[2] In addition, in a recent policy statement, the Board indicated that capital maintenance responsibilities are one of two types of obligations that may be imposed on individuals acquiring control of insured institutions.[3]

Since the Board first started imposing capital maintenance obligations, it has implemented such requirements in a variety of ways. Recently, the Board has implemented the requirement by means of an agreement between the Board and the acquiror. Previously, the Board implemented the requirement by means of a stipulation signed by the acquiror. When the capital maintenance requirement was first conceived, the Board included as a condition of approval the requirement that the acquiror maintain the insured institution's capital at or above the required level. In all cases, the acquiror consummated the acquisition with full knowledge of the obligation imposed by the conditions of approval specified by the Board.

The exact terms of the capital maintenance responsibility also have changed over time. Until August 1988, acquirors generally were subject to an obligation that was not limited in amount and that remained in existence for as long as the acquiror controlled the insured institution. However, reflecting the Board's most recent policy statement on the subject of capital maintenance,[4] and the guidelines implemented by the Office of Regulatory Activities implementing the policy statement,[5] the capital maintenance agreements currently imposed by the Board are limited as to potential liability and have a duration of ten years.[6]

It has been the Board's experience that acquirors that are subject to a capital maintenance obligation may attempt various strategies to avoid such an obligation. Such attempts may occur, for example, where an acquiror sees the institution facing increased capital requirements and/or a deteriorating financial condition and seeks to avoid its obligations by divesting control of the institution. The problem is particularly acute where the divestiture is to a widely dispersed group of new owners, none of which would be deemed to control the divested institution and, accordingly, none of which would be subject to a new net worth maintenance obligation. Although divestiture does not absolve an acquiror from the responsibility of curing capital deficiencies that occurred while the acquiror controlled the institution (even where the acquiror divests to a new acquiror, who enters into a new capital maintenance obligation), divestiture has, on occasion, raised practical problems with regard to enforcing an agreement.

The Board has consistently believed that acquirors that control the practices of their insured subsidiaries and enjoy the benefits of such control, including FSLIC insurance of accounts, should support such institutions during periods of financial weakness or instability.[7] The obligation to maintain the institution's capital during such periods increases an acquiror's incentive to manage the institution prudently. In addition, such support promotes the continued viability of the institution, and helps maintain a safe and sound financial system and promote depositor confidence. Regardless of the form they have taken, capital maintenance obligations have been explicit, and their existence has been clearly evident to acquirors prior to the time that an acquisition was consummated. Thus, acquirors that are subject to capital maintenance obligation today assumed that position voluntarily, with full knowledge of the obligation they assumed to support the financial condition of the institution they controlled, when they acquired savings institutions and sought to enjoy the benefits of such ownership.

The Board, therefore, does not intend to tolerate efforts to avoid capital maintenance obligations, particularly because attempts to avoid such obligations, when they occur, usually occur when an institution is most in need of the support that the Board has sought to ensure by imposing the obligation.

Accordingly, pursuant to authority under 12 U.S.C. 1437(a), 1725(a), 1730(m)(3), and 1730a(h)(1), the Board proposes to adopt a regulation that would require any acquiror that is subject to a capital maintenance obligation to give prior written notice to the Board of the proposed divestiture of the insured institution to which the obligation relates.[8] In the Board's view, the proposed rule would (and is intended to) contribute to the safety and soundness of insured institutions, help to preserve the federal deposit insurance fund for insured savings institutions, and further the Board's goal of ensuring that acquirors of insured institutions serve as a source of strength to their subsidiary institutions.

Under the proposal, the party giving notice could proceed with the proposed divestiture when either (i) the acquiror provides the Board with an agreement to infuse into the institution the amount necessary to fulfill the acquiror's capital maintenance obligation (calculated on a "snapshot" basis) and makes satisfactory arrangements to assure payment of the amount owed, *e.g.*, by establishing an escrow administered by an acceptable escrow agent; or (ii) the extent of the obligation is ascertained and the obligation is satisfied prior to divestiture.[9]

The proposal provides that the Board would have 120 days during which to conduct either a full or limited purpose examination (as deemed appropriate by the Supervisory Agent) of the insured institution to detemine the extent of any capital deficiency.[10] If an examination is not completed within 120 days after the Board received notice of the divestiture, the accounting information set forth in the institution's most recent thrift financial report would be used in computing any deficiency. However, if the failure to complete an examination within 120 days is caused by lack of cooperation from the acquiror, the 120 days period would be extended.

The proposed regulation does not impose any additional liability under existing capital maintenance obligations.[11] Instead, the proposal recognizes that acquirors are obligated to maintain the capital of an institution above certain levels at all times and is designed to ensure that any appropriate amounts are infused into the institution, even where, for example, the accounting records of an institution at the time of a proposed divestiture, for whatever reason, do not reflect deterioration in the quality of an asset. In this regard, the notice of divestiture, as proposed, would require the acquiror to inform the Board of any adverse financial developments affecting the institution.

The Board is concerned, however, that a one-time payment to remedy any capital deficiency that is present at that time does not provide the same protection to the FSLIC as had the continuing obligation to infuse capital whenever a capital deficiency appears. This concern is especially present where an institution has deteriorating asset quality, which is not fully reflected by accounting records which are primarily based upon historical costs. Accordingly, although not part of the current proposal, the Board is considering, and specifically requests commenters to address, whether an additional payment mechanism to address the foregoing concerns should be added to the proposal. Such a mechanism could provide that the Board could determine that an institution's records do not accurately or adequately reflect the institution's financial condition as a result of factors such as poor asset quality, higher risk operations, poor underwriting practices or ongoing operational losses. In such a case, the Board could require that the acquiror establish an acceptable escrow arrangement for funds that would be used to cover the institution's anticipated capital deficiency for a specified period, *e.g.*, two years, after the date of the acquiror's divestiture of control of the institution.

In order to provide flexibility, the proposed regulation permits the Supervisory Agent to grant or deny exemptions from the regulation, after consulting with the Office of Regulatory Activities and the Office of General Counsel. The use of such exemptive authority may be appropriate where, for example, the acquiror proposes to sell the institution to a new acquiror, which would restore the institution's capital to the appropriate level in connection with the acquisition, where the Supervisory Agent, for supervisory reasons, desires prompt divestiture.

The proposed regulation does not impose any limitation on divestiture by an acquiror that is subject to a prenuptial agreement.[12] However, there would appear to be a reasonable basis for imposing a similar requirement in the context of prenuptial agreements, given that if an institution's capital is below the level that triggers the Board's rights under the agreement, the Board may desire to pursue such rights.

The Board requests comment on suitable approaches to use to make sure that acquirors that have entered into prenuptial agreements do not avoid the terms of such agreements. In particular, the Board requests comment on whether the Board should provide that the Board's rights under a prenuptial agreement would survive any transfer of the shares held by the acquiror.[13]

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rules.* These elements have been discussed elsewhere in the **SUPPLEMENTARY INFORMATION** regarding the proposal.

2. *Small entities to which the proposed rules would apply.* The rule would apply to all persons or companies that are subject to a capital maintenance obligation.

3. *Impact of the proposed rules on small institutions.* The rule will affect all persons and companies who are subject to capital maintenance obligations equally and will not have an adverse impact on small institutions.

4. *Overlapping or conflicting federal rules.* There are no known federal rules which duplicate, overlap, or conflict with the proposed rule.

5. *Alternatives to the proposed rule.* There are no alternatives that would be less burdensome and yet effectively accomplish the objectives of the proposed rule than the proposal in addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set forth above.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Currency, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby proposes to amend part 563, subchapter D, chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128,

---

[1] Generally, capital maintenance obligations have been computed with respect to an institution's regulatory capital requirement, although tangible capital has occasionally been used.

[2] *See* 12 CFR 571.6(d)(4) (1988).

[3] 53 FR 31761 (August 19, 1988) (the "Policy Statement").

[4] *Id.*

[5] *See Net Worth Maintenance and Prenuptial Agreements*, Office of Regulatory Activities, Thrift Bulletin TB–5, October 19, 1988.

[6] The policy statement as implemented by the guidelines provides that acquirors of insured institutions meeting their fully phased-out capital requirement (as defined in 12 CFR 563.13) upon completion of the acquisition would not be required to enter into such an agreement. In addition, in many cases, acquirors would have the option of entering into a "prenuptial agreement." A "prenuptial agreement" does not by its terms require the infusion of capital into an institution. However, in the event the insured institution's regulatory capital declines below a specified level, the prenuptial agreement grants an officer of the Board the right to vote the securities of the institution held by the acquiror respecting certain actions, to remove and replace the board of directors of the institution, or to dispose of any or all of the securities of the institution owned by the acquiror. The proposed regulation does not impose any limitation on divestiture by an acquiror that is subject to a prenuptial agreement.

[7] *See, e.g.* the Policy Statement, at 53 FR 31761 (August 19, 1988).

[8] When an acquiror is subject to a *pro rata* capital maintenance obligation (for example, when the acquiror has acquired a minority interest in the institution and the Board has permitted the acquiror's obligation to be *pro rata*), the level at which the acquiror would be required to maintain the capital would be the level the capital of the institution would reach if the acquiror contributed the *pro rata* contribution.

[9] This obligation would be separate from any application to be released from registration as a savings and loan holding company under 12 U.S.C. 1730a(b)(6) and 12 CFR 584.1(d).

[10] Of course, if the Board determines at a later time that fraud or misrepresentations occurred during the course of the examination, the Board may seek appropriate enforcement remedies.

[11] In addition to providing that termination of the agreement shall not preclude the exercise by the Board of any right or remedy arising from a default under the agreement that occurred or existed prior to termination of the agreement, the current form of regulatory capital maintenance agreement provides that termination of the agreement shall not preclude the Board from exercising any right or remedy under the agreement arising from a regulatory capital deficiency occurring within one year following termination of the agreement. The proposed regulation includes a provision that clarifies that the term of the regulation do not automatically supersede any provisions of existing regulatory capital maintenance agreements; however, termination of such agreements could be negotiated on a case by case basis in conjunction with a divestiture accomplished in accordance with the proposed rule.

[12] Prenuptial agreements are described in footnote 6, *supra*.

[13] Similarly, the Board requests comment on whether the objectives of the proposed regulation concerning capital maintenance agreements could be met by providing that an institution's stock divested by an acquiror subject to a capital maintenance agreement would carry with it a *pro rata* obligation to maintain the capital of the institution.

BEST COPY AVAILABLE

as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–1948 Comp., p. 1071.

2. Amend part 563 by adding new § 563.14–2 to read as follows:

§ 563.14–2 Obligations to maintain capital.

(a) *Definitions.* As used in this section, the following definitions apply, unless the context otherwise requires:

(1) *Acquiror* means a person or company that has acquired control of an insured institution.

(2) *Control* means control as determined under § 574.4 (a) or (b).

(3) *Capital* means the measure of capital used in the applicable capital maintenance obligation.

(4) *Capital maintenance obligation* means an obligation to maintain the capital of an insured institution imposed by means of a resolution issued or condition imposed by the FSLIC, the Board, or the delegate of either, a stipulation to the FSLIC, the Board, or the delegate of either, or an agreement between the acquiror and the FSLIC, the Board, or the delegate of either.

(5) *Deficiency* means: (i) The amount by which the level at which the acquiror is required to maintain the institution's capital pursuant to a capital maintenance obligation exceeds the insured institution's capital, as determined pursuant to a full or limited purpose examination (as deemed appropriate by the Supervisory Agent) performed within 120 days of the date the notice required under paragraph (b) of this section is received by the Supervisory Agent; or

(ii) If an examination is not completed within 120 days of the notice required under paragraph (b) of this section, the amount by which the level at which the acquiror is required to maintain the institution's capital pursuant to a capital maintenance obligation exceeds the insured institution's capital, as set forth in the insured institution's most recent thrift financial report, filed prior to the divestiture, provided, however, that if the failure to complete an examination within 120 days is caused by any failure to cooperate by the acquiror, the deficiency shall be based on the results of a completed examination. Notwithstanding any other provision of this section, if the Board determines that fraud or misrepresentation occurred during the course of an examination conducted to determine the institution's capital, the Board may revoke its prior approval of the divestiture of the institution and seek appropriate enforcement remedies.

(6) *Divestiture* or *divest* means any action or conduct that would result in the acquiror no longer being in control of the insured institution.

(7) *Insured institution* means an insured institution as defined under § 574.2(h).

(8) *Savings and loan holding company* means a savings and loan holding company as defined in § 574.2(k).

(b) *Notice.* Prior to divestiture of an insured institution, an acquiror that is subject to a capital maintenance obligation shall provide written notice of such divestiture to the Principal Supervisory Agent. Such notice shall include the following:

(1) The name of the acquiror and the names of all of the acquiror's insured institution subsidiaries.

(2) A description of the transaction pursuant to which the divestiture will be accomplished.

(3) For each insured institution subsidiary, other than an insured institution that is a savings and loan holding company, the insured institution's current level of capital and current capital requirement, and the *pro forma* level of capital and the capital requirement upon divestiture if different from the insured institution's current capital and capital requirement.

(4) A description of any recent adverse financial developments affecting the insured institution and a description of any circumstances that may indicate that the institution's assets are overstated.

(c) *Divestiture.* An acquiror that is subject to a capital maintenance obligation may not divest the insured institution to which the obligation relates unless:

(1) The acquiror provides the Board with an agreement to infuse into the insured institution the amount necessary to remedy a deficiency under the acquiror's capital maintenance obligation and makes arrangements, satisfactory to the Executive Director of the Office of Regulatory Activities, with the concurrence of the General Counsel, or their respective designees, to assure payment of the deficiency, if any; or

(2) The deficiency, if any, is satisfied by the acquiror, prior to divestiture.

(d) *Effect of regulation on terms of capital maintenance obligations.* This regulation does not supercede any liability imposed by a capital maintenance obligation.

(e) *Exceptions.* The Supervisory Agent may, upon application or upon his or her own initiative, grant or deny exemptions from this section, after consulting with the Office of Regulatory Activities and the Office of General Counsel.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–19177 Filed 8–16–89; 8:45 am]

BILLING CODE 6720–01–M

---

12 CFR Parts 563 and 563b

[No. 89–2342]

Capital Distributions by Insured Institutions

Date: August 7, 1989.

AGENCY: The Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is proposing a rule to apply a uniform regulatory approach to capital distributions such as dividends, stock repurchases and cash-out mergers by institutions regulated by the Board, including those whose accounts are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation") ("insured institution(s)" or "institution(s)"). This proposed regulation utilizes a tiered approach keyed to an insured institution's capital level after giving effect to such transactions. This approach gives institutions meeting their fully phased-in capital requirements greater flexibility to engage in such capital distributing activities than institutions not meeting their fully phased-in capital requirements.

DATES: Comments must be received on or before October 16, 1989.

ADDRESSES: Send comments to: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at the Board's Information Services Office, 801 17th Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: John F. Connolly, Associate Deputy Director for Mortgage Capital Markets, (202) 906–6465, Valerie Lithotomos, Attorney, (202) 906–6439, Corporate and Securities Division; Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 906–6549, Office of General Counsel; Donald Bisenius, Director, Financial Analysis Division, (202) 906–6759, Office of Policy and Economic Research; Donald Cooper, Compliance Specialist, (202) 906–7171, Office of Enforcement; Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552; Michael P. Scott, Policy Analyst, (202) 331–4590, Edward J. Taubert, Deputy Director, Policy Analysis, (202) 331–4588; Robyn Dennis, Financial Analyst (202) 331–4572; Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: This proposed regulation would treat in a uniform manner capital distributions by insured institutions, including dividends, stock repurchases and cash-out mergers. The general approach being proposed is a tiered safe-harbor system keyed to the continued sound capitalization of an insured institution after giving effect to such transactions. This approach prohibits such transactions by institutions with net capital below their fully phased-in capital requirement unless the Board has given prior authorization, while giving institutions that meet their fully phased-in capital requirement and have received ratings of 1 or 2 under the MACRO supervisory ratings system ("MACRO system") significant flexibility to effect such transactions out of capital in excess of their fully phased-in capital requirement.

I. Reasons for Amending the Board's Current Regulation

Capital distributions in the form of dividends, stock repurchases, and cash-out mergers [1] (collectively "capital distributions" or "capital-distributing transactions") all reduce insured institutions' tangible capital and distribute a portion of that capital to third parties that generally are not part of the FSLIC deposit insurance system. These three types of transactions of constitute capital-distributing transactions because they represent different ways in which investors can recover their initial investments and a return on such investments; in the case of dividends and stock repurchases, the distribution is made to the institution's own shareholders; in a cash-out merger, the cash payment made by an acquiring institution is to the stockholders of the institution it is acquiring. Currently, however, these transactions are not treated uniformly, despite their similar economic consequences for insured institutions and the FSLIC.

[1] A cash-out merger is a transaction in which an acquiring institution pays cash to the shareholders of a target insured institution to acquire ownership of and to merge with the target insured institution. The terms "cash-out merger," as used in this regulation, includes any payment to the shareholders of a target institution by an acquiring insured institution, other than a distribution of shares of the acquiring insured institution, to purchase ownership of a target institution from its shareholders.

The Board believes that uniform treatment of these transactions by regulation would provide a consistent Board policy regarding insured institutions' capital needs and the necessity of preserving and enhancing the tangible capital levels of all institutions. Adequate capital is essential to the safe and sound operation of insured institutions because it provides a buffer to absorb losses resulting from insured institutions' operational and financial policies. Furthermore, in order to protect their equity interests and the market for their shares, investors may impose a prudential discipline on institutions' management and on their policies and strategies. A uniform approach would better address the Board's concerns regarding institutions' distribution of their capital, which serves to reduce the institutions' capital cushions and, when such a reduction occurs, to increase FSLIC's loss exposure.

In formulating a rule, however, the Board believes it is imperative to encourage capital formation and to attract new investors in FSLIC-insured institutions. To facilitate the raising of capital by insured institutions in the capital markets, the Board seeks to assure investors that insured institutions in which they have equity stakes will be subject to consistent, reasonable capital requirements. Furthermore, when those requirements are met, those investors will have the ability to redeploy surplus capital in ways that meet their own investment objectives.

To protect depositors and the insurance fund while encouraging such capital formation, the Board is proposing to adopt a safe-harbor approach, allowing capital distributions by insured institutions within parameters set by the Board. This safe-harbor approach would predicate institutions' capital distributions to shareholders on the institutions' capital levels and supervisory ratings under the MACRO system. This would enable the owners of institutions meeting their fully phased-in capital requirements and not presenting significant supervisory problems to redeploy capital in excess of their fully phased-in levels ("surplus capital") to meet their own business needs and investment objectives. For example, a holding company owning an insured institution with surplus capital may wish to shift capital to other subsidiaries in light of their current business needs and subsequently to reinvest such capital in the insured institution if the institution's capital needs increase. In the interest of the safety and soundness of the depository system, however, the safe-harbor seeks to ensure that insured institutions making such capital distributions remain soundly capitalized, thereby providing a strong capital buffer protecting depositors and the insurance fund from loss.

II. Current Treatment of Capital Distributions; Dividends, Stock Repurchases and Cash-Out Mergers

Dividend payments, stock repurchases, and cash-out mergers are currently treated in dissimilar ways despite their similar economic consequences for an institution's capitalization. The treatment of dividend payments is based on the type of transaction and on factors such as how long ago the institution converted from mutual to stock form and whether the institution is affiliated with a holding company. Stock repurchases are currently only controlled as a general matter by regulation if the institution has converted from mutual to stock form, with substantially greater restrictions applying if the conversion has been within the last three years. Currently, *de novo* stock institutions are not subject to regulatory limitation on their dividend payments or stock repurchases. Finally, cash-out mergers have been dealt with on an application-by-application basis in accordance with evolving perspectives of the Board. The following is a discussion of the current treatment of each type of transaction.

A. Dividends

The ability of an insured institution to pay dividends may be, but is not always subject to restriction, with restrictions varying markedly, depending on whether the institution is a converted institution or is owned by a holding company.

A converted institution is prohibited from paying cash dividends if, on a *pro forma* basis, the insured institution's regulatory capital would be reduced below its regulatory capital requirement or the amount required for the institution's liquidation account. *See* 12 CFR 563b.3(g)(2). Converted institutions also are prohibited for the first three years after conversion from paying cash dividends in excess of one-half of the greater of: (1) the converted institution's net income for the current fiscal year, or (2) the average of the institution's net income for the current fiscal year and not more than two preceding fiscal years. *See* 12 CFR 563b.3(g)(3).

As a condition to the approval of holding company applications, the Board until recently had routinely imposed a condition that a subsidiary

insured institution of a holding company may not declare or pay dividends in any fiscal year exceeding 50 percent of the subsidiary insured institution's net income for that fiscal year, although permitted dividends could be deferred and paid in a subsequent fiscal year. In no event, however, could dividends be paid that would cause the insured institution's capital to fall below its regulatory capital requirement under 12 CFR 563.13(b) or successor regulations.

The Board's basic approach to limitations on payments of dividends has been modified recently in connection with the recent Board policy statement on "Regulatory Capital Maintenance Obligations of Acquirers of Insured Institutions", adopted on August 12, 1988, 53 FR 31761 (Aug. 19, 1988), and the supplemental guidelines, "Net Worth Maintenance and Prenuptial Agreements," issued by the Office of Regulatory Activities on October 19, 1988. The current form of dividend restriction agreement required from acquirers of insured institutions in general employs a tiered capital approach for dividends that is similar to, but less conservative than, the approach proposed herein.

In sum, the present dividend agreement employed to implement the guidelines uses a three tier approach keyed to an institution's "net capital".[2] An institution with net capital equal to or in excess of its fully phased-in capital requirement pursuant to 12 CFR 563.13, as modified by 12 CFR 563.14 and 563.14–1, may pay dividends in any quarter up to the amount of its cumulative net income for the preceding eight quarters as reflected on the institution's quarterly reports to the Board, less cumulative dividends paid in such prior eight quarters, without prior approval of the institution's Supervisory Agent. These institutions are only allowed to pay out 100% of their cumulative net income over the prior eight quarters if the dividend payments would not cause the institution to fall below its fully phased-in capital requirement.

If an institution's net capital exceeds its regulatory capital requirement, but is less than its fully phased-in capital requirement, the institution may not pay dividends exceeding 50 percent of its cumulative net income for the prior eight quarters as reflected on its quarterly reports to the Board, less cumulative dividends paid for such prior eight quarters, without prior approval of its Supervisory Agent. These institutions cannot make dividend payments without approval if the payout would result in the institution falling below its minimum regulatory capital requirements.

An institution may not pay a dividend without approval of its Supervisory Agent if its net capital is below its regulatory capital requirement or would fall below its regulatory capital requirement after paying the dividend. This proposed regulation would apply a similar, but more conservative, approach to all institutions' capital distributions.

The Board has also modified both the old and the new dividend restrictions on a case-by-case basis, however, in approving some applications involving well-capitalized insured institutions. For example, one institution was authorized to pay out dividends up to 100 percent of its net income each year provided that its capital as computed under generally accepted accounting principles remained at or above 10 percent of its total liabilities.

Finally, the Board previously has proposed to adopt a regulation prohibiting any insured institution from paying dividends or making stock repurchases if, after giving effect to the transaction, the insured institution's regulatory capital would be less than the institution's regulatory capital requirement under section 563.13. *See* Board Res. No. 85–10, 50 FR 52462 (December 24, 1985) ("Corporate Governance II").

B. Stock Repurchases

Currently, the only general restrictions on stock repurchases by insured institutions are the restrictions applicable to stock repurchases by converted institutions, which are the same restrictions applicable to dividend payments by such converted institutions. This includes the 50 percent of net income test if the institution converted within the last three years. *See* 12 CFR 563b.3(g)(2) and (g)(3). Furthermore, the Board in Corporate Governance II also proposed that stock repurchases by all insured institutions be treated in the same manner as dividend payments. Accordingly, such repurchases would be permitted only if the insured institution on a *pro forma* basis would continue to meet its regulatory capital requirement under 12 CFR 563.13. Logically, this capital floor for dividends and stock repurchases would be the capital requirement § 563.13, as modified by 12 CFR 563.14 and 563.14–1.

In addition, no converted institution may repurchase any of its stock from any person for three years after conversion with the exception of: (i) A repurchase on a *pro rata* basis pursuant to an offer approved by the Board and made to all shareholders of such institution, (ii) the repurchase of qualifying shares of a director, or (iii) the purchase on the open market by the institution's tax-qualified or non-tax-qualified employee stock benefit plan in an amount reasonable and appropriate to fund the plan. *See* 12 CFR 563.b(g)(1). Additionally, § 563b.3(g)(4), adopted by the Board on January 20, 1988, preapproves open market repurchase programs provided that the following conditions are met: (i) No more than 5 percent of the insured institution's or holding company's outstanding capital stock is to be repurchased during any six-month period, (ii) the insured institution's ratio of regulatory capital to total liabilities would not be reduced below 6 percent of total liabilities, and (iii) the repurchases would not adversely affect the financial condition of the insured institution. Board. Res. No. 88–31, Jan. 20, 1988, 53 FR 2477 (Jan. 28, 1988).

C. Cash-Out Mergers

Cash-out mergers can have similar effects to dividends and stock repurchases, although the analysis is more subtle. From the perspective of the acquiring thrift, a cash-out merger is just a purchase of an asset—albeit, a comparatively large purchase and one that carries both assets and liabilities and hence increases the leverage of the resulting entity. From the perspective of the depository insurance system, however, the transaction represents a cash payment by the acquiror to the shareholders of the acquired institution without a corresponding decrease in the institution's liabilities. Consequently, the new combined institution has less capital to support the same level of assets, thereby decreasing its capital-to-assets ratio. The greater leverage of the resulting entity is a reflection of the system-wide reduction in net worth. To demonstrate the similarity between a cash-out merger and a stock repurchase, the following example is illustrative. Assume that a merger was effected through payment to the acquired thrift's stockholders of shares of new "class B" stock issued by the acquiring thrift. Subsequently, the resulting entity repurchases all of the class B stock. The net effect would be the same as if the merger had originally been a cash-out merger.

In considering the proposed approach to cash-out mergers, it is worthwhile noting that the Federal Reserve Board has adopted a policy against diminution in capital strength to support expansion proposals.[3] Under this policy, the FRB will only approve an expansion proposal if, before consummation of the acquisition, the acquiring bank raises new equity capital replacing most of its cash outlay for the acquisition and commits to raise additional new capital within a short time period to replace the remainder of its cash outlay.

[2] Net capital is an institution's capital as defined under generally accepted accounting principles ("GAAP capital") plus qualifying subordinated debt and redeemable preferred stock.

[3] *See* Citicorp, 72 Federal Reserve Bulletin 497 (1986). *See Id.* Security Pacific Corporation, 72 Federal Reserve Bulletin 800 (1986); New York Company, Inc., 74 Federal Reserve Bulletin 257, 264–265 (1988).

III. Recent Dividend Experience of Insured Institutions

The Board's Office of Policy and Economic Research has conducted a preliminary review of the dividend payment history of insured institutions from 1984 through 1988 (annualized based on the first three quarters). Other variable factors considered were the institution's capital levels and holding company affiliations.

The Board stresses, however, that this preliminary review of insured institutions' dividend records is not meant to provide economic or supervisory evidence to the need for a proposal with the exact criteria of this proposed regulation. Furthermore, this study does not attempt to draw a direct correlation between dividends paid and the FSLIC's loss experience. Rather, the Board is making a safety and soundness oriented determination that institutions failing their minimum capital requirement should be subject to restrictions on their capital payouts, which delay attainment of sound capitalization. The Board further believes it is necessary to impose a reasonable limitation on capital distributions by institutions with capital exceeding their fully phased-in requirements because accounting information is imperfect and net worth levels can be subject to rapid swings.

The following brief analysis of institutions' recent dividend payments was undertaken by staff and is set forth here to provide a summary understanding of the perceived need for and level of dividends paid by managers of institutions in exercising their discretion under current regulations.

The preliminary review and analysis of average dividends paid by institutions in stock form led to the following observations, including identification that there are a number of undercapitalized institutions paying substantial dividends despite the institutions' risk to the insurance fund.

First, many stock institutions did not pay any dividends over the period. Second, dividend payments by thrifts paying dividends at least once during the period averaged 2.36 percent of capital and 23.8 percent of after-tax income. Third, thrifts with negative capital paid few dividends in the four year period, and none after 1986. Finally, insitutions affiliated with holding companies consistently had higher dividend averages than non-holding company affiliated insitutions. When only those thrifts paying dividends during the period were considered, however, the differences fell significantly.

The staff also reviewed the dividend payment record of insured institutions during this period on a median basis. Since the distributions of thrift dividend/income and dividend/capital ratios are highly skewed, the average (mean) dividend rate differs substantially from the median rate. Some institutions as reflected by the average data discussed above, paid greater dividends than income received, or paid a significant fraction of capital out in dividends. On the other hand, many stock institutions have never paid any dividends. If the thrifts that never paid dividends are omitted, the median ratio of annual dividend payments to annual income was 5.1 percent of income. The median ratio of annual dividend payments, by such institutions to their GAAP capital was 0.33 percent of their GAAP capital. Another observation is that the median dividend ratios of thrifts affiliated with holding companies were generally higher than those of non-holding company affiliated thrifts.

Finally, the analysis reflected that some institutions with negative capital may have paid high dividends in earlier quarters in anticipation of insolvency. Of 319 thrifts that became insolvent from 1984 through September 1988, 16 (about 5 percent) of them paid dividends greater than 5 percent of book capital in the quarters prior to insolvency, or paid dividends after capital fell below zero. Of this group, six were affiliated with holding companies. Obviously, such dividends allow investors to recoup their investment while increasing the financial loss that the insurance fund must absorb.

For example, of the 1049 stock-issuing thrifts that operated in all four quarters of 1988, 692 had GAAP capital below 6 percent of assets. Of these institutions, 191 paid some dividends and 54 paid dividends in excess of 50 percent of their after-tax income.

In 1988, there were 1167 stock issuing thrifts operating during all four quarters. Of these institutions 720 had a GAAP capital-to-assets ratio below 6 percent Of the thrifts in this group, 209 paid dividends, and 984 paid dividends in excess of 50 percent of 1988 after-tax income.

The Board views the dividend payment record of well-capitalized insured institutions as generally reflecting reasonable management action consistent with the Board's policy views and well within the parameters established by this proposed regulation. The record, however, also reflects that institutions needing to reach their fully phased-in capital level are paying dividends, thereby delaying attainment of that goal. Accordingly, the Board is proposing this regulation to help protect the insurance fund from losses caused by the diminution of capital by those insured institutions that have not reached their fully phased-in capital levels, particularly those undercapitalized thrifts that are paying dividends inconsistent with their capital, net income and risk to the deposit insurance fund.

At the same time, however, the Board wishes to leave ample management discretion with respect to capital distributions for institutions meeting or exceeding their fully phased-in capital requirements and not posing significant supervisory problems. The Board believes that this safe-harbor approach is logical in light of the reasonable dividend payment records of most insured institutions and the fact that the approach advances the Board's policy of increasing the capital levels of insured institutions. *See* Bard Res. No. 88–1342 (December 15, 1988), 53 FR 51800 (December 23, 1988).

IV. Proposal

The Board seeks to exercise the greatest supervisory control over those institutions that are below their regulatory capital requirements because of the potential effect of actions taken by such institutions on their safe and sound operation and the increased risk of loss that such institutions pose to the FSLIC. The Board is also concerned about the ability of insured institutions that are between their minimum and fully phased-in capital requirements to meet expeditiously their fully phased-in capital requirements. Capital distributions by institutions not meeting their fully phased-in capital requirements retard the attainment of this goal.

The Board, on the other hand, seeks to give greater management discretion to

institutions meeting or exceeding their fully phased-in capital requirements and not posing significant supervisory problems. Thus, the Board is proposing a tiered approach to capital distributions,[4] based on the soundness of an institution's capitalization and the safety of its operation.

This proposed regulation establishes three tiers of insured institutions. Tier 2 and tier 3 institutions, however, will be treated similarly, but not identically, in their ability to make capital distributions. The three tiers are: (1) Tier 1, an insured institution that has net capital exceeding this fully phased-in capital requirement under 12 CFR 563.13, 563.14 and 563.14–1 as reported on its quarterly reports to the Board and that is rated in one of the top two categories of the MACRO system; (2) tier 2, an insured institution with either (a) net capital above its regulatory capital requirements under §§ 563.13, 563.14 and 563.14–1, but below its fully phased-in capital requirements, or (b) net capital that would qualify it for tier 1, but that is not rated in one of the top two categories of the MACRO system and (3) tier 3, an insured institution with net capital below the amount of its regulatory capital requirement.

An institution is considered to be in a lower tier, such as tier 2 instead of tier 1, if its capital would fall into the lower tier either immediately prior to, or on a *pro forma* basis after giving effect to, a proposed capital distribution. The percentage by which a tier 1 institution's net capital-to-assets ratio exceeds the ratio of its fully phased-in capital requirement to its assets is referred to as its "surplus capital ratio".

A. Tier 1 Institutions

A tier 1 institution would have the greatest discretion to make capital distributions. A tier 1 institution would be permitted (without application) to make aggregate capital distributions during a calendar year up to the amount that would reduce its surplus capital ratio below one-half of its surplus capital ratio at the beginning of the calendar year, as adjusted to reflect its net income to date during the calendar year. If the institution wishes to make capital distributions in an amount above the "safe-harbor" standard, it must receive approval in advance from the Board.

The Board has specifically determined that earnings over a calendar year should logically be regarded as "instantaneous capital". As such, a tier 1 institution's capital distributions during a calendar year are limited to the amount that would reduce by one-half its surplus capital ratio at the beginning of a calendar year as adjusted to reflect its net income for the calendar year to date. This amount is calculated by computing 50 percent of a ratio with a numerator equal to the sum of the institution's surplus capital at the beginning of the calendar year plus its net income to date for the year and a denominator equal to the institution's total assets on the date of the proposed capital distribution. This regulation does not prohibit a tier 1 institution's net capital from falling below this level but does prohibit capital distributions by a tier 1 institution if its net capital is below this level immediately prior to the capital distribution or to the extent that it would fall below that level on a *pro forma* basis after a proposed capital distribution.

For example, if at the beginning of a calendar year, a $100 million asset institution has net capital of $10 million (10 percent of assets) and a fully phased-in capital requirement of $6 million (6 percent of assets), it would have surplus capital of $4 million and a surplus capital ratio of 4 percent of assets. Assume its fully phased-in capital requirement remained constant. Also assume that the institution had earnings of $1 million during the calendar year, thereby increasing its net capital to $11 million (11 percent of assets). This institution's surplus capital ratio at the end of the calendar year would not be permitted to be below 8.5 percent of assets, a reduction of 50 percent of its initial surplus capital ratio of 4 percent (2 percent or $2 million) plus 50 percent of its additional 1 percent ($1 million) from earnings ($500,000). Therefore, this institution could make capital distributions up to $2.5 million during the calendar year without application.

With regard to such tier 1 institutions, the Board's goal is to guard against rapid decreases in their capital levels, while enabling owners of tier 1 institutions to redeploy the institutions' surplus capital as long as the institutions remain soundly capitalized. Because accounting information is imperfect and net worth levels can be subject to rapid swings, the Board believes that the proposed limit of one-half of tier 1 institutions' surplus capital ratios is a conservative and prudent means to protect the safety and soundness of insured institutions. Subjecting current year earnings to the same 50 percent standard applicable to surplus capital reinforces the safeguards of the proposed payout limit during a calendar year of one-half of a tier 1 institution's surplus capital without application, although the Board recognizes that such a rule imposes higher *de facto* minimum capital standards on institutions with higher earnings unless approval is received to drop below this regulatory floor.

B. Tier 2 Institutions

Institutions that qualify as tier 2 institutions on either a current or *pro forma* basis would generally not be authorized to make capital distributions except upon application. The proposed regulation adopts a formal application procedure for relief from the regulatory requirements for tier 2 institutions. It will allow supervisory personnel to approve the making of capital distributions by tier 2 institutions, when appropriate, according to Board delegations of authority and guidelines promulgated by the Office of Regulatory Activities on behalf of the Board. In these guidelines, supervisory personnel will be directed to look favorably upon applications for approval to pay dividends by tier 2 institutions that are making new issuances of stock to raise their capital levels and that are making significant and rapid progress toward meeting their fully phased-in capital requirements. The guidelines would also direct supervisory staff on the appropriated supervisory action to take for violations of this regulation.

In proposing this general limitation on capital distributions by tier 2 institutions, the Board seeks to encourage these insured institutions to build their capital levels through the retention of earnings as well as through securities issuances in the capital markets, while simultaneously adopting an applications process to provide relief in appropriate circumstances. The Board also is providing an incentive through the tiered system in this and other regulations for such insured institutions to attain compliance with their fully phased-in capital requirements prior to the required compliance dates under the Board's regulations.

All insured institutions must file either an application or a notice with their Principal Supervisory Agents ("PSAs") prior to making capital distributions. First, all insured institution subsidiaries of savings and loan holding companies must comply with the statutorily required notice provisions of § 584.5 prior to paying dividends. Second, all tier 1 institutions must provide written notice to their PSAs ten days prior to the making of capital distributions. This notice requirement is satisfied by compliance with § 584.5. Finally, the notice of requirements under § 584.5 may be satisfied by the filing of applications required for capital distributions by tier 1 or tier 2 institutions, if filed 30 calendar days before making the proposed capital distribution.

C. Tier 3 Institutions

An institution that qualifies as a tier 3 institution either immediately prior to or after making a capital distribution is not authorized to make capital distributions. Exceptions to this policy will not be granted within the confines of the proposed regulation.

The Board firmly believes that it is imperative to prohibit the distribution of capital to shareholders by tier 3 institutions that do not satisfy even their minimum regulatory capital requirements. Protection of the safety and soundness of such institutions, their depositors, and the FSLIC demands that tier 3 institutions preserve any existing capital and dedicate any earnings to building their capital.

The requirements of the proposal, when finalized, will be generally applicable to all insured institutions, including those with current outstanding dividend limitation agreements. These new regulatory requirements will also supplant any forbearances previously granted with regard to dividend payments or other capital distributions. Insured institutions initially will be subject to the more restrictive set of restraints under either their existing dividend agreement or the requirements of the regulation. Institutions under a stricter agreement than the new regulatory requirements, however, may apply to their PSAs to substitute the proposed regulatory standards. These requests will generally be favorably considered barring special supervisory circumstances. The Board expressly seeks comment on this aspect of the proposal.

This proposal's thresholds for capital distributions are keyed to whether insured institutions have net capital equal to their minimum regulatory capital requirements or fully phased-in capital requirements under 12 CFR 563.13, 563.14, and 563.14–1. The proposal is intended to adapt to any future changes to these regulatory requirements, including but not limited to the adoption of risk-based capital regulations currently being considered by the Board and other federal banking agencies and any capital requirements imposed by the Financial Institutions Reform, Recovery and Enforcement Act of 1989. *See* S 413, 101st Cong., 1st Session, 135 Cong. Rec. 5113; S 577, 101st Cong., 1st Session, 135 Cong. Rec. S4304; HR 1278, 101st Cong., 1st Session, 135 Cong. Rec. H2602 (1989). ("FIRREA").

Accordingly, references in this proposal to the terms regulatory capital, regulatory capital requirement and fully phased-in capital requirement relate to the current regulations (§§ 561.13, 563.13 and 563.14) and to any successor to these regulations. These terms refer to current or prospective regulations and relate to the Board's policies on the minimum permissible amount of capital during a transition period ("minimum capital requirement") and attainment by an institution of full capitalization at the end of a transition period ("fully phased-in capital requirement").

The Board also believes that this tiered approach should be used as a guide for various types of corporate restructurings and reorganizations. One such use would be in establishing the amount of proceeds from a mutual to stock conversion by an insured institution that its holding company would be permitted to retain. The amount would depend upon the capital tier into which the institution falls on a *pro forma* basis. Because such a transaction is the economic equivalent of the institution receiving all of the proceeds and then paying a dividend to the holding company, the amount of proceeds retained by the holding company would be aggregated with the insured institution's other capital distributions subject to the ceiling for the institution's capital tier.

Another transaction that would be appropriate to treat as a capital distribution is the capitalization of a holding company in a reorganization. Under the standards of this proposal, the amount of capital infused into the newly formed holding company by the insured institution would be aggregated with other capital distributions for the period and would be limited by application of the tiered ceilings.

V. Solicitation of Comment on Specific Issues

The Board, in addition to seeking comment on the entire proposal, expressly seeks comment on specific alternative provisions of the regulation that the Board may adopt in the final regulation.

First, although the Board has determined not to explicitly address growth issues in this proposed regulation, there is a strong argument for doing so. Both growth and capital distributions can involve "capital dissipation" and, as such, effectively reduce an insured institution's capital ratio. There is no substantive economic difference between a cash-out merger (fully addressed in the proposal) and asset/liability growth of an equivalent amount in terms of the increase in the leverage of the resulting institution.

The Board recognizes, however, that the existing regulatory and supervisory policies on growth, restricting the growth of insolvent and troubled institutions, as well as requiring sufficient capitalization of all new growth, address many of the supervisory difficulties that the Board has experienced in the past with regard to rapid growth. Furthermore, FIRREA is expected to provide the Board with an explicit statutory mandate and authority to restrict the growth of any insured savings association that is not meeting applicable regulatory capital requirements. The Board's successor agency will need to implement this authority in a comprehensive regulatory fashion, which cannot be done at this time because the legislation has not been finalized.

Because of the many issues that will arise in the context of amending the Board's growth regulations and policies and the desire of the Board to keep this proposal simple in order to issue it in an expeditious manner, the Board is not proposing to address growth issues at this time. The Board, however, expects to incorporate growth in a consistent fashion with this proposed policy after FIRREA becomes law and requests comment on the appropriate regulatory interrelationship between growth and capital distributions in the post-FIRREA era.

Second, the Board solicits comment on what other types of capital distributions should or should not be encompassed under the same approach, either explicitly in this regulation or by providing the discretion for the Board or its designee to make a subsequent finding that an activity constitutes a capital distribution that should be

[4] In brief, the Board considers the following transactions, as defined in the proposed regulation, to be capital distributions subject to the tiered approach. First, all non-stock dividends on and repurchases of an institution's common or preferred stock, are defined as capital distributions, as are repurchases of options, warrants, and other rights for the purchase of or conversion into such stock. All of these transactions entail the payout of an institution's capital to its shareholders or to those investors with entitlements to become shareholders. The term capital distribution also encompasses cashout mergers, as defined above, because they cause the acquiring or resulting institution to have a lower capital-to-assets ratio on *a pro forma* basis than the acquiring institutions had before giving effect to the transaction. Finally, the Corporation would be authorized to find that other transactions involving the payout of capital by an institution are capital distributions to be subject to this regulation.

subject to this regulation. The Board also specifically seeks comment on whether contributions to employee stock ownership plans, because of their potential effect on institutions' capital and the distribution to the employees, officers, and directors of insured institutions' capital, warrant separate express treatment under this proposed regulation.

Third, the Board also seeks comment on whether preferred stock dividends should be treated differently under this proposed rule, particularly in light of insured institutions' commitments to pay dividends and to accumulate unpaid dividends on existing classes of preferred. If insured institutions were unable because of this proposed rule to pay preferred stock dividends, to what extent would this require insured institutions to violate the terms of their issued preferred stock and expose such institutions to liability or immediate acceleration? Also, would such action generate undue concern and negative market perceptions resulting in impairment of such institutions' market access? These matters present significant problems and the Board asks for comment on the appropriate method of dealing with these issues in its final rule.

Finally, from a supervisory standpoint, the Board seeks comment on whether there is any need for supervisory concern if tier 1 institutions that make capital distributions early in a calendar year subsequently suffer losses during the calendar year that causes their net capital to fall below one-half of their surplus capital ratio at the beginning of the calendar year plus one-half of their earnings during the calendar year. The proposal does not expressly prohibit a tier 1 institution's net capital from falling below one-half of its surplus capital ratio at the beginning of the period (plus one-half of earnings year-to-date), but does prohibit further capital distributions if the institution's net capital is at or below this level on a current or *pro forma* basis. Should the Board, however, require institutions to wait until later in a calendar year to make capital distributions or only permit capital distributions early in a calendar year deemed by the insured institution to be consistent with their projections of net income/losses during the coming year?

VI. Solicitation of Comment on Alternative Approaches

In addition to seeking comment on specific aspects of this proposal, the Board also requests commenters to address the merits of adopting alternative approaches to this proposal. One such alternative has been used previously in imposing conditions to the approval of certain holding company applications. This option utilizes a sliding-scale approach based on an institution's capital instead of the tiered approach herein proposed.

Under one form of sliding-scale system, an institution would be allowed to declare and pay dividends up to 50 percent of its net income for any quarter if the institution has regulatory capital at least equal to its regulatory capital requirement. If the institution's regulatory capital is greater than or equal to its fully phased-in regulatory capital requirement and its GAAP capital is greater than or equal to 6 percent of total liabilities, the institution would be permitted to declare and pay dividends up to 75 percent of its net income for any quarter. If the institution's regulatory capital is greater than or equal to its fully phased-in regulatory capital requirement plus 2 percent of total liabilities and its GAAP capital is greater than or equal to 6 percent of total liabilities, then the institution would be permitted to declare and pay dividends up to 90 percent of its net income for any quarter.

The ability to declare and pay dividends under the foregoing approach would be subject to a "rolling" four-quarter period test of dividends paid and net income. Dividends declared and paid in any quarter would not only be limited to the net income of the quarter but would be aggregated with the dividends and net income from the three immediately preceding quarters. In no event would the institution be permited to declare and pay dividends that would reduce its capital below its minimum regulatory capital requirement. The Board requests comment on whether adoption of such a sliding scale approach applied to all capital distributions would provide greater protection to the FSLIC and would provide greater enhancement of the safe and sound operation of insured institutions than the tiered approach proposed herein.

Another alternative to the proposal would make further distinctions between the limitations on capital distributions for tier 2 and tier 3 institutions. For example, a tier 2 institution could be allowed to make aggregate capital distributions during any calendar year up to 50 percent of its net income for the calendar year without application. (This standard, if adopted, would also be available as an alternative for tier 1 institutions.) The Board could also permit tier 2 institutions to pay dividends on new classes of stock issued by the institution to raise capital without having to submit an application. Since the Board is unclear on the best method of implementing this option, if adopted, (*i.e.*, Class B common stock, special classes of preferred), it requests comment on the optimal approach. Finally, under either of these alternatives, institutions qualifying as tier 3 institutions on either a current or *pro forma* basis would still generally be prohibited from making capital distributions, but could be authorized to make such capital distributions in rare instances upon receiving supervisory approval of their waiver applications.

The Board is also considering options eliminating either the 50% of net income restriction or all restrictions on capital distributions by tier 1 institutions that are in compliance with their fully phased-in requirements immediately prior to and after the proposed capital distributions. The Board strongly urges all interested persons to comment on the foregoing specific provisions and alternative approaches.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives and legal basis underlying the proposed rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Small institutions to which the proposed rule would apply.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a)(1988). Therefore, small entities to which the proposed rule applies are the 1,651 insured institutions that had assets totaling $100 million or less as of December 31, 1987.

3. *Impact of the proposed rule on small entities.* The proposed rule would not have a substantial impact on small insured institutions and would apply uniformly to all insured institutions.

The rule would not impose any unnecessary financial, recordkeeping or administrative burden on small insured institutions.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* The Board is not aware of any alternatives that would be less burdensome than the proposed rule in addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set forth above. The Board, however, specifically requests comment on appropriate alternatives to this proposed rule.

List of Subjects in 12 CFR Part 563 and 563b

Bank deposit insurance, Currency, Investments, Reporting and recordkeeping requirements, Savings and loan associations, Securities.

Accordingly, the Board hereby proposes to amend parts 563 and 563b, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below:

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend part 563 by adding a new § 563.48 to read as follows:

§ 563.48 Capital distributions.

(a) *Definitions:* (1) *Capital distribution* means:

(i) Any dividend paid or other distribution (including but not limited to, a liquidating distribution) made on or with respect to any shares of an insured institution, but not including a dividend consisting of shares of the insured institution;

(ii) Any payment made by an insured institution to repurchase, redeem, retire or otherwise acquire any of its shares;

(iii) Other distributions charged against the capital accounts of an insured institution;

(iv) Any payments to shareholders of an insured institution by an acquiring insured institution to acquire ownership of the insured institution, other than distributions of shares of the acquiring insured institution;

(v) Other types of transactions determined by the Board to entail the payout of capital by an insured institution.

(2) *Net capital* means components of capital acceptable under generally accepted accounting principles ("GAAP Capital") plus qualifying subordinated debt and redeemable preferred stock.

(3) *Shares* means common and preferred stock; any securities convertible into such stock; and any options, warrants, or other rights for the acquisition of such stock.

(4) *Surplus capital ratio* means the percentage by which an institution's net capital-to-assets ratio exceeds the ratio of its fully phased-in capital requirement to its assets.

(5) *Tier 1 institution* means an insured institution that:

(i) Has net capital immediately prior to, and on a *pro forma* basis after giving effect to, a proposed capital distribution that is equal to or greater than the amount of its fully phased-in capital requirement under §§ 563.13, 563.14, and 563.14–1 of this part as reported on its quarterly reports to the Board ("fully phased-in capital requirement") and

(ii) Whose most recent composite MACRO rating in one of the top two categories of the MACRO system.

(6) *Tier 2 institution* means an insured institution that has net capital immediately prior to, and on a *pro forma* basis after giving effect to, a proposed capital distribution that is equal to or in excess of its minimum regulatory capital requirement under §§ 563.13, 563.14, and 563.14–1 of this part as reported on its quarterly reports to the Board ("minimum regulatory capital requirement"), but that either:

(i) Has net capital immediately prior to, or on a *pro forma* basis after giving effect to, a proposed capital distribution that is less than the amount of its fully phased-in capital requirement; or

(ii) Has net capital equal to or exceeding its fully phased-in capital requirement, but whose most recent composite MACRO rating is not in one of the top two categories of the MACRO system.

(7) *Tier 3 institution* means an insured institution that has net capital immediately prior to, and on a *pro forma* basis after giving effect to, a proposed capital distribution that is less than the amount of its minimum regulatory capital requirement.

(b) *Limits on capital distribution*—(1) *Tier 1 Institution.* A tier 1 institution is authorized to make capital distributions during a calendar year up to the amount that would reduce its surplus capital ratio to less than one-half of its surplus capital ratio at the beginning of the calendar year as adjusted to reflect its net income to date during the calendar year. Any additional capital distributions during the calendar year require prior written approval of the institution's Principal Supervisory Agent ("PSA") and the concurrence of the Office of Regulatory Activities ("ORA"). Any institution violating this provision would need approval by its PSA and the concurrence of ORA to engage in any activity during the current or subsequent calendar year that would further reduce its surplus capital ratio.

(2) *Tier 2 Institution.* A tier 2 institution shall not make capital distributions unless approval is granted pursuant to paragraph (e) of this section.

(3) *Tier 3 Institution.* A tier 3 institution is not authorized to make any capital distributions.

(4) No insured institution may make a capital distribution prohibited by any statute or regulation, including but not limited to § 563b.3(g) of this part, or prohibited by any agreement entered into by the institution with the Corporation or its designee, unless:

(i) With respect to § 563b.3(g), approval is granted under part 563b, or

(ii) With respect to other limitations, prior approval is granted pursuant to paragraph (e) of this section.

(c) *Notice of capital distribution.* All insured institutions must file either an application or a notice with their Principal Supervisory Agent prior to making capital distributions. All insured institution subsidiaries of savings and loan holding companies must comply with the notice provisions of § 584.5 prior to paying dividends. All tier 1 institutions are required to provide written notice to their PSAs no less than ten calendar days prior to the making of a capital distribution. This notice requirement is satisfied by compliance with § 584.5. Finally, the notice requirements under § 584.5 may also be satisfied by the filing of applications required for capital distributions by tier 1 institutions wishing to exceed the limits of this regulation or tier 2 institutions, if filed no less than 30 days before making the proposed capital distribution.

(d) *Corporate reorganizations.* The tiered limits set forth above in paragraph (b) of this section shall control any direct or indirect distributions of capital to affiliates in connection with corporate reorganizations.

(e) *Exceptions.* (1) The Corporation is authorized to approve or deny exceptions from the limitations of paragraphs (b)(1), (b)(2), or (d) of this section upon written application by an institution setting forth good cause why such an exception would not be detrimental to the safe and sound operation of the institution or protection of the deposit insurance system.

(2) An institution under a more restrictive dividend agreement than that

contained in this rule may elect to comply with the standards of this section in lieu of the dividend agreement entered into prior to [effective date of the regulation]. An institution making such an election shall submit a written notice of this election to its PSA. If the PSA does not object within 30 calendar days of receipt of the notice of election, the institution will thereafter be subject to the provisions of this section.

(3) *Delegations of authority.* (i) The Principal Supervisory Agent, or designee, acting pursuant to delegations of authority by the Board and guidelines issued by ORA, is authorized to approve or deny exceptions from the limitations of paragraphs (b)(1) and (b)(2) of this section when requested alone, or in connection with applications for which the PSA, or designee, has delegated authority. The guidelines issued by ORA will specifically direct the PSA, or designee, to consider favorably applications for approval to pay dividends by tier 2 institutions making new stock issuances to raise their capital levels and who are making significant and rapid progress toward meeting their fully phased-in capital requirements. The guidelines shall direct supervisory staff on the appropriate supervisory action to take for violations of this regulation.

(ii) ORA is authorized:

(A) To approve or deny exceptions from the limitations of paragraphs (b)(1), (b)(2) and (d) of this section, unless the application involves a significant issue of law or policy and

(B) To condition approval of any application not involving an issue of law or policy upon an institution entering into a capital distribution agreement with individually designed provisions differing from the provisions of this section if determined by ORA to be necessary to preserve the safe and sound operation of the insured institution and to protect the deposit insurance system.

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

3. The authority citation for part 563b continues to read as follows:

Authority: Section 5A, 47 Stat. 727, as added by section 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sections 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462; 1464), sections 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); section 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); secs. 3, 12–14, 23, 48 Stat. 882, 892, 894–895, 901, as amended (15 U.S.C. 78c, 1–n, w); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–48 Comp., p. 1071.

4. Section § 563b.3 is amended by revising paragraph (g)(2) and by removing paragraph (g)(3) and redesignating paragraph (g)(4) as the new paragraph (g)(3) to read as follows:

§ 563b.3 General principles for conversions.

* * * * *

(g) *Restrictions on repurchase of stock and payment of dividends.* * * *

(2) No converted insured institution shall declare or pay a dividend on, or repurchase any of, its capital stock if the effect thereof would cause the regulatory capital of the converted insured institution to be reduced below the amount required for its liquidation account. Any dividend declared or paid on, or repurchase of, a converted insured institution's capital stock also shall be in compliance with § 563.48 of this subchapter.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-19176 Filed 8-16-89; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-132-AD]

Airworthiness Directives; Boeing of Canada Ltd., de Havilland Division, Model DHC-8-100 Series Airplanes, Serial Numbers 3 Through 119, Inclusive, Equipped With Eldec Proximity Switch Electronic Control Unit (PSEU), Part Number 8-410-03 or 8-410-04

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain de Havilland Model DHC-8-100 series airplanes, which currently requires a revision of the Airplane Flight Manual (AFM) to include a pre-flight check of the nose-gear cockpit indication system, and repair, if necessary, in order to preclude the possibility of the system indicating an erroneous nose gear position. This proposal would require modification of the landing gear control system which would terminate the need for the pre-flight procedures required by the existing AD. This proposal is prompted by the development of a modification which includes certain wiring changes to make the operation of the landing gear selector valve and the opening of the landing gear doors independent of the Proximity Switch Electronic Unit.

DATES: Comments must be received no later than October 6, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-132-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing of Canada Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. C. Kallis, New York Aircraft Certification Office, ANE-173, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York, 11581; telephone (516) 791-6427. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-132-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On February 26, 1988, the FAA issued AD 88-03-51, Amendment 39-5868 (53 FR 7348; March 8, 1988), applicable to de Havilland Model DHC-8 series airplanes, which requires a revision to the Airplane Flight Manual (AFM) to include a pre-flight check procedure of the nose-gear cockpit indication system, and repair, if necessary. That action was prompted by a report of a fault identified in the Proximity Switch Electronic Control Unit (PSEU), which can result in failure of the nose-gear to extend and an incorrect gear position indication in the cockpit.

Since issuance of that AD, de Havilland has issued Service Bulletin 8-32-70, Revision A, dated September 16, 1988, which describes procedures for modification of the wiring of the landing-gear control system, making the operation of the landing gear selector valve and opening of the landing gear doors independent of the PSEU. This modification, if accomplished, terminates the need for the pre-flight procedure for the nose-gear cockpit indication system. Transport Canada has issued Canadian Airworthiness Directive CF-88-02R2 addressing this subject.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would revise AD 88-03-51 to require modification of the landing gear control system in accordance with the service bulletin previously described.

The applicability statement has been changed to identify special serial numbers of the affected airplanes. The FAA has determined that the modification of the wiring of the landing-gear control system was incorporated during manufacture on airplanes having Serial Number 120 and higher.

It is estimated that 42 airplanes of U.S. registry would be affected by this AD, that it would take approximately 40 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The modification kits will be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $67,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 88-03-51, Amendment 39-5868 (53 FR 7348; March 8, 1988), as follows:

De Havilland Aircraft Co. of Canada, a Division of Boeing of Canada, Ltd.: Applies to de Havilland Model DHC-8-101 and -102 series airplanes, Serial Number 3 through 119, inclusive, equipped with Eldec Proximity Switch Electronic Control Unit (PSEU), P/N 8-410-03 or 8-410-04, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To preclude the possibility of the nose gear cockpit indication system indicating erroneous nose gear position, accomplish the following:

A. Within 24 hours after March 25, 1988 (the effective date of Amendment 39-5868), add the following to the Limitations Section of the Airplane Flight Manual (AFM) and notify all crew members. This may be accomplished in inserting a copy of this AD in the AFM:

1. Perform the following check prior to each flight: This check is to be performed even when the airplane is being operated with the anti-skid inoperative under the minimum equipment list:

a. Anti-skid switch—"OFF"

b. Anti-skid switch—"ON"

c. Check that inboard and ouboard anti-skid caution lights illuminate, and then extinguish within 6 seconds. Should the lights fail to function as noted above, dispatch is prohibited until maintenance action clears the fault.

2. While performing the 'After Take Off' and 'Approach' procedures:

a. Monitor the landing gear indication system during landing gear retraction and extension.

b. If there is any irregularity in gear indication or operation at any time throughout the flight, the gear must be confirmed down and locked using the alternate down-lock verification system, irrespective of gear down and locked (green) indication on the normal landing gear indicating system.

B. Any in-flight landing gear irregularity must be corrected after landing by maintenance action prior to further flight.

C. Within 60 days after the effective date of this amendment, modify the landing gear control system, in accordance with Service Bulletin 8-32-70, Revision A, dated September 16, 1988. This modification constitutes terminating action for the requirements of paragraphs A. and B. of this AD, and the revised operating procedures may be removed from the AFM.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada Ltd, de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

Issued in Seattle, Washington, on August 7, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19281 Filed 8-16-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 89-NM-139-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which would require replacement of aluminum brake control shafts with steel shafts. This proposal is prompted by reports of fractures of aluminum shafts on Boeing Model 757 series airplanes. The Model 767 is similar to the Model 757 in this area. This condition, if not corrected, could result in partial or complete loss of braking on one side of the airplane and, potentially, complete loss of braking on the airplane.

DATES: Comments must be received no later than October 6, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-139-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Herron, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1949. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipts of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-139-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: There have been several occurrences of aluminum brake metering valve actuation shafts failing on Boeing Model 757 series airplanes. The cause of these failures was determined to be due to fatigue of the shafts. This condition, if not corrected, could result in partial or complete loss of braking on one side of the airplane and, potentially, complete loss of braking on the airplane.

On June 8, 1989, the FAA issued AD 89-13-08, Amendment 39-6241 (54 FR 26022; June 21, 1989), to require the replacement of aluminum shafts with steel shafts on the Model 757 series airplanes.

The FAA has determined that a similar unsafe condition may exist on Boeing Model 767 series airplanes because certain Model 767 airplanes are equipped with aluminum brake metering valve module shafts similar to those on the Model 757.

The FAA has reviewed and approved Boeing Service Bulletin 767-32-0081, dated April 27, 1989, which describes the replacement of the aluminum brake metering valve module shaft with steel shafts.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require the replacement of aluminum brake metering valve module shafts with steel shafts in accordance with the service bulletin previously described.

There are approximately 152 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 67 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Parts are estimated at $2,656 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $199,392.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes listed in Boeing Service Bulletin 767-32-0081, dated April 27, 1989, certificated in any category. Compliance required within the next 750 landings after the effective date of this AD or prior to the accumulation of 15,000 landings, whichever occurs later, unless previously accomplished.

To prevent partial loss of braking and, potentially, the complete loss of braking, accomplish the following:

A. Replace aluminum brake metering valve module shafts with steel shafts, in accordance with Boeing Service Bulletin 767-32-0081, dated April 27, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 7, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19282 Filed 8-16-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 89-NM-145-AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Boeing Model 757 series airplanes, which would require modification; one-time and periodic inspections; and repair, if necessary, of passenger doors to ensure proper operation of the emergency power assist door opening system. This proposal is prompted by reports of fractured emergency power assist triggers. This condition, if not corrected, could result in an inoperative emergency power assist door opening system during an emergency evacuation.

DATES: Comments must be received no later than October 10, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-145-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Aerospace Engineer, Airframe Branch, ANM-120S; telephone (206) 431-1931. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-145-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: Several operators of Boeing Model 757 airplanes have reported instances in which the trigger for a passenger door emergency power assist system had fractured. Investigation has revealed that trigger fractures or damage, resulting from torsional overload, may be caused by interference, sticking, or binding of the trigger mechanism. It appears that sticking or binding of the spring cylinder, a part of the trigger mechanism, contributes to damaged trigger forks. This condition, if not corrected, could result in failure of the trigger mechanism to activate the power assist reservoir and, subsequently, render the door emergency power assist opening system inoperative when required during an emergency evacuation.

The FAA has reviewed and approved Boeing Service Bulletin 757-52-0042, dated March 30, 1989, which describes the modification, inspection, and repair of certain passenger doors to eliminate interference with the emergency power assist trigger mechanism; periodic inspections for failed, damaged, or inoperative parts of the emergency power assist trigger mechanism and their replacement or repair; and proper adjustment of the emergency lockout mechamism.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require modification, inspection, and rework, if necessary, in accordance with the service bulletin previously described.

There are approximately 205 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 111 airplanes of U.S. registry would be affected by this AD, that it would take approximately 9 manhours per airplane to accomplish the initial actions, and the average labor cost would be $40 per manhour. Based on these figures, the total initial cost impact of the AD on U.S. operators is estimated to be $39,960. It is estimated that it would take 3 manhours per airplane to accomplish each periodic inspection, resulting in an annual estimated cost impact of $26,640.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, as listed in Boeing Service Bulletin 757-52-0042, dated March 30, 1989 (hereafter referred to as the Service Bulletin), certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure passenger door power assist opening when required for emergency evacuation, accomplish the following:

A. For airplanes identified in the Service Bulletin as Group 1, within the next 350 flight hours after the effective date of this AD, accomplish the following in accordance with section III., Part II., of the Service Bulletin. Any interference or improper clearance detected as a result of the required inspections must be repaired prior to further flight, in accordance with the Service Bulletin.

1. Modify the forward right-hand door.

2. Inspect all doors for evidence of interference between the trigger support housing and the upper hinge arm.

3. Inspect all doors for proper clearance between the power assist trigger and the door and fuselage skin.

B. For all airplanes, within the next 350 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 6 months, accomplish the following inspections in accordance with Section III., Part I., of the Service Bulletin. Any damage or improper adjustment or operation detected as a result of the inspections must be repaired prior to further flight, in accordance with the Service Bulletin.

1. Inspect the forward doors for proper adjustment of the lockout mechanism of the door emergency power assist system.

2. Inspect all passenger door emergency power assist triggers for wear marks, damage, or fracture.

3. Inspect trigger spring cylinders for proper operation.

4. Inspect roller arms for damage.

C. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 8, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19268 Filed 8-16-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 89-NM-141-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires external and internal inspections of the skin at fuselage lap joints and stringer 17 for cracks, corrosion, and delamination, and repair, if necessary. This action would increase the applicability to include additional airplanes, expand the definition of terminating action for one group of airplanes, and revise the terminating action requirements for the skin along stringer 17. This proposal is prompted by the discovery that the improved tearstrap hot bonding process occurred at a later airplane line number than previously determined. This condition, if not corrected, could result in rapid decompression of the airplane.

DATES: Comments must be received no later than October 10, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-141-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Mudrovich, Airframe Branch, ANM-120S; telephone (206) 431-1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to aknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-141-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: On October 27, 1988, the FAA issued AD 88-22-11, Amendment 39-6059 (53 FR 44156; November 1, 1988), applicable to certain Boeing Model 737 series airplanes, line numbers (L/N) 001 through 464, to require external and internal inspections of the skin at fuselage lap joints and stringer 17 for cracks, corrosion, and delamination, and repair, if necessary.

That action was prompted by reports of extensive cracking occurring at cold bonded lap splices. This condition, if not corrected, could result in rapid decompression of an airplane.

Since issuance of that AD, the manufacturer has advised the FAA that incorporation of the improved tear strap hot bonding technique was not accomplished on airplanes beginning with line number (L/N) 465, as originally stated. After a review of the airplane manufacturing records, operator reports, and results of a manufacturer's inspection program, the improved process has been determined to have been incorporated at L/N 520. Therefore, the applicability of AD 88-22-11 must be expanded to also include airplanes L/N 465 through L/N 519.

Additionally, changes to the terminating requirements for inspection along stringer 17 are proposed which reduce the area for tearstrap bond assurance to one bay above and below the stringer. This change was necessary due to the different failsafe characteristics at stringer 17 when compared to the lap joints.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-53A1039, Revision 5, dated May 25, 1989, which describes inspection and repair procedures for Model 737 lap joints.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would revise AD 88-22-11 to expand the applicability to include additional affected airplanes. This proposal would also revise the existing AD to clarify the terminating action requirements for late line number airplanes and revise the terminating action requirements for the skin along stringer 17. The economic and regulatory burden for operators of airplanes, line numbers 001 through 464, would not be changed.

Finally, the rule would be revised to include reference to Revision 5 of the applicable Boeing service bulletin (described above) as an optional service information source for compliance with the requirements.

There are approximately 55 additional Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 12 additional airplanes of U.S. registry would be affected by this amendment, that it would take approximately 2,798 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the amendment on U.S. operators is estimated to be $1,343,040.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-6059 (53 FR 44156; November 1, 1988), AD 88-22-11, as follows:

Boeing: Applies to Model 737 series airplanes, line number 001 through 519, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid decompression of the airplane, accomplish the following:

A. For airplanes line number 001 through 291, prior to the accumulation of 40,000 landings, or within 10 calendar days after November 21, 1988 (the effective date of Amendment 39-6059), whichever occurs later, restrict all flight operations to a maximum cabin pressure differential of 5.67 psi until the inspections required by paragraph B.1., below, are accomplished.

B.1. For airplanes line number 001 through 291, within the next 1,500 landings after November 21, 1988, or prior to the accumulation of 40,000 landings, whichever occurs later, unless previously accomplished within the last 3,000 landings; and thereafter at intervals not to exceed 4,500 landings or 15 months, whichever occurs first; accomplish the requirements of paragraph C., below, along the skin at all fuselage lap joints between BS 259 and BS 1016.

2. At the initial interval indicated in Table 1, below, unless previously accomplished within the last 4,000 landings, accomplish the requirements of paragraph C., below, along the skin at stringer (S)-17 between BS 360 and BS 540 and between BS 727 and BS 927.

TABLE 1

Airplane line No.	Initial inspection
001 through 291	Within 500 landings after November 21, 1988 or prior to the accumulation of 40,000 landings, whichever occurs later.
292 through 464	Within 500 landings after November 21, 1988, or prior to the accumulation of 60,000 landings whichever occurs later.
465 through 519	Within 500 landings after the effective date of this amendment, or prior to the accumulation of 60,000 landings, whichever occurs later.

Repeat the inspection at intervals not to exceed 4,500 landings or 15 months, whichever occurs first.

C. For airplanes identified in paragraphs B.1. and B.2., above, remove paint with an approved chemical stripper, or ensure that the fastener head is clearly visible and that

no more than 2 coats of paint are on the airplane skin, prior to the inspections required by this paragraph:

1. Perform a high frequency eddy current inspection for cracks along the upper rivet line at the lap joints and along both rivet lines at S–17, in accordance with Boeing Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, or Boeing Service Bulletin 737–53–1069, Revision 1, dated October 13, 1988, accordingly.

Note: No credit will be given for previous inspections accomplished on a painted surface where the fastener head was not clearly visible or where more than 2 coats of paint were on the airplane skin.

2. Perform a detailed external visual inspection, using adequate lighting for evidence of corrosion or delamination. Inspect for small cracks, bulging skin between fasteners, blistered paint, dished or popped rivet heads, or loose fasteners. If evidence of corrosion or delamination is found, prior to further flight, perform a low frequency eddy current inspection for corrosion to determine material loss, of the entire length of the effected panel, in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, or Boeing Service Bulletin 737–53–1069, Revision 1, dated October 13, 1988.

3. Repair cracks, corrosion, and delamination prior to further flight (except as permitted by paragraph G., below), in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, or Boeing Service Bulletin 737–53–1069, Revision 1, dated October 13, 1988.

a. All upper row fasteners at the lap joint and both rows of fasteners at S–17 of any skin panel in which cracks are found, must be replaced with standard protruding head solid fasteners, in accordance with the applicable service bulletin, within 3,000 cycles following the repair.

b. Blind fasteners are to be used as an interim repair only, and must be replaced with protruding head solid fasteners within 3,000 cycles following installation.

(1) For airplanes line numbers 001 through 464: Repairs installed with blind fasteners prior to November 21, 1988, must be inspected for loose or missing fasteners within 1,000 cycles after that date; and all upper row fasteners in the affected panel must be replaced with standard protruding head solid fasteners within 3,000 cycles after that date.

(2) For airplanes line numbers 465 through 519: Repairs installed with blind fasteners prior to the effective date of this amendment, must be inspected for loose or missing fasteners within 1,000 cycles after the effective date of this amendment; and all upper row fasteners in the affected panel must be replaced with standard protruding head solid fasteners within 3,000 cycles after the effective date of this amendment.

c. (1) For airplanes line numbers 001 through 464: Repairs of the skin installed with countersunk fasteners at any fuselage lap joint or along S–17 prior to November 21, 1988, must be inspected and verified as FAA-approved within 1,000 cycles after that date. Repairs determined not to be FAA-approved must be replaced or modified in accordance with an FAA-approved method prior to further flight.

(2) For airplanes line numbers 465 through 519: Repairs of the skin installed with countersunk fasteners at any fuselage lap joint or along S–17 prior to the effective date of this amendment, must be inspected and verified as FAA-approved within 1,000 cycles after the effective date of this amendment. Repairs determined not to be FAA approved must be replaced or modified in accordance with an FAA-approved method to further flight.

D. For airplanes line number 001 through 291, within the next 2,250 landings or within 6 months after November 21, 1988, whichever occurs first, or prior to the accumulation of 40,000 landings, whichever occurs later, unless accomplished within the last 9,750 landings; and thereafter at intervals not to exceed 12,000 landings or 4 years, whichever occurs first; accomplish the inspections described in paragraph F., below. If the inspections required by paragraph C., above, are repeated at intervals not to exceed 2,250 landings or 7½ months, whichever occurs first, then the requirements of paragraph F., below, may be deferred until the accumulation of 7,000 landings or 24 months after November 21, 1988, whichever occurs first.

E. For airplanes line number 292 through 464, within the next 12,000 landings or 4 years after November 21, 1988, whichever occurs first, and for airplanes line number 465 through 519, within the next 12,000 landings or 4 years after the effective date of this amendment, whichever occurs first; or prior to the accumulation of 40,000 landings, whichever occurs later; and thereafter at intervals not to exceed 12,000 landings or 4 years; whichever occurs first; accomplish the inspections described in paragraph F., below.

F. As required by paragraphs D. and E., above, perform a detailed internal visual inspection of tearstraps (circumferential portion of the bonded waffle doubler), not mechanically fastened to the skin between BS 360 and BS 1016 2 bays above and 1 bay below the lap joints at S–4 and S–10, and between BS 259 and BS 360 2 bays above and 1 bay below the lap joint at S–4 for delamination and corrosion, in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989. Adequate lighting must be used for this inspection. Inspect for bulges in the doubler, white powder or a thin black line at the edges of the doubler, and missing or dished fasteners. Check for disbond by pushing outward on the skin while attempting to insert a feeler gage between the doubler and skin. If inspection areas are obscured by sealant, dirt, etc., these areas must be cleaned. If disbond or corrosion is found, inspect entire skin panel as described above, in addition to one bay of the adjacent skin panel (above and below), and repair prior to further flight, in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, or Boeing Service Bulletin 737–53–1069, Revision 1, dated October 13, 1988, as appropriate.

G. If corrosion found as a result of the external inspection does not exceed 10 percent of the skin thickness, reinspect for corrosion in accordance with paragraph C.2. or I., of this AD, as appropriate, at intervals not to exceed 2,250 cycles or 6 months, whichever occurs first, until a repair is accomplished. If such corrosion exceeds 10 percent of skin thickness or if cracking is found, repair prior to further flight, in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, for the skin along the lap joints; or Boeing Service Bulletin 737–53–1069, Revision 1, dated October 13, 1988, for the skin along S–17. Following such repair, resume inspections in accordance with paragraphs C.2. or I., of this AD, as appropriate.

H. The accomplishment of the following two subparagraphs constitutes terminating action for the inspection indicated:

1. a. For airplanes line number 001 through 291, accomplishment of the terminating repair at all lap joints between BS 259 and BS 1016, in accordance with Boeing Alert Service Bulletin 747–53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, constitutes terminating action for paragraphs A., C., and F., as they apply to lap joint areas. This repair includes replacing all upper row fasteners with standard protruding head solid fasteners and assuring the tearstraps are functional 2 bays above and 1 bay below each lap joint, by the use of mechanical fasteners where disbonding of the tearstraps has occurred.

b. For airplanes line number 292 through 519, perform a detailed internal visual inspection of the tearstraps for delamination and corrosion 1 bay above and 2 bays below all lap joints between BS 259 and BS 1016, in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989. Repair delamination and corrosion in accordance with the service bulletin using mechanical fasteners as necessary. In skin panels where delamination is detected, accomplish the lap joint modification in accordance with the service bulletin. This subparagraph constitutes terminating action for paragraph F., above.

2. Accomplishment of the preventative modification as described in Boeing Service Bulletin 737–53–1039, Revision 1, dated October 13, 1988, constitutes terminating action for the requirements of paragraphs A., C., and F. as they apply to the skin at S–17. The repair requires using standard protruding head solid fasteners, and assuring that the tearstraps are functional 1 bay above and below S–17, by the use of mechanical fasteners where disbonding of the tearstraps has occurred, in accordance with the Structural Repair Manual.

I. For aircraft on which the procedures described in paragraph H.1., above, have been accomplished in accordance with Part IV, A.2., of Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, or Part II, B of Boeing Service Bulletin 737–53A1039, Revision 5, dated May 25, 1989, within 15 months after accomplishment, or within 6 months after the effective date of this AD, whichever occurs later, perform an external visual inspection of the skin for corrosion and delamination at all lap joints in accordance with that service bulletin. If corrosion is found, prior to further flight, perform a low frequency eddy current inspection of the entire length of the affected panel to determine material loss. If cracks are found, prior to further flight, perform a high frequency eddy current inspection of the entire length of the affected skin panel in accordance with the service bulletin. Repair cracks, corrosion, and delamination, prior to further flight (except as permitted by paragraph G., above), in accordance with the service bulletin. Inspections are to continue at intervals not to exceed 15 months.

J. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

K. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 9, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–19284 Filed 8–16–89; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 89–AEA–9]

Proposed Alteration of VOR Federal Airway; West Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of VOR Federal Airway V–45 located in the state of West Virginia. This proposal would establish a portion of V–45 Charleston and Henderson, WV. This action would lessen the workload associated with flight plan filing and facilitate clearance delivery along this route by air traffic facilities.

DATES: Comments must be received on or before September 25, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AEA–500, Docket No. 89–AEA–9, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Jesse B. Bogan, Jr., Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9253.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–AEA–9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availabilty of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V–45 located in the state of West Virginia. This action, to extend V–45 from Charleston to Henderson, WV, would eliminate a break in the continuity of the route. This action would also serve to lessen the workload associated with filing a flight plan as well as to facilitate clearance delivery along this route by air traffic facilities. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-45 [Amended]

By removing the words "Charleston, WV. From Henderson, WV;" and substituting the words "Charleston, WV; Henderson, WV;"

Issued in Washington, DC, on July 27, 1989.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-19286 Filed 8-16-89; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL 3630-7; EPA/OSW-FR-89-021]

Hazardous Waste Management System, Identification and Listing of Hazardous Waste; New Data and Use of These Data Regarding the Proposed Identification and Listing as Hazardous Waste From the Manufacture of 1,1-Dimethylhydrazine

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability and request for comments; supplement to proposed rule.

SUMMARY: On December 20, 1984, the Environmental Protection Agency proposed to amend its hazardous waste identification regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA) by amending the list of hazardous wastes under 40 CFR part 261.32. As proposed in 1984, the Agency proposed to list as hazardous a group of wastes generated during the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides. The Agency based its conclusion that these wastes should be regulated as hazardous in part on the determination that they contained significant concentrations of UDMH, which was evaluated by the U.S. EPA's Carcinogen Assessment Group (CAG) to be a potential human carcinogen (U.S. EPA, 1984).

As a result of this proposal, questions were raised regarding the appropriate use of certain studies upon which CAG based its determination. Today's notice presents new data which the Agency believes supports a conclusion that UDMH should be considered a potential human carcinogen. Therefore, we are making available for comment this new data the Agency believes should be considered in making our final decision to list these wastes as hazardous.

This new data includes a peer reviewed assessment performed by EPA's Office of Pesticides Programs (U.S. EPA, 1989) of new data generated by the manufacturer of both UDMH and a major pesticide product that uses UDMH as a starting material, Alar. The documents containing this new data as well as EPA's assessment of this data are listed in the reference section of this Notice of Data Availability.

The Agency specifically solicits comments on the use of the new data as it would support the listing of wastes from the manufacture of UDMH as hazardous.

DATES: EPA accept public comments on this notice until September 18, 1989.

ADDRESSES: The official record for this notice of data availability as well as the proposed rulemaking for the listing of UDMH wastes is identified as Docket Number F-89-DMHA-FFFFF and is located in the EPA RCRA docket, Room 2427, 401 M Street SW., review docket materials by calling (202) 475-9327. A copy of the May 15, 1989 Second Peer Review of Daminozide (Alar) and UDMH (Unsymmetrical 1,1-dimethylhydrazine) is available for viewing and copying only in the OSW docket.

Copies of the Daminozide Technical Support Document as well as the studies conducted by Uniroyal Corporation used as a basis for determining the carcinogenicity of UDMH are contained in EPA's Office of Pesticide Programs Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Room 246, CM#2, U.S. EPA, 1921 Jefferson Davis Highway, Arlington, VA 22202. Both dockets are available for inspection from 9:00 a.m. to 4:00 p.m., Monday through Friday. The public may copy 100 pages from the docket at no charge; additional copies are available at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346 or at (202) 382-3000. For technical information, contact Dr. Cate Jenkins, Office of Solid Waste (OS-332), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4786.

SUPPLEMENTARY INFORMATION:

I. Background

A. RCRA Hazardous Waste Listings

Section 3001 of the Resource Conservation and Recovery Act (RCRA), as amended, requires EPA to identify wastes that pose a substantial hazard to human health and the environment, if the wastes are improperly managed. One means for doing this is by listing wastes from specific industry sources as hazardous under 40 CFR Part 261.32.

On December 20, 1984 (49 FR 49556), the Agency proposed to amend the list of hazardous wastes by adding four wastes generated during the manufacture of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines. These listings were proposed in response to a requirement by the Hazardous and Solid Waste Amendments of 1984 (HSWA) to make a decision whether to list wastes generated from the production of UDMH. These wastes included:

- K107—Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.
- K108—Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UMDH) from carboxylic acid hydrazines.
- K109—Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UMDH) from carboxylic acid hydrazines.
- K110—Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.

The effect of this proposed regulation would be to subject these wastes to the hazardous waste management standards contained in 40 CFR Parts 262 to 266, 270, 271, and 124 of this chapter; the notification requirements of section 3010 of RCRA; and the notification requirements under CERCLA section 103.

The Agency made its preliminary conclusion that these wastes should be listed as hazardous based in part on the determination that they were

contaminated with significant concentrations of UDMH. The U.S. EPA's Carcinogen Assessment Group (CAG) evaluated the toxicological studies available at that time and concluded that UDMH should be considered a potential human carcinogen (U.S. EPA, 1984).

B. FIFRA Registration Standard for Daminozide

In the early 1980s, the Agency's Office of Pesticide Programs initiated a review of the pesticide manufactured from UDMH, Daminozide, through its Registration Standard process to identify any outstanding data gaps regarding the possible carcinogenicity and other health effects of Daminozide and its contaminant, UDMH. Evaluations of the risk of Daminozide and UDMH, developed through this review process, were submitted to the Scientific Advisory Panel (SAP) and the United States Department of Agriculture (USDA) as required by the Federal Insecticide, Rodenticide and Fungicide Act (FIFRA). Based on this review, the SAP believed that the data from these studies were insufficient to support a quantitative risk assessment for either Daminozide or UDMH because of various limitations in methodology and documentation.

Based in large part on the SAP's review, EPA concluded that it should not proceed with the cancellation action at that time, but instead should take steps to minimize exposure to Daminozide and UDMH and require the Uniroyal Corporation, the company which manufactures Daminozide, to begin a wide range of testing that would enable EPA to base its cancer risk assessment on more complete and sound scientific data.

C. Discussion of the New Data and Request for Comments

Based on the additional data submitted by Uniroyal as a result of this requirement to conduct additional studies, EPA has made a preliminary determination that supports the conclusion that Daminozide and UDMH are carcinogenic. The basis for this determination was given in detail in a May 24, 1989 Preliminary Determination to Cancel Certain Daminozide Product Registrations (54 FR 22558).

By this Notice, the Agency is requesting comments on the use of this data and determination regarding the potential carcinogenicity of UDMH to support, in part, the basis for a listing determination under 40 CFR 261.32 of the RCRA regulations for wastes generated from the manufacture of UDMH. The documents relating to the Agency's assessment of the carcinogenicity of UDMH (listed in the Reference section of this Notice) may be obtained from the Office of Pesticide Programs Public Docket listed in the ADDRESSES section of this Notice. The May 15, 1989 Second Peer Review of Daminozide (Alar) and UDMH (Unsymmetrical 1,1-dimethylhydrazine) as well as the supporting documentation for the Agency's December 20, 1984 proposal to list as hazardous four wastes from the manufacture of UDMH are contained in the RCRA Docket listed in the ADDRESSES section of this Notice.

Dated: August 11, 1989.

Robert L. Duprey,

Acting Deputy Assistant Administrator for Solid Waste and Emergency Response.

References

U.S. Environmental Protection Agency (1984) Health and Environment Effects Profile for 1,1-Dimethylhydrazine. Prepared by Environmental Criteria and Assessment Office, EPA, Cincinnati, OH 45268. Publication No. ECAO-CIN-026.

U.S. EPA, Office of Pesticides and Toxic Substances (May 15, 1989) Second Peer Review of Daminozide (Alar) and UDMH (Unsymmetrical 1,1-dimethylhydrazine).

Uniroyal Corporation (1982) Report—P7642: Assessment of Its Ability to Induce Primary DNA Damage in Strains of *Escherichia coli*. Docket No. D-7246B.

Uniroyal Corporation (1983) Report—P7642: Assessment of Its Ability to Induce Genetic Damage in *Saccharomyces cerevisiae*—Amended Final Report. Docket No. D-7245B.

Uniroyal Chemical Company, Inc. (1984a) Balance Study of ^{14}C Labelled Daminozide in Rats. Biospherics Inc., Acc No. 253012, Appendix F.

Uniroyal Chemical Company, Inc. (1984b) 1,1-dimethylhydrazine Bioavailability Study in Guinea Pigs, Borriston Labs, Inc. Project No. 23084, Acc No. 252413.

Uniroyal Chemical Company, Inc. (1984a) Magnitude of the Residues in Food/Feed Daminozide/UDMH Crop Field Trials, MRID 402247-01 and Addendum, January 1988, MRID 404874-01.

Uniroyal Chemical Company, Inc. (1986) Market Basket Survey, February 1986, MRID 263812, Phase II, October 1986, MRID 265706, Phase III, February 1987, MRID 400874-03.

Uniroyal Chemical Company, Inc. (1987b) Livestock Feeding Studies of Residues in Milk and Goat Tissues, November 1987, MRID 404199-01, -04, -06.

Uniroyal Chemical Company, Inc. (1987c) Livestock Feeding Studies of Residues in Eggs and Hen Tissues, November 1987, MRID 404199-02, -03, -05, -07.

Uniroyal Chemical Company, Inc. (1987d) Metabolism of Daminozide in Miniature Swine, Analysis for UDMH in Liver Tissue. Final Report submitted by Mitros, K., Doweyko, A.M. and Burger, R.N., December 1987, MRID 404519-01.

Uniroyal Chemical Company, Inc. (1987e) Exposure of Greenhouse Workers to Daminozide Applied by Hand-held Atomizing Sprayers. Study submitted by Ames R. and Ball, J.O., MRIS 400874-01, 205 pages.

Uniroyal Chemical Company, Inc. (1988a) Two Year Dietary Oncogenicity Study in Mice. 5 Volumes, MRID 408131-02.

Uniroyal Chemical Company, Inc. (1988b) Two Year Rat Oncogenicity Study on Alar (Daminozide), August 1988, MRID 408131-01.

Uniroyal Chemical Company, Inc. (1988c) Two Year UDMH Rat Study—12 Month Interim Sacrifice. Submitted to Uniroyal Chemical Company by Johnson, D. of International Research and Development Corp., March 1988, MRID 405520-01.

Uniroyal Chemical Company, Inc. (1988d) Two Year Oncogenicity Study in Mice ("Low dose")—One Year Interim Report. Submitted to Uniroyal Chemical Company by Johnson, D. of International Research and Development Corp., April 1988.

Uniroyal Chemical Company, Inc. (1988e) Interim 12-month Sacrifice—Two Year Study in Mice, July 1988, MRID 407401-01 and Interim Eight-month Sacrifice—Two Year UDMH Oncogenicity Study in Mice, February 1987, MRID 405502-101. Submitted to Uniroyal Chemical Company by Johnson, D. for International Research and Development Corp.

Uniroyal Chemical Company, Inc. (1988g) Rat Hepatocyte Primary Culture/DNA Repair Test, Barfknecht, T.R., December 1986, MRID 400326-05; *In vitro* Chromosome Aberration Analysis in Chinese Hamster Ovary (CHO) Cells, San Sebastian, J., December 1986, MRID 400326-04; Ames/Salmonella Plate Incorporation Assay, Stankowski, L. December 1986, MRID 400326-01; Mammalian Cell Forward Gene Mutation Assay, Stankowski, L. and Tuman, W., January 1987, MRID 400677-01.

[FR Doc. 89-19355 Filed 8-16-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6964]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already

in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Arkansas	Newport, City, Jackson County.	Village Creek, Outfall Ditch	At downstream corporate limits	*224	*223
			Approximately 900 feet upstream of Daugherty Street.	None	*227
Maps available for inspection at the City Hall, 120 Walnut, Newport, Arkansas 72112.					
Send comments to The Honorable Wayne Beard, Jr., Mayor of the City of Newport, Jackson County, P.O. Box 128, Newport, Arkansas 72112.					
Colorado	City of Boulder, Boulder County.	Boulder Creek	Approximately 400 feet downstream of Arapahoe Avenue.	*5245	*5245
			Approximately 210 feet downstream of Arapahoe Avenue.	*5246	*5247
			At Arapahoe Avenue	*5247	*5250
			Approximately 600 feet upstream of Arapahoe Avenue.	*5252	*5253
			Approximately 1,200 feet upstream of Arapahoe Avenue.	*5257	*5258
			Approximately 700 feet downstream of 30th Street.	*5263	*5263
		Skunk Creek	At the confluence with Bear Canyon Creek	*5243	*5243
			Just upstream of Foothills Parkway	*5245	*5243
			Just downstream of Colorado Avenue	*5260	*5260
		Boulder Creek (Right Bank Overflow).	At Foothills Parkway	*5240	*5240
			Approximately 2,320 feet upstream of Foothills Parkway.	*5257	*5254
Maps are available for review at the Utilities Administrative Office, 1739 Broadway, Suite 306, Boulder, Colorado.					
Send comments to The Honorable Linda Jourgensen, Mayor, City of Boulder, P.O. Box 791, Boulder, Colorado 80306.					
Connecticut	Stratford, Town, Fairfield County.	Long Brook	At the confluence with Tanners Brook and Ferry Creek.	*11	*10
			Just upstream of Brewsters Pond Dam	*40	*36
		Brewsters Pond	For entire shoreline	*40	*36
		Tanners Brook	At confluence with Long Brook	*11	*10
		Ferry Creek	At confluence with Housatonic River	*11	*10
			At confluence with Tanners Brook and Long Brook.	*11	*10

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Town Hall, 2725 Main Street, Stratford, Connecticut.					
Send comments to The Honorable Ronald W. Owens, Stratford Town Manager, Fairfield County, 2725 Main Street. Stratford, Connecticut 06497.					
Kentucky	City of Louisa, Lawrence County.	Big Sandy River	At confluence of Town Branch	*576	*575
			At confluence of Tug and Levisa Forks	*577	*576
		Levisa Fork	Within community	*577	*576
Maps available for inspection at the City Hall Building, 215 North Main Cross Street, Louisa, Kentucky. Send comments to The Honorable Mike Armstrong, Mayor, City of Louisa, City Hall Building, 215 North Main Cross Street, Louisa, Kentucky 41230.					
Mississippi	City of Starkville, Oktibbeha County.	Springer's Branch	At mouth	None	*299
			About 330 feet upstream of East White Drive	None	*328
		Sand Creek	Just downstream of confluence of Sand Creek Tributary 1.	*282	*279
			About 400 feet upstream of West Point Road	*290	*288
		Sand Creek Tributary 1	At confluence with Sand Creek	*283	*279
			About 600 feet upstream of Patrick Road	*284	*284
		Sand Creek Tributary 2	At confluence with Sand Creek Tributary 1	*283	*281
			About 1100 feet downstream of West Point Road.	*284	*284
Maps available for inspection at the Building Department, City Hall, Lampkin Street, Starkville, Mississippi. Send comments to The Honorable Bill Stacy, Mayor, City of Starkville, City Hall, Lampkin Street, Starkville, Mississippi 39759.					
New Jersey	Spotswood, Borough, Middlesex County.	Cedar Brook	Approximately 910 feet upstream of CONRAIL	*31	*30
			Approximately 380 feet downstream of upstream corporate limits.	*35	*34
Maps available for inspection at the Borough Hall, 77 Summerhill Road, Spotswood, New Jersey.					
Send comments to The Honorable George R. Balascak, Mayor of the Borough of Spotswood, Middlesex County, 77 Summerhill Road, Spotswood, New Jersey 08884.					
North Carolina	City of Thomasville, Davidson County.	Hanks Branch	About 2000 feet downstream of Young Street	*718	*718
			Just downstream of State Road 109	*744	*745
			Just upstream of State Road 109	*745	*748
		Hasty Creek	About 300 feet downstream of Hasty Hill Road	*746	*747
			About 550 feet downstream of Payne Road	*763	*764
			Just downstream of Payne Road	*768	*768
		Hunts Fork	Just downstream of Ball Park Road	*735	*735
			Just downstream of Norfolk Southern Railway	*833	*829
			Just upstream of Norfolk Southern Railway	*837	*843
			Just upstream of Blair Street	*846	*846
		North Hamby Creek	About 750 feet downstream of State Road 109	*809	*809
			Just downstream of Julian Avenue	*828	*827
			Just upstream of Julian Avenue	*830	*833
			Just upstream of Mason Way	*854	*854
		South Hamby Creek	Just downstream of Access Road	*774	*774
			Just downstream of washed out dam	*790	*793
			Just upstream of washed out dam	*791	*798
			About 650 feet upstream of High Point, Thomasville and Denton Railroad.	*816	*817
Maps available for inspection at the Engineering Office, City Hall, 7 West Guilford, Thomasville, North Carolina. Send comments to The Honorable Kyle Williams, City Manager, City of Thomasville, P.O. Box 368, Thomasville, North Carolina 27360.					
Tennessee	City of Kingsport, Sullivan County.	Holston River	About .31 mile downstream of inter-plant railroad.	*1174	*1172
			At confluence of North Fork Holston River & South Fork Holston River.	*1179	*1178
		North Fork Holston River	At mouth	*1179	*1178
			About .18 mile upstream of U.S. Route 11W	*1181	*1180
		South Fork Holston River	At mouth	*1179	*1178
			Just downstream of Fort Patrick Henry Dam	*1208	*1210
		South Fork Holston River Sluice.	At confluence with South Fork Holston River	*1179	*1178
			About .37 mile upstream of Wilcox Drive	*1191	*1192
		Reedy Creek	Just downstream of Industry Drive	*1180	*1181
			Just upstream of Industry Drive	*1181	*1181
		Horse Creek	About .15 mile downstream of John B. Dennis Bypass.	None	*1207
			About .66 mile upstream of Ridge Road	None	*1217
		Kendrick Creek	About 300 feet downstream of Interstate 81	None	*1438
			About 400 feet upstream of Interstate 81	None	*1461

BEST COPY AVAILABLE

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county.	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
Maps available for inspection at City Hall, Planning Department, 225 West Center Street, Kingsport, Tennessee. Send comments to The Honorable Hunter W. Wright, Mayor, City of Kingsport, City Hall, 225 West Center Street, Kingsport, Tennessee 37660.					
Texas	Bedford, City Tarrant County.	East Fork Bedford Creek	At the confluence with Bedford Creek	*552	*554
			Approximately 550 feet upstream of Bedford Forum Drive.	*559	*560
		Bedford Creek	Approximately 520 feet upstream of State Route 121.	*552	*553
			Downstream side of Bedford Road	*565	*566
		Bedford Creek Tributary 1	At the confluence with Bedford Creek	None	*553
			Approximately 640 feet upstream of the confluence with Bedford Creek.	None	*554
Maps available for inspection at the Engineering Department, City Hall, 200 Forest Ridge Drive, Bedford, Texas. Send comments to The Honorable L. Don Dodson, Mayor of the City of Bedford, Tarrant County, P.O. Box 157, Bedford, Texas 76095-0157.					
Texas	Farmers Branch, City Dallas County.	Farmers Branch Creek	At confluence with Elm Fork of the Trinity River.	*431	*434
			Approximately 1,825 feet upstream of confluence of Stream 6H1.	*576	*580
		Rawhide Creek	At confluence with Farmers Branch Creek	*457	*458
			At upstream corporate limits	*565	*564
		Cooks Branch	At downstream corporate limits	*436	*438
			At Fyke Road	*505	*503
		Elm Fork of the Trinity River	At downstream side of Royal Lane	*430	*432
			Approximately .7 mile upstream of Valley View Lane.	None	*438
		Stream 6H1	At confluence with Farmers Branch Creek	*566	*568
			Approximately 1,565 feet upstream of Midway Road.	*587	*588
		Tributary CB 187-L	Approximately 200 feet upstream of confluence with Cooks Branch.	*483	*484
			Approximately 693 feet upstream of confluence with Cooks Branch.	*483	*486
Maps available for inspection at the City Hall, 13000 William Dodson Parkway, Farmers Branch, Texas. Send comments to The Honorable Dave Blair, Mayor of the City of Farmers Branch Dallas County, P.O. Box 819010, Farmers Branch, Texas 75234.					
Texas	Haltom City, City Tarrant County.	Big Fossil Creek	Approximately 200 feet upstream of Haltom Road.	*565	*566
			Approximately 500 feet downstream of corporate limits.	*574	*575
Maps available for inspection at the City Hall, 5024 Broadway Avenue, Haltom City, Texas. Send comments to The Honorable Jack O. Lewis, Mayor of the City of Haltom City Tarrant County, P.O. Box 14246, Haltom City, Texas 76117.					
Texas	Kenedy, City Karnes County.	Escondido Creek	At downstream corporate limits	*265	*259
			Approximately 1,050 feet upstream of U.S. Route 181.	*284	*273
		Nichols Creek	At confluence with Escondido Creek	*266	*260
			At upstream corporate limits and FM 1145	None	*292
Maps available for inspection at the City Hall, 305 W. Main Street, Kenedy, Texas. Send comments to The Honorable A. G. "Tito" Vidaurri, Mayor of the City of Kenedy Karnes County, P.O. Box 539, Kenedy, Texas 78119.					

Issued: August 10, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-19349 Filed 8-16-89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-351, RM-6377]

Radio Broadcasting Services; Carlisle, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Nicholas County Broadcasting, proposing the allot Channel 284A to Carlisle, Kentucky, as its first FM service at coordinates 38-21-02 and 83-55-42.

DATES: Comments must be filed on or before October 2, 1989, and reply comments on or before October 17, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Jerrold Miller, Miller and Fields, P.C., P.O. Box 33003, Washington, DC 20033 (Counsel for petitioner)

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-351, adopted July 26, 1989, and released August 11, 1989,. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230). 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-19315 Filed 8-16-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

Injurious Wildlife; Importation of Fish or Fish Eggs

AGENCY: Fish and Wildlife Service.

ACTION: Notice of intent to revise 50 CFR 16.13.

SUMMARY: Regulations designed to reduce the risk of importing certain untreatable, uncontrollable pathogens of salmonid fishes (50 FR 16.13) have not been revised in nearly 20 years. Many factors relative to such regulations have changed during that period. As a result, the Fish and Wildlife Service intends to revise the regulations concerning the importation of fish or fish eggs to improve their effectiveness in reducing the risk of introducing certain pathogens of fish into the United States. This notice of the intent to revise the regulations controlling the importation of fish or fish eggs is provided so that interested parties may comment on the need for, and the potential effects of, such revisions and suggest additions, deletions, or other modifications to the regulations.

DATES: Comments, statements of effects, and suggestions pertaining to the intended revisions must be received on or before October 16, 1989.

ADDRESSES: Comments, statements, and suggestions must be sent to: Chief, Division of Fish Hatcheries. 820 ARLSQ, U.S. Fish and Wildlife Service, Department of the Interior, 18th & C Streets, NW., Washington, DC 20240. Telephone: 703/358-1878

FOR FURTHER INFORMATION CONTACT: Dr. John C. Nickum, Division of Fish Hatcheries, 820 ARLSQ, U.S. Fish and Wildlife Service, Department of the Interior, 18th & C Streets, NW., Washington, DC 20240; telephone: 703/358-1878.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service has broad responsibilities for the welfare of fish and wildlife resources of the United States, including protection of fish resources from the introduction of exotic pathogens. Regulations (50 CFR 16.13) governing the importation of fish, or the eggs of fish, or the flesh of fish of the family Salmonidae were developed and implemented to reduce the risk of introducing certain untreatable, uncontrollable pathogens of salmonid fishes into the United States. These regulations have not been revised for nearly 20 years. Factors affecting the effectiveness, and the effect, of these regulations, have changed considerably during that time. The Fish and Wildlife Service needs information, comments, and suggestions from all interested parties concerning the value of such regulations; the economic, environmental, and other effects of the existing and potential regulations; and suggestions for specific provisions that should be included in the regulations. The information obtained from public comments will be used to develop proposed regulations and to complete necessary environmental and regulatory analyses. The material that follows: (1) Requests information and comments on specific issues relevant to existing or potential regulations, (2) provides additional background information on the rationale for the regulations, and (3) describes the process that will be used to develop the revised regulations.

Background

Disease in fish populations results from interactions of fish, pathogens, and the environment. The simultaneous presence of a suitable host fish and a pathogen in a particular place may not lead to disease; however, the most certain way to avoid disease is to keep host fish and pathogens separate. Minimizing the risk of disease in hatchery reared fish used to maintain stocks that cannot be maintained through natural reproduction is especially important. Many populations of trout and salmon are maintained primarily through hatchery production; therefore, regulations have focused on the importation of salmonid fishes and the flesh or eggs of salmonid fishes, so as to reduce the risk of introducing untreatable, uncontrollable pathogens into the hatchery and free-ranging stocks of salmonid fishes in the United States.

Present regulations require that importations of live fish or dead fish (including frozen fish or fillets) or eggs of the fish family Salmonidae must be

By direct shipment, accompanied by a certification that the importation is free of the protozoan *Myxosoma cerebralis*, the causative agent of so-called whirling disease, and the virus causing viral hemorrhagic septicemia, or Egtved disease. The certification shall be signed in the country of origin by a designated official acceptable to the Secretary of the Interior as being qualified in fish pathology, or in the United States by a qualified fish pathologist designated for this purpose by the Secretary of the Interior.

Fish caught in the wild in North America, or fish fleet or eggs that have been processed in a manner that kills the pathogens have been exempted from these regulations. The existing regulations were not designed to deal with pathogens that are already widespread in the United States, can be controlled by standard therapeutic measures, or do not cause disease in salmonid fishes. Existing regulations and procedures would be retained in the revised regulations except for provisions that are identified to be in need of addition, deletion, or modification.

Specific Information Needs

Interested parties are encouraged to offer comments and suggestions on any

or all aspects of 50 CFR 16.13 of concern to them. However, the Fish and Wildlife Service is particularly interested in economic, environmental, and general information relating to the following specific questions and/or topics. A background statement providing basic information follows each question.

1. Should a provision be included that would require all importations of salmonid fishes or eggs to be certified as free of all known replicating viral pathogens of salmonid fishes. (Viruses not known to cause pathological effects in fish or that cannot replicate on salmonid fish cell cultures would not be included.) What would be the effects of adding this requirement?

Background: Diseases of fish caused by viruses cannot be treated effectively through existing methods. At the time the present regulations were written, viral hemorrhagic septicemia (VHS) was the only known viral disease considered a serious threat to fish resources in the United States. The list of viruses known to infect fish has grown substantially in recent years and continues to grow rapidly, thereby making it virtually impossile to maintain an up-to-date current list of controlled pathogens. A general ban on viruses known to replicate/cause cytopathic effects on cultures of fish cells has been suggested as an effective, practical method of preventing the importation of those viruses identified since the original regulations were established, as well as those that may be identified in the future.

2. Should a provision be included to require all importations of fish or eggs of esocid fishes to be certified as free of all replicating viral pathogens of salmonid or esocid fishes? What would be the effects of such an addition?

Background: Esocid fishes are known to contract and carry VHS; therefore, importation of these fishes could be a possible avenue for introduction of VHS, or possibly other viral pathogens, into U.S. waters.

3. Should a provision be included banning the importation of live fishes of the families Salmonidae and Esocidae? What would be the effects of such a provision?

Background: Importations of live fish create the greatest risk for introducing pathogens into the United States. There are no known procedures for effectively disinfecting live fish prior to shipment, and they normally will be transferred into fish culture facilities or lakes and streams where they and any pathogens they carry will mingle with resident stocks.

4. Should a provision be included to require all live eggs of salmonid and esocid fishes to be water-hardened in solutions of polyvinylpyrrolidone iodine prior to importation into the United States? What would be the effects of such a provision?

Background: Water-hardening and/or treatments before and/or after shipment of eggs have been shown to remove pathogens from the surface of eggs and thereby to reduce the risk of transferring pathogens.

5. Should parental stocks from which live salmonid or esocid eggs are obtained for importation into the United States be required to have a two-year history of freedom (three inspections over a two-year period) from the viral pathogens banned under these regulations? What would be the effects of such a regulation?

Background: Sampling and monitoring over an extended period of time would reduce the risk of a pathogen actually being present, but not being detected during a single inspection.

6. Should fillets, fresh or frozen, of salmonid or esocid fishes to be excluded from the provisions of these regulations? What would be the effect of such an exemption?

Background: It has been suggested that there is very little probability of fillets being discarded uncooked, or otherwise unprocessed, and, therefore, they pose very little risk for introducing pathogens into North American waters.

7. Should fish caught in North American waters from free-ranging stocks be subject to the same certification requirements that apply to fish, fish eggs, or fish products imported from other continents or produced in North American aquaculture facilities? What would be the effects of such a provision?

Background: Present regulations exempt from certification requirements those fish caught under a valid sport or commercial license and landed in North America, because such fish and the waters they inhabit may move freely across national boundaries and it is not practical to enforce such a regulation. However, certification of freedom from viral hemorrhagic septicemia virus and *Myxobolus cerebralis* is required for fish from all aquaculture facilities, including those in North America, because these fish are thought to have greater probability of carrying controlled pathogens and it is possible to operate a valid inspection and certification program. It has been suggested that free-ranging fish and cultured fish should be treated similarly, where practical to do so.

8. Should a provision be included requiring live eggs of the Atlantic salmon (*Salmo salar*) to be certified as free of *Renibacterium salmoninarum*, the causative agent for bacterial kidney disease? What would be the effects of such a requirement?

Background: Reinibacterium salmoninarum is common in many areas of the United States; however, there have been no outbreaks of bacterial kidney disease in the hatcheries and stocks that provide fish for the programs designed to restore natural runs of Atlantic salmon in New England, nor has this bacterium been found in sea-run adults returning to rivers in New England. There is concern that failure to require imported Atlantic salmon eggs to be free of *Reinibacterium salmoninarum* could increase the reservoir of infective agents, thereby increasing the probability that returning adults would carry the pathogen and, in turn, lead to disease outbreaks that would jeopardize restoration efforts. *Reinibacterium salmoninarum* is egg-transmissible; therefore, it can be argued that imported eggs must be certified to come from stocks free of the bacterium if the risk from such introductions is to be avoided.

9. Should the present requirement that importations of salmonid fishes or eggs be certified as free of *Myxobolus (myxosomo) cerebralis* be deleted? What would be the effects of deleting this requirement?

Background: Whirling disease, caused by *Myxobolus cerebralis*, is untreatable. At the time the present regulations were written, the impact of the disease was considered to be very severe. Present information indicates that *Myxobolus cerebralis* has become firmly established in some areas (at least 16 States of the United States) and management techniques have been developed that reduce the undesirable effects of the pathogen.

10. Should a provision be included that would require laboratories that wish to import tissues, suspensions, fluids, cell cultures, or other materials containing pathogens covered by these regulations (50 CFR 16.13) to demonstrate adequate operational and containment procedures and facilities prior to being approved to receive such imports? What would be the effects of such a provision.

Background: Professional laboratories generally have facilities for preventing the accidental discharge of pathogens and standard operational procedures (e.g. no studies on live fish and sterilization of all waste material) that minimize the possibility of pathogen escapement. Nevertheless, there is concern that standards and periodic inspections of such laboratories would reduce the risk of accidental release of controlled pathogens.

11. Should a provision be included allowing the Director of the United States Fish and Wildlife Service to approve certain laboratories with established histories of competence and performance in fish pathology as Certifying Laboratories designated to certify the pathogen status of fish to be imported into the United States?

Background: Present regulations provide for designation of individuals only as Certifying Officials. It has been suggested that there should be provisions to exempt professional fish pathologists working in well-established laboratories from the need to apply individually for approval as a Certifying Official.

12. Should a provision be included prohibiting individuals from certifying the pathogen status of shipments in which the Certifying Official may have a vested interest? What would be the effects of such a provision?

Background: It has been argued that a conflict of interest exists if the result of a fish health inspection could cause in financial gain or loss or the possibility of such for the Certifying Official (inspector), or if the inspector has a financial or other interest in the fish being inspected. It is standard professional procedure and practice in other established inspection programs (e.g. USDA) to prohibit such conflicts of interest, or even the appearance of such conflicts.

Process for Developing Revised Regulations

This notice informs all interested parties that the Fish and Wildlife Service intends to revise the regulations pertaining to the importation of salmonid fishes and other fishes that may carry pathogens of salmonid fishes. Information has been requested concerning specific issues, a request made for additional suggestions, and opportunity provided for comment on the effects of possible modifications to the existing regulations. A schedule for public comment has been established.

Interested parties are invited to submit written comments to the Division of Fish Hatcheries. Comments may address any aspect of the existing regulations, possible revisions, and their present or potential impacts. No specific format is required. Details concerning the economic and environmental effects of possible revisions or suggested wording for the revised regulations will be especially useful. If sufficient interest and concern are expressed, the Fish and Wildlife Service will schedule public meetings at key locations to provide additional opportunities for comments.

After the conclusion of the comment period for this notice of intent, proposed regulations will be developed by the Fish and Wildlife Service and announced in the Federal Register. Public comment will be invited on the proposed regulations and, if necessary, public meetings scheduled. Final regulations reflecting all public comments, and the stewardship responsibilities of the Fish and Wildlife Service will be prepared and published subsequently in the Federal Register.

List of Subjects in 50 CFR Part 16.

Animal diseases, Fish, Freight, Imports, Transportation, Wildlife.

Dated: August 8, 1989.

Richard M. Smith,

Acting Deputy Director.

[FR Doc. 89-19321 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 18 and 228

RIN 1018-AB16

Incidental Take of Endangered, Threatened and Other Depleted Marine Mammals; Definition of Citizen of the United States

AGENCIES: U.S. Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: Regulations are proposed to modify the definition of " 'Citizen of the United States' and 'U.S. citizen' " in 50 CFR 18.27(c) and 228.3 by deleting the requirement that corporations and similar entities be controlled by individuals who are citizens of the United States. Limiting the definition of organizations "controlled by U.S. citizens" was incorporated without explanation when regulations implementing section 101(a)(5) of the Marine Mammal Protection Act were promulgated in 1982. Without the proposed change, Federal revenues from offshore leasing bonus bids could be reduced by up to several hundred million dollars annually.

DATES: Comments on the proposed rule must be received by September 18, 1989.

ADDRESSES: Comments should be submitted to the Director, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop—620 Arlington Square, 18th and C Streets NW., Washington, DC 20240. Documents supporting this proposed rule are available for inspection at the Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Room 840, Arlington Square Building, 4401 North Fairfax Drive, Arlington, VA, telephone: (703) 358-1718.

FOR FURTHER INFORMATION CONTACT: Robert A. Peoples, Jr., Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, (703) 358-1718, or Patricia Montanio, Protected Species Management Division, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, (301) 427-2322.

SUPPLEMENTARY INFORMATION: Revision of 50 CFR 18.27 and part 228 is proposed to allow Letters of Authorization to take small numbers of marine mammals incidental to a specific activity pursuant to section 101(a)(5) of the Marine Mammal Protection Act of 1972 (Act, 16 U.S.C. 1361 *et seq.*) to be granted to corporations and similar entities organized under laws of the United States or any State law, but not controlled by citizens of the United States. The current limitation of the definition to organizations "controlled by U.S. citizens" was incorporated without explanation when the general regulations implementing section 101(a)(5) were first promulgated by the National Marine Fisheries Service in 1982. The requirement that corporations and similar entities be organized under United States or any State law, and therefore subject to United States jurisdiction, will be retained to ensure these entities are accountable for their actions and to maintain consistency with the Act.

The Act prohibits all taking of marine mammals, including harassment, unless specifically allowed by the Act or by procedures established under provisions of the Act. In 1981, the Act was amended to add section 101(a)(5) authorizing the Secretaries of Commerce and the Interior to allow "citizens of the United States" to engage in specified activities (other than commercial fishing) within specific geographic regions during periods of not more than five consecutive years that result in the incidental, but not intentional, taking of small numbers of non-depleted marine mammals.

In early 1982, the National Marine Fisheries Service proposed "Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities" (50 CFR part 228) to implement the new provisions of the Act (47 FR 9027). In response to comments, a definition of " 'Citizens of the United States' and 'U.S. citizen' " was added without explanation or opportunity for comment in the final regulations published in May 1982 (47 FR 21248). "Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities" (50 CFR 18.27) which were virtually identical to those adopted by the National Marine Fisheries Service were promulgated by the U.S. Fish and Wildlife Service in July 1983 (48 FR 31220).

Both sets of regulations establish standards and procedures for determining whether the taking of small numbers of non-depleted marine mammals incidental to specified activities (other than commercial fishing) should be allowed and included the following definition:

"Citizens of the United States" and "U.S. citizens" means individual U.S. citizens or any partnership, corporation, association, or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13) and controlled by individuals who are U.S. citizens. U.S. Federal, State, and local government agencies shall also constitute citizens of the United States for purposes of this section.

Under this definition, foreign controlled corporations and similar entities, including their subsidiaries, cannot obtain Letters of Authorization necessary to proceed with specific activities that may result in the incidental taking of marine mammals under United States jurisdiction.

The U.S. Fish and Wildlife Service and the National Marine Fisheries Service jointly proposed to amend the incidental take framework regulations on March 15, 1988 (53 FR 8473). That rule, which did not address the definition of citizen of the United States, was proposed to implement amendments to section 101(a)(5) of the Act adopted in 1988. The 1988 amendments authorized the issuance of specific regulations for the incidental take of depleted, as well as non-depleted, marine mammals.

In commenting on the proposed rule, the American Petroleum Institute, Minerals Management Service and several other entities stated that the existing definition of citizen of the United States as applied to a corporation is unduly restrictive since it requires control by American citizens. The commenters also noted that the definition of citizen of the United States in the marine mammal incidental take regulations is inconsistent with regulatory practice under the Outer Continental Shelf Lands Act which requires only that a corporation be organized under the laws of the United States (i.e., be subject to United States jurisdiction). They believe that the Congress intended that all holders of offshore leases be permitted to receive Letters of Authorization under the Act and, therefore, that the definition in the marine mammal regulations should be consistent with Outer Continental Shelf Lands Act regulatory practice.

The clear language in section 101(a)(5) of the Marine Mammal Protection Act only authorizes United States citizens to take marine mammals incidental to specified activities (other than commercial fishing). However, there is no suggestion in the Act or its legislative history that Congress intended to preclude corporations or similar entities organized under United States or any State law from qualifying as United States citizens.

Generally, corporations and similar entities that are organized under, and therefore subject to, United States or State laws are considered persons in a legal sense and are afforded many of the same rights as individual citizens of the United States regardless of who owns or controls the entity. Similarly, for purposes of section 101(a)(5) of the Act, we are proposing that corporations and similar entities organized under United States or State laws be considered citizens of the United States without restriction as to controlling interest.

In extending this definition to include all corporations and similar entities, it is desirable to avoid situations where non-citizens can circumvent the intent of the statute to limit the availability of incidental take Letters of Authorization to United States citizens. By similar entities, therefore, the Services mean only those entities recognized under United States or State laws to be legal persons for purposes of legal jurisdiction and legal liability. Most, if not all, corporations or similar entities created pursuant to State or Federal law would meet this requirement. Therefore, reference to partnerships and associations are proposed to be deleted from the definition. This would not preclude individuals who are United States citizens or corporations organized under United States or any State law from forming a partnership or other associations since they would be considered as applying in their capacity as United States citizens or corporations.

The requirement in the definition of "United States citizen" that corporations and similar entities must be controlled by individuals who are United States citizens appears to be unduly restrictive without any corresponding benefits to marine mammals. As has been noted, the requirement that corporations be controlled by individuals who are United States citizens is inconsistent with regulatory practice under the Outer Continental Shelf Lands Act. In addition, it could adversely affect otherwise acceptable activities and substantially reduce revenues from the sale of offshore oil and gas leases. Elimination of this limitation in the definition of United States citizen appears to be warranted and desirable.

Proposed Regulatory Change

These regulations propose to amend the definition of "citizen of the United States and U.S. citizen" in 50 CFR 18.27(c) and 228.3 by deleting the requirement that corporations and similar entities be "controlled by individuals who are U.S. citizens." Consistent with the preamble discussion, it is also proposed that the specific reference to partnerships and associations in the definition be deleted. These revisions are proposed to allow Letters of Authorization to incidentally take marine mammals to be granted to corporations and similar entities not controlled by United States citizens. The requirement that corporations and similar entities be organized under United States or any State law, and therefore subject to United States jurisdiction, would be retained.

Classification

The Department of the Interior, as the lead agency, has prepared a draft environmental assessment of this proposed rule. A determination will be made at the time of the final rule as to whether or not this is a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969. Section 101(a)(5) of the Marine Mammal Protection Act, and implementing regulations, require that the impacts of any authorized incidental take on marine mammal populations be negligible and that there be no unmitigable adverse impacts on their use for subsistence purposes. The proposed modification of the definition of "citizen of the United States" does not alter this standard.

It has been determined that these regulations constitute a major rule as defined in Executive Order 12291.

Without the proposed definitional change, Federal revenues from offshore leasing bonus bids are likely to be reduced by more than $100 million annually. However, considering time constraints and the nature of the rulemaking, the Office of Management and Budget, consistent with section 6(a)(4) of the Executive Order, has waived the requirement for preparation of a Regulatory Impact Analysis.

The Department of the Interior has certified under terms of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the proposed regulations will not have a significant economic impact on a substantial number of small entities. Most requests for specific regulations to incidentally take marine mammals under the revised regulations are, as at present, likely to be from the oil and gas and related industries; they would not be considered small entities under the Regulatory Flexibility Act.

This rule does not contain an information collection requirement subject to Office of Management and Budget clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

The analyses under the National Environmental Policy Act, Executive Order 12291 and the Regulatory Flexibility Act are available for review (see **ADDRESSES**).

The primary author of this proposal is Robert A. Peoples, Jr., Department of the Interior.

List of Subjects

50 CFR Part 18

Administrative practice and procedure, Alaska, Exports, Imports, Intergovernmental relations, Marine mammals, Transportation.

50 CFR Part 228

Administrative practice and procedure, Marine mammals, Outer continental shelf oil and gas exploration.

Proposed Regulation Promulgation

Accordingly, the Service proposes to amend 50 CFR parts 18 and 228 as shown below.

PART 18—MARINE MAMMALS

1. The authority citation for 50 CFR part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Section 18.27(c) is amended by revising the definition of "Citizens of the United States" and "U.S. citizens" to read as follows:

§ 18.27 Regulations governing small takes of marine mammals incidental to specified activities.

* * * * *

(c) * * *

Citizens of the United States and *U.S. citizens* means individual U.S. citizens or any corporation or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13). U.S. Federal, State and local government agencies shall also constitute citizens of the United States for purposes of this section.

* * * * *

Dated: June 27, 1989.

Susan Recce Lamson,

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

James W. Brennan,

Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

PART 228—REGULATIONS GOVERNING SMALL TAKES OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

3. The authority citation for 50 CFR part 228 continues to read as follow:

Authority: 16 U.S.C. 1361 *et seq.*

4. Section 228.3 is amended by revising the definition of " 'Citizens of the United States' and 'U.S. citizens' " with the following:

§ 228.3 Definitions

* * * * *

Citizens of the United States and *U.S. citizens* means individual U.S. citizens or any corporation or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13). U.S. Federal, State and local government agenices shall also constitute citizens of the United States for purposes of this section.

* * * * *

[FR Doc. 89-19267 Filed 8-16-89; 8:45 am]
BILLING CODES 3510-22-M and 4310-55-M

Notices

Federal Register
Vol. 54, No. 158
Thursday, August 17, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 11, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Extension

- Animal and Plant Health Inspection Service

Prohibited and Restricted Importation of Meats, Animals, Animal Byproducts, Poultry, Organisms and Vectors into the United States

VS 16-3, VS 16-25, VS 16-26

Recordkeeping; On occasion; Quarterly

Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 6,291 responses; 12,803 hours; not applicable under 3504(h)

Harry A. Kryder, (301) 436-7885.

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 89-19274 Filed 8-16-89; 8:45 am]

BILLING CODE 3410-01-M

Office of International Cooperation and Development

Cooperative Agreement Intent; Florida A&M University

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

ACTIVITY: OICD intends to enter into an agreement with Florida A&M University, in conjunction with the International Science and Education Council, to co-sponsor an "International Goat Symposium."

AUTHORITY: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99-198).

OICD anticipates the availability of funds in fiscal year 1989 (FY 1989) to support Florida A&M University in co-sponsoring an International Goat Symposium, 22-26 October 1989. The symposium will provide a means for scientists, educators, and small farmers to exchange information related to goat research, production and marketing techniques being utilized in developed and developing nations. Targeted participants include students from 1890 and 1862 Land-Grant Universities, farmers from the Southeastern United States, and scientists from East and West Africa, Latin and South America, the Caribbean Basin, Europe and Asia.

Assistance will be provided only to the University which will utilize funds to support preparations for, and conduct of the symposium.

Based on the above, this is not a formal request for application. An estimated $5,000 will be available in FY 1989 as partial support for this project.

Information on proposed Agreement #58-319R-9-012 may be obtained from: USDA/OICD/Management Services Branch, Washington, DC 20250-4300.

Dated: August 10, 1989.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 89-19293 Filed 8-16-89; 8:45 am]

BILLING CODE 3410-DF-M

Cooperative Agreement Intent; University of Arkansas

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

ACTIVITY: OICD intends to award a Grant to the University of Arkansas to support the "1989 Farming Systems Research Symposium."

AUTHORITY: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99-198).

OICD anticipates the availability of funds in fiscal year 1989 (FY 1989) to provide funding support to the University of Arkansas for conduct of the "1989 Farming Systems Research Symposium. This symposium is recognized as the major international forum for the exchange of research experiences and the development of new approaches related to farming systems research and extension.

Assistance will be provided only to the University which will utilize funds to support the publication and staff support costs of the symposium.

Based on the above, this is not a formal request for application. An estimated $40,000 will be available in FY 1989 as partial support for this symposium.

Information on proposed Grant #59-319R-9-002 may be obtained from: USDA/OICD/Management Services Branch, Washington, DC 20250-4300.

Dated: August 10, 1989.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 89-19294 Filed 8-16-89; 8:45 am]

BILLING CODE 3410-DF-M

Cooperative Agreement Intent: University of Georgia

AGENCY: Office of Interantional Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

ACTIVITY: OICD intends to enter into an agreement with the University of Georgia Research Foundation to develop agroclimatological strategies for Dryland Agriculture.

AUTHORITY: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Public Law 99-198).

OICD anticipates the availability of funds in fiscal year 1989 (FY 1989) to support the University of Georgia in its program to provide coordination and network linkage to several projects dealing with agroclimatic resource strategies in dryland agriculture, such as AGRHYMET, ICRISAT Sahelian Center, Famine Early Warning System and TAMSAT.

Assistance will be provided only to the University which will utilize funds to support the proposed coordination and network linkage.

Based on the above, this is not a formal request for application. An estimated $15,000 will be available in FY 1989 as partial support for this project.

Information on proposed Agreement #58-319R-9-013 may be obtained from: USDA/OICD/Management Services Branch, Washington, DC 20250-4300.

Dated: August 10, 1989.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 89-19295 Filed 8-16-89; 8:45 am]

BILLING CODE 3410-DF-M

Office of International Cooperation and Development

Cooperative Agreement Intent: Old Dominion University

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

ACTIVITY: OICD intends to award a Grant to Old Dominion University for publication of the newsletter on parasitic plants entitled HAUSTORIUM.

AUTHORITY: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Public Law 99-198).

OICD anticipates the availability of funds in fiscal year 1989 (FY 1989) to provide funding support to Old Dominion University for continued publication of the newsletter, HAUSTORIUM; the reprinting of the 1957 USDA bibliography on *Striga asiatica* (witchweed), including its update; and establishing a literature collection on *Striga* in Africa.

Assistance will be provided only to the University which will utilize funds to partially support the publication of the newsletter and bibliography reprint, as well as establishing the literature collection.

Based on the above, this is not a formal request for application. An estimated $10,511 will be available in FY 1989 as partial project support. Additional funding may be awarded during FY 1990 and FY 1991 depending on availability.

Information on proposed Grant #59-319R-9-003 may be obtained from: USDA/OICD/Management Services Branch, Washington, DC 20250-4300

Dated: August 10, 1989.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 89-19296 Filed 8-16-89; 8:45 am]

BILLING CODE 3410-DF-M

Rural Electrification Administration

Intention to Prepare an Environmental Impact Statement and Hold Scoping Meeting; Associated Electric Cooperative, Inc.

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of intent to prepare environmental impact statement and hold scoping meetings.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR parts 1500-1508), and REA Environmental Policies and Procedures (7 CFR part 1794) may prepare a Draft Environmental Impact Statement (DEIS) and subsequently a Final Environmental Impact Statement (FEIS) for its Federal action related to a proposal by Associated Electric Cooperative, Inc., (Associated) of Springfield, Missouri to participate in constructing a 345 kV transmission line project. REA may consider providing financing assistance, construction approval, and/or approval of contractual agreements between Associated and other parties that would result in construction of the project. Notice is also given of public scoping meetings to be held in conjunction with the review of the possible environmental consequences and the determination of potentially significant environmental issues associated with the REA Federal action related to the proposed project.

FOR INFORMATION CONTACT: The primary point of contact for this project is Mr. Alex M. Cockey, Jr., Director, Southeast Area—Electric, Rural Electrification Administration, room number 0270, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250-1500, telephone number (202) 382-8436. For information on specific aspects of Associated's proposal contact Mr. Charles Means. Associated Electric Cooperative, Inc., P.O. Box 754, Springfield, Missouri 65801, telephone number (417) 881-1204.

SUPPLEMENTARY INFORMATION: Associated tentatively proposes to participate in a project to construct 105 miles of 354 kV transmission line and modify three existing substations. The line would begin at the Cooper Nuclear Station in Nemaha County, Nebraska, traverse east through Atchison, Holt, Nodaway, Andrew, and Gentry Counties, Missouri, to the Fairport Substation in De Kalb County, Missouri and southwest to the St. Joseph Substation in Andrew County, Missouri. The Cooper, Fairport and St. Joseph substations will be upgraded to accommodate the 345 kV transmission line.

Possible participants in the project beside Associated may include the Nebraska Public Power District, Omaha Public Power District, the Lincoln Electric System, Kansas City Power and Light, St. Joseph Light and Power Company, and Iowa Power and Light Company.

Alternatives to be considered by REA and Associated may include, among other options: (a) No action, (b) load management, (c) individual versus joint participation, (d) new generation and (e) various transmission line support structures and alternative corridors.

Public scoping meetings will be held at Northwest Missouri Electric Cooperative, 401 Highway 71, Savannah, Missouri, at 7:00 pm on Tuesday, September 26, 1989, and at the Fairfax Reorganized R-3 School, U.S. Highway 59, Fairfax, Missouri, at 7:00 pm on Wednesday, September 27, 1989.

Comments regarding the proposed project may be submitted orally or in writing at the scoping meetings or in writing within 30 days after the September 27 meeting to REA at the address provided in this notice.

Government agencies, other organizations, and the public are invited to participate in the planning and analysis of the proposed project. Issues to be discussed at the scoping meetings include, but are not limited to, determination of the project scope, the nature and extent of reasonable alternatives, identification of significant environmental issues and the scope of those issues, delineation of issues which are not significant and do not warrant detailed study, and requirements that REA or other Federal, State of Missouri, or local agencies may conduct concurrently with the environmental review of the proposed project.

To be presented at the meeting will be a Macro-Corridor Study and an Alternative Evaluation prepared by Associated and Burns & McDonnell and reviewed by REA. The Macro-Corridor

Study and Alternative Evaluation are available for public review at REA or Associated at the addresses provided herein. They can also be reviewed at the following libraries:

Rolling Hills Regional Library, 514 West Main Street, Savannah, Missouri 64485, Telephone: (816) 324–4569

Atchison County Library, 200 South Main Street, Rock Point, Missouri 64482, Telephone: (816) 744–5404

Maryville Public Library, 5th and Main Street, Maryville, Missouri 64468, Telephone: (816) 582–5281

Gentry County Library, 2nd and Park Street, Stanberry, Missouri 64489, Telephone: (816) 783–2335.

From information provided in the Macro-Corridor Study, the Alternative Evaluation, input from local, State of Missouri and Federal agencies, and the public, Associated will prepare an Environmental Analysis to be submitted to REA for review. If significant effects are not evident based on a review of the analysis, REA will prepare an environmental assessment to determine if the preparation of an Environmental Impact Statement (EIS) is warranted.

Should REA determine that the preparation of an EIS is not warranted, it will prepare a Finding of No Significant Impact (FONSI). The FONSI will be made available for public review and comment for 30 days. REA will not take its final action related to the project prior to the expiration of the 30-day period.

Any final action by REA related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of the environmental procedures as prescribed by CEQ, and REA environmental policies and procedures as applicable.

Dated: August 11, 1989.

Frank W. Bennett,

Acting Assistant Administrator—Electric.

[FR Doc. 89–19344 Filed 8–16–89; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Green Knoll Critical Area Treatment (CAT) RC&D Measure, New Jersey

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Green Knoll Critical Area Treatment (CAT) RC&D Measure, Somerset, New Jersey.

FOR FURTHER INFORMATION CONTACT: Barbara T. Osgood, State Conservationist, Soil Conservation Service, 1370 Hamilton Street, Somerset, New Jersey 08873, telephone (201) 246–1662.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Barbara T. Osgood, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for providing for bank stabilization of a stream.

The planned works of improvement include the installation of riprap and seeding.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Basic data developed during the environmental assessment are on file and may be reviewed by contacting Barbara T. Osgood.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: August 3, 1989.

Carlos F. Henning,

Acting State Conservationist.

[FR Doc. 89–19358 Filed 8–16–89; 8:45 am]

BILLING CODE 3410-16-M

Warren Township Middle School Drainage RC&D Measure, New Jersey

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Warren Township Middle School Drainage RC&D Measure, Somerset, New Jersey.

FOR FURTHER INFORMATION CONTACT: Barbara T. Osgood, State Conservationist, Soil Conservation Service, 1370 Hamilton Street, Somerset, New Jersey 08873, telephone (201) 246–1662.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Barbara T. Osgood, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for providing for the land grading and shaping of an athletic field to control surface runoff.

The planned works of improvement include the installation of a diversion, waterway, subsurface drain, and revegetation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Barbara T. Osgood.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.091, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: August 3, 1989.

Carlos F. Henning,

Acting State Conservationist.

[FR Doc. 89–19357 Filed 8–16–89; 8:45 am]

BILLING CODE 3410-16-M

Brashears Creek Watershed, Kentucky; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Brashears Creek Watershed, Henry, Shelby, and Spencer Counties, Kentucky.

FOR FURTHER INFORMATION CONTACT: Randall W. Geissler, State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, KY 40504, telephone: 606–233–2759.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Randall W. Geissler, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for erosion reduction and protection of municipal and industrial water quality. The planned works of improvement include nineteen waste management facilities and accelerated technical and financial assistance for land treatment.

A limited number of copies of the Finding of No Significant Impact (FONSI) are available to fill single copy requests at the above address. Basic data developed during development of the environmental assessment are on file and may be reviewed by contacting Randall W. Geissler.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No., 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: August 10, 1989.

Clyde L. Goodman,

Deputy State Conservationist.

[FR Doc. 89–19319 Filed 8–16–89; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: The Impact of Aids on the U.S. Army: Interviews with Seropositive Applicants for Military Service; No Form; and OMB Control Number 0704–0282.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 75 hours.

Frequency of Response: One response per respondent.

Number of Respondents: 1,200.

Annual Burden Hours: 1,900.

Annual Responses: 1,200.

Needs and Uses: Interview survey is to be used by contractor trained personnel to interview military recruit applicants who have been identified as positive for HIV to determine risk factors for the disease. The interview will be conducted in a single session by contractor trained interviewers who will not know the antibody status of the subject. The survey instrument and analysis and summary files will not contain personal identifier information and linking of individuals to their specific responses will not be possible. Information gained will be of unique importance for designing intervention programs, for targeting high risk groups for screening and health education and for assessing the efficacy of prevention efforts. Data currently available may not reflect the current state of the epidemic. This research effort will provide a broad-based, national surveillance system for determining the geographical spread of the epidemic and the risk factors most associated with its spread.

Affected Public: Individuals or households.

Frequency: One per respondent.

Respondent's Obligation: This is a voluntary survey.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at the Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: August 14, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 89–19369 Filed 8–16–89; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement, Part 247, Transportation, and Related Clauses in § 252.247; DFSC Form 1890; and OMB Control Number 0704–0245.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 1 Hour.

Frequency of Response: On occasion.

Number of Respondents: 28,750.

Annual Burden Hours: 64,700.

Annual Responses: 64,700.

Needs and Uses: This request concerns information collection requirements required to support contracting for transportion and related services in the DoD FAR Supplement and Service Supplements.

Affected Public: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: August 14, 1989.
L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 89-19370 Filed 8-16-89; 8:45 am]
BILLING CODE 3810-01-M

Office of the Secretary

Membership of the Defense Contract Audit Agency (DCAA) Performance Review Boards

AGENCY: Defense Contract Audit Agency.

ACTION: Notice of Membership of the Defense Contract Audit Agency Performance Review Boards.

SUMMARY: This notice announces the appointment of the members of the Performance Review Boards (PRBs) of the Defense Contract Audit Agency (DCAA). The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Director, DCAA, regarding final performance ratings and performance awards for DCAA SES members.

EFFECTIVE: August 17, 1989.

FOR FURTHER INFORMATION CONTACT: Dale R. Collins, Director, Personnel and Security Division, Defense Contract Audit Agency, Department of Defense, Cameron Station, Alexandria, Virginia, 202/274-5798.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of the executives who have been appointed to serve as members of the DCAA Performance Review Boards. They will serve one-year terms, effective upon publication of this notice.

Headquarters Performance Review Board:
- Mr. Roy Heidemann, Assistant Director, Operations, Defense Contract Audit Agency, Chairperson
- Mr. William Sharkey, Assistant Director, Policy and Plans, Defense Contract Audit Agency, member
- Mr. John van Santen, Assistant Director, Resources, Defense Contract Audit Agency, member

Regional Performance Review Board:
- Mr. Harvey Della Bernarda, Regional Director, Eastern, Defense Contract Audit Agency, Chairperson
- Mr. Joel Valenzuela, Regional Director, Central Defense Contract Audit Agency, member
- Mr. Gary Neil, Director, Field Detachment Defense Contract Audit Agency member

Dated: August 14, 1989.
Linda M. Bynum,
Alternate OSD, Federal Register Liaison Officer, Department of Defense.
[FR Doc. 89-19372 Filed 8-16-89; 8:45 am]
BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 11, 1989.

The USAF Scientific Advisory Board Strategic Cross-Matrix Panel will meet on September 8, 1989, from 8:00 a.m., to 5:00 p.m., at HQ Strategic Air Command (SAC), Offutt AFB NE.

The purpose of this meeting will be to facilitate the exchange of information amongst Scientific Advisory Board members and SAC staff on strategic missile programs. The meeting at HQ Strategic Air Command (SAC) will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.
[FR Doc. 89-19320 Filed 8-16-89; 8:45 am]
BILLING CODE 3810-01-M

Office of the Inspector General

Privacy Act of 1974; New System of Records

AGENCY: Office of the Inspector General, DOD.

ACTION: Notice of a new system of records subject to the Privacy Act.

SUMMARY: The Office of the Inspector General, Department of Defense, is adding a new system of records to its inventory of record systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 522a).

DATE: This proposed action will be effective without further notice on or before September 18, 1989, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the Assistant Director, FOIA/PA Division, Assistant Inspector General for Investigations, Room 1016, 400 Army Navy Drive, Arlington, VA 22202-2884.

FOR FURTHER INFORMATION CONTACT: Dominick D. Wasielewski, (202) 697-6035, AUTOVON: 227-6035.

SUPPLEMENTARY INFORMATION: The complete inventory of record system notices subject to the Privacy Act for the Office of the Inspector General, DoD, has been published in the **Federal Register** to this date as listed:

50 FR 22279 May 29, 1985 (Compilation, changes follow)
52 FR 26547 Jul 15, 1987
52 FR 35754 Sep 23, 1987
54 FR 24377 Jun 7, 1989

A new system report, as required by 5 U.S.C. § 552a(r) of the Privacy Act, was submitted on August 9, 1989, to the Committee on Governmental Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

Dated: August 14, 1989.
L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG-11

SYSTEM NAME:

Budget Information Tracking System (BITS).

SYSTEM LOCATION:

Department of Defense (DoD), Office of the Assistant Inspector General for Administration and Information Management, Financial Management Directorate, 400 Army Navy Drive, Room 567A, Arlington, VA 22202-2884.

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

All DoD Inspector General employees who participate in IG Travel, Permanent Change of Station (PCS), Awards, and Training.

CATEGORIES OF RECORDS IN THE SYSTEM:

Cost records of IG employees who have been approved for Temporary Duty and Blanket Travel; employee training; Permanent Change of Station (PCS); and employee cash awards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 95-452, the Inspector General Act of 1978, as amended; 10 U.S.C. 133, Secretary of Defense: Appointment, Powers, Duties and Delegation by; DoD Directive 5106.1, "Inspector General of the Department of Defense" (32 CFR part 373); and Executive Order 9397.

PURPOSE(S):

Information is used in determining current year execution and future budgetary requirements for the Office of the Inspector General. Personal information such as individual's name, Social Security Number and grade/rank are used as follows:

a. Tracking temporary duty travel costs. Personal information, individual's name and Social Security Number are used as unique identifiers used in querying the system for cost data.

b. Tracking blanket travel costs and effective dates.

c. Tracking training costs and requirements.

d. Tracking Permanent Change of Station (PCS) costs.

e. Tracking cash award costs. Personal information, grade/rank are used in determining the cash award ceiling and range available to the individual proposing the cash award.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Office of the Inspector General's compilation of record system notices apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer disks, stored in a fireproof safe. Paper records are forwarded to the appropriate office within the Inspector General for storage.

RETRIEVABILITY:

Records are retrieved by Social Security Number. A specified data element or a combination thereof contained in this system of records can be used for accessing information.

SAFEGUARDS:

Access to the system is protected/restricted through the use of assigned user identification/passwords for entry into system modules.

RETENTION AND DISPOSAL:

Records are maintained for the current fiscal year. Records are then archived and stored in a fireproof safe for three years. At the end of the third year, the archived disks and paper records are destroyed.

SYSTEM MANAGER AND ADDRESS:

Assistant Director, FOIA/PA Division, Office of the Assistant Inspector General for Investigations, 400 Army Navy Drive, Room 1016, Arlington, VA 22202-2884.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Director, FOIA/PA Division, Office of the Inspector General for Investigations, 400 Army Navy Drive, Arlington, VA 22202-2884. The request should contain the full name, address, and Social Security Number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Assistant Director, Office of the Inspector General for Investigations, 400 Army Navy Drive, Arlington, VA 22202-2884. The request should contain the full name, address, and Social Security Number of the individual.

CONTESTING RECORD PROCEDURES:

Agency rules for accessing records and for contesting contents and appealing initial IG determinations by the individual concerned are published in OSD Administrative Instruction No. 81, "OSD Privacy Program"; 32 CFR part 286b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Data maintained in the system is obtained directly from the individual on the following forms:

A. Request to Temporary Duty Travel Form, provided to the Travel Section with information obtained from the individual traveler;

b. Request for Permanent Change of Station Form, provided by the Personnel and Security Directorate and Travel Section with information obtained from the individual;

c. Request for Training Form, provided by the Training Officer within each segment of the Office of the Assistant Inspector General with information obtained from the individual; and

d. Incentive Awards Nomination and Action Form, provided by the Personnel and Security Directorate with information obtained from an individual's supervisor and personnel records.

To the extent that a follow-up to resolve discrepancies is required, information is collected directly from the individual or the appropriate office within the Office of the Inspector General on Department of Defense (DD) Forms 1610 and 1614, Standard Form 182, and IG Form 1400.430-3.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 89-19371 Filed 8-16-89; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before September 18, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B.Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each

proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: August 14, 1989.

Carlos U. Rice,

Director, for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Existing
Title: Private Schools Survey
Frequency: Biennially/Annually
Affected Public: Non-profit institutions; Small businesses or organizations
Reporting Burden:
Responses: 25,000
Burden Hours: 12,000
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This survey will obtain basic information about private elementary and secondary schools. The Department will use this information to build a universe frame of schools to serve as a sampling frame for surveys of private schools; and to conduct a sample survey to collect early estimates of key statistics (e.g. total number of private schools, teachers and students) annually.

[FR Doc. 89-19318 Filed 8-16-89; 8:45 am]
BILLING CODE 4000-1-M

DEPARTMENT OF ENERGY

Grants and Cooperative Agreement Awards; Texas

AGENCY: Bartlesville Project Office, Department of Energy.

ACTION: Notice of intent to negotiate a grant with the State of Texas (Annex V).

SUMMARY: "Microbial Enhanced Oil Recovery (MEOR) Research." The U.S. Department of Energy (DOE), Bartlesville Project Office, through the DOE, Idaho Operations Office, intends to negotiate on a noncompetitive basis a cost-share grant with the State of Texas. All technical and scientific aspects will be conducted by the University of Texas at Austin (UTA) through a subgrant. The action is prompted by the consummation of Annex V to the Memorandum of Understanding between the DOE and the State of Texas which defines the research proposal and the participants, and specifies cost sharing. The grant will be utilized by the University of Texas at Austin to enhance the understanding of MEOR processes through experimentation as well as simulation of bacteria transport and oil recovery mechanisms. To accomplish this the following four tasks will be conducted: (1) The strain initially chosen for this study, *Bacillus licheniformis* JF-2, will be characterized with respect to its growth characteristics and its ability to generate biosurfactants, (2) transport studies in cores will be conducted to compare with the model results, (3) a computer model will be formulated to simulate bacterial transport growth in porous media, and (4) the bioengineering aspects of specific MEOR processes will be evaluated using the simulator. The participant shall further transfer the learned technologies to oil operators through publications and workshops. The University of Texas at Austin will make available to this research project the state well records, geological data archives, well samples and computer resources.

The authority and justification for determination of noncompetitive financial assistance (DNCFA) is DOE Financial Assistance Rules 10 CFR 600.7(b)(2)(i), (B) and (C). The activities proposed in Annex V to the agreement between the U.S. Department of Energy and the State of Texas are in support of a public purpose and are as directed by the agreement. This activity would be conducted by the State of Texas using their own resources, however, DOE support of the activity would enhance the public benefits to be derived by allowing full development and verification of a computer simulator for MEOR modeling and evaluation. DOE knows of no other entity which is conducting or planning to conduct such an activity. The applicant is a unit of Government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity. The grant term is for two years at an estimated cost of $360,328 which will be cost shared equally by DOE and the State of Texas. Public response may be addressed to the contract specialist stated below.

CONTACT: U.S. Department of Energy, Idaho Operations Office 785 DOE Place, Idaho Falls, Idaho 83402, Trudy A. Thorne, Contract Specialist (208) 526-9519.

Dated: August 1, 1989.

J. Roger Gonzales,

Director, Contracts Management Division.

[FR Doc. 89-19383 Filed 8-16-89; 8:45 am]
BILLING CODE 6450-01-M

Grants and Cooperative Agreement Awards; Texas

AGENCY: Bartlesville Project Office, Department of Energy.

ACTION: Notice of intent to negotiate a grant with the State of Texas (Annex VI).

SUMMARY: "Development of Nuclear Magnetic Resonance Imaging/Spectroscopy for Improved Petroleum Recovery." The U.S. Department of Energy (DOE), Bartlesville Project Office, through the DOE, Idaho Operations Office, intends to negotiate on a noncompetitive basis, a cost-share grant with the State of Texas. All technical and scientific apsects will be conducted by the Texas A&M University through a subgrant. The action is prompted by the consummation of Annex VI to the Memorandum of Understanding between the DOE and the State of Texas which defines the research proposal and the participants, and specifies cost sharing. The grant will be used by the Texas A&M University for the development and application of Nuclear Magnetic Resonance Imaging (NMRI) methods for determining rock-fluid and petrophysical properties and for fundamental studies of multiphase flow behavior in porous media. Specific objectives are development of NMRI procedures for: (1) Measuring porosity, permeability, pore size distribution, capillary pressure, and wetting characteristics, (2) improvement of the methods for determining two- and three-phase relative permeability functions, (3) development of a better understanding of dispersed phase displacement processes, and (4) determination of saturation distributions and fingering during miscible displacements. The learned technologies will be transferred to oil operators through publications and workshops. The Texas A&M University will make available to this research project the facilities of the Engineering Imaging Laboratory. The authority and justification for determination of noncompetitive financial assistance (DNCFA) is DOE Financial Assistance Rules 10 CFR 600.7(b)(2)(i), (b), (C) and (D). The activities proposed in Annex VI to the agreement between the U.S. Department of Energy and the State of Texas are in support of a public purpose and are as directed by the agreement.

This activity would be conducted by the State of Texas using their own resources, however, DOE support of the activity would enhance the public benefits to be derived by allowing more thorough and more rapid development of NMRI methodologies applicable to reservoir characterization. DOE knows of no other entity which is conducting or planning to conduct such an activity. The applicant is a unit of Government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction thereby precluding DOE provision of support to another entity. The State of Texas through its subgrantee, Texas A&M University, has exclusive domestic capability to perform the activity successfully based on unique equipment, proprietary data, and technical expertise. The applicant has access to data relative to the proposed activities that will be identified and structured and made available to developers, decision-makers, and researchers. The applicant has access to the Engineering Imaging Laboratory and technicians and researchers skilled in NMRI. The grant term is for three years at an estimated value of $1,870,000 which will be cost shared equally by DOE and the State of Texas. Public response may be addressed to the Contract Specialist stated below.

CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Trudy A. Thorne, Contract Specialist (208) 526-9519.

Dated: August 1, 1989.

J. Roger Gonzales,

Director, Contracts Management Division.

[FR Doc. 89-19384 Filed 8-16-89; 8:45 am]
BILLING CODE 6450-01-M

Financial Assistance Award; Intent of Award Grant to Uni-Frac, Inc.

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE-FG01-89CE15998 to Uni-Frac, Inc., to fund testing of the unique Uni-Frac distillation Column under six different operating conditions.

Scope: This grant will aid in providing funding to Uni-Frac, Inc., for the purpose of testing the invention at the world renowned University of Texas Separations Research Center (SRC) to determine the efficiency of the Uni-Frac Column under six separate operating conditions in order to quantitatively assess its significance. Conventional distillation column designs do not allow uni-directional flow of liquids across the plate. The Uni-Frac Column has solved this problem. This new form of plate design in a distillation column will substantially increase the efficiency for separating liquids. The crude oil processing industry, petro-chemical industry, and a number of other industries are highly sensitive to the performance of distillation columns. In the petro-chemical industry alone, the National Institute of Standards and Technology (NIST) estimates savings on a global scale from the adoption of Uni-Frac Column technology at 21 million barrels of oil annually. Another large use for the technology would be for distilling liquid air that is needed to produce oxygen for the iron and steel industry. Distillation is widely employed as a key unit of operation in many industries therefore, the Uni-Frac Column technology could lead to many other potential energy savings applications.

Eligibility: Based on acceptance of an unsolicited application, eligibility of this award is being limited to Trent J. Parker, Uni-Frac, Inc., a private corporation that invented and holds the patent on the Uni-Frac Column. It has been determined that this project has high technical merit, representing an innovative technology which has a strong possibility of adding to the national energy resources.

The term of this grant shall be for 18 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement of Operations, Attn: Richard E. Leotta, MA-453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89-19385 Filed 8-16-89; 8:45 am]
BILLING CODE 6450-01-M

Senior Executive Service; Performance Review Board

ACTION: Amendment to the SES Performance Review Board Appointments.

SUMMARY: This notice lists the additional members to serve on the Performance Review Board standing register for the Department of Energy. This supplements the listings published in 52 FR 32165, on August 26, 1987, and 52 FR 34980, on September 16, 1987, as amended by our letter of August 10, 1988.

EFFECTIVE DATE: These appointments are effective as of July 31, 1989.

The additional names for the SES Performance Review Board are as follows:

James A. Stout
Marvin Klinger
Alan J. Streb
Gail dePlanque
William L. Barker
Anthony Lane
Mary J. Hutzler
David Hendrie
Denise F. Swink
John S. Wilson
Ignacio Resendez
Grover L. Allen
David Pye
James K. Magruder
William P. Snyder
Milt Lorenz
Thomas H. Isaacs
Ralph Stein
Terry A. Vaeth
J. J. Wagoner
James Davies

Issued in Washington, DC on August 10, 1989.

Vito A. Magliano,

Executive Secretary, Executive Personnel Board.

[FR Doc. 89-19386 Filed 8-16-89; 8:45 am]
BILLING CODE 1455-01-M

Energy Information Administration

Changes to DOE Energy Information Reporting and Record-keeping Requirements

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of changes to the inventory of energy information reporting and record-keeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives notice to respondents and other interested parties of changes to the inventory of current information collections as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 U.S.C. 3501 et seq.) for which EIA is responsible. DOE management and procurement assistance collections, which are the responsibility of the DOE's Office of Management and Administration, are not included in these notices.

During the third quarter of fiscal year 1989 (April 1, 1989 through June 30, 1989), changes were made to the October 1, 1988 inventory of DOE information collections, which was published in the **Federal Register**, 53 FR 48287, (November 30, 1988). Changes during the first quarter were published in the **Federal Register**, 54 FR 6743, (February 14, 1989) and changes made during the second quarter were published in 54 FR 19430 (May 5, 1989). The third quarter changes are listed below, and include new information collections approved by the Office of Management and Budget (OMB), collections extended, reinstated, discontinued or allowed to expire, and changes to continuing information collections. For each new requirement, requirement extension, or requirement reinstatement, the current DOE control or form number, the title, the OMB control number, and the OMB approval expiration date are listed by the DOE sponsoring office. For the list of discontinued requirements, the discontinued date is shown instead of the expiration date. If applicable, the appropriate Code of Federal Regulations citation is also listed. For revised information collections, a brief summary of the type of revision is noted. Information collections not utilizing structured forms are designated by an asterisk (*) placed to the right of the control or form number.

FOR FURTHER INFORMATION CONTACT: Etta Harris, EI–73, Energy Information Administration, Mail Stop 1H–023, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2165.

Information on the availability of single, blank information copies of those collections utilizing structured forms may be obtained by contacting the National Energy Information Center, EI–231, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (202) 586–8800.

Statutory Authority: Sec. 3506, Pub. L. 96–511, Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3506.

Issued in Washington, D.C., August 11, 1989.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

NEW DOE ENERGY INFORMATION COLLECTIONS APPROVED BY OMB

DOE No.	Title	OMB control No.	Expiration date	CFR citation
Energy Information Administration:				
None	None			

DOE No.	Title	OMB control No	Expiration date	CFR citation
Energy Information Administration:				
EIA–800	Weekly Refinery Report	19050165	04/30/92	
EIA–801	Weekly Bulk Terminal Report	19050165	04/30/92	
EIA–802	Weekly Product Pipeline Report	19050165	04/30/92	
EIA–803	Weekly Crude Oil Stocks Report	19050165	04/30/92	
EIA–804	Weekly Imports Report	19050165	04/30/92	
EIA–806	Weekly Crude Watch Report	19050165	04/30/92	
EIA–810	Monthly Refinery Report	19050165	04/30/92	
EIA–811	Monthly Bulk Terminal Report	19050165	04/30/92	
EIA–812	Monthly Product Pipleine Report	19050165	04/30/92	
EIA–812	Monthly Product Pipeline Report	19050165	04/30/92	
EIA–813	Monthly Crude Oil Report	19050165	04/30/92	
EIA–814	Monthly Imports Report	19050165	04/30/92	
EIA–816	Monthly Natural Gas Liquids Report	19050165	04/30/92	
EIA–817	Monthly Tanker and Barge Movement Report	19050165	04/30/92	
EIA–818	International Energy Agency Imports/Stocks-at-Sea Report	19050165	04/30/92	
EIA–820	Annual Refinery Report	19050165	04/30/92	
EIA–825	Petroleum Facility Operator Identification Survey	19050165	04/30/92	
Federal Energy Regulatory Commission:				
FERC–6	Underground Gas Storage Report	19020026	06/30/92	18CFR 260.11.
FERC–516*	Electric Rate Schedule Filings	19020096	11/30/85	18 CFR 35, Subpart A, 35.12–.16, 35.26, 35.30, 35.31, 292, 301.
FERC–550*	Oil Pipeline Rates: Tariff Filings	19020089	08/31/89	18 CFR 340–345 and 347.
FERC–561	Annual Report of Interlocking Positions	19020099	07/31/89	18 CFR 46.4, 46.6, 131.1.
FERC–588*	Emergency Natural Gas Sale, Transportation and Exchange Transactions.	19020144	06/30/91	18 CFR 284, Subpart I.
Fossil Energy:				
FE–748	Enhanced Oil Recovery Annual Report	19010291	06/30/92	
International Affairs and Energy Emergencies:				
IE–417R	Major Electric Power System Emergency Report	19010288	05/31/92	10 CFR 205.350–.353.

* Does not utilize a structured form.

DOE ENERGY INFORMATION COLLECTIONS DISCONTINUED OR ALLOWED TO EXPIRE

DOE No.	Title	OMB control No.	Discontinued date	CFR citation
Energy Information Administration:				
EIA–846(F)	Manufacturing Energy Consumption Survey (Consumption and Related).	19050169	04/07/89	
EIA–846(S)	Manufacturing Energy Consumption Survey (Fuel Switching Capability).	19050169	04/07/89	
Federal Energy Regulatory Commission:				
FERC–519*	Electric Rates—Corporate Applications	19020082	06/30/89	18 CFR 33.

*Does not utilize a structured form.

REINSTATED DOE ENERGY INFORMATION COLLECTIONS

DOE No.	Title	OMB control No.	Expiration date	CFR citation
Federal Energy Regulatory Commission:				
FERC–576*	Report by Certain Natural Gas Companies on Service Interruptions.	19020004	06/30/92	18 CFR 260.9.

*Does not utilize a structured form.

CHANGES IN CONTINUING DOE ENERGY INFORMATION COLLECTIONS

DOE Nos. as previously listed	Changes
Energy Information Administration:	
EIA–846A/D, Manufacturing Energy Consumption Survey	Superseded EIA–846(F) and EIA–846(S) Forms are different from predecessors and approved for use through 4/30/91.
EIA–871A/F, Commercial Building Energy Consumption Survey	Modifications to forms and approved for use through 5/31/92.
Fossil Energy:	
FE–329R, Regulatory Reporting and Record-keeping Requirements	Superseded ERA–329R and OMB number changed to 1901–0297.
Federal Energy Regulatory Commission	
FERC–537, Pipeline Certificates	Revisions to regulations and approved for use through 4/30/92.
FERC–545, Gas Pipeline Rates: Rate change (non-formal)	Revisions to regulations and approved for use through 4/30/90.
FERC–555, Record Retention Requirements	Revisions to regulations and approved for use through 5/31/92.
FERC–569, Refund obligations (Producer)	Revisions to regulations and approved for use through 10/31/90.

[FR DOC. 89–19387 Filed 8–16–89; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER89–568–000 et al.]

Idaho Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Idaho Power Co.

[Docket No. ER89–568–000]

August 8, 1989.

Take notice that on July 31, 1989, Idaho Power Company (Idaho) tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 76 between Idaho and the Washington Water Power Company.

Idaho requests this cancellation to be effective as of June 1, 1989.

Comment date: August 22, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Co.

[Docket No. ER89–538–000]

August 8, 1989.

Take notice that on July 31, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing missing pages to the Agreement among the Modesto Irrigation District, the Turlock Irrigation District, City and County of San Francisco and Pacific Gas and Electric filed in this docket on July 6, 1989.

Comment date: August 22, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Iowa Public Service Co.

[Docket No. ER89–567–000]

August 8, 1989.

Take notice that Iowa Public Service Company (IPS) on August 3, 1989, tendered for filing an executed Capacity Purchase Agreement, dated March 13, 1989, whereby IPS will supply St. Joseph Light & Power Company (SJLP) with firm capacity and associated energy, commencing May 1, 1989 and continuing through April 1, 1995. IPS requests that the negotiated Agreement be made effective as of May 1, 1989.

Copies of the filing have been served on St. Joseph Light & Power Company and the Iowa Utilities Board.

Comment date: August 22, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Southeastern Power Administration

[Docket No. EF89–3011–000]

August 8, 1989.

Take notice that on June 22, 1989, Southeastern Power Administration (SEPA) tendered for filing modifications to Rate Schedule CAR–3–A for power from SEPA's Georgia System of Projects.

Comment date: August 22, 1989, in accordance with Standard Paragraph end of this notice.

5. Arizona Public Service Co.

[Docket No. ER89–285–000]

August 8, 1989.

Take notice that on August 2, 1989, Arizona Public Service Company (Arizona) tendered for filing additional revised rate sheets that were not

included in its July 26, 1989 filing in the above referenced docket.

Comment date: August 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Minnesota Power & Light Co.

[Docket No. ER89-589-000]

August 8, 1989.

Take notice that on August 3, 1989, Minnesota Power & Light Company (MP&L) tendered for filing the following agreements between MP&L and the Cooperative Power Association (CPA):

1. Supplement No. 4 to the Integrated Transmission Agreement between MP&L and CPA.
2. Input Line Agreement, which provides for the use and cost sharing of the liens that import power to the Integrated Transmission System.
3. Substation Lease Agreement, under which MP&L will lease a share of CPA's Hubbard 230 KV Substation.

MP&L states that these agreements are intended to resolve certain disputes regarding the manner in which CPA will meet its outlet facilities investment obligation for the import of power from its Coal Creek plant to the Integrated Transmission System. MP&L states that approval of these agreements will permit dismissal of appeals from FERC Opinion Nos. 263 and 263-A filed by both CPA and MP&L in the United States Court of Appeals for the District of Columbia Circuit. MP&L has requested waiver of the Commission's regulations in order to permit the agreements to become effective as of May 1, 1988, in accordance with the intention of the parties.

Comment date: August 22, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. O'Brien (Riverdale) Cogeneration, Inc.

[Docket No. QF89-298-000]

August 8, 1989.

On July 21, 1989, O'Brien (Riverdale) Cogeneration, Inc. (Applicant), of 225 South Eighth St., Philadelphia, PA 19106, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Riverdale, Illinois. The facility will consist of one or two boilers, a heat recovery steam generator and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be utilized by the Acme Steel Company in a steel pickling process and for space heating. The electric power production capacity of the facility will be 14 MW. The primary source of energy will be natural gas. Construction of the facility is scheduled to begin in April 1990. Operation of the facility is planned to commence in July 1991.

Comment date: Thirty days from publication in the **Federal Register** in accordance with Standard Paragraph E at the end of this notice.

8. Boston Edison Co. v. Town of Concord, Massachusetts

[Docket No. EL89-43-000]

August 8, 1989.

Take notice that on August 4, 1989, Boston Edison Company (Edison) filed a complaint pursuant to sections 205 and 307(a) of the Federal Power Act against the town of Concord, Massachusetts (Concord).

Edison alleges that Concord owes Edison $45,406.50, and that it is entitled to this amount under its filed rate schedule for service to Concord for unmetered energy.

Comment date: September 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Iowa Public Service Co.

[Docket No. ER89-467-000]

August 8, 1989.

Take notice that Iowa Public Service Company (IPS) on July 12, 1989, amended its filing for its Firm Capacity Sales agreement between IPS and Citizens Electric Corporation (CEC) whereby IPS will supply short-term power and associated energy. IPS has requested an effective date of June 1, 1989 for the initial rate, and accordingly seeks waiver of the notice requirements of the Commission's rules.

IPS states that copies of this filing were served on CEC and the Iowa Utilities Board.

Comment date: August 22, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Iowa Public Service Co.

[Docket No. ER89-593-000]

August 9, 1989.

Take notice that Iowa Public Service Company (IPS) on August 7, 1989, tendered for filing an executed Firm Power Purchase Agreement, dated September 18, 1987, and accompanying Letter Agreement, dated July 17, 1989, whereby IPS will sell to MJMEUC firm electric capacity and associated energy subject to wheeling and/or other agreements between the MJMEUC member city and the intermediary utilities providing transmission service. The amount of firm electric capacity and associated energy will be in accord with the individual member cities capacity requirements schedules attached to the Agreement as Exhibit II.

Copies of the filing have been served on the Missouri Joint Municipal Electric Utility Commission, the Iowa Utilities Board and the City of Marceline.

Comment date: August 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Commonwealth Edison Co.

[Docket No. ER89-594-000]

August 9, 1989.

Take notice that on August 7, 1989, Commonwealth Edison Company (Edison) tendered for filing Amendment No. 6, dated August 1, 1989, to Interconnection Agreement, dated March 1, 1975, between Edison and Wisconsin Power and Light Company (Wisconsin Power). Amendment No. 6 changes various rates for coordination energy transactions between the parties.

Edison and Wisconsin Power requested expedited consideration of the filing and an effective date for each rate schedule to be August 1, 1989. Accordingly, Edison and Wisconsin Power request waiver of the Commission's notice requirements to the extent necessary.

Copies of the filing were served upon the Illinois Commerce Commission, the Public Service Commission of Wisconsin and Wisconsin Power.

Comment date: August 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Kansas City Power & Light Co.

[Docket No. ER89-386-000]

August 9, 1989.

Take notice that on August 7, 1989, Kansas City Power & Light Company (KCPL) tendered an amendment to its earlier filing in this Docket.

KCPL states that the purpose of the Amendment is to provide, at the request of Commission Staff, responses to a series of questions regarding the filing.

Comment date: August 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Company of New Hampshire

[Docket No. ER89-591-000]

August 9, 1989.

Take notice that on August 4, 1989, Public Service Company of New Hampshire (PSNH) tendered for filing six copies of an executed amendment to its FERC Electric Rate Schedule No. 107 for transmission service power purchased by Boston Edison Company (BECO) from the New Brunswick Electric Commission over the transmission facilities of PSNH.

The proposed executed amendment to FERC Electric Rate Schedule No. 107 changes that rate schedule in those respects. Article I, which specifies the term of the agreement, has been amended to extend the agreement through October 31, 1991, unless terminated earlier at BECO's option. IF BECO is unable to get a commitment for transmission service across the transmission systems of Central Maine Power Company and Maine Electric Power Company for the period November 1, 1990 through October 31, 1991, then BECO may terminate the agreement on October 31, 1990, provided that BECO gives written notice to PSNH no latter than April 1, 1990.

Article III which specifies the rates for the service, has been amended to replace the words "applicable PTF rate" with a reference to PSNH's FERC Electric Tariff Original Volume No. 1 (Non Firm Transmission Service) as that tariff may be amended from time to time. All other references to "PTF system(s)" in other sections of the Contract have been deleted and replaced with the words "transmission system(s).

Finally, the discount provided for in Article Ii of the original contract has been replaced with a variable discount schedule. PSNH will provide service at a 75% discount from the rate established under the Non-Firm Tariff for the period May 2, 1989 through October 31, 1989; at a 50% discount from that rate from the period November 1, 1989 through October 31, 1990; and at a 33% discount from that rate for the period November 1, 1990 through October 31, 1991.

PSNH requests that the amendment to FERC Electric Rate Schedule No. 107 be made effective May 2, 1989 and requests waiver of the Commission's notice requirements in order to allow the proposed effective date. As good cause for such waiver, PSNH submits that no party would be prejudiced by the grant of such waiver and that PSNH and BECO reached agreement after the proposed effective date had passed.

PSNH states that it has served copies of the filing on BECO and the Massachusetts Department of Public Utilities.

Comment date: August 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

14. Cajun Electric Power Cooperative, Inc. v. Gulf States Utilities Co.

[Docket No. EL89-44-000]

August 9, 1989.

Take notice that on August 7, 1989, Cajun Electric Power Cooperative (Cajun) tendered for filing a complaint against Gulf States Utilities Company (Gulf States). Cajun states that this filing is made pursuant to sections 205, 206 and 306 of the Federal Power Act, 16 U.S.C. 824d, 824c and 825e, and pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.206.

Cajun states that Gulf States has refused to provide transmission service and delivery points necessary to enable Cajun member Jefferson Davis Electric Cooperative, Inc. (Jefferson Davis) to make Westlake Polymers Corporation and NL Chemicals, two industries which have requested electric service from Jefferson Davis. Cajun further states that Gulf States must provide such service pursuant to Service Schedule CSTS, a rate schedule filed with and approved by the Commission, but that Gulf States has refused to acknowledge the applicability of Service Schedule CSTS to the requested service.

Cajun is requesting the Commission to order Gulf States to accommodate the requested service pursuant to Service Schedule CSTS by either (1) establishing a new delivery point pursuant to Service Schedule CSTS or (2) agreeing to a reasonable location for new delivery points to be constructed by Cajun.

According to Gulf States a copy of this complaint is being served contemporaneously upon Gulf States.

Comment date: September 8, 1989, in accordance with Standard Paragraph end of this notice.

15. PMEP, Inc.

[Docket No. QF89-267-000]

August 9, 1989.

On July 28, 1989, PMEP, Inc. (Applicant), of Prudential Center, Boston, MA 02199, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Los Angeles, California. The facility will consist of two combustion turbine generators, two heat recovery steam generators with supplementary firing and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be utilized for space heating and cooling on the UCLA campus. The maximum net electric power production capacity of the facility will be 39,960 kW. The primary source of energy will be natural gas. Construction of the facility is scheduled to begin in April 1990.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

16. Southern California Edison Co.

[Docket No. ER89-592-000]

August 9, 1989.

Take notice that on August 7, 1989, Southern California Edison Company (Edison) tendered for filing, as an initial rate schedule, the following agreement, executed on July 5, 1989, by the respective parties:

Edison-Turlock Economy Energy Agreement

Between

Southern California Edison Company
and
Turlock Irrigation District

The filed Agreement establishes the terms and conditions under which Economy Energy may be purchased or sold by either Party.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: August 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

16. Idaho Power Co.

[Docket No. ER89-528-000]

August 9, 1989.

Take notice that on August 7, 1989, Idaho Power Company tendered for filing an amendment to its earlier filing of a proposed tariff entitled, Short Term Capacity and/or Energy for Resale. In the amended filing Idaho Power Company submits a Notice of Cancellation of all Service Agreements currently effective under the Company's existing non-firm energy tariff, 1st Revised FERC Electric Tariff Volume No. 1. The proposed tariff would supersede Idaho Power Company's existing tariff applicable to firm and nonfirm-transactions of short duration.

The amendment delays the effective date for the proposed tariff to October 8, 1989 and modifies the energy charge component of the tariff rates.

Idaho Power Company states that copies of the amended filing were mailed to those utilities believed by Idaho Power Company to be interested in purchasing this type of service, as well as the utility regulatory

commissions for Idaho, Oregon, Nevada, California, Montana, Utah, New Mexico, Washington and Colorado.

Comment date: August 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the apropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection

Lois D. Cashell,

Secretary.

[FR Doc. 89-19280 Filed 8-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-217-000]

El Paso Natural Gas Co.; Tariff Filing

August 10, 1989

Take notice that on August 3, 1989, El Paso Natural Gas Company ("El Paso") filed, pursuant to part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act, certain tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1

El Paso states that the tendered tariff sheets, when accepted by the Commission and permitted to become effective, serve to clarify El Paso's right to selectively adjust (discount) its Order No. 500 Throughput Surcharge for interruptible sales service.

El Paso also states that by order issued June 23, 1989 at Docket No. RP89-180-000, the Commission accepted for filing, effective June 1, 1989, certain tariff sheets permitting the selective adjustment of the Throughput Surcharge applicable to transportation service performed under part 284 of the Commission's Regulations on El Paso's interstate pipeline system. On page 6 of said order, the Commission, in response to the argument raised by certain parties that the discount should apply to all sales as well as transportation customers, clearly stated that individually certificated sales are not permitted to receive discounts. However, the Commission also clearly stated that it also permits discounts for sales under a blanket interruptible sales certificate which El Paso currently has in place. El Paso states that it agrees with the Commission that it can discount under its blanket sales certificate but is concerned that its ability to selectively adjust the Throughput Surcharge for interruptible sales may not be clearly stated in its tariff. In this regard, El Paso notes that the surcharge is presently displayed separately from (and, thus, by possible implication, as being additive to) the minimum rate. Therefore, to make clear that the surcharge component of the interruptible sales service rates can be selectively adjusted, El Paso has tendered its statement of Rates tariff sheet for Rate Schedule IS-1 which reflects a Maximum Rate of $.1291 per dth and a Minimum Rate of $.0000 per dth for the Throughput Surcharge. El Paso also tendered a revision to subparagraph 21.3(b) of section 21, Take-or-Pay Buyout and Buydown Cost Recovery, of the General Terms and Conditions contained in its First Revised Volume No. 1 Tariff so as clearly to provide for selectively adjusting the Throughput Surcharge for interruptible sales customers as well as shippers.

El Paso further states that as indicated in its May 26, 1989 filing and as set forth in section 21 of El Paso's Volume No. 1 Tariff, the Throughput Surcharge is designed to recover a portion of the fixed costs which El Paso has paid to producers/suppliers in settlement of take-or-pay claims. In the event that El Paso adjusts the surcharge to any level which is less than the Maximum Rate, the shortfall becomes non-recoupable and will not be made up from other customers or shippers utilizing El Paso's interstate pipeline system.

El Paso requested pursuant to § 154.51 of the Commission's Regulations, that waiver of the notice requirements of § 154.22 of said Regulations be granted so as to permit the tendered tariff sheets to become effective August 1, 1989.

Copies of this filing were served upon all interstate pipeline system sales customers and shippers of El Paso and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

FR Doc. 89-19281 Filed 8-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-46-000]

Kentucky West Virginia Gas Co.; Compliance Filing

August 10, 1989.

Take notice that on August 7, 1989, Kentucky West Virginia Gas Company (Kentucky West) filed Second Substitute Fourteenth Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective August 1, 1989.

Kentucky West states that this filing is in compliance with the Commission's Letter Order issued June 21, 1989.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before August 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19282 Filed 8-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-27-000]

North Penn Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

August 1, 1989.

Take notice that North Penn Gas Company (North Penn) on August 4, 1989, tendered for filing Ninety-fourth Revised Sheet No. PGA-1 to its FERC Gas Tariff First Revised Volume No. 1.

The revised tariff sheet is being filed pursuant to section 14 (PGA Clause) of the General Terms and Conditions of North Penn's FERC Gas Tariff to reflect changes in the cost of gas for the period September 1, 1989 through November 30, 1989 and is proposed to be effective September 1, 1989. The proposed change reflects an increase in the average cost of gas for the G-1 Rate Schedule of 9.782¢ per Mcf.

North Penn request waiver of the Commission's Rules and regulations pertaining to the thirty-day notice requirements.

While North Penn believes that no other waivers are necessary in order to permit this filing to become effective September 1, 1989, as proposed, North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective September 1, 1989 as proposed.

North Penn states that copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and State Commissions shown on the service list attach to the filing.

Any person desiring to the heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211, 385.214). All such motions or protests should be filed on or before August 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1926 Filed 8-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-259-018]

Northern Natural Gas Company (Division of Enron Corp.); Proposed Changes in FERC Gas Tariff

August 10, 1989.

Take notice that on August 4, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing in its FERC Gas Tariff Third Revised Volume No. 1, the following tariff sheets:

Sixth Revised Sheet No. 4d
Eighty-Sixth Revised Sheet No. 4e

The listed tariff sheets are being filed in compliance with the Commission's July 20, 1989 Order Granting Rehearing issued in Docket No. RP88-259-009 which directed Northern to file tariff sheets listing the D-2 billing determinants for each of its customers.

The Company states that copies of the filing have been mailed to each of its customers purchasing gas and receiving transportation and gathering services under its FERC Gas Tariff and to interested State Commissions. Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.214, 385.211). All such protests should be filed on or before August 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19284 Filed 8-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-191-002]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

August 10, 1989.

Take notice that on August 7, 1989, Northwest Pipeline Corporation ("Northwest") submitted for filing Eighteenth Revised Sheet No. 201, to be a part of its FERC Gas Tariff, Original Volume No. 1-A.

Northwest states that this sheet is amended to include the ACA and GRI Surcharges in the currently effective minimum and maximum tariff rates, pursuant to the directives in the Commission's order dated July 6, 1989 in the above docket number.

A copy of this filing is being served to all parties of record in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before August 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19285 Filed 8-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-256-004]

West Texas Gas, Inc.; Notice of Filing

August 10, 1989.

Take notice that on August 3, 1989, West Texas Gas, Inc. (WTG) filed Substitute Fourteenth Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, to be effective April 1, 1989, and Substitute Fifteenth Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, to be effective July 1, 1989. These tariff sheets were filed by WTG in compliance with the Commission's letter order issued July 7, 1989, in this docket.

Copy of this filing were served upon WTG's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214 (1978)). All such protests should be filed on or before August 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons who are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19286 Filed 8-16-89; 8:45 am]

BILLING CODE 6717-01-M

BEST COPY AVAILABLE

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

August 11, 1989.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501–3520).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632–7513.

OMB Number: 3060–0288
Title: Section 78.33, Special temporary authority (cable television relay stations)
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 40 responses; 160 hours; 4 hours average burden per response
Needs and Uses: Section 78.33 permits Cable Television Relay Service stations to file informal requests for special temporary authority to install and operate new equipment or operate licensed equipment in a manner different from that authorized in station licenses. Data is used by the Commission staff to ensure that grant would not cause interference to established stations.

OMB Number: 3060–0287
Title: Section 78.69, (Cable Relay) Station records
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 2,057 recordkeepers; 53,482 hours; 26 hours average burden per recordkeeper
Needs and Uses: Section 78.69 requires each licensee of cable television relay stations to maintain records of certain inspections, observations, and repairs. Used by Commission staff in field investigations to ensure proper operation of station.

OMB Number: 3060–0169
Title: Sections 43.51 and 43.53—Reports and records of communications common carriers and certain affiliates
Action: Revision
Respondents: Businesses (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 374 responses; 6,029 hours; 16.12 hours average burden per response
Needs and Uses: Sections 43.51 and 43.53 require common carriers to submit reports so that the FCC can monitor various activities of these carriers to determine the impact on the just and reasonable rates required by the Communications Act of 1934, as amended.

OMB Number: 3060–0166
Title: Part 42—Preservation of records of communication common carriers
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 68 recordkeepers; 136 hours; 2 hours average burden per recordkeeper
Needs and Uses: Part 42 prescribes the regulations governing the preservation of records of communications common carriers that are fully subject to the jurisdiction of the FCC. The requirements are necessary to ensure the availability of carrier records needed by Commission staff for regulatory purposes.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

[FR Doc. 89–19307 Filed 8–16–89; 8:45 am]
BILLING CODE 6712–01–M

[Report No. 1790]

Petitions for Reconsideration and Stay of Actions in Rule Making Proceedings

August 11, 1989.

Petitions for reconsideration and stay have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR § 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202–857–3800). Oppositions to these petitions must be filed September 5, 1989. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Revision of part 15 of the Rules Regarding the Operation of Radio Frequency Devices with and Individual License. (Gen Docket No. 87–389, RM's 5193, 5250 and 5575).

Number of Petitions Received: 1.

Subject: Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Waterbury and Royalton, Vermont) (MM Docket No. 87–410, RM's 5802, 6202 and 6207.

Number of Petitions Received: 2.

Subject: Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Jupiter and White City, Florida) (MM Docket No. 88–366, RM's 6260 and 6531).

Number of Petitions Received: 1.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

[FR Doc. 89–19308 Filed 8–16–89; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

[FHLBB No. 4561; AG–777]

The Waldoboro Bank, F.S.B.; Final Action Approval of Conversion Application

Date: August 8, 1989.

Notice is hereby given that on August 4, 1989, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of The Waldoboro Bank, F.S.B., Waldoboro, Maine, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Boston, One Financial Center, 20th Floor, Boston, Massachusetts 02110.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,
Assistant Secretary.

[FR Doc. 89–19278 Filed 8–16–89; 8:45 am]
BILLING CODE 6720–01–M

FEDERAL RESERVE SYSTEM

Norwest Corp.; Proposal to Underwrite and Deal in Certain Securities to a Limited Extent, Conduct Private Placements as Agent of All Types of Securities and Engage in Other Securities Related Activities

Norwest Corporation, Minneapolis, Minnesota ("Norwest"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage through its wholly owned subsidiary, Norwest Investment Services, Inc., Minneapolis, Minnesota ("Company"), in the activities of underwriting and dealing in, to a limited extent, commercial paper, municipal revenue bonds, mortgage-related securities, and consumer-receivable-related securities ("ineligible securities").

Norwest has applied to underwrite and deal in ineligible securities in accordance with the limitations set forth in the Board's Orders approving those activities for a number of bank holding companies. *See, e.g.,* Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation, 73 Federal Reserve Bulletin 473 (1987); and Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation, and Security Pacific Corporation, 73 Federal Reserve Bulletin 731 (1987). Norwest is proposing to limit the gross revenues derived by Company from underwriting and dealing in bank-ineligible securities to no more than 5 percent of its total gross revenues as derived in any rolling 24 month period, measured every 3 months. Norwest is requesting, however, that the first measurement period be a six month period.

Norwest has also applied to: (1) Underwrite and deal in securities that state member banks are permitted to underwrite and deal in under the Glass-Steagall Act ("bank-eligible securities") pursuant to § 225.25(b)(16) of Regulation Y (12 CFR 225.25(b)(16)); (2) act as a futures commission merchant and provide investment advice on futures contracts and options pursuant to 12 CFR 225.25(b) (18) and (19); and (3) purchase and sell silver and gold bullion and coins for the account of customers within the limitations contained in United Virginia Bankshares, Inc., 73 Federal Reserve Bulletin 309 (1987). Company would conduct the proposed activities on a nationwide basis.

In addition, Norwest proposes to provide investment advisory and brokerage services on a combined basis subject to all of the conditions of 12 CFR 225.25(b)(15), Bank of New England Corporation, 74 Federal Reserve Bulletin 700 (1988), and PNC Financial Corp, 75 Federal Reserve Bulletin 396 (1989), including brokering and recommending to institutional customers securities in which Company has a principal's position as permitted in Bankers Trust New York Corporation, 74 Federal Reserve Bulletin 695 (1988). Norwest is also seeking to provide other incidental services, including margin lending, maintenance lending, maintenance of customers securities accounts, securities lending and sweep arrangements.

Norwest is also applying to engage in certain activities that it maintains are incidental to the underwriting and dealing activities that it is seeking approval for. Norwest states that Company would act as principal or agent with respect to bank eligible securities and may act as agent with regard to bank ineligible securities.

Norwest is proposing that Company will provide investment advice to issuers, generally regarding timing, rates and maturities of specific issues, as well as providing advice regarding general market conditions. Norwest maintains that these activities are a necessary and ordinary part of the business of acting as underwriter or dealer in securities in accordance with the Board's Order in Manufacturers Hanover Corporation, 70 Federal Reserve Bulletin 661 (1984). Norwest is also proposing that Company will provide financial advice to issuers of municipal securities.

Finally, Norwest anticipates that Company may enter into hedging transactions to enable it to hedge its risks, such as interest rate risk incurred by Company in the course of underwriting and dealing in bank-eligible and bank-ineligible securities. Norwest contends that such hedging transactions are a necessary incident to the proposed underwriting and dealing activities because they: (1) Reduce the risk to Company in its underwriting and dealing activities; (2) enable Company to compete effectively in obtaining mandates from issuers; and (3) enable Company to distribute and sell securities successfully. Norwest is also proposing that Company will engage in transactions such as options, caps, floors, swaps, futures and forward contracts in bank-eligible securities for its own account in accordance with the Board's policy statement set out at 12 CFR 225.142.

Norwest also seeks independent approval to privately place the following types of securities as a separate activity from Company's underwriting and dealing in ineligible securities: commercial paper, municipal revenue bonds, municipal leases, and securitized assets of the type that Norwest is seeking authority to underwrite. The Board has previously authorized a bank holding company subsidiary to privately place third-party commercial paper as agent subject to certain limitations. Bank of Montreal, 74 Federal Reserve Bulletin 500 (1988). Norwest has proposed to engage in the placement activity subject to the same limitations relating to: restrictions on credit extensions by lending affiliates of Company, transactions involving securities (placed) by Company, restrictions on other inter-affiliate transactions, management interlocks, and disclosure to customers of affiliate relationships and activities as would apply to Company's underwriting and dealing activities. Norwest has also otherwise committed to conduct these activities within the same limitations approved by the Board in Bank of Montreal, except that Norwest proposes that Company place commercial paper in minimum denominations of $100,000.

Norwest has also applied to engage through Company in leasing personal or real property or acting as agent, broker, or adviser in leasing such property pursuant to 12 CFR 225.25(b)(5), in connection with Company's proposed private placement of municipal leases.

The Board has not previously determined that the proposed combination of activities is permissible under section 4(c)(8) of the Bank Holding Company Act. Section 4(c)(8) provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking as to be a proper incident thereto." Norwest maintains that the proposed placement activities are closely related to banking because banks are currently active participants in the private placement market.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Norwest

contends that permitting bank holding companies to engage in the proposed activities would result in increased competition, gains in efficiency, and increased competition. Norwest believes that Company, through its limited underwriting, retail brokerage and private placement activities will be able to more effectively compete with investment bankers. Norwest states that the public will benefit from this increased competition and convenience of a firm providing many of the investment banking services needed by middle market and smaller businesses.

Norwest further contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), relying on *Securities Industry Ass'n* v. *Board of Governors*, 807 F.2d 1052 (D.C. Cir. 1986), *cert. denied*, 107 S.Ct 3228 (1987).

Any request for a hearing on this application must comply with 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Minneapolis.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than September 8, 1989.

Board of Governors of the Federal Reserve System, August 11, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-19301 Filed 8-16-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89E-0224]

Determination of Regulatory Review Period for Purposes of Patent Extension; Suprax®

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for SUPRAX® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product SUPRAX® (cefixime) which is indicated in the treatment of the following infections when caused by susceptible strains of the designated microorganisms: uncomplicated urinary tract infections caused by *Escherichia coli, Proteus mirabilis;* otitis media caused by *Haemophilus influenzae* (beta-lactamase positive and negative strains); *Moraxella (Branhamella) catarrhalis* and *Streptococcus pyogenes* [1]; pharyngitis and tonsillitis, caused by *Streptococcus pyogenes;* acute bronchitis and acute exacerbations of chronic bronchitis, caused by *Streptococcus pneumoniae* and *Haemophilus influenzae* (beta-lactamase positive and negative strains).

Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for SUPRAX® (U.S. Patent No. 4,409,214) from the American Cyanamid Co. and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated July 25, 1989, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, cefixime, represented the first permitted commercial marketing or use either alone or in combination with other active ingredients. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for SUPRAX® is 2,068 days. Of this time, 1,031 days occurred during the testing phase of the regulatory review period, while 1,037 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective: September 1, 1983. The applicant claims the investigational new drug (IND) application for SUPRAX® became effective August 18, 1983. However, FDA records indicate that the IND became effective September 1, 1983.

2. The date the application was initially submitted with respect to the human drug product under section 507 of the Federal Food, Drug, and Cosmetic Act: June 27, 1986. The applicant claims that the new drug applications (NDA's) SUPRAX® (NCA 50-621 and NDA 50-622) were initially submitted June 25, 1986. However, FDA records indicate that the applications were not received until June 27, 1986.

3. The date the application was approved: April 28, 1989. FDA has verified the applicant's claim that both NDA 50-621 and NDA 50-622 were approved April 28, 1989.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent extension.

[1] Efficacy for this organism in this organ system was studied in fewer than 10 infections.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 16, 1989, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 5, 1990, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 9, 1989.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 89-19306 Filed 8-16-89; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Psychopharmacologic Drugs Advisory Committee

Date, time, and place. September 21 and 22, 1989, 9 a.m., Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD.

Type of meeting and contact person. Open public hearing, September 21, 1989, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to conclusion; open public hearing, September 22, 1989, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to conclusion; Michael A. Bernstein, Center for Drug Evaluation and Research (HFD-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4020.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the practice of psychiatry and related fields.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should notify the contact person.

Open committee discussion. On September 21, 1989, the committee will discuss XANAX™ (Alprazolam), new drug application (NDA) 18-276, The Upjohn Co., for use in the treatment of panic disorder. On September 22, 1989, the committee will discuss clinical data relevant to the labeling of the hypnotic agent HALCION™ (NDA 17-892), The Upjohn Co.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committee.

Dated: August 11, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-19304 Filed 8-16-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Program Announcement, Proposed Funding Priorities, Preferences, Definition of Community-Based Program, and Grant Orientation Conferences for the Health Careers Opportunity Program

The Health Resources and Services Administration announces that applications for Fiscal Year 1990 Health Careers Opportunity Program (HCOP) grants are now being accepted under the authority of section 787 of the Public Health Service Act, as amended by Public Law 100-607, and invites comments on the proposed funding priorities, preferences and definition of community-based program stated below.

Section 787 authorizes the Secretary to make grants to and enter into contracts with schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic and podiatric medicine and public and nonprofit private schools which offer graduate programs in clinical psychology and other public or private nonprofit health or educational entities to carry out programs which assist individuals from disadvantaged backgrounds to enter and graduate from health professions schools. The assistance authorized by the section includes: recruitment, preliminary education, facilitating entry and retention in health and allied health professions schools, counseling and advice on financial aid.

The Administration's FY 1990 budget request for this program is $21,518,000. This amount could support an estimated 90 competitive awards at an average of $140,000, in addition to the continuation of multi-year projects approved in prior years. There is, however, no assurance of HCOP funding for FY 1990 at the level of the budget request or any other level. Applicants should be advised that this application announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

The statute requires that of the amounts appropriated for any fiscal year, 20 percent shall be obligated for stipends to disadvantaged individuals of exceptional financial need who are students at schools of medicine, osteopathic medicine, or dentistry. 10 percent must be obligated to community-based programs and 70 percent must be obligated for grants or contracts to institutions of higher education. Not more than 5 percent of such funds may be obligated for grants and contracts having the primary purpose of informing individuals about the existence and general nature of health careers. The legislation specifies that priority for funding will be given to health and allied professions schools that, during a period of three years commencing on the date of award of the grant, increase their first year enrollment of individuals from disadvantaged backgrounds by at least 20 percent by the end of such 3 year period and subsequent to the 3 year period attain such an increase over enrollments in the base year 1987.

To receive support, applicants must meet the requirements of the program regulations specified in 42 CFR part 57, subpart S.

Requests for grant application materials and questions regarding grants policy should be directed to: Grants Management Officer (D18), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6857.

Completed applications should be returned to the Grants Management Officer at the above address.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. the OMB clearance number is 0915-0060.

The application deadline date is November 3, 1989. Applications shall be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications recieved after the deadline will be returned to the applicant. This program is listed at 13.822 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Review Criteria

The review of applications will take into consideration the following criteria:

(a) The degree to which the proposed project adequately provides for the requirements in the program regulations;

(b) The number and types of individuals who can be expected to benefit from the project;

(c) The administrative and management ability of the applicant to carry out the proposed project in a cost effective manner;

(d) The adequacy of the staff and faculty;

(e) The soundness of the budget; and

(f) The potential of the project to continue without further support under this program.

In addition, the following mechanisms may be applied in determining the funding of applications.

1. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

2. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

The following funding priorities and preferences are proposed to govern the distribution of grant awards to approved HCOP grant applicants for Fiscal Year 1990.

Proposed Funding Priorities for Fiscal Year 1990

1. A funding priority will be given to HCOP applications from health professions schools and from allied health training centers for baccalaureate or higher level programs in physical therapy, physician assistant, respiratory therapy, medical technology and/or occupational therapy that have a disadvantaged student enrollment of 35 percent or more; or can document (over the past 3-year period) a 10 percent increase in the number of first-year enrollees who are disadvantaged; or can document a 90 percent retention rate of disadvantaged students of the most recent graduating class.

2. A funding priority will be given to applicant educational institutions that can document that at least 60 percent of the disadvantaged prehealth professions students from their school, who applied over the past 3 years to a health or allied health professions school, were enrolled in such schools.

Proposed Funding Preferences for Fiscal Year 1990

A. A health professions school may request consideration for a funding preference if—

1. Either the applicant health professions school or an undergraduate school with which it has a formal arrangement:

a. Identifies and selects a cohort of seven or more disadvantaged students that have completed an undergraduate prehealth professions program and applied but were not accepted into a health professions school, or made a late decision to enter a new health professions school, for participation in the program; and

b. Provides the selected student cohort with one calendar year (including the initial 6 to 8 week summer program) of rigorous postbaccalaureate (undergraduate and/or professional) level science and other appropriate educational experiences to prepare the students for entry into the applicant health professions school; and

2. The applicant health professions school:

a. Accepts for enrollment in the first year of their health professions school class, upon entry into the post-baccalaureate program, members of the cohort who successfully complete the program; or assures enrollment, at the election of the student, at another health professions school; and

b. Provides members of the cohort and other disadvantaged enrollees retention services including a 6 to 8 week prematriculation summer program to ease their transition into the health professions school curriculum.

Stipends would be available through the grant for the targeted students during their summer programs and undergraduate academic year participation.

B. An allied health training center may request consideration for a funding preference if—

1. Either the applicant allied health training center or an undergraduate school offering pre-allied health preparation with which the center has a formal arrangement:

a. Identifies and selects a cohort of five or more disadvantaged students for participation in the program who have completed an undergraduate degree with a significant science focus and made a late decision to enter an allied health professions school and are in pursuit of a baccalaureate level degree in physical therapy, physician assistant, respiratory therapy, medical technology or occupational therapy; and

b. Provides the selected student cohort with one calendar year (including an initial 6 to 8 week summer program) of rigorous science and other educational experiences (e.g., allied health basic science, and quantitative and reading skills), to prepare them for entry at the end of that year into one of the above named baccalaureate level training programs of the applicant allied health training center; and

2. The applicant allied health training center:

a. Accepts for enrollment in the first-year class of one of the specified baccalaureate level training programs of the applicant allied health training center, upon entry into the preprofessional phase, members of the cohort who complete the program; or assures enrollment, at the election of the student, at another health professions school; and

b. Provides members of the cohort and other disadvantaged enrollees with retention services including a 6 to 8 week prematriculation summer program to ease the transition into the specified allied health professions school curriculum.

The funding priorities and preferences do not preclude funding of other eligible approved applications. Accordingly, entities which do not qualify for or elect to request consideration under the priorities and/or preferences are encouraged to submit applications.

The applicant must indicate on the upper right-hand corner of the face page of the application the funding priority and/or preference in which the applicant wishes consideration. However, the final determination of the category of funding priority and preference will be based on a staff assessment of the contents of the proposal. An applicant may apply for consideration under only one funding priority and one preference.

It is proposed to define "community-based" programs as follows:

"Community-based program" means a program whose organizational headquarters is located in and which primarily serves: a Metropolitan Statistical Area, as designated by the Office of Management and Budget; a Bureau of Economic Analysis, U.S. Department of Commerce designated non-metropolitan economic area or a county; or Indian tribe(s) as defined in 43 CFR 36.102(c), i.e., an Indian tribe, band, nation, rancheria, Pueblo, colony or community, including an Alaska Native Village or regional or village corporation.

Interested persons are invited to comment on the proposed funding priorities, preferences, and definition of community-based program. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1990 award cycle, this comment period has been reduced to 30 days. All comments received on or before September 18, 1989 will be considered before the final funding priorities, preferences and final definition of community-based programs are established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding priorities and preferences will be applied.

Written comments should be addressed to: Director, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A-09, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Disadvantaged Assistance, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Definitions

As used in this notice:

"Health Professions Schools" means schools of medicine, dentistry, osteopathic medicine, pharmacy, optometry, podiatric medicine, veterinary medicine, public health, chiropractic, or graduate programs in clinical psychology and health administration, as defined in section 701(4) of the Public Health Service Act.

"Individual from a disadvantaged background" means an individual who (a) comes from an environment that has inhibited the individual from obtaining knowledge, skills and abilities required to enroll in and graduate from a health professions school or from a program providing education or training in an allied health profession or (b) comes from a family with an annual income below a level based on low income thresholds according to family size, published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index and adjusted by the Secretary for use in all health professions programs, 42 CFR 57.1804(b)(2).

The following income figures determine what constitutes a low income family for purposes of these Health Careers Opportunity Program grants for fiscal year 1990:

Size of parents' family [1]	Income level [2]
1	$7,900
2	10,300
3	12,300
4	15,700
5	18,500
6 or more	20,800

[1] Includes only dependents listed on Federal income tax forms.
[2] Adjusted gross income for calendar year 1988, rounded to $100.

"Training Center for Allied Health Professions" means a junior college, or college, or university, as defined in section 795 of the Public Health Service Act, which:

a. Provides educational programs leading to an associate, baccalaureate, or higher degree needed to practice as one of the following:

Doctoral Degree:
Clinical Psychologist
Master's Degree:
Speech Pathologist/Audiologist
Nutritionist
Biostatistician
Bachelor's Degree:
Biomedical Engineer
Blood Bank Technologist
Community Health Educator
Corrective Therapist
Cytogenetic Counselor
Dental Hygienist
Dietitian (Coordinated undergraduate program)
Health Physicist
Health Services Administrator
Medical Illustrator
Medical Records Administrator
Medical Technologist
Microbiology Technologist
Occupational Therapist
Physical Therapist
Primary Care Physician Assistant
Recreational Therapist
Rehabilitation Counselor
Sanitarian (Environmental Health)
Associate Degree:
Clinical Dietetic Technician
Cytotechnologist
Dental Assistant
Dental Hygienist
Dental Laboratory Technician
EKG/EEG Technologist
Medical Assistant
Medical Laboratory Technician
Medical Records Technician
Occupational Therapy Assistant
Ophthalmic Medical Assistant
Ophthalmic Technologist
Optometric Technician
Orthopedic Technologist
Physical Therapy Assistant
Radiologic Technologist
Respiratory Therapist
Sanitarian Technician
Surgical Technologist

b. Provides training for no fewer than 20 persons in the substantive health portion, including clinical experience as required for employment, in three or more of the disciplines listed in paragraph (a) of this definition and has a minimum of six full-time students in that portion of each curriculum by October 15 of the fiscal year of application.

c. Has a teaching hospital as part of the grantee institution or is affiliated with a teaching hospital by means of a formal written agreement. The term "teaching hospital" includes other settings which provide clinical or other health services if they fulfill the requirement for clinical experience specified in an allied health curriculum.

Grant Orientation Conferences

Grant applications and program information for the Health Careers Opportunity Program also will be provided through four program technical assistance conferences. The conferences scheduled during September 1989 are for the benefit of potential applicants and current grantees.

The four conferences will be held as follows:

September 11–12, 1989

Philadelphia, Pennsylvania.
Thomas Jefferson University, College of Allied Health Sciences, Jefferson Alumni Hall, Locust and 11th Street, Philadelphia, Pennsylvania 19107, Telephone: (215) 928–6873 (Holiday Inn—1305 Walnut Street Philadelphia, Pennsylvania 19107 Telephone: (215) 735–9300

September 14–15

Atlanta, Georgia
The Westin Peachtree Plaza Hotel, Peachtree at International Blvd., Atlanta, Georgia 30343, Telephone: (404) 659–1400, (800) 228–3000

September 18–19, 1989

Chicago, Illinois
McCormick Center Hotel, Lake Shore Drive at 23rd Street, Chicago, Illinois 60616, Telephone: (312) 791–1900, (800) 621–6909

September 21–22, 1989

San Francisco, California
John Burton Federal Building, 450 Golden Gate Avenue, Room 2007, San Francisco, California 94102, Telephone: (415) 556–7539.

Expenses incurred by the attendees will not be supported by the Federal Government.

Agenda items will include: New retention program and revised HCOP legislative requirements; application preparation (competitive and continuation); and grants management information. Significant focus of the conferences will be directed toward: future implications of the new legislation; funding priorities for applicants demonstrating increased enrollment and retention of disadvantaged students; and funding preferences designed to increase the numbers of disadvantaged students into health professions and allied health professions schools.

Participation in the technical assistance meetings does not insure approval and funding of prospective applications.

To obtain specific information regarding the conferences and programmatic aspects of this grant program, direct inquiries to: Mr. Darl W. Stephens, Chief, Program Coordination Branch, Division of Disadvantaged Assistance, Bureau of Health Professions, HRSA, Parklawn Building, Room 8A–08, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–4493.

Dated: July 7, 1989.

John H. Kelso,

Acting Administrotor.

[FR Doc. 89–19303 Filed 8–16–89; 8:45 am]

BILLING CODE 4160–15–M

Office of Human Development Services

Agency Information Collection Under the Office of Management and Budget Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) a request for an information collection approval for the National Child Care Survey, 1989.

ADDRESS: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245–6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to Justin Kopca, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, Room 3208, 725 17th Street NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: National Child Care Survey, 1988
OMB No.: N/A
Description: The National Child Care, 1988 Survey will provide national estimates of the use of child care and preschool programs by households with children under 13. Information obtained from center-based programs and home-based providers will describe the supply of child care and early education programs
Annual Number of Respondents: 29,794
Annual Frequency: 1
Average Burden Hours Per Response: 0.13
Total Burden Hours: 3,961

Dated: August 10, 1989.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 89–19270 Filed 8–16–89; 8:45 am]

BILLING CODE 4130–01–M

Public Health service

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place NW., Washington, DC 20005, (202) 633–7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, Parklawn Building, 5600 Fishers Lane, Room 4–101, Rockville, MD 20857, (301) 443–6593).

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters to take evidence, conduct hearings as appropriate, and to submit to the Court proposed findings of fact and conclusions of law.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2) requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by PHS from June 13 through July 6, 1989. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of Title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. John & Pamela Miller on behalf of Ashley Miller, Omaha, Nebraska, Claims Court Docket No. 89–75 V
2. Kay Outlaw on behalf of William Clinton Outlaw, Macon, Georgia, Claims Court Docket No. 89–76 V
3. Jeff & Mary Batdorf on behalf of Kyle Grey Batdorf, Nashville, Tennessee, Claims Court Docket No. 89–77 V
4. Wayne & Karen Kime on behalf of Jason Kime, Brandon, Florida, Claims Court Docket No. 89–78 V
5. Crystal & Joseph Deitz on behalf of Jonathan Deitz, Lewesburg, West Virginia, Claims Court Docket No. 89–79 V
6. Susan Carter, Springfield, Utah, Claims Court Docket No. 89–80 V
7. Carol Singh, Swathmore, Pennsylvania, Claims Court Docket No. 89–81 V
8. Barbara Borchardt, Marathon County, Wisconsin, Claims Court Docket No. 89–82 V
9. J. Marie Loe on behalf of Nathan Loe, Albany, Oregon, Claims Court Docket No. 89–83 V
10. Jonathan & Donna Wilson on behalf of Gregory Wilson, Rockingham County, New Hampshire, Claims Court Docket No. 89–84 V
11. Leonard Fleischer, West Medford, Massachusetts, Claims Court Docket No. 89–86 V
12. Warrren & Sheila Stidham on behalf of Warren E. Stidham, Davenport, Iowa, Claims Court Docket No. 89–87 V.

Dated: August 11, 1989.
John H. Kelso,
Acting Administrator.
[FR Doc. 89-19258 Filed 8-16-89; 8:45 am]
BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Approval for Inclusion in the National Wild and Scenic Rivers System as a State Administered Component

AGENCY: Office of the Secretary, Interior.
ACTION: Notice.

Pursuant to the authority granted the Secretary of the Interior by Section 2 of the Wild and Scenic Rivers Act (82 Stat. 906, 16 U.S.C. 1273), and upon proper application of the Governor of the State of Illinois, the Middle Fork of the Vermilion River is designated as a State-administered component of the National Wild and Scenic Rivers System. This action is based on the designation of the river by the State of Illinois and the protection offered this river and its immediate environment by and pursuant to applicable State laws and regulations.

On August 20, 1987, the Governor of Illinois petitioned the Secretary of the Interior to add the Middle Fork of the Vermilion River to the National System. (See **Federal Register** of January 20, 1988, page 1525.) This river had been designated as a State Protected River on August 8, 1986. The Secretary on November 14, 1988, denied the State's application to include the river segment as a component of the National Wild and Scenic Rivers System under State administration.

In response to a request for reconsideration from the Governor of Illinois on February 15, 1989, the Secretary conducted a complete review of the State application and documents associated with the designation decision. As a result of that review, the Secretary has determined that a 17.1-mile segment of the Middle Fork of the Vermilion should be designated as a State-administered scenic river component of the National Wild and Scenic Rivers System, as provided for in section 2(a)(ii) of the Wild and Scenic Rivers Act.

The State of Illinois has fulfilled the requirements of the Act by designating this segment as a "State Protected River" and by adopting a program of action that will adequately protect the river from adverse State actions. The National Park Service evaluation of the river concluded that Middle Fork meets the criteria for a national scenic river. Accordingly, the river segment is classified as scenic pursuant to section 2(b) of the Act.

Middle Fork of the Vermilion River. The segment of the river from River Mile 29.8 at the Conrail Railroad crossing north of U.S. 150 to River Mile 46.9 north-northeast of Collison, all in Vermilion County.

This action is taken following substantial public involvement and consultation with the Departments of Agriculture, Army, and Transportation, the Federal Energy Regulatory Commission, and the U.S. Environmental Protection Agency as required by section 4(c) of the Wild and Scenic Rivers Act. A public meeting on the State's proposed river management plan and application for national designation of the river was held in Danville, Illinois, on February 26, 1987. In addition, a 45-day period for public comment on the State's application and river management plan and on the environmental assessment of the proposed national designation was provided from January 20 to March 5, 1988. All comments received have been carefully considered.

Notice is hereby given that effective upon this date, the above-described river segment is approved for inclusion in the National Wild and Scenic Rivers System as a scenic river area to be administered by the State of Illinois.

The primary author of this notice is Tom Gilbert, National Park Service, 1709 Jackson Street, Omaha, NE 68102, Phone 402/221-2481.

Dated: August 11, 1989.

Manuel Lujan Jr.,
Secretary of the Interior.

[FR Doc. 89-19302 Filed 8-16-89; 8:45 am]
BILLING CODE 4310-10-M

Bureau of Land Management

[CA-930-09-4310-13]

Afton Canyon Area of Critical Environmental Concern and the Adjacent Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Implementation of the management plan for the Afton Canyon Natural Area and the surrounding area, including vehicle route designation decisions and supplemental rules.

SUMMARY: The California Desert Conservation Area Plan identified the Afton Canyon Area of Critical Environmental Concern (ACEC) as an area with significant riparian, wildlife, and scenic values which require special management attention. The management plan prescribes actions for the protection and preservation of those resource values. The planning area includes 41,500 acres within T. 10 N., R. 5 E.-6 E; T. 11 N., R. 5 E.-7 E; T. 12 N., R. 6 E.-7 E, SBM. Authorities for the management plan are 43 CFR 8341, 8342, and 8360; Federal Land Policy and Management Act of 1976 (Sec. 202e); National Environmental Policy Act of 1969; and the California Desert Conservation Area Plan of 1980, as amended. Both written and oral public comments were evaluated in reaching these management decisions. An 82-day public comment period extended from October 1, 1988 to December 21, 1988. Two public meetings were held (in Barstow of November 1, 1988, and in Riverside on November 2, 1988) to solicit comments on the draft management plan. The draft management plan was then revised based on public comment and the final management plan was signed on June 8, 1989. The decision to implement the management plan was made on the basis of an Environmental Assessment (EA) which considered the environmental effects of the proposed action and alternatives. No significant adverse effects were found and a Finding of No Significant Impact (FONSI) was made. The EP and FONSI are available for public inspection at the Barstow BLM Office.

The Afton Canyon area will remain open to uses which are compatible with the protection and preservation of riparian, wildlife, and visual resources. The management plan prescribes the following actions: Amend the CDCA Plan to expand the Afton Canyon ACEC from 4,800 acres to 8,160 acres; consolidate land ownership by acquiring, through exchange, most private land within the 41,500 area acre; designate a basic vehicle access network of open routes and designate all other routes and washes as closed to vehicle use; reroute the Mojave Road for two and one-half miles to remove vehicle use from the prime riparian area; rehabilitate closed vehicle routes; allow camping only in designated campgrounds; prohibit recreational shooting except for legal hunting only with shotguns using non-solid projectiles in the expanded ACEC; increase on-the-ground management (law enforcement, educational, and visitor services activities); sign the area to provide visitor information regarding services, as well as activities which are allowed and prohibited; remove exotic plant species (tamarisk) and replant with native vegetation; prohibit motor vehicle events involving the elements of competition; prohibit wood collection within the expanded ACEC; remove burros; and monitor the area to ensure plan actions are having the desired effect.

Maps showing which routes are open and closed to vehicle use are contained in the final management plan and are available from the address listed. The designation of these routes is made under the authority of 45 CFR 8342.2(b).

In order the fully implement selected recommendations in the final management plan, the following supplemental rules are promulgated to provide for the protection of persons, property, and public land resources in the Afton Canyon area:

The Afton Canyon ACEC is closed to recreational shooting (including but not limited to target shooting, plinking, and trap shooting); however, legal hunting (consistent with State laws) will be allowed with shotguns only using non-solid projectiles. No shooting or hunting is permitted within one-half mile of designated camping areas and the middle railroad trestle. Camping and campfires are allowed only in designated campgrounds in the Afton Canyon area. Equestrian camping is allowed only in the designated equestrian campground. Additional information regarding these supplemental rules is contained in the final management plan for the Afton Canyon area available from the BLM office listed below.

EFFECTIVE DATE: September 18, 1989.

ADDRESS: The management plan, including maps, environmental assessment, vehicle route designation records of decision and public comment analysis, are available at the Barstow Resource Area Office, 150 Coolwater Lane, Barstow, CA 92311 from 7:45 a.m. until 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Harold Johnson or Paul McClain at the above address or telephone (619) 256-3501.

SUPPLEMENTARY INFORMATION: The authority for establishing supplemental rules is contained in 43 CFR 8362.1-6. These rules have been recommended and adopted through the development of the Afton Canyon Management Plan. These rules will be available in the Barstow Resource Area office which has jurisdiction over the the lands, sites, and facilities affected. These rules will also be posted near and/or within the lands, sites, or facilities affected.

Appeals: If a party is adversely affected by this action, there is a right of appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations in 43 CFR part 4, subpart E. If an appeal is taken, the notice of appeal must be filed in this office (not with the Board) so that the case file can be sent to the Board. A copy of the notice of appeal and of any statement of reasons, written arguments, or briefs must be served upon any adverse parties, and in addition, to the Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, CA 95825, within 15 days of the filing of any specific document. If the procedures set forth in the regulations are not followed, and appeal is subject to dismissal.

Dated: August 11, 1989.

Ed Hastey,
State Director.

[FR Doc. 89-19305 Filed 8-16-89; 8:45 am]
BILLING CODE 4310-40-M

[NV-060-09-4320-02]

Battle Mountain District Advisory Council Meeting in Austin, NV

SUMMARY: Notice is hereby given in accordance with Public Law 94-579 and 43 CFR part 1780 that a meeting of the Battle Mountain District Advisory Council will be held on Wednesday, September 13, 1989. The meeting will convene at 9:00 a.m. in Austin, Nevada.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Continuation/update of District recreation program;
2. Information on the effects of grazing decisions on wild horses;
3. Update on fire program;
4. Briefing on District's proposed FY90 budget; and
5. Field trip to Steiner Creek, the District's demonstration riparian management area.

The meeting is open to the public. Interested persons may make oral statements between 9:30 and 10:00 a.m. on September 13, 1989. If you wish to make an oral statement, please contact James D. Currivan, District Manager, by 4:30 p.m., September 8, 1989.

FOR FURTHER INFORMATION CONTACT: James D. Currivan, District Manager, P.O. Box 1420, Battle Mountain Nevada 89820 or phone (702) 635-5181.

Dated: August 7, 1989.

James D. Currivan,
District Manager, Battle Mountain, Nevada.

[FR Doc. 89-19324 Filed 8-16-89; 8:45 am]
BILLING CODE 4310-HC-M

[CO-060-4320-02]

Canon City District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 463), that a meeting of the Canon City District Grazing Advisory Board will be held at 9:30 a.m. Thursday, September 21, 1989, at the basement level of the Chaffee County Bank, 146 G Street, Salida, Coloredo.

The purpose of this meeting will be:

1. Discussion of proposed Range Improvement projects.
2. Initiate, conduct and settle business pertaining to the expenditure of Range Betterment Funds.
3. Update Board on status of ongoing resource management planning efforts in the Canon City District.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public. Any member of the public may file with the Board a written statement concerning matters to be discussed. Minutes of the meeting will be made available for public inspection 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Donnie R. Sparks, District Manager, Bureau of Land Management, 3170 East Main Street, Canon City, Colorado 81212 or telephone at (719) 275-0631.

Adrian Nelsine,
Acting District Manager.

[FR Doc. 89-19325 Filed 8-16-89; 8:45 am]
BILLING CODE 4310-JB-M

[OR-010-09-4410-10;GP9-298]

Lakeview District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Lakeview District Multiple Use Advisory Council will hold a meeting on Thursday, September 28, 1989. The meeting will begin at 9:00 a.m. at the Bly Fire Hall in Bly, Oregon. The public is invited to attend. The meeting is being held in order to elect a new Council president and to establish procedures for future meetings. In addition, members will be briefed on the status of the upper Klamath River Wild and Scenic River Study and the Warner

Lakes Plan Amendment for Wetlands and Associated Uplands.

FOR FURTHER INFORMATION CONTACT: Renee Snyder, Public Affairs, Officer, 1000 So. Ninth St., Lakeview, OR 97630, (Telephone [503] 947-6110).

Judy Ellen Nelson,

District Manager, Lakeview.

[FR Doc. 89-19328 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-33-M

[OR-020-09-4340-14; GP9-303]

Burns District Advisory Council Meeting and Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice, Burns District Advisory Council Meeting and Tour.

SUMMARY: Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976, that a meeting and tour by the Burns District Advisory Council will be held on September 14 and 15, at the Burns District Office located on Highway 20, 3 miles west of Hines, Oregon. The meeting will begin at 9 a.m. on Thursday, September 14; the tour will leave the Burns District Office at 9 a.m. on Friday, September 15.

The agenda for the meeting will include: (1) An update on the Three Rivers Resource Management Plan (RMP); (2) a report on increased minerals activity in the Burns District; (3) a briefing on the District's Wildlife and Recreation programs; (4) a status report on the Proposed Steens Mountain Winter Sports program; (5) an update on the District's grazing management program; and (6) other miscellaneous items.

The tour will leave from the Burns District Office parking lot to tour areas within the Three Rivers Resource Area which reflect major resource issues identified in the Three Rivers RMP.

DATES: The meeting will begin at 9 a.m. and should adjourn by 5 p.m. Pacific Standard Time. The field tour will begin at 9 a.m. and conclude at the Burns District Office by 5 p.m.

FOR FURTHER INFORMATION CONTACT: Joshua L. Warburton, District Manager, Bureau of Land Management, Burns District Office, HC 74-12338, Highway 20 West, Hines, Oregon 97738. Phone (503) 573-5241.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Interested persons may make oral statements to the council at the end of the meeting or file written statements for the council's consideration. Anyone desiring to make an oral statement must notify the District Manager, Bureau of Land Management, HC 74-12338, Highway 20 West, Hines, Oregon 97738, by September 11, 1989.

The tour will be open to the general public. However, interested persons will need to provide their own transportation and meals. Road conditions will require 4-wheel drive vehicles with high clearance. Individuals wishing to attend the tour should contact the Burns District Office at the above address.

Dated: August 7, 1989.

Joshua L. Warburton,

Burns District Manager.

[FR Doc. 89-19305 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-33-M

[MT-930-09-4212-20; NDM 78173]

Issuance of Disclaimer of Interest to Oil and Gas and/or Mineral Rights; North Dakota

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice.

SUMMARY: Application has been filed on behalf of the North Dakota State Land Department for a recordable Disclaimer of Interest by the United States.

DATE: Comments should be received by November 15, 1989.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2935.

SUPPLEMENTARY INFORMATION: The United States of America, under the provisions of Section 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1745 (1982), intends to disclaim interest in all minerals beneath the bed of the Missouri River, and the oil and gas rights beneath islands, each part of the following described land:

Fifth Principal Meridian, North Dakota

T. 152 N., R. 103 W.,
Sec. 20, S½.

The area affected is unsurveyed, but contains approximately 165 acres of islands and riverbed in McKenzie and Williams Counties.

1. The Bureau of Land management has reviewed the official public land records and related evidence, and has determined that the United States has no claim to the minerals listed in the land described. They found that the minerals under the riverbed belong to the State of North Dakota because the river was navigable at statehood, and that the oil and gas rights under islands formed in the bed of the river after statehood were not acquired by the Corps of Engineers in the August 12, 1958, Declaration of Taking, in the matter of the *United States of America vs. 1,300.50 Acres of Land, More or Less, Situated in McKenzie and Williams Counties, State of North Dakota, and Dolly Coyne, et al. and Unknown Owners*, in the United States District Court, in and for the Southwestern Division, District of North Dakota, Civil No. 2554. Issuance of a recordable disclaimer of interest will help remove a cloud on the title to the listed mineral interests.

2. for a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or obligations in connection with the proposed disclaimer, may present their reviews to the Chief, Branch of Lands, in the Montana State Office.

3. Absent objections, the recordable disclaimer will be issued no sooner than 90 days after the date of this publication.

Dated: August 6, 1989.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 89-19322 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-DN-M

[CA-940-09-3110-10-WEAA; CACA B 02978]

California; Opening Order

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Opening.

SUMMARY: Lands which were formerly patented for Recreation and Public Purposes have been returned to the Bureau of Land Management for non-use. The lands are now being opened to exchange.

FOR FURTHER INFORMATION CONTACT: Nancy J. Alex, Chief, Lands Section (916-978-4820).

Upon publication of this Opening Order in the Federal Register, the following lands will be open to exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976: SBM, T. 9 N., R. 2 W., Sec. 6, NE¼SW¼, containing 40 acres.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 89-19324 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-09-5410-10-ZBAQ; CACA 24448]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Segregation.

SUMMARY: The private lands described in this notice, aggregating 30.00 acres, are segregated and made unavailable for filings under the public land laws, including the mining laws, to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, California State Office, Federal Office Building, 2800 Cottage Way, Room 2845, Sacramento, California 95825, (916) 978-4820.

Serial No.—CACA 24448

T. 13 N., R. 5 E., San Bernardino Meridian, Sec. 34, W½ W½ NE¼ SW¼ W½ SE¼ SW¼. County—San Bernardio.

Minerals reservation—All coal and other minerals.

Upon publication of this Notice of Segregation in the Federal Register as provided in 43 CFR 2720.1-1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate by publication of an opening order in the Federal Register specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interests; or two years from the date of publication of this notice, whichever occurs first.

Dated: August 10, 1989.

Nancy J. Alex,

Chief, Lands Section Branch of Adjudication and Records.

[FR Doc. 89-19327 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-40-M

[CO-080-4212-21; COC-49782]

Realty Action; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed leasing of public land in Saguache County, CO.

SUMMARY: A parcel of land is being considered for lease under section 302 of the Federal Land Policy and Management of 1976 (90 Stat. 2762; 43 U.S.C. 1732). Leasing of the land will authorize an area for supplies and materials necessary for the operation of a sawmill and will allow the government to collect fair market rental. The land and prospective lessee are as follows:

New Mexico Principal Meridian, Colorado

T. 44 N., R. 7 E.
Sec. 13: E½SE¼SE¼SW¼.

The parcel of land contains about 5 acres located adjacent to the sawmill site. Prospective lessee: John Baxter. The parcel would be offered noncompetitively to the applicant under a 3-year renewable lease at no less than fair market rental. The general terms and conditions for leases are found in 43 CFR 2920.7. The lessee would be required to reimburse the United States for reasonable costs incurred in processing and monitoring the lease, in accordance with 43 CFR 2920.6.

DATE: On or before September 18, 1989, interested parties may submit comments to the District Manager, Bureau of Land Management, 3170 East Main Street, Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Bill Miller, San Luis Area Realty Specialist, at (719) 589-4975.

Adrian Nelsius,

Acting District Manager.

[FR Doc. 89-19323 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-JB-M

[NM-010-09-4333-12-11/GP9-0120]

Albuquerque District, NM; Rules of Conduct and Supplemental Rules

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of supplementary rules to 43 CFR part 8365 for designated recreation sites, special management areas, and other Public Lands in the Albuquerque District.

SUMMARY: The purpose of these supplementary rules is to provide for the protection of persons, property, and public lands and resources. As a visitor to public lands, the user is asked to follow certain rules designed to protect the lands and the natural environment, to ensure the health and safety of visitors, and to promote a pleasant and rewarding outdoor recreation experience. More specifically the purposes fall into the following categories:

1. Implementation of Management Plans—Certain prohibited activities have been recommended as supplemental rules for designated recreation sites, specially designated management areas, and Public Lands in general. Some plan amendments and recommendations are not enforceable as published. In order to implement these recommendations, they must be published as specific prohibitied acts in the Federal Register. Use of the supplemental rules section of 43 CFR subpart 8365.1-6, is the most appropriate way of implementing these recommendations. Rationale for these recommendations are presented in their entirety in the final management plan for the specific area.

2. Mitigation of User Conflict—Certain other supplementary rules are recommended because of specific user conflict problems. Prohibiting the reservation of camping space in developed campgrounds will allow such space to be available on first come first serve basis. This will prevent a few persons from monopolizing the use of limited developed camping space. Motorized vehicle freeplay is recommended as a prohibited act to minimize the noise and nuisance factor that such activity represents in a developed recreation site.

3. Public Health and Safety—The erection and maintenance of temporary toilet stuctures on the public lands could represent a major threat to public safety and health due to the concentration of human wastes. The erection and maintenance of temporary toilets may be permitted by the authorized officer on a case by case basis and only when appropriate state and local permits have been obtained.

It should be noted that the shooting restrictions recommended do not prohibit legitimate hunting activities, and therefore do not conflict with the New Mexico Department of Game and Fish Regulations. Recreational shooters are encouraged to use public land where such shooting restrictions do not apply.

4. Complimentary Rules—Some supplementary rules are recommended to compliment those of other Federal, state and local agenices. Because these rules provide for the protection of persons and resources and in the interest and spirit of cooperation with the responsible agenices, these

supplementary rules are deemed necessary.

Definitions

1. A Special Management Area (SMA): A special management area is an area where special or more intensive types of recreation management are needed. There are two primary types of SMAs: those Congressionally designated and those administratively established by the BLM.

2. A designated developed recreation site: A designated recreation site is a smaller area or an enclave of a SMA where recreation is the principal management objective for which the Bureau manages and facilities are provided. Development within designated recreation sites may vary from limited development for protection of the resources values and the safety of users to a distinctly defined site in which definite developed facilities that meet the Land and Water Conservation Fund Act of 1965 as amended, criteria for a fee collection site and are provided for concentrated public use.

3. Public lands and related waters: Public lands are lands or interest in lands administered by the Bureau of Land Management. Related waters and waters which lie directly over or adjacent to public lands and require some management control to protect federally administered resources or to provide for enhanced visitor safety and other recreation experience.

4. Overnight camping: Occupying a developed camp site or specific location within campgrounds during the established night period of 10:00 p.m. to 6:00 a.m. will be considered overnight camping for fee collection and enforcement purposes unless otherwise authorized.

The following areas are designated as developed recreation sites for the purpose of applying the rules of conduct contained in 43 CFR 8365.2:

1. Rio Grande Wild Rivers Recreation Area (Taos Resource Area). T. 29 N., R. 12 E., NMPM, Sec. 16, 17, 20, 29, 31, 32. T. 28 N., R. 12 E., NMPM, Sec. 4, 5, 8, 9, 16, 17.

2. Santa Cruz Lake (Taos Resource Area). T. 20 N., R. 10 E., NMPM, Sec. 7, 18.

3. Rio Grande Lower Gorge River Access (Taos Resource Area). T. 23 N., R. 11 E., NMPM, Sec. 32.

4. Rio Grande County Line (Taos Resource Area). T. 23 N., R. 11 E., NMPM, Sec. 15.

5. John Dunn Bridge (Taos Resource Area). T. 27 N., R. 12 E., NMPM, Sec. 31.

6. Angel Peak (Farmington Resource Area). T. 28 N., R. 10 W., NMPM, Sec. 4, 5, 6. T. 27 N., R. 10 W., NMPM, Sec. 23, 26, 34, 35.

7. Simon Canyon (Farmington Resource Area). T. 30 N., R. 8 W., NMPM, Sec. 9, 10, 15.

In addition to the regulation contained in 43 CFR 8365.2 the following supplemental rules will be applied, unless otherwise authorized, to the recreation sites and areas listed above.

1. Reserving camping space is prohibited. Camping space will be allocated on a first come first served basis.

2. Camping or occupying between 10:00 p.m. and 8:00 a.m. is prohibited at the Rio Grande Lower George River Access, John Dunn Bridge and Rio Grande County Line recreation sites.

3. Camping or occupying between 10:00 p.m. and 6:00 a.m. is prohibited on the access road or in developed parking areas in the Simon Canyon Recreation site. Tent camping is permitted elsewhere within the recreation site.

4. Campfires are prohibited along the river in the Simon Canyon recreation site. Camp stoves and grills are permissible.

5. Motorized vehicle freeplay is prohibited within designated recreation sites.

6. Equestrian use is prohibited at campgrounds, picnic area, and other developed facilities.

7. No person may discharge a firearm or any other device capable of injuring a person or animal or causing damage to any property within 1 mile of designated recreation sites.

8. Within designated recreation sites, quiet hours are in effect from 10:00 p.m. to 6:00 a.m.

9. No more than 2 vehicles allowed per camp site at designated recreation sites.

10. Posting or distribution of any unauthorized signs, posters, printed material, or commerical advertisments is prohibited.

In addition to the regulations contained in 43 CFR 8365.1, the following supplemental rules will be applied, unless otherwise authorized, to these SMAs as identified:

1. On public land within El Malpais National Conservation Area (Rio Puerco Resource Area) the following rules apply:

a. On public lands in the vicinity of the La Ventana natural arch within T. 6 N., R. 10 W., Sec. 33 SE¼, Sec. 34 SW¼ and T. 7 N., R. 10 W., Sec. 3 NW¼, Sec. 4 NE¼.

1. The use of firearms is prohibited.

2. Campfires are prohibited.

3. Camping is prohibited.

2. On all public lands within the Tent Rocks Area of Critical Environmental Concern (Rio Puerco Resources Area) the following rules apply:

a. Firewood collection is prohibited.

b. The use of firearms is prohibited.

c. Climbing on tent rock formations is prohibited.

In addition to the regulations contained in 43 CFR 8361, the following supplemental rules will be applied to all Public Lands and related waters.

1. Persons may camp or occupy any specific location within designated campgrounds, or on public lands within the Albuquerque District, New Mexico for a period of not more than 14 days within any period of 28 consecutive days. Exceptions, which will be posted, include areas closed to camping and areas with specially designated camping stay limits. The 28-day period will begin when a camper initially occupies a specific location on public land. The 14-day limit may be reached either through a number of separate visits or through 14 days of continuous occupation during the 28-day period. After the 14th day of occupation, campers must move outside of a 25 mile radius of the previous location. Camping means the erection and use of a tent or shelter of natural or synthetic material; preparing a sleeping bag or other bedding material for use; mooring of a vessel; use of a vehicle, camper, trailer, or other self-contained camping unit for the apparent purpose of overnight occupancy. Occupancy is defined as the taking or holding possession of a camp or residence on public land.

2. It is unlawful to park any motor vehicle, or to camp, within 300 yards of any spring, manmade water hole, water well, or watering tank used by wildlife or domestic stock.

3. It is prohibited to erect or maitain any toilet, shower, permanent structure, or other sanitary facilities on public lands.

4. On public land where off-road vehicle use is permitted, all such vehicles must be equipped within an approved spark arrester and muffler and must display a State of New Mexico (or any other State's) off-road vehicle registration sticker.

5. Possession or use of fireworks is prohibited.

6. Compliance with all applicable State of New Mexico regulations for boating safety, equipment, and registration is required on all public lands and related waters.

FOR FURTHER INFORMATION CONTACT: John Bristol, Outdoor Recreation Planner, Bureau of Land Management, Albuquerque District, 435 Montano NE, Albuquerque, New Mexico 87107, (505) 761-4504.

SUPPLEMENTARY INFORMATION: The authority for establishing supplemental rules is contained in 43 CFR 8365.1-6. These rules have been recommended and adopted through the development of individual resource management plans and recreation management plans. The rules will be available in each local office having jurisdiction over the lands, sites, or facilities affected.

Dated: August 11, 1989.

Patricia E. McLean,

Associate District Manager.

[FR Doc. 89-19367 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-FB-M

[NM 940-09-4730-12]

New Mexico; Filing of Plat of Survey

August 11, 1989.

The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Sante Fe, New Mexico, effective at 10:00 a.m. on October 6, 1989.

A survey representing the dependent resurvey of certain small holding claim boundaries, the survey of portions of the 1989 right and left banks of the Embudo River, the medial line of a portion of the 1989 channel of the Embudo River, and partition lines, in section 19, Township 23 North, Range 10 East, New Mexico Principal Meridian, New Mexico, executed under Group 769.

This survey was requested by Albuquerque District Manager, Albuquerque, NM.

A survey representing the dependent resurvey of portions of the east and south boundaries of the Agua Salada Grant, and the survey of the west boundary of the Armijo Ranch Tract within the Agua Salada Grant, New Mexico Principal Meridian, New Mexico, executed under Group 840.

This survey was requested by the Assistant Area Director, Bureau of Indian Affairs, Albuquerque, NM.

A survey representing the dependent resurvey of the 1873 south boundary of the Cherokee lands, a portion of the south boundary, a portion of the subdivisional lines, and the adjusted record meanders of portions of the 1873 right and left banks of the North Fork of the Canadian River, and the subdivision of section 34, the survey of a portion of the medial line of the avulsed channel of the North Fork of the Canadian River, and partition lines, in section 34, Township 20 North, Range 16 West, Indian Meridian, Oklahoma, executed under Group 58.

This survey was requested by the Area Manager, Oklahoma Resource Area Headquarters, Oklahoma City, Oklahoma.

A survey representing the dependent resurvey of a portion of the subdivisional lines, and the adjusted record meanders of a portion of the 1872 right bank of the Cimarron River in section 8, Township 17 North, Range 2 East, Indian Meridian, Oklahoma, executed under Group 58.

This survey was requested by the Area Manager, Oklahoma Resource Area Headquarters, Oklahoma City, Oklahoma.

A survey representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 9, and the survey of a lot in section 9, Township 25 North, Range 9 East, Indian Meridian, Oklahoma, executed under Group 55.

This survey was requested by the Director, Muskogee Area Office, BIA, Muskogee, Oklahoma.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

John P. Bennett,

Chief, Branch of Cadastral Survey.

[FR Doc. 89-19368 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-FB-M

[OR-943-09-4214-10; GP9-307; OR-45225(WASH)]

Proposed Withdrawal and Opportunity for Public Meeting; Correction

The heading and acreage in FR Doc. 89-17342 published on pages 30954 and 30955, in the issue of Tuesday, July 25, 1989, are hereby corrected as follows:

On page 30954, in the heading, Washington was omitted after "Public Meeting" and is corrected to read "Public Meeting; Washington".

On page 30954, in the summary, and on page 30955 following the land description, the acreage reads "640" and is corrected to read "2,900".

Dated: August 8, 1989.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-19328 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-09-M

[OR-943-09-4213-10; GP9-306; WASH-02220A]

Proposed Withdrawal and Opportunity for Public Meeting; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed an application to withdraw 285 acres of National Forest System land for protection of an addition to the Sullivan Lake Recreation Area and Summer Homesite. The land has been closed to location and entry under the United States mining laws since the application was posted to the official public land records on February 16, 1972.

DATE: Comments must be received by November 21, 1989.

ADDRESS: Comments should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: On February 3, 1972, the U.S. Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Willamette Meridian

Colville National Forest

T. 39 N., R. 44 E.,
Sec. 29, SE¼SW¼;
Sec. 32, E½W½ and W½SE¼, except those portions withdrawn by Public Land Order No. 1685 of July 21, 1958, for the Sullivan Creek Recreation Area.

The area described contains, after making the above mentioned exception, approximately 285 acres in Pend Oreille County, Washington.

The purpose of the proposed withdrawal is to protect an addition to the Sullivan Lake Recreation Area and Summer Homesite. The land involved is located adjacent to the existing Sullivan Lake/Sullivan Creek Recreational Complex approximately six miles east of the town of Metaline Falls, Washington.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing on or before November 21, 1989, to the Oregon/Washington State Director, Bureau of Land Management, at the address indicated above.

Notice is herby given that an opportunity for a public meeting is afforded on connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being head must submit a written request to the Oregon/Washington State Director, Bureau of

Land Management, on or before November 21, 1989. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

This is the first publication in the **Federal Register** of the notice of proposed withdrawal WASH 0222A. Under the provisions of 43 CFR 2310.2(b), the land will be segregated, as specified above, through October 20, 1991, unless the application is denied or cancelled or the withdrawal is approved prior to that date. The Forest Service has authority to permit all temporary uses during the segregative period with the exception of the disposal of the mineral resources under the mining laws.

The temporary segregation of the land in connection with this withdrawal application shall not affect the administrative jurisdiction over the lands.

Dated: August 8, 1989.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-19329 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-GG-M

Minerals Management Service

Meeting of the Royalty Management Advisory Committee

August 9, 1989.

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that the Royalty Management Advisory Committee (RMAC) will meet in Lakewood, Colorado, at the location and on the dates identified below. The purpose of this meeting is for the Strategic Planning Work (Panel) to present to RMAC its findings and recommendations with regard to Royalty Management Program (RMP) improvements and changes in mission and performance.

LOCATION AND DATES: The RMAC will meet at the Sheraton Hotel and Conference Center, 360 Union Blvd., Lakewood, Colorado, on September 7 and 8, 1989. The RMAC will meet from 9:00 a.m. to 5:00 p.m. on September 7 and 9:00 a.m. to 3:00 p.m. on September 8. An evening session on September 7 will be scheduled during the day session if it is deemed necessary by the Committee chairperson and members. For overnight accommodations at the Sheraton Hotel in Lakewood, call 1-800-325-3535 or (303) 987-2000.

The meetings will be open to the public. Public attendance may be limited to the space available. Members of the public will be given an opportunity to address the Committee and questions from the public will be addressed at a designated time during each session. Written statements should be submitted by September 1, 1989, to the address listed below. Minutes of this meeting will be available for public inspection and copying by September 29, 1989, at the same address.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Gibbs, Minerals Management Service, Royalty Management Program, Denver Federal Center, Building 85, Box 25165, Mail Stop 660, Denver, Colorado 80225, Telephone Number (303) 231-3410, FTS 326-3410.

SUPPLEMENTARY INFORMATION: At its June 22, 1989, meeting RMAC established a Strategic Planning Work Panel to review the RMP draft Strategic Plan for Operations and Systems and make recommendations as to conclusions drawn in the plan. In addition, the Panel was asked to review and make recommendations on any royalty management improvements being contemplated in response to concerns recently expressed by the Senate Select Committee.

A written report containing the Panel's recommendations will be submitted to RMAC for review and approval at the September 7-8, 1989, meeting. In addition to the written report, the Panel chairperson and/or designee will make an oral presentation on the Panel's work, findings, and recommendations. Any recommendations of the Panel will be reviewed and voted on by RMAC at the September 7-8, 1989, meeting.

Dated: August 10, 1989.

Jerry D. Hill,

Associated Director for Royalty Management.

[FR Doc. 89-19290 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Elf Aquitaine Operating, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Elf Aquitaine Operating, Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5499, Block 202, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Freshwater City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 9, 1989. Comments must be received on or before September 1, 1989, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/ Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of title 30 of the CFR.

Dated: August 10, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-19330 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Flash Gas & Oil Southwest, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Flash Gas & Oil Southwest, Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6721, Block 287, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 8, 1989. Comments must be received on or before September 1, 1989, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/ Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of title 30 of the CFR.

Dated: August 10, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-19331 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Walter Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Walter Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 3601 and 2933, Blocks 62 and 63, respectively, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on August 10, 1989. Comments must be received on or before September 1, 1989, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/ Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in reviews § 250.34 of title 30 of the CFR.

Dated: August 11, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-19332 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Reclamation

Central Valley Project/State Water Project Water Conveyance and Purchase Contract; California

AGENCY: Bureau of Reclamation.

ACTION: Notice of intent to prepare a draft environmental impact statement/ environmental impact report (EIS/EIR).

SUMMARY: Pursuant to section 204(f)(C) of the National Environmental Policy Act of 1969, as amended, and section 21000 et seq., of the California Environmental Quality Act of 1970, as amended, the U.S. Bureau of Reclamation (Reclamation) and the California Department of Water Resources (DWR) propose to prepare an EIS/EIR to analyze the environmental effects of implementing a water conveyance and purchase contract. The objective of the water conveyance and purchase contract is to make more water available for delivery by each project through additional and more efficient use of Central Valley Project (CVP) and State Water Project (SWP) facilities and water supplies. The surface water is needed to alleviate ground-water overdraft conditions in the San Joaquin Valley. As specified in Article 10(h) of the Coordinated Operations Agreement (COA), the means to achieve the objective and meet the need is for the SWP to purchase water from the CVP and to transport additional water for the CVP. The EIS/EIR will address project, regional, and cumulative impacts of providing water for agricultural, municipal, industrial, and wildlife purposes to CVP/SWP service areas south of the Sacramento-San Joaquin Delta. The diversion of this water would be subject to: (1) The limitations of the existing Corps of Engineers' Delta pumping criteria for the SWP's Harvey O. Banks pumping plant; (2) existing and future Delta water quality standards in accordance with Article 11 of the COA; (3) applicable requirements of the Reclamation Reform Act; (4) instream flow requirements; and (5) other CVP and SWP obligations.

Four workshops have been scheduled to solicit information from interested public entities and persons in determining the scope of the EIS/EIR.

DATES: The workshops will be held on September 18, 19, 26, and 28, 1989, in Redding, Concord, Irvine, and Fresno, California, respectively, and begin at 7 p.m.

ADDRESS: The workshop locations are:

Redding—Holiday Inn, Fairmont Room, 1900 Hilltop Drive, September 18, 1989.

Concord—Concord Hilton, Golden Gate Room C, 1970 Diamond Boulevard, September 19, 1989.

Irvine—U.C. Irvine Campus, Koll Room, Bren Event Center, Corner of Bridge and Mesa Roads, September 26, 1989.

Fresno—Fresno Hilton, Press Room, 1055 Van Ness, September 28, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Vogelsang, Environmental Specialist, Division of Planning, California Department of Water Resources, 1416 Ninth Street, Room 252-32, Sacramento, CA 95814, (916) 445-8692; or Mr. Rich Breitenbach, Environmental Specialist, U.S. Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825, (916) 978-5134.

SUPPLEMENTARY INFORMATION: The Coordinated Operations Agreement (COA) signed on November 24, 1986, provides the basis for coordinated operations between the CVP and the SWP. Article 10(h) of the COA provides guidelines for the DWR and Reclamation to negotiate a contract for the sale of CVP water to DWR and the conveyance of CVP water through SWP facilities.

The SWP has the ability to convey more water south of the Delta than it presently does. On the other hand, Reclamation is unable to deliver some of its water south of the Delta because of limited capacity in CVP facilities. The 10(h) contract would provide the means for DWR to purchase and delivery additional water to its contractors south of the Delta and at the same time provide Reclamation the means to convey more water to its users south of the Delta. CVP water to be conveyed and purchased is: (1) That portion of the CVP's firm yield which is either not contracted or under-contract but not presently being used; and (2) water which is in addition to CPV's firm yield.

The CVP firm yield which has not been contracted or used would be available to both the State and CVP contractors until it is needed by existing contractors or new CVP long-term contractors. This water would be purchased and/or conveyed on the same priority, as Reclamation and DWR would make it available to their respective long-term contractors. Water in excess of the firm yield would be purchased and/or conveyed as available, providing these actions do not diminish deliveries to or increase costs for SWP and CVP long-term contractors.

Allocations of water to CVP users would be addressed in Reclamation's Water Contracting EIS's. The State's purchase would be used to meet Delta outflow requirements. Water that had been used by the SWP to meet Delta outflow requirements would now be allocated to SWP contractors on the basis of contract obligations.

Alternatives to be considered:

1. Preferred Alternative—Under the proposed water conveyance and purchase contract, Reclamation would operate its existing CVP reservoirs to deliver water through existing channels and facilities to the Delta. CVP water sold to DWR would be used by DWR for Delta outflow. SWP and CVP water conveyed by DWR would be transported through the California Aqueduct and other CVP and SWP storage and conveyance facilities to their contractors. The quantity of CVP water to be transported and purchased and the schedule of delivery for such water have not yet been determined. Reclamation and DWR are currently estimating the water conveyance and purchase contract would be for 500,000 acre-feet-per-year (250,000 transported for the CVP and 250,000 sold to DWR). A specific quantity of water would be proposed after the scoping sessions and hydrological studies have been completed.

2. Modifications to Preferred Alternative—Various alternatives are possible by modifying the water conveyance and purchase contract through changes in terms or conditions of the agreement. These changes may include variations in quantities of water, rates and timing of conveyance, purpose of use, any combination of these factors.

3. Alernative to the Water Conveyeance and Purchase Contract—There may be several means for meeting the service area water demands in ways other than outlined in Article 10(h) of the COA. These would include projects to develop additional water supplies, increase reuse of water in the service area, increase CVP conveyance, or reduce water demands in the service area through conservation or other means.

4. No. Action—This alternative is the existing situation. The CVP and SWP would continue to utilize facilities as authorized. Planned projects would come on line as completed.

Environmental review and consultation requirements that will be met concurrently with the National Environmental Policy Act and California Environmental Quality Act proposes include applicable requirements of the Clean Water Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Endangered Species Act, and Executive Orders 11988 and 11990 regarding flood plains and wetlands.

Preliminary analysis suggests that the water conveyance and purchase contract would cause the following impacts:

1. Changes in flow patterns of the Sacramento—San Joaquin Delta including increased regulated inflow and increased exports and changes in seasonal outflows;
2. Changes in river, reservoir, and Delta fish populations;
3. Changes in wildlife populations and vegetation along the river and within the reservoirs and Delta;
4. Changes in water quality and recreation in the river, reservoirs, and Delta;
5. Changes in return flows from irrigated lands with subsequent impacts on San Joaquin Valley and Delta water quality, fish, wildlife, and vegetation;
6. Changes in the composition of constituents in San Joaquin Valley soils; and
7. Changes in Changes resulting from growth-inducing effects such as air quality and socioeconomic conditions.

These effects and others identified during the public scoping process will be discussed in the EIS/EIR.

Raymond H. Willms,
Acting Deputy Commissioner.

[FR Doc. 89-19291 Filed 8-16-89; 8:45 am]
BILLING CODE 4310-09-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0067), Washington, DC 20503, telephone 202-395-7340.

Title: Restrictions of Financial Interests of State Employees, 30 CFR Part 705.

OMB approval number: 1029-0067.

Abstract: Respondents supply information on employment and financial interests. The information is used to determine if respondents are in compliance with section 517(g) of the Surface Mining Control and Reclamation Act of 1977 which places an absolute prohibition on having a direct or indirect financial interests in underground or surface coal mining operations.

Frequency: Entrance on duty and annually.

Description of respondents: Any State regulatory authority employee or member of advisory boards and commissions established in accordance with State law or regulation to represent multiple interests who performs any function or duty under the Act is required to file a statement of employment and financial interests.

Estimated completion time: 20 minutes.

Annual responses: 1,980.

Annual burden hours: 667.

Bureau clearance officer: Andrew F. DeVito 202-343-5954.

Dated: July 6, 1989.

Annetta L. Cheek,
Acting Chief, Division of Regulatory Development.

[FR Doc. 89-19333 Filed 8-16-89; 8:45 am]
BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-287]

Certain Strip Lights; Decision to Review a Portion of an Initial Determinstion

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to review a portion of the presiding administrative law judge's (ALJ's) initial determination (ID) finding a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202)-252-1116.

SUPPLEMENTARY INFORMATION: This action is taken pursuant to Commission rules 210.53-210.56 (19 CFR 210.53-210.56, as amended). On June 27, 1989, the ALJ issued an ID finding a violation of section 337. No petitions for review or government agency comments were received.

Having examined the record in this investigation, including the ID, the Commission has concluded that review of a portion of the ID is warranted. Specifically, the Commission will review the following issue:

Whether it was proper for the ID to contain findings regarding importation, sale, and patent infringement by non-respondents, in light of the following:

—Commission interim rule § 210.58(b);

—The usefulness of such findings to the Commission's consideration of remedy;

—ALJ Order No. 4, which denied complainant's motion to add four foreign companies (all of which are among the non-respondents mentioned in the ID) as respondents;

—The possibility that, following a finding of a violation of section 337 by only one or two respondents, a general exclusion order might be issued based in large part upon findings of unauthorized use by a number of non-respondents which have had no opportunity to appear in the investigation and to contest the allegations at issue; and

—Any other relevant considerations.

Furthermore, the Commission has determined that an additional finding with regard to complainant's registered trademark is warranted by the facts contained in the ID. The Commission has determined that respondent Golden Apple Corporation violated section 337 through the sale in the United States of a product that infringed complainant Vista Manufacturing Company's trademark for "FLEX LITE," Registration No. 1,433,725.

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) a cease and desist order that could result in a respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. In addition, the Commission is interested in receiving submissions regarding what weight should be given by the Commission, in its consideration of an appropriate remedy, to allegations of unauthorized importation by non-respondents generally and, under the circumstances of this investigation, by those non-respondents whose alleged unauthorized importation was known to complainant prior to the filing of the complaint.

If the Commission contemplates some form of remedy, it must consider the effect of that remedy upon the public interest. The factors that the Commission will consider include the effect that an exclusion order and/or cease and desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles that are like or directly competitive with those that are subject to the investigation, and (4) U.S. consumers. The Commission is therefore

interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation, interested government agencies, and any other persons are encouraged to file written submissions on the issue under review, remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or proposed cease and desist order(s) for the Commission's consideration. Written submissions from the parties, including any proposed orders, must be filed by August 25, 1989. Written submissions from government agencies and any other persons, and reply submissions from the parties, must be filed by September 1, 1989.

ADDITIONAL INFORMATION: Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202)-252-1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202)-252-1810.

By order of the Commission.

Issued: August 14, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-19462 Filed 8-15-89; 11:54 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Joint Newspaper Operating Agreement; Las Vegas Sun and Las Vegas Review-Journal

Notice is hereby given that the Attorney General has received an application for approval of a joint operating arrangement between two Las Vegas newspapers. The application was filed on August 8, 1989 by the Las Vegas Sun, Inc. and Donrey of Nevada, Inc. (owner of Las Vegas Review-Journal). The proposed arangement provides that the printing and commercial operation of both newspapers be handled by the Review-Journal. According to the application, the Sun would maintain complete editorial independence.

The Newspaper Preservation Act,. 15 U.S.C. 1801, *et seq.*, requires that joint newspaper operating arrangements such as that proposed by the Sun and the Review Journal have the prior written consent of the Attorney General of the United States in order to qualify for the antitrust exemption provided by the Act. Before granting his consent, the Attorney General must find that one of the publications is a failing newspaper and that approval of the arrangement would effectuate the policy and purpose of the Act.

In accordance with the Newspaper Preservation Act Regulations, published at 28 CFR part 48, copies of the proposed arrangement and other materials filed by the newspapers in support of the application are available for public inspection in the main offices of the newspapers involved and at the Department of Justice, 633 Indiana Avenue, NW., Room 529, Washington, DC 20530.

Any person with views about the proposed arrangement may file written comments stating the reasons why approval should or should not be granted, or requesting that a hearing be held on the application. A request for hearing must set forth the issues of fact to be determined and the reason that a hearing is believed necessary to determine them. Comments shall be filed by mailing or delivering five copies to the Assistant Attorney General for Administration, Justice Management Division, Department of Justice, Washington, DC 20530, and must be received by September 18, 1989.

Replies to any comments filed on or before that date may be filed on or before September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Janis Sposato, General Counsel, Justice Management Division, 202-633-3452.

Dated: August 10, 1989.

Harry H. Flickinger,

Assistant Atorney General for Administration.

[FR Doc. 89-19334 Filed 8-16-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; State of Connecticut Department of Transportation

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States of America* v. *State of Connecticut Department of Transportation*, No. H-89-504 (EBB) (D. Conn.), was lodged with the United States District Court for the District of Connecticut, on August 8, 1989.

The proposed consent decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311, as a result of the discharges of fill material into various waterbodies and their adjacent wetlands in Norwalk, Connecticut, which are alleged to constitute "waters of the United States." The consent decree requires the State of Connecticut to pay a civil penalty of $2,500.00, and to comply with the terms of an interagency agreement with the Corps of Engineers regarding the need for 404 permits on future road projects.

The Department of Justice will receive until September 29, 1989, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, P.O. Box 23986, Washington, DC 20026-3986, Attention: Mary Elizabeth Ward, and should refer to *United States* v. *State of Connecticut Department of Transportation*, DJ Reference No. 90-5-1-1-2919.

The consent decree may be examined at the Clerk's Office, United States District Court, 141 Church Street, New Haven, Connecticut 06508.

Richard B. Stewart,

Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 89-19361 Filed 8-16-89; 8:45 am]

BILLING CODE 4410-01-M

Membership of the Senior Executive Service Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of the Department of Justice's 1989 Senior Executive Service (SES) Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its SES Performance Review Boards. The purpose of the Performance Review Boards are to provide fair and impartial review of Senior Executive Service performance appraisals and to make recommendations to the Deputy Attorney General regarding the ratings.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Oser, Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, DC 20530. Telephone: (202) 272-6235.

Paul W. Mathwin,

Executive Secretary, Senior Executive Resources Board.

1989 Performance Review Board Membership

Antitrust Division
- Jon M. Joyce, Chief, Economic Regulatory Section
- P. Terry Lubeck, Chief, Litigation II Section
- Catherine G. O'Sullivan, Chief, Appellate Section

Bureau of Prisons
- Gilbert L. Ingram, Assistant Director, Correctional Programs Division
- Wade B. Houk, Assistant Director, Administration Division
- Douglas T. Lansing, Assistant Director, Human Resource Management Division
- Ronald Waldron, Senior Deputy Assistant Director, Health Services Division

Civil Division
- Jeffrey Axelrad, Director, Torts Branch
- David Epstein, Director, Commercial Litigation Branch
- Vincent M. Garvey, Deputy Director, Federal Programs Branch

Civil Rights Division
- Nathaniel Douglas, Chief, Educational Opportunities Litigation Section
- Paul Hancock, Chief, Housing and Civil Enforcement Section
- Arthur Peabody, Jr., Chief, Special Litigation Section

Criminal Division
- George Calhoun, Senior Counsel, Asset Forfeiture Office
- Theodore G. Gilinsky, Senior Counsel, Office of Special Investigations
- William S. Lynch, Senior Counsel for Litigation Office of the Assistant Attorney General

Executive Office for U.S. Attorneys
- Richard C. DeHaan, Associate Director

Executive Office for U.S. Trustees
- Philip M. Zeidner, Deputy Director

Immigration and Naturalization Service
- C. Bradley Cates, Special Counsel to the Commissioner
- Elizabeth C. MacRae, Associate Commissioner for Information Systems
- James A. Puleo, Assistant Commissioner for Adjudications
- Paul W. Virtue, Deputy General Counsel

Justice Management Division
- Richard J. Krips, Director, Legal and Information Systems Staff
- Gilbert M. Leigh, Jr., Assistant Director, Management and Planning Staff
- Charles R. Neill, Director, Systems Policy Staff
- Warren Oser, Director, Personnel Staff

Land and Natural Resources Division
- William M. Cohen, Chief, General Litigation Section
- William J. Kollins, Chief, Land Acquisition Section
- Anne H. Shields, Chief, Policy, Legislation and Special Litigation Section

Office of Justice Programs
- Jack A. Nadol, Comptroller

Tax Division
- Gary R. Allen, Chief, Appellate Section
- Ronald A. Cimino, Regional Chief, Western Region
- Donald J. Garvin, Chief, Office of Special Litigations

U.S. Marshals Service
- Joseph B. Enders, Assistant Director for Operations Support

[FR Doc. 89-19363 Filed 8-16-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research Act of 1984; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on July 18, 1989 filed written notifications, on behalf of Bellcore and Samsung Software America, Inc., (hereinafter known as "Samsung") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

Samsung is a Delaware corporation with its principal place of business at 1 Corporate Drive, Andover, Massachusetts 01810.

Bellcore and Samsung entered into an agreement effective April 6, 1989 to collaborate on research to better understand the application of object-oriented programming systems and knowledge bases methodologies and concomitant technologies to exchange access services.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 89-19359 Filed 8-16-89; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; UNIX International, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), UNIX International, Inc. on August 1, 1989, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of UNIX International, Inc. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On January 30, 1989, UNIX filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on March 1, 1989, 54 FR 8906. On May 4, 1989, UNIX filed an additonal written notification. the Department published a notice in the Federal Register in response to the additional notification on June 22, 1989 (54 FR 26266).

As of July 21, 1989, the following have become members of UNIX International, Inc.:

Acer
Addamax
Alcatel

BEST COPY AVAILABLE

Alliant
Amdahl
Anderson
Avcom
ASCII
AT&T
C. Itoh
Cadence
CBIS
CDC
Citibank
Concurrent
Convergent
CTG
Dansk Data
Data General
Dell Computer
DMR
Dolphin Server
DuPont Fibers
EDS/GM
EMSCA
Emulex
Encore
Ericsson
ERSO–ITRI
Floating Point Systems
Fuji-Xerox
Fujitsu
German UNIX User's Group (GUUG)
HCL
ICL
III
Informix
Integrated Solutions
Intel
Interactive
Locus
Micro Focus
MIPS
Modcomp
Motorola
NBI
NCR
NEC
Nihon Unisys
Nippon Steel
Oki Electric
Olivetti
Omron
Oracle
Phoenix
Prime
Prisma
Pyramid
Ricoh
Relational Technologies
SCO
Sequent
Sequoia
Silicon Graphics
Sony
SSBA
Stellar
Stratus
Sun Microsystems
Sybase
Tadpole
Tandem
Tata Consultancy
Texas Instruments
Thomson-CETIA
Tolerant
Topologix
Toshiba
Unisoft
Unisys
Wang
Xerox
88 Open

Joseph H. Widmar
Director of Operations, Antitust Division.
[FR Doc. 89–19360 Filed 8–16–89; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on National Retiree Income Policy of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:00 a.m., Friday, September 8, 1989, in Suite C–5515, Seminar Room 1–A, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This nine member work group was formed by the Advisory Council to study issues relating to a national retiree income policy for employee welfare plans covered by ERISA.

The purpose of the September 8 meeting is to:

1. Hear from invited witnesses relative to desirability of the adoption of a formal national retiree income policy.
2. Entertain comments from the general public.
3. Discuss among members of the work group, plans for the coming year.

The work group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before September 5, 1989 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue NW., Washington DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 5, 1989.

Signed at Washington, DC this 11th day of August, 1989.

Ann L. Combs,
Deputy Assistant Secretary for Policy, Pension and Welfare Benefits Administration.
[FR Doc. 89–19280 Filed 8–16–89; 8:45 am]
BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (89–56)]

Granting of Federal Information Processing Standards (FIPS) Waiver Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of granting of FIPS waiver request.

SUMMARY: Pursuant to section 3506(b) of Title 44 of the U.S. Code, the authority to waive, under conditions specified by the Secretary of Commerce, NASA hereby gives notice of granting a request for waiver of FIPS 60–2, 61–1, and 97 for the Director, Marshall Space Flight Center, to acquire the vector processing portion of the replacement for the Engineering Analysis and Data System (EADS). If the selected system has one mainframe for both vector and scalar processing, then the waiver will apply to the entire system.

DATE: The waiver was effective May 18, 1989.

ADDRESS: National Aeronautics and Space Administration, Code NT, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Wallace O. Keene, Assistant Associate Administrator for Information Resources Management, 202–453–1775.

Dated: August 11, 1989.

C. Howard Robins, Jr.,
Associate Administrator for Management.
[FR Doc. 89–19346 Filed 8–16–89; 8:45 am]
BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. *Date:* September 11, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for NEH/Reader's Digest Teacher-Scholar Program for Elementary and Secondary School Teachers, submitted to the Division of Education Programs, for projects beginning after September 1, 1989.

2. *Date:* September 11–12, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Preservation Program, submitted to the Office of Preservation, for projects beginning after January 1, 1990.

3. *Date:* September 13, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for NEH/Reader's Digest Teacher-Scholar Program for Elementary and Secondary School Teachers, submitted to the Division of Education Programs, for projects beginning after September 1, 1989.

4. *Date:* September 15, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for NEH/Reader's Digest Teacher-Scholar Program for Elementary and Secondary School Teachers, submitted to the Division of Education Programs, for projects beginning after September 1, 1989.

5. *Date:* September 18, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for NEH/Reader's Digest Teacher-Scholar Program for Elementary and Secondary School Teachers, submitted to the Division of Education Programs, for projects beginning after September 1, 1989.

6. *Date:* September 27, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications in American Materials, submitted to Division of Research Programs, for projects beginning after April 1, 1990.

Stephen J. McCleary,
Advisory Committee Management Officer.
[FR Doc. 89–19382 Filed 8–16–89; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Special Committee to Review the Severe Accident Risks Report; Meeting

The NRC Speical Committee to Review the Severe Accident Risks Report (NUREG–1150) will hold its second meeting on September 13 and 14 at the Sheraton-Old Town Hotel, Albuquerque, New Mexico. The entire meeting will be open to the public.

Notice of the establishment of this committee and its purpose was published in the Federal Register on June 21, 1989 (54FR26124). The availability of the draft of NUREG–1150, "Severe Accident Risks; An Assessment for Five U.S. Nuclear Power Plants" was made available to the public on July 19, 1989.

Any member of the public wishing to file a written statement with the Committee may do so by sending the statement to Mr. Charles B. Bartlett, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The agenda for the meeting has not, at this time, been firmly established. The general topics that the Committee tentatively plans to discuss at this meeting will include the following:

—The extent to which key safety experiments were factored into the NUREG–1150 analysis;

—The human factors analyses that were used in the study and the effects of recovery actions that were assumed to be possible;

—A review of the Mark-I containment failure scenario to identify which elements in the assessment were the result of engineering analysis and which were based on elicitation of opinion based on engineering;

—A review and comparison of the conclusions of expert panels set forth in the present draft of NUREG–1150 and those conclusions presented in the first draft;

—Views of report contributors and NRC staff as to where, at the lower end of the distributions, probability distributions should be truncated and how should one deal with probability distributions that are spread over several decades and/or are bimodal;

—A review of NUREG–1150 results in light of the greatest uncertainty found in the tails of the probability distributions;

—An indepth review of the seismic inputs into the 1150 study including the use and effects of the two different seismic hazard distributions presented;

—Views of contributors and staff as to whether the report is a fair representation of the state of understanding and agreement in the field of PRA and reflects similar studies in other countries;

—Views of contributors and staff as to the work done in developing NUREG–1150 results, on plans for archiving codes and panel conclusions for reuse, and how panel conclusions might be modified or replaced as engineering data is improved.

Topics may be added or deleted prior to the meeting. A more detailed agenda will be published in the Federal Register when available.

Further information regarding this meeting may be obtained by calling Mr. Charles B. Bartlett on 301–492–3604.

Dated: August 11, 1989.

Samuel J. Chilk,

Acting Advisory Committee Management Officer.

[FR Doc. 89-19255 Filed 8-16-89; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 1 to Regulatory Guide 3.48, "Standard Format and Content for the Safety Analysis Report for an Independent Spent Fuel Storage Installation or Monitored Retrievable Storage Installation (Dry Storage)," has been developed to conform with revisions to 10 CFR part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste" (53 FR 31651). This guide presents guidance on and a format for the information required by part 72.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publication Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 8th day of August 1989.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 89-19350 Filed 8-16-89; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series. This series has been developed to describe and make avilable to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in this review of applications for permits and licenses

On November 28, 1988, the Nuclear Regulatory Commission published a notice of proposed rulemaking (53 FR 47822) that would require commercial nuclear power plant licensees to implement effective maintenance programs. Public comments received on the proposed rule have been analyzed, particularly those related to the structures, systems, components, and extent of activities included in the maintenance program, and are reflected in a draft regulatory guide.

This draft guide, temporarily identified by its task number, DG-1001 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Maintenance Programs for Nuclear Power Plants" and is intended for Division 1, "Power Reactors." This guide is being developed to provide guidance to nuclear reactor licensees and applicants on methods acceptable to the NRC staff for planning, conducting, and assessing the effectiveness of nuclear power plant maintenance programs to prevent the degradation or failure of, and to promptly restore the intended function of, structures, systems, and components that can significantly affect safety or security.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. Comments from the public and industry on this guide will be extremely valuable to the NRC staff in establishing a final regulatory position on maintenance programs.

Specific comments are solicited on the following:

1. What level of detail should be included in the regulatory guide?
2. Is the scope of systems, structures, and components covered by the regulatory guide appropriate?
3. What criteria could be used to determine that a maintenance program is fully effective and additional improvement is not essential from a safety standpoint?
4. Is it appropriate to use quantitative goals, which are described in Regulatory Position 3 of the draft regulatory guide, directed toward achieving a satisfactory level of performance in plant maintenance programs consistent with the level achieved by the top performing U.S. plants of similar design?
5. What quantitative measures would be appropriate for such goals? Should they be at the plant level, system level, component level, or some combination thereof?

The NRC staff is also planning to conduct a workshop early in 1990 to discuss this guidance on maintenance programs and the public comments received. There will be a public announcement of the workshop when plans have been completed.

Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments should be accompanied by supporting data. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by December 1, 1989.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 10th day of August 1989.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 89-19351 Filed 8-16-89; 8:45 am]

BILLING CODE 7590-01-M

[NUREG-0800]

Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants; Issuance and Availability of Revised Sector

The U.S. Nuclear Regulatory Commission (NRC) has published a revision to section 13.1.2-13.1.3, "Operating Organization" of NUREG-0800, "Standa.d Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," LWR Edition (SRP).

The revision of SRP section 13.1.2-13.1.3 (Revision 3) added reference to Regulatory Guide 1.114, "Guidance to Operators at the Controls and to Senior Operators in the Control Room of a Nuclear Power Unit." Changes were made to delete the description of certain requirements with respect to licensed operators and senior operators that are now described in 10 CFR 50.54(m), and to include reference to the Commission Policy Statement on Engineering Expertise of Shift in place of a statement on the Shift Technical Advisor.

The revised SRP section is effective immediately. A copy will be available in the Commission's Public Document Room in approximately 2 weeks. Copies of the revised SRP Section, or of the complete Standard Review Plan, NUREG-0800, Accession No. PD-81-920199 are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; telephone (703) 487-4650.

Dated at Rockville, Maryland this 9th day of August 1989.

For the Nuclear Regulatory Commission.

Edward J. Butcher, Jr.,

Chief, Inspection and Licensing Program Branch, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 89-19353 Filed 8-16-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-313 and 50-368]

Arkansas Power and Light Co., Arkansas Nuclear One, Unit Nos. 1 and 2; Withdrawal of Application for Amendments to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Arkansas Power and Light Company (the licensee) to withdraw its December 4, 1987 applications for proposed amendments to Facility Operating License Nos. DPR-51 and NPF-6 for the Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2), located in Pope County, Arkansas.

The proposed amendments would have revised the ANO-1&2 Technical Specifications to decrease the review requirements of the Plant Safety Committee.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on January 12, 1988 (53 FR 767). However, by letter dated August 3, 1989, the licensee withdrew the proposed change.

For further details with respect to this action, see the applications for amendments dated December 4, 1987, and the licensee's letter dated August 3, 1989, which withdrew the applications for license amendments.

The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland this 10th day of August, 1989.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate IV, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-19352 Filed 8-16-89; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Representative Payee Parental Custody Monitoring
(2) *Form(s) submitted:* G-99d
(3) *OMB Number:* New Collection
(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval
(5) *Type of request:* New collection
(6) *Frequency of response:* On occasion
(7) *Respondents:* Individuals or households
(8) *Estimated annual number of respondents:* 5,900
(9) *Tootal annual responses:* 5,900
(10) *Average time per response:* .0666 hours
(11) *Total annual reporting hours:* 393
(12) *Collection description:* Under section 12(a) of the RRA, the RRB is authorized to select, make payments to, and conduct transactions with an annuitant's relative or some other person willing to act on behalf of the annuitant as a representative payee. The collection obtains information needed to verify that a parent-for-child payee still retains custody of the child.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents can be obtained from Ronald J. Hodapp, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Ronald J. Hodapp,

Director of Information Resources Management.

[FR Doc. 89-19335 Filed 8-16-89; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27112; File No. SR-BSE-89-5]

Self-Regulatory Organizations; Proposed Rule Change by Boston Stock Exchange, Inc. Relating to Review of Proposed Specialist Combinations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 10, 1989, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities

and Exchange Commission ("Commission") the proposed rule as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would authorize the BSE's Executive Committee to review proposed specialist combinations that, in the Exchange's view, may lead to undue concentration within the specialist community. The text of the proposed rule follows.

Specialist Concentration

1. The Executive Committee will review any arrangement where previously separate specialist organizations would be operating under common control and would comprise:
(a) 15% or more of the 100 most actively traded CTA stocks; or,
(b) 15% or more of the second 100 most actively traded CTA stocks; or,
(c) 20% or more of the third 100 most actively traded CTA stocks; or
(d) 15% or more of all the CTA stocks eligible for trading on the BSE where the Free List contains fewer than 100 issues.
The total number of transactions reported to the Consolidated Tape during the previous four calendar quarters shall be used to rank Exchange eligible CTA stocks to determine the most actively trade stocks.
2. The Executive Committee shall approve or disapprove the proposed combination based on its assessment of the following considerations:
(a) Specialist performance and market quality in the stocks subject to the proposed combination;
(b) The effects of the proposed combination in terms of the following criteria:
(i) Strengthening the capital base of the resulting specialist organization;
(ii) Minimizing both the potential for financial failure and the negative consequences of any such failure on the specialist system as a whole; and
(iii) Maintaining or increasing operational efficiencies;
(c) Commitment to the Exchange market, focusing on whether the constituent specialist organizations engage in business activities that might detract from the resulting specialist organization's willingness or ability to act to strengthen the Exchange agency/auction market and its competitiveness in relation to other markets; and
(d) The effect of the proposed combination on overall concentration of specialist organizations.
3. Except under extraordinary circumstances, all applications will be approved or disapproved within 60 days of receipt by the Exchange.
4. The applicable concentration limits shall in no way impose restrictions on any specialist unit to compete for new stocks through the Exchange's regular allocation process.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. The purpose of the proposed rule is to provide a process for reviewing certain proposed mergers, acquisitions and other combinations between or among specialist units.[1] The Exchange (in SR–BSE–87–5) stated that the following concerns were considered in proposing a specialist concentration rule:
1. Unless reasonable limits or guidelines are established a disproportionately large number of top quality stocks could end up under the control of one or a few firms as a result of business combinations.
Similarly, overall high concentrations could occur regardless of the measure of quality.
2. If specialist units were permitted to aggregate control or dominate activity on the floor of the Exchange the potential for increasing orderflow would be seriously diminished.
3. Entry to the BSE by outside firms would become much more difficult if the universe of firms from which they could choose to affiliate is limited. Further, affiliations with larger firms would become more difficult to negotiate.
4. The Exchange cannot afford to be dependent on any one firm for a disproportionately large portion of its revenues. The increased economic risk to the Exchange would pose similar risk to other members dependent upon the Exchange to effectively administer and provide its services to the marketplace.
5. Competition for stocks would be reduced with fewer firms and the likelihood of influence by larger firms over the policies or direction of the Exchange would be significantly increased.
6. The integrity of the entire stock allocation process would be impaired if the methods for measuring relative performance are made ineffective by reduced independence, undue influence, limited participants and reduced competition.
7. Fewer and larger specialist units could reduce incentives for quality markets and consequently higher standards for performance.
b. The Statutory basis for the proposed rule is section 6(b)(5) of the Act in that the BSE will be able to monitor tendencies toward concentration in the specialist community and intervene to prevent undue concentration.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

[1] The Exchange initially filed guidelines for reviewing specialist combinations in File No. SR–BSE–87–5. (File No. SR–BSE–87–5 was withdrawn when File No. SR–BSE–89–5 was filed.)

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submission should refer to File No. SR–BSE–89–5 and should be submitted by September 7, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 9, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89–19374 Filed 8–16–89; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–27113; File No. SR–BSE–89–4]

Self-Regulatory Organizations; Proposed Rule Change by Boston Stock Exchange, Inc. Relating to Crosses, Fictitious Transactions, and Transactions in Privileges

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 10, 1989, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule changes is to (i) eliminate the requirement that all crosses be effected in the presence of a Floor Governor; (ii) eliminate the specific intent requirement for fictitious transactions; and, (iii) abrogate an antiquated prohibition concerning offers to buy or sell privileges.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. The BSE proposes to make the following changes to Chapter 11 of the Exchange's Rules of the Board of Governors:

Sec. 18. Orders to Buy and Sell the Same Security. The BSE is proposing to eliminate the requirement that all crosses be effected in the presence of a Floor Governor. The existing provision is impractical because the number of crosses executed on a daily basis has increased along with the level of activity throughout the industry and it would be disruptive to Governors to be compelled to witness such trades. Moreover, this extra time would discourage the execution of crosses on our Floor and be disadvantageous to our customers.[1]

Sec. 21. Fictitious Transactions. Certain language has been deleted to eliminate the specific intent element for fictitious transactions and to provide a broader prohibition against effecting fictitious transactions.

Sec. 22. Transactions in Privileges Forbidden. The BSE has abrogated an antiquated prohibition against offers to buy or sell privileges.

b. The statutory basis for the proposed changes is section 6(b)(5) of the Act in that they promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submission should refer to File No. SR–BSE–89–4 and should be submitted by September 7, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 9, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89–19375 Filed 8–16–89; 8:45 am]
BILLING CODE 8010–01–M

[1] The BSE also is proposing to eliminate the right of other floor members to object to a cross under certain circumstances.

[34-27115; SR-MCC-89-9]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Clearing Corporation Relating to Buy-Ins and Withdrawals of U.S.A. Medical Corporation

August 9, 1989

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 7, 1989 the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the text of a proposed rule change of Midwest Clearing Corporation ("MCC") regarding Buy-Ins and Withdrawals of the stock of U.S.A. Medical Corporation.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organizations included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to clarify MCC's procedures regarding Buy-Ins and Withdrawals of U.S.A. Medical Corporation. Effective August 1, 1989, MCC will no longer process withdrawal requests, accept buy-in liability or process buy-ins in the securities of U.S.A. Medical Corporation (CUSIP No. 902916-10-5) ("U.S.A. Medical"). MCC will only process withdrawal requests when it has sufficient security denominations on deposit to process and fulfill such requests.

MCC's actions are based on the fact that its Correspondent Depository has advised MCC that certain certificates of U.S.A. Medical ultimately due MCC, on behalf of Participants, are the subject of a court proceeding involving the securities' transfer agent, the Correspondent Depository and other named parties. As a result, the Correspondent Depository is unable to deliver stock of U.S.A. Medical ultimately due MCC.

In addition, as the attached Special Notice indicates, on March 1, 1989, the U.S. District Court (District of Utah) has determined that the stock of U.S.A. Medical had never been registered with any proper regulatory authority and was traded as part of a fraudulent scheme and device to manipulate and artificially inflate the price. The stock of U.S.A. Medical also continues to be subject to a Default Order by the Securities Division of the Department of Commerce of the State of Utah.

Copies of the Special Notice will be distributed to those Participant(s) maintaining positions in U.S.A. Medical. Since January 30, 1989, the stock of U.S.A. Medical has not been eligible for clearing services at MCC (except for Trade-for-Trade transactions which have not been eligible since March 1, 1989); MCC has been processing, and will continue to process, withdrawals as sufficient security denominations become available.

MCC believes that the proposed rule change is consistent with Section 17A of the Securities Exchange Act in that it promotes the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MCG does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

MCC has not received any comments from Participants on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within sixty (60) days of the filing of such proposed rule change, the Commissoin may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provision of 5 U.S.C. 552, will be available for inspection and copying in the commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to file number SR-MCC-89-9 and should be submitted by September 7, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

August 1, 1989

To: MSTC/MCC participants maintaining positions in U.S.A. Medical Corporation

Attention: Chief Executive Officer, Operations Manager/Head Cashier

Subject: Special notice regarding buy-ins and withdrawals of U.S.A. Medical Corporation

Effective immediately, MSTC/MCC will no longer process withdrawal requests, and MCC will no longer accept buy-in liability or process buy-ins, in the securities of U.S.A. Medical Corporation ("U.S.A. Medical"). MSTC/MCC will only process withdrawal requests when it has sufficient security denominations on deposit to process and fulfill such requests.

MSTC/MCC's foregoing action is based on the fact that its Correspondent Depository has advised MSTC/MCC that certain certificates of U.S.A. Medical ultimately due MSTC/MCC, on behalf of Participants, is the subject of a court proceeding involving the Securities' transfer agent, the Correspondent Depository and other named parties. As a result, the Correspondent Depository is unable to deliver stock of U.S.A. Medical ultimately due MSTC/MCC.

In addition, on March 1, 1989, the U.S. District Court (District of Utah) determined that the stock was unlawfully issued, had never been registered with any proper regulatory authority, was not exempt from

such requisite registration and had been and was continuing to be traded illegally. The Court also found that the stock traded as part of a fraudulent scheme and device to manipulate and artificially inflate the price of that stock in violation of the securities laws.

Finally, since March 27, 1989, the stock of U.S.A. Medical continues to be the subject of a Default Order by the Securities Division of the Department of Commerce of the State of Utah.

MSTC/MCC's foregoing action is also based on MCC's existing Buy-In Procedures (B-88/8776) [August 25, 1988], as well as MSTC Rules, including, but not limited to, Article I, Rule 2 (Eligible Securities); Article I, Rule 3, Sec. 1 (a) (General Provisions); Article II, Rule 1, (Delivery and Withdrawal of Securities (including Delivery in Contravention of Law Not Required)) and MCC Article I, Rule 2 (Eligible Securities), Article I, Rule 3, Sec. 3(a) (General Provisions), Article III, Rules 3 and 4 (Withdrawal of Securities/Failure to Deliver Securities).

Any Participant having any questions regarding this Special Notice may contact Jeffrey E. Lewis, Associate Counsel at (312) 663-2796.

Jeffrey E. Lewis,

Associate Counsel, MSTC/MCC.

[FR Doc. 89-19078 Filed 8-16-89; 8:45 am]

BILLING CODE 8010-01-M

[34-27128 SR-MSTC-89-7]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Securities Trust Company Relating to Buy-Ins and Withdrawals of U.S.A. Medical Corporation

August 9, 1989

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 7, 1989 the Midwest Securities Trust Company filed with the Securities Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the text of a proposed rule change of Midwest Securities Trust Company ("MSTC") regarding Buy-Ins and Withdrawals of the stock of U.S.A. Medical Corporation.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to clarify MSTC's procedures regarding Buy-Ins and Withdrawals of U.S.A. Medical Corporation. Effective August 1, 1989, MSTC will no longer process withdrawal requests (and Midwest Clearing Corporation will not longer accept buy-in liability or process buy-ins) in the securities of U.S.A. Medical Corporation (CUSIP No. 902916-10-5) ("U.S.A. Medical"). MSTC will only process withdrawal requests when it has sufficient security denominations on deposit to process and fulfill such requests.

MSTC's actions are based on the fact that its Correspondent Depository has advised MSTC that certain certificates of U.S.A. Medical ultimately due MSTC, on behalf of Participants, are the subject of a court proceeding involving the securities' transfer agent, the Correspondent Depository and other named parties. As a result, the Correspondent Depository is unable to deliver stock of U.S.A. Medical ultimately due MSTC.

In addition, as the attached Special Notice indicates, on March 1, 1989, the U.S. District Court (District of Utah) has determined that the stock of U.S.A. Medical had never been registered with any proper regulatory authority and was traded as part of a fraudulent scheme and device to manipulate and artificially inflate the price. The stock of U.S.A. Medical also continues to be subject to a Default Order by the Securities Division of the Department of Commerce of the State of Utah.

Copies of the Special Notice will be distributed to only those Participant(s) maintaining positions in U.S.A. Medical. Since January 30, 1989, the stock of U.S.A. Medical has not been eligible for depository or depository-related services at MSTC and MSTC has been, and will continue to, process withdrawals as sufficient security denominations become available.

MSTC believes that the proposed rule change is consistent with section 17A of the Securities Exchange Act in that it promotes the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

MSTC has not received any comments from Participants on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

All submissions should refer to file number SR–MSTC–89–7 and should be submitted by September 7, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

August 1, 1989

To: MSTC/MCC Participants Maintaining Positions in U.S.A. Medical Corporation

Attention: Chief executive officer, operations manager/head cashier

Subject: Special Notice Regarding Buy-ins and Withdrawals of U.S.A. Medical Corporation

Effective immediately, MSTC/MCC will no longer process withdrawal requests, and MCC will no longer accept buy-in liability or process buy-ins, in the securities of U.S.A. Medical Corporation ("U.S.A. Medical"). MSTC/MCC will only process withdrawal requests when it has sufficient security denominations on deposit to process and fulfill such requests.

MSTC/MCC's foregoing action is based on the fact that its Correspondent Depository has advised MSTC/MCC that certain certificates of U.S.A. Medical ultimately due MSTC/MCC, on behalf of Participants, is the subject of a court proceeding involving the securities' transfer agent, the Correspondent Depository and other named parties. As a result, the Correspondent Depository is unable to deliver stock of U.S.A. Medical ultimately due MSTC/MCC.

In addition, on March 1, 1989, the U.S. District Court (District of Utah) determined that the stock was unlawfully issued, had never been registered with any proper regulatory authority, was not exempt from such requisite registration and had been and was continuing to be traded illegally. The Court also found that the stock traded as part of a fraudulent scheme and device to manipulate and artificially inflate the price of that stock in violation of the securities laws.

Finally, since March 27, 1989, the stock of U.S.A. Medical, continues to be the subject of a Default Order by the Securities Division of the Department of Commerce of the State of Utah.

MSTC/MCC's foregoing action is also based on MCC's existing Buy-In Procedures (B–88/8778) (August 25, 1988), as well as MSTC Rules, including, but not limited to, Article I, Rule 2 (Eligible Securities); Article I, Rule 3, Sec. 1(n) (General Provisions); Article II, Rule 1, (Delivery and Withdrawal of Securities (including Delivery in Contravention of Law Not Required)) and MCC Article I, Rule 2 (Eligible Securities), Article I, Rule 3, Sec. 3(n) (General Provisions), Article III, Rules 3 and 4 (Withdrawal of Securities/Failure to Deliver Securities).

Any Participant having any questions regarding this Special Notice may contact Jeffrey E. Lewis, Associate Counsel at (312) 663–2796.

Jeffrey E. Lewis,

Associate Counsel, MSTC/MCC.

[FR Doc. 89–19377 Filed 8–16–89; 8:45 am]

BILLING CODE 8010–1–M

[Rel. No. IC–17108; 812–7374]

ML-Lee Acquisition Fund II, L.P. et al.; Application

August 11, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Amended Order of Exemption under the Investment Company Act of 1940 ("1940 Act" or the "Act").

Applicants: ML-Lee Acquisition Fund II, L.P., ML-Lee Acquisition Fund (Retirement Accounts) II, L.P. (together with ML-Lee Acquisition Fund II, L.P., the "New Funds"), Mezzanine Investments II, L.P., and Thomas H. Lee Advisors II, L.P. ("Advisors II").

Relevant 1940 Act Sections: Order requested under section 6(c) for exemptions from the provisions of sections 2(a)(19) and 2(a)(3)(D).

Summary of Application: Applicants seek an amendment to an existing order (Investment Company Act Releases No. 16651, November 23, 1988). The amended order would be substantially similar to the existing order, but would take into account changes in the proposed management structure of the New Funds. As amended, the order would provide that (i) the Independent General Partners of each New Fund would not be "interested persons" of such New Fund, Mezzanine Investments II, L.P., Advisors II, or Merrill Lynch, Pierce, Fenner & Smith Inc. (Merrill Lynch") by virtue of being general partners of such New Fund, (ii) the Independent General Partners of a New Fund or ML-Lee Acquisition Fund, L.P. (together, "Funds") would not be interested persons of each such Fund because they were Independent General Partners of the other Funds, and (iii) limited partners owning less than 5 percent of the limited partnership units of a Fund would not be "affiliated persons" of such Fund, any other limited partner, any of the Individual General Partners, Mezzanine Investments II, L.P., or Advisors II solely because of their status as limited partners.

Filing Date: The Application was filed on August 10, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 5, 1989, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; the New Funds, Merrill Lynch, and Mezzanine Investments II, L.P., World Financial Center, North Tower, New York, NY 10281–1381; Advisors II, 75 State Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272–2847, or Max Berueffy, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee by either going to the SEC's Public Reference Branch or contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations: 1. The New New Funds are newly formed Delaware limited partnerships, each governed by an Agreement of Limited Partnership (the "Partnership Agreements"). The New Funds will operate as business development companies pursuant to section 55 of the Act. Thus, the New Funds will be subject to section 55 through 65 of the 1940 Act and to those sections of the Act made applicable to business development companies by section 59 thereof. The New Funds have been organized as limited partnerships because Applicants believe that the partnership form is the appropriate investment vehicle for a closed-end entity of limited duration that will make a limited number of investments.

2. The New Funds have filed a joint registration statement on Form N–2 under the 1933 Act (File No. 33–25816) with respect to an offering of up to 1,000,000 units of limited partnership interest for each of the New Funds. Merrill Lynch will act as the selling agent for the units on a "best efforts" basis.

3. Applicants (other than Mezzanine Investments II, L.P.) have filed another application requesting orders (i) under sections 6(c), 17(d), 57(i) of, and Rule 17d–1 under, the 1940 Act to permit certain joint transactions that would otherwise be prohibited under sections 17(d) and 57(a)(4) of the Act, and (ii) under sections 6(c) and 57(c) of the 1940 Act to permit certain affiliated transactions that would otherwise be prohibited under section 57(a)(1) of the Act. In response to comments from the staff of the SEC, changes were made in the proposed management structure of the New Funds, including the replacement of Advisors II by Mezzanine Investments II, L.P. as the managing general partner of the New Funds. A notice, stating that an order granting the relief requested in the other application will be issued unless the SEC orders a hearing, was issued on August 7, 1989 (Investment Company Act Release No. 17101). The relief requested in the present application is necessary solely because of the changes to the management structure of the New Funds made in connection with the related application.

4. Advisors II is the investment adviser to the New Funds and is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). Advisors II is a limited partnership, the administrative general partner of which is T.H. Lee Mezzanine II, a Massachusetts business trust, and the individual general partner of which is Thomas H. Lee. T.H. Lee Mezzanine II is controlled by Thomas H. Lee and is under common control with the Thomas H. Lee Company.

5. Mezzanine Investments II, L.P. (the "Managing General Partner") is the managing general partner of the New Funds. The Managing General Partner is a limited partnership controlled by its general partner, ML Mezzanine II Inc., which is a special purpose, indirect, wholly-owned subsidiary of Merrill Lynch & Co., Inc. The sole limited partner of the Managing General Partner is Advisors II. The Managing General Partner will be registered as an investment adviser under the Advisers Act. The limited partner of the Managing General Partner will have no authority to participate in the management of the Managing General Partner and will have no voting rights relating to the Managing General Partner.

6. The Managing General Partner will be responsible for purchasing investments for each New Fund that have been approved by the Independent General Partners, for investing and managing such Fund's temporary investments, and for the admission of additional or assignee limited partners. Each New Fund considers its relationship with the Managing General Partner to be an investment advisory relationship. Applicants believe that the partnership allocations in the Partnership Agreements and in the Managing General Partner's partnership agreement will comply with section 15 of the 1940 Act and section 205 of the Advisers Act, and are relying on a opinion of counsel to the New Funds concerning such allocations.

7. ML-Lee Acquisition Fund, L.P. ("Fund I") is a business development company whose investment adviser, Thomas H. Lee Advisors, Inc., is under common control with Advisors II. "Fund" and the "Funds" refer individually and collectively to the New Funds and Fund I.

8. The Partnership Agreements require that there be, in addition to the Managing General Partner, at least two and not more than nine Individual General Partners and that a majority of the General Partners be Independent General Partners (individuals who are not "interested persons" of such Fund within the meaning of the 1940 Act). There will initially be four Individual General Partners, all of whom will be Independent General Partners except Thomas H. Lee. The New Funds will be managed solely by their Individual General Partners, except with regard to those specific activities for which the Managing General Partner or Advisors II as investment adviser will be responsible. The Individual General Partners will provide overall guidance and supervision of Fund operations and perform the same functions as directors of a corporation. The Individual General Partners will assume the responsibilities and obligations imposed by the 1940 Act and the regulations thereunder on the non-interested directors of a registered investment company.

9. The Partnership Agreements provide that Individual General Partners may be removed either (i) for cause by the action of two-thirds of the remaining Individual General Partners or (ii) by vote of the limited partners. The Managing General Partner may be removed either (i) by a majority of the Individual General Partners or (ii) by vote of the limited partners. The limited partners have no right to control the Fund's business, but may exercise certain rights and powers of a limited partner under the respective Partnership Agreements. Under the Partnership Agreements, limited partners are afforded all voting rights required by the 1940 Act. The Partnership Agreements also authorize limited partners to vote on certain matters. It is the opinion of counsel to the New Funds that the existence of these voting rights does not subject the limited partners to liability as general partners under the Revised Uniform Limited Partnership Act of the State of Delaware.

10. Insurance policies that would provide coverage to persons who become limited partners in the New Funds have not been obtained as of the filing date of the application because (i) the New Funds have been advised by their counsel that units in the New Fund will constitute valid limited partnership interests in the New Funds and that subscribers to the units will be limited partners of the New Funds entitled to all of the benefits of limited partnership under the Partnership Agreements and the Revised Uniform Limited Partnership Act of the State of Delaware; (ii) based upon the nature of the business to be conducted by the New Funds, the New Funds submit that the risk of liability for actions against the limited partners, including actions based upon contract or tort claims, is remote; and (iii) the Partnership Agreements will obligate the General Partners of the New Funds to take all action that may be necessary or appropriate to protect the limited liability of the limited partners. In light of the SEC staff's position that substantial insurance coverage is appropriate in the view of the special problems of using the limited partnership for registered investment companies, the New Funds will review periodically the question of the appropriateness of obtaining an errors and omissions insurance policy for the New Funds.

11. Applicants request that an amended order be issued determining that (i) the Independent General Partners of each New Fund will not be not "interested persons" of such New Fund, the Managing General Partner, Advisors II, or Merrill Lynch, within the meaning of section 2(a)(19) of the 1940 Act, solely by virtue of being general partners of the New Fund, and (ii) the Independent General Partners of a Fund will not be "interested persons" of such Fund solely by virtue of their service as Independent General Partners of the other two Funds.

12. Applicants believe that service by the same individuals as Independent General Partners of each of the Funds, a relationship similar to one in which an individual serves as a director of multiple investment companies in the same complex, will be beneficial to all of the Funds. The Funds have been structured so that the Independent General Partners are the functional equivalents of the disinterested directors of an incorporated registered investment company. Section 2(a)(19) excludes from the definition of "interested person" of an investment company those individuals who would be "interested persons" solely because

they are directors of the investment company. There is no equivalent exception for partners or co-partners of an investment company.

13. Applicants also request that the amended order determine that any limited partner owning less than 5% of the units of a New Fund will not be an "affiliated person" of such Fund, any other limited partner, any of the Individual General Partners, the Managing General Partner, or Advisors II, within the meaning of section 2(a)(3)(D) of the 1940 Act, merely because such limited partner is a partner of a Fund or a partner with any of such other persons in a Fund. Since such limited partners have no exclusion under the Act comparable to that provided under section 2(a)(3) to corporate shareholders with less than a 5% ownership interest, the requested relief will place investments in the New Funds on a footing more equal with investments in business development companies organized as corporations.

Applicants' Conditions: If the requested order is granted, Applicants agree to the following conditions:

1. The New Funds will be structured so that the Independent General Partners are the functional equivalents of the non-interested directors of an incorporated investment company registered under the 1940 Act.

2. Under the Partnership Agreements, each of the Funds are authorized to make in-kind distributions of its portfolio securities to its Partners upon liquidation of a Fund. However, each Fund agrees not to make any in-kind distributions of portfolio securities to its respective Partners until it has obtained either a "no-action" letter from the staff of the Commission confirming the Funds' interpretation of Section 205 of the Advisers Act (i.e., that unrealized gains or losses attributable to Securities distributed in-kind to Partners are properly deemed realized upon such distribution) or, in the alternative, the Funds have obtained an exemption from section 205 by a Commission order issued pursuant to section 206a of the Advisers Act, permitting the Funds to deem such gains or losses to be realized upon in-kind distributions.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19361 Filed 8-16-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27119; File No. SR-NASD-89-35]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Exemption From Pricing Requirement by Qualified Independent Underwriter Under Schedule E to the NASD By-Laws

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 13, 1989, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The following is the text of the proposed rule change to Schedule E of the NASD By-Laws ("Schedule E") and the Interpretation of the Board of Governors—Review of Corporate Financing, Article III, section 1 of the NASD Rules of Fair Practice ("Corporate Financing Interpretation"). Proposed new language is italicized; proposed deletions are in brackets.

Schedule E to the NASD By-Laws

* * * * *

Section 2—Definitions

* * * * *

(h) Institutional investor—an investor which comes within any of the following categories:

(1) A bank, savings and loan association, insurance company or registered investment company with total assets of at least $100,000,000;

(2) A registered investment advisor with more than $100,000,000 under management; or

(3) An entity whether natural person, corporation, partnership, trust or otherwise with total assets of at least $100,000,000.

(The remaining provisions of Section 2 are redenominated (i) through (o)).

* * * * *

Section 3—Participation in Distribution of Securities of Member or Affiliate

* * * * *

(c) If a member proposes to underwrite, participate as a member of the underwriting syndicate or selling group, or otherwise assist in the distribution of a public offering of its own or an affiliate's securities subject to this Section without limitation as to the amount of securities to be distributed by the member, one or more of the following three criteria shall be met:

(1) The *price at which an equity issue or the yield at which a debt issue is to be* distributed to the public is established at a price no higher or yield no lower than that recommended by a qualified independent underwriter which shall also participate in the preparation of the registration statement and the prospectus, offering circular, or similar document and which shall exercise the usual standards of "due diligence" in respect thereto; provided, however, that:

(i) An offering of securities by a member which has not been actively engaged in the investment banking or securities business, in its present form or as a predecessor broker/dealer, for at least the five years immediately preceding the filing of the registration statement shall be managed by a qualified independent underwriter; or

(ii) The provision of this paragraph which requires that the price of the securities be established based on the recommendation of a qualified independent underwriter shall not apply to an offering if:

a. The securities (except for the securities of a broker-dealer or its parent) are registered on behalf of selling security holders, with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, and Rule 415 adopted thereunder;

b. The securities will only be offered or sold from time to time in negotiated transactions;

c. Sales by the affiliated member will be made solely to institutional investors;

d. The qualified independent underwriter fulfills all other requirements of this paragraph with respect to the Registration Statement as of the date it is declared effective by the Securities and Exchange Commission and as of the date of any amendment thereto; or

* * * * *

Interpretation of the Board of Governors—Review of Corporate Financing

Article III, section 1 of the Rules of Fair Practice [1]

* * * * *

Proceeds Directed to a Member

No member shall participate in a public offering of an issuer's securities where more than 10 percent of the net offering proceeds, not including underwriting compensation, are intended to be paid to members participating in the distribution of the offering or associated or affiliated persons of such members, or members of the immediate family of such persons, unless the *offering is made in compliance with Subsection 3(c) of Schedule E to the By-Laws* [price at which an equity issuer or the yield at which a debt issue is to be distributed to the public is established at a price no higher or yield no lower than that recommended by a qualified independent underwriter as defined in

[1] The NASD is also proposing to amend the Venture Capital Restrictions provision of the Corporate Financing Interpretation to change the designation of the definition of qualified independent underwriter from section 2(i) to 2(m) of Schedule E to the By-Laws.

section 2(i) of Schedule E to the By-Laws, who shall participate in the preparation of the registration statement and the prospectus, offering circular, or similar document and who shall exercise the usual standards of "due diligence" in respect thereto); provided, however, this paragraph shall not apply to:

[(1) An offering of a class of equity securities for which a bona fide independent market as defined in seciton 2(c) of Schedule E to the By-Laws exists as of the date of the filing of the registration statement and as of the effective date thereof;]

[(2) An offering of a class of securities rated Baa or bette by Moody's rating service or Bbb or better by Standard & Poor's rating service or rated in a comparable category by another rating service acceptable to the Association;]

([3]*1*) An offering otherwise subject to the provisions of Schedule E to the By-Laws;

([4]*2*) An offering of securities exempt from registration with the Securities and Exchange Commission under section 3(a)(4) of the Securities Act of 1933;

([5]*3*) An offering of a real estate investment trust as defined in section 856 of the Internal Revenue Code; or

([6]*4*) An offering of securities subject to Appendix F to Article III, section 34 of the Rules of Fair Practice unless the net proceeds of such offering are intended to be paid to the above persons for the purpose of repaying loans, advances or other types of financing utilized to acquire an interest in a preexisting company.

For purposes of this paragraph, the term "net offering proceeds" means the gross offering proceeds less all expenses of issuance and distribution and the term "immediately family" has the meaning set forth in section 2(g) of Schedule E to the By-Laws.

* * * * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD adopted Schedule E in 1972 to address the conflicts of interest present in a public distribution by a member of its own securities or those of an affiliate. A conflict of interest arises, *inter alia*, when the member participates in establishing the public offering price of the securities and when the member conducts due diligence with respect to the registration statement. Schedule E addresses these conflict by requiring that a member independent of the issuer, *i.e.*, a "qualified independent underwriter", participate in the preparation of the offering document, and provide an opinion that the price of an equity issue is no higher or the yield of a debt issue is no lower than it would recommend.[2]

For the past two years, a Subcommittee of the Corporate Financing Committee has studied the corporate financing activities of members in takeover transactions, corporate reorganizations, and merchant-banking transactions. The Subcommittee has reviewed numerous transactions in which members acted as financial advisors, consultants, and underwriters in connection with private placements of high-yield debt securities to a member's institutional clients. The placement of such high-yield debt securities to a member's institutional clients in a private offering permits a rapid acquisition or restructuring of the target company. In addition, member firms are often permitted to participate as a "partner" in the takeover transaction by purchasing equity securities of the company on the same terms as other insiders. In this case, the member is departing from the traditional role of financial consultant or advisor and becomes a principal in the takeover transaction.

In such transactions, the member also agrees to provide liquidity to its institutional customers, and the issuer usually grants demand registration rights to the institutional investors. The registration rights generally obligate the issuer to file a registration statement covering the securities and use its best efforts to have the registration statement declared effective within six months of the closing of the private offering. As a result, the securities become freely transferable, and the institutional investor can act as a selling security holder in the public distribution of the securities and sell or otherwise transfer the securities on a delayed or continuous basis under Rule 415.

The securities sold in offerings under Rule 415 are generally taken "off the shelf" at various times and in various amounts. When the selling security holder seeks to sell its securities, it contacts a member who will usually enter into negotiations with one or more institutional customers to purchase the securities. The market for the securities is illiquid and the sale is very much a private placement transaction.

In cases where the ownership interest of the member rises to the level of affiliation, as defined in section 2(a) of Schedule E, and the member represents that it intends to provide liquidity to its institutional customers or to execute sale transactions in the "shelf" securities on their behalf, Schedule E will apply to the offering. In other cases, compliance with section 3(c) of Schedule E may be triggered if more than 10% of the net offering proceeds are directed to a member participating in the distribution through the application of the "Proceeds Directed to Member" provision of the Corporate Financing Interpretation.

The NASD has considered the difficulty and impracticality of retaining a qualified independent underwriter to provide a recommendation with respect to the yield each time a selling security holder elects to sell debt securities "off the shelf" under Rule 415. The NASD determined that requiring a qualified independent underwriter to provide a pricing opinion was unnecessary where transactions in "high-yield" debt securities take place in negotiated, large dollar transactions between institutional investors as such investors regularly make such investments and are capable of determining a fair yield or dividend for such securities.

Therefore, the NASD is proposing to amend Section 3(c)(1) of Schedule E to provide an exemption for a qualified independent underwriter from the pricing requirement in that provision in connection with offerings registered with the SEC and distributed pursuant to Rule 415 solely to institutional investors. In order to ensure that the securities can legitimately claim the "shelf offering" exemption provided by Rule 415, new subprovision (ii) to section 3(c)(1) clarifies that the exemption is only available for securities that will only be offered or sold from time to time in negotiated transactions. Thus, the exemption is not available should securities registered pursuant to Rule 415 be sold through an underwriting syndicate. Nor is the exemption available for securities sold through an underwriting syndicate that are registered with the SEC on the same registration statement with securities that are intended to be sold "off the shelf" under Rule 415. The new exemption is also not available for offerings of securities of a broker-dealer or its parent, regardless of whether the

[2] Where the offering is of equity securities with a bona fide independent market, as defined in section 2(c) of Schedule E, or of a class of securities rated investment grade, a qualified independent underwriter is not required.

offering otherwise meets the requirements of the exemption, as the NASD believes that a pricing opinion by a qualified independent underwriter is necessary in such cases in the interest of protecting the public.

New subprovision (ii) would also require that the qualified independent underwriter participate in the preparation of the registration statement and conduct "due diligence" with respect to the offering document as of the date the offering is declared effective by the Securities and Exchange Commission and as of the date of any amendment thereto. Thus, the qualified independent underwriter would be required to perform due diligence prior to the initial effectiveness of the registration statement and when material changes have occurred such that the registration statement needs to be amended.

The term "institutional investor" is proposed to be adopted as new subsection (h) of Section 2 to Schedule E. The NASD determined to limit sales under the proposed exemption to those types of institutional investors that generally invest in such securities, utilizing significant financial criteria to ensure knowledge and sophistication regarding the price of "high-yield" bonds. The definition proposed by the NASD would make the exemption available to (1) banks, savings and loan associations, insurance companies, or registered investment companies with total assets of at least $100 million; (2) registered investment advisors with more than $100 million under management; and (3) any other entity with total assets of at least $100 million.

The proposed rule change is consistent with the provisions of section 15A(b)(2) of the Securities Exchange Act of 1934, which requires that a registered securities association enforce compliance by its members and persons associated with its members with the rules of the Association. By amending Schedule E to address the special circumstances present in an offering pursuant to Rule 415, the NASD is ensuring that its rules have a practical applicability and can be complied with.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary to appropriate in furtherance of the purposes of the Securities Exchange Act of 1934, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in Notice to Members 88-98 (December, 1988). Six comment letters were received in response thereto. All of the commentators were in support of the proposed rule change, but recommended a number modifications thereto. For purposes of clarity in the following discussion, the version of the proposed rule change that was published in Notice to Members 88-98 will be referred to as the "original rule change."

The commentators were unanimous in asserting that Schedule E should not require the participation of a qualified independent underwriter throughout the life of *all* Rule 415 self-registration statements relating to securities of affiliates of NASD members and that, particularly, such participation is not appropriate for shelf-registration statements which relate only to what they describe as secondary trading transactions. The commentators indicated that they believe that the current language of the amendment creates uncertainty with regard to this matter.

The commentators stated that it was the practice for members, in the context of takeover transactions and other reorganizations, to utilize a market making prospectus in connection with secondary trading transactions in securities of the affiliate issuer in order to comply with section 5 of the Act. The NASD agrees that where a member uses a prospectus solely for the purpose of buying and selling securities of an affiliate which has previously been publicly distributed (*i.e.*, the market making prospectus) such secondary market transactions should not be subject to Schedule E. Indeed, it had not been the intention of the NASD to include such transactions within the scope of the original proposed rule change. Therefore, the NASD has determined to clarify herein that the proposed rule change is not intended to apply Schedule E to secondary market transactions in securities pursuant to a market making prospectus, registered under Rule 415, which is intended to cover securities sold by an affiliate member of the issuer in market making transactions. It is the intention of the NASD that, upon SEC approval of the proposed rule change, the SEC's release and the NASD's adopting Notice of Members will clarify that Schedule E is not applicable to such transactions.

As a result of certain of the comments regarding the scope of the original proposed rule change, the NASD also determined to modify the exemption to make it clear that an offering of securities of a member or its parent would not qualify for the exemption since all of the provisions of Schedule E, including pricing, should apply to public offerings of securities of a member of the parent of a member. The term "parent" is defined in Schedule E as any entity affiliated with a member, from which member the entity derives 50% or more of its gross revenues or in which it employs 50% or more of its assets.

The original proposed rule change required that the qualified independent underwriter participate in the preparation of the registration statement and prospectus and conduct due diligence "on a continuous basis throughout the effectiveness of the registration statement." The commentators asserted that the requirement for a qualified independent underwriter to conduct continuous due diligence for an indefinite period of time would create unacceptable uncertainties with regard to liability, unreasonably high transaction costs and impose serious admininistrative burdens. The commentators argued that any requirement to conduct appropriate due diligence should terminate with the original effectiveness of the registration statement. They asserted that the possiblity that the member will limit adverse disclosure to enhance capital raising is not present after the initial affectiveness of the registration statement and, as a result, the qualified independent underwriter's participation in the preparation of the initial registration statement should largely address any subsequent due diligence concerns. The commentators also urged that the member-affiliate had a strong incentive to perform its own due diligence responsibilities carefully because the prospectus, when used in the context of secondary trading, does not limit the member's potential liability under federal or state securities laws. The NASD reviewed these comments and determined that in those cases where the issuers have recently undergone leveraged buy-outs that such issuers would most likely undergo major corporate restructuring during the life of the registration statement (*e.g.*, the sale or disposition of assets, and the selling or spinning off of operating divisions) and, as a result, the NASD believes that the qualified independent underwriter should be required to periodically update its due diligence. Therefore, in response to the above comments, the NASD determined to modify the original proposed rule change to require that due diligence be performed as of the effective date of the registration statement and with respect to any amendment to the registration statement. This would require due diligence to be performed prior to the initial effectiveness of the registration statement and when material changes have occurred requiring an amendment thereto.

The original proposed rule change proposed a definition of "institutional investor" that did not have any net asset test with respect to banks, savings and loan associations, insurance companies or registered investment companies. Further, the original proposed rule change would have required that any entity which meets the $100 million gross asset test also demonstrate that the entity regularly makes investments in securities similar to the securities being offered. The commentators suggested that the definition be modified to: (1) More closely conform the definition to that of the definition of "institutional buyer" found in proposed SEC Rule 144A, and the definition of "accredited investor" found in Rule 501(a) of Regulation D; (2) modify the asset test of any entity meeting the definition for "gross assets" to "Total assets"; and (3) delete the requirement that the entity demonstrate that it regularly invests in the type of high yield securities being purchased.

The Committee reviewed the comments recommending that the definition of institutional investor be broadened to include a number of additional types of entities. The Committee determined to maintain the minimum $100 million threshold and that such other entities need not be specifically set forth as they can qualify under $100 million dollar entity category.

The NASD determined to accept the recommendation of the commentators to modify the asset test required of any entity meeting the definition from "gross assets" to "total assets" and deleted the requirement that the entity demonstrate that it regularly invests in the type of high yield securities being purchased. The NASD agrees that most statutory concepts found in federal or state securities law involving institutional investors and institutional sales do not contain an experience requirement.

In its review of the original proposed rule change, the NASD also determined to add a requirement that banks, savings and loan associations, insurance companies or registered investment companies seeking to qualify under the institutional investor definition have total assets of more than $100 million.

One of the commentators suggested that the exception should be modified to permit a certain number of sales to noninstitutional investors. The commentators argued that the noninstitutional investors who could purchase from the affiliated member under the exemption would receive the benefit of the pricing discipline imposed by the institutional investors. It was recommended that the original proposed rule change be modified to require sales aggregating 85% of the aggregate dollar amount of the securities being offered will be sold to institutional investors. The NASD reviewed the comment and determined that it would undermine the purpose of the proposed amendment to permit sales of high yield debt securities by an affiliate of the issuer to persons who did not meet the definition of institutional investor in an amount of up to 15% of the aggregate dollar amount of the securities being offered.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 7, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: August 9, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19378 Filed 8-16-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27167; File No. SR-NYSE-89-19]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Filing of Proposed Rule Change Relating to Time Records of Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 25, 1989, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes consist of amendments to NYSE Rules 121 and 123 to ensure that records be maintained as to the time an order is received by a specialist at the post, or is received at a member's booth on the Floor from off the Floor.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

Purpose—The purpose of the proposed rule changes is to further enhance market surveillance procedures

and to assist the Exchange in the reconstruction of market activity by providing the Exchange with the ability to pinpoint the time that each order is received by a specialist or is received at a membrer's booth on the Floor from off the Floor.

Rule 121

Currently, Rule 121 requires specialists to keep records of all orders placed with them and of all executions, modifications and cancellations of such orders for at least three (3) years. The rule does not currently contain a time-recording requirement. Rule 123A.30 requires that all percentage orders received by a specialist be time-recorded at the post location. Additionally, as a matter of procedure, all orders directed to a specialist via SuperDot have a time record. Therefore, the only orders directed to a specialist that do not have a time record are non-systematized, non-percentage orders. The proposed amendments to Rule 121 would require that all orders be time recorded. The amendments to Rule 121 would also require that the specialist's records of orders and modifications or cancellations of orders include the name and the amount of the security and the terms of the order, modification or cancellation.

Rule 123

At the present time, there are no requirements that members time-record orders received on the Floor from off the floor. The amendments to Rule 123 will require that every member preserve a record, for at least 3 years, of every order received by the member on the Floor from off the Floor. The record would have to indicate the name and the amount of the security, the terms of the order and the time when the order was received on the Floor.

Statutory Basis

The basis under the Act for these proposed rule changes is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The amendments to Rules 121 and 123 are consistent with these objectives in that they enhance the exchange's ability to reconstruct market activity as it occurred on the trading Floor and they foster uniformity in trading data which aids in NYSE surveillance programs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

The Exchange has neither solicited nor recieved written comments regarding these proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making writen submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washingon, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washingon, DC 20549.

Copies of such filing wil also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 7, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 8, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19379 Filed 8-16-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27124; File No. SR-NYSE-89-18]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc. to Permit the Earlier Redemption of Due-Bills that Represent Large Cash Dividends.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 25, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has expanded the interpretation of Rule 259 to enable due-bills [2] that represent large cash dividends (25 percent of market price) to be redeemed within fewer than five days.

The text of the proposed rule change is available at the Commission and the principle office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, as set forth in sections A, B, and C below, of the most significant aspect of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] Exchange Rule 255 provides that the term "due-bill," as used in the Rules, means "an assignment or other instrument employed for the purpose of evidencing the transfer of title to any dividend, interest, or rights pertaining to securities contracted for, or evidencing the obligation of a seller to deliver such dividend, interest or rights to a subsequent owner."

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Exchange Rule 259 presently permits due-bills to be redeemed "on a date set by the Exchange." Exchange policy has been to require the redemption of due-bills five (5) business days following the payment of a dividend or a distribution.

Due-bills are utilized in order to correctly assign a particular dividend or distribution to the buyer in a transaction that would settle after the appropriate record date. For the majority of trades (not requiring physical delivery), this method of transferring ownership is accomplished through the Depository Trust Company ("DTC"). If the due-bills represent stock (as in a split-up), the redemption (furnish monies owed or securities owed) is done five days after the payable date. This redemption covers the entire due-bill trading period. Should the due-bill represent a large cash dividend, DTC "nets" due-bill trading through to the payable date. However, for those trades that settle on and after the payable date, redemption of due-bills presently must be done "outside" the system, or, on a "broker to broker" basis. Handling the due-bills and payment outside of DTC has been burdensome to Participants of DTC. As the Exchange has historically set the due-bill redemption date five business days following the pay date, member organizations redeem due-bills for the five days of trading on that date.

Problems have been incurred as a result of the significant special cash dividends that have been paid by issuers recently. Because of the amount of some cash dividends ($40 per share in a recent case) and the obvious desirability for cash, member organizations have requested a daily reconciling of due-bills for this five-day period. Member organizations have stated that they had extremely large amounts of funds tied up in due-bills for the above mentioned five-day period. As a solution to the problem, DTC has recently developed a new system that will accomplish a "daily" redemption of crediting and debiting member organizations with the value of the dividend for each day for the last five days of trading. Accordingly, the Exchange proposes to permit the redemption of due-bills within five business days following the payment of a dividend or a distribution.

(2) Basis

The statutory basis for the Proposed Rule Change is section 6(b)(5) of the Act which, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The revision in interpretation of the Exchange's Rule 259 should promote the economical and efficient clearing and settling of securities. The dividends affected would be more expediently credited/debited to the appropriate firms.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited nor received comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act in that it is designated as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submission should refer to File No. SR-NYSE-89-18 and should be submitted by September 7, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 10, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19380 Filed 8-16-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 05/05-0210]

Norwest Equity Partners IV; Issuance of a Small Business Investment Company License

On November 16, 1988, a notice was published in the Federal Register (53 FR 46734) stating that an application had been filed by Norwest Venture Partner—II (name changed to Norwest Equity Partners IV), 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402, with the Small Business Administration (SBA), pursuant to § 107.103 of the Regulations governing small business investment companies (13 CFR 107.103 (1988)), for a license to operate as a small business investment company.

Interested parties were given until the close of business December 15, 1988, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05-0210 on August 2, 1989, to Norwest Equity Partners IV to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 11, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-19354 Filed 8-16-89; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF STATE

U.S. Organization for the International Telegraph and Telephone Consultative Committee CCITT Study Group A; Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on September 12 at 9:30 a.m. in Room 1105, Department of State, 2201 C Street, NW., Washington, DC.

Study Group A deals with international telecommunications policy and services.

The agenda for this meeting will include (1) the establishment of U.S. positions, and announcement of candidates for delegations to upcoming meetings of CCITT Study Group II and III, (2) report of Ad hoc group for leased circuit Recommendations, and review of any proposed delayed documents for Study Group II and III.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl S. Barbely, State Department, Washington, DC; telephone 647 5209. All attendees must use the C Street entrance to the building.

Dated: August 1, 1989.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman U.S. CCITT National Committee.

[FR Doc. 89-19341 Filed 8-16-89; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Docket No. 22; Notice 89-14]

Standard Time Zone Boundaries; Operating Exception for the Burlington Northern Railroad

AGENCY: Office of the Secretary, DOT.

ACTION: Removal of operating exception.

SUMMARY: The Burlington Northern Railroad was granted an exception from the standard time zones created by Congress to permit operation under mountain time from Texline to Amarillo, Texas, despite the fact that the area is in the central time zone. The exception is no longer needed because of computerization within the railroad dispatching office. This notice removes the exception.

EFFECTIVE DATE: October 29, 1989.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the General Counsel (C-50), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590; (202) 366-9306.

SUPPLEMENTARY INFORMATION: Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260-64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. He also has authority (delegated to the General Counsel) to grant to a railroad an exception from the time zones to permit for internal purposes only operation of a railroad line on one time, despite the fact that it crosses a time zone boundary. When there is less confusion, railroad operations are less hazardous and more efficient.

The request. In 1987, the Burlington Northern Railroad Company requested, and was granted, an operating exception permitting internal operation of its line between Pueblo, Colorado and Amarillo, Texas, on mountain time. This railroad line is bisected by the time zone boundary between central and mountain time at Texline, Texas. Control of trains on this line was in a single dispatching territory and under the control of one dispatching office, which was located in the mountain time zone. The railroad stated that because of the time zone change, its personnel were experiencing confusion in understanding and implementing train orders. It alleged that misunderstanding of the times that orders and directives were to be observed could lead to dangerous operating and working conditions. In response, the Department's General Counsel granted an operational exception that moved the operational time zone boundary eastward to Amarillo, Texas, which was the division point between Burlington Northern's Colorado and Fort Worth Division, and the boundary between dispatching districts.

In a letter dated August 2, 1989, Burlington Northern Railroad requested authority to change the existing operating time zone boundary to return to Central Time between Amarillo, Texas and Texline, Texas to conform with the standard time zone boundaries. Since the exception was granted, the railroad has implemented a "Computerized Track Warrant Control" in the McCook train dispatcher's office. As a result, the train dispatcher's job does not now involve dispatching trains by time of day. The requested change would put the operation of trains on this track back in conformance with standard time zone boundaries. Amtrak trains do not operate on this line and the railroad states that the change would have no effect on the general public. The railroad asked that the change be effective on October 29, 1989, to coincide with publication of its timetable.

Decision. Because the operating exception is no longer necessary, it is removed effective October 29, 1989.

Authority: Act of March 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97-449, 15 U.S.C. 260-64; 49 CFR 1.57(b).

Issued in Washington, DC, on August 11, 1989.

Phillip D. Brady,

General Counsel.

[FR Doc. 89-19271 Filed 8-16-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; Franklin and Vance Counties, North Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public for a proposed highway project between the cities of Franklinton and Henderson, North Carolina.

FOR FURTHER INFORMATION CONTACT: Robert L. Lee, District Engineer, Federal Highway Administration, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 790-2856.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the North Carolina Department of Transportation (NCDOT) will prepare an Environmental Impact Statement (EIS) for the improvement of the US-1 Corridor between Franklinton and Henderson. The proposed action would be the construction of a multi-lane highway, potentially on a new location from US-1A in Franklinton to US-1 Business south of Henderson, a distance of about 13.4 miles. The NCDOT Transportation Improvement Program 1988-1989 includes this project as part of the Strategic Corridor linking Raleigh and Henderson. Improvements to the corridor are considered necessary to increase safety and traffic service.

Alternatives under consideration include: (1) The "no-build", (2) improving existing facilities, and (3) partial relocation.

Solicitation of comments on the proposed action are being sent to appropriate Federal, State and local agencies. A complete public involvement program has been developed for the project to include public meetings and a public hearing to be held in the study area. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To assure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding inter-governmental consultation on Federal programs and activities apply to this program).

Robert L. Lee,

District Engineer Raleigh, North Carolina.

[FR Doc. 89-19336 Filed 8-16-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

Date: August 11, 1989.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0998.

Form Number: 8615.

Type of Review: Resubmission.

Title: Computation of Tax for Children Under Age 14 Who Have Investment Income of More Than $1,000.

Description: Under section 1 (i), children under age 14 who have unearned income may be taxed on part of that income at their parent's tax rate. Form 8615 is used to see if any of the child's unearned income is taxed at the parent's rate and, is so, to figure the child's tax on his or her unearned income and earned income, if any.

Respondents: Individuals or households.

Estimated Number of Respondents: 500,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping	13 minutes.
Learning about the law or the form	11 minutes.
Preparing the form	37 minutes.
Copying, assembling, and sending the form to IRS	17 minutes.

Frequency of Response: Annually.

Estimated Total Recordkeeping/ Reporting Burden: 655,000 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-19342 Filed 8-16-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted the Office of Management and Budget for Review

Date: August 11, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Office listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0236.

Form Number: 11-C.

Type of Review: Revision.

Title: Stamp Tax Registration Return for Wagering.

Description: Form 11-C is used to register persons accepting wagers (Internal Revenue Code section 4412). IRS uses this form to register the respondent, collect the annual stamp tax (Internal Revenue Code section 4412) and to verify that the tax on wagers is reported on Form 730.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents: 3,500.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping	7 hours, 10 minutes.
Learning about the law or the form	2 hours, 2 minutes.
Preparing the form	4 hours, 5 minutes.

Office of Hearings

[Docket 46438]

U.S.-Japan Service Case; Assignment of Proceeding

Served: August 11, 1989.

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50, Room 9228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2142.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 89-19272 Filed 8-16-89; 8:45 am]

BILLING CODE 4910-62-M

Copying, assembling, and sending the form to IRS	32 minutes.

Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 48,405 hours.
OMB Number: 1545-1007.
Form Number: 8606.
Type of Review: Revision.
Title: Nondeductible IRA Contributions, IRA Basis, and Nontaxable IRA Distributions.

Description: Internal Revenue Code section 408(o) allows taxpayers to elect to make nondeductible contributions to individual retirement plans. This section also requires taxpayers to report to the Service certain information regarding nondeductible contributions.
Respondents: Individuals or households.
Estimated Number of Respondents: 997,745.
Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping	26 minutes.
Learning about the law or the form	7 minutes.
Preparing the form	22 minutes.
Copying, assembling, and sending the form to IRS	20 minutes.

Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 1,267,140 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 89-19343 Filed 8-16-89; 8:45 am]
BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 158
Thursday, August 17, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, August 22, 1989, 10:00 a.m.

PLACE: 999 E. Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, August 24, 1989, 10:00 a.m.

PLACE: 999 E. Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Regulations: 11 CFR parts 4 and 5—Notice of Proposed Rulemaking
FY 1991 Budget Request
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 89-19452 Filed 8-15-89; 10:58 am]
BILLING CODE 6715-01-M

LEGAL SERVICES CORPORATION

Committee on the Provision for the Delivery of Legal Services Meeting

TIME AND DATE: The meeting will take place on Thursday, August 24, 1989, from 9:00 a.m. until 6:00 p.m. and continue on Friday, August 25, 1989, from 9:00 a.m. until 12:00 p.m., or until all official business has been completed.

PLACE: Washington Marriott Hotel, Dupont Ballroom, 1221 22nd Street NW., Washington, DC 20037.

STATUS OF MEETING: Open. All persons wishing to address the Legal Services Corporation Board of Directors at its public meetings must register with the Secretary of the Corporation, Maureen R. Bozell. Other members of the public may address a meeting of the Board upon invitation of the Chairman of the meeting.

MATTER TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes June 12-13, 1989
3. Consideration of Competition for Federal Legal Services Grants:
   Discussion Topics to Include:
   —Competition Models Used by Selected Federal Agencies:
   —Requirements for a Solicitation for a Legal Services Grant;
   —Issues Presented at the June 12-13, 1989, Meeting in Schaumburg, IL: and
   —Presentation by Douglas J. Besharov, of the American Enterprise Institute.
4. Public comment.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date issued: August 15, 1989.

Maureen R. Bozell,
Corporation Secretary.

[FR Doc. 89-19531 Filed 8-15-89; 3:36 pm]
BILLING CODE 7050-01-M

BEST COPY AVAILABLE

federal register

Thursday
August 17, 1989

Part II

Environmental Protection Agency

40 CFR Part 60
Standards of Performance for New Stationary Sources; Fluid Catalytic Cracking Unit Regenerators; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3104-8]

RIN 2060-AA36

Standards of Performance for New Stationary Sources; Fluid Catalytic Cracking Unit Regenerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance to limit sulfur oxide (SO_x) emissions from new, modified, and reconstructed fluid catalytic cracking unit (FCCU) regenerators were proposed in the **Federal Register** on January 17, 1984 (49 FR 2058). Revisions to the proposed standards were proposed in the **Federal Register** on November 8, 1985 (50 FR 46464). This action promulgates these standards of performance for FCCU regenerators. These standards implement section 111 of the Clean Air Act and are based on the Administrator's determination that emissions from petroleum refineries cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, and reconstructed FCCU regenerators to achieve emission levels that reflect the best demonstrated system of continuous emission reduction considering costs, non-air quality health, and environmental and energy impacts. The standards define an FCCU to include fluidized bed treatment processes requiring the continuous regeneration of catalyst or contact materials by burning off coke and other deposits. New, modified, and reconstructed process units fitting this definition would be required to achieve the FCCU carbon monoxide (CO), particulate, and opacity standards in 40 CFR part 60, subpart J, as well as the SO_x standards promulgated today.

DATES: This regulation is effective August 17, 1989.

These standards of performance become effective upon publication but apply to affected facilities for which construction, modification, or reconstruction commenced after January 17, 1984. Any FCCU that was constructed, modified, or reconstructed on or before January 17, 1984 to use a contact material for removing impurities from feedstock (rather than a catalyst for cracking feedstock) is not retroactively subject to the FCCU standards for particulate, opacity, and CO emissions.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

The incorporation by reference of certain publications in these standards is approved by the Director of the Office of the **Federal Register** as of August 17, 1989.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Sulfur Oxides Emissions from Fluid Catalytic Cracking Unit Regenerators—Background Information for Promulgated Standards of Performance" (EPA-450/3-82-013b). The BID contains (1) a summary of all the public comments made on the proposed standards and the Administrator's responses to the comments, (2) a summary of the changes made to the standards since proposal, and (3) the final Environmental Impact Statement, which summarizes the impacts of the standards.

Docket. A docket, number A-79-09, containing information considered by EPA in the development of the promulgated standards, is available for public inspection between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket (LE-131), Room M-1500, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information and official interpretations of applicability, compliance requirements, and reporting aspects of the promulgated standard, contact the appropriate Regional, State, or local office contact as listed in 40 CFR 60.4. For further information on the background of the regulatory decisions in the promulgated standard, contact Ms. Gail Lacy, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5261. For further information on the technical aspects of the promulgated standards, contact Mr. Dave Markwordt, Chemicals and Petroleum Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-0837. For further information on the testing and monitoring requirements of the promulgated standards, contact Mr. Terry Harrison, Emission Measurement Branch, Technical Support Division (MD-14), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5233.

SUPPLEMENTARY INFORMATION:

I. The Standards

Standards of performance for new sources established under section 111 of the Clean Air Act reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [section 111(a)(1)].

For convenience, this will be referred to as "best demonstrated technology" or "BDT."

As prescribed by section 111, promulgation of these standards was preceded by the Administrator's determination (40 CFR 60.16, 38 FR 15380 dated June 11, 1973) that petroleum refineries contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

The promulgated standards limit SO_x emissions from new, modified, and reconstructed affected facilities. For the purpose of these standards, the affected facility is identified as the FCCU regenerator (or regenerators where an FCCU has multiple regenerators) and air blower. The definition of FCCU in the standards includes units that can process residual feedstocks. These units are commonly referred to as heavy oil cracking (HOC) units and include reduced crude conversion (RCC) units. The definition also includes other process units such as asphalt residual treatment (ART) units that are similar to an FCCU in equipment configuration, operation, and emissions. An ART unit circulates and regenerates a contact material for removing feedstock impurities, including sulfur. Such units constructed, modified, or reconstructed after January 17, 1984, are subject to these standards and to the FCCU standards in 40 CFR part 60 subpart J for particulate matter, CO, and visible emissions.

A refiner can choose from several alternatives to achieve the standards. Each of these alternatives is discussed below.

The standard for FCCU's with add-on controls is applicable if a refiner chooses to use an add-on control device, such as a scrubber. This standard requires that sulfur dioxide (SO_2) emissions from the FCCU regenerator must be reduced by at least 90 percent, or that the SO_2 emissions to the atmosphere must be no greater than 50 parts per million by volume (vppm) whichever is less stringent. The standard for FCCU's with add-on controls now requires determination of compliance on a daily basis, rather than using excess emissions to identify the need for a compliance test. Use of continuous SO_2 monitors, located at the control device inlet and outlet, is required to determine on a continual basis the compliance status of the facility. Only a continuous monitor at the outlet of the control device is required if the owner or operator seeks to comply specifically with only the 50 vppm standard. Because SO_2 monitors are now used for compliance determinations, they are subject to 40 CFR part 60 appendix F, "Quality Assurance Procedures, Procedure 1—Quality Assurance Requirements for Gas Continuous Emission Monitoring Systems Used for Compliance Determinations." The compliance averaging time has changed since proposal from 3 hours to a rolling 7-day average. Minimum data requirements have now been incorporated. The minimum data requirements require 22 valid days of data out of every 30 successive, rolling calendar days. A valid day of data consists of a minimum of 18 valid hours of data, where a valid hour of data consists of at least 2 valid data points. If the continuous emission monitoring system (CEMS) does not collect enough data to meet the minimum data requirement, then other means, such as manual test Methods 6B or 8, or another CEMS must be used to obtain sufficient data to meet the minimum data requirements.

The standard for FCCU's without add-on controls requires that a refiner limit SO_2 emissions to the atmosphere from an FCCU to a level less than or equal to 9.8 kilograms (kg)/1,000 kg coke burn-off without the use of an add-on control device. Examples of SO_2 control techniques that could be used to achieve this standard include SO_2 reduction catalysts and feed hydrotreating. Like the standard for FCCU's with add-on controls, the standard for FCCU's without add-on controls now requires daily compliance determinations. Compliance with the standard is determined by manual stack sampling using EPA Reference Method 1 for sample and velocity traverses, Method 2 calculation procedures for velocity and volumetric flowrate, Method 3 for gas analysis, and Method 8 for determining the SO_2 content of the stack gases. The compliance averaging time has also changed since proposal from 3 hours to 7 days, so that daily compliance determinations are made on the basis of a 7-day rolling average. One 3-hour Method 8 test is required each day. Alternative methods may be approved on a case-by-case basis if sufficient data are obtained to show that the data can be used for making compliance determinations on a daily basis.

The feed sulfur cutoff states that FCCU's processing feedstocks with sulfur contents less than or equal to 0.30 percent by weight, averaged over a rolling 7-day period, are exempt from both the standard for FCCU's with add-on controls and the standard for FCCU's without add-on controls. Refiners can use low sulfur feedstocks or hydrotreating to meet this limit. Compliance with the feed sulfur cutoff is determined by sampling the fresh feedstock to the FCCU and determining its sulfur content using American Society for Testing and Materials (ASTM) analytical test methods ASTM D129-64 (Reapproved 1978), ASTM D1552-83, ASTM D2622-87, or ASTM D1266-87. The results are reported as a 7-day rolling average. This represents a change since proposal, when results were reported as a 7-day calendar average. One sample is required per 8-hour period.

Each 7-day period during which the owner or operator does not meet the applicable standards is a violation of that standard. For example, if an owner or operator seeks to comply with the feed sulfur cutoff, each 7-day period for which the average feed sulfur level exceeds 0.30 weight percent is a violation of the standard. Failure to meet the minimum data requirements (that is, 22 valid days of data out of 30 days) during any rolling 30-day period of successive calendar days for the standards for FCCU's with add-on controls is also considered a violation of the standards.

Quarterly reporting is required for all periods in which a violation occurs. These reports include information on any 7-day period during which a violation of the standard has occurred and any 30-day period during which the minimum data requirements have not been met. This information includes the date the violation occurred; an explanation for the violation; whether the violation was concurrent with startup, shutdown, or malfunction of the FCCU or control system; and a description of the corrective action taken, if any. If no violations occur during a quarter, then a semiannual report may be submitted. However, if an owner or operator elects to comply with an alternative standard, a quarterly report must be submitted to the Administrator in the quarter following such a change even if no violations of a standard have occurred. Whether or not a violation has occurred, for any single calendar day in which 18 valid hours of CEMS data, a Method 8 test result, or 3 test results for feed sulfur content were not obtained as required by these standards, the dates for and brief explanations as to why such data were not obtained shall still be included in the quarterly (or semiannual) report. Records of continuous monitoring data and calibrations, supplemental sampling test results, Method 8 test results, feed sulfur test results, and each 7-day average compliance determination must be maintained by the owner or operator of the affected facility and be available for inspection by EPA for 2 years. In addition, the standards require refiners to submit notification and compliance reports in accordance with the General Provisions (40 CFR part 60, subpart A).

The promulgated standards would also amend the standards in Subpart J for fuel gas combustion devices by deleting an incorrect duplication of the definition of excess emissions of SO_2, i.e., deleting 40 CFR 60.105(e)(4).

II. Environmental Impacts

The promulgated standards are based on the application of BDT to control FCCU SO_x emissions. The EPA determined, considering costs, environmental, energy, and non-air quality health impacts that scrubbers effectively control FCCU SO_x emissions and are BDT. However, refiners may also use SO_x reduction catalysts, naturally occurring low sulfur FCCU feedstocks, or hydrotreated FCCU feedstocks to meet these standards.

To estimate the impacts of the promulgated standards, EPA projected that 17 newly constructed, modified, and reconstructed FCCU regenerators would be affected by the standards during the first 5 years after the effective date of the standards. Assuming that scrubbing systems are used at all affected facilities processing feedstocks containing greater

than 0.30 weight percent sulfur. EPA estimates that the promulgated standards would reduce fifth year nationwide SO_2 emissions by about 69,000 megagrams per year (Mg/yr). If, instead, these same facilities processing feeds greater than 0.30 weight percent sulfur elected to comply with the standards for FCCU's without add-on controls, fifth year nationwide SO_2 emissions would be reduced by about 63,000 Mg/yr.

Application of sodium-based scrubbers to control SO_2 emissions from the affected facilities would increase fifth year nationwide wastewater discharges by about 23×10^9 cubic meters per year (m^3/yr). Wastewater from sodium-based scrubbers designed to control both particulates and SO_2 emissions from FCCU's is treated to reduce collected particulates and chemical oxygen demand. The treated discharge from these scrubbers would contain about 69 Mg/yr of suspended solids and chemical oxygen demand and about 710 gigagrams per year (Gg/yr) of total dissolved solids in the fifth year of the standards. The discharge from sodium-based scrubbers designed to control only SO_2 would not produce significant quantities of solid wastes.

The sodium scrubbers that are currently applied to FCCU's control both particulate emissions as well as SO_2 emissions. With this type of scrubber, an additional particulate control device would not be required to achieve the current FCCU particulate standard. Control of FCCU particulate emissions (primarily catalyst fines) by a sodium scrubber does not incrementally increase the dry weight of solid wastes over control by a dry particulate control device, such as an electrostatic precipitator (ESP). Therefore, the amount of particulates collected by the sodium scrubbers are not "charged" to the SO_2 standards. However, particulates collected in a scrubber would be wet and thus weigh more and encompass a larger volume. The increase due to the amount of water added to the solids is "charged" to the SO_2 standards. The fifth year nationwide incremental increase in solid wastes produced by application of sodium scrubbers is estimated to be about 140 Gg/yr.

At refinery locations where the disposal of treated wastestream from a sodium scrubber is not permitted, a refiner would need to use other SO_2 control techniques with minimal wastewater impacts. Alternative scrubbing systems include dual alkali or spray drying scrubbing systems, which produce no significant liquid wastes but instead produce solid wastes. Other alternatives are Wellman-Lord or citrate scrubbing systems which produce no significant liquid wastes but instead produce a salable sulfur product. If dual alkali scrubbers are used to control SO_2 emissions from all affected facilities with feed sulfur levels above 0.30 percent, solid wastes would increase over baseline by 335 Gg/yr in the fifth year.

The use of SO_2 reduction catalysts may increase FCCU particulate emissions, and hence increase solid wastes collected by the particulate control device. It is difficult to approximate this increase, however, because the catalyst technology is still in the developmental stages. It is unlikely that the use of SO_2 reduction catalysts would significantly increase FCCU solid waste impacts over current levels. Wastewater discharges would not increase with the use of SO_2 reduction catalysts.

III. Energy Impacts

The promulgated standards would have a small impact on nationwide energy consumption. Sodium scrubbers would increase FCCU energy consumption for new, modified, and reconstructed FCCU's by about 0.2 to 2.0 percent, depending on the regeneration mode of the FCCU and type of venturi scrubber used. Other scrubbing systems, particularly regenerable systems such as Wellman-Lord and citrate scrubbers, would have a greater energy impact. However, EPA expects few refiners to use regenerable scrubbing systems. No energy increase is expected from use of SO_2 reduction catalysts.

IV. Cost Impacts

The costs for these standards have changed somewhat since proposal. Costs were revised to account for inflation and to better reflect the cost of retrofitting scrubbers at existing refineries. The EPA estimates that if sodium-based scrubbers are used at all affected facilities with feed sulfur levels above 0.30 percent by weight, the promulgated standards would result in a 5-year total nationwide capital cost of $117 million and an annual cost of $85 million (reported in fourth quarter 1984 dollars) in the fifth year after the effective date of the standards. Units processing feeds with sulfur contents of 0.30 percent by weight would be below the feed sulfur cutoff and, therefore, not need to install a scrubber. Where sodium scrubbers are not applicable, dual alkali scrubbers could be used at a similar cost to sodium scrubbers. If all affected facilities used SO_2 reduction catalysts, SO_2 emission control would cost about $20 million to $60 million in the fifth year of the standards. SO_2 reduction catalyst costs are presented as a range because the technology is under development. The upper end of the range represents a catalyst formulation that is the earlier stages of development; the developer of this catalyst expects the cost to decrease as the catalyst formulation is produced in greater quantities.

The cost of SO_2 control, if all affected facilities with feed sulfur levels greater than 0.30 weight percent used scrubbers, would be approximately $660/Mg of SO_2 removed. Based on catalyst developer claims of SO_2 reduction catalyst performance sufficient, SO_2 reduction catalysts, when used at those affected facilities with feed sulfur levels greater than 0.30 weight percent but less than or equal to 1.5 weight percent, are estimated to cost from $320 to $850/Mg of SO_2 removed. Affected facilities processing feeds containing greater than 1.5 weight percent sulfur would likely use scrubbers. These affected facilities would incur a cost of less than $660/Mg of SO_2 removed.

The cost of scrubbing for FCCU's processing feeds containing slightly greater than 0.30 weight percent sulfur would be approximately $1,900/Mg of SO_2 removed. However, EPA does not expect refiners processing feeds with sulfur contents slightly greater than 0.30 weight percent actually to incur a cost of $1,900 to remove each megagram of SO_2 emissions. This is because these refiners are the ones most likely to use SO_2 reduction catalysts rather than install a scrubber.

V. Economic Impact

The economic impact of the standards will be small even if all affected facilities use flue gas scrubbers. The price increases presented in the proposal BID were all less than 0.4 percent. Using the revised control costs and second quarter 1986 product prices, that figure increases to approximately 0.8 percent in the worst case. Even without passing through price increases, the standards are not expected to reduce the profitability of FCCU operations to the point where planned investments would be postponed. The EPA does not consider these percentages sufficiently high to deter a decision to install an FCCU that is otherwise economically justified.

The environmental, energy, and economic impacts are discussed in greater detail in the BID for the proposed standards, "Sulfur Oxides Emissions from Fluid Catalytic Cracking Unit Regenerators—Background

Information for Proposed Standards," EPA-450/3-82-013a.

VI. Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the Federal Register (46 FR 55000, November 5, 1981) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the standards for FCCU regenerators recommended for proposal. This meeting was held on December 1, 1981. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal.

The proposed standards were published in the Federal Register on January 17, 1984 (49 FR 2068). The preamble to the proposed standards described the availability of the BID, "Sulfur Oxides Emissions from Fluid Catalytic Cracking Unit Regenerators—Background Information for Proposed Standards," EPA-450/3-82-013a, which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal and copies of the proposal BID were distributed to interested parties. The Agency published a revised proposal in the Federal Register on November 8, 1985 (50 FR 46464). Public comments on the revised proposal were solicited at the time of their proposal and copies of the revised proposal were distributed to interested parties.

The public was also given the opportunity for oral presentation of data, views, or arguments concerning the proposed standards in accordance with section 307(d)(5) of the Clean Air Act. No one requested a public hearing, so a public hearing was not held.

The original public comment period was from January 17 to April 3, 1984. This comment period was reopened on November 8, 1985, and extended through December 9, 1985, in order to allow interested parties to comment specifically on the proposed revisions. A total of 30 comment letters were received. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed standards.

VII. Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from industry, State and local air pollution control agencies, trade associations, a private individual, and the Office of Management and Budget (OMB). A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the ADDRESSES section of this preamble. The summary of comments and responses in the BID serve as the basis for the revisions that have been made to the standards between proposal and promulgation. The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The comments have been divided into the following areas: The Standards, Control Technologies and Economic Impacts, Compliance Testing and Monitoring, Compliance, and Modification/ Reconstruction.

The Standards

Applicability

Comment (Regulated Pollutant): In the revised proposed standards (50 FR 46464), the Agency proposed to change the regulated pollutant from SO_x to SO_2 for the standard with add-on controls, but keep SO_2 as the regulated pollutant for the standard without add-on controls. Comments were received only on SO_x as the regulated pollutant for the standard without add-on controls.

Several commenters suggested that EPA use SO_2 rather than SO_x as the regulated pollutant for the standard for SO_x reduction catalysts. Among the arguments presented by the commenters were that: (1) Emerging SO_x reduction catalyst data indicate that sulfur trioxide (SO_3) is unaffected by the catalysts; (2) preliminary data previously submitted to EPA from several SO_x reduction catalyst trials at one of their refineries generally indicate only an insignificant amount of SO_3 in the SO_x emissions; (3) using SO_2 as the regulated pollutant enables the same monitoring technique (proven SO_2 monitors) to be used as for add-on scrubber technology, resulting in cost savings and sample consistency and reliability; and (4) other refinery sources are only regulated for SO_2 and EPA usually regulates only SO_2.

Response: The Agency has considered the arguments presented by the commenters and reviewed the data available on the composition of SO_x when using SO_x reduction catalysts. After this review, the Agency still believes that the most appropriate regulated pollutant for SO_x reduction catalysts is SO_x, not SO_2.

The Agency recontacted SO_x reduction catalyst vendors to review the mechanism by which SO_x reduction catalysts reduce total SO_x emissions. The SO_x reduction catalyst vendors indicate that SO_x reduction catalysts preferentially remove SO_3, forming a metal sulfate compound that is much more stable than the metal sulfite compound formed when the SO_2 reacts with the catalyst. As the SO_x reduction catalyst picks up more and more SO_3, the equilibrium balance is disturbed. To regain equilibrium, more SO_3 becomes SO_3. If the rate of SO_2 to SO_3 is less than the rate of metal sulfate formation (SO_3 plus metal oxide), then the SO_3 percentage in the FCCU emissions will decrease. If the SO_2 to SO_3 rate is faster than the metal sulfate formation rate, then the ratio of SO_2 to SO_3 will remain the same. In order for the percentage of SO_3 to increase, other operating parameters of the regenerator would have to change in order to change the thermodynamic equilibrium. To ensure maximum SO_2 removal efficiency, the owner or operator would likely operate a regenerator, to the extent possible, in such a manner that the SO_2 to SO_3 rate is not limiting; that is, create conditions within the regenerator that increase the SO_3 percentage.

The Agency again reviewed the data on the SO_2/SO_3 ratio in regenerator emissions, including that most recently submitted by several commenters. The Agency requested in the revised proposal that any data that were available on this be submitted. Very little data were submitted. The data base, therefore, remains very limited and inconclusive. The more recent data generally tend to have a lower percentage of SO_3 than the earlier data. Some of the recent data still suggest, however, that there is a potential for large amounts of SO_3 to be emitted, which would be undetected by a standard using SO_3 as the regulated pollutant. Thus, regulating SO_3 only will not necessarily reflect the potential control of SO_x that can be obtained by SO_x reduction catalysts.

The Agency requested, but did not receive, data on the possibility that the plume opacity standard for FCCU's may help limit the emissions of SO_3. Plume opacity is affected by the condensation of SO_3 and, to the extent this condensation affects the ability of a source to comply with the opacity standard, it may also help limit the emissions of SO_3. If sufficient data had been presented, the Agency would have considered changing the regulated pollutant for FCCU's without add-on controls from SO_x to SO_2 so that SO_2 CEMS's could be used for compliance determinations.

The arguments relating to the advantages of SO_2 monitoring are outweighed by the need for an SO_x standard for the reasons described above. The fact that other refinery

sources are only regulated for SO_2 sheds no light on whether an SO_2 standard is appropriate for this source.

Comment (Affected Facility): Several commenters stated that the designation of the affected facility should be broadened to include the entire FCCU, and that the definition of "fresh feed" should be clarified.

Response: At proposal, the affected facility was designated as each individual FCCU regenerator and air blower. The rationale for this selection of the affected facility was presented in the preamble to the proposed standards (49 FR 2060). As stated in the preamble, SO_x are generated in and emitted from the FCCU regenerator. The designation of the regenerator of each FCCU as the affected facility, rather than the entire FCCU, would lead to bringing replacement equipment under these standards sooner and thus, would adhere to the purpose of section 111 of the Clean Air Act.

The EPA anticipates that few, if any, FCCU's utilizing multiple regenerators will become subject to these standards over the next 5 years. However, identifying each FCCU regenerator as the affected facility for multiple regenerator configurations is unreasonable. If only one regenerator in a multiple regenerator configuration were to become subject to the standards, it would be impossible in some multiple regenerator ducting arrangements to isolate and measure the SO_x content of the exhaust gases from the affected regenerator. Furthermore, because the refiner would want to minimize the cost and downtime for revamping work on the unit, it is unlikely that only one regenerator in a multiple regenerator configuration would be modified or reconstructed without the others. Therefore, the affected facility is now defined to include all regenerators serving an FCCU reactor.

The proposed definition of "fresh feed" specifically excluded those petroleum derivatives recycled within the FCCU. To ensure that a refiner would not circumvent the feed sulfur cutoff by adding low-sulfur content recycle from the fractionator and gas recovery unit, EPA has revised the definition of "fresh feed" in the regulation. The revised definition specifically identifies petroleum derivatives from the FCCU, fractionator, and gas recovery unit as recycle, and thus excludes them from the definition of "fresh feed."

Comment (RCC/ART Units): One commenter stated that the proposed standards should not apply to RCC process or ART units, because the RCC unit is designed to process residual feedstocks, and the ART unit is a feedstock upgrading unit, and, therefore, these units are not FCCU's.

Response: To upgrade residual feedstocks and to increase gasoline and middle distillate product yields, new processes termed HOC, which includes RCC, and ART are being installed at refineries. The HOC units are FCCU's that process residual and other heavy oil feedstocks. As in a conventional FCCU, emissions occur as a result of catalyst regeneration. Sulfur oxide emissions may, in fact, be greater from HOC units than from other FCCU's because HOC feedstocks have a higher coke make rate than gas oil feeds and a greater portion of the sulfur in HOC feedstocks forms coke than that in gas oil feeds. The EPA's analysis of SO_x emissions, control costs, and cost effectiveness for HOC units showed that the proposed standards for FCCU's are achievable and affordable for HOC units. The results of this analysis were presented in Appendix F of the proposal BID.

Emissions, emission control, and control costs for the ART process were further evaluated by EPA. The differences stated by the commenter between an ART unit and an FCCU do exist. The ART process does not employ a catalyst, but rather uses an inert microspheric contact material that collects contaminants; the objective of the ART process is feedstock upgrading, not processing; and some of the operating conditions may vary significantly.

Nevertheless, important similarities in regenerator configuration, operation, and emissions exist that warrant the regulation of an ART unit under the FCCU new source performance standards (NSPS). For both an ART unit and a conventional FCCU, regeneration is performed to burn off coke from the catalyst or contact material, thereby restoring it for reuse in the unit. Opacity and emissions of CO, SO_2, and particulate from an ART unit regenerator during normal operation are expected to be within the range of emissions from all types of FCCU regenerators, including those from HOC units. The EPA evaluated control feasibility and cost for an ART unit based on reported emissions and determined that control of an ART unit by a scrubber was applicable and had a reasonable cost. Based on a scrubber SO_x efficiency of 90 percent, the scrubber cost effectiveness calculated for the ART unit is below the range of cost effectiveness expected for FCCU's. In addition, costs to control CO emissions, if necessary, and particulate emissions are estimated to be reasonable.

The similarity in emissions from the regenerator and the availability of control equipment at a reasonable cost indicate that the ART unit regenerator can meet the FCCU standards. The facts that the objective of the ART process is different than that of the FCCU and that the material being regenerated is not a catalyst are not significant reasons to support the contention that an ART unit should not be subject to the FCCU NSPS. Therefore, the final standards require, as proposed, that an ART unit, HOC unit, or any other similar type of fluidized bed treatment unit regenerator achieve the FCCU particulate, opacity, CO, and SO_2 standards.

Format of the Standards

Comment: Several commenters stated that EPA should establish a single SO_2 standard for FCCU's because it would allow refiners the options and flexibility of determining the most cost-effective method of meeting that limit and it would comply with Section 111(h) of the Clean Air Act, which implies that the Administrator should prescribe a performance standard rather than a work practice or equipment standard, where feasible to do so.

Response: To develop SO_2 emission standards for FCCU's, EPA evaluated all available techniques for controlling FCCU SO_2 emissions. Upon thorough consideration of the availability, SO_2 emission reduction capability, and impacts associated with each of these techniques, EPA determined that scrubbing systems effectively control SO_2 emissions from all types of FCCU applications, and represent BDT for FCCU SO_2 and SO_3 emissions.

The percent reduction format was selected because it best reflects the performance of add-on controls for all expected feed sulfur levels. This is consistent with section 111(a)(1), which requires that the standard reflect application of BDT.

However, for many FCCU applications, SO_2 emissions can be reduced effectively and continuously without the use of add-on controls. This can be achieved by using SO_2 reduction catalysts or low sulfur FCCU feedstocks obtained by either hydrotreating high sulfur feedstocks or processing naturally occurring low sulfur crude oils. Although these techniques may be less effective at reducing SO_2 emissions than scrubbers for some FCCU applications, they have lower costs and smaller non-air environmental impacts than scrubbers. The EPA judged that it is reasonable to give up some emission reduction by establishing a standard without add-on controls in return for the other benefits afforded by using SO_2 reduction catalysts, hydrotreating, or low sulfur feedstocks instead of scrubbers. Therefore, EPA has established alternative standards for the sources that can effectively and continuously reduce SO_2 emissions without the use of add-on controls. If a refiner believes that using SO_2 reduction catalysts, hydrotreating, or low sulfur feedstocks for his particular FCCU application will not achieve the standard without add-on controls, then the refiner can still install and operate an add-on control device that achieves 90 percent reduction of SO_2 emissions.

The standards are performance standards and are consistent with section 111 of the Clean Air Act. Neither the add-on control standard nor the standard for FCCU's without add-on controls specifies the type of controls that must be used or exactly how the controls are to be operated to achieve the standard.

One commenter noted that by partial scrubbing of the FCCU regenerator exhaust gases, the emission level represented by the standard for FCCU's without add-on controls could be achieved for some FCCU applications. However, the 90 percent standard is intended to reflect the capability of scrubbers, which can achieve 90 percent control of the entire exhaust stream. A relaxation of the standard to 9.8 kg SO_2/1,000 kg coke burn-off would cause it to no longer reflect the capability of scrubbers.

Comment: Commenters questioned the coke burn-off format proposed by EPA for the standard for FCCU's without add-on controls. They noted that the coke burn-off format does not allow for variation in coke sulfur content and will discourage process improvements. They stated that EPA should consider a percent reduction format and a format in kilograms of SO_2 per thousand barrels of feed.

Response: Based on a sensitivity analysis presented in Appendix F of the proposal BID, EPA concluded that the coke burn-off format relates well to normal fluctuations in SO_2 emissions from FCCU's processing a variety of feeds. This is because SO_2 emissions are related directly to the coke sulfur content. Normally, FCCU's are operated to limit the amount of coke that can be burned off in the regenerator. Process improvements that reduce the coke make rate are made to allow the refiner to process more feed through the unit until the unit is again limited in the amount of coke it can burn off. An example of a process improvement that results in reduced coke make is high temperature regeneration (HTR). The initial result of HTR would be reduced SO_2 emissions from FCCU's on a mass basis. However, SO_2 emissions in terms of coke burn-off would remain the same because SO_2 emissions are related to the sulfur on coke. Thus, the refiner could increase throughput until the unit is again coke burn-off limited and still be within the standard even though emissions would increase. This format offers greater refining flexibility than a mass of SO_2 per unit of feed basis. The commenters provided no new information to refute this conclusion.

A sliding scale format that allows for variation in coke sulfur content would be difficult to enforce because the sulfur content of the coke on catalyst is not readily obtainable. For this reason, EPA considers a sliding scale format unreasonable.

The EPA considered a percent reduction format for the standard for FCCU's without add-on controls, but rejected it because of compliance considerations. With SO_2 reduction catalysts, there is no uncontrolled or inlet SO_2 concentration to measure. Thus, it would be impossible to determine through stack testing the percent reduction being achieved by the catalysts. An alternative method would be to estimate the percent reduction achieved by SO_2 reduction catalysts using EPA's correlation of feed sulfur with SO_2 emissions. However, EPA's correlation represents an average for all FCCU's and feedstocks. While the correlation is useful for analyzing the overall impact of the standards, inlet SO_2 concentrations may be lower or higher than the level predicted by the correlation for a specific FCCU and feedstock. Thus, the correlation cannot be used on a case-by-case basis. The cost to develop a separate correlation for each feedstock and FCCU affected by the standards is unreasonable. Because there is not a practical method for determining the SO_2 inlet concentration when using SO_2 reduction catalysts, EPA did not select a percent reduction format.

The EPA considers the coke burn-off format reasonable because of its direct relationship to the sulfur-on-coke relationship. The coke burn-off format is identical to the format selected for the NSPS particulate standard; the coke burn-off rate can be recorded reasonably and would be readily available.

Level of Standards

Comment (Without Add-On Controls): Many commenters stated that the standard for FCCU's without add-on controls should be set at 13 kg SO_2/1,000 kg coke burn-off because 90 percent reductions by SO_2 reduction catalysts are not supported by the limited commercial tests cited by EPA. Also, a 13 kg SO_2/1,000 kg coke burn-off emission limit would allow more refiners to use the catalysts rather than add-on controls. The commenters believe that SO_2 reduction catalysts are the only cost-effective and environmentally acceptable control alternative. One commenter stated that the emission reduction required by the standard for FCCU's without add-on controls is essentially equivalent to the level of control required by the Texas Air Control Board (TACB) to control FCCU SO_2 emissions.

Response: The EPA disagrees with the comment that SO_2 reduction catalysts are the only cost-effective and environmentally acceptable control alternative. The EPA determined, considering costs, environmental, energy, and non-air quality health impacts, that scrubbers effectively control FCCU SO_2 emissions and are BDT. Furthermore, as an alternative to using SO_2 reduction catalysts, refiners may use hydrotreating or low sulfur feedstocks to achieve compliance with the 9.8 kg SO_2/1,000 kg coke burn-off level.

The level of the standard (9.8 kg SO_2/1,000 kg coke burn-off) was selected to allow refiners flexibility to use SO_2 reduction catalysts with best currently available performance, and to encourage the further development of the catalyst technology. For many feedstocks, especially those with lower sulfur content, the emission reduction needed to achieve the level of the standard is less than 80 percent. For example, a feedstock with 0.5 weight percent sulfur would need approximately 50 percent reduction in SO_2 emissions to achieve the level of the standard. In response to the comments, EPA contacted a number of companies known to be developing SO_2 reduction catalysts to request updated information on the performance and availability of developmental SO_2 reduction catalysts. Based on a survey of SO_2 reduction catalyst developers, current commercial SO_2 reduction catalyst test data have been reported by the developers to reduce FCCU SO_2 emissions by 65 to 75 percent. The test data reported by the developers span a wide range of catalyst performance; some data points show catalyst performance as high as 90 percent. As the technology continues to develop, refiners will be able to use the catalyst

technology to achieve the standard for a greater range of feedstocks.

Based on the results of SO_X reduction catalyst tests, EPA believes the level of the standard for FCCU's without add-on controls is reasonable. The determination of the level of this standard included consideration of the benefits of SO_X reduction catalysts and the increase in SO_X emissions compared to the BDT of scrubbing. Because the primary purpose of the standards is to reduce future FCCU SO_X emissions, and scrubbers can achieve cost-effective emission reductions, EPA concluded that it is not reasonable to further increase allowable emissions by raising the level of the standard. Should a refiner find that SO_X reduction catalysts will not reduce emissions sufficiently to achieve the 9.8 kg SO_X/1,000 kg coke burn-off level, the refiner still has the flexibility to use hydrotreating alone or in combination with SO_X reduction catalysts, to choose a lower sulfur content feedstock, or to install a scrubber.

Comment (Feed Sulfur Cutoff): Two commenters stated that an arbitrary feed sulfur cutoff of 0.30 weight percent sulfur is too restrictive, suggesting that a feed sulfur cutoff equivalent to 9.8 kg SO_X/1,000 kg coke burn-off be established by developing a correlation between feed sulfur content and SO_X production based on test data.

Response: The selection of the feed sulfur cutoff level of 0.30 weight percent was not arbitrary. As was discussed in the preamble to the proposed standards, the feed sulfur cutoff level was selected based on consideration of the costs for application of scrubbers to control SO_X emissions from FCCU's processing low sulfur feedstocks, and the feedstock sulfur levels refiners are expected to be processing if they elect to use naturally occurring low sulfur feed or to hydrotreat high sulfur feeds.

A correlation between FCCU feed sulfur content and SO_X emissions is presented on p. 3–16 of the proposal BID. The correlation is based on test data for a large number of FCCU's and feedstock types. Based on this correlation, an FCCU SO_X emission level of 9.8 kg SO_X/1,000 kg coke burn-off corresponds to a feed sulfur level of approximately 0.3 weight percent. Thus, the feed sulfur cutoff level established by EPA is approximately equivalent to the standard for FCCU's without add-on controls.

Averaging Times

Comment: Commenters stated that the averaging time for the standards should be increased. Several commenters suggested a 7-day averaging period for compliance because it would be consistent with the averaging time for the feed sulfur cutoff; no process variables could be adjusted in a 3-hour period to regulate SO_2 emissions when using SO_X reduction catalysts; and 7 days would account for variation in SO_2 inlet concentrations to the control device whereas 3 hours would not.

Response: After assessing the long-term variability by statistically analyzing in a times series analysis of the continuous SO_2 monitoring data from an EPA study of a sodium scrubber applied to an FCCU, the EPA agrees that the averaging time for compliance with the standards for FCCU's with and without add-on controls should be lengthened. The revised proposed standards included a revision of the compliance averaging time from 3 hours to 7 days. Six commenters agreed with EPA's revision. No commenters disagreed.

Comment: Two commenters stated that the averaging period for the feed sulfur cutoff should be a 30-day rolling average period. The use of the 30-day period would be appropriate because a 30-day rolling average period is used for the fossil fuel-fired steam generator NSPS.

Response: Whenever practical, EPA determines NSPS regulatory requirements on an individual source category basis. It is not appropriate to use a 30-day rolling average period for the FCCU feed sulfur cutoff standard simply to copy the fossil fuel-fired steam generator NSPS. The proposed 7-day averaging period was selected by EPA after careful consideration of a range of averaging periods. A daily averaging time was judged by EPA to be too short to account for sampling variability. Also, a daily averaging time would constrain a refiner's flexibility in blending different types of feedstocks for processing in the FCCU. A 7-day averaging time would reduce sampling variability and increase refiner flexibility in selecting the FCCU feedstock mix. However, increasing the averaging time beyond a 7-day period would allow feedstocks with sulfur contents significantly greater than 0.30 weight percent to be processed in the FCCU during a portion of the sampling period. Consequently, a refiner would be able to process high sulfur feedstocks without having to use any SO_X controls. This would be inconsistent with the intent of the standards to apply BDT to control emissions from the regenerator of FCCU's processing feedstocks with more than 0.3 weight percent sulfur. Therefore, EPA selected the 7-day averaging period to allow reasonable flexibility to the refiner for processing different sulfur content feedstocks.

Control Technologies and Economic Impacts

SO_X Scrubbers

Comment (Performance): Some commenters challenged EPA's assessment of the performance of scrubbers as applied to FCCU's. These commenters expressed the opinion that scrubbers should not be considered BDT because they are not demonstrated on high sulfur feeds and have poor operability. Another commenter supported EPA's statements that scrubbers can achieve 90 percent reductions in SO_2 emissions over the expected range of inlet SO_2 concentrations.

Response: Scrubber SO_X control is a function of the scrubbing liquor sorbent and good contact between the SO_X-containing flue gas and the scrubbing liquor. Based on engineering judgment, scrubbers applied to higher SO_X-containing gas streams would be expected to operate as well as those scrubbers applied to lower SO_X-containing gas streams. However, because scrubbers have not been applied to FCCU's processing high sulfur feeds, none was available for testing by EPA to confirm scrubber performance. Therefore, EPA compared the composition of FCCU exhaust gases to industrial boiler flue gases to determine if the performance of sodium scrubbers for industrial boilers is applicable to FCCU's processing high sulfur feedstocks. This comparison showed that the coke formed on the FCCU catalyst is a carbonaceous material similar to the coal used in solid fuel-fired industrial boilers. The catalyst coke is burned off the catalyst during regeneration by adding air to the regenerator. The regeneration process is thus similar to the combustion processes that take place in boilers. Given the similarities between catalyst coke and other solid fuels, the combustion process that takes place in the FCCU regenerator is expected to yield exhaust gases that are similar to those derived from coal-fired boilers. A comparison between FCCU regenerator exhaust gases and industrial boiler flue gases was presented in Table 4-3 in the proposal BID. The comparison showed that the ranges in concentration of most FCCU regenerator exhaust gas constituents (nitrogen (N_2), oxygen (O_2), carbon dioxide (CO_2), SO_X, nitrous oxides (NO_X)) are similar to the boiler flue gas concentrations. Scrubber systems installed on FCCU regenerators will thus experience similar inlet concentrations as boiler scrubber systems.

The primary difference between FCCU regenerator exhaust gases and boiler flue gases is the particulate emissions. Boiler particulate emissions are higher and composed primarily of fly ash. Catalyst fines comprise the majority of regenerator particulate emissions. In an industrial boiler application, fly ash is typically collected upstream of a non-venturi type scrubber. A similar type of scrubber applied to an FCCU would require particulate control upstream from the scrubber. According to scrubber vendors, the particulates that pass through the particulate control device would not affect the design of the scrubber regardless of the application. This is because catalyst fines are no more erosive than fly ash and neither type of particulate would interfere with the scrubbing reaction. Thus, the difference in particulates from an industrial boiler and an FCCU are not expected to affect scrubber performance.

A second, less important difference is that hydrocarbon emissions from FCCU regenerators may be higher than those from boilers. The presence of hydrocarbons in the FCCU gas stream will not affect scrubber operation or performance. Due to the low solubility of hydrocarbons in the aqueous scrubbing liquor, the hydrocarbons will not be absorbed, but will pass through the scrubber to the atmosphere. Other differences in gas compositions are minor and are not expected to invalidate the applicability of scrubber systems for FCCU regenerators.

The similarities in flue gas flow rates and characteristics between industrial boilers and FCCU's and consideration of their differences support the reasonable conclusion that industrial boiler sodium scrubber performance is applicable to FCCU's. The commenter did not provide any information to show that scrubber performance for industrial boilers would be different than scrubber performance for FCCU's.

Source test results for a sodium scrubber applied to an industrial boiler burning a high sulfur fuel show that sodium scrubbers can achieve at least 90 percent reduction in SO_X emissions at high inlet SO_X concentrations. Therefore, in consideration of the above mentioned similarities, EPA has reasonably concluded that the FCCU standard is achievable and that scrubbers are applicable over the expected range of FCCU regenerator exhaust gas sulfur concentrations.

At proposal, sodium scrubbing systems had been effectively applied to seven FCCU regenerators at five refineries to control SO_X emissions. Since proposal, to the Agency's knowledge, two other scrubbers controlling FCCU's at two refineries have begun operation. There is no information to show that the operation of these sodium scrubbers has increased FCCU shutdowns, reduced refinery capacity, or reduced refinery profitability. Rather, the sodium scrubbers applied to FCCU's have operated continuously with no failures between FCCU turnarounds. The commenter provided no data to support his claims that scrubbers have poor operability. Thus, EPA continues to believe scrubbers are an effective control method for reducing FCCU SO_X emissions.

Comment (Water Impacts): Five commenters stated that the waste disposal aspects of the proposed standards are more complex than shown by the analysis presented in the proposal BID. Commenters stated that inland refiners would not be able to obtain a permit for the discharge of waste liquids from sodium scrubbers and would need to install expensive additional wastewater treatment systems to meet permitted discharge levels.

Response: The petroleum refining effluent guidelines (40 CFR Part 419) Federal Register technically apply to all wastewater from air pollution control devices when these wastes are treated with the main refinery wastewater or are discharged from the main refinery wastewater treatment system. The costs for the treatment of these wastes are accounted for under the Part 419 regulations. If the scrubber wastes are processed, treated, or discharged separately from the main refinery wastewater collection, treatment, or disposal system, then case-by-case determinations would be made to regulate them. However, the major polluting characteristic of the treated sodium scrubber wastestream is its high dissolved solids content, about 8 percent solids by weight, which consists primarily of sodium sulfates. There are currently no Federal regulations applicable to the dissolved solids content of the sodium scrubber wastestream. Instead, limitations on dissolved solids, where appropriate, would be developed on a case-by-case basis outside of the Federal effluent guidelines. Such limitations should be based on whether the receiving water body can still meet the relevant water quality standard. For many refineries, the sodium scrubber wastewater would constitute a small portion of the total refinery wastewater flow. Thus, the dissolved solids content of the combined scrubber and treated refinery wastestreams may be within permit levels.

All seven sodium scrubbers operating at the time of proposal to control SO_X and particulate emissions from FCCU's are located at coastal locations where no requirements exist for the discharge of sodium scrubber wastes to brackish or salt water. Further, at least one of the two scrubbers applied to FCCU's since proposal discharges to brackish water. However, sodium scrubbers have been used extensively at inland locations to control SO_X emissions from industrial boilers. Waste disposal methods used include discharge to a sewer, discharge to surface water, evaporative ponding, deep-well injection, and recycle. If a refiner elects to install a sodium scrubber but cannot obtain a discharge permit, he will need to use one of these disposal methods. These methods may be costly and have limited availability.

However, other SO_X scrubber systems with minimal wastewater impacts are applicable to FCCU's at a reasonable cost. These include dual alkali and spray drying scrubbers, which have no significant liquid waste but instead produce solid waste. There are also Wellman-Lord and citrate scrubbers, which have no significant liquid waste and produce a salable sulfur product. These scrubbing systems have demonstrated removal efficiencies of 90 percent on industrial boilers. Due to the similarities between industrial boiler and FCCU flue gases, these scrubbing systems are applicable to FCCU's. The costs and cost effectiveness of these scrubbers were evaluated by EPA and are judged to be reasonable. Alternatively, the refiner may choose to demonstrate compliance with the standard for FCCU's without add-on controls by using hydrotreating or SO_X reduction catalysts, or by complying with the feed sulfur cutoff using low sulfur feedstocks.

Comment (Solid Waste Impacts): Two commenters questioned EPA's assessment that sodium scrubbers would have no added cost impacts for solid waste disposal. One commenter asked how EPA determined that sodium scrubber waste is 50 percent water and felt that this increase in weight of total discharge would result in an incremental waste disposal cost "chargeable" to this standard. The other commenter stated that scrubbing systems could greatly increase the amount of solids generated, and thus increase disposal costs, provided disposal locations are available.

Response: The sodium scrubbing systems that are currently applied to FCCU's control both particulate emissions as well as SO_x emissions. With this type of scrubber, an additional particulate control device would not be required to achieve the current particulate standard. Control of FCCU particulate emissions (primarily catalyst fines) by a sodium scrubber does not incrementally increase the dry weight of solid waste over control by a dry particulate control device, such as an ESP. Therefore, the amount of particulate matter collected by the sodium scrubbers are not "chargeable" to the SO_x standards. However, solids collected in a scrubber would be wet and, thus, weigh more and encompass a larger volume. It will cost more to transport and dispose solids collected in a scrubber to a landfill than dry solids. The increase due to the amount of water added to the solids is "chargeable" to the SO_x standards and is included as a solid waste cost (at $20.13/Mg) in the analysis of sodium scrubber costs. In addition, a "liquid waste" disposal cost was added as a conservative estimate of the costs to dispose treated liquid scrubber waste to the sewer (see response to the comment on scrubber costs below).

To determine the additional solid waste disposal cost due to the water contained in settled scrubber solids (sludge), it was necessary to determine the percent solids content of the scrubber solids. However, EPA had no information regarding the water content of the settled particulates (sludge) because none of the settling ponds used for sodium scrubbers applied to FCCU's had been emptied. Instead, EPA had information regarding the solids content of wastes for other scrubbing systems, such as dual alkali scrubbers. For these other systems, the percent of solids in the scrubber waste is higher than that from sodium scrubbers, being typically 60 percent solids. The EPA assumed for cost purposes that the settled sodium scrubber waste would be approximately 50 percent solids, by weight.

Other types of nonregenerable scrubber systems, such as dual alkali, spray drying, or lime/limestone scrubbers, generate greater quantities of solid waste than generated by sodium scrubbers. A dual alkali scrubber controlling SO_x emissions from an FCCU processing a 1.5 weight percent sulfur feedstock will produce approximately 7,700 Mg/yr of solid waste for a 2,500 m^3/stream day (sd) FCCU and 25,000 Mg/yr for an 8,000 m^3/sd FCCU. The EPA considers the solid waste impacts for these systems reasonable. Should solid waste disposal locations not be available, the refiner would need to consider control techniques that do not produce solid waste, such as regenerable scrubber systems (e.g., Wellman-Lord or citrate scrubbers which produce salable sulfur products), hydrotreating, SO_x reduction catalysts, or low sulfur feedstocks.

Comment (Air Impacts): Commenters questioned the appropriateness of using scrubbers if they increase ground-level SO_x concentrations and one commenter suggested that EPA require reheating the scrubber exit gases to reduce ground-level concentrations and to include reheat in the sodium scrubber cost analysis.

Response: Scrubbing a gas stream lowers the temperature of the gas stream. Unless the gas stream is reheated downstream of the scrubber, the plume emitted from the scrubber stack will be cooler than the plume emitted from an FCCU regenerator not using a scrubber. Lowering the temperature of the plume reduces the effective height above the ground to which the plume will rise.

The results of dispersion modeling performed by EPA and presented in the proposal BID were used to analyze the air quality impact of the proposed standards. In all cases ground level SO_x concentrations are within the national ambient air quality standards. For all the model plant scenarios except the one processing a low sulfur feedstock, the ground level SO_x concentrations predicted for implementation of the proposed standards are lower than the baseline (uncontrolled) concentrations. In these cases, the decrease in SO_x emissions afforded by implementation of scrubbers offsets the lower plume rise.

The EPA agrees that if a control technique other than a scrubber was used to achieve the same emission reduction as the scrubber would achieve, the resulting maximum ground level concentrations may be less than if a scrubber were used. However, the application of SO_x reduction catalysts to meet the standard for FCCU's without add-on controls would provide less emission reduction than the application of scrubbers. The additional emission reduction provided by scrubbers would likely compensate for the lower plume rise, so that the use of scrubbers would result in lower ground-level concentrations than the use of SO_x reduction catalysts.

The stack temperatures, heights, and exit velocities used in the modeling analysis were selected as average values from data for actual FCCU scrubbers. Only one of the seven FCCU sodium scrubber installations existing at proposal is equipped with scrubber stack reheat. Reheat is used only occasionally to reduce the visible steam plume during certain weather conditions. For this reason, EPA believes that the modeling input parameters selected and the assumption of no reheat are appropriate.

Comment (Scrubber Costs): Five commenters stated the opinion that the scrubber costs presented in the proposal BID are unrealistic and are significantly underestimated. The commenters claimed that the scrubber cost estimates should be 2.2 to 7 times higher. The commenter's specific comments are identified in the response below.

Response: To respond to these comments, EPA decided first to solicit more detailed cost data for single alkali scrubbers from vendors and then to perform a general reevaluation of the cost data presented in the proposal BID. Concurrently, EPA solicited supplemental cost data from commenters and then addressed the individual comments pertaining to specific cost items.

A. *General Cost Review.* First, EPA solicited data from scrubber vendors other than the vendor who provided the costs on which the proposal BID cost estimates were based. This vendor is the only one whose scrubber has actually been installed on an FCCU. The EPA received detailed cost data from two other scrubber vendors, one of which has served as a subcontractor to the primary vendor in the installation of several of their scrubbers on FCCU's, and, therefore, is familiar with FCCU operation, refinery codes, and equipment specifications. The other vendor that supplied cost data has considerable experience with the design and application of scrubbers to industrial boilers, but not to FCCU's.

The analysis of these data showed that the costs provided by the primary vendor of single alkali scrubbers applied to FCCU's, were the highest of all the vendor cost estimates and are conservative due to more stringent design specifications than other vendors use and the use of redundant equipment that serve to provide the scrubber with the reliability that petroleum companies believe is necessary in the refining industry. In particular, the primary vendor's system design specifications call for vessel design coded by the American Society of Mechanical Engineers (ASME), and design of pumps, piping, and electrical equipment coded by the American Petroleum Institute (API); one of the other two vendors that provided cost data did not specify such coded design. Vessels on scrubbers designed by the primary vendor are larger than those designed by the other two companies, and use special refractory linings to protect the steel shell from the abrasive effects of catalyst fines in the refinery flue gas. Further, the primary vendor's design requires sparing of all rotating equipment and critical analyzers, and specifies multiple venturis, rather than a single variable throat venturi as specified by the other vendors. Fluid catalytic cracking units may be in continuous operation for about 3 years nonstop, or significantly longer in some cases, and the primary vendor designs their scrubbers to maintain safe and reliable operation for time periods equal to that of the FCCU's the scrubbers control.

B. *Review of Specific Cost Comments.* Second, EPA considered the specific cost comments provided by companies.

One commenter stated that EPA's costs were low, in part, because of erroneous assumptions of FCCU exhaust gas volumes. The EPA concluded that the exhaust gas volumes used for the cost analysis for FCCU's using HTR are appropriate. Model plant FCCU exhaust gas volumes were developed based on stoichiometric relationships between the coke composition, the amount of air necessary to burn the coke, and typical levels of excess air. The calculated exhaust gas volumes were compared to actual exhaust volumes reported for FCCU regenerators and were found to be reasonable. Furthermore, the values used for the model plant regenerator exhaust gas volumes were sent to industry representatives for review prior to beginning the impact analyses, and no comments were received by EPA indicating that the exhaust gas volumes were not representative of actual conditions.

During these cost evaluations, EPA revised the exhaust gas volume for FCCU's operating with jet ejector venturis (JEV's) to include the flue gas contribution from the CO boiler. As a result, EPA also revised the capital and annual costs for JEV scrubbers installed on FCCU's. Fluid catalytic cracking units using CO boilers must install the JEV-type scrubber. The JEV costs presented in the proposal BID did not account for the additional flue gas volume that would enter a JEV scrubber because of the combustion air required in the CO boiler. The EPA determined that flue gas volume to a JEV scrubber would be about 10 percent higher than the volume of gas from an FCCU to a high-energy venturi scrubber. This increased volume resulted in about a 3-percent increase in the cost of the JEV scrubber over that previously calculated.

Several commenters stated that EPA used erroneous assumptions for scrubber waste disposal costs. The EPA, therefore, reviewed the waste disposal costs used in the proposal BID. The cost values used in the proposal BID represent the cost for the transport to and disposal of collected catalyst fines in a landfill. This solid waste disposal cost is based only on the additional mass of solid wastes to be disposed due to the use of a wet scrubber as the collection device instead of an ESP. In the proposal BID, no costs were credited to the disposal of the treated liquid wastes because EPA assumed that the treated liquid wastes were disposed to surface water. Upon review, EPA decided that it is appropriate to provide a more conservative estimate of liquid waste disposal costs by assuming that all affected facilities would discharge to sewers. Some refiners, especially in coastal locations, will likely be able to discharge the treated scrubber liquid wastes to surface waters without incurring a sewer discharge cost.

Two commenters questioned EPA's assumptions of off-site costs. Two other commenters stated that EPA did not consider site space or equipment variability, soil conditions, FCCU turnaround schedule, start up costs, or construction climate. The EPA has considered specific costs for off-sites, soil conditions, turnaround schedule, equipment availability, climate, and startup in the costs estimates. Off-sites include electricity, water, fire protection, steam, compressed air, and other utilities. The scrubber costs used by EPA to evaluate cost impacts include the cost of connecting utilities to the scrubber provided the utilities are located within the battery limits of the FCCU. The battery limits refer to that portion of the refinery associated with a particular process unit and its supporting equipment. Where utilities are not available or insufficient capacity is available within the FCCU battery limits, the refiner will incur a cost greater than that assumed in the cost estimates. However, a 20-percent contingency is provided in each capital cost estimate. The EPA considers the site-specific costs related to soil conditions, turnaround schedules, site space and equipment availability, climate, startup, and the expense of off-sites to be included in this contingency and, therefore, to have been considered by EPA.

In support of the comments on costs of construction climate, space and equipment availability, and pond and treatment system requirements, one commenter provided capital costs for the retrofit installation of a sodium scrubber to control both particulate and SO_x emissions from an FCCU at an existing refinery. The single alkali scrubber is sized for a flue gas volumetric flow rate similar to the 8,000 m^3/sd model plant used by EPA in developing costs. A comparison of the commenter's cost estimate with EPA's revised cost estimate shows that the total direct cost for both estimates is about the same. The commenter applied a 60-percent factor to account for indirect costs compared to the 40-percent factor used by EPA. The commenter also applied to this base cost estimate an additional 27-percent cost adjustment, which included labor productivity, design allowance, and construction climate. The EPA evaluated the commenter's cost factors and believes that these factors are adequately accounted for by EPA's 20-percent contingency cost factor. When adjusted to equivalent dollars, the commenter's cost estimate is approximately 50 percent higher than EPA's revised cost estimate for a single alkali scrubber of a comparable size installed on an existing FCCU.

The commenter's scrubber costs were developed from a preliminary factor-type cost estimate provided by a vendor. This type of cost estimate is developed in the early stages of a construction project when the project specifications are not very well defined. A factor-type estimate will typically contain several generous cost allowances to account for uncertainties in equipment specifications and construction. As a project becomes more defined, the final cost estimate normally is lower, and closer to the actual cost of the project. The EPA's costs are based on a vendor's experience with scrubber applications to FCCU's, and EPA believes that these costs are more representative of the actual cost of this scrubber design than the cost estimate provided by the commenter. Thus, the difference between the commenter's cost estimate and EPA's revised costs is largely due to the preliminary nature of the commenter's cost estimate.

One commenter indicated that EPA's cost estimates should more appropriately be based on the use of dual alkali flue gas desulfurization systems, because single alkali systems may not be applicable in areas where water availability or wastewater discharge is restricted. The commenter provided cost data to show that dual alkali systems are more expensive than

single alkali systems. A dual alkali scrubber consists of two parts, the "front half" and the "back half." The front half of a dual alkali scrubber resembles a single alkali scrubber without a wastewater treatment unit and performs the same function—removing SO_2 from a gas stream by contacting it with a caustic or soda ash scrubbing liquor. In the back half of a dual alkali scrubber, however, the purge is treated to regenerate the scrubbing liquor for reuse; a single alkali scrubber simply treats and discharges the purged liquor.

The EPA agrees that, where direct discharge of scrubber wastewater is not permitted, dual alkali scrubbers would be a viable alternative to single alkali scrubbers because dual alkali scrubbers produce a calcium sulfate sludge that would be more readily disposed than wastewater, but disagrees that dual alkali scrubbing systems would be more expensive than single alkali.

The commenter compared capital costs for dual alkali scrubbers to EPA's proposed single alkali scrubber costs. The commenter's cost estimates were based on proprietary actual scrubber cost information provided by the commenter's contractors. For each of the model plants presented in the proposal BID, a computer cost model was used by the commenter to estimate dual alkali scrubber costs assuming 90 percent SO_2 reduction. The commenter's dual alkali scrubber costs are a function of volumetric gas flow rates and sulfur loading. The commenters cost estimates for dual alkali scrubbing were significantly higher than EPA's proposal estimates for all dual alkali model units.

Because these differences existed, EPA performed a further evaluation of dual alkali costs based on data from vendors of dual alkali systems. Specifically, costs from the primary vendor of single alkali scrubbers to FCCU's were used to develop costs for the front half of both sizes of a dual alkali scrubber. Another vendor provided back half costs for both sizes of dual alkali scrubber. The primary vendor also provided EPA with a cost estimate provided to them by an independent vendor of dual alkali scrubbers for the back half of a dual alkali scrubber applied to the 8000 m^3/sd FCCU only. The commenter's and EPA's costs are based on a scrubber design that would control both FCCU particulate and SO_2 emissions.

The EPA's revised capital cost estimates for dual alkali scrubbers are greater than those in the proposal BID, but less than the capital cost estimates for single alkali scrubbers provided by the primary vendor. This is because the back half of the dual alkali scrubber, where the purged scrubbing liquor is treated to regenerate it for reuse, was found to be less costly than the wastewater treatment system needed to treat the purged scrubbing liquor before discharge from a single alkali system. Construction costs for the in-ground ponds specified by the primary vendor for wastewater treatment are greater than the cost of the dual alkali sludge dewatering and disposal facilities.

A comparison of EPA's revised dual alkali costs with those provided by the commenter shows that the commenter's total dual alkali costs remained significantly higher than EPA's revised dual alkali total cost estimate. However, because the commenter's cost information is based on proprietary actual cost data developed by contractors of dual alkali scrubbers and provided to the commenter, detailed cost information was not provided to EPA by the commenter, and a comparison of EPA's individual capital costs to those provided by the commenter was not possible.

The EPA's analysis of data supplied by vendors of dual alkali systems indicates that total single alkali scrubber costs are more costly than total dual alkali scrubber costs rather than less costly as the commenter believes. Therefore, EPA's current cost estimates for model plants, which reflect the use of only single alkali scrubbing, represent a conservative estimate of nationwide costs; dual alkali cost estimates applied to the model plants would only decrease the national costs. Therefore, it was decided not to revise costs of SO_2 control of model plants to reflect the use of dual alkali at some facilities.

This commenter also provided cost data for single alkali systems. The EPA performed an analysis of this single alkali cost data for comparison to single alkali cost estimates in the proposal BID. The commenter's costs for single alkali scrubber systems are similar to EPA's revised costs for the low sulfur model plants, but are significantly higher than EPA's revised costs for the 1.5 and 3.5 weight percent sulfur model plants. The commenter's single alkali cost estimates assume that single alkali capital costs are 93 percent of dual alkali costs. The EPA believes this approach is inappropriate because, whereas capital costs for dual alkali systems are a function of both waste gas flow rate and feed sulfur content, capital costs for single alkali systems are a function only of waste gas flow rate. Dual alkali control requires equipment to regenerate the reagent solution, the cost of which depends, in part, on the sulfur content of the flue gas. Because single alkali systems do not have such equipment, capital costs of single alkali control are a function only of waste gas flow rate. Therefore, single alkali cost estimates derived by applying a constant percentage of dual alkali costs for different sulfur content models would result in erroneous estimates. The EPA believes, therefore, that the accuracy of the commenter's single alkali costs, which increase with feed sulfur content, is doubtful.

Two commenters stated that EPA needed to reevaluate the cost of retrofitting existing FCCU's with scrubbers. The EPA reevaluated these costs. Costs associated with retrofit will vary widely from one refinery to another based on the refinery configuration and the availability of land. In some cases, space limitations around an existing FCCU may result in relocating utilities and piping runs, longer ducting runs, and other factors that may make scrubber installations more difficult than at a new refinery. Therefore, EPA agrees that retrofit should be included in the cost estimates for some model plants. A retrofit cost factor of 20 percent of the scrubber capital cost (less contingency) was estimated by one commenter. This cost was added to three of the seven modified or reconstructed FCCU's anticipated to be subject to this standard during the first 5 years after the effective date of the standard.

One commenter stated that EPA did not consider a cost for business interruption that would result from a scrubber malfunction shutting down the FCCU. Although sodium scrubbers have demonstrated reliability factors in excess of 95 percent, scrubber malfunctions can occur. The General Provisions to 40 CFR part 60 states that emissions in excess of an emission limit during a period of malfunction of a control device are not considered a violation provided the control device has been properly operated and maintained. During a period of a sudden or unavoidable scrubber failure, the refiner would still be able to operate the FCCU. Therefore, no business interruption cost would be incurred. For this reason, EPA did not include a business interruption impact when revising the proposal BID costs.

One commenter stated that EPA subtracted an ESP cost credit inappropriately in the cases of an existing FCCU with an ESP in place if scrubbers are required as a result of modification/reconstruction. The EPA agrees that an ESP cost credit is not appropriate in these cases. The proposal BID costs were revised to eliminate the ESP cost credit for the three modified or reconstructed FCCU's in which retrofit costs were included.

C. *Summary of Cost Changes.* As a result of both the general reevaluation of costs and the review of specific cost comments, EPA revised the capital and annual cost estimates for FCCU scrubbers. The following changes were made: (1) Costs of individual components were adjusted based on the data received; (2) JEV scrubber costs were revised to account for increased flue gas volume entering the scrubber as a result of CO boiler combustion air; (3) waste disposal costs were increased to include liquid waste discharges; (4) a cost for retrofit installation was added for the modified or reconstructed FCCU's; and (5) the ESP cost credit was deleted for the three scrubbers that were installed on modified or reconstructed FCCU's and for which retrofit costs were included. Costs were then further adjusted to 1984 dollars.

After both the general and the specific cost analyses, EPA concluded that the proposal BID costs are not understated by a factor of 2.2 to 7. Changes in cost as described above caused nationwide capital costs to increase by 30 percent (from $72 to $93.6 million); adjusted to 1984 dollars, capital costs increased a total of 63 percent from proposal (from $72 to $117 million). Changes in cost caused nationwide annual costs to increase by 5 percent (from $35 to $36.6 million per year); adjusted to 1984 dollars, annual costs increased a total of 29 percent from proposal (from $35 to $45 million per year).

Thus, these estimates show that the standards would result in a total nationwide capital cost for SO_x control for the first 5 years after the effective date of the standards of $117 million, assuming sodium-based scrubbers are used at all facilities processing feedstocks with sulfur content above 0.3 weight percent. The fifth year nationwide annual cost is $45 million. Units processing feedstocks with sulfur contents of 0.3 weight percent would be below the feed sulfur cutoff and, therefore, would not need to install a scrubber. Where sodium scrubbers are not applicable, dual alkali scrubbers could be used at a similar cost to sodium scrubbers.

SO_x Reduction Catalysts

Comment (Performance): Commenters stated that SO_x reduction catalysts are not demonstrated and cannot achieve 80 percent reductions in SO_x emissions.

Response: The EPA considers SO_x reduction catalysts to be an emerging technology. The standards allow for their use and thereby encourage their further development. Current catalysts show promising results. As described in the "Level of Standards" section of this preamble, current SO_x reduction catalysts can achieve SO_x emission reductions of 65 to 75 percent. Additionally, for many feed sulfur levels, the standard can be met with less than 80 percent SO_x emission reduction.

Comment (Solid Waste Impacts): One commenter stated that, according to the preamble, SO reduction catalysts are not expected to have a solid waste impact. The commenter estimated, however, that the use of SO_x reduction catalysts would increase FCCU solid waste by 11,000 Mg/yr.

Response: The EPA does not believe that the use of SO_x reduction catalysts would result in a significant increase in FCCU solid waste. When used as an additive, SO_x reduction catalysts replace from less than 5 to 10 percent of the circulating catalyst inventory. One of the catalyst developers stated that, due to the softness of their SO_x reduction catalyst (an additive), its makeup rate is greater than that for the cracking catalyst. The developer reported that this may result in an increase in solid waste of up to 40 percent. Based on recent tests by another developer, solid waste increases of less than 5 percent are anticipated for the newer SO_x reduction catalyst formulations because these are much harder than earlier formulations. The EPA believes that it would be in the catalyst developers' interest to produce a harder reduction catalyst because a harder formulation would have a lower makeup rate and therefore, most likely would cost less to use than a softer one. Other recently developed catalyst formulations incorporate the SO_x reduction catalyst as a constituent of the cracking catalyst and consequently, SO_x control can be accomplished without increasing the total quantity of cracking catalyst used in the FCCU over a period of time. In this case, SO_x reduction catalysts would not increase particulate emissions or solid waste. In summary, whether the SO_x reduction catalyst is in the form of an additive or a constituent of the cracking catalyst, it is unlikely that the use of newer SO_x reduction catalyst formulations would significantly increase FCCU solid waste over current levels.

Comment (Air Impacts): One commenter stated that the preamble to the proposed standards does not adequately address the effect of SO_x reduction catalysts on NO_x emissions. The commenter pointed out that the preamble states that SO_x reduction catalysts would not increase NO_x emissions, while the proposal BID and a docket entry show that SO_x reduction catalysts raised NO_x emissions.

Response: Most refiners use one of two techniques to control CO emissions from the FCCU regenerators: HTR or catalytically promoted CO combustion. Data from some tests of NO_x emissions from regenerators using both CO combustion promoter catalysts and SO_x reduction catalysts in combination show an increase in NO_x emissions. Separate data for regenerators using CO combustion promoters without SO_x reduction catalysts suggest that the use of these catalysts may increase NO_x emissions. Thus, at this time, it is unclear whether the NO_x increases observed for SO_x reduction catalyst tests are due to the reduction catalyst or the CO combustion promoter. Recent commercial tests of SO_x reduction catalysts in FCCU's utilizing HTR show no increase in NO_x emissions. No recent tests of SO_x reduction catalysts in FCCU's utilizing CO promoters were available. Because most FCCU's subject to the standards are expected to use HTR and because newer SO_x reduction catalyst formulations have not increased NO_x emissions, EPA believes that the use of the SO_x reduction catalyst technology will not increase NO_x emissions.

Comment (Costs): Three commenters wrote that in certain circumstances the SO_x reduction catalyst technology requires a capital outlay. The circumstances identified by the commenters were: (1) Because SO_x reduction catalysts can only be used in units with HTR, older units subject to the standards under the modification or reconstruction provisions that do not or cannot operate in this mode will be required to convert or modify units; (2) small refineries that do not have sulfur recovery units; and (3) refineries with inadequate sulfur recovery unit capacities to handle the increased sulfur load due to the SO_x reduction catalyst technology. In addition, two commenters stated that annual costs for SO_x reduction catalysts will likely be at least 2 times higher than EPA's estimate.

Response: Many refiners have modified their older FCCU's to HTR; HTR offers advantages over conventional regeneration (e.g., reduced SO_x emissions, improved yields, and increased throughput). It is unlikely that an older FCCU would become subject to these standards through the modification/reconstruction provisions without modifying the unit to HTR. A refiner is more likely to use SO_x reduction catalysts in an FCCU modified for HTR than to modify an FCCU solely to use SO_x reduction catalysts. If an

FCCU subject to these standards cannot utilize SO_2 reduction catalysts, the refiner is more likely to select another control technique than incur a $10–20 million capital expenditure.

Use of SO_2 reduction catalysts will increase the amount of hydrogen sulfide (H_2S) in refinery fuel gas, which is removed from the fuel gas in a sulfur recovery unit. The increase in the amount of H_2S to a sulfur recovery unit is only about 5 to 10 percent. Sulfur recovery units generally are overdesigned by much more than this to account for swings or surges in H_2S production from refinery process units. It is doubtful that the use of SO_2 reduction catalysts alone would overload a sulfur recovery unit.

The EPA contacted companies developing or licensing SO_2 reduction catalysts to obtain current costs for commercially available SO_2 reduction catalysts. Catalyst developers reported costs for the technology ranging from $0.60 to $1.60 per cubic meter of fresh feed processed. The fifth year cost for SO_2 reduction catalysts was then calculated by multiplying the cost factors provided by the catalyst developers by the total fifth year annual throughput for all affected facilities processing feedstocks containing greater than 0.30 weight percent sulfur. The new fifth year cost for SO_2 reduction catalysts ranges from $20 million to $50 million. Costs for SO_2 reduction catalyst are presented as a range because the technology is under development. The upper end of the range represents a newer catalyst formulation; the developer of this catalyst expects the cost to decrease as the catalyst formulation is produced in greater quantities.

Economic Impacts

Comment: Several commenters stated that the proposed standards would have an adverse effect on the refining industry and the nation's economy. Four commenters wrote that the compliance costs are sufficiently high to require the preparation of a Regulatory Impact Analysis under Executive Order 12291. One commenter wrote that current prices will reduce the attractiveness of FCCU modifications to the point where the additional cost of a scrubber or other SO_2 control device would not be feasible. Three commenters wrote that the costs of the proposed standards would, in some cases, postpone new investments and would cause a significant economic impact on the profitability of FCCU operation and the construction of new FCCU's.

Response: The cost analysis presented in the proposal BID was reviewed under Executive Order 12291 by the Office of Management and Budget (OMB). Since that time, in response to comments, EPA has revised these costs upward. With these revisions, the fifth year nationwide annualized costs are still below the $100 million level that triggers a regulatory impact analysis under Executive Order 12291. The price increases published in the proposal BID were all less than 0.4 percent. Using the revised control costs and second quarter 1984 product prices, that figure increases to approximately 0.8 percent for the worst case considered (3.5 weight percent sulfur feedstock). The EPA still considers this to be acceptable.

The capital required for the control devices will increase the investment for a new FCCU by 9 percent for the 8,000 m^3/sd unit and by 15 percent for the 2,500 m^3/sd unit. The EPA does not consider these percentages sufficiently high to deter a decision to install an FCCU that is otherwise economically justified.

Compliance Testing and Monitoring

General

Comment: Two commenters pointed out that as proposed SO_2 testing would be conducted upstream of the CO incinerator while velocity and volumetric flow rates would be determined downstream of the CO incinerator. One commenter pointed out that the regulation indicates that sampling for SO_2 concentration "shall be the same as for determining volumetric flow rate;" the commenter believed the regulation statement is correct. One commenter stated that it is unsafe to require personnel to conduct manual sampling due to the high flue gas temperatures at this location (650–700 °C) and that sampling at extreme temperatures is impractical due to frequent sampling train operating problems and rapid sample probe failures.

Response: The EPA agrees that SO_2 testing should be performed at the same location as the volumetric flow rate measurement, as is specified in the regulation.

The EPA recognizes the commenter's concern regarding safety. Sampling either upstream or downstream from the CO boiler is acceptable for the standard without add-on controls. However, if the owner or operator chooses to test downstream of the CO boiler, alternative calculation procedures for determining the coke burn-off rate and the SO_2 contribution due to the auxiliary fuel burned in the boiler must be submitted to and approved by the Administrator. In addition, the recommended location for the inlet CEMS has been changed to downstream of the CO boiler for the standard with add-on controls.

Add-On Control Devices

Comment: One commenter stated that an operator of an add-on control device should be given the flexibility to choose between the original proposal, which would have required using an outlet monitor only, and the operation of a CEMS in which both an inlet and outlet monitor are used.

Another commenter stated that after the compliance test, the proposed standards only need an "alerting service," which could be provided by an outlet monitor alone.

Response: The standard for FCCU's using add-on controls is 90 percent reduction or 50 vppm, whichever is less stringent. The intent of monitoring for the standard for add-on controls is to determine compliance on a daily basis, as described in the revised proposal. To meet this intent, the Agency needs data that show the actual compliance status of the source, not data that simply alert the Agency to potential problems. To make an accurate determination of compliance with the 90 percent reduction standard, the Agency must have both scrubber inlet and outlet data. Even where feed sulfur is not "highly" variable, the outlet concentration may vary due to FCCU operation or the source of the feed, while scrubber performance may stay constant. Therefore, measuring only the outlet emissions may lead to an incorrect compliance determination for the percent reduction standard. The Agency recognizes, however, that an inlet monitor is unnecessary for making continuous compliance determinations in relation to the 50 vppm standard for add-on controls. Thus, the Agency has modified the regulation so that owners or operators may choose to declare their intent to meet the standard for add-on controls by limiting their outlet SO_2 emissions to 50 vppm and install a CEMS at only the outlet of the control device to determine compliance. The Agency wishes to point out that, for such owners or operators, compliance determinations will be made only on the basis of the outlet SO_2 emissions without regard for the percent reduction being achieved by the control device. Such owners or operators may change their choice so they would be subject to the whole standard on "90 percent reduction or 50 vppm, whichever is less stringent," provided a CEMS is installed and maintained at the inlet of the control device as well as the outlet.

Comment: One commenter felt that because an add-on control device achieves greater reductions in SO_2 emissions than technologies meeting the standard without add-on controls, "less drastic" compliance monitoring requirements for scrubbers are reasonable. This commenter proposed that compliance be determined instead by an initial performance test, quarterly monitoring of inlet and outlet SO_2 concentration using EPA Reference Method 6 or 6B, and continuous monitoring of wet gas scrubber process variables, such as pH, liquid-to-gas ratios, and pressure drop, to evaluate scrubber performance in an ongoing basis.

Response: Monitoring and testing requirements are chosen to be appropriate for the control technique and to meet the intent or goal of the monitoring and testing. The relative stringency of different control techniques has no bearing on the selection of the most appropriate monitoring or testing requirement for each control technique.

The purpose of monitoring for these standards is determining compliance on a daily basis. The procedure suggested by the commenter does not give information from which the compliance status can be determined daily.

Comment: Several commenters stated that continuous SO_2 monitors are unreliable due to monitor operational problems. One commenter proposed that the requirement for continuous monitoring of the inlet and outlet to add-on controls be eliminated, while another commenter recommended an increased allowance for CEMS downtime and maintenance, such as requiring data for 15 days per month instead of 22, and 12 hours per day instead of 18. One commenter stated that, to his knowledge, EPA does not have CEMS data showing that the device can run 24 hours per day for one full month and give accurate results. He also asked about the frequency of manual emission testing that would be required when the CEMS fails.

Response: The EPA extensively studied the reliability of SO_2 and diluent CEMS during the development of subpart D, subpart Da, and appendix F of 40 CFR part 60. Current studies show that state-of-the-art monitoring systems provide precise and accurate data when proper operation and maintenance techniques are employed on a continuous basis. Experience has shown that approximately 2 hours per day of manual attention is necessary to obtain an 85 percent or greater availability. Further, as discussed in the BID for the proposed standards, Appendix D, FCCU catalyst regenerator exhausts are similar to those of coal-fired steam generators; therefore, the continuous SO_2 monitoring technology proven acceptable for steam generators should be applicable to FCCU catalyst regenerators. The SO_2 monitors have been installed on some FCCU catalyst regenerators; EPA has gathered information on the operational history of some of these CEMS but the data were insufficient to compare directly to appendix F to 40 CFR part 60, which contains quality assurance procedures for CEMS used for compliance determinations.

The Agency has, for example, conducted tests at a sodium scrubber on an FCCU using inlet and outlet SO_2 CEMS. The outlet monitor was on a saturated gas stream without reheat of the flue gas. There was no particulate removal in the flue gas prior to the inlet monitor. The duration of the testing was about 12 days. Over this time, no difficulty was experienced in obtaining valid data. Some regular backflushing of the outlet analyzer system occurred due to the saturated nature of the flue gas. This limited time testing suggests that with careful maintenance of the monitors, long term use and potential problems can be avoided. The difficulty stated with regard to outlet monitors on a saturated gas stream can be overcome through adequate design and maintenance of the CEMS. (The commenter does not state that the difficulty cannot be overcome, but rather just that it is difficult.)

A particular concern of several commenters was particulate plugging. The Agency does not agree that particulate plugging will be a problem if the monitor is properly designed and operated. In-stack filters have been redesigned with better shields, and improved outside-stack conditioning systems have been developed that allow removal of the in-stack filter, when necessary. Furthermore, technologies are available to circumvent CEMS plugging. Properly designed systems usually have back-purge capabilities to prevent particulate plugging of the sampling probe in the stack. Studies have also shown that high pressure (greater than 70 psi) air in backflushing sample lines and probes improves removal of particulate and moisture from the in-stack probes and filters both upstream and downstream of scrubbers. Manufacturers of the systems and installation personnel would be responsible for designing each system for a specific source.

Based on these studies, EPA has concluded that continuous SO_2 monitors are reliable and accurate when properly operated and maintained, and are capable of meeting the minimum requirements for determining compliance with these standards. Thus, the promulgated standards retain the requirement for continuous SO_2 monitors.

The EPA does not expect the CEMS to run nonstop for 24 hours per day for an entire month. To allow for periods when CEM's are shut down for various reasons, minimum data requirements were established. The EPA based its selection of 18 hours of data in a 24-hour day and 22 days of data out of 30 days on the minimum data requirements for compliance determinations specified for utility boilers under subpart Da of 40 CFR part 60. Under these standards, EPA concluded that the required data to be collected provided sufficient information to characterize emissions, and that properly operated and maintained CEMS's were capable of meeting these requirements. The operating conditions at the upstream CEMS at FCCU's are similar to those found at a subpart Da boiler CEMS prior to the flue gas scrubber. The minimum data requirements (i.e., collection of 18 valid hours of data per day for 22 days out of every 30) provide for downtime enabling the owner or operator to maintain and calibrate the CEMS and correct minor malfunctions.

Manual testing is not required when the CEMS fails provided the facility meets the minimum data requirements. Malfunctions are not likely to occur every 30-day period. Thus, EPA expects that most CEMS's routinely will operate better than the minimum data requirements and supplemental sampling will be rarely necessary to meet them.

Many methods are available for supplemental sampling; each owner or operator would develop an approach to obtaining these minimum data in the Quality Control Plan required by Procedure 1 of 40 CFR part 60 appendix F. Any acceptable sampling scheme would have to obtain data representing at least 18 hours of operation daily. If Method 6 is used, the minimum sampling time is 20 minutes and the minimum sampling volume is 0.02 dry standard cubic meters (dscm) (0.71 dry standard cubic feet (dscf)) for each sample. Samples are taken at approximately 60-minute intervals; each sample represents a 1-hour average. To obtain one valid day from supplemental sampling requires 18 valid samples. Method 6B, if used, would also have to collect a sample representing a minimum of 18 hours. If a back-up monitor is used instead, then a minimum

of 18 valid hours to obtain a valid day is still required.

Comment: Two commenters questioned the costs of CEMS's reported by EPA. One commenter asked whether the sample collecting and conditioning systems needed to ensure a reliable CEMS were included in the price of the CEMS and whether the Agency updated the costs from the original proposal. The other commenter felt the Agency substantially underestimated the costs of a CEMS.

Response: The cost of the additional CEMS reported in the revised proposal notice reflected the cost of an extractive analyzer and installation (in February 1961 dollars). The Agency updated the original 1961 costs for the extractive analyzer system and obtained a revised fourth quarter 1984 cost estimate of $69,300 (including installation and data acquisition system (DAS); $49,200 without the DAS).

The Agency also recently attempted to obtain updated CEMS cost data by contacting vendors and source owners or operators using CEMS. The study found total worst-case costs for an extractive analyzer (including a DAS and installation) to be from $45,000 to $180,000 (1984 dollars). (The worst-case costs included additional costs for longer sample lines, corrosion-resistant probes, probe back-flush systems, and computer data acquisition systems capable of generating emissions reports.) The commenter provides an estimate of about $100,000 (analyzer, sampling system, and installation). Taking out the cost of a DAS (about $23,000) from the worst-case costs, the commenter's estimate falls in the middle-to-upper end of the worst-case costs. The Agency notes that its original cost estimate for an extractive analyzer, when updated to 1984 dollars, still falls within the worst-case costs range reported in the updated study.

Updating the across-the-stack cost estimate, which was for a complete outlet monitoring system, to fourth quarter 1984 dollars yields a cost estimate of about $92,900 for the analyzer, DAS, and installation. Data on across-the-stack CEMS gathered more recently show total worst-case vendor costs without a DAS from $22,000 to $152,000 (1984 dollars). The one commenter estimated costs of about $150,000 to $175,000 per analyzer (analyzer, sampling, and installation), which falls at the upper range of the worst-case vendor estimates.

The annual maintenance costs estimated by the Agency in the proposal BID appendix D were $11,000 for either an extractive or across-the-stack CEMS. Updating the cost results in an estimate similar to the commenter's estimate of $16,000 for an extractive system and is more conservative than the commenter's estimate for an across-the-stack system.

Without Add-On Control Devices

Comment: Several commenters stated that EPA had underestimated the costs of daily Method 8 testing. Commenters estimates ranged from $184,000 to $400,000/yr per FCCU. Commenters did not think it was reasonable to claim the costs to be "reasonable" when the costs are based, in part, on a traversing system not yet developed. One commenter believed that insufficient qualified contractor manpower exists to conduct the Method 8 compliance sampling.

Response: The EPA agrees with the commenters that the assumption of an automatic traversing system should not be used for evaluating and recommending daily Method 8 testing, although the Agency still contends that it is technologically feasible. Instead, the Agency has revised the cost estimate assuming that a monorail system will be installed at each of the two sampling ports and that a single sampling train will be used, with manual movement of the sampling train for traversing and changing ports. Although not addressed by the commenters, EPA decided that it was appropriate to also include a cost for an enclosed sampling area to protect the sampler and equipment from various weather conditions, such as rain and snow. The capital cost of the monorail system and enclosure is estimated to be $20,000. When the Agency originally estimated the cost using an automated traversing system, two sampling trains were assumed, one in each port. With the revised assumptions, only one sampling train is used, and is moved from one port to the next. The standard requires one 3-hour sample per day, 365 days per year; this halves the number of samples to be analyzed to 365 (1 per day).

The EPA disagrees with the commenters' claim that three or more people would be devoted full-time to this stack testing. Only one 3-hour sample is required each day. The Agency believes that it would take an average of 8 labor hours per day to prepare the equipment, conduct the sampling, and perform periodic maintenance on spare equipment, with added labor for analysis of about 1.3 hours per sample. The revised annualized cost per affected facility is estimated to be $120,000.

The EPA assumed that in-house personnel would be used to conduct the Method 8 compliance sampling. The EPA believes there is sufficient lead time to train such personnel without requiring or solely relying on contractor manpower.

Comment: Many commenters stated that daily testing should be deleted from the standard for FCCU's without add-on controls. The commenters felt that daily testing was too costly and unduly burdensome, especially, according to one commenter, when compared to the costs of monitoring for the scrubber or testing under the feed sulfur cutoff. One commenter stated that the cost of daily Method 8 testing could hamper improvements in SO_x reduction catalyst development.

Response: The Agency recognizes that daily testing with Method 8 is not inexpensive, but that it is also not an unreasonable cost. The Agency has examined various methods available to show daily compliance with the standards. For facilities that opt to use SO_x reduction catalysts to meet the standards, the Agency has determined that daily Method 8 testing is currently the only viable alternative that enables the Agency to be sure that the owner or operator is in compliance on a daily basis.

The relative costs of the various methods for determining continuous compliance available to all affected facilities subject to the standards is not a valid basis for rejecting one method or another. What is relevant is whether the total (capital, annual, monitoring, etc.) cost of compliance for meeting the standards for an affected facility is reasonable or unreasonable. Daily testing is needed for this standard in order to show daily compliance, and the cost of such testing, in the Agency's assessment, is reasonable.

The Agency disagrees that daily testing is too costly and unduly burdensome. The Agency studied the potential economic impact of the standards on small and large refineries and reported and discussed the findings in the original proposal notice to these standards (49 FR 2072). The economic impact to the small (and large) refiner is expected to be small because most, if not all, of the cost should be capable of being included in the prices of the refined petroleum products and the resulting price impact is reasonable. These results were obtained assuming compliance by all projected affected facilities with the standard for FCCU's with add-on controls, which is more expensive than compliance with the standard for FCCU's without add-on controls. Therefore, the economic impacts of complying with the standard for FCCU's without add-on controls will be smaller.

The Agency believes that the monitoring costs associated with daily Method 8 testing are unlikely to affect SO_x reduction catalyst development. Even with the higher testing costs, SO_x reduction catalysts are still likely to be overall less costly to use than scrubbers. Thus, development on SO_x reduction catalysts will still continue as owners or operators try to minimize their costs in meeting these standards.

In conclusion, the Agency believes that the cost of daily Method 8 testing is reasonable in order to ensure daily compliance. Less expensive methods that allow the Agency to make equivalently accurate daily compliance determinations are encouraged and may be used subject to the approval of the Administrator.

Comment: One commenter stated that the proposed regulation does not supply sufficient information (calculation procedures) under Section 60.106, "Test Methods and Procedures," to determine total SO_x emissions.

Response: The EPA agrees with the commenter. Therefore, the regulation has been revised to indicate that modification to the calculation procedures specified in Reference Method 8 will be required to calculate total SO_x emissions as SO_2.

Comment: Many commenters suggested alternatives to daily Method 8 testing for demonstrating continuous compliance. The commenters suggested three basic types of alternatives: (1) The use of less frequent Method 8 testing, (2) periodic testing for SO_x until an SO_2 CEMS is developed, and (3) the use of continuous SO_2 monitors with periodic testing for SO_2. One commenter stated, in general, that the daily application of Method 8 is cumbersome, and thus, the proposed rule should contain provisions to allow the permittee to demonstrate continuous compliance based on a broader spectrum of options.

Response: The Agency has considered the alternatives suggested by the commenters. The Agency agrees that any test should not be performed more frequently than necessary and that a history of test data may show that daily testing is unnecessary. However, such a "history of test data" does not exist at this time and without such data, the Agency does not believe any of the alternative monitoring or testing schemes suggested can be implemented at this time and ensure that accurate continuous compliance determinations are made. Further, the commenters provided very little data to support their arguments, and available data show that the SO_2/SO_x ratio can be variable.

One of the commenters provided literature on an SO_2 monitor that they thought should be able to monitor SO_2 also. The information and literature provided were insufficient for the Agency to evaluate this potential for this particular monitor.

The Agency has examined other monitors for their ability to monitor SO_2. To date, none of the monitors examined has proven suitable. Therefore, the Agency could not require at this time such a monitor. The Agency does agree that many of these alternatives may be shown acceptable as more data on SO_x reduction catalyst use and SO_x emissions are generated. Therefore, the standard explicitly states that such alternatives supported by sufficient data may be approved on a case-by-case basis. Some of the criteria that may be considered are the SO_2/SO_x ratio, product feed variability, frequency of product slate changes, operational variability in regenerator conditions (e.g., excess oxygen, temperature), catalyst addition schedules, and FCCU operating conditions. The development of a successful SO_x monitor would also be an acceptable alternative, upon approval by the Administrator, to Method 8 testing. In the meantime, however, the Agency has retained daily Method 8 testing for determining compliance on a continuous basis for the standard for FCCU's without add-on controls.

Comment: Two commenters expressed concern over the possible interfering effects of particulates when performing Method 8 or revised Method 6.

Response: The EPA agrees that the presence of "other particulate matter" could invalidate the Method 8 test results. Therefore, appropriate changes have been made in the regulation to permit the insertion of a heated filter and probe in the sampling train, prior to the impingers. The heated probe and filter will prevent the particulate matter from getting into the impinger solution. Filters would be required that are at least 99.95 percent efficient, as required in Section 3.1.1 of Method 5. There is no indication or reason to suspect these filters would not eliminate the analysis problem. If analytical interference because of particulate matter still exists, then alternative analytical techniques (for example, ion chromatography) are available for use upon approval by the Administrator.

The Agency has not conducted testing of Method 8 as modified under these standards to specifically address the commenter's concerns. The Agency knows of no technical reason, however, as to why the modifications to Method 8 under this subpart would adversely affect the repeatability, reproducibility, precision, or accuracy of Method 8. In addition, EPA is currently developing test procedures for minimizing the sulfate interference in particulate matter measurements. The alternative of measuring both particulate matter and SO_x with the same equipment and analytical techniques will be addressed at that time.

The EPA acknowledges that ammonia has known interfering effects on SO_2 determinations. We believe there are alternative techniques to eliminate the interference and are currently studying potential interference problems with respect to ammonia. Thus, in cases where ammonia and/or amines are expected or are known to create problems, the owner or operator should consult the Administrator for approval of alternative test methods.

Comment: One commenter stated that the collection of a grab sample using Reference Method 8 is less reliable than a continuous on-line analyzer, even though there could be some minor variation in the SO_2 to SO_2 ratio in the stack gas. The commenter believed the use of Method 8 could give unrealistic results where an unscrupulous operator could adjust the operating conditions prior to obtaining the daily sample.

Response: The revised proposed standards specified that the measurement of SO_x emissions from FCCU's using SO_x reduction catalysts would be accomplished by conducting revised Method 8 for one shift each day. The Agency knows of no evidence that the variation in total SO_x through the course of a day is any greater than the variation in the SO_2 to SO_2 ratio in the stack gas and, thus, knows of no evidence for the commenter's remarks.

The EPA assumes that operators will obtain valid samples that are representative of operating conditions at the facility and, therefore, will not alter operating conditions prior to sampling. Such deliberate actions on the part of an owner or operator to obtain unrealistic results clearly constitute circumvention of the standard and are illegal under subpart A, the General Provisions (40 CFR 60.12). Inspection of plant operating data by EPA and State personnel would lead to detection of such alteration of plant operation.

Comment: One commenter questioned whether 160 °C (320 °F) is the appropriate temperature for the heated probe and filter in the revised Method 8. This commenter also asked how the 160 °C (320 °F) temperature at the probe is reached if the stack temperature is hotter, or if it is colder. This commenter stated that if a "probe outlet" is a

deposit in the probe, the probe would soon plug up.

Response: The EPA based the selection of the temperature for the heated filter and probe in the revised Method 8 on the temperature specified in the proposed Method 5B and 5F (50 FR 21403, May 29, 1985), which are the methods for sampling particulate matter at FCCU's. The dew point for SO_3 may be higher than the temperature of the heated filter and probe (160 °C). In such instances, the filter would pick up condensed SO_3 (most likely, though, as sulfuric acid mist), thereby leading to a low estimate of SO_2 as measured in the impingers. The Agency believes that this problem is small because the filter would pick up only a small part of the sulfuric acid mist, and the rest would pass through the filter and be collected in the impingers. Thus, the Agency recognizes that, in such situations, a potential bias exists to underestimate emissions, but believes that it is small provided a temperature of 160 °C is maintained.

The materials used (glass and stainless steel) in the probes and filter holders are not subject to corrosion from sulfuric acid. Further, the probes and filter holder are removed each day (after the 3-hour test) for cleaning. In addition, FCCU operators would be required to conduct periodic leak checks. If leaks are detected in the system, or if the sampling system fails, then the system would need to be repaired.

With regard to the stack temperature being different from the probe temperature, if the stack temperature is hotter, there is no problem from an SO_x enforcement standpoint—more SO_x will be trapped in the impingers—and, thus, no temperature adjustment has to be made at the probe. However, if the stack temperature is colder, less SO_x will pass through the filter and a temperature adjustment has to be made. It is common practice to electrically heat the probe to attain the desired temperature.

Finally, with regard to plugging of the probe, as part of normal operating procedures, sampling conducted using revised Method 8 requires that the probe be cleaned out after each run and that the collected sample be discarded from the analysis. This procedure eliminates the potential problem brought up by the commenter.

Comment: One commenter asked why the isopropanol (IPA) impinger was deleted from Method 8.

Response: Method 8 was designed primarily for the separate capture and measurement of sulfuric acid and SO_2. The IPA impinger is used to collect sulfuric acid and SO_2, while the hydrogen peroxide impinger is used to collect SO_2. In the absence of the IPA impinger, the hydrogen peroxide impinger will collect all the SO_x compounds together. The current standards for SO_x reduction catalysts are based on total SO_2; there is no need to separate SO_3 from other sulfur emissions. Therefore, EPA eliminated the IPA impinger from Method 8, the effect of which is to simplify the test procedure, analysis, and calculations.

Feed Sulphur Cutoff

Comment: One commenter felt that the cost of testing the feed sulfur at FCCU's using the alternative feed sulfur cutoff is too expensive to be performed more often than is necessary and suggested that such testing should be required once per week if the feed is previously found to contain below 0.3 percent sulfur in every sample for a week.

Response: For these standards, owners and operators are required to determine compliance on a continuous basis (i.e., on a daily basis). As described in the proposed standards, most refiners manually sample the FCCU fresh feed once per day. Fresh feed sulfur content, however, may change on an hourly basis. Requiring samples to be collected once per hour is not practical using manual sampling techniques. Therefore, the Agency selected a sampling frequency of one sample per 8-hour shift. This frequency would measure major fluctuations in fresh feed sulfur level and is reasonable considering current refinery sampling practices. The sampling program suggested by the commenter would not allow the Agency to be sure that the owner or operator is in fact meeting the standard on a daily basis. Furthermore, past feed usage is not a good indicator of future use; many refiners use different feeds or feed blends for short periods of time. Therefore, the Agency has retained daily testing for feed sulfur content for those operators using this alternative standard.

Compliance

Source Operation During Malfunctions

Comment: One commenter requested that EPA consider establishing standards that allow a certain amount of scrubber downtime without requiring an FCCU shutdown.

Response: The General Provisions in 40 CFR part 60 provide for malfunction of control equipment. "Malfunction" means only sudden and unavoidable failure of air pollution control equipment, process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition, are not considered malfunctions. As stated in § 60.8(c), emissions in excess of a standard due to a malfunction do not represent a violation of the standard. In addition, scrubbers currently applied to FCCU's have demonstrated reliability levels in excess of 95 percent. Thus, it is unnecessary to provide a provision in the standards for scrubber downtime.

Comment: One commenter asked if the affected facility is allowed to continue operating during continuous emission monitor malfunctions.

Response: An affected facility may continue to operate during continuous emission monitor malfunctions. However, as prescribed under 40 CFR 60.7(b) and (c)(3) of the General Provisions, the owner or operator shall maintain records of any periods during which a continuous monitoring system or monitoring device is inoperative, and the quarterly (or semiannual, if no exceedances have occurred during a particular quarter) compliance report shall include the date and time identifying each period during which the continuous monitoring system was inoperative, except for zero and span checks, and the nature of the system repairs or adjustments. It should be noted that failure to properly operate or maintain a continuous monitoring system would be considered as a violation rather than a malfunction (see 40 CFR 60.105 and 60.13).

Changing Compliance Method

Comment: Four commenters wrote that the 90-day notification prior to changing from one method of compliance to another should be modified to allow for an immediate change in emergency cases. Two of these commenters stated that no prior notification should be required provided that records appropriate to demonstrate compliance are maintained, and EPA is notified in writing of the change in compliance method.

Response: The regulation now requires that daily compliance determinations be made for all of the standards. Thus, EPA agrees with the commenters and has removed the requirements for prior notification provided that records appropriate to demonstrate compliance with the regulation are maintained. Additionally, a quarterly report with notification of the change must be submitted to the Administrator in the quarter following such a change even if no violations of a standard have occurred.

Modification/Reconstruction

Comment: One commenter stated that routine maintenance items should not be included in determining if a facility is modified or reconstructed because many of these items are frequently repaired without a resultant emissions increase. Another commenter stated that the affected facility should be redefined to include the fractionator and gas plant because rebuilding work in a single turnaround of an affected facility can commonly exceed 50 percent of the cost of a new unit. Also, the cost of rebuilding work on an affected facility can represent 20 percent of the new unit cost of an entire FCCU. To a refiner, an entire FCCU includes the fractionator and gas plant. These two units usually do not require any significant rebuilding.

Response: The reconstruction provision (40 CFR 60.15) cannot be invoked until 50 percent of the "fixed capital cost" to replace the existing facility with a comparable, new facility has been incurred by the owner or operator. The period in which the FCCU is shut down for maintenance and repair is called a turnaround. During a typical turnaround, regenerator refractory linings, cyclones, and other internal components are inspected and repaired or replaced as required. Based on information from the refining industry, regenerator components have a useful life ranging from 10 years to an indefinite period of time when they are repaired and maintained during turnarounds. The costs used in the summation to determine the total fixed capital cost incurred are those costs incurred to replace components. The costs incurred during maintenance and repair of the existing facility's components (assuming components are not replaced) are not included in the summation of expended fixed capital costs. Thus, there is no need to specifically exempt routine maintenance items from the reconstruction provisions.

The EPA disagrees with the comment that rebuilding work typically can exceed 50 percent of the capital cost of a new affected facility. The EPA examined data from section 114 letter responses, trip reports, literature articles, and companies who provide turnaround services to refineries. These data led EPA to conclude that routine rebuilding is less than 50 percent of the cost of a new affected facility. As discussed above, this is because regenerator components are typically repaired rather than replaced during a turnaround. If several major changes, such as increasing the FCCU capacity, changing to a heavier or more sour crude oil, or converting to HTR, occur during a single turnaround, the cost may approach or surpass the 50 percent point. Such major changes are not, however, a typical turnaround occurrence. The possibility that rebuilding work may exceed 50 percent of the cost of a new unit is an inadequate reason to broaden the definition of the affected facility (i.e., restrict invoking the reconstruction provision).

The modification provision (40 CFR 60.14) is invoked when any physical or operational change to an existing facility results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies. As the actions described by the commenter do not increase emissions, the modification provision would not be invoked. In addition, paragraph (f) of § 60.14 specifies that routine maintenance, repair, and replacement by themselves, shall not be considered modifications.

Comment: One commenter stated that a 1-calendar year or a 12-month "inclusion period" for reconstruction is more logical than a 2-year period. A refiner with a normal 2-year turnaround could be affected by the reconstruction provisions of the standards if a shutdown began 1 or 2 months prematurely. A refiner would not install a sizeable process modification during a routine shutdown period due to the excessive downtime incurred.

Response: The EPA considered again the 2-year period and concluded that a 1-calendar year or a 12-month "inclusion period" for reconstruction is not more logical than a 2-year period for FCCU's. Information from industry and literature (see proposal BID, p. 5–3) indicates that the normal turnaround schedule for revamping FCCU regenerators is every 3 years (i.e., a maximum of one turnaround would occur during each 2-year period of operation). A process unit turnaround typically includes maintenance and repair items that do not qualify as fixed capital costs and therefore, a turnaround is not likely to be a "reconstruction." The Agency also does not expect that the 2-year period will alter decisions by an FCCU's owner or operator on when to replace equipment; that is, the FCCU owner or operator is not likely to prolong the useful life of the regenerator components with the intent of avoiding the NSPS. Therefore, for this particular NSPS, EPA believes that the 2-year period provides a reasonable, objective method of determining whether an owner or operator of an FCCU regenerator is actually "proposing" extensive component replacement, within the original intent of § 60.15.

Recordkeeping and Reporting

Comment: The OMB commented that quarterly reporting was too frequent, and that semiannual reporting would allow the Agency to obtain the necessary information.

Response: For FCCU's, EPA has concluded that quarterly reporting (or semiannual reporting if no exceedances have occurred during a particular quarter) is the appropriate reporting frequency for the following reasons. The major reason is that the reports contain direct compliance information rather than indicators of the source's performance. Therefore, enforcement action can be taken quickly because no further testing is necessary for documentation. The FCCU is one of several significant emission sources in petroleum refineries, so periods of excess emissions could have a significant impact on the environment. This is particularly true because refineries generally are located in clusters near industrial, urban, populated, nonattainment areas. Because the refinery generally does not save money by operating the control techniques correctly and the pollutants cannot be recovered for resale, there is little incentive for this source category to be self-regulated. Therefore, to ensure that sources are not out of compliance for long periods of time during which significant environmental impacts could occur, quarterly reporting is appropriate for quarters when facilities have had a period when the standard has been exceeded. In addition, the amount of data to be provided in these cases is reasonable. Sources complying with the proposed revised standard would need to supply only a semiannual negative declaration statement. Only noncompliant sources would be required to provide additional information in the quarterly compliance reports.

VIII. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the

BEST COPY AVAILABLE

contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

The effective date of this regulation is August 17, 1989. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities of which the construction or modification was commenced after the date of proposal (January 17, 1984).

As prescribed by section 111, the promulgation of these standards was preceded by the Administrator's determination that petroleum refineries contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. In accordance with section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that cost was carefully considered in determining BDT. The economic impact assessment is included in the BID for the proposed standards and the promulgated standards.

During the first 3 years that the proposed standards would be in effect, the public reporting burden for collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information is estimated to be 4,360 averaged annual hours. The estimated burden for a typical respondent (including initial reports) ranges from about 660 hours per year for complying with the fuel sulfur standard to about 980 hours per year for complying with the standard for add-on controls. The resources required by EPA and State and local agencies to process the reports and to maintain records for the first 3 years would be about 0.15 person-years per year.

Information collection requirements associated with this regulation have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060-0051.

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." The fifth-year annualized costs of the standards are expected to be $45.8 million for the projected 17 newly constructed, modified, and reconstructed FCCU regenerators that could be affected by the standards during the first 5 years after the effective date of the standards. The economic analysis shows that the standards would not have a significant impact on petroleum refineries if all FCCU owners or operators subject to these standards used scrubbers. The standards would have a small effect on profitability (a profit decrease of 0.6 percent). The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Petroleum refineries, Reporting and recordkeeping requirements.

Dated: July 27, 1989.

William K. Reilly,

Administrator.

40 CFR part 60 is amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7601.

2. The table of contents for subpart J is revised to read as follows:

Subpart J—Standards of Performance for Petroleum Refineries

Sec.
60.100 Applicability, designation of affected facility, and reconstruction.
60.101 Definitions.
60.102 Standard for particulate matter.
60.103 Standard for carbon monoxide.
60.104 Standards for sulfur oxides.
60.105 Monitoring of emissions and operations.
60.106 Test methods and procedures.
60.107 Reporting and recordkeeping requirements.
60.108 Performance test and compliance provisions.
60.109 Delegation of authority.

3. Section 60.17 of subpart A—General Provisions is amended by adding paragraphs (a) (56), (57), (58), and (59) to read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(a) * * *

(56) ASTM D129-64 (Reapproved 1978), Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), IBR approved August 17, 1989, for § 60.106(h)(2).

(57) ASTM D1552-83, Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method), IBR approved August 17, 1989, for § 60.106(h)(2).

(58) ASTM D2622-87, Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry, IBR approved August 17, 1989, for § 60.106(h)(2).

(59) ASTM D1266-87, Standard Test Method for Sulfur in Petroleum Products (Lamp Method), IBR approved August 17, 1989, for § 60.106(h)(2).

* * * * *

4. Subpart J, § 60.100 is amended by revising the section heading and paragraph (b) and by adding paragraphs (c), (d), and (e) to read as follows:

§ 60.100 Applicability, designation of affected facility, and reconstruction.

* * * * *

(b) Any fluid catalytic cracking unit catalyst regenerator or fuel gas combustion device under paragraph (a) of this section which commences construction or modification after June 11, 1973, or any Claus sulfur recovery plant under paragraph (a) of this section which commences construction or modification after October 4, 1976, is subject to the requirements of this subpart except as provided under paragraphs (c) and (d) of this section.

(c) Any fluid catalytic cracking unit catalyst regenerator under paragraph (b) of this section which commences construction or modification on or before January 17, 1984, is exempted from § 60.104(b).

(d) Any fluid catalytic cracking unit in which a contact material reacts with petroleum derivatives to improve feedstock quality and in which the contact material is regenerated by burning off coke and/or other deposits and that commences construction or modification on or before January 17, 1984, is exempt from this subpart.

(e) For purposes of this subpart, under § 60.15, the "fixed capital cost of the new components" includes the fixed capital cost of all depreciable components which are or will be replaced pursuant to all continuous programs of component replacement which are commenced within any 2-year period following January 17, 1984. For purposes of this paragraph, "commenced" means that an owner or operator has undertaken a continuous program of component replacement or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of component replacement.

5. Section 60.101 is amended by adding paragraphs (m), (n), (o), (p), and (q) to read as follows:

§ 60.101 Definitions.

* * * * *

(m) *Fluid catalytic cracking unit* means a refinery process unit in which petroleum derivatives are continuously charged; hydrocarbon molecules in the presence of a catalyst suspended in a fluidized bed are fractured into smaller molecules, or react with a contact material suspended in a fluidized bed to improve feedstock quality for additional processing; and the catalyst or contact material is continuously regenerated by burning off coke and other deposits. The unit includes the riser, reactor, regenerator, air blowers, spent catalyst or contact material stripper, catalyst or contact material recovery equipment, and regenerator equipment for controlling air pollutant emissions and for heat recovery.

(n) *Fluid catalytic cracking unit catalyst regenerator* means one or more regenerators (multiple regenerators) which comprise that portion of the fluid catalytic cracking unit in which coke burn-off and catalyst or contact material regeneration occurs, and includes the regenerator combustion air blower(s).

(o) *Fresh feed* means any petroleum derivative feedstock stream charged directly into the riser or reactor of a fluid catalytic cracking unit except for petroleum derivatives recycled within the fluid catalytic cracking unit, fractionator, or gas recovery unit.

(p) *Contact material* means any substance formulated to remove metals, sulfur, nitrogen, or any other contaminant from petroleum derivatives.

(q) *Valid day* means a 24-hour period in which at least 18 valid hours of data are obtained. A "valid hour" is one in which at least 2 valid data points are obtained.

6. Section 60.102 is amended by adding introductory text to the section and revising the introductory text of paragraph (a) to read as follows:

§ 60.102 Standard for particulate matter.

Each owner or operator of any fluid catalytic cracking unit catalyst regenerator that is subject to the requirements of this subpart shall comply with the emission limitations set forth in this section on and after the date on which the initial performance test, required by § 60.8, is completed, but not later than 60 days after achieving the maximum production rate at which the fluid catalytic cracking unit catalyst regenerator will be operated, or 180 days after initial startup, whichever comes first.

(a) No owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from any fluid catalytic cracking unit catalyst regenerator:

* * * * *

7. Section 60.103 is revised to read as follows:

§ 60.103 Standard for carbon monoxide.

Each owner or operator of any fluid catalytic cracking unit catalyst regenerator that is subject to the requirements of this subpart shall comply with the emission limitations set forth in this section on and after the date on which the initial performance test, required by § 60.8, is completed, but not later than 60 days after achieving the maximum production rate at which the fluid catalytic cracking unit catalyst regenerator will be operated, or 180 days after initial startup, whichever comes first.

(a) No owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from any fluid catalytic cracking unit catalyst regenerator any gases which contain carbon monoxide in excess of 0.050 percent by volume.

8. Section 60.104 is amended by revising the section heading, adding introductory text to the section, revising the introductory text of paragraph (a), and adding paragraphs (b), (c), and (d) to read as follows:

§ 60.104 Standards for sulfur oxides.

Each owner or operator that is subject to the requirements of this subpart shall comply with the emission limitations set forth in this section on and after the date on which the initial performance test, required by § 60.8, is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after initial startup, whichever comes first.

(a) No owner or operator subject to the provisions of this subpart shall:

* * * * *

(b) Each owner or operator that is subject to the provisions of this subpart shall comply with one of the following conditions for each affected fluid catalytic cracking unit catalyst regenerator:

(1) With an add-on control device, reduce sulfur dioxide emissions to the atmosphere by 90 percent or maintain sulfur dioxide emissions to the atmosphere less than or equal to 50 ppm by volume (vppm), whichever is less stringent; or

(2) Without the use of an add-on control device, maintain sulfur oxides emissions calculated as sulfur dioxide to the atmosphere less than or equal to 9.8 kg/1,000 kg coke burn-off; or

(3) Process in the fluid catalytic cracking unit fresh feed that has a total sulfur content no greater than 0.30 percent by weight.

(c) Compliance with paragraph (b)(1), (b)(2), or (b)(3) of this section is determined daily on a 7-day rolling average basis using the appropriate procedures outlined in § 60.106.

(d) A minimum of 22 valid days of data shall be obtained every 30 rolling successive calendar days when complying with paragraph (b)(1) of this section.

9. Section 60.105 is amended by revising the section heading, revising the introductory text of paragraph (a); adding and reserving paragraph (a)(7), and adding paragraphs (a)(8), (a)(9), (a)(10), (a)(11), (a)(12), (a)(13), and (a)(14); revising paragraph (c); and removing paragraph (e)(4) to read as follows:

§ 60.105 Monitoring of emissions and operations.

(a) Continuous monitoring systems shall be installed, calibrated, maintained, and operated by the owner or operator subject to the provisions of this subpart as follows:

* * * * *

(7) [Reserved]

(8) An instrument for continuously monitoring and recording concentrations of sulfur dioxide in the gases at both the inlet and outlet of the sulfur dioxide control device from any fluid catalytic cracking unit catalyst regenerator for which the owner or operator seeks to comply with § 60.104(b)(1). The span value of the inlet monitor shall be set at 125 percent of the maximum estimated hourly potential sulfur dioxide emission concentration entering the control device, and the span value of the outlet monitor shall be set at 50 percent of the maximum estimated hourly potential sulfur dioxide emission concentration entering the control device.

(9) An instrument for continuously monitoring and recording concentrations of sulfur dioxide in the gases discharged into the atmosphere from any fluid catalytic cracking unit catalyst regenerator for which the owner or operator seeks to comply specifically with the 50 vppm emission limit under § 60.104(b)(1). The span value of the monitor shall be set at 50 percent of the maximum hourly potential sulfur dioxide emission concentration entering the control device.

(10) An instrument for continuously monitoring and recording concentrations of oxygen (O_2) in the gases at both the inlet and outlet of the sulfur dioxide control device (or the outlet only if specifically complying with the 50 vppm standard) from any fluid catalytic cracking unit catalyst regenerator for which the owner or operator has elected to comply with § 60.104(b)(1). The span of this continuous monitoring system shall be set at 10 percent.

(11) The continuous monitoring systems under paragraphs (a)(8), (a)(9), and (a)(10) of this section are operated and data recorded during all periods of operation of the affected facility including periods of startup, shutdown, or malfunction, except for continuous monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments.

(12) The owner or operator shall follow appendix F, Procedure 1, including quarterly accuracy determinations and daily calibration drift tests, for the continuous monitoring systems under paragraphs (a)(8), (a)(9), and (a)(10) of this section.

(13) When seeking to comply with § 60.104(b)(1), when emission data are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks and zero and span adjustments, emission data will be obtained by using one of the following methods to provide emission data for a minimum of 18 hours per day in at least 22 out of 30 rolling successive calendar days.

(i) The reference methods as described in paragraph (a)(14) of this section;

(ii) A spare continuous monitoring system; or

(iii) Other monitoring systems as approved by the Administrator.

(14) Reference methods used to supplement continuous monitoring system data to meet the minimum data requirements in paragraph § 60.104(d) will be used as described below or as otherwise approved by the Administrator.

(i) Reference Methods 6, 6B, or 8 are used. The sampling location(s) are the same as those specified for the continuous emission monitoring system.

(ii) For Method 6, the minimum sampling time is 20 minutes and the minimum sampling volume is 0.02 dscm (0.71 dscf) for each sample. Samples are taken at approximately 60-minute intervals. Each sample represents a 1-hour average. A minimum of 18 valid samples is required to obtain one valid day of data.

(iii) For Method 6B, collection of a sample representing a minimum of 18 hours is required to obtain one valid day of data.

(iv) For Method 8, the procedures as outlined in § 60.106. The equivalent of 18 hours of sampling is required to obtain one valid day of data.

* * * * *

(c) The average coke burn-off rate (thousands of kilograms per hour) and hours of operation shall be recorded daily for any fluid catalytic cracking unit catalyst regenerator subject to § 60.102, § 60.103, or § 60.104(b)(2).

* * * * *

10. Section 60.106 is amended by revising the units in the definition of R_c in paragraph (a)(7) and adding paragraphs (e), (f), (g), and (h) to read as follows:

§ 60.106 Test methods and procedures.

(a) * * *

(7) * * *

R_c = coke burn-off rate, kg/hr (English units: 1000 lb/hr).

* * * * *

(e) Each performance test conducted for the purpose of determining compliance under § 60.104(b) shall consist of all testing performed over a 7-day period using the applicable test methods and procedures specified in this section. To determine compliance, the arithmetic mean of the results of all the tests shall be compared with the applicable standard.

(f) For the purpose of determining compliance with § 60.104(b)(1), the following calculation procedures shall be used:

(1) Calculate each 1-hour average concentration (dry, zero percent oxygen, vppm) of sulfur dioxide at both the inlet and the outlet to the add-on control device as specified in § 60.13(h). These calculations are made using the emission data collected under § 60.105(a).

(2) Calculate a 7-day average (arithmetic mean) concentration of sulfur dioxide for the inlet and for the outlet to the add-on control device using all of the 1-hour average concentration values obtained during seven successive 24-hour periods.

(3) Calculate the 7-day average percent reduction using the following equation:

$$R_{SO_2} = 100(C_{SO_2(i)} - C_{SO_2(o)})/C_{SO_2(i)}$$

where:

R_{SO_2} = 7-day average sulfur dioxide emission reduction, percent

$C_{SO_2(i)}$ = sulfur dioxide emission concentration determined in § 60.106(f)(2) at the inlet to the add-on control device, vppm

$C_{SO_2(o)}$ = sulfur dioxide emission concentration determined in § 60.106(f)(2) at the outlet to the add-on control device, vppm

100 = conversion factor, decimal to percent

(4) Outlet concentrations of sulfur dioxide from the add-on control device for compliance with the 50 vppm standard, reported on a dry, O_2-free basis, shall be calculated using the procedures outlined in § 60.106(f) (1) and (2) above, but for the outlet monitor only.

(5) If supplemental sampling data are used for determining the 7-day averages under paragraph (f) of this section and such data are not hourly averages, then the value obtained for each supplemental sample shall be assumed to represent the hourly average for each hour over which the sample was obtained.

(6) For the purpose of adjusting pollutant concentrations to zero percent oxygen, the following equation shall be used:

$$C_{adj} = C_{meas}(20.9_c/(20.9 - \%O_d))$$

where:

C_{adj} = pollutant concentration adjusted to zero percent oxygen, ppm or g/dscm

C_{meas} = pollutant concentration measured on a dry basis, ppm or g/dscm

20.9_c = 20.9 percent oxygen—0.0 percent oxygen (defined oxygen correction basis), percent

20.9 = oxygen concentration in air, percent

$\%O_d$ = oxygen concentration measured on a dry basis, percent

(g) For the purpose of determining compliance with § 60.104(b)(2), the following reference methods and calculation procedures shall be used except as provided in paragraph (g)(12) of this section:

(1) One 3-hour test shall be performed each day.

(2) For gases released to the atmosphere from the fluid catalytic cracking unit catalyst regenerator:

(i) Method 8 as modified in § 60.106(g)(3) for the concentration of sulfur oxides calculated as sulfur dioxide and moisture content,

(ii) Method 1 for sample and velocity traverses,

(iii) Method 2 calculation procedures (data obtained from Methods 3 and 8) for velocity and volumetric flow rate, and

(iv) Method 3 for gas analysis.

(3) Method 8 shall be modified by the insertion of a heated glass fiber filter between the probe and first impinger. The probe liner and glass fiber filter temperature shall be maintained above 160°C (320°F). The isopropanol impinger shall be eliminated. Sample recovery procedures described in Method 8 for container No. 1 shall be eliminated. The heated glass fiber filter also shall be excluded; however, rinsing of all connecting glassware after the heated glass fiber filter shall be retained and included in container No. 2. Sampled volume shall be at least 1 dscm.

(4) For Method 3, the integrated sampling technique shall be used.

(5) Sampling time for each run shall be at least 3 hours.

(6) All testing shall be performed at the same location. Where the gases discharged by the fluid catalytic cracking unit catalyst regenerator pass through an incinerator-waste heat boiler in which auxiliary or supplemental gaseous, liquid, or solid fossil fuel is burned, testing shall be conducted at a point between the regenerator outlet and the incinerator-waste heat boiler. An alternative sampling location after the waste heat boiler may be used if alternative coke burn-off rate equations, and, if requested, auxiliary/supplemental fuel SO_2 credits, have been submitted to and approved by the Administrator prior to sampling.

(7) Coke burn-off rate shall be determined using the procedures specified under paragraph (a)(4) of this section, unless paragraph (g)(6) of this section applies.

(8) Calculate the concentration of sulfur oxides as sulfur dioxide using equation 8-3 in Section 6.5 of Method 8 to calculate and report the total concentration of sulfur oxides as sulfur dioxide (C_{SO_2}).

(9) Sulfur oxides emission rate calculated as sulfur dioxide shall be determined for each test run by the following equation:

$$E_{SO_2} = C_{SO_2} Q_{sd}/1{,}000$$

where:

E_{SO_2} = sulfur oxides emission rate calculated as sulfur dioxide, kg/hr

C_{SO_2} = sulfur oxides emission concentration calculated as sulfur dioxide, g/dscm

Q_{sd} = dry volumetric stack gas flow rate corrected to standard conditions, dscm/hr

1,000 = conversion factor, g to kg

(10) Sulfur oxides emissions calculated as sulfur dioxide per 1,000 kg coke burn-off in the fluid catalytic cracking unit catalyst regenerator shall be determined for each test run by the following equation:

$$R_{SO_2} = (E_{SO_2}/R_c)$$

where:

R_{SO_2} = sulfur oxides emissions calculated as sulfur dioxide, kg/1,000 kg coke burn-off

E_{SO_2} = sulfur oxides emission rate calculated as sulfur dioxide, kg/hr

R_c = coke burn-off rate, 1,000 kg/hr

(11) Calculate the 7-day average sulfur oxides emission rate as sulfur dioxide per 1,000 kg of coke burn-off by dividing the sum of the individual daily rates by the number of daily rates summed.

(12) An owner or operator may, upon approval by the Administrator, use an alternative method for determining compliance with § 60.104(b)(2), as provided in § 60.8(b). Any requests for approval must include data to demonstrate to the Administrator that the alternative method would produce results adequate for the determination of compliance.

(h) For the purpose of determining compliance with § 60.104(b)(3), the following analytical methods and calculation procedures shall be used:

(1) One fresh feed sample shall be collected once per 8-hour period.

(2) Fresh feed samples shall be analyzed separately by using any one of the following applicable analytical test methods: ASTM D129-64 (Reapproved 1978), ASTM D1552-83, ASTM D2622-87, or ASTM D1266-87. (These methods are incorporated by reference: see § 60.17.) The applicable range of some of these ASTM methods is not adequate to measure the levels of sulfur in some fresh feed samples. Dilution of samples prior to analysis with verification of the dilution ratio is acceptable upon prior approval of the Administrator.

(3) If a fresh feed sample cannot be collected at a single location, then the fresh feed sulfur content shall be determined as follows:

(i) Individual samples shall be collected once per 8-hour period for each separate fresh feed stream charged directly into the riser or reactor of the fluid catalytic cracking unit. For each sample location the fresh feed volumetric flow rate at the time of collecting the fresh feed sample shall be measured and recorded. The same method for measuring volumetric flow rate shall be used at all locations.

(ii) Each fresh feed sample shall be analyzed separately using the methods specified under paragraph (h)(2) of this section.

(iii) Fresh feed sulfur content shall be calculated for each 8-hour period using the following equation:

$$S_f = \sum_{i=1}^{n} \frac{S_i Q_i}{Q_f}$$

where:

S_f = fresh feed sulfur content expressed in percent by weight of fresh feed.

n = number of separate fresh feed streams charged directly to the riser or reactor of the fluid catalytic cracking unit.

Q_f = total volumetric flow rate of fresh feed charged to the fluid catalytic cracking unit.

S_i = fresh feed sulfur content expressed in percent by weight of fresh feed for the "ith" sampling location.

Q_i = volumetric flow rate of fresh feed stream for the "ith" sampling location.

(4) Calculate a 7-day average (arithmetic mean) sulfur content of the fresh feed using all of the fresh feed sulfur content values obtained during seven successive 24-hour periods.

11. Section 60.107 is added to subpart J to read as follows:

§ 60.107 Reporting and recordkeeping requirements.

(a) Each owner or operator subject to § 60.104(b) shall notify the Administrator of the specific provisions of § 60.104(b) with which the owner or operator seeks to comply. Notification shall be submitted with the notification of initial startup required by § 60.7(a)(3). If an owner or operator elects at a later date to comply with an alternative provision of § 60.104(b), then the Administrator shall be notified by the

owner or operator in the quarterly (or semiannual) report described in paragraphs (c) and (d) of this section for the quarter during which the change occurred.

(b) Each owner or operator subject to § 60.104(b) shall record and maintain the following information:

(1) If subject to § 60.104(b)(1),

(i) All data and calibrations from continuous monitoring systems located at the inlet and outlet to the control device, including the results of the daily drift tests and quarterly accuracy assessments required under appendix F, Procedure 1;

(ii) Measurements obtained by supplemental sampling (refer to § 60.105(a)(13) and (a)(14)) for meeting minimum data requirements; and

(iii) The written procedures for the quality control program required by appendix F, Procedure 1.

(2) If subject to § 60.104(b)(2), measurements obtained in the daily Method 8 testing, or those obtained by alternative measurement methods, if § 60.106(g)(12) applies.

(3) If subject to § 60.104(b)(3), data obtained from the daily feed sulfur tests.

(4) Each 7-day rolling average compliance determination.

(c) Each owner or operator subject to § 60.104(b) shall submit a report each quarter except as provided by paragraph (d) of this section. The following information shall be contained in each quarterly report:

(1) Any 7-day period during which:

(i) The average percent reduction and average concentration of sulfur dioxide on a dry, O_2-free basis in the gases discharged to the atmosphere from any fluid cracking unit catalyst regenerator for which the owner or operator seeks to comply with § 60.104(b)(1) is below 90 percent and above 50 vppm, as measured by the continuous monitoring system prescribed under § 60.105(a)(8), or above 50 vppm, as measured by the outlet continuous monitoring system prescribed under § 60.105(a)(9). The average percent reduction and average sulfur dioxide concentration shall be determined using the procedures specified under § 60.106(f);

(ii) The average emission rate of sulfur dioxide in the gases discharged to the atmosphere from any fluid catalytic cracking unit catalyst regenerator for which the owner or operator seeks to comply with § 60.104(b)(2) exceeds 9.8 kg SO_2 per 1,000 kg coke burn-off, as measured by the daily testing prescribed under § 60.106(g). The average emission rate shall be determined using the procedures specified under § 60.106(g); and

(iii) The average sulfur content of the fresh feed for which the owner or operator seeks to comply with § 60.104(b)(3) exceeds 0.30 percent by weight. The fresh feed sulfur content, a 7-day rolling average, shall be determined using the procedures specified under § 60.106(h).

(2) Any 30-day period in which the minimum data requirements specified in § 60.104(d) are not obtained.

(3) For each 7-day period during which an exceedance has occurred as defined in paragraphs (c)(1)(i) through (c)(1)(iii) and (c)(2) of this section:

(i) The date that the exceedance occurred;

(ii) An explanation of the exceedance;

(iii) Whether the exceedance was concurrent with a startup, shutdown, or malfunction of the fluid catalytic cracking unit or control system; and

(iv) A description of the corrective action taken, if any.

(4) If subject to § 60.104(b)(1),

(i) The dates for which and brief explanations as to why fewer than 18 valid hours of data were obtained for the inlet continuous monitoring system;

(ii) The dates for which and brief explanations as to why fewer than 18 valid hours of data were obtained for the outlet continuous monitoring system;

(iii) Identification of times when hourly averages have been obtained based on manual sampling methods;

(iv) Identification of the times when the pollutant concentration exceeded full span of the continuous monitoring system; and

(v) Description of any modifications to the continuous monitoring system that could affect the ability of the continuous monitoring system to comply with Performance Specifications 2 or 3.

(vi) Results of daily drift tests and quarterly accuracy assessments as required under appendix F, Procedure 1.

(5) If subject to § 60.104(b)(2), for each day in which a Method 8 sample result was not obtained, the date for which and brief explanation as to why a Method 8 sample result was not obtained, for approval by the Administrator.

(6) If subject to § 60.104(b)(3), for each 8-hour shift in which a feed sulfur measurement was not obtained, the date for which and brief explanation as to why a feed sulfur measurement was not obtained, for approval by the Administrator.

(d) If no exceedances (as defined in paragraphs (c)(1)(i) through (c)(1)(iii) and (c)(2) of this section) occur in a quarter, and if the owner or operator has not changed the standard under § 60.104(b) under which compliance is obtained, then the owner or operator may submit a semiannual report in which a statement is included that states that no exceedances had occurred during the affected quarter(s). If the owner or operator elects to comply with an alternative provision of § 60.104(b), a quarterly report must be submitted for the quarter during which a change occurred.

(e) For any periods for which sulfur dioxide or oxides emissions data are not available, the owner or operator of the affected facility shall submit a signed statement indicating if any changes were made in operation of the emission control system during the period of data unavailability which could affect the ability of the system to meet the applicable emission limit. Operations of the control system and affected facility during periods of data unavailability are to be compared with operation of the control system and affected facility before and following the period of data unavailability.

(f) The owner or operator of the affected facility shall submit a signed statement certifying the accuracy and completeness of the information contained in the report.

(Approved by the Office of Management and Budget under control number 2060-0081)

12. Section 60.108 is added to subpart J to read as follows:

§ 60.108 Performance test and compliance provisions.

(a) Section 60.8(d) shall apply to the initial performance test specified under paragraph (c) of this section, but not to the daily performance tests required thereafter as specified in § 60.106(d). Section 60.8(f) does not apply when determining compliance with the standards specified under § 60.104(b). Performance tests conducted for the purpose of determining compliance under § 60.104(b) shall be conducted according to the applicable procedures specified under § 60.106.

(b) Owners or operators who seek to comply with § 60.104(b)(3) shall meet that standard at all times, including periods of startup, shutdown, and malfunctions.

(c) The initial performance test shall consist of the initial 7-day average calculated for compliance with § 60.104(b)(1), (b)(2), or (b)(3).

(d) After conducting the initial performance test prescribed under § 60.8, the owner or operator of a fluid catalytic cracking unit catalyst regenerator subject to § 60.104(b) shall conduct a performance test for each successive 24-hour period thereafter. The daily performance tests shall be conducted according to the appropriate procedures specified under § 60.106. In the event that a sample collected under § 60.106(g) or (h) is accidentally lost or conditions occur in which one of the samples must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances, beyond the owner or operators' control, compliance may be determined using available data for the 7-day period.

(e) Each owner or operator subject to § 60.104(b) who has demonstrated compliance with one of the provisions of § 60.104(b) but at a later date seeks to comply with another of the provisions of § 60.104(b) shall begin conducting daily performance tests as specified under paragraph (d) of this section immediately upon electing to become subject to one of the other provisions of § 60.104(b). The owner or operator shall furnish the Administrator a written notification of the change in a quarterly report that must be submitted for the quarter in which the change occurred.

13. Section 60.109 is added to subpart J to read as follows:

§ 60.109 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which shall not be delegated to States:

(1) Section 60.105(a)(13)(iii),

(2) Section 60.106(g)(12).

[FR Doc. 89-18599 Filed 8-16-89; 8:45 am]

BILLING CODE 6560-50-M

federal register

Thursday
August 17, 1989.

Part III

Environmental Protection Agency

40 CFR Part 792

Toxic Substances Control Act (TSCA); Good Laboratory Practice Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 792

[OPTS-46016A; FRL-3516-3]

RIN 2070-AB65

Toxic Substances Control Act (TSCA); Good Laboratory Practice Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing this final rule to amend the TSCA Good Laboratory Practice (GLP) standards to incorporate many of the changes made by the Food and Drug Administration (FDA) to its GLP regulations and to expand the scope of the TSCA GLP standards to apply to testing conducted in the field under TSCA. EPA is amending these regulations to ensure the quality and integrity of data generated from such studies.

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404. TDD: (202) 554-0551

SUPPLEMENTARY INFORMATION:

Following is an index to the remainder of this preamble:

I. Introduction
A. Legal Authority.
B. Background.
C. Consistency With FDA GLP Regulations.
D. Publication of the Complete Rule.
II. Summary of Comments and Responses
A. General Provisions: Definitions.
B. Organization and Personnel.
C. Facilities.
D. Equipment.
E. Testing Facilities Operation.
F. Test, Control, and Reference Substances.
G. Protocol For and Conduct of a Study.
H. Records and Reports.
III. Regulatory Requirements
A. Executive Order 12291.
B. Regulatory Flexibility Act.

I. Introduction

EPA is amending the TSCA Good Laboratory Practice standards (40 CFR part 792) to incorporate many of the changes made by FDA to its GLP regulations and to expand the scope of TSCA GLP standards.

Public reporting for this collection of information is estimated to be negligible, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20503.

A. Legal Authority

On November 29, 1983 (48 FR 53922), EPA promulgated the GLP standards under the authority of TSCA section 4 (90 Stat. 2006, 15 U.S.C. 2603). Section 4(a) of TSCA authorizes the EPA Administrator to require, by rule, that manufacturers (including importers) and processors of identified chemical substances and mixtures (chemicals) test such chemicals if certain findings are made. Section 4(b)(1) of TSCA specifies that each test rule shall include standards for the development of test data. These standards are defined in section 3(12) of TSCA to mean a prescription of—

(A) the—

(i) health and environmental effects, and

(ii) information relating to the toxicity, persistence, and other characteristics which affect health and the environment, for which test data for a chemical substance or mixture are to be developed and any analysis that is to be performed on such data, and

(B) to the extent necessary to assure that data respecting such effects and characteristics are reliable and adequate—

(i) the manner in which such data are to be developed,

(ii) the specification of any test protocol or methodology to be employed in the development of such data, and

(iii) such other requirements as are necessary to provide such assurance.

In summary, the specific authority to issue the GLP standards is provided by section 4(b)(1) of TSCA, which is further explained by the definitions in sections 3(12)(B)(i) and 3(12)(B)(iii).

In addition, EPA also requires sponsors to utilize these GLP standards when conducting testing under TSCA section 4 testing consent agreements and will include provisions to adhere to these GLP standards in those agreements (see 40 CFR 790.60(a)(7)). Also, it is EPA's policy that all data developed as a result of rules or orders under section 5 of TSCA should be in accordance with the GLP standards. If data developed under section 5 of TSCA are not generated in accordance with the GLP standards, EPA may elect to consider such data insufficient to evaluate the health effects, environmental effects, and fate of the chemical(s).

B. Background

EPA originally published TSCA GLP standards in the Federal Register of November 29, 1983 (48 FR 53922), which were codified as 40 CFR part 792. At the same time, EPA published GLP standards applicable to testing under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 48 FR 53963; 40 CFR part 160). These regulations were promulgated in response to investigations by EPA and FDA during the mid-1970s which revealed that some studies submitted to the Agencies had not been conducted in accordance with acceptable laboratory practices. Some studies had been conducted so poorly that the resulting data could not be relied upon in EPA's regulatory decision-making process. For instance, some studies had been submitted which did not adhere to specified protocols, were conducted by underqualified personnel and supervisors, or were not adequately monitored by study sponsors. In some cases, results were selectively reported, underreported, or fraudulently reported. In addition, it was discovered that some testing facilities displayed poor animal care procedures and inadequate record-keeping techniques. The TSCA GLP standards specify minimum practices and procedures which must be followed in order to ensure the quality and integrity of data submitted in accordance with TSCA section 4 requirements. The 1983 TSCA GLP standards also established a policy that persons should comply with the GLP standards when submitting data in response to rules and orders issued under section 5 of TSCA, and when submitting data to EPA voluntarily.

When EPA published its final TSCA and FIFRA GLP standards in the Federal Register of November 29, 1983, the Agency sought to harmonize the requirements and language with those regulations promulgated by the FDA in the Federal Register of December 22, 1978 (43 FR 60013), and codified as 21 CFR part 58. Differences between the two Agencies' current GLP regulations exist only to the extent necessary to reflect the Agencies' different statutory responsibilities under TSCA, FIFRA, and the Federal Food, Drug and Cosmetic Act (FFDCA). Similar to the FDA GLP regulations, the FIFRA and TSCA GLP regulations delineate standards for studies designed to determine the health effects of a test substance; however, the TSCA GLP standards also contain provisions related to environmental testing (i.e., ecological effects and chemical fate).

Compliance with EPA's GLP regulations has been monitored through a program of laboratory inspections and study audits coordinated between EPA and FDA. Under an Interagency Agreement originated in 1976, FDA carries out GLP inspections at laboratories which conduct health effects testing. EPA primarily performs GLP inspections for environmental laboratories and conducts data audits for health effects and environmental studies.

After a thorough review of its GLP regulations and compliance program, FDA concluded that some of the provisions of the GLPs needed to be clarified, amended, or deleted in order to reduce the regulatory burden on testing facilities. Accordingly, FDA revised its GLP regulations in the Federal Register of September 4, 1987 (52 FR 33768). These GLP standards are intended to simplify the regulations without compromising study integrity.

EPA agrees with FDA that many provisions of the GLP regulations can be streamlined without compromising the goals of the GLP standards. Therefore, EPA is amending the TSCA GLP standards to incorporate many of the changes made by FDA to its GLP regulations. In addition, EPA is expanding the scope of the TSCA GLP standards to cover testing wherever it is conducted (e.g., field testing). Elsewhere in this Federal Register, EPA is finalizing similar changes to the FIFRA GLP standards.

C. Consistency With FDA GLP Regulations

It is EPA's policy to minimize the regulatory burden on the public which might arise from conflicting requirements which could be promulgated under different regulatory authorities. In keeping with this policy, the final 1983 TSCA GLP standards, 40 CFR part 792, followed the format and, with few exceptions, the wording of FDA's final GLP regulations, 21 CFR part 58. Differences between the EPA and FDA GLP regulations were based upon varying needs and responsibilities under each Agency's regulatory statutes. This revision to the TSCA GLP standards follows this same policy by conforming to many of the changes FDA made to its GLP regulations, published in the Federal Register of September 4, 1987 (52 FR 33768). EPA has varied from FDA's revised GLP regulations only when necessary due to EPA's statutory responsibilities. The most significant differences between the EPA changes and the revised FDA GLP regulations are the scope of the testing and test systems affected.

As in the 1983 TSCA GLP standards, the revisions to the TSCA GLP standards vary from the FDA GLP regulations in that the TSCA GLP standards incorporate provisions for environmental testing (EPA is extending the FIFRA GLP standards to extend to environmental studies as well). Environmental studies include ecological effects and chemical fate studies. Ecological effects studies are those performed for development of information on non-human toxicity and potential ecological impact of chemicals and their degradation products. Chemical fate studies are studies performed to characterize physical, chemical, and persistence properties of a substance in order to evaluate the transport and transformation of the substance in the environment.

To ensure the quality and integrity of all data generated from environmental studies, the current TSCA GLP standards contain requirements within 40 CFR part 792, subpart L applicable to testing plants, microbial organisms, aquatic organisms, amphibians, reptiles, and birds, where appropriate.

These requirements include provisions for care, care facilities, and supply facilities for the various test systems used in environmental testing. As a means of simplifying the regulations, EPA is changing the requirements currently found within subpart L by merging them into subparts A through J of the TSCA GLP standards (40 CFR part 792, subparts A through J). Accordingly, § 792.43 Animal care facilities, § 792.45 Animal supply facilities, and § 792.90 Animal care, incorporate the provisions relating to the care of test systems, test system care facilities, and test system supply facilities from § 792.228 in subpart L of the 1983 GLP standards. The expanded sections are retitled in the revision as follows: § 792.43 Test system care facilities, § 792.45 Test system supply facilities, and § 792.90 Animal and other test system care. Further, in most instances, EPA is replacing the term "animal," used in the 1983 EPA and 1978 FDA GLP regulations, with the broader term "test system." Specifically, this change occurs in §§ 792.43, 792.45, 792.81, 792.90, and 792.120. These changes are further discussed in Unit II of this preamble.

EPA's TSCA GLP standards also vary from FDA's in their coverage of testing conducted in the field. To ensure the quality and integrity of data submitted to the Agency, EPA believes that GLP standards must apply whenever data collection occurs. Because many of the test data required by EPA are developed in the field, or more accurately in outdoor laboratories (ground water studies, air monitoring studies, degradation in soil, etc.), EPA is amending the GLP standards to include field testing within the scope of these regulations.

The remaining differences between the EPA and FDA GLP regulations are described in the preamble to this final rule and the preamble to the TSCA GLP standards, published in the Federal Register of November 29, 1983 (48 FR 53922). EPA has coordinated this final rule with FDA and has considered public comments received on the December 28, 1987 proposal (52 FR 48933).

D. Publication of the Complete Rule

The entire TSCA GLP rule is published in this notice to simplify interpretation and facilitate the use of this notice by the regulated community. The following lists the sections of 40 CFR part 792 that were changed from the 1983 rule:

Section changed	Changes
792.1	(a) and (c), revised.
792.3	"Batch," "Control substance," "Study," and "Test system," revised; "Test substance or mixture," removed; "Carrier," "Experimental start date," "Experimental termination date," "Reference substance," "Study completion date," "Study initiation date," "Test substance," and "Vehicle," added.
792.12	Introductory text, revised.
792.17	(a) and (c), revised.
792.29	(d), (e), and (f), revised.
792.31	(b), revised.
792.35	(a), (b) (1), and (3), revised; (e), removed.
792.41	Revised.
792.43	Revised.
792.45	Revised.
792.47	Revised.
792.49	Revised.
792.53	Removed.
792.61	Revised.
792.63	(b), revised.
792.81	(b) (1), (2), (3), (5), (6), (7), and (12) and (c), revised.
792.90	Revised.
Subpart F	Title revised.
792.105	Revised.
792.107	Revised.
792.113	Revised.
792.120	(a), revised.
792.130	(d) and (e), revised.
792.135	Added
792.185	(a) (4) and (5), and (c), revised.
792.190	(a) and (e), revised.
792.195	(c), revised; (f) added.
Subpart L	Removed.

II. Summary of Comments and Responses

EPA received 14 comment letters: 6 from manufacturers of products

regulated by EPA, 3 from associations, 4 from testing or consulting laboratories, and 1 from another government agency. The majority of the comments supported the proposed changes, although numerous suggestions were made for additional revisions to parts of the GLP regulations not subject to this rulemaking or modifications to the proposed changes. Comments that raised important policy questions, suggested modification to the essence of the proposed regulation, or required an individual response, are discussed below. Comments addressing changes to the GLP standards that were not proposed are not the subject of this rulemaking. However, all comments made have been placed in the public record.

A. General Provisions: Definitions

1. *Batch.* The definition of "batch" is expanded to include reference substances. This was an omission in the proposed rule that is corrected in the final rule to maintain consistency with the use of the term in § 792.105(a).

2. *Carrier—*i. *Comment:* The word "systems" should replace the word "organisms" in the definition of "carrier," to be consistent with the term "test system."

Response: EPA concurs with the suggestion. In order to be consistent with the definition of "test systems," the word is changed accordingly.

ii. *Comment:* EPA should revise the list in parentheses that follows the word "material" in the definition of "carrier" to make it all inclusive.

Response: EPA has decided to add the phrase "including but not limited to * * *", to indicate that the list provides examples and is not meant to be all inclusive.

3. *Control substance—Comment:* EPA should delete the phrase "for no-effect levels" in the definition of control substance. The definition as written is too narrow and excludes analytical chemistry (e.g., chemical fate, residue chemistry) operations where the term "control" has a meaning distinctly different from biological effects.

Response: Since the purpose of the analytical control is to eventually establish that none of the materials administered to the test system interfere with identification of the test substance and its degradate(s) and metabolite(s), EPA agrees that the terminology is too limiting and is replacing the phrase "for no-effect levels" with the phrase "for known chemical or biological measurements." The definition now reads: "Control substance means any chemical substance or mixture, or any other material other than a test substance, feed, or water, that is administered to the test system in the course of a study for the purpose of establishing a basis for comparison with the test substance for known chemical or biological measurements."

4. *Experimental start and termination dates—Comment:* These dates would be difficult to predict, especially for field studies, because they would be subject to natural or man-made conditions that cannot be controlled or anticipated. Since the dates would be subject to change, many protocol amendments would be required, creating an undue administrative burden.

Response: The experimental start and termination dates specified in the protocol are merely proposed dates. Therefore if the actual experimental start or termination date is different from the proposed dates no protocol amendment would be required.

5. *Reference substance—Comment:* If EPA intended the term "reference substance" to include analytical and calibration standards, then several other sections of the proposed rule which mention "reference substance," would also require the same types of records to be kept for analytical standards. This would constitute an excessive burden on management which would require maintaining various records that do not add any value to the study.

Response: The definition of reference substance is intended to include analytical reference standards. Therefore, EPA believes this change eliminates any ambiguity in the definition. EPA has modified the definition of "reference substance," as follows: "Reference substance means any chemical substance or mixture, analytical reference standard, or material other than a test substance, feed, or water, that is administered to or used in analyzing the test system in the course of a study for purposes of establishing a basis for comparison with the test substance for known chemical or biological measurements."

EPA disagrees that inclusion of analytical reference standards in this part constitutes an excessive documentation burden or adds no value to the study. Documentation which supports defining of analytical reference standards under this part should not require excess paperwork since common laboratory practices already require assurance of the validity of standards to make certain that the measurements are accurate.

6. *Study—*i. *Comment:* The proposed definition of study would imply that each determination such as stability, solubility, octanol water partition coefficient, volatility, persistence, and other data point determinations would be studies with concomitant requirements such as protocols and quality assurance unit (QAU) inspections.

Response: EPA intends that QAU inspections as listed in § 792.35 be conducted at intervals adequate to ensure the integrity of the study for each determination such as stability, solubility, octanol water partition coefficient, volatility, persistence, and other data point determinations. However, if done as part of a larger study, then these determinations are covered under the larger study's protocol or standard operating procedure (SOP). If they are submitted to EPA as a study unto itself, then they require their own protocol(s).

ii. *Comment:* An experiment such as product chemistry which does not involve a test system cannot be considered a "study" and therefore should not be covered by GLP standards.

Response: Studies designed to determine the physical or chemical characteristics of a test substance are included within the scope of these regulations. Therefore, EPA intends to include product chemistry experiments in the definition of "study." This change is consistent with the definition of the term "study" as it now appears, and as it appears in the FIFRA GLP standards at 40 CFR part 160. In the case of product chemistry experiments, the test substance itself may be the test system.

iii. *Comment:* The addition of the term "or in the environment" to the definition of "study" indicates that the change extends the proposed regulations to field studies. While it is necessary to ensure the validity of all data collected, the variety and special requirements of field research have not been addressed in the new rules.

Response: These regulations are intended to apply to all studies required to be submitted under TSCA, including those conducted in the field. EPA recognizes that field studies vary and have special requirements, but believes that the development of protocols and SOPs by the testing facility provides adequate flexibility in this respect.

iv. *Comment:* "Prospectively" should not be deleted from the definition of "study." If the essence of GLP standards requires a carefully planned study and the proposed rule is very strict about documentation that must be completed prior to the experimental start date, how can the GLP standards also apply to studies that were generated without a protocol or advance planning, such as epidemiology?

Response: EPA disagrees with the comment. The term prospectively is deleted because EPA wishes all studies, including epidemiological studies where past exposure to a study population is determined or estimated retrospectively, to be performed under GLP standards. EPA recognizes that in such studies data used may not have been generated in conformance with FIFRA GLP standards. However, it is EPA's position that the study itself can be conducted and submitted to EPA in accordance with the GLP standards. Retrospective aspects of such studies that are not performed according to GLP standards, for example, test system treatment, should be identified in the compliance statement submitted with the study report.

In addition, the types of studies potentially not covered by these regulations were expanded in the definition to include experiments involving test methods.

7. *Test system—Comment:* What constitutes the "test system" in tests of product chemistry studies?

Response: The definition of "test system" includes the statement that it is "* * * any * * * chemical or physical matrix * * *," including subparts thereof that are treated with the test, control, or reference substance and also appropriate components of the system that are not treated. Therefore, in the case of product chemistry, the test system may be the test substance itself.

EPA is including the term "reference," which was inadvertently omitted from the definition as it appeared in the proposed rule, in order to remain consistent. In addition, EPA is replacing "e.g." in the parenthetical by adding "including but not limited to" in order to clarify that it is not EPA's intent for the list to be all encompassing.

8. *Vehicle—Comment:* The definition of "vehicle" serves to clarify the GLP standards, but there has been no confusion based on the current standards and this change is contrary to EPA's stated objective of being consistent with FDA's GLP regulations.

Response: EPA believes that clarification is needed. The EPA GLP standards cover a larger number of types of studies and the need for clarification of the meaning of potentially ambiguous terms is greater.

B. Organization and Personnel

1. *Testing Facility Management—Comment:* The "master schedule" should not be considered "raw data" as was indicated in the preamble (52 FR 48936) to the proposed rule.

Response: EPA deleted the requirement that the replacement of a study director must be documented as "raw data" in order to conform to the revised FDA GLP regulations. This is because replacement of the study director must be reflected on the master schedule sheet, which is a study record that must be retained.

In addition, the term "reference," which was inadvertently omitted in the proposed rule, has been added to this section.

2. *Quality Assurance Unit—*i. *Comment:* A QAU that is entirely separate from and independent of the personnel engaged in the conduct of the study creates an unjustified financial burden on some facilities. In some cases it would be impossible to establish a completely independent QAU with qualified personnel.

Response: As stated in the proposed rule (52 FR 48933), EPA does not require the QAU to be a fixed, permanently staffed unit whose only functions are to monitor the quality of a study. EPA is only concerned that there be a distinct separation of duties between those personnel involved with the conduct or direction of a study and those personnel performing quality assurance on the same study. Therefore, § 792.35(a) prohibits personnel from performing quality assurance activities on their own study. The rules allow a study director for a particular study to serve as a part of the QAU or as the QAU for a different study. FDA noted (52 FR 33771) that it was aware that many small laboratories could not afford the operation of a permanently staffed QAU. EPA would like to point out that in those situations where there are different individuals performing the quality assurance functions for different studies, each individual is required to maintain that portion of the master schedule sheet which relates to the study being monitored. For this reason, EPA agrees with FDA's conclusion that the separation of functions on a study-by-study basis, as permitted in the existing and revised regulations, would provide effective quality assurance. In view of the potential gain to management, to sponsors, and to EPA, through the added assurance of well-conducted studies, the increased costs are thereby justified. EPA believes that its intent is more clearly indicated by the changes now being made.

ii. *Comment:* Laboratory management should have the discretion to determine who enters the data into the master schedule, as long as the required information is listed.

Response: EPA believes that management retains such discretion since it is involved in determining the composition of the QAU and it provides an adequate number of such personnel (§§ 792.31 (c) and (e)). The QAU is distinguished by training that ensures that QAU functions are properly conducted. As stated above, study personnel may belong to the QAU, as long as they are not performing the QAU functions associated with studies in which they are involved.

iii. *Comment:* The requirement for inspection of each study under § 792.35(b)(3), regardless of duration, is excessive for the quality assurance needed to address study integrity, especially where studies are performed by highly standardized procedures. The repetitive inspection of these types of studies would consume large amounts of time for both the study personnel and QAU staff. Auditing each study is not necessary to ensure the work is conducted in compliance with the regulations. Random sampling procedures should be allowed in selecting studies and phases of studies to inspect to decrease the work load and resource requirements of the QAU.

Response: EPA does not believe that a random inspection program would be an appropriate method of evaluating a study. Generally, random sampling provides an adequate means of quality control where analysis involves repetition or identical procedures. However, any assumption that the conduct of one phase of one study would be representative of another would be invalidated by the differences among study personnel and the operations they conduct. Furthermore, this requirement does not apply to all routine studies. Section 792.35(b) is among the exclusions for chemical and physical characterization studies as listed in § 792.135(b).

In conformance with the revised FDA GLP regulations (52 FR 33780), EPA modified the requirements of § 792.35(b)(3) to provide for inspections of a study on a schedule adequate to ensure the integrity of the study. The changes to this section will allow the QAU the necessary latitude to adjust its monitoring activities to meet the individual problems of each study. However, each study, no matter how short, must be inspected at least once while in progress. EPA expects that by allowing the QAU flexibility in designing a reasonable inspection schedule, the goal of ensuring the quality of the study can be best achieved.

iv. *Comment:* EPA indicates in the preamble to the proposed rule (§ 792.35(e), 52 FR 48936) that all QAU records will now be routinely available to inspectors. Existing GLP standards

treat certain QAU records as confidential, and explicitly state that the only QAU records to be reviewed by EPA auditors would be the master schedule (e.g., the inspection dates, study inspected, the phase or segment of the study inspected, and the name of the individual performing the inspection). If QAU records for findings and corrective action are available on an auditor's request, QAUs would lose their effectiveness.

Response: EPA shares the concerns of the commenters that access to all parts of a QAU inspection would weaken the inspection system, and recognizes the need to maintain a degree of confidentiality. Therefore, records of findings and problems, as well as records of corrective action recommended and taken, are exempt from routine EPA inspections, except under special circumstances as indicated in § 792.15. However, EPA maintains that all other reports and records must be easily accessible and made available to EPA and FDA inspectors when requested as indicated in § 792.35(c).

C. Facilities

1. *General—Comment:* Outdoor testing facilities should not be under GLP standards since: (a) Outdoor test facilities will be conducting studies according to approved protocols; (b) ensuring suitability is highly subjective based on the diverse number of possible locations; (c) there is a concomitant lack of clear standards for determining suitability of locations.

Despite best efforts, the choice could always be subject to criticism and even criminal liability based on a good faith compliance statement indicating GLP standards had been followed. Most outdoor testing is done to mimic normal environmental conditions which are specific for the test substance and use being proposed. Therefore, the determination of whether the size, construction or location of a facility is suitable for a study is a technical issue, and is not within the scope of the GLP regulation and would be considered in the experimental design of the protocol.

Response: In cases where an EPA-approved protocol establishes test locations, that protocol would satisfy GLP requirements. EPA considers any site to be the testing facility wherever testing is undertaken to generate data required to be submitted to EPA. The conditions required by the protocol are not necessarily conducive to artificial manipulation in the field, or to other outdoor testing facilities. Therefore, ensuring the suitability of the location of these types of testing facilities is both a valid and necessary part of protocols approved by EPA.

2. *Test system care facilities.* i. *Comment:* Instead of expanding the original document to fit all test systems, the old rules should be left as is, and a statement added to cover non-animal test systems.

Response: EPA disagrees with the comment and believes that specific changes of the old rule are necessary to avoid ambiguity concerning the meaning of non-animal test systems.

ii. *Comment:* Section 792.43(a)(2) and (b), (e), (f), (g), and (h) should be deleted because EPA has already stated that these GLP requirements will be applicable to all types of testing. It is not necessary to add the four new paragraphs detailing specific requirements of environmental conditions for aquatic organisms and plants.

Response: EPA believes that some test systems, e.g., aquatic, are unique to the extent that they require special treatment in the rules.

iii. *Comment:* The change in § 792.43(c) is appropriate but the current wording does not require separate disease handling facilities in every case. The proposed change has merit in clarifying the options available to laboratories and the change promotes harmony between EPA and FDA GLP regulations.

Response: EPA agrees with the comment. In § 792.43(c), EPA is deleting the requirement that separate areas be provided in all cases for the diagnosis, treatment, and control of test system diseases. Instead, a change is made so that separate areas are provided "as appropriate." This change is consistent with the September 4, 1987 revised FDA GLP regulations and the revised FIFRA GLP regulations.

EPA has made this change to allow laboratories the option of disposing of diseased test systems without also bearing the expense of maintaining separate areas in testing facilities for diagnosis, treatment, and control of disease. Additionally, EPA recognizes that the diagnosis and treatment requirements of § 792.43(c) may not be appropriate when dealing with such test systems as soil, plants, or microorganisms. However, if the decision is made not to dispose of the test system, then test system care facilities, as specified in § 792.43(c), must be provided.

3. *Test system supply facilities.* i. *Comment:* The addition of the two new paragraphs outlining plant and aquatic facilities to § 792.45(b) is unnecessary. These considerations are addressed in § 792.41 with the requirement that testing facilities be of suitable construction "to facilitate proper conduct of studies."

Response: EPA maintains that testing facilities as mentioned in § 792.41 and test system supply facilities as mentioned in § 792.45, are not the same and must be addressed separately.

ii. *Comment:* EPA should delete § 792.45(b) introductory text, (b)(1), (b)(2), and (c) because this information was adequately covered in § 792.45(a) and in § 792.43, and the facilities they refer to will be addressed in study protocol.

Response: EPA maintains that § 792.43 (test system care) is different from § 792.45 (test system supply) and must therefore be treated separately.

4. *Facilities for handling test, control, and reference substances—Comment:* Would it be necessary to provide separate sink facilities or separate rooms for mixing of the test, control, and reference substances or for adding water to tank sprayers?

Response: Separate areas are required for receipt, mixing and storage of test, control, and reference substances and their mixtures as necessary to prevent contamination or mixups. The same sink could be used for all work involving mixing provided that the procedures (standard operating procedures) used are adequate to prevent contamination and mixups. Separate areas for receipt and storage, mixing and storage of test, control, and reference substances as required in § 792.47(a) (1), (2) and (3) does not mandate the use of separate rooms. The areas could be in the same room provided there is adequate space and equipment to provide that contamination and mixup do not occur. This determination should be made on a case-by-case basis.

D. Equipment

Maintenance and calibration of equipment—Comment: It is better to designate in § 792.63(b) that repair and maintenance will be performed by "qualified personnel," than to require that a person be designated in the written SOP. The requirement for written SOPs in § 792.63(b) causes problems since at many laboratories the equipment used in conducting a study is shared by a number of individuals and the care and maintenance of the equipment is also shared. In the event of equipment failure, a number of laboratory personnel may be capable of effecting repair or correcting a problem, or in more serious equipment failures, a service representative of the manufacturer may be called. It is therefore difficult and very inefficient to

designate specific people to perform each specific maintenance and repair operation.

Response: The definition of "person" as it appears in § 792.3(h) is not limited to an individual scientist or technician, but includes an organizational subunit. Consequently, the SOP that designates the "person responsible" will be designating a subunit of the testing facility, which could be one or several individuals. This view is consistent with FDA's (52 FR 33774) interpretation and definition of "person." Where duties are delegated in the SOPs all contingencies may be addressed, including the contracting of service personnel.

E. Testing Facilities Operation

1. *Standard operating procedures—*i. *Comment:* Some of the examples of required SOPs provided in § 792.81(b) are not applicable to all test systems or study types. For example, "test room preparation" would not be appropriate when conducting field studies, and "necropsy of test system or postmortem examination of test systems," would not apply to studies using a chemical or physical matrix as the test system (sterile water, soil, agricultural fields). Furthermore, § 792.81(c) states that, "Each laboratory or other study area shall have immediately available manuals and SOPs relative to the laboratory or field procedures being performed."

Response: EPA agrees that the term "room" in § 792.81(b)(1) is inappropriate to many studies and is changing the word to "area" to clarify that field studies are included. EPA believes that § 792.81(b) should apply in all cases since the purpose of SOPs is to insure the quality and integrity of the data generated in the course of a study as stated in § 792.81(a). However, procedures that are not performed, such as necropsy in the case of field studies, do not require SOPs.

ii. *Comment:* Published literature (e.g., ASTM methods) should be acceptable in § 792.81(c) as an appropriate part of an SOP and not just as a supplement to a written SOP. The written SOP could incorporate the published literature into it by reference, without having to rewrite the entire procedure.

Response: EPA agrees that it would not be appropriate to rewrite published literature, hence the allowance for SOPs to use them as supplements. The SOPs are still needed to establish the relationship of the method to data collection procedures and needs in the laboratory. While the resulting SOP would still have to be written it would in effect be abbreviated in that all of the methodology referenced would not need to be rewritten.

2. *Animal and other test system care—*i. *Comment:* The evaluation of certain test systems according to "acceptable * * * scientific practice" creates some difficulty, particularly for plants, microorganisms, soil, and water, since such practices are not defined. "Acceptable" should be deleted regarding scientific practice and the requirement be only that a scientific basis be used in determining appropriateness for testing. In this way, testing facilities would not need to justify or prove their basis to be "acceptable" in ill-defined areas or those in flux.

Response: EPA agrees that the term "acceptable scientific practice" may not be definable when method developments are in flux. The term "acceptable" is retained, but the term "scientific practice" is changed to "scientific methods." This change preserves the EPA's intent that rigorous scientific methodology be used without implying that rigid practices be adhered to where they may not appropriately exist.

ii. *Comment:* Section 792.90(c) should be deleted since the effect of corrective treatment cannot be accounted for in test results.

Response: EPA believes that while the effects of corrective actions taken to isolate and treat disease or signs of disease may complicate interpretation of test results, so might the effects of the disease itself. This requirement for field studies is not inconsistent with its inclusion for laboratory, i.e. toxicology, studies.

iii. *Comment:* Markings which identify animals individually, rather than the group as required by § 792.90(d), are needed in many studies with warm blooded vertebrates in pens, or in the field. For example, precocial young of avian species should be marked individually.

Response: Specific criteria for marking of individuals to meet study requirements should be addressed separately in the protocol of the study. The requirement in § 792.90(d) addresses the need that test systems be adequately identified to prevent confounding with other test systems. Identification of precocial birds, for example, may be outlined in the study protocol.

iv. *Comment:* The proposed multispecies housing under § 792.90(e)(1) is redundant to proposed § 792.43(a)(1) and is inconsistent with EPA's desire to streamline GLP standards.

Response: EPA disagrees with the conclusion that these provisions are redundant. While § 792.43(a)(1) states that the facilities shall be sufficient to allow proper separation of species, § 792.90(e)(1) refers specifically to test system care within the facilities.

v. *Comment:* The requirement in § 792.90(j) for acclimatization of plants and animals should be deleted, since it is not defined and promotes confusion. Animal toxicology tests would be subject to isolation and separately to acclimatization. Organisms in environmental studies will have been isolated with their health status being evaluated per § 792.90(b) and acclimatization would have already been performed as part of the process. This part should be amended to indicate that test organisms should be acclimatized to all experimental conditions except the test substance.

Response: EPA believes that the term acclimatization has common meaning that is clear in the context of its usage in the rule. Acclimatization implies accustoming to experimental, i.e. environmental, conditions other than the actual introduction of the effect (e.g. test substance) to be measured in the experiment. If acclimatization is achieved during the process of isolation then it should be so stated in the protocol and does not require additional technical effort.

In addition, the term "organisms" in § 792.90(j) has been changed to "systems." This change is consistent with the intended expansion of GLP standards and was an inadvertent omission in the proposed rule.

F. Test, Control, and Reference Substances

1. *Test, control, and reference substance charcterization—*i. *Comment:* The term "purity" should be expanded to include radiochemical purity since further definition is needed to encompass metabolism/environmental fate studies conducted with radioactive materials.

Response: Radiochemical purity is covered under "other characteristics which appropriately define the test, control, or reference substance." It is not necessary to specifically list this characteristic.

ii. *Comment:* What level of analysis constitutes "appropriate" characterization? Is quality control batch analysis sufficient? Is it necessary to fully characterize technical materials to 0.1 percent?

Response: The details of what "appropriately" defines the test substance is a guideline or protocol

issue that cannot be specified in a generic document such as GLP standards. The appropriate level of characterization is largely dependent on the nature and purpose of the study.

iii. *Comment:* The characterization requirement is inappropriate since it conflicts with management responsibilities, is costly and adds unnecessary delays to the development process. It removes a necessary option of planning by objectives that responsible business management must retain. Delays and rescheduling, which may result if inadequate work is permitted by management, are real consequences that must be accepted by management, and management must decide whether or not to risk beginning an expesiment prior to doing characterization studies. Since the ultimate validity of a study will require that such data be obtained before the study is completed and as long as the sponsor can demonstrate that a study was conducted with authentic material, it is irrelevant when the characterization is completed. This proposal is not in concert with FDA GLPs. Many times prospective products fail to reach the marketplace due to unusual or insurmountable problems. Therefore, eliminating the need for characterization of product will reduce the costs of these products that fall out of the developmental process.

Response: Characterization is necessary to ensure integrity of studies. It is also necessary for EPA to have characterization data available for inspectional purposes during ongoing studies, and thus to have this information complete at the beginning of the study. Without characterization, it is not possible to know whether test, control, or reference substances from different batches that are used in a single study are in fact identical. Adequate testing for characterization normally occurs during the synthesis or production of test, control, and reference substances, and thus should already be available before the test begins. Consequently, having characterization data available should not impose an additional burden in most cases.

EPA does agree, however, that stability testing should be allowed to be performed concurrently with the study, to prevent unreasonable delays. The sponsor will bear the burden of a repeated test in the case that concurrent stability testing suggests that the study is not valid. For that reason, EPA is revising § 792.105(b) to allow for concomitant determination of stability.

iv. *Comment:* The last sentence of § 792.105(a), relating to methods and fabrication should be deleted since these may contain confidential business information (CBI).

Response: This is not a new requirement and has not posed any problems. Inspectors are cleared to handle CBI material; any sensitive information can be declared CBI and treated as such.

v. *Comment:* Many of the tests coming under the scope of the proposed GLP standards are in themselves stability studies. The proposal places industry in the quandary of conducting stability studies prior to a stability study.

Response: The performance tests cited cannot be considered to be stability tests under the GLP standards. In the context described above, the persistence of the substance in the environment is a separately measured parameter. However, when performing such tests, it is still important to know the stability of the substance to ensure that the measured effect was due to the effect of the test system.

vi. *Comment:* Would it be acceptable to EPA if the stability knowledge is based on the extrapolation of the results of a short-term stability study under extreme conditions carried out before the experimental starting date?

Response: Such an accelerated study would not demonstrate stability under test conditions, and could not be part of the concurrent stability testing in conjunction with a larger study. It would be a separate study with its own protocol.

vii. *Comment:* The proposed rule does not address whether quality control activities fall under the GLP standards.

Response: Not all quality control activities are GLP issues. Quality control work that is integral to the laboratory performing the study would be under GLP standards, but not that performed during manufacturing. Studies, as defined in this part, are subject to GLP standards only when required to be submitted to fulfill data requirements.

viii. *Comment:* The part related to "storage container assignment for the duration of a study" in § 792.105(c) would be unrealistic for field studies, especially where storage containers may be large tanks, or delivery systems which are possibly not even owned by the sponsor or testing facility.

Response: The delivery systems and tanks that are part of delivery systems are not "storage containers." Test, control, and reference substances will, however, be stored before use in some container that is unique to that substance during the test. This may be the container that the substance comes in or that is assigned to it by the testing facility.

ix. *Comment:* Liquids from large containers are often placed into smaller containers for use during the study. Consolidation of the test substance into smaller containers as the supply is depleted should be allowed. These containers need not be retained after they are empty, since their retention does not enhance the quality or integrity of the data collected.

Response: EPA disagrees with the suggestion. The retention of containers is necessary to ensure the integrity of the study. This includes empty containers, which must be kept to verify the disposition of the test, control, and reference substance. Disposal of containers adversely affects accountability. This provision of the rule is not changed from the 1983 rule, but was commented on by the public because it may affect types of studies, such as field studies, that will now fall under the provisions of the rule as a result of these amendments.

x. *Comment:* How are "studies of more than 4 weeks duration" specified in § 792.105(d) defined? They should be defined as studies having an "in-life phase" of more than 4 weeks.

Response: The term "4 weeks duration" is meant to apply to the experimental start and experimental termination dates. The suggestion of using the term "in-life phase" is not accepted since this introduces new terminology that is not adequately defined. The term "4 weeks experimental duration" replaces "4 weeks duration" in § 792.105(d) to clarify that the study initiation and study completion dates are not implied.

xi. *Comment:* Knowledge of stability makes sense for long-term, but not short-term studies because if stability is suspect then doses are made up each day and given or sprayed immediately. Adequate knowledge of stability may exist from chemical information about the test substance.

Response: If a substance is known to be stable for a few days, then its stability is known in terms of the test requirements. If the stability is not known then it must be determined, even for short studies. Storage stability needs to be known even if the material is used "immediately". If enough information is known about the material to support its stability from other testing then its stability is known and the requirement is met. However, theoretical stability is not considered to be adequate. The method used to compensate for poor stability, such as daily mixing or immediate application, is a technical issue that cannot be specifically prescribed in GLP standards.

2. *Test, control, and reference substance handling—Comment:* If the test, control, or reference substance is inherently unstable, it may not be possible to "preclude deterioration * * *". Therefore, the regulation should allow for periodic evaluation of the purity of the test substance during a study to assure its integrity and replace it when shown to be warranted.

Response: The intent is to prevent deterioration due to handling. Periodic testing is allowed under § 792.105(b) as changed in the final rule.

3. *Mixtures of substances with carriers—*i. *Comment:* Does § 792.113 require determination of uniformity, stability, and solubility during field residue studies? If so, does it require analyses for each tank preparation? This requirement would impose a large burden on testing facilities performing these types of studies.

Response: The purpose of this section is to assure that the methodology used to prepare the mixture is valid. Once the methodology has been proven for a particular mixture, it need not be reconfirmed each time that mixture is prepared. For field trials, there will likely already be data submitted to EPA that support the uniformity, stability and solubility of a substance in the carrier when prepared by appropriate methodology, i.e. according to the proposed use or label. In such cases it should not be necessary to test each batch that is prepared for field application. However, field trials do remain subject to the requirements of this section. Where available data are inadequate to support uniformity, stability, and solubility in a particular case, then it is necessary for the data to be generated under this section. Also, there may be protocol stipulations applicable to a particular study that require tank mixture analyses in addition to any provisions of this section.

ii. *Comment:* The range of environmental conditions encountered in field trials are great and would require extensive evaluations of stability and solubility under numerous environmental conditions. This amount of data could not be evaluated prior to study initiation.

Response: Section 792.113(a)(2) states that the determination(s) shall be "* * * under the environmental conditions specified in the protocol and as required by the conditions of the test." All possible environmental conditions do not have to be anticipated and tested unless required in the protocol.

iii. *Comment:* Short-term toxicity and field residue studies should be exempted from this section since supplementary analyses are performed for other studies with the same test substance. The analytical cost could equal or exceed the cost of the remainder of the short-term study.

Response: The GLP standards do not require characterization for each study. The characterization is required for each test, control, and reference substance. The same substance may need to be characterized only once, even if used on multiple studies.

iv. *Comment:* The requirement for stability and solubility should allow flexibility for the sponsor to make the determination either before, during, or after the study. When to determine the stability is a business decision based on knowledge of the risk of having to repeat a study, if the stability data negatively impacts the integrity of the study.

Response: EPA understands that requiring stability testing to be completed prior to a study may introduce unreasonable delays. In harmony with the modification of § 792.105(b) to allow concurrent stability testing of test, control, and reference substances, § 792.113(a)(2) is changed to allow stability testing of mixtures to be performed concomitantly with the study. This allows flexibility and is consistent with FDA's GLP regulations.

v. *Comment:* In the very early stage of a compound's development there is a need for basic acute toxicity tests. However, there are no analytical methods and calibrated reference standards available to test the stability of the test substance in the carrier according to GLP standards. An estimate of the stability of the compound in an inert carrier like starch, oil, or polyethylene glycol is possible and should be sufficient as a preliminary approach. The stability test will be carried out as early as the analytical methods are available.

Response: If a carrier is used, the mixture with the carrier must go through the same test, i.e. stability, solubility, etc. Instability of the mixture in a specific carrier is important since it may affect the apparent effects of the test substance.

vi. *Comment:* The assurances called for in § 792.113(c) are not well defined. How would the addition of the vehicle used to facilitate mixing of the test substance with the carrier to the control system affect this requirement? If the vehicle is identically mixed in control, is there a need to show noninterference?

Response: Any vehicle used to facilitate mixing must be shown not to interfere with the study. This includes a vehicle control to determine interaction effect.

G. Protocol for and Conduct of a Study

1. *Protocol—General—*i. *Comment:* Section 792.120(a) (3), (7), (10), and (11) should not apply to product chemistry experiments.

Response: The term "test system" is redefined to include any physical matrix, which may thus be applicable to product chemistry studies. However, note that a study designed solely for the determination of certain chemical or physical characteristics of a test substance are exempted from § 792.120(a) (5), (7), (10), and (11) as described in § 792.135.

In addition, the word "of" prior to "frequency" should be "and". This was a typographical error noticed by one commenter and has been corrected in the final rule.

ii. *Comment:* Guidance is needed in the final preamble for presenting addresses, as required by § 792.120(a)(3), of field and environmental locations used to conduct tests.

Response: The address of the testing facility is the address of the "person" (i.e. organizational unit or subunit) who actually conducts the study. Even if this organizational unit includes parts situated in different locations it may still be considered to have one address. The address should be a permanent address and would probably be synonymous with the address of the study director and/or testing facility's management.

iii. *Comment:* "Address of sponsor" should be removed from this part to maintain consistency with FDA GLP regulations.

Response: EPA maintains that the address of the sponsor is essential to its inspectional process, which differs from that of FDA.

iv. *Comment:* The requirement in § 792.120(a)(4) to state the proposed experimental start and termination dates poses problems for field studies where these dates cannot be predicted with certainty. Would this result in protocol deviations whenever these dates are not exactly met?

Response: The requirement to document the proposed experimental start and termination date in the protocol does not suggest that a protocol deviation occurs when the date is not met. The term "proposed" signifies that this date is estimated. However, gross deviation from the proposed date may be a violation of the protocol, if there are date-critical aspects of the study that are identified as such.

v. *Comment:* Section 792.120(a)(5) is inappropriate because: (a) Justification should be required only when more than one test system can be used in a study; (b) where standard test systems are used, justification should not be required; (c) justification should only be required for those that deviate from, or fall outside the test standards; (d) this requirement does not promote harmony between the EPA and FDA GLPs.

Response: Environmental studies are more diverse than health effects testing and are subject to details relevant to test system design that are more chemically dependent than is the case in health effects studies. Furthermore, § 792.120(a)(5) is not seen to impose a burden in the cases described in this comment. In the case where only one test system can be used, that is a justification that should be stated. If a standard test system is used because it is the referenced system in EPA or Organization for Economic Cooperation and Development (OECD) guidelines, then citing the use of such guidelines is sufficient justification. Thus, detailed discussions are required only in the relatively few cases where the study design requires deviation or special choices to be made in selection of the test system.

vi. *Comment:* EPA should add "range" to § 792.120(a)(6) so it reads "* * * body weight range," since without specifying range, the protocol requirement could be misinterpreted to mean that all individual body weights of the test system should be included. This would not be possible since exact weights of test systems would not be known when the protocol is prepared.

Response: EPA did not intend to make a change here and retains the term "body weight range" as used in the 1983 rule.

vii. *Comment:* Section 792.120(a)(10) should be modified to read "* * * route of administration and/or exposure * * *" to encompass other types of protocols.

Response: EPA disagrees with the suggestion since the experimenter controls administration but does not have control of the route of exposure. Administration routes cover the potential of all exposure routes and hence is a more general, all-inclusive term.

viii. *Comment:* Section 792.120(a)(10) should be reworded so that it reads: "The route or method of administration/application and the reason for choice, if appropriate."

Response: EPA disagrees with the suggestion. The route of administration is not the same concept as method of application or administration. It would not be appropriate to introduce statements concerning methodology into this section.

2. *Physical and chemical characterization studies*—i. *Comment:* Section 792.135 is confusing and needs to be read several times in order to understand it. EPA should clarify its intent by specifying those studies to be conducted under GLP standards, and by removing the double negatives currently presented in § 792.135 (a) and (b).

Response: EPA agrees with the comment. The section is changed to eliminate the double negative and reworded for clarity while retaining the intent of the proposed changes.

ii. *Comment:* Should exemptions also apply to "assembly line" biological studies, such as the Ames test, acute lethality, eye irritation, etc.?

Response: EPA does not intend to expand exemptions to biological tests previously covered by GLP standards, even where they are repetitive in nature. Section 792.135 applies only to physical and chemical characterization studies and is intended to ease the burden on many studies that will now come under GLP standards.

iii. *Comment:* The concept of what constitutes a study is blurred by this section. Partial deletion of protocol requirements implies that a protocol is still required for these "exempted measurements."

Response: EPA intends that a protocol still be required for the partially exempted studies. Some, but not all, of the full protocol requirements are eliminated.

iv. *Comment:* Areas for receipt and storage of test substances have been deleted in § 792.47(a)(1), but corresponding SOPs are still required by § 792.81(b)(3).

Response: EPA maintains that SOPs for test, control, and reference substance handling are still important, if not more important, when facilities for their handling are not specified.

v. *Comment:* Stability is to be known under conditions of the test under § 792.105(e), but the requirement to report that information is deleted in § 792.185(a)(5), and the requirement to determine stability is removed by deleting § 792.105(b).

Response: EPA agrees, but there is no contradiction. The requirements for determination and reporting of stability are relaxed although stability still needs to be known.

vi. *Comment:* A protocol is required even though certain specific elements have been deleted (§ 792.120(a) (5) through (12) and (15)), but the requirement for the quality assurance unit to retain the protocol is deleted (§ 792.195(d)).

Response: EPA agrees that this is true. The QAU record-keeping requirements are relaxed although the protocol still needs to be written.

vii. *Comment:* A quality assurance unit is required by § 792.35(a), but by deleting § 792.31(c) management will not have to assure the existence of a QAU.

Response: EPA eliminated § 792.31(c) since it requires management to "assure that there is a quality assurance unit as described in § 792.35." This would have contradicted the exclusion of certain portions of § 792.35 as specified (i.e., § 792.35 (b) and (c)). That which is not excluded under § 792.35 must comply with § 792.35(a).

viii. *Comment:* A study director is required according to §§ 792.12 and 792.33, but does not have to be shown in the final report by deletion of § 792.185(a)(10).

Response: The study director is still required to sign the compliance statement submitted with the final report as required in § 792.12 and is thus required to be named in the final report. A number of individuals are listed in § 792.185(a)(10) in addition to the study director. This section was exempted to reduce reporting requirements.

ix. *Comment:* Studies designed to determine octanol water partition coefficient, volatility, and environmental persistence (biodegradation, phqtodegradation, or chemical degradation studies) should exclude §§ 792.43 (a)(1) through (c) and (f) through (h), 792.45, 792.81(b) (1), (2), (6), (7), and (9), and 792.90. Only the physical and chemical properties that are used to predict the environmental fate of a test substance should be developed in compliance with these regulations. Those properties which are not clearly used for this purpose should be excluded.

Response: EPA does not agree that the listed sections are irrelevant in their entirety to the listed studies. Those portions of the sections which are plainly not applicable to these studies (e.g., animal care facilities) do not place any burden on these studies.

x. *Comment:* The removal of physical and chemical characterization from the responsibilities of the QAU should not be accepted because it presents a major problem for the QAU personnel. The QAU should be responsible for every study within the laboratory with no exception.

Response: EPA disagrees with the conclusion that the QAU has no responsibilities in physical and chemical characterization studies. The exclusions reduce the responsibilities of the QAU, i.e., master schedule requirements, etc., but do not eliminate them.

xi. *Comment:* The QAU should be responsible for looking at the functional components of the laboratory (e.g., all melting points, all GC/MS analyses, etc.) rather than focusing on a particular study, such as with toxicology studies.

Response: EPA agrees and is modifying the inspectional requirements of the QAU under § 792.35. This change specifies that the QAU conduct inspections and maintain records that are appropriate to particular studies. This gives latitude to the QAU with respect to how the information is gathered; i.e., as part of the standard review procedures of the laboratory, or as needed for the test. This change should reduce burden in cases where it is appropriate to maintain central records regarding functional components that affect several studies rather than requiring such records to be maintained separately.

H. Records and Reports

1. *Storage and retrieval of records and data*—i. *Comment:* The phrase "beyond quality assurance" in § 792.190(a) needs clarification since it could be ambiguously interpreted. Does it mean the date of the final approved report? Does it mean beyond initial evaluation of the specimens, since that was the statement used in the corresponding preamble section?

Response: EPA intends that the specimens be retained until QAU assures that their discarding does not negatively impact the integrity of the study. The wording is being changed to "after quality assurance verification" to clarify this intent.

ii. *Comment:* Tissues and animal feeds collected from non-toxicology studies should also be discarded after quality assurance verification. If EPA does not intend for animal tissues to be retained from residue studies then "animal" not appearing after "plants" is an oversight.

Response: EPA did not include the term "animal" in the list since it would potentially include tissues and feeds from toxicology studies which must be kept under the GLP standards. The suggested wording would not provide sufficient breadth to cover non-residue samples. Therefore EPA will require that all animal tissue samples, even from non-toxicology studies, be included in this section.

iii. *Comment:* Retention time for ^{14}C-labelled specimens needs to be addressed since a facilities license limit could be exceeded for storing radioactive material.

Response: The problem of licensing requirements is a facility responsibility under GLP standards. EPA does not agree that special consideration be given to sample storage based on this reasoning.

2. *Retention of records*—i. *Comment:* The appropriate endpoint for specimen retention in § 792.195 should be based on the integrity of the specimens and use by the study director, or other technical personnel, not based on when QAU personnel may perform a review.

Response: Quality assurance evaluation is needed to assure that the integrity of the data is not compromised by the decision not to retain specimens. For consistency, EPA is changing the wording of § 792.195(c) to concur with the wording of § 792.190(a).

ii. *Comment:* EPA should explicitly state in § 792.195(i) that when exact copies are substituted for original source as raw data, then the original may be discarded. In the past EPA inspectors have required retention of original data sources even if exact copies existed. The burden imposed by some EPA auditors, that each copy must be signed and dated, is unrealistic. Verification of "batches" of reproduction copies is just as meaningful and would eliminate most of the unnecessary burden on personnel and time resources.

Response: Specific wording advising the discarding of raw data after copying is not necessary or useful. "True copies" will be acceptable as raw data by EPA inspectors under § 792.190. Signing and dating each copy may be impractical and an acceptable alternative method may be devised and incorporated into standard operating procedures to ensure the integrity of the copies. Laboratories are cautioned that discarding originals places additional burden on verification of the authenticity of the copies.

III. Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether a rule is a "major" one and is therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that these amendments of the TSCA Good Laboratory Practice standards do not constitute a major rule because they do not meet any of the criteria set forth and defined in section 1(b) of the Order.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and at the Office of Management and Budget, Washington, DC 20503, with OMB requests marked "Attention: Desk Officer for EPA."

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., EPA is certifying that these amendments to the Good Laboratory Practice standards will not have a significant impact on small businesses. Further, the revisions to the TSCA GLP standards which reflect the FDA GLP revisions primarily provide relief from the original GLP standards (ICF 1987). Therefore, these amendments to the TSCA GLP standards are not expected to have a significant economic impact on a substantial number of small businesses since little or no economic impact is expected from the changes overall.

List of Subjects in 40 CFR Part 792

Chemicals, Environmental protection, Good laboratory practices, Hazardous materials, Laboratories, Recordkeeping and reporting requirements.

Dated: July 27, 1989.

William K. Reilly,

Administrator.

Therefore, 40 CFR part 792 is revised to read as follows:

PART 792—GOOD LABORATORY PRACTICE STANDARDS

Subpart A—General Provisions

Sec.
792.1 Scope.
792.3 Definitions.
792.10 Applicability to studies performed under grants and contracts.
792.12 Statement of compliance or non-compliance.
792.15 Inspection of a testing facility.
792.17 Effects of non-compliance.

Subpart B—Organization and Personnel

792.29 Personnel.
792.31 Testing facility management.
792.33 Study director.
792.35 Quality assurance unit.

Subpart C—Facilities

792.41 General.
792.43 Test system care facilities.
792.45 Test system supply facilities.
792.47 Facilities for handling test, control, and reference substances.
792.49 Laboratory operation areas.
792.51 Specimen and data storage facilities.

Subpart D—Equipment

792.61 Equipment design.
792.63 Maintenance and calibration of equipment.

Subpart E—Testing Facilities Operation

792.81 Standard operating procedures.

Sec.
792.63 Reagents and solutions.
792.90 Animal and other test system care.

Subpart F—Test, Control, and Reference Substances

792.105 Test, control, and reference substance characterization.
792.107 Test, control, and reference substance handling.
792.113 Mixtures of substances with carriers.

Subpart G—Protocol for and Conduct of A Study

792.120 Protocol.
792.130 Conduct of a study.
792.135 Physical and chemical characterization studies.

Subparts H and I—[Reserved]

Subpart J—Records and Reports

792.186 Reporting of study results.
792.190 Storage and retrieval of records and data.
792.195 Retention of records.

Authority: 15 U.S.C. 2603.

Subpart A—General Provisions

§ 792.1 Scope.

(a) This part prescribes good laboratory practices for conducting studies relating to health effects, environmental effects, and chemical fate testing. This part is intended to ensure the quality and integrity of data submitted pursuant to testing consent agreements and test rules issued under section 4 of the Toxic Substances Control Act (TSCA) (Pub. L. 94-469, 90 Stat. 2006, 15 U.S.C. 2603 et seq.).

(b) This part applies to any study described by paragraph (a) of this section which any person conducts, initiates, or supports on or after September 18, 1989.

(c) It is EPA's policy that all data developed under section 5 of TSCA be in accordance with provisions of this part. If data are not developed in accordance with the provisions of this part, EPA will consider such data insufficient to evaluate the health and environmental effects of the chemical substances unless the submitter provides additional information demonstrating that the data are reliable and adequate.

§ 792.3 Definitions.

As used in this part the following terms shall have the meanings specified:

Batch means a specific quantity or lot of a test, control, or reference substance that has been characterized according to § 792.105(a).

Carrier means any material, including but not limited to, feed, water, soil, and nutrient media, with which the test substance is combined for administration to a test system.

Control substance means any chemical substance or mixture, or any other material other than a test substance, feed, or water, that is administered to the test system in the course of a study for the purpose of establishing a basis for comparison with the test substance for chemical or biological measurements.

EPA means the U.S. Environmental Protection Agency.

Experimental start date means the first date the test substance is applied to the test system.

Experimental termination date means the last date on which data are collected directly from the study.

FDA means the U.S. Food and Drug Administration.

Person includes an individual, partnership, corporation, association, scientific or academic establishment, government agency, or organizational unit thereof, and any other legal entity.

Quality assurance unit means any person or organizational element, except the study director, designated by testing facility management to perform the duties relating to quality assurance of the studies.

Raw data means any laboratory worksheets, records, memoranda, notes, or exact copies thereof, that are the result of original observations and activities of a study and are necessary for the reconstruction and evaluation of the report of that study. In the event that exact transcripts of raw data have been prepared (e.g., tapes which have been transcribed verbatim, dated, and verified accurate by signature), the exact copy or exact transcript may be substituted for the original source as raw data. "Raw data" may include photographs, microfilm or microfiche copies, computer printouts, magnetic media, including dictated observations, and recorded data from automated instruments.

Reference substance means any chemical substance or mixture, or analytical standard, or material other than a test substance, feed, or water, that is administered to or used in analyzing the test system in the course of a study for the purposes of establishing a basis for comparison with the test substance for known chemical or biological measurements.

Specimen means any material derived from a test system for examination or analysis.

Sponsor means:

(1) A person who initiates and supports, by provision of financial or other resources, a study;

(2) A person who submits a study to the EPA in response to a TSCA section 4(a) test rule and/or a person who submits a study under a TSCA section 4 testing consent agreement or a TSCA section 5 rule or order to the extent the agreement, rule or order references this part; or

(3) A testing facility, if it both initiates and actually conducts the study.

Study means any experiment at one or more test sites, in which a test substance is studied in a test system under laboratory conditions or in the environment to determine or help predict its effects, metabolism, environmental and chemical fate, persistence, or other characteristics in humans, other living organisms, or media. The term "study" does not include basic exploratory studies carried out to determine whether a test substance or a test method has any potential utility.

Study completion date means the date the final report is signed by the study director.

Study director means the individual responsible for the overall conduct of a study.

Study initiation date means the date the protocol is signed by the study director.

Test substance means a substance or mixture administered or added to a test system in a study, which substance or mixture is used to develop data to meet the requirements of a TSCA section 4(a) test rule and/or is developed under a TSCA section 4 testing consent agreement or section 5 rule or order to the extent the agreement, rule or order references this part.

Test system means any animal, plant, microorganism, chemical or physical matrix, including but not limited to, soil or water, or components thereof, to which the test, control, or reference substance is administered or added for study. "Test system" also includes appropriate groups or components of the system not treated with the test, control, or reference substance.

Testing facility means a person who actually conducts a study, i.e., actually uses the test substance in a test system. "Testing facility" encompasses only those operational units that are being or have been used to conduct studies.

TSCA means the Toxic Substances Control Act (15 U.S.C. 2601 et seq.)

Vehicle means any agent which facilitates the mixture, dispersion, or solubilization of a test substance with a carrier.

§ 792.10 Applicability to studies performed under grants and contracts.

When a sponsor or other person utilizes the services of a consulting laboratory, contractor, or grantee to perform all or a part of a study to which this part applies, it shall notify the consulting laboratory, contractor, or grantee that the service is, or is part of, a study that must be conducted in compliance with the provisions of this part.

§ 792.12 Statement of compliance or non-compliance.

Any person who submits to EPA a test required by a testing consent agreement or a test rule issued under section 4 of TSCA shall include in the submission a true and correct statement, signed by the sponsor and the study director, of one of the following types:

(a) A statement that the study was conducted in accordance with this part; or

(b) A statement describing in detail all differences between the practices used in the study and those required by this part; or

(c) A statement that the person was not a sponsor of the study, did not conduct the study, and does not know whether the study was conducted in accordance with this part.

§ 792.15 Inspection of a testing facility.

(a) A testing facility shall permit an authorized employee or duly designated representative of EPA or FDA, at reasonable times and in a reasonable manner, to inspect the facility and to inspect (and in the case of records also to copy) all records and specimens required to be maintained regarding studies to which this part applies. The records inspection and copying requirements shall not apply to quality assurance unit records of findings and problems, or to actions recommended and taken, except the EPA may seek production of these records in litigation or formal adjudicatory hearings.

(b) EPA will not consider reliable for purposes of showing that a chemical substance or mixture does not present a risk of injury to health or the environment any data developed by a testing facility or sponsor that refuses to permit inspection in accordance with this part. The determination that a study will not be considered reliable does not, however, relieve the sponsor of a required test of any obligation under any applicable statute or regulation to submit the results of the study to EPA.

(c) Since a testing facility is a place where chemicals are stored or held, it is subject to inspection under section 11 of TSCA.

§ 792.17 Effects of non-compliance.

(a) The sponsor or any other person who is conducting or has conducted a test to fulfill the requirements of a testing consent agreement or a test rule issued under section 4 of TSCA will be in violation of section 15 of TSCA if:

(1) The test is not being or was not conducted in accordance with any requirement of this part;

(2) Data or information submitted to EPA under this part (including the statement required by § 792.12) include information or data that are false or misleading, contain significant omissions, or otherwise do not fulfill the requirements of this part; or

(3) Entry in accordance with § 792.15 for the purpose of auditing test data or inspecting test facilities is denied. Persons who violate the provisions of this part may be subject to civil or criminal penalties under section 16 of TSCA, legal action in United States district court under section 17 of TSCA, or criminal prosecution under 18 U.S.C. 2 or 1001.

(b) EPA, at its discretion, may not consider reliable for purposes of showing that a chemical substance or mixture does not present a risk of injury to health or the environment any study which was not conducted in accordance with this part. EPA, at its discretion, may rely upon such studies for purposes of showing adverse effects. The determination that a study will not be considered reliable does not, however, relieve the sponsor of a required test of the obligation under any applicable statute or regulation to submit the results of the study to EPA.

(c) If data submitted to fulfill a requirement of a testing consent agreement or a test rule issued under section 4 of TSCA are not developed in accordance with this part, EPA may determine that the sponsor has not fulfilled its obligations under section 4 of TSCA and may require the sponsor to develop data in accordance with the requirements of this part in order to satisfy such obligations.

Subpart B—Organization and Personnel

§ 792.29 Personnel.

(a) Each individual engaged in the conduct of or responsible for the supervision of a study shall have education, training, and experience, or combination thereof, to enable that individual to perform the assigned functions.

(b) Each testing facility shall maintain a current summary of training and experience and job description for each individual engaged in or supervising the conduct of a study.

(c) There shall be a sufficient number of personnel for the timely and proper conduct of the study according to the protocol.

(d) Personnel shall take necessary personal sanitation and health precautions designed to avoid contamination of test, control, and reference substances and test systems.

(e) Personnel engaged in a study shall wear clothing appropriate for the duties they perform. Such clothing shall be changed as often as necessary to prevent microbiological, radiological, or chemical contamination of test systems and test, control, and reference substances.

(f) Any individual found at any time to have an illness that may adversely affect the quality and integrity of the study shall be excluded from direct contact with test systems, test, control, and reference substances and any other operation or function that may adversely affect the study until the condition is corrected. All personnel shall be instructed to report to their immediate supervisors any health or medical conditions that may reasonably be considered to have an adverse effect on a study.

§ 792.31 Testing facility management.

For each study, testing facility management shall:

(a) Designate a study director as described in § 792.33 before the study is initiated.

(b) Replace the study director promptly if it becomes necessary to do so during the conduct of a study.

(c) Assure that there is a quality assurance unit as described in § 792.35.

(d) Assure that test, control, and reference substances or mixtures have been appropriately tested for identity, strength, purity, stability, and uniformity, as applicable.

(e) Assure that personnel, resources, facilities, equipment, materials and methodologies are available as scheduled.

(f) Assure that personnel clearly understand the functions they are to perform.

(g) Assure that any deviations from these regulations reported by the quality assurance unit are communicated to the study director and corrective actions are taken and documented.

§ 792.33 Study director.

For each study, a scientist or other professional of appropriate education, training, and experience, or combination thereof, shall be identified as the study director. The study director has overall responsibility for the technical conduct of the study, as well as for the interpretation, analysis, documentation,

BEST COPY AVAILABLE

and reporting of results, and represents the single point of study control. The study director shall assure that:

(a) The protocol, including any change, is approved as provided by § 792.120 and is followed.

(b) All experimental data, including observations of unanticipated responses of the test system are accurately recorded and verified.

(c) Unforeseen circumstances that may affect the quality and integrity of the study are noted when they occur, and corrective action is taken and documented.

(d) Test systems are as specified in the protocol.

(e) All applicable good laboratory practice regulations are followed.

(f) All raw data, documentation, protocols, specimens, and final reports are transferred to the archives during or at the close of the study.

§ 792.35 Quality assurance unit.

(a) A testing facility shall have a quality assurance unit which shall be responsible for monitoring each study to assure management that the facilities, equipment, personnel, methods, practices, records, and controls are in conformance with the regulations in this part. For any given study, the quality assurance unit shall be entirely separate from and independent of the personnel engaged in the direction and conduct of that study. The quality assurance unit shall conduct inspections and maintain records appropriate to the study.

(b) The quality assurance unit shall:

(1) Maintain a copy of a master schedule sheet of all studies conducted at the testing facility indexed by test substance and containing the test system, nature of study, date study was initiated, current status of each study, identity of the sponsor, and name of the study director.

(2) Maintain copies of all protocols pertaining to all studies for which the unit is responsible.

(3) Inspect each study at intervals adequate to ensure the integrity of the study and maintain written and properly signed records of each periodic inspection showing the date of the inspection, the study inspected, the phase or segment of the study inspected, the person performing the inspection, findings and problems, action recommended and taken to resolve existing problems, and any scheduled date for re-inspection. Any problems which are likely to affect study integrity found during the course of an inspection shall be brought to the attention of the study director and management immediately.

(4) Periodically submit to management and the study director written status reports on each study, noting any problems and the corrective actions taken.

(5) Determine that no deviations from approved protocols or standard operating procedures were made without proper authorization and documentation.

(6) Review the final study report to assure that such report accurately describes the methods and standard operating procedures, and that the reported results accurately reflect the raw data of the study.

(7) Prepare and sign a statement to be included with the final study report which shall specify the dates inspections were made and findings reported to management and to the study director.

(c) The responsibilities and procedures applicable to the quality assurance unit, the records maintained by the quality assurance unit, and the method of indexing such records shall be in writing and shall be maintained. These items including inspection dates, the study inspected, the phase or segment of the study inspected, and the name of the individual performing the inspection shall be made available for inspection to authorized employees or duly designated representatives of EPA or FDA.

(d) An authorized employee or a duly designated representative of EPA or FDA shall have access to the written procedures established for the inspection and may request testing facility management to certify that inspections are being implemented, performed, documented, and followed up in accordance with this paragraph.

Subpart C—Facilities

§ 792.41 General.

Each testing facility shall be of suitable size and construction to facilitate the proper conduct of studies. Testing facilities which are not located within an indoor controlled environment shall be of suitable location to facilitate the proper conduct of studies. Testing facilities shall be designed so that there is a degree of separation that will prevent any function or activity from having an adverse effect on the study.

§ 792.43 Test system care facilities.

(a) A testing facility shall have a sufficient number of animal rooms or other test system areas, as needed, to ensure: proper separation of species or test systems, isolation of individual projects, quarantine or isolation of animals or other test systems, and routine or specialized housing of animals or other test systems.

(1) In tests with plants or aquatic animals, proper separation of species can be accomplished within a room or area by housing them separately in different chambers or aquaria. Separation of species is unnecessary where the protocol specifies the simultaneous exposure of two or more species in the same chamber, aquarium, or housing unit.

(2) Aquatic toxicity tests for individual projects shall be isolated to the extent necessary to prevent cross-contamination of different chemicals used in different tests.

(b) A testing facility shall have a number of animal rooms or other test system areas separate from those described in paragraph (a) of this section to ensure isolation of studies being done with test systems or test, control, and reference substances known to be biohazardous, including volatile substances, aerosols, radioactive materials, and infectious agents.

(c) Separate areas shall be provided, as appropriate, for the diagnosis, treatment, and control of laboratory test system diseases. These areas shall provide effective isolation for the housing of test systems either known or suspected of being diseased, or of being carriers of disease, from other test systems.

(d) Facilities shall have proper provisions for collection and disposal of contaminated water, soil, or other spent materials. When animals are housed, facilities shall exist for the collection and disposal of all animal waste and refuse or for safe sanitary storage of waste before removal from the testing facility. Disposal facilities shall be so provided and operated as to minimize vermin infestation, odors, disease hazards, and environmental contamination.

(e) Facilities shall have provisions to regulate environmental conditions (e.g., temperature, humidity, photoperiod) as specified in the protocol.

(f) For marine test organisms, an adequate supply of clean sea water or artificial sea water (prepared from deionized or distilled water and sea salt mixture) shall be available. The ranges of composition shall be as specified in the protocol.

(g) For freshwater organisms, an adequate supply of clean water of the appropriate hardness, pH, and temperature, and which is free of contaminants capable of interfering with the study shall be available as specified in the protocol.

(h) For plants, an adequate supply of soil of the appropriate composition, as specified in the protocol, shall be available as needed.

§ 792.45 Test system supply facilities.

(a) There shall be storage areas, as needed, for feed, nutrients, soils, bedding, supplies, and equipment. Storage areas for feed, nutrients, soils, and bedding shall be separated from areas where the test systems are located and shall be protected against infestation or contamination. Perishable supplies shall be preserved by appropriate means.

(b) When appropriate, plant supply facilities shall be provided. These include:

(1) Facilities, as specified in the protocol, for holding, culturing, and maintaining algae and aquatic plants.

(2) Facilities, as specified in the protocol, for plant growth, including but not limited to, greenhouses, growth chambers, light banks, and fields.

(c) When appropriate, facilities for aquatic animal tests shall be provided. These include but are not limited to aquaria, holding tanks, ponds, and ancillary equipment, as specified in the protocol.

§ 792.47 Facilities for handling test, control, and reference substances.

(a) As necessary to prevent contamination or mixups, there shall be separate areas for:

(1) Receipt and storage of the test, control, and reference substances.

(2) Mixing of the test, control, and reference substances with a carrier, e.g., feed.

(3) Storage of the test, control, and reference substance mixtures.

(b) Storage areas for test, control, and/or reference substance and for test, control, and/or reference mixtures shall be separate from areas housing the test systems and shall be adequate to preserve the identity, strength, purity, and stability of the substances and mixtures.

§ 792.49 Laboratory operation areas.

Separate laboratory space and other space shall be provided, as needed, for the performance of the routine and specialized procedures required by studies.

§ 792.51 Specimen and data storage facilities.

Space shall be provided for archives, limited to access by authorized personnel only, for the storage and retrieval of all raw data and specimens from completed studies.

Subpart D—Equipment

§ 792.61 Equipment design.

Equipment used in the generation, measurement, or assessment of data and equipment used for facility environmental control shall be of appropriate design and adequate capacity to function according to the protocol and shall be suitably located for operation, inspection, cleaning, and maintenance.

§ 792.63 Maintenance and calibration of equipment.

(a) Equipment shall be adequately inspected, cleaned, and maintained. Equipment used for the generation, measurement, or assessment of data shall be adequately tested, calibrated, and/or standardized.

(b) The written standard operating procedures required under § 792.81(b)(11) shall set forth in sufficient detail the methods, materials, and schedules to be used in the routine inspection, cleaning, maintenance, testing, calibration, and/ or standardization of equipment, and shall specify, when appropriate, remedial action to be taken in the event of failure or malfunction of equipment. The written standard operating procedures shall designate the person responsible for the performance of each operation.

(c) Written records shall be maintained of all inspection, maintenance, testing, calibrating, and/or standardizing operations. These records, containing the date of the operation, shall describe whether the maintenance operations were routine and followed the written standard operating procedures. Written records shall be kept of nonroutine repairs performed on equipment as a result of failure and malfunction. Such records shall document the nature of the defect, how and when the defect was discovered, and any remedial action taken in response to the defect.

Subpart E—Testing Facilities Operation

§ 792.81 Standard operating procedures.

(a) A testing facility shall have standard operating procedures in writing, setting forth study methods that management is satisfied are adequate to insure the quality and integrity of the data generated in the course of a study. All deviations in a study from standard operating procedures shall be authorized by the study director and shall be documented in the raw data. Significant changes in established standard operating procedures shall be properly authorized in writing by management.

(b) Standard operating procedures shall be established for, but not limited to, the following:

(1) Test system room preparation.

(2) Test system care.

(3) Receipt, identification, storage, handling, mixing, and method of sampling of the test, control, and reference substances.

(4) Test system observations.

(5) Laboratory or other tests.

(6) Handling of test systems found moribund or dead during study.

(7) Necropsy of test systems or postmortem examination of test systems.

(8) Collection and identification of specimens.

(9) Histopathology.

(10) Data handling, storage and retrieval.

(11) Maintenance and calibration of equipment.

(12) Transfer, proper placement, and identification of test systems.

(c) Each laboratory or other study area shall have immediately available manuals and standard operating procedures relative to the laboratory or field procedures being performed. Published literature may be used as a supplement to standard operating procedures.

(d) A historical file of standard operating procedures, and all revisions thereof, including the dates of such revisions, shall be maintained.

§ 792.83 Reagents and solutions.

All reagents and solutions in the laboratory areas shall be labeled to indicate identity, titer or concentration, storage requirements, and expiration date. Deteriorated or outdated reagents and solutions shall not be used.

§ 792.90 Animal and other test system care.

(a) There shall be standard operating procedures for the housing, feeding, handling, and care of animals and other test systems.

(b) All newly received test systems from outside sources shall be isolated and their health status or appropriateness for the study shall be evaluated. This evaluation shall be in accordance with acceptable veterinary medical practice or scientific methods.

(c) At the initiation of a study, test systems shall be free of any disease or condition that might interfere with the purpose or conduct of the study. If during the course of the study, the test systems contract such a disease or condition, the diseased test systems should be isolated, if necessary. These test systems may be treated for disease

or signs of disease provided that such treatment does not interfere with the study. The diagnosis, authorization of treatment, description of treatment, and each date of treatment shall be documented and shall be retained.

(d) Warm-blooded animals, adult reptiles, and adult terrestrial amphibians used in laboratory procedures that require manipulations and observations over an extended period of time, or in studies that require these test systems to be removed from and returned to their test system-housing units for any reason (e.g., cage cleaning, treatment, etc.), shall receive appropriate identification (e.g., tattoo, color code, ear tag, ear punch, etc.). All information needed to specifically identify each test system within the test system-housing unit shall appear on the outside of that unit. Suckling mammals and juvenile birds are excluded from the requirement of individual identification unless otherwise specified in the protocol.

(e) Except as specified in paragrapl (e)(1) of this section, test systems of different species shall be housed in separate rooms when necessary. Test systems of the same species, but used in different studies, should not ordinarily be housed in the same room when inadvertent exposure to test, control, or reference substances or test system mixup could affect the outcome of either study. If such mixed housing is necessary, adequate differentiation by space and identification shall be made.

(1) Plants, invertebrate animals, aquatic vertebrate animals, and organisms that may be used in multispecies tests need not be housed in separate rooms, provided that they are adequately segregated to avoid mixup and cross contamination.

(2) [Reserved]

(f) Cages, racks, pens, enclosures, aquaria, holding tanks, ponds, growth chambers, and other holding, rearing, and breeding areas, and accessory equipment, shall be cleaned and sanitized at appropriate intervals.

(g) Feed, soil, and water used for the test systems shall be analyzed periodically to ensure that contaminants known to be capable of interfering with the study and reasonably expected to be present in such feed, soil, or water are not present at levels above those specified in the protocol. Documentation of such analyses shall be maintained as raw data.

(h) Bedding used in animal cages or pens shall not interfere with the purpose or conduct of the study and shall be changed as often as necessary to keep the animals dry and clean.

(i) If any pest control materials are used, the use shall be documented. Cleaning and pest control materials that interfere with the study shall not be used.

(j) All plant and animal test systems shall be acclimatized to the environmental conditions of the test, prior to their use in a study.

Subpart F—Test, Control, and Reference Substances

§ 792.105 Test, control, and reference substance characterization.

(a) The identity, strength, purity, and composition, or other characteristics which will appropriately define the test, control, or reference substance shall be determined for each batch and shall be documented before its use in a study. Methods of synthesis, fabrication, or derivation of the test, control, or reference substance shall be documented by the sponsor or the testing facility, and such location of documentation shall be specified.

(b) When relevant to the conduct of the study the solubility of each test, control, or reference substance shall be determined by the testing facility or the sponsor before the experimental start date. The stability of the test, control or reference substance shall be determined before the experimental start date or concomitantly according to written standard operating procedures, which provide for periodic analysis of each batch.

(c) Each storage container for a test, control, or reference substance shall be labeled by name, chemical abstracts service number (CAS) or code number, batch number, expiration date, if any, and, where appropriate, storage conditions necessary to maintain the identity, strength, purity, and composition of the test, control, or reference substance. Storage containers shall be assigned to a particular test substance for the duration of the study.

(d) For studies of more than 4 weeks experimental duration, reserve samples from each batch of test, control, and reference substances shall be retained for the period of time provided by § 792.195.

(e) The stability of test, control, and reference substances under storage conditions at the test site shall be known for all studies.

§ 792.107 Test, control, and reference substance handling.

Procedures shall be established for a system for the handling of the test, control, and reference substances to ensure that:

(a) There is proper storage.

(b) Distribution is made in a manner designed to preclude the possibility of contamination, deterioration, or damage.

(c) Proper identification is maintained throughout the distribution process.

(d) The receipt and distribution of each batch is documented. Such documentation shall include the date and quantity of each batch distributed or returned.

§ 792.113 Mixtures of substances with carriers.

(a) For each test, control, or reference substance that is mixed with a carrier, tests by appropriate analytical methods shall be conducted:

(1) To determine the uniformity of the mixture and to determine, periodically, the concentration of the test, control, or reference substance in the mixture.

(2) When relevant to the conduct of the experiment, to determine the solubility of each test, control, or reference substance in the mixture by the testing facility or the sponsor before the experimental start date.

(3) To determine the stability of the test, control or reference substance in the mixture before the experimental start date or concomitantly according to written standard operating procedures, which provide for periodic analysis of each batch.

(b) Where any of the components of the test, control, or reference substance carrier mixture has an expiration date, that date shall be clearly shown on the container. If more than one component has an expiration date, the earliest date shall be shown.

(c) If a vehicle is used to facilitate the mixing of a test substance with a carrier, assurance shall be provided that the vehicle does not interfere with the integrity of the test.

Subpart G—Protocol for and Conduct of a Study

§ 792.120 Protocol.

(a) Each study shall have an approved written protocol that clearly indicates the objectives and all methods for the conduct of the study. The protocol shall contain but shall not necessarily be limited to the following information:

(1) A descriptive title and statement of the purpose of the study.

(2) Identification of the test, control, and reference substance by name, chemical abstracts service (CAS) number or code number.

(3) The name and address of the sponsor and the name and address of the testing facility at which the study is being conducted.

(4) The proposed experimental start and termination dates.

(5) Justification for selection of the test system.

(6) Where applicable, the number, body weight, sex, source of supply, species, strain, substrain, and age of the test system.

(7) The procedure for identification of the test system.

(8) A description of the experimental design, including methods for the control of bias.

(9) Where applicable, a description and/or identification of the diet used in the study as well as solvents, emulsifiers and/or other materials used to solubilize or suspend the test, control, or reference substances before mixing with the carrier. The description shall include specifications for acceptable levels of contaminants that are reasonably expected to be present in the dietary materials and are known to be capable of interfering with the purpose or conduct of the study if present at levels greater than established by the specifications.

(10) The route of administration and the reason for its choice.

(11) Each dosage level, expressed in milligrams per kilogram of body or test system weight or other appropriate units, of the test, control, or reference substance to be administered and the method and frequency of administration.

(12) The type and frequency of tests, analyses, and measurements to be made.

(13) The records to be maintained.

(14) The date of approval of the protocol by the sponsor and the dated signature of the study director.

(15) A statement of the proposed statistical method.

(b) All changes in or revisions of an approved protocol and the reasons therefor shall be documented, signed by the study director, dated, and maintained with the protocol.

§ 792.130 Conduct of a study.

(a) The study shall be conducted in accordance with the protocol.

(b) The test systems shall be monitored in conformity with the protocol.

(c) Specimens shall be identified by test system, study, nature, and date of collection. This information shall be located on the specimen container or shall accompany the specimen in a manner that precludes error in the recording and storage of data.

(d) In animal studies where histopathology is required, records of gross findings for a specimen from postmortem observations shall be available to a pathologist when examining that specimen histopathologically.

(e) All data generated during the conduct of a study, except those that are generated by automated data collection systems, shall be recorded directly, promptly, and legibly in ink. All data entries shall be dated on the day of entry and signed or initialed by the person entering the data. Any change in entries shall be made so as not to obscure the original entry, shall indicate the reason for such change, and shall be dated and signed or identified at the time of the change. In automated data collection systems, the individual responsible for direct data input shall be identified at the time of data input. Any change in automated data entries shall be made so as not to obscure the original entry, shall indicate the reason for change, shall be dated, and the responsible individual shall be identified.

§ 792.135 Physical and chemical characterization studies.

(a) All provisions of the GLPs shall apply to physical and chemical characterization studies designed to determine stability, solubility, octanol water partition coefficient, volatility, and persistence (such as biodegradation, photodegradation, and chemical degradation studies).

(b) The following GLP standards shall not apply to studies designed to determine physical and chemical characteristics of a test, control, or reference substance:

§ 792.31 (c), (d), and (g)
§ 792.35 (b) and (c)
§ 792.43
§ 792.45
§ 792.47
§ 792.49
§ 792.81(b) (1), (2), (6) through (9), and (12)
§ 792.90
§ 792.105 (a) through (d)
§ 792.113
§ 792.120(a) (5) through (12), and (15)
§ 792.185(a) (5) through (8), (10), (12), and (14)
§ 792.195 (c) and (d)

Subparts H and I—[Reserved]

Subpart J—Records and Reports

§ 792.185 Reporting of study results.

(a) A final report shall be prepared for each study and shall include, but not necessarily be limited to, the following:

(1) Name and address of the facility performing the study and the dates on which the study was initiated and was completed, terminated, or discontinued.

(2) Objectives and procedures stated in the approved protocol, including any changes in the original protocol.

(3) Statistical methods employed for analyzing the data.

(4) The test, control, and reference substances identified by name, chemical abstracts service (CAS) number or code number, strength, purity, and composition, or other appropriate characteristics.

(5) Stability, and when relevant to the conduct of the study, the solubility of the test, control, and reference substances under the conditions of administration.

(6) A description of the methods used.

(7) A description of the test system used. Where applicable, the final report shall include the number of animals or other test organisms used, sex, body weight range, source of supply, species, strain and substrain, age, and procedure used for identification.

(8) A description of the dosage, dosage regimen, route of administration, and duration.

(9) A description of all circumstances that may have affected the quality or integrity of the data.

(10) The name of the study director, the names of other scientists or professionals and the names of all supervisory personnel, involved in the study.

(11) A description of the transformations, calculations, or operations performed on the data, a summary and analysis of the data, and a statement of the conclusions drawn from the analysis.

(12) The signed and dated reports of each of the individual scientists or other professionals involved in the study, including each person who, at the request or direction of the testing facility or sponsor, conducted an analysis or evaluation of data or specimens from the study after data generation was completed.

(13) The locations where all specimens, raw data, and the final report are to be stored.

(14) The statement prepared and signed by the quality assurance unit as described in § 792.35(b)(7).

(b) The final report shall be signed and dated by the study director.

(c) Corrections or additions to a final report shall be in the form of an amendment by the study director. The amendment shall clearly identify that part of the final report that is being added to or corrected and the reasons for the correction or addition, and shall be signed and dated by the person responsible. Modification of a final report to comply with the submission requirements of EPA does not constitute a correction, addition, or amendment to a final report.

(d) A copy of the final report and of any amendment to it shall be maintained by the sponsor and the test facility.

§ 792.190 Storage and retrieval of records and data.

(a) All raw data, documentation, records, protocols, specimens, and final reports generated as a result of a study shall be retained. Specimens obtained from mutagenicity tests, specimens of soil, water, and plants, and wet specimens of blood, urine, feces, and biological fluids, do not need to be retained after quality assurance verification. Correspondence and other documents relating to interpretation and evaluation of data, other than those documents contained in the final report, also shall be retained.

(b) There shall be archives for orderly storage and expedient retrieval of all raw data, documentation, protocols, specimens, and interim and final reports. Conditions of storage shall minimize deterioration of the documents or specimens in accordance with the requirements for the time period of their retention and the nature of the documents of specimens. A testing facility may contract with commercial archives to provide a repository for all material to be retained. Raw data and specimens may be retained elsewhere provided that the archives have specific reference to those other locations.

(c) An individual shall be identified as responsible for the archives.

(d) Only authorized personnel shall enter the archives.

(e) Material retained or referred to in the archives shall be indexed to permit expedient retrieval.

§ 792.195 Retention of records.

(a) Record retention requirements set forth in this section do not supersede the record retention requirements of any other regulations in this subchapter.

(b)(1) Except as provided in paragraph (c) of this section, documentation records, raw data, and specimens pertaining to a study and required to be retained by this part shall be retained in the archive(s) for a period of at least ten years following the effective date of the applicable final test rule.

(2) In the case of negotiated testing agreements, each agreement will contain a provision that, except as provided in paragraph (c) of this section, documentation records, raw data, and specimens pertaining to a study and required to be retained by this part shall be retained in the archive(s) for a period of at least ten years following the publication date of the acceptance of a negotiated test agreement.

(3) In the case of testing submitted under section 5, except for those items listed in paragraph (c) of this section, documentation records, raw data, and specimens pertaining to a study and required to be retained by this part shall be retained in the archive(s) for a period of at least five years following the date on which the results of the study are submitted to the agency.

(c) Wet specimens, samples of test, control, or reference substances, and specially prepared material which are relatively fragile and differ markedly in stability and quality during storage, shall be retained only as long as the quality of the preparation affords evaluation. Specimens obtained from mutagenicity tests, specimens of soil, water, and plants, and wet specimens of blood, urine, feces, biological fluids, do not need to be retained after quality assurance verification. In no case shall retention be required for longer periods than those set forth in paragraph (b) of this section.

(d) The master schedule sheet, copies of protocols, and records of quality assurance inspections, as required by § 792.35(c) shall be maintained by the quality assurance unit as an easily accessible system of records for the period of time specified in paragraph (b) of this section.

(e) Summaries of training and experience and job descriptions required to be maintained by § 792.29(b) may be retained along with all other testing facility employment records for the length of time specified in paragraph (b) of this section.

(f) Records and reports of the maintenance and calibration and inspection of equipment, as required by § 792.63 (b) and (c), shall be retained for the length of time specified in paragraph (b) of this section.

(g) If a facility conducting testing or an archive contracting facility goes out of business, all raw data, documentation, and other material specified in this section shall be transferred to the archives of the sponsor of the study. The EPA shall be notified in writing of such a transfer.

(h) Specimens, samples, or other non-documentary materials need not be retained after EPA has notified in writing the sponsor or testing facility holding the materials that retention is no longer required by EPA. Such notification normally will be furnished upon request after EPA or FDA has completed an audit of the particular study to which the materials relate and EPA has concluded that the study was conducted in accordance with this part.

(i) Records required by this part may be retained either as original records or as true copies such as photocopies, microfilm, microfiche, or other accurate reproductions of the original records.

[FR Doc. 89-19086 Filed 8-16-89; 8:45 am]
BILLING CODE 6560-50-M

federal register

Thursday
August 17, 1989

Part IV

Environmental Protection Agency

40 CFR Part 160

Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); Good Laboratory Practice Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 160

[OPP-300165A; FRL-3518-2]

RIN 2070-AB68

Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); Good Laboratory Practice Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing this final rule that expands the regulations to require compliance with Good Laboratory Practice (GLP) standards for testing conducted in the field and for such disciplines of testing as ecological effects, chemical fate, residue chemistry, and, as required to be submitted by 40 CFR 158.640, product performance (efficacy testing). EPA is amending these regulations to ensure the quality and integrity of all data submitted to EPA in conjunction with pesticide product registration, or other marketing and research permits. EPA is also amending the FIFRA GLP standards to incorporate many of the changes made by the Food and Drug Administration (FDA) to its GLP regulations (52 FR 33768, September 4, 1987; 21 CFR Part 58).

DATE: Effective: This rule becomes effective on October 16, 1989.
Compliance: All studies conducted, initiated, or supported after the effective date of this rule shall be subject to these regulations.

FOR FURTHER INFORMATION CONTACT: Stephen Howie, Office of Compliance Monitoring (EN-342), Rm. E-707B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 382-7825.

SUPPLEMENTARY INFORMATION: Following is an index to the remainder of this preamble:

I. Introduction
- A. Legal Authority.
- B. Background.
- C. Consistency With FDA GLP Regulations.
- D. Publication of the Complete Rule.

II. Summary of Comments and Responses
- A. General Provisions.
- B. Organization and Personnel.
- C. Facilities.
- D. Equipment.
- E. Testing Facilities Operation.
- F. Test and Control Substances.
- G. Protocol For and Conduct of A Study.
- H. Records and Reports.

III. Regulatory Requirements
- A. Executive Order 12291.
- B. Regulatory Flexibility Act.
- C. Paperwork Reduction Act.

I. Introduction

EPA is amending the FIFRA GLP standards (40 CFR Part 160) to incorporate many of the changes made by the Food and Drug Administration to its GLP regulations.

A. Legal Authority

These standards are promulgated under the authority of sections 3, 4, 5, 6, 8, 18, 24(c), and 25(a) of FIFRA, 7 U.S.C. 136 et seq., as amended, sections 406, 409, and 701 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., and the Reorganization Plan No. 3 of 1970.

B. Background

EPA originally published FIFRA GLP standards in the **Federal Register** of November 29, 1983 (48 FR 53946), which were codified as 40 CFR part 160. At the same time, EPA published GLP standards applicable to testing required under the Toxic Substances Control Act (TSCA, 48 FR 53922, 40 CFR part 792). These regulations were promulgated in response to investigations by EPA and FDA during the mid-1970s which revealed that some studies submitted to the Agencies had not been conducted in accordance with acceptable laboratory practices. Some studies had been conducted so poorly that the resulting data could not be relied upon in EPA's regulatory decision-making process. For instance, some studies had been submitted which did not adhere to specified protocols, were conducted by underqualified personnel and supervisors, or were not adequately monitored by study sponsors. In some cases results were selectively reported, underreported, or fraudulently reported. In addition, it was discovered that some testing facilities displayed poor animal care procedures and inadequate record-keeping techniques. The FIFRA GLP standards specify minimum practices and procedures which must be followed in order to ensure the quality and integrity of data submitted to EPA in support of a research or marketing permit for a pesticide product.

When EPA published its final FIFRA and TSCA GLP standards in the **Federal Register** of November 29, 1983, EPA sought to harmonize the requirements and language with those regulations promulgated by the FDA in the **Federal Register** of December 22, 1978 (43 FR 60013), and codified as 21 CFR part 58. Differences between the two Agencies' current GLP regulations exist only to the extent necessary to reflect the Agencies' different statutory responsibilities under TSCA, FIFRA, and the Federal Food, Drug and Cosmetic Act (FFDCA). Similar to the FDA GLP regulations, the FIFRA and TSCA GLP standards delineate standards for studies designed to determine the health effects of a test substance; however, the TSCA GLP standards also contain provisions related to environmental testing (i.e., ecological effects and chemical fate).

Compliance with EPA's FIFRA and TSCA GLP standards has been monitored through a program of laboratory inspections and study audits coordinated between EPA and FDA. Under an Interagency Agreement originated in 1978, FDA carries out GLP inspections at laboratories which conduct health effects testing. EPA primarily performs GLP inspections for environmental laboratories and conducts data audits for health effects and environmental studies.

After a thorough review of its GLP regulations and compliance program, FDA concluded that some of the provisions of the GLP regulations needed to be clarified, amended, or deleted to reduce the regulatory burden on testing facilities. Accordingly, FDA revised its GLP regulations in the **Federal Register** of September 4, 1987 (52 FR 33768). These GLP revisions are intended to simplify the regulations without compromising study integrity.

EPA agrees with FDA that many provisions of the GLP regulations can be streamlined without compromising the goals of the GLP standards. Therefore, EPA is amending the FIFRA GLP standards to incorporate many of the changes made by FDA to its revised GLP regulations. In addition, EPA is expanding the scope of the FIFRA GLP standards to include the environmental testing provisions currently found in the TSCA GLP standards. EPA's revision to the FIFRA GLP standards also extends their scope to include product performance data (efficacy testing) as currently required to be submitted by 40 CFR 158.640. In summary, the FIFRA GLP standards will allow EPA to ensure the quality and integrity of all data submitted in support of pesticide product research or marketing permits. Elsewhere in this **Federal Register**, EPA is making similar changes to the TSCA GLP standards.

C. Consistency With FDA GLP Regulations

It is EPA's policy to minimize the regulatory burden on the public which might arise from conflicting requirements promulgated under different regulatory authorities. In keeping with this policy, the final FIFRA 1983 GLP standards, 40 CFR part 160, followed the format and, with few exceptions, the wording of FDA's final GLP regulations, 21 CFR part 58. Differences between the EPA and FDA GLP regulations were based upon varying needs and responsibilities under each Agency's regulatory statutes. This revision to the FIFRA GLP standards follows this same policy by conforming to many of the changes FDA made to its GLP regulations, published in the **Federal Register** of September 4, 1987 (52 FR 33768). EPA has varied from FDA's revised GLP regulations only when necessary due to EPA's statutory responsibilities. The most significant differences between the EPA and the FDA revised GLP regulations are the scope of the testing and test systems affected.

More specifically, EPA is requiring compliance with the FIFRA GLP standards for all studies submitted to EPA which are intended to support pesticide product research or marketing permits. Under the 1983 FIFRA GLP regulations EPA only required GLP compliance under FIFRA for health effects testing. However, unlike FDA, testing required by EPA in support of research or marketing permits may include ecological effects, environmental and chemical fate, and efficacy (as stipulated by 40 CFR 158.640 Product performance data requirements), as well as health effects testing. Therefore, in an effort to attain consistency in the quality and the integrity of all data submitted to the Agency, EPA has determined that it is necessary to expand the scope of the FIFRA GLP standards to require that all types of testing which are used to obtain data in support of research or marketing permits be conducted in accordance with the amended GLP standards that are required to be submitted under 40 CFR 158.640.

EPA's amended FIFRA GLP standards also vary from FDA's in their coverage of testing conducted in the field. To ensure the quality and integrity of all data submitted in support of research or marketing permits, EPA believes that GLP standards must apply whenever data collection occurs. Because many of the test data required by EPA under FIFRA are developed in the field, or more accurately in outdoor laboratories (i.e., ground water studies, air monitoring studies, degradation in soil, etc.), EPA is including field testing within the scope of the standards.

EPA's FIFRA GLP standards also differ from FDA's in the scope of the requirements provided for test system care facilities, test system supply facilities, and test system care. Because testing required by FDA is focused on health testing, in which animals are the central test system, it is appropriate for FDA's GLP regulations to focus on requirements for appropriate animal care facilities (21 CFR 58.43), adequate animal supply facilities (21 CFR 58.45), and proper animal care (21 CFR 58.90). However, the broad range of testing required by EPA may involve plants, soils, and microorganisms, as well as animals, for the primary test systems. To ensure the quality and integrity of all data submitted to EPA, § 160.43 Animal care facilities, § 160.45 Animal supply facilities, and § 160.90 Animal care are being expanded to cover facilities, handling, and care of all test systems. Accordingly, EPA is retitling these sections as follows: § 160.43 Test system care facilities, § 160.45 Test system supply facilities, and § 160.90 Animal and other test system care. Further, in most instances, EPA is replacing the term "animal," which is currently used in the FIFRA GLP standards, with the broader term "test system." Specifically, this change occurs in §§ 160.43, 160.45, 160.81, 160.90 and 160.120. These changes are further discussed in Unit II. of this preamble.

The remaining differences between the EPA and FDA GLP regulations are described in the preamble to this final rule and the preamble to the FIFRA GLP standards, published in the **Federal Register** of November 29, 1983 (48 FR 53946). EPA has coordinated this final rule with FDA and has considered public comments on the December 28, 1987 EPA proposal (52 FR 48920).

D. Publication of the Complete Rule

The entire FIFRA GLP rule (40 CFR part 160) is published in this notice to simplify interpretation and facilitate the use of this notice by the regulated community. The following lists the sections of 40 CFR part 160 that were changed from the 1983 rule:

Sections affected	Changes
160.3	"Batch," "Control substance," "Study," and "Test system," revised; "Test substance or mixture," removed; "Carrier," "Experimental start date," "Experimental termination date," "Reference substance," "Study completion date," "Study initiation date," "Test substance," and "Vehicle," added.
160.29	(d), (e), and (f) revised.
160.31	(b) and (d), revised.
160.35	(a), (b) (1), and (3), revised; (e), removed.
160.41	Revised.
160.43	Revised.
160.45	Revised.
160.47	Revised.
160.49	Revised.
160.53	Removed.
160.81	Revised.
160.89	(a), revised.
160.81	(a) (1), (2), (3), (5), (6), (7), and (12) and (c), revised.
160.90	Revised.
Subpart F	Heading revised.
160.105	Revised.
160.107	Heading and introductory text, revised.
160.113	Revised.
160.120	(a), revised.
160.130	(d) and (e), revised.
160.135	Added.
160.185	(a) (4) and (5), and (c), revised.
160.190	(c) and (e), revised.
160.195	(c), revised; (i) added.

II. Summary of Comments and Responses

EPA received 43 comment letters: 24 from manufacturers of pesticide products regulated by EPA, 8 from associations, 10 from testing or consulting laboratories, and 1 from another government agency. The majority of the comments supported the proposed changes, although numerous suggestions were made for additional revisions to parts of the 1983 FIFRA GLP regulations not subject to this rulemaking or modifications to the proposed changes. Comments that raised important policy questions, suggested modification to the essence of the proposed regulation, or required an individual response, are discussed below. Comments addressing changes to the GLP standards that were not proposed are not the subject of this rulemaking. However, all comments made have been placed in the public record.

A. General Provisions

1. *Scope—Comment:* EPA should specify exactly what categories of studies (especially efficacy) are covered under the revised GLP regulations since they are discussed in the preamble and will not appear at 40 CFR part 160 when the final rule is published.

Response: EPA intends GLP standards to cover all types of studies required to be submitted and does not feel it necessary to list each type.

Please note that EPA is developing additional product performance regulations. EPA plans to consider the impact that GLP standards will have on these new product performance requirements to determine if the full scope of the GLP standards should apply to studies performed to fulfill these requirements. Unless the GLP rule is modified to specifically exclude certain parts of product performance regulations, the full GLP rule will apply

to all existing and prospective product performance studies required under 40 CFR 158.640.

2. *Definitions*—a. *Batch.* The definition of "batch" is expanded to include reference substances. This was an omission in the proposed rule that is corrected in the final rule to maintain consistency with the use of the term in § 160.105(a).

b. *Carrier*—i. *Comment:* The word "systems" should replace the word "organisms" in the definition of "carrier," to be consistent with the term "test system."

Response: EPA concurs with the suggestion. To be consistent with the definition of "test systems," the word is changed accordingly.

ii. *Comment:* EPA should revise the list in parentheses that follows the word "material" in the definition of "carrier" to make it all inclusive.

Response: EPA has decided to add the phrase "including but not limited to * * *", to indicate that the list provides examples and is not meant to be all inclusive.

c. *Control substance*—i. *Comment:* Since "material" conveys a broader description than "substance" and is already used in definitions for "carrier," "control substance," and "reference substance," "chemical substance" should be changed to "chemical material" in the definition of "control substance."

Response: EPA does not believe that a change in terminology is needed to broaden the definition since the term "material" is already included in the present definition. The term "substance" must also be retained to maintain consistency with TSCA and the TSCA GLP standards.

ii. *Comment:* EPA should delete the phrase "for no-effect levels" in the definition of control substance. The definition as written is too narrow and excludes analytical chemistry (e.g., chemical fate, residue chemistry) operations where the term "control" has a meaning distinctly different from biological effects.

Response: Since the purpose of the analytical control is to establish eventually that none of the materials administered to the test system interfere with identification of the test substance and its degradate(s) and metabolite(s), EPA agrees that the terminology is too limiting and is replacing the phrase "for no-effect levels" with the phrase "for known chemical or biological measurements." The definition now reads: "Control substance means any chemical substance or mixture, or any other material other than a test substance, feed, or water, that is administered to the test system in the course of a study for the purpose of establishing a basis for comparison with the test substance for known chemical or biological measurements."

d. *Experimental start and termination dates—Comment:* These dates would be difficult to predict, especially for field studies, because they would be subject to natural or man-made conditions that cannot be controlled or anticipated. Since the dates would be subject to change, many protocol amendments would be required, thereby creating an undue administrative burden.

Response: The experimental start and termination dates specified in the protocol are merely proposed dates. Therefore if the actual experimental start or termination date is different from the proposed dates no protocol amendment shall be required.

e. *Reference substance—Comment:* If EPA intended the term "reference substance" to include analytical and calibration standards, then several other sections of the proposed rule which mention "reference substance," would also require the same types of records to be kept for analytical standards. This would constitute an excessive burden on management which would require maintaining various records that do not add any value to the study.

Response: The definition of reference substance is intended to include analytical reference standards. Therefore, EPA has modified the definition of "reference substance," as follows: "Reference substance means any chemical substance or mixture, analytical reference standard, or material, other than a test substance, feed, or water, that is administered to, or used, in analyzing the test system in the course of a study for purposes of establishing a basis for comparison with the test substance for known chemical or biological measurements." EPA believes this change eliminates any ambiguity in the definition.

EPA disagrees that inclusion of analytical reference standards in this part constitutes an excessive documentation burden or adds no value to the study. Documentation which supports defining analytical reference standards should not require excess paperwork since common laboratory practices already require assurance of the validity of standards in order to make certain that the measurements are accurate.

f. *Study*—i. *Comment:* "Basic exploratory studies" are excluded from GLP standards, but the results of such studies may be required to meet GLP standards, if included in support of research or marketing permits.

Response: EPA does not wish to discourage basic exploratory testing and does not explicitly require GLP standards for such tests even if the data are later submitted to EPA. However, if the data are to be used in sole support of a marketing permit such non-GLP studies may not be accepted. GLP standards are required when data is developed in the context of a study that is required to be submitted to EPA in support of a research or marketing permit. Where GLP standards were not followed in the case of a study performed with the original intent of exploratory testing, a GLP compliance statement should be included in the study report to indicate this.

ii. *Comment:* It is not clear what constitutes separate studies and what studies could be included under a single protocol. Specifically, is a test system located in several different geographical locations a single study or would each location by means of its particular requirements need to be a separate study?

Response: The protocol defines what the study entails. Therefore, if the test system for a specific study is located in different geographical locations, the protocol will describe the study as being located at the different sites. EPA is adding the phrase "at one or more test sites" to the definition of "study" to clarify the intent that more than one field site may be included in one study.

iii. *Comment:* The proposed definition of study would imply that each determination such as stability, solubility, octanol water partition coefficient, volatility, persistence, and other data point determinations would be separate studies with concomitant requirements such as protocols and quality assurance unit (QAU) inspections.

Response: EPA intends that QAU inspections as listed in § 160.35 be conducted at intervals adequate to ensure the integrity of the study for each determination such as stability, solubility, octanol water partition coefficient, volatility, persistence, and other data point determinations. However, if done as part of a larger study, then these determinations are covered under the larger study's protocol or standard operating procedure (SOP). If they are submitted to EPA as studies unto themselves, then they do require their own protocols.

iv. *Comment:* An experiment such as product chemistry which does not involve a test system cannot be considered a "study" and therefore would not be covered by GLP standards.

Response: Studies designed to determine the physical or chemical characteristics of a test substance are included within the scope of these regulations. Therefore, EPA intends to include product chemistry experiments in the definition of "study." This change is consistent with the definition of the term "study" as it now appears, and as it appears in the TSCA GLP standards at 40 CFR Part 792. In the case of product chemistry experiments, the test substance itself may be the test system.

v. *Comment:* The addition of the term "or in the environment" to the definition of "study" indicates that the change extends the proposed regulations to field studies. While it is necessary to ensure the validity of all data collected, the variety and special requirements of field research have not been addressed in the new rules.

Response: These regulations are intended to apply to all studies required to be submitted under FIFRA, including those conducted in the field. EPA recognizes that field studies vary and have special requirements, but believes that the development of protocols and SOPs by the testing facility provides adequate flexibility in this respect.

vi. *Comment:* Why are metabolism, product performance, environmental and chemical fate, persistence and residue listed in the definition of "study", but not toxicology data or data to assess hazards and product chemistry.

Response: The list is not meant to be limiting in any way. Data to assess toxicology, hazards and product chemistry are included under "effects" and "other characteristics" under the new definition of "study".

vii. *Comment:* "Prospectively" should not be deleted from the definition of study. If the essence of GLPs requires a carefully planned study and the proposed rule is very strict about documentation that must be completed prior to the experimental start date, how can the GLP standards also apply to studies that were generated without a protocol or advance planning, such as epidemiology.

Response: EPA disagrees with the comment. The term prospectively is deleted because EPA wishes all studies, including epidemiological studies where past exposure to a study population is determined or estimated retrospectively, to be performed under GLP standards. EPA recognizes that in such studies data used may not have been generated in conformance with FIFRA GLP standards. However, it is EPA's position that the epidemiological study itself can be conducted and submitted to EPA in accordance with the GLP standards. Retrospective aspects of such studies that are not performed according to GLP standards, for example, test system treatment, should be identified in the compliance statement submitted with the study report.

In addition, the types of studies potentially not covered by these regulations were expanded in the definition of "study" to include experiments involving test methods.

g. *Study initiation and completion date—Comment:* EPA should delete the definition of "study initiation date" and "study completion date," since these terms were not defined in the 1983 GLP standards. The dates will be included in the protocol and final report and do not need further emphasis.

Response: EPA believes that it is necessary to define the terms to differentiate them from "experimental start and termination" dates. These terms indicate the dates on which specific milestones occur during a study. The definition is necessary to clarify EPA's requirements, and to ensure consistency with FDA's GLP regulations (52 FR 33780).

The phrase "close of the study" as used in § 160.33(f), and the phrase "study is completed" as used in § 160.195(b)(3) both refer to the "study completion date." Therefore, as of the study completion date: (1) Under § 160.33(f), the study director must ensure that all raw data, documentation, protocols, specimens, and final reports are transferred to the archives; (2) after this date under § 160.185(c), corrections or additions to the final report must be in the form of an amendment by the study director under the procedures specified in that section; and (3) in the applicable situations described in § 160.195(b)(3), records must be maintained for a period of at least 2 years following the study completion date.

Furthermore, the phrase "study is initiated" as used in § 160.31(a), and the phrase "study was initiated" as used in § 160.35(b)(1) would refer to the "study initiation date." Therefore, as of the study initiation date: (1) Under § 160.31(a), the testing facility management would designate a study director; (2) under § 160.35(b)(1), the study would be entered on the master schedule sheet by the QAU; and (3) under § 160.120(b), after this date all changes or revisions in the protocol would be documented, signed by the study director, and dated. EPA also expects that as of the study initiation date, under § 160.31(e), the testing facility management would have ensured that personnel, resources, facilities, equipment, material, and methodologies are available as scheduled.

h. *Test system—Comment:* What constitutes the "test system" in tests of pre-emergent herbicides, soil pesticides, and product chemistry studies?

Response: The definition of "test system" includes the statement that it is "* * * any * * * chemical or physical matrix * * *", including subparts thereof that are treated with the test, control, or reference substance and also appropriate components of the system that are not treated. Therefore, test systems may include the soils that pesticides are applied to, and in the case of product chemistry, the test system may be the test substance itself.

EPA is including the term "reference," which was inadvertently omitted from the definition as it appeared in the proposed rule. In addition, EPA is replacing "e.g." in the parenthetical with "including but not limited to" in order to clarify that it is not our intent for the list to be all encompassing.

i. *Vehicle—Comment:* The definition of "vehicle" serves to clarify the GLP standards, but there has been no confusion based on the current standards and this change is contrary to EPA's stated objective of being consistent with FDA's GLP regulations.

Response: EPA believes that clarification is needed. The EPA GLP standards cover a larger number of types of studies and the need for clarification of the meaning of potentially ambiguous terms is greater.

B. Organization and Personnel

1. *Testing Facility Management—Comment:* The specific requirement to document the replacement of the study director as raw data should be retained. The "master schedule" should not be considered "raw data" as was indicated in the preamble (52 FR 48923) to the proposed rule.

Response: EPA deleted the requirement that the replacement of a study director must be documented as "raw data" to conform to the revised FDA GLP regulations. This is because replacement of the study director must be reflected on the master schedule sheet, which is a study record that must be retained.

In addition, the term "reference," which was inadvertently omitted in the proposed rule, has been added to § 160.31(d).

2. *Study Director—Comment:* Archiving the study records within a "reasonable period" after the study completion date, instead of at the close of the study as required by § 160.33(f),

would not impact on the integrity of the records.

Response: EPA believes that the requirement that all raw data, documentation, protocols, specimens, and final reports be transferred to the archives at a definitive time, i.e. the study completion date, is necessary. This assures an intact audit trail for the study.

3. *Quality assurance unit*—i. *Comment:* A QAU that is entirely separate from and independent of the personnel engaged in the conduct of the study creates an unjustified financial burden on some facilities. In some cases it would be impossible to establish a completely independent QAU with qualified personnel.

Response: As stated in the proposed rule (52 FR 48920), EPA does not require the QAU to be a fixed, permanently staffed unit whose only functions are to monitor the quality of a study. EPA is only concerned that there be a distinct separation of duties between those personnel involved with the conduct or direction of a study and those personnel performing quality assurance on the same study. Therefore, § 160.35(a) prohibits personnel from performing quality assurance activities on their own study. The regulations allow a study director for a particular study to serve as a part of the QAU or as the QAU for a different study. FDA noted (52 FR 33771) that it was aware that many small laboratories could not afford the operation of a permanently staffed QAU. EPA would like to point out that in those situations where there are different individuals performing the quality assurance functions for different studies, each individual is required to maintain that portion of the master schedule sheet which relates to the study being monitored. For this reason, EPA agrees with FDA's conclusion that the separation of functions on a study-by-study basis, as permitted in the existing and revised regulations, would provide effective quality assurance. In view of the potential gain to management, to sponsors, and to EPA, through the added assurance of well-conducted studies, the increased costs are thereby justified. EPA believes that its intent is more clearly indicated by the changes now being made.

ii. *Comment:* EPA should delete the requirement to index the master schedule by test substance, and the QAU should only be required to index the master schedule to facilitate retrieval of the information monitored.

Response: EPA acknowledges that a test facility may have several studies in progress on each test substance that is listed on the master schedule sheet. However, EPA concludes that deleting the requirement to index by test substance would be inappropriate, since the master schedule sheet is the mechanism through which the QAU can assure management that the facilities are satisfactory and there are adequate numbers of competent personnel available to perform the scheduled tasks. Furthermore, § 160.31(e) requires that management assure that study materials (e.g., test substances) are available as planned. Therefore, elimination of this requirement would hinder a major function of the master schedule sheet and hamper the conduct of a critical management role.

iii. *Comment:* Laboratory management should have the discretion to determine who enters the data into the master schedule, as long as the required information is listed.

Response: EPA believes that management retains such discretion since it is involved in determining the composition of the QAU and it provides an adequate number of such personnel (§§ 160.31(c) and (e)). The QAU is distinguished by training that ensures that QAU functions are properly conducted. As stated above, study personnel may belong to the QAU as long as they are not performing the QAU functions associated with studies they are involved in.

iv. *Comment:* Do all studies conducted by an analytical laboratory have to be listed on a master schedule, or just those studies that will be, or likely be, submitted to EPA?

Response: The GLP standards specifically exempt many product chemistry studies as described in § 160.135. The master schedule need only list those analytical chemistry studies that will be or will likely be submitted to EPA.

v. *Comment:* The requirement for inspection of each study under § 160.35(b)(3) regardless of duration is excessive for the quality assurance needed to address study integrity, especially where studies are performed by highly standardized procedures. The repetitive inspection of these types of studies would consume large amounts of time for both the study personnel and QAU staff. Auditing each study is not necessary to ensure the work is conducted in compliance with the regulations. Random sampling procedures should be allowed in selecting studies and phases of studies to inspect to decrease the work load and resource requirements of the QAU.

Response: EPA does not believe that a random inspection program would be an appropriate method of evaluating a study. Generally, random sampling provides an adequate means of quality control where analysis involves repetition or identical procedures. However, any assumption that the conduct of one phase of one study would be representative of another would be invalidated by the differences among study personnel and the operations they conduct. Furthermore, this requirement is not intended for all routine studies. Section 160.35(b) is among the exclusions for chemical and physical characterization studies as listed in § 160.135(b).

In conformance with the revised FDA GLP regulations (52 FR 33780), EPA modified the requirements of § 160.35(b)(3) to provide for inspections of a study on a schedule adequate to ensure the integrity of the study. The changes to this section will allow the QAU the necessary latitude to adjust its monitoring activities to meet the individual needs of each study. However, each study, no matter how short, must be inspected at least once while in progress. EPA expects that by allowing the QAU flexibility in designing a reasonable inspection schedule, the goal of ensuring the quality of the study can be best achieved.

vi. *Comment:* EPA indicates in the preamble to the proposed rule (§ 160.35(e), (52 FR 48923)) that all QAU records will now be routinely available to inspectors. Existing GLP standards treat certain QAU records as confidential, and explicitly state that the only QAU records to be reviewed by EPA auditors would be the master schedule (e.g., the inspection dates, study inspected, the phase or segment of the study inspected and the name of the individual performing the inspection). If QAU records for findings and corrective action are available on an auditor's request, QAUs would lose their effectiveness.

Response: EPA shares the concerns of the commenters that access to all parts of a QAU inspection would weaken the inspection system, and recognizes the need to maintain a degree of confidentiality. Therefore, records of findings and problems, as well as records of corrective action recommended and taken, are exempt from routine EPA inspections, except under special circumstances as indicated in § 160.15. However, EPA maintains that all other reports and records must be easily accessible and made available to EPA and FDA inspectors when requested as indicated in § 160.35(c).

C. Facilities

1. *General*—i. *Comment:* Outdoor testing facilities should not be under GLP standards since: (a) Outdoor test facilities will be conducting studies according to approved protocols; (b) ensuring suitability is highly subjective based on the diverse number of possible locations; (c) there is a concomitant lack of clear standards for determining suitability of locations. Procedures must be specified by EPA regarding the determination of suitability for locations, testing facilities, etc.

Despite best efforts, the choice could always be subject to criticism and even criminal liability based on a good faith Compliance Statement indicating GLP standards had been followed. Most outdoor testing is done to mimic normal agricultural conditions which are specific for the test substance and use being proposed. Therefore, the determination of whether the size, construction or location of a facility is suitable for a study is a technical issue, and is not within the scope of the GLP regulation and would be considered in the experimental design of the protocol.

Response: In cases where an EPA-approved protocol establishes test locations, that protocol would satisfy GLP requirements. EPA considers any site to be the testing facility wherever testing is undertaken to generate data required to be submitted to EPA. The conditions required by the protocol are not necessarily conducive to artificial manipulation in the field, or to other outdoor testing facilities. Therefore, ensuring the suitability of the location of these types of testing facilities is both a valid and necessary part of protocols approved by EPA.

ii. *Comment:* The design of the individual scientist could be dictated by § 160.41 since a "testing facility" (definition from § 160.3) means "a person who actually conducts a study * * *" The term "test site" should be defined to refer to the actual location of a given "study system." "Testing facility" could then be used as currently defined and refer to an individual (mobile development scientist or scientist working from a testing farm facility).

Response: The definition of "person" in this Part refers to the legal entity responsible for testing, including organizational units. Consequently, it does not specifically indicate an individual scientist.

2. *Test system care facilities*—i. *Comment:* Instead of expanding the original document to fit all test systems, the old rules should be left as is, and a statement added to cover non-animal test systems.

Response: EPA disagrees with the comment and believes that specific changes of the old rule are necessary to avoid ambiguity concerning the meaning of non-animal test systems.

ii. *Comment:* Section 160.43(a)(2) and (b), (e), (f), (g), and (h) should be deleted because EPA has already stated that these GLP requirements will be applicable to all types of testing. It is not necessary to add the four new paragraphs detailing specific requirements of environmental conditions for aquatic organisms and plants.

Response: EPA believes that some test systems, e.g. aquatic, are unique, and for the sake of clarity, they require special treatment in the regulations.

iii. *Comment:* Field studies should be exempted because isolation is not possible in these types of studies.

Response: EPA disagrees and believes that inclusion of field studies poses no unusual burden, since the separation is only required to be "as needed" to ensure "proper separation." If the procedures used are justifiable based on experimental design and documented, then this requirement is met. "Proper separation" in a field study may mean simply that only one crop is planted in the same subplot.

iv. *Comment:* The change in § 160.43(c) is appropriate but the current wording does not require separate disease handling facilities in every case. The proposed change has merit in clarifying the options available to laboratories and the change promotes harmony between EPA and FDA GLP regulations.

Response: EPA agrees with the comment. In § 160.43(c), EPA is deleting the requirement that separate areas be provided in all cases for the diagnosis, treatment, and control of test system diseases. Instead, a change is made so that separate areas are provided "as appropriate." This change is consistent with the September 4, 1987, revised FDA GLP regulations and the revised TSCA GLP regulations.

EPA has made this change to allow laboratories the option of disposing of diseased test systems without also bearing the expense of maintaining separate areas in testing facilities for diagnosis, treatment, and control of disease. Additionally, EPA recognizes that the diagnosis and treatment requirements of § 160.43(c) may not be appropriate when dealing with such test systems as soil, plants, or microorganisms. However, if the decision is made not to dispose of the test system, test system care facilities, as specified in § 160.43(c), must be provided.

3. *Test system supply facilities*—i. *Comment:* The first sentence in § 160.45(a) should be changed so that plants and plant materials are covered in this section.

Response: EPA believes that since plants and plant materials are covered in § 160.45(b), including them in § 160.45(a) is unnecessary.

ii. *Comment:* Change § 160.45(b) by deleting it or expanding it to include tests not confined to the indoor laboratory or greenhouse.

Response: EPA agrees with the comment and is expanding the wording of § 160.45 to emphasize that this section is not intended to be confining. Therefore, § 160.45(a) is changed to read "* * * areas where the test systems are located * * *," and § 160.45(b) is changed to read "* * * (included but not limited to fields, greenhouses, * * *)."

iii. *Comment:* The addition of the two new paragraphs outlining plant and aquatic facilities to § 160.45(b) is unnecessary. These considerations are addressed in § 160.41 with the requirement that testing facilities be of suitable construction "to facilitate proper conduct of studies."

Response: EPA maintains that testing facilities as mentioned in § 160.41 and test system supply facilities as mentioned in § 160.45, are not the same and must be addressed separately.

iv. *Comment:* EPA should delete § 160.45(b) introductory text, (b)(1), (b)(2), and (c) because this information was adequately covered in § 160.45(a) and in § 160.43, and the facilities they refer to will be addressed in study protocol.

Response: EPA maintains that § 160.43 (test system care) is different from § 160.45 (test system supply facilities) and must therefore be treated separately.

4. *Facilities for handling test, control, and reference substances*—i. *Comment:* These requirements would severely restrict the ability of efficacy investigators to test their product, since § 160.47 would require separation of facilities for test animals and testing material. The real issue for efficacy testing is test substance accountability, which should be a vital part of the efficacy testing protocol, and appropriate records maintained to verify test substance accountability.

Response: EPA notes that similar concerns were raised by commenters regarding the 1983 rule. The wording "as necessary" was included then to allow latitude in facility design and operation.

EPA agrees that other measures, i.e. protocol, SOPs, and appropriate records, must be adequate to demonstrate the integrity of test, control, and reference substances during handling.

ii. *Comment:* Would it be necessary to provide separate sink facilities or separate rooms for mixing of the test, control, and reference substances or for adding water to tank sprayers?

Response: Separate areas are required for receipt, mixing and storage of test, control, and reference substances and their mixtures as necessary to prevent contamination or mixups. The same sink could be used for all work involving mixing provided that the procedures (SOPs) used are adequate to prevent contamination and mixups. Separate areas for receipt and storage and for mixing and storage of test, control, and reference substances as required in § 160.47(a)(1), (2), and (3) does not mandate the use of separate rooms. The areas could be in the same room provided there is adequate space and equipment to provide that contamination and mixup do not occur. This determination should be made on a case-by-case basis.

D. Equipment

Maintenance and calibration of equipment—i. *Comment:* The entire section, § 160.63(b), requires unnecessary documentation and/or is vague about what is required, especially for field portions of residue studies. Equipment used in these studies may only be used on an occasional basis, and routine inspection should only be "before use." Requiring calibration and maintenance logs for all equipment involved in generating a residue sample would be prohibitive, would often be forgotten or overlooked and would then be a cause for not meeting audits.

Response: The requirement states that equipment shall be "adequately inspected, cleaned and maintained" and "adequately tested, calibrated and/or standardized." This requirement is not changed from the old rule. The laboratory has latitude in defining in its SOPs what is "adequate" unless given specific guidance otherwise (i.e. in test rules or testing guidelines). However, EPA recommends that calibration and maintenance records be available for all equipment used in field studies. This includes equipment used only rarely and rental equipment.

ii. *Comment:* It is better to designate in § 160.63(b) that repair and maintenance will be performed by "qualified personnel," than to require that a person be designated in the written SOP. The requirement for written SOPs in § 160.63(b) causes problems since at many laboratories the equipment used in conducting a study is shared by a number of individuals and the care and maintenance of the equipment is also shared. In the event of equipment failure, a number of laboratory personnel may be capable of repairing or correcting a problem, or in more serious equipment failures, a service representative of the manufacturer may be called. It is therefore difficult and very inefficient to designate specific people to perform each specific maintenance and repair operation.

Response: The definition of "person" as it appears in § 160.3(h) is not limited to an individual scientist or technician, but includes an organizational subunit. Consequently, the SOP that designates the "person responsible" will be designating a subunit of the testing facility, which could be one or several individuals. This view is consistent with FDA's (52 FR 33774) interpretation and definition of "person." Where duties are delegated in the SOPs, all contingencies may be addressed, including the contracting of service personnel.

iii. *Comment:* Certain pieces of equipment, such as tractors, land preparation and land measuring devices should be exempt from the calibration requirement, as should standard commercially available laboratory ware, such as graduated cylinders, beakers, flasks, etc. Only equipment directly related to application of the test substance, such as sprayers or granular applicators should be listed as requiring calibration. Therefore, § 160.63(c) is not appropriate for field studies.

Response: EPA believes that calibration should be required for the application phase of field studies. However, the method of calibration, and hence the exact equipment to be calibrated, are not specified in GLP standards, as long as the methods and records ensure the quality and integrity of the study. Some equipment, such as graduated cylinders and volumetric flasks are pre-calibrated and do not need to be recalibrated. Equipment directly related to the application of the test substance may require calibration, but application rates may include other parameters. The methods used to measure all parameters inherent in the determination of application rates would have to be adequately calibrated in order to ensure the quality and integrity of the study.

E. Testing Facilities Operation

1. *Standard operating procedures*—i. *Comment:* There are few standardized tests available to researchers related to novel microbial pesticides. An experimental use permit is required for the evaluation of certain microbials at an earlier stage of research than is required for chemical evaluations. Therefore, it would be very cumbersome to require written SOPs for microbial pesticides, since the methodology may be in a state of flux. It may only be possible to develop SOPs following the completion of a study. If methods of application and assessment need to be modified for each microbial developed, it would be best to affirm that methods development could be performed in accordance with accepted scientific standards without having SOPs as described in § 160.81. EPA is encouraged to take a flexible, case-by-case approach to establishing appropriate GLP standards for a given set of experiments concerning development of microbial pesticides. Allowances could be made for situations in which SOPs are inappropriate, such as in the early stages of field work. These allowances, made in advance of the work, could then be positively affirmed as good laboratory practice, rather than as tolerated, non-compliance with GLP standards. This would alleviate the uncertainty of performing experiments in a scientifically sound fashion, without knowing until the conclusion of the work whether the data would be acceptable to EPA.

Response: EPA agrees that there are special problems associated with the early stage of method development. Method development phases of an experiment are not under GLP standards as has been clarified in the definition of "study" in § 160.3. SOPs are thus required for those operations in which all steps have been worked out. However, SOPs are needed to ensure the quality and integrity of all studies performed under GLP standards, for instance, after the method has been developed. There is flexibility in relation to SOPs insofar as changes can occur during the study as long as they are authorized by the study director (and management, if the changes are significant) and documented with raw data. Furthermore, methodology that is not generalized or established sufficiently to be included in SOPs can be defined in the study protocol.

ii. *Comment:* Although unchanged from the old rule, the second half of § 160.81(a) should not apply in some cases. The justification for this is as follows: (a) Unforeseen circumstances cannot be authorized; (b) minor deviations do not need authorization by the study director; (c) people who conduct the studies are required to be appropriately trained and are able to make decisions if necessary to deviate from the SOPs; (d) in field studies, deviations from SOPs will occur before the researcher is able to consult with the study director; (e) decisions about deviations from SOPs that are made by field personnel would be based on standard agricultural practices.

Response: EPA disagrees with the suggestion that some deviations do not require authorization by the study director. It is necessary for the study director to authorize deviations from SOPs to ensure that these deviations do not have an adverse impact on the study. SOPs should be written with sufficient flexibility to accommodate field studies by anticipating conditions under which appropriate actions must be taken without the need for authorization by the study director. Standard agricultural practices can be referenced in SOPs as long as this does not lead to ambiguity concerning the appropriate action to be taken in a given situation. If SOPs state the constraints on action and a decision is made within these limits, there is no deviation. This is in concert with FDA's GLP regulations (52 FR 33774) which require that the study director make certain that specified procedures are followed and that all modifications to the procedures in the approved study plan are documented and approved.

iii. *Comment:* Some of the examples of required SOPs provided in § 160.81(b) are not applicable to all test systems or study types. For example, "test room preparation" would not be appropriate when conducting field residue studies, and "necropsy of test system or post-mortem examination of test systems," would not apply to studies using a chemical or physical matrix as the test system (sterile water, soil, agricultural fields). Furthermore, § 160.81(c) states that, "Each laboratory or other study area shall have immediately available manuals and SOPs relative to the laboratory or field procedures being performed."

Response: EPA agrees that the term "room" in § 160.81(b)(1) is inappropriate to many studies and is changing the word to "area" in order to clarify that field studies are included. EPA believes that § 160.81(b) should apply in all cases since the purpose of SOPs is to insure the quality and integrity of the data generated in the course of a study as stated in § 160.81(a). However, procedures that are not necessary to be performed, such as necropsy in the case of field studies, do not require SOPs.

iv. *Comment:* The term "test systems" should not replace "animals" in § 160.81(b) (6) and (7). Although this requirement is useful for preventing or slowing autolysis for toxicology studies, for other studies, such as metabolism, addressing the handling of moribund or dead test systems is not appropriate. In these types of studies, if a test system were moribund or dead, the testing guidelines require the part of the study that was impacted to be repeated, and this requirement is only applicable to animals.

Response: EPA disagrees with the comment. This rule applies to plants as well as animals.

v. *Comment:* Published literature (e.g., ASTM methods) should be acceptable in § 160.81(c) as an appropriate part of an SOP and not just as a supplement to a written SOP. The written SOP could incorporate the published literature by reference, without having to rewrite the entire procedure.

Response: EPA agrees that it would not be appropriate to rewrite published literature, hence the allowance for SOPs to use it as supplements. The SOPs are still needed to establish the relationship of the method to data collection procedures and needs in the laboratory. While the resulting SOP would still have to be written, it would in effect be abbreviated in that all of the methodology referenced would not need to be rewritten.

2. *Animal and other test system care*—i. *Comment:* Section 160.90(a) should be deleted since the subject is covered in § 160.81(b).

Response: EPA recognizes that § 160.81(b) requires testing facilities to establish SOPs for animal or other test system care. Section 160.90(a), however, expressly specifies that SOPs shall also cover test system housing, feeding and handling. This section is consistent with FDA's GLP regulations and is not an additional requirement.

ii. *Comment:* Section 160.90(b) should be simplified to provide that test systems be evaluated prior to use but not necessarily isolated. For some studies, such as plant metabolism, isolating the plants or soil is not appropriate.

Response: EPA disagrees. Isolation is necessary to insure that a test system is free from disease or other conditions that may impact the study. Further, the inclusion of this is consistent with FDA's GLP regulations.

iii. *Comment:* The evaluation of certain test systems according to "acceptable * * * scientific practice" creates some difficulty, particularly for plants, microorganisms, soil and water, since such practices are not defined. "Acceptable" should be deleted regarding scientific practice and the requirement be only that a scientific basis be used in determining appropriateness for testing. In this way, testing facilities would not need to justify or prove their basis to be "acceptable" in ill-defined areas or those in flux.

Response: EPA agrees that the term "acceptable scientific practice" may not be definable when method developments are in flux. The term "acceptable" is retained, but the term "scientific practice" is changed to "scientific methods." This change preserves EPA's intent that rigorous scientific methodology be used without implying that rigid practices be adhered to where they may not appropriately exist.

iv. *Comment:* The requirement under § 160.90(c) that the test area be disease-free prior to study initiation is inappropriate for field studies since it would be impossible to declare areas totally disease free under field conditions. Also, one of the objectives of performing studies in the field is to conduct the studies under representative environmental conditions which includes encountered disease and insect pressures, making this part in direct conflict with the study objective.

Response: The requirement is for the test system to be "free of disease or condition that interfere with the purpose or conduct of the study." The current wording therefore provides sufficient latitude for field studies. Furthermore, EPA does not intend compliance with this provision to require deviation from accepted agricultural practices. If disease and insect pressures are considered to be an integral part of a study, they clearly do not interfere with the purpose and conduct of that study. The test system would therefore not need to be free of them.

v. *Comment:* Section 160.90(c) should be deleted since the effect of corrective treatment cannot be accounted for in test results.

Response: EPA believes that while the effects of corrective actions taken to isolate and treat disease or signs of disease may complicate interpretation of test results, so might the effects of the disease itself. This requirement for field studies is not inconsistent with its inclusion for laboratory, i.e., toxicology, studies.

vi. *Comment:* Markings which identify animals individually, rather than the group as required by § 160.90(d), are needed in many studies with warm-blooded vertebrates in pens, or in the field. For example, precocial young of avian species should be marked individually.

Response: Specific criteria for marking of individuals to meet study

requirements should be addressed separately in the protocol of the study. The requirement in § 160.90(d) addresses the need that test systems be adequately identified to prevent confounding with other test systems. Identification of precocial birds, for example, may be outlined in the study protocol.

vii. *Comment:* The proposed multispecies housing under § 160.90(e)(1) is redundant to proposed § 160.43(a)(1) and is inconsistent with EPA's desire to streamline GLP standards.

Response: EPA disagrees with the conclusion that these sections are redundant. While § 160.43(a)(1) states that the facilities shall be sufficient to allow proper separation of species, § 160.90(e)(1) refers spectifically to test system care within the facilities.

viii. *Comment:* Field studies should be exempt from the periodic testing requirement of § 160.90(g). A bioassay or chemical analysis prior to study initiation should suffice to show that contaminants are not present at levels capable of interfering with the study. The need for prior analysis may even be obviated by documentation of the previous history of pesticide use in the soil according to Standard Evaluation Procedures to ensure that no interfering contaminants are present.

Response: The regulations as written do not require that periodic tests be performed during a study unless there are "contaminants known to be capable of interfering with the study and reasonably expected to be present at levels above those specified in the protocol." If there is no reasonable expectation that a problem exists, periodic testing is not needed. An acceptable method to determine this, such as evaluation of the history of pesticide use, should be defined in the protocol or SOPs.

ix. *Comment:* The requirement in § 160.90(j) for acclimatization of plants and animals should be deleted, since it is not defined and promotes confusion. Animal toxicology tests would be subject to isolation and separately to acclimatization. Organisms in environmental studies will have been isolated with their health status being evaluated per § 160.90(b) and acclimatization would have already been performed as part of the process. This part should be amended to indicate that test organisms be acclimatized to all experimental conditions except the test substance.

Response: EPA believes that the term acclimatization has common meaning that is clear in the context of its usage in the regulation. Acclimatization implies accustoming to experimental, i.e., environmental, conditions other than the actual introduction of the effect (e.g., test substance) to be measured in the experiment. If acclimatization is achieved during the process of isolation, it should be so stated in the protocol and does not require additional technical effort.

In addition, the term "organisms" in § 160.90(j) has been changed to "systems." This change is consistent with the intended expansion of GLP standards and was an inadvertent omission in the proposed rule.

F. Test and Control Substances

1. *Test, control, and reference substance characterization*—i. *Comment:* Requiring stability and solubility before testing would result in a costly burden to the efficacy testing sponsor. The solubility testing portion of this requirement would not cause significant problems, but requiring stability testing to be completed before study initiation could result in significant time and cost burdens.

Response: It is more costly to have to repeat a study because of inadequate solubility or stability in respect to experimental needs. EPA agrees, however, that requiring stability testing to be completed before the study may result in unnecessary delays and is allowing concurrent stability testing. Therefore, EPA has changed the requirement to allow stability testing concurrently with the study. Solubility, where this is relevant to a study, must still be known before the experimental start date. Please note that the 1983 GLP standards require determination of characteristics which will appropriately define the test or control article before study initiation. Thus solubility determination before a study, where it is relevant to the study and hence an appropriate characteristic, is not a new requirement.

ii. *Comment:* The term "purity" should be expanded to include radiochemical purity since further definition is needed to encompass metabolism/environmental fate studies conducted with radioactive materials.

Response: Radiochemical purity is covered under "other characteristics which appropriately define the test, control, or reference substance." It is not necessary to specifically list this characteristic.

iii. *Comment:* What level of analysis constitutes "appropriate" characterization? Is quality control batch analysis sufficient? Is it necessary to fully characterize technical materials to 0.1 percent?

Response: The details of what "appropriately" defines the test substance is a guideline or protocol issue that cannot be specified in a generic document such as GLP standards. The appropriate level of characterization is largely dependent on the nature of the study that the substance is to be used for.

iv. *Comment:* What needs to be characterized, the technical grade active ingredient or the end product?

Response: The test substance needs to be characterized. If the test substance is the end product, the end product needs to be characterized.

v. *Comment:* The characterization requirement is inappropriate since it conflicts with management responsibilities, is costly, and adds unnecessary delays to the development process. It removes a necessary option of planning by objectives that responsible business management must retain. Delays and rescheduling, which may result if inadequate work is permitted by management, are real consequences that must be accepted by management, and management must decide whether or not to risk beginning an experiment prior to doing characterization studies. Since the ultimate validity of a study will require that such data be obtained before the study is completed and as long as the sponsor can demonstrate that a study was conducted with authentic material, it is irrelevant when the characterization is completed. This proposal is not in concert with FDA GLP regulations. Many times prospective products fail to reach the marketplace due to unusual or insurmountable problems. Therefore, eliminating the need for characterization of product will reduce the costs of products that fall out of developmental process.

Response: Characterization is necessary to ensure integrity of studies. It is also necessary for EPA to have characterization data available for inspectional purposes during ongoing studies, and thus to have this information complete at the beginning of the study. Without characterization, it is not possible to know whether test, control, or reference substances from different batches that are used in a single study are in fact identical. Adequate testing for characterization normally occurs during the synthesis or production of test, control, and reference substances, and thus should already be available before the test begins. Consequently, having characterization data available should not impose an additional burden in most cases.

EPA does agree, however, that stability testing should be allowed to be performed concurrently, to prevent unreasonable delays. The sponsor will bear the burden of a repeated test in the case that concurrent stability testing suggests that the study is not valid. For that reason, EPA is revising § 160.105(b) to allow for concomitant determination of stability.

vi. *Comment:* The last sentence of § 160.105(a), relating to methods and fabrication, should be deleted since these may contain CBI.

Response: This is not a new requirement and has not posed any problems. Inspectors are cleared to handle CBI material; any sensitive information can be declared CBI and treated as such.

vii. *Comment:* Some EPA auditors are interpreting this section to require that the testing facility not only archive certification records concerning the purity or assay of an analytical standard (reference substance), but to also archive copies of the raw data and records generated during the certification process. The sponsor or chemical supplier should only be required to archive the raw data supporting the certification of an analytical standard. The testing facility need only archive a copy of the certification of the standard.

Response: EPA agrees with the comment, and is modifying § 160.105(a) to allow for specification of the availability of the documentation supporting the characterization if it is not available at the testing facility. The phrase "and such documentation availability shall be specified" is added to the end of the first sentence in § 160.105(a), following the word "* * * experiment."

viii. *Comment:* Many of the tests coming under the scope of the proposed GLP standards are in themselves stability studies. Soil dissipation tests are stability determinations of herbicides, as are tests of microbial genetic markers for measuring persistence of recombinantly derived organisms. The proposal places industry in the quandary of conducting stability studies prior to a stability study.

Response: The performance tests cited cannot be considered to be stability tests under the GLP standards. In the context described above, the persistence of the substance in the environment is a separately measured parameter. However, when performing such tests, it is still important to know the stability of the substance to ensure that the measured effect was due to the effect of the test system.

ix. *Comment:* Would it be acceptable to EPA if the stability knowledge is based on the extrapolation of the results of a short-term stability study under extreme conditions carried out before the experimental starting date?

Response: Such an accelerated study would not demonstrate stability under test conditions, and could not be part of the concurrent stability testing performed in conjunction with a larger study. It would be a separate study with its own protocol.

x. *Comment:* The proposed rule does not address whether quality control activities fall under the GLP standards.

Response: Not all quality control activities are GLP issues. Quality control work that is integral to the laboratory performing the study would be under GLP standards, but not that performed during manufacturing. Studies as defined in this part are subject to GLP standards only when required to be submitted to fulfill data requirements.

xi. *Comment:* The part related to "storage container assignment for the duration of a study" in § 160.105(c) would be unrealistic for field studies, especially where storage containers may be large tanks, or delivery systems which are possibly not even owned by the sponsor or testing facility.

Response: The delivery systems and tanks that are part of delivery systems are not "storage containers." Test, control, and reference substance will, however, be stored before use in some container that is unique to that substance during the test. This may be the container that it comes in or that is assigned to it by the testing facility.

xii. *Comment:* Liquids from large containers are often placed into smaller containers for use during the study. Consolidation of the test substance into smaller containers as the supply is depleted should be allowed. These containers need not be retained after they are empty, since their retention does not enhance the quality or integrity of the data collected.

Response: EPA disagrees with the suggestion. The retention of containers is necessary to ensure the integrity of the study. This includes empty containers, which must be kept to verify the disposition of the test, control, and reference substance. Disposal of containers adversely affects accountability. This provision of the rule is not changed from the 1983 rule, but was commented on by the public because it may affect types of studies, such as field studies, that will now fall under the provisions of the rule as a result of these amendments.

xiii. *Comment:* How are "studies of more than 4 weeks duration" specified in § 160.105(d) defined? They should be defined as studies having an "in-life phase" of more than 4 weeks.

Response: The term "4 weeks duration" is meant to apply to the experimental start and experimental termination dates. The suggestion of using the term "in-life phase" is not accepted since this introduces new terminology that is not adequately defined. The term "4 weeks experimental duration" replaces "4 weeks duration" in § 160.105(d) to clarify that the study initiation and study completion dates are not implied.

xiv. *Comment:* Section 160.105 (b) and (c) do not provide necessary discretion to testing personnel to determine what data are needed to characterize stability for a substance, and how the determination is made. The phrase "under test conditions" needs additional clarification, since a variety of temperature, humidity, moisture, and other test conditions may be encountered across the United States. Routine product chemistry testing for emulsion stability, hydrolysis, photostability, etc., should satisfy this requirement.

Response: The terminology "under test conditions" is ambiguous and may be misinterpreted, so EPA has decided to delete "under test conditions" from § 160.105(c) and replace it with "under storage conditions at the test site." This may be adequately addressed by routine product chemistry testing as long as storage of the substance at the test site is in known, acceptable conditions.

xv. *Comment:* Section 160.105(c) should be deleted since it was redundant with § 160.113(a)(2).

Response: EPA disagrees that these sections are redundant. Section 160.105(c) refers to the test, control, and reference substance, while § 160.113 refers to mixtures.

xvi. *Comment:* Knowledge of stability makes sense for long-term, but not short term studies because if stability is suspect then doses are made up each day and given or sprayed immediately. Adequate knowledge of stability may exist from chemical information about the test substance.

Response: If a substance is known to be stable for a few days, then its stability is known in terms of the test requirements. If the stability is not known, it must be determined, even for short-term studies. Storage stability needs to be known even if the material is used "immediately". If enough information is known about the material to support its stability from other testing, its stability is known and the requirement is met. However,

theoretical stability is not considered to be adequate. The method used to compensate for poor stability, such as daily mixing or immediate application, is addressed in guidelines rather than in GLP standards.

2. *Test, control, and reference substance handling—Comment:* If the test, control, or reference substance is inherently unstable, it may not be possible to "preclude deterioration." Therefore, the regulation should allow for periodic evaluation of the purity of the test substance during a study to assure its integrity and replace it when shown to be warranted.

Response: The intent is to prevent deterioration due to handling. Periodic testing is allowed under § 160.105(b) as changed in the final rule.

3. *Mixtures of substances with carriers*—i. *Comment:* Does § 160.113 require determination of uniformity, stability, and solubility during field residue studies? If so, does it require analyses for each tank preparation? This requirement would impose a large burden on testing facilities performing these types of studies.

Response: The purpose of this section is to assure that the methodology used to prepare the mixture is valid. Once the methodology has been proven for a particular mixture, it need not be reconfirmed each time that mixture is prepared. For field residue trials, there will be data submitted to EPA that support the uniformity, stability, and solubility of a substance in the carrier when prepared by appropriate methodology, i.e. according to the proposed use or label. In such cases it may not be necessary to test each batch that is prepared for field application. However, field residue trials do remain subject to the requirements of this section. Where available data are inadequate to support uniformity, stability, and solubility in a particular case, then it is necessary for the data to be generated under this section. Also, there may be protocol stipulations applicable to a particular study that require tank mixture analyses in addition to any provisions of this section.

ii. *Comment:* The range of environmental conditions encountered in field trials are great and would require extensive evaluations of stability and solubility under numerous environmental conditions. This amount of data could not be evaluated prior to study initiation.

Response: Section 160.113(a)(2) states that the determination(s) shall be "* * * under the environmental conditions specified in the protocol and as required by the conditions of the test." All possible environmental conditions do not have to be anticipated and tested unless required in the protocol.

iii. *Comment:* Short-term toxicity and field residue studies should be exempted from this section since supplementary analyses are performed for other studies with the same test substance. The analytical cost could equal or exceed the cost of the remainder of the short-term study.

Response: The GLP standards do not require characterization for each study. The characterization is required for each test, control, and reference substance. The same substance may need to be characterized only once, even if used on multiple studies.

iv. *Comment:* The requirement for stability and solubility should allow flexibility for the sponsor to make the determination either before, during, or after the study. When to determine the stability is a business decision based on knowledge of the risk of having to repeat a study, if the stability data negatively impacts the integrity of the study.

Response: EPA understands that requiring stability testing to be completed prior to a study may introduce unreasonable delays. In harmony with the modification of § 160.105(b) to allow concurrent stability testing of test, control, and reference substances, § 160.113(a)(2) is changed to allow stability testing of mixtures to be performed concomitantly with the study. This allows the necessary flexibility and is also consistent with FDA's GLP regulations.

v. *Comment:* In the very early stages of a compound's development there is a need for basic acute toxicity tests. However, there are no analytical methods and calibrated reference standards available to test the stability of the test substances in the carrier according to GLP standards. An estimate of the stability of the compound in an inert carrier like starch, oil, or polyethylene glycol is possible and should be sufficient as a preliminary approach. The stability test will be carried out as early as the analytical methods are available.

Response: If a carrier is used, the mixture with the carrier must go through the same test, i.e. stability, solubility, etc. Instability of the mixture in a specific carrier is important since it may affect the apparent effects of the test substance.

vi. *Comment:* The assurances called for in § 160.113(c) are not well defined. How would the addition of the vehicle used to facilitate mixing of the test substance with the carrier to the control system affect this requirement? If the vehicle is identically mixed in control, is there a need to show noninterference?

Response: Any vehicle used to facilitate mixing must be shown not to interfere with the study. This includes a vehicle control to determine interaction effect.

vii. *Comment:* If a test substance is applied to a soil, is the soil a carrier or test system?

Response: This section does not generally consider "soil" to be a carrier; it is considered to be part of the test system.

G. Protocol for and Conduct of a Study

1. *Protocol—General*—i. *Comment:* The proposed regulations do not offer sufficient latitude for the generation of protocols. The regulations state that a protocol must exist prior to study conduct, yet it would be almost impossible to specify the exact analyses that would be performed on biological samples collected in the field until the samples were collected.

Response: The protocol requirement is not too restrictive to allow for situations where the exact analysis performed may not be known in advance. The type or nature of analysis still needs to be specified in the protocol. The protocol should state what samples are intended to be collected, how they are to be collected, and how they are intended to be analyzed. If there is a need for latitude, (for instance it is not known specifically how many samples will result from a particular study) that should be anticipated and stated in the protocol.

ii. *Comment:* Section 160.120(a)(5), (7), (10), and (11) should not apply to product chemistry experiments.

Response: The term "test system" is redefined to include any physical matrix, which may thus be applicable to product chemistry studies. However, note that a study designed solely for the determination of certain chemical or physical characteristics of a test substance are exempted from § 160.120(a) (5), (7), (10), and (11) as described in § 160.135.

In addition, the word "of" prior to "frequency" should be "and." This was a typographical error noticed by one commenter and has been corrected in this final rule.

iii. *Comment:* Guidance is needed in the final preamble for presenting addresses, as required by § 160.120(a)(3), of field and environmental locations used to conduct tests.

Response: The address of the testing facility is the address of the "person" (i.e. organizational unit or subunit) who actually conducts the study. Even if this organizational unit includes parts situated in different locations it may still be considered to have one address. The address should be a permanent address and would probably be synonymous with the address of the study director and/or testing facility's management.

iv. *Comment:* "Address of sponsor" should be removed from this Part to maintain consistency with FDA GLP regulations.

Response: EPA maintains that the address of the sponsor is essential to its inspectional process, which differs from that of FDA.

v. *Comment:* The requirement in § 160.120(a)(4) to state proposed experimental start and termination dates poses problems for field studies where these dates cannot be predicted with certainty. Would this result in protocol deviations whenever these dates are not exactly met?

Response: The requirement to document the proposed experimental start and termination dates in the protocol does not suggest that a protocol deviation occurs when the date is not met. The term "proposed" signifies that this date is estimated. However, gross deviation from the proposed date may be a violation of the protocol, if there are date-critical aspects of the study that are identified as such.

vi. *Comment:* Section 160.120(a)(5) is inappropriate because: (a) Justification should be required only when more than one test system can be used in a study and not, for example, in residue chemistry studies where residue levels in specific target crops are the subject of a study; (b) justification should only be required for those that deviate from, or fall outside the normal EPA guidelines and not where standard test systems (Pesticide Assessment Guidelines and Standard Evaluation Procedures) are used; (c) The retention of this requirement does not promote harmony between the EPA and FDA GLP regulations.

Response: Environmental studies are more diverse than health effects testing and are subject to details relevant to test system design that are more chemically dependent than is the case in health effects studies. Furthermore, this is not seen to impose a burden in the cases described in this comment. In the case where only one test system can be used, that is the justification that should be stated. The targeting of a specific crop may be part of the justification and so stated; it is still necessary to state that the test system (e.g., strain of crop, soil, location) used is justified for the purpose of the study. If a standard test system is used because it is the referenced system in EPA or Organization for Economic Cooperation and Development (OECD) guidelines, citing the use of such guidelines is sufficient justification. Thus, detailed discussions are required only in the relatively few cases where the study design requires deviation or special choices to be made in selection of the test system.

vii. *Comment:* EPA should add "range" to § 160.120(a)(6) so it reads "* * * body weight range," since without specifying range, the protocol requirement could be misinterpreted to mean that all individual body weights of the test system should be included. This would not be possible since exact weights of test systems would not be known when the protocol is prepared.

Response: EPA did not intend a change here and retains the term "body weight range" as used in the 1983 rule.

viii. *Comment:* Section 160.120(a)(7) should be deleted since the test system will be identified and justification for its selection will be in the protocol.

Response: Identification of the test system is not covered in any of the other parts of § 160.120. Identification is the specific description of which individual test system is used, not a general description of the kind of test system.

ix. *Comment:* The method for controlling bias is usually in the SOP, therefore inclusion of a reference in the protocol to the SOP should suffice.

Response: EPA agrees that this is allowed. The SOP may be referred to in the protocol in such cases.

x. *Comment:* The term "nutrients" should be added to the list for the description of the diet used in the study to cover the use of fertilizer in plant studies.

Response: EPA has incorporated this suggestion into the final rule.

xi. *Comment:* Section 160.120(a)(10) should be deleted, or amended with "if appropriate" because: (a) The reason for selecting the route of administration is the objective of the study; (b) route of administration and reason for its choice is not applicable to studies such as aqueous hydrolysis and anaerobic aquatic; (c) EPA Pesticide Assessment Guidelines require the use of certain routes.

Response: Unlike FDA, EPA requires many tests where a predefined route of exposure is not available. Multiple exposure routes may be possible for many test substances. It is appropriate to state that the route is mandated by guidelines or by the purpose of the study if either of these are the case.

xii. *Comment:* Section 160.120(a)(10) should be modified to read "* * * route of administration and/or exposure * * *" to encompass other types of protocols.

Response: EPA disagrees with the suggestion since the experimenter controls administration but does not have control of the route of exposure. Administration routes cover the potential of all exposure routes and hence is a more general, all-inclusive term in this case.

xiii. *Comment:* Section 160.120(a) should be reworded so that it reads: "The route or method of administration/application and the reason for choice, if appropriate."

Response: EPA disagrees with the suggestion. The route of administration is not the same concept as method of application or administration. It would not be appropriate to introduce statements concerning methodology to this section.

xiv. *Comment:* In the case where the study director is part of a contract laboratory engaged for the study by the sponsor, it should be clarified that such signature as required under § 160.120(a)(14) does not constitute review and approval of those parts of the protocol not related to the work done by the contract lab. For example, the study director for the chemical analysis of pesticide residues in plants may not be trained in the experimental design of the sponsor's overall study, although he or she may be qualified to conduct the subpart of the study contracted to the laboratory. Such a dilemma may similarly arise in § 160.120(a)(5), (7), (10), and (15).

Response: EPA believes that the study director cannot, by definition, be an individual who is not trained or cognizant of the overall study. A study is not subdivided into multiple studies with multiple study directors. The definitions of "study" and "study director" preclude such a separation of responsibility.

xv. *Comment:* "Where applicable" should be added to § 160.120(a)(15) since statistical methods are not used in field studies.

Response: Statistical methods are and should be used in field studies. However, where the use of statistics is limited this can be so stated.

The phrase "to be used" should modify the term "statistical method" as in § 160.120(a)(16) of the 1983 rule. This was a typographical error noted by one commenter and has been corrected.

xvi. *Comment:* Section 160.120(a)(15) is redundant since all of § 160.185(a)(3) requires statistical methods employed for analyzing the data.

Response: Section 160.185 describes reporting requirements after the study,

while § 160.120 describes protocol requirements before the study.

2. *Physical and chemical characterization studies*—i. *Comment:* Section 160.135 is confusing and needs to be read several times in order to understand it. EPA should clarify its intent by specifying those studies to be conducted under GLP standards, and by removing the double negatives currently presented in § 160.135(a) and (b).

Response: EPA agrees with the comment. The section is changed to eliminate the double negative and reworded for clarity while retaining the intent of the proposed changes.

ii. *Comment:* Should exemptions also apply to "assembly line" biological studies, such as the Ames test, acute lethality, eye irritation, etc?

Response: EPA does not intend to expand exemptions to biological tests previously covered by GLP standards, even when repetitive in nature. Section 160.135 applies only to physical and chemical characterization studies and is intended to ease the burden on many studies that will now come under GLP standards.

iii. *Comment:* The concept of what constitutes a study is blurred by this section. Partial deletion of protocol requirements implies that a protocol is still required for these "exempted measurements."

Response: EPA intends that a protocol still be required for the partially exempted studies. Some, but not all, of the full protocol requirements are eliminated.

iv. *Comment:* Areas for receipt and storage of test substances have been deleted in § 160.47(a)(1), but corresponding SOPs are still required by § 160.81(b)(3).

Response: EPA maintains that SOPs for test, control and reference substance handling are still important, if not more important, when facilities for their handling are not specified.

v. *Comment:* Stability is to be known under conditions of the test under § 160.105(e), but the requirement to report that information is deleted in § 160.185(a)(5)) and the requirement to determine stability is removed by deleting § 160.105(b).

Response: EPA agrees, but there is no contradiction. The requirements for determination and reporting of stability are relaxed although stability still needs to be known.

vi. *Comment:* A protocol is required even though certain specific elements have been deleted (§ 160.120(a)(3) through (12) and (15)), but the requirement for the quality assurance unit to retain the protocol is deleted (§ 160.195[d]).

Response: EPA agrees that this is true. The QAU recordkeeping requirements are relaxed although the protocol still needs to be written.

vii. *Comment:* A quality assurance unit is required by § 160.35(a), but by deleting § 160.31(c) management will not have to assure the existence of a QAU.

Response: EPA eliminated § 160.31(c) because it requires management to "assure that there is a quality assurance unit as described in § 160.35." This would have contradicted the exclusion of certain portions of § 160.35 as specified (i.e. § 160.35(b) and (c)). That which is not excluded under § 160.35 must comply with § 160.35(a).

viii. *Comment:* A study director is required according to §§ 160.12 and 160.33, but does not have to be shown in the final report by the deletion of § 160.185(a)(10).

Response: The study director is still required to sign the compliance statement submitted with the final report as required in § 160.12 and is thus required to be named in the final report. A number of individuals are listed in § 160.185(a)(10) in addition to the study director. This section was exempted to reduce reporting requirements.

ix. *Comment:* Studies designed to determine stability, octanol water partition coefficient, volatility, and environmental persistence (biodegradation, photodegradation, or chemical degradation studies) should exclude § 160.43(a)(1) through (c) and (f) through (h), 160.45, 160.81(b)(1), (2), (6), (7), and (9), and 160.90. Only the physical and chemical properties that are used to predict the environmental fate of a test substance should be developed in compliance with these regulations. Those properties which are not clearly used for this purpose should be excluded.

Response: EPA does not agree that the listed sections are irrelevant in their entirety to the listed studies. Those portions of the sections which are plainly not applicable to these studies (e.g. animal care facilities) do not place any burden on these studies.

x. *Comment:* The removal of physical and chemical characterization from the responsibilities of the QAU should not be accepted because it presents a major problem for the QAU personnel. The QAU should be responsible for every study within the laboratory with no exception.

Response: EPA disagrees with the conclusion that the QAU has no responsibilities in physical and chemical characterization studies. The exclusions reduce the responsibilities of the QAU, i.e. master schedule requirements, etc., but do not eliminate them.

xi. *Comment:* The QAU should be responsible for looking at the functional components of the laboratory (e.g., all melting points, all GC/MS analyses, etc.) rather than focusing on a particular study, such as with toxicology studies.

Response: EPA agrees and is modifying the inspectional requirements of the QAU under § 160.35. This change specifies that the QAU conduct inspections and maintain records that are appropriate to particular studies. This gives latitude to the QAU with respect to how the information is gathered; i.e., as part of the standard review procedures of the laboratory, or as needed for the test. This change should reduce the burden in cases where it is appropriate to maintain central records regarding functional components that affect several studies rather than requiring such records to be maintained separately.

xii. *Comment:* If physical and chemical characteristics are to be covered by GLP standards, they should not be referred to as separate "characterization studies." These tests are listed in 40 CFR part 158 as physical and chemical characteristics and properties and are submitted to EPA in studies by Guideline series numbers, not necessarily as individual "characterization studies." Additionally, in product chemistry many of the characteristics listed in proposed § 160.135(b) are part of Series 63 (i.e. stability, solubility, etc.), which is submitted as a single study. If these characteristics are to be covered by GLP standards, it should only be to the extent of the data requirements in 40 CFR 158, because it is not the purpose of the GLP standards to define studies for registration.

Response: EPA disagrees with this comment. GLP standards do not expand data requirements. The regulations only specify how the data are to be generated.

xiii. *Comment:* All product chemistry should be exempted from these regulations, except for those studies specifically noted in the preamble (i.e. stability, solubility, octanol water partition coefficient, volatility and persistence), which also affect the environmental hazard assessment and/or are required by other sections of the guidelines.

Response: EPA maintains that all data that are required to be submitted to EPA be collected according to GLP standards. While EPA believes that a portion of the requirements of the previous GLP standards can be reduced for some studies, the standards are still important to assure the quality and integrity of the data generated.

xiv. *Comment:* The series 60, 61, 62, and 63 requirements are mainly process and method development type experiments, and are developed over a period of time with portions sometimes contributed from laboratories in plant locations, making it prohibitively expensive and unrealistic to have these portions under a GLP program.

Response: While there may be additional cost, the need to have the work performed under GLP standards overrides this concern. EPA does not agree that GLP requirements in this section entail unrealistic requirements on laboratories that perform these types of experiments.

xv. *Comment:* The data quality from the series 60, 61, 62 and 63 studies would not be compromised since the companies that are generating these data are usually doing so for their own economic benefit as well as for registration purposes.

Response: Data developed under manufacturer's demands for quality control information do not reflect the same constraints upon data integrity as required by EPA. During the manufacturing process, cost and time considerations may conflict with safety assessment data quality needs.

xvi. *Comment:* EPA should revise PR Notice 86–5 to ensure that the definition of study corresponds with the definition in the GLP regulations.

Response: The GLP regulations address the integrity of data generated during a study. PR Notice 86–5 addresses the reporting of the data, which is a separate concern.

xvii. *Comment:* The term "studies" in the title of § 160.135 should be replaced with another term, such as "experiments," to avoid the misconception that these experiments must be carried out as separate "studies." As separate studies, they would require separate protocols, study directors, study reports, QAU audits, etc., when in fact these experiments are part of a larger study, which already has its own protocol covering all the various experiments to be performed. It may be that this part should be deleted because these tests do not fit the basic definition of study and should not be included, in any way, under the scope of the GLP standards.

Response: EPA disagrees that these tests are not studies. The definition of study includes the phrase "to determine or help predict [the test substance's] effect * * * and fate." Therefore the physical and chemical characterization parameters are included. EPA agrees that in some cases, the determinations will have been performed as part of a larger study (e.g. product chemistry) and consequently will have been performed under the protocol of the larger study. In other cases, however, each of these studies will require a separate protocol.

xviii. *Comment:* Are GLP requirements applicable when analyses are conducted by an outside laboratory, or are they exempted from the various sections outlined in § 160.135(a)?

Response: The location where the analyses are performed does not affect the applicability of the GLP regulations.

xix. *Comment:* Section 160.135(a) in the proposed rule should be deleted because the regulation is far too complex to start applying parts of it to one study, but not to another. It is a major task to instruct personnel on the requirements in the GLP standards; and it would be an impossible task to instruct them on multiple versions of GLP standards.

Response: There should not be many cases where the same workers will need to be trained in both levels of GLP interpretation. There are not "multiple versions" of GLP standards, only a relaxation of some requirements for some studies. EPA does not consider this to be imposing an additional burden.

xx. *Comment:* Under § 160.135(b), an unusual situation can occur with quality assurance because a QAU is required to exist by retention of § 160.35(a) and is implied to have records of inspection by retention of § 160.35(d), but has no duties by virtue of deleting § 160.35 (b) and (c). Both § 160.35 (a) and (d) should be added to the list of excluded provisions.

Response: EPA agrees that there are inconsistencies in eliminating § 160.35 (b) and (c) since there are no inspectional responsibilities included in § 160.35 (a) or (d). Consequently, EPA is expanding § 160.35(a) to include inspectional responsibilities.

xxi. *Comment:* The repetitive inspection of the types of studies required in proposed § 160.135(b) would consume large amounts of time for both study personnel and the QAU staff without contributing to the quality and integrity of the data. The periodic inspection of such operations would provide the necessary assurance that the data were of sufficient quality and integrity to meet all requirements under GLP standards.

Response: EPA disagrees with the comment and expects that each study be inspected by the QAU at least once. Where these types of tests are repetitive or routine in nature it should be possible for the QAU inspectional process to be equally routine.

xxii. *Comment:* EPA should modify proposed § 160.135(b) to make it perfectly clear that stability/solubility experiments carried out as part of a study are not excluded from the exemption provided by § 160.135(a). When the sole purpose of a study is to determine stability or solubility, GLP standards should apply, but where stability or solubility determinations are being made prior to the initiation of the actual experiment for which the study is being conducted, there is no reason to treat those determinations as a separate study. The study protocol will cover the need for, and method of, determining stability and solubility in situations where it is necessary to make those determinations in order to ensure the success of the study.

Response: EPA agrees that "sole purpose" stability/ solubility studies are under GLP standards, but disagrees that these studies should be exempt when they are part of another GLP study. If they are a part of a larger study, they are within its protocol, and hence under GLP standards. If they are not within that protocol, then they are "sole studies" under GLP standards in their own right.

H. Records and Reports

1. *Reporting of study results*—i. *Comment:* Section 160.185 delineates the information to be included in the final report. Since the Office of Pesticide Programs (OPP) has already designed Data Reporting Guidelines (DRGs) as addenda to the Pesticide Assessment Guidelines and these are being used by applicants, this section appears to be unnecessary. Furthermore, there are a few issues where the GLP standards and DRGs are not compatible and illustrate a possible conflict in EPA requirements: (a) Section 160.185(a)(2)—(protocol)—The reviewer at OPP needs to know the study objectives, not necessarily what the objectives were in the protocol and what changes were made during the course of the study; (b) Section 160.185(a)(6)—(methodology)—A description of the methods used is required, but residue chemistry reports require a separate report for methodology; (c) Section 160.185(c)—(report amendments)—Information Services Branch has specific requirements in PR Notice 86–5 regarding the submission of amended reports. In cases such as these, which document has the superseding authority?

Response: DRGs are designed for presentation of data to EPA after the performance of the study, and GLP standards are designed to ensure data

BEST COPY AVAILABLE

integrity during the performance of the study. GLP standards require additional information to be contained in the final report that are not required by the DRGs. This should not result in any issues of superseding authority.

ii. *Comment:* Section 160.185(a)(12) should be modified to require reports only when they are necessary to explain results that are highly subject to interpretation or critical to the final evaluation of the study. Otherwise this will result in an unusual reporting burden with little benefit during field residue studies.

Response: EPA does not agree that the requirement is impractical or unnecessary. This reporting requirement cannot be left entirely to the discretion of the study director.

iii. *Comment:* At the EPA's second data submitters' workshop on the implementation of PR Notice 86-5 on December 15, 1988, EPA handed out the "Clarification of PR Notice 86-5 Requirements" pertaining to GLP considerations. EPA states in this clarification that reformatting final study reports to comply with the submission requirements of PR Notice 86-5 does not constitute a formal "correction or addition" to a final report that would otherwise require the signature of the study director under 40 CFR 160.185(c).

Response: EPA agrees and is incorporating the suggestion in the final rule so that modification to comply with EPA submission requirements does not constitute a correction, addition, or amendment. However, EPA advises that the process of reformatting final study reports does not alleviate the study director of accountability in signing the final report or the compliance statement.

2. *Storage and retrieval of records and data*—i. *Comment:* The phrase "beyond quality assurance" in § 160.190(a) needs clarification since it could be ambiguously interpreted. Does it mean the date of the final approved report or does it mean beyond initial evaluation of the specimens, since that was the statement used in the corresponding preamble section?

Response: EPA intends that the specimens be retained until the quality assurance unit assures that their discarding does not negatively impact the integrity of the study. The wording is being changed to "after quality assurance verification" to clarify this.

ii. *Comment:* Tissues and animal feeds collected from non-toxicology studies should also be discarded after quality assurance verification. If EPA does not intend for animal tissues to be retained from residue studies, "animal" not appearing after "plants" is an oversight.

Response: EPA did not include the term "animal" in the list since it would potentially include tissues and feeds from toxicology studies which must be kept. It is felt that the suggested wording would not provide sufficient breadth to cover non-residue samples. Therefore, EPA will require that all animal tissue samples, even from non-toxicology studies, be included in this Part.

iii. *Comment:* Retention time for ^{14}C-labelled specimens needs to be addressed since a facility's license limit could be exceeded for storing radioactive material.

Response: The problem of licensing requirements is a facility responsibility under GLP standards. EPA does not agree that special consideration be given to sample storage based on the above reasoning.

iv. *Comment:* This Part does not clearly define who must archive raw data or authenticated copies. If the test facility's portion of the study is small compared to the entire project, it does not make sense to archive at the test facility. The sponsor should be required to archive all raw data in support of a submission and provide that data to the test facility in the event of an audit. Archiving at the test facility will put an undue and unnecessary hardship on small laboratory facilities. Another problem to be considered is whether the test facility is required to archive the final report submitted to EPA. It could find itself archiving analytical data generated by another facility. Furthermore, in the event that the sponsor may be involved in a lawsuit concerning the study, the contingent liability exposure for the test facility should be clarified.

Response: The test facility may contract with a commercial archiver under § 160.195 (b) and (g). This implies flexibility in the physical location of the archives.

3. *Retention of records*—i. *Comment:* The appropriate endpoint for specimen retention in § 160.195 should be based on the integrity of the specimens and use by the study director, or other technical personnel, not based on when QAU personnel may perform a review.

Response: Quality assurance evaluation is needed to assure that the integrity of the data are not compromised by the decision to discard specimens. For consistency, EPA is changing the wording of § 160.195(c) to concur with the wording of § 160.190(a).

ii. *Comment:* EPA should explicitly state in § 160.195(i) that when exact copies are substituted for original source as raw data, then the original may be discarded. In the past, EPA inspectors have required retention of original data sources even if exact copies existed. The burden imposed by some EPA auditors, that each copy must be signed and dated, is unrealistic. Verification of "batches" of reproduction copies is just as meaningful and would eliminate most of the unnecessary burden on personnel and time resources.

Response: Specific wording advising the discarding of raw data after copying is not necessary or useful. "True copies" will be acceptable as raw data by EPA inspectors under § 160.190. Signing and dating each copy may be impractical and an acceptable alternative method may be devised and incorporated into standard operating procedures to ensure the integrity of the copies. Laboratories are cautioned that discarding originals places an additional burden on verification of the authenticity of the copies.

III. Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that the amendments are not a major rule because they do not meet any of the criteria set forth and defined in section 1(b) of the Order. Compliance costs were estimated using data from a survey of laboratories potentially affected by the revised GLP standards and from data on pesticides testing demand, and costs taken from a 1980 study of the pesticides testing industry.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and at the Office of Management and Budget, Washington, DC 20503, with OMB requests marked "Attention: Desk Officer for EPA."

B. Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1165 (5 U.S.C. 601 et. seq.)), and it has been determined that it will not have significant economic impact on a substantial number of small businesses, small governments, or small organization. It was found that the GLP revisions will not increase the costs of health effects testing and that nonhealth effects testing costs will increase about 20 percent.

C. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the Federal Register.

Public reporting for this collection of information is estimated to average 15 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St. SW. Washington, DC 20503.

List of Subjects in 40 CFR Part 160

Environmental protection, Good laboratory practice, Hazardous materials, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 27, 1989.

William K. Reilly,

Administrator.

Therefore, 40 CFR chapter I, part 160 is revised to read as follows:

PART 160—GOOD LABORATORY PRACTICE STANDARDS

Subpart A—General Provisions

Sec.

160.1 Scope.
160.3 Definitions.
160.10 Applicability to studies performed under grants and contracts.
160.12 Statement of compliance or non-compliance.
160.15 Inspection of a testing facility.
160.17 Effects of non-compliance.

Subpart B—Organization and Personnel

160.29 Personnel.
160.31 Testing facility management.
160.33 Study director.
160.35 Quality assurance unit.

Subpart C—Facilities

160.41 General.
160.43 Test system care facilities.
160.45 Test system supply facilities.
160.47 Facilities for handling test, control, and reference substances.
160.49 Laboratory operation areas.
160.51 Specimen and data storage facilities.

Subpart D—Equipment

160.61 Equipment design.
160.63 Maintenance and calibration of equipment.

Subpart E—Testing Facilities Operation

160.81 Standard operating procedures.
160.83 Reagents and solutions.
160.90 Animal and other test system care.

Subpart F—Test, Control, and Reference Substances

160.105 Test, control, and reference substance characterization.
160.107 Test, control, and reference substance handling.
160.113 Mixtures of substances with carriers.

Subpart G—Protocol for and Conduct of a Study

160.120 Protocol.
160.130 Conduct of a study.
160.135 Physical and chemical characterization studies.

Subparts H and I—[Reserved]

Subpart J—Records and Reports

160.185 Reporting of study results.
160.190 Storage and retrieval of records and data.
160.195 Retention of records.

Authority: 7 U.S.C. 136a, 136c, 136d, 136f, 136j, 136l, 136v, 136w; 21 U.S.C. 346a, 348, 371, Reorganization Plan No. 3 of 1970.

Subpart A—General Provisions

§ 160.1 Scope.

(a) This part prescribes good laboratory practices for conducting studies that support or are intended to support applications for research or marketing permits for pesticide products regulated by the EPA. This part is intended to assure the quality and integrity of data submitted pursuant to sections 3, 4, 5, 8, 18 and 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136a, 136c, 136f, 136q and 136v(c)) and sections 408 and 409 of the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 346a, 348).

(b) This part applies to any study described by paragraph (a) of this section which any person conducts, initiates, or supports on or after October 16, 1989.

§ 160.3 Definitions.

As used in this part the following terms shall have the meanings specified:

Application for research or marketing permit includes:

(1) An application for registration, amended registration, or reregistration of a pesticide product under FIFRA sections 3, 4 or 24(c).

(2) An application for an experimental use permit under FIFRA section 5.

(3) An application for an exemption under FIFRA section 18.

(4) A petition or other request for establishment or modification of a tolerance, for an exemption for the need for a tolerance, or for other clearance under FFDCA section 408.

(5) A petition or other request for establishment or modification of a food additive regulation or other clearance by EPA under FFDCA section 409.

(6) A submission of data in response to a notice issued by EPA under FIFRA section 3(c)(2)(B).

(7) Any other application, petition, or submission sent to EPA intended to persuade EPA to grant, modify, or leave unmodified a registration or other approval required as a condition of sale or distribution of a pesticide.

Batch means a specific quantity or lot of a test, control, or reference substance that has been characterized according to § 160.105(a).

Carrier means any material, including but not limited to feed, water, soil, nutrient media, with which the test substance is combined for administration to a test system.

Control substance means any chemical substance or mixture, or any other material other than a test substance, feed, or water, that is administered to the test system in the course of a study for the purpose of establishing a basis for comparison with the test substance for known chemical or biological measurements.

EPA means the U.S. Environmental Protection Agency.

Experimental start date means the first date the test substance is applied to the test system.

Experimental termination date means the last date on which data are collected directly from the study.

FDA means the U.S. Food and Drug Administration.

FFDCA means the Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 321 et seq).

FIFRA means the Federal Insecticide, Fungicide and Rodenticide Act as amended (7 U.S.C. 136 et seq).

Person includes an individual, partnership, corporation, association, scientific or academic establishment, government agency, or organizational unit thereof, and any other legal entity.

Quality assurance unit means any person or organizational element, except the study director, designated by testing facility management to perform the duties relating to quality assurance of the studies.

Raw data means any laboratory worksheets, records, memoranda, notes, or exact copies thereof, that are the result of original observations and activities of a study and are necessary for the reconstruction and evaluation of the report of that study. In the event that exact transcripts of raw data have been

prepared (e.g., tapes which have been transcribed verbatim, dated, and verified accurate by signature), the exact copy or exact transcript may be substituted for the original source as raw data. "Raw data" may include photographs, microfilm or microfiche copies, computer printouts, magnetic media, including dictated observations, and recorded data from automated instruments.

Reference substance means any chemical substance or mixture, or analytical standard, or material other than a test substance, feed, or water, that is administered to or used in analyzing the test system in the course of a study for the purposes of establishing a basis for comparison with the test substance for known chemical or biological measurements.

Specimens means any material derived from a test system for examination or analysis.

Sponsor means:

(1) A person who initiates and supports, by provision of financial or other resources, a study;

(2) A person who submits a study to the EPA in support of an application for a research or marketing permit; or

(3) A testing facility, if it both initiates and actually conducts the study.

Study means any experiment at one or more test sites, in which a test substance is studied in a test system under laboratory conditions or in the environment to determine or help predict its effects, metabolism, product performance (efficacy studies only as required by 40 CFR 158.640), environmental and chemical fate, persistence and residue, or other characteristics in humans, other living organisms, or media. The term "study" does not include basic exploratory studies carried out to determine whether a test substance or a test method has any potential utility.

Study completion date means the date the final report is signed by the study director.

Study director means the individual responsible for the overall conduct of a study.

Study initiation date means the date the protocol is signed by the study director.

Test substance means a substance or mixture administered or added to a test system in a study, which substance or mixture:

(1) Is the subject of an application for a research or marketing permit supported by the study, or is the contemplated subject of such an application; or

(2) Is an ingredient, impurity, degradation product, metabolite, or radioactive isotope of a substance described by paragraph (1) of this definition, or some other substance related to a substance described by that paragraph, which is used in the study to assist in characterizing the toxicity, metabolism, or other characteristics of a substance described by that paragraph.

Test system means any animal, plant, microorganism, chemical or physical matrix, including but not limited to soil or water, or subparts thereof, to which the test, control, or reference substance is administered or added for study. "Test system" also includes appropriate groups or components of the system not treated with the test, control, or reference substance.

Testing facility means a person who actually conducts a study, i.e., actually uses the test substance in a test system. "Testing facility" encompasses only those operational units that are being or have been used to conduct studies.

Vehicle means any agent which facilitates the mixture, dispersion, or solubilization of a test substance with a carrier.

§ 160.10 Applicability to studies performed under grants and contracts.

When a sponsor or other person utilizes the services of a consulting laboratory, contractor, or grantee to perform all or a part of a study to which this part applies, it shall notify the consulting laboratory, contractor, or grantee that the service is, or is part of, a study that must be conducted in compliance with the provisions of this part.

§ 160.12 Statement of compliance or non-compliance.

Any person who submits to EPA an application for a research or marketing permit and who, in connection with the application, submits data from a study to which this part applies shall include in the application a true and correct statement, signed by the applicant, the sponsor, and the study director, of one of the following types:

(a) A statement that the study was conducted in accordance with this part; or

(b) A statement describing in detail all differences between the practices used in the study and those required by this part; or

(c) A statement that the person was not a sponsor of the study, did not conduct the study, and does not know whether the study was conducted in accordance with this part.

§ 160.15 Inspection of a testing facility.

(a) A testing facility shall permit an authorized employee or duly designated representative of EPA or FDA, at reasonable times and in a reasonable manner, to inspect the facility and to inspect (and in the case of records also to copy) all records and specimens required to be maintained regarding studies to which this part applies. The records inspection and copying requirements should not apply to quality assurance unit records of findings and problems, or to actions recommended and taken, except that EPA may seek production of these records in litigation or formal adjudicatory hearings.

(b) EPA will not consider reliable for purposes of supporting an application for a research or marketing permit any data developed by a testing facility or sponsor that refuses to permit inspection in accordance with this part. The determination that a study will not be considered in support of an application for a research or marketing permit does not, however, relieve the applicant for such a permit of any obligation under any applicable statute or regulation to submit the results of the study to EPA.

§ 160.17 Effects of non-compliance.

(a) EPA may refuse to consider reliable for purposes of supporting an application for a research or marketing permit any data from a study which was not conducted in accordance with this part.

(b) Submission of a statement required by § 160.12 which is false may form the basis for cancellation, suspension, or modification of the research or marketing permit, or denial or disapproval of an application for such a permit, under FIFRA section 3, 5, 6, 18, or 24 or FFDCA section 408 or 409, or for criminal prosecution under 18 U.S.C. 2 or 1001 or FIFRA section 14, or for imposition of civil penalties under FIFRA section 14.

Subpart B—Organization and Personnel

§ 160.29 Personnel.

(a) Each individual engaged in the conduct of or responsible for the supervision of a study shall have education, training, and experience, or combination thereof, to enable that individual to perform the assigned functions.

(b) Each testing facility shall maintain a current summary of training and experience and job description for each individual engaged in or supervising the conduct of a study.

(c) There shall be a sufficient number of personnel for the timely and proper conduct of the study according to the protocol.

(d) Personnel shall take necessary personal sanitation and health precautions designed to avoid contamination of test, control, and reference substances and test systems.

(e) Personnel engaged in a study shall wear clothing appropriate for the duties they perform. Such clothing shall be changed as often as necessary to prevent microbiological, radiological, or chemical contamination of test systems and test, control, and reference substances.

(f) Any individual found at any time to have an illness that may adversely affect the quality and integrity of the study shall be excluded from direct contact with test systems, and test, control, and reference substances, and any other operation or function that may adversely affect the study until the condition is corrected. All personnel shall be instructed to report to their immediate supervisors any health or medical conditions that may reasonably be considered to have an adverse effect on a study.

§ 160.31 Testing facility management.

For each study, testing facility management shall:

(a) Designate a study director as described in § 160.33 before the study is initiated.

(b) Replace the study director promptly if it becomes necessary to do so during the conduct of a study.

(c) Assure that there is a quality assurance unit as described in § 160.35.

(d) Assure that test, control, and reference substances or mixtures have been appropriately tested for identity, strength, purity, stability, and uniformity, as applicable.

(e) Assure that personnel, resources, facilities, equipment, materials and methodologies are available as scheduled.

(f) Assure that personnel clearly understand the functions they are to perform.

(g) Assure that any deviations from these regulations reported by the quality assurance unit are communicated to the study director and corrective actions are taken and documented.

§ 160.33 Study director.

For each study, a scientist or other professional of appropriate education, training, and experience, or combination thereof, shall be identified as the study director. The study director has overall responsibility for the technical conduct of the study, as well as for the interpretation, analysis, documentation, and reporting of results, and represents the single point of study control. The study director shall assure that:

(a) The protocol, including any change, is approved as provided by § 160.120 and is followed.

(b) All experimental data, including observations of unanticipated responses of the test system are accurately recorded and verified.

(c) Unforseen circumstances that may affect the quality and integrity of the study are noted when they occur, and corrective action is taken and documented.

(d) Test systems are as specified in the protocol.

(e) All applicable good laboratory practice regulations are followed.

(f) All raw data, documentation, protocols, specimens, and final reports are transferred to the archives during or at the close of the study.

§ 160.35 Quality assurance unit.

(a) A testing facility shall have a quality assurance unit which shall be responsible for monitoring each study to assure management that the facilities, equipment, personnel, methods, practices, records, and controls are in conformance with the regulations in this part. For any given study, the quality assurance unit shall be entirely separate from and independent of the personnel engaged in the direction and conduct of that study. The quality assurance unit shall conduct inspections and maintain records appropriate to the study.

(b) The quality assurance unit shall:

(1) Maintain a copy of a master schedule sheet of all studies conducted at the testing facility indexed by test substance, and containing the test system, nature of study, date study was initiated, current status of each study, identity of the sponsor, and name of the study director.

(2) Maintain copies of all protocols pertaining to all studies for which the unit is responsible.

(3) Inspect each study at intervals adequate to ensure the integrity of the study and maintain written and properly signed records of each periodic inspection showing the date of the inspection, the study inspected, the phase or segment of the study inspected, the person performing the inspection, findings and problems, action recommended and taken to resolve existing problems, and any scheduled date for reinspection. Any problems which are likely to affect study integrity found during the course of an inspection shall be brought to the attention of the study director and management immediately.

(4) Periodically submit to management and the study director written status reports on each study, noting any problems and the corrective actions taken.

(5) Determine that no deviations from approved protocols or standard operating procedures were made without proper authorization and documentation.

(6) Review the final study report to assure that such report accurately describes the methods and standard operating procedures, and that the reported results accurately reflect the raw data of the study.

(7) Prepare and sign a statement to be included with the final study report which shall specify the dates inspections were made and findings reported to management and to the study director.

(c) The responsibilities and procedures applicable to the quality assurance unit, the records maintained by the quality assurance unit, and the method of indexing such records shall be in writing and shall be maintained. These items including inspection dates, the study inspected, the phase or segment of the study inspected, and the name of the individual performing the inspection shall be made available for inspection to authorized employees or duly designated representatives of EPA or FDA.

(d) An authorized employee or a duly designated representative of EPA or FDA shall have access to the written procedures established for the inspection and may request testing facility management to certify that inspections are being implemented, performed, documented, and followed up in accordance with this paragraph.

Subpart C—Facilities

§ 160.41 General.

Each testing facility shall be of suitable size and construction to facilitate the proper conduct of studies. Testing facilities which are not located within an indoor controlled environment shall be of suitable location to facilitate the proper conduct of studies. Testing facilities shall be designed so that there is a degree of separation that will prevent any function or activity from having an adverse effect on the study.

§ 160.43 Test system care facilities.

(a) A testing facility shall have a sufficient number of animal rooms or other test system areas, as needed, to ensure: proper separation of species or test systems, isolation of individual projects, quarantine or isolation of animals or other test systems, and routine or specialized housing of animals or other test systems.

(1) In tests with plants or aquatic animals, proper separation of species can be accomplished within a room or area by housing them separately in different chambers or aquaria. Separation of species is unnecessary where the protocol specifies the simultaneous exposure of two or more species in the same chamber, aquarium, or housing unit.

(2) Aquatic toxicity tests for individual projects shall be isolated to the extent necessary to prevent cross-contamination of different chemicals used in different tests.

(b) A testing facility shall have a number of animal rooms or other test system areas separate from those described in paragraph (a) of this section to ensure isolation of studies being done with test systems or test, control, and reference substances known to be biohazardous, including volatile substances, aerosols, radioactive materials, and infectious agents.

(c) Separate areas shall be provided, as appropriate, for the diagnosis, treatment, and control of laboratory test system diseases. These areas shall provide effective isolation for the housing of test systems either known or suspected of being diseased, or of being carriers of disease, from other test systems.

(d) Facilities shall have proper provisions for collection and disposal of contaminated water, soil, or other spent materials. When animals are housed, facilities shall exist for the collection and disposal of all animal waste and refuse or for safe sanitary storage of waste before removal from the testing facility. Disposal facilities shall be so provided and operated as to minimize vermin infestation, odors, disease hazards, and environmental contamination.

(e) Facilities shall have provisions to regulate environmental conditions (e.g., temperature, humidity, photoperiod) as specified in the protocol.

(f) For marine test organisms, an adequate supply of clean sea water or artificial sea water (prepared from deionized or distilled water and sea salt mixture) shall be available. The ranges of composition shall be as specified in the protocol.

(g) For freshwater organisms, an adequate supply of clean water of the appropriate hardness, pH, and temperature, and which is free of contaminants capable of interfering with the study, shall be available as specified in the protocol.

(h) For plants, an adequate supply of soil of the appropriate composition, as specified in the protocol, shall be available as needed.

§ 160.45 Test system supply facilities.

(a) There shall be storage areas, as needed, for feed, nutrients, soils, bedding, supplies, and equipment. Storage areas for feed nutrients, soils, and bedding shall be separated from areas where the test systems are located and shall be protected against infestation or contamination. Perishable supplies shall be preserved by appropriate means.

(b) When appropriate, plant supply facilities shall be provided. As specified in the protocol, these include:

(1) Facilities for holding, culturing, and maintaining algae and aquatic plants.

(2) Facilities for plant growth, including, but not limited to greenhouses, growth chambers, light banks, and fields.

(c) When appropriate, facilities for aquatic animal tests shall be provided. These include, but are not limited to, aquaria, holding tanks, ponds, and ancillary equipment, as specified in the protocol.

§ 160.47 Facilities for handling test, control, and reference substances.

(a) As necessary to prevent contamination or mixups, there shall be separate areas for:

(1) Receipt and storage of the test, control, and reference substances.

(2) Mixing of the test, control, and reference substances with a carrier, e.g., feed.

(3) Storage of the test, control, and reference substance mixtures.

(b) Storage areas for test, control, and/or reference substance and for test, control, and/or reference mixtures shall be separate from areas housing the test systems and shall be adequate to preserve the identity, strength, purity, and stability of the substances and mixtures.

§ 160.49 Laboratory operation areas.

Separate laboratory space and other space shall be provided, as needed, for the performance of the routine and specialized procedures required by studies.

§ 160.51 Specimen and data storage facilities.

Space shall be provided for archives, limited to access by authorized personnel only, for the storage and retrieval of all raw data and specimens from completed studies.

Subpart D—Equipment

§ 160.61 Equipment design

Equipment used in the generation, measurement, or assessment of data and equipment used for facility environmental control shall be of appropriate design and adequate capacity to function according to the protocol and shall be suitably located for operation, inspection, cleaning, and maintenance.

§ 160.63 Maintenance and calibration of equipment.

(a) Equipment shall be adequately inspected, cleaned, and maintained. Equipment used for the generation, measurement, or assessment of data shall be adequately tested, calibrated, and/or standardized.

(b) The written standard operating procedures required under § 160.81(b)(11) shall set forth in sufficient detail the methods, materials, and schedules to be used in the routine inspection, cleaning, maintenance, testing, calibration, and/ or standardization of equipment, and shall specify, when appropriate, remedial action to be taken in the event of failure or malfunction of equipment. The written standard operating procedures shall designate the person responsible for the performance of each operation.

(c) Written records shall be maintained of all inspection, maintenance, testing, calibrating, and/or standardizing operations. These records, containing the dates of the operations, shall describe whether the maintenance operations were routine and followed the written standard operating procedures. Written records shall be kept of nonroutine repairs performed on equipment as a result of failure and malfunction. Such records shall document the nature of the defect, how and when the defect was discovered, and any remedial action taken in response to the defect.

Subpart E—Testing Facilities Operation

§ 160.81 Standard operating procedures.

(a) A testing facility shall have standard operating procedures in writing setting forth study methods that management is satisfied are adequate to insure the quality and integrity of the data generated in the course of a study. All deviations in a study from standard operating procedures shall be authorized by the study director and shall be documented in the raw data. Significant changes in established standard operating procedures shall be

properly authorized in writing by management.

(b) Standard operating procedures shall be established for, but not limited to, the following:

(1) Test system area preparation.

(2) Test system care.

(3) Receipt, identification, storage, handling, mixing, and method of sampling of the test, control, and reference substances.

(4) Test system observations.

(5) Laboratory or other tests.

(6) Handling of test systems found moribund or dead during study.

(7) Necropsy of test systems or postmortem examination of test systems.

(8) Collection and identification of specimens.

(9) Histopathology.

(10) Data handling, storage and retrieval.

(11) Maintenance and calibration of equipment.

(12) Transfer, proper placement, and identification of test systems.

(c) Each laboratory or other study area shall have immediately available manuals and standard operating procedures relative to the laboratory or field procedures being performed. Published literature may be used as a supplement to standard operating procedures.

(d) A historical file of standard operating procedures, and all revisions thereof, including the dates of such revisions, shall be maintained.

§ 160.83 Reagents and solutions.

All reagents and solutions in the laboratory areas shall be labeled to indicate identity, titer or concentration, storage requirements, and expiration date. Deteriorated or outdated reagents and solutions shall not be used.

§ 160.90 Animal and other test system care.

(a) There shall be standard operating procedures for the housing, feeding, handling, and care of animals and other test systems.

(b) All newly received test systems from outside sources shall be isolated and their health status or appropriateness for the study shall be evaluated. This evaluation shall be in accordance with acceptable veterinary medical practice or scientific methods.

(c) At the initiation of a study, test systems shall be free of any disease or condition that might interfere with the purpose or conduct of the study. If during the course of the study, the test systems contract such a disease or condition, the diseased test systems should be isolated, if necessary. These test systems may be treated for disease or signs of disease provided that such treatment does not interfere with the study. The diagnosis, authorization of treatment, description of treatment, and each date of treatment shall be documented and shall be retained.

(d) Warm-blooded animals, adult reptiles, and adult terrestrial amphibians used in laboratory procedures that require manipulations and observations over an extended period of time or in studies that require these test systems to be removed from and returned to their test system-housing units for any reason (e.g., cage cleaning, treatment, etc.), shall receive appropriate identification (e.g., tattoo, color code, ear tag, ear punch, etc.). All information needed to specifically identify each test system within the test system-housing unit shall appear on the outside of that unit. Suckling mammals and juvenile birds are excluded from the requirement of individual identification unless otherwise specified in the protocol.

(e) Except as specified in paragraph (e)(1) of this section, test systems of different species shall be housed in separate rooms when necessary. Test systems of the same species, but used in different studies, should not ordinarily be housed in the same room when inadvertent exposure to test, control, or reference substances or test system mixup could affect the outcome of either study. If such mixed housing is necessary, adequate differentiation by space and identification shall be made.

(1) Plants, invertebrate animals, aquatic vertebrate animals, and organisms that may be used in multispecies tests need not be housed in separate rooms, provided that they are adequately segregated to avoid mixup and cross contamination.

(2) [Reserved]

(f) Cages, racks, pens, enclosures, aquaria, holding tanks, ponds, growth chambers, and other holding, rearing and breeding areas, and accessory equipment, shall be cleaned and sanitized at appropriate intervals.

(g) Feed, soil, and water used for the test systems shall be analyzed periodically to ensure that contaminants known to be capable of interfering with the study and reasonably expected to be present in such feed, soil, or water are not present at levels above those specified in the protocol. Documentation of such analyses shall be maintained as raw data.

(h) Bedding used in animal cages or pens shall not interfere with the purpose or conduct of the study and shall be changed as often as necessary to keep the animals dry and clean.

(i) If any pest control materials are used, the use shall be documented. Cleaning and pest control materials that interfere with the study shall not be used.

(j) All plant and animal test systems shall be acclimatized to the environmental conditions of the test, prior to their use in a study.

Subpart F—Test, Control, and Reference Substances

§ 160.105 Test, control, and reference substance characterization.

(a) The identity, strength, purity, and composition, or other characteristics which will appropriately define the test, control, or reference substance shall be determined for each batch and shall be documented before its use in a study. Methods of synthesis, fabrication, or derivation of the test, control, or reference substance shall be documented by the sponsor or the testing facility, and the location of such documentation shall be specified.

(b) When relevant to the conduct of the study the solubility of each test, control, or reference substance shall be determined by the testing facility or the sponsor before the experimental start date. The stability of the test, control, or reference substance shall be determined before the experimental start date or concomitantly according to written standard operating procedures, which provide for periodic analysis of each batch.

(c) Each storage container for a test, control, or reference substance shall be labeled by name, chemical abstracts service number (CAS) or code number, batch number, expiration date, if any, and, where appropriate, storage conditions necessary to maintain the identity, strength, purity, and composition of the test, control, or reference substance. Storage containers shall be assigned to a particular test substance for the duration of the study.

(d) For studies of more than 4 weeks experimental duration, reserve samples from each batch of test, control, and reference substances shall be retained for the period of time provided by § 160.195.

(e) The stability of test, control, and reference substances under storage conditions at the test site shall be known for all studies.

§ 160.107 Test, control, and reference substance handling.

Procedures shall be established for a system for the handling of the test, control, and reference substances to ensure that:

(a) There is proper storage.

(b) Distribution is made in a manner designed to preclude the possibility of contamination, deterioration, or damage.

(c) Proper identification is maintained throughout the distribution process.

(d) The receipt and distribution of each batch is documented. Such documentation shall include the date and quantity of each batch distributed or returned.

§ 160.113 Mixtures of substances with carriers.

(a) For each test, control, or reference substance that is mixed with a carrier, tests by appropriate analytical methods shall be conducted:

(1) To determine the uniformity of the mixture and to determine, periodically, the concentration of the test, control, or reference substance in the mixture.

(2) When relevant to the conduct of the study, to determine the solubility of each test, control, or reference substance in the mixture by the testing facility or the sponsor before the experimental start date.

(3) To determine the stability of the test, control, or reference substance in the mixture before the experimental start date or concomitantly according to written standard operating procedures, which provide for periodic analysis of each batch.

(b) Where any of the components of the test, control, or reference substance carrier mixture has an expiration date, that date shall be clearly shown on the container. If more than one component has an expiration date, the earliest date shall be shown.

(c) If a vehicle is used to facilitate the mixing of a test substance with a carrier, assurance shall be provided that the vehicle does not interfere with the integrity of the test.

Subpart G—Protocol for and Conduct of a Study

§ 160.120 Protocol.

(a) Each study shall have an approved written protocol that clearly indicates the objectives and all methods for the conduct of the study. The protocol shall contain but shall not necessarily be limited to the following information:

(1) A descriptive title and statement of the purpose of the study.

(2) Identification of the test, control, and reference substance by name, chemical abstracts service (CAS) number or code number.

(3) The name and address of the sponsor and the name and address of the testing facility at which the study is being conducted.

(4) The proposed experimental start and termination dates.

(5) Justification for selection of the test system.

(6) Where applicable, the number, body weight range, sex, source of supply, species, strain, substrain, and age of the test system.

(7) The procedure for identification of the test system.

(8) A description of the experimental design, including methods for the control of bias.

(9) Where applicable, a description and/or identification of the diet used in the study as well as solvents, emulsifiers and/or other materials used to solubilize or suspend the test, control, or reference substances before mixing with the carrier. The description shall include specifications for acceptable levels of contaminants that are reasonably expected to be present in the dietary materials and are known to be capable of interfering with the purpose or conduct of the study if present at levels greater than established by the specifications.

(10) The route of administration and the reason for its choice.

(11) Each dosage level, expressed in milligrams per kilogram of body or test system weight or other appropriate units, of the test, control, or reference substance to be administered and the method and frequency of administration.

(12) The type and frequency of tests, analyses, and measurements to be made.

(13) The records to be maintained.

(14) The date of approval of the protocol by the sponsor and the dated signature of the study director.

(15) A statement of the proposed statistical method to be used.

(b) All changes in or revisions of an approved protocol and the reasons therefore shall be documented, signed by the study director, dated, and maintained with the protocol.

§ 160.130 Conduct of a study.

(a) The study shall be conducted in accordance with the protocol.

(b) The test systems shall be monitored in conformity with the protocol.

(c) Specimens shall be identified by test system, study, nature, and date of collection. This information shall be located on the specimen container or shall accompany the specimen in a manner that precludes error in the recording and storage of data.

(d) In animal studies where histopathology is required, records of gross findings for a specimen from postmortem observations shall be available to a pathologist when examining that specimen histopathologically.

(e) All data generated during the conduct of a study, except those that are generated by automated data collection systems, shall be recorded directly, promptly, and legibly in ink. All data entries shall be dated on the day of entry and signed or initialed by the person entering the data. Any change in entries shall be made so as not to obscure the original entry, shall indicate the reason for such change, and shall be dated and signed or identified at the time of the change. In automated data collection systems, the individual responsible for direct data input shall be identified at the time of data input. Any change in automated data entries shall be made so as not to obscure the original entry, shall indicate the reason for change, shall be dated, and the responsible individual shall be identified.

§ 160.135 Physical and chemical characterization studies.

(a) All provisions of the GLP standards shall apply to physical and chemical characterization studies designed to determine stability, solubility, octanol water partition coefficient, volatility, and persistence (such as biodegradation, photodegradation, and chemical degradation studies) of test, control, or reference substances.

(b) The following GLP standards shall not apply to studies, other than those designated in paragraph (a) of this section, designed to determine physical and chemical characteristics of a test, control, or reference substance:

§ 160.31 (c), (d), and (g)
§ 160.35 (b) and (c)
§ 160.43
§ 160.45
§ 160.47
§ 160.49
§ 160.81(b) (1), (2), (6) through (9), and (12)
§ 160.90
§ 160.105 (a) through (d)
§ 160.113
§ 160.120(a) (5) through (12), and (15)
§ 160.185(a) (5) through (8), (10), (12), and (14)
§ 160.195 (c) and (d)

Subparts H and I—[Reserved]

Subpart J—Records and Reports

§ 160.185 Reporting of study results.

(a) A final report shall be prepared for each study and shall include, but not necessarily be limited to, the following:

(1) Name and address of the facility performing the study and the dates on which the study was initiated and was completed, terminated, or discontinued.

(2) Objectives and procedures stated in the approved protocol, including any changes in the original protocol.

(3) Statistical methods employed for analyzing the data.

(4) The test, control, and reference substances identified by name, chemical abstracts service (CAS) number or code number, strength, purity, and composition, or other appropriate characteristics.

(5) Stability and, when relevant to the conduct of the study the solubility of the test, control, and reference substances under the conditions of administration.

(6) A description of the methods used.

(7) A description of the test system used. Where applicable, the final report shall include the number of animals used, sex, body weight range, source of supply, species, strain and substrain, age, and procedure used for identification.

(8) A description of the dosage, dosage regimen, route of administration, and duration.

(9) A description of all circumstances that may have affected the quality or integrity of the data.

(10) The name of the study director, the names of other scientists or professionals and the names of all supervisory personnel, involved in the study.

(11) A description of the transformations, calculations, or operations performed on the data, a summary and analysis of the data, and a statement of the conclusions drawn from the analysis.

(12) The signed and dated reports of each of the individual scientists or other professionals involved in the study, including each person who, at the request or direction of the testing facility or sponsor, conducted an analysis or evaluation of data or specimens from the study after data generation was completed.

(13) The locations where all specimens, raw data, and the final report are to be stored.

(14) The statement prepared and signed by the quality assurance unit as described in § 160.35(b)(7).

(b) The final report shall be signed and dated by the study director.

(c) Corrections or additions to a final report shall be in the form of an amendment by the study director. The amendment shall clearly identify that part of the final report that is being added to or corrected and the reasons for the correction or addition, and shall be signed and dated by the person responsible. Modification of a final report to comply with the submission requirements of EPA does not constitute a correction, addition, or amendment to a final report.

(d) A copy of the final report and of any amendment to it shall be maintained by the sponsor and the test facility.

§ 160.190 Storage and retrieval of records and data.

(a) All raw data, documentation, records, protocols, specimens, and final reports generated as a result of a study shall be retained. Specimens obtained from mutagenicity tests, specimens of soil, water, and plants, and wet specimens of blood, urine, feces, and biological fluids, do not need to be retained after quality assurance verification. Correspondence and other documents relating to interpretation and evaluation of data, other than those documents contained in the final report, also shall be retained.

(b) There shall be archives for orderly storage and expedient retrieval of all raw data, documentation, protocols, specimens, and interim and final reports. Conditions of storage shall minimize deterioration of the documents or specimens in accordance with the requirements for the time period of their retention and the nature of the documents of specimens. A testing facility may contract with commercial archives to provide a repository for all material to be retained. Raw data and specimens may be retained elsewhere provided that the archives have specific reference to those other locations.

(c) An individual shall be identified as responsible for the archives.

(d) Only authorized personnel shall enter the archives.

(e) Material retained or referred to in the archives shall be indexed to permit expedient retrieval.

§ 160.195 Retention of records.

(a) Record retention requirements set forth in this section do not supersede the record retention requirements of any other regulations in this subchapter.

(b) Except as provided in paragraph (c) of this section, documentation records, raw data, and specimens pertaining to a study and required to be retained by this part shall be retained in the archive(s) for whichever of the following periods is longest:

(1) In the case of any study used to support an application for a research or marketing permit approved by EPA, the period during which the sponsor holds any research or marketing permit to which the study is pertinent.

(2) A period of at least 5 years following the date on which the results of the study are submitted to the EPA in support of an application for a research or marketing permit.

(3) In other situations (e.g., where the study does not result in the submission of the study in support of an application for a research or marketing permit), a period of at least 2 years following the date on which the study is completed, terminated, or discontinued.

(c) Wet specimens, samples of test, control, or reference substances, and specially prepared material which are relatively fragile and differ markedly in stability and quality during storage, shall be retained only as long as the quality of the preparation affords evaluation. Specimens obtained from mutagenicity tests, specimens of soil, water, and plants, and wet specimens of blood, urine, feces, and biological fluids, do not need to be retained after quality assurance verification. In no case shall retention be required for longer periods than those set forth in paragraph (b) of this section.

(d) The master schedule sheet, copies of protocols, and records of quality assurance inspections, as required by § 160.35(c) shall be maintained by the quality assurance unit as an easily accessible system of records for the period of time specified in paragraph (b) of this section.

(e) Summaries of training and experience and job descriptions required to be maintained by § 160.29(b) may be retained along with all other testing facility employment records for the length of time specified in paragraph (b) of this section.

(f) Records and reports of the maintenance and calibration and inspection of equipment, as required by § 160.63 (b) and (c), shall be retained for the length of time specified in paragraph (b) of this section.

(g) If a facility conducting testing or an archive contracting facility goes out of business, all raw data, documentation, and other material specified in this section shall be transferred to the archives of the sponsor of the study. The EPA shall be notified in writing of such a transfer.

(h) Specimens, samples, or other non-documentary materials need not be

retained after EPA has notified in writing the sponsor or testing facility holding the materials that retention is no longer required by EPA. Such notification normally will be furnished upon request after EPA or FDA has completed an audit of the particular study to which the materials relate and EPA has concluded that the study was conducted in accordance with this part.

(ii) Records required by this part may be retained either as original records or as true copies such as photocopies, microfilm, microfiche, or other accurate reproductions of the original records.

[FR Doc. 89-19067 Filed 8-16-89; 8:45 am]
BILLING CODE 6560-50-M

federal register

Thursday
August 17, 1989

Part V

Department of Education

National Center for Research and Development in the Education of Gifted and Talented Children and Youth; Invitation of Applications for New Awards for Fiscal Year 1990; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.206R]

National Center for Research and Development in the Education of Gifted and Talented Children and Youth; Invitation of Applications for New Awards for Fiscal Year 1990

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The National Center for Research and Development in the Education of Gifted and Talented Children and Youth (Gifted and Talented Education Research Center) is established pursuant to a requirement in the Jacob K. Javits Gifted and Talented Students Education Act of 1988 (Act), Title IV, part B of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The purpose of the Act is to provide financial assistance to State and local educational agencies, institutions of higher education, and other public and private agencies and organizations, to initiate a coordinated program of research, demonstration projects, personnel training, and similar activities designed to build a nationwide capability in elementary and secondary schools to identify and meet the special educational needs of gifted and talented students.

Deadline for Transmittal of Applications: November 15, 1989.

Available Funds: The Department estimates that $1,500,000 will be available for this competition.

Estimated Size of Award: $1,500,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 5 years.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), and part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace Grants)).

Description of Program:

Congressional Findings Regarding the Education of Gifted and Talented Students

The Act contains the following Congressional findings; applicants may wish to consider these findings in preparing their applications.

(a) Gifted and talented students are a national resource vital to the future of the Nation and its security and well-being.

(b) Unless the special abilities of gifted and talented students are recognized and developed during their elementary and secondary school years, much of their special potential for contributing to the national interest is likely to be lost.

(c) Gifted and talented students from economically disadvantaged families and areas, and students of limited English proficiency are at greatest risk of being unrecognized and of not being provided adequate or appropriate educational services.

(d) State and local educational agencies and private nonprofit schools often lack the necessary specialized resources to plan and implement effective programs for the early identification of gifted and talented students for the provision of educational services and programs appropriate to their special needs.

(e) The Federal Government can best carry out the limited but essential role of stimulating research and development and personnel training, and providing a national focal point of information and technical assistance, that is necessary to ensure that our Nation's schools are able to meet the special educational needs of gifted and talented students, and thereby to serve a profound national interest.

Definitions

The following definitions apply to the terms used in this notice:

(a) "Gifted and talented students" means children and youth who give evidence of high performance capability in areas such as intellectual, creative, artistic or leadership capacity, or in specific academic fields, and who require services or activities not ordinarily provided by the school in order to fully develop such capabilities.

(b) "Institution of higher education" has the same meaning given such term in section 435(b) of the Higher Education Act of 1965, as amended.

Eligible Parties

The following are eligible to apply for the Gifted and Talented Education Research Center award:

(a) Institutions of higher education.

(b) State educational agencies.

(c) A combination or consortium of institutions of higher education or State educational agencies, or both.

Mission of the Gifted and Talented Education Research Center

The Department, after consultation with the field, has chosen to encourage the widest possible array of proposals by defining the Center essentially in terms of the Act. The purpose of the Gifted and Talented Education Research Center is to conduct—

(a) Research on methods and techniques for identifying and teaching gifted and talented students; and

(b) Program evaluations, surveys, and the collection, analysis, and development of information needed to accomplish the purposes of the Act.

Structure and Requirements of the Gifted and Talented Education Research Center

The Gifted and Talented Education Research Center shall have a Director.

The Secretary may authorize the Director to carry out such functions of the Gifted and Talented Education Research Center as may be agreed upon through arrangements with other institutions of higher education, State or local educational agencies, or other public or private agencies and organizations. Applicants who plan to make such arrangements should describe the arrangements they plan to make in their application narratives.

The Gifted and Talented Education Research Center will be expected to cooperate with the administrative unit in the Department of Education. Responsibilities of the administrative unit are to administer programs under the Act, coordinate all programs for gifted and talented students administered by the Department, and serve as a focal point of national leadership and information on the educational needs of gifted and talented students and the availability of educational services to meet those needs. Applicants should describe in their applications how they propose to work with the Department of Education's administrative unit.

Grantees must use funds received under this program to supplement and make more effective the expenditure of state and local funds, and of Federal funds made available under chapter 2 of Title I and Title II of the ESEA, for the education of gifted and talented students.

Participation of Private School Students and Teachers

Under the Act, the Secretary is required to ensure, where appropriate, that provision is made for the equitable participation of students and teachers in private nonprofit elementary and secondary schools. Therefore, applicants are strongly encouraged to propose activities that involve such participation, as in, for example, research activities that include students and teachers from these private schools as research subjects, or include the study of these private schools' programs for gifted and talented students.

Priorities

Absolute Priorities

The Secretary gives an absolute preference to applications that propose:

(a) Activities pertaining to the identification of gifted and talented students who may not be identified through traditional assessment methods (including economically disadvantaged individuals, individuals of limited English proficiency, and individuals with handicaps) and to education programs designed to include gifted and talented students from such groups.

(b) Activities designed to develop or improve the ability of a significant number of the Nation's schools to plan, conduct, and improve programs for the identification and education of gifted and talented students, and that may also be designed to utilize the cooperative efforts and participation of State and local educational agencies, institutions of higher education, and other public and private agencies and organizations (including business, industry, and labor).

Under 34 CFR 75.105(c)(3) the Secretary funds under this competition only applications that include these activities.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of the Jacob K. Javits Gifted and Talented Students Education Act of 1988, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified these needs;

(iii) How these needs will be met by the project; and

(iv) The benefits to be gained by meeting these needs.

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (15 points)

(i) The Secretary reviews each applicant to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (7 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.206R), Washington, DC 20202-4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.206R), Room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts, plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions.

Note: ED Form GCS–009 is intended for the use of grantees and should not be transmitted to the Department.

Certification Regarding Drug-Free Workplace Requirements: Grantees Other Than Individuals (ED 80–0004).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

For Further Information Contact: William Weston or Ivor Pritchard, Office of Research, Office of Educational Research and Improvement, Room 617, 555 New Jersey Avenue, NW., Washington, DC 20208–5646. Phone: (202) 357–6223.

Program Authority: 20 U.S.C. 3061–3068.

Dated: August 9, 1989.

Bruno V. Manno,

Acting Assitant Secretary for Educational Research and Improvement.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): [ ][ ] – [ ][ ][ ][ ][ ][ ][ ]

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award — B. Decrease Award — C. Increase Duration
D. Decrease Duration — Other (Specify): _____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 0 6R

TITLE: Gifted and Talented Education Research Center

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Authorized for Local Reproduction

Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES					
(a) Grant Program		(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.		$	$	$	$
9.					
10.					
11.					
12. TOTALS (sum of lines 8 and 11)		$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT					
(a) Grant Program		FUTURE FUNDING PERIODS (Years)			
		(b) First	(c) Second	(d) Third	(e) Fourth
16.		$	$	$	$
17.					
18.					
19.					
20. TOTALS (sum of lines 16 -19)		$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A (continued)

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

BILLING CODE 4000-01-C

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, read carefully the description of the program, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications.

The Panelists who will review the applications and make recommendations to the Secretary will evaluate the applications according to the EDGAR selection criteria provided in this application package. To facilitate fair consideration of the merits of all applications, you are encouraged to organize the application narrative as follows:

1. Begin with an Abstract: that is, a 200 word summary of the Gifted and Talented Education Research Center as proposed in the application narrative.

2. Describe the activities of the proposed Gifted and Talented Education Research Center as a whole for the course of the projected 5 year period, including the nature of its mission, organization, personnel, and resources. This description should be followed by a description of each individual activity proposed. For each activity, identify the nature of the activity; the significance of its objectives; the importance of achieving those objectives, including potential products and other results; the activity's design and methods to be utilized; the degree of involvement and the qualifications of key personnel; the activity's budget; the way in which the activity will be evaluated; and the resources that will be used to carry out the activity.

3. If you intend to carry out some of the Center's functions through arrangements with other institutions of higher education, State or local education agencies, or other public or private agencies and organizations, describe those arrangements.

4. Describe how you propose to work with the Department of Education's administrative unit that will administer programs under the Act.

5. Describe any opportunities you will provide for the participation of students and teachers in private nonprofit elementary and secondary schools in Gifted and Talented Education Research Center activities.

6. Include any other pertinent information that might assist the Secretary in reviewing the applications.

7. Please limit the Application Narrative to no more than 100 double-spaced, typed pages (on one side only). You are encouraged to provide resumes of key personnel as an appendix to the narrative.

Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing the Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 200 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850-0838, Washington, DC 20503.

(Information collection approved under OMB control number 1850-0838. Expiration date: 12/31/1990.)

BILLING CODE 4000-01-M

BEST COPY AVAILABLE

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

SF 424B (4-88) Back

Certification Regarding
Debarment, Suspension, and Other Responsibility Matters
Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name	PR/Award Number or Project Name
Name and Title of Authorized Representative	
Signature	Date

ED Form GCS-008, (REV.12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

ED Form GCS-008, (REV. 12/88)

Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name | PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature | Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government-wide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name — PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature — Date

ED 80-0004

[FR Doc. 89-19106 Filed 8-16-89; 8:45 am]
BILLING CODE 4000-01-C

federal register

Thursday
August 17, 1989

Part VI

Department of Justice

Bureau of Prisons

28 CFR Part 551

Control, Custody, Care, Treatment and Instruction of Inmates; Smoking/No Smoking Areas; Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 551

Control, Custody, Care, Treatment and Instruction of Inmates; Smoking/No Smoking Areas

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document the Bureau of Prisons is proposing to amend its regulations on Smoking/No Smoking Areas within its institutions and offices. The amendment requires Chief Executive Officers to designate by the placement of signs each area that may be used as a smoking area. The absence of a sign shall be interpreted as a no smoking area. This amendment is intended to provide for a clean air environment and to protect the health and safety of staff and inmates.

DATES: Comments by October 2, 1989.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 724-3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on Smoking/No Smoking Areas. A final rule on this subject was published in the **Federal Register** March 19, 1986 (51 FR 9615). This amendment restricts the areas where smoking is permitted and changes the presumption, in the absence of a sign, from smoking to no smoking.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views or arguments in writing to the Bureau of Prisons, Room 760, 320 First Street NW., Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 551

Prisoners.

In consideration of the foregoing, it is proposed to amend part 551 in subchapter C of 28 CFR, chapter V as set forth below.

Dated: August 11, 1989.

J. Michael Quinlan,

Director, Bureau of Prisons.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 551—MISCELLANEOUS

1. In part 551, subpart N is revised to read as follows:

Subpart N—Smoking/No Smoking Areas

Sec.
551.160 Purpose and scope.
551.161 Definition.
551.162 Designated smoking areas.
551.163 Notice of smoking areas.

Subpart N—Smoking/No Smoking Areas

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082 (Repealed as to conduct occurring on or after November 1, 1987), 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

§ 551.160 Purpose and scope.

To advance towards becoming a clean air environment and to protect the health and safety of staff and inmates, the Bureau of Prisons will restrict areas and circumstances in which smoking is permitted within its institutions and offices.

(a) All areas of Bureau of Prisons facilities and vehicles are no smoking areas unless specifically designated as smoking areas by the Chief Executive Officer consistent with the guidelines set forth in this rule.

(b) Chief Executive Officers shall limit smoking areas to a minimum number of locations, consistent with effective operations. Under no circumstances shall smoking be permitted in the following areas, except as noted in § 551.162(a):

(1) Elevators,
(2) Storage Rooms and Warehouses,
(3) Libraries,
(4) Corridors and Halls,
(5) Dining Facilities,
(6) Kitchen and Food Preparation Areas,
(7) Medical/Dental Care Delivery Areas,
(8) Institution/Government Vehicles,
(9) Administrative Areas and Offices,
(10) Auditoriums,
(11) Class and Conference Rooms,
(12) Gymnasiums and Exercise Rooms, and
(13) Restrooms.

§ 551.161 Definition.

For purpose of this rule, smoking is defined as carrying or inhaling a lighted cigar, cigarette, pipe or other lighted tobacco products.

§ 551.162 Designated smoking areas.

(a) Chief Executive Officers shall identify "smoking areas" for staff and inmates, especially for those who may be employed in, or restricted to, a nonsmoking area for an extended time.

(b) To the extent practicable, Chief Executive Officers shall accommodate nonsmoking inmates in nonsmoking living quarters. The sharing of a cell or living area between a smoker and a nonsmoker will be avoided except where impractical due to circumstances, and then may be done only for limited duration.

§ 551.163 Notice of smoking areas.

The Chief Executive Officer shall ensure that smoking areas are clearly identified for staff and inmates by the appropriate placement of signs. The absence of a sign shall be interpreted as indicating a no smoking area. Appropriate disciplinary action will be taken for failure to observe smoking restrictions.

[FR Doc. 89-19356 Filed 8-16-89; 8:45 am]
BILLING CODE 4410-05-M

federal register

Thursday
August 17, 1989

Part VII

Department of Transportation

Urban Mass Transportation Administration

Section 3 and 9 Grant Applications; Notice

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1989, Public Law 100-457, signed into law on September 30, 1988, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** each time a grant is obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street, SW., Room 9305, Washington, DC 20590, (202) 366-2053.

SUPPLEMENTARY INFORMATION: The Section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The Section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant No.	Grant amount	Date obligated
None			

SECTION 9 GRANTS

Transit property	Grant No.	Grant amount	Date obligated
Norwalk Transit District, Norwalk, CT	CT-90-X137	$2,987,200	6/30/89
City of Boise, Boise, ID	ID-90-X017	814,514	(1)
Lowell Regional Transit Authority, Lowell, MA	MA-90-X097	1,027,248	6/29/89
Casco Bay Island Transit District, Portland, ME	ME-90-X043	92,400	6/30/89
Suburban Mobility Authority for Regional Transportation, Detroit, MI	MI-90-X117	306,836	(1)
City of Greensboro, Greensboro, NC	NC-90-X096	256,000	6/26/89
Manchester Transit Authority, Manchester, NH	NH-90-X019	620,362	(1)
Regional Transportation Commission, Las Vegas, NV	NV-90-X012	1,965,770	6/30/89
Mid-Mon Valley Transit Authority, Monessen, PA	PA-90-X175	1,163,756	6/30/89
Utah Transit Authority, Salt Lake City, UT	UT-90-X013-01	960,000	7/18/89

[1] The Section 9 grants shown without an obligation date are awaiting 13(c) certification from the Department of Labor. After receipt of the certification the grants will be obligated.

Issued on: August 1, 1989.

Roland J. Mross,

Deputy Administrator.

[FR Doc. 89-19273 Filed 8-16-89; 8:45 am]

BILLING CODE 4910-57-M

federal register

Thursday
August 17, 1989

Part VIII

Federal Election Commission

11 CFR Parts 100, 102, 110, 114, and 9034

Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions; Final Rule

FEDERAL ELECTION COMMISSION

[Notice 1989-13]

11 CFR Parts 100, 102, 110, 114 and 9034

Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions

AGENCY: Federal Election Commission.

ACTION: Final Rule; Transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations at 11 CFR 110.3, 110.4, 110.5 and 110.6, concerning affiliated committees, transfers, contributions in the name of another, annual contribution limits and earmarked contributions. These regulations implement the contribution limitations and prohibitions established by 2 U.S.C. 441a, 441e, 441f and 441g, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA"), 2 U.S.C. 431 *et seq.* The revisions clarify the Commission's application of the affiliation rules and resolve several issues concerning transfers between committees authorized by the same candidate. The amended rules also update the reporting requirements for conduits of earmarked contributions and define the term "conduit." In addition, the Commission has made several corresponding amendments to 11 CFR 100.5(g), 102.2(b), 110.1(f), 110.8(d), 114.5(g), 114.8(g) and 9034.4(d) to bring those provisions into conformity with the amendments to 11 CFR 110.3 through 110.6. Further information on these revisions is provided in the supplementary information which follows.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d) and 26 U.S.C. 9039(c). A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR 110.3, 110.4, 110.5 and 110.6, which concern affiliation of political committees, transfers between committees, certain prohibited contributions, annual contribution limits for individuals, and earmarked contributions directed through conduits or intermediaries. The Commission is also publishing conforming amendments to §§ 100.5, 102.2, 110.1, 110.8, 114.5, 114.8 and 9034.4 to reflect the changes made in §§ 110.3 through 110.6 of the regulations.

On July 30, 1986 the Commission issued a Notice of Proposed Rulemaking (NPRM) in which it sought comments on proposed revisions to these regulations. 51 FR 27183. Ten written comments were received in response to the Notice. A public hearing was held on September 17, 1986, at which three witnesses presented testimony on the issues raised in the rulemaking.

Section 438(d) of title 2, United States Code, and 26 U.S.C. 9039(c), require that any rules or regulations prescribed by the Commission to carry out the provisions of titles 2 and 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on August 14, 1989. Please note that the methods of calculating legislative days are different under these two provisions. Although most of the regulations contained in this document implement title 2 of the United States Code, the conforming amendment to 11 CFR 9034.4 implements title 26. Consequently, the legislative days for the revisions to 11 CFR parts 100, 102, 110 and 114 will be counted separately from the legislative days for the conforming amendment to 11 CFR 9034.4. Thus, the title 2 rules and the title 26 rules may be promulgated on different dates, since the expiration of the time periods may not coincide.

Explanation and Justification

In revising §§ 110.3 through 110.6 of the regulations, the Commission has addressed several significant issues. The principal areas in which the rules published today differ from the previous language of these sections are as follows:

(1) The factors used to evaluate whether committees are commonly established, financed, maintained or controlled and therefore affiliated (*see* § 110.3(a)(3));

(2) Transfers of funds between previous and current federal campaign committees of the same candidate (*see* §110.3(c)(4));

(3) Transfers of funds between principal campaign committees of a candidate who is concurrently seeking more than one office (*see* § 110.3(c)(5));

(4) New language on transfers of funds from a candidate's nonfederal campaign to that candidate's federal campaign committee (*see* § 110.3(c)(6));

(5) New language defining the term "conduit or intermediary" (*see* § 110.6(b)(2)); and

(6) Reporting of earmarked contributions by both the recipient candidate's committee and the conduit or intermediary (*see* § 110.6(c)).

After considering the public comments and testimony on the current presumption that state and local party committees are affiliated, and thus subject to common contribution limits, the Commission has decided to retain the current language.

The Notice of Proposed Rulemaking also raised questions concerning affiliation between a candidate's authorized committee and an unauthorized committee established, financed, maintained or controlled by the candidate or the candidate's campaign organization. Having evaluated the two public comments and testimony on this complex area, the Commission has decided to continue to apply the affiliation factors at 11 CFR 110.3(a)(3)(ii) in these instances.

Another significant issue in this rulemaking concerns the exercise of direction or control by a conduit over the choice of the recipient candidate for earmarked contributions. The Commission has decided to retain the wording of the current rules at § 110.6(d) and to continue to rely upon the standards it has delineated in previous decisions.

Finally, the Commission has included new subheadings in each paragraph of §§ 110.3, 110.4, 110.5, and 110.6 for the convenience of the reader.

Section 110.3 Contribution Limitations for Affiliated Committees and Political Party Committees; Transfers (2 U.S.C. 441a(a)(5), 441a(a)(4))

This section has been substantially revised to resolve a number of issues that have been raised during the administration and enforcement of this provision since it was promulgated in 1977. In addition, § 110.3 has been retitled "Contribution limitations for affiliated committees and political party committees; Transfers" to reflect that several provisions pertaining to political party committees are located in this section.

Section 110.3 has been reorganized to some extent. As in the current rules, paragraph (a) implements contribution limitations for affiliated committees and explains when committees are considered affiliated. Revised paragraph (b) explains how the affiliation rules affect the contribution limits for political party committees. Revised paragraph (c) consolidates the rules located in current paragraphs (a)(2) and (c) concerning transfers between committees.

Section 110.3(a) Contribution Limitations for Affiliated Committees

Section 110.3(a), as revised, follows current § 110.3(a)(1) by applying the FECA's contribution limits to affiliated committees other than political party committees. This paragraph implements the "anti-proliferation" provisions of 2 U.S.C. 441a(a)(5).

Paragraph (a)(1) states that general rule the committees commonly established, financed, maintained or controlled are affiliated, and are therefore subject to common contribution limits. The new rules modify current paragraph (a)(1) in several respects. First, the revisions specify that the shared contribution limits for affiliated committees apply to both contributions made by those committees and to contributions they receive. Second, the revisions clarify that committees may be affiliated even if one of them is not a political committee as defined in 11 CFR 100.5. Several previous advisory opinions (AOs) have made this point. *e.g.* AOs 1987-12, 1985-2, 1984-46 and 1982-52. Next, revisions to paragraph (a)(1)(i) clarify that the common contribution limits apply to all the authorized committees of a candidate for the same election. Separate contribution limits would apply to a candidate's authorized committees for different elections. However, transfers between authorized committees will in some situations require that the contributions transferred be aggregated and subject to a single contribution limit. *See* 11 CFR 110.3(c). Finally, paragraph (a)(1)(ii) has been revised to state that in appropriate cases, the term "local unit" may include a franchisee, licensee, or state or regional association. *See* AOs 1983-46, 1979-38, 1978-61 and 1977-70.

A list of committees viewed as *per se* affiliated is set forth in paragraph (a)(2). This list is essentially the same as the one set forth in current paragraph (a)(1)(ii), which was taken from the House and Conference reports on the 1976 amendments to the FECA. H.R. Rep. No. 94-917, 94th Cong., 2d Sess. 6 (1976); H.R. Conf. Rep. No. 94-1057, 94th Cong., 2d Sess. 58 (1976).

One commenter questioned whether the proposed revisions to § 110.3(a) were intended to change the Commission's view of Congressional intent to exclude the relationship between a labor federation, such as the AFL-CIO, and an international or national labor organization from the affiliation rules. The commenter pointed out that the legislative history of the 1976 FECA Amendments evidences a decision by Congress to continue the *status quo* by permitting separate contribution limits for the separate segregated fund of a labor federation structured along the lines of the AFL-CIO and the separate segregated fund of an international or national labor organization that is a member of the labor federation. The comment argues that this view is reflected in the set of five interrelated anti-proliferation rules first stated by Rep. Wayne Hays, Chairman of the House Administration Committee, during a markup session on the 1976 FECA Amendments and later restated in the House Committee and the Conference Committee reports on those amendments. H.R. Rep. No. 94-917, 94th Cong., 2d Sess. 6 (1976); H.R. Conf. Rep. No. 94-1057, 94th Cong., 2d Sess. 58 (1976). The comment concludes from the legislative history that Congress was well aware of the existence of separate segregated funds established by such labor federations and viewed them as separate from political committees established by their constituent members, entitled to separate contribution limits. Consequently, the commenter assumed that the language proposed in the NPRM was based on an intention not to apply the affiliation factors in paragraph (a)(3)(ii) to labor federations. However, if that assumption was incorrect, the comment suggested several specific revisions to the affiliation factors, which are addressed below in the discussion of those paragraphs.

On several occasions, the Commission has determined that the AFL-CIO COPE-PCC and the separate segregated funds of the AFL-CIO's constituent member unions were not affiliated under the anti-proliferation rules established by 2 U.S.C. 441a(a)(5). *See* MURs 354, 783 and 1605. These conclusions were based upon the legislative history of section 441a(a)(5) cited by the commenter. Current §§ 100.5(g) and 110.3(a) incorporate the anti-proliferation rules stated by Rep. Hays and the congressional reports. These provisions are included in the new rules with minor clarifying revisions. Consequently, the revisions to §§ 110.3(a) and 100.5(g) do not alter the Commission's previous decisions in MURs 354, 783 and 1605. Under the revised rules, there are separate contribution limits for the separate segregated funds of labor federations and the separate segregated funds of their member national and international unions. However, this exception to the anti-proliferation rules only applies to labor federations whose relationships with their member unions are structured along the lines of the relationship that existed between the AFL-CIO and its member unions at the time the 1976 amendments to the FECA were enacted by Congress.

New paragraph (a)(3) makes several revisions to the "indicia of affiliation" currently found in § 110.3(a)(1)(iii). First, the terminology has been changed by substituting "circumstantial factors" for "indicia." Next, new paragraph (a)(3)(i) has been added to explain that in making affiliation determinations, the Commission may examine a variety of relationships, including the relationship between organizations sponsoring committees, between the committees themselves, or between one sponsoring organization and a committee established by another sponsoring organization. The NPRM suggested including language to clarify that the factors are used to determine whether committees are affiliated. The Commission has now decided to add additional language to provide a more complete explanation of the role of the affiliation factors set forth in paragraphs (a)(3)(ii) (A) through (J). The Commission will examine the factors in evaluating the overall relationship between committees or their sponsoring organizations to determine whether there is evidence that the committees are commonly established, financed, maintained or controlled, and therefore affiliated. The Commission notes that the factors set out in § 110.3(a)(3)(ii) could have been used to evaluate the relationships that result when an entity creates smaller organizational units, as well as the relationships that result when entities join together to create a larger organization.

The factors, themselves, have been revised to rework proposed language that could have been interpreted more broadly or narrowly than intended, and to explain more clearly the type of activity covered by each factor. Several of the revisions have been made in response to legitimate concerns raised by the two public comments that discussed the current indicia of affiliation.

The first factor in paragraph (a)(3)(ii)(A) concerns the ownership of a controlling interest in the voting stock or securities of an organization sponsoring another committee. This factor is based on current paragraph (a)(1)(iii)(A).

Paragraph (a)(3)(ii)(B) follows current paragraph (a)(1)(iii)(B) by addressing the authority or ability of one sponsoring organization or committee to direct or participate in the governance of another

sponsoring organization or committee through its constitution, bylaws, contracts or other rules. One comment on the proposed rules suggested that this indicium also include the ability to influence the decisions of the officers or members of another entity. Another commenter urged the Commission to revise this factor to consider only significant authority to govern another sponsoring organization or committee. The Commission has decided, instead of including either of these suggestions, to include new language in revised paragraph (a)(3)(ii)(B) to explicitly recognize that formal or informal practices or procedures should be considered in examining the relationship between the organizations or committees.

Revised paragraph (a)(3)(ii)(C) concerns a committee's or sponsoring organization's authority or ability to hire, appoint, demote or otherwise control the officers or decision-making employees of another sponsoring organization or committee. This paragraph is based on current paragraph (a)(1)(iii)(C). One commenter recommended revising this factor to focus only on situations where the authority to hire, appoint or demote is "significant." Another comment recommended that the current language, which focuses on the ability to influence decision-making, be retained. The Commission has revised this factor by including the authority or ability to otherwise control the decisionmakers because "control" is a more specific term that more accurately describes the kind of involvement that could lead to affiliation.

Revised paragraph (a)(3)(ii) contains two new factors in paragraphs (D) and (E) which facilitate consideration of whether the sponsoring organizations or committees have common or overlapping members, officers or employees. One public comment observed that common or overlapping membership with another sponsoring organization or political committee should not be one of the criteria because it merely reflects similar goals for the two organizations or committees. For this reason, the Commission has refined the proposed rule to clarify that the presence of common or overlapping members, officers or employees is only significant when it indicates a formal or ongoing relationship between the committees or sponsoring organizations.

Another comment argued that the proposed rules did not clearly cover consecutive roles an individual may have in various organizations or committees. Therefore, the comment recommended that the Commission add new language to the regulations to permit consideration of whether a political committee or sponsoring organization has any members, officers or employees who were members, officers or employees of another sponsoring organization or committee. The Commission has now included new paragraph (a)(3)(ii)(F) to address this type of situation. New paragraph (F) explains that consecutive roles are a consideration only when they reveal a formal or ongoing relationship between sponsoring organizations or committees or when they indicate the creation of a successor entity.

New paragraph (a)(3)(ii)(G), which is based on current paragraph (a)(1)(iii)(E), focuses on the funding of one committee or sponsoring organization by another. This paragraph has been amended to reflect the fact that the provision of goods may be as significant as the provision of funding. Also, language has been added to clarify that occasional transfers resulting from joint fundraising activities under 11 CFR 102.17 are not considered in affiliation determinations. Under section 441a(a)(5)(A) of the FECA, the contribution limits for affiliated committees do not limit transfers between otherwise unaffiliated committees of funds raised in accordance with legitimate joint fundraising activities. The proposed rules had also included a reference to 11 CFR 1026(b)(1)(iv) regarding collecting agents for the separate segregated fund of a federation of labor organizations. This reference has been deleted from the final rules because it did not involve a joint fundraising situation.

The single comment on the current financing indicium of affiliation suggested including financing that does not involve the direct passing or payment of funds between two entities as an indicium of affiliation. The comment cited instances where the Commission has considered efforts by one organization or committee to arrange for contributions to be made to another organization or committee in determining whether they are affiliated. MURs 1667, 1704, and 1722. The comment recommended that the proposed regulation be redrafted to clarify that affiliation may result when a sponsoring organization or a committee provides for the indirect financing of another organization or committee. The Commission agrees that some forms of indirect financing should be treated as evidence of affiliation. Accordingly, new paragraph (a)(3)(ii)(H) has been added to the regulations to take into account indirect methods of financing, such as where one entity regularly arranges for a committee to receive contributions from third parties.

New paragraph (a)(3)(ii)(I) has been added to permit consideration of whether a sponsoring organization or committee has an active or significant role in forming another committee or sponsoring organization. One comment suggested that the rule should also focus on the role played by the personnel of an organization or committee in determining whether one entity has a significant role in the formation of another. The commenter expressed the concern that individuals may establish several committees or organizations as "spin-offs" and yet contend that they are not affiliated. The commenter recommended redrafting this language to consider whether the members, officers, employees or agents of an entity had an active or leadership role in the formation of another sponsoring organization or committee. Consequently, the Commission has modified the wording of this provision to permit consideration of whether an agent of the sponsoring organization or committee had this type of role.

The NPRM had proposed deleting current paragraph (a)(1)(iii)(D), which concerns similar patterns of contributions. One comment urged the Commission to reinstate this provision because the commenter believed that public records of contributions provide objective evidence of affiliating conduct. The Commission has previously considered whether committees received their contributions from the same source or made contributions to the same candidates as an indicium of affiliation in several compliance matters and advisory opinions. The Commission had decided to delete this criterion from the proposed rules because political committees with similar political viewpoints and objectives may tend to make contributions to the same candidates and receive contributions from the same donors even though the committees are completely independent. The Commission has now determined that these concerns can be alleviated by retaining this factor and adding language in new paragraph (a)(3)(ii)(J) explaining that similar patterns of contributions and contributors are evidence of affiliation only when they indicate a formal or ongoing relationship between the sponsoring organizations or committees.

The Commission has evaluated the previously proposed revisions to section 110.3(a) in light of the subsequent decision in *Federal Election Commission* v. *Sailors' Union of the Pacific Political Fund*, 823 F.2d 502 (9th Cir. 1987). The Commission has concluded that the unique circumstances present in that case do not necessitate any additional changes in the affiliation rules.

A question that has arisen in advisory opinions is whether affiliated committees, such as separate segregated funds of corporations, may disaffiliate at some point after their parent corporations have ceased to be commonly owned or controlled. *See* AOs 1987-21 and 1986-42. Although the entities involved in those advisory opinions had not reached the point of disaffiliation, the Commission recognizes that under the appropriate circumstances, disaffiliation might be possible. *See* AO 1983-28. The revised rules do not address this topic because the Commission has not had sufficient opportunities to examine particular situations in which corporations or other organizations seek to sever their connections with other corporate or noncorporate entities and to develop criteria for such determinations. However, nothing contained in the new affiliation regulations reverses or modifies the Commission's decisions on this subject.

There are several consequences resulting from a determination that committees are affiliated. First, affiliated committees share a common contribution limit with regard to all contributions they make or receive. If either of the affiliated committees is a multicandidate committee, the multicandidate committee's higher contribution limit applies to contributions made by either committee. Another consequence of affiliation is that there is no limit on the total amount of funds that may be transferred between the two committees under 11 CFR 102.6(a). However, transfers must be made only from funds which are permissible under the Act. Furthermore, new § 110.3(c)(5) and current § 110.6(d) contain certain restrictions on transfers between affiliated campaign committees of a dual candidate for federal offices or for federal and state offices. *See* discussion of new § 110.3(c)(5) below.

Under § 102.2, political committees are required to list on their Statements of Organization other political committees with which they are affiliated. Accordingly, § 102.2 has been amended to assist the reader in locating the affiliation provisions in the regulations. However, each affiliated committee that qualifies as a political committee under the FECA is responsible for satisfying its own recordkeeping and reporting obligations under 11 CFR parts 102 and 104. *See* AOs 1985-9, 1979-66 and 1979-59.

Finally, the Commission notes that determinations of affiliation will affect the ability of a corporation or federation of trade associations to solicit specific categories of individuals under 11 CFR 114.5(g) and 114.8(g). Specifically, the Commission has used the indicia of affiliation to decide whether particular entities, such as franchisees, licensees, wholesale distributors, partnerships and joint ventures are "affiliates" of corporations for solicitation purposes. *See* AOs 1989-8, 1986-46, 1987-34, 1985-31, 1985-7, 1984-36, 1983-48, 1983-46, 1979-38, 1978-61, 1978-39 and 1977-70. Accordingly, the Commission has included a cross-reference to the § 100.5(g) definition of "affiliated committee" in the portions of §§ 114.5 and 114.8 that refer to "affiliates." A similar reference has not been included, however in § 114.7, which addresses solicitations by membership organizations, cooperatives and corporations without capital stock, since the term "affiliate" is not used in § 114.7.

The NPRM observed that increasing numbers of candidates and prospective candidates are establishing political action committees (PACs) that make contributions to Federal, state and local candidates and conduct other political activities on instructions from or in conjunction with the founding candidates. Thus, the Commission sought comment on whether the indicia of affiliation in § 110.3(a) should continue to be applied to determine if such "candidate PACs" or "leadership committees" are affiliated with the candidates' authorized campaign committees. Questions were raised in AO 1978-12 concerning the status of a committee that expected to receive the assistance of a congressman in raising funds and making contribution decisions. The AO indicated that the committee was not considered an authorized committee if the congressman had not given it written authorization. On the basis of the facts presented, the Commission assumed the committee would not be affiliated with the congressman's principal campaign committee. The opinion did not, however, "give blanket approval for a general proposal" like the one described in the request. AO 1978-12. Thus, the Commission has acknowledged that under certain circumstances a candidate PAC or leadership committee may be considered affiliated with the candidate's campaign committee for the purposes of the contribution limitations. The Commission has relied upon the current indicia of affiliation in § 110.3 to determine whether particular authorized committees and candidate PACs were affiliated in MURs 2161, 1870, 1741, 999 and 459. Questions of this nature were also presented in AOs 1988-6 and 1985-40.

Two comments were received on this issue. One comment stated that a candidate PAC should be viewed as affiliated with the candidate's campaign committee and thus both committees should be subject to a single contribution limit. The other commenter submitted a draft provision that would implement a specific *per se* affiliation rule for a candidate's authorized committees or exploratory committees and any other committee established by the same candidate or significantly influenced by the candidate in its solicitation, contribution or expenditure activities.

Although the Commission considered including in the revised regulations language that would focus specifically on affiliation between authorized committees and candidate PACs or leadership committees, the Commission has decided instead to continue to rely on the factors set out at 11 CFR 110.3(a)(3)(ii). After evaluating the comments and testimony on this issue, as well as the situations presented in the previous advisory opinions and compliance matters, the Commission has concluded that this complex area is better addressed on a case-by-case basis. Thus, in an appropriate case, the Commission will examine the relationship between the authorized and unauthorized committees to determine whether they are commonly established, financed, maintained or controlled.

Section 110.3(b) Contribution Limitations for Political Party Committees.

Section 110.3(b) implements section 441a(a)(5)(B) of the Act by explaining how the FECA's antiproliferation provisions apply to different types of political party committees. Although § 110.3(b) has been reorganized, it does not change the current rules as to when separate contribution limits are available for particular types of party committees. New paragraph (b)(1) generally follows current paragraph (b)(1) by providing that the contribution limit that applies to the national committees of a political party is separate from the contribution limit for the state committees of the same political party. Please note that the separate contribution limits in new paragraph (b)(1) apply to contributions made or received by national and State party committees.

The revised regulations delete current paragraph (b)(3), which sets out examples involving contributions by national party committees, House campaign committees, state party committees and subordinate committees of State parties. It did not seem appropriate to include those examples in the regulations since examples are generally included in the Explanation and justification. Thus, these examples are discussed below, and their deletion from the text of the regulations does not mean they have been invalidated.

New paragraph (b)(2) has been reorganized to consolidate the provisions in current paragraphs (b)(2)(i) and (b)(4) explaining the contribution limits that apply to certain types of national party committees. Under the revised rules, the House campaign committee and the national committee of the same political party have separate per election limits on contributions they give to any federal candidate, including a candidate for the House of Representatives, the Senate or a candidate seeking the party's nomination for President. Similarly, the Senate campaign committee and the national committee of the same political party have separate per election limits on contributions to House candidates and candidates for President. However, with regard to contributions to Senate candidates, the Senate campaign committee and the national committee of the same party share a single $17,500 limit on contributions made at any time in the six year Senate election cycle. *See* 11 CFR 110.2(e). Finally, the Senate and House campaign committees have contribution limits which are separate from each other.

New paragraph (b)(3) follows current paragraph (b)(2)(ii) by explaining that contributions made by a State party committee and by subordinate State party committees are presumed to be made by a single committee. However, this provision also grants these party committees an opportunity to demonstrate that they qualify for an exemption from the affiliation rules, provided they can show they have not received funds from any other party committee and that they do not make contributions in cooperation, consultation or concert with, or at the request or suggestion of, any other party unit or party committee.

In applying these rules, the Commission has encountered several questions including who has the burden of rebutting the presumption and what aspects of the relationship between a state party committee and a subordinate state party committee should be looked at to determine whether these committees are affiliated. Accordingly, the Commission sought comments on proposed language to clarify the application of the presumption in the current rules and to permit consideration of a wider range of interactions between a state party committee and subordinate state committees in determining whether they are entitled to separate contribution limits. The criteria proposed were based upon factors considered by the Commission in AO 1978–9.

Five comments were received on the proposed revisions to the rules governing the contribution limitations for state party committees and subordinate state party committees. The commenters opposing the proposed regulation argued that county committees and other local party units are independent of state party committees and are, therefore, entitled to separate contribution limits. However, according to these comments, county party units partly finance state party committees in some states, while in other states the county parties are financially supported by the state political party. One state party indicated that it has an agreement to provide office space at no cost to one of the county party units, in addition to providing the county party with financial support in a fixed amount per month. The comments and testimony illustrated and emphasized the complexity and greatly varying nature of relationshps between state party committees, county party committees, and other local party units.

One comment expressed the concern that the proposed change in terminology from "any party unit" to "the state party" in the draft rules could permit a subordinate party committee that received financing from or acted in consultation with party units other than the state committee, such as a national party committee, to claim that it operated independently and was entitled to a separate contribution limitation. This comment supported the approach taken in the current rules, which examines the contacts between the subordinate committee and any other party unit.

In light of the questions raised regarding the current rule and the proposed amendments, the Commission has reviewed the pertinent legislative history on this matter, as well as the 1976 rulemaking proceeding which culminated in the promulgation of the current rule. *See* FEC Agenda Document #87–79, at pp. 11–16 (July 22, 1987) (considered on Aug. 6, 1987). Finally, the Commission has examined various state laws and the bylaws of several state party committees to ascertain the general structure of state party organizations and to determine how state and local party committees interact with each other.

The Commission has decided not to adopt the approach urged by the commenters who favor treating state and local party committees as independent or *per se* unaffiliated because this approach would be in conflict with some of the evidence presented in this rulemaking and with the legislative history of the anti-proliferation provision of the Act. At this time the Commission has determined to retain the current language. Accordingly, in lieu of the language proposed in the July 30, 1986 NPRM, new § 110.3(b)(3) follows the language of current § 110.3(b)(2)(ii) by presuming that state party committees and subordinate state party committees are affiliated and by granting these committees the opportunity to demonstrate otherwise.

Section 110.3(c) Transfers

The rules pertaining to transfers of funds between political committees, including campaign committees and party committees, are currently set forth in paragraphs (a)(2) and (c) of § 110.3. The revised rules consolidate these provisions into a single paragraph (c) and resolve several significant points that have been raised regarding transfers. For example, new paragraph (c) clarifies the method used to determine whether the funds transferred between candidate committees contain any impermissible contributions. The cash on hand of the transferor is considered to consist of the funds most recently received, and the transferor must be able to demonstrate that it has sufficient permissible funds on hand at the time of the transfer. With regard to transfers from a federal candidate's previous campaign committee to his or her current campaign committee, new paragraph (c) explains when the transfer affects the original contributors' per election contribution limitations. The new rules also provide additional guidance as to when candidates are considered to be actively seeking more than one Federal office for purposes of the transfer rules. Finally, new paragraph (c) addresses transfers from a candidate's nonfederal campaign to the same candidate's Federal campaign committee. The Commission received no public comments on the proposed revisions to the transfer rules or on any of the transfer issues raised in the NPRM.

The Commission has deleted from the revised transfer rules the current provision in § 110.3(a)(2)(ii) allowing transfers between a candidate's authorized committees in situations where the candidate has not received a waiver from reporting. This provision is not needed because candidates no longer have the option of reporting separately from their principal campaign committees. Moreover, transfers between authorized committees are covered by new paragraphs (c)(4) and (c)(5).

New paragraph (c)(1) follows current paragraph (c) by permitting unlimited transfers of funds between affiliated or unaffiliated party committees of the same political party. Language has also been added to paragraph (c)(1) to explicitly state that the contribution limitations of 11 CFR 110.1 and 110.2 do not restrict transfers between affiliated committees or by collecting agents to a separate segregated fund. This is consistent with 11 CFR 102.6(a)(1) regarding affiliated committees, and with 11 CFR 102.6(b) concerning collecting agents. Please note, however, that under 11 CFR 102.6(a)(1)(iv), only permissible funds may be transferred. Furthermore, such transfers can trigger the Act's registration and reporting requirements for previously unregistered entities. *See* 11 CFR 102.6(a)(2).

New paragraph (c)(2) generally follows current paragraph (a)(2)(i) regarding the transfer of joint fundraising proceeds. New language has been included to clarify that under the joint fundraising rules, a participating committee or organization may not receive more than its allocated share of the funds raised.

Paragraph (c)(3) generally follows current paragraph (a)(2)(iii) concerning transfers between a candidate's primary and general election campaigns.

New § 110.3(c)(4) continues the overall approach taken by current § 110.3(a)(2)(iv), which permits transfers in either direction between a current campaign committee and a previous campaign committee of the same candidate, so long as the funds do not contain contributions in violation of the Act. In addition, new language has been included to clarify that transfers of permissible funds between two previous campaign committees of the same candidate are also allowed under paragraph (c)(4). This provision has also been modified to clarify that it applies only to transfers between a candidate's Federal campaign committees. Transfers from a candidate's nonfederal campaign to the same candidate's Federal campaign committee are covered by new paragraph (c)(6), discussed below.

Definitions of "previous Federal campaign committee" and "current Federal campaign committee" have also been included in new paragraph (c)(4). These definitions are intended to distinguish transfers between previous and current campaign committees (which come within paragraph (c)(4)) from transfers between committees of dual Federal candidates (which are subject to somewhat different requirements, as set out in paragraph (c)(5)). The phrase "previous Federal campaign committee" refers to a campaign committee that supported a candidate in any federal election that has already been held. A "current Federal campaign committee" refers to the candidate's committee that is working for his or her nomination or election in an upcoming election.

The Commission has added new language to paragraph (c)(4) to assist committees in determining whether contributions to each committee from the same contributor must be aggregated upon transfer, and consequently whether the transfer would result in the making of excessive contributions. Under new paragraphs (c)(4) (iii) and (iv), aggregation of contributions is required if the transferred contributions were made after the previous election is over, or after the candidate withdrew from or became ineligible to participate in the previous election. However, post-election contributions need not be aggregated if they are properly designated for outstanding debts. Thus, the aggregation provisions effectuate the statutory scheme which establishes contribution limits on a per election basis. The new language is consistent with the approach taken in AOs 1987–4, 1986–12, 1980–30 and in revised 11 CFR 110.1(b) (1987).

Finally, the Commission notes that questions were raised in AO 1988–5 regarding transfers by a publicly funded Presidential campaign to a previously publicly funded campaign committee of the same candidate. The Commission held that this type of transfer from a publicly funded committee is not a qualified campaign expense under 11 CFR 9032.9(a). Therefore, the Commission concluded that such a transfer is not permissible until after the audit process is completed and any repayment obligations and any possible civil penalties are satisfied. The new regulations at 11 CFR 110.3(c)(4) do not directly address the issue of nonqualified campaign expenses presented in AO 1988–5. However, nothing contained in the new transfer provisions would reverse or modify the Commission's decision in that advisory opinion.

Paragraph (c)(5) of § 110.3 implements the statutory restrictions found in 2 U.S.C. 441a(a)(5) on transfers between principal campaign committees of a candidate who is seeking nomination or election to more than one Federal office. Although new paragraph (c)(5) generally follows current § 110.3(a)(2)(v), new language has been included to provide further guidance on certain points. First, the revised rules clarify when a candidate is deemed to be seeking more than one Federal office, and is thus subject to the "dual candidate" transfer rules of paragraph (c)(5). An individual is considered to be seeking more than one Federal office if the individual is concurrently a candidate for more than one Federal office during the same or overlapping election cycles.

New paragraph (c)(5)(i) follows the current regulations and 2 U.S.C. 441a(a)(5)(C) by prohibiting transfers until the candidate is no longer "actively seeking" more than one Federal office. The revised rules continue to list the situations where the candidate will no longer be considered to be actively seeking a particular office—when the principal campaign committee has filed a termination report or has notified the Commission that no further campaign activities will be conducted except for expenditures for debt retirement purposes. The NPRM suggested including other situations where candidates are prohibited from running for more than one office by operation of state law. Along these lines, the Commission has now added two new examples to paragraph (c)(5)(i): Where the candidate is ineligible for nomination or election to more than one office by operation of law, such as when the state filing deadline has passed, and where the individual publicly withdraws from the race and ceases to campaign. The first of these follows the Commission's decision in AO 1988–12.

New paragraph (c)(5)(ii) follows the current rules and section 441a(a)(5)(C) of the Act by requiring aggregation of a donor's contributions to each committee to the extent that such contributions are transferred between committees. Contributions must be excluded from the total amount transferred to the extent that they would exceed the donor's contribution limits with respect to the committee receiving the transferred funds.

Paragraph (c)(5)(iii) prohibits transfers where the dual federal candidate's committee "has elected to receive" public funding under title 26. This provision more closely conforms to the

language in section 441a(a)(5)(C) of the Act than the wording of the current provision. The revision clarifies that the application of this provision does not depend upon the timing of the receipt of title 26 funding.

The Notice raised the question of what is meant by "more than one Federal office," noting the Commission's decisions in AOs 1982–22 and 1978–19. The Commission concluded in AO 1982–22 that a candidate is not running for two offices if the candidate switches Congressional districts in response to a court reapportionment plan. However, in AO 1978–19, the Commission decided that a candidate is running for two Federal offices if he or she enters races for two different Senate seats which span different terms. Specific language addressing these situations has not been included in the amended rules because they do not occur with sufficient frequency to warrant mention; however, these opinions still serve as precedent.

Another issue addressed in the NPRM concerned transfers between the campaign committees of a candidate who abandons his or her campaign for a second Federal office and reactivates the previous campaign for the first office, where both general elections are to be held on the same day. *See* AO 1984–36. In such a situation the Commission determined that if a contribution to the first campaign committee is transferred to the second campaign committee, it must be counted against the contribution limits for the second office. However, the contribution is still attributed to the contribution limits for the first office as well, unless the donor provides a written redesignation. The Commission has decided that this is another area in which specific regulatory language is not needed because this type of situation occurs infrequently.

The Commission has considered whether the restrictions on transfers between committees of dual candidates should also apply to situations where an individual is concurrently a candidate for one office and testing the waters for another office. Although the Commission is unable at this time to reach a conclusion on this issue, the Commission has determined that even if such transfers were permissible, contributions received by the campaign committee and contributions received by the exploratory committee from the same contributor would have to be aggregated for purposes of the contribution limitations of the FECA whenever such contributions are transferred.

Finally, the Commission notes that additional guidance concerning the operation of dual Federal campaign committees may be found at 11 CFR 110.8(d).

Paragraph (c)(6) sets forth new regulatory language concerning transfers of funds from a candidate's nonfederal campaign organization to his or her federal campaign committee. This paragraph generally follows the regulations concerning transfers between previous and current federal committees in § 110.3(c)(4) as well as the previous advisory opinions in this area. *See* AOs 1987–12, 1985–2, 1984–46, 1983–34 and 1982–52. Please note that if the candidate is conducting dual campaigns for state and Federal offices, the provisions of § 110.8(d) would be applicable instead of new § 110.3(c)(6).

Under new paragraph (c)(6), previous nonfederal committees may transfer funds to current federal committees, and current nonfederal committees may make transfers to previous federal committees. Although the total amount that may be transferred between the two affiliated committees is unlimited, the funds actually transferred must not include any contributions from prohibited sources or any contributions in excess of the contribution limits. To assure this, paragraph (c)(6)(i) states that the committee transferring the funds must be able to demonstrate that it has sufficient funds on hand at the time of the transfer that comply with the FECA's contribution limitations and prohibitions. This is consistent with the Commission's current approach in compliance matters. New paragraph (c)(6)(i) also requires the transferor committee to keep records of the sources of funds and to make these records available to the Commission upon request. This is consistent with the recordkeeping requirements for reporting committees.

Paragraph (c)(6)(ii) addresses the question of when contributions to the nonfederal and federal committees must be aggregated for purposes of the contribution limits of the Act. In determining whether contributions are excessive, the amount contributed by a particular person to the nonfederal committee must be aggregated with any contributions made by that person to the federal committee if the contributions were made after the state or local election was held, or after the candidate withdrew from the state or local election, or after the candidate publicly announces his or her candidacy for the Federal office. However, contributions included in the transferred amount that were made prior to the state or local election and while the candidate was still in the nonfederal race do not have to be aggregated with subsequent contributions to the federal campaign committee. AO 1987–12. These requirements effectuate the per election contribution limits of the FECA.

Consistent with previous Commission determinations, the new rules require nonfederal to federal transfers to count toward the threshold for political committee status under the Act. *See e.g.* AOs 1987–12, 1985–2 and 1984–46. Thus, under paragraph (c)(6)(ii), the nonfederal campaign committee must register and report if the amount transferred exceeds $1000. A statement of organization must be filed no later than ten days after the transfer occurs. The nonfederal committee's first report must disclose cash on hand, the source(s) of such funds, and the amount transferred to the federal committee. This information is required under current 11 CFR 104.12. As noted above, the amount transferred is composed of the funds most recently received, excluding any amounts that are not permissible under the FECA. The committee must itemize the sources of the funds transferred in a memo Schedule A in accordance with current 11 CFR 104.3(a)(4). Finally, the new rules allow the nonfederal committee's first report to serve as its termination report, if appropriate. During this rulemaking, the Commission explored alternatives that would have excluded nonfederal committees transferring over $1000 from the FECA's registration and reporting obligations. However, the Commission was not able to find an alternative given that the Commission no longer has the authority to grant waivers from the reporting requirements of the Act.

New paragraph (c)(7) has been added to the regulations to alert the reader that current § 110.8(d) contains additional provisions concerning concurrent campaigns for Fedeal office or for Federal and nonfederal office, including the requirement to maintain completely separate campaign organizations. The Commission may decide at a later time to initiate a rulemaking to move paragraph (d) of § 110.8 to a more appropriate place in the regulations.

Section 110.4 Prohibited Contributions (2 U.S.C. 441e, 441f, 441g, 432(c)(2))

This section implements sections 441e and 441f of the FECA by prohibiting contributions from foreign nationals in connection with any election for local, State or Federal public office, and by prohibiting contributions in the name of another. Section 110.4 also sets out restrictions on contributions of currency, in accordance with sections 441g and 432(c)(2) of the Act. The Commission received no public comments on this section.

Paragraph (a) of § 110.4 contains no substantive changes regarding foreign nationals.

The rules pertaining to contributions in the name of another follow the current provisions, except that new paragraph (b)(1)(iii) has been added to specifically prohibit any person from knowingly helping or assisting any other person in making a contribution in the name of another. Former paragraph (b)(1)(iii) has been renumbered as paragraph (b)(1)(iv). The new language is consistent with a recent judicial interpretation of 2 U.S.C. 441f in *FEC* v. *Rodriguez*, No. 86–687 Civ–T–10(B) (M.D. Fla. May 5, 1987) (unpublished order denying motion for summary judgment). New paragraph (b)(1)(iii) applies to those who initiate or instigate or have some significant participation in a plan or scheme to make a contribution in the name of another, including those who solicit or act as go-betweens to third parties whose donations are reimbursed by the individual who performs a purely ministerial act without any knowledge of the scheme, such as someone who routinely reviews or approves all checks drawn on a specific account.

New paragraph (c) follows the language of current paragraph (c) regarding the making and receipt of cash contributions.

Section 110.5 Annual Contribution Limitation for Individuals (2 U.S.C. 441a(a)(3))

New section 110.5 generally follows current § 110.5 by implementing the $25,000 limitation on contributions made by individuals in a calendar year. The new provision contains several minor clarifying revisions to the current rules. First, the title of this section has been amended to emphasize that the $25,000 annual limitation applies only to contributions made by individuals. Next, new paragraph (a), designated "Scope," has been added to clarify that this section only applies to individuals permitted to make contributions under the Act and does not apply, for example, to foreign nationals or federal contractors. Accordingly, previous paragraphs (a) through (d) have been renumbered (b) through (e).

The wording of new § 110.5(b) has been slightly changed from current § 110.5(a) to clarify that the $25,000 contribution limit applies to all contributions made in the same calendar year. This provision has also been modified somewhat from the proposed rules because the language of the proposed rules could have been misinterpreted to mean that the annual limit does not apply to contributions to delegates or contributions to persons making independent expenditures. The revised language clarifies that these types of contributions are subject to the $25,000 annual limit. The Commission also notes that contributions to a "testing the waters" account under § 101.3 are subject to the annual contribution limit in the event that the individual receiving the contributions subsequently becomes a candidate. The $25,000 annual limit also applies to contributions to an account set up under 11 CFR 9003.3, including a legal and accounting compliance fund.

Paragraph 110.5(c), which is based upon current paragraph 110.5(b), explains when contributions made in a nonelection year are treated as made in an election year for purposes of the annual contribution limit. A definition of the term "nonelection year" has been included to avoid repetition of the phrase "in a year other than the calendar year in which an election is held."

Paragraphs (d) and (e) generally follow current paragraphs (c) and (d), respectively, by providing that the $25,000 limit applies to contributions to persons (including political committees) making independent expenditures and to contributions to delegates and delegate committees. None of the public comments addressed the possible changes to § 110.5 put forth by the Commission.

Section 110.6 Earmarked Contributions (2 U.S.C. 441a(a)(8))

Section 110.6 of the regulations implements 2 U.S.C. 441a(a)(8), which requires that all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, must be treated as contributions from that person to the candidate. Under section 441a(a)(8) of the FECA and § 110.6 of the Commission's regulations, conduits and intermediaries must report the original source of the earmarked contribution, as well as the intended recipient, to the Commission and to the intended recipient. Section 110.6 also provides that contributions over which the conduit exercises direction or control are treated as contributions from both the original contributor and the conduit, and are reportable as such. This provision is based on the legislative history of the 1974 amendments to the FECA.

The title of § 110.6 has been amended to include a reference to section 441a(a)(8) of the FECA. The current title incorrectly refers to section 441a(a)(7)(A) of the Act.

The Commission received three comments, and heard testimony from one of those commenters, regarding proposed revisions to the earmarking regulations. Two of these comments addressed questions concerning the permissibility of separate segregated funds acting as conduits, while the comments and testimony of the third commenter concerned the direction or control provisions.

Section 110.6(a) General

New § 110.6(a) follows current § 110.6(a) by treating contributions transmitted through a conduit to a candidate as subject to the original contributors' limits on contributions to that candidate.

The Notice of Proposed Rulemaking raised the question of whether the requirements set out in § 110.6 should apply to contributions earmarked to a political committee that is not an authorized committee of any candidate, such as a political action committee. The Commission noted that the statutory provision on which § 110.6 is based only refers to contributions earmarked or otherwise directed to a particular candidate. None of the public comments addressed this question.

The Commission has decided that § 110.6 should continue to be limited to contributions earmarked to candidates and their authorized committees, and thus should not be extended to include contributions earmarked to other types of political committees. However, as indicated in AOs 1983–18 and 1981–57, conduits would not be barred from forwarding earmarked contributions to unauthorized committees so long as they comply with the time limits for forwarding the contributions, as prescribed by 11 CFR 102.8. In such situations, unauthorized committees are required to report the amount received as a contribution from the original contributor pursuant to 11 CFR 104.3(a)(4).

Section 110.6(b) Definitions

The definition of "earmarked" in § 110.6(b)(1) follows the definition set forth in current § 110.6(b).

New paragraph (b)(2) has been added to provide a definition of the phrase "conduit or intermediary." The Commission has decided that providing a definition would be more useful than the previously proposed approach of simply setting forth factors or criteria for deciding who is a conduit. Additional guidance is needed because the question

BEST COPY AVAILABLE

of whether a particular individual is acting as a conduit has been raised in several contexts, including compliance matters such as MUR 1690. Neither the provisions of the FECA, nor its legislative history, indicates what was intended by the term "conduit or intermediary."

The new definition of "conduit or intermediary" in paragraph (b)(2) encompasses all those who receive and forward contributions earmarked to a candidate or authorized committee, with certain exceptions discussed below. Please note that this definition does not distinguish between the term "conduit" and the term "intermediary." The Commission considers these terms to be synonymous.

The new rules recognize that certain persons are not properly considered conduits and are consequently not subject to the requirements of § 110.6. First, individuals who are employees or full-time volunteers for a campaign, or who are expressly authorized to engage in fundraising on behalf of the campaign and occupy significant positions in the campaign organization, would be viewed as agents of the campaign rather than conduits so long as they do not act on behalf of an entity prohibited from making contributions, such as a corporation. The Commission notes that in determining whether an individual is acting as an agent of the candidate's campaign or as an agent of another entity, one consideration would be whether the individual incurred any solicitation expenses, and if so, whether reimbursement was provided by the campaign committee or by any other entity.

Other exceptions from the definition of conduit include affiliated committees, fundraising representatives conducting joint fundraising with the candidate's campaign committee, and commercial fundraising firms retained by the campaign. Fundraising representatives have been excluded because their activities are already covered by the joint fundraising regulations at 11 CFR 102.17 and 9034.8. In addition, the activities of affiliated committees receiving earmarked contributions are governed by the affiliation rules in 11 CFR 110.3. Commercial fundraising firms hired by the candidate's authorized committee are considered agents of the committee rather than conduits.

The new definition of conduit also explicity provides that persons who are prohibited from making contributions or expenditures in connection with Federal elections are also prohibited from serving as conduits for contributions earmarked to candidates or their campaign committees. Thus, corporations, labor organizations, government contractors and foreign nationals are not permitted to be conduits. This is consistent with AO 1988-4. However, this provision does not limit the ability of an organization or a committee, other than a foreign national, to function as a collecting agent for a related separate segregated fund under 11 CFR 102.6.

The Notice of Proposed Rulemaking also sought comments on whether to continue to permit separate segregated funds (SSFs) to serve as conduits for earmarked contributions. In three previous advisory opinions the Commission has permitted such activity, AOs 1988-4; 1981-21; and re: AOR 1976-92. However, the House Report accompanying the 1974 amendments to the Act states that the earmarking provisions "are not intended to apply to contributions from separate segregated funds maintained by corporations or labor organizations because donors to such funds must relinquish control of their donation to the corporation or labor organization and such donors may not earmark or direct such donations to any specific candidate or political committee." H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 15 (1974). This statement is repeated in the Conference Report. H.R. Conf. Rep. No. 93-1438, 93d Cong., 2d Sess. 51 (1974). Hence, the NPRM proposed three alternative approaches: (1) Explicitly prohibit earmarking through SSFs; (2) Permit SSFs to receive and forward earmarked contributions but clarify that the contributions must not exceed the amount that the original contributor may donate directly to the candidate; (3) Permit SSFs to receive and forward earmarked contributions but specifically prohibit the corporation or labor organization from exercising direction or control over the choice of the recipient candidate.

Two comments from SSFs addressed these concerns. One favored alternative 2, allowing earmarked contributions through SSFs if they are limited to what the individual could lawfully contribute directly to the candidate. The other comment supported the current approach of permitting earmarking through SSFs and stated that nothing would be added by the adoption of either alternative 2 or 3 because those restrictions are already located in other portions of the regulations. This commenter felt that the present system promotes support for a wider range of candidates and political views.

Under new paragraph (b)(2), SSFs may continue to act as conduits or intermediaries for earmarked contributions. However, these earmarked contributions must not exceed the contribution limits that apply to the original contributor's donations to the candidate under section 441a of the Act. This practice is also consistent with § 114.3(c)(2), which allows candidates and party representatives to address an organization's restricted class and to ask that contributions to the organization's SSF be designated for the candidate's campaign or party. SSFs acting as conduits will continue to be required to report their conduit activities pursuant to section 110.6b (c) or (d). *See* AO 1981-21 and re: AOR 1976-92. Furthermore, if a SSF incurs expenses in soliciting contributions on behalf of particular candidates, those solicitation expenses should be reported as in-kind contributions or as independent expenditures by the SSF to the candidate, depending on the circumstances. Finally, the Commission had decided that where the circumstances demonstrate that the SSF exercises direction or control over earmarked contributions, the SSF must treat those contributions as contributions from both the original contributor and the SSF. This is consistent with the Commission's decisions in AO 1988-4 and re: AOR 1976-92.

As discussed above, under the new definition of "conduit or intermediary" a corporation or labor organization may not itself act as a conduit. This represents a continuation of the Commission's previous approach regarding the permissible scope of activities undertaken by a corporation of labor organization not acting through a SSF. Within the confines of 11 CFR 114.3, the corporation or labor organization may encourage those in its solicitable class to contribute to particular candidates or political committees. *See* Explanation and Justification for § 114.3, H.R. Doc. No. 95-44, 95th Cong., 1st Sess. 104 (1977). However, in AOs 1987-29, 1988-4 and 1982-2 the Commission has stated that corporations are not permitted to act as conduits or intermediaries or facilitate the making of contributions. If a corporation establishes an employee participation plan pursuant to 11 CFR 114.11, only the custodian of the accounts, and not the corporation, may forward employee contributions that have accumulated in the accounts. The Explanation and justification for section 114.11 explains that corporations and labor organizations are also forbidden to exercise any direction or control over employee contributions to such plans because this would result in illegal corporate expenditures. H.R. Doc. No. 95-44, 95th Cong., 1st Sess. 110, 117 (1977).

The new definition of "conduit or intermediary" also recognizes that those who serve as conduits or intermediaries are required to forward earmarked contributions to the intended recipient candidate committees within the time periods prescribed by 11 CFR 102.8. However, anyone who is prohibited from being a conduit, but nevertheless receives earmarked contributions, must return them to the contributor rather than forwarding them.

Section 110.6(c) Reporting of Earmarked Contributions

The Commission notes that sometimes contributions must be reported by several entities under different provisions of the Act. The principal reporting provision is 2 U.S.C. 434, which requires political committees, including committees authorized by candidates, to report their receipts and disbursements to the Commission. Section 441a(a)(8) of the Act requires conduits and intermediaries to report the source and intended recipient of earmarked contributions to the Commission and to the intended recipient. Section 432(b) of the FECA is also, in some respects, a reporting provision as it requires persons receiving contributions for authorized and unauthorized political committees to forward certain information together with the contribution to the committee's treasurer, but not to the Commission. Through its regulations at part 104, § 102.8 and § 110.6, the Commission has set forth a reporting and recordkeeping system which takes into account the overlapping requirements of these statutory provisions.

The Commission has revised and reorganized the provisions of § 110.6(c) regarding the reporting of earmarked contributions. Paragraph 110.6(c)(1) consolidates the conduit reporting provisions in current paragraphs (c)(1), (c)(2), (c)(4), and (c)(5). Paragraph 110.6(c)(2) sets forth reporting requirements for recipient candidates and their authorized committees based on present paragraph (c)(3).

Paragraph (c)(1) generally follows the provisions of current paragraph (c)(1). However, the new rules specify that information on earmarked contributions should be included in the conduit's report for the reporting period in which such contributions were received, rather than simply stating that the information should be included in the conduit's "next due" report.

Section 110.6(c)(1) continues the current requirement that conduits not otherwise subject to the reporting requirements of 11 CFR part 104 must still report earmarked contributions to the Commission by letter. However, this paragraph has been amended to state that the letter is due thirty days after forwarding the earmarked contribution. The current rules do not specify a due date for the letter. Two alternatives were discussed in the NPRM—either requiring the letter to be filed within 30 days after receiving the earmarked contribution or within the time frames set out in § 104.5(c) for filing reports. The Commission concluded that it would be simplest to require reporting within thirty days after forwarding the earmarked contribution.

Revised paragraph (c)(1) also requires conduits to use memo entries to report contributions passed on by means of the contributor's check. The current regulations do not specify that memo entries be used.

New paragraph (c)(1) also incorporates paragraph (c)(2) of the current regulations by providing that the information pertaining to earmarked contributions shall be supplied to the candidate at the same time that the contribution itself is passed on to the intended recipient. For clarity, this paragraph contains a cross-reference to the ten-day forwarding requirement of 11 CFR 102.8(a).

In addition, revised paragraph (c)(1) follows present paragraph (c)(4) regarding the information that the conduit must report. Accordingly, the conduit must report the name and address of the contributor, the amount of the contribution, the date the conduit received it, the intended recipient's name, the date the contribution was forwarded and whether it was forwarded in cash, by the contributor's check or by the conduit's check. For contributions exceeding $200, the report must also include the contributor's occupation and the name of his or her employer.

Finally, the new conduit reporting rules delete the previous exception to the reporting requirements found in current paragraph (c)(5) for "occasional, isolated, or incidental physical transfers of checks or other written instruments payable to a candidate or his or her authorized committee" aggregating $1,000 or less per candidate per year. That exception was created when the Commission had authority to grant waivers to the Act's reporting obligations. As the Commission no longer has waiver authority, it is necessary to delete the exception.

New § 110.6(c)(2) requires candidates and their authorized committees to report the receipt of earmarked contributions. In contrast, the present rules state that all intended recipients must report earmarked contributions. The Commission has decided to restrict the reporting obligation to intended recipients that are candidates or authorized committees because 2 U.S.C. 441a(a)(8) refers to contributions earmarked to a particular candidate, but does not mention contributions earmarked to other recipients, such as political action committees.

Revised paragraph (c)(2) amends the reporting requirements for candidates and authorized committees in several other respects. The revisions clarify the reporting obligations that apply if the candidate or committee receives one or more earmarked contributions from a conduit which in the aggregate exceed $200 in a calendar year. The recipient candidate or committee is required to itemize the identification of the conduit, the total amount received from the conduit and the date of receipt. If contributions from a contributor aggregate over $200 in any calendar year, the candidate or committee is also required to itemize the identification of the contributor, the amount, and the date of receipt. For earmarked contributions aggregating $200 or less, the reporting requirements in 11 CFR part 104 continue to apply.

No public comments were received regarding the amendments to the reporting provisions in 11 CFR 110.6(c)(1) and (2).

Section 110.6(d) Direction or Control

The new regulations do not change the longstanding requirement that for purposes of a conduit's contribution limits, a contribution is treated as made by the conduit if the conduit exercises any direction or control over the choice of the recipient candidate. This rule is based on the House Report accompanying the 1974 amendments to the Act. It states that "if a person exercises any direct or indirect control over the making of a contribution, then such contribution shall count toward the limitation imposed with respect to such person under [current 2 U.S.C. 441a], but it will not count toward such a person's contribution limitation when it is demonstrated that such person exercised no direct or indirect control over the making of the contribution involved." H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 16 (1974). The Conference Report repeats this language and states that the Conference substitute is the same as the House amendment with certain exceptions not relevant here. H.R. Rep. No. 93-1438, 93d Cong., 2d Sess. 51, 52 (1974).

In the course of this rulemaking the Commission considered changing the terminology in § 110.6(d) to refer to "direct or indirect control over the making of an earmarked contribution" to more closely conform to the language set out in the Congressional reports discussed above. However, the Commission has now decided to retain the phrase "direction or control" used in the current regulation because this wording has become a commonly recognized term. The Commission also notes that a change in the wording could create the mistaken assumption that the Commission has changed the standard used to determine when the contribution counts against the conduit's contribution limits in addition to counting against the original contributor's limits. The Commission intends to maintain the current approach regarding the circumstances under which the direction or control rule applies.

The Commission also considered whether it would be advisable to provide criteria or examples or a definition of direction or control. The legislative history provides no guidance as to when this rule should apply. In the past, the Commission has considered such factors as whether the conduit controlled the amount and timing of the contribution, and whether the conduit selected the intended recipient. *See* MUR 1028, AO 1986–4 and re: AOR 1976–92. The Commission has also distinguished a "suggestion" to make a contribution from actual direction or control over the contribution. AO 1980–46.

In response to the questions raised in the NPRM, one organization submitted a written comment and testimony urging the Commission to revise this provision to prevent certain situations from occurring. The commenter pointed out that in recent years several political committees have collected sizeable numbers of checks made out to particular candidates, "bundled" them together and turned them over to the candidates. The commenter argued that bundling substantially undermines one purpose of the Act, which is to limit the actuality or appearance of corruption resulting from large individual financial contributions. *See Buckley* v. *Valeo*, 424 U.S. 1, 26–27 (1976). For this reason, the commenter urged the Commission to revise § 110.6(d) to provide that the conduit exercises direction or control if the conduit actively solicits others to contribute and then turns the funds over to the candidate in such a way that the candidate is aware of the conduit's role.

The Commission has carefully considered this comment, as well as several different versions of possible regulatory language. In light of the wide variety of earmarking situations which have arisen in the past, the Commission is not able at this time to formulate regulatory language that clearly delineates situations where direction or control exists from those in which the conduit does not exercise direction or control. Accordingly, the Commission will continue to evaluate these situations on a case-by-case basis. However, further guidance on this can be found in AOs 1987–29, 1986–4, 1980–46 and re: AOR 1976–92 as well as MURs 1028 and 2282.

Finally, the Commission has made several revisions to § 110.6(d)(2) to clarify the reporting of contributions when the conduit exercises direction or control. The conduit's reports to the Commission and to the recipient should indicate that the contribution is made by both the orginal contributor and the conduit, and that the entire amount is attributed to each of them. The recipient candidate or authorized committee should also report the dual attribution of the contribution.

Conforming Amendments

In addition to the foregoing revisions to 11 CFR 110.3, 110.4, 110.5, and 110.6, several amendments have been made to other sections of the Commission's regulations for clarification and to make those sections consistent with the revised language in 11 CFR 110.3 through 110.6. The conforming amendments are located in 11 CFR 100.5(g), 102.2(b), 110.1(f), 110.8(d), 114.5(g), 114.8(g), and 9034.4(d). The Commission received no public comments on these changes.

Section 100.5 Political Committee (2 U.S.C. 431 (4), (5), (6))

The definition of "affiliated committee" in § 100.5(g) has been revised to follow the language of new § 100.3(a).

Section 102.2 Statement of Organization: Forms and Committee Identification Number (2 U.S.C. 433 (b), (c))

The Commission has made two conforming amendments to the rules concerning Statements of Organization filed by political committees. First, Cross-references to § 110.3(a), 110.3(b), 110.14(j), and 110.14(k) have been added to assist political committees filing Statements of Organization in locating the applicable provisions concerning affiliation with other political committees, including political party committees and delegate committees. Secondly, the revisions clarify that Statement of Organization must disclose situations where an unauthorized committee and a principal campaign committee are affiliated.

Section 100.1 Contributions by Persons Other Than Multicandidate Political Committees (2 U.S.C. 441a(a)(1))

There are no substantive changes in this section. However, in paragraph (f)(3), the cross-reference to current § 110.3(a)(2)(iv) has been revised to refer to new § 110.3(c)(4).

Section 110.8 Presidential Candidate Expenditure Limitations

There are not substantive changes in this section. However, in paragraph (d)(2), regarding transfers between committees of dual candidates, the cross-reference to current § 110.3(a)(2)(iv) has been revised and corrected to refer to new § 110.3(c)(5). The cross-reference had incorrectly referred to the provision on transfers between previous and current campaign committees rather than the provision concerning transfers between committees of candidates concurrently running for more than one office.

Section 114.5 Separate Segregated Funds

A new sentence has been added to paragraph (g)(1) of § 114.5 to clarify that for solicitation purposes, the affiliation factors found in § 100.5(g)(4) shall be used to determine whether an organization is an affiliate of a corporation. The new sentence is consistent with AOs 1985–51 and 1983–48, and thus does not represent a substantive change.

Section 114.8 Trade Associations

A new sentence has been added to paragraph (g)(1) of § 114.8 to clarify that for solicitation purposes, the affiliation factors found in § 100.5(g)(4) shall be used to determine whether an entity is an affiliate of a federation of trade associations. This new sentence follows the new language added to § 114.5(g) and does not represent a substantive change.

Section 9034.4 Use of Contributions and Matching Payments

Section 9034.4(d), which governs transfers of funds by candidates receiving federal matching funds, has been amended in three respects. First, new language has been added to paragraph (d) to clarify the relationship between this provision and the transfer rules at new 11 CFR 110.3(c)(5) applicable to dual Federal candidates. Next, the cross-reference to current § 110.3(a)(2)(v) has been changed to revised § 110.3(c)(5), and a new cross-reference to § 110.8(d) has been added to assist the reader in locating additional provisions pertaining to transfers. Finally, § 9034.4(d) has been reworded to clarify that the statutory requirements set forth in this paragraph apply to all candidates who have elected to receive matching funds, and are not limited to those who have already received matching funds.

List of Subjects

11 CFR Part 100

Elections, Political committees and parties.

11 CFR Part 102

Political committees and parties, Reporting requirements.

11 CFR Part 110

Aliens, Campaign funds, Political candidates, Political committees and parties.

11 CFR Part 114

Business and industry, Elections.

11 CFR Part 9034

Campaign funds, Elections, Political candidates.

For the reasons set out in the preamble, subchapters A and F, chapter I, title 11 of the Code of Federal Regulations are amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. 11 CFR part 100 is amended by revising § 100.5(g) to read as follows:

§ 100.5 Political committee (2 U.S.C. 431 (4), (5), (6)).

* * * * *

(g) *Affiliated committee.* (1) All authorized committees of the same candidate for the same election to Federal office are affiliated. (2) All committees (including a separate segregated fund, *see* 11 CFR part 114) established, financed, maintained or controlled by the same corporation, labor organization, person, or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated. "Local unit" may include, in appropriate cases, a franchisee, licensee, or State or regional association. (3) Affiliated committees sharing a single contribution limitation under paragraph (g)(2) of this section include all of the committees established, financed, maintained or controlled by—

(i) A single corporation and/or its subsidiaries;

(ii) A single national or international union and/or its local unions or other subordinate organizations;

(iii) An organization of national or international unions and/or all its State and local central bodies;

(iv) A membership organization, (other than political party committees, *see* 11 CFR 110.3(b)) including trade or professional associations, *see* 11 CFR 114.8(a), and/or related State and local entities of that organization or group; or

(v) The same person or group of persons.

(4)(i) The Commission may examine the relationship between organizations that sponsor committees, between the committees themselves, or between one sponsoring organization and a committee established by another organization to determine whether committees are affiliated.

(ii) In determining whether committees not described in paragraphs (g)(3) (i)–(iv) of this section are affiliated, the Commission will consider the circumstantial factors described in paragraphs (g)(4)(ii) (A) through (J) of this section. The Commission will examine these factors in the context of the overall relationship between committees or sponsoring organizations to determine whether the presence of any factor or factors is evidence of one committee or organization having been established, financed, maintained or controlled by another committee or sponsoring organization. Such factors include, but are not limited to:

(A) Whether a sponsoring organization owns controlling interest in the voting stock or securities of the sponsoring organization of another committee;

(B) Whether a sponsoring organization or committee has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures;

(C) Whether a sponsoring organization or committee has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members of another sponsoring organization or committee;

(D) Whether a sponsoring organization or committee has a common or overlapping membership with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;

(E) Whether a sponsoring organization or committee has common or overlapping officers or employees with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;

(F) Whether a sponsoring organization or committee has any members, officers or employees who were members, officers or employees of another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees, or which indicates the creation of a successor entity;

(G) Whether a sponsoring organization or committee provides funds or goods in a significant amount or on an ongoing basis to another sponsoring organization or committee, such as through direct or indirect payments for administrative, fundraising, or other costs, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17;

(H) Whether a sponsoring organization or committee causes or arranges for funds in a significant amount or on an ongoing basis to be provided to another sponsoring organization or committee, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17;

(I) Whether a sponsoring organization or committee or its agent had an active or significant role in the formation of another sponsoring organization or committee; and

(J) Whether the sponsoring organizations or committees have similar patterns of contributions or contributors which indicates a formal or ongoing relationship between the sponsoring organizations or committees.

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

3. The authority citation for part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 438(a)(8), 441d.

4. Section 102.2 is amended by revising paragraphs (b)(1) introductory text and (b)(1)(i) to read as follows:

§ 102.2 Statement of organization: Forms and committee identification number (2 U.S.C. 433(b), (c)).

* * * * *

(b) * * *

(1) "Affiliated committee" includes any committee defined in 11 CFR 100.5(g), 110.3(a) or (b), or 110.14(j) or (k).

(i) A principal campaign committee is required to disclose the names and addresses of all other authorized committees which have been authorized by its candidate, and all other unauthorized committees that are affiliated with the principal campaign committee. Authorized committees, and unauthorized committees that are affiliated, need only disclose the name of their principal campaign committee.

* * * * *

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

5. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h and 441i.

6. Section 110.1 is amended by revising paragraph (f)(3) to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).

* * * * *

(f) * * *

(3) No principal campaign committee or other authorized political committee of that candidate for one election for one Federal office transfers funds to, loans funds to, makes contributions to, or makes expenditures on behalf of another principal campaign committee or other authorized political committee of that candidate for another election for another Federal office, except as provided in 11 CFR 110.2(c)(4).

* * * * *

7. Section 110.3 is revised to read as follows:

§ 110.3 Contribution limitations for affiliated committees and political party committees; Transfer (2 U.S.C. 441a(a)(5), 441a(a)(4)).

(a) *Contribution limitations for affiliated committees.* (1) For the purposes of the contribution limitations of 11 CFR 110.1 and 110.2, all contributions made or received by more than one affiliated committee, regardless of whether they are political committees under 11 CFR 100.5, shall be considered to be made or received by a single political committee. *See* 11 CFR 100.5(g). Application of this paragraph means that all contributions made or received by the following committees shall be considered to be made or received by a single political committee—

(i) Authorized committees of the same candidate for the same election to Federal office; or

(ii) Committees (including a separate segregated fund, *see* 11 CFR part 114) established, financed, maintained or controlled by the same corporation, labor organization, person or group of persons, including any parent, subsidiary, branch, division, department or local unit thereof. For the purposes of this section, "local unit" may include, in appropriate cases, a franchisee, licensee, or State or regional association.

(2) Affiliated committees sharing a single contribution limitation under paragraph (a)(1)(ii) of this section include all of the committees established, financed, maintained or controlled by—

(i) A single corporation and/or its subsidiaries;

(ii) A single national or international union and/or its local unions or other subordinate organizations;

(iii) An organization of national or international unions and/or all its State and local central bodies;

(iv) A membership organization, (other than political party committees, *see* paragraph (b) of this section) including trade or professional associations, *see* 11 CFR 114.8(a), and/or related State and local entities of that organization or group; or

(v) The same person or group of persons.

(3)(i) The Commission may examine the relationship between organizations that sponsor committees, between the committees themselves, or between one sponsoring organization and a committee established by another organization to determine whether committees are affiliated.

(ii) In determining whether committees not described in paragraphs (a)(2)(i)–(iv) of this section are affiliated, the Commission will consider the circumstantial factors described in paragraphs (a)(3)(ii) (A) through (J) of this section. The Commission will examine these factors in the context of the overall relationship between committees or sponsoring organizations to determine whether the presence of any factor or factors is evidence of one committee or organization having been established, financed, maintained or controlled by another committee or sponsoring organization. Such factors include, but are not limited to:

(A) Whether a sponsoring organization owns a controlling interest in the voting stock or securities of the sponsoring organization of another committee;

(B) Whether a sponsoring organization or committee has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures;

(C) Whether a sponsoring organization or committee has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members of another sponsoring organization or committee;

(D) Whether a sponsoring organization or committee has a common or overlapping membership with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;

(E) Whether a sponsoring organization or committee has common or overlapping officers or employees with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;

(F) Whether a sponsoring organization or committee has any members, officers or employees who were members, officers or employees of another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees, or which indicates the creation of a successor entity;

(G) Whether a sponsoring organization or committee provides funds or goods in a significant amount or on an ongoing basis to another sponsoring organization or committee, such as through direct or indirect payments for administrative, fundraising, or other costs, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17;

(H) Whether a sponsoring organization or committee causes or arranges for funds in a significant amount or on an ongoing basis to be provided to another sponsoring organization or committee, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17;

(I) Whether a sponsoring organization or a committee or its agent had an active or significant role in the formation of another sponsoring organization or committee; and

(J) Whether the sponsoring organizations or committees have similar patterns of contributions or contributors which indicates a formal or ongoing relationship between the sponsoring organizations or committees.

(b) *Contribution limitations for political party committees.* (1) For the purposes of the contribution limitations of 11 CFR 110.1 and 110.2, all contributions made or received by the following political committees shall be considered to be made or received by separate political committees—

(i) The national committee of a political party and any political committees established, financed, maintained, or controlled by the same national committee; and

(ii) The State committee of the same political party.

(2) Application of paragraph (b)(1)(i) of this section means that—

(i) The House campaign committee and the national committee of a political party shall have separate limitations on contributions under 11 CFR 110.1 and 110.2.

(ii) The Senate campaign committee and the national committee of a political party shall have separate limitations on contributions, except that contributions to a senatorial candidate made by the Senate campaign committee and the national committee of a political party are subject to a single contribution limitation under 11 CFR 110.2(e).

(3) All contributions made by the political committees established, financed, maintained, or controlled by a State party committee and by subordinate State party committees shall be presumed to be made by one political committee. This presumption shall not apply if—

(i) The political committee of the party unit in question has not received funds from any other political committee established, financed, maintained, or controlled by any party unit; and

(ii) The political committee of the party unit in question does not make its contributions in cooperation, consultation or concert with, or at the request or suggestion of any other party unit or political committee established, financed, maintained, or controlled by another party unit.

(c) *Transfers.* The contribution limitations of 11 CFR 110.1 and 110.2 shall not limit the transfers set forth below in 11 CFR 110.3(c) (1) through (6)—

(1) Transfers of funds between affiliated committees or between party committees of the same political party whether or not they are affiliated or by collecting agents to a separate segregated fund made pursuant to 11 CFR 102.6;

(2) Transfers of joint fundraising proceeds between organizations or committees participating in the joint fundraising activity provided that no participating committee or organization governed by 11 CFR 102.17 received more than its allocated share of the funds raised;

(3) Transfers of funds between the primary campaign and general election campaign of a candidate of funds unused for the primary;

(4) Transfers of funds between a candidate's previous Federal campaign committee and his or her current Federal campaign committee, or between previous Federal campaign committees, provided that the candidate is not a candidate for more than one Federal office at the same time, and provided that the funds transferred are not composed of contributions that would be in violation of the Act. The cash on hand from which the transfer is made shall be considered to consist of the funds most recently received by the transferor committee. The transferor committee must be able to demonstrate that such cash on hand contains sufficient funds at the time of the transfer that comply with the limitations and prohibitions of the Act to cover the amount transferred.

(i) "Previous Federal campaign committee" means a principal campaign committee, or other authorized committee, that was organized to further the candidate's campaign in a Federal election that has already been held.

(ii) "Current Federal campaign committee" means a principal campaign committee, or other authorized committee, organized to further the candidate's campaign in a future Federal election.

(iii) For purposes of the contribution limits, a contribution made after an election has been held, or after an individual ceases to be a candidate in an election, shall be aggregated with other contributions from the same contributor for the next election unless the contribution is designated for the previous election, or is designated for another election, and the candidate has net debts outstanding for the election so designated pursuant to 11 CFR 110.1(b)(3).

(iv) For purposes of this section, an individual ceases to be a candidate in an election as of the earlier of the following dates—

(A) The date on which the candidate publicly announces that he or she will no longer be a candidate in that election for that office and ceases to conduct campaign activities with respect to that election; or

(B) The date on which the candidate is or becomes ineligible for nomination or election to that office by operation of law;

(5) Transfers of funds between the principal campaign committees of an individual seeking nomination or election to more than one Federal office, as long as the conditions in 11 CFR 110.3(c)(5) (i), (ii) and (iii) are met. An individual will be considered to be seeking nomination or election to more than one Federal office if the individual is concurrently a candidate for more than one Federal office during the same or overlapping election cycles.

(i) The transfer shall not be made when the individual is actively seeking nomination or election to more than one Federal office. An individual will not be considered to be actively seeking nomination or election to a Federal office if:

(A) The individual publicly announces that he or she will no longer seek nomination or election to that office and ceases to conduct campaign activities with respect to that election, except in connection with the retirement of debts outstanding at the time of the announcement;

(B) The individual is or becomes ineligible for nomination or election to that office by operation of law;

(C) The individual has filed a proper termination report with the Commission under 11 CFR 102.3; or

(D) The individual has notified the Commission in writing that the individual and his or her authorized committees will conduct no further campaign activities with respect to that election, except in connection with the retirement of debts outstanding at the time of the notification;

(ii) The limitations on contributions by persons shall not be exceeded by the transfer. The cash on hand from which the transfer is made shall be considered to consist of the funds most recently received by the transferor committee. The transferor committee must be able to demonstrate that such cash on hand contains sufficient funds at the time of the transfer that comply with the limitations and prohibitions of the Act to cover the amount transferred. A contribution shall be excluded from the amount transferred to the extent that such contribution, when aggregated with other contributions from the same contributor to the transferee principal campaign committee, exceeds the contribution limits set forth at 11 CFR 110.1 or 110.2, as appropriate; and

(iii) The candidate has not elected to receive funds under 26 U.S.C. 9006 or 9037 for either election; or

(6) Transfers of funds from a candidate's campaign committee for a nonfederal election to his or her principal campaign committee or other authorized committee for a federal election, provided that the funds transferred are not composed of contributions that would be in violation of the Act.

(i) The cash on hand from which the transfer is made shall be considered to consist of the funds most recently received by the transferor committee. The transferor committee must be able to demonstrate that such cash on hand contains sufficient funds at the time of the transfer that comply with the limitations and prohibitions of the Act to cover the amount transferred. A contribution shall be excluded from the amount transferred if the making or acceptance of such contribution in connection with an election for Federal office is prohibited by the Act. The amount transferred per contributor shall not exceed the limitations on contributions set forth at 11 CFR 110.1 or 110.2, as appropriate. The campaign committee transferring the funds shall keep records of the sources of the funds in the account from which the transfer is made and, upon request, shall make such records available for examination by the Commission.

(ii) For purposes of the contribution limits, a contribution made after a nonfederal election has been held, or after an individual ceases to be a candidate in a nonfederal election pursuant to paragraph (c)(4)(iv) of this section, or after an individual has publicly announced that he or she is or will become a candidate in a particular election for Federal office, shall be aggregated with other contributions from the same contributor for that next election unless the contribution is designated for the previous nonfederal election or is designated for another election, and the candidate has net debts outstanding for the election so designated.

(iii) If a candidate's nonfederal campaign committee transfers funds exceeding $1,000 to such candidate's principal campaign committee or other authorized committee for a federal election, the nonfederal campaign committee shall become a political committee pursuant to 11 CFR 100.5(a) and shall file a Statement of Organization in accordance with 11 CFR 102.2 no later than ten days after transferring the funds. Such committee shall be subject to the recordkeeping and reporting obligations of 11 CFR parts 102 and 104 and shall disclose in its first report its cash on hand balance, the source(s) of such funds, and the amount transferred to the federal campaign committee. *See* 11 CFR 104.12. The funds transferred shall be deemed composed of the funds most recently received until the amount transferred is reached, excluding any amounts in excess of the contribution limits or the prohibitions of the Act. The nonfederal campaign committee shall itemize the source(s) of the funds transferred in a memo Schedule A as required by 11 CFR 104.3(a)(4). The first report may be the termination report under 11 CFR 102.3.

(7) The authorized committees of a candidate for more than one Federal office, or for a Federal office and a nonfederal office, shall follow the requirements for separate campaign organizations set forth at 11 CFR 110.8(d).

8. Section 110.4 is revised to read as follows:

§ 110.4 Prohibited contributions (2 U.S.C. 441e, 441f, 441g, 432(e)(2)).

(a) *Contributions by foreign nationals.* (1) A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State or Federal public office.

(2) No person shall solicit, accept, or receive a contribution as set out above from a foreign national.

(3) For purposes of this section, "foreign national" means—

(i) A foreign principal, as defined in 22 U.S.C. 611(b); or

(ii) An individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined in 8 U.S.C. 1101(a)(20);

(iii) Except that "foreign national" shall not include any individual who is a citizen of the United States.

(b) *Contributions in the name of another.* (1) No person shall—

(i) Make contribution in the name of another;

(ii) Knowingly permit his or her name to be used to effect that contribution;

(iii) Knowingly help or assist any person in making a contribution in the name of another; or

(iv) Knowingly accept a contribution made by one person in the name of another.

(2) Examples of "contributions in the name of another" include—

(i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made; *see* 11 CFR 110.6; or

(ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.

(c) *Cash contributions.* (1) With respect to any campaign for nomination for election or election to Federal office, no person shall make contributions to a candidate or political committee of currency of the United States, or of any foreign country, which in the aggregate exceed $100.

(2) A candidate or committee receiving a cash contribution in excess of $100 shall promptly return the amount over $100 to the contributor.

(3) A candidate or committee receiving an anonymous cash contribution in excess of $50 shall promptly dispose of the amount over $50. The amount over $50 may be used for any lawful purpose unrelated to any Federal election, campaign, or candidate.

9. Section 110.5 is revised to read as follows:

§ 110.5 Annual contribution limitation for individuals (2 U.S.C. 441a(a)(3)).

(a) *Scope.* This section applies to all contributions made by any individual, except individuals prohibited from making contributions under 11 CFR 110.4 and 11 CFR part 115.

(b) *Annual limitation.* No individual shall make contributions in any calendar year which aggregate more than $25,000.

(c) *Contributions made in a nonelection year.* (1) For the purposes of this section, "nonelection year" means a year other than the calendar year in which a particular election is held.

(2) For purposes of this section, any contribution to a candidate or his or her authorized committee with respect to a particular election made in a nonelection year shall be considered to be made during the calendar year in which such election is held.

(3) For purposes of this section, any contribution to an unauthorized committee which is made in a nonelection year shall not be considered to be made during the calendar year in which an election is held unless:

(i) The political committee is a single candidate committee which has supported or anticipates supporting the candidate; or

(ii) The contribution is earmarked by the contributor for a particular candidate with respect to a particular election.

(d) *Independent expenditures.* The annual limitation on contributions in this section applies to contributions made to persons, including political committees, making independent expenditures under 11 CFR part 109.

(e) *Contributions to delegates and delegate committees.* The annual limitation on contributions in this section applies to contributions to delegates and delegate committees under 11 CFR 110.14.

10. Section 110.6 is revised to read as follows:

§ 110.6 Earmarked contributions (2 U.S.C. 441a(a)(8)).

(a) *General.* All contributions by a person made on behalf of or to a candidate, including contributions which are in any way earmarked or otherwise directed to the candidate through an intermediary or conduit, are contributions from the person to the candidate.

(b) *Definitions.* (1) For purposes of this section, "earmarked" means a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.

(2) For purposes of this section, "conduit or intermediary" means any person who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee, except as provided in paragraph (b)(2)(i) of this section.

(i) For purposes of this section, the following persons shall not be considered to be conduits or intermediaries:

(A) An individual who is an employee or full-time volunteer working for the candidate's authorized committee, provided that the individual is not acting in his or her capacity as a representative of an entity prohibited from making contributions;

(B) A fundraising representative conducting joint fundraising with the candidate's authorized committee pursuant to 11 CFR 102.17 or 9034.8;

(C) An affiliated committee, as defined in 11 CFR 100.5(g);

(D) A commercial fundraising firm retained by the candidate or the candidate's authorized committee to assist in fundraising; and

(E) An individual who is expressly authorized by the candidate or the candidate's authorized committee to engage in fundraising, and who occupies a significant position within the candidate's campaign organization, provided that the individual is not acting in his or her capacity as a representative of an entity prohibited from making contributions.

(ii) Any person who is prohibited from making contributions or expenditures in connection with an election for Federal office shall be prohibited from acting as a conduit for contributions earmarked to candidates or their authorized committees. The provisions of this section shall not restrict the ability of an organization or committee to serve as a collecting agent for a separate segregated fund pursuant to 11 CFR 102.6.

(iii) Any person who receives an earmarked contribution shall forward such earmarked contribution to the candidate or authorized committee in accordance with 11 CFR 102.8, except that—

(A) A fundraising representative shall follow the joint fundraising procedures set forth at 11 CFR 102.17.

(B) A person who is prohibited from acting as a conduit pursuant to paragraph (b)(2)(ii) of this section shall return the earmarked contribution to the contributor.

(c) *Reporting of earmarked contributions*—(1) *Reports by conduits and intermediaries.* (i) The intermediary or conduit of the earmarked contribution shall report the original source and the recipient candidate or authorized committee to the Commission, the Clerk of the House of Representatives, or the Secretary of the Senate, as appropriate (see 11 CFR part 106), and to the recipient candidate or authorized committee.

(ii) The report to the Commission, Clerk or Secretary shall be included in the conduit's or intermediary's report for the reporting period in which the earmarked contribution was received, or, if the conduit or intermediary is not required to report under 11 CFR part 104, by letter to the Commission within thirty days after forwarding the earmarked contribution.

(iii) The report to the recipient candidate or authorized committee shall be made when the earmarked contribution is forwarded to the recipient candidate or authorized committee pursuant to 11 CFR 102.8.

(iv) The report by the conduit or intermediary shall contain the following information:

(A) The name and mailing address of each contributor and, for each earmarked contribution in excess of $200, the contributor's occupation and the name of his or her employer;

(B) The amount of each earmarked contribution, the date received by the conduit, and the intended recipient as designated by the contributor; and

(C) The date each earmarked contribution was forwarded to the recipient candidate or authorized committee and whether the earmarked contribution was forwarded in cash or by the contributor's check or by the conduit's check.

(v) For each earmarked contribution passed through the conduit's or intermediary's account, the information specified in paragraph (c)(1)(iv) (A) through (C) of this section shall be itemized on the appropriate schedules of receipts and disbursements attached to the conduit's or intermediary's report, or shall be disclosed by letter, as appropriate. For each earmarked contribution forwarded in the form of the contributor's check or other written instrument, the information specified in paragraph (c)(1)(iv) (A) through (C) of this section shall be disclosed as a memo entry on the appropriate schedules of receipts and disbursements attached to the conduit's or intermediary's report, or shall be disclosed by letter, as appropriate.

(2) *Reports by recipient candidates and authorized committees.* (i) The recipient candidate or authorized committee shall report each conduit or intermediary who forwards one or more earmarked contributions which in the aggregate exceed $200 in any calendar year.

(ii) The report by the recipient candidate or authorized committee shall contain the following information:

(A) The identification of the conduit or intermediary, as defined in 11 CFR 100.12;

(B) The total amount of earmarked contributions received from the conduit or intermediary and the date of receipt; and

(C) The information required under 11 CFR 104.3(a) (3) and (4) for each earmarked contribution which in the aggregate exceeds $200 in any calendar year.

(iii) The information specified in paragraph (c)(2)(ii) (A) through (C) of this section shall be itemized on Schedule A attached to the report for the reporting period in which the earmarked contribution is received.

(d) *Direction or control.* (1) A conduit's or intermediary's contribution limits are not affected by the forwarding of an earmarked contribution except where the conduit or intermediary exercises any direction or control over the choice of the recipient candidate.

(2) If a conduit or intermediary exercises any direction or control over the choice of the recipient candidate, the

earmarked contribution shall be considered a contribution by both the original contributor and the conduit or intermediary. If the conduit or intermediary exercises any direction or control over the choice of the recipient candidate, the report filed by the conduit or intermediary and the report filed by the recipient candidate or authorized committee shall indicate that the earmarked contribution is made by both the original contributor and the conduit or intermediary, and that the entire amount of the contribution is attributed to each.

11. Section 110.8 is amended by revising paragraph (d)(2) to read as follows:

§ 110.8 Presidential candidate expenditure limitations.

* * * * *

(d) * * *

(2) No funds, goods, or services, including loans and loan guarantees, may be transferred between or used by the separate campaigns, except as provided in 11 CFR 110.3(c)(5).

* * * * *

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

12. The authority citation for part 114 continues to read as follows:

Authority: 2 U.S.C. 431(b)(3), 431(e)(2), 432, 437d(a)(8), 438(a)(8) and 441b.

13. Section 114.5 is amended by revising paragraph (g)(1) to read as follows:

§ 114.5 Separate segregated funds.

* * * * *

(g) * * *

(1) A corporation or a separate segregated fund established by a corporation is prohibited from soliciting contributions to such funds from any person other than its stockholders and their families and its executive or administrative personnel and their families. A corporation may solicit the executive or administrative personnel of its subsidiaries, branches, divisions, and affiliates and their families. For purposes of this section, the factors set forth at 11 CFR 100.5(g)(4) shall be used to determine whether an organization is an affiliate of a corporation.

* * * * *

14. Section 114.8 is amended by revising paragraph (g)(1) introductory text to read as follows:

§ 114.8 Trade associations.

* * * * *

(g) * * *

(1) A federation of trade associations is an organization representing trade associations involved in the same or allied line of commerce. Such a federation may, subject to the following limitations, solicit the members of the federation's regional, State or local affiliates or members, provided that all of the political committees established, financed, maintained or controlled by the federation and its regional, State, or local affiliates or members are considered one political committee for the purposes of the limitations in §§ 110.1 and 110.2. The factors set forth at §110.5(g)(4) shall be used to determine whether an entity is a regional, State or local affiliate of a federation of trade associations.

* * * * *

PART 9034—ENTITLEMENTS

15. The authority citation for part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

16. Section 9034.4 is amended by revising paragraph (d) to read as follows:

§ 9034.4 Use of contributions and matching payments.

* * * * *

(d) *Transfers to other campaigns.* If a candidate has elected to receive matching funds and is simultaneously seeking nomination or election to another Federal office, no transfer of funds between his or her principal campaign committees or authorized committees may be made. *See* 2 U.S.C. 441a(a)(5)(C) and 11 CFR 116.2(c)(5) and 110.8(d). A candidate will be considered to be simultaneously seeking nomination or election to another Federal office if he or she is seeking nomination or election to such Federal office under 11 CFR 110.8(c)(5).

Dated: August 11, 1989.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 89-19387 Filed 8-15-89; 8:45 am]

BILLING CODE 6715-01-M

federal register

Thursday
August 17, 1989

Part IX

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25, 121, and 125
Landing Gear Aural Warning; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 121 and 125

[Docket No. 25991, Notice No. 89-25]

RIN 2120-AC82

Landing Gear Aural Warning

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the airworthiness standards for transport category airplane landing gear aural warning systems and the operating rules for using transport category airplanes to update the present requirements. This proposal is prompted by reports of nuisance or inappropriate aural warnings which have occurred in modern transport airplanes which adhere strictly to the present regulations. It is intended to align the regulations with existing design practices thereby removing the regulatory burden associated with making an equivalent level of safety finding or exemption, for those systems that do not meet the existing requirements. This proposal will not affect existing certificated airplanes.

DATES: Comments must be received on or before February 13, 1990.

ADDRESSES: Comments on this proposal may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), 800 Independence Avenue SW., Washington, DC 20591, or delivered in triplicate to: Room 915G, 800 Independence Avenue SW., Washington, DC 20591. Comments must be marked: Docket No. . Comments may be inspected in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Assistant Chief Counsel (ANM-7), FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Comments in the information docket may be inspected in the Office of the Assistant Chief Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Flight Test and Systems Branch (ANM-111), Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168; telephone (206) 431-2116.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are also invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments, in duplicate, to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25991." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

Parts 25, 121 and 125 of the Federal Aviation Regulations (FAR) all contain similarly worded requirements for a landing gear aural warning system. The function of this system is to provide the flightcrew with an aural alert if the landing gear are not extended and locked at the appropriate time. Since the landing gear aural warning requirements of parts 25, 121, and 125 are similar, § 25.729(e) will be used as an example to describe the nuisance or inappropriate warnings that result when the present regulations are applied. Section 25.729(e), as amended by Amendment 25-42 (43 FR 2302; January 16, 1978), states, in pertinent part, that:

(2) Landplanes must have an aural warning device that will function continuously when one or more throttles are closed, if the landing gear is not fully extended and locked.

(3) If there is a manual shutoff for the aural warning device prescribed in paragraph (e)(2) of this section, the warning system must be designed so that, when the warning has been suspended after one or more throttles are closed, subsequent retardation of any throttle to or beyond the position for a normal landing approach will activate the aural warning.

(4) Landplanes must have an aural warning device that will function continuously, when the wing flaps are extended beyond the maximum approach position determined under § 25.67(e), if the gear is not fully extended and locked. There may not be a manual shutoff for this warning device. The flap position sensing unit may be installed at any suitable location. The system for this device may use any part of the system (including the aural warning device) for the device required in paragraph (e)(2) of this section;

These regulations are very specific as to when the aural warning system should function. They are based on operation of early transport airplanes using reciprocating engines. Operation of modern jet transports in some situations causes the system to be activated when it should remain silent, thereby causing a nuisance warning. In order to preclude nuisance aural warnings, modern transport airplane aural warning system designs have used inhibits during some phases of flight. Consequently, an equivalent level of safety finding, or exemption from the operating rules, was required because these systems do not comply with the regulations as they now exist. This process is time-consuming and may result in type certification program delays. Complying fully with the existing regulations results in the following disadvantages:

a. The regulation requires an aural warning sound whenever the throttles are closed and the landing gear is not fully extended and locked. Since this often occurs at the start of descent, at an altitude which is inappropriate for gear extension, the warning sound is immediately cancelled by the crew. This unwarranted alert and the subsequent crew action causes flightcrew distraction.

b. If an engine fails on or immediately after takeoff, one action of the pilot is to raise the gear to minimize airplane drag, and to close the throttle on the failed engine. This can result in an immediate gear aural warning which is inappropriate for the situation and which may create a possibly dangerous distraction to the crew when they should be coping with an engine failure.

c. Section 25.729 requires the warning to sound when the flaps are extended to the approach setting if the gear is not fully extended and locked. This dates back to the days of piston-engined airplanes which had landing flap settings different from approach and takeoff flap settings. Today some airplanes have landing flap settings which are also used for approach or takeoff. Therefore, complying with the present rule results in a gear aural warning sounding when the gear is raised after takeoff and/or when approach flaps are selected. In addition, for some multiengine airplanes, no protection is provided by the existing regulations for one engine inoperative approach and landings where nonstandard landing flap settings and thrust levels are used.

Discussion

Revising the existing regulations to state the objectives without stating how the requirements would be met would allow manufacturers the latitude to use their ingenuity in designing systems so that nuisance and inappropriate aural warnings are minimized. The proposed revision would delete present § 25.729(e)(2) through (4) and substitute a new § 25.729(e)(2), which is discussed below. The lead-in to § 25.729(e)(2) would refer to "Airplanes." The reference to landplanes would be deleted because it has been determined that the rule should apply equally to seaplanes and amphibians with retractable gear. Existing seaplanes and amphibians would not be required to meet this new rule because their certification basis has already been established. However, the operating rules in parts 121 and 125 that require landing gear aural warnings do not make a distinction between landplanes and seaplanes. Therefore, this proposal would have no impact on seaplanes with retractable gear or floats that are intended to be operated in accordance with these rules. Seaplanes with retractable landing gear or floats certificated under the proposed new rule that are not designed to be able to meet these operating rules would be impacted by this proposed rule change. However, the FAA is unaware of any existing seaplanes that would fall in this category or of any plans to type certificate such seaplanes.

Section 25.729(e)(2) would require a gear-not-down aural warning for the flightcrew that functions continuously, or is periodically repeated. The existing requirement that the aural warning function continuously may be unduly distracting and disruptive to the flightcrew. The proposed rule would give the option of using a periodically repeated aural warning which may be less disruptive, and more effective, from the human factors perspective.

There would be a requirement that the aural warning be provided in sufficient time to allow for a go-around or gear extension and a landing. Under the existing rule, there is no means to inhibit the aural warning. Due to the fact that the throttles and/or flaps are in landing positions long before the touchdown, there is inherent assurance that the aural warning will be provided in sufficient time to allow for a go-around or gear extension and landing. With a means to inhibit the warning, as proposed, this inherent assurance would no longer be provided if the aural warning were not reactivated in sufficient time. The requirement is intended to maintain the same operational safety margins that are provided by the present regulations.

The system used to generate this warning must be designed to eliminate false or inappropriate alerts. The proposed performance standard is necessary to encourage innovative uses of state-of-the-art systems and sensors to solve the problem of nuisance alarms.

It must be shown that it is improbable that failures of systems used to inhibit the gear aural warning will prevent the warning system from operating. This requirement is necessary to provide an equivalent level of safety to the existing rule for a complex system with many interlocks and inhibits.

The aural warning shall not have a manual shutoff. Designing aural warning systems to eliminate foreseeable nuisance warnings eliminates the need for a manual shutoff.

Sections 121.289(a) and 125.187(a) would be amended by adding the following phrase at the beginning of the respective paragraphs: "Except for airplanes that comply with the requirements of § 25.729 of this chapter on or after [insert effective date of this amendment]," This amendment would recognize new airplanes meeting the new airworthiness requirements after the effective date of this amendment, while retaining the present airworthiness and operating requirements with respect to existing certificated airplanes.

Regulatory Evaluation

The proposed revisions to parts 25, 121, and 125 result in no compliance cost whatsoever to operators or to manufacturers of transport category airplanes other than seaplanes, certificated under the proposed new rules, that are not intended to be operated in accordance with parts 121 and 125. The proposed revisions to part 25 would, for the first time, require newly certificated transport category seaplanes that are not intended to be operated under parts 121 or 125, to be equipped with aural landing gear warnings. However, the FAA is not aware of any such seaplanes or of any plans for development of such seaplanes. Proposed §§ 121.289(a) and 125.187(a) state that, with the exception of transport category airplanes that comply with the requirements of § 25.729 on or after the effective date of this amendment, each transport category airplane must have a landing gear aural warning device that functions continuously under the conditions that are specified in those sections. This language would allow operators of airplanes type certificated before this amendment the option to comply with the new airworthiness requirements or, alternatively to remain in compliance with the present airworthiness requirements. Consequently, this amendment avoids imposing new requirements and potential compliance costs on existing certificated airplanes.

The proposed amendment relieves a burden on the aircraft manufacturing industry because the existing regulations do not accommodate modern technology and industry design practices currently employed in aircraft manufacture. The revised rule would save aircraft manufacturers the cost of requesting an equivalent level of safety finding from the FAA during aircraft type certification. This process is time consuming an can result in type certification program delays. The FAA is unable to accurately quantify this saving.

In summary, these proposals would make the regulations compatible with present industry practice with no change in operational safety. They also would enable aircraft manufacturers to comply with § 25.729 without asking the FAA for an equivalent level of safety finding, therefore affording manufacturers and the FAA some amount of administrative savings.

The proposals will have no impact on trade both for U.S. firms doing business

in foreign countries and for foreign firms doing business in the United States. No compliance cost or potential savings will affect the sale of foreign transport category airplanes in the United States or the sale of such U.S. airplanes in foreign countries. Since the certification rules are applicable both to foreign and to domestic manufacturers which sell in the U.S., there will be no competitive advantage to either.

While the proposals in this notice would directly affect those transport category airplane manufacturers who certify their airplanes under Part 25, Order 2100.14A states a size threshold of 75 employees as a standard for small manufacturers of aircraft. (See FAA Order 2100.14A, "Regulatory Flexibility Criteria and Guidance," dated September 16, 1988.) According to current FAA data, there are no transport category airplane manufacturers who meet that criteria. Therefore, there is not a significant economic impact on a substantial number of small entities.

The proposals in this notice also would affect small air carriers which are regulated under part 121 and part 125. However, since no compliance cost is imposed on carriers, there is not a significant economic impact on a substantial number of small entities.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion:

For the reasons given earlier in the preamble, the FAA has determined that this document involves proposals which are not considered to be significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and are not major as defined in Executive Order 12291. In addition, it is certified under the criteria of the Regulatory Flexibility Act that these regulations, at promulgation, would not have a significant economic impact, positive or negative, on a substantial number of small entities.

List of Subjects

14 CFR Part 25

Aircraft, Aviation safety, Safety.

14 CFR Part 121

Aircraft, Airplanes, Airworthiness, Pilots.

14 CFR Part 125

Aviation safety, Safety, Air carriers, Aircraft pilots, Airplanes, Pilots.

The Proposed Amendment

Accordingly, the FAA proposes to amend parts 25, 121 and 125 of the Federal Aviation Regulations (FAR), 14 CFR parts 25, 121 and 125, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for Part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub L. 97-449, January 12, 1983).

2. By amending § 25.729, by removing paragraphs (e)(3) and (e)(4), and by revising paragraph (e)(2) to read as follows:

§ 25.729 Retracting mechanism.

* * * * *

(e) * * *

(2) Airplanes must be equipped with a landing gear aural warning system that provides the flightcrew a gear-not-down aural warning that functions continuously, or is periodically repeated, in sufficient time to allow for a go-around or gear extension and a landing. The system used to generate this warning must be designed to eliminate false or inappropriate alerts. It must be shown that it is improbable that failures of systems used to inhibit the gear aural warning will prevent the warning system from operating. The aural warning shall not have a manual shutoff.

* * * * *

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421-1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

4. By amending § 121.289 by revising paragraph (a) to read as follows:

§ 121.289 Landing gear: Aural warning device.

(a) Except for airplanes that comply with the requirements of § 25.729 of this chapter on or after [insert effective date of this amendment], each large airplane must have a landing gear aural warning device that functions continuously under the following conditions:

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

5. The authority citation for Part 125 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

6. By amending § 125.187 by revising paragraph (a) to read as follows:

§ 125.187 Landing gear: Aural warning device.

(a) Except for airplanes that comply with the requirements of § 25.729 of this chapter on or after [insert effective date of this amendment], each airplane must have a landing gear aural warning device that functions continuously under the following conditions:

* * * * *

Issued in Washington, DC, on August 9, 1989.

M.C. Beard,

Director, Aircraft Certification Service.

[FR Doc. 89-19285 Filed 8-16-89; 8:45 am]

BILLING CODE 4910-13-M

Reader Aids

Federal Register
Vol. 54, No. 158
Thursday, August 17, 1989

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237
Code of Federal Regulations	
Index, finding aids & general information	523-5227
Printing schedules	523-3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230
The United States Government Manual	
General information	523-5230
Other Services	
Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

31645-31796	1
31797-31932	2
31933-32034	3
32035-32332	4
32333-32632	7
32633-32828	8
32829-32784	9
32785-32950	10
32951-33182	11
33183-33492	14
33493-33664	15
33665-33852	16
33853-34118	17

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6002 ... 31794
6003 ... 31931
6004 ... 31933
6005 ... 32033
6006 ... 32783
6007 ... 33653
6008 ... 33655
6009 ... 33657
Executive Orders:
12685 ... 31795
12686 ... 32629

5 CFR

1620 ... 32785

7 CFR

29 ... 31787
58 ... 31648
301 ... 32788
319 ... 33665
401 ... 33489
406 ... 33493
910 ... 32035, 32951
917 ... 32794, 33667
945 ... 31788
947 ... 32493
948 ... 33484
1076 ... 31799
1126 ... 32951
1864 ... 32953
Proposed Rules:
1c ... 32985
51 ... 32419
401 ... 33557, 33588
403 ... 33567
800 ... 33702
910 ... 33704
911 ... 31843
929 ... 31844
931 ... 33705
932 ... 33705
945 ... 33707
967 ... 31845
993 ... 31848
1001 ... 33709
1002 ... 33709
1004 ... 33709
1005 ... 33709
1006 ... 33709
1007 ... 33709
1011 ... 33709
1012 ... 33709
1013 ... 33709
1030 ... 33709
1032 ... 33709
1033 ... 33709
1036 ... 33709
1040 ... 33709
1046 ... 33709
1049 ... 33709
1050 ... 33709
1064 ... 33709
1065 ... 33709
1068 ... 33709
1076 ... 33709
1079 ... 33709
1080 ... 33709
1093 ... 33709
1094 ... 33709
1096 ... 33709
1097 ... 33709
1099 ... 33709
1098 ... 33709
1106 ... 33709
1108 ... 33709
1120 ... 33709
1124 ... 33709
1126 ... 33709
1131 ... 33709
1132 ... 33709
1134 ... 33709
1135 ... 33709
1137 ... 33709
1138 ... 33709
1139 ... 33709
1900 ... 33906
1910 ... 33906
1951 ... 33906
1955 ... 33906
1956 ... 33917
1962 ... 33906
1965 ... 33906

8 CFR

Proposed Rules:
210 ... 31998

9 CFR

51 ... 32434
91 ... 33668
92 ... 31800
Proposed Rules:
94 ... 33918
309 ... 33920
310 ... 33920
318 ... 33920

10 CFR

2 ... 33188
7 ... 31646
26 ... 33148
Proposed Rules:
Ch. I ... 32653
50 ... 33568
55 ... 33698
70 ... 33570
72 ... 33570
73 ... 33570
75 ... 33570
430 ... 32348, 32744

11 CFR

100 ... 34096

102.....34066
110.....34066
114.....34066
9034.....34066

12 CFR

33.....31935
207.....31646
220.....31646
221.....31646
224.....31646
226.....32953
229.....32035
262.....33183
328.....33669
545.....32954, 33859
563.....33870
574.....32959, 33183

Proposed Rules:

4.....32820
5.....33711
7.....33711
12.....32853
226.....32069
328.....33716
563.....33923–33926
563b.....33926
584.....33235

14 CFR

39.....31649, 31651–31653, 31803–31809, 31935, 32435–32437, 32796, 33186, 33873–33875
71.....31654, 31936, 31937
73.....31655, 32800
75.....31937
97.....33497
217.....31810
241.....31810
303.....32439, 32440, 32603, 32797–32800, 33496
1221.....32963

Proposed Rules:

Ch. I.....33557
25.....34116
39.....31693, 31694, 31847, 32824, 32826, 33235, 33237, 33934–33936
43.....32563
65.....32563
71.....31696–31704, 31966, 32452, 32827, 33579, 33941
75.....31705, 31967
121.....34116
125.....34116
145.....32563
Ch. II.....33577, 33578
233.....33580
252.....33580
253.....33580
302.....33580
377.....33582

15 CFR

773.....31812
799.....33676

16 CFR

305.....32631

Proposed Rules:

4.....32654

17 CFR

1.....33676
140.....31814
200.....33500
211.....32333, 32334
230.....33500
260.....33500
270.....31850, 32048
274.....32048
275.....32048, 32441
279.....32048

Proposed Rules:

230.....32226, 32993
239.....32226, 32993
240.....31850, 32229
249.....32226
260.....32226
269.....32226
270.....32993, 33027
274.....32993

18 CFR

35.....32802
270.....32805
271.....31938, 32805

Proposed Rules:

37.....31706
803.....33036

19 CFR

4.....33187, 33188
10.....33189
113.....33672
177.....32742, 32810
213.....33881

Proposed Rules:

355.....33238

20 CFR

Proposed Rules:

208.....32163
219.....31939
220.....32163
230.....32163
260.....32163
327.....31968
404.....33238
416.....31656, 33238

21 CFR

133.....32050
179.....32335
510.....32632, 33672
520.....32336, 33501, 33814
522.....32632
524.....32632
540.....33672, 33673
556.....32633
558.....32633–32634, 32963, 33884
573.....33673
1301.....33674
1305.....33674

Proposed Rules:

Ch. I.....32610
133.....32091
168.....33582
522.....31949
556.....31949
1308.....31815, 31855
1310.....31657
1313.....31657
1316.....31669

22 CFR

60.....31815
61.....31815
62.....31815
63.....31815
64.....31815
65.....31815
514.....32964

23 CFR

659.....32967

24 CFR

200.....32059, 32968
203.....32968
204.....32968
206.....32059
213.....32968
220.....32968
221.....32968
222.....32968
226.....32968
227.....32968
235.....32968
237.....32968
240.....32968
570.....31670

Proposed Rules:

Ch. I.....31856
200.....33039
205.....33039

26 CFR

1.....31672, 31816
602.....31672

Proposed Rules:

1.....31706, 32453

28 CFR

31.....32818
523.....32027
544.....32026

Proposed Rules:

551.....34094

29 CFR

524.....32920, 33814
525.....32920, 33814
529.....32920, 33814
1600.....32061
1601.....32061
1610.....32061
1611.....32061
1620.....32061
1626.....32061, 33501
1627.....33675
1691.....32061
1910.....31765, 31970
2589.....32635
2619.....33504
2676.....33505

Proposed Rules:

503.....32965
1910.....31858, 33832

30 CFR

934.....32063

Proposed Rules:

250.....31768, 32316, 32563, 33042
906.....32828
917.....32093
920.....33042
925.....32094
931.....32095, 32096
946.....32097, 32098

31 CFR

103.....33675
500.....32064

32 CFR

231.....33512
231a.....33516
286.....33190
385.....33521
706.....31825

33 CFR

100.....31826, 32066, 32441–32442, 33679, 33680
110.....32419
117.....31827
146.....32971
162.....32419
165.....32419, 32443

Proposed Rules:

100.....31859, 31860, 32453, 32659
162.....32661
334.....33584

34 CFR

206.....32936
345.....32770
755.....32946

35 CFR

Proposed Rules:

133.....32099
135.....32099

36 CFR

1153.....32337–32342
1155.....32337–32342
1202.....32067
1250.....32067
1254.....32067

Proposed Rules:

1206.....32455

37 CFR

1.....32637
2.....32637
301.....32810
309.....32810

38 CFR

3.....31828, 31950
21.....31829, 31950–31952, 32070, 33685

39 CFR

111.....32071, 33523
3001.....33525, 33681

40 CFR

52.....31953, 32072, 32073, 32637, 32971, 33526, 33528–33536, 33894
60.....32444, 32972, 34008
61.....32444
80.....33218
81.....32078, 33219, 33536
85.....32566
116.....33426
117.....33426
180.....34502
167.....32638
180.....31674, 31830–31836, 33690
228.....33685
264.....33376
265.....33376

270.....33376
271.....32973
302.....33418, 33426
792.....34034
795.....33400
796.....33148
797.....33148
799.....33148, 33400

Proposed Rules:

52.....32101, 33245, 33247, 33717
81.....31860, 31971, 31972
85.....32598
180.....31971, 31972, 33044, 33718
185.....31836
186.....31832–31836
228.....32351–32356
261.....31675, 32320, 32662, 33942
300.....33846
302.....32320, 32671
355.....32671
704.....31680
799.....32829

41 CFR

101–47.....32445

42 CFR

50.....32446
484.....33354

Proposed Rules:

5.....32459

43 CFR

Public Lands Orders:

6741.....32812
6742.....32812
6743.....33693

44 CFR

59.....33541
60.....33541
64.....32813, 32814, 33220, 33222
65.....33541, 33896
67.....33693, 33897
80.....31681
83.....31681
352.....31920

Proposed Rules:

67.....33943
335.....32359

45 CFR

232.....32284
302.....32284
303.....32284
304.....32284
306.....32284
307.....32284
1632.....31954

46 CFR

Proposed Rules:

10.....33045
15.....33045

47 CFR

Chapter I.....33224
2.....32339, 33896
15.....32339
22.....33551, 33896
25.....33226, 33896
73.....31665, 31666, 31838, 31960, 32340, 32639–32641, 33227, 33698, 33700, 33900, 33901
80.....31839
90.....33902

Proposed Rules:

2.....32830
64.....33585
69.....33585
73.....32361, 32362, 32672–32676, 33249, 33250, 33719–33721, 33946
94.....32362

48 CFR

203.....32161
206.....32161
209.....32161
212.....32161
213.....32161
214.....32161
215.....32161, 32975
216.....32161
217.....32161
219.....32161
222.....32161
223.....32161
226.....32161
242.....32161
245.....32161
252.....32161
253.....32161
273.....32161
525.....33554
901.....31961

Proposed Rules:

44.....32422
45.....32424
51.....32424
52.....32424
205.....33045
970.....33251

49 CFR

190.....32342
191.....32342
192.....32344, 32641
195.....32342, 32344
210.....33227
215.....33227
216.....33227
217.....33227
225.....33227
226.....33227
229.....33227
231.....33227
232.....33227
383.....33230
571.....31687, 32345
1207.....33555
1249.....33555

Proposed Rules:

571.....32830

50 CFR

17.....32326
20.....32975
23.....33231
215.....32346
217.....32815
226.....32065
227.....32065, 32815
611.....32642, 32819
652.....33700
661.....31841
663.....31668
672.....32819, 33701
674.....33904
675.....31842, 32642

Proposed Rules:

16.....33947
18.....33949
17.....32633, 33556
20.....33721
228.....33949
263.....32362
267.....32362
611.....31861
620.....31861
649.....32834
655.....31862
672.....31861, 33737
675.....31861, 33737
Ch. VII.....33735

LIST OF PUBLIC LAWS

Last List August 16, 1989

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.R. 2799/Pub. L. 101–81

To amend the Agricultural Act of 1949 for the 1990 crops to allow the planting of alternative crops on permitted acreage and to amend the provisions regarding the designation of farm acreage base as acreage base established for oats. (Aug. 14, 1989; 103 Stat. 563; 1 page) Price: $1.00

H.R. 2457/Pub. L. 101–82

Disaster Assistance Act of 1989. (Aug. 14, 1989; 103 Stat. 564; 25 pages) Price: $1.00

H.J. Res. 221/Pub. L. 101–83

To designate the week beginning September 1, 1989, as "World War II Remembrance Week." (Aug. 14, 1989; 103 Stat. 589; 1 page) Price: $1.00

S.J. Res. 55/Pub. L. 101–84

To designate the week of October 1, 1989, through October 7, 1989, as "Mental Illness Awareness Week." (Aug. 14, 1989; 103 Stat. 590; 2 pages) Price: $1.00

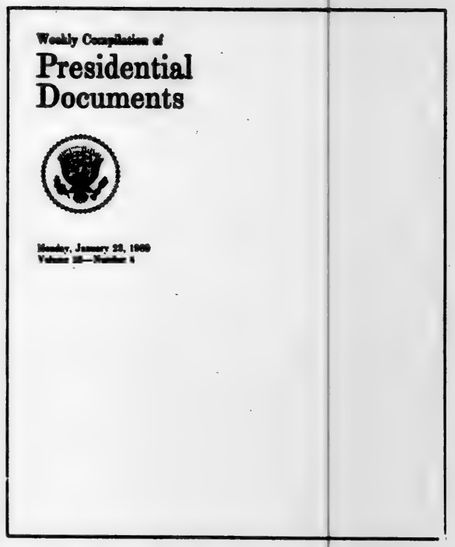
S.J. Res. 67/Pub. L. 101–85

To commemorate the twenty-fifth anniversary of the Wilderness Act of 1964 which established the National Wilderness Preservation System. (Aug. 14, 1989; 103 Stat. 592; 1 page) Price: $1.00

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

Administration of George Bush



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, personnel appointments and nominations, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue contains an Index of Contents and a Cumulative Index to Prior Issues.

Separate indexes are published periodically. Other features include lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
*6466

Charge your order. It's easy! MasterCard VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday–Friday (except holidays)

☐ **YES,** please enter my subscription for one year to the **WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS (PD)** so I can keep up to date on Presidential activities.

☐ $96.00 First Class ☐ $55.00 Regular Mail

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)
_____
(Additional address/attention line)
_____
(Street address)
_____
(City, State, ZIP Code)
(_____) _____
(Daytime phone including area code)

3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐–☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
_____ *Thank you for your order!*
(Credit card expiration date)
_____
(Signature) (Rev. 1-90-88)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

L

S

G

39

11

OL
4

SS
1
5
9

G
8

89

MI

8-18-89
Vol. 54 No. 159

federal register

Friday
August 18, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 89 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

8-18-89
Vol. 54 No. 159
Pages 34119-34474

federal register

Friday
August 18, 1989

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, and Atlanta, GA, see announcement on the inside cover of this issue.

BEST COPY AVAILABLE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: September 20; at 9:00 a.m.
WHERE: Room 808, 74 Spring Street, SW.
Richard B. Russell Federal Building
Atlanta, GA
RESERVATIONS: Call the Federal Information Center
404–331–6895

WASHINGTON, DC

WHEN: September 25; at 9:00 a.m.
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

Contents

Federal Register
Vol. 54, No. 159
Friday, August 18, 1989

Agricultural Marketing Service
See also Packers and Stockyards Administration
RULES
Lemons grown in California and Arizona, 34134
Raisins produced from grapes grown in California, 34134
PROPOSED RULES
Lemons grown in California and Arizona, 34163
Potatoes (Irish) grown in—
Washington, 34184

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Forest Service; Packers and Stockyards Administration; Rural Electrification Administration

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, foreign:
Ports of entry—
Houston, TX, 34133

Army Department
NOTICES
Meetings:
ROTC Affairs Advisory Panel, 34214

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Centers for Disease Control
NOTICES
Grants and cooperative agreements; availability, etc.:
Resident research associateship program, 34209

Commerce Department
See also International Trade Administration; National Oceanic and Atmospheric Administration; Patent and Trademark Office
NOTICES
Agency information collection activities under OMB review, 34204
National Trade Data Bank; Omnibus Trade and Competitiveness Act; implementation, 34204

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list, 1989:
Additions and deletions, 34212, 34213
(2 documents)

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Romania, 34212

Customs Service
PROPOSED RULES
Merchandise, special classes:
Switchblade knives; definition, 34166

Defense Department
See also Army Department; Navy Department
NOTICES
Meetings:
Scientific Advisory Group, 34213

Education Department
RULES
Vocational and adult education:
State-administered adult education programs and Secretary's discretionary programs of adult education, 34408
NOTICES
Grants and cooperative agreements; availability, etc.:
National workplace literacy program, 34412
Strengthening institutions and endowment challenge programs, 34214
Meetings:
National Assessment Governing Board, 34215

Employment and Training Administration
NOTICES
Adjustment assistance:
Avtex Fibers, Inc., et al., 34262
Ocean Drilling & Exploration Co. et al., 34263
Range Drilling Co. et al., 34263

Energy Department
See also Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
Valentin, Ingo, 34216
Natural gas exportation and importation:
Equitable Resources Marketing Co., 34216
Norbec International Corp., 34217

Environmental Protection Agency
RULES
Hazardous waste:
Identification and listing—
Exclusions, 34175
Water pollution control:
Ocean dumping; site designations—
Gulf of Mexico near Houma Navigation Canal, LA, 34172
Underground injection control program—
Water-brine interface mechanical integrity test for class III salt solution mining injection wells, 34188
PROPOSED RULES
Water pollution control:
Ocean dumping; site designations—
Gulf of Mexico near Barataria Bay Waterway, LA, 34191
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 34230

Weekly receipts, 34284
Meetings:
National Drinking Water Advisory Council; correction, 34282
Superfund program:
De minimis landowner settlements; prospective purchaser settlements; guidance availability, 34235
Toxic and hazardous substances control:
Premanufacture exemption applications, 34231
Premanufacture notices; monthly status reports, 34402
Premanufacture notices receipts, 34231, 34234
(2 documents)

Executive Office of the President
See Management and Budget Office; Presidential Documents

Federal Aviation Administration
RULES
Air traffic operating and flight rules:
Revision, 34284
PROPOSED RULES
Air carrier certification and operations:
Airborne low-altitude windshear equipment requirements, 34304
Airworthiness directives:
Sikorsky, 34185
NOTICES
Airport noise compatibility program:
Noise exposure map—
Chicago O'Hare International Airport, IL, 34280

Federal Communications Commission
RULES
Radio stations; table of assignments:
Alabama, 34182

Federal Energy Regulatory Commission
NOTICES
Natural gas certificate filings:
Transcontinental Gas Pipe Line Corp. et al., 34218
Preliminary permits surrender:
James River Hydro Associates, 34228
Applications, hearings, determinations, etc.:
Midwestern Gas Transmission Co., 34229
Seagull Interstate Corp., 34229
Transcontinental Gas Pipe Line Corp., 34229

Federal Home Loan Bank Board
RULES
Competitive Equality Banking Act; implementation:
Federal Savings and Loan Insurance Corporation, etc.—
Assets classification system; conforming and technical amendments, 34143
Federal Savings and Loan Insurance Corporation:
Subordinated debt securities; issuance and use, 34148

Federal Maritime Commission
RULES
Maritime carriers in domestic offshore commerce:
Financial reports regulations; reporting and recordkeeping requirements, 34182
PROPOSED RULES
Maritime carriers in foreign commerce:
Conditions unfavorable to shipping, actions to adjust or meet—
Ecuador/United States trade, 34194
NOTICES
Agreements filed, etc., 34247, 34248
(4 documents)
Agreements filed, etc.; correction, 34282

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Dentel Bancorporation; correction, 34248
Premier Bancorp, Inc., et al., 34248

Fish and Wildlife Service
RULES
Endangered and threatened species:
Cheat Mountain and Shenandoah salamanders, 34464
Roanoke logperch, 34468
PROPOSED RULES
Marine mammals:
Northern Sea otters; native exemptions, 34201

Food and Drug Administration
PROPOSED RULES
Human drugs:
Antibiotic drugs—
Topical antimicrobial products (OTC); final monograph, 34188
NOTICES
Meetings:
Consumer information exchange, 34249

Forest Service
PROPOSED RULES
Landownership adjustments:
Land exchanges, 34368
NOTICES
Environmental statements; availability, etc.:
Dixie National Forest, UT, 34203
(2 documents)
Strawberry Gulch, WY, 34203

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration; National Institutes of Health; Social Security Administration

Health Care Financing Administration
NOTICES
Organization, functions, and authority delegations, 34249

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 34311
Organization, functions, and authority delegations:
Acting Manager, Memphis Office, 34255

Immigration and Naturalization Service
RULES
Immigration:
Aliens; classification as immediate relative of U.S. citizen or preference immigrant—
Overseas service office and consulate acceptance based on residence of petitioners, 34141

Indian Affairs Bureau
RULES
Osage judgment funds for education; management, 34154

Interior Department
See Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; National Park Service; Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping:
Mechanical transfer presses from Japan, 34206
Antidumping and countervailing duties:
Administrative review requests; correction, 34282
Meetings:
Management-Labor Textile Advisory Committee, 34211
Applications, hearings, determinations, etc.:
University of Utah et al.; correction, 34282

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Canadian National Railway Co., 34260
Railroad services abandonment:
Southern Railway-Carolina Division et al., 34261

Justice Department
See also Immigration and Naturalization Service; Prisons Bureau
RULES
Persons of Japanese ancestry; redress provisions, 34157

Labor Department
See Employment and Training Administration; Mine Safety and Health Administration

Land Management Bureau
PROPOSED RULES
Land resource management:
Exchange and appraisal procedures, 34380
NOTICES
Meetings:
Boise District Advisory Council, 34256
Elko District Grazing Advisory Board, 34256
Vernal District Grazing Advisory Board, 34256
Realty actions; sales, leases, etc.:
Nevada, 34256
Utah, 34257
Withdrawal and reservation of lands:
Idaho, 34257, 34258
(3 documents)
Nevada, 34256

Management and Budget Office
NOTICES
Metropolitan Statistical Areas; standards revision, 34268

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Rocky Hollow Coal Co., 34264

National Foundation on the Arts and the Humanities
NOTICES
Senior Executive Service:
Performance Review Board; membership, 34264

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Institutes of Health
NOTICES
Meetings:
National Center for Nursing Research, 34254
National Institute of Allergy and Infectious Diseases, 34253
(3 documents)
National Institute of Diabetes and Digestive and Kidney Diseases, 34254
National Institute of Environmental Health Sciences, 34254
National Institute on Deafness and Other Communication Disorders, 34254
National Library of Medicine, 34255
President's Cancer Panel, 34252

National Oceanic and Atmospheric Administration
RULES
Endangered and threatened species:
Winter-run chinook salmon
Correction, 34282
NOTICES
Family of Services and climate dial-up service; fee schedule, 34211
Meetings:
Mid-Atlantic Fishery Management Council, 34212

National Park Service
NOTICES
Concession contract negotiations:
Cavern Supply Co., Inc., 34259
Signal Mountain Lodge, Inc., 34259
Meetings:
National Park System Advisory Board, 34259

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 34264
Meetings:
Astronomical Sciences Advisory Committee, 34265

Navy Department
NOTICES
Meetings:
Chief of Naval Operations Executive Panel Advisory Committee, 34214

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Georgia Power Co. et al., 34265
Pacific Gas & Electric Co., 34266
Meetings:
Reactor Safeguards Advisory Committee, 34267
Reports; availability, etc.:
Severe accident risks, assessment for five nuclear power plants; second draft, 34268
Applications, hearings, determinations, etc.:
Indiana Michigan Power Co., 34267

Office of Management and Budget
See Management and Budget Office

Packers and Stockyards Administration
NOTICES
Central filing system; State certifications:
Arkansas, 34204

Patent and Trademark Office
RULES
Patent and trademark cases:
Fees; revision
Correction, 34282

Presidential Documents
PROCLAMATIONS
Special observances:
Bicentennial Anniversary of the First U.S. Patent and Copyright Laws, 1990 (Proc. 6013), 34125
Drive for Life Weekend, National (Proc. 6011), 34121
Pledge of Allegiance Day, National (Proc. 6012), 34123
Women's Equality Day (Proc. 6010), 34119
EXECUTIVE ORDERS
Choctawhatchee National Forest, FL; authority delegation (EO 12688), 34129
Committees; establishment, renewal, termination, etc.:
President's Education Policy Advisory Committee (EO 12687), 34127
Debarment and suspension (EO 12689), 34131

Prisons Bureau
NOTICES
Environmental statements; availability, etc.:
Union County, PA, 34262

Public Health Service
See Centers for Disease Control; Food and Drug Administration; National Institutes of Health

Resolution Trust Corporation
NOTICES
Establishment, 34274

Rural Electrification Administration
RULES
Telephone standards and specifications:
Digital stored program controlled central office equipment, 34138

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Depository Trust Co., 34274
Midwest Securities Trust Co., 34275, 34277 (2 documents)
New York Stock Exchange, Inc., 34276
Options Clearing Corp., 34279 (2 documents)

Social Security Administration
NOTICES
Agency information collection activities under OMB review, 34255

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Pennsylvania, 34168
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Missouri, 34190

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See also Federal Aviation Administration
NOTICES
Aviation proceedings:
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 34280

Treasury Department
See Customs Service

Veterans Affairs Department
PROPOSED RULES
Board of Veterans Appeals:
Appeal regulations and rules of practice, 34334

Separate Parts In This Issue

Part II
Department of Transportation, Federal Aviation Administration, 34284

Part III
Department of Veterans Affairs, 34334

Part IV
Department of Agriculture, Forest Service, 34388

Part V
Department of the Interior, Bureau of Land Management, 34380

Part VI
Department of Transportation, Federal Aviation Administration, 34394

Part VII
Environmental Protection Agency, 34402

Part VIII
Department of Education, 34408

Part IX
Department of the Interior, Fish and Wildlife Service, 34464

Part X
Department of Housing and Urban Development, 34474

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6010 34119
6011 34121
6012 34123
6013 34125
Executive Orders:
10355 (See EO 12688) 34129
12549 (See EO 12689) 34131
12687 34127
12688 34129
12689 34131

7 CFR
319 34133
910 34134
989 34134
1772 34138
Proposed Rules:
910 34183
946 34184

8 CFR
204 34141

12 CFR
545 34143
546 34143
561 34143
563 (2 documents) 34143, 34148
563b 34143
563c 34143
570 34143
571 34143

14 CFR
1 34284
21 34284
23 34284
25 34284
27 34284
29 34284
31 34284
33 34284
35 34284
36 34284
43 34284
45 34284
47 34284
61 34284
63 34284
65 34284
71 34284
91 34284
93 34284
99 34284
103 34284
121 34284
125 34284
127 34284
133 34284
135 34284
137 34284
141 34284
Proposed Rules:
39 34185
121 34394

19 CFR
Proposed Rules:
12 34186

21 CFR
Proposed Rules:
333 34188
448 34188

25 CFR
122 34154

28 CFR
74 34157

30 CFR
938 34166
Proposed Rules:
925 34190

34 CFR
425 34402
426 34402
432 34402
433 34402
434 34402
435 34402
436 34402
437 34402
438 34402
441 34402

36 CFR
Proposed Rules:
254 34368

37 CFR
1 34282

38 CFR
Proposed Rules:
14 34334
19 34334
20 34334

40 CFR
146 34169
228 34172
261 34175
Proposed Rules:
228 34191

43 CFR
Proposed Rules:
2090 34380
2200 34360

46 CFR
552 34182
553 34182
Proposed Rules:
586 34194

47 CFR
73 34182

50 CFR
17 (2 documents) 34464, 34466
226 34282
227 34282
Proposed Rules:
18 34201

Federal Register
Vol. 54, No. 159
Friday, August 18, 1989

Presidential Documents

Title 3—

The President

Proclamation 6019 of August 15, 1989

Women's Equality Day, 1989

By the President of the United States of America

A Proclamation

On August 26, 1989, we will commemorate the 69th anniversary of the ratification of the 19th Amendment to the Constitution. The adoption of that amendment secured for women an equal voice in our representative system by guaranteeing their right to vote. Its ratification in 1920 marked a watershed in American history by ensuring that women, equally with men, could enjoy fully the rights and responsibilities of citizenship.

The active role of women during World War I was one important factor in gathering the force of public opinion behind the women's suffrage movement. Women already had the vote in some States, but during the war, as they became essential workers in many industries, women gained increasing voice and stature throughout the country. Thus, after years of hard work and persistent lobbying by women's rights groups, the Congress passed the 19th Amendment in June 1919. It was finally ratified by the Tennessee legislature on August 18, 1920, and proclaimed as part of our Constitution on August 26.

By securing for women the right to vote—and allowing them full participation in the political life of our country—the 19th Amendment affirmed the principles upon which our Nation was founded. In essence, it called us to remain faithful to the vision of our Founders, who had pledged their lives and fortunes to defending the belief "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness." The ratification of the 19th Amendment was a poignant reminder that the civil and political rights enshrined in our Constitution are the birthright of all.

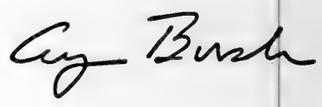
By recognizing previously disenfranchised members of our society, the 19th Amendment took a place among other great landmarks in American history, such as President Lincoln's Emancipation Proclamation and the 13th, 14th, and 15th Amendments. These legal milestones, and others that have since followed, such as the 1964 Civil Rights Act, have marked our Nation's progress in ensuring that all members of our society have the opportunity to reach their full potential.

In recent years, women have continued their remarkable achievements in virtually every field of endeavor, gaining positions of leadership in government, education, business, medicine, and the arts. During our Nation's record peacetime economic expansion these past 80 months, 53 percent of the increase in employment has been among women; the wage gap has been closing; and today, increasing numbers of women are obtaining undergraduate and professional degrees.

On this 69th anniversary of the 19th Amendment, it is appropriate that we recognize the many accomplishments of women, as well as their unique role in keeping our families, communities, and Nation strong. But today let us also renew our commitment to protecting the rights of all Americans, so that the United States might truly be a land of "liberty and justice for all."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 26, 1989, as Women's Equality Day—a day to commemorate the 69th anniversary of the ratification of the 19th Amendment. I call upon all Americans to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of August, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-19031
Filed 8-16-89; 2:28 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6011 of August 15, 1989

National Drive for Life Weekend, 1989

By the President of the United States of America

A Proclamation

Although the proportion of traffic deaths related to alcohol has declined during the past few years, alcohol-impaired driving remains our Nation's number one highway safety problem.

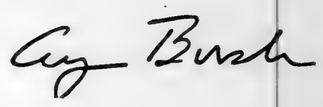
Approximately one-half of all fatal motor vehicle crashes in the United States continue to be alcohol-related. Some 80 percent of these crashes involve a legally intoxicated driver or pedestrian. During 1988 alone, alcohol played a role in more than 23,000 traffic deaths. The personal losses and suffering of the thousands injured by drunk driving and of those whose loved ones are killed in alcohol-related crashes are inestimable.

Drugs other than alcohol also pose a significant threat to our highway safety. Studies show that certain drugs—legal as well as illegal, and either alone or in combination with alcohol—contribute to highway crashes. All of us should be aware of the safety risks of driving after taking prescribed medications or over-the-counter drugs—especially those that have labels warning against operating a motor vehicle. We should also be mindful that combining drugs and alcohol increases those safety risks.

Two years ago, a coalition headed by Mothers Against Drunk Driving sponsored the first National Drive for Life Day and campaigned for all Americans to pledge not to drink and drive on that day. By pausing on National Drive for Life Day to demonstrate their commitment to the fight against drunk driving, Americans underscored the importance of keeping that pledge throughout the year. The success of that first day prompted calls for an expanded campaign, to which the Congress responded in 1988 by designating Labor Day weekend as National Drive for Life Weekend. By Senate Joint Resolution 127, the Congress has again called for a national campaign by designating the Labor Day weekend beginning September 2, 1989, as "National Drive for Life Weekend" and has authorized and requested the President to issue a proclamation in observance of this weekend.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the Labor Day weekend, September 2 through 4, 1989, as National Drive for Life Weekend. I ask all Americans to help improve the safety of our Nation's highways by pledging not to drink and drive that weekend. I also call upon the Governors of the States, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, and American Samoa, the Mayor of the District of Columbia, and the people of the United States to observe that weekend with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of August, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-19632
Filed 8-16-89; 2:29 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6012 of August 15, 1989

National Pledge of Allegiance Day, 1989

By the President of the United States of America

A Proclamation

On September 8, 1892, the Pledge of Allegiance to the Flag first appeared in print. Today, nearly a century later, the words penned by Francis Bellamy in observance of the 400th anniversary of the discovery of America are among the most widely recited verses of American literature.

The simple yet eloquent words of the Pledge of Allegiance capture both the character of the American people and the principles upon which our Nation was founded. They are a fitting tribute to our Flag.

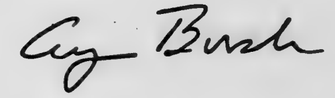
The Flag is the unique symbol of our Republic and the freedom that we cherish. It embodies the faith and unity of the men and women who have carried forth this bold experiment in self-government, and it stands in honor of those who have sacrificed their lives to defend it. This proud emblem, the glorious banner of a great and blessed Nation, is worthy of our abiding respect and loyalty.

A diverse people, we Americans are united by what we believe. We believe in God; we believe that all men are created equal; we believe in freedom; and we believe in equal opportunity and justice for all. We rededicate ourselves to these eternal truths every time we pledge allegiance to the Flag of the United States.

In recognition of the significance of the Pledge of Allegiance, the Congress, by House Joint Resolution 253, has designated September 8, 1989, as "National Pledge of Allegiance Day" and has authorized and requested the President to issue a proclamation calling for the observance of this event.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim September 8, 1989, National Pledge of Allegiance Day. I call upon the people of the United States to observe this day by displaying the United States Flag, by reciting publicly the Pledge of Allegiance, and by participating in other appropriate activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of August, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-19633
Filed 8-16-89; 2:30 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6013 of August 15, 1989

The Bicentennial Anniversary of the First U.S. Patent and Copyright Laws, 1990

By the President of the United States of America

A Proclamation

Our Nation's Founding Fathers recognized not only the need to protect the rights and property of individual Americans, but also the importance of providing incentives to stimulate the economic and cultural growth of the United States. Thus, in Article I, Section 8 of the Constitution, they gave the Congress the power "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Under this provision, the Federal Government can encourage the work of authors and inventors by protecting their right to reap the fruits of their labor.

In his first Annual Message to the Congress, President George Washington reminded its members of the importance of progress in science and the arts, proclaiming that "there is nothing which can better deserve your patronage than the promotion of science and literature." Less than 6 months later, the Congress passed two landmark laws: the first Patent Act, which President Washington signed on April 10, 1790, and the first Copyright Act, which he signed on May 31, 1790. These two Acts have played an important role in establishing the United States as an economic and cultural leader among nations.

During the past 200 years, our Nation's patent and copyright laws have, as Abraham Lincoln once observed, "added the fuel of interest to the fire of genius." American inventors have left their mark on industry and everyday life, and the world's history books include their names alongside those of other great pioneers. Our standard of living, which is in part the result of American technology and innovation, has long been the highest in the world.

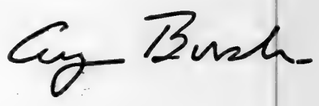
Advances in technology have also produced new forms of authorship, and we have expanded our copyright laws accordingly. Copyright protection now covers such works as photographs, phonograms, motion pictures, and computer programs. These changes have enabled fledgling enterprises to become enduring industries. The success of new industries has, in turn, given aspiring authors, inventors, and artists greater faith in their dreams and further incentive to share the fruits of their talents with others.

As our patent and copyright laws enter their 3rd century, it is fitting that we recognize the role they have played in the scientific, economic, and cultural development of our Nation. On this occasion, it is also fitting that we encourage America's young people to follow in the footsteps of the many inventors and artists who have enriched our lives with their vision and creativity.

In recognition of the importance of the patent and copyright laws to the United States, the Congress, by Public Law 99–523, has authorized and requested the President to issue a proclamation commemorating the bicentennial anniversary of the first patent and copyright laws.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby call upon the people of the United States to foster recognition of the importance of our patent and copyright systems through appropriate educational and cultural programs and activities during 1990, the bicentennial year of our Nation's first patent and copyright laws.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of August, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-19634
Filed 8-16-89; 2:31 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12667 of August 15, 1989

President's Education Policy Advisory Committee

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), an advisory committee on the education policy of the United States, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the President's Education Policy Advisory Committee. The Committee shall be composed of members appointed by the President.

(b) The President shall designate a Chairman from among members of the Committee. The Assistant to the President for Economic and Domestic Policy shall serve as the Secretary of the Committee.

Sec. 2. *Functions.* (a) The Committee shall advise the President with respect to the objectives and conduct of the overall education policy of the United States.

(b) In the performance of its advisory duties the Committee shall conduct a continuing review and assessment of education policy and shall report thereon to the President whenever requested.

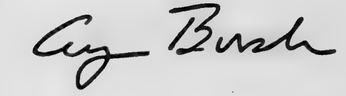
Sec. 3. *Administration.* (a) The heads of executive agencies shall, to the extent permitted by law, provide the Committee such information with respect to education policy matters as the Committee requires for the purpose of carrying out its functions.

(b) Members of the Committee shall serve without any compensation for their work on the Committee. However, they shall be entitled to travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(c) Any expenses of the Committee shall be paid from funds available for the expenses of the Office of Policy Development.

Sec. 4. *General.* Notwithstanding any other Executive order, the responsibilities of the President under the Federal Advisory Committee Act, as amended, shall be performed by the Assistant to the President for Economic and Domestic Policy or his designee, except that the Administrator of General Services shall, on a reimbursable basis, provide such administrative services as may be required.

(b) The Committee shall terminate on December 31, 1990, unless sooner extended.



THE WHITE HOUSE,
August 15, 1989.

[FR Doc. 89-19635
Filed 8-16-89; 2:32 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12688 of August 15, 1989

Transfer Authority Choctawhatchee National Forest, Florida

By the authority vested in me as President by the Constitution and laws of the United States of America, including Pub. L. No. 668, 76th Cong., 3d Sess., 54 Stat. 655 (1940), to ensure that excess property under the control of the Department of Defense within and adjacent to the Choctawhatchee National Forest, Florida, is transferred to the Department of Agriculture for inclusion in the National Forest, it is hereby ordered as follows:

The Secretary of Defense is hereby delegated the President's authority under Pub. L. No. 668, 76th Cong., 3d Sess., 54 Stat. 655 (1940), to transfer such property within or adjacent to the boundaries of Choctawhatchee National Forest, Florida, that is no longer required for military purposes, to the Secretary of Agriculture to be restored to national forest status. To the extent this order delegates the President's authority under Pub. L. No. 668, 76th Cong., 3d Sess., 54 Stat. 655 (1940), to the Secretary of Defense, it supersedes Executive Order No. 10355, which delegates the President's authority to revoke withdrawals and reservations of public lands to the Secretary of the Interior. The Secretary of Defense will document the transaction by letter of transfer between the Departments. The Secretary of Defense, 30 days prior to taking any action to transfer property pursuant to this order, shall notify the Secretary of the Interior of the effective date and time for "opening" of the lands to relevant land laws. The authority delegated by this order may be further redelegated within the Department of Defense.

George Bush

THE WHITE HOUSE,
August 15, 1989.

[FR Doc. 89-19668
Filed 8-16-89; 4:27 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12689 of August 16, 1989

Debarment and Suspension

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to protect the interest of the Federal Government, to deal only with responsible persons, and to insure proper management and integrity in Federal activities, it is hereby ordered as follows:

Section 1. *Definitions.* For purposes of this order:

(a) "Procurement activities" refers to all acquisition programs and activities of the Federal Government, as defined in the Federal Acquisition Regulation.

(b) "Nonprocurement activities" refers to all programs and activities involving Federal financial and nonfinancial assistance and benefits, as covered by Executive Order No. 12549 and the Office of Management and Budget guidelines implementing that order.

(c) "Agency" refers to executive departments and agencies.

Sec. 2. *Governmentwide Effect.*

(a) To the extent permitted by law and upon resolution of differences and promulgation of final regulations pursuant to section 3 of this order, the debarment, suspension, or other exclusion of a participant in a procurement activity under the Federal Acquisition Regulation, or in a nonprocurement activity under regulations issued pursuant to Executive Order No. 12549, shall have governmentwide effect. No agency shall allow a party to participate in any procurement or nonprocurement activity if any agency has debarred, suspended, or otherwise excluded (to the extent specified in the exclusion agreement) that party from participation in a procurement or nonprocurement activity.

(b) An agency may grant an exception permitting a debarred, suspended, or otherwise excluded party to participate in procurement activities of that agency to the extent exceptions are authorized under the Federal Acquisition Regulation, or to participate in nonprocurement activities of that agency to the extent exceptions are authorized under regulations issued pursuant to Executive Order No. 12549.

Sec. 3. *Implementation.*

(a) The Office of Management and Budget may assist Federal agencies in resolving differences between the provisions contained in the Federal Acquisition Regulation and in regulations issued pursuant to Executive Order No. 12549. The Office of Management and Budget may determine the date of resolution of differences and then shall notify affected agencies of that date.

(b) To implement this order, proposed regulations amending the Federal Acquisition Regulation and the agency regulations issued pursuant to Executive Order No. 12549 shall be published simultaneously within 6 months of the resolution of differences.

BEST COPY AVAILABLE

(c) Final regulations shall be published simultaneously within 12 months of the publication of the proposed regulations, to be effective 30 days thereafter.

George Bush

THE WHITE HOUSE
August 16, 1989.

[FR Doc. 89-19669
Filed 8-16-89; 4:26 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 54, No. 159
Friday, August 18, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 89-140]

Ports of Entry for Certain Plants and Plant Products

AGENCY: Animal and Plant Health Inspection Service, USDA.
ACTION: Final rule.

SUMMARY: We are amending the regulations concerning foreign quarantine notices by adding a plant inspection station at the port of Houston, Texas. Adding a station through which certain plants and plant products may be imported will facilitate the importation of these plants and plant products into the United States.

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Don R. Thompson, Operations Officer, Port Operations, PPQ, APHIS, USDA, Room 638, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8393.

SUPPLEMENTARY INFORMATION:

Background

We are amending the regulations concerning foreign quarantine notices contained in 7 CFR part 319, Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds and Other Plant Products (referred to below as the regulations).

On June 5, 1989, we published a proposal in the **Federal Register** (54 FR 23988-23990, Docket Number 88-073) to amend the regulations by adding a plant inspection station at the port of Houston, Texas. This new station has the special inspection and treatment facilities needed to import certain restricted articles, including certain plants and plant products, that are required to be imported under a written permit pursuant to § 319.37-3(a) (1) through (6) of the regulations.

Our proposal invited the submission of written comments, which were required to be received on or before July 5, 1989. We received two comments. One comment, from a plant importing business in Texas, supported the proposed rule because it would benefit the business itself as well as the economy of Texas. The other comment, from the California Department of Food and Agriculture, supported the proposed rule provided that the new plant inspection station in Houston, Texas, would not divert funding or manpower from United States Department of Agriculture (USDA) programs in California. USDA programs in California should not be affected by the new plant inspection station in Houston, Texas.

Based on the rationale in the proposal and in this document, we are adopting the provisions of the proposal as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The addition of a plant inspection station in Houston, Texas, will facilitate the importation of restricted articles, including certain plants, into the United States. We believe the addition of this facility will have a positive but small economic impact on importers, since Texas already has three inspection stations through which plants requiring written permits pursuant to § 319.37-3(a) (1) through (6) of the regulations may be imported. We have no way of projecting how heavily the new plant inspection station will be used, but we estimate that between 5 and 20 commercial importers—most of them small entities—will use this new facility on a regular basis. Most of them will realize small savings in transportation costs since they will now have access to a fourth plant inspection station. The primary impact on these importers, therefore, will be increased convenience.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Nursery stock, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds and Other Plant Products is revised to read as follows:

Authority: 7 U.S.C. 150dd-150ff, 154, 155, 157, 159, 160, 162, and 164a; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 319.37-14(b), the entry for Texas is amended by adding an asterisk immediately before the word "Houston", and by adding, immediately under the word "Houston", the information as shown below:

§ 319.37-14 Ports of entry.

* * * * *

(b) * * *

Lists of Ports of Entry

* * * * *

Texas

* * * * *

(Airport) Houston Plant Inspection Station, 3016 McKaughan, Houston, TX 77032.

* * * * *

Done in Washington, DC, this 14th day of August 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-19473 Filed 8-17-89; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 679]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 679 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 300,000 cartons during the period August 20 through August 26, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: Regulation 679 (§ 910.979) is effective for the period August 20 through August 26, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989-90. The Committee met publicly on August 15, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is fair.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.979 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.979 Lemon Regulation 679.

The quantity of lemons grown in California and Arizona which may be handled during the period August 20, 1989, through August 26, 1989, is established at 300,000 cartons.

Dated: August 16, 1989.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 89-19626 Filed 8-17-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 989

[AMS-FV-88-106; Docket No. AO-198-A14]

Raisins Produced From Grapes Grown in California; Order Amending the Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal marketing agreement and order for California raisins. The amendments will: (1) Add a production cap under the Raisin Diversion Program (RDP), (2) authorize payments of expenses for alternate Raisin Administrative Committee (Committee) members; (3) establish mail balloting procedures for nominating independent producer members to the Committee; (4) modify reserve pool procedures; and (5) authorize interest and late payment charges when handlers fail to pay for reserve pool raisins on time. These changes are intended to improve the operation of the raisin marketing order program.

EFFECTIVE DATE: August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION:

Prior documents in this proceeding: Notice of Hearing issued on July 18, 1987, and published in the July 21, 1987, issue of the **Federal Register** (52 FR 27269); Recommended Decision issued on July 21, 1988, and published in the July 26, 1988, issue of the **Federal Register** (53 FR 28465); and Secretary's Decision and Referendum Order issued on March 29, 1989, and published in the March 24, 1989, issue of the **Federal Register** (54 FR 12295).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

Preliminary Statement

This final rule was formulated on the record of a public hearing held August 5 and 6, 1987, at Fresno, California, to consider the proposed further amendment of Marketing Agreement and Order No. 989 (7 CFR part 989) regulating the handling of raisins produced from grapes grown in California, hereinafter referred to collectively as the "order." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900).

The Notice of Hearing contained five amendment proposals submitted by the Committee which locally administers the order. Those proposals pertained to changing the RDP, nomination procedures for independent producer representatives on the Committee, expenses for alternate Committee representatives, reserve pool procedures, and handler compliance with the marketing order. Mr. John D. Pakcholan, former chairman of the Committee, submitted a proposal which would have required that independent producer representatives not have an interest in handler operations. This proposal was not included in the Recommended Decision. The notice also included three proposals by the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), to limit Committee tenure, add authority for continuance referenda, and provide authority to make any necessary conforming changes.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS), on July 21, 1987, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision containing a notice of the opportunity to file written exceptions thereto by August 28, 1988. Three exceptions were filed and were discussed and ruled upon in the Secretary's Decision.

The Secretary's Decision was issued on March 20, 1989, directing that a referendum be conducted during the period April 24 through May 3, 1989, among producers of California raisins to determine whether they favored the proposed amendments to the order. This final order includes the amendments which received the requisite approval of two-thirds by number of the California raisin producers who voted in the referendum or producers representing two-thirds of the volume of raisins voted in the referendum. Of the eight proposals listed on the referendum ballot, California raisin producers favored the following five proposals: (1) Add a production cap under the RDP; (2) authorize payments of expenses for alternate Committee members; (3) establish mail balloting procedures for nominating independent producer members to the Committee; (4) modify reserve pool procedures; and (5) authorize interest and late payment charges when handlers fail to pay for reserve pool raisins on time.

The proposals that did not receive the requisite approval would have authorized handlers to set aside reconditioned raisins to satisfy reserve pool obligations, limited Committee members' tenure to six years, and added authority for continuance referenda every six years.

Small Business Considerations

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. As stated in the Notice of Hearing, interested persons were invited to present evidence at the hearing on the probable impact of the regulatory and informational requirements of the amendment proposals on small businesses for the purposes of the RFA. In that regard, such evidence was considered in arriving at the findings and conclusions contained in the Recommended Decision and in the Secretary's Decision. Those findings and conclusions are incorporated herein.

There are approximately 25 handlers of California raisins subject to regulation under the order and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $500,000. Small agricultural service firms, which include handlers under the marketing agreement and order, are defined as those with gross annual revenues of less than $3,500,000. The majority of California raisin producers and a minority of raisin handlers may be classified as small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed rule on small businesses. Marketing orders and rules issued thereunder are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

The amendments to the marketing agreement and order include a provision pertaining to a production cap of 2.75 tons per acre for production units approved for participation in the Raisin Diversion Program (RDP). The RDP gives producers the means of voluntarily reducing the quantity of grapes grown for drying into raisins while receiving the equivalent quantity of raisins, represented on diversion certificates issued to the producers by the Committee, to sell to handlers as though the raisins were produced in the current crop year. The producer receives raisins from the previous year's reserve pool in an amount equal to the acreage removed or diverted under the RDP multiplied by the producer's previous year's production in tons per acre.

This amount is represented on the diversion certificate. The production cap is designed to prevent producers applying to participate in the RDP from reporting greater than actual raisin production. Since the RDP is a voluntary program, no producer is required to participate. If a producer historically produces above the production cap, such producer could choose to produce a crop rather than participate in the RDP.

This change will not adversely affect small entities.

The change to establish an average maturity quality level that reserve raisins must meet when delivered to the Committee is intended to improve the quality of reserve pool raisins and thus improve producers' returns on their equity. This change will not adversely affect small entities.

The change that will require the Committee to reimburse alternate Committee members their necessary expenses for attending Committee meetings is anticipated to have a positive effect on producers and handlers by increasing the level of expertise of Committee members.

This additional expense would be offset by assessments on handlers. Program operations benefit all handlers and producers and it is thus appropriate to provide a minimum level of compensation to alternate members, who serve in the industry's general interest. The change will have no adverse affect on small entities.

The change to add a late payment and interest charge for handlers who default on reserve pool sales would encourage prompt payment by handlers and discourage such defaults. Handlers will be required to pay such charges only if they are late in paying the Committee for raisins released to them from the reserve pool. In addition, prompt payment by handlers would ensure more timely payments to producers who have equity in the reserve pools. This change will not adversely affect small entities. The change to require that nominations for independent producer positions on the Committee be held by mail should increase independent producer participation in the nomination process. This change will not adversely affect small entities.

All these changes are designed to enhance the administration and functioning of the marketing agreement and order and will not have a significant economic impact on small businesses.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the changes in the recordkeeping and reporting requirements that are included in the amendments to the order have been submitted for approval to the Office of Management and Budget (OMB). The OMB approved these requirements and assigned OMB No. 0581-0083. The change concerning the addition of a mail ballot for the purposes of nominating to the Committee independent producers and producers affiliated with cooperative marketing organizations handling less than 10 percent of the total raisin acquisitions during the preceding crop year is estimated to take 10 minutes to complete while the change concerning optional preparation of brief statements that nominees may submit to the Committee describing their qualifications to serve on the Committee is estimated to take 5 minutes to complete. These forms will not be used prior to OMB approval.

Order Amending the Order—Regulating the Handling of Raisins Produced From Grapes Grown in California

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary, and in addition to, the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon proposed amendment of the marketing agreement, as amended, and Order No. 989, as amended (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California.

Upon the basis of the record, it is found that: (1) The order, as amended, and as hereby further amended, and all terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as amended, and as hereby further amended, regulates the handling of raisins produced from grapes grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of raisins produced from grapes grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of raisins produced from grapes grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make this order amending the order effective on the date of publication in the Federal Register. Any delay beyond that date would interfere with the effective functioning and administration of the marketing order. The amendatory order authorizes changes in the operation and functioning of the marketing order which should be made effective as soon as possible. The specified effective date is necessary to meet these objectives.

The provisions of this amendatory order include authorization for adding a production cap under the RDP, authorizing payments of expenses for alternate Committee members, modifying reserve pool procedures, and authorizing interest and late payment charges when handlers fail to pay for reserve pool raisins on time. It is necessary to implement these changes as soon as possible as these provisions should be in place for the new crop year for raisins which begins August 1.

In view of the foregoing, it is found and determined that good cause exists for making this amendatory order effective upon publication in the Federal Register, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after publication in the Federal Register (sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) The "Marketing Agreement, As Amended, Regulating the Handling of Raisins Produced from Grapes Grown in California" upon which the aforesaid public hearing was held has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping covered by the said order, as amended, and as hereby further amended) who, during the period August 1, 1987, through July 31, 1988 handled not less than 50 percent of the volume of such raisins covered by the said order, as amended, and as hereby further amended; and

(2) The issuance of this amendatory order, amending the aforesaid order, as amended, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during the period August 1, 1987, through July 31, 1988, (which has been deemed to be a representative period), have been engaged within the State of California in the production of grapes which were sun-dried or dehydrated by artificial means until they became raisins for market, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

Order Relative to Handling

It is therefore ordered, That, on and after the effective date hereof, the handling of raisins produced from grapes grown in California shall be in conformity to and in compliance with the terms and conditions of the said order, as hereby amended, as follows:

Except for the previously noted modifications, the provisions of the proposed marketing agreement and order, amending the order, contained in the Recommended Decision issued by the Administrator on July 21, 1988, and published in the Federal Register (53 FR 28411, July 28, 1988), and in the Secretary's Decision issued on March 20, 1989, and published in the March 24, 1989, issue of the Federal Register (54 FR 12205) shall be and are the terms and provisions of this order, amending the order, and are set forth in full therein.

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing agreements and orders, Raisins.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Note: These sections will appear in the annual Code of Federal Regulations.

2. Section 989.29 is amended by revising paragraph (b)(2) and paragraph (b)(4) as follows:

§ 989.29 Initial members and nomination of successor members.

* * * * *

(b) * * *

(1) * * *

(2)(i) Any producer representing independent producer and producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year must have produced grapes which were made into raisins in the particular district for which they are nominated to represent said district as a producer member or alternate producer member on the committee. In the event any such nominee is engaged as a producer in more than one district, such producer may be a nominee for only one district. One or more producers may be nominated for each such producer member or alternate member position.

(ii) Each such producer whose name is offered in nomination shall be given the opportunity to provide the committee a short statement outlining qualifications and desire to represent on the committee independent producers or producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year. These brief statements, together with a ballot and voting instructions, shall be mailed to all independent producers and producers who are affiliated with cooperative marketing associations handling less than 10 percent of the total raisin acquisitions during the preceding crop year of record with the committee in each district. The producer receiving the highest number of votes shall be designated as the first member nominee, the second highest shall be designated as the second member nominee or alternate member nominee, as the case may be, until nominees for all member and alternate member positions have been filled.

(iii) Each independent producers or producers affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall cast only one vote with respect to each position for which nominations are to be made. Write-in candidates shall be accepted. The person receiving the most votes with respect to each position to be filled, in accordance with paragraph (b)(2)(ii) of this section, shall be the person to be certified to the Secretary as the nominee. The committee may, subject to the approval of the Secretary, establish rules and regulations to effectuate this section.

* * * * *

(4) Each vote cast shall be on behalf of the person voting, the person's agent, subsidiaries, affiliates, and representatives. Voting at each handler meeting shall be in person. The results of each ballot at each handler meeting shall be announced at that meeting.

* * * * *

3. Section 989.30 is revised as follows:

§ 989.30 Compensation and expenses.

The members and alternate members of the committee shall serve without compensation, but shall be allowed their necessary expenses as approved by the committee.

4. Section 989.56 is amended by revising paragraphs (a) and (c) as follows:

§ 989.56 Raisin diversion program.

(a) *Announcement of program.* On or before November 30 of each crop year, the committee shall hold a meeting to review production data, supply data, demand data, including anticipated demand to all potential market outlets, desirable carryout inventory, and other matters relating to the quantity of raisins of all varietal types. When the committee determines that raisins exist in the reserve pool in excess of projected market needs for any varietal type, it may announce the amount of such tonnage eligible for diversion during the subsequent crop year. At the same time, the committee shall determine and announce to producers, handlers, and the cooperative bargaining association(s) the allowable harvest cost to be applicable to such diversion tonnage. A production cap of 2.75 tons of raisins per acre shall be established for any production unit approved for participation in a diversion program. The committee, with the approval of the Secretary, may recommend, at the same time that the diversion tonnage for that season is announced, a change in the production cap for that season's diversion program of less than 2.75 tons per acre for any production unit approved for the diversion program.

* * * * *

(c) *Issuance of diversion certificates.* After the committee announces a raisin diversion program, any producer may divert grapes of the producer's own production and receive from the committee a diversion certificate in accordance with the applicable rules and regulations. Such certificates may only be submitted by producers to handlers in accordance with applicable rules and regulations. Diversion certificates issued by the committee shall apply to a specific production unit and shall be equal to the creditable fruit weight, not to exceed the production cap established pursuant to paragraph (a) of this section, of such raisins produced on such unit during the prior crop year or the last prior crop year eligible for such diversion: *Provided,* That in the case of a production unit, or partial production unit, removed from production through

vine removal or other means established by the committee, the committee may issue a diversion certificate in an amount greater than the creditable fruit weight of the raisins produced therein or the production cap applicable.

* * * * *

5. Section 989.66 is amended by revising paragraph (b)(4) as follows:

§ 989.66 Reserve tonnage generally.

* * * * *

(b) * * *

(4) The committee may, after giving reasonable notice, require a handler to deliver to it, or to anyone designated by it, at such handler's warehouse or at such other place as the raisins may be stored, part or all of the reserve tonnage raisins held by such handler. Reserve tonnage raisins delivered by any handler to the committee, or to any person designated by it, in the form of natural condition raisins shall in the aggregate be not more than 2 percent less than the average maturity level of all raisins such handler acquired during the applicable crop year. The committee may require that such delivery consist of natural condition raisins, or it may arrange for such delivery to consist of packed raisins.

* * * * *

6. Section 989.67 is amended by revising paragraph (g) as follows:

§ 989.67 Disposal of reserve raisins.

* * * * *

(g)(1) The committee may, subject to review by the Secretary, refuse to sell reserve tonnage raisins for export:

(i) To any handler who is in default on any previous purchase of reserve tonnage raisins from the committee;

(ii) To any handler currently not in compliance with the provisions of a sales agreement covering reserve tonnage raisins, executed by such handler with the committee; or

(iii) To any handler who signifies an intention to sell reserve tonnage to or through any person who has previously failed to complete a sale of reserve tonnage raisins to a foreign buyer and such raisins remain to be exported and remain unsold to any foreign buyer in an eligible export market.

(2) Handlers who are in default of timely payment under any purchase agreement are subject to an interest and late payment charge(s) recommended by the committee and approved by the Secretary on the delinquent amount that is owed the committee. The interest charge shall be the current prime rate plus 2 percent established by the bank in which the committee has its administrative assessment funds deposited, on the day the amount owed becomes delinquent; and further, that such rate of interest be added to the bill monthly until the handler's delinquent amount owed plus applicable interest has been paid: *Provided,* That the committee, with the approval of the Secretary, may recommend changes in the rate of interest to another rate of interest. When the committee determines to change the rate of interest or a late payment charge is needed, and such change is approved by the Secretary, the committee shall announce the change in the rate of interest or the rate of late payment charge through a mailing by the committee to handlers.

(3) *Appeals.* If a determination is made by the committee that a handler has not complied with the provisions of this section and any actions allowed under this section are taken against the handler, such handler may request a hearing before an appeals subcommittee established by the committee. If the handler disagrees with the subcommittee's decisions, the handler may request the committee to review the subcommittee's decision. The committee may, subject to the approval of the Secretary, establish additional procedures concerning appeals.

* * * * *

Dated: August 11, 1989.

Jo Ann R. Smith,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 89-19474 Filed 8-17-89; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1772

REA Bulletin 345-165, General Specification for Digital, Stored Program Controlled Central Office Equipment, REA Form 522

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by issuing revised Bulletin 345-165, General Specification for Digital Stored Program Controlled Central Office Equipment, REA Form 522. The latest revision of this specification was June 1984. Since that date, significant changes have occurred within the telephone industry, including the fast changing technology of electronic telephone central office equipment. The specification includes new developments considered advantageous to REA borrowers and their subscribers. All manufacturers of digital central office equipment and eventually all the REA telephone borrowers and their consulting engineers will be impacted. This action makes it possible for REA telephone borrowers to continue to provide their subscribers with the most modern and efficient telephone service.

EFFECTIVE DATE: This final rule is effective August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Dean A. Dion, Chief, Central Office Equipment Branch, Telecommunications Staff Division, Rural Electrification Administration, Washington, DC 20250-1500, telephone (202) 382-8671. The final Regulatory Impact Analysis describing the options considered in developing this rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 *et seq.*), REA hereby amends 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by issuing revised REA Bulletin 345-165, General Specification for Digital, Stored Program Controlled Central Office Equipment, REA Form 522. This incorporation by reference was approved by the Director of the **Federal Register** on December 30, 1983.

This action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This regulation contains no reporting or record keeping provisions requiring Office of Management and Budget approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851 "Rural Telephone Loans and Loan Guarantees" and 10.852 "Rural Telephone Bank Loans."

For the reasons set forth in the Final Rule related Notice to 7 CFR 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

REA has issued a series of publications entitled "bulletins" which serve to implement the policy, procedures, and requirements for administering its loans and loan guarantee programs and the security instruments which provide for and secure REA financing. In the bulletin series REA issues standards and specifications for the construction of telephone facilities financed with REA loan funds. REA is revising Bulletin 345-165 the REA General Specification for Digital, Stored Program Controlled Central Office Equipment, REA Form 522.

This specification was last revised in June 1984. Since that time there have been many technical changes in the technology of electronic switching that are advantageous to REA borrowers and their subscribers. Following is a list of the main changes in the specifications.

1. *Surge Protection and Grounding System* Provisions have been added to require supplemental surge protection in the bid proposal when such equipment is deemed necessary. Also, included is a requirement for a joint owner and supplier validation audit of the grounding system prior to a new central office being placed into service. This audit requires the use of Part VI of the specification and a possible REA pre-approved supplemental grounding checklist provided by the manufacturer.

2. *Spare Parts* Provisions have been added to accommodate the procedure of including the price of spare parts when determining the low bidder.

3. *Switched Access Service Arrangements* Requires the equipment be capable of providing Feature Groups A, B, C, and D signaling, including arrangements for Automatic Number Identification. Signaling protocols are as defined in the "Notes on the BOC Intra-LATA Networks—1988."

4. *Billing Data/Traffic Recording* Requires Automatic Message Accounting (AMA) capabilities by trunk group. Also, provisions have been added to accommodate the requirement of remote polling devices. REA Form 538 will no longer be a required reference when purchasing AMA recording equipment.

5. *Tandem Capabilities* Provisions have been added in Part III to permit the owner to specify intermediate tandem and access tandem capabilities.

6. *Reliability* A requirement has been added concerning the expected individual line downtime.

7. *Ringing Equipment* Part I has been modified to incorporate the requirements for ringing machines, which is now specified in PE-40. PE-40 will no longer be referenced in Form 522.

8. *System Clock* Specifications for system clocks have been made more definitive with regard to Stratum designation.

9. *Dialed Number* Requires the system to be capable of handling up to 20-digit dialed numbers to accommodate the equal access dialing to originate an international call.

10. *911 Emergency Calls* The requirements for the processing of 911 emergency calls have been made more definitive.

11. *Loaded Cable Pairs.* Provisions have been added to insure proper operations with nonloaded, D-66, and H-88 loaded cable pairs.

12. *Maintenance and Diagnostics Subsystem.* The requirement for automatic self-diagnostics has been made more definitive.

13. *Network Failure.* The use of redundant portions of the network has been made more definitive.

This revision will facilitate REA borrowers in purchasing equipment with build-in revenue producing features rather than having to purchase expensive add-ons to their central office equipment at a later date. It also improves the standards of reliability for central office equipment, thereby reducing maintenance cost to the borrowers and their subscribers.

Major central office manufacturers presently have the ability to support the significant changes contained in this revised REA specification. Therefore, there should be little impact on them in complying with the new requirements.

On December 20, 1988, at 53 FR 51119, REA published in the **Federal Register** Proposed Rule 7 CFR Part 1772, REA Bulletin 345-165, General Specification for Digital Stored Program Controlled Central Office Equipment, REA Form 522. In the proposed rule REA invited interested parties to file comments on or before January 19, 1989.

Comments

Public comments and recommendations were received from Northern Telcom Inc.; National Telephone Cooperative Association; Telephone and Data Systems Inc.; and Wesley Bull and Associates, Inc. The comments and recommendations are summarized as follows:

Part I—Line Circuit Requirements

One respondent commented that the performance requirements proposed in paragraphs 2.1.1, 2.1.2, and 2.2.1 for loop resistance, ring trip and dialing are no longer valid as various requirements included in Part 68 of the FCC Rules which now apply to customer premises equipment.

Response: The requirements contained in paragraph 2.1.1 are to ensure proper operation under maximum adverse environmental and manufacturing variation tolerance conditions. The resistance of the subscriber loop with loop extenders has been reduced to 3600 ohms. Paragraph 2.1.2 has been deleted. Paragraph 2.2.1 has been revised to delete the reference to paragraph 2.1.2.

One respondent commented that the loop limits for 24-gauge D-66 and 22-gauge D-66 loaded loops are reversed in paragraph 2.1.2.

Response: The references to 24-gauge and 22-gauge loaded loops were correct. However, because of new performance criteria that have been introduced since deregulation, this stringent requirement has been eliminated by deletion of paragraph 2.1.2 in order to avoid possible conflict with FCC Rules now governing subscriber premise equipment.

One respondent commented that a new paragraph 2.2.4 should be added to include an acceptable range for pushbutton dialing receive tone levels at the central office location.

Response: Paragraph 2.2.3 has been revised to require the Dial Tone Multi-Frequency (MTMF) central office receiver to comply with the operating parameters as described in section 6 of "Notes on its BOC Intra-LATA Networks—1988."

Two respondents commented that in paragraph 10.1 redundancy as a function should apply to centralized call processors.

Response: Paragraph 10.1 has been revised to permit greater latitude from a switch architect standpoint to provide redundancy in call processing such that failure of a call processing unit will not degrade the call processing capability of

the switch nor result in its loss of established calls.

One respondent commented that paragraph 13.3.1.2, regarding line-to-line loss, should be changed for the purpose of requiring manufacturers to improve their product. The respondent feels that the line-to-line loss should be "between 0 and 0.5dB."

Response: The presently specified 0 to 2dB line-to-line loss is a very reasonable and acceptable digital switching system objective. It is not the intent of the specification to impose unnecessarily rigid requirements but rather those that are consistent with the telecommunications industry practices.

One respondent commented that paragraph 15.3.2 regarding the charging of batteries should be changed to strengthen the requirement for manually changing the output voltage of the rectifier to 2.25 volts, etc. The respondent felt the need to specifically state the requirement of a "normal/equalize" switch for the purpose of manually changing the output voltage of the rectifier to 2.25 volts.

Response: The present requirement clearly states that provisions are to be made to manually change the output voltage of the rectifier. A restatement of this requirement would serve no useful purpose; rather, there is perhaps a need that the suppliers be reminded of this requirement.

One respondent commented that paragraph 15.7.2 exempts the bidder from providing portable or panel mounted frequency meters, although specified by the borrower, under certain circumstances. The respondent feels the borrower should have the option of requiring the bidder to provide such meters.

Response: The integrated design of many digital switches is arranged to internally measure actual ringer voltages and frequency outputs and to print the results; thus, there is no need for portable or panel mounted frequency meters for such systems and manufacturers do not provide a means of bringing out discrete terminals for attaching them.

Two respondent commented that the description in paragraph 19.1.1 for a Remote Switching Terminal (RST) should be revised. One recommended it be described as a remotely located switching terminal. The other recommended the hardware be interchangeable *or compatible* with the host office.

Response: Paragraph 19.1.1 has been revised to clarify that an RST is a remotely located digital switching terminal for subscriber lines; is part of the host central office from a switching standpoint; and has hardware interchangeable with the host office, except for items that are applicable only to RST control and associated peripheral equipment.

One respondent commented that the language in paragraph 19.3.3 is confusing, that it should be revised to provide options for the borrower to specify its emergency stand alone capability requirements for an RST.

Response: Paragraph 19.3.3 has been revised to clarify that the RST shall have available an emergency call processing option and the related features that shall be included in the option. The hardware to place the option in service shall be provided only when specified by the borrower in the detailed specifications.

One respondent commented that an addition should be added to paragraph 20.9.1 to specify the requirements placed on equipment manufacturers or suppliers for a single-point grounding system when the equipment is to be provided on a "Furnish Only" basis.

Response: This requirement has been included in the revised 7 CFR Part 1765, Section 1765.27 Plans and Specifications for Central Office Equipment to be provided on a "Furnish Only" basis.

Part II—Installation Specifications

One respondent commented that paragraph 2.1.6 should be revised to state testing is at the owner's expense as it is listed under the "Responsibilities of Owner."

Response: This paragraph has been revised to reflect this change.

Part III—Host Office Detailed Equipment Requirements

One respondent commented that the equipment in 10.8.2 probably should have the capability to restrict call forwarding to the local calling area of the telephone company if LAMA is not available.

Response: There does not appear to be sufficient evidence that there is a serious network deficiency; therefore, there is no justification to change the specification at this time.

One respondent commented that paragraph 12.1.1.1 should be revised to ensure the output capacity of the standby generator is sufficient to include air conditioning equipment needed for proper operation of the switching equipment.

Response: Paragraph 12.1.1.1 has been revised to make this a requirement.

Part IV—Remote Switching Terminals (RST's) Detailed Requirements

One respondent commented that the ringer frequency and wattage specified in paragraphs 5.6.2 and 5.6.3 should consider that most FCC Registered Equipment functions at 20 hz with varying total number of Ringer Equivalences per line.

Response: This comment appears to be a general observation. The intent of these specification items is to gain information on the frequencies to be used at the central office site as well as an estimate of its wattage requirements.

One respondent commented that paragraph 6.1 should provide for the borrower to specify "Back Door Trunking" between RST's as another possible means of providing emergency calling.

Response: Back door trunking does not serve the same purpose as the emergency stand alone feature. The RST must also be equipped with the emergency stand alone features in order to have any switching capability to reach trunk links when the control links to the host office fail.

One respondent commented that paragraph 6.1 should be amended to provide the borrower the options of (1) immediate requirement, (2) future requirement, or (3) no requirement for emergency stand alone capability for an RST.

Response: REA believes that no emergency stand alone capability ever would be an imprudent decision by the borrower and very expensive, if at all possible, to later retrofit the system if this feature became necessary. Since manufacturers have to design their systems to provide immediate and future options for emergency stand alone capability, the savings, if any, for a "no requirement" option would be very nominal.

Part V—Information To Be Supplied by Bidders

One respondent commented that an addition should be made to paragraph 6.1 to require the bidder to provide details concerning memory capacity of its proposed switching system as it relates to the ultimate line size.

Response: This requirement has been included in the revised 7 CFR part 1765, section 1765.28 Procurement Procedures for Central Office Equipment.

Other Revisions

Revisions, in addition to those in response to public comments, deemed necessary by the REA staff are included in the final specification as follows:

1. Part I, paragraph 11.1.1, to clarify that an alarm is classified as "Major" when one or both redundant units fail.

2. Part I, paragraph 15.4.2, added to clarify that power converters are to be provided in duplicate with each unit capable of immediately assuming the full operating load upon failure of a unit.

3. Part I, paragraph 19.6.2, to specify ringing sources rather than ringing machines shall be supplied in duplicate.

4. Part I, paragraph 19.6.3, added to require power converters used for the purpose of providing operating voltage to printed circuit boards or similar equipment to be provided in duplicate with each unit capable of immediately assuming the full operating load upon failure of a unit.

5. Part I, figures 1 and 2, reference to Northeast Electronics Transmission Test Sets has been deleted.

6. Part VI, item 10.5, added to require grounding of a metal spare parts cabinet when located in the central office building.

List of Subjects in 7 CFR Part 1772

Loan programs—communications, Telecommunications, Telephone.

In view of the above, REA hereby amends 7 CFR part 1772 by issuing revised Bulletin 345–165.

PART 1772—[AMENDED]

1. The authority cited for part 1772 continues to read as follows, and all authorities following the sections are removed.

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

2. The table in § 1772.97 is amended by revising the entry for Bulletin 345–165 to read as follows:

§ 1772.97 Incorporation by Reference of Telephone Standards and Specifications.

* * * * *

345–165 . . . Form 522 . . . February 1989 . . . REA General Specification for Digital, Stored Program Controlled Central Office Equipment.

* * * * *

Dated: August 14, 1989.

Jack Van Mark,

Acting Administrator.

[FR Doc. 89–19472 Filed 8–17–89; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS Number: 1055–89]

RIN Number: 1115–AB01

Acceptance by Overseas Immigration and Naturalization Service Offices and United States Consulates of Jurisdiction of Relative Petitions Based on Residence of Petitioners

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule revises and clarifies the process used by overseas Immigration and Naturalization Service (INS) offices and by United States (U.S.) consulates in accepting jurisdiction of Form I–130, Petition for Alien Relative. This regulatory change is necessary to inform petitioners that they must now meet the residence rather than the physical presence criteria in order to be eligible to file a Form I–130 abroad. In emergent or humanitarian cases as well as those in the national interest, the Service and the U.S. consulates abroad may continue to use their discretionary authority to accept relative petitions submitted by non-residents. By providing clear and consistent procedures, INS will be better able to process certain immigrant visa petitions abroad.

EFFECTIVE DATE: August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Yolanda Sanchez-K. Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Room 7223, Washington, DC 20536, (202) 633–5014.

SUPPLEMENTARY INFORMATION: On February 21, 1989, the Immigration and Naturalization Service, published in the **Federal Register** (54 FR 7433) a proposed rule to revise and clarify the process used by overseas INS offices and U.S. consulates in accepting jurisdiction of Form I–130, Petition for Alien Relative. This proposal was made available for public comment for a thirty (30) day period ending on March 23, 1989. INS published a correction to the proposed rule on March 7, 1989 at 54 FR 9459, and also extended the comment period for an additional thirty (30) days ending on April 6, 1989.

This rule has been promulgated to revise and clarify procedures for accepting jurisdiction for processing certain relative petitions abroad. The authority to adjudicate Forms I–130 for petitioners and beneficiaries who are physically present in a consular jurisdiction was extended to U.S. consular officers of October 11, 1988. As overseas Service offices were opened abroad, this authority was revised to permit processing of Forms I–130 by consular officers only when an INS office is not located in their jurisdictional area. This resulted in the establishment of one set of requirements for acceptance of these cases by consular officers, and another set of requirements for acceptance by the Service; and finally to confusion by prospective applicants.

To standardize procedures, the Service is promulgating this rule which will clarify for the Immigration and Naturalization Service, the U.S. Consulates abroad, and the public, the process for filing and accepting relative petitions abroad. Like requirements established for acceptance by Service officers abroad, a petitioner will have to reside in the consular jurisdiction before a consular officer may accept his/her Form I–130 for processing by its office. When there is an INS presence, the Form I–130 will be submitted to INS. If the petitioner is unable to show residence abroad for which the INS or consular officer has jurisdiction, the Form I–130 will be forwarded to the Service office which has jurisdiction over the petitioner's place of residence in the United States. Discretionary authority to accept petitions submitted by non-residents in humanitarian or emergent cases and those in the national interest will remain in effect for both INS and consular offices.

During the comment period, the Service received five comments. Two comments were received from private law firms, one from a Service employee, one from an employee from the State Department, and one from a citizen's group. Most of the comments suggested minor changes and/or clarification in the rulemaking which have been incorporated in the final regulation. All of the comments were carefully reviewed and given full consideration. A summary of these comments and the Service response follow:

(1) *Comment:* Two commentors requested that the countries listed in 8 CFR 204.1(a)(3)(ii) be revised to include the United Kingdom and that England be deleted since the INS office in London, England has jurisdiction over all countries in the United Kingdom.

Response: Since the Service office in London has jurisdiction for England, Wales, Scotland and Northern Ireland,

the final regulation is amended to include the United Kingdom rather than England.

(2) *Comment:* One commentor requested clarification of the residence criteria for the beneficiary. It was recommended that if residence was required of both the petitioner and beneficiary, the regulation should reflect said requirement. If the beneficiary is not so required, the regulation should reflect that the beneficiary need not be physically present or residing in the same consular district as the petitioner.

Response: Although the proposed regulation requires residence of both the petitioner and beneficiary for the consular officer to accept jurisdiction, this issue has been reviewed once more by both the Service and the Department of State. Both agencies have agreed that, to standardize procedures, the residence requirement should be amended to permit a petitioner to file a petition with the INS or consular office having jurisdiction over the petitioner's place of residence, regardless of the beneficiary's residence or physical presence. The final rule is amended accordingly.

(3) *Comment:* One commentor complained about the changes in the list of countries where consular officers are not authorized to accept jurisdiction for processing relative petitions without notice in the **Federal Register.**

Response: Although normal procedure is to announce changes such as openings and closings of Service overseas offices in the **Federal Register,** the Service took this opportunity to update its Service Office Listing in an effort to avoid further confusion by petitioners.

(4) *Comment:* One commentor complained that the proposed rule was overly restrictive and that because processing in the United States may take six to nine months, the consulate which is able to approve a petition and issue a visa within days or weeks of filing should be allowed, under special circumstances, to accept an I–130 relative petition although the petitioner does not reside in his/her jurisdiction. The following are examples of cases cited: (a) Where beneficiary is a very young child or very old parent who needs petitioner to care for them; (b) so-called "orphan" cases, where the beneficiary may not obtain a visa from his/her country of nationality but must find a third country to voluntarily accept jurisdiction; and (c) cases in which the qualifying marriage takes place abroad, as it makes no sense to require petitioners who are already abroad to return to the U.S. to file.

Response: Since the authority to process petitions remains, by statute, with the Attorney General, adjudication is chiefly done in the United States. The authority to process abroad was extended to consular officers in an effort to assist United States citizens and lawful permanent residents who were temporarily residing abroad due to employment, and who required expeditious processing due to emergent or humanitarian reasons. It was not intended to encourage petitioners to travel abroad to file petitions.

With development of numerous automated systems which will cut processing time of relative petitions and aid in clearing up backlogs at Service offices in the U.S., the final regulations have been written to permit consular officer processing of Form I–130 only if there is no INS presence and if the petitioner resides in the consular jurisdiction, or if humanitarian of emergent circumstances exist.

The Service and the State Department have considered various special circumstances and have agreed to continue the acceptance of Form I–130 processing in special humanitarian cases. The decision to accept these cases will continue to be determined on an individual basis. The examples cited by this writer may be considered as special humanitarian cases, except for orphan cases which do not involve Form I–130 processing.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act under control number #1115–0054.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Reporting and recordkeeping requirements.

Accordingly, part 204 of chapter I of title 8, Code of Federal Regulations, is amended as follows:

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

1. The authority citation for part 204 continues to read as follows:

Authority: 66 Stat. 166, 173, 175, 178, 179, 182, 217; 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1151, 1154, 1182, 1186a, 1255, and 8 CFR part 2.

2. In § 204.1, paragraph (a)(3) (ii) and (iii) are revised to read as follows:

§ 204.1 Petition.

(a) * * *

(3) * * *

(ii) *Petitioner residing abroad.* When the petitioner resides in Austria, Federal Republic of Germany, German Democratic Republic, Greece, Hong Kong, India, Italy, Kenya, Korea, Mexico, the Philippines, Republic of Panama, Singapore, Thailand, or the United Kingdom of Great Britain and Northern Ireland, the petition must be filed with the overseas office of the Service designated to act on the petition. The beneficiary need not reside in the same jurisdiction as the petitioner for Service acceptance of the petitioner's Form I–130. In addition, the overseas Service officer may accept a Form I–130 filed by a petitioner who does not reside within the office's jurisdiction when it is established that an emergent or humanitarian reason for acceptance exists or when it is in the national interest.

(iii) *Jurisdiction assumed by United States consular officers.* United States consular officers assigned to visa-issuing posts abroad, except those in countries listed in paragraph (a)(3)(ii) of this section, are authorized to approve any relative petition filed on Form I–130 if the petitioner resides in the area over which the post has jurisdiction, regardless of the beneficiary's residence or physical presence at the time of filing. In emergent or humanitarian cases as well as those in the national interest, the U.S. consular officers may use discretion in accepting a Form I–130 filed by a petitioner who does not reside within the consulate's jurisdiction. While these consular officers are authorized to approve petitions, they must refer any petition which is not clearly approvable to the appropriate Service office for a decision. Consultation with the appropriate Service office abroad may be sought prior to stateside referral, if applicable.

* * * * *

Dated: July 17, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89-19422 Filed 8-17-89; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 545, 546, 561, 563, 563b, 563c, 570, and 571

[No. 89-2246]

RIN 3068-AA90

Conforming and Technical Amendments to the Classification of Assets System

Date: August 8, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is amending its regulations so that they conform with the Board's classification of assets system. The amendments include removing references to the terms "scheduled items" and "specified assets."

EFFECTIVE DATE: August 8, 1989.

FOR FURTHER INFORMATION CONTACT: Jeffrey Ross Williams, Attorney, (202) 906–6559, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, or Francis E. Raue, Policy Analyst, (202) 331–4586, Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street NW., Washington, DC 20006; for accounting related amendments, Dave Martens, Chief Accountant, (202) 331–4579, Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background and the Proposed Rule

The Board, on February 2, 1989, proposed to amend its regulations so that they would conform to the classification of assets system that the Board, under the Competitive Equality Banking Act of 1987 ("CEBA"), had previously adopted. The proposed changes included the removal of references in the regulations to the terms "scheduled items" and "specified assets." Board Res. No. 89–104, 54 FR 6685 (February 14, 1989) ("proposed rule").

On August 10, 1987, CEBA was signed into law. [Pub. L. No. 100–86, 101 Stat. 552]. Sections 402 and 407 of CEBA required the Board to establish an asset classification scheme consistent with the classification practices of the Federal banking agencies and to remove its scheduled items system. Accordingly, the Board, on December 21, 1987, adopted rules establishing a classification of assets system consistent with the asset classification practices of the Federal banking agencies, including consistency with generally accepted accounting principles, and removed its scheduled items regulation, 12 CFR 561.15 (1987). *See* 53 FR 318 (January 6, 1988). Although the Board removed § 561.15, eighteen other regulations continue either to contain the term "scheduled items" or to refer to § 561.15.

Before adopting the classification of assets system as directed by CEBA, the Board used a measure of an insured institution's ratio of scheduled items to specified assets to determine whether to approve such institution's application to engage in certain activities. Since CEBA removed the scheduled items system, the Board proposed to remove § 561.17 and to revise those regulations that refer to a specified assets ratio, consistent with CEBA and the Board's regulations promulgated pursuant to CEBA. *See* 54 FR 6685 (February 14, 1989). The Board proposed to replace that ratio with a requirement that insured institutions demonstrate compliance with the minimum capital requirements of § 563.13 and the individual minimum capital requirements of §§ 563.14 and 563.14–1. This proposed change would provide supervisory personnel with the flexibility to restrict an institution's activities on the basis of overall capital strength, as determined on a case-by-case basis, rather than on a scheduled items formula that simply measured problem assets. Moreover, because there is no longer any reason to compute specified assets, the Board proposed removing § 561.17 which had defined the term "specified assets." 12 CFR 561.17 (1988).

The Board also proposed technical amendments to §§ 563.17–2 and 571.1a in an effort to ensure that this regulatory provision and Statement of Policy are consistent with the asset classification system adopted by the Board. These amendments reflect the Board's conclusions that a properly conducted appraisal may be an important factor in an examiner's evaluation of an asset, but that the risk of nonpayment is dependent upon several factors. *See* 53 FR 348, 360. These amendments clarify existing language, not addressed by the final rule adopted in December, 1987, that incorrectly suggests that an appraisal is required in the evaluation of real estate or real estate collateral for the purpose of establishing valuation allowances. Consistent with the Board's classification of assets system, the proposed revision to § 563.17–2(a) did not alter the requirement that an appraisal be conducted with respect to real estate owned ("REO") at the earlier of foreclosure or in-substance foreclosure.[1]

The proposed rule also provided that if real estate collateral has been in-substance foreclosed, the re-evaluation shall be based on the fair value of the real estate. 12 CFR 563.17–2(b). Finally, the Board proposed a technical amendment to § 545.112 providing that a Federal institution may carry REO at fair market value, which may include uncollected interest to the extent the inclusion of such interest is supported by the fair market value of the property.

II. Discussion of Comments

The Board received a total of three written comments: One from a trade association representing thrift institutions, and two from insured institutions. Their comments were brief and were limited to the following regulatory sections.

A. Section 545.112: Real Estate Owned

One of the commenters agreed with the proposal to permit Federal institutions to include uncollected interest in the book value of REO to the extent that the interest is supported by the fair market value of the property. One commenter objected to the proposal and the other commenter suggested that the regulation should permit a Federal institution to account for REO including uncollected interest, at less than fair market or net realizable value when appropriate.

One of the commenters suggested that the Board clarify its regulation governing the accounting treatment for REO. This commenter suggested that the accounting treatment for REO now located in § 545.112, and which is applicable only to Federal associations, be applied to all insured institutions. The Board agrees with this suggestion and is therefore removing § 545.112 entirely and including the provision in the Insurance Regulations at § 563.17–2(a) to be applicable to all insured institutions. This amendment complies with the CEBA requirement that asset classification practices be consistent with the asset classification practices of the Federal banking agencies. The federal banking agencies' asset classification practices are generally

[1] For purposes of the Board's regulations, the terms "in-substance foreclosure" and "repossession in substance" have the same meaning. *See* Board Statement of Policy, Accounting for Troubled Debt Restructuring, 12 CFR 571.1a(b)(1) (1989), for a description of when the Board will deem a "repossession in substance" to have occurred.

consistent with generally accepted accounting principles. In order to comply with this CEBA requirement, the Board has determined to adopt the amendment as proposed, but include it in § 563.17–2(a). The Board notes that institutions are expected, under generally accepted accounting principles, to account for REO, including uncollected interest, at fair market or net realizable value. Inasmuch as fair market or net realizable value should already reflect appropriate disposition and holding costs, there does not seem to be any appropriate reason to account for REO at less than fair market or net realizable value.

B. Section 563.13: Regulatory Capital Requirement

One commenter objected to the continued use of the term "scheduled item factor" in calculating the contingency component of an institution's regulatory capital requirement. *See* 12 CFR 563.13(b)(4)(i)(F) (1988). This commenter contended that such continued use requires an undue calculation burden, deals with a portion of old risks, and is in effect a "double counting." The commenter questioned how long the Board intends to continue use of the scheduled item factor.

The immediate effect of the Board's removal of the scheduled items regulation, absent some continued recognition of the risks posed by items formerly deemed scheduled items, would have been to greatly reduce insured institutions' contingency components, thereby reducing the industry's required minimum regulatory capital level even though the quality of the industry's asset portfolio did not change. Thus, in order to counter what would have been an unreasoned and superficial enhancement of the industry's capital position, the Board found it necessary to implement use of the scheduled item factor.

In response to the commenter's objection to the continued use of the scheduled item factor, the Board does not view the use of the scheduled item factor as an undue or unreasonable calculation burden because institutions have already calculated their scheduled items as of September 30, 1987. While the Board acknowledges that the factor does deal with a portion of old risks, this is offset because the factor does not include existing risks that were not scheduled items as of September 30, 1987. The Board restates that the use of the scheduled item factor is an interim, transitional device that is a reasonable measure of asset risk for the industry as a whole, while the Board considers substantial modifications to its minimum regulatory capital requirements. *See* 53 FR 51800 (December 23, 1988). Moreover, there is no "double counting." The amount of general valuation allowances that an institution establishes for current substandard and doubtful assets that are also included in the institution's calculation of the scheduled item factor count as regulatory capital. Current assets classified loss, which an institution has either charged off or for which it maintains a one hundred percent specific valuation allowance, may be deleted from the scheduled item factor, as may assets included in the scheduled item factor that have been paid-off or sold without recourse to a nonaffiliate. *See* 12 CFR 563.13 (1988); Office of Regulatory Activities ("ORA") Memorandum #R 72 (April 26, 1988).

C. Section 563.17–2: Re-evaluation of Assets; Adjustment of Book Value; Adjustment Charges

1. Section 563.17–2(a): Real Estate Owned

One commenter interpreted this proposed amendment to provide that an institution may adjust the book value of real estate owned only on the basis of periodic re-appraisals. This is an incorrect interpretation of § 563.17–2(a). Paragraph (a) of this section is intended to pertain to appraisals of REO and requires an appraisal at the earlier of in-substance foreclosure or acquisition. The Board notes that the first part of the penultimate sentence of proposed § 563.17–2(a) mistakenly reads, "*Re-evaluations* of parcels of real estate * * *" (emphasis added). In this final rule, the Board has corrected the phrase to read, "*Appraisals* of parcels of real estate * * *" (emphasis added).

2. Section 563.17–2(b): Re-evaluation of Loans and Other Assets

Section 563.17–2(b) is intended to address re-evaluations of REO. Pursuant to generally accepted accounting principles, paragraph (b) provides that re-evaluations of real estate or real estate collateral shall be based on net realizable value.

A commenter questioned why the Board proposed to transfer to this section the availability of private mortgage insurance as a consideration in classifying assets. As described in the proposed rule, the Board believes that the availability of private mortgage insurance compensation is a re-evaluation factor rather than a classification of assets factor. The commenter also argued that the inclusion in this section of the private mortgage insurance provision indicates that such consideration is only available to examiners and not to institutions. The Board would like to emphasize that the inclusion of private mortgage insurance in this section indicates that consideration of private mortgage insurance compensation is not limited only to examiners. Rather, authority for the treatment of private mortgage insurance is prescribed by generally accepted accounting principles, which state that insured institutions are authorized to consider the availability of private mortgage insurance compensation when re-evaluating loans and other assets, including REO. Finally, this same commenter suggested that the proposed section that addresses private mortgage insurance be clarified to presume the probability of payment unless there is a substantial reason to believe that a denial of a claim will occur. The Board believes that some clarification of this section is warranted, but disagrees with the suggestion by this commenter. This final rule amends the provision regarding private mortgage insurance to state that a re-evaluation of loans or other assets should take into consideration the availability of compensation by private mortgage insurance to the extent of its probability of payment.

3. Section 563.17–2(d): Adjustment Charges

One commenter questioned why the Board proposed to modify the current requirement that an adjustment charge may be made against either earnings or reserves, by requiring that adjustment charges shall be made first against allowances, and then against earnings. The commenter believes that such a change unnecessarily removes an institution's discretion in accounting for adjustment charges, including such matters as timing and consolidation of entries.

The Board is revising this paragraph to be consistent with generally accepted accounting principles. Also, the Board does not view the changes as imposing any substantive requirements more exacting than the regulation previously contained. Requiring that adjustment charges be made first against an allowance and then against earnings has the same result as if the accounting entries were made in reverse. Moreover, paragraph (d) does not specify any requirements with respect to the consolidation or timing of entries.

D. Section 571.13: Participation Interests in Pools of Loans

One commenter recommended that the Board clarify the meanings of the term "pool of loans" and the phrases "maximum regulatory limitations, or 30 years" and "maximum regulatory limitations, or 90 percent of the security value" contained in paragraph (a)(3). *See* 12 CFR 571.13(a)(3) (1988). The Board agrees, and is amending the first sentence of the regulation to clarify that a pool of loans means a group of loans in the nature of mortgage-backed securities. The Board is also amending paragraph (a)(3) to clarify that the 30 year limitation applies when there is no otherwise applicable maximum regulatory limitation. Furthermore, the final rule clarifies that 90 percent of the security value applies when there is no regulatory maximum percentage of value limitation.

The same commenter also suggested that insured and guaranteed loans and loans with private mortgage insurance coverage be excluded from the originator/servicer reporting requirements of paragraph (a)(3). The Board agrees that insured and guaranteed loans should be excluded from these reporting requirements. Former § 571.13(a)(3), however, did not exclude loans with private mortgage insurance coverage. The Board believes that an amendment to exclude loans with private mortgage insurance from the originator/servicer reporting requirements would constitute a substantive amendment and is not appropriate at this time.

III. The Final Rule

In addition to the changes from the proposed rule described in the "Discussion of Comments," the final rule differs from the proposal in the following areas.

To be consistent with the Board's classification of assets system, § 563.17–2(a) is amended to direct that an institution's appraisal of REO shall be conducted at the earlier of in-substance foreclosure or at the time of acquisition.

Section 563.17–2(b) of this final rule provides that an examiner shall base re-evaluations of real estate and real estate collateral on net realizable value. This is in contrast to paragraph (b) as proposed, which provided that if real estate collateral has been in-substance foreclosed the re-evaluation shall be based on fair value. As a result of the issuance of Consensus No. 89–9 by the Emerging Issues Task Force of the Financial Accounting Standards Board, clarifying that in-substance foreclosures and actual foreclosures should be accounted for in the same way, the Board is not including this "fair value" prescription in the final rule. Paragraph (b) of the final rule also provides that the availability of private mortgage insurance compensation may be a re-evaluation factor, rather than a classification of assets factor, which the Board is removing from Section 571.1a. Paragraph (d) provides that adjustment charges shall be made against established allowances, if any, and then against earnings. Also, as a technical amendment the Board is removing language in Section 571.1a that incorrectly suggested that an appraisal must be used as a basis for establishing a valuation allowance.

As previously described, the Board proposed a technical amendment to § 545.112 providing that a Federal institution may carry REO at fair market value, which may include uncollected interest to the extent the inclusion of such interest is supported by the fair market value of the property. The Board has determined, however, to apply this provision to all insured institutions. Therefore, it has been included in § 563.17–2(a). Accordingly, the Board is removing § 545.112 entirely.

An exception to the proposed removal of regulatory references to "scheduled items" is the continued use of that term, and the use of a "scheduled item factor" in § 563.13(b)(4)(i)(F). *See* 12 CFR 563.13(b)(4)(i)(F) (1988). In adopting the classification of assets system, the Board developed and implemented the use of the scheduled item factor as an interim, transitional measure to calculate the contingency component of an institution's regulatory capital requirement. *Id.* The Board will continue to include the scheduled item factor as an interim device until the Board completes its review and consideration of appropriate revisions to the minimum regulatory capital regulation. *See* 53 FR 338, 345.

The Board wishes to note that it is continuing to review the proposed changes to the minimum regulatory capital requirement regulation. *See* 12 CFR 563.13 (1988); 53 FR 51800 (December 23, 1988). The Board's proposed capital requirement is a risk-based system and does not use a scheduled items factor.

This regulation, effective immediately upon adoption by the Board, is being issued without the delayed effective date requirements of the Administrative Procedure Act, as amended ("APA"). Pursuant to 5 U.S.C. 553(d)(2), and in accordance with the Board's regulations published at 12 CFR 308.14, the Board has determined that the regulation is not subject to the delayed effective date requirements of the APA because the regulations are conforming and technical amendments that impose no new requirements.

Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the rule.* These elements are incorporated above in the Supplementary Information section.

2. *Small institutions to which the rule would apply.* The rule would apply to all insured institutions without regard to size.

3. *Impact of the rule on small institutions.* The rule would not have a disproportionate impact on small insured institutions.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this rule.

5. *Alternatives to the rule.* The Board has not found any alternatives to date that would be less burdensome and adequately address its concerns.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings and loan associations.

12 CFR Parts 546 and 561

Savings and loan associations.

12 CFR Part 563

Bank deposit insurance, Currency, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

12 CFR Part 563b

Reporting and recordkeeping requirements, Savings and loan associations, Securities.

12 CFR Part 563c

Accounting, Reporting and recordkeeping requirements, Savings and Loan associations, Securities.

12 CFR Part 570

Bank deposit insurance, Savings and loan associations.

12 CFR Part 571

Accounting, Bank deposit insurance, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends parts 545

and 546, subchapter C, and parts 561, 563, 563c, 570, and 571, subchapter D, chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

1. The authority citation for Part 545 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 66 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, and 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

§ 545.45 [Amended]

2. Section 545.45(e) is amended by removing the paragraph designation for paragraph (e)(1) and by removing paragraph (e)(2).

3. Section 545.73(a) is revised to read as follows:

§ 545.73 Inter-American Savings and Loan Bank.

* * * * *

(a) The association's regulatory capital meets the requirements of § 563.13 of this chapter, including any individual minimum capital requirement established under § 563.14 of this chapter or by a capital directive issued pursuant to § 563.14–1 of this chapter, and all losses have been offset by specific loss allowances to the extent required by § 563.17–2 of this chapter.

* * * * *

4. Section 545.74 is amended by removing paragraph (a)(4) and by redesignating existing paragraph (a)(5) as the new paragraph (a)(4); by revising the introductory text of paragraph (d)(2) to read as follows; and by removing paragraph (d)(4).

§ 545.74 Service corporations.

* * * * *

(d) *Amount of investment.* * * *

(2) In addition to amounts that it may invest under paragraph (d)(1) of this section, an association that meets the minimum regulatory capital requirements of § 563.13 of this chapter, including any individual minimum capital requirements established under § 563.14 of this chapter or by a capital directive issued under the authority of § 563.14–1 of this chapter, may lend additional amounts as follows:

* * * * *

§ 545.112 [Removed and reserved]

5. Section 545.112 is removed and reserved.

PART 546—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

6. The authority citation for Part 546 continues to read as follows:

Authority: Secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

7. Amend § 546.2 by removing the last two sentences of paragraph (h)(1)(xii) and adding in their place the following sentence:

§ 546.2 Procedure; effective date.

* * * * *

(h)(1) * * *

(xii) * * * For purposes of this provision, in calculating whether the regulatory capital of the resulting association will at least equal the amount required under § 563.13 of this chapter, the Principal Supervisory Agent may exclude the scheduled item factor that will be acquired in the merger and the amount of either the regulatory capital deficiency or the liabilities of the acquired association at the date of the merger;

* * * * *

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

8. The authority citation for Part 561 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 et seq.); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

§ 561.17 [Removed and reserved]

9. Section 561.17 is removed and reserved.

PART 563—OPERATIONS

10. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 et seq.); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

§ 563.7–5 Mandatorily redeemable preferred stock.

11. Amend § 563.7–5 by removing paragraph (b)(2)(ii); and by redesignating paragraphs (b)(2)(iii) and (b)(2)(iv) as paragraphs (b)(2)(ii) and (b)(2)(iii), respectively.

12. Section 563.8(e)(1) is amended by revising the introductory text to read as follows:

§ 563.8 Borrowing limitations.

* * * * *

(e) *Filing requirements for outside borrowings with maturities in excess of one year.* (1) Unless the insured institution meets the regulatory capital requirement of § 563.13 of this chapter or any applicable individual minimum capital requirement of § 563.14 of this chapter or capital directive issued pursuant to § 563.14–1 of this chapter, it shall, at least ten business days prior to issuance, file with the Supervisory Agent a notice of intent to issue securities evidencing such borrowings. Such notice shall contain a summary of the terms of the security, including: * * *

* * * * *

13. Amend § 563.8–1 by removing paragraph (b)(2)(ii) and by redesignating paragraphs (b)(2)(iii), (iv) and (v) as the new paragraphs (b)(2)(ii), (iii) and (iv), respectively.

14. Amend § 563.8–4 by revising the second sentence of paragraph (b)(7) to read as follows:

§ 563.8–4 Transfer and repurchase of government securities.

* * * * *

(b) * * *

(7) *Eligibility requirements.* * * * An institution that does not have regulatory capital equal to the sum of one percent of all liabilities (*i.e.*, total assets minus regulatory capital) of the institution, plus an amount equal to 20 percent of the institution's assets classified under § 561.16c of this chapter, shall not issue or renew repurchase agreements under paragraph (b) of this section unless it meets the following additional requirements. * * *

* * * * *

15. Section 563.9–7(b) is revised to read as follows:

§ 563.9–7 Loans in excess of 90 percent of value.

* * * * *

(b) This section does not apply to loans to facilitate the sale of real estate owned as a result of foreclosure, or acquired by deed in lieu of foreclosure, or where a contract purchaser has defaulted and the contract canceled, nor to investments in Farmers Home Administration Rural Housing Program guaranteed loans complying with § 545.38 of this chapter.

16. Amend § 563.9–8 by revising paragraph (g)(3)(ii) (A)(*1*)(*iii*) to read as follows:

§ 563.9–8 Regulation of equity risk investment in equity securities, real estate, service corporations, operating subsidiaries, certain land loans, and nonresidential construction loans.

* * * * *

(g) *Exceptions.* * * *

(3) * * *

(ii) * * *

(A) * * *

(*1*) * * *

(*iii*) The level of assets classified under § 561.16c of this chapter.

* * * * *

17. Section 563.17–2 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 563.17–2 Re-evaluation of assets; adjustment of book value; adjustment charges.

(a) *Real estate owned.* An insured institution shall appraise each parcel of real estate owned at the earlier of in-substance foreclosure or at the time of the institution's acquisition of such property, and at such times thereafter as dictated by prudent management policy. The Principal Supervisory Agent or his or her designee may require subsequent appraisals if, in his or her discretion, such subsequent appraisal is necessary under the particular circumstances. The foregoing requirement shall not apply to any parcel of real estate that is sold and reacquired less than 12 months subsequent to the most recent appraisal made pursuant to this paragraph. A dated, signed copy of each report of appraisal made pursuant to any provisions of this paragraph shall be retained in the institution's records. Appraisals of parcels of real estate that are similar in all essential respects may be based on an appraisal of one or more of such parcels. Appraisals required under this provision shall conform with § 563.17–1a of this Part. An insured institution may not carry real estate on its books for a sum in excess of the total amount invested by the institution on account of such real estate, including advances, costs, improvements, and uncollected interest to the extent that such carrying value is supported by the fair market value of the property at the date of the earlier of foreclosure or in-substance foreclosure.

(b) *Re-evaluation of loans and other assets.* In connection with each examination of an insured institution or service corporation, the Board's examiner shall make such re-evaluation of such institution's or service corporation's assets (exclusive of insured or guaranteed loans) as deemed advisable or necessary. Any such re-evaluation of real estate or real estate collateral shall be based on net realizable value and should take into consideration the availability of compensation by private mortgage insurance to the extent of its probability of payment.

* * * * *

(d) *Adjustment charges.* Adjustment of the book value of an asset by an insured institution or service corporation pursuant to any provision of this section shall be made by a charge against such institution's or service corporation's previously established allowances, if any, and then against earnings for the period in which such charge is made. Any recovery of any portion of any amount previously charged against allowances established for the sole purpose of absorbing losses shall be credited to such allowances; such credit shall be in addition to all other required credits to such allowances. Any recovery of any portion of any amount previously charged against earnings shall be credited to earnings for the period in which such recovery is effected. For the purposes of this paragraph (d), any charge against a specific allowance established pursuant to any provision of this section shall be deemed to be a recovery on an asset, the book value of which was previously adjusted unless such charge is made for the purpose of concurrently writing down the book value of such asset.

18. Amend § 563.22(e)(1)(xii) by removing the semicolon located at the end of the paragraph and replacing it with a period and by adding a new sentence to read as follows:

§ 563.22 Merger, consolidation, purchase or sale of assets, or assumption of liabilities.

* * * * *

(e) * * *

(1) * * *

(xii) * * * For purposes of this section, in calculating whether the regulatory capital of the resulting association will at least equal the amount required under § 563.13 of this part, the Principal Supervisory Agent may exclude the scheduled item factor that would otherwise apply to the association that will be acquired in the merger and the amount of either the regulatory capital deficiency or the liabilities, including averaged liabilities, of the acquired association at the date of the merger;

* * * * *

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

19. The authority citation for Part 563b continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); secs. 3, 12–14, 23, 48 Stat. 882, 894–895, 901, as amended (15 U.S.C. 78c, l–n, w); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

20. Amend § 563b.101 by adding a new sentence at the end of Item 7(c)(1)(C)(v) and revising Item 7(d)(7) to read as follows:

§ 563b.101—Form PS—Proxy Statement.

* * * * *

(7) * * *

(c) * * *

(1) * * *

(C) *Results of operations.* * * *

(v) * * * This would include real estate development, significant amounts of commercial real estate as loan collateral, and any other significant risk factors inherent in the applicant's lending or investment portfolios, including significant increases in amounts of nonaccrual, past due, restructured, and potential problem loans (*see* Securities Exchange Commission's Securities Act Industry Guide 3, Section III C).

* * * * *

(d) * * *

(7) Describe briefly the risk elements within the loan and investment portfolios including the applicant's customary procedures regarding delinquent loans. As of the end of each of the periods covered by the statements of operation required by Item 14(b)(1) of this section and as of the date of the latest statement of financial condition required by Item 14(a), set forth in tabular form the amounts and categories of nonaccrual, past due, restructured, and potential problem loans (*see* Securities Exchange Commission's Securities Act Industry Guide 3, Section III C) and the ratio of such loans to total assets. Where the amount of real estate that has been in-substance foreclosed, acquired by foreclosure, or by deed in lieu thereof is significant, include a brief description of the major properties and a statement as to the applicant's probable losses, if any, upon disposition of such properties.

* * * * *

PART 563c—ACCOUNTING REQUIREMENTS

21. The authority citation for part 563c continues to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1728, 1730); secs. 3(b), 12–14, 23, 48 Stat. 882, 892, 894–895, 901, as amended (15 U.S.C. 78c(b), m, n, w); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

22. Amend § 563c.14 by revising the first sentence of paragraph (a) to read as follows:

§ 563c.14 Accounting for gains and losses on the sale or other disposition of mortgage loans, redeemable ground-rent leases, and certain securities; matching the amortization of discounts and losses.

(a) *General.* An insured institution, by resolution of its board of directors, may elect to defer and amortize all gains and losses net of related income taxes computed in accordance with generally accepted accounting principles on any sale or other disposition, occurring in the fiscal year that the action to defer and amortize is taken, of mortgage loans, redeemable ground-rent leases, mortgage-related securities (as defined in § 563.17(a)(4) of this subchapter), preferred stock that at the time of issuance provides for redemption on a fixed date in a fixed dollar amount or for redemption pursuant to a fixed schedule of periodic payments and has a remaining term to maturity of at least five years, and debt securities that do not qualify as liquid assets under § 523.10(g) (except those qualifying under § 523.10(g)(11)) of this chapter because of their maturities or that have remaining terms to maturity of at least five years.

* * *

* * * * *

23. Amend § 563c.102 by revising Item I (7)(j)(ii) to read as follows:

§ 563c.102 Financial statement presentation.

* * * * *

I. Balance Sheet * * *
(7) * * *
(j) * * *

(ii) If a significant portion of the aggregate amount of loans outstanding at the end of the fiscal year disclosed pursuant to subparagraph (i)(A) of this paragraph (j) above relates to nonaccrual, past due, restructured, and potential problem loans (*see* Securities Exchange Commission's Securities Act Industry Guide 3, Section III C), so state and disclose the aggregate amount of such loans along with such other information necessary to an understanding of the effects of the transactions on the statements.

* * * * *

PART 570—BOARD RULINGS

24. The authority citation for part 570 continues to read as follows:

Authority: Secs. 552, 559, 80 Stat. 383, 386, as amended (5 U.S.C. 552, 559); sec. 11, 47 Stat. 733, as amended (12 U.S.C. 1431(e)(2)(c)); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–403, 405, 407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728, 1730); sec. 414, as added by sec. 522, 94 Stat. 185, as amended (12 U.S.C. 1730g); Reorg. Plan No. 3 of 1947, 3 CFR, 1943–48 Comp., p. 1071.

§ 570.8 [Removed and reserved]

25. Section 570.8 is removed and reserved.

PART 571—STATEMENTS OF POLICY

26. The authority citation for part 571 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 406, 407, 48 Stat. 1256, 1257, 1259, 1260, as amended (12 U.S.C. 1725, 1726, 1729, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

27. Amend § 571.1 by adding the following after the last sentence in paragraph (b); and by removing and reserving paragraph (d).

§ 571.1 Appraisal of real estate securing assets of insured institutions.

* * * * *

(b) *Authority of Supervisory Agent to obtain appraisals.* * * * When the trend of the ratio of assets classified under § 561.16c of this chapter to total assets is such that it raises a serious question as to an institution's financial condition, when it is apparent that assets secured by real property are worth substantially less than the book value thereof, or when there are other indications of the need to evaluate appraisal practices and policies, the Supervisory Agent is authorized to obtain, as a part of and in connection with an examination, appraisals of the real estate securing the insured institution's loans and contracts.

* * * * *

(d) [Reserved]

* * * * *

28. Amend § 571.1a by revising the introductory text of the section to read as follows:

§ 571.1a Classification of certain assets.

This statement of policy provides guidance in the classification of assets pursuant to § 561.16c of this subchapter. Assets subject to this classification requirement may fall within more than one category, and a portion of an asset may remain unclassified.

* * * * *

29. Amend § 571.13 by revising the introductory text of paragraph (a) and paragraph (a)(3) to read as follows:

§ 571.13 Participation interests in pools of loans.

(a) When an insured institution purchases a participation interest in a pool of loans (in the nature of mortgage-backed securities), compliance with the documentation requirements of §§ 563.9 and 563.17 of this subchapter may be impractical.

* * * * *

(3) The originator/servicer has agreed to provide each insured institution investing in the pool a monthly report of loan delinquencies. The report shall separately indicate:

(i) The number and aggregate principal amount of loans delinquent one month and two or more months;

(ii) The book value of any collateral acquired by the pool through foreclosure, deed in lieu of foreclosure or other exercise of the originator/servicer's security interest in the collateral; and

(iii) The aggregate dollar amount of loans made by the pool, if any, on the security of the collateral acquired as described in paragraph (a)(3)(ii) of this section (other than insured loans, guaranteed loans, or contract or loans having the benefit of a guaranty by the Federal Savings and Loan Insurance Corporation) if such loans have remaining expiration periods in excess of maximum regulatory limitations, or 30 years when there is no maximum term limitation, or have unpaid principal balances in excess of maximum regulatory limitations or 90 percent of the security value when there is no maximum regulatory percentage of value limitation.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–19174 Filed 8–17–89; 8:45 am]

BILLING CODE 6720–01–M

---

12 CFR Part 563

[No. 89–2345]

RIN 3069–AA76

Issuance and Use of Subordinated Debt Securities

Date: August 8, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation (the "FSLIC" or the "Corporation"), is amending its regulations relating to issuance and regulatory capital treatment of subordinated debt securities by insured institutions found at 12 CFR 563.8–1. The changes are intended to increase the use of delegations, to codify certain interpretations of the rule, to add conditions of approval, and to interpretations of the rule, to add conditions of approval, and to make technical revisions in the rule. In addition, the final rule modifies the bases for supervisory objection to approval of a subordinated debt application now found at 12 CFR 563.8–1(b)(2) by authorizing the Office of Regulatory Activities of the Federal Home Loan Bank System ("Office of Regulatory Activities") to develop guidelines in consultation with the Office of District Banks and the Office of General Counsel and to specify the bases for supervisory objection to the issuance of subordinated debt (the "Guidelines"). The Guidelines developed by the Office of Regulatory Activities will be issued before the effective date of this final rule. The Board expects to limit the imposition of non-standard conditions in subordinated debt approvals. Accordingly, the Board is deleting certain of the bases for supervisory objection currently specified in the regulation, some of which have become obsolete, and the Office of Regulatory Activities will issue shortly Guidelines that specify supervisory bases for objection to subordinated debt applications. The Guidelines will implement the general standards contained in the final regulation.

Further, the rule now includes a set of standard conditions that will be applicable to approvals of applications to include subordinated debt in regulatory capital. Except in highly unusual circumstances or where supervisory objections are raised based on the Guidelines in effect at that time, the Board expects that such standard conditions will be the only conditions imposed by the Board or its delegates in the approval of subordinated debt applications.

Finally, the final rule gives the Principal Supervisory Agents ("PSAs") authority to deny as well as to approve subordinated debt applications. Coupled with this new authority, the regulation includes an appeal process designed to provide "final agency action."

The Board is aware that under the pending Financial Institutions Reform, Recovery and Enforcement Act of 1989, inclusion of subordinated debt as a form of regulatory capital may become more limited than is the case today. Accordingly, to the extent that inclusion of subordinated debt as a form of regulatory capital is restricted, the revised regulatory provisions will apply to only that portion of an insured institution's subordinated debt that would be permitted to be treated as regulatory capital and to the extent such subordinated debt can be included in regulatory capital under the new legislation and new regulations issued pursuant thereto.

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Paul D. Glenn, Attorney, (202) 906–6203, Corporate and Securities Division; Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 906–6459, Office of General Counsel; Cindy Miller, Financial Analyst, (202) 906–7492, Office of District Banks, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; Robyn Dennis, Financial Analyst, (202) 331–2660; or John F. Robinson, Managing Director for Surveillance and Oversight, (202) 331–4567, Office of Regulatory Activities, Federal Home Loan Bank System, 801 Seventeenth Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: On December 30, 1988, the Board proposed to amend its regulations concerning the issuance of subordinated debt by insured institutions found at 12 CFR 563.8–1. *See* Board Res. No. 88–1569, 54 FR 1379 (January 13, 1989). The Board invited comments on the proposed changes to the regulation at the time the proposed changes were issued. The comment period expired on March 15, 1989.

The Board has carefully studied the comments and the issues raised by the commentators in determining whether and in what manner to proceed in changing the subordinated debt regulation. As a result, while major elements of the final rule are substantially the same as the language proposed, some provisions have been changed in response to comments.

I. Background

Since 1973, the Board, as operating head of the FSLIC, has permitted insured institutions to include as part of their regulatory capital the proceeds of the sale of subordinated debt securities issued pursuant to 12 CFR 563.8–1. Initially, insured institutions were permitted to include as regulatory capital the principal amount of such debt securities up to a limit of 20 percent of their capital. In 1982, the Board amended its regulations to allow insured institutions to include the full amount of the proceeds of the sale of subordinated debt securities having a remaining maturity in excess of one year as part of their capital and statutory reserve.[1] On April 18, 1985, the Board further amended its regulations to require that the amount of qualifying subordinated debt with a remaining period to maturity of less than seven years that may be included as regulatory capital must be reduced annually pursuant to an amortization schedule set forth in § 561.13.[2] The principal rationale underlying the Board's decision to allow the inclusion in regulatory capital of the proceeds of the sale of subordinated debt securities issued under 12 CFR 563.8–1 is that subordinated debt meeting the requirements of the regulation has some of the characteristics of other types of permanent capital and reduces the risks to the FSLIC.

On August 10, 1987, the President signed into law the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. 100–86, 101 Stat. 552. The CEBA addresses a number of important issues relating specifically to the thrift industry, including recapitalization of the FSLIC, emergency acquisitions of troubled thrift institutions, and potential areas for improvement in the examination and supervisory process. As required by CEBA, the Board on October 9, 1987, promulgated Applications Processing Guidelines as part of 12 CFR 571.12. The present regulatory proposal seeks to promote more efficient processing of subordinated debt applications, consistent with the objectives of CEBA and the requirements of the Applications Processing Guidelines, and also reflects an additional four years of experience with the subordinated debt regulation since the regulation was last amended. The Board is aware, however, that under the pending Financial Institutions Reform, Recovery and Enforcement Act of 1989, inclusion of subordinated debt may be more limited than is the case today. Thus, the revised regulations will apply to only that

---

[1] See Resolution No. 82–561 (August 26, 1982). Under Generally Accepted Accounting Principles ("GAAP"), subordinated debt is treated as a liability.

[2] See Resolution No. 85–292, 50 FR 20580 (May 17, 1985).

portion of an insured institution's subordinated debt that is permitted to be treated as regulatory capital under the new legislation and new regulations issued thereunder.

The rule changes herein are effective September 18, 1989, and are applicable to subordinated debt applications in process but not yet deemed complete as well as those filed after the effective date of this rule.

The Board has followed the notice and comment procedure pursuant to 5 U.S.C. 553(b) and 12 CFR 508.11 by publishing the proposed rules for notice and comment. *See* 54 FR 1379, January 13, 1988. The Board has determined that the 30-day delay of effective date pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14 is appropriate in this instance.

II. Summary of Comments and Discussion of the Rule

The Board received two letters of comment on the Board's rule proposal—one from an insured institution and one from a thrift industry trade association. The letters were generally supportive of the rule proposal. The following paragraphs address the concerns raised in those letters as well as further insights of the Board and its staff.

1. Issuance of Guidelines

One commentator objected to authorizing the Office of Regulatory Activities to issue Guidelines. While the Board has considered this objection, the Board is of the opinion that, on balance, the industry and the agency are better served by having guidelines that can be changed as opposed to having no guidelines and that up-to-date specific guidelines are preferable to out-of-date vague regulations.

Guidelines will provide a mechanism to clarify and keep current the bases for supervisory objection to applications to include subordinated debt in regulatory capital of insured institutions. The use of uniform Guidelines also should increase efficiency in approving applications to include subordinated debt issues as part of regulatory capital.[3]

The Office of Regulatory Activities will prepare such Guidelines in consultation with the Board's Office of District Banks and the Board's Office of General Counsel. These Guidelines will be published in the near future before the effective date of this rule. In keeping with the Board's desire to have uniform national supervisory policies, the Office of Regulatory Activities, under the Board's oversight, will administer and maintain the Guidelines on an on-going basis. The format of Guidelines will allow for increased flexibility in future modifications, as needed. The Guidelines are designed to identify supervisory factors that PSAs may use in considering whether to approve or deny an application. Some of the current bases for supervisory objections now set forth at 12 CFR 563.8–1(b)(2) are obsolete and have been revised and/or expanded into Guidelines. The Guidelines are illustrative but not exclusive bases for supervisory objection to subordinated debt applications. The Office of Regulatory Activities in consultation with the Office of District banks and the Office of General Counsel will be able in the future to change the Guidelines as circumstances warrant, without the necessity for notice and comment rulemaking.[4]

2. Defaults and Other Events Providing for Mandatory Prepayment of Principal

One of the factors considered in the processing of a subordinated debt application is whether the issuance of the subordinated debt securities and any related transactions will result in a transfer of risk from the FSLIC to parties other than insured institutions. See 12 CFR 563.8–1(b)(3). The Board, on the basis of this provision, has objected to the inclusion in subordinated debt instruments of terms that provide for mandatory redemption of the debt or for events of default (which could give rise to acceleration of maturity of the principal of the debt) based on changes in control of the obligor (known in anti-takeover parlance as a "poisoned put"), or a failure of the obligor to comply with maintenance and operating covenants that were believed to be unreasonable in the circumstances. In this connection, the Board notes that one of the bases for permitting an insured institution to include an amount equal to the proceeds of the sale of subordinated debt securities in its regulatory capital is that the issuance of such securities represents a relatively long term commitment of capital to the insured institution. For this reason, the Board has not approved subordinated debt applications where the subordinated debt securities (or the indentures pursuant to which they were proposed to be issued) included provisions that might unduly accelerate payment of the debt prior to scheduled maturities, because such provisions could subject the FSLIC to a significant risk of precipitous decline in an institution's regulatory capital. The Board recognizes, however, that to effect a successful offering of debt securities, the securities, or the indentures pursuant to which they are issued, must include provisions that investors have come to accept as customary in offerings of such type, to the extent such provisions can be included without frustrating the purpose of the subordinated debt regulation. Thus, although provisions that require acceleration of maturity (through declaration, mandatory prepayments, or otherwise) following a change of control of the obligor will continue to be objectionable, the Board will not object to subordinated debt applications solely because the terms of the securities (or related indentures) include events of default such as failure to make timely payment of interest and principal, failure to comply with reasonable and customary financial maintenance and operating covenants, and certain events of bankruptcy or insolvency, receivership, and similar events. The final rule has been revised appropriately to add clarifying language to 12 CFR 563.8–1(b)(3) to address these considerations.

3. Voluntary Prepayments

The subordinated debt regulation provides that payment of principal may not be accelerated without approval of the FSLIC, if, after giving effect to such accelerated payment, the insured institution obligor would fail to meet its regulatory capital requirement. 12 CFR 563.8–1(d)(1)(iv). The Board has consistently taken the position that if any mandatory prepayment (such as payment upon acceleration of maturity following an event of default) is restricted to this extent, *a fortiori*, any voluntary prepayment should be similarly restricted. Further, an institution obviously should not be permitted to make such payments if the institution is already failing to meet its regulatory capital requirements. 12 CFR 563.8–1(d)(1)(iv) now reflects these long-standing interpretive positions.

4. Issuance of Subordinated Debt Securities Pursuant to an Indenture

While the Board proposed for comment the proposition that all insured institutions be subject to requirements based upon standards of the Trust Indenture Act of 1939, as amended, ("TIA") 15 U.S.C. 77aaa–77bbbb, the Board has decided to take a more limited approach. The Board considers the benefits of the use of an indenture in certain circumstances to be beneficial to the discipline of the institution and for the institution in dealing with its debt holders. Thus the Board has determined to require an issuer to issue its subordinated debt securities pursuant to an indenture in certain circumstances. Such an indenture must provide for the appointment of a trustee other than the obligor or an affiliate of the obligor and for the collective enforcement of the rights and remedies of the security holders, if the aggregate amount of debt securities "publicly offered" (sales in a non-public offering as defined in 12 CFR 563g.4 are excluded) and sold by a single obligor in any consecutive twelve month period exceeds $2,000,000 and/or exceeds $5,000,000 in any consecutive thirty-six month period.

One commentator suggested that the proposed trust indenture requirement should "grandfather" any subordinated offerings already approved by the Board. The Board has followed that suggestion. The indenture requirement will be applicable to subordinated debt applications in process but not yet deemed complete as well as those applications filed after the effective date of the rule.

Another commentator objected to the requirement that some subordinated debt offerings would be required to use an indenture. That commentator opposed the requirement of using an indenture because of the added cost to an insured institution for the trust indenture and the related costs of the trustee's expenses over the life of the obligations.[5] The Board has considered the objections of this commentator, but has determined to adopt the limited requirement outlined above.

The TIA, which by its terms is inapplicable to securities issued by insured institutions, and the Rules and Regulations under the TIA provide, generally, that any debt securities offered and sold to the public by a single obligor in an amount in excess of $2,000,000 in any consecutive twelve month period must be issued pursuant to an indenture and that debt securities that are publicly offered and sold by the same obligor in an amount exceeding $5,000,000 in any consecutive thirty-sixty month period must be issued pursuant to an indenture that is "qualified" under the TIA. See 17 CFR 230.4(a)(1) and 230.4(a)(2). Although the TIA specifies in considerable detail the provisions that must be included in a qualified indenture (which required provisions relate principally to the qualifications, duties and powers of the trustee, the duties of the obligor, and the rights of the holders of the debt securities), neither the TIA nor the rules promulgated thereunder set forth any requirements with respect to the provisions of a non-qualified indenture. The Securities and Exchange Commission, however, for many years has taken the position that any indenture must, at a minimum, provide for the appointment of a trustee other than the obligor or an affiliate of the obligor and provide some reasonable procedures for the collective enforcement of the rights of the holders of the debt securities.

The Board's experience has been that most publicly offered issues of subordinated debt securities of any significant size by insured institutions are offered and sold through underwriters, and in such cases the securities are invariably issued pursuant to an indenture that includes all or substantially all of the provisions that would be required to be included in an indenture qualified under the TIA. The use of an indenture in connection with the issuance of subordinated debt securities can be beneficial, since certain of the terms included in such an indenture may provide a framework of financial discipline for the obligor, which in some cases may further the interests of the Board and the FSLIC. Further, it may be more efficient and workable for the insured institution obligor to deal with a trustee (some actions may be subject to ratification by the holders of a specified majority in principal amount of the debt securities) if the debtor should desire to amend the terms of the securities or to obtain a waiver of any convenants provided therein, or is the related indenture, rather than to contend with a large number of individual security holders. The Board is aware that the requirement to use an indenture will result in additional expense to certain issuing institutions but has concluded that the additional expense is warranted by the benefit received.

5. Reports

One commentator noted that GAAP requires an institution to include as a balance sheet liability the entire amount of subordinated debt issued including any capitalized expenses and therefore this commentator argues that the Board should allow insured institutions to include as regulatory capital all subordinated debt, including the portion of the subordinated debt offset by the expenses of the debt offering. The Board agrees that GAAP requires the entire debt to be listed on the liability side of the balance sheet. However, under GAAP, no portion of debt is included as capital. The purpose of the Board's subordinated debt regulation is to specify the portion of subordinated debt the Board is willing to count as "capital" for regulatory purposes. Since capital is designed to provide protection for the FSLIC and since only net proceeds provide that protection, the Board is willing to give such credit for only the actual net amount of moneys raised by the issuer that are available for the insured institution's use and that meet the other requirements of 12 CFR 563.13 for inclusion as regulatory capital. Thus this aspect of the proposed regulation has not been changed.

To clarify this point, however, the Board has added the additional sentence to the requirement in 12 CFR 563.8–1(h) that an insured institution must file a report with the Board 30 days after completion of the sale of subordinated debt securities. This sentence clarifies that the amount to be included in regulatory capital is an amount net of all expenses incurred in connection with the sale of the subordinated debt securities. This revised provision requires the issuing institution to specify the actual amount of the proceeds from the sale of the subordinated debt securities that the insured institution initially intends to include in its regulatory capital.[6]

6. Delegations of Authority

Currently, PSAs are authorized to approve applications filed pursuant to 12 CFR 563.8–1 unless such applications involve significant issues of law or policy upon which the Board has not taken a formal position, or unless an offering circular will be required in connection with the public offering and sale of the securities that are the subject of any such application. The revised regulation eliminates the requirement that an application be forwarded to Washington solely because an offering circular is involved and gives the PSAs

---

[3] In its release No. 87–1288 dated December 22, 1987, the Board similarly authorized the Office of Regulatory Activities to develop guidelines for administering the Board's new rule providing for individual minimum capital requirements. See 12 CFR 563.14.

[4] Such Guidelines will not form the basis for assertions of violations of statutes and regulations, but may be part of a finding that an institution is engaged in unsafe or unsound practices.

[5] The Board notes that both bank holding companies and savings and loan holding companies would have to comply with all of the requirements of the TIA. Any related exemptions to the TIA would apply only to any debt securities issued by their subsidiary insured institutions and not to the holding company itself.

[6] On an ongoing basis, the insured institution must calculate the amount of subordinated debt including any unaccreted premiums or unamortized discounts as required by GAAP. This concept means essentially that as the capitalized expenses of the debt offering are amortized over the life of the obligations, the net amount of subordinated debt to be counted as capital will increase. Similarly, as any premium on the sale of the debt is amortized over the life of the obligations, the net amount of subordinated debt that will be counted as capital will decrease.

BEST COPY AVAILABLE

authority to deny applications as well as to approve them, subject to an appeal process. Applicants must be aware, however, that even though the PSA under the proposed regulatory amendments could approve a subordinated debt application where securities are to be sold pursuant to an offering circular even if such offering circular has not yet been declared effective, PSA approval would be conditioned upon the offering circular in the form declared effective not disclosing any material adverse information concerning the applicant's business, operations, prospects, or financial condition not disclosed in the latest form of offering circular filed as an exhibit to the subordinated debt application.

At the present time, the Board is concerned about so-called "retail" sales of subordinated debt securities by institutions on their own premises. Such sales present a variety of legal and policy concerns. Accordingly, where such sales of subordinated debt are proposed to be made by the institution itself in its offices or those of an affiliate, those applications will be carefully reviewed consistent with the guidance provided by the Office of Regulatory Activities (*see*, Thrift Bulletin 23, dated April 13, 1989) and the Corporate and Securities Division, Office of General Counsel. If such application fails to meet such standards, the PSA should deem the application to involve significant issues of law and policy and refer the application to Washington DC to be considered by the Board.

The revised regulation otherwise further delegates authority to approve or deny requests for extensions of time requested pursuant to 12 CFR 563.8–1(g) to whomever is authorized to approve an application. Such extensions of time could be granted for a period of time of up to six months. All such extensions of time taken together may not exceed one year from the date of the original approval of the subordinated debt application.

7. Appeals

The Board has considered an additional idea that the "appeal process" should include the right to appeal any non-standard conditions included in the approval of a subordinated debt application by the PSA pursuant to their newly delegated authority. While the Board does not expect the PSAs to be including non-standard conditions in their approvals of subordinated debt applications, the Board thinks that the idea is appropriate and has revised the final rule accordingly.

In connection with the delegation of authority to the PSA's to deny applications under 12 CFR 563.8–1, the Board is adopting an appeal process for the further consideration of denials of applications by the PSAs in the form originally proposed. In essence, the appeal process requires any applicant wishing to appeal a determination of the PSA to file with the Office of District Banks, within 30 days of the PSA's determination, a written request for review describing with specificity the action appealed from and the relief sought. The filing of such a request will be necessary to seek judicial review of an initial determination. Such appeals will be processed under the time-frames and other requirements of the Board's standard applications processing guidelines at 12 CFR 571.12.

The Director of the Office of District Banks, with the concurrence of the Executive Director of the Office of Regulatory Activities, and the General Counsel, or their respective designees shall consider appeals from denials by the PSAs unless the Director of the Office of District Banks in his or her sole discretion determines to refer the appeal to the Board on the basis that the appeal involves policy considerations that warrant resolution by the Board. In the event that the Director of the Office of District Banks fails to obtain the concurrence of the Executive Director of the Office of Regulatory Activities and the General Counsel, the Director of the Office of District Banks shall present the matter to the Board.

8. Standard Conditions of Approval

The Board has considered the concept that one of the "standard conditions" to be included in the regulation could require that before any offers or sales of the subordinated debt are made on the premises of the institution or any of its affiliates, the applicant shall submit to the Supervisory Agent a set of policies and procedures for such sale of the subordinated debt satisfactory to the supervisory agent. Such policies and procedures would address the considerations set forth by the Office of Regulatory Activities in its Thrift Bulletin 23 issued on April 13, 1989. The Board has considered such an idea to have substantial merit and has included such a provision in the final regulation.

With the foregoing addition, the Board is adopting the proposed set of standard conditions that will apply to all approvals of subordinated debt applications. The Board anticipates that such conditions will, except in rare cases, be the only conditions applied to subordinated debt approvals. Other conditions would be imposed only where one or more of the bases for supervisory objection specified in the Guidelines developed by the Office of Regulatory Activities in consultation with the Office of District Banks and the Office of General Counsel are present and where such non-standard conditions are necessary to address the areas of concern that would otherwise form a basis for denial of the application. These standard conditions of approval also will apply to any subordinated debt application that is approved automatically pursuant to the Board's Applications Processing Guidelines found at 12 CFR 571.12. For technical considerations, these conditions are now included in the text of the rule rather than in a separate appendix as proposed.

Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Small entities to which the proposed rule applies.* The final rule will apply to all FSLIC-insured institutions without regard to size. However, the Small Business Administration defines a small financial institution as a "commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a)(1987). Therefore, small entities to which the rule applies are the 1,651 insured institutions that had assets totaling $100 million or less as of December 31, 1987.

3. *Impact of the final rule on small entities.* The Board believes that the revision to procedures for processing subordinated debt securities applications will not have a disparate effect on small entities. To the extent that under the revised regulations small entities will more likely be able to file their applications at their district Federal Home Loan Bank, the impact of the proposal will be liberalizing.

4. *Overlapping or conflicting Federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this rule.

5. *Alternatives to the final rule.* There are no alternatives that would be less burdensome than the rule changes addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set for above.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Currency, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1467); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 563.8–1 by revising paragraphs (b)(2), (b)(3), and (d)(1)(iv); by adding a new paragraph (d)(4); by revising paragraphs (e), (h), and (i); and by adding new paragraphs (j) and (k), to read as follows:

§ 563.8–1 Issuance of subordinated debt securities.

* * * * *

(b) *Eligibility requirements.* * * *

(2) Whether in the opinion of the Corporation, the overall policies, condition, and operation of the applicant do not afford a basis for supervisory objection to the application. The Office of Regulatory Activities in consultation with the Office of District Banks and the Office of General Counsel shall establish Guidelines for the Principal Supervisory Agents to apply in exercising authority delegated to them in considering applications under this section. These Guidelines shall identify supervisory bases that may be used to object to the inclusion of specific subordinated debt issues as regulatory capital. Such Guidelines shall constitute illustrative but not exclusive bases for supervisory objection to subordinated debt applications. The Office of Regulatory Activities in consultation with the Office of District Banks and the Office of General Counsel may modify such Guidelines from time to time as appropriate. Any such changes to the Guidelines shall be effective for those applications filed after the date of the changes to the Guidelines and for those applications submitted for approval but not yet deemed "complete."

(3) Whether the issuance of such securities by the applicant in the transaction and any related transactions will result in a transfer of risk from the Corporation to parties other than insured institutions. In this connection, the issuance of subordinated debt securities shall be deemed to result in an insufficient transfer of risk from the Corporation if such securities or any indenture or related agreement pursuant to which such securities are issued provide for events of default or include other provisions that could result in a mandatory prepayment of principal by declaration or otherwise, other than events of default arising out of (i) the obligor's failure to make timely payment of interest and principal, (ii) the obligor's failure to comply with reasonable financial, operating, and maintenance covenants of a type that are customarily included in indentures relating to publicly offered issues of debt securities, and (iii) events of default relating to certain events of bankruptcy or insolvency, receivership, and similar events.

* * * * *

(d) * * *

(1) * * *

(iv) State or refer to a document stating that no voluntary prepayment of principal shall be made and that no payment of principal shall be accelerated without the approval of the Corporation, if the institution is failing to meet its regulatory capital requirement or if after giving effect to such payment the institution would fail to meet its regulatory capital requirement; and

* * * * *

(4) *Indenture.* An issuer must use an indenture, as described herein, for subordinated debt securities offered pursuant to this section. Such an indenture must provide for the appointment of a trustee other than the obligor or an affiliate of the obligor (as defined in 12 CFR 563.15) and provide for the collective enforcement of the rights and remedies of the security holders, if the aggregate amount of debt securities "publicly offered" (sales in a private non-public offering as defined in 12 CFR 563g.4 are excluded) and sold by a single obligor in any consecutive twelve month period exceeds $2,000,000 and/or $5,000,000 in any consecutive thirty-six month period.

(e) *Filing of application.* Applications for approval of the issuance of subordinated debt securities under this section shall be filed by transmitting the original and three copies of the application and all supporting documents to the institution's Principal Supervisory Agent.

* * * * *

(h) *Reports.* Within 30 days after completion of the sale of the subordinated debt securities issued pursuant to prior approval under this section, the institution shall transmit a written report to the Supervisory Agent stating the number of purchasers, the total dollar amount of securities sold, and the amount of net proceeds received by the institution. The institution's report shall clearly state the amount of subordinated debt, net of all expenses, that the institution initially intends to be counted as regulatory capital.

(i) *Delegation of authority.* Unless a subordinated debt application involves a significant issue of law or policy or would establish a precedent of national significance, the Principal Supervisory Agent is authorized:

(1) To approve an application filed pursuant to this section, if the application is in compliance with regulatory requirements, and

(2) To deny a subordinated debt application.

Whoever is authorized to approve a subordinated debt application is also authorized to grant a request pursuant to paragraph (g) of this section for an extension of time for up to six months. All such approved extensions of time taken together may not exceed one year from the date of original approval of the subordinated debt application.

(j) *Appeals.* Denial of an application by a Principal Supervisory Agent pursuant to paragraph (i) of this section or the inclusion of any non-standard condition(s) not set forth in paragraph (k) of this section in the approval of an application may be appealed to the Corporation under the following procedures: Within 30 days after notification of the Principal Supervisory Agent's decision as provided for in this section, the applicant must file a written request for review with the Office of District Banks stating the applicant's desire to appeal the Principal Supervisory Agent's decision. The request for review must identify the party seeking review and describe with specificity the action taken for which review is sought and the reasons why the Principal Supervisory Agent's denial is contended to be erroneous. Three copies of such request for review must be submitted to the Office of District Banks, Applications Policy Division, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. One copy of such request should be

addressed to the attention of "Office of District Banks;" one copy to the attention of "Office of General Counsel, Corporate and Securities Division;" and one copy to the attention of "Office of Regulatory Activities, Corporate Activities Section." Also, one copy shall be sent to the appropriate Principal Supervisory Agent. The Principal Supervisory Agent shall thereupon forward to the Office of District Banks his record or a copy thereof used as a basis for his determination together with any other information believed by the Principal Supervisory Agent to be helpful in reviewing his determination. If an applicant does not file a request for review within the time permitted under this section, any objection to the initial determination by the Principal Supervisory Agent is waived. A timely filing of a request for review with the Office of District Banks in accordance with the provisions of this section shall be mandatory for securing judicial review of an initial determination. With the concurrence of the Executive Director of the Office of Regulatory Activities, or his or her designee, and the General Counsel, or his or her designee, the Director of the Office of District Banks, or his or her designee shall decide each appeal from a denial of an application under 12 CFR 563.8–1 by a Principal Supervisory Agent or the inclusion of any non-standard condition(s) not set forth in paragraph (k) of this section. With the concurrence of the Executive Director of the Office of Regulatory Activities, or his or her designee, and the General Counsel, or his or her designee, the Director of the Office of District Banks, or his or her designee, shall prepare and send to the applicant a written response to the applicant's request for review. Such written response shall be deemed to be a final agency action by the Corporation. If the Director of the Office of District Banks, or his or her designee, in his or her sole discretion is of the opinion that the appeal involves policy considerations that warrant resolution by the Corporation, the Director, or his or her designee, shall submit the application to the Corporation for its determination. In the event that the Director, or his or her designee, fails to obtain the concurrence of the Executive Director of the Office of Regulatory Activities, or his or her designee, and the General Counsel, or his or her designee, the Director, or his or her designee, shall present the matter to the Corporation for its determination.

(k) *Conditions of approval.* Approvals of subordinated debt applications shall be subject to the following conditions:

(1) Where securities are to be sold pursuant to an offering circular required to be filed with the Corporation pursuant to 12 CFR 563g.2, and where such offering circular has not yet been declared effective prior to the date of approval of the subordinated debt application, the offering circular in the form declared effective shall not disclose any material adverse information concerning the applicant's business, operations, prospects, or financial condition not disclosed in the latest form of offering circular filed as an exhibit to the application;

(2) The applicant shall submit to the Supervisory Agent, no later than 30 days from the completion of the sale of the securities, evidence of compliance with all applicable laws and regulations in connection with the offering, issuance, and sale of the subordinated debt securities;

(3) The applicant shall submit to the Supervisory Agent no later than 30 days from the completion of the sale of the securities, the report(s) required by § 563.8–1(h) of the Insurance Regulations and the following additional items:

(i) Three copies of an executed form of the securities issued pursuant to the subject application and a copy of any related agreement or indenture governing the issuance of the securities; and

(ii) A certificate from the principal executive officer of the applicant that states that to the best of his knowledge none of the securities issued pursuant to the subject application were sold to any institution whose accounts are insured by the FSLIC, or a corporate affiliate thereof, except as permitted by § 563.8–1 of the Insurance Regulations;

(4) That as of the date of approval, there have been no material changes with respect to the information disclosed in the application as submitted to the Principal Supervisory Agent;

(5) The applicant shall submit an application and receive prior written approval of the Principal Supervisory Agent for any post-approval amendment to the subordinated debt securities or any related indenture if:

(i) The proposed amendment modifies or is inconsistent with any provision of the securities, or the indenture, which is required to be included therein by the regulations as may then be in effect or would result in a transfer of risk to the applicant or the FSLIC; and

(ii) All or a portion of the proceeds from the issuance and sale of the securities would continue to be included in the regulatory capital of the applicant following adoption of the amendment;

(6) The applicant shall submit to the Supervisory Agent promptly after execution one copy of each post-approval amendment to the securities or the related indenture and, if prior approval of such amendment was not obtained, shall also state the reason(s) such prior approval was not required; and

(7) Before any offers or sales of the subordinated debt are made on the premises of the institution or its affiliates, the applicant shall submit to the Supervisory Agent a set of policies and procedures for such sale of subordinated debt satisfactory to the Supervisory Agent.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–19277 Filed 8–17–89; 8:45am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 122

RIN 1076–AB51

Management of Osage Judgment Funds for Education

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends part 122 of 25 CFR, Management of Osage Judgment Funds for Education and Socioeconomic Programs, by excluding all references to the "socioeconomic" provisions. At the request of the Osage Indian Tribe, on October 30, 1984, Congress enacted legislation which eliminated the numerous requests for an interpretation of the socioeconomic provision. In addition, this action assures the availability of funds for financial assistance to eligible Osage tribal members pursuing post secondary education degrees. Part 122 is retitled "Management of Osage Judgment Funds for Education."

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Reginald Rodriguez, Bureau of Indian Affairs, Office of Indian Education Programs, Main Interior Building, Mail Stop Room 3512, 18th & C Streets, NW., Washington, DC 20240, (202) 343–4871.

SUPPLEMENTARY INFORMATION: The Department of the Interior has determined that this document is not a major rule and does not require regulatory analysis under Executive Order 12291. This rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969. This regulation does not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These regulations will not have an impact on small entities as defined in the Act.

The primary author of this document is Reginald Rodriguez, Education Specialist, Post Secondary Education, Office of Indian Education Programs, Bureau of Indian Affairs, (202) 343–4871.

On October 30, 1984, Pub. L. 98–605 was enacted to clarify and to make technical amendments to the various acts pertaining to the Osage Indians. The amendment deletes the "socioeconomic" provisions.

Because of the time expended by the Osage Tribal Education Committee (OTEC) to resolve the numerous complaints and requests for interpretation of the "socioeconomic" provision, along with the limited availability of funds for both the "socioeconomic" programs and the educational demands of tribal members, the "socioeconomic" provision in § 122.7 of 25 CFR part 122, Management of Osage Judgment Funds for Education and Socioeconomic Programs, is removed. This removal will provide the Osage Tribal Education Committee the opportunity to concentrate its energies and monies on education, which the Osage Tribal members have established as a principal priority. Other deletions were made; i.e., the definitions of the point system and the ranking of applications. However, the Osage Tribal Education Committee is minimally obligated to obtain approval from the Assistant Secretary—Indian Affairs for proposed budget expenditures and for the overall program plan of operation.

On June 30, 1988, the Bureau of Indian Affairs published a proposed rule at 53 FR 24732, and the Bureau requested that interested persons submit written comments, suggestions, or objections on or before August 29, 1988. One commenter submitted three written recommendations. These recommendations reference § 122.6, Duties of the Osage Tribal Education Committee. The following is a summary of the recommended comments and the Bureau's responses are noted as follows:

Section 122.6 Duties of the Osage Tribal Education Committee

Comments. The commenter requested that this part limit the funding period for the pursuit of a Master's degree to "* * * six semesters, not to include summer sessions, * * *", and that Doctoral program candidates be considered on a case by case basis by the Osage Tribal Education Committee. In addition, it was recommended that the unused first and second semester funds be redistributed for summer school.

Response. The Bureau recommends that advanced degrees, i.e., Masters and Doctoral programs, be funded at the discretion of the Osage Tribal Education Committee contingent upon the availability of funds on a case by case basis; however, because the Bureau wishes to support tribal autonomy, the Bureau also declines to insert into the regulations the recommendation for the redistribution for summer school of unused first and second semester funds. This will remain a committee choice. The Bureau, therefore, has not incorporated the Commenter's recommendations.

Information Collection Statement

The information collection requirements contained in §§ 122.6 and 122.9 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1076–0098 and 1076–0106, respectively.

List of Subjects in 25 CFR Part 122

Indian-claims, Indian-education, and Indian-judgment funds.

For the reasons set out in the preamble, title 25, chapter I, part 122 of the Code of Federal regulations is revised to read as follows:

PART 122—MANAGEMENT OF OSAGE JUDGMENT FUNDS FOR EDUCATION

Sec.

122.1 Purpose and scope.
122.2 Definitions.
122.3 Information collection.
122.4 Establishment of the Osage Tribal Education Committee.
122.5 Selection/nomination process for committee members.
122.6 Duties of the Osage Tribal Education Committee.
122.7 Budget.
122.8 Administrative costs for management of the fund.
122.9 Annual report.
122.10 Appeal.
122.11 Applicability.

Authority: 86 Stat. 1295, 98 Stat. 3103 (25 U.S.C. 331 note).

§ 122.1 Purpose and scope.

(a) The purpose of this part is to set forth procedures and guidelines to govern the use of authorized funds in education programs for the benefit of Osage Tribal members, along with application requirements and procedures used by those eligible persons.

(b) The Osage Tribe by act of Congress, October 27, 1972 (25 U.S.C. 883, 86 Stat. 12950, as amended by Pub. L. 98–605) on October 30, 1984, provides that $1 million, together with other funds which revert to the Osage Tribe, may be advanced, expended, invested, or reinvested for the purpose of financing an education program of benefit to the Osage Tribe of Indians of Oklahoma, with said program to be administered as authorized by the Secretary of the Interior.

§ 122.2 Definitions.

Act means Osage Tribe by Act of Congress, October 27, 1972 (25 U.S.C. 883, 86 Stat. 1295), as amended by Pub. L. 98–605.

Allottee means a person whose name appears on the roll of Osage Tribe of Indians approved by the Secretary of the Interior on April 11, 1908, pursuant to the Act of June 28, 1906 (34 Stat. 539).

Assistant Secretary means the Assistant Secretary—Indian Affairs.

Osage Tribal Education Committee means the committee selected to administer the provisions of this part as specified by § 122.6.

Reverted funds means the unpaid portions of the per capita distribution fund, as provided by the Act, which were not distributed because the funds were:

(1) Unclaimed within the period specified by the Act; or

(2) For an amount totaling less than $20 due an individual from one or more shares of one or more Osage allottees.

Secretary means the Secretary of the Department of the Interior or his/her authorized representative.

§ 122.3 Information collection.

(a) The information collection requirements contained in §§ 122.6 and 122.9 have been approved by the Office of Management and Budget under U.S.C. 3501 *et seq.* and assigned clearance numbers 1076–0098 and 1076–0106, respectively. The information collected in § 122.6 is used to determine the eligibility of Osage Indian student applicants for educational assistance grants. The information collected in § 122.9 provides summary review for program evaluation and program planning. Response to the information collections is required to obtain a benefit in accordance with 25 U.S.C. 883.

(b) Public reporting burden for this information collection is estimated to average 30 minutes per response.

including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 337 SIB, 18th & C Streets, NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1076–0106), Washington DC 20503.

§ 122.4 Establishment of the Osage Tribal Education Committee.

(a) The Osage Tribe, to maintain its right of Tribal autonomy, shall, at the direction of the Bureau of Indian Affairs, establish the Osage Tribal Education Committee (OTEC) to fulfill the responsibilities and provisions of this part as set out in § 122.6.

(b) This committee shall be composed of seven (7) members. Five (5) of the members shall be of Osage blood or descendents of Osage, and two (2) from the education staff of the Bureau of Indian Affairs.

(1) Of the five Osage members, at least three shall be legal residents and/or live within a 20-mile radius of one of the three Osage Indian villages. Of these, at least one member shall reside within the specified radius of the Pawhuska Indian village; at least one member shall reside within the specified radius of the Hominy Indian village; and at least one member shall reside within the specified radius of the Greyhorse Indian village.

(2) The two remaining Osage committee members will be members at large.

§ 122.5 Selection/nomination process for committee members.

(a) Selection of the five (5) OTEC members shall be made by the Assistant Secretary in accordance with the following:

(1) Any adult person of Osage Indian blood who is an allottee or a descendant of an allottee is eligible to serve on the Osage Tribal Education Committee.

(2) Nominees for committee membership shall include a brief statement of interest and qualifications for serving on the committee.

(b) Nominations may be made by any Osage organization, including the Osage village communities of Greyhorse, Hominy and Pawhuska, by requesting its candidates to follow procedures outlined in paragraph (a)(2) of this section.

(c) Nominations shall be delivered by registered mail to the following address: Osage Tribal Education Committee, c/o Area Education Programs Administrator, Bureau of Indian Affairs, Muskogee Area Office—Room 152, 5th & W, Okmulgee, Muskogee, Oklahoma 74401.

(d) A Nominee Selection Committee composed of OTEC members so designated by the Assistant Secretary will review all nominations. Upon completion of this process, the Nominee Selection Committee will forward its recommendations for final consideration to the Assistant Secretary.

(e) Each member shall be sworn in for a four year term. At the discretion of the Assistant Secretary, members may succeed themselves with a recommendation for reappointment from the Nominee Selection Committee.

(f) The Assistant Secretary may, until a vacancy is filled, appoint an individual to serve for a temporary period not to exceed 120 days.

§ 122.6 Duties of the Osage Tribal Education Committee.

(a) For the purpose of providing financial assistance to eligible Osage applicants for educational assistance, the Osage Tribal Education Committee shall maintain an office and retain all official records at the Bureau of Indian Affairs offices located at the Federal Building, Muskogee, Oklahoma.

(b) The Osage Tribal Education Committee shall be responsible for implementing an overall plan of operation consistent with the policy of Indian self-determination which incorporates a systematic sequential process whereby all student applications for financial aid are rated and ranked simultaneously to enable a fair distribution of available funds.

(1) All applicants shall be rated by a point system appropriate to applications for education assistance. After all applications are rated, the Osage Tribal Education Committee will rank the applications in a descending order for award purposes. No awards shall be made until all applications are rated against the point system.

(2) Monetary awards shall be for fixed amounts as determined by the Osage Tribal Education Committee. The fixed amounts shall be itemized in the committee's annual budgetary request, and the monetary award amounts shall be consistent with the fixed amounts itemized in the approved budget.

(3) Payment of the monetary awards shall be made directly to the student, with half of the amount payable on or before September 15 and the second half payable on or before February 15, provided the student is successfully enrolled in an accredited institution of higher education and meeting the institution's requirement for passing work.

(4) No student will be funded beyond 10 semesters or five academic years, not to include summer sessions, nor shall any student with a baccalaureate degree be funded for an additional undergraduate degree.

§ 122.7 Budget.

(a) By August 1 of each year, the Osage Tribal Education Committee will submit a proposed budget to the Assistant Secretary or to his/her designated representative for formal approval. Unless the Assistant Secretary or his/her designated representative informs the committee in writing of budget restrictions by September 1, the proposed budget is considered to be accepted.

(b) The investment principal, composed of the one million dollars appropriated by the Act and reverted funds, must be invested in a federally insured banking or savings institution or invested in obligations of the Federal Government. There are no provisions in this part which shall limit the right of the Osage Tribal Education Committee to withdraw interest earned from the investment principal; however, expenditures shall be made against only the interest generated from investment principal and reverted funds.

(c) All funds deposited will accumulate interest at a rate not less than that generally available for similar funds deposited at the same banking or savings institution or invested in the same obligations of the United States Government for the same period of time.

§ 122.8 Administrative costs for management of the fund.

Funds available for expenditures may be used by the Osage Tribal Education Committee in the performance of its duties and responsibilities. Recordkeeping is required and proposed expenditures are to be attached with the August 1 proposed annual budget to the Assistant Secretary or his/her designated representative.

§ 122.9 Annual Report.

The Osage Tribal Education Committee shall submit an annual report on OMB approved Form 1076–0106, Higher Education Annual Report, to the Assistant Secretary or his/her designated representative on or before November 1, for the preceding 12 month period.

§ 122.10 Appeal.

The procedure for appealing any decision regarding the awarding of funds under this part shall be made in accordance with 25 CFR Part 2, Appeals from Administrative Action.

§ 122.11 Applicability.

These regulations shall cease upon determination of the legal and appropriate body to administer the fund and upon the establishment of succeeding regulations.

W. P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 89–19340 Filed 8–17–89; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF JUSTICE

28 CFR Part 74

[Order No. 1359–89]

Redress Provisions for Persons of Japanese Ancestry

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice hereby adopts rules for the enforcement of section 105 of the Civil Liberties Act of 1988, Pub. L. 100–383, 102 Stat. 903, codified at 50 U.S.C. app. 1989b–4, which authorizes the Attorney General to identify, locate, and when funds are appropriated, make payments of $20,000 to eligible individuals of Japanese ancestry who were evacuated, relocated or interned during World War II.

EFFECTIVE DATE: August 18, 1989.

ADDRESSES: Comments received on the Notice of Proposed Rulemaking will remain available for public inspection at the Office of Redress Administration facility at 1100 Connecticut Avenue NW., Washington, DC in Suite 825 from 9:30 a.m. to 5:30 p.m., Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Valerie O'Brian, Office of Redress Administration, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530; (202) 633–5119 (Voice) or (202) 786–5986 (TDD). These are not toll free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

The Civil Liberties Act of 1988 enacts into law the recommendations of the Commission on Wartime Relocation and Internment of Civilians established by Congress in 1980 (Pub. L. 96–317). This bipartisan Commission was established to review the facts and circumstances surrounding Executive Order 9066, issued February 19, 1942, and the impact of that Executive Order on American citizens and permanent resident aliens of Japanese ancestry; to review directives of United States military forces requiring the relocation, and in some cases, detention in internment camps of these American citizens and permanent resident aliens; and to recommend appropriate remedies. The Commission submitted to Congress in February, 1983, a unanimous report, *Personal Justice Denied*, which extensively reviewed the history and circumstances of the decisions to exclude, remove and then to detain Japanese Americans and Japanese resident aliens from the West Coast, as well as the treatment of the Aleuts during World War II. The final part of the Commission's report, *Personal Justice Denied Part 2: Recommendations*, concluded that these events were influenced by racial prejudice, war hysteria, and a failure of political leadership, and recommended remedial action to be taken by the Congress and the President.

On August 10, 1988, President Ronald Reagan signed the Civil Liberties Act of 1988 into law. The purposes of the Act are to acknowledge and apologize for the fundamental injustice of the evacuation, relocation, and internment of Japanese Americans and permanent resident aliens of Japanese ancestry, to make restitution, and to fund a public education program to prevent the recurrence of any similar event in the future.

Section 105 of the Act assigned the Attorney General the responsibility and duties for the restitution provisions. The Attorney General delegated the responsibilities and duties assigned him by the Act to the Assistant Attorney General for Civil Rights, who, in turn, established the Office of Redress Administration in the Civil Rights Division to carry out the execution of the responsibilities and duties under the Act.

The Office of Redress Administration (ORA) is charged with the responsibility of identifying and locating persons eligible under the Act, without requiring any application for payment, within twelve months after the date of enactment of the Act (August 10, 1988), or within twelve months after the appropriation of funds necessary to complete the identification process. To date no appropriations have been made. It was estimated by the Commission on Wartime Relocation and Internment of Civilians that approximately 120,000 American citizens and permanent resident aliens of Japanese ancestry were affected by the exclusion. Of these, an estimated 60,000 individuals survive and are eligible for redress payment.

In its efforts to identify and locate these individuals, the Office of Redress Administration has initiated a highly publicized outreach program to the Japanese American community to encourage those persons thought to be eligible to notify the Office with information concerning their eligibility and current residences. On September 19, 1988, the Office of Redress Administration announced the establishment of a toll free telephone number and a U.S. Post Office Box designed to accommodate individuals wishing to ask questions or volunteer information concerning their eligibility. This announcement also was publicized in Japanese American newspapers. The Office also placed its West Coast staff in San Francisco, California, for ninety days in order to establish close working relationships with the leaders of Japanese American organizations to ensure that the Office would reach as many eligible persons as possible.

Section 105 of the Act also requires the Attorney General to notify each eligible individual in writing as to a determination of eligibility, and to authorize the payment of $20,000 to each eligible individual. Payment will be made in the order of the date of birth pursuant to Section 105(b).

Therefore, when funds are appropriated, payment will be made to the oldest eligible individual living on the date of the enactment of the Act, August 10, 1988 (or his or her statutory heirs), who has been located by the Administrator at that time. Payments will continue to be made until all eligible persons have received payment. For this purpose, the Act specifies that a total of $1,250,000,000 is to be placed in the United States Civil Liberties Public Education Fund from which payments may be made. Because the Act specifies that no more than $500,000,000 may be appropriated in any one year, not all payments can be made at one time.

During the period of drafting the proposed regulations, many individuals and organizations in the Japanese American community contacted the Civil Rights Division to ask questions and express concern regarding the determination of eligibility. In response to these concerns the Division published a Notice in the **Federal Register**, 53 FR 41252 (October 20, 1988), inviting the public to submit comments during the proposed regulation's drafting period on three issues that seemed to be of major concern to the public. These issues pertained to the eligibility of minors who were relocated to Japan between

December 7, 1941 and September 2, 1945, persons of Japanese ancestry sent to the United States from other American republics during World War II as a result of international agreements, and voluntary evacuees who did not file "Change of Residence"cards.

In response to this Notice, the Office of Redress Administration received one hundred forty-eight comments regarding these and other issues of eligibility, all of which have been placed for public inspection in the public reading room of the ORA office. Some respondents were United States citizens of Japanese ancestry who were relocated to Japan without consent as minors during World War II. These individuals expressed the belief that their constitutional rights had been violated at the time and to exclude them now from compensation would brand them as disloyal Japanese Americans. Most other comments concerned the plight of individuals of Japanese ancestry from other American countries who were interned in the United States. Letters from those so interned, and others who were not, generally supported compensation to these persons. Comments regarding voluntary evacuees who did not file "Change of Residence" cards provided further evidence that verification of the status of these individuals will need to be done on a case by case basis in order to determine if such persons evacuated as a result of government action. Finally, the Office of Redress Administration received letters from Japanese American World War II veterans whose families had been evacuated. Some of these soldiers had been unable to return to unauthorized zones to protect their property, while others had been prohibited from visiting their families in relocation centers. These veterans voiced the concern that the Act might not include them as eligible.

In drafting the proposed regulations, the Division read and considered each comment. The decisions that the Division made in response to these comments were made on a thorough consideration of the merits of each point of view expressed in the comments.

On June 14, 1989, the Department of Justice published a Notice of Proposed Rulemaking (NPRM) for the implementation of section 105 of the Civil Liberties Act of 1988. 54 FR 25291. By July 14, 1989, the close of the comment period, the Division had received 157 comments, 148 from individuals, 9 from organizations representing the interests of Japanese Americans, and 2 from members of Congress. Of these comments, 130 were based on two form letters supporting eligibility for three groups determined ineligible in the proposed regulation: Japanese American minors who were relocated to Japan during World War II, children of parents who had voluntarily evacuated from the excluded zones, and Latin American Japanese brought to the United States for internment during World War II. Thirteen other comments expressed concern that the requirements for documents for verification of identity were unduly burdensome.

The Division read and analyzed each comment. In response to these comments the Office of Redress Administration made changes to the proposed regulations incorporating suggestions where appropriate. However, such changes were not made on the basis of the number of comments addressing any one point but on a thorough consideration of the merits of the points of view expressed in the comments. Other non-substantive changes were made in order to provide further clarification of the implementation procedures.

II. Responses to Comments and Summary of the Regulations and Revisions

These regulations, which consist of five subparts, implement section 105 of the Act. Subpart A states the purpose of the regulation and defines key terms; subpart B lists the categories of individuals determined to be eligible or ineligible in accordance with the statute; subpart C establishes a procedure through which the Office of Redress Administration will identify and locate all eligible individuals; subpart D establishes the procedures for payment; and subpart E establishes an appeals process whereby an individual who is determined by the Redress Administrator to be ineligible may petition for a reconsideration of that finding.

The first issue of eligibility is concerned with the statutory threshold requirement that an eligible person be an individual of "Japanese ancestry." Records of the evacuation period indicate that there were approximately 80 non-Japanese who were interned with their Japanese American spouses or children. (It is estimated that perhaps 40 such persons are still living.) The Government required these persons to sign a waiver of their rights as non-excluded individuals in order to accompany spouses or children to assembly centers and relocation camps. These wives, husbands and parents executed WPC Form PM-7, "Request and Waiver of Non-Excluded Person," which requested leave to accompany a member of his or her family through all the stages of evacuation and internment as if they were persons of Japanese ancestry. In reality these non-Japanese spouses and parents were confronted by a horrifying choice. They could either "elect" to accompany their spouses or children throughout the removal and internment process, or choose to be separated from them. In the event that there was no Japanese parent or adult relative to accompany the child the Government policy was to take the part-Japanese child and place him or her in an institution and later transfer the child to the Children's Center under the supervision of the War Relocation Authority at Manzanar, California. Obviously, every human instinct would compel these parents to "elect" evacuation.

Unfortunately, however, section 108(2) of the Civil Liberties Act of 1988 limits the definition of an "eligible individual" specifically to "any individual of Japanese ancestry." Indeed, the focus throughout the Act is on those of Japanese ancestry and the discrimination they suffered based on their race. In light of the specificity with which Congress has spoken and its focus on the racial discrimination suffered, it must be concluded that the statute authorizes compensation be paid only to those of Japanese ancestry, and not to those who are of non-Japanese ancestry but who were nevertheless interned.

Although the phrase "of Japanese ancestry" in the Civil Liberties Act of 1988 cannot be interpreted in the regulation to include non-Japanese family members for purposes of compensation, it is undeniable that these individuals suffered the very injury that the Civil Liberties Act of 1988 is designed to redress and compensate, and that they should be compensated. Therefore, the Department will submit legislation to the Congress to amend the Civil Liberties Act of 1988 to render eligible those non-Japanese family members who suffered the effects of the government's internment policy by accompanying their spouses or children of Japanese ancestry through the evacuation and internment process.

A second area of inquiry regarding eligibility pertains to the method of confinement. It is clear from the findings by the Commission on Wartime Relocation of Civilians that the evacuation, relocation or internment of the Japanese Americans and Japanese resident aliens was not a single uniform action. Indeed, in section 108(2)(B)(i) (I)–(III) Congress specifically included language to ensure that the Act covered individuals confined, held in custody, relocated, or "otherwise deprived of liberty or property" as a result of any action taken by the United States or its agents solely on the basis of Japanese ancestry during the period from December 7, 1941 to June 30, 1946. Therefore, in addition to persons deprived of liberty or property solely on the basis of Japanese ancestry by placement in relocation centers under the supervision of the Wartime Relocation Authority, or in camps under the authority of the Department of Justice or the U.S. Army, others who were deprived of liberty by other Government actions would also be eligible. As the discussion below illustrates, the language "otherwise deprived of liberty or property as a result (of government actions)" may be interpreted to include several categories of individuals. One example of a deprivation of liberty could be institutionalized persons who were unable to evacuate from the prohibited areas and were placed in the custody of the Wartime Relocation Authority.

In addition, some individuals who were members of the U.S. Armed Forces on or before mandatory evacuation on March 31, 1942, and not discharged from duty by that date, and whose domiciles were in excluded areas, could be determined to be eligible under section 108(2)(B)(i) as persons "otherwise deprived of liberty or property" as a result of the acts enumerated in subsections (I), (II), and (III). The Western Defense Command Public Proclamation No. 11, dated August 18, 1942, excluded all Japanese citizens and aliens from Military Area No. 1 and the California portion of Military Area No. 2 without first securing written permission of the Western Defense Command. As a result, there were some soldiers who were unable to re-enter unauthorized zones and safeguard their property. Such persons, as well as those whose property was confiscated by the government, could be considered to have been "deprived of property" as a result of the exclusion policy.

The issue concerning deprivation of property was raised in the Attorney General Adjudication for the Japanese American Evacuation Act of 1948. In *Hirotoshi Oda*, 1 Adjudications of the Attorney General 361 (No. 148–35–16597, November 5, 1954), it was held that persons of Japanese ancestry who were members of the Armed Forces and sustained property losses as a result of the exclusion policy were as much entitled to compensation under the Act as if they had been evacuated to assembly centers and relocation centers with the other members of their families. In light of the statutory language of the 1988 Act and the expressed purpose of that Act, such persons may be eligible for redress.

Finally, some Japanese American soldiers were "deprived of liberty" by virtue of the fact that regulations prohibited them from entering relocation centers to visit their family members or forced Japanese American soldiers to submit to undue restrictions amounting to a deprivation of liberty prior to visiting their families. (This group could also include a small percentage of members of the United States Armed Forces of Japanese ancestry from Hawaii whose families were interned.) One respondent questioned the singling out of the members of the military for eligibility and not other non-military persons of Japanese ancestry who were temporarily outside the prohibited zone and who may also have sustained property losses as a result of exclusion policy. We note that the regulations specifically set forth two categories of eligibility for the military, § 74.3 (b)(4) and (b)(5); however, the regulations also provide in § 74.3(c) that other individuals may be determined eligible under the Act on a case-by-case basis.

Another major issue of eligibility concerns those persons who were not interned but who evacuated their places of residence during the evacuation, relocation and internment period. The central question in determining eligibility in such cases is whether the individuals concerned evacuated their places of residence "as a result of" one or other of the statutorily specified types of governmental action. See section 108(2)(B). Thus, if the individuals in question were ordered by the military to evacuate an area, their evacuation was clearly a result of a governmental action. Similarly, if they evacuated in order to avoid internment, their evacuation resulted from governmental action. In contrast, if they evacuated voluntarily, not in response to any governmental order, it would seem that they are not eligible.

Some individuals evacuated as a result of specific governmental or military directives. President Roosevelt's Executive Order 9066, empowering the Secretary of War and the Military Commanders whom he might designate to prescribe military areas from which "any and all persons may be excluded" was issued on February 19, 1942. However, even as early as December 7, 1941, agents of the government were taking custody of enemy aliens, including Japanese. On January 29, 1942, the Department of Justice announced the first of a series of zones prohibited to enemy aliens on the West Coast, ordering such persons not to enter or remain in such areas after February 24, 1942. On February 19, 1942, the Department of Justice warned all Japanese aliens (of a total Japanese and Japanese American population of about 3,500) to evacuate Terminal Island, near Los Angeles: That evacuation took place, under orders of the Navy, on February 25, 1942. Apart from these early evacuations preceding Executive Order 9066, there was at least one later case of evacuations undertaken in response to a specific military directive. On March 24, 1942, after the issuance of Executive Order 9066, but before evacuation from Military Area No. 1 was required by orders of the West Coast Military Commander, persons of Japanese ancestry were ordered to evacuate Bainbridge Island, near Seattle.

The statute reaches all of the above-described situations. Even assuming that none of these evacuations "resulted from" Executive Order 9066, section 108(2)(B)(i)(III) declares evacuees eligible if their relocation resulted from any "directive of the Armed Forces of the United States, or other action taken by or on behalf of the United States or its agents, representatives, officers, or employees." Thus, actions of the Department of Justice, the Federal Bureau of Investigation, the Army, the Navy, or any other federal entity, to exclude, relocate or intern persons of Japanese descent, whether taken pursuant to Executive Order 9066 or not, provide the basis for eligibility for these groups of evacuees.

Another group of persons involuntarily evacuated who are deemed eligible under the regulations consist of those who left their places of residence on the West Coast between March 2, 1942, the issuance of Public Proclamation No. 1, and March 29, 1942, the date on which the Public Proclamation No. 4 took effect whereby persons of Japanese ancestry were prohibited from leaving parts of the West Coast area because the Government was preparing to forcibly relocate them later. Section 108(2)(B)(ii) of the Act defines as eligible one who "was enrolled on the records of the United States Government during the period beginning on December 7, 1941, and ending on June 30, 1946, as being in a prohibited military zone." The Conference Report explains this language as a reference to some 4,000 Japanese Americans who left the West Coast during the so-called "voluntary" phase of the Government's evacuation program, and who filed "Change of

Residence" cards with the Wartime Civil Control Administration: "The conferees intend to include individuals who filed Change of Residence cards during the period between the issuance of Public Proclamation No. 1, on March 2, 1942 and public proclamation No. 4 on March 27, 1942 as being 'enrolled on the records of the U.S. Government.' " While some individuals may have evacuated after March 2, 1942, but not have been enrolled on such cards, they may be determined on a case by case basis to be eligible if such persons were directly ordered by the Government to evacuate. (Clearly, any person of Japanese ancestry who was evacuated from an excluded zone *after* March 29, 1942 is eligible, since such an evacuation would have been a "result" either of Executive Order 9066 or of a military directive issued pursuant to it.)

There remain those cases, if any, of evacuations occurring *before* March 2, 1942, but *not* in response to a governmental order directed specifically at the evacuees. We believe that if there are any such evacuees, they cannot be considered eligible.

The Office of Redress Administration also received comments pertaining to the eligibility of certain categories of persons who were minors during the internment period. We received 63 comments stating that Japanese American children born after the parents had voluntarily relocated from the prohibited zones or had departed from relocation centers or internment camps should be eligible. While children born in assembly centers, relocations camps and internment camps are included as eligible for compensation, the regulations do not include as eligible children born after their parents had voluntarily relocated from prohibited military zones or from assembly centers, relocation camps, or internment camps.

One comment pointed out that children of Japanese ancestry born in internment camps during the internment period were not specifically listed in the regulations. Such persons were intended to be included as eligible in the proposed regulations and therefore, § 74.3(b)(7) has been amended to include as eligible children of Japanese ancestry born in the internment camps during the internment period in addition to those born in assembly centers and relocation camps.

A unique eligibility issue pertains to minors who were relocated to Japan during the period beginning on December 7, 1941 and ending on September 2, 1945. Records indicate that some minors who were United States citizens were relocated with their families during this period. The Division received 61 comments in support of the eligibility of these minors. However, in implementing section 105 of the Act, the Department must follow the clearly restrictive language in section 108(2) that specifically excludes any individual who during the period beginning on December 7, 1941, and ending on September 2, 1945, relocated to a country while the United States was at war with that country. Consequently, the exclusionary language of the Act would preclude from eligibility the minors, as well as adults, who were relocated to Japan during that particular time period.

The last major eligibility issue pertains to persons of Japanese ancestry who were sent to the United States from other American countries for restraint and repatriation pursuant to international commitments of the United States Government for the security of the United States and its associated powers. We received 77 comments advocating that all such individuals should be eligible for redress. The plight of these persons is described in the Appendix to Part I of *Personal Justice Denied*. Although these individuals were evacuated, relocated or interned similarly to those of Japanese ancestry evacuated from the West Coast, the statute's threshold requirement that an eligible person must be a citizen of the United States or a permanent resident alien excludes most of these persons from redress payment. Records indicate that the people who entered the United States under these international agreements were determined by the Department of Justice to be illegal aliens. As such, they were not lawfully admitted to the United States for permanent residence. Consequently, the restrictive language of the Act pertaining to citizenship status renders such persons ineligible. On the other hand, after World War II some of the Latin American Japanese who were brought to the United States from other American republics for internment were permitted, under applicable statutes, to apply to the Attorney General of the United States for an adjustment of their immigration status; these individuals obtained the status of permanent resident alien extending retroactively to the internment period. Such persons would meet the threshold statutory requirement under the regulations of being permanent resident aliens during the evacuation, relocation and internment period and, as such, be eligible for compensation. In addition, children born in the United States to the Latin American Japanese during their internment would, by virtue of their place of birth, be United States citizens and therefore meet the threshold requirement for eligibility.

While this preamble has endeavored to discuss eligibility issues of public concern, § 74.3 of the regulations specifically sets forth those categories of individuals who are eligible or ineligible for compensation under Section 105 of the Act.

II. Verification Procedures

The Act forbids the Government from requiring persons to file claims for redress payments, but states that the Attorney General shall locate and identify all eligible persons by using records already in the possession of the United States Government. However, any eligible person is free to notify the Attorney General and advise him of the individual's claim of eligibility. In addition to using Federal Government records, the Attorney General may use any facility or resource of any public or nonprofit organization or any other record document or information that may be made available to the Government. Section 74.5 describes the official and unofficial sources that the Government anticipates using for identification and location of eligible persons. Section 74.6 describes the procedures whereby the Office shall endeavor to locate eligible individuals.

All information compiled in these files is subject to the statutory mandates of the Privacy Act. Therefore, the Civil Rights Division is prohibited from using or releasing this information for purposes other than those described in the Division's Privacy Act Notice of Records Systems. 54 FR 13252.

After an individual is determined to be eligible, the regulations provide for a letter of notification to be sent to the individual to notify him or her of a preliminary finding of eligibility. (§ 74.7) Enclosed with the letter will be a form and a request for documentation. The Division attached draft forms which were appended to the proposed regulations as Appendix A to Part 74. The forms are unsworn declarations under penalty of perjury. (28 U.S.C. 1746) The purpose of these forms and the requests for documentation is to verify the identity of the individuals eligible for redress in order to prevent fraud or duplication of payments.

We received 13 comments pertaining to our requests for documentation. These letters expressed concern that the requirements to submit *original* documents, particularly to document the date of birth of a candidate are unduly burdensome. In response to such comments § 74.7(b) has been amended to eliminate the requirement of submission of a photo identification with the current legal name. In addition, documentation requirements in Appendix A to Part 74 have been modified to accept certified copies in lieu of original records as evidence of birth or current legal name and address. Furthermore, we have waived the documentation of date of birth for persons whose identification has been confirmed by the Social Security Administration (SSA). (We estimate that SSA has confirmed over one-third of the possible 60,000 surviving eligible persons.) Finally, ORA will establish a telephone number for persons to call for advice about documentation.

III. Notification and Payment

Upon receipt of a person's unsworn declaration and documentation, the Redress Administrator will make a final determination of eligibility for payment and notify the individual in writing of his finding. (§ 74.8) As required by statute, a person determined to be eligible has up to eighteen months after notification to accept payment. The statute states that a person who accepts payment waives all claims against the United States arising from government actions described in the Act. The regulations also incorporate the statutory requirement that the refusal to accept payment by a person determined to be eligible must be in writing and such refusal will be final for that person and his or her survivors. (§ 74.11)

After funds have been appropriated and actual payments are to be made, the Assistant Attorney General for Civil Rights will certify authorization for payment to the Assistant Attorney General for Justice Management, who will give final authorization to the Secretary of the Treasury. (§ 74.10) Payments will be made beginning with the oldest living eligible person that has been identified at the date the notice goes out, or his or her survivors, until all eligible persons have received payment. (§ 74.12) In accordance with the statute, the categories of survivors who can receive redress payments are limited to spouses, children, and parents. (§ 74.13) The methods for establishing proof of relationship to the deceased eligible person are set forth in § 74.14.

IV. Appeal Procedures

In order to fairly resolve those cases in which the Administrator makes a determination of ineligibility, the regulations have established an appeal process. When an individual is notified in writing of the Administrator's finding of ineligibility and reason or reasons for the finding, the letter also shall inform the individual that he or she may petition for a reconsideration of the determination of ineligibility to the Assistant Attorney General for Civil Rights, or the official designated by the Assistant Attorney General for Civil Rights, and that he or she has the right to submit documentation in support of his or her claim of eligibility. (§ 74.15) The regulations also provide procedures for filing a request for reconsideration. (§ 74.16)

Section 74.17 describes the appeal procedure whereby the Assistant Attorney General for Civil Rights, or the official designated to act on his behalf, reviews the determination of the Redress Administrator and any documentation submitted by the requester, and then notifies the requester of his or her decision to reverse or affirm the Redress Administrator's determination of ineligibility. The decision shall constitute the final action of the Department on that appeal.

Finally, non-substantive changes have been made throughout the regulations in response to comments in order to further clarify the verification and documentation procedures.

V. Regulatory Impact Analysis

This rule is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR 1981 Comp. p.127). Moreover, a regulatory flexibility analysis has not been prepared under the Regulatory Flexibility Act (5 U.S.C. 601–612), because the rule is unlikely to have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 74

Administrative practice and procedure, Aliens, Archives and records, Citizenship and naturalization, Civil rights, Indemnity payments, Minority groups, Nationality, War claims.

For the reasons set forth in the preamble and by the authority vested in me including 28 U.S.C. 509 and 510, chapter I of title 28 of the Code of Federal Regulations is amended by adding part 74 to read as follows:

PART 74—CIVIL LIBERTIES ACT REDRESS PROVISION

Subpart A—General.

Sec.
74.1 Purpose.
74.2 Definitions.

Subpart B—Standards of Eligibility

74.3 Eligibility determinations.
74.4 Individuals excluded from compensation pursuant to section 108(5) of the Act.

Subpart C—Verification of Eligibility

74.5 Identification of eligible persons.
74.6 Location of eligible persons.

Subpart D—Notification and Payment

74.7 Notification of eligibility.
74.8 Notification of payment.
74.9 Conditions of acceptance of payment.
74.10 Authorization for payment.
74.11 Effect of refusal to accept payment.
74.12 Order of payment.
74.13 Pay..ent in the case of a deceased eligible individual.
74.14 Determination of the relationship of statutory heirs.

Subpart E—Appeal Procedures

74.15 Notice of the right to appeal a finding of ineligibility.
74.16 Procedures for filing an appeal.
74.17 Action on appeal.

Appendix A to Part 74—Declarations of Eligibility by Persons Identified by the Office of Redress Administration and Requests for Documentation.

Authority: 50 U.S.C. app. 1989b.

Subpart A—General

§ 74.1 Purpose.

The purpose of this part is to implement section 105 of the Civil Liberties Act of 1988, which authorizes the Attorney General to locate, identify, and make payments to all eligible individuals of Japanese ancestry who were evacuated, relocated, and interned during World War II as a result of government action.

§ 74.2 Definitions.

(a) *The Act* means the Civil Liberties Act of 1988, Pub. L. 100–383, 102 Stat. 903, as codified at 50 U.S.C. app. 1989b et seq., (August 10, 1988).

(b) *The Administrator* means the Administrator in charge of the Office of Redress Administration of the Civil Rights Division.

(c) *Assembly centers and relocation centers* means those facilities established pursuant to the acts described in § 74.4(i)–(ii).

(d) *Child of an eligible individual* means a recognized natural child, an adopted child, or a step-child who lived with the eligible person in a regular parent-child relationship.

(e) *The Commission* means the Commission on Wartime Relocation and Internment of Civilians established by the Commission on Wartime Relocation and Internment Act, 50 U.S.C. app. 1981 note.

(f) *Evacuation, relocation, and internment period* means that period beginning December 7, 1941, and ending June 30, 1946.

(g) *The Fund* means the Civil Liberties Public Education Fund in the Treasury

of the United States administered by the Secretary of the Treasury pursuant to section 104 of the Civil Liberties Act of 1988.

(h) *The Office* means the Office of Redress Administration established in the Civil Rights Division of the U.S. Department of Justice to execute the responsibilities and duties assigned the Attorney General pursuant to Section 105 of the Civil Liberties Act of 1988.

(i) *Parent of an eligible individual* means the natural father and mother, or fathers and mothers through adoption.

(j) *The Report* means the published report by the Commission on Wartime Relocation and Internment of Civilians of its findings and recommendations entitled, *Personal Justice Denied*, Part I and Part II.

(k) *Spouse of an eligible individual* means a wife or husband of an eligible individual who was married to that eligible person for at least one year immediately before the death of the eligible individual.

Subpart B—Standards of Eligibility

§ 74.3 Eligibility determinations.

(a) An individual is found to be eligible if such an individual:

(1) Is of Japanese ancestry; and

(2) Was living on the date of enactment of the Act, August 10, 1988; and

(3) During the evacuation, relocation, and internment period was—

(i) A United States citizen; or

(ii) A permanent resident alien who was lawfully admitted into the United States; or

(iii) An alien, who after the evacuation, relocation and internment period, was permitted by applicable statutes to obtain the status of permanent resident alien extending to the internment period; and

(4) Was confined, held in custody, relocated, or otherwise deprived of liberty or property as a result of—

(i) Executive Order 9066, dated February 19, 1942;

(ii) The Act entitled "An Act to provide a penalty for violation of restrictions or orders with respect to persons entering, remaining, leaving, or committing any act in military areas or zones," approved March 21, 1942; or

(iii) Any other Executive order, Presidential proclamation, law of the United States, directive of the Armed Forces of the United States, or other action taken by or on behalf of the United States or its agents, representatives, officers, or employees, respecting the evacuation, relocation, or internment of individuals solely on the basis of Japanese ancestry.

(b) The following individuals are deemed to have suffered a loss within the meaning of paragraph (a)(4) of this section:

(1) Individuals who were interned under the supervision of the wartime Relocation Authority, the Department of Justice or the United States Army; or

(2) Individuals enrolled on the records of the United States Government during the period beginning on December 7, 1941, and ending June 30, 1946, as being in a prohibited military zone, including those individuals who, during the voluntary phase of the government's evacuation program between the issuance of Public Proclamation No. 1 on March 2, 1942, and the enforcement of Public Proclamation No. 4 on March 29, 1942, filed a "Change of Residence" card with the Wartime Civil Control Administration; or

(3) Individuals ordered by the Navy to leave Bainbridge Island, off the coast of the State of Washington, or Terminal Island, near San Pedro, California; or

(4) Individuals who were members of the Armed Forces of the United States at the time of the evacuation and internment period and whose domicile was in a prohibited zone and as a result of the government action lost property; or

(5) Individuals who were members of the Armed Forces of the United States at the time of the evacuation and internment period and were prohibited by government regulations from visiting their interned families or forced to submit to undue restrictions amounting to a deprivation of liberty prior to visiting their families; or

(6) Individuals who, after March 29, 1942, evacuated and relocated from the West Coast as a result of government action, including those who obtained written permission to travel to a destination outside of the unauthorized areas from the Western Defense Command and the Fourth Army; or

(7) Individuals born in assembly centers, relocation centers or internment camps to parents of Japanese ancestry who had been evacuated, relocated or interned pursuant to paragraph (a)(4) of this section, including children born in the United States to parents of Japanese ancestry who were relocated to the United States from other countries in the Americas during the internment period; or

(8) Individuals who, prior to or at the time of evacuation, relocation or internment period, were in institutions, such as a hospital, pursuant to acts described in paragraph (a)(4) and, were placed under the custody of the Wartime Relocation Authority and confined within the grounds of the institution and not permitted to return to their homes or to go anywhere else.

(c) Paragraph (b) of this section is not an exhaustive list of individuals who are deemed eligible for compensation; there may be other individuals determined to be eligible under the Act on a case-by-case basis by the Redress Administrator.

§ 74.4 Individuals excluded from compensation pursuant to section 108(B) of the Act.

The term "eligible individual" does not include any individual who, during the period beginning on December 7, 1941, and ending on September 2, 1945, relocated to a country while the United States was at war with that country.

Subpart C—Verification of Eligibility

§ 74.5 Identification of eligible persons.

(a) The Office shall establish an information system with names and other identifying information of potentially eligible individuals from the following sources:

(1) Official sources:

(i) The National Archives;

(ii) The Department of Justice;

(iii) The Social Security Administration;

(iv) Internal Revenue Service;

(v) University libraries;

(vi) State and local libraries;

(vii) State and local historical societies;

(viii) State and local agencies.

(2) Unofficial sources:

(i) Potentially eligible individuals;

(ii) Eligible individuals, relatives, legal guardians, representatives, or attorneys;

(iii) Civic Associations;

(iv) Religious organizations;

(v) Such other sources that the Administrator determines are appropriate.

(b) Historic information pertaining to individuals listed in official United States Government records will be analyzed to determine if such persons are eligible for compensation as set forth in section 108 of the Act.

(c) Persons not listed in the historic records of the United States Government who volunteer information pertaining to their eligibility may be required by the Administrator to submit affidavits and documentary evidence to support assertions of eligibility.

§ 74.6 Location of eligible persons.

The Office shall compare the names and other identifying information of eligible individuals from the historical official records of the United States Government with current information from both official and unofficial sources in the information system to determine if such persons are living or deceased and, if living, the present location of these individuals.

Subpart D—Notification and Payment

§ 74.7 Notification of eligibility.

(a) Each individual who has been found to be eligible or their statutory heirs will be sent written notification of such status by the Office. Enclosed with the notification will be a declaration to be completed by the person so notified, or by his or her legal guardian, and a request for documentation of identity.

(b) The declaration and submitted documents (Appendix A to part 74) will be used for a final verification of eligibility in order to ensure that the person identified as eligible by the Office is in fact the person who will receive payment, and shall include a request for the following information:

(1) Current legal name;

(2) Proof of name change if the current legal name is different from the name used when evacuated or interned, such as a marriage certificate or other evidence of the name change as described in Appendix A;

(3) Date of birth;

(4) Proof of date of birth as set forth in Appendix A;

(5) Current address;

(6) Proof of current address as set forth in Appendix A;

(7) Current telephone number;

(8) Social Security Number;

(9) Name when evacuated or interned;

(10) Proof of guardianship by a person executing a declaration on behalf of an eligible person as set forth in Appendix A.

(11) Proof of the relationship to a deceased eligible individual by a statutory heir as set forth in § 74.13 and Appendix A;

(12) Proof of the death of a deceased eligible person as set forth in Appendix A.

(c) The individual must submit a signed and dated statement swearing under penalty of perjury to the truth of all the information provided on the declaration. A natural or legal guardian, or any other person, including the spouse of an eligible person, who the Administrator determines is charged with the care of the individual, may submit a signed and dated statement on behalf of the eligible individual who is incompetent or otherwise under a legal disability.

(d) Upon receipt of an individual's declaration and documentation, the Administrator shall make a determination of verification of the identity of the eligible person.

(e) Each person determined not to be preliminarily eligible after review of the submitted documentation will be notified by the Redress Administrator of the finding of ineligibility and the right to petition for a reconsideration of such a finding.

§ 74.8 Notification of payment.

The Administrator shall, when funds are appropriated for payment, notify an eligible individual in writing of his or her eligibility for payment. Section 104 of the Act limits any appropriation to not more than $500,000,000 for any fiscal year.

§ 74.9 Conditions of acceptance of payment.

(a) Each eligible individual will be deemed to have accepted payment if, after receiving notification of eligibility from the Redress Administrator, the eligible individual does not refuse payment in the manner described in § 74.11.

(b) Acceptance of payment shall be in full satisfaction of all claims arising out of the acts described in § 74.3(a)(4).

§ 74.10 Authorization for payment.

(a) Upon determination by the Administrator of the eligibility of an individual, the authorization for payment of $20,000 to the eligible individual will be certified by the Assistant Attorney General of the Civil Rights Division to the Assistant Attorney General of the Justice Management Division, who will give final authorization to the Secretary of the Treasury for payment out of the funds appropriated for this purpose.

(b) Authorization of payments made to survivors of eligible persons will be certified in the manner described in paragraph (a) of this section to the Secretary of the Treasury for payment to the individual member or members of the class of survivors entitled to receive payment under the procedures set forth in § 74.13. Payments to statutory heirs of a deceased eligible individual will be made only after all the statutory heirs of the deceased person have been identified and verified by the Office.

(c) Any payment to an eligible person under a legal disability, may, in the discretion of the Assistant Attorney General for Civil Rights, be certified for payment for the use of the eligible person, to the natural or legal guardian, committee, conservator or curator, or, if there is no such natural or legal guardian, committee, conservator or curator, to any other person, including the spouse of such eligible person, who the Administrator determines is charged with the care of the eligible person.

§ 74.11 Effect of refusal to accept payment.

If an eligible individual who has been notified by the Administrator of his or her eligibility refuses in writing within eighteen months of the notification to accept payment, the written record of refusal will be filed with the Office and the amount of payment as described in § 74.10 shall remain in the Fund and no payment may be made as described in § 74.12 to such individual or his or her survivors at any time after the date of receipt of the written refusal.

§ 74.12 Order of payment.

Payment will be made in the order of date of birth pursuant to section 105(b) of the Act. Therefore, when funds are appropriated, payment will be made to the oldest eligible individual living on the date of the enactment of the Act, August 10, 1988, (or his or her statutory heirs) who has been located by the Administrator at that time. Payments will continue to be made until all eligible individuals have received payment.

§ 74.13 Payment in the case of a deceased eligible individual.

In the case of an eligible individual as described in § 74.3 who is deceased, payment shall be made only as follows—

(a) If the eligible individual is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

(b) If there is no surviving spouse as described in paragraph (a) of this subsection, such payment shall be made in equal shares to all children of the eligible individual who are living at the time of payment.

(c) If there is no surviving spouse described in paragraph (a) of this section, and if there are no surviving children as described in paragraph (b) of this section, such payment shall be made in equal shares to the parents of the deceased eligible individual who are living at the time of payment.

(d) If there are no surviving spouses, children or parents as described in paragraphs (a), (b), and (c) of this section, the amount of such payment shall remain in the Fund and may be used only for the purposes set forth in section 108(b) of the Act.

§ 74.14 Determination of the relationship of statutory heirs.

(a) A spouse of a deceased eligible individual must establish his or her marriage by one (or more) of the following:

(1) A copy of the public record of marriage, certified or attested;

(2) An abstract of the public record, containing sufficient data to identify the parties, the date and place of marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or other public official authorized to certify the record;

(3) A certified copy of the religious record of marriage;

(4) The official report from a public agency as to a marriage which occurred while the deceased eligible individual was employed by such agency;

(5) An affidavit of the clergyman or magistrate who officiated;

(6) The original certificate of marriage accompanied by proof of its genuineness;

(7) The affidavits or sworn statements of two or more *eyewitnesses* to the ceremony;

(8) In jurisdictions where "Common Law" marriages are recognized, the affidavits or certified statements of the spouse setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits or certified statements from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage, including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife and whether they were generally accepted as such in the communities in which they lived; or

(9) Any other evidence which would reasonably support a finding by the Administrator that a valid marriage actually existed.

(b) A child should establish that he or she is the child of a deceased eligible individual by one of the following types of evidence:

(1) A birth certificate showing that the deceased eligible individual was the child's parent;

(2) An acknowledgment in writing signed by the deceased eligible individual;

(3) Evidence that the deceased eligible individual has been identified as the child's parent by a judicial decree ordering the deceased eligible individual to contribute to the child's support or for other purposes; or

(4) Any other evidence that reasonably supports a finding of a parent-child relationship, such as—

(i) A certified copy of the public record of birth or a religious record showing that the deceased eligible individual was the informant and was named as the parent of the child;

(ii) Affidavits or sworn statements of a person who knows that the deceased eligible individual accepted the child as his or hers; or

(iii) Information obtained from public records or a public agency, such as school or welfare agencies, which shows that with the deceased eligible individual's knowledge, the deceased eligible individual was named as the parent of the child.

(c) Except as may be provided in paragraph (b) of this section, evidence of the relationship by an adopted child must be shown by a certified copy of the decree of adoption. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where the release of such documents or information is prohibited, a revised birth certificate will be sufficient to establish the fact of adoption.

(d) The relationship of a step-child to a deceased eligible individual shall be demonstrated by—

(1) Evidence of birth to the spouse of the deceased eligible individual as required by paragraphs (e) and (f) of this section;

(2) Evidence of adoption as required by section (b) of this section when the step-child was adopted by the spouse;

(3) Other evidence which reasonably supports the finding of a parent-child relationship between the child and the spouse;

(4) Evidence that the step-child was either living with or in a parent-child relationship with the deceased eligible individual at the time of the eligible individual's death; and

(5) Evidence of the marriage of the deceased eligible individual and the step-child's natural or adoptive parent, as required by paragraph (a) of this section.

(e) A parent of a deceased eligible individual may establish his or her parenthood of the deceased eligible individual by providing one of the following types of evidence:

(1) A birth certificate that shows the person to be the deceased eligible individual's parent;

(2) An acknowledgment in writing signed by the person before the eligible individual's death; or

(3) Any other evidence which reasonably supports a finding of such a parent-child relationship, such as—

(i) A certified copy of the public record of birth or a religious record showing that the person was the informant and was named as the parent of the deceased eligible individual;

(ii) Affidavits or sworn statements of persons who know the person had accepted the deceased eligible individual as his or her child; or

(iii) Information obtained from public records or a public agency such as school or welfare agencies, which shows that with the deceased eligible individual's knowledge, the person had been named as parent of the child.

(f) An adoptive parent of a deceased eligible individual must show one of the following as evidence—

(1) A certified copy of the decree of adoption and such other evidence as may be necessary; or

(2) In jurisdictions where petition must be made to the court for release of such documents or information, or where release of such documents or information is prohibited, a revised birth certificate showing the person as the deceased eligible individual's parent will suffice.

Subpart E—Appeal Procedures

§ 74.15 Notice of the right to appeal a finding of ineligibility.

Persons determined to be ineligible by the Administrator will be notified in writing of the determination, the right to petition for a reconsideration of the determination of ineligibility to the Assistant Attorney General for Civil Rights, and the right to submit any documentation in support of eligibility.

§ 74.16 Procedures for filing an appeal.

A request for reconsideration shall be made to the Assistant Attorney General for Civil Rights within 60 days of the receipt of the notice from the Administrator of a determination of ineligibility. The request shall be made in writing, addressed to the Assistant Attorney General of the Civil Rights Division, P.O. Box 65808, Washington, DC. 20035–5808. Both the envelope and the letter of appeal itself must be clearly marked: "Redress Appeal." A request not so addressed and marked shall be forwarded to the Office of the Assistant Attorney General for Civil Rights, or the official designated to act on his behalf, as soon as it is identified as an appeal of eligibility. An appeal that is improperly addressed shall be deemed not to have been received by the Department until the Office receives the appeal, or until the appeal would have been so received with the exercise of due diligence by Department personnel.

§ 74.17 Action on appeal.

(a) The Assistant Attorney General or the official designated to act on his behalf shall:

(1) Review the original determination;

(2) Review additional information or documentation submitted by the individual to support a finding of eligibility;

(3) Notify the petitioner when a determination of ineligibility is reversed on appeal; and

(4) Inform the Redress Administrator.

(b) Where there is a decision affirming the determination of ineligibility, the letter to the individual shall include a statement of the reason or reasons for the affirmance.

(c) A decision of affirmance shall constitute the final action of the Department on that redress appeal.

Appendix A to Part 74—Declarations of Eligibility by Persons Identified by the Office of Redress Administration and Requests for Documentation.

Form A:

Declaration of Eligibility by Persons Identified by the Office of Redress Administration

U.S. Department of Justice
Civil Rights Division
Office of Redress Administration

This declaration shall be executed by the identified eligible person or such person's designated representative.

Complete the following information:

(1) Current Legal Name: _____
(2) Current Address:
Street: _____
City, State and Zip Code: _____

(3) Telephone Number:

(Home) _____

(Business) _____
(4) Social Security Number: _____
(5) Date of Birth: _____
(6) Name Used When Evacuated or Interned:

Read the following carefully before signing this document. A False Statement may be grounds for punishment by fine (U.S. Code, title 31, section 3729), and fine or imprisonment or both (U.S. Code, title 18, section 287 and section 1001).

I declare under penalty of perjury that the foregoing is true and correct.

Signature

Date

Privacy Act Statement: The authority for collecting this information is contained in 50 U.S.C. app. 1989b. The information that you provide will be used principally for verifying eligible persons for payment under the restitution provision of the Civil Liberties Act of 1988.

Required Documentation: The following documentation must be submitted with the above Declaration to complete your verification.

DOCUMENTATION:

I. Identification

A document with your current legal name and address. For example, you might send a bank or financial statement, or a monthly utility bill. Submit either a notarized copy of the record or an original that you do not need back.

II. *One* Document of Date of Birth

A certified copy of a birth certificate or a copy of another record of birth that has been certified by the custodian of the records. For example, you might send a religious record which shows your date of birth, or a hospital birth record. If you do not have any record of your birth the Administrator will accept affidavits of two or more persons attesting to the date of your birth.

If your notification letter says that the Social Security Administration has confirmed your date of birth, you *do not* have to send us any further evidence of your birth date.

III. *One* Document of Name Change

If your current legal name is the same as your name when evacuated or interned, this section does not apply.

This section is only required for persons whose current legal name is different from the name used when evacuated or interned.

1. A certified copy of the public record of marriage.
2. A certified copy of the divorce decree.
3. A certified copy of the court order of a name change.
4. Affidavits or sworn statements of two or more persons attesting to the name change.

IV. *One* Document of Evidence of Guardianship

If you are executing this document for the person identified as eligible, you must submit evidence of your authority.

If you are the legally-appointed guardian, committee, or other legally-designated representative of such an individual, the evidence shall be a certificate executed by the proper official of the court appointment.

If you are not such a legally-designated representative, the evidence shall be an affidavit describing your relationship to the recipient or the extent to which you have the care of the recipient or your position as an officer of the institution in which the recipient is institutionalized.

Form B:

Declaration of Verification by Persons Identified as Statutory Heirs by the Office of Redress Administration

U.S. Department of Justice
Civil Rights Division
Office of Redress Administration

This declaration shall be executed by the spouse of a deceased eligible individual as statutory heir in accordance with Section 105(a)(7) of the Civil Liberties Act of 1988, 50 U.S.C. app. 1989b.

Complete the following information:

(1) Current Legal Name: _____
(2) Current Address:
Street: _____
City, State and Zip Code: _____

(3) Telephone Number:

(Home) _____

(Business) _____
(4) Social Security Number: _____
(5) Date of Birth: _____
(6) Relationship to the Deceased: _____
(6) Date of marriage to the Deceased: _____

Read the following carefully before signing this document.

A False Statement may be grounds for punishment by fine (U.S. Code, Title 31, section 3729), and fine or imprisonment or both (U.S. Code, Title 18, sections 287 and Section 1001).

I declare under penalty of perjury that the foregoing is true and correct.

Signature

Date

Privacy Act Statement: The authority for collecting this information is contained in 50 U.S.C. app. 1989b. The information that you provide will be used principally for verifying eligible persons for payment under the restitution provision of the Civil Liberties Act of 1988.

Required Documentation: The following documentation must be submitted with the above Declaration to complete your verification.

DOCUMENTATION:

I. *One* Document as Evidence of the Deceased Eligible Individual's Death

1. A certified copy or extract from the public records of death, coroner's report of death, or verdict of a coroner's jury.
2. A certificate by the custodian of the public record of death.
3. A statement of the funeral director or attending physician, or intern of the institution where death occurred.
4. A certified copy, or extract from an official report or finding of death made by an agency or department of the United States.
5. If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department, or a copy of public record of death in the foreign country.
6. If you cannot obtain any of the above evidence of your spouse's death, you must submit other convincing evidence to ORA such as the signed statements of two or more people with personal knowledge of the death, giving the place, date, and cause of death.

II. *One* Document as Evidence of Your Marriage to the Deceased Eligible Individual

1. A copy of the public records of marriage, certified or attested, or an abstract of the public records, containing sufficient data to identify the parties, the date and place of marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or other public official authorized to certify the record, or a certified copy of the religious record of marriage.
2. An offical report from a public agency as to a marriage which occurred while the deceased eligible individual who was employed by such agency.
3. The affidavit of the clergyman or magistrate who officiated.
4. The certified copy of a certificate of marriage attested to by the custodian of the records.

5. The affidavits or sworn statements of two or more eyewitnesses to the ceremony.

6. In jurisdictions where "Common Law" marriages are recognized, the affidavits or certified statements of the spouse setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits or certified statements from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage, including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife and whether they were generally accepted as such in the communities in which they lived.

7. Any other evidence which would reasonably support a belief by the Administrator that a valid marriage actually existed.

III. Identification

A document with your current legal name and address. For example, you might send a bank or financial statement or a monthly utility bill. Submit either a notarized copy of the record or an original that you do not need back.

IV. *One* Document of Date of Birth

A certified copy of a birth certificate or a copy of another record of birth that has been certified by the custodian of the records. For example, you might send a copy of a religious record which shows your date of birth, or a hospital birth record. If you do not have any record of your birth, the Administrator will accept affidavits of two or more persons attesting to the date of your birth.

If your notification letter says that the Social Security Administration has confirmed your date of birth, you *do not* have to send us any further evidence of your birth date.

V. *One* Document of Name Change

If your current legal last name is the same as the last name of the deceased eligible individual or the same as at the time of marriage this section does not apply.

This section is only required for persons whose current legal last name is different from the last name of the deceased eligible.

1. A certified copy of the public record of marriage.

2. A certified copy of the divorce decree.

3. A certified copy of the court order of a name change.

4. Affidavits or sworn statements of two or more persons attesting to the name change.

VI. *One* Document of Evidence of Guardianship

If you are executing this document for the person identified as eligible, you must submit evidence of your authority.

If you are the legally-appointed guardian, committee, or other legally-designated representative of such an individual, the evidence shall be a certificate executed by the proper official of the court appointment.

If you are not such a legally-designated representative, the evidence shall be an affidavit describing your relationship to the recipient or the extent to which you have the care of the recipient or your position as an officer of the institution in which the recipient is institutionalized.

Form C:

Declaration of Verification by Persons Identified by the Office of Redress Administration as Statutory Heirs

U.S. Department of Justice
Civil Rights Division
Office of Redress Administration

This declaration shall be executed by the child of a deceased eligible individual as a statutory heir in accordance with section 105(a)(7) of the Civil Liberties Act of 1988, 50 U.S.C. app. 1989b.

Complete the following information:

(1) Current Legal Name: _____
(2) Current Address:
Street: _____
City, State and Zip Code: _____

(3) Telephone Number:

(Home) _____

(Business) _____
(4) Social Security Number: _____
(5) Date of Birth: _____
(6) Relationship to the Deceased: _____
(7) List the names and address (if known) of all other children of the deceased eligible individual. This includes all recognized natural children, step-children who lived with the deceased eligible and adopted children. Enter the date of death for any persons who are deceased.

_____
_____
_____
_____

Read the following carefully before signing this document. A False Statement may be grounds for punishment by fine (U.S. Code, title 31, section 3729), and fine or imprisonment or both (U.S. Code, title 18, section 287 and section 1001).

I declare under penalty or perjury that the foregoing is true and correct.

_____
Signature

_____
Date

Privacy Act Statement: The authority for collecting this information is contained in 50 U.S.C. app. 1989b. The information that you provide will be used principally for verifying eligible persons for payment under the restitution provision of the Civil Liberties Act of 1988.

Required Documentation for Children of Deceased Eligible Individual

The following documentation must be submitted with the above Declaration to complete your verification.

DOCUMENTATION:

I. *One* Document as Evidence of Your Parent's Death

1. A certified copy or extract from the public records of death, coroner's report of death, or verdict of a coroner's jury.

2. A certificate by the custodian of the public record of death.

3. A statement of the funeral director or attending physician, or intern of the institution where death occurred.

4. A certified copy, or extract from an official report or finding of death made by an agency or department of the United States.

5. If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department, or a copy of public record of death in the foreign country.

6. If you cannot obtain any of the above evidence of your parent's death, you must submit other convincing evidence to ORA such as the signed statements of two or more people with personal knowledge of the death, giving the place, date, and cause of death.

II. *One* Document as Evidence of Your Relationship to Your Parent

Natural Child

1. A certified copy of a birth certificate showing that the deceased eligible individual was your parent.

2. If the birth certificate does not show the deceased eligible individual as your parent, other proof would be a certified copy of:

(a) An acknowledgment in writing signed by the deceased eligible individual.

(b) A judicial decree ordering the deceased eligible individual to contribute to your support or for other purposes.

(c) A certified copy of the public record of birth or a religious record showing that the deceased eligible individual was the informant and was named as your parent.

(d) Affidavits or sworn statements of a person who knows that the deceased eligible individual accepted the child as his or hers.

(e) A record obtained from a public agency or public records, such as school or welfare agencies, which shows that with the deceased eligible individual's knowledge, the deceased eligible individual was named as the parent of the child.

Adopted Child

Evidence of the relationship by an adopted child must be shown by a certified copy of the decree of adoption. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where the release of such documents or information is prohibited, a revised birth certificate will be sufficient to establish the fact of adoption.

Step-Child

Submit all *three* as evidence of the step-child relationship.

1. One document as evidence of birth to the spouse of the deceased eligible individual as listed under the "natural child" and "adoptive child" sections to show that you were born to or adopted by the deceased individual's spouse, or other evidence which reasonably supports the existence of a parent-child relationship between you and the spouse of the deceased eligible person.

2. One document as evidence that you were either living with or in a parent-child relationship with the deceased eligible individual at the time of the eligible individual's death.

3. One document as evidence of the marriage of the deceased eligible individual and the spouse, such as a copy of the record of marriage, certified or attested, or by an abstract of the public records, containing sufficient data to identify the parties and the date and place of marriage issued by the officer having custody of the record, or a certified copy of a religious record of marriage.

III. Identification

A document with your current legal name and address. For example, you might send a bank or financial statement, or a monthly utility bill. Submit either a notarized copy of the record or an original that you do not want back.

IV. *One* Document of Date of Birth

A certified copy of a birth certificate or a copy of another record of birth that has been certified by the custodian of the records. For example, you might send a copy of a religious record which shows your date of birth, or a hospital birth record. If you do not have any record of your birth, the Administrator will accept affidavits of two or more persons attesting to the date of your birth.

If your notification letter says that the Social Security Administration has confirmed your date of birth, you *do not* have to send us any further evidence of your birth date.

V. *One* Document of Name Change

If your current legal last name is the same as the last name of the deceased eligible, this section does not apply.

This section is only required for persons whose current legal last name is different from the last name of the deceased eligible.

Submit *one* of the following as evidence of the change of legal name.

1. A certified copy of the public record of marriage.

2. A certified copy of the divorce decree.

3. A certified copy of the court order of a name change.

4. Affidavits or sworn statements of two or more persons attesting to the name change.

VI. *One* Document of Evidence of Guardianship

If your are executing this document for the person identified as an eligible beneficiary, you must submit evidence of your authority.

If you are a legally-appointed guardian, committee, or other legally-designated representative of such an individual, the evidence shall be a certificate executed by the proper official of the court appointment.

If you are not such a legally-designated representative, the evidence shall be an affidavit describing your relationship to the recipient or the extent to which you have the care of the recipient or your position as an officer of the institution in which the recipient is institutionalized.

Form D:

Declaration of Verification by Persons Identified by the Office of Redress Administration as Statutory Heirs

U.S. Department of Justice Civil Rights Division Office of Redress Administration

This declaration shall be executed by the identified parent of a deceased eligible individual as statutory heir in accordance with Section 105(a)(7) of the Civil Liberties Act of 1988, 50 U.S.C. app. 1989b.

Complete the following information:

(1) Current Legal Name: _____
(2) Current Address: _____
Street: _____
City, State and Zip Code: _____
(3) Telephone Number: _____
(Home) _____
(Business) _____
(4) Social Security Number: _____
(5) Date of Birth: _____
(6) Relationship to the Deceased: _____
(7) The name of the child's other parent and the address if known. This includes fathers and mothers through adoption. If the parent is deceased provide the date and place of death. _____

Read the following carefully before signing this document. A False Statement may be grounds for punishment by fine (U.S. Code, title 31, section 3729), and fine or imprisonment or both (U.S. Code, title 18, section 287 and section 1001).

I declare under penalty of perjury that the foregoing is true and correct.

_____
Signature

_____
Date

Privacy Act Statement: The authority for collecting this information is contained in 50 U.S.C. app. 1989b. The information that you provide will be used principally for verifying eligible persons for payment under the restitution provision of the Civil Liberties Act of 1988.

Required Documentation.

The following documentation must be submitted with the above Declaration to complete your verification.

DOCUMENTATION:

I. *One* Document as Evidence of Your Child's Death

1. A certified copy or extract from the public records of death, coroner's report of death, or verdict of a coroner's jury.

2. A certificate by the custodian of the public record of death.

3. A statement of the funeral director or attending physician, or intern of the institution where death occurred.

4. A certified copy, or extract from an official report or finding of death made by an agency or department of the United States.

5. If death occurred outside the United States, an official report of death by a United States Consul or othe employee of the State Department, or a copy of public record of death in the foreign country.

6. If you cannot obtain any of the above evidence, you must submit other convincing evidence to ORA such as the signed statements of two or more people with personal knowledge of the death, giving the place, date, and cause of death.

II. *One* Document as Evidence of Your Parent-Child Relationship Natural Parent

1. A certified copy of a birth certificate that shows you to be the deceased eligible individual's parent.

2. A certified acknowledgment in writing signed by you before the eligible individual's death.

3. Any other evidence which reasonably supports a finding of such a parent-child relationship, such as a certified copy of the public record of birth or a religious record showing that you were the informant and were named as the parent of the deceased eligible individual.

4. Affidavits or sworn statements of persons who know that you had accepted the deceased eligible individual as his or her child.

5. Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with the deceased eligible individual's knowledge, you were named as parent.

Adoptive Parent

1. A certified copy of the decree of adoption and such other evidence as may be necessary.

2. In jurisdictions where petition must be made to the court for release of such documents or information, or where release of such documents or information is prohibited, a revised birth certificate showing the person as the deceased eligible individual's parent will suffice.

III. Identification

A document with your current legal name and address. For example, you might send a bank or financial statement, or a monthly utility bill. Submit either a notarized copy or an original that you do not need back.

IV. *One* Document of Date of Birth

A certified copy of a birth certificate or a copy of another record of birth that has been certified by the custodian of the records. For example, you might send a copy of a religious record which shows your date of birth, or a hospital birth record. If you do not have any record of your birth, the Administrator will accept affidavits of two or more persons attesting to the date of your birth.

If your notification letter says that the Social Security Administration has confirmed your date of birth, you *do not* have to send any further evidence of your birth date.

V. *One* Document of Name Change

If your current legal last name is the same as the last name of the deceased eligible individual this section does not apply.

This section is only required for persons whose current legal last name is different from the last name of the deceased eligible.

1. A certified copy of the public record of marriage.

2. A certified copy of the divorce decree.

3. A certified copy of the court order of a name change.

4. Affidavits or sworn statements of two or more persons attesting to the name change.

VI. *One* Document of Evidence of Guardianship

If you are executing this document for the person identified as eligible, you must submit evidence of your authority.

If you are the legally-appointed guardian, committee, or other legally-designated representative of such an individual, the evidence shall be a certificate executed by the proper official of the court appointment.

If you are not such a legally-designated representative, the evidence shall be an affidavit describing your relationship to the

recipient or the extent to which you have the care of the recipient or your position as an officer of the institution in which the recipient is institutionalized.

Approved the 10th day of August, 1989.

Dick Thornburgh,

Attorney General.

[FR Doc. 89-19362 Filed 8-17-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Pennsylvania Regulatory Program; Civil Penalty Assessments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSMRE is announcing the approval of an amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment provides Pennsylvania's Department of Environmental Resources (DER) with the option to not assess a civil penalty for a Compliance Order violation when the calculated amount of the assessment is less than $1,000 and the violation does not relate to a discharge. The amendment is intended to give greater discretion to the State regulatory authority while maintaining consistency with the corresponding Federal regulations.

EFFECTIVE DATE: August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Third Floor, Suite 3C, Harrisburg Transportation Center, 4th and Market Streets, Harrisburg, Pennsylvania 17101; Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Submission of Amendment
III. Director's Findings
IV. Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Pennsylvania Program

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information on the general background of the Pennsylvania program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the July 30, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of Amendment

By letter dated August 17, 1988 (Administrative Record No. PA 699), Pennsylvania proposed to amend its Program Guidance Manual at Section 1:3:6, paragraph 4 by replacing the mandatory civil penalty provision for each Compliance Order violation with a discretionary civil penalty provision. Under the existing Pennsylvania program, all assessments for violations cited on Compliance Orders are mandatory, regardless of their nature.

Following receipt of the proposed amendment by OSMRE, the DER discovered that the State's Civil Penalty Program document at Section II, paragraph 4 had to be revised to reflect the proposed change in the Program Guidance Manual. A proposal to amend the Civil Penalty Program document was submitted to OSMRE by letter dated June 21, 1989 (Administrative Record Number PA 780). The substantive content of the proposed revision to the Civil Penalty Program document is identical to the proposed change in the Program Guidance Manual with the added limitation that the violation not be related to a discharge. OSMRE is therefore treating the August 17, 1988, and June 21, 1989, submissions as one amendment since they concern the same substantive issue.

OSMRE announced receipt of the proposed amendment in the October 6, 1988, **Federal Register** (53 FR 39316), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. Comments were not solicited on the June 21, 1989, submission because the change submitted by the State was considered to be within the scope of the original proposal.

III. Director's Findings

The mandatory civil penalty provision for a Compliance Order violation was approved as part of Pennsylvania's Civil Penalty Program on March 20, 1984 (49 FR 10253), along with other civil penalty provisions. At that time, the Secretary of the Interior found that the program and its accompanying policy statements and guidance manuals provided for civil and criminal penalties no less stringent than those of Section 518 of SMCRA. The Secretary also found that the program's procedures for assessing and reviewing civil penalty assessments were the same as or similar to those in Section 518 of SMCRA and no less effective than those provided by 30 CFR part 845.

The proposed amendment will provide DER with the option to waive the civil penalty for any Compliance Order violation when the calculated assessed amount of the penalty is less than $1,000 and the violation does not relate to a discharge. This amendment will not affect Section 2, paragraph 3 of the Civil Penalty Program document which requires mandatory civil penalties when the assessment amount for a Compliance Order violation is $1,000 or greater.

The Federal counterpart at 30 CFR 845.12 requires a mandatory civil penalty for each violation assigned 31 or more points which, under the Federal assessment scheme, equates to $1,100. Thus, the proposed amendment provides for a mandatory civil penalty at a lower dollar level than do the Federal rules.

The U.S. District Court for the District of Columbia, in *In re: Permanent Surface Mining Regulation Litigation* (Civil Action 79-1144, February 26, 1980), ruled that SMCRA requires states to develop penalty systems incorporating the penalty criteria listed in section 518(a) of the Act and that these systems must result in the imposition of penalties no less stringent than those set forth in the Act; however, penalties need not be assessed in all cases where they would be under 30 CFR part 845, nor need penalty amounts be equivalent to those of 30 CFR part 845.

Under section 518(a) of SMCRA, the assessment of civil penalties by the regulatory authority is discretionary, except when a violation leads to the issuance of a cessation order. In determining the amount of penalty, a regulatory authority is required by section 518(a) to give consideration to: (1) The permittee's history of previous violations, (2) the seriousness of the violation, (3) whether the permittee was negligent; and (4) the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification. These criteria are present in Pennsylvania's system of assessment of civil penalties. Furthermore, the State's rules at 25 PA Code 86.193(a) provide for mandatory civil penalties for each violation which is included as a basis for a cessation order.

For the reasons discussed above, the Director finds that the amendment provides for the assessment of civil penalties no less stringent than those in section 518 of SMCRA and that the procedural requirements relating to civil penalty assessments are consistent with 30 CFR part 845.

IV. Disposition of Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Pennsylvania program. Only one, the United States Environmental Protection Agency (EPA), provided substantive comments. It suggested that Pennsylania and OSMRE consider the feasibility of dismissing civil penalties only when the accumulative total of civil penalties for the respective facility does not exceed $1,000 annually (Administrative Record No. PA 716). Otherwise, all civil penalties would become due and payable.

OSMRE does not accept this comment because the State's system for assessment of civil penalties already gives consideration to a violator's history of previous violations. Section 86.194(b)(6) of the Pennsylvania Code requires that a penalty assessment be increased by a factor of 5.0 percent for each previous violation within the previous two-year period. Each previous violation must be counted without regard to whether it led to a civil penalty assessment. OSMRE believes that Pennsylvania's system for assessment of civil penalties which includes consideration of the permittee's history of previous violations achieves the financial deterrent recommended by the commenter.

The Director also solicited public comments in the October 6, 1988 **Federal Register** (53 FR 39316). No comments were received and no one requested a public hearing to present testimony.

V. Director's Decision

For the reasons discussed in the finding above, the Director is approving the amendment as submitted to OSMRE on August 17, 1988, and June 21, 1989.

The Federal rules at 30 CFR part 938 codifying decisions concerning the Pennsylvania program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from section 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSMRE is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of Interior has determined that this rule will not have a signficant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Managment and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 10, 1989.

Alfred E. Whitehouse,

Acting Assistant Director Eastern Field Operations.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 938—PENNSYLVANIA

1. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 938.15, paragraph (q) is added to read as follows:

§ 938.15 Approval of regulatory program amendments.

* * * * *

(q) The following amendment pertaining to discretionary civil penalties as submitted to OSMRE on August 17, 1988, and June 21, 1989, is approved effective August 18, 1989: Civil Penalty Program, Section II (Assessment), paragraph 4, and Program Guidance Manual, Section 1:3:6 (Civil Penalty Assessments) Part 1—Coal, paragraph 4.

[FR Doc. 89-19453 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 146

[FRL-3631-5]

Underground Injection Control Program; Water-Brine Interface Mechanical Integrity Test for Class III Salt Solution Mining Injection Wells

AGENCY: Environmental Protection Agency.

ACTION: Notice of alternative method; interim approval with request for comments.

SUMMARY: The Director of the Office of Drinking Water, Environmental Protection Agency (EPA), is granting a two-year interim approval for the use of the Water-Brine Interface mechanical integrity test as an alternative to the tests specified in the Code of Federal Regulations 40 CFR 146.8(b) for the demonstration of no significant leaks in the casing, tubing, or packer. The Agency intends this approval to apply to Class III salt solution mining injection wells on a national basis. The test is referred to as the Water-Brine Interface Method.

To better define the use of this alternative test, EPA requests comments and further data on the viability of this alternative. During the two-year interim approval, the Agency intends to study the test to verify that it provides comparable results to the tests currently specified in 40 CFR 146.8(b) and to refine the criteria for its use. Based on this analysis, the Agency will then issue a final determination on its use as an alternative to existing tests for demonstrating no significant leaks in the casing, tubing, or packer.

DATES: The interim approval period for this alternative mechanical integrity test becomes effective September 18, 1989. Written comments and referenced data may be submitted, and will be considered by EPA in making its decision on whether to grant final approval. EPA requests that such written and any referenced data be submitted by February 19, 1991.

ADDRESSES: Comments should be addressed to Jeffrey B. Smith, Office of

Drinking Water (WH-550E), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A copy of the comments and supporting documents will be available for review during normal business hours at EPA Headquarters, Room 1103, East Tower, 401 M Street SW., Washington, DC and at EPA Region V, 111 West Jackson Boulevard, Trans Union Building, 9th Floor, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Smith, Office of Drinking Water (WH-550E), U.S. EPA, Washington, DC 20460 at: (202) 475-8459 or Harlan Gerrish, Drinking Water Branch, U.S. EPA, 111 West Jackson Boulevard, Trans Union Building, 9th Floor, Chicago, IL 60604 at: (312) 886-2930.

SUPPLEMENTARY INFORMATION:

I. Background

The Safe Drinking Water Act (SDWA) (42 U.S.C. 300h, *et seq.*) is intended to protect underground sources of drinking water (USDWs) from contamination by underground injection. One of the cornerstones of the Underground Injection Control (UIC) Program is the mechanical integrity of the wells. Mechanical Integrity (MI) is defined as the absence of significant leaks in the casing, tubing, or packer, and the absence of significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection wellbore. This movement can occur from either the injection zone or from other zones or aquifers. Acceptable methods of evaluating mechanical integrity are specified in 40 CFR 146.8 for State programs administered by EPA (direct implementation), and in the program applications of the States with primary enforcement responsibility (primacy) for injection wells. Section 146.8(d) states that the Director may allow alternative mechanical integrity tests if the Administrator approves the alternative method. The Director of the Office of Drinking Water has been delegated the authority to approve alternative tests.

An alternative method is needed for the Class III salt solution wells because of the great difficulty which has been encountered in attempting to test these wells with a tubing and packer. Typically, a tubing and packer would have to be installed in the well for a standard test to be run. Scale formed on the interior surface of the casing often makes establishment of a seal across the packer very difficult.

The EPA is granting approval for a period of two years from (insert date 30 days after publication) for the use of an alternative mechanical integrity test known as the Water-Brine Interface Method. The Salt Institute has requested that EPA approve this test as an alternative mechanical integrity test. This test may be applied to Class III salt solution mining injection wells. The information gathered during the two year interim period will be used to verify the effectiveness of the alternative. Any necessary changes in the test will be identified during the interim approval period.

II. Application and Description of the Test

A. Application

The field design of a salt solution mining operation is dependant upon the morphology of the salt formation being mined. If the salt formation is a dome or a very thick layer, single wells are commonly used. In this instance, typically one well is drilled for each cavern. The well has a surface casings and within it, a production casing. Both casing are cemented to the surface, and tubing is placed inside the casing. Water or partially saturated brine is injected through either the tubing or the annulus and salt saturated brine is returned up the annulus or the tubing, respectively.

If the salt formation is bedded, two or more wells are usually drilled, then connected by one of several technologies, and circulation of liquid through various wells established. In this case, the well construction consists of a surface casing and a production casing reaching to the top of the salt, both of which are cemented to the surface. In a gallery containing two wells, one well is used for injection and the other for production. If there are more than two wells in the gallery, the additional wells may be used for either injection or production. None of these variations in geology, well construction, or field design affect the proposed alternative test.

A pressure sufficient to cause the produced brine to flow through the wells and piping to the production facilities is maintained within the cavern. This results in a pressure differential between the well bore and any aquifer adjacent to it.

B. Testing Method

Fresh water (lower specific gravity) is emplaced between the wellhead assembly and the cavern brine (higher specific gravity) and, due to the force of buoyancy, remains there with a relatively distinct interface between the two liquids. The contribution of buoyant force to the pressure at the wellhead can be determined by measurements using a dead weight gauge before and after the fresh water is introduced into the well. If a portion of the fresh water is removed from the casing through a leak or by intentional release, the interface between the water and the brine moves up the casing and a drop in pressure will result. This is because a greater amount of cavern pressure is required to support the more dense cavern brine replacing the fresh water which has been moved. The Water-Brine Interface Method indicates leakage through changes in the wellhead pressure which result from the upward movement of the water-brine interface. A monitoring method which can accurately detect small pressure changes has been developed to make this test effective.

By measuring the change in pressure, the upward movement of the water-brine interface in the casing can be calculated. The extent of movement is obtained by dividing any pressure drop observed during the test by the product of the difference of the specific gravities of the two liquids (above and below the interface) and the conversion constant of 0.4331 psi per foot.

$$M = \frac{NPC}{(SG1-SG2)\times k}$$

where:

NPC = the net pressure change in pounds per square inch (psi),
SG1 = the specific gravity of the cavern brine,
SG2 = the specific gravity of the injected fluid (water),
k = 0.4331 psi/ft, a conversion constant (pressure gradient for fresh water), and
M = the upward movement of the interface in ft.

The rate of leakage can be determined by multiplying the casing volume per foot of length by M, the distance which the interface has moved, and dividing the result by the length of the test.

The sensitivity of the test is a function of two factors: (1) The duration of the test; and, (2) the sensitivity of the pressure gauge. In theory, with proper design, almost any sensitivity can be achieved, particularly by extending the duration of the test.

C. Procedure

The procedure to run this test is as follows:

1. Withdraw fluid from the test well until the specific gravity of the fluid is constant and record the value.
2. Measure the wellhead pressure.
3. Withdraw fluid from a reference well until the specific gravity of withdrawn fluids is constant. Shut-in the reference well and take a pressure reading. If there is only one well in the system, the tubing is the reference well and the casing tubing annulus is the test well.
4. Inject fresh water in the test well in sufficient quantity to fill all but the bottom 50 ft of the well. To achieve this, inject fresh water until the wellhead pressure increases by the amount calculated using the following formula:

Pressure increase = (D-50)×(SG1-SG2)×k

where:

D = depth of the well,
SG1 = the specific gravity of the cavern brine,
SG2 = the specific gravity of the injected fluid (water), and
k = 0.4331 psi/ft, a conversion constant (pressure gradient for fresh water).

Determine the net pressure change during the injection in the reference well. Add this pressure change to the calculated pressure increase for the test well to obtain the final pressure necessary for proper placement of the interface.

5. In order to maintain a sharp interface, inject the fresh water at a rate which will not cause the interface to move downward at a rate of greater than 20 feet per minute.
6. Wait a minimum of 36 hours for the test and reference wells to come to temperature equilibrium.
7. At the conclusion of the 36 hours, the pressure of both wells must be checked against the original pressures to assure no significant movement of the interface. If pressure differences can be explained by the wells coming to temperature equilibrium then the test may proceed. If pressure differences cannot be explained by the wells coming to temperature equilibrium then the operator must bleed a minimum of one casing volume from both wells and start the test again at step 1.
8. Simultaneously measure the wellhead pressures for both the test well and reference well at one minute intervals for a minimum of 10 readings. (Use a deadweight gauge or similar device with a sensitivity of 0.1 psi or better.) Calculate the average pressure at the test well and the reference well and the difference between them.
9. Wait eight hours.
10. Repeat step seven.
11. Calculate the net pressure change at the test well as follows:

NPC = P(start) − P(end)

where:

NPC = Net Pressure Change.
Pstart = average pressure of test well at the beginning of the test minus average pressure of reference well at the start of the test.
Pend = average pressure of the test well at the conclusion of the test minus the average pressure of the reference well at the conclusion of the test.

12. If the calculations indicate a net pressure change of greater than 0.5 psi/hr, the well has failed to demonstrate mechanical integrity.

III. Basis for Determination

All technical documentation supporting the Water-Brine Interface Method will be available for review at EPA offices mentioned in the Summary of this notice. EPA developed the requirements and limitations of the testing method to demonstrate mechanical integrity pursuant to 40 CFR 146.8(b) after considering test results on test wells at the Morton Salt Plant at Rittman, Ohio from July 5-13, 1988 and from June 16-20, 1989.

Further consideration was given to the following technical documents:

(1) "Significance of Regulatory Constraints on the Operation of Packerless Injection Wells." K.I. Kamath, et. al. SPE #17047

(2) "Solar Ponds Collect Sun's Heat." R.K. Multer, Chemical Engineering, March, 1982.

IV. Special Conditions

A. Limitations for Conducting the Water-Brine Interface Method Mechanical Integrity Test

The following are limitations for running the Water-Brine Interface Method mechanical integrity test:

1. A reference well must be used.
2. Verification that there is no salt crystallization inside the casing must be included with the test results.
3. The test well must be filled with a lower specific gravity fluid to within fifty feet of the bottom of the casing.
4. The test and reference wells must reach temperature equilibrium prior to initiation of the test.
5. Deadweight gauges (or similar device) with a minimum sensitivity of 0.1 psi must be used.
6. Wellhead pressures for the reference well and the test well must be read simultaneously.

B. Informational Requirements for the Test

During the interim approval period the EPA is requesting affected State UIC Directors to make certain determinations and supply necessary information for effective evaluation of this test, as follows:

1. The results of the testing must include the following well name and/or number, county, and State. In addition, the information must indicate the number of wells in the gallery, the depth of the wells, the construction and configuration of the wells, the calibration of the testing equipment, the stabilization of the wells, the duration of the test, the readings from both the test well and the reference well, all calculations involved in determining the water-brine interface movement, the pass/fail criteria used, and the witnessing field personnel.

2. All new wells drilled by companies proposing to use this test must run a standard annulus pressure test prior to well injection and record the results. After a maximum of six months, those same wells shall demonstrate MI using the Water-Brine Interface Method for comparison purposes.

3. If the Director chooses to require or allow the use of the Water-Brine Interface Method, he is asked to submit recommendations for modifications to the Water-Brine Interface Method to the Office of Drinking Water, or the Region, based on the results obtained during the interim period. The recommendations shall outline any limitations, procedures, and criteria necessary to assure effective testing.

4. If a well fails to demonstrate mechanical integrity, in order to aid EPA in determining the sensitivity of the test, the operator should run a second test using the same procedure outlined above except that the difference in specific gravity must be half what it was when the test test only. If the well fails the 0.05 psi/hr test, it has failed to demonstrate mechanical integrity.

C. Determination

The Water-Brine Interface Method, subject to the conditions and procedures discussed in this notice, provides the necessary information to demonstrate reliably whether a well has a leak in the casing, tubing, or packer.

EPA is approving the test for Class III salt solution mining injection wells in all States. After the two-year interim period, EPA will make a final determination on whether this test is an effective alternative mechanical integrity test for Class III salt solution mining wells in all States.

Date: August 7, 1989.

Michael B. Cook,
Director of Office of Drinking Water.

[FR Doc. 89-19465 Filed 8-17-89; 8:45 am]
BILLING CODE 6560-50-M

BEST COPY AVAILABLE

40 CFR Part 228

[FRL-3631-3]

Ocean Dumping; Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates an existing dredged material disposal site located in the Gulf of Mexico near the Houma Navigation Canal (HNC) for the continued disposal of dredged material removed from the Cat Island Pass section of the HNC. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This final site designation is for an indefinite period of time and is subject to monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATE: This designation shall become effective on September 18, 1989.

ADDRESSES: Norm Thomas, Chief, Federal Activities Branch (6E-F), U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733.

Information supporting this designation is available for public inspection at the following locations: EPA, Region 6, 1445 Ross Avenue, 9th Floor, Dallas, Texas 75202, Corps of Engineers, New Orleans District, Foot of Prytania Street, Room 298, New Orleans, Louisiana 70160.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655-2260 or FTS/255-2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established the HNC site for the disposal of material dredged from the Cat Island Pass section of the HNC. In January 1980, the interim status of the HNC site was extended indefinitely.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

EPA and the New Orleans District Corps of Engineers (COE) jointly prepared a Final Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Houma Navigation Canal Ocean Dredged Material Disposal Site Designation." On February 3, 1989, a notice of availability of the Final EIS for public review and comment was published in the Federal Register. The public comment period on this Final EIS closed on March 6, 1989. One comment letter from the Louisiana Department of Natural Resources (LDNR) was received. LDNR stated that designation of the HNC disposal site was inconsistent with the Louisiana Coastal Zone Management Program. LDNR recommended that spoil from the HNC should be used to create or enhance wildlife habitat in the Wine Island Shoal area. A meeting with Federal and state agencies regarding use of Wine Island as a disposal site was held in Baton Rouge, Louisiana on March 27, 1989. Subsequently, the COE conducted a cost feasibility study of this option. The COE concluded, based on the study, that pumping the dredged material to Wine Island would cost approximately $400,000.00 more per dredging cycle than ocean disposal. This estimate did not include any cost associated with dike construction. The COE also determined that the only available option for accomplishing disposal at Wine Island is if 100 percent of the additional costs are provided by non-Federal interests. Since site designation does not preclude the consideration of other disposal options, EPA has elected to proceed with final designation of the HNC site.

The action discussed in the EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis. Prior to each use the Corps will comply with 40 CFR Part 227 by providing EPA a letter containing all the necessary information.

The EIS discussed the need for the action and examined ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS and the analysis was updated in the Draft EIS based on information from the COE. Inland disposal sites are currently used for the inland reaches of the Houma Navigation Canal. These inland sites, however, cannot accommodate the dredged material from Cat Island Pass. Use of these upland sites for material which has traditionally been dumped at sea would quickly decrease the lifetime of the sites. Additionally, the nearest land-based sites are about 30 miles away and their use would involve barging material, which is economically impractical.

Four ocean disposal alternatives—two shallow water areas (including the proposed site), a mid-shelf area and a deepwater area—were evaluated. Use of the mid-shelf and deepwater sites would involve: (1) Increased transporation costs without any corresponding environmental benefits; (2) the removal of sediments from the nearshore environment making them unavailable for movement and deposition by longshore currents; and (3) increased safety hazards resulting from transporting dredged material greater distances through areas of active oil and gas development. Because of these reasons, the mid-shelf area and the deepwater area were eliminated from further consideration. An alternate shallow-water site located west of the existing site was also evaluated. However, no environmental benefits would be gained by its selection. Rather, the potential exists for greater impact to Isle Dernieres from the turbidity plume at this site.

In accordance with the requirements of the Endangered Species Act, EPA and the COE have completed a biological assessment. The COE coordinated a no adverse effect determination with the National Marine Fisheries Service (NMFS); NMFS concurred. Regarding coastal zone consistency, EPA has determined that final designation of the HNC site is consistent, to the maximum extent practicable, with Louisiana's Coastal Zone Management Program. The State of Louisiana has not concurred with EPA's determination.

The EIS presented the information needed to evaluate the suitability of ocean disposal areas for final designation and is based on a disposal site environmental study. The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations and other applicable Federal environmental legislation. This final rulemaking notice fills the same role as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

C. Site Designation

On November 4, 1988, EPA proposed designation of this site for the continuing disposal of dredged materials from the Cat Island Pass section of the HNC. The public comment period on this proposed action closed on December 19, 1988. No comments were received on the proposed rule.

The site is located about eight miles south of the Terrebonne Parish mainland and about three miles from Timbalier Island to the east and Isles Dernieres to the west. The site extends approximately four miles offshore. Water depths at the site range from 6 to 30 feet. The coordinates of the site are as follows: 29°05'22.3" N., 90°34'43" W.; thence following a line 1000 feet west of the channel centerline to 29°02'17.8" N., 90°34'28.4" W.; thence to 29°02'12.6" N., 90°35'27.8" W.; thence to 29°05'30.8" N., 90°35'27.8" W.; thence to the point of beginning.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific factors used in evaluating a disposal site to assure that the general criteria are met.

EPA has determined, based on information presented in the Final EIS, that the existing site is acceptable under the five general criteria. The Continental Shelf location is not feasible and no environmental benefit would be obtained by selecting such a site. Historical use of the existing site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. The characteristics of the site are reviewed below in terms of the eleven specific factors.

1. *Geographical position, depth of water, bottom topography and distance from coast.* (40 CFR 228.6(a)(1).)

Geographical position, average water depth, and distance from the coast for the disposal site are given above. Bottom topography is relatively flat and slopes to the south (3.8 feet per mile).

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* (40 CFR 228.6(a)(2).)

The northern Gulf of Mexico is a breeding, spawning, nursery and feeding area for shrimp, menhaden and bottomfish. Migration of fish and shellfish through the area is heaviest during spring and fall. The HNC ocean disposal site represents a small area of the total range of the fisheries resource.

3. *Location in relation to beaches and other amenity areas.* (40 CFR 228.6(a)(3).)

The HNC ocean disposal site is about three miles from the nearest beaches on the barrier islands. These beaches are sparsely used because they are accessible only by boat. The turbidity plume would be diluted to ambient levels well before reaching these beaches.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any.* (40 CFR 228.6(a)(4).)

The dredged material to be disposed is from the adjacent area of the HNC and consists of varying amounts of sand, silt and clay. Sediments generally decrease in grain size in the offshore direction, with sands being predominant in the northern portion of the disposal site and 80 to 97 percent silts existing generally in the southern area. Approximately 400,000 cubic yards of material are disposed in the site annually. About 90 percent of the material is removed with a hydraulic pipeline dredge. The material is released as an uncohesive slurry directly into the water overlying the site. The remaining 10 percent of the material is removed by hopper dredge and released as a slurry from the hopper. The material is not packaged in anyway. The Corps of Engineers would likely be the only user of the site.

5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6(a)(5).)

Surveillance is possible by shore-based radar, aircraft, or day-use boats. No surveillance is currently performed by the U.S. Coast Guard. Monitoring would be facilitated by the fact that the disposal site is nearshore, in shallow waters, and has baseline data available. The primary purpose of monitoring is to determine whether disposal at the site is significantly affecting areas outside the disposal area and to detect any unacceptable adverse effects occurring in or around the site. Based on historic data, an intense monitoring program is not warranted. However, in order to provide adequate warning of environmental harm, EPA will develop a monitoring plan in coordination with the COE. The plan would concentrate on periodic depth soundings and sediment and water quality testing.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6).)

Mixing processes, current characteristics, and sediment transport in the nearshore region off Cat Island Pass are influenced by tidal currents, winds, and storms. Chemical and physical parameters generally indicate a vertically homogenous water column in the area. Density stratification can occur seasonally. In the summer, bottom waters on the Louisiana shelf are occasionally oxygen depleted, which causes mass mortalities of benthic organisms. During a site study in December 1980 and June 1981, waters were supersaturated with oxygen at all depths. A westerly surface flow of 0.8 knots predominates during winter and spring. Velocities of 3 to 4 knots may occur during storm events. In non-storm conditions, predominant sediment transport along the barrier islands fronting Terrebonne Bay is toward the west. Suspended sediments associated with tidal discharge or dredged material disposal, may be rafted along with the tidal plumes and eventually influenced by wind-driven, longshore currents.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7).)

Dredged materials from maintenance of the HNC have been disposed at the site since 1964, and no significant adverse impacts have resulted. Previous disposals have caused minor effects, such as temporary increases in suspended sediment concentrations, temporary turbidity, sediment mounding, smothering of some benthic organisms, release of nutrients, possible minor releases of trace metals, and a temporary change in sediment grain size.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8).)

In the vicinity of the disposal site the majority of shipping traffic is confined to the HNC. Dredging facilitates shipping; periodic use of the disposal site has some potential for interfering with ship movement in the HNC during dredging and disposal operations. Shoaling immediately after dredging stopped resulted in the grounding of one ship in the disposal site.

Nearshore areas contain a productive "high-use" fishing ground for a number of commercial and recreational species. The Houma site represents a very small portion of the total nearshore fishing grounds in the Deltaic Plain. Adverse impacts from disposal would be temporary and minor. Interferences with fishing may occur if any shoals are created by dredged material disposal, since this could cause groundings of shrimp boats within disposal site boundaries.

The nearest shellfish culture is the Terrebonne Bay estuarine area; disposal operations at the site would not affect this activity. There are oyster leases in remnant bayous on the north side of Isles Dernieres and the Timbalier Islands. Designation of the disposal site would not impact these lease areas. Desalination and areas of special scientific importance do not occur in the vicinity of the disposal site.

Petroleum and mineral-extracting activities occur offshore within 3.5 miles of the site and are not impacted by use of the site. Intermittent dumping does not interfere with the exploration or production phases of resource development, or with other legitimate uses of the ocean.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9).)

Water column concentrations of trace metals and chlorinated hydrocarbons (CHC) were below EPA's water quality criteria during the 1986–1981 study. Concentrations in sediment were strongly related to grain size, with highest levels in silts and clays offshore. Concentrations of heavy metals and CHC's were comparable inside and outside the disposal site for similar sediment types.

Nutrient concentrations, turbidity, and suspended solids, are controlled in large part by Mississippi River discharge, and are generally low in the summer/fall and increase in the winter/spring.

The benthos at the site is dominated by polychaete worms, ribbon worms, and the little surf clam. Population densities were highest in the late spring. Several of the dominant organisms, inside and outside the site, were small-bodied opportunistic species capable of rapid recolonization of disturbed sediments. There was little difference in density or diversity of benthic organisms inside and outside the site. During disposal, however, species density and diversity would decline. Recolonization would start at the cessation of dumping and be essentially complete within two to six months.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* (40 CFR 228.6(a)(10).)

Past disposal of dredged material at the existing site has not resulted in the development or recruitment of nuisance species. Considering the similarity of the dredged material with the existing sediments, it is not expected that continued disposal of dredged material will result in the development of such species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* (40 CFR 228.6(a)(11).)

There are no known features of historical or cultural significance on the barrier islands to either side of the site. No known shipwrecks are located within site boundaries.

E. Action

The EIS concludes that the site may appropriately be designated for use. The site is compatible with the general criteria and specific factors used for site evaluation. The designation of the HNC site as an EPA approved Ocean Dumping Site is being published as final rulemaking.

It should be emphasized that, if an ocean dumping site is designated, such site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. And although the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: August 4, 1989.

Robert E. Layton Jr.,

Regional Administrator of Region 6.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

Part 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. Sections 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Houma Navigation Canal, Louisiana-Cat Island Pass and adding paragraph (b)(38) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(38) Houma Navigation Canal, Louisiana—Region 6

Location: 29° 05' 22.5" N, 90° 34' 45" W; thence following a line 1000 feet west of the channel centerline to 29° 02' 17.5" N, 90° 34' 28.4" W; thence to 29° 02' 12.6" N, 90° 35' 27.5" W; thence to 29° 05' 30.5" N, 90° 35' 27.5" W; thence to the point of beginning.
Size: 2.08 square nautical miles.
Depth: Ranges from 6–30 feet.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to dredged material from the vicinity of Cat Island Pass, Louisiana.

* * * * *

[FR Doc. 89-19483 Filed 8-17-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3631-7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for specified waste generated by BF Goodrich Intermediates Company, Incorporated, Calvert City, Kentucky. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: August 18, 1989.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m. in room M2427, Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The reference number for this docket is "F–89–BFEF–FFFFF." The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Linda Cessar, Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475–9828.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of this Rulemaking

BF Goodrich Intermediates Company, Incorporated (BFG), located in Calvert City, Kentucky, petitioned the Agency to exclude from hazardous waste control a specific waste that it intends to generate. After evaluating the petition, EPA proposed, on December 9, 1988, to exclude BFG's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32, conditional upon BFG meeting certain sampling, analysis, and reporting requirements. See 53 FR 49680.

BFG petitioned the Agency for an "upfront" exclusion. A petitioner requests an upfront exclusion for wastes that have not yet been generated or that will be subject to further treatment. When treatment is planned, an upfront delisting petition requests that an exclusion be granted based on untreated waste characteristics, pilot-scale treatment data if available, and process descriptions. As a condition of an upfront exclusion, the Agency may impose batch testing requirements, which often include analytical testing of representative samples obtained from the full-scale system. These data can be used to verify that the treatment system, once on-line, is operating as described in the petition. The Agency may also specify verification testing limitations (*i.e.*, set maximum allowable levels for hazardous constituents of concern in the waste) in the conditions of the granted exclusion. When the actual levels of the constituents of concern are below these levels, the waste will not be considered hazardous. If the actual levels of the constituents are above these levels, the waste is still considered to be hazardous and must be retreated or disposed in accordance with RCRA Subtitle C requirements.

This rulemaking addresses public comments received on the proposal and finalizes the proposed exclusion.

II. Disposition of Petition

BF Goodrich Intermediates Company, Incorporated, Calvert City, Kentucky

1. Proposed Exclusion

BFG petitioned the Agency to conditionally exclude from regulation as a hazardous waste its brine purification muds and saturator insolubles, presently listed as EPA Hazardous Waste No. K071—"Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used." BFG based its petition on the claim that the constituent of concern, although present in the waste, was both low in concentration and in an essentially immobile form. To support its claim that both the non-listed and listed constituents of concern would not be present in the brine purification muds and saturator insolubles above levels of regulatory concern, BFG relied on the analytical data presented in Vulcan Materials' (Vulcan) delisting petition (see 51 FR 16880, May 7, 1986). BFG believes that the analytical data presented by Vulcan is representative of the treated waste that BFG will generate because (1) BFG's and Vulcan's production processes are similar and use the same raw materials; (2) BFG's untreated waste and Vulcan's untreated waste are similar in composition; and, (3) BFG plans to use a treatment system that will be identical to the one used by Vulcan.

As stated above, BFG relied upon the analytical data provided by Vulcan. The Agency, therefore, used the results of its evaluation of Vulcan's petitioned waste to determine that the constituents in BFG's waste also would not leach and migrate at concentrations above the health-based levels used in delisting decision-making. Specifically, the Agency evaluated Vulcan's waste using the Vertical and Horizontal Spread (VHS) model to predict the potential mobility of the hazardous constituents found in Vulcan's waste. See 51 FR 16873, May 7, 1986. The Agency also evaluated the total concentrations of benzene, toluene, and xylene (derived from mass-balance demonstrations) provided by BFG in support of its petition and determined that these organic constituents, if present in the petitioned waste, would not pose a threat to human health and the environment. Specifically, the Agency evaluated BFG's waste using the VHS model and Organic Leachate Model (OLM) to predict the potential mobility of these organic constituents potentially found in BFG's waste. Based on this evaluation, the Agency determined that these constituents, if present, would not leach and migrate at concentrations above the health-based levels used in delisting decision-making. See 53 FR 49680, December 9, 1988, for a more detailed explanation of why EPA proposed to grant BFG's petition for its

brine purification muds and saturator insolubles when treated using the "Vulcan technology."

2. Agency Response to Public Comments

The Agency received comments on the proposed rule from two interested parties. One commenter supported the Agency's proposed decision to exclude BFG's brine purification muds and saturator insolubles. The second commenter opposed the Agency's proposed decision. The comments made by the two interested parties are discussed below.

Petition-Specific Comments

One commenter opposed the Agency's proposal to grant BFG an exclusion for the reasons discussed below.

The commenter stated that EPA listed K071 wastes as hazardous based primarily on the waste's "significant concentrations" of mercury. The commenter therefore believed that a specific K071 waste could not be delisted without consideration of the mercury concentrations. The commenter also believed that, in the context of upfront delisting, a petitioner should offer a reasonable projection as to the constituent concentrations expected in the treated waste and a basis for such a projection. The commenter therefore reasoned that because the proposed rule contained no information regarding the concentrations of total mercury and the other non-listed constituents in the treated waste, EPA's granting of this petition would be inconsistent with the Agency's own rules.

The Agency agrees that the presence in K071 wastes of significant concentrations of mercury was one of the reasons for listing K071 wastes as "T" (toxic) wastes. See 40 CFR § 261.11(a)(3)(ii) and "Background Document, Resource Conservation and Recovery Act, Subtitle C, Hazardous Waste Management, Section 3001, Identification and Listing of Hazardous Waste," 1980. The Agency, however, believes that the data presented in the Background Document broadly characterize the physical/chemical nature of brine purification muds and that these data are not representative of the physical/chemical nature of BFG's treated brine purification muds and saturator insolubles (*i.e.*, BFG's waste, unlike those wastes characterized in the Background Document, will be subjected to a chemical washing step to reduce the total concentration of mercury). Furthermore, the maximum concentration of total mercury present in BFG's untreated wastes (26.5 mg/kg) is seven times lower than the average level of total mercury found in KO71 wastes (200 mg/kg) and is more than 75 times less the maximum level of mercury found in K071 wastes (2,000 mg/kg). See Background Document, page 8.

The Agency also agrees that, in the context of upfront delistings, the petitioner should provide a reasonable projection of the levels of constituents in the petitioned waste. The Agency, however, disagrees with the commenter's claim that the petitioner did not provide a reasonable projection as to the concentrations of total mercury in the treated waste. Specifically, the petitioner provided a worst-case projection of the level of total mercury using the maximum concentration of total mercury in the untreated waste. The petitioner also referenced the levels of total mercury reported by Vulcan for both its untreated and treated wastes (see 53 *FR* 49683, December 9, 1988). The Agency considered these data as well as all other relevant data in issuing this final rule.

The Agency also disagrees with the commenter's claim that the proposed notice failed to provide any information regarding total constituent levels for the non-listed constituents in the petitioned waste. Specifically, the Agency cited the petitioner's reliance on Vulcan's results from total constituent analyses performed for all the EP toxic metals, nickel, and cyanide (previously published on May 7, 1986, 51 *FR* 16872). See 53 *FR* 49683, December 9, 1988.

The Agency does not believe that BFG's wastes (both untreated and treated) exhibit significant total concentrations of mercury. Specifically, EPA based its conclusion that the waste would not contain significant concentrations of total mercury on: (1) the maximum total concentration of mercury exhibited by the untreated waste, and (2) the data on total mercury in Vulcan's untreated and treated wastes. The "Vulcan technology" actually removes mercury from the waste; therefore, the treated waste would exhibit levels of total mercury below those exhibited by the untreated waste (*i.e.*, the analysis of the total mercury levels in the untreated waste serves as a worst-case analysis of the total mercury levels exhibited by the treated waste). The Agency also expects that the levels of total mercury to be found in BFG's waste will be similar to the levels exhibited by Vulcan's wastes due to the similarities in raw materials and manufacturing processes, and the use of identical treatment processes.

Last, the Agency disagrees with the commenter's claim that granting an exclusion in the apparent absence of total constituent data would be inconsistent with the Agency's own rules. EPA notes that the petitioner did provide data for total constituents (see above). However, in the context of upfront delisting, the petitioner may not always be in the position to provide analytical data characterizing the waste intended to be generated. The Agency encourages the use of upfront delisting petitions in these cases, because they have the advantage of allowing the applicant to know what treatment levels for constituents should be sufficient to render specific wastes non-hazardous, before investing in new or modified waste treatment systems. As in this case, the upfront delisting petition was processed concurrently during construction activities; therefore, the new/modified treatment system will be capable of producing wastes that are considered non-hazardous sooner than otherwise would be possible. At the same time, conditional batch testing requirements to collect and submit data verifying that the delisting levels are achieved by the fully operational treatment system will maintain the integrity of the delisting decision and will ensure that only non-hazardous wastes are removed from Subtitle C control.

The Agency also does not believe that the wastes, when treated using the "Vulcan technology" present a potential threat to human health or the environment. The commenter's conclusion that the treatment residues contained significant concentrations of total mercury and thus, represented a potential (yet unspecified) risk to human health and the environment, was based on the comparison of the maximum total mercury concentration of 26.5 mg/kg in BFG's *untreated* wastes to the range of 0.02 mg/kg to 0.5 mg/kg total mercury generally found in soils. In delisting evaluations, the Agency does not typically consider site-specific factors, including the background concentrations of the constituents of concern. Rather, the Agency evaluates the characteristics of the waste. EPA notes that both the mercury and other metals BFG's treated wastes will be tightly bound within the waste matrix. The Agency's conclusion that the inorganic constituents of concern (both listed and unlisted) would be bound in the waste matrix and not available for leaching is supported by the results of the EP leachate analyses provided by Vulcan. See 51 *FR* 16872, May 7, 1986. Therefore, the Agency believes that the levels of both mercury and the other metals present in BFG's treated wastes should not pose a threat to either human health or the environment.

EPA normally evaluates the potential mobility of the treated wastes using the maximum EP leachate concentrations and the vertical and horizontal spread (VHS) model. In the context of upfront delistings, a treated waste has not been generated. As a result, the Agency used the predicted dilution factor (calculated using the VHS model and BFG's projected maximum annual waste volume) and the appropriate health-based levels to back-calculate maximum allowable levels of all the EP toxic metals, nickel, and cyanide. The VHS model analysis provides a conservative and reasonable worst-case evaluation of the waste's effect on the underlying aquifer. The Agency, therefore, believes that the maximum allowable EP levels obtained from this analysis are protective of human health and the environment. See 53 FR 49684, December 9, 1988, for a description of the modeling analysis of BFG's waste.

Furthermore, in delisting evaluations, EPA considers all the factors for which the waste was listed, as well as factors other than those for which the waste was originally listed, that could cause the waste to be hazardous. See 42 U.S.C. 6921(f). For this specific wastestream, based on the above discussion, EPA does not believe that any other factors, including elevated total constituent concentrations of the listed and non-listed inorganic constituents of concern, could cause this wastestream to present a hazard to human health and the environment.

The commenter asserted that the Agency based its evaluation exclusively on the "worst-case scenario" of land disposal and that the proposed rule provides no basis for determining if the waste would be hazardous under other mismanagement scenarios. The commenter believed that EPA should not exclusively rely on the leachable levels of hazardous constituents. The commenter cited a statement by the Agency contained in the Background Document for K071 wastes which suggested that EP leachate results are not determinative in making a delisting determination. The commenter also believed that the Agency did not consider waterborne and airborne dispersal of the waste.

The commenter used the agency's previous statement that "EP leachate results are certainly relevant, although not determinative, in making a delisting determination" out of context. See Background Document, Comment Response Section, page 20. Specifically, the Background Document was referring to the use of the EP toxicity test to define the level of leachable mercury at which a waste is a characteristic hazardous waste. The point made in the Background Document was that K071 waste should not necessarily be delisted merely because the waste exhibits EP leachate concentrations below the characteristic level (0.2 mg/l). (This interpretation is confirmed by the Federal Register notice cited in the Background Document (45 FR 33111–33112, May 19, 1980) which is a discussion of the EP toxicity test as a method for defining characteristic wastes.) The level of leachable mercury established in the exclusion for BFG (0.0126 mg/l) is much lower than the level of leachable mercury that defines a characteristic waste (0.2 mg/1). As discussed below, EPA believes that such wastes that meet this delisting level (and the levels for other constituents referenced in this rule) are justifiably non-hazardous.

With regard to possible airborne dispersal, the Agency believes that the commenter's concern is unfounded. The Agency believes that direct contact from airborne exposure to hazardous contaminants from BFG's waste is not probable because BFG's untreated waste will be regulated as a hazardous waste, thus releases of the untreated waste to the atmosphere should be controlled. Additionally, due to the physical nature of BFG's treated waste (*i.e.*, approximately 35 percent water), the Agency believes that direct contact from airborne exposure to hazardous contaminants from the treated waste is unlikely.

With regard to waterborne dispersal of the waste, it is important to first note that BFG's waste will be handled as hazardous until it is treated using the "Vulcan technology." Also, the VHS model analysis described in the proposal shows that leachate from the treated waste that travels through ground water will not exceed health based levels. The Agency acknowledges that it may also be possible for surface water runoff to transport contaminants from the treated waste to a nearby surface water body. However, the Agency does not believe that analysis of such overland transport of contaminants as a reasonable exposure route for the petitioned waste would compel a different result for this petition. As described in the proposed rule, the Agency believes that landfill disposal is a reasonable worst-case management scenario for BFG's waste. Contamination of surface water might occur, therefore, through runoff from the petitioned waste. However, EPA believes that the concentrations of any hazardous constituents in that runoff will tend to be lower than the levels in the EP leachate analyses reported in the proposal due to the acidic medium of the EP test. Furthermore, any transported constituents would be further diluted in the surface water body.

Finally, the Agency believes that, in general, the leachate derived from this treated waste will not directly enter a surface water body without first traveling through the saturated (subsurface) zone where dilution and attenuation of hazardous contituents may occur. The VHS model takes this saturated zone into account as it predicts the ultimate fate and transport of hazardous constituents.

Conditional Testing and Reporting Requirements

One commenter believed that EPA should modify the wording of conditions (1), (2)(A), and (2)(B) to require BFG to also analyze for total concentrations of mercury.

The Agency disagrees with the commenter. The Agency expects that this waste will be disposed of in a municipal landfill, where soil conditions would be mildly acidic. The EP extraction procedure is the most appropriate analytical tool to evaluate the potential leachability of this waste in an acidic environment. For this waste, EPA believes that continued evaluation of the EP leachable concentrations as required by the conditions of this exclusion will be adequate to protect human health and the environment. Furthermore, the Agency has not developed a health-based delisting standard regulating the total constituent concentration of mercury. To require BFG to continually monitor for the total constituent concentration of mercury will not ensure further protection of human health or the environment.

Another commenter believed that EPA should clarify the wording of conditions (1), (2)(A), and (2)(B) to require that representative samples be collected according to the procedures specified in "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986. The Agency agrees with the commenter and has modified these conditions accordingly.

The same commenter stated that proposed conditions (4)(A) and (4)(B) allowing BFG to discontinue the sampling and analyses requirements of conditions (2)(A) and (2)(B) were inappropriate. Rather, the commenter believed that EPA should require BFG to periodically sample the brine

purification muds and saturator insolubles on a quarterly basis for one or two years to ensure that the constituent concentrations remain fairly constant.

As discussed in the proposed rule, the Agency does not believe it is necessary to require BFG to periodically test its treated brine purification muds and saturator insolubles for any hazardous constituents, except for mercury. See 53 *FR* 49686, December 9, 1988. The exclusion only covers wastes generated from processes covered by the original demonstration. BFG would require a new exclusion if its manufacturing or treatment processes are altered. As a result, wastes containing either new or increased levels of hazardous constituents would not be covered by the exclusion. More importantly, EPA believes that it is unlikely for either new or increased levels of hazardous constituents to be found in BFG's waste without BFG modifying either its manufacturing or treatment processes.

The Agency originally proposed conditions (2)(A) and (2)(B) to require BFG to collect weekly composite samples of the mercury brine purification muds and saturator insolubles, respectively. See 53 FR 49685 and 49687, December 9, 1988. The Agency, however, intended to require BFG to collect weekly composite samples of the *treated* brine purification muds and *treated* saturator insolubles since these wastes were the subject of BFG's petition. The proposed conditions do not specifically require the collection and analyses of treated batches. EPA, therefore, is clarifying conditions (2)(A) and (2)(B) to specifically require BFG to collect weekly composite samples of the *treated* mercury brine purification muds and *treated* saturator insolubles, respectively.

Lastly, the Agency elected to modify the reporting requirements associated with this exclusion. Specifically, the Agency no longer believes it is necessary to require the petitioner to submit the analytical results obtained from conditions (1), (2)(A), and (2)(B) every 90 days. Rather, the Agency is requiring BFG to only submit the analytical results, including quality control data, generated through condition (1) within 90 days. In addition, BFG is now required to compile and store on-site for a minimum of three years, the analytical data, including quality control information, obtained from subsequent testing analyses, as required, by conditions (2)(A) and (2)(B). The Agency realized that requiring the petitioner to submit these analytical data every 90 days would place an undue burden on both the petitioner and EPA. In addition, the Agency, may at any time, either visit the facility for inspection purposes or request the petitioner to report these data. Therefore, the Agency is maintaining the same level of protection without requiring the petitioner to report these analytical data every 90 days.

The Agency, therefore, has restructured the proposed conditions. The Agency has not reduced the requirements, other than as discussed above. The testing conditions of this exclusion now read:

(1) Initial Testing

During the first four weeks of full-scale operation, BFG must do the following:

(A) Collect representative grab samples from every batch of the treated mercury brine purification muds and treated saturator insolubles on a daily basis and composite the grab samples to produce two separate daily composite samples (one of the treated mercury brine purification muds and one of the treated saturator insolubles). Prior to disposal of the treated batches, the two daily composite samples must be analyzed for EP leachate concentration of mercury. BFG must report the analytical test data, including all quality control data, within 90 days after the treatment of the first full-scale batch.

(B) Collect representative grab samples from every batch of the treated mercury brine purification muds and treated saturator insolubles on a daily basis and composite the grab samples to produce two separate weekly composite samples (one of the treated mercury brine muds and one of the treated saturator insolubles). Prior to disposal of the treated batches, the two weekly composite samples must be analyzed for the EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using distilled water in the cyanide extractions), and the total constituent concentrations of reactive sulfide and reactive cyanide. BFG must report the analytical test data, including all quality control data, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch.

(2) Subsequent Testing

After the first four weeks of full-scale operation, BFG must do the following:

(A) Continue to sample and test as described in condition (1)(A). BFG must compile and store on-site for a minimum of three years all analytical data and quality control data. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Kentucky.

(B) Continue to sample and test as described in condition (1)(B). BFG must compile and store on-site for a minimum of three years all analytical data and quality control data. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Kentucky. These testing requirements shall be terminated by EPA when the results of four consecutive weekly composite samples of both the treated mercury brine muds and treated saturator insolubles, obtained from either the initial testing or subsequent testing, show the maximum allowable levels in condition (3) are not exceeded and the Section Chief, Variances Section, notifies BFG that the requirements of this condition have been lifted.

(3) If, under condition (1) or (2), the EP leachate concentrations for chromium, lead, arsenic, or silver exceed 0.316 mg/l; for barium exceeds 6.31 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.16 mg/l; for cyanide exceeds 4.42 mg/l; or for total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be retreated until it meets these levels or managed and disposed of in accordance with Subtitle C of RCRA.

(4) Within one week of system start-up, BFG must notify the Section Chief, Variances Section (see address below) when the full-scale system is on-line and waste treatment has begun. All data obtained through condition (1) must be submitted to the Section Chief, Variances Section, PSPD/OSW (OS-343), U.S. EPA, 401 M Street, S.W., Washington, DC 20460 within the time period specified in condition (1). At the Section Chief's request, BFG must submit any other analytical data obtained through condition (2) to the above address, within the time period specified by the Section Chief. * * *

EPA's Modeling Approach

One commenter objected to EPA's use of the VHS model in analyzing BFG's treated brine purification muds and saturator insolubles. The commenter believed that the VHS model could not be assumed to predict a reasonable worst-case when applied to BFG's waste and may result in significant underestimation of actual ground-water concentrations for the two reasons discussed below.

The commenter believed that the VHS model cannot accurately predict the behavior of waste volumes of the magnitude of BFG's waste stream (6,420 cubic yards). The commenter asserted that above approximately 2,000 cubic yards, the VHS model predicts virtually no further reduction in the expected dilution. The commenter noted that EPA has previously stated: "Since the quantity of leachate from a larger quantity of waste will be greater, the [VHS] model predicts that a large waste volume will tend to have a greater impact on an underlying aquifer" and "waste in excess of 2,000 cubic yards probably would have a greater than predicted impact at the compliance point." See 50 FR 48888, 48899, November 27, 1985.

The initial version of the VHS model, presented on February 26, 1985, calculated dilution factors ranging from 10 to 50, with the minimum dilution factor (*i.e.*, 10) resulting at a waste volume approaching approximately 2,000 cubic yards. See 50 FR 7896. On November 27, 1985, the Agency both modified the values used for several of the VHS model variables and responded to public comments regarding the February 26, 1985 model. See 50 FR 48896. The November 27, 1985 version (present version) of the VHS model calculates dilution factors ranging from 6.3 to 32.3. In the present version, the calculated dilution factor steadily falls as the waste volume increases from 475 cubic yards, with the minimum dilution factor resulting at waste volumes equal to, or exceeding 8,000 cubic yards.

Unfortunately, the Agency's November 27, 1985, notice (cited by the commenter) failed to consistently reflect both the technical modifications made to the VHS model computer code and the resulting change in the range of calculated dilution factors. Due to the technical modifications incorporated into the final version that is now being used, the statement noted by the commenter, that the VHS model predicts virtually no further dilution above a waste volume of 2,000 cubic yards, was an inadvertent error in the text and is not accurate. Specifically, the present version of the model predicts a dilution factor of 8.98 for 2,000 cubic yards and a dilution factor of 6.31 for BFG's waste volume (6,420 cubic yards). The Agency continues to believe that the VHS model performs a reasonable, worst-case analysis and provides dilution factors that are fully protective of human health and the environment.

The commenter also believed that the VHS model, as applied, considered the impact of only one year of waste disposal, rather than the cumulative impact of continuing disposal of BFG's waste. The commenter noted that after a decade of such generation, the total amount of waste would exceed the VHS model's upper limit by more than 30-fold. The commenter also stated that nowhere in the development of the VHS model does EPA justify the use of an annual, rather than cumulative, waste quantity as the appropriate input into the VHS model. Nor did the commenter see any possible justification for such an application of the model.

First, the Agency believes that the commenter is incorrect in concluding that a decade of waste generation would yield a waste volume that exceeds the VHS model upper limit by 30-fold. The VHS model does not have an "upper limit", but rather incorporates a sliding-scale which allows the Agency to take into account the different impact that various waste volumes would have on ground water. As stated above, the VHS model calculates the maximum and minimum dilution factors at waste volumes of less than, or equal to 475 cubic yards and equal to, or greater than 8,000 cubic yards, respectively. Thus, as the waste volume increases above 8,000 cubic yards or even 64,240 cubic yards (10 years X 6,420 cubic yards/year), the dilution factor calculated by the VHS model would be 6.3. The reason that the dilution factor remains constant after the waste volume exceeds 8,000 cubic yards is a function of the assumptions made in the disposal unit dimensions for the VHS model. For a discussion of the assumptions made in the disposal unit dimensions for the VHS model, see 53 FR 48900, November 27, 1985.

The commenter also is incorrect in stating that the Agency has not justified the use of annual waste volumes, instead of cumulative waste volumes. The Agency previously stated that EPA will use either the volume of the waste generated by the facility annually or the volume of waste discarded at the time of disposal, if the waste is disposed of less than once a year. See 50 FR 7899, February 26, 1985. The Agency considers the use of annual or one-time waste volumes to be sufficiently conservative since it is a reasonable worst-case for a petitioner to dispose of one year's accumulated volume of waste in a single landfill cell at one time. Based on routine landfill management practice, however, EPA believes that it is unreasonable to assume, even in a worst-case scenario, one-time disposal of waste continuously generated over ten years into the same landfill cell. Specifically, wastes continuously generated are not disposed of in the same landfill cell. Rather, continuously generated wastes (if disposed of at the same landfill) are periodically disposed of and, as such, are distributed throughout the entire landfill, as the landfill is filled.

The Agency believes that periodic disposal of a continuously generated waste over the course of time (e.g., ten years) would likely increase mixing (*i.e.*, dilution) of the petitioned waste with other non-hazardous wastes and fill material (e.g., native soils) at the Subtitle D landfill. Subsequently, due to this long-term mixing, the wastes effect on the underlying aquifer would be reduced. The Agency, therefore, believes its assumption that the annual waste volume is disposed in the same landfill cell is a reasonable worst-case and is protective of human health and the environment. The Agency, however, will continue to use the total volume when the petitioner is attempting to obtain a "one-time" delisting for waste no longer generated.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that BFG's brine purification muds and saturator insolubles, when both are treated using the "Vulcan technology" and subject to the verification testing requirements specified in the exclusion, should be excluded from hazardous waste control. The Agency, therefore, is granting a final conditional exclusion to BF Goodrich Intermediates Company, located in Calvert City, Kentucky, for its treated brine purification muds and saturator insolubles, described in its petition as EPA Hazardous Waste No. K071. The exclusion applies only to the processes and waste volumes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition or increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to § 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory

authority to determine the current status of their wastes under State law.

IV. Effective Date

This rule is effective upon publication in the Federal Register. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this rule should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective upon publication in the Federal Register, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: August 7, 1989.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Table 2 of Appendix IX, add the following wastestream in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
BF Goodrich Intermediates Company, Inc.	Calvert City, Kentucky	Brine purification muds and saturator insolubles (EPA Hazardous Waste No. K071) after August 18, 1989. This exclusion is conditional upon the collection and submission of data obtained from BFG's full-scale treatment system because BFG's original data was based on data presented by another petitioner using an identical treatment process. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, BFG must implement a testing program. All sampling and analyses (including quality control procedures) must be performed according to SW–846 procedures. This testing program must meet the following conditions for the exclusion to be valid: (1) Initial Testing: During the first four weeks of full-scale operation, BFG must do the following: (A) Collect representative grab samples from every batch of the treated mercury brine purification muds and treated saturator insolubles on a daily basis and composite the grab samples to produce two separate daily composite samples (one of the treated mercury brine purification muds and one of the treated saturator insolubles). Prior to disposal of the treated batches, two daily composite samples must be analyzed for EP leachate concentration of mercury. BFG must report the analytical test data, including all quality control data, within 90 days after the treatment of the first full-scale batch.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(B) Collect representative grab samples from every batch of the treated mercury brine purification muds and treated saturator insolubles on a daily basis and composite the grab samples to produce two separate weekly composite samples (one of the treated mercury brine muds and one of the treated saturator insolubles). Prior to disposal of the treated batches, two weekly composite samples must be analyzed for the EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using distilled water in the cyanide extractions), and the total constituent concentrations of reactive sulfide and reactive cyanide. BFG must report the analytical test data, including all quality control data, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (2) Subsequent Testing: After the first four weeks of full-scale operation, BFG must do the following: (A) Continue to sample and test as described in condition (1)(A). BFG must compile and store on-site for a minimum of three years all analytical data and quality control data. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Kentucky. (B) Continue to sample and test as described in condition (1)(B). BFG must compile and store on-site for a minimum of three years all analytical data and quality control data. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Kentucky. These testing requirements shall be terminated by EPA when the results of four consecutive weekly composite samples of both the treated mercury brine muds and treated saturator insolubles, obtained from either the initial testing or subsequent testing, show the maximum allowable levels in condition (3) are not exceeded and the Section Chief, Variances Section, notifies BFG that the requirements of this condition have been lifted. (3) If, under condition (1) or (2), the EP leachate concentrations for chromium, lead, arsenic, or silver exceed 0.316 mg/l; for barium exceeds 6.31 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l, for nickel exceeds 3.16 mg/l; for cyanide exceeds 4.42 mg/l; or for total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be retreated until it meets these levels or managed and disposed of in accordance with subtitle C of RCRA. (4) Within one week of system start-up, BFG must notify the Section Chief, Variances Section (see address below) when the full-scale system is on-line and waste treatment has begun. All data obtained through condition (1) must be submitted to the Section Chief, Variances Section, PSPD/OSW (OS–343), U.S. EPA, 401 M Street, SW., Washington, DC 20460 within the time period specified in condition (1). At the Section Chief's request, BFG must submit any other analytical data obtained through condition (2) to the above address, within the time period specified by the Section Chief. Failure to submit the required data will be considered by the Agency sufficient basis to revoke BFG's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

[FR Doc. 89–19464 Filed 8–17–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 552 and 553

Financial Reports by Common Carriers in the Domestic Offshore Trades

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is amending its regulations with respect to financial reports by vessel operating common carriers (46 CFR part 552) and non-vessel-operating common carriers (46 CFR part 553) to reflect revised Office of Management and Budget ("OMB") information collection control numbers.

EFFECTIVE DATE: August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION: Section 3507(f) of the Paperwork Reduction Act of 1980, Public Law 96-511, requires that agencies display a current control number assigned by the Director of the OMB for each agency information collection. This Final Rule amends 46 CFR parts 552 and 553 to display the current control numbers of these particular Commission information collection requirements.

Therefore, pursuant to 5 U.S.C. 553, sections 18(a), 21 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 817(a), 820 and 841a), and sections 1, 2, 3(a), 3(b), 4 and 7 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 843, 844, 845, 845a and 847), the Federal Maritime Commission amends parts 552 and 553 of title 46 of the Code of Federal Regulations as follows:

PART 552—[AMENDED]

1. The authority citation for part 552 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 817(a), 820, 841a, 843, 844, 845, 845a, and 847.

2. Section 552.91 is revised to read:

§ 552.91. OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. chapter 35 and have been assigned OMB control number 3072-0008.

PART 553—[AMENDED]

3. The authority citation for part 553 continues to read:

Authority: 5 U.S.C. 553; secs. 18(a), 21 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 817(a), 820, 841a); secs. 1, 2, 3(a), 3(b), 4 and 7 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 843, 844, 845, 845a and 847).

4. Section 553.91 is revised to read:

§ 553.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. chapter 35 and have been assigned OMB control number 3072-0031.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-19407 Filed 8-17-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-388; RM-6374]

Radio Broadcasting Services; Glencoe, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 226A to Glencoe, Alabama, as that community's first local broadcast service, in response to a petition for rule making filed by Bill Dunnavant. See 53 FR 32633, August 26, 1988. Coordinates utilized for Channel 226A at Glencoe are 33-56-44 and 85-52-19. With this action, the proceeding is terminated.

DATES: Effective September 25, 1989; The window period for filing applications on Channel 226A at Glencoe, Alabama, will open on September 26, 1989, and close on October 26, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-388, adopted July 28, 1989, and released August 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Alabama, by adding Glencoe, Channel 226A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-19312 Filed 8-17-89; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 54, No. 159
Friday, August 18, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[FV-89-094-PR]

Expenses and Assessment Rate for Lemons Grown in California and Arizona

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 910 for the 1989-90 fiscal year established under the lemon marketing order. This action is needed for the Lemon Administrative Committee (Committee), the agency responsible for the local administration of the order, to incur operating expenses during the 1989-90 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by August 28, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2524-S, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 910 [7 CFR Part 910], both as amended, regulating the handling of lemons grown in California and Arizona. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona who are subject to regulation under the lemon marketing order, and approximately 2,500 producers of lemons in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of lemon producers and handlers may be classified as small entities.

The lemon marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable lemons handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the U.S. Department of Agriculture for approval. The Committee consists of handlers, producers, and a non-industry member. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of lemons. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment is usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on July 18, 1989, and unanimously recommended 1989-90 marketing order expenditures of $775,000 and an assessment rate of $0.045 per carton of lemons. In comparison, 1988-89 marketing year budgeting expenditures were $734,000 and the assessment rate was $0.045 per carton. Assessment income for 1989-90 is estimated to total $742,500 based on anticipated fresh domestic shipments of 16,500,000 cartons of lemons. Other sources of income, including interest expected to be received, are estimated at $22,500. The remaining $10,000, a projected deficit that might be realized during the 1989-90 fiscal year, will be derived from the Committee's reserve. Additional reserve funds may be used to meet any deficit in assessment income.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for the program needs to be expedited. The Committee needs to have sufficient funds to pay its expenses.

which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 910 be amended as follows:

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 910.227 is added to read as follows:

§ 910.227 Expenses and assessment rate.

Expenses of $775,000 by the Lemon Administrative Committee are authorized, and an assessment rate of $0.045 per carton of assessable lemons is established for the 1989–90 fiscal year ending July 31, 1990. Unexpended funds from the 1989–90 fiscal year may be carried over as a reserve.

Dated: August 15, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–19475 Filed 8–17–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 946

[Docket No. FV–89–084]

Irish Potatoes Grown in Washington; Proposed Amendment to Exempt Handlers From Reinspection of U.S. No. 1 Grade Potatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would exempt from reinspection requirements U.S. No. 1 grade or better potatoes that are resorted or repacked within 72 hours of the original inspection. Currently all inspected potatoes which are repacked must be reinspected. Exempting high quality potatoes from reinspection under specified conditions would lessen the regulatory burden on handlers and help to reduce operating costs.

DATES: Comments must be received by September 5, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 477–2431.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 113 and Marketing Order No. 946 (7 CFR Part 946), both as amended, regulating the handling of Irish potatoes grown in the State of Washington. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of Washington State potatoes subject to regulation under the marketing order, and approximately 475 producers in the production area. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Washington State potatoes may be classified as small entities.

On June 21, 1989, the State of Washington Potato Committee (committee) met and unanimously recommended amending the handling regulation to exempt previously inspected and certified U.S. No. 1 grade or better potatoes from reinspection after resorting or repacking if such potatoes are repacked in the State of Washington within 72 hours of the original inspection.

The handling regulation effective under Marketing Order No. 946 specifies the quality and other requirements that must be met in order for potatoes to be handled. For example, all varieties must be at least U.S. No. 2 grade or better. Also, round types must be at least 1⅞ inches in diameter except that round reds or yellow fleshed potatoes may be at least one inch in diameter. Sections 946.60 and 946.336(g) (53 FR 8144) require potatoes handled in the State of Washington to be inspected and certified as meeting these requirements. Section 946.60(b) of the marketing order further requires that potatoes that are regraded, resorted or repackaged be reinspected prior to shipment.

Potatoes are customarily packed in a number of different containers of varying size, type and construction. The actual container used is usually determined by many market factors, including the preference of the buyer. Potatoes that are graded and packed in a specific container are sometimes repackaged in different containers in response to changes in these market requirements.

The purpose of reinspection is to ensure that the minimum quality requirements are met. This action would be limited to U.S. No. 1 or better potatoes which would assure a high quality pack. Requiring reinspection of these potatoes would be unnecessary to accomplish the above stated purpose and therefore constitutes an undue hardship on handlers under § 946.60(a) of the order. The committee therefore recommended that U.S. No. 1 grade or better potatoes that have been previously inspected be exempt from the reinspection requirements of § 946.60(b), if repacked by a handling facility in the State of Washington within 72 hours of the original inspection. A maximum time limit of 72 hours would help to ensure that the quality of repackaged potatoes would not significantly deteriorate prior to shipment.

The committee believes that a lot of U.S. No. 1 grade or better potatoes, when repacked, would not be of significantly different quality when resorted or repacked within 72 hours of the original inspection. The committee did not, however, recommend permitting U.S. No. 2 grade potatoes that are resorted or repackaged to be shipped without being reinspected. If lots of U.S. No. 2 grade potatoes were resorted, the better quality potatoes in the lot could be segregated and sold as a higher grade, while those lower quality potatoes sorted out of the lot could fail marketing order requirements even though officially covered by an original inspection and certification. The committee further believes that, in order to maintain control of regraded potatoes, this rule should apply only to potatoes handled by Washington shippers.

The majority of handlers and growers that would be affected by this proposed regulatory change are small entities. Permitting handlers to repackage No. 1 or better grade potatoes within 72 hours of the original inspection without requiring reinspection would have a positive impact on them by decreasing inspection costs. Moreover, reducing these costs to handlers would tend to increase returns to growers.

Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

It is found that a comment period of 15 days is appropriate. The shipping season has begun and this regulation, if adopted, should apply to as many shipments as possible to be of maximum benefit to producers and handlers. Also, this action was proposed at a public meeting in which all affected parties could participate. All written comments received within the designated comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 946

Marketing agreements and orders, Potatoes, Washington.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 946 be amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR Part 946 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 946.336 is amended by adding a new paragraph (g)(2) as follows:

§ 946.336 Handling regulation.

* * * * *

(g) * * *

(2) U.S. No. 1 grade or better potatoes in the State of Washington which are resorted or repacked within 72 hours of being inspected and certified are exempt from reinspection.

Dated: August 15, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–19476 Filed 8–17–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–ASW–56]

Airworthiness Directives; Sikorsky Aircraft Model S–61N and S–61NM Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to further amend an airworthiness directive (AD) that presently requires periodic inspections for cracks in the main landing gear (large sponson) truss assemblies; a one-time hardness test of the butt-welded lug of sponson truss components; and replacement of the components, as necessary, on Sikorsky Model S–61N and S–61NM series helicopters. The proposed amendment to the AD is needed to increase the compliance times to alleviate difficulties being encountered in accomplishing the hardness test and initial fluorescent penetrant inspections, and to extend the intervals for repetitive florescent penetrant inspections. If adopted, the extended compliance times would eliminate these undue burdens on operators and at the same time provide an equivalent level of safety.

DATES: Comments must be received on or before October 2, 1989.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Regional Rules Docket. Office of the Assistant Chief Counsel, FAA, Fort Worth, Texas 76193–0007, or delivered in duplicate to Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Bldg. 3B, Room 158, Fort Worth, Texas. Comments must be marked: Docket No. 88–ASW–56. Comments may be inspected at the above location in Room 158 between the hours of 8 a.m. and 4 p.m. weekdays, except Federal holidays.

The applicable service information may be obtained from Sikorsky Aircraft, 600 Main Street, Stratford, Connecticut 06601–1381, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Richard B. Noll, Boston Aircraft certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Park, Burlington, Massachusetts 01803, telephone (617) 273–7111.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Office of Assistant Chief Counsel for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 88–ASW–56. The postcard will be date/time stamped and returned to the commenter.

This action proposes to amend Amendment 39–6131 (54 FR 6512; February 13, 1989), AD 89–04–01, as amended by Amendment 39–6279 (54 FR 31505; July 31, 1989), which currently requires periodic inspections for cracks in the main landing gear (large sponson) truss assemblies; a one-time hardness test of the butt-welded lug of sponson truss components to determine if the hardness is within an approved range; and replacement of the components, as necessary, on Sikorsky Model S–61N and S–61NM series helicopters. The one-time hardness test is applicable to truss tube assemblies which have butt-welded end fitting with a lug welded to the end fitting.

Since issuing Amendment 39–6131 (54 FR 6512; February 13, 1989), AD 89–04–01, as amended by amendment 39–6279 (54 FR 31505; July 31, 1989), the FAA has determined that operators have encountered difficulty in achieving accurate hardness readings. Some operators have elected to remove the truss tube assemblies to conduct a

laboratory-type hardness test, and others have replaced the affected truss tube assemblies with serviceable parts, if available. As a result, the hardness test has taken more time than anticipated. In response to these problems the FAA has determined that the compliance time may be extended without adversely affecting safety, considering service experience to date. Therefore, the FAA proposes to further amend paragraph (a) to extend the compliance time to 100 hours' time in service for completing the hardness test.

In addition, the FAA has determined that operators of a fleet of S–61 series helicopters have encountered serious operational difficulties in complying with the initial fluorescent penetrant inspections. The inspection has taken more time than anticipated and sufficient serviceable spares are not available to allow immediate replacement of the parts affected. The result is that the inspection for the fleet of S–61 series helicopters cannot be conducted on a rotation basis. The FAA has determined that a compliance time in terms of number of landings and increased inspection intervals alleviates the operators' difficulties while achieving the same level of safety, considering all available service experience to date. Therefore, the FAA proposes to amend paragraph (b) to require the initial fluorescent penetration inspections on the basis of number of landings and to increase the intervals in table 1 for the repetitive inspections.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation is relieving in nature and imposes no additional burden on any person. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

The Proposed Amendment

PART 39—AIRWORTHINESS DIRECTIVES

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of 14 CFR part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39–6131 (54 FR 6512; February 13, 1989), AD 89–04–01, as amended by Amendment 39–6279 (54 FR 31505; July 31, 1989), by revising paragraph (a) introductory text; by revising paragraph (b) introductory text; and by revising table 1 by inserting 2,500 in place of 500 and 4,700 in place of 2,500 as follows:

Sikorsky Aircraft: Applies to Model S–61N and S–61NM helicopters certificated in any category. (Docket No. 88–ASW–56)

* * * * *

(a) Within the next 100 hours' time in service after the effective date of this AD, conduct a hardness test of each welded lug of sponson truss tube assemblies, Part Numbers (P/N) S6125–51212–4 and 61250–51233–042, aft lower truss tube assembly—left side, S6125–51212–5 and 61250–51233–043, aft lower truss tube assembly—right side; S6125–51214–3 and 61250–51235–041, forward upper truss tube assembly—left and right side; and S6125–51214–4 and 61250–51235–042, aft upper truss tube assembly—left and right side, as follows:

* * * * *

(b) Prior to the accumulation of 1,000 landings after the effective date of this AD, and thereafter at intervals not to exceed those landing intervals stated in table 1, inspect the sponson truss tube assemblies for cracks in the locations noted in the table as follows:

* * * * *

Issued in Fort Worth, Texas, on August 9, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89–19427 Filed 8–17–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

Proposed Customs Regulation Amendment to the Definition of Switchblade Knives

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule, solicitation of comments.

SUMMARY: This document proposes to amend the Customs Regulations relating to switchblade knives. Switchblade knives are prohibited entry into the United States by the Switchblade Knife Act. The document clarifies the definition of switchblade knives and related materials which are included within the prohibitions of the Act. It would also amend the regulations by including "Balisong" and "ballistic" knives among the prohibited weapons. It is Customs position that both the legislative intent and current definitions include Balisong knives within the existing regulatory prohibition. This position has been expressly upheld in the courts; however, Customs has decided to clarify the regulations. The inclusion of "ballistic" knives reflects direct Congressional action. This notice of proposed rulemaking invites comments from interested members of the public which will be reviewed and considered prior to the publication of a final rule.

DATE: Comments must be received on or before October 17, 1989.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, Room 2119, 1301 Constitution Avenue, NW, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Samuel Orandle, Value, Special Programs and Admissibility Branch, Commercial Ruling Division, (202) 566–5765.

SUPPLEMENTARY INFORMATION:

Background

The Switchblade Knife Act (15 U.S.C. 1241–1245) prohibits the introduction, manufacture, transportation or introduction into interstate commerce of any switchblade knife. To implement the law, Customs adopted regulations which followed the legislative language extremely closely (19 CFR 12.95–12.103). Those regulations also specifically referred to the court decision of *Precise Imports Corp. and Others* v. *Joseph P. Kelly, Collector of Customs, and Others* (378 F. 2d 1014). Because of this reference, the existing regulations appear to imply that one of the principal considerations in determining the legality of a knife is the type of blade style the weapon possesses. While style is relevant, it is not of overriding importance. Concealability, and the ease with which the knife can be transformed from a "safe" or "closed" condition to an "operational" or "open" state are much more important. The Customs position, which has been supported by court decisions, is that Congressional intent was to address the problem of the importation, subsequent sale, and use of a class of quick-opening, easily concealed knives most frequently used for criminal purposes. The deletion of the reference to the *Precise Imports* case does not imply that customs does not consider the principles contained in that case important, or that they are in any way no longer relevant. Rather, the principles in the *Precise Imports* case could not be considered too limiting.

In addition to the knives themselves, Customs is also concerned with blades, handles, and kits which are entered separately into the United States where they are assembled into a finished product which would have been denied entry had any been attempted. To prevent such actions, Customs has issued several decisions which include these components within the prohibitions of the Switchblade Knife Act.

The Customs position that Balisong knives are included within the prohibitions of the Switchblade Knife Act was squarely addressed in a decision of the United States Court of Appeals for the Sixth Circuit, *Taylor* v. *United States*, 848 F.2d 715 (6th Cir. 1988). That decision reversed an order of the district court which had enjoined Customs from seizures of Balisong knives. In its decision, the Court of Appeals stated the Customs Service's interpretation of the statute was rational and should not be set aside. In order to clearly set forth Customs position, the regulations issued to implement the Act are being amended to specifically refer to Balisong knives.

In 1986, in response to a newly developed weapon called a "ballistic knife", Congress, as part of Public Law 99–570, amended the Switchblade Knife Act by adding a new section 1245 prohibiting the possession, manufacture, sale or importation of ballistic knives. These knives were defined in the legislation as knives with a detachable balde that is propelled by a spring-operated mechanism. To conform the Customs Regulations to the statute, the proposed amendment includes these knives within the identified prohibited items.

The proposed amended regulation is intended to eliminate the need for continuing litigation over the scope of Customs Regulations which exclude knives which are within the breadth of the Switchblade Knife Act. The amendment is intended to include within the definition section, (§ 12.95(a)), all types of knives and knife components which fall within the prohibition of the Switchblade Knife Act either by name or description.

The proposal also amends the Regulations to provide that Customs will use its seizure authority under 19 U.S.C. 1595a(c) to enforce the provisions of the Switchblade Knife Act. In addition, citations of the Switchblade Knife Act are revised to reflect its amendment.

It is Customs position that the proposed amendments of the Customs Regulations are being made to clarify already existing enforcement standards and regulations, and not to create new standards or prohibitions. Accordingly, Customs will continue to enforce the existing regulations, to include all judicial interpretations thereof, during the consideration of these proposed amendments.

Comments

Before adopting the proposed amendments, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is certified that if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspection, imports.

Proposed Amendment

It is proposed to amend Part 12, Customs Regulations (19 CFR Part 12), as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 will continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202, (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

2. The specific authority for §§ 12.95–12.103 will be revised to read as follows:

Sections 12.95–12.103 also issued under 15 U.S.C. 1241–1245;

3. Section 12.95 is amended by revising paragraph (a) to read as follows:

§ 12.95 Definitions.

* * * * *

(a) *Switchblade knife.* "Switchblade knife" means:

(1) Any knife, or components thereof, including, but not limited to, knives which are referred to as Balisong, butterfly, or gravity knives, which has the following characteristics or identities:

(i) A blade which opens automatically by hand pressure applied to button or device in the handle of the knife, or any knife with a blade which opens automatically by operation of inertia, gravity, or both; or

(ii) Knives which, by insignificant preliminary preparation, as described in paragraph (b) of this section, can be altered or converted so as to open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both; or

(iii) Unassembled knife kits or knife handles without blades which, when fully assembled with added blades, springs, or other parts, are knives which

open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both.

(2) Knives with a detachable blade that is propelled by a spring-operated mechanism and which are referred to as ballistic knives, or components thereof.

* * * * *

§ 12.96 [Amended]

4. In § 12.96(b) remove the words "the Act of August 12, 1958 (15 U.S.C. 1241–1244)" and add, in their place, the words "15 U.S.C. 1241–1245".

5. Section 12.97 is revised to read as follows:

§ 12.97 Importations contrary to law.

Importations of switchblade knives, except as permitted by 15 U.S.C. 1244, are importations contrary to law and are subject to forfeiture under 19 U.S.C. 1595a(c).

6. Section 12.98 is amended by revising the introductory text and revising paragraph (c) to read as follows:

§ 12.98 Importations permitted by statutory exceptions.

The importation of switchblade knives is permitted by 15 U.S.C. 1244, when:

* * * * *

(c) A switchblade knife, other than a ballistic knife, having a blade not exceeding 3 inches in length is in the possession of and is being transported on the person of an individual who has only one arm.

§ 12.100 [Amended]

7. In § 12.100(b) remove the words "§ 4 of the Act of August 12, 1958".

§ 12.101 [Amended]

8. In § 12.101(a) remove the words "section 545, title 18, United States Code" and add, in their place, the words "19 U.S.C. 1595a(c)".

§ 12.103 [Amended]

9. In § 12.103 remove the words "the Act of August 12, 1958 (15 U.S.C. 1241–1244)" and add, in their place, the words "15 U.S.C. 1241–1245".

Michael H. Lane,

Acting Commissioner of Customs.

Approved: August 14, 1989.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 89–19492 Filed 8–17–89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 333 and 448

[Docket No. 76N–0482]

RIN 0905–AA06

Topical Antimicrobial Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph for OTC First Aid Antibiotic Drug Products

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking that would amend the final monograph for over-the-counter (OTC) first aid antibiotic drug products in 21 CFR Part 333 that establishes conditions under which these drug products are generally recognized as safe and effective and not misbranded. The amendment would allow bacitracin-polymyxin B sulfate topical aerosol to include a suitable local anesthetic as an active ingredient. FDA is concurrently amending the antibiotic regulations in 21 CFR part 448 to be consistent with the monograph for OTC first aid antibiotic drug products. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by October 17, 1989. Requests for an informal conference on proposed change in § 448.510f(a)(1) by September 18, 1989.

ADDRESSES: Written comments or requests for conference on proposed change in § 448.510f(a)(1) to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 11, 1987 (52 FR 47312), FDA issued a final monograph for OTC first aid antibiotic drug products (21 CFR Part 333 Subpart B). The monograph providers for combinations of bacitracin-polymyxin B sulfate topical aerosol (§ 333.120(a)(3)) and bacitracin or bacitracin-neomycin sulfate-polymyxin B sulfate ointment and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient (§ 333.120(b)(1) and (2)).

On January 27, 1989, FDA received a citizen petition (Docket No. 76N–0482/CP0002) requesting the amendment of 21 CFR Part 333 and 21 CFR 448.510f to include a suitable local anesthetic in the combination bacitracin-polymyxin B sulfate topical aerosol. Specifically, the petition requested that the following paragraph be added to § 333.120(b):

(3) Bacitracin-polymyxin B sulfate topical aerosol containing, in each gram, 500 units of bacitracin and 5,000 units of polymyxin B and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient in a suitable vehicle, packaged in a pressurized container with inert gases: *Provided*, that it meets the tests and methods of assay in § 448.510f(b).

The petition also requested that the following sentence be added to § 448.510f(a)(1): "It may contain a suitable local anesthetic."

After reviewing the citizen petition, the agency concludes that there is sufficient evidence to generally recognize the requested combination as safe and effective and not misbranded for OTC first aid antibiotic-anesthetic use. The citizen petition pointed out that FDA, in its final monograph for OTC first aid antibiotic drug products, accepted the appropriateness of the combination of OTC topical products containing antibiotics and a local analgesic, and expressly permitted the combination of certain antibiotic active ingredients with any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient (52 FR 47312 at 47323). This acceptance was based, in part, on the facts that combination topical antibiotic products containing a local anesthetic have a marketing history that predates the OTC drug review and the antibiotic regulations in §§ 448.510a and 448.510e (21 CFR 448.510a and 448.510e) allow certain antibiotic-anesthetic combinations.

In the advance notice of proposed rulemaking for OTC external analgesic drug products (December 4, 1979; 44 FR 69768), the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products recommended as Category I combinations containing certain external analgesic active ingredients and Category I antimicrobial active ingredients provided the product was labeled for the concurrent symptoms involved (44 FR 69865). In the tentative final monograph for OTC external analgesic drug products, the agency proposed such combinations as

Category I (February 8, 1983; 48 FR 5852 at 5868). That rulemaking has not been finalized to date. However, in the final monograph for OTC first aid antibiotic drug products, the agency stated that the combination of a first aid antibiotic and an external analgesic, anesthetic, or antipruritic is similar in action and intended use to the combination of a topical antimicrobial and an external analgesic, anesthetic, and antipruritic (52 FR 47312 at 47319).

In addition, the agency stated that combinations of first aid antibiotic and local anesthetic ingredients provide rational concurrent therapy for a significant proportion of the target population and that the combination is suitable for OTC use under adequate directions for use and warnings against unsafe use, as required under § 330.10(a)(4)(iv) (52 FR 47319).

In the final monograph for OTC first aid antibiotic drug products, the agency included only those topical antibiotic-anesthetic combinations that included Category I ingredients from both the external analgesic and first aid antibiotic rulemakings and that are the subject of a current CFR antibiotic monograph (52 FR 47319). Bacitracin-polymyxin B sulfate topical aerosol in combination with a local anesthetic was not the subject of an existing antibiotic regulation and, consequently, such a combination was not included in the final monograph.

Therefore, the agency is proposing to amend the existing antibiotic regulation in § 448.510(a)(1) to provide for such a combination and to include this combination in § 333.120(b) of the final monograph for OTC first aid antibiotic drug products. The product would be labeled in accordance with § 333.160 (21 CFR 333.160).

The agency advises that any final rule resulting from this proposed rule will be effective 12 months after its date of publication in the **Federal Register**. On or after that date, any OTC drug product that is not in compliance may not be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to the rule that is repackaged or relabeled after the effective date of the rule must be in compliance with the rule regardless of the date the product was initially introduced into interstate commerce. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC first aid antibiotic drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC first aid antibiotic drug products is not expected to pose such an effect on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC first aid antibiotic drug products. Comments regarding the impact of this rulemaking on OTC first aid antibiotic drug products should be accompanied by appropriate documentation.

It has been determined that under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before October 17, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Three copies of all comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Interested persons may, on or before September 18, 1989, submit to the Dockets Management Branch a request for an informal conference on the proposed change in § 448.510f(a)(1). The participants in an informal conference, if one is held, will have until October 17, 1989, or 30 days after the day of the conference, whichever is later, to submit their comments.

List of Subjects

21 CFR Part 333

First aid antibiotic drug products, Labeling over-the-counter drugs.

21 CFR Part 448

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

PART 333—TOPICAL ANTIMICROBIAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR Part 333 continues to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. A new paragraph (b)(3) is added to § 333.120 to read as follows:

§ 333.120 Permitted combinations of active ingredients.

* * * * *

(b) * * *

(3) Bacitracin-polymyxin B sulfate topical aerosol containing, in each gram, 500 units of bacitracin and 5,000 units of polymyxin B and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient in a suitable vehicle, packaged in a pressurized container with inert gases: *Provided*, That it meets the tests and methods of assay in § 448.510f(b) of this chapter.

PART 448—PEPTIDE ANTIBIOTIC DRUGS

3. The authority citation for 21 CFR Part 448 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

4. Section 448.510f is amended by revising paragraph (a)(1) to read as follows:

§ 448.510f Bacitracin-polymyxin B sulfate topical aerosol.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Bacitracin-polymyxin B sulfate topical aerosol is bacitracin and polymyxin B sulfate in a suitable and

harmless vehicle, packaged in a pressurized container with a suitable and harmless inert gas. Each gram contains 500 units of bacitracin and 5,000 units of polymyxin B. It may contain a suitable local anesthetic. Its bacitracin content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of bacitracin that it is represented to contain. Its polymyxin B content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of polymyxin B that it is represented to contain. Its moisture content is not more than 0.5 percent. The bacitracin used conforms to the standards prescribed by § 448.10(a)(1). The polymyxin B sulfate used conforms to the standards prescribed by § 448.30(a)(1).

* * * * *

Dated: June 14, 1989.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 89-19392 Filed 8-17-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment.

SUMMARY: OSMRE is announcing receipt of a proposed amendment to the Missouri permanent regulatory program (hereinafter, the "Missouri program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to previously mined areas, fish and wildlife, maps and plans, steep slope mining, subsidence, definitions, financial interests of State employees, and individual civil penalties. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Missouri program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.d.t. September 18, 1989. If requested, a public hearing on the proposed amendment will be held on September 12, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., c.d.t. on September 5, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William J. Kovacic at the address listed below.

Copies of the Missouri program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Kansas City Field Office:

Mr. William. J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, MO 64106, Telephone: (307) 758-6405.

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102, Telephone: (314) 951-4041.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, (307) 758-6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, Federal Register (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

II. Proposed Amendment

By letter dated August 3, 1989, (Administrative Record No. MO-454), Missouri submitted a proposed amendment to its program pursuant to SMCRA. Missouri submitted the proposed amendment in response to a November 3, 1988, letter from OSMRE in accordance with 30 CFR 732 requiring certain provisions of the State program to be updated for consistency with the Federal regulations through June 15, 1988.

The regulations that Missouri proposes to amend are: 10 CSR 40-4.060 (1) and (2), Previously Mined Areas; 10 CSR 40-6.040(11)(E), Fish and Wildlife Resource Information; 10 CSR 40-6.050(5)(C), Operations Maps and Plans; 10 CSR 40-6.060 (2)(B) and (2)(C), Steep Slope Mining; 10 CSR 40-6.070 (7)(A)3, Review of Permit Applications; 10 CSR 40-6.070(8)(M), Criteria for Permit Approval or Denial; 10 CSR 40-6.120(11), Subsidence Control Plan; 10 CSR 40-8.010(1)(A) 5, 18, and 71, Definitions; 10 CSR 40-8.045 (1), (2), (3), (4), (5), and (8), Individual Civil Penalty Assessment to the Directors, Officers, or Agents of a Corporation; and 10 CSR 40-8.060(8)(B), Resolving Prohibited Interest.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Missouri program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m., c.d.t. September 5, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 925

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 9, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-19454 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3631-2]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate an existing dredged material disposal site located in the Gulf of Mexico near the Barataria Bay Waterway (BBWW) for the continued disposal of dredged material removed from the BBWW. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This proposal site designation is for an indefinite period of time, but the site is subject to monitoring to insure that unaccepable adverse environmental impacts do not occur.

DATES: Comments must be received on or before October 2, 1989.

ADDRESSES: Send comments to: Norm Thomas, Chief, Federal Activities Branch (6E-F), U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733.

Information supporting this proposed designation is available for public inspection at the following locations:

EPA, Region 6, 1445 Ross Avenue, 9th Floor, Dallas, Texas 75202.

Corps of Engineers, New Orleans District, Foot of Prytania Street, Room 296, New Orleans, Louisiana 70160.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655-2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This proposed site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter I, subchapter H, § 288.4) state that ocean dumping sites will be designated by publication in part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established the BBWW site for the disposal of material dredged from the BBWW. In January 1980, the interim status of the BBWW site was extended indefinitely. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the EPA Region 6 address given above.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

EPA and the New Orleans District Corps of Engineers (COE) have jointly prepared a Final Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Barataria Bay Waterway, Louisiana Ocean Dredged Material Disposal Site Designation." On August 11, 1989, a notice of availability of the Final EIS for public review and comment was published in the Federal Register. The public comment period on this Final EIS closes on September 11, 1989. Limited copies of the Final EIS are available from the EPA address given above. Comments received on the March 1988 Draft EIS were addressed in the Final EIS. Five comment letters were received. The major issue raised concerned the beneficial uses of dredged material for marsh creation purposes instead of ocean disposal of the material. Because site disignation does not preclude the use of other disposal options, EPA has elected to proceed with site designation.

The proposed action discussed in the EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis. Prior to each use the Corps will comply with 40 CFR 227 by providing EPA a letter containing all the necessary information.

The EIS discusses the need for the action and examines oceans disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS and the analysis was updated in the Final EIS based on information from the COE. The nearest land disposal area occurs about 3.5 miles north of the disposal site. However, this area is already used for disposal of material dredged from the bay portion of the BBWW. Using this or other sites would increase costs considerably and reduce their life expectancy, necessitating acquisition of new areas. Accordingly, this alternative was not considered feasible. Marsh creation and beach nourishment with BBWW material were also evaluated. Because of increased transportation costs, these alternatives were also determined not practicable.

Four ocean disposal alternatives—two shallow water areas (including the proposed site), a mid-shelf area and a deepwater area—were evaluated. Use of the mid-shelf and deepwater sites would involve: (1) Increased transportation costs without any corresponding environmental benefits; (2) the removal of sediments from the nearshore environment making them unavailable for movement and deposition by longshore currents; and (3) increased safety hazards resulting from transporting dredged material greater distances through areas of active oil and gas development. Because of these reasons, the mid-shelf area and the deepwater area were eliminated from further consideration. An alternate

BEST COPY AVAILABLE

shallow-water site located further east or immediately west of the existing site was also evaluated. However, no environmental benefits would be gained by its selection.

In accordance with the requirements of the Endangered Species Act, EPA and the COE have completed a biological assessment. The COE has coordinated a no adverse effect determination with the National Marine Fisheries Service (NMFS) and NMFS has concurred with this determination. The State of Louisiana has indicated that EPA's proposed action is not consistent with the Louisiana Costal Zone Management Program. However, EPA has determined that designation of the BBWW site is consistent, to the maximum extent practicable, with the Coastal Zone Management Act.

C. Site Designation

The BBWW ocean disposal site is located off the Barataria Basin of southeast Louisiana. The northern end of the site is about 1.25 miles southeast of Grand Terre Island and about 2.0 miles east of Grand Isle in Jefferson Parish. The site extends approximately three miles offshore. Water depths at the site range from 8 to 20 feet. The coordinates of the rectangular shaped site are as follows: 29°16'10" N, 89°56'20" W; 29°14'19" N, 89°53'18" W; 29°14'00" N, 89°53'36" W; 29°16'29" N, 89°55'59" W.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for coninuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific factors used in evaluating a proposal disposal site to assure that the general criteria are met.

EPA has determined, based on information presented in the Final EIS, that the existing site is acceptable under the five general criteria. The Continental Shelf location is not feasible and no environmental benefit would be obtained by selecting such a site. Historical use of the existing site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. The characteristics of the proposed site are reviewed below in terms of the eleven specific factors.

1. *Geographical position, depth of water, bottom topography and distance from coast.* (40 CFR 228.6(a)(1))

Geographical position, average water depth, and distance from the coast for the disposal site are given above. Bottom topography gently slopes to the southeast (2.0 feet per mile).

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* (40 CFR 228.6(a)(2))

The northern Gulf of Mexico is a breeding, spawning, nursery and feeding area for shrimp, menhaden and bottomfish. Migration of fish and shellfish through the area is heaviest during spring and fall. The BBWW ocean disposal site represents a small area of the total range of the fisheries resource. Impacts to endangered or threatened turtles and whales that might utilize the area for the listed activities are negligible. Grand Terre Island harbors a bird nesting colony consisting of black skimmers. This colony is located about 2.5 miles from the disposal site.

3. *Location in relation to beaches and other amenity areas.* (40 CFR 228.6(a)(3))

The existing ocean disposal site is about 1 mile from the nearest beach on Grand Terre Island. The Grand Terre beach is sparsely used because it is small and accessible only by boat. There is a beach on the eastern end of Grand Isle in Grand Isle State Park, about 1.5 miles to the east, that attracts visitors. The turbidity plume resulting from disposal would be diluted to ambient levels well before reaching either of these beaches.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any.* (40 CFR 228.6(a)(4))

The material to be disposed of is from the adjacent area of the BBWW and consists of a mixture of sand, silt and clay obtained by hydraulic dredge. Sediment grain size generally decreases in the offshore direction, with sands being predominant in the disposal site. Approximately 500,000 cubic yards of material are disposed of in the site during each use. The material is removed with a hydraulic dredge and released in the disposal site. The material is not packaged in anyway. The Corps of Engineers would likely be the only user of the site.

5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6(a)(5))

Surveillance is possible by shore-based radar, aircraft, or day-use boats. No surveillance is currently performed by the U.S. Coast Guard. Monitoring would be facilitated by the fact that the disposal site is nearshore, in shallow waters, and has baseline data available. The primary purpose of monitoring is to determine whether disposal at the site is significantly affecting areas outside the disposal area and to detect any unacceptable adverse effects occurring in or around the site. Based on historic data, an intense monitoring program is not warranted. However, in order to provide adequate warning of environmental harm, EPA will develop a monitoring plan in coordination with the COE. The plan would concentrate on periodic depth soundings and sediment and water quality testing.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6))

Mixing processes, current characteristics, and sediment transport in the nearshore region off Barataria Pass are influenced by tidal currents, winds, and storms. Chemical and physical parameters generally indicate a fairly homogenous water column in the area. Density stratification can occur seasonally to a minor extent with fresher water from the Mississippi River on the surface. In the summer, bottom waters on the Louisiana shelf are occasionally oxygen depleted, which can cause mortality of benthic organisms. During a site study in December 1980, waters were supersaturated with oxygen at all depths. During June 1981, waters were partially saturated or supersaturated with oxygen down to about sixteen feet. Velocities of 3 to 4 knots may occur during storm events. It appears that the predominant current is to the west, but easterly currents occur with storm events. Data on the specifics of currents in the area are sparse.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7))

Dredged materials from the construction and maintenance of the BBWW have been disposed of at the site since 1960, and no significant adverse impacts have resulted. Previous disposals have caused minor effects, such as temporary increases in suspended sediment concentrations, temporary turbidity, sediment mounding, smothering of some benthic organisms, release of nutrients, possible minor releases of trace metals, and a temporary change in sediment grain size. Since the effects of disposal are temporary, there are no cumulative effects.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of specific scientific importance and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8))

In the vicinity of the disposal site the majority of shipping traffic is confined to the BBWW. Dredging facilitates shipping; periodic use of the disposal site has some potential for interfering with ship movement in the BBWW during disposal operations.

Nearshore areas contain a productive "high-use" fishing ground for a number of commercial and recreational species. The BBWW site represents a very small portion of the total nearshore fishing grounds in the Deltaic Plain. Adverse impacts from disposal would be temporary and minor. Interferences with fishing may occur if any shoals are created by dredged material disposal, since this could cause groundings of shrimp boats within disposal site boundaries. If the material is spread evenly, it will raise bottom elevations within the site by 0.4 feet, which should not result in vessel groundings.

The nearest oyster leases are on the north side of Grand Terre Island about 2.0 miles to the northwest of the site. Designation of the disposal site would not impact these or any other lease areas. Desalination areas do not occur in the vicinity of the disposal site. The site is located near the Grand Isle State Park recreation area. There has been no apparent impact to the park from use of the disposal site and no impact is expected to occur in the future.

Petroleum and mineral-extracting activities occur offshore within 8.0 miles of the site and are not impacted by use of the site. Also there are pipelines that occur throughout the area that have not been impacted by the deposition of dredged material. There is a major oil and gas collection facility that occurs on the eastern end of Grand Isle; it has not been impacted by the use of the disposal site. Intermittent dumping does not interfere with the exploration or production phases of resource development, or with other legitimate uses of the ocean.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9))

Water column concentrations of trace metals were below EPA's water quality criteria during the 1980–1981 study. Chlorinated hydrocarbon concentrations (CHC) in and near the BBWE disposal site were below detection limits, except for dieldrin and DDE. These chemicals were found at slightly higher levels than EPA's 24-hour average criteria, but at levels well below the single measurement criteria.

Nutrient concentrations, turbidity, and suspended solids are controlled in large part by Mississippi River discharge, and are generally low in the summer/fall and increase in the winter/spring.

During the 1980–1981 study, concentrations of chemicals in sediments were strongly related to grain size, with highest levels in slits and clays. Concentrations of heavy metals and CHC's were comparable inside and outside the disposal site for similar sediment types. Total hydrocarbon concentrations were three to four times higher in June than in December probably due to riverine sources. The presence of unresolved high molecular weight hydrocarbons showed evidence of chronic petroleum contamination. Concentrations of cyanide, phenol and oil and grease were low and were comparable inside and outside the disposal site.

The benthos at the site was found to exhibit a patchy distribution, spatially and temporarily and was dominated by polychaete worms and the little surf clam. The little surf clam only became dominant during summer on sand substrate. Polychactes tended to reach highest densities in fine grained sediments. Statistical analyses demonstrated a high variance between dominant species inside and outside of the site. No effects of previous dredged material disposal on benthic organisms could be identified at the disposal site and the macrofauna were characteristic of shallow areas offshore from southern Louisiana.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* (40 CFR 228.6(a)(10))

Past disposal of dredged material at the existing site has not resulted in the development or recruitment of nuisance species. Considering the similarity of the dredged material with the existing sediments, it is not expected that continued disposal of dredged material will result in the development of such species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* (40 CFR 228.6(a)(11))

Fort Livingston is a registered historic site on the west end of Grand Terre Island, due north of the disposal site. This landmark has undergone marked subsidence and cannot be restored. A survey to identify other archeological and historical resources is not required at this time. However, a Nautical Resources Plan for the Corps is being prepared in consultation with the Louisiana State Historic Preservation Officer. Under guidelines established by this plan, studies may be done in the future to evaluate impacts to historic shipwrecks that may result from use of the disposal site.

E. Proposed Action

Based on the Final EIS, EPA proposes to designate the Barataria Bay Waterway ocean dredged material disposal site. The existing site is compatible with the general criteria and specific factors used for site evaluation. While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: August 8, 1989.

Robert E. Layton Jr., P.E.,

Regional Administrator of Region 6.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Barataria Bay Waterway, La.–Bar Channel and adding paragraph (b)(81) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(81) Barataria Bay Waterway, Louisiana—Region 6

Location: 29°16'10" N, 89°56'20"W; 29°14'19"N, 89°53'16"W; 29°14'00" N, 89°53'30" W; 29°16'29" N, 89°55'59" W.

Size: 1.4 square nautical miles.

Depth: Ranges from 8–20 feet.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material from the vicinity of Barataria Bay Waterway.

[FR Doc. 89–19466 Filed 8–17–89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 89–07]

Inquiry Into Laws, Regulations and Policies of the Government of Ecuador Affecting Shipping in the United States/Ecuador Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission, in response to apparent unfavorable conditions in the foreign oceanborne trade between the United States and Ecuador, proposes rules imposing a fee of $100,000 per outbound voyage from the United States to Ecuador on Maritima Transligra, S.A., an Ecuadorian-flag carrier. The rule would adjust or meet apparent unfavorable conditions by imposing burdens on an Ecuadorian carrier in response to burdens imposed on U.S. commerce by Ecuadorian laws and regulations.

In addition, the Commission proposes to revise Part 586 of the Code of Federal Regulations to incorporate as a single section the present Part 586, and to add the proposed rule to that Part as a new section. For this reason, the Final Rule issued in Docket No. 87–6, *Actions to Adjust or Meet Conditions Unfavorable to Shipping In The U.S./Peru Trade*, 54 FR 12,629 (March 28, 1989) is reprinted herein as a proposed recodification which makes no substantive change in the rule and does not otherwise affect its status.

DATES: Comments due on or before September 18, 1989.

ADDRESSES: Comments (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION:

Pursuant to the authority of section 19(1)(b) ("Section 19"), Merchant Marine Act, 1920 ("1920 Act"), 46 U.S.C. app. 876(1)(b), as implemented by 46 CFR Part 585, the Federal Maritime Commission ("Commission" or "FMC") is authorized and directed to make rules and regulations affecting shipping in the foreign trade of the United States in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade of the United States and which arise out of, or result from, foreign laws, rules or regulations, or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.

The types of conditions which the Commission has found to be unfavorable to shipping in the foreign trade of the United States are set forth at 46 CFR 585.3. Among these are conditions which: (1) Preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel; (2) reserve substantial cargoes to the national-flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in the foreign trade of the United States; and (3) are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors, 46 CFR 585.3(a), (b) and (d).

Background

On March 15, 1989 (54 FR 10,721), the Commission issued a Notice of Inquiry ("March Notice") into laws, regulations and policies of the Government of Ecuador ("GOE") affecting shipping in the United States/Ecuador trade ("Trade") to determine whether action pursuant to Section 19 is warranted. The Commission instituted this inquiry as a result of allegations made by Overseas Enterprises, Inc. ("OEI"), a U.S.-owned company, that it has been unable to reestablish a liquid bulk service in the Trade due to GOE cargo reservation laws [1] which require OEI to employ U.S.-flag vessels in such a service. In addition, the Commission requested information from the U.S. Department of State ("DOS") about its efforts to resolve the situation through diplomatic channels.

The Commission received comments to its March Notice from Maritima Transligra S.A. ("Transligra"), OEI, Pecten Chemicals ("Pecten"), Trans Marketing Houston, Inc. ("Trans Marketing"), Shippers for Competitive Ocean Transportation ("SCOT"), the Joint Maritime Congress ("JMC"), DOS, and the GOE.

Based on the comments received, the Commission on May 18, 1989 (54 FR 21,473), issued a Notice of Further Comments ("May Notice") to provide interested parties an opportunity to submit additional comments on the status and operations of OEI, as well as on shipping conditions in the U.S./Ecuador trade. These comments were generally solicited to assist the Commission in determining whether issuance of a countervailing rule pursuant to Section 19 is warranted. The Commission particularly sought information on the status and operations of OEI because it was not clear from the comments filed whether OEI operates as a carrier, is solely an agent for non-U.S. companies which are carriers operating foreign-flag vessels, or has some other relationship to carriers operating third-flag vessels.

In the May Notice, the Commission stated that GOE Resolution No. 012/87, on its face, appears to create conditions unfavorable to shipping in the Trade and, to the extent that the Resolution applies only to the U.S./Ecuador bulk trade, leaving most other Ecuadorian bulk trades open to third-flag carriers, it is discriminatory.[2] The Commission added that this Resolution allows Ecuadorian shipping companies to charter and employ foreign-flag vessels in the Trade, whereas U.S. shipping companies may employ only U.S.-flag vessels in the Trade. Further, the Commission advised that even if, as the GOE represents, U.S. companies may employ third-flag vessels in the Trade if they operate at least one U.S.-flag vessel, troubling questions are raised as to whether Ecuadorian laws dictating the fleet mix and other registration requirements for U.S. or other non-Ecuadorian citizens' participation in U.S. trade create conditions unfavorable to shipping or are otherwise inappropriate. Additionally, the Commission noted that the exclusion of third-flag operators in the Trade pursuant to Resolution No. 012/87 alone may create conditions unfavorable to shipping in the Trade and that comments received thus far indicate shipper support for OEI's allegation that GOE cargo reservation laws create conditions unfavorable to shipping in the Trade.

Comments in response to the May Notice were received from: OEI, Transligra, SCOT, Nedlloyd Lines ("Nedlloyd"), Council of European and Japanese National Shipowners Association ("CENSA") and DOS. These comments are summarized below.[3]

Summary of Comments

A. OEI

OEI states that it does not own or operate vessels. It reportedly acts as agent for owners and operators of non-U.S.-flag vessels. OEI advices that it markets the services of vessel owners and operators and negotiates their charters and other shipping arrangements. Further, OEI states that it is affiliated with and operates as agent for O.N.E. Shipping, Ltd., a Bermuda company that uses liquid parcel tankers in regular service between the U.S. and South and Central America and the Caribbean. OEI advises that this service of 25 years included Ecuador until GOE laws excluded competitors of Transligra.

OEI takes the position that the facts and circumstances present in this proceeding definitively show the existence of conditions unfavorable to shipping in the foreign trade of the United States within the meaning of Section 19 and that, therefore, countervailing action under that Section is warranted. The laws and policies of the GOE are said to have caused actual harm to shipping in the U.S. commerce and to U.S. trade interests. OEI maintains that all third-flag carriers except those operated by the authorized Ecuadorian carrier, Transligra, are prohibited from carrying U.S. exports to Ecuador; [4] U.S. exporters are compelled by the GOE to deal with a one carrier monopoly; and shipping-related services by U.S. companies such as OEI are unemployed in the Trade. OEI asserts that GOE laws and policies have resulted in "above-market freight rates for U.S. exporters, absence of cost sensitive competition, inability of U.S. exporters to make commercial selection of transportation, and U.S. exporters' potential loss of markets to other countries' exporters not facing similar restrictions." Further, it believes that the threat of penalties to shippers violating GOE cargo reservation laws magnifies the actual and potential harm. Shippers unwilling to risk penalties allegedly will not venture to use a carrier other than Transligra.

OEI submits that it is "doubly affected and harmed" by the GOE's actions. It reports that it is unable to engage U.S.-flag vessels in the Trade due to their unavailability,[5] and that its principals who own and/or operate third-flag vessels cannot use OEI to broker shipments in the Trade because third-flag vessels not chartered by Transligra are excluded.

OEI maintains that, due to GOE restrictions, U.S. exporters to Ecuador and neighboring countries necessarily suffer higher costs because they are unable to employ a single carrier to transport cargoes to all destinations. The inability to employ a single carrier allegedly prevents exporters from receiving volume discounts. Further, OEI contends that carriers cannot compete effectively if barred from the U.S.-Ecuador leg of a U.S.-West Coast of South America service.

OEI takes exception with the GOE's earlier contention that no additional service is needed because the Trade is not large enough to accommodate any carrier other than Transligra. Transligra allegedly has used as much or more third-flag tonnage in the Trade as Ecuadorian-flag tonnage.

OEI contends that Section 19 relief is available under the circumstances of this case, citing past Section 19 cases, dealing with countries such as Venezuela,[6] Colombia,[7] and the Philippines [8] wherein the Commission issued proposed rules due to unilateral foreign government actions resulting in the apparent exercise of control by that government over the flow of U.S. exports. OEI quotes from the Commission's proposed rules, illustrating that in these cases the Commission sought to protect the interests of not only U.S.-flag carriers, but third-flag carriers and U.S. shippers. OEI maintains, therefore, that Transligra's argument that Section 19 benefits only U.S.-flag shipping is without merit.

Further, OEI contends that relief under Section 19 is available for parcel tanker cargoes. It cites the fact that such interests were previously protected by the Commission in FMC Docket No. 87–11, *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Colombia Trade*. OEI takes the position that the interest protected by Section 19 is "shipping in the foreign trade," which includes all types of international ocean commerce.

OEI maintains that the harm it has described is expected to continue since the GOE has not indicated that it will permit freer access. Given the harm which allegedly is suffered by U.S. exporters of liquid bulk commodities, U.S. enterprises like OEI, and third-flag operators, OEI urges the Commission to find that the laws, policies and actions of the GOE produce conditions that the Commission has previously declared to be unfavorable to shipping under Section 19.

B. Transligra

Comments submitted by Transligra include an affidavit of Wil W. Nefkens, Vice President of Transligra. Transligra avers that no operator of U.S.-flag

---

[1] The particular law in question is GOE Resolution No. 012/87 of March 1987, which reserves solid and liquid bulk import cargo from the United States to Ecuador for Ecuadorian-flag vessels belonging to Ecuadorian shipping companies, or foreign vessels chartered by Ecuadorian shipping companies, or vessels flying the flag of the United States. The stated rationale in Resolution No. 012/87 for narrowing the application of the cargo reservation law solely to the trade between the United States and Ecuador is that 86 percent of Ecuador's imported bulk cargo originates "in the Gulf of the United States."

[2] Exceptions to this may be the Ecuador/Brazil-Argentina trades wherein the GOE states in its April 7, 1989 letter to GOS that 100 percent of the cargo generated by those two countries destined for Ecuador is reserved for "itself."

[3] *See* May Notice for a summary of comments received in response to the March Notice.

[4] OEI reports that it has been informed that applications for authorization to serve the Trade must be submitted by a U.S. company thereby barring third-flag carrier access.

[5] OEI asserts that no U.S.-flag vessels able to carry liquid bulk cargoes serve the Trade or are available for service. One reason for lack of availability of U.S.-flag service is reportedly the vessel draft restriction at Guayaquil.

[6] *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Venezuela Trade*, Docket No. 82–58, Notice of Proposed Rulemaking, 47 FR 55969, 55971 (December 14, 1982).

[7] *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Colombia Trade*, Docket No. 87–11, Notice of Proposed Rulemaking, 52 FR 20119 (May 29, 1987).

[8] *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Republic of the Philippines Trade*, Docket No. 83–45, Notice of Proposed Rulemaking, 48 FR 45800, 45802–03 (October 7, 1983).

vessels has claimed that conditions unfavorable to shipping exist in the Trade. Transligra states that, on the contrary, the JMC, a research and education organization representing U.S.-flag ship companies, did not oppose GOE policies in its comments.

Transligra notes that OEI appears to be an agent for one or more third-flag carriers and argues that FMC jurisdiction under Section 19 is limited to protecting the interests of U.S.-flag carriers.

Transligra submits a number of statements rebutting comments filed by shippers in response to the Commission's March Notice. It states that Trans Marketing neither claims nor demonstrates that service in the Trade is poor, rates are high, or unfavorable conditions exist. Transligra asserts that Pecten makes no attempt to support its allegations of high rates in the Trade. It likewise counters SCOT's concern that GOE restrictions do not apply to liquid bulk exporters of any other country, contending that virtually all liquid bulk parcel tanker imports to Ecuador are shipped from the U.S. SCOT's allegations that GOE restrictions result in economic, safety and environmental costs are said to be unfounded and in no way demonstrate that conditions are unfavorable to shipping in the trade from the U.S. to Ecuador. Transligra responds that its rates in the Trade are competitive and its service is efficient and of high quality.

Further, Transligra maintains that OEI's claim that the number of liquid bulk operators offering service from the U.S. to Ecuador has declined to one while the Ecuadorian import trade from other countries continues to have several operators is misleading. It notes that OEI, for example, lists product carriers such as Shell Tankers as carriers of Ecuadorian liquid bulk imports in other trades. Further, Transligra advises that less than 10 percent of parcel shipments in any year originates outside the U.S.

Transligra concludes that nothing in the comments submitted to date indicates that unfavorable conditions exist in the Trade, and accordingly suggests that the proceeding be terminated.

The affidavit submitted by Mr. Nefkens provides information on Transligra's service in the Trade, stating that its rates are competitive and operations efficient. He reports that Transligra operates one Ecuadorian-flag vessel, the MV CHIMBORAZO which normally makes 10 to 11 voyages per year in the Trade. When additional tonnage is required, Transligra reportedly charters space on other parcel tankers or charters entire voyages.

Mr. Nefkens takes exception to a number of comments submitted in response to the Commission's March Notice. He points out that OEI's claim that no U.S.-flag vessels are available for service in the Trade is directly refuted by the JMC. He suggests, however, that if OEI is a U.S. company operating vessels, it would acquire a foreign-built vessel and register it under the U.S. flag.

Mr. Nefkens also takes issue with OEI's statement that Transligra transports a majority of its liquid bulk cargo on third-flag vessels. He states that in the first five months of 1989, over one-half of Transligra's liquid bulk cargoes were transported on Ecuadorian-flag vessels. Mr. Nefkens explains that, if sufficient liquid bulk cargoes were available in the Trade, Transligra would operate a second Ecuadorian-flag vessel.

Mr. Nefkens states that the GOE "obviously favors reliable service by the Ecuadorian carrier, operating a dedicated Ecuadorian vessel" at rates that can be adjusted or lowered by the GOE when it believes that such action is necessary. Further, Mr. Nefkens submits that Transligra can offer a full service which meets the needs of shippers.

C. SCOT

SCOT reports that its members have used OEI vessels in U.S./South America trades other than the U.S./Ecuador trade, and that it has provided efficient service. It therefore maintains that OEI should not be denied access to the Trade.

SCOT explains that in small markets for U.S. exports, such as Ecuador, it is particularly important that chemical parcel tankers be free to serve a total geographic area to make their services cost effective. Free access is said to be important so that shippers can select the carrier that will best assure safe handling of the product, minimize the risk to the environment, and maintain product quality. SCOT asserts that these assurances are not possible when a single carrier, *i.e.*, Transligra, is granted an effective monopoly in the Trade.

SCOT refutes JMC's claim that the U.S. merchant marine has chemical parcel tankers capable of operating in the Trade. Further, SCOT disputes JMC's argument that the FMC's primary goal is to protect the rights of U.S.-flag vessels, asserting that the FMC is responsible for protecting the rights of U.S. shippers, as well as the rights of U.S.-flag and other carriers.

SCOT expresses concern over the fact that the GOE has involved itself in the setting of freight rates, which it believes should be set by the market and not by the government. Additionally, SCOT is troubled by the fact that the GOE has imposed severe fines on importers who violated the cargo reservation law.

SCOT has provided information on conditions in the U.S./Ecuador *liner* trade because GOE cargo reservation policies extend to liner, as well as bulk cargoes. Competition in the U.S./Ecuador liner trade is said to be extremely limited causing rates to be among the highest that U.S. shippers experience anywhere in the world. SCOT states that with the possible exception of northbound service by Nedlloyd to the U.S. East Coast, no third-flag carriers operate in the Trade.

D. Nedlloyd

Nedlloyd advises that it is precluded from offering service in the U.S. export trade to Ecuador because of Ecuadorian requirements that U.S. exports to Ecuador be transported on Ecuadorian or U.S.-flag vessels. It believes that "the overall effect of Ecuadorian restrictions on U.S. maritime commerce is to restrict heavily market mechanisms in the export commerce of the United States to Ecuador without subjecting Ecuadorian exports to similar impediments." Nedlloyd urges the Commission to examine Ecuador's restrictions of general cargo as part of its evaluation of OEI's complaint.

While Nedlloyd has no information to submit regarding the status of OEI, it challenges the position taken by Transligra that OEI lacks standing to raise issues under Section 19. Nedlloyd states that this position is inconsistent with the provision's nearly seventy-year history. Nedlloyd submits that Commission authority under Section 19 and the issues to be brought to the Commission pursuant thereto must necessarily be broad. It contends that the adverse impact of unilateral restrictions on U.S. commerce is varied and widespread. In order for the Commission to determine whether unfavorable conditions exist, Nedlloyd believes that the Commission must engage in efforts to obtain the broadest possible comment in the shortest time practicable. Nedlloyd maintains that Transligra, through its Petition to Dismiss the Proceeding due to OEI's standing, is attempting to prevent the Commission from compiling an adequate record, and is focusing on OEI's status rather than explaining why Transligra should enjoy a privileged position in the U.S. export commerce due to GOE restrictions, or providing a defense or explanation for GOE restrictions.

E. CENSA

CENSA challenges Transligra's argument that Section 19 does not extend to protection of non-U.S.-flag carriers. CENSA notes that the Commission has consistently rejected this argument and that the Commission's long-standing interpretation of Section 19 has not been overridden by Congress. CENSA, therefore, urges the Commission to adhere to its prior decisions and reject the jurisdictional argument advanced by Transligra.

F. DOS

The DOS transmitted two letters to the Commission. By letter of June 6, 1989, DOS reports that the issue of OEI was being discussed within the GOE's National Merchant Marine Council. In a follow up letter to the Commission, dated July 21, 1989, DOS advises that based on a recent meeting between U.S. Embassy representatives in Quito and GOE officials, the GOE has not indicated that it is contemplating any initiatives to allow OEI into the Trade.

Discussion

A. Jurisdiction

Much of the substance of the second round of comments was directed to the legal issue raised by Transligra, that the reach of Section 19 is limited to U.S.-flag vessel operators and thus may not be invoked by OEI, which, although a U.S. company, is not an operator of vessels. Indeed, certain commenters went to some length to refute the jurisdictional contentions of Transligra. CENSA filed comments addressed solely to this issue, citing past Commission exercises and interpretations of Section 19. Nedlloyd Lines filed lengthy comments rejecting what it terms Transligra's "tortured interpretations of Section 19 * * *." (Nedlloyd Comments at 1.)

Nedlloyd correctly points out that Transligra's reliance on specific aspects of the legislative history is strained and misplaced. Transligra argues that the 1920 Act is promotional in purpose rather than regulatory, and that regulation of carriers was accomplished in the earlier Shipping Act, 1916 ("1916 Act"), 46 U.S.C. 801, et seq. (1982). In this connection, Transligra states that the "only" regulatory section of the 1920 Act—Section 20—was cast as an amendment to the 1916 Act. This argument ignores the fact that Section 19 itself refers to regulations affecting shipping in each of its four subsections. Moreover, as Nedlloyd points out, the far more numerous promotional aspects of the 1920 Act were specifically recognized as such and separated from the regulatory section—Section 19—when the Maritime Administration was created as an agency separate from the Federal Maritime Commission in 1961.

Transligra's use of the legislative history of the Merchant Marine Act, 1920 is disingenuous and misleading in several respects. In its Petition to Dismiss this proceeding,[9] Transligra cites from the House hearings and debates, arguing that they focus exclusively on the maintenance of a U.S.-flag merchant marine based on the government-built ships to be transferred to the private sector at the end of World War I. (*See* Transligra Petition to Dismiss the Proceedings, 7–8.) However, Section 19 was not part of the bill that originated in the House of Representatives. Section 19, therefore, did not exist during the House hearings and debates and the concerns expressed there cannot accurately be relied upon in interpreting the scope of that section.

Moreover, even with respect to the House debates, Transligra overstates the exclusivity of the legislative concern with the welfare of a U.S.-flag fleet. In the House debate on the original bill, H.R. 10378, which focused solely on disposition of the World War I fleet acquired by the United States Shipping Board and the Emergency Fleet Corporation, the concern was "[n]ot only that we must have our own merchant marine if we *expect our commerce to have a fair chance in the markets of the world* in peace time, but it is necessary that we do so in case of emergency." 58 Cong. Rec. 8152 (1919) (Emphasis added). For example, Representative Lazaro expressed the concern that:

> Other powerful nations have built and are building their merchant marines and we must do likewise *if we are to get our share of the world's commerce.* The day has come when we should be no more dependent upon foreign ships to carry our products to market than should any other nation. We all agree that we are to have intensive competition following the world war and that we need a sound policy and sane laws to keep up our position. (Emphasis added) *Id.*

This concern was echoed by Representative Wright:

> As I see it, the brightest opportunity in the history of this great country is before us, to promote an efficient and great American merchant marine, and *thereby to extend and promote our foreign commerce and trade.* (Emphasis added). *Id.*

Thus, even the House debates reflect the broader Congressional concern with U.S. trade and commerce generally, as well as vessel operations. These general concerns informed the impetus for the bill originated in the House as H.R. 10378 which dealt only with the disposition of the ships and other physical assets acquired by the United States Shipping Board, as well as its maritime powers. This bill did not extend to other concerns, including the detrimental actions of foreign governments and foreign carriers, which subsequently arose during Senate consideration of the bill.

Indeed, Section 19 originated in the draft of the bill that emerged from the Senate Committee on Commerce following testimony concerning the detrimental effects of foreign laws and regulations on the ability of U.S. commercial interests to compete in foreign markets. The Senate committee heard much testimony on the effects of foreign laws, rules, "orders in council", and shipping and commercial practices in promoting not only the foreign nation's merchant marines, but their import and export trade as well, to the detriment of American commercial interests.

The British and Canadian use of orders in council was discussed in the testimony of William L. Clark of the Pacific Steamship Company. *Hearings Before the Senate Committee on Commerce, Establishment of an American Merchant Marine,* 66th Cong., 2nd Sess. 1429, 1453–1456, 1463–1466 (1920). The following exchange occurred during that testimony:

> SEN. CHAMBERLAIN: Well, I have often wondered if there was any way in the world in which the United States under its Constitution can adopt any regulations or can confer any powers which would meet these constant orders in council, which may change every 24 hours to meet a good situation.
>
> * * * * *
>
> I have often thought that a power could be conferred upon the board enabling us to meet that order in council. It affects us not only in Canada, but in America, everywhere.
>
> THE CHAIRMAN: Why could we not give power to the Shipping Board to pass regulations to meet the situation started by the orders in council?
>
> SEN. CHAMBERLAIN: That is the only way we could protect ourselves.
>
> MR. CLARK: If there were some way that we could devise a department somewhat similar to the British Board of Trade, it would be of great benefit to us. *The British Board of Trade protects British shipping in every way possible. That protection is always presumed to be in the general British interests, and all matters of regulation are therefore worked out in harmony with British commerce and British shipping, protective of both, . . .* and they make their laws to protect Great Britain *against all the commerce and all the shipping* of the world, and that is as it should be.
>
> * * * * *

[9] Transligra's Petition to Dismiss the Proceedings has been treated by the Commission as comments. See the Commission's May Notice (54 FR 21473).

Wherever you find the British flag you will find that its *carriers are working not simply for the revenues that can be earned from the carrying of a cargo, but working also in the interests of British trade.*

* * * * *

THE CHAIRMAN: And we have got to emulate her [Great Britain]. If we want our interests looked after we have got to look after them ourselves. Other countries are looking after their own interests and not after ours. *Id.* 1465–1466. [Emphasis supplied]

Section 19 originated in the Confidential Committee Print of H.R. 10378 which emerged from those hearings. The language proposed in that print was enacted with little change.[10]

These broad, nationalistic purposes of the Act were emphasized in floor debate on the Senate bill by Senator Jones, Chairman of the Commerce Committee, who expressed the desire:

to impress upon the Shipping Board, if I can do it * * * that we want them to be animated by a spirit of Americanism; that we want them to be moved with the desire, an intense desire, *to build up American trade, American shipping, and American interests.* I want them to understand that we are placing in their hands the greatest and widest power, probably greater than was ever invested in any governmental organization before and that we are giving them this power and giving them this discretion *to use in the interest of American trade and American shipping* and not for the purpose of simply getting rid of the ships we have in the most expeditious way possible. 59 Cong. Rec. 6813 (May 10, 1929). [Emphasis added]

This portion of the Senate debate is also quoted at page 5 of Transligra's Petition to Dismiss. We note, however, that the passage has been selectively edited by Transligra to omit the references to "American trade" or the broader "American interests" of concern to Senator Jones. Therefore, contrary to Transligra's representations, the legislative history of Section 19 does reflect Congress' wish to protect not only U.S.-flag carriers, but U.S. interests in the efficient movement of U.S. export and import commerce.

The Commission sought clarification and further comment on the nature of OEI's operations in its May Notice. OEI advises in its supplemental comments that it does not itself operate vessels, but arranges and coordinates shipping transactions between vessel owners and operations and U.S. exporters.

We do not view OEI's activities as making it any less engaged in the business of "shipping in the foreign trade," as that term is used in Section 19. It participates in such "shipping" much in the same way as non-vessel operating common carriers (NVOCCs) and ocean freight forwarders do.

Although the Commission's rules do not refer to such participants in maritime activities in delineating who may file a petition for relief under Section 19 at 46 CFR 585.4, the rule is applicable to *"any person,* including, but not limited to * * *" the entities named. (Emphasis added). We see no reason to exclude non-carrier maritime businesses, such as OEI, from the broad coverage available under Section 19.

The Commission's rule, moreover, clearly states its applicability to any owner, operator or charterer of "bulk or tramp," as well as liner, vessels. OEI, as a U.S. company seeking to participate in transactions to provide bulk vessel capacity in the Trade for service to U.S. exporters is within the range of shipping interests protected by Section 19. The Commission proposed a rule to meet conditions alleged to be unfavorable to shipping in the liquid bulk trade between the U.S. and Columbia. *See Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Colombia Trade,* 52 FR 20,119 (May 29, 1987).

B. Conditions Unfavorable to Shipping

The supplemental comments filed in response to the Commission's May Notice, taken as a whole, support the tentative conclusion of that Notice that "GOE Resolution No. 012/87, on its face, appears to create conditions unfavorable to shipping in the Trade." Nothing in the second round of comments justifies or offsets the discriminatory nature of the Resolution noted therein.

The discriminatory impact of the Ecuadorian Resolution is not lessened by the possible authorization of service by a U.S. company operating at least one U.S. vessel. No U.S.-flag vessels can or do serve the Trade, according to OEI, due to economic and physical impediments to such service. The physical limitations of the port of Guayaquil make service by a vessel of greater than 23'6" draft impossible; U.S.-flag chemical tankers reportedly exceed that draft. Economic as well as physical aspects of the Trade effectively limit service to parcel tankers of 5 to 10 thousand DWT. No such vessels are present in the U.S.-flag fleet, according to OEI. In any event, the possible existence of U.S.-flag vessels which might be able to participate in this Trade does not justify GOE exclusion from the Trade of other vessels which do wish to participate, in order to create a monopoly for its own vessels.

As OEI points out in its supplemental comments, the effect of the Ecuadorian resolution is to close the Trade to all third-flag carriers *except* those chosen by Transligra to participate through charters. The result, as several commenters point out, is to subject U.S. export commerce to a limit imposed on the market for shipping services by the GOE while similar limits are not imposed on the shipping services available to Ecuadorian exporters or non-U.S. exporters to Ecuador.

The comments of SCOT and Pecten indicate that those who must move cargo in this U.S. export trade find that their ability to do so efficiently and safely, as well as economically, has been adversely affected by the exclusion of third-flag carriers from the market. Such effects are harmful to shipping in the Trade within the meaning of section 19.

The only justification for the GOE restrictions offered by Transligra is that the size of the Trade provides only sufficient cargo for its own dedicated service. The Commission has rejected similar arguments based on adequacy of service in the past, and does so again here. As we noted in Docket No. 86–7 concerning Peru, adequacy of service "is irrelevant as a defense of government schemes which limit competition in shipping services in order to protect or enhance their national-flag or State-owned shipping lines." *See Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade,* Order Denying Petition, _____ F.M.C. _____, 24 S.R.R. 308, 312 (June 18, 1987). The Commission there further pointed out that a showing that the government-favored carrier now offers adequate service may merely indicate that it has been able to increase its share of the market and consolidate its position during the period when competitors have been excluded.

The Commission, therefore, finds that conditions unfavorable to shipping appear to exist in this Trade.

C. Sanctions

Transligra is the chief, if not sole, beneficiary of the Ecuadorian resolution. Transligra is an Ecuadorian-flag carrier serving the Trade with one Ecuadorian-flag vessel and additional space chartered on foreign-flag vessels. However, Transligra is not a liner operator and therefore does not file tariffs. Therefore, tariff cancellation is not an available sanction. The sanctions added to section 19 by the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a, however, are available. These include the assessment of a fee of up to $1 million per voyage, as well as the denial of clearance at U.S. ports by the collector of customs.

Based on the comments filed to date, the Commission has found that conditions unfavorable to shipping appear to exist in the U.S./Ecuador trade as a result of Ecuadorian Resolution No. 012/87. In order to adjust or meet these conditions, we herein propose a rule to impose a countervailing fee of $100,000 per outbound (ex. U.S.) voyage by Transligra. In addition, in order to secure the information necessary for Commission administration and enforcement of this rule, Transligra is required to file with the Commission periodic reports reflecting the service it provides in the Trade, including the vessels employed and the amount of cargo carried, as well as certification that it has complied with the Commission's rule. In the event that Transligra fails to comply with the requirements of the rule, it is further provided that the Commission, through its Secretary, will request that the collector of customs at ports in the U.S. Gulf of Mexico deny the clearance required by section 4197 of the Revised Statutes (46 U.S.C. app. 91) to vessels owned or operated by Transligra, as provided for in section 1002(f) of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a(f).

Since the Commission instituted this proceeding by publication of the Notice of Inquiry in March 1989, there has been no indication of willingness on the part of the GOE to permit greater opportunity for non-Ecuadorian participation in the Trade. Nevertheless, it is to be hoped that progress in resolving these issues, through GOE acton or talks with OEI or the DOS, or both, may yet be achieved without need for Commission action on a Final Rule in this proceeding.

To assist the Commission in assessing the continuing need for the action proposed, interested parties are invited to file comments, views and information relating to the proposed rule within 30 days of publication in the **Federal Register.** Because the Commission is proposing a rule to meet or adjust conditions in a non-liner trade by action affecting a carrier which does not file tariffs with the Commission, the specific authority provided in the Foreign Shipping Practices Act of 1988, making the action against foreign carriers authorized by that Act available for use in proceedings under section 19, has been utilized. This is, therefore, a case of first impression in that respect, and interested parties are asked to focus in their comments on the sanctions proposed. The issues raised include the probable effect of the fees imposed on Transligra's rates in the Trade and the possibility that the request for denial of clearance, reflected at section 586.3(d) of the proposed rule, alone might be a more effective means of adjusting the effects of GOE Resolution No. 012/87.

Another matter to which commenter's attention is invited is the possibility that the Commission might require in its final rule that the fees imposed will become effective if the Ecuadorian-flag carrier fails to certify within 25 days of publication that no law, regulation or policy of the GOE will preclude any carrier from operating in the trade on the same basis as any other carrier or impose any administrative burden on any non-Ecuadorian-flag carrier, vessel or shipper in the trade not imposed on Ecuadorian-flag carriers.

In addition to the rule proposed herein to meet or adjust conditions unfavorable to shipping in the U.S./Ecuador trade, the Commission proposes to revise the manner in which it incorporates in the Code of Federal Regulations rules issued in similar proceedings under section 19. Therefore, the Commission proposes to revise part 586 of the CFR to add a new § 586.1 descriptive of the function of part 586 and to redesignate and incorporate as a single § 586.2 all provisions of the current part 586 which were enacted by the Final Rule to adjust or meet conditions unfavorable to shipping in the U.S./Peru Trade, published at 54 FR 12629 (March 28, 1989). This rule is republished herein to reflect the redesignation and conforming changes. No substantive changes have been made in the rule and its status as a Final Rule is unchanged by this action. The proposed rule in the U.S./Ecuador trade would be added to part 586 as § 586.3 if it becomes a final rule.

List of Subjects in 46 CFR Part 586

Foreign trade, Maritime carriers, Trade practices.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b); section 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a; Reorganization Plan No. 7 of 1961, 26 Fr 7315 (August 12, 1961); and 46 CFR part 585; part 586 of title 46 of the Code of Federal Regulations is revised to read as follows:

PART 586—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN SPECIFIC TRADE

Sec.

586.1 Actions to adjust or meet conditions unfavorable to shipping in specific trade.
586.2 Conditions unfavorable to shipping in the United States/Peru trade.
586.3 Conditions unfavorable to shipping in the United States/Ecuador trade.

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 1710a; 46 CFR part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

§ 586.1 Actions to adjust or meet conditions unfavorable to shipping in specific trades.

Whenever the Commission determines that conditions unfavorable to shipping exist in the United States foreign trade with any nation and issues rules to adjust or meet trade with any nation and issues rules to adjust or meet such conditions, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) and 46 CFR part 585, such rules shall be published in the **Federal Register** and added to this part.

§ 586.2 Conditions unfavorable to shipping in the United States/Peru Trade.

(a) *Conditions unfavorable to shipping in the trade.* (1) The Federal Maritime Commission has determined that the Government of Peru ("GOP") has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws and regulations which unreasonably restrict non-Peruvian-flag carriers from competing in the Trade on the same basis as Peruvian-flag carriers, and additionally deny to non-Peruvian-flag carriers effective and equal access to cargoes in the Trade. Moreover, the laws and regulations at issue unilaterally allocate and reserve export liner cargoes from the United States for carriage by Peruvian-flag carriers.

(2) GOP law provides that non-Peruvian-flag carriers must become associate carriers or obtain cargo from shippers who have secured waivers for individual shipments or certification of cargo shipped, to operate in the Trade. The enforcement of this system discriminates against U.S. shippers and exporters, restricts their opportunities to select a carrier of their own choice, and hampers their ability to compete in international markets.

(b) *Peruvian-flag carriers—assessment of fees.* (1) "Voyage" means an inbound or outbound movement between a foreign country and the

[10] A direction to act "in aid of the development and maintenance of an American merchant marine" was replaced by the more general command to "* * * aid in the accomplishment of the purposes of this Act * * *" and the reference to rules and regulations "relating to ships and shipping" was replaced with a reference to "shipping" only.

United States by a vessel engaged in the United States trade. Each inbound or outbound movement constitues a separate voyage. For purposes of this part, the transportation of cargo by water aboard a single vessel inbound or outbound betwen ports in Peru and ports in the United States under one or more bills of lading issued by or on behalf of the Peruvian-flag carriers named in paragraph (b)(2) of this section, whether on board vessels owned or operated by the named carriers or in space chartered by the named carriers on vessels owned or operated by others, or carried for the account of the named carriers pursuant to Agreements on file with the Federal Maritime Commission, under any of the tariffs enumerated in paragraph (b)(4) of this section, shall be deemed to constitute a voyage.

(2) For each voyage completed after the effective date of this section, the following carriers shall pay to the Federal Maritime Commission a fee in the amount of $50,000:

Compania Peruana de Vapores ("CPV"); Empresa Naviera Santa, S.A. ("Santa"); Naviera Neptuno, S.A. ("Neptuno"); and Naviera Universal, S.A. ("Uniline").

The fee for each voyage shall be paid by certified or cashiers check made payable to the Federal Maritime Commission within 7 calendar days of the completion of the voyage for which it is assessed.

(3) Each Peruvian-flag carrier named in paragraph (b)(2) of this section shall file with the Federal Maritime Commission a report setting forth the date of each voyage completed, amount of cargo carried, and amount of fees assessed pursuant to paragraph (b)(2) of this section during the preceding calendar quarter. Each such report shall include a certification that all applicable fees assessed pursuant to paragraph (b)(2) of this section have been paid, and shall be executed by the Chief Executive Officer under oath. Such reports shall be filed within 15 days of the end of each calendar quarter.

(4) If any Peruvian-flag carrier shall fail to pay any fee assessed by paragraph (b)(2) of this section within the prescribed time for payment, or fail to file any quarterly report required by paragraph (b)(3) of this section within the prescribed period for filing, the tariffs identified below, as applicable to such carrier, shall be suspended effective 30 dalendar days after the expiration of the calendar quarter in which such fees or report were due:

(i)(A) *Compania Peruana de Vapores (CPV)*

FMC No. 14—Applicable BETWEEN United States Atlantic and Gulf Ports AND Ports in South America, Trinidad, and the Leeward and Windward Islands.

FMC No. 15—Applicable FROM United States West Coast Ports and Hawaii TO Ports in Chile, Peru, Mexico, Panama and the West Coast of Central America.

FMC No. 16—Applicable FROM Ports in Chile, Peru, Mexico, Panama and the West Coast of Central America TO United States West Coast Ports and Hawaii.

(B) *Empresa Naviera Santa, S.A.*

FMC No. 3—Applicable FROM Rail Container Terminals at United States Pacific Coast Ports TO Ports in South America.

FMC No. 5—Applicable FROM Rail Terminals at United States Interior Ports and Points TO Peru and Chile.

FMC No. 7—Applicable BETWEEN United States Atlantic and Gulf Ports and Ports in Peru.

(C) *Naviera Neptuno, S.A.*

FMC No. 5—Applicable BETWEEN United States Pacific Ports AND Peru and Pacific Coast Ports in Chile, Colombia and Ecuador.

(D) *Naviera Universal, S.A. (Uniline)*

FMC No. 2—Applicable BETWEEN United States Ports and Points AND Ports and Points in Central America, South America, Mexico, and the Caribbean.

(ii) The following conference tariffs, or any other conference tariff covering the Trade, including intermodal tariffs covering service from interior U.S. points:

Atlantic & Gulf/West Coast of South America Conference

FMC No. 2—Applicable FROM United States Atlantic and Gulf Ports TO West Coast Ports in Peru and Chile via the Panama Canal.

FMC No. 3—Applicable FROM Points in the United States TO Points and Ports in Chile, Peru, and Bolivia moving through United States Atlantic and Gulf Ports of Interchange.

FMC No. 5—Applicable FROM Points and Ports in Chile, Peru and Bolivia TO Points and Ports in the United States, moving through United States Atlantic and Gulf Ports of Interchange.

FMC No. 6—Applicable FROM Chilean and Peruvian Ports of Call via the Panama Canal TO Ports of Call on the Atlantic and Gulf Coasts of the United States.

(iii) Any other tariff which may be filed by or on behalf of the carriers listed in paragraph (b) of this section.

(iv) In the event of suspension of tariffs pursuant to this paragraph, all affected conference or rate agreement tariffs shall be amended to reflect said suspensions. Operation by any carrier under suspended, cancelled or rejected tariffs shall subject said carrier to all applicable remedies and penalties provided by law.

(c) *Source of fees.* Any fees assessed by paragraph (b)(2) of this section against Peruvian-flag carriers operating pursuant to any Agreement filed with the Federal Maritime Commission providing for revenue pooling, joint service, space-chartering or other joint operations shall be paid by such Peruvian-flag carriers without affecting the revenue shares or amount of revenue earned by non-Peruvian-flag carriers operating pursuant to such Agreements.

(d) *Effective Date.* Paragraph (a) of this section is effective on March 28, 1989. The date upon which paragraphs (b) and (c) of this section shall become effective shall be determined by further order of the Commission amending this section.

§ 586.3 Conditions unfavorable to shipping in the United States/Ecuador Trade.

(a) *Conditions unfavorable to shipping.* (1) The Federal Maritime Commission has determined that the Government of Ecuador ("GOE") has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws, decrees and regulations which unreasonably restrict non-Ecuadorian-flag carriers from competing in the liquid bulk trade from the United States to Ecuador on the same basis as Ecuadorian-flag carriers.

(2) Resolution No. 012/87 unilaterally reserves export liquid bulk cargoes from the United States to Ecuador for carriage by Ecuadorian-flag carriers who utilize Ecuadorian-flag vessels or charter third-flag vessels, or U.S.-flag carriers who utilize U.S.-flag vessels. The enforcement of this system discriminates against U.S. carriers and other maritime companies desirous of participating in this Trade through the charter of third-flag vessels, and denies to non-Ecuadorian-flag carriers effective and equal access to liquid bulk cargoes in the Trade. It also discriminates against U.S. shippers and exporters whose opportunities to select a carrier of their choice are restricted and whose ability to compete in international markets is hampered.

(b) *Ecuadorian-flag carriers—assessment of fees. (1)* "Voyage" for purposes of this section means an outbound movement from the United States to a foreign country by a vessel engaged in the United States trade. Each outbound movement constitutes a separate voyage. The transportation of cargo by water aboard a single outbound vessel between ports in the United States and ports in Ecuador under one or more bills of lading issued by or on behalf of the Ecuadorian-flag carrier Maritima Transligra, S.A. ("Transligra"), whether on board vessels owned or operated by Transligra or in space chartered by Transligra in vessels owned or operated by others shall be deemded to constitute a voyage.

(2) For each voyage completed after the effective date of this section, Transligra shall pay to the Federal Maritime Commission a fee in the amount of $100,000. The fee for each voyage shall be paid by certified or cashiers check made payable to the Federal Maritime Commission within 14 calendar days of the completion of the voyage for which it is assessed.

(c) *Report.* Transligra shall file with the Federal Maritime Commission a report setting forth the names of vessels operated by Transligra in the Trade, whether owned or chartered; the names of vessels on which Transligra has chartered space for the carriage of cargo in the Trade, and the names and addresses of the owners of such vessels; the date of each voyage completed in the Trade; the amount of cargo carried; and the amount of fees assessed pursuant to paragraph (b)(2) of this section during the preceding calendar quarter. Each such report shall include a certification that all applicable fees assessed pursuant to paragraph (b)(2) of this section have been paid, and shall be executed by the Chief Executive Officer under oath. Each report shall be filed within 15 days of the end of the applicable calendar quarter.

(d) *Refusal of Clearance by the Collector of Customs.* If Transligra shall fail to pay any fee assessed by paragraph (b)(2) of this section, or fail to file any quarterly report required by paragraph (c) of this section within the prescribed period for filing, the Secretary of the Commission shall request the Chief, Carrier Rulings Branch of the U.S. Customs Service to direct the collectors of customs at ports in the U.S. Gulf of Mexico to refuse the clearance required by Section 4197 of the Revised Statutes (46 U.S.C. app. 91) to any vessel owned or operated by Transligra.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-19408 Filed 8-17-89; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

Marine Mammals; Native Exemptions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public meetings.

SUMMARY: In the November 14, 1988, **Federal Register** (53 FR 45788) the Fish and Wildlife Service (Service) proposed to amend the regulations in 50 CFR Part 18 implementing the Marine Mammal Protection Act of 1972 (the Act), 16 U.S.C. 1361–1407. The proposed rule would prohibit the taking of sea otters by Alaskan Natives for use in creating and selling authentic Native articles of handicrafts and clothing under the Native Exemptions section of the Act, 16 U.S.C. 1371(b). In the February 15, 1989, **Federal Register** (54 FR 6940), the Service extended the comment period on the proposed rule to April 13, 1989. In the May 31, 1989, **Federal Register** (54 FR 23233), the Service gave notice that the comment period was further extended through November 30, 1989, to allow time for public meetings to be conducted in selected coastal Alaska locations within the range of the sea otter, and at one location in California. This notice announces the exact times and locations of those meetings.

DATES: The public meetings are scheduled as follows:

1. September 1, 1989, 1:00 p.m., Atka, Alaska
2. October 2, 1989, 7:00 p.m., Sitka, Alaska
3. October 3, 1989, 7:00 p.m., Klawock, Alaska
4. October 9, 1989, 7:00 p.m., Unalaska, Alaska
5. October 12, 1989, 7:00 p.m., Cordova, Alaska
6. October 16, 1989, 7:00 p.m., Anchorage, Alaska
7. October 19, 1989, 7:00 p.m., Homer, Alaska
8. October 23, 1989, 7:00 p.m., Kodiak, Alaska
9. October 24, 1989, 7:00 p.m., Dillingham, Alaska
10. October 26, 1989, 7:00 p.m., Seldovia, Alaska
11. October 30, 1989, 1:00 p.m., San Francisco, California

Written comments and materials on the proposed rule will still be accepted through November 30, 1989.

ADDRESSES: The public meetings will be held in the following locations:

1. Atka—Atka Community Building, Atka, Alaska 99502
2. Sitka—Centennial Building (Pestchouroff Room), Sitka, Alaska 99835
3. Klawock—Alaska Native Brotherhood Hall, Klawock, Alaska 99925
4. Unalaska—City Council Chambers, Unalaska, Alaska 99685
5. Cordova—Cordova Public Library, Cordova, Alaska 99574
6. Anchorage—Large Conference Room, First Floor, Regional Office, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503
7. Homer—Kachemak Bay Campus of the Kenai Peninsula College, 533 E. Pioneer Avenue, Homer, Alaska 99603
8. Kodiak—Fisherman's Hall, Kodiak, Alaska 99615
9. Dillingham—Senior Citizens Center, Dillingham, Alaska 99576
10. Seldovia—Seldovia Native Association Office, 206 Main Street, Seldovia, Alaska 99663
11. San Francisco—Fort Mason Center, Golden Gate National Recreation Area, Building 201, Room A2, San Francisco, California 94102

Comments and materials concerning the proposed rule may be sent to the Regional Director, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska, 99503, or delivered in person to the U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska. Comments and materials received in response to the proposed rule will be available for public inspection at the above address during normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jon R. Nickles, Supervisor, Marine Mammals Management, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska, 99503, telephone (907) 786–3492.

SUPPLEMENTARY INFORMATION: The meetings will be open to the public. Interested parties may present data, information, or views, orally or in writing, on the issue under consideration, that is, the Service's proposal to prohibit the taking of sea otters by Alaskan Natives for use in creating and selling authentic Native articles of handicrafts and clothing under the Native Exemption section of the Act, 16 U.S.C. 1371(b). Oral statements may be limited in length if the number of parties present at the meetings necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the meetings or mailed to

the Service. The closing of the comment period for the proposed rule remains November 30, 1989. Parties unable to attend any of the meetings but who wish to provide written comments or materials should mail, or deliver in person, their submissions to the Service's Anchorage Regional Office (see ADDRESSES section above).

The author of this notice is Jeffrey L. Horwath, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Mail Stop 820–Arlington Square, 18th and C Streets, NW., Washington, DC 20240.

Dated: August 11, 1989.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service, Department of the Interior.

[FR Doc. 89–19425 Filed 8–17–89; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 54, No. 159
Friday, August 18, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Strawberry Ridge Timber Sale, Dixie National Forest, Utah

AGENCY: Forest Service, USDA.

ACTION: Revision of Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service published a Notice of Intent to prepare an Environmental Impact Statement in the May 25, 1989 **Federal Register** (Vol. 54, No. 100) for a proposal to harvest timber and build roads in the Strawberry Ridge area on the Cedar City Ranger District of the Dixie National Forest in Kane County, Utah. That notice is hereby revised to show that the Draft Environmental Impact Statement (DEIS) is expected to be available for public review in October 1989, and the Final Environmental Impact Statement (FEIS) is scheduled to be completed by January 1990. No other revisions are made.

Dated: August 3, 1989.

Hugh C. Thompson,

Forest Supervisor.

[FR Doc. 89–19388 Filed 8–17–89; 8:45 am]

BILLING CODE 3410–11–M

Forest Service, USDA.

North Slope Timber Sale, Dixie National Forest, Utah

AGENCY: Forest Service, USDA.

ACTION: Revision of Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest published a Notice of Intent to prepare an Environmental Impact Statement in the May 25, 1989 **Federal Register** (Vol. 54, No. 100) for a proposal to harvest timber and build roads in the north slope area of Boulder Mountain on the Teasdale Ranger District of the Dixie National Forest in Wayne County, Utah. That notice is hereby revised to show that the Draft Environmental Impact Statement (DEIS) is expected to be available for public review in October 1989, and the Final Environmental Impact Statement (FEIS) is scheduled to be completed by January 1990. No other revisions are made.

Dated: August 3, 1989.

Hugh C. Thompson,

Forest Supervisor.

[FR Doc. 89–19389 Filed 8–17–89; 8:45 am]

BILLING CODE 3410–11–M

Strawberry Gulch Timber Sale

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental effects of a site specific proposal to harvest timber in the Strawberry Gulch area of the Hayden Ranger District, Carbon County, Wyoming. The National Environmental Policy Act (NEPA) requires an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to the proposal. The Forest Service will schedule a public scoping meeting to identify issues related to the proposal during the latter part of September 1989 in the town of Encampment, Wyoming. Adequate notice will be given with the specific location and date so that interested and affected people may attend.

The Forest Service is seeking comments during the scoping analysis from other Federal, State, and local agencies, and organizations and individuals who may be interested or affected by the decision. The analysis process will include:

1. Identification of the issues to be addressed.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues, issues covered by previous environmental review, and issues not within the scope of this decision.

DATE: The Draft EIS is expected to be completed and made available for public review and comment in December 1989. A public comment period of 45 days will be established, beginning August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Submit written comments and suggestions concerning management of the area or the scope of the analysis, or direct any questions about the proposed action and Environmental Impact Statement to Bob Thompson, District Forester, Box 187, Encampment, WY 82325, phone 307–327–5481.

SUPPLEMENTARY INFORMATION: The Strawberry Gulch timber sale is a site specific project identified in the Medicine Bow Land and Resource Management Plan (Forest Plan). This project was tentatively scheduled during the first ten-year period of the Forest Plan, and is intended to implement the Plan and achieve the desired future condition for the area.

The decision to be made is how to best manage the Strawberry Gulch area, and whether to implement the proposed timber sale and other related activities. The related activities could include road construction and reconstruction, site preparation, tree planting and thinning, and some road closures.

A reasonable range of alternatives, including "no action", which would result in no development of the area, and the "proposed action" will be considered. Other alternatives may be formulated as a result of scoping, and may consider various combinations of development designs for timber harvest, transportation, wildlife and fishery habitat activities, and visual and recreation opportunities.

The draft Environmental Impact Statement (EIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December 1989. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register.**

The comment period on the draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested in the Strawberry Gulch timber sale participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adquacy of the statement or the merits of the

alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' positions and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by June 1990. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to review under 36 CFR 217.

Dated: August 9, 1989.

Gerald G. Heath,

Forest Supervisor.

[FR Doc. 89-19455 Filed 8-17-89; 8:45 am]

BILLING CODE 3410-11-M

Packers and Stockyards Administration

Withdrawal of Certification of Central Filing System; Arkansas

The certification of the Statewide central filing system of Arkansas is hereby withdrawn on the basis of information submitted by W.J. "Bill" McCuen, Secretary of State, and in accordance with State of Arkansas Act 655 of 1989.

The central filing system was previously certified, pursuant to section 1324 of the Food Security Act of 1985, for all farm products produced in that State except for cattle and calves, goats, horses, hogs, mules, sheep and lambs (51 FR 46887, December 29, 1986; 52 FR 6040, February 27, 1987).

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: August 14, 1989.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 89-19421 Filed 8-17-89; 8:45 am]

BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census

Title: Alternative Questionnaire Experiment S-601, 605, 606, 607, 609A, 609B, 610A, 610B

Type of Request: New Collection

Burden: 29,168 hours

Number of Respondents: 42,000

Avg Hours per Response: 41 minutes

Needs and Uses: This survey will test and evaluate question wording, layout, and instructions for the census questionnaire which is administered to the entire population. The Census Bureau staff will use the information gathered to improve the design and content of later census forms.

Affected Public: Individuals or households

Frequency: One-time only

Respondent's Obligation: Mandatory

OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 10, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-19443 Filed 8-17-89; 8:45 am]

BILLING CODE 3510-07-M

[Docket No. 90517-9117]

Request for Comments on the Preliminary Implementation Plan of Portion of the Omnibus Trade and Competitiveness Act of 1988; National Trade Data Bank

AGENCY: Office of the Under Secretary for Economic Affairs, Commerce.

ACTION: Notice and request for comments.

SUMMARY: Pursuant to subtitle E of title V of the Omnibus Trade and Competitiveness Act of 1988, 15 U.S.C. 4901-4913, the Commerce Department is establishing a National Trade Data Bank (NTDB) and is proposing a systems concept for it. The purpose of the NTDB is to provide reasonable public access, including electronic access to data "useful * * * to policymakers and analysts concerned with international economics and trade * * *" and "* * * data * * * of the greatest interest to United States business firms that are engaged in export-related activities and to Federal and State agencies that promote exports. * * *".

The purpose of this notice is to inform the public and seek comments prior to the establishment of the NTDB.

DATE: Comments from the public should be received no later than September 18, 1989.

ADDRESS: Written comments should be addressed to: John E. Cremeans, Economic Affairs, Office of Business Analysis, Room 4878, Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: John E. Cremeans, telephone (202) 377-1405.

SUPPLEMENTARY INFORMATION: Subtitle E, Part I of Title V of the Omnibus Trade and Competitiveness Act of 1988 directs the Department of Commerce to establish and manage a National Trade Data Bank (NTDB) consisting of two parts: (1) An "International Economic Data System" (IEDS) and (2) an "Export Promotion Data System" (EPDS). The Act calls for the Secretary of Commerce, with the assistance of other Federal agencies to assemble, in one location, those economic, demographic, social, and other statistics of the United States and other countries that are of use to policymakers and analysts concerned with international economics and trade. The NTDB will also include information of greatest interest to U.S. businesses engaged in export-related activities and to Federal and State agencies that promote exports. The NTDB is to be operational within two years of the enactment of the Act (i.e., August 23, 1990).

Interagency Trade Data Advisory Committee

Some of the U.S. information called for in the IEDS and the EPDS is produced by the Department of Commerce. However, a significant portion is produced by other government agencies. The Act stipulates that each agency shall provide data considered necessary to the operation of the data bank. In addition, some of the data to be included in the IEDS may be derived from foreign sources such as foreign government agencies or international organizations.

The Act establishes the Interagency Trade Data Advisory Committee (ITDAC) to be chaired by the Secretary of Commerce. The ITDAC will consist of:

The United States Trade Representative,
The Secretary of Agriculture,
The Secretary of Defense,
The Secretary of Commerce,
The Secretary of Labor,
The Secretary of Treasury,
The Secretary of State,
The Director of the Office of Management and Budget,
The Director of the Central Intelligence Agency,
The Chairman of the Federal Reserve Board,
The Chairman of the International Trade Commission,
The President of the Export-Import Bank,
The President of the Overseas Private Investment Corporation,

or their designees, and

Such other members as may be appointed by the President from full-time officers or employees of the Federal Government.

The Secretary of Commerce will seek the advice of the Committee on the establishment, structure, contents, and operation of the NTDB as appropriate with the goals of assuring timely and accurate collection of the information and providing efficient access to the data by the private sector and government officials. The ITDAC will be a standing committee that will provide ongoing consultation and guidance to the Secretary.

Review of Notice by the Interagency Trade Data Advisory Committee

This notice on the NTDB was reviewed by the Interagency Trade Data Advisory Committee and the Committee was asked for its advice in correspondence and in a formal meeting. The first draft of the notice was circulated to the member agencies on March 17, 1989 and representatives of the member agencies were briefed on the draft on March 20, 1989. Comments were received and changes made to the draft. The second draft was circulated to the member agencies of the Committee on April 21, 1989. At the meeting of the Interagency Trade Data Advisory Committee on May 3, 1989, representatives were briefed on the draft notice.

Content

A determination has not yet been made as to the specific data entities to be included in the data bank. However, the language of the Act provides clear guidance on the general types of information to be included. The agencies of the Federal government and especially those represented on the Interagency Trade Data Advisory Committee will be asked to determine those data entities that are prepared or estimated by them that should be included in the EPDS or the IEDS. The Secretary of Commerce, with the advice of the ITDAC, will request additional data entities if they are determined to be useful in carrying out the purposes of the Act or may delete data items not determined to be useful.

The resulting list of data entities, determined by the Secretary with the advice of the Committee, will constitute the initial desired content of the data bank. Data entities may be added or deleted later as circumstances change or experience suggests improvement. The actual content of the data bank when it is made available to the public will, however, be determined in part by the resources and budget for the purpose of the NTDB that are available to the Secretary and to the Federal agencies supplying the data. Data determined to be useful, but not available initially, will be included as resources and budget permit.

International Economic Data System: The IEDS will contain current and historical statistics for the United States and other countries with which we have "important" economic relations and which are determined to be useful for policymakers and analysts concerned with international economics and trade. Among the statistics specifically cited as examples of data to be included in the IEDS are the following:

Imports and exports:
- Aggregate statistics
- Industry specific statistics
- Product-specific statistics
- Market penetration statistics
- Foreign destinations for exports

International service transactions

International capital markets
- Interest rates
- Exchange rates

Foreign direct investment in United States

International labor market
- Wage rates by industry
- Unemployment rates
- Labor productivity

Policies affecting trade
- Trade barriers
- Export financing policies

Imports/exports by States
- Destination
- Origin

"Any other economic and trade data collected by the Federal Government that the Secretary determines to be useful in carrying out the purposes of this subtitle."

Export Promotion Data System: The EPDS will contain information of greatest interest to U.S. firms engaged in export-related activities and to Federal and State agencies that promote exports. The Act calls for the system to "monitor, organize, and disseminate" information on the following:

Business opportunities in foreign countries

Industry sectors in foreign countries with high export potential including:
- Size of market,
- Distribution of products,
- Competition,
- Significant applicable laws, regulations, specifications, and standards,
- Appropriate government officials, trade associations and other contact points

Foreign countries generally such as:
- Economic conditions
- Common business practices
- Significant trade barriers and tariffs,
- Other significant laws and regulations regarding imports, licensing, patents, etc.,

Export financing information,

Transactions involving barter and countertrade, and

"Any other similar information, that the Secretary determines to be useful in carrying out the purposes of this subtitle."

The Act specifically excludes data which are prohibited from disclosure to the public by other laws or are authorized to be withheld under provision of law. Also, it may not contain classified information. Finally, with the exception of section 5408 which calls for an expansion in the collection of information on service sector transactions, the Act does not grant authority to collect any new information from individuals or entities outside the Federal government.

Users

The Act directs Commerce to make the information available to:

U.S. Government policymakers,
U.S. business firms,
U.S. workers,
U.S. industry associations,
U.S. agricultural interests,
State and local economic development agencies; and other interested U.S. persons who could benefit from such information.

The Act further directs Commerce to consult regularly with representatives of the private sector and officials of State and local governments on the adequacy of trade information and seek recommendations on how the information can be made more accessible, understandable, and relevant.

Operation and Dissemination

The Act requires that Commerce manage the data base by utilizing appropriate data retrieval systems to monitor, organize, analyze, and disseminate the information found in the data bank and to use the most effective means to make the information available to a wide range of potential users ranging from individual citizens to government officials. Operation of the data base should facilitate dissemination through nonprofit organizations with significant outreach programs.

The Act further directs that information systems created by the NTDB should not unnecessarily duplicate existing systems available from other U.S. Government agencies or the private sector and that Commerce provide reasonable public services and access (including electronic access) to any information maintained as part of the data base.

Dissemination of the NTDB is to be facilitated through public/private partnerships with the information community (State and local governments, nonprofit organizations, libraries, and information vendors) to provide multiple outlets for obtaining the information.

Operation of the NTDB

The Department of Commerce will establish, on a government computer system or on a private computer system under contract, the National Trade Data Bank. The system will be comprised of 1) all information to be contained in the Export Promotion Data System and the International Economic Data System, 2) computer programs and related software necessary to establish, operate, update, and maintain the information contained in the EPDS and IEDS, 3) software and related information necessary to maintain and ensure the security of the information found in the data bank, and 4) the programs and related software necessary to disseminate the NTDB information to its intended audience through a network of government, nonprofit, and private information distributors. Management and operation of this system will be in accord with OMB Circular A–130, Management of Information Resources, internal Department of Commerce administrative orders, and other applicable information processing standards that may apply as determined by the Department's Office of Information Resources Management.

The NTDB will be operated as an information warehouse. Statistics and other data will be supplied by Federal Government agencies and other organizations in bulk electronic form using magnetic tape, diskette, or telecommunications as the means to transfer the information from agency internal files to the NTDB. Information in the system will be updated on a regular ongoing basis at the same time it is made available to the public through other means. While the information will be stored in a Commerce-operated data bank,[1] supplier agencies will retain ownership and maintain control of their respective data in the data bank. They will be solely responsible for updating, correcting, and verifying their data in the data bank. The NTDB "manager" will not be authorized to change, correct, or delete any substantive data item from the data bank.

The NTDB is not designed to replace existing dissemination programs of supplier agencies. Many individuals and organizations have already established means to obtain certain trade related information from these agencies. Access channels currently in place should not be disrupted due to the establishment of the NTDB unless the supplier agency elects to change its dissemination program. The NTDB will offer an additional outlet for supplier agencies' information.

In addition to the basic statistical data and reports, other information will be included in a data "dictionary" for each entity in the IEDS and EPDS. This will include such items as (examples are shown in parenthesis): program (U.S. Balance of Payments), agency/organization (BEA, U.S. Department of Commerce), contact (name of individual responsible for information), telephone number, update schedule (Mid-month in March, June, September, and December), creation and/or expiration date (3/3/88), time period covered (1988 to present for most series), periodicity/seasonality (Annual and quarterly, seasonally adjusted and unadjusted), basis of classification (SIC, TSUSA, etc.), description of data methods, caveats, coverage, and references to other sources of information. The "data dictionary" will be used both for internal NTDB operations and will be disseminated in electronic and paper form so that users will be able to determine what is in the data bank.

To the extent possible, computer programs required by the NTDB will take advantage of off-the-shelf software to minimize system development costs and expected future maintenance expenditures. The system will be built using data management software that features a structured query language (SQL). The implementation will be designed to allow for expansion of the content of the data bank with a minimum of reprogramming effort.

Trade-related information now available from supplier agencies is structured in a wide variety of formats. By contrast, data for both the IEDS and the EPDS will be supplied and maintained in a limited set of standard formats. This will enable the data bank to accommodate as much of the supplied information as possible without specialized programming, provide enough flexibility to enable the data bank to dynamically change without major reprogramming efforts, and, be logically coherent to users.

Forms of Dissemination

Information will be distributed to end users via government, nonprofit, and private distributors to take advantage of existing information dissemination networks. "Retail" distributors are expected to include State development agencies, nonprofit organizations, Federal depository libraries, the National Technical Information Service, the Government Printing Office, private sector information vendors, and Department of Commerce Field Offices.

Information from the data bank will be transferred in "bulk" to the retail distributors; i.e., only whole categories of information will be shipped (e.g., an update of all of BEA's international transactions), not single requests (e.g., exports of industrial supplies and materials excluding petroleum in 1986). Distributors, in turn, may repackage the information, provide value-added services and/or proprietary information, and redistribute the information to their respective constituents.

There will be three forms of media used to provide information. The primary medium for distribution of NTDB information will be the compact disk-read only memory [CD–ROM]. This technology provides the capability to distribute in electronic format vast amounts of information at an extremely low cost relative to other technologies (printed or electronic). Monthly NTDB CD–ROMs will be produced that contain the entire data bank,[2] including all information updated during the month. Users may obtain the CD–ROMs individually or through a subscription service which will provide new CD–ROMs each month; they will be distributed by the Government Printing Office and/or the National Technical Information Service. They will also be distributed through the GPO Federal Depository Library program.

The CD–ROMs will be prepared to conform with ISO–9660 standards to ensure compatibility with existing CD–ROM readers and software. Information on the CD–ROMs will be structured on the disk to afford maximum usability by a wide a variety of computer and computer operating systems. Along with the CD–ROM, Commerce will distribute software to perform rudimentary search, reporting, and extraction functions. No specialized programs to perform more sophisticated searches or numeric manipulation are planned. Software will not be written on the CD–ROM; it will be distributed using floppy diskettes containing the proper program for the computer system specified by the purchaser. Current plans call for software to be developed for the Apple Macintosh™ and IBM PC™ (or compatible) families of computers. Programs for other computer operating systems will be provided as demand warrants and as CD–ROM technology is made available to these systems.

Using the CD–ROM medium for distribution will not be appropriate for a small subset of NTDB information. This constitutes information that is perishable in nature; it loses its value quickly and must be accessed as soon as possible after it is made available to the public. For example, Commerce's International Trade Administration and the Department of Agriculture issue daily trade opportunities (TOPS), which are leads to help U.S. businesses export their goods and services to foreign countries. TOPS leads are usually very time sensitive, often requiring submission of bids within 30 to 60 days of the date the TOPS notice is filed. Information on the CD–ROM will be at least 30 and possibly 80 days old by the time it is available to end users. Consequently, a second component of the NTDB distribution service will be an electronic bulletin board or similar computer service that will enable NTDB end users to directly access time sensitive information. The bulletin board will not contain other, less time sensitive information that is normally distributed on the CD–ROM.

The third form of distribution will be via magnetic tape(s), which will contain the same information provided on the CD–ROM.

These three forms of distribution—CD–ROM, bulletin board, and magnetic tape—constitute what Commerce defines as the "standard" NTDB service. It provides all the information found in the NTDB to as wide an audience as possible and at the lowest possible prices. The standard service is expected to meet the needs of the average NTDB user.

In addition to the standard service, Commerce will offer a higher "premium" level of service to users that require NTDB information (perishable or not) as soon as it is made available to the public. The distinction between the premium service and the standard service is one of timeliness and cost, not content; i.e., users of the premium service will obtain the same information content distributed via the standard service but will receive it in a more timely manner. Users of the premium service will be charged the full direct cost of providing this information to them which is expected to be higher than the cost of obtaining the NTDB using the standard service. Specific premium service costs which may be recovered through user fees are outlined in OMB Circular A–130 and the Department of Commerce Draft Departmental Administrative Order on Electronic Dissemination of Information.

The premium service will provide users with direct electronic access to the NTDB. This may be accomplished via standard asynchronous telecommunications or via specialized high-speed data links. The exact type of telecommunications service offered will depend on the capabilities of the computer site selected to house the NTDB operations. However, the premium service will not allow selective query and access to the data bank. Rather, it will provide a mechanism to transfer updated information in bulk from the NTDB computer system to the premium user's computer system.

An example may clarify the premium service concept. One type of premium service user is expected to be an information vendor that will obtain NTDB information, add value to it, and resell the information to its clients. The initial distribution of NTDB information to this user will probably be via magnetic tape. Thereafter, the user will establish communications periodically with the NTDB computer to obtain more recent information. NTDB software will determine what information was updated since the user last obtained data and transmit all of it to the user's computer.

Depending on the time and frequency with which the user obtains information, the update could range from a few numbers or reports to millions of pieces of information.

Finally, Commerce proposes a third level of NTDB service—NTDB authorized distributors—whereby Commerce and interested distributors enter into a contractual arrangement for distribution of the NTDB. Commerce wishes to encourage, through this service, the development of private value added programs and services which will make information contained in the NTDB more useful to a wider spectrum of users. It is also intended to provide a measure of quality control by providing a mechanism to insure the completeness, accuracy, timeliness, and documentation of the data made available to the public. In general, authorized distributors agree to meet certain standards in return for the use of the NTDB logo and trademark and customer referral by the Department of Commerce. Any organization may become an authorized distributor.

Specific contractual arrangements have not been developed. However, proposed rules specify that authorized distributors will:

Make the entire NTDB available to all requestors, not just the most profitable segments of the data bank.

Update their copy of the data bank daily using the NTDB premium service or at a frequency commensurate with the distributor's form of dissemination, e.g., a distributor packaging NTDB information and using a CD–ROM as the distribution medium must obtain the most recent information prior to mastering the disc.

Clearly identify the source of each data item they distribute.

Pass along standard descriptive information about the data including any caveats about use of the data.

Pay an annual fee to the Department of Commerce to defray its costs of administering the service.

Provide a feedback mechanism to enable Commerce to learn of errors in the information, suggestions for improvement to the content or

[1] Some historical data may be stored off-line.

[2] Some historical data may be made available on separate CD–ROMS that are updated annually or less frequently as required.

organization of the NTDB, usage of the information, etc.

No restrictions are placed on how the information is organized, the medium used to distribute it, or what, if any, ancillary value added services accompany the information. No restrictions will be placed on charges to users of these services; they will be expected to vary depending on the extent of specialized services accompanying the information.

In return, the Department will:

Conduct a modest news release and publicity campaign about the NTDB that emphasizes the contents of the data bank and includes phrases such as "See your authorized NTDB distributor."

Provide a list of authorized distributors to the public.

Provide an "NTDB assistance phone line". Staff will provide basic information on the data bank and offer to send a list of distributors. A list of callers expressing a wish to be contacted by distributors will be provided to authorized distributors.

It is important to emphasize that redistribution of information in the NTDB is not restricted to authorized distributors. Commerce cannot nor will it attempt to prevent users of the standard or premium services from redistributing the non-copyrighted information in any manner they see fit. However, the authorized distributor service is planned to provide quality control and provide attractive market opportunities to a large number of information distributors.

With very few exceptions, none of the information in the NTDB is copyrighted. If copyrighted information is included in the data bank, special permission to redistribute it may need to the obtained from the copyright holder.

Summary of User Access Options

The three levels of service proposed provide users of the NTDB with a number of choices for receiving information. In sum, the standard service offers access to all data the lowest possible prices; the premium service offers access with more frequent updates and faster delivery at higher but still reasonable prices; the authorized distributor service offers the prospect that non-Federal sources will provide value added services and analysis at commensurate rates.

Developer's Toolkit

The Department of Commerce wishes to encourage the development of ancillary computer programs, analytical tools, and other related data by non-Federal sources to assure the widest and most effective use of information found in the National Trade Data Bank. To meet this objective, the Department will prepare and issue to all interested parties a Developer's Toolkit which will provide sufficient information about the content and structure of the NTDB to enable businesses and individuals to design and prepare these tools. Information to be included in the toolkit will include:

File structure and organization of the CD-ROM
File structure and organization of the distribution tape
File structure and organization of information distributed online
The data dictionary
Data bank update schedule
Suggested applications
Sample data files

Tentative plans call for the Developer's Toolkit to be available by December 31, 1989.

Resource and Budget Constraints

The Department of Commerce supports the NTDB is doing everything possible, within the tight limits of the Department's budget, to get the system into operation by the August 1990 date set by the Trade Act. The NTDB is an advanced and complex information distribution system requiring time and substantial development and data conversion costs to the Department of Commerce and the other Federal Agencies supplying data. Nothing in this notice should be construed to guarantee that the NTDB will be complete with all described features in August 1990. The NTDB is expected to evolve and improve after its initial release; features described in this notice but not initially available will be added as resource and budget availability permit.

Request for Comments

The Department of Commerce invites the public to comment on the proposed preliminary implementation plan within 30 days of this notice. In particular, the Department of Commerce solicits views by the public on:

1. The proposal to have three levels of service—standard, premium, and authorized distributor service.
2. The proposed rules for the authorized distributor service.
3. The specific contents of the international economic data system and the export promotion data system.
4. Specific telecommunications requirements for access to the premium service.

Recommendations received may be incorporated into planning for the content and organization of the data bank. At its option, the Department of Commerce may elect to distribute recommendations (without attribution) as part of the NTDB Developer's Toolkit in order to provide further guidance to software writers designing programs to enhance the value of information in the NTDB.

Additional **Federal Register** notices about the National Trade Data Bank may be issued as plans are further developed covering the content of the data bank, the authorized distributors service, and proposed user charges. Persons interested in receiving these and other public correspondence concerning the NTDB directly may have their name added to the NTDB mailing list by contacting John E. Cremeans.

Dated: August 14, 1989.

Mark W. Plant,

Acting Under Secretary for Economic Affairs, U.S. Department of Commerce.

[FR Doc. 89-19408 Filed 8-17-89; 8:45 am]

BILLING CODE 3510-EA-M

International Trade Administration

[A-588-810]

Preliminary Determination of Sales at Less Than Fair Value; Mechanical Transfer Presses From Japan

AGENCY: Import Administration, International Trade, Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that mechanical transfer presses from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of mechanical transfer presses from Japan as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by October 24, 1989.

EFFECTIVE DATE: August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, James P. Maeder, Jr., or V. Irene Darzenta, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3965, 377-4929, or 377-0186, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that mechanical transfer presses (MTPs) from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended, 19 U.S.C. section 1673b (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation [54 FR 5993, February 7, 1989), the following events have occurred. On March 8, 1989, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of mechanical transfer presses [54 FR 9905).

On March 3, 1989 and May 10, 1989, the Department presented Section A and Sections B, C and D, respectively, of the antidumping duty questionnaire to Komatsu, Ltd. (Komatsu). This company accounted for a substantial portion of exports of the subject merchandise from Japan to the United States during the period of investigation. On a voluntary basis, Aida Engineering, Ltd. (Aida) also responded to the antidumping duty questionnaire.

Responses to Section A of the questionnaire were due on March 31, 1989, and responses to the remaining sections were due on June 9, 1989. At the request of the respondents, the response deadline for Sections B, C and D of the questionnaire was extended to June 26, 1989. Responses to Section A were received on March 31, 1989, and responses to Sections B, C and D were received June 26, 1989. The Department issued supplemental questionnaires to both Komatsu and Aida on May 24, 1989, and July 12, 1989. Supplemental responses were filed by both respondents on May 31, 1989 and July 24, 1989.

On May 25, 1989, petitioners requested that the preliminary determination be postponed for 30 days. On June 12, 1989, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination until July 21, 1989 (54 FR 24927). On July 3, 1989, petitioners requested that the Department further extend the period for the preliminary determination by an additional 20 days. On July 13, 1989, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination until August 10, 1989 (54 FR 29597).

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of product coverage.

The products covered by this investigation are mechanical transfer presses from Japan. For purposes of this investigation, the term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be assembled or unassembled. Prior to January 1, 1989, such merchandise was classifiable under items 674.3583, 674.3586, 674.3587, 674.3592, 674.3594, 674.3596, 674.5315, and 674.5320 of the *Tariff Schedules of the United States Annotated* (TSUSA). Until July 1, 1989, this merchandise was classifiable under HTS subheadings 8462.29.00, 8462.39.00, 8462.49.00, 8462.99.00, and 8466.94.50. Effective July 1, 1989, the Committee for Statistical Annotation of the Tariff Schedules changed the tariff classification of mechanical transfer presses. Mechanical transfer presses are currently classifiable under HTS item numbers 8462.99.0035 and 8466.94.5040.

Period of Investigation

The period of investigation covers MTPs sold and shipped in the period January 1, 1987 through January 31, 1989.

Such or Similar Comparisons

Komatsu claimed that it had sales of merchandise in the home market during the period of investigation which were similar to certain MTPs sold to the United States. We preliminarily determine that only one of the MTPs sold to the United States could reasonably be compared to an MTP sold in the home market. For that sale, we based foreign market value on the home market price. For all other MTPs sold to the United States, we determined that there were no sales of such or similar merchandise. Therefore, we used constructed value as the basis for calculating foreign market value.

Although its home market was viable, Aida claimed that there were no sales of merchandise which were sufficiently similar to that sold to the United States to serve as a basis for comparison. Therefore, we used constructed value as the basis for calculating foreign market value.

Fair Value Comparisons

To determine whether sales of MTPs from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For both respondents in this investigation, we based the United States price on purchase price in accordance with section 772(B) of the Act, because all sales were made directly to unrelated parties prior to importation into the United States.

A. Komatsu

For Komatsu, we calculated purchase price based on packed f.o.b. Japanese port prices, packed p.o.e. duty paid on carrier prices, or packed delivered prices, as appropriate. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, ocean freight, air freight, U.S. inland freight, loading charge, unloading charge, brokerage and handling, marine insurance, U.S. Customs duty and fees, discounts and spare parts. We disallowed the installation expenses claimed by Komatsu as a deduction to U.S. price, as it appears that such expenses are characteristic of manufacturing costs rather than movement charges. See A(5) of section on "Constructed Value". We also disallowed as deductions to U.S. price export proceed insurance and reassembly insurance. We consider these to be selling expenses which cannot be deducted from U.S. price in purchase price transactions. We added uncollected or rebated duties pursuant to section 772(d)(1)(B) of the Act.

B. Aida

For Aida, we calculated purchase price based on packed ex-go down Japanese port prices or packed f.o.b. U.S. port prices, as appropriate. We made deductions, where appropriate, for foreign inland freight and insurance, ocean freight, brokerage and handling,

stevedoring charges, marine insurance, air freight, and U.S. Customs duty and fees.

Foreign Market Value

In accordance with section 773(a)(2) of the Act, we calculated foreign market value based on a home market sale or constructed value, as appropriate.

A. Komatsu

For the one sale of similar merchandise in the home market for which the difference in merchandise adjustment was less than 20 percent of the home market price (net of discounts and movement charges), we calculated foreign market value based on the packed, ex-factory price to an unrelated customer. We made deductions for inland freight and discounts. We deducted the home market packing costs from the foreign market value and added U.S. packing costs. We made circumstance of sale adjustments for differences in credit terms, technical services, warranty and advertising, pursuant to section 353.56 of the Department's regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.56).

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with section 353.57 of the Department's regulations.

For those products sold in the United States for which the difference in merchandise adjustment between the reported home market product and the U.S. product was substantial, we determined that the home market MTPs could not reasonably be compared to the MTPs sold to the United States. In this investigation, we determined that an adjustment greater than 20 percent of the home market selling price less inland freight and discounts was substantial. In these instances, we calculated foreign market value based on constructed value, in accordance with section 773(e) of the Act. The methodology used to calculate constructed value is fully described in the "Constructed Value" section of this notice.

B. Aida

For the reasons stated in the "Such or Similar Merchandise" section of this notice, foreign market value was based on constructed value in accordance with section 773(a)(2) of the Act. Constructed value was calculated in accordance with section 773(e) of the Act. The methodology used to calculate constructed value is fully described in the "Constructed Value" section of this notice.

Constructed Value

The constructed value for both Komatsu and Aida included materials, fabrication, general expenses, profit and packing. For both companies, actual general expenses were used since these exceeded the statutory minimum requirement of ten percent of the cost of materials and fabrication. The statutory eight percent profit was applied to the cost of production for both companies since the profit in the home market was less than the statutory minimum. The finance expense was reduced to account for the interest portion included in the imputed credit expense. The constructed values submitted by the respondents were relied upon, except in those instances where the costs were not appropriately quantified or valued, as described below.

A. *Komatsu:* We made the following adjustments to constructed value:

(1) Inventory was excluded from Komatsu's calculation of the offset to finance expense. Inventory carrying costs were not included as a selling expense, therefore, no adjustment to interest expense was necessary for this portion of finance expenses.

(2) Bond issue costs and stock issue costs were included in the calculation of finance expense. These expenses are more appropriately characterized as finance rather than general and administrative expenses as claimed by Komatsu.

(3) Capitalized interest was not included in the cost of manufacturing. According to Financial Accounting Standards Nos. 34 and 42, interest should be capitalized for assets intended for sale or lease that are constructed or otherwise produced as discrete projects. However, interest capitalization is only required for these assets if the effect, compared with the effect of expensing interest, is material. Upon review of the time required to construct the MTP and the cost involved, it appears that capitalization of interest is not appropriate. Therefore, capitalized interest was not included for the preliminary determination.

(4) General and administrative costs were recalculated based on the selling, general and administrative expenses from the Ministry of Finance Report of the parent company, Komatsu Ltd., as best information available, since certain adjustments made by Komatsu in its response could not be reconciled. The Department deducted those items which were identified as product-line research and development, and ex-factory expenses. (For an explanation of selling expense adjustments, see (6) below.)

(5) Installation costs were included in the cost of manufacturing because Komatsu reported the price of the MTP inclusive of installation. Due to the nature of these expenses, it appears that they are characteristic of manufacturing expenses rather than movement charges as claimed by Komatsu.

(6) Where we used constructed value because there were no sales of such or similar merchandise in the home market, we deducted selling expenses which could be matched with the direct selling expenses incurred on the U.S. sales from SG&A as reflected in the Ministry of Finance Report. We added U.S. selling expenses as a surrogate for sale-specific home market expenses. We made a circumstance of sale adjustment based on U.S. direct selling expenses, which consisted of credit, warranty, advertising, technical service, export proceeds insurance, and reassembly insurance. We offset U.S. commissions against home market indirect selling expenses.

B. *AIDA:* We made the following adjustments to constructed value:

(1) We calculated interest expense as a percentage of the cost of sales on a consolidated basis rather than on a parent company basis as reported in the submission. Since Aida had not provided specific details on the amount of interest income related to operations, no deduction from interest expense was allowed.

(2) Transfer prices were used for the cost of services or products purchased from wholly-owned subsidiaries except in those cases where the transfer price was less than actual cost. In those cases, the actual cost was used. Aida had reported all of these services or products at cost.

(3) Capitalized interest was not included in the cost of manufacturing for the same reasons outlined in section A(4) above.

(4) Since there were no home market sales of such or similar merchandise, we substituted U.S. direct selling expenses for the equivalent home market expenses. We made a circumstance of sale adjustment based on U.S. direct selling expenses, which consisted of credit and warrantly. Since Aida did not report U.S. indirect selling expenses, as best information available, we used home market selling expenses and overseas selling expenses (incurred in markets other than the U.S. and Canada) as a percentage of net sales value as a surrogate for U.S. indirect selling expenses. We offset U.S. commissions with home market indirect selling expenses.

Currency Conversion

In accordance with § 353.60 of the Department's regulations, we used the official exchange rates in effect on the appropriate dates for determining foreign market value.

Verification

As provided in section 776(b)(1) of the Act, we will verify all information used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of MTPs, as defined in the "Scope of Investigation" section of this notice, that are entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of MTPs exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Komatsu	14.52
Aida	5.89
All Others	13.83

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or threaten material injury to, a U.S. industry before the latter of 120 days after the date of this determination, or 45 days after the final determination, if affirmative.

Public Comment

In accordance with section 353.38 of the Commerce Department's regulations, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary by October 6, 1989, and rebuttal briefs by October 12, 1989. In accordance with § 353.38(b) of the Department's regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs at 10:00 a.m. on October 18, 1989, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099 within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with § 353.38(b) of the Department's regulations, oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Dated: August 10, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-19390 Filed 8-17-89; 8:45 am]

BILLING CODE 3510-DS-M

Management-Labor Textile Advisory Committee; Partially Closed Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held on Tuesday, August 22, 1989, Herbert C. Hoover Building, Room H4830, 14th Street and Constitution Avenue NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on October 18, 1961 to advise officials of problems and conditions in the textile and apparel industry.)

General Session: 2:00 P.M. Review of import trends, report on conditions in the domestic market, and other business.

Executive Session: 2:30 P.M. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room H6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes, contact Alfreda Clark Burton (202) 377-3737.

Dated: August 15, 1989.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-19696 Filed 8-17-89; 11:13 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

[Docket No. 90779-9179]

Family of Services and Climate Dial-Up Service

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice announces the National Oceanic and Atmospheric Administration's FY 90 fee schedule for the National Weather Service's Family of Services (FOS) and the Climate Analysis Center's (CAC) Climate Dial-Up Service. The FOS and the CAC Climate Dial-Up Service provide external user access to near real-time weather and flood data and other information as well as climatological data accessible in the Washington area. This notice announces the fee schedule for the seven medium speed communication services which make up the FOS as well as the CAC Climate Dial-Up Service. It further lists the points of contact for each of these services.

FOR FURTHER INFORMATION CONTACT: Edward M. Gross, Constituent Affairs Officer (NWS), 8060 13th Street, Silver Spring, Maryland 20910, (301) 427-7258.

SUPPLEMENTARY INFORMATION: Although the Department of Commerce/NOAA/NWS is not legally required to issue this notice of fees under 15 U.S.C. 1525, the notice is being issued as a matter of general policy.

Authority: 15 U.S.C. 313 and 15 U.S.C. 1525.

BEST COPY AVAILABLE

Dated: August 11, 1989.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

NOAA announces the FY 90 fee schedule for the National Weather Service (NWS) Family of Services (FOS) and the Climate Analysis Center (CAC) Climate Dial-Up Service.

The FOS provides external user access to near real-time weather and flood data and information available on a family of medium speed communication services accessed in the Washington, DC area. The FOS is divided into seven services described below. Along with the service description is the one-time connection fee which covers the expense related to establishing service and the annual maintenance fee which covers the Government's expense in maintaining the service provided. This expense includes direct labor and other related costs as well as computer and communication costs. Each year's annual service fee is based on the previous year's costs for that individual service divided by the number of direct subscribers.

The family of services	One time connection fee	FY 90 fee
Public Product Service (PPS), Forecasts and warnings in an easily read, plain language format		$2,500
Domestic Data Service (DDS), Coded observations, reports, forecasts and analysis	$2,500	3,500
International Data Service (IDS), Worldwide coded observations, reports, and forecasts	2,500	4,500
Numerical Product Service (NPS), Global model-derived forecasts and analysis in a gridded binary format	5,000	12,000
Direct Connect Service (DCS), Same as NPS, exception subscribers have direct posts on the NWS Telecommunication Gateway	5,000	16,500
National Facsimile Service (NAFAX), 100 facsimile charts of analysis, prognosis, and observed data including 10 satellite photos-analog signal	2,500	21,000
Digital Facsimile Service (DIFAX), 300 facsimile charts of analysis, prognosis, and observed data similar to those on NAFAX plus international aviation charts and agricultural products	2,500	3,500

The PPS and NPS fee stayed the same while the DDS, IDS, and NAFAX fees increased and the DCS and DIFAX fee decreased.

Besides the fees listed above, subscribers are required to pay for all related telephone line charges into the Washington, DC area. For more information on the Family of Services, please contact: Edward M. Gross, Constituent Affairs Officer (NWS), 8060 16th Street, Rm. 1412, Silver Spring, Maryland 20910.

The CAC Climate Dial-Up Service provides near real-time delivery of climate information by providing telephone/computer menu access to the CAC data base. The user fee described below will be based on the number of times per year subscribers access the service. As with the FOS, the fees are required to recover the costs for operating this service. In addition, subscribers will continue to incur long-distance charges where applicable.

The annual fee scale for the CAC Climate Dial-Up Service will be as follows:

Very Heavy User (100 or more calls per year)..... $600
Heavy User (52–99 calls per year)..... 400
Moderate User (12–51 calls per year)..... 140
Light User (1–11 calls per year)..... 48

For more information on this service contact: Ms. Joanna M. Dionne, Climate Dial-Up Service, Room 805, World Weather Building, Washington, DC 20233, Telephone: 301–763–8071.

[FR Doc. 89–19442 Filed 8–17–89; 8:45 am]

BILLING CODE 3510–13–M

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will hold a joint public meeting of the Surf Clam and Scientific and Statistical Committees at the Ramada Inn, Ball Room C, 76 Industrial Highway, Essington, PA. The meeting will begin on August 29, 1989, at 10 a.m., and will adjourn at approximately 5 p.m. The Committees will set quotas for 1990 surf clam and ocean quahog specifications. No other surf clam/ocean quahog issues will be discussed, including Amendment #8 issues.

For more information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: August 11, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–19401 Filed 8–17–89; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Socialist Republic of Romania; Correction

August 14, 1989.

On page 49345, in the table in the letter to the Commissioner of Customs published in the **Federal Register** on December 7, 1989 (53 FR 49344), the HTS coverage for sublimit 334pt. should be corrected as indicated below:

* * * shall be in Category 334pt. in all HTS numbers except 6101.20.0010, 6101.20.0020 and 6112.11.0010.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–19391 Filed 8–17–89; 8:45 am]

BILLING CODE 3510–DR–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989, Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletions from procurement list.

SUMMARY: This action adds to and deletes from Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: September 18, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverely Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On April 21, June 2, 26 and 30, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 26828, 23684, 16148 and 27667) of proposed additions to and deletions from Procurement List 1989, which was published on November 5, 1988 (53 FR 46018).

Additions

No comments were received in direct response to the proposed additions to the Procurement List. However, during the early development stage, the current contractor claimed in a letter to the Committee that the addition of the woman's shirts would adversely affect his firm as well as its employment levels. The value of the firm's contract for the woman's shirts represents approximately 9.7 percent of its total annual sales. This is not considered to be severe adverse impact. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the services at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1989:

Commodities

Envelope, Wallet
7530–00–268–3993
Pad, Writing Paper (Repositionable)
7530–01–116–7865
7530–01–116–7866
7530–01–116–7867
Shirt, Woman's
8410–01–069–6611
8410–01–069–6612
8410–01–069–6613
8410–01–069–6614
8410–01–069–6615
8410–01–069–6616
8410–01–069–6617
8410–01–069–6618
8410–01–069–6619
8410–01–069–6620
8410–01–069–6621
8410–01–069–6622
8410–01–069–6623
8410–01–069–6624
8410–01–069–6625
8410–01–069–6626
8410–01–069–6627

Services

Janitorial/Custodial, U.S. Army Reserve Center, 2562 Avery Avenue, Memphis, Tennessee.

Deletions

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

Accordingly, the following services are hereby deleted from Procurement List 1989:

Commissary Shelf Stocking, Naval Construction Battalion Center, Gulfport, Mississippi
Janitorial/Custodial, Naval and Marine Corps Reserve Center, Jackson, Mississippi

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–19493 Filed 8–17–89; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

Comments Must be Received on or Before: September 18, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Commodities

Shampoo, Medicated, 6508–00–116–1362, 6508–00–116–1367

Services

Janitorial/Custodial, Federal Building, 600 Church Street, Flint, Michigan.
Janitorial/Custodial, Federal Building and Post Office, Wenatchee, Washington
Laundry Service, Harrisburg/Middletown Airport, Tobyhanna, Army Depot and Fort Indiantown Gap, Pennsylvania.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–19494 Filed 8–17–89; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

The Joint Staff; Joint Strategic Target Planning Staff (JSTPS), Scientific Advisory Group; Closed Meeting

AGENCY: Joint Strategic Target Planning Staff, Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Director, Joint Strategic Target Planning Staff has scheduled a closed meeting of the Scientific Advisory Group.

DATE: The meeting will be held on October 12–13, 1989.

ADDRESS: The meeting will be held at Offutt AFB, Nebraska.

FOR FURTHER INFORMATION CONTACT: The Joint Strategic Target Planning Staff, Scientific Advisory Group, Offutt AFB, Nebraska 68113.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss strategic issues which relate to the development of the Single Integrated Operational Plan (SIOP). Full development of the topics will require discussion of information classified Top Secret in accordance with Executive Order 12356, 2 April 1982. Access to this information must be strictly limited to personnel having requisite security clearances and specific need-to-know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave

impact upon national defense. Accordingly, the meeting will be closed in accordance with 5 U.S.C. 552b(c)(1).

Dated: August 15, 1989.

Linda M. Bynum,

OSD Federal REgister Liaison Officer, Department of Defense.

[FR Doc. 89-19481 Filed 8-17-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Advisory Panel on ROTC Affairs, Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Panel meeting:

Name of Panel: Army Advisory Panel of ROTC Affairs

Date of Meeting: October 1, 1989

Place: Duquesne University, Pittsburg, PA

Time: 8 a.m.-5 p.m., November 8, 1989
8 a.m.-12 p.m., November 9, 1989

Proposed Agenda: The meeting will consist of briefings and discussions. The meeting is open to the public. Any interested person may appear before or file a statement with the Panel at the time, and in the manner, permitted by the Panel. It is projected that the following events will take place during the meeting. After opening remarks by Major General Robert E. Wagner and the chairman of the Panel, Dr. Anthony F. Ceddia, any administrative matters requiring attention will be resolved. The meeting will then proceed with a variety of recent ROTC Cadet Command initiatives. Major General Wagner will provide an overview of the significant changes since the June 1989 meeting at Fort Bragg, NC. Briefings on November 8-9 will include updates on Scholarships, Advertising Strategy, Marketing Operation, Citizen Soldier, Spring Gold, Green to Gold, Camps, Cadet Professional Development Training, the High School Program and the Hispanic Task Force. On November 9 the Army Advisory Panel on ROTC Affairs will visit Pittsburg area ROTC battalions and observe cadets enrolled in Military Science classes.

Kenneth L. Denton,

Alternate Liaison Officer with the Federal Register, Department of the Army.

[FR Doc. 89-19456 Filed 8-17-89; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

CNO Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet August 23-25, 1989 from 9 a.m. to 5 p.m. each day, at multiple locations in Alexandria, Virginia, Kings Bay, Georgia, Mayport, Florida, and at sea onboard the USS Kennedy (CV 67). All sessions will be closed to the public.

The purpose of this meeting is to review maritime issues as they impact national security policy and requirements. The entire agenda of the meeting will consist of discussions of key issues regarding national security policy, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This notice is being published late due to difficulties encountered in coordinating the schedules of multiple fleet units in order to hold this meeting afloat. This constitutes an exceptional circumstance, now allowing for 15 days Notice of this meeting.

For further information concerning this meeting, contact: Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: August 15, 1989.

Sandra M. Kay,

Alternate Federal Register Liaison Officer, Department of the Navy.

[FR Doc. 89-19565 Filed 8-16-89; 9:57 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.031A, CFDA No. 84.031G]

Invitation for Applications for Designation as an Eligible Institute for Fiscal Year 1990 for the Strengthening Institutions Program and the Endowment Challenge Grant Program

Purpose: Institutions of higher education must meet specific statutory and regulatory requirements to be designated eligible to receive funds under the Strengthening Institutions Program and the Endowment Challenge Grant Program.

Deadline for Transmittal of Applications: October 16, 1989.

Applications Available: August 28, 1989.

Eligibility Information: Under section 312 of the Higher Education Act of 1965, as amended (HEA), an institution of higher education qualifies as an eligible institution under the Strengthening Institutions and Endowment Challenge Grant Programs if, among other requirements, it has a high enrollment of needy students, and its Educational and General (E&G) expenditures are low per full-time equivalent (FTE) undergraduate student in comparison with the average E&G expenditures per FTE student of institutions that offer similar instruction. The complete eligibility requirements are found in 34 CFR 607.2 through 607.4 of the Strengthening Institutions Program regulations.

Enrollment of Needy Students: Under 34 CFR 607.3(a), an institution is considered to have a high enrollment of needy students if—

(1) At least 50 percent of its degree students received financial assistance under one or more of the following programs: Pell Grant, Supplemental Educational Opportunity Grant, College Work-Study, or Perkins Loan Program; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants at comparable institutions that offer similar instruction. To qualify under the second criterion, an applicant's Pell Grant percentage must be more than the median for its category provided on the table in this notice.

E&G Expenditures Per FTE Student: An applicant should compare its average E&G expenditure/FTE student to the average E&G expenditure/FTE student for its category of institution contained in the table in this notice. If the applicant's average E&G expenditure for 1987-88 is less than the average for its category, the applicant meets this eligibility requirement.

The applicant's E&G expenditures are the total amount expended by the institution during the base year for instruction, research, public service, academic support, student services, institutional support, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Pell Grant percentages and the average E&G expenditures per FTE for the 1987-88 base year.

	Median Pell Grant percentage	Average E&G per FTE student
2-year Public Institutions	21.90	$4,625
2-year non-profit Private Institutions	26.57	5,677
4-year Public Institutions	20.09	8,745
4-year non-profit Private Institutions	24.17	10,697

Waiver Information: Applicants unable to meet the high needy student enrollment requirement and/or the low E&G expenditure requirement may apply to the Secretary for waiver of these requirements under various options described in 34 CFR 607.3(b) and 34 CFR 607.4 (c) and (d) respectively.

For the purpose of 34 CFR 607.3(b)(2), under which an applicant must demonstrate that at least 30 percent of the students it served in base year 1987-88 were from low-income families, "low-income" is defined as an amount which does not exceed 150 percent of the amount equal to the poverty level as established by the U.S. Bureau of the Census. The following table sets forth the low-income levels for various sizes of families.

For the purposes of this waiver provision, low-income families are identified according to the following:

Size of family*	Gross annual Family income must be less than**
1	$8,250
2	11,100
3	13,950
4	16,800
5	19,650
6	22,500
7	25,350
8	28,200

*For all families with more than 8 members, add $2,850 for each additional member.

**Add 15 percent for Hawaii and 25 percent for Alaska to the figures in Family income column.

Source: U.S. Department of Health and Human Services as published in the Federal Register of February 20, 1987, Vol. 52, No. 34, pages 5340-5341.

In reference to the waiver option specified in § 607.3(b)(4) of the regulation, information about "metropolitan statistical areas" may be obtained by contacting: National Technical Information Services, Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161, or call (703) 487-4650. Title Metropolitan Statistical Areas, 1988 #PB89-217567.

Applicable Regulations: Regulations applicable to the eligibility process include: (a) The Strengthening Institutions Programs, 34 CFR part 607; (b) the Endowment Challenge Grant Program Regulations, 34 CFR part 628; and (c) the Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77 and 85.

For Applications or Information Contact: Strengthening Institutions Program Branch, Division of Institutional Development, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3042, ROB#3, Washington, DC 20202-5335, Telephone: (202) 732-3314.

Authority: 20 U.S.C. 1057 and 1065a.

Dated: August 11, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89-19462 Filed 8-17-89; 8:45 am]

BILLING CODE 4000-01-M

Amendment to Executive Committee Meeting of the National Assessment Governing Board

AGENCY: National Assessment Governing Board, Education.

ACTION: Amendment notice of partially closed meeting.

SUMMARY: This amends the notice of a partially closed meeting of the Executive Committee of the National Assessment Governing Board, published on Monday, August 14, 1989, in Vol. 24, No. 155, page 33266. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: August 23, 1989.

Time: 10:00 a.m. to 10:30 (open); 10:30 to 11:15 (closed); 11:15 until adjournment (open).

Location: U.S. Department of Education, National Assessment Governing Board, Suite 4060, Mary E. Switzer Building, 330 C Street SW., Washington, DC 20202-7583.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Staff Director, National Assessment Governing Board, U.S. Department of Education, Suite 4060, Mary E. Switzer Building, 330 C Street SW., Washington, DC 20202-7583. Telephone: (202) 732-1824.

The Executive Committee of the National Assessment Governing Board will meet via teleconference in Washington, DC on August 23, 1989, from 10:00 a.m. until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the open portions of the Committee's deliberations. These facilities will be provided in the location listed in the portion of this notice titled "Location."

The Board will convene in open session beginning at 10:00 a.m. for roll call and introductory remarks. Thereafter, from 10:30 a.m. to 11:15 a.m., the meeting will be closed to the public. The closed portion of the meeting will be closed under the authority of 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. Appendix 2) and under exemptions (2) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act (Pub. L. 94-409, 5 U.S.C. 552b). During the closed portion, the Board members will discuss the qualifications of specific individuals nominated for Board membership and consider the qualifications of specific individuals for positions on the Board's staff. Discussion during the closed portion will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy, if conducted in open session and will relate solely to the internal personnel rules and practices of an agency. Such matters are protected under exemptions (2) and (6) of 5 U.S.C. 552b(c).

The proposed agenda for the open session from 11:15 a.m. until adjournment includes preparation of the agenda for the full Board meeting to be held in September, an update on appropriations, and reports from the test item review subcommittees in the areas of science, reading and math.

A summary of the activities at the closed session and related matters, which are informative to the public, consistent with the policy of 5 U.S.C. 5526b, will be available to the public within fourteen days after the meeting.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, Mary E. Switzer Building, 330 C Street SW., Suite 4060, Washington, DC, from 8:30 a.m. to 5:00 p.m.

Dated: August 16, 1989.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89-19651 Filed 8-17-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to Ingo Valentin

AGENCY: Department of Energy.

ACTION: Notice of Unsolicited Financial Assistance Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE–FG01–89CE15448 to Ingo Valentin to assist in the development of an invention entitled "Continuous Variable Hydraulic Pump/Motor Machinery and Vehicles." The technology is a completely redesigned and re-engineered swash plate type hydraulic motor, which offers high efficiency, low cost and weight.

SCOPE: This grant will aid in the building and testing of a production prototype of the unique swash-plate type hydraulic pump/motor. Currently the two types of hydraulic pump/motors for machinery and vehicular transmissions are the swash plate and bent shaft. The swash plate pumps are relatively small and light but have a limited displacement range and lower efficiency. The bent shaft pumps have larger displacement range and higher efficiency but are large, heavy and complex. The proposed technology is a completely redesigned and re-engineered swash-plate type hydraulic motor, which offers high efficiency, low cost, and light weight. These features have mainly been achieved by internal enigneering changes leading to higher speed and pressure operation and by changing the position and design of axial support bearings and design of the swash plate system. The National Institute of Standards and Technology (NIST) estimates a savings of 1.8 billion barrels of crude oil each year. It is anticipated that this project has a very high probability of achieving the objectives as well as achieving the energy savings.

ELIGIBILITY: Based on receipt of an unsolicited application, eligibility of the award is being limited to Mr. Ingo Valentin. Mr. Valentin was the president of Hydropac, which has been engaged in fluid power products research in Brookfield, Wisconsin. Mr. Valentin, the inventor, has more than 20 years experience in the fluid power field and holds a patent on the pump/motor configuration to be covered under this grant.

The term of this grant shall be two years from the effective date of award.

FOR FURTHER INFORMATION CONTACT:
U.S. Department of Energy, Office of Procurement Operations, Attn: Rosemarie H. Marshall, MA–453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,
Director, Contract Operations Division "B," Office of Procurement Operations.

[FR Doc. 89–19507 Filed 8–17–89; 8:45 am]
BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 89–46–NG]

Equitable Resources Marketing Co.; Application To Import Natural Gas From and Export Natural Gas to Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from and Export Natural Gas to Canada and Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 20, 1989, of an application filed by Equitable Resources Marketing Company (ERMG) for blanket authorization to import up to 100 Bcf, and to export up to 100 Bcf, respectively, of Canadian, Mexican and/or domestically produced natural gas for a term of two years, commencing on the date of first delivery. ERMC intends to utilize existing pipeline facilities for transportation of the volumes to be imported and exported, and indicates it would submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than September 18, 1989.

FOR FURTHER INFORMATION CONTACT:
Linda Silverman, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7249,
Diane J. Stubbs Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: ERMC, a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania, is a wholly-owned subsidiary within the corporate system of Equitable Resources, Inc. ERMC proposes to import or export natural gas either for its own account or as agent on behalf of both suppliers and purchasers, including local distribution companies, pipelines, gas brokers, agents, municipalities, and end users. According to the application, the authority requested by ERMC contemplates the following types of import and export transaction: (1) importation of Canadian and/or Mexican natural gas to U.S. markets; (2) importation of Canadian and/or Mexican natural gas for export to markets in either of such countries; (3) exportation of domestically produced natural gas to Canadian and/or Mexican markets; and (4) exportation of domestically produced natural gas to Canada and/or Mexico for eventual return by exchange or otherwise, via import, to U.S. markets.

According to ERMC, the specific terms of each transaction would be negotiated on an individual basis, including price and volumes, to reflect market conditions.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import and export authority. The applicant asserts that this import/export arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanker import/export application is granted, the authorization may permit the import or export of the gas at any point of entry or exit on the international boundary where existing pipeline facilities are located.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the Federal Register (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the action is not a major Federal action under NEPA. Unless the DOE receives comments indicated that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F–056, FR–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585. They must be filed no later than 4:30 p.m. e.s.t., September 18, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comment should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of ERMC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., August 11, 1989.

Constance L. Buckley,
Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–19508 Filed 8–17–89; 8:45 am]
BILLING CODE 6450–01–M

[FE Docket No. 89–40–NG]

Norbac International Corp.; Application To Export Natural Gas to Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of Application for Blanket Authorization to Export Natural Gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 7, 1989, of an application filed by Norbac International Corporation (Norbac) requesting blanket authorization to export from the United States to Mexico up to 47.45 Bcf of natural gas over a two-year period beginning on the date of first delivery. Norbac intends to use existing facilities within the United States and at the U.S.-Mexico border for the transportation of the exported gas. Norbac will advise the DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application is filed with the Department under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, request for additional procedures and written comments are to be filed no later than September 18, 1989.

FOR FURTHER INFORMATION CONTACT:
Frank Duchaine, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H–087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8233,
Michael Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Norbac, a Delaware corporation, with its principal place of business in El Paso, Texas, was organized to engage in the business of international marketing of natural gas, light hydrocarbons, and gaseous petroleum chemicals for resale or to specified end-users. Norbac intends to export natural gas to Mexico for spot market sales, primarily to Petroleos Mexicanos (Pemex). Norbac anticipates purchasing all the gas required to serve this authorization at arms length from natural gas producers in the States of Texas and New Mexico. Norbac states that each sales transaction would be negotiated at arms length with Pemex and would be consistent with the public interest.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE police of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic

gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanket export application is granted, the authorization may permit the export of the gas at any international border point where existing transmission facilities are located.

Norbac requests that an authorization be granted on an expedited basis. A decision on Norbac's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 29, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendment to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585. They must be filed no later than 4:30 p.m., e.d.t., September 18, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of Norbac's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 11, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-19509 Filed 8-17-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP89-1915-000, et al.]

Transcontinental Gas Pipe Line Corporation, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-1915-000]

August 8, 1989.

Take notice that on August 7, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77254, filed an application in Docket No. CP89-1915-000, pursuant to Section 7 of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Transco to provide a firm interim natural gas sales service with pre-granted abandonment pursuant to a new rate schedule designated Rate Schedule IFS, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that the instant Application is being filed in accordance with the Commission's "Order Rejecting Settlements" issued July 19, 1989, and the Revised Stipulation and Agreement filed on August 7, 1989 in *Transcontinental Gas Pipe Line Corporation*, Docket Nos. RP88-68, *et al.* The Revised Stipulation and Agreement provides, *inter alia*, for the restructuring of Transco's sales, storage and transportation services for an interim period to bring its system fully into the era of open access and competitive market oriented services, pending further negotiations on long-term system restructuring.

Transco proposes to provide an interim firm sales service to customers located on its pipeline system pursuant to a new rate schedule designated Rate Schedule IFS. Transco would provide this new sales service on an interm basis—*i.e.*, through March 31, 1991—commencing on the first day of the month following the date the Revised Stipulation and Agreement in Docket Nos. RP88-68, *et al.* is approved by the Commission. Transco states that if the Commission has not issued an order on a mutually agreeable long-term resolution of Transco's merchant service restructuring by March 1, 1991, Transco and each customer under Rate Schedule IFS may negotiate an extension of service for an additional one year period. In order to effectively implement Rate Schedule IFS service on an interim basis, Transco requests pre-granted abandonment authorization at (1) March 31, 1991, or if applicable (2) March 31, 1992.

Transco states that under Rate Schedule IFS, each month, customers would pay Transco the sum of the following charges: a Gas Commodity Charge; an Interim Service Charge; a Non-gas Demand Charge and a Non-gas Commodity Charge. Transco explains that the Interim Service Fee would be subject to adjustment as set forth in Attachment J to the Revised Stipulation and Agreement. Under Rate Schedule IFS, Transco explains that the IFS customers have the right, but no obligation, to purchase gas on a firm basis.

Transco explains that in accordance with Rate Schedule IFS and the *pro forma* Service Agreement for service thereunder, no later than eleven days prior to the beginning of each month, Transco would propose a delivered price of gas for the following month. Thereafter, Transco and each customer would negotiate a delivered price of gas and no later than eight days prior to the beginning of each month, customers must nominate a quantity to be purchased at a negotiated commodity price. Transco explains that the commodity gas price would be subject to a price cap based upon the spot index set forth in Exhibit A of the service agreement under Rate Schedule IFS. Transco further explains that the price cap would also determine the commodity gas price for any month for any specific customer who is unable to agree with Transco upon a commodity gas price for that month.

Comment date: August 15, 1989 in accordance with Standard Paragraph F at the end of the notice.

2. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-1916-000]

August 8, 1989.

Take notice that on August 7, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed an application in Docket No. CP89-1916-000, pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Transco to make its firm transportation capacity rights on third-party pipelines available to its shippers on a non-discriminatory basis, all as more fully set forth in the application is on file with the Commission and open to public inspection.

Transco states that the instant application is being filed in accordance with the Revised Stipulation and Agreement filed on August 7, 1989, in *Transcontinental Gas Pipe Line Corporation*, Docket Nos. RP88-68 *et al.* The Revised Stipulation and Agreement provides, *inter alia*, for the restructuring of Transco's sales, storage and transportation services for an interim period to bring its system fully into the era of open access and competitive market oriented services, pending further negotiations on long-term restructuring.

Transco states that it currently holds firm transportation capacity entitlements on numerous third-party pipelines, as set forth in an exhibit to the application. Transco proposes to make these capacity rights on consenting upstream pipelines available to its shippers on a non-discriminatory basis to the extent that such capacity is not being utilized for Transco's system supply. Transco states that it would make such capacity available under IT Rate Schedule service agreements in connection with a newly proposed § 28.2(h) to the General Terms and Conditions of its FERC Gas Tariff, which provides for such capacity to be treated as an extension of Transco's system. Transco states that Rate Schedule FT customers would have priority access to any available capacity. Transco further states that it would post all available transportation arrangements on its electronic "Bulletin Board" and would update such list on a periodic basis.

Transco explains that it would continue to be responsible for arranging and scheduling the transportation with the pipelines and paying demand and commodity charges applicable to the service. Transco further explains that the operational and payment provisions of the underlying contracts between Transco and the transporting pipelines, as well as the corresponding certificate provisions, would remain in full force and effect. Transco states that the customers would reimburse Transco for any and all variable, commodity, or volumetric charges or costs incurred by Transco on behalf of customers (including fuel) for quantities transported through Transco's firm transportation entitlements on third-party pipeline systems.

Comment date: August 15, 1989, in accordance with Standard Paragraph F at the end of this notice.

3. Transcontinental Gas Pipe Line Corporation

[Docket Nos. CP84-335-022, CP83-228-000, CP81-194-000, G2432-000]

August 8, 1989.

Take notice that on August 7, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed an application in Docket No. CP84-335-022, *et al.*, pursuant to Section 7 of the Natural Gas Act, to amend the authorizations granted in the referenced dockets to modify the restrictions on the injection or return to storage under Rate Schedules GSS, LSS, LG-A and S-2 of natural gas purchased from parties other than Transco, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that the instant Application is being filed in accordance with the Revised Stipulation and Agreement filed on August 7, 1989 in *Transcontinental Gas Pipe Line Corporation*, Docket Nos. RP88-68, *et al.* The Revised Stipulation and Agreement provides, *inter alia*, for the restructuring of Transco's sales, storage and transportation services for an interim period to bring its system fully into the era of open access and competitive market oriented services, pending further negotiations on long-term system restructuring.

Transco states that the instant Application is designed to provide the necessary authorization to enable Transco and its customers to restructure service currently provided under Rate Schedules GSS, LSS, LG-A and S-2. Transco explains that as originally certificated, under Rate Schedules GSS, LSS and LG-A customers were entitled to inject into storage only gas purchased from Transco. As a result of Order Nos. 436 and 500 and Transco's transition toward an unbundled, open access pipeline environment, many of Transco's customers have permanently converted a portion of their firm sales entitlements to firm transportation entitlements, and Transco agreed to limited modifications of the GSS, LSS and LG-A tariff restrictions to enable customers to inject into storage limited quantities of gas purchased from third parties. Transco states that the current entitlement to inject third-party gas into storage is not in all instances equivalent on a percentage basis to the percentage converted to firm transportation service. Transco explains that if the permanent conversion from sales to transportation occurred on or before May 1, 1988, injection quantities purchased from third

parties are limited, on a daily and total quantity basis, to a quantity equal to the customer's injection entitlement (daily and total) multiplied by the percentage of the customer's daily firm purchase entitlement which has been converted to firm transportation service. It is further explained, for conversions taking place after May 1, 1988, the customer's injection rights for third-party gas are further limited on both a daily and total quantity basis so as not to exceed 15% of the customer's storage injection entitlements. Transco explains that Under Rate Schedule S–2, customers currently are not permitted to return to storage quantities of gas purchased from third-party sellers.

Transco proposes to modify the services it currently renders pursuant to the Schedules GSS, LSS, LG–A and S–2 to permit customers unlimited right to inject into storage (or "return" to Transco for storage), on a daily and total quantity basis, quantities of gas purchased from third parties equivalent on a percentage basis to the level which each customer has converted, either on an interim or permanent basis, from firm sales service to firm transportation service. Transco explains that under the Revised Stipulation and Agreement customers are permitted to convert up to 100 percent firm sales service to firm transportation service on an interim basis—from the date the Commission approves the Stipulation and Agreement through March 31, 1991, with a possible one year extension. Transco proposes for the interim period, to remove all limitations on the injection into storage (or "return" to storage) of third-party gas under Rate Schedules GSS, LSS, LG–A and S–2.

Transco states that under Rate Schedule S–2, during the November 16 to April 15 period, customers would designate to Transco that portion of withdrawal quantities (consistent with conversion percentages) which would be purchased from Transco under Rate Schedule CD and that portion of such quantities which would be returned to Transco from quantities of gas purchased under third-party transportation arrangements, including purchases under Transco's Rate Schedule IFS. Transco explains that in regard to withdrawal quantities which a customer designates would be returned under third-party arrangements (non Rate Schedule CD), at the time of withdrawal the customer would pay only the applicable delivered from storage charge. Transco further explains that when the customer returns gas purchased from third-party sources, Transco would charge the applicable rate under its Rate Schedule IT of FT, as applicable, for transportation of the gas on Transco's system for redelivery to Texas Eastern Transmission Corporation under Rate Schedule X–28 plus the return to seller charge.

Comment date: August 15, 1989 in accordance with Standard Paragraph F at the end of the notice.

4. Transcontinental Gas Pipe Line

[Docket No. CP74–33–013]

August 8, 1989.

Take notice that on August 7, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston Texas 77251, filed an application in Docket No. CP74–33–013, pursuant to Section 7(c) of the Natural Gas Act, to amend the authorizations granted in Docket No. CP74–33 on February 28, 1975, in order to provide specific daily withdrawal entitlements to Washington Storage Service customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco explains that the February 28, 1975 order authorized Transco to (1) construct and operate certain facilities in the Washington Field, St. Landry Parish, Louisiana, (2) use the Cockfield "D" reservoir therein as a storage field, and (3) provide a natural gas storage service pursuant to Rate Schedule WSS, *i.e.*, Washington Storage Service. Transco states that Rate Schedule WSS provides for an interruptible service and does not provide individual customers with a specific daily withdrawal entitlement. Transco further states that its ability to withdraw gas from storage and, consequently, the customers, entitlement to storage withdrawals is currently expressed in terms of the total balance of the storage field and the customers' nominations. Transco explains that in the event the customers' aggregate daily nominations exceed the total quantity Transco can withdraw, the customers' nominations are prorated in proportion to each customer's current Storage Gas Balance.

Transco states that the instant application is being filed in accordance with—and is contingent upon Commission approval of—the Revised Stipulation and Agreement filed on August 7, 1989 in *Transcontinental Gas Pipeline Corporation* Docket Nos. RP88–68, *et al.* The Revised Stipulation and Agreement provides, *inter alia*, for the restructuring of Transco's sales, storage and transportation services for an interim period to bring its system fully into the era of open access and competitive market oriented services, pending further negotiation on long-term restructuring.

Transco proposes to modify the service it currently renders pursuant to Rate Schedule WSS to provide customers with specific minimum daily withdrawal entitlements which are based on each customer's Storage Capacity Quantity. Transco states that a customer's minimum Daily Withdrawal Entitlement would be based upon its individual use of Washington Storage Service as set forth in Exhibit P to the application and would not be affected by the use of storage by other customers receiving service under Rate Schedule WSS. Transco states that its proposal would provide WSS customers with greater certainty as to their daily withdrawal entitlement.

Comment date: August 15, 1989, in accordance with Standard Paragraph F at the end of this notice.

5. ANR Pipeline Company

[Docket No. CP89–1898–000]

August 9, 1989.

Take notice that on August 2, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–1898–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Howard Energy Company, Inc. (Howard), a marketer, under ANR's blanket certificate issued in Docket No. CP88–532–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that the transportation service would be provided pursuant to a transportation agreement wherein ANR proposes to transport up to 100,000 dekatherms (dt) per day equivalent of natural gas, on an interruptible basis, for Howard. ANR further states that it would receive the natural gas at ANR's existing points of receipt located in the states of Kansas, Louisiana, Michigan, Texas and Wisconsin; and the offshore Louisiana and Texas gathering areas and would redeliver the natural gas for the account of Howard at existing interconnections located in the state of Michigan. ANR indicates that the average day and annual volumes of natural gas to be transported would be 100,000 dt and 36,500,000 dt, respectively.

ANR states that service under § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)) commenced on June 6, 1989, as reported in Docket No. ST89–4141–000.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of the notice.

6. Colorado Interstate Gas Company

[Docket No. CP89–1895–000]

August 9, 1989.

Take notice that on August 2, 1989, Colorado Interstate Gas Company [CIG], P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89–1895–000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport natural gas under its blanket certificate issued in Docket No. CP86–589, *et al.*, a maximum of 35,000 Mcf per day for Williams Gas Marketing Company (WGMC), a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG indicates that service commenced May 18, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–3850–000 and estimates the volumes transported to be 35,000 Mcf on peak day, 20,000 Mcf on an average day and 7,300 MMcf on an annual basis. It is asserted that CIG would receive gas from various existing points of receipt on its system in Wyoming, and redeliver the subject gas, less fuel gas and lost and unaccounted-for gas, for WGMC in Kearny County, Kansas.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Northwest Pipeline Corporation

[Docket No. CP89–1902–000]

August 9, 1989.

Take notice that on August 3, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–1902–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of KTM, Inc. (KTM), a marketer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86–578–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport, on an interruptible basis, up to 20,000 MMBtu per day for KTM. Northwest states that construction of facilities would not be required to provide the proposed service.

Northwest further states that the maximum day, average day, and annual transportation volumes would be approximately 20,000 MMBtu, 600 MMBtu and 219,000 MMBtu respectively.

Northwest advises that service under § 284.223(a) commenced July 2, 1989, as reported in Docket No. ST89–4216.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Stingray Pipeline Company

[Docket No. CP89–1893–000]

August 9, 1989.

Take notice that on August 2, 1989, Stingray Pipeline Company (Stingray), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–1893–000 an applications pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Superior Natural Gas Corporation (Superior), a marketer of natural gas, under Stingray's blanket certificate issued by Commission Order No. 509 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Stingray proposes to transport, on an interruptible basis, up to 50,000 MMBtu per day for Superior. Stingray states that construction of facilities would not be required to provide the proposed service.

Stingray further states that the maximum day, average day, and annual transportation volumes would be approximately 50,000 MMBtu, 10,000 MMBtu and 3,650,000 MMBtu respectively.

Stingray advises that service under § 284.223(a) commenced June 1, 1989, as reported in Docket No. ST89–4006.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. ANR Pipeline Company

[Docket No. CP89–1885–000]

August 9, 1989.

Take notice that on August 1, 1989, ANR Pipeline Company (ANR) 500 Renaisssance Center, Detroit, Michigan 48243, filed in Docket No. CP89–1885–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport, on an interruptible basis, natural gas under its blanket certificate issued in Docket No. CP88–532–000 for Dekalb Energy Canada Ltd. (Dekalb), a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that it would receive the gas at ANR's existing points of receipt located in the state of Wisconsin and redeliver the gas for the account of Dekalb at existing interconnections also located in the state of Wisconsin. ANR indicates that it commenced service for Dekalb under § 284.223 as reported in Docket No. ST89–4145–000.

ANR indicates that service commenced June 1, 1989, as repored in Docket No. ST89–4145–000.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Black Marlin Pipeline Company

[Docket No. CP89–1905–000]

August 9, 1989.

Take notice that on August 3, 1989, Black Marlin Pipeline Company (Black Marlin), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–1905–000, an application pursuant to sections 157.205 and 284.223 of the Commission's Regulations for authority to transport natural gas on behalf of Shell Offshore Inc./Shell Gas Trading Company, a marketer of natural gas, pursuant to Black Marlin's blanket certificate issued by the Commission's Order No. 509 and Section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89–75–000, as more fully set forth in the application on file with the Commission and open to public inspection.

Black Marlin further states that the estimated daily and estimated annual quantities would be 150,000 MMBtu and 54,750,000 MMBtu, respectively. Service under Section 284.223 (a) commenced on June 1, 1989, as reported in Docket No. ST89–4073–000. Construction of facilities will not be required to provide the proposed service.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Stingray Pipeline Company

[Docket No. CP89–1913–000]

August 10, 1989.

Take notice that on August 7, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1913–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Amoco Production Company (Amoco), a producer, under the blanket certificate

issued by the Commission's Order No. 509, pursuant to Section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89–70–000, all as more fully set forth in the request that is filed with the Commission and open to public inspection.

Stingray states that pursuant to a transportation agreement dated April 27, 1989, under its Rate Schedule ITS, it proposes to receive up to 50,000 million Btu per day from Amoco at specified points located onshore and offshore Louisiana and redeliver the gas at specified points located offshore Texas and onshore Louisiana. Stingray estimates that the peak day, average day and annual volumes would be 50,000 million Btu, 7,500 million Btu, and 2,737,500 million Btu, respectively. It is stated that on July 1, 1989, Stingray initiated a 120-day transportation service for Amoco under § 284.223(a) as reported in Docket No. ST89–4345–000.

Stingray further states that no facilities need be constructed to implement the service. Stingray states that the primary term of the transportation service would expire one year from the initial date of service, but that the service would continue on a month-to-month basis until terminated by 30 days written notice. Stingray proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: September 25, 1989, in accordance with Standard Paragrpah G at the end of this notice.

12. Stingray Pipeline Company

[Docket No. CP89–1906–000]

August 10, 1989.

Take notice that on August 3, 1989, Stingray Pipeline Company (Stingray), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–1906–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on an interruptible basis for Koch Hydrocarbon Company (KHC), a marketer of natural gas, under the blanket certificate issued by the Commissfon's Order No. 509, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Stingray states that it would receive the gas for KHC at various existing points of receipt in offshore Louisiana, Louisiana and Texas, and would redeliver the gas at existing delivery points located in Cameron Parish, Louisiana and offshore Texas.

Stingray further states that the maximum daily, average daily and annual quantities that it would transport for KHC would be 150,000 MMBtu equivalent of natural gas, 100,000 MMBtu equivalent of natural gas and 36,500,000 MMBtu equivalent of natural gas, respectively.

Stingray indicates that in a filing made with the Commission on June 26, 1989, in Docket No. ST89–54005, it reported that transportation service for KHC commenced on June 9, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Great Lakes Gas Transmission Company

[Docket Nos. CP81–225–008 [1] CP88–397–004]

August 10, 1989.

Take notice that on July 20, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket Nos. CP81–225–008 and CP88–397–004 a petition to amend the orders issued on December 2, 1987, in Docket No. CP81–225–005 and on October 26, 1988, in Docket No. CP88–397–000, so as to permit Great Lakes to continue providing incremental firm transportation services for Northern Minnesota Utilities, a Division of Utilicorp United Inc. (Northern Minnesota) and TransCanada PipeLines Limited (TransCanada), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Great Lakes states that the Commission has issued orders authorizing Great Lakes to transport incremental volumes of natural gas on a firm basis for Northern Minnesota and TransCanada, respectively, for a term of the earlier of one year from the date of such order, or the date that Great Lakes accepts a blanket certificate issued by the Commission pursuant to Part 284 of its Regulations. Northern Minnesota and TransCanada have each entered into arrangements with Great Lakes for the continuation of their respective services, it is indicated. No new facilities are required to provide the continuation of these transportation services, it is stated.

Great Lakes states that it currently provides certain transportation and exchange services to Northern Minnesota in conjunction with Northern Minnesota obtaining storage service from ANR Storage Company (ANR). Great Lakes states that by Commission order issued on December 2, 1987, it was authorized to (1) increase in the Summer Period (April 1 to October 31) transportation service volumes from 2,026 Mcf per day to 3,292 Mcf per day transported from an interconnection between the facilities of Great Lakes and Northern Minnesota near Cloquet, Minnesota (Cloquet) to an interconnection between the facilities of Great Lakes and ANR located in Crawford County, Michigan (Crawford); (2) change the total Summer Period quantity from 405,200 Mcf to 658,450 Mcf for this transportation service; and (3) increase the Winter Period (November 1 to March 31) exchange volumes from 8,000 Mcf per day to 13,000 Mcf per day that would be delivered to Great Lakes at Crawford and a thermally equivalent quantity would be delivered at Cloquet and/or two additional existing points of interconnection between Great Lakes and Northern Minnesota located near Grand Rapids and Thief River Falls, Minnesota. This authorization was subsequently extended by the order dated December 2, 1988, in Docket No. CP81–225–005, it is stated. Great Lakes states that Northern Minnesota has requested that the incremental firm services continue until termination of Great Lakes' Rate Schedule T–11 which initial term expires March 31, 1991 and governs these services.

Also, Great Lakes states that it transports natural gas for TransCanada from a point on the international boundary between the United States and Canada near Emerson, Manitoba to points on the international boundary at Sault Ste. Marie and St. Clair, Michigan (St. Clair). Great Lakes states that by Commission order issued on October 26, 1988, in Docket No. CP88–397–000, it was authorized an incremental increase in the transportation quantities by 37,500 Mcf per day for this firm transportation service but with a limited term of the earlier of one year from the date of the order, or the date that Great Lakes accepts a blanket certificate issued by the Commission pursuant to Part 284 of its Regulations. Great Lakes states that TransCanada has requested that this incremental firm service continue until the termination of Great Lakes' Rate Schedule T–4, which governs this transportation service.

Comment date: August 31, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

[1] These proceedings are not consolidated

14. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89–1841–000]

August 10, 1989.

Take notice that on July 19, 1989, Northern Natural Gas Company, Division of Enron Corp., (Applicant), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP88–1841–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate to construct certain pipeline extensions, loops, compression facilities, meters, and other related facilities to implement transportation services to various shippers pursuant to Section 311(a) of the Natural Gas Policy Act or its blanket transportation certificate, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to construct and operate certain transmission facilities in order to provide additional capacity on its system designated as Applicant's East Leg which is located between its Ogden Compressor Station in Boone County, Iowa and its Janesville delivery station in Rock County, Wisconsin. Applicant proposes to construct such facilities in two phases. Applicant explains that Phase I construction would consiat of (1) a total of approximately 45.02 miles of 30-inch pipeline loops which would be located in Boone County, Iowa and in Lafayette County, Wisconsin, (2) 24.8 miles of 16-inch line which would be located in Green and Dane Counties, Wisconsin, (3) 24.3 miles of 16-inch line which would be located in Benton County, Iowa, (4) an additional 4,000 horsepower of compression at Applicant's Waterloo Compressor Station which is located in Blackhawk County, Iowa and (5) certain station modifications at Applicant's Ogden Compressor Station and its Galena Compressor Station which is located in Jo Daviess, County, Illinois. Applicant proposes to complete construction of Phase I facilities in 1990. Applicant explains part of its Phase I facilities would interconnect with a line to be constructed by Iowa-Illinois Gas and Electric Company (IIGE). In connection with the IIGE's line, Applicant requests authorization to include as intangible plant a contribution in aid-of-construction which Applicant has agreed to pay in the amount of $7,700,000 to IIGE. Applicant further explains that Phase II construction would consist of 4.99 miles of 30-inch pipeline loop, (2) an additional 2,000 horsepower of compression at Applicant's Waterloo Compressor Station, and (3) certain station modifications at its Galena Compressor Station. Applicant states that Phase II facilities are designed to accommodate Madison Gas and Electric Company's request to provide additional service to begin for the 1992 winter season.

Applicant asserts that the proposed construction (Phase I and Phase II) are designed to increase capacity on its East Leg by a total of 203,000 Mcf per day and that the total cost of construction would be approximately $65,570,000 (Phase I—$57.47 million and Phase II—$8.10 million) exclusive of the proposed aid-in-construction to IIGE and the FERC filing fee. Applicant states that it would finance the proposed construction project with internally generated funds.

Applicant states that it conducted an Open Season from October 6, 1988, to October 24, 1988, during which time it received requests for new firm and interruptible transportation services to be provided through the additional capacity proposed herein. Applicant further advises that it has executed precedent agreements to provide firm transportation services on behalf of the following shippers:

Shipper	Phase I volumes (MMBtu/d)	Phase II volumes (MMBtu/d)
Northern Illinois Gas Co	70,000	70,000
Iowa-Illinois Gas & Electric	50,000	50,000
Wisconsin Gas Company	25,000	25,000
Madison Gas & Electric Co	18,500	37,653
Wisconsin Power & Light Co	12,000	12,000
Centran Corp	2,500	2,500
Wisconsin Southern Gas Co., Inc	1,500	1,500
Totals	177,500	196,653

Upon completion of the proposed facilities, Applicant explains that it would render the above firm transportation services pursuant to its blanket transportation certificate issued on December 22, 1986, in Docket No. CP86–435–000 and that it would render these services under its then-applicable rate schedules.

Applicant notes that it has filed an application in Docket No. CP89–1538–000 for authorization to construct a 2.0-mile line crossing of the Mississippi River located west of its Galena Compressor Station; it is proposes therein that such line be operated on an emergency basis. Applicant explains that such line now would be operated as part of proposed expansion herein. Applicant further notes that it previously proposed expansion of its East Leg in pending Docket No. CP83–216 *et al.* in order to render firm transportation services on behalf of certain coal gas shippers [1] which has arranged to purchase coal gas from the Great Plains Coal Gasification Plant located in Mercer County, North Dakota. Applicant explains that Commission authorization in Docket No. CP83–216 *et al.* has never been received for either the construction or for the proposed transportation services. Applicant states that it has contacted each of the coal gas shippers and has advised them that it is considering the withdrawal of its application in Docket No. CP83–216 *et al.* and that other alternative arrangements would be considered to accommodate the coal gas shippers.

Comment date: August 31, 1989, in accordance with Standard Paragraph F at the end of this notice.

15. Stingray Pipeline Company

[Docket No. CP89–1910–000]

August 10, 1989.

Take notice that on August 4, 1989, Stingray Pipeline Company (Stingray), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–1910–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Union Exploration Partners LTD, (Union), a producer of natural gas, under the blanket certificate issued by the Commission's Order No. 509, pursuant to Section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89–70–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Stingray states that pursuant to a transportation agreement dated April 1, 1989, under its Rate Schedule ITS, it proposes to transport up to 70,000 MMBtu per day equivalent of natural gas for Union. Stingray states that it would transport the gas from various receipt points on its system as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less fuel used and unaccounted line loss, to Holly Beach and OXY-NGL Plant located in Cameron Parish, Louisiana and Stingray-HIOS Exchange (EHI–A330) located offshore Texas.

Stingray advises that service under § 284.223(a) commenced April 20, 1989, as reported in Docket No. ST89–4393–000. Stingray further advises that it

[1] The coal gas shippers were: ANR Pipeline Company, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., Transcontinental Gas Pipe Line Corporation, and Natural Gas Pipeline Company of America.

would transport 22,000 MMBtu on an average day and 8,030,000 MMBtu annually.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. El Paso Natural Gas Company

[Docket No. CP89-1880-000]

August 10, 1989.

Take notice that on July 31, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request at Docket No. CP89-1880-000, pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service for Bonneville Fuels Corporation (Bonneville), under its blanket certificate issued at Docket No. CP88-433-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Pursuant to a transportation agreement dated April 18, 1989, El Paso requests authority to transport up to 13,188 MMBtu of natural gas per day, on an interruptible basis, for Bonneville. El Paso states the agreement provides for it to receive the gas at various points of receipt along its system and deliver it to various points of delivery along the borderline between the States of Arizona and California. Bonneville has informed El Paso that it expects to have the full 13,188 MMBtu transported on an average day and, based thereon, 4,813,600 MMBtu would be transported annually. El Paso advises that the transportation service commenced on July 1, 1989, as reported at Docket No. ST89-4210-000, pursuant to § 284.223(a) of the Commissions Regulations.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Tennessee Gas Pipeline Company

[Docket No. CP89-1883-000]

August 11, 1989.

Take notice that on July 31, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1883-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the Stratton Pipeline System (Stratton System) and a petition for a declaratory order which disclaims jurisdiction over the abandoned facilities, all as more fully set forth in the application and petition which are on file with the Commission and open to public inspection.

Tennessee states that it has entered into an Option and Agreement of Sale with Union Pacific Resources Company (UPRC) which provides, *inter alia*, for the conveyance by Tennessee to UPRC of the Stratton System. Upon receipt of the authorization requested herein, Tennessee avers it will convey such facilities to UPRC, and UPRC will continue to operate the facilities in order to deliver gas into Tennessee's interstate pipeline system at Tennessee's Meter No. 1-0008. Therefore, Tennessee requests, on behalf of UPRC, that the Commission confirm that the Stratton System for which abandonment is sought herein by Tennessee will be a non-jurisdictional gathering facility when owned and operated by UPRC.

It is stated that the facilities which are subject to this application and petition for declaratory order are located behind processing plants or serve to deliver gas to a central point in the field at a pipeline interconnection. According to Tennessee, the primary function of these facilities is gathering gas to the plant for processing and delivery and/or delivering the gas into the mainlines of Tennessee and United. As such, Tennessee states that the realignment of the facilities when two plants were shut down for economic/operational reasons did not modify the primary function of the subject facilities which remains gathering.

Tennessee describes states that the Stratton System as follows:

Agua Dulce-Wardner Line 1B-100

(1) Approximately 4.65 miles of 18-inch pipeline beginning at an 18-inch weld ell which adjoins piping on the upstream side of the Champlain Wardner Coastal Meter Station [1] as detailed on Drawing TO-C1-E1-YA-102 located in the Andres De La Fuente Survey A-111 and being situated on Tennessee fee lands. Thence extending through Valve No. 1B-101 and continuing in a southwesterly direction to a point, said point being a reducer. Approximately 3.06 miles of 12-inch pipeline beginning at the hereinbefore referenced reducer and proceeding in a southwesterly direction to a point of termination located at the Wardner Plant, which is no longer operative, and being located in the Luciano Rivas Survey A-286.

[1] The Champlain Wardner Coastal Meter Station is also identified as Tennessee Meter No. 1-0008.

Agua Dulce-Wardner Line-Gulf Plains Lateral Line No. 1B-200

(2) Approximately 0.51 mile of 10-inch pipeline beginning at an 18-inch by 12-inch weld saddle being the tie-in point with the Agua Dulce Wardner Line No. 1B-100 as detailed on Drawing No. TO-F1-1B-200-1 and extending in a westerly direction to a point of termination at the Gulf Plains Plant and being situated in the Luciano Rivas Survey A-286.

Coastal Line No. 1E-100

(3) 0.43 mile of 10-inch pipeline beginning at an 18-inch weld tee being the tie-in point of piping from the Champlain Wardner Coastal Meter Station and the Agua Dulce Wardner Line No. 1B-100 as detailed on Drawing No. TO-C1-E1-YA-102 and extending through Valve No. 1E-101 and continuing in a northerly direction across Tennessee fee lands to a specific point. Thence proceeding in a southeasterly direction to a point of termination at the Coastal Plant, which is no longer operative, and being situated in the Andres De La Fuente Survey A-111.

It is stated that the Stratton System includes all additions or modifications thereto which are used with, useful to, or required for the operation thereof.

Tennessee states that the Stratton System is located near its Compressor Station No. 1 in San Patricio County, Texas and consists of three segments of pipeline. The Agua Dulce-Wardner line (4.65 miles of 18-inch and 3.06 miles of 12-inch pipeline) extended from the discharge side of the Wardner Station Processing Plant to an interconnection with Tennessee's original 24-inch main line. The Agua Dulce-Wardner-Gulf Plains lateral (0.51 mile of 10-inch pipeline) extended from the discharge side of the Gulf Plains Processing Plant to an interconnection with the Agua Dulce-Wardner line. The Coastal line (0.43 mile of 10-inch pipeline) extended from the discharge side of the Coastal Station processing Plant to an interconnection with the Agua Dulce-Wardner line near Tennessee's Meter No. 1-0008. Tennessee states that, today, only the Gulf Plains Plant remains in operation.

According the Tennessee, the Stratton System was constructed by Tennessee in 1944 (Docket No. G-230, 3 FPC 574), and has been fully depreciated for both book and tax purposes.

Tennessee avers that the three segments of the Stratton System were originally installed for the receipt and transportation of gas produced in the Stratton-Agua Dulce field. The gas was either purchased by Tennessee from the Chicago Corporation (Chicago), predecessor of UPRC, or delivered to Tennessee for transportation for the account of The Manufacturers Light and Heat Company (Manufacturers), predecessor of Columbia Gas Transmission Corporation (Columbia), all as provided by an agreement between Tennessee and Chicago dated September 7, 1943. The gas to be transported by Tennessee for Manufacturers was sold by Chicago to Manufacturers. It is stated that the September 7, 1943, contract provided that the point of delivery to Tennessee for both gas sold by Chicago to Tennessee and gas sold by Chicago to Manufacturers would be at a point on Tennessee's system in the Agua Dulce field. Tennessee states that upon construction of its system, the point of delivery was established at the discharge side of each of the three then existing processing plants.

Tennessee states that the September 7, 1943, contract was superseded by a contract between Tennessee and Chicago dated August 15, 1952 (UPRC's FERC Gas Rate Schedule No. 5). Tennessee adds that by an amendment dated May 30, 1953, the parties agreed that the point of delivery for gas to be purchased by Tennessee was to be at the discharge side of Chicago's Wardner Coastal Meter Station (Tennessee's Meter No. 1-0008). Further, it is stated that pursuant to the May 30, 1953, agreement, although Tennessee retained ownership of the lines, Chicago assumed all responsibility in connection with the maintenance and operation of the Stratton System.

Tennessee further states that its Meter No. 1-0008 has also been established as the delivery point to Tennessee of gas purchased by Columbia from UPRC and delivered to Tennessee for transportation for Columbia's account.

It is stated that Tennessee has entered into other obligations to receive gas at its Meter No. 1-0008, however, Tennessee has no obligation to receive or deliver gas at any point on the Stratton System other than at Tennessee's Meter No. 1-0008. Therefore, Tennessee states, the facilities proposed to be abandoned are not necessary for Tennessee's continued receipt of gas under any gas purchase agreement or any gas transportation agreement.

According to Tennessee, the Wardner and Coastal Plants ceased to operate in 1952, and operation of the Stratton System has evolved in a manner so that it is utilized as a production and gathering facility. By conveying the Stratton System to UPRC, Tennessee adds, it will maintain the same gas supply dedication and the same transportation abilities while eliminating all expenses of maintenance of such system. Accordingly, Tennessee states that such reduction will generate savings to Tennessee's customers. In addition, Tennessee avers that conveyance of such properties to UPRC and decertification of this system will permit flexibility in operations which will enhance UPRC's ability to carry out its production and gathering operations in the Agua Dulce and other nearby fields.

Comment date: September 1, 1989, in accordance with Standard Paragraph F at the end of this notice.

18. Stingray Pipeline Company

[Docket No. CP89-1914-000]

August 11, 1989.

Take notice that on August 7, 1989, Stingray Pipeline Company (Stingray), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-1914-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Philbro Distributors Corporation (Philbro), a marketer of natural gas, under Stingray's Order No. 509 blanket authorization pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Stingray states that it would transport, on an interruptible basis, up to 50,000 MMBtu equivalent of natural gas on a peak day, 50,000 MMBtu equivalent on an average day and 18,250,000 MMBtu equivalent on an annual basis. It is stated that Stingray would receive the gas for Philbro's account at receipt points on Stingray's system in Louisiana, Texas, offshore Louisiana and offshore Texas, and would deliver equivalent volumes of gas in Louisiana and offshore Texas. It is further stated that the transportation service would be effected using existing facilities and would require no construction of additional facilities. It is explained that the transportation service commenced July 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4344.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Stingray Pipeline Company

[Docket No. CP89-1894-000]

August 11, 1989.

Take notice that on August 2, 1989, Stingray Pipeline Company (Stingray), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-1894-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation for Gulf Ohio Corporation (Gulf Ohio), a shipper of natural gas, under Stingray's blanket certificate issued by the Commission's Order 509 pursuant to Section 7 of the Natural Gas Act, with corresponding rates, terms and conditions in Docket No. RP89-70-000, all as more fully set forth in the request on file with the Commission and open for public inspection.

Stingray states that pursuant to a Transportation Agreement dated April 11, 1989 between Stingray and Gulf Ohio (Transportation Agreement), it proposes to transport up to 7,000 MMBtu per day on an interruptible basis on behalf of Gulf Ohio. The Transportation Agreement provides for Stingray to receive gas from various existing receipt points that are located in Louisiana, offshore Louisiana and offshore Texas and the redelivery points are located in Louisiana and offshore Texas.

Stingray advises that service under § 284.223(a) commenced June 1, 1989, as reported in Docket No. ST89-4004.000. Stingray further states that it would transport on an average day 7,000 MMBtu and 2,535,000 MMBtu annually.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1919-000]

August 11, 1989.

Take notice that on August 8, 1989, Panhandle Easter Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1919-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Gastrak Corporation (Gastrak), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 under Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Specifically, Panhandle requests authority to transport natural gas up to

100,000 Dt. per day on an interruptible basis on behalf of Gastrak pursuant to a transportation agreement dated March 30, 1989, between Panhandle and Gastrak, it is stated. Panhandle states that the transportation agreement provides for Panhandle to receive gas from various existing points of receipt on its system in the States of Colorado, Kansas, Oklahoma and Texas. Panhandle further states it would then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to Haven Pool in Reno County, Kansas.

It is further stated that the estimated daily and estimated annual quantities would be 100,000 Dt. and 36,500,000 Dt., respectively. Service under § 284.223(a) commenced on July 1, 1989, as reported in Docket No. ST89-4324-000, it is stated.

Comment date: September 25, 1989, in accordance with Standard paragraph G at the end of this notice.

21. Natural Gas Pipeline Company

[Docket No. CP89-1907-000]

August 11, 1989.

Take notice that on August 3, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89-1907-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Acacia Gas Corporation (Acacia), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a transportation agreement dated November 18, 1988, as amended, Natural requests authority to transport up to 50,000 MMBtu of gas per day (plus any additional volumes accepted pursuant to the overrun provisions of its Rate Schedule ITS), on an interruptible basis, for Acacia. Natural states that the agreement provides for it to receive the gas at various existing points of receipt along its system and to deliver the gas to various existing points of delivery located in Texas and Oklahoma. Acacia has informed Natural that it expects to have only 26,000 MMBtu of gas transported on an average day and, based thereon, estimates that 9,490,000 MMBtu of gas would be transported annually. Natural advises that the transportation service commenced on June 1, 1989, as reported in Docket No. ST89-438-000 pursuant to § 284.223 of the Commission's Regulations.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1920-000]

August 11, 1989.

Take notice that on August 1, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1920-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Amgas, Inc. (Amgas), a marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport on an interruptible basis up to 130 dt equivalent of natural gas on a peak day, 20 dt equivalent on an average day and 7,300 dt equivalent on an annual basis for Amgas. Panhandle states that it would perform the transportation service for Amgas under Panhandle's Rate Schedule PT. Panhandle indicates that it would receive the gas at various points on its system and deliver the gas to CILCO in Tazewell County, Illinois.

It is explained that the service commenced July 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4361. Panhandle indicates that no new facilities would be necessary to provide the subject service.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1928-000]

August 11, 1989.

Take notice that on August 8, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1928-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis on behalf of Mountain Iron & Supply Company (Mountain Iron), a shipper and marketer of natural gas, under its blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that it proposes to transport natural gas on behalf of Mountain Iron from various points of receipt on Panhandle's system in Oklahoma, Colorado, Illinois, Kansas, Ohio, Mississippi, Texas and Wyoming to Dow Chemical Company in Marion County, Indiana.

Panhandle further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Mountain Iron would be 3,000 dt equivalent of natural gas, 155 dt equivalent of natural gas and 56,575 dt equivalent of natural gas, respectively.

Panhandle indicates that in a filing made with the Commission in Docket No. ST89-4330, it reported that transportation service on behalf of Mountain Iron had begun on July 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1926-000]

August 11, 1989.

Take notice that on August 8, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1926-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis on behalf of Mountain Iron & Supply Company (Mountain Iron), a shipper and marketer of natural gas, under its blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that it proposes to transport natural gas on behalf of Mountain Iron from various points of receipt on Panhandle's system in Oklahoma, Colorado, Illinois, Kansas, Ohio, Mississippi, Texas and Wyoming to the City of Montgomery in Montgomery County, Missouri.

Panhandle further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Mountain Iron would be 2,700 dt equivalent of natural gas, 500 dt equivalent of natural gas and 182,500 dt equivalent of natural gas, respectively.

Panhandle indicates that in a filing made with the Commission in Docket No. ST89-4326, it reported that transportation service on behalf of Mountain Iron had begun on July 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

25. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1924-000]

August 11, 1989.

Take notice that on August 8, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1924-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis on behalf of Mountain Iron & Supply Company (Mountain Iron), a shipper and marketer of natural gas, under its blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that it proposes to transport natural gas on behalf of Mountain Iron from various points of receipt on Panhandle's system in Oklahoma, Colorado, Illinois, Kansas, Ohio, Mississippi, Texas and Wyoming to the Cabot Corporation in Douglas County, Illinois.

Panhandle further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Mountain Iron would be 1,500 dt equivalent of natural gas, 180 dt equivalent of natural gas and 65,700 dt equivalent of natural gas, respectively.

Panhandle indicates that in a filing made with the Commission in Docket No. ST89-4331, it reported that transportation service on behalf of Mountain Iron had begun on July 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

26. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1921-000]

August 11, 1989.

Take notice that on August 8, 1989 Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-1921-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Vesta Energy Company (Vesta), a shipper and marketer of natural gas, pursuant to Panhandle's blanket certificate issued in Docket No. CP86-585-000 and Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Panhandle requests authority to transport up to 50,000 Dt. per day on an interruptible basis on behalf of Vesta pursuant to a Transportation Agreement dated June 26, 1989 between Panhandle and Vesta (Transportation Agreement). The agreement provides for Panhandle to receive gas from various existing points of receipt on its system. Panhandle will then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to Haven Pool in Reno County, Kansas.

The shipper states that the estimated daily and estimated annual quantities would be 50,000 Dt. and 18,250,000 Dt., respectively. Service under § 284.223(a) commenced on July 1, 1989, as reported in Docket No. ST89-4327-000.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

27. Tennessee Gas Pipeline Company

[Docket No. CP89-1931-000]

August 11, 1989.

Take notice that on August 10, 1989 Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas, 77252 filed in Docket No. CP89-1931-000 a request pursuant to §157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Columbia Gas Development Corporation (Columbia), a producer, under the blanket certificate issued in Docket No. CP87-115-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open for public inspection.

Tennessee states that pursuant to a transportation agreement dated July 13, 1989, as amended, under its Rate Schedule IT, it proposes to transport up to 75,000 dekatherms (dt) per day equivalent of natural gas for Columbia. Tennessee states that it would transport the gas for Columbia from receipt points located offshore Louisiana and Texas, and in the states of Louisiana, Texas, Massachusetts, New York, Mississippi, Pennsylvania, West Virginia, and New Jersey. Tennessee further states that the points of delivery and ultimate points of delivery are located in the states of Louisiana, Texas, Massachusetts, New York, Mississippi, Pennsylvania, Alabama, West Virginia, Rhode Island, New Hampshire, Connecticut, Tennessee, Ohio, and Kentucky.

Tennessee advises that service under § 284.223(a) commenced on July 19, 1989, as reported in Docket No. ST89-4397-000 (filed August 4, 1989). Tennessee further advises that it would transport 75,000 dt on an average day and 27,375,000 dt annually.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

28. Panhandle Eastern Pipe Line Company and Trunkline Gas Company

[Docket No. CP89-1912-000]

August 11, 1989.

Take notice that on August 7, 1989 Panhandle Eastern Pipe Line Company (Panhandle) and Trunkline Gas Company (Trunkline), referred to as "Applicants", P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1912-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a firm transportation service for Southern Natural Gas Company (Southern), rendered under the certificate issued in Docket No. CP82-211, as amended, all as more fully set forth in the request pursuant that is on file with the Commission and open to public inspection.

Applicants state that they would abandon the firm transportation service being provided to Southern under Panhandle's Rate Schedule T-50 and Trunkline's Rate Schedule T-74 (Original Volume No. 2). Applicants advise that by letter dated October 14, 1987, which was received by Panhandle on October 19, 1987, Southern formally effected the terms of the transportation agreement dated December 23, 1981, for termination of this service. Applicants request an October 19, 1988, effective date for the abandonment authorization.

Comment date: September 1, 1989 in accordance with Standard Paragraph F at the end of the notice.

29. Columbia Gas Transmission Corporation

[Docket No. CP-89-1930-000]

August 11, 1989.

Take notice that on August 8, 1989, Columbia Gas Transmission Corporation (Columbia Gas), P.O. Box 1273, Charleston, West Virginia 25325-1273, filed in Docket No. CP89-1930-000

an application pursuant to §§ 157.205 and 284.223 (18 CFR 157.05 and 284.223) of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for Endevco Oil and Gas Company (Endevco), a shipper of gas, pursuant to Columbia Gas, blanket transportation certificate issued February 28, 1986, in Docket No. CP86-240-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gas states that it will receive the gas from; Panhandle Eastern Pipeline Company at Maumee, Ohio; Texas Gas Transmission Corporation at Lebanon, Ohio; Columbia Gulf Transmission Company at Leach, Kentucky; at various existing interconnections with Texas Eastern Gas Pipeline Company and Tennessee Gas Pipeline Company and deliver the gas for the account of Endevco to Equitrans, Inc. in Pennsylvania.

Columbia Gas proposes to transport for Endevco up to 50,000 MMBtu gas equivalent per peak day and an estimated 40,000 MMBtu and 18,250,000 MMBtu gas equivalent per average day and annually, respectively. Columbia Gas states the transportation service commenced on June 2, 1989, pursuant to the 120-day automatic authorization under § 284.223 of the Commission's Regulations under the terms of a transportation agreement dated June 1, 1989. Columbia Gas notified the Commission of the commencement of the transportation service in Docket No. ST89-3995-000.

Comment date: September 25, 1989 in accordanced with Standard Paragraph G at the end of the notice.

30. Panhandle Eastern Pipe Line Company

[Docket No. CP-89-1927-000]

August 11, 1989.

Take notice that on May 19, 1989, Panhandle Eastern Pipe Line Company (Panhandle), Post Office 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1927-000, as a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.05) for authorization to transport natural gas on behalf of Mountain Iron & Supply Company (Mountain Iron), a shipper and marketer of natural gas, under its blanket authorization issued in Docket No. CP86-585-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle would perform the proposed interruptible transportation service for Mountain Iron, pursuant to a transportation service agreement dated June 5, 1989. The transportation agreement is effective for a primary term of one year from the initial date of service and shall continue month-to-month thereafter until terminated by either party upon at least thirty days prior notice. Panhandle proposes to transport 2,150 Dekatherms (Dth) of natural gas on a peak day; 150 dt on an average day; and on an annual basis 54,750 Dth of natural gas for Mountain Iron. Panhandle proposes to receive the subject gas from various existing points of recept on its system. Panhandle will then transport and redeliver the subject gas, less fuel and unaccounted for line loss, to Continental Cement Low Flow and United Steel Cement in Ralls County, Missouri. No new facilities or expansion of existing facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Panhandle commenced such self-implementing service on July 1, 1989, as reported in Docket No. ST89-4329-000.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19413 Filed 8-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10631-002 Virginia]

James River Hydro Associates; Surrender of Preliminary Permit

August 10, 1989.

Take notice that James River Hydro Associates, permittee for the proposed Twelfth Street Hydro Project, has requested that its preliminary permit be terminated. The permit was issued on January 31, 1989, and would have expired on December 31, 1991. The project would have been located on the James River in the City of Richmond, Virginia. The permittee states that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed a request on June 28, 1989, and the preliminary permit for Project No. 10631 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR § 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-19417 Filed 8-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-4-5-000]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

August 11, 1989.

Take notice that on August 7, 1989, Midwestern Gas Transmission Company (Midwestern) is filing ten copies of First Revised Seventeenth Revised Sheet No. 7 to its FERC gas tariff, to be effective July 1, 1989. This filing is made in accordance with the June 19, 1989 letter order in Docket No. TM89-3-5 where Midwestern was directed to track any modifications made in Tennessee's take-or-pay recovery filings in Docket No. RP88-191. This filing tracks the revised charges implemented by Tennessee Gas Pipeline Company in Docket No. RP88-191-010 filed July 14, 1989, to be effective July 1, 1989, including the revised amortization schedule for Tennessee's carrying charges required by the Commission's Order in Docket No. RP88-191-006 on March 23, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-19415 Filed 8-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT89-8-000]

Seagull Interstate Corp.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

August 11, 1989.

Take notice that on August 1, 1989, Seagull Interstate Corporation tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and section 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet:

Substitute First Revised Sheet No. 1
Substitute Second Revised Sheet Nos. 53 and 54
Substitute First Revised Sheet Nos. 54A and 54B
Add Original Sheet No. 54C
Substitute First Revised Sheet No. 57
Add Original Sheet Nos. 57A, 57B, 57C, and 57D
Delete Original Sheet No. 78

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR §§ 385.214 and 385.211. All such motions or protests must be filed by August 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-19416 Filed 8-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-68-000 et al.]

Transcontinental Gas Pipeline Corp.; Offer of Settlement

August 8, 1989.

In the matter of Docket Nos. RP88-68-000, RP87-7-12, RP87-7-000, RP89-122-000, RP89-123-000, RP89-163-000, TA88-1-29-000, TA88-4-29-000, TQ88-1-29-000, TA88-5-29-000, TQ89-1-29-000, TQ89-2-29-000, TQ89-4-29-000, TA89-1-29-000, CP89-1915-000, CP89-1916-000, CP74-33-013, CP84-335-022, CP61-194-000, CP83-228-000, and G-2432-000.

Take notice that on August 7, 1989, Transcontinental Gas Pipe Line Corporation (Transco) filed an Offer of Settlement in the captioned proceedings. The Offer of Settlement would resolve the above-referenced proceedings and provides for certificate authorizations pursuant to section 7(c) of the Natural Gas Act, which are generally described as follows, all as more fully set forth in the Offer of Settlement.

(1) Article I of the Settlement is intended to resolve long-standing take-or-pay issues on the Transco system and is alleged to provide Transco's customers with over $100 million in take-or-pay savings compared to the charges under Transco's Order No. 500 take-or-pay filing in Docket Nos. RP88-68-000, *et al.*

(2) Article II establishes a new jurisdictional Interim Firm Sales Service (IFS) to be provided by Transco which is designed to permit Transco to meet current producer obligations and prevent the occurrence of additional take-or-pay liability.

(3) Article III resolves the throughput mix issue pending in Docket No. RP87-7-000 on the same basis as reflected in Transco's proposed June 24, 1988 Reserved Issues Settlement in that same proceeding, and establishes the fuel-retention percentages applicable to service under Transco's FT and IT Rate Schedules for the period commencing April 1, 1989 through the remaining period of the effectiveness of the Docket No. RP87-7 rates.

(4) As more fully described in separate notices issued contemporaneously, Transco has filed together with the Offer of Settlement filing, four separate certificate applications requesting authority for Transco to:

(a) Implement the IFS Service under proposed Rate Schedule IFS;

(b) Amend Transco's existing certificate in Docket No. CP74-33 for Rate Schedule WSS service to provide for specific daily withdrawal entitlements;

(c) Make its firm transportation capacity rights on consenting upstream pipelines available to any shipper; and

(d) Modify Transco's existing storage Rate Schedules GSS, LSS, LG-A and S-2 to permit customers to nominate for injection gas purchased from third parties.

Transco states that the instant filing represents the parties' response to the Commission's July 19, 1989 Order Rejecting Settlements (46 FERC ¶ 61,052), which rejected Transco's April 3, 1989 settlement filing in Docket Nos. RP88-68-000, et al.

Transco states that the settlement, together with all attachments thereto, has been served pursuant to Rule 602(d)(1) upon all participants listed on the official service lists in the captioned proceedings on file with the

Commission, and upon all persons who were required to be served with Transco's rate filings which initiated several of the captioned proceedings.

Any persons desiring to file comments regarding the certificate authorizations sought in connection with the Offer of Settlement should, on or before August 15, 1989, file such comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 602(f)), together with a motion to intervene in accordance with the requirements of the Commissions Regulations under the Natural Gas Act (18 CFR 157.10 and 385.214).

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-19423 Filed 8-17-89; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3631-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 31, 1989 through August 4, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. DS-COE-J28017-WY, Rating EU3, Sandstone Dam and Reservoir Construction, Municipal, Agricultural and Industrial Water Supply Project, Purpose and Need and Mitigation Plan Sections Revision, 404 Permit, Savery Creek, Carbon County, WY.

Summary: EPA is concerned that the project, as proposed, does not comply with NEPA and the Clean Water Act Section 404(b) Guidelines. No established need for 20,000 acre feet of annual yield is demonstrated. The project as currently described would result in major impacts to the existing aquatic ecosystem and significant degradation of the area's fish and wildlife resources.

ERP No. DS-DOE-A22076-NM, Rating EC2, Waste Isolation Pilot Plant Construction, Updated Geological and Hydrological Information, Eddy County, NM.

Summary: EPA expressed concern about compliance with the applicable requirements of the Resource Conservation and Recovery Act and with standards for the disposal of high-level and transuranic radioactive wastes. EPA is reviewing separately the petition for a no mitigation waiver under RCRA and the Test Phase Plan for demonstrating compliance with the radioactive waste disposal standard.

ERP No. D-DOE-L00003-WA, Rating LO, Hanford Site Eight Surplus Plutonium Production Reactors Decommissioning, Implementation, Richland, WA.

Summary: EPA has no objections to the project as described in the draft EIS. EPA's review has not identified any potential environmental impacts that would require any significant changes to the analysis.

ERP No. D-USA-K10009-TT, Rating EO2, Kwajalein Atoll Ongoing and Strategic Defense Initiative Activities, Test Range Facility Construction and Support Services, Republic of the Marshall Islands.

Summary: EPA expressed environmental objections because the U.S. Army is presently handling hazardous waste and solid waste in a manner not consistent with the Federal Resource Conservation and Recovery Act, Clean Water Act and Clean Air Act. EPA requested that the final EIS contain a commitment to bring U.S. Army Kwajalein activities into substantive compliance with Federal environmental laws so that the proposed project does not aggravate existing environmental compliance problems.

Final EISs

ERP No. F-BLM-K01006-CA, PLES I Geothermal Project, Geothermal Wellfield Development and 10 MWe Powerplant Construction/Operation, Plan of Operation, Utilization and Injection, Approval, Inyo National Forest, Mono County, CA.

Summary: Review of the final EIS was not deemed necessary.

ERP No. F-FHW-K40063-CA, CA-76 Bypass Expressway Construction, I-5 to Mission Avenue Near Frontier Drive, Funding and 404 Permit, City of Oceanside, San Diego County, CA.

Summary: EPA requested that the Record of Decision contain a commitment to adopt all of the wetlands and endangered species mitigation measures outlined in the final EIS, and that the mitigation measures outlined in final EIS be incorporated into the section 404 permit application to the Army Corps of Engineers, to ensure that mitigation measures outlined in the EIS process are carried out in the permit process.

Dated: August 15, 1989.

Richard E. Sanderson,
Director, Office of Federal Activities.

[FR Doc. 89-19477 Filed 8-17-89; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-3630-9]

Environmental Impact Statements; Availability

Responsible agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed August 7, 1989 Through August 11, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890224, FSuppl, SCS, CO, McElmo Creek Unit, Salinity Control Study, Onfarm Irrigation Improvements, Additional Water Delivery and Management Improvements, Funding and Implementation, Montezuma County, CO, Due: September 18, 1989, Contact: Sheldon G. Boone (303) 964-0295.

EIS No. 890225, Draft, UMC, NC, Camp Lejeune Marine Corps Base Camp, Expansion and Realignment for Additional Training Needs, Implementation, Onslow County, NC, Due: October 2, 1989, Contact: Major Stuart Wagner (919) 451-5100.

EIS No. 890226, FSuppl, CDB, CA, Azusa Central Business District Redevelopment Project Area, Parcel A/Site 1, Increased Office and Commercial Space Construction, CDB Grant/Section 108 Loan Guarantee, City of Azusa, Los Angeles County, CA, Due: September 18, 1989, Contact: Robb Steel (818) 334-5125.

EIS No. 890227, Final, BOP, MD, Cumberland Minimum Security Federal Prison Camp and Correctional Institution Facility, Construction and Operation, Mexico Farms Industrial Park, Cumberland, Allegheny County, MD, Due: September 18, 1989, Contact: William J. Patrick (202) 272-6871.

Amended Notices

EIS No. 890168, Draft, AFS, OK, AR, Ozark/Quachita Mountains Vegetation Management Plan, Implementation, Ouachita, Ozark and St. Francis National Forests, AR and McCurtain and LeFlore Counties, OK, Due: November 6, 1989, Contact: Steve McCorquodale (404) 347-7076. Published FR 6-30-89—Review period extended.

Dated: August 15, 1989.

Richard E. Sanderson,
Director, Office of Federal Activities.

[FR Doc. 89-19476 Filed 8-17-89; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-59274; FRL-3632-2]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of 4 application(s) for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

DATES: Written comments by:
T 89-20, August 18, 1989.
T 89-21, 89-22, August 23, 1989.
T 89-23, August 25, 1989.

ADDRESSES: Written comments, identified by the document control number "(OPTS-59274)" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Room L-100, Washington, DC 20460 (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division, Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 89-20

Close of Review Period. September 1, 1989.
Manufacturer. Cape Industries.
Chemical. (G) Aromatic polyester polyol.
Use/Production. (G) Industrial and commercial use. Prod. range: 200,000 kg/yr.

T 89-21

Close of Review Period. September 6, 1989.
Manufacturer. Confidential.
Chemical. (G) Fatty acidamine-organic salts.
Use/Production. (G) Corrosion inhibitor. Prod. range: Confidential.

T 89-22

Close of Review Period. September 6, 1989.
Manufacturer. Confidential.
Chemical. (G) Fatty acidamine-organic salts.
Use/Production. (G) Corrosion inhibitor. Prod. range: Confidential.

T 89-23

Close of Review Period. September 8, 1989.
Manufacturer. Confidential.
Chemical. (G) Organoaluminum compound.
Use/Production. (G) Contained destructive use. Prod. range: Confidential.

Dated: August 15, 1989.

Steven Newburg-Rinnn,
Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-19471 Filed 8-17-89; 8:45 am]
BILLING CODE 6560-JD-M

[OPTS-51737; FRL-3632-3]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of 61 such PMNs and provides a summary of each.

DATES: Closes of Review Periods:
P 89-795, September 6, 1989.
P 89-853, 89-854, September 24, 1989.
P 89-855, September 23, 1989.
P 89-856, September 25, 1989.
P 89-858, 89-859, 89-860, September 27, 1989.
P 89-861, 89-862, 89-863, 89-864, 89-865, 89-866, 89-867, 89-868, 89-869, September 30, 1989.
P 89-870, 89-871, October 2, 1989.
P 89-872, September 30, 1989.
P 89-873, 89-874, 89-875, 89-876, 89-877, 89-878, 89-879, October 2, 1989.
P 89-880, 89-881, 89-882, October 3, 1989.
P 89-883, October 4, 1989.
P 89-884, 89-885, 89-886, 89-887, 89-888, 89-889, 89-890, 89-891, 89-892, 89-893, October 8, 1989.
P 89-894, 89-895, 89-896, 89-897, 89-898, October 9, 1989.
P 89-899, October 10, 1989.
P 89-900, 89-901, 89-902, 89-903, October 11, 1989.
P 89-904, 89-905, October 14, 1989.
P 89-906, 89-907, 89-908, 89-909, 89-910, 89-911, 89-912, 89-913, October 15, 1989.

Written comments by:
P 89-795, August 7, 1989.
P 89-853, 89-854, August 25, 1989.
P 89-855, August 24, 1989.
P 89-856, August 16, 1989.
P 89-858, 89-859, 89-860, August 28, 1989.
P 89-861, 89-862, 89-863, 89-864, 89-865, 89-866, 89-867, 89-868, 89-869, August 31, 1989.
P 89-870, 89-871, September 2, 1989.
P 89-872, August 31, 1989.
P 89-873, 89-874, 89-875, 89-876, 89-877, 89-878, 89-879, September 2, 1989.
P 89-880, 89-881, 89-882, September 3, 1989.
P 89-883, September 4, 1989.
P 89-884, 89-885, 89-886, 89-887, 89-888, 89-889, 89-890, 89-891, 89-892, 89-893, September 8, 1989.
P 89-894, 89-895, 89-896, 89-897, 89-898, September 9, 1989.
P 89-899, September 10, 1989.
P 89-900, 89-901, 89-902, 89-903, September 11, 1989.
P 89-904, 89-905, September 14, 1989.
P 89-906, 89-907, 89-908, 89-909, 89-910, 89-911, 89-912, 89-913, September 15, 1989.

ADDRESSES: Written comments, identified by the document control number "(OPTS-51737)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room L-100, Washington, DC 20460. (202) 382-3532.

BEST COPY AVAILABLE

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division, Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M Street, SW., Washington, DC 20460. (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 89–795

Importer. Mitsubishi International Corporation.
Chemical. (S) 2', 2'-dimethyl-3'-hydroxypropyl-2,2-dimethyl-3-hydroxypropionate, di C10–C20 fattyacids ester.
Use/Import. (G) Lubricant on intermediate products in textile manufacturing. Import range: 1,000–10,000 kg/yr.

P 89–853

Manufacturer. Ciba-Geigy Corporation Additive Div.
Chemical. (S) 2-Propanoic acid, polymer with sodium phosphinate.ium salt.
Use/Production. (G) Electrical encapsulation and lamination. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 ml/kg species(Rat). Static acute toxicity: LC50 > 1,000 mg/1 time 96 H species(Zebra fish). Eye irritation: slight species(Rabbit). Skin irritation: slight species(Rabbit).

P 89–854

Manufacturer. Confidential.
Chemical. (G) Acrylic-methacrylic ester copolymer salt.
Use/Production. (G) Coatings. Prod. range: Confidential.

P 89–855

Manufacturer. Confidential.
Chemical. (G) Arylic methacrylic ester copolymer salt.
Use/Production. (G) Coatings. Prod. range: Confidential.

P 89–856

Manufacturer. Confidential.
Chemical. (G) Saturated, oil-free polyester resin.
Use/Production. (G) Resin for use in water-reducible and higher solids. Confidential.

P 89–858

Manufacturer. Confidential.
Chemical. (G) Polymer of alkylene glycols and terephthalic and substituted benzoic acid esters.
Use/Production. (G) Dispersive use. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 20 g/kg species(Rat). Acute dermal toxicity: LD50 > 2 g/kg species(Rabbit). Eye irritation: none species(Rabbit). Skin sensitization: negative species(Guinea pig).

P 89–859

Importer. Confidential.
Chemical. (G) Polyether-modified polyurethane.
Use/Import. (G) Paint additive. Import range: Confidential.

P 89–860

Manufacturer. Confidential.
Chemical. (G) Polyester polyurethane.
Use/Production. (S) Laminating adhesive, modifier for coatings, inks, and adhesives. Prod. range: Confidential.

P 89–861

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Polyurethane elastomer.
Use/Production. (S) Binder of pigment for paints and printing inks. Prod. range: Confidential.

P 89–862

Manufacturer. Allied Colloids Inc.
Chemical. (G) Acrylic terpolymer.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 6,000 mg/kg species(Rat). Eye irritation: slight species(Rabbit). Skin irritation: negligible species(Rabbit). Skin sensitization: negative species(guinea pig).

P 89–863

Importer. Sherex Chemical Company, Inc.
Chemical. (G) Fatty anionic surfactant.
Use/Import. (S) Hard surface cleaners with good lime soap dispersiontextile auxilliary-scouring aid. Import range: Confidential.

P 89–864

Importer. Sherex Chemical Company, Inc.
Chemical. (G) Magnesium alkyl.
Use/Import. (G) Catalyst for olefin polymerization. Import range: Confidential.

P 89–865

Importer. Confidential.
Chemical. (G) Polyamide copolymer.
Use/Import. (G) Vehicle for inks. Import range: Confidential.

P 89–866

Importer. Confidential.
Chemical. (G) Metal alkyl.
Use/Import. (G) Polymerization catalyst. Import range: Confidential.

P 89–867

Importer. Confidential.
Chemical. (G) Halogenated alkyl aromatic.
Use/Import. (G) Open, non dispersive. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species(Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species(Rabbit). Eye irritation: none species(Rabbit). Skin irritation: negligible species(Rabbit). Mutagenicity: negative.

P 89–868

Manufacturer. Confidential.
Chemical. (S) Higher alkyl carboxylic acid.
Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.

P 89–869

Manufacturer. Confidential.
Chemical. (G) Functionalized aliphatic polyurethane.
Use/Production. (G) Dispersively applied coating. Prod. range: 10,000–60,000 kg/yr.
Toxicity Data. Mutagenicity: negative.

P 89–870

Manufacturer. Confidential.
Chemical. (G) Alkyl substituted 3,3-bis(phenyl)isobenzofuranone.
Use/Production. (G) Minor color-forming component in paper coatings. Prod. range: Confidential.

P 89–871

Manufacturer. Bostik Division.
Chemical. (G) Polyurethane.
Use/Production. (G) Adhesive. Prod. range: Confidential.

P 89–872

Importer. Pacific Anchor Chemical Corporation.
Chemical. (G) Reaction product of a sustituted methyloxirane and a polyethylenepolyamine.
Use/Import. (S) Curing agents for epoxy resin coating systems. Import range: Confidential.

P 89–873

Importer. Pacific Anchor Chemical Corporation.
Chemical. (G) Polymer of vegetable oil, polylenepolyamines and a polymeric diglycidyl ether.
Use/Import. (S) Curing agent for epoxycoating resins. Import range: Confidential.

P 89–874

Importer. Pacific Anchor Chemical Corporation.
Chemical. (G) Polymer of vegetable oil and polylenepolyamines.
Use/Import. (S) Curing agent for epoxy resin coatings systems. Import range: Confidential.

P 89–875

Manufacturer. Confidential.
Chemical. (G) 1,4-butanediol, polymer with 2,2-dimethyl-1,3-propanediol, hexanedioic acid, 3-hydroxy-2-(hydroxymethyl)-2-methylproprionic acid, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, hydrozine, poly(oxy(methyl-1,2-ethanediyl), W-hydro-W-(2-aminomethyl ethoxyl),-ether with 2-ethyl-2-(ethyl-(hydroxymethyl)-1,3-propanediol (3:1), and 1,3-bis(1, substitutedl-l-methylethyl)-benezene.
Use/Production. (S) Coating for flexibile sustracts and adhesive for laminating flexible materials. Prod. range: 50,000–100.000 kg/yr.

P 89–876

Importer. Hoechst Celanese Corporation.
Chemical. (G) Polyester resin modified with synthetic monobasic acid.
Use/Import. (S) Binder for paints. Import range: 8–31 kg/yr.

P 89–877

Manufacturer. Confidential.
Chemical. (G) Polyiosobutenyl succinimide.
Use/Production. (G) Fuel additive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species(Rat). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 89–878

Importer. Confidential.
Chemical. (G) Sulfo and acetylamino substituted naphthalene disazo dye.
Use/Import. (G) Open, nondispersive. Import range: Confidential.
Toxicity Data. Mutagenicity: negative.

P 89–879

Importer. Shin-Etsu Silicones of America, Inc.
Chemical. (G) Organosilicone copolymer.
Use/Import. (S) Primer. Import range: 100–300 kg/yr.

P 89–880

Manufacturer. Sanncor Industries, Incorporation.
Chemical. (G) Polyurethane prepared from polyisocyanates, polyols and polyamines.
Use/Production. (G) Coatings. Prod. range: Confidential.

P 89–881

Importer. Organic Dyestuffs Corporation.
Chemical. (S) Benzene sulfonic acid, 3-[(4-amino-9,10-dihydro-9010 dioxo-3-(sulfo-4-(1,1'3,3'-tetramethyl-butyl)phenoxy) 1-amiracenyl) amino)-2,4,6 trimethyl disodium salt.
Use/Import. (S) Resale as is and physical mixtures other shading colors. Import range: 4,000–6,000 kg/yr.

P 89–882

Manufacturer. Confidential.
Chemical. (G) Partially hydrolyzed alkyl silicate-polyol-siliane polymer.
Use/Production. (G) Ingredient in paints that are primarily spray applied. Prod. range: Confidential.

P 89–883

Manufacturer. Arco Chemical Company.
Chemical. (G) Urethane catalyst.
Use/Production. (S) Catalyst for polyurethane. Prod. range: Confidential.

P 89–884

Manufacturer. Harcros Chemicals Inc.
Chemical. (G) Alkyl aryl amine sulfonate.
Use/Production. (S) Pesticide emulsifier. Prod. range: 10,000–24,000 kg/yr.

P 89–885

Manufacturer. NL Chemicals, Inc.
Chemical. (G) Polyester resin.
Use/Production. (G) Polyester resin to be used in an open nondispersive manner. Prod. range: Confidential.

P 89–886

Manufacturer. NL Chemicals, Inc.
Chemical. (G) VT-acrylic modified polyester resin.
Use/Production. (G) Vinyl toluene-acrylic modified polyester resin to be used in an open nondispersive manner. Prod. range: Confidential.

P 89–887

Manufacturer. NL Chemicals, Inc.
Chemical. (G) Silicone modified polyester.
Use/Production. (G) Silicone modified polyester to be used in an open nondispersive manner. Prod. range: Confidential.

P 89–888

Manufacturer. NL Chemicals, Inc.
Chemical. (G) Alkyd resin.
Use/Production. (G) Alkyd resin to be used in an open nondispersive manner. Prod. range: Confidential.

P 89–889

Manufacturer. NL Chemicals, Inc.
Chemical. (G) Alkyd resin.
Use/Production. (G) Alkyd resin to be used in an open nondispersive manner. Prod. range: Confidential.

P 89–890

Manufacturer. Bedoukian Research Inc.
Chemical. (G) Halo-aliphatic oxy-substituted saturated pyran.
Use/Production. (S) Chemical intermediate. Prod. range: 350–1,000 kg/yr.

P 89–891

Importer. Basf Corporation Chemicals Division.
Chemical. (G) Polyurethane dispersion.
Use/Import. (G) Laminating adhesive. Import range: Confidential.

P 89–892

Manufacturer. Confidential.
Chemical. (G) Modified polymer of butyl acrylate and methyl methacrylate.
Use/Production. (G) Binder. Prod. range: Confidential.

P 89–893

Manufacturer. R.T. Vanderbilt Company, Inc.
Chemical. (G) Tolutriazole compound.
Use/Production. (S) Antioxidant for hydraulic fluids. Prod. range: Confidential.

P 89–894

Importer. Shin-Etsu Silicones of America, Inc.
Chemical. (G) Polyether modified siloxane.
Use/Import. (S) Sufactant for polyurethane foam. Import range: 3,000–6,000 kg/yr.

P 89–895

Importer. Shin-Etsu Silicones of America, Inc.
Chemical. (G) Modified organo siloxane.
Use/Import. (G) Additive for paints. Import range: 500–5,000 kg/yr.

P 89–896

Manufacturer. Confidential.

Chemical. (G) Tall-oil fatty acid condensate quaternary.
Use/Production. (G) An additive for the energy production industries. Prod. range: Confidential.

P 89-897

Manufacturer. Baker Performance Chemicals Inc.
Chemical. (G) Potassium dithiocarbamate.
Use/Production. (G) Water clarification. Prod. range: Confidential.

P 89-898

Manufacturer. Confidential
Chemical. (S) Polymeric alpha, omega diocarboxylic acid.
Use/Production. (G) Epoxy loughener. Prod. range: Confidential.

P 89-899

Manufacturer. Owens-Corning Fiberglas Corporation.
Chemical. (G) Carboxylic acid ester.
Use/Production. (S) Plasticizer. Prod. range: Confidential.

P 89-900

Manufacturer. H.B. Fuller Company.
Chemical. (G) Ethylenically unsaturated ethylene urea.
Use/Production. (G) Compound functions as a wet adhesive promotor in emulsion copolymers in coating, paint and adhesive. Prod. range: Confidential.

P 89-901

Manufacturer. Rohm Tech Inc.
Chemical. (G) Aliphatic polyurethane.
Use/Production. (S) Base or top coat for leather finishing. Prod. range: Confidential.

P 89-902

Manufacturer. Lilly Industrial Coatings, Inc.
Chemical. (G) Polymer of benzendicarboxylic acids and aliphatic diols.
Use/Production. (G) Industrial liquid paints. Prod. range: 48,000–96,000 kg/yr.

P 89-903

Manufacturer. Dow Corning Corporation
Chemical. (G) Organo-functional silica.
Use/Production. (S) Silicone construction coating. Prod. range: Confidential.

P 89-904

Manufacturer. Uniroyal Chemical Co., Inc.
Chemical. (G) Para-phenylenediamine.
Use/Import. (G) Chemical intermediate. Import range: Confidential.

P 89-905

Manufacturer. Confidential.
Chemical. (G) Substituted halophenylpyrazolone.
Use/Production. (G) Contained use in an article. Prod. range: 1,000–2,300 kg/yr.

P 89-906

Manufacturer. Confidential.
Chemical. (S) Isobutyl(tert)butoxydimethoxysilane.
Use/Production. (G) Additive for polymerization catalyst. Prod. range: Confidential.

P 89-907

Importer. Harvey E. Giss and Associates.
Chemical. (S) 2,4-di-tert-butylcycohexanone.
Use/Import. (S) Perfume. Import range: 5,000–12,000 kg/yr.

P 89-908

Manufacturer. Confidential.
Chemical. (G) Aliphatic, methacrylatic functionized polymer.
Use/Production. (S) Binder resin for automative sealant (undercoating). Prod. range: 250,000–530,000 kg/yr.

P 89-909

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Modified resin ester salts.
Use/Production. (S) A binder used for ink printing on paper. Prod. range: Confidential.

P 89-910

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Modified resin ester salts.
Use/Production. (S) A binder used for ink printing on paper. Prod. range: Confidential.

P 89-911

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Modified resin ester salts.
Use/Production. (S) A binder used for ink printing on paper. Prod. range: Confidential.

P 89-912

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Modified resin ester salts.
Use/Production. (S) A binder and grinding add for inks to be printed on paper. Prod. range: Confidential.

P 89-913

Manufacturer. Confidential.
Chemical. (G) Carboxylic acid, quaternary ammonium salt.
Use/Production. (G) Electrolyte for contained use. Prod. range: 5,000–34,000 kg/yr.

Dated: August 4, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-19469 Filed 8-17-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59873; FRL-3632-1]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protectiqn Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of five such PMN(s) and provides a summary of each.

DATES: Close Review Periods:
Y 89-154, August 8, 1989.
Y 89-155, August 10, 1989.
Y 89-156, August 13, 1989.
Y 89-157, August 17, 1989.
Y 89-158, August 22, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division, Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460. (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 89-154

Manufacturer. Confidential.
Chemical. (G) Tall oil fatty acid modified polyester.
Use/Production. (S) Binder for general metal coating. Prod. range: Confidential.

Y 89-155

Importer. Confidential.
Chemical. (G) Modified polypropylene.
Use/Import. (G) Dispersing agent. Import range: Confidential.

Y 89-156

Manufacturer. Confidential.
Chemical. (G) Polyurethane.
Use/Production. (G) A polyurethane used in the plastic and textile industry. Prod. range: Confidential.

Y 89-157

Manufacturer. Confidential.
Chemical. (G) Polyester polyurethane methacrylate graft copolymer.
Use/Production. (S) Overprint varnish. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 460 mg/kg species (Rat).

Y 89-158

Manufacturer. Eastman Kodak Company.
Chemical. (S) 2-Propenamide; 2-Methyl-2-(1-oxo-2-propenyl)amine-1-propanesulfonic acid, monosodium salt.
Use/Production. (G) Contained use in an article. Prod. range: 1,000–4,000 kg/yr.

Dated: August 8, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-19470 Filed 8-17-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3631-6]

Superfund Program; De Minimis Landowner Settlements, Prospective Purchaser Settlements]

ACTION: Public notice.

SUMMARY: The Agency is publishing today its Guidance on settlements with *de minimis* landowners under Section 122(g)(1)(B) of the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), in order to inform the public on this important aspect of the superfund enforcement process. The guidance also addresses the Agency's approach to requests from prospective purchasers of contaminated property that the Agency agree to accept a limit on the liability that would otherwise attach to that purchaser at the time of purchase. This guidance is a companion piece to earlier guidance on *de minimis* contributor settlements published at 52 FR 24333 (June 30, 1987). Also included today are interim models for use in drafting *de minimis* landowner settlements; a model administrative order on consent, and a model civil judicial consent decree. The Agency may revise the interim models based upon its experience gained in drafting *de minimis* landowner settlements.

FOR FURTHER INFORMATION CONTACT: Helen Keplinger, U.S. Environmental Protection Agency, Office of Enforcement and Compliance Monitoring, Waste Enforcement Division, LE-134S, 401 M Street, SW., 20460, (202) 382-3077.

SUPPLEMENTARY INFORMATION: Section 122(g) of SARA provides EPA with authority to enter into expedited final settlements with *de minimis* owners of real property on or in which a Superfund facility is located, providing such settlement involves only a minor portion of the response costs at the facility concerned. *De minimis* owners of real property on or in which the Superfund facility is located are those landowners who, in the Judgment of the Agency (as delegatee of the President) during the term of ownership did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility, which substance is the subject of the response action. *De minimis* landowner settlements must be practicable and in the public interest, as determined by the Agency.

De minimis landowner settlements under section 122(g) of SARA, while offering some of the same advantages as *de minimis* contributor settlements, do not present the same economy of numbers as typical *de minimis* contributor settlements which may involve the "cash out" of scores of parties and raise substantial revenues. The number of landowners involved will likely be small, and generally will "involve only a minor portion of response costs at the facility." Nonetheless, the Agency expects to use the authority provided in section 122(g) to provide legal repose for qualifying landowners, while reducing the number of parties with whom it must carry out the complex and costly CERCLA enforcement process.

The Agency is aware of CERCLA's impact on private real estate transactions, notwithstanding the so-called "innocent landowner" defense under CERCLA. Despite the clear liability which attaches to landowners who purchase contaiminated property with knowledge of contamination, private transactions concernig such property are a fact. Because of concerns about liablity for cleanup, requests for covenants not to sue have been received by the Agency from prospective purchasers of Superfund sites. It is the Agency's policy not to involve itself in pruely private real estate transactions. However, in very limited circumstances, at sites where enforcement action is ongoing or anticipated, and performance of cleanup, or payment for cleanup, would not otherwise be available, a covenant not to use prospective purchaser might appropriately be considered.

The Guidance follows:

Dated: August 10, 1989.

Edward E. Reich,

Acting Assistant Administrator for Enforcement and Compliance Monitoring.

Dated: August 9, 1989.

Robert L. Duprey,

Acting Assistant Administrator for Solid Waste and Emergency Response.

June 6, 1989.

Guidance on Landowner Liability Under Section 107(a)(1) of CERCLA, *De minimis* Settlements Under Section 122(g)(1)(B) of CERCLA, and Settlements With Prospective Purchasers of Contaminated Property.

Index

Guidance on Landowner Liability under Section 107(a)(1) of CERCLA, *De Minimis* Settlements under Section 122(g)(1)(B) of CERCLA, and Settlements with Prospective Purchasers of Contaminated Property

I. Purpose
II. Overview
III. Background/Landowner Liability
  A. Before SARA
  B. SARA
  C. SARA's *De Minimis* Settlement Provisions
IV. Statement of Settlement Policy
  A. Threshold Questions for Landowner Eligibility
  1. Did the landowner acquire the property without actual or constructive knowledge of the disposal of hazardous substances?
  2. Did the governmental landowner acquire the property involuntarily or through eminent domain proceedings?
  3. Did the landowner acquire the property by inheritance or bequest without knowledge?
  4. Was the property contaminated by third parties outside the chain of title?
  B. Guidelines for *De Minimis* Settlements with Landowners
  1. Goals of settlement
  2. Information gathering to aid settlement
  3. Settlement
  a. Consideration
  b. Reopeners
  c. Type of agreement

C. Policy on Prospective Purchasers
1. Criteria for entering into covenants not to sue with prospective purchasers of contaminated property
a. Enforcement action is anticipated by the Agency at the facility
b. A substantial benefit, not otherwise available, will be received by the Agency for cleanup
c. The Agency believes that continued operation of the facility or new site development, with the exercise of due care, will not aggravate or contribute to the existing contamination or interfere with the remedy
d. Due consideration has been given to the effect of continued operations or new development on health risks to those persons likely to be present at the site
e. The prospective purchaser is financially viable
2. Content and form of settlement
a. Consideration
b. Reservation of rights
c. Scope of response actions
d. Compliance with applicable laws and duty to exercise due care
e. Disclaimer
3. Procedures
V. Purpose and Use of This Guidance
Attachments
Attachment I: Model CERCLA Section 122(g)(4) Administrative Order on Consent for Settlements with Landowners Under Section 122(g)(1)(B)
Attachment II: Model CERCLA Section 122(g)(4) Judicial Consent Decree for Settlements with Landowners Under Section 122(g)(1)(B)

I. Purpose

The purpose of this memorandum is to provide general guidance on landowner liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), 42 U.S.C. § 9601 *et seq.*, and to provide specific guidance on which landowners qualify for *de minimis* settlements under Section 122(g)(1)(B) and on structuring such settlements.[1] Because the nature of a *de minimis* settlement with a landowner will differ substantially from a *de minimis* settlement with waste contributors, it will usually be more efficient to draft such agreements separately. In addition, because the Agency has received numerous requests from prospective purchasers of contaminated property for covenants not to sue, this memorandum sets forth Agency policy on this issue.

II. Overview

In the event of a release or threatened release of a hazardous substance, owners of property where such substance has been "deposited, stored, disposed of, or placed, or otherwise come to be located" are strictly liable for the costs of response.[2] Under section 107(b)(3), such liability generally extends to releases which are caused by a third party "in connection with a contractual relationship, existing directly or indirectly" with the owner. To address concerns that this strict liability could cause inequitable results with respect to landowners who had not been involved in hazardous substance disposal activities, Congress in SARA clarified the defense to liability available to certain landowners under section 107(b)(3) by specifically defining the term "contractual relationship." Section 101(35)(A) defines "contractual relationship" to include deeds and other instruments transferring title or possession unless the landowner can demostrate that at the time he acquired the property, he had no knowledge or reason to know of the disposal of the hazardous substances at the facility. Accordingly, a person who acquires already contaminated property and who can satisfy the remaining requirements of section 101(35) as well as those of section 107(b)(3) may be able to establish a defense to liability. Although this is an affirmative defense, for which the defendant bears the burden of proof, Congress has provided a settlement mechanism which the Agency may use in its discretion for settlement purposes to resolve the liability of certain landowners prior to or in the early stages of litigation through the application of the *de minimis* settlement provisions of section 122(g)(1)(B) of CERCLA.

III. Background/Landowner Liability

A. Before SARA

Section 107(a)(1) of CERCLA imposes liability for response costs on owners or operators of "facilities" from which there is a release or threatened release of a hazardous substance. A "facility" is defined under Section 101(9) as including, among other things, any building, structure, equipment, pit, pond, storage container, motor vehicle, etc., and any "area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located." Courts have consistently held that the standard of liability imposed by Section 107 is strict. *See, e.g., Tanglewood East Homeowners v. Charles Thomas, Inc.*, 849 F.2d 1568 (5th Cir. 1988), *New York v. Shore Realty Corporation*, 759 F.2d 1032, 1042 (2d Cir. 1985), *United States v. Hooker Chemicals and Plastics Corp.*, 680 F. Supp 546 (W.D. N.Y. 1988). The government need not prove that the owner contributed to the release in any manner in order to establish a *prima facie* case. However, Section 107(b) provides the following four affirmative defenses which may be asserted by a person, including a landowner: (1) An act of God; (2) an act of war; (3) an act or omission of a third party; and (4) any combination of the foregoing.[3] In order to prove the third party defense set forth in Section 107(b)(3), the landowner must establish by a preponderance of the evidence that:

(1) the release or threat of release and * * * damages resulting therefrom were caused solely by * * * an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly with the defendant * * *;

(2) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances; and

(3) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions.

Section 107(b)(3).

Before SARA, the Agency took the position that a real estate deed represented a contractual relationship within the meaning of Section 107(b)(3), thus eliminating the availability of the third party defense for a landowner in the chain of title with a party who had caused or contributed to the release. However, this issue was not addressed by a court before SARA's enactment.[4]

B. SARA

Section 101(35)(A) of CERCLA, as amended by SARA, confirms the Agency's position that a real estate deed represents a contractual relationship and specifically defines "contractual relationship" to include "land contracts, deeds, or other instruments transferring title or possession," (for example, leases) unless the property was acquired after the disposal or placement of the hazardous substance which is the subject of the release or threat of release and the landowner establishes by a preponderance of the evidence that:

(i) At the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility;

(ii) The defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation; or

(iii) The defendant acquired the facility by inheritance or bequest.

In addition to the foregoing, the landowner must satisfy the due care requirements of section 107(b)(3) in order to establish the third party defense. Furthermore, section 101(35)(D) provides that:

Nothing in this paragraph shall affect the liability under this Act of a defendant who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance.

C. SARA's De Minmis Settlement Provisions

Under section 122(g)(1) of the CERCLA, as amended by SARA, when the Agency determines that a settlement is "practicable and in the public interest," it "shall as promptly as possible reach a final settlement" if the settlement "involves only a minor portion of the response costs at the facility concerned" and the Agency determines that the potentially responsible party satisfies either of two sets of conditions: (A) the party's contribution of waste to the site is minimal (by amount and toxicity) in comparison to other hazardous substances at the facility; or (B) the party (i) is an "owner of the real property on or in which the facility is located;" [5] (ii) "did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility;" [6] and (ii) "did not contribute to the release or threat of release * * * through any act or omission." Subparagraph B does not apply if the party purchased the property "with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance." Section 122(g)(1)(B).[7]

The requirement which must be satisfied in order for the Agency to consider a settlement which landowners under the *de minimis* settlement provisions of Section 122(g)(1)(B) are substantially the same as the elements which must be proved at trial in order for a landowner to establish a third party defense under Section 107(b)(3) and Section 101(35).[8] Section 122(g)(1)(B) of CERCLA authorizes the Agency to enter into settlements with *de minimis* landowners, enabling such landowners to avoid the transaction costs of attempting to establish the 107(b)(3) defense through litigation and enabling the Agency to exercise enforcement discretion in appropriate circumstances. However, inasmuch as section 122(g)(1)(B) comes into play in the settlement context, as distinct from section 107(b)(3) coming into play in the litigation context, the quality and quantum of evidence provided by a landowner in support of his eligibility for a *de minimis* settlement may differ from that necessary for him to establish the third party defense at trial. Furthermore, inasmuch as the Agency's determination as to whether the landowner has satisfied the criteria for a *de minimis* settlement must be made in advance of trial, the terms of the settlement, particularly the question of whether cash consideration will be required, will depend in part on the extent of the litigation risks involved in the particular case. The principles which will guide the Agency in evaluating this evidence are discussed below in Section IV, Paragraph B.3., "Settlement."

IV. Statement of Settlement Policy

The Agency will make an effort in the early stages of a case to determine whether a landowner satisfies the elements necessary to establish a third party defense under Section 107(b)(3) of CERCLA. Such determination may be made from information available to and under development by the Agency to identify all potentially responsible parties for that site. Since it serves no purpose to require a landowner who satisfies the elements of section 107(b)(3) and who wishes to obtain legal repose to incur the litigation costs of establishing the defense at trial, if the Agency determines that the landowner has a persuasive case that each of these elements has been met, the Agency will

---

[1] Agency guidance regarding *de minimis* settlements with waste contributors has been provided by separate memorandum entitled "Interim Guidance on Settlements with *De Minimis* Waste Contributors under Section 122(g) of SARA," 52 Fed. Reg. 24333 (June 30, 1987), and by publication of the Agency's "Interim Model CERCLA Section 122(g)(4) *De Minimis* Waste Contributor Consent Decree and Administrative Order on Consent," 52 FR 43393 (November 12, 1987).

[2] *See* sections 101(9), 101(32), and 107(a)(1) of CERCLA. Liability under CERCLA is also joint and several unless the harm is divisible and there is a reasonable basis for apportioning the harm. *See, e.g., United States v. Monsanto Co.*, 858 F.2d 160, 171-73 (4th Cir. 1988), *United States v. Bliss*, No. 84-2088C-(1) (E.D. Mo. Sept. 27, 1988), *United States v. Mottolo*, Civ. No. 85-645-D (D. N.H. Aug. 28, 1988), *United States v. Tyson*, Civ. No. 84-2863 (E.D. Pa. Jan. 29, 1988), *United States v. Northernaire*, 670 F. Supp 742, 748 (W.D. Mich. 1987), *United States v. Chem-Dyne Corp.*, 572 F. Supp. 802 (S.D. Ohio 1983).

[3] *See United States v. Stringfellow*, 661 F. Supp. 1053 (C.D. Cal. 1987) (holding that these statutory defenses are exclusive). *See also, United States v. Monsanto Co.*, 858 F. 2d 160, (4th Cir. 1988), *United States v. Bliss*, No. 84-2088C-(1) (E.D. Mo. Sept. 27, 1988), *United States v. Hooker Chemicals & Plastics Corp.*, 680 F. Supp. 546 (W.D. N.Y. 1988), *United States v. Bliss*, 667 F. Supp. 1298 (E.D. Mo. 1987), *United States v. Dickerson*, 640 F. Supp. 448 (D. Md. 1986).

[4] The government's argument on this issue was upheld in *United States v. Hooker Chemicals & Plastics Corp.*, 680 F. Supp. 546 (W.D. N.Y. 1988) (decided after passage of SARA, applying pre-SARA law).

[5] Relinquishment of ownership or possession does not necessarily disqualify a person from consideration under the Section 122(g)(1)(B) *de minimis* settlement provision. This approach is consistent with the fact that prior owners of facilities are not precluded from attempting to establish a defense to liability under section 107(b). In order to qualify for a *de minimis* settlement, however, the past owner must demonstrate satisfaction of section 122(g)(1)(B) criteria through the full term of his ownership.

[6] The Agency interprets the phrase "any hazardous substance" to mean a hazardous substance which is the subject of the release or threat of release. Interpreting "any hazardous substance" more broadly would make the *de minimis* landowner settlement provisions unavailable to essentially every party. It is clear that section 122(g) is concerned with a *de minimis* party's connection to the activities giving rise to the release that is the subject of the response action. Under section 122(g)(1)(A), the generator or transporter is not a *de minimis* party if it cannot establish that its contribution was minimal. Similarly, under section 122(g)(1)(B), if the landowner engaged in activities, specified in the statute as "conduct[ing] or permit[ing] the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility," involving the substance which is the subject of the response action, it will not be entitled to *de minimis* status.

[7] For the reasons explained above, the Agency interprets the phrase "any hazardous substance" in the context of actual or constructive knowledge to mean a hazardous substance which is the subject of the release or threat of release.

[8] Even though the language in sections 122(g)(1)(B) and 101(35) is not identical, the scope of the two provisions is substantially the same. For example, the requirements for a *de minimis* settlement under section 122(g)(1)(B) are that the landowner "did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility" and "did not contribute to the release." Substantially similar requirements are imposed by section 101(35). That Section conditions the defense in part on the landowner acquiring the facility "after the disposal or placement of the hazardous substance * * *" and not contributing to the release. Since generation, transportation, storage and treatment of the substances at the site generally all take place before disposal and placement (or at the most concurrently, in the case of "placement" and "storage"), the landowner generally would not have conducted or permitted the generation, transportation, storage, treatment, or disposal of the hazardous substances which are the subject of the release or threat of release if he had acquired the facility after disposal or placement of those substances, as required by section 101(35). This is not to suggest, however, that for purposes of establishing liability under CERCLA, "disposal" will not continue to include ongoing "leaking." In this manner, the scope of section 122(g)(1)(B) and 101(35) is generally the same. Throughout this guidance, liability will be discussed in the context of section 107 of CERCLA, but reference will be made to section 122(g)(1)(B) of CERCLA in the context of settlement.

entertain an offer for a *de minimis* settlement under 122(g)(1)(B) of CERCLA.

A. Threshold Questions for Landowner Eligibility for Settlement

Before the Agency will approve settlements with owners of contaminated property several questions concerning landowner eligibility for settlements must be answered, bearing in mind that section 122(g)(1)(B) does not extend to any party who contributed to the release or threat of release "through any act or omission."

1. Did the Landowner acquire the property without knowledge or reason to know of the disposal of hazardous substances?

Section 122(g)(1)(B) applies only to owners who purchased the property without "actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance." Similarly, section 101(35) extends the third party defense to defendants who acquired the property after the disposal or placement of the hazardous substance only if, at the time of acquisition, the defendant "did not know and had no reason to know that any hazardous substance which is the subject of the release * * * was disposed of * * * at the facility." [9] Section 101(35) expressly provides that in order for a defendant to prove that he had "no reason to know" of the disposal of hazardous substances, he must demonstrate by a preponderance of the evidence that, prior to acquisition, he conducted all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice. A landowner who demonstrates that he has conducted "all appropriate inquiry" will not be deemed to have constructive knowledge under section 122(g)(1)(B) and, therefore, may be eligible for a *de minimis* settlement.[10]

Under section 101(35)(B), the following factors must be considered when determining whether "all appropriate inquiry" has been made:

> any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

These factors clearly indicate that a determination as to what constitutes "all appropriate inquiry" under all the circumstances is to be made on a case-by-case basis. Generally, when determining whether a landowner has conducted "all appropriate inquiry," the Agency will require a more comprehensive inquiry for those involved in commercial transactions than for those involved in residential transactions for personal use.[11] For example, an investigation along the lines of a survey for contamination may be recommended in some commercial transactions, whereas this type of inquiry would not typically be recommended for the purchaser of personal residential property.[12] In sum, the determination will be made on the basis of what is reasonable under all of the circumstances.

Lenders may also be eligible for *de minimis* settlements in some circumstances. A lender who does not participate in the management of a facility and who only holds "indicia of ownership primarily to protect his security interest" is excepted from the definition of "owner or operator" and, therefore, is not liable. Section 101(20)(A)(ii). If, however, a lender becomes an owner by foreclosing and taking title to the property or by conducting management activities at the site, he is potentially liable.[13] Under these circumstances, the lender may be eligible for a *de minimis* settlement, if he meets the requirements of Section 122, including that he demonstrates that he conducted "all appropriate inquiry" prior to acquisition of the facility.

2. Did Governmental landowners acquire the property involuntarily or through eminent domain proceedings?

Section 101(35)(A)(ii) excepts from the definition of "contractual relationship" acquisitions by governmental entities which occur by condemnation or purchase [14] in connection with the exercise of eminent domain authority, or involuntarily through escheat or any other such involuntary transfer or acquisition. State and local governments who acquire property involuntarily are by definition not owners or operators under section 101(20)(D), as long as they have not caused or contributed to the release.[15] However, section 101(35)(A)(ii) is broader than 101(20)(D) in that 101(35)(A)(ii) extends the defense under section 107(b)(3) to the federal government, as well as to State and local governments, and also applies to eminent domain proceedings.[16]

[9] The Agency will construe as similar the constructive knowledge requirements of Sections 122 and 101(35), taking into consideration all relevant information available on the issue of knowledge.

[10] The government has taken the position that "owner" for the purposes of liability includes "lessee." A lessee of a facility, who is potentially liable as an "owner," may be eligible for a *de minimis* settlement under section 122(g)(1)(B), if he conducted "all appropriate inquiry" prior to taking possession of the property and meets all of the other criteria of section 122(g)(1)(B). This is also consistent with the approach taken in section 101(35). *See* section 101(35)(A) ("The term 'contractual relationship' for the purpose of section 107(b)(3) includes, but is not limited to land contracts, deeds or other instruments"); *See also United States v. S.C.R.D.I.*, 653 F. Supp. 864, 1093 (D. S.C. 1984) (aff'd *sub nom. United States v. Monsanto Co.*, 858 F.2d 160 (4th Cir. 1988)) (court held lessee an owner); *United States v. Northernaire*, 670 F. Supp. 742, 748 (W.D. Mich. 1987).

[11] The Conference Committee noted that a reasonable inquiry must have been made "in light of best business and land transfer principles", and that "[t]hose engaged in commercial transactions should * * * be held to a higher standard than those who are engaged in private residential transactions." Conference Report on SARA, H.R. 2005, 99th Cong., 2d Sess., p. 167. The Committee also noted that the duty to inquire will be judged as of the time of acquisition, and that as public awareness of environmental hazards increases, the burden of inquiry will increase concomitantly. *Id.* In a recent decision, the U.S. District Court for the Middle District of Pennsylvania held that the United States was not entitled to summary judgment against a group of landowners without an evidentiary showing that, as of 1969, it was customary or good commercial practice among real estate developers to conduct a visual inspection of property prior to purchase, *United States v. Serafini*, 28 Env. Rep. Cas. 1182 (M.D. Pa. Feb. 18, 1988). Although we do not agree with the decision because the criteria set forth in section 101(35)(B) seem, at a minimum, to contemplate a visual inspection, the court in *Serafini* appears to have recognized the evolutionary nature of the "all appropriate inquiry" standard.

[12] In the course of conducting "all appropriate inquiry" as required by section 101(35)(B), information regarding a release or threat of release may become available. If so, the "person in charge of the facility" is required to comply with the notification requirements under Section 103.

[13] *See United States v. Maryland Bank & Trust Co.*, 632 F. Supp. 573 (D. Md. 1986); *United States v. Mirabile*, 15 Envtl. L. Rep. 20992 (E.D. Pa. September 4, 1985).

[14] The Agency interprets "purchase" in Section 122(g)(1)(B) to include involuntary acquisitions, applied to parties acquiring by inheritance, consistent with the purposes and underlying policy of sections 101(20) and 101(35)(A).

[15] Section 101(20)(D) provides in part: "The term owner or operator does not include a unit of State or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign."

[16] The legislative history contains useful guidance on how federal agencies should handle acquisitions of contaminated property. *See also*, CERCLA section 120(h).

Governmental entities which fall within this category and exercise due care will escape liability and, therefore, a settlement under section 122(g)(1)(B) will not normally be necessary.[17]

3. Did the Landowner acquire the property by inheritance or bequest without knowledge?

Section 101(35)(A)(iii) excepts acquisitions by inheritance or bequest from the definition of "contractual relationship." However, the Conference Committee report suggests that the "all appropriate inquiry" requirement is nonetheless relevant:

> [T]hose who acquire property through inheritance or bequest without actual knowledge may rely on this section if they engage in a reasonable inquiry, but they need not be held to the same standard as those who aquire property as part of a commercial or private transaction, and those who acquire property by inheritance without knowing of the inheritance shall not be liable, if they satisfy the remaining requirements of section 107(b)(3).
>
> Conference Committee Report, pp. 167–168.

It is recommended that inquiry by the heir at the time of acquisition and thereafter be considered, not only for the purpose of determining the existence of a contractural relationship, but also for the purpose of determining whether the due care requirements of the third party defense have been satisfied.[18]

4. Was the property contaminated by third parties outside the chain of title?

Even before the enactment of SARA, it was clear that the third party defense of section 107(b)(3) was available to a landowner whose property was contaminated as the result of the act or omission of a third party who had no contractual relationship with the landowner through a deed or otherwise, as long as the landowner satisfied the other requirements of the third party defense. Examples of this situation include contamination of property by adjacent landowners and "midnight dumping." A landowner who falls within this category and demonstrates that he has exercised due care may be eligible for a *de minimis* settlement under Section 122(g)(1)(B).

With respect to landowners described above, the section 107(b)(3) defense is not available to a landowner who learns of a release or threat of release after acquiring the property and then transfers the property without disclosing this information. Section 101(35)(C). Any such transfer may contribute to the threat of release under section 122(g)(1)(B)(iii) precluding a *de minimis* settlement.

B. Guidelines for De Minimis Settlements with Landowners

1. Goals of settlement

The general goal of a *de minimis* settlement is to allow parties who meet the criteria set forth in section 122(g)(1)(A) or (B) to resolve their potential liability as quickly as possible, thus minimizing litigation costs and allowing the government to focus its resources on negotiations or litigation with the major parties. However, there is a fundamental difference between contributors of hazardous substances who are eligible for settlements under Subparagraph A of section 122(g)(1) and landowners who are eligible for settlements under Subparagraph B. The waste contributor under Subparagraph A will typically have no viable defense to liability, whereas a landowner who qualifies for settlement under Subparagraph B may ultimately be able to prove a third party defense. Nevertheless, the landowner who may have a third party defense may wish to enter into a *de minimis* settlement in order to obtain legal repose and avail himself of the contribution protection provided in sections 113(f)(2) and 122(g)(5) of CERCLA. As discussed below, the government will entertain offers for such settlements in exchange for, at a minimum, access and due care assurances.

2. Information-gathering to aid settlement

Section 122(g)(3) of CERCLA provides that *de minimis* settlements shall be concluded as soon as possible after the necessary information is available. SARA contemplates that a *de minimis* settlement will be reached in the early stages of a case. The Agency has substantial information-gathing authority under sections 104(e) and 122(e) of CERCLA which may be used to aid in the determination of whether a landowner is eligible for a *de minimis* settlement. Generally, however, the information bearing on a landowner's status as a *de minimis* party is most readily available to the landowner, unlike the information regarding the waste contributor's status as a *de minimis* party, which is most readily available to the government through its compilation of information regarding the waste contributions to a site by all parties. Therefore, the Agency will place on the landowner the burden of coming forward with information establishing his eligibility for a *de minimis* settlement. The Agency may then use its information gathering authority to supplement the information produced by the landowner, as appropriate, and to check its veracity.

Information which should be provided by the landowner includes all evidence relevant to the actual or constructive knowledge of the landowner at the time of acquisition including all affirmative steps taken by the landowner to determine the previous ownership and uses of the property, information regarding the condition of the property at the time of purchase, all documentation and evidence of represenations made at the time of sale regarding prior uses of the property, the purchase price of the property and the fair market value of comparable property at the time of acquisition, and information regarding any specialized knowledge on the part of the landowner which may be relevant.

Additionally, the landowner should provide all information relevant to the issues of whether he exercised due care and whether he contributed to the release or threat of release through any act or omission. This information should include the circumstances under which the hazardous substances were discovered, the extent of the landowner's knowledge regarding the substances, all measures taken by the landowner to abate the threats of harm to human health and the environment posed by such substances, and all measures taken by the landowner to prevent foreseeable acts of third parties which may have contributed to the release. The information is to be included in the order or decree, and any settlement agreement is to be made contingent on its accuracy.

3. Settlement

Where the potentially responsible party meets the criteria for settlement under Section 122(g)(1)(B), and in the context of litigation or potential litigation, when the Agency is evaluating its settlement options and its litigation risks, the terms of an acceptable settlement may very with the strength of the evidence relating to the landowner's *de minimis* status. In some instances, a landowner may be able to make a

[17] If governmental entities within this category seek a section 12 settlement for purposes of obtaining legal repose, the Agency may use section 122(g)(1)(B).

[18] The government may, in appropriate circumstances, enter into a settlement with heirs to contaminated property pursuant to the *de minimis* provision in Section 122(g)(1)(B). Footnote 14, *Infra*, provides clarification of the Agency's interpretation of the exclusion from eligibility for a *de minimis* landowner settlement pursuant to Section 122(g)(1)(B)(iii) of parties who "purchased" contaminated property "with knowledge."

thoroughly convincing demonstration that each of the elements of the third party defense has been satisfied. In such cases, settlements requiring only that the landowner provide access and due care assurances will be appropriate. Although such cases will rarely be free of all doubt, the Government should be persuaded that there is a very high probability that the landowner would prevail in establishing a third party defense at trial.

If a landowner does not make the thorough and convincing demonstration described above, but is nevertheless able to persuade the Agency that it is likely that he would prevail in establishing the third party defense at trial, he may be considered for a *de minimis* settlement for cash consideration, as well as access and due care assurances. A landowner who cannot make this showing is not eligible for a *de minimis* settlement, but may be eligible for a Section 122 settlement using the same criteria as any other potentially responsible party under CERCLA, the generally applicable guidelines of the Interim CERCLA Settlement Policy, 50 Fed. Reg. 5034 (February 5, 1985), and the interim guidance on Covenants Not To Sue Under SARA, 52 Fed. Reg. 28038 (July 27, 1987). In any event, the United States ultimately must be able to show that any *de minimis* landowner settlement entered into meets the criteria of Section 122(g)(1)(B) in order to withstand judicial review.

a. *Consideration.* All landowners who enter into *de minimis* settlements should be required to provide access to the property and cooperation in the Agency's response activities. In specific cases, it may be appropriate to obtain cash payments for the response activities at the site. Sitge access and cooperation should also extend to the Agency's response action contractors and to any other parties performing response activities under the Agency's oversight pursuant to court order, administrative order, or consent ageement under section 106 or 122 of CERCLA. The Agency should also require the landowner to provide assurances that he will continue to exercise due care with respect to the hazardous substances at the site.[19] The Agency shall also require that the purchaser file in the local land records a notice acceptable to EPA, stating that hazardous substances were disposed of on the site and that EPA makes no representation as to the appropriate use of the property.[20] Settlements under CERCLA generally also require that the settlor agree not to assert any claims or causes of action against the United States or the Hazardous Substance Superfund arising from work performed or expenses incurred pursuant to the agreement, or to seek any other casts, damages, or attorney's fees from the United States arising out of response activities at the facility. These requirements are in addition to any cash component of the *de minimis* settlement, as discussed above.

In exchange for this consideration, the landowner will receive statutory contribution protection under Sections 113(f)(2) and 122(g)(5) of CERCLA. Subject to the reopeners discussed below, the landowner may also receive a convenant not to sue for civil claims seeking injunctive relief under Section 106 of CERCLA and Section 7003 of RCRA [21] or cost recovery under Section 107(a) of CERCLA with regard to the facility when the Agency determines that such a covenant is in the public interest.[22] However, natural resource damage claims may not be released and should be expressly reserved unless the Federal natural resource trustee has agreed in writing to such a covenant not to sue pursuant to the terms of section 122(j)(2) ofd CERCLA.[23]

b. *Reopeners.* In order to protect the Agency against the possiblity that the information supplied by the landowner regarding his eligibility for a *de minimis* settlement is inaccurate or incomplete, the settlement agreement generally should include a certification by the landowner that he has fully and accurately disclosed all information in his possession regarding those qualifications. The settlement agreement should also include a reservation of rights which would allow the Government to seek further relief from the landowner, including the filing and enforcement of a federal lien,[24] if information not known to the Government at the time of settlement is discovered which indicates that the landowner does not meet the requirements for a *de minimis* settlement. The settlement agreement should expressly reserve the Agency's right to seek further relief from the landowner, where appropriate, including but not limited to: for claims arising from the introduction of any hazardous substance, pollutant, or contaminants at the facility by any person after the effective date of the settlement agreement; for failure of the landowner to exercise due care with respect to any contamination at the facility; for exacerbation by the landowner of the existing release or threat of release of hazardous substances; or for failure to cooperate and/or for interference with the Agency, its response action contractors, or other parties or their contractors conducting response activities under Agency oversight in the implementation of response actions at the facility. In addition, other reopeners may need to be incorporated on a case-by-case basis.

c. *Type of agreement.* Section 122(g)(4) of CERCLA requires that *de minimis* settlements be entered either through judicial consent decrees or administrative orders on consent.[25] Generally, a *de minimis* settlement with a landowner should be concluded by separate agreement, rather than as part of a larger agreement with other potentially responsible parties. Pursuant to Agency delegation 14–14–E (September 13, 1987), and waivers of

[19] The Conference committee made the following statement regarding 107(b)(3)'s due care requirement:

[T]he due care requirement embodied in section 107(b)(3) only requires such person to exercise that degree of care which is reasonable under the circumstances. The requirement would include those steps necessary to protect the public from a health or environmental threat.

Conference Report on SARA, H.R. 2005, 99th Cong., 2d Sess., p. 187.

[20] Where the ROD requires that institutional controls be imposed on the property, a much more extensive notice may be required.

[21] Section 7003 of RCRA may provide an additional basis for compelling cleanup or obtaining cost recovery in appropriate circumstances where a party "has contributed or is contributing to [the past or present] handling, storage, treatment, transportation, or disposal" of any solid or hazardous waste. Where the release or threatened release involves wastes which are not hazardous substances under CERCLA, section 7003 of RCRA can be an important supplemental enforcement mechanism for obtaining cost recovery or injunctive relief.

[22] Any covenant provided should be drafted to apply only to the individual landowner and should not run with the property at issue.

[23] In accordance with section 122(j)(1) of CERCLA, which the release or threatened release of any hazardous substance at the site may have resulted in damages to natural resources under the trusteeship of the United States, the region should notify the Federal natural resource trustee of the negotiations and encourage the trustee to participate in the negotiations.

[24] Guidance on Federal liens has been provided by separate memorandum entitled "Guidance on Federal Superfund Liens." (Issued by AA–OECM, September 22, 1987).

[25] Model language is provided in Attachment I, "Model CERCLA Section 122(g)(4) Administrative Order on Consent for Settlements with Landowners under Section 122(g)(1)(B)" and Attachment II, "Model CERCLA Section 122(g)(4) Consent Decree for Settlements with Landowners under Section 122(g)(1)(B)."

settlement concurrence in "Revision of CERCLA Civil Judicial Settlement Authorities under Delegations 14–13–B and 14–14–E" (Adams/Porter June 17, 1988), the first landowner *de minimis* consent decree negotiated by each Region must be referred to Headquarters and must receive the concurrence of the Assistant Administrator for Enforcement and Compliance Monitoring or his designee ("AA-OECM") and the Assistant Administrator for Solid Waste and Emergency Response or his designee ("AA–OSWER") prior to referral to the Department of Justice for filing. After the Region has concluded one *de minimis* consent decree with a landowner, other consent decrees may then be referred directly to the Department of Justice with consultation by the AA–OECM and the AA–OSWER. All *de minimis* consent decrees will be subject to a thirty-day comment period after lodging.

If the *de minimus* settlement is entered through an administrative order on consent, it must receive the concurrence of the AA–OECM and the AA–OSWER prior to signature by the Regional Administrator if it is the first administrative settlement with a *de minimis* landowner. Additionally, if the total past and projected response costs for the site, excluding interest, exceed $500,000, section 122(g)(4) requires that the *de minimis* administrative order on consent receive the prior written approval of the Attorney General or his designee. Section 122(g)(4) of CERCLA gives the Attorney General thirty days from referral by EPA to approve or disapprove the settlement. If he does not act within this time period, the settlement will be deemed to have been approved unless he has reached agreement with the Agency on an extension of time.[26] Section 122(i) of CERCLA requires notice of all administrative *de minimis* settlements to be published in the Federal Register for a thirty day comment period. The Region must consider all comments received and "may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate." Section 122(i)(3).

C. Policy on Prospective Purchasers

Because of the clear liability which attaches to landowners who acquire property with knowledge of contamination, the Agency has received numerous requests for covenants not to sue from prospective purchasers of contaminated property.[27]

It is the Agency's policy not to become involved in private real estate transactions. However, a covenant not to sue a prospective purchaser might appropriately be considered if an enforcement action is anticipated and if performance of or payment for cleanup would not otherwise be available except from the Superland and if the prospective purchaser participates in a clean-up. A prospective purchaser may participate in cleanup either through the payment of a substantial sum of money[28] to be applied towards a clean-up of the site or through a commitment to perform substantial response actions.

There are a number of concerns, however, associated with entering into such covenants which may, in a given case, outweigh any benefit which the Agency may receive. Given the number of sites on the National Priorities List ("NPL"), most have not been the subject of a remedial investigation/feasibility study ("RI/FS"), nor have responsible party searches been conducted. Therefore, in most instances, the extent of contamination and necessary remedy will be unknown and it may be impossible to determine whether the proposed activities of the prospective purchaser at the site (for example, operating a manufacturing facility or developing the property) will interfere with any remedy ultimately selected by the Agency. Secondly, unless the universe of potentially responsible parties and their financial viability is known, it will be impossible to determine with any certainty that the Agency is receiving a benefit which otherwise could not be obtained. If there are other viable responsible parties, by entering into an agreement with a prospective purchaser for future response costs, the Agency will have merely succeeded in providing those other parties with a set-off against future cost recovery. Furthermore, in some instances, the Agency may ultimately be able to recoup its response costs, or at least an amount equivalent to the consideration offered by a prospective purchaser, through enforcement of the federal lien estblished pursuant to Section 107(1) of CERCLA.

Moreover, the listing of any site on the NPL means that there is a release or threatened release of hazardous substances from the site. Development and commercial use of such sites may pose a danger to those persons present at such sites, and the activities to be carried out by the purchaser, even with the exercise of due care, may aggravate or contribute to the contamination. Where the remedy calls for other than destruction of all contaminants below health based levels, there may be a risk that unknown future uses are inconsistent with the remedy or may interfere with an ongoing cleanup.

The Agency recognizes, however, that in an appropriate case, entering into a convenant not to sue with a prospective purchaser of contaminated property, given appropriate environmental safeguards, may result in an environmental benefit through a payment to be applied to clean-up of the site or a commitment to perform response action. This guidance sets forth criteria which should be met before the Agency will enter into such convenants. These criteria are minimal standards, however, and the Agency will reject any offer unless it determines that entering into a convenant with a prospective purchaser is sufficiently in the public interest to warrant expanding the resources necessary to reach such an agreement in light of competing priorities for the use of limited Agency resources.

1. Criteria for entering into convenants not to sue with prospective purchasers of contaminated property

a. *Enforcement action is anticipated by the Agency at the facility.* It is the policy of the Agency not to become involved in purely private commercial transactions. The Agency will not entertain requests or covenants not to sue from prospective purchasers unless an enforcement action is contemplated with respect to the facility. Therefore, such convenants generally will be considered only with regard to those facilities listed or proposed for listing on the NPL, those facilities at which Fund monies have been expended, or those facilities which are the subject of a pending enforcement action.

b. *A substantial benefit, not otherwise available, will be received by the Agency for cleanup.* The Agency will not entertain requests for covenants not to sue unless entering into such a covenant will produce a substantial

[26] More detailed procedures for the referral of *de minimis* consent orders to Headquarters and the Department of Justice are being developed.

[27] Since settlements with typical prospective purchasers (*i. e.* those who do not currently own the property, are not otherwise involved with the site, and are, therefore, not yet liable under Section 107) will not be reached under Section 122, the procedures and restrictions in that section, such as those relating to covenants not to sue, will not apply.

[28] Such monies could be paid directly to the Superfund (in the event the Agency is undertaking the cleanup) or in appropriate circumstances and with proper controls could be paid to the seller of the property if the seller has agreed to perform substantial response action pursuant to an administrative order or consent decree.

monetary benefit to be applied to response activities at the facility, or an agreement to conduct response actions, which otherwise would not be available. This criterion may be met if the Agency projects that its anticipated response costs are not recoverable from other sources. However, if the Agency determines that its anticipated response costs can be recouped through other means, such as the filing and enforcement of a federal lien, such covenants will not be entertained.

c. *The Agency believes that the continued operation of the facility or new site development, with the exercise of due care, will not aggravate or contribute to the existing contamination or interfere with the remedy.* Unless the Agency believes, based on available information, that the continued operation of the facility or new development of the site will not aggravate or contribute to the existing contamination or interfere with the remedy, such agreements will not be entertained. Information which should be considered by the Agency includes the remedial investigation/feasibility study, if completed, and all other information relevant to the condition of the facility. If the prospective purchaser is to continue the operations of an existing facility, the Agency will require the purchaser to submit information sufficient to determine whether the continued operations are likely to aggravate or contribute to the existing contamination or interfere with the remedy. If the prospective purchaser plans to undertake new operations or development of the facility, comprehensive information regarding these plans will be required. If the available information indicates that the planned activities of the prospective purchaser are likely to aggravate or contribute to the existing contamination, the agreement will not be entered into or will include restrictions which prohibit those operations or portions of those operations which are likely to aggravate or contribute to the existing contamination or interfere with the remedy.

The Agency's determination as to whether the available information is sufficient for purposes of this evaluation will be made on a case by case basis; however, one key factor which will necessarily be considered is whether the remedial investigation has been completed and the extent of information which has been generated in that process. If the available information is insufficient for purposes of evaluating the impact of the proposed activities, the agreement will not be entered into.

d. *Due consideration has been given to the effect of continued operations or new development on health risks to those persons likely to be present at the site.* The Agency will not entertain requests for covenants not to sue unless due consideration has been given to the effect which continued operations at the facility or new development is likely to have on the health risks to those persons likely to be present at the site.

e. *The prospective purchaser is financially viable.* The prospective purchaser must demonstrate that he is financially viable and capable of fulfilling his obligations under the agreement. The Agency will not entertain requests for covenants not to sue if it appears that the Agency could not recoup its costs in the event that the purchaser breaches his obligations under the agreement.

2. Content and form of settlement

If the foregoing criteria are met, and the Agency determines that entering into the covenant not to sue is in the public interest, the covenant will be embodied in an agreement to be executed by the authorized representative of the prospective purchaser, the Regional Administrator (with the concurrence of the AA–OECM, the AA–OSWER, and the Attorney General), and, where appropriate, the current owner of the facility.[20]

a. *Consideration.* Generally, the consideration required of the prospective purchaser will be a cash payment. In specific cases, it may be possible to dedicate the payments to response activities at the site through an appropriate mechanism.[20] However, the consideration may take the form of a removal, or if a Record of Decision (ROD) has been signed, remedial activities. In addition, the prospective purchaser must agree not to assert any claims or causes of action against the United States or the Hazardous Substance Superfund arising from contamination of the facility which exists as of the date of acquisition of the facility, or to seek any other costs, damages, or attorney's fees from the United States arising out of response activities at the facility.[21] The Agency shall also require that the purchaser file in the local land records a notice acceptable to EPA, stating that hazardous substances were disposed of on the site and that EPA makes no representation as to the appropriate use of the property.

The agreement should contain a provision under which the purchaser grants an irrevocable right of entry to the Agency, its response action contractors, and other persons performing response actions under Agency oversight for the purpose of taking response actions at the facility and for monitoring compliance with the agreement.

In exchange for this consideration, the Agency will grant a covenant not to sue to the prospective purchaser for civil liability under Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA arising from contamination of the facility which exists as of the date of acquisition of the facility. The covenant should provide that, with respect to any claim or cause of action asserted by the Agency against the prospective purchaser, the purchaser shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to contamination which existed prior to the date of acquisition.

b. *Reservation of rights.* The agreement should expressly reserve the Agency's rights to assert all claims against the prospective purchaser, except for those set forth in the covenant not to sue, including, but not limited to, those claims arising from:

(i) the release or threat of release of any hazardous substance, pollutant or contaminant resulting from the purchaser's operation of the facility;

(ii) the release or threat of release of any hazardous substance, pollutant, or contaminant resulting from the introduction of any hazardous substance, pollutant, or contaminant at the facility by any person after the date of acquisition by the purchaser;

(iii) exacerbation of contamination existing prior to the date of acquisition;

(iv) failure to cooperate and/or interference with the Agency, its response action contractors, or other persons conducting response activities under Agency oversight in the implementation of response actions at the facility;

(v) failure to exercise due care with respect to any contamination at the facility; or

(vi) any and all criminal liability.

The agreement should also expressly reserve the Agency's rights to assert all claims and causes of action against all persons other than the purchaser. Unless the Federal natural resource trustee has agreed in writing to the covenant not to sue, the agreement should also expressly reserve natural resource damage claims.

c. *Scope of response actions.* The agreement should provide that none of its terms is to be construed as limiting or restricting the nature or scope of response actions which may be undertaken by the Agency in exercising its authority under federal law. In most circumstances, the agreement should also state that the purchaser recognizes that the implementation of response actions may interfere with its operation, including closure of the facility or a part thereof.

d. *Compliance with applicable laws and duty to exercise due care.* The agreement should provide that the purchaser is subject to the requirements of all federal and state laws and regulations, including the duty to exercise due care with respect to hazardous substances at the facility.

e. *Disclaimer.* The agreement should contain a statement that the execution of the agreement in no way constitutes an Agency finding as to the risks to human health and the environment which may be posed by contamination at the facility or an Agency representation that the property is fit for any particular use.

3. Procedures

Any agreement entered with a prospective purchaser of contaminated property must receive the concurrence of the AA–OECM and the AA–OSWER. Additionally, such agreement must be approved by the Attorney General. Procedurally, the Regions should handle requests for such covenants in accordance with forthcoming Agency guidance on the referral of administrative settlements under Section 122(g)(4).[22] The settlement analysis required by that guidance should specifically address the criteria set forth in this memorandum for entering into covenants not to sue with prospective purchasers of contaminated property.

V. Purpose and Use of This Guidance

This guidance and any internal procedures adopted for its implementation are intended solely as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this guidance or its internal implementing procedures.

Attachments.

Attachment I—Model CERCLA Section 122(g)(4) Administrative Order on Consent For Settlements With Landowners Under Section 122(g)(1)(B)

U.S. EPA Docket No. _____

ADMINISTRATIVE ORDER ON CONSENT

In the Matter of: [Insert Site Name and Location]

Proceeding under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9622(g)(4)

I. Jurisdiction

This Administrative Order on Consent ("Consent Order") is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), Pub. L. No. 99-499, 42 U.S.C. 9622(g)(4), to reach settlements in actions under Section 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a). The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 FR 2923 (Jan. 29, 1987) and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-E (Sept. 13, 1987).

This Administrative Order on Consent is issued to [insert name] ("Respondent"). Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

II. Definitions

"Site" shall mean that parcel of property located at [insert address and general description], more particularly described as [insert legal description of the property owned by Respondent]. [Note: Additional definitions may be required.]

III. Statement of Facts

1. [In one or more paragraphs, describe the NPL status of the site and briefly describe the historical hazardous substance activity at the site, including the date on which the hazardous substance activities were terminated.]

2. Hazardous substances within the definition of Section 101(14) of CERCLA, 42 U.S.C 9601(14), have been or are threatened to be released into the environment at or from the Site. [Note: Additional information about specific hazardous substances present on- or off-site may be included.]

3. As a result of the release or threatened release of hazardous substances into the environment, EPA has undertaken response action at the Site under Section 104 of CERCLA, 42 U.S.C. 9604, and will undertake response action in the future. [Note: A brief recitation of the specific response action undertaken or planned for the site, *e.g.*, whether an RI/FS and ROD have been completed, should be included.]

4. In performing this response action, EPA has incurred and will continue to incur response costs at or in connection with the Site. [Note: The dollar amount and costs incurred as of a specific date should be included.]

5. [Identify the Respondent, the nature of his ownership interest in the site, the manner in which he acquired the site, *e.g.*, by purchase, bequest, eminent domain proceedings, *etc.*, and the date of acquisition. Add any other facts relevant to the requirements of Section 122(g).]

6. Respondent represents, and for the purposes of this order EPA accepts, that respondent's involvement with the site is limited to the following: [State each fact. Make sure to address the elements of Section 122(g)(1)(B), and if no cash consideration is involved, Sections 107(b) and 101(35).]

7. Payments required to be made by Respondent pursuant to this Consent Order are a minor portion of the total response costs at the Site which EPA, based upon currently available information, estimates to be between $_____ and $_____. [Note: This statement need not be included if EPA is settling only for access and due care assurances. The dollar figure inserted should include the total response costs incurred to date as well as EPA's projection of the total response costs to be incurred during completion of the remedial action at the site.]

IV. Determinations

Based upon the Findings of Fact set forth above and on the administrative record for this Site, EPA has determined that:

1. The Site as described in Section II of this Consent Order is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. 9601(9).

2. Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. 9601(21).

3. Respondent is an "owner" of a facility within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. 9607(a)(1), and a "potentially responsible party" within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

4. The past, present, or future migration of hazardous substances from the Site constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. 9601(22).

5. Prompt settlement with the Respondent is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

6. This Consent Order involves at most only a minor portion of the response costs at

---

[20] In the past, this has arisen most often in the bankruptcy context.

[20] Note, however, that at present, the federal Superfund accounting system does not provide for the establishment of site-specific accounts to receive dedicated payments.

[21] In evaluating what is appropriate consideration, the Agency should consider the value of any lien which may be or has been placed on the property pursuant to CERCLA section 107(l), since, in entering into an agreement with a prospective purchaser, the government is relinquishing its right to recover its cleanup costs when the property is subsequently sold to the prospective purchaser. This is because an agreement with a prospective purchaser would effectively constitute a satisfaction of the prospective purchaser's liability for cleanup work at the site, thus terminating any lien under section 107(l)(2).

[22] *See supra* note 20.

the Site pursuant to Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1). [Note: This statement need not be included if the Agency is settling only for access and due care assurances.]

7. Respondent is eligible for a *de minimis* settlement pursuant to section 122(g)(1)(B) of CERCLA, 42 U.S.C. 9622(g)(1)(B).

V. Order

Based upon the administrative record for this Site and the Findings of Fact and Determinations set forth above, and in consideration of the promises and covenants set forth herein, it is hereby AGREED TO AND ORDERED:

VI. Access and Notice

1. Respondent hereby grants to EPA, its representatives, contractors, agents, and all other persons performing response actions under EPA's oversight, an irrevocable right of access to the Site for the purposes of monitoring the terms of this Consent Order and performing response actions at the Site. Respondent shall file in the land records of _____ County a notice, approved by EPA, to subsequent purchasers of the land, that hazardous substances were disposed of on the site and that EPA makes no representations as to the appropriate use of the property. Nothing herein shall limit EPA's right of access under applicable law.

2. Nothing in this Consent Order shall in any manner restrict or limit the nature or scope of response actions which may be taken by EPA in fulfilling its responsibilities under federal law. Respondent recognizes that the implementation of response actions at the Site may interfere with the use of his property. Respondent agrees to cooperate with EPA in the implementation of response actions at the Site and further agrees not to interfere with such response actions.

VII. Due Care

3. Nothing in this Consent Order shall be construed to relieve Respondent of his duty to exercise due care with respect to the hazardous substances at the Site or his duty to comply with all applicable laws and regulations.

VIII. Payment

4. Respondent shall pay the sum of $_____ to the Hazardous Substance Superfund within _____ days [insert short time period, *e.g.*, 10, 30 or 45 days] of the effective date of this Consent Order. [NOTE: If EPA is settling only for access, notice and due care assurances, then this section may be omitted. If EPA is settling for an agreement by the owner to perform response activities [removal—since a consent decree is required for remedial activities] rather than a cash payment, then the following section should be substituted: "*WORK TO BE PERFORMED:* Respondent agrees to perform [insert general description of activities to be performed], as more fully described in the Scope of Work and schedules attached hereto as Exhibit A and incorporated herein, and in accordance with the schedules and standards set forth therein. Based on information provided by Respondent, EPA estimates the present value of this work to be approximately $_____."]

5. The payment specified in Paragraph 4 shall be made by certified or cashier's check payable to "EPA Hazardous Substance Superfund." Each check shall reference the site name, the name and address of the Respondent, and the EPA docket number for this action, and shall be sent to:

[Insert address for Regional lock box]

6. Respondent shall simultaneously send a copy of its check to:

[Insert name and address of Regional Attorney or Remedial Project Manager]

IX. Civil Penalties

7. In addition to any other remedies or sanctions available to EPA, the Respondent shall be subject to a civil penalty of up to $25,000 per day for each failure or refusal to comply with any term or condition of this Consent Order pursuant to section 122(l) of CERCLA, 42 U.S.C. 9622(l). [NOTE: If the Respondent is to perform the removal action under the Consent Order, stipulated penalties should be considered.]

X. Certification of Respondent

8. The Respondent certifies that to the best of his knowledge and belief he has fully and accurately disclosed to EPA and stated in Paragraph 6, section III, all information currently in his [its] possession and in the possession of his agents, [or in the possession of its officers, directors, employees, contractors or agents] which relates in any way to his [its] qualifications for a *de minimis* settlement under section 122(g)(1)(B) of CERCLA. [NOTE: In very limited circumstances this language may be omitted if EPA determines that the risk of discovering information which would disqualify the Respondent from a *de minimis* settlement is negligible.]

XI. Covenant Not to Sue

9. Subject to the reservation of rights in Paragraphs 11 and 12, section XII, of this Consent Order, upon payment of the amounts specified in Paragraph 4, section VIII, of this Consent Order [NOTE: If work is to be performed instead of a cash payment, this sentence should read: "upon satisfactory completion of the work specified in the Scope of Work." If EPA is settling only for access and due care assurances, this sentence should read: "upon the effective date of this Consent Order."], EPA covenants not to sue or take any other civil or administrative action against the Respondent for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to sections 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a), or section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, with regard to the Site.

10. In consideration of EPA's covenant not to sue in Paragraph 9, section XI, of this Consent Order, the Respondent agrees not to assert any claims or causes of action against the United States or its contractors or its employees or the Hazardous Substance Superfund arising out of expenses incurred or payments made [or work performed] pursuant to this Consent Order, or to seek any other costs, damages, or attorney's fees from the United States or its contractors or employees arising out of response activities at the Site.

XII. Reservation of Rights

11. Nothing in this Consent Order is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, at law or in equity, which the United States, including EPA, may have against Respondent for:

(a) Any liability as a result of failure to provide access, notice, or otherwise comply with Paragraphs 1 and 2, section VI, of this Consent Order;

(b) Any liability as a result of failure to exercise due care with respect to hazardous substances at the Site;

(c) Any liability as a result of failure to make the payments [or perform the work] required by Paragraph 4, section VIII, of this Consent Order;

(d) Any liability resulting from exacerbation by Respondent of the release or threat of release of hazardous substances from the Site;

(e) Any and all criminal liability; or

(f) Any matters not expressly included in the covenant not to sue set forth in Paragraph 9, section XI, of this Consent Order, including, without limitation, any liability for damages to natural resources. [NOTE: This natural resource damage reservation must be included unless the Federal natural resource trustee has agreed to a covenant not to sue pursuant to section 122(j)(2) of CERCLA. In accordance with section 122(j)(1) of CERCLA, where the release or threatened release of any hazardous substances at the site may have resulted in damages to natural resources under the trusteeship of the United States, the Region should notify the Federal natural resource trustee of the negotiations and encourage the trustee to participate in the negotiations.]

12. Nothing in this Consent Order constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States, including EPA, to seek or obtain further relief from the Respondent, and the covenant not to sue in Paragraph 9, section XI, of this Consent Order is null and void, if information different from that specified in Paragraph 6, section III, is discovered which indicates that Respondent fails to meet any of the criteria specified in section 122(g)(1)(B) of CERCLA.

13. Nothing in this Consent Order is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States, including EPA, may have against any person, firm, corporation or other entity not a signatory to this Consent Order.

14. EPA and Respondent agree that the actions undertaken by the Respondent in accordance with this Consent Order do not constitute an admission of any liability by the Respondent. The Respondent does not admit and retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Consent Order, the validity of the Findings of Fact or Determinations contained in this Consent Order.

XIII. Contribution Protection

15. Subject to the reservation of rights in Paragraphs 11 and 12, section XII, of this Consent Order, EPA agrees that by entering into and upon carrying out the terms of this Consent Order, Respondent will have resolved his liability to the United States for those matters set forth in the covenant not to sue, Paragraph 9, section XI, as provided by section 122(g)(5) of CERCLA, 42 U.S.C. 9622(g)(5), and shall have satisfied his liability for those matters within the meaning of section 107(a) of CERCLA, 42 U.S.C. 9607(a).

XIV. Parties Bound

16. This Consent Order shall apply to and be binding upon the respondent and his heirs, agents, and assigns [its officers, directors, employees, agents, successors and assigns]. The signatory represents that he is fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the Respondent. [NOTE: The preceding sentence and the bracketed phrase in the first sentence should be used if the respondent is a corporation or entity other than a natural person.] In the event that the Respondent transfers title or possession of the Site, he shall notify the United States EPA (at the address included in Paragraph 6, Section VIII) prior to any such transfer and shall continue to be bound by all of the terms and conditions of this Consent Order unless EPA agrees otherwise and modifies this Consent Order accordingly.

XV. Public Comment

17. This Consent Order shall be subject to a thirty-day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. 9622(i)(3), EPA may withdraw or modify consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper, or inadequate.

XVI. Attorney General Approval

18. The Attorney General or his designee has issued prior written approval of the settlement embodied in this Consent Order in accordance with Section 122(g)(4) of CERCLA. [NOTE: Attorney General approval usualy will be required for *de minimis* consent orders because the total past and projected response costs at the site will exceed $500,000, excluding interest. In the event that Attorney General approval is not required, the order shall not include this Paragraph 18, but should include the following as a separate numbered paragraph in the Determinations section (Section IV) above: "The Regional Administrator of EPA, Region _____, has determined that the total response costs incurred to date at or in connection with the Site do not exceed $500,000, excluding interest, and that, based upon information currently known to EPA, total response costs at or in connection with the Site are not anticipated to exceed $500,000, excluding interest, in the future."

Use of this determination requires changes to the model Statement of Facts in Section III above; specifically, Paragraph 3 of the Facts should delete "and will undertake response actions in the future." Paragraph 4 of the Facts should delete "and will continue to incur response costs at or in connection with the site."]

XVII. Effective Date

19. The effective date of this Consent Order shall be the date upon which EPA issues written notice to the Respondent that the public comment period pursuant to Paragraph 17, Section XV, of this Consent Order has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Consent Order.

IT IS SO AGREED AND ORDERED:

[Respondent(s)]

By: [Name] _____
[Date] _____

U.S. Environmental Protection Agency

By: [Name] _____
[Date] _____

Attachment II—Model CERCLA Section 122(g)(4) Consent Decree for Settlements With Landowners Under Section 122(g)(1)(B)

United States of America, Plaintiff v. [Insert Name(s) of Defendant(s)] Defendant(s) Civil Action No._____

Judge_____

Consent Decree

[NOTE: If the complaint concerns causes of action which are not resolved by this document or names defendants who are not signatories to this document, the title should be "Partial Consent Decree."]

WHEREAS, the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("Plaintiff" or "United States") filed a complaint on [insert date] against [insert defendant's name] ("Defendant") pursuant to [insert causes of action and relief sought, *e.g.*, Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), Pub. L. No. 99-499, 42 U.S.C. 9606 and 9607(a), and Section 7003 of the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. 6973, seeking injunctive relief regarding the cleanup of the [insert site name] ("Site") and recovery of costs incurred and to be incurred in responding to the release or threat of release of hazardous substances at or in connection with the Site];

WHEREAS, the United States has incurred and continues to incur response costs in responding to the release or threat of release of hazardous substances at or in connection with the Site;

WHEREAS, the Regional Administrator of the United States Environmental Protection Agency, Region _____ ("Regional Administrator"), has determined that prompt settlement of this case is practicable and in the public interest;

WHEREAS, this settlement does not involve the payment of response costs [delete this clause if cash consideration is included pursuant to Section V];

WHEREAS, based on information currently available to the Environmental Protection Agency ("EPA"), the Regional Administrator has determined that Defendant qualifies for a *de minimis* settlement pursuant to Section 122(g)(1)(B) of CERCLA;

WHEREAS, the United States and the Defendant agree that settlement of this case without further litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving this action;

NOW, THEREFORE, it is ORDERED, ADJUDGED and DECREED as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter and the parties to this action. The parties agree to be bound by the terms of this Consent Decree and not to contest its validity in any subsequent proceeding to implement or enforce its terms.

II. Parties Bound

This Consent Decree shall apply to and be binding upon the United States and the Defendant, his heirs, agents, and assigns [its officers, directors, employees, agents, successors and assigns]. The signatory represents that he is fully authorized to enter into the terms and conditions of this Consent Decree and to legally bind the Defendant. [NOTE: The preceding bracketed language should be used if the Defendant is a corporation or entity other than a natural person.]

III. Definitions

"Site" shall mean that parcel of property located at [insert address and general description], more particularly described as [insert legal description of the property owned by Defendant]. [NOTE: It may be necessary to include additional definitions.]

IV. Access and Notice

1. Defendant hereby grants to EPA, its representatives, contractors, agents, and all other persons performing response actions under EPA's oversight, an irrevocable right of access to the Site for the purposes of monitoring the terms of this Consent Decree and performing or monitoring performance of response actions at the Site. Defendant shall file in the land records of _____ County a notice, approved by EPA, to subsequent purchasers of the land that hazardous substances were disposed of on the site and that EPA makes no representation as to the appropriate use of the property. Nothing herein shall limit EPA's right of access under applicable law. In the event that defendant transfers title or possession of the Site, he shall continue to be bound by all of the terms and conditions of this Consent Decree and shall notify the United States EPA prior to any such transfer.

2. Nothing in this Consent Decree shall in any manner restrict or limit the nature or scope of response actions which may be taken by EPA in exercising its authority under federal law. Defendant recognizes that the implementation of response actions at the Site may interfere with the use of his

property. Defendant agrees to cooperate with EPA in the implementation of response actions at the Site and further agrees not to interfere with such response actions.

V. Payment

1. Respondent shall pay the sum of $_____ to the Hazardous Substance Superfund within _____ days [insert short time period, *e.g.*, 10, 30 or 45 days] of the effective date of this Consent Order. [NOTE: If EPA is settling only for access, notice and due care assurances, then this section may be omitted. If EPA is settling for an agreement by the owner to perform response activities, rather than a cash payment, then the following section should be substituted: "*WORK TO BE PERFORMED*: Respondent agrees to perform [insert general description of activities to be performed], as more fully described in the Scope of Work and schedules attached hereto as Exhibit A and incorporated herein, and in accordance with the schedules and standards set forth therein. Based on information provided by Respondent, EPA estimates the present value of this work to be approximately $_____."]

22. The payment specified in Paragraph 1 of this Section, shall be made by certified or cashier's check payable to "EPA Hazardous Substance Superfund." Each check shall reference the site name, the name and address of the Respondent, and the EPA docket number for this action, and shall be sent to:

[Insert address for Regional lock box]

3. Defendant shall simultaneously send a copy of its check to:

[Insert name and address of Regional Attorney or Remedial Project Manager]

VI. Due Care

Nothing in this Consent Decree shall be construed to relieve Defendant of his duty to exercise due care with respect to hazardous substances at the Site or his duty to comply with all applicable laws and regulations.

VII. Civil Penalties

In addition to any other remedies or sanctions available to the United States, Defendant shall be subject to a civil penalty of up to $25,000 per day for each failure or refusal to comply with any term or condition of this Consent Decree pursuant to Section 122(1) of CERCLA, 42 U.S.C. 9622(1). [Note: If the defendant is to perform remedial action under the Consent Decree, stipulated penalties, pursuant to Section 121(e)(2) must be included.]

VIII. Certification of Dependant

The Defendant certifies that, to the best of his [its] knowledge and belief, he [it] has fully and accurately disclosed to EPA all information currently in his [its] possession and in the possession of his agents [and in the possession of its officers, directors, employees, contractors or agents] which relates in any way to his [its] qualifications for a *de minimis* settlement under Section 122(g)(1)(B) of CERCLA. [NOTE: In very limited circumstances this language may be omitted if EPA determines that the risk of discovering information which would disqualify the Defendant from a *de minimis* settlement is negligible. The bracketed language in this paragraph should be used if the Defendant is a corporation or entity other than a natural person.]

IX. Covenant Not To Sue

1. Subject to the reservation of rights in Section X, Paragraphs 1 and 2, of this Consent Decree, upon entry of this Consent Decree, the United States covenants not to sue or take any other civil or administrative action against the Defendant for any and all civil liability for reimbursement of response costs or for injunctive relief pursuant to Sections 106 or 107(a) or CERCLA, 42 U.S.C. 9606 or 9607(a), or Section 7003 of RCRA, 42 U.S.C. 6973, arising from conditions existing at the Site as of the date of entry of this Consent Decree.

2. In consideration of the United States' covenant not to sue in Paragraph 1 of this Section, the Defendant agrees not to assert any claims or causes of action against the United States or its contractors or its employees or the Hazardous Substance Superfund arising out of expenses incurred or payments Superfund arising out of expenses incurred or payments made [or work performed] pursuant to this Consent Decree, or to seek any other costs, damages, or attorney's fees from the United States arising out of response activities at the Site.

X. Reservation of Rights

1. Nothing in this Consent Decree is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, at law or in equity, which the United States, including EPA, may have against Defendant for:

a) Failure to provide access, notice or otherwise comply with Section IV, Paragraphs 1 and 2, of this Consent Decree;

b) Failure to exercise due care with respect to hazardous substances at the Site;

c) Exacerbation of the release or threat of release of hazardous substances from the Site;

d) Any liability resulting from the introduction of any hazardous substance, pollutant, or contaminant by any person at the Site after the entry of this Consent Decree;

e) Any and all criminal liability; or

f) Any matters not expressly included in the covenant not to sue set forth in section IX, paragraph 1, of this Consent Decree, including, without limitation, any liability for damages to natural resources. [*Note*: This natural resource damage reservation must be included unless the Federal natural resource trustee has agreed to a covenant not to sue pursuant to section 122(j)(2) of CERCLA. In accordance with section 122(j)(1) of CERCLA. In accordance with section 122(j)(1) of CERCLA, where the release or threatened release of any hazardous substances at the site may have resulted in damages to natural resources under the trusteeship of the United States, the Region should notify the Federal natural resource trustee of the negotiations and encourage the trustee to participate in the negotiations.]

2. In the event that the United States asserts any claim or cause of action against the Defendant pursuant to Section X, Paragraph 1, of this Consent Decree, the Defendant shall bear the burden of proving that any release or threat of release which is the subject of the claim or cause of action is attributable solely to conditions existing at the Site as of the date of entry of this Consent Decree.

3. Nothing in this Consent Decree constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States, including EPA, to seek or obtain further relief from the Defendant, and the covenant not to sue in Section IX, Paragraph 1, of this Consent Decree is null and void, if information not currently known to the United States is discovered which indicates that Defendant fails to meet any of the criteria specified in Section 122(g)(1)(B) of CERCLA.

4. Nothing in this Consent Decree is intended as a release from or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States, including EPA, may have against any person, firm, corporation or other entity not a signatory to this Consent Decree.

5. United States and Defendant agree that the actions undertaken by the Defendant in accordance with this Consent Decree do not constitute an admission of any liability by Defendant.

XI. Contribution Protection and Liens

Subject to the reservation of rights in section X, Paragraphs 1 and 3, of this Consent Decree, the United States agrees that by entering to and carrying out the terms of this Consent Decree, Defendant will have resolved his liability to the United States for those matters set forth in the covenant not to sue, section IX, Paragraph 1, as provided in section 122(g)(5) of CERCLA, 42 U.S.C. 9622(g)(5), and shall have satisfied his liability for those matters within the meaning of Section 107(a) of CERCLA, 42 U.S.C. 9607(a).

XII. Public Comment

This Consent Decree shall be subject to a thirty-day public comment period. The United States may withdraw consent to this Consent Decree if comments received disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate.

XIII. Effective Date

The effective date of this Consent Decree shall be the date of entry by this Court, following public comment pursuant to Section XII of this Consent Decree.

The United States of America

[Defendant]
By: _____
By: _____

SO ORDERED this _____ day of _____, 19__.

[Name]

[Date]

[FR Doc. 89-19466 Filed 8-17-89; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Maryland Port Administration Terminal Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200276.
Title: Maryland Port Administration Terminal Agreement.
Parties:
Maryland Port Administration (MPA)
Polish Ocean Lines, Inc. (POL)
Synopsis: The Agreement provides for POL's use of 9.02 acres, in Area 403, at MPA's Dundalk Marine Terminal. POL will: pay MPA $1,917.00 per acre per month; and, guarantee MPA a minimum of 12,500 gross cargo tons per month by direct liner service to the Port of Baltimore. The Agreement will be on a month-to-month basis for a term of six months pending the final negotiations of a long term lease between the parties.

Agreement No.: 224-010968-003.
Title: Maryland Port Administration Terminal Agreement.
Parties:
Maryland Port Administration
Hapag Lloyd AG/Atlantic Division
Synopsis: The Agreement amends the basic agreement (Agreement No. 224-010968). It provides that the agreement will be on a month-by-month basis for a term of three months pending the final negotiations of a long term lease between the parties.

By Order of the Federal Maritime Commission.

Dated: August 14, 1989.

Joseph C. Polking,
Secretary.

[FR Doc. 89-19394 Filed 8-17-89; 8:45 am]
BILLING CODE 6730-01-M

Port of New Orleans and Port of Oakland; Terminal Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200060-009.
Title: Port of New Orleans Terminal Agreement.
Parties:
Port of New Orleans
Coastal Cargo Company
Synopsis: The Agreement amends the basic agreement by rescinding a previous amendment that would have deleted sections 81 through 90 of the Galvez Street Wharf lease from the basic agreement, Agreement No. 224-200060.

Agreement No.: 224-010600-001.
Title: Port of New Orleans Terminal Agreement.
Parties:
Port of New Orleans (City)
Ceres Gulf, Inc.
Synopsis: The Agreement provides for a five year extension of the Agreement through July 12, 1994.

Agreement No.: 224-200274.
Title: Port of Oakland Terminal Agreement.
Parties:
Port of Oakland (Port)
Pasha Properties, Inc. (Pasha)
Synopsis: The Agreement provides for an arrangement whereby the Port assigns to Pasha the responsibility for the management, terminal operation and cargo solicitation services at Berths 10, 11, and 12 of the Port's Outer Harbor Terminal. The provision shall be used for berthing vessels and loading/discharging of cargoes. As compensation, Pasha will pay the Port $9,851.00 per month until January 31, 1990, and thereafter tariff revenue from dockage, wharfage, wharfage demurrage and storage, or $50,878 per month, subject to guaranteed minimum annual compensation of $671,595.00 for the year ending January 31, 1991.

Agreement No.: 224-200-157-001.
Title: Port of Oakland Terminal Agreement.
Parties:
Port of Oakland (Port)
Marine Terminals Corporation (MTC)
Synopsis: The Agreement provides for reimbursement of a portion of MTC's costs in making certain repairs to the premises assigned MTC in the Port's Ninth Avenue Terminal Area.

By Order of the Federal Maritime Commission.

Dated: August 11, 1989.

Joseph C. Polking,
Secretary.

[FR Doc. 89-19397 Filed 8-17-89; 8:45 am]
BILLING CODE 6730-01-M

Turkey/United States Atlantic and Gulf Rate Agreement Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-011207-001.
Title: Turkey/United States Atlantic and Gulf Rate Agreement.
Parties:
Farrell Lines, Inc.
Lykes Bros. Steamship Co., Inc.
Pharos Lines, S.A.
Synopsis: The proposed modification adds new provisions for the terms and conditions for associate membership to the Agreement.

By Order of the Federal Maritime Commission.

Dated: August 11, 1989.

Joseph C. Polking,
Secretary.

[FR Doc. 89-19396 Filed 8-17-89; 8:45 am]
BILLING CODE 6730-01-M

United States/Middle East and Indian Subcontinent Discussion Agreement Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011239-001.

Title: United States/Middle East Indian Subcontinent Discussion Agreement.

Parties:

The "8900" Lines
The West Coast/Middle East and West Asia Rate Agreement
American President Lines, Ltd.
A.P. Moller-Maersk Line
National Shipping Company of Saudi Arabia
Sea-Land Service, Inc.
Thames Shipping Ltd.
United Arab Shipping Company (S.A.G.)
Waterman Steamship Corporation

Synopsis: The proposed modification would clarify that the separate tariffs of the individual Parties will be the tariffs of this Agreement.

By Order of the Federal Maritime Commission.

Dated: August 14, 1989.

Joseph C. Polking,
Secretary.

[FR Doc. 89-19395 Filed 8-17-89; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Dentel Bancorporation Victor, IA; Notice to Acquire Bank Holding Company; Correction

This notice corrects a previous Federal Register notice (FR 89-14084) published at page 28842 of the issue for Monday, June 26, 1989.

Under the Federal Reserve Bank of Chicago, the entry for Dentel Bancorporation is amended to read as follows:

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 LaSalle Street, Chicago, Illinois 60690:

1. *Dental Bancorporation,* Victor, Iowa; to acquire 20 percent of the voting shares and 100 percent of the preferred shares of Colfax Bancshares, Inc., Colfax, Iowa, and thereby indirectly acquire The First National Bank in Colfax, Colfax, Iowa.

Comments regarding this application must be received at the Federal Reserve Bank of Chicago or the offices of the Board of Governors not later than September 5, 1989.

Board of Governors of the Federal Reserve System, August 14, 1989.

William W. Wiles,
Secretary of the Board.

[FR Doc. 89-19429 Filed 8-17-89; 8:45 am]
BILLING CODE 6210-01-M

Premier Bancorp, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c) (8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 1, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW. Atlanta, Georgia 30303:

1. *Premier Bancorp, Inc.,* Baton Rouge, Louisiana; to engage *de novo* through its subsidiary, Florida Street National Bank, Baton Rouge, Louisiana, a limited purpose *de novo* bank in voluntary liquidation, in servicing loans pursuant to § 225.25(b)(1); and operating a collection agency pursuant to § 225.25(b)(23) of the Board's Regulation Y. These activities will be conducted in the State of Louisiana.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation,* Los Angeles, California, and Security Pacific Bancorporation Northwest, Seattle, Washington; to engage *de novo* through their subsidiary, Security Pacific Investments, Inc., Seattle, Washington, in dealing in the obligations of the United States, general obligations of states and their political subdivisions, including, but not limited to participating in the sale of securities underwritten by Security Pacific Bank Washington, N.A., and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24 and 335, including bankers acceptances and certificates of deposit, under the same limitations as would be applicable if the activity were performed by the bank holding company's subsidiary member banks or its subsidiary nonmember banks as if they were member banks, pursuant to § 225.25(b)(16) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 14, 1989.

William W. Wiles,
Secretary of the Board.

[FR Doc. 89-19430 Filed 8-17-89; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 919]

Resident Research Associateship Program

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for a cooperative agreement for the Resident Research Associateship Program with the National Academy of Sciences.

Authority

This program is authorized under Section 301 of the Public Health Service Act, 42 U.S.C. 241, as amended.

Eligible Applicant

Assistance will be provided only to the National Academy of Sciences/National Research Council (NAS/NRC). No other applications are solicited or will be accepted.

The NAS/NRC is a unique institution because of its ability to assemble the best scientific talent in the country and to apply study procedures that ensure objectivity and maximal credibility.

Created by a Congressional charter in 1863, the National Academy of Sciences is a private honorary society dedicated to the furtherance of science and the use of science for the general welfare. The Academy established the National Research Council (NRC) in 1916 as a means for securing the active participation of specialists from universities, the industry, and the government in the Academy's work. The NRC is charged with the administration of the Resident Research Associateship Program (RRAP).

Because of the unique abilities of NAS/NRC as an unbiased source of technical and scientific expertise in the fields of public health sciences and public health, it is the only organization capable of carrying out the activities contemplated under this cooperative agreement.

Availability of Funds

Approximately $1,000,000 is available in Fiscal Year 1989 to fund this award. It is expected that the award will begin on or about September 28, 1989, for a 12-month budget period within a project period of 1 to 5 years. Funding estimates may vary and are subject to change. Continuation awards within an approved project period will be made on the basis of satisfactory progress and availability of funds.

Purpose

The purpose of this cooperative agreement is to assist the NAS/NRC in the continuation of a postdoctoral research associateship program which emphasizes molecular biology related to infectious disease prevention and control.

Program Requirements

The specific Cooperative Activities, Application Content and Evaluation Criteria are set forth in the application kit.

E.O. 12372 Review

Applications are not subject to review as governed by Executive Order 12372 (45 CFR Part 100), "Intergovernmental Review of Federal Programs."

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 13.283.

Application Submission and Deadline

The National Academy of Science has been notified of the availability of funds for this project and must submit an original and two copies of the application Form PHS 5161-1 (Rev. 3/89) to Edwin L. Dixon, Grants Management Officer, Centers for Disease Control, Procurement and Grants Office, 255 East Paces Ferry Road, N.E., Room 300, Atlanta, Georgia 30305.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please reference Announcement Number 919, entitled "Resident Research Associateship Program," and contact the following:

Business: Marsha A. Jones, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, telephone (404) 842-6640 or FTS 236-6640.

Technical: Joseph E. McDade, Ph.D., Assistant Director for Laboratory Science, Center for Infectious Diseases, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 639-3967 or FTS 236-3967.

Dated: August 14, 1989.

Robert L. Foster,
Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 89-19433 Filed 8-17-89; 8:45 am]
BILLING CODE 4160-18-M

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Boston District Office, chaired by Edward J. McDonnell, District Director. The topic to be discussed is an open forum on acquired immunodeficiency syndrome (AIDS), in conjunction with ACT UP of Provincetown, MA.

DATES: Friday, August 25, 1989, 7:30 p.m. to 9:30 p.m.

ADDRESSES: Provincetown Town Hall, Commercial St., Provincetown, MA 02657.

FOR FURTHER INFORMATION CONTACT: Paula B. Fairfield, Consumer Affairs Officer, Food and Drug Administration, One Montvale Ave., Stoneham, MA 02180, 617-279-1479.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: August 15, 1989.

Alan L. Hoeting,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-19566 Filed 8-16-89; 11:26 am]
BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (Federal Register, Vol. 51, No. 201, dated Friday, October 17, 1986, Federal Register, Vol. 50, No. 198, dated Friday, October 11, 1985, Federal Register, Vol. 49, No. 133, dated Tuesday, July 10, 1984, Federal Register, Vol. 48, No. 196, dated Wednesday, October 12, 1983, and Federal Register, No. 223, dated Thursday, November 19, 1981) is amended to update organizational titles and functional statements within the Bureau of Policy Development (BPD), Office of the Associate Administrator

for Program Development. The amendments replace the word "reimbursement" with the word "payment" in the organization titles and in the functional statements within BPD. These changes will more accurately reflect the responsibilities of the Bureau.

The specific changes to Part F. are described below:

• Section FQ.10 The Office of the Associate Administrator for Program Development (FQ) (Organization) is deleted in its entirety and replaced by the following:

FQ. Office of the Associate Administrator for Program Development (FQ)

A. Bureau of Policy Development (FQA)
B. Office of Research and Demonstrations (FQB)

• Section FQ.10.A.4. The Office of Reimbursement Policy (FQA5) (Organization) is deleted in its entirety and replaced by the following:

4. Office of Payment Policy (FQA5)

a. Division of Medical Services Payment (FQA54)
b. Division of Alternative Payment Systems (FQA55)
c. Division of Hospital Payment Policy (FQA56)
d. Division of Payment and Reporting Policy (FQA58)
e. Division of Dialysis and Transplant Payment Policy (FQA59)

• Section FQ.20.A.4., The Office of Reimbursement Policy (FQA5) is deleted in its entirety and replaced with the following section. Section FQ.20.A.4. now reads:

4. Office of Payment Policy (FQA5)

Establishes national program policy on all issues of Medicare or Medicaid payment including provider payment policy, provider accounting and audit policy, and physician and medical services payment policy. Develops, evaluates, and maintains regulations, policies, and standards for payments to hospitals for inpatient services under the prospective payment system. Coordinates with and reviews recommendations from the Prospective Payment Assessment Commission. Develops payment policy for alternative forms of health care delivery such as health maintenance organizations, rural health clinics, hospices, prepaid health plans, comprehensive health centers, ambulatory surgery centers, and kidney dialysis centers. Establishes payment policies as they apply to the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) and the End-Stage Renal Disease (ESRD) Programs. Develops cost analysis systems policies for the ESRD Program, conducts ongoing analysis of cost payment data, and provides input of a payment nature to the Annual Report to Congress on the ESRD Program. Reviews requests for exceptions to payment limitations and recommends approval or disapproval. Establishes policy for implementing payment controls and cost containment programs. Establishes policy pertaining to the Federal Financial Participation in State Medicaid administrative costs and third-party liability collection procedures. Maintains liaison with interested professional groups, States, intermediaries, and Departmental components on issues related to payment. Participants in the development and evaluation of proposed legislation in the area of health care payment. Develops policies related to the maximum allowable cost program for multiple source drugs and the development of reasonable charges for physician and medical services payment.

• Section FQ.20.A.4.a., Division of Medical Services Reimbursement (FQA54), is deleted in its entirety and replaced by the following:

a. Division of Medical Services Payment (FQA54)

Formulates and evaluates national policies and standards for Medicare and Medicaid payment and fiscal standards for physician services, practitioner services, pharmaceuticals, supplies and equipment such as hearing aids, eyeglasses, durable medical equipment, and other medical services. Develops policies related to the maximum allowable cost program for multiple source drugs and the development of reasonable charges for physician and medical services payment. Drafts program regulations, manuals, guidelines, and other general instructions related to medical services payment. Coordinates with other HCFA bureaus, divisions, and offices, the Social Security Administration, and other Department components in the development of payment policies for medical services. Participates in the development and evaluation of proposed legislation in the area of medical services payment and recommends alternatives to current methods of payment. Provides interpretations of established policies and technical assistance to Departmental and HCFA components, regional offices, State agencies, and carriers.

• Section FQ.20.A.4.b., Division of Alternative Reimbursement Systems (FQA55), is deleted in its entirety and replaced by the following:

a. Division of Alternative Payment Systems (FQA55)

Assumes the primary responsibility within HCFA in formulating and evaluating policies for the payment of alternative methods of health service delivery requiring special methods of cost finding and apportionment. Establishes policies and principles for reimbursing services furnished in ambulatory care settings such as health care prepayment plans, health maintenance organizations, prepaid health plans, nonprovider-based comprehensive health centers, hospices, and rural health clinics. Analyzes and approves payments to be made to hospitals for inpatient hospital services under State payment control systems rather than systems provided for by Medicare. Formulates and evaluates policies and procedures related to hospitals and long-term care activities including approval and verification of methodologies used by the States to determine payment to hospitals, skilled nursing facilities, and intermediate care facilities under medical assistance plans. Serves as the focal point in the Bureau for the coordination of alternative payment and long-term care issues. Develops policies and procedures on Federal Financial Participation in State administrative costs relating to alternative payment or comprehensive health planning activities. Prepares regulations, manuals, program guidelines, and other general instructions related to these policies. Reviews policies developed by other components for their impact on alternative delivery systems and alternative payment for hospitals and long-term care. Conducts studies on the impact of alternative modes of health care delivery on health care payment. Provides interpretations of established policies to regional offices, State agencies, fiscal intermediaries, suppliers of services, congressional staffs, and other Departmental offices. Provides technical assistance to regional offices, States, and intermediaries. Participates in the development and evaluation of proposed legislation pertaining to alternative delivery of payment systems and long-term care services. Reviews Medicaid State plan waivers requested under Section 1915 of the Social Security Act.

• Section FQ.20.A.4.c., Division of Hospital Payment Policy (FQA56), is deleted in its entirety and replaced by the following:

c. Division of Hospital Payment Policy (FQA56)

Develops evaluates, and maintains regulations, policies and standards for payments to hospitals for inpatient services under the prospective payment system (PPS). Develops, evaluates, and maintains policies pertaining to the determination of appropriate amounts of prospective payments to hospitals for services furnished to inpatients. Works with the Prospective Payment Assessment Commission on PPS and reviews the commission's recommendations on and basis for rates of payments. Develops, evaluates, and maintains policies pertaining to the appropriate methods for determining the amount of payments for cost items associated with inpatient hospital services but not yet within the prospective payment rates and develops policies for bringing such excepted cost items under PPS. Develops, evaluates, and maintains policies for determining and applying rates of increase and limitations to the costs of hospitals for services furnished to inpatients. Develops, evaluates, and maintains methods for classifying hospitals and hospital services to inpatients, including sole community hospitals, for the purpose of applying rates of increase and limitations on hospitals' costs and for determining prospective payments to hospitals. Develops, evaluates, and maintains criteria for exceptions to the established rates of increase and limitations of hospitals' costs for inpatient services and reviews fiscal intermediaries' recommendations on hospitals' requests for exceptions. Prepares regulations, program guidelines, and instructions related to PPS and those excepted items or adjustments to the system that are paid on a cost-payment basis to hospitals for inpatient services. Works with other offices in the Bureau, HCFA, the Department, and the Prospective Payment Assessment Commission to improve hospital efficiency and reduce Medicare expenditures. Reviews policies and operational guidelines and instructions developed by other components for their impact on the policies governing PPS and limitations on payment for hospital services to inpatients. Participates in the development and evaluation of proposed legislation pertaining to PPS and cost containment for hospital services to inpatients. Provides interpretations of established policies and other policy and technical assistance to regional offices, State agencies, Medicare contractors, hospitals, hospital associations, congressional staff, Departmental offices, and others on policy issues relating to PPS and cost containment policies for hospital inpatient services. Assists in the Administration's professional relations and public information activities to foster understanding and acceptance of the PPS.

• Section FQ.20.A.4.e., Division of Payment and Reporting Policy (FQA58), is deleted in its entirety and replaced by the following functional statement. Sections e. and f. are being renumbered as sections d. and e. Section d. had been previously deleted.

d. Division of Payment and Reporting Policy (FQA58)

Develops and evaluates national policies, regulations, and standards for payment of the costs incurred by providers of services including hospitals not under the Prospective Payment System (PPS) and other classes of providers under both the health insurance and medical assistance programs. Collaborates in and coordinates the development of overall payment policies involving prospective payment and cost payment. Ensures that interrelated policies are consistent. Directs the planning and analysis of Medicare payment initiatives including studies and recommendations for solutions to program related problems. Evaluates the effectiveness of general payment policies in meeting the goals and objectives of HCFA. Evaluates and interprets policy issues and initiatives that cross Division lines, such as PPS under Medicare and State cost control systems. Provides technical and advisory services to HCFA, the Department, officials at the policymaking level, and to officials with similar authority within the executive branch, congressional committees, individual congressmen, and private organizations interested in HCFA's payment policies. Initiates and collaborates in the development and review of legislative proposals on general Medicare and Medicaid payment policies, interprets law (considering intent), and develops policy directives and basic payment policy decision statements which derive from such applicable law and which are reflective of the minimum requirements of such law (i.e., the broad parameters). Develops detailed payment specifications which constitute the basis for regulations promulgating payment policies and pertinent public notices. Reviews and evaluates written regulations to be certain they are technically complete and accurately reflect specifications as developed. Develops and issues implementing instructions consistent with overall payment policy, directives and specifications applicable to Medicare. Reviews alternative payment and rate-setting systems for potential adaptation to the health insurance and medical assistance programs. Compiles materials, reports, and decisions memoranda and makes recommendations for action by principal administrative policymakers and congressional staff on Federal health care programs. Establishes policies, principles and guidelines related to circumstances requiring atypical payment practices. Plans, develops, and maintains a continuing program of surveillance and evaluation of HCFA auditing, accounting practices, general payment policy, and billing procedures at Central Office, regional intermediary, and carrier levels which impact on Office functions in order to identify emerging problems and to develop and promulgate corrective policies and procedures. Collaborates with other components in maintaining consistency among the various payment activities conducted with the Office. Formulates and evaluates national policies for all Medicare and Medicaid program provider financial filing and reporting requirements. Develops policies pertaining to the use of all reporting forms, schedules, and related instructions necessary for reimbursing health care institutions. Receives and analyzes all reported expense data from providers and health care facilities and serves as a source of information on payment data for HCFA and the Department. Develops policies, pertaining to the validity of accounting and audit policies and procedures. Develops and maintains a system of internal controls for the validation of policy decisions. Provides interpretations of overall cost and charge payment policies to regional offices, State agencies, Medicare contractors, providers of services, other health care facilities, congressional staffs, other Departmental offices, and others. Identifies problem areas and develops solutions to such problems, as appropriate. Maintains continuing liaison with Medicare contractors' advisory groups, provider associations, the American Institute of Certified Public Accountants, and others. Chairs the Technical Advisory Group. Develops policies related to accounting and auditing of provider costs and policies for assisting States in implementing programs for auditing institutions participating in Medicare assistance programs. Provides technical assistance

BEST COPY AVAILABLE

to regional offices, Medicare contractors, and State agencies on the application of cost-based data reporting requirements and policies and procedures for cost accounting and audit. Formulates and evaluates national policies governing payment of skilled nursing facilities (SNFs), home health agencies (HHAs), hospital outpatient departments, outpatient physical therapy facilities, and comprehensive outpatient rehabilitiation facilities under the health insurance program and the medical assistance plans. Develops policies pertaining to determining the reasonable costs and charges, where appropriate, for the services of these providers and facilities. Prepares and evaluates regulations, program guidelines, and instructions for providers, Medicare contractors, and State agencies related to payment for the services of these providers and facilities. Formulates the basic principles and policies for developing and applying limitations to the costs of health care. Develops methods for classifying SNFs and HHAs and their service for the purpose of developing effective limitations. Develops and evaluates the criteria for exceptions to the limitations and reviews and makes decisions on the intermediary recommendations on providers' requests for exceptions. Analyzes cost data, develops actual limitations which will be applied to health care costs, promulgates required notices of limitations and issues companion instructions and policies needed to implement the limitations. Works with other offices of the Department in developing changes in the cost payment system which are designed to improve provider efficiency through the use of financial incentives or penalties. Reviews policies and operational guidelines and instructions developed by other components for their impact on payment and cost containment policies for these providers and facilities. Provides interpretations of established policies and technical assistance on the application of payment and cost limit policies to regional offices, State agencies, Medicare contractors, providers of services and health care facilities, congressional staff, and other Departmental offices. Maintains continuing liaison with provider associations and others. Participates in the development and evaluation of proposed legislation pertaining to payment and cost containment for these providers and facilities. Provides centralized data extraction, maintenance, and analysis services for the Office. Provides data and/or analysis to other HCFA components on request.

• Section FQ.20.A.4.f., Division of Dialysis and Transplant Payment Policy (FQA59), is deleted in its entirety and replaced by the following functional statement at Section FQ.20.A.4.e.:

e. Division of Dialysis and Transplant Payment Policy (FQA59)

Formulates and evaluates policies for reimbursing services under the End-Stage Renal Disease (ESRD) program. Establishes policies and procedures for reimbursing ESRD services, transplantation, physician payment, kidney acquisition including payments, organ procurement, histocompatibility services, home and self-dialysis training, and other medical items and services related to the ESRD program. Serves as the focal point in HCFA for coordinating ESRD policies that frequently cross Bureau lines. Prepares regulations, manuals, program guidelines, and other general instructions in these policy areas. Formulates and evaluates accounting policy for payments through ESRD delivery systems. Established policies, procedures, and criteria for reimbursing payment exceptions for ESRD facilities. Processes such requests and determines which ESRD facilities should be granted exceptions to national payment rates. Analyzes payment data, develops payment rates for ESRD services, and updates rates. Develops and performs professional evaluation of payment data for rate setting, exceptions processing, and program evaluation. Provides technical assistance in the development of cost reporting and audit programs for ESRD facilities. Provides liaison with the Veterans' Administration and other insurers of dialysis and transplant services. Conducts special studies and reviews of ESRD payment as necessary for rate setting and program evaluation purposes. Maintains continuing liaison with ESRD provider groups, industry associations, patient organizations, medical associations, and related parties. Reviews policies developed by other components for their impact on the ESRD program. Provides interpretations of established policies to regional offices, State agencies, fiscal intermediaries, suppliers of services, congressional staff, and other Departmental offices. Provides technical assistance to regional offices, States, and intermediaries. Participates in the development and evaluation of proposed legislation pertaining to the ESRD program and organ transplant issues. Formulates and evaluates national policies governing payment of ambulatory surgical centers under the health insurance program and the medical assistance plans. Develops policies pertaining to determining the reasonable costs and charges, where appropriate, for the services of these facilities. Prepares and evaluates regulations, program guidelines, and instructions for providers, Medicare contractors, and State agencies related to payment for the services of these facilities. Formulates the basic principles and policies for developing and applying limitations to the costs of health care. Reviews policies and operational guidelines and instructions developed by other components for their impact on payment and cost containment policies for these facilities. Provides interpretations of established policies and technical assistance on the application of payment and cost limits policies to regional offices, State agencies, Medicare contractors, providers of services and health care facilities, congressional staff, and other Departmental offices. Maintains continuing liaison with provider associations and others. Participates in the development and evaluation of proposed legislation pertaining to payment and cost containment for these facilities.

Dated: August 7, 1989.

Louis B. Hays,

Acting Administrator.

[FR Doc. 89-19412 Filed 8-17-89; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

National Cancer Institute; Meeting (President's Cancer Panel)

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, October 13, 1989, at the Stanford University School of Medicine, Sherman Fairchild Auditorium, Stanford, CA 94305.

This meeting will be open to the public on October 13 from 9:00 a.m. to 12:30 p.m. Attendance will be limited to space available. Agenda items will include reports by the Chairman, President's Cancer Panel, the Director, NCI, members of the staff of the College and others.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A29, National Institutes of Health, Bethesda, Maryland 20892 (301/496-1148) will provide a roster of the Panel members, and substantive program information upon request.

Dated: August 8, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-19410 Filed 8-17-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Meeting of Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on October 25-26, 1989, at the Sheraton Potomac Hotel, 3 Research Court, Rockville, Maryland 20850.

The meeting will be open to the public from 8:30 a.m. to 9:10 a.m. on October 25, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting of the Allergy and Clinical Immunology Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:10 a.m. until recess on October 25, and from 8:30 a.m. until adjournment on October 26. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Kamal K. Mittal, Executive Secretary, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Westwood Building, Room 3A07, Bethesda, Maryland 20892, telephone (301-496-3528), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: August 8, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-19441 Filed 8-17-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Meeting of Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on October 18, 1989, at the Sheraton Potomac Hotel, 3 Research Court, Rockville, Maryland 20850.

The meeting will be open to the public from 8:30 a.m. to 9:15 a.m. on October 18, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting of the Transplantation Biology and Immunology Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:15 a.m. on October 18, until adjournment. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning associated with the application and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Kamal K. Mittal, Executive Secretary, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Westwood Building, Room 3A07, Bethesda, Maryland 20892, telephone (301-496-3528), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: August 8, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-19445 Filed 8-17-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Meeting of Basic Sciences I Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Basic Sciences I Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee, National Institute of Allergy and Infectious Diseases, on September 18, 1989, at the Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

The meeting will be open to the public from 8:30 a.m. to 9:30 a.m. on September 18, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting of the Basic Sciences I Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:30 a.m. until adjournment on September 18. These applications, proposals, and discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Geoffrey P. Cheung, Ph.D., Executive Secretary, Acquired Immunodeficiency Syndrome Research Review Committee, NIAID, NIH,

Westwood Building, Room 3A07, Bethesda, Maryland 20892, telephone (301-496-7465), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: August 8, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-19447 Filed 8-17-89; 8:45 am]

BILLING CODE 4140-01-M

National Institutes of Diabetes and Digestive and Kidney Diseases; Meeting, National Kidney and Urologic Diseases Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on September 14-15, 1989, from 8:30 a.m. to approximately 4:30 p.m. each day at the Holiday Inn Crowne Plaza, 300 Army Navy Drive, Arlington, Virginia 22202. The meeting, which will be open to the public, is being held to discuss the Board's activities and the development of the long-range plan to combat kidney and urologic diseases. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: August 9, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-19411 Filed 8-17-89; 8:45 am]

BILLING CODE 4140-01-M

National Center for Nursing Research; Meeting: National Advisory Council for Nursing Research: Steering Committee for the National Nursing Research Agenda

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Steering Committee for the National Advisory Council for Nursing Research, National Center for Nursing Research, September 14, 1989, from 1:30 p.m. to 5:00 p.m. in Building 31, Conference Room 6, on the NIH campus in Bethesda, Maryland.

This meeting will be open to the public. The agenda will include an update on the National Nursing Research Agenda and planning for its evaluation.

Attendance by the public will be limited to space available.

Dr. Doris Bloch, Executive Secretary, Steering Committee, National Nursing Research Agenda, National Advisory Council for Nursing Research, National Institutes of Health, Building 31, Room 5B03, Bethesda, Maryland 20892, (301) 496-0207, will provide a summary of the meeting, roster of steering committee members, and substantive program information upon request.

Dated: August 10, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-19446 Filed 8-17-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Deafness and Other Communication Disorders; Meeting of Deafness and Other Communication Disorders Advisory Council

Pursuant to Public Law 92-463, notice is hereby given of the first meeting of the National Deafness and Other Communication Disorders Advisory Council on September 18, 1989. The meeting will take place from 8:30 a.m. to 5:00 p.m. in the Bethesda Marriott at Pooks Hill.

The morning portion of the meeting will be open to the public and will include introduction of new Advisory Council members and a report from the Acting Director of the National Institute on Deafness and Other Communication Disorders (NIDCD). Attendance by the public will be limited to space available.

In accordance with the provisions set forth in § 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public on September 18 from 1:00 P.M. to adjournment for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosures of which could constitute a clearly unwarranted invasion of personal privacy.

The Acting Executive Officer, Geoffrey Grant, NIDCD, Building 31, Room 1B62, Bethesda, Maryland 20892, (301) 496-7243, will furnish the meeting agenda, rosters of council members, and substantive program information upon request.

Dated: August 8, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-19448 Filed 8-17-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environment Health Science; Meeting of National Advisory Environmental Health Sciences Council, September 19-20, 1989, at the National Institute of Environmental Health Sciences Council

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, September 19-20, 1989, at the National Institute of Environmental Health Sciences, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina.

This meeting will be open to the public on September 19 from 9 a.m. to approximately 2 p.m. for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public September 19, from approximately 2 p.m. to adjournment on September 20, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, Rm. 2B55, NIH, Bethesda, Md. 20892 (301) 496-3511, will provide summaries of the meeting and rosters of council members.

Dr. Anne Sassaman, Director, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541-7723, FTS 629-7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and

Manpower Development, National Institutes of Health)

Dated: August 8, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-19449 Filed 8-17-89; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Meetings of the Board of Regents and Subcommittees

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on October 5-6, 1989, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland. The Subcommittees will meet on October 4 as follows:

Research and Development and Planning Subcommittees, 7th-floor Conference Room, Building 38A, 3:30 p.m. to approximately 4:30 p.m.; and the Extramural Programs Subcommittee, 5th-floor Conference Room, Building 38A, 2 p.m. to 3:30 p.m. All, but the Extramural Programs Subcommittee, will be open to the public.

The meeting of the Board will be open to the public from 9 a.m. to approximately 5 p.m. on October 5 and from 9 a.m. to approximately 11:00 on October for administrative reports and program discussions. Attendance will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4), 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the entire meeting of the Extramural Programs Subcommittee on October 4 will be closed to the public, and the regular Board meeting on October 5 will be closed from approximately 11:00 to adjournment of the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301-496-6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: August 8, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-19450 Filed 8-17-89; 8:45 a.m.]

BILLING CODE 4140-01-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance package have been submitted to OMB since the last list was published in the Federal Register on August 4, 1989.

Social Security Administration

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

1. *State Contribution Return*—0960-0041—The information collected on the form SSA-3961 is used by the Social Security Administration to identify and account for all contributions due and paid by the States under section 218 of the Social Security Act. The respondents are State agencies.

Number of Respondents: 117
Frequency of Response: 85
Average Burden Per Response: 3 minutes
Estimated Annual Burden: 500 hours

2. *Statement of Funds You Received/ Provided* (SSA-2854/2855)—New—The information collected on these forms will be used by the Social Security Administration to verify an allegation that a claimant for Supplemental Security Income payments has borrowed money on an informal basis. If the alleged loan is determined to be bona fide, the proceeds are not considered income to the claimant.

Number of Respondents: 40,000
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 6,667 hours

3. *Modified Benefit Formula Questionnaire.*—0960-0395—The information collected on the form SSA-150 is used by the Social Security Administration to determine the correct formula to be used in computing the Social Security benefit of someone who also receives a benefit from employment not covered by Social Security.

Number of Respondents: 90,000
Frequency of Response: 1
Average Burden Per Response: 4 minutes
Estimated Annual Burden: 6,000 hours

4. *Child Relationship Statement*—0960-0116—The information collected on the form SSA-2519 is used by the Social Security Administration to determine the entitlement of children to Social Security benefits under the deemed relationship provision.

Number of Respondents: 50,000
Frequency of Response: 1
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 12,500 hours

5. *Application for Survivors Benefits*—0960-0062—The information collected on the form SSA-24 is used by the Social Security Administration to satisfy the "jointly prescribed application" provision of Title 38 U.S.C. 3005. That provision requires that survivors who file with either the Social Security Administration (SSA) or the Veterans Administration (VA) shall be deemed to have filed with both agencies, and that each agency's forms must request sufficient information to constitute an application for both SSA and VA benefits.

Number of Respondents: 3,200
Frequency of Response: 1
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 800 hours

OMB Desk Officer: Justin Kopca

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: August 14, 1989.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 89-19480 Filed 8-17-89; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Regional Administrator Regional Housing Commissioner

[Docket No. D-89-903]

Acting Manager, Region IV (Atlanta); Designation for Memphis Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Memphis Office.

EFFECTIVE DATE: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Henry E. Rollins, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 634, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303-3388, 404-331-5199.

Designation of Acting Manager for Memphis Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all other employees whose titles precede his/hers in this designation are unable to serve by reason of absence:

1. Deputy Manager
2. Chief, Valuation Branch
3. Chief, Mortgage Credit Branch

This designation supersedes the designation effective June 29, 1988, (53 FR 28918 August 1, 1988). (Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3388, February 23, 1971)).

This designation shall be effective as of July 24, 1989.

Michael F. Dalton,

Acting Manager, Memphis Office.

Raymond A. Harris,

Regional Administrator, Regional Housing Commissioner, Office of the Regional Administrator.

[FR Doc. 89-19495 Filed 8-17-89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-010-09-4320-02]

Boise District Advisory Council; Meeting

AGENCY: Boise District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Boise District Advisory Council will meet August 29 to discuss the proposed expansion of the Saylor Creek Bombing Range in the district's Jarbidge and Owyhee Resource Areas. Time permitting, the council will also discuss maintenance of the Gem Motorcycle Park in the Cascade Resource Area, and juniper management in the Owyhee Resource Area.

DATE: The meeting will begin at 9:00 a.m. on Tuesday, August 29. It will be held in the district office conference room.

ADDRESSES: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Boise BLM District 208-334-9661.

Rodger E. Schmitt,

Associate District Manager.

[FR Doc. 89-19418 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-GG

[NV-930-09-4212-24; N-43266]

Partial Termination of Airport Lease Application Involving Lands in Clark County

Notice is hereby given that a portion of the lands involved in airport lease application N-43266, as described below, have been withdrawn.

Mount Diablo Meridian, Nevada

T. 13 S., R. 71 E.,
Sec. 4, lots 6, 11, SW¼NE¼, W½SE¼
Sec. 10, E½NW¼

The segregative effect of the airport lease application, as it pertains to the above-described lands only, is hereby removed upon publication of this notice in the Federal Register.

Dated: August 8, 1989.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 89-19457 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-HC

[NV-010-09-4320-02]

Meeting of the Elko District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Elko District Grazing Advisory Board Meeting.

A meeting of the Elko District Grazing Advisory Board will be held on September 14, 1989. The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management Office at 3900 E. Idaho St., Elko, Nevada 89801.

The Board will review:

1. Range improvement projects for Fiscal Years 1988 and 1990,
2. Proposed Allotment Management Plans, and
3. Proposed agreements and decisions, as well as other matters that may come before the Board.

The meeting is open to the public. Interested persons may make oral statements to the Board between 1:00 p.m. and 1:30 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, 3900 E. Idaho St., Elko, NV 89801 by September 7, 1989.

Rodney Harris,

District Manager.

[FR Doc. 89-19431 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-HC-M

[UT-060-09-4320-02]

Vernal District Grazing Advisory Board; Tour and Meeting

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Public Law 92-463, that a meeting of the Vernal District Grazing Advisory Board will be held Thursday, September 21, 1989 commencing at 8:00 a.m. The meeting will be held in the District Office Conference Room at 170 South 500 East, Vernal, Utah.

The agenda will include: A field tour of all winter use areas and riparian habitat and an office discussion of (1) drought conditions, (2) Elk use on Diamond Mountain, (3) Riparian Resource Grazing Management, (4) Diamond Mountain RMP, (5) Animal Damage Control, (6) Current grazing legislation, (7) FY 89 and 90 Range Improvement work and proposals, (8) Items from the public, if any.

The meeting is open to the public. Interested persons wishing to participate or present a statement should notify the District Manager at the above mentioned address or phone him at (801) 789-1362 no later than September 20, 1989.

Dated: August 10, 1989.

David E. Little,

Vernal District Manager.

[FR Doc. 89-19455 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-DQ-M

[NV-010-41-5410-10-ZFKD; N-49048]

Realty Action: Mineral Interest Application; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Receipt of Conveyance of Mineral Interest Application.

Notice is hereby given that pursuant to Section 209 of the Act of October 21, 1976, 90 Stat. 2757, Hegny Bros., a general partnership has applied for conveyance of the mineral estate described as follows:

Mount Diablo Meridian

T. 42 N., R. 57 E.,
Sec. 5, Lots 1, 3, 4, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼;
Sec. 6, Lot 1;
Sec. 9, S½SW¼;
Sec. 16, N½N½, SE¼NE¼, SW¼NW¼, S½.
T. 43 N., R. 57 E.,
Sec. 31, Lots 2-4, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 32, SW¼, W½SE¼.

Containing approximately 1749.880 acres.

Additional information concerning this application may be obtained from the Area Manager, Elko Resource Area, Elko District Office, 3900 E. Idaho St., Elko, NV 89801.

Upon publication of this notice in the Federal Register, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, January 27, 1990 whichever occurs first.

Dated: August 8, 1989.

Rodney Harris,

District Manager.

[FR Doc. 89-19434 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-HC-M

[UT-060-09-4212-14; U-51883]

Realty Action; Noncompetitive Sale of Public Land in Garfield County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, U-51883; Noncompetitive sale of public lands in Garfield County, Utah.

SUMMARY: The following public lands have been examined and found suitable for direct sale under Section 209 of the Federal Land Policy and Management Act of 1976, at not less than the appraised fair market value of $36,000.00. The lands will not be offered for sale until 60 days after date of publication of this notice.

Parcel and legal description	Acreage	FMV
1. T.31S., R.7 E., Salt Lake Meridian: Section 35: SE¼NW¼	40	$4,000
2. T.31S., R.8 E., Salt Lake Meridian:		
Section 19: SE¼SE¼	40	4,000
Section 30: E½E¼	160	16,000
SW¼SE¼	40	4,000
Section 31: NE¼NE¼	40	4,000
3. T.31S., R.8 E., Salt Lake Meridian:		
Section 20: NE¼NW¼	40	4,000
	960	$36,000

The public land described above is being offered by direct sale to Tercero Corporation. The public land is isolated, and is surrounded by land owned by Tercero Corporation. The public land is difficult and uneconomic to manage as part of the public lands system and is not suitable for management by another Federal department or agency.

Publication of this notice in the Federal Register segregates the above described public lands from all forms of appropriation under the public land laws and the mining laws. This segregation will end upon issuance of a patent to the lands, upon publication in the Federal Register of a notice terminating the segregation, or 270 days from the date of publication of this notice, whichever comes first.

Beginning December 1, 1989, any land not sold by direct sale will be reoffered for sale to the general public by competitive bidding. Bids will be accepted on a continuing basis until the land is sold or the sale is cancelled. The sale will be held on the first and third Wednesday of each month. Competitive sale will be by sealed bid only. No bid will be accepted for less than the appraised fair market value. Sealed bids for the unsold land will be accepted from 7:45 a.m. until 4:30 p.m. at the Richfield District Office, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701, with bid openings at 2 p.m. on the sale days.

DATE: For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Richfield District, at the address identified above. Any objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Terms and Conditions Applicable to the Sale: Any patent, when issued, will contain certain reservations to the United States and be subject to existing rights-of-way and other valid existing rights. These include, but are not limited to, the following:

1. All minerals, including oil and gas, shall be reserved to the United States together with the right to prospect for, mine and remove the minerals under applicable law and such regulations as the Secretary of the Interior may prescribe.

2. A right-of-way will be reserved to the United States for ditches and canals constructed under the authority of the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

3. A Garfield County Road established under principles of R.S. 2477.

SUPPLEMENTARY INFORMATION: Detailed information concerning the sale, including the reservations, procedures for and conditions of sale, and planning and environmental documents, are available for review at the Henry Mountain Resource Area, P.O. Box 99, Hanksville, Utah 84734, or by telephone at (801) 542-3461.

Dated: August 10, 1989

Sam Rowley,

Acting District Manager.

[FR Doc. 89-19437 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-DQ-M

[ID-943-09-4214-11; I-2509]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that a 30.00 acre withdrawal for the Towsley Springs Recreation Site, continue for an additional 30 years. The land is being used as a recreation site. These lands will remain closed to surface entry and mining, but has been and would remain open to mineral leasing.

EFFECTIVE DATE: Comments should be received on or before November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

The U.S. Forest Service proposes that the existing land withdrawal made by Public Land Order No. 4788, for the Towsley Springs Recreation Site, be continued for a period of 30 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as it affects the following described land:

Boise Meridian

T. 21 N., R. 3 W.
Sec. 13, E½NW¼NE¼SW¼, NE¼NE¼SW¼, W½NW¼NW¼SE¼, NE¼SW¼NE¼SW¼, N½SE¼NE¼SW¼ and NW¼SW¼NW¼SE¼.

The area described contains 30.00 acres in Adams County.

The withdrawal is essential for protection of substantial capital improvements on the Recreation Site. The withdrawal closed the described land to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 9, 1989.

William E. Ireland,

Chief Realty Operations Section.

[FR Doc. 89-19403 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-84-M

[ID-943-09-4214-11; I-010796 et al]

Proposed Continuation of Withdrawals; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service proposes that a 479.43 acres of land withdrawn for Recreation and Administrative Sites continue for an additional 50 years based upon the anticipated remaining useful life of the associated improvements. The land will remain closed to surface entry and mining, but has been and will remain open to mineral leasing.

EFFECTIVE DATE: Comments should be received on or before November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

The U.S. Forest Service proposes that the existing land withdrawals made by Public Land Order Nos. 1342, 3093 and Secretarial Order dated May 29, 1906, be continued for a period of 50 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as they affect the following described land:

Boise Meridian

(I-15472, SO 5/9/08)

T. 32 N., R. 7 E.
Sec. 23, lots 1 and 3 and SE¼NW¼.

(I-05778, PLO 1342)

Beginning at corner No. 8 of H.E.S. No. 242, T. 28 N., R. 10 E. (unsurveyed), by metes and bounds,
S. 1° 01' E., 396.0 ft.;
N. 52° 00' E., 3118.5 ft.;
N. 32° 00' E., 2062.5 ft.;
N., 820.0 ft.;
W., 329.0 ft.;
S. 51° 00' W., 1740.0 ft.;
S. 43° 00' W., 3393.0 ft.;
S. 20° 00' E., 666.4 ft.;
S. 66° 55' E., 33.0 ft. to corner No. 8, the place of beginning.

(I-010796, PLO 3093)

T. 27 N., R. 9 E.,
Sec. 3 and 4, unsurveyed.
T. 28 N., R. 9 E.
Sec. 34, unsurveyed.
T. 28 N., R. 10 E.,
Metes and Bounds description within sec. 19.

The areas described aggregate 479.43 acres in Idaho County.

The withdrawals are essential for protection of the Recreation and Administrative Sites involved. The withdrawals closed the land to surface entry and mining but not to mineral leasing. No change in the segretative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: August 9, 1989.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 89-19404 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-84-M

[ID-943-09-4214-11; I-67]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that 10.00 acre withdrawal for the Papoose Cave Area, continue for an additional 100 years. The land is now being used as a special recreation area. These lands will remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

EFFECTIVE DATE: Comments should be received November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

The U.S. Forest Service proposes that the existing land withdrawal made by Public Land Order No. 4222, for the Papoose Cave Area, be continued for a period of 100 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as it affects the following-described land:

Boise Meridian

T. 24 N., R. 1 W.

Sec. 27, S½NE¼NE¼SE¼ and N½SE¼NE¼SE¼.

The area described contains 10.00 acres in Idaho County.

The withdrawal is essential for protection of scientific and recreational values. The withdrawal closed the described land to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 9, 1989.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 89-19405 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Concession Contract Negotiations; Signal Mountain Lodge

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with Rex G. Maughan and Ruth G. Maughan dba Signal Mountain Lodge, Inc., authorizing it to continue to provide food service, lodging, gift and merchandising sales, gasoline, marina and fishing related facilities and services and a concession permit to provide Snake River float and fishing trips for the public at Signal Mountain at Grand Teton National Park, Wyoming for a period of fifteen (15) years from January 1, 1990, through December 31, 2004.

EFFECTIVE DATE: September 18, 1989.

ADDRESS: Interested parties should contact the Regional Director, Rocky Mountain Region, 12795 W. Alameda Pkwy, P.O. Box 25287, Denver, CO 80225-0287, for information as to the requirements of the proposed contract.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed by the Superintendent, Grand Teton National Park, Moose, Wyoming 83012, Telephone 307-733-2880.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1989, and therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. Sec. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR, Sec. 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the thirtieth (30th) day following publication of this notice to be considered and evaluated.

Dated: July 14, 1989.

Homer L. Rosen,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 89-19469 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-70-M

Concession Contract Negotiations

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with The Cavern Supply Company, Inc., authorizing it to continue to provide food services, souvenirs, merchandise, nursery, kennels, and parcel checking facilities and services for the public at Carlsbad Caverns National Park, New Mexico for a period of fifteen (15) years from January 1, 1990, through December 31, 2004.

EFFECTIVE DATE: October 17, 1989.

ADDRESS: Interested parties should contact the Superintendent, Carlsbad Caverns National Park, 3225 National Parks Highway, Carlsbad, New Mexico 88220, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed in the Superintendent's office, Carlsbad Caverns National Park.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1989, and therefore, pursuant to the provisions of Section 5 of the Act of October 9, 1965 [79 Stat. 969; U.S.C. 20], is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: August 8, 1989.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 89-19470 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-70-M

National Park System Advisory Board; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting of History Areas Committee of Advisory Board.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the History Areas Committee of the Secretary of the Interior's National Park System Advisory Board will be held at 9:00 a.m. at the following location and date.

DATE: September 11, 1989.

LOCATION: 1100 L Street, NW (2nd Floor Conference Room 2416), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Benjamin Levy, Senior Historian,

History Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Telephone (202) 343–8164.

SUPPLEMENTARY INFORMATION:

The purpose of the History Areas Committee of the Secretary of the Interior's National Park System Advisory Board is to evaluate studies of historic properties in order to advise the full National Park System Advisory Board meeting on October 18, 1989 of the qualifications of properties being proposed for National Historic Landmark designation, and to recommend to the full Board those properties that the Committee finds meet the criteria of the National Historic Landmarks Program. The members of the History Areas Committee are: Mr. Robert Burley, Chair, Dr. Holly Anglin Robinson, Dr. Alfonz Lengyel, Mrs. Anne Walker.

The meeting will include presentations and discussions on the national historic significance and the integrity of numerous properties being nominated for National Historical Landmark designation. These nominations include 16 properties being considered for an astronomy and astrophysics theme study located in California, District of Columbia, Illinois, Maryland, Massachusetts, New Jersey, Ohio, Pennsylvania, Vermont, West Virginia, and Wisconsin; 13 maritime resources located in California, Iowa, Maine, Maryland, Massachusetts, Michigan, Missouri, Ohio, and Oregon; archeological properties located in Mississippi and Oregon; a constitutional site in Connecticut; a recreation site in Missouri; and a Civil War site in Virginia.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Committee a written statement concerning matters to be discussed. Written statements may be submitted to the Senior Historian, History Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Minutes of the meeting will be available in the office of the History Division, National Park Service, WASO, for public inspection approximately 4 weeks after the meeting.

Dated: August 10, 1989.

Jerry L. Rogers,

Associate Director, Cultural Resources National Park Service, WASO.

[FR Doc. 89-19491 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31387 (Sub-No. 1)[1]]

Canadian National Railway Co., Lease From Grand Trunk Western Railroad Co.; Decision

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission is accepting for consideration the application, filed July 20, 1989, by Canadian National Railway Company to lease Grand Trunk Western Railroad Company's Railport intermodal facility in Chicago, IL. Pursuant to 49 CFR part 1180, the Commission finds this to be a minor transaction.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than September 18, 1989. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by October 2, 1989. Applicants' reply is due by October 23, 1989. Comments must be served on all parties of record within 10 days of the Commission's issuance of a service list. A revised list will be issued shortly thereafter.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

ADDRESSES: Send original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31387, (Sub-No. 1), Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy of all documents to the United States Secretary of Transportation, the Attorney General of the United States, and to applicants' representative:

Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 Seventh St., SW., Washington, DC 20590.

Attorney General of the United States, Washington, DC 20590.

Charles A. Spitulnik, Hopkins, Sutter, Hamel & Park, 888 Sixteenth Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: By application filed July 20, 1989, Canadian National Railway Company (CN) and Grand Trunk Western Railroad Company (GTW), collectively referred to as applicants, seek Commission approval under 49 U.S.C. 11343, *et seq.*, for CN to lease GTW's Railport intermodal facility (Railport) in Chicago, IL. In addition, the parties will enter into a "Haulage Agreement" providing for the operation of CN intermodal trains by GTW personnel over the GTW lines between Port Huron, MI, and Railport. The term of the lease is 3 years, with an option for a 3-year extension. Annual rental will be $227,280 payable in monthly installments. The lease will take effect on the commencement date of the accompanying haulage arrangement. Applicants contemplate consummation of the transaction no later than December 31, 1989, or as soon as the Commission's approval is obtained. Applicants contend that this is a minor transaction under 49 CFR 1180.2(c), and they submitted an application in accordance with the railroad consolidation procedures at 49 CFR part 1180 for minor transactions.

CN, a crown corporation of Canada, is a Class I carrier operating in the provinces of Canada, except for Newfoundland, and in the states of Minnesota, New York, and Vermont. It interchanges traffic with U.S. rail carriers at border points in Maine, Michigan, Minnesota, New Hampshire, New York, North Dakota, and Washington. GTW is a Class I railroad operating in Michigan, Ohio, Indiana, and Illinois. It is a wholly owned subsidiary of Grand Trunk Corporation (GTC), which is a wholly owned subsidiary of CN. GTC also owns the Central Vermont Railway, Inc., and the Duluth, Winnipeg and Pacific Railway Company, which are operating railroad companies.

Railport is GTW's western terminus and is not served by any other railroad. GTW conducts switching, blocking, or other direct interchange with other carriers at its Blue Island yard, or via the network of switching and belt line carriers in the Chicago terminal. Railport is used only as an intermodal facility.

Applicants state that Railport will be a crucial factor in the success of CN's dedicated transborder intermodal service (Laser trains) between Montreal and Toronto, in the east, and Chicago in the west. The Laser trains currently operate as GTW trains between Port Huron and Railport. Under the haulage arrangement, GTW will continue to move the trains, but CN will have direct control over all other aspects of the service.

Moreover, applicants asset that the transaction will benefit both carriers financially. CN will improve the profitability of its intermodal operations. GTW will realize financial benefits from reduced costs. The lease to CN will relieve GTW of the cost of operating and staffing a facility for which it has no independent need.

Applicants contend that the transaction will not reduce competition nor result in a monopoly. It involves two separate markets: (1) The provision of intermodal services in the Chicago terminal area; and (2) the movement of intermodal transborder traffic in the Chicago-Montreal/Toronto corridor. According to the applicants, the transaction will not have anticompetitive effects in either market. GTW will continue to move Laser trains between Port Huron and Chicago under the haulage arrangement. CN will simply replace GTW as operator of Railport and will be responsible for marketing, pricing, and scheduling the service. Railport will continue to handle Laser trains or any other traffic that CN moves through the facility. No other carrier uses Railport as the terminal for handling its intermodal traffic that originates or terminates in Chicago.

Applicants also argue that the transaction is not likely to result in a monopoly or a restraint of trade in freight service transportation. CN states that it will not gain access to any new market since it currently operates in the Chicago-Montreal/Toronto market and indirectly serves the Chicago terminal market. The transaction is merely a means for CN to gain direct control over the Chicago terminal phase of its operations. The transaction, it says, will enhance its competitive position in the transborder intermodal market by improving its service to customers, but it will continue to face stiff competition from motor carriers as well as from other U.S. and Canadian railroads.

Applicants state that no CN employees will be adversely affected by the transaction. However, GTW intends to abolish the 28 non-management positions at Railport and will terminate its arrangement with its operating contractor. Although CN does not intend to offer employment to these affected employees, GTW will offer employment to some of these employees at other locations and will reimburse hired employees for relocation expenses. Moreover, applicants anticipate that the Commission will impose labor protective conditions[2] on its approval of the transaction, and GTW will assume responsibility for payment of any displacement or dismissal allowances or other required benefits to affected employees.

Applicants state that they are seeking approval of this transaction under 49 U.S.C. 11343, rather than handling it as an exempt transaction within the corporate family, 49 CFR 1180.2(d)(3), to secure the exemption from the application of all other laws that is provided by 49 U.S.C. 11341(a). They request that the Commission specifically find that preemption of the requirements of the Railway Labor Act (RLA), 45 U.S.C. 151, *et seq.*, is necessary to permit them to implement the proposed transaction. In view of the recent decision in *Burlington Northern R. Co.* v. *United Trans. Union*, 862 F.2d 1266 (7th Cir. 1988), applicants contend that they must request a specific finding that preemption of the RLA is necessary to permit them to carry out the proposed lease here. *But cf. Brotherhood of Railway Carmen, et al.*, v. *I.C.C.*, Nos. 88–1724 and 88–1694 (DC Cir. July 25, 1989).

Under 49 CFR 1180.4(b)(2)(iv), we must determine whether a proposed transaction is major, significant, minor, or exempt. The proposal here involves two Class I railroads but has no regional or national significance and will neither result in a major market extension nor reduce the present level of competition. Accordingly, we find the proposal is a minor transaction as defined in 49 CFR 1180.2(c). Since the application complies with our regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representative named above.

Any interested persons, including government entities, may participate in this proceeding by submitting written comments. Any person who files timely written comments shall be considered a party of record if the person's comments so request. In this event, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that the proposal in this proceeding constitutes a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proposal is found to be a minor transaction under 49 CFR 1180.2(c).

2. The application in Finance Docket No. 31387 (Sub-No. 1) is accepted for consideration.

3. The parties shall comply with all provisions as stated above.

4. This decision is effective on the date of service.

Decided: August 11, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips. Commissioner Lamboley did not participate in the disposition of this proceeding.

Kathleen M. King,

Acting Secretary.

[FR Doc. 89-19497 Filed 8-17-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290; Sub-No. 64X]

Southern Railway-Carolina Division and Southern Railway Co., Abandonment and Discontinuance Exemption Between Hasskamp and Camden, SC

AGENCY: Interstate Commerce Commission.

[1] The docket number has been modified by adding Sub-No. 1 to distinguish this proceeding from Finance Docket No. 31387, *Canadian National Ry. Co.—Partial Revoc. of Class Exempt.—Lease from Grand Trunk West. R. Co.* (not printed), served January 27, 1989, which granted a partial revocation of the class exemption for transactions within a corporate family under 49 CFR 1180.2(d)(3) to the extent that it related to the rail properties involved in this application proceeding.

[2] The labor protection conditions ordinarily imposed in lease transaction are those set forth in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Southern Railway-Carolina Division of 14.0 miles of rail line between Hasskamp and Camden, SC, and the discontinuance of operations by Southern Railway Company over 4 miles of the line between Hasskamp and Hagood, SC, subject to standard labor protective conditions and certain environmental conditions related to post-abandonment plans.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 20, 1989. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by August 28, 1989, petitions to stay must be filed by September 5, 1989, and petitions for reconsideration must be filed by September 15, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB-290 (Sub-No. 64X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioners' representative: Virginia K. Young, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-2191.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing imparied is available through TDD service (202) 275-1721.]

Decided: August 14, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioner Andre, Lamboley, and Phillips.

Kathleen M. King,

Acting Secretary.

[FR Doc. 89-19498 Filed 8-17-89; 8:45 am]

BILLING CODE 7035-01-M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correctional Complex Allenwood, Union County, PA

AGENCY: Federal Bureau of Prisons, Department of Justice.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

1. *Proposed Action:* The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new Federal Correctional complex is needed in its system. A 1000 acre tract of land on the Allenwood Federal Prison Camp near the Town of Allenwood, Pennsylvania will be evaluated. The proposal calls for the construction of a 550 bed high security facility, a 900 bed medium security facility and a 500 bed minimum security camp.

Approximately 300 of the 1000 acres would be used for road access, inmate housing, administration, program and service spaces and service and support facilities. In addition, exercise areas would be included in the needed acreage.

2. *In the process of evaluating the tract of land, several aspects will receive a detailed examination including:* utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources, and socio-economic impacts.

3. *Alternatives:* In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

4. *Scoping Process:* During the preparation of the DEIS, there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at a location convenient to the citizens of Allenwood. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of informal meetings have already been held and will be continued by representatives of the Bureau of Prisons with interested community leaders, officials and citizens.

5. *DEIS Preparation:* Public notice will be given concerning the availability of the DEIS for public review and comment.

6. *Address:* Questions concerning the proposed action and the DEIS can be answered by: Lloyd McMillan, Site Acquisition Specialist, Office of Facilities Development and Operations, Administration Division, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone: (202) 272-6871.

Dated: August 9, 1989.

Buddy L. Crain,

Chief, Facilities Operations, Federal Bureau of Prisons, Department of Justice.

[FR Doc. 89-19057 Filed 8-17-89; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 28, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 28, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 7th day of August 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Avtex Fibers, Inc., (ACTWU)	Front Royal, VA	8/7/89	7/19/89	23,212	Synthetic rayon fibers
Bethenergy Mines, Inc. (Workers)	Eighty Four, PA	8/7/89	7/24/89	23,213	Metallurgical coal
Bethenergy Mines, Inc. (Workers)	Ellsworth, PA	8/7/89	7/24/89	23,214	Metallurgical coal
Celsius Energy Co., (Wodkers)	Denver, CO	8/7/89	7/24/89	23,215	Oil & gas
DPSC (Company)	ADA, OK	8/7/89	7/10/89	23,216	Downhole oil tools
DPSC (Company)	Odessa, TX	8/7/89	7/10/89	23,217	Downhole oil tools
DPSC (Company)	Casper, WY	8/7/89	7/10/89	23,218	Downhole oil tools
Delta Chemicals, Inc. (ICWU)	Searsport, ME	8/7/89	7/12/89	23,219	Chemicals for wood and paper industry
Devileg-Sundstrand (Workers)	Royal Oak, MI	8/7/89	7/22/89	23,220	Mfg. equipment
Derrick Well Serv., (Company)	Monahans, TX	8/7/89	7/19/89	23,221	Oil & gas
East Texas Pipe Service, Inc.	Hughes Springs, TX	8/7/89	7/25/89	23,222	Oil & gas
Edmar Creations, Inc./Edmar Co. (Company)	Clifton, NJ	8/7/89	7/13/89	23,223	Vanity trays
Gedney & Associates (Company)	Denver, CO	8/7/89	7/27/89	23,224	Oil & gas
General Motors CPC (UAW/GM)	Framingham, MA	8/7/89	7/24/89	23,225	Cars
General Motors-BOC, Body Assembly (UAW)	Lansing, MI	8/7/89	7/18/89	23,226	Bodies for GM cars
Goecience Petroleum Services	Denver, CO	8/7/89	7/14/89	23,227	Oil & gas
Goodall Rubber Co., (Workers)	Braintree, MA	8/7/89	7/21/89	23,228	Rubber & plastic hose
Honeywell/Atmel, Inc. (Workers)	Colorado Springs, CO	8/7/89	7/20/89	23,229	Integrated circuits
Homiachleger Corp. (UAW)	Cedar Rapids, IA	8/7/89	7/17/89	23,230	Construction cranes
Joy Footwear Corp. (Workers)	Hialeah, FL	8/7/89	7/19/89	23,231	Tennis shoes
Kearfott Guidance & Navigation Corp., (Workers)	Wayne, NJ	8/7/89	4/5/89	23,232	Guidance & navigation systems
Leviton Mfg. Co., Inc., (IBEW)	West Kingston, RI	8/7/89	7/25/89	23,233	Electrical wiring devices
Levolor Lorentzen, Inc. (Company)	Fairfield, NJ	7/17/89	6/21/89	23,234	Engineering & research facility
Levolor Lorentzen, Inc. (Company)	Rockaway, NJ	8/7/89	7/19/89	23,235	Venetion blinds
MCENA, Inc., (Workers)	Midland, TX	8/7/89	6/15/89	23,236	Oil & gas
Maloof Mfg., Inc., (Workers)	Willspoint, TX	8/7/89	7/26/89	23,237	Ladies' sportswear
Maloof Mfg., Inc., (Workers)	Canton, TX	8/7/89	7/25/89	23,238	Ladies' sportswear
Marathon Oil Co., (Workers)	Robinson, IL	8/7/89	7/19/89	23,239	Oil & gas
Resource Drilling, Inc. (Workers)	Houston, TX	8/7/89	7/10/89	23,240	Oil & gas
Rheem Mfg. Co., (Company)	Chicago, IL	8/7/89	7/20/89	23,241	Water heaters
Samsung International, Inc. (Workers)	Ledgewood, NJ	8/7/89	7/20/89	23,242	Color TV's
Smith Drilling Co., Inc. (Workers)	Lawrenceville, IL	8/7/89	7/21/89	23,243	Oil & gas
Teledyne Wisconsin Motor (UAW)	West Allis, WI	8/7/89	7/20/89	23,244	Gas engines
(The) Timken Co., (SWLU)	Canton, OH	8/7/89	7/27/89	23,245	Bearings & steel
Tippett & Gee, Inc., (Workers)	Abilene, TX	8/7/89	6/27/89	23,246	Design lignite facilities, etc.
General Motors/BOC Chassis Assembly	Lansing, MI	8/7/89	7/18/89	23,247	Cars

[FR Doc. 89-19503 Filed 8-17-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21, 918 et al.]

Ocean Drilling and Exploration Co., New Orleans, Louisiana; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of Odeco International Ocean Odyssey Rig: TA-W-21,916A Washington, TA-W-21,916B California, TA-W-21,916C Alaska.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 25, 1989, applicable to all workers of Ocean Drilling and Exploration Company, New Orleans, Louisiana.

The certification is being amended to include the Ocean Odyssey drilling rig which shut down in 1986 and to specify the divisions in New Orleans, Louisiana to be included under the certification. The Ocean Odyssey had decreased employment and sales in 1986 compared to 1985. The rig operated off the coasts of Washington, California and Alaska during the period between October 1, 1985 and December 31, 1986.

Workers of Odeco, Inc., and Odeco Engineers at New Orleans are intended to be covered, accordingly the notice is amended to include the Ocean Odessey drilling rig of ODECO International and to specify the intended coverage at New Orleans, Louisiana.

The amended notice applicable to TA-W-21918 is hereby issued as follows:

All workers of the Ocean Drilling and Exploration Company, ODECO Engineers, and ODECO Inc. New Orleans, Louisiana and the Ocean Odyssey drilling rig of ODECO International which operated off the coasts of Washington, California and Alaska who became totally or partially separated from employment on or after October 1, 1985 and before December 31, 1986 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC. this 10th day of August 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-19504 Filed 8-17-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21, 941 et al.]

Range Drilling Co. Arkansas City, Kansas; Dismissal of Applications for Reconsideration

In the matter of TA-W-22,944 Mundy Contract Maintenance, Incorporated Houston, Texas.

Pursuant to 29 CFR 90.18 applications for administrative reconsideration were filed with the Director of the Office of trade Adjustment Assistance for workers at the Range Drilling Company,

Arkansas City, Kansas and Mundy Contract Maintenance, Incorporated, Houston, Texas. The reviews indicated that the applications contained no new substantial information which would bear importantly on the Department's determinations. Therefore dismissal of the applications were issued.

TA-W-21,941; Range Drilling Company, Arkansas City, Kansas (August 9, 1989)

TA-W-22,944; Mundy Contract Maintenance, Incorporated, Houston, Texas (August 9, 1989)

Signed at Washington, DC this 10th day of August 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-19505 Filed 8-17-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-107-C]

Rocky Hollow Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Rocky Hollow Coal Company, Lobata, West Virginia 25677 has filed a petition to modify the application of 30 CFR 75.900 (low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Mine No. 1 (I.D. No. 46-06195) located in Mingo County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage power circuits serving three-phase alternating current equipment are required to be protected by suitable circuit breakers of adquate interrupting capacity which are properly tested and maintained. Such breakers are required to be equipped with devices to provide protection against undervoltage, grounded phase, short circuit, and overcurrent.

2. With the use of undervoltage release breakers to meet the requirements for undervoltage protection, it is necessary, after each power outage, for a person to travel to each belt drive location and reset the circuit breakers before the conveyor belts can start and production can resume.

3. The use of undervoltage circuit breakers also creates an extremely hazardous safety condition. Whenever the power blinks, workers are dashing to each belt drive location to reset the circuit breakers. A sense of urgency often causes the workers to take unplanned actions which places their safety and the safety of their fellow workers in jeopardy.

4. As an alternate method, petitioner proposes to use contactors and voltage monitors in lieu of circuit breakers to obtain undervoltage protection with specific equipment and procedures as outlined in the petition.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 18, 1989. Copies of the petition are available for inspection at that address.

Dated: August 10, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-19506 Filed 8-17-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Performance Review Board; Membership

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: This notice announces a new appointment of the National Endowment for the Humanities' Performance Review Board.

DATE: Effective July 31, 1989, Jerry Martin, Assistant Chairman for Studies and Evaluation has been designated to replace Susan Metts, Assistant Chairman for Administration, as a Member of the SES Performance Review Board until March 31, 1990.

FOR FURTHER INFORMATION CONTACT: Timothy G. Connelly, Director of Personnel, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Lynne Cheney,

Chairperson.

[FR Doc. 89-19414 Filed 8-17-89; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATE: Interested parties are invited to submit written data, comments, or views with respect to the permit applications by September 21, 1989. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTAL INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on July 17, 1989. The applications received are as follows:

1. Applicant

Mark A. Chappell, Department of Biology, University of California, Riverside, Riverside, CA 92521.

Activity for Which Permit Requested

Taking, import into U.S. The applicant is conducting a study of the physiological condition of seabirds breeding near Palmer Station, Antarctica, in relation to the effects of the recent oilspill there. The applicant will collect stomach content and blood samples form Adelie penguins (140); blue-eyed shags (10); southern giant petrels (10); and South Polar skuas (10). These specimens will be released after samples are taken. Up to five Adelie penguins will be sacrificed for calibration of body composition measurements.

Location

Palmer Station, Antarctic Peninsula vicinity.

Dates

October 1989—March 1990.

2. Applicant

Richard Rivkin, Horn Point Environmental Laboratories, University of Maryland, Cambridge, MD 21613.

Activity for Which Permit Requested

Introduction of non-indigenous species into Antarctica. The applicant proposes to study the nutrition of planktonic larvae produced by marine benthic invertebrates (asteroids and echinoids). Larvae survival on particulate food, dissolved organic food and/or yolk provided by the parents will be investigated.

The study requires algal cultures to rear mass cultures of larvae to determine food preference and grazing characteristics. Six non-indigenous species of algae are required to feed lavaral cultures for nutritional studies. The six species are: Synechococcus, Dunaliella, Skeletonema, Isochrysis, Thalassiosira, and Nannochoris. Cultures of indigenous species of algae will also be established and used to feed larvae for grazing preference and characteristics.

All cultures will be maintained in enclosed incubators at the Eklund Biological Laboratory. Larvae will be reared within the Aquarium Building at McMurdo. Non-indigenous species of algae will not be released in the environment. All non-indigenous species will be destroyed (heat killed by autoclaving) at the end of the study. Cultures of indigenous species of algae will be transported back to the U.S.A. (University of Maryland) to study physiological characteristics of the antarctic algae.

Location

McMurdo Station, Antarctica.

Dates

October 1989—January 1990.

Charles E. Myers,

Permit Office.

[FR Doc. 89-19510 Filed 8-17-89; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Astronomical Sciences Subcommittee on Radio Astronomy; Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences Subcommittee on Radio Astronomy

Date & Time: September 7 and 8, 1989 9:00 PM—5:00 PM

Place: National Science Foundation Room 1243

Type of Meeting: September 7 and 8, 1989 Open

Contact Person: Dr. Vernon L. Pankonin, Program Director, Galactic and Solar System Astronomy, Division of Astronomial Sciences, Room 615, National Science Foundation, Washington, DC 20550 (202/357-7620)

Summary Minutes: May be obtained from the contact person at the above address.

Pubpose of Committee: To provide advice and recommendations concerning research programs, proposals, and projects in NSF-funded astronomy with the objective of achieving the highest quality forefront research for the funds allocated. To provide service and recommendations concerning short-range and long-range plans in astronomy, including a recommendation of relative priorities.

Agenda: September 7 and 8

Discussion of the scientific areas that show the greatest promise with regard to new breakthroughs in discovery and understanding using ground-based rado astronomy techniques.

Discussion of activities and initiatives which are needed to address the scientific problems identified above.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-19438 Filed 8-17-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-424 and 50-425]

Georgia Power Co., et al.; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-68 and NPF-81 to the Georgia Power Company, et al., (the licensee) for the Vogtle Electric Generating Plant, Units 1 and 2, located on the licensee's site in Burke County, Georgia.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise the provision in the Technical Specifications (TS) relating to reload fuel enrichment.

The proposed action is in accordance with the licensee's applications dated June 12 and July 17, 1989.

The Need for the Proposed Action

The proposed changes are needed so that the licensee can use higher enrichment fuel, increase flexibility by extending fuel irradiation, and permit operation of longer fuel cycles.

Environmental Impacts of the Proposed Action

The proposed TS revisions would permit use of fuel enriched with Uranium 235 in excess of 4 weight percent and up to 4.55 weight percent and the licensee would expect the fuel to be irradiated to levels above 33 gigawatt days per metric ton (GWD/MT), but not to exceed 36 GWD/MT. The safety considerations associated with fuel storage and reactor operations with higher enrichment and extended irradiation have been evaluated by the licensee. The licensee has concluded that such changes would not adversely affect plant safety. The proposed changes have no effect on the probability of any accident. The increased burnup was considered in the original safety analyses and, therefore, does not change the analysis of fission products that might be released in the event of a serious accident. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor

operation with higher enrichment and extended irradition, the proposed changes to the TS involve systems located within the restricted areas, as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation are discussed in the NRC staff's assessment entitled "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988. This assessment was published in the August 11, 1988 Federal Register (53 Fr 30355) as part of the Carolina Power and Light Co., *et al.*, Shearon Harris Nuclear Power Plant, Unit 1, Environmental Impact Assessment and Finding of No Significant Impact for the utilization of higher enriched fuel and extended fuel irradiation and is hereby referenced for this Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contributions of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may in fact be reduced from those summarized in Table S-4, as set forth in 10 CFR 51.52(c). Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendments.

Alternative to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed action, any alternatives would have equal or greater environmental impact.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operations and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of the Vogtle Electric Generating Plant, Units 1 and 2" dated May 1985.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a signficant effect on the quality of the human environment.

For further details with respect to this action, see the request for the amendments dated June 12, 1989, supplemented July 17, 1989 which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Burke County Library, 412 4th Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 11th day of August 1989.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II-3, Division of Reactor Projects I/II Office of Nuclear Reactor Regulation.

[FR Doc. 89-19458 Filed 8-17-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-133]

Environmental Assessment and Finding of No Significant Impact Regarding an Exemption From the Requirements of 10 CFR 50.54(w) Pacific Gas and Electric Co. Humboldt Bay Power Plant, Unit 3

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w) to Pacific Gas and Electric Company (the licensee), for Humboldt Bay Power Plant, Unit 3, located in Humboldt County, California.

Environmental Assessment

Identification of Proposed Action

By application dated June 9, 1989, Pacific Gas and Electric Company requested an exemption. The exemption will reduce the current requirement for minimum primary property damage insurance for the permanently shut down Humboldt Bay Power Plant, Unit 3, from $100,000,000 to $63,160,000.

The Need for the Proposed Action

The licensee is requesting an exemption from the current requirement for primary property damage insurance, in order to reduce the amount of insurance coverage required, and the associated premium payments.

Humboldt Bay Unit 3 was shut down on July 2, 1976 and all spent fuel was subsequently transferred to the spent fuel pool. The operating license was modified to possess-but-not-operate status on July 16, 1985. On July 19, 1988, the NRC approved a decommissioning plan that required safe storage of spent fuel on-site until a Federal respository was available to receive it.

On November 3, 1982, the Commission granted, at the request of the licensee, a previous exemption to the requirements of 10 CFR 50.54(w) provided a minimum of $100,000,000 of primary property damage insurance was maintained. The licensee now asks for a further reduction of the minimum property damage insurance coverage to $63,160,000 and states that the cost of maintaining the insurance will be reduced by about $94,000 per year. The licensee believes the reduced minimum coverage amount to be adequate to cover costs of on-site cleanup following accidents because the reactor may not be operated and all fuel is stored on-site such that a nuclear criticality accident is not credible.

Environmental Impact of the Proposed Action

The proposed action is administrative only and will have no environmental impact since an adequate amount of insurance is being retained to cover on-site recovery from accidents.

Alternative Use of Resources

This action does not involve the use of resources.

Agencies and Persons Consulted

The NRC staff is reviewing the licensee's request. No other agencies or persons were consulted.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's application dated June 9, 1989 which is available in the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Eureka-Humboldt County Library, 421 I Street, Eureka, California.

Dated at Rockville, Maryland, this 11th day of August, 1989.

For the Nuclear Regulatory Commission.

Michael J. Ball,

Chief Regulatory Branch, Division of Low-Level Waste Management and Decommissioning, Office Of Nuclear Material Safety and Safeguards.

[FR Doc. 89-19461 Filed 8-17-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Joint Subcommittees on Extreme External Phenomena and Severe Accidents; Meeting

The ACRS Subcommittees on Extreme External Phenomena and Severe Accidents will hold a joint meeting on September 6, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, September 6, 1989–8:30 a.m. until the conclusion of business.

The Subcommittees will be briefed by the NRC and industry on the Individual Plant Examination for External Events (IPEEE) program.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 301/492-8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: August 10, 1989.

Gary Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89-19511 Filed 8-17-89; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-315 and 50-316]

Indiana Michigan Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-58 and DPR-74 issued to the Indiana Michigan Power Company (the licensee), for operation of Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, located in Berrien County, Michigan.

In accordance with the licensee's application for amendments dated January 27, 1989, footnotes would be added to Tables 3.3-13 and 4.3-9 for both Units 1 and 2 which would allow a portion of the Waste Gas Holdup System Explosive Monitoring System to be inoperable for 180 days on a one-time basis so that it may be replaced. This proposed amendment would also make some editorial changes.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By September 18, 1989, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so

inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lawrence A. Yandell: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated January 27, 1989 which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 11th day of August.

For the Nuclear Regulatory Commission.

Lawrence A. Yandell,

Acting Director, Project Directorate III-1, Division of Reactor Projects, III, IV, V & Special Projects, Office of Nuclear Regulatory Commission.

[FR Doc. 89-19459 Filed 8-17-89; 8:45 am]

BILLING CODE 7590-01-M

Second Draft of NUREG-1150 for Peer Review; Issuance and Availability

The U.S. Nuclear Regulatory Commission published the second draft of NUREG-1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants," on July 6, 1989. A special peer review committee has been formed in conformance with the Federal Advisory Committee Act (FACA) to review the document. The first meeting of the committee was held on July 13-15, 1989 (as noticed in the FEDERAL REGISTER on June 23, 1989, 54 FR 26455). Public comments on this document are also solicited.

NUREG-1150 summarizes estimates of frequencies and risks of core damage accidents for five nuclear reactors of different designs and discusses perspectives gained through these assessments and their potential uses by the NRC staff.

The first draft of NUREG-1150 was published in February 1987 for public comment. The document was also reviewed by three independent review committees. Major modifications were made to the draft document based on additional staff review and the comments received from the public and the review committees.

Single copies of the second draft of NUREG-1150 can be obtained free of charge, to the extent of supply, by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Division of Information Support Services, Office of Information Resources Management. Telephone requests cannot be accommodated.

Public comments should be sent to Chief, Regulatory Publications Branch, Division of Freedom of Information & Publications Services, P-223, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The 120-day comment period ends on December 16, 1989.

The comment letters and the second draft of NUREG-1150 are available for inspection and copying in the Commission's Public Document Room, 2120 L Street NW., Washington, DC. There is a fee for copying.

Dated at Rockville, MD this 14th day of August, 1989.

For the Nuclear Regulatory Commission.

Brian W. Sheron,

Director, Division of Systems Research, Office of Nuclear Regulatory Research.

[FR Doc. 89-19460 Filed 8-17-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Second Notice on Metropolitan Statistical Area Standards

AGENCY: Statistical Policy Office, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB).

ACTION: Notice of intent to revise the standards used to define metropolitan statistical areas (MSAs) and of hearings on the MSA standards.

SUMMARY: OMB solicits further public comment on the standards to define metropolitan statistical areas (MSAs). This notice summarizes public comment received to a notice of December 20, 1988, requesting comments on the existing MSA standards; announces that OMB will hold a public hearing on the MSA standards; presents certain preliminary conclusions; and requests further comments.

DATE: Comments from the public should be submitted no later than October 17, 1989.

ADDRESS: Comments should be addressed to: Office of Information and Regulatory Affairs, Statistical Policy Office, New Executive Office Building, Room 3228, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Maria E. Gonzalez, Office of Information and Regulatory Affairs, Statistical Policy Office, New Executive Office Building, Room 3228, Office of Management and Budget, Washington, DC 20503, (202) 395-7313.

Public Hearing: OMB will hold a public hearing where comments on the MSA standards may be presented. The hearing will be held on Wednesday, September 20, 1989, 1:30 p.m. at the New Executive Office Building, Room 2010, 725 17th St., NW., Washington, DC 20503. Those interested in participating should contact Maria E. Gonzalez, Office of Information and Regulatory Affairs, NEOB, Room 3228, OMB, Washington, DC 20503 (Telephone (202) 395-7313).

SUPPLEMENTARY INFORMATION: On December 20, 1988, OMB published for public comment a notice (hereafter referred to as the December 1988 notice) entitled Metropolitan Statistical Areas (53 No. 244, Federal Register, 51175-51181). OMB set a deadline for comment of February 17, 1989.

OMB received 99 letters of comment on the December 1988 notice. 22 percent were from Members of Congress; 5 percent from Federal agencies; 23 percent from State and local governments; 50 percent from the private sector. The complete set of comments is available to the public in OMB's public docket room: Room 3201, New Executive Office Building, 725 17th St., NW., Washington, DC 20503 (Telephone (202) 395-6880).

OMB intends to announce the final MSA standards for the 1990's before April 1, 1990.

Background: OMB defines metropolitan statistical areas (MSAs) as part of its statistical policy responsibilities under the Paperwork Reduction Act (5 USC 1320). The concept of an MSA is an area consisting of a large population nucleus together with adjacent communities having a high degree of economic and social integration with that nucleus. MSAs are composed of whole counties, except in New England where they are defined by city and town. The current standards also specify that an MSA of more than one million population that meets certain other specified requirements will be termed a "Consolidated Metropolitan Statistical Area" (CMSA), consisting of major components recognized as "Primary Metropolitan Statistical Areas" (PMSAs). In addition, OMB defines New England county metropolitan areas (NECMAs).

The MSA standards were first used for the 1950 census and have been reviewed at the time of each decennial census since then. The 1980 MSA standards published in the Federal Register (45 FR 956, January 3, 1980) are being reviewed now. OMB intends the 1990 MSA standards to be similar to the 1980 MSA standards, except where we have specifically noted a possible change in the section that follows called "Summary of Comments." After the June 1992 announcement defining MSAs for the 1990's, based on the 1990 MSA standards and the 1990 census results, the determinations will not be reviewed again until after the 2000 census, except for selected changes as specified in the section on intercensal updating.

Summary of Comments

General Comments

1. *Issue:* The present terminology is confusing and should be clarified. The term MSA can mean either the whole set of areas defined under the standard, or just those whose label is "MSA"—those metropolitan areas that are free-standing and not included in any CMSA.

Response: OMB is considering using the term "Metropolitan Areas (MAs)" as the generic descriptor for the overall system, and using CMSAs, PMSAs, and MSAs to identify different kinds of individual areas.

2. *Issue:* A concise statement of the metropolitan area concept is needed.

Response: The general concept of a metropolitan area is that of a geographic area consisting of a large population nucleus together with adjacent communities having a high degree of economic and social integration with that nucleus. Some areas are defined around two or more nuclei.

A standard set of metropolitan areas in the United States is defined by the Office of Management and Budget as part of its statistical policy responsibilities under the Paperwork Reduction Act.

3. *Issue:* State whether the basic concept of an MSA has remained the same since 1950.

Response: The basic concept of an MSA (see Issue 2) has remained the same since these areas were first defined for the 1950 census. However, the specific criteria used to define the area's nucleus and to implement other aspects of the basic concept have been adjusted from time to time to reflect changes that have occurred in national settlement and commuting patterns, and to maintain definitions that are relatively consistent. After the post-1990 redefinition we intend to address the issue of whether more extensive changes are needed in the procedures for defining metropolitan areas.

4. *Issue:* Provide the official OMB definition, if any, of nonmetropolitan areas.

Response: OMB is responsible for defining metropolitan areas for Federal statistics. Any territory not included in a metropolitan area is referred to as nonmetropolitan. Other Federal agencies may classify the territory outside of metropolitan areas for their own statistical or program purposes; for example, the Bureau of Labor Statistics of the Department of Labor classifies areas outside of MSAs into individual small labor market areas for purposes of estimating labor force and unemployment.

5. *Issue:* Consider returning to a simplier metropolitan classification system.

Response: A system of CMSA/PMSA/MSA classification will continue for 1990. The current system was adopted in 1980, following a review of changes in the distribution patterns of the population since the inception of the formal definitions in 1950, and in response to the data requirements of an increasingly sophisticated data-using public.

6. *Issue:* The MSA standards should emphasize consistency.

Response: OMB assigns a high priority to maintaining the consistency of the metropolitan area concept as presented in the standards over the past 40 years. However, definitional consistency cannot equate to geographic stability. Metropolitan areas are expanded (or contracted, or combined) to reflect growth or change over time.

7. *Issue:* Consider alternative methods for determining when MSAs, central cities, or outlying counties should be disqualified, such as:

A. Disqualifying areas only after two successive censuses show them failing to meet the required thresholds.

B. Adopting lower thresholds for retention than those applicable for initial qualification.

C. Eliminate all "grandfathering" criteria that retain previously qualifying areas; delete any area that does not meet the current standards as soon as a decennial census shows that to be the case.

Response: We will consider this issue before finalizing the standards for the 1990's. We welcome comments on these or other alternative approaches.

8. *Issue:* OMB should not create new MSAs in one year and then combine them with others two years later, as occurred in 1981-1983.

Response: OMB has two options with regard to the announcement of metropolitan areas after the 1990 census data become available:

A. OMB can announce certain newly qualifying areas in June 1991 based on the Census Bureau's 1990 census population counts and using the 1980 census commuting data, since 1990 commuting data will not yet be available. When metropolitan area configurations using the 1990 census commuting data are announced (scheduled for June 1992) the areas announced in 1991 may be modified. This approach is consistent with the procedure followed after the 1980 census and with OMB's established practice of announcing new areas between decennial censuses when they reach the prerequisite thresholds. In addition, it will allow for the earlier publication of the decennial census data for an expanded set of metropolitan areas. However, it will probably result in the announcement of a few areas that will lose separate recognition and become parts of other areas when the 1990 commuting data become available, as was the case after the 1980 census.

B. OMB can wait to announce all redefinitons of metropolitan areas in the United States until the complete set of 1990 census data becomes available, scheduled for June 1992. This option provides consistency and avoids announcing some areas that will probably have only short-term separate recognition. However, it delays the announcement of any areas that have met the required thresholds in 1991. It will also limit the number of metropolitan areas for which statistics appear in the 1990 census publications.

We invite comments on which redefinition option OMB should adopt in

announcing metropolitan areas after the 1990 census.

9. *Issue:* MSAs should be defined by county in New England as in the rest of the country. Alternatively, the New England approach—defining MSAs in terms of subcounty geographic areas—should be adopted nationwide.

Response: New England MSAs are defined by town (township) and city rather than by whole county due to significant differences from the rest of the country in both administrative functions and settlement patterns. Also, except for New England a wide range of statistics was generally not available below the county level when standard metropolitan areas were first established at the time of the 1950 census, and this is still the case. However, OMB does issue a set of metropolitan definitions in terms of whole counties for New England—the New England County Metropolitan Areas (NECMAs)—for data users who wish to use county units.

Given the continued need for a county-based system, and the existence of the supplemental NECMA classification, OMB intends to maintain the present structure.

10. *Issue:* There is confusion among the terms "merged", "consolidated", and "combined" as used in defining metropolitan areas under the standards.

Response: OMB will clarify the meaning of these different terms in the MSA standards. OMB intends to continue using the term "consolidated" for Consolidated Metropolitan Statistical Areas (CMSAs).

11. *Issue:* The percent of population that is urban is an indicator used to qualify outlying counties of an MSA. If a county is included in an MSA, will it be called "urban"?

Response: OMB does not designate counties as "urban" or "rural," and the Census Bureau definitions of "urban" and "rural" are not made in terms of counties. Some other Federal agencies have designated counties as "urban" for the purposes of certain specific programs.

12. *Issue:* State (1) the mathematical approach to rounding and precision of percentages, densities, and ratios in determining qualification, and (2) the sources of the data.

Response: Percentages, densities, and ratios are expressed to the nearest tenth (one decimal place) and comparisons between them are made on that basis. For example, if a commuting interchange is computed at 19.949 percent, it is to be rounded to 19.9 percent; if the percentage is computed as 19.950, it is to be rounded to 20.0 percent. The proposed use of one decimal place in the 1980 standards replaces the use of two decimal places in the 1980 standards.

The source of the data used in these calculations is the most recent decennial census, except in cases of intercensal updating (see Issue 17).

13. *Issue:* Define what is meant by a "statistical program."

Response: "Statistical program" means the use in the Federal statistical system of all resources required to collect, process, and disseminate quantitative information on the economic and social practices and experiences of the people, businesses, and institutions of the United States.

14. *Issue:* There is no distinction in the standards between statistical and programmatic uses of MSA data.

Response: MSAs are defined by OMB as part of its statistical policy responsibilities under the Paperwork Reduction Act of 1980. OMB Bulletin No. 89-11 states that:

"All agencies that conduct statistical activities to collect and publish data for MSAs should use the most recent definitions of MSAs established by OMB.

"OMB establishes and maintains the definitions of MSAs solely for statistical purposes. In periodically reviewing and revising the MSA definitions, OMB does not take into account or attempt to anticipate any nonstatistical uses that may be made of the definitions, nor will OMB modify the definitions to meet the requirements of any nonstatistical program."

15. *Issue:* Indicate how OMB obtains comments from the public.

Response: OMB solicits comments from the public on the MSA standards through notices in the Federal Register. OMB also solicits comments from selected organizations and persons interested in this subject.

Local Opinion

16. *Issue:* Define local opinion and its appropriate sources, and state its role in the MSA designation process. Expand local opinion to include views of the business community as expressed by chambers of commerce, planning commissions, etc., directly to OMB rather than through the Congressional delegation.

Response: Local opinion is the reflection of the views of the public on selected matters related to the application of the standards for defining MSAs. In the current MSA standards, local opinion is a factor in:

A. Combining two adjacent MSAs whose central cities are within 25 miles of each other.
B. Identification of PMSAs within CMSAs.
C. Titling PMSAs.
D. Titling CMSAs after identification of the largest city.
E. Assignment of an area that, based on commuting, is eligible for inclusion in more than one area.

We believe the appropriate focal point for local opinion is the Congressional delegation, consisting of the Senators of the State(s) involved and the United States Representatives of the area in question. As part of the 1990 area redefinition process, members of the Congressional delegations will be urged to contact a wide range of groups in their communities, including business or other leaders, chambers of commerce, planning commissions, and local officials to solicit comments on specified issues. After the thresholds in the statistical standards have been met, all pertinent local opinion material received by OMB on these matters will be considered in determining the final definition and title of the area. OMB also will consider any pertinent information that it may receive from other sources on the local opinion issue being considered.

Intercensal Updating

17. *Issue:* Clarify the procedures for intercensal updating of MSA definitions, and discuss the possibility of adding outlying counties between decennial censuses. Other comments stated that frequent redefinitions are an inconvenience.

Response: Procedures to update MSA definitions between censuses will be added to the standards. The scope of intercensal MSA updating is determined primarily by data availability. For example, Bureau of the Census commuting data have not been available between censuses; therefore, definitions based on sections of the standards that rely on commuting data, such as those qualifying outlying counties and those defining CMSAs and PMSAs, have not been updated between censuses.

The following draft for a new section of the MSA standards is published for comment.

Section XX. MSA Changes in Definitions Between Censuses

Definitions: A *Census Count* is a special census conducted by the U.S. Bureau of the Census or a decennial census count updated to reflect annexations and boundary changes since the census.

An *Official Estimate:* is a population estimate issued by the U.S. Bureau of the Census for an intercensal year.

A. *Qualification as an MSA.* A potential MSA qualifies for recognition if:

(1) A city reaches 50,000 population according to a Census Count or Official Estimate.

(2) A nonmetropolitan county containing an urbanized area (UA) defined by the Bureau of the Census at the most recent decennial census reaches 100,000 population according to a Census Count or Official Estimate. If the potential MSA centered on the UA consists of two or more counties, their total population must reach 100,000. In New England, the cities and towns qualifying for the potential MSA must reach a total population of 75,000.

(3) The Census Bureau defines a new UA based on a Census Count after the decennial census, and the potential MSA containing the UA meets the population requirements of Section XX. A(2).

If an MSA is qualified intercensally, the qualification of the MSA must be confirmed by the next decennial census, or the area is disqualified.

B. *Addition of counties.* As a general rule, counties are not added to MSAs between censuses. The only exceptions are:

(1) If a qualified central city extends into a county not included in the MSA and the population of the portion of the city in the county reaches 2,500 according to a Census Count, then the county qualifies as a central county and is added to the MSA.

(2) If an MSA qualified intercensally under Section XX. A meets the requirements of section 6 of the standards for combination with an MSA already recognized, that combination may take place and thereby alter the definition of the existing MSA.

C. *Qualification as a central city.* A Census Count serves to qualify a central city (Section 4) which has failed to qualify solely because its population was smaller than required—for example, it did *not* qualify as the largest city in the MSA (Section 4A), or was below 250,000 (4B), below 25,000 (4C), or below 15,000 (4D). If qualification requires comparison with the population of another city, comparison is made with the latest available Official Estimate or Census Count of the population of the other city.

D. *Area titles.* The title of an MSA, PMSA, or CMSA may be altered to include the name of a place that has newly qualified as a central city on the basis described in Section XX. C, and that also meets the requirements of Section 6. Such a change is made by adding the new name at the end of the existing title, but cannot be made if the title already contains three names. Names in area titles are not resequenced except on the basis of a decennial census.

E. Other aspects of the MSA standard are not subject to change between decennial censuses."

MSA Qualification and Outlying County Qualification

18. *Issue:* Revise the minimum population size for MSA qualification.

A. Raise the minimum qualifying population size from 50,000 to 100,000 for all MSAs.

B. Waive the 100,000 minimum qualifying population size if two or more contiguous cities equal or exceed 50,000 population.

Response: The current criterion qualifies a metropolitan area if it contains an incorporated city of 50,000 or more, regardless of the area's total population. This criterion has been used since the metropolitan area system was first adopted for the 1950 census. when additional areas were recognized after 1980 on the basis of urbanized areas populations of 50,000 or more, regardless of the size of the largest city, a criterion was added to require at least 100,000 total area population in such cases. This population may be the total of one or more counties. We proposed to maintain these criteria for 1990.

The proposal to accept two contiguous cities that exceed 50,000 parallels a provision that was part of the metropolitan area criteria from 1958 to 1971. A somewhat similar provision was in effect from 1971 to 1980. All such provisions in the standards represent attempts to identify the population nucleus around which a metropolitan area is to be defined (see Issues 2 and 3). Over time, the standards have moved away from making this identification in terms of corporate city areas and towards a definition in terms of the extent of urban development. This is because the pre-1980 criteria based on two or more contiguous cities or places often produced inconsistent results, since cities in some States have annexed extensively and are contiguous to others some distance away, while in other States city areas are small. The current criteria provide a much more standard treatment based on urbanized areas, whose boundaries to a large extent do not observe corporate limits. Therefore, the current criteria will not be changed for 1990.

19. *Issue:* A county that meets the existing commuting standards through a combined commuting rate to two or more MSAs should be qualified as an outlying country, even if it does not have qualifying commuting to any MSA individually.

Response: The general concept of an MSA reflected in the standards is that of a geographic area consisting of a large population nucleus together with adjacent communities having a high degree of economic and social integration, as measured by commuting to the nucleus of the MSA. It would not be consistent with this concept to accept commuting to two or more separate MSAs.

20. *Issue:* Change the qualification requirements for including outlying countries in MSAs.

A. Tighten the requires—for example:

(1) Require counties with 15 to 25 percent of their workers commuting to qualify on all four measures of metropolitan character in Sec. 2A(4), instead of two, and increase the 60 persons per square mile density requirement to 100 per square mile.

(2) Require outlying counties to be at least 50 percent urban, have at least 30 percent commuting, have some urbanized area, and have a minimum population density of 150 persons per square mile.

B. Loosen the requirements—for example:

(1) For an MSA with a central city more than 100 miles from any other central city, allow a county to qualify if it has at least 10 percent commuting, provided there is at least 15 percent commuting from its largest city, population density is at least 60 per square mile, the urban percentage is at least 50, and population grew by at least 20 percent in the past intercensal period or 40 percent over the past two intercensal periods. This change is called for because the unusually large size of many counties in the West makes population density an inappropriate measure.

(2) Include counties in an MSA based on media penetration, for example newspaper circulation.

Response: The current standards for qualifying outlying counties establish specific criteria of metropolitan character, and require counties to meet specified combinations of these, with less restrictive requirements for counties with relatively high rates of commuting. Counties may qualify on the basis of alternative combinations of the criteria (for example, by meeting two out of four specified requirements) because this appears to produce metropolitan definitions that are more consistent from region to region. Requiring outlying counties to meet all these indicators would disqualify a large share of those

BEST COPY AVAILABLE

now qualified and would present a sharp break with past practice.

OMB must consider the appropriateness of any proposed criterion for a nationally applicable standard. Therefore, it would be inappropriate to adopt individualized rules lacking national applicability. A rule based on distance from other MSA central cities would be hard to maintain as additional cities reach metropolitan size. Newspaper circulation data are unsatisfactory for defining metropolitan areas because many metropolitan newspapers also circulate extensively to rural counties and small cities that lie beyond the actual metropolitan area.

Issue: Base commuting interchange rates on full-time employees only. The increase of part-time workers in the labor force may alter previous commuting patterns.

Response: The number of part-time workers has increased both in the 1970's and the 1980's. However, the effect of this increase on commuting rates needs further study, which we plan to undertake after 1990 census data are available. (See also Issue 3)

22. *Issue:* Exclude military base personnel from the computation of job commuting rates.

Response: Resident military personnel are considered a part of the area's population and labor force and should not be treated separately in the calculations.

23. *Issue:* Exclude from the population density calculations areas unsuitable for habitation, such as national forests, reservoirs, wetlands, military test sites, and the like.

Response: Such areas are part of the county. In many instances such landholdings surround or border settlements of people who depend on them for employment and who might otherwise not live in the area.

Central Cities

24. *Issue:* Central cities are not adequately identified by commuting and minimum population standards. These standards should be waived or modified, particularly for previously qualified central cities.

Response: In the 1980 MSA standards, OMB specified two commuting requirements as a means of more clearly identifying which cities were functioning as centers of metropolitan areas. OMB believes population size, combined with the commuting standards, can continue to provide a valid basis for determining which cities are functioning as central cities. (See Issue 7)

25. *Issue:* Do not delete central cities with urban stress conditions or with high minority populations. Consider cultural and social dominance as well as (or in lieu of) other factors. Add tests on population density or percent minority population to the criteria to determine central cities.

Response: Central cities are defined in terms of population size and commuting standards. Urban stress or high minority populations are not unique to central cities of metropolitan areas. The revision of the 1990 standards will not modify the qualification requirements with respect to these issues. (Also see Issue 3)

26. *Issue:* Retain all previously qualified central cities when MSAs merge.

Response: When MSAs meet the criteria for merger, a city that was large enough for central city status in the previous MSA may not meet the required 25,000 or one-third population size to be a central city in the larger area, even though it may continue to meet the commuting requirements. The purpose of the standards is to provide a current depiction of each metropolitan area and the most prominent cities in the enlarged area. It is not appropriate to retain central cities simply because they were previously qualified. However, we will review whether it might be appropriate to establish different thresholds for qualification and for disqualification (also see Issue 7).

27. *Issue:* Consider qualifying as MSAs areas that meet the standards although lacking an incorporated central city.

Response: The Census Bureau is proposing to change its 1990 urbanized area (UA) criteria to permit delineation of UAs without incorporated places; the main population cluster would then be called the "central place" of the UA rather than "central city". Towns in New England (and towns and townships in other States where such units may have municipal-type functions) are eligible under the existing MSA standards for central city status under Section 4 if their population is essentially all urban. Assuming this change in the UA criteria becomes effective, OMB may designate one or more MSAs with no incorporated city, but with a central community of this type. We welcome comments as to whether the "central city" in such an area should be the entire town or township, or only the core community. In the unlikely event of a UA qualifying in a State where there are no governmentally functioning county subdivisions (towns or townships), the "central place" would be only the core unincorporated community.

28. *Issue:* Central cities should be classified into "principal" and "outlying."

Response: OMB does not plan to make this change. Central cities will remain a single category for the MSA standards of the 1990's. (Also see Issue 3)

29. *Issue:* A PMSA should have a single central city if there is a very large population difference (for example, two million or more) between the largest and second largest qualifying cities.

Response: If a minimum population criterion has been met (in the standards, generally 25,000), a city may have strong enough centrality as measured by the requirements of Section 4C of the MSA standards to be designated as central. (Also see Issue 3)

Titles

30. *Issue:* State how area titles are determined under the current standards, and whether city and county names can be reflected in the same title.

Response: Area titles should be indicative of the major communities of the area, preferably the central city(ies), and be recognizable to the user. To be included in a title, a city must qualify as a central city under the MSA standards. There may be up to three names in a title. MSA titles use only city names.

PMSA titles may use city names or county names since some PMSAs do not include a qualifying central city. However, in order to avoid ambiguity, OMB will not combine the names of both cities and counties in a single PMSA title. Local opinion is a factor in determining PMSA titles.

Under the current standards, CMSA titles begin with the name of the CMSA's largest central city. This is generally followed by the first city name appearing in the title of each of the next two largest PMSAs. A regional designation may be substituted for the second and/or third name in a title if there is strong local support and the proposed designation is suitable and unambiguous. Local opinion is a factor in determining CMSA titles.

31. *Issue:* State whether a city must be a CMSA central city in order to be in a PMSA title.

Response: The central city concept is integral to the MSA concept; a city must qualify under the standards as central if its name is to appear in any area title.

32. *Issue:* Specify proposed changes in the titling of MSAs.

Response: OMB is considering changing section 8A(1) of the existing standards to base secondary central cities in titles on population only (deleting the reference to work force); and also is considering replacing section 8A(3) with a provision that would allow local opinion to add a second or third central city to the title, even if that city does not meet the one-third population requirement.

Section 8 on Titles of Metropolitan Statistical Areas would read as follows:

A. The title of a metropolitan statistical area assigned to Level B, C, and D includes the name of the largest central city, and up to two additional names:

(1) The name of each additional city with a population of at least 250,000;

(2) The names of additional cities qualified as central cities by Section 4, provided each is at least one-third as large as the largest central city;

(3) The names of other central cities (up to the maximum of two additional names) if local opinion supports the resulting title.

B. An area title that includes the names of more than one city begins with the name of the largest city and lists the other cities in order of their population according to the most recent national census.*

C. In addition to city names, the title contains the name of each State in which the metropolitan statistical area is located.

OMB welcomes comments on this proposal.

33. *Issue:* Changes in titles and Federal Information Processing Standards (FIPS) codes cause problems for users, especially for those making historical data comparisons.

Response: Changes in the initial name in MSA titles are infrequent. Under the present standards, if a city qualifies as a central city and is included in an existing metropolitan statistical area title, it will not be resequenced in or displaced from that title until both its population *and* the number of persons working within its limits are exceeded by those of another city qualifying for the area title.

However, title changes may occur from time to time. If the initial name in a title changes, the FIPS code will be changed to reflect the position of the new title in the alphabet.

CMSA/PMSA

34. *Issue:* Change the required level of commuting interchange between adjacent MSAs for consolidation of the areas.

A. Tighten requirements—for example:

(1) Require evidence of a higher order of economic relationships before qualifying areas as consolidated.

(2) Do not allow consolidation unless there is at least 15 percent interchange; allowing 10 percent interchange to qualify if urbanized areas are contiguous is unsatisfactory in more densely populated areas.

B. Loosen requirements—for example:

(1) Allow a specified amount of interchange, such as 100,000, to qualify instead of requiring a specified percentage; consider requiring different base amounts depending on the population of the areas.

(2) Allow consolidation if there is an interchange of at least 10 percent.

Response: The current standards for consolidation require a commuting interchange (the total of workers who live in either of the areas but work in the other) of at least 15 percent of the number of workers living in the smaller of the two areas. If the central cities are located in the same urbanized area, or if the urbanized areas are contiguous, a commuting interchange of 10 percent is sufficient for consolidation. These standards have worked satisfactorily and will be continued.

OMB will continue to use percentages rather than absolute amounts of commuting for qualification because they provide comparability for areas of varying population size.

35. *Issue:* State what limits exist, if any, on the number and geographic extent of MSA mergers and consolidations into "super areas."

Response: The procedures used for the consolidation of MSAs generally preclude the designation of "chains" of areas as CMSAs (for example, from Boston to Washington). Further, any case in which such a chain might emerge would be subject to special review. All current CMSAs are focused either on a single dominant nucleus or on a pair of nuclei.

36. *Issue:* Define central counties on the basis of a single urbanized area and do not reflect other urbanized areas that may be nearby.

Response: Central counties are defined in the standards as the basis for determining the area to which commuting from outlying counties is measured. Any separate urbanized area may give rise to a separate MSA, but once the county containing such an urbanized area has commuting ties with the central county of another area sufficient for it to qualify under the outlying county requirements, the two become merged as a single MSA with two central counties. This ensures that any outlying county with qualifying commuting to either of the central counties or to the two central counties combined will qualify for the enlarged MSA.

37. *Issue:* Raise from 60 to 75 the percent urban requirement for a county to be considered for forming a new PMSA.

Response: The percent urban requirement for designating PMSAs is the same as for consolidating adjacent MSAs. When consolidated statistical areas were established in 1975, a 75 percent urban population was a prerequisite. This figure was lowered to 60 percent in the 1980 standards after a detailed inspection indicated that this would be a more realistic figure. The 60 percent criterion standard will be retained for 1990.

38. *Issue:* In the criteria for qualifying as a core county of a PMSA (Sec. 9 of the standards), requiring less than 35 percent of a county's workers to work outside the county is too low; this cutoff should be raised to 50 percent.

Response: The cutoff in the present PMSA standards will be maintained in the 1990 MSA standards.

39. *Issue:* When an interim MSA adjoins more than one potential CMSA, give preference to including it with an area in its own State.

Response: The MSA standards for determining when adjacent areas should be consolidated (Section 5) are designed to treat such situations consistently and give chief emphasis to the relative commuting ties between the areas.

40. *Issue:* State whether the presence of a small part of a central city in a county precludes that county from separate PMSA status.

Response: For PMSAs other than the one containing the largest central city, the 1980 MSA standards include a criterion that a county may not contain any part of the largest central city of the Level A MSA. We propose to maintain this criterion in the 1990 standards.

41. *Issue:* Change the rules for sequencing central city names in a CMSA title so that the largest central city of the largest PMSA is the first name.

Response: The current standards require the designation of the city with the largest population in the CMSA as the first city in the CMSA title and we propose to maintain this criterion in the 1990 MSA standards.

42. *Issue:* Indicate whether the identification and definition of PMSAs are reviewed every decade by OMB, and whether CMSA/PMSA configurations will be reviewed by the appropriate Congresional delegation before announcing redefinitions after the 1990 census.

Response: All MSAs with a population of at least one million (Level A MSAs) will be reviewed by OMB to

* If a city qualifies as a central city under Section 4, and is included in an existing metropolitan statistical area title, it will not be resequenced in or displaced from that title until both its population and the number of persons working within its limits are exceeded by those of another city qualifying for the area title.

determine whether two or more PMSAs can be identified according to the standards. This review will include existing as well as potential new areas. In areas where PMSAs could qualify, OMB will write to the appropriate Congressional delegation to obtain local opinion as part of the review of possible PMSA configurations. After OMB has considered local opinion and made a decision on a particular matter, local opinion on the same question will not be considered again until after the next decennial census.

43. *Issue:* Do not break up CMSAs into PMSAs unless the expressed local opinion to do so is broadly based.

Response: After MSAs are defined, they are classified based on total population. MSAs of one million or more are categorized as Level A and are reviewed to see if they contain any areas that could qualify as PMSAs. Local opinion is sought before any PMSAs are qualified; this local opinion should be broadly based and is obtained through the Congressional delegation. If no PMSAs are designated, the area remains an MSA.

Availability of Revised MSA Standards

44. *Issue:* Send copies of the revised MSA standards, when available, to the parties that provided comments based on the Federal Register notice.

Response: OMB will publish the revised MSA standards in the Federal Register by April 1, 1990, and will make copies available to individual parties that request them. OMB will send copies of the present Notice to persons that commented.

James B. MacRae, Jr.,

Deputy Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 89-19393 Filed 8-17-89; 8:45 am]

BILLING CODE 3170-01-M

RESOLUTION TRUST CORPORATION

Establishment of the Resolution Trust Corporation

AGENCY: Resolution Trust Corporation.

ACTION: Notice of establishment.

SUMMARY: This action provides notice of the establishment of the Resolution Trust Corporation. This notice is published pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

FOR FURTHER INFORMATION CONTACT: Robert E. Feldman, Acting Executive Secretary of the Resolution Trust Corporation, 202-898-3811.

SUPPLEMENTARY INFORMATION: As of August 9, 1989, the Resolution Trust Corporation is established as an agency of the United States, when acting as a corporation, for purposes of subchapter II of chapter 5 and chapter 7 of title 5 of the United States Code pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73.

The duties of the Corporation shall be to carry out a program, under the general oversight of the Oversight Board (an instrumentality of the United States established pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989) and through the Federal Deposit Insurance Corporation, including managing and resolving all cases involving depository institutions, the accounts of which were insured by the Federal Savings and Loan Insurance Corporation before August 9, 1989, the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and for which a conservator or receiver had been appointed at any time during the period beginning January 1, 1989, and ending on August 9, 1989, or is appointed within the three-year period beginning on August 9, 1989. The Corporation will also manage the Federal Asset Disposition Association, subject to the provisions of the Act. The Corporation shall terminate not later than December 31, 1998.

Dated: August 9, 1989.

Resolution Trust Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 89-19400 Filed 8-17-89; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

[34-27122; File No. SR-DTC-89-13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Depository Trust Company Relating to Modification to Interim Accounting Procedure for Special Cash Distributions

August 10, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 28, 1989 the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described below (SR-DTC-89-13). The Commission is publishing this notice to solicit comments by interested persons on the proposed rule change.

[1] 15 U.S.C. 78s(b)(1) (1981).

I. Description of the Rule Change

The proposed rule change would modify DTC's interim accounting procedures for the allocation of large cash distributions and extraordinary cash dividends ("special cash distributions") so that all payments relating to such cash distributions can be allocated by DTC on the payable date (if DTC has received a timely payment from the issuer). In addition, DTC will continue to apply the interim accounting procedure during the period from the day after payable date through the due bill redemption date and, on a daily basis, DTC will allocate the special cash distribution (by debit and credit to money settlement accounts) to participants receiving deliveries during that period.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The Commission has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing DTC states that participants have to deliver due-bills and make payments on the due-bills outside of DTC for trades settling from the payable date to the due-bill redemption date. According to DTC this procedure has been burdensome to participants.

According to DTC, the purpose of the proposed rule change is to promote the efficient settlement of trades involving due-bill payments so that special cash distributions can be made within DTC. DTC believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to DTC. DTC further represents that the proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The rule filing states that DTC does not believe that the proposed rule changes will have an impact on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

DTC represented in the filing that comments were not solicited or received regarding the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act [2] and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

You are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at DTC's principal office. All submissions should refer to File number SR-DTC-89-13 and should be submitted by September 8, 1989.

[2] 15 U.S.C. 78s(b)(3) (1981).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19483 Filed 8-17-89; 8:45 am]

BILLING CODE 8010-01-M

[34-27126; File No. SR-MSTC-89-06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Securities Trust Company relating to an Input Error Correction Fee for Automated Transfers Submitted Inaccurately

August 11, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 27, 1989 the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Midwest Securities Trust Company ("MSTC") proposes to institute a $5.00 input error correction charge for automated transfers submitted inaccurately and requiring modification. In addition, MSTC has included in its filing an outline of formats and guidelines to be used by Participants when submitting transfer instructions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Since the automation of transfer processing by transfer agents, MSTC has been faced with an increased number of transfer rejects, requiring registration reformatting, slower turn-around time and increased costs.

In an effort to minimize these problems, MSTC will assess a $5.00 input error correction charge for each transfer which requires a correction, along with any transfer agent reject costs. If the information necessary for an adjustment is not readily available, MSTC will contact the Participant and allow a 24-hour response time. If no reply is received, MSTC will cancel the transfer request and assess the $5.00 input error correction charge. MSTC will provide Participants with copies of the transfer instruction which required reformatting on the last business day of each month.

The proposed rule change is consistent with section 17A of the Securities Exchange Act of 1934 (the "Act") in that it provides for the equitable allocation of reasonable dues, fees and other charges among MSTC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Midwest Securities Trust Company does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to file number SR-MSTC-89-06 and should be submitted by September 8, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19434 Filed 8-17-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27114; File No. SR-NYSE-89-07]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Maximum Quote Spreads By Specialists and Competitive Options Traders

On June 2, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder, [2] a proposed rule change to modify Exchange Rules 750 and 758 relating to the requirement of competitive options traders ("COTs") and specialists to maintain certain bid/ask spreads.

The proposed rule change was noticed in Securities Exchange Act Release No. 26870 (June 28, 1989), 54 FR 28077 (July 5, 1989). No comments were received on the proposed rule change.

Currently, pursuant to NYSE Rule 758, COTs must bid and/or offer so as to create differentials of no more than 1/4 of $1 between the bid and the offer for each option contract for which the last preceding transaction price was less than $3 or less, no more than 1/2 of $1 where the last preceding transaction price was more than $.50 but did not exceed $10, no more than 3/4 of $1 where the last preceding transaction price was more than $10 but less than $20, and no more than $1 where the last preceding transaction price was $20 or more.

The proposed modifications to NYSE Rule 758 narrows the bid/ask differentials for those options contracts for which the last preceding transaction price was less than $10. Pursuant to the proposed rule change COTs must bid and/or offer so as to create differentials of no more than 1/4 of $1 between the bid and the offer for each option contract for which the last preceding transaction price was less than $1, no more than 3/8 of $1 where the last preceding transaction price was $1 or more but less than $5, and no more than 1/2 of $1 where the last preceding transaction price was $5 or more but less than $10. The proposed rule change, however, retains the maximum bid/ask spreads currently applicable to option contracts for which the last preceding transaction price was between $10 and $20 and those option contracts for which the last preceding transaction price was more than $20.

In addition, the proposed rule change modifies NYSE Rule 750 by applying the NYSE Rule 758 obligation of COTs to maintain bid/ask differentials to specialists bidding and/or offering for their own accounts.

The NYSE states that the proposed rule change is designed to enhance the quality of the Exchange's options market by requiring narrower price differentials between bids and offers and clarifying the applicability of the quotation differential requirements to regular options specialists. The NYSE states further that the proposed rule change will produce Exchange options quotations that are more reflective of current market conditions.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 11 [3] and the rules and regulations thereunder. Specifically, the commission believes that narrowing the maximum allowable bid-ask differentials for options contracts for which the last preceding transaction price was less than $10 will benefit public customers by improving price continuity and providing tighter, more liquid markets. The Commission believes also that modifying NYSE Rule 758 concerning bid/ask differentials so as to conform with existing trading practices regarding such bid/ask differentials should eliminate any possible investor confusion. In addition, the Commission believes that modifying NYSE Rule 760 to apply the NYSE Rule 758 obligation of COTs to maintain minimum bid/ask differentials to specialists bidding and/or offering for their own accounts is a logical and necessary step in ensuring that quotations remain within the maximum bid/ask limits. Specialists are the primary market makers in their options, and should be charged with the obligation to maintain narrow quotes. Finally, the Commission previously approved a substantially identical proposed rule change by the Philadelphia Stock Exchange, Inc., and incorporates the reasoning in that approval order into this order. [4]

It is therefore ordered, pursuant to section 19(b)(2) of the Act [5] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [6]

Dated: August 9, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19435 Filed 8-17-89; 8:45 am]

BILLING CODE 8010-01-M

[34-27130; File No. SR-OCC-89-05]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change to Require Clearing Members to Submit Data and Other Items Through the Clearing Management and Control System

August 11, 1989.

On June 7, 1989, the Options Clearing Corporation ("OCC") filed a proposed rule change (File No. SR-OCC-89-05) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). [1] Notice of the proposed rule change appeared in the Federal Register of July 3, 1989. [2] No comments were

---

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] 15 U.S.C. 78k (1982).

[4] See Securities Exchange Act Release No. 25149 (May 18, 1987), 52 FR 19015 (May 20, 1987).

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1988).

[1] 15 U.S.C. 78s(b)(1) (1981).

[2] Securities Exchange Act Release No. 26870 (June 28, 1989), 54 FR 28057 (July 5, 1989).

received. As discussed below, the Securities and Exchange Commission ("Commission") is approving the proposed rule change.

The proposed rule amends OCC's Rule 206.04 giving OCC the option to require clearing members to submit reports, notices, instructions, options clearance and settlement data and other items directly to OCC, through the on-line data entry system known as Clearing Management and Control Systems ("C/MACS"). [3] A participant using this on-line data entry system must purchase or lease hardware, or use currently owned qualifying equipment, consisting of two display terminals and one printer to produce "hard-copy" documents.

Notwithstanding these additional costs, OCC indicates that 112 of its clearing members interface with OCC through C/MACS, representing 70% of total cleared volume. [4] OCC further asserts that mandating clearing member use of C/MACS would position OCC for future technological enhancements, eliminate data entry risk and reduce paper and printer costs. Finally OCC represents that C/MACS has the capacity and the capability to take in and handle the participation increase resulting from the approval of this proposal. [5]

The Commission believes that OCC's proposal is consistent with section 17A of the Act [6] because it will require all of its participants to use more effective data processing and communications techniques. This requirement, in turn, will promote safer and more efficient procedures for the clearance and settlement of options. [7]

As the Commission has stated before, C/MACS improves the timeliness and efficiency of OCC's operations while reducing the time and costs of processing options transactions. [8] C/MACS, moreover, has sophisticated security measures that will reduce the risk of unauthorized access [9] while, at the same time, it creates "a detailed data bank that should assist clearing members to monitor members' transactions and to meet their regulatory responsibilities." [10]

The requirement that all members use C/MACS to submit their options clearance and settlement data will extend the benefits of C/MACS to the totality of OCC's clearance and settlement system. This will translate into a generalized reduction of processing costs and a substantial decrease in technical as well as security risks. [11] The compulsory nature of the proposed expansion, however, will require additional expenditures by persons contemplating participation in OCC and by participants who do not currently submit data via C/MACS, in order to cover the costs associated with the purchase and maintenance of the equipment necessary to connect with C/MACS. [12] The Commission, however, does not believe that, given the increasing public familiarity with computer systems, such additional costs reflect an unnecessary cost burden for OCC participants or for those contemplating participation in OCC.

With respect to potential participants, in particular, terminal equipment expenses are not the only expenses they must pay. In fact, such expenses are a relatively insignificant factor affecting participation decisions, when measured against other expenses such as, clearing fund contributions and account maintenance fees. [13] The Commission believes instead that the benefits associated with C/MACS will increase small clearing member market participation to the benefit of the options market.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed filing (SR-OCC-89-05) be, and is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19486 Filed 8-17-89; 8:45 am]

BILLING CODE 8010-01-M

[34-27131; File No. SR-MSTC-89-06]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Securities Trust Company Relating to Institutional Participant Service Programs

August 11, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 31, 1989 the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interest persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify NSTC's rules as summarized in II.A. below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

---

[3] For a description of C/MACS' operational capabilities see Securities Exchange Act Release No. 20863 (May 22, 1984), 49 FR 23427 (May 29, 1984) (Approving OCC's proposal to establish C/MACS).

[4] Form 19b-4 filed in support of proposed rule change, p. 3.

[5] Letter from James C. Young, Assistant Vice President and Deputy General Counsel OCC, to Julius R. Leiman-Carbia, Staff Attorney, Division of Market Regulation, Securities and Exchange Commission (August 10, 1989).

[6] 15 U.S.C. 78q-1 (1981).

[7] *See specifically* section 17A (a)(1)(C) of the Act, 15 U.S.C. 78q-1(a)(1)(C) (1981).

[8] Securities Exchange Act Release No. 20863, *supra* note 3, at 23429.

[9] *Id.; see also* Securities Exchange Act Release No. 22930 (February 24, 1989), 51 FR 7172 (February 28, 1986) (Approving OCC's procedures to enable clearing members to access C/MACS via ordinary telephone lines ["dial-up"] rather than by dedicated lines, and reaffirming the Commission's position that C/MACS "contains elaborate safeguards that should protect adequately funds, securities and data," at 7172 [footnote omitted].)

[10] Securities Exchange Act Release No. 20863, *supra* note 3, at 23429.

[11] An important consideration in reaching this conclusion is C/MACS operational and safety record. OCC has not had any significant operational or security problems with respect to C/MACS since its inception in 1984. Letter from James C. Young, *supra* note 5.

[12] In order to connect with C/MACS a participant must own a compatible personal computer ("PC") and a printer. A participant must also pay $1,500.00 plus tax and shipment cost for the software necessary to communicate with C/MACS. In addition, a participant must pay a $200.00 monthly subscription fee.

OCC intends to file a rule proposal that would enable it to increase membership fees from the current $2,000.00 to $4,000.00. The $2,000.00 difference would cover the cost of the software. Therefore, if the proposed rule change is filed and approved by the Commission, a new participant would have to pay only the cost of the hardware and the monthly subscription fee, in addition to membership fees and any other ordinary cost associated with membership.

[13] *See* Securities Exchange Act Release No. 20619 (December 30, 1983), 49 FR 986, 987 (January 6, 1984). (Using similar analysis to discuss the extent to which the burden of costs associated with computer terminal equipment affected decisions by dual clearing agency participants).

(A) *Self-Regulatory Organizations Statement of the Purpose of, and Statutory Basis, for, the Proposed Rule Change*

The proposed rule change formally establishes the Institutional Participant Services Program. The Program is designed to provide book-entry settlement, safekeeping and other depository services on behalf of Institutional Participants. Institutional Participants are defined generally as institutions who maintain an account with MSTC pursuant to the rules and the Institutional Participant Services Program.

Institutional Participants must meet those qualifications for MSTC participation set forth in MSTC article V, rule 1, section 1. That section generally limits MSTC participation to, among others, SEC-registered broker-dealers; Federal or state supervised or regulated banks, savings and loan associations or trust companies; state supervised or regulated insurance companies; SEC-registered investment companies; and other qualifying persons, funds or entities.

Institutional Participants must meet the foregoing requirements, as well as certain other specific financial and reporting qualifications. For example, Institutions subject to state, federal or other governmental regulation must provide MSTC with copies of all financial reports submitted to regulatory authorities. Institutions not subject to such regulation, or if not required to file financial reports with regulatory authorities, must provide MSTC with copies of unaudited quarterly financial statements and audited annual financial statements.

An Institutional Participant must also promptly advise MSTC of any decreases of 10% or more in net assets, or its revenue or income, during any period.

MSTC may, in its discretion, require Institutions to provide financial statements on a more frequent basis. MSTC may also request such other financial information necessary to assure itself that an Institution's financial condition and performance, including information as to the level and quality of earnings and other generally accepted measures of liquidity, capital adequacy and profitability, do not create undue risks to MSTC, Participants or other Institutional Participants.

The proposed rule also requires that each applicant to become an Institutional Participant demonstrate (to MSTC's satisfaction) (i) sufficient operational capability to utilize the services of MSTC, and (ii) sufficient personnel, operational capability, and physical facilities necessary to fulfill its obligations to MSTC.

In addition, Institutional Participants must (i) have an established business history of a minimum of one year or personnel with sufficient operational background and experience to ensure its ability to conduct business with MSTC, and (ii) maintain a minimum of $5 million in net assets, either directly or under management. Any applicant with less than $5 million may be admitted, but must demonstrate to MSTC's satisfaction (through a demonstrated plan or other documentation) that its net assets (or net assets under management) will reach $5 million within one year of admission as a Participant.

Finally, with respect to MSTC's rules, the proposed rule changes amend MSTC's loss recovery procedures in the case of losses incurred as a result of Participant defaults. Under MSTC's present article VI, rule 2, section 4, if MSTC incurs a loss in excess of a Participant's contribution to the Participants Fund by reason of such Participant's default, the unrecovered portion of such loss (not recovered through insurance) may be made good from the Contingency Reserve Fund, the Participants Fund or existing undivided profits and retained earnings, at the election of MSTC.

The proposed rule change amends article VI, rule 2, section 4 to provide that MSTC will limit assessments of contributions to the Participants Fund of non-defaulting Institutional Participants to cover losses arising from defaults by Institutional Participants; MSTC will also limit assessments of contributions of non-defaulting non-Institutional Participants to cover losses arising from defaults by non-Institutional Participants. An exception is made if the loss resulted from Participant defaults involving a transaction or transactions between an Institutional Participant and a non-Institutional Participant. In this scenario, MSTC may assess the contributions to the Participants Fund of both Institutional Participants and non-Institutional Participants.

The foregoing rule changes regarding Participants Fund assessments and allocation of potential losses are designed to balance the statutory goals of promoting prompt and accurate clearance and settlement of securities transactions (by encouraging participation by institutions) and the equitable allocation of dues, fees and other charges. The different treatment in potential assessments also reflects MSTC's analysis of risks by both Institutional and non-Institutional Participants. For example, the proposed rules impose specific risk reduction requirements on Institutions that are similarly not imposed on non-Institutional Participants, including requirements relating to minimum net assets, financial reporting, operational background and experience, and business history. The changes also recognize that Institutions will receive specific specialized services, including the appointment of an individual account administrator to assist in monitoring account activity.

Contributions to the Participants Fund of both Institutional Participants and non-Institutional Participants are subject to potential assessments in all other cases not involving Participant defaults, including losses resulting from larceny, embezzlement, or insolvency of a depository (see MSTC article VI, rule 2, sections 5 and 6).

The rule change also contains a Description of Institutional Participants' Services, which are submitted in the form of proposed Procedures. The Description of Services describes the specialized services offered to Institutions, including:

Income Collection. Institutional Participants will receive cash dividend and interest payments on payable date, regardless of whether the funds are collected from the Issuer or Paying Agent by payable date. However, MSTC will reserve the right under article III, rule 1, sections 3 and 4 to reverse credits within specified timeframes in the case of issuer or paying agent defaults. MSTC also reserves the right to defer credit of dividend and interest income until such amounts have been received from the paying agent or issuer if MSTC believes or is concerned that the paying agent or issuer will default or fail to make prompt payment on payable date or anticipated amounts due from the paying agent or issuer are in excess of amounts available or prudent for advance on payable date.

Customer Support. Each Institution will be assigned an individual account administrator. This account administrator will actively assist the Institution in monitoring account activity and handling daily operational inquiries. The administrator will also assist the Institution in processing or resolving certain activities including unusual or unanticipated account activity or securities deliveries.

Annual Operational Review. MSTC will provide each Institution with an annual operational review. Institutions will receive a written report regarding the effectiveness of depository utilization and, if appropriate, MSTC will make cost reduction or securities processing recommendations.

Finally, the proposed rule change sets forth a Fee Schedule for the Institutional Participants' Services Program. The schedule is structured in several board areas, including specific fees for Account Maintenance, Safekeeping, Book-Entry Transactions, Physical Transactions, Dividend Reinvestment Programs etc. The fees incorporate MSTC's development efforts in establishing the Institutional Participant Services Program and recognize MSTC's provision of specialized services to Institutions, including Income Collection, Customer Support and Annual Operational Review. The schedule, uniformly charged to Institutions depending on volume and activity, is also intended to compensate MSTC for the increased monitoring of Institutional Participants and related account activity.

MSTC believes that the proposed rule change is consistent with section 17A of the Securities Exchange Act of 1934 (the "Act") in that it (i) provides for direct depository and clearing agency participation by insurance companies, investment companies and other qualifying institutions, (ii) promotes the prompt and accurate clearance and settlement of securities transactions in the National Clearance and Settlement System by qualifying institutions, and (iii) provides for the equitable allocation of fees for services for such institutions.

(B) *Self-Regulatory Organization's Statement on Burden on Competition.*

MSTC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

MSTC has not received any comments from Participants on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the commission and any person, other than those that may be withheld from the public in accordance with the provision of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be made available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to file number SR-MSTC-89-05 and should be submitted by September 8, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19487 Filed 8-17-89; 8:45 am]

BILLING CODE 8010-01-M

[34-27128; File No. SR-OCC-89-08]

Self-Regulatory Organizations; Options Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change

August 11, 1989.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on July 20, 1989, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission a proposed rule change. The proposed would amend OCC's Canadian margin and clearing fund depository receipt forms ("Canadian Receipts").[1] The proposal also would amend OCC's United States margin and clearing fund depository receipt forms ("U.S. Receipts") to conform those receipts to proposed Canadian Receipts. The Commission is publishing this notice to solicit comment on the proposal from interested persons.

The proposal would amend Canadian and U.S. Receipts in several ways. First, the words "And Security Agreement" would be added to the title of those receipts. Second, Canadian Receipts would specify that depositories holding securities under the receipts are acting on behalf of OCC as OCC's agent rather than as agent for the depositing clearing member and that the depositing clearing member has directed the depository to act in such capacity. U.S. Receipts would contain similar language except they would not specify that the depository is not acting as agent for the depositing clearing member. U.S. Receipts also would specify that deposited securities have been pledged, assigned, and transferred to OCC by the depositing member. Third, Canadian and U.S. Receipts would specify that depositories must segregate property held under the receipts from all other property held by the depository "in any other capacity." Fourth, Canadian Receipts would specify that "As continuing security for all existing and future indebtedness and obligations of the (depositing) member to OCC, the (depositing) member hereby pledges, charges, and grants a first, fixed, and specific security interest to and in favor of (OCC) in (securities deposited under the receipt) and any proceeds thereof." U.S. Receipts would contain similar language except they would use the words "pledges, assigns, and transfers" instead of "pledges, charges, and grants" and the security interest granted would not be specified as "first, fixed, and specific." Fifth, Canadian and U.S. Receipts would specify that OCC's ability to liquidate deposited securities is subject to "applicable law" and is a power OCC may exercise in "its own right." Finally, the words "attorneys' fees" would be replaced with "counsel fees (on a solicitor and his own client basis)" in a provision of the Canadian Receipts describing a clearing member's duty to compensate a depository in connection with litigation. A reference to "counsel fees" would be eliminated in a comparable provision of the U.S. Receipts.

[1] On April 22, 1988, the Commission approved an OCC proposal permitting members to deposit securities issued or guaranteed by the Canadian government ("Canadian government securities") for OCC margin and clearing fund purposes. OCC accepts pledges of Canadian government securities in the form of a depository receipt or confirmation from its clearing banks that Canadian government securities have been pledged through an EDP Pledge System. *See* Securities Exchange Act Release No. 25640 (April 22, 1988), 53 FR 15622.

OCC believes the proposal is consistent with the purposes and requirements of section 17A of the Act. Specifically, OCC believes the proposal is designed to assure the safeguarding of securities and funds in OCC's custody or control by enhancing OCC's lien under Canadian law on securities deposited pursuant to Canadian Receipts. OCC further believes the amendments to U.S. Receipts are necessary to conform those receipts to the proposed Canadian Receipts.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views, and arguments concerning the submission within 21 days after the date of publication in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR–OCC–89–06.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing (SR–OCC–89–06) and of any subsequent amendments also will be available for inspection and copying at OCC's principal office. All submissions to file number (SR–OCC–89–06) should be submitted by September 8, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–19486 Filed 8–17–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 11, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number 46436

Date Filed: August 7, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 7, 1989.

Description: Application of The National Airline Commission of Papua New Guinea, t/a Air Niuguni, pursuant to Section 402 of the Act and Subpart Q of the Regulations requests that it be issued a foreign air carrier permit authorizing it to engage in foreign transportation between Guam and Port Moresby, New Guinea.

Docket No. 46440

Date Filed: August 9, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 6, 1989.

Description: Application of Continental Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests renewal of its certificate for Route 470 authorizing foreign air transportation of persons, property and mail between Houston and Dallas/Ft. Worth, Calgary and Edmonton, Alberta, Canada, and Anchorage and Fairbanks, Alaska.

Docket No. 45611

Date Filed: August 9, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 6, 1989.

Description: Application of United Parcel Service Co. pursuant to Section 401 of the Act and Subpart Q of the Regulations request an amendment to its certificate of public convenience and necessity so as to authorize scheduled all-cargo foreign air transportation to additional countries.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89–19402 Filed 8–17–89; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Noise Exposure Map; Chicago O'Hare International Airport, Chicago, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of Chicago for Chicago O'Hare International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is August 7, 1989.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL–611.1, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694–7538.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Chicago O'Hare International Airport are in compliance with applicable requirements of Part 150, effective August 7, 1989.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional non compatible uses.

The FAA has completed its review of the noise exposure maps and related description submitted by the city of Chicago. The specific maps under consideration are the noise exposure maps: Existing (1988) Noise Exposure Map, Exhibit E–1 and Future (1993) Noise Exposure Map, Exhibit E–2 (both showing unabated contours), located in Appendix E of the submission. The FAA has determined that these maps for Chicago O'Hare International Airport are in compliance with applicable requirements. This determination is effective on August 7, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps.

Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Great Lakes Region, Airports Division Office, 2300 East Devon Avenue, Room 289, Des Plaines, Illinois 60018

Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 268, Des Plaines Illinois 60018

Department of Aviation, City of Chicago, 20 North Clark Street, Suite 3000, Chicago, Illinois 60602.

Also, copies of the Noise Exposure Map document are available at the following public libraries:

Elmwood Park Public Library, Four Conti Parkway, Elmwood Park, Illinois 60635

Franklin Park Public Library, 10311 Grand Avenue, Franklin Park, Illinois 61031

Glenview Public Library, 1930 Glenview Road, Glenview, Illinois 60025

Eisenhower Public Library, 4652 North Olcott, Harwood Heights, Illinois 60656

Palatine Public Library, 500 North Benton Street, Palatine, Illinois 60067

Park Ridge Public Library, 20 South Prospect Avenue, Park Ridge, Illinois 60068

River Grove Public Library, 8638 West Grand Avenue, River Grove, Illinois 60171

Itasca Community Library, 500 West Irving Park Road, Itasca, Illinois 60143

Lombard Public Library, 110 West Maple Street, Lombard, Illinois 60148

Melrose Park Public Library, 801 North Broadway, Melrose Park, Illinois 60160

Mount Prospect Public Library, 10 South Emerson Street, Mount Prospect, Illinois 60056

Niles Public Library, 6960 Oakton Street, Niles, Illinois 60648

Northlake Public Library, 231 North Wolf Road, Northlake, Illinois 60164

Rolling Meadows Public Library, 3110 Martin Lane, Rolling Meadows, Illinois 60008

Roselle Public Library, 40 South Park Street, Reselle, Illinois 60172

Schaumburg Township Public Library, 32 West Library Lane, Schaumburg, Illinois 60194

Schiller Park Public Library, 4200 Old River Road, Schiller Park, Illinois 60176

Villa Park Public Library, 305 South Ardmore, Villa Park, Illinois 60181

Wood Dale Public Library, 520 South Wood Dale Road, Wood Dale, Illinois 60191.

Questions may be directed to the individual named above under the heading FOR FURTHER INFORMATION CONTACT.

Issued in Des Plaines, Illinois on August 7, 1989.

Henry A. Lamberts,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 89–19428 Filed 8–17–89; 8:45 am]

BILLING CODE 4910–13–M

Corrections

Federal Register
Vol. 54, No. 159
Friday, August 18, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation, Opportunity To Request Administrative Review

Correction

In notice document 89-18426 beginning on page 32364 in the issue of Monday, August 7, 1989, make the following correction:

On page 32364, in the third column, in the table, in the second column, the last line should read "02/01/88-07/31/89".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

University of Utah et al.; Consolidation Decision on Application for Duty-Free Entry of Scientific Instruments

Correction

In notice document 89-17823 appearing on page 31718 in the issue of Tuesday, August 1, 1989, make the following corrections:

1. On page 31718, in the first column, in the last paragraph, the first line should read "Docket Number: 89-028".,

2. On the same page, in the second column, in the first complete paragraph, in the sixth line remove "FY", and insert"See Notice at 54 FR 4878, January 31, 1989. *Reasons for this Decision:"*

3. On the same page, in the same column, in the second complete paragraph, in the 12th line, "(ST)" should read "(STP)".

4. On the same page, in the same column, in the third complete paragraph, in the 9th line remove the period before "for", and in the 11th line, "0.40°" should read "0.4°".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 226 and 227

[Docket No. 90778-9178]

Endangered and Threatened Species; Critical Habitat; Winter-run Chinook Salmon

Correction

In rule document 89-18302 beginning on page 32085 in the issue of Friday, August 4, 1989, make the following correction:

On page 32085 in the third column, under "EFFECTIVE DATE", the last line should read "August 4, 1989, through April 2, 1990."

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 81024-9016]

Revision of Patent and Trademark Fees

Correction

In a correction to rule document 89-3486 appearing on page 8053 in the issue of Friday, February 24, 1989, the corrections to § 1.21 should read as follows:

§ 1.21 [Corrected]

4. On the same page, in the third column, in § 1.21(d), ".00" should read "$50.00".

5. On the same page, in the same column, in § 1.21(g), "$15.00" should read "$0.15".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3624-7]

National Drinking Water Advisory Council; Open Meeting

Correction

In notice document 89-18258 appearing on page 32116 in the issue of Friday, August 4, 1989, make the following correction:

On page 32116, in the third column, in the sixth line, "August 20, 1989" should read " August 30, 1989".

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

Agreement(s)

Correction

In notice document 89-18826 beginning on page 33077 in the issue of Friday, August 11, 1989, make the following correction:

On page 33078, in the first column, "Agreement No.: 224-010677-002" should read "Agreement No.: 224-010677-001".

BILLING CODE 1505-01-D

federal register

Friday
August 18, 1989

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 1 et al.

Revision of General Operating and Flight Rules; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 21, 23, 25, 27, 29, 31, 33, 35, 36, 43, 45, 47, 61, 63, 65, 71, 91, 93, 99, 103, 121, 125, 127, 133, 135, 137, 141

[Docket No. 16334; Amdts. No. 1-36, 21-66, 23-37, 25-68, 27-24, 29-27, 31-5, 33-13, 35-6, 36-18, 43-31, 45-18, 47-24, 61-84, 63-27, 65-34, 71-13, 91-211, 93-56, 99-11, 103-3, 121-206, 125-12, 127-43, 133-10, 135-32, 137-12, 141-11]

RIN 2120-AA13

Revision of General Operating and Flight Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment reorganizes and realigns the general operating and flight rules to make them more understandable and easier to use. Also, several changes are made to provide more flexibility for certain operations. These changes result from comments received from the general public and aviation industry in response to a request for specific comments to help identify substantive areas needing review.

EFFECTIVE DATE: This amendment becomes effective on August 18, 1990, except that § 91.203(a)(2) becomes effective September 18, 1989, and remains numbered as § 91.27(a)(2) until August 18, 1990.

FOR FURTHER INFORMATION CONTACT: William T. Cook (202) 267-3849 or Edna French (202) 267-8150, Project Development Branch (AFS-850), General Aviation and Commercial Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 1978, the Aircraft Owners and Pilots Association (AOPA) petitioned the Federal Aviation Administration (FAA) to revise part 91 of the Federal Aviation Regulations (FAR) to make the regulations simpler and more comprehensible. In response to this petition, on January 11, 1979, the FAA issued an Advance Notice of Proposed Rulemaking (ANPRM) No. 79-2 (44 FR 4572; January 22, 1979) consisting of a verbatim publication of AOPA's proposal.

The FAA received 106 comments in response to the ANPRM. An overwhelming majority of the commenters supported the intent of the proposal to reorganize part 91. However, there were numerous problem areas identified by the commenters relating to the proposed changes that were considered substantive.

On November 18, 1980, the FAA formed a part 91 Working Group to analyze the AOPA proposal and comments received on the ANPRM. It was determined that certain technical and administrative problems existed and that it was not feasible to undertake a substantive revision of part 91 at that time. Subsequently, AOPA withdrew its petition. However, review of AOPA's proposal to reorganize and renumber part 91 revealed that many of the changes had merit and could be implemented. The FAA part 91 Working Group concluded that the reorganization and renumbering of part 91 would be the first step to improve the regulation and make it more understandable and easier to use. Consequently, the FAA published NPRM No. 79-2A (46 FR 45256; September 10, 1981), which proposed to reorganize and realign the general operating and flight rules to make them more understandable and easier to use. Other proposals were made to delete redundancies and obsolete compliance dates and to make other minor changes.

Notice No. 79-2A did not contain any substantive changes; however, it did inform the public that the FAA considered that notice to be the first step in a regulatory review of part 91 consistent with the objective of Executive Order 12291. With this in mind, the FAA invited additional specific comments to help identify substantive areas to be reviewed and possibly included in subsequent proposals concerning part 91. The notice further stated that the FAA would not take final action concerning the reorganization until substantive changes were proposed and the public had been given an opportunity to comment on those proposals.

The FAA published Notice No. 79-2B (46 FR 60461; December 10, 1981) to extend the comment period for Notice No. 79-2A by 120 days. That notice was issued in response to a petition from the National Business Aircraft Association to allow additional time for commenters to prepare substantive comments.

The FAA received 69 comments in response to Notice No. 79-2A. The majority of these comments favored the proposal and were discussed in Notice No. 79-2C (50 FR 11292; March 20, 1985).

Notice 79-2C proposed four substantive changes in addition to the numerous changes made to reorganize and clarify existing rules. Two of these changes were made in response to comments received from the public. These changes are as follows:

(1) *Section 91.117.* Allows reciprocating-powered aircraft to be operated at 200 knots in an airport traffic area;

(2) *Section 91.135.* Allows operators desiring authorizations to deviate from positive control area and route segment requirements to utilize a 48-hour oral notification system;

(3) *Section 91.409.* Allows operators of turbine-powered rotorcraft to use an alternate inspection program, such as an FAA-approved inspection program; and

(4) *Sections 91.205, 91.509, and 91.511.* Defines "shore" as it is used in these sections to exclude tidal flats.

Public Comments

Forty-seven comments were received in response to Notice No. 79-2C. A number of commenters recommended regulations that were not proposed in the notice. Because such comments discuss matters which the public has not had an opportunity to consider, they are beyond the scope of the notice and cannot be considered without further notice and public participation. Some of these comments concern proposals that will be considered by the FAA in future rulemaking and, therefore, could be published in a future notice.

There were two areas in particular where several proposals were received that are not within the scope of the notice. First, 11 comments specifically request that balloons be excepted from certain requirements now pertaining to aircraft in general. These comments seek substantive change to the existing regulations not proposed in the notice.

Second, a number of commenters propose substantive changes to the regulations with regard to rotorcraft. Although these comments are not within the scope of this rulemaking, they were considered in the Rotorcraft Regulatory Review Program, Notice No. 5.

Two commenters are opposed to changing masculine references to "airman" to read "he or she." One commenter states that this would keep the text shorter and speed up the reading of the text. The other commenter states that § 1.3(a)(3) already provides that "words importing the masculine gender include the feminine," and the better course would be to refer to the "person," or the "pilot." The FAA agrees with these commenters. Accordingly, references throughout part 91 that use the words "he" or "she" have been changed to refer to the "person," the "pilot," the "crewmember," or the "Administrator."

One commenter writes that the use of "pilot in command" and "PIC" is inconsistent in the proposed rules. The FAA agrees with this commenter and, accordingly, has changed references to "PIC" in §§ 91.123(a) and 91.129(b) to "pilot in command" to make their use consistent throughout part 91.

A commenter suggests that all references to distances expressed in miles should state whether they are statute or nautical miles. The FAA agrees that such references should be clear. Accordingly, references to distance expressed in miles in §§ 91.171(b)(4)(ii) and 91.207(e)(3) are changed by adding the word "nautical" to reflect that the distances are expressed in nautical miles since they reference ground-measured distance. References to visibilities in §§ 91.155(b), 91.167(b)(2)(ii), and 91.303(e) are changed by adding the word "statute" to reflect that visibilities are expressed in statute miles.

Several commenters state that the proposed wording for § 91.1 implies that operations of moored balloons, kites, unmanned rockets, and unmanned free balloons are governed by part 103. This comment has merit and § 91.1 is revised by adding a specific reference to part 101 after the phrase "unmanned free balloons" to make clear that moored balloons, kites, unmanned rockets, and unmanned free balloons operate under part 101.

Another commenter requests clarification of the discussion of § 91.7 in Notice No. 79-2C, where the FAA states that there is no provision for the use of an approved Minimum Equipment List (MEL) in part 91 operations, whereas § 91.213 permits the use of an approved MEL. The FAA points out that at the time Notice No. 79-2C was published, the effective date of current § 91.30 (proposed § 91.213) was stayed indefinitely (44 FR 62884; November 1, 1979). Amendment No. 91-192 (50 FR 51188; December 13, 1985) which took effect on March 13, 1986, terminated the stay.

Section 91.7(b), which was proposed without substantive change from existing § 91.29, provides that a flight should be discontinued when unairworthy mechanical or structural conditions occur. One commenter suggests that this be changed by deleting "mechanical or structural" and making it more general so as to provide for a possible unairworthy electrical system. This suggestion raises a valid point; however, the FAA has determined that the rule should be amended to explicitly reference mechanical, electrical, or structural conditions. Therefore, § 91.7(b) is amended accordingly.

As suggested by one commenter, § 91.21(a)(1) is amended by deleting reference to a "commercial operator." This revision conforms § 91.21(a)(1) with SFAR 38-2 and part 125 which do not provide for a commercial operator's certificate and, instead, provide for the issuance of either an "air carrier operating certificate" or an "operating certificate."

One commenter states that consideration should be given to better defining "appropriately rated pilot" in § 91.109 and provide a definition. The FAA agrees that the phrase "appropriately rated pilot" should be defined better.

The preamble to Amendment No. 91-36 (32 FR 280; January 11, 1967 states that an "appropriately rated pilot" in § 91.21(b) requires a private pilot certificate with an airplane category rating, a multiengine class rating for a small multiengine land plane, and a type rating for a large airplane or a turbojet-powered airplane (large or small).

Accordingly § 91.109(b)(1) is amended to require that the safety pilot hold at least a private pilot certificate with category and class ratings appropriate to the aircraft being flown.

One commenter urges the FAA to reinsert the current rule regarding visual descent points (VDPs) (current § 91.116). VDPs are not an integral part of the approach procedure. An aircraft that is not equipped to identify a VDP has the same approach minima as a similar aircraft that is equipped to identify the VDP.

Mandatory use of VDPs is considered inappropriate for a number of reasons:

(1) VDPs that use Distance Measuring Equipment (DME) fixes may, because of displacement factors and/or fix errors, result in descent angles that are either too shallow or too steep for the approach.

(2) A mandatory VDP rule discourages the purchase and use of the very equipment necessary to identify the VDP. This is so because compliance can only be required of those aircraft that are equipped to identify the VDP.

For these reasons, the final rule, like the NPRM, does not include a mandatory VDP requirement.

Notice No. 79-2C proposed that § 91.175(a) read: "Unless otherwise authorized by ATC, when an instrument letdown to a civil airport is necessary, each person operating an aircraft except a military aircraft of the United States, shall use a standard instrument approach procedure prescribed for the airport in Part 97 of this chapter." The lead-in clause is changed to read, "Unless otherwise authorized by the Administrator," because ATC does not have the authority to approve a person's noncompliance with this rule.

Several commenters raise objections to proposed § 91.203(a)(2), which would prevent an aircraft from operating outside of the United States under the temporary authority of the pink copy of the Aircraft Registration Application as provided in § 47.31(b). The commenters assert that the proposal is a substantive change and not a clarification of the present rule; and that the FAA should consider the economic impact on the industry, the consumers, and the historical precedence of past practices. These commenters suggest that the FAA withdraw the proposal and acknowledge the pink copy of the application as a temporary certificate of registration.

Another commenter is of the opinion that the FAA has not provided discussion, as required by Executive Order 12291, on the economic impacts that would result from the delay between application for an issuance or denial of the registration certificate, under the proposals, in the NPRM. The commenter maintains that future investment purchases and leases would also be adversely affected. Several commenters also question the regulatory consistency that the FAA claims as the basis for the change.

These comments were responded to in full in a Notice of Legal Opinion issued December 1988 (53 FR 50206; December 14, 1988). That Notice of Legal Opinion stated that the limitation of temporary authority to operate an aircraft without registration to domestic operations (as also provided in new § 91.203(a)(2)) reflects current U.S. law and practice. Concerning the economic impact of this ruling, the FAA in that Notice of Legal Opinion answered:

> The aviation community has always been able to transfer ownership and register their aircraft with minimal difficulty. In order to mitigate the potential hardship that could result from grounding an aircraft used in international operations, pending receipt of a registration certificate, the Registry will, upon request, telex a copy of the Certificate of Aircraft Registration to the individual whose name appears on the application as the registered owner of the aircraft. The telex copy is issued after confirmation of the information contained on an Aircraft Registration Application and determination of eligibility for registration. The telex, which reflects critical and verified information resulting from the evaluation by the Registry of an application for aircraft registration, may be used as a temporary Certificate of Aircraft

Registration until the original certificate is forwarded for carriage in the aircraft.

This telex certificate will assist owners who submit an application for aircraft registration and who wish to operate the aircraft as soon as possible in international operations. Since the telex, by its terms, is a form of registration certificate, the aircraft may be operated in international air navigation consistent with Article 28 of the Convention [Convention on International Civil Aviation (61 Stat. 2180; T.I.A.S. 1591; 15 U.N.T.S. 295)]. The Registry will telex this copy within a matter of days—often within 48 hours—to be kept in the aircraft until the original Certificate of Aircraft Registration (AC Form 8050-3) is forwarded to the registered owner.

Accordingly, the FAA has determined that the rule should be amended as proposed, and consistent with the Chief Counsel's legal opinion, to provide explicitly that operations of aircraft outside the United States for which an application for registration has been submitted but a certificate of registration has not been issued are not authorized under the Federal Aviation Regulations.

Several judicial decisions have defined the "shore" as including tidal flats. In some parts of the United States, these tidal flats can extend for several miles and, because of the extreme tides prevalent in those areas, the land may be submerged under as much as 25 to 35 feet of water during periods of high tide. The intent of the rule is to require operators carrying passengers for hire over these areas to equip their aircraft with the necessary flotation gear and pyrotechnic devices. Therefore, "shore," when it is used in §§ 91.205, 91.503, and 91.511, is defined to exclude land areas, such as tidal flats, which are intermittently under water.

An incorrect reference to "§ 91.105" was used in proposed § 91.409(e), which has been corrected to "§ 91.409" in the final rule.

It was pointed out by several commenters that the word "stop" in § 91.605(c)(2) was inadvertently included in the proposal and should be deleted. The commenters are correct, and the final rule has been amended accordingly. Also, the word "if" following the word "distance" in that same sentence has been corrected to read "is."

In addition to the specific changes discussed above, minor changes have been made in the wording of the regulations proposed in Notice No. 72-2C. In § 91.3(b), the word "in-flight" has been inserted to clarify that the deviation authority of § 91.3 applies only to in-flight emergencies which affect the safe completion of the flight.

The original intent of § 91.3 was to allow the pilot in command to deviate from certain regulations in the event of an in-flight emergency. Over time, regulations involving non-flight items were inserted into subparts A and B, while flight-related regulations were inserted in other subparts. Therefore, the word "in-flight" is being added to return the language to its original intent.

Other changes are nonsubstantive in nature. Except for such minor revisions, those parts of the proposal for which there were no comments are adopted as proposed. Finally, all other sections of Part 91 remain unchanged except for renumbering (see the cross-reference lists below).

Several amendments to part 91 adopted since Notice No. 79-2C were published are reflected in the final rule. Where reference to other sections of this part were set forth in an amendment, the references have been changed to reflect the appropriate sections as used in the final rule. Those required changes published in the Federal Register prior to June 19, 1989 are discussed below.

Amendment No. 91-186, (50 FR 15380; April 17, 1985) amended current § 91.11, which governs the use of alcohol or drugs by any crewmember performing duty during the operation of an aircraft. This amendment took effect on June 17, 1985. Subsequently, Amendment No. 91-194 (51 FR 1229; January 9, 1986) amended § 91.11(c) to impose a requirement for a crewmember to furnish the results of any test that indicates percentage by weight of alcohol in a crewmember's blood. This amendment took effect on April 9, 1986. Proposed § 91.17 has been revised accordingly.

Amendment No. 91-188 (50 FR 31580; August 5, 1985) removed references to "expect approach clearance time" in § 91.127. This amendment took effect on September 4, 1985. Section 91.185 reflects this amendment.

Amendment No. 91-190 (50 FR 45602; November 1, 1985) added a new paragraph (c) to current § 91.24. This amendment took effect on December 2, 1985. This new paragraph required all aircraft equipped with an operable radar beacon transponder be turned on while airborne in controlled airspace. Subsequently, § 91.24(c) was amended by Amendment No. 91-208 (53 FR 23374; June 21, 1988). Proposed § 91.215(c) has been redesignated as paragraph (d) and the changes brought about by Amendment Nos. 91-190 and 91-208 have been incorporated into revised § 91.215(c).

Amendment No. 91-194 (50 FR 46877; November 13, 1985) amended current § 91.14 (proposed § 91.167) by revising the title and the section to include reference to shoulder harnesses. This amendment took effect on December 12, 1985. Section 91.167 has been revised accordingly. Amendment No. 91-191 also added a new paragraph to current § 91.33 which requires a shoulder harness for specified seats in normal, utility, and acrobatic category airplanes with a seating configuration, excluding pilot seats, of nine or less, manufactured after December 12, 1986. This paragraph appears as § 91.205(b)(15).

Amendment No. 91-192 (50 FR 51192; December 13, 1985) terminated the suspension of Amendment No. 91-157 (44 FR 43714; July 26, 1979) staying the effective date of current § 91.39. This amendment took effect on March 31, 1986. Subsequently, Amendment No. 208 (53 FR 50195; December 13, 1988) amended § 91.39. Section 91.213 reflects these amendments.

Amendment No. 91-196 (50 FR 51193; December 13, 1985) changed the FAA's description of North Atlantic (NAT) Minimum Navigation Performance Specifications (MNPS) airspace to coincide with the International Civil Aviation Organization's (ICAO's) description of the NAT MNPS airspace. This has been reflected accordingly in Section 1 of Appendix C of this final rule.

Amendment No. 91-195 (51 FR 31088; September 2, 1986) corrects the reference to the Department of Defense office in current § 91.102 restricting the flight of aircraft near space flight operations. This amendment took effect on September 15, 1986. Section 91.143 reflects this amendment.

Amendment No. 91-199 (51 FR 40302; November 7, 1986) upgraded rotorcraft certification and operational requirements, thus effecting amendments to several FARs. This amendment took effect on January 6, 1987. Current § 91.2 was amended to afford small helicopter operators the opportunity to apply for Category II instrument approach authorization. Proposed § 91.193 has been revised accordingly. Current § 91.23 was amended to reduce the IFR reserve fuel requirement for helicopters from 45 to 30 minutes. Proposed § 91.167 has been amended to reflect this change. Current § 91.116 (proposed § 91.175) was amended to establish a separate takeoff minimum for helicopters under IFR, of one-half mile visibility. Current § 91.171 was amended to include helicopters in the altimeter system and altitude reporting equipment tests and inspection requirements. Proposed § 91.411 has been amended to reflect this change. In order to enable rotorcraft to perform

Category II operations, Amendment No. 91-196 also amended appendix A in part 91 by removing the word "airplane" and replacing it with the word "aircraft" wherever it appears.

Amendment No. 91-197 (52 FR 1836; January 15, 1987) revises the authority citation for part 91 and adds a new paragraph to current § 91.213 which states that a commuter category airplane must have a pilot designated as second in command, unless the airplane has a passenger seating configuration, excluding pilot seats, of nine or less seats, and is type certificated for operations with one pilot. This amendment took effect on February 17, 1987. This rule now appears as § 91.531(a)(3).

Amendment No. 91-198, (52 FR 3391; February 3, 1987) amended current § 91.24(a) and (b) on ATC transponder and altitude reporting equipment and use. This amendment took effect on April 6, 1987. Subsequently, Amendment No. 91-208 (53 FR 23374; June 21, 1988) amended § 91.24(a) and (c) and Amendment No. 91-210 (54 FR 25862; June 16, 1989) revised § 91.24(a). Proposed § 91.215 has been revised accordingly. Amendment No. 91-208 also revised paragraph (b)(2)(iii) of current § 91.99 to allow operations conducted prior to December 1, 1987, in Group II TCAs, to be exempt from the new equipment requirements of current § 91.24. Amendment No. 91-208 (53 FR 23374; June 21, 1988) subsequently revised § 91.99, effective July 21, 1988. Amendment No. 91-205 (53 FR 40323; October 14, 1988) further revised § 91.99 in its entirety effective January 12, 1989. Amendment No. 90-209 (54 FR 24883; June 9, 1989) amended § 91.99 by delaying the effective date of the section for helicopter operations. The rule, covering all amendments to date, appears in this revision as § 91.131.

Amendment No. 91-199, (52 FR 9638; March 25, 1987) amended current § 91.25 by renumbering the paragraphs and adding a new paragraph that requires any operator who has installed approved flight recorders and approved cockpit voice recorders to keep the recorded information for at least 60 days, or longer, if requested by the Administrator or the National Transportation Safety Board. This amendment took effect on May 26, 1987. The amended rule now appears as § 91.609.

Amendment No. 91-200, (52 FR 17277; May 6, 1987) amended current § 91.173 by requiring each registered aircraft owner or operator to keep "preventive maintenance" records as well as maintenance, alteration, and records of the 100-hour annual, progressive, and other required or approved inspections, as appropriate, for each engine, propeller, rotor, and appliance of an aircraft. This amendment took effect on June 5, 1987. This amended rule now appears as § 91.417(a)(1).

Amendment No. 91-201, (52 FR 20028; May 28, 1987) adds the reference to part 129 to the exception in current § 91.161(b) from the requirements of §§ 91.165, 91.169, 91.171, 91.173, and 91.174 for aircraft maintained in accordance with a continuous maintenance program as provided for in part 129. The amendment took effect on August 25, 1987. This amended rule now appears as § 91.401(b).

Amendment No. 91-202, (52 FR 34192; September 9, 1987 and 52 FR 35234; September 18, 1987) amended current § 91.27 on civil aircraft certification requirements by adding a new paragraph (c) to require that a copy of the form which authorized the alteration of an aircraft with fuel tanks within the passenger or a baggage compartment be kept on board the modified aircraft. This new rule now appears as § 91.203(c). Current § 91.173 on maintenance records was revised by requiring that such records be made available to the Administrator or an authorized representative of the National Transportation Safety Board and when such a fuel tank is installed as set forth in § 91.35 as amended pursuant to part 43, a copy of the FAA Form 337 be kept on board the modified aircraft. This new rule appears as § 91.417(b) and (c). This amendment took effect on December 8, 1987.

Amendment No. 91-203, (53 FR 23374; June 21, 1988, 53 FR 25050; July 1, 1988, and 53 FR 26592; July 14, 1988) amended or revised §§ 91.24 (ATC transponder and altitude reporting equipment and use), 91.88 (Airport radar service areas), and 91.90 (Terminal control areas), and by adding a new appendix D entitled "Airports/Locations Where the Transponder Requirements of § 91.24(b)(5)(iii) Apply," regarding use of transponders with automatic altitude reporting. This amendment took effect on July 21, 1988. Amendment No. 91-205 (53 FR 40323; October 14, 1988) revised § 91.90 in its entirety effective January 12, 1989. Amendment No. 91-209 (54 FR 24883; June 9, 1989) amended § 91.90 by delaying the effective date of the section for helicopter operations. These rules now appear in this revision as §§ 91.215, 91.136, 91.131, and new appendix D to Part 91, respectively.

Amendment No. 91-204, (53 FR 26146; July 11, 1988) amended current § 91.35 on flight recorders and cockpit voice recorders to require digital flight recorders and voice recorders to be installed on selected aircraft operated in general aviation. The specifications for such recorders are set forth in a new Appendix E to Part 91 for airplanes and in a new appendix F to Part 91 for helicopters. The amendment is reflected as § 91.609(b), (c), (d), and (e), and new appendixes E and F to part 91. This amendment becomes effective on October 11, 1991.

Amendment No. 91-205 (53 FR 40323; October 14, 1988) revised the classification and pilot and equipment requirements for conducting operations in terminal control areas (TCA's) by amending § 91.90 to establish a single-class TCA; require the pilot-in-command of a civil aircraft to hold at least a private pilot certificate, except for a student pilot who has received certain documented training; and, to eliminate the helicopter exception from the minimum equipment requirement. The amendment was effective on January 12, 1989. Subsequently, Amendment No. 91-209 (54 FR 24883; June 9, 1989) amended § 91.90(c)(1) by delaying the application of the section for helicopter operations for one year. Revised § 91.131 covers these amendments.

Amendment No. 91-206 (53 FR 50195; December 13, 1988) amended § 91.30 to permit rotorcraft, nonturbine-powered airplanes, gliders, and lighter-than-air aircraft, for which an approved Master Minimum Equipment List has not been developed, to be operated with inoperative instruments and equipment not essential for the safe operation of the aircraft. The amendment also permits general aviation operators of small rotorcraft, nonturbine-powered small airplanes, gliders, and lighter-than-air aircraft for which a Master Minimum Equipment List has been developed, the option of operating under the minimum equipment list concept, or under other conditions as set forth in the amendment. Amendment No. 91-206 also amended § 91.165 to require that any inoperative instrument or item of equipment permitted to be inoperative under the new amended § 91.30 to be repaired, replaced, removed, or inspected at the next required inspection for the aircraft. These amendments became effective on December 13, 1988 and appear as §§ 91.213 and 91.405 of this revision to part 91.

Amendment No. 91-207 (54 FR 265; January 4, 1989) amended §§ 91.1 and 91.61 to extend the controlled airspace and the applicability of certain air traffic rules to coincide with presidential action to extend the territorial sea of the United States for international purposes, from 3 to 12 nautical miles from the U.S. coast. This amendment became effective

on December 27, 1988. These amended rules now appear as §§ 91.1 and 91.101.

Amendment No. 91–206 (54 FR 950; January 10, 1989) added a new § 91.26 to require that any traffic alert and collision avoidance system installed in a U.S. registered civil aircraft must be approved by the Administrator, and if installed, must be on and operating during the aircraft's operation. The amendment became effective on February 9, 1989. The amendment appears herein as § 91.221.

Amendment No. 91–209 (54 FR 24883; June 9, 1989) delays the effective date of certain navigational equipment requirements of helicopter operations in a Terminal Control Area (TCA) by the amendment of § 91.91.90(c)(1). The amendment became effective on June 6, 1989. Section 91.131 covers this amendment.

Amendment No. 91–210 (54 FR 25662; June 16, 1989), effective June 16, 1989, amended § 91.24(a) to allow certain aircraft operators to install non-Mode S transponders in aircraft until July 1, 1992, instead of until January 1, 1992, provided that such transponders are manufactured prior to January 1, 1991, instead of prior to January 1, 1990. This amendment appears as § 91.215(a).

References to part 91 found in other sections of the Federal Aviation Regulations have also been amended to incorporate the revised numbering of part 91. These miscellaneous amendments are found at the end of the amendments to part 91.

Furthermore, §§ 91.615 through 91.645 as identified in Notice No. 79–2C (50 FR 11292; March 20, 1985) now appear in this final rule as §§ 91.503 through 91.533.

Regulatory Evaluation

FAA analysis indicates that these amendments will not have a significant impact on the public or any level of government on an annual basis. The final rule includes changes to clarify the existing rules by simplifying the language, deleting obsolete requirements, consolidating similar regulations, updating equipment requirements to reflect the state-of-the-art, and relaxing certain operating and flight rule requirements.

Benefits

Section 91.117 allows reciprocating-powered aircraft to be operated in an airport traffic area at indicated airspeeds not greater than 200 knots. The FAA is unable to determine operator time and fuel cost savings because they will largely depend on the type of aircraft involved, desired speed, and weather and traffic conditions. The aggregate annual cost savings to these operators will not be significant because: (1) The normal cruise speed for most single engine reciprocating-powered aircraft does not exceed 156 knots, and (2) pilots of most multiengine reciprocating-powered aircraft, while operating within an airport traffic area, will not exceed the normal aircraft cruising speed which is not significantly greater than 156 knots in many of these aircraft.

Section 91.135 provides for a 2-day advance oral notification for submitting requests for authorizations to deviate from positive control area and route segment requirements. The old rule required a 4-day advance written notification of the proposed operation to ATC. A request for an authorization to deviate from these requirements is an infrequent occurrence. Consequently, the new rule will have minor benefits in terms of cost savings.

Sections 91.205, 91.509, and 91.511 clarify the definition of "shore" as that area of land adjacent to the water which is above the high water mark, thereby excluding tidal flats. From a safety standpoint, a tidal area covered with water is not as safe an emergency landing place as a dry shoreline. The main benefit is improved survivability from accidents in areas where for-hire operators may not be in compliance with the intent of the present rule. There is insufficient information in accident records to be able to estimate how many deaths could have been avoided through the use of life jackets and pyrotechnic signaling devices in these instances.

Costs

Any cost associated with defining "shore" in § 91.205 as the high water line is expected to be negligible. The only parties potentially affected are small for-hire operators who do not comply with the obvious intention of the rule as presently worded. The FAA believes these operators are very few (probably less than 20 operators) in number. Such operators are likely to be traversing tidal flats in areas like Alaska. If such operators do not comply with the rule as written now, then the cost of compliance would be a maximum of about $105 per year per aircraft. This assumes a $50 cost for an approved flotation device per seat and a flotation device useful life of 5 years ($10 per passenger seat per year), 10 seats per aircraft for these specific operators, plus $5 per year per aircraft for a pyrotechnic signaling device.

Section 91.409 allows operators of turbine-powered rotorcraft to use alternate inspection programs such as inspections under an FAA-approved continuous airworthiness maintenance program. The operators may now schedule inspections in a manner that allows the highest level of utilization of their rotorcraft.

The FAA estimates that in 1984 there were approximately 3,000 active turbine-powered rotorcraft in non-air taxi use. The FAA assumes that about one-half of the operators of these aircraft would use the new inspection options.

The value of using these options is difficult to estimate. At a minimum, the major effect of this proposed rule would be one additional day per year of rotorcraft utility. The usefulness of this can be set at least at the cost of capital for 1 day. Using an average aircraft value of $300,000 and a use of 250 days per year, the cost of capital can be estimated at $180 per day ($300,000 at 15 percent interest divided by 250 days). Thus, the minimum benefit is approximately $0.27 million per year (half the fleet, 1500 turbine-powered rotorcraft times $180). As the fleet grows, the value of this benefit also increases.

Because of the reorganization and resulting renumbering of provisions, persons who regularly refer to existing part 91 must familiarize themselves with the new structure. It is also recognized that many non-regulatory materials containing references to present part 91 sections may have to be modified. To assist in reference to the new provisions, a redesignation table, similar to the cross-reference table published herein, will be included in subsequent editions of the Code of Federal Regulations. The FAA believes that any short-term costs associated with transition to the reorganized part 91 will be outweighed by the benefits inherent in a more logically organized set of regulations.

Trade Impact

The FAA has determined that this regulation will have no impact on international trade.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress in order to insure, among other things, that small entities are not disproportionately affected by Government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of small entities." As discussed above, the regulatory evaluation for part 91 indicates that there are no negative or significant economic impacts associated with the proposed rule.

All but four of the changes to part 91 are editorial or clarifying changes. Three of the four changes result only in minimal benefits being applied. The other is a change to § 91.205 which, while it is basically clarifying, may involve some minimal cost and benefit. Any economic impact would be minor—approximately $100 per aircraft per year and would affect only a few small for-hire operators in Alaska who do not comply with the intent of the rule as presently worded. Thus, the change could not be construed to cause "significant economic impact on a substantial number" of small entities within the meaning of the RFA. Therefore, this rule will not have a significant economic impact on a substantial number of small entities.

Conclusion

The FAA has determined that this document is not considered major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It causes only four minor changes, three of which will provide benefits with no additional costs to the aviation public. The fourth will impose negligible costs which are substantially outweighed by the benefits provided. Other amendments provide general benefits by deleting obsolete requirements, relaxing certain operating and flight rule requirements, and updating and clarifying the text. Under the provisions of Executive Order 12291, the amendments in this final rule will not have a major economic effect on consumers; industries; Federal, State, or local government agencies; or geographic regions. There will be no significant effects on competition, employment, investment, productivity, innovations, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or import markets. It is certified that under the criteria of the Regulatory Flexibility Act this final rule will not have a significant economic impact on a substantial number of small entities. A copy of the full economic evaluation is filed in the public docket and may be obtained by contacting the person listed in the "FOR FURTHER INFORMATION CONTACT" paragraph of this document.

Cross Reference

To identify where present regulations are relocated in the new rule, the following cross-reference lists are provided:

Cross Reference Table

Old section	New section
91.1	91.1 and 91.703.
91.2	91.193.
91.3	91.3.
91.4	91.5.
91.5	91.103.
91.6	91.180.
91.7	91.105.
91.8	91.11.
91.9	91.13.
91.10	91.13.
91.11	91.17.
91.12	91.19.
91.13	91.15.
91.14	91.107.
91.15	91.307.
91.17	91.309.
91.18	91.311.
91.19	91.21.
91.20	91.705.
91.21	91.109.
91.22	91.151.
91.23	91.107.
91.24	91.215.
91.25	91.171.
91.26	91.221.
91.27	91.203.
91.28	91.715.
91.29	91.7.
91.30	91.213.
91.31	91.9.
91.32	91.211.
91.33	91.205.
91.34	91.191.
91.35	91.609.
91.36	91.217.
91.37	91.605.
91.38	91.323.
91.39	91.313.
91.40	91.315.
91.41	91.317.
91.42	91.319.
91.43	91.711.
91.45	91.611.
91.47	91.607.
91.49	91.609.
91.50	Deleted.
91.51	91.219.
91.52	91.297.
91.53	Deleted.
91.54	91.23.
91.55	91.817.
91.56	91.815.
91.57	91.25.
91.58	91.613.
91.59	91.321.
91.61	91.101.
91.63	91.903.
91.65	91.111 and 91.122.
91.67	91.113.
91.69	91.115.
91.70	91.117.
91.71	91.303.
91.73	91.209.
91.75	91.123.
91.77	91.125.
91.79	91.119.
91.81	91.121.
91.83	91.103 and 91.109.
91.89	91.707.
91.95	91.127.
91.97	91.129.
91.98	91.130.
91.99	91.127.
91.99	91.127.
91.91	91.709.
91.93	91.205.
91.95	91.133.
91.97	91.135.
91.100	91.103.
91.101	91.703.

Cross Reference Table—Continued

Old section	New section
91.102	91.103.
91.103	91.713.
91.104	91.141.
91.105	91.155.
91.107	91.157.
91.109	91.159.
91.115	91.173.
91.116	91.175.
91.117	Deleted.
91.119	91.177.
91.121	91.179.
91.123	91.181.
91.125	91.183.
91.127	91.185.
91.129	91.187.
91.131	91.189.
91.133	91.191.
91.135	91.193.
91.137	91.195.
91.139	91.197.
91.141	91.199.
91.143	91.200.
91.145	91.201.
91.147	91.203.
91.149	91.205.
91.151	Deleted.
91.153	Deleted.
91.155	91.207.
91.157	91.209.
91.159	91.211.
91.161	91.213.
91.163	91.215.
91.165	91.301.
91.167	91.302.
91.169	91.303.
91.171	91.305.
91.173	91.306.
91.174	91.307.
91.175	91.308.
91.181	91.309.
91.183	91.311.
91.185	Appendix A.
91.187	Appendix B.
91.189	Appendix C.
91.191	Appendix D.
91.193	Appendix E.
91.195	Appendix F.
91.197	
91.199	
91.200	
91.201	
91.203	
91.205	
91.207	
91.209	
91.211	
91.213	
91.215	
91.301	
91.302	
91.303	
91.305	
91.306	
91.307	
91.308	
91.309	
91.311	
Appendix A	
Appendix B	
Appendix C	
Appendix D	
Appendix E	
Appendix F	

Cross Reference Table

New section	Old section
91.1	91.1.
91.3	91.2.
91.5	91.4.
91.7	91.29.
91.9	91.31.
91.11	91.8.
91.13	91.9 and 91.10.
91.15	91.12.
91.17	91.11.
91.19	91.12.
91.21	91.18.
91.23	91.54.
91.25	91.57.

CROSS REFERENCE TABLE—Continued

New section	Old section
91.101	91.61.
91.103	91.5.
91.105	91.7.
91.107	91.14.
91.109	91.21.
91.111	91.65.
91.113	91.67.
91.115	91.69.
91.117	91.70.
91.119	91.79.
91.121	91.81.
91.123	91.75 and 91.85.
91.125	91.77.
91.127	91.85 and 91.89.
91.129	91.87.
91.130	91.86.
91.131	91.90.
91.133	91.95.
91.135	91.97.
91.137	91.91.
91.139	91.100.
91.141	91.104.
91.143	91.102.
91.151	91.22.
91.153	91.83.
91.155	91.105.
91.157	91.107.
91.159	91.109.
91.167	91.23.
91.169	91.93.
91.171	91.25.
91.173	91.115.
91.175	91.118.
91.177	91.119.
91.179	91.121.
91.181	91.123.
91.183	91.125.
91.185	91.127.
91.187	91.129.
91.188	91.6.
91.191	91.34.
91.193	91.2.
91.201	New.
91.203	91.27.
91.205	91.33.
91.207	91.52.
91.209	91.73.
91.211	91.32.
91.213	91.30.
91.215	91.24.
91.217	91.36.
91.219	91.51.
91.221	91.25.
91.301	New.
91.303	91.71.
91.305	91.93.
91.307	91.15.
91.309	91.17.
91.311	91.18.
91.313	91.39.
91.315	91.40.
91.317	91.41.
91.319	91.42.
91.321	91.89.
91.323	91.38.
91.401	91.161.
91.403	91.163.
91.405	91.165.
91.407	91.167.
91.409	91.169.
91.411	91.171.
91.413	91.172.
91.415	91.170.
91.417	91.173.
91.419	91.174.
91.421	91.175.
91.501	91.181.
91.503	91.183.
91.505	91.185.
91.507	91.187.

CROSS REFERENCE TABLE—Continued

New section	Old section
91.509	91.189.
91.511	91.191.
91.513	91.193.
91.515	91.195.
91.517	91.197.
91.519	91.199.
91.521	91.200.
91.523	91.201.
91.525	91.203.
91.527	91.209.
91.529	91.211.
91.531	91.213.
91.533	91.215.
91.601	New.
91.603	91.49.
91.605	91.37.
91.607	91.47.
91.609	91.35.
91.611	91.45.
91.613	91.58.
91.701	New.
91.703	91.1.
91.705	91.20.
91.707	91.84.
91.709	91.101.
91.711	91.43.
91.713	91.103.
91.715	91.28.
91.801	91.301.
91.803	91.302.
91.805	91.303.
91.807	91.305.
91.809	91.306.
91.811	91.307.
91.813	91.308.
91.815	91.56.
91.817	91.55.
91.819	91.309.
91.821	91.311.
91.901	New.
91.903	91.63.
91.905	New.
Appendix A	Appendix A.
Appendix B	Appendix B.
Appendix C	Appendix C.
Appendix D	Appendix D.
Appendix E	Appendix E.
Appendix F	Appendix F.
Newly Established Rules	91.201, 91.301, 91.601, 91.701, 91.901, 91.905.

List of Subjects

14 CFR Part 1

Airmen, Flights, Balloons, Parachutes, Aircraft pilots, Pilots, Transportation, Agreements, Kites, Air safety, Safety, Aviation safety, Air transportation, Air carriers, Aircraft, Airports, Airplanes, Helicopters, Rotorcraft, Heliports.

14 CFR Part 21

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 23

Air transportation, Aircraft, Aviation safety, Safety, Tires.

14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety, Tires.

14 CFR Part 27

Air transportation, Aircraft, Aviation safety, Safety, Tires.

14 CFR Part 31

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 35

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 36

Aircraft noise, Type certification.

14 CFR Part 43

Air carriers, Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 45

Nationality, Air safety, Safety, Aviation safety, Air transportation, Transportation, Airplanes, Helicopters, Rotorcraft.

14 CFR Part 47

Aliens, Transportation, Nationality, Air safety, Safety, Aviation safety, Air transportation, Citizenship and naturalization, Corporations, Treaties.

14 CFR Part 61

Airmen, Balloons, Aircraft pilots, Pilots, Alcohol and alcoholic beverages, Students, Foreign persons, Transportation, International agreements, Narcotics, Air safety, Safety, Aviation safety, Air transportation, Aircraft, Airplanes, Helicopters, Rotorcraft, Drug abuse, Compensation, Education, Teachers.

14 CFR Part 63

Airmen, Narcotics, Air safety, Safety, Aviation safety, Air transportation, Transportation, Aircraft, Airplanes, Helicopters, Rotorcraft, Drug abuse.

14 CFR Part 65

Airmen, Parachutes, Transportation, Narcotics, Air safety, Safety, Aviation safety, Air transportation, Aircraft, Drug abuse.

14 CFR Part 71

Airspace, Airways, Special use airspace, Prohibited areas, Restricted areas.

14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Air traffic control, Liquor, Narcotics, Pilots, Airspace, Air transportation, Cargo, Smoking, Airports, Airworthiness directives and standards.

14 CFR Part 93

Special air traffic rules.

14 CFR Part 99

Air defense zone, Identification of foreign aircraft.

14 CFR Part 103

Safety, Ultralight, Ultralight certification, Ultralight operations, Ultralight pilot, Ultralight registration.

14 CFR Part 121

Aviation safety, Safety, Air carriers, Air traffic control, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Airports, Airspace, Airworthiness directives and standards, Beverages, Cargo, Chemicals, Children, Narcotics, Flammable materials, Handicapped, Hazardous materials, Hours of work, Infants, Liquor, Mail, Drugs, Pilots, Smoking, Transportation, Common carriers.

14 CFR Part 125

Aircraft, Airplanes, Hours of work, Airports, Air traffic control, Airworthiness, Flammable materials, Cargo, Airmen, Pilots, Drugs, Narcotics, Hazardous materials, Handicapped, Children, Infants, Smoking, Air transportation, Airspace, Chemicals.

14 CFR Part 127

Aircraft, Air carriers, Narcotics, Airworthiness, Cargo, Airmen, Pilots, Air traffic control, Helicopters, Drugs, Airspace, Weapons, Alcohol, Hours of work, Children, Infants, Smoking, Beverages.

14 CFR Part 133

Aircraft, Airworthiness, Narcotics, Pilots, Drugs, Mail.

14 CFR Part 135

Air carriers, Aviation safety, Safety, Air transportation, Air taxi, Narcotics, Airworthiness, Cargo, Pilots, Airmen, Aircraft, Alcohol, Airports, Hours of work, Hazardous materials, Weapons, Baggage, Transportation, Mail, Helicopters, Smoking, Beverages, Air traffic control, Handicapped, Drugs, Airspace, Chemicals, Airplanes.

14 CFR Part 137

Aircraft, Narcotics, Rotorcraft, Pilots, Air traffic control, Airports.

14 CFR Part 141

Airmen, Balloons, Parachutes, Aircraft pilots, Pilots, Educational facilities, Students, Transportation, Air safety, Safety, Aviation safety, Air transportation, Airplanes, Helicopters, Rotorcraft, Education, Schools, Teachers, Business and industry.

The Rule

For the reasons set forth above, part 91 of the Federal Aviation Regulations (14 CFR part 91) is amended to read as follows; and parts 1, 21, 23, 25, 27, 31, 33, 35, 36, 43, 45, 47, 61, 63, 65, 71, 93, 99, 103, 121, 125, 127, 133, 135, 137, and 141 of the Federal Aviation Regulations (14 CFR parts 1, 21, 23, 25, 27, 31, 33, 35, 36, 43, 45, 47, 61, 63, 65, 71, 93, 99, 103, 121, 125, 127, 133, 135, 137, and 141) are amended as follows:

1. By amending part 91 by revising subparts A–E and appendices A–F and by adding subparts F–J to read as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

Special Federal Aviation Regulations

* * * * *

Subpart A—General

Sec.

91.1 Applicability.
91.3 Responsibility and authority of the pilot in command.
91.5 Pilot in command of aircraft requiring more than one required pilot.
91.7 Civil aircraft airworthiness.
91.9 Civil aircraft flight manual, marking, and placard requirements.
91.11 Prohibition against interference with crewmembers.
91.13 Careless or reckless operation.
91.15 Dropping objects.
91.17 Alcohol or drugs.
91.19 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.
91.21 Portable electronic devices.
91.23 Truth-in-leasing clause requirement in leases and conditional sales contracts.
91.25 Aviation Safety Reporting Program: Prohibition against use of reports for enforcement purposes.
91.27–91.99 [Reserved]

Subpart B—Flight Rules

General

91.101 Applicability.
91.103 Preflight action.
91.105 Flight crewmembers at stations.
91.107 Use of safety belts.
91.109 Flight instruction; Simulated instrument flight and certain flight tests.
91.111 Operating near other aircraft.
91.113 Right-of-way rules: Except water operations.
91.115 Right-of-way rules: Water operations.
91.117 Aircraft speed.
91.119 Minimum safe altitudes: General.
91.121 Altimeter settings.
91.123 Compliance with ATC clearances and instructions.
91.125 ATC light signals.
91.127 Operating on or in the vicinity of an airport: General rules.
91.129 Operation at airports with operating control towers.
91.130 Airport radar service areas.
91.131 Terminal control areas.
91.133 Restricted and prohibited areas.
91.135 Positive control areas and route segments.
91.137 Temporary flight restrictions.
91.139 Emergency air traffic rules.
91.141 Flight restrictions in the proximity of the Presidential and other parties.
91.143 Flight limitation in the proximity of space flight operations.
91.145–91.149 [Reserved]

Visual Flight Rules

91.151 Fuel requirements for flight in VFR conditions.
91.153 VFR flight plan: Information required.
91.155 Basic VFR weather minimums.
91.157 Special VFR weather minimums.
91.159 VFR cruising altitude or flight level.
91.161–91.165 [Reserved]

Instrument Flight Rules

91.167 Fuel requirements for flight in IFR conditions.
91.169 IFR flight plan: Information required.
91.171 VOR equipment check for IFR operations.
91.173 ATC clearance and flight plan required.
91.175 Takeoff and landing under IFR.
91.177 Minimum altitudes for IFR operations.
91.179 IFR cruising altitude or flight level.
91.181 Course to be flown.
91.183 IFR radio communications.
91.185 IFR operations: Two-way radio communications failure.
91.187 Operation under IFR in controlled airspace: Malfunction reports.
91.189 Category II and III operations: General operating rules.
91.191 Category II manual.
91.193 Certificate of authorization for certain Category II operations.
91.195–91.199 [Reserved]

Subpart C—Equipment, Instrument, and Certificate Requirements

91.201 [Reserved]
91.203 Civil aircraft: Certifications required.
91.205 Powered civil aircraft with standard category U.S. airworthiness certificates: Instrument and equipment requirements.
91.207 Emergency locator transmitters.
91.209 Aircraft lights.
91.211 Supplemental oxygen.
91.213 Inoperative instruments and equipment.
91.215 ATC transponder and altitude reporting equipment and use.
91.217 Data correspondence between automatically reported pressure altitude data and the pilot's altitude reference.
91.219 Altitude alerting system or device: Turbojet-powered civil airplanes.
91.221 Traffic alert and collision avoidance system equipment and use.
91.223–91.299 [Reserved]

Subpart D—Special Flight Operations

91.301 [Reserved]
91.303 Aerobatic flight.
91.305 Flight test areas.
91.307 Parachutes and parachuting.
91.309 Towing: Gliders.

BEST COPY AVAILABLE

91.311 Towing: Other than under § 91.309.
91.313 Restricted category civil aircraft: Operating limitations.
91.315 Limited category civil aircraft: Operating limitations.
91.317 Provisionally certificated civil aircraft: Operating limitations.
91.319 Aircraft having experimental certificates: Operating limitations.
91.321 Carriage of candidates in Federal elections.
91.323 Increased maximum certificated weights for certain airplanes operated in Alaska.
91.325–91.399 [Reserved]

Subpart E—Maintenance, Preventive Maintenance, and Alterations

91.401 Applicability.
91.403 General.
91.405 Maintenance required.
91.407 Operation after maintenance, preventive maintenance, rebuilding, or alteration.
91.409 Inspections.
91.411 Altimeter system and altitude reporting equipment tests and inspections.
91.413 ATC transponder tests and inspections.
91.415 Changes to aircraft inspection programs.
91.417 Maintenance records.
91.419 Transfer of maintenance records.
91.421 Rebuilt engine maintenance records.
91.423–91.499 [Reserved]

Subpart F—Large and Turbine-Powered Multiengine Airplanes

91.501 Applicability.
91.503 Flying equipment and operating information.
91.505 Familiarity with operating limitations and emergency equipment.
91.507 Equipment requirements: Over-the-top or night VFR operations.
91.509 Survival equipment for overwater operations.
91.511 Radio equipment for overwater operations.
91.513 Emergency equipment.
91.515 Flight altitude rules.
91.517 Smoking and safety belt signs.
91.519 Passenger briefing.
91.521 Shoulder harness.
91.523 Carry-on baggage.
91.525 Carriage of cargo.
91.527 Operating in icing conditions.
91.529 Flight engineer requirements.
91.531 Second in command requirements.
91.533 Flight attendant requirements.
91.535–91.599 [Reserved]

Subpart G—Additional Equipment and Operating Requirements for Large and Transport Category Aircraft

91.601 Applicability.
91.603 Aural speed warning device.
91.605 Transport category civil airplane weight limitations.
91.607 Emergency exits for airplanes carrying passengers for hire.
91.609 Flight recorders and cockpit voice recorders.
91.611 Authorization for ferry flight with one engine inoperative.
91.613 Materials for compartment interiors.
91.615–91.699 [Reserved]

Subpart H—Foreign Aircraft Operations and Operations of U.S.-Registered Civil Aircraft Outside of the United States

91.701 Applicability.
91.703 Operations of civil aircraft of U.S. registry outside of the United States.
91.705 Operations within the North Atlantic Minimum Navigation Performance Specifications Airspace.
91.707 Flights between Mexico or Canada and the United States.
91.709 Operations to Cuba.
91.711 Special rules for foreign civil aircraft.
91.713 Operation of civil aircraft of Cuban registry.
91.715 Special flight authorizations for foreign civil aircraft.
91.717–91.799 [Reserved]

Subpart I—Operating Noise Limits

91.801 Applicability: Relation to part 36.
91.803 Part 125 operators: Designation of applicable regulations.
91.805 Final compliance: Subsonic airplanes.
91.807 Phased compliance under parts 121, 125, and 135: Subsonic airplanes.
91.809 Replacement airplanes.
91.811 Service to small communities exemption: Two-engine, subsonic airplanes.
91.813 Compliance plans and status: U.S. operations of subsonic airplanes.
91.815 Agricultural and fire fighting airplanes: Noise operating limitations.
91.817 Civil aircraft sonic boom.
91.819 Civil supersonic airplanes that do not comply with part 36.
91.821 Civil supersonic airplanes: Noise limits.
91.823–91.899 [Reserved]

Subpart J—Waivers

91.901 [Reserved]
91.903 Policy and procedures.
91.905 List of rules subject to waivers.
91.907–91.999 [Reserved]

Appendix A—Category II Operations: Manual, Instruments, Equipment, and Maintenance

Appendix B—Authorizations to Exceed Mach 1 (§ 91.817)

Appendix C—Operations in the North Atlantic (NAT) Minimum Navigation Performance Specifications (MNPS) Airspace

Appendix D—Airports/Locations Where the Transponder Requirements of Section 91.215(b)(5)(ii) Apply

Appendix E—Airplane Flight Recorder Specifications

Appendix F—Helicopter Flight Recorder Specifications

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Subpart A—General

§ 91.1 Applicability.

(a) Except as provided in paragraph (b) of this section and § 91.703, this part prescribes rules governing the operation of aircraft (other than moored balloons, kites, unmanned rockets, and unmanned free balloons, which are governed by part 101 of this chapter, and ultralight vehicles operated in accordance with part 103 of this chapter) within the United States, including the waters within 3 nautical miles of the U.S. coast.

(b) Each person operating an aircraft in the airspace overlying the waters between 3 and 12 nautical miles from the coast of the United States shall comply with §§ 91.1 through 91.21; §§ 91.101 through 91.143; §§ 91.151 through 91.159; §§ 91.167 through 91.193; § 91.203; § 91.205; §§ 91.209 through 91.217; § 91.221; §§ 91.303 through 91.319; § 91.323; § 91.605; § 91.609; §§ 91.703 through 91.715; and 91.903.

§ 91.3 Responsibility and authority of the pilot in command.

(a) The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft.

(b) In an in-flight emergency requiring immediate action, the pilot in command may deviate from any rule of this part to the extent required to meet that emergency.

(c) Each pilot in command who deviates from a rule under paragraph (b) of this section shall, upon the request of the Administrator, send a written report of that deviation to the Administrator.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.5 Pilot in command of aircraft requiring more than one required pilot.

No person may operate an aircraft that is type certificated for more than one required pilot flight crewmember unless the pilot in command meets the requirements of § 61.58 of this chapter.

§ 91.7 Civil aircraft airworthiness.

(a) No person may operate a civil aircraft unless it is in an airworthy condition.

(b) The pilot in command of a civil aircraft is responsible for determining whether that aircraft is in condition for safe flight. The pilot in command shall discontinue the flight when unairworthy mechanical, electrical, or structural conditions occur.

§ 91.9 Civil aircraft flight manual, marking, and placard requirements.

(a) Except as provided in paragraph (d) of this section, no person may operate a civil aircraft without complying with the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual, markings, and placards, or as otherwise prescribed by the certificating authority of the country of registry.

(b) No person may operate a U.S.-registered civil aircraft—

(1) For which an Airplane or Rotorcraft Flight Manual is required by § 21.5 of this chapter unless there is available in the aircraft a current, approved Airplane or Rotorcraft Flight Manual or the manual provided for in § 121.141(b); and

(2) For which an Airplane or Rotorcraft Flight Manual is not required by § 21.5 of this chapter, unless there is available in the aircraft a current approved Airplane or Rotorcraft Flight Manual, approved manual material, markings, and placards, or any combination thereof.

(c) No person may operate a U.S.-registered civil aircraft unless that aircraft is identified in accordance with part 45 of this chapter.

(d) Any person taking off or landing a helicopter certificated under part 29 of this chapter at a heliport constructed over water may make such momentary flight as is necessary for takeoff or landing through the prohibited range of the limiting height-speed envelope established for the helicopter if that flight through the prohibited range takes place over water on which a safe ditching can be accomplished and if the helicopter is amphibious or is equipped with floats or other emergency flotation gear adequate to accomplish a safe emergency ditching on open water.

§ 91.11 Prohibition against interference with crewmembers.

No person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated.

§ 91.13 Careless or reckless operation.

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

(b) *Aircraft operations other than for the purpose of air navigation.* No person may operate an aircraft, other than for the purpose of air navigation, on any part of the surface of an airport used by aircraft for air commerce (including areas used by those aircraft for receiving or discharging persons or cargo), in a careless or reckless manner so as to endanger the life or property of another.

§ 91.15 Dropping objects.

No pilot in command of a civil aircraft may allow any object to be dropped from that aircraft in flight that creates a hazard to persons or property. However, this section does not prohibit the dropping of any object if reasonable precautions are taken to avoid injury or damage to persons or property.

§ 91.17 Alcohol or drugs.

(a) No person may act or attempt to act as a crewmember of a civil aircraft—

(1) Within 8 hours after the consumption of any alcoholic beverage;

(2) While under the influence of alcohol;

(3) While using any drug that affects the person's faculties in any way contrary to safety; or

(4) While having .04 percent by weight or more alcohol in the blood.

(b) Except in an emergency, no pilot of a civil aircraft may allow a person who appears to be intoxicated or who demonstrates by manner or physical indications that the individual is under the influence of drugs (except a medical patient under proper care) to be carried in that aircraft.

(c) A crewmember shall do the following:

(1) On request of a law enforcement officer, submit to a test to indicate the percentage by weight of alcohol in the blood, when—

(i) The law enforcement officer is authorized under State or local law to conduct the test or to have the test conducted; and

(ii) The law enforcement officer is requesting submission to the test to investigate a suspected violation of State or local law governing the same or substantially similar conduct prohibited by paragraph (a)(1), (a)(2), or (a)(4) of this section.

(2) Whenever the Administrator has a reasonable basis to believe that a person may have violated paragraph (a)(1), (a)(2), or (a)(4) of this section, that person shall, upon request by the Administrator, furnish the Administrator, or authorize any clinic, hospital, doctor, or other person to release to the Administrator, the results of each test taken within 4 hours after acting or attempting to act as a crewmember that indicates percentage by weight of alcohol in the blood.

(d) Whenever the Administrator has a reasonable basis to believe that a person may have violated paragraph (a)(3) of this section, that person shall, upon request by the Administrator, furnish the Administrator, or authorize any clinic, hospital, doctor, or other person to release to the Administrator, the results of each test taken within 4 hours after acting or attempting to act as a crewmember that indicates the presence of any drugs in the body.

(e) Any test information obtained by the Administrator under paragraph (c) or (d) of this section may be evaluated in determining a person's qualifications for any airman certificate or possible violations of this chapter and may be used as evidence in any legal proceeding under section 602, 609, or 901 of the Federal Aviation Act of 1958.

§ 91.19 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.

(b) Paragraph (a) of this section does not apply to any carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances authorized by or under any Federal or State statute or by any Federal or State agency.

§ 91.21 Portable electronic devices.

(a) Except as provided in paragraph (b) of this section, no person may operate, nor may any operator or pilot in command of an aircraft allow the operation of, any portable electronic device on any of the following U.S.-registered civil aircraft:

(1) Aircraft operated by a holder of an air carrier operating certificate or an operating certificate; or

(2) Any other aircraft while it is operated under IFR.

(b) Paragraph (a) of this section does not apply to—

(1) Portable voice recorders;

(2) Hearing aids;

(3) Heart pacemakers;

(4) Electric shavers; or

(5) Any other portable electronic device that the operator of the aircraft has determined will not cause interference with the navigation or communication system of the aircraft on which it is to be used.

(c) In the case of an aircraft operated by a holder of an air carrier operating certificate or an operating certificate, the determination required by paragraph (b)(5) of this section shall be made by that operator of the aircraft on which

the particular device is to be used. In the case of other aircraft, the determination may be made by the pilot in command or other operator of the aircraft.

§ 91.23 Truth-in-leasing clause requirement in leases and conditional sales contracts.

(a) Except as provided in paragraph (b) of this section, the parties to a lease or contract of conditional sale involving a U.S.-registered large civil aircraft and entered into after January 2, 1973, shall execute a written lease or contract and include therein a written truth-in-leasing clause as a concluding paragraph in large print, immediately preceding the space for the signature of the parties, which contains the following with respect to each such aircraft:

(1) Identification of the Federal Aviation Regulations under which the aircraft has been maintained and inspected during the 12 months preceding the execution of the lease or contract of conditional sale, and certification by the parties thereto regarding the aircraft's status of compliance with applicable maintenance and inspection requirements in this part for the operation to be conducted under the lease or contract of conditional sale.

(2) The name and address (printed or typed) and the signature of the person responsible for operational control of the aircraft under the lease or contract of conditional sale, and certification that each person understands that person's responsibilities for compliance with applicable Federal Aviation Regulations.

(3) A statement that an explanation of factors bearing on operational control and pertinent Federal Aviation Regulations can be obtained from the nearest FAA Flight Standards district office.

(b) The requirements of paragraph (a) of this section do not apply—

(1) To a lease or contract of conditional sale when—

(i) The party to whom the aircraft is furnished is a foreign air carrier or certificate holder under part 121, 125, 127, 135, or 141 of this chapter, or

(ii) The party furnishing the aircraft is a foreign air carrier, certificate holder under part 121, 125, 127, or 141 of this chapter, or a certificate holder under part 135 of this chapter having appropriate authority to engage in air taxi operations with large aircraft.

(2) To a contract of conditional sale, when the aircraft involved has not been registered anywhere prior to the execution of the contract, except as a new aircraft under a dealer's aircraft registration certificate issued in accordance with § 47.61 of this chapter.

(c) No person may operate a large civil aircraft of U.S. registry that is subject to a lease or contract of conditional sale to which paragraph (a) of this section applies, unless—

(1) The lessee or conditional buyer, or the registered owner if the lessee is not a citizen of the United States, has mailed a copy of the lease or contract that complies with the requirements of paragraph (a) of this section, within 24 hours of its execution, to the Aircraft Registry Technical Section, P.O. Box 25724, Oklahoma City, Oklahoma 73125;

(2) A copy of the lease or contract that complies with the requirements of paragraph (a) of this section is carried in the aircraft. The copy of the lease or contract shall be made available for review upon request by the Administrator, and

(3) The lessee or conditional buyer, or the registered owner if the lessee is not a citizen of the United States, has notified by telephone or in person the FAA Flight Standards district office nearest the airport where the flight will originate. Unless otherwise authorized by that office, the notification shall be given at least 48 hours before takeoff in the case of the first flight of that aircraft under that lease or contract and inform the FAA of—

(i) The location of the airport of departure;

(ii) The departure time; and

(iii) The registration number of the aircraft involved.

(d) The copy of the lease or contract furnished to the FAA under paragraph (c) of this section is commercial or financial information obtained from a person. It is, therefore, privileged and confidential and will not be made available by the FAA for public inspection or copying under 5 U.S.C. 552(b)(4) unless recorded with the FAA under part 49 of this chapter.

(e) For the purpose of this section, a lease means any agreement by a person to furnish an aircraft to another person for compensation or hire, whether with or without flight crewmembers, other than an agreement for the sale of an aircraft and a contract of conditional sale under section 101 of the Federal Aviation Act of 1958. The person furnishing the aircraft is referred to as the lessor, and the person to whom it is furnished the lessee.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.25 Aviation Safety Reporting Program: Prohibition against use of reports for enforcement purposes.

The Administrator of the FAA will not use reports submitted to the National Aeronautics and Space Administration under the Aviation Safety Reporting Program (or information derived therefrom) in any enforcement action except information concerning accidents or criminal offenses which are wholly excluded from the Program.

§ 91.27-91.99 [Reserved]

Subpart B—Flight Rules

General

§ 91.101 Applicability.

This subpart prescribes flight rules governing the operation of aircraft within the United States and within 12 nautical miles from the coast of the United States.

§ 91.103 Preflight action.

Each pilot in command shall, before beginning a flight, become familiar with all available information concerning that flight. This information must include—

(a) For a flight under IFR or a flight not in the vicinity of an airport, weather reports and forecasts, fuel requirements, alternatives available if the planned flight cannot be completed, and any known traffic delays of which the pilot in command has been advised by ATC;

(b) For any flight, runway lengths at airports of intended use, and the following takeoff and landing distance information:

(1) For civil aircraft for which an approved Airplane or Rotorcraft Flight Manual containing takeoff and landing distance data is required, the takeoff and landing distance data contained therein; and

(2) For civil aircraft other than those specified in paragraph (b)(1) of this section, other reliable information appropriate to the aircraft, relating to aircraft performance under expected values of airport elevation and runway slope, aircraft gross weight, and wind and temperature.

§ 91.105 Flight crewmembers at stations.

(a) During takeoff and landing, and while en route, each required flight crewmember shall—

(1) Be at the crewmember station unless the absence is necessary to perform duties in connection with the operation of the aircraft or in connection with physiological needs; and

(2) Keep the safety belt fastened while at the crewmember station.

(b) Each required flight crewmember of a U.S.-registered civil airplane shall, during takeoff and landing, keep the shoulder harness fastened while at the crewmember station. This paragraph does not apply if—

(1) The seat at the crewmember's station is not equipped with a shoulder harness; or

(2) The crewmember would be unable to perform required duties with the shoulder harness fastened.

§ 91.107 Use of safety belts.

(a) No pilot may take off a U.S.-registered civil aircraft (except an airship or free balloon that incorporates a basket or gondola) unless the pilot in command of that aircraft ensures that each person on board is briefed on how to fasten and unfasten that person's safety belt and shoulder harness, if installed. The pilot in command shall ensure that all persons on board have been notified to fasten their safety belt and shoulder harness, if installed, before takeoff or landing.

(b) During the takeoff and landing of a U.S.-registered civil aircraft (except an airship or a free balloon that incorporates a basket or gondola) each person on board that aircraft must occupy an approved seat or berth with a safety belt and shoulder harness, if installed, properly secured about that person. However, a person who has not reached the second birthday may be held by an adult who is occupying an approved seat or berth, and a person on board for the purpose of engaging in sport parachuting may use the floor of the aircraft as a seat.

(c) This section does not apply to operations conducted under part 121, 125, 127, or 135 of this chapter. Paragraph (b) of this section does not apply to persons subject to § 91.105.

§ 91.109 Flight instruction; Simulated instrument flight and certain flight tests.

(a) No person may operate a civil aircraft (except a manned free balloon) that is being used for flight instruction unless that aircraft has fully functioning dual controls. However, instrument flight instruction may be given in a single-engine airplane equipped with a single, functioning throwover control wheel in place of fixed, dual controls of the elevator and ailerons when—

(1) The instructor has determined that the flight can be conducted safely; and

(2) The person manipulating the controls has at least a private pilot certificate with appropriate category and class ratings.

(b) No person may operate a civil aircraft in simulated instrument flight unless—

(1) The other control seat is occupied by a safety pilot who possesses at least a private pilot certificate with category and class ratings appropriate to the aircraft being flown.

(2) The safety pilot has adequate vision forward and to each side of the aircraft, or a competent observer in the aircraft adequately supplements the vision of the safety pilot; and

(3) Except in the case of lighter-than-air aircraft, that aircraft is equipped with fully functioning dual controls. However, simulated instrument flight may be conducted in a single-engine airplane, equipped with a single, functioning, throwover control wheel, in place of fixed, dual controls of the elevator and ailerons, when—

(i) The safety pilot has determined that the flight can be conducted safely; and

(ii) The person manipulating the controls has at least a private pilot certificate with appropriate category and class ratings.

(c) No person may operate a civil aircraft that is being used for a flight test for an airline transport pilot certificate or a class or type rating on that certificate, or for a part 121 proficiency flight test, unless the pilot seated at the controls, other than the pilot being checked, is fully qualified to act as pilot in command of the aircraft.

§ 91.111 Operating near other aircraft.

(a) No person may operate an aircraft so close to another aircraft as to create a collision hazard.

(b) No person may operate an aircraft in formation flight except by arrangement with the pilot in command of each aircraft in the formation.

(c) No person may operate an aircraft, carrying passengers for hire, in formation flight.

§ 91.113 Right-of-way rules: Except water operations.

(a) *Inapplicability.* This section does not apply to the operation of an aircraft on water.

(b) *General.* When weather conditions permit, regardless of whether an operation is conducted under instrument flight rules or visual flight rules, vigilance shall be maintained by each person operating an aircraft so as to see and avoid other aircraft. When a rule of this section gives another aircraft the right-of-way, the pilot shall give way to that aircraft and may not pass over, under, or ahead of it unless well clear.

(c) *In distress.* An aircraft in distress has the right-of-way over all other air traffic.

(d) *Converging.* When aircraft of the same category are converging at approximately the same altitude (except head-on, or nearly so), the aircraft to the other's right has the right-of-way. If the aircraft are of different categories—

(1) A balloon has the right-of-way over any other category of aircraft;

(2) A glider has the right-of-way over an airship, airplane, or rotorcraft; and

(3) An airship has the right-of-way over an airplane or rotorcraft.

However, an aircraft towing or refueling other aircraft has the right-of-way over all other engine-driven aircraft.

(e) *Approaching head-on.* When aircraft are approaching each other head-on, or nearly so, each pilot of each aircraft shall alter course to the right.

(f) *Overtaking.* Each aircraft that is being overtaken has the right-of-way and each pilot of an overtaking aircraft shall alter course to the right to pass well clear.

(g) *Landing.* Aircraft, while on final approach to land or while landing, have the right-of-way over other aircraft in flight or operating on the surface, except that they shall not take advantage of this rule to force an aircraft off the runway surface which has already landed and is attempting to make way for an aircraft on final approach. When two or more aircraft are approaching an airport for the purpose of landing, the aircraft at the lower altitude has the right-of-way, but it shall not take advantage of this rule to cut in front of another which is on final approach to land or to overtake that aircraft.

§ 91.115 Right-of-way rules: Water operations.

(a) *General.* Each person operating an aircraft on the water shall, insofar as possible, keep clear of all vessels and avoid impeding their navigation, and shall give way to any vessel or other aircraft that is given the right-of-way by any rule of this section.

(b) *Crossing.* When aircraft, or an aircraft and a vessel, are on crossing courses, the aircraft or vessel to the other's right has the right-of-way.

(c) *Approaching head-on.* When aircraft, or an aircraft and a vessel, are approaching head-on, or nearly so, each shall alter its course to the right to keep well clear.

(d) *Overtaking.* Each aircraft or vessel that is being overtaken has the right-of-way, and the one overtaking shall alter course to keep well clear.

(e) *Special circumstances.* When aircraft, or an aircraft and a vessel, approach so as to involve risk of collision, each aircraft or vessel shall proceed with careful regard to existing

circumstances, including the limitations of the respective craft.

§ 91.117 Aircraft speed.

(a) No person may operate an aircraft below 10,000 feet MSL at an indicated airspeed of more that 250 knots (288 m.p.h.).

(b) Unless otherwise authorized or required by ATC, no person may operate an aircraft within an airport traffic area at an indicated airspeed of more than 200 knots (230 m.p.h.). This paragraph (b) does not apply to any operations within a terminal control area. Such operations shall comply with paragraph (a) of this section.

(c) No person may operate an aircraft in the airspace underlying a terminal control area, or in a VFR corridor designated through a terminal control area, at an indicated airspeed of more than 200 knots (230 m.p.h.).

(d) If the minimum safe airspeed for any particular operation is greater than the maximum speed prescribed in this section, the aircraft may be operated at that minimum speed.

§ 91.119 Minimum safe altitudes: General.

Except when necessary for takeoff or landing, no person may operate an aircraft below the following altitudes:

(a) *Anywhere.* An altitude allowing, if a power unit fails, an emergency landing without undue hazard to persons or property on the surface.

(b) *Over congested areas.* Over any congested area of a city, town, or settlement, or over any open air assembly of persons, an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft.

(c) *Over other than congested areas.* An altitude of 500 feet above the surface, except over open water or sparsely populated areas. In those cases, the aircraft may not be operated closer than 500 feet to any person, vessel, vehicle, or structure.

(d) *Helicopters.* Helicopters may be operated at less than the minimums prescribed in paragraph (b) or (c) of this section if the operation is conducted without hazard to persons or property on the surface. In addition, each person operating a helicopter shall comply with any routes or altitudes specifically prescribed for helicopters by the Administrator.

§ 91.121 Altimeter settings.

(a) Each person operating an aircraft shall maintain the cruising altitude or flight level of that aircraft, as the case may be, by reference to an altimeter that is set, when operating—

(1) Below 18,000 feet MSL, to—

(i) The current reported altimeter setting of a station along the route and within 100 nautical miles of the aircraft;

(ii) If there is no station within the area prescribed in paragraph (a)(1)(i) of this section, the current reported altimeter setting of an appropriate available station; or

(iii) In the case of an aircraft not equipped with a radio, the elevation of the departure airport or an appropriate altimeter setting available before departure; or

(2) At or above 18,000 feet MSL, to 29.92" Hg.

(b) The lowest usable flight level is determined by the atmospheric pressure in the area of operation as shown in the following table:

Current altimeter setting	Lowest usable flight level
29.92 (or higher)	180
29.91 through 29.42	185
29.41 through 28.92	190
28.91 through 28.42	195
28.41 through 27.92	200
27.91 through 27.42	205
27.41 through 26.92	210

(c) To convert minimum altitude prescribed under §§ 91.119 and 91.177 to the minimum flight level, the pilot shall take the flight level equivalent of the minimum altitude in feet and add the appropriate number of feet specified below, according to the current reported altimeter setting:

Current altimeter setting	Adjustment factor
29.92 (or higher)	None
29.91 through 29.42	500
29.41 through 28.92	1,000
28.91 through 28.42	1,500
28.41 through 27.92	2,000
27.91 through 27.42	2,500
27.41 through 26.92	3,000

§ 91.123 Compliance with ATC clearances and instructions.

(a) When an ATC clearance has been obtained, no pilot in command may deviate from that clearance, except in an emergency, unless an amended clearance is obtained. A pilot in command may cancel an IFR flight plan if that pilot is operating in VFR weather conditions outside of positive controlled airspace. If a pilot is uncertain of the meaning of an ATC clearance, the pilot shall immediately request clarification from ATC.

(b) Except in an emergency, no person may operate an aircraft contrary to an ATC instruction in an area in which air traffic control is exercised.

(c) Each pilot in command who, in an emergency, deviates from an ATC clearance or instruction shall notify ATC of that deviation as soon as possible.

(d) Each pilot in command who (though not deviating from a rule of this subpart) is given priority by ATC in an emergency, shall submit a detailed report of that emergency within 48 hours to the manager of that ATC facility, if requested by ATC.

(e) Unless otherwise authorized by ATC, no person operating an aircraft may operate that aircraft according to any clearance or instruction that has been issued to the pilot of another aircraft for radar air traffic control purposes.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.125 ATC light signals.

ATC light signals have the meaning shown in the following table:

Color and type of signal	Meaning with respect to aircraft on the surface	Meaning with respect to aircraft in flight
Steady green	Cleared for takeoff.	Cleared to land.
Flashing green	Cleared to taxi	Return for landing (to be followed by steady green at proper time).
Steady red	Stop	Give way to other aircraft and continue circling.
Flashing red	Taxi clear of runway in use.	Airport unsafe—do not land.
Flashing white	Return to starting point on airport.	Not applicable.
Alternating red and green.	Exercise extreme caution.	Exercise extreme caution.

§ 91.127 Operating on or in the vicinity of an airport: General rules.

(a) Unless otherwise required by part 93 of this chapter, each person operating an aircraft on or in the vicinity of an airport shall comply with the requirements of this section and, if applicable, of § 91.129.

(b) Each person operating an aircraft to or from an airport without an operating control tower shall—

(1) In the case of an airplane approaching to land, make all turns of that airplane to the left unless the airport displays approved light signals or visual markings indicating that turns should be made to the right, in which case the pilot shall make all turns to the right;

(2) In the case of a helicopter approaching to land, avoid the flow of fixed-wing aircraft; and

(3) In the case of an aircraft departing the airport, comply with any traffic patterns established for that airport in part 93.

(c) Unless otherwise authorized or required by ATC, no person may operate an aircraft within an airport traffic area except for the purpose of landing at, or taking off from, an airport within that area. ATC authorization may be given as individual approval of specific operations or may be contained in written agreements between airport users and the tower concerned.

(d) Except when necessary for training or certification, the pilot in command of a civil turbojet-powered airplane shall use, as a final landing flap setting, the minimum certificated landing flap setting set forth in the approved performance information in the airplane flight manual for the applicable conditions. However, each pilot in command has the final authority and responsibility for the safe operation of the airplane and may use a different flap setting approved for that airplane if it is necessary in the interest of safety.

§ 91.129 Operation at airports with operating control towers.

(a) *General.* Unless otherwise authorized or required by ATC, each person operating an aircraft to, from, or on an airport with an operating control tower shall comply with the applicable provisions of this section.

(b) *Communications with control towers operated by the United States.* No person may, within an airport traffic area, operate an aircraft to, from, or on an airport having a control tower operated by the United States unless two-way radio communications are maintained between that aircraft and the control tower. However, if the aircraft radio fails in flight, the pilot in command may operate that aircraft and land if weather conditions are at or above basic VFR weather minimums, visual contact with the tower is maintained, and a clearance to land is received. If the aircraft radio fails while in flight under IFR, the pilot must comply with § 91.185.

(c) *Communications with other control towers.* No person may, within an airport traffic area, operate an aircraft to, from, or on an airport having a control tower that is operated by any person other than the United States unless—

(1) If that aircraft's radio equipment so allows, two-way radio communications are maintained between the aircraft and the tower; or

(2) If that aircraft's radio equipment allows only reception from the tower, the pilot has the tower's frequency monitored.

(d) *Minimum altitudes.* When operating to an airport with an operating control tower, each pilot of—

(1) A turbine-powered airplane or a large airplane shall, unless otherwise required by the applicable distance from cloud criteria, enter the airport traffic area at an altitude of at least 1,500 feet above the surface of the airport and maintain an altitude of at least 1,500 feet within the airport traffic area, including the traffic pattern, until further descent is required for a safe landing;

(2) A turbine-powered airplane or a large airplane approaching to land on a runway being served by an ILS, if the airplane is ILS equipped, shall fly that airplane at an altitude at or above the glide slope between the outer marker (or the point of interception with the glide slope, if compliance with the applicable distance from clouds criteria requires interception closer in) and the middle marker; and

(3) An airplane approaching to land on a runway served by a visual approach slope indicator shall maintain an altitude at or above the glide slope until a lower altitude is necessary for a safe landing.

However, paragraphs (d) (2) and (3) of this section do not prohibit normal bracketing maneuvers above or below the glide slope that are conducted for the purpose of remaining on the glide slope.

(e) *Approaches.* When approaching to land at an airport with an operating control tower, each pilot of—

(1) An airplane shall circle the airport to the left; and

(2) A helicopter shall avoid the flow of fixed-wing aircraft.

(f) *Departures.* No person may operate an aircraft taking off from an airport with an operating control tower except in compliance with the following:

(1) Each pilot shall comply with any departure procedures established for that airport by the FAA.

(2) Unless otherwise required by the departure procedure or the applicable distance from clouds criteria, each pilot of a turbine-powered airplane and each pilot of a large airplane shall climb to an altitude of 1,500 feet above the surface as rapidly as practicable.

(g) *Noise abatement runway system.* When landing or taking off from an airport with an operating control tower and for which a formal runway use program has been established by the FAA, each pilot of a turbine-powered airplane and each pilot of a large airplane assigned a noise abatement runway by ATC shall use that runway. However, consistent with the final authority of the pilot in command concerning the safe operation of the aircraft as prescribed in § 91.3(a), ATC may assign a different runway if requested by the pilot in the interest of safety.

(h) *Clearances required.* No person may, at an airport with an operating control tower, operate an aircraft on a runway or taxiway, or take off or land an aircraft, unless an appropriate clearance is received from ATC. A clearance to "taxi to" the takeoff runway assigned to the aircraft is not a clearance to cross that assigned takeoff runway or to taxi on that runway at any point, but is a clearance to cross other runways that intersect the taxi route to that assigned takeoff runway. A clearance to "taxi to" any point other than an assigned takeoff runway is a clearance to cross all runways that intersect the taxi route to that point.

§ 91.130 Airport radar service areas.

(a) *General.* For the purposes of this section, the primary airport is the airport designated in Part 71, Subpart L, for which the airport radar service area is designated. A satellite airport is any other airport within the airport radar service area.

(b) *Deviations.* An operator may deviate from any provision of this section under the provisions of an ATC authorization issued by the ATC facility having jurisdiction of the airport radar service area. ATC may authorize a deviation on a continuing basis or for an individual flight, as appropriate.

(c) *Arrivals and overflights.* No person may operate an aircraft in an airport radar service area unless two-way radio communication is established with ATC prior to entering that area and is thereafter maintained with ATC while within that area.

(d) *Departures.* No person may operate an aircraft within an airport radar service area unless two-way radio communication is maintained with ATC while within that area, except that for aircraft departing a satellite airport, two-way radio communication is established as soon as practicable and thereafter maintained with ATC while within that area.

(e) *Traffic patterns.* No person may take off or land an aircraft at a satellite airport within an airport radar service

area except in compliance with FAA arrival and departure traffic patterns.

(f) *Equipment requirement.* Unless otherwise authorized by ATC, no person may operate an aircraft within an airport radar service area unless that aircraft is equipped with the applicable equipment specified in § 91.215.

§ 91.131 Terminal control areas.

(a) *Operating rules.* No person may operate an aircraft within a terminal control area designated in part 71 of this chapter except in compliance with the following rules:

(1) No person may operate an aircraft within a terminal control area unless that person has received an appropriate authorization from ATC prior to operation of that aircraft in that area.

(2) Unless otherwise authorized by ATC, each person operating a large turbine engine-powered airplane to or from a primary airport shall operate at or above the designated floors while within the lateral limits of the terminal control area.

(3) Any person conducting pilot training operations at an airport within a terminal control area shall comply with any procedures established by ATC for such operations in terminal control area.

(b) *Pilot requirements.* (1) No person may takeoff or land a civil aircraft at an airport within a terminal control area or operate a civil aircraft within a terminal control area unless:

(i) The pilot-in-command holds at least a private pilot certificate; or,

(ii) The aircraft is operated by a student pilot who has met the requirements of § 61.95.

(2) Notwithstanding the provisions of paragraph (b)(1)(ii) of this section, at the following TCA primary airports, no person may takeoff or land a civil aircraft unless the pilot-in-command holds at least a private pilot certificate:

(i) Atlanta Hartsfield Airport, GA.

(ii) Boston Logan Airport, MA.

(iii) Chicago O'Hare International Airport, IL.

(iv) Dallas/Fort Worth International Airport, TX.

(v) Los Angeles International Airport, CA.

(vi) Miami International Airport, FL.

(vii) Newark International Airport, NJ.

(viii) New York Kennedy Airport, NY.

(ix) New York La Guardia Airport, NY.

(x) San Francisco International Airport, CA.

(xi) Washington National Airport, DC.

(xii) Andrews Air Force Base, MD

(c) *Communications and navigation equipment requirements.* Unless otherwise authorized by ATC, no person may operate an aircraft within a terminal control area unless that aircraft is equipped with—

(1) An operable VOR or TACAN receiver (except for helicopter operations prior to January 1, 1990; and

(2) An operable two-way radio capable of communications with ATC on appropriate frequencies for that terminal control area.

(d) *Transponder requirement.* No person may operate an aircraft in a terminal control area unless the aircraft is equipped with the applicable operating transponder and automatic altitude reporting equipment specified in paragraph (a) of § 91.215, except as provided in paragraph (d) of that section.

§ 91.133 Restricted and prohibited areas.

(a) No person may operate an aircraft within a restricted area (designated in part 73) contrary to the restrictions imposed, or within a prohibited area, unless that person has the permission of the using or controlling agency, as appropriate.

(b) Each person conducting, within a restricted area, an aircraft operation (approved by the using agency) that creates the same hazards as the operations for which the restricted area was designated may deviate from the rules of this subpart that are not compatible with the operation of the aircraft.

§ 91.135 Positive control areas and route segments.

(a) Except as provided in paragraph (b) of this section, no person may operate an aircraft within a positive control area or positive control route segment designated in part 71 of this chapter unless the aircraft is—

(1) Operated under IFR at a specific flight level assigned by ATC;

(2) Equipped with instruments and equipment required for IFR operations;

(3) Flown by a pilot rated for instrument flight; and

(4) Equipped, when in a positive control area, with—

(i) The applicable equipment specified in § 91.215; and

(ii) A radio providing direct pilot/controller communication on the frequency specified by ATC for the area concerned.

(b) ATC may authorize deviations from the requirements of paragraph (a) of this section. In the case of an inoperative transponder, ATC may immediately approve an operation within a positive control area allowing flight to continue, if desired, to the airport of ultimate destination, including any intermediate stops, or to proceed to a place where suitable repairs can be made, or both. A request for authorization to deviate from a requirement of paragraph (a) of this section, other than for operation with an inoperative transponder as outlined above, must be submitted at least 48 hours before the proposed operation to the ATC center having jurisdiction over the positive control area concerned. ATC may authorize deviation on a continuing basis or for an individual flight, as appropriate.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.137 Temporary flight restrictions.

(a) The Administrator will issue a Notice to Airmen (NOTAM) designating an area within which temporary flight restrictions apply and specifying the hazard or condition requiring their imposition, whenever he determines it is necessary in order to—

(1) Protect persons and property on the surface or in the air from a hazard associated with an incident on the surface;

(2) Provide a safe environment for the operation of disaster relief aircraft; or

(3) Prevent an unsafe congestion of sightseeing and other aircraft above an incident or event which may generate a high degree of public interest.

The Notice to Airmen will specify the hazard or condition that requires the imposition of temporary flight restrictions.

(b) When a NOTAM has been issued under paragraph (a)(1) of this section, no person may operate an aircraft within the designated area unless that aircraft is participating in the hazard relief activities and is being operated under the direction of the official in charge of on scene emergency response activities.

(c) When a NOTAM has been issued under paragraph (a)(2) of this section, no person may operate an aircraft within the designated area unless at least one of the following conditions are met:

(1) The aircraft is participating in hazard relief activities and is being operated under the direction of the official in charge of on scene emergency response activities.

(2) The aircraft is carrying law enforcement officials.

(3) The aircraft is operating under the ATC approved IFR flight plan.

(4) The operation is conducted directly to or from an airport within the area, or is necessitated by the impracticability of VFR flight above or around the area due to weather, or terrain; notification is given to the Flight Service Station (FSS) or ATC facility specified in the NOTAM to receive advisories concerning disaster relief aircraft operations; and the operation does not hamper or endanger relief activities and is not conducted for the purpose of observing the disaster.

(5) The aircraft is carrying properly accredited news representatives, and, prior to entering the area, a flight plan is filed with the appropriate FAA or ATC facility specified in the Notice to Airmen and the operation is conducted above the altitude used by the disaster relief aircraft, unless otherwise authorized by the official in charge of on scene emergency response activities.

(d) When a NOTAM has been issued under paragraph (a)(3) of this section, no person may operate an aircraft within the designated area unless at least one of the following conditions is met:

(1) The operation is conducted directly to or from an airport within the area, or is necessitated by the impracticability of VFR flight above or around the area due to weather or terrain, and the operation is not conducted for the purpose of observing the incident or event.

(2) The aircraft is operating under an ATC approved IFR flight plan.

(3) The aircraft is carrying incident or event personnel, or law enforcement officials.

(4) The aircraft is carrying properly accredited news representatives and, prior to entering that area, a flight plan is filed with the appropriate FSS or ATC facility specified in the NOTAM.

(e) Flight plans filed and notifications made with an FSS or ATC facility under this section shall include the following information:

(1) Aircraft identification, type and color.

(2) Radio communications frequencies to be used.

(3) Proposed times of entry of, and exit from, the designated area.

(4) Name of news media or organization and purpose of flight.

(5) Any other information requested by ATC.

§ 91.138 Emergency air traffic rules.

(a) This section prescribes a process for utilizing Notices to Airmen (NOTAMs) to advise of the issuance and operations under emergency air traffic rules and regulations and designates the official who is authorized to issue NOTAMs on behalf of the Administrator in certain matters under this section.

(b) Whenever the Administrator determines that an emergency condition exists, or will exist, relating to the FAA's ability to operate the air traffic control system and during which normal flight operations under this chapter cannot be conducted consistent with the required levels of safety and efficiency—

(1) The Administrator issues an immediately effective air traffic rule or regulation in response to that emergency condition; and

(2) The Administrator or the Associate Administrator for Air Traffic may utilize the NOTAM system to provide notification of the issuance of the rule or regulation.

Those NOTAMs communicate information concerning the rules and regulations that govern flight operations, the use of navigation facilities, and designation of that airspace in which the rules and regulations apply.

(c) When a NOTAM has been issued under this section, no person may operate an aircraft, or other device governed by the regulation concerned, within the designated airspace except in accordance with the authorizations, terms, and conditions prescribed in the regulation covered by the NOTAM.

§ 91.141 Flight restrictions in the proximity of the Presidential and other parties.

No person may operate an aircraft over or in the vicinity of any area to be visited or traveled by the President, the Vice President, or other public figures contrary to the restrictions established by the Administrator and published in a Notice to Airmen (NOTAM).

§ 91.143 Flight limitation in the proximity of space flight operations.

No person may operate any aircraft of U.S. registry, or pilot any aircraft under the authority of an airman certificate issued by the Federal Aviation Administration within areas designated in a Notice to Airmen (NOTAM) for space flight operations except when authorized by ATC, or operated under the control of the Department of Defense Manager for Space Transportation System Contingency Support Operations.

§§ 91.145–91.149 [Reserved]

Visual Flight Rules

§ 91.151 Fuel requirements for flight in VFR conditions.

(a) No person may begin a flight in an airplane under VFR conditions unless (considering wind and forecast weather conditions) there is enough fuel to fly to the first point of intended landing and, assuming normal cruising speed—

(1) During the day, to fly after that for at least 30 minutes; or

(2) At night, to fly after that for at least 45 minutes.

(b) No person may begin a flight in a rotorcraft under VFR conditions unless (considering wind and forecast weather conditions) there is enough fuel to fly to the first point of intended landing and, assuming normal cruising speed, to fly after that for at least 20 minutes.

§ 91.153 VFR flight plan: information required.

(a) *Information required.* Unless otherwise authorized by ATC, each person filing a VFR flight plan shall include in it the following information:

(1) The aircraft identification number and, if necessary, its radio call sign.

(2) The type of the aircraft or, in the case of a formation flight, the type of each aircraft and the number of aircraft in the formation.

(3) The full name and address of the pilot in command or, in the case of a formation flight, the formation commander.

(4) The point and proposed time of departure.

(5) The proposed route, cruising altitude (or flight level), and true airspeed at that altitude.

(6) The point of first intended landing and the estimated elapsed time until over that point.

(7) The amount of fuel on board (in hours).

(8) The number of persons in the aircraft, except where that information is otherwise readily available to the FAA.

(9) Any other information the pilot in command or ATC believes is necessary for ATC purposes.

(b) *Cancellation.* When a flight plan has been activated, the pilot in command, upon canceling or completing the flight under the flight plan, shall notify an FAA Flight Service Station or ATC facility.

§ 91.155 Basic VFR weather minimums.

(a) Except as provided in § 91.157, no person may operate an aircraft under VFR when the flight visibility is less, or at a distance from clouds that is less, than that prescribed for the corresponding altitude in the following table:

Altitude	Flight visibility	Distance from clouds
1,200 feet or less above the surface (regardless of MSL altitude)—		
Within controlled airspace	3 statute miles	500 feet below, 1,000 feet above, 2,000 feet horizontal.
Outside controlled airspace	1 statute mile except as provided in § 91.155(b)	Clear of clouds.
More than 1,200 feet above the surface but less than 10,000 feet MSL—		
Within controlled airspace	3 statute miles	500 feet below, 1,000 feet above, 2,000 feet horizontal.
Outside controlled airspace	1 statute mile	500 feet below, 1,000 feet above, 2,000 feet horizontal.
More than 1,200 feet above the surface and at or above 10,000 feet MSL	5 statute miles	1,000 feet below, 1,000 feet above, 1 mile horizontal.

(b) When the visibility is less than 1 statute mile, a helicopter may be operated outside controlled airspace at 1,200 feet or less above the surface if operated at a speed that allows the pilot adequate opportunity to see any air traffic or other obstruction in time to avoid a collision.

(c) Except as provided in § 91.157, no person may operate an aircraft, under VFR, within a control zone beneath the ceiling when the ceiling is less than 1,000 feet.

(d) Except as provided in § 91.157, no person may take off or land an aircraft, or enter the traffic pattern of an airport, under VFR, within a control zone—

(1) Unless ground visibility at that airport is at least 3 statute miles; or

(2) If ground visibility is not reported at that airport, unless flight visibility during landing or takeoff, or while operating in the traffic pattern, is at least 3 statute miles.

(e) For the purposes of this section, an aircraft operating at the base altitude of a transition area or control area is considered to be within the airspace directly below that area.

§ 91.157 Special VFR weather minimums.

(a) Except as provided in § 93.113, when a person has received an appropriate ATC clearance, the special weather minimums of this section instead of those contained in § 91.155 apply to the operation of an aircraft by that person in a control zone under VFR.

(b) No person may operate an aircraft in a control zone under VFR except clear of clouds.

(c) No person may operate an aircraft (other than a helicopter) in a control zone under VFR unless flight visibility is at least 1 statute mile.

(d) No person may take off or land an aircraft (other than a helicopter) at any airport in a control zone under VFR—

(1) Unless ground visibility at that airport is at least 1 statute mile; or

(2) If ground visibility is not reported at that airport, unless flight visibility during landing or takeoff is at least 1 statute mile.

(e) No person may operate an aircraft (other than a helicopter) in a control zone under the special weather minimums of this section, between sunset and sunrise (or in Alaska, when the sun is more than 6 degrees below the horizon) unless:

(1) That person meets the applicable requirements for instrument flight under part 61 of this chapter; and

(2) The aircraft is equipped as required in § 91.205(d).

§ 91.159 VFR cruising altitude or flight level.

Except while holding in a holding pattern of 2 minutes or less, or while turning, each person operating an aircraft under VFR in level cruising flight more than 3,000 feet above the surface shall maintain the appropriate altitude or flight level prescribed below, unless otherwise authorized by ATC:

(a) When operating below 18,000 feet MSL and—

(1) On a magnetic course of zero degrees through 179 degrees, any odd thousand foot MSL altitude +500 feet (such as 3,500, 5,500, or 7,500); or

(2) On a magnetic course of 180 degrees through 359 degrees, any even thousand foot MSL altitude +500 feet (such as 4,500, 6,500, or 8,500).

(b) When operating above 18,000 feet MSL to flight level 290 (inclusive) and—

(1) On a magnetic course of zero degrees through 179 degrees, any odd flight level +500 feet (such as 195, 215, or 235); or

(2) On a magnetic course of 180 degrees through 359 degrees, any even flight level +500 feet (such as 185, 205, or 225).

(c) When operating above flight level 290 and—

(1) On a magnetic course of zero degrees through 179 degrees, any flight level, at 4,000-foot intervals, beginning at and including flight level 300 (such as flight level 300, 340, or 380); or

(2) On a magnetic course of 180 degrees through 359 degrees, any flight level, at 4,000-foot intervals, beginning at and including flight level 320 (such as flight level 320, 360, or 400).

§§ 91.161-91.165 [Reserved]

Instrument Flight Rules

§ 91.167 Fuel requirements for flight in IFR conditions.

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft in IFR conditions unless it carries enough fuel (considering weather reports and forecasts and weather conditions) to—

(1) Complete the flight to the first airport of intended landing;

(2) Fly from that airport to the alternate airport; and

(3) Fly after that for 45 minutes at normal cruising speed or, for helicopters, fly after that for 30 minutes at normal cruising speed.

(b) Paragraph (a)(2) of this section does not apply if—

(1) Part 97 of this chapter prescribes a standard instrument approach procedure for the first airport of intended landing; and

(2) For at least 1 hour before and 1 hour after the estimated time of arrival at the airport, the weather reports or forecasts or any combination of them indicate—

(i) The ceiling will be at least 2,000 feet above the airport elevation; and

(ii) Visibility will be at least 3 statute miles.

§ 91.169 IFR flight plan: information required.

(a) *Information required.* Unless otherwise authorized by ATC, each person filing an IFR flight plan shall include in it the following information:

(1) Information required under § 91.153(a).

(2) An alternate airport, except as provided in paragraph (b) of this section.

(b) *Exceptions to applicability of paragraph (a)(2) of this section.* Paragraph (a)(2) of this section does not apply if part 97 of this chapter prescribes a standard instrument approach procedure for the first airport of intended landing and, for at least 1 hour before and 1 hour after the estimated time of arrival, the weather reports or forecasts, or any combination of them, indicate—

(1) The ceiling will be at least 2,000 feet above the airport elevation; and

(2) The visibility will be at least 3 statute miles.

(c) *IFR alternate airport weather minimums.* Unless otherwise authorized by the Administrator, no person may include an alternate airport in an IFR flight plan unless current weather forecasts indicate that, at the estimated time of arrival at the alternate airport, the ceiling and visibility at that airport will be at or above the following alternate airport weather minimums:

(1) If an instrument approach procedure has been published in part 97 of this chapter for that airport, the alternate airport minimums specified in that procedure or, if none are so specified, the following minimums:

(i) Precision approach procedure: Ceiling 600 feet and visibility 2 statute miles.

(ii) Nonprecision approach procedure: Ceiling 800 feet and visibility 2 statute miles.

(2) If no instrument approach procedure has been published in part 97 of this chapter for that airport, the ceiling and visibility minimums are those allowing descent from the MEA, approach, and landing under basic VFR.

(d) *Cancellation.* When a flight plan has been activated, the pilot in command, upon canceling or completing the flight under the flight plan, shall notify an FAA Flight Service Station or ATC facility.

§ 91.171 VOR equipment check for IFR operations.

(a) No person may operate a civil aircraft under IFR using the VOR system of radio navigation unless the VOR equipment of that aircraft—

(1) Is maintained, checked, and inspected under an approved procedure; or

(2) Has been operationally checked within the preceding 30 days, and was found to be within the limits of the permissible indicated bearing error set forth in paragraph (b) or (c) of this section.

(b) Except as provided in paragraph (c) of this section, each person conducting a VOR check under paragraph (a)(2) of this section shall—

(1) Use, at the airport of intended departure, an FAA-operated or approved test signal or a test signal radiated by a certificated and appropriately rated radio repair station or, outside the United States, a test signal operated or approved by an appropriate authority to check the VOR equipment (the maximum permissible indicated bearing error is plus or minus 4 degrees); or

(2) Use, at the airport of intended departure, a point on the airport surface designated as a VOR system checkpoint by the Administrator, or, outside the United States, by an appropriate authority (the maximum permissible bearing error is plus or minus 4 degrees); or

(3) If neither a test signal nor a designated checkpoint on the surface is available, use an airborne checkpoint designated by the Administrator or, outside the United States, by an appropriate authority (the maximum permissible bearing error is plus or minus 6 degrees); or

(4) If no check signal or point is available, while in flight—

(i) Select a VOR radial that lies along the centerline of an established VOR airway;

(ii) Select a prominent ground point along the selected radial preferably more than 20 nautical miles from the VOR ground facility and maneuver the aircraft directly over the point at a reasonably low altitude; and

(iii) Note the VOR bearing indicated by the receiver when over the ground point (the maximum permissible variation between the published radial and the indicated bearing is 6 degrees).

(c) If dual system VOR (units independent of each other except for the antenna) is installed in the aircraft, the person checking the equipment may check one system against the other in place of the check procedures specified in paragraph (b) of this section. Both systems shall be tuned to the same VOR ground facility and note the indicated bearings to that station. The maximum permissible variation between the two indicated bearings is 4 degrees.

(d) Each person making the VOR operational check, as specified in paragraph (b) or (c) of this section, shall enter the date, place, bearing error, and sign the aircraft log or other record. In addition, if a test signal radiated by a repair station, as specified in paragraph (b)(1) of this section, is used, an entry must be made in the aircraft log or other record by the repair station certificate holder or the certificate holder's representative certifying to the bearing transmitted by the repair station for the check and the date of transmission.

(Approved by the Office of Management and Budget under OMB control number 2120-0008)

§ 91.173 ATC clearance and flight plan required.

No person may operate an aircraft in controlled airspace under IFR unless that person has—

(a) Filed an IFR flight plan; and

(b) Received an appropriate ATC clearance.

§ 91.175 Takeoff and landing under IFR.

(a) *Instrument approaches to civil airports.*

Unless otherwise authorized by the Administrator, when an instrument letdown to a civil airport is necessary, each person operating an aircraft, except a military aircraft of the United States, shall use a standard instrument approach procedure prescribed for the airport in part 97 of this chapter.

(b) *Authorized DH or MDA.* For the purpose of this section, when the approach procedure being used provides for and requires the use of a DH or MDA, the authorized DH or MDA is the highest of the following:

(1) The DH or MDA prescribed by the approach procedure.

(2) The DH or MDA prescribed for the pilot in command.

(3) The DH or MDA for which the aircraft is equipped.

(c) *Operation below DH or MDA.* Where a DH or MDA is applicable, no pilot may operate an aircraft, except a military aircraft of the United States, at any airport below the authorized MDA or continue an approach below the authorized DH unless—

(1) The aircraft is continuously in a position from which a descent to a landing on the intended runway can be made at a normal rate of descent using normal maneuvers, and for operations conducted under part 121 or part 135 unless that descent rate will allow touchdown to occur within the touchdown zone of the runway of intended landing;

(2) The flight visibility is not less than the visibility prescribed in the standard instrument approach being used; and

(3) Except for a Category II or Category III approach where any necessary visual reference requirements are specified by the Administrator, at least one of the following visual references for the intended runway is distinctly visible and identifiable to the pilot:

(i) The approach light system, except that the pilot may not descend below 100 feet above the touchdown zone elevation using the approach lights as a reference unless the red terminating bars or the red side row bars are also distinctly visible and identifiable.

(ii) The threshold.
(iii) The threshold markings.
(iv) The threshold lights.
(v) The runway end identifier lights.
(vi) The visual approach slope indicator.
(vii) The touchdown zone or touchdown zone markings.
(viii) The touchdown zone lights.
(ix) The runway or runway markings.
(x) The runway lights.

(d) *Landing.* No pilot operating an aircraft, except a military aircraft of the United States, may land that aircraft when the flight visibility is less than the visibility prescribed in the standard instrument approach procedure being used.

(e) *Missed approach procedures.* Each pilot operating an aircraft, except a military aircraft of the United States, shall immediately execute an appropriate missed approach procedure when either of the following conditions exist:

(1) Whenever the requirements of paragraph (c) of this section are not met at either of the following times:

(i) When the aircraft is being operated below MDA; or

(ii) Upon arrival at the missed approach point, including a DH where a DH is specified and its use is required, and at any time after that until touchdown.

(2) Whenever an identifiable part of the airport is not distinctly visible to the pilot during a circling maneuver at or above MDA, unless the inability to see an identifiable part of the airport results only from a normal bank of the aircraft during the circling approach.

(f) *Civil airport takeoff minimums.* Unless otherwise authorized by the Administrator, no pilot operating an aircraft under parts 121, 125, 127, 129, or 135 of this chapter may take off from a civil airport under IFR unless weather conditions are at or above the weather minimum for IFR takeoff prescribed for that airport under part 97 of this chapter. If takeoff minimums are not prescribed under part 97 of this chapter for a particular airport, the following minimums apply to takeoffs under IFR for aircraft operating under those parts:

(1) For aircraft, other than helicopters, having two engines or less—1 statute mile visibility.

(2) For aircraft having more than two engines—¼ statute mile visibility.

(3) For helicopters—1/2 statute mile visibility.

(g) *Military airports.* Unless otherwise prescribed by the Administrator, each person operating a civil aircraft under IFR into or out of a military airport shall comply with the instrument approach procedures and the takeoff and landing minimum prescribed by the military authority having jurisdiction of that airport.

(h) *Comparable values of RVR and ground visibility.* (1) Except for Category II or Category III minimums, if RVR minimums for takeoff or landing are prescribed in an instrument approach procedure, but RVR is not reported for the runway of intended operation, the RVR minimum shall be converted to ground visibility in accordance with the table in paragraph (h)(2) of this section and shall be the visibility minimum for takeoff or landing on that runway.

(2)

RVR (feet)	Visibility (statute miles)
1,600	¼
2,400	½
3,200	⅝
4,000	¾
4,500	⅞
5,000	1
6,000	1¼

(i) *Operations on unpublished routes and use of radar in instrument approach procedures.* When radar is approved at certain locations for ATC purposes, it may be used not only for surveillance and precision radar approaches, as applicable, but also may be used in conjunction with instrument approach procedures predicated on other types of radio navigational aids. Radar vectors may be authorized to provide course guidance through the segments of an approach to the final course or fix. When operating on an unpublished route or while being radar vectored, the pilot, when an approach clearance is received, shall, in addition to complying with § 91.177, maintain the last altitude assigned to that pilot until the aircraft is established on a segment of a published route or instrument approach procedure unless a different altitude is assigned by ATC. After the aircraft is so established, published altitudes apply to descent within each succeeding route or approach segment unless a different altitude is assigned by ATC. Upon reaching the final approach course or fix, the pilot may either complete the instrument approach in accordance with a procedure approved for the facility or continue a surveillance or precision radar approach to a landing.

(j) *Limitation on procedure turns.* In the case of a radar vector to a final approach course or fix, a timed approach from a holding fix, or an approach for which the procedure specifies "No PT," no pilot may make a procedure turn unless cleared to do so by ATC.

(k) *ILS components.* The basic ground components of an ILS are the localizer, glide slope, outer marker, middle marker, and, when installed for use with Category II or Category III instrument approach procedures, an inner marker. A compass locator or precision radar may be substituted for the outer or middle marker. DME, VOR, or nondirectional beacon fixes authorized in the standard instrument approach procedure or surveillance radar may be substituted for the outer marker. Applicability of, and substitution for, the inner marker for Category II or III approaches is determined by the appropriate part 97 approach procedure, letter of authorization, or operations specification pertinent to the operations.

§ 91.177 Minimum altitudes for IFR operations.

(a) *Operation of aircraft at minimum altitudes.* Except when necessary for takeoff or landing, no person may operate an aircraft under IFR below—

(1) The applicable minimum altitudes prescribed in Parts 95 and 97 of this chapter; or

(2) If no applicable minimum altitude is prescribed in those parts—

(i) In the case of operations over an area designated as a mountainous area in part 95, an altitude of 2,000 feet above the highest obstacle within a horizontal distance of 4 nautical miles from the course to be flown; or

(ii) In any other case, an altitude of 1,000 feet above the highest obstacle within a horizontal distance of 4 nautical miles from the course to be flown.

However, if both a MEA and a MOCA are prescribed for a particular route or route segment, a person may operate an aircraft below the MEA down to, but not below, the MOCA, when within 22 nautical miles of the VOR concerned (based on the pilot's reasonable estimate of that distance).

(b) *Climb.* Climb to a higher minimum IFR altitude shall begin immediately after passing the point beyond which that minimum altitude applies, except that when ground obstructions intervene, the point beyond which that higher minimum altitude applies shall be crossed at or above the applicable MCA.

§ 91.179 IFR cruising altitude or flight level.

(a) *In controlled airspace.* Each person operating an aircraft under IFR in level cruising flight in controlled airspace shall maintain the altitude or flight level assigned that aircraft by ATC. However, if the ATC clearance assigns "VFR conditions on-top," that person shall maintain an altitude or flight level as prescribed by § 91.159.

(b) *In uncontrolled airspace.* Except while in a holding pattern of 2 minutes or less or while turning, each person operating an aircraft under IFR in level cruising flight in uncontrolled airspace shall maintain an appropriate altitude as follows:

(1) When operating below 18,000 feet MSL and—

(i) On a magnetic course of zero degrees through 179 degrees, any odd thousand foot MSL altitude (such as 3,000, 5,000, or 7,000); or

(ii) On a magnetic course of 180 degrees through 359 degrees, any even thousand foot MSL altitude (such as 2,000, 4,000, or 6,000).

(2) When operating at or above 18,000 feet MSL but below flight level 290, and—

(i) On a magnetic course of zero degrees through 179 degrees, any odd flight level (such as 190, 210, or 230); or

(ii) On a magnetic course of 180 degrees through 359 degrees, any even flight level (such as 180, 200, or 220).

(3) When operating at flight level 290 and above, and—

(i) On a magnetic course of zero degrees through 179 degrees, any flight level, at 4,000-foot intervals, beginning at and including flight level 290 (such as flight level 290, 330, or 370); or

(ii) On a magnetic course of 180 degrees through 359 degrees, any flight level, at 4,000-foot intervals, beginning at and including flight level 310 (such as flight level 310, 350, or 390).

§ 91.181 Course to be flown.

Unless otherwise authorized by ATC, no person may operate an aircraft within controlled airspace under IFR except as follows:

(a) On a Federal airway, along the centerline of that airway.

(b) On any other route, along the direct course between the navigational aids or fixes defining that route. However, this section does not prohibit maneuvering the aircraft to pass well clear of other air traffic or the maneuvering of the aircraft in VFR conditions to clear the intended flight path both before and during climb or descent.

§ 91.183 IFR radio communications.

The pilot in command of each aircraft operated under IFR in controlled airspace shall have a continuous watch maintained on the appropriate frequency and shall report by radio as soon as possible—

(a) The time and altitude of passing each designated reporting point, or the reporting points specified by ATC, except that while the aircraft is under radar control, only the passing of those reporting points specifically requested by ATC need be reported;

(b) Any unforecast weather conditions encountered; and

(c) Any other information relating to the safety of flight.

§ 91.185 IFR operations: Two-way radio communications failure.

(a) *General.* Unless otherwise authorized by ATC, each pilot who has two-way radio communications failure when operating under IFR shall comply with the rules of this section.

(b) *VFR conditions.* If the failure occurs in VFR conditions, or if VFR conditions are encountered after the failure, each pilot shall continue the flight under VFR and land as soon as practicable.

(c) *IFR conditions.* If the failure occurs in IFR conditions, or if paragraph (b) of this section cannot be complied with, each pilot shall continue the flight according to the following:

(1) *Route.* (i) By the route assigned in the last ATC clearance received;

(ii) If being radar vectored, by the direct route from the point of radio failure to the fix, route, or airway specified in the vector clearance;

(iii) In the absence of an assigned route, by the route that ATC has advised may be expected in a further clearance; or

(iv) In the absence of an assigned route or a route that ATC has advised may be expected in a further clearance, by the route filed in the flight plan.

(2) *Altitude.* At the highest of the following altitudes or flight levels for the route segment being flown:

(i) The altitude or flight level assigned in the last ATC clearance received;

(ii) The minimum altitude (converted, if appropriate, to minimum flight level as prescribed in § 91.121(c)) for IFR operations; or

(iii) The altitude or flight level ATC has advised may be expected in a further clearance.

(3) *Leave clearance limit.* (i) When the clearance limit is a fix from which an approach begins, commence descent or descent and approach as close as possible to the expect-further-clearance time if one has been received, or if one has not been received, as close as possible to the estimated time of arrival as calculated from the filed or amended (with ATC) estimated time en route.

(ii) If the clearance limit is not a fix from which an approach begins, leave the clearance limit at the expect-further-clearance time if one has been received, or if none has been received, upon arrival over the clearance limit, and proceed to a fix from which an approach begins and commence descent or descent and approach as close as possible to the estimated time of arrival as calculated from the filed or amended (with ATC) estimated time en route.

§ 91.187 Operation under IFR in controlled airspace: Malfunction reports.

(a) The pilot in command of each aircraft operated in controlled airspace under IFR shall report as soon as practical to ATC any malfunctions of navigational, approach, or communication equipment occurring in flight.

(b) In each report required by paragraph (a) of this section, the pilot in command shall include the—

(1) Aircraft identification;

(2) Equipment affected;

(3) Degree to which the capability of the pilot to operate under IFR in the ATC system is impaired; and

(4) Nature and extent of assistance desired from ATC.

§ 91.189 Category II and III operations: General operating rules.

(a) No person may operate a civil aircraft in a Category II or III operation unless—

(1) The flight crew of the aircraft consists of a pilot in command and a second in command who hold the appropriate authorizations and ratings prescribed in § 61.3 of this chapter;

(2) Each flight crewmember has adequate knowledge of, and familiarity with, the aircraft and the procedures to be used; and

(3) The instrument panel in front of the pilot who is controlling the aircraft has appropriate instrumentation for the type of flight control guidance system that is being used.

(b) Unless otherwise authorized by the Administrator, no person may operate a civil aircraft in a Category II or Category III operation unless each ground component required for that operation and the related airborne equipment is installed and operating.

(c) *Authorized DH.* For the purpose of this section, when the approach procedure being used provides for and requires the use of a DH, the authorized DH is the highest of the following:

(1) The DH prescribed by the approach procedure.

(2) The DH prescribed for the pilot in command.

(3) The DH for which the aircraft is equipped.

(d) Unless otherwise authorized by the Administrator, no pilot operating an aircraft in a Category II or Category III

approach that provides and requires use of a DH may continue the approach below the authorized decision height unless the following conditions are met:

(1) The aircraft is in a position from which a descent to a landing on the intended runway can be made at a normal rate of descent using normal maneuvers, and where that descent rate will allow touchdown to occur within the touchdown zone of the runway of intended landing.

(2) At least one of the following visual references for the intended runway is distinctly visible and identifiable to the pilot:

(i) The approach light system, except that the pilot may not descend below 100 feet above the touchdown zone elevation using the approach lights as a reference unless the red terminating bars or the red side row bars are also distinctly visible and identifiable.

(ii) The threshold.

(iii) The threshold markings.

(iv) The threshold lights.

(v) The touchdown zone or touchdown zone markings.

(vi) The touchdown zone lights.

(e) Unless otherwise authorized by the Administrator, each pilot operating an aircraft shall immediately execute an appropriate missed approach whenever, prior to touchdown, the requirements of paragraph (d) of this section are not met.

(f) No person operating an aircraft using a Category III approach without decision height may land that aircraft except in accordance with the provisions of the letter of authorization issued by the Administrator.

(g) Paragraphs (a) through (f) of this section do not apply to operations conducted by the holders of certificates issued under part 121, 125, 129, or 135 of this chapter. No person may operate a civil aircraft in a Category II or Category III operation conducted by the holder of a certificate issued under part 121, 125, 129, or 135 of this chapter unless the operation is conducted in accordance with that certificate holder's operations specifications.

§ 91.191 Category II manual.

(a) No person may operate a civil aircraft of United States registry in a Category II operation unless—

(1) There is available in the aircraft a current, approved Category II manual for that aircraft;

(2) The operation is conducted in accordance with the procedures, instructions, and limitations in that manual; and

(3) The instruments and equipment listed in the manual that are required for a particular Category II operation have been inspected and maintained in accordance with the maintenance program contained in that manual.

(b) Each operator shall keep a current copy of the approved manual at its principal base of operations and shall make it available for inspection upon request of the Administrator.

(c) This section does not apply to operations conducted by the holder of a certificate issued under part 121 of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.193 Certificate of authorization for certain Category II operations.

The Administrator may issue a certificate of authorization authorizing deviations from the requirements of §§ 91.189, 91.191, and 91.205(f) for the operation of small aircraft identified as Category A aircraft in § 97.3 of this chapter in Category II operations if the Administrator finds that the proposed operation can be safely conducted under the terms of the certificate. Such authorization does not permit operation of the aircraft carrying persons or property for compensation or hire.

§§ 91.195-91.199 [Reserved]

Subpart C—Equipment, Instrument, and Certificate Requirements

§ 91.201 [Reserved]

§ 91.203 Civil aircraft: Certifications required.

(a) Except as provided in § 91.715, no person may operate a civil aircraft unless it has within it the following:

(1) An appropriate and current airworthiness certificate. Each U.S. airworthiness certificate used to comply with this subparagraph (except a special flight permit, a copy of the applicable operations specifications issued under § 21.197(c) of this chapter, appropriate sections of the air carrier manual required by parts 121 and 135 of this chapter containing that portion of the operations specifications issued under § 21.197(c), or an authorization under § 91.611) must have on it the registration number assigned to the aircraft under part 47 of this chapter. However, the airworthiness certificate need not have on it an assigned special identification number before 10 days after that number is first affixed to the aircraft. A revised airworthiness certificate having on it an assigned special identification number, that has been affixed to an aircraft, may only be obtained upon application to an FAA Flight Standards district office.

(2) An effective U.S. registration certificate issued to its owner or, for operation within the United States, the second duplicate copy (pink) of the Aircraft Registration Application as provided for in § 47.31(b), or a registration certificate issued under the laws of a foreign country.

(b) No person may operate a civil aircraft unless the airworthiness certificate required by paragraph (a) of this section or a special flight authorization issued under § 91.715 is displayed at the cabin or cockpit entrance so that it is legible to passengers or crew.

(c) No person may operate an aircraft with a fuel tank installed within the passenger compartment or a baggage compartment unless the installation was accomplished pursuant to part 43 of this chapter, and a copy of FAA Form 337 authorizing that installation is on board the aircraft.

§ 91.205 Powered civil aircraft with standard category U.S. airworthiness certificates: Instrument and equipment requirements.

(a) *General.* Except as provided in paragraphs (c)(3) and (e) of this section, no person may operate a powered civil aircraft with a standard category U.S. airworthiness certificate in any operation described in paragraphs (b) through (f) of this section unless that aircraft contains the instruments and equipment specified in those paragraphs (or FAA-approved equivalents) for that type of operation, and those instruments and items of equipment are in operable condition.

(b) *Visual-flight rules (day).* For VFR flight during the day, the following instruments and equipment are required:

(1) Airspeed indicator.

(2) Altimeter.

(3) Magnetic direction indicator.

(4) Tachometer for each engine.

(5) Oil pressure gauge for each engine using pressure system.

(6) Temperature gauge for each liquid-cooled engine.

(7) Oil temperature gauge for each air-cooled engine.

(8) Manifold pressure gauge for each altitude engine.

(9) Fuel gauge indicating the quantity of fuel in each tank.

(10) Landing gear position indicator, if the aircraft has a retractable landing gear.

(11) If the aircraft is operated for hire over water and beyond power-off gliding distance from shore, approved flotation gear readily available to each occupant and at least one pyrotechnic signaling device. As used in this section, "shore" means that area of the land adjacent to the water which is above the high water mark and excludes land areas which are intermittently under water.

(12) Except as to airships, an approved safety belt with an approved metal-to-metal latching device for each occupant 2 years of age or older.

(13) For small civil airplanes manufactured after July 18, 1978, an approved shoulder harness for each front seat. The shoulder harness must be designed to protect the occupant from serious head injury when the occupant experiences the ultimate inertia forces specified in § 23.561(b)(2) of this chapter. Each shoulder harness installed at a flight crewmember station must permit the crewmember, when seated and with the safety belt and shoulder harness fastened, to perform all functions necessary for flight operations. For purposes of this paragraph—

(i) The date of manufacture of an airplane is the date the inspection acceptance records reflect that the airplane is complete and meets the FAA-approved type design data; and

(ii) A front seat is a seat located at a flight crewmember station or any seat located alongside such a seat.

(14) An emergency locator transmitter, if required by § 91.207.

(15) For normal, utility, and acrobatic category airplanes with a seating configuration, excluding pilot seats, of 9 or less, manufactured after December 12, 1986, a shoulder harness for—

(i) Each front seat that meets the requirements of § 23.785 (g) and (h) of this chapter in effect on December 12, 1985;

(ii) Each additional seat that meets the requirements of § 23.785(g) of this chapter in effect on December 12, 1985.

(c) *Visual flight rules (night).* For VFR flight at night, the following instruments and equipment are required:

(1) Instruments and equipment specified in paragraph (b) of this section.

(2) Approved position lights.

(3) An approved aviation red or aviation white anticollision light system on all U.S.-registered civil aircraft. Anticollision light systems initially installed after August 11, 1971, on aircraft for which a type certificate was issued or applied for before August 11, 1971, must at least meet the anticollision light standards of part 23, 25, 27, or 29 of this chapter, as applicable, that were in effect on August 10, 1971, except that the color may be either aviation red or aviation white. In the event of failure of any light of the anticollision light system, operations with the aircraft may be continued to a stop where repairs or replacement can be made.

(4) If the aircraft is operated for hire, one electric landing light.

(5) An adequate source of electrical energy for all installed electrical and radio equipment.

(6) One spare set of fuses, or three spare fuses of each kind required, that are accessible to the pilot in flight.

(d) *Instrument flight rules.* For IFR flight, the following instruments and equipment are required:

(1) Instruments and equipment specified in paragraph (b) of this section, and, for night flight, instruments and equipment specified in paragraph (c) of this section.

(2) Two-way radio communications system and navigational equipment appropriate to the ground facilities to be used.

(3) Gyroscopic rate-of-turn indicator, except on the following aircraft:

(i) Large airplanes with a third attitude instrument system usable through flight attitudes of 360 degrees of pitch and roll and installed in accordance with § 121.305(j) of this chapter; and

(ii) Rotorcraft with a third attitude instrument system usable through flight attitudes of ±80 degrees of pitch and ±120 degrees of roll and installed in accordance with § 29.1303(g) of this chapter.

(4) Slip-skid indicator.

(5) Sensitive altimeter adjustable for barometric pressure.

(6) A clock displaying hours, minutes, and seconds with a sweep-second pointer or digital presentation.

(7) Generator or alternator of adequate capacity.

(8) Gyroscopic pitch and bank indicator (artificial horizon).

(9) Gyroscopic direction indicator (directional gyro or equivalent).

(e) *Flight at and above 24,000 ft. MSL (FL 240).* If VOR navigational equipment is required under paragraph (d)(2) of this section, no person may operate a U.S.-registered civil aircraft within the 50 states and the District of Columbia at or above FL 240 unless that aircraft is equipped with approved distance measuring equipment (DME). When DME required by this paragraph fails at and above FL 240, the pilot in command of the aircraft shall notify ATC immediately, and then may continue operations at and above FL 240 to the next airport of intended landing at which repairs or replacement of the equipment can be made.

(f) *Category II operations.* For Category II operations the instruments and equipment specified in paragraph (d) of this section and appendix A to this part are required. This paragraph does not apply to operations conducted by the holder of a certificate issued under part 121 of this chapter.

§ 91.207 Emergency locator transmitters.

(a) Except as provided in paragraphs (d) and (e) of this section, no person may operate a U.S.-registered civil airplane unless—

(1) There is attached to the airplane an automatic type emergency locator transmitter that is in operable condition and meets the applicable requirements of TSO-C91 for the following operations:

(i) Those operations governed by the supplemental air carrier and commercial operator rules of parts 121 and 125;

(ii) Charter flights governed by the domestic and flag air carrier rules of part 121 of this chapter; and

(iii) Operations governed by part 135 of this chapter; or

(2) For operations other than those specified in paragraph (a)(1)(i) of this section, there must be attached to the airplane a personal type or an automatic type emergency locator transmitter that is in operable condition and meets the applicable requirements of TSO-C91.

(b) Each emergency locator transmitter required by paragraph (a) of this section must be attached to the airplane in such a manner that the probability of damage to the transmitter in the event of crash impact is minimized. Fixed and deployable automatic type transmitters must be attached to the airplane as far aft as practicable.

(c) Batteries used in the emergency locator transmitters required by paragraphs (a) and (b) of this section must be replaced (or recharged, if the batteries are rechargeable)—

(1) When the transmitter has been in use for more than 1 cumulative hour; or

(2) When 50 percent of their useful life (or, for rechargeable batteries, 50 percent of their useful life of charge), as established by the transmitter manufacturer under TSO-C91, paragraph (g)(2) of this section, has expired.

The new expiration date for replacing (or recharging) the battery must be legibly marked on the outside of the transmitter and entered in the aircraft maintenance record. Paragraph (c)(2) of this section does not apply to batteries (such as water-activated batteries) that are essentially unaffected during probable storage intervals.

(d) Notwithstanding paragraph (a) of this section, a person may—

(1) Ferry a newly acquired airplane from the place where possession of it was taken to a place where the emergency locator transmitter is to be installed; and

(2) Ferry an airplane with an inoperative emergency locator

transmitter from a place where repairs or replacements cannot be made to a place where they can be made.

No person other than required crewmembers may be carried aboard an airplane being ferried under paragraph (d) of this section.

(e) Paragraph (a) of this section does not apply to—

(1) Turbojet-powered aircraft;

(2) Aircraft while engaged in scheduled flights by scheduled air carriers;

(3) Aircraft while engaged in training operations conducted entirely within a 50-nautical mile radius of the airport from which such local flight operations began;

(4) Aircraft while engaged in flight operations incident to design and testing;

(5) New aircraft while engaged in flight operations incident to their manufacture, preparation, and delivery;

(6) Aircraft while engaged in flight operations incident to the aerial application of chemicals and other substances for agricultural purposes;

(7) Aircraft certificated by the Administrator for research and development purposes;

(8) Aircraft while used for showing compliance with regulations, crew training, exhibition, air racing, or market surveys;

(9) Aircraft equipped to carry not more than one person; and

(10) An aircraft during any period for which the transmitter has been temporarily removed for inspection, repair, modification, or replacement, subject to the following:

(i) No person may operate the aircraft unless the aircraft records contain an entry which includes the date of initial removal, the make, model, serial number, and reason for removing the transmitter, and a placard located in view of the pilot to show "ELT not installed."

(ii) No person may operate the aircraft more than 90 days after the ELT is initially removed from the aircraft.

§ 91.209 Aircraft lights.

No person may, during the period from sunset to sunrise (or, in Alaska, during the period a prominent unlighted object cannot be seen from a distance of 3 statute miles or the sun is more than 8 degrees below the horizon)—

(a) Operate an aircraft unless it has lighted position lights;

(b) Park or move an aircraft in, or in dangerous proximity to, a night flight operations area of an airport unless the aircraft—

(1) Is clearly illuminated;

(2) Has lighted position lights; or

(3) Is in an area which is marked by obstruction lights;

(c) Anchor an aircraft unless the aircraft—

(1) Has lighted anchor lights; or

(2) Is in an area where anchor lights are not required or vessels; or

(d) Operate an aircraft, required by § 91.205(c)(3) to be equipped with an anticollision light system, unless it has approved and lighted aviation red or aviation white anticollision lights. However, the anticollision lights need not be lighted when the pilot in command determines that, because of operating conditions, it would be in the interest of safety to turn the lights off.

§ 91.211 Supplemental oxygen.

(a) *General.* No person may operate a civil aircraft of U.S. registry—

(1) At cabin pressure altitudes above 12,500 feet (MSL) up to and including 14,000 feet (MSL) unless the required minimum flight crew is provided with and uses supplemental oxygen for that part of the flight at these altitudes that is of more than 30 minutes duration;

(2) At cabin pressure altitudes above 14,000 feet (MSL) unless the required minimum flight crew is provided with and uses supplemental oxygen during the entire flight time at these altitudes; and

(3) At cabin pressure altitudes above 15,000 feet (MSL) unless each occupant of the aircraft is provided with supplemental oxygen.

(b) *Pressurized cabin aircraft.* (1) No person may operate a civil aircraft of U.S. registry with a pressurized cabin—

(i) At flight altitudes above flight level 250 unless at least a 10-minute supply of supplemental oxygen, in addition to any oxygen required to satisfy paragraph (a) of this section, is available for each occupant of the aircraft for use in the event that a descent is necessitated by loss of cabin pressurization; and

(ii) At flight altitudes above flight level 350 unless one pilot at the controls of the airplane is wearing and using an oxygen mask that is secured and sealed and that either supplies oxygen at all times or automatically supplies oxygen whenever the cabin pressure altitude of the airplane exceeds 14,000 feet (MSL), except that the one pilot need not wear and use an oxygen mask while at or below flight level 410 if there are two pilots at the controls and each pilot has a quick-donning type of oxygen mask that can be placed on the face with one hand from the ready position within 5 seconds, supplying oxygen and properly secured and sealed.

(2) Notwithstanding paragraph (b)(1)(ii) of this section, if for any reason at any time it is necessary for one pilot to leave the controls of the aircraft when operating at flight altitudes above flight level 350, the remaining pilot at the controls shall put on and use an oxygen mask until the other pilot has returned to that crewmember's station.

§ 91.213 Inoperative instruments and equipment.

(a) Except as provided in paragraph (d) of this section, no person may take off an aircraft with inoperative instruments or equipment installed unless the following conditions are met:

(1) An approved Minimum Equipment List exists for that aircraft.

(2) The aircraft has within it a letter of authorization, issued by the FAA Flight Standards district office having jurisdiction over the area in which the operator is located, authorizing operation of the aircraft under the Minimum Equipment List. The letter of authorization may be obtained by written request of the airworthiness certificate holder. The Minimum Equipment List and the letter of authorization constitute a supplemental type certificate for the aircraft.

(3) The approved Minimum Equipment List must—

(i) Be prepared in accordance with the limitations specified in paragraph (b) of this section; and

(ii) Provide for the operation of the aircraft with the instruments and equipment in an inoperable condition.

(4) The aircraft records available to the pilot must include an entry describing the inoperable instruments and equipment.

(5) The aircraft is operated under all applicable conditions and limitations contained in the Minimum Equipment List and the letter authorizing the use of the list.

(b) The following instruments and equipment may not be included in a Minimum Equipment List:

(1) Instruments and equipment that are either specifically or otherwise required by the airworthiness requirements under which the aircraft is type certificated and which are essential for safe operations under all operating conditions.

(2) Instruments and equipment required by an airworthiness directive to be in operable condition unless the airworthiness directive provides otherwise.

(3) Instruments and equipment required for specific operations by this part.

(c) A person authorized to use an approved Minimum Equipment List issued for a specific aircraft under Part 121, 125, or 135 of this chapter shall use that Minimum Equipment List in connection with operations conducted with that aircraft under this part without additional approval requirements.

(d) Except for operations conducted in accordance with paragraph (a) or (c) of this section, a person may takeoff an aircraft in operations conducted under this part with inoperative instruments and equipment without an approved Minimum Equipment List provided—

(1) The flight operation is conducted in a—

(i) Rotorcraft, nonturbine-powered airplane, glider, or lighter-than-air aircraft for which a master Minimum Equipment List has not been developed; or

(ii) Small rotorcraft, nonturbine-powered small airplane, glider, or lighter-than-air aircraft for which a Master Minimum Equipment List has been developed; and

(2) The inoperative instruments and equipment are not—

(i) Part of the VFR-day type certification instruments and equipment prescribed in the applicable airworthiness regulations under which the aircraft was type certificated;

(ii) Indicated as required on the aircraft's equipment list, or on the Kinds of Operations Equipment List for the kind of flight operation being conducted;

(iii) Required by § 91.205 or any other rule of this part for the specific kind of flight operation being conducted; or

(iv) Required to be operational by an airworthiness directive; and

(3) The inoperative instruments and equipment are—

(i) Removed from the aircraft, the cockpit control placarded, and the maintenance recorded in accordance with § 43.9 of this chapter; or

(ii) Deactivated and placarded "Inoperative." If deactivation of the inoperative instrument or equipment involves maintenance, it must be accomplished and recorded in accordance with part 43 of this chapter; and

(4) A determination is made by a pilot, who is certificated and appropriately rated under part 61 of this chapter, or by a person, who is certificated and appropriately rated to perform maintenance on the aircraft, that the inoperative instrument or equipment does not constitute a hazard to the aircraft.

An aircraft with inoperative instruments or equipment as provided in paragraph (d) of this section is considered to be in a properly altered condition acceptable to the Administrator.

(e) Notwithstanding any other provision of this section, an aircraft with inoperable instruments or equipment may be operated under a special flight permit issued in accordance with §§ 21.197 and 21.199 of this chapter.

§ 91.215 ATC transponder and altitude reporting equipment and use.

(a) *All airspace: U.S.-registered civil aircraft.* For operations not conducted under part 121, 127 or 135 of this chapter, ATC transponder equipment installed within the time periods indicated below must meet the performance and environmental requirements of the following TSO's.

(1) *Through July 1, 1992:*

(i) Any class of TSO–C74b or any class of TSO–C74c as appropriate, provided that the equipment was manufactured before January 1, 1991; or

(ii) The appropriate class of TSO–C112 (Mode S).

(2) *After July 1, 1992:* The appropriate class of TSO–C112 (Mode S). For purposes of paragraph (a)(2) of this section, "installation" does not include—

(i) Temporary installation of TSO–C74b or TSO–C74c substitute equipment, as appropriate, during maintenance of the permanent equipment;

(ii) Reinstallation of equipment after temporary removal for maintenance; or

(iii) For fleet operations, installation of equipment in a fleet aircraft after removal of the equipment for maintenance from another aircraft in the same operator's fleet.

(b) *All airspace.* No person may operate an aircraft in the airspace described in paragraphs (b)(1) through (b)(5) of this section, unless that aircraft is equipped with an operable coded radar beacon transponder having either Mode 3/A 4096 code capability, replying to Mode 3/A interrogations with the code specified by ATC, or a Mode S capability, replying to Mode 3/A interrogations with the code specified by ATC and intermode and Mode S interrogations in accordance with the applicable provisions specified in TSO C–112, and that aircraft is equipped with automatic pressure altitude reporting equipment having a Mode C capability that automatically replies to Mode C interrogations by transmitting pressure altitude information in 100-foot increments. This requirement applies—

(1) *All aircraft.* In terminal control areas and positive control areas;

(2) *Effective July 1, 1990—All aircraft.* In all airspace within 30 nautical miles of a terminal control area primary airport from the surface upward to 10,000 feet MSL;

(3) *Effective July 1, 1990.* Notwithstanding paragraph (b)(2) of this section, any aircraft which was not originally certificated with an engine-driven electrical system or which has not subsequently been certified with such a system installed, balloon, or glider may conduct operations in the airspace within 30 nautical miles of a terminal control area primary airport provided such operations are conducted—

(i) Outside any terminal control area and positive control area; and

(ii) Below the altitude of the terminal control area ceiling or 10,000 feet MSL, whichever is lower; and

(4) *Effective December 30, 1990—All aircraft.* (i) In the airspace of an airport radar service area, and

(ii) In all airspace above the ceiling and within the lateral boundaries of an airport radar service area upward to 10,000 feet MSL; and

(5) *All aircraft except any aircraft which was not originally certificated with an engine-driven electrical system or which has not subsequently been certified with such a system installed, balloon, or glider. (i) In all airspace of the 48 contiguous states and the District of Columbia:*

(A) *Through June 30, 1989.* Above 12,500 feet MSL and below the floor of a positive control area, excluding the airspace at and below 2,500 feet AGL.

(B) *Effective July 1, 1989.* At and above 10,000 feet MSL and below the floor of a positive control area, excluding the airspace at and below 2,500 feet AGL; and

(ii) *Effective December 30, 1990.* In the airspace from the surface to 10,000 feet MSL within a 10-nautical-mile radius of any airport listed in Appendix D of this part excluding the airspace below 1,200 feet AGL outside of the airport traffic area for that airport.

(c) *Transponder-on operation.* While in the airspace as specified in paragraph (b) of this section or in all controlled airspace, each person operating an aircraft equipped with an operable ATC transponder maintained in accordance with § 91.413 of this part shall operate the transponder, including Mode C equipment if installed, and shall reply on the appropriate code or as assigned by ATC.

(d) *ATC authorized deviations.* ATC may authorize deviations from paragraph (b) of this section—

(1) Immediately, to allow an aircraft with an inoperative transponder to continue to the airport of ultimate destination, including any intermediate stops, or to proceed to a place where suitable repairs can be made or both;

(2) Immediately, for operations of aircraft with an operating transponder

but without operating automatic pressure altitude reporting equipment having a Mode C capability; and

(3) On a continuing basis, or for individual flights, for operations of aircraft without a transponder, in which case the request for a deviation must be submitted to the ATC facility having jurisdiction over the airspace concerned at least one hour before the proposed operation.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.217 Data correspondence between automatically reported pressure altitude data and the pilot's altitude reference.

No person may operate any automatic pressure altitude reporting equipment associated with a radar beacon transponder—

(a) When deactivation of that equipment is directed by ATC;

(b) Unless, as installed, that equipment was tested and calibrated to transmit altitude data corresponding within 125 feet (on a 95 percent probability basis) of the indicated or calibrated datum of the altimeter normally used to maintain flight altitude, with that altimeter referenced to 29.92 inches of mercury for altitudes from sea level to the maximum operating altitude of the aircraft; or

(c) Unless the altimeters and digitizers in that equipment meet the standards of TSO-C10b and TSO-C88, respectively.

§ 91.219 Altitude alerting system or device: Turbojet-powered civil airplanes.

(a) Except as provided in paragraph (d) of this section, no person may operate a turbojet-powered U.S.-registered civil airplane unless that airplane is equipped with an approved altitude alerting system or device that is in operable condition and meets the requirements of paragraph (b) of this section.

(b) Each altitude alerting system or device required by paragraph (a) of this section must be able to—

(1) Alert the pilot—

(i) Upon approaching a preselected altitude in either ascent or descent, by a sequence of both aural and visual signals in sufficient time to establish level flight at that preselected altitude; or

(ii) Upon approaching a preselected altitude in either ascent or descent, by a sequence of visual signals in sufficient time to establish level flight at that preselected altitude, and when deviating above and below that preselected altitude, by an aural signal;

(2) Provide the required signals from sea level to the highest operating altitude approved for the airplane in which it is installed;

(3) Preselect altitudes in increments that are commensurate with the altitudes at which the aircraft is operated;

(4) Be tested without special equipment to determine proper operation of the alerting signals; and

(5) Accept necessary barometric pressure settings if the system or device operates on barometric pressure. However, for operation below 3,000 feet AGL, the system or device need only provide one signal, either visual or aural, to comply with this paragraph. A radio altimeter may be included to provide the signal if the operator has an approved procedure for its use to determine DH or MDA, as appropriate.

(c) Each operator to which this section applies must establish and assign procedures for the use of the altitude alerting system or device and each flight crewmember must comply with those procedures assigned to him.

(d) Paragraph (a) of this section does not apply to any operation of an airplane that has an experimental certificate or to the operation of any airplane for the following purposes:

(1) Ferrying a newly acquired airplane from the place where possession of it was taken to a place where the altitude alerting system or device is to be installed.

(2) Continuing a flight as originally planned, if the altitude alerting system or device becomes inoperative after the airplane has taken off; however, the flight may not depart from a place where repair or replacement can be made.

(3) Ferrying an airplane with any inoperative altitude alerting system or device from a place where repairs or replacements cannot be made to a place where it can be made.

(4) Conducting an airworthiness flight test of the airplane.

(5) Ferrying an airplane to a place outside the United States for the purpose of registering it in a foreign country.

(6) Conducting a sales demonstration of the operation of the airplane.

(7) Training foreign flight crews in the operation of the airplane before ferrying it to a place outside the United States for the purpose of registering it in a foreign country.

§ 91.221 Traffic alert and collision avoidance system equipment and use.

(a) *All airspace: U.S.-registered civil aircraft.* Any traffic alert and collision avoidance system installed in a U.S.-registered civil aircraft must be approved by the Administrator.

(b) *Traffic alert and collision avoidance system, operation required.* Each person operating an aircraft equipped with an operable traffic alert and collision avoidance system shall have that system on and operating.

§§ 91.223-91.299 [Reserved]

Subpart D—Special Flight Operations

§ 91.301 [Reserved]

§ 91.303 Aerobatic flight.

No person may operate an aircraft in aerobatic flight—

(a) Over any congested area of a city, town, or settlement;

(b) Over an open air assembly of persons;

(c) Within a control zone or Federal airway;

(d) Below an altitude of 1,500 feet above the surface; or

(e) When flight visibility is less than 3 statute miles.

For the purposes of this section, aerobatic flight means an intentional maneuver involving an abrupt change in an aircraft's attitude, an abnormal attitude, or abnormal acceleration, not necessary for normal flight.

§ 91.305 Flight test areas.

No person may flight test an aircraft except over open water, or sparsely populated areas, having light air traffic.

§ 91.307 Parachutes and parachuting.

(a) No pilot of a civil aircraft may allow a parachute that is available for emergency use to be carried in that aircraft unless it is an approved type and—

(1) If a chair type (canopy in back), it has been packed by a certificated and appropriately rated parachute rigger within the preceding 120 days; or

(2) If any other type, it has been packed by a certificated and appropriately rated parachute rigger—

(i) Within the preceding 120 days, if its canopy, shrouds, and harness are composed exclusively of nylon, rayon, or other similar synthetic fiber or materials that are substantially resistant to damage from mold, mildew, or other fungi and other rotting agents propagated in a moist environment; or

(ii) Within the preceding 60 days, if any part of the parachute is composed of silk, pongee, or other natural fiber, or materials not specified in paragraph (a)(2)(i) of this section.

(b) Except in an emergency, no pilot in command may allow, and no person may make, a parachute jump from an aircraft within the United States except in accordance with Part 105.

(c) Unless each occupant of the aircraft is wearing an approved parachute, no pilot of a civil aircraft carrying any person (other than a crewmember) may execute any intentional maneuver that exceeds—

(1) A bank of 60 degrees relative to the horizon; or

(2) A nose-up or nose-down attitude of 30 degrees relative to the horizon.

(d) Paragraph (c) of this section does not apply to—

(1) Flight tests for pilot certification or rating; or

(2) Spins and other flight maneuvers required by the regulations for any certificate or rating when given by—

(i) A certificated flight instructor; or

(ii) An airline transport pilot instructing in accordance with § 61.169 of this chapter.

(e) For the purposes of this section, "approved parachute" means—

(1) A parachute manufactured under a type certificate or a technical standard order (C-23 series); or

(2) A personnel-carrying military parachute identified by an NAF, AAF, or AN drawing number, an AAF order number, or any other military designation or specification number.

§ 91.309 Towing: Gliders.

(a) No person may operate a civil aircraft towing a glider unless—

(1) The pilot in command of the towing aircraft is qualified under § 61.69 of this chapter;

(2) The towing aircraft is equipped with a tow-hitch of a kind, and installed in a manner, that is approved by the Administrator;

(3) The towline used has breaking strength not less than 80 percent of the maximum certificated operating weight of the glider and not more than twice this operating weight. However, the towline used may have a breaking strength more than twice the maximum certificated operating weight of the glider if—

(i) A safety link is installed at the point of attachment of the towline to the glider with a breaking strength not less than 80 percent of the maximum certificated operating weight of the glider and not greater than twice this operating weight.

(ii) A safety link is installed at the point of attachment of the towline to the towing aircraft with a breaking strength greater, but not more than 25 percent greater, than that of the safety link at the towed glider end of the towline and not greater than twice the maximum certificated operating weight of the glider;

(4) Before conducting any towing operation within a control zone, or before making each towing flight within a control zone if required by ATC, the pilot in command notifies the control tower if one is in operation in that control zone. If such a control tower is not in operation, the pilot in command must notify the FAA Flight Service Station serving the control zone before conducting any towing operation in that control zone; and

(5) The pilots of the towing aircraft and the glider have agreed upon a general course of action, including takeoff and release signals, airspeeds, and emergency procedures for each pilot.

(b) No pilot of a civil aircraft may intentionally release a towline, after release of a glider, in a manner that endangers the life or property of another.

§ 91.311 Towing: Other than under § 91.309.

No pilot of a civil aircraft may tow anything with that aircraft (other than under § 91.309) except in accordance with the terms of a certificate of waiver issued by the Administrator.

§ 91.313 Restricted category civil aircraft: Operating limitations.

(a) No person may operate a restricted category civil aircraft—

(1) For other than the special purpose for which it is certificated; or

(2) In an operation other than one necessary to accomplish the work activity directly associated with that special purpose.

(b) For the purpose of paragraph (a) of this section, operating a restricted category civil aircraft to provide flight crewmember training in a special purpose operation for which the aircraft is certificated is considered to be an operation for that special purpose.

(c) No person may operate a restricted category civil aircraft carrying persons or property for compensation or hire. For the purposes of this paragraph, a special purpose operation involving the carriage of persons or material necessary to accomplish that operation, such as crop dusting, seeding, spraying, and banner towing (including the carrying of required persons or material to the location of that operation), and operation for the purpose of providing flight crewmember training in a special purpose operation, are not considered to be the carriage of persons or property for compensation or hire.

(d) No person may be carried on a restricted category civil aircraft unless that person—

(1) Is a flight crewmember;

(2) Is a flight crewmember trainee;

(3) Performs an essential function in connection with a special purpose operation for which the aircraft is certificated; or

(4) Is necessary to accomplish the work activity directly associated with that special purpose.

(e) Except when operating in accordance with the terms and conditions of a certificate of waiver or special operating limitations issued by the Administrator, no person may operate a restricted category civil aircraft within the United States—

(1) Over a densely populated area;

(2) In a congested airway; or

(3) Near a busy airport where passenger transport operations are conducted.

(f) This section does not apply to nonpassenger-carrying civil rotorcraft external-load operations conducted under Part 133 of this chapter.

(g) No person may operate a small restricted-category civil airplane manufactured after July 18, 1978, unless an approved shoulder harness is installed for each front seat. The shoulder harness must be designed to protect each occupant from serious head injury when the occupant experiences the ultimate inertia forces specified in § 23.561(b)(2) of this chapter. The shoulder harness installation at each flight crewmember station must permit the crewmember, when seated and with the safety belt and shoulder harness fastened, to perform all functions necessary for flight operation. For purposes of this paragraph—

(1) The date of manufacture of an airplane is the date the inspection acceptance records reflect that the airplane is complete and meets the FAA-approved type design data; and

(2) A front seat is a seat located at a flight crewmember station or any seat located alongside such a seat.

§ 91.315 Limited category civil aircraft: Operating limitations.

No person may operate a limited category civil aircraft carrying persons or property for compensation or hire.

§ 91.317 Provisionally certificated civil aircraft: Operating limitations.

(a) No person may operate a provisionally certificated civil aircraft unless that person is eligible for a provisional airworthiness certificate under § 21.213 of this chapter.

(b) No person may operate a provisionally certificated civil aircraft outside the United States unless that person has specific authority to do so from the Administrator and each foreign country involved.

(c) Unless otherwise authorized by the Director of Airworthiness, no person may operate a provisionally certificated civil aircraft in air transportation.

(d) Unless otherwise authorized by the Administrator, no person may operate a provisionally certificated civil aircraft except—

(1) In direct conjunction with the type or supplemental type certification of that aircraft;

(2) For training flight crews, including simulated air carrier operations;

(3) Demonstration flight by the manufacturer for prospective purchasers;

(4) Market surveys by the manufacturer;

(5) Flight checking of instruments, accessories, and equipment that do not affect the basic airworthiness of the aircraft; or

(6) Service testing of the aircraft.

(e) Each person operating a provisionally certificated civil aircraft shall operate within the prescribed limitations displayed in the aircraft or set forth in the provisional aircraft flight manual or other appropriate document. However, when operating in direct conjunction with the type or supplemental type certification of the aircraft, that person shall operate under the experimental aircraft limitations of § 21.191 of this chapter and when flight testing, shall operate under the requirements of § 91.305 of this part.

(f) Each person operating a provisionally certificated civil aircraft shall establish approved procedures for—

(1) The use and guidance of flight and ground personnel in operating under this section; and

(2) Operating in and out of airports where takeoffs or approaches over populated areas are necessary. No person may operate that aircraft except in compliance with the approved procedures.

(g) Each person operating a provisionally certificated civil aircraft shall ensure that each flight crewmember is properly certificated and has adequate knowledge of, and familiarity with, the aircraft and procedures to be used by that crewmember.

(h) Each person operating a provisionally certificated civil aircraft shall maintain it as required by applicable regulations and as may be specially prescribed by the Administrator.

(i) Whenever the manufacturer, or the Administrator, determines that a change in design, construction, or operation is necessary to ensure safe operation, no person may operate a provisionally certificated civil aircraft until that change has been made and approved. Section 21.99 of this chapter applies to operations under this section.

(j) Each person operating a provisionally certificated civil aircraft—

(1) May carry in that aircraft only persons who have a proper interest in the operations allowed by this section or who are specifically authorized by both the manufacturer and the Administrator; and

(2) Shall advise each person carried that the aircraft is provisionally certificated.

(k) The Administrator may prescribe additional limitations or procedures that the Administrator considers necessary, including limitations on the number of persons who may be carried in the aircraft.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.319 Aircraft having experimental certificates: Operating limitations.

(a) No person may operate an aircraft that has an experimental certificate—

(1) For other than the purpose for which the certificate was issued; or

(2) Carrying persons or property for compensation or hire.

(b) No person may operate an aircraft that has an experimental certificate outside of an area assigned by the Administrator until it is shown that—

(1) The aircraft is controllable throughout its normal range of speeds and throughout all the maneuvers to be executed; and

(2) The aircraft has no hazardous operating characteristics or design features.

(c) Unless otherwise authorized by the Administrator in special operating limitations, no person may operate an aircraft that has an experimental certificate over a densely populated area or in a congested airway. The Administrator may issue special operating limitations for particular aircraft to permit takeoffs and landings to be conducted over a densely populated area or in a congested airway, in accordance with terms and conditions specified in the authorization in the interest of safety in air commerce.

(d) Each person operating an aircraft that has an experimental certificate shall—

(1) Advise each person carried of the experimental nature of the aircraft;

(2) Operate under VFR, day only, unless otherwise specifically authorized by the Administrator; and

(3) Notify the control tower of the experimental nature of the aircraft when operating the aircraft into or out of airports with operating control towers.

(e) The Administrator may prescribe additional limitations that the Administrator considers necessary, including limitations on the persons that may be carried in the aircraft.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.321 Carriage of candidates in Federal elections.

(a) An aircraft operator, other than one operating an aircraft under the rules of part 121, 125, or 135 of this chapter, may receive payment for the carriage of a candidate in a Federal election, an agent of the candidate, or a person traveling on behalf of the candidate, if—

(1) That operator's primary business is not as an air carrier or commercial operator;

(2) The carriage is conducted under the rules of this part 91; and

(3) The payment for the carriage is required, and does not exceed the amount required to be paid, by regulations of the Federal Election Commission (11 CFR *et seq.*).

(b) For the purposes of this section, the terms "candidate" and "election" have the same meaning as that set forth in the regulations of the Federal Election Commission.

§ 91.323 Increased maximum certificated weights for certain airplanes operated in Alaska.

(a) Notwithstanding any other provision of the Federal Aviation Regulations, the Administrator will approve, as provided in this section, an increase in the maximum certificated weight of an airplane type certificated under Aeronautics Bulletin No. 7–A of the U.S. Department of Commerce dated January 1, 1931, as amended, or under the normal category of part 4a of the former Civil Air Regulations (14 CFR Part 4a, 1964 ed.) if that airplane is operated in the State of Alaska by—

(1) An air taxi operator or other air carrier; or

(2) The U.S. Department of Interior in conducting its game and fish law enforcement activities or its management, fire 1 detection, and fire suppression activities concerning public lands.

(b) The maximum certificated weight approved under this section may not exceed—

(1) 12,500 pounds;

(2) 115 percent of the maximum weight listed in the FAA aircraft specifications;

(3) The weight at which the airplane meets the positive maneuvering load factor requirement for the normal category specified in § 23.337 of this chapter; or

(4) The weight at which the airplane meets the climb performance requirements under which it was type certificated.

(c) In determining the maximum certificated weight, the Administrator considers the structural soundness of the airplane and the terrain to be traversed.

(d) The maximum certificated weight determined under this section is added to the airplane's operation limitations and is identified as the maximum weight authorized for operations within the State of Alaska.

§§ 91.325–91.399 [Reserved]

Subpart E—Maintenance, Preventive Maintenance, and Alterations

§ 91.401 Applicability.

(a) This subpart prescribes rules governing the maintenance, preventive maintenance, and alterations of U.S.-registered civil aircraft operating within or outside of the United States.

(b) Sections 91.405, 91.409, 91.411, 91.417, and 91.419 of this subpart do not apply to an aircraft maintained in accordance with a continuous airworthiness maintenance program as provided in part 121, 127, 129, or § 135.411(a)(2) of this chapter.

(c) Sections 91.405 and 91.409 of this part do not apply to an airplane inspected in accordance with part 125 of this chapter.

§ 91.403 General.

(a) The owner or operator of an aircraft is primarily responsible for maintaining that aircraft in an airworthy condition, including compliance with part 39 of this chapter.

(b) No person may perform maintenance, preventive maintenance, or alterations on an aircraft other than as prescribed in this subpart and other applicable regulations, including part 43 of this chapter.

(c) No person may operate an aircraft for which a manufacturer's maintenance manual or instructions for continued airworthiness has been issued that contains an airworthiness limitations section unless the mandatory replacement times, inspection intervals, and related procedures specified in that section or alternative inspection intervals and related procedures set forth in an operations specification approved by the Administrator under part 121, 127 or 135 of this chapter or in accordance with an inspection program approved under § 91.409(e) have been complied with.

§ 91.405 Maintenance required.

Each owner or operator of an aircraft—

(a) Shall have that aircraft inspected as prescribed in subpart E of this part and shall between required inspections, except as provided in paragraph (c) of this section, have discrepancies repaired as prescribed in part 43 of this chapter;

(b) Shall ensure that maintenance personnel make appropriate entries in the aircraft maintenance records indicating the aircraft has been approved for return to service;

(c) Shall have any inoperative instrument or item of equipment, permitted to be inoperative by § 91.213(d)(2) of this part, repaired, replaced, removed, or inspected at the next required inspection; and

(d) When listed discrepancies include inoperative instruments or equipment, shall ensure that a placard has been installed as required by § 43.11 of this chapter.

§ 91.407 Operation after maintenance, preventive maintenance, rebuilding, or alteration.

(a) No person may operate any aircraft that has undergone maintenance, preventive maintenance, rebuilding, or alteration unless—

(1) It has been approved for return to service by a person authorized under § 43.7 of this chapter; and

(2) The maintenance record entry required by § 43.9 or § 43.11, as applicable, of this chapter has been made.

(b) No person may carry any person (other than crewmembers) in an aircraft that has been maintained, rebuilt, or altered in a manner that may have appreciably changed its flight characteristics or substantially affected its operation in flight until an appropriately rated pilot with at least a private pilot certificate flies the aircraft, makes an operational check of the maintenance performed or alteration made, and logs the flight in the aircraft records.

(c) The aircraft does not have to be flown as required by paragraph (b) of this section if, prior to flight, ground tests, inspection, or both show conclusively that the maintenance, preventive maintenance, rebuilding, or alteration has not appreciably changed the flight characteristics or substantially affected the flight operation of the aircraft.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.409 Inspections.

(a) Except as provided in paragraph (c) of this section, no person may operate an aircraft unless, within the preceding 12 calendar months, it has had—

(1) An annual inspection in accordance with part 43 of this chapter and has been approved for return to service by a person authorized by § 43.7 of this chapter; or

(2) An inspection for the issuance of an airworthiness certificate in accordance with part 21 of this chapter.

No inspection performed under paragraph (b) of this section may be substituted for any inspection required by this paragraph unless it is performed by a person authorized to perform annual inspections and is entered as an "annual" inspection in the required maintenance records.

(b) Except as provided in paragraph (c) of this section, no person may operate an aircraft carrying any person (other than a crewmember) for hire, and no person may give flight instruction for hire in an aircraft which that person provides, unless within the preceding 100 hours of time in service the aircraft has received an annual or 100-hour inspection and been approved for return to service in accordance with part 43 of this chapter or has received an inspection for the issuance of an airworthiness certificate in accordance with part 21 of this chapter. The 100-hour limitation may be exceeded by not more than 10 hours while en route to reach a place where the inspection can be done. The excess time used to reach a place where the inspection can be done must be included in computing the next 100 hours of time in service.

(c) Paragraphs (a) and (b) of this section do not apply to—

(1) An aircraft that carries a special flight permit, a current experimental certificate, or a provisional airworthiness certificate;

(2) An aircraft inspected in accordance with an approved aircraft inspection program under part 125, 127, or 135 of this chapter and so identified by the registration number in the operations specifications of the certificate holder having the approved inspection program;

(3) An aircraft subject to the requirements of paragraph (d) or (e) of this section; or

(4) Turbine-powered rotorcraft when the operator elects to inspect that rotorcraft in accordance with paragraph (e) of this section.

(d) *Progressive inspection.* Each registered owner or operator of an

BEST COPY AVAILABLE

aircraft desiring to use a progressive inspection program must submit a written request to the FAA Flight Standards district office having jurisdiction over the area in which the applicant is located, and shall provide—

(1) A certificated mechanic holding an inspection authorization, a certificated airframe repair station, or the manufacturer of the aircraft to supervise or conduct the progressive inspection;

(2) A current inspection procedures manual available and readily understandable to pilot and maintenance personnel containing, in detail—

(i) An explanation of the progressive inspection, including the continuity of inspection responsibility, the making of reports, and the keeping of records and technical reference material;

(ii) An inspection schedule, specifying the intervals in hours or days when routine instructions for exceeding an inspection interval by not more than 10 hours while en route and for changing an inspection interval because of service experience;

(iii) Sample routine and detailed inspection forms and instructions for their use; and

(iv) Sample reports and records and instructions for their use;

(3) Enough housing and equipment for necessary disassembly and proper inspection of the aircraft; and

(4) Appropriate current technical information for the aircraft.

The frequency and detail of the progressive inspection shall provide for the complete inspection of the aircraft within each 12 calendar months and be consistent with the manufacturer's recommendations, field service experience, and the kind of operation in which the aircraft is engaged. The progressive inspection schedule must ensure that the aircraft, at all times, will be airworthy and will conform to all applicable FAA aircraft specifications, type certificate data sheets, airworthiness directives, and other approved data. If the progressive inspection is discontinued, the owner or operator shall immediately notify the local FAA Flight Standards district office, in writing, of the discontinuance. After the discontinuance, the first annual inspection under § 91.409(a)(1) is due within 12 calendar months after the last complete inspection of the aircraft under the progressive inspection. The 100-hour inspection under § 91.409(b) is due within 100 hours after that complete inspection. A complete inspection of the aircraft, for the purpose of determining when the annual and 100-hour inspections are due, requires a detailed inspection of the aircraft and all its components in accordance with the progressive inspection. A routine inspection of the aircraft and a detailed inspection of several components is not considered to be a complete inspection.

(e) *Large airplanes (to which part 125 is not applicable), turbojet multiengine airplanes, turbopropeller-powered multiengine airplanes, and turbine-powered rotorcraft.* No person may operate a large airplane, turbojet multiengine airplane, turbopropeller-powered multiengine airplane, or turbine-powered rotorcraft unless the replacement times for life-limited parts specified in the aircraft specifications, type data sheets, or other documents approved by the Administrator are complied with and the airplane or turbine-powered rotorcraft, including the airframe, engines, propellers, rotors, appliances, survival equipment, and emergency equipment, is inspected in accordance with an inspection program selected under the provisions of paragraph (f) of this section, except that, the owner or operator of a turbine-powered rotorcraft may elect to use the inspection provisions of § 91.409(a), (b), (c), or (d) in lieu of an inspection option of § 91.409(f).

(f) *Selection of inspection program under paragraph (e) of this section.* The registered owner or operator of each airplane or turbine-powered rotorcraft described in paragraph (e) of this section must select, identify in the aircraft maintenance records, and use one of the following programs for the inspection of the aircraft:

(1) A continuous airworthiness inspection program that is part of a continuous airworthiness maintenance program currently in use by a person holding an air carrier operating certificate or an operating certificate issued under part 121, 127, or 135 of this chapter and operating that make and model aircraft under part 121 of this chapter or operating that make and model under part 135 of this chapter and maintaining it under § 135.411(a)(2) of this chapter.

(2) An approved aircraft inspection program approved under § 135.419 of this chapter and currently in use by a person holding an operating certificate issued under part 135 of this chapter.

(3) A current inspection program recommended by the manufacturer.

(4) Any other inspection program established by the registered owner or operator of that airplane or turbine-powered rotorcraft and approved by the Administrator under paragraph (g) of this section. However, the Administrator may require revision of this inspection program in accordance with the provisions of § 91.415.

Each operator shall include in the selected program the name and address of the person responsible for scheduling the inspections required by the program and make a copy of that program available to the person performing inspections on the aircraft and, upon request, to the Administrator.

(g) *Inspection program approved under paragraph (e) of this section.* Each operator of an airplane or turbine-powered rotorcraft desiring to establish or change an approved inspection program under paragraph (f)(4) of this section must submit the program for approval to the local FAA Flight Standards district office having jurisdiction over the area in which the aircraft is based. The program must be in writing and include at least the following information:

(1) Instructions and procedures for the conduct of inspections for the particular make and model airplane or turbine-powered rotorcraft, including necessary tests and checks. The instructions and procedures must set forth in detail the parts and areas of the airframe, engines, propellers, rotors, and appliances, including survival and emergency equipment required to be inspected.

(2) A schedule for performing the inspections that must be performed under the program expressed in terms of the time in service, calendar time, number of system operations, or any combination of these.

(h) *Changes from one inspection program to another.* When an operator changes from one inspection program under paragraph (f) of this section to another, the time in service, calendar times, or cycles of operation accumulated under the previous program must be applied in determining inspection due times under the new program.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.411 Altimeter system and altitude reporting equipment tests and inspections.

(a) No person may operate an airplane, or helicopter, in controlled airspace under IFR unless—

(1) Within the preceding 24 calendar months, each static pressure system, each altimeter instrument, and each automatic pressure altitude reporting system has been tested and inspected and found to comply with appendix E of part 43 of this chapter;

(2) Except for the use of system drain and alternate static pressure valves, following any opening and closing of the static pressure system, that system has been tested and inspected and found to comply with paragraph (a), appendices E and F, of part 43 of this chapter; and

(3) Following installation or maintenance on the automatic pressure altitude reporting system of the ATC transponder where data correspondence error could be introduced, the integrated system has been tested, inspected, and found to comply with paragraph (c), appendix E, of part 43 of this chapter.

(b) The tests required by paragraph (a) of this section must be conducted by—

(1) The manufacturer of the airplane, or helicopter, on which the tests and inspections are to be performed;

(2) A certificated repair station properly equipped to perform those functions and holding—

(i) An instrument rating, Class I;

(ii) A limited instrument rating appropriate to the make and model of appliance to be tested;

(iii) A limited rating appropriate to the test to be performed;

(iv) An airframe rating appropriate to the airplane, or helicopter, to be tested; or

(v) A limited rating for a manufacturer issued for the appliance in accordance with § 145.101(b)(4) of this chapter; or

(3) A certificated mechanic with an airframe rating (static pressure system tests and inspections only).

(c) Altimeter and altitude reporting equipment approved under Technical Standard Orders are considered to be tested and inspected as of the date of their manufacture.

(d) No person may operate an airplane, or helicopter, in controlled airspace under IFR at an altitude above the maximum altitude at which all altimeters and the automatic altitude reporting system of that airplane, or helicopter, have been tested.

§ 91.413 ATC transponder tests and inspections.

(a) No persons may use an ATC transponder that is specified in 91.215(a), 121.345(c), 127.123(b), or § 135.143(c) of this chapter unless, within the preceding 24 calendar months, the ATC transponder has been tested and inspected and found to comply with appendix F of part 43 of this chapter; and

(b) Following any installation or maintenance on an ATC transponder where data correspondence error could be introduced, the integrated system has been tested, inspected, and found to comply with paragraph (c), appendix E, of part 43 of this chapter.

(c) The tests and inspections specified in this section must be conducted by—

(1) A certificated repair station properly equipped to perform those functions and holding—

(i) A radio rating, Class III;

(ii) A limited radio rating appropriate to the make and model transponder to be tested;

(iii) A limited rating appropriate to the test to be performed;

(iv) A limited rating for a manufacturer issued for the transponder in accordance with § 145.101(b)(4) of this chapter; or

(2) A holder of a continuous airworthiness maintenance program as provided in part 121, 127 or § 135.411(a)(2) of this chapter; or

(3) The manufacturer of the aircraft on which the transponder to be tested is installed, if the transponder was installed by that manufacturer.

§ 91.415 Changes to aircraft inspection programs.

(a) Whenever the Administrator finds that revisions to an approved aircraft inspection program under § 91.409(f)(4) are necessary for the continued adequacy of the program, the owner or operator shall, after notification by the Administrator, make any changes in the program found to be necessary by the Administrator.

(b) The owner or operator may petition the Administrator to reconsider the notice to make any changes in a program in accordance with paragraph (a) of this section.

(c) The petition must be filed with the FAA Flight Standards district office which requested the change to the program within 30 days after the certificate holder receives the notice.

(d) Except in the case of an emergency requiring immediate action in the interest of safety, the filing of the petition stays the notice pending a decision by the Administrator.

§ 91.417 Maintenance records.

(a) Except for work performed in accordance with §§ 91.411 and 91.413, each registered owner or operator shall keep the following records for the periods specified in paragraph (b) of this section:

(1) Records of the maintenance, preventive maintenance, and alteration and records of the 100-hour, annual, progressive, and other required or approved inspections, as appropriate, for each aircraft (including the airframe) and each engine, propeller, rotor, and appliance of an aircraft. The records must include—

(i) A description (or reference to data acceptable to the Administrator) of the work performed; and

(ii) The date of completion of the work performed; and

(iii) The signature, and certificate number of the person approving the aircraft for return to service.

(2) Records containing the following information:

(i) The total time in service of the airframe, each engine, each propeller, and each rotor.

(ii) The current status of life-limited parts of each airframe, engine, propeller, rotor, and appliance.

(iii) The time since last overhaul of all items installed on the aircraft which are required to be overhauled on a specified time basis.

(iv) The current inspection status of the aircraft, including the time since the last inspection required by the inspection program under which the aircraft and its appliances are maintained.

(v) The current status of applicable airworthiness directives (AD) including, for each, the method of compliance, the AD number, and revision date. If the AD involves recurring action, the time and date when the next action is required.

(vi) Copies of the forms prescribed by § 43.9(a) of this chapter for each major alteration to the airframe and currently installed engines, rotors, propellers, and appliances.

(b) The owner or operator shall retain the following records for the periods prescribed:

(1) The records specified in paragraph (a)(1) of this section shall be retained until the work is repeated or superseded by other work or for 1 year after the work is performed.

(2) The records specified in paragraph (a)(2) of this section shall be retained and transferred with the aircraft at the time the aircraft is sold.

(3) A list of defects furnished to a registered owner or operator under § 43.11 of this chapter shall be retained until the defects are repaired and the aircraft is approved for return to service.

(c) The owner or operator shall make all maintenance records required to be kept by this section available for inspection by the Administrator or any authorized representative of the National Transportation Safety Board (NTSB). In addition, the owner or operator shall present Form 337 described in paragraph (d) of this section for inspection upon request of any law enforcement officer.

(d) When a fuel tank is installed within the passenger compartment or a baggage compartment pursuant to part 43 of this chapter, a copy of FAA Form 337 shall be kept on board the modified aircraft by the owner or operator.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.419 Transfer of maintenance records.

Any owner or operator who sells a U.S.-registered aircraft shall transfer to the purchaser, at the time of sale, the following records of that aircraft, in plain language form or in coded form at the election of the purchaser, if the coded form provides for the preservation and retrieval of information in a manner acceptable to the Administrator:

(a) The records specified in § 91.417(a)(2).

(b) The records specified in § 91.417(a)(1) which are not included in the records covered by paragraph (a) of this section, except that the purchaser may permit the seller to keep physical custody of such records. However, custody of records by the seller does not relieve the purchaser of the responsibility under § 91.417(c) to make the records available for inspection by the Administrator or any authorized representative of the National Transportation Safety Board (NTSB).

§ 91.421 Rebuilt engine maintenance records.

(a) The owner or operator may use a new maintenance record, without previous operating history, for an aircraft engine rebuilt by the manufacturer or by an agency approved by the manufacturer.

(b) Each manufacturer or agency that grants zero time to an engine rebuilt by it shall enter in the new record—

(1) A signed statement of the date the engine was rebuilt;

(2) Each change made as required by airworthiness directives; and

(3) Each change made in compliance with manufacturer's service bulletins, if the entry is specifically requested in that bulletin.

(c) For the purposes of this section, a rebuilt engine is a used engine that has been completely disassembled, inspected, repaired as necessary, reassembled, tested, and approved in the same manner and to the same tolerances and limits as a new engine with either new or used parts. However, all parts used in it must conform to the production drawing tolerances and limits for new parts or be of approved oversized or undersized dimensions for a new engine.

§§ 91.423-91.499 [Reserved]

Subpart F—Large and Turbine-Powered Multiengine Airplanes

§ 91.501 Applicability.

(a) This subpart prescribes operating rules, in addition to those prescribed in other subparts of this part, governing the operation of large and of turbojet-powered multiengine civil airplanes of U.S. registry. The operating rules in this subpart do not apply to those airplanes when they are required to be operated under parts 121, 125, 129, 135, and 137 of this chapter. (Section 91.409 prescribes an inspection program for large and for turbine-powered (turbojet and turboprop) multiengine airplanes of U.S. registry when they are operated under this part or part 129 or 137.)

(b) Operations that may be conducted under the rules in this subpart instead of those in parts 121, 129, 135, and 137 of this chapter when common carriage is not involved, include—

(1) Ferry or training flights;

(2) Aerial work operations such as aerial photography or survey, or pipeline patrol, but not including fire fighting operations;

(3) Flights for the demonstration of an airplane to prospective customers when no charge is made except for those specified in paragraph (d) of this section;

(4) Flights conducted by the operator of an airplane for his personal transportation, or the transportation of his guests when no charge, assessment, or fee is made for the transportation;

(5) Carriage of officials, employees, guests, and property of a company on an airplane operated by that company, or the parent or a subsidiary of the company or a subsidiary of the parent, when the carriage is within the scope of, and incidental to, the business of the company (other than transportation by air) and no charge, assessment or fee is made for the carriage in excess of the cost of owning, operating, and maintaining the airplane, except that no charge of any kind may be made for the carriage of a guest of a company, when the carriage is not within the scope of, and incidental to, the business of that company;

(6) The carriage of company officials, employees, and guests of the company on an airplane operated under a time sharing, interchange, or joint ownership agreement as defined in paragraph (c) of this section;

(7) The carriage of property (other than mail) on an airplane operated by a person in the furtherance of a business or employment (other than transportation by air) when the carriage is within the scope of, and incidental to, that business or employment and no charge, assessment, or fee is made for the carriage other than those specified in paragraph (d) of this section;

(8) The carriage on an airplane of an athletic team, sports group, choral group, or similar group having a common purpose or objective when there is no charge, assessment, or fee of any kind made by any person for that carriage; and

(9) The carriage of persons on an airplane operated by a person in the furtherance of a business other than transportation by air for the purpose of selling them land, goods, or property, including franchises or distributorships, when the carriage is within the scope of, and incidental to, that business and no charge, assessment, or fee is made for that carriage.

(c) As used in this section—

(1) A "time sharing agreement" means an arrangement whereby a person leases his airplane with flight crew to another person, and no charge is made for the flights conducted under that arrangement other than those specified in paragraph (d) of this section;

(2) An "interchange agreement" means an arrangement whereby a person leases his airplane to another person in exchange for equal time, when needed, on the other person's airplane, and no charge, assessment, or fee is made, except that a charge may be made not to exceed the difference between the cost of owning, operating, and maintaining the two airplanes;

(3) A "joint ownership agreement" means an arrangement whereby one of the registered joint owners of an airplane employs and furnishes the flight crew for that airplane and each of the registered joint owners pays a share of the charge specified in the agreement.

(d) The following may be charged, as expenses of a specific flight, for transportation as authorized by paragraphs (b) (3) and (7) and (c)(1) of this section:

(1) Fuel, oil, lubricants, and other additives.

(2) Travel expenses of the crew, including food, lodging, and ground transportation.

(3) Hangar and tie-down costs away from the aircraft's base of operation.

(4) Insurance obtained for the specific flight.

(5) Landing fees, airport taxes, and similar assessments.

(6) Customs, foreign permit, and similar fees directly related to the flight.

(7) In flight food and beverages.

(8) Passenger ground transportation.

(9) Flight planning and weather contract services.

(10) An additional charge equal to 100 percent of the expenses listed in paragraph (d)(1) of this section.

§ 91.503 Flying equipment and operating information.

(a) The pilot in command of an airplane shall ensure that the following flying equipment and aeronautical charts and data, in current and appropriate form, are accessible for each flight at the pilot station of the airplane:

(1) A flashlight having at least two size "D" cells, or the equivalent, that is in good working order.

(2) A cockpit checklist containing the procedures required by paragraph (b) of this section.

(3) Pertinent aeronautical charts.

(4) For IFR, VFR over-the-top, or night operations, each pertinent navigational en route, terminal area, and approach and letdown chart.

(5) In the case of multiengine airplanes, one-engine inoperative climb performance data.

(b) Each cockpit checklist must contain the following procedures and shall be used by the flight crewmembers when operating the airplane:

(1) Before starting engines.
(2) Before takeoff.
(3) Cruise.
(4) Before landing.
(5) After landing.
(6) Stopping engines.
(7) Emergencies.

(c) Each emergency cockpit checklist procedure required by paragraph (b)(7) of this section must contain the following procedures, as appropriate:

(1) Emergency operation of fuel, hydraulic, electrical, and mechanical systems.

(2) Emergency operation of instruments and controls.

(3) Engine inoperative procedures.

(4) Any other procedures necessary for safety.

(d) The equipment, charts, and data prescribed in this section shall be used by the pilot in command and other members of the flight crew, when pertinent.

§ 91.505 Familiarity with operating limitations and emergency equipment.

(a) Each pilot in command of an airplane shall, before beginning a flight, become familiar with the Airplane Flight Manual for that airplane, if one is required, and with any placards, listings, instrument markings, or any combination thereof, containing each operating limitation prescribed for that airplane by the Administrator, including those specified in § 91.9(b).

(b) Each required member of the crew shall, before beginning a flight, become familiar with the emergency equipment installed on the airplane to which that crewmember is assigned and with the procedures to be followed for the use of that equipment in an emergency situation.

§ 91.507 Equipment requirements: Over-the-top or night VFR operations.

No person may operate an airplane over-the-top or at night under VFR unless that airplane is equipped with the instruments and equipment required for IFR operations under § 91.205(d) and one electric landing light for night operations. Each required instrument and item of equipment must be in operable condition.

§ 91.509 Survival equipment for overwater operations.

(a) No person may take off an airplane for a flight over water more than 50 nautical miles from the nearest shore unless that airplane is equipped with a life preserver or an approved flotation means for each occupant of the airplane.

(b) No person may take off an airplane for a flight over water more than 30 minutes flying time or 100 nautical miles from the nearest shore unless it has on board the following survival equipment:

(1) A life preserver, equipped with an approved survivor locator light, for each occupant of the airplane.

(2) Enough liferafts (each equipped with an approved survival locator light) of a rated capacity and buoyancy to accommodate the occupants of the airplane.

(3) At least one pyrotechnic signaling device for each liferaft.

(4) One self-buoyant, water-resistant, portable emergency radio signaling device that is capable of transmission on the appropriate emergency frequency or frequencies and not dependent upon the airplane power supply.

(5) A lifeline stored in accordance with § 25.1411(g) of this chapter.

(c) The required liferafts, life preservers, and signaling devices must be installed in conspicuously marked locations and easily accessible in the event of a ditching without appreciable time for preparatory procedures.

(d) A survival kit, appropriately equipped for the route to be flown, must be attached to each required liferaft.

(e) As used in this section, the term shore means that area of the land adjacent to the water which is above the high water mark and excludes land areas which are intermittently under water.

§ 91.511 Radio equipment for overwater operations.

(a) Except as provided in paragraphs (c) and (d) of this section, no person may take off an airplane for a flight over water more than 30 minutes flying time or 100 nautical miles from the nearest shore unless it has at least the following operable equipment:

(1) Radio communication equipment appropriate to the facilities to be used and able to transmit to, and receive from, any place on the route, at least one surface facility:

(i) Two transmitters.

(ii) Two microphones.

(iii) Two headsets or one headset and one speaker.

(iv) Two independent receivers.

(2) Appropriate electronic navigational equipment consisting of at least two independent electronic navigation units capable of providing the pilot with the information necessary to navigate the airplane within the airspace assigned by air traffic control. However, a receiver that can receive both communications and required navigational signals may be used in place of a separate communications receiver and a separate navigational signal receiver or unit.

(b) For the purposes of paragraphs (a)(1)(iv) and (a)(2) of this section, a receiver or electronic navigation unit is independent if the function of any part of it does not depend on the functioning of any part of another receiver or electronic navigation unit.

(c) Notwithstanding the provisions of paragraph (a) of this section, a person may operate an airplane on which no passengers are carried from a place where repairs or replacement cannot be made to a place where they can be made, if not more than one of each of the dual items of radio communication and navigational equipment specified in paragraphs (a)(1) (i) through (iv) and (a)(2) of this section malfunctions or becomes inoperative.

(d) Notwithstanding the provisions of paragraph (a) of this section, when both VHF and HF communications equipment are required for the route and the airplane has two VHF transmitters and two VHF receivers for communications, only one HF transmitter and one HF receiver is required for communications.

(e) As used in this section, the term "shore" means that area of the land adjacent to the water which is above the high-water mark and excludes land areas which are intermittently under water.

§ 91.513 Emergency equipment.

(a) No person may operate an airplane unless it is equipped with the emergency equipment listed in this section.

(b) Each item of equipment—

(1) Must be inspected in accordance with § 91.409 to ensure its continued serviceability and immediate readiness for its intended purposes;

(2) Must be readily accessible to the crew;

(3) Must clearly indicate its method of operation; and

(4) When carried in a compartment or container, must have that compartment or container marked as to contents and date of last inspection.

(c) Hand fire extinguishers must be provided for use in crew, passenger, and cargo compartments in accordance with the following:

(1) The type and quantity of extinguishing agent must be suitable for the kinds of fires likely to occur in the compartment where the extinguisher is intended to be used.

(2) At least one hand fire extinguisher must be provided and located on or near the flight deck in a place that is readily accessible to the flight crew.

(3) At least one hand fire extinguisher must be conveniently located in the passenger compartment of each airplane accommodating more than six but less than 31 passengers, and at least two hand fire extinguishers must be conveniently located in the passenger compartment of each airplane accommodating more than 30 passengers.

(4) Hand fire extinguishers must be installed and secured in such a manner that they will not interfere with the safe operation of the airplane or adversely affect the safety of the crew and passengers. They must be readily accessible and, unless the locations of the fire extinguishers are obvious, their stowage provisions must be properly identified.

(d) First aid kits for treatment of injuries likely to occur in flight or in minor accidents must be provided.

(e) Each airplane accommodating more than 19 passengers must be equipped with a crash axe.

(f) Each passenger-carrying airplane must have a portable battery-powered megaphone or megaphones readily accessible to the crewmembers assigned to direct emergency evacuation, installed as follows:

(1) One megaphone on each airplane with a seating capacity of more than 60 but less than 100 passengers, at the most rearward location in the passenger cabin where it would be readily accessible to a normal flight attendant seat. However, the Administrator may grant a deviation from the requirements of this subparagraph if the Administrator finds that a different location would be more useful for evacuation of persons during an emergency.

(2) On each airplane with a seating capacity of 100 or more passengers, one megaphone installed at the forward end and one installed at the most rearward location where it would be readily accessible to a normal flight attendant seat.

§ 91.515 Flight altitude rules.

(a) Notwithstanding § 91.119, and except as provided in paragraph (b) of this section, no person may operate an airplane under VFR at less than—

(1) One thousand feet above the surface, or 1,000 feet from any mountain, hill, or other obstruction to flight, for day operations; and

(2) The altitudes prescribed in § 91.177, for night operations.

(b) This section does not apply—

(1) During takeoff or landing;

(2) When a different altitude is authorized by a waiver to this section under subpart J of this part; or

(3) When a flight is conducted under the special VFR weather minimums of § 91.157 with an appropriate clearance from ATC.

§ 91.517 Smoking and safety belt signs.

(a) Except as provided in paragraph (b) of this section, no person may operate an airplane carrying passengers unless it is equipped with signs that are visible to passengers and cabin attendants to notify them when smoking is prohibited and when safety belts should be fastened. The signs must be so constructed that the crew can turn them on and off. They must be turned on for each takeoff and each landing and when otherwise considered to be necessary by the pilot in command.

(b) The pilot in command of an airplane that is not equipped as provided in paragraph (a) of this section shall ensure that the passengers are orally notified each time that it is necessary to fasten their safety belts and when smoking is prohibited.

§ 91.519 Passenger briefing.

(a) Before each takeoff the pilot in command of an airplane carrying passengers shall ensure that all passengers have been orally briefed on—

(1) Smoking;

(2) Use of safety belts;

(3) Location and means for opening the passenger entry door and emergency exits;

(4) Location of survival equipment;

(5) Ditching procedures and the use of flotation equipment required under § 91.509 for a flight over water; and

(6) The normal and emergency use of oxygen equipment installed on the airplane.

(b) The oral briefing required by paragraph (a) of this section shall be given by the pilot in command or a member of the crew, but need not be given when the pilot in command determines that the passengers are familiar with the contents of the briefing. It may be supplemented by printed cards for the use of each passenger containing—

(1) A diagram of, and methods of operating, the emergency exits; and

(2) Other instructions necessary for use of emergency equipment.

(c) Each card used under paragraph (b) must be carried in convenient locations on the airplane for the use of each passenger and must contain information that is pertinent only to the type and model airplane on which it is used.

§ 91.521 Shoulder harness.

(a) No person may operate a transport category airplane that was type certificated after January 1, 1958, unless it is equipped at each seat at a flight deck station with a combined safety belt and shoulder harness that meets the applicable requirements specified in § 25.785 of this chapter, except that—

(1) Shoulder harnesses and combined safety belt and shoulder harnesses that were approved and installed before March 6, 1980, may continue to be used; and

(2) Safety belt and shoulder harness restraint systems may be designed to the inertia load factors established under the certification basis of the airplane.

(b) No person may operate a transport category airplane unless it is equipped at each required flight attendant seat in the passenger compartment with a combined safety belt and shoulder harness that meets the applicable requirements specified in § 25.785 of this chapter, except that—

(1) Shoulder harnesses and combined safety belt and shoulder harnesses that were approved and installed before March 6, 1980, may continue to be used; and

(2) Safety belt and shoulder harness restraint systems may be designed to the inertia load factors established under the certification basis of the airplane.

§ 91.523 Carry-on baggage.

No pilot in command of an airplane having a seating capacity of more than 19 passengers may permit a passenger to stow baggage aboard that airplane except—

(a) In a suitable baggage or cargo storage compartment, or as provided in § 91.525; or

(b) Under a passenger seat in such a way that it will not slide forward under crash impacts severe enough to induce the ultimate inertia forces specified in § 25.561(b)(3) of this chapter, or the requirements of the regulations under which the airplane was type certificated. Restraining devices must also limit sideward motion of under-seat baggage and be designed to withstand crash impacts severe enough to induce sideward forces specified in § 25.561(b)(3) of this chapter.

§ 91.525 Carriage of cargo.

(a) No pilot in command may permit cargo to be carried in any airplane unless—

(1) It is carried in an approved cargo rack, bin, or compartment installed in the airplane;

(2) It is secured by means approved by the Administrator; or

(3) It is carried in accordance with each of the following:

(i) It is properly secured by a safety belt or other tiedown having enough strength to eliminate the possibility of shifting under all normally anticipated flight and ground conditions.

(ii) It is packaged or covered to avoid possible injury to passengers.

(iii) It does not impose any load on seats or on the floor structure that exceeds the load limitation for those components.

(iv) It is not located in a position that restricts the access to or use of any required emergency or regular exit, or the use of the aisle between the crew and the passenger compartment.

(v) It is not carried directly above seated passengers.

(b) When cargo is carried in cargo compartments that are designed to require the physical entry of a crewmember to extinguish any fire that may occur during flight, the cargo must be loaded so as to allow a crewmember to effectively reach all parts of the compartment with the contents of a hand fire extinguisher.

§ 91.527 Operating in icing conditions.

(a) No pilot may take off an airplane that has—

(1) Frost, snow, or ice adhering to any propeller, windshield, or powerplant installation or to an airspeed, altimeter, rate of climb, or flight attitude instrument system;

(2) Snow or ice adhering to the wings or stabilizing or control surfaces; or

(3) Any frost adhering to the wings or stabilizing or control surfaces, unless that frost has been polished to make it smooth.

(b) Except for an airplane that has ice protection provisions that meet the requirements in section 34 of Special Federal Aviation Regulation No. 23, or those for transport category airplane type certification, no pilot may fly—

(1) Under IFR into known or forecast moderate icing conditions; or

(2) Under VFR into known light or moderate icing conditions unless the aircraft has functioning de-icing or anti-icing equipment protecting each propeller, windshield, wing, stabilizing or control surface, and each airspeed, altimeter, rate of climb, or flight attitude instrument system.

(c) Except for an airplane that has ice protection provisions that meet the requirements in section 34 of Special Federal Aviation Regulation No. 23, or those for transport category airplane type certification, no pilot may fly an airplane into known or forecast severe icing conditions.

(d) If current weather reports and briefing information relied upon by the pilot in command indicate that the forecast icing conditions that would otherwise prohibit the flight will not be encountered during the flight because of changed weather conditions since the forecast, the restrictions in paragraphs (b) and (c) of this section based on forecast conditions do not apply.

§ 91.529 Flight engineer requirements.

(a) No person may operate the following airplanes without a flight crewmember holding a current flight engineer certificate:

(1) An airplane for which a type certificate was issued before January 2, 1964, having a maximum certificated takeoff weight of more than 80,000 pounds.

(2) An airplane type certificated after January 1, 1964, for which a flight engineer is required by the type certification requirements.

(b) No person may serve as a required flight engineer on an airplane unless, within the preceding 6 calendar months, that person has had at least 50 hours of flight time as a flight engineer on that type airplane or has been checked by the Administrator on that type airplane and is found to be familiar and competent with all essential current information and operating procedures.

§ 91.531 Second in command requirements.

(a) Except as provided in paragraph (b) of this section, no person may operate the following airplanes without a pilot who is designated as second in command of that airplane:

(1) A large airplane, except that a person may operate an airplane certificated under SFAR 41 without a pilot who is designated as second in command if that airplane is certificated for operation with one pilot.

(2) A turbojet-powered multiengine airplane for which two pilots are required under the type certification requirements for that airplane.

(3) A commuter category airplane, except that a person may operate a commuter category airplane notwithstanding paragraph (a)(1) of this section, that has a passenger seating configuration, excluding pilot seats, of nine or less without a pilot who is designated as second in command if that airplane is type certificated for operations with one pilot.

(b) The Administrator may issue a letter of authorization for the operation of an airplane without compliance with the requirements of paragraph (a) of this section if that airplane is designed for and type certificated with only one pilot station. The authorization contains any conditions that the Administrator finds necessary for safe operation.

(c) No person may designate a pilot to serve as second in command, nor may any pilot serve as second in command, of an airplane required under this section to have two pilots unless that pilot meets the qualifications for second in command prescribed in § 61.55 of this chapter.

§ 91.533 Flight attendant requirements.

(a) No person may operate an airplane unless at least the following number of flight attendants are on board the airplane:

(1) For airplanes having more than 19 but less than 51 passengers on board, one flight attendant.

(2) For airplanes having more than 50 but less than 101 passengers on board, two flight attendants.

(3) For airplanes having more than 100 passengers on board, two flight attendants plus one additional flight attendant for each unit (or part of a unit) of 50 passengers above 100.

(b) No person may serve as a flight attendant on an airplane when required by paragraph (a) of this section unless that person has demonstrated to the pilot in command familiarity with the necessary functions to be performed in an emergency or a situation requiring

emergency evacuation and is capable of using the emergency equipment installed on that airplane.

§§ 91.535-91.599 [Reserved]

Subpart G—Additional Equipment and Operating Requirements for Large and Transport Category Aircraft

§ 91.601 Applicability.

This subpart applies to operation of large and transport category U.S.-registered civil aircraft.

§ 91.603 Aural speed warning device.

No person may operate a transport category airplane in air commerce unless that airplane is equipped with an aural speed warning device that complies with § 25.1303(c)(1).

§ 91.605 Transport category civil airplane weight limitations.

(a) No person may take off any transport category airplane (other than a turbine-engine-powered airplane certificated after September 30, 1958) unless—

(1) The takeoff weight does not exceed the authorized maximum takeoff weight for the elevation of the airport of takeoff;

(2) The elevation of the airport of takeoff is within the altitude range for which maximum takeoff weights have been determined;

(3) Normal consumption of fuel and oil in flight to the airport of intended landing will leave a weight on arrival not in excess of the authorized maximum landing weight for the elevation of that airport; and

(4) The elevations of the airport of intended landing and of all specified alternate airports are within the altitude range for which the maximum landing weights have been determined.

(b) No person may operate a turbine-engine-powered transport category airplane certificated after September 30, 1958, contrary to the Airplane Flight Manual, or take off that airplane unless—

(1) The takeoff weight does not exceed the takeoff weight specified in the Airplane Flight Manual for the elevation of the airport and for the ambient temperature existing at the time of takeoff;

(2) Normal consumption of fuel and oil in flight to the airport of intended landing and to the alternate airports will leave a weight on arrival not in excess of the landing weight specified in the Airplane Flight Manual for the elevation of each of the airports involved and for the ambient temperatures expected at the time of landing;

(3) The takeoff weight does not exceed the weight shown in the Airplane Flight Manual to correspond with the minimum distances required for takeoff considering the elevation of the airport, the runway to be used, the effective runway gradient, and the ambient temperature and wind component existing at the time of takeoff; and

(4) Where the takeoff distance includes a clearway, the clearway distance is not greater than one-half of—

(i) The takeoff run, in the case of airplanes certificated after September 30, 1958, and before August 30, 1959; or

(ii) The runway length, in the case of airplanes certificated after August 29, 1959.

(c) No person may take off a turbine-engine-powered transport category airplane certificated after August 29, 1959, unless, in addition to the requirements of paragraph (b) of this section—

(1) The accelerate-stop distance is no greater than the length of the runway plus the length of the stopway (if present); and

(2) The takeoff distance is no greater than the length of the runway plus the length of the clearway (if present); and

(3) The takeoff run is no greater than the length of the runway.

§ 91.607 Emergency exits for airplanes carrying passengers for hire.

(a) Notwithstanding any other provision of this chapter, no person may operate a large airplane (type certificated under the Civil Air Regulations effective before April 9, 1957) in passenger-carrying operations for hire, with more than the number of occupants—

(1) Allowed under Civil Air Regulations § 4b.362 (a), (b), and (c) as in effect on December 20, 1951; or

(2) Approved under Special Civil Air Regulations SR-387, SR-389, SR-389A, or SR-389B, or under this section as in effect.

However, an airplane type listed in the following table may be operated with up to the listed number of occupants (including crewmembers) and the corresponding number of exits (including emergency exits and doors) approved for the emergency exit of passengers or with an occupant-exit configuration approved under paragraph (b) or (c) of this section.

Airplane type	Maximum number of occupants including all crewmembers	Corresponding number of exits authorized for passenger use
B-307	61	4
B-377	96	9
C-46	57	4
CV-240	53	6
CV-340 and CV-440	53	6
DC-3	35	4
DC-3 (Super)	38	5
DC-4	86	5
DC-6	87	7
DC-6B	112	11
L-18	17	3
L-049, L-649, L-749	57	7
L-1049 series	96	9
M-202	68	6
M-404	53	7
Viscount 700 series	53	7

(b) Occupants in addition to those authorized under paragraph (a) of this section may be carried as follows:

(1) For each additional floor-level exit at least 24 inches wide by 48 inches high, with an unobstructed 20-inch-wide access aisleway between the exit and the main passenger aisle, 12 additional occupants.

(2) For each additional window exit located over a wing that meets the requirements of the airworthiness standards under which the airplane was type certificated or that is large enough to inscribe an ellipse 19×26 inches, eight additional occupants.

(3) For each additional window exit that is not located over a wing but that otherwise complies with paragraph (b)(2) of this section, five additional occupants.

(4) For each airplane having a ratio (as computed from the table in paragraph (a) of this section) of maximum number of occupants to number of exits greater than 14:1, and for each airplane that does not have at least one full-size, door-type exit in the side of the fuselage in the rear part of the cabin, the first additional exit must be a floor-level exit that complies with paragraph (b)(1) of this section and must be located in the rear part of the cabin on the opposite side of the fuselage from the main entrance door. However, no person may operate an airplane under this section carrying more than 115 occupants unless there is such an exit on each side of the fuselage in the rear part of the cabin.

(c) No person may eliminate any approved exit except in accordance with the following:

(1) The previously authorized maximum number of occupants must be reduced by the same number of additional occupants authorized for that exit under this section.

(2) Exits must be eliminated in accordance with the following priority schedule: First, non-over-wing window exits; second, over-wing window exits; third, floor-level exits located in the forward part of the cabin; and fourth, floor-level exits located in the rear of the cabin.

(3) At least one exit must be retained on each side of the fuselage regardless of the number of occupants.

(4) No person may remove any exit that would result in a ratio of maximum number of occupants to approved exits greater than 142.

(d) This section does not relieve any person operating under part 121 of this chapter from complying with § 121.291.

§ 91.609 Flight recorders and cockpit voice recorders.

(a) No holder of an air carrier operating certificate or an operating certificate may conduct any operation under this part with an aircraft listed in the holder's operations specifications or current list of aircraft used in air transportation unless that aircraft complies with any applicable flight recorder and cockpit voice recorder requirements of the part under which its certificate is issued except that the operator may—

(1) Ferry an aircraft with an inoperative flight recorder or cockpit voice recorder from a place where repair or replacement cannot be made to a place where they can be made;

(2) Continue a flight as originally planned, if the flight recorder or cockpit voice recorder becomes inoperative after the aircraft has taken off;

(3) Conduct an airworthiness flight test during which the flight recorder or cockpit voice recorder is turned off to test it or to test any communications or electrical equipment installed in the aircraft; or

(4) Ferry a newly acquired aircraft from the place where possession of it is taken to a place where the flight recorder or cockpit voice recorder is to be installed.

(b) No person may operate a U.S. civil registered, multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration, excluding any pilot seats of 10 or more that has been manufactured after October 11, 1991, unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium, that are capable of recording the data specified in appendix E to this part, for an airplane, or appendix F to this part, for a rotorcraft, of this part within the range, accuracy, and recording interval specified, and that are capable of retaining no less than 8 hours of aircraft operation.

(c) Whenever a flight recorder required by this section is installed, it must be operated continuously from the instant the airplane begins the takeoff roll or the rotorcraft begins lift-off until the airplane has completed the landing roll or the rotorcraft has landed at its destination.

(d) Unless otherwise authorized by the Administrator, after October 11, 1988, no person may operate a U.S. civil registered multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration of six passengers or more and for which two pilots are required by type certification or operating rule unless it is equipped with an approved cockpit voice recorder that:

(1) Is installed in compliance with § 23.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); § 25.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); § 27.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); or § 29.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g) of this chapter, as applicable; and

(2) Is operated continuously from the use of the checklist before the flight to completion of the final checklist at the end of the flight.

(e) In complying with this section, an approved cockpit voice recorder having an erasure feature may be used, so that at any time during the operation of the recorder, information recorded more than 15 minutes earlier may be erased or otherwise obliterated.

(f) In the event of an accident or occurrence requiring immediate notification to the National Transportation Safety Board under part 830 of its regulations that results in the termination of the flight, any operator who has installed approved flight recorders and approved cockpit voice recorders shall keep the recorded information for at least 60 days or, if requested by the Administrator or the Board, for a longer period. Information obtained from the record is used to assist in determining the cause of accidents or occurrences in connection with the investigation under part 830. The Administrator does not use the cockpit voice recorder record in any civil penalty or certificate action.

§ 91.611 Authorization for ferry flight with one engine inoperative.

(a) *General.* The holder of an air carrier operating certificate or an operating certificate issued under Part 125 may conduct a ferry flight of a four-engine airplane or a turbine-engine-powered airplane equipped with three engines, with one engine inoperative, to a base for the purpose of repairing that engine subject to the following:

(1) The airplane model has been test flown and found satisfactory for safe flight in accordance with paragraph (b) or (c) of this section, as appropriate. However, each operator who before November 19, 1966, has shown that a model of airplane with an engine inoperative is satisfactory for safe flight by a test flight conducted in accordance with performance data contained in the applicable Airplane Flight Manual under paragraph (a)(2) of this section need not repeat the test flight for that model.

(2) The approved Airplane Flight Manual contains the following performance data and the flight is conducted in accordance with that data:

(i) Maximum weight.

(ii) Center of gravity limits.

(iii) Configuration of the inoperative propeller (if applicable).

(iv) Runway length for takeoff (including temperature accountability).

(v) Altitude range.

(vi) Certificate limitations.

(vii) Ranges of operational limits.

(viii) Performance information.

(ix) Operating procedures.

(3) The operator has FAA approved procedures for the safe operation of the airplane, including specific requirements for—

(i) Limiting the operating weight on any ferry flight to the minimum necessary for the flight plus the necessary reserve fuel load;

(ii) A limitation that takeoffs must be made from dry runways unless, based on a showing of actual operating takeoff techniques on wet runways with one engine inoperative, takeoffs with full controllability from wet runways have been approved for the specific model aircraft and included in the Airplane Flight Manual;

(iii) Operations from airports where the runways may require a takeoff or approach over populated areas; and

(iv) Inspection procedures for determining the operating condition of the operative engines.

(4) No person may take off an airplane under this section if—

(i) The initial climb is over thickly populated areas; or

(ii) Weather conditions at the takeoff or destination airport are less than those required for VFR flight.

(5) Persons other than required flight crewmembers shall not be carried during the flight.

(6) No person may use a flight crewmember for flight under this section

unless that crewmember is thoroughly familiar with the operating procedures for one-engine inoperative ferry flight contained in the certificate holder's manual and the limitations and performance information in the Airplane Flight Manual.

(b) *Flight tests: reciprocating-engine-powered airplanes.* The airplane performance of a reciprocating-engine-powered airplane with one engine inoperative must be determined by flight test as follows:

(1) A speed not less than 1.3 V_{s1} must be chosen at which the airplane may be controlled satisfactorily in a climb with the critical engine inoperative (with its propeller removed or in a configuration desired by the operator and with all other engines operating at the maximum power determined in paragraph (b)(3) of this section.

(2) The distance required to accelerate to the speed listed in paragraph (b)(1) of this section and to climb to 50 feet must be determined with—

(i) The landing gear extended;

(ii) The critical engine inoperative and its propeller removed or in a configuration desired by the operator; and

(iii) The other engines operating at not more than maximum power established under paragraph (b)(3) of this section.

(3) The takeoff, flight and landing procedures, such as the approximate trim settings, method of power application, maximum power, and speed must be established.

(4) The performance must be determined at a maximum weight not greater than the weight that allows a rate of climb of at least 400 feet per minute in the en route configuration set forth in § 25.67(d) of this chapter in effect on January 31, 1977, at an altitude of 5,000 feet.

(5) The performance must be determined using temperature accountability for the takeoff field length, computed in accordance with § 25.61 of this chapter in effect on January 31, 1977.

(c) *Flight tests: Turbine-engine-powered airplanes.* The airplane performance of a turbine-engine-powered airplane with one engine inoperative must be determined by flight tests, including at least three takeoff tests, in accordance with the following:

(1) Takeoff speeds V_2 and V_2, not less than the corresponding speeds under which the airplane was type certificated under § 25.107 of this chapter, must be chosen at which the airplane may be controlled satisfactorily with the critical engine inoperative (with its propeller removed or in a configuration desired by the operator, if applicable) and with all other engines operating at not more than the power selected for type certification as set forth in § 25.101 of this chapter.

(2) The minimum takeoff field length must be the horizontal distance required to accelerate and climb to the 35-foot height at V_2 speed (including any additional speed increment obtained in the tests) multiplied by 115 percent and determined with—

(i) The landing gear extended;

(ii) The critical engine inoperative and its propeller removed or in a configuration desired by the operator (if applicable); and

(iii) The other engine operating at not more than the power selected for type certification as set forth in § 25.101 of this chapter.

(3) The takeoff, flight, and landing procedures such as the approximate trim setting, method of power application, maximum power, and speed must be established. The airplane must be satisfactorily controllable during the entire takeoff run when operated according to these procedures.

(4) The performance must be determined at a maximum weight not greater than the weight determined under § 25.121(c) of this chapter but with—

(i) The actual steady gradient of the final takeoff climb requirement not less than 1.2 percent at the end of the takeoff path with two critical engines inoperative; and

(ii) The climb speed not less than the two-engine inoperative trim speed for the actual steady gradient of the final takeoff climb prescribed by paragraph (c)(4)(i) of this section.

(5) The airplane must be satisfactorily controllable in a climb with two critical engines inoperative. Climb performance may be shown by calculations based on, and equal in accuracy to, the results of testing.

(6) The performance must be determined using temperature accountability for takeoff distance and final takeoff climb computed in accordance with § 25.101 of this chapter. For the purpose of paragraphs (c)(4) and (5) of this section, "two critical engines" means two adjacent engines on one side of an airplane with four engines, and the center engine and one outboard engine on an airplane with three engines.

§ 91.613 Materials for compartment interiors.

No person may operate an airplane that conforms to an amended or supplemental type certificate issued in accordance with SFAR No. 41 for a maximum certificated takeoff weight in excess of 12,500 pounds unless within 1 year after issuance of the initial airworthiness certificate under that SFAR the airplane meets the compartment interior requirements set forth in § 25.853 (a), (b), (b–1), (b–2), and (b–3) of this chapter in effect on September 26, 1978.

§§ 91.615–91.699 [Reserved]

Subpart H—Foreign Aircraft Operations and Operations of U.S.-Registered Civil Aircraft Outside of the United States

§ 91.701 Applicability.

This subpart applies to the operations of civil aircraft of U.S. registry outside of the United States and the operations of foreign civil aircraft within the United States.

§ 91.703 Operations of civil aircraft of U.S. registry outside of the United States.

(a) Each person operating a civil aircraft of U.S. registry outside of the United States shall—

(1) When over the high seas, comply with annex 2 (Rules of the Air) to the Convention on International Civil Aviation and with §§ 91.117(c), 91.130, and 91.131;

(2) When within a foreign country, comply with the regulations relating to the flight and maneuver of aircraft there in force;

(3) Except for §§ 91.307(b), 91.309, 91.323, and 91.711, comply with this part so far as it is not inconsistent with applicable regulations of the foreign country where the aircraft is operated or annex 2 of the Convention on International Civil Aviation; and

(4) When over the North Atlantic within airspace designated as Minimum Navigation Performance Specifications airspace, comply with § 91.705.

(b) Annex 2 to the Convention on International Civil Aviation, Eighth Edition—July 1986, with amendments through Amendment 28 effective November 1987, to which reference is made in this part, is incorporated into this part and made a part hereof as provided in 5 U.S.C. 552 and pursuant to 1 CFR part 51. annex 2 (including a complete historic file of changes thereto) is available for public inspection at the Rules Docket, AGC–10, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. In addition, Annex 2 may be purchased from the International Civil Aviation Organization (Attention: Distribution Officer), P.O. Box 400, Succursale, Place de L'Aviation Internationale, 1000 Sherbrooke Street West, Montreal, Quebec, Canada H3A 2R2.

§ 91.705 Operations within the North Atlantic Minimum Navigation Performance Specifications Airspace.

No person may operate a civil aircraft of U.S. registry in North Atlantic (NAT) airspace designated as Minimum Navigation Performance Specifications (MNPS) airspace unless—

(a) The aircraft has approved navigation performance capability which complies with the requirements of Appendix C of this part; and

(b) The operator is authorized by the Administrator to perform such operations.

(c) The Administrator authorizes deviations from the requirements of this section in accordance with section 3 of appendix C to this part.

§ 91.707 Flights between Mexico or Canada and the United States.

Unless otherwise authorized by ATC, no person may operate a civil aircraft between Mexico or Canada and the United States without filing an IFR or VFR flight plan, as appropriate.

§ 91.709 Operations to Cuba.

No person may operate a civil aircraft from the United States to Cuba unless—

(a) Departure is from an international airport of entry designated in § 6.13 of the Air Commerce Regulations of the Bureau of Customs (19 CFR 6.13); and

(b) In the case of departure from any of the 48 contiguous States or the District of Columbia, the pilot in command of the aircraft has filed—

(1) A DVFR or IFR flight plan as prescribed in § 99.11 or § 99.13 of this chapter; and

(2) A written statement, within 1 hour before departure, with the Office of Immigration and Naturalization Service at the airport of departure, containing—

(i) All information in the flight plan;

(ii) The name of each occupant of the aircraft;

(iii) The number of occupants of the aircraft; and

(iv) A description of the cargo, if any.

This section does not apply to the operation of aircraft by a scheduled air carrier over routes authorized in operations specifications issued by the Administrator.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.711 Special rules for foreign civil aircraft.

(a) *General.* In addition to the other applicable regulations of this part, each person operating a foreign civil aircraft within the United States shall comply with this section.

(b) *VFR.* No person may conduct VFR operations which require two-way radio communications under this part unless at least one crewmember of that aircraft is able to conduct two-way radio communications in the English language and is on duty during that operation.

(c) *IFR.* No person may operate a foreign civil aircraft under IFR unless—

(1) That aircraft is equipped with—

(i) Radio equipment allowing two-way radio communications with ATC when it is operated in control zone or control area; and

(ii) Radio navigational equipment appropriate to the navigational facilities to be used;

(2) Each person piloting the aircraft—

(i) Holds a current United States instrument rating or is authorized by his foreign airman certificate to pilot under IFR; and

(ii) Is thoroughly familiar with the United States en route, holding, and letdown procedures; and

(3) At least one crewmember of that aircraft is able to conduct two-way radiotelephone communications in the English language and that crewmember is on duty while the aircraft is approaching, operating within, or leaving the United States.

(d) *Over water.* Each person operating a foreign civil aircraft over water off the shores of the United States shall give flight notification or file a flight plan in accordance with the Supplementary Procedures for the ICAO region concerned.

(e) *Flight at and above FL 240.* If VOR navigational equipment is required under paragraph (c)(1)(ii) of this section, no person may operate a foreign civil aircraft within the 50 States and the District of Columbia at or above FL 240, unless the aircraft is equipped with distance measuring equipment (DME) capable of receiving and indicating distance information from the VORTAC facilities to be used. When DME required by this paragraph fails at and above FL 240, the pilot in command of the aircraft shall notify ATC immediately and may then continue operations at and above FL 240 to the next airport of intended landing at which repairs or replacement of the equipment can be made. However, paragraph (e) of this section does not apply to foreign civil aircraft that are not equipped with DME when operated for the following purposes and if ATC is notified prior to each takeoff:

(1) Ferry flights to and from a place in the United States where repairs or alterations are to be made.

(2) Ferry flights to a new country of registry.

(3) Flight of a new aircraft of U.S. manufacture for the purpose of—

(i) Flight testing the aircraft;

(ii) Training foreign flight crews in the operation of the aircraft; or

(iii) Ferrying the aircraft for export delivery outside the United States.

(4) Ferry, demonstration, and test flight of an aircraft brought to the United States for the purpose of demonstration or testing the whole or any part thereof.

§ 91.713 Operation of civil aircraft of Cuban registry.

No person may operate a civil aircraft of Cuban registry except in controlled airspace and in accordance with air traffic clearance or air traffic control instructions that may require use of specific airways or routes and landings at specific airports.

§ 91.715 Special flight authorizations for foreign civil aircraft.

(a) Foreign civil aircraft may be operated without airworthiness certificates required under § 91.203 if a special flight authorization for that operation is issued under this section. Application for a special flight authorization must be made to the Regional Director of the FAA region in which the applicant is located or to the region within which the U.S. point of entry is located. However, in the case of an aircraft to be operated in the U.S. for the purpose of demonstration at an airshow, the application may be made to the Regional Director of the FAA region in which the airshow is located.

(b) The Administrator may issue a special flight authorization for a foreign civil aircraft subject to any conditions and limitations that the Administrator considers necessary for safe operation in the U.S. airspace.

(c) No person may operate a foreign civil aircraft under a special flight authorization unless that operation also complies with part 375 of the Special Regulations of the Department of Transportation (14 CFR part 375).

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§§ 91.717–91.799 [Reserved]

Subpart I—Operating Noise Limits

§ 91.801 Applicability; Relation to Part 36.

(a) This subpart prescribes operating noise limits and related requirements that apply, as follows, to the operation of civil aircraft in the United States.

(1) Sections 91.803, 91.805, 91.807, 91.809, and 91.811 apply to civil subsonic turbojet airplanes with maximum weights of more than 75,000 pounds and—

(i) If U.S. registered, that have standard airworthiness certificates; or

(ii) If foreign registered, that would be required by this chapter to have a U.S. standard airworthiness certificate in order to conduct the operations intended for the airplane were it registered in the United States. Those sections apply to operations to or from airports in the United States under this part and parts 121, 125, 129, and 135 of this chapter.

(2) Section 91.813 applies to U.S. operators of civil subsonic turbojet airplanes covered by this subpart. This section applies to operators operating to or from airports in the United States under this part and parts 121, 125, and 135, but not to those operating under part 129 of this chapter.

(3) Sections 91.803, 91.819, and 91.821 apply to U.S.-registered civil supersonic airplanes having standard airworthiness certificates and to foreign-registered civil supersonic airplanes that, if registered in the United States, would be required by this chapter to have U.S. standard airworthiness certificates in order to conduct the operations intended for the airplane. Those sections apply to operations under this part and under parts 121, 125, 129, and 135 of this chapter.

(b) Unless otherwise specified, as used in this subpart "part 36" refers to 14 CFR part 36, including the noise levels under appendix C of that part, notwithstanding the provisions of that part excepting certain airplanes from the specified noise requirements. For purposes of this subpart, the various stages of noise levels, the terms used to describe airplanes with respect to those levels, and the terms "subsonic airplane" and "supersonic airplane" have the meanings specified under part 36 of this chapter. For purposes of this subpart, for subsonic airplanes operated in foreign air commerce in the United States, the Administrator may accept compliance with the noise requirements under annex 16 of the International Civil Aviation Organization when those requirements have been shown to be substantially compatible with, and achieve results equivalent to those achievable under part 36 for that airplane. Determinations made under these provisions are subject to the limitations of § 36.5 of this chapter as if those noise levels were part 36 noise levels.

§ 91.803 Part 125 operators: Designation of applicable regulations.

For airplanes covered by this subpart and operated under part 125 of this chapter, the following regulations apply as specified:

(a) For each airplane operation to which requirements prescribed under this subpart applied before November 29, 1980, those requirements of this subpart continue to apply.

(b) For each subsonic airplane operation to which requirements prescribed under this subpart did not apply before November 29, 1980, because the airplane was not operated in the United States under this part or part 121, 129, or 135 of this chapter, the requirements prescribed under §§ 91.805, 91.809, 91.811, and 91.813 of this subpart apply.

(c) For each supersonic airplane operation to which requirements prescribed under this subpart did not apply before November 29, 1980, because the airplane was not operated in the United States under this part or part 121, 129, or 135 of this chapter, the requirements of §§ 91.819 and 91.821 of this subpart apply.

(d) For each airplane required to operate under part 125 for which a deviation under that part is approved to operate, in whole or in part, under this part or part 121, 129, or 135 of this chapter, notwithstanding the approval, the requirements prescribed under paragraphs (a), (b), and (c) of this section continue to apply.

§ 91.805 Final compliance: Subsonic airplanes.

Except as provided in §§ 91.809 and 91.811, on and after January 1, 1985, no person may operate to or from an airport in the United States any subsonic airplane covered by this subpart unless that airplane has been shown to comply with Stage 2 or Stage 3 noise levels under part 36 of this chapter.

§ 91.807 Phased compliance under Parts 121, 125, and 135: Subsonic airplanes.

(a) *General.* Each person operating airplanes under part 121, 125, or 135 of this chapter, as prescribed under § 91.803 of this subpart, regardless of the state of registry of the airplane, shall comply with this section with respect to subsonic airplanes covered by this subpart.

(b) *Compliance schedules.* Except for airplanes shown to be operated in foreign air commerce under paragraph (c) of this section or covered by an exemption (including those issued under § 91.811), airplanes operated by U.S. operators in air commerce in the United States must be shown to comply with Stage 2 or Stage 3 noise levels under part 36 of this chapter, in accordance with the following schedule, or they may not be operated to or from airports in the United States:

(1) By January 1, 1981—

(i) At least one quarter of the airplanes that have four engines with no bypass ratio or with a bypass ratio less than two; and

(ii) At least half of the airplanes powered by engines with any other bypass ratio or by another number of engines.

(2) By January 1, 1983—

(i) At least one-half of the airplanes that have four engines with no bypass ratio or with a bypass ratio less than two; and

(ii) All airplanes powered by engines with any other bypass ratio or by another number of engines.

(c) *Apportionment of airplanes.* For purposes of paragraph (b) of this section, a person operating airplanes engaged in domestic and foreign air commerce in the United States may elect not to comply with the phased schedule with respect to that portion of the airplanes operated by that person shown, under an approved method of apportionment, to be engaged in foreign air commerce in the United States.

§ 91.809 Replacement airplanes.

A Stage 1 airplane may be operated after the otherwise applicable compliance dates prescribed under §§ 91.805 and 91.807 if, under an approved plan, a replacement airplane has been ordered by the operator under a binding contract as follows:

(a) For replacement of an airplane powered by two engines, until January 1, 1986, but not after the date specified in the plan, if the contract is entered into by January 1, 1983, and specifies delivery before January 1, 1986, of a replacement airplane which has been shown to comply with Stage 3 noise levels under part 36 of this chapter.

(b) For replacement of an airplane powered by three engines, until January 1, 1985, but not after the date specified in the plan, if the contract is entered into by January 1, 1983, and specifies delivery before January 1, 1985, of a replacement airplane which has been shown to comply with Stage 3 noise levels under part 36 of this chapter.

(c) For replacement of any other airplane, until January 1, 1985, but not after the date specified in the plan, if the contract specifies delivery before January 1, 1985, of a replacement airplane which—

(1) Has been shown to comply with Stage 2 or Stage 3 noise levels under part 36 of this chapter prior to issuance of an original standard airworthiness certificate; or

(2) Has been shown to comply with Stage 3 noise levels under part 36 of this chapter prior to issuance of a standard airworthiness certificate other than original issue.

(d) Each operator of a Stage 1 airplane for which approval of a replacement plan is requested under this section shall submit to the Director, Office of Environment and Energy, an application constituting the proposed replacement plan (or revised plan) that contains the information specified under this paragraph and which is certified (under penalty of 18 U.S.C. 1001) as true and correct. Each application for approval must provide information corresponding to that specified in the contract, upon which the FAA may rely in considering its approval, as follows:

(1) Name and address of the applicant. .

(2) Aircraft type and model and registration number for each airplane to be replaced under the plan.

(3) Aircraft type and model of each replacement airplane.

(4) Scheduled dates of delivery and introduction into service of each replacement airplane.

(5) Names and addresses of the parties to the contract and any other persons who may effectively cancel the contract or otherwise control the performance of any party.

(6) Information specifying the anticipated disposition of the airplanes to be replaced.

(7) A statement that the contract represents a legally enforceable, mutual agreement for delivery of an eligible replacement airplane.

(8) Any other information or documentation requested by the Director, Office of Environment and Energy, reasonably necessary to determine whether the plan should be approved.

§ 91.811 Service to small communities exemption: Two-engine, subsonic airplanes.

(a) A Stage I airplane powered by two engines may be operated after the compliance dates prescribed under §§ 91.805, 91.807, and 91.809 when, with respect to that airplane, the Administrator issues an exemption to the operator from the noise level requirements under this subpart. Each exemption issued under this section terminates on the earliest of the following dates:

(1) For an exempted airplane sold, or otherwise disposed of, to another person on or after January 1, 1983, on the date of delivery to that person.

(2) For an exempted airplane with a seating configuration of 100 passenger seats or less, on January 1, 1988.

(3) For an exempted airplane with a seating configuration of more than 100 passenger seats, on January 1, 1985.

(b) For the purpose of this section, the seating configuration of an airplane is governed by that shown to exist on December 1, 1979, or an earlier date established for that airplane by the Administrator.

§ 91.813 Compliance plans and status: U.S. operations of subsonic airplanes.

(a) Each U.S. operator of a civil subsonic airplane covered by this subpart (regardless of the state of registry) shall submit to the Director, Office of Environment and Energy, in accordance with this section, the operator's current compliance status and plan for achieving and maintaining compliance with the applicable noise level requirements of this subpart. If appropriate, an operator may substitute for the required plan a notice, certified as true (under penalty of 18 U.S.C. 1001) by that operator, that no change in the plan or status of any airplane affected by the plan has occurred since the date of the plan most recently submitted under this section.

(b) Each compliance plan, including each revised plan, must contain the information specified under paragraph (c) of this section for each airplane covered by this section that is operated by the operator. Unless otherwise approved by the Administrator, compliance plans must provide the required plan and status information as it exists on the date 30 days before the date specified for submission of the plan. Plans must be certified by the operator as true and complete (under penalty of 18 U.S.C. 1001) and be submitted for each airplane covered by this section on or before 90 days after initially commencing operation of airplanes covered by this section, whichever is later, and thereafter—

(1) Thirty days after any change in the operator's fleet or compliance planning decisions that has a separate or cumulative effect on 10 percent or more of the airplanes in either class of airplanes covered by § 91.807(b); and

(2) Thirty days after each compliance date applicable to that airplane under this subpart, and annually thereafter through 1985, or until any later date for that airplane prescribed under this subpart, on the anniversary of that submission date, to show continuous compliance with this subpart.

(c) Each compliance plan submitted under this section must identify the operator and include information regarding the compliance plan and status for each airplane covered by the plan as follows:

(1) Name and address of the airplane operator.

(2) Name and telephone number of the person designated by the operator to be responsible for the preparation of the compliance plan and its submission.

(3) The total number of airplanes covered by this section and in each of the following classes and subclasses:

(i) For airplanes engaged in domestic air commerce—

(A) Airplanes powered by four turbojet engines with no bypass ratio or with a bypass ratio less than two;

(B) Airplanes powered by engines with any other bypass ratio or by another number of engines; and

(C) Airplanes covered by an exemption issued under § 91.811 of this subpart.

(ii) For airplanes engaged in foreign air commerce under an approved apportionment plan—

(A) Airplanes powered by four turbojet engines with no bypass ratio or with a bypass ratio less than two;

(B) Airplanes powered by engines with any other bypass ratio or by another number of engines; and

(C) Airplanes covered by an exemption issued under § 91.811 of this subpart.

(4) For each airplane covered by this section—

(i) Aircraft type and model;

(ii) Aircraft registration number;

(iii) Aircraft manufacturer serial number;

(iv) Aircraft powerplant make and model;

(v) Aircraft year of manufacture;

(vi) Whether part 36 noise level compliance has been shown, "Yes/No";

(vii) The appropriate code prescribed under paragraph (c)(5) of this section which indicates the acoustical technology installed, or to be installed, on the airplane;

(viii) For airplanes on which acoustical technology has been or will be applied, following the appropriate code entry, the actual or scheduled month and year of installation on the airplane;

(ix) For DC–8 and B–707 airplanes operated in domestic U.S. air commerce which have been or will be retired from service in the United States without replacement between January 24, 1977, and January 1, 1985, the appropriate code prescribed under paragraph (c)(5) of this section followed by the actual or scheduled month and year of retirement of the airplane from service;

(x) For DC–8 and B–707 airplanes operated in foreign air commerce in the United States which have been or will be retired from service in the United States without replacement between April 14, 1980, and January 1, 1985, the appropriate code prescribed under paragraph (c)(5) of this section followed

by the actual or scheduled month and year of retirement of the airplane from service;

(xi) For airplanes covered by an approved replacement plan under § 91.807(c) of this subpart, the appropriate code prescribed under paragraph (c)(5) of this section followed by the scheduled month and year for replacement of the airplane;

(xii) For airplanes designated as "engaged in foreign commerce" in accordance with an approved method of apportionment under § 91.807(c) of this subpart, the appropriate code prescribed under paragraph (c)(5) of this section;

(xiii) For airplanes covered by an exemption issued to the operator granting relief from noise level requirements of this subpart, the appropriate code prescribed under paragraph (c)(5) of this section followed by the actual or scheduled month and year of expiration of the exemption and the appropriate code and applicable dates which indicate the compliance strategy planned or implemented for the airplane;

(xiv) For all airplanes covered by this section, the number of spare shipsets of acoustical components needed for continuous compliance and the number available on demand to the operator in support of those airplanes; and

(xv) For airplanes for which none of the other codes prescribed under paragraph (c)(5) of this section describes either the technology applied or to be applied to the airplane in accordance with the certification requirements under Parts 21 and 36 of this chapter, or the compliance strategy or methodology following the code "OTH," enter the date of any certificate action and attach an addendum to the plan explaining the nature and the extent of the certificated technology, strategy, or methodology employed, with reference to the type certificate documentation.

(5) TABLE OF ACOUSTICAL TECHNOLOGY/STRATEGY CODES

Code	Airplane type/model	Certificate technology
A	B-707-120B; B-707-320B/C; B-720B.	Quiet nacelles + 1-ring.
B	B-727-100	Double wall fan duct treatment.
C	B-727-200	Double wall fan duct treatment (pre-January 1977 installations and amended type certificate).
D	B-727-200; B-737-100; B-737-200.	Quiet nacelles + double wall fan duct treatment.

(5) TABLE OF ACOUSTICAL TECHNOLOGY/STRATEGY CODES—Continued

Code	Airplane type/model	Certificate technology
E	B-747-100 (pre-December 1971); B-747-200 (pre-December 1971).	Fixed lip inlets + sound absorbing material treatment.
F	DC-9	New extended inlet and tailpipe with treatment + fan duct treatment areas.
G	DC-9	P-36 sound absorbing material treatment kit.
H	BAC-111-200	Silencer kit (BAC Acoustic Report 522).
I	BAC-111-400	Silencer kit (BAC Acoustic Report 508).
J	B-707; DC-8	Reengined with high bypass ratio turbojet engines + quiet nacelles (if certificated under stage 3 noise level requirements).

REP—For airplanes covered by an approved replacement plan under § 91.807(c) of this subpart.

EFC—For airplanes designated as "engaged in foreign commerce" in accordance with an approved method of apportionment under § 91.811 of this subpart.

RET—For DC-8 and B-707 airplanes operated in domestic U.S. air commerce and retired from service in the United States without replacement between January 24, 1977, and January 1, 1985. RFC—For DC-8 and B-707 airplanes operated by U.S. operators in foreign air commerce in the United States and retired from service in the United States without replacement between April 24, 1999, and January 1, 1985.

EXD—For airplanes exempted from showing compliance with the noise level requirements of this subpart.

OTH—For airplanes for which no other prescribed code describes either the certificated technology applied or to be applied to the airplane, or the compliance strategy or methodology. (An addendum must explain the nature and extent of technology, strategy, or methodology and reference the type certificate documentation.)

§ 91.815 Agricultural and fire fighting airplanes: Noise operating limitations.

(a) This section applies to propeller-driven, small airplanes having standard airworthiness certificates that are designed for "agricultural aircraft operations" (as defined in § 137.3 of this chapter, as effective on January 1, 1966) or for dispensing fire fighting materials.

(b) If the Airplane Flight Manual, or other approved manual material information, markings, or placards for the airplane indicate that the airplane has not been shown to comply with the noise limits under part 36 of this chapter, no person may operate that airplane, except—

(1) To the extent necessary to accomplish the work activity directly associated with the purpose for which it is designed;

(2) To provide flight crewmember training in the special purpose operation for which the airplane is designed; and

(3) To conduct "nondispensing aerial work operations" in accordance with the requirements under § 137.29(c) of this chapter.

§ 91.817 Civil aircraft sonic boom.

(a) No person may operate a civil aircraft in the United States at a true flight Mach number greater than 1 except in compliance with conditions and limitations in an authorization to exceed Mach 1 issued to the operator under appendix B of this part.

(b) In addition, no person may operate a civil aircraft for which the maximum operating limit speed M_{mo} exceeds a Mach number of 1, to or from an airport in the United States, unless—

(1) Information available to the flight crew includes flight limitations that ensure that flights entering or leaving the United States will not cause a sonic boom to reach the surface within the United States; and

(2) The operator complies with the flight limitations prescribed in paragraph (b)(1) of this section or complies with conditions and limitations in an authorization to exceed Mach 1 issued under appendix B of this part.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.819 Civil supersonic airplanes that do not comply with Part 36.

(a) *Applicability.* This section applies to civil supersonic airplanes that have not been shown to comply with the Stage 2 noise limits of Part 36 in effect on October 13, 1977, using applicable trade-off provisions, and that are operated in the United States, after July 31, 1978.

(b) *Airport use.* Except in an emergency, the following apply to each person who operates a civil supersonic airplane to or from an airport in the United States:

(1) Regardless of whether a type design change approval is applied for under part 21 of this chapter, no person may land or take off an airplane covered by this section for which the type design is changed, after July 31, 1978, in a manner constituting an "acoustical change" under § 21.93 unless the acoustical change requirements of part 36 are complied with.

(2) No flight may be scheduled, or otherwise planned, for takeoff or landing after 10 p.m. and before 7 a.m. local time.

§ 91.821 Civil supersonic airplanes: Noise limits.

Except for Concorde airplanes having flight time before January 1, 1980, no person may operate in the United States, a civil supersonic airplane that does not comply with Stage 2 noise limits of part 36 in effect on October 13, 1977, using applicable trade-off provisions.

§§ 91.823-91.899 [Reserved]

Subpart J—Waivers

§ 91.901 [Reserved]

§ 91.903 Policy and procedures.

(a) The Administrator may issue a certificate of waiver authorizing the operation of aircraft in deviation from any rule listed in this subpart if the Administrator finds that the proposed operation can be safely conducted under the terms of that certificate of waiver.

(b) An application for a certificate of waiver under this part is made on a form and in a manner prescribed by the Administrator and may be submitted to any FAA office.

(c) A certificate of waiver is effective as specified in that certificate of waiver.

§ 91.905 List of rules subject to waivers.

Sec.
91.107 Use of safety belts.
91.111 Operating near other aircraft.
91.113 Right-of-way rules: Except water operations.
91.115 Right-of-way rules: Water operations.
91.117 Aircraft speed.
91.119 Minimum safe altitudes: General.
91.121 Altimeter settings.
91.123 Compliance with ATC clearances and instructions.
91.125 ATC light signals.
91.127 Operating on or in the vicinity of an airport: General rules.
91.129 Operating at airports with operating control towers.
91.131 Terminal control areas.
91.133 Restricted and prohibited areas.
91.135 Positive control areas and route segments.
91.137 Temporary flight restrictions.
91.141 Flight restrictions in the proximity of the Presidential and other parties.
91.143 Flight limitation in the proximity of space flight operations.
91.153 VFR flight plan: Information required.
91.155 Basic VFR weather minimums
91.157 Special VFR weather minimums.
91.159 VFR cruising altitude or flight level.
91.169 IFR flight plan: Information required.
91.173 ATC clearance and flight plan required.
91.175 Takeoff and landing under IFR.
91.177 Minimum altitudes for IFR operations.
91.179 IFR cruising altitude or flight level.
91.181 Course to be flown.
91.183 IFR radio communications.
91.185 IFR operations: Two-way radio communications failure.
91.187 Operation under IFR in controlled airspace: Malfunction reports.
91.209 Aircraft lights.
91.303 Aerobatic flights.
91.305 Flight test areas.
91.311 Towing: Other than under § 91.309.
91.313(e) Restricted category civil aircraft: Operating limitations.
91.515 Flight altitude rules.
91.705 Operations within the North Atlantic Minimum Navigation Performance Specifications Airspace.
91.707 Flights between Mexico or Canada and the United States.
91.713 Operation of civil aircraft of Cuban registry.

§§ 91.907-91.999 [Reserved]

Appendix A—Category II Operations: Manual, Instruments, Equipment, and Maintenance

1. Category II Manual

(a) *Application for approval.* An applicant for approval of a Category II manual or an amendment to an approved Category II manual must submit the proposed manual or amendment to the Flight Standards District Office having jurisdiction of the area in which the applicant is located. If the application requests an evaluation program, it must include the following:

(1) The location of the aircraft and the place where the demonstrations are to be conducted; and

(2) The date the demonstrations are to commence (at least 10 days after filing the application).

(b) *Contents.* Each Category II manual must contain:

(1) The registration number, make, and model of the aircraft to which it applies;

(2) A maintenance program as specified in section 4 of this appendix; and

(3) The procedures and instructions related to recognition of decision height, use of runway visual range information, approach monitoring, the decision region (the region between the middle marker and the decision height), the maximum permissible deviations of the basic ILS indicator within the decision region, a missed approach, use of airborne low approach equipment, minimum altitude for the use of the autopilot, instrument and equipment failure warning systems, instrument failure, and other procedures, instructions, and limitations that may be found necessary by the Administrator.

2. Required Instruments and Equipment

The instruments and equipment listed in this section must be installed in each aircraft operated in a Category II operation. This section does not require duplication of instruments and equipment required by § 91.205 or any other provisions of this chapter.

(a) *Group I.* (1) Two localizer and glide slope receiving systems. Each system must provide a basic ILS display and each side of the instrument panel must have a basic ILS display. However, a single localizer antenna and a single glide slope antenna may be used.

(2) A communications system that does not affect the operation of at least one of the ILS systems.

(3) A marker beacon receiver that provides distinctive aural and visual indications of the outer and the middle markers.

(4) Two gyroscopic pitch and bank indicating systems.

(5) Two gyroscopic direction indicating systems.

(6) Two airspeed indicators.

(7) Two sensitive altimeters adjustable for barometric pressure, each having a placarded correction for altimeter scale error and for the wheel height of the aircraft. After June 26, 1979, two sensitive altimeters adjustable for barometric pressure, having markings at 20-foot intervals and each having a placarded correction for altimeter scale error and for the wheel height of the aircraft.

(8) Two vertical speed indicators.

(9) A flight control guidance system that consists of either an automatic approach coupler or a flight director system. A flight director system must display computed information as steering command in relation to an ILS localizer and, on the same instrument, either computed information as pitch command in relation to an ILS glide slope or basic ILS glide slope information. An automatic approach coupler must provide at least automatic steering in relation to an ILS localizer. The flight control guidance system may be operated from one of the receiving systems required by subparagraph (1) of this paragraph.

(10) For Category II operations with decision heights below 150 feet either a marker beacon receiver providing aural and visual indications of the inner marker or a radio altimeter.

(b) *Group II.* (1) Warning systems for immediate detection by the pilot of system faults in items (1), (4), (5), and (8) of Group I and, if installed for use in Category III operations, the radio altimeter and autothrottle system.

(2) Dual controls.

(3) An externally vented static pressure system with an alternate static pressure source.

(4) A windshield wiper or equivalent means of providing adequate cockpit visibility for a safe visual transition by either pilot to touchdown and rollout.

(5) A heat source for each airspeed system pitot tube installed or an equivalent means of preventing malfunctioning due to icing of the pitot system.

3. Instruments and Equipment Approval

(a) *General.* The instruments and equipment required by section 2 of this appendix must be approved as provided in this section before being used in Category II operations. Before presenting an aircraft for approval of the instruments and equipment, it must be shown that since the beginning of the

12th calendar month before the date of submission—

(1) The ILS localizer and glide slope equipment were bench checked according to the manufacturer's instructions and found to meet those standards specified in RTCA Paper 23-63/DO-117 dated March 14, 1963, "Standard Adjustment Criteria for Airborne Localizer and Glide Slope Receivers," which may be obtained from the RTCA Secretariat, 1425 K St., NW., Washington, DC 20005.

(2) The altimeters and the static pressure systems were tested and inspected in accordance with Appendix E to Part 43 of this chapter; and

(3) All other instruments and items of equipment specified in section 2(a) of this appendix that are listed in the proposed maintenance program were bench checked and found to meet the manufacturer's specifications.

(b) *Flight control guidance system.* All components of the flight control guidance system must be approved as installed by the evaluation program specified in paragraph (e) of this section if they have not been approved for Category III operations under applicable type or supplemental type certification procedures. In addition, subsequent changes to make, model, or design of the components must be approved under this paragraph. Related systems or devices, such as the autothrottle and computed missed approach guidance system, must be approved in the same manner if they are to be used for Category II operations.

(c) *Radio altimeter.* A radio altimeter must meet the performance criteria of this paragraph for original approval and after each subsequent alteration.

(1) It must display to the flight crew clearly and positively the wheel height of the main landing gear above the terrain.

(2) It must display wheel height above the terrain to an accuracy of plus or minus 5 feet or 5 percent, whichever is greater, under the following conditions:

(i) Pitch angles of zero to plus or minus 5 degrees about the mean approach attitude.

(ii) Roll angles of zero to 20 degrees in either direction.

(iii) Forward velocities from minimum approach speed up to 200 knots.

(iv) Sink rates from zero to 15 feet per second at altitudes from 100 to 200 feet.

(3) Over level ground, it must track the actual altitude of the aircraft without significant lag or oscillation.

(4) With the aircraft at an altitude of 200 feet or less, any abrupt change in terrain representing no more than 10 percent of the aircraft's altitude must not cause the altimeter to unlock, and indicator response to such changes must not exceed 0.1 seconds and, in addition, if the system unlocks for greater changes, it must reacquire the signal in less than 1 second.

(5) Systems that contain a push-to-test feature must test the entire system (with or without an antenna) at a simulated altitude of less than 500 feet.

(6) The system must provide to the flight crew a positive failure warning display any time there is a loss of power or an absence of ground return signals within the designed range of operating altitudes.

(d) *Other instruments and equipment.* All other instruments and items of equipment required by § 2 of this appendix must be capable of performing as necessary for Category II operations. Approval is also required after each subsequent alteration to these instruments and items of equipment.

(e) *Evaluation program*—(1) *Application.* Approval by evaluation is requested as a part of the application for approval of the Category II manual.

(2) *Demonstrations.* Unless otherwise authorized by the Administrator, the evaluation program for each aircraft requires the demonstrations specified in this paragraph. At least 50 ILS approaches must be flown with at least five approaches on each of three different ILS facilities and no more than one half of the total approaches on any one ILS facility. All approaches shall be flown under simulated instrument conditions to a 100-foot decision height and 90 percent of the total approaches made must be successful. A successful approach is one in which—

(i) At the 100-foot decision height, the indicated airspeed and heading are satisfactory for a normal flare and landing (speed must be plus or minus 5 knots of programmed airspeed, but may not be less than computed threshold speed if autothrottles are used);

(ii) The aircraft at the 100-foot decision height, is positioned so that the cockpit is within, and tracking so as to remain within, the lateral confines of the runway extended;

(iii) Deviation from glide slope after leaving the outer marker does not exceed 50 percent of full-scale deflection as displayed on the ILS indicator;

(iv) No unusual roughness or excessive attitude changes occur after leaving the middle marker; and

(v) In the case of an aircraft equipped with an approach coupler, the aircraft is sufficiently in trim when the approach coupler is disconnected at the decision height to allow for the continuation of a normal approach and landing.

(3) *Records.* During the evaluation program the following information must be maintained by the applicant for the aircraft with respect to each approach and made available to the Administrator upon request:

(i) Each deficiency in airborne instruments and equipment that prevented the initiation of an approach.

(ii) The reasons for discontinuing an approach, including the altitude above the runway at which it was discontinued.

(iii) Speed control at the 100-foot decision height if auto throttles are used.

(iv) Trim condition of the aircraft upon disconnecting the auto coupler with respect to continuation to flare and landing.

(v) Position of the aircraft at the middle marker and at the decision height indicated both on a diagram of the basic ILS display and a diagram of the runway extended to the middle marker. Estimated touchdown point must be indicated on the runway diagram.

(vi) Compatibility of flight director with the auto coupler, if applicable.

(vii) Quality of overall system performance.

(4) *Evaluation.* A final evaluation of the flight control guidance system is made upon successful completion of the demonstrations. If no hazardous tendencies have been displayed or are otherwise known to exist, the system is approved as installed.

4. Maintenance program

(a) Each maintenance program must contain the following:

(1) A list of each instrument and item of equipment specified in § 2 of this appendix that is installed in the aircraft and approved for Category II operations, including the make and model of those specified in § 2(a).

(2) A schedule that provides for the performance of inspections under subparagraph (5) of this paragraph within 3 calendar months after the date of the previous inspection. The inspection must be performed by a person authorized by part 43 of this chapter, except that each alternate inspection may be replaced by a functional flight check. This functional flight check must be performed by a pilot holding a Category II pilot authorization for the type aircraft checked.

(3) A schedule that provides for the performance of bench checks for each listed instrument and item of equipment that is specified in section 2(a) within 12 calendar months after the date of the previous bench check.

(4) A schedule that provides for the performance of a test and inspection of each static pressure system in accordance with appendix E to part 43 of this chapter within 12 calendar months after the date of the previous test and inspection.

(5) The procedures for the performance of the periodic inspections and functional flight checks to determine the ability of each listed instrument and item of equipment specified in section 2(a) of this appendix to perform as approved for Category II operations including a procedure for recording functional flight checks.

(6) A procedure for assuring that the pilot is informed of all defects in listed instruments and items of equipment.

(7) A procedure for assuring that the condition of each listed instrument and item of equipment upon which maintenance is performed is at least equal to its Category II approval condition before it is returned to service for Category II operations.

(8) A procedure for an entry in the maintenance records required by § 43.9 of this chapter that shows the date, airport, and reasons for each discontinued Category II operation because of a malfunction of a listed instrument or item of equipment.

(b) *Bench check.* A bench check required by this section must comply with this paragraph.

(1) It must be performed by a certificated repair station holding one of the following ratings as appropriate to the equipment checked:

(i) An instrument rating.

(ii) A radio rating.

(iii) A rating issued under subpart D of part 145 of this chapter.

(2) It must consist of removal of an instrument or item of equipment and performance of the following:

(i) A visual inspection for cleanliness, impending failure, and the need for lubrication, repair, or replacement of parts;

(ii) Correction of items found by that visual inspection; and

(iii) Calibration to at least the manufacturer's specifications unless otherwise specified in the approved Category II manual for the aircraft in which the instrument or item of equipment is installed.

(c) *Extensions.* After the completion of one maintenance cycle of 12 calendar months, a request to extend the period for checks, tests, and inspections is approved if it is shown that the performance of particular equipment justifies the requested extension.

Appendix B—Authorizations to Exceed Mach 1 (section 91.817)

Section 1. Application

(a) An applicant for an authorization to exceed Mach 1 must apply in a form and manner prescribed by the Administrator and must comply with this appendix.

(b) In addition, each application for an authorization to exceed Mach 1 covered by section 2(a) of this appendix must contain all information requested by the Administrator necessary to assist him in determining whether the designation of a particular test area or issuance of a particular authorization is a "major Federal action significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), and to assist him in complying with that act and with related Executive Orders, guidelines, and orders prior to such action.

(c) In addition, each application for an authorization to exceed Mach 1 covered by section 2(a) of this appendix must contain—

(1) Information showing that operation at a speed greater than Mach 1 is necessary to accomplish one or more of the purposes specified in section 2(a) of this appendix, including a showing that the purpose of the test cannot be safely or properly accomplished by overocean testing;

(2) A description of the test area proposed by the applicant, including an environmental analysis of that area meeting the requirements of paragraph (b) of this section; and

(3) Conditions and limitations that will ensure that no measurable sonic boom overpressure will reach the surface outside of the designated test area.

(d) An application is denied if the Administrator finds that such action is necessary to protect or enhance the environment.

Section 2. Issuance

(a) For a flight in a designated test area, an authorization to exceed Mach 1 may be issued when the Administrator has taken the environmental protective actions specified in section 1(b) of this appendix and the applicant shows one or more of the following:

(1) The flight is necessary to show compliance with airworthiness requirements.

(2) The flight is necessary to determine the sonic boom characteristics of the airplane or to establish means of reducing or eliminating the effects of sonic boom.

(3) The flight is necessary to demonstrate the conditions and limitations under which speeds greater than a true flight Mach number of 1 will not cause a measurable sonic boom overpressure to reach the surface.

(b) For a flight outside of a designated test area, an authorization to exceed Mach 1 may be issued if the applicant shows conservatively under paragraph (a)(3) of this section that—

(1) The flight will not cause a measurable sonic boom overpressure to reach the surface when the aircraft is operated under conditions and limitations demonstrated under paragraph (a)(3) of this section; and

(2) Those conditions and limitations represent all foreseeable operating conditions.

Section 3. Duration

(a) An authorization to exceed Mach 1 is effective until it expires or is surrendered, or until it is suspended or terminated by the Administrator. Such an authorization may be amended or suspended by the Administrator at any time if the Administrator finds that such action is necessary to protect the environment. Within 30 days of notification of amendment, the holder of the authorization must request reconsideration or the amendment becomes final. Within 30 days of notification of suspension, the holder of the authorization must request reconsideration or the authorization is automatically terminated. If reconsideration is requested within the 30-day period, the amendment or suspension continues until the holder shows why the authorization should not be amended or terminated. Upon such showing, the Administrator may terminate or amend the authorization if the Administrator finds that such action is necessary to protect the environment, or he may reinstate the authorization without amendment if he finds that termination or amendment is not necessary to protect the environment.

(b) Findings and actions by the Administrator under this section do not affect any certificate issued under Title VI of the Federal Aviation Act of 1958.

Appendix C—Operations in the North Atlantic (NAT) Minimum Navigation Performance Specifications (MNPS) Airspace

Section 1

NAT MNPS airspace is that volume of airspace between FL 275 and FL 400 extending between latitude 27 degrees north and the North Pole, bounded in the east by the eastern boundaries of control areas Santa Maria Oceanic, Shanwick Oceanic, and Reykjavik Oceanic and in the west by the western boundary of Reykjavik Oceanic Control Area, the western boundary of Gander Oceanic Control Area, and the western boundary of New York Oceanic Control Area, excluding the areas west of 60 degrees west and south of 38 degrees 30 minutes north.

Section 2

The navigation performance capability required for aircraft to be operated in the airspace defined in section 1 of this appendix is as follows:

(a) The standard deviation of lateral track errors shall be less than 6.3 NM (11.7 Km). Standard deviation is a statistical measure of data about a mean value. The mean is zero nautical miles. The overall form of data is such that the plus and minus 1 standard deviation about the mean encompasses approximately 68 percent of the data and plus or minus 2 deviations encompasses approximately 95 percent.

(b) The proportion of the total flight time spent by aircraft 30 NM (55.6 Km) or more off the cleared track shall be less than 5.3×10^{-4} (less than 1 hour in 1,887 flight hours).

(c) The proportion of the total flight time spent by aircraft between 50 NM and 70 NM (92.6 Km and 129.6 Km) off the cleared track shall be less than 13×10^{-5} (less than 1 hour in 7,693 flight hours.)

Section 3

Air traffic control (ATC) may authorize an aircraft operator to deviate from the requirements of § 91.705 for a specific flight if, at the time of flight plan filing for that flight, ATC determines that the aircraft may be provided appropriate separation and that the flight will not interfere with, or impose a burden upon, the operations of other aircraft which meet the requirements of § 91.705.

Appendix D—Airports/Locations Where the Transponder Requirements of Section 91.215(b)(5)(ii) Apply

Section 1

The requirements of § 91.215(b)(5)(ii) apply to operations in the vicinity of each of the following airports: Logan International Airport, Billings MT. Hector International Airport, Fargo, ND.

Appendix E—Airplane Flight Recorder Specifications

Parameters	Range	Installed system 1 minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution 4 read out
Relative Time (From Recorded on Prior to Takeoff).	8 hr minimum	±0.125% per hour	1	1 sec.

APPENDIX E—AIRPLANE FLIGHT RECORDER SPECIFICATIONS—Continued

Parameters	Range	Installed system 1 minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution 4 read out
Indicated Airspeed	Vso to VD (KIAS)	±5% or ±10 kts., whichever is greater. Resolution 2 kts. below 175 KIAS.	1	1%3
Altitude	−1,000 ft. to max cert. alt. of A/C.	±100 to ±700 ft. (see Table 1, TSO C51-a).	11	25 to 150 ft.
Magnetic Heading	360°	±5°	1	1°
Vertical Acceleration	−3g to +6g	±0.2g in addition to ±0.3g maximum datum.	4 (or 1 per second where peaks, ref. to 1g are recorded).	0.03g.
Longitudinal Acceleration	±1.0g	±1.5% max. range excluding datum error of ±5%.	2	0.01g.
Pitch Attitude	100% of usable	±2°	1	0.8°
Roll Attitude	±60° or 100% of usable range, whichever is greater.	±2°	1	0.8°
Stabilizer Trim Position, or	Full Range	±3% unless higher uniquely required.	1	1%3
Pitch Control Position				
Engine Power, Each Engine:	Full Range	±3% unless higher uniquely required.	1	1%3
Fan or N1 Speed or EPR or Cockpit Indications Used for Aircraft Certification OR.	Maximum Range	±5%	1	1%3
Prop. speed and Torque (Sample Once/Sec as Close together as Practicable).			1 (prop Speed) 1 (torque)	1%3 1%3
Altitude Rate2 (need depends on altitude resolution).	±8,000 fpm	±10%. Resolution 250 fpm below 12,000 ft. indicated.	1	250 fpm. below 12,000
Angle of Attack2 (need depends on altitude resolution).	−20° to 40° or 100% of usable range.	±2°	1	0.8%3
Radio Transmitter Keying (Discrete).	On/Off		1	
TE Flaps (Discrete or Analog)	Each discrete position (U, D, T/O, AAP) OR.		1	
LE Flaps (Discrete or Analog)	Analog 0–100% range	±3%	1	1%3
	Each discrete position (U, D, T/O, AAP) OR.		1	
Thrust Reverser, Each Engine (Discrete).	Analog 0–100% range	±3°	1	1%3
	Stowed or full reverse			
Spoiler/Speedbrake (Discrete).	Stowed or out		1	
Autopilot Engaged (Discrete)	Engaged or Disengaged		1	

1 When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than half of the values in this column.
2 If data from the altitude encoding altimeter (100 ft. resolution) is used, then either one of these parameters should also be recorded. If however, altitude is recorded at a minimum resolution of 25 feet, then these two parameters can be omitted.
3 Per cent of full range.
4 This column applies to aircraft manufactured after October 11, 1991.

APPENDIX F—HELICOPTER FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Installed system1 minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution 3 read out
Relative Time (From Recorded on Prior to Takeoff).	4 hr minimum	±0.125% per hour	1	1 sec.
Indicated Airspeed	VM in to VD (KIAS) (minimum airspeed signal attainable with installed pilot-static system).	±5% or ±10 kts., whichever is greater.	1	1 kt.
Altitude	−1,000 ft. to 20,000 ft. pressure altitude.	±100 to ±700 ft. (see Table 1, TSO C51–a).	1	25 to 150 ft.
Magnetic Heading	360°	±5°	1	1°
Vertical Acceleration	−3g to +6g	±0.2g in addition to ±0.3g maximum datum.	4 (or 1 per second where peaks, ref. to 1g are recorded).	0.05g.
Longitudinal Acceleration	±1.0g	±1.5% max. range excluding datum error of 5%.	2	0.03g.
Pitch Attitude	100% of usable range.	±2°	1	0.8°
Roll Attitude	±60 or 100% of usable range, whichever is greater.	±2°	1	0.8°
Altitude Rate	±8,000 fpm	±10% Resolution 250 fpm below 12,000 ft. indicated.	1	250 fpm below 12,000.
Engine Power, Each Engine				
Main Rotor Speed	Maximum Range	±5%	1	1%2.
Free or Power Turbine	Maximum Range	±5%	1	1%2.

APPENDIX F—HELICOPTER FLIGHT RECORDER SPECIFICATIONS—Continued

Parameters	Range	Installed system1 minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution 3 read out
Engine Torque	Maximum Range	±5%	1	1%2.
Flight Control Hydraulic Pressure				
Primary (Discrete)	High/Low		1	
Secondary—if applicable (Discrete).	High/Low		1	
Radio Transmitter Keying (Discrete).	On/Off		1	
Autopilot Engaged (Discrete)	Engaged or Disengaged		1	
SAS Status–Engaged (Discrete).	Engaged or Disengaged		1	
SAS Fault Status (Discrete)	Fault/OK		1	
Flight Controls				
Collective	Full range	±3%	2	1%2.
Pedal Position	Full range	±3%	2	1%2.
Lat. Cyclic	Full range	±3%	2	1%2.
Long. Cyclic	Full range	±3%	2	1%2.
Controllable Stabilator Position.	Full range	±3%	2	1%2.

1 When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than half of the values in this column.
2 Per cent of full range.
3 This column applies to aircraft manufactured after October 11, 1991.

PART 1—DEFINITIONS AND ABBREVIATIONS

2. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 1347, 1348, 1354(a), 1357(d)(2), 1372, 1421 through 1430, 1432, 1442, 1443, 1472, 1510, 1522, 1652(e), 1655(c), 1657(f); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

§ 1.1 [Amended]

3. By amending § 1.1 by changing the cross reference "§ 91.10" found in the definition of "Operate" to "§ 91.13."

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

4. The authority citation for Part 21 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

SFAR NO. 29–4—LIMITED IFR OPERATIONS OF ROTORCRAFT

SFAR No. 29–4 [Amended]

5. By amending SFAR 29–4 located in part 21, paragraph 4, by changing the cross reference "§ 91.23(a)(3)" to "§ 91.167(a)(3)."

§ 21.81 [Amended]

6. By amending § 21.81(a) by changing the cross reference "§ 91.41" to "§ 91.317."

§ 21.83 [Amended]

7. By amending § 21.83(a) and (b) by changing the cross reference "§ 91.41" to "§ 91.317" in each paragraph.

§ 21.85 [Amended]

8. By amending § 21.85(f) by changing the cross reference "§ 91.41" to "§ 91.317."

§ 21.221 [Amended]

9. By amending § 21.221(a)(2) and (c) by changing the cross reference "§ 91.41" to "§ 91.317."

§ 21.223 [Amended]

10. By amending § 21.223(a)(2) and (f) by changing the cross reference "§ 91.41" to "§ 91.317."

§ 21.225 [Amended]

11. By amending § 21.225(a)(2) and (e) by changing the cross reference "§ 91.41" to "§ 91.317."

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, AND ACROBATIC CATEGORY AIRPLANES

12. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

Appendix G, Part 23 [Amended]

13. By amending § G23.4 in appendix G in part 23 by changing the cross reference "§ 91.165" to "§ 91.409."

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

14. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

Appendix H, Part 25 [Amended]

15. By amending § H25.4 in appendix H in part 25 by changing the cross reference "§ 91.163" to "§ 91.403."

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

16. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

Appendix A, Part 27 [Amended]

17. By amending § A27.4 in appendix A in part 27 by changing the cross reference "§ 91.163" to "§ 91.403."

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

18. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

Appendix A, Part 29 [Amended]

19. By amending § A29.4 in appendix A in part 29 by changing the cross reference "§ 91.163" to "§ 91.403."

PART 31—AIRWORTHINESS STANDARDS: MANNED FREE BALLOONS

20. The authority citation for part 31 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Appendix A, Part 31 [Amended]

21. By amending § A31.4 in appendix A in part 31 by changing the cross reference "§ 91.163" to "§ 91.403."

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

22. The authority citation for part 33 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Appendix A, Part 33 [Amended]

23. By amending § A33.4 in appendix A in part 33 by changing the cross reference "§ 91.163" to "§ 91.403."

PART 35—AIRWORTHINESS STANDARDS: PROPELLERS

24. The authority citation for part 35 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Appendix A, Part 35 [Amended]

25. By amending § A35.4 in appendix A in part 35 by changing the cross reference "§ 91.163" to "§ 91.403."

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

26. The authority citation for part 36 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430, 1431(b), 1651(b)(2), 2121 through 2125; 42 U.S.C. 4321 *et seq.*; Sec. 124 of Pub. L. 08-473, E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 36.1583 [Amended]

27. By amending § 36.1583(b) by changing the cross reference "§ 91.56" to "§ 91.815."

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

28. The authority citation for part 43 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 43.5 [Amended]

29. By amending § 43.5(c) by changing the cross reference "§ 91.31" to "§ 91.9."

§ 43.15 [Amended]

30. By amending § 43.15(a)(2) by changing the cross reference "§ 91.169(e)" to "§ 91.409(e)."

§ 43.16 [Amended]

31. By amending § 43.16 by changing the cross reference "§ 91.169(e)" to "§ 91.409(e)."

§ 43.17 [Amended]

32. By amending § 43.17(a)(2) by changing the cross reference "§ 91.169" to "§ 91.409."

Appendix B, Part 43 [Amended]

33. By amending appendix B in part 43 by changing the cross reference "§ 91.173" to "§ 91.417" in paragraph (d).

Appendix E, Part 43 [Amended]

34. By amending appendix E in part 43 by changing the cross reference "§ 91.171" to "§ 91.411" in the introductory paragraph.

Appendix F, Part 43 [Amended]

35. By amending appendix F in part 43 by changing the cross reference "§ 91.172" to "§ 91.413 in the introductory paragraph."

PART 45—IDENTIFICATION AND REGISTRATION MARKING

36. The authority citation for part 45 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, 1401, 1402, 1421, 1423, and 1522; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

§ 45.22 [Amended]

37. By amending § 45.22(a)(3)(ii) by changing the cross reference "§ 91.83" to read "either § 91.153 or § 91.169.

PART 47—AIRCRAFT REGISTRATION

38. The authority citation for part 47 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, 1401, 1402, 1403, 1405, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 4 U.S.T. 1830.

§ 47.9 [Amended]

39. By amending § 47.9(f)(1)(i) by changing the cross reference "§ 91.173(a)(2)(i)" to "§ 91.417(a)(2)(i)."

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

40. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

§ 61.15 [Amended]

41. By amending § 61.15(b) by changing the cross reference "§ 91.11(a) or § 91.12(a)" to "§ 91.17(a) or § 91.19(a)."

§ 61.16 [Amended]

42. By amending § 61.16, introductory text, by changing the cross reference "§ 91.11(c) or (d)" to "§ 91.17(c) or (d)."

§ 61.118 [Amended]

43. By amending § 61.118(d)(5) by changing the cross reference "§ 91.169" to "§ 91.409."

§ 61.153 [Amended]

44. By amending § 61.153(a) by changing the cross reference "§§ 91.1 through 91.9 and subpart B of part 91" to "§§ 91.1, 91.3, 91.5, 91.11, 91.13, 91.103, 91.105, 91.189, 91.193, 91.703, and subpart B of part 91."

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

45. The authority citation for part 63 continues to read as follows:

Authority: 49 U.S.C. 1354, 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

§ 63.12 [Amended]

46. By amending § 63.12(b) by changing the cross reference "§ 91.11(a) or § 91.12(a)" to "§ 91.17(a) or § 91.19(a)."

§ 63.12a [Amended]

47. By amending § 63.12a, introductory text, by changing the cross reference "§ 91.11(c) or (d)" to "§ 91.17(c) or (d)."

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

48. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 1354, 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

§ 65.12 [Amended]

49. By amending § 65.12(b) by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

50. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

SFAR No. 45-1

SFAR 45-1 [Amended]

51. By amending SFAR 45-1, paragraph 4, in part 71 by changing the cross reference "§ 91.5" to "§ 91.103."

§ 71.17 [Amended]

52. By amending § 71.17(a) by changing the cross reference "§ 91.125" to "§ 91.183."

PART 91—GENERAL OPERATING AND FLIGHT RULES

53. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

SFAR No. 29-4—LIMITED IFR OPERATIONS OF ROTORCRAFT

SFAR 29-4 [Amended]

54. By amending paragraph 4 in SFAR 29-4 in part 91 by changing the cross reference "§ 91.23(a)(3)" to "§ 91.167(a)(3)."

SFAR No. 44-5—AIR TRAFFIC CONTROL SYSTEM INTERIM OPERATIONS PLAN

SFAR 44-5 [Amended]

55. By amending paragraphs 1, 2(a), and 7 in SFAR 44-5 in part 91 by changing the cross reference "§ 91.100" to "§ 91.139."

SFAR No. 50-2—SPECIAL FLIGHT RULES IN THE VICINITY OF THE GRAND CANYON NATIONAL PARK

56. By amending the Note following section 3(a) in SFAR 50-2 in part 91 by changing the cross reference "§ 91.79" to "§ 91.119."

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

57. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2402, and 2424; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 93.111 [Amended]

58. By amending § 93.111 by changing the cross reference "§ 91.107" to "§ 91.157."

§ 93.113 [Amended]

59. By amending § 93.113 by changing the cross reference "§ 91.107" to "§ 91.157."

§ 93.183 [Amended]

60. By amending § 93.183(b)(3) by changing the cross reference "§ 91.24" to "§ 91.215."

§ 93.199 [Amended]

61. By amending § 93.199(c) by changing the cross reference "§ 91.127" to "§ 91.185."

PART 99—SECURITY CONTROL OF AIR TRAFFIC

62. The authority citation for part 99 continues to read as follows:

Authority: 49 U.S.C 1348, 1502, 1510, and 1522; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 99.11 [Amended]

63. By amending § 99.11(b)(1) by changing the cross reference "§ 91.83" to "91.169," and by amending § 99.11(b)(2) by changing the cross reference "§§ 91.83(a) (1) through (7)" to "§§ 91.153(a) (1) through (6)."

§ 99.17 [Amended]

64-65. By amending § 99.17(a) by changing the cross reference "§ 91.125" to "§ 91.183."

§ 99.27 [Amended]

66-67. By amending § 99.27(a) by changing the cross reference "§ 91.75" to "§ 91.123."

§ 99.31 [Amended]

68. By amending § 99.31 by changing the cross reference to "§ 91.127" to "§ 91.185."

PART 103—ULTRALIGHT VEHICLES

69. The authority citation for part 103 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421(a), 1422, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 103.20 [Amended]

70. By amending § 103.20 by changing the cross reference "§ 91.102 or § 91.104" to "§ 91.143 or § 91.161."

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

71. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421-1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

§ 121.1 [Amended]

72. By amending § 121.1(f) by changing the cross reference "§ 91.59" to "§ 91.321."

§ 121.15 [Amended]

73. By amending § 121.15 by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

§ 121.207 [Amended]

74. By amending § 121.207, introductory text, by changing the cross reference "§ 91.41" to "§ 91.317."

§ 121.578 [Amended]

75. By amending § 121.579(b)(1) and (2) by changing the cross reference "§ 91.105" to "§ 91.155."

§ 121.649 [Amended]

76. By amending § 121.649(c) by changing the cross reference "§ 91.105" to "§ 91.155."

§ 121.657 [Amended]

77. By amending § 121.657(a) by changing the cross reference "§ 91.79" to "§ 91.119."

§ 121.667 [Amended]

78. By amending § 121.667(b) by changing the cross reference "§ 91.83" to "§§ 91.153 and 91.169."

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

79. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

§ 125.23 [Amended]

80. By amending § 125.23(b) by changing the cross reference "§ 91.1(c)" to "§ 91.703(b)."

§ 125.39 [Amended]

81. By amending § 125.39 by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

BEST COPY AVAILABLE

§ 125.329 [Amended]

82. By amending § 125.329(c) by changing the cross reference "§ 91.105" to "§ 91.155."

PART 127—CERTIFICATION AND OPERATIONS OF SCHEDULED AIR CARRIERS WITH HELICOPTERS

83. The authority citation for part 127 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 127.1 [Amended]

84. By amending § 127.1(b) by changing the cross reference "§ 91.59" to "§ 91.321."

§ 127.22 [Amended]

85. By amending § 127.22 by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

§ 127.85 [Amended]

86. By amending § 127.85 by changing the cross reference "§ 91.41" in the introductory paragraph to "§ 91.317."

PART 133—ROTORCRAFT EXTERNAL-LOAD OPERATIONS

87. The authority citation for part 133 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 133.14 [Amended]

88. By amending § 133.14 by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

89. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 135.1 [Amended]

90. By amending § 135.1(b)(10) by changing the cross reference "§ 91.59" to "§ 91.321."

§ 135.3 [Amended]

91. By amending § 135.3(b) by changing the cross reference "§ 91.1(c)" to "§ 91.703(b)."

§ 135.41 [Amended]

92. By amending § 135.41 by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

§ 135.71 [Amended]

93. By amending § 135.71 by changing the cross reference "§ 91.169" to "§ 91.409."

§ 135.93 [Amended]

94. By amending § 135.93(c) by changing the cross reference "§ 91.105" to "§ 91.155."

§ 135.211 [Amended]

95. By amending § 135.211(a)(2) by changing the cross reference "§ 91.116(f)" to "§ 91.175(f)."

PART 137—AGRICULTURAL AIRCRAFT OPERATIONS

96. The authority citation for part 137 continues to read as follows:

Authority: 49 U.S.C. 1348(c), 1354(a), 1421, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 137.23 [Amended]

97. By amending § 137.23 by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

§ 137.43 [Amended]

98. By amending § 137.43(c) by changing the cross reference "§ 91.107(e)" to "§ 91.157(e)."

§ 137.53 [Amended]

99. By amending § 137.53(c)(1)(ii) by changing the cross reference "§ 91.217" to "§ 91.409."

PART 141—PILOT SCHOOLS

100. The authority citation for part 141 continues to read as follows:

Authority: 49 U.S.C. 1354, 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 141.18 [Amended]

101. By amending § 141.18 by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

§ 141.41 [Amended]

102. By amending § 141.41(a) (1)(iii) and (2)(iii) by changing the cross reference "§ 91.33" to "§ 91.205."

Issued in Washington, DC, on August 7, 1989.

James B. Busey,

Administrator.

[FR Doc. 89-18775 Filed 8-17-89; 8:45 am]

BILLING CODE 4910-13-M

federal register

Friday
August 18, 1989

Part III

Department of Veterans Affairs

38 CFR Parts 14, 19, and 20

Appeals Regulations; Rules of Practice; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 14, 19, and 20

RIN 2900-AE02

Appeals Regulations; Rules of Practice

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Veterans' Judicial Review Act establishes judicial review of Board of Veterans' Appeals decisions, facilitates greater involvement of private attorneys-at-law in the appeals process at the Department level, and makes other changes affecting appeals. The Board of Veterans' Appeals has completely revised its Appeals Regulations and Rules of Practice to accommodate these changes and to generally update these regulatory provisions. Conforming revisions have also been made to part 14.

DATES: Comments must be submitted on or before September 18, 1989. All written comments will be available for public inspection only in the Veterans Services Unit, room 132, at the address below, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Comments will be available for public inspection until September 27, 1989. It is proposed to make these changes effective the date of their final publication in the Federal Register.

ADDRESSES: Send written comments to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address contained in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Jan Donsbach, Office of the Chairman, Special Legal Assistant (01C), Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202-233-2976).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act: Sections 20.202 and 20.602 of this regulation contain information collection requirements. The public reporting burden for these collections of information are: § 20.202 is one hour per response and § 20.602 is 10 minutes per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

As required by section 3504(h) of the Paperwork Reduction Act, the Department of Veterans Affairs is submitting to the Office of Management and Budget (OMB) a request that it approve these information collection requirements. Organizations and individuals desiring to submit comments for consideration by OMB on these proposed information collection requirements should address them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington DC 20503; Attention: Joseph F. Lackey.

In the comments which follow, the Veterans' Judicial Review Act is cited as Public Law 100-687. In addition to substantive changes, the Appeals Regulations and Rules of Practice have been reorganized for greater usefulness. The Appeals Regulations are now the primary source of regulatory provisions concerning the internal operations of Department of Veterans Affairs field facilities and the Board of Veterans' Appeals with respect to appeals processing while the Rules of Practice are the primary source of information of interest to appellants and their representatives concerning their rights and responsibilities in the appeals process. The Appeals Regulations remain in part 19, while the Rules of Practice have been placed in new part 20. Both the Rules of Practice and the Appeals Regulations have been renumbered, reserving numbers between major subdivisions so that they may be expanded logically in the future when the need arises. The material has been reorganized so that related material appears together. More detailed information has been provided in anticipation of involvement of private attorneys who may not be familiar with the Department of Veterans Affairs adjudication process. Title changes related to the conversion of the Veterans' Administration to the Department of Veterans Affairs have been made throughout. (See Public Law 100-527.) Numerous editorial revisions have been made. Citations to authority have been revised and updated. The cross-references which previously appeared at the end of sections have been consolidated into appendices.

The following changes have been made in part 14:

§ 14.634: Removed.

§ 14.635: Removed.

§ 14.636: Redesignated as § 14.634. Citation to authority and cross-references added.

§ 14.637: Redesignated as § 14.636. Cross-references added.

The following changes have been made in part 19:

§ 19.1: Revised. Based on old Rule of Practice 8 (38 CFR 19.108).

§ 19.2: Revised. Based on old Rule of Practice 9 (38 CFR 19.109).

§ 19.3: Revised. Based on old Rule of Practice 10 (38 CFR 19.110). Changes to paragraph (a) based on section 201(a) of Public Law 100-687. Material added to paragraph (b) provides for designation and redesignation of Chief Members.

§ 19.4: Revised. Based on old Rule of Practice 11 (38 CFR 19.111).

§ 19.5: Revised. Based on old Rule of Practice 3 (38 CFR 19.103).

§ 19.6: Revised. Based on old Rule of Practice 61 (38 CFR 19.161). Material removed from first sentence. The Board Members serving on the hearing panel are not always the Members who make the appellate decision (e.g., Travel Board hearing in a radiation case).

§ 19.7: Added. Based on old Rule of Practice 80 (38 CFR 19.180). Revisions based on sections 203, 205, and 206 of Public Law 100-687.

§ 19.8: Added. Based on old Rule of Practice 16 (38 CFR 19.116). Changes based on section 205 of Public Law 100-687.

§ 19.9: Added. Based on old Rule of Practice 82, paragraph (a) (38 CFR 19.182(a)).

§ 19.10: Added. Based on old Rule of Practice 88 (38 CFR 19.188). Revised to reflect the development by remand in reconsideration cases which is appropriate to reconsideration of a prior Board of Veterans Appeals decision.

§ 19.11: Added. Based on old Rule of Practice 89, paragraph (b) (38 CFR 19.189(b)), and on old Rule of Practice 90 (38 CFR 19.190). Completely rewritten. Changes in provisions for determining the number of Board Members on reconsideration panels have been made to give more flexibility in view of the requirement of a majority opinion. Because a majority opinion, as opposed to an unanimous decision, can now constitute a final decision, a nine Member panel may be necessary in order to break tie votes. Material added to explain that Members who conduct Travel Board reconsideration hearings will be included in the reconsideration panel.

§ 19.12: Added. Based on old Rule of Practice 83 (38 CFR 19.183). Paragraph (c), which permits the Chairman to disqualify a Member of the Board from acting in an appeal under certain circumstances, added.

§ 19.13: Added. Based on old 38 CFR 19.5.

§ 19.14: Added. Describes matters to be addressed in appeals which involve prior final determination by the agency of original jurisdiction.

§ 19.15: Added. Delegates authority to take various actions.

§ 19.25: Added. Based on old Rule of Practice 14 (38 CFR 19.114). Revised to include a requirement of notification of the appellate rights which were added by section 301 of Public Law 100-687.

§ 19.26: Added. Based on old Rule of Practice 19 (38 CFR 19.119).

§ 19.27: Added. Based on old Rule of Practice 34 (38 CFR 19.134).

§ 19.28: Added. Based on old Rule of Practice 36 (38 CFR 19.136). Material added to make it clear that whether a Notice of Disagreement is adequate is an appealable issue, as was implicit in the old rule.

§ 19.29: Added. Based on old Rule of Practice 29 (38 CFR 19.129). Changes to item (b) in the list of information which must be included in the Statement of the Case based on section 205 of Public Law 100-687.

§ 19.30: Added. Based on old Rule of Practice 21 (38 CFR 19.121). Changes based on section 208 of Public Law 100-687. Paragraph (b) previously described in detail information provided to appellants and their representatives concerning the completion of the VA Form 1-9. Inasmuch as the information is furnished with the form, repeating it in the rule is redundant.

§ 19.31: Added. Primarily based on old Rule of Practice 22 (38 CFR 19.122). On occasion, the Board will determine that a Supplemental Statement of the Case is not necessary following a remand. (An example of such a remand might be a request for an X-ray film which the Board desires to send to an independent medical expert as part of a request for an advisory medical opinion pursuant to Rule 903, paragraph (d) (§ 20.903(d)).) The second sentence of this rule has been modified to allow for this contingency. Some of the concepts concerning post-remand Supplemental Statements of the Case previously found in old Rule 82, paragraph (b) (§ 19.182(b)), have also been incorporated into this rule. The rule has been revised to require that a Supplemental Statement of the Case be provided following a hearing on appeal conducted by field personnel if documentary evidence or evidence in the form of testimony concerning relevant facts or expert opinion is presented at the hearing.

§ 19.32: Added. Based on old Rule of Practice 24 (38 CFR 19.124).

§ 19.33: Added. Based on old Rule of Practice 33 (38 CFR 19.133).

§ 19.34: Added. Based on old Rule of Practice 35 (38 CFR 19.135). Material added to make it clear that whether a Notice of Disagreement or Substantive Appeal has been filed on time is an appealable issue, as was implicit in the old rule.

§ 19.35: Added. Based on old Rule of Practice 23, paragraph (b) (38 CFR 19.123(b)).

§ 19.36: Added. Based on old Rule of Practice 74, paragraph (a) (38 CFR 19.174(a)).

§ 19.37: Added. Based on old Rule of Practice 73 (38 CFR 19.173). Additional information added to paragraph (a) concerning when a Supplemental Statement of the Case is required.

§ 19.38: Added. Based on old Rule of Practice 82, paragraphs (b) and (c) (38 CFR 19.182 (b) and (c)). Extensively revised to describe the action taken by the agency of original jurisdiction when a case is remanded by the Board of Veterans Appeals. (Not all of the material in old paragraph (b) is included in this new section. Some of the material previously in paragraph (b) overlapped material found in old Rule of Practice 22 (§ 19.122) and has been incorporated into the revisions to § 19.31, which is based on old Rule of Practice 22.)

§ 19.50: Added. Based on old Rule of Practice 38 (38 CFR 19.138).

§ 19.51: Added. Based on old Rule of Practice 39 (38 CFR 19.139).

§ 19.52: Added. Based on old Rule of Practice 40 (38 CFR 19.140). (Some of the concepts previously found in old Rule of Practice 40 are also found in new Rule of Practice 400 (§ 20.400).)

§ 19.53: Added. Based on old 38 CFR 19.4.

§ 19.75: Added. Establishes requirement that Department of Veterans Affairs facilities generating appeals activity maintain a Travel Board hearing docket. Such dockets are necessary in view of the requirement of new 38 U.S.C. 4910, added by section 207 of Public Law 100-687, that Travel Board hearings be scheduled in the order in which the requests for such hearings are received.

§ 19.76: Added. Establishes procedures for notifying appellants and their representatives of the time and place of Travel Board hearings.

§ 19.77: Added. Provides that a Statement of the Case is to be provided to an appellant and his or her representative not later than the date that notification of the time and place of a Travel Board hearing is provided.

§ 19.192: Added. Based on old Rule of Practice 43 (38 CFR 19.143). The first sentence of this rule has been deleted. Definitions, including the definition of "simultaneously contested claim," are now grouped in Rule of Practice 3 (§ 20.3).

§ 19.193: Revised. Based on old Rule of Practice 46 (38 CFR 19.146).

§ 19.192: Revised. This regulation and Rule of Practice 502 (§ 20.502) are based on old Rule of Practice 47 (38 CFR 19.147). The old rule combined action to be taken by the agency of original jurisdiction, more properly the subject of an Appeal Regulation, with action to be taken by an appellant or representative when notice of the substance of an appeal by another contesting party is received in a simultaneously contested claim. This Appeal Regulation addresses the former while Rule 502 addresses the latter. This regulation provides that a copy of the actual Substantive Appeal will be furnished to the other contesting parties.

§§ 19.193–19.201 Removed.

Appendix A to Part 19: Added. Consolidates cross-references which previously appeared at the end of individual sections.

The following sections have been added to new Part 20:

§ 20.1: Rule 1. Based on old Rule of Practice 1 (38 CFR 19.101). Old paragraph (a) removed. The authorities for the provisions of this rule are cited at the end of each paragraph of the rule in compliance with 38 U.S.C. 210(c)(1). (Where the same authorities apply to all paragraphs, the authorities are found at the end of the rule.) Subsequent paragraphs appropriately redesignated. The second sentence of old paragraph (b) has been removed. The removed material is the basis for new Rule 2 (§ 20.2).

§ 20.2: Rule 2. Based on material previously found in old Rule of Practice 1, paragraph (b) (38 CFR 19.101(b)).

§ 20.3: Rule 3. Gives definitions of various terms used throughout the Rules of Practice.

§ 20.100: Rule 100. Based on old Rule of Practice 7 (38 CFR 19.107). Some items which are mailed to the Board (e.g., certain motions) are addressed to an office other than that of the Chairman. Paragraph (c) has been revised to allow for these exceptions.

§ 20.101: Rule 101. The material which was previously in old Rule of Practice 12 (38 CFR 19.112), which concerned the Board's jurisdiction, has been removed. Former paragraph (a) repeated information which was already contained in § 19.1. Former paragraph (b) was more in the nature of a cross reference than a substantive rule. This revised rule, concerning the same subject, is based on material previously found in 38 CFR 19.1 through 19.3. The first portion of paragraph (a) is based on paragraph (a) of old § 19.1. Revisions to the first sentence of paragraph (a) are

based on section 101 of Public Law 100–687. The reference to Administrator's Instructions has been removed from paragraph (a) due to regulatory changes. Examples of jurisdiction previously found in 38 CFR 19.2 have been updated and incorporated into paragraph (a). Paragraph (b) is based on material previously found in 38 CFR 19.3. Paragraph (c) is based on material previously found in paragraph (b) of 38 CFR § 19.1.

§ 20.102: Rule 102. Delegates authority to rule on various motions, etc.

§ 20.200: Rule 200. Based on old Rule of Practice 17 (38 CFR 19.117).

§ 20.201: Rule 201. Based on old Rule of Practice 18 (38 CFR 19.118). The definition of "agency of original jurisdiction" previously included in the first sentence has been removed. Definitions are now in new Rule 3 (§ 20.3). Agencies of original jurisdiction often make determinations on several issues at the same time. Frequently, the claimant will agree with adjudicative action taken on some issues and disagree with action taken with respect to others. Material has been added to point out that when notice is received concerning the disposition of several issues, the claimant or representative should identify which determinations he or she disagrees with in the Notice of Disagreement.

§ 20.202: Rule 202. Based on old Rules of Practice 23, paragraph (a), and 26 (38 CFR 19.123(a) and 19.126). Revisions have been made to note that a Substantive Appeal should make it clear which issues are being appealed when the Statement of the Case and any prior Supplemental Statements of the Case have addressed multiple issues. Amended to note that the Board may dismiss an appeal which fails to allege specific error of fact or law, as provided by 38 U.S.C. 4005(d)(5) and as previously noted in old Rule 26 (§ 19.126), and to incorporate the change to 38 U.S.C. 4005(d)(4) made by Section 208(b) of Public Law 100–687.

§ 20.203: Rule 203. Based on old Rule of Practice 37 (38 CFR 19.137).

§ 20.204: Rule 204. Based on old Rule of Practice 25 (38 CFR 19.125). The vague exception previously found in paragraph (b) has been removed. An appellant has an absolute right to withdraw his or her appeal prior to the promulgation of an appellate decision. Paragraph (c) has been amended to show that a representative may withdraw a Notice of Disagreement or Substantive Appeal personally filed by the appellant if the representative has the written permission of the appellant to do so.

§ 20.300: Rule 300. Based on old Rule of Practice 27 (38 CFR 19.127). On occasion, because a claimant has moved to another area or for some other reason, applicable files will be transferred from one Department of Veterans Affairs office to another after an action is taken which a claimant wishes to appeal, but before a Notice of Disagreement and/or Substantive Appeal is filed. This rule has been amended to allow for this contingency.

§ 20.301: Rule 301. Based on old Rule of Practice 28 (38 CFR 19.128).

§ 20.302: Rule 302. Based on old Rule of Practice 29 (38 CFR 19.129). Amended to make it clear that this rule does not apply to cases involving simultaneously contested claims. (Time limits for filing in simultaneously contested claims are set out in Rule 501 (§ 20.501).) Paragraph (c) previously pointed out that there must be a response to a Supplemental Statement of the Case which includes new issues which were not included in the Statement of the Case, but it did not indicate the nature of the required response. When new issues are included in a Supplemental Statement of the Case it becomes, in effect, the Statement of the Case with respect to the new issues and the response required is therefore a Substantive Appeal. New material has been added to make this clear. Particularly in view of this situation, the time for responding to a Supplemental Statement of the Case has been lengthened to 60 days. Material has also been added to paragraph (c) to make it clear that the 60-day period allowed for response to a Supplemental Statement of the Case begins with the mailing of the Supplemental Statement of the Case.

§ 20.303: Rule 303. Based on old Rule of Practice 30, paragraph (a) (38 CFR 19.130(a)). Material has been added to allow for filing requests for an extension of time with the office which has assumed jurisdiction over the applicable Department of Veterans Affairs records in cases where the records have been transferred after the action being appealed was taken.

§ 20.304: Rule 304. Based on old Rule of Practice 30, paragraph (b) (38 CFR 19.130(b)).

§ 20.305: Rule 305. Based on old Rule of Practice 31 (38 CFR 19.131). Revised to show that this rule applies to the computation of the time limit for filing any written document, not just to the time limit for filing a Notice of Disagreement or Substantive Appeal. A presumption has been added that the postmark date is five days prior to the receipt of the document in those cases where the postmark is not of record due to the loss of the mailing envelope, etc.

§ 20.306: Rule 306. Based on old Rule of Practice 32 (38 CFR 19.132).

§ 20.400: Rule 400. Based on old Rules of Practice 40 and 41 (38 CFR 19.140 and 19.141). (Some of the concepts previously found in old Rule of Practice 40 are also found in new 38 CFR 19.52.) The last sentence of this rule has been revised. While a representative may act upon behalf of a claimant with his or her authorization, only the claimant may authorize a merged appeal.

§ 20.401: Rule 401. Based on old Rule of Practice 42 (38 CFR 19.142).

§ 20.500: Rule 500. Based on old Rule of Practice 44 (38 CFR 19.144).

§ 20.501: Rule 501. Based on old Rule of Practice 45 (38 CFR 19.145). The definition has been removed from the first sentence of paragraph (a). Definitions, including the definition of "simultaneously contested claim," are now grouped in Rule 3 (§ 20.3). New paragraph (c) added to provide information concerning action to be taken by claimants/appellants and their representatives when a Supplemental Statement of the Case is received in a simultaneously contested claim.

§ 20.502: Rule 502. This rule and new 38 CFR 19.102 are based on old Rule of Practice 47 (38 CFR 19.147). The old rule combined action to be taken by the agency of original jurisdiction, more properly the subject of an Appeal Regulation, with action to be taken by an appellant or representative when notice of the substance of an appeal by another contesting party is received in a simultaneously contested claim. The rewritten rule focuses on the latter. A new Appeal Regulation (§ 19.102) addresses the former. The revised rule provides that a copy of the actual Substantive Appeal will be furnished to all other contesting parties. It also clarifies when the 30-day period allowed for a response commences.

§ 20.503: Rule 503. Based on old Rule of Practice 48 (38 CFR 19.148).

§ 20.504: Rule 504. Based on old Rule of Practice 49 (38 CFR 19.149).

§ 20.600: Rule 600. Based on old Rule of Practice 50 (38 CFR 19.150). Rule revised to make it clear that there is a full right to representation in appellate proceedings before the Board of Veterans Appeals, as well as before the agency of original jurisdiction.

§ 20.601: Rule 601. Based on old Rule of Practice 55, paragraph (a) (38 CFR 19.155(a)).

§ 20.602: Rule 602. Based on old Rule of Practice 51, paragraph (a) (38 CFR 19.151(a)). Material added to note that a designation of a representative is not effective until it is received by the Department of Veterans Affairs and to note the existing practice of continuing to recognize a representative designated prior to initiation of an appeal, provided that the designation has not been revoked.

§ 20.603: Rule 603. Based on old Rule of Practice 52, paragraphs (a) and (b) (38 CFR 19.152 (a) and (b)). Material added to paragraph (a) to point out that an attorney-at-law may be designated through the use of a VA Form 2–22a, as well as through the alternative procedure outlined in the rule; that all designations of attorneys-at-law must be to individuals rather than partnerships or firms; that an attorney's authority to act as a representative may be limited as noted in 38 CFR 14.631(d); that a designation of a representative is not effective until it is received by the Department of Veterans Affairs; and to note the existing practice of continuing to recognize a representative designated prior to initiation of an appeal if the designation has not been revoked. Reference to appellant's guardian removed from the third sentence as unnecessary. (If an individual has a legal guardian, the guardian is the appellant.) The material previously contained in the last sentence of paragraph (a) has been moved to Rule 606 (§ 20.606). Cross-reference material removed from body of paragraph (b). Last sentence of paragraph (b) removed as inappropriate for inclusion in the text of this rule. This material is covered in Rule 606. The new material in paragraph (c) permits an attorney who is associated or affiliated with the attorney of record to assist in appellate representation as provided in 38 CFR 14.629(c).

§ 20.604: Rule 604. Based on old Rule of Practice 53, paragraphs (a) and (b) (38 CFR 19.153 (a) and (b)). Material added to paragraph (a) to note that a designation of a representative is not effective until it is received by the Department of Veterans Affairs and to note the existing practice of continuing to recognize a representative designated prior to initiation of an appeal, provided that the designation has not been revoked. Old paragraph (b), which has been revised to conform to 38 CFR 14.630, is now paragraph (d).

§ 20.605: Rule 605. Based primarily on old Rule of Practice 58 (38 CFR 19.158). Completely rewritten to give additional information on the use of the services of legal interns, law students, and paralegals in accordance with existing practices. First sentence of paragraph (b) based on material previously found in old Rule 52, paragraph (a) (38 CFR 19.152(a)). Last sentence of paragraph (b) added to make the rule consistent with the provisions of 38 CFR 14.629(c)(4). New paragraph (e) added concerning the withdrawal of permission for legal interns, law students and paralegals to assist in the presentation of appeals.

§ 20.607: Rule 607. Based on old Rule of Practice 51, paragraph (b) (38 CFR 19.151(b)); old Rule of Practice 52, paragraph (c) (38 CFR 19.152(c)); old Rule of Practice 58, paragraph (c) (38 CFR 19.153(c)); and old Rule of Practice 54, paragraph (c) (38 CFR 19.154(c)). Material added to provide additional information on how a designation of representation is revoked and to make it clear that designating a new representative will automatically revoke any prior designation of representation, except for cases in which the designation of a new representative is limited to a specific claim. (With respect to the latter, see 38 CFR 14.631(d).)

§ 20.608: Rule 608. Explains how, and under what circumstances, a representative may withdraw from an appeal.

§ 20.609: Rule 609. Implements Section 104 of Public Law. 100–687. Replaces portions of 38 CFR 14.634 which dealt with representative's fees.

§ 20.610: Rule 610. Part of the implementation of Section 104 of Public Law 100–687. Replaces portions of 38 CFR 14.634 which dealt with representative's expenses and all of 38 CFR 14.635.

§ 20.611: Rule 611. Based on old Rule of Practice 55, paragraphs (b) through (d) (38 CFR 19.155 (b)–(d)). Scope of rule extended to any claimant or appellant, not just vetesans. Distinction between surviving spouse and other survivors eliminated as unnecessary and inconsistent with 38 CFR 14.631(e). The old "reasonable time" standard has been replaced by a definite period during which a veteran's representative may continue to represent his or her survivors following his or her death without action on the part of the survivors.

§ 20.700: Rule 700. Based on old Rule of Practice 57 (38 CFR 19.157). Changes have been made throughout to explain that the primary purpose of a personal hearing is to receive testimony from an appellant and witnesses and that, in the absence of such testimony, arguments by representatives should normally be submitted to the Board in the form of a written brief or by submitting an audio cassette for transcription as an informal hearing presentation. Provision is made for allowing a representative to appear in person without the claimant or witnesses in unusual circumstances when good cause is shown. The closing sentence of paragraph (e) has been added. It describes the authority of the presiding Member to curtail the presentation of evidence, testimony, and/or argument which is not relevant or material or which is unduly repetitious.

§ 20.701: Rule 701. Based on old Rule of Practice 58 (38 CFR 19.159). Rule revised to focus on who may present argument. (Testimony is covered elsewhere in a rule pertaining to witnesses. See Rule 710 (§ 20.710).) It is more appropriate to classify Members of Congress and their staffs as witnesses when they appear and present testimony in support of the appeal without being formally designated as representatives by power of attorney.

§ 20.702: Rule 702. Based on old Rule of Practice 59 (38 CFR 19.156). Extensive material added to explain how, and when, changes in hearing dates may be obtained; what action is taken when an appellant fails to appear for a scheduled hearing; and that an appellant may withdraw a hearing request.

§ 20.703: Rule 703. Explains when the right to a hearing before a traveling Section of the Board of Veterans Appeals arises.

§ 20.704: Rule 704. Provides detailed information concerning the scheduling of hearings conducted by traveling Sections of the Board of Veterans Appeals.

§ 20.705: Rule 705. Based on old Rule of Practice 60 (38 CFR 19.160). Language added to clarify that hearings are only conducted at Department of Veterans Affairs facilities which have appropriate support available. (Material in the closing paragraph of old Rule of Practice 60 has been moved to new Rule 707 (§ 20.707).)

§ 20.706: Rule 706. Based on old Rule of Practice 62 (38 CFR 19.162).

§ 20.707: Rule 707. Based on the last paragraph of old Rule 60 (38 CFR 19.160). Revised to provide more detailed information.

§ 20.706: Rule 706. Based on old Rule of Practice 63 (38 CFR 19.163). Revised for clarity and to add information on how prehearing conferences are requested.

§ 20.709: Rule 709. Based on old Rule of Practice 64 (38 CFR 19.164).

§ 20.710: Rule 710. Based on old Rule of Practice 65 (38 CFR 19.165). Material added to paragraph (a) to note that testimony by witnesses extends to presentations by Members of Congress and their staffs. Material concerning attendance of witnesses removed from paragraph (a), inasmuch as a new rule concerning subpoenas has been added.

§ 20.711: Rule 711. Provides information on how and when subpoenas are issued and related matters.

§ 20.712: Rule 712. Based on old Rule of Practice 66 (38 CFR 19.166).

§ 20.713: Rule 713. Based on old Rule of Practice 67 (38 CFR 19.167). Completely rewritten. Allows a single hearing, at which all contesting parties may be present and may present argument and testimony, in simultaneously contested claims. (Previously, separate hearings were conducted for each party.) Provides information on requests for changes in hearing dates in such cases.

§ 20.714: Rule 714. Based on old Rule of Practice 68 (38 CFR 19.168). Paragraphs (a) and (b) amended to show that the applicable case record may be something other than the claims folder. Paragraph (a) amended to provide that requests for hearing transcripts may be made orally at the time of the hearing, as well as in writing at a later time, and that transcripts of Travel Board hearings will be prepared automatically in various types of cases. Paragraph (b) amended to make it clear that the transcript of field hearings prepared by the agency of original jurisdiction is the official record of that hearing.

§ 20.715: Rule 715. Based on old Rule of Practice 69 (38 CFR 19.169). Additional information given on how to make arrangements for private recording of hearings.

§ 20.716: Rule 716. Based on old Rules of Practice 70 and 71 (38 CFR 19.170 and 19.171). Completely rewritten. Specifies that alternate hearing transcripts will not be accepted and explains how corrections in hearing transcripts are obtained.

§ 20.717: Rule 717. Explains actions to be taken when a hearing transcript or tape is lost or damaged.

§ 20.800: Rule 800. Based on old Rule of Practice 72 (38 CFR 19.172). Amended to include a reference to the limitations imposed on the submission of additional evidence after a case has been certified to the Board of Veterans Appeals.

§ 20.900: Rule 900. Paragraph (a) is based on old Rule of Practice 5 (§ 19.105). Paragraph (b) is based on old Rule of Practice 75 (38 CFR 19.175). Paragraph (c) is based on old Rule of Practice 6 (§ 19.106). Additional information has been provided on motions for advancement on the docket.

§ 20.901: Rule 901. Paragraphs (a) through (c) are based on old Rule of Practice 76 (38 CFR 19.176). New paragraph (d) is based on old Rule of Practice 77 (38 CFR 19.177). New paragraph (e) clarifies who may request an opinion.

§ 20.902: Rule 902. Based on old Rule of Practice 78 (38 CFR. 19.178).

§ 20.903: Rule 903. Based on old Rule of Practice 79 (38 CFR 19.179). Amended to conform to 38 U.S.C. 4009(c), added by Section 103 of Public Law 100–687. Material added to clarify when the 60-day period allowed for a response to an opinion commences.

§ 20.904: Rule 904. Based on old Rule of Practice 84 (38 CFR 19.184).

§ 20.905: Rule 905. Based on old Rule of Practice 101 (38 CFR 19.201).

§ 20.1000: Rule 1000. Based on old Rule of Practice 85 (38 CFR 19.185). New paragraph (d) based on Section 202 of Public Law 100–687.

§ 20.1001: Rule 1001. Based on old Rule of Practice 86 (38 CFR 19.186). More detailed information provided on how to file a motion for reconsideration.

§ 20.1002: Rule 1002. Based on old Rule of Practice 87 (38 CFR 19.187). Old paragraph (a) has been broken up into paragraphs (a) and (b). More detailed information concerning the evidence considered on reconsideration of a prior Board of Veterans Appeals decision based upon an allegation of obvious error has been added to paragraph (a). Old paragraph (b) is the basis for new paragraph (c).

§ 20.1003: Rule 1003. Based on old Rule of Practice 89, paragraph (a) (38 CFR 19.189(a)). Reference to personal appearance by representative alone removed, inasmuch as the purpose of a personal hearing is to receive testimony. (Old Rule of Practice 89, paragraph (b) (38 CFR 19.189(b)) is part of the basis for new § 19.11.)

§ 20.1100: Rule 1100. Based on old Rule of Practice 4 (38 CFR 19.104). Revised to conform to 38 U.S.C. 211(a), as amended by Section 101 of Public Law 100–687. Old paragraph (b) has been removed. The material in that paragraph was in the nature of a cross-reference and it has been incorporated into a new cross-reference.

§ 20.1101: Rule 1101. Based on old Rule of Practice 81 (38 CFR 19.181). Revisions based on sections 202, 203, and 205 of Public Law 100–687. Material added to make it clear when the Board's decisions are final.

§ 20.1102: Rule 1102. Based on old Rule of Practice 91 (38 CFR 19.191).

§ 20.1103: Rule 1103. Based on old Rule of Practice 92 (38 CFR 19.192).

§ 20.1104: Rule 1104. Based on old Rule of Practice 93 (38 CFR 19.193).

§ 20.1105: Rule 1105. Based on old Rule of Practice 94 (38 CFR 19.194).

§ 20.1106: Rule 1106. Based on old Rule of Practice 96 (38 CFR 19.196). The old rule was inconsistent with 38 CFR 3.22(a)(2) which, in effect, requires that it be shown that there was clear and unmistakable error in prior rating decisions which failed to give a veteran a total rating for the required period of time in order to qualify for "410(b)" benefits. (Former 38 U.S.C. 410(b) is now 38 U.S.C. 418, see Section 1403 of Public Law 100–687.) 38 U.S.C. 3504(c) forbids the payment of benefits to any person after September 1, 1959, based on the service of an individual before the date of a treasonous act if that individual's Department of Veterans Affairs benefits have been forfeited for treason. There is a similar prohibition in 38 U.S.C. 3505(a) pertaining to cases involving forfeiture for subversive activities. These provisions are now recognized.

§ 20.1200: Rule 1200. Based on old Rule of Practice 98 (38 CFR 19.196).

§ 20.1201: Rule 1201. Based on old Rule of Practice 99 (38 CFR 19.199).

§ 20.1300: Rule 1300. Based on old Rule of Practice 13 (38 CFR 19.113).

§ 20.1301: Rule 1301. Paragraph (a) based on old 38 CFR 19.8. Supplemental Statements of the Case added to the list of items normally disclosed to appellants. Paragraph (b) based on old Rule of Practice 100 (38 CFR 19.200).

§ 20.1302: Rule 1302. Based on old Rule of Practice 95 (38 CFR 19.195).

§ 20.1303: Rule 1303. Based on old Rule of Practice 97 (38 CFR 19.197).

§ 20.1304: Rule 1304. Based on old Rule of Practice 74, paragraphs (b) through (e) (38 CFR 19.174(b)–(e)).

§ 20.1305: Rule 1305. Based on old Rule of Practice 2 (38 CFR 19.102). Updated.

Appendix A to Part 20: Consolidates cross-references which previously appeared at the end of individual sections.

VA has determined that these proposed regulations do not contain a major rule as that term is defined by Executive Order 12291, Federal Regulation. The proposed regulations will not have a $100 million annual effect on the economy and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary hereby certifies that these proposed regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that the proposed regulations would have only a limited, beneficial effect on claimants/appellants and their representatives. Pursuant to 5 U.S.C. 605(b), these proposed regulations are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There are no Catalog of Federal Domestic Assistance numbers associated with these proposed regulatory amendments.

List of Subjects

38 CFR Part 14

Claims, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

38 CFR Part 20

Administrative practice and procedure, Claims, Lawyers, Legal services, Veterans.

Approved: July 17, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 14, Legal Services, General Counsel, and Part 19, Board of Veterans Appeals, are proposed to be amended, and 38 CFR Part 20, Board of Veterans Appeals: Rules of Practice, is proposed to be added, as follows:

PART 14—[AMENDED]

§§ 14.634 and 14.635 [Removed]

§§ 14.636 and 14.637 [Redesignated as §§ 14.634 and 14.635]

1. In 38 CFR Part 14, Legal Services, General Counsel, remove §§ 14.634 and 14.635 and redesignate §§ 14.636 and 14.637 as new §§ 14.634 and 14.635 respectively.

2. In newly designated § 14.634, remove the last sentence and add an authority citation and cross-references to read as follows:

§ 14.634 Banks or trust companies acting as guardians.

* * * * *

(Authority: 38 U.S.C. 3403, 3404)

Cross-References: Payment of Representative's Fees in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans Appeals. See § 20.609 of this chapter. Payment of Representative's Expenses in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans Appeals. See § 20.610 of this chapter.

§ 14.635 [Amended]

3. In newly designated § 14.635, remove the word "Administrator" where it appears and add, in its place, the word "Secretary".

4. In § 14.635, cross-references are added to read as follows:

§ 14.635 Space and office facilities.

* * * * *

Cross-References: Payment of Representative's Fees in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans' Appeals. See § 20.609 of this chapter. Payment of Representative's Expenses in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans' Appeals. See § 20.610 of this chapter.

5. 38 CFR part 19, Board of Veterans' Appeals, is revised to read as follows:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

Subpart A—Operation of the Board of Veterans' Appeals

Sec.

19.1 Establishment of the Board.
19.2 Composition of the Board.
19.3 Appointment, assignment, and rotation of Members.
19.4 Principal functions of the Board.
19.5 Criteria governing disposition of appeals.
19.6 Composition of Board of Veterans' Appeals hearing panels.
19.7 The decision.
19.8 Decision notification.
19.9 Remand for further development.
19.10 Remands in reconsideration cases.
19.11 Reconsideration panel.
19.12 Disqualification of Members.
19.13 Delegation of authority to Chairman and Vice Chairman, Board of Veterans' Appeals.
19.14 Decisions involving final determinations by the agency of original jurisdiction.
19.15 Delegation of authority—Appeals Regulations.
§§ 19.16–19.24 [Reserved]

Subpart B—Appeals Processing by Agency of Original Jurisdiction

19.25 Notification by agency of original jurisdiction of right to appeal.
19.26 Action by agency of original jurisdiction on Notice of Disagreement.
19.27 Adequacy of Notice of Disagreement questioned within the agency of original jurisdiction.
19.28 Determination that a Notice of Disagreement is inadequate protested by claimant or representative.
19.29 Statement of the Case.
19.30 Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.
19.31 Supplemental Statement of the Case.
19.32 Closing of appeal for failure to respond to Statement of the Case.
19.33 Timely filing of Notice of Disagreement or Substantive Appeal questioned within the agency of original jurisdiction.
19.34 Determination that Notice of Disagreement or Substantive Appeal was not timely filed protested by claimant or representative.
19.35 Certification of appeals.
19.36 Notification of certification of appeal and transfer of appellate record.
19.37 Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.
19.38 Action by agency of original jurisdiction when remand received.
§§ 19.39–19.49 [Reserved]

Subpart C—Administrative Appeals

19.50 Nature and form of administrative appeal.
19.51 Officials authorized to file administrative appeals and time limits for filing.
19.52 Notification to claimant of filing of administrative appeal.
19.53 Restriction as to change in payments pending determination of administrative appeals.
§§ 19.54–19.74 [Reserved]

Subpart D—Hearings Before Traveling Sections of the Board of Veterans' Appeals

19.75 Travel Board hearing docket.
19.76 Notice of time and place of Travel Board hearing.
19.77 Providing Statement of the Case when Travel Board hearing has been requested.
§§ 19.78–19.99 [Reserved]

Subpart E—Simultaneously Contested Claims

19.100 Notification of right to appeal in simultaneously contested claims.
19.101 Notice to contesting parties on receipt of Notice of Disagreement in simultaneously contested claims.
19.102 Notice of appeal to other contesting parties in simultaneously contested claims.

Appendix A—Cross-References

Authority: 38 U.S.C. 210(c)(1), unless otherwise noted.

Subpart A—Operation of the Board of Veterans Appeals

§ 19.1 Establishment of the Board.

The Board of Veterans Appeals is established by authority of, and functions pursuant to, title 38, United States Code, chapter 71.

§ 19.2 Composition of the Board.

The Board consists of a Chairman, Vice Chairman, Deputy Vice Chairmen, Members, and professional, administrative, clerical and stenographic personnel.

(Authority: 38 U.S.C. 210, 212, 4001(a))

§ 19.3 Appointment, assignment, and rotation of Members.

(a) *Appointment.* The Chairman is appointed by the President of the United States, by and with the advice and consent of the United States Senate. Members of the Board, including the Vice Chairman, are appointed by the Secretary upon the recommendation of the Chairman with the approval of the President of the United States. Deputy Vice Chairmen are appointed by the Secretary upon the recommendation of the Chairman.

(Authority: 38 U.S.C. 210, 212, 4001(b))

(b) *Assignment.* The Chairman may divide the Board into Sections of three Members, assign Members of the Board to each such Section, and designate the Chief Member of each such Section. From time to time, a Member may be designated as a Chief Member or a Chief Member may be redesignated as a Member.

(Authority: 38 U.S.C. 4002)

(c) *Rotation.* The Chairman may from time to time rotate the Members of the Sections.

(Authority: 38 U.S.C. 4002)

(d) *Inability to serve.* If, as a result of a vacancy, absence, or other good cause, a Member of a Section of the Board is unable to participate effectively in the disposition of an appeal before the Section, the Chairman may assign or substitute another Member or direct the Section to proceed without any additional assignment or substitution of Members.

(Authority: 38 U.S.C. 4002)

§ 19.4 Principal functions of the Board.

The principal functions of the Board are to make determinations of appellate jurisdiction, consider all applications on appeal properly before it, conduct hearings on appeal, evaluate the evidence of record, and enter decisions in writing on the questions presented on appeal.

(Authority: 38 U.S.C. 4002, 4004)

§ 19.5 Criteria governing disposition of appeals.

In the consideration of appeals, the Board is bound by applicable statutes, regulations of the Department of Veterans Affairs and precedent opinions of the General Counsel of the Department of Veterans Affairs. The Board is not bound by Department manuals, circulars, or similar administrative issues.

(Authority: 38 U.S.C. 4004(c))

§ 19.6 Composition of Board of Veterans Appeals hearing panels.

A Board of Veterans Appeals hearing panel consists of a presiding Member, and, except as provided in §§ 19.3(d) and 19.11 or this part, two other Board Members. When, after a hearing, a Board Member assigned to a panel is unable to participate in the final decision, the Chairman may assign a substitute.

(Authority: 38 U.S.C. 4002, 4004(a))

§ 19.7 The decision.

(a) *Decisions based on entire record.* The appellant will not be presumed to be in agreement with any statement of fact contained in a Statement of the Case to which no exception is taken. Decisions of the Board are based on a review of the entire record.

(Authority: 38 U.S.C. 4004(a), 4005(d)(4))

(b) *Disposition of issues.* The Board will dispose of each issue on appeal:

(1) By an order granting, denying, or dismissing the appeal in whole or in part with respect to that issue;

(2) By remanding the issue to the agency of original jurisdiction for further development; or

(3) By vacating a prior decision of the Board with respect to that issue.

(Authority: 38 U.S.C. 4004)

(c) *Content.* The decision of the Board will be in writing and will set forth specifically the issue or issues under appellate consideration. Except with respect to issues remanded to the agency of original jurisdiction for further development of the case and appeals which are dismissed because the issue has been resolved by administrative action or because an appellant seeking nonmonetary benefits has died while the appeal was pending, the decision will also include separately stated findings of fact and conclusions of law on all material issues of fact and law presented on the record, the reasons or bases for those findings and conclusions, and an order granting or denying the benefit or benefits sought on appeal or dismissing the appeal.

(Authority: 38 U.S.C. 4004(d))

§ 19.8 Decision notification.

After a decision has been rendered by the Board, all parties to the appeal and the representatives, if any, will be notified of the results by the mailing of a copy of the written decision to the parties and their representatives at their last known addresses.

(Authority: 38 U.S.C. 4004(e))

§ 19.9 Remand for further development.

When, during the course of review, it is determined that further evidence or clarification of the evidence or correction of a procedural defect is essential for a proper appellate decision, a Section of the Board shall remand the case to the agency of original jurisdiction, specifying the action to be undertaken.

(Authority: 38 U.S.C. 4002, 4004(a))

§ 19.10 Remands in reconsideration cases.

In connection with reconsideration of a prior Board of Veterans Appeals decision, the Board may remand for the purpose of obtaining additional service department records, evidence deemed necessary as a prerequisite for a request for an outside opinion to be obtained pursuant to Rule of Practice 901 (§ 20.901 of this chapter), evidence to be considered in determining whether the Board decision being considered involved the allowance of benefits which was materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant, or evidence which was before the Board at the time that the decision being reconsidered was entered which is no longer a part of the appellate record. The Board may also remand the case in order to afford the appellant a hearing on reconsideration, if a request has been received that such a hearing be conducted at a location other than Washington, DC.

(Authority: 38 U.S.C. 4003, 4004(b))

§ 19.11 Reconsideration panel.

(a) *Assignment of Members.* When a motion for reconsideration is allowed, the Chairman will assign a panel to conduct the reconsideration.

(Authority: 38 U.S.C. 4002, 4003)

(b) *Number of members constituting a panel.* When none of the Board Members who participated in the decision being reconsidered is available, the Chairman may assign a panel consisting of three Board Members to conduct the reconsideration. Otherwise, the number of Board Members assigned to the reviewing panel will be determined by increasing the number of Members who participated in the original decision by not less than three additional Members, in increments of three Members. Except when necessary to obtain a majority opinion, a reconsideration panel will not exceed nine members.

(Authority: 38 U.S.C. 4002, 4003)

(c) *Members included in the reconsideration panel.* The reconsideration panel will include those Members who participated in the original decision who are available, additional Members assigned by the Chairman to substitute for Members who participated in the decision being reconsidered who are no longer available, and additional Members assigned in accordance with paragraph (b) of this section. In the case of Travel Board hearings involving reconsideration of a prior Board decision, the Members of the traveling Section of the Board will be included in the expanded Section established pursuant to paragraph (b) of this section, or will constitute the three-Member reconsideration panel established in accordance with paragraph (b) of this section. If the prior Board decision being reconsidered involves questions concerning radiation, Agent Orange, or asbestos exposure, the traveling Section will be included in an expanded Section which also includes Board Members specializing in those issues.

(Authority: 38 U.S.C. 4002, 4003, 4010)

§ 19.12 Disqualification of Members.

(a) *General.* A Member of the Board will disqualify himself or herself in a hearing or decision on an appeal if that appeal involves a determination in which he or she participated or had supervisory responsibility in the agency of original jurisdiction prior to his or her appointment as a Member of the Board, or where there are other circumstances which might give the impression of bias either for or against the appellant.

(Authority: 38 U.S.C. 4002)

(b) *Appeal on same issue subsequent to decision on administrative appeal.* Members of the Board who made the decision on an administrative appeal will disqualify themselves from acting on a subsequent appeal by the claimant on the same issue.

(Authority: 38 U.S.C. 4002, 4006)

(c) *Disqualification of Members by the Chairman.* The Chairman of the Board, on his or her own motion, may disqualify a Member from acting in an appeal on the grounds set forth in paragraphs (a) and (b) of this section and in those cases where a Member is unable or unwilling to act.

(Authority: 38 U.S.C. 4002, 4006)

§ 19.13 Delegation of authority to Chairman and Vice Chairman, Board of Veterans' Appeals.

The Chairman and/or Vice Chairman have authority delegated by the Secretary of Veterans Affairs to:

(a) Approve the assumption of appellate jurisdiction of an adjudicative determination which has not become final in order to grant a benefit.

(b) Approve an administrative allowance on an adjudicative determination which has become final by appellate decision or failure to timely appeal.

(c) Order VA Central Office investigations of matters before the Board.

(Authority: 38 U.S.C. 210(b), 212(a))

§ 19.14 Decisions involving final determinations by the agency of original jurisdiction.

(a) *Scope of regulation.* This section applies to appeals in cases in which one or more prior determinations by the agency of original jurisdiction with respect to an issue, or issues, currently being appealed have become final because those prior determinations were not appealed within the time allowed by law. It is not applicable to those cases in which any such prior unappealed determination has been superseded by a subsequent Board of Veterans' Appeals or court decision on the same issue, or issues.

(b) *Decisions involving prior final agency of original jurisdiction determinations.* Prior relevant determinations by the agency of original jurisdiction which have become final because they were not appealed in the time allowed by law will be identified in Board of Veterans' Appeals decisions. Such identification will include the date of each such determination, the date that the claimant was notified of the determination, and an indication that the relevant determination was not appealed. If error in a prior unappealed determination is alleged by either an appellant or his or her representative, the decision will include a sufficient description of the evidence which was of record prior to each such determination to support an informed discussion of whether each such determination was or was not clearly and unmistakably erroneous and, if such error is not found, a sufficient description of the evidence which has been added to the record since the last such prior final determination to support an informed discussion of whether such evidence furnishes a new factual basis for the grant of the benefit, or benefits, involved. If error is not alleged, the evidence which was of record prior to the unappealed determinations and the evidence which has been added to the record since the last such prior final determination will be identified in such a manner as to show whether it was received before or after the last such prior final determination and will be described in sufficient detail to support an informed discussion of whether such evidence furnishes a new factual basis for the grant of the benefit, or benefits, involved. The decision will also include references to relevant laws and regulations, findings of fact, and conclusions of law pertaining to the finality of prior unappealed determinations by the agency of original jurisdiction. If the benefit sought on appeal cannot be otherwise granted, consideration shall be given to a recommendation for an administrative allowance.

(Authority: 38 U.S.C. 4005)

§ 19.15 Delegation of authority—appeals regulations.

(a) The authority exercised by the Chairman of the Board of Veterans' Appeals described in §§ 19.3(b), 19.3(c), and 19.12(c) of this part may also be exercised by the Vice Chairman of the Board.

(b) The authority exercised by the Chairman of the Board of Veterans' Appeals described in §§ 19.3(d), 19.6, 19.11(a), and 19.11(b) of this part may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board.

(Authority: 38 U.S.C. 212(a), 4002, 4004)

§§ 19.16–19.24 [Reserved]

Subpart B—Appeals Processing by Agency of Original Jurisdiction

§ 19.25 Notification by agency of original jurisdiction of right to appeal.

The claimant and his or her representative, if any, will be informed of appellate rights provided by 38 U.S.C. chapters 71 and 72, including the right to a personal hearing and the right to representation. The agency of original jurisdiction will provide this information in each notification of a determination of entitlement or nonentitlement to Department of Veterans Affairs benefits.

(Authority: 38 U.S.C. 4005(a))

§ 19.26 Action by agency of original jurisdiction on Notice of Disagreement.

When a Notice of Disagreement is timely filed, the agency of original jurisdiction must reexamine the claim and determine if additional review or development is warranted. If no preliminary action is required, or when it is completed, the agency of original jurisdiction must prepare a Statement of the Case pursuant to § 19.29 of this part, unless the matter is resolved by granting the benefits sought on appeal or the Notice of Disagreement is withdrawn by the appellant or his or her representative.

(Authority: 38 U.S.C. 4005(d)(1))

§ 19.27 Adequacy of Notice of Disagreement questioned within the agency of original jurisdiction.

If, within the agency of original jurisdiction, there is a question as to the adequacy of a Notice of Disagreement, the procedures for an administrative appeal must be followed.

(Authority: 38 U.S.C. 4005, 4006)

§ 19.28 Determination that a Notice of Disagreement is inadequate protested by claimant or representative.

Whether a Notice of Disagreement is adequate is an appealable issue. If the claimant or his or her representative protests an adverse determination made by the agency of original jurisdiction with respect to the adequacy of a Notice of Disagreement, the claimant will be furnished a Statement of the Case.

(Authority: 38 U.S.C. 4005)

§ 19.29 Statement of the Case.

The Statement of the Case must be complete enough to allow the appellant to present written and/or oral arguments before the Board of Veterans' Appeals. It must contain:

(a) A summary of the evidence in the case relating to the issue or issues with which the appellant or representative has expressed disagreement;

(b) A summary of the applicable laws and regulations, with appropriate citations, and a discussion of how such laws and regulations affect the determination; and

(c) The determination of the agency of original jurisdiction on each issue and the reasons for each such determination with respect to which disagreement has been expressed.

(Authority: 38 U.S.C. 4005(d)(1))

§ 19.30 Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.

(a) *To whom the Statement of the Case is furnished.* The Statement of the Case will be forwarded to the appellant at the latest address of record and a separate copy provided to his or her representative (if any).

(b) *Information furnished with the Statement of the Case.* With the Statement of the Case, the appellant and the representative will be furnished information on the right to file, and time limit for filing, a Substantive Appeal; information on hearing and representation rights; and a VA Form 1–9, Appeal to Board of Veterans' Appeals.

(Authority: 38 U.S.C. 4005)

§ 19.31 Supplemental Statement of the Case.

A Supplemental Statement of the Case, so identified, will be furnished to the appellant and his or her representative, if any, when additional pertinent evidence is received after a Statement of the Case or the most recent Supplemental Statement of the Case has been issued, when a material defect in the Statement of the Case or a prior Supplemental Statement of the Case is discovered, or when, for any other reason, the Statement of the Case or a prior Supplemental Statement of the Case is inadequate. A Supplemental Statement of the Case will also be issued following development pursuant to a remand by the Board unless the only purpose of the remand is to assemble records previously considered by the agency of original jurisdiction and properly discussed in a prior Statement of the Case or Supplemental Statement of the Case or unless the Board specifies in the remand that a Supplemental Statement of the Case is not required. If the case is remanded to cure a procedural defect, a Supplemental Statement of the Case will be issued to assure full notification to the appellant of the status of the case, unless the Board directs otherwise. A Supplemental Statement of the Case is required following a hearing on appeal before field personnel when new documentary evidence or evidence in the form of testimony concerning the relevant facts or expert opinion is presented, but is not required if only argument is presented.

(Authority: 38 U.S.C. 4005(d))

§ 19.32 Closing of appeal for failure to respond to Statement of the Case.

The agency of original jurisdiction may close the appeal without notice to an appellant or his or her representative for failure to respond to a Statement of the Case within the period allowed. However, if a response is subsequently received within the 1-year appeal period (60-day appeal period for simultaneously contested claims), the appeal will be considered to be reactivated.

(Authority: 38 U.S.C. 4005(d)(3))

§ 19.33 Timely filing of Notice of Disagreement or Substantive Appeal questioned within the agency of original jurisdiction.

If, within the agency of original jurisdiction, there is a question as to the timely filing of a Notice of Disagreement or Substantive Appeal, the procedures for an administrative appeal must be followed.

(Authority: 38 U.S.C. 4005, 4006)

§ 19.34 Determination that Notice of Disagreement or Substantive Appeal was not timely filed protested by claimant or representative.

Whether a Notice of Disagreement or Substantive Appeal has been filed on time is an appealable issue. If the claimant or his or her representative protests an adverse determination made by the agency of original jurisdiction with respect to timely filing of the Notice of Disagreement or Substantive Appeal, the claimant will be furnished a Statement of the Case.

(Authority: 38 U.S.C. 4005)

§ 19.35 Certification of appeals.

Following receipt of the Substantive Appeal, the agency of original jurisdiction will certify the case to the Board of Veterans Appeals. Certification is accomplished by the execution of VA Form 1–8, Certification of Appeal. Its purpose is to identify the issues for appellate consideration and to serve as a check list for the originating agency to ensure that the appeals development procedures have been adequate, particularly as they affect the appellant's due process rights.

(Authority: 38 U.S.C. 4005)

§ 19.36 Notification of certification of appeal and transfer of appellate record.

When an appeal is certified to the Board of Veterans Appeals for appellate review and the appellate record is transferred to the Board, the claimant and his or her representative, if any, will be notified in writing.

(Authority: 38 U.S.C. 4005)

§ 19.37 Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.

(a) *Evidence received prior to transfer of records to Board of Veterans Appeals.* Evidence received by the agency of original jurisdiction prior to transfer of the records to the Board of Veterans Appeals after an appeal has been initiated (including evidence received after certification has been completed) will be referred to the appropriate rating or authorization activity for review and disposition. If the Statement of the Case and any prior Supplemental Statements of the Case were prepared before the receipt of the additional evidence, a Supplemental Statement of the Case will be furnished to the appellant and his or her representative as provided in § 19.31 of this part, unless the additional evidence received duplicates evidence previously of record which was discussed in the Statement of the Case or a prior Supplemental Statement of the Case or the additional evidence is not relevant to the issue, or issues, on appeal.

(b) *Evidence received after transfer of records to the Board of Veterans Appeals.* Additional evidence received by the agency of original jurisdiction after the records have been transferred to the Board of Veterans Appeals for appellate consideration will be forwarded to the Board if it has a bearing on the appellate issue or issues. The Board will then determine what action is required with respect to the additional evidence.

(Authority: 38 U.S.C. 4005(d)(1))

§ 19.38 Action by agency of original jurisdiction when remand received.

When a case is remanded by the Board of Veterans Appeals, the agency of original jurisdiction will complete the additional development of the evidence or procedural development required. Following completion of the development, the case will be reviewed to determine whether the additional development supports the allowance of all benefits sought on appeal. If so, the Board and the appellant and his or her representative, if any, will be promptly informed. If any benefits sought on appeal remain denied following this review, the agency of original jurisdiction will issue a Supplemental Statement of the Case concerning the additional development pertaining to those issues in accordance with the provisions of § 19.31 of this part. Following the 30-day period allowed for a response to the Supplemental Statement of the Case pursuant to Rule of Practice 302, paragraph (c) (§ 20.302(c) of this chapter), the case will be returned to the Board for further appellate processing unless the appeal is withdrawn or review of the response to the Supplemental Statement of the Case results in the allowance of all benefits sought on appeal. Remanded cases will not be closed for failure to respond to the Supplemental Statement of the Case.

(Authority: 38 U.S.C. 4005(d)(1))

§§ 19.39–19.49 [Reserved]

Subpart C—Administrative Appeals

§ 19.50 Nature and form of administrative appeal.

(a) *General.* An administrative appeal from an agency of original jurisdiction determination is an appeal taken by an official of the Department of Veterans Affairs authorized to do so to resolve a conflict of opinion or a question pertaining to a claim involving benefits under laws administered by the Department of Veterans Affairs. Such appeals may be taken not only from determinations involving dissenting opinions, but also from unanimous determinations denying or allowing the benefit claimed in whole or in part.

(b) *Form of Appeal.* An administrative appeal is entered by a memorandum entitled "Administrative Appeal" in which the issues and the basis for the appeal are set forth.

(Authority: 38 U.S.C. 4006)

§ 19.51 Officials authorized to file administrative appeals and time limits for filing.

The Secretary of Veterans Affairs authorizes certain officials of the Department of Veterans Affairs to file administrative appeals within specified time limits, as follows:

(a) *Central Office—(1) Officials.* The Chief Benefits Director or a Service Director of the Veterans Benefits Administration, the Chief Medical Director or a service director of the Veterans Health Services and Research Administration, and the General Counsel.

(2) *Time limit.* Such officials must file an administrative appeal within 1 year from the date of mailing notice of such determination to the claimant.

(b) *Agencies of original jurisdiction—(1) Officials.* Directors, adjudication officers, and officials at comparable levels in field offices deciding any claims for benefits, from any determination originating within their established jurisdiction.

(2) *Time limit.* The Director or comparable official must file an administrative appeal within 6 months from the date of mailing notice of the determination to the claimant. Officials below the level of Director must do so within 60 days from such date.

(c) *The Date of Mailing.* With respect to paragraphs (a) and (b) of this section, the date of mailing notice of the determination to the claimant will be presumed to be the same as the date of the letter of notification to the claimant.

(Authority: 38 U.S.C. 4005(d)(1))

§§ 19.52–19.74 [Reserved]

Subpart D—Hearings Before Traveling Sections of the Board of Veterans Appeals

§ 19.75 Travel Board hearing docket.

Travel Board hearings will be scheduled in the order in which requests for such hearings are received by Department of Veterans Affairs field facilities. Any requests submitted directly to the Board will be transferred to the appropriate field facility and will not be considered to have been filed for docketing purposes until received by the applicable field facility. Each Departmental facility generating appeals activity will:

(a) Mark each written request for a Travel Board hearing to show the date of receipt, and

(b) Maintain a formal log showing, in the order that each request for a Travel Board hearing is received:

(1) The date that each request for a Travel Board hearing was received,

(2) The name of the appellant,

(3) The name of the representative,

(4) The applicable Departmental file number,

(5) Whether the request for a Travel Board hearing has been withdrawn,

(6) And the date that the hearing was conducted or a notation that the appellant failed to appear for the hearing.

(Authority: 38 U.S.C. 4006)

§ 19.52 Notification to claimant of filing of administrative appeal.

When an administrative appeal is entered, the claimant and his or her representative, if any, will be promptly furnished a copy of the memorandum entitled "Administrative Appeal," or an adequate summary thereof, outlining the question at issue. They will be allowed a period of 60 days to join in the appeal if they so desire. The claimant will also be advised of the effect of such action and of the preservation of normal appeal rights if he or she does not elect to join in the administrative appeal.

(Authority: 38 U.S.C. 4006)

§ 19.53 Restriction as to change in payments pending determination of administrative appeals.

If an administrative appeal is taken from a review or determination by the agency of original jurisdiction pursuant to §§ 19.50 and 19.51 of this part, that review or determination may not be used to effect any change in payments until after a decision is made by the Board of Veterans Appeals.

(Authority: 38 U.S.C. 4006)

§§ 19.54–19.74 [Reserved]

Subpart D—Hearings Before Traveling Sections of the Board of Veterans Appeals

§ 19.75 Travel Board hearing docket.

Travel Board hearings will be scheduled in the order in which requests for such hearings are received by Department of Veterans Affairs field facilities. Any requests submitted directly to the Board will be transferred to the appropriate field facility and will not be considered to have been filed for docketing purposes until received by the applicable field facility. Each Departmental facility generating appeals activity will:

(a) Mark each written request for a Travel Board hearing to show the date of receipt, and

(b) Maintain a formal log showing, in the order that each request for a Travel Board hearing is received:

(1) The date that each request for a Travel Board hearing was received,

(2) The name of the appellant,

(3) The name of the representative,

(4) The applicable Departmental file number,

(5) Whether the request for a Travel Board hearing has been withdrawn,

(6) And the date that the hearing was conducted or a notation that the appellant failed to appear for the hearing.

(Authority: 38 U.S.C. 4010)

§ 19.76 Notice of time and place of Travel Board hearing.

The agency of original jurisdiction will notify the appellant and his or her representative of the place and time of a Travel Board hearing not less than 60 days prior to the hearing date. This time limitation does not apply to hearings which have been rescheduled due to a postponement requested by an appellant, or on his or her behalf, or due to the prior failure of an appellant to appear at a scheduled Travel Board hearing with good cause. The requirement will also be deemed to have been waived if an appellant accepts an earlier hearing date due to the cancellation of another previously scheduled Travel Board hearing.

(Authority: 38 U.S.C. 4010)

§ 19.77 Providing Statement of the Case when Travel Board hearing has been requested.

If not previously furnished, the appellant and his or her representative will be provided with a Statement of the Case not later than the date on which the agency of original jurisdiction furnishes them with notification of the place and time of the Travel Board hearing. A Statement of the Case is not required when the only issue to be considered by the traveling Section of the Board is the reconsideration of a prior Board of Veterans Appeals decision.

(Authority: 38 U.S.C. 4005(d)(1), 4010)

§§ 19.78–19.99 [Reserved]

Subpart E—Simultaneously Contested Claims

§ 19.100 Notification of right to appeal in simultaneously contested claims.

All interested parties will be specifically notified of the action taken by the agency of original jurisdiction in a simultaneously contested claim and of the right and time limit for initiation of an appeal, as well as hearing and representation rights.

(Authority: 38 U.S.C. 4005A(a))

§ 19.101 Notice to contesting parties on receipt of Notice of Disagreement in simultaneously contested claims.

Upon the filing of a Notice of Disagreement in a simultaneously contested claim, all interested parties and their representatives will be furnished a copy of the Statement of the Case. The interested parties who filed Notices of Disagreement will be duly notified of the right to file, and the time limit within which to file, a Substantive Appeal and will be furnished with VA Form 1–9, Appeal to Board of Veterans Appeals.

(Authority: 38 U.S.C. 4005A(b))

§ 19.102 Notice of appeal to other contesting parties in simultaneously contested claims.

When a Substantive Appeal is filed in a simultaneously contested claim, a copy of the Substantive Appeal will be furnished to the other contesting parties.

(Authority: 38 U.S.C. 4005A(b))

Appendix A to Part 19—Cross-References

Section	Cross-reference	Title of cross-referenced material or comment
19.5	38 CFR 14.507(b)	See re "precedent opinions" of the General Counsel of the Department of Veterans Affairs.
	38 CFR 20.1303	*Rule 1303. Nonprecedential nature of Board decisions.*
19.7	38 CFR 20.905	*Rule 905. Vacating a decision.*
19.13	38 CFR 2.66	Contains similar provisions.
19.14	38 CFR 19.13(b)	See re administrative allowances.
	38 CFR 20.1103	*Rule 1103. Finality of determinations of the agency of original jurisdiction where appeal is not perfected.*
	38 CFR 20.1104	*Rule 1104. Finality of determinations of the agency of original jurisdiction affirmed on appeal.*
19.25	38 CFR 19.52	*Notification to claimant of filing of administrative appeal.*
	38 CFR 19.100	*Notification of right to appeal in simultaneously contested claims.*
19.26	38 CFR 20.302	*Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.*
19.27	38 CFR 19.50–19.53	See re administrative appeals.
19.30	38 CFR 20.202	*Rule 202. Substantive Appeal.*
19.32	38 CFR 20.302	*Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.*
	38 CFR 20.501	*Rule 501. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.*
19.33	38 CFR 19.50–19.53	See re administrative appeals.
19.50	38 CFR 19.53	*Restriction as to change in payments pending determination of administrative appeals.*
19.100	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
19.101	38 CFR 19.30	*Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.*

6. New Part 20, Board of Veterans Appeals: Rules of Practice, is added to 38 CFR Chapter I to read as follows:

PART 20—BOARD OF VETERANS APPEALS: RULES OF PRACTICE

Subpart A—General

20.1 Rule 1. Purpose and construction of Rules of Practice.
20.2 Rule 2. Procedure in absence of specific Rule of Practice.
20.3 Rule 3. Definitions.
§§ 20.4–20.99 [Reserved]

Subpart B—The Board

20.100 Rule 100. Name, business hours, and mailing address of the Board.
20.101 Rule 101. Jurisdiction of the Board.
20.102 Rule 102. Delegation of authority—Rules of Practice.
§§ 20.103–20.199 [Reserved]

Subpart C—Commencement and Perfection of Appeal

20.200 Rule 200. What constitutes an appeal.
20.201 Rule 201. Notice of Disagreement.
20.202 Rule 202. Substantive Appeal.
20.203 Rule 203. Decision as to adequacy of the Substantive Appeal.
20.204 Rule 204. Withdrawal of Notice of Disagreement or Substantive Appeal.
§§ 20.205–20.299 [Reserved]

Subpart D—Filing

20.300 Rule 300. Place of filing Notice of Disagreement and Substantive Appeal.
20.301 Rule 301. Who can file an appeal.
20.302 Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.
20.303 Rule 303. Extension of time for filing Substantive Appeal and response to Supplemental Statement of the Case.
20.304 Rule 304. Filing additional evidence does not extend time limit for appeal.
20.305 Rule 305. Computation of time limit for filing.
20.306 Rule 306. Legal holidays.
§§ 20.307–20.399 [Reserved]

Subpart E—Administrative Appeals

20.400 Rule 400. Action by claimant or representative on notification of administrative appeal.

20.401 Rule 401. Effect of decision on administrative or merged appeal on claimant's appellate rights.

§§ 20.402–20.499 [Reserved]

Subpart F—Simultaneously Contested Claims

20.500 Rule 500. Who can file an appeal in simultaneously contested claims.
20.501 Rule 501. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.
20.502 Rule 502. Time limit for response to notice of appeal by another contesting party in a simultaneously contested claim.
20.503 Rule 503. Extension of time for filing a Substantive Appeal in simultaneously contested claims.
20.504 Rule 504. Notices sent to last addresses of record in simultaneously contested claims.

§§ 20.505–20.599 [Reserved]

Subpart G—Representation

20.600 Rule 600. Right to representation.
20.601 Rule 601. Only one representative recognized.
20.602 Rule 602. Representation by recognized organizations.
20.603 Rule 603. Representation by attorneys-at-law.
20.604 Rule 604. Representation by agents.
20.605 Rule 605. Other persons as representative.
20.606 Rule 606. Legal interns, law students and paralegals.
20.607 Rule 607. Revocation of a representative's authority to act.
20.608 Rule 608. Withdrawal of services by a representative.
20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.
20.610 Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.
20.611 Rule 611. Continuation of representation following death of a claimant or appellant.

§§ 20.612–20.699 [Reserved]

Subpart H—Hearings on Appeal

20.700 Rule 700. General.
20.701 Rule 701. Who may present oral argument.
20.702 Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans Appeals in Washington, DC, and by agency of original jurisdiction personnel acting on behalf of the Board of Veterans Appeals at field facilities.
20.703 Rule 703. When right to Travel Board hearing arises.
20.704 Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans' Appeals at Department of Veterans' Affairs field facilities.
20.705 Rule 705. Where hearings on appeal are conducted.
20.706 Rule 706. Functions of the presiding Member.
20.707 Rule 707. When a hearing panel makes the final appellate decision.
20.708 Rule 708. Prehearing conference.
20.709 Rule 709. Procurement of additional evidence following a hearing.
20.710 Rule 710. Witnesses at hearings.
20.711 Rule 711. Subpoenas.
20.712 Rule 712. Expenses of appellants, representatives, and witnesses incident to hearings.
20.713 Rule 713. Hearings in simultaneously contested claims.
20.714 Rule 714. Record of hearing.
20.715 Rule 715. Recording of hearing by appellant or representative.
20.716 Rule 716. Correction of hearing transcripts.
20.717 Rule 717. Loss of hearing tapes or transcripts—motion for new hearing.

§§ 20.718–20.799 [Reserved]

Subpart I—Evidence

20.800 Rule 800. Submission of additional evidence after initiation of appeal.

§§ 20.801–20.899 [Reserved]

Subpart J—Action by the Board

20.900 Rule 900. Order of consideration of appeals.
20.901 Rule 901. Medical opinions and opinions of the General Counsel.
20.902 Rule 902. Filing of requests for the procurement of opinions.
20.903 Rule 903. Notification of opinions secured by the Board and opportunity for response.
20.904 Rule 904. Administrative allowance.
20.905 Rule 905. Vacating a decision.

§§ 20.906–20.999 [Reserved]

Subpart K—Reconsideration

20.1000 Rule 1000. When reconsideration is accorded.
20.1001 Rule 1001. Filing and disposition of motion for reconsideration.
20.1002 Rule 1002. Evidence considered on reconsideration.
20.1003 Rule 1003. Hearings on reconsideration.

§§ 20.1004–20.1099 [Reserved]

Subpart L—Finality

20.1100 Rule 1100. Finality of decisions of the Board.
20.1101 Rule 1101. When decisions of the Board become final.
20.1102 Rule 1102. Harmless error.
20.1103 Rule 1103. Finality of determinations of the agency of original jurisdiction where appeal is not perfected.
20.1104 Rule 1104. Finality of determinations of the agency of original jurisdiction affirmed on appeal.
20.1105 Rule 1105. New claim after promulgation of appellate decision.
20.1106 Rule 1106. Claim for death benefits by survivor—prior unfavorable decisions during veteran's lifetime.

§§ 20.1107–20.1199 [Reserved]

Subpart M—Privacy Act

20.1200 Rule 1200. Privacy Act request—appeal pending.
20.1201 Rule 1201. Amendment of appellate decisions.

§§ 20.1202–20.1298 [Reserved]

Subpart N—Miscellaneous

20.1300 Rule 1300. Access to Board records.
20.1301 Rule 1301. Disclosure of information.
20.1302 Rule 1302. Death of appellant during pendency of appeal.
20.1303 Rule 1303. Nonprecedential nature of Board decisions.
20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.
20.1305 Rule 1305. Effective date.

Appendix A—Cross-References

Authority: 38 U.S.C. 210(c)(1), unless otherwise noted.

Subpart A—General

§ 20.1 Rule 1. Purpose and construction of Rules of Practice.

(a) *Purpose.* These rules establish the practices and procedures governing appeals to the Board of Veterans' Appeals.

(Authority: 38 U.S.C. 210(c)(1), 4002, 4004)

(b) *Construction.* These rules are to be construed to secure a just and speedy decision in every appeal.

(Authority: 38 U.S.C. 210, 3007, 4004)

§ 20.2 Rule 2. Procedure in absence of specific Rule of Practice.

Where in any instance there is no applicable rule or procedure, the Chairman may prescribe a procedure which is consistent with the provisions of title 38, United States Code, and these rules.

(Authority: 38 U.S.C. 210(c)(1), 212, 4002, 4004)

§ 20.3 Rule 3. Definitions.

As used in these rules:

(a) "Agency of original jurisdiction" means the Department of Veterans Affairs regional office, medical center, clinic, or other Department of Veterans Affairs facility which made the initial determination on a claim or, if the applicable records are later permanently transferred to another Department of Veterans Affairs facility, its successor.

(b) "Agent" means a person who has met the standards and qualifications for accreditation outlined in § 14.629(b) of this chapter and who has been properly designated under the provisions of Rule 604 (§ 20.604 of this part). It does not include representatives recognized under Rules 602, 603, or 605 (§ 20.602, 20.603, or 20.605 of this part).

(c) "Appellant" means a claimant who has initiated an appeal to the Board of Veterans Appeals by filing a Notice of Disagreement pursuant to the provisions of 38 U.S.C. 4005.

(d) "Attorney-at-law" means a member in good standing of a State bar.

(e) "Benefit" means any payment, service, commodity, function, or status, entitlement to which is determined under laws administered by the Department of Veterans Affairs pertaining to veterans and their dependents and survivors.

(f) "Claim" means application made under title 38, United States Code, and implementing directives for entitlement to Department of Veterans Affairs benefits or for the continuation or increase of such benefits, or the defense of a proposed agency adverse action concerning benefits.

(g) "Claimant" means a person who has filed a claim, as defined by paragraph (f) of this section.

(h) "Hearing on appeal" means a hearing conducted after a Notice of Disagreement has been filed in which argument and/or testimony is presented concerning the determination, or determinations, by the agency of original jurisdiction being appealed.

(i) "Law student" means an individual pursuing a Juris Doctor or equivalent degree at a school approved by a recognized accrediting association.

(j) "Legal intern" means a graduate of a law school, which has been approved by a recognized accrediting association, who has not yet been admitted to a State bar.

(k) "Motion" means a request that the Board rule on some question which is subsidiary to the ultimate decision on the outcome of an appeal. For example, the questions of whether a representative's fees are reasonable or whether additional evidence may be submitted more than 60 days after certification of an appeal to the Board are raised by motion (see Rule 609, paragraph (g), and Rule 1304, paragraph (b) (§§ 20.609(g) and 20.1304(b) of this part). Unless raised orally at a personal hearing before Members of the Board, motions for consideration by the Board must be made in writing. No formal type of document is required. The motion may be in the form of a letter which contains the necessary information.

(l) "Paralegal" means a graduate of a course of paralegal instruction given by a school which has been approved by a recognized accrediting association, or an individual who has equivalent legal experience.

(m) "Simultaneously contested claim" refers to the situation in which the allowance of one claim results in the disallowance of another claim involving the same benefit or the allowance of one claim results in the payment of a lesser benefit to another claimant.

(n) "State" includes any State, possession, territory, or Commonwealth of the United States, as well as the District of Columbia.

§§ 20.4-20.99 [Reserved]

Subpart B—The Board

§ 20.100 Rule 100. Name, business hours, and mailing address of the Board.

(a) *Name.* The name of the Board is the Board of Veterans Appeals.

(b) *Business hours.* The Board is open during business hours on all days except Saturday, Sunday and legal holidays. Business hours are from 8:00 a.m. to 4:30 p.m.

(c) *Mailing address.* Except as otherwise noted in these Rules, mail to the Board must be addressed to: Chairman (01), Board of Veterans Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 4001(a))

§ 20.101 Rule 101. Jurisdiction of the Board.

(a) *General.* All questions of law and fact necessary to a decision by the Secretary of Veterans Affairs under a law that affects the provision of benefits by the Secretary to veterans or their dependents or survivors are subject to review on appeal to the Secretary. Decisions in such appeals are made by the Board of Veterans Appeals. In its decisions, the Board is bound by applicable statutes, the regulations of the Department of Veterans Affairs and precedent opinions of the General Counsel of the Department of Veterans Affairs. Examples of the issues over which the Board has jurisdiction include, but are not limited to, the following:

(1) Entitlement to and benefits resulting from service-connected disability or death (38 U.S.C. Chapter 11).

(2) Dependency and indemnity compensation for service-connected death, including benefits in certain cases of inservice or service-connected deaths (38 U.S.C. 412) and certification and entitlement to death gratuity (38 U.S.C. 423).

(3) Benefits for survivors of certain veterans rated totally disabled at time of death (38 U.S.C. 418).

(4) Entitlement to nonservice-connected disability pension, service pension and death pension (38 U.S.C. Chapter 15).

(5) All-Volunteer Force Educational Assistance Program (38 U.S.C. Chapter 30).

(6) Training and Rehabilitation for Veterans with Service-Connected Disabilities (38 U.S.C. Chapter 31).

(7) Post-Vietnam Era Veterans' Educational Assistance (38 U.S.C. Chapter 32).

(8) Veterans' Educational Assistance (38 U.S.C. Chapter 34).

(9) Survivors' and Dependents' Educational Assistance (38 U.S.C. Chapter 35).

(10) Veterans' Job Training (Pub. L. 98-77, as amended; 38 CFR 21.4600 *et seq.*).

(11) Educational Assistance for Members of the Selected Reserve (10 U.S.C. chapter 106).

(12) Educational Assistance Test Program (10 U.S.C. chapter 107; 38 CFR 21.5701 *et seq.*).

(13) Educational Assistance Pilot Program (10 U.S.C. chapter 107; 38 CFR 21.5290 *et seq.*).

(14) Matters arising under National Service Life Insurance and United States Government Life Insurance (38 U.S.C. chapter 19).

(15) Payment or reimbursement for unauthorized medical expenses (38 U.S.C. 628).

(16) Burial benefits and burial in National Cemeteries (38 U.S.C. chapters 23 and 24).

(17) Benefits for persons disabled by medical treatment or vocational rehabilitation (38 U.S.C. 351).

(18) Basic eligibility for home, condominium and mobile home loans as well as waiver of payment of loan guaranty indebtedness (38 U.S.C. chapter 37, 38 U.S.C. 3102).

(19) Waiver of recovery of overpayments (38 U.S.C. 3102).

(20) Forfeiture of rights, claims or benefits for fraud, treason, or subversive activities (38 U.S.C. 3502-3505).

(21) Character of discharge (38 U.S.C. 3103).

(22) Determinations as to duty status (38 U.S.C. 101 (21)-(24)).

(23) Determinations as to marital status (38 U.S.C. 101(3), 103).

(24) Determination of dependency status as parent or child (38 U.S.C. 101 (4), (5)).

(25) Validity of claims and effective dates of benefits (38 U.S.C. chapter 51).

(26) Apportionment of benefits (38 U.S.C. 3107).

(27) Payment of benefits while a veteran is hospitalized and questions regarding an estate of an incompetent institutionalized veteran (38 U.S.C. 3203).

(28) Benefits for surviving spouses and children of deceased veterans under Pub. L. 97-377, § 156 (38 CFR 3.812(d)).

(29) Eligibility for automobile and automobile adaptive equipment assistance (38 U.S.C. chapter 39).

(b) *Appellate jurisdiction of determinations of the Veterans Health Services and Research Administration.* The Board's appellate jurisdiction extends to questions of eligibility for hospitalization, outpatient treatment, and nursing home and domiciliary care; for devices such as prostheses, canes, wheelchairs, back braces, orthopedic shoes, and similar appliances; and for other benefits administered by the Veterans Health Services and Research Administration. Medical determinations, such as determinations of the need for and appropriateness of specific types of medical care and treatment for an individual, are not adjudicative matters and are beyond the Board's jurisdiction. Typical examples of these issues are whether a particular drug should be prescribed, whether a specific type of physiotherapy should be ordered, and similar judgmental treatment decisions with which an attending physician may be faced.

(c) *Appeals as to jurisdiction.* All claimants have the right to appeal a determination made by the agency of original jurisdiction that the Board does not have jurisdictional authority to review a particular issue. This includes questions relating to the timely filing and adequacy of the Notice of Disagreement and the Substantive Appeal. Only the Board of Veterans' Appeals will make final decisions with respect to its jurisdiction.

(Authority: 38 U.S.C. 211(a), 4004)

§ 20.102 Rule 102. Delegation of authority—Rules of Practice.

(a) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 900(c) and 1101(c) (§§ 20.900(c) and 20.1101(c) of this part) may also be exercised by the Vice Chairman of the Board.

(b) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 808(b), 717(d), and 1001(c) (§§ 20.808(b), 20.717(d), and 20.1001(c) of this part) may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board.

(c) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rule 2 (§ 20.2 of this part) may also be exercised by the Vice Chairman of the Board, by Deputy Vice Chairmen of the Board, by Members of the Board who have been designated as the Chief Member of a Section of the Board or as the Acting Chief Member of a Section of the Board, and by a Member of the Board who is acting as the presiding Member of a hearing panel.

(d) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 606(e), 609(i), 610(d), 711(e), 711(f), and 1304(b) (§§ 20.606(e), 20.609(g), 20.610(d), 20.711(e), 20.711(f), and 20.1304(b) of this part) may also be exercised by the Vice Chairman of the Board, by Deputy Vice Chairmen of the Board, and by any Member of the Board.

(Authority: 38 U.S.C. 212(a), 4002, 4004)

§§ 20.103-20.199 [Reserved]

Subpart C—Commencement and Perfection of Appeal

§ 20.200 Rule 200. What constitutes an appeal.

An appeal consists of a timely filed Notice of Disagreement in writing and, after a Statement of the Case has been furnished, a timely filed Substantive Appeal.

(Authority: 38 U.S.C. 4005)

§ 20.201 Rule 201. Notice of Disagreement.

A written communication from a claimant or his or her representative expressing dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the result will constitute a Notice of Disagreement. While special wording is not required, the Notice of Disagreement must be in terms which can be reasonably construed as disagreement with that determination and a desire for appellate review. If the agency of original jurisdiction gave notice that adjudicative determinations were made on several issues at the same time, the specific determinations with which the claimant disagrees must be identified. For example, if service connection was denied for two disabilities and the claimant wishes to appeal the denial of service connection with respect to only one of the disabilities, the Notice of Disagreement must make that clear.

(Authority: 38 U.S.C. 4005)

§ 20.202 Rule 202. Substantive Appeal.

A Substantive Appeal consists of a properly completed VA Form 1-9, Appeal to Board of Veterans Appeals, or correspondence containing the necessary information. If the Statement of the Case and any prior Supplemental Statements of the Case addressed several issues, the Substantive Appeal must either indicate that the appeal is being perfected as to all of those issues or must specifically identify the issues appealed. The Substantive Appeal must set out specific arguments relating to errors of fact or law made by the agency of original jurisdiction in reaching the determination, or determinations, being appealed. To the extent feasible, the argument should be related to specific items in the Statement of the Case and any prior Supplemental Statements of the Case. The Board will construe such arguments in a liberal manner for purposes of determining whether they raise issues on appeal, but the Board may dismiss any appeal which fails to allege specific error of fact or law in the determination, or determinations, being appealed. The Board will not presume that an appellant agrees with any statement of fact contained in a Statement of the Case or a Supplemental Statement of the Case which is not specifically contested. Proper completion and filing of a Substantive Appeal are the last actions the appellant needs to take to perfect an appeal.

(Authority: 38 U.S.C. 4005(d) (3)-(5))

§ 20.203 Rule 203. Decision as to adequacy of the Substantive Appeal.

A decision as to the adequacy of allegations of error of fact or law in a Substantive Appeal will be made by the Board of Veterans Appeals. When the Board raises the issue of adequacy of the Substantive Appeal, the appellant and representative, if any, will be given notice of the issue and a period of 60 days following the date on which such notice is mailed to present written argument or to request a hearing to present oral argument on this question. The date of mailing of the notice will be presumed to be the same as the date of the letter of notification.

(Authority: 38 U.S.C. 4005(d)(3), 4008)

§ 20.204 Rule 204. Withdrawal of Notice of Disagreement or Substantive Appeal.

(a) *Notice of Disagreement.* A Notice of Disagreement may be withdrawn in writing before a timely Substantive Appeal is filed.

(Authority: 38 U.S.C. 4005(d)(1))

(b) *Substantive Appeal.* A Substantive Appeal may be withdrawn in writing at any time before the Board of Veterans Appeals promulgates a decision.

(Authority: (38 U.S.C. 4005(d)(3))

(c) *Who May Withdraw.* Withdrawal may be by the appellant or by his or her authorized representative, except that a representative may not withdraw either a Notice of Disagreement or Substantive Appeal filed by the appellant personally without the express written consent of the appellant. The agency of original jurisdiction may not withdraw a Notice of Disagreement or a Substantive Appeal after filing of either or both.

(Authority: 38 U.S.C. 4005(b)(2))

§§ 20.295-20.299 [Reserved]

Subpart D—Filing

§ 20.300 Rule 300. Place of filing Notice of Disagreement and Substantive Appeal.

The Notice of Disagreement and Substantive Appeal must be filed, with the Department of Veterans Affairs office from which the claimant received notice of the determination being appealed unless notice has been received that the applicable Department of Veterans Affairs records have been transferred to another Department of Veterans Affairs office. In that case, the Notice of Disagreement or Substantive Appeal must be filed with the Department of Veterans Affairs office which has assumed jurisdiction over the applicable records.

(Authority: 38 U.S.C. 4005(b)(1), (d)(3))

§ 20.301 Rule 301. Who can file an appeal.

(a) *Persons authorized.* A Notice of Disagreement and/or a Substantive Appeal may be filed by a claimant personally, or by his or her representative if a proper Power of Attorney or declaration of representation, as applicable, is on record or accompanies such Notice of Disagreement or Substantive Appeal.

(b) *Claimant rated incompetent by Department of Veterans Affairs or under disability and unable to file.* If an appeal is not filed by a person listed in paragraph (a) of this section, and the claimant is rated incompetent by the Department of Veterans Affairs or has a physical, mental, or legal disability which prevents the filing of an appeal on his or her own behalf, a Notice of Disagreement and a Substantive Appeal may be filed by a fiduciary appointed to manage the claimant's affairs by the Department of Veterans Affairs or a court, or by a person acting as next friend if the appointed fiduciary fails to take needed action or no fiduciary has been appointed.

(c) *Claimant under disability and able to file.* Notwithstanding the fact that a fiduciary may have been appointed for a claimant, an appeal filed by a claimant will be accepted.

(Authority: 38 U.S.C. 4005(b)(2))

§ 20.302 Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.

(a) *Notice of Disagreement.* Except in the case of simultaneously contested claims, a claimant, or his or her representative, must file a Notice of Disagreement with a determination by the agency of original jurisdiction within one year from the date that that agency mails notice of the determination to him or her. Otherwise, that determination will become final. The date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.

(Authority: 38 U.S.C. 4005(b)(1))

(b) *Substantive Appeal.* Except in the case of simultaneously contested claims, a Substantive Appeal must be filed within 60 days from the date that the agency of original jurisdiction mails the Statement of the Case to the appellant, or within the remainder of the 1-year period from the date of mailing of the notification of the determination being appealed, whichever period ends later. The date of mailing of the Statement of the Case will be presumed to be the same as the date of the Statement of the Case and the date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.

(Authority: 38 U.S.C. 4005(b)(1), (d)(3))

(c) *Response to Supplemental Statement of the Case.* Where a Supplemental Statement of the Case is furnished, a period of 60 days from the date of mailing of the Supplemental Statement of the Case will be allowed for response. The date of mailing of the Supplemental Statement of the Case will be presumed to be the same as the date of the Supplemental Statement of the Case for purposes of determining whether a response has been timely filed. Provided a Substantive Appeal has been timely filed in accordance with paragraph (b) of this section, the response to a Supplemental Statement of the Case is optional and is not required for the perfection of an appeal, unless the Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case. If a Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case, a Substantive Appeal must be filed with respect to those issues within 60 days in order to perfect an appeal with respect to the additional issues.

(Authority: 38 U.S.C. 4005(d)(3))

§ 20.303 Rule 303. Extension of time for filing Substantive Appeal and response to Supplemental Statement of the Case.

An extension of the 60-day period for filing a Substantive Appeal, or the 60-day period for responding to a Supplemental Statement of the Case when such a response is required, may be granted for good cause. A request for such an extension must be in writing and must be made prior to expiration of the time limit for filing the Substantive Appeal or the response to the Supplemental Statement of the Case. The request for extension must be filed with the Department of Veterans Affairs office from which the claimant received notice of the determination being appealed, unless notice has been received that the applicable records have been transferred to another Department of Veterans Affairs office. A denial of a request for extension may be appealed to the Board.

(Authority: 38 U.S.C. 4005(d)(3))

§ 20.304 Rule 304. Filing additional evidence does not extend time limit for appeal.

The filing of additional evidence after receipt of notice of an adverse determination does not extend the time limit for initiating or completing an appeal from that determination.

(Authority: 38 U.S.C. 4005)

§ 20.305 Rule 305. Computation of time limit for filing.

(a) *Acceptance of postmark date.* When these Rules require that any written document be filed within a specified period of time, a response postmarked prior to expiration of the applicable time limit will be accepted as having been timely filed. In the event that the postmark is not of record, the postmark date will be presumed to be five days prior to the date of receipt of the document by the Department of Veterans Affairs. In calculating this five-day period, Saturdays, Sundays, and legal holidays will be excluded.

(b) *Computation of time limit.* In computing the time limit for filing a written document, the first day of the specified period will be excluded and the last day included. Where the time limit would expire on a Saturday, Sunday, or legal holiday, the next succeeding workday will be included in the computation.

(Authority: 38 U.S.C. 4005)

§ 20.306 Rule 306. Legal holidays.

For the purpose of Rule 305 (§ 20.305 of this part), the legal holidays, in addition to any other day appointed as a holiday by the President or the Congress of the United States, are as follows: New Year's Day—January 1; Inauguration Day—January 20 of every fourth year or, if the 20th falls on a Sunday, the next succeeding day selected for public observance of the inauguration; Martin Luther King, Jr.'s Birthday—Third Monday in January; Washington's Birthday—Third Monday in February; Memorial Day—Last Monday in May; Independence Day—July 4; Labor Day—First Monday in September; Columbus Day—Second Monday in October; Veterans' Day—November 11; Thanksgiving Day—Fourth Thursday in November; and Christmas Day—December 25. When a holiday occurs on a Saturday, the Friday immediately before is the legal public holiday. When a holiday occurs on a Sunday, the Monday immediately after is the legal public holiday.

(Authority: 5 U.S.C. 6103)

§§ 20.307-20.399 [Reserved]

Subpart E—Administrative Appeals

§ 20.400 Rule 400. Action by claimant or representative on notification of administrative appeal.

When an official of the Department of Veterans Affairs enters an administrative appeal, the claimant and his or her representative, if any, are notified and given a period of 60 days from the date of mailing of the letter of notification to join in the administrative appeal. The date of mailing of the letter of notification will be presumed to be the same as the date of the letter of notification. If the claimant, or the representative acting on his or her behalf, elects to join in the administrative appeal, it becomes a "merged appeal" and the rules governing an appeal initiated by a claimant are for application. The presentation of evidence or argument in response to notification of the right to join in the administrative appeal will be construed as an election to join in the administrative appeal. If the claimant does not authorize the merger, he or she must hold such evidence or argument in abeyance until resolution of the administrative appeal.

(Authority: 38 U.S.C. 4006)

§ 20.401 Rule 401. Effect of decision on administrative or merged appeal on claimant's appellate rights.

(a) *Merged appeal.* If the administrative appeal is merged, the appellate decision on the merged appeal will constitute final disposition of the claimant's appellate rights.

(b) *Appeal not merged.* If the claimant does not authorize merger, normal appellate rights on the same issue are preserved, and a decision in a separate appeal perfected by the claimant will be entered by a Section of the Board which does not include Members who made the decision on the administrative appeal. The period of time from the date of notification to the claimant of the administrative appeal to the date of the Board's decision on the administrative appeal is not chargeable to the claimant for purposes of determining the time limit for perfecting his or her separate appeal.

(Authority: 38 U.S.C. 4006)

§§ 20.402-20.499 [Reserved]

Subpart F—Simultaneously Contested Claims

§ 20.500 Rule 500. Who can file an appeal in simultaneously contested claims.

In a simultaneously contested claim, any claimant or representative of a claimant may file a Notice of Disagreement or Substantive Appeal within the time limits set out in Rule 501 (§ 20.501 of this part).

(Authority: 38 U.S.C. 4005(b)(2), 4005A)

§ 20.501 Rule 501. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.

(a) *Notice of Disagreement.* In simultaneously contested claims, the Notice of Disagreement from the person adversely affected must be filed within 60 days from the date of mailing of the notification of the determination to him or her; otherwise, that determination will become final. The date of mailing of the letter of notification will be presumed to be the same as the date of that letter for purposes of determining whether a Notice of Disagreement has been timely filed.

(Authority: 38 U.S.C. 4005A(a))

(b) *Substantive Appeal.* In the case of simultaneously contested claims, a Substantive Appeal must be filed within 30 days from the date of mailing of the Statement of the Case. The date of mailing of the Statement of the Case will be presumed to be the same as the date of the Statement of the Case for purposes of determining whether an appeal has been timely filed.

(Authority: 38 U.S.C. 4005A(b))

(c) *Supplemental Statement of the Case.* Where a Supplemental Statement of the Case is furnished by he agency of original jurisdiction in a simultaneously contested claim, a period of 30 days from the date of mailing of the Supplemental Statement of the Case will be allowed for response, but the receipt of a Supplemental Statement of the Case will not extend the time allowed for filing a Substantive Appeal as set forth in paragraph (b) of this section. The date of mailing of the Supplemental Statement of the Case will be presumed to be the same as the date of the Supplemental Statement of the Case for purposes of determining whether a response has been timely filed. Provided a Substantive Appeal has been timely filed in accordance with paragraph (b) of this section, the response to a Supplemental Statement of the Case is optional and is not required for the perfection of an appeal, unless the Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case. If a Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case, a Substantive Appeal must be filed with respect to those issues within 30 days of the date of mailing of the Supplemental Statement of the Case in order to perfect an appeal with respect to the additional issues.

(Authority: 38 U.S.C. 4005(d)(3), 4005A(b))

§ 20.502 Rule 502. Time limit for response to notice of appeal by another contesting party in a simultaneously contested claim.

Notice of an appeal by another contesting party in a simultaneously contested claim is given by sending a copy of that party's Substantive Appeal to all other contesting parties. A period of 30 days from the date of mailing of the copy of the Substantive Appeal is allowed for filing a brief or argument in answer. The date of mailing of the copy will be presumed to be the same as the date of the letter which accompanies the copy.

(Authority: 38 U.S.C. 4005A(b))

§ 20.503 Rule 503. Extension of time for filing Substantive Appeal in simultaneously contested claims.

An extension of the 30-day period to file a Substantive Appeal in simultaneously contested claims may be granted if good cause is shown. In granting an extension, consideration will be given to the interests of the other parties involved. A request for such an extension must be in writing and must be made prior to expiration of the time limit for filing the Substantive Appeal.

(Authority: 38 U.S.C. 4005A(b))

§ 20.504 Rule 504. Notices to last addresses of record in simultaneously contested claims.

Notices in simultaneously contested claims will be forwarded to the last address of record of the parties concerned and such action will constitute sufficient evidence of notice.

(Authority: 38 U.S.C. 4005A(b))

[§§ 20.505–20.599 [Reserved]

Subpart G—Representation

Cross-Reference: In cases involving access to medical records relating to drug abuse, alcoholism, alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, also see 38 U.S.C. 4132.

§ 20.600 Rule 600. Right to representation.

An appellant will be accorded full right to representation in all stages of an appeal by a recognized organization, attorney, agent, or other authorized person.

(Authority: 38 U.S.C. 3401–3405, 4005(a))

§ 20.601 Rule 601. Only one representative recognized.

A specific claim may be prosecuted at any one time by only one recognized organization, attorney, agent or other person properly designated to represent the appellant.

(Authority: 38 U.S.C. 4005(b)(2))

§ 20.602 Rule 602. Representation by recognized organizations.

In order to designate a recognized organization as his or her representative, an appellant must execute a VA Form 21–22, Appointment of Veterans Service Organization as Claimant's Representative. This form gives the organization power of attorney to represent the appellant. The designation will be effective when it is received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked by the appellant or unless the representative has properly withdrawn.

(Authority: 38 U.S.C. 4005(b)(2))

§ 20.603 Rule 603. Representation by attorneys-at-law.

(a) *Designation.* An attorney-at-law may be designated as an appellant's representative through a properly executed VA Form 2–22a, Appointment of Attorney or Agent as Claimant's Representative. This form gives the attorney power of attorney to represent the appellant. In lieu thereof, a signed consent by the appellant permitting access to all information in the individual's records and a signed statement by the attorney that he or she is authorized to represent the appellant, prepared on the attorney's letterhead, will be accepted as an executed power of attorney. The designation must be of an individual attorney, rather than a firm or partnership. An appellant may limit an attorney's right to act as representative in an appeal to representation with respect to a specific claim; for one or more specific benefits by noting the restriction in the written designation. Unless specifically noted to the contrary, however, designations of an attorney as a representative will extend to all matters with respect to claims for benefits under laws administered by the Department of Veterans Affairs. Designations are effective when they are received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked or unless the representative has properly withdrawn. Legal interns, law students, and paralegals may not be independently accredited to represent appellants under this Rule.

(b) *Attorneys employed by recognized organization.* A recognized organization may employ an attorney-at-law to represent an appellant. If the attorney so employed is not an accredited representative of the recognized organization, the signed consent of the appellant for the substitution of representatives must be obtained and submitted to the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, to the Board of Veterans Appeals. When the signed consent is received by the agency of original jurisdiction or the Board, as applicable, the attorney will be recognized as the appellant's representative in lieu of the organization.

(c) *Participation of associated or affiliated attorneys.* With the specific written consent of the appellant, an attorney associated or affiliated with the appellant's attorney of record, including an attorney employed by the same legal services office as the attorney of record, may assist in representation of the appellant and may have access to the appellant's Department of Veterans Affairs records to the same extent as the attorney of record. Unless revoked by the appellant, such consent will remain effective in the event the original attorney of record is replaced by another attorney who is a member of the same law firm or an attorney employed by the same legal services office. The consent must include the name of the veteran; the name of the appellant if other than the veteran (e.g., the veteran's guardian or survivor); the applicable Department of Veterans Affairs file number; the name of the attorney of record; the consent of the appellant for the use of the services of the associated or affiliated attorney and for that individual to have access to applicable Department of Veterans Affairs records; and the name of the associated or affiliated attorney who will be assisting in the case. The consent must be filed with the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, with the Board of Veterans Appeals. The presiding Member at a hearing on appeal may require that not more than one attorney participate in the examination of any one witness or impose other reasonable limitations to ensure orderly conduct of the hearing.

(Authority: 38 U.S.C. 3401, 3404)

§ 20.604 Rule 604. Representation by agents.

(a) *Designation.* The designation of an agent will be by a duly executed power of attorney, VA Form 2–22a, Appointment of Attorney or Agent as Claimant's Representative, or its equivalent. The designation must be of an individual, rather than a firm or partnership. The designation will be effective when it is received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked or unless the representative has properly withdrawn.

(b) *Admission to practice.* The provisions of 38 U.S.C. 3404 and of § 14.629(b) of this chapter are applicable to the admission of agents to practice before the Department of Veterans Affairs. Authority for making determinations concerning admission to practice rests with the General Counsel of the Department of Veterans Affairs, and any questions concerning admissions to practice should be addressed to: Office of the General Counsel (022A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 3404)

§ 20.605 Rule 605. Other persons as representative.

(a) *Scope of rule.* This section applies to representation by other than by a recognized organization, an agent admitted to practice before the Department of Veterans Affairs, or an attorney-at-law.

(b) *Who may act as representative.* Any competent person may be recognized as a representative for a particular claim, unless that person has been barred from practice before the Department of Veterans Affairs.

(c) *Designation.* The designation of an individual to act as an appellant's representative may be made by executing a VA Form 2–22a, Appointment of Attorney or Agent as Claimant's Representative. This form gives the individual power of attorney to represent the appellant in all matters pertaining to the presentation and prosecution of claims for any and all benefits under laws administered by the Department of Veterans Affairs. In lieu of using the form, the designation may be by a written document signed by both the appellant and the individual representative, which may be in the form of a letter, which authorizes a named individual to act as the appellant's representative only with respect to a specific claim involving one or more specific benefits. The document must include the name of the veteran; the name of the appellant if other than the veteran (e.g., the veteran's guardian or survivor); the applicable Department of Veterans Affairs file number; the appellant's consent for the individual representative to have access to his or her Department of Veterans Affairs records; the name of the individual representative; a description of the specific claim for benefits to which the designation of representation applies; and a certification that no compensation will be charged or paid for the individual representative's services. The designation, in either form, must be filed with the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, with the Board of Veterans Appeals. The designation will be effective when it is received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked or unless the representative has properly withdrawn.

(d) *Representation of more than one appellant.* An individual recognized as an appellant's representative under this Rule may represent only one appellant. If an individual has been recognized as a representative for one appellant and wishes to represent another appellant, he or she must obtain permission to do so from the Office of the General Counsel as provided in § 14.630 of this chapter.

(Authority: 38 U.S.C. 3403)

§ 20.606 Rule 606. Legal interns, law students and paralegals.

(a) *When services of legal interns, law students and paralegals may be used.* Not more than two legal interns, law students or paralegals may assist an attorney-at-law in the presentation of evidence and argument in appeals before the Board of Veterans Appeals in Washington, DC, or before traveling Sections of the Board at Department of Veterans Affairs field facilities.

(b) *Consent of appellant.* If it is contemplated that a legal intern, law student, or paralegal will assist in the appeal, written consent must be obtained from the appellant. The written consent must include the name of the veteran; the name of the appellant if other than the veteran (e.g., the veteran's guardian or survivor); the applicable Department of Veterans Affairs file number; the name of the attorney-at-law; the consent of the appellant for the use of the services of legal interns, law students, or paralegals and for such individuals to have access to applicable Department of Veterans Affairs records; and the names of the legal interns, law students, or paralegals who will be assisting in the case. In the case of appeals before the Board in Washington, DC, the signed consent must be submitted to: Chief, Hearing Section (014B), Board of Veterans Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. In the case of appeals before traveling Sections of the Board, the consent must be presented to the presiding Member of the traveling Section as noted in paragraph (d). Unless revoked by the appellant, such consent will remain effective in the event the original attorney of record is replaced by another attorney who is a member of the same law firm or another attorney employed by the same legal services office.

(c) *Supervision.* Legal interns, law students and paralegals must be under the direct supervision of a recognized attorney-at-law in order to prepare and present cases before the Board of Veterans Appeals.

(d) *Hearings.* Legal interns, law students and paralegals who desire to participate at a hearing before the Board in Washington, DC, must make advance arrangements with the Chief of the Hearing Section and submit written authorization from the attorney naming the individual who will be participating in the hearing. In the case of proceedings before traveling Sections of the Board in the field, the attorney-at-law must inform the office of the Department of Veterans Affairs official who gave notice of the Travel Board hearing date and time not more than 10 days prior to the scheduled hearing date that the services of a legal intern, law student, or paralegal will be used at the hearing. At the same time, a prehearing conference with the presiding Member of the traveling Section must be requested. At the conference, the written consent of the appellant for the use of the services of such an individual required by paragraph (b) must be presented and agreement reached as to the individual's role in the hearing. Legal interns, law students or paralegals may not present oral arguments at hearings either in the field or in Washington, DC, unless the recognized attorney-at-law is present. Not more than two such individuals may make presentations at a hearing. The presiding Member at a hearing on appeal may require that not more than one such individual participate in the examination of any one witness or impose other reasonable limitations to ensure orderly conduct of the hearing.

(e) *Withdrawal of permission for legal interns, law students, and paralegals to assist in the presentation of an appeal.* When properly designated, the attorney-at-law is the recognized representative of the appellant and is responsible for ensuring that an appeal is properly presented. Legal interns, law students, and paralegals are permitted to assist in the presentation of an appeal as a courtesy to the attorney-at-law. Permission for a legal intern, law student, or paralegal to prepare and present cases before the Board may be withdrawn by the Chairman at any time if a lack of competence, unprofessional conduct, or interference with the appellate process is demonstrated by that individual.

(Authority: 38 U.S.C. 3404, 4005(b)(2))

§ 20.607 Rule 607. Revocation of a representative's authority to act.

An appellant may revoke a representative's authority to act on his or her behalf at any time, irrespective of whether another representative is concurrently designated. Written notice of the revocation must be given to the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, to the Board of Veterans Appeals. The revocation is effective when notice of the revocation is received by the agency of original jurisdiction or the Board, as applicable. An appropriate designation of a new representative will automatically revoke any prior designation of representation. If an appellant has limited a designation of representation by an attorney-at-law to a specific claim under the provisions

BEST COPY AVAILABLE

of Rule 603, paragraph (a) (§ 20.603(a) of this part), or has limited a designation of representation by an individual to a specific claim under the provisions of Rule 605, paragraph (c) (§ 20.605(c) of this part), such specific authority constitutes a revocation of an existing representative's authority to act only with respect to, and during the pendency of, that specific claim. Following the final determination of that claim, the existing representative's authority to act will be automatically restored in full, unless otherwise revoked.

(Authority: 38 U.S.C. 3401–3404)

§ 20.608 Rule 608. Withdrawal of services by a representative.

(a) *Withdrawal of services prior to certification of an appeal.* A representative may withdraw services as representative in an appeal at any time prior to certification of the appeal to the Board of Veterans Appeals by the agency of original jurisdiction. The representative must give written notice of such withdrawal to the appellant and to the agency of original jurisdiction. The withdrawal is effective when notice of the withdrawal is received by the agency of original jurisdiction.

(b) *Withdrawal of services after certification of an appeal.* After the agency of original jurisdiction has certified an appeal to the Board of Veterans Appeals, a representative may not withdraw services as representative in the appeal unless good cause is shown on motion. Good cause for such purposes is the extended illness or incapacitation of an agent admitted to practice before the Department of Veterans Affairs, an attorney-at-law, or other individual representative; failure of the appellant to cooperate with proper preparation and presentation of the appeal; or other factors which make the continuation of representation impractical or impossible. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor or guardian), the applicable Department of Veterans Affairs file number, and the reason why withdrawal should be permitted. Such motions must be filed at the following address: Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. The representative must mail a copy of the motion to the appellant, with a return receipt requested. The receipt, which must bear the signature of the appellant, must then be filed with the Board at the same address as proof of service of the motion. The appellant may file a response to the motion with the Board at the same address not later than 30 days following receipt of the copy of the motion. The appellant must mail a copy of any such response to the representative, with a return receipt requested. The receipt, which must bear the signature of the representative or an employee of the representative, must then be filed with the Board at the same address as proof of service of the response. The ruling on the motion will be made by the Chairman.

(Authority: 38 U.S.C. 3401–3404)

§ 20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.

(a) *Applicability of rule.* The provisions of this section apply to the services of representatives with respect to benefits under laws administered by the Department of Veterans Affairs in all proceedings before Department of Veterans Affairs personnel or before the Board of Veterans Appeals regardless of whether an appeal has been initiated.

(b) *Who may charge fees for representation.* Only agents and attorneys-at-law may receive fees from claimants or appellants for their services. Recognized organizations, their accredited representatives, and individuals recognized pursuant to Rule 605 (§ 20.605 of this part) are not permitted to receive fees.

(c) *Circumstances under which fees may be charged.* Except as noted in paragraph (d) of this section, attorneys-at-law and agents may charge claimants or appellants for their services only if all of the following conditions have been met:

(1) A final decision has been promulgated by the Board of Veterans Appeals with respect to the issue, or issues, involved;

(2) The Notice of Disagreement which preceded the applicable Board of Veterans Appeals decision was received by the agency of original jurisdiction on or after November 18, 1988; and

(3) The attorney-at-law or agent was retained not later than one year following the date that the applicable decision by the Board of Veterans Appeals was promulgated. (This condition will be considered to have been met with respect to all successor attorneys-at-law or agents acting in the continuous prosecution of the same matter if a predecessor was retained within the required time period.)

(d) *Payment of fee by disinterested third party.* An attorney-at-law or agent may receive a fee or salary from an organization, governmental entity, or other disinterested third party for representation of a claimant or appellant even though the conditions set forth in paragraph (c) of this section have not been met.

(e) *Fees permitted.* Fees permitted under paragraph (c) for services of an attorney-at-law or agent admitted to practice before the Department of Veterans Affairs must be reasonable. They may be based on a fixed fee, hourly rate, a percentage of benefits recovered, or a combination of such bases. Factors considered in determining whether fees are reasonable include:

(1) The extent and type of services the representative performed;

(2) The complexity of the case;

(3) The level of skill and competence required of the representative in giving the services;

(4) The amount of time the representative spent on the case;

(5) The results the representative achieved, including the amount of any benefits recovered;

(6) The level of review to which the claim was taken and the level of the review at which the representative was retained; and

(7) Rates charged by other representatives for similar services.

(f) *Presumption of reasonableness.* Fees which total no more than 20 percent of any past-due benefits awarded, as defined in paragraph (h)(2) of this section, will be presumed to be reasonable.

(g) *Fee agreements.* All agreements for the payment of fees for services of attorneys-at-law and agents must be in writing and signed by both the claimant or appellant and the attorney-at-law or agent. The agreement must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor or guardian), the applicable Department of Veterans Affairs file number, and the specific terms under which the amount to be paid for the services of the attorney-at-law or agent will be determined. A copy of the agreement must be filed with the Board of Veterans Appeals within 30 days of its execution by mailing the copy to the following address: Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. (Also see paragraph (h)(3) for information concerning additional filing requirements when fees are to be paid by the Department of Veterans Affairs from past due benefits.)

(h) *Payment of fees by Department of Veterans Affairs directly to attorney or agent from past due benefits.* (1) Subject to the requirements of the other paragraphs of this section, including paragraphs (c) and (e), the claimant or appellant and the attorney-at-law or agent may enter into a fee agreement providing that payment for the services of the attorney-at-law or agent will be made directly to the attorney-at-law or agent by the Department of Veterans Affairs out of any past-due benefits awarded as a result of a successful appeal to the Board of Veterans' Appeals or an appellate court or as a result of a reopened claim before the Department following a prior denial of such benefits by the Board of Veterans' Appeals or an appellate court. Such an agreement will be honored by the Department only if the following conditions are met:

(i) The total fee payable (excluding expenses) does not exceed 20 percent of the total amount of the past-due benefits awarded,

(ii) The amount of the fee is contingent on whether or not the claim is resolved in a manner favorable to the claimant or appellant, and

(iii) The award of past-due benefits results in a cash payment to a claimant or an appellant from which the fee may be deducted. (An award of past-due benefits will not always result in a cash payment to a claimant or an appellant. For example, no cash payment will be made to military retirees unless there is a corresponding waiver of retirement pay. (See 38 U.S.C. 3104(a) and § 3.750 *et seq.* of this chapter.))

(2) For purposes of this paragraph, a claim will be considered to have been resolved in a manner favorable to the claimant or appellant if all or any part of the relief sought is granted.

(3) For purposes of this paragraph, "past-due benefits" means a nonrecurring payment resulting from a benefit, or benefits, granted on appeal or awarded on the basis of a claim reopened after a denial by the Board of Veterans' Appeals or the lump sum payment which represents the total amount of recurring cash payments which accrued between the effective date of the award, as determined by applicable laws and regulations, and the date of the grant of the benefit by the agency of original jurisdiction, the Board of Veterans' Appeals, or an appellate court.

(i) When the benefit granted on appeal, or as the result of the reopened claim, is service connection for a disability, the "past-due benefits" will be based on the initial disability rating assigned by the agency of original jurisdiction following the award of service connection. The sum will equal the payments accruing from the effective date of the award to the date of the initial disability rating decision. If an increased evaluation is subsequently granted as the result of an appeal of the disability evaluation initially assigned by the agency of original jurisdiction, and if the attorney-at-law or agent represents the claimant or appellant in that phase of the claim, the attorney-at-law or agent will be paid a supplemental payment at the time that the appellant is paid retroactive benefits based upon the increase granted on appeal, to the extent that the increased amount of disability is found to have existed between the initial effective date of the award following the grant of service connection and the date of the rating action implementing the appellate decision granting the increase.

(ii) Unless otherwise provided in the fee agreement between the claimant or appellant and the attorney-at-law or agent, the attorney-at law's or agent's fees will be determined on the basis of the total amount of the past-due benefits even though a portion of those benefits may have been apportioned to the claimant's or appellant's dependents.

(iii) If an award is made as the result of favorable action with respect to several issues, the past-due benefits will be calculated only on the basis of that portion of the award which results from action taken on issues concerning which the criteria in paragraph (c) of this section have been met.

(4) In addition to filing a copy of the fee agreement with the Board of Veterans' Appeals as required by paragraph (g) of this section, the attorney or agent must notify the agency of original jurisdiction within 30 days of the date of execution of the agreement of the existence of an agreement providing for the direct payment of fees out of any benefits subsequently determined to be past-due and provide that agency with a copy of the fee agreement. Payment of the attorney's or agent's share of any past-due benefits will be made at the same time that any such benefits are paid to the claimant or appellant.

(i) *Motion for review of fee agreement.* The Board of Veterans' Appeals may review a fee agreement between a claimant or appellant and an attorney-at-law or agent upon its own motion or upon the motion of any party to the agreement and may order a reduction in the fee called for in the agreement if it finds that the fee is excessive or unreasonable in light of the standards set forth in paragraph (e) of this section. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor or guardian), the applicable Department of Veterans Affairs file number, and the reason why the amount of the fee is felt to be excessive or unreasonable. Such motions must be filed at the following address: Office of the Chairman, Special Legal Assistant (OIC), Board of Veterans' Appeals, 810 Vermont Avenue NW, Washington, DC 20420. The moving party must mail a copy of the motion to all other parties to the agreement, with return receipts requested. The receipts, which must bear the signatures of the other parties, must then be filed with the Board at the same address as proof of service of the motion. The other parties may file a response to the motion with the Board at the same address not later than 30 days following the date of receipt of the copy of the motion. A copy of any such response must be mailed to the moving party, with a return receipt requested. The receipt, which must bear the signature of the moving party, must then be filed with the Board at the same address as proof of service of the response. The ruling on the motion will be by the Chairman. Such ruling will constitute the final decision of the Board with respect to the motion. If a reduction in the fee is ordered, the attorney or agent must credit the account of the claimant or appellant with the amount of the reduction and refund any excess payment on account to the claimant or appellant not later than the expiration of the time within which the ruling may be appealed to the Court of Veterans Appeals. Failure to do so may result in proceedings under § 14.633 of this chapter to terminate the attorney's or agent's right to practice before the Department of Veterans Affairs and the Board of Veterans Appeals and/or prosecution under the provisions of 38 U.S.C. 3405.

(Authority: 38 U.S.C. 3402, 3404(c), 3405)

§ 20.610 Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.

(a) *Applicability of rule.* The provisions of this section apply to the services of representatives with respect to benefits under laws administered by the Department of Veterans Affairs in all proceedings before Department of Veterans Affairs personnel or before the Board of Veterans Appeals regardless of whether an appeal has been initiated.

(b) *General.* Any representative may be reimbursed for expenses incurred on behalf of a veteran or a veteran's dependents or survivors in the prosecution of a claim for benefits

pending before the Department of Veterans Affairs. Whether such a representative will be reimbursed for expenses and the method of such reimbursement is a matter to be determined by the representative and the claimant or appellant. Expenses are not payable directly to the representative by the Department of Veterans Affairs out of benefits determined to be due to a claimant or appellant. Unless required in conjunction with a motion for the review of expenses filed in accordance with paragraph (d) of this section, agreements for the reimbursement of expenses need not be filed with the Department of Veterans Affairs or the Board of Veterans Appeals.

(c) *Nature of expenses subject to reimbursement.* "Expenses" include nonrecurring expenses incurred directly in the prosecution of a claim for benefits upon behalf of a claimant or appellant. Examples of such expenses include expenses for travel specifically to attend a hearing with respect to a particular claim, the cost of copies of medical records or other documents obtained from an outside source, the cost of obtaining the services of an expert witness or an expert opinion, etc. "Expenses" do not include normal overhead costs of the representative such as office rent, utilities, the cost of obtaining or operating office equipment or a legal library, salaries of the representative and his or her support staff, the cost of office supplies, etc.

(d) *Expense charges permitted—motion for review of expenses.* Reimbursement for the expenses of a representative may be obtained only if the expenses are reasonable. The Board of Veterans Appeals may review expenses charged by a representative upon the motion of the claimant or appellant and may order a reduction in the expenses charged if it finds that they are excessive or unreasonable. Such motions must be in writing. They must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor or guardian), and the applicable Department of Veterans Affairs file number. They must specifically identify which expenses charged are felt to be unreasonable and the reason, or reasons, why the amount of the expenses is felt to be excessive or unreasonable. Such motions must be filed at the following address: Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420. The appellant or claimant, as applicable, must mail a copy of the motion to the representative, with a return receipt requested. The receipt, which must bear the signature of the representative or an employee of the representative, must then be filed with the Board at the same address as proof of service of the motion. The representative may file a response to the motion with the Board at the same address not later than 30 days following the date of receipt of the copy of the motion. The representative must mail a copy of any such response to the appellant, with a return receipt requested. The receipt, which must bear the signature of the appellant, must then be filed with the Board at the same address as proof of service of the response. The ruling on the motion will be by the Chairman. Factors considered in determining whether expenses are excessive or unreasonable include the complexity of the case, the potential extent of benefits recoverable, whether travel expenses are in keeping with expenses normally incurred by other representatives, etc.

(Authority: 38 U.S.C. 3404)

§ 20.611 Rule 611. Continuation of representation following death of a claimant or appellant.

A recognized organization, attorney, agent, or person properly designated to represent a claimant or appellant will be recognized as the representative of his or her survivors for a period of one year following the death of the claimant or appellant. A representative may also continue to act with respect to any appeal pending upon the death of the claimant or appellant until such time as a final decision has been promulgated by the Board of Veterans Appeals. The provisions of this section do not apply to any survivor who has appointed another representative in accordance with these rules or who has indicated in writing that he or she does not wish to be represented by the claimant's or appellant's representative. Written notice that a survivor does not wish to be represented by the claimant's or appellant's representative will be effective when received by the agency of original jurisdiction or, if the case has been certified to the Board for appellate review, by the Board of Veterans Appeals.

(Authority: 38 U.S.C. 3402–3404)

§§ 20.612–20.699 [Reserved]

Subpart H—Hearings on Appeal

§ 20.700 Rule 700. General.

(a) *Right to a hearing.* A hearing on appeal will be granted if an appellant, or an appellant's representative acting on his or her behalf, expresses a desire to appear in person.

(b) *Purpose of hearing.* The purpose of a hearing is to receive argument and testimony relevant and material to the appellate issue. It is contemplated that the appellant and witnesses, if any, will be present. A personal hearing will not normally be scheduled solely for the purpose of receiving argument by a representative. Such argument should be submitted in the form of a written brief. Oral argument may also be submitted on audio cassette for transcription for the record in accordance with paragraph (d) of this section. Requests for appearances by representatives alone to personally present argument to Members of the Board may be granted if good cause is shown. Whether good cause has been shown will be determined by the presiding Member of the hearing panel involved.

(c) *Nonadversarial proceedings.* Hearings conducted by and for the Board are *ex parte* in nature and nonadversarial. Parties to the hearing will be permitted to ask questions, including follow-up questions, of all witnesses but cross-examination will not be permitted. Proceedings will not be limited by legal rules of evidence, but reasonable bounds of relevancy and materiality will be maintained. The presiding Member may set reasonable time limits for the presentation of argument and may exclude documentary evidence, testimony, and/or argument which is not relevant or material to the issue, or issues, being considered or which is unduly repetitious.

(d) *Informal hearings.* This term is used to describe situations in which the appellant cannot, or does not wish to, appear. In the absence of the appellant, the authorized representative may present oral arguments, not exceeding 30 minutes in length, to the Board on an audio cassette without personally appearing before a Board of Veterans Appeals hearing panel. These arguments will be transcribed by Board personnel for subsequent review by the panel members. This procedure will not be construed to satisfy an appellant's request to appear in person.

(Authority: See 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.701 Rule 701. Who may present oral argument.

Only the appellant and/or his or her authorized representative may appear and present argument in support of an appeal. At the request of an appellant, a Veterans Benefits Counselor of the Department of Veterans Affairs may present the appeal at a hearing before the Board of Veterans Appeals or before Department of Veterans Affairs field personnel acting for the Board.

(Authority: 38 U.S.C. 4002, 4004(a), 4005)

§ 20.702 Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans Appeals in Washington, DC, and by agency of original jurisdiction personnel acting on behalf of the Board of Veterans Appeals at field facilities.

(a) *General.* To the extent that officials scheduling hearings for or on behalf of the Board of Veterans Appeals determine that necessary physical resources and qualified personnel are available, hearings will be scheduled at the convenience of appellants and their representatives, with consideration of the travel distance involved. While a Statement of the Case should be prepared prior to the hearing, it is not a prerequisite for a hearing and an appellant may request that the hearing be scheduled prior to issuance of the Statement of the Case.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

(b) *Notification of hearing.* When a hearing is scheduled, the person requesting it will be notified of its time and place, and of the fact that the Government may not assume any expense incurred by the appellant, the representative or witnesses attending the hearing.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

(c) *Requests for changes in hearing dates.* (1) The appellant or the representative may request a different date for the hearing within 60 days from the date of the letter of notification of the time and place of the hearing, or not later than two weeks prior to the scheduled hearing date, whichever is earlier. The request must be in writing, but the grounds for the request need not be stated. Only one such request for a change of the date of the hearing will be granted, subject to the interests of other parties if a simultaneously contested claim is involved. In the case of hearings to be conducted by the Board of Veterans Appeals in Washington, DC, such requests for a new hearing date must be filed with: Chief, Hearing Section (014B), Board of Veterans Appeals, 810 Vermont Avenue NW., Washington, DC 20420. In the case of hearings conducted for the Board by agency of original jurisdiction personnel, the requests must be filed with the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date.

(2) After the period described in paragraph (c)(1) of this section has passed, or after one change in the hearing date is granted based on a request received during such period, the date of the hearing will become fixed. After a hearing date has become fixed, an extension of time for appearance at a hearing will be granted only for good cause, with due consideration of the interests of other parties if a simultaneously contested claim is involved. Examples of good cause include, but are not limited to, illness of the appellant and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness. The motion for a new hearing date must be in writing and must explain why a new hearing date is necessary. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the request for postponement has been removed. Ordinarily, however, hearings will not be postponed more than 30 days. An adverse determination by the agency of original jurisdiction as to whether good cause for postponement has been shown is an appealable issue. In the case of a hearing conducted by the Board of Veterans Appeals in Washington, DC, whether good cause for establishing a new hearing date has been shown will be determined by the presiding Member of the hearing panel assigned to conduct the hearing. In the case of hearings to be conducted by the Board of Veterans Appeals in Washington, DC, the motion for a new hearing date must be filed with: Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue NW., Washington, DC 20420. In the case of hearings conducted for the Board by agency of original jurisdiction personnel, the motion must be filed with the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a), 4005A)

(d) *Failure to appear for a scheduled hearing.* If an appellant fails to appear for a scheduled hearing and a request for postponement has not been received and granted, the case will be processed as though the request for a hearing had been withdrawn. No further request for a hearing will be granted in the same appeal unless such failure to appear was with good cause and the cause for the failure to appear arose under such circumstances that a timely request for postponement could not have been submitted prior to the scheduled hearing date. A motion for a new hearing date following a failure to appear must be in writing; must be submitted not more than 15 days following the original hearing date; and must set forth the reason, or reasons, for the failure to appear at the originally scheduled hearing and the reason, or reasons, why a timely request for postponement could not have been submitted. In the case of hearings to be conducted by the Board of Veterans Appeals in Washington, DC, the motion must be filed with: Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue NW., Washington, DC 20420. In the case of hearings conducted for the Board by agency of original jurisdiction personnel, the motion must be filed with the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the failure to appear has been removed. An adverse determination by the agency of original jurisdiction as to whether good cause for failure to appear has been shown is an appealable issue. In the case of hearings before the Board of Veterans Appeals in Washington, DC, whether good cause for such failure to appear has been established will be determined by the presiding Member of the hearing panel to which the case was assigned.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a), 4005A)

(e) *Withdrawal of hearing requests.* A request for a hearing may be withdrawn by an appellant at any time before the date of the hearing. A request for a hearing may not be withdrawn by an appellant's representative without the consent of the appellant. In the case of hearings to be conducted by the Board of Veterans Appeals in Washington, DC, the notice of withdrawal must be sent to: Chief, Hearing Section (014B), Board of Veterans Appeals, 810 Vermont Avenue NW., Washington, DC 20420. In the case of hearings conducted for the Board by agency of original jurisdiction personnel, the notice must be sent to the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.703 Rule 703. When right to Travel Board hearing arises.

A Travel Board hearing is a "hearing on appeal". Accordingly, there is no right to a hearing before a traveling Section of the Board until such time as a Notice of Disagreement has been filed. Any request for such a hearing filed

with a Notice of Disagreement, or filed subsequent to the filing of a Notice of Disagreement, will be accepted by the agency of original jurisdiction. Requests for such hearings before a Notice of Disagreement has been filed, or after the Board has entered a final decision in the case on the issue (or issues) appealed (with the exception of requests for such hearings in conjunction with requests for reconsideration of a prior Board decision) will be rejected.

(Authority: 38 U.S.C. 4005(a), 4010)

§ 20.704 Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans Appeals at Department of Veterans Affairs field facilities.

(a) *General.* Travel Board hearings are conducted during prescheduled visits to Department of Veterans Affairs facilities by traveling Sections of the Board of Veterans' Appeals. The hearings will be scheduled during such visits in the order in which requests for such hearings were received by the agency of original jurisdiction. Requests for Travel Board hearings must be submitted to the agency of original jurisdiction, in writing, and should not be submitted directly to the Board of Veterans' Appeals.

(b) *Notification of hearing.* When a hearing is scheduled, the person requesting it will be notified of its time and place, and of the fact that the Government may not assume any expense incurred by the appellant, the representative or witnesses attending the hearing.

(c) *Requests for changes in hearing dates.* Requests for a change in a Travel Board hearing date may be made at any time prior to the scheduled date of the hearing if good cause is shown. Such requests must be in writing, must explain why a new hearing date is necessary, and must be filed with the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date. Examples of good cause include, but are not limited to, illness of the appellant and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness. If good cause is shown, the Travel Board hearing will be rescheduled for the next available Travel Board hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the request for postponement has been removed. If good cause is not shown, the appellant and his or her representative will be promptly notified and given an opportunity to appear at the hearing as previously scheduled. If the appellant elects not to appear at the prescheduled date, the request for a Travel Board hearing will be considered to have been withdrawn. In such cases, however, the record will be submitted to the presiding Member of the traveling Section for review when the traveling Section of the Board arrives at the agency of original jurisdiction to conduct Travel Board hearings. If the presiding Member does not concur with the determination that good cause has not been shown, the Travel Board hearing will be rescheduled for the next available Travel Board hearing date after the contingency which gave rise to the request for postponement has been removed.

(d) *Failure to appear for a scheduled hearing.* If an appellant fails to appear for a scheduled Travel Board hearing and a request for postponement has not been received and granted, the case will be processed as though the request for a hearing had been withdrawn. No further request for a hearing will be granted in the same appeal unless such failure to appear was with good cause and the cause for the failure to appear arose under such circumstances that a timely request for postponement could not have been submitted prior to the scheduled hearing date. A motion for a new hearing date following a failure to appear for a scheduled Travel Board hearing must be in writing, must be filed within 15 days of the originally scheduled hearing date, and must explain why the appellant failed to appear for the hearing and why a timely request for a new hearing date could not have been submitted. Such motions must be filed with: Office of the Chairman, Special Legal Assistant (OIC), Board of Veterans Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the contingency which gave rise to the failure to appear has been removed. Whether good cause for such failure to appear has been established will be determined by the presiding Member of the traveling Section of the Board. If good cause is shown, the Travel Board hearing will be rescheduled for the next available Travel Board hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the failure to appear has been removed.

(e) *Withdrawal of Travel Board hearing requests.* A request for a Travel Board hearing may be withdrawn by an appellant at any time before the date of the hearing. A request for a Travel Board hearing may not be withdrawn by an appellant's representative without the consent of the appellant. Notices of withdrawal must be forwarded to the office of the Department of Veterans Affairs official who signed the notice of the hearing date.

(Authority: 38 U.S.C. 4004(a), 4010)

§ 20.705 Rule 705. Where hearings on appeal are conducted.

A hearing on appeal may be held in one of the following places at the option of the appellant:

(a) Before a Section of the Board of Veterans Appeals in Washington, DC, or

(b) Before a traveling Section of the Board of Veterans' Appeals. Such hearings are held during prescheduled visits to Department of Veterans Affairs facilities having adequate physical resources and personnel for the support of such hearings.

(c) Before appropriate personnel in the Department of Veterans Affairs facility having original jurisdiction over the claim at issue, acting as a hearing agency for the Board of Veterans' Appeals. If the appellant resides within the jurisdiction of, or is closer proximity to, a Department of Veterans Affairs facility other than the one that rendered the determination at issue, the appellant may request that the hearing be conducted at the more convenient facility. That request will be granted upon the certification of the director of the second facility that that facility has appropriate physical and personnel resources, including personnel with expertise in the issues involved, available to conduct such a hearing within a reasonable period of time. Personnel conducting such hearings as agents for the Board of Veterans' Appeals will allow the appellant and/or representative to present any argument and testimony, as well as any witnesses before the panel, subject to the exclusion of testimony, documentary evidence, and/or argument which is not relevant or material to the issues being considered or which is unduly repetitious. Rule 708 (§ 20.708 of this part) and Rules 709 through 713 (§§ 20.709 through 20.713 of this part) are applicable to this paragraph.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a), 4010)

§ 20.706 Rule 706. Functions of the presiding Member.

The presiding Member of a hearing panel is responsible for the conduct of the hearing, administration of the oath or affirmation, and for ruling on questions of procedure. The presiding Member will assure that the course of the hearing remains relevant to the issue, or issues, on appeal and that there is no cross-examination of the parties or witnesses. The presiding Member will take such steps as may be necessary to maintain good order at hearings and may terminate a hearing or direct that the offending party leave the hearing if an appellant, representative, or witness persists in disruptive behavior.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.707 Rule 707. When a hearing panel makes the final appellate decision.

(a) *Hearings in Washington, DC.* Hearings held before a Section of the Board of Veterans' Appeals in Washington, DC, are normally held before Members who will make the final decision on the appeal.

(b) *Hearings held before traveling Sections of the Board.* Hearings held before traveling Board Sections are normally held before Members who will make the final decision on the appeal unless an issue on appeal involves radiation, Agent Orange, or asbestos exposure; the case involves the reconsideration of a prior Board of Veterans' Appeals decision; or the hearing panel consists of fewer than three Members of the Board. Appeals involving radiation, Agent Orange, or asbestos exposure issues will be decided by Board Members specializing in those issues. Decisions in appeals involving reconsideration of a prior Board of Veterans Appeals decision on the same issue, or issues, may involve Board Members in addition to those Members making up the traveling Section. An expanded reconsideration panel considering issues involving radiation, Agent Orange, or asbestos exposure will include both the traveling Section and Board Members specializing in those issues. If a Travel Board panel is comprised of fewer than three Board Members, the Chairman may assign an additional Member, or Members, to constitute a three-Member panel which will make the final decision in Washington, DC.

(Authority: 38 U.S.C. 4002, 4004(a), 4010)

§ 20.708 Rule 708. Prehearing conference.

An appellant's authorized representative may request a prehearing conference with the presiding Member of a hearing panel in order to clarify the issues to be considered at a hearing on appeal, obtain rulings on the admissibility of evidence, develop stipulations of fact, establish the length of argument which will be permitted, or take other steps which will make the hearing itself more efficient and productive. With respect to hearings to be held before Members of the Board at Washington, DC, arrangements for a prehearing conference must be made through: Chief, Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Requests for prehearing conferences in cases involving hearings to be held before traveling Sections of the Board and hearings to be held before Department of Veterans Affairs personnel acting as agents for the Board must be addressed to the office of the Department of Veterans Affairs official who signed the letter giving notice of the time and place of the hearing.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.709 Rule 709. Procurement of additional evidence following a hearing.

If it appears during the course of a hearing that additional evidence would assist in the review of the questions at issue, the presiding Member may direct that the record be left open so that the appellant and his or her representative may obtain the desired evidence. The presiding Member will determine the period of time during which the record will stay open, considering the amount of time estimated by the appellant or representative as needed to obtain the evidence and other factors adduced during the hearing. Ordinarily, the period will not exceed 60 days, and will be as short as possible in order that appellate consideration of the case not be unnecessarily delayed.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.710 Rule 710. Witnesses at hearings.

(a) *General.* The testimony of witnesses, including appellants, will be heard. Testimony may include presentations by Members of the Congress or Congressional staff members appearing on an appellant's behalf.

(b) *Testimony under ooth.* All testimony must be given under oath unless excused because of religious principles or other good cause. If the witness declines to take an oath, he or she must be informed that testimony will be permitted on affirmation. The witness must then be requested to make a solemn declaration as to the truth of the testimony about to be given. The witness may use such words as he or she considers binding on his or her conscience. Administration of the oath for the sole purpose of presenting contentions and argument is not required.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.711 Rule 711. Subpoenas.

(a) *General.* An appellant, or his or her representative, may arrange for the production of any tangible evidence or the voluntary appearance of any witnesses desired. When necessary evidence can not be obtained in any other reasonable way, the appellant, or his or her representative, may move that a subpoena be issued to compel the attendance of witnesses residing within 100 miles of the place where a hearing on appeal is to be held and/or to compel the production of tangible evidence. A subpoena will not be issued to compel the attendance of Department of Veterans Affairs adjudicatory personnel.

(b) *Contents of motion for subpoena.* The motion for a subpoena must be in writing, must clearly show the name and address of each witness to be subpoenaed, must clearly identify all documentary or other tangible evidence to be produced, and must explain why the attendance of the witness and/or the production of the tangible evidence cannot be obtained without a subpoena.

(c) *Where motion for subpoena is to be filed.* In cases in which the appellate record has been transferred to the Board of Veterans' Appeals in Washington, DC, motions for a subpoena must be filed with the Office of the Chairman, Special Legal Assistant (OIC), Board of Veterans Appeals, 810 Vermont Avenue NW., Washington, DC 20420. In those cases where the appellate record has not been transferred to the Board, such motions must be filed with the Director of the Department of Veterans Affairs facility where the appellate record is located.

(d) *When motion for subpoena is to be filed in cases involving a hearing on appeal.* Motions for the issuance of a subpoena for the attendance of a witness, or the production of documents or other tangible evidence, at a hearing on appeal must be filed not later than 30 days prior to the hearing date.

(e) *Ruling on motion for subpoena.* In cases in which the appellate record has been transferred to the Board of Veterans' Appeals in Washington, DC, the ruling on the motion will be made by the Chairman. In those cases where the appellate record has not been transferred to the Board, the ruling on the motion will be made by the Director of the Department of Veterans Affairs facility where the appellate record is located. In cases where the production of documents or other tangible evidence is sought, the granting of the motion may be conditioned upon the advancement by the appellant of the reasonable cost of producing the books, papers, documents, or other tangible evidence requested. Denial of a motion for a subpoena by a Director of a Department

of Veterans Affairs facility may be appealed to the Chairman of the Board of Veterans Appeals.

(f) *Motion to quash or modify subpoena.* If an individual served with a subpoena considers the subpoena to be unreasonable or oppressive, he or she may move that the subpoena be quashed or modified. Such motions must be in writing and must explain why the subpoena is unreasonable or oppressive and what relief is sought. Such motions must be filed with the office of the official who issued the subpoena not more than 10 days following receipt of the subpoena. Rulings on such motions will be made by the official who issued the subpoena, who will inform all interested parties of the ruling in writing. Such rulings are final and are not subject to appeal.

(g) *Service of subpoenas.* The official issuing the subpoena will serve the subpoena by certified mail, return receipt requested. The receipt, which must bear the signature of the witness or of the custodian of the tangible evidence, and a copy of the subpoena will be filed in the claims folder, loan guaranty folder, or other applicable Department of Veterans Affairs records folder.

(Authority: 38 U.S.C. 3311, 4002(c), 4004(a))

§ 20.712 Rule 712. Expenses of appellants, representatives, and witnesses incident to hearings.

No expenses incurred by an appellant, representative, or witness incident to attendance at a hearing may be paid by the Government.

(Authority: 38 U.S.C. 111)

§ 20.713 Rule 713. Hearings in simultaneously contested claims.

(a) *General.* If a hearing is scheduled for any party to a simultaneously contested claim, the Board will accord the other contesting claimants and their representatives, if any, the opportunity to be present. The appellant will be allowed to present opening testimony and argument. Thereafter, any other contesting party who wishes to do so may present testimony and argument. The appellant will then be allowed an opportunity to present testimony and argument in rebuttal. Cross-examination will not be allowed.

(b) *Requests for changes in hearing dates.* Any party to a simultaneously contested claim may request a change in a hearing date in accordance with the provisions of Rule 702, paragraph (c) (§ 20.702(c) of this part), or Rule 704, paragraph (c) (§ 20.704(c) of this part), as applicable. In order to obtain a new hearing date under the provisions of Rule 702, paragraph (c)(i), the consent of all other interested parties must be obtained and submitted with the request for a new hearing date. If such consent is not obtained, paragraph (c)(ii) of that rule will apply even though the request is submitted within 60 days from the date of the letter of notification of the time and place of the hearing. A copy of any motion for a new hearing date required by these rules must be mailed to all other interested parties by certified mail, return receipt requested. The receipts, which must bear the signatures of the other interested parties, and a letter explaining that they relate to the motion for a new hearing date and containing the applicable Department of Veterans Affairs file number must be filed at the same address where the motion was filed as proof of service of the motion. Each interested party will be allowed a period of 10 days from the date that the copy of the motion was received by that party to file written argument in response to the motion.

(Authority: 38 U.S.C. 4005A)

§ 20.714 Rule 714. Record of hearing.

(a) *Board of Veterans' Appeals.* A hearing before Members of the Board, whether held in Washington, DC, or before a traveling Section, will be recorded on audio tape. In those instances where a complete written transcript is prepared, that transcript will be the official record of the hearing and the tape recording will be retained at the Board for a period of 12 months following the date of the hearing as a duplicate record of the hearing. Tape recordings of hearings that have not been transcribed will be maintained by the Board as the official record of hearings and retained in accordance with retention standards approved by the National Archives and Records Administration. A transcript will be prepared and incorporated as a part of the claims folder, loan guaranty folder, or other applicable Department of Veterans Affairs records folder if one or more of the following conditions have been met:

(1) The appellant or representative has shown good cause why such a written transcript should be prepared. (The presiding Member of the hearing panel will determine whether good cause has been shown. Requests that recordings of hearing proceedings be transcribed may be made orally at the time of the hearing. Requests made subsequent to the hearing must be in writing and must explain why a transcription is necessary. They must be filed with: Chief, Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC 20420.)

(2) Testimony and/or argument has been presented at the hearing pertaining to an issue which is to be remanded to the agency of original jurisdiction for further development or an issue which is not in appellate status which is to be referred to the agency of original jurisdiction for consideration.

(3) The hearing involves an issue relating to National Service Life Insurance or United States Government Life Insurance.

(4) With respect to hearings conducted by a traveling Section of the Board:

(i) An issue on appeal involves radiation, Agent Orange, or asbestos exposure;

(ii) The appeal involves reconsideration of a prior Board of Veterans Appeals decision on the same issue; or

(iii) The traveling Section consists of fewer than three Members of the Board.

(5) The Board's decision on an issue addressed at the hearing has been appealed to the United States Court of Veterans Appeals.

(b) *Field offices.* The hearing proceedings before field office personnel after the filing of a Notice of Disagreement will be recorded and a copy of the complete written transcript incorporated as a part of the claims folder, loan guaranty folder, or other applicable Department of Veterans Affairs records folder as the official record of the hearing.

(c) *Copy of hearing tape recording or written transcript.* A copy of the tape recording of hearing proceedings before the Board of Veterans Appeals, or the written transcript of such proceeding when such a transcript has been prepared in accordance with the provisions of paragraph (a) of this section, and/or a copy of the written transcript of field office appellate hearing proceedings may be furnished without cost to the appellant or representative if a request is made at the time of or prior to the hearing; otherwise a charge may be made in accordance with § 1.577 of this chapter.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.715 Rule 715. Recording of hearing by appellant or representative.

An appellant or representative may record the hearing with his or her own equipment. Filming, videotaping or televising the hearing may be authorized provided a consent is obtained from the appellant and made a matter of record. In no event will such additional equipment be used if it interferes with the conduct of the hearing or the official recording apparatus. In all such situations advance arrangements must be made. In the case of hearings held before Members of the Board of Veterans Appeals in Washington, DC, arrangements must be made with the Chief of the Hearing Section (014B), Board of Veterans Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. In the case of hearings held before traveling Sections of the Board or before Department of Veterans Affairs personnel acting as agents for the Board, arrangements must be made through the office of the Department of Veterans Affairs official who signed the letter giving notification of the time and place of the hearing.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.716 Rule 716. Correction of hearing transcripts.

The tape recording on file at the Board of Veterans Appeals or a transcript prepared by the Board of Veterans Appeals or by Department of Veterans Affairs personnel acting as agents for the Board is the only official record of a hearing on appeal. Alternate transcript versions prepared by the appellant and representative will not be accepted. An appellant or his or her representative may move for the correction of a hearing transcript, provided that the motion is filed within 30 days after the date that the transcript is mailed to the appellant. The motion must be in writing and must specify the error, or errors, in the transcript and the correct wording to be substituted. In the case of hearings held before Members of the Board of Veterans Appeals, whether in Washington, DC, or in the field, the motion must be filed with the Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. In the case of hearings held before Department of Veterans Affairs personnel acting as agents for the Board, the motion must be filed with the office of the Department of Veterans Affairs official who signed the letter giving notification of the time and place of the hearing. The ruling on the motion will be made by the presiding Member of the hearing panel concerned.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a), 4010)

§ 20.717 Rule 717. Loss of hearing tapes or transcripts—motion for new hearing.

(a) *Motion for new hearing.* In the event that a hearing has not been recorded in whole or in part due to equipment failure or other cause, or the official transcript of the hearing is lost or destroyed and the recording upon which it was based is no longer available, an appellant or his or her representative may move for a new hearing. The motion must be in writing and must specify why prejudice would result from the failure to provide a new hearing.

(b) *Time limit for filing motion for a new hearing.* The motion will not be granted if there has been no request for a new hearing within a period of 120 days from the date of a final Board of Veterans Appeals decision or, in cases appealed to the United States Court of Veterans Appeals, if there has been no request for a new hearing within a reasonable period of time after the appeal to that Court has been filed.

(c) *Where motion for a new hearing is filed.* In the case of hearings held before Members of the Board of Veterans Appeals, whether in Washington, DC, or in the field, the motion must be filed with the Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings held before Department of Veterans Affairs personnel acting as agents for the Board, the motion must be filed with the office of the Department of Veterans Affairs official who signed the letter giving notification of the time and place of the hearing unless the appellant has received notice that the case has been transferred to the Board of Veterans Appeals for appellate review or unless a final Board of Veterans Appeals decision has already been promulgated with respect to the appeal in question. In such cases, the motion must be filed with the Board at the address specified herein.

(d) *Ruling on motion for a new hearing.* Except as noted hereinafter, the ruling on the motion for a new hearing will be made by the presiding Member of the hearing panel concerned. If the presiding Member of the hearing panel is no longer available, the ruling on the motion may be made by any other member of the hearing panel who is available. In cases in which a hearing was held before Department of Veterans Affairs personnel acting as agents for the Board and the appellate record has been transferred to the Board of Veterans Appeals for appellate review, or in which a final Board of Veterans Appeals decision has already been promulgated with respect to the appeal in question, the ruling on the motion will be by the Chairman of the Board. Factors to be considered in ruling on the motion include, but will not be limited to, the extent of the loss of the record in those cases where only a portion of a hearing tape is unintelligible or only a portion of a transcript has been lost or destroyed, and the extent and reasonableness of any delay in moving for a new hearing. If a new hearing is granted in a case in which a final Board of Veterans Appeals decision has already been promulgated, a supplemental decision will be issued.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a), 4010)

§§ 20.718-20.799 [Reserved]

Subpart I—Evidence

§ 20.800 Rule 800. Submission of additional evidence after initiation of appeal.

Subject to the limitations set forth in Rule 1304 (§ 20.1304 of this part), an appellant may submit additional evidence, or information as to the availability of additional evidence, after initiating an appeal.

(Authority: 38 U.S.C. 4005(d)(1))

§§ 20.801-20.899 [Reserved]

Subpart J—Action by the Board

§ 20.900 Rule 900. Order of consideration of appeals.

(a) *Docketing of appeals.* Applications for review on appeal are docketed in the order in which they are received. Cases returned to the Board following action pursuant to a remand assume their original places on the docket.

(b) *Appeals considered in docket order.* Appeals are considered in the order in which they are entered on the docket.

(c) *Advancement on the docket.* A case may be advanced on the docket if it involves an interpretation of law of general application affecting other claims or for other good cause. Examples of such good cause include terminal illness, extreme hardship which might be relieved in whole or in part if the benefits sought on appeal were granted, etc. Advancement on the docket is requested by motion. Such motions must be in writing and must identify the law of general application affecting other claims or other good cause involved. They must also include the name of the veteran, the name of the appellant if other than the veteran (e.g., the veteran's guardian or survivor), and the applicable Department of Veterans Affairs file number. The motion must be filed with the Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue NW., Washington, DC 20420. The ruling on the motion will be by the Chairman. If a motion to advance a case on the docket is denied, the appellant and his

or her representative will be immediately notified. If the motion to advance a case on the docket is granted, that fact will be noted in the Board's decision when rendered.

(Authority: 38 U.S.C. 4007)

§ 20.901 Rule 901. Medical opinions and opinions of the General Counsel.

(a) *Opinion of the Chief Medical Director.* The Board may obtain a medical opinion from the Chief Medical Director of the Veterans Health Services and Research Administration of the Department of Veterans Affairs on medical questions involved in the consideration of an appeal when, in its judgment, such medical expertise is needed for equitable disposition of an appeal.

(Authority: 38 U.S.C. 3007(a))

(b) *Armed Forces Institute of Pathology opinions.* The Board may refer pathologic material to the Armed Forces Institute of Pathology and request an opinion based on that material.

(Authority: 38 U.S.C. 4009(a))

(c) *Opinion of the General Counsel.* The Board may obtain an opinion from the General Counsel of the Department of Veterans Affairs on legal questions involved in the consideration of an appeal.

(Authority: 38 U.S.C. 4004(c))

(d) *Independent medical expert opinions.* When, in the judgment of the Board, additional medical opinion is warranted by the medical complexity or controversy involved in an appeal, the Board may obtain an advisory medical opinion from one or more medical experts who are not employees of the Department of Veterans Affairs. Opinions will be secured, as requested by the Chairman of the Board, from recognized medical schools, universities, clinics, or medical institutions with which arrangements for such opinions have been made by the Secretary of Veterans Affairs. An appropriate official of the institution will select the individual expert, or experts, to give an opinion.

(Authority: 38 U.S.C. 4009)

(e) For purposes of this section, the term "the Board" includes the Chairman, the Vice Chairman, any Deputy Vice Chairman, and any Member of a Section of the Board before whom a case is pending.

(Authority: 38 U.S.C. 3007(a), 4004(c), 4009)

§ 20.902 Rule 902. Filing of requests for the procurement of opinions.

The appellant or representative may request that the Board obtain an opinion under Rule 901 (§ 20.901 of this part). The request must be in writing. It will be granted upon a showing of good cause, such as the identification of a complex or controversial medical or legal issue involved in the appeal which warrants such an opinion.

(Authority: 38 U.S.C. 3007(a), 4002(c), 4004(c), 4009)

§ 20.903 Rule 903. Notification of opinions secured by the Board and opportunity for response.

When an opinion is requested by the Board pursuant to Rule 901 (§ 20.901 of this part), the Board will notify the appellant and his or her representative, if any. When the opinion is received by the Board, a copy of the opinion will be furnished to the appellant's representative or, subject to the limitations provided in 38 U.S.C. 3301(b)(1), to the appellant if there is no representative. A period of 60 days from the date of mailing of a copy of the opinion will be allowed for response. The date of mailing will be presumed to be the same as the date of the letter or memorandum which accompanies the copy of the opinion for purposes of determining whether a response was timely filed.

(Authority: 38 U.S.C. 4009(c))

§ 20.904 Rule 904. Administrative allowance.

The Chairman or Vice Chairman, under authority delegated in §§ 2.66 and 19.13(b) of this chapter, may authorize an Administrative Allowance, following review and recommendation by a Member or Members of the Board, in adjudicative actions which are otherwise final.

(Authority: 38 U.S.C. 210(b), 212(a))

§ 20.905 Rule 905. Vacating a decision.

An appellate decision may be vacated by the Board of Veterans Appeals at any time upon request of the appellant or his or her representative, or on the Board's own motion, on the following grounds:

(a) *Denial of due process.* Examples of circumstances in which denial of due process of law will be conceded are:

(1) When the appellant was denied his or her right to representation through action or inaction by Department of Veterans Affairs or Board of Veterans Appeals personnel,

(2) When a Statement of the Case or required Supplemental Statement of the Case was not provided, and

(3) When there was a prejudicial failure to afford the appellant a personal hearing. (Where there was a failure to honor a request for a hearing and a hearing is subsequently scheduled, but the appellant fails to appear, the decision will not be vacated.)

(b) *Allowance of benefits based on false or fraudulent evidence.* Where it is determined on reconsideration that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant, the prior decision will be vacated only with respect to the issue or issues to which, within the judgment of the Board, the false or fraudulent evidence was material.

(Authority: 38 U.S.C. 4004(a))

§§ 20.906–20.999 [Reserved]

Subpart K—Reconsideration

§ 20.1000 Rule 1000. When reconsideration is accorded.

Reconsideration of an appellate decision may be accorded at any time by the Board of Veterans Appeals on motion by the appellant or his or her representative or on the Board's own motion:

(a) Upon allegation of obvious error of fact or law;

(b) Upon discovery of new and material evidence in the form of relevant records or reports of the service department concerned;

(c) Upon allegation that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant; or

(d) In accordance with Rule 1101, paragraph (c) (§ 20.1101(c) of this part), when there has been a dissenting opinion.

(Authority: 38 U.S.C. 4008, 4004)

§ 20.1001 Rule 1001. Filing and disposition of motion for reconsideration.

(a) *Application requirements.* A motion for Reconsideration must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor or guardian); the applicable Department of Veterans Affairs file number; and the date of the Board of Veterans Appeals decision, or decisions, to be reconsidered. It must also set forth clearly and specifically the alleged obvious error, or errors, of fact or law in the applicable decision, or decisions, of the Board or other appropriate basis for requesting Reconsideration. If the applicable Board of Veterans Appeals decision, or decisions, involved more than one issue on appeal, the motion for reconsideration must identify the specific issue, or issues, to which the motion pertains. Issues not so identified will not be considered in the disposition of the motion.

(b) *Filing of motion for reconsideration.* A motion for reconsideration of a prior Board of Veterans Appeals decision may be filed at any time. Such motions must be filed at the following address: Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(c) *Disposition.* The Chairman will review the sufficiency of the allegations set forth in the motion and, depending upon the decision reached, proceed as follows:

(1) *Motion denied.* The appellant and representative or other appropriate party will be notified if the motion is denied. The notification will include reasons why the allegations are found insufficient. This constitutes final disposition of the motion.

(2) *Motion allowed.* If the motion is allowed, the appellant and his or her representative, if any, will be notified. The appellant and the representative will be given a period of 60 days from the date of mailing of the letter of notification to present additional arguments. The date of mailing of the letter of notification will be presumed to be the same as the date of the letter of notification. The Chairman will assign a Reconsideration panel in accordance with § 19.11 of this chapter.

(Authority: 38 U.S.C. 4003, 4008)

§ 20.1002 Rule 1002. Evidence considered on reconsideration.

(a) *Reconsideration based upon an allegation of obvious error of fact or law.* Reconsideration of an appellate decision for error is limited to review of the evidence of record at the time the decision was entered, but the Board may secure medical or legal opinions as provided by Rule 901 (§ 20.901 of this part). Apart from service department records, additional evidence submitted following the decision being reconsidered will be considered only in conjunction with a reopened claim. If the reopened claim has not been developed and certified for appellate consideration, the additional evidence will be referred to the agency of original jurisdiction unless the Board assumes jurisdiction of the reopened claim on its own motion in order to grant the benefits sought on the basis of new and material evidence.

(Authority: 38 U.S.C. 3008, 4003, 4008)

(b) *Reconsideration based upon service department records.* Additional evidence in the form of relevant service department records may be reviewed on reconsideration, inasmuch as such records are deemed to have been constructively of record at the time of the decision, or decisions, being reconsidered. If such additional evidence furnishes a basis for the grant of one or more benefits sought on appeal, error in the prior Board decision being reconsidered need not be shown with respect to such benefits.

(Authority: 38 U.S.C. 4003)

(c) *Reconsideration based upon an allegation of false or fraudulent evidence.* Reconsideration of an appellate decision based upon an allegation that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant will be limited to a review of the evidence of record at the time the decision was entered and only such additional evidence as is required, in the Board's judgment, to establish the veracity of the evidence of record at the time the decision was entered. The reconsideration panel will not readjudicate the underlying issue, or issues.

(Authority: 38 U.S.C. 4004(a))

§ 20.1003 Rule 1003. Hearings on reconsideration.

After a motion for reconsideration has been allowed, a hearing will be granted if an appellant desires to appear in person.

(Authority: 38 U.S.C. 4002, 4003, 4004(a), 4005(a))

§§ 20.1004–20.1099 [Reserved]

Subpart L—Finality

§ 20.1100 Rule 1100. Finality of decisions of the Board.

A decision of the Board of Veterans Appeals is final, with the exception of matters subject to 38 U.S.C. 223, matters covered by 38 U.S.C. 775 and 784, matters arising under 38 U.S.C. chapter 37, and matters covered by 38 U.S.C. chapter 72.

(Authority: 38 U.S.C. 211(a), 4004(a))

§ 20.1101 Rule 1101. When decisions of the Board become final.

(a) *Unanimous decisions.* Subject to a motion for reconsideration in accordance with Rule 1001 (§ 20.1001 of this part), a decision unanimously concurred in by the Members of a Section of the Board and duly promulgated is final.

(b) *Majority decisions.* Unless the Chairman of the Board orders reconsideration of the case in accordance with the provisions of paragraph (c) of this section, a decision by a majority of the Members of a Section of the Board, when duly promulgated, is final.

(c) *Dissent.* Except for cases involving reconsideration of a prior final Board of Veterans Appeals decision, any decision involving a dissenting opinion will be referred to the Chairman of the Board prior to its promulgation. If the Chairman determines that reconsideration is not warranted, the decision will be promulgated and will become final in accordance with paragraph (b) of this section. If the Chairman determines that there is a question as to whether the majority opinion may involve an obvious error of fact or law, he or she may order that the decision be reconsidered by an expanded Section of the Board in accordance with the provisions of Rules 1000 through 1003 (§§ 20.1000 through 20.1003 of this part). The appellant and his or her representative, if any, will be notified that reconsideration has been ordered and provided with a copy of the decision. At the time of notification the appellant and the representative will be given a period of 60 days to present additional argument or to request a hearing on reconsideration in accordance with Rule 1003 (§ 20.1003 of this part). The decision of the majority of the Members of the expanded Section of the Board, duly promulgated, is the final decision of the Board. If the Members of the expanded Section are equally divided, the Chairman will further expand the Section until a majority opinion is obtained.

(d) *Promulgation.* Except as noted in this paragraph, a decision of the Board will be considered to have been duly promulgated as of the date shown on the face of the decision. A decision involving a dissent will not be considered to be a promulgated decision when reconsideration has been ordered by the Chairman in accordance with paragraph (c) of this section. Both the decision with the dissenting opinion and the decision on reconsideration will be considered to be promulgated as of the date shown on the face of the reconsideration decision. A remand is in the nature of a preliminary order and does not constitute a final decision of the Board.

(e) *Presumption of date of mailing of notice of decision.* The date of mailing of notice of the decision will be presumed to be the same as the date of promulgation for purposes of 38 U.S.C.

4066 pertaining to appeals to the Court of Veterans Appeals.

(Authority: 38 U.S.C. 4002, 4003, 4004)

§ 20.1102 Rule 1102. Harmless error.

An error or defect in any decision by the Board of Veterans Appeals which does not affect the merits of the issue or substantive rights of the appellant will be considered harmless and not a basis for vacating or reversing such decision.

(Authority: 38 U.S.C. 4003)

§ 20.1103 Rule 1103. Finality of determinations of the agency of original jurisdiction where appeal is not perfected.

A determination on a claim by the agency of original jurisdiction of which the claimant is properly notified is final if an appeal is not perfected as prescribed in Rule 302 (§ 20.302 of this part).

(Authority: 38 U.S.C. 4005)

§ 20.1104 Rule 1104. Finality of determinations of the agency of original jurisdiction affirmed on appeal.

When a determination of the agency of original jurisdiction is affirmed by the Board of Veterans Appeals, such determination is subsumed by the final appellate decision.

(Authority: 38 U.S.G. § 4004(a))

§ 20.1105 Rule 1105. New claim after promulgation of appellate decision.

When a claimant requests that a claim be reopened after an appellate decision has been promulgated and submits evidence in support thereof, a determination as to whether such evidence is new and material must be made and, if it is, as to whether it provides a new factual basis for allowing the claim. An adverse determination as to either question is appealable.

(Authority: 38 U.S.C. 3008, 4004)

§ 20.1106 Rule 1106. Claim for death benefits by survivor—prior unfavorable decisions during veteran's lifetime.

Except with respect to benefits under the provisions of 38 U.S.C. 418 and certain cases involving individuals whose Department of Veterans Affairs benefits have been forfeited for treason or for subversive activities under the provisions of 38 U.S.C. 3504 and 3505, issues involved in a survivor's claim for death benefits will be decided without regard to any prior disposition of those issues during the veteran's lifetime.

(Authority: 38 U.S.C. 4004(b))

§§ 20.1107-20.1199 [Reserved]

Subpart M—Privacy Act

§ 20.1200 Rule 1200. Privacy Act request—appeal pending.

When a Privacy Act request is filed under § 1.577 of this chapter by an individual seeking records pertaining to him or her and the relevant records are in the custody of the Board, such request will be reviewed and processed prior to appellate action on that individual's appeal.

(Authority: 5 U.S.C. 552a; 38 U.S.C. 4007)

§ 20.1201 Rule 1201. Amendment of appellate decisions.

A request for amendment of an appellate decision under the Privacy Act (5 U.S.C. 552a) may be entertained. However, such a request may not be used in lieu of, or to circumvent, the procedures established under Rules 1000 through 1003 (§§ 20.1000–20.1003 of this part). The Board will review a request for correction of factual information set forth in a decision. Where the request to amend under the Privacy Act is an attempt to alter a judgment made by the Board and thereby replace the adjudicatory authority and functions of the Board, the request will be denied on the basis that the Act does not authorize a collateral attack upon that which has already been the subject of a decision of the Board. The denial will satisfy the procedural requirements of § 1.579 of this chapter. If otherwise appropriate, the request will be considered one for reconsideration under Rules 1000 through 1003 (§§ 20.1000 through 20.1003 of this part).

(Authority: 5 U.S.C. 552a(d); 38 U.S.C. 4003, 4006)

§§ 20.1202-20.1299 [Reserved]

Subpart N—Miscellaneous

Cross-Reference: In cases involving access to medical records relating to drug abuse, alcoholism, alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, also see 38 U.S.C. 4132.

§ 20.1300 Rule 1300. Access to Board records.

(a) *Removal of records.* No original record, paper, document or exhibit certified to the Board may be taken from the Board except as authorized by the Chairman or except as may be necessary to furnish copies or to transmit copies for other official purposes.

(Authority: 38 U.S.C. 3301)

(b) *Release of information.* Information requested from records, including copies of such records in the custody of the Board of Veterans' Appeals, will be furnished to the extent permitted by law and Department of Veterans Affairs regulations.

(Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 3301)

(c) *Fees.* The fees to be charged and collected for the release of information and for any copies will be in accordance with §§ 1.526, 1.555, and 1.577 of this chapter.

(Authority: 38 U.S.C. 3302(b))

(d) *Waiver of fees.* When information is requested from records certified to and in the custody of the Board, the required fee may be waived if such information is requested in connection with the requestor's pending appeal.

(Authority: 38 U.S.C. 3302(b))

(e) *Review of records.* Information in the records may be reviewed by Board of Veterans Appeals employees who have a need to do so in the performance of their duties.

(Authority: 5 U.S.C. 552a(b)(1))

§ 20.1301 Rule 1301. Disclosure of information.

(a) *Policy.* It is the policy of the Board of Veterans Appeals for the full text of appellate decisions, Statements of the Case, and Supplemental Statements of the Case to be disclosed to appellants. In those situations where disclosing certain information directly to the appellant would not be in conformance with 38 U.S.C. 3301, that information will be removed from the decision, Statement of the Case, or Supplemental Statement of the Case and the remaining text will be furnished to the appellant. A full-text appellate decision, Statement of the Case, or Supplemental Statement of the Case will be disclosed to the designated representative, however, unless the relationship between the appellant and representative is such (for example, a parent or spouse) that disclosure to the representative would be as harmful as if made to the appellant.

(Authority: 38 U.S.C. 4005(d)(2))

(b) *Index to decisions.* The appellate decisions of the Board of Veterans' Appeals have been indexed to facilitate access to the contents of the decisions (BVA Index I–01–1). The index, which is published quarterly in microfiche form with an annual cumulation, is available for review at Department of Veterans Affairs regional offices and at the Board of Veterans' Appeals in Washington, DC. The index can be used to locate citations to decisions with issues similar to those of concern to an appellant. Each indexed decision has a locator number assigned to it (e.g., 82–07–0001). This number must be used when requesting a paper copy of that decision. These requests must be directed to the Appellate Index and Retrieval Staff (01CI), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Microfiche copies of BVA Index I–01 1 can be obtained from Promisel and Korn, Inc., 4720 Montgomery Lane, Suite 900, Bethesda, MD 20814.

(Authority: 5 U.S.C. 552(a)(2))

§ 20.1302 Rule 1302. Death of appellant during pendency of appeal.

When an appeal is pending before the Board of Veterans' Appeals at the time of the appellant's death, the Board may complete its action on the issues properly before it without application from the survivors.

(Authority: 38 U.S.C. 4004(a))

§ 20.1303 Rule 1303. Nonprecedential nature of Board decisions.

Previously issued Board decisions will be considered binding only with regard to the specific case decided. While prior decisions in other appeals may be considered in a case to the extent that they reasonably relate to the case, each case presented to the Board will be decided on the basis of the individual facts of the case in light of applicable procedure and substantive law.

(Authority: 38 U.S.C. 4004(a))

§ 20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.

(a) *Request for a change in representation, request for a personal hearing, or submission of additional evidence within 60 days following notification of certification and transfer of records.* An appellant and his or her representative, if any, will be granted a period of 60 days following the mailing of notice to them that an appeal has been certified to the Board for appellate review and that the appellate record has been transferred to the Board during which period they may submit a request for a personal hearing, additional evidence, or a request for a change in representation. Any such request or additional evidence must be submitted directly to the Board and not to the agency of original jurisdiction. The date of mailing of the letter of notification will be presumed to be the same as the date of that letter for purposes of determining whether the request was timely made or the evidence was timely submitted. Any evidence which is submitted at a hearing on appeal which was requested not more than 60 days after certification and transfer of the appellate record to the Board will be considered to have been received during such period, even though the hearing may be held following the expiration of the period. Any pertinent evidence submitted by the appellant or representative is subject to the requirements of paragraph (c) of this section and, if a simultaneously contested claim is involved, the requirements of paragraph (d) of this section.

(b) *Request for a change in representation, request for a personal hearing, or submission of additional evidence more than 60 days following notification of certification and transfer of records.* Following the expiration of the 60-day period described in paragraph (a) of this section, the Board of Veterans' Appeals will not accept a request for a change in representation, a request for a personal hearing, or additional evidence except when the appellant demonstrates on motion that there was good cause for the delay. Examples of good cause include, but are not limited to, illness of the appellant or the representative which precluded action during the 60-day period and the discovery of evidence that was not available prior to the expiration of the 60-day period. Such motions must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor or guardian); the applicable Department of Veterans Affairs file number; and an explanation of why the request for a change in representation, the request for a personal hearing, or the submission of additional evidence could not be accomplished in a timely manner. Such motions must be filed at the following address: Office of the Chairman, Special Legal Assistant (01C), Board of Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC 20420. The ruling on the motion will be by the Chairman. Depending upon the ruling on the motion, action will be taken as follows:

(1) *Good cause not shown.* If good cause is not shown, the request for a change in representation, the request for a personal hearing, or the additional evidence submitted will be referred to the agency of original jurisdiction upon completion of the Board's action on the pending appeal without action by the Board concerning the request or additional evidence. Any personal hearing granted as a result of a request so referred or any additional evidence so referred may be treated by that agency as the basis for a reopened claim, if appropriate. If the Board denied a benefit sought in the pending appeal and any evidence so referred which was received prior to the date of the Board's decision, or testimony presented at a hearing resulting from a request for a hearing so referred, together with the evidence already of record, is subsequently found to be the basis of an allowance of that benefit, the effective date of the award will be the same as if the benefit had been granted by the Board as a result of the appeal which was pending at the time that the hearing request or additional evidence was received.

(2) *Good cause shown.* If good cause is shown, the request for a change in representation or for a personal hearing will be honored. Any pertinent evidence submitted by the appellant or representative will be accepted, subject to the requirements of paragraph (c) of this section and, if a simultaneously contested claim is involved, the requirements of paragraph (d) of this section.

(c) *Consideration of additional evidence by agency of original jurisdiction.* Any pertinent evidence submitted by the appellant or representative which is accepted by the Board under the provisions of this rule, as well as any such evidence referred to the Board by the originating agency under § 19.112(b) of this chapter, must be referred to the agency of original jurisdiction for review and preparation of a Supplemental Statement of the Case unless this procedural right is waived by the appellant or unless the Board determines that the benefit, or benefits, to which the evidence relates may be allowed on appeal without such referral. Such waiver must be in writing or, if a hearing on appeal is conducted, formally entered on the record orally at the time of the hearing.

(d) *Simultaneously contested claims.* In simultaneously contested claims, if pertinent evidence is submitted by any claimant and is accepted by the Board under the provisions of this section, the substance of such evidence will be mailed to each of the other claimants who will then have 60 days from the date of mailing of notice of the new evidence within which to comment upon it and/or submit additional evidence in rebuttal. The date of mailing of the letter of notification of the new evidence will be presumed to be the same as the date of that letter for purposes of determining whether such comment or evidence in rebuttal was timely submitted. No further period will be provided for

response to such comment or rebuttal evidence.

(Authority: 38 U.S.C. 4004, 4005, 4005A)

§ 20.1305 Rule 1305. Effective date.

These revised rules are effective as of the date of their final publication in the Federal Register. In some cases, revisions to these rules are based, in whole or in part, on provisions of Public Law 100-687 which become effective on September 1, 1989. In the event that such final publication occurs prior to September 1, 1989, existing laws and regulations (including the Rules of Practice of the Board of Veterans' Appeals in effect prior to these revisions) will govern until the effective date of the applicable provisions of Public Law 100-687 to the extent that these revisions may be determined to be in conflict with such existing laws and regulations.

(Authority: 5 U.S.C. 552(a)(1))

Appendix A to Part 20—Cross-References

Section	Cross-reference	Title of cross-referenced material or comment
20.1	38 CFR 3.103(a)	*Statement of policy.*
20.100	38 CFR 20.305	*Rule 305. Legal holidays.*
20.200	38 CFR 20.201	*Rule 201. Notice of Disagreement.*
	38 CFR 20.202	*Rule 202. Substantive Appeal.*
	38 CFR 20.300-20.305	See re filing Notices of Disagreement and Substantive Appeals.
20.202	38 CFR 19.29	*Statement of the Case.*
	38 CFR 19.31	*Supplemental Statement of the Case.*
20.264	38 CFR 20.1101	*Rule 1101. When decisions of the Board become final.*
20.301	38 CFR 20.500	*Rule 500. Who can file an appeal in simultaneously contested claims.*
	38 CFR 20.602	*Rule 602. Representation by recognized organizations.*
	38 CFR 20.603	*Rule 603. Representation by attorneys-at-law.*
	38 CFR 20.604	*Rule 604. Representation by agents.*
	38 CFR 20.605	*Rule 605. Other persons as representative.*
20.302	38 CFR 20.501	*Rule 501. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.*
20.303	38 CFR 20.304	*Rule 304. Filing additional evidence does not extend time limit for appeal.*
	38 CFR 20.503	*Rule 503. Extension of time for filing a Substantive Appeal in simultaneously contested claims.*
20.305	38 CFR 20.305	*Rule 305. Legal holidays.*
20.400	38 CFR 19.50-19.53	See also re administrative appeals.
20.401	38 CFR 19.50-19.53	See also re administrative appeals.
	38 CFR 20.302 20.305	See re time limits for perfecting an appeal.
	38 CFR 20.501, 20.503	See re time limits for perfecting an appeal in simultaneously contested claims.
20.500	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.501	38 CFR 20.305	*Rule 305. Computation of time limit for filing.*
	38 CFR 20.305	*Rule 305. Legal holidays.*
	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.502	38 CFR 20.305	*Rule 305. Computation of time limit for filing.*
	38 CFR 20.305	*Rule 305. Legal holidays.*
	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.503	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.504	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.600	38 CFR 14.626 *et seq.*	See also re representation.
	38 CFR 20.602	*Rule 602. Representation by recognized organizations.*
	38 CFR 20.603	*Rule 603. Representation by attorneys-at-law.*
	38 CFR 20.604	*Rule 604. Representation by agents.*
	38 CFR 20.605	*Rule 605. Other persons as representative.*
20.602	38 CFR 14.628	*Recognition of organizations.*
	38 CFR 14.631	*Powers of attorney.*
	38 CFR 20.100	*Rule 100. Name, business hours, and mailing address of the Board.*
	38 CFR 20.607	*Rule 607. Revocation of a representative's authority to act.*
	38 CFR 20.608	*Rule 608. Withdrawal of services by a representative.*
	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.*
20.603	38 CFR 14.629	*Requirements for accreditation of representatives, agents, and attorneys.*
	38 CFR 14.631	*Powers of attorney.*
	38 CFR 20.100	*Rule 100. Name, business hours, and mailing address of the Board.*
	39 CFR 20.606	*Rule 606. Legal interns, law students and paralegals.*
	38 CFR 20.607	*Rule 607. Revocation of a representative's authority to act.*
	38 CFR 20.608	*Rule 608. Withdrawal of services by a representative.*
	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.*
	39 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.*
20.604	38 CFR 14.631	*Powers of attorney.*
	38 CFR 20.100	*Rule 100. Name, business hours, and mailing address of the Board.*
	38 CFR 20.607	*Rule 607. Revocation of a representative's authority to act.*
	38 CFR 20.608	*Rule 608. Withdrawal of services by a representative.*
	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.*
20.605	38 CFR 14.630	*Authorization for a particular claim.*
	39 CFR 14.631	*Powers of attorney.*
	38 CFR 20.100	*Rule 100. Name, business hours, and mailing address of the Board.*
	38 CFR 20.607	*Rule 607. Revocation of a representative's authority to act.*
	38 CFR 20.608	*Rule 608. Withdrawal of services by a representative.*

Section	Cross-reference	Title of cross-referenced material or comment
	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.*
20.606	38 CFR 20.603	*Rule 603. Representation by attorneys-at-law.*
20.607	38 CFR 14.631(d)	See also re revocation of powers of attorney.
20.609	38 CFR 14.629	*Requirements for accreditation of representatives, agents, and attorneys.*
	38 CFR 20.603	*Rule 603. Representation by attorneys-at-law.*
	38 CFR 20.604	*Rule 604. Representation by agents.*
	38 CFR 20.606	*Rule 606. Legal interns, law students and paralegals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.*
	38 CFR 20.1101	*Rule 1101. When decisions of the Board become final.*
20.610	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.*
20.611	38 CFR 1.525(d), 14.631(e).	See also re continuation of authority conferred by powers of attorney upon the death of a claimant.
	38 CFR 20.1101	*Rule 1101. When decisions of the Board become final.*
20.701	38 CFR 20.710	*Rule 710. Witnesses at hearings.*
20.702	38 CFR 20.704	*Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans Appeals at Department of Veterans Affairs facilities.*
	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.703	38 CFR 20.201	*Rule 201. Notice of Disagreement.*
20.704	38 CFR 20.702	*Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans Appeals in Washington, DC, and by agency of original jurisdiction personnel acting on behalf of the Board of Veterans Appeals at field facilities.*
20.706	38 CFR 20.700(c)	See also re the presiding Member's role in the conduct of hearings.
	38 CFR 20.708	*Rule 708. Prehearing conference.*
	38 CFR 20.709	*Rule 709. Procurement of additional evidence following a hearing.*
20.707	38 CFR 19.11	*Reconsideration panel.*
	38 CFR 20.1101	*Rule 1101. When decisions of the Board become final.*
20.708	38 CFR 20.606(d)	See re the prehearing conference required when a legal intern, law student, or paralegal is to participate in a hearing held before a traveling Section of the Board.
20.709	38 CFR 19.37	*Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.*
	38 CFR 20.1304	*Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans Appeals.*
20.710	38 CFR 20.711	*Rule 711. Subpoenas.*
20.711	38 CFR 2.1	See for further information on subpoenas, including allowable fees and mileage and action to be taken in the event of noncompliance.
20.713	38 CFR 20.702	*Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans Appeals in Washington, DC, and by agency of original jurisdiction personnel acting on behalf of the Board of Veterans Appeals at field facilities.*
	38 CFR 20.704	*Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans Appeals at Department of Veterans Affairs facilities.*
20.715	38 CFR 20.706	*Rule 706. Functions of the presiding Member.*
20.717	38 CFR 20.1101(d)	*Promulgation.*
20.800	38 CFR 20.304	*Rule 304. Filing additional evidence does not extend time limit for appeal.*
	38 CFR 20.709	*Rule 709. Procurement of additional evidence following a hearing.*
	38 CFR 20.1304	*Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans Appeals.*
20.901	38 CFR 14.507	See re opinions of the General Counsel of the Department of Veterans Affairs.
20.903	38 CFR 20.305	*Rule 305. Computation of time limit for filing.*
	38 CFR 20.305	*Rule 305. Legal holidays.*
20.1002	38 CFR 20.1000	*Rule 1000. When reconsideration is accorded.*
	38 CFR 19.7(b), 20.905(b).	See re disposition of issues when it is determined on reconsideration that an allowance of benefits was influenced by false or fraudulent evidence.
	38 CFR 20.1105	*Rule 1105. New claim after appellate decision.*
20.1003	38 CFR 20.700(b)	See re submission of written briefs and of oral argument on audio cassette.
20.1100	38 CFR 20.1000-20.1003.	See re reconsideration of Board of Veterans Appeals decisions.
	38 CFR 20.1101	*Rule 1101. When decisions of the Board become final.*
20.1101	38 CFR 19.3	*Appointment, assignment, and rotation of Members.*
	38 CFR 19.6	*Composition of Board of Veterans Appeals hearing panels.*
	38 CFR 20.705	*Rule 705. Where hearings on appeal are conducted.*
20.1105	38 CFR 3.156	*New and material evidence.*
	38 CFR 3.160(e)	*Reopened claim.*
	38 CFR 20.1304(b)(1)	See re request for a personal hearing or submission of additional evidence more than 90 days after a case has been certified to the Board of Veterans Appeals as possible basis for a reopened claim.
20.1106	38 CFR 3.22(a)(2)	See re correction of a rating, after a veteran's death, based on clear and unmistakable error, in cases involving claims for benefits under the provisions of 38 U.S.C. 418.
20.1300	38 CFR 1.500-1.527	See re the release of information from Department of Veterans Affairs claimant records.
	38 CFR 1.550-1.559	See re the release of information from Department of Veterans Affairs records other than claimant records.
	38 CFR 1.575-1.584	See re safeguarding personal information in Department of Veterans Affairs records.
	38 CFR 20.1301	*Rule 1301. Disclosure of information.*
20.1301	38 CFR 1.577	*Access to records.*
20.1302	38 CFR 20.611	*Rule 611. Continuation of representation following death of a claimant or appellant.*
20.1304	38 CFR 3.103(c)	See also re hearings.
20.700-20.717	38 CFR 3.156	*New and material evidence.*
	38 CFR 3.160(e)	*Reopened claim.*
	38 CFR 20.305	*Rule 305. Computation of time limit for filing.*
	38 CFR 20.306	*Rule 306. Legal holidays.*

[FR Doc. 89-18166 Filed 8-17-89; 8:45 am]
BILLING CODE 6820-01-M

federal register

Friday
August 18, 1989

Part IV

Department of Agriculture

Forest Service

36 CFR Part 254
Land Exchanges; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 254

RIN 0596-AA42

Land Exchanges

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: These regulations would establish standards for implementing the Federal Land Exchange Facilitation Act of 1988 (43 U.S.C. 1716), which seeks to streamline and facilitate land exchange procedures and expedite land exchanges. In addition, these proposed regulations would correct errors, delete obsolete portions, and update the Forest Service land exchange regulations to reflect other current authorities. Public comment is invited.

DATE: Comments must be received in writing by October 2, 1989.

ADDRESS: Send comments to F. Dale Robertson, Chief, (5430), Forest Service, U.S. Department of Agriculture, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: Jerry Sutherland, Assistant Director of Lands, (703) 235-8212, or James M. Dear, Lands Specialist, (703) 235-2493.

SUPPLEMENTARY INFORMATION:

Forest Service Land Exchange Program

Over the past 80 years, the Forest Service has completed approximately 8,000 land exchange cases, acquiring almost 9.5 million acres of non-Federal land in exchange for about 3.5 million acres of Federal land. The western national forests, which were largely reserved from the public domain for national forest purposes, have a consolidated landownership pattern with few small tracts of non-Federal ownership. As a result, most Forest Service land exchanges in the West involve large acreages and blocks of land owned by State and local governments, railroads, timber and mining companies, and ranchers. Such exchanges often involve the alternate section "checkerboard" landownership patterns which resulted from land grants to railroads 100 years ago. The eastern national forests were largely acquired tract-by-tract from non-Federal sources, resulting in a broken, unconsolidated landownership pattern. Most exchanges in the East involve individual landowners with small tracts.

Land exchanges involving National Forest System lands were first authorized in 1908. Since then, over 100 exchange laws affecting the national forests have been passed. However, the two primary exchange authorities are the Weeks Act and the General Exchange Act. The Weeks Act of March 1, 1911 (16 U.S.C. 516) is the principal authority for acquiring lands for national forest purposes in the East. The Act provides for the conveyance of national forest land or timber with Weeks Act status in exchange for non-Federal lands which are chiefly valuable for regulation of the flow of navigable streams or for timber production. The General Exchange Act of March 20, 1922 (16 U.S.C. 485, 486), provides for the conveyance of National Forest lands or timber reserved from the public domain, in exchange for non-Federal lands suitable for national forest purposes. The primary objective of the General Exchange Act is the consolidation of national forest lands. These two Acts are supplemented by the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1715, 1716), which provides for the exchange of land or interests in land, requires that the lands being exchanged be located in the same State, requires that State and local needs be considered, requires that property values exchanged be of equal value or equalized by the payment of cash, requires that exchanges be in the public interest, and limits exchanges to United States citizens or corporations subject to the laws of a State or the United States.

Within the boundaries of the National Forest System, only 83 percent (191 million acres) of the total land area (230 million acres) is under Forest Service jurisdiction. Most of the remaining 17 percent (39 million acres) is in non-Federal ownership. Much of that non-Federal land is scattered throughout the national forests in small parcels. Such mixed ownership is beneficial in many instances where non-Federal and national forest management practices compliment one another. However, in some areas, acquisition of specific non-Federal tracts of land is desirable to protect or improve the management of the adjacent national Forest System land. For example, land exchanges are frequently used to acquire desirable lands in congressionally designated areas such as Wilderness Areas, National Recreation Areas, Wild and Scenic Rivers, and National Trails. Exchange has been the primary method of land acquisition in the Mount St. Helens National Volcanic Monument, the Alpine Lakes Wilderness Area, and the Rattlesnake and Lee Metcalf Wilderness Areas.

The primary reason for the exchange of lands or interests in lands is to provide for more efficient management of the National Forest System through consolidation of Federal landownership. Exchanges result in cost savings through improved resource administration, reduced access needs, reduced property boundary survey needs, reduced or eliminated special-use administration, and resolution of title claims and encroachments. Cost savings in property boundary surveys along often exceed the cost to complete an exchange. Many exchanges also assist local communities by exchanging isolated tracts of non-Federal lands for Federal lands adjacent to expanding communities, where the land is needed to facilitate development.

Land exchange is the primary means of landownership adjustment for the Forest Service. As the preferred alternative to direct purchase of needed non-Federal lands, land exchange provides a method of improving landownership patterns with minimal impact on the Federal and local budgets. In an average year, the Forest Service completes 147 exchange cases, acquiring from willing landowners 135,000 acres of non-Federal land in exchange for 92,000 acres of Federal land, with exchanged values of $102 million. Land exchange is expected to continue to be an effective alternative to direct purchase of needed and desirable non-Federal land for the National Forest System.

Need for Rules

The Federal Land Exchange Facilitation Act of 1988 (43 U.S.C. 1716), has as its purpose to facilitate and expedite land exchanges under the authority of the Secretary of Agriculture and the Secretary of the Interior by streamlining and improving the procedures for such exchanges and by authorizing additional funding. The Act endorses the long-standing policy that land exchange is an important tool to consolidate landownership for purposes for more efficient management and to secure important objectives of resource management, enhancement, development, and protection; to meet the needs of communities; to promote multiple-use; and to fulfill other public needs. A significant feature of the Act is the authority for non-Federal parties to seek arbitration of values of lands when they object to the valuation determined by the Forest Service. The Act requires each Secretary to promulgate separate rules for exchanges of land, in recognition of the differing statutory authorities governing exchanges of the Federal lands under their respective jurisdictions. However, the Forest Service has coordinated the development of these rules with the Bureau of Land Management in an attempt to attain similar procedures where possible.

Features of the Proposed Rule

The existing rules for conducting land exchanges, codified at Subpart A of Part 254—Landownership Adjustments, would be revised to incorporate the provisions of the Federal Land Exchange Facilitation Act of 1988, and otherwise rewritten to update obsolete portions with current provisions and clarify obscure portions. The organization of the subpart would be substantially revised. The principal features of the proposed rule keyed to the CFR section number are summarized here.

Section 254.1—Scope and applicability. This section, which is not significantly different from the existing requirements, would establish land exchanges as strictly voluntary transactions between the Forest Service and willing non-Federal parties. Because of differing authorities governing national forest exchanges in Alaska, the rules would not fully apply to certain land exchanges in the State of Alaska. This section provides an exemption clause for those exchanges formally initiated prior to promulgation of these rules. This section also makes clear that the authority utilized in an exchange is dependent upon the status of the Federal land and the purpose of the exchange, and provides a cross reference to further policy and guidelines for exchanges set forth in Forest Service Manual Chapter 5400 and Forest Service Handbook 5409.13.

Section 254.2—Definitions. The Federal Land Exchange Facilitation Act of 1988 embraced new terms which require definition and explanation to ensure uniformity in the application of the provisions of this Act. Accordingly, this section has been expanded significantly over the corresponding section of the current regulations. The new terms come from several sources. The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715 *et seq.*) provides the definition of *acquisition*. The Federal Land Exchange Facilitation Act of 1988 is the source of the terms *approximately equal values, arbitration, bargaining, determination of approximately equal values, relative values,* and *statement of value*. *Authorized forest officer* was derived from the Forest Service Appeal Regulations at 36 CFR parts 217 and 251, as was *formal proposal*. *Brokered exchange* was developed from requirements of GAO Report RCED-87-9 of February 5, 1987, entitled "Federal Land Acquisitions." *Fair market value* and *highest and best use* are as defined in the "Uniform Appraisal Standards for Federal Land Acquisitions," May 1973, GPO Stock Number 052-058-00002-0. The definition of *hazardous substances* is as defined in Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 *et seq.*). *Qualified appraiser* was developed from the Uniform Relocation Assistance and Real Property Acquisition Regulations for Federally Assisted Programs at 49 CFR part 24. The definition of *segregation* was derived from the term as described in the Bureau of Land Management land exchange regulations at 43 CFR Part 2200. In addition, a definition of *Secretary* would be added for clarification.

Section 254.3—Requirements. This section sets forth the minimum requirements applicable to all exchanges. All Forest Service exchanges must be subjected to certain tests of need, meet certain criteria, and be governed by certain limitations. Generally, the proposed rule provides that exchanges must be with United States citizens or coorporations, must be in the public interest, must not result in a decrease of public values, must involve lands within the same State, must be equal value, and must be consistent with the planning direction and objectives for a particular national forest. This is consistent with the present rule, but adds emphasis to landownership adjustment planning in Forest Land Management Plans. This proposed rule would allow the payment of cash to equalize the values of lands to be exchanged and would allow the waiver of cash equalization payment by the Forest Service, if the payment does not exceed the lesser of 3 percent of the value of the Federal land or $15,000. Cash equalization payment, a provision of the current rule, permits the use of cash to balance land exchange values after all reasonable and logical adjustments of involved land values have been made. Waiver of cash equalization payments by the Forest Service amounts to relatively small donations of land values by the non-Federal party, when that party agrees to forgo collection of such values in the interest of timely completion of an exchange.

The Forest Service must reserve or retain such rights or interests as are necessary to protect the public interest on the lands or partial interests conveyed out of public ownership. Similarly, the lands acquired by the Forest Service must not be prohibitively encumbered by reservations or outstanding rights. The exercise of reserved rights on lands or interests conveyed to the United States are subject to the Secretary's rules and regulations unless waived by the Forest Service. These requirements are a continuation of those in the current rule and are necessary to ensure that such conveyances and reservations do not interfere with the use and management of the lands and interests retained for national forest purposes.

The future use of land conveyed out of Federal ownership will be determined by State and local zoning authorities. Such future use will not necessarily be addressed in the land appraisal, which is based solely on the highest and best use of the property, since most Federal controls over use of the land cease upon conveyance to non-Federal parties. Exceptions to such loss of Federal control are reserved rights, deed restrictions, and certain Federal laws such as the wetlands dredge and fill permit requirements of Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251), as amended by the Clean Water Act of 1977 (33 U.S.C. 1344).

The Environmental Protection Agency is in the process of promulgating final rules on hazardous substances. Accordingly, this section of the proposed rule recognizes that the Forest Service should determine if hazardous materials are present on the involved non-Federal lands and negotiate the responsibility for control action with the non-Federal party prior to completing an exchange.

A new provision of the Exchange Facilitation Act states that lands recently acquired by the Forest Service which become subject to entry under the mining and mineral leasing laws automatically will be segregated from such entry for 90 days upon acceptance of title by the Forest Service. That segregation will terminate automatically at the end of the 90-day period, unless the Forest Service requests the Secretary of the Interior to withdraw the lands from entry. This provision is incorporated in the proposed rule.

At 7 CFR 2.42, the Secretary has delegated authority to the Chief of the Forest Service to extend Weeks Act national forest boundaries in order to acquire up to 3,000 acres of land in each case under the Weeks Act authority. This rule would provide that when a land acquisition case requires a national forest boundary extension, such extension will be automatic upon approval of a Weeks Act acquisition by an authorized forest officer.

The proposed rule would update existing regulations to make clear certain specific requirements that apply to acquisitions over a certain value. Weeks Act acquisitions of $150,000 or more in value, including both exchanges and purchases of land, are subject to a 30-day oversight review by the House and Senate Committees on Agriculture. The proposed rule would provide certain exceptions to the requirement that the Secretary of Agriculture must approve such acquisitions over $250,000 in value. Insignificant changes that occur after completion of oversight or Secretarial approval would be exempt from any required resubmission for such oversight or approval. Acquisitions, including exchanges, which are specifically required by enacted legislation, generally would be exempted from congressional oversight or Secretarial approval.

Section 254.4—Initiating an exchange. This section would revise existing procedures by which a non-Federal party can initiate an exchange. Under the proposed rule, a non-Federal landowner interested in an exchange with the Forest Service could make a proposal for an exchange to the appropriate Forest Service officer. The rule would make clear that either party may reject a proposal or withdraw from an exchange at any time prior to entering a binding exchange agreement.

The rule would provide that the parties will document their preliminary agreement to initiate an exchange in a signed Statement of Intent. The Exchange Facilitation Act requires that exchange parties comply with specific time frames for the appraisal process. The Act establishes the preliminary agreement to exchange as the starting point for those appraisal time frames. The Forest Service proposes to adopt the Statement of Intent, an optional document under current rules, as a mandatory document for every land exchange proposal to clearly and firmly establish the starting point for the appraisal time frames. As a minimum, the Statement of Intent would include certification of citizenship, statement of ownership, notice of hazardous substances, responsibilities of each party, identification of the Federal and non-Federal properties, and permission to enter and examine the lands of each party. The parties may also arrange for an appraisal in the Statement of Intent. Otherwise, within 90 days of signing the Statement of Intent, the parties must negotiate and agree upon the terms of the appraisal and the expected appraisal completion date.

Section 254.5—Responsibilities. Land exchanges are complex undertakings involving a series of costs, responsibilities, and requirements which must be met or accomplished in order to successfully complete an exchange. Particular responsibilities typically rest with either the Federal or non-Federal parties, or both, varying according to local custom. Although a common practice in past exchanges, the new rule specifies for the first time that some responsibilities may be negotiated in each case. Under the proposed rule, it would be the general practice that each party will pay their own normal expenses in a land exchange, but, subject to the needs of the Forest Service in processing an exchange, either party may assume the costs normally borne by the other party. The parties may agree that such assumption of costs will be without compensation. In special and exceptional circumstances, the Forest Service may determine that it is in the public interest to compensate a non-Federal party for assuming costs normally borne by the Forest Service. The new rule specifies that such compensation will be on an exceptional basis only, will be limited to 25 percent of the value of the Federal lands, and must meet certain criteria. The intent of these limitations and criteria is to avoid routine adjustments of relative exchanged values, which amounts to the use of National Forest System land values to pay for the cost of processing land exchanges. Such activity could seldom be determined to be in the public interest.

Section 254.6—Legal description of properties. This section is essentially the same as the existing rule and describes the requirements for describing or locating the lands involved in an exchange.

Section 254.7—Appraisals. As does the current rule, this section would establish the "Uniform Appraisal Standards for Federal Land Acquisitions" as the Forest Service national standard for appraising both the Federal and non-Federal lands in an exchange. However, the new rule would supplement those standards with portions of the "Uniform Standards of Professional Appraisal Practice," to the extent that they do not conflict with the former standards.

For purposes of the appraisal, Federal lands will be considered as though they are already in non-Federal ownership, zoned for their highest and best use. Appraisals are required to be no more than one year old at the time a binding exchange agreement is entered, which "locks in" the values.

Appraisals are to be made by qualified staff or private-sector appraisers, in accordance with Forest Service criteria for qualification.

There are individuals and organizations that sometimes act as brokers to assemble multiple parcels of land for exchange in furtherance of National Forest System management objectives at the request or with the cooperation of the Forest Service. Previous rules and authorities operated to penalize such brokers by requiring that such parcels be considered as a single ownership for appraisal purposes. This typically resulted in a reduced valuation of the involved properties. The proposed rule would treat brokered exchanges involving assembled multiple parcels as individual tracts in the appraisal of such exchange properties rather than impose a penalty on the broker for assembling the properties at the request or with the cooperation of the Forest Service. In most cases, such treatment as individual tracts would result in higher appraised values. It is in the public interest to utilize brokered exchanges, due to the efficiency and economy of replacing a number of small exchanges with a single large exchange. This special treatment will not apply when an individual owning multiple parcels proposes to exchange those parcels in a single exchange. When a non-Federal party assembles a number of scattered non-Federal parcels for a brokered exchange and the non-Federal parcels are considered as individual parcels in an exchange appraisal, the same individual-tract treatment will be used in the appraisal of any multiple-parcel Federal lands involved in the exchange.

Section 254.8—Approximately equal value exchanges. In the interest of accelerating the processing of relatively small exchanges and reducing costs, the Forest Service may proceed with certain exchanges of similar tracts of land under $150,000 in value on the basis of a determination that the values are approximately equal when it is in the public interest to expedite an exchange. This new authority is provided by the Exchange Facilitation Act. Such simplified valuation does not require formal appraisal reports, but is based on Statements of Value which summarize the conclusions reached by a qualified staff appraiser in estimating the values. The preparation of Statements of Value would be limited to Forest Service staff appraisers, due to the need to maintain control over the appraisal evidence supporting a Statement of Value. Statements of Value would have the same one-year maximum life span as do

formal appraisal reports and values would be "locked in" upon entering into a binding exchange agreement.

Section 254.9—Arbitration of valuation. A major provision of the new Exchange Facilitation Act authorizes arbitration of disagreements over appraised values. The Act provides that if, within 180 days after appraisals are submitted to the authorized forest officer for review and approval, the parties cannot agree on the valuation, the issue may be settled through arbitration. The Act also provides that, in lieu of arbitration of values, the parties may agree to bargain. The Forest Service proposes that such bargaining may include various alternative uses of appraisers, appraisals, or appraisal reviews, or it may involve negotiation outside of the appraisal process.

Arbitration would be conducted according to the Real Estate Valuation Arbitration Rules of the American Arbitration Association, in accordance with the Act, with the following special considerations and treatments:

(a) When an exchange party files a notice of intent to arbitrate, the Forest Service would appoint an arbitrator from a list of qualified arbitrators furnished by the American Arbitration Association.

(b) Forest Service interpretation of the Act finds that arbitration is limited to resolution of a disputed valuation for a proposed land exchange and an arbitrator's award decision must not have application beyond the value estimate(s) of the questioned appraisal(s). An award decision cannot include recommendations affecting any aspects of an exchange proposal other than valuation. An award decision cannot recommend changes in an exchange proposal which affect management decisions in order to achieve a desired change in valuation.

(c) Award decisions may be effective for a maximum of two years if the parties agree in writing within 30 days after completion of arbitration to consummate an exchange. However, the Forest Service proposes that any subsequent adjustments in the elements of a proposed exchange which result in changes in valuation will render an arbitrator's award decision moot.

As provided in the Exchange Facilitation Act, the parties may agree, in recognition of scheduling problems, processing obstacles, and special requirements which may be unique to any particular land exchange proposal, that the following time frames and deadlines may be changed or eliminated:

(a) The requirement to arrange for an appraisal, set its completion date, and negotiate terms of an appraisal within 90 days of entering into a Statement of Intent.

(b) The requirement to submit an exchange to arbitration if agreement on valuation has not been reached within 180 days after submission of the appraisal(s) to the authorized forest officer for approval.

(c) The requirement for all parties to decide to proceed with an exchange and accept the arbitrator's award decision or withdraw from an exchange proposal within 30 days after delivery of the decision on the arbitration.

Although arbitration is set forth in the Exchange Facilitation Act as a mandatory consequence of non-negotiable disagreement over valuation, the Act also confirms that either party may withdraw from an exchange *at any time* before entering into a binding exchange agreement. Therefore, it would be the policy and practice of the Forest Service to proceed with the additional expense and delay associated with the arbitration process only in exceptional cases, if justified by compelling public interest.

Section 254.10—Publication of proposed exchange. In managing the National Forest System, the Forest Service has an obligation to keep the public fully informed of all activities including landownership adjustments through exchange. As in the existing rule, the public notice requirements in this section of the proposed rule would serve to inform the general public of the exchange proposal, to provide an opportunity for those with claims to come forward, and to offer a comment period for those who wish to express their views about a proposed exchange. However, a new provision of the rule would establish that minor corrections and insignificant changes (additions or deletions) would not require the republishing of a notice as long as the general concept and basis of an exchange remain the same. The proposed rule would continue to provide 15 days from the date of final publication for submission of written comments on an exchange proposal. This time period is necessary to allow sufficient time to analyze and consider those comments in the environmental analysis without delaying the exchange process. However, if the environmental analysis is at a stage where late comments can be accommodated, they will be considered.

Section 254.11—Approval of exchange. The proposed new rule would clarify that approval of an exchange proposal occurs when an authorized forest officer signs a decision document to proceed with an exchange. The decision may be documented in a Decision Notice for an Environmental Assessment with a Finding of No Significant Impact; a Record of Decision for an Environmental Impact Statement; or a Decision Memo where the action is found to be categorically excluded from documentation in an Environmental Assessment or an Environmental Impact Statement. Notice of a decision is to be provided to all interested parties. The proposed rule notes that conditional decisions may be made subject to certain actions that must be completed prior to completion of an exchange, such as congressional oversight or Secretarial approval. An exchange agreement may be entered into by the parties after final or conditional approval of an exchange proposal by the Forest Service.

Section 254.12—Appeal of exchanges. The proposed rule provides that a written decision to proceed or not to proceed with a land exchange proposal, made upon completion of an environmental analysis in compliance with the National Environmental Policy Act (NEPA), is the only appealable point in the exchange process. The provision is basically a restatement of what is appealable under the agency's new appeal procedures at 36 CFR part 217. Previously, appeals of such decisions were entered under 36 CFR 211.18. With adoption of final revisions to administrative appeals (54 FR 3342, January 23, 1989), these decisions would now be appealable under the procedures at 36 CFR part 217. Decisions related to exchanges are not appealable under the rules at 36 CFR part 251, subpart C, because exchange does not involve occupancy and use of National Forest System lands. Rejections of exchange proposals are not subject to appeal, when such rejections are made in advance of written decisions resulting from analysis, documentation, and other requirements of the National Environmental Policy Act. Appeals pursuant to 36 CFR part 217 may be made by anyone objecting to an exchange proposal.

Section 254.13—Exchange agreement. The proposed rule would continue the provision of the existing rule, that it is desirable but not mandatory to enter into an exchange agreement, once a decision is made to proceed with an exchange proposal. Under the proposed rule, Forest Service exchanges generally would utilize exchange agreements unless in the judgment of an authorized forest officer, such a binding contract to exchange is not needed. An exchange agreement is a binding contract between the Forest Service and the non-Federal party to complete an exchange. An

BEST COPY AVAILABLE

exchange agreement should be made subject to certain final uncompleted exchange processes and contingencies that might occur prior to consummation of an exchange. The proposed rule contains a new requirement that certification of the absence of known hazardous substances on involved lands be made in an exchange agreement document or, in the absence of an exchange agreement, in some other suitable document. Under the proposed rule, if no exchange agreement is entered into by the parties, either party may back out of an exchange proposal at any time prior to issuance of the deeds, regardless of the investment of time and money in the proposal.

Section 254.14—Conveyance documents. As provided under the existing rule, exchange deeds are issued by the Forest Service in conveying acquired Federal lands, and patents or quitclaim deeds are issued by the Bureau of Land Management in conveying national forest land reserved from the public domain for national forest purposes. A new provision reflected in this proposed rule is that of simultaneous issuance of conveyance documents, as required by the Exchange Facilitation Act. Simultaneous issuance of conveyance documents is possible when the parties can comply with the instructions issued with a preliminary title opinion by the Office of the General Counsel of the Department of Agriculture. However, the rule provides that parties should be prepared to waive the requirement for simultaneous issuance of conveyance documents when such requirement is not practicable.

Section 254.15—Title evidence and approval. As provided in the current rule, the Office of the General Counsel of the Department of Agriculture has the delegated authority to approve title to lands being conveyed to the United States in Forest Service acquisitions. The non-Federal party must furnish insurable title to the lands to be conveyed to the United States in Forest Service land exchanges. The proposed rule contains a new provision that title acceptance by the Forest Service occurs after the Office of the General Counsel of the Department of Agriculture issues the final title opinion. This provision is necessary to establish the starting point for the 90-day automatic segregation of lands acquired in an exchange, as provided by the Exchange Facilitation Act.

Summary

These proposed regulations would help facilitate and expedite Forest Service land exchanges by clarifying exchange authorities, their scope, and application; determining exceptions to application of rules; defining terms used in exchanges; stating general and specific requirements of land exchanges; delineating procedures in initiating exchanges; establishing the responsibility for duties and costs associated with land exchanges and the conditions under which one party may assume those costs, responsibilities, and requirements of the other party; providing rules pertaining to land appraisals which reflect nationally recognized appraisal standards; describing conditions and limitations for approximately equal value exchanges; prescribing procedures and guidelines for resolution of appraisal disputes; stating the minimum requirements for providing public notice of an exchange; establishing the rules under which an exchange may be approved and appealed; outlining the requirements for a binding exchange agreement; and, by setting forth the legal standards and requirements for the description of the properties to be exchanged, the conveyance documents, and the title evidence and approval. The public is invited to submit written comments in opposition or support of the new or continuing provisions of this proposed rule.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. The rule would not have an effect of $100 million or more on the economy; would not substantially increase prices or costs for consumers, industry, or State or local governments; nor would it adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action would not have a significant economic impact on a substantial number of small entities.

Environmental Impact

Based on experience, this proposed rule would not have a significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an Environmental Assessment or an Environmental Impact Statement (40 CFR 1506.4).

Controlling Paperwork Burdens on the Public

The content of a Statement of Intent and an exchange agreement as would be required by §§ 254.4 and 254.13 of this proposed rule represents a new information requirement as defined in 5 CFR Part 1320, Controlling Paperwork Burdens on the Public. In accordance with those rules and the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the Forest Service has requested Office of Management and Budget review and approval of the information required to be addressed in a Statement of Intent or exchange agreement. The agency estimates that each non-Federal party to a land exchange proposal will spend an average of 4 hours preparing and submitting the information required in a Statement of Intent and an exchange agreement for Forest Service review and approval.

Reviewers who wish to comment on this information requirement should submit their views to the Chief of the Forest Service at the address listed earlier in this document as well as to the:

Forest Service Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503

List of Subjects in 36 CFR Part 254

Land exchanges, National forests.

Therefore, for the reasons set forth above, it is proposed to amend Part 254 by revising Subpart A of Title 36 of the Code of Federal Regulations as follows:

PART 254—LANDOWNERSHIP ADJUSTMENTS

Subpart A—Land Exchanges

Sec.

254.1 Scope and applicability.
254.2 Definitions.
254.3 Requirements.
254.4 Initiating an exchange.
254.5 Responsibilities.
254.6 Legal description of properties.
254.7 Appraisals.
254.8 Approximately equal value exchanges.
254.9 Arbitration of valuation.
254.10 Publication of proposed exchanges.
254.11 Approval of exchanges.
254.12 Appeal of exchanges.
254.13 Exchange agreements.
254.14 Conveyance documents.
254.15 Title evidence and approval.

Subpart A—Land Exchanges

Authority: 7 U.S.C. 428a(a); 7 U.S.C. 1011; 16 U.S.C. 484a; 16 U.S.C. 465, 460; 16 U.S.C. 516; 16 U.S.C. 555a; 43 U.S.C. 1715, 1716; 43 U.S.C. 1701, 1716, 1723; and other applicable laws.

§ 254.1 Scope and applicability.

(a) These rules set forth the formal procedures for conducting exchanges of National Forest System lands. The procedures in these rules are supplemented by instructions issued to Forest Service officers in chapter 5400 of the Forest Service Manual and Forest Service Handbook 5409.13.

(b) These rules are applicable to all National Forest System land exchanges, except those made under the authority of the Small Tracts Act of January 12, 1983 (16 U.S.C. 521c–521i), and as otherwise noted. However, application of these rules to exchanges made under the authority of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1621) and the Alaska National Interest Lands Conservation Act (16 U.S.C. 3192), shall be limited to those rules which do not conflict with the provisions of those Acts.

(c) The Secretary of Agriculture is not required to exchange any part of the National Forest System. Land exchanges are discretionary, voluntary real estate transactions between the Secretary of Agriculture, acting by and through the Forest Service, and non-Federal landowners. These transactions may involve the exchange of lands or interests therein.

(d) Unless the parties to an exchange otherwise agree, land exchanges for which an agreement to initiate an exchange was entered into prior to [*Insert effective date of final rule.*], may proceed in accordance with existing laws and regulations in effect at the time the Statement of Intent was signed.

(e) Land exchanges involving National Forest System lands are governed by the exchange statute appropriate to the particular status of the National Forest System land in question and the purpose for which an exchange is to be made.

§ 254.2 Definitions.

For the purposes of this subpart, the following terms shall have the meaning set forth in this section.

Acquisition includes the acquiring of lands or interests in lands by the Secretary of Agriculture, as delegated to the Forest Service, by exchange, purchase, donation, or eminent domain.

Approximately equal value is a comparative estimate of the value of lands involved in an exchange where the elements of value, such as physical characteristics and other amenities, are readily apparent and substantially similar.

Arbitration is a process by which exchange parties may submit disputes over valuation to an arbitrator appointed by the Forest Service from a list of arbitrators submitted by the American Arbitration Association.

An *authorized forest officer* is a Forest Service line or staff officer who has the delegated authority and responsibility to make and execute indicated decisions.

Bargaining is a process for determining an acceptable value for properties involved in an exchange, when the parties cannot agree on the initial appraised valuation.

A *brokered exchange* occurs when a party other than the present landowner, at the request or concurrence of the Forest Service, assembles and manages a land exchange acceptable to the United States, for the benefit of the present landowner.

A *determination of approximately equal value* is a statement by an authorized forest officer which documents that the Federal and non-Federal lands proposed for exchange have approximately equal values.

Fair market value is the sum of money or terms equivalent to money, for which in all probability a property would be sold by a knowledgeable owner who is willing but not obligated to sell, to a knowledgeable purchaser who is willing but not obligated to buy.

A *formal proposal* for a land exchange is written, identifies the potential Federal and non-Federal lands, and identifies the ownership or other authority of a non-Federal party to convey the non-Federal lands.

Hazardous substances are those substances designated under Environmental Protection Agency regulations at 40 CFR part 302.

Highest and best use is the reasonable and probable legal use, or combination of reasonable and probable legal uses, that as of the date of valuation are most likely to produce the greatest net return.

An *interest in land* is a partial or undivided right in real property that is less than the complete fee or estate.

Lands means any land or interests held in land.

National forest land status refers to the condition or type of ownership that applies to a given parcel of land within the national forests, as determined by the method by which the land became part of the National Forest System.

National Forest System, as defined in the Act of August 17, 1974 (16 U.S.C. 1609), includes all national forest lands reserved or withdrawn from the public domain of the United States; all national forest lands acquired through purchase, exchange, donation, or other means; the national grasslands and Land Utilization Projects; and other lands, waters, or interests therein which are administered by the Forest Service or are designated for administration through the Forest Service as a part of the System.

An *outstanding interest* is a right or interest in property held by a third party other than the present landowner.

A *qualified appraiser* is an individual who, as determined by the Forest Service, has the knowledge and experience necessary to competently complete an appraisal assignment.

Relative values is a term used to describe the relationship between the values of properties on each side of an exchange transaction in which there is compensation for exchange processing costs assumed by other than the party responsible for those costs. Such values are distinguished from appraised values, which may have formed the basis for the initial valuation of the properties, but to which administrative adjustments may have occurred outside of the appraisal process, in compensation for costs of one party assumed by the other party.

A *reservation* is a right created by the grantor in an instrument of conveyance by which the grantor retains some right, interest, or profit in the estate granted.

Secretary means the Secretary of Agriculture.

Segregation means the removal for a limited period, subject to valid existing rights, of a specified area of National Forest System land reserved from the public domain for national forest purposes from the operation of the public land laws, including the mining and mineral leasing laws.

A *statement of value* is an informal appraisal report that documents an estimate of value and contains only the conclusions reached in the appraiser's investigation and analysis.

§ 254.3 Requirements.

The following requirements apply to exchanges of National Forest System lands:

(a) *Eligibility of parties.* Lands can be exchanged only with a non-Federal landowner who is a citizen of the United States or a corporation which is subject to the laws of a State or of the United States. Lands cannot be exchanged with a Member of Congress (18 U.S.C. 431).

(b) *Lands available for exchange.* The Forest Service will emphasize exchanges that implement and are consistent with land and resource management planning direction and objectives for a particular national forest. The authorized forest officer must find that the exchange will not result in an overall decrease in public values or the ability to meet National Forest System management objectives. In any exchange, the authorized forest officer must reserve such rights or retain such

interests as are needed to protect the public interest or shall otherwise restrict the use of National Forest System lands or partial interests to be exchanged, as appropriate.

(c) *Determination of public interest.* An exchange must be found to be in the overall public interest. When considering if the public interest will be served, the authorized forest officer shall give full consideration to the opportunity to achieve better Federal land management and to the needs of State and local residents, including but not limited to, such needs as a sound economy, community expansion, recreational opportunities, food, fiber, minerals, and fish and wildlife.

(d) *Same-State exchanges.* Lands transferred out of Federal ownership in an exchange must be located in the same State as the non-Federal land conveyed to the United States, unless specifically exempt by terms of an exchange authority.

(e) *Value of lands.* The lands or interests in lands involved in an exchange must be equal in value or equalized by cash payment, pursuant to paragraph (e)(1) of this section; unless a waiver of cash equalization is authorized, as provided in paragraph (e)(2) of this section; or unless the exchange is conducted under the approximately equal value provisions of § 254.8 of this subpart.

(1) *Cash equalization.* An amount not to exceed 25 percent of the value of the involved Federal lands may be paid by either party to equalize the values in a land exchange. There are no limits on the amount of cash equalization in exchanges made pursuant to the Sisk Act of December 4, 1967 (16 U.S.C. 484a).

(2) *Waiver of cash equalization.* When the Forest Service determines that the public interest would be better served and that an exchange will be expedited, the parties may agree that the authorized forest officer may waive a cash equalization payment by the United States, of up to 3 percent of the value of the involved Federal lands, not to exceed $15,000. However, the authorized forest officer shall not waive a cash equalization payment to the United States.

(f) *Future use of exchanged Federal lands.* The use or development of lands or interests in lands conveyed out of Federal ownership become subject to the laws, regulations, and zoning authorities of State and local governing bodies. Except for reservations or restrictions imposed on future uses within the conveyance document, the future use of lands conveyed into non-Federal ownership shall be determined by State and local governments responsible for regulating land use. However, the intended use must not be in conflict with management objectives on adjacent National Forest System land and must be compatible with local zoning requirements.

(g) *Encumbrances on Federal use.* Lands conveyed to the United States cannot be encumbered by reservations or outstanding interests that would unduly interfere with their use and management as part of the National Forest System.

(h) *Reserved rights.* Reservations by the non-Federal owner are subject to the appropriate rules and regulations of the Secretary as set forth in 36 CFR 251.14 through 251.19 for such reserved rights, except upon a special finding by the Forest Service.

(i) *Hazardous substances.* When hazardous substances are known to have been stored for one year or more, or are known to have been released or disposed of on Federal lands involved in an exchange, the Forest Service shall provide notice to the other parties in accordance with current Environmental Protection Agency regulations. That notice may be included in a Statement of Intent, an exchange agreement, or some other acceptable document. The Forest Service shall determine if there are deposits of hazardous substances on the non-Federal land involved in an exchange and reach an agreement on responsibility for control action with the non-Federal party prior to entering into a binding exchange agreement or accepting title to non-Federal lands. The non-Federal landowner must notify the Forest Service of any knowledge of hazardous substances on the non-Federal land pursuant to § 254.4 of this subpart, or must certify the absence of any knowledge of such materials on the land pursuant to § 254.13 of this subpart.

(j) *Automatic segregation from mining laws.* Under provisions of the Act of October 21, 1976 (43 U.S.C. 1715), as amended by the Act of August 20, 1988 (43 U.S.C. 1716), those non-Federal lands acquired in exchange for Federal lands reserved from the public domain for national forest purposes automatically shall be segregated from operation of the public land laws, including the mining and mineral leasing laws, for 90 days after acceptance of title by the United States. At the end of the 90-day period, without further action to permanently withdraw the lands, they automatically will be open to operation of the public land laws and to entry under the mining and mineral leasing laws.

(k) *Boundary extensions.* Lands acquired under the authority of the Weeks Act of March 1, 1911, as amended (16 U.S.C. 516), which are near or adjoining existing national forest boundaries and total no more than 3,000 acres in each case, automatically shall be included within a Weeks Act boundary extension encompassing those lands (7 CFR 2.42).

(l) *Special review and approval.* Land acquisitions of $150,000 or more in value made under the authority of the Weeks Act of March 1, 1911, as amended (16 U.S.C. 516), must be submitted to Congress for oversight, pursuant to the Act of October 22, 1976, as amended (16 U.S.C. 521b). Land acquisitions of $250,000 or more in value, made under Weeks Act authority, must also be submitted to the Secretary for approval, except as indicated in this paragraph. Minor and insignificant changes in land acquisition proposals need not be resubmitted for congressional oversight or approval by the Secretary. Land acquisitions specifically mandated by legislation shall be exempt from Secretarial approval or congressional oversight, unless otherwise specified.

§ 254.4 Initiating an exchange.

(a) *Proposals.* Exchanges may be initiated by a non-Federal landowner, an agent of a landowner, a broker, a third party, a non-Federal public agency, or the Forest Service. Initial exchange proposals made to the Forest Service should be directed to the District Ranger or Forest Supervisor of the National Forest System unit on which the Federal land is located. A proposal may be accepted, modified, or rejected by either party, at any time before entering into a binding written exchange agreement.

(b) *Agreement to initiate.* Only a Statement of Intent, signed by an authorized forest officer, constitutes a Forest Service agreement to initiate and pursue an exchange. Failure of an authorized forest officer to reject a proposal shall not be construed as Forest Service consent to enter into an exchange.

(c) *Statement of Intent.* When the Forest Service and the non-Federal party decide to pursue the possibility of a land exchange, they must document their intentions in a Statement of Intent.

(1) A Statement of Intent shall include, but is not limited to:

(i) Certification by the non-Federal party of United States citizenship or status as a corporation subject to the laws of a State or of the United States;

(ii) Identification of the properties and estates considered for exchange;

(iii) Identification of ownership or other authority to make such an exchange;

(iv) Identification of any known release, storage, or disposal of hazardous substances on involved non-Federal or Federal lands;

(v) Assignment of responsibility for performance of required functions and for payments associated with processing the exchange (§§ 254.3, 254.5);

(vi) The scheduled beginning date for appraisals and anticipated date for review of appraisals, unless deferred under paragraph (d) of this section;

(vii) A clear grant of permission by either party to examine and physically inspect the lands of the other party.

(2) A Statement of Intent shall be a preliminary non-binding agreement to initiate an exchange and may be amended as needed. It may be terminated at any time by any of the parties, before entering into a binding exchange agreement.

(d) *Appraisal timetable.* Within 90 days after entering into a Statement of Intent, the authorized forest officer and the other parties in an exchange shall arrange for an appraisal. If not already agreed upon in the Statement of Intent, the completion date and terms of the appraisal must be negotiated at this time. Such date and terms will be dependent upon the scope, complexity, and priority of the appraisal, and the capability of the Forest Service to process and review the proposal.

§ 254.5 Responsibilities.

(a) *General requirements.* Costs, responsibilities, and requirements associated with land exchanges may include, but are not limited to, land surveys, platting, appraisals, mineral examinations, timber cruises, title searches, title curative actions, cultural resource surveys and mitigation, hazardous substance surveys and controls, curing deficiencies preventing highest and best use of the land, conducting public hearings, assemblage of brokered multiple-parcel exchanges, arbitration, or other costs to comply with laws, regulations, and policies applicable to exchange transactions. Some costs and responsibilities traditionally rest with certain parties of an exchange, some are typically shared, while others are negotiated in each case, subject to the needs of the Forest Service.

(b) *Assumption of costs without compensation.* While generally, each party will pay the expenses normally associated with processing their own lands in a land exchange, the parties in an exchange may agree that either party will assume without compensation, all or part of certain costs, responsibilities, or requirements that are ordinarily borne by the other party. However, an authorized forest officer shall decide to assume costs normally borne by the non-Federal party only on an exceptional basis, when it is clearly in the public interest and in the best interest of consummating an exchange.

(c) *Compensation for costs assumed by the non-Federal party.* The Forest Service may, in special circumstances, determine that it is in the public interest to consummate an exchange and compensate the non-Federal party for assuming costs, responsibilities, or requirements which would ordinarily be borne by the Forest Service. Such compensation shall be agreed upon in advance and shall be made by adjusting the relative values involved in an exchange.

(1) In order to compensate a non-Federal party for assuming costs, responsibilities, or requirements normally borne by the Forest Service, an authorized forest officer must find that all of the following conditions exist or will result from the compensation:

(i) Resulting landownership patterns will not be disadvantageous to the Government.

(ii) The exchange will result in exceptional public benefit.

(iii) Consummation will be expedited for a land exchange needed to protect cultural resource sites, protect adjacent National Forest System lands from external degradation, protect or enhance important recreational opportunities, protect critical wildlife or fish habitat, protect threatened, endangered, or sensitive species habitat, or protect other national forest resource values.

(iv) There will be no resultant change in the appraised values of the lands involved in the exchange.

(v) The amount of compensation is reasonable and accurately reflects the approximate value of any costs or services provided, or any responsibilities or requirements assumed.

(vi) No other means of meeting the exchange processing costs, responsibilities, or requirements of the Forest Service are available or practicable.

(2) Relative value adjustments reflecting compensation for costs may result in acreage adjustments of included Federal or non-Federal land, or cash equalization payments. Compensation shall not exceed 25 percent of the value of the involved Federal lands. Only those costs that are set forth and agreed to in the Statement of Intent will be considered for compensation.

§ 254.6 Legal descriptions of properties.

Lands proposed for exchange must be properly described and locatable under the survey laws and standards of the United States and the State in which located. Any survey required is the responsibility of each party unless otherwise negotiated and documented in a Statement of Intent, or subsequent amendments.

§ 254.7 Appraisals.

(a) *Uniform standards.* The fundamental appraisal standards for National Forest System land exchanges are as set forth in the "Uniform Appraisal Standards for Federal Land Acquisitions," as amended, an Interagency Land Acquisition Conference publication (May, 1973). Those standards are further supplemented by Standards 1, 2, and 3 of the "Uniform Standards of Professional Appraisal Practice," as published by the Appraisal Foundation. If any parts of the latter standards conflict with the first set of standards, those parts of the latter standards shall be disregarded and the applicable parts of the "Uniform Appraisal Standards for Federal Land Acquisitions" shall govern. The same appraisal standards shall be used in appraising both the Federal and the non-Federal lands involved in an exchange.

(b) *Appraisal of Federal lands.* Federal lands shall be appraised under the assumption that they are already in non-Federal ownership and are zoned in accordance to their highest and best use.

(c) *Qualified appraisers.* Appraisals to estimate fair market value must be made by qualified Forest Service staff or private-sector fee appraisers. Criteria for qualification of private-sector fee appraisers shall be determined by the Forest Service, based on the requirements and complexity of the appraisal assignment, and listed in the contract for an appraisal. Requirements for qualification of Forest Service staff appraisers are as described in Forest Service Manual Chapter 5410.

(d) *Brokered exchanges.* Brokered exchanges shall be utilized whenever practical to facilities landownership adjustments and reduce costs. When a broker, agent, or third party proposes an exchange of two or more properties which have been assembled to meet Forest Service landownership adjustment goals, special appraisal instructions may apply. The intent of such special instruction is that the appraisal process will not penalize an agent for an assembly. Multiple-parcel Federal lands involved in brokered exchanges shall be subject to the same

valuation techniques as the non-Federal lands.

(e) *Current appraisals.* Appraisals must be current, dated no more than one year prior to entering into a binding exchange agreement. However, market conditions may indicate that a shorter period is appropriate. When an exchange agreement is executed, approved values shall remain effective until consummation of the exchange.

§ 254.8 Approximately equal value exchanges.

(a) *Requirements.* The Forest Service may make a determination of approximately equal values without a formal appraisal report only when:

(1) It is in the public interest to expedite the consummation of a particular exchange;

(2) The value of the involved Federal land does not exceed $150,000;

(3) The exchange properties have readily apparent and substantially similar elements of value;

(4) There are no significant elements of value requiring complex analysis, such as, but not limited to, high-valued minerals, high-valued improvements, or high-valued water frontage; and

(5) a qualified Forest Service staff appraiser has prepared a Statement of Value to document the Federal land value.

(b) *Determination of value.* Approximately equal values shall be determined by comparing and evaluating the elements of value on lands or interests in lands to be exchanged. Elements of value to be considered include, but are not limited to, highest and best use of the land, size, shape, location, physical attributes, functional utility, proximity of other similar sites, and amenities. Findings that parcels are approximately equal in value shall be documented in a Determination of Approximately Equal Value approved by an authorized forest officer.

(c) *Appraisal standards.* Statements of Value must meet the same appraisal standards as detailed appraisal reports. It is the Forest Service staff appraiser's responsibility to maintain full documentation of the data supporting a Statement of Value and to make it available for review upon request.

(d) *Current statement of value.* A Statement of Value must be current, within one year prior to the date of entering into a binding exchange agreement. However, market conditions may indicate that a shorter period is appropriate.

§ 254.9 Arbitration of valuation.

(a) *Agreement on valuation.* The Forest Service and non-Federal exchange parties should attempt to reach agreement as to the valuation of an exchange, before resorting to arbitration. Such agreement may be reached through bargaining, pursuant to paragraph (b) of this section.

(b) *Bargaining.* If the Forest Service and other parties cannot agree to accept the findings of the initial appraisal or appraisals, they may bargain to select one of the following methods to determine the values of the properties involved in an exchange:

(1) Additional appraisals by either or both parties;

(2) Agreement on an additional appraisal to be done by a mutually acceptable qualified third appraiser;

(3) Agreement to submit the disputed appraisals to a review by a mutually acceptable qualified third appraiser; or

(4) Some other acceptable and commonly recognized practice for determining values. The final determination of value must be acceptable to the Forest Service, for an exchange to proceed.

(c) *Submission for arbitration.* If the valuation of an exchange cannot be agreed upon within 180 days after appraisals are submitted to the authorized forest officer for review and approval, the appraisals may be submitted to an arbitrator appointed by the Forest Service from a list provided by the American Arbitration Association, for arbitration in accordance with the Real Estate Valuation Arbitration Rules of that organization.

(d) *Election of arbitration.* Failure to voluntarily negotiate terms generally will be grounds to discontinue an exchange. Arbitration shall be considered as a last resort in negotiating terms of an exchange and shall be used only when the Forest Service determines that there are extenuating public interest reasons for proceeding with an exchange.

(e) *Arbitration procedures and requirements.* When arbitration is utilized, the following procedures will apply:

(1) Upon receipt of a notice of intent to arbitrate, the authorized forest officer shall appoint a single arbitrator from a list provided by the American Arbitration Association.

(2) Arbitration shall be limited to the disputed valuation of a proposed exchange, and an arbitrator's award decision shall be limited to the value estimate(s) of the contested appraisal(s). An award decision shall not include recommendations regarding the nature of a proposed exchange. An award decision shall not infringe upon the authority of the Secretary to make all decisions regarding management of National Forest System lands and to make public interest determinations.

(3) An award decision reached by an arbitrator shall be the effective valuation for a period not to exceed two years from the date of the decision and shall be binding only if an exchange is consummated. Any adjustment or modification of an exchange which results in changes of the values arbitrated will nullify an arbitrator's award decision.

(4) Within 30 days after delivery of an arbitrator's award decision, each party in an exchange shall notify in writing all other parties of their intent to proceed with an exchange with the values as arbitrated, or to modify an exchange as a result of the arbitration findings or other factors, or to withdraw from an exchange. Until the parties enter into a binding exchange agreement, any party may elect to withdraw from an exchange at any time during the exchange or arbitration process.

(f) *Suspension of time limits.* Time frames and deadlines in paragraphs (c) and (e)(4) of this section, and in § 254.4(d) of this subpart, may be modified or suspended at any time, upon agreement of the parties.

(g) *Termination of exchange.* Notwithstanding the provisions of this section, if it appears at any time during the exchange process, before entering into a binding exchange agreement, that further negotiations would be futile or that it would be administratively impractical to continue, an authorized forest officer may terminate an exchange.

§ 254.10 Publication of proposed exchanges.

(a) *Publication of notice.* The Forest Service shall publish a notice for each proposed exchange once a week for four consecutive weeks in newspapers of general circulation in the counties in which the Federal and non-Federal lands or interests proposed for exchange are located. An exchange notice will be published at the point when the potential lands that may be included in an exchange have been identified in a Statement of Intent.

(b) *Purpose of notice.* The purposes of an exchange notice are:

(1) To apprise the public of an exchange proposal in a timely fashion;

(2) To allow anyone having a claim to the lands to notify the appropriate forest officer and present evidence supporting their claim; and

(3) To afford an opportunity for those with comments to submit their views to the Forest Service.

(c) *Response deadline.* All claims and comments must be made in writing and postmarked or delivered within 15 days of the final publication of a notice, to be assured of consideration in the environmental analysis of a proposed exchange.

(d) *Republication requirements.* If some of the lands described in a published exchange notice are excluded from the final exchange agreement, it is not necessary to republish the final land descriptions, as long as the included lands were substantially identified in the published notice. Minor corrections of legal descriptions, small additions of exchange lands, and other insignificant changes also do not require republication.

§ 254.11 Approval of exchanges.

(a) *Environmental analysis.* If preliminary negotiations result in concurrence on an exchange proposal, the Forest Service shall conduct an environmental analysis in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321), the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and the Forest Service Environmental Policy and Procedures (Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15). In making this analysis, the Forest Service shall consider timely written comments received in response to the published exchange notice.

(b) *Notice of decision.* The Forest Service shall provide copies of the decision documents to the exchange parties, to all parties who filed written objections, and to all known parties with an expressed or inherent interest in an exchange.

(c) *Exchange approval.* The authorized forest officer may approve or conditionally approve an exchange, subject to any required approval by the Secretary or congressional oversight, after the remaining requirements of this section and § 254.3 of this subpart have been met. A decision to proceed constitutes the final or conditional final approval of an exchange.

§ 254.12 Appeal of exchanges.

Appeal of land exchange decisions. Written decisions to proceed or not to proceed with land exchanges, made by authorized forest officers, which result from analysis and other requirements of the National Environmental Policy Act and are documented in a Decision Memo, Decision Notice, or Record of Decision, are subject to appeal under 36 CFR Part 217.

§ 254.13 Exchange agreements.

(a) *Purpose of agreement.* To execute an exchange, the Forest Service and the non-Federal party must enter into an exchange agreement, unless an authorized forest officer determines that such an agreement is not needed. An exchange agreement shall identify the estates to be exchanged, all reservations and outstanding interests, any necessary cash equalization, and all other terms and conditions which each party agrees to perform.

(b) *Timing of agreement.* An agreement may be executed only after the Forest Service has approved or conditionally approved an exchange as provided in § 254.11 of this subpart.

(c) *Conditions of agreement.* An Exchange agreement shall be binding on both parties providing:

(1) Acceptable title can be conveyed;

(2) No loss or damage occurs to either property from any cause;

(3) No undisclosed hazardous substances are found on the involved Federal or non-Federal lands prior to conveyance; and

(4) The decision to complete the exchange is upheld in event of appeal under 36 CFR Part 217.

(d) *Requirements and contingencies.* An exchange agreement shall be made subject to the conditions set forth in this section, and where required, made subject to approval by the Secretary and completion of congressional oversight. When an exchange agreement is made subject to such conditions or uncompleted processes, the exchange shall not proceed to consummation until those requirements or contingencies are discharged.

(e) *Notice or certification of hazardous substances.* An exchange agreement or other agreed upon document must include a notice of the presence of, or certification of the absence of, known hazardous substances on involved Federal and non-Federal lands.

(f) *Need for binding agreement.* In the absence of an exchange agreement, no action taken by the parties to the exchange shall create or establish any contractual or other obligations or rights against either exchange party prior to issuance of a patent or deed.

§ 254.14 Conveyance documents.

(a) *Deed form.* Deeds to the United States must be in a form that complies with the Department of Justice "Standards for the Preparation of Title Evidence in Land Acquisition by the United States."

(b) *Conveyance document types.* Conveyances from the United States shall be by exchange deed from the Department of Agriculture, or by patent or quitclaim deed issued by the Department of the Interior. The type of document depends upon the status of the Federal land.

(c) *Simultaneous issuance.* Patents or deeds for conveyances out of Federal ownership in exchanges shall be issued simultaneously with deeds issued for lands or interests to be acquired by the United States. Such simultaneous issuance shall occur after the Office of the General Counsel of the Department of Agriculture has provided a preliminary title opinion which assures that the United States will receive acceptable title to the lands or interests being acquired by the United States, if the instructions in that opinion are properly complied with. Where simultaneous issuance of documents is impracticable, this requirement may be waived by agreement of the parties.

§ 254.15 Title evidence and approval.

(a) *Title evidence standards.* Evidence of title for land or interests being conveyed to the United States must be in a form acceptable to the Department of Justice, as described in the "Standards for the Preparation of Title Evidence in Land Acquisition by the United States."

(b) *Responsibility.* The non-Federal landowner shall usually bear the cost of the required title evidence, unless provided otherwise pursuant to § 254.5 of this subpart.

(c) *Title encumbrances.* Taxes, liens, and other encumbrances such as mortgages, deeds of trust, and judgments must be eliminated or released in accordance with requirements of the title opinion of the Office of the General Counsel of the Department of Agriculture.

(d) *Title approval.* Title to lands being conveyed to the United States must be approved by the Office of the General Counsel of the Department of Agriculture, prior to acceptance.

(e) *Title evidence for Federal land.* The United States does not furnish formal title evidence to its land.

(f) *Title acceptance.* Title acceptance by the Forest Service of land or interests being conveyed to the United States occurs after issuance of the final title opinion by the Office of the General Counsel of the Department of Agriculture.

Dated: June 13, 1989.

[FR Doc. 89-19161 Filed 8-17-89; 8:45 am]
BILLING CODE 3410-11-M

federal register

Friday
August 18, 1989

Part V

Department of the Interior

Bureau of Land Management

43 CFR Parts 2090 and 2200
Land Exchanges; General Procedures; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2090, 2200

RIN 1004-AB28
[AA-320-09-4212-02]

Land Exchanges; General Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rule revises the existing exchange regulations to implement the Federal Land Exchange Facilitation Act of August 20, 1988 (Public Law 100-409) (hereafter referred to as the Act). This Act amended provisions of the Federal Land Policy and Management Act of 1976 and directed the Secretaries of the Interior and Agriculture to promulgate, within one year after enactment of the Act, new and comprehensive regulations governing exchanges of land.

DATE: Comments should be submitted by October 2, 1989. Comments received or postmarked after this date may not be considered in the decisionmaking process on the issuance of the final rule.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1800 C Street, NW., Washington, DC 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Roger Taylor or Dave Cavanaugh, (202) 343-8693 or 343-5441.

SUPPLEMENTARY INFORMATION: The land exchange regulations contained in part 2200 of title 43 of the Code of Federal Regulations are being revised to implement the Federal Land Exchange Facilitation Act. (Act) The proposed rule is intended to reflect the amendments made by that Act to section 206 of the Federal Land Policy and Management Act of 1976 by providing for:

1. Time frames and mechanisms for the resolution of disagreements concerning the values of the lands involved in an exchange, unless otherwise agreed by parties to the exchange;
2. Appraisal standards that reflect nationally recognized appraisal standards;
3. Adjustment of the relative values involved in an exchange transaction in order to compensate a party or parties to the exchange for assuming costs, or other responsibilities or requirements, which would ordinarily be borne by the other party or parties;
4. Exchanges of lands of approximately equal value when the appraised values of the public and nonfederal lands are within 5 percent, the value of the public lands to be conveyed is $150,000 or less, and when the determination of approximately equal value can be made without a formal appraisal on the basis of a statement of value prepared by a qualified appraiser, and approved by the authorized officer;
5. Waiver of cash equalization payment where the amount to be waived is no more than 3 percent of the value of the lands being transferred out of Federal ownership or $15,000, whichever is less;
6. Automatic segregation of public lands proposed for exchange from the operation of the public land and mineral laws, for a period not to exceed 5 years;
7. Automatic segregation of nonfederal lands acquired in an exchange from operation of the public land and mineral laws, for 90 days from the date of acceptance of title;
8. Simultaneous transfer of titles, unless mutually agreed otherwise; and
9. Automatic transfer of jurisdiction when lands acquired by exchange are within national land systems estabished by Congress.

The proposed rule also provides for land pooling agreements with governmental agencies and other parties. These agreements would create separate pools of public and nonfederal lands from which individual tracts could be conveyed without simultaneous title transfers. A ledger would be maintained to tabulate each of the transactions and record the resulting balances. The account would be equalized every two years, or at the expiration of the agreement, whichever comes first.

Finally, to facilitate land exchanges involving minerals, the rulemaking allows the parties to an exchange to reserve the minerals, exchange minerals of equal value, or reserve a 25-year royalty.

In the interest of uniformity, the Bureau of Land Management has consulted with the U.S. Forest in developing this proposed rule. In addition, a Notice of Intent to Propose Rulemaking was published in the **Federal Register** on November 14, 1988 (53 FR 45782). The Notice of Intent requested the public to provide information or make recommendations which would assist the Bureau in developing regulations on the agreement to initiate an exchange, the bargaining process, appraisal standards, adjustment of relative values for compensation purposes, and the definitions of approximately equal value, statement of value, and qualified appraiser.

The Notice of Intent drew comments from 13 sources: two from State governments, one from local government, six from private organizations, two from public land grazing associations, one from a public land grazing advisory board and one from the Advisory Council on Historic Preservation. A summary of the comments and corresponding responses are as follows:

Agreement to Initiate an Exchange

Comments: One commenter recommended that all exchanges be initiated at the State Director level and tied to specific time frames. Another commenter stated that the agreement to initiate an exchange should be in the form of a letter of understanding that describes the land parcels to be exchanged and sets forth the terms and conditions relative to the appraisal process. It was also suggested that the exchange process be as unstructured as possible and allow the parties to an exchange maximum flexibility within the framework of the Federal Land Exchange Facilitation Act.

Response: The Bureau believes that all exchange proposals should be discussed initially with the BLM District Manager or Area Manager for the District or Resource Area in which the public lands which are the subject of the exchange are located. These are the Bureau officials most familiar with the properties involved, i.e., land status, planning and environmental considerations, would be directly responsible for coordinating and processing the exchanges.

The exchange process has been designed around a written, nonbinding statement of present intent, called in the Act an "agreement to initiate an exchange." This agreement may be terminated by either party, without cost or penalty, at any time, or it may be modified by mutual agreement during the exchange process. The purpose of this agreement is to establish a working relationship between the parties by (1) delineating various responsibilities and informational requirements, (2) identifying applicable procedures, and (3) fixing time frames and mechanisms to complete each stage of the exchange process.

Process of Bargaining

Comments: Several comments addressed the bargaining process. One commenter believed that this "smacks of horse trading" that could lead to potential problems and should only be used sparingly at the Washington Office level. Another stated that bargaining, without some guidelines and/or restrictions relative to value, would not be in the public's best interest. It was also pointed out that the process of bargaining would serve as an important mechanism for resolving disputes when there are legitimate differences in appraisal assumptions, approaches to value, or interpretation of data that could not be resolved through the appraisal process.

Response: In lieu of arbitration, bargaining or some other process may be used to resolve disputes concerning the appraised values of the lands being considered for exchange. As indicated in § 2201.2-2(c) of this proposed rule, the parties may meet to discuss issues relating to differences in the appraised values of the lands involved in an exchange. These issues may be resolved through mutual agreement, or the parties may involve an impartial third party to either mediate or propose a solution. Any agreement, including the rationale supporting the values of the lands to be exchanged, must be in writing and made part of the administrative record.

Appraisal Standards

Comments: Several commenters recommended adoption of nationally recognized appraisal standards. One reviewer recommended that the appraisal standards should be consistent with standards of nationally recognized appraisal organizations such as the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, and the American Society of Farm Managers and Rural Appraisers.

Four comments were directed at the publication "Uniform Appraisal Standards for Federal Land Aquisitions" (Department of Justice, 1973 ed.). Two commenters were unsure that the publication was applicable to exchanges authorized under the Federal Land Policy and Management Policy Act of 1976. One State agency suggested that it not be used, or at least not be the primary standard for exchange appraisals. A private land exchange company expressed the view that the standards were primarily applicable to Federal acquisition by condemnation. They suggested that whatever standards are adopted should be equally applied to both the public and nonfederal lands.

It was also recommended that two separate appraisals be completed on both the public and nonfederal lands proposed for exchange, and that the appraisal rules of the Departments of the Interior and Agriculture be identical or at least very similar.

Response: The Act requires this rulemaking to reflect nationally recognized appraisal standards, to the extent appropriate. These standards are reflected in § 2201.4 of this proposed rule. These standards incorporate, as appropriate, the "Uniform Appraisal Standards for Federal Land Acquisitions", as amended, an Interagency Land Acquisition Conference publication (May 1973) and the "Uniform Standards of Professional Appraisal Practice", as published by the Appraisal Foundation. The standards apply to the public and nonfederal lands involved in an exchange.

The proposed rule does not require two separate appraisals of the public and nonfederal lands although, as discussed below, all appraisals are subject to review by an agency appraiser. The complexity of the appraisal assignment, the working relationship established between the exchange parties, and the preliminary estimate of the values of the lands involved, may indicate the desirability of having a second appraisal. Circumstances requiring more than one appraisal will vary with each exchange transaction. These circumstances may include lands having various encumbrances affecting title, possessing commercially developable timber or mineral resources, or instances where the highest and best use may be questionable. In addition, the uniqueness of the lands appraised or the lack of relevant market information for analysis may warrant a second appraisal.

Public comments are specifically requested as to whether and under what circumstances more than one appraisal should be required. The input provided will be helpful in the preparation of the final rule or of instructional guidance that may be developed to assist the parties involved in an exchange.

As indicated in § 2201.4-7 of this proposed rule, all appraisals prepared for an exchange transaction will be reviewed by an agency appraiser. The purpose of this review is to determine whether the appraisal report is logical and supports the estimate of market value. The authorized officer must concur in the reviewer's statement before the estimate of market value becomes the agency's approved value for the lands proposed for exchange.

The Bureau of Land Management and the U.S. Forest Service have met concerning the development of appraisal standards. There are some minor differences. These differences reflect various agency exchange authorities and procedures for developing and implementing policies. However, both the Bureau and the Forest Service have relied on the aforementioned publications to attain consistency with nationally recognized appraisal standards.

Adjustment of Relative Values

Comments: Several comments were received on Section 206(f)(2)(B)(ii) of the Federal Land Policy and Management Act. Most agreed that compensation should be allowed for various costs paid by the nonfederal parties. One commenter recommended that the costs associated with exploration, development, and marketing of coal reserves deemed no longer mineable as a result of the Surface Mining Control and Reclamation Act of 1977 should be considered part of the value of an exchange property. It was also suggested that the costs and services be limited to those specified in the Act, or that the nonfederal party be compensated for incurring extraordinary expenses unique to Federal land transactions. This would include costs associated with Federal land appraisals, environmental analyses, cultural surveys, mineral examinations or other requirements in order to comply with laws, regulations and policies applicable to Federal land exchanges.

Response: The Act and proposed rule list but do not limit the various costs that can be incurred or services that can be rendered in making adjustments to the relative values involved in an exchange transaction. Previously incurred costs associated with exploration, development, and marketing of coal reserves deemed no longer mineable under the Surface Mining Control and Reclamation Act of 1977 are not considered appropriate for value adjustment purposes. However, the information derived from these activities may be taken into account when estimating the market value of the lands involved in an exchange.

Section 2201.1(c)(7) of the rulemaking would allow the exchange parties to agree, within reason, upon the type and amount of compensation to be credited to either party. The authorized officer must ensure that the amount of each adjustment is reasonable and accurately reflects the approximate value of the costs incurred, the services provided, or any responsibility or requirements assumed. The total amount of all such adjustments and any cash equalization payment may not exceed 25 percent of the preadjustment value of the lands to be conveyed out of Federal ownership.

Approximately Equal Value

Comments: A wide range of comments was received concerning the criterion of "approximately equal value". One State agency commented that its Enabling Act would prevent the use of approximately equal value if the value of the Federal lands in the exchange was less than the value of the State lands. Another State agency commented that it is a good tool for moving small tracts of low value in a relatively short period of time. Two commenters felt that the difference in value should not exceed 10 percent while another stated that 5 percent would be reasonable for most appraisals. One reviewer recommended that approximately equal value should never be used in consummating land exchanges.

Response: The proposed rule defines "approximately equal value" as occurring when the value of the nonfederal lands is within 5 percent of the value of the public lands being exchanged. The determination of approximately equal value must be based on a statement of value prepared by a qualified appraiser and approved by the authorized officer. In addition, the criterion of approximately equal value can only be applied to exchanges in which the value of the lands to be conveyed out of Federal ownership is no more than $150,000.

This provision of the regulations would facilitate smaller exchanges involving either intermingled lands within a property ownership or land adjustments on the edges of currently blocked landholdings. Its application would be limited to those circumstances in which the qualified appraiser would appraise properties that are similar in location, use, size, and other physical attributes. For these reasons, a 5 percent difference in value is considered to be reasonable and attainable.

Statement of Value

Comments: Four comments were received concerning statement of value. One State agency commented that it could not use a statement of value if it was something less than an appraisal. Others suggested information and the minimum amount of support data that should be included in the statement. An appraiser stated he did not believe that the use of a statement of value would result in a significant savings in time or costs. Another commenter felt that the document would be highly efficient for in-house land managers to accomplish land adjustments in half the time normally required when using narrative appraisals.

Response: The statement of value would consist of a written report prepared by a qualified appraiser and approved by the authorized officer. This type of appraisal could only be requested when (1) the estimated value of the lands to be transferred from Federal ownership is not more than $150,000, and (2) the lands appraised are similar in location, acreage, use and physical attributes. The statement of value would comply with the minimum report standards for an appraisal as provided in § 2201.4–6 of this title. It would also contain the appraiser's analysis and estimate of value for both the public and nonfederal lands.

Qualified Appraiser

Comments: Several comments were received concerning the qualifications of an appraiser. One commenter suggested that the person preferably be an accredited member of a nationally recognized appraisal organization that meets the membership requirements of the Appraisal Foundation. One State agency recommended adoption of qualification standards developed by the Appraisal Foundation and included reference to proposed State legislation concerning licensing standards. Another State agency was concerned that the standards may be too high and could result in the elimination of agency appraisers. The same commenter also suggested that when minerals are involved the appraiser should have a baccalaureate in the earth sciences. Finally, one reviewer suggested that the existing qualification standards should remain in effect.

Response: As indicated in § 2201.4–1 of this rulemaking, the qualifications of an appraiser were expanded to incorporate the majority of recommendations made in the comments. Consideration was also given to ongoing efforts by State legislatures and national appraiser organizations to develop appraiser qualifications.

Resource Values

Comments: Several commenters suggested that appraised values include historic, scenic, and other intangible qualities such as recreational potential, wildlife habitat, and economic development needs for urban expansion. Although many of them agreed that it may not be feasible to set economic values on these qualities, they suggested that appraisers should, to the extent possible, consider these intangible qualities in estimating market value.

Response: Market value is the standard for estimating value. The appraiser's responsibility is to estimate what the propery would sell for in the real estate market as of the date of appraisal. To the extent that historic, wildlife, recreation, scenic qualities or economic and other resources values influence market value, these values are included in the estimates of appraised values. Appraisers would use comparable sales and analyses which reflect these qualities and attributes.

Concluding Remarks

In summary, the proposed rule prescribes an exchange process that will enhance decisionmaking and expedite viable exchanges. The process is based on a nonbinding "agreement to initiate an exchange" that can be unilaterally terminated or mutually modified. This agreement would establish an informal working relationship between the parties, and set forth time frames, responsibilities, and information requirements for exchange transactions. Other elements of the process are intended to simplify and speed up the consummation of proposed changes.

The proposed rule also allows the public to participate in the land exchange, decisionmaking process. In the early stages of the process, the authorized officer will publish a notice of initiation if the exchange proposal appears to be acceptable. After the authorized officer completes all necessary studies to determine whether the proposed exchange is in compliance with the regulations and is consistent with the Bureau of Land Management policies and programs, the authorized officer will issue a notice of realty action. Both notices will be published in the **Federal Register** and provide the opportunity for public comment.

The principal authors of this proposed rule are David Cavanaugh, Roger Taylor, and Bob Schrott of the BLM Washington Office (WO), with assistance from Herb Olson (WO), Paul McNutt (WO), Jim Binando (Montana State Office), Bob Archibald (Arizona State Office), Yolanda Vega (Albuquerque District Office), Marla Bohl (Nevada State Office), and Mike Pool of the Division of Legislation and Regulatory Management (WO).

It has been determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Additionally, the proposed rule would not cause a taking of private property under Executive Order 12630.

The provision for collection of information contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of information will not be required until it has been approved by the Office of Management and Budget.

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Division of Information Resources Management, Bureau of Land Management, 1800 C Street, NW., Premier Building, Room 208, Washington, DC 20240; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

List of Subjects

43 CFR Part 2090

Public lands-classification, Public lands-mineral resources.

43 CFR Part 2200

Administrative practices and procedures, National forests, Public lands-classification.

Under the authority of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1715, 1716 and 1732), part 2200, group 2200, subchapter B, chapter II of title 43 of the Code of Federal Regulations is proposed to be amended as follows:

PART 2200—EXCHANGES—GENERAL PROCEDURES—[AMENDED]

1. The citation authority for Part 2200 is revised to read as follows:

Authority: 43 U.S.C. 1715 and 1716.

Subpart 2200—Exchanges—General [Amended]

2. Subpart 2200 is revised to read as follows:

Subpart 2200—Exchanges—General

Sec.
2200.0–1 Purpose.
2200.0–2 Objective.
2200.0–4 Responsibilities.
2200.0–5 Definitions.
2200.0–6 Policy.
2200.0–7 Scope.
2200.1 Lands subject to disposal by exchange.
2200.2 Lands subject to acquisition by exchange.
2200.3 Lands acquired by exchange.
2200.4 Qualifications of parties.

§ 2200.0–1 Purpose.

This part 2200 sets forth procedures for the exchange of public lands for nonfederal lands.

§ 2200.0–2 Objective.

The objective is to encourage and expedite the exchange of public lands for nonfederal lands, found to be in the public interest, while maintaining applicable statutory policies, standards and requirements.

§ 2200.0–4 Responsibilities.

The Bureau of Land Management shall carry out the responsibilities of the Secretary of the Interior under these regulations.

§ 2200.0–5 Definitions.

As used in this part:

(a) "Adjustment to relative values" means compensation for various costs, or other responsibilities or requirements assumed by one party, which ordinarily would be paid by the other party. These adjustments for costs do not alter the agreed upon appraised values of the lands involved in an exchange. The total amount of the adjustment is not to exceed the limit established under § 2201.6(c) of this title.

(b) "Agreement to initiate an exchange" means a nonbinding statement of present intent, in written form, that is signed by the parties considering an exchange proposal.

(c) "Appraisal" means an unbiased written report that supports an estimate of value.

(d) "Approximately equal value" means that the agreed upon value of the nonfederal lands to be acquired by the United States is within 5 percent of the agreed upon value of public lands to be conveyed out of Federal ownership by the United States. This criterion can only be applied to exchanges in which the value of the public lands to be conveyed is no more than $150,000.

(e) "Arbitration" means a process to resolve a disagreement among the parties as to appraised value by an arbitrator recommended by the American Arbitration Association and appointed by the Secretary.

(f) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(g) "Bargaining" is a process, other than arbitration, by which a party to a proposed exchange attempts to resolve a dispute with the other party concerning the appraised value of the lands involved in an exchange.

(h) "Cash equalization" means money payment made by either party to the other to balance the difference in the value of the lands involved in an exchange, not to exceed the limit established under § 2201.6(c) of this title.

(i) "Costs or other responsibilities or requirements" include but are not limited to the expense of conducting land surveys, appraisals, mineral examinations, title searches, archaeological surveys, mitigation and salvage, removal of encumbrances, arbitration, bargaining, or other means of value dispute resolution; of curing deficiencies preventing highest and best use, and the expense of complying with laws, regulations, and policies applicable to exchange transactions, or which are necessary to bring the public and nonfederal lands involved in the exchange to their highest and best use for appraisal and exchange purposes.

(j) "Equal value exchange" means an exchange where there is no difference in the appraised value of the lands being conveyed.

(k) "Exchange" means a conveyance of lands by the United States to a party either simultaneously with or before or after a conveyance of lands by that party to the United States, the timing being agreed to beforehand.

(l) "Hazardous substance" means (1) any substance designated pursuant to 33 U.S.C. 1321(b)(2)(A), (2) any element, compound, mixture, solution, or substance designated under 42 U.S.C. 9602, (3) any hazardous waste having the characteristics identified under § 3001 of the Solid Waste Disposal Act (42 U.S.C. 6921), but not including any waste the regulation of which under the Solid Waste Disposal Act (42 U.S.C. 6901 *et seq.*) has been suspended by Act of Congress, (4) any toxic pollutant listed under 33 U.S.C. 1317(a), (5) any hazardous air pollutant listed under § 112 of the Clean Air Act (42 U.S.C. 7412), and (6) any imminently hazardous chemical substance or mixture with respect to which the Administrator of the Environmental Protection Agency has taken action pursuant to 15 U.S.C. 2606. The term excludes petroleum,

crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (1) through (6) of this paragraph, and excludes natural gas, natural gas liquids, liquefied natural gas, synthetic gas (usable for fuel), and mixtures of natural and synthetic gas.

(m) "Highest and best use" means the most probable use of specific lands based upon the appraiser's analysis of relevant market information.

(n) "Land exchange pooling" means an arrangement where multiple tracts of public and nonfederal lands are consolidated into a package for exchange purposes. Lands in the pool may be exchanged in single or multiple land exchange transactions over a period of time. Each transaction is between the United States and a party owning or having the ability to provide title to a tract or multiple tracts of land that are suitable for exchange with the United States.

(o) "Lands" means any land or interest in land, including but not limited to mineral, timber, grazing, use or occupancy interest.

(p) "Market value" means the most probable price, in cash, or in terms equivalent to cash, for which specific lands would sell if offered for sale under normal, free, open market conditions, as of a specific date.

(q) "Mineral laws" means laws applicable to the mineral resources administered by the Bureau of Land Management. They include, but are not necessarily limited to, the mining laws, the mineral leasing laws, the material disposal laws and the Geothermal Steam Act.

(r) "Notice of initiation" means the publication in the **Federal Register** and a local newspaper of general distribution of a determination, made by the authorized officer, that, based upon preliminary information, an exchange proposal has been found to be acceptable for further processing. When published, a notice of initiation segregates the public lands included in the exchange proposal from the operation of the public land and mineral laws.

(s) "Notice of realty action" means publication in the **Federal Register** and a local newspaper of general distribution of a determination that certain lands are suitable for disposal by exchange under specified laws.

(t) "Party" means, in addition to the United States, any individual person or persons, or any entity or entities, that has or have the capacity and are empowered to own and convey lands, under the laws of the United States or under the laws of the State within which the lands are located, and that initiate, are asked by the United States to participate in, or that consummate a proposed exchange.

(u) "Preliminary estimate" means a written report prepared by an appraiser that sets forth an initial estimate of the range of values for which specific lands would likely sell.

(v) "Public land laws" means that body of laws dealing with the administration, use and disposition of the public lands, but does not include the mineral laws.

(w) "Public lands" means any lands or interest in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except (1) lands located on the Outer Continental Shelf, and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(x) "Secretary" means Secretary of the Interior, or his delegate within the Secretariat.

(y) "Segregation" means the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of the public land and mineral laws, pursuant to the exercise by the Secretary of the Interior of authority granted to him or her, in order to allow for the orderly administration of the public lands.

(z) "Significant mineral value" means an energy or mineral resource that has the potential to be economically developable in the foreseeable future.

(aa) "Statement of value" means an informal appraisal report that documents an estimate of value and contains only the conclusions reached in the appraiser's investigation and analysis.

§ 2200.0-6 Policy.

(a) Land exchanges shall comply with applicable law, regulations and executive orders issued pursuant thereto.

(b) When considering public interest, full consideration shall be given to efficient management of public lands and to secure important objectives including: protection of fish and wildlife habitats, cultural resources, wilderness and aesthetic values; enhancement of recreation opportunities; consolidation of mineral and timber holdings for more logical and efficient management; expansion of communities; promotion of multiple-use values; and fulfillment of public needs. There shall also be a finding that the values and the objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the values of the nonfederal lands or interests and the public objectives they could serve if acquired.

(c) Exchanges shall be used to improve Federal and nonfederal management of lands by establishing more efficient management units and securing important resource objectives.

(d) Exchange pooling shall be used whenever practical to facilitate land exchanges and reduce unit costs.

(e) Exchanges shall be expeditiously handled and processed to meet the goals and time frames established by the parties to an exchange.

(f) When determined to be in the public interest, exchanges may be used to consolidate or unite the surface and subsurface estates for both the United States and the nonfederal owners in split or mixed estate situations.

(g) To facilitate exchanges involving minerals, the parties to an exchange may (1) exchange minerals of equal value, (2) reserve the minerals, or (3) reserve an overriding royalty equal to the royalty the United States would receive through a lease of such minerals. Reservation of royalties shall be for a term of not more than 25 years or the period of production of such minerals, should extraction begin during the 25-year term of the reservation, whichever is the longer term.

(h) Exchanges are discretionary. Nothing in Part 2200 shall be construed to prohibit the parties from withdrawing from a proposed exchange at any time.

§ 2200.0-7 Scope.

(a) These regulations apply to all exchanges involving public lands, as defined herein, except to the extent that all or part of the regulations may be excluded under the provisions of parts 2210, 2240, 2250, and 2270 of this title.

(b) If an exchange involving public lands is authorized pursuant to an Act of Congress, other than the Federal Land Policy and Management Act of 1976, as amended, it shall be implemented in accordance with those provisions of this part that are not inconsistent with any provision of the Act of Congress.

(c) Nothing in these regulations shall be construed as altering the administration of the Alaska Native Claims Settlement Act [Public Law 92-203, as amended) or the Alaska National Interest Lands Conservation Act (Public Law 96-487, as amended) or as enlarging or diminishing the authority with regard to exchanges conferred upon the Secretary of the Interior by either of these Acts.

(d) Exchanges proposed by persons holding fee title to coal deposits that qualify for exchanges under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)) and as provided in Subpart 3436 of this title shall be processed in accordance with this part, except as otherwise provided in Subpart 3436 of this title.

(e) These regulations apply to the exchange of interests, such as mineral estate interests, separate and apart from the surface estate in either public or nonfederal lands.

§ 2200.1 Lands subject to disposal by exchange.

(a) Public lands may be disposed of by exchange under this part only if their disposal is (1) consistent with land use plans developed in accordance with the land use planning provisions contained in Part 1600 of this title, (2) in compliance the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), and (3) in compliance with applicable laws, regulations, and policies concerning hazardous and controlled substances.

(b) Unless otherwise provided by statute, the public lands to be exchanged shall be located in the same State as the nonfederal lands to be acquired. Revested Oregon and California Railroad Grant Lands or reconveyed Coos Bay Wagon Road Grant lands shall be exchanged only for the nonfederal lands located within those countries in which the original grant was made.

(c) The public lands proposed for exchange shall be properly described on the basis of either a survey executed in accordance with the Public Land Survey System laws and standards of the United States or, if special circumstances exists, by such other means as may be prescribed by law.

(d) No exchange of lands shall be consummated until a determination has been made by the authorized officer that the exchange is in the public interest and such determination and the reasons therefore are made a part of the administrative record.

(e) As part of the consideration of whether public interest would be served by acquisition of fee coal through exchange, the unsuitability of coal mining on private land as determined under Subpart 3461 of this title, shall be evaluated as a factor and basis for the exchange.

(f) Livestock permittees or lessees shall be compensated for the adjusted value of their interest in authorized permanent improvements located on public lands, as provided in subpart 4120 of this title.

§ 2200.2 Lands subject to acquisition by exchange.

(a) Lands may be acquired by exchange under this part only if their acquisition is (1) consistent with land use plans developed in accordance with the land use planning provisions contained in Part 1600 of this title or, as the case may be, the approved and relevant land use plan of the benefitted Federal department or agency, (2) in compliance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), and (3) in compliance with applicable laws, regulations, and policies concerning hazardous and controlled substances.

(b) For purposes of exchange only, unsurveyed school sections, which would become State lands upon survey by the Secretary, are considered as "nonfederal" lands and may be used by the State in an exchange. However, minerals shall not be reserved by the State when unsurveyed sections are used in an exchange. As a condition of the exchange, the State shall have waived, in writing, all rights to unsurveyed sections used in the exchange.

(c) Nonfederal lands in an exchange proposal shall be described as part of a surveyed section or by a metes and bounds survey tied to a section, township, range, meridian, and State, or shall be described by the description contained in an approved protraction diagram of the Bureau of Land Management.

§ 2200.3 Lands acquired by exchange.

(a) Except as otherwise provided in this section, lands acquired by an exchange within a Bureau of Land Management district shall automatically become part of that district and shall be managed in accordance with existing regulations and land use plans.

(b) Land acquired by an exchange for revested Oregon and California Railroad Grant lands or reconveyed Coos Bay Wagon Road Grant lands shall be considered for all purposes to have the same status as, and shall be administered in accordance with the same provisions of law applicable to the revested or reconveyed lands that were exchanged for the acquired lands.

(c) Subject to valid existing rights, lands that are acquired by the United States through an exchange, and that by operation of law become public lands, shall be automatically segregated from the operation of the public land and mineral laws, for 90 days after acceptance of title. At the end of the 90-day period, such lands are automatically, without further action of the Secretary, open to operation of the public land and mineral laws, to the extent set forth in a notice of title acceptance pursuant to § 2201.8-2(b) of this title.

(d) Lands acquired by an exchange that are located within the boundaries of Areas of Critical Environmental Concern, Special Management Areas or any other area having an administrative designation established through the land use planning process set forth in Part 1600 of this title shall automatically become part of the unit or area within which they are located, without further action by the Bureau of Land Management, and shall be managed in accordance with all laws, rules and regulations applicable to such unit or area.

(e) Lands acquired by an exchange that are within the boundaries of (1) any unit of the National Forest System, National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, or any other system established by Act of Congress, (2) the California Desert Conservation Area, or (3) any National Conservation or National Recreation area established by Act of Congress shall automatically become part of the unit or area within which they are located, without further action by the Secretary, and shall thereafter be managed in accordance with all laws, rules, and regulations applicable to such unit or area.

§ 2200.4 Qualifications of parties.

No public land may be disposed of, pursuant to the exchange provisions of the Federal Land Policy and Management Act of 1976, as amended, to any party who is not a citizen of the United States, or in the case of a corporation, is not subject to the laws of any State or of the United States.

Subpart 2201—Exchanges—Specific Requirements [Amended]

3. Subpart 2201 is revised to read as follows:

Subpart 2201—Exchanges—Specific Requirements

Sec.

2201.1 Agreement to initiate an exchange.
2201.2 Notice of initiation.
2201.2-1 Segregative effect.
2201.2-2 Appraisal scheduling; arbitration; bargaining.
2201.3 Notice of realty action.
2201.4 Appraisal standards.
2201.4-1 Appraiser qualifications.
2201.4-2 Market value.
2201.4-3 Mineral valuation.
2201.4-4 Timber valuation.
2201.4-5 Conservation easements.

Sec.
2201.4-6 Appraisal report guidelines.
2201.4-7 Appraisal review.
2201.5 Exchanges at approximately equal value.
2201.6 Value equalization.
2201.6-1 Waiver of cash equalization.
2201.7 Land exchange pooling.
2201.8 Final requirements.
2201.8-1 Items needed to complete an exchange.
2201.8-2 Acceptance of title.
2201.9 Contractual rights; return of title evidence; reconveyance.

Subpart 2201—Exchanges—Specific Requirements

§ 2201.1 Agreement to initiate an exchange.

(a) Anyone interested in proposing that nonfederal lands be exchange for public lands shall contact the Bureau of Land Management District Manager or Area Manager responsible for the management of those public lands so that:

(1) Potential constraints may be identified;

(2) Public interest considerations can be explored referencing land use plans or other guidance;

(3) Actions, time frames, costs and other requirements can be discussed; and

(4) Any other questions, issues or concerns that may arise in connection with the exchange proposal can be addressed.

(b) To assess the feasibility of entertaining an exchange proposal, the parties may request a preliminary estimate of the value of any lands involved in the proposal. The preliminary estimate shall consist of a written report prepared by a qualified appraiser. The report shall establish a range of values for which the lands in question would likely sell for based on highest and best use.

(c) If the authorized officer agrees to proceed with an exchange proposal based on the information collected under paragraphs (a) and (b) of this section, a nonbinding agreement to initiate an exchange shall be executed by all interested parties. At a minimum, the agreement shall include:

(1) The identity of the parties involved in the proposed exchange;

(2) A legal description of the lands being considered for exchange;

(3) The steps to be taken in processing the proposal;

(4) The parties responsible for completion of each step;

(5) A schedule to complete each step of the proposed exchange;

(6) The method to be used in resolving any value disputes as provided in § 2201.2-2 of this title;

(7) A statement as to the financial responsibility of each party for each step of the exchange and whether or not compensation is required pursuant to the provisions contained in § 2201.6 of this title;

(8) A statement that if hazardous substances are determined to be present on the public or nonfederal lands involved in an exchange, either party may terminate the proposal as to the lands on which the hazardous substances are located or which they may affect;

(9) A statement as to the manner in which documents of conveyance will be exchanged should the exchange proposal be successfully completed;

(10) A statement requiring the exchange parties to submit preliminary title evidence as prescribed in § 2201.8-1(b) of this title for the nonfederal lands involved in an exchange, unless the authorized officer agrees that the United States shall furnish such evidence;

(11) A description of the appurtenant rights proposed to be exchanged as well as a statement of any known reservations, exceptions, covenants, restrictions, title defects or encumbrances;

(12) A statement as to the livestock permittees' or lessees' right to compensation for the adjusted value of their interest in authorized permanent improvements located on public lands, as provided in Subpart 4120 of this title; and

(13) A statement by the nonfederal party that such party has not been convicted of any Federal or State offense referred to in 21 U.S.C. §§ 853a (a)(1) or (b)(1).

(d) No party to a proposed exchange shall be bound legally to proceed with the processing of or to consummate a proposed exchange, or to reimburse or pay any damages to any other party to a proposed exchange that is not consummated or to anyone doing business with the other party.

§ 2201.2 Notice of initiation.

(a) After the execution of an agreement to initiate a proposed exchange, as provided for in § 2201.1 of this title, the authorized officer will publish a notice of initiation of the proposal in the **Federal Register** and in a local newspaper of general circulation with a 30-day public comment period, and make any other distribution of the notice as appropriate including to adjoining landowners and authorized users of the lands. The notice of initiation shall include:

(1) The identity of the parties involved in the proposed exchange;

(2) A legal description of the lands being considered for exchange;

(3) The management objectives that would be achieved and the public interest that would be served by the proposed exchange;

(4) The estimated time required for completing the exchange;

(5) A statement as to the segregative effect of the notice upon its publication in the **Federal Register**; and

(6) An opportunity for public comment on the exchange proposal.

(b) When a proposed exchange of a tract of public lands requires the cancellation of a grazing permit or lease in whole or in part, written notification in accordance with § 4110.4 of this title shall be given.

(c) If additional lands are added to a proposal, the authorized officer shall publish, as appropriate, either an amendment to the notice of initiation in accordance with § 2201.3 of this title. Minor corrections of legal descriptions and other insignificant changes do not require republications.

§ 2201.2-1 Segregative effect.

(a) Publication in the **Federal Register** of a notice of initiation shall segregate, for a period not to exceed 5 years, the public lands covered by the notice from the operation of the public land and mineral laws.

(b) Any prior reserved interests of the United States in the nonfederal lands that are covered by the exchange proposal, as set out in the notice of initiation, shall be segregated by publication of the notice in the **Federal Register** to the same extent that the public lands included in the exchange proposal are segregated.

(c) Publication in the **Federal Register** of a notice that lands are being added to an exchange proposal shall segregate such lands for a period not to exceed any existing segregation period then in effect.

(d) When the notice of initiation segregates the public lands or reserved interests of the United States in the nonfederal lands, any subsequently tendered application applying for a use covered by the segregation shall not be considered as filed and shall be returned to the applicant.

(e) The segregative effect of the notice of initiation shall terminate:

(1) Upon publication of an opening order in the **Federal Register**; or

(2) Upon conveyance of the title to the affected lands; or

(3) Automatically, without further action by the authorized officer, at the end of the period not to exceed 5 years from the date of the publication of the notice of initiation, whichever comes first.

§ 2201.2-2 Appraisal scheduling; arbitration; bargaining.

Unless the parties to an exchange agree to suspend or modify the deadlines contained in this section, the following processing schedule shall be adhered to by the parties:

(a) No later than 90 days from the date of the executed agreement, the parties shall arrange for appraisals which are to be completed as scheduled in the agreement. The appraisals shall be prepared in accordance with the standards and requirements prescribed in § 2201.4 of this title. If the parties agree on the respective appraised values of the public and nonfederal lands, those values shall be binding upon all parties for a period of 1 calendar year from the date of agreement or until the exchange is consummated, whichever occurs first.

(b) If the parties do not agree as to the respective appraised values of the lands included in the exchange within 180 days from the date of submission of the last appraisal to the authorized officer for review and approval, the parties may submit the appraisals to an arbitrator selected and appointed by the Secretary from a list of arbitrators submitted by the American Arbitration Association. The arbitration shall be conducted in accordance with the real estate valuation arbitration rules of the American Arbitration Association.

(c) In lieu of arbitration, the parties may mutually agree to employ a process of bargaining or some other process to establish the values of the lands involved in the proposed exchange. The parties may meet to discuss issues relating to differences in the appraised values of the lands involved in an exchange. These issues may be resolved through mutual agreement, or the parties may involve an impartial third party to either mediate or propose a solution. Any agreement, including the rationale supporting the values of the lands to be exchanged, shall be in writing and made part of the administrative record.

(d) Should arbitration, bargaining or some other process be invoked, the parties shall, within 30 days after completion, determine whether to proceed with the proposed exchange, to modify the proposal to reflect the results of arbitration, the bargaining process, or any other permissible factors, or to unilaterally withdraw from the exchange proposal.

(e) The values of the lands that are established by arbitration shall be binding upon all parties for a period of 2 calendar years or until the exchange proposal is terminated or the exchange is consummated, whichever occurs first.

(f) The values of the lands that are established through bargaining or some other process shall be binding upon all parties for a period of 1 calendar year or until the exchange proposal is terminated or the exchange is consummated, whichever occurs first.

§ 2201.3 Notice of realty action.

(a) Upon completion of all required studies to determine if an exchange, as proposed, is in compliance with applicable statutory law and the regulations in this part, the authorized officer shall decide whether to proceed with the exchange proposal. If a decision is made to proceed, the authorized officer shall issue a notice of realty action. The notice shall be published in the **Federal Register** not less than 60 days prior to patent issuance and once a week for 3 consecutive weeks in a local newspaper of general circulation in the vicinity of the public lands included in the notice. The notice of realty action shall include:

(1) The identity of the parties involved in the proposed exchange;

(2) A legal description of the lands being considered for exchange;

(3) The management objectives that would be achieved and the public interest that would be served by the proposed exchange; and

(4) Any special terms, conditions or reservations required by the authorizing statute or that may be included in the patent or other documents of conveyance.

(b) The notice of realty action shall be mailed to the Governor of the State within which the public lands covered by the notice are located, to the head of the governing body of any political subdivision having zoning or other land use regulatory authority in the area within which the public lands are located, and to other persons known or considered likely to be interested, including but not limited to adjoining landowners and authorized users of the lands. The notice shall be mailed not less than 60 days before patent of the land or interests in lands is issued.

(c) For a period of 45 days after issuance of a notice of realty action, interested persons may submit their written comments concerning the exchange proposal to the authorized officer issuing the notice.

§ 2201.4 Appraisal standards.

§ 2201.4-1 Appraiser qualifications.

(a) Appraisals shall be prepared by qualitified appraisers. Appraisers selected shall be competent, reputable, impartial and have experience in appraising property similar to the lands proposed to be exchanged. It is preferred, but not required, that the person have an appraisal designation from a nationally recognized appraisal organization, and if applicable, be licensed or certified under State law. At a minimum, the appraiser shall have:

(1) Two years of relevant appraisal experience, or the equivalent thereof, within the last five years;

(2) Successfully completed 150 classroom hours of courses in subjects related to real estate appraisal and 15 classroom hours related to standards of professional practice fom a nationally recognized appraisal organization, and/or an accredited college or university. Appraisal training sponsored by the government or industry can be credited towards meeting these requirements; and

(3) Successfully completed not less than 30 classroom hours of courses or seminars relating to real property appraisal within the last three years.

(b) An appraisal for land that involves significant mineral values, as determined by a mineral report, shall be prepared by a qualified appraiser that has at least a baccalaureate degree or equivalent experience in geology, mining engineering, petroleum engineering, or mineral economics. The appraiser shall, in lieu of the requirement in paragraph (a)(1) of this section, have two years of experience estimating mineral values within the last five years and meet the requirements set forth in paragraphs (a)(2) and (a)(3) of this section.

(c) In reporting their analysis and conclusions, appraisers shall:

(1) Possess the knowledge and experience necessary to complete the appraisal assignment competently;

(2) Not commit errors or withhold pertinent information that would affect the estimate of market value;

(3) Report their findings in a manner that is meaningful, and does not mislead, or confuse the exchange parties or the public;

(4) Disclose any instructions or extraordinary assumptions that may affect the estimate of market value; and

(5) Prepare reports consistent with professionally recognized appraisal standards.

§ 2201.4-2 Market value.

In estimating market value, the appraiser shall:

(a) Determine the highest and best use of the rights and interests to be conveyed;

(b) Estimate the value of the lands and interests as if they were to be offered for sale in the open market;

(c) Consider all valid existing rights, encumbrances or restrictions affecting conveyance of title;

(d) Include historic, wildlife, recreation, wilderness, scenic, cultural or other resource values that are reflected in prices paid for similar properties under normal market conditions;

(e) Consider the rights and interests to be conveyed as a whole, unless market transactions indicate they are valued separately; and

(f) Estimate the value of each property held or controlled under separate ownership by the nonfederal party for purposes of exchange.

§ 2201.4–3 Mineral valuation.

(a) A mineral report shall be prepared for all the lands included in a proposed exchange in which the Federal government owns the mineral interest. The report shall be prepared by a qualified geologist, mining engineer, petroleum engineer and/or mineral economist. The documentation of minerals, including the determination of the existence of significant mineral values, shall be included in the mineral report. The report shall be referenced, or included as an attachment to the appraisal report.

(b) The authorized officer shall use the "Methodology for an Alternative Method of Determining the Value of Lands for Exchange Containing Oil Shale and Associated Minerals", a guidance document for determining equal value in lieu of an appraisal to determine equal value only for lands containing oil shale and any associated minerals when he/she determines an appraisal to be inappropriate. The Director, Bureau of Land Management, shall review the use of this alternative methodology to determine if it has been properly applied in lieu of an appraisal. When the authorized officer uses the procedures contained in the methodology described herein to determine equal value, the notice of realty action issued in connection with the exchange shall state that the methodology procedures are being used pursuant to a determination by the Director.

§ 2201.4–4 Timber valuation.

(a) Appraisals of lands containing marketable timber shall be prepared after a timber cruise has been conducted by a qualified timber cruiser in accordance with industry standards for the area. The timber cruise report shall be referenced, or included as an attachment to the appraisal report.

(b) The appraisal of timber lands under one ownership shall be based on an appraisal of the entire property as a whole, unless there is market evidence that land with marketable timber and land with small, nonmerchantable trees are valued separately.

§ 2201.4–5 Conservation easements.

Conservation easements may be acquired for purposes of protecting biological, cultural, historical, scenic, natural or open space values from intentional or inadvertent destruction. Each provision of the easement that may affect use of the property shall be evaluated to determine to what extent the restriction would change the highest and best use, and market value of the property.

§ 2201.4–6 Appraisal report guidelines.

At a minimum, the appraisal shall be a written document that contains:

(a) A statement of the purpose and function of the appraisal;

(b) A statement of any assumptions or limiting conditions affecting the estimated values, if applicable;

(c) An accurate description of the lands being appraised, including the location of the properties, current use, and at least a 5-year sales history;

(d) A description of, or reference to, relevant market data considered;

(e) An explanation supporting the appraiser's determination of highest and best use;

(f) An explanation of the reasoning that supports the appraiser's assumptions, analyses and opinions of market value;

(g) Dates of valuation and signed appraisal report; and

(h) A statement certifying that:

(1) The lands were inspected;

(2) The appraiser has no interest in the lands appraised; and

(3) The appraisal fees paid are not contingent on the value estimated.

§ 2201.4–7 Appraisal review.

(a) All appraisals involving land exchanges shall be reviewed by an agency reviewing appraiser who meets all of the education and training requirements of the appropriate type of qualified appraiser prescribed in § 2201.4–1 of this title, have at least 5 years of continuous experience in appraising, and possess an additional 50 hours of classroom training. A reviewing appraiser shall determine whether the appraisal report:

(1) Is complete, logical, consistent and supported by a reasoned market analysis;

(2) Complies with recognized and generally accepted appraisal practices and applicable appraisal standards; and

(3) Reasonably estimates the probable market value of the lands appraised.

(b) If the review leads to agreement with the values submitted in the appraisal report or an estimate of different values, a written review statement shall be prepared fully explaining and justifying such conclusions. The statement shall include a certification stating that the reviewing appraiser has no present or prospective interest in the lands appraised or personal interest in the values estimated. The authorized officer shall concur in the reviewer's statement before the estimate of market value becomes the agency's approved value for the lands proposed for exchange.

§ 2201.5 Exchanges at approximately equal value.

(a) The authorized officer may, without cash equalization, exchange lands which are of approximately equal value when:

(1) The value of the lands to be conveyed out of Federal ownership is not more than $150,000;

(2) The public and nonfederal lands appraised are similar in location, acreage, use, and physical attributes; and

(3) A statement of value concludes that the values of the lands to be exchanged are within 5 percent of each other. The statement of value shall be prepared by a qualifed appraiser, meet minimum report standards for an appraisal as provided in § 2201.4–6 of this title, contain the analysis and estimate of value for both the public and nonfederal lands, and shall be approved by the authorized officer.

(b) Appraiser estimates based on a statement of value, which conclude that the values of the public lands exceed $150,000, or are not within 5 percent of the value of the nonfederal lands, may be used as the basis for agreement on value.

§ 2201.6 Value equalization.

(a) In the agreement to initiate a proposed exchange:

(1) One of the parties may assume, without compensation, all or part of the costs or other responsibilities or requirements which would ordinarily be borne by the other party; or

(2) The parties may make adjustments to the relative values involved in an exchange transaction in order to compensate a party for assuming costs or other responsibilities or requirements which would ordinarily be borne by the other party. This includes but is not limited to those items listed in § 2200.0–5(i) of this title. Prior to agreeing to adjustments pursuant to this paragraph, the authorized officer shall:

(i) Determine, in writing, that each adjustment is in the public interest, and is in the best interest of consummating the exchange; and

(ii) Ensure that the amount of each adjustment is reasonable and reflects accurately the approximate value of the cost or service provided, or any responsibility and requirement assumed.

(b) To equalize the agreed upon values of the public and nonfederal lands involved in an exchange, either with or without adjustments of relative values as compensation for various costs, the parties to an exchange may agree to:

(1) Modify the exchange proposal by adding or deleting acreage; and/or

(2) Cash equalization, but the amount of the money payment shall be reduced to as small amount as possible.

(c) In no event shall the amount of any cash equalization payment plus the amount of all adjustments agreed to as compensation for costs exceed 25 percent of the appraised value of the public lands to be exchanged out of Federal ownership.

§ 2201.6–1 Waiver of cash equalization.

(a) The parties may agree to waive cash equalization, if the amount to be waived does not exceed 3 percent of the value of the lands being exchanged out of Federal ownership or $15,000, whichever is less.

(b) A cash equalization payment to the United States may be waived only after the authorized officer certifies, in writing, how the waiver will expedite the exchange and why the public interest will be better served by the waiver.

(c) A waiver of cash equalization shall not be applied to reduce the amount of a cash equalization payment and/or compensation for costs pursuant to § 2201.6 of this title.

§ 2201.7 Land exchange pooling.

(a) The exchange parties may agree to the pooling of public and nonfederal lands that the parties have indicated an interest in exchanging.

(b) When a land exchange pooling arrangement has been created, the authorized officer shall establish a master exchange file and ledger account under which the public and nonfederal lands can be exchanged as necessary clearances are obtained.

(c) Values of lands conveyed from the pools shall be balanced with land and/or money at least every 2 years pursuant to § 2201.6 of this title.

(d) The authorized officer may require deposit of cash, bond or other approved surety in an amount equal to any outstanding value differential.

(e) The master exchange file may be terminated unilaterally by any party to the pooling agreement or upon depletion of lands in one or both of the pools. Prior to termination, values shall be equalized pursuant to § 2201.6 of this title.

§ 2201.8 Final requirements.

§ 2201.8–1 Items needed to complete an exchange.

At the end of the comment period provided in the notice of realty action, and upon a determination by the authorized officer that a particular exchange proposal is still acceptable, the owner or holder of the nonfederal lands shall provide the following:

(a) *Hazardous and controlled substances certification.* A certification that: (1) the nonfederal lands to be exchanged are free of hazardous substances, as based upon a survey conducted in accordance with the policies and requirements of the Department of the Interior, and (2) each nonfederal party has not been convicted of any Federal or State offense referred to in 21 U.S.C. §§ 853a (a)(1) or (b)(1).

(b) *Evidence of title acceptable to the authorized officer.* (1) Owners of private lands shall provide one of the types of title evidence prescribed in the "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" (Department of Justice, 1970 ed.), as specified by the authorizing officer. The authorized officer, when acting in accordance with the provisions under § 2201.1(c)(10) of this title, may elect to provide the required title evidence.

(2) If State-owned lands involved in a proposed exchange were ever held in private ownership, evidence of title shall be obtained in the manner provided by paragraph (b)(1) of this section. For State-owned lands that have not been in private ownership, the statement of an authorized State official certifying, under the official seal of the State, that State-owned lands have not been sold, leased, conveyed or otherwise encumbered shall be acceptable evidence of title.

(c) *Conveyance documents.* All deeds to the United States shall be prepared in accordance with "A Procedural Guide for the Acquisition of Real Property by Governmental Agencies" (Department of Justice, 1972 ed.).

(1) Owners of private lands shall submit a warranty deed, or other instrument of conveyance which meets Department of Justice title standards for realty acquired by the United States, conveying the privately-owned lands to the United States, and stating that the deed is made "for and in consideration of the exchange of certain lands and interests as authorized by the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is being made. In the absence of controlling Federal law, deeds shall be executed, acknowledged and recorded in accordance with the laws of the State in which the lands are located. Revenue stamps, if required by law, shall be affixed to the deed and cancelled.

(2) A deed executed by an individual grantor shall disclose the marital status of the grantor. The spouse of a married grantor also shall execute the deed to bar any right of curtesy, dower, community interest, or any other claim to the lands conveyed, unless written evidence is submitted establishing that under the laws of the State where the conveyed lands are located the grantor's spouse has no present or prospective interest in the conveyed lands.

(3) Any deed executed by a partnership, association, or other entity other than a corporation shall certify that the deed is executed pursuant to the articles of association or partnership or other similar instrument creating the entity. If there is none or if signing authority is not provided for in the document, the deed shall be signed by each person or entity holding an ownership interest in the subject lands as certified in the title evidence required for those lands.

(4) Any deed executed by a corporation shall state that the deed is executed pursuant to its bylaws or, as the case may be, a resolution or order made by the corporation's board of directors or other governing body. A certified copy of the bylaws, resolution or order shall accompany the deed and shall, unless not required by State law, bear the corporate seal. Where State law does not require such seal evidence, a citation of applicable State law shall be provided.

(5) States shall submit a deed of conveyance for State-owned lands that includes a statement that the deed is made "for and in consideration of the exchange of certain lands and interests as authorized by the Federal Land Policy and Management Act of 1976, as

amended (43 U.S.C. 1701 *et seq.*)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is being made. In the absence of controlling Federal law, deeds shall be executed, acknowledged, and recorded in accordance with the laws of the State in which the lands are located. Revenue stamps, if required by law, shall be affixed to the deed and cancelled. A certification that the State officer executing the conveyance is authorized to do so under State law shall accompany the deed. When unsurveyed sections are used as exchange lands by the State, the exchange shall constitute a relinquishment of the State's right to the unsurveyed sections used in the exchange.

(d) *Taxes.* Where taxes constitute a lien on any of the nonfederal lands, the owner of those lands shall furnish a bond with a qualified surety or other security acceptable to the authorized officer for an amount equal to 120 percent of taxes paid on the lands for the previous year or, alternatively assure payment of the taxes by making a money deposit to the authorized officer in like amount. When evidence of payment of taxes acceptable to the authorized officer is furnished, the bond shall be released or the cash returned to the owner of the nonfederal lands.

§ 2201.8–2 Acceptance of title.

(a) Unless otherwise agreed to by the parties in connection with a pooling arrangement, title to the nonfederal lands and the public lands involved in a proposed exchange shall vest unconditionally and simultaneously upon receipt by the authorized officer, acting on behalf of the United States, of a final title opinion of the Office of the Solicitor, stating that satisfactory title has vested in the United States. Such opinion shall be prepared in accordance with applicable procedures and title standards prescribed by the Attorney General. Thereafter, a confirmatory patent or other confirmatory instrument of conveyance for the public lands involved in the exchange shall be issued. Unless the parties stipulate to the contrary, the confirmatory patent or other like instrument of conveyance of the United States, on the one hand, and the recorded deed or deeds of the nonfederal party, on the other, shall be surrendered to each other simultaneously. The surrender of these documents may be conducted by approved insurance or abstract title companies or other entities that are licensed and bounded by the State containing the lands being exchanged.

(b) When the title to lands it is acquiring in an exchange vests unconditionally in the United States, such title thereupon shall be deemed to be accepted by the United States, and the authorized officer immediately shall publish in the **Federal Register** a notice of acceptance of title by the United States. Subject to valid existing rights as of the date of title acceptance, and excepting any lands withdrawn and reserved automatically under the terms of section 206(c) of the Federal Land Policy and Management Act, as amended (43 U.S.C. 1716(c)), the newly acquired lands shall be segregated automatically from the public land and mineral laws for a period of 90 days after the date of title acceptance by the United States. At the end of the 90-day period, such segregation shall end and the lands shall be opened to the operation of the public land and mineral laws, to the extent set forth in the previously published notice of acceptance of title. As to the public lands included in an exchange that are located within their respective jurisdictions, the Governor of the State and the heads of local governments shall be notified promptly by the authorized officer of the dates of consummation of the exchange and of issuance of the confirmatory instruments of conveyance.

(c) If any buildings, fencing, or other removable improvements owned or erected by a party to an exchange on the nonfederal lands conveyed, are not a part of the exchange proposal, the party may remove such improvements upon being notified that title has been unconditionally accepted by the United States. The removal shall be accomplished within a period to be specified in the notice, or within any extension thereof that may be granted by the authorized officer, and in the manner previously agreed upon or as specified in the notice by the authorized officer. If the party fails to remove the improvements within the prescribed time, the improvements shall be deemed to be abandoned to, and shall become the property of the United States.

(d) Where public lands to be conveyed under this part contain authorized improvements or those subject to patent reservation, the owner of such improvements shall be given an opportunity to remove them if such owner is not the exchange party, or the exchange party may compensate the owner of such authorized improvements and submit proof of compensation to the authorized officer.

§ 2201.9 Contractual rights; return of title evidence; reconveyance.

(a) No action taken before the title to the nonfederal lands being acquired by the United States has been accepted by the United States shall establish or result in any contractual or other legally enforceable rights or obligations between the United States and any party to an exchange proposal or any person doing business with any such party.

(b) If a party has submitted title evidence in connection with a proposed exchange and processing of the proposed exchange is terminated and the exchange will not be proposed again in the foreseeable future, the title evidence shall be returned to the exchange party. In the event a deed from the nonfederal party to the United States has been recorded and thereafter the proposed exchange is terminated, a quitclaim deed for the lands described in the deed of the nonfederal party shall be issued to that party by the United States, as authorized under Section 6 of the Act of April 28, 1930 (43 U.S.C. 872).

Subpart 2202—Exchanges: National Forest Exchange [Amended]

4. Section 2202.1 is amended by revising paragraph (b) to read as follows:

§ 2202.1 Applicable regulations.

* * * * *

(b) The filing of a proposal for a forest exchange with the authorized officer and the notation of such proposed exchange on the public land records shall segregate the National Forest System lands included in the proposed exchange from the operation of the mining and mineral leasing laws but not from the applicability of those laws governing the use of the National Forest System under leases, license or permit, or governing the disposal of mineral or vegetative resources, other than under the mining and mineral leasing laws. The segregative effect of the exchange proposal notation on the public land records shall terminate upon publication of an opening order in the **Federal Register** at the request or with concurrence of the Secretary of Agriculture, upon issuance of a patent or other instrument of title conveyance to such lands, or 5 years from the date of the notation, whichever occurs first.

Subpart 2203—Exchanges Involving Fee Federal Coal Deposits [Amended]

5. Section 2203.1 is revised to read as follows:

§ 2203.1 Opportunity for public comment and public meeting on exchange proposal.

Upon acceptance of a proposal for a fee exchange of Federal coal deposits, the authorized officer shall publish a notice of initiation of an exchange proposal as set forth in § 2201.2 of this title, which shall be distributed in accordance with § 2201.3(b) of this title and which shall include a request for public comment on the public interest factors of the exchange proposal.

6. Section 2203.2 is amended revising paragraphs (a) and (d) to read as follows:

§ 2203.2 Submission of information concerning proposed exchange.

(a) Any person submitting a proposal for a fee exchange of Federal coal deposits shall submit information concerning the coal reserves presently held in each geographic area involved in the exchange along with a description of the reserves that would be added or eliminated by the proposed exchange. In addition, the person filing a proposed exchange under this section shall furnish any additional information requested by the authorized officer in connection with the consideration of the antitrust consequences of the proposed exchange.

* * * * *

(d) Where the entity proposing a fee coal exchange has previously submitted information, a reference to the date of submission and to the serial number of the record in which it is filed, together with a statement of any and all changes in holdings since the date of the previous submission, shall be accepted.

§ 2203.3 [Amended]

7. Section 2203.3 is amended by removing the citation "§ 2201.1(e)" is the introductory paragraph and replacing it with the citation "§ 2201.3(b)".

PART 2090—SPECIAL LAWS AND RULES [AMENDED]

8. The authority citation for Part 2090 continues to read as follows:

Authority: R.S. 2478 (43 U.S.C. 1201); R.S. 2275, 2276 (43 U.S.C. 851, 852); 43 U.S.C. 869 *et seq.*; 43 U.S.C. 641 *et seq.*; 43 U.S.C. 321–323; 43 U.S.C. 231, 321, 323, 327–329; 25 U.S.C. 334; 25 U.S.C. 336; 16 U.S.C. 485; 72 Stat. 339–340; 43 U.S.C. 852 note; 16 U.S.C. 518; 43 U.S.C. 315f; 43 U.S.C. 1601 *et seq.*; 16 U.S.C. 3101 *et seq.*; 43 U.S.C. 1701 *et seq.*; 30 U.S.C. 189; 46 U.S.C. 462 note, unless otherwise noted.

Subpart 2091—Segregation and Opening of Lands [Amended]

9. Section 2091.0–3 is amended by revising the citation "Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*)" to read Federal Land Policy and Management Act of 1976, as amended, (43 U.S.C. 1701 *et seq.*).

10. Section 2091.2–1 is amended by revising the introductory paragraph and paragraph (c) to read as follows:

§ 2091.2–1 Segregation.

The publication of a Notice of Initiation or Notice of Realty Action in the **Federal Register** segregates lands that are available for disposal under:

* * * * *

(c) The exchange provisions of Section 206 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1715 and 1716) for a period of 5 years. (See part 2200)

11. Section 2091.2–2 is amended by revising paragraphs (a), (a)(2) and (c) to read as follows:

§ 2091.2–2 Opening.

(a) The segregative effect of a Notice of Initiation or Notice of Realty Action automatically terminates either:

* * * * * *

(2) Upon publication of an opening order in the **Federal Register**; or

* * * * * *

(c) Upon a determination that satisfactory title has vested in the United States, the authorized officer shall publish a notice of title acceptance in the **Federal Register**. Subject to valid existing rights, the lands that are acquired shall be automatically segregated from the operation of the public land and mineral laws for a period of 90 days from the date of publication. At the end of the 90-day segregation period, such lands shall be open to the operation of the public land and mineral laws, to the extent set forth in a notice of title acceptance. (See § 2201.8–2(b).)

12. Section 2091.3–1 is amended by revising paragraph (b) to read as follows:

§ 2091.3–1 Segregation.

* * * * *

(b) The filing of a proposal for exchange of lands within the National Forest System and the notation of such proposal on the public land records shall segregate the lands for a period of 5 years from the date of such filing with the authorized officer. (See § 2202.1(b))

* * * * * *

13. Section 2091.3–2 is amended by revising paragraphs (a), (a)(2), (a)(3) and (b) to read as follows:

§ 2091.3–2 Opening.

(a) If the application or proposal described in § 2091.3–1 of this title is not denied or otherwise terminated prior to the end of the segregative periods set out in § 2091.3–1, the segregative effect of the filing of the application or proposal terminates either:

* * * * * *

(2) Upon publication of an opening order in the **Federal Register**; or

(3) Automatically upon the expiration of the segregation period commencing on the date the application or proposal is filed; whichever occurs first.

(b) If the application or proposal described in § 2091.3–1 of this title is denied or otherwise terminated prior to the end of the segregation periods, the lands are opened by publication in the **Federal Register** of an opening order.

* * * * * *

Dated: July 7, 1989.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR Doc. 89–19189 Filed 8–17–89; 8:45 am]

BILLING CODE 4310–84–M

BEST COPY AVAILABLE

federal register

Friday
August 18, 1989

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Airborne Low-Altitude Windshear Equipment Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 19110; Notice No. 89-21]

RIN: 2120-AD 18

Airborne Low-Altitude Windshear Equipment Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend the airborne low-altitude windshear equipment rule to: (1) Remove the requirement that windshear flight guidance be installed on older airplanes; (2) amend the provision allowing for an extended compliance period based on a phased airplane retrofit schedule; and (3) provide for acceptance of alternative airplane equipment in the form of an approved airborne windshear detection and avoidance system.

This proposed amendment is based in part on information contained in a petition for rulemaking dated June 1, 1989, submitted by the Air Transport Association (ATA) and published in the Federal Register on June 27, 1989 (54 FR 27023). The information was not available to the FAA when it was formulating the windshear equipment rule.

This notice solicits public comments on the issues presented in ATA's petition to assist the FAA in determining the merit of this proposal.

DATES: Comments must be received on or before September 18, 1989.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 19110, 800 Independence Avenue SW., Washington, DC 20591, or delivered in triplicate to Room 916, 800 Independence Avenue SW., Washington, DC. Comments may be examined in Room 916 weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gary Davis, Project Development Branch, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8096.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments on the proposed rule as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address indicated above. All communications received on or before the closing date will be considered before taking action on the proposal. All comments submitted will be available for examination in the FAA docket. Persons wishing the FAA to acknowledge receipt of comments received in response to this notice should submit a self-addressed stamped postcard which states "Comments to Docket No. 19110." All comments received on or before September 18, 1989, will be considered by the Administrator before taking final action. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for interested persons to examine.

To assist the FAA in this rulemaking proceeding, the FAA will hold a public meeting on August 16 and 17, 1989. Interested persons are invited to make oral comments concerning the scheduled retrofitting of TCAS II and windshear equipment requirements. [Federal Register, July 10, 1989, 54 FR 20978]

The Regulation

The applicable portions of current § 121.358 require that, "after January 2, 1991, no person may operate a turbine-powered airplane unless it is equipped with an approved system providing airborne windshear warning with flight guidance." However, this section also states that a certificate holder may obtain an extension of this date, "for airplanes manufactured before January 2, 1989, if it obtains FAA approval of a retrofit schedule." To obtain an extended compliance date, the certificate holder would have to show that "at least 50 percent of those airplanes manufactured before January 2, 1989, will be equipped by January 2, 1991, at least 25 percent more of those airplanes will be equipped by January 2, 1992, and all of the remaining airplanes which are required to be equipped in accordance with this section by January 4, 1993."

Background

On June 1, 1987, the FAA published NPRM No. 79-11A, Airborne Low-Altitude Windshear Equipment and Training Requirements (52 FR 20560); the comment period closed September 28, 1987. The final rule was issued September 22, 1988, and published in the Federal Register on September 28, 1988 (53 FR 37688).

On March 17, 1989, the ATA submitted to the FAA comments concerning the FAA's windshear rule. Included with these comments were studies concerning the retrofit of airborne windshear warning and flight guidance equipment on older airplanes. On June 1, 1989, the ATA petitioned the FAA to amend the windshear equipment rule to repeal the requirement that older airplanes be retrofitted with the flight guidance systems. In its petition, the ATA included the studies it had submitted to the FAA on March 17, 1989.

Note: The ATA petition speaks of windshear "alerting" equipment. For the sake of consistency, this notice will use the term "warning" as is found in the windshear rule.

Discussion of the Proposals

Retrofitting older airplanes with windshear flight guidance. The ATA asserts that the studies submitted to the FAA support the premise that there may be no benefit provided from retrofitting windshear flight guidance into older airplanes. For the purpose of this proposal, older airplanes include, but are not limited to, the DC-9, B-727, and certain airplanes in the B-737 and B-747 series. This term, older airplanes, comprises about 48% of the commercial fleet. These airplanes were manufactured without the means to easily install windshear flight guidance equipment; thus, in many cases, they cannot be retrofitted without substantial installation costs. Newer airplanes, such as those listed in the proposal, are manufactured with the capability to easily install windshear flight guidance equipment without major retrofitting. ATA's petition asserts that the studies provided to the FAA show that in the case of older airplanes, windshear warning systems coupled with pilot training using the Windshear Training Aid [1] and flight simulators help pilots to avoid or recover from a windshear encounter in a manner equal to or better than piloting procedures based on windshear warning systems and escape flight guidance. Studies to which ATA makes reference conclude: (1) That training with the Windshear Training Aid is retained well; and (2) that recovery capability does not depend on the pilot's ability to precisely execute windshear recovery techniques. Further, ATA asserts that, because certain windshear warning and flight guidance systems currently in use on older aircraft require a windshear warning before providing flight guidance, pilots are likely to wait for the warning and guidance, relying completely on the windshear equipment, instead of initiating avoidance procedures immediately upon early windshear recognition.

[1] In 1988, the FAA contracted with aviation specialists from the Boeing Company, United Airlines, McDonnell Douglas, Lockheed-California, Aviation Weather Associates, and Hellitwell, Inc. to produce a training aid on flight procedures to help pilots avoid or recover from encounters with windshear.

The information included in the attachment to the ATA petition represents a substantial effort to study the effectiveness of the Windshear Training Aid and whether retrofitting older airplanes with windshear flight guidance is warranted. The FAA is not aware of data that refutes ATA's studies or attempts to quantify the economic benefits of the individual components of the windshear final rule, i.e., training, windshear warning, and windshear flight guidance. Therefore, the FAA concludes that the portion of ATA's petition concerning the retrofit of older airplanes may have merit.

The FAA solicits specific comments on the following issues raised in the ATA petition: (1) The claim that, because certain airborne windshear systems in older aircraft require a windshear warning before providing flight guidance, pilots are likely to wait for the warning and guidance instead of initiating avoidance procedures upon early windshear recognition as trained; (2) pilot retention of windshear escape and avoidance procedures; and (3) whether the list of airplanes in this proposal that would be required to have windshear flight guidance systems should be modified.

The above requests for specific comments are designed to solicit comments on issues raised by ATA's petition. The FAA is aware, however, that other issues may be equally important to commenters. Therefore, interested persons are invited to submit comments concerning other relevant issues.

The FAA has determined that airborne low-altitude windshear equipment provides a positive safety benefit. Concerning older airplanes, an additional issue is the appropriate means of achieving that benefit. The ATA asserts that for older airplanes windshear warning and training, without flight guidance, is more efficient, because windshear flight guidance on older airplanes does not provide a sufficient increase in safety to warrant the cost of retrofitting. The FAA recognizes that so long as the safety benefits are equal, it is in the public interest to obtain those benefits at the lowest available cost. The FAA further notes that the shorter life span and the expense and problems of upgrading and maintaining aging airplanes in general may not warrant windshear flight guidance system installations for those airplanes. This concern is reflected in the proposed NPRM, which does not require air carriers to retrofit older airplanes with windshear flight guidance. Thus, the FAA solicits public comment on whether older airplanes should be exempt from the windshear flight guidance equipment requirement.

Included in ATA's proposed amendment is a subsection concerning performance standards for the development of windshear flight guidance systems. The ATA requested approval guidelines for: (1) Automatic windshear warning and flight guidance systems that are fully integrated into flight guidance computers; and (2) windshear warning and flight guidance systems that are not integrated into flight guidance computers and that require a windshear warning or pilot action to initiate flight guidance. In addition, the FAA has determined that the development of guidelines for airborne windshear detection and avoidance systems [2] (predictive systems) should be developed.

The FAA recognizes the need for such standards and solicits specific comments on what criteria are necessary in the area of flight guidance performance. Based on these comments the FAA may issue or revise appropriate guidance material.

Compliance Schedules. The proposed rule would permit a certificate holder to obtain an extension of the windshear equipment compliance date. However, unlike the current rule, the proposal would not require certificate holders to submit schedules demonstrating that certain percentages of their fleets will be in compliance on particular dates. Rather, certificate holders would be required to be in full compliance on a specific date, and would be required to submit status reports every 6 months showing the progress made. The purpose of the proposed amendment is to allow certificate holders to retrofit required airborne windshear equipment by using the same compliance schedule established for the retrofit of Traffic Alert and Collision Avoidance System II (TCAS II) equipment.

While developing the windshear final rule, the FAA was also developing a rule requiring the installation of TCAS II equipment on large passenger carrying aircraft. The Airway Safety and Capacity Expansion Act of 1987 required that TCAS II equipment be installed on all large passenger carrying aircraft by December 30, 1991. Due to reported testing and installation problems, legislation has been introduced to extend the compliance date by allowing air carriers to install TCAS II equipment in accordance with a phased schedule. This legislation, if adopted, would also require that the Administrator consider amending the schedule for the installation of airborne windshear warning and flight guidance systems. The FAA believes that it will be more efficient if the industry were required to have only one cycle of disassembly and reassembly during which both systems are installed. This would preclude a second, out-of-service period for retrofit.

Windshear Detection and Avoidance Systems (Predictive Systems). The FAA also takes this opportunity to propose an amendment to the windshear equipment rule so that the use of approved windshear detection and avoidance systems (predictive systems) is allowed by the rule when such equipment becomes available. Therefore, the FAA proposes to amend the provisions in Section 121.358(a) so that turbine powered airplanes may be equipped with an airborne windshear warning and flight guidance system, or an approved airborne windshear detection and avoidance system (predictive system), or an approved combination of these systems. Although no predictive, look-ahead systems have been approved yet, the FAA does not want to preclude the use of predictive systems when such systems become available.

[2] Windshear detection and avoidance systems are expected to provide windshear warnings early enough so that a pilot can completely avoid windshear encounters. At this time, these predictive systems are not available.

Necessity for 30-Day Comment Period

The FAA announced on July 10, 1989, [54 FR 28978] its intention to hold a public meeting on August 16 and 17, 1989, to discuss possible changes to existing requirements for the installation of collision avoidance equipment (TCAS II) and windshear flight guidance equipment. The TCAS II equipment is to be installed in the same aircraft that are covered by the windshear warning and flight guidance equipment rules which are the subject of this notice. Uniform attainment of the TCAS II phased retrofit schedule mandated by Public Law 100-223 coupled with the phased retrofit schedule for windshear equipment under Section 121.358 of the Federal Aviation Regulations appears to be difficult at this time, as noted in the 1989 Office of Technology Assessment

Report entitled *Safer Skies with TCAS*, and affirmed by a number of witnesses at the hearings of the House Aviation Subcommittee on May 4, 1989, regarding H.R. 2181. If statutory changes are enacted and signed into law making it possible for the FAA to modify the TCAS II installation schedules, it is in the public interest to make the installation schedule for the windshear warning and flight guidance equipment compatible with the modified TCAS II installation schedule; doing so will eliminate the need for two separate out-of-service retrofit periods for each aircraft. These schedule changes, if they are to provide the relief intended, must be made as soon as possible, because of the complexity of the TCAS II installation requirements and the urgent need for modification of that schedule. The changes proposed herein for the airborne windshear equipment installation requirements must be considered simultaneously with the changes in TCAS II installation schedules in order to be able to assess the range of costs, benefits, and scheduling implications of the various installation schedule options.

The FAA is mailing a copy of this NPRM and the ATA petition, for rulemaking to all persons who have placed their names on the Department of Transportation's Part 121 NPRM mailing list. In addition, the FAA is making the NPRM and the ATA petition, including the data in the attachment to the petition, available to all groups it could identify as having an interest in these issues, and has asked that these groups make this information available to their members.

Economic Summary

The FAA has considered the economic impact of amending the airborne low-altitude windshear equipment requirements (windshear rules) in response to certain issues raised by the ATA in its June 1, 1989, petition. The ATA petition contains an economic analysis, which maintains that the requirement for windshear flight guidance does not pass the most elemental cost/benefit analysis.

Cost

The petition indicates that industry sources agree with the FAA's estimate of $372.2 million, in 1987 dollars, as the cost of equipping all affected airplanes with on board windshear warning and escape flight guidance systems over a 15 year period. The ATA claims however, that training and maintenance during the same 15 year period would drive total costs to over $800 million.

The petition claims that the latest research conducted by the airlines as they begin to comply with the rule indicates that the cost of windshear flight guidance, most likely, has been underestimated. ATA states that airlines and airframe manufacturers are discovering that the recertification of older airplanes after retrofitting windshear flight guidance is more difficult than expected when the FAA developed its cost analysis for the windshear final rule. The problems with recertification are twofold. First, there is concern regarding the feasibility of maintaining Category II and Category III certification (lower visibility approaches) of some older airplanes because the flight instrumentation systems may not be compatible with the windshear flight guidance systems. Second, obtaining certification of the retrofitted flight guidance systems themselves is more difficult than expected.

According to the petition, the industry estimates the incremental cost of adding windshear flight guidance along with the basic windshear alert equipment for all airplanes to be $183.4 million, in 1987 dollars, over the 15 year period. ATA does not show how it arrived at these costs nor does it estimate the number of airplanes that may need recertification of the affected associated systems.

The FAA realizes that retrofitting windshear escape flight guidance systems into older airplanes is more expensive than either retrofitting these systems into airplanes with digital flight instrumentation systems (digital airplanes) or manufacturing new airplanes with factory installed windshear flight guidance systems. This was shown in the regulatory evaluation of the final windshear rule. The FAA cannot verify the revised costs presented by the petition because ATA does not present sufficient details showing how the costs were derived. ATA does not quantify these costs nor does it estimate the number of airplanes that may need recertification of the affected associated systems. Moreover, ATA does not attempt to quantify the marginal costs of retrofitting windshear flight guidance systems into older airplanes, although it seeks relief from the requirement to retrofit only these systems.

The agency does not have sufficient data at this time to quantify ATA's costs. However, based on the information presented by ATA, the FAA acknowledges that certain certificate holders may incur substantial recertification costs. Therefore, the FAA requests additional information regarding training, maintenance, and recertification costs.

Benefits

The ATA petition points out that FAA estimated $351.8 million in benefits over 15 years, assuming that all of the requirements of the rule would eliminate windshear accidents. These benefits were predicated on an accident rate of 1.13 per year (17 windshear accidents occurred during the 15 years preceding the analysis). FAA notes that, in its regulatory evaluation of the windshear final rule, it predicated its projection of potential avoidable accidents on the basis of accidents per operation. The petition submits that, since the 1969 Academy of Sciences Study and the subsequent voluntary implementation of windshear training by 80 percent of certificate holders affected by the windshear rules, the accident rate has dropped dramatically. In fact, no accidents have occurred in 42 months, or four times longer than the previous average. Thus, in the last 6 years, since the academy study, the accident rate has fallen to 0.5 accidents per year. Scaling the benefits of the rule accordingly, reduces the 15 year benefits to $199.2 million. The petition maintains that pilot reports attribute the above reduction in accidents to the avoidance of windshear made possible by heightened awareness of clues to its existence and their significance, rather than to the use of recovery techniques.

While the FAA does not dispute ATA's assertion that no windshear accidents have occurred in the 42-month period cited in the petition or that pilot training in handling windshear conditions has significantly affected the windshear accident rate, it is unwilling to accept that the reduction in accidents over the 42-month period can be attributed solely to pilot training. Other factors, such as controller awareness and increased forecasting capabilities also could have played a role in the reduction of such accidents. These continued efforts should improve safety. For example, 1985 was the aviation industry's safest year. The exact cause for this has never been pinpointed nor has the industry been able to repeat that year's safety record. Commenters should address whether the FAA should give the 42-month period the overwhelming weight in estimating benefits that was given to it in the ATA petition. Is a longer period necessary to accurately ascertain the impact of pilot training, or any other factor, on improved safety?

The petition attempts to isolate the incremental benefit of windshear flight guidance by referring to the Windshear Training Aid. The Windshear Training Aid compares "optimum" flight guidance, i.e., guidance methods having full knowledge of the wind field and optimized for the conditions, against alerting plus flight guidance and alerting plus training techniques. In this study optimum flight guidance is given a value of 100 percent; alerting plus flight guidance is given a value of 97 percent; and alerting plus trained techniques is given a value of 94 percent. Based on the 3 percent difference in effectiveness between alerting plus flight guidance on the one hand, and alerting plus trained techniques on the other, the petition allocates $5.8 million over the 15 year period as the benefit attributable to flight guidance alone.

According to ATA, the benefits of retrofitting older airplanes with windshear flight guidance over the 15 year period, do not justify the cost of such retrofitting. ATA points out that the FAA, in the preamble to the final windshear rules, acknowledged that the accident prevention potential attributed to these rules was uncertain. ATA asserts that this analysis does not support the requirement for escape flight guidance.

The FAA acknowledges the study ATA used as the basis for its analysis, but does not believe that the study's findings are conclusive enough to significantly influence this rulemaking action. For example, the effectiveness values may not have been allocated to each of the different combinations of windshear systems on a strictly scientific basis.

ATA's petition also claims that safety may be decreased because flight guidance on older airplanes is dependent on the issuance of a windshear warning. As the FAA understands ATA's contention, pilots who are trained to avoid windshear conditions may fail to initiate early avoidance procedures and instead wait for the warning and flight guidance. The FAA does not deny that certain pilots may rely on warning dependent flight guidance to help them recover from a windshear encounter instead of initiating early avoidance techniques; however, the FAA does not have sufficient information to determine whether this practice would result in decreased safety.

Conclusion

ATA concludes by stating that it strongly believes that too little credit has been given to the increased understanding of the windshear phenomenon and the ensuing training improvements that have resulted in reduced windshear related accidents. ATA cites various encounters with windshear conditions by pilots, without windshear devices, and how they successfully dealt with these conditions using the techniques recommended in the Windshear Training Aid. Further, ATA notes the absence of windshear related accidents during the past 3 years and asserts that this proves that the bulk of the benefits should be attributed to training rather than the devices required by the regulation, particularly the requirement to equip the older airplanes in the fleet with warning dependent escape flight guidance systems. The petition maintains that if FAA grants the relief sought, no reduction in safety would result. It reiterates that the rules have raised concerns that a warning dependent escape flight guidance system may be less safe than a pilot executed escape maneuver initiated before the issuance of a warning.

While the FAA cannot fully agree with all of the assertions in ATA's petition, it concedes that the petition raises a number of issues that merit further consideration. Based on data presented in the petition, the FAA realizes that certain certificate holders may incur recertification costs that were not taken into account in the regulatory evaluation of the final windshear rules. A degree of uncertainty still exists regarding the effect of retrofitting windshear flight guidance into certain older airplanes. Introducing flight guidance into these airplanes may result in time consuming and expensive recertification of these older airplanes. Because ATA presented insufficient data regarding these costs, the FAA cannot quantify them at this time. Nevertheless, these costs may adversely affect the cost efficiency of retrofitting windshear flight guidance into older airplanes. Therefore, this issue should be reconsidered.

The FAA disagrees with the ATA assertion that no safety benefits are provided by windshear flight guidance on older airplanes and recognizes that, if the relief sought is granted, the full safety benefits of windshear systems estimated in the regulatory evaluation of the final windshear rules may not be realized. The FAA has not quantified the extent by which these benefits would be reduced, nor has the agency quantified the extent, if any, to which safety benefits will accrue by eliminating the possibility of too much pilot reliance on warning-dependent windshear flight guidance. In addition, the FAA needs to closely study ATA's attempt to isolate the incremental benefits of retrofitting windshear escape flight guidance systems into older airplanes. Therefore, the FAA seeks comments from the public regarding these issues to help determine the extent to which the benefits obtained from windshear systems would be reduced if the requested relief is granted. The FAA notes that these reduced benefits may be further reduced by the fact that the affected airplanes are the segment of the fleet expected to be most rapidly retired because of age.

In light of the above discussion, the FAA is considering the issues raised by the petition; therefore, it requests comments on this regulatory evaluation and on the consequences of granting the relief requested by ATA.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress in order to ensure, among other things, that small entities are not disproportionately affected by Government regulations. The RFA requires a regulatory flexibility analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small business entities. FAA Order 2100.14A, *Regulatory Flexibility Criteria and Guidance*, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions. The small entities that would be affected by the proposed rule amendments are part 121 certificate holders that own nine or fewer aircraft, which is the size threshold for small aircraft operators. The cost thresholds are $94,500 for operators of scheduled services with entire fleets having a seating capacity of over 60; $54,000 for other scheduled operators; and $3,700 for unscheduled operators.[8] A substantial number of small entities means a number which is not less than eleven and which is more than one-third of the small entities subject to the proposed rule.

The FAA has determined that granting ATA's petition requesting the elimination from the windshear regulations the requirement that windshear escape flight guidance systems be retrofitted into certain older airplanes may have a significant beneficial economic impact on a substantial number of small entities.

According to FAA data for the period ending December 1, 1987, 51 certificate holder subject to part 121 operated nine

[8] Thresholds appearing in the order have been inflated from 1986 to 1989 dollars using the Consumer Price Index appearing in "FAA Aviation Forecasts, Fiscal Years 1989–2000 (FAA–APO–88–1) March 1988.

or fewer aircraft. Twenty-seven of these certificate holders conducted scheduled service and the remaining 24 engaged in unscheduled operations. These 51 certificate holders are small entities that will be affected by the proposed rule changes.

Although the FAA does not have sufficient information to accurately estimate the level of the economic impact on these small operators, it has determined that the impact may be significant by using data in the regulatory evaluation of windshear final rules. The impact of relieving small certificate holders from the requirement that windshear escape flight guidance systems be retrofitted on certain older airplanes should exceed the $3,760 cost threshold for nonscheduled part 121 certificate holders. While FAA does not have data readily available indicating how many of the affected aircraft each of these small entities has in its fleet, FAA feels secure in assuming that more than one-third of such small certificate holders have at least one of the affected aircraft in their fleet. Thus, a substantial number of nonscheduled part 121 certificate holders are expected to incur a significant beneficial economic impact as a result of the proposed amendments to the windshear regulations. On the basis of this finding a full regulatory flexibility analysis is attached as appendix A to the full regulatory evaluation.

Trade Impact Assessment

The proposed rule amendments will have little or no impact on trade by either U.S. firms doing business in foreign countries or foreign firms doing business in the United States. The proposed rules will apply only to part 121 certificate holders some of which compete internationally for passenger and cargo revenues. Granting the relief requested by ATA's petition will permit the affected certificate holders to operate aircraft equipped essentially the same as those of international air carriers, most of whose countries do not require them to install windshear equipment. In any event, the amount of relief that would be granted to these carriers is not expected to be sufficient enough to noticeably impact international trade. Therefore, the proposed amendment will not cause a competitive fare disadvantage for U.S. carriers in international operations.

Federalism Implications

Changes to the regulations proposed by this notice, if enacted, would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that these proposed changes would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed above, the FAA has determined that this proposed amendment is not major under Executive Order 12291 and that it is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Also for the reasons discussed above, it has been determined that the proposed amendment would have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 121

Air carriers, Air transportation, Aviation safety, Safety, Transportation, Windshear.

The Proposed Rule

Accordingly, the Federal Aviation Administration proposes to amend Part 121 of the Federal Aviation Regulations (14 CFR Part 121) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–30, 1472, 1485, and 1502; 49 U.S.C. 106(g) [Revised, Pub. L. 97–449; January 12, 1983]

2. Section 121.358 is revised to read as follows:

§ 121.358 Low-altitude windshear system equipment requirements.

(a) Except as provided in paragraphs (b) and (c) of this section, after January 2, 1991, no person may operate a turbine-powered airplane unless it is equipped with either an approved airborne windshear detection and avoidance system or an approved airborne windshear warning and flight guidance system or an approved combination of these systems.

(b) Notwithstanding the requirements of paragraph (a) of this section, the following exceptions apply for airplanes manufactured before January 2, 1991:

(1) Except for those airplanes listed in paragraph (b)(2) of this section, and except as provided in paragraph (c) of this section, after January 2, 1991, no person may operate a turbine-powered airplane unless it is equipped with, as a minimum requirement, an approved airborne windshear warning system.

(2) The following make, model, and series airplanes shall be equipped in accordance with the requirements of paragraph (a) of this section—

(i) B–737–300 and 400 series;
(ii) B–747–400;
(iii) B–757–all series;
(iv) B–767–all series;
(v) A–300–600;
(vi) A–310–all series;
(vii) A–320–all series;
(viii) F–100–all series; and
(ix) MD–80–all series equipped with a Honeywell 970 or equivalent subsequent model Digital Flight Guidance Computer.

(c) A certificate holder may obtain an extension of the compliance date in paragraph (a) of this section if it obtains FAA approval of a retrofit schedule. To obtain approval of a retrofit schedule and show continued compliance with that schedule, a certificate holder must do the following:

(1) Submit a request for approval of a retrofit schedule by June 1, 1990, to the Flight Standards Division Manager in the region of the certificate holding district office.

(2) Show that all of the certificate holder's airplanes required to be equipped in accordance with this section will be equipped by December 30, 1993 [or the final compliance date established for TCAS II retrofit].

(3) Comply with its retrofit schedule and submit status reports containing information acceptable to the Administrator. The initial report must be submitted by January 2, 1991, and subsequent reports must be submitted every 6 months thereafter until completion of the schedule. The reports must be submitted to the certificate holder's assigned Principal Avionics Inspector.

(d) *Definitions.* For the purposes of this section the following definitions apply—

(1) "Turbine-powered airplane" includes, e.g., turbofan-, turbojet-, propfan-, and ultra-high bypass fan-powered airplanes. The definition specifically excludes turbopropeller-powered airplanes with variable pitch propellers with constant speed controls.

(2) An airplane is considered manufactured on the date the inspection acceptance records reflect that the airplane is complete and meets the FAA Approved Type Design Data.

Issued in Washington, DC on August 15, 1989.

Daniel C. Beaudette,
Acting Director, Flight Standards Service.

[FR Doc. 89–19479 Filed 8–15–89; 1:17 pm]
BILLING CODE 4910–13–M

federal register

Friday
August 18, 1989

Part VII

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for April 1989

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–53118; FRL–3625–5]

Premanufacture Notices Monthly Status Report for April 1989

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for APRIL 1989.

Nonconfidential portions of the PMNs and exemption request may be seen in the Public Reading Room NE–G004 at the address below between 8:00 a.m and 4:00 p.m., Monday thru Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS–53118]" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room L–100, Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M Street, S.W., Washington, D.C. 20460 (202) 382–3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received duŕing APRIL; (b) PMNs received previous and still under review at the end of APRIL; (c) PMNs for which the notice review period has ended during APRIL; (d) chemical substances for which EPA has received a notice of comencement to manufacture during APRIL; and (e) PMNs for which the review period has been suspended. Therefore, the APRIL 1989 PMN Status Report is being published.

Dated: July 11, 1989

Steven Newburg–Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

PREMANUFACTURE NOTICE MONTHLY STATUS REPORT APRIL 1989

I. 128 PREMANUFACTURE NOTICES AND EXEMPTION REQUESTS RECEIVED DURING THE MONTH

PMN No.			
P 89–0574	P 89–0575	P 89–0576	P 89–0577
P 89–0579	P 89–0580	P 89–0581	P 89–0582
P 89–0583	P 89–0584	P 89–0585	P 89–0586
P 89–0587	P 89–0588	P 89–0589	P 89–0590
P 89–0591	P 89–0592	P 89–0593	P 89–0594
P 89–0595	P 89–0596	P 89–0597	P 89–0598
P 89–0599	P 89–0600	P 89–0601	P 89–0602
P 89–0603	P 89–0604	P 89–0605	P 89–0606
P 89–0607	P 89–0608	P 89–0609	P 89–0610
P 89–0611	P 89–0612	P 89–0613	P 89–0614
P 89–0615	P 89–0616	P 89–0617	P 89–0618
P 89–0619	P 89–0620	P 89–0621	P 89–0622
P 89–0623	P 89–0624	P 89–0625	P 89–0626
P 89–0627	P 89–0628	P 89–0629	P 89–0630
P 89–0631	P 89–0632	P 89–0633	P 89–0634
P 89–0635	P 89–0636	P 89–0637	P 89–0638
P 89–0639	P 89–0640	P 89–0641	P 89–0642
P 89–0643	P 89–0644	P 89–0645	P 89–0646
P 89–0647	P 89–0648	P 89–0649	P 89–0650
P 89–0651	P 89–0652	P 89–0653	P 89–0654
P 89–0655	P 89–0656	P 89–0661	P 89–0662
P 89–0663	P 89–0664	P 89–0665	P 89–0666
P 89–0667	P 89–0668	P 89–0669	P 89–0670
P 89–0703	Y 89–0082	Y 89–0083	Y 89–0084
Y 89–0085	Y 89–0086	Y 89–0087	Y 89–0088
Y 89–0089	Y 89–0090	Y 89–0091	Y 89–0092
Y 89–0093	Y 89–0094	Y 89–0095	Y 89–0096
Y 89–0097	Y 89–0098	Y 89–0099	Y 89–0100
Y 89–0101	Y 89–0102	Y 89–0103	Y 89–0104
Y 89–0105	Y 89–0106	Y 89–0107	Y 89–0108
Y 89–0109	Y 89–0110	Y 89–0111	Y 89–0112
Y 89–0114	Y 89–0115	Y 89–0116	Y 89–0117

II. 256 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH

PMN No.			
P 85–0216	P 85–0535	P 85–0536	P 85–0619
P 85–0718	P 86–0294	P 86–0295	P 86–1189
P 86–1602	P 86–1603	P 86–1604	P 86–1607
P 87–0057	P 87–0058	P 87–0059	P 87–0105
P 87–0197	P 87–0198	P 87–0199	P 87–0200
P 87–0201	P 87–0323	P 87–0770	P 87–0794
P 87–0963	P 87–1028	P 87–1086	P 87–1104
P 87–1192	P 87–1226	P 87–1227	P 87–1273
P 87–1337	P 87–1379	P 87–1417	P 87–1542
P 87–1546	P 87–1547	P 87–1548	P 87–1549
P 87–1555	P 87–1759	P 87–1872	P 87–1881
P 87–1882	P 88–0049	P 88–0083	P 88–0156
P 88–0157	P 88–0195	P 88–0225	P 88–0275
P 88–0319	P 88–0320	P 88–0353	P 88–0387
P 88–0393	P 88–0468	P 88–0515	P 88–0522
P 88–0576	P 88–0602	P 88–0606	P 88–0622
P 88–0658	P 88–0671	P 88–0701	P 88–0726
P 88–0836	P 88–0864	P 88–0884	P 88–0888
P 88–0889	P 88–0890	P 88–0894	P 88–0898
P 88–0918	P 88–0972	P 88–0981	P 88–1005
P 88–1020	P 88–1021	P 88–1035	P 88–1063
P 88–1168	P 88–1189	P 88–1211	P 88–1212
P 88–1240	P 88–1271	P 88–1272	P 88–1273
P 88–1274	P 88–1303	P 88–1377	P 88–1443
P 88–1446	P 88–1473	P 88–1529	P 88–1543
P 88–1567	P 88–1568	P 88–1618	P 88–1619
P 88–1620	P 88–1621	P 88–1622	P 88–1630
P 88–1631	P 88–1632	P 88–1647	P 88–1648
P 88–1658	P 88–1682	P 88–1686	P 88–1690
P 88–1691	P 88–1730	P 88–1739	P 88–1740
P 88–1748	P 88–1753	P 88–1761	P 88–1783
P 88–1774	P 88–1783	P 88–1807	P 88–1809
P 88–1811	P 88–1823	P 88–1844	P 88–1850
P 88–1858	P 88–1889	P 88–1898	P 88–1937
P 88–1938	P 88–1956	P 88–1958	P 88–1980
P 88–1982	P 88–1984	P 88–1985	P 88–1995
P 88–1999	P 88–2000	P 88–2001	P 88–2002
P 88–2069	P 88–2100	P 88–2160	P 88–2169
P 88–2177	P 88–2179	P 88–2180	P 88–2181
P 88–2188	P 88–2196	P 88–2204	P 88–2210
P 88–2212	P 88–2213	P 88–2228	P 88–2229
P 88–2230	P 88–2231	P 88–2236	P 88–2237
P 88–2271	P 88–2275	P 88–2293	P 88–2341
P 88–2343	P 88–2344	P 88–2349	P 88–2367
P 88–2380	P 88–2389	P 88–2434	P 88–2435
P 88–2436	P 88–2437	P 88–2469	P 88–2470
P 88–2473	P 88–2484	P 88–2518	P 88–2529
P 88–2530	P 88–2536	P 88–2540	P 88–2562
P 88–2563	P 88–2564	P 88–2566	P 88–2568
P 88–2575	P 88–2582	P 88–2631	P 88–2632
P 89–0030	P 89–0031	P 89–0066	P 89–0073
P 89–0077	P 89–0078	P 89–0089	P 89–0090
P 89–0091	P 89–0097	P 89–0116	P 89–0122
P 89–0184	P 89–0194	P 89–0195	P 89–0225
P 89–0234	P 89–0254	P 89–0266	P 89–0279
P 89–0292	P 89–0298	P 89–0301	P 89–0303
P 89–0321	P 89–0328	P 89–0336	P 89–0344
P 89–0380	P 89–0383	P 89–0384	P 89–0385
P 89–0386	P 89–0387	P 89–0396	P 89–0413
P 89–0422	P 89–0423	P 89–0424	P 89–0426
P 89–0427	P 89–0448	P 89–0474	P 89–0475
P 89–0476	P 89–0483	P 89–0506	P 89–0507
P 89–0520	P 89–0538	P 89–0539	P 89–0540
P 89–0657	P 89–0658	P 89–0659	P 89–0660

III. 111 PREMANUFACTURE NOTICES AND EXEMPTION REQUEST FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH. (EXPIRATION OR THE NOTICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAS BEEN ADDED TO THE INVENTORY).

PMN No.			
P 86–0592	P 87–0930	P 87–0931	P 87–1436
P 88–0598	P 88–0675	P 88–0985	P 88–1220
P 88–1250	P 88–1460	P 88–1514	P 88–1657
P 88–1786	P 88–1940	P 88–2365	P 88–2463

P 89–0115	P 89–0191	P 89–0235	P 89–0236	P 89–0269	P 89–0270	P 89–0271	P 89–0272	P 89–0308	P 89–0309	P 89–0310	P 89–0311
P 89–0239	P 89–0240	P 89–0241	P 89–0242	P 89–0273	P 89–0274	P 89–0275	P 89–0276	P 89–0312	P 89–0313	P 89–0314	P 89–0315
P 89–0243	P 89–0244	P 89–0245	P 89–0246	P 89–0277	P 89–0278	P 89–0281	P 89–0282	P 89–0316	P 89–0317	P 89–0318	P 89–0320
P 89–0247	P 89–0248	P 89–0249	P 89–0250	P 89–0283	P 89–0284	P 89–0285	P 89–0286	P 89–0322	P 89–0324	P 89–0325	P 89–0327
P 89–0251	P 89–0252	P 89–0253	P 89–0255	P 89–0286	P 89–0289	P 89–0290	P 89–0291	Y 89–0074	Y 89–0075	Y 89–0076	Y 89–0077
P 89–0256	P 89–0257	P 89–0258	P 89–0259	P 89–0293	P 89–0294	P 89–0295	P 89–0298	Y 89–0078	Y 89–0079	Y 89–0080	Y 89–0081
P 89–0260	P 89–0261	P 89–0262	P 89–0263	P 89–0297	P 89–0299	P 89–0300	P 89–0302	Y 89–0082	Y 89–0083	Y 89–0084	Y 89–0085
P 89–0264	P 89–0265	P 89–0266	P 89–0267	P 89–0304	P 89–0305	P 89–0306	P 89–0307	Y 89–0086	Y 89–0087	Y 89–0088	

IV. 198 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE

PMN No.	Identity/generic name	Date of commencement
P 81–0035	G N-methylene phosphoric acids of substituted amine mixture (fractionation of crude carboheterocycle) consisting mainly of 2,2'-substituted bis-ethylamine.	Apr. 20, 1981
P 84–0313	G Poly alkylene polyol	July 7, 1984.
P 85–0291	G Copolymer of unsaturated polyester and alkyl-compounds	Apr. 17, 1986.
P 85–1374	G Amine-modified epoxy resin	Mar. 4, 1986.
P 86–0040	G Formaldehyde, reaction products with aliphatic carboxylic acid, aromatic amines, and oxygen	Oct. 14, 1987.
P 86–0539	G Substituted phenylacetamide	Mar. 18, 1988.
P 87–0206	G Acrylic polymer	Apr. 22, 1987.
P 87–0209	G Pentanamidato nickel (II) cyanoborate complex	Apr. 2, 1987.
P 87–0211	Aluminum, bis (2-propanolato) isooctanoloto-	May 19, 1987.
P 87–0212	G Amine-functional poly dimethyl siloxane	May 27, 1987.
P 87–0213	G Alkyd polyester with coconut oil	July 15, 1987.
P 87–0216	G Acrylic resin	Mar. 7, 1987.
P 87–0220	G Substituted dicarboxylic acid	Aug. 1, 1987.
P 87–0228	G Halogenated polyester diisocyanate prepolymer	Feb. 26, 1987.
P 87–0232	G Cyclohexane carbenol acetate	Sept. 20, 1987.
P 87–0233	G Substituted acrylic polymer	May 28, 1987.
P 87–0247	G Thermoplastic elastomer	July 20, 1987.
P 87–0249	G Acrylic acid/polyol copolymer	July 7, 1987.
P 87–0253	G Aqueous acrylic latex polymer	Aug. 24, 1987.
P 87–0273	G Inert perfluorocarbon liquid	May 4, 1987.
P 87–0274	G Inert perfluorocarbon liquid	Aug. 3, 1987.
P 87–0282	G Aliphatic aromatic polyester	Aug. 11, 1987.
P 87–0286	Saturated cyclic hydrocarbons	May 6, 1987.
P 87–0296	1-Penten-3-one, 2-methyl-1-(2,6,6,-trimethyl-2-cyclohexen-yl)-	June 5, 1987.
P 87–0297	G Polymeric aromatic polyester ether	July 20, 1987.
P 87–0298	G Substituted triphenodioxazine	Sept. 9, 1987.
P 87–0301	G Substituted thioxotetrazole	June 29, 1987.
P 87–0304	G Aryl azo thiophene	Aug. 18, 1987.
P 87–0305	G Polymeric ricinoleate	Mar. 4, 1988.
P 87–0329	Butanedioic acid, (2-benzothiazolylthio)-	Apr. 25, 1987.
P 87–0346	G Polyurethane polymer	Sept. 1, 1987.
P 87–0348	G Acrylic resin	Apr. 6, 1987.
P 87–0364	Polymer of dichlorodimethylsilane and trichlorophenylsilane	Apr. 2, 1987.
P 87–0374	G Alkoxy modified grafts copolymer of a hydrocarbon resin and polysiloxane	May 25, 1987.
P 87–0375	G Alkoxyether terminated silicones	May 24, 1987.
P 87–0384	Acrylic acid 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,-hexadecafluoro-9-(trifluoro methyl) decyl ester polymers	Sept. 10, 1987.
P 87–0396	G Modified alkyd resins	Apr. 10, 1987.
P 87–0399	G Derivative of amines, polyethylenepoly-, compounds with (polybutenyl) succinic anhydride borates	July 2, 1987.
P 87–0406	G Butyl (mercapto)tin sulfide	July 28, 1987.
P 87–0422	G Alkyl amine salt	Nov. 22, 1988.
P 87–0423	do	Do.
P 87–0424	do	Do.
P 87–0425	do	Do.
P 87–0426	do	Do.
P 87–0427	do	Do.
P 87–0429	G Substituted aromatic polymer	Aug. 31, 1987.
P 87–0433	G Copolymer of perfluoroalkylacrylate and cyclomethacrylate	Apr. 30, 1987.
P 87–0435	G Aromatic modified terpene resin	Sept. 21, 1987.
P 87–0439	G Benzenesulfonyl chloride, 3-(acetylamino)-4-methoxy	June 17, 1987.

IV. 198 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/generic name	Date of commencement
P 87-0446	G Polyether polyurethane	Apr. 20, 1988.
P 87-0450	G Oxyalkylated terephthalate polyol esters	Jan. 4, 1988.
P 87-0451	G Terephthalate polyol esters	Sept. 10, 1987.
P 87-0452	G 3,6-Dimethyl-1-octyn-3-1	Aug. 4, 1987.
P 87-0453	G Polyester resin	June 12, 1987.
P 87-0454	....do	Do.
P 87-0455	....do	Do.
P 87-0456	....do	June 6, 1987.
P 87-0461	G Carbonic acid and 1,3-(and/or 1,4-) benzenedicarboxylic acid, copolymer with 4,4'-(1-methylidene)bis(phenol) and hydroxy arene.	May 21, 1987.
P 87-0462	G Carbonic acid and 1,3-(and/or 1,4-) benzenedicarboxylic acid, copolymer with 4,4'-(1-methylethylidene)bis(phenol) and 4-alkylphenol.	Do.
P 87-0463	G Carbonic acid and 1,3-(and/or 1,4-) benzenedicarboxylic acid, copolymer with 4,4',-(methylethyl-idene)bis(phenol) and 4-aralkylphenol.	Do.
P 87-0464	G Carbonic acid and 1,3-(and/or 1,4-) benzenedicarboxylic acid, copolymer with 4,4'-(1-methylethylidene)bis(phenol) and 4-arocycloalkyphenol.	Do.
P 87-0479	4,4'-Tetrathiobismorpholine	Aug. 18, 1987.
P 87-0480	G Dithiocarbamyl Substituted triazine	Aug. 20, 1987.
P 87-0481	G Salt of perfluoro fatty acids	Apr. 30, 1987.
P 87-0505	Decanedioic acid, polymer with 1,2-ethanediol	Sept. 17, 1987.
P 87-0511	Phenol, 4, 4,4''-(ethylidene) tris	Aug. 6, 1987.
P 87-0516	G Substituted benzothiazolesulfonic acid	Oct. 20, 1987.
P 87-0533	G Thermosetting polyester	May 6, 1987.
P 87-0549	G Substituted naphthylazo substituted benzene	Sept. 9, 1988.
P 87-0561	G 2-Naphtalene carboxylic acid, 4-(substituted phenyl) azo)-3-hydroxy-, metal salt	Mar. 29, 1989.
P 87-0565	G Polyether modified organopolysiloxane	Nov. 14, 1987.
P 87-0660	Polyacrylate, mixed potassium sodium salt	Oct. 1, 1987.
P 87-0666	G Dimerized fatty acids di (alkylether) ester	May 18, 1987.
P 87-0672	4,7,11-Trimethyl-4,6,10-dodecatrien-3-one	July 15, 1987.
P 87-0676	G Mixed amidoamine	Jan. 23, 1988.
P 87-0691	G Blocked aliphatic urethane polymer	Aug. 18, 1987.
P 87-0693	Escherichia coli K-12, SG-936 was transformed with a plasmid vector which contains the metsomatomedin-C/insulin-like growth factor-1 (met-SMC/IGF-1) gene from human liver cells.	May 26, 1987.
P 87-0695	G Aliphatic polyanhydride	July 11, 1987.
P 87-0696	G Alkylmethyl silicone glycol copolymer	Aug. 18, 1987.
P 87-0706	G Organo polysiloxane	Nov. 14, 1987.
P 87-0714	G Carboxyethylated complex tall oil polyalkylene polyamine	June 2, 1987.
P 87-0715	....do	Do.
P 87-0719	Polymer of epoxy resin, di-n-butylamine and di-ethanolamine	Apr. 5, 1989.
P 87-0727	G Mixture of polyfunctional methacrylate of polyisocyanate adduct of alkoxylated polyol & aromatic urethane with methacrilate end groups.	June 8, 1987.
P 87-0732	G Ethylene-allene copolymer	July 29, 1987.
P 87-0733	G Unsaturated fatty acid epoxy ester	June 1, 1987.
P 87-0734	G Water-reducible epoxy ester copolymer resin	Do.
P 87-0736	G Calcium aluminate alcohol ethoxylate (dispersed)	June 25, 1987.
P 87-0737	G Silicone resin	July 1, 1987.
P 87-0740	G C14–C16 dialkylbenzenes	Aug. 28, 1987.
P 87-0742	G Heteropolycyclichydraz base	Oct. 22, 1987.
P 87-0743	G Water-reducible epoxy ester copolymer resin	June 3, 1987.
P 87-0744	G Unsaturated fatty acid epoxy ester	Do
P 87-0747	G Mixed polyester polymer	Sept. 18, 1987.
P 87-0748	G Aliphatin polycarbonate urethane	Apr. 8, 1988.
P 87-0755	G Acrylate functional organopolysiloxane	Jan. 25, 1988.
P 87-0762	2-butenal, 3-methyl-	Aug. 17, 1987.
P 87-0771	G Mixed methacrylate polymer	Sept. 18, 1987.
P 87-0774	Polymer of melamine, formaldehyde, methanol and 2-ethylhexanol	June 29, 1987.
P 87-0777	G 4, 4'-bis(substituted) stilbene	July 30, 1987.
P 87-0778	G 2,5-bis(substituted)-1,3,4-oxadiazole	Do
P 87-0779	G Pyrene derivative	Do
P 87-0780	G Phthalocyanine colorant	Do
P 87-0781	G Carbazole derivative	Do
P 87-0782	G Benzoic acid derivative	Do
P 87-0783	G 1,1'-bis(substituted)-3-substituted-1-propene	Do
P 87-0784	G 2,5-Bis(substituted)-1,3,4-oxadiazole	Do
P 87-0785	G Carbazole derivative	Do
P 87-0797	G Alkoxy functional silicon hydride alkyl hydrocarbon	Nov. 9, 1987.
P 87-0798	....do	Do
P 87-0814	G Medium oil alkyd resin	Jan. 8, 1988.
P 87-0818	G Oxyalkylated terephthalate polyol ester	June 15, 1987.
P 87-0820	G Organo-platinum complex	June 17, 1987.
P 87-0827	G Silicone phenolic acid resin	Aug. 26, 1987.
P 87-0830	G Copper disalicylidine complex	July 4, 1987.
P 87-0833	G High solids soybean oil urethane polymer	June 15, 1987.
P 87-0843	G Carboxyfunctional zirconaluminate chloride hydroxide polymer	June 16, 1987.
P 87-0845	G Reaction product of epichlorohydrin and sodium phosphate	June 29, 1987.
P 87-0858	G Rosin, polymer with substituted phenols, formaldehyde and pentaerythriotol	Sept. 15, 1987.
P 87-0861	G Aliphatic polyester polyurethane	May 2, 1988.
P 87-0866	G Alkyl silicone fluid	Nov. 23, 1987.
P 87-0873	G Aromatic polyester polyurethane	Dec. 18, 1987.

IV. 198 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/generic name	Date of commencement
P 87-0880	G Amide substituted imidazolidines	Sept. 17, 1987.
P 87-0886	G Acrylated polyester	Oct. 3, 1987.
P 87-0892	G Dihydroxynaphthalene derivation	Aug. 1, 1987.
P 87-0905	G Diester of alkoxylated diol	Jan. 6, 1988.
P 87-0906	G Urethane polymer	Sept. 1, 1987.
P 87-0907	G Polyether aromatic urethane	Do.
P 87-0915	G Carbonochloridothioic acid, aryl ester	Oct. 5, 1987.
P 87-0919	G Styrenated acrylate polymer with methyl methacrylate	July 15, 1987.
P 87-0935	G Advancement product of cresol epoxy novolac	Dec. 15, 1987.
P 87-0943	G Polyurethane prepolymer	May 6, 1987.
P 87-0945	G Substitute vinyl acetate/ethylene polymer	Oct. 21, 1987.
P 87-0950	G Blocked aliphatic urethane copolymer	Aug. 18, 1987.
P 87-0955	G Comb branch poly (urethane-acrylate)	Aug. 25, 1987.
P 87-0976	G Dihydroxyalkane	Sept. 4, 1987.
P 87-0978	G Tall oil fatty acid alkyd resin	Sept. 18, 1987.
P 87-0979	2-(Hexadecylthio)-3-methylbutanoic acid	Sept. 23, 1987.
P 87-0981	2-hexadecylsulfonyl-3-methyl butanoic acid	Oct. 12, 1987.
P 87-0987	G N-(2-propyl) styrylnitrone	July 28, 1987.
P 87-0990	G Chain-stopped short oil Soya alkyd	Aug. 13, 1987.
P 87-0993	G Heteromonocycle sulfonyl aniline, salt	Nov. 19, 1987.
P 87-0994	G Monosubstituted phenylazo disubstituted naphthalene sulfonic acid, salt	Jan. 20, 1988.
P 87-1000	G Urethane acrylate with pendant carboxy groups	Aug. 17, 1987.
P 87-1004	G Sulfonated aromatic polymer	Aug. 27, 1987.
P 87-1016	G Partial metal complex of aminomethylene phosphonic acid, reaction products with potassium hydroxide	July 21, 1987.
P 87-1031	G Alkylcycloalkanoneacetic acid	May 17, 1988.
P 87-1034	G Octyl iminodipropionate	Sept. 8, 1987.
P 87-1153	G Polymer of diethylenetriamine, triethylenearnine, monobasic fatty acid, dibasic fatty acids; a lactamsubstituted phenol and substituted oxirane.	Oct. 30, 1987.
P 87-1179	G Alkylcycloalkanonemalonic acid ester	Aug. 19, 1988.
P 87-1196	1,1-Methylene bis(4-isocyanate cyclohexane), polymer w/5-amino-1,3,3-trimethyl cyclohexane methanamine & n-butylamine & (alpha-hydro-omega-hydroxy poly(oxy-1,2-ethanediyl),alpha-hydro-omega-hydroxy poly (oxy(methyl-1,2-ethanediyl))) & (hexane-dioic acid polymer w/1,4-butanediol, 1,3-butanediol, & 1,6-hexanediol).	Dec. 16, 1987.
P 87-1586	G N'-Alkyl'-N,N,N''-TETRA alkyl''-trialkyl ''-dipropylene-quaternary ammonium trialkyl ''-sulfate	Oct. 6, 1988.
P 87-1699	Bicyclo(3.2.1)Octan-8-one, 1,5-dimethyl	Jan. 15, 1988.
P 87-1850	Butyl alcohol; methyl alcohol; acrylic acid; plus residual reactants of section b(2)(b)	Mar. 27, 1989.
P 87-1853	G Substituted polycarbonate	Mar. 29, 1989.
P 87-1866	G A-olefin-maleic acid derivatives copolymer	Apr. 26, 1988.
P 88-0156	G Cycloalkanyl substituted alkyl alkanol	Mar. 6, 1989.
P 88-0185	G Chlorinated alkyd resin	Mar. 29, 1989.
P 88-0182	G Polyurethane	Jan. 16, 1989.
P 88-0493	G 1,6-Bis (5-P-chlorophenylbiguanda)hexan diacetate; 1,6-Di(N-chlorophenyldiguanda)hexan diacetate	Mar. 15, 1989.
P 88-0560	G Polyglycol carbonate	Mar. 17, 1989.
P 88-0586	G Acrylic copolymer emulsion	Apr. 19, 1988.
P 88-0635	G Alkylated polysilanes	Mar. 10, 1989.
P 88-0765	G Waterborne urethane-acrylic copolymer	Mar. 21, 1989.
P 88-1092	G Trisubstituted naphthalenedisulfonic acid	Apr. 14, 1989.
P 88-1105	G Amine monomer grafted ethylene-propylene copolymer	Apr. 3, 1989.
P 88-1137	G Aliphatic polyester polyurethane	Mar. 1, 1989.
P 88-1161	G Short oil alkyd resin	Mar. 2, 1989.
P 88-1200	G Substituted heterocycle	Mar. 7, 1989.
P 88-1383	G Peroxide curable polymer of hexafluoropropylene, tetrafluoroethylene, and vinylidene fluoride	Feb. 22, 1989.
P 88-1677	G Heterocyclic substituted sulfon amide	Mar. 7, 1989.
P 88-1696	G Quaternary salt	Mar. 21, 1989.
P 88-1709	G Castor oil hydrogenated polymer with ethylenediamine 12, hydroxyoctadecanoic acid and adipic acid	Feb. 7, 1989.
P 88-1711	G Castor oil hydrogenated polymer with ethylenediamine 12, hydroxyoctanoic acid	Do.
P 88-1850	G Mixed alkylated diphenylamine	Mar. 27, 1989.
P 88-1853	G Nickel-azomenthine dyestuff complex	Mar. 29, 1989.
P 88-1882	G Amine salt of sulfonated heterocyclic compound	Mar. 27, 1989.
P 88-1967	G Substituted-substituted-substituted-benzene polymer, aminomethylated, chloromethane quaternized, chloride	Feb. 23, 1989.
P 88-2012	G Substituted carboxylic acid alkane diol polyester	Apr. 7, 1989.
P 88-2049	G Alcoholic polyimide urethane	Apr. 8, 1989.
P 88-2106	G Polybrominated aromatics modified with brominated epoxy resin	Mar. 17, 1989.
P 88-2128	G Alkyl amine rosinate	Mar. 2, 1989.
P 88-2331	G Amine-modified epoxy resin	Mar. 6, 1989.
P 88-2352	G Silicic acid tetraalkyl ester	Mar. 15, 1989.
P 88-2514	G Alkyl carboxylic acid ester	Apr. 9, 1989.
P 88-2559	G Octadecanoic acid, esters with alcohols, C11-14-iso-, C13-rich, ethoxylated	Mar. 18, 1989.
P 88-2560	G Octadecanoic acid, esters with alcohol, C11-14-iso-, C13-rich	Mar. 24, 1989.
P 89-0034	Trans-1,4-cyclohexanediisocyanate; polytetramethylene glycol	Apr. 4, 1989.
P 89-0065	G Polyester resin	Mar. 31, 1989.
P 89-0081	G Copolymer of acrylonitrile and 3 kinds of acrylates	Apr. 15, 1989.
P 89-0176	G Acrylic resin	Mar. 20, 1989.
P 89-0180	G Carboxylic acid, metal salt	Mar. 22, 1989.
P 89-0182	G Substituted urethane	Mar. 22, 1989.
P 89-0192	Aluminum chloride hydroxide sulfate	Mar. 20, 1989.
P 89-0216	G Guerbet alcohol ester	Apr. 4, 1989.
P 89-0219	G Guerbet diester	Do.
Y 86-0195	G Acrylic polymer	Mar. 30, 1988.

IV. 196 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/generic name	Date of commencement
Y 89-0037	G Polyester	Mar. 14, 1989.

V. 25 PREMANUFACTURE NOTICES FOR WHICH THE PERIOD HAS BEEN SUSPENDED

PMN No.

P 88-0997
P 88-0998
P 88-0999
P 88-1005
P 88-1446
P 88-1783
P 88-3438
P 88-3437
P 88-3536
P 88-3568
P 88-3531
P 88-3532
P 89-0195
P 89-0234
P 89-0241
P 89-0245
P 89-0254
P 89-0266
P 89-0279
P 89-0280
P 89-0287
P 89-0292
P 89-0301
P 89-0303
P 89-0336

[FR Doc. 89-18261 Filed 8-17-89; 8:45 am]
BILLING CODE 6560-50-M

federal register

Friday
August 18, 1989

Part VIII

Department of Education

34 CFR Part 425, et al.
State-Administered Adult Education Programs and Secretary's Discretionary Programs for Adult Education; Final Regulations

National Workplace Literacy Program; Invitation for Applications for New Awards To Be Made in Fiscal Year 1990; Notice

DEPARTMENT OF EDUCATION

34 CFR Parts 425, 426, 432, 433, 434, 435, 436, 437, 438, and 441

RIN 1830-AA06

State-Administered Adult Education Programs and Secretary's Discretionary Programs of Adult Education

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary issues regulations governing the Adult Education State-administered Basic Grant Program, the National Workplace Literacy Program, the State-administered Workplace Literacy Program, the State-administered English Literacy Program, the National English Literacy Demonstration Program for Individuals of Limited English Proficiency, the Adult Migrant Farmworker and Immigrant Education Program, the National Adult Literacy Volunteer Training Program, and the State Program Analysis Assistance and Policy Studies Program. These programs are authorized by the Adult Education Act and the Stewart B. McKinney Homeless Assistance Act, as revised by the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297) and the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628). These regulations explain the types of activities that the Secretary may support under each program, how to apply for an award under each program, and the basis on which the Secretary would make awards.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments, with the exception of §§ 435.21, 436.22, and 438.21. Sections 435.21, 436.22, 437.21, and 438.21 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR ADDITIONAL INFORMATION CONTACT: Mary Hanrahan, Acting Director, Division of Adult Education, Office of Vocational and Adult Education, U.S. Department of Education (Mary E. Switzer Building, Room 4428), 400 Maryland Avenue, SW., Washington, DC 20202-7240. Telephone: (202) 732-2270.

SUPPLEMENTARY INFORMATION:

Background

Adult Education Act

Pub. L. 100-297 was signed into law on April 28, 1988. Title II, part B of Pub. L. 100-297 revises the Adult Education Act (the Act), which continues to be set forth in 20 U.S.C. 1201 *et seq.* The revised Act continues Federal assistance for adult education through fiscal year 1993.

The primary effect of the Act is the continuance of the Adult Education State-administered Basic Grant Program. Under the revised Act States are now required to develop a systematic approach for meeting the needs of populations eligible for adult education programs. States must also expand the delivery of adult education services to reach typically underserved groups and involve a variety of public and private agencies and organizations that serve educationally disadvantaged adults in the development and implementation of the State's programs.

The Act heightens the focus of programs on "educationally disadvantaged adults"—defined by the Act generally as adults who demonstrate basic skills at or below the fifth grade level or have been placed in the lowest or beginning level of an adult education program. Special emphasis is also given to such adult populations as the incarcerated, individuals of limited English proficiency, adults with handicaps, adult immigrants, the chronically unemployed, homeless adults, the institutionalized, and minorities. The Act also encourages long-range coordinated planning, and increases requirements related to coordination with other programs and public and community involvement. Beginning with the grant from the fiscal year 1990 appropriation, States must pay an increasing share of the cost of programs.

In addition to the basic State grant program, the Act authorizes several new categorical programs—some to be administered at the national level, others to be administered by the States.

At the national level, the Act authorizes a variety of national discretionary programs. These programs are intended to enhance the overall quality of the Nation's adult education system, draw upon community support, and focus on the educational needs of adults in special populations. The programs include the—

(1) National Workplace Literacy Program;

(2) National English Literacy Demonstration Programs for Adults of Limited English Proficiency;

(3) Adult Migrant Farmworker and Immigrant Education Program;

(4) National Adult Literacy Volunteer Training Program; and

(5) State Program Analysis Assistance and Policy Studies Program.

The Act also authorizes two new State-administered programs—the State-administered Workplace Literacy Program and the State-administered English Literacy Program. These programs are intended to improve the literacy skills of adult workers and of individuals of limited English proficiency, respectively.

Stewart B. McKinney Homeless Assistance Act

Title VI, part A, subpart 1 of Public Law 100-297 and title VII, subtitle A, section 701 of Public Law 100-628 amend section 702 of the McKinney Act, which authorizes the Adult Education for the Homeless Program. The amendments to section 702—

(1) Provide that State applications include "an estimate of the number of homeless adults expected to be served and the number of homeless adults within each of the school districts within the State to be served";

(2) Remove the State grant allocation formula;

(3) Provide authority for a discretionary program;

(4) Permit a State to implement the program either directly or through contracts or subgrants; and

(5) Expand the definition of "State" to include the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Analysis of Comments and Changes

On April 12, 1989, the Secretary published a notice of proposed rulemaking (NPRM) for State-administered Adult Education Programs and Secretary's Discretionary Programs of Adult Education in the Federal Register (54 FR 14740). In response to the Secretary's invitation in the NPRM, 30 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and certain suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

Programs covered by 34 CFR parts 426, 432, 433, 434, 435, 436, 437, 438, and 441 are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

In the notice of proposed rulemaking the Secretary requested comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 425

Administrative practice and procedure, Adult education, Grant programs.

34 CFR Part 426

Administrative practice and procedure, Adult education, Bilingual education, Business and industry, Colleges and universities, Day care, Education, Education of disadvantaged, Education of handicapped, Foreign persons, Grant programs, Labor unions, Libraries, Manpower training programs, Migrant labor, Minority groups, Prisoners, Public health, Reporting and recordkeeping requirements, Secondary education, Transportation, Vocational education, Volunteers.

34 CFR Parts 432 and 433

Adult education, Business and industry, Colleges and universities, Day care, Education, Grant programs, Labor unions, Manpower training programs, Reporting and recordkeeping requirements, Schools, Transportation.

34 CFR Parts 434 and 435

Adult education, Bilingual education, Education, Grant programs, Reporting and recordkeeping requirements.

34 CFR Part 436

Adult education, bilingual education, Education, Foreign persons, Grant programs, Migrant labor, Reporting and recordkeeping requirements.

34 CFR Part 437

Adult education, Elderly, Education, Grant programs, Reporting and recordkeeping requirements, Volunteers.

34 CFR Parts 438 and 441

Adult education, Education, Grant programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers: 84.002 Adult Education State-administered Basic Grant Program; 84.102 Adult Education for the Homeless Program; 84.198 National Workplace Literacy Program; and 84.223 State-administered English Literacy Program. Catalog of Federal Domestic Assistance Numbers have not been assigned for: State-administered Workplace Literacy Program; National English Literacy Demonstration Program for Adults of Limited English Proficiency; Adult Migrant Farmworker and Immigrant Education Program; National Adult Literacy Volunteer Training Program; and State Program Analysis Assistance and Policy Studies Program.)

Dated: July 27, 1989.

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by revising parts 425 and 426, and adding new parts 432, 433, 434, 435, 436, 437, 438, and 441 as follows:

1. Part 425 is revised to read as follows:

PART 425—ADULT EDUCATION—GENERAL PROVISIONS

Sec.

425.1 What is the purpose of the Adult Education Act?
425.2 What programs are authorized by the Adult Education Act?
425.3 What regulations apply to the adult education programs?
425.4 What definitions apply to the adult education programs?

Authority: 20 U.S.C. 1201 *et seq.*, unless otherwise noted.

§ 425.1 What is the purpose of the Adult Education Act?

The purpose of the Adult Education Act (the Act) is to assist the States to—

(a) Improve educational opportunities for adults who lack the level of literacy skills requisite to effective citizenship and productive employment;

(b) Expand and improve the current system for delivering adult education services, including delivery of these services to educationally disadvantaged adults; and

(c) Encourage the establishment of adult education programs that will—

(1) Enable adults to acquire the basic educational skills necessary for literate functioning;

(2) Provide adults with sufficient basic education to enable them to benefit from job training and retraining programs and obtain and retain productive employment so that they might more fully enjoy the benefits and responsibilities of citizenship; and

(3) Enable adults who so desire to continue their education to at least the level of completion of secondary school.

(Authority: 20 U.S.C. 1201)

§ 425.2 What programs are authorized by the Adult Education Act?

The following programs are authorized by the Act:

(a) Adult Education State-administered Basic Grant Program (34 CFR part 426).

(b) National Workplace Literacy Program (34 CFR part 432).

(c) State-administered Workplace Literacy Program (34 CFR part 433).

(d) State-administered English Literacy Program (34 CFR part 434).

(e) National English Literacy Demonstration Program for Individuals of Limited English Proficiency (34 CFR part 435).

(f) Adult Migrant Farmworker and Immigrant Education Program (34 CFR part 436).

(g) National Adult Literacy Volunteer Training Program (34 CFR part 437).

(h) State Program Analysis Assistance and Policy Studies Program (34 CFR part 438).

(Authority: 20 U.S.C. 1201 *et seq.*)

§ 425.3 What regulations apply to the adult education programs?

The following regulations apply to the adult education programs:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations) for grants, including

cooperative agreements, to institutions of higher education, hospitals, and nonprofit organizations.

(2) 34 CFR part 75 (Direct Grant Programs) (applicable to parts 432, 435, 436, 437, and 438);

(3) 34 CFR part 76 (State-administered Programs) (applicable to parts 426, 433, and 434), except that 34 CFR 76.101 (The general State application) does not apply.

(4) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(5) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(6) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) for grants, including cooperative agreements, to State and local governments, including Indian tribal organizations.

(7) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this part 425.

(c) The regulations in 34 CFR parts 426, 432, 433, 434, 435, 436, 437, and 438.

(Authority: 20 U.S.C. 1201 *et seq.*)

§ 425.4 What definitions apply to the adult education programs?

(a) *Definitions in the Act.* The following terms used in regulations for adult education programs are defined in sections 312 and 328(b) of the Act:

Academic education
Adult
Adult education
Community-based organization
Community school program
Correctional institution
Criminal offender
Educationally disadvantaged adult
English literacy program
Institution of higher education
Local educational agency
Out-of-school youth
Private industry council
State educational agency

(b) *Definitions in EDGAR.* The following terms used in regulations for adult education programs are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Budget period
Contract
ED
EDGAR
Fiscal year
Grant
Grantee
Nonprofit
Private
Project
Project period
Public
Secretary
Subgrant
Subgrantee

(c) *Other definitions.* The following definitions also apply to regulations for adult education programs:

Act means the Adult Education Act (20 U.S.C. 1201 *et seq.*).

Adult basic education means instruction designed for an adult who—

(1) Has minimal competence in reading, writing, and computation;

(2) Is not sufficiently competent to meet the educational requirements of adult life in the United States; or

(3) Is not sufficiently competent to speak, read, or write the English language to allow employment commensurate with the adult's real ability.

If grade level measures are used, adult basic education includes grades 0 through 8.9.

Adult secondary education means instruction designed for an adult who—

(1) Is literate and can function in everyday life, but is not proficient; or

(2) Does not have a certificate of graduation (or its equivalent) from a school providing secondary education. If using grade level measures, adult secondary education includes grades 9 through 12.9.

Adults with Limited English proficiency, persons with limited English proficiency, individuals of limited English proficiency, and *limited English proficient adults* mean individuals who—

(1) Were not born in the United States or whose native language is a language other than English;

(2) Come from environments where a language other than English is dominant; or

(3) Are American Indian or Alaska Natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency; and

(4) Who, by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny these individuals the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in our society.

(Authority: 20 U.S.C. 3283(a)(1))

Expansion means that the State educational agency (SEA) has increased during the period covered by the State's four-year plan the number of agencies, institutions, and organizations—other than local educational agencies—used to provide adult education and support services in order to increase the number of adults served, particularly the number of typically underserved adults participating in the adult education program, such as educationally disadvantaged adults, individuals of limited English proficiency, and adults with handicaps.

Homeless or *homeless adult:*

(1) The terms mean an adult lacking a fixed, regular, and adequate nighttime residence as well as an individual having a primary nighttime residence that is—

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(2) The terms do not include any adult imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(Authority: 42 U.S.C. 11301)

Immigrant means any refugee admitted or paroled into this country or any alien except one who is exempt under the provisions of the Immigration and Nationality Act, as amended.

(Authority: 8 U.S.C. 1101(a)(15))

Institutionalized individual means an adult, as defined in the Act, who is an inmate, patient, or resident of a correctional, medical, or special institution.

Migrant farmworker means a person who has moved within the past 12 months from one school district to another—or, in a State that is comprised of a single school district, has moved from one school administrative area to another— to enable him or her to obtain temporary or seasonal employment in any activity directly related to—

(1) The production or processing of crops, dairy products, poultry, or livestock for initial commercial sale or as a principal means of personal subsistence;

(2) The cultivation or harvesting of trees; or

(3) Fish farms.

Outreach means activities designed to—

(1) Inform educationally disadvantaged adult populations of the availability and benefits of the adult education program;

(2) Actively recruit these adults to participate in the adult education program; and

(3) Assist these adults to participate in the adult education program by providing reasonable and convenient access and support services to remove barriers to their participation in the program.

Program year means the twelve-month period during which a State operates its adult education program.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, and the Virgin Islands.

(Authority: 20 U.S.C. 1201a(7) and 48 U.S.C. 1681)

State administrative costs means costs for those management and supervisory activities necessary for direction and control by the State educational agency responsible for developing the State plan and overseeing the implementation of the adult education program under the Act. The term includes those costs incurred for State advisory councils under section 332 of the Act, but does not include costs incurred for such additional activities as evaluation, teacher training, dissemination, technical assistance, and curriculum development.

(Authority: 20 U.S.C. 1201 *et seq.*)

2. Part 426 is revised to read as follows:

PART 426—ADULT EDUCATION STATE-ADMINISTERED BASIC GRANT PROGRAM

Subpart A—General

Sec.

426.1 What is the Adult Education State-administered Basic Grant Program?
426.2 Who is eligible for an award?
426.3 What are the general responsibilities of the State educational agency?
426.4 What regulations apply to the program?
426.5 What definitions apply to the program?

Subpart B—How Does a State Apply for a Grant?

426.10 What documents must a State submit to receive a grant?
426.11 How is the State plan developed?
426.12 What must the State plan contain?
426.13 What procedures does a State use to submit its State plan?
426.14 When are amendments to a State plan required?

Subpart C—How Does the Secretary Make a Grant to a State?

426.20 How does the Secretary make allotments?
426.21 How does the Secretary make reallotments?
426.22 What criteria does the Secretary use in approving a State's description of efforts relating to program reviews and evaluations?
426.23 How does the Secretary approve State plans and amendments?

Subpart D—How Does a State Make an Award to an Eligible Recipient?

426.30 Who is eligible for a subgrant or contract?
426.31 How does a State award funds?
426.32 What are programs for corrections education and education for other institutionalized individuals?
426.33 What are special experimental demonstration projects and teacher training projects?

Subpart E—What Conditions Must Be Met by a State?

426.40 What are the State and local administrative costs requirements?
426.41 What are the cost-sharing requirements?
426.42 What is the maintenance of effort requirement?
426.43 Under what circumstances may the Secretary waive the maintenance of effort requirement?
426.44 How does a State request a waiver of the maintenance of effort requirement?
426.45 How does the Secretary compute maintenance of effort in the event of a waiver?
426.46 What requirements for program reviews and evaluations must be met by a State?

Subpart F—What Are the Administrative Responsibilities of a State?

426.50 What are a State's responsibilities regarding a State advisory council on adult education?
426.51 What are the membership requirements of a State advisory council on adult education?
426.52 What are the responsibilities of a State advisory council on adult education?
426.53 May a State establish an advisory body other than a State advisory council?

Authority: 20 U.S.C. 1201 *et seq.*, unless otherwise noted.

Subpart A—General

§ 426.1 What is the Adult Education State-administered Basic Grant Program?

The Adult Education State-administered Basic Grant Program (the program) is a cooperative effort between the Federal Government and the States to provide adult education. Federal funds are granted to the States on a formula basis. The States fund local programs of adult basic and secondary education based on need and resources available.

(Authority: 20 U.S.C. 1203)

§ 426.2 Who is eligible for an award?

State Educational Agencies (SEAs) are eligible for awards under this part.

(Authority: 20 U.S.C. 1203)

§ 426.3 What are the general responsibilities of the State educational agency?

(a) A State that desires to participate in the program shall designate the SEA as the sole State agency responsible for the administration and supervision of the program under this part.

(b) The SEA has the following general responsibilities:

(1) Development, submission, and implementation of the State application and plan, and any amendments to these documents.

(2) Evaluation of activities, as described in section 352 of the Act and § 426.46.

(3) Consultation with the State advisory council, if a State advisory council has been established under section 332 of the Act and § 426.50.

(4) Consultation with other appropriate agencies, groups, and individuals involved in the planning, administration, evaluation, and coordination of programs funded under the Act.

(5)(i) Assignment of personnel as may be necessary for State administration of programs under the Act.

(ii) The SEA must ensure that—

(A) These personnel are sufficiently qualified by education and experience; and

(B) There is a sufficient number of these personnel to carry out the responsibilities of the State.

(6) If the State imposes any rule or policy relating to the administration and operation of programs under the Act (including any rule or policy based on State interpretation of any Federal law, regulation, or guidance), the SEA shall identify the rule or policy as a State-imposed requirement.

(Authority: 20 U.S.C. 1205 (a) and (b))

§ 426.4 What regulations apply to the program?

The following regulations apply to the program:

(a) The regulations in this part 426.

(b) The regulations in 34 CFR part 425.

(Authority: 20 U.S.C. 1201 *et seq.*)

BEST COPY AVAILABLE

§ 426.5 What definitions apply to the program?

The definitions in 34 CFR 425.4 apply to this part.

(Authority: 20 U.S.C. 1201 *et seq.*)

Subpart B—How Does a State Apply for a Grant?

§ 426.10 What documents must a State submit to receive a grant?

An SEA shall submit the following to the Secretary as one document:

(a) A State plan, developed once every four years, that meets the requirements of the Act and the regulations in this part.

(b) A State application consisting of program assurances, signed by an authorized official of the SEA, to provide that—

(1) The SEA will provide such methods of administration as are necessary for the proper and efficient administration of the Act;

(2) Federal funds granted to the State under the Act will be used to supplement, and not supplant, the amount of State and local funds available for uses specified in the Act;

(3) Programs, services, and activities funded in accordance with the uses specified in section 322 of the Act are designed to expand or improve the quality of adult education programs, including programs for educationally disadvantaged adults, to initiate new programs of high quality, or, where necessary, to maintain programs;

(4) The SEA will provide such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid to the State (including such funds paid by the State to eligible recipients under the Act);

(5) The SEA has instituted policies and procedures to ensure that copies of the State plan and all statements of general policy, rules, regulations, and procedures will be made available to the public;

(6) The SEA will comply with the maintenance of effort requirements in section 361(b) of the Act;

Cross-Reference: See § 426.42, What is the maintenance of effort requirement?

(7) Adults enrolled in adult basic education programs will not be charged tuition, fees, or any other charges, or be required to purchase any books or any other materials that are needed for participation in the program;

(8) The SEA may use not more than 20 percent of the funds granted to the State under the Act for programs of equivalency for a certificate of graduation from secondary school;

(9) As may be required by the Secretary, the SEA will report information concerning special experimental demonstration projects and teacher training projects supported under section 353 of the Act; and

(10) The SEA annually will report information about the State's adult education students, programs, expenditures, and goals, as may be required by the Secretary.

(Approved under OMB Control Nos. 1830-0028 and 1830-0027)

(Authority: 20 U.S.C. 1203a(b)(2), 1206a(c) (3) and (5), 1206b, 1207a, 1208, and 1209(b))

§ 426.11 How is the State plan developed?

In formulating the State plan, the SEA shall—

(a) Meet with and utilize the State advisory council, if a council is established under section 332 of the Act and § 426.50;

(b) After providing appropriate and sufficient notice to the public, conduct at least two public hearings in the State for the purpose of affording all segments of the public, including groups serving educationally disadvantaged adults, and interested organizations and groups an opportunity to present their views and make recommendations regarding the State plan;

(c) Make a thorough assessment of—

(1) The needs of adults, including educationally disadvantaged adults, eligible to be served as well as adults proposed to be served and those currently served by the program; and

(2) The capability of existing programs and institutions to meet those needs; and

(d) State the changes and improvements required in adult education to fulfill the purposes of the Act and the options for implementing these changes and improvements.

(Authority: 20 U.S.C. 1206a (a) (1) and (2), (b))

§ 426.12 What must the State plan contain?

(a) Consistent with the assessment described in § 426.11(c), a State plan shall, for the four-year period covered by the plan, described the following:

(1) The adult education needs of all segments of the adult population in the State identified in the assessment, including the needs of those adults who are educationally disadvantaged.

(2)(i)(A) The goals the SEA intends to achieve in meeting the needs described in paragraph (a)(1) of this section for the period covered by the plan.

(B) These goals must be designed to develop a statewide program in which the adult populations in the State, especially adults who are educationally disadvantaged, are served in a manner whereby they learn most effectively; and

(ii)(A) Proposed activities, methods, and strategies for reaching each goal, including the estimated percentages of funds under the State plan to be allocated to each goal; and

(B) The expected outcomes of programs, services, and activities.

(3) The curriculum, equipment, and instruments that are being used by instructional personnel in programs and how current these elements are.

(4) The means by which the delivery of adult education services will be significantly expanded (including efforts to reach typically underserved groups such as educationally disadvantaged adults, individuals of limited English proficiency, and adults with handicaps) through the use of agencies, institutions, and organizations other than the public school system, such as businesses, labor unions, libraries, institutions of higher education, public health authorities, employment or training programs, antipoverty programs, organizations providing assistance to the homeless, and community and voluntary organizations.

(5) The means by which representatives of the public and private sectors were involved in the development of the State plan and how they will continue to be involved in the implementation of the plan, especially in the expansion of the delivery of adult educaton services by cooperation and collaboration with those public and private agencies, institutions, and organizations.

(6) The capability of existing programs and institutions to meet the needs described in paragraph (a)(1) of this section, including the other Federal and non-Federal resources available to meet those needs.

(7) The outreach activities that the State intends to carry out during the period covered by the plan, including specialized efforts—such as flexible course schedules, auxiliary aids and services, convenient locations, adequate transportation, and child care services—to attract and assist meaningful participation in adult education programs.

(8)(i) The manner in which the SEA will provide for the needs of adults of limited English proficiency or no English proficiency by providing programs designed to teach English and, as appropriate, to allow these adults to progress effectively through the adult education program or to prepare them to enter the regular program of adult education as quickly as possible.

(ii) These programs may, to the extent necessary, provide instruction in the native language of these adults or may provide instruction exclusively in English.

(iii) These programs must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(9) How the particular educational needs of adult immigrants, the incarcerated, adults with handicaps, the chronically unemployed, homeless adults, the disadvantaged, and minorities in the State will be addressed.

(10)(i) The progress the SEA has made in achieving the goals set forth in each State plan subsequent to the initial State plan filed in 1989; and

(ii) How the assessment of accomplishments and the findings of program reviews and evaluations required by section 352 of the Act and § 426.46 were considered in establishing the State's goals for adult education in the plan being submitted.

(11) The progress the SEA expects to make in achieving the purposes of the Act during the four-year period of the plan.

(12) The criteria the SEA will use in approving applications by eligible recipients and allocating funds made available under the Act to those recipients.

(13) The methods proposed for joint planning and coordination with programs conducted under applicable Federal and State programs, including the Carl D. Perkins Vocational Education Act, the Job Training Partnership Act, the Rehabilitation Act of 1973, the Educaton of the Handicapped Act, the Immigration Reform and Control Act of 1986, the Higher Education Act of 1965, and the Domestic Volunteer Service Act, to ensure maximum use of funds and to avoid duplication of services.

(14) The steps taken to utilize volunteers, particularly volunteers assigned to the Literacy Corps established under the Domestic Volunteer Service Act and volunteers trained in programs carried out under section 382 of the Act and 34 CFR part 437, but only to the extent that such volunteers supplement and do not supplant salaried employees.

(15) The measures to be taken to ensure that adult education programs, services, and activities under the Act will take into account the findings of program reviews and evaluations required by § 426.46.

Cross-Reference: See 34 CFR 426.22

(16) The SEA's policies, procedures, and activities for carrying out special experimental demonstration projects and teacher training projects that meet the requirements of § 426.33.

(17) The SEA's policies, procedures, and activities for carrying out corrections education and education for other institutionalized adults tht meet the requirements of § 426.32.

(18) The SEA's planned use of Federal funds for administrative costs under § 426.40(a), including any planned expenditures for a State advisory council under § 426.50.

(19) An SEA shall provide a summary of recommendations received and the SEA's responses to the recommendations made through the State plan development process required under § 426.11(b).

(b) A SEA that is prohibited by State law from awarding Federal funds by subgrant or contract to public or private agencies, organizations, or institutions, other than local educational agencies, shall describe in its State plan—

(1) The legal basis of this prohibition; and

(2) How public or private agencies, organizations, or institutions will otherwise be used for expanding the delivery of services.

(c) To be eligible to participate in the State-administered Workplace Literacy Program under section 371(b) of the Act, a SEA shall comply with the requirements in 34 CFR 433.10.

(d) To be eligible to participate in the State-administered English Literacy Program under section 372(a) of the Act, a SEA shall comply with the requirements in 34 CFR 434.10.

(e) In order for a State, or the local recipients within the State, to be eligible to apply for funds under the Adult Migrant Farmworker and Immigrant Education Program under section 381 of the Act and 34 CFR Part 436, a SEA shall describe the types of projects appropriate for meeting the educational needs of adult migrant farmworkers and immigrants under section 381 of the Act.

(Approved under OMB Control No. 1830-0028)

(Authority: 20 U.S.C. 1204; 1205(c); 1206a(a)(2), (b)((1)(B), (c), (d); 1208; 1211(b)(3)(A); 1211a(a)(2); and 1213(a))

§ 426.13 What procedures does a State use to submit its State plan?

(a) A SEA shall submit its State plan to the Secretary not later than 90 days prior to the first program year for which the plan is in effect.

(b)(1) Not less than sixty days prior to submitting the State plan to the Secretary, the SEA shall give the State advisory council, if one is established under section 332 of the Act and § 426.50, an opportunity to review and comment on the plan.

(2) The SEA shall respond to all timely and substantive objections of the State advisory council and include with the State plan a copy of its response.

(c)(1) Not less than sixty days prior to submitting the State plan to the Secretary, the SEA shall give the following entities an opportunity to review and comment on the plan:

(i) State board or agency for vocational education.

(ii) State Job Training Coordinating Council under the Job Training Partnership Act.

(iii) State board or agency for postsecondary education.

(2) Comments (to the extent those comments are received in a timely fashion) of entities listed in paragraph (c)(1) of this section and the SEA's response must be included with the State plan.

(Approved under OMB Control No. 1830-0028)

(Authority: 20 U.S.C. 1206(b) and 1206a(a)(3) (A) and (B))

§ 426.14 When are amendments to a State plan required?

If an amendment to the State plan is necessary, the amendment must be submitted to the Secretary not later than 90 days prior to the program year of operation to which the amendment applies.

Cross-Reference: See 34 CFR 76.140

(Approved under OMB Control No. 1830-0028)

(Authority: 20 U.S.C. 1207(a))

Subpart C—How Does the Secretary Make a Grant to a State?

§ 426.20 How does the Secretary make allotments?

The Secretary determines the amount of each State's grant according to the formula in section 313(b) of the Act.

(Authority: 20 U.S.C. 1201b(b))

§ 426.21 How does the Secretary make reallotments?

(a) Any amount of any State's allotment under section 313(b) of the Act that the Secretary determines is not required, for the period the allotment is available, for carrying out that State's plan, is reallotted to other States on dates that the Secretary may fix.

(b) The Secretary determines any amounts to be reallotted on the basis of—

(1) Reports, filed by the States, of the amounts required to carry out their State plans; and

(2) Other information available to the Secretary.

(c) Reallotments are made to other States in proportion to those States' original allotments for the fiscal year in which allotments originally were made, unless the Secretary reduces a State's proportionate share by the amount the Secretary estimates will exceed the sum the State needs and will be able to use under its plan.

(d) The total of any reductions made under paragraph (c) of this section is reallotted among those States whose proportionate shares were not reduced.

(e)(1) Any amount reallotted to a State during a fiscal year is deemed part of the State's allotment for that fiscal year.

(2) A reallotment of funds from one State to another State does not extend the period of time in which the funds must be obligated.

(Authority: 20 U.S.C. 1201b(c))

§ 426.22 What criteria does the Secretary use in approving a State's description of efforts relating to program reviews and evaluations?

The Secretary considers the following criteria in approving a State's description of efforts relating to program reviews and evaluations under section 342(c)(13) of the Act and § 426.12(a)(15):

(a) The extent to which the State will have effective procedures for using the findings of program reviews and evaluations to identify, on a timely basis, those programs, services, and activities under the Act that are not meeting the educational goals set forth in the State plan and approved applications of eligible recipients.

(b) The adequacy of the State's procedures for effecting timely changes that will enable programs, services, and activities identified under paragraph (a) of this section to meet the educational goals in the State plan and approved applications of eligible recipients.

(c) The extent to which the State will continue to review those programs, activities, and services, and effect further changes as necessary to meet those educational goals.

(Approved under OMB Control No. 1830-0517)

(Authority: 20 U.S.C. 1206a(c)(13) and 1207a)

§ 426.23 How does the Secretary approve State plans and amendments?

(a) The Secretary approves, within 60 days of receipt, a State plan or amendment that the Secretary determines complies with the applicable provisions of the Act and the regulations.

(b) In approving a State plan or amendment, the Secretary considers any information submitted in accordance with § 426.13 (b) and (c).

(c) The Secretary notifies the SEA, in writing, of the granting or withholding of approval.

(d) The Secretary does not finally disapprove a State plan or amendment without first affording the State reasonable notice and opportunity for a hearing.

(Authority: 20 U.S.C. 1206(b), 1206a(a)(3), and 1207(b))

Subpart D—How Does a State Make an Award to an Eligible Recipient?

§ 426.30 Who is eligible for a subgrant or contract?

The following eligible recipients may apply to the SEA for an award:

(a) A local educational agency (LEA)

(b) A public or private nonprofit agency, organization, or institution.

(c) An LEA or public or private nonprofit agency, organization, or institution apply on behalf of a consortium that includes a for-profit agency, organization, or institution that can make a significant contribution to attaining the objectives of the Act.

(Authority: 20 U.S.C. 1203a(a)(1), (2))

§ 426.31 How does a State award funds?

(a) In selecting local recipients, if appropriations under this program exceed the $115,367,000 appropriated in the Fiscal Year 1988 appropriation for the basic grant program, a SEA shall give preference to those local applicants that have demonstrated or can demonstrate a capability to recruit and serve educationally disadvantaged adults.

(b) A SEA shall award funds on the basis of applications submitted by eligible recipients.

(c) In reviewing a local application, a SEA shall determine that the application contains the following:

(1) A description of current programs, activities, and services receiving assistance from Federal, State, and local sources that provide adult education in the geographic area proposed to be served by the applicant.

(2) A description of cooperative arrangements (including arrangements with business, industry, and volunteer literacy organizations as appropriate) that have been made to deliver services to adults.

(3) Assurances that the adult educational programs, services, or activities that the applicant proposes to provide are coordinated with and not duplicative of programs, services, or activities made available to adults under other Federal, State, and local programs, including the Job Training Partnership Act, the Carl D. Perkins Vocational Education Act, the Rehabilitation Act of 1973, the Education of the Handicapped Act, the Indian Education Act, the Higher Education Act of 1965, and the Domestic Volunteer Service Act.

(4) Any other information the SEA considers necessary.

(d) In reviewing a local application, a SEA may consider the extent to which the application—

(1) Identifies the needs of the population proposed to be served by the applicant;

(2) Proposes activities that are designed to reach educationally disadvantaged adults;

(3) Describes a project that gives special emphasis to adult basic education;

(4) Describes adequate outreach activities, such as—

(i) Flexible schedules to accommodate the greatest number of adults who are educationally disadvantaged;

(ii) Location of facilities offering programs that are convenient to large concentrations of the adult populations identified by the State in its four-year State plan or how the locations of facilities will be convenient to public transportation; and

(iii) The availability of day care and transportation services to participants in the project;

(5) Describes proposed programs, activities, and services that address the identified needs;

(6) Describes the resources available to the applicant—other than Federal and State adult education funds—to meet those needs (e.g., funds provided under the Job Training Partnership Act, the Carl D. Perkins Vocational Education Act, the Rehabilitation Act of 1973, the Education of the Handicapped Act, the Indian Education Act, the Higher Education Act of 1965, or the Domestic Volunteer Service Act, and local cash or in-kind contributions); and

(7) Describes project objectives that can be accomplished within the amount of the applicant's budget request.

(e) An SEA may not approve an application from a public or private agency, organization, or institution other than an LEA unless the applicant—

(1) Provides assurance to the State that the applicable LEA, located in the same city, county, township, school district, or other political subdivision of the State to be served by the applicant has been consulted;

(2) Provides the applicable LEA the opportunity to comment on the application; and

(3) Provides the comments of the LEA and any responses as an attachment to the application.

(f) An SEA may not approve an application from a consortium that includes a for-profit agency, organization, or institution unless the State has first determined that—

(1) The for-profit entity can make a significant contribution to attaining the objectives of the Act;

(2) The LEA, or public or private nonprofit agency, organization, or institution, will enter into a contract with the for-profit agency, organization, or institution for the establishment or expansion of programs; and

(3) The applicant, if not an LEA, has met the requirements of paragraph (f) (1) through (3) of this section.

(g) If an SEA awards funds to a consortium that includes a for-profit agency, organization, or institution, the award must be made directly to the LEA or public or private nonprofit agency, organization, or institution that applies on behalf of the consortium.

(Approved under OMB Control No. 1830-0030)

(Authority: 20 U.S.C. 1203a(a) and 1206a(c)(3))

§ 426.32 What are programs for corrections education and education for other institutionalized individuals?

(a) An SEA shall use not less than 10 percent of its grant for educational programs for criminal offenders in corrections institutions and for other institutionalized adults. Those programs may include—

(1) Academic programs for—

(i) Basic education with special emphasis on reading, writing, vocabulary, and arithmetic;

(ii) Special education programs as defined by State law;

(iii) Bilingual or English-as-a-second-language programs; and

(iv) Secondary school credit programs;

(2) Vocational training programs;

(3) Library development and library service programs;

(4) Corrections education programs, training for teacher personnel specializing in corrections education, particularly courses in social education, basic skills instruction, and abnormal psychology;

(5) Guidance and counseling programs;

(6) Supportive services for criminal offenders, with special emphasis on the coordination of educational services with agencies furnishing services to criminal offenders after their release; and

(7) Cooperative programs with educational institutions, community-based organizations of demonstrated effectiveness, and the private sector that are designed to provide education and training.

(b)(1) An SEA shall establish its own statewide criteria and priorities for administering programs for corrections education and education for other institutionalized adults.

(2) An SEA shall determine that an application proposing a project under paragraph (a) of this section contains the information in § 426.31(c) and any other information the SEA considers necessary.

(Authority: 20 U.S.C. 1203a(a)(3), (b)(1) and 1204)

§ 426.33 What are special experimental demonstration projects and teacher training projects?

(a) An SEA shall use not less than 10 percent of its grant for—

(1) Special projects that will be carried out in furtherance of the purposes of the Act, that will be coordinated with other programs funded under the Act, and that—

(i) Involve the use of innovative methods (including methods for educating adults with handicaps, homeless adults, and adults of limited English proficiency), systems, materials, or programs that may have national significance or will be of special value in promoting effective programs under the Act; or

(ii) Involve programs of adult education, including education for adults with handicaps, homeless adults, and adults of limited English proficiency, which are part of community school programs, carried out in cooperation with other Federal, State, or local programs that have unusual promise in promoting a comprehensive or coordinated approach to the problems of adults with educational deficiencies; and

(2) Training persons engaged, or preparing to engage, as personnel in programs designed to carry out the purposes of the Act.

(b)(1) An SEA shall establish its own statewide criteria and priorities for providing and administering special experimental demonstration projects and teacher training projects.

(2) The SEA shall determine that an application proposing a project under paragraph (a) of this section contains—

(i) The information in § 426.31(c);

(ii) Plans for continuing the activities and services under the project after completion of the project's funding under the Act; and

(iii) Any other information the SEA considers appropriate.

(Authority: 20 U.S.C. 1203a(a)(3) and 1206)

Subpart E—What Conditions Must be Met by a State?

§ 426.40 What are the State and local administrative costs requirements?

(a)(1) Beginning with the fiscal year 1991 grant (a grant that is awarded on or after July 1, 1991 from funds appropriated in the fiscal year 1991 appropriation), an SEA may use no more than 5 percent of its grant or $50,000—whichever is greater—for necessary and reasonable State administrative costs.

(2) For grants awarded from funds appropriated for fiscal years prior to fiscal year 1991 (grants awarded before July 1, 1991), an SEA may determine what percent of its grant is necessary and reasonable for State administrative costs.

(b)(1) At least 95 percent of an eligible recipient's award from the SEA must be expended for adult education instructional activities.

(2) The remainder may be used for local administrative costs—noninstructional expenses, including planning, administration, evaluation, personnel development, and coordination—that are necessary and reasonable.

(3) In cases where the administrative cost limits under paragraph (b)(2) of this section would be insufficient for adequate planning, administration, evaluation, personnel development, and coordination of programs supported under the Act, the SEA shall negotiate with local grant recipients in order to determine an adequate level of funds to be used for noninstructional purposes.

(Authority: 20 U.S.C. 1205, and 1205(c))

§ 426.41 What are the cost-sharing requirements?

(a) The Federal share of expenditures made under a State plan for any of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico may not exceed—

(1) 90 percent of the costs of programs carried out with the fiscal year 1988 grant (a grant that is awarded on or after July 1, 1988 from funds appropriated in the fiscal year 1988 appropriation);

(2) 80 percent of the cost of programs carried out with the fiscal year 1989 grant (a grant that is awarded on or after July 1, 1989 from funds appropriated in the fiscal year 1989 appropriation);

(3) 65 percent of the costs of programs carried out with the fiscal year 1990

grant (a grant that is awarded on or after July 1, 1990 from funds appropriated in the fiscal year 1990 appropriation);

(4) 80 percent of the cost of programs carried out with the fiscal year 1991 grant (a grant that is awarded on or after July 1, 1991 from funds appropriated in the fiscal year 1991 appropriation); and

(5) 75 percent of the costs of programs carried out with the fiscal year 1992 grant (a grant that is awarded on or after July 1, 1992 from funds appropriated in the fiscal year 1992 appropriation) and from each grant thereafter.

(b) The Federal share for American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands (Republic of Palau), and the Virgin Islands is 100 percent.

(c) The Secretary determines the non-Federal share of expenditures under the State plan by considering—

(1) Expenditures from State, local, and other non-Federal sources for programs, services, and activities of adult education, as defined in the Act, made by public or private entities that receive from the State Federal funds made available under the Act or State funds for adult education; and

(2) Expenditures made directly by the State for programs, services, and activities of adult education as defined in the Act.

(Authority: 20 U.S.C. 1209(a); 48 U.S.C. 1681)

§ 426.42 What is the maintenance of effort requirement?

(a)(1)(i) *Basic standard.* Except as provided in § 426.43, a State is eligible for a grant from appropriations for any fiscal year, only if the Secretary determines that the State has expended for adult education from non-Federal sources during the second preceding fiscal year (or program year) an amount not less than the amount expended during the third preceding fiscal year (or program year).

(ii) The Secretary determines maintenance of effort on a per student expenditure basis or on a total expenditure basis.

(2) *Meaning of "second and third preceding fiscal years (or program years)."* For purposes of determining maintenance of effort, the "second preceding fiscal year (or program year)" is the fiscal year (or program year) two years prior to the year of the grant for which the Secretary is determining the State's eligibility. The "third preceding fiscal year (or program year)" is the fiscal year (or program year) three years prior to the year of the grant for which the Secretary is determining the State's eligibility.

Example

Computation based on fiscal year. If a State chooses to use the fiscal year as the basis for its maintenance of effort computations, the Secretary determines whether a State is eligible for the fiscal year 1989 grant (a grant that is awarded on or after July 1, 1989 from funds appropriated in the fiscal year 1989 appropriation) by comparing expenditures from the second preceding fiscal year—year 1987 (October 1, 1986—September 30, 1987)—with expenditures from the third preceding fiscal year—year 1986 (October 1, 1985—September 30, 1986). If there has been decrease in expenditures from fiscal year 1986 to fiscal year 1987, the State has maintained effort and is eligible for its fiscal year 1989 grant.

Computation based on program year. If a State chooses to use a program year running from July 1 to June 30 as the basis for its maintenance of effort computation, the Secretary determines whether a State is eligible for funds for the fiscal year 1989 grant by comparing expenditures from the second preceding program year—year 1987 (July 1, 1986–June 30, 1987)—with expenditures from the third preceding program year—year 1986 (July 1, 1985–June 30, 1986). If there has been no decrease in expenditures from program year 1986 to program year 1987, the State has maintained effort and is eligible for its fiscal year 1989 grant.

(b) *Expenditures to be considered.* In determining a State's compliance with the maintenance of effort requirement, the Secretary considers the expenditures described in § 426.41(c).

(Authority: 20 U.S.C. 1209(b))

§ 426.43 Under what circumstances may the Secretary waive the maintenance of effort requirement?

(a) The Secretary may waive, for one year only, the maintenance of effort requirement in § 426.42 if the Secretary determines that a waiver would be equitable due to exceptional or uncontrolled circumstances. These circumstances include, but are not limited to, the following:

(1) A natural disaster.

(2) An unforeseen and precipitous decline in financial resources.

(b) The Secretary does not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(Authority: 20 U.S.C. 1209(b)(2))

§ 426.44 How does a State request a waiver of the maintenance of effort requirement?

An SEA seeking a waiver of the maintenance of effort requirement in § 426.42 shall—

(a) Submit to the Secretary a request for a waiver; and

(b) Include in the request—

(1) The reason for the request; and

(2) Any additional information the Secretary may require.

(Approved under OMB Control No. 1830-0510)

(Authority: 20 U.S.C. 1209(b)(2))

§ 426.45 How does the Secretary compute maintenance of effort in the event of a waiver?

If a State has been granted a waiver of the maintenance of effort requirement that allows it to receive a grant from appropriations for a fiscal year, the Secretary determines whether the State has met that requirement for the grant to be awarded for the year after the year of the waiver by comparing the amount spent for adult education from non-Federal sources in the second preceding fiscal year (or program year) with the amount spent in the fourth preceding fiscal year (or program year).

Example

Because exceptional or uncontrollable circumstances prevented a State from maintaining effort in fiscal year 1987 (October 1, 1986–September 30, 1987)—or in a program year 1987 running from July 1, 1986–June 30, 1987—at the level of fiscal year 1986 (October 1, 1985–September 30, 1986)—or program year 1986 (July 1, 1985–June 30, 1986), the Secretary grants the State a waiver of the maintenance of effort requirement that permits the State to receive its fiscal year 1989 grant (a grant that is awarded on or after July 1, 1989 from funds appropriated in the fiscal year 1989 appropriation). In order to determine whether a State has met the maintenance of effort requirement and therefore is eligible to receive its fiscal year 1990 grant (the grant to be awarded for the year after the year of the waiver), the Secretary compares the State's expenditures from the second preceding fiscal year (or program year)—fiscal year 1988 (October 1, 1987–September 30, 1988) or program year 1988 (July 1, 1987–June 30, 1988)—with expenditures from the fourth preceding fiscal year (or program year—year 1986. If the expenditures from fiscal year (or program year) 1988 are not less than the expenditures from fiscal year (or program year) 1986, the State has maintained effort and is eligible for its fiscal year 1990 grant.

(Authority: 20 U.S. 1209(b)(2))

§ 426.46 What requirements for program reviews and evaluations must be met by a State?

(a) An SEA shall provide for program reviews and evaluations of all State-administered adult education programs, services, and activities it assists under the Act. The SEA shall use its program reviews and evaluations to assist LEAs and other recipients of funds in planning and operating the best possible programs of adult education and to improve the State's programs of adult education.

(b) In reviewing programs, an SEA shall, during the four-year period of the State plan, gather and analyze data on the extent to which—

(1) The State's adult education programs are achieving the goals in the State plan, including the goal of serving educationally disadvantaged adults; and

(2) Grant recipients have improved their capacity to achieve the purposes of the Act.

(c)(1) An SEA shall, during the four-year period of the State plan, evaluate in qualitative and quantitative terms the effectiveness of programs, services, and activities conducted by at least one-third of the local recipients of funds.

(2) The recipients the State evaluates must be representative of all recipients in the State.

(3) An evaluation must consider the following factors:

(i) Planning and content of the programs, services, and activities.

(ii) Curriculum, instructional materials, and equipment.

(iii) Adequacy and qualifications of all personnel.

(iv) Effect of the program on the subsequent work experience of participants, completers, and graduates.

(v) Achievement of the goals set forth in the State plan.

(vi) Extent to which educationally disadvantaged adults are being served.

(vii) Extent to which local recipients of funds have improved their capacity to achieve the purposes of the Act.

(viii) Other factors that affect program operations, as determined by the SEA.

(d)(1) Within 90 days of the close of each program year, the SEA shall submit the following to the Secretary:

(i) The information in § 426.10(b)(10).

(ii) A report on the SEA's activities under paragraph (b) of this section.

(iii) A report on the SEA's activities under paragraph (c) of this section.

(2) The reports described in paragraphs (d)(1) (ii) and (iii) of this section must include—

(i) The results of any program reviews and evaluations performed during the program year, and a description of how the SEA used the program review and evaluation process to make necessary changes to improve programs; and

(ii) The comments and recommendations of the State advisory council, if a council has been established.

(e) If an SEA has established a State advisory council on adult education under § 426.50, the SEA shall—

(1) Obtain approval of the plan for program reviews and evaluations from the State advisory council; and

(2) Inform the State advisory council of the results of program reviews and evaluations so that the State advisory council may perform its duties under section 332(f)(3) of the Act.

Note to § 426.46: In addition to the Adult Education State-administered Basic Grant Program in this part 426, State-administered adult education programs include the State-administered Workplace Literacy Program (See 34 CFR part 433) and the State-administered English Literacy Program (See 34 CFR part 434).

(Approved under OMB Control No. 1830-0510)

(Authority: 20 U.S.C. 1205a(f)(3) and 1207a)

Subpart F—What are the Administrative Responsibilities of a State?

§ 426.50 What are a State's responsibilities regarding a State advisory council on adult education?

(a) A State that receives funds under section 313 of the Act may—

(1) Establish a State advisory council; or

(2) Designate an existing body as the State advisory council.

(b) If a State elects to establish or designate a State advisory council on adult education, the following provisions apply:

(1) The State advisory council must comply with §§ 426.51 and 426.52.

(2) The Governor appoints members to the State advisory council in accordance with section 332(e) of the Act.

(3) Costs incurred for a State advisory council must be counted as part of the allowable State administrative costs under the Act.

(4) The Governor determines the amount of funding available to a State advisory council.

(5)(i) A State advisory council determines its own staffing needs, within the budget established by the Governor.

(ii) A State advisory council's staffing may include professional, technical, and clerical personnel as may be necessary to enable the council to carry out its functions under the Act.

(6) Members of a State advisory council and its staff, while serving on the business of the council, may receive subsistence, travel allowances, and compensation in accordance with State law and regulations and State practices applicable to persons performing comparable duties and services.

(Authority: 20 U.S.C. 1205a (a), (d), (e))

§ 426.51 What are the membership requirements of a State advisory council on adult education?

(a)(1) The membership of a State advisory council may broadly represent citizens and groups within the State having an interest in adult education. The council must consist of representatives of—

(i) Public education;

(ii) Private and public sector employment;

(iii) Recognized State labor organizations;

(iv) Private, voluntary, or community literacy organizations;

(v) Libraries; and

(vi) State economic development agencies.

(2) The State shall ensure that there is appropriate representation on the State advisory council of—

(i) Urban and rural areas;

(ii) Women;

(iii) Persons with handicaps; and

(iv) Racial and ethnic minorities.

(b)(1) An SEA shall certify to the Secretary the establishment of, and membership of, its State advisory council.

(2) The certification must be submitted to the Secretary prior to the beginning of any program year in which the State desires to receive a grant under the Act.

(c) Members must be appointed for fixed and staggered terms and may serve until their successors are appointed. Any vacancy in the membership of the council must be filled in the same manner as the original appointment. Any member of the council may be removed for cause in accordance with procedures established by the council.

(Approved under OMB Control No. 1830-0510)

(Authority: 20 U.S.C. 1205a (a)(1), (b), and (c))

§ 426.52 What are the responsibilities of a State advisory council on adult education?

(a)(1) The State advisory council shall, using procedures agreed upon, elect a chairperson.

(2) The State advisory council shall adopt rules that govern the number, time, place, and conduct of meetings as well as council operating procedures. The rules must provide for at least one public meeting each year at which the general public is given an opportunity to express views concerning adult education programs in the State.

(b) A State advisory council shall—

(1) Meet with the SEA or its representative during the planning year to advise on the development of the State plan;

(2) Review the State plan before it is submitted to the Secretary and, if the State advisory council has substantial disagreement with the final State plan, file timely objections with the SEA;

(3) Advise the SEA on—

(i) Policies the State should pursue to strengthen adult education; and

(ii) Initiatives and methods the private sector could undertake to assist the State's improvement of adult education programs; and

(4)(i) Approve the plan for the program reviews and evaluations required in section 352 of the Act and § 426.46 and participate in implementing and disseminating the program reviews and evaluations. In approving the plan for the program reviews and evaluations, the State advisory council shall ensure that persons knowledgeable of the daily operation of adult education programs are involved;

(ii) Advise the Governor, the State legislature, and the general public of the State with respect to the findings of the program reviews and evaluations; and

(iii) Include in any reports of the program reviews and evaluations the council's comments and recommendations.

(Approved under OMB Control No. 1830-0610)

(Authority: 20 U.S.C. 1205a (d) and (f), 1205a(a)(3)(B))

§ 426.53 May a State establish an advisory body other than a State advisory council?

(a) A State may establish an advisory body that is funded solely from non-Federal sources.

(b) The advisory body described in paragraph (a) of this section is not required to comply with the requirements of section 332 of the Act and this part.

(c) The non-Federal funds used to support the advisory body may not be included in the non-Federal share of expenditures under the State plan described in § 426.41(c).

(Authority: 20 U.S.C. 1205a and 1209)

3. A new part 432 is added to read as follows:

PART 432—NATIONAL WORKPLACE LITERACY PROGRAM

Subpart A—General

Sec.

432.1 What is the National Workplace Literacy Program?
432.2 Who is eligible for an award?
432.3 What activities may the Secretary fund?
432.4 What regulations apply?
432.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

432.10 Are preapplications required?
432.11 How does the Secretary consider a preapplication?

Subpart C—How Does the Secretary Make an Award?

432.20 What priorities may the Secretary establish?
432.21 How does the Secretary evaluate an application?
432.22 What selection criteria does the Secretary use?
432.23 What additional factor does the Secretary consider?

Subpart D—What Conditions Must be Met After an Award?

432.30 What other requirements must be met under this program?
432.31 How must projects that serve adults with limited English proficiency provide for the needs of those adults?

Authority: 20 U.S.C. 1211(a), unless otherwise noted.

Subpart A—General

§ 432.1 What is the National Workplace Literacy Program?

The National Workplace Literacy Program provides assistance for demonstration projects that teach literacy skills needed in the workplace through exemplary education partnerships between business, industry, or labor organizations and educational organizations.

(Authority: 20 U.S.C. 1211(a)(1))

§ 432.2 Who is eligible for an award?

(a) Awards are provided to exemplary partnerships between—

(1) A business, industry, or labor organization, or private industry council; and

(2) A State educational agency (SEA), local educational agency (LEA), institution of higher education, or school (including an area vocational school, an employment and training agency, or a community-based organization).

(b) A partnership shall include as partners at least one entity from paragraph (a)(1) of this section and at least one entity from paragraph (a)(2) of this section, and may include more than one entity from each group.

(c)(1) The partners shall apply jointly to the Secretary for funds.

(2) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and the grantee. The agreement must also detail the role each partner plans to perform, and must bind each partner to every statement and assurance made in the application.

(Authority: 20 U.S.C. 1211(a)(4)(A))

§ 432.3 What activities may the Secretary fund?

The Secretary provides grants or cooperative agreements to projects designed to improve the productivity of the workforce through improvement of literacy skills in the workplace by—

(a) Providing adult literacy and other basic skills services and activities;

(b) Providing adult secondary education services and activities that may lead to the completion of a high school diploma or its equivalent;

(c) Meeting the literacy needs of adults with limited English proficiency;

(d) Upgrading or updating basic skills of adult workers in accordance with changes in workplace requirements, technology, products, or processes;

(e) Improving the competency of adult workers in speaking, listening, reasoning, and problem solving; or

(f) Providing educational counseling, transportation, and child care services for adult workers during nonworking hours while the workers participate in the project.

(Authority: 20 U.S.C. 1211(a)(3))

§ 432.4 What regulations apply?

The following regulations apply to the National Workplace Literacy Program:

(a) The regulations in this part 432.

(b) The regulations in 34 CFR part 425.

(Authority: 20 U.S.C. 1211(a))

§ 432.5 What definitions apply?

(a) The definitions in 34 CFR 425.4 apply to this part.

(b) The following definitions also apply to this part:

Adult worker means an individual who has attained 16 years of age or who is beyond the age of compulsory school attendance under State law, and whose receipt of project services is expected to result in new employment, enhanced skills related to continued employment, career advancement, or increased productivity.

Area vocational school means—

(1) A specialized high school used exclusively or principally for the provision of vocational education to individuals who are available for study in preparation for entering the labor market;

(2) The department of a high school exclusively or principally used for providing vocational education in no less than five different occupational fields to individuals who are available for study in preparation for entering the labor market;

(3) A technical institute or vocational school used exclusively or principally for the provision of vocational education to individuals who have completed or left high school and who are available for study in preparation for entering the labor market; or

(4) The department or division of a junior college or community college or university operating under the policies of the State board and that provides vocational education in no less than five different occupational fields leading to immediate employment but not necessarily leading to a baccalaureate degree, if, in the case of a school, department, or division described in paragraphs (3) and (4) of this definition it admits as regular students both individuals who have completed high school and individuals who have left high school.

(Authority: 20 U.S.C. 2471)

Business and industry organizations include, but are not limited to—

(1) For-profit businesses or industrial concerns;

(2) Nonprofit businesses or industrial concerns, such as hospitals and nursing homes;

(3) Associations of business and industry organizations, such as local or State Chambers of Commerce;

(4) Associations of private industry councils; and

(5) Educational associations—such as the American Association for Adult and Continuing Education, the American Council on Education, the National Association for Bilingual Education, the National Association of Independent Colleges and Universities, or the National Association of Technical and Trade Schools.

Contractor means an individual or organization other than a partner that provides specific and limited services, equipment, or supplies to a partnership under a contractual agreement.

Employment and training agency includes any agency that provides—as a substantial portion of its activity—employment and training services, either directly or through contract.

Helping organization means an entity other than a partner that voluntarily assists a partnership by providing services, technical assistance, or cash or in-kind contributions to the project. Helping organizations may not be recipients of funds from partners or serve as contractors.

Partner means an entity included in the list of entities in § 432.2(a) (1) or (2).

Private industry council means the private industry council established under section 102 of the Job Training Partnership Act (29 U.S.C. 1512).

Site means an entity other than a partner that participates in a project by providing adult workers to be trained and, at the site's option, space for this training. A site may not be a recipient of funds from partners or serve as a contractor.

(Authority: 20 U.S.C. 1211(a))

Subpart B—How Does One Apply for an Award?

§ 432.10 Are preapplications required?

The Secretary may require applicants to submit preapplications by including that requirement in an application notice published in the Federal Register.

(Authority: 20 U.S.C. 1211(a))

§ 432.11 How does the Secretary consider a preapplication?

(a) The Secretary considers a preapplication if—

(1) The applicant complies with the procedural rules that govern submission of the preapplication; and

(2) The preapplication is submitted in response to an application notice that requires preapplications.

(b) If the Secretary requires preapplications and an applicant does not preapply, the applicant may not apply for a grant.

(c) If an applicant submits a preapplication—

(1) The Secretary—

(i) Informs the applicant that it is eligible and encourages it to apply for a grant;

(ii) Informs the applicant that it is eligible but does not encourage it to apply for a grant; or

(iii) Informs the applicant that it is ineligible for assistance, and explains why the applicant is ineligible; and

(2) An applicant may apply for a grant even if the Secretary has not encouraged it to apply, as described in paragraph (c)(1)(ii) of this section.

(Authority: 20 U.S.C. 1211(a))

Subpart C—How Does the Secretary Make an Award?

§ 432.20 What priorities may the Secretary establish?

(a) The Secretary may announce through one or more notices published in the Federal Register the priorities for this program, if any, from the types of projects described in paragraph (b) of this section.

(b) Priority may be given to projects training adult workers who have inadequate basic skills and who—

(1) Are currently unable to perform their jobs effectively or are ineligible for career advancement due to an identified lack of basic skills;

(2) Are employed in industries retooling with high technology and for whom training in basic skills is expected to result in continued employment;

(3) Require training in English-as-a-second-language in order to increase productivity, to continue employment, or to be eligible for career advancement; or

(4) Are employed in an industry adversely impacted by competitiveness in the world economy and for whom training is expected to result in the increased competitiveness of that industry in world markets.

(Authority: 20 U.S.C. 1211(a))

§ 432.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 432.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 432.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the Federal Register, the Secretary may assign the reserved points among the criteria in § 432.22.

(Authority: 20 U.S.C. 1211(a))

§ 432.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (15 points) The Secretary reviews each application to determine the extent to which the project—

(1) Demonstrates a strong relationship between skills taught and the literacy requirements of actual jobs, especially the increased skill requirements of the changing workplace;

(2) Is targeted to adults with inadequate skills for whom the training described is expected to mean new employment, continued employment, career advancement, or increased productivity;

(3) Includes support services, based on cooperative relationships within the partnership and from helping organizations, necessary to reduce barriers to participation by adult workers. Support services could include educational counseling, transportation, and child care during non-working hours while adult workers are participating in a project; and

(4) Demonstrates the active commitment of all partners to accomplishing project goals.

(b) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including consideration of—

(1) The extent to which the project will focus on demonstrated needs for workplace literacy training of adult workers;

(2) The adequacy of the applicant's documentation of the needs to be addressed by the project;

(3) How those needs will be met by the project; and

(4) The benefits to adult workers and their industries that will result from meeting those needs.

(c) *Quality of training.* (15 points) The Secretary reviews each application to determine the quality of the training to be provided by the project, including the extent to which the project will—

(1) Use curriculum materials that are designed for adults and that reflect the needs of the workplace;

(2) Use individualized educational plans developed jointly by instructors and adult learners;

(3) Take place in a readily accessible environment conducive to adult learning; and

(4) Provide training through the partner classified under § 432.2(a)(2), unless transferring this activity to the partner classified under § 432.2(a)(1) is necessary and reasonable within the framework of the project.

(d) *Plan of operation.* (12 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project, and includes—

(i) A description of the respective roles of each member of the partnership in carrying out the plan;

(ii) A description of the activities to be carried out by any contractors under the plan;

(iii) A description of the respective roles, including any cash or in-kind contributions, of helping organizations; and

(iv) A description of the respective roles of any sites;

(3) How well the objectives of the project relate to the purposes of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants, who are otherwise eligible to participate, are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(e) *Applicant's experience and quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the extent of the applicant's experience in providing literacy services to working adults.

(2) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project including—

(i) The qualifications, in relation to project requirements, of the project director, if one is to be used;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(2) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) To determine personnel qualifications under paragraphs (e)(2) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Identify expected outcomes of the participants and how those outcomes will be measured;

(4) Include evaluation of effects on job advancement, job performance (including, for example, such elements as productivity, safety and attendance), and job retention; and

(5) Are systematic throughout the project period and provide data that can be used by the project on an ongoing basis for program improvement.

(g) *Budget and cost-effectiveness.* (8 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable and necessary in relation to the objectives of the project; and

(3) The applicant has minimized the purchase of equipment and supplies in order to devote a maximum amount of resources to instructional services.

(Approved under OMB Control No. 1830-0507)

(Authority: 20 U.S.C. 1211(a))

§ 432.23 What additional factor does the Secretary consider?

In addition to the criteria in § 432.22, the Secretary may consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 1211(a))

Subpart D—What Conditions Must Be Met After an Award?

§ 432.30 What other requirements must be met under this program?

(a) An applicant shall use funds to supplement and not supplant funds otherwise available for the purposes of this program.

(b) A project may include—

(1) A start-up period between the time the project begins and the time services are provided to adult workers; and

(2) An operational period during which these services are provided.

(c) In partnerships in which either an SEA or an LEA is the grantee, an award under this program may be used to pay—

(1) 100 percent of the administrative costs incurred by an SEA or an LEA in establishing projects during the start-up period referenced in paragraph (b)(1) of this section; and

(2) 70 percent of the costs of a project during the operational period referenced in paragraph (b)(2) of this section.

(d) In partnerships in which any other entity is the grantee, an award under this program may be used to pay 70 percent of costs incurred in establishing and operating the project throughout the period of the grant.

(e)(1) A project's start-up period may not last longer than 90 days; and

(2) Applicants shall minimize the start-up period, if any, proposed for their projects.

(Authority: 20 U.S.C. 1211(a)(2) and (e)(1))

§ 432.31 How must projects that serve adults with limited English proficiency provide for the needs of those adults?

(a) Projects serving adults with limited English proficiency or no English proficiency shall provide for the needs of these adults by teaching literacy skills needed in the workplace.

(b) Projects may teach workplace literacy skills—

(1) To the extent necessary, in the native language of these adults; or

(2) Exclusively in English.

(c) Projects must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(Authority: 20 U.S.C. 1206a(d) and 1211(a))

4. A new part 433 is added to read as follows:

PART 433—STATE-ADMINISTERED WORKPLACE LITERACY PROGRAM

Subpart A—General

Sec.

433.1 What is the State-administered Workplace Literacy Program?
433.2 Who is eligible for an award?
433.3 What kinds of activities may be assisted?
433.4 What regulations apply?
433.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

433.10 What must the State plan contain?

Subpart C—How Does the Secretary Make a Grant to a State?

433.20 How does the Secretary make allotments?
433.21 How does the Secretary make reallotments?

Subpart D—How Does an Applicant Apply to a State for an Award?

433.30 Who is eligible to apply to a State for an award?
433.31 How does a State carry out the State-administered Workplace Literacy Program?
433.32 What are the local application requirements?

Subpart E—What Post-Award Conditions Must Be Met by a State and Its Subgrantees and Contractors?

433.50 What other requirements must be met under this program?
433.51 What are the program review and evaluation requirements?
433.52 How must projects that serve adults with limited English proficiency provide for the needs of those adults?

Authority: 20 U.S.C. 1211a(b), unless otherwise noted.

Subpart A—General

§ 433.1 What is the State-administered Workplace Literacy Program?

When the annual appropriation for workplace literacy equals or exceeds $50,000,000, the State-administered Workplace Literacy Program provides financial assistance for adult education programs that teach literacy skills needed in the workplace through education partnerships between business, industry, or labor organizations and educational organizations.

(Authority: 20 U.S.C. 1211(b))

§ 433.2 Who is eligible for an award?

(a) A State educational agency (SEA) is eligible for an award if the Secretary has approved the State plan and application submitted in accordance with section 342 of the Act and 34 CFR 426.10 through 426.13, and the State plan meets the requirements in § 433.10.

(b) If a State is ineligible to receive its allotment under this program, the Secretary uses the State's allotment to make direct grants to applicants in that State who are qualified to teach literacy skills needed in the workplace. To make those awards, the Secretary uses the procedures described for the National Workplace Literacy Program in 34 CFR part 432.

(Authority: 20 U.S.C. 1211(b) (3), (6))

§ 433.3 What kinds of activities may be assisted?

(a) Under the State-administered Workplace Literacy Program the Secretary makes allotments to an SEA to pay the Federal share of the cost of adult education programs that teach literacy skills needed in the workplace through partnerships between the entities in § 433.30(a) (1) and (2).

(b) A State shall assist partnership projects that are designed to improve the productivity of the workforce through improvement of literacy skills needed in the workplace through the activities described in 34 CFR 432.3 (a) through (f).

(Authority: 20 U.S.C. 1211(b) (4), (5))

§ 433.4 What regulations apply?

The following regulations apply to the State-administered Workplace Literacy Program:

(a) The regulations in this part 433.

(b) The regulations in 34 CFR part 425.

(Authority: 20 U.S.C. 1211(b))

§ 433.5 What definitions apply?

(a) The definitions in 34 CFR 432.5 apply to this part.

(b) The following definition also applies to this part:

Partner means an entity included in the list of entities in § 433.30(a) (1) or (2).

(Authority: 20 U.S.C. 1211(b))

Subpart B—How Does a State Apply for a Grant?

§ 433.10 What must the State plan contain?

To receive a grant under the State-administered Workplace Literacy Program, an SEA shall include in its State plan, submitted to the Secretary in accordance with 34 CFR 426.10, a description of—

(a) The requirements for State approval of funding of a local workplace literacy project;

(b) The procedures under which applications for that funding may be submitted; and

(c) The method by which the SEA will obtain an annual third-party evaluation of student achievement in, and the overall effectiveness of the services provided by, all projects that receive funding from the State's grant under the State-administered Workplace Literacy Program.

(Approved under OMB Control No. 1830-0026)

(Authority: 20 U.S.C. 1211(b)(3)(A))

Subpart C—How Does the Secretary Make a Grant to a State?

§ 433.20 How does the Secretary make allotments?

The Secretary determines the amount of each State's allotment according to a formula in section 371(b)(7)(B) of the Act.

(Authority: 20 U.S.C. 1211(b)(7)(B))

§ 433.21 How does the Secretary make reallotments?

(a)(1) At the end of each fiscal year, the Secretary reallocates the portion of any State's allotment that—

(i) Exceeds 10 percent of the State's allotment under this program for the fiscal year; and

(ii) Was not obligated by the end of the fiscal year.

(2) A State may not obligate any portion of the excess described in paragraphs (a)(1) (i) and (ii) of this section after the end of the fiscal year.

(b) The Secretary reallots funds among the other States that themselves are not described in paragraph (a) of this section in the same proportion as each State's allocation for the fiscal year described in paragraph (a) of this section.

(c) Any amount reallotted to a State during a fiscal year is deemed part of the State's allotment for that fiscal year.

(d) Any amount that a State carries over from a prior year's allotment is deemed part of the State's allotment for the year into which funds are carried.

(e) In determining whether a State has obligated at least 90 percent of its allotment for a fiscal year, the Secretary considers as part of the State's allotment any funds reallotted to the State during that year or carried over from a prior year allotment.

(Authority: 20 U.S.C. 1211(b)(7)(C))

Subpart D—How Does an Applicant Apply to a State for an Award?

§ 433.30 Who is eligible to apply to a State for an award?

(a) Subgrants or contracts may be provided by the SEA to exemplary partnerships between—

(1) A business, industry, or labor organization, or private industry council; and

(2) The State educational agency, a local educational agency (LEA), an institution of higher education, or a school (including an area vocational school, an employment and training agency, or a community-based organization).

(b) Partnerships must include at least one entity listed in paragraph (a)(1) of this seciton and one entity listed in paragraph (a)(2) of this section, and may include more than one entity from each group.

(Authority: 20 U.S.C. 1211(b)(5))

§ 433.31 How does a State carry out the State-administered Workplace Literacy Program?

(a) An SEA carries out the program by—

(1) Providing State administration of the grant; and

(2) Awarding subgrants or contracts to eligible partnerships.

(b) The SEA may not use program funds for the administrative costs it incurs in carrying out its responsibilities under paragraph (a) of this section.

(c) If an SEA awards a subgrant or contract to a partnership in which the SEA is a partner, the SEA shall—

(1) Take an active role in the partnership in addition to its administrative responsibilities under paragraph (a) of this section; and

(2) Serve as a full and equal partner with other members of the partnership.

(d) An SEA may use program funds for necessary and reasonable administrative costs incurred in performing its role as a partner in a project described in paragraph (c) of this section.

(Authority: 20 U.S.C. 1211(b))

§ 433.32 What are the local application requirements?

A local partnership application, submitted to an SEA for funding under the State-administered Workplace Literacy Program, must contain the information in section 371(a)(4) of the Act.

(Approved under OMB Control No. 1830-0510)

(Authority: 20 U.S.C. 1211(b)(5))

Subpart E—What Post-Award Conditions Must Be Met by a State and its Subgrantees and Contractors?

§ 433.50 What other requirements must be met under this program?

(a) The Federal share of expenditures for projects funded under the State-administered Workplace Literacy Program is paid from the State's allotment under the program.

(b) A State Educational agency may reserve a portion of its allotment to pay 100 percent of the costs incurred by the SEA in obtaining evaluations required in § 433.10(c).

(c) A project funded by the SEA may include—

(1) A start-up period between the time the project begins and the time services are provided to adult workers; and

(2) An operational period during which these services are provided.

(d) An award to a partnership under this program may be used to pay—

(1) 70 percent of the costs of a project during the operational period referenced in paragraph (c)(2) of this section;

(2) 100 percent of the administrative costs incurred by an SEA or an LEA in establishing projects during the start-up period referenced in paragraph (c)(1) of this section; and

(3) 70 percent of the administrative costs incurred by other entities in establishing projects during the start-up period referenced in paragraph (c)(1) of this section.

(e)(1) A project's start-up period may not last longer than 90 days; and

(2) Partnerships shall minimize the start-up period, if any, proposed for their projects.

(Authority: 20 U.S.C. 1211(b)(1), (2))

§ 433.51 What are the program review and evaluation requirements?

The SEA shall provide for program reviews and evaluations in accordance with 34 CFR 426.40.

(Approved under OMB Control No. 1830-0510)

(Authority: 20 U.S.C. 1207a and 1211(b))

§ 433.52 How must projects that serve adults with limited English proficiency provide for the needs of those adults?

(a) An SEA shall ensure that projects serving adults with limited English proficiency or no English proficiency provide for the needs of these adults by teaching literacy skills needed in the workplace.

(b) Projects may teach workplace literacy skills—

(1) To the extent necessary, in the native language of these adults; or

(2) Exclusively in English.

(c) Projects must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(Authority: 20 U.S.C. 1208a(d) and 1211(b))

5. A new part 434 is added to read as follows:

PART 434—STATE-ADMINISTERED ENGLISH LITERACY PROGRAM

Subpart A—General

Sec.

434.1 What is the State-administered English Literacy Program?
434.2 Who is eligible for an award?
434.3 What activities may the Secretary fund?
434.4 What regulations apply?
434.5 What definitions apply?

Subpart B—How Does A State Apply for an Award?

434.10 What State plan requirements must be met?

Subpart C—How Does the Secretary Make an Award?

434.20 How does the Secretary determine the amount of an award?

Subpart D—What Conditions Must be Met After a State Receives an Award?

434.30 Who is eligible to apply to a State for a subgrant or contract?
434.31 What percentage requirements must a State meet in using and allocating funds to eligible recipients?
434.32 How are awards made to eligible recipients?
434.33 In what additional way may a State use funds under this program?
434.34 What are the reporting and program review and evaluation requirements under this program?
434.35 What other condition applies to this program?

Subpart E—What Compliance Procedures May the Secretary Use?

434.40 When may the Secretary terminate a grant?

Authority: 20 U.S.C. 1211a, unless otherwise noted.

Subpart A—General

§ 434.1 What is the State-administered English Literacy Program?

The State-administered English Literacy Program provides grants to States for English literacy programs for individuals of limited English proficiency.

(Authority: 20 U.S.C. 1211a(a)(1))

§ 434.2 Who is eligible for an award?

A State educational agency (SEA) is eligible for an award if the Secretary has approved the State plan and application submitted in accordance with section 342 of the Act and 34 CFR 426.10 through 426.13, and the State plan meets the requirements in § 343.10.

(Authority: 20 U.S.C. 1211a(a)(1), (2))

§ 434.3 What activities may the Secretary fund?

(a) The Secretary provides funds for establishing, operating, and improving English literacy programs of instruction that are designed to help limited English proficient adults, out-of-school youths, or both, achieve full competence in the English language.

(b) Funds may also be used to provide support services for program participants, including child care and transportation.

(Authority: 20 U.S.C. 1208a(13) and 1211a(a)(1))

§ 434.4 What regulations apply?

The following regulations apply to the State-administered English Literacy Program:

(a) The regulations in this part 434.

(b) The regulations in 34 CFR part 425.

(Authority: 20 U.S.C. 1211a)

§ 434.5 What definitions apply?

The definitions in 34 CFR 425.4 apply to this part.

(Authority: 20 U.S.C. 1211a)

Subpart B—How Does A State Apply for an Award?

§ 434.10 What State plan requirements must be met?

(a) To receive a grant under this program, an SEA shall include in its State plan, submitted to the Secretary in accordance with 34 CFR 426.10, a description of—

(1) The number of individuals of limited English proficiency in the State who need or could benefit from programs assisted under section 372(a) of the Act and this part;

(2) The activities to be undertaken with the grant under this part and the manner in which these activities will promote English literacy and enable individuals of limited English proficiency in the State to participate fully in national life;

(3) How the activities described in paragraph (a)(2) of this section will serve individuals of limited English proficiency, including the qualifications and training of personnel who will participate in the proposed activities;

(4) The resources necessary to develop and operate the proposed activities and the resources to be provided by the State; and

(5) The specific goals of the proposed activities and how achievement of these goals will be measured.

(b) An SEA that is prohibited by State law from awarding Federal funds by subgrant or contract to public or private agencies, organizations, or institutions, other than local educational agencies, shall describe in its State plan—

(1) The legal basis of this prohibition; and

(2) How community-based organizations (CBOs) with demonstrated capability to administer English proficiency programs will otherwise be fully involved in establishing and operating English literacy programs for individuals of limited English proficiency.

(Approved under OMB Control No. 1830-0520)

(Authority: 20 U.S.C. 1211a(a)(2))

Subpart C—How Does the Secretary Make an Award?

§ 434.20 How does the Secretary determine the amount of an award?

(a)(1) From the sums available for the purpose of grants to States under section 372 of the Act, the Secretary allots to—

(i) Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands $10,000 each;

(ii) The Trust Territory of the Pacific Islands (Republic of Palau) an amount that bears the same ratio to $76,600 that the population of Palau ages 18 and over bears to the total population of the Trust Territory of the Pacific Islands as formally constructed (including the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands) ages 18 and over; and

(iii) Puerto Rico, $25,000.

(2) From the remainder of these sums the Secretary allots to each of the 50 States and the District of Columbia an amount that bears the same ratio to that remainder as the number of persons 18 years of age and older who are limited English proficient of such State bears to the numbes of those persons in all States, except that no State shall receive less than $25,000. For purposes of paragraph (a)(2) of this section the term "State" does not include Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands (Republic of Palau).

(b) The Secretary relies on Census data on the number of individuals in that speak English less than very well to make the determinations in paragraph (a) of this section.

(Authority: 20 U.S.C. 1211a(b))

Subpart D—What Conditions Must be Met After a State Receives an Award?

§ 434.30 Who is eligible to apply to a State for a subgrant or contract?

The following entities are eligible to apply to the SEA for an award:

(a) A local educational agency (LEA).

(b) A CBO with demonstrated capability to administer English proficiency programs.

(c)(1) A public or private nonprofit agency, organization, or institution.

(2) The nonprofit agency, organization, or institution shall consult the LEA in the area proposed to be served by the applicant and give that LEA an opportunity to comment on the application.

(3) The nonprofit agency, organization, or institution shall respond to the LEA's comments and attach the comments and responses to the application.

(d)(1) An LEA, CBO, or public or private nonprofit agency, organization or institution may apply on behalf of a consortium that includes a for-profit agency, organization, or institution that can make a significant contribution to attaining the objectives of the Act.

(2) The LEA, CBO, or public or private nonprofit agency, organization, or institution shall enter into a contract with the for-profit agency, organization, or institution for the establishment or expansion of programs.

(Authority: 20 U.S.C. 1208a(e) and 1211a(b))

§ 434.31 What percentage requirements must a State meet in using and allocating funds to eligible recipients?

(a) An SEA may use not more than 5 percent of its grant for State administration, technical assistance, and training.

(b) After determining the amount to be used for State administration, technical assistance, and training under paragraph (a) of this section, the SEA shall allocate at least 50 percent of the remainder of its grant to programs operated by CBOs with demonstrated capability to administer English proficiency programs.

(Authority: 20 U.S.C. 1211a(b)(2)(B))

§ 434.32 How are awards made to eligible recipients?

(a) Except as provided in paragraph (c) of this section, an SEA shall make awards to eligible recipients using the provisions in 34 CFR 426.31.

(b) In applying the preference provisions in 34 CFR 426.31(a), the SEA shall ensure that it allocates at least 50 percent of the remainder of its grant to programs operated by CBOs, as described in § 434.31(b).

(c) An SEA may not use the consultation and comment provisions in 34 CFR 426.31(e) in making awards to CBOs.

(d) An SEA shall develop appropriate criteria for the review of an application submitted by a CBO to ensure that the applicant has demonstrated capability to administer an English proficiency program.

(Authority: 20 U.S.C. 1203a(a), 1206(c)(3), and 1211a(b))

§ 434.33 In what additional way may a State use funds under this program?

An award to an SEA under this program may be used in combination with other Federal funds awarded to a State for literacy training for individuals of limited English proficiency.

(Authority: 20 U.S.C. 1211a(f)(3))

§ 434.34 What are the reporting and program review and evaluation requirements under this program?

An SEA that receives a grant under section 372 of the Act and this part shall—

(a)(1) Report information describing the activities funded under the SEA's grant for each fiscal year covered by the grant.

(2) Provide for program reviews and evaluations in accordance with 34 CFR 426.46.

(b) Notify the Secretary if there is no longer a need in the State for the activities funded under the SEA's grant.

(Approved under OMB Control 1830-0510)

(Authority: 20 U.S.C. 1207a and 1211a(a))

§ 434.35 What other condition applies to this program?

(a) An SEA shall provide for the needs of individuals of limited English proficiency or no English proficiency by providing programs designed to teach English and, as appropriate, to allow these adults to progress effectively through the adult education program or to prepare them to enter the regular program of adult education as quickly as possible.

(b) The programs may, to the extent necessary, provide instruction in the native language of these adults or may provide instruction exclusively in English.

(c) These programs must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(Authority: 20 U.S.C.1206a(d) and 1211(a)

Subpart E—What Compliance Procedures May the Secretary Use?

§ 434.40 When may the Secretary terminate a grant?

(a) The Secretary terminates a grant only if the Secretary determines that—

(1) The State has not made substantial progress in achieving the educational goals described in the State plan; or

(2) There is no longer a need in the State for the activities funded under this part.

(b) Prior to making a determination under paragraph (a) of this section, the Secretary provides the State an opportunity to change the administration of its grant in order to—

(1) Achieve substantial progress in meeting those educational goals; or

(2) Meet new needs through different activities.

(Authority: 20 U.S.C. 1211a(a)(3))

6. A new part 435 is added to read as follows:

PART 435—NATIONAL ENGLISH LITERACY DEMONSTRATION PROGRAM FOR INDIVIDUALS OF LIMITED ENGLISH PROFICIENCY

Subpart A—General

Sec.

435.1 What is the National English Literacy Demonstration Program for Individuals of Limited English Proficiency?
435.2 Who is eligible for an award?
435.3 What activities may the Secretary fund?
435.4 What regulations apply?
435.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

435.20 How does the Secretary evaluate an application?
435.21 What selection criteria does the Secretary use?
435.22 What additional factor does the Secretary consider?

Subpart D—What Conditions Must be Met After an Award?

435.30 How many States use funds under this program?
435.31 How must projects that serve individuals of limited English proficiency provide for the needs of those adults?

Authority: 20 U.S.C. 1211a(d), unless otherwise noted.

Subpart A—General

§ 435.1 What is the National English Literacy Demonstration Program for Individuals of Limited English Proficiency?

The National English Literacy Demonstration Program for individuals of limited English proficiency provides financial assistance for the development of innovative approaches and methods used in English literacy programs for individuals of limited English proficiency.

(Authority: 20 U.S.C. 1211a(d))

§ 435.2 Who is eligible for an award?

Public or private nonprofit agencies, institutions, or organizations are eligible for a grant, cooperative agreement, or contract under this program.

(Authority: 20 U.S.C. 1211a(d))

§ 435.3 What activities may the Secretary fund?

(a) The Secretary may support, directly or through awards, the development of innovative approaches and methods of English literacy education for individuals of limited English proficiency that use new instructional methods and technologies.

(b) These innovative approaches and methods must be designed to help limited English proficient adults, out-of-school youths, or both, to achieve full competence in the English language.

(Authority: 20 U.S.C. 1201a(13) and 1211a(d)(1))

§ 435.4 What regulations apply?

The following regulations apply to the National English Literacy Demonstration Program for Individuals of Limited English Proficiency:

(a) The Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1 and the Department of Education Acquisition Regulation (EDAR) in 48 CFR chapter 34 (applicable to contracts).

(b) The regulations in this part 435.

(c) The regulations in 34 CFR part 425.

(Authority: 20 U.S.C. 1221a)

§ 435.5 What definitions apply?

The definitions in 34 CFR 425.4 apply to this part.

(Authority: 20 U.S.C. 1221a)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 435.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 435.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 435.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition announced through a notice published in the Federal Register, the Secretary may assign the reserved points among the criteria in § 435.21.

(Authority: 20 U.S.C. 1221a(d))

§ 435.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including consideration of—

(1) The need for the innovative approaches and methods of English literacy education for individuals of limited English proficiency that the project proposes to develop;

(2) How the needs were identified; and

(3) How the project will meet the needs.

(b) *Project objectives.* (10 points) The Secretary reviews each application to determine the extent to which the project objectives—

(1) Relate to the innovative approaches and methods of English literacy education for individuals of limited English proficiency proposed for use in the project;

(2) Are clearly stated;

(3) Are measurable; and

(4) Describe appropriate outcomes.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, and how it incorporates the use of new instructional methods and technologies;

(2) The extent to which the management plan is well-designed and ensures proper and efficient administration of the project;

(3) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(4) How the applicant will select project participants and ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Evaluation.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Contribute to the possible replication of the project; and

(4) To the extent possible, include a third party evaluation.

(e) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the director and other key personnel to be used in the project, particularly as their experience and expertise relate to English literacy and training in English-as-a-second-language for adults;

(ii) The appropriateness of the time that each person referred to in paragraph (e)(1)(i) of this section will commit to the project; and

(iii) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (e)(1), (2), and (3) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(f) *Institutional commitment.* (5 points) The Secretary reviews each application to determine the extent to which the applicant's agency, institution, or organization—

(1) Has experience in providing English literacy services for individuals of limited English proficiency;

(2) Will provide appropriate resources; and

(3) Will provide adequate facilities, equipment, and supplies.

(g) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1221a(d))

§ 435.22 What additional factor does the Secretary consider?

In addition to the criteria in § 435.21, the Secretary may consider whether funding a particular application would contribute to the funding of a variety of approaches and methods.

(Authority: 20 U.S.C. 1221a(d))

Subpart D—What Conditions Must be Met After an Award?

§ 435.30 How many States use funds under this program?

An award to a State educational agency under this program may be used in combination with other Federal funds awarded to a State for literacy training for individuals of limited English proficiency.

(Authority: 20 U.S.C. 1221a(d))

§ 435.31 How must projects that serve individuals of limited English proficiency provide for the needs of those adults?

(a) Projects that serve individuals of limited English proficiency shall provide for the needs of these adults by providing programs designed to teach English and, as appropriate, to allow these adults to progress effectively through the adult education program or to prepare them to enter the regular program of adult education as quickly as possible.

(b) These programs may, to the extent necessary, provide instruction in the native language of these adults or may provide instruction exclusively in English.

(c) These programs must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(Authority: 20 U.S.C. 1206a(d) and 1221a)

117. A new part 436 is added to read as follows:

PART 436—ADULT MIGRANT FARMWORKER AND IMMIGRANT EDUCATION PROGRAM

Subpart A—General

Sec.

436.1 What is the Adult Migrant Farmworker and Immigrant Education Program?
436.2 What activities may the Secretary fund?
436.3 Who is eligible for an award?
436.4 What regulations apply?
436.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

436.20 What priorities may the Secretary establish?
436.21 How does the Secretary evaluate an application?
436.22 What selection criteria does the Secretary use?
436.23 What additional factor does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

436.30 How must projects that serve adults with limited English proficiency provide for the needs of those adults?

Authority: 20 U.S.C. 1213, unless otherwise noted.

Subpart A—General

§ 436.1 What is the Adult Migrant Farmworker and Immigrant Education Program?

The Adult Migrant Farmworker and Immigrant Education Program provides financial assistance for adult education programs, services, and activities to meet the special needs of adult migrant farmworkers and immigrants.

(Authority: 20 U.S.C. 1213(a))

§ 436.2 What activities may the Secretary fund?

The Secretary provides awards for planning, developing, and evaluating projects that are designed to provide adult education programs, services, and activities to meet the special needs of adult migrant farmworkers and immigrants.

(Authority: 20 U.S.C. 1213(a))

§ 436.3 Who is eligible for an award?

(a) The following entities are eligible for a direct grant under the Adult Migrant Farmworker and Immigrant Education Program:

(1) A State educational agency (SEA).

(2) A local educational agency (LEA).

(3)(i) A public or private nonprofit agency, organization, or institution.

(ii) The nonprofit agency, organization, or institution shall consult the LEA in the area proposed to be served by the applicant and give that LEA an opportunity to comment on the application.

(iii) The nonprofit agency, organization, or institution shall respond to the LEA's comments and attach the comments and responses to the application.

(4)(i) An LEA or public or private nonprofit agency, organization or institution may apply on behalf of a consortium that includes a for-profit agency, organization, or institution that can make a significant contribution to attaining the objective of the Act.

(ii) The LEA or public or private nonprofit agency, organization, or institution shall enter into a contract with the for-profit agency, organization, or institution for the establishment or expansion of programs.

(b)(1) To be eligible for a grant, the applicant must propose a project of the type described in the State's plan as appropriate for meeting the educational needs of adult migrant farmworkers and immigrants.

Cross-Reference: See 34 CFR 428.12(e).

(2)(i) An applicant other than an SEA shall obtain from the SEA a certification that the proposed project meets the requirements of paragraph (b)(1) of this section and forward that certification to the Secretary with the application.

(ii) An SEA that declines to issue a certification for a proposed project shall provide the applicant and the Secretary a written statement of its reasons for withholding certification.

(Authority: 20 U.S.C. 1203a(a) (1), (2), and 1213(a))

§ 436.4 What regulations apply?

The following regulations apply to the Adult Migrant Farmworker and Immigrant Education Program:

(a) The regulations in this part 436.

(b) The regulations in 34 CFR part 425.

(Authority: 20 U.S.C. 1213(a))

§ 436.5 What definitions apply?

The definitions in 34 CFR 425.4 apply to this part.

(Authority: 20 U.S.C. 1213(a))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 436.20 What priorities may the Secretary establish?

(a) The Secretary may announce through one or more notices published in the Federal Register the priorities for this program, if any, from the types of projects described in paragraph (b) of this section.

(b) Priority may be given to projects that meet the special needs of—

(1) Adult migrant farmworkers; or

(2) Adult migrants.

(Authority: 20 U.S.C. 1213(a))

§ 436.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 436.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 436.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the Federal Register, the Secretary may assign the reserved points among the criteria in § 436.22.

(Authority: 20 U.S.C. 1213(a))

§ 436.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Need.* (15 points)

(1) The Secretary reviews each application to determine how it addresses the literacy training needs of adult migrant farmworkers, adult immigrants, or both.

(2) The Secretary looks for information that describes—

(i) The literacy training needs of adults to be served by the project; and

(ii) The number and characteristics of the adults to be served by the project.

(b) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective plan of management that ensures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purpose of the program;

(4) How the applicant plans to use its resources and personnel to achieve each objective; and

(5) A clear description of how the applicant will select participants and ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(c) *Program factors.* (15 points) The Secretary reviews each application to determine the extent to which there is—

(1) A clear description of the services to be offered;

(2) Evidence of past successful performance using the model being proposed, if appropriate;

(3) A complete description of the methodology to be used including some or all of the following components:

(i) A thorough assessment of the needs of individual students.

(ii) Recruitment strategies that are culturally appropriate.

(iii) Flexibility in the manner that services are offered, e.g., the provision of an accessible training site and schedule and the use of aides.

(iv) Individualized treatment.

(v) Counseling; and

(4) Any ongoing and planned activities in the community that will serve the same population as the project; and the extent to which coordination with those activities is planned so that a comprehensive package of services is provided for the project participants and the project does not duplicate existing activities.

(d) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each one of the key personnel, including the project director, will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (d)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate for the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Identify expected outcomes of the participants and how those outcomes will be measured; and

(4) To the extent possible, include a third party evaluation.

(f) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(g) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(Authority: 20 U.S.C. 1213(a))

§ 436.23 What additional factor does the Secretary consider?

In addition to the criteria in § 436.22, the Secretary may consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 1213(a))

Subpart D—What Conditions Must be Met After an Award?

§ 436.30 How must projects that serve adults with limited English proficiency provide for the needs of those adults?

(a) Projects that serve adults with limited English proficiency or no English proficiency shall provide for the needs for these adults by providing programs designed to teach English and, as appropriate, to allow these adults to progress effectively through the adult education program or to prepare them to enter the regular program of adult education as quickly as possible.

(b) These programs may, to the extent necessary, provide instruction in the native language of these adults or may provide instruction exclusively in English.

(c) These programs must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(Authority: 20 U.S.C. 1206(d) and 1213(a))

8. A new part 437 is added to read as follows:

PART 437—NATIONAL ADULT LITERACY VOLUNTEER TRAINING PROGRAM

Subpart A—General.

Sec.
437.1 What is the National Adult Literacy Volunteer Training Program?
437.2 Who is eligible for an award?
437.3 What activities may the Secretary fund?
437.4 What regulations apply?
437.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

437.20 How does the Secretary evaluate an application?
437.21 What selection criteria does the Secretary use?
437.22 What additional factors does the Secretary consider?

Authority: 20 U.S.C. 1213a, unless otherwise noted.

Subpart A—General

§ 437.1 What is the National Adult Literacy Volunteer Training Program?

The National Adult Literacy Volunteer Training Program provides financial assistance for projects that train adult volunteers, especially the elderly, who wish to participate as tutors in local adult education programs under the Act.

(Authority: 20 U.S.C. 1213a(a))

§ 437.2 Who is eligible for an award?

The following entities are eligible for a direct grant or cooperative agreement under the Adult Literacy Volunteer Training Program:

(a) State educational agencies.

(b) Local educational agencies.

(c) Public or private nonprofit agencies, organizations, or institutions.

(Authority: 20 U.S.C. 1213a(a))

§ 437.3 What activities may the Secretary fund?

The Secretary supports planning, implementation, and evaluation of projects designed to train adult volunteers, especially the elderly, who wish to participate as tutors in local adult education programs under the Act.

(Authority: 20 U.S.C. 1213a(a))

§ 437.4 What regulations apply?

The following regulations apply to the National Adult Literacy Volunteer Training Program:

(a) The regulations in this part 437.

(b) The regulations in 34 CFR part 425.

(Authority: 20 U.S.C. 1213a)

§ 437.5 What definitions apply?

(a) The definitions in 34 CFR 425.4 apply to this part.

(b) The following definition also applies to this part:

Elderly means an individual 60 years of age or older.

(Authority: 20 U.S.C. 1213a(a))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 437.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 437.21.

(b) The Secretary may award up to 100 points, including a reserved 15

points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 437.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the Federal Register, the Secretary may assign the reserved points among the criteria in § 437.21.

(Authority: 20 U.S.C. 1213a(a))

§ 437.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Extent of need for the project.* (10 points) The Secretary reviews each application to determine the extent to which the project meets volunteer training needs, including consideration of—

(1) The extent to which the project will train adult volunteers, especially the elderly, who can be placed in an adult education program immediately upon completion of the training program;

(2) The extent to which the project has identified specific training needs for volunteers in the geographical area to be served for which resources are not available; and

(3) How these training needs were identified.

(b) *Project objectives.* (10 points) The Secretary reviews each application to determine the extent to which the project objectives—

(1) Are clearly stated;

(2) Are measurable; and

(3) Will result in appropriate project outcomes.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project including—

(1) The quality of the training design;

(2) The extent to which the participant recruitment and selection plan is effective and is designed to ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(3) The extent to which the plan of operation provides for the effective management and efficient administration of the project; and

(4) The extent to which the training program relates appropriately to any training programs in the community.

(d) *Evaluation.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and are appropriate to the project;

(2) Include a description of the outcomes expected for participants;

(3) Include a description of how these outcomes will be measured; and

(4) Include a plan, as a part of the project, to follow up the trainees' placement as tutors in adult education programs.

(e) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualification of the project director;

(ii) The qualifications of trainers and other key personnel;

(iii) The appropriateness of, and time allotted to, each of the assigned tasks; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualification under paragraphs (e)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(f) *Institutional commitment.* (10 points) The Secretary reviews each application to determine the extent to which the applicant's agency, organization, or institution—

(1) Has experience in providing literacy services to adults;

(2) Will provide adequate training facilities; and

(3) Will provide other appropriate resources.

(g) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1213a(a))

§ 437.22 What additional factors does the Secretary consider?

In addition to the criteria in § 437.21, the Secretary may consider the following factors in making an award:

(a) *Geographical distribution.* The Secretary may consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

(b) *Variety of approaches.* The Secretary may consider whether funding a particular applicant would contribute to the funding of a variety of approaches.

(Authority: 20 U.S.C. 1213a(a))

9. A new part 438 is added to read as follows:

PART 438—STATE PROGRAM ANALYSIS ASSISTANCE AND POLICY STUDIES PROGRAM

Subpart A—General

Sec.

438.1 What is the State Program Analysis Assistance and Policy Studies Program?
438.2 Who is eligible for an award?
438.3 What activities may the Secretary fund?
438.4 What regulations apply?
438.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

438.20 How does the Secretary evaluate an application?
438.21 What selection criteria does the Secretary use?
438.22 What additional factors does the Secretary consider?

Authority: 20 U.S.C. 1213b(a), unless otherwise noted.

Subpart A—General

§ 438.1 What is the State Program Analysis Assistance and Policy Studies Program?

The State Program Analysis Assistance and Policy Studies Program assists States in evaluating the status and progress of adult education in achieving the purposes of the Act.

(Authority: 20 U.S.C. 1213b(a))

§ 438.2 Who is eligible for an award?

(a) Public or private nonprofit agencies, organizations, or institutions are eligible for a grant or cooperative agreement under this program.

(b) Business concerns or public or private nonprofit agencies, organizations, or institutions are eligible for a contract under this program.

(Authority: 20 U.S.C. 1213b(a))

§ 438.3 What activities may the Secretary fund?

The Secretary may support the following directly or through awards:

(a) An analysis of State plans and of the findings of evaluations conducted in accordance with section 352 of the Act, with suggestions to State educational agencies for improvements in planning or program operation.

(b) The provision of an information network (in conjunction with the National Diffusion Network) on the results of research in adult education, the operation of model or innovative programs (including efforts to continue activities and services under the program after Federal funding has been discontinued), successful experiences in the planning, administration, and conduct of adult education programs, advances in curriculum and instructional practices, and other information useful in the improvement of adult education.

(c) Any other activities, including national policy studies, which the Secretary may designate, that assist States in evaluating the status and progress of adult education in achieving the purposes of the Act.

(Authority: 20 U.S.C. 1213b(a))

§ 438.4 What regulations apply?

The following regulations apply to the State Program Analysis Assistance and Policy Studies Program:

(a) The Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1 and the Department of Education Acquisition Regulation (EDAR) in 48 CFR Chapter 34 (applicable to contracts).

(b) The regulations in this part 438.

(c) The regulations in 34 CFR part 425.

(Authority: 20 U.S.C. 1213b(a))

§ 438.5 What definitions apply?

The definitions in 34 CFR 425.4 apply to this part.

(Authority: 20 U.S.C. 1213b(a))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 438.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 438.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 438.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the Federal Register, the Secretary may assign the reserved points among the criteria in § 438.21.

(Authority: 20 U.S.C. 1213b(a))

§ 438.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews each application to determine how well the objectives of the proposed project will assist States in evaluating the status and progress of their adult education programs.

(b) *Extent of need for the project.* (10 points) The Secretary reviews each application to determine the extent to which the proposed project meets specific needs, including consideration of—

(1) The needs addressed by the project;

(2) How the applicant identified those needs;

(3) How those needs relate to project objectives; and

(4) The benefits to be gained by meeting those needs.

(c) *Plan of operation.* (20 points) The Secretary reviews each aplication to determine the quality of the plan of operation for the proposed project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program; and

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective.

(d) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the proposed project, including—

(i) The qualifications and experience of the project director, if one is to be used;

(ii) The qualifications and experience of each of the other key personnel to be used on the project;

(iii) The time that each person referred to in paragraphs (d)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (d)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the proposed project activities; and

(2) Costs are necessary and reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Dissemination plan.* (10 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including—

(1) The extent to which the project is designed to yield outcomes that can be readily disseminated;

(2) A description of the types of materials the applicant plans to make available and the methods for making the materials avialable; and

(3) Provisions for publicizing the findings of the project at the local, State, and national levels, as appropriate.

(Authority: 20 U.S.C. 1213b(a))

§ 438.22 What additional factors does the Secretary consider?

In addition to the criteria in § 438.21, the Secretary may consider the following factors in making an award:

(a) *Geographic distribution.* The Secretary may consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

(b) *Variety of approaches.* The Secretary may consider whether funding a particular applicant would contribute to the funding of a variety of approaches to assisting States in evaluating the status and progress of their adult education programs.

(Authority: 20 U.S.C. 1213b(a)).

10. A new part 441 is added to read as follows:

PART 441—ADULT EDUCATION FOR THE HOMELESS PROGRAM

Subpart A—General

Sec.

441.1 What is the Adult Education for the Homeless Program?
441.2 Who may apply for an award?
441.3 What activities may the Secretary fund?
441.4 What regulations apply?
441.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

441.20 How does the Secretary evaluate an application?
441.21 What selection criteria does the Secretary use?
441.22 What additional factor does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

441.30 How may an SEA operate the program?

Authority: 42 U.S.C. 11421, unless otherwise noted.

Subpart A—General

§ 441.1 What is the Adult Education for the Homeless Program?

The Adult Education for the Homeless Program provides financial assistance to State educational agencies (SEAs) to enable them to implement, either directly or through contracts or subgrants, a program of literacy training and basic skills remediation for adult homeless individuals within their State.

(Authority: 42 U.S.C. 11421(a))

§ 441.2 Who may apply for an award?

State educational agencies in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands may apply for an award under this program.

(Authority: 42 U.S.C. 11421(d))

§ 441.3 What activities may the Secretary fund?

The Secretary provides grants or cooperative agreements for projects that implement a program of literacy training and basic skills remediation for adult homeless individuals. Projects must—

(a) Include a program of outreach activities; and

(b) Coordinate with existing resources such as community-based organizations, VISTA recipients, the adult basic education program and its recipients, and nonprofit literacy-action organizations.

(Authority: 42 U.S.C. 11421(a))

§ 441.4 What regulations apply?

The following regulations apply to the Adult Education for the Homeless Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, Nonprofit Organizations) for grants, including cooperative agreements, to institutions of higher education, hospitals, and nonprofit organizations.

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) for grants, including cooperative agreements, to State and local governments, including Indian tribal governments.

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this part 441.

(Authority: 42 U.S.C. 11421)

§ 441.5 What definitions apply?

(a) *Definitions in the Act.* The following terms used in this part are defined in sections 103 and 702(d), respectively, of the Steward B. McKinney Homeless Assistance Act (Pub. L. 100–77, 42 U.S.C. 11301 *et seq.*):

Homeless or homeless individual.
State.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Contract
EDGAR
Grant
Grantee
Local educational agency
Nonprofit
Private
Project
Public
Secretary
State educational agency

(c) *Other definitions.* The following definitions also apply to this part:

Act means the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, 42 U.S.C. 11301 *et seq.*).

Adult means an individual who has attained 16 years of age or who is beyond the age of compulsory school attendance under the applicable State law.

Basic skills remediation and *literacy training* mean adult education for homeless adults whose inability to speak, read, or write the English language constitutes a substantial impairment of their ability to get or retain employment commensurate with their real ability, that is designed to help eliminate this inability and raise the level of education of those individuals with a view to making them less likely to become dependent on others, to improving their ability to benefit from occupational training and otherwise increasing their opportunities for more productive and profitable employment, and to making them better able to meet their adult responsibilities.

Eligible recipients means public or private agencies, institutions, or organizations, including religious or charitable organizations, eligible to apply for a contract from a State educational agency to operate projects, services, or activities.

Outreach means activities designed to—

(1) Identify and inform adult homeless individuals of the availability and benefits of the Adult Education for the Homeless Program; and

(2) Assist those homeless adults, by providing active recruitment and reasonable and convenient access, to participate in the program.

(Authority: 42 U.S.C. 11421)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 441.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 441.21.

(b) The Secretary awards up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 441.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 441.21.

(Authority: 42 U.S.C. 11421)

§ 441.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (25 points) The Secretary reviews each application to determine the extent to which—

(1) The program design is tailored to the literacy and basic skills needs of the specific homeless population being served (for example, designs to address the particular needs of single parent heads of households, substance abusers, or the chronically mentally ill);

(2) Cooperative relationships with other service agencies will provide an integrated package of support services to address the most pressing needs of the target group at, or through, the project site. Support services must be designed to bring members of the target group to a state of readiness for instructional services or to enhance the effectiveness of instructional services. Examples of appropriate support services to be provided and funded through cooperative relationships include, but are not limited to—

(i) Assistance with food and shelter;
(ii) Alcohol and drug abuse counseling;
(iii) Individual and group mental health counseling;
(iv) Health care;
(v) Child care;
(vi) Case management;
(vii) Job skills training;
(viii) Employment training and work experience programs; and
(ix) Job placement;

(3) The SEA's application provides for individualized instruction, especially the use of individualized instructional plans or individual education plans that are developed jointly by the student and the teacher and reflect student goals;

(4) The program's activities include outreach services, especially interpersonal contacts at locations where homeless persons are known to gather, and outreach efforts through cooperative relations with local agencies that provide services to the homeless; and

(5) Instructional services will be readily accessible to students, especially the provision of instructional services at a shelter or transitional housing site.

(b) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs in section 702 of the Act, including consideration of—

(1) (i) An estimate of the number of homeless persons expected to be served and the number of homeless adults to be served within each participating school district of the State.

(ii) For the purposes of the count in paragraph (b)(1)(i) of this section, an eligible homeless adult is an individual who has attained 16 years of age or who is beyond the age of compulsory attendance under the applicable State law; who does not have a high school diploma, a GED, or the basic education skills to obtain full-time meaningful employment; and who meets the definition of "homeless or homeless individual" in section 103 of the Act;

(2) How the numbers in paragraph (b)(1) of this section were determined;

(3) The extent to which the target population of homeless to be served in the project needs and can benefit from literacy training and basic skills remediation;

(4) The need of that population for educational services, including their readiness for instructional services and how readiness was assessed; and

(5) How the project would meet the literacy and basic skills needs of the specific target group to be served.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The establishment of written, measurable goals and objectives for the project that are based on the project's overall mission;

(2) The extent to which the program is coordinated with existing resources such as community-based organizations, VISTA recipients, adult basic education program recipients, nonprofit literacy action organizations, and existing organizations providing shelters to the homeless;

(3) The extent to which the management plan is effective and ensures proper and efficient administration of the project;

(4) How the applicant will ensure that project participants otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(5) If applicable, the plan for the local application process and the criteria for evaluating local applications submitted by eligible applicants for contracts or subgrants.

(d) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of key personnel the State plans to use on the project, including—

(i) The qualifications of the State coordinator/project director;

(ii) The qualifications of each of the other key personnel to be used by the SEA in the project;

(iii) The time that each person referred to in paragraphs (d) (1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (d) (1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience in providing services to homeless populations;

(iii) Experience and training in project management; and

(iv) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The budget is presented in enough detail for determining paragraphs (e) (1) and (2) of this section.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Objectively, and to the extent possible, quantifiably measure the success, both of the program and of the participants, in achieving established goals and objectives;

(2) Contain provisions that allow for frequent feedback from evaluation data provided by participants, teachers, and community groups in order to improve the effectiveness of the program; and

(3) Include a description of the types of instructional materials the applicant plans to make available and the methods for making the materials available.

(Approved under OMB Control No. 1830-0506)

(Authority: 42 U.S.C. 11421)

§ 441.22 What additional factor does the Secretary consider?

In addition to the criteria in § 441.21, the Secretary may consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

BEST COPY AVAILABLE

(Authority: 42 U.S.C. 11421)

Subpart D—What Conditions Must be Met After an Award?

§ 441.30 How may an SEA operate the program?

An SEA may operate the program directly, award subgrants, or award contracts to eligible recipients. If an SEA awards contracts, the SEA shall distribute funds on the basis of the State-approved contracting process.

(Authority: 42 U.S.C. 11421(a)).

Note: This appendix is published in the Federal Register with the final regulations but is not to be codified in the Code of Federal Regulations.

Appendix A—Summary of Comments and Responses

The following is a summary of the comments received on the notice of proposed rulemaking for the State-Administered Adult Education Programs and Secretary's Discretionary Programs of Adult Education published on April 12, 1989. Each comment is followed by a discussion that indicates why a change has been made or why no change is considered necessary. Specific comments are arranged in order of the sections of the final regulations to which they pertain.

Part 425—Adult Education—General Provisions

Definitions (Section 425.4)

Comment: One commenter expressed concern about the definitions of adult basic education, adult secondary education, and adults with limited English proficiency (LEP). The commenter interpreted these definitions as requiring States to group students by "categorical definitions based on a grade level kind of achievement or implied ability level." The commenter also thought that the regulations precluded programs from serving LEP students if those students had attained sixth grade basic literacy. The commenter suggested that the regulations add at least an "instructional definition" relating to "functional literacy as situational achievement." The commenter stated that adding "instructional definitions" would "reduce confusion between instructional type and program category" and could "provide insight into what curriculum or pedagogy can be considered, what can be taught and how it can be taught."

Discussion: The regulations allow, but do not require, States to use grade level measures for distinguishing between adult basic and adult secondary education. Nothing in the regulations requires States to use a specific type of instruction for either adult basic or secondary education, and the Secretary believes it would be appropriate to do this. The commenter apparently misunderstood the regulations' treatment of LEP students. States have flexibility to address any particular needs these students may have at both the adult basic and secondary levels.

Changes: None.

Definition of Expansion (Section 425.4)

Comment: A commenter suggested that expansion should not be defined only as increasing the number of agencies—other than LEAs—used to provide adult education and support services in order to increase the number of adults served. The commenter sees this definition in conflict with the legislative purpose to improve educational opportunities. The commenter stated that in some instances better services could be provided by reducing the number of deliverers of services but increasing the breadth and scope of services available to more participants. The commenter, therefore, recommended that expansion be redefined to include an increase in agencies, sites, available services, or number of students served.

Discussion: The definition of expansion implements section 342(c) (3) and (4) of the Act. These provisions specifically require that agencies other than LEAs be used to expand the delivery of services. The Secretary believes that this expansion should include an increased number of agencies other than LEAs, in order to increase the number of adults served. The Secretary agrees that programs should be improved in other ways; however, these improvements should not be used in lieu of the type of expansion contemplated by the regulatory definition.

Changes: None.

Definition of State Administrative Costs (Section 425.4)

Comments: Several commenters raised questions concerning the definition of State administrative costs. Concerns centered on the exclusion of ancillary activities, such as evaluation, teacher training, dissemination, technical assistance, and curriculum development, from the definition. Some commenters interpreted the regulations as prohibiting the use of funds for these activities. One commenter supported the definition since it excludes ancillary services from the statutory cap on State administrative costs.

Discussion: The Secretary agrees with the commenters that these designated activities are vital to an effective adult education program. The exclusion of these activities from the definition is generally carried over from previous regulations. Their continued exclusion helps clarify that these activities are allowable costs that are not included in the statutory cap on State administrative costs that becomes effective July 1, 1991. The Secretary has decided to exclude the enumerated activities from the definition, and has decided to modify the definition to describe these activities as "additional" rather than "ancillary."

Change: The definition now refers to additional allowable activities that a State may conduct in addition to its administrative responsibilities.

Part 426—Adult Education State-Administered Basic Grant Program

Administrative Staff (Section 426.3(b)(5))

Comments: Several commenters, while supporting the need for the assignment of qualified personnel to administer the program, pointed out that the regulations do not define "qualified" and do not provide for Federal enforcement of personnel qualifications.

Discussion: The purpose of this provision is to emphasize the factors a State must consider in assigning personnel to carry out its responsibilities under the Act. The Secretary sees no need to prescribe the exact type of education and experience that make a State's personnel "qualified" to carry out these responsibilities.

Changes: None.

Tuition and Fees (Section 426.10(b)(7))

Comments: Several commenters took exception to the requirement that State applications include an assurance that prohibits charges or required purchases for participants in adult basic education programs. These commenters thought the tuition and fees could be used as additional revenue for matching, purchasing additional materials, or program expansion. Several other commenters endorsed the prohibition against charging adult basic education students, since fees could be construed as barriers to participation. Other commenters recommended a sliding-scale fee structure, a waiver for the indigent, or a voluntary fee. One commenter agreed with the prohibition on charges for instructional services, but recommended that participants be allowed to purchase textbooks. Another commenter favored a charge for books and a modest fee for General Education Development (GED) studies.

Discussion: Historically, the Secretary has supported a prohibition on charges for adult basic education services, or requiring participants to purchase books or other materials. This policy furthers the broad statutory purpose to reach educationally disadvantaged adults. It has been reflected in past program regulations and is continued in § 426.10(b)(7). Nothing in the legislative history of Public Law 100-297 indicates that Congress disapproved of this policy. Moreover, the Secretary believes that tuition and fees would actually undermine the statute's requirements regarding efforts to reach underserved adults and to attract and assist their meaningful participation in adult education. Undereducated adults are precisely those persons least likely to have adequate financial resources available for educational expenses.

Even if the Secretary were to modify the prohibition, States and local recipients still could not apply tuition and fees collected from students toward meeting matching, cost sharing, or maintenance of effort requirements of a program. See 34 CFR 76.534.

With regard to the purchase of books or materials, there is nothing in the referenced program assurance to prevent an adult basic education participant from purchasing books or other materials should the participant desire to do so. The prohibition does not allow these purchases to be required. The Secretary wishes to point out that this prohibition applies only to adult basic education programs, services, and activities. Therefore, States are permitted to assess necessary and reasonable charges for adult secondary education programs, services, and activities, such as services that prepare participants for high school equivalency diplomas or GED examinations.

Changes: None.

Public Comment on State Plans (Section 426.11(b))

Comment: One commenter expressed concern that adequate notice may not be given for public meetings on the State plan. The commenter favored public notification at least three weeks in advance through invitations and the news media.

Discussion: Section 342(a)(2) of the statute requires an SEA to conduct public hearings so that all segments of the public will have an opportunity to present their views and recommendations regarding the State plan. Section 342(a)(2) also requires that these hearings be preceded by appropriate and sufficient notice. The regulatory language in § 328.11(b) is based on the statute. While the Secretary is very supportive of ensuring that appropriate and sufficient notice is given to the public, the Secretary does not believe it is necessary to be more prescriptive in this requirement, since States should be allowed to structure public participation according to local needs and circumstances.

Change: None.

State Plan (Section 426.12)

Comment: A commenter saw § 426.12 as creating redundancies in the required content of a State plan. Particular attention was directed to the descriptions required on expanding the delivery system, outreach, and providing for the needs of limited English proficient adults. The commenter suggested that these areas be consolidated and included in § 426.12(a)(2)(ii)(A). Likewise, the commenter suggested that the use of volunteers not be addressed separately but be included as a part of the § 426.12(a)(13).

Discussion: The regulations follow the general format established by the Act for the components of the State plan. Neither the statute nor the regulations require redundant information. The Secretary does not require the States to submit their plans in a particular format. However each plan must satisfy the requirements of the statute and regulations.

Changes: None.

Program Goals (Section 426.12(a)(2))

Comments: Some commenters requested clarification of the meaning of "expected outcomes" as they relate to programs, services, and activities that must be described in a State plan. One commenter asked who decides which outcomes are important.

Discussion: Neither the statute nor the regulations make any attempt to prescribe specific outcomes. The SEA has the responsibility to identify, determine the importance of, and define the expected outcomes to be derived from programs, services, and activities under its State plan. In doing so, it should design and administer a statewide program that best meets the adult education needs of all segments of the adult population, especially adults who are educationally disadvantaged. Contributing to the State's decisions are the public and private sectors through their involvement in the development of the State plan. A State advisory council, if established or designated, also makes a contribution.

Changes: None.

Addressing Needs of Special Populations (Section 426.12(a)(9))

Comment: One commenter opposed the requirement that the State plan describe how the particular educational needs of designated special populations in the State will be addressed. The commenter suggested that the provision was unnecessary and would generate needless paperwork. The commenter suggested that a better provision would simply require States to include a needs assessment of these special populations with an indication of whether the assessment suggests a programmatic emphasis on one population or another. The commenter suggested that a good needs assessment will identify those particular populations that merit a greater claim on resources.

Discussion: Section 426.12(a)(9) implements a requirement in section 342(c)(7) of the statute. In addition, both the statute and regulations require a thorough needs assessment of the spectrum of adults eligible for services as part of the formulation of a State plan. The Secretary agrees with the commenter that a needs assessment will help a State in directing its Federal, State, and local resources to those populations most in need of educational services.

Changes: None.

Review of State Plan (Section 426.13 (b) and (c))

Comments: One commenter suggested that States submit the State plan only to the State Single Point of Contact rather than to the entities in § 426.13(b) and (c).

Discussion: Section 342(a)(3)(A) of the Act requires that an SEA provide specific State entities having responsibility for vocational education, the Job Training Partnership programs, and postsecondary education an opportunity to review and comment on the State plan. That section further requires that the State plan contain the comments of those entities as well as the State's responses to the comments. Section 342(a)(3)(B) of the Act sets forth similar provisions regarding the State advisory council, if a council has been established. The regulations in § 426.13(b) and (c) implement the statutory language. States must also follow any applicable State procedures respecting the State Single Point of Contact. See § 425.3(a)(5), which references the Department's regulations on intergovernmental review.

Changes: None.

Approval of State Plan Amendments (Section 426.23)

Comment: One commenter suggested that the Secretary be allowed a shorter response time for the approval of State plan amendments. The commenter suggested a maximum of 30 days be allowed since programs may have to change quickly.

Discussion: Section 426.23 follows section 351(b) of the statute, which allows the Secretary a maximum of 60 days to take action on a State plan amendment. While it would be inappropriate to change this statutory provision, the Secretary anticipates that most amendments will be acted on in less than 60 days. The Secretary will respond to any proposed amendment as quickly as possible.

Changes: None.

Multi-Year Grants or Contracts (Section 426.31 (a) and (b))

Comment: A commenter suggested that annual awards are often redundant for established, long-term providers. The commenter further suggested that the regulations should give SEAs discretion to award multi-year grants of contracts.

Discussion: These regulations permit multi-year grants or contracts as well as annual awards. Note that States must nevertheless ensure that they generally give preference to local eligible recipients that have a demonstrated capacity to recruit and serve educationally disadvantaged adults. See § 426.31(a). Note also that these regulations strengthen a State's responsibilities to review and evaluate projects—however long their duration—in order to ensure their effectiveness. See §§ 426.22 and 426.46.

Changes: None.

Approval of Local Applications (Section 426.31(c)(1))

Comments: Several commenters suggested that the language of § 426.31(c)(1) should define more clearly the scope of one of the descriptions required of a local applicant. One commenter recommended that the language be changed to read "a description of current programs, activities, and services receiving assistance from Federal, State, and local sources that support the purposes of the State plan in the geographical area proposed to be served by the applicant." Another commenter suggested that the provision be changed to "a description of current programs, activities, and services receiving assistance from Federal, State, and local adult education sources in the geographic area proposed to be served."

Discussion: The Secretary agrees that the language needs clarification. The Secretary believes the provision is best clarified by requiring a local applicant to provide "a description of current programs, activities, and services receiving assistance from Federal, State, and local sources that provide adult education in the geographic area proposed to be served by the applicant."

Changes: The language of § 426.31(c)(1) has been clarified.

Coordination of Programs (Section 426.31(c)(3))

Comment: Section 426.31(c)(3) requires that a local application contain assurances that the adult education programs, services, or activities that the applicant proposes to provide are coordinated with and not duplicative of programs, services, or activities made available to adults under other Federal, State, and local programs. One commenter suggested that this assurance cover only unnecessary duplication.

Discussion: The language of section 322(a)(3) of the statute clearly states that Federally assisted adult education must not be "duplicative" of other programs. This indicates that no duplication is considered necessary.

Changes: None.

Corrections Education and Education for Other Institutionalized Individuals (Section 426.32(a)(1)(iv))

Comment: One commenter suggested adding "high school equivalency, external diploma, and GED Testing" to the term "secondary school credit programs" in § 426.32(a)(1)(iv). The commenter suggested that this would more adequately describe the universe of programs in secondary education for adults that may be provided in programs for corrections education and education for other institutionalized individuals.

Discussion: Section 326(a)(1) of the Act lists the types of educational services that may be a part of academic programs for corrections education and education for other institutionalized individuals. "Secondary school credit programs" is included in this list. The Secretary agrees that this term includes high school equivalency, external diploma, or General Education Development (GED). The Secretary also believes that it is unnecessary to specify this in regulations.

Changes: None.

Supportive Services for Criminal Offenders (Section 426.32(a)(6))

Comment: One commenter recommended that § 426.32(a)(6) include a list of the authorized support services for criminal offenders or that a definition of supportive services be provided.

Discussion: Section 326(a)(6) of the statute authorizes supportive services for criminal offenders in corrections education programs. The statute also provides for special emphasis on coordination of educational services with agencies furnishing services to criminal offenders after their release. Because the needs for these services may vary, the Secretary believes that there is no need, at this time, to provide a comprehensive definition of authorized support services. In general, these services should assist criminal offenders in the transition from education in their institutions to education in the community.

Changes: None.

Special Experimental Demonstration Projects and Teacher Training Projects (Section 426.33(b)(2))

Comment: One commenter recommended eliminating the descriptions and assurances required in local applications for special experimental demonstration projects and teacher training projects under section 353 of the statute. The commenter also called for the elimination from the regulations of the application requirement to indicate the project's continuation upon the completion of Federal assistance under the statute. The commenter suggested that the SEA be given sole responsibility for determining criteria for approval and components of applications for these projects.

Discussion: The descriptions and assurances delineated in § 426.31(c) and referenced in § 426.33(b)(2)(i) implement section 322(a)(3) of the statute. These descriptions and assurances apply to all local applications to be approved by the SEA, including applications under section 353 of the Act. The requirements relating to plans for continuation are created by section 353(b) of the Act.

Changes: None.

State Administrative Costs (Section 426.40(a))

Comments: Several commenters proposed that the five percent cap on State administrative costs be raised.

Discussion: Section 331(c) of the Act places a limitation on State administrative costs. Beginning with grants awarded on July 1, 1991, an SEA may use no more than five percent of its grant or $50,000, whichever is greater, to pay the costs of its administration of the State's program. For grants awarded prior to that date, an SEA may determine what percent of its grant is necessary and reasonable for State administrative costs. These provisions are implemented in § 426.40(a) of the regulations.

Changes: None.

Local Administrative Costs (Section 426.40(b))

Comments: Several commenters addressed local administrative cost limits. One commenter endorsed energetic vigilance and scrutiny of requests to negotiate for greater administrative costs. Another saw the provision that permits negotiation for a higher percentage as an area for potential abuse, asked if there are guidelines on negotiating administrative costs, and suggested that the five percent limit be non-negotiable. Conversely, other commenters expressed the view that the five percent cap, although negotiable, is too low and seems almost punitive. Still another commenter indicated that good programs require strong, full-time administrative leadership, and that an SEA should have the flexibility to permit up to 20 percent for local administrative costs if justified by a local provider of service. Another commenter suggested that the five percent cap all but excludes community and volunteer organizations with low fiscal bases, and therefore proposed a higher limit of ten percent.

Discussion: Section 323 of the Act clearly imposes a five percent limitation on local administrative costs but also provides for an SEA to negotiate a higher rate. Congress principal purpose was to restrict local administrative costs in order to ensure that a maximum amount of funds be used for direct services. However, Congress also recognized that in some cases five percent would provide an insufficient amount of local administrative costs. Therefore, the statute provides for the SEA to negotiate with the local recipients in order to determine an adequate level of funds to be used for non-instructional purposes.

The Secretary does not believe that detailed, prescriptive guidance on what constitutes a need for a higher administrative cost rate is warranted at this time. The Act does not impose such a requirement and the Secretary believes that within the framework of the law and congressional intent, States should have the flexibility to develop their own guidelines.

Changes: None.

Maintenance of Effort (Section 426.42)

Comments: Several commenters addressed the maintenance of effort provisions. Two commenters questioned the omission of any provision to allow a minimal percentage variation. Other commenters expressed the concern that only State funds, or only those funds under the direct authority of the SEA, should be considered for maintenance of effort purposes. One commenter viewed the maintenance of effort requirement as a factor contributing to inaccuracies in reports of the actual non-Federal level of effort and inhibiting the expansion of programs to community-based and volunteer organizations that do not have the fiscal base of public institutions.

Discussion: Section 361(b) of the statute states that "No payment may be made to any State from its allotment for any fiscal year unless . . ." the maintenance of effort requirement is met. Section 426.42 implements this statutory provision. As described in § 426.43, the statute does make provision for a one-year waiver of the maintenance of effort requirement. A waiver may be granted only in the case of certain exceptional or uncontrollable circumstances.

With regard to the expenditures to be considered in determining a State's compliance with the maintenance of effort requirement, the statute requires broadly that a State maintain expenditures "for adult education from non-Federal sources." The Secretary believes that this phrase should be interpreted to include certain expenditures in addition to those made from State funds. All of the expenditures that the Secretary considers in determining compliance relate to adult education programs, services, and activities that receive assistance from, or are directly conducted by, the SEA or another State agency. A more restrictive definition would not accurately measure the State's non-Federal level of effort for adult education.

Changes: None.

Program Reviews and Evaluations (Section 426.46(b))

Comments: Several comments were received on the proposed provision in § 426.46(b) that would require an SEA to include standardized test data in its review of the effectiveness of adult education programs, services, and activities. One commenter recommended that the provision concerning standardized test data either be deleted or made optional. Another commenter asked whether States must obtain standardized test data for every student. Some commenters interpreted the regulations as precluding what they regarded as better or more effective assessment methods, and suggested that there are many other criteria to use in determining program effectiveness other than standardized test analyses. Commenters agreed that measures of accountability are needed, but suggested they be brief and non-threatening to learners. The commenters stated that students should be assessed in terms of skill strengths and weaknesses rather than by grade level norms. Commenters also raised questions about benchmarks to determine program effectiveness, criteria or guidelines to be used in the selection of assessment instruments for special populations in adult education, and standards for personnel who administer assessments in the field. Other commenters suggested that the Department identify a variety of standardized tests or specify which assessment instruments are appropriate for the various populations of adults.

Discussion: The requirements in § 426.46(b) for reviewing programs build on section 352 of the statute. Section 352 specifically requires use of standardized test data to determine the effectiveness of programs.

A test is standardized if it is based on a systematic sampling of behavior, has data on reliability and validity, is administered and scored according to specific instructions, and is widely used. A standardized test may be norm-referenced or criterion-based. The tests may, but need not, relate to readability levels, grade level equivalencies, or competency-based measurements.

The Secretary believes that it is inappropriate for the Department to select or approve the selection of specific standardized tests to be administered in adult education programs. SEAs must determine which standardized tests are appropriate. The Secretary wishes to underscore that States are required to gather and analyze data in addition to standardized test data in order to determine whether programs are effective. States have flexibility to determine which criteria measure effectiveness within the framework set forth for reviews and evaluations in § 426.46. Sections 426.12(a)(15) and 426.22 highlight a State's responsibilities to improve programs through reviews and evaluations. The Secretary does not believe that a State need have standardized test data for every student. However, the State must have sufficient standardized test data to determine the extent to which its programs and grant recipients meet the goals of the State plan and have improved their capacity to achieve the purposes of the Act. See § 426.46(b). Note that the Secretary may require certain data—other than standardized test data—for all students in a particular project (see, for example,

§ 428.46(c)(3)(iv)], or for all students in the State (see, for example, § 428.10(b)[10]; and pertinent provisions in § 428.60).

Changes: None.

Program Reviews and Evaluations (Section 428.46(c))

Comments: Several commenters suggested eliminating the requirement to consider the "effect of the program on the subsequent work experience of participants, completers, and graduates" as a factor in evaluating programs. The commenters suggested that it is not feasible to collect these data on a systematic basis without excessive expenditures and that the requirements would place an undue burden on the States.

Discussion: Section 428.46(c)(3) builds on the requirements in section 353(2) of the statute. The Secretary sees these data relating to employment and employability of participants as valuable measures of achievements through the program. Economic achievements, along with educational and societal achievements, have been sought since the inception of the federally assisted effort on behalf of undereducated adults.

A State may choose to use a portion of its Federal allotment or State matching funds to obtain the required evaluation. Expenditures for this activity are not considered State administrative costs.

Changes: None.

Reporting (Section 428.46(d))

Comment: A commenter, while not opposing data acquisition and reporting requirements, suggested that allowing amendments to reports and a longer time period for compiling complete data would improve the system and strengthen the accuracy of the data. The commenter also suggested that reporting requirements contained in these regulations be expanded to include additional programs providing education to adults, such as those administered and funded through the Departments of Health and Human Services, Labor, and Defense. This was proposed as a means to provide a more complete and accurate understanding of adult education in the Nation.

Discussion: Historically, States have been required to submit reports within 90 days of the close of each program year. This requirement is carried over into § 428.46(b). Also see 34 CFR 80.40 and 80.41. A State may receive an extension of the due date based on a justified request to the Department. A State may also amend its reports if determined necessary.

The Secretary does not have authority to set reporting requirements for programs funded and administered through other agencies of the Federal Government.

Changes: None.

State Advisory Councils (Sections 428.51, 428.52, and 428.53)

Comments: Several commenters expressed concerns about the appointment and operation of State advisory councils. While supporting a council as an important element of the program, one commenter suggested either eliminating or making less restrictive the regulatory requirements relating to representation, responsibilities, the Governor's authority with respect to the level of funding, and use of State administrative funds to defray expenses of councils.

Discussion: The regulatory language relating to council representation, responsibilities, and the Governor's authority to determine funding levels follows the framework of the statute. In accompanying legislative history, Congress also indicated its intention that Federal funds used to support a council be considered part of State administrative costs. (See Item 17 of the Conference Report, House Report No. 100-567, 100th Cong. 2d Sess. p. 383.) Historically, a similar requirement has been included in previous program regulations.

The Secretary recognizes that a State may wish to use non-Federal funds to establish an advisory body that is not subject to the provisions in section 332 of the statute and these regulations. Nothing in the statute or regulations forbids this. However, the non-Federal funds used to support the advisory body must not be used to help meet the State's cost-sharing requirements under the State plan. Of course if a council is supported at least in part with Federal funds, it must meet the statutory and regulatory requirements.

Changes: Section 428.53 has been added to clarify that the requirements of the statute and regulations apply only to councils supported with Federal funds. This new section permits a State to establish an advisory body that is not subject to the statutory and regulatory requirements if the advisory body is wholly supported with non-Federal funds. This new section also explains that the non-Federal funds may not be used for cost-sharing.

Part 432—National Workplace Literacy Program

Definitions of Workplace Literacy and Technology (Section 432.5)

Comment: One commenter suggested that the regulations define terms such as "workplace literacy" and "technology." The commenter was particularly interested in establishing the scope of authorized activities related to technologies such as computers.

Discussion: Section 371(a)(3) of the statute broadly defines the types of activities that may be funded under this program. Section 432.3 reiterates this definition. The Secretary believes it is unnecessary to elaborate on the definition at this time. It would also be unwise to give abstract guidance on whether computers can be used in particular workplace literacy projects. As a general matter, nothing in the statute or regulations precludes use of computers as a means of providing instruction if this is necessary and reasonable under the circumstances of a project.

Changes: None.

Selection Criteria—Program Factors (Section 432.22(a)(1))

Comment: One commenter requested that limits be placed or examples be given of types of activities authorized under § 432.22(a)(1).

Discussion: Section 432.22(a)(1) is part of a selection criterion and does not attempt to define the scope of authorized activities under this program. The types of activities that are authorized under this program are listed in § 432.3.

Changes: None.

Selection Criteria—Quality of Training (Section 432.22(c))

Comment: One commenter recommended that § 432.22(c) include the additional language: "provide training resulting in demonstrated mastery of competencies needed in the workplace and in adult life." The commenter suggested that workplace literacy programs will be most effective if they teach skills related to current and emerging job requirements and to "broader adult needs."

Discussion: The commenter's concern regarding the relationship of the instruction to the requirements of the workplace is addressed in § 432.22(a). That section criterion references, among other things "a strong relationship between skills taught and the literacy requirements of actual jobs, especially the increased skill requirements of the changing workplace." The commenter's reference to "broader adult needs" misses the focus of this program, which is specifically on workplace literacy. It would be inappropriate to encourage or fund projects including services not directly related to workplace literacy.

Changes: None.

Selection Criteria—Quality of Training (Section 432.22(c)(2))

Comment: One commenter was concerned about the selection criterion in § 432.22(c)(2). The commenter suggested that individualized educational plans (IEP) are not usually required for English-as-a-second language (ESL) students. Further, the commenter proposed that a distinction be made between requirements for ESL, basic skills remediation, and GED training.

Discussion: Section 432.22(c)(2) is the selection criterion the Secretary uses to evaluate the quality of training to be provided in proposed projects. Nothing in this criterion requires an applicant to use IEPs. However, the Secretary believes that IEPs provide benefits in all types of workplace literacy programs, including those that provide work-related ESL training. Consequently, the quality of an applicant's proposed training is regarded more favorably to the extent it uses IEPs. This increases the likelihood that the application will be selected for funding.

Changes: None.

Selection Criteria—Evaluation Plan (Section 432.22(f))

Comment: One commenter questioned whether the evaluation plans described in § 432.22(f) should include the effect of the program on the participants' job advancement and job performance in the unionized industries. The commenter felt job advancement may be based solely on factors like seniority, and that improvements in performance may have little relationship to the program provided. The commenter also felt that such information was especially difficult to obtain in unionized industries, and that the regulations inappropriately called for the establishment of a control group.

Discussion: The Secretary believes that an evaluation plan should be reviewed on a number of factors. These include the extent to which the plan will evaluate the effects of the program on the job advancement and the job performance of the participants. These effects are relevant for any industry, regardless of whether it is unionized. Section 432.22(f) neither requires nor precludes the establishment of a control group.

Changes: None.

Comment: One commenter interpreted § 432.22(f) as requiring quantifiable data on program effectiveness for the evaluation plan. The commenter suggested that the recordkeeping needed to provide the information would require excessive paperwork.

Discussion: The Secretary believes that a project should produce quantifiable data to the extent possible. The Secretary also believes that it is reasonable to regard an evaluation plan more favorably to the extent that it will produce data that are quantifiable. However, nothing in § 432.22(f) requires excessive paperwork.

Changes: None.

Rural Areas (Section 432.23)

Comment: One commenter suggested that rural areas should be specifically mentioned in § 432.23, which authorizes the Secretary to consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

Discussion: The language regarding "geographical distribution" may include consideration of rural areas, as well as other factors.

Changes: None.

Adults With Limited English Proficiency (Section 432.31)

Comment: One commenter asked whether § 432.31 permits instruction of participants exclusively in their native language so that they can progress in literacy in that language before being introduced to English.

Discussion: The purpose of the National Workplace Literacy Program is to teach literacy skills specifically needed in the workplace. Projects serving adults with limited English proficiency or no English proficiency may teach these skills, to the extent necessary, in the adults' native language, or exclusively in English. Note that this program does not permit the teaching of general literacy skills that are not directly related to the workplace either in the native language or in English.

Changes: Section 432.21 has been clarified. Parallel classifications have also been made in § 432.52, which deals with the State-administered Workplace Literacy Program.

Union Participation (Part 432)

Comment: One commenter suggested that workers, through their unions, actively participate in all stages of program planning and operation. The commenter recommended that detailed guidance requiring union participation in funded activities be included in the final rule. The commenter requested that grant applicants be required to consult with appropriate labor organizations and include the written concurrence of these organizations in their applications for funding. The commenter also recommended that the extent of worker and union participation in program planning, implementation and evaluation be included in the selection criteria for funding.

Discussion: Section 371(a)(1) of the Act permits, but does not require, a labor organization to be a partner in an application under this program. This provision is reflected in § 432.2 (a) and (b). As indicated in § 432.2(c), a labor organization, like any partner, must participate in a joint application for funding and sign a partnership agreement. The Secretary does not believe that partnerships that do not include a labor organization should be required to consult with a labor organization and obtain its written concurrence before filing an application. Nevertheless, the Secretary encourages all partnerships to involve workers and, as appropriate, labor organizations in identifying how a project can best meet needs for workplace literacy. Note that § 432.22(c)(2) encourages use of individualized educational plans developed jointly by instructors and adult learners. No changes in selection criteria are needed. This is because these criteria are used to evaluate both those applications that include labor organizations as partners and those that do not.

Changes: None.

Part 433—State-Administered Workplace Literacy Program

Reallotment of Funds for State-Administered Workplace Literacy (Section 433.21)

Comment: Three commenters requested that funds from the State-administered Workplace Literacy Program that remain unobligated at the end of each fiscal year be carried over rather than be reallocated to other States. Two of these commenters suggested that a "grace period" of six to twelve months be instituted for funds from the first year of program implementation.

Discussion: Section 371(b)(7)(C) of the Act requires the Secretary, at the end of each fiscal year, to reallocate that portion of any State's allotment that exceeds ten percent of that allotment and remains unobligated. Section 433.21 derives from this provision. The statute does not allow for a "grace period" to phase in its requirements.

Changes: None.

State Administrative Costs (Section 433.33)

Comment: One commenter requested that § 433.31(b) be revised to permit States to use funds to pay the costs of providing State administration of the grant and of awarding subgrants or contracts to eligible partnerships.

Discussion: Section 433.31 follows the framework of section 371(b) of the Act. Nothing in the Act authorizes the use of Federal funds for a State's basic responsibilities in administering the workplace literacy program. However, the regulations do allow State educational agencies to claim—for projects in which they participate fully as partners—one hundred percent of their administrative costs in establishing projects and 70 percent of the costs of these projects during their operational period.

Changes: None.

Funding Procedure (Part 433)

Comment: One commenter requested that funds for the State-administered Workplace Literacy Program be distributed under the funding formula for the State-administered Basic Grant program, rather than on the basis of competitive applications.

Discussion: As explained in § 433.30, the Secretary determines the amount of each State's allotment according to a formula in section 371(b)(7)(B) of the Act. After a State receives its allotment, it then awards funds to eligible partnerships. See subpart D of part 433.

Changes: None.

Comment: One commenter requested that the requirement to distribute appropriations of $50 million or more on a formula basis to State educational agencies be removed and these appropriations continue to be awarded directly to partnerships on a competitive basis. The commenter indicated that States and Territories have various organizations that function as the State educational agency and suggested that this form of administration was cumbersome and unnecessary.

Discussion: Section 371(b) of the Act establishes the State-administered Workplace Literacy Program for appropriations of $50 million or more. These appropriations are to be distributed on a formula basis to State educational agencies having State plans for adult education approved by the Secretary. States then make subawards to partnerships comparable to those funded directly by the National Workplace Literacy Program. Both programs fund the types of activities set forth in section 371(a)(3) of the Act.

Changes: None.

Part 434—State-Administered English Literacy Program

State Administrative Costs (Section 434.31(a))

Comments: One commenter urged that the five percent limitation on State administrative costs, technical assistance, and training be eliminated or increased to at least 20 percent. The commenter indicated that the increase is needed to meet the demand for training instructors in existing and new English-as-a-Second-Language programs. Other commenters recommended that the five percent limitation be deleted or amended to exclude technical assistance and training.

Discussion: Section 372(f)(5) of the statute limits State administration, technical assistance, and training costs to five percent. The regulations reflect this statutory requirement.

Changes: None.

Set-Side for Community-Based Organizations (Sections 434.10 and 434.31(b))

Comments: Several commenters were concerned that some States would not be able to comply with the requirement in § 434.31(b) that States allocate at least 50 percent of the remainder of their grants to programs operated by community-based organizations (CBOs) with demonstrated capability to administer English proficiency programs. The commenters suggested that some States have few or no CBOs with demonstrated capability to administer English proficiency programs, and that some States are prohibited by State law from awarding Federal funds to public or private agencies, organizations, or institutions other than local educational agencies (LEAs). Two commenters wanted the regulations to permit States to use the set-aside for CBOs to make awards to other local eligible recipients, if the State could not comply with § 434.31(b). One commenter asked whether a State would lose its eligibility for a grant under the State-administered English Literacy Program, if the State could not award funds to CBOs.

Discussion: Section 434.31(b) reflects a requirement in section 372(b) of the Act. Congress believed that CBOs are the proper parties to operate programs funded with at least half of the funds available under the State-administered English Literacy program in each State. The Secretary recognizes that some States may be prohibited by State law from awarding Federal funds to entities other than local educational agencies (LEAs). In these cases, the State must describe the legal basis for the prohibition. The State must also propose an alternative plan under which funds awarded to LEAs can be used in programs also operated by CBOs. The Secretary will review each situation on a case-by-case basis. Each State bears the burden of showing how CBOs can fully participate in establishing and operating programs in cases where CBOs cannot legally be direct recipients of funds.

With respect to other States, the Secretary observes that the Act defines the term "CBO" quite broadly. States should be able to identify a sufficient number of CBOs that can demonstrate their capacity to administer English proficiency programs. Since this is the case, it is unnecessary to speculate on whether a State would lose its grant if it contained no CBOs.

Changes: Section 434.10 has been modified to require a State to confirm the legal basis for any prohibition on making awards to entities other than LEAs and to propose an acceptable alternative plan that enables CBOs to participate fully in establishing and operating programs with the 50 percent set-aside for CBOs.

Part 437—National Adult Literacy Volunteer Training Program

Selection Criteria—Project Objectives and Evaluations (Section 437.21 (b)(2) and (d)(3))

Comment: One commenter objected to selection criteria that consider, among other things, the extent to which a project's objectives are "measurable" and its outcomes for participants "will be measured." The commenter suggested that this language may encourage an undue restriction of project objectives. The commenter recommended that the regulations speak of "observation" or "authentication."

Discussion: The selection criteria in question are intended to encourage projects that have quantifiable results. The references to measurement appropriately convey this meaning.

Changes: None.

Part 441—Adult Education for the Homeless Program

Funding Procedure (Section 441.3)

Changes: One commenter requested that funds for the Adult Education for the Homeless Program be distributed according to the formula for the State-administered Basic Grant Program rather than on competitive applications.

Discussion: Section 702 of the McKinney Homeless Assistance Act has been amended to authorize that funds for the Adult Education for the Homeless Program be distributed on a competitive basis rather than on a formula basis.

Changes: None.

Definition of Basic Skills Remediation (Section 441.5)

Comment: One commenter suggested that the definition of "basic skills remediation" in § 441.5 appears to be inconsistent with the selection criterion in § 441.21(a)(1).

Discussion: The Secretary does not consider the two provisions to be inconsistent. Programs must be designed to meet the literacy and basic skills needs of any group of homeless adults to be served, including substance abusers and the chronically mentally ill.

Changes: None.

Counts of Homeless Adults (Section 441.21(b)(1))

Comments: Several commenters interpreted the application requirement for counts of homeless adults by school district to mean general counts of homeless adults in every school district in the applicant State. One commenter pointed out that these counts are not available in most areas. Another commenter suggested that the requirement is burdensome because of the large number of school districts to be included in the count and the mobility of the homeless. Still another commenter suggested that the counts would be more readily available by State, county, or other political subdivision.

Discussion: Section 702 of the McKinney Act requires that each application include estimates of the number of homeless adults expected to be served and the number of homeless adults expected to be served within each of the participating school districts of the State. A general count of homeless adults by school district is not required.

Changes: To clarify the intent of this provision, the word "participating" has been added to § 441.21(b)(1)(i).

Allowable Costs

Comment: One commenter requested that costs be allowed in the grants for training staff of public and private agencies in techniques and strategies for teaching homeless adults.

Discussion: Under the cost principles in the Education Department General Administrative Regulations (EDGAR), costs for this type of staff training may be charged to the grant if these costs are necessary and reasonable and the training is related to the purposes of the grant. These provisions need not be repeated in the program regulations.

Changes: None.

[FR Doc. 89-19316 Filed 8-17-89; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA NO.: 84.198]

National Workplace Literacy Program; Invitation for Applications for New Awards To Be Made in Fiscal Year 1990

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this competititon.

Purpose of Program: The National Workplace Literacy Program provides assistance for demonstration projects that teach literacy skills needed in the workplace through exemplary education partnerships between business, industry, or labor organizations and educational organizations.

Deadline for Transmittal of Applications: October 13, 1989

Deadline for Intergovernmental Review: December 13, 1989

Available Funds: $11,856,000

Estimated Range of Awards: $50,000 to $400,000

Estimated Average Size of Awards: $275,720

Estimated Number of Awards: 43

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct grant Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities, part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and (b) The regulations for this program in 34 CFR parts 425 and 432 as published in this issue of the Federal Register.

Priority: The Secretary is particularly interested in applications that meet the following invitational priority: The Secretary invites applications that propose projects training adult workers who have inadequate basic skills and who are currently unable to perform their jobs effectively or are ineligible for career advancement due to an identified lack of basic skills. However, under 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for new grants under this competititon. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses. The Secretary assigns the 15 points reserved in 34 CFR 432.21(d) as follows: 5 points to the Selection Criterion (a)—Program Factors—in 34 CFR 432.22(a) for a total of 20 points for that criterion; 3 points to Selection Criterion (d)—Plan of Operation—in 34 CFR 432.22(d) for a total of 15 points for that criterion; 2 points to the Selection Criterion (e)—Applicant's Experience and Quality of Key Personnel—in 34 CFR 432.22(e) for a total of 12 points for that criterion; and 5 points to the Selection Criterion (f)—Evaluation Plan—in 34 CFR 432.22(f) for a total of 15 points for that criterion.

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which the project—

(1) Demonstrates a strong relationship between skills taught and the literacy requirements of actual jobs, especially the increased skill requirements of the changing workplace;

(2) Is targeted to adults with inadequate skills for whom the training described is expected to mean new employment, continued employment, career advancement, or increased productivity;

(3) Includes support services, based on cooperative relationships within the partnership and from helping organizations, necessary to reduce barriers to participation by adult workers. Support services could include educational counseling, transportation, and child care during non-working hours while adult workers are participating in a project; and

(4) Demonstrates the active commitment of all partners to accomplishing project goals.

(b) Extent of need for the project: (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including consideration of—

(1) The extent to which the project will focus on demonstrated needs for workplace literacy training of adult workers;

(2) The adequacy of the applicant's documentation of the needs to be addressed by the project;

(3) How those needs will be met by the project; and

(4) The benefits to adult workers and their industries that will result from meeting those needs.

(c) Quality of training: (15 points) The Secretary reviews each application to determine the quality of the training to be provided by the project, including the extent to which the project will—

(1) Use curriculum materials that are designed for adults and that reflect the needs of the workplace;

(2) Use individualized educational plans developed jointly by instructors and adult learners;

(3) Take place in a readily accessible environment conducive to adult learning; and

(4) Provide training through the partner classified under 35 CFR 432.2(a)(2), unless transferring this activity to the partner classified under 34 CFR 432.2(a)(1) is necessary and reasonable within the framework of the project.

(d) Plan of operation: (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project, and includes—

(i) A description of the respective roles of each member of the partnership in carrying out the plan;

(ii) A description of the activities to be carried out by any contractors under the plan;

(iii) A description of the respective roles including any cash or in-kind contributions, of helping organizations; and

(iv) A description of the respective roles of any sites;

(3) How well the objectives of the project relate to the purposes of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants, who are otherwise eligible to participate, are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(e) *Applicant's experience and quality of key personnel.* (12 points)

(1) The Secretary reviews each application to determine the extent of the applicant's experience in providing literacy services to working adults.

(2) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project including—

(i) The qualifications, in relation to project requirements, of the project director, if one is to be used;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(2) (i) and (ii) will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) To determine personnel qualifications under paragraphs (e)(2) (i) and (ii). The Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(f) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Identify expected outcomes of the participants and how those outcomes will be measured;

(4) Include evaluation of effects on job advancement, job performance (including, for example, such elements as productivity, safety and attendance), and job retention; and

(5) Are systematic throughout the project period and provide data that can be used by the project on an ongoing basis for program improvement.

(g) *Budget and cost-effectiveness.* (8 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable and necessary in relation to the objectives of the project; and

(3) The applicant has minimized the purchase of equipment and supplies in order to devote a maximum amount of resources to instructional services.

[Approved by the Office of Management and Budget under OMB Control No. 1830-0507].

Additional Factor: In addition to the Selection Criteria, the Secretary may consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program. (Authority: 20 U.S.C. 1211(a))

Intergovernmental Review of Federal Programs: The Workplace Literacy Program is subject to the requirements of Executive Order 12372 [Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an inter-governmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the Federal Register on November 16, 1987, pages 44338–44340.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372–CFDA #84.198, U.S. Department of Education, Room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as the application (see 34 CFR 75.102). Recommendations or comments may be hand delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Instructions for Transmittal of Applications: (a) If an applicant wants to apply for a grant, the applicant shall—(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.198, Washington, DC 20202–8725,

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.198, Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number: 84.198, and title of this program: National Workplace Literacy Program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms: This notice has two appendices: The Appendix A is divided into four parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 242 (Rev. 4–88)) and Instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and Instructions.

Part III: Application Narrative.
Part IV: Partners' Agreement Form and Instructions.

Additional Materials

Estimated Public Reporting Burden.
Assurance—Non-Construction Programs (Standard Form 424B).
Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transaction (ED Form GCS–006) and instructions.
Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions.

(Note: ED Form GCS–009 is intended for the use of primary participants and should not be transmitted to the Department).

Certification Regarding Drug-Free Workplace Requirements: Grantees Other Than Individuals (ED 80–0004).

An applicant may submit information on a photostatic copy of the application, budget, and Partners' Agreement forms, the assurances, and the certifications as printed in this notice. These documents must include original signatures. The Secretary wishes to underscore that an application will be considered incomplete unless it contains a Partners' Agreement form including each partner's original signature.

Appendix B contains questions and answers to assist potential applicants.

For Information Contact: Sarah Newcomb, Program Services Branch, Division of Adult Education, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4428, Mary E. Switzer Building), Washington, DC 20202–7320. Telephone (202) 732–2390 or Nancy Smith Brooks, Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4512, Mary E. Switzer Building), Washington, DC 20202–7242. Telephone (202) 732–2269).

Program Authority: 20 U.S.C. 1211(a).

Dated: August 10, 1989.

D. Kay Wright,

Acting Assistant Secretary, Office of Vocational and Adult Education.

BILLING CODE 4000-01-M

APPENDIX A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☐ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award — B. Decrease Award — C. Increase Duration
D. Decrease Duration — Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ • ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 2-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. Workplace	84.198	$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Authorized for Local Reproduction

Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8. National Workplace Literacy Program	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS --Do Not Complete Section D

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT --Do Not Complete Section E

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

PART II -- BUDGET INFORMATION

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from any one of the grant programs funded by the U.S. Department of Education. For the National Workplace Literacy Program (CFDA No. 84.198) Sections A, B, and C should include budget estimates for the entire project period. (NOTE: Section D and E need not be completed to apply for this program). All applications should contain a breakdown by the object class categories shown in Section B, Lines 6a through 6j.

Section A. Budget Summary

Line 1, Columns (a) through (g) — Enter on Line 1 the catalog program title in Column (a) and the catalog program number in Column (b). Leave Columns (c) and (d) blank. Enter in Columns (e), (f), and (g), the appropriate amounts of funds needed to support the project for the entire project period.

Section B. Budget Categories

Lines 6a through 6i -- Fill in the total requirements for Federal funds by object class categories for the entire project period.

Line 6a -- Personnel: Show salaries and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included in line 6f.

Line 6b -- Fringe Benefits: Include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits to personnel are treated as part of the indirect cost rate.

Line 6c -- Travel: Indicate the amount requested for travel of employees.

Line 6d -- Equipment: Indicate the cost of nonexpendable personal property which has a useful life of more than two years and an acquisition cost of $5000 or more per unit.

Line 6e -- Supplies: Include the cost of consumable supplies to be used in this project. These should be items which cost less than $5000 per unit with a useful life of less than two years.

Line 6f -- Contractual: Show the amount to be used for: (a) procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and (b) payments for consultants.

Line 6g -- Construction: Construction expenses are not allowable under the National Workplace Literacy Program (CFDA No. 84.198).

Line 6h -- Other: Indicate all direct costs not clearly covered by lines 6a through 6g. Trainee costs or stipends are not allowable.

Line 6i -- Total Direct Charges: Show total of Lines 6a through 6h.

Line 6j -- Show the amount of indirect cost to be charged to the project.

Line 6k -- Enter the total of the amounts on Line 6i and 6j.

Section C. Non-Federal Resources

Line 8 -- Enter any amounts of non-Federal resources that will be used on the grant. Contributions may be in the form of cash or, in-kind contributions. If any in-kind contributions are included,

provide a brief explanation of each contribution on a separate sheet.

Column (b) -- Enter the contribution to be made by the applicant. For purposes of column (b), the applicant includes all partners and not merely the applicant designated by the Partners' Agreement Form and on the SF 424. If a partner is a State agency, that partner's contribution should be included in column (b), rather than in column (c).

Column (c) -- Enter the amount of the State's cash and in-kind contribution if the applicant is not a State agency. Enter the contributions of any State agency that is not a partner. Applicants which are a State or State agencies should leave this column blank.

Column (d) -- Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) -- Enter the totals of Columns (b), (c), and (d).

(NOTE: If an SEA or LEA is designated as the grantee for a partnership, the grantee may receive 100 percent of its necessary and reasonable administrative costs incurred in establishing a project during a start-up period. Federal funds may provide no more than 70 percent of any other costs in a project: these include a cost incurred during a project's operational period by partnerships where an SEA or LEA is the designated grantee and costs incurred in both a project's start-up and operational periods by a partnership where an entity other than an SEA or LEA is the designated grantee. This means that the amount shown on Line 8, Column (e), must be at least 30 percent of the amount shown in Section A, Line 1, Column (g), unless the first amount is smaller

than 30 percent because an SEA or LEA is the designated grantee).

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project (NOTE: This section does not apply to the National Workplace Literacy Program).

Section F. Other Budget Information

Prepare a detailed Budget Narrative that explains, justifies, and/or clarifies the budget figures shown in Section A, B, and C. Explain:

1. The basis used to estimate certain costs (professional personnel, consultants, travel, indirect costs), and any other cost that may appear unusual;
2. How the major cost items relate to the proposed project activities;
3. The costs of the project's evaluation component;
4. What matching occurs in each budget category; and
5. For State or local education agencies claiming 100 percent Federal funding for administrative costs incurred in establishing a project during a start-up period, not to exceed 90 days, provide a breakdown of expenditures in the start-up period and in the subsequent operational period. Organizations claiming 100 percent Federal funding during start-up must meet the definitions of "LEA" and "SEA" contained in Sec. 312(5) or Sec. 312(8) of the Adult Education Act, as amended by Title II, Part B of P.L. 100-297.

INSTRUCTIONS FOR PART III -- APPLICATION NARRATIVE

Before preparing the Application Narrative an applicant should read carefully the purpose of the program, the information regarding the priority, the selection criteria the Secretary uses to evaluate applications, and the applicable regulations governing

the National Workplace Literacy Program contained in 34 CFR 432 as published in this issue of the FEDERAL REGISTER.

The narrative should encompass each function or activity for which funds are being requested and should --

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include the total estimated number of persons expected to be served as well as the estimated number of persons expected to be served by each training location if more than one location is to be included.

4. If adults of limited English proficiency are to be served, describe how the proposed project will meet the provisions of 34 CFR 432.31 governing such projects designed to serve adults with limited or no English proficiency.

5. Applicants are encouraged to provide a table of contents and to number the pages of the Application Narrative. Please limit the Application Narrative to 30 double-spaced, typed pages (on one side only). Supporting documentation (e.g., letters of support, footnotes, resumes, etc.) may be submitted as appendices to the Application Narrative. Letter of support may not be used as a substitute for the submission of the Partners' Agreement Form contained in this notice which shall be signed by all partners and which shall accompany the application when submitted. Include any other pertinent information that might assist the Secretary in reviewing the application under the Adult

BEST COPY AVAILABLE

Education Act, as amended by Title II, Part B of P.L. 100-297.

INSTRUCTIONS FOR PART IV -- PARTNERS' AGREEMENT FORM

Partners must submit a signed Partners' Agreement Form and enclose it with the application. Under 34 CFR 432.2 as published in this issue of the FEDERAL REGISTER, it is essential that the partners sign and submit this document in order for their application to be considered complete. If the document is not signed by all partners and submitted with the application, the Secretary will return the application without further consideration for funding pursuant to 34 CFR 75.216.

INSTRUCTIONS FOR ESTIMATED PUBLIC REPORTING BURDEN

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing the Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project, 1830-0507, Washington, D.C. 20503.

(Information Collection approved under OMB control number 1830-0507. Expiration date: 12/31/91).

PARTNERS' AGREEMENT

As authorized representatives of our organizations, we agree on their behalf to the following terms with respect to our application number V 198 A as a condition of applying for and receiving a grant from the National Workplace Literacy Program. We:

- o designate partner _____ (organization) as the applicant and grantee on behalf of the partnership;
- o are willing to be partners in this project;
- o will perform the role detailed for each of us in the application;
- o will be bound by every statement and assurance made in the application including, but not limited to, the assurance that any funds provided to the partnership under Section 371 of Public Law 100 - 297 will be used to supplement and not supplant funds otherwise available for the purposes of the National Workplace Literacy Program.

Name	Name
Title, Organization	Title, Organization
Date	Date
Name	Name
Title, Organization	Title, Organization
Date	Date
Name	Name
Title, Organization	Title, Organization
Date	Date

(add or delete signature spaces as necessary)

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name | PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature | Date

ED Form GCS-009, (REV. 12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

ED Form GCS-009, (REV. 12/88)

Certification Regarding
Debarment, Suspension, and Other Responsibility Matters
Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name	PR/Award Number or Project Name
Name and Title of Authorized Representative	
Signature	Date

ED Form GCS-008, (REV. 12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

ED Form GCS-008, (REV. 12/88)

Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name — PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature — Date

BILLING CODE 4000-01-C

Appendix B

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the Federal Register and apply to all applications. Waivers for individual applications cannot be granted, regardless of the circumstances.

Q. We just missed the deadline for a previous Department of Education competition. May we submit the application we prepared for it under this competition?

A. Yes. However the likelihood of success is not good. A properly prepared application must meet the specifications of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate for my project. What should I do?

A. We are happy to discuss any questions with you and provide clarification on the unique elements of the various competitions.

Q. How can I best ensure that my application is received on time and is considered under the correct competition?

A. Applicants should carefully follow the instructions for filing applications that are set forth in this notice. Be sure to clearly indicate in Block 10 of the face page of their application (Standard form 424) the CFDA number—84.198—and the title of the program—National Workplace Literacy Program—representing the competition in which the application should be considered.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, selection criteria, and the priority. Applicants should understand that this previous contact is not required, nor will it in any way influence the success of an application.

Q. How long should an application be?

A. The Department of Education is making a concerted effort to reduce the volume of paperwork in discretionary program applications. However, the scope and complexity of projects is too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. We recommend that you address all of the selection criteria in an "Application Narrative" of no more than thirty pages in length. Supporting documentation may be included in appendices to the Application Narrative. Some examples:

(1) Staff qualifications. These should be brief. They should include the person's title and role in the proposed project and contain only information about his or her qualifications that are relevant to the proposed project. Qualifications of consultants should be provided and be similarly brief. Resumes may be included in the appendices.

(2) Copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

Q. How should my application narrative be organized?

A. The application narrative should be organized to follow the exact sequence of the components in the selection criteria in this notice.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed if necessary and reasonable. The Secretary anticipates that representatives of the partners of funded projects, including the principal investigator or director of funded projects may be asked to attend a staff development meeting. Therefore, you may wish to include the costs of a trip to Washington, D.C. in the travel budget.

Q. How can I ensure that my application is filed on behalf of a validly formed partnership?

A. The requirements for forming a partnership and filing an application on its behalf are explained in § 432.2 of the program regulations. These regulations appear elsewhere in this publication of the Federal Register. A partnership requires a signed agreement between at least one entity described in § 432.2(a)(1) and at least one entity described in § 432.2(a)(2). Note that State and local governments—like any other entities—may not qualify as partners unless they fall within these descriptions. For example, under the regulations a State or local educational agency or a municipal employment and training agency is an eligible partner, but a State or city as such is not an eligible partner. No agency of the Federal government is an eligible partner. If you are not sure whether a particular entity is an eligible partner, please call one of the program officers listed as an information contact in the application notice.

Q. Must the signed partnership agreement be submitted with the application?

A. Yes. The agreement is necessary both to establish the partnership's legal eligibility and to ensure each partner's continuing commitment during the workplace literacy project. Prior to submitting an application, partners should ensure that each partner clearly understands its role and responsibilities under the project.

Q. Can entities that are not eligible partners be involved in a workplace literacy project?

A. Yes. They could potentially be involved as "contractors," "helping organizations," or "sites," as defined in Sec. 432.5 of the regulations.

Q. What is meant by a required percent of non-Federal matching funds?

A. In this program, the recipient of Federal funds is required to "match" the Federal grant by paying at least a minimum percentage of total program costs. Total program costs include both the Federal funds received and the non-Federal contribution. For example, a partnership that is required to pay 30 percent of total program costs would have to contribute $30,000 to match a Federal award of $70,000 ($30,000=30 percent of $30,000 plus $70,000). All partnerships must contribute at least 30 percent of the total program costs, unless this amount is reduced because an SEA or LEA is the partnership's designated grantee. SEAs and LEAs are eligible to receive full—not merely 70 percent—reimbursement for their neccessary and reasonable administrative costs incurred in establishing a project during the project start-up period. That period may not exceed 90 days.

Q. May a project provide vocational or job training?

A. No. Projects must provide adult education programs that teach literacy skills needed in the workplace.

Q. How many copies of the application should I submit and must they be bound?

A. Current Government-wide policy is that only an original and two copies need be submitted. However, an original and four copies will be greatly appreciated. The binding of applications is optional. At least one copy should be left unbound to facilitate any necessary reproduction. Applications should not include foldouts, photographs, audio-

visuals, or other materials that are hard-to-duplicate.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Will my application be returned?

A. We do not return original copies of applications. Thus, applicants should retain at least one copy of the application.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. Where can copies of the Federal Register, program regulations, and Federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783-3238. When requesting copies of regulations or statutes, it is helpful to use the specific name, public law number, or part number. The materials referenced in this notice should be referred to as follows:

(1) Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Public Law 100-297, title II, part B.

(2) Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77, 79, 80, 81, or 85.

(3) 34 CFR part 432 (National Workplace Literacy Program), as published in this issue of the Federal Register.

[FR Doc. 89-19317 Filed 8-17-89; 8:45 am]
BILLING CODE 4000-01-M

federal register

Friday
August 18, 1989

Part IX

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Cheat Mountain Salamander and Endangered Status for the Shenandoah Salamander and the Roanoke Logperch; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB31

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Cheat Mountain Salamander and Endangered Status for the Shenandoah Salamander

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines threatened status for the Cheat Mountain salamander (*Plethodon nettingi*) and endangered status for the Shenandoah salamander (*Plethodon shenandoah*). The latter is known only from three tiny populations on isolated talus slopes in Shenandoah National Park, Virginia. Its existence is endangered by competition with the widespread red-backed salamander (*Plethodon cinereus*). The closely related *P. nettingi* is found above 3,000 feet in an approximately 19 by 50 mile area of Pendleton, Pocahontas, Randolph and Tucker Counties, West Virginia, mostly within the Monongahela National Forest. Its populations are generally small and disjunct, probably remnants of a larger, more continuous distribution fragmented by habitat modifications, such as timbering, mining and recreational development (ski resorts, hiking trails, etc.). This rule implements protection provided by the Endagered Species Act of 1973, as amended, for these salamanders.

EFFECTIVE DATE: September 18, 1989.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401.

FOR FURTHER INFORMATION CONTACT: Judy Jacobs at the above address or by telephone (301/269-5448).

SUPPLEMENTARY INFORMATION:

Background

The Cheat Mountain and Shenandoah salamanders are members of the family Plethodontidae, the lungless salamanders. Members of the genus *Plethodon* are also known as woodland salamanders. The Cheat Mountain salamander (*Plethodon nettingi*) was first observed on Barton Knob in Randolph County, West Virginia, in 1935 and was described as a new species by Green (1938). Highton and Grobman (1956) considered *P. nettingi* to be a subspecies of *P. richmandi*, but later, Highton (1971) re-elevated *P. nettingi* to full species status. *Plethodon shenandoah* was first described as a subspecies of *P. richmandi* (Highton and Worthington 1967), and later considered to be a subspecies of *P. nettingi* Highton (1971). Subsequent analyses of electrophoretic data resulted in a determination of full species status for *P. shenandoah* (Highton and Larson 1979).

The Cheat Mountain and Shenandoah salamanders are morphologically similar, small, slender *Plethodons*, reaching a maximum length of 11–12 cm (about 4½ inches), generally with 18 costal grooves (vertical indentations that externally mark the position of the ribs) and dark gray to black bellies. The dorsum, or back of *P. nettingi* is dark, usually with a heavy sprinkling of brassy or silvery flecks. The dorsum of *P. shenandoah* is also dark, but in this species, there are two color phases, striped and unstriped. In the unstriped phase, the dorsum is uniformly dark and may have a few brassy flecks; the striped phase is characterized by a narrow red stripe down the back.

As a general rule, woodland salamanders are found during the day under rocks and logs, or in rock crevices below the surface of the ground. At night, especially during rainy weather, they forage on the surface of the forest floor and occasionally climb trees or other plants for short distances (Pauley 1985, Jaeger 1978). The diet of the Cheat Mountain salamander, fairly typical for woodland salamanders, consists mainly of mites, springtails, small bettles, flies and other insects (Paulet 1980). There are no reported observations of mating for the Cheat Mountain or Shenandoah salamanders, but as in all other woodland salamanders, fertilization is internal and complete development takes place within the egg; in contrast with most other salamanders, there is no aquatic larval stage (Conant, 1975). Eggs are laid in damp logs, moss, etc. Cheat Mountain salamander egg masses containing 4–17 eggs have been found from May to August, with most observations in June (Brooks 1948). Timing of reproductive activity is probably similar for *P. shenandoah*.

The Cheat Mountain salamander occurs in the Allegheny Mountains of eastern West Virginia, in Pendleton, Pocahontas, Randolph and Tucker Counties, in an area approximately 19 miles wide and 50 miles long (Pauley 1985), almost entirely within the proclamation boundaries of the Monongahela National Forest. This species is found in forested areas above 3,120 feet, where red spruce (*Picea rubens*) and yellow birch (*Betula alleghaniensis*) are or were the dominant tree species. Originally, red spruce forest covered nearly half a million acres in West Virginia. Timbering operations around the turn of the century, in combination with wildfires caused by human activity, removed nearly all the red spruce in the state.

The Shenandoah salamander is known only from north-facing talus slopes on three mountains in Shenandoah National Park, Madison and Page Counties, Virginia, at elevations above 3,000 feet (Highton and Worthington 1967). It is confined to pockets of soil and/or vegetative debris within the talus, where moisture conditions are favorable. Because, like all members of the Plethodontidae, these salamanders are lungless, sufficient moisture must be present for respiratory exchange to occur directly through the skin. However, competition with the red-backed salamander (*Plethodon cinereus*), which requires moister conditions than the Shenandoah salamander, plays a major role in restricting the latter's range (Jaeger 1970, 1971, 1974, 1980). The Shenandoah salamander is classified as an endangered species under Virginia state law.

In its Review of Vertebrate Wildlife in the Federal Registers of December 30, 1982 (48 FR 58454–58460) and September 18, 1985, (50 FR 37958–37967), the U.S. Fish and Wildlife Service placed both the Cheat Mountain and Shenandoah salamanders in Category 2, meaning that a proposal to list as endangered or threatened was possibly appropriate, but that substantial biological data were not then available to support such a proposal. Subsequently, the Service received a report from Dr. Thomas K. Pauley, who had been contracted by the Service to investigate the status of the Cheat Mountain salamander. The data presented in Dr. Pauley's report, along with other information assembled by the Service, including published reports by Dr. R.G. Jaeger on the Shenandoah salamander, indicated that a proposal to list both species was warranted. Accordingly, on September 28, 1988, the Service published a proposal in the Federal Register (53 FR 37814) to list *Plethodon nettingi* as threatened and *Plethodon shenandoah* as endangered. With the publication of this final rule, the Service now determines threatened and endangered status for these salamanders.

Summary of Comments and Recommendations

In the September 28, 1988, proposed rule (53 FR 37814) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Comments were requested from appropriate state agencies, county governments, scientific organizations and other interested parties. Newspaper notices inviting public comment were published on October 15, 1988, in the Daily News-Record, Harrisonburg, Virginia, and the Inter-Mountain, Elkins, West Virginia. Six comments were received. Three of these, from the Virginia Natural Heritage Program, Virginia Department of Game and Inland Fisheries and the Nature Conservancy, Eastern Regional Office, fully supported the proposed listing. Another, from the West Virginia division of Parks and Recreation, also supported the listing, but strongly recommended continued fieldwork to locate new populations and monitor existing ones. Monitoring will certainly be a component central to the recovery effort for the Cheat Mountain and the Shenandoah salamanders. Searches for new populations will also be important to the recovery of these species, particularly for *P. shenandoah*, for which only three locations are known. Oftentimes, the increased attention received by species following listing stimulates additional research, resulting in an increased knowledge of the species' life history and distribution.

Two comments from university professors, while supporting the listings, expressed concern that this action might curtail future research on these salamanders, particularly *P. shenandoah*. One respondent noted that the possibility of hybridization between *P. shenandoah* and *P. cinereus* (not fully documented) could complicate protection efforts. This writer raised the concern that legal protection might be "so rigid as to completely prevent the rational study of problems that affect the species in question." With the publication of this rule, it is not the Service's intention to obstruct the acquisition of information contributing to our understanding of factors essential to the species' survival. Permits to work on these species are already required by the State agencies, as well as by the U.S. Forest Service (for *P. nettingi*) and the National Park Service (for *P. shenandoah*). The Service recognizes that the requirement for a Fish and Wildlife Service permit, in addition to those already required, may seem burdensome to the permit applicant. However, it is likely that all of the above-mentioned agencies will use similar criteria in evaluating permit applications; i.e. the amount and types of information to be gained by the proposed research and the critical nature of this information relative to the species' recovery, weighed against the type and amount of proposed "take." Therefore Fish and Wildlife Service permit issuance decisions will very likely concur with those already required by other agencies.

This same respondent questioned whether additional U.S. tax dollars would be spent unnecessarily on *P. shenandoah*, since it is already protected by its location on Park Service land. Fish and Wildlife Service funding of recovery, research or protection efforts for *P. shenandoah* will be prioritized with the needs of other listed species and authorized only if deemed appropriate.

In summary, while questions and concerns were raised by some commentors, all were in support of the listings, and no new biological information was presented.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Cheat Mountain salamander (*Plethodon nettingi*) and the Shenandoah salamander (*Plethodon shenandoah*) are as follows:

A. The Present or Threatened Destruction, Modification or Curtailment of Their Habitat or Range

Habitat modification is a primary factor threatening the continued existance of the Cheat Mountain salamander. This species prefers cool moist forests where mature red spruce (*Picea rubens*) and yellow birch (*Betula alleghaniensis*) predominate. At West Virginia's latitude, these northern forest types occur only at higher elevations. The Cheat Mountain salamander is found only at elevations above 3120 feet (Pauley 1985). Prior to the late 1880's, *P. nettingi* may have been more widely distributed in these high elevation areas. The timber boom began in West Virginia during the 1880's; forty years later, virtually all of the old-growth, high quality timber had been stripped from the mountains in the eastern part of the state. Wildfires, some set intentionally to clear pasture, others resulting from the slash left from timbering operations, or from sparks from the stacks of steam locomotives, also contributed to the demise of spruce in the state (Clarkson 1964). Only one sizeable tract of virgin spruce, encompassing some 200 acres, remains. Interestingly, one of the healthiest remaining populations of *P. nettingi* now occurs in this vicinity.

Subsequent to the lumbering operations, the Cheat Mountain salamander somehow managed to survive, perhaps in small pockets of marginally suitable habitat. High elevation forests have since regenerated, and today, spruce and mixed spruce-northern hardwood forests cover an estimated 27,000–37,000 acres in West Virginia, roughly 10% of the area covered prior to the lumbering era (Bonar 1978, Zinn and Sutton 1976). Although at present only 10% to 15% of the red spruce in the state measure over 15 inches in diameter at breast-height (dbh), smaller spruce are economically valuable in today's timber market, and spruce timber sales are again occurring in West Virginia. The Cheat Mountain salamander's extirpation from one clearcut area has been documented, and seven other populations that have been impacted by timbering operations are likely to die out due to the hot, dry conditions that prevail in their habitat (T. Pauley, pers. comm.).

In addition to timber cutting, access roads, hiking trails and pipeline rights-of-way bisect or limit the expansion of many *P. nettingi* populations. Such openings decrease soil moisture and increase soil temperature, thus presenting a barrier to these salamanders, which require cool, moist conditions. Due to genetic considerations, these bisected "half-populations" may not be viable over the long term. Nearly 40% of the populations Pauley (1985) found were bisected by or adjacent to roads or pipeline rights-of-way.

Other activities that threaten Cheat Mountain salamander habitat include the construction of ski resorts and coal mining. Within the range of *P. nettingi*, four ski resorts are in operation and an additional one is presently being developed. Cutting of high-elevation forests for ski trails, lodges and condominiums is ongoing as these resorts expand. One Cheat Mountain salamander population has already been subdivided by ski slopes, and another presently healthy population is threatened by an additional proposed ski resort and development. One historical population occurred on an

area that is now developed as a ski resort (Pauley 1985).

Although high elevation coal mining in West Virginia makes up only a small percentage of the total, high elevation coal deposits consist of low-sulphur coal, which is becoming increasingly desirable, thus valuable, due to air quality considerations. Pauley (1985) reported five *P. nettingi* populations that have been severely impacted by surface or deep mining activities. One of these is likely extirpated and another is known to have been destroyed. Clearing and haul roads associated with mining activity broaden the scope of the impact of this threat of *P. nettingi*.

Habitat of the Shenandoah salamander has been timbered and burned in the past, which may have negatively impacted the species. At present, *P. shenandoah* habitat is protected from active modification, since it is located within the Shenandoah National Park. However, deterioration of the talus areas in which it occurs could promote the incursion of *Plethodon cinereus*, its chief competitor, which could ultimately lead to the extinction of *P. shenandoah* (see Factor "E" below).

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

These salamanders have no known commercial utility; however, in the past, considerable numbers of both species have been collected for scientific purposes or as curiosities, by amateur collectors. It is debatable whether unlimited collection can have any long-term effect upon salamander populations (R. Highton, University of Maryland, pers. comm.). Such impacts may be assessed through use of "surrogate" species (C. Pague, pers. comm.). Permitting requirements for collection of these species were mentioned above.

C. Disease or Predation

There is no evidence that these salamanders are threatened by disease or predation.

D. Inadequacy of Existing Regulatory Mechanisms

As mentioned above, collecting these salamanders already requires a permit, thereby providing limited protection from take. The habitat of both species also receives some protection, since both Shenandoah National Park and Monongahela National Forest recognize *P. shenandoah* and *P. nettingi* respectively as species of concern. Despite this recognition, the habitat of *P. nettingi* is still threatened with destruction from a variety of sources, as specified in (A) above, and *P. shenandoah* may be declining due to natural causes, as mentioned in (E) below.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

The existence of the Shenandoah salamander is threatened by a naturally-occurring phenomenon, competition with the closely related red-backed salamander, *Plethodon cinereus* one of the most abundant and common woodland salamanders. *P. shenandoah* is essentially confined to its few talus islands by competition with *P. cinereus*. The species is able to survive there due to its higher tolerance to dry conditions, relative to *P. cinereus* (Jaeger 1971). The talus in which *P. shenandoah* lives is in the process of disintegration. Organic matter and the products of erosion accumulate in the less steep talus slopes, fragmenting them, decreasing their area and ultimately creating moister conditions in which *P. cinereus* could possibly survive. As this process continues, *P. cinereus* is likely to invade the habitat now occupied by *P. shenandoah*, possibly resulting in the eventual extinction of the latter species.

The Cheat Mountain salamander also experiences competition with *Plethodon cinereus* and with the mountain dusky salamander (*Desmognathus ochrophaeus*), which may limit the ability of *P. nettingi* to expand its range or re-populate areas previously occupied. Pauley's survey work revealed one or both of these potential competitor species present at 83% of the sites where he found *P. nettingi*, and their numbers exceeded those of *P. nettingi* at half of the observed population sites. Recent evidence indicates that *P. nettingi* populations may actually be declining where these competing species are present (Pauley, in prep.).

The ability of *P. nettingi* to establish populations in unoccupied, suitable habitat appears to be limited. In an experimental effort to save a population, 53 of these salamanders were removed from an area where habitat destruction from mining activities was imminent. These animals were carefully relocated to another area of very similar habitat, soil type and temperature from which all salamanders of other species found had been removed. Follow-up studies over the past four years have as yet revealed no surviving *P. nettingi* from this transplant effort (T. Pauley, pers. comm.).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present and future threats faced by these species in determining to make this rule final. Based on this evaluation, the Service has determined to list the Cheat Mountain salamander *(Plethodon nettingi)* as threatened and the Shenandoah salamander *(Plethodon shenandoah)* as endangered. The Cheat Mountain salamander is known from numerous populations within its limited range, and the management of much of its habitat is under the jurisdiction of a Federal agency, the U.S. Forest Service. Although its habitat has already been considerably altered, proper habitat management should prevent this species from becoming endangered throughout its range. In contrast, although the Shenandoah salamander also occurs on Federal land (National Park Service), its population numbers are much lower and the management of its habitat does not appear to be the major factor contributing to its endangerment or to its recovery. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. Implementing regulations at 50 CFR 424.12(a)(1) state: "A designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) such designation of critical habitat would not be beneficial to the species." In the case of these salamanders, the Service finds that a determination of critical habitat is not prudent. Such a determination would result in no known benefit to the species. Nearly all of the known habitat of these salamanders is under the jurisdiction of Federal agencies (U.S. Forest Service and National Park Service). Forest and park supervisors and other involved parties are already aware of the occupied range of these species. Furthermore, both the Park Service and the Forest Service have their own regulations which give high priority to protection of endangered and threatened species. Thus, no benefit would accrue from designation of critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibition against certain practices. Recognition through listing encourages and results in conservation action by Federal, State, and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperative provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service.

Federal actions which could impact these salamanders would include land management decisions on the Monongahela National Forest or Shenandoah National Park, and possibly, Federal permitting requirement for private actions, such as mining or recreational development. Such actions will require formal consultation, unless the Sevice concurs in writing that the action has been designed in a manner that eliminates adverse effects to these salamanders.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibitied activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidential take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. As mentioned above, the Service will promote the issuance of permits for scientific research essential to the species' continued existence.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Boues, J. T. 1976. The Forest Resources of West Virginia. U.S.F.S. Resource Bulletin NE-56. U.S.D.A., Broomall, PA.

Brooks, M. 1948. Notes on the Cheat Mountain salamander. Copeia 4:239–244.

Clarkson, R. B. 1964. Tumult on the Mountains. Parsons, WV; McClain Printing Co. 410 pp.

Conant, R. 1975. A field guide to reptiles and amphibians of eastern and central North America. Boston: Houghton Mifflin Co., 429 pp.

Green, N. B. 1938. A new salamander, *Plethodon nettingi*, from West Virginia. Ann. Carnegie Mus. 29:295–299.

Highton, R. 1971. Distributional interactions among easter North American salamanders of the genus *Plethodon*. p. 139–188 in C. Holt, ed., The Distributional History of the Biota of the Southern Appalachians, Part III: Vertebrates, Virginia Polytechnic Institution, Research Division, Monogr. Vol. 4.

Highton, R., and A.B. Grobman. 1968. Two new salamanders of the genus *Plethodon* from the southeastern United States. Herpetologica 12:185–188.

Highton, R., and A. Larson. 1979. The genetic relationships of the salamanders of the genus *Plethodon*. Syst. Zool. 28:579–599.

Highton, R., and R. D. Worthington. 1967. A new salamander of the genus *Plethodon* from Virginia. Copeia 1967(3):617–623.

Jaeger, R. G. 1970. Potential extinction through competition between two species of terrestrial salamanders. Evolution 24:632–642.

_____. 1971. Competitive exclusion as a factor influencing the distributions of two species of terrestrial salamanders. Ecology 52:632–637.

_____. 1972. Food as a limited resource competition between two species of terrestrial salamanders. Ecology 53:535–546.

_____. 1974. Competitive exclusion: Comments on survival and extinction of species. Bioscience 24:33–39.

_____. 1978. Plant climbing by salamanders: Periodic availability of plant-swelling prey. Copeia 1978(4):660–661.

_____. 1980. Density-dependent and density-independent causes of extinction of a salamander population. Evolution 34(4):617–621.

Pauley, T. K. 1980. The ecological status of the Cheat Mountain salamander. U.S. Dept. of Agriculture, Forest Service Report 7720. 160 pp.

_____. 1985. Distribution and status of the Cheat Mountain salamander. Status survey report submitted to U.S. Fish and Wildlife Service, Dec. 1985 and Jan. 1986.

Zinn, G., and J. T. Sutton. 1978. Major forest cover type groups of West Virginia. W. Va. Forestry Notes 5:3–6.

Author

The primary author of this proposed rule is Judy Jacobs (see **ADDRESSES** section), 301/269–5448.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under Amphibians, to the List of Endangered and Threatend Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species								
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
AMPHIBIANS							
Salamander, Cheat Mountain	*Plethodon nettingi*	U.S.A. (WV)	Entire	T	356	NA	NA
Salamander, Shenandoah	*Plethodon shenandoah*	U.S.A. (VA)	Entire	E	366	NA	NA

Dated: July 18, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-19448 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB29

Endangered and Threatened Wildlife and Plants; Endangered Status for the Roanoke Logperch

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Roanoke logperch (*Percina rex*) to be an endangered species. Endemic to Virginia, this fish now occurs only in four widely separated populations: In the upper Roanoke River, the Pigg River, the Nottoway River and the Smith River. Each population is vulnerable because of its relatively low density and limited extent. The largest and most vigorous population, in the upper Roanoke River, is subject to the most serious threats: from urbanization, industrial development, water supply and flood control projects, and, in the upper basin, from agricultural runoff. The other three populations are subject to siltation resulting from agricultural activities and to potential chemical spills. The Smith River population is especially vulnerable because of its small size. This rule implements the protection of the Endangered Species Act of 1973, as amended, for this fish.

EFFECTIVE DATE: The effective date of this rule is September 18, 1989.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401.

FOR FURTHER INFORMATION CONTACT: Mr. G. Andrew Moser at the above address (301/269-5448).

SUPPLEMENTARY INFORMATION:

Background

The Roanoke logperch, (*Percina rex*), was discovered in the Roanoke River near Roanoke, Virginia in 1888 and described by Jordan (1889).

A large darter, *P. rex* reaches 14 centimeters (5.5 inches) total length. It is characterized by an elongate, cylindrical to slab-sided body, conical snout and complete lateral line. The back is dark green, the sides are greenish to yellowish and belly is white to yellowish. The upper sides and back have dark screwlings and numerous small saddles. Bar markings on its sides are prominent, usually separated from the dorsal markings and typically ovoid in shape.

The species commonly lives 5 to 6 years; both sexes probably reach maturity by age four. Spawning occurs in April or May in deep runs over gravel and small cobble (Simonson and Neves 1986). *P. rex* feeds primarily on aquatic insect larvae, especially the larvae of chironomids and caddisflies (Burkhead 1983). During warm months, adults occupy gravel and cobble runs and riffles, while juveniles typically utilize slow runs and pools with clean sand substrates. Winter habitat of all individuals appears to be deep pools, under boulders (Burkhead 1983).

The Roanoke logperch is endemic to two river systems in Virginia—the Roanoke River drainage (including the Pigg and Smith Rivers) and the Notoway River drainage. Its distribution extends from the Ridge and Valley province through the Blue Ridge to the lower Piedmont. It now occurs in four disjunct populations located in widely separated segments of four rivers: the upper Roanoke River, the Pigg River, the Nottoway River and the Smith River. It is probable that these represent remnants of a single much larger population that once occupied much of the Roanoke drainage upstream of the fall line.

All extant populations of the Roanoke logperch are in Virginia in the river reaches described below. Within the upper Roanoke River, the logperch occurs in Roanoke and Montgomery Counties from within the city limits of Roanoke upstream into the North and South Forks of the Roanoke. It also occurs in Tinker Creek, a tributary of the upper Roanoke in Roanoke County. In the Pigg River system the logperch occurs in a 32-mile reach of the mainstem Pigg River in Pittsylvania and Franklin Counties, and in Big Chestnut Creek, a Franklin County tributary of the Pigg. In the Nottoway River system the species occurs in a 32-mile reach of the mainstem in Sussex County, Virginia, and in Stony Creek, a tributary of the Nottoway in Dinwiddie and Sussex Counties. In the Smith River system, *P. rex* occurs in a 2.5-mile reach in Patrick County upstream of Philpott Reservoir, and in Town Creek, a Smith River tributary in Henry County.

Recent survey data (Simonson and Neves 1986) indicate that the largest population of *P. rex* inhabits the Upper Roanoke River. The Pigg River system is rather sparsely inhabited by the logperch, while the Nottoway River has even lower population densities of the species. The Smith River logperch population appears to be extremely small.

Threats to the upper Roanoke population of the logperch are posed by a pending Roanoke County water supply project and a proposed U.S. Army Corps of Engineers (Corps) flood control project. Results of the most recent comprehensive survey (Simonson and Neves 1986) indicate that the species has probably already declined in the North Fork of the Roanoke. Chemical spills, which have increased in frequency in the industrialized sections of the river in Salem and Roanoke, present a continuing threat. The Pigg River and North Fork of the Roanoke are heavily impacted by silt washed from agricultural lands in the watersheds.

The Roanoke logperch has been included in three Notices of Review indicating that it was a candidate for Federal listing. These were published in May 13, 1980, Federal Register (45 FR 31447), the December 30, 1982, Federal Register (47 FR 58454), and the September 18, 1985, Federal Register (50 FR 37958). The last of these Notices placed the logperch in category 1, indicating that the Service had substantial information on hand to

support listing the species as endangered or threatened. The Service was petitioned on September 29, 1983, by Mr. Noel Burkhead to list the Roanoke logperch as a threatened species. In 1985, 1986, and 1987 evaluations of this petition the Service found that the action was warranted, but precluded from immediate proposal because of other pending proposals to list, delist or reclassify species. Notice of these findings was published in the Federal Register on January 9, 1986 (51 FR 996), June 30, 1987 (52 FR 24312), and July 7, 1988 (53 FR 25511), respectively. On September 7, 1988, the Service published in the Federal Register (53 FR 34561) a proposed rule to list the Roanoke logperch as an endangered species.

Summary of Comments and Recommendations

In the September 7, 1988, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the Roanoke Times and World News on September 21, 1988, and the Richmond Times Dispatch on September 22, 1988, which invited general public comment. No public hearing was requested or held. Fourteen comments were received and are discussed below.

Eight letters indicating support for the proposal were received from the following sources: the Forest Supervisor of the Jefferson National Forest, the Virginia Department of Game and Inland Fisheries, the Virginia Natural Heritage Program, Dr. R.J. Neves of the Virginia Polytechnic Institute's Department of Fisheries and Wildlife Science, the City of Roanoke, the Friends of the Roanoke River, the Virginia Wildlife Federation, and one private citizen.

In his letters of support, the Jefferson National Forest Supervisor indicated that the Forest's activities have minimal potential for impacting the logperch, but special consideration would, nonetheless, be given to maintenance of high quality runoff within the headwaters of the Roanoke drainage.

The City of Roanoke asked that the Federal Government share in any "additional costs for community projects addressing needs along the Roanoke River and Tinker Creek", that may result from the listing. The Fish and Wildlife Service's authority under the Endangered Species Act would limit it to assisting with projects which contribute to the recovery of the logperch or other endangered species.

The Friends of the Roanoke River (F.O.R.R.) requested that critical habitat be designated for the logperch. The F.O.R.R. argues that designation of critical habitat is necessary to provide full protection for the logperch and that the benefits of this added protection would outweigh any possible threat of vandalism. The Service believes that designation of critical habitat would result in no net benefit to the species. The Service's basis for this conclusion is explained in the critical habitat section of this rule. The Service notes that, even without critical habitat designation, the habitats of this species will receive protection under section 7 of the Act.

Letters indicating neither support nor opposition to the proposed listing of the logperch were received from: The Wilmington District of the Army Corps of Engineers, and Montgomery and Henry Counties, Virginia. Information provided by the Corps of Engineers concerning projects under study is summarized elsewhere in this rule. Henry County expressed concern over potential effects of the listing on their water supply withdrawals from the mouth of Town Creek. Based on current information on logperch distribution and the location of the county's withdrawals, it appears that they will be unaffected by the listing.

Opposition to the proposal was expressed by the Roanoke Valley Home Builders Association, and the County Administrators of Pittsylvania and Roanoke Counties, Virginia. Roanoke County had a number of specific comments on the proposal which are listed below with the Service's response to each.

Comment 1. The Corps of Engineers' flood control project and Roanoke County's water supply project are no longer threats to the species; therefore it should not be Federally listed.

Service response. It is true that both the Corps of Engineers and the County of Roanoke have taken steps to reduce impacts from their projects to the Roanoke logperch. The Service agrees that the Upper Roanoke Flood Control Project is not a serious threat to the survival of the logperch. It is, however, a threat to the Roanoke River logperch population within the City of Roanoke. It is anticipated that this project may reduce the logperch population in this segment of the river by up to 25% over several years.

In comparison with the flood control project, the water supply project affects a much longer reach of the Roanoke River containing much of the best logperch habitat in existence. Thus, it has a much greater potential for serious impacts to the species. Corps of Engineers permit conditions for this project are designed to ameliorate such impacts, but will not eliminate them. Thus, the water supply project is expected to have some adverse effects on the logperch, even if all permit conditions are conscientiously implemented.

The Service cannot agree with Roanoke County that the Roanoke logperch does not warrant Federal listing. Even without the existence of these two proposed projects, the information on population status and other threats to the species would support its listing.

Comment 2. The proposal indicates several causes for degradation or modification of habitat, one being urban growth. This can be disputed since the largest and most dense population noted in Burkhead's study is in the middle of Ronoke City, a highly urbanized area.

Service response. It is known that pollutants found in urban runoff, including excess nutrients, petroleum products and salt, adversely affect fish. Urban runoff together with effluent discharges and other effects or urbanization may account for the long river reaches within the City of Roanoke from which the logperch is absent. Although there is a dense population of logperch at a single location within the City of Roanoke, the continued existence of this population may be dependent on periodic recruitment of young from upstream populations.

Comment 3. The proposal also notes that chemical spills have resulted in fish kills; however, no evidence is presented that the logperch has been affected or taken during a fish kill.

Service response. Burkhead (1983) describes the threat presented to the logperch by chemical spills. His compilation of records of fish kills in the Roanoke River was based largely on Roanoke Times and World News reports which provided limited information on species killed. However, there is little doubt that logperch were killed during these events along with other fish species.

Comment 4. The proposal indicates that low flows resulting from the proposed water supply project would severely degrade the logperch habitat. No proof exists to indicate the proposed project would "severely" degrade the logperch habitat. The indications of exposure of riffles, decreased D.O. levels, increased temperatures during summer and increased pollution are

assumptions that are not substantiated. In fact, the June 1983 Ecological Study Report by Neal Burkhead for the Corps of Engineers indicated increased D.O. levels because of low flow. It also shows that water temperature is more related to air temperature than flow levels. The exposure of riffles also indicates a benefit for increasing D.O. Levels.

Service response. Burkhead (1986) provides the most specific prediction of adverse effects on the logperch of the low flows resulting from the proposed water supply project. Exposure of riffles and increased water temperature during summer months are expected to occur in any river when flows drop to very low levels (Tennant, 1975). Periods of decreased dissolved oxygen (D.O.) and decreased dilution of pollutants will always accompany these changes. The increased D.O. in the Roanoke River during the low flow period referred to by Burkhead (1983) occurred during an algal bloom. During algal blooms, extreme fluctuations in D.O. are to be expected, with extremely high oxygen levels occurring during sunny periods, and oxygen depressions occurring during nighttime or overcast conditions. Such D.O. fluctuations are generally symptomatic of degraded conditions and are harmful to fish life.

Comment 5. Other projects are cited that will reportedly affect the logperch habitat. However, no economic effects of the listing are presented.

Service response: Under the Act and its implementing regulations, listing determinations are to be made solely on the basis of the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination. 16 U.S.C. 1533(b)(1)(A); 50 CFR 424.11(b).

Comment 6. One of the most critical problem areas noted in the proposal was silt generated from agricultural activities. This seems to be the culprit of any reduction or modification of habitat. Without knowing the intentions of the Fish and Wildlife Service as to the plan to control these activities, no one can possibly comment on the effects it may have on the farming activities along the critical habitat areas.

Service response: Silt generated by agricultural activities is but one of many factors affecting the logperch. While the Service may recommend measures, such as filter strips along streams, to reduce agricultural runoff, it has no authority to require such modifications of private activities unless they result in taking of the species.

Comment 7. The existing and continued studies performed on this fish seem to be the only over-utilization evident. As noted in correspondence from Burkhead, over 2,000 collections were made, many of which were specifically aimed at the capture of the logperch.

Service response: There is no evidence to suggest that overutilization has been a factor in the decline of the logperch.

Comment 8. The proposal notes that Virginia state law does not protect the species' habitat from potential impacts. Roanoke County disagrees with this statement. The State of Virginia does have code sections that protect aquatic life, water quality and critical habitat of endangered species and of any outstanding State resource waters.

Service response: State programs to enforce the Clean Water Act do provide a degree of protection for all aquatic species. Federal listing will provide added protection, particularly from those impacts of Federal (or Federally regulated) projects which are not addressed by the Clean Water Act.

Comment 9. The use of chemical toxicants is prohibited in any river in Virginia. State law prohibits any discharge of these materials. Vandalism along with the suggestion of chemical toxicant use stretches the point under this heading and should not be considered.

Service response: All reference to chemical toxicants has been removed from the "Summary of Factors Affecting the Species". Although State laws prohibit such discharges, enforcement may be difficult.

Comment 10. The only significant decline in logperch populations has been in the reaches where farming activities are prominent, not where urbanization has occurred or low water levels exist. In fact, low water levels seem to be more of an optimum habitat than higher flows. Over 77 percent of the river miles occupied by the logperch are in reaches where flows are only a small portion of the flows that exist in the main stream of the Roanoke River.

Service response: See response to comments 2 and 6 regarding the threats presented by siltation and urbanization. Adverse effects of low flows are described in Burkhead (1986), Tennant (1975) and Camp Dresser and McKee (1986). The absolute flow levels in a river have little meaning in terms of the biology of aquatic species. Instead, fishery biologists generally refer to flows in terms of percentage of natural stream flow (or mean annual flow) when they are evaluating impacts on aquatic species. To date, withdrawals from the Roanoke River have been small enough that any reduction in natural flows has been minor. Thus no fish declines would be expected to result.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Roanoke logperch should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Roanoke logperch (*Percina rex*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The largest known population of the logperch, in the upper Roanoke River, is under increasing stress from urbanization and industrial development (Jenkins 1979). Urban runoff and other nonpoint-source pollution are increasing problems. Silt, oil, fertilizer and a variety of chemical pollutants in this runoff degrade habitat of the logperch. As urban development expands to the west along the Roanoke River Valley, the river reach degraded by this runoff will increase. Frequent chemical spills have occurred from the industries and transportation corridors along the upper Roanoke River. These have included fuel oil, diesel fuel, sodium cyanide, toluene, gasoline and ethyl benzene-creosote (Burkhead 1983). Many of these spills have resulted in fish kills, several extending over a distance of six miles or more downstream.

Additional threats in the upper Roanoke River habitat could result from the proposed West Roanoke County Water Supply Project, the Corps of Engineers' Upper Roanoke River Flood Control Project and the National Park Service's Roanoke River Parkway proposal. The water supply project is intended to supply projected future water needs of Roanoke County by withdrawal of water from the Roanoke River. As projected, it could result in long periods when a seven-mile reach of the Roanoke River would be drawn down to low flow levels. This river reach provides excellent logperch habitat (Burkhead 1986) that could be adversely affected by such extended low flows. Predicted effects of these low flow periods include exposure of riffles, decreased dissolved oxygen, increased pollution concentrations, and increased water temperatures during the summer and early fall. Certain recent project modifications, however, lessen the expected severity of these effects.

The Corps of Engineers flood control project involves proposed channel modification of the upper Roanoke River within the city limits of Roanoke. Although the Corps has funded studies of the logperch and worked with the Service to reduce project impacts, some adverse effects on the logperch are expected. Several other smaller flood control projects in the Roanoke drainage are under study by the Corps of Engineers. Until these projects have been defined, it is not known what impacts, if any, they will have on the logperch.

The National Park Service's Roanoke River Parkway could adversely affect the logperch if it is constructed adjacent to the upper Roanoke River, but until the proposal goes beyond the conceptual stage, the significance of its impacts, if any, will remain unknown.

Most of the rivers supporting the logperch are subject to siltation resulting from agricultural activities and other developments in their watersheds. The Pigg River and the North Fork of the Roanoke, in particular, are impacted by silt generated from agriculture. This may partially account for the recently observed decline of the species in the North Fork of the Roanoke River (Simonson and Neves 1986).

B. Overutilization for Commercial, Recreation, Scientific or Educational Purposes

There is no evidence to suggest that overutilization for any of these purposes has contributed to the decline of the logperch. Because of the species' low numbers, overcollection could adversely affect its smaller populations occurring outside the mainstem Roanoke River.

C. Disease or Predation

There is no evidence that disease is a threat to this species. Predation may constitute a significant portion of the mortality of the larval and post larval stages (Burkhead 1983), but this is not considered a significant threat so long as reproductive rates remain normal.

D. The Inadequacy of Existing Regulatory Mechanisms

Virginia State law (Sections 29.1–412 and 29.1–418) requires a permit for the scientific collection of freshwater fishes, but does not protect the species' habitat from the potential impacts of Federal projects. Federal listing would provide protection for the species under the Endangered Species Act by requiring Federal agencies to consult with the Service when projects they fund, authorize or carry out may affect the species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The logperch is vulnerable to vandalism, particularly the small populations found at locations other than the mainstem Roanoke River.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Roanoke logperch as endangered. Each of the four relatively small and widely separated populations of the logperch is susceptible to extirpation through continued adverse habitat modification. Several imminent threats are now present in the upper Roanoke River drainage, which supports the species' largest population. Furthermore, the most recent comprehensive survey for the species (Simonson and Neves 1986) indicates a sharp decline in the North Fork Roanoke population and low population densities for all populations of the fish. Although three other populations of the species are extant, two of these populations (in the Nottoway River and the Smith River) are highly vulnerable to threats because of their small size; the third, in the Pigg River, is threatened by siltation. In view of the serious problems faced by the logperch, threatened status is not appropriate.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. As outlined above under Factors "B" and "E", the species is vulnerable to overcollection and vandalism. The Service finds that designation of critical habitat is not prudent for the Roanoke logperch. No benefit to the species has been identified that would outweigh the potential threats of collection or vandalism, which would be exacerbated by publication of a detailed critical habitat description. The Corps of Engineers has conducted studies of the upper Roanoke River population of the logperch and is familiar with the species' total distribution. It is the agency that would be involved with most projects or permits affecting the species' habitat. Several other Federal agencies have also been notified of the Roanoke logperch's distribution and requested to provide data on proposed Federal projects that might adversely affect the species. The involved Federal agencies thus already have the species' distributional data needed to determine if the species may be impacted by their actions.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered and with respect to its critical habitat, if any is being designated. Revised regulations implementing this interagency cooperation provision of the Act were published on June 3, 1986 (51 FR 19926). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that could impact the Roanoke logperch include, but are not limited to, the following: Issuance of permits for steam alterations, reservoir construction, wastewater facility development, flood control projects, and road and bridge construction on the river reaches supporting the logperch. Three specific proposed actions with Federal involvement that may affect the logperch are the West Roanoke County Water Supply Project, the Upper Roanoke River Flood Control Project, and the Roanoke River Parkway. These projects and potential impacts on the species are described above. Modifications of these planned activities may be necessary to protect the

BEST COPY AVAILABLE

Roanoke logperch. It has been the experience of the Service that nearly all section 7 consultations are resolved so that the species is protected and the project objectives are met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered fish or wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Burkhead, N.M. 1983. Ecological studies of two potentially threatened fishes (the orangefin madtom, *Noturus gilberti*, and the Roanoke logperch, *Percina rex*) endemic to the Roanoke River drainage. Report to Wilmington District Corps of Engineers, Wilmington, North Carolina. 155 pp.

Burkhead, N.M. 1986. Potential impact of the West County Reservoir Project on two endemic rare fish and the aquatic biota of the upper Roanoke River, Roanoke County, Virginia. Report to Roanoke County Public Facilities Dept., Roanoke, Virginia. 15 pp.

Camp Dresser and McKee. 1986. Minimum Instream Flow Study. Commonwealth of Virginia, State Water Control Board, Richmond, Virginia. 329 pp.

Jenkins, R.E. 1979. Freshwater and Marine Fishes. *In* D.W. Linzey [ed.], Endangered and Threatened Plants and Animals of Virginia. Virg. Poly. Inst. and State Univ., Blacksburg, Virginia. pp. 319–373.

Jordan, D.S. 1889. Description of fourteen species of freshwater fishes collected by the United States Fish Commission in the summer of 1888. Proc. U.S. Natl. Mus. 11:351–362.

Simonson, T.D., and R.J. Neves. 1986. A status survey of the orangefin madtom (*Noturus gilberti*) and Roanoke logperch (*Percina rex*). Report for the Virginia Commission of Game and Inland Fisheries, Richmond, Virginia. 108 pp.

Tennant, D.L. 1975. Instream Flow Regimens for Fish, Wildlife, Recreation and Related Environmental Resources. U.S. Fish and Wildlife Service, Billings, Montana. 30 pp.

Author

The primary author of this final rule is G. Andrew Moser, Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401 (301/269–5448).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Fishes," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes:							
Logperch, Roanoke	*Percina rex*	U.S.A. (VA)	Entire	E	359	NA	NA

Dated: July 18, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–19439 Filed 8–17–89; 8:45 am]

BILLING CODE 4310–55–M

federal register

Friday
August 18, 1989

Part X

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

Unutilized and Underutilized Federal Buildings and Real Property Determined To Be Suitable for Use for Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-1917; FR-2806]

Unutilized and Underutilized Federal Buildings and Real Property Determined To Be Suitable for Use for Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: August 18, 1989.

ADDRESS: For further information, contact Morris Bourne, Department of Housing and Urban Development, Room 9140, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Date: August 15, 1989

C. Austin Fitts,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 89-19570 Filed 4-17-89; 11:30 am]

BILLING CODE 4210-27-M

Reader Aids

Federal Register

Vol. 54, No. 159

Friday, August 18, 1989

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237
Code of Federal Regulations	
Index, finding aids & general information	523-5227
Printing schedules	523-3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230
The United States Government Manual	
General information	523-5230
Other Services	
Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

31645-31796	1
31797-31932	2
31933-32034	3
32035-32332	4
32333-32432	7
32433-32628	8
32629-32794	9
32795-32950	10
32951-33182	11
33183-33492	14
33493-33664	15
33665-33852	16
33853-34118	17
34119-34474	18

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR	
Proclamations:	
6002	31794
6003	31931
6004	31933
6005	32033
6006	32783
6007	33853
6008	33855
6009	33857
6010	34119
6011	34121
6012	34123
6013	34125
Executive Orders:	
10355 (See EO 12588)	34129
12549 (See EO 12689)	34131
12585	31795
12586	32629
12587	34127
12588	34129
12589	34131
5 CFR	
1620	32785
7 CFR	
29	31797
58	31646
301	32788
319	33665, 34133
401	33493
406	33493
910	32035, 32951, 34134
917	32794, 33667
945	31798
947	32433
948	33494
989	34134
1076	31799
1126	32951
1772	34136
1864	32953
Proposed Rules:	
1a	32985
51	32419
401	33557, 33586
403	33567
800	33702
910	33704, 34153
911	31843
929	31844
931	33706
932	33706
945	33707
948	34154
957	31845
993	31846
1001	33709
1002	33709
1004	33709
1005	33709
1006	33709
1007	33709
1011	33709
1012	33709
1013	33709
1030	33709
1032	33709
1033	33709
1036	33709
1040	33709
1046	33709
1049	33709
1050	33709
1064	33709
1065	33709
1068	33709
1076	33709
1079	33709
1080	33709
1093	33709
1094	33709
1096	33709
1097	33709
1098	33709
1099	33709
1106	33709
1108	33709
1120	33709
1124	33709
1126	33709
1131	33709
1132	33709
1134	33709
1135	33709
1137	33709
1138	33709
1139	33709
1900	33906
1910	33906
1951	33906
1955	33906
1956	33917
1962	33906
1965	33906
8 CFR	
204	34141
Proposed Rules:	
210	31986
9 CFR	
51	32434
91	33666
92	31800
Proposed Rules:	
94	33918
309	33920
310	33920
318	33920

10 CFR

2 33166
7 31646
26 33148
Proposed Rules:
Ch. I 32653
50 33568
55 33568
70 33570
72 33570
73 33570
75 33570
430 ..... 32349, 32744

11 CFR

100 34696
102 34696
110 34696
114 34696
9004 34696

12 CFR

33 31836
207 31646
220 31646
221 31646
224 31646
226 32850
229 32835
262 33169
336 33690
545 ..... 32954, 33859, 34143
546 34143
561 34143
563 ..... 33670, 34143, 34146
563b 34143
563c 34143
570 34143
571 34143
574 ..... 32959, 33169
Proposed Rules:
4 32839
5 33711
7 33711
12 32853
226 32099
328 33716
563 33023-33026
563b 33026
564 33235

14 CFR

1 34284
21 34284
23 34284
25 34284
27 34284
29 34284
31 34284
33 34284
35 34284
36 34284
39 ..... 31649, 31651-31653, 31803-31809, 31935, 32435-32457, 32705, 33195, 33873-33875
43 34284
45 34284
47 34284
61 34284
63 34284
65 34284
71 ..... 31654, 31936, 31937, 34284
73 ..... 31655, 32800
75 31937
91 34284
93 34284
97 32487
99 34284
103 34284
121 34284
125 34284
127 34284
133 34284
135 34284
137 34284
141 34284
217 31810
241 31810
303 ..... 32439, 32440, 32693, 32797-32800, 33498
1221 32963
Proposed Rules:
Ch. I 33557
25 34118
39 ..... 31693, 31694, 31847, 32824, 32826, 33235, 33237, 33934-33938, 34165
43 32563
65 32563
71 ..... 31696-31704, 31966, 32452, 32827, 33579, 33941
75 ..... 31705, 31967
121 ..... 34118, 34394
125 34118
145 33563
Ch. II 33577, 33578
232 33560
252 33560
253 33560
302 33560
377 33562

15 CFR

773 31812
799 33676

16 CFR

305 33631
Proposed Rules:
4 32654

17 CFR

1 33678
140 31614
200 33500
211 ..... 32333, 32334
230 33500
260 33500
270 ..... 31650, 32048
274 32048
275 ..... 32048, 32441
279 32048
Proposed Rules:
230 ..... 32226, 32993
239 ..... 32226, 32993
240 ..... 31650, 32229
249 32226
260 32226
269 32226
270 ..... 32993, 33027
274 32993

18 CFR

35 32802
270 32805
271 ..... 31938, 32805
Proposed Rules:
37 31706
803 33036

19 CFR

4 ..... 33187, 33188
10 33189
113 33672
177 ..... 32742, 32810
213 33881
Proposed Rules:
12 34186
355 33238

20 CFR

Proposed Rules:
208 32163
218 31939
220 32163
230 32163
260 32163
327 31968
404 33238
416 ..... 31656, 33238

21 CFR

138 32050
179 32335
510 ..... 32632, 33672
520 ..... 32336, 33501, 33814
522 32632
524 32632
540 ..... 33672, 33673
556 32629
558 ..... 32633-32634, 32963, 33884
573 33673
1301 33674
1308 33674
Proposed Rules:
Ch. I 32610
133 32091
168 33582
333 34188
448 34188
522 31949
556 31949
1308 ..... 31815, 31955
1310 31657
1313 31657
1316 31669

22 CFR

60 31815
61 31815
62 31815
63 31815
64 31815
65 31815
514 32984

23 CFR

659 32967

24 CFR

200 ..... 32059, 32968
203 32968
204 32968
206 32059
213 32968
220 32968
221 32968
222 32968
226 32968
227 32968
235 32968
237 32968
240 32968
570 31670
Proposed Rules:
Ch. I 31856
200 33039
205 33039

25 CFR

122 34154

26 CFR

1 ..... 31672, 31816
602 31672
Proposed Rules:
1 ..... 31708, 32459

28 CFR

31 32618
74 34157
523 32027
544 32095
Proposed Rules:
551 34094

29 CFR

524 ..... 32920, 33814
525 ..... 32920, 33814
529 ..... 32920, 33814
1600 32061
1601 32061
1610 32061
1611 32061
1620 32061
1626 ..... 32061, 33501
1627 33675
1691 32061
1910 ..... 31765, 31970
2599 32936
2619 33504
2676 33505
Proposed Rules:
503 32995
1910 ..... 31868, 33832

30 CFR

934 32063
936 34166
Proposed Rules:
250 ..... 31768, 32316, 32563, 33042
906 32828
917 32093
920 33042
925 ..... 32094, 34190
931 ..... 32095, 32096
948 ..... 32097, 32098

31 CFR

103 33675
500 32064

32 CFR

231 33512
231a 33516
286 33190
385 33521
706 31825

33 CFR

100 ..... 31826, 32066, 32441-32442, 33679, 33680
110 32419
117 31827
146 32971
162 32419
165 ..... 32419, 32443
Proposed Rules:
100 ..... 31859, 31860, 32453, 32659

162 32661
334 33584

34 CFR

208 32936
345 32770
425 34402
426 34402
432 34402
433 34402
434 34402
435 34402
436 34402
437 34402
438 34402
441 34402
755 32946

35 CFR

Proposed Rules:
133 32099
135 32099

36 CFR

1153 32337-32342
1155 32337-32342
1202 32067
1250 32067
1254 32067
Proposed Rules:
254 34366
1206 32455

37 CFR

1 ..... 32637, 34282
2 32637
301 32810
309 32810

38 CFR

3 ..... 31826, 31950
21 ..... 31829, 31950-31952, 32070, 33885
Proposed Rules:
14 34334
19 34334
20 34334

39 CFR

111 ..... 32071, 33523
3001 ..... 33525, 33681

40 CFR

52 ..... 31953, 32072, 32073, 32637, 32971, 33526, 33529-33530, 33894
60 ..... 32444, 32972, 34008
61 32444
80 33218
81 ..... 32078, 33219, 33536
85 32566
116 33426
117 33426
146 34160
180 34502
187 32638
180 ..... 31674, 31830-31836, 33690
228 ..... 33585, 34172
261 34175
264 33376
265 33376
270 33376
271 32973
302 ..... 33416, 33426
792 34034
795 33400
796 33148
797 33148
799 ..... 33148, 33400
Proposed Rules:
52 ..... 32101, 33245, 33247, 33717
81 ..... 31860, 31971, 31972
85 32598
180 ..... 31971, 31972, 33044, 33718
185 31836
186 31832-31836
228 ..... 32351-32356, 34191
261 ..... 31675, 32320, 32662, 33942
300 33846
302 ..... 32320, 32671
355 32671
704 31680
799 32629

41 CFR

101-47 32445

42 CFR

50 32448
484 33354
Proposed Rules:
5 32459

43 CFR

Public Lands Orders:
6741 32812
6742 32812
6743 33693
Proposed Rules:
2090 34380
2200 34380

44 CFR

59 33541
60 33541
64 ..... 32813, 32814, 33220, 33222
65 ..... 33541, 33696
67 ..... 33693, 33697
80 31681
83 31681
352 31920
Proposed Rules:
67 33943
335 32359

45 CFR

232 32284
302 32284
303 32284
304 32284
305 32284
307 32284
1632 31954

46 CFR

552 34182
553 34182
Proposed Rules:
10 33045
15 33045
586 34194

47 CFR

Chapter I 33224
2 ..... 32339, 33698
15 32339
22 ..... 33551, 33696
25 ..... 33226, 33696
73 ..... 31685, 31686, 31838, 31960, 32340, 32639-32641, 33227, 33699, 33700, 33900, 33901, 34182
80 31839
90 33902
Proposed Rules:
2 32630
64 33565
69 33565
73 ..... 32361, 32362, 32672-32676, 33249, 33250, 33719-33721, 33946
94 32362

48 CFR

203 32161
208 32161
209 32161
212 32161
213 32161
214 32161
215 ..... 32161, 32975
216 32161
217 32161
219 32161
222 32161
223 32161
226 32161
242 32161
245 32161
252 32161
253 32161
273 32161
525 33554
801 31961
Proposed Rules:
44 32422
45 32424
51 32424
52 32424
205 33045
970 33251

49 CFR

190 32342
191 32342
192 ..... 32344, 32841
195 ..... 32342, 32344
210 33227
215 33227
216 33227
217 33227
225 33227
228 33227
229 33227
231 33227
232 33227
383 33230
571 ..... 31687, 32345
1207 33555
1249 33555
Proposed Rules:
571 32830

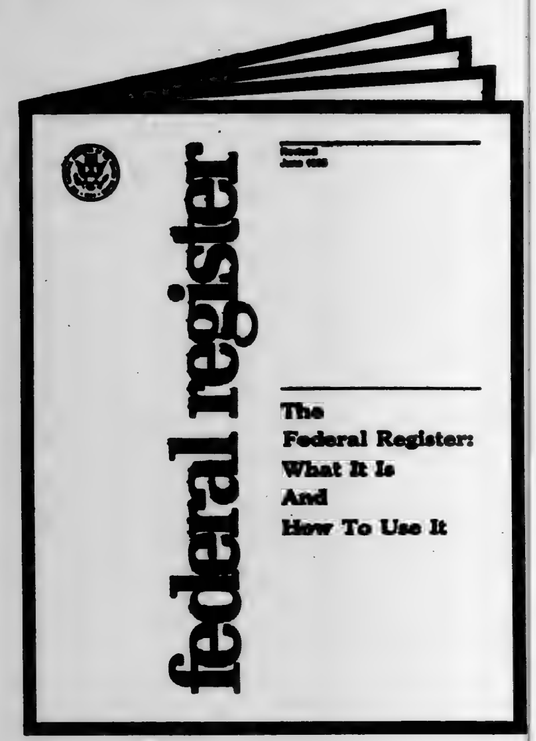
50 CFR

17 ..... 32326, 34484, 34486
20 32975
23 33231
215 32348
217 32615
226 ..... 32085, 34282
227 ..... 32065, 32815, 34282
611 ..... 32642, 32819
652 33700
661 31841
663 31688
672 ..... 32819, 33701
674 33904
675 ..... 31842, 32642
Proposed Rules:
16 33947
18 ..... 33949, 34201
17 ..... 32833, 33558
20 33721
228 33949
263 32362
267 32362
611 31861
620 31861
649 32834
655 31862
672 ..... 31861, 33737
675 ..... 31861, 33737
Ch. VII 33736

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List August 17, 1989



Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register—Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a sample research problem.

Price $4.50

Order Form

Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐☐ – ☐

Order No. _____

Master Card and VISA accepted.

Credit Card Orders Only
Total charges $ _____
Fill in the boxes below.

Customer's Telephone Nos.
Area Code Home Area Code Office

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month / Year ☐☐☐☐

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday - Friday (except holidays)

Please send me _____ copies of **The Federal Register - What It Is and How To Use It,** at $4.50 per copy, Stock No. 022-003-01116-1

Please Print or Type

Name - First, Last

Company name or additional address line

Street address

City State ZIP Code

(or Country)

(Rev. 11 – 85)

L

S

G

3

39

11

OL
4
SS
1
6
0
G
1
89
MI

8-21-89
Vol. 54 No. 160

federal register

Monday
August 21, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 89 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

8-21-89
Vol. 54 No. 160
Pages 34475-34766

federal register

Monday
August 21, 1989

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, and Atlanta, GA, see announcement on the inside cover of this issue.

BEST COPY AVAILABLE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-783-3238
Magnetic tapes	275-3328
Problems with public subscriptions	275-3054

Single copies/back copies:

Paper or fiche	783-3238
Magnetic tapes	275-3328
Problems with public single copies	275-3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523-5240
Magnetic tapes	275-3328
Problems with Federal agency subscriptions	523-5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: September 20; at 9:00 a.m.
WHERE: Room 808, 75 Spring Street, SW.
Richard B. Russell Federal Building
Atlanta, GA
RESERVATIONS: Call the Federal Information Center
404-331-6895

WASHINGTON, DC

WHEN: September 25; at 9:00 a.m.
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street NW., Washington, DC
RESERVATIONS: 202-523-5240

Contents

Federal Register
Vol. 54, No. 160
Monday, August 21, 1989

Agricultural Marketing Service
RULES
Grapes (Tokay) grown in California, 34483
Raisins produced from grapes grown in California, 34484
PROPOSED RULES
Kiwifruit grown in California, 34521
Potatoes (Irish) grown in—
California and Oregon, 34522
Colorado, 34524
Raisins produced from grapes grown in California, 34525

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Federal Crop Insurance Corporation; Forest Service

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Meetings; advisory committees:
September, 34554

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Ostriches and other ratites, 34485
Plant-related quarantine, domestic:
Oriental fruit fly, 34477
NOTICES
Genetically engineered organisms for release into environment; permit applications, 34533

Army Department
NOTICES
Patent licenses, exclusive:
Army Electronics Technology and Devices Laboratory, 34546
LTC Corp., 34546

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control
NOTICES
In vitro systems for human biological monitoring: NIOSH meeting, 34554
Meetings:
Injury Prevention and Control Advisory Committee, 34554
Scientific Counselors Board (NIOSH), 34554
Vital and Health Statistics National Committee, 34555

Coast Guard
RULES
Regattas and marine parades:
Thirty Third Annual Powerboat Regatta, 34505
PROPOSED RULES
Drawbridge operations:
Maryland, 34530
NOTICES
Committees; establishment, renewal, termination, etc.:
Chemical Transportation Advisory Committee, 34636

Commerce Department
See also Export Administration Bureau; International Trade Administration; National Institute of Standards and Technology
NOTICES
Agency information collection activities under OMB review, 34536
(3 documents)
Senior Executive Service:
Performance Review Board; membership, 34545

Consumer Product Safety Commission
NOTICES
Agency information collection activities under OMB review, 34545

Defense Department
See also Army Department; Navy Department
RULES
Federal Acquisition Regulation (FAR):
Miscellaneous amendments, 34750
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 34546

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
King Pharmacy et al., 34623
White's Discount Drugs, 34628

Education Department
NOTICES
Grantback arrangements; award of funds:
Georgia, 34548

Employment Standards Administration
See Wage and Hour Division

Energy Department
See also Federal Energy Regulatory Commission
NOTICES
National energy strategy, development
Hearings, 34549

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 34512
Wisconsin, 34515
NOTICES
Hazardous waste:
Confidential business information and data transfer to contractors, 34550
Water pollution control:
Disposal site determinations—
Big River, Mishnock River, etc., Kent County, RI, 34550

Executive Office of the President
See Presidential Documents

Export Administration Bureau
NOTICES
Export privileges, actions affecting:
Lange, Wilfried, et al., 34536

Farm Credit Administration
NOTICES
Senior Executive Service:
Performance Review Board; membership, 34551

Farm Credit System Assistance Board
RULES
Freedom of Information and Privacy Acts; implementation, 34467

Federal Aviation Administration
RULES
Airworthiness directives:
Aerospatiale, 34498, 34499
(2 documents)
Boeing, 34500
Boeing et al., 34762
Lockheed, 34501
Control zones, 34503
PROPOSED RULES
Airworthiness directives:
Boeing, 34527
Transition areas, 34528
NOTICES
Meetings:
Aeronautics Radio Technical Commission, 34636

Federal Crop Insurance Corporation
PROPOSED RULES
Crop insurance endorsements, etc.:
Rice, 34518
Tobacco, 34519

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 34639

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Blue River Dam, OR, 34549
Applications, hearings, determinations, etc.:
Pacific Offshore Pipeline Co., 34549

Federal Highway Administration
PROPOSED RULES
Engineering and traffic operations:
Federal-aid highway projects; prevailing wage rates in advertisements and contracts; withdrawn, 34529

Federal Maritime Commission
NOTICES
Agreements filed, etc., 34551

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 34639
(2 documents)
Applications, hearings, determinations, etc.:
Banc One Corp., 34552
Bank of Nova Scotia, 34551
Cardinal Bancshares, Inc., et al., 34552
Fifth Third Bancorp et al., 34553
Fourth Financial Corp. et al., 34553

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 34617

Food and Drug Administration
NOTICES
Meetings:
Consumer information exchange, 34555

Forest Service
RULES
Administration:
National Forest System; appeal of decisions
Technical amendments, etc., 34505
NOTICES
National Environmental Policy Act; implementation, 34533

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
Miscellaneous amendments, 34750
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 34546

Health and Human Services Department
See Alcohol, Drug Abuse, and Mental Health Administration; Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration; Health Resources and Services Administration

Health Care Financing Administration
NOTICES
Medicare:
National coverage decisions, 34555
Privacy Act:
Systems of records, 34612

Health Resources and Services Administration
NOTICES
Meetings; advisory committees:
November and December, 34615

Housing and Urban Development Department
NOTICES
Agency information collection activities under OMB review, 34616

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Meetings:
Importers and Retailers' Textile Advisory Committee, 34538
Applications, hearings, determinations, etc.:
Argonne National Laboratory, Energy Department, 34538
Boston College et al., 34539
California Institute of Technology, 34539
Carleton College et al., 34539
Harlem Hospital et al., 34540

Purdue University et al., 34541
Rensselaer Polytechnic Institute, 34542
University of California et al., 34542
University of Nebraska-Lincoln et al., 34543
University of Wisconsin, 34544

Interstate Commerce Commission
NOTICES
Motor carriers:
Compensated intercorporate hauling operations, 34619
Railroad services abandonment:
Southern Pacific Transportation Co., 34620, 34621
(2 documents)
St. Louis Southwestern Railway Co., 34620

Justice Department
See also Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
French Limited, Inc., et al., 34621
Gulf States Utilities Co., 34622
McGraw, William R., 34622
Southern Pacific Transportation Co., 34623

Labor Department
See Wage and Hour Division

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
Wyoming; correction, 34617
Realty actions; sales, leases, etc.:
Utah, 34617

Libraries and Information Science, National Commission
NOTICES
Meetings:
Information Policy Committee, 34628

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
Miscellaneous amendments, 34750
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 34546

National Commission on Libraries and Information Science
See Libraries and Information Science, National Commission

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities under OMB review, 34629
Meetings:
Design Arts Advisory Panel, 34629
Music Advisory Panel, 34629

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Institute of Standards and Technology
NOTICES
Meetings:
Consortium on Automation of Analytical Laboratory Systems, 34544

Navy Department
NOTICES
Environmental statements; availability, etc.:
Naval Weapons Station, Earle, Colts Neck, NJ, 34547
Inventions, Government-owned; availability for licensing, 34547
Meetings:
Chief of Naval Operations Executive Panel Advisory Committee, 34547

Nuclear Regulatory Commission
NOTICES
Meetings:
Nuclear Waste Advisory Committee, 34630
Reactor Safeguards Advisory Committee, 34630
Applications, hearings, determinations, etc.:
Carolina Power & Light Co., 34631
Connecticut Yankee Atomic Power Co., 34631
Duke Power Co., 34633

Personnel Management Office
NOTICES
Agency information collection activities under OMB review, 34634, 34635
(2 documents)

Postal Rate Commission
NOTICES
Post office closings; petitions for appeal:
Hoxeyville, MI, 34635

Postal Service
NOTICES
Meetings; Sunshine Act, 34639

Presidential Documents
ADMINISTRATIVE ORDERS
Jordan/West Bank program; U.S. assistance (Presidential Determination No. 89-22 of August 9, 1989), 34475

Public Health Service
See Alcohol, Drug Abuse, and Mental Health Administration; Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration

Research and Special Programs Administration
RULES
Hazardous materials:
Hazardous substances and reportable quantities list revision, 34666

Resolution Trust Corporation
NOTICES
Meetings; Sunshine Act, 34640

Securities and Exchange Commission
NOTICES
Applications, hearings, determinations, etc.:
American Stock Exchange, Inc., 34635
Boston Stock Exchange, Inc., 34636

Small Business Administration
RULES
Conflict of interests, 34745
Hearings and Appeals Office; minority small business and capital ownership development program; conforming amendments, 34746

Minority small business and capital ownership development:
Business Opportunity Development Reform Act; implementation, 34745

State Justice Institute
NOTICES
Grants, cooperative agreements, and contracts; guidelines, 34642

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities under OMB review, 34619
Environmental statements; availability, etc.:
Black Mesa-Kayenta Mine, AZ, 34619

Thrift Supervision Office
NOTICES
Organization, functions, and authority delegations, 34637

Transportation Department
See Coast Guard; Federal Aviation Administration; Federal Highway Administration; Research and Special Programs Administration

Treasury Department
See Thrift Supervision Office

United States Information Agency
RULES
Exchange visitor program:
Citizenship of responsible officers and sponsorship Correction, 34503
NOTICES
Grants and cooperative agreements; availability, etc.:
Private non-profit organizations in support of international educational and cultural activities. 34635
Meetings:
Book and Library Advisory Committee, 34636

Veterans Affairs Department
PROPOSED RULES
Disabilities rating schedule:
Genitourinary system disabilities, 34531

Wage and Hour Division
RULES
Fair Labor Standards Act:
Minimum wage and overtime compensation provisions; State and local governments, 34504

Separate Parts in This Issue

Part II
State Justice Institute, 34642

Part III
Department of Transportation, Research and Special Programs Administration, 34666

Part IV
Small Business Administration, 34692

Part V
Department of Defense; General Services Administration; National Aeronautics and Space Administration, 34750

Part VI
Department of Transportation, Federal Aviation Administration, 34762

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Presidential Determinations:
No. 89-22 of Aug. 9, 1989.....34475

7 CFR
301.....34477
926.....34483
989.....34484
Proposed Rules:
401 (2 documents).....34518, 34519
920.....34521
947.....34522
948.....34524
989.....34525

9 CFR
92.....34485

12 CFR
1300.....34487

13 CFR
105.....34745
124.....34692
134.....34746

14 CFR
39 (5 documents).....34496-34501, 34762
71.....34503
Proposed Rules:
39.....34527
71.....34528

22 CFR
514.....34503

23 CFR
Proposed Rules:
635.....34529

29 CFR
775.....34504

33 CFR
100.....34505
Proposed Rules:
117.....34530

36 CFR
217.....34505
251.....34505

38 CFR
Proposed Rules:
4.....34531

40 CFR
52 (2 documents).....34512, 34515

48 CFR
4.....34750
9.....34750
12.....34750
15.....34750
19.....34750
22.....34750
23.....34750
25.....34750
27.....34750
28.....34750
31.....34750
32.....34750
42.....34750
45.....34750
52.....34750
53.....34750

49 CFR
172.....34666

Federal Register
Vol. 54, No. 160
Monday, August 21, 1989

Presidential Documents

Title 3—

The President

Presidential Determination No. 89-22 of August 9, 1989

Authorization of Reallocation of Economic Support Fund Appropriations for Jordan

Memorandum for the Secretary of State

By virtue of the authority vested in me by Section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2364(a)(1), I hereby determine that it is important to the security interests of the United States:

(1) to reallocate the $7 million earmarked for Jordan's West Bank Development Program (under Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988) for the West Bank/Gaza Direct Program, and

(2) to authorize the furnishing of such assistance.

You are authorized and directed to report this Determination to the Congress immediately, and none of the assistance provided for herein shall be furnished until after such report has been made.

You are further authorized and directed to publish this Determination in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, August 9, 1989.

[FR Doc. 89-19771
Filed 8-17-89; 3:21 pm]
Billing code 3195-01-M

Federal Register
Vol. 54, No. 160
Monday, August 21, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89-144]

Oriental Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are quarantining an area of Los Angeles County in California because of the Oriental fruit fly and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Oriental fruit fly into noninfested areas of the United States.

DATES: Interim rule effective August 15, 1989. Consideration will be given only to comments received on or before October 20, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-144. Comments received may be inspected at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, Room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION:

Background

We are amending the "Domestic Quarantine Notices" in 7 CFR Part 301 by adding a new subpart, 301.93, "Oriental Fruit Fly" (referred to below as the regulations). These regulations quarantine a portion of Los Angeles County, California, because of the Oriental fruit fly and restrict the interstate movement of regulated articles from the quarantined area.

The Oriental fruit fly, *Dacus dorsalis* (Hendel), is a destructive pest of numerous fruits (especially citrus fruits), nuts, vegetables, and berries. The Oriental fruit fly can cause serious economic losses. Heavy infestations can cause complete loss of crops. The short life cycle of this pest permits the rapid development of serious outbreaks.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), reveal that a portion of Los Angeles County, California, is infested with the Oriental fruit fly. Specifically, inspectors collected 11 male Oriental fruit flies and 4 female Oriental fruit flies in traps in the West Covina area of Los Angeles County between June 16 and July 22, 1989. The Oriental fruit fly is not known to occur anywhere else in the continental United States.

Officials of State agencies of California have begun an intensive Oriental fruit fly eradication program in the quarantined area in California. Also, as explained below, California has taken action to restrict the intrastate movement of certain articles from the quarantined area to prevent the spread of the Oriental fruit fly within California. However, it is also necessary to restrict the interstate movement of certain articles from the quarantined area to prevent the spread of the Oriental fruit fly to other States. Accordingly, to prevent the spread of the Oriental fruit fly, this document establishes Federal regulations, which are described below by section.

Restrictions on Interstate Movement of Regulated Articles (Section 301.93)

Section 301.93 prohibits any person from moving any regulated article interstate from any quarantined area except in accordance with conditions prescribed in the regulations. For informational purposes, a footnote (number 1) has been added to reference the authority of an inspector to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply remedial measures to, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

Definitions (Section 301.93-1)

Section 301.93-1 contains, for informational purposes, definitions of the following terms: "Administrator," "Animal and Plant Health Inspection Service," "Certificate," "Compliance Agreement," "Core area," "Day degrees," "Infestation," "Inspector," "Interstate," "Limited permit," "Moved (Move, Movement)," "Oriental fruit fly," "Person," "Quarantined Area," "Regulated article," and "State."

Regulated Articles (Section 301.93-2)

The regulations impose conditions on the interstate movement of those articles that present a significant risk of spreading Oriental fruit fly if moved without restrictions from quarantined areas into or through noninfested areas. These articles, which are designated as regulated articles, may not be moved interstate from quarantined areas except in accordance with conditions specified in §§ 301.93-4 through 301.93-10.

Section 301.93-2 designates as regulated articles a number of fruits, nuts, vegetables, and berries, and soil within the drip line of plants that produce the fruits, nuts, vegetables, or berries. Based on research and experience, the regulated articles listed in § 301.93-2(a) and (b) are articles that are likely to cause the spread of the Oriental fruit fly. In addition, § 301.93-2(c) allows designation of any other product, article, or means of conveyance as a regulated article if an inspector determines that it presents a risk of spreading the Oriental fruit fly and notifies the person in possession of the product, article, or means of conveyance that it is subject to the restrictions in the regulations. This provision for "any other product, article, or means of conveyance" allows an inspector who discovers a risk of spreading Oriental fruit fly (e.g., a truck with Oriental fruit fly pupae in cracks in the floorboards) to

regulate the affected articles immediately, by informing the person in possession of the product, article or means of conveyance that it is being regulated.

Fruits, nuts, vegetables, or berries that are canned, dried, or frozen below −17.8 °C. (0 °F.) are not included as regulated articles since the Oriental fruit fly could not survive under those conditions.

Quarantined Area (Section 301.93–3)

As stated in § 301.93–3(a), it is necessary to quarantine areas in which the Oriental fruit fly has been found by an inspector, areas in which the Administrator has reason to believe the Oriental fruit fly is present, and areas the Administrator considers necessary to quarantine because of their proximity to the Oriental fruit fly or their inseparability for quarantine enforcement purposes from localities where Oriental fruit flies have been found.

Section 301.93–3(a) further provides that less than an entire State will be designated as a quarantined area only if the Administrator determines that (1) the State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those that are imposed by our regulations with respect to the interstate movement of these articles; and (2) quarantining less than the entire State will prevent the interstate spread of the Oriental fruit fly. These determinations would indicate that infestations are confined to the quarantined areas and eliminate the need for designating an entire State as a quarantined area.

In accordance with these criteria, we are designating as a quarantined area an area in Los Angeles County in California. This area is as follows:

Los Angeles County—That portion of the county in the West Covina area bounded by a line beginning at the intersection of Sunset Avenue and San Bernardino Road, then east along San Bernardino Road to its intersection with Grand Avenue, then south along Grand Avenue to its intersection with Badillo Street, then east along Badillo Street to its intersection with Reeder Avenue, then south along Reeder Avenue to its intersection with Puente Street, then southeast along Puente Street to its intersection with Via Verde, then east along Via Verde to its intersection with Interstate Highway 210, then south along Interstate Highway 210 to its intersection with State Highway 57, then south along State Highway 57 to its intersection with Highland Valley Road, then southeast along Highland Valley Road to its intersection with Diamond Bar Boulevard, then southwest along Diamond Bar Boulevard to its intersection with State Highway 57, then west along an imaginary line from this intersection to the intersection of Fullerton Road and Skyline Drive, then northwest along Skyline Drive to its intersection with Suncrest Court, then northwest along an imaginary line from this intersection to the intersection of Colima Road and Stimson Avenue, then north along Stimson Avenue to its intersection with Halliburton Road, then west along Halliburton Road to its intersection with Hacienda Boulevard, then north along Hacienda Boulevard to its intersection with State Highway 60, then northwest along State Highway 60 to its intersection with 7th Avenue, then northeast along 7th Avenue to its intersection with Valley Boulevard and Sunset Avenue, then northeast along Sunset Avenue to the point of beginning.

It is necessary to designate this portion of Los Angeles County as a quarantined area because it is an area in which the Oriental fruit fly has been found, or in which the Administrator has reason to believe the Oriental fruit fly is present, or an area necessary to regulate because of its proximity to the Oriental fruit fly or its inseparability for quarantine enforcement purposes from localities where Oriental fruit fly has been found.

There does not appear to be any reason to designate any other quarantined areas in Califorina other than the area specified above. California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles under this subpart.

Section 301.93–3(b) provides that the Administrator or an inspector may designate an area as a quarantined area temporarily without publication in the **Federal Register** if there is a basis for listing the area as a quarantined area under § 301.93–3(a) and if the owner or person in possession of the area to be quarantined is given written notice of this action. This is necessary in order to prevent spread of the Oriental fruit fly before restrictions can be published in the **Federal Register** concerning the interstate movement of regulated articles from the designated area.

Conditions Governing the Interstate Movement of Regulated Articles From Quarantined Areas (Sections 301.93–4 through 301.93–10) Section 301.93–4

Section 301.93–4(a) requires regulated articles moved interstate from quarantined areas to be accompanied by a certificate or limited permit issued and attached as prescribed by §§ 301.93–5 and 301.93–8, unless moved as prescribed in § 301.93–4(b).

Section 301.93–4(b) allows a regulated article to move interstate without a certificate or limited permit if the article originates outside of a quarantined area, if it is moved directly through the quarantined area without stopping except for refueling or for traffic conditions such as traffic lights and stop signs, if it is shipped in an enclosed vehicle or is completely covered so as to prevent access by Oriental fruit flies, if the point of origin is indicated on the waybill, and if the enclosed vehicle or the enclosure which contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

Also, § 301.93–4(c) allows the Department to move regulated articles interstate without a certificate or limited permit for experimental or scientific purposes. However, the regulated articles must be moved in accordance with a permit issued by the Administrator, under conditions that prevent the spread of the Oriental fruit fly.

Section 301.93–4 contains a footnote (number 2) to remind persons that other applicable domestic plant quarantine and regulation requirements may need to be met for interestate movement.

Section 301.93–5

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles upon a finding by an inspector that, because of certain conditions (e.g. the article is free of Oriental fruit fly), there is an absence of a pest risk prior to movement. Regulated articles accompanied by a certificate can be moved interstate without further restrictions being imposed. Limited permits are issued for regulated articles when an inspector has determined that, because of a possible pest risk, such articles may be safely moved interstate only subject to further restrictions, such as movement to limited areas and movement for limited purposes. Section 301.93–5 explains the conditions for issuing a certificate or limited permit.

Specifically, § 301.93–5(a) provides that a certificate will be issued by an inspector for the movement of a regulated article if the inspector determines that the article: (1) is free of Oriental fruit fly, has been treated under direction of an inspector in accordance with § 301.93–10, or comes from premises of origin free from Oriental fruit fly and has not been exposed to Oriental fruit fly; (2) will be moved in compliance with any additional emergency conditions deemed necessary to prevent the spread of Oriental fruit fly pursuant to section 105 of the Federal Plant Pest Act; and (3) is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to that article.

A footnote (number 3) is added to provide information on the location of inspectors.

A footnote (number 4) explains that the Secretary of Agriculture may, pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), take emergency actions.

Section 301.93–5(b) provides for the issuance of a limited permit (in lieu of a certificate) by an inspector for movement of a regulated article if the inspector determines that the article is to be moved to a specified destination for specified handling, utilization or processing, and that the movement will not result in the spread of Oriental fruit fly.

Section 301.93–5(c) allows any person who has entered into and is operating under a compliance agreement to execute a certificate or limited permit for the interstate movement of a regulated article after an inspector has made a determination that the article is eligible for a certificate or limited permit in accordance with § 301.93–5(a) or (b).

Also § 301.93–5(d) contains provisions for the withdrawal of a certificate or limited permit by an inspector upon a determination by the inspector that the holder of the certificate or limited permit has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact.

Section 301.93–6

Section 301.93–6 provides for the issuance and cancellation of compliance agreements. Specifically, compliance agreements may be entered into by any person engaged in growing, handling, or moving regulated articles who agrees in writing to comply with the provisions of subpart 301.93. Compliance agreements are provided for the convenience of persons who are involved in frequent shipments of regulated articles from quarantined areas; they are written to ensure that persons issuing certificates or limited permits are knowledgeable with respect to the requirements of Subpart 301.93 and have agreed to comply with them.

Section 301.93–6 also provides that an inspector supervising enforcement of a compliance agreement may cancel the agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations. The inspector will notify the holder of the compliance agreement of the reasons for cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact. This section contains a footnote (number 5) to explain where compliance agreement forms can be obtained.

Sections 301.93–7, 301.93–8, and 301.93–9

Section 301.93–7 provides that any person who desires a certificate or limited permit to move regulated articles must as far in advance of movement as possible (no less than 48 hours before the desired movement), request an inspector to issue a certificate or limited permit. This provision ensures that persons desiring inspection services can obtain them before the intended movement date. A footnote (number 3) is added for informational purposes to indicate how to contact the inspectors for inspection or how to obtain additional information from offices of the Animal and Plant Health Inspection Service.

Section 301.93–8 requires the certificate or limited permit issued for the movement of the regulated article to be attached to the regulated article, or to a container carrying the regulated article, or to the accompanying waybill during the interstate movement. This provision is necessary for enforcement purposes.

Section 301.93–9 explains the APHIS policy that services of an inspector that are needed to comply with the provisions of the regulations in subpart 301.93 are provided without cost during normal business hours (8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays), but that we will not be responsible for any other costs or charges.

Section 301.93–10

Section 301.93–10 sets forth treatment schedules that qualify cucumbers and soil for the issuance of a certificate as provided in § 301.93–5, and a treatment for premises on which regulated articles are grown. This section also identifies treatments for the Oriental fruit fly that are contained in the Plant Protection and Quarantine Treatment Manual. The Plant Protection and Quarantine Treatment Manual is incorporated by reference in the Code of Federal Regulations in 7 CFR part 300. Research has determined that these treatments would be adequate to destroy the Oriental fruit fly. Section 301.93–10 also includes a footnote (number 6) stating that some varieties of fruit may be injured by one of the approved treatments (methyl bromide) and that shippers should test before making commercial shipments.

The treatment schedules for cucumbers, soil, and premises in § 301.93–10 are as follows:

(a) Cucumbers: Fumigation at NAP (chamber or tarpaulin) with 32 g/m³ methyl bromide for 4 hours at 70 °F or above, minimum gas readings 28 g/m³ at ½ hour, 20 g/m³ at 2 hours, 19 g/m³ at 4 hours; or, fumigation at NAP (chamber or tarpaulin) with 48 g/m³ methyl bromide for 2 hours at 70 °F or above, minimum gas readings 40 g/m³ at ½ hour, 30 g/m³ at 2 hours.

(b) Soil: Soil within the drip area of plants that are producing or have produced the fruits, nuts, vegetables, and berries listed in § 301.93–2(a) of this subpart: Apply diazinon at the rate of 5 pounds actual ingredient per acre to the soil within the drip area with sufficient water to wet the soil to a depth of at least ½ inch. Both immersion and pour-on treatment procedures are also acceptable.

(c) Premises: A field, grove, or area that is located within the quarantined area but outside the infested core area, and that produces regulated articles, must receive regular treatments with malathion bait spray at 6 to 10-day intervals, starting at least 30 days before harvest and continuing through the harvest period. The malathion bait spray treatment must be applied by ground equipment at a rate of 2.4 ounces of technical grade malathion and 9.6 ounces of protein hydrolysate per acre.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this rule without prior opportunity for public comment. Immediate action is necessary to prevent the Oriental fruit fly from spreading to noninfested areas of the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an

effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This interim rule restricts the interstate movement of regulated articles from a portion of Los Angeles County, California. It appears that there is very little commercial activity in the quarantined area that may be affected by this rule. The small entities that may be affected appear to consist of approximately 75 nurseries, 2 community gardens, 2 fruit stands, and 25 locations producing cucumbers, tomatoes, and avocados.

These small entities comprise less than ½ of 1 percent of the total number of small entities that move these articles interstate from nonquarantined areas in California. In addition, these small entities sell regulated articles primarily for local intrastate, not interstate, movement. Also, many of the nurseries sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Oriental fruit fly, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Incorporation by reference.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301 is amended to read as follows:

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Part 301 is amended by adding a new "Subpart—Oriental Fruit Fly" to read as follows:

Subpart—Oriental Fruit Fly

Sec.

301.93 Restrictions on interstate movement of regulated articles.
301.93–1 Definitions.
301.93–2 Regulated articles.
301.93–3 Quarantined areas.
301.93–4 Conditions governing the interstate movement of regulated articles from quarantined areas.
301.93–5 Issuance and cancellation of certificates and limited permits.
301.93–6 Compliance agreement and cancellation.
301.93–7 Assembly and inspection of regulated articles.
301.93–8 Attachment and disposition of certificates and limited permits.
301.93–9 Costs and charges.
301.93–10 Treatments.

Subpart—Oriental Fruit Fly

§ 301.93 Restrictions on interstate movement of regulated articles.

No person shall move interstate from any quarantined area any regulated article except in accordance with this subpart.[1]

§ 301.93–1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS or Service).

Certificate. A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of Oriental fruit fly and may be moved interstate to any destination.

Compliance agreement. A written agreement between the Animal and Plant Health Inspection Service and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart.

Core area. The 1 square mile area surrounding each property where Oriental fruit fly has been detected.

Day degrees. A mathematical construct combining average temperature over time that is used to calculate the length of an Oriental fruit fly life cycle. Day degrees are the product of the following formula, with all temperatures measured in °F:

[(Minimum Daily Temp + Maximum Daily Temp)/2] − 54° = Day Degrees

Infestation. The presence of the Oriental fruit fly or the existence of circumstances that make it reasonable to believe that the Oriental fruit fly is present.

Inspector. Any employee of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person authorized by the Administrator to enforce this subpart.

Interstate. From any State into or through any other State.

Limited permit. A document, in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is eligible for interstate movement in accordance with § 301.93–5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

Moved (Move, Movement). Shipped, offered for shipment, received for transportation or transported, or carried, moved, or allowed to be moved by any means.

Oriental fruit fly. The insect known as Oriental fruit fly (*Dacus dorsalis* (Hendel)) in any stage of development.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

Quarantined area. Any State, or any portion of a State, listed in § 301.93–3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.93–3(b) of this subpart.

Regulated article. Any article listed in § 301.93–2 of this subpart or otherwise designated as a regulated article in accordance with § 301.93–2(c) of this subpart.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any state, territory or possession of the United States.

§ 301.93–2 Regulated articles.

(a) The following are regulated articles:

The following fruits, nuts, vegetables and berries:

Akia (*Wikstromeia phyllyraefolia*)
Alexander laurel (*Calophyllum inophyllum*)
Apple (*Malus sylvestris*)
Apricot (*Prunus armeniaca*)
Avocado (*Persea americana*)
Banana (*Musa paradisiaca* var. *sapientum*) (*Musa x paradisiaca*)
Banana, dwarf (*Musa nana*)
Barbados cherry (*Malpighia glabra*)
Bell pepper (*Capsicum annum*)
Brazil cherry (*Eugenia dombeyi*)
Breadfruit (*Artocarpus altilis*)
Caimitillo (*Chrysophyllum oliviforme*)
Cashew (*Anacardium occidentale*)
Cactus (*Cereus coerulescens*)
Cherimoya (*Anonna cherimola*)
Cherry, Catalina (*Prunus ilicifolia*)
Cherry, Portuguese (*P. lusitanica*)
Chile (*Capsicum annum*)
Coffee, Arabian (*Coffea arabica*)
Country gooseberry (*Averrhoa carambola*)
Cucumber (*Cucumis sativas*)
Custard apple (*Annona reticulata*)
Date palm (*Phoenix dactylifera*)
Dragon tree (*Dracena draco*)
Eggfruit tree (*Pouteria campechiana*)
Elengi tree (*Mimusops elengi*)
Fig (*Ficus carica*)
Gourka (*Garcinia celebica*)
Granadilla, sweet (*Passiflora ligularis*)
Grape (*Vitis* spp.)
Grapefruit (*Citrus paradisi*)
Guava (*Psidium guajava*), (*P. littorale*), (*P. cattleianum*)
Imbu (*Spondios tuberosa*)
Jackfruit (*Artocarpus heterophyllus*)
Jerusalem cherry (*Solanum pseudocapsicum*)
Kitembilla (*Dovyalis hebecarpa*)
Kumquat (*Fortunella japonica*)
Laurel (*Calophyllum inophyllum*)
Lemon (*Citrus limon*)
Lime, key or Mexican (*Citrus aurantifolia*)
Lime, Persian (*Citrus latifolia*)
Lime, sweet (*Citrus limetioides*)
Longan (*Euphoria longan*)
Loquat (*Eriobotrya japonica*)
Lychee nut (*Lychee chinensis*)
Malay apple (*Eugenia malaccensis*)
Mammee apple (*Mammea americana*)
Mandarin orange (*Citrus reticulata*) (*tangerine*)
Mango (*Mangifera indica*)
Mangosteen (*Garcinia mangostana*)
Mock orange, (*Murraya exotica*)
Mulberry (*Morus nigra*)
Myrtle, downy rose (*Rhodomyrtus tomentosa*)
Natal plum (*Carissa grandiflora*)
Nectarine (*Prunus persica* var. *nectarina*)
Oleander, yellow (*Thevetia peruviana*)
Orange, calamondin (*Citrus reticulata* x. *fortunella*)
Orange, Chinese (*Fortunella japonica*)
Orange, king (*Citrus reticulata* x. *C. sinensis*)
Orange, sweet (*Citrus sinensis*)
Orange, Unshu (*Citrus reticulata* var. *Unshu*)
Oriental bush red pepper (*Capsicum frutescens abbreviatum*)
Otaheite apple (*Spondias dulcis*)
Palm, syrup (*Juboea spectabilis*)
Papaya (*Carica papaya*)
Passionflower (*Passiflora edulis*)
Passionflower, softleaf (*Passiflora mollissima*)
Passionfruit (*Passiflora edulis*) (*yellow lilikoi*)
Peach (*Prunus persica*)
Pear, (*Pyrus communis*)
Pepino (*Solanum muricatum*)
Pepper, sweet (*Capsicum frutescens var. grossum*)
Persimmon, Japanese (*Diospyros kaki*)
Pineapple guava (*Feijoa sellowiana*)
Plum (*Prunus americana*)
Pomegranate (*Punica granatum*)
Prickly pear (*Opuntia megacantha*) (*Opuntia ficus indica*)
Prune (*Prunus domestica*)
Pummelo (*Citrus grandis*)
Quince (*Cydonia oblonga*)
Rose apple (*Eugenia jambos*)
Sandalwood (*Santalum paniculatum*)
Sandalwood, white (*Santalum album*)
Santol (*Sandercium koetjape*)
Sapodilla (*Manilkara zapota*)
Sapodilla, chiku (*Manilkara zapota*)
Sapota, white (*Casimiroa edulis*)
Seagrape (*Coccoloba uvifera*)
Sour orange (*Citrus aurantium*)
Soursop (*Annona muricata*)
Star apple, (*Chrysophyllum cainito*)
Surinam cherry (*Eugenia uniflora*)
Tomato (*Lycopersicon esculentium*)
Tropical almond (*Terminalia catappa*) (*Terminalia chebula*)
Velvet apple (*Diospyros discolor*)
Walnut (*Juglans hindsii*)
Walnut, English (*Juglans regia*)
Wampi (*Citrus lansium*)
West Indian cherry (*Malpighia punicifolia*)
Ylang-Yland (*Canango odorata*)

Any fruits, nuts, vegetables, or berries that are canned or dried or frozen below −17.8 °C. (0 °F.) are not regulated articles.

(b) Soil within the drip area of plants that are producing or have produced the fruits, nuts, vegetables, or berries listed in paragraph (a) of this section.

(c) Any other product, article, or means of conveyance, not covered by paragraphs (a) or (b) of this section, that an inspector determines presents a risk of spread of the Oriental fruit fly and notifies the person in possession of it that the product, article, or means of conveyance is subject to the restrictions of this subpart.

§ 301.93–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section, each State, or each portion of a State, in which the Oriental fruit fly has been found by an inspector, in which the Administrator has reason to believe that the Oriental fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the Oriental fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Oriental fruit fly has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of the Oriental fruit fly.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria specified in paragraph (a) of this section for listing quarantined areas. The Administrator will give written notice of this temporary designation to the owner or person in possession of the nonquarantined area; thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section or the designation will be terminated by the Administrator of an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described below is designated as a quarantined area:

California

Los Angeles County—That portion of the county in the West Covina area bounded by a line beginning at the intersection of Sunset Avenue and San Bernardino Road, then east along San Bernardino Road to its intersection with Grand Avenue, then south along Grand Avenue to its intersection with Badillo Street, then east along Badillo Street to its intersection with Reeder Avenue, then south along Reeder Avenue to its intersection with Puente Street, then southeast along Puente Street to its intersection with Via Verde, then east along Via Verde to its intersection with Interstate Highway 210, then south along Interstate Highway 210 to its intersection with State Highway 57, then south along State Highway 57 to its intersection with Highland Valley Road, then southeast along Highland Valley Road to its intersection with Diamond Bar Boulevard, then southwest along Diamond Bar Boulevard to its intersection with State Highway 57, then

[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

west along an imaginary line from this intersection to the intersection of Fullerton Road and Skyline Drive, then northwest along Skyline Drive to its intersection with Suncrest Court, then northwest along an imaginary line from this intersection to the intersection of Colima Road and Stimson Avenue, then north along Stimson Avenue to its intersection with Halliburton Road, then west along Halliburton Road to its intersection with Hacienda Boulevard, then north along Hacienda Boulevard to its intersection with State Highway 60, then northwest along State Highway 60 to its intersection with 7th Avenue, then northeast along 7th Avenue to its intersection with Valley Boulevard and Sunset Avenue, then northeast along Sunset Avenue to the point of beginning.

§ 301.93–4 Conditions governing the interstate movement of regulated articles from quarantined areas.[3]

Any regulated article may be moved interstate from a quarantined area only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.93–5 and 301.93–8 of this subpart;

(b) Without a certificate or limited permit, if:

(1) The regulated article originated outside of any quarantined area and is moved directly through (without stopping except for refueling, or for traffic conditions, such as traffic lights or stop signs) the quarantined area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by Oriental fruit flies (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area; and

(2) The point of origin of the regulated article is indicated on the waybill, and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

(c) Without a certificate or limited permit, if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the permit and found by the Administrator to be adequate to prevent the spread of Oriental fruit fly; and,

(4) With a tag or label bearing the number of the permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container.

[3] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

§ 301.93–5 Issuance and cancellation of certificates and limited permits.

(a) An inspector [3] will issue a certificate for the interstate movement of a regulated article if the inspector determines that:

(1)(i) The regulated article has been treated under the direction of an inspector in accordance with § 301.93–10 of this subpart; or

(ii) Based on inspection of the permises of origin, or treatment of the premises of origin in accordance with § 301.93–10(c) of this subpart, the premises are free from Oriental fruit flies and the regulated article has not been exposed to Oriental fruit fly; or

(iii) Based on inspection of the regulated article, it is free of Oriental fruit fly; and

(2) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose, under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd); [4] to prevent the spread of the Oriental fruit fly; and

(3) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(b) An inspector will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1) The regulated article is to be moved interstate to a specified destination for specified handling, utilization, or processing (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the Oriental fruit fly because life stages of the Oriental fruit fly will be destroyed by the specified handling, utilization, or processing;

(2) The regulated article is to be moved interstate in compliance with any additional emergency conditions the Administrator may impose, under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd); [5] to prevent the spread of the Oriental fruit fly; and

(3) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates and limited permits for use for interstate movement of regulated articles may be issued by an inspector or person engaged in growing, handling, or moving regulated articles provided the person is operating under a compliance agreement. A person operating under a compliance agreement may execute a certificate for the interstate movement of a regulated article if an inspector has determined that the regulated article is otherwise eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may execute a limited permit for interstate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn by an inspector orally or in writing, if the inspector determines that the holder of the certificate or limited permit has not complied with all conditions under this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

§ 301.93–6 Compliance agreement and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the interstate movement of regulated articles under this subpart.[6]

[3] Inspectors are assigned to local offices of the Animal and Plant Health Inspection Service, which are listed in telephone directories. Information concerning these offices may also be obtained from the Administrator, c/o Domestic and Emergency Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

[4] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides that the Secretary of Agriculture may—under certain conditions—seize, quarantine, treat, destroy, or apply other remedial measures to articles that the Administrator has reason to believe are infested or infected by or contain plant pests.

[5] See footnote 4 to § 310.86–5(a)(2).

[6] Compliance agreement forms are available without charge from the Permits Unit, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505

Continued

(b) Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing shall be adopted by the Administrator.

§ 301.93–7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.93–5(c)), who desires to move a regulated article interstate accompanied by a certificate or limited permit must notify an inspector,[7] as far in advance of the desired interstate movement as possible (no less than 48 hours before the desired interstate movement).

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

§ 301.93–8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article, at all times during the interstate movement, must be attached to the outside of the container containing the regulated article, attached to the regulated article itself if not in a container, or attached to the consignee's copy of the accompanying waybill: *Provided however,* that the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill only if the regulated article is sufficiently described on the certificate, limited permit, or waybill to identify the regulated article.

Belcrest Road, Hyattsville, Maryland 20782, and from local offices of the Animal and Plant Health Inspection Service, which are listed in telephone directories.

[7] See footnote 3 to § 301.93–5(a).

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article.

§ 301.93–9 Costs and charges.

The services of the inspector during normal business hours (8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The United States Department of Agriculture will not be responsible for any other costs or charges.

§ 301.93–10 Treatments.

Treatment schedules listed in the Plant Protection and Quarantine Treatment Manual to destroy Oriental fruit fly on regulated articles are authorized treatments. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 301.1 of this chapter, "Materials incorporated by reference". The following treatments are also authorized:

(a) *Cucumbers:* Fumigation at NAP (chamber or tarpaulin) with 32 g/m³ methyl bromide [8] for 4 hours at 70 °F or above, minimum gas readings 28 g/m³ at ½ hour, 20 g/m³ at 2 hours, 19 g/m³ at 4 hours; or, fumigation at NAP (chamber or tarpaulin) with 48 g/m³ methyl bromide for 2 hours at 70 °F or above, minimum gas readings 40 g/m³ at ½ hour, 30 g/m³ at 2 hours.

(b) *Soil:* Soil within the drip area of plants which are producing or have produced the fruits, nuts, vegetables, and berries listed in § 301.93–2(a) of this subpart: Apply diazinon at the rate of 5 pounds actual ingredient per acre to the soil within the drip area with sufficient water to wet the soil to at least a depth of ½ inch. Both immersion and pour-on treatment procedures are also acceptable.

(c) *Premises:* A field, grove, or area that is located within the quarantined area but outside the infested core area, and that produces regulated articles, must receive regular treatments with malathion bait spray at 6 to 10-day intervals, starting at least 30 days before harvest and continuing through the harvest period. The malathion bait spray treatment must be applied by ground equipment at a rate of 2.4 ounces of technical grade malathion and 9.6 ounces of protein hydrolysate per acre.

[8] Some varieties of fruit may be injured by methyl bromide, and we suggest that shippers test treat before making commercial treatments.

Done at Washington, DC, this 15th day of August, 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

FR Doc. 89–19811 Filed 8–18–89; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 926

[Docket No. FV–89–078]

California Tokay Grapes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 926 for the 1989–90 fiscal period. Authorization of this budget will allow the Tokay Industry Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: April 1, 1989 through March 31, 1990.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 93 and Marketing Order No. 926 (7 CFR Part 926), regulating the handling of Tokay grapes grown in San Joaquin County, California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about

through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 10 handlers of California Tokay grapes under this marketing order, and approximately 20 California Tokay grape producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989–90 fiscal year was prepared by the Tokay Industry Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of grapes. They are familiar with the committee's needs and with the costs of goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of Tokay grapes. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the committee's expected expenses.

The committee met on March 21 and June 19, 1989, and unanimously recommended a 1989–90 budget of $13,575. This year's budget is $59,550 less than last year's, due to decreases in most expense items. The most significant reductions are for market development activities and salaries, which together account for savings of $52,100. The committee also recommended an assessment rate of $0.08 per 23-pound lug, down from last year's rate of $0.175. This rate, when applied to anticipated shipments of 200,000 lugs, will yield $12,000 in assessment revenue which, when added to $1,575 from reserve funds, will be adequate to cover budgeted expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the Federal Register on July 20, 1989 (54 FR 30393). That document contained a proposal to add § 926.228 to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through July 31, 1989. No comments were received.

It is found tht the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1989 shipping season begins in August, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable Tokay grapes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at public meetings. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 926

Marketing agreements and orders, Tokay grapes, California.

For the reasons set forth in the preamble, 7 CFR Part 926 is amended as follows:

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CA

1. The authority citation for 7 CFR Part 926 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 926.228 is added to read as follows:

Note: This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations.

§ 926.228 Expenses and assessment rate.

Expenses of $13,575 by the Tokay Industry Committee are authorized and an assessment rate of $0.08 per 23-pound container of grapes is established for the fiscal year ending March 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: August 15, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–19537 Filed 8–18–89; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 989

[Docket No. FV–89–081FR]

Raisins Produced From Grapes Grown in California; Addition of the Dominican Republic as a Country Eligible for Exports of Reserve Pool Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule adds the Dominican Republic as a country eligible for exports of reserve pool California raisins. This action was unanimously recommended by the Raisin Administrative Committee (RAC), the agency responsible for local administration of the Federal marketing order regulating raisins produced in California. By providing handlers with another market for their reserve raisins, this action will reduce the burden of oversupply currently confronting the industry.

DATES: This interim final rule is effective on August 21, 1989. Comments which are received by September 20, 1989, will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments should be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 382–1754.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 989 (7 CFR Part 989), both as amended, regulating the handling of raisins produced from grapes grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers of raisins who are subject to regulation under the raisin marketing order and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. A majority of producers and a minority of handlers of California raisins may be classified as small entities.

The raisin order provides for the establishment of "free" and "reserve" percentages by variety of raisin for each crop year. "Free" raisins are those which may be shipped freely to any market. Raisins in excess of free tonnage are reseve raisins which must be held by handlers in a pool for the account of the RAC. Most reserve raisins withheld under the order have been marketed as food in domestic and eligible export outlets. In crop years with inadequate raisin production, reserve raisins are available to supplement new crop supplies.

Pursuant to § 989.221, reserve raisins are currently sold to handlers for export to islands on the continental shelf of South America and to all other markets in the world except the following: Canada, Mexico, and all islands adjacent to these countries, and all of the Caribbean Islands north of the 12th parallel, including the Dominican Republic. Canada, Mexico, and the mentioned islands are excluded because of the potential for shipment of raisins back to the United States for sale in competition with free tonnage raisins.

Adding the Dominican Republic as a country eligible for exports of reserve pool raisins will give handlers another market outlet for their reserve raisins. Since this provision utilizes reserve raisins, it will reduce the burden of oversupply that is currently confronting the industry.

According to the RAC, the Dominican Republic is a developing market for California raisins and the potential for expansion is good. The fact that nearly all raisins imported into the Dominican Republic area already is readily identifiable consumer packages is an effective deterrent to the transshipment of raisins to the United States.

Further, upon addition of the Dominican Republic as a country eligible for export of reserve raisins, the RAC has indicated that it would seek approval under § 989.53 for the implementation of an export incentive program for the Dominican Republic.

In addition, this rule makes editorial changes to § 989.221 for the purpose of clarity.

Based on the available information, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all available information, it is found that the revision of § 989.221, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that upon good cause it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This final action relieves restrictions on handlers by adding the Dominican Republic as a country eligible for export of reserve pool raisins; (2) it should be effective as soon as possible since August 1 is the beginning of the 1989–90 crop year; and (3) interested persons are provided a 30-day comment period in which to respond. All comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing agreements and orders, Raisins.

For the reasons set forth in the preamble, 7 CFR part 989 is proposed to be revised as follows:

Note: *This section will appear in the Code of Federal Regulations.*

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

2. Section 989.221 is revised to read as follows:

§ 989.221 Sale and export of reserve raisins by handlers.

(a) *Eligible countries.* Pursuant to § 989.67(c), the Committee shall sell reserve raisins to handlers for export to the Dominican Republic, islands on the continental shelf of South America, and to all other markets in the world except those listed in paragraph (b) of this section.

(b) *Non-eligible countries.* The Committee shall not sell reserve raisins to handlers for export to Canada, Mexico, and all islands adjacent to these countries, and all other Caribbean Islands north of the 12th parallel, except for the Dominican Republic.

Dated: August 15, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–19538 Filed 8–18–89; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

[Docket No. 89–123]

9 CFR Part 92

Importation of Ostriches and Other Ratites

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are prohibiting, until further notice, the importation into the United States of flightless birds known as ratites (cassowaries, emus, ostriches, and rheas). This action is considered necessary to prevent the introduction and dissemination of ectoparasites that could spread heartwater and East Coast Fever, exotic and highly morbid diseases of livestock.

DATES: Interim rule effective August 15, 1989. Consideration will be given

only to comments received on or before October 20, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 89–123. Comments received may be inspected at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Wade H. Ritchie, Senior Staff Microbiologist, Import-Export Animals Staff, VS APHIS, USDA, Room 766, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8590.

SUPPLEMENTARY INFORMATION:

The regulations in 9 CFR Part 92 contain, among other things, provisions concerning the importation of birds, including ostriches and other flightless birds. The regulations, which include health certification requirements and other requirements concerning quarantine upon arrival in the United States, are designed to prevent the introduction of communicable animal diseases.

Ostriches have become increasingly popular in the United States in recent years, and as a result, importations of these birds have increased dramatically. Recently, exotic ticks, identified as African Bont ticks and Bont-legged ticks, were found on imported adult ostriches in Ohio, Oklahoma, and Texas. These ticks are known to transmit heartwater and East Coast Fever, highly morbid diseases that do not currently exist in the United States, and that affect cattle, sheep, goats and other ruminants. Prompted by these finds, we are prohibiting the importation of ratites (cassowaries, emus, ostriches and rheas) into the United States until further notice. We are also reviewing data about ectoparasites of ratites and their role in disease transmission, and our current inspection methods and quarantine facility standards, to determine if any action less restrictive than prohibiting importation of ratites could ensure protection against the introduction of these pests and the diseases may carry.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Because imported ratites could be infested with ectoparasites that could spread heartwater and East Coast Fever in the United States, it is necessary to act immediately to control the spread of these diseases.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register** including discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis regarding the impact of this interim rule on small entities.

We are prohibiting the importation of ratites (cassowaries, emus, ostriches and rheas) into the United States because we have determined that imported ratites may be infested with ectoparasites capable of transmitting heartwater and East Coast Fever, highly morbid diseases that do not currently exist in the United States, and that affect, cattle, sheep, goats and other ruminants. In accordance with 21 U.S.C. 134c, the Secretary of Agriculture is authorized to promulgate regulations prohibiting the movement into the United States of animals likely to introduce or disseminate any communicable animal disease.

This rule affects primarily ostrich importers and domestic ostrich breeders. There are currently about 5,000 ostriches being raised commercially in the United States, owned by between 500 and 1,000 different persons and businesses, most of which are small entities. Apparently none of these owners currently depend on the sale of ostrich products for a significant part of their income. It will be several years before most of these entities could make any profit selling ostrich products, due to the time needed to increase their flock sizes and the current lack of tanneries and other processing facilities prepared to deal with ostrich products. For the near future, most profits associated with ostriches will come from the sale of breeding pairs of ostriches. This rule will not limit the sale of ostriches by current owners and breeders, although it may encourage increases in their price by eliminating imported ostriches as a source of new stock.

The primary persons affected by this rule are approximately 25 importers and brokers in the business of importing ostriches. This interim rule could have a significant economic impact on these businesses, most of which are small entities. These importers and brokers imported approximately 600 ostriches in fiscal year 1988, and have imported approximately 1,000 ostriches to date in fiscal year 1989. Most of the ostriches imported were sold as breeding pairs, at a price of $40,000 to $60,000 per pair. Most of these importers and brokers also import other products in addition to ostriches. If these entities remain in the import business they will have to shift to importing only products other than ostriches, and will probably make less profit per unit imported. We do not anticipate that this rule will have a significant economic impact on a substantial number of small entities.

This interim rule will not result in any significant increase in reporting, recordkeeping, or compliance requirements.

As alternatives to prohibiting the importation of ratites, we have considered allowing ratites to be imported only after they have been treated with a pesticide to destroy ectoparasities. This alternative was rejected because at the present time we do not have an approved treatment to destroy ectoparasites on ratites, and because at the present time we have not established whether ratites formerly infested with ectoparasites harboring heartwater and East Coast Fever agents are capable of spreading these diseases, e.g., through subsequent infestation with domestic ectoparasites. We also considered taking no action and allowing importation of ratites to proceed. This alternative was rejected because it would allow a significant risk of introducing and disseminating heartwater and East Coast Fever.

We encourage the submission of written comments on our Initial Regulatory Flexibility Analysis. Comments may be sent to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 89–123. Comments received will be considered in the preparation of the Final Regulatory Flexibility Analysis prepared for this rule.

Paperwork Reduction Act

The regulations in this subpart contain no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 is amended as follows:

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.1 the following definition is added in alphabetical order:

§ 92.1 Definitions.

* * * * *

Ratites. Cassowaries, emus, ostriches, and rheas.

* * * * *

§ 92.2 [Amended]

3. Paragraph (b) of 92.2 is redesignated as (b)(2) and the phrase "other than ratites" is added immediately following the phrase "Birds from Canada"; a new paragraph (b)(1) is added to read as follows:

* * * * *

(b)(1) In order to protect domestic ruminants of the United States from heartwater and East Coast Fever borne by ectoparasites, the importation of ratites into the United States is prohibited.

* * * * *

§ 92.4 [Amended]

4. In paragraph (e) of § 92.4, the phrase ", other than ratites," is inserted immediately following the word "pigeons" in the introductory text.

* * * * *

Done in Washington, DC, this 15th day of August 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–19602 Filed 8–18–89; 8:45 am]

BILLING CODE 3410-34-M

FARM CREDIT SYSTEM ASSISTANCE BOARD

12 CFR Part 1300

Disclosure of Records: Freedom of Information Act and Privacy Act

AGENCY: Farm Credit System Assistance Board.

ACTION: Final rule.

SUMMARY: The Farm Credit System Assistance Board (Assistance Board) adopts final regulations implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Privacy Act of 1974, (Privacy Act), 5 U.S.C. 552a.

EFFECTIVE DATE: August 21, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Mullarkey (Deputy General Counsel) or Christine Pembroke (Attorney) at 202–737–9255.

SUPPLEMENTARY INFORMATION: The Assistance Board, as an "agency" as defined in the FOIA and the Privacy Act, is subject to the requirements of these two statutes with respect to certain records. However, pursuant to 12 U.S.C. 2278a–10, regulations, policies, procedures, guidelines or statements issued by the Assistance Board and records related to their promulgation or enforcement are not subject to the FOIA and or the Privacy Act. Accordingly, these matters are not included within or covered by these implementing regulations.

Similarly, pursuant to 12 U.S.C. 2278a–10, the Assistance Board is not required to follow the requirements of the Administrative Procedure Act (APA) with respect to notice and comment on rulemaking. However, in the interest of informing the public of the procedures for obtaining Assistance Board records that are subject to the FOIA and the Privacy Act, the Assistance Board is publishing these implementing regulations. The Assistance Board's determination in this instance is not and should not be construed as a determination that it is subject to the notice and comment requirements of the APA.

The Assistance Board has determined that this regulation is not a major rule within the meaning of Executive Order 12291 because it will not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria. Therefore, the preparation of a regulatory impact analysis is not required.

This regulation does not require use of a form, nor does it otherwise involve a collection of information subject to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

List of Subjects in 12 CFR Part 1300

Freedom of Information Act, and Privacy Act.

Title 12 of the Code of Federal Regulations is amended by establishing Chapter XIII consisting of part 1300 to read as follows:

CHAPTER XIII—FARM CREDIT SYSTEM ASSISTANCE BOARD

PART 1300—DISCLOSURE OF RECORDS: FREEDOM OF INFORMATION ACT AND PRIVACY ACT

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Sec.

1300.1 General.
1300.2 Exclusions.
1300.3 Requirements pertaining to requests.
1300.4 Responses to requests.
1300.5 Business information.
1300.6 Administrative appeals.
1300.7 Fees.
1300.8 Other rights and services.

Subpart B—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

1300.9 General.
1300.10 Exclusions.
1300.11 Records in exempt systems of records.
1300.12 Requests for notification of whether records exist.
1300.13 Responses to requests for notification of the existence of records.

BEST COPY AVAILABLE

1300.14 Administrative appeals from denials of requests for notification of the existence of records.
1300.15 Request for access to records.
1300.16 Responses to requests for access to records.
1300.17 Access to records.
1300.18 Fees for access to records.
1300.19 Administrative appeals from denials of access to records.
1300.20 Request for correction of records.
1300.21 Responses to requests for correction of records.
1300.22 Records not subject to correction.
1300.23 Administrative appeals from determination not to correct records.
1300.24 Request for accounting of record disclosures.
1300.25 Notice of disclosure under compulsory legal process and emergencies.
1300.26 Employee standards of conduct.
1300.27 Other rights and services.

Authority: 5 U.S.C. 552, 5 U.S.C. 552a, 12 U.S.C. 2278a–10.

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

§ 1300.1 General.

(a) This subpart contains the regulations of the Farm Credit System Assistance Board implementing the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, and Executive Order 12600, with respect to Assistance Board records that are subject to the FOIA. Information customarily furnished to the public in the regular course of the performance of official duties will be furnished to the public without complying with this subpart, provided that the furnishing of such information would not violate any applicable laws or regulations. To the extent permitted by other laws, the Farm Credit System Assistance Board will also consider making available records which it is permitted to withhold under the FOIA if it determines that such disclosures would be in the public interest. However, the fact that an exemption is not applied by the Assistance Board in a particular case will have no precedential significance in other cases.

(b) As used in this subpart, the following terms shall have the following meanings:

(1) "Agency" as defined in 5 U.S.C. 551 and 552.

(2) "Appeal" means the appeal by a requester of an adverse determination of the request, as described in 5 U.S.C. 552.

(3) "Assistance Board" means the Farm Credit System Assistance Board.

(4) "Business information" means trade secrets or other commercial or financial information.

(5) "Business submitter" means any person or entity who provides business information to the Assistance Board and who has a proprietory interest in the information.

(6) "FOIA Appeals Officer" means the Assistance Board employee designated by the Assistance Board as the Freedom of Information Act Appeals Officer.

(7) "Request" means any request for records made pursuant to 5 U.S.C. 552.

(8) "Requester" means any person who makes a request to the Assistance Board for records pursuant to 5 U.S.C. 552.

(9) "Exemptions" means those matters to which the provisions of 5 U.S.C. 552 do not apply.

(10) "Record" means any document or information, in any form, in the possession of the Assistance Board.

(c) Requests and appeals submitted under this subpart will be processed and responded to in accordance with the time limits and exemptions set forth in the FOIA and this subpart, unless there are exceptional circumstances as provided in 5 U.S.C. 552. The Assistance Board will notify a requester whenever it is unable to process or respond to the request or appeal within the time limits established by the FOIA and this subpart. Requests and appeals will be processed and responded to in their approximate order of receipt, to the extent consistent with sound administrative practice.

§ 1300.2 Exclusions.

(a) Pursuant to 12 U.S.C. 2278a–10, regulations, policies, procedures, guidelines or statements issued by the Assistance Board and records related to their promulgation or enforcement are not subject to the FOIA and, therefore, are not included within or covered by these implementing regulations.

(b) Pursuant to 12 U.S.C. 2278a–10, the Assistance Board is not subject to the requirements of 5 U.S.C. 552(a) (1) and (2).

§ 1300.3 Requirements pertaining to requests.

(a) *How made and addressed.* A request under this subpart for a record in the possession of the Assistance Board is to be made in writing, signed by the requester and addressed to the Assistance Board at 1301 Pennsylvania Avenue NW., Suite 702, Washington, DC 20004. Both the envelope and the request must be clearly marked: "Freedom of Information Act Request." A request shall also state in which, if any, of the categories set forth in § 1300.7(b)(5)–(8) the requester fits.

(b) *Reasonable description of records.* A request must describe the records sought in sufficient detail to enable the Assistance Board personnel to locate the records with a reasonable amount of effort. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient and subject matter of the record. In addition, if the request seeks records pertaining to pending litigation, the request should indicate the title of the case, the court in which the case was filed, and the nature of the case. If the Assistance Board determines that the request does not reasonably describe the records sought, the Assistance Board will either advise the requester what additional information is needed or otherwise state why the request is deficient.

(c) *Response address.* A request must set forth the address where the requester wants to be notified about whether or not the request will be granted.

(d) *Inspection or copy.* A request must state whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them.

(e) *Agreement to pay fees.* A request must state whether the requester is seeking a reduction or waiver of fees (see § 1300.7(e)). Unless a waiver of fees is requested, the filing of a request under this subpart shall be deemed to constitute an agreement by the requester to pay all applicable fees charged under § 1300.7 of this subpart, up to $25.00. When filing a request, a requester may specify a willingness to pay a greater amount, if applicable. If it is estimated that the applicable fees will be greater than $25.00, the requester will be so advised and asked to agree to pay this amount, unless the requester has so indicated in the request.

(f) *Date of receipt of request.* A request will be considered to have been received for purposes of this subpart on the later of the dates on which:

(1) The requirements of this section have been satisfied and, where applicable,

(2) The requester has agreed in writing to pay the fees due in accordance with § 1300.7 of this subpart if greater than $25, or

(3) The fees have been waived in accordance with § 1300.7 of this subpart, or

(4) Payment in advance has been received from the requester, when required in accordance with § 1300.7 of this subpart.

§ 1300.4 Responses to requests.

(a) *Granting a request.* If the Assistance Board makes a determination to grant a request in whole or in part, the Assistance Board will so notify the requester in writing. The notice will include:

(1) The name of the person responsible for the decision;

(2) A description of the manner in which the record will be disclosed, whether by providing a copy of the record to the requester or by making a copy of the record available to the requester for inspection at a reasonable time and place. The procedure for such an inspection shall not unreasonably disrupt the operations of the Assistance Board; and

(3) A statement of any fees to be charged in accordance with the provisions of § 1300.7 of this subpart.

(b) *Denial of a request.* If the Assistance Board makes a determination to deny a request in whole or in part, the requester will be so notified in writing. The notice will include:

(1) The name of the person responsible for the denial;

(2) A brief statement of the reason or reasons for the denial, including the FOIA exemption or exemptions relied upon in denying the request;

(3) A statement that the denial may be appealed under § 1300.6 of this subpart and a description of the requirements of that section; and

(4) A statement of any fees charged in accordance with the provisions of § 1300.7 of this subpart.

(c) *Segregable portions of records.* Release of portions of a record may be denied, leaving the remaining reasonably segregable portions subject to release. However, these portions will be released only if the meaning is not distorted by deletion of the denied portions and when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the deleted information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not reasonable to segregate portions of the record for release.

(d) *Record cannot be located or has been destroyed.* If a requested record cannot be located or is known or believed to have been destroyed or otherwise disposed of, the Assistance Board will so notify the requester in writing. The requester will also be notified of any fees charged in accordance with the provisions of § 1300.7 of this subpart.

§ 1300.5 Business information.

(a) *In general.* Business information provided to the Assistance Board by a business submitter will not be disclosed pursuant to a FOIA request except in accordance with this section.

(b) *Notice to business submitters.* (1) The Assistance Board will provide a business submitter with prompt written notice of receipt of a request encompassing its business information whenever required under paragraph (c) of this section, and except as is provided in paragraph (g) of this section. Such written notice will either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

(2) When notice is given to a business submitter under this section, the requester will be advised that such notice has been given to the business submitter. The requester will be further advised that a delay in responding to the request may be considered a denial of access to records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the requester will be invited to agree to a voluntary extension of time so that the Assistance Board may review the business submitter's objection to the disclosure.

(c) *When notice is required.* (1) The Assistance Board will provide a business submitter with notice of receipt of a request for buiness information whenever:

(i) The business information is subject to a prior express written commitment of confidentiality given by the Assistance Board to the business submitter;

(ii) The business submitter has in good faith designated the information as commerically or financially sensitive information; or

(iii) The Assistance Board has reason to believe that disclosure of the business information may result in commercial or financial injury to the business submitter.

(2) Notice of receipt of a request for business information will be given for a period of not more than the time the Assistance Board is in existence or ten years after the date of submission, whichever is earlier. If the Assistance Board is in existence and the business submitter requests and provides acceptable justification, the Assistance Board will consider a specific notice period of greater duration.

(3) Whenever possible, the business submitter's claim of confidentiality should be supported by a statement by the business submitter or certification by an officer or authorized representative of the business submitter that the information in question is in fact confidential commercial or financial information and has not been disclosed to the public.

(d) *Opportunity to object to disclosure.* A business submitter will be afforded 10 working days from the date of receipt of the notice provided pursuant to this section within which to provide the Assistance Board with a detailed statement of any objection to disclosure. (It is assumed for the purpose of this paragraph that receipt occurs within three calendar days of proper mailing.) Such statement shall specify all grounds for withholding any of the information under any exemption of the FOIA and, in the case of Exemption 4, shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(e) *Notice of intent to disclose.* The Assistance Board will consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose the business information. Whenever the Assistance Board decides to disclose business information over the objection of a business submitter, the Assistance Board will forward to the business submitter a written notice which will include:

(1) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date.

Such notice of intent to disclose will be forwarded a reasonable number of days, as circumstances permit, prior to the specified date upon which disclosure is intended. A copy of such disclosure notice will be forwarded to the requester at the same time.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (c) of this section, the Assistance Board will promptly notify the business submitter.

(g) *Exceptions to notice requirements.* The notice requirements of this section do not apply if:

(1) The Assistance Board determines that the information should not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552);

(4) The information was acquired in the course of a lawful investigation of a possible violation of criminal law;

(5) Disclosure is required by an Assistance Board rule that:

(i) Was adopted pursuant to notice and public comment;

(ii) Specifies narrow classes of records submitted to the Assistance Board that are to be released under the FOIA; and

(iii) Provides in exceptional circumstances for notice when the business submitter provides written justification, at the time the business information is submitted or a reasonable time thereafter, that disclosure of the business information could reasonably be expected to cause substantial competitive harm;

(6) The information requested is not designated by the business submitter as exempt from disclosure in accordance with this section when the business submitter had an opportunity to do so at the time of submission of the information or a reasonable time thereafter, unless the Assistance Board has substantial reason to believe that disclosure of the information would result in competitive harm; or

(7) The designation made by the business submitter in accordance with this section appears obviously frivolous, except that, in such case, the Assistance Board will provide the business submitter with written notice of any final administrative disclosure determination within a reasonable number of days prior to the specified disclosure date.

§ 1300.6 Administrative appeals.

(a) *In general.* When a request for access to records has been denied in whole or in part, or when the Assistance Board fails to respond to a request within the time limits set forth in the FOIA, the requester may appeal the denial of the request to the FOIA Appeals Officer within 30 calendar days of the requester's receipt of a notice denying the request.

(b) *Form and content of notice of appeal.* A notice of appeal shall:

(1) Be made in writing and signed by the requester;

(2) Be addressed to the FOIA Appeals Officer, Assistance Board, 1301 Pennsylvania Avenue NW., Suite 702, Washington, DC 20004. Both the envelope and the notice of appeal must be clearly marked: "Freedom of Information Act Appeal."

(3) Reasonably describe, in accordance with § 1300.3(b) of this subpart, the records subject to the denial of access to which an appeal is being taken;

(4) Set forth the address where the requester desires to be notified of the determination on appeal;

(5) Specify the date of the initial request and the date of the letter denying the initial request; and

(6) State any supporting arguments for overturning the initial determination.

(c) *Date of receipt of appeal.* An appeal will be considered to have been received for purposes of this subpart when the requirements of this section have been satisfied.

(d) *Form of action on appeal.* (1) The disposition of an appeal will be in writing. A decision affirming in whole or in part the denial of request a will include:

(i) A brief statement of the reason or reasons for the affirmance, including the FOIA exemption or exemptions relied upon;

(ii) The name of the person responsible for the decision on appeal; and

(iii) A statement that judicial review of the denial is available in the U.S. District Court for the District of Columbia pursuant to 12 U.S.C. 2278a–3.

(2) If the denial of a request is reversed on appeal, the requester will be so notified in writing and the request will be processed promptly in accordance with the decision on appeal.

§ 1300.7 Fees.

(a) *In general.* Fees pursuant to 5 U.S.C. 552 will be assessed according to the schedule contained in this section for services rendered in processing and responding to requests for records under this subpart. All fees so assessed will be charged to the requester, except where the charging of fees is limited under this section or where a waiver or reduction of fees is granted under this section. All applicable fees must be received before copies of the requested records are made available to the requester. Requesters shall pay fees by check or money order made payable to the Assistance Board and indicate the request for which payment is made.

(b) *Definitions.* For the purpose of this section:

(1) The term "direct costs" means those expenditures which the Assistance Board actually incurs in searching for and duplicating (and, in the case of commercial use requesters, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the records are stored.

(2) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

(3) The term "duplication" refers to a process of making a copy of a record necessary to respond to a FOIA request. Such copies can take the form of paper, copy, microform, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk) among others. The copy provided shall be in a form that is reasonably usable by requesters.

(4) The term "review" refers to the process of examining a record located in response to a request in order to determine whether any portion of it is permitted to be withheld. It also includes processing any record for disclosure, e.g., doing all that is necessary to excise it and otherwise prepare it for release. Review costs shall be recoverable even where there ultimately is no disclosure of a record. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term "commercial use" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation. Where the circumstances of a request suggest that the requester will put the records sought to a commercial use, either because of the nature of the request itself or because the Assistance Board has reasonable cause to doubt a requester's stated use, the Assistance Board will provide the requester a reasonable opportunity to submit further clarification.

(6) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education which operates a program or programs of scholarly research. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scholarly research.

(7) The term "noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (a)(5) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scientific research.

(8) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization; a publication contract would be the clearest proof, but the Assistance Board will also look to the past publication record of a requester in making this determination. To be eligible for inclusion in this category, a requester also must not be seeking the requested records for a commercial use. In this regard, a request for records supporting the news dissemination function of the requester will not be considered to be for a commercial use.

(c) *Charges.* In responding to requests under this subpart, the following fees will be assessed, unless a waiver or reduction of fees has been granted pursuant to paragraph (e) of this section:

(1) *Search.* (i) No search fee will be assessed with respect to requests by educational institutions, noncommercial scientific institutions, and representatives of the news media (as defined in paragraphs (b) (6), (7) and (8) of this section, respectively). Search fees will be assessed with respect to all other requests, subject to the limitations of paragraph (d) of this section.

(ii) *Searches other than for computerized records.* Requesters will be charged at the salary rate(s) (i.e., basic pay plus 16 percent) of the employee(s) making the search. However, when a single class of personnel is used exclusively (e.g., all administrative/clerical, or all professional/executive), an average salary (plus 16 percent) may be established and charged. This charge will include transportation of personnel and records necessary to the search at the direct costs.

(iii) *Searches for computerized records.* For computer searches of records, which may be undertaken through the use of existing programming, requesters will be charged the direct costs of the search, including computer search time, runs and the operator's salary (basic pay plus 16 percent). The fee for computer printouts will be the direct costs.

(2) *Review.* (i) Review fees will be assessed with respect to only those requesters who seek records for a commercial use, as defined in paragraph (b)(5) of this section. Commercial use requesters will be charged at the salary rate(s) (i.e., basic pay plus 16 percent) of the employee(s) making the review. However, when a single class of personnel is used exclusively (e.g., all administrative/clerical, or all professional/executive), an average salary (plus 16 percent) may be established and charged.

(ii) Review fees will be assessed only for the initial record review, i.e., all of the review undertaken when the Assistance Board analyzes the applicability of a particular exemption to a particular record or record portion at the initial request level. No charge will be assessed for review at the administrative appeal level of an exemption already applied. However, records or record portions withheld pursuant to an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The requester may be charged the costs of such a subsequent review, particularly where that review is made necessary by a change of circumstances.

(3) *Duplication.* Duplication fees will be assessed with respect to all requesters, subject to the limitations of paragraph (d) of this section, as follows:

(i) For a paper photocopy of a record (up to 8½×14") the fee will be $.15 per page.

(ii) For copies produced by computer, such as tapes or printouts, the requester will be charged the direct costs of producing the copy.

(iii) For other methods of duplication, the requester will be charged the direct costs.

(4) *Inspection of documents.* Fees for all services provided will be charged whenever the Assistance Board must make copies available to the requester for inspection.

(5) *Other services.* Apart from the other provisions of this section, if the Assistance Board elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending them other than by ordinary mail, the direct costs of providing the service or materials will be charged.

(d) *Limitations on charging fees.* (1) No search or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(2) Except for requesters seeking records for a commercial use (as defined in paragraph (b)(5) of this section), the Assistance Board will provide without charge:

(i) The first 100 pages of duplication (or its cost equivalent), and

(ii) The first two hours of search (or its cost equivalent).

(3) Whenever a total fee calculated under paragraph (c) of this section is $8.00 or less, no fee will be charged.

(4) The provisions of paragraph (d)(2) and (3) of this section work together. For requesters other than those seeking records for a commercial use, no fee will be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages exceeds $8.00.

(e) *Waiver or reduction of fees.* (1) Request for a waiver or reduction of fees will be considered on a case by case basis. In making its determination whether to waive or reduce fees, the Assistance Board will consider whether disclosure of the requested information is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) Requests for the waiver or reduction of fees shall be made in writing and shall address the factors listed in paragraph (e)(1) of this section, as they apply to each record requested.

(3) Where only a portion of the requested records satisfies the factors listed in paragraph (e)(1) of this section, a waiver or reduction will be granted only as to that portion.

(f) *Notice of anticipated fees in excess of $25.00.* When the Assistance Board determines or estimates that the fees to be assessed under this section may amount to more than $25.00, the Assistance Board will notify the requester as soon as practicable of the

actual or estimated amount of the fees, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. In cases where a requester has been notified that actual or estimated fees may amount to more than $25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee.

(g) *Aggregating requests.* When the Assistance Board reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the Assistance Board will aggregate any such requests and charge accordingly. Factors that will be considered include, but are not limited to, whether the multiple requests are made within a 30-day period or involve clearly related matters.

(h) *Advance payments.* (1) If the Assistance Board estimates that a total fee to be assessed under this section is likely to exceed $250.00, the Assistance Board may require the requester to make an advance payment of an amount up to the entire estimated fee before beginning to process the request.

(2) When a requester has previously failed to pay a records access fee within 30 calendar days of the date of billing, the Assistance Board may require the requester to pay the full amount owed, plus any applicable interest (as provided for in paragraph (i) of this section), and to make an advance payment of the full amount of any estimated fee before the Assistance Board begins to process a pending request from that requester.

(3) For requests other than those described in paragraphs (h)(1) and (2) of this section, the Assistance Board will not require the requester to make an advance payment, i.e., a payment made before work is commenced or continued on a request. Payment owed for work already completed is not an advance payment.

(4) When the Assistance Board acts under paragraphs (h)(1) or (2) of this section, the administrative time limits prescribed in the FOIA for the processing of an initial request or an appeal, plus permissible extensions of these time limits, will be deemed not to begin to run until the Assistance Board has received payment of the assessed fee.

(i) *Charging interest.* The Assistance Board may assess interest charges on an unpaid bill starting on the 31st calendar day following the day on which the bill was sent to the requester. Once a fee payment has been received by the Assistance Board, even if not processed, the accrual of interest will be stayed. Interest charges will be assessed at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing.

(j) *Other statutes specifically providing for fees.* (1) The fee schedule set forth in this section does not apply with respect to the charging of fees under a statute specifically providing for setting the level of fees for particular types of records—i.e., any statute that specifically requires a government entity such as the Government Printing Office or the National Technical Information Service, to set and collect fees for particular types of records—in order to:

(i) Serve both the general public and private sector organizations by conveniently making available government information;

(ii) Ensure that groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(iii) Operate an information-dissemination activity on a self-sustaining basis to the maximum extent possible; or

(iv) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

(2) Where records responsive to requests are maintained for distribution by agencies operating statutorily based fee schedule programs, the Assistance Board will inform requesters of the steps necessary to obtain records from those sources.

§ 1300.8 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under 5 U.S.C. 552 or 12 U.S.C. 2278a–10.

Subpart B—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

§ 1300.9 General.

(a) This subpart contains regulations of the Farm Credit System Assistance Board implementing the Privacy Act of 1974 ("Privacy Act") 5 U.S.C. 552a. The regulations apply to all records maintained by the Farm Credit System Assistance Board and which are retrieved by an individual's name or personal identifier. These regulations do not relate to those personnel records of Government employees which are under the jurisdiction of the Office of Personnel Management (OPM) to the extent such records are subject to regulations issued by OPM. These regulations also do not relate to those personnel records of Government employees which are under the jurisdiction of the Department of Agriculture to the extent such records are subject to regulations issued by the Department of Agriculture. These regulations set forth the procedures by which an individual may request notification of whether the Assistance Board maintains a record pertaining to that individual, may seek access under the Privacy Act to records pertaining to the individual, may request correction of such records or may seek an accounting of disclosures of such records by the Assistance Board.

(b) *Definitions.* As used in this subpart, the following terms shall have the following meanings:

(1) "Agency" as defined in 5 U.S.C. 551 and 552.

(2) "Assistance Board" means the Farm Credit System Assistance Board.

(3) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(4) "Maintain" includes maintain, collect, use, or disseminate.

(5) "Record" means any item, collection, or grouping of information about an individual that is maintained by the Assistance Board within a system of records and which contains the individual's name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(6) "Request for access" means a request made pursuant to 5 U.S.C. 552a.

(7) "Request for correction" means a request made pursuant to 5 U.S.C. 552a.

(8) "Request for accounting" means a request made pursuant to 5 U.S.C. 552a.

(9) "Request for notification" means a request made pursuant to 5 U.S.C. 552a.

(10) "Requester" means an individual who makes either a request for notification, a request for access, a request for correction, or a request for an accounting.

(11) "System of records" means a group of any records under the control of the Assistance Board from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(12) "Privacy Act Appeals Officer" means the Assistance Board employee designated by the Assistance Board as the Privacy Act Appeals Officer.

(13) "Exemptions" means those matters to which the provisions of 5 U.S.C. 552a do not apply.

(c) Request and appeals submitted under this subpart will be processed and responded to in accordance with the time limits and exemptions set forth in the Privacy Act and this subpart, unless there are exceptional circumstances as provided in 5 U.S.C. 552a. The Assistance Board will notify a requester whenever it is unable to process or respond to the request or appeal within the time limits established by the Privacy Act and this subpart. Requests and appeals will be processed and responded to in their approximate order of receipt, to the extent consistent with sound administrative practice.

§ 1300.10 Exclusions.

(a) Pursuant to 12 U.S.C. 2278a–10, regulations, policies, procedures, guidelines or statements issued by the Assistance Board and records (as defined in Subpart A of this Part) related to their promulgation or enforcement are not subject to the Privacy Act and, therefore, are not included within or covered by these implementing regulations.

(b) Pursuant to 12 U.S.C. 2278a–10, the Assistance Board does not publish its system of records.

§ 1300.11 Records in exempt systems of records.

The following records are exempt from the Assistance Board's system of records pursuant to 5 U.S.C. 552a to the extent provided in this section:

(a) Records subject to the provisions of 5 U.S.C. 552 (b)(1).

(b) Investigatory material compiled for law enforcement purposes. However, before denying a request by an individual for a law enforcement record which has been exempted pursuant to 5 U.S.C. 552a, the Assistance Board will review the requested record to determine whether information in the record has been used or is being used to deny the individual any right, privilege, or benefit for which the requester is eligible or to which the requester would otherwise be entitled under federal law. If so, the Assistance Board will notify the requester of the existence of the record and disclose such information to the requester, except to the extent that the information would identify a confidential source. In cases where disclosure of information in a law enforcement record could reasonably be expected to identify a confidential source, the record will not be disclosed to the requester unless the Assistance Board is able to delete from such information all material which would identify the confidential source.

(c) Records required by statute to be maintained and used solely as statistical records;

(d) Investigatory material compiled solely for the purpose of determining suitability, eligibility or qualifications for Federal civilian employment, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would identify a confidential source; and

(e) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

§ 1300.12 Requests for notification of whether records exist.

(a) *How made and addressed.* A request for notification of whether records in the possession of the Assistance Board exist about that individual is to be made in writing, signed by the requester and addressed to the Assistance Board, 1301 Pennsylvania Avenue NW., Suite 702, Washington, DC 20004. Both the envelope and the request must be clearly marked: "Privacy Act Notification Request."

(b) *Reasonable description of records.* A request for notification of whether records exist must describe the records for which notification of existence is sought in sufficient detail to enable Assistance Board personnel to locate the system of records which should contain any existing record with a reasonable amount of effort. Whenever possible, a request for notification should describe the nature of the record for which notification of existence is sought and the time period during which the requester believes any existing record would have been compiled.

(c) *Response address.* A request must set forth the address where the requester wants to be notified about whether the record exists or whether the request will be granted or denied.

(d) *Verification of identity.* Any individual who submits a written request for notification of the existence of records must verify the requester's identity one of the following ways:

(1) A requester must state in the request the requester's full name, current address, and date and place of birth. In addition, a requester must provide with the request an example of the requester's signature, which shall be notarized. In order to facilitate the identification and location of the requested records, a requester may also, at the requester's option, include in the request the requester's Social Security number.

(2) A requester may visit the Assistance Board in person with a written request and may provide to the Assistance Board a form of official photographic identification, such as a passport or an identification badge. If a requester is unable to produce a form of photographic identification, the requester may provide to the Assistance Board two or more acceptable forms of identification (such as driver's license or credit card) bearing the requester's name and address.

(e) *Verification of parentage or guardianship.* The parent or guardian of a minor (or the guardian of a person judicially determined to be incompetent) who submits a request for notification of the existence of the records of the minor or incompetent must establish:

(1) The requester's own identity and the identity of the subject of the record, as required in paragraph (d) of this section;

(2) That the requester is the parent or guardian of the subject of the record, which may be established by providing a copy of the subject's birth certificate showing parentage or by providing a court order establishing the guardianship; and

(3) That the requester seeks to act on behalf of the subject of the record.

(f) *Date of receipt of request.* A request will be considered to have been received for purposes of this subpart on the date on which the requirements of this section have been satisfied.

§ 1300.13 Responses to requests for notification of the existence of records.

(a) *Granting a request.* If the Assistance Board makes a determination to grant a request in whole or in part, the Assistance Board will notify the requester in writing. The notice will include:

(1) The name of the person responsible for the decision;

(2) For each record for which notice of existence was sought, a statement as to whether the record exists.

(b) *Denial of a request.* When an individual requests notification as to whether a record exists concerning the requester which is for a record that has been exempted from notification requirements pursuant to 5 U.S.C. 552a (see § 1300.11) and the assertion of the exemption is deemed necessary, the Assistance Board will neither confirm nor deny the existence of the record but shall advise the requester only that no record subject to the notification of existence requirements of the Privacy Act has been identified. When the Assistance Board makes a determination to deny a request for notification, in whole or in part, the Assistance Board will so notify the requester in writing. The notice will include:

(1) The name of the person responsible for the denial;

(2) A brief statement for the reason or reasons for the denial, including the Privacy Act exemption or exemptions which the Assistance Board has relied upon in denying the request; and

(3) A statement that the denial may be appealed under § 1300.14 of this subpart and a description of the requirements of that section.

(c) *Record cannot be located or has been destroyed.* If the request seeking notice of the existence of records is for records that cannot be located from the information supplied, or are known or believed to have been destroyed or otherwise disposed of, the Assistance Board will so notify the requester in writing.

(d) *Medicel records.* When an individual requests notice of the existence of medical records, including psychological records, pertaining to the requester which are not otherwise exempt from the notice requirements of the Privacy Act, the Assistance Board may advise the requester that notice of whether the records exist will be provided only to a physician, designated by the requester who requests notice of the existence of the records and establishes his or her identity in writing. The designated physician shall determine whether notice of the existence of records should be provided to the individual and the existence of which records should not be disclosed to the individual because of possible harm to the individual or another person.

§ 1300.14 Administrative appeals from denials of requests for notification of the existence of records.

(a) *In general.* When a request for notice of the existence of records has been denied in whole or in part, the requester may appeal the denial of the request to the Privacy Act Appeals Officer within 30 calendar days of the requester's receipt of a notice denying the request.

(b) *Form and content of notice of appeal.* A notice of appeal shall:

(1) Be made in writing and signed by the requester;

(2) Be addressed to the Privacy Act Appeals Officer, Assistance Board, 1301 Pennsylvania Avenue, NW., Suite 702, Washington, DC 20004. Both the envelope and the notice of appeal must be clearly marked: "Privacy Act Notice Appeal."

(3) Reasonably describe, in accordance with section 1300.12, the records subject to denial of the request for notification from which the appeal is being taken;

(4) Set forth the address where the requester desires to be notified of the determination on appeal;

(5) Specify the date of the initial request and the date of the letter denying the initial request; and

(6) State any supporting arguments for overturning the initial determination.

(c) *Date of receipt of appeal.* An appeal will be considered to have been received for purposes of this subpart when the requirements of this section have been satisfied.

(d) *Form of action on appeal.* (1) The disposition of an appeal will be in writing. A decision affirming in whole or in part the denial of a request will include:

(i) A brief statement of the reason or reasons for the affirmance, including the Privacy Act exemption or exemptions relied upon;

(ii) The name of the person responsible for the decision on appeal; and

(iii) A statement that judicial review of the denial is available in the U.S. District Court for the District of Columbia pursuant to 12 U.S.C. 2278a–3.

(2) If the denial of a request is reversed on appeal, the requester will be so notified in writing and the request will be processed promptly in accordance with the decision on appeal.

§ 1300.15 Request for access to records.

(a) *How made and addressed.* A request under this subpart by an individual for access to a record in the possession of the Assistance Board about that individual is to be made in writing, signed by the requester and addressed to the Assistance Board at 1301 Pennsylvania Avenue, NW., Suite 702, Washington, DC 20004. Both the envelope and the request must be clearly marked: "Privacy Act Access Request."

(b) *Reasonable description of records.* A request for access to records must describe the records sought in sufficient detail to enable Assistance Board personnel to locate the system of records containing the record with a reasonable amount of effort. Whenever possible, a request for access should describe the nature of the record sought, the date of the record or the period in which the record was compiled, and the name or identifying number of the system of records in which the requester believes the record is kept.

(c) *Response address.* A request must set forth the address where the requester wants to be notified about whether or not the request will be granted.

(d) *Inspection or copy.* A request must state whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them.

(e) *Exemptions.* The processes prescribed under this section do not apply to:

(1) systems of records exempted pursuant to § 1300.11 of this subpart;

(2) information complied in reasonable anticipation of a civil action or proceeding; or

(3) information pertaining to an individual which is contained in, and inseparable from, another individual's record.

(f) *Agreement to pay fees.* The filing of a request for access to a record under this subpart shall be deemed to constitute an agreement to pay all applicable fees charged under § 1300.18 of this subpart up to $25.00. When filing a request, a requester may specify a willingness to pay a greater amount, if applicable. If it is estimated that the applicable fees will be greater than $25.00, the requester will be so advised and asked to agree to pay this amount, unless the requester has so indicated in the request for access.

(g) *Verification of identity.* Any individual who submits a written request for access to records must verify the requester's identity in the manner set forth in § 1300.12 of this subpart for verifying the identity of requesters seeking notification.

(h) *Verification of guardianship.* The parent or guardian of a minor (or the guardian of a person judicially determined to be incompetent) who submits a request for access to the records of the minor or incompetent must establish the requirements set forth in § 1300.12 of this subpart for verifying the parentage or guardianship of requesters seeking notification.

(i) *Date of receipt of request.* A request for access to records will be considered to have been received for purposes of this subpart on the later of the dates on which:

(1) The requirements of this section have been satisfied and, where applicable,

(2) The requester has agreed in writing to pay the fees due in accordance with § 1300.18 of this subpart if greater than $25.00, or

(3) Payment in advance has been received from the requester, when required in accordance with § 1300.18 of this subpart.

§ 1300.16 Responses to requests for access to records.

(a) *In general.* Upon receipt of a request for access to records, the Assistance Board will determine whether another Government agency is better able to determine whether the record is exempt, to any extent, from access. If the Assistance Board determines that it is the agency best able to determine whether the record is exempt, to any extent, from access, then the Assistance Board will respond to the request. If the Assistance Board determines that it is not the agency best able to determine whether or not the record is exempt from access, the Assistance Board will respond to the requester, after consulting with the agency best able to determine whether or not the record is exempt from access. Under ordinary circumstances, the agency that generated or originated a requested record shall be presumed to be the agency best able to determine whether or not the record is exempt from access.

(b) *Law enforcement information.* Whenever a request for access is made for a record containing information which relates to an investigation of a possible violation of criminal law or to a criminal law enforcement proceeding and which is generated or originated by another agency, the Assistance Board will consult with the other agency, as appropriate.

(c) *Classified information.* Whenever a request for access is made for a record containing information which has been classified, or which may be eligible for classification, by another agency under the provisions of Executive Order 12356 or any other Executive order concerning the classification of records, the Assistance Board will refer the responsibility for responding to the request to the agency that classified the information or should consider the information for classification. Whenever a record contains information that has been derivatively classified by the Assistance Board because it contains information classified by another agency, the Assistance Board will refer the responsibility for responding to the request to the agency that classified the underlying information; however, such referral will extend only to the information classified by the other agency.

(d) *Granting a request.* If the Assistance Board makes a determination to grant a request for access, in whole or in part, the Assistance Board will so notify the requester in writing. The notice will include:

(1) The name of the person responsible for the decision;

(2) A description of the manner in which access to the record will be granted; and

(3) A statement of any fees to be charged in accordance with § 1300.18 of this subpart.

(e) *Denial of a request for access.* If the Assistance Board makes a determination to deny a request for access, in whole or in part, the requester will be so notified in writing. The notice will include:

(1) The name of the person responsible for the denial;

(2) A brief statement for the reason or reasons for the denial, including the Privacy Act exemption or exemptions relied upon; and

(3) A statement that the denial may be appealed under § 1300.19 of this subpart and a description of the requirements of that section.

(f) *Segregable portions of records.* Access to portions of a record may be denied, leaving the remaining reasonably segregable portions subject to access. However, these portions will be made available to the requester only if the meaning is not distorted by deletion of the denied portions and when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the deleted information (in addition to satisfaction of all other applicable requirements of this subpart). When access to a record is denied in whole, the response advising the requester of that determination will specifically state that it is not reasonable to segregate portions of the record for access.

(g) *Record cannot be located or has been destroyed.* If a requested record cannot be located or is known or believed to have been destroyed or otherwise disposed of, the Assistance Board will so notify the requester in writing.

(h) *Medical records.* When an individual requests medical records, including psychological records, pertaining to the requester which are not otherwise exempt from individual access, the Assistance Board may advise the requester that the records will be provided only to a physician, designated by the individual who requests the records and establishes his or her identity in writing. The designated physician shall determine which records should be provided to the requester and which records should not be disclosed to the requester because of possible harm to the individual or another person.

(i) *Records exempt, in whole or in part.* When an individual requests access to records concerning the individual which have been exempted from individual access pursuant to 5 U.S.C. 552a(j) or which have been compiled in reasonable anticipation of a civil action or proceedings in either a court or before an administrative tribunal and the assertion of the exemption is deemed necessary, the Assistance Board may neither confirm nor deny the existence of the record but may advise the individual only that no record available to the individual pursuant to the Privacy Act has been identified.

§ 1300.17 Access to records.

(a) *Manner of access.* Where the determination to grant a request for access has been made, the Assistance Board will grant the requester access to the requested record either by:

(1) Providing the requester with a copy of the record; or

(2) Making the record available for inspection by the requester at a reasonable time and place. The Assistance Board will in either case charge the requester applicable fees in accordance with the provisions of § 1300.18 of this subpart. If the Assistance Board provides access to a record by making the record available for inspection by the requester, the manner of such inspection shall not unreasonably disrupt the operations of the Assistance Board.

(b) *Accompanying persons.* A requester appearing in person to review the requester's records may be accompanied by another individual of the requester's choosing. Both the requester and the accompanying person will be required to sign a form stating that the Assistance Board is authorized to disclose the record in the presence of both individuals.

§ 1300.18 Fees for access to records.

(a) *In general.* The Assistance Board will charge fees for the copying of records to afford access to individuals unless the Assistance Board, in its discretion, waives or reduces the fees for good cause shown. The Assistance Board will charge $.15 per page. For materials other than paper copies, the Assistance Board may charge the direct costs, as defined in § 1300.7 of this part, for reproduction, but only if the requester has been notified of such costs before they are incurred. Fees will not be charged where they would amount, in aggregate, for one request or for a series of related requests, to less than $4.50.

(b) *Inspection of documents.* Fees will be charged whenever the Assistance Board must make copies available to the requester for inspection.

(c) *Form of payment.* Requesters shall pay fees by check or money order made payable to the Assistance Board and

indicate the request for which payment is made.

(d) *Advance payments.* (1) If the Assistance Board estimates that a total fee to be assessed under this section is likely to exceed $25.00, the Assistance Board may require the requester to make an advance payment of an amount up to the entire estimated fee before beginning to process the request.

(2) When a requester has previously failed to pay a records access fee within 30 calendar days of the date of billing, the Assistance Board may require the requester to pay the full amount owed, plus any applicable interest (as provided for in paragraph (e) of this section), and to make an advance payment of the full amount of any estimated fee before the Assistance Board begins to process a pending request from that requester.

(3) For requests other than those described in paragraphs (d) (1) and (2) of this section, the Assistance Board will not require the requester to make an advance payment, i.e., a payment made before work is commenced or continued on a request. Payment owed for work already completed is not an advance payment.

(e) *Charging interest.* The Assistance Board may assess interest charges on an unpaid bill starting on the 31st calendar day following the day on which the bill was sent to the requester. Once a fee payment has been received by the Assistance Board, even if not processed, the accrual of interest will be stayed. Interest charges will be assessed at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing.

§ 1300.19 Administrative appeals from denials of access to records.

(a) *In general.* When a request for access to records has been denied in whole or in part, the requester may appeal the denial of the request to the Privacy Act Appeals Officer within 30 calendar days of the requester's receipt of a notice denying the request.

(b) *Form and content of notice of appeal.* A notice of appeal shall:

(1) Be made in writing and signed by the requester;

(2) Be addressed to the Privacy Act Appeals Officer, Assistance Board, 1301 Pennsylvania Avenue, Suite 702, Washington, DC 20004. Both the envelope and the notice of appeal must be clearly marked: "Privacy Act Appeal."

(3) Reasonably describe, in accordance with § 1300.15 of this subpart, the record subject to the denial of access to which an appeal is being taken;

(4) Set forth the address where the requester desires to be notified of the determination on appeal;

(5) Specify the date of the initial request and the date of the letter denying the initial request; and

(6) State any supporting arguments for overturning the initial determination.

(c) *Date of receipt of appeal.* An appeal will be considered to have been received for purposes of this subpart when the requirements of this section have been satisfied.

(d) *Form of action of appeals.* (1) The disposition of an appeal will be in writing. A decision affirming in whole or in part the denial of a request for access will include:

(i) A brief statement of the reasons or reasons for the affirmance, including the Privacy Act exemption or exemptions relied upon;

(ii) The name of the person responsible for the decision on appeal; and

(iii) A statement that judicial review of the denial is available in the U.S. District Court for the District of Columbia pursuant to 12 U.S.C. 2278a–3.

(2) If the denial of a request for access is reversed on appeal, the requester will be so notified in writing and the request will be processed promptly in accordance with the decision on appeal.

§ 1300.20 Request for correction of records.

(a) *How made and addressed.* Unless a record is exempted from correction and amendment, (see §§ 1300.11 and 1300.22 of this subpart), an individual may submit a request for correction of a record pertaining to that individual. A request for correction must:

(1) Be made in writing and signed by the requester, who must be the individual about whom the record is maintained, or the duly authorized representative of such individual;

(2) Be addressed to the "Privacy Act Officer", Assistance Board, 1301 Pennsylvania Avenue, NW., Suite 702, Washington, DC 20004. Both the envelope and the request must be clearly marked "Privacy Act Correction Request"; and

(3) Identify the particular record in question, state the correction sought, and set forth the justification for the correction.

(b) *Reasonable description of records.* A request for correction of records must describe the records in sufficient detail to enable Assistance Board personnel to locate the system of records containing the record with a reasonable amount of effort. Whenever possible, a request for correction of records should describe the nature of the record involved, the date of the record or the period in which the record was compiled, and the name or identifying number of the system of records in which the requester believes the record is kept.

(c) *Response address.* A request must set forth the address where the requester wants to be notified about whether or not the request will be granted.

(d) *Date of receipt of request.* A request for correction of records pertaining to an individual shall be deemed to have been received for purposes of this subpart when the requirements of this section have been satisfied.

(e) *Review of requests to correct records.* The Assistance Board will acknowledge receipt of the request in writing within 10 days (excluding Saturdays, Sundays, and legal holidays) and promptly thereafter notify the requester whether the request will be granted or denied in whole or in part.

§ 1300.21 Responses to requests for correction of records.

(a) *Granting request.* If the Assistance Board makes a determination to grant a request for correction in whole or in part, the Assitance Board will so notify the requester in writing and advise the requester of the right to obtain a copy of the corrected record, in releasable form, upon request.

(b) *Denial of request.* If the Assistance Board makes a determination to deny a request for correction in whole or in part, the Assistance Board will notify the requester in writing. The notice will state the reason or reasons for the denial and advise the requester of the right to appeal in accordance with § 1300.23 of this subpart.

§ 1300.22 Records not subject to correction.

In addition to the exempt records noted in § 1300.11 of this subpart, the following records are not subject to correction or amendment as provided in § 1300.20 of this subpart:

(a) Transcripts or written statements made under oath;

(b) Transcripts of grand jury proceedings, judicial or quasi-judicial proceedings which constitute the official record of such proceedings;

(c) Pre-sentence reports which are the property of the courts but are maintained in a system of records;

(d) Records pertaining to the determination, the collection and the payment of the Federal taxes;

(e) Records duly exempted from correction by notice published in the Federal Register; and

(f) Records compiled in reasonable anticipation of a civil action or proceeding.

§ 1300.23 Administrative appeals from determinations not to correct records.

(a) *In general.* When a request for correction has been denied in whole or in part, the requester may appeal the denial to the Assistance Board within 30 calendar days of the requester's receipt of the notice denying the request.

(b) *Form and content of notice of appeal.* The notice of appeal shall:

(1) Be made in writing and signed by the person to whom the record pertains, or the duly authorized representative of such individual;

(2) Be addressed to the Privacy Act Appeals Officer, Assistance Board, 1301 Pennsylvania Avenue, NW, Suite 702, Washington, DC 20004. Both the envelope and the notice of appeal must be clearly marked "Privacy Act Correction Appeal";

(3) Reasonably describe, in accordance with section 1300.20, the records sought to the corrected;

(4) Set forth the address where the requester desires to be notified of the determination on appeal;

(5) Specify the date of the initial request and the date of the letter giving notification that the request was denied; and

(6) State any supporting arguments for overturning the initial determination.

(c) *Date of receipt of appeal.* An appeal will be considered to have been received for purposes of this subpart when the requirements of this section have been satisfied. An appeal will be promptly stamped with the date of its receipt by the Assistance Board. The receipt of the appeal will be acknowledged within 10 days (excluding Saturdays, Sundays, and legal public holidays) from the date of receipt (unless the determination on appeal is dispatched in 10 days, in which case, no acknowledgement is required) by the Assistance Board and the requester will be advised of the date of receipt and when a response is due in accordance with this section.

(d) *Form of action on appeal*—(1) *In general.* The Assistance Board will complete the review and notify the requester of the Assistance Board's final decision within 30 days (excluding Saturdays, Sundays and legal public holidays) after the date of receipt of such appeal, unless the time is extended for good cause shown.

(2) *Affirming the denial of a request.* If the denial of a request is affirmed on appeal, the requester will be so notified in writing and advised of:

(i) The reason or reasons the denial has been affirmed;

(ii) The requester's right to file a Statement of Disagreement, as provided in paragraph (e) of this section; and

(iii) The requester's right to obtain judicial review of the denial in the U.S. District Court for the District of Columbia in accordance with 12 U.S.C. 2278a–3.

(3) *Reversing the denial of a request.* If the denial is reversed on appeal, the requester will be so notified in writing and the requested correction made.

(e) *Statements of disagreement.* (1) A requester whose appeal under this section is denied shall have the right to file a Statement of Disagreement with the Assistance Board, 1301 Pennsylvania Avenue, NW., Suite 702, Washington, DC 20004, within 30 calendar days of receiving the notice of denial of the requester's appeal.

(2) Statements of Disagreement are to be concise and set forth the reasons for the requester's disagreement with the decision.

(3) Upon receipt of a Statement of Disagreement, the Statement will be included in the system of records in which the disputed record is maintained and the disputed record shall be marked so as to indicate (i) that a Statement of Disagreement has been filed, and (ii) where in the system of records the Statement may be found. The Assistance Board may include a concise statement of the Assistance Board's reasons for not making the requested corrections.

§ 1300.24 Request for accounting of record disclosures.

(a) *How made and addressed.* An individual may request that the Assistance Board provide the individual with an accounting of disclosures of records pertaining to that individual and the date, nature, and purpose of each disclosure. A request for an accounting is to be made in writing and signed by the requester, who must be the individual about whom the requested record is maintained, or such individual's duly authorized representative and must identify the particular record for which the accounting is requested. The request must be addressed to the Assistance Board at 1301 Pennsylvania Avenue, NW., Suite 702, Washington, DC 20004. Both the envelope and the request must clearly be marked: "Privacy Act Accounting Request."

(b) The Assistance Board is not required to provide an accounting to an individual to the extent that the accounting relates to:

(1) Records for which no accounting must be kept pursuant to 5 U.S.C. 552a;

(2) Those records exempt from the Assistance Board's system of records in accordance with § 1300.11 of this subpart; or

(3) Records for which an accounting need not be disclosed pursuant to 5 U.S.C. 552a.

(c) *Notice of Appeal.* A denial of a request for an accounting may be appealed to the Privacy Act Appeals Officer in the same manner as a denial of a request for access, with both the envelope and the notice of appeal clearly marked: "Privacy Act Accounting Appeal."

§ 1300.25 Notice of disclosure under compulsory legal process and emergencies.

(a) *Compulsory legal process.* When records concerning an individual are subpoenaed by a grand jury, court, or quasi-judicial authority from the Assistance Board, or disclosed in accordance with an ex parte court order pursuant to 26 U.S.C. 6103, the Assistance Board will make reasonable efforts to assure that written notice of its service or any disclosure is provided to the individual. Notice shall be provided within 5 days (excluding Saturdays, Sundays, and legal public holidays) of making the records available under compulsory legal process or, in the case of a grand jury subpoena or an ex parte order, within 5 days (excluding Saturdays, Sundays, and legal public holidays) of its becoming a matter of public record. Notice will be mailed to the last known address of the individual and will contain the following information: The date and authority to which the subpoena is, or was returnable, or the date of and court issuing the ex parte order, the name and the nature of the information sought and provided. Notice pursuant to this section will not be provided if the system of records has been exempted from the notice requirement of 5 U.S.C. 552a by a Notice of Exemption published in the Federal Register.

(b) *Emergency disclosure.* If information concerning an individual has been disclosed to any person under compelling circumstances affecting health or safety as described in 5 U.S.C. 552a, the individual shall be notified of the disclosure at the individual's last known address within 5 days (excluding Saturdays, Sundays, and legal public holidays). Notice will be in writing and will state the nature of the information disclosed, the person or agency to whom it was disclosed, the date of disclosure,

and the compelling circumstances justifying the disclosure.

§ 1300.26 Employee standards of conduct.

(a) *In general.* Employees of the Assistance Board have a duty to:

(1) Protect the security of records;

(2) Ensure the accuracy, relevance, timeliness, and completeness of records; and

(3) Avoid the unauthorized disclosure, either verbal or written, of records.

(b) *Maintenance of records.* Except to the extent that the Privacy Act permits such activities, an employee of the Assistance Board shall:

(1) Not collect information of a personal nature from individuals unless the employee is authorized to collect such information to perform a function or discharge a responsibility of the Assistance Board;

(2) Collect from individuals only that information which is necessary to the performance of the functions or to the discharge of the responsibilities of the Assistance Board;

(3) Collect information about an individual directly from that individual whenever practicable;

(4) Inform each individual from whom information is collected of:

(i) The legal authority that authorizes the Assistance Board to collect such information and whether disclosure of such information is mandatory or voluntary;

(ii) The principal purposes for which the Assistance Board intends to use the information;

(iii) The routine uses the Assistance Board may make of the information; and

(iv) The practical and legal effects upon the individual of not furnishing the information;

(5) Maintain all records which are used by the Assistance Board in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as to ensure fairness to the individual in the determination;

(6) Except as to disclosures to an agency or pursuant to 5 U.S.C. 552, make reasonable efforts, prior to disseminating any record about an individual, to ensure that such records are accurate, relevant, timely and complete;

(7) Not maintain any record concerning an individual's religious or political beliefs or activities, or membership in associations or organizations, or describing how any individual exercises rights guaranteed by the First Amendment, unless:

(i) The individual has volunteered such information for the individual's own benefit; or

(ii) A statute expressly authorizes the Assistance Board to collect, maintain, use, or disseminate the information;

(8) When required by the Privacy Act, maintain an accounting in the prescribed form of all disclosures of records by the Assistance Board to agencies or individuals whether verbally or in writing;

(9) Not disclose any record to anyone for any use unless authorized by the Privacy Act;

(10) Maintain and use records with care to prevent the inadvertent disclosure of a record to anyone; and

(11) Notify the head of the Assistance Board of any record that contains information that the Privacy Act or the foregoing provisions of this paragraph do not permit the Assistance Board to maintain.

(c) *Civil liability and criminal penalty provisions.* Assistance Board employees are referred to the civil liability and criminal penalty provisions of the Privacy Act, 5 U.S.C. 552a.

§ 1300.27 Other rights and services.

Nothing in this subpart shall be construed to entitle any individual, as of right, to any service or to the disclosure of any record to which such individual is not entitled under 5 U.S.C. 552a or 12 U.S.C. 2278a–10.

John Barkell,

Acting President and Chief Executive Officer.

[FR Doc. 89–19530 Filed 8–18–89; 8:45 am]

BILLING CODE 6410-09-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–151–AD; Amendment 39–6394]

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42 series airplanes, which currently requires inspection and modification, if necessary, of the aileron control tab hinge pins. This action adds additional airplanes to the AD applicability; requires repetitive inspections and repair, if necessary, of the aileron control tab hinges; and provides an optional modification which, if installed, terminates the need for the repetitive inspections. This amendment is prompted by reports of hinge pin migration continuing to occur following modification in accordance with the existing rule. This condition, if not corrected, could lead to excessive aileron forces and loss of controllability of the airplane.

EFFECTIVE DATE: September 5, 1989.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Standardization Branch, ANM–113; telephone (206) 431–1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On May 18, 1989, the FAA issued AD 89–12–05, Amendment 39–6229 (54 FR 22878; May 30, 1989), which requires inspection and modification, if necessary, of the aileron control tab hinge pins. The modification consisted of restoring the hinge pin to its proper location and peening the hinge end knuckle to prevent the pin from migrating and contacting adjacent structure. That action was prompted by reports of aileron binding due to migration of the aileron tab inboard hinge pin, which contacts adjacent structure. This condition, if not corrected, could lead to excessive aileron forces and loss of controllability of the airplane.

Since issuance of that AD, the FAA has received reports of hinge pin migration occurring on airplanes that have incorporated the modification required by the existing AD. The migration has been observed on all aileron control tab hinges.

Aerospatiale has issued Service Bulletin ATR42–57–0030, dated July 7, 1989, which describes procedures for installation of new hinge pins and stop plates. Installation of this modification terminates the need for the repetitive inspections. The Direction Générale de L'Aviation Civile, which is the airworthiness authority of France, has classified this service bulletin as mandatory, and has issued Airworthiness Directive T–89–077–021 (B)R3 addressing this subject.

Additionally, since issuance of AD 89–12–05, the Model ATR42 fleet has increased and additional airplanes that were not listed in the applicability of the existing AD, are also subject to the unsafe condition addressed by that action.

This airplane model is manufactured in France and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 89–12–05 to require inspections of all aileron control tab hinges to determine if the hinge pin has migrated out of its housing, and repair, if necessary; adds additional airplanes to the existing applicability; and provides for an optional modification (in accordance with the service bulletin described above) which, if installed, would constitute terminating action for the repetitive inspections.

This is considered to be interim action. The FAA is considering revising this AD action to mandate the now optional terminating modification; however, the proposed compliance time for installation of the modification is sufficiently long so that notice and public comment will not be impracticable.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 89–12–05, Amendment 39–6229 (54 FR 22878; May 30, 1989), with the following new airworthiness directive:

Aerospatiale: Applies to all Model ATR42 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent migration of the aileron control tag hinge pins, accomplish the following:

A. Within 7 days after June 12, 1989 (the effective date of AD 89–12–05), for airplanes Serial Numbers 003 through 098, modify the aileron control tab hinge pins in accordance with Part B of Aerospatiale Service Bulletin ATR42–57–0019, Revision 1, dated June 7, 1989.

B. Within 7 days after June 12, 1989 (the effective date of AD 89–12–05), for airplanes Serial Numbers 003 through 135, perform an inspection of the aileron control tab hinge pins in accordance with Part B of Aerospatiale Service Bulletin ATR42–57–0028, Revision 1, dated April 20, 1989. If the inspection reveals that the end knuckle is not peened, prior to further flight, modify the aileron control tab hinge pins in accordance with the service bulletin.

C. Within 7 days after the effective date of this amendment, for airplanes Serial Numbers 003 through 147, unless accomplished within the last 50 hours time-in-service, inspect all aileron control tab hinges to determine if the hinge pin has visibly migrated out of its housing. If the inspection reveals that a hinge pin has migrated, prior to further flight, push the hinge pin back into its housing. Repeat the inspection for hinge pin migration, and the associated repair, if necessary, at intervals not to exceed 50 hours time-in-service.

D. Installation of new hinge pins and stop plates, in accordance with Service Bulletin ATR42–57–0030, dated July 7, 1989, constitutes terminating action for the repetitive inspections required by paragraph C., above.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 5, 1989.

Issued in Seattle, Washington, on August 11, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–19564 Filed 8–18–89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89–NM–62–AD; Amdt. 39–6392]

Airworthiness Directives; Aerospatiale Model Nord 262A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Aerospatiale Model Nord 262A series airplanes, which requires a one-time inspection and replacement, if necessary, of certain main landing gear (MLG) shock absorber spherical bearings. This amendment is prompted by a report that the MLG failed to lock and the MLG collapsed on landing. This condition, if not corrected, could result in collapse of the main landing gear.

EFFECTIVE DATE: September 25, 1989.

ADDRESSES: The applicable service information may be obtained from

Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive, applicable to Aerospatiale Model Nord 262A series airplanes, which requires a one-time inspection and replacement, if necessary, of certain main landing gear (MLG) shock absorber spherical bearings, was published in the Federal Register on May 19, 1989 (54 FR 21627).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 12 airplanes of U.S. registry will be affected by this AD, that it will take approximately 17 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for the modification kit is $2,700. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $40,560.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Applies to all Model Nord 262A series airplanes, certificated in any category, with ERAM main landing gear shock absorber part numbers: 11105-002 B and higher dash numbers, 11384-001 and higher dash numbers, 11385-001 and higher dash numbers, 11695-002 and higher dash numbers.

Compliance is required as indicated, unless previously accomplished. To prevent collapse of the main landing gear (MLG) due to defective shock absorbers, accomplish the following:

A. Within 30 days after the effective date of this AD, disconnect the shock absorber in accordance with Nord 262 Service Bulletin No. 32-22, Revision 2, dated January 11, 1988, and perform the appropriate action as follows:

1. If there is no milled slot serving to extract the male spherical bearing, reassemble in accordance with the service bulletin.

2. If there is a milled slot, extract the male spherical bearing, clean and visually inspect both parts of the bearing assembly for cracks or corrosion in accordance with the service bulletin.

a. If the assembly is found in serviceable condition, grease and re-install in accordance with the service bulletin.

b. If the spherical bearing assembly extracted is found to be cracked or corroded or seized, replace prior to further flight with new type spherical assembly in accordance with ERAM Service Bulletin 32-48 or Nord 262 Service Bulletin 32-22.

B. Within 60 days after the effective date of this AD, replace all separable spherical bearing assemblies, described in paragraph A.2., above with the new type spherical bearing assembly, in accordance with ERAM Service Bulletin 32-48 or Nord 262 Service Bulletin 32-22, Revision 2, dated January 11, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 25, 1989.

Issued in Seattle, Washington, on August 11, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19557 Filed 8-18-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-42-AD; Amdt. 39-6305]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737-200 series airplanes, which currently requires modification of the autopilot flight control computers (FCC) and autopilot mode control panel (MCP) to prevent the airplane from making uncommanded changes in altitude (ALT), vertical speed (V/S), or indicated airspeed/Mach (IAS/MACH). This condition, if not corrected, could result in the airplane flying at an unassigned altitude. Since the issuance of that AD, the FAA has determined that, contrary to previous testing, the corrective action called for in the AD is ineffective. Accordingly, this action supersedes the existing AD and requires, as an interim action, a revision to the FAA-approved Airplane Flight Manual (AFM) to incorporate certain operational procedures to detect uncommanded changes in the Mode Control Panel ALT, IAS/MACH, and V/S windows.

EFFECTIVE DATE: September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Alvin R. Habbestad, Systems and Equipment Branch, ANM-130S, telephone (206) 431-1942. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On August 8, 1988, the FAA issued AD 88-19-01, Amendment 39-5996 (53 FR 30976; August 17, 1988) to require modification of the Flight Control Computer (FCC) and Mode Control Panel (MCP) on certain Model 737-200 airplanes. That action was taken as a result of reports of the airplane making uncommanded changes in altitude, vertical speed, or mach/airspeed due to uncommanded changes in the MCP display window. The changes were predominantly in the altitude display. Testing by the manufacturer of the autopilot components and by the manufacturer of the airplane indicated that the modification required by AD 88-19-01 would eliminate the uncommanded changes in the MCP display window.

Since issuance of the AD, however, the manufacturer has presented FAA with information which indicates the altitude window of the MCP continues to have an uncommanded change in value, and the corrective action called for in AD 88-19-01 is ineffective in correcting the problem.

Since the modification required by AD 88-19-01 is apparently ineffective in correcting the unsafe condition addressed, and since the unsafe condition may still exist or develop in airplanes of the same type design, the FAA has determined that AD 88-19-01 must be superseded with a new AD that requires a revision of the FAA-approved Airplane Flight Manual (AFM) to incorporate certain MCP operating procedures to detect uncommanded changes in the Mode Control Panel ALT, IAS/MACH, and V/S windows. This is considered interim action.

The manufacturers are currently working on a new design for the MCP display window and its monitors. The FAA may consider further rulemaking action after evaluation of the new design is accomplished.

Since a situation exists that requires immediate adoption of this regulation it is found that notice and public procedure hereon are impracticable, and good cause exists making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Fedeal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39 [AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 88-19-01, Amendment 39-5996 (53 FR 30978; August 17, 1988), with the following new airworthiness directive:

Boeing: Applies to Model 737-200 series airplanes, equipped with Sperry Model SP177 autopilot flight control computers (FCC) and mode control panels (MCP), certificated in any category. Compliance required within 10 days after the effective date of this AD, unless previously accomplished.

To reduce the potential for nonadvised changes in the autopilot mode control panel being undetected, accomplish the following:

A. Incorporate the following procedures into the Limitations Section of the FAA-approve Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM.

Autopilot Limitations

For airplanes with SP177 autopilot Mode Control Panels (MCP), Flightcrews must use the following procedures:

1. Check MCP settings after any electrical power interruptions.

2. Following change in ALT selection in the MCP window, check ALT display to ensure desired altitude is displayed.

3. Closely monitor altitude during all altitude changes to ensure that the autopilot captures and levels off at the desired altitude.

Note: Standard "callouts", crew coordination, and cross-checking of MCP settings and flight instruments are necessary to detect any nonselected MCP display changes.

B. An alternate means of compliance or adjustment of the compliance times which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Operations Inspector (POI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

This amendment supersedes AD 88-19-01, Amendment 39-5996.

This amendment becomes effective September 5, 1989.

Issued in Seattle, Washington, on August 11, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19555 Filed 8-18-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-33-AD; Amendment 39-6303]

Airworthiness Directives; Lockheed Aeronautical Systems Company Model L-1011-385-1, L-1011-385-1-14, L-1011-385-1-15, and L-1011-385-3 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Lockheed Model L-1011-385 series airplanes, which requires inspection of the Auxiliary Power Unit (APU) starter ground cable for loose ground stud terminations, and appropriate corrective action, as

necessary. This amendment is prompted by a report of loose APU starter ground terminals, and deterioration of the grounding bracket due to electrical arcing at the ground studs. This condition, if not corrected, could result in a fire caused by arcing.

EFFECTIVE DATE: September 25, 1989.

ADDRESSES: The applicable service information may be obtained from Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65–33, Unit 20, Plant A–1. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5344.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Lockheed Aeronautical Systems Company Model L–1011–385–1, L–1011–385–1–14, L–1011–385–1–15, and L–1011–385–3 series airplanes, which requires inspecting the Auxiliary Power Unit (APU) starter ground cable for loose ground stud termination, and appropriate corrective action, as necessary, to eliminate APU starter ground cable discrepancies, was published in the **Federal Register** on April 19, 1989 (54 FR 15770).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Comments were received from the Air Transport Association (ATA) of America on behalf of its member operators. Most members expressed no objection to adoption of the proposed rule. However, one member questioned the need to mandate inspection of the Lockheed L–1011 APU starter ground cable installation by issuing an AD. This commenter, who experienced arcing damage on one airplane, inspected thirty-nine other aircraft and found no further damage or incorrect stud build-up. Based on this inspection, this commenter believes that no further action is necessary and requested that the proposed rule be withdrawn. The FAA disagrees. A partial fleet check recently conducted by eight Model L–1011 operators revealed that, of 56 aircraft checked, 23 had some discrepancy in the ground stud/bracket installation. Of those 23, 5 had loose studs with no evidence of arcing and 12 were missing the required mid-span cable clamp. This condition, if not corrected, could result in a fire caused by arcing, since an eroded ground stud and a missing wire harness clamp could allow the starter ground cable to fall onto the APU fuel shutoff valves. The FAA has determined that this unsafe condition may exist in any Model L–1011–385 series airplanes, and AD action is warranted in order to identify and correct it.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 241 Lockheed Model L–1011–385 series airplanes of the affected design in the worldwide fleet. It is estimated that 116 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $20,880.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Lockheed Aeronautical Systems Company: Applies to Lockheed Model L–1011–385–1, L–1011–385–1–14, L–1011–385–1–15, and L–1011–385–3 series airplanes, as listed in Lockheed TriStar L–1011 Service Bulletin 093–49–062, dated September 19, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a fire from arcing due to loose APU starter ground cables falling off the ground studs and onto the APU fuel shutoff valves, accomplish the following:

A. Within 6 months after the effective date of this airworthiness directive (AD), inspect the APU starter ground stud/bracket for proper installation and proper ground stud torque, in accordance with the Accomplishment Instructions of Lockheed TriStar Service Bulletin 093–49–062, dated September 19, 1988. Any discrepancies identified must be corrected prior to further flight, in accordance with the service bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special Flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65–33, Unit 20, Plant A–1. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective September 25, 1989.

Issued in Seattle, Washington, on August 11, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–19556 Filed 8–18–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 89–ASW–54]

Revision of Control Zones; Hood Army Airfield (AAF), TX and Robert Gray Airfield (AAF), TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; editorial amendment.

SUMMARY: This action makes an editorial change to the legal descriptions that were published in the **Federal Register** concerning the Hood AAF and the Robert Gray AAF Control Zones. This action corrects the legal description of both control zones, but does not affect the physical size of either the Hood AAF or Robert Gray AAF Control Zone.

EFFECTIVE DATE: August 21, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5561.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document FR 89–13921 was published on June 13, 1989, revising the control zone located at Hood AAF, TX. The existing control zone was described as "Within 3-mile radius of the Hood AAF * * *" The Hood AAF Control Zone and the adjoining Robert Gray AAF Control Zone should have touched. However, it was determined that the 3-mile radius Hood AAF Control Zone was too small to touch the Robert Gray AAF Control Zone and the Hood AAF Control Zone had to be enlarged to a 3.5-mile radius of Hood AAF. This editorial amendment will revise any reference to the "3-mile radius of the Hood AAF" contained in the Hood AAF Control Zone and Robert Gray AAF Control Zone, TX, legal description to read "3.5-mile radius of the Hood AAF." For the purpose of clarity, the entire legal description of both control zones is being republished.

The FAA has determined that this amendment only involves an editorial change to an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Hood Army Airfield (AAF), TX [Revised]

Within a 3.5-mile radius of the Hood AAF (latitude 31°06'13" N., longitude 97°42'49" W.) and within a 5-mile radius of the Killeen Municipal Airport (latitude 31°05'09" N., longitude 97°41'10" W.); excluding the portion subtended by a chord drawn between the points of intersection of the 3.5-mile radius of the Hood AAF and the 5-mile radius of the Robert Gray AAF, TX, Control Zones south to the intersection of the 5-mile radius of the Killeen Airport and the 5-mile radius of the Robert Gray AAF, TX, Control Zones. This control zone is effective 2300, local time, Sunday to 0700, local time, Saturday and other times by notice to airmen.

§ 71.171 [Amended]

3. Section 71.171 is amended as follows:

Robert Gray Army Airfield (AAF), TX [Revised]

Within a 5-mile radius of Robert Gray AAF (latitude 31°04'04" N., longitude 97°49'45" W.); within 1.5 miles each side of the north localizer course extending from the 5-mile radius area to 7 miles north of the airfield; within 2 miles each side of the 180° bearing from the Robert Gray AAF extending from the 5-mile radius area to 11 miles south of the airport; within a 3.5-mile radius of the Hood AAF (latitude 31°06'13" N., longitude 97°42'49" W.); within a 5-mile radius of the Killeen Municipal Airport (latitude 31°05'09" N., longitude 97°41'10" W.), excluding the portion within the Hood AAF, TX, Control zone when it is effective.

Issued in Fort Worth, TX, on July 31, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89–19559 Filed 8–18–89; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 3]

Exchange-Visitor Program; Citizenship of Responsible Officers and Sponsors; Correction

AGENCY: United States Information Agency.

ACTION: Final rule; correction.

SUMMARY: The Agency issued a final rule on August 11, 1989, at 54 FR 32964. Because of administrative error parts of two sentences were deleted. Also, there is a spelling error. This notice corrects the errors.

EFFECTIVE DATE: August 11, 1989.

ADDRESSES: Merry Lymn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 485–8829.

Dated: August 16, 1989.

Alberto J. Mora,

General Counsel.

PART 514—[AMENDED]

Accordingly, the United States Information Agency is amending 22 CFR 514.1 by correctly adding the definition of "Citizen of the United States" and correctly revising the definitions of "Responsible Officer" and "sponsor" to read as follows:

§ 514.1 Definitions.

* * * * *

"Citizen of the United States" means (a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is a United States citizen, or (c) a corporation or association created or organized under the laws of the United States, of which the chief executive officer, president, chairman of the board of directors, and 75 per centum of the members of the board and its other managing officers are United States citizens and in which at least 75 per centum of the stock or voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

* * * * *

"Responsible Officer" means the official of an organization sponsoring an Exchange-Visitor Program who has been listed with the Agency as being responsible for administering the program and carrying out the obligations which the organization assumes in undertaking to sponsor a program (see § 514.14). The designation of an Alternate Responsible Officer is permitted and encouraged. The Responsible Officer and all Alternative Responsible Officers must be United States citizens.

"Sponsor" means any reputable United States federal, state or local government agency or recognized international agency or organization of which the United States government is a member and has offices in the United States or a reputable organization which is a "citizen of the United States" as that term is defined by this regulation which makes application as prescribed to the Director of the United States Information Agency for designation of a program under its sponsorship as an Exchange-Visitor Program and whose application is approved. Other corporations or organizations which are not citizens of the United States as herein defined may not be designated as a sponsor.

* * * * *

[FR Doc. 89-19623 Filed 8-18-89; 8:45 am]
BILLING CODE 8230-01-M

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 775

Application of the Fair Labor Standards Act to Employees of State and Local Governments

AGENCY: Wage and Hour Division, Employment Standards Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: The Supreme Court in *Garcia* v. *San Antonio Metropolitan Transit Authority, et al.*, 469 U.S. 528 (1985), overruled its prior decision in *National League of Cities* v. *Usery*, 426 U.S. 833 (1976) that the minimum wage and overtime compensation provisions of the Fair Labor Standards Act could not constitutionally be applied to State and local government employees engaged in traditional governmental activities. As a result of the *National League of Cities* decision the Department of Labor published in the **Federal Register** a special enforcement policy and notification procedure, and listed those governmental functions which the Administrator of the Wage and Hour Division had determined to be traditional and those governmental functions determined to be nontraditional. As a result of the *Garcia* decision, *supra*, overruling *National League of Cities*, the need to identify traditional and nontraditional governmental functions became unnecessary and obsolete. This final rule deletes the special enforcement policy and notification procedures from part 775.

EFFECTIVE DATE: August 21, 1989.

FOR FURTHER INFORMATION CONTACT: Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8305. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

Application of the Fair Labor Standards Act to States and Political Subdivisions Prior to Garcia

The Fair Labor Standards Act, as originally enacted in 1938, did not apply to employees employed by States or political subdivisions. The first such application was in 1966, when Congress extended the Act's coverage (including the prohibition against sex-based wage differentials adopted by the Equal Pay Act of 1963) to employees of States and other public enterprises engaged in operating transit companies, hospitals, schools and related institutions. The constitutionality of this extension of the Act's coverage was upheld in *Maryland* v. *Wirtz*, 392 U.S. 183 (1968).

In 1974, Congress amended the Fair Labor Standards Act to cover virtually all public sector employees except those specifically exempt as holders of a public elective office or employees appointed by such an office holder to be a "member of his personal staff" or "to serve on a policymaking level" or as an immediate advisor "with respect to the office."

On June 24, 1976, the Supreme Court ruled in *National League of Cities* v. *Usery*, 426 U.S. 833, that the minimum wage and overtime provisions of the Fair Labor Standards Act could not constitutionally be applied to State and local government employees who are engaged in traditional governmental activities. The Court expressly overruled its earlier decision in *Maryland* v. *Wirtz* insofar as that decision upheld the application of the Act's minimum wage and overtime provisions to public school and hospital employees. The Court's decision did not affect the continued application of the Act's minimum wage and overtime provisions to employees engaged in activities which are not traditional functions of government.

Because the Supreme Court did not establish a test for distinguishing between traditional and nontraditional governmental functions for purposes of applying the Act's minimum wage and overtime provisions, the three-judge district court to which the case was remanded requested the Secretary to propose a means of providing interpretative guidance to public employers in identifying the nontraditional functions which are constitutionally subject to the minimum wage and overtime provisions of the Fair Labor Standards Act. The court also indicated that the States and political subdivisions should not be subject to an award for "liquidated damages" (over and above back wages) except as to activities which had already been identified as nontraditional.

In response to this request, the Secretary submitted a proposal to the court for the amendment of the Secretary's enforcement policy stated in 29 CFR 775 and a notification procedure for identifying traditional and nontraditional governmental functions. This proposal was approved by the court and published in final form in the **Federal Register** on December 21, 1979 (see 44 FR 75628), by adding §§ 775.2–.4 to Part 775.

Effect of The Garcia Decision

On February 19, 1985, the Supreme Court in *Garcia* v. *San Antonio Metropolitan Transit Authority, et al.*, 469 U.S. 528, overruled the *National League of Cities* decision. The court found authority for application of the Fair Labor Standards Act to state and local governments under the Commerce Clause of the Constitution and found that application of federal regulation on the basis of a governmental function being traditional or nontraditional was unsound in principle and unworkable in practice. As a result, classification of state and local governmental functions as traditional or nontraditional became obsolete and unnecessary. Accordingly, 29 CFR Part is amended by deleting §§ 775.2, 775.3 and 775.4.

Publication in Final

The Department of Labor has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving public comment on this procedural amendment to the regulation because such comment is unnecessary. This finding is made because the changes made herein are necessitated by operation of law as a result of the Supreme Court's reversal of its prior decision in *National League of Cities*.

Regulatory Impact

This document reflects the removal of interpretive or procedural regulations for which there is no current statutory or other legal authority. Therefore this document does not constitute a rule or regulation as defined in Executive Order No. 12291. In addition, this document was not preceded by a general notice of proposed rulemaking, and is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2) and 604(a).

List of Subjects in 29 CFR Part 775

State and local governments, Fair Labor Standards Act.

For the reasons set out in the preamble, 29 CFR Part 775 is amended as set forth below.

Signed at Washington, DC, this 15th day of August, 1989.

Elizabeth Dole,

Secretary of Labor.

PART 775—GENERAL

1. The authority citation for Part 775 is revised to read as follows:

Authority: 52 Stat. 1060, 29 U.S.C. 201 *et seq.*, 61 Stat. 84, 29 U.S.C. 251 *et seq.*, 49 Stat. 2036, 41 U.S.C. 35 *et seq.*

§§ 775.2, 775.3, 775.4 [Removed]

2. 29 CFR Part 775 is amended by removing §§ 775.2, 775.3, and 775.4.

[FR Doc. 89-19621 Filed 8-18-89; 8:45 am]
BILLING CODE 4510-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-89-79]

Special Local Regulations for Marine Events; Thirty-Third Annual Powerboat Regatta, Susquehanna River, Havre de Grace, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation of 33 CFR 100.510.

SUMMARY: This notice implements 33 CFR 100.510 for the Thirty-Third Annual Powerboat Regatta. The event will be held on the Susquehanna River, west of Garrett Island. The special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATES: The regulations in 33 CFR 100.510 are effective for the following periods.

11:00 a.m. to 7:00 p.m., August 26, 1989.
11:00 a.m. to 7:00 p.m., August 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Susquehanna River Optimist Club has submitted an application on July 13, 1989 to hold the Thirty-Third Annual Powerboat Regatta on August 26 and 27, 1989, on the Susquehanna River, west of Garrett Island. The powerboat race will consist of approximately seventy five Inboard Hydroplanes, runabouts, and outboard performance crafts ranging from eight to twenty three feet in length racing around an oval course. Three to twelve boats will race at once, at speed up to 140 miles per hour. The races will last from three to four hours. Since this event is of the type contemplated by these regulations and the safety of the participants and spectators viewing this event will be enhanced by the implementation of special local regulations for the Susquehanna River, 33 CFR 100.510 will be in effect. Closure of the entire waterway is not anticipated and marine traffic will be allowed to proceed up the Susquehanna River using that portion of the waterway east of Garrett Island.

These regulations are implemented by publication of this implementing notice in the **Federal Register** and a notice in the Local Notice to Mariners.

Dated: August 11, 1989.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89-19543 Filed 8-18-89; 8:45 am]
BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 217 and 251

Appeal of Decisions Concerning the National Forest System

AGENCY: Forest Service, USDA.

ACTION: Final rule; technical amendments and corrections.

SUMMARY: This rule makes corrections and technical amendments to the Forest Service administrative appeal procedures at 36 CFR parts 217 and 251, Subpart C, and corrects typographical errors in the final rules published in the **Federal Register** on January 23, 1989 [54 FR 3342]. The changes remove several ambiguities and inconsistencies in the appeal procedures which have been brought to the agency's attention since publication.

EFFECTIVE DATE: This rule is effective August 21, 1989.

FOR FURTHER INFORMATION CONTACT: Kathryn C. Hauser, Program Analyst, National Forest System, Forest Service, U.S. Department of Agriculture, (202) 382-9346.

SUPPLEMENTARY INFORMATION: On January 23, 1989, at 54 FR 3342, part VI, the Secretary of Agriculture gave notice of adoption of two new rules that provide a process for appeal of decisions of Forest Service officials related to management of the National Forest System. The new rules at 36 CFR

part 251, subpart C, provide appeal procedures applicable to holders of or applicants for special use authorizations. New rules at 36 CFR part 217 provide a new process for appeal of National Forest System plan and project decisions. The new rules replace the administrative appeal procedures at 36 CFR 211.18. Following publication, the Forest Service discovered several inconsistencies, typographical errors, and omissions that are being corrected by this rulemaking.

Technical Amendments to 36 CFR Part 217

1. Section 217.3

Section 217.3 describes the decisions arising from a National Environmental Policy Act (NEPA) evaluation, and documented in a Record of Decision, Decision Notice, or Decision Memo that are appealable pursuant to this rule. Revision is needed to correct a terminology problem with one of the decisions listed in paragraph (b)(3). The decision in question currently reads, "* * * land exchanges and acquisitions, * * *" Land exchanges involve both disposal of land and the acquisition of land, but it is disposal which inherently results in environmental effects. Acquisitions merely involve transfer of title. Environmental effects are likely to occur only when specific management decisions are implemented concerning the acquired land. Accordingly, paragraph (b)(3) is revised to read, "* * * conveyance of land or interests in land out of Federal ownership, * * *"

2. Section 217.4

The final rule clearly establishes a review process applicable only to decisions arising from analysis required by the National Environmental Policy Act and subsequent implementing regulations and procedures documented in a Record of Decision, Decision Notice, or Decision Memo. Accordingly, appeals of decisions not made through any of these three documents shall not be accepted under 36 CFR part 217. However, while § 217.11 clearly defines the circumstances under which an appeal shall be dismissed, for example decisions excluded from appeal, paragraph (b) of § 217.4. Decisions not subject to appeal, conflicts with this direction. It states that a Reviewing Officer will "not accept" an appeal on subsequent implementing actions. Therefore, paragraph (b) of § 217.4 is being revised to say that appeals of subsequent implementing actions that result from initial decisions subject to review will be dismissed. This revision is consistent with the direction already set out in § 217 11(a)(5).

3. Section 217.7

The proposed regulations published May 16, 1988 (53 FR 17310, Part II), stated the agency's intent to apply the same procedures described for first-level appeals when the Secretary elects to review an initial decision of the Chief. And, the final rule at § 217.13(d) states that if the Secretary elects to review an initial decision, the review shall be conducted in accordance with the applicable rules and procedures of this part. However, § 217.7(a) could be interpreted to contradict this direction because the citation refers only to special procedures involved in discretionary reviews set forth at § 217.17. To ensure that the intent of the rule is achieved and that the Secretary's review of the Chief's initial decisions follows first-level procedures, paragraph (d) of § 217.13, which clearly stated the intent, is being moved to § 217.7(a) and the reference to § 217.17 in § 217.7(a) is being removed. Additionally, consistent with the notification procedures set out in § 217.17, new language has been added to § 217.7(a) to clarify that the discretionary level will notify the appellants when the review at this level is not elected and that the Chief's decision is, therefore, the final administrative decision of the Department of Agriculture.

4. Section 217.8

Part 217 established a review process applicable to all decisions arising from analysis required by the National Environmental Policy Act (NEPA) and subsequent implementing regulations and procedures documented in a Record of Decision, Decision Notice, or Decision Memo. Section 217.8, at paragraphs (a) (3) and (4), delineates the filing times for appeals, differentiating between project decisions, and land and resource management plan approvals, significant amendments, or revisions. Inadvertently, the rule failed to address non-significant amendments to land and resource management plans or programmatic decisions made through an Environmental Assessment and documented in a Decision Notice. This omission has resulted in questions as to whether or not these decisions are appealable and, if so, which filing time applies.

To cure the omission and uncertainty, § 217.8(a)(3) is being amended to provide a 45-day period for filing appeals of non-significant amendments to land and resource management plans documented in a Decision Notice or Decision Memo, or for filing appeals of programmatic decisions documented in a Decision Notice. Neither a non-significant amendment nor a programmatic decision analyzed in an Environmental Assessment and documented in a Decision Notice are as complicated as land and resource management plan approvals, significant amendments, revisions, or other programmatic decisions documented in a Record of Decision. Therefore, 45 days is sufficient time to file an appeal for these kinds of decisions. This change is wholly consistent with the treatment of the 45/90-day period for filing appeals in the final rule. The difference between significant and non-significant amendments to land and resource management plans is explained in Forest Service Manual 1922.5 (51 FR 1476; 53 FR 26807).

5. Section 217.12

One of the fundamental features of the new procedures at part 217 is the emphasis the rules give to conflict resolution. The intent of the new rules, as stated in the preamble (54 FR 3351), is that the rule would allow Deciding Officers, Reviewing Officers, appellants, or intervenors to request meetings to resolve issues. However, through an oversight in § 217.12(a), only Reviewing Officers are specifically authorized to initiate meetings. Therefore, this section is being amended to correct this oversight and conform to the stated intent.

6. Section 217.13

Reviewing Officers are permitted to extend the time periods for review to request additional information needed to clarify issues. However, § 217.13(c) limits this authority to the Secretary of Agriculture, Chief, and Regional Foresters in their capacity as Reviewing Officers. This limitation was an oversight, as Forest Supervisors also need this latitude in first level appeals of District Ranger decisions. Accordingly, § 217.13(c) is being amended to give Forest Supervisors this authority in their capacity as Reviewing Officers.

7. Section 217.15

Procedures for closing the record are set forth in the final rule at § 217.15(e). Paragraph (1) provides that the record will close "* * * upon receipt of comments on the appeal by the intervenor or at the end of the 30-day period for providing comments, whichever is the latter date." The intent of the rule was to close the record upon receipt of intervenor comments on the appeal but not later than the end of the 30-day period intervenors have for providing comments. The rule as written is confusing. Accordingly, § 217.15(e) is amended to clarify that the record closes upon receipt of comments from intervenors but not later than the end of the 30-day comment period.

The final rule at § 217.15 describes the appeal record. It clearly lays out what the record contains, who maintains it, and when it closes. And, § 217.7 clearly states that, if the Secretary elects to review a Chief's initial decision, the first-level appeal procedures outlined in this part apply. Some confusion exists, however, about the handling of the appeal record in the interim, i.e., when an appeal is filed on a Chief's initial decision but prior to the Secretary's determination. Because the creation of the official appeal record would not begin until the Secretary has made the decision to review an initial decision of the Chief (accepted the appeal), nothing filed by an appellant would constitute part of an administrative appeal record until such a determination was made. Accordingly, to clarify this, § 217.15 is revised by adding a new paragraph that makes this point.

8. Section 217.17

Based on inquiries from the public and Forest Service employees, there appears to be some confusion in the new appeal regulation as to whether a Chief's discretionary review decision made pursuant to § 217.17 must be forwarded to the Secretary for possible further discretionary review. The intent of the final rule is clearly stated in the preamble discussion of levels of available review at 54 FR 3346, "* * * the one-level review with discretionary review at the second-level best fits the intent of the rule. It simplifies the process, improves the potential to process appeals in a timely manner, yet retains the option for a second review." There was never any intention to offer a second level of discretionary review. Such a process would be inconsistent with the desire to streamline the appeals process. Accordingly, § 217.7(e) is amended to make clear that only one level of discretionary review exists.

The intent of the final rule as discussed in the preamble is to provide a discretionary review for appeal decisions rendered by the Regional Forester and Chief. If discretionary review is exercised, the review is to be conducted solely on the record used by the lower level Reviewing Officer. Paragraph (e) of § 217.17 states that the record will not be reopened to accept additional submissions from parties to the appeal or the Reviewing Officer. This could lead one to conclude that a non-party could submit information to the record. This would be an erroneous conclusion based on the stated intent of the discretionary review level.

Accordingly, paragraph (e) of § 217.17 is being revised to state that the record shall not be reopened to accept additional submissions from any source.

9. Appendix

Section 217.8(e) delineates how long the first-level review process should take: 100 days for projects or 160 days for land and resource management plans or programmatic decisions documented in a Record of Decision. Appendix A—a flow chart of the appeal process under part 217 which is not to be set out in the Code of Federal Regulations—was provided with the final rule to assist the public in understanding the timeframes. Unfortunately, it was confusing. The total number of days shown on the schematic do not add up to 100/160 days because (1) when the rule was finalized, mailing times were built in to the 100-/160-day timeframe; and (2) the schematic erroneously showed either 30 days or 90 days to make a decision after the record closure. These timeframes were replaced in the final rule with the 100-/160-day timeframe. Adding to the confusion over timeframes is an erroneous statement in the preamble that the 90-day timeframe for review is retained in the final rule (54 FR 3351). No changes in the rule itself are required to clarify the timeframes; however, correction of the chart is necessary. Accordingly, a revised Appendix A is published at the end of this rulemaking.

Technical Amendments to 36 CFR Part 251, Subpart C

1. Section 251.82

Review of § 251.82, which lists the written decisions arising from specific types of permitted uses of National Forest System lands that can be appealed, revealed that two of the decisions listed do not comport the purpose and scope of 36 CFR part 251 and therefore should be deleted. The two decisions in § 251.82(a) are: Paragraph (9), "Land exchange agreements under 36 CFR 254.11 and decisions to proceed/not proceed with land exchanges"; and paragraph (13), "Decisions to object, or not to object to the issuance of minerals leases." In both cases the appealable decision is documented in a NEPA-based document and therefore would be appealable pursuant to the procedures set forth in 36 CFR Part 217.

Written agreements on a land exchange come after the actual decision point to proceed or not to proceed and involve only an exchange of titles. Additionally, the decision to proceed/not proceed with land exchanges is accomplished through a NEPA analysis documented in a Decision Notice or Record of Decision and thus would be appealable pursuant to the procedures set forth in 36 CFR part 217. There are occasions when the Forest Service solicits exchange partners. In such instances, respondents (bidders) to the solicitation are not applying for written authorization to occupy and use National Forest System land. Therefore, no appeal rights under 36 CFR part 251 Subpart C exist for the unsuccessful bidder(s). However, an unsuccessful bidder could appeal pursuant to 36 CFR 217 when a Decision Notice is issued subsequently. If a land exchange decision affects a permit holder, the permit holder has appeal rights pursuant to 36 CFR part 251, subpart C.

Decisions to object/not object to the issuance of minerals leases are also accomplished through a NEPA analysis documented in a Decision Notice or Record of Decision and thus would be appealable pursuant to the procedures set forth in 36 CFR part 217. Even though there are occasions where a person is entitled to apply for a mineral permit or lease and the Forest Service has authority to consent or not to consent to the permit or lease, these decisions are not appealable under 36 CFR part 251, Subpart C because there is no current permit in effect and, therefore, no written authorization establishing a relationship that entitles a party to appeal, as required by 36 CFR 251.86(b); nor is the application the result of a Forest Service solicitation, as required by 36 CFR 251.86(a). Eligibility to appeal under this rule is established when a permit or lease is issued which grants authority to the permittee or lessee to occupy and use NFS lands or when an application is received in response to a Forest Service solicitation (36 CFR 251.86). The applicant for a Bureau of Land Management (BLM) permit or lease will have appeal rights under 36 CFR part 217, because the consent decision forwarded to BLM is accomplished through NEPA analysis and documented in a Record of Decision or Decision Notice.

These changes do not eliminate a person's appeal opportunities. They simply realign them into the proper rule as outlined in the purpose and scope of the respective rules: 36 CFR parts 217 and 251. Accordingly, the rule is amended to reflect these two changes.

BEST COPY AVAILABLE

2. Section 251.83

The final rule at § 251.83 lists those decisions not subject to appeal under this subpart. Paragraph (o) of that list reads "Reaffirmation of prior decisions to terminate a special use authorization." This exclusion should have read "Reaffirmation of prior decisions." This limitation was an oversight by the agency. Forest Service line officers can be asked to reconsider any decision concerning written authorizations to occupy and use NFS lands, not just decisions to terminate a special use authorization. That officer may review the decision to ensure its continued validity without opening the decision to appeal. If the reconsideration leads to a change in the original decision, the resulting changed decision would be appealable. If there is no change in the original decision, there is no action to appeal. And, if the officer refuses to reconsider a decision, the refusal is not appealable. If this were not the case, there could be no effective time limit on the appealability of decisions. This change is consistent with longstanding guidance in Forest Service Handbook 1509.12 (51 FR 10041). Accordingly, the rule is amended to reflect this change.

3. Section 251.87

Consistent with the revisions to § 217.7 and the stated intention of having the two rules consistent, as appropriate, § 251.87(a) is being revised to make explicit that first level appeal procedures apply when the Secretary elects to review appeals of initial decisions of the Chief. Accordingly, paragraph (d) of § 251.95 is being moved to § 251.87(a), and the reference in § 251.87 to § 251.100 is being removed.

Consistent with the notification procedures set out in § 251.100, language has been added in paragraph (a) of § 251.87 to clarify that the discretionary level will notify the appellants when the review at this level is not elected and that the Chief's decision is, therefore, the final administrative decision of the Department of Agriculture.

4. Section 251.89

The Reviewing Officer is given the discretion to extend most timelines. A contradiction could be construed when reading paragraph (b) of § 251.89 because it states that the Reviewing Officer may extend all other timelines except for filing of a notice of appeal. However, paragraph (b)(2) of the same section states that a Reviewing Officer cannot extend the time period for discretionary review. Therefore, to avoid confusion, paragraph (b) is being revised to bring those two limitations together in the same paragraph. And, the citation to § 251.87(d) in paragraph (b)(2) of § 251.89 is being corrected to cite § 251.100 which is the section that describes the procedures for discretionary review.

5. Section 251.93

Consistent with the stated intent of the rule, the Reviewing Officer has the discretion to extend the timelines to allow for conflict resolution. However, as noted previously, a Reviewing Officer cannot extend the time periods during discretionary review. To avoid any confusion and uncertainty, paragraph (b) § 251.93 is being revised to clearly state that the authority of the Reviewing Officer to extend time periods for review to allow for conduct of meaningful negotiations does not extend to the discretionary review level.

6. Section 251.96

The proposed rule stated that intervention would be limited to applicants for or holders of a written instrument. The discussion in the preamble states that the final rule retains the language proposed. Paragraph (b)(2) of § 251.96 states that in order to intervene, a party must be as defined at § 251.81 "* * * an applicant for or *party* to * * *" [emphasis added]. Use of the words "party to" is inconsistent with the preamble discussion and the definition at § 251.81. Therefore, the reference to "party to" in paragraph (b)(2) of § 251.96 is being changed to "holder of" to make it consistent with the definition in § 251.81.

7. Section 251.98

The final rule at § 251.98 describes the appeal record. It clearly lays out what the record contains, who maintains it, and when it closes. And, § 251.87 clearly states that if the Secretary elects to review a Chief's initial decision that the first level appeal procedures outlined in this part apply. Some confusion exists, however, about the appeal record in the interim, i.e., when an appeal is filed on a Chief's initial decision but prior to the Secretary's determination of whether or not to review a decision of the Chief. Because the creation of the official appeal record would not begin until the Secretary has made the decision to review an initial decision of the Chief (accepted the appeal), nothing filed by an appellant would constitute part of an administrative appeal record until such a determination was made. Accordingly, to clarify this and consistent with a similar change in 36 CFR Part 217, § 251.98 is revised by adding a new paragraph that makes this point.

8. Section 251.99

Whenever an appeal decision is made, the Reviewing Officer's decision must be consistent with applicable law, regulations, and orders. The final rule at paragraph (a) of § 251.99 includes the phrase "* * * in effect at the time the decision was made." This was an error. The intent was that the Reviewing Officer's decision would be consistent with all applicable laws, etc., not limited to only those in effect at the time the decision was made. Accordingly, paragraph (a) § 251.99 is being revised by deleting the phrase "in effect at the time the decision was made." This change is also consistent with the language currently in the corresponding section of 36 CFR part 217.

9. Section 251.100

The final rule sets out at § 251.100 the procedures that will apply to discretionary reviews. However, it fails to state the responsible level for notification about discretionary review. Accordingly, paragraphs (c) and (g) of § 251.100 are revised to say that the discretionary review level will notify. This revision is consistent with the notification procedures in the corresponding section of 36 CFR part 217. Also, in § 251.100, paragraph (d) states that the record will not be reopened to accept additional submissions parties to the appeal or the Reviewing Officer. This could lead one to conclude that a non-party could submit information. This was not the intent. It was intended that the discretionary review be conducted on the same record used by the initial Reviewing Officer. Therefore, paragraph (d) of § 251.100 is being revised to state that the record shall not be reopened to accept additional submissions from any source. This revision is consistent with a similar revision to the corresponding section in 36 CFR part 217.

Corrections

Several typographical errors were found after publication in the Federal Register that cause confusion in the final rules. Errors and corrections are as follows:

1. In § 217.4 Decisions not subject to appeal, paragraph (13) should read "36 CFR 296.15 or violations," eliminating the phrase "to issue order;"

2. In § 217.8 Appeal process sequence, paragraph (a)(4) should read "programmatic decisions" instead of "programmatic decision;"

3. In § 217.17 Discretionary review, the fifth sentence of paragraph (d) incorrectly reads "* * * expiration of the 15-day period or the additional 5-day period following receipt * * *" It is being corrected to read "* * * or the additional 15-day period following receipt * * *."

4. In § 251.82(a)(4), it should read "Mining plans of operation" not "mining plans of operating."

5. In § 251.90(b)(6) the phrase "that the appellant believes to be violated" appears twice. This paragraph is being corrected to remove the unnecessary verbiage.

6. In § 251.91 Stays, the first sentence of paragraph (j) incorrectly reads "* * * during the pendency of a stay." It is being corrected to read "* * * during the pendency of an appeal."

The revisions in this rulemaking are technical corrections of errors and omissions and do not represent a change in agency policy or intended procedures. They are necessary to ensure that the rule is consistent with the stated intent and to eliminate confusion and ambiguity. Because of their technical nature, this final rule will not have a significant effect on the human environment, individually or cumulatively.

Controlling Paperwork Burdens on the Public

This rulemaking does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and therefore imposes no paperwork burden on the public.

List of Subjects

36 CFR Part 217

Administrative practice and procedure, National forests.

36 CFR Part 251

Administrative practice and procedure, Electric power, National forests, Public lands—rights-of-way, Reporting and recordkeeping requirements, Water resources.

Therefore, for the reasons set forth in the preamble, chapter II of title 36 of the Code of Federal Regulations is amended as follows:

PART 217—REQUESTING REVIEW OF NATIONAL FOREST PLANS AND PROJECT DECISIONS

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 551, 472.

2. Revise § 217.3(b)(3) to read as follows:

§ 217.3 Decisions subject to appeal.

* * * * *

(b) * * *

(3) Other projects and activities for which decision documents are prepared, such as timber sales, road and facility construction, range management and improvements, wildlife and fisheries habitat improvement measures, forest pest management activities, removal of certain minerals or mineral materials, conveyance of land or interests in land out of Federal ownership, and establishment or expansion of winter sports or other special recreation sites.

* * * * *

3. In § 217.4, revise paragraph (a)(13) and revise the first sentence of paragraph (b) to read as follows:

§ 217.4 Decisions not subject to appeal.

(a) * * *

(13) Decisions imposing penalties for archaeological violations under 36 CFR 296.15 or for violations of prohibitions and orders under 36 CFR part 261.

* * * * *

(b) In addition to decisions excluded from appeal by paragraph (a) of this section, the Forest Service shall dismiss any notice of appeal on subsequent implementing actions that result from the initial decision subject to review under this part as defined at § 217.3(b)(3). * * *

4. In § 217.7, revise the last two sentences in paragraph (a) and revise the first sentence in paragraphs (d) and (e) respectively to read as follows:

§ 217.7 Levels of appeal.

(a) * * * If the Secretary has not decided to review the Chief's decision by the expiration of the 15-day period, the requester(s) shall be notified by the Secretary's office that the Chief's decision is the final administrative decision of the Department of Agriculture. When the Secretary elects to review an initial decision made by the Chief, the Secretary shall conduct the review in accordance with the first level appeal procedures outlined in this rule.

* * * * *

(d) *Discretionary review of dismissal decisions.* Dismissal decisions rendered by Forest Service line officers pursuant to this part (§ 217.11) are subject to only one level of discretionary review (§ 217.11) as follows: * * *

(e) *Discretionary review of appeal decisions.* Appeal decisions rendered by Regional Foresters and the Chief pursuant to this part are subject to only one level of discretionary review as follows: * * *

5. In § 217.8, revise paragraphs (a)(3) and (a)(4) to read as follows:

§ 217.8 Appeal process sequence.

(a) * * *

(3) File the notice of appeal within 45 days of the date of the decision for project decisions, non-significant amendments to land and resource management plans documented in a Decision Memo, Decision Notice, or Record of Decision, or programmatic decisions documented in a Decision Notice (§ 217.3).

(4) File the notice of appeal within 90 days of the date of the decision for land and resource management plan approvals, significant amendments, or revisions, and for other programmatic decisions documented in a Record of Decision.

* * * * *

6. In § 217.12, revise the first and last sentences in paragraph (a) to read as follows:

§ 217.12 Resolution of issues.

(a) When a decision is appealed, appellants or intervenors may request meetings with the Deciding Officer to discuss the appeal, either together or separately, to narrow issues, agree on facts, and explore opportunities to resolve the issues by means other than review and decision on the appeal. * * * Reviewing Officers may, at the request of the Deciding Officer, or on their own initiative, extend the time periods for review and specify a reasonable duration to allow for conduct of meaningful negotiations.

* * * * *

7. In § 217.13, remove paragraph (d) and revise the first sentence of paragraph (c) to read as follows:

§ 217.13 [Amended]

(c) *Requests for information.* At any time during the appeal process, the Reviewing Officer at the levels specified in § 217.7 (a), (b), or (c)(1) of this part may extend the time periods for review to request additional information from an appellant, intervenor, or the Deciding Officer. * * *

8. In § 217.15, revise paragraph (e)(1) and add paragraph (g) to read as follows:

§ 217.15 Appeal record.

* * * * *

(e) *Closing the record.* (1) In appeals with intervenors, the appeal record shall close upon receipt of comments on the appeal by the intervenor, but not later than the end of the 30-day period provided for intervenors to submit comments (§ 217.14(c)).

* * * * *

(g) In appeals involving initial decisions of the Chief (217.7(a)), the establishment of an administrative record as defined in paragraph (a) of

this section shall not begin unless the Secretary elects to review the appeal. Except for the initial notice of appeal, any filings made previous to the Secretary's election to review will not be accepted.

9. In § 217.17, revise the fifth sentence of paragraph (d) and the last sentence of paragraph (e) to read as follows:

§ 217.17 Discretionary review.

* * * * *

(d) * * * If that officer takes no action by the expiration of the 15-day period or the additional 15-day period following receipt of the record, the decision of the Reviewing Officer stands as the final administrative decision of the Department of Agriculture. * * *

(e) * * * The record shall not be reopened to accept additional submissions from any source including the Reviewing Officer whose appeal decision is being reviewed.

* * * * *

PART 251—LAND USES

Subpart C—Appeal of Decisions Relating to Occupancy and Use of National Forest System Lands

10. The authority citation for Subpart C continues to read as follows:

Authority: 16 U.S.C. 472, 551.

11. In § 251.82, remove paragraphs (a)(9) and (a)(13), redesignate paragraphs (a)(10), (a)(11), (a)(12), and (a)(14) as paragraphs (a)(9) through (a)(12) respectively, and revise paragraph (a)(4) to read as follows:

§ 251.82 Appealable decisions.

(a) * * *

(4) Mining plans of operation under 36 CFR part 228, subpart A.

* * * * *

12. In § 251.83, revise paragraph (o) to read as follows:

§ 251.83 Decisions not appealable.

* * * * *

(o) Reaffirmation of prior decisions.

13. In § 251.87, revise the last two sentences in paragraph (a) and revise the first and second sentences in paragraphs (d) and (e) respectively to read as follows:

§ 251.87 Levels of appeal.

(a) * * * If the Secretary has not decided to review the Chief's decision by the expiration of the 15-day period, the requester(s) shall be notified by the Secretary's office that the Chief's decision is the final administrative decision of the Department of Agriculture. When the Secretary elects to review an initial decision made by the Chief, the Secretary shall conduct the review in accordance with the first level appeal procedures outlined in this rule.

* * * * *

(d) *Discretionary review of dismissal decisions.* Dismissal decisions rendered by Forest Service line officers pursuant to this part (§ 251.92) are subject to only one level of discretionary review (§ 251.100) as follows: * * *

(e) *Discretionary review of appeal decisions.* Appeal decisions rendered by Regional Foresters and the Chief pursuant to this part are subject to only one level of discretionary review as follows: * * *

14. In § 251.89 revise the last sentence in paragraph (b) introductory text and the introductory phrase of the first sentence in paragraph (b)(2) to read as follows:

§ 251.89 Time extensions.

* * * * *

(b) * * * Except as noted in paragraph (a) of this section and as prohibited at the discretionary review level (§ 251.100), the Reviewing Officer may extend all other time periods under this subpart. * * *

(2) Except for discretionary reviews of appeal decisions as provided in § 251.100 of this subpart, * * *

15. In § 251.90 revise paragraph (b)(6) to read as follows:

§ 251.90 Content of notice of appeal.

* * * * *

(b) * * *

(6) Specific references to any law, regulation, or policy that the appellant believes to be violated and the reason for such an allegation.

* * * * *

16. In § 251.91 revise the first sentence of paragraph (j) to read as follows:

§ 251.91 Stays.

* * * * *

(j) *Petitions to change a stay.* An appellant or intervenor may petition a Reviewing Officer to change or lift a stay at any time during the pendency of an appeal. * *

* * * * *

17. In § 251.93, revise the last sentence in paragraph (b) to read as follows:

§ 251.93 Resolution of issues.

* * * * *

(b) * * * At the request of the Deciding Officer, the Reviewing Officer may extend the time periods for review, except at the discretionary level, and specify a reasonable duration to allow for conduct of meaningful negotiations.

* * * * *

§ 251.95 [Amended]

18. In § 251.95, remove paragraph (d).

§ 251.96 [Amended]

19. In § 251.96(b)(2) change the words "party to" to read "holder of".

20. In § 251.96, remove the paragraph designation (a), redesignate paragraphs (1) through (5) as (a) through (e), and add paragraph (f) to read as follows:

§ 251.96 Appeal record.

* * * * *

(f) In appeals involving initial decisions of the Chief (§ 251.87(a)), the establishment of an administrative record as defined in paragrapn (a) of this section shall not begin unless the Secretary elects to review the appeal. Except for the initial notice of appeal, any filings made previous to the Secretary's election to review will not be accepted.

21. In § 251.99, revise paragraph (a) to read as follows:

§ 251.99 Appeal decision.

(a) The Reviewing Officer shall base the appeal decision on the appeal record and applicable laws, regulations, orders, policies, and procedures.

* * * * *

22. In § 251.100, revise the last sentence of paragraph (c), the last sentence in paragraph (d), and the last sentence of paragraph (g) to read as follows:

§ 251.100 Discretionary review.

* * * * *

(c) * * * If that officer takes no action by the expiration of the discretionary review period, appellants shall be notified by the discretionary level officer that the appeal decision of the Reviewing Officer stands as the final administrative review decision of the Department of Agriculture.

(d) * * * The record shall not be reopened to accept additional submissions from any source, including the Reviewing Officer whose appeal decision is being reviewed.

* * * * *

(g) * * * In such case, appellants, intervenors, and the lower level Reviewing Officer shall be notified by the discretionary level officer.

* * * * *

Dated: August 9, 1989.

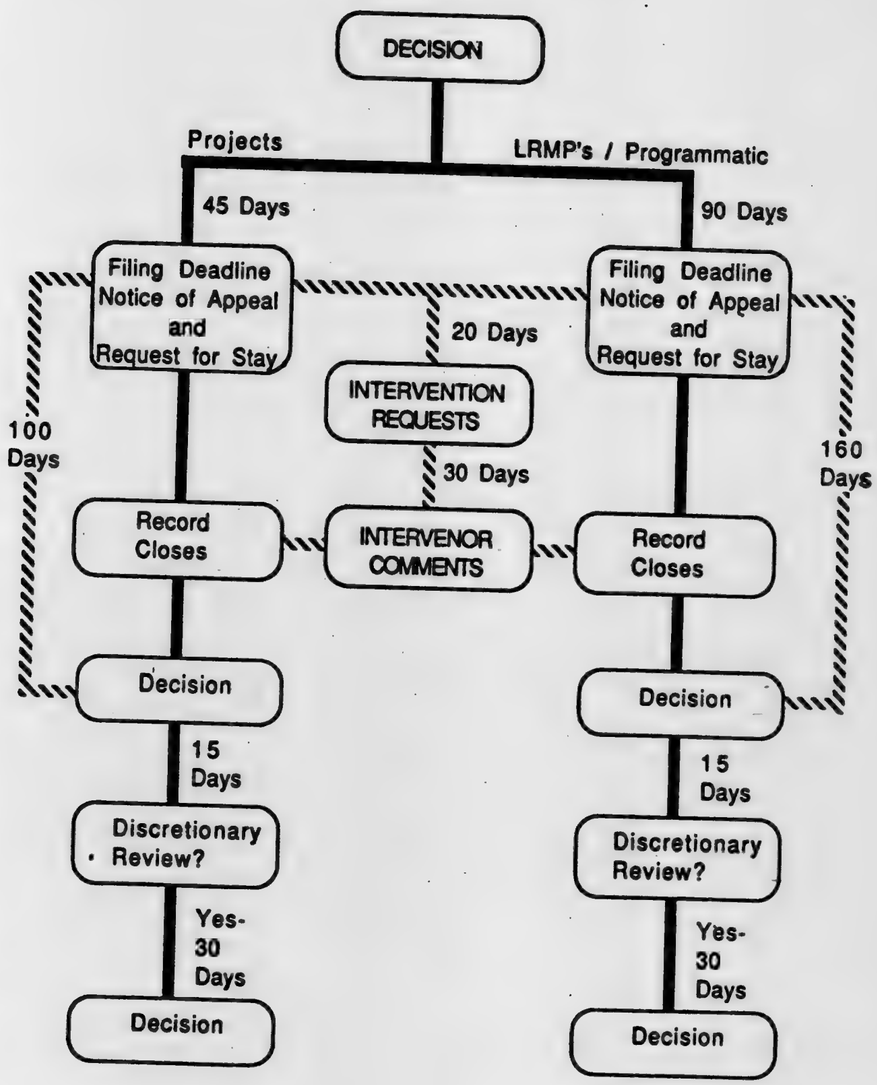
George M. Leonard,

Associate Chief.

BILLING CODE 3410-11-M

Note.—This appendix will not appear in the Code of Federal Regulations

Appendix A - 36 CFR 217



[FR Doc. 89-19420 Filed 8-18-89; 8:45 am]

BILLING CODE 3410-11-C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3637-2]

Approval and Promulgation of Implementation Plans; California; South Coast Air Quality Management District Rule 1115, Motor Vehicle Assembly Line Coating Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This notice takes final action under section 110 and part D of the Clean Air Act to disapprove a revision to the California State Implementation Plan (SIP). On July 10, 1984, the California Air Resources Board (CARB) submitted to EPA an amended version of South Coast Air Quality Management District (SCAQMD) Rule 1115. The rule controls emissions from motor vehicle assembly line surface coating operations. The amended rule significantly relaxes current SIP requirements and allows emissions in excess of reasonably available control technology (RACT).

EPA proposed to disapprove this rule in a **Federal Register** notice published December 30, 1988 (see 51 FR 47032). EPA has analyzed and responded to the comments received on this proposed action and has determined that the amended rule should be disapproved.

EFFECTIVE DATE: This action is effective September 20, 1989.

ADDRESSES: Copies of the revised rule and EPA's evaluation report are available for public inspection during normal working hours at the EPA Region 9 office, at the California Air Resources Board, at the South Coast AQMD, and at the U.S. EPA Public Information Reference Unit.

California Air Resources Board, Projects Section, Technical Support Division, 1131 "S" Street, Sacramento, CA 95812.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731.

FOR FURTHER INFORMATION CONTACT: Scott Bohning, State Implementation Plan Section, Air and Toxics Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7642, FTS 454-7642.

SUPPLEMENTARY INFORMATION:

Background

The State submitted South Coast Rule 1115, Motor Vehicle Assembly Line Coating Operations (original Rule 1115) on January 28, 1981, and EPA approved this version of the rule for inclusion in the California SIP at 40 CFR 52.220(c)(98). The rule governs the amount of volatile organic compounds (VOC) allowable in surface coatings for assembly line coating operations and specifies transfer efficiencies for each coating line. For example, a minimum transfer efficiency of 30 percent must be achieved for topcoat applications, and all topcoats must have a VOC content of 275 grams of VOC per liter of coating (g/l) or less. The EPA-approved rule satisfied minimum Clean Air Act (CAA) requirements as meeting RACT.

The State submitted a revised version of Rule 1115 on July 10, 1984. EPA proposed to disapprove the revised rule on December 30, 1986 (see 51 FR 47032). The revision clarified definitions, removed transfer efficiency requirements, added VOC limits for two-stage basecoat/clearcoat (BC/CC) topcoat systems, and relaxed VOC limits for some coatings. These changes are discussed below.

Transfer efficiency requirements were removed from the revised rule. The revised rule merely lists application methods and assumed transfer efficiencies for each step of the coating process. This is done in two lists, one for one-stage topcoat and one for BC/CC systems. Each list has its own set of VOC limits and transfer efficiencies (See Table 1). It is unclear whether operators are required by the rule to use methods and VOC limits within a single list, or may choose from either list. The revised rule seems to assume that a certain application method is always used in conjunction with each type of coating (for example, manual electrostatic spray with solvent-borne topcoat). However, several application techniques (for example, manual and automatic, electrostatic and non-electrostatic) are often used in a single coating operation. It is therefore unclear which VOC limit should apply; this makes much of the revised rule unusable, and therefore not approvable by EPA.

TABLE 1.—REVISED TRANSFER EFFICIENCIES REQUIRED IN SCAQMD RULE 1115 [1]

Coating category	Required by EPA-approved rule (percent)	Assumed by revised rule 1115 (collecting purged paint) (percent)	Assumed by revised rule 1115 (no purged paint collection) (percent)
Primer surfacer	65	39 or 75 [2]	30 or 62.
Spray primer	65	39 or 95	30 or 75.
Topcoat	30	39 or 75	30 or 62.
Final repair primer	65	50	40.
Final repair topcoat:			
(Except last coat)	65	50	40.
(Last coat)	30	50	40.
Electrophoretic applied primer	95		

[1] Values are from the original and revised versions of Rule 1115.
[2] Two values shown indicates one-stage or BC/CC topcoat system.

The rule also assumes that the chosen application method will always achieve a certain transfer efficiency; it does not actually require any particular level of transfer efficiency. In practice, the transfer efficiency achieved with a certain type of equipment is not constant, but varies considerably depending on many factors, such as the characteristics of the coating itself, the size and shape of the object being coated, and operating conditions. The emissions that would result from the rule are thus unpredictable, and the transfer efficiencies unenforceable. Further, even if the listed transfer efficiencies were required by the revised rule, in some cases they are relaxations from the EPA-approved rule in the SIP. These problems make the rule unapprovable.

The only purpose of transfer efficiency values in the revised rule is for use in demonstrating equivalency. The rule contains more than one VOC limit and transfer efficiency for each coating step, depending on whether purged materials are collected, whether a one-stage or BC/CC topcoat is used, and whether high or low voltage electrostatic spray systems are used. Thus, it is not possible to determine the baseline emissions rate to use in equivalency demonstrations. (The range of possible values implied in the revised rule is shown in Table 2.) The rule is therefore not enforceable, and hence not approvable by EPA.

The revised rule also makes changes in maximum allowed VOC content of coatings. The VOC content limit for topcoats was relaxed from 275 g/l to either 380 or 580 g/l and the limit for final repair (i.e., primer, surfacer, topcoat) was relaxed from 590 g/l to 780 g/l.

The rule establishes new VOC limits for the BC/CC topcoat system: 590 g/l for basecoat and 405 g/l for clearcoat. The rule also includes limits for the coatings to be used in conjunction with this system. The limits for primer surfacers have been relaxed from 340 g/l to 460 g/l; for spray primers, from 275 g/l to 460 g/l; and for topcoats, from 275 g/l to 590 g/l.

Table 2 compares the emissions that would result from alternative sets of VOC limits and transfer efficiencies. The RACT emissions recommended by the Control Techniques Guideline (CTG), "Control of VOC emissions for Surface Coating from Automobiles and Light Duty Trucks" and various EPA policy memos, and those allowed by the original Rule 1115 and revised Rule 1115 are listed below for coatings affected by the rule relaxation.

TABLE 2.—EMISSIONS (LB VOC/GALLON SOLIDS APPLIED UNLESS SPECIFIED)

Coating category	CTG/RACT	Original rule 1115	Revised rule 1115
Top Coats			
Basecoat/Clearcoat	15.1	11.1	14.4–23.7.
Spray Primer	15.1 [1]	11.1	13.6–16.8.
Primer Surfacer	(2)	5.1	8.3–12.7.
Final Repair+:	15.1	7.1	10.8–15.1.
Primer	4.8 lb/gal	4.9 lb/gal	4.9–6.5 lb/gal.
Top coat	4.8 lb/gal	4.9 lb/gal	4.9–6.5 lb/gal.
Last coat	4.8 lb/gal	4.9 lb/gal	4.9–6.5 lb/gal.

[1] The CTG and original Rule 1115 did not separately address BC/CC systems. However, BC/CC is a topcoat and replaces other topcoat systems. Therefore, EPA considers the topcoat limit to be applicable to BC/CC systems.
[2] A numerical limit was not recommended in the CTG. + EPA has not recognized a baseline transfer efficiency for final repair. Thus, it is not possible to determine an equivalent control level on an emissions per solids applied basis.

The revised Rule 1115 limits are in every case relaxations from that required by original Rule 1115. In addition, limits for one-stage topcoats, BC/CC systems, and final repair allow emissions greater than RACT and are therefore not approvable, on that basis alone.

In sum, revised Rule 1115 contains ambiguous provisions, VOC content limits that are relaxations from the current EPA-approved rule and in some cases relaxations from RACT.

In 1984, the SCAQMD estimated that total emissions from the operations subject to Rule 1115 were 6 tons/day. Under the original limits, Rule 1115 would have realized an additional emission reduction of 3.6 tons VOC/day (see TSD and January 27, 1984 SCAQMD staff report). Thus the relaxations in Rule 1115 will cause excess emissions of 3.6 tons VOC/day.

EPA Requirements

EPA has evaluated the revised South Coast Rule 1115 for consistency with the CAA, 40 CFR part 51, and EPA policy. EPA has also evaluated it to determine whether it weakens or strengthens the existing federally approved SIP.

Section 110(a)(2)(A) and 172(a)(1) of the CAA, 40 CFR part 51.110, and EPA policy require that SIPs provide for the attainment of the national ambient air quality standards (NAAQS) "as expeditiously as practicable". Section 110(a)(2)(B) of the CAA, 40 CFR part 51, subpart G, and EPA policy require that SIPs also ensure maintenance of the NAAQS. Section 110(a)(3)(A) of the CAA and 40 CFR part 51.104 extend the SIP requirements in section 110 and 40 CFR part 51 to SIP revisions. Finally, section 172 of the CAA requires states to adopt regulations that reflect reasonably available control technology (RACT) at a minimum in order to attain and maintain the NAAQS. EPA-approved rules may also require controls more stringent than RACT if such controls are necessary for attainment and maintenance of the ozone standard.

The revised South Coast Rule 1115 represents a weakening of SIP requirements that may increase VOC emissions and that will not provide for attainment and maintenance of the NAAQS as expeditiously as practicable. The revised rule allows emissions of 3.6 tons/day in excess of those that would result from the original Rule 1115 limits and is less stringent than RACT as defined in the CTG. The revised rule also allows increased emissions in an area that will not demonstrate attainment (53 FR 1760, January 22, 1988) of the ozone standard by 1987, and is the worst ozone nonattainment area in the country (53 FR 49494). The rule is therefore contrary to section 172 of the CAA.

In addition to the CAA requirements listed above, EPA has developed policy guidelines for the approval of relaxations in automobile coating rules (see TSD, policy memorandum, Richard G. Rhoads, Director, CPDD to Regional Offices, October 6, 1978). The policy, which reflects EPA's interpretation of the RACT and reasonable further progress (RFP)/attainment requirements of CAA section 172, calls for (1) a demonstration that the original emissions limit is inappropriate due to specific circumstances unique to a particular facility; (2) that the proposed level of control is the maximum reasonably attainable by the affected source(s); and (3) that reasonable further progress will be maintained. In the case of South Coast Rule 1115, adequate technical information that would justify the relaxation to control requirements less stringent than RACT has not been submitted.

The original Rule 1115 requirements have also been relaxed for spray primers, a category for which EPA has

not even presumptively determined RACT. Before this relaxation can be approved by EPA, the District must demonstrate that the original limit is not practicable. The District must also provide compensating emissions reductions from another source or another source category to ensure non-interference with or reasonable further progress toward attainment of the NAAQS. Neither condition has been met. EPA is therefore taking final action to disapprove South Coast Rule 1115 since it is inconsistent with the CAA, 40 CFR Part 51, and EPA policy.

Response to Public Comments

On December 30, 1988, EPA published in the **Federal Register** a proposal to disapprove South Coast Air Quality Management District (SCAQMD) Rule 1115 and solicited public comments on the disapproval. One comment letter, dated January 29, 1987, was received from Samuel I. Gutter of Sidley & Austin representing General Motors Corporation (GM). The January 29, 1987 letter incorporated by reference a September 18, 1985 letter from Pillsbury, Madison and Sutro also representing GM. The purpose of this section is to respond to comments received in those two letters.

In brief, the GM comments allege that the original South Coast Rule 1115 is unreasonably stringent, that the revised Rule represents RACT, and that EPA has recognized these facts in published policy. GM concludes that EPA should approve revised Rule 1115. EPA rejects these arguments because, as shown in the preceding two sections of this notice, (i) some of its provisions are clearly less stringent than RACT, and (ii) it is a relaxation from the original Rule. Neither of these are acceptable for nonattainment areas without adequate plant-specific justification and compensating reductions in the District in another VOC category. This is especially true given the severity of the ozone problem in the South Coast Air Basin. (See 53 FR 49494, December 7, 1988.)

Much of GM's comments are concerned with showing that the limits for BC/CC in the revised Rule meet RACT (which GM seems to assume is the sole criterion for approvability). As detailed below in the responses to comments 2 and 3, it is not clear that EPA ever recognized BC/CC as RACT. Even if EPA agreed, it could not approve only part of the rule, as GM suggests at one point. Regardless of the RACT status of BC/CC, the revised Rule fails on the other criteria cited above, and so is not approvable.

Relevant specific comments have been summarized and EPA responses to each are listed below.

Comment 1: The original Rule 1115 limits were based on overly optimistic projections of waterborne coating technology that did not develop.

Response: Although the final topcoat limits in original Rule 1115 were based on projections of future developments in water-borne coatings, those limits were chosen as a standard that would apply to all topcoat technologies. Complying water-borne coatings have not been developed largely due to industry's shift to alternative coatings technologies, primarily the basecoat/clearcoat system. In cases where the emissions reductions achieved through improved coatings and transfer efficiencies are inadequate, the necessary incremental reductions can be achieved through incineration of oven gases or carbon adsorpotion of a portion of the spray booth emissions. This is consistent with EPA policy as expressed in the October 6, 1978 policy memo.

The EPA's CTG/RACT limits were based on presumptive norms for the automobile coating industry and were not intended to be absolute limits for individual plants. A source may request a plant-specific evaluation, which could lead to less stringent levels of control than that recommended by the CTG; however, the source must submit adequate technical and plant-specific information to justify the less stringent control. As described below, adequate technical information has not been provided to support the relaxations of the limits in revised rule 1115.

Comment 2: Add-on abatement technology is not RACT because add-on controls are economically unreasonable. Regenerative incineration would cost $8258/ton of VOC controlled while carbon adsorption would cost $9276/ton. EPA has recognized that add-on controls are economically unreasonable, (49 FR 37548, September 24, 1984). EPA has stated that RACT requires only the highest solids coatings and highest available transfer efficiency, not add-on controls (46 FR 51386, October 20, 1981).

Response: The September 24, 1984 **Federal Register** notice cited above approves innovative technology waivers from the New Source Performance Standard (NSPS) for motor vehicle assembly line coatings. EPA concluded that add-on controls for BC/CC were, at that time, economically unreasonable and thus "not adequately demonstrated" under section 111(a)(1) of the CAA. Therefore, BC/CC was eligible for NSPS waivers. Section 111(a)(1) of the CAA describes NSPS requirements and does not pertain to RACT requirements for nonattainment areas. EPA has not established an upper limit on cost effectiveness that defines RACT; rather, "RACT for a particular source is determined on a case by case basis considering the technological and economic circumstances of the individual source." (44 FR 53762, September 17, 1979).

The limits in the original rule 1115 were identified by EPA as "sufficient to fulfill the requirements of RACT", based on the CTG requirements for "Control of VOC emissions from Surface Coating of Automobiles and Light Duty Trucks". But this is not only a question of RACT; an area may adopt rules more stringent than RACT if needed to attain the ozone standard. A company that believes that it should not be subject to adopted control requirements may request a case specific review; it must present adequate technical information that demonstrates that the control is not cost effective.

GM has provided rough calculations showing that incineration would cost $8,258/ton of VOC controlled and that carbon adsorption would cost $9,276/ton. However, GM has not provided any plant specific information that could be used to confirm their cost calculations or to verify the degree of control necessary to comply with the Rule's requirements. These calculations appear to be based on full abatement through add-on controls while considering a limited range of control options. In fact, a significant amount of control may already be achieved through high solids coatings and improved transfer efficiency. Thus, it may be possible to comply with the original limits by controlling only a portion of the spray booths or through the use of more economical control strategies. This would significantly reduce the total cost of control. In consideration of the above requirements, EPA finds that GM has not demonstrated that a level of control less stringent than the current SIP limits is justified.

An October 20, 1981 **Federal Register** notice was also cited by GM. It stated that in plants with short ovens and spray booths, where conversion to low-solvent coatings would require major reconstruction, RACT would have to be determined on a case-by-case basis; in such plants RACT would require use of high solids coatings and high transfer efficiency, rather than major reconstruction. These statements were not a definition of RACT in general, and the notice did not rule out add-on controls. Further, there has been no evidence submitted to EPA that major reconstruction would be necessary for South Coast plants.

Comment 3: EPA has recognized industry's shift to the base coat/clear coat technology and has deferred compliance dates in other areas of the country.

Response: EPA has recognized that, for reasons of product quality and competitiveness, industry has shifted to the base coat/clear coat technology. EPA has granted innovative technology waivers for NSPS requirements for several companies that installed basecoat/clearcoat coating lines. EPA also developed a policy for deferring compliance with final SIP limits until 1986/1987 (see 46 FR 51386, October 20, 1981). However, these waivers were not permanent relaxations of the NSPS requirements or of RACT requirements for nonattainment areas. EPA simply deferred the final compliance deadline in order to allow industry more time to develop complying coatings that would be more cost effective than add-on controls. The innovative technology waivers expired in 1986 and all sources are required to comply with the NSPS.

Comment 4: EPA approved a similar relaxation to Rule 13 in the Bay Area Air Quality Management District (BAAQMD).

Response: As discussed above, the level of control required in any specific area will depend on the severity of the nonattainment problem in that area. At the time that EPA approved the revised Rule 13, the BAAQMD had an approved Air Quality Management Plan that demonstrated attainment of the ozone standard even with relaxation of the original Rule 13 requirements. The SCAQMD does not have an approved Air Quality Plan and is unable to demonstrate attainment of the ozone standard at any future date. Therefore, a more stringent level of control is required in the SCAQMD and it would be inappropriate to relax the original Rule 1115 limits.

Comment 5: In absence of an EPA RACT limit for final repair coating, EPA should approve the SCAQMD limits unless EPA finds substantive deficiencies.

Response: EPA has presumptively established that RACT for final repair is 4.8 pounds of VOC per gallon (see CTG, page vii). EPA's Technical Support Document referenced in the December 30, 1988 proposed disapproval (see 51 FR 43032), incorrectly stated that RACT had not been determined for final repair, and has since been revised to include the above limit. However, EPA has not established RACT for spray primers, another coating category for which the original Rule 1115 limit has been relaxed. The CTG stated that spray primer emissions could be reduced through the use of high solids coatings, but did not recommend a specific limit.

Although EPA has not determined RACT for spray primers, EPA did approve the spray primer limit of 275 g/l at 60% transfer efficiency proposed by the SCAQMD in original Rule 1115. The revised Rule 1115 relaxes that limit to 460 g/l without sufficient technical justification for such relaxation. Any relaxation of a SIP limit must be supported by a demonstration that the existing limit is not economically or technologically feasible. Additionally, compensating emissions reductions must be achieved in order to ensure noninterference with, or reasonable further progress toward, attainment of the NAAQS. This applies whether or not EPA has established CTG limits for a particular source category. The SCAQMD has not satisfied these requirements. Therefore, EPA cannot approve the relaxation in the level of control required in the federally approved SIP.

Comment 6: The SCAQMD submitted with original Rule 1115 Resolution 80-44 that made the final emissions limits in the original rule subject to reconsideration and therefore, EPA is bound by the new limits resulting from such reconsideration.

Response: Neither the terms of the original Rule 1115 nor Resolution 80-44 provide for any change in the emission limits in the original rule. The resolution simply directed the SCAQMD staff to report at the July 1982 South Coast Board meeting the state-of-the-art technology for compliance with the final limits of the rule. The original Rule 1115, approved by EPA, contains no automatic reopener to include any new limits developed as a result of such report. Accordingly, those new limits were incorporated into a new rule and submitted to EPA for consideration as a proposed SIP revision. That proposal has been considered by EPA and is now the subject of this action.

Copies of EPA's detailed evaluation contained in the Technical Support Document, including policy memoranda, are available at the EPA's Region 9 office in San Francisco.

EPA Action

EPA is taking final action under section 110 and Part D of the CAA to disapprove amended South Coast Rule 1115 since it is inconsistent with the CAA, 40 CFR Part 51, and EPA policy.

Regulatory Process

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 20, 1989. This action may not be challenged in later proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Date: July 31,1989.

William Reilly,

Administrator.

40 CFR Part 52, Subpart F, is amended as follows:

PART 52—[AMENDED]

Subpart F—California

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.229 is amended by adding paragraph (b)(2)(ii) to read as follows:

§ 52.229 Control strategy and regulations: Photochemical Oxidants (hydrocarbons), Metropolitan Los Angeles Intrastate Region.

* * * * *

(b) * * *

(2) * * *

(ii) Rule 1115, Automotive Coatings, adopted on March 16, 1984 by the District and submitted by the state to EPA on July 10, 1984.

* * * * *

[FR Doc. 89-19524 Filed 8-18-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3632-5]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: In a December 8, 1988, notice of proposed rulemaking, USEPA proposed to disapprove a site-specific revision to the Wisconsin State Implementation Plan (SIP) for ozone. This revision is a request for a site-specific reasonably available control technology (RACT) determination for

volatile organic compound (VOC) emissions from two miscellaneous metal parts and products spray coating lines at General Electric Company, Medical Systems (GE). This facility is located in Milwaukee, Wisconsin.

In today's Final Rulemaking, USEPA is disapproving this SIP revision request because the State has not documented that GE cannot meet a lower limit through the use of low solvent coatings.

EFFECTIVE DATE: This final rulemaking becomes effective on September 20, 1989.

ADDRESSES: Copies of the SIP revision and related documents are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886-6031, before visiting the Region V office.) U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460. U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604. Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: On August 22, 1988, the Wisconsin Department of Natural Resources (WDNR) submitted a proposed revision to its ozone SIP, consisting of a site-specific RACT [1] determination for two miscellaneous metal parts and products spray coatings lines. These operations are located at the GE facility in Milwaukee, Wisconsin, an area which has been designated as nonattainment for ozone, pursuant to section 107 of the Clear Air Act (Act) and 40 Code of Federal Regulations Part 81, section 81.350.

On November 24, 1988, USEPA notified WDNR that the August 22, 1988, submittal was deficient for reasons stated in USEPA's technical support document (TSD), dated October 27, 1988. WDNR submitted supplemental information on January 29, 1987, which was intended to correct the cited deficiencies.

[1] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator for Air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

Wisconsin's SIP

Under the existing federally approved SIP for Wisconsin, each miscellaneous metal parts and products spray coating line is subject to the control requirements contained in Wisconsin Administrative Code, National Resources (NR) 154.13(4)(m). This rule limits air-dried coatings to 3.5 pounds of VOC per gallon, excluding water, by December 31, 1985. USEPA approved these rules as meeting the RACT requirements of the Act on January 11, 1980 (45 FR 2319), and June 21, 1982 (47 FR 26822).

Analysis

In order for the 7.31 pounds of VOC per gallon of coating limit proposed by GE to be considered RACT, the source would have to demonstrate that it is technically or economically infeasible to meet a lower emission limit using coatings with a lower VOC content or using add-on control equipment.

WDNR's January 29, 1987, submittal contains documentation of GE's efforts to reduce the VOC emissions from this process. This documentation shows that GE has considered the following alternatives:

1. Eliminate the coating step by integrating the lead shielding into the casing design. This study, which was initiated in August 1986, was expected to extend into the fourth quarter of 1988.
2. Contract with an outside vendor to coat the lead shielding. The vendor contacted by GE, which coats for GE's competitors, indicated that it would be unable to coat GE's parts due to chemical storage issues.
3. Use of coating recommended by the vendor mentioned above. The VOC content of this coating exceeds the SIP limit. In fact, this coating has a higher VOC content than the one currently used by GE.
4. Use of a vacuum impregnation process utilizing solventless coatings. This process was determined to be infeasible for GE's application due to the density of the lead being coated.
5. Investigation of other coating materials. GE has provided evidence of having contacted, in late 1986, several suppliers of coating materials.

However, because GE only recently began contacting these suppliers, GE is unable to demonstrate that the suppliers are unable to provide coatings with a lower VOC content that meet all of GE's criteria. GE has provided limited information about coatings that it intends to evaluate. Wisconsin must also demonstrate that a 7.31 pound emission is RACT. Further discussion of the type of demonstration required can be found in Appendix A to the notice of proposed rulemaking for Easco Aluminum, published on November 9, 1988, at 53 FR 45285.

Comments and USEPA's response

Comments on this notice of proposed rulemaking were received from the WDNR. The comment and USEPA's response are provided below:

WDNR's January 25, 1989, Comments

The WDNR stated that its previous State submittals thoroughly documented the technical infeasibility of low solvent coatings for GE's particular application.

USEPA's Response

The January 25, 1989, comments provided no additional information or justification for the revision. Therefore, USEPA is disapproving GE's SIP revision for the reasons stated in the December 6, 1988, notice of proposed rulemaking i.e., because the State has not documented that GE cannot meet a lower limit through the use of low solvent coatings.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (October 20, 1989). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Hydrocarbon, Carbon monoxide, Intergovernmental offices.

Authority: 42 U.S.C. 7401-7642.

Dated: August 10, 1989.

Robert Springer,

Acting Regional Administrator.

Title 40 of the Code of the Federal Regulations, Chapter 1, part 52, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart YY—Wisconsin

2. Section 52.2585 is amended by adding paragraph (b) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(b) Disapproval—On August 22, 1988, the Wisconsin Department of Natural Resources submitted a proposed revision to its ozone State Implementation Plan consisting of a site-specific reasonably available control technology determination for two miscellaneous metal parts and products spray coatings lines. These operations are located at the General Electric Company, Medical Systems facility in Milwaukee, Wisconsin, an area which has been designated as nonattainment for ozone, pursuant to section 107 of the Clean Air Act and 40 Code of Federal Regulations, part 81, § 81.350.

[FR Doc. 89-19615 Filed 8-18-89; 8:45 am]

BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 54, No. 160
Monday, August 21, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amendment No. 35; Doc. No. 7057S]

General Crop Insurance Regulations; Rice Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR part 401), effective for the 1990 and succeeding crop years, by amending the Rice Endorsement (7 CFR 401.120) to: (1) Remove restrictions in existing unit division language to standardize the unit structure across commodity program crops; and, (2) establish units by share where there is a landlord/tenant relationship. The intended effect of this rule is to standardize units among crops.

COMMENT DATE: Written comments, data, and opinions on this proposed rule should be received not later than September 20, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to amend the Rice Endorsement (7 CFR 401.120) to remove restrictions in existing unit division language to standardize the unit structure; establish units by share where there is a landlord/tenant relationship.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comment should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance; Rice.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR part 401), proposed to be effective for the 1990 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. The Rice Endorsement (7 CFR 401.120) is amended by revising subsections 5. and 10. to read as follows:

§ 401.120 Rice endorsement.

* * * * *

5. Unit Division

Rice acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if for each proposed unit:

a. You maintain written verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. Acreage planted to the insured rice is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in Florida) the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the section or ASCS Farm Serial Number are clearly identified and the insured acreage is easily determined; and

(2) The rice is planted in such a manner that the planting pattern does not continue into an adjacent section or ASCS Farm Serial Number; or

c. If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

* * * * *

10. Meaning of Terms

a. *Harvest* means the completion of combining or threshing of rice on the unit.

b. *Mill center* means any location in which two or more mills are engaged in milling rough rice.

c. *Replanting* means the performing of cultural practices necessary to replant insured acreage to rice.

d. *Second crop rice* means regrowth of a stand of rice originating from the initially insured rice crop following harvest and which can be harvested in the same crop year.

Done in Washington, DC on August 14, 1989.

John Marshall,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 89–19551 Filed 8–18–89; 8:45 am]
BILLING CODE 3410–08–M

7 CFR Part 401

[Amendment No. 20; Doc. No. 6945S]

General Crop Insurance Regulations; Tobacco (Guaranteed Plan) Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of additional proposed rulemaking and extended comment period.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of additional proposed rulemaking and extension of comment period with respect to a proposed amendment to the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1990 and succeeding crop years, to add a new § 401.129, Tobacco (Guaranteed Plan) Endorsement. The intended effect of this notice of additional proposed rulemaking is to include an amended unit division subsection to standardize the unit structure.

DATES: Written comments on this additional proposed rulemaking must be submitted not later than September 20, 1989, to be sure of consideration.

ADDRESS: Written comments on this additional proposed rulemaking should be sent to Peter F. Cole, Office of Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Thursday, May 11, 1989, FCIC published a notice of proposed rulemaking in the **Federal Register** at 54 FR 20382, amending 7 CFR 401 General Crop Insurance Regulations to add a new § 401.129, Tobacco (Guaranteed Plan) Endorsement to provide the provisions of crop insurance protection on tobacco in an endorsement to the general crop insurance policy.

FCIC herein proposes to further amend the Tobacco (Guaranteed Plan) Endorsement (7 CFR 401.129) to remove restrictions in existing unit division language to standardize the unit structure.

In providing changes to the unit division determinations, FCIC is responding to the recommendations contained in the April 3, 1989, interim Report of the Commission.

FCIC proposes to further amend the Tobacco (Guaranteed Plan) Endorsement with respect to standardizing the unit definition. Changes being proposed herein serve to allow standard policy unit currently in existence for all tobacco (guaranteed plan) program counties.

As a convenience to the reader, FCIC republishes the original notice of proposed rulemaking appearing in the **Federal Register** on Thursday, May 11, 1989, at 54 FR 20392, to include a revised subsection 5, titled "Unit Division."

FCIC is soliciting public comment on this additional proposed rulemaking for 30 days following publication in the **Federal Register**. Written comment should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this additional proposed rulemaking will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop Insurance; Tobacco (guaranteed plan).

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR part 401), proposed to be effective for the 1990 and succeeding crop years, as follows:

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 401 is amended to add a new § 401.129, Tobacco (Guaranteed Plan) Endorsement, effective for the 1990 and Succeeding Crop Years, to read as follows:

§ 401.129 Tobacco (Guaranteed Plan) endorsement.

The provisions of the Tobacco (Guaranteed Plan) Crop Insurance Endorsement for the 1990 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Tobacco (Guaranteed Plan) Endorsement

1. Insured Crop and Acreage

a. The crop insured will be any of the following tobacco types you elect which are grown on insured acreage and for which a

guarantee and premium rate are provided by the actuarial table:

Flue Cured	Fire Cured
Type 11A	Type 21
Type 11B	Type 22
Type 12	Type 23
Type 13	Burley
Type 14	Type 31
Maryland	Dark Air
Type 32	Type 35
Cigar Filler	Type 36
Type 41	Type 37
Type 42	Cigar Binder
Type 44	Type 51
Cigar Wrapper	Type 52
Type 61	Type 54
	Type 55

b. In addition to the acreage not insurable under section 2 of the general crop insurance policy, we do not insure any acreage:

(1) On which the tobacco was destroyed or put to another use for the purpose of conforming with any other program administered by the United States Department of Agriculture; or

(2) Planted to tobacco of a discount variety under provisions of the tobacco price support program.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are expected, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee for the unit times the applicable price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insurance experience through the 1985 crop year under the terms of the experience table contained in the guaranteed tobacco policy in effect for the 1986 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction amount will not increase because of favorable experience;

(3) The premium reduction amount will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1986 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

4. Insurance Period

In lieu of the provisions of section 7 of the general crop insurance policy the following will apply:

Insurance attaches on each unit or part of a unit when the tobacco is planted (see subsection 10(e)) and ends at the earliest of:

a. Total destruction of the tobacco;

b. Weighing-in at the tobacco warehouse;

c. Removal of the tobacco from the unit (except for curing, grading, packing, or immediate delivery to the tobacco warehouse);

d. Final adjustment of a loss; or

e. One the following dates of the crop year:

(1) Types 11 and 12 ..... Nov. 30;
(2) Type 13 ..... Oct. 31;
(3) Type 14 ..... Oct. 15;
(4) Types 31 & 36 ..... Feb. 28;
(5) Types 21, 35 and 37 ..... Mar. 15;
(6) Types 22 and 23 ..... Apr. 15;
(7) Type 32 ..... May 15;
(8) All other types ..... Apr. 30.

5. Unit Division

Tobacco acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if for each proposed unit:

a. You maintain written verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. Acreage planted to insured tobacco is located on land identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the ASCS Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The tobacco is planted in such a manner that the planting pattern does not continue into an adjacent ASCS Farm Serial Number.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss

For purposes of section 8 of the general crop insurance policy, the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of each field.

7. Claim for Indemnity

a. An indemnity will be determined for each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of tobacco to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the applicable price election; and

(4) Multiplying this result by your share.

b. The total production (in pounds) to be counted for a unit will include all harvested and appraised production.

(1) Harvested tobacco production which, due to insurable causes, has a value less than the market price for tobacco of the same type, will be adjusted by:

(a) Dividing the average value per pound of the harvested production by the market price per pound; and

(b) Multiplying that result by the number of pounds of such damaged harvested tobacco.

(c) If due to insurable causes there is no market price available for the grade being adjusted, the production to count will be reduced 20% for each grade that the production falls below the lowest marketable grade with a market price (see subsection 10.d.(2)).

(2) All harvested tobacco production which is not damaged by insurable causes and cannot be sold in the current market year will be considered production to count.

(3) To enable us to determine the fair market value of tobacco not sold through auction warehouses, we must be allowed:

(a) To inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed of; and

(b) At our option to obtain additional offers on your behalf.

(4) Appraised production to be counted will include:

(a) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(b) Not less than 35 percent of the guarantee for all unharvested acreage;

(c) Unharvested production on harvested acreage; and

(d) Potential production lost due to uninsured cause and to failure to follow recognized good tobacco farming practices.

(5) We may appraise any acreage of tobacco types 11, 12, 13, or 14 on which the stalks have been destroyed without our consent at not less than the guarantee.

(6) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tobacco becomes general in the county and reappraised by us; or

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(7) The commingled production of units will be prorated to such units in proportion to our liability on the harvested acreage of each unit.

(8) No replanting payment will be made under this endorsement.

8. Cancellation and Termination Dates

State and county	Cancellation and termination dates
Alabama; Florida; Georgia; South Carolina; and Surry, Wilkes, Caldwell, Iredell, and Cleveland Counties, North Carolina, and all North Carolina counties east thereof.	March 31
All other North Carolina Counties and all other states.	April 15

9. Contract Changes

Contract changes will be available at your service office by December 31 prior to the cancellation date.

10. Meaning of Terms

a. *Average value per pound* means the total value of all harvested production from the unit divided by the harvested pounds and may include the value of any harvested production which is not sold.

b. *County* means the land defined in the general crop insurance policy and any land identified by an ASCS Farm Serial Number for the county but physically located in another county.

c. *Harvest* means the completion of cutting or priming of tobacco on any acreage from which at least 20 percent of the production guarantee per acre shown by the actuarial table is cut or primed with the intent of marketing.

d. *Market price:*

(1) For types, 11, 12, 13, 14, 21, 22, 23, 31, 35, 36, 37, 42, 44, 54, and 55, means the average price support level per pound for the insured type of tobacco as announced by the United States Department of Agriculture under the tobacco price support program (if for any crop year price support for the insured type is not in effect, we will use the season average price in the belt or area through the day tobacco sales are completed on any unit or part thereof which is harvested); and

(2) For types 32, 41, 51, 52, and 61 means the season average price for the applicable type of tobacco, (such price will be the season average price for the current crop year for any unit or part thereof which is harvested) and may be established by including the value of sold and unsold production.

e. *Planting* means transplanting the tobacco plant from the bed into the field.

Done in Washington, DC on August 14, 1989.

John Marshall,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-19552 Filed 8-18-89; 8:45 am]
BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV-89-092]

Kiwifruit Grown in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 920 for the 1989–90 fiscal period. Authorization of this budget would enable the Kiwifruit Administrative Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program would be derived from assessments on handlers.

DATES: Comments must be received by August 31, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Order No. 920 (7 CFR Part 920) regulating the handling of kiwifruit grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 145 handlers of California kiwifruit under Marketing Order No. 920, and approximately 1,225 kiwifruit producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989–90 fiscal year was prepared by the Kiwifruit Administrative Committee (committee), the agency responsible for local administration of the order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of California kiwifruit. They are familiar with the committee's needs and with the costs of goods, services, and personnel in their local area, and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of kiwifruit. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on July 19, 1989, and unanimously recommended a 1989–90 budget of $136,293. This compares with $129,025 last year. Major increases this year include $8,528 for salaries and benefits, $1,100 for staff vehicle expense, and $2,100 for scales to check weight. Partially offsetting these increases are decreases of $1,000 for controlled buys to check for compliance and $4,300 for maturity test equipment.

The committee also recommended an assessment rate of $0.0075 per 7½-pound tray or equivalent, down from $0.0125 last year. This rate, when applied to anticipated shipments of 9 million trays, would yield $67,500 in assessment income. This, when combined with $68,793 from interest income and the reserve, would provide adequate funds for budgeted expenses. Operating reserve funds, currently at $192,046, would be reduced to approximately one fiscal period's expenses by the end of the 1989–90 fiscal year.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1989–90 fiscal period for the program began on August 1, 1989, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable kiwifruit handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee as a public meeting. Therefore, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited.

List of Subjects in 7 CFR Part 920

California, Kiwifruit, Marketing agreements and orders.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 920 be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 920 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 920.205 is added to read as follows:

§ 920.205 Expenses and assessment rate.

Expenses of $136,293 by the Kiwifruit Administrative Committee are authorized, and an assessment rate of $0.0075 per 7½-pound tray or equivalent of kiwifruit is established for the fiscal period ending July 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: August 15, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–19539 Filed 8–18–89; 8:45 am]

BILLING CODE 3410–02–M

---

7 CFR Part 947

[Docket No. FV–89–075]

Irish Potatoes Grown in Designated Areas in California and Oregon; Proposed Rule To Revise Handling Requirements for Certain Small Sized Potatoes and Establish Reporting Requirements for Shipments to Processors

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would eliminate current pack and reporting requirements associated with shipments of small non-red-skinned potatoes that otherwise grade at least U.S. No. 1. The objective of this action is to facilitate the movement of such potatoes to meet current consumer demand by relieving shippers from handling requirements that are no longer deemed necessary. This proposal would also establish reporting requirements for potatoes shipped for canning, freezing, prepeeling and other processing. The intent of this action is to provide assurance that potatoes shipped without regard to the size, quality and inspection requirements of the handling regulation are shipped to authorized exempt outlets.

DATES: Comments must be received by September 20, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 447–5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 114 and Marketing Order No. 947 [7 CFR Part 947], both as amended, regulating the handling of potatoes grown in Modoc and Siskiyou Counties, California, and in all counties in Oregon, except Malheur County. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small business will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Oregon-California potatoes subject to regulation under the marketing order, and approximately 470 producers in the production area. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Oregon-California potatoes may be classified as small entities.

The 1988 crop of potatoes grown in the production area totalled 23,623,400 hundredweight (cwt.). About 36 percent of the crop (8,563,575 cwt.) was shipped to fresh markets, and an additional 22 percent was used for seed. The remaining 42 percent of the crop was utilized primarily in processing outlets. Potatoes shipped to fresh markets are required to meet the handling requirements specified in 7 CFR § 947.340 (as amended at 53 FR 2998, February 3, 1988, and 53 FR 49113, December 6, 1988). The current requirements are that potatoes grade at least U.S. No. 2 and, if shipped within the continental United States, be at least 2 inches in diameter or 4 ounces in weight. Potatoes shipped to export destinations must meet a minimum diameter of 1⅛ inches and are not subject to grade requirements.

Currently, red-skinned varieties of potatoes may be shipped without regard to the minimum size requirements if they otherwise grade at least U.S. No. 1. Non-red-skinned potatoes that are 1⅛ inches or less in diameter may be shipped if they grade at least U.S. No. 1, and are packed in containers of at least 50 pounds. In addition, handlers who ship such potatoes must meet certain reporting requirements. Also included in the handling regulation are safeguard procedures for potatoes shipped to authorized exempt outlets, which are not required to meet the established quality and size requirements.

At a meeting held on June 9, 1989, the Oregon-California Potato Committee (committee), which is responsible for local administration of the marketing order, recommended the following changes in the existing requirements to become effective in late fall, when the 1989–90 marketing season begins.

Upon the basis of the committee's recommendation, this proposed rule would revise the size requirements for non-red-skinned potatoes by providing that such potatoes that are 1¾ inches in diameter or smaller that otherwise grade at least U.S. No. 1 may be shipped, and by eliminating the pack and reporting requirements. This rule also proposes adding reporting requirements for all potatoes shipped for canning, freezing, prepeeling and other processing to assure that these potatoes for processing are shipped to exempt outlets.

Until fairly recently, consumer demand for smaller sized potatoes was limited. Over the last several seasons, however, opportunities for marketing small, high quality potatoes have expanded. To determine the potential market demand for these potatoes and to promote market expansion, the handling regulation was amended in February 1987 (52 FR 7119) to relax the minimum size requirements for potatoes shipped under certain conditions. That action temporarily relaxed the minimum size requirements for high quality white potatoes handled for market expansion purposes and exempted all non-white fleshed varieties of potatoes from handling regulations under the order. These relaxed size requirements became effective February 3, 1988, on a continuous basis (53 FR 2995). Prior to shipping potatoes under these relaxed size requirements, handlers were required to apply for and obtain from the committee each marketing season a special purpose certificate authorizing shipment of the potatoes. In addition, handlers who shipped potatoes under the relaxed minimum size provisions were required to promptly report information requested by the committee relating to such shipments, including the grade and usage of the potatoes, once the shipments were concluded. The reporting requirements were designed to provide adequate safeguards to assure that the potatoes shipped under these provisions were shipped to the intended market for the purpose of market expansion, and to provide the committee with information necessary to monitor and evaluate the effects of such shipments on the overall market for Oregon-California potatoes.

The committee reports that these actions, intended to further the development of new markets and expand marketing opportunities for Oregon-California potato growers and handlers, have proven successful. Shipments of the smaller sized potatoes have been well received and have not adversely impacted the market for larger-sized potatoes. Demand was particularly strong for small red-skinned potatoes, and in 1988 the safeguard provisions pertaining to such potatoes were eliminated (53 FR 31650).

Based on an additional year of experience, the committee believes that shipping non-red-skinned potatoes that are 1¾ inches in diameter or less that otherwise grade at least U.S. No. 1 should be permitted without the reporting and pack requirements. The reporting requirements have served their purpose and are no longer necessary. The deletion of 50-pound pack requirement would allow handlers to ship non-red-skinned potatoes in smaller containers. This would provide handlers with maximum flexibility in marketing such potatoes, and enable them to take advantage of current market demand. This proposed change would benefit consumers by providing them with a product they desire, and producers and handlers by increasing sales. The committee believes that permtting the shipment of small, high quality, non-red-skinned potatoes would not adversely affect the market for larger sized potatoes.

The handling regulation specifies that potatoes shipped for certain exempt purposes are not required to meet the size and quality standards established for those shipped to commercial fresh market outlets. Among the exempt purposes are certified seed, livestock feed, and charity. Handlers shipping for these purposes are required to comply with established safeguard procedures. These include applying for and obtaining a Certificate of Privilege from the committee prior to making such shipments, and filing reports with the committee after such shipments are made. These requirements are in place to provide the committee with the information necessary to determine that potatoes shipped without regard to the fresh requirements enter authorized exempt outlets, and are not sold in fresh markets.

All varieties of potatoes shipped for canning, freezing, prepeeling and other processing are also exempt from the size and quality requirements of the handling regulation. For such shipments, no handler reporting requirements are currently in effect. The regulation only provides that handlers making shipments for such purposes must ship them to persons or firms the committee has designated as manufacturers of potato products. The committee believes that the current requirement does not provide adequate assurance that the potatoes are actually shipped to designated processors. For that reason, it is proposed that handlers making shipments to these outlets be required to obtain a Certificate of Privilege from, and file shipment reports with, the committee. This procedure will enable the committee to ascertain compliance with the requirements of the handling regulation.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area. The import requirements for all non-red-skinned potatoes are based on those established under the marketing orders covering Virginia-North Carolina potatoes (M.O. 953), Colorado Area No. potatoes (M.O. 948), and Idaho-Eastern Oregon potatoes (M.O. 945). These proposed changes in the handling requirements for Oregon-California potatoes would not change the findings and determinations or provisions that appear in the potato import regulation (7 CFR 980.1).

The information collection requirements contained in this proposed rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB No. 0581–0112. This action would reduce the current information collection burden by eliminating the reporting requirements applicable to shipments of small, high quality non-red-skinned potatoes. The appropriate forms for reporting potatoes for processing have been submitted previously to the OMB for approval and are currently approved by OMB to be used for information collection purposes.

Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 947

Marketing agreements and orders, Potatoes, Oregon-California.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 947 be amended as follows:

PART 947—POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR part 947 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

2. Section 947.340 is amended by revising paragraphs (b)(3) and (h)(3) to read as follows:

§ 947.340 Handling regulation.

* * * * *

(b) * * *

(3) All non-red-skinned varieties of potatoes that measure 1¾ inches in diameter or less may be shipped if such potatoes otherwise grade at least U.S. No. 1.

* * * * *

(h) * * *

(3) Each handler making shipments pursuant to paragraph (g)(7) of this section may ship such potatoes only to persons or firms designated as manufacturers of potato products by the committee pursuant to § 947.134. Further, each handler making such shipments shall obtain a Certificate of Privilege from the committee and shall promptly report each shipment to the committee on Special Purpose Shipment Report forms.

* * * * *

Dated: August 15, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–19540 Filed 8–18–89; 8:45 am]

BILLING CODE 3410–02–M

---

7 CFR Part 948

[Docket No. FV–89–060]

Irish Potatoes Grown in Colorado; Proposed Rule To Establish Pack Requirements for Small Sized Potatoes and Revise Handling Requirements for Potatoes for Export

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish pack requirements to permit the shipment of potatoes with a minimum diameter of 1 inch and a maximum diameter of 1¾ inches, that otherwise grade at least U.S. No. 1, to fresh domestic and export markets. The objective of this action is to facilitate the movement of such potatoes to meet current consumer demand. This proposal would also establish a minimum grade requirement and revise the minimum size requirement for potatoes for export. The intent of this action is to require that all Colorado Area 2 potatoes, regardless of destination, meet the same minimum quality and size requirements established under the marketing order.

DATES: Comments must be received by September 20, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 447–5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR part 948), both as amended, regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of Colorado Area 2 potatoes under this marketing order, and approximately 290 potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.1) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers may be classified as small entities.

Shipments of the 1988 Colorado Area 2 potato crop through May 1989, totalled 13,339,680 hundredweight. Typically, about 97 percent of total shipments are to fresh markets and 3 percent to processors.

By far, the majority of the potatoes shipped from the production area are of the Centennial Russet variety, which generally accounts for about 70 percent of the total. Approximately 24 percent is Russet Burbanks, five percent red varieties, and one percent other varieties.

The grade composition of fresh market shipments averages about 65 percent U.S. No. 1, 20 percent U.S. Commercial, 10 percent U.S. No. 2, and five percent U.S. No. 1/Size B.

The handling requirements for fresh market shipments of Colorado Area 2 potatoes are specified in 7 CFR 948.386 (as amended at 53 FR 8145, March 14, 1988; 54 FR 805, January 10, 1989; 54 FR 961, January 11, 1989; and 54 FR 11419, March 21, 1989) and, with the exception of the maturity requirements, are in effect all year long. The current minimum grade, size, and maturity requirements provide that fresh potatoes be shipped under the following requirements. Round variety potatoes must grade at least U.S. No. 2 and be at least 2 inches in diameter. All long type potato varieties, except Centennial Russets, must grade at least U.S. No. 2 and be at least 1⅞ inches in diameter. Centennial Russets must grade U.S. No. 2 or better and be at least 2 inches in diameter or 4 ounces in weight. All varieties of potatoes may be size B if they otherwise grade U.S. No. 1 or better. Size B potatoes have a minimum diameter of 1½ inches and a maximum diameter of 2¼ inches. All varieties of potatoes being exported must be at least 1½ inches in diameter, and are not subject to a minimum grade requirement. Maturity requirements during the period August 25 through October 31 specify that potatoes grading U.S. No. 2 cannot be more than "moderately skinned" and potatoes grading other than U.S. No. 2 cannot be more than "slightly skinned".

This proposed rule would revise current requirements to permit the shipment of potatoes ranging in size from 1 inch to 1¾ inches in diameter if such potatoes otherwise grade at least U.S. No. 1. This action would also require potatoes shipped for export to meet the same quality and size requirements as those shipped domestically. These changes were unanimously recommended at a meeting held June 15, 1989, by the Colorado Potato Administrative Committee, San Luis Valley Office (Area 2) (committee), which is responsible for local administration of the marketing order.

In recent years, consumer demand for high quality, small-sized potatoes as a specialty food item has grown significantly. There is a specific market for high quality potatoes that are smaller than a size B, which range in size from 1½ to 2¼ inches in diameter. These smaller potatoes are referred to as "creamers", and when available, often command premium prices. Consumer demand has continued to strengthen for these high quality, smaller potatoes particularly for those that are red-skinned. Virtually all round potatoes grown in Colorado Area 2 are red-skinned, which typically account for approximately five percent of the total crop. Centennial Russets and Russet Burbanks (long white varieties) are the other dominant varieties. There are minimal shipments of round white potatoes from this area.

Given the changing market requirements, the committee has concluded that handlers should be provided the opportunity to ship "creamers", which range in size from 1 to 1¾ inches in diameter if they otherwise grade at least U.S. No. 1. This rule proposes revising the handling regulation accordingly. These "creamers" would have to be segregated from potatoes of larger size, and could not be commingled in the same container with those larger potatoes. This pack requirement would enable shippers to fill specific orders for the small, high quality potatoes, without adversely affecting the market for larger potatoes.

Currently, potatoes shipped to export markets are required to be at least 1½ inches in diameter and are not subject to a minimum grade requirement. The committee reports that export opportunities for Colorado shippers are limited, but that some production area potatoes are exported to Mexico. Problems have arisen in recent seasons when ungraded potatoes, often of marginal quality, were destined for Mexico but were subsequently diverted and actually sold in U.S. markets. The committee unanimously recommended that potatoes for export meet the same quality and size requirements as are imposed on potatoes sold in domestic markets. This action would provide assurance that only potatoes of acceptable quality and size enter commercial fresh market channels.

Quality assurance is very important to the Colorado Area 2 potato industry. Providing the public with quality potatoes which are appealing and responsive to consumer trends is necessary in order to maintain market share. This proposed rule is expected to foster increased consumption and benefit Colorado Area 2 potato growers and handlers.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area.

In the case of potatoes, the current import regulation (7 CFR 980.1) specifies that import requirements for long types be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon (7 CFR Part 945) during each month of the year. The import requirements for round white types are based on those in effect for potatoes grown in Southeastern States from June 5 to July 31 (7 CFR Part 953), and on those in effect for potatoes grown in Colorado Area 3 for the remainder of the year (7 CFR Part 948).

The quality standards imposed upon imports of red-skinned, round type potatoes are based on that type grown in Washington during the months of July and August (7 CFR Part 946). During the remainder of the year, the import requirements are based upon those in effect for potatoes grown in Colorado Area 2 (7 CFR Part 948).

Because this proposed rule would establish a minimum size requirement of 1 inch in diameter for all Colorado Area 2 potatoes grading at least U.S. No. 1, and since import requirements for red-skinned varieties are based on those established for potatoes grown in Colorado Area 2, this change, if adopted, would also be applicable to imports of red-skinned, round type potatoes from September 1 to June 30 each season.

No change would be required in the language of § 980.1 or § 948.386(h) Applicability to imports or the findings and the determinations made therein.

Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 948

Marketing agreements and orders, Potatoes, Colorado.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 948 be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR Part 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 948.386 is amended by revising paragraph (a)(5) and adding a new paragraph (a)(6) to read as follows:

§ 948.386 Handling regulation.

* * * * *

(a) * * *

(5) All varieties. 1-inch minimum diameter to 1¾ inches maximum diameter, if at least U.S. No. 1 grade.

(6) None of the above categories of potatoes identified in subparagraphs (a)(1) through (a)(5) of this section may be commingled in the same bag or other container.

* * * * *

Dated: August 15, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–19541 Filed 8–18–89; 8:45 am]

BILLING CODE 3410–02–M

---

7 CFR Part 989

[Docket No. FV–89–057PR]

Raisins Produced From Grapes Grown in California; Deletion of Conversion Factors for Partially Reconditioned Raisins

AGENCY: Agricultural Markeing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on deleting weight conversion factors that are applied when handlers

partially recondition raisins. This action was recommended by the Raisin Administrative Committee (RAC), the agency responsible for local administration of the order. The proposed change reflects current industry operations.

DATES: Comments must be received by September 5, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Martha B. Ransom, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 989 (7 CFR Part 989), both as amended, regulating the handling of raisins produced from grapes grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers of raisins who are subject to regulation under the raisin marketing order and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms (handlers) are defined as those whose gross annual receipts are less than $3,500,000. A majority of producers and a minority of handler of California raisins may be classified as small entities.

This proposed rule invites comments on deleting certain weight conversion factors under the federal marketing order for California raisins. This action would delete the conversion factors that are applied when handlers partially recondition raisins. This action was unanimously recommended by the RAC.

When handlers acquire raisins from producers, all payments are made on the basis of the creditable weight of the lot of raisins. The creditable weight is based on the net natural condition weight, adjusted for the presence of substandard raisins and the maturity of the raisins in the lot. Paragraph (d) of § 989.58 of the marketing order requires the Federal inspection of raisins acquired or received by handlers. Inspectors determine if the raisins meet minimum grade and condition requirements established under the marketing order. Determining the maturity of the raisins and the presence of substandard raisins are part of the inspection process.

In order to convert the net weight of reconditioned or partially reconditioned raisins to a natural condition weight, factors have been established, in § 989.601, for several varietal types of raisins. The natural condition weight is obtained by dividing the net weight of the raisins by the conversion factor.

Two sets of conversion factors have been established to convert the weight of reconditioned raisins to a natural condition weight. There is one factor for partially reconditioned raisins (weight taken after passing through a steamer or blower) and one for fully processed raisins (weight aken after completion of processing). This proposed rule would delete the conversion factors for partially reconditioned raisins. The factors for fully processed raisins would remain unchanged. The conversion factors apply to Natural (sun-dried) Seedless raisins, Golden Seedless raisins, Dipped Seedless raisins, Muscats, Sultanas, Zante currants, and Oleate and Related Seedless raisins.

Partial or dry reconditioning consists of passing the raisins through a vacuum or blower mechanism to remove substandard raisins, foreign material, large stems, and other debris.

As improvements in the minimum grade and condition standards for raisins have been implemented in recent seasons, producers have done more to prepare their raisins for delivery to handlers. More producers have purchased and are using shakers, some of which have vacuums or blowers installed, to assist in removing substandard raisins, foreign material, and large stems. Due to the cost of these investments, there are situations where producers with this equipment are "shaking" other producers' raisins for a fee before the raisins are delivered to a handler.

The industry is of the opinion that this activity should not be discouraged. Generally, producers can improve the maturity of the raisins delivered to a handler by removing substandard and very low maturity raisins.

Presently, if a producer delivers to a handler raisins which fail due to substandard or foreign material, the producer has three options: (1) Take the raisins back and recondition them or have another producer recondition them; (2) leave the raisins at the handler's premises and have the handler recondition them; or (3) have the raisins delivered to a dehydrator for reconditioning. The reconditioning process at the handler's or dehydrator's premises is performed under the surveillance of the Federal inspectors. If a handler reconditions the raisins by a process which has been identified as dry reconditioning or partially reconditioning the raisins, the handler is required to convert the weight of the raisins to a natural condition weight by applying a conversion factor.

For example, a handler receives from a producer 100 tons of natural (sun-dried) seedless raisins and partially reconditions them. After partial reconditioning, the lot of raisins weighs 80 tons. To determine the equivalent natural condition weight of the raisins, a conversion factor of 0.94 would be applied to the 80 tons. Eighty tons divided by 0.94 equals roughly 85.1 tons. Therefore, the producer would be credited with delivering 85.1 tons of natural condition raisins to the handler.

However, if a producer delivers 80 tons of partially reconditioned raisins to a handler, the conversion factor would not be applied. Thus, in this situation, the producer would receive credit for delivering only 80 tons of raisins.

The dry reconditioning or partial reconditioning procedure used by handlers and dehydrators is virtually the same as the shaker systems with vacuums or blowers used by many producers, and no conversion factors are applied to such producer processes. Whether raisins are subject to shakers or vacuums by handlers or producers, there is still some loss (shrinkage) when the raisins are ultimately processed by handlers.

In addition, handlers who are required to apply a conversion factor to raisins are refusing to accept raisins for reconditioning since they must pay for more raisins after application of the conversion factors than they actually have available after reconditioning. Thus, if the conversion factors for partially reconditioned raisins are not deleted, producers may lose a reconditioning source, have to pay extra handling costs, and need to seek alternative sources to remove the substandard raisins or foreign material which caused the raisins to fail the minimum grade and condition standards.

To correct the situation, the Committee has recommended that the conversion factors no longer be applied to the weight of raisins partially reconditioned by handlers. This action would delete those factors and bring the regulation into line with current industry operations.

Based on available information, the Administrator of the AMS has determined that issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

Interested persons are invited to submit their views and comments on this proposal. A 15-day comment period is considered approprite because the change, if adopted, should be in effect for as much of the new crop year, which begins on August 1, as possible.

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing agreements and orders, Raisins.

For the reasons set forth in the preamble, 7 CFR Part 989 is proposed to be revised as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

2. Section 989.601 is revised to read as follows:

§ 989.601 Conversion factors for raisin weight.

The following factors for the named varietal types of raisins shall be used to convert the new weight of reconditioned raisins acquired by handlers as packed raisins to natural condition weight. The new weight of the raisins after the completion of processing shall be divided by the applicable factor to obtain the natural condition weight: *Provided,* That the adjusted weight does not exceed the original weight of the raisins prior to reconditioning; and *Provided further,* That, if the adjusted weight exceeds the original weight, the original weight will be used.

Varietal type	Conversion factor
Natural (sun-dried) seedless	0.92
Golden seedless	.95
Dipped seedless	.95
Muscats (including raisins with seeds):	
Seeded	.80
Unseeded	.92
Sultana	.92
Zante current	.91
Oleate and related seedless	.92

Dated: August 15, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–19542 Filed 8–18–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–104–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires inspection for cracks of the fuselage between body station (BS) 940 and BS 1000 body crown crease beam and the intercostal structure, and repair, if necessary. Investigation has shown that the earlier-produced airplanes are designed differently in this area and are not subject to the addressed cracking. This revision would delete airplanes, line number 001 through 085, from the applicability of the existing rule.

DATES: Comments must be received no later than September 20, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–104–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM–120S; telephone (206) 431–1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing data for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–104–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On March 28, 1989, the FAA issued AD 89–08–03, Amendment 39–6163 (54 FR 13875; April 6, 1989), to require inspection for cracks of the fuselage between body station (BS) 940 and BS 1000 body crown crease beam and the

BEST COPY AVAILABLE

intercostal structure on Boeing Model 747 series airplanes, and repair if cracking is found. That action was prompted by reports of body crease beam web and/or outer tee chord cracks between BS 940 and BS 1000, near stringer (S) 3 to S-8, left and right. The cracking was attributed to cyclic loading. Such cracking, if not detected and corrected, could cause in-flight airplane depressurization and inability of the airplane to sustain fail-safe loads.

Since issuance of that AD, the FAA has determined that the crease beam installation on airplanes from line numbers 001 through 065 is a different configuration from the crease beam on airplanes after line number 065, and is not susceptible to the same cracking. Accordingly, those airplanes from line numbers 001 through 065 are not subject to the unsafe condition addressed in the existing AD.

The FAA has reviewed and approved Boeing Service Bulletin 747-53-2237, Revision 1, dated January 26, 1989, which deletes airplanes line number 001 through 065 from the effectivity of the original issue dated June 30, 1988.

Since the unsafe condition which required the issuance of AD 89-08-03 would not exist or develop on airplanes line number 001 through 065, the FAA proposes to revise the AD to delete those airplanes from the applicability.

There are approximately 65 Model 747 series airplanes of the affected design in the worldwide fleet which would no longer be affected by this AD; it is estimated that 48 of those airplanes are of U.S. registry. The actions required by the existing AD take approximately 16 manhours per airplane to accomplish, at an average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators would be reduced by $30,720.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending AD 89-08-03, Amendment 39-6183 (54 FR 13675; April 6, 1989), by revising the applicability statement to read as follows:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747-53-2237, dated June 30, 1988, certificated in any category, except line number 001 through 065. Compliance required as indicated, unless previously accomplished.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 11, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19553 Filed 8-18-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 89-ASW-27]

Proposed Revision of Transition Area, Chickasha, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at Chickasha, OK. The development of a new standard instrument approach procedure (SIAP) to the Chickasha Municipal Airport, Chickasha, OK, utilizing the Chickasha Nondirectional Radio Beacon (NDB), has made this proposed revision necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing this new SIAP to the Chickasha Municipal Airport.

DATES: Comments must be recieved on or before October 9, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 89-ASW-27, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASW-27." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR part 71) to revise the existing Chickasha, OK, Transition Area. The development of a new NDB RWY 17 SIAP to the Chickasha Municipal Airport, utilizing the Chickasha NDB, has necessitated this proposed revision. This proposal would add a new 2-statue mile arrival extension north of the existing transition area. The intended effect of this action is to provide adequate controlled airspace for aircraft executing the new NDB RWY 17 SIAP to the Chickasha Municipal Airport. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Chickasha, OK [Amended]

By adding to the end of the current legal description: and within 3 miles each side of the 016° bearing of the Chickasha NDB (latitude 35°06'13" N., longitude 97°58'15" W.), extending from the 6.5-mile radius area to 8.5 miles north of the Chickasha NDB.

Issued in Fort Worth, TX, on August 7, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-19558 Filed 8-18-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

23 CFR Part 635

[FHWA Docket No. 85-11]

RIN 2125-AB37

Labor and Employment; Prevailing Wage Rates

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The FHWA is withdrawing the notice of proposed rulemaking (NPRM) on prevailing wage rates, 50 FR 39137, September 27, 1985, and is closing Docket No. 85-11. The proposed amendment would have precluded the payment of Federal-aid funds for excess costs due to State prevailing wage rates higher than that determined by the Secretary of Labor. This action is being taken based on the comments received.

DATES: This withdrawal is effective on August 21, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Stuart A. Bender, Office of the Chief Counsel, 202-366-0780, or Mr. William A. Weseman, Chief, Construction and Maintenance Division, Office of Highway Operations, (202) 366-0362, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The Federal statute commonly known as the Davis-Bacon Act (40 U.S.C. 276, *et seq.*) requires that laborers and mechanics employed on Federal construction work be paid not less than a "prevailing wage" to be determined by the Secretary of Labor. Such wage rates are extended to construction projects on Federal-aid highway systems by 23 U.S.C. 113.

The FHWA, in seeking to obtain uniform prevailing wage rate determinations, decided to review State-determined prevailing wage rates. As a result of such review, the FHWA published a notice of proposed rulemaking (NPRM) in the Federal Register on September 27, 1985 (50 FR 39137), and requested that comments be submitted to Docket No. 85-11 on or before November 12, 1985.

Sixty-six comments were received in response to the NPRM. Of the comments received, 43 expressed opposition to the proposed rulemaking and 20 expessed support. Three respondents while not expressing support, had no objection to the proposed rule. Twenty-three of the comments were from State highway or public works agencies. Of these, 16 opposed the proposed rule and 7 supported it. Three Congressmen expressed opposition as did the California Senate Committee on Transportation. Eight construction industry respondents supported the proposed rule while 14 labor groups or representatives opposed it.

Several of the commenters expressed concern that the proposal would be too cumbersome in its operation and would necessitate the establishment of a new bureaucracy within the State government to conduct the numerous wage rate surveys and handle the extensive, additional paperwork required under the proposal.

In addition to these comments, other commenters expressed concern over the problems that would be encountered with the enforcement of the proposal. Based on the review of docket comments and a further review of the notice, the FHWA hereby withdraws the notice of proposed rulemaking published

in the Federal Register on September 27, 1985 (50 FR 39137).

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

(Authority: 23 U.S.C. 112, 113, 214, 117, 120 and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4231–4233, 4601 *et seq.*; 49 CFR 1.48(b).

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 635

Government contracts, Grant programs—transportation, Highways and roads, Wage rates.

Issued on: August 11, 1989.

R.D. Morgan,

Executive Director.

[FR Doc. 89-19817 Filed 8-18-89; 8:45 am]

BILLING CODE 4910-22-M

Coast Guard

33 CFR Part 117

[CGDS-89-39]

Drawbridge Operation Regulations; Spa Creek, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Maryland Department of Transportation, the Coast Guard is considering changing the regulations that govern the operation of the S161 drawbridge across Spa Creek at mile 0.4, in Annapolis, Maryland, by further restricting the number of bridge openings during the weekday evening rush hours, and by expanding the current seasonal restrictions for Saturdays and Sundays by requiring the bridge to open on the hour and half hour year-round on Saturdays, Sundays, and holidays. This change also would impose additional opening restrictions during the summer weekday hours between the morning and evening rush hour periods. The morning rush hour restrictions remain the same. The changes to these regulations are, to the extent practical and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge.

DATES: Comments must be received on or before October 5, 1989.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments and other materials referenced in this notice will be available for inspection and copying at the above address, Room 507, between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Comments may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, (804) 398–6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended changes to the proposal. The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a final course of action on this proposal. The proposed regulations may be changed based on comments received.

Drafting Information

The drafters of this notice are Linda L. Gilliam, Project Officer, and LCDR Robin K. Kutz, Project Attorney.

Discussion of Proposed Regulations

The Maryland Department of Transportation has requested further regulation of the drawbridge across Spa Creek at mile 0.4 in Annapolis, Maryland. The request specified that from April 1 through November 30, the bridge would be closed Monday through Friday, except holidays, from 7:30 a.m. to 9:00 a.m., and from 4:30 p.m. to 7:30 p.m., with on-demand openings at 6:00 p.m. and 7:00 p.m. for vessels waiting to pass through the bridge. Between the hours of 9:00 a.m. and 4:30 p.m., the draw would be opened on the hour and half-hour. From December 1 to March 31, the draw would be closed to vessel traffic from 7:30 a.m. to 9:00 a.m. and from 4:30 p.m. to 6:30 p.m., Monday through Friday, except holidays. From 9:00 a.m. to 4:30 p.m., and from 6:30 p.m. to 7:30 a.m., the draw would open on demand. The Department also has requested that bridge openings be limited to the hour and half-hour on Saturdays, Sundays and holidays, year-round. The rest of the time the draw would be required to open on demand.

The current regulations for this drawbridge (33 CFR 117.571) restrict bridge openings from 7:30 a.m. to 9:00 a.m. and from 4:30 p.m. to 6:00 p.m., Monday through Friday, year-round, except Federal and State holidays. From 10:00 a.m. to 5:00 p.m. on Saturdays and Sundays from May 1 to November 1. current regulations require openings for vessels waiting to pass through the bridge only on the hour and half-hour. From 5:00 p.m. to 10:00 a.m., on Saturdays and Sundays from May 1 to November 1, and the remainder of the time during the rest of the year, the draw is only required to open on demand.

The Maryland Department of Transportation's request for additional regulations was based on an increase in vessel traffic that has been causing excessive bridge openings, resulting in increased traffic congestion. The Department submitted a copy of the drawlogs for the Spa Creek Bridge covering the period January 1987 through December 1987. The logs have been reviewed for the months of April through November, which is the requested period for extending the weekday evening rush hours for an additional hour and a half. During the hours of 6:00 p.m. to 7:30 p.m., Monday through Friday, draw openings averaged 61 per month. Since there are an average of 22 week days per month, the bridge experienced 2.7 openings per day during this time period.

The Maryland Department of Transportation conducted a field survey on May 23, 1988. By using a 4-minute opening-closing cycle, the Department calculated that 107 vehicles would queue up in the Northbound land and 95 in the Southbound lane for each opening. The Department also conducted a traffic count on August 16, 1988, which revealed that, from 6:00 p.m. to 7:00 p.m., 1423 vehicles crossed the bridge Northbound and 1453 crossed Southbound. Using the same 4-minute opening-closing cycle, 95 vehicles would be queued up Northbound and 97 vehicles would be queued up Southbound for every opening occurring during this time period.

The above statistics reveal the need to further restrict draw openings during weekday evening rush hours based on the data submitted for review. The Coast Guard concurs with the Maryland Department of Transportation's request to extend the evening closure period with openings at 6:00 p.m. and 7:00 p.m. However, the Coast Guard believes that the evening rush hour restrictions should be extended only from May 1 to October 31, and not from April 1 to November 30, as requested by the Department. The statistics for draw openings and vehicle counts submitted by the Department do not justify extending the weekday evening rush hours during April and November. In April, the Spa Creek drawbridge only opened 30 times and in November it only opened 5 times during the evening rush-hour period under consideration. The draw logs also were reviewed for the months of December, January, February and March to ascertain whether the Department's request to extend the evening rush hours by 30 minutes during these months was justified. Based on the figures gathered from the logs for these months, extending the evening rush hours by a half-hour cannot be granted. The logs revealed the Spa Creek Bridge only opened 3 times in December, none in January, once in February, and 18 times in March during the extended rush hour period.

The Maryland Department of Transportation also has requested that the draw open on the hour and half-hour year-round on Saturdays, Sundays and holidays. The current regulations restrict draw openings in this manner on Saturdays and Sundays from May 1 to November 1, from 10:00 a.m. to 5:00 p.m. While the proposed restrictions on bridge openings on weekends and holidays year-round will impose an additional burden on vessel operators, the Coast Guard believes these restrictions will not unduly restrict vessel passage through the bridge.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule will not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These proposed regulations are not considered major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The proposed regulation will have no effect on commercial navigation or on any industries that depend on waterborne transportation. Because the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); 33 CFR 117.43.

2. Section 117.571 is revised to read as follows:

§ 117.571 Spa Creek.

The S161 bridge, mile 4.0, at Annapolis, Maryland:

(a) From May 1 to October 31, Monday through Friday, except Federal and State holidays:

(1) The draw shall remain closed from 7:30 a.m. to 9:00 a.m. and from 4:30 p.m. to 7:30 p.m., except the draw shall open at 6:00 p.m. and 7:00 p.m. for any vessels waiting to pass.

(2) The draw shall open on the hour and the half hour, from 9:00 a.m. to 4:30 p.m.

(3) The draw shall open on signal from 7:30 p.m. to 7:30 a.m.

(b) From November 1 to April 30, Monday through Friday, except Federal and State holidays:

(1) The draw shall remain closed from 7:30 a.m. to 9:00 a.m. and from 4:30 p.m. to 6:00 p.m.

(2) The draw shall open on signal from 9:00 a.m. to 4:30 p.m. and from 6:00 p.m. to 7:30 a.m.

(c) On Saturdays, Sundays, and holidays, year-round, the draw shall open on the hour and half-hour for vessels waiting to pass.

(d) The draw shall always open on signal for public vessels of the United States, State or local vessels used for public safety, tugs with tows, and vessels in distress.

Dated: August 3, 1989.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89-19644 Filed 8-18-89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900-AE11

Schedule for Rating Disabilities; The Genitourinary System

AGENCY: Department of Veterans Affairs.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Veterans Affairs (VA) is issuing an advanced notice of proposed rulemaking (ANPRM) concerning that portion of the Schedule for Rating Disabilities which deals with disabilities of the genitourinary system. This ANPRM is necessary because of a General Accounting Office (GAO) study and recommendation that the medical criteria in the rating schedule be reviewed and updated as necessary. The intended effect of this ANPRM is to solicit and obtain the comments and suggestions of various interest groups and the general public on necessary additions, deletions and revisions of terminology and how best to proceed with a systematic review of the medical criteria used to evaluate disabilities of the genitourinary system. Other body systems will be subsequently scheduled for review until the medical criteria in the entire rating schedule has been analyzed and updated.

DATES: Written comments and submissions in response to this ANPRM must be received by VA on or before October 20, 1989.

ADDRESSES: Interested persons and organizations are invited to submit written comments and suggestions regarding this ANPRM to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All written submissions will be available for public inspection only in the Veterans Services Unit, Room 132, at the above address and only between the hours of 8:00 a.m. and 4:30 p.m Monday through Friday (except holidays) until October 30, 1989.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff (211B), Compensation and Pension

Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: In December 1988 the GAO published a report entitled *Veterans Benefits: Need to Update Medical Criteria Used in VA's Disability Rating Schedule* (GAO/HRD–89–28). After consulting numerous medical professionals and VA rating specialists GAO concluded that a comprehensive and systematic plan was needed for reviewing and updating VA's Schedule for Rating Disabilities (38 CFR Part 4). The medical professionals noted outdated terminology, ambiguous impairment classifications and the need to add a number of medical conditions not presently in the rating schedule. VA rating specialists noted that for some disorders they would prefer more medical criteria for distinguishing between various levels of severity and that inconsistent ratings may result when unlisted conditions had to be rated by analogy to other listed disorders. The GAO recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. It is also recommended that VA implement a procedure for systematically reviewing the rating schedule to keep it updated. VA agreed to both recommendations, and this ANPRM is the first step in a comprehensive rating schedule review plan which will ultimately be converted into a systematic, cyclical review process.

This ANPRM is the first stage in VA's consideration of what regulatory action to take, if any, with respect to revising and updating that portion of the rating schedule dealing with disabilities of the genitourinary system (38 CFR 4.115 and 4.115a). While we do not wish to limit comments in any way, it should be noted that our primary concern in this ANPRM is the medical criteria used to evaluate genitourinary disabilities and not the percentage evaluations presently assigned to each level of severity.

Interested organizations are invited to submit comments and suggestions for revising current medical criteria, adding additional disabilities and/or deleting certain rarely encountered disorders or transferring them to other sections of the rating schedule. Submissions may run the gamut from narrative discussions of individual rating criteria to wholesale format changes and substitute rating schedules. Where changes are suggested, we would also appreciate a recitation as to the scientific or medical authority for such changes. Early submissions will expedite the comment review process and are encouraged.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: August 2, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 89–19627 Filed 8–18–89; 8:45 am]

BILLING CODE 8320–01–M

Notices

Federal Register

Vol. 54, No. 160

Monday, August 21, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89–141]

Receipt of a Permit Application for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment), in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
89–193–01	Calgene	07–14–89	Cotton plants genetically engineered to express bromoxynil herbicide tolerance	Hawaii.

Done in Washington, DC, this 15th day of August 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–19693 Filed 8–18–89; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

National Environmental Policy Act, Revised Policy and Procedures

AGENCY: Forest Service, USDA.

ACTION: Notice of interim policy and procedures.

SUMMARY: Interim Directive No. 17 to Forest Service Manual Chapter 1950 gives broad guidance to Forest Service field officers on categorically excluding proposed actions from documentation in an environmental impact statement (EIS) or environmental assessment (EA). Interim Directive No. 2 to Forest Service Handbook 1909.15, Environmental Procedures Handbook, provides technical and procedural direction on how to document a categorical exclusion decision in a Decision Memo and lists the categories of actions that, based on experience and environmental analysis, may be categorically excluded from documentation in an EIA or EA. Because it contained new guidance the Forest Service published ID No. 2 in the Federal Register on March 3, 1989 (54 FR 9073–9075); but, because it did not contain new information or direction, did not publish ID No. 17. Therefore, the Forest Service is publishing Interim Directive (ID) No. 17 and republishing Interim Directive No. 2 to end confusion created when ID No. 17 was not published simultaneously with ID No. 2.

EFFECTIVE DATES: Interim Directive No. 2 was effective February 28, 1989, and Interim Directive No. 17 was effective March 22, 1989.

FOR FURTHER INFORMATION CONTACT: Mikel Shilling, Environmental Coordination Specialist, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, phone (202) 447–4708.

SUPPLEMENTARY INFORMATION: On January 23, 1989, the Secretary of Agriculture gave notice of adoption of final rules (36 CFR part 217) providing a revised administrative appeal process. Those rules established a new type of decision document—a Decision Memo—which was to be used to document a decision to categorically exclude a proposed action from documentation in an environmental impact statement (EIS) or environmental assessment (EA).

On Friday, March 3, 1989 (54 FR 9073–9075), the Forest Service published a notice informing the public that it was issuing Interim Directive No. 2 to FSH 1909.15 giving instructions to Forest Service personnel on when and how to prepare a Decision Memo. Included in the interim directive were the categories of actions typically excluded from documentation in an EIS or EA which had previously been issued as part of Interim Directive No. 16 to Forest Service Manual Chapter 1950. To avoid redundant direction, ID No. 16 was removed upon issuance of ID No. 2, and a new ID No. 17 was subsequently issued that retained the broad direction on categorical exclusions previously in ID No. 16 and provided cross reference to the new ID No. 2.

The Forest Service gave notice of ID No. 2 in the Federal Register in accordance with Council on Environmental Quality regulations, 40

CFR 1507.3, but did not publish ID No. 17 because it was a re-issuance of residual direction from ID No. 16 which had been published August 5, 1988 (53 FR 29505). The agency has become aware that failure to publish ID No. 17 has led to confusion both inside and outside the agency. To end the confusion and questions, the agency is publishing ID No. 17 and republishing ID No. 2. The documents as they appear in the Forest Service Manual and Handbook are set out at the end of this notice.

As noted when Interim Directive No. 2 was published, the agency is not requesting public comment on this interim policy and procedure at this time because a comprehensive revision of Forest Service policy and procedure on implementation of the National Environmental Policy Act is underway and will soon be published for public comment.

Dated: August 15, 1989.

John A. Leasure,

Acting Deputy Chief, Programs and Legislation.

Forest Service Manual

Washington, DC

Interim Directive No. 17

March 22, 1989.

Duration: One year.

Chapter: 1950—Environmental Policy and Procedures

Posting Notice: Last ID was No. 16 to FSM 1950, which is being removed.

Remove: ID No. 16, FSM 1950, dated 8/1/88

This interim directive provides broad guidance for determining if an action may be categorically excluded from documentation in an environmental impact statement or an environmental assessment. It is a reissuance of ID No. 16, dated August 1, 1988, except that the categories of actions which have been determined not to have a significant effect on the human environment have been removed and have been reissued as Interim Directive No. 2 to chapter 20 of Forest Service Handbook 1909.15.

1952.2—Categorical Exclusion From Documentation In An Environmental Impact Statement Or An Environmental Assessment. (40 CFR 1508.4) In addition to the seven categories of actions excluded from documentation in 7 CFR 1b.3 (sec. 28, FSH 1909.15), certain other actions may be categorically excluded from documentation in an environmental impact statement or an environmental assessment. To determine if an action may be categorically excluded, an environmental analysis, including scoping, must be conducted (FSH 1909.15, ch. 10 and 20).

The guide for determining whether an action may be categorically excluded is the significance of the effects (40 CFR 1508.27). In unusual circumstances an action that normally might be categorically excluded may have a significant environmental effect on the quality of the human environment and require an environmental impact statement. Unusual circumstances might involve the potential for impacts on threatened and endangered species; critical habitat; flood plains; wetlands; and specially designated areas, such as wilderness, wilderness study areas, or roadless areas designated for further planning.

Typical classes and representative examples of actions that might be categorically excluded are listed in chapter 20 (ID No. 2, dated February 28, 1989). Experience and environmental analysis indicate that these actions and classes usually do not significantly affect the quality of the human environment, individually or cumulatively. The typical classes include most forest management activities that normally could be categorically excluded. Proposed actions considered for categorical exclusion which are not clearly within a typical class must have no more environmental impact than those which are.

Interested and affected persons must be informed in an appropriate manner (40 CFR 1506.6 and FSM 1950.3) of a decision to proceed with an action that has been categorically excluded.

Direction on development of project files and preparation of a decision memo to document a decision to proceed with an action categorically excluded is found in chapter 20 of FSH 1909.15.

Forest Service Handbook

Washington, DC

FSH 1909.15—Environmental Policy and Procedures Handbook

Interim Directive No. 2

February 28, 1989.

Duration: One year.

Chapter: 20—Environmental Analysis

Posting Notice: Last ID was No. 1, which has expired.

On February 22, 1989, the new administrative appeal procedures at 36 CFR part 217 became effective. Section 217.3 of the new rules provides that decisons documented in a Decision Memo, Decision Notice, or Record of Decision may be appealed under the rules in part 217. A Decision Memo is a new type of environmental document to be prepared by Forest Service employees. In order to implement the new appeal rules, it is necesary to provide interim direction on when a Decision Memo should be prepared and on the format and content of this type of decision document.

For ease of use and consistency of implementation, this interim directive (ID) also integrates guidance on categorical exclusions with the guidance on how and when to prepare a Decision Memo. Specifically, this ID (1) enumerates the categories established by the Department of Agriculture at 7 CFR 1b.3 as categorically excluded from documentation in an EIS or EA; (2) identifies the categories of actions for which a project file and Decision Memo must be prepared; (3) defines the content of a project file; and (4) requires notice of a decision to proceed with an action that has been categorically excluded from documentation. The direction on categorical exclusions is identical to that issued in ID No. 16 to FSM 1950, dated August, 1988, which is being removed by separate posting notice.

26—Categories of Actions Excluded from Documentation in an EIS or EA (40 CFR 1508.4).

26.1—Categories for Which a Project File and a Decision Memo Are Not Required. A project file is not required for the categories of actions listed in sections 26.1a and 26.1b. However, a project file may be established for such an action at the discretion of the responsible official.

26.1a—Categories Established by the Secretary. The rules at 7 CFR 1b.3 exclude from documentation in an environmental impact statement (EIS) or an environmental assessment (EA) the following categories of actions:

§ 1b.3 Categorical Exclusions

(a) The following are categories of activities which have been determined not to have a significant effect on the human environment and are excluded from the preparation of environmental assessments (EA's) or environmental impact statements (EIS's), unless individual agency procedures prescribe otherwise.

(1) Policy development, planning and implementation which relate to routine activities, such as personnel, organizational changes, or similar administrative functions;

(2) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(3) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(4) Educational and informational programs and activities;

(5) Civil and criminal law enforcement and investigative activities;

(6) Activities which are advisory and consultative to other agencies and public and private entities, such as legal counseling and representation;

(7) Activities related to trade representation and market development activities abroad.

26.1b—Categories Established by the Chief. The following categories of routine administrative and maintenance actions normally do not individually or cumulatively have a significant effect (40 CFR 1508.22) on the quality of the human environment and, therefore, may be categorically excluded from documentation in an environmental impact statement (EIS) or environmental assessment (EA):

1. Administrative actions, such as road and area closures; restrictions on travel or use, such as camping, boating, or hunting; and posting signs and markers.

2. Construction of low-impact facilities or improvements, such as auxiliary support buildings or other structures; picnic areas and campgrounds; temporary and other low-standard roads, such as traffic service level "D" roads (FSH 7709.56); and trails.

3. Repair and maintenance activities, such as on buildings, grounds, trails, rights-of-way, and range improvements.

26.2—Categories of Actions for Which a Project File and a Decision Memo Are Required. Maintain a project file and prepare a Decision Memo for the following categories of proposed actions:

1. Low-impact silvicultural activities that are limited in size and duration and that primarily use existing roads and facilities, such as firewood and miscellaneous forest product sales; salvage, thinning, and small harvest cuts of less than 100,000 board feet or less than 10 acres; site preparation; and planting and seeding.

2. Low-impact range management activities, such as fencing, seeding, and installing water facilities.

3. Issuance or modification of authorizations or agreements for such uses of lands or facilities as road maintenance and additional use of existing roads, rights-of-way, and easements.

4. Low-impact pest management activities, such as suppressing nuisance insects and poisonous plants in campgrounds and picnic areas; controlling cone and seed insects in seed orchards; and fumigating to control weeds in nurseries.

5. Mineral and energy activities of limited size, duration, and degree of disturbance, such as preliminary exploration and removal of small mineral samples.

6. Fish and wildlife management activities, such as improving habitat, installing fish ladders, and stocking native or established species.

7. Transfer of interests in land, such as sales, exchanges, or interchanges pursuant to the Small Tracts Act; purchases and gifts; and small transfers and trades with other Federal agencies.

26.2a—Content of Project File. As a minimum, a project file on a proposed action as listed in sec. 26.2 should include:

1. A list of the names of interested and affected people, groups, and agencies contacted during scoping;

2. The results of scoping and the subsequent environmental analysis;

3. A copy of the Decision Memo (sec. 27);

4. A list of the people, agencies, and groups notified of the decision;

5. Other notice used to inform interested and affected persons of the decision to proceed with or to implement an action that has been categorically excluded.

27—Documentation of Decisions in a Decision Memo. A Decision Memo is not required if a proposed action has been categorically excluded from documentation in an environmental impact statement or an environmental assessment under categories in section 26.1a (7 CFR 1b.3) or section 26.1b of this chapter. However, interested and affected persons must be informed in an appropriate manner (sec. 11.5).

A Decision Memo is required if the proposed action has been categorically excluded from documentation in an EIS or EA under the categories listed in section 26.2. These decisions are subject to review under 36 CFR 217.6.

27.1—Format and Content. The format of the Decision Memo is not intended to replicate the format of a correspondence memorandum (FSH 6209.12). Generally, Decision Memos should conform to the following format and content although sections may be combined or rearranged in the interest of clarity and brevity.

1. *Heading.* The heading consists of the following elements:

(a) Title of document—"Decision Memo."

(b) The title of the proposed action.

(c) The location of the proposed action (including the Forest Service administrative unit, county, and state). In some cases, including the legal land description is appropriate.

2. *Proposed action.* Describe the proposed action, the decision to be implemented, and reasons for making the decision.

3. *Scoping and public involvement.* Describe the scoping process used and the issues identified. It may be appropriate to identify or refer to the interested and affected agencies, organizations, and persons contacted.

4. *Reasons for categorically excluding the proposed action.* This section includes:

(a) Identification of the category (sec. 26) into which the proposed action falls.

(b) Finding that no extraordinary circumstances exist that might cause the action to have significant effects.

5. *Findings required by other laws.* Include any findings required by any other laws. For example, findings of consistency with the forest plan, suitability, and vegetation management required by the National Forest Management Act (FSM 1922.41 and FSH 1909.12, sec. 5.3).

6. *Implementation date.* Include the date when the responsible official intends to implement the decision (sec. 51).

7. *Administrative review or appeal opportunities.* State whether the decision is subject to review or appeal, cite the applicable regulations (36 CFR part 217), and identify when and where to file a request for review or appeal.

8. *Contact person.* Include the name, address, and phone number of the Forest Service employee who can supply further information about the decision.

9. *Signature and date.* The responsible official must sign and date the Decision Memo on the date the decision is made.

27.2—Notice and Distribution of Decision Memo. Distribute the Decision Memo in a manner designed to inform agencies, organizations, and persons interested in or affected by the proposed action.

1. For decisions subject to appeal under 36 CFR part 217, the responsible official shall promptly mail the Decision Memo to those who, in writing, have requested it, and to those who are known to have participated in the decisionmaking process.

2. The responsible official may provide other forms of notice, including legal notice in newspapers of general circulation in the area where the proposed action is to be implemented.

When required by E.O. 12372, send copies to the State Single Point of Contact or, in cases where a State has elected not to establish a Single Point of Contact, the State official(s) involved.

[FR Doc. 89-19580 Filed 8-18-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration (BXA).
Title: Delivery Verification Certificate.
Form Number: BXA–647P; OMB No. 0694–0018.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 500 respondents; 133 total reporting/recordkeeping hours (125 hours Form BXA–647P, 8 hours for recordkeeping). Average time per respondent is fifteen minutes for Form ITA–647P.
Needs and Uses: Foreign governments sometimes require U.S. importers of strategic commodities to furnish their foreign supplier with a U.S. Delivery Verification Certificate validating that the commodities shipped to the U.S. were in fact received. This procedure increases the effectiveness of controls over exports of strategic materials.
Affected Public: Businesses or other for-profit institutions, small businesses or organizations.
Frequency: On Occasion.
Respondent's Obligation: Required to obtain a benefit.
OMB Desdk Officer: Donald Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: August 15, 1989.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 89–19563 Filed 8–18–89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35)

Agency: Bureau of Export Administration (BXA).
Title: Approval of Triangular Transactions Involving Commodities Covered by a U.S. Import Certificate.
Form Number: Export Administration Regulations, § 768.2(a)(8), (9), OMB–0694–0009.
Type of request: Extension of the expiration date of a currently approved collection.
Burden: 16 respondents, 9 reporting, recordkeeping hours. Approximate time per response is one-half hour.
Needs and Uses: This collection provides a means to authorize approved imports to the U.S. to be transhipped to another destination instead of being imported to the U.S. as approved on the Import Certificate.
Affected Public: Business or other for-profit institutions, small businesses or organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain a benefit.
OMB Desk Office: Donald Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC. 20503.

Dated: August 15, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–19584 Filed 8–18–89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.
Title: Application for Export License.
Form Number: Form BXA–622P, OMB—0694–0005.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 77,980 respondents, 33,671 reporting/recordkeeping hours. Approximate time per response is 25 minutes.
Needs and Uses: This collection is required in compliance with U.S. export regulations. The information given by U.S. exporters provides the basis for decisions to grant export licenses for exports of goods and technology that are controlled for reasons of national security and foreign policy.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: On occasion and recordkeeping.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Donald Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Ave., NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: August 15, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–19585 Filed 8–18–89; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

[Case No. OEE–1–88]

Wilfried Lange and PPC Computer Handles GmbH; Order Renewing Temporary Denial of Export Privileges

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), pursuant to the provisions of § 788.19 of the Export Administration Regulations, 15 CFR parts 768–799 (the Regulations),[1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. 2401–2420 (Supp. 1989)) (the Act), has asked the Assistant Secretary for Export Enforcement [2] to renew an order temporarily denying all United States export privileges to Wilfried Lange (Lange), individually and doing business as Purchasing Pool Company (PPC) and PPC Computer Handles GmbH (PCH). The initial order was issued on April 20, 1988 (53 FR 15253, April 28, 1988). It was renewed effective June 20, 1988 (53 FR 23294, June 21, 1988), and was renewed again on August 19, 1988 (53 FR 32639, August 26, 1988), October 18, 1988 (53 FR 43249, October 26, 1988), December 17, 1988 (53 FR 52207, December 27, 1988) and February 15, 1989 (54 FR 7459, February 21, 1989).

In its renewal request of July 25, 1989, the Department states that, since the time the initial temporary denial order was issued, and for much of the time the renewals have been in effect, the Department has conducted an investigation into Lange's dealings in U.S.-origin commodities. The Department expects a final resolution of this matter in the not too distant future.

The Department continues to believe, however, that Lange's past pattern of conduct demonstrates that there is a likelihood that he will commit future violations of the Act and the Regulations. Accordingly, for the reasons set forth below, the Department believes that, until this matter is finally resolved, Lange's export privileges should continue to be temporarily denied.

First, the Department states that, on numerous occasions since the end of 1985, Lange has reexported, without the required reexport authorization, U.S.-origin computers which are controlled for reasons of national security from West Germany to Austria, Yugoslavia and Hungary.

The Department also asserts that Lange has provided it with false and misleading information. Specifically, in response to a request from the Department that Lange identify the firms who purchased U.S.-origin equipment from him, Lange provided the Department with false invoices in an effort to hide the fact that he had reexported controlled U.S.-origin commodities from West Germany without the required reexport authorization.

In addition, the Department states that a contrast for two U.S.-origin computers, which are controlled for reasons of national security, exists between PPC and a Czechoslovakian foreign trading firm. The Department also believes that Lange and PPC may have attempted to fulfill that contract by trying to obtain, under the name of PPC Computer Handles GmbH, two U.S.-origin DEC VAX 8350 computer systems from a supplier in the United Kingdom.

The Department continues to believe that Lange's past activities establish that the violations of the Act and the Regulations which Lange is suspected of having committed were deliberate and covert and are likely to occur again unless appropriate action is taken to reduce the likelihood that Lange, PPC, and PCH can continue to acquire U.S.-origin goods either inside or outside of the United States. In addition, the Department believes that renewal of the temporary denial order is necessary to give notice to companies in the United States and abroad that they should cease dealing with Lange, PPC, and PPC Computer Handles GmbH in transactions involving U.S.-origin goods.

Therefore, based on the showing made by the Department in its request for renewal, which neither Lange, PPC, nor PCH has opposed, I find that an order temporarily denying export privileges to Lange, PPC, and PCH is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with Lange, PPC, and PCH in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that Lange, PPC, and PCH will continue to engage in activities which are in violation of the Act and the Regulations.

Accordingly, it is hereby *Ordered*

I. All outstanding validated export licenses in which Wilfried Lange, Purchasing Pool Company, or PPC Computer Handles GmbH appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Lange's, PPC's, and PCH's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Respondents Wilfried Lange, Purchasing Pool Company and PPC Computer Handles GmbH, all with an address at AM Stelg 3, 8913 Schondorf, Federal Republic of Germany, their successors or assignees, officers, partners, representatives, agents, and employees hereby denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which Lange, PPC, or PCH is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Lange, PPC, or PCH or any related party, or whereby Lange, PPC, or PCH or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document

[1] Effective October 1, 1989, the Export Administration Regulations were redesignated as 15 CFR parts 768–799 (53 FR 37751, September 28, 1988). The transfer merely changed the first number of each part from "3" to "7". Until such time as the Code of Federal Regulations is republished, the Regulations may be found in 15 CFR parts 368–399 (1988).

[2] In accordance with Department Organization Order 50–1, dated March 23, 1988, the Assistant Secretary for Export Enforcement is now the Department official who issues and renews temporary denial orders.

relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for Lange, PPC, or PCH or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 788.19(e) of the Regulations, Lange, PPC, or PCH may, at any time, appeal this temporary denial order by filing with the Office of Administrative Law Judges, U.S. Department of Commerce, Room H–6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order shall remain in effect for 180 days.

VII. In accordance with the provisions of § 788.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration data. Lange, PPC, or PCH may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served on Lange, PPC, and PCH and this order shall be published in the Federal Register.

Effective Date: August 14, 1989.

Kenneth A. Cutshaw,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 89–19513 Filed 8–18–89; 8:45 am]

BILLING CODE 3510-DR-M

International Trade Administration

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory committee will be held on Thursday, August 31, 1989, Herbert C. Hoover Building, Room H–B841, 14th Street and Constitution Avenue, NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets and retailing of cotton, wool, and man-made fiber, silk blend and other vegetable fiber textiles.)

General Session: 10:30 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 11:00 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room H6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes, contact Alfreda Clark Burton (202) 377–3737.

Dated: August 15, 1989.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–19697 Filed 8–17–89; 11:30 am]

BILLING CODE 3510-DR-M

U.S. DOE, Argonne National Laboratory; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89–057. *Applicant:* U.S. Department of Energy, Argonne National Laboratory, Argonne, IL 60439–4812. *Instrument:* Raman Spectrometer with Microscope Attachment. *Manufacturer:* Jobin-Yvon, France. *Intended Use:* See notice at 54 FR 9076, March 3, 1989. *Reasons For This Decision:* The foreign instrument provides a double grating and a focal length of 1.0 m and is capable of obtaining spectra within 5.0 cm^{-1} of the 514.5 nm laser line used for excitation. *Advice Submitted By:* National Institute of Standards and Technology, July 5, 1989.

Docket Number: 89–061. *Applicant:* The Regents of the University of California, Riverside, CA 92521. *Instrument:* XY Laser Raman Spectrometer. *Manufacturer:* Dilor, France. *Intended Use:* See notice at 54 FR 7972, February 24, 1989. *Reasons For This Decision:* The foreign instrument provides an integrated system capable of multichannel operation from low to high resolution and sequential scanning at high resolution with a cooled optical multichannel detector. *Advice Submitted By:* National Institutes of Health, July 5, 1989.

Docket Number: 89–069. *Applicant:* University of Texas Medical School, Houston, TX 77030. *Instrument:* High Precision Digital Scanning Device. *Manufacturer:* Institute for Biomedical Technology, Switzerland. *Intended Use:* See notice at 54 FR 11990, March 23, 1989. *Reasons For This Decision:* The foreign instrument provides an image resolution of 2048 × 3000 picture points with up to 4000 grey levels. *Advice Submitted By:* National Institutes of Health, July 5, 1989.

Docket Number: 89–072. *Applicant:* Yale University School of Medicine, New Haven, CT 06510–8002. *Instrument:* Free Flow Electrophoresis with Optical Scanner, Model Elphor Vap 22. *Manufacturer:* Bender & Hobein, West Germany. *Intended Use:* See notice at 54 FR 11992, March 23, 1989. *Reasons For This Decision:* The foreign instrument can collect 15 distinct fractions over a separation distance of 1.0 centimeter rapidly and at a controlled temperature of +4 to +25 degrees centigrade. *Advice Submitted By:* National Institutes of Health, July 5, 1989.

Docket Number: 89–075. *Applicant:* Vanderbilt University School of Medicine, Nashville, TN 37230–0146. *Instrument:* Rapid Kinetics Instrument, Model QFM–5. *Manufacturer:* Bio-Logic, France. *Intended Use:* See notice at 54 FR 11992, March 23, 1989. *Reasons For This Decision:* The foreign instrument provides five independently programmable syringes including the waste syringe, permitting use with smalll reagent samples. *Advice Submitted By:* National Institutes of Health, July 5, 1989.

Docket Number: 89–085. *Applicant:* Purdue University, Lafayette, IN 47907. *Instrument:* Time-of-Flight Mass Spectrometer, Model BIOION 20. *Manufacturer:* Bio Ion Nordic AB, Sweden. *Intended Use:* See notice at 54 FR 13407, April 3, 1989. *Reasons For This Decision:* The foreign instrument provides: (1) a plasma desorption source, (2) mass range to 20,000, and (3) rapid scan and time-of-flight capabilities. *Advice Submitted By:* National Institutes of Health, July 5, 1989.

Docket Number: 89–087. *Applicant:* West Virginia University, Morgantown, WV 26505–6108. *Instrument:* Insect Suction Trap Model V1–12". *Manufacturer:* Burkark Manufacturing Co. Ltd., United Kingdom. *Intended Use:* See notice at 54 FR 13406, April 3, 1989. *Reasons For This Decision:* The foreign instrument can sample 1900 cubic meters of air per second and segregate the catch into hourly samples. *Advice Submitted By:* National Institutes of Health, July 5, 1989.

Docket Number: 89–094. *Applicant:* University of Hawaii at Manoa, Honolulu, HI 96822. *Instrument:* Ultrasonic Interferometer. *Manufacturer:* Amtech Pty., Ltd. Australia. *Intended Use:* See notice at 54 FR 13726, April 5, 1989. *Reasons For This Decision:* The foreign instrument provides measurement of elastic wave travel times in the range of 0.5 to 1.0 μs at 10 to 500 MHz under extremely high temperatures and pressures. *Advice Submitted By:* National Institute of Standards and Technology, June 30, 1989.

Docket Number: 89–090. *Applicant:* Woods Hole Oceanographic Institution, Woods Hole, MA 02543. *Instrument:* Seasoar Vehicle with Hydraulics, Controller, Cable and Winch. *Manufacturer:* Chelsea Instruments, United Kingdom. *Intended Use:* See notice at 54 FR 13726, April 5, 1989. *Reasons For This Decision:* The foreign article is capable of continuous cycling between depths as great as 450 m and the ocean surface with faired cabling and compatible winch. *Advice Submitted By:* National Oceanic and Atmospheric Administration, June 23, 1989. *Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health and National Institute of Standards and Technology advice that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument of apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–19514 Filed 8–18–89; 8:45 am]

BILLING CODE 3510-DS-M

Boston College, et al.; Consolidated Decision on Applications for Duty-Free Entry of Accessories for Foreign Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89–067. *Applicant:* Boston College, Chestnut Hill, MA 02167. *Instrument:* 2 Computer Interfaces and Software, Models 1401 and 1708. *Manufacturer:* Cambridge Electronic Design, United Kingdom.

Docket Number: 89–088. *Applicant:* Cleveland Metropolitan General Hospital, Cleveland, OH 44109. *Instrument:* Fluroescance Lifetime Instrument Upgrade. *Manufacturer:* Edinbrugh Instruments, Ltd., United Kingdom.

Docket Number: 89–089. *Applicant:* Cuyahoga County Hospital Foundation, Cleveland, OH 44109. *Instrument:* Photomultiplier Tube. *Manufacturer:* Edinburgh Instruments, Ltd., United Kingdom.

Intended Use: See notice at 54 FR 13725, April 5, 1989. *Advice Submitted By:* National Institutes of Health, July 5, 1989.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States. *Reasons:* These are compatible accessories for instruments previously imported for the use of the applicants. In each case, the instrument and accessory were made by the same manufacturer. NIH advises us that the accessories are pertinent to the intended uses and that it knows of no comparable domestic accessories.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–19515 Filed 8–18–89; 8:45 am]

BILLING CODE 3510-DS-M

California Institute of Technology; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89–145. *Applicant:* California Institute of Technology, Pasadena, CA 91125. *Instrument:* Primary Beam Transport System. *Manufacturer:* Cameca Instruments, France. *Intended Use:* See notice at 54 FR 23508, June 1, 1989.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer. The accessory is pertinent to the intended uses and we know of no comparable domestic accessory.

Frank W. Creel,

Director, Statutory Import Programs Staff

[FR Doc. 89–19516 Filed 8–18–89; 8:45 am]

BILLING CODE 3510-DS-M

Carleton College; Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the

Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 89–053R. *Applicant:* Carleton College, Department of Chemistry, One North College Street, Northfield, MN 55057. *Instrument:* Laser System (Excimer Laser and Excimer-Pumped Dye Laser). *Manufacturer:* Lumonics, Canada. Original notice of this resubmitted application was published in the **Federal Register** of March 3, 1989.

Docket Number: 88–205R. *Applicant:* USDA-ARS, Beltsville Agricultural Research Center, BARC-West Building 050, Room 100, Beltsville, Md 20705. *Instrument:* NMR Spectrometer, Model MSL–400 (System C). *Manufacturer:* Bruker Analytische Messtechnik, West Germany. Original notice of this resubmitted application was published in the **Federal Register** of June 17, 1988.

Docket Number: 88–206R. *Applicant:* USDA-ARS, Eastern Regional Center, 600 East Mermaid Lane, Philadelphia, PA 19118. *Instrument:* NMR Spectrometer, Model MSL–300 (System A). *Manufacturer:* Bruker Analytische Messtechnik, West Germany. Original notice of this resubmitted application was published in the **Federal Register** of June 17, 1988.

Docket Number: 88–207R. *Applicant:* USDA-ARS, Northern Regional Center, 1815 North University Street, Peoria, IL 61604. *Instrument:* NMR Spectrometer, Model MSL–300 (System D). *Manufacturer:* Bruker Analytische Messtechnik, West Germany. Original notice of this resubmitted application was published in the **Federal Register** of June 17, 1988.

Docket Number: 89–200. *Applicant:* U.S. DOE/Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. *Instrument:* Electron Microscope, Model JEM–200 FX/SEG. *Manufacturer:* Jeol, Japan. *Intended Use:* Studies of high nuclear waste glass that has been reacted with water under conditions relevant to long-term disposal in a repository. The phases identified during the investigations are needed input to the modeling of the glass reaction. The objective is to model glass reaction over a 10,000 year period. *Application received by Commissioner of Customs:* July 25, 1989.

Docket Number: 89–201. *Applicant:* Texas A & M University, Chemistry Department, College Station, TX 77843. *Instrument:* X-Ray Photoelectron Spectrometer, Model MAX–100. *Manufacturer:* Leybold, West Germany. *Intended Use:* The instrument will be used for studies of metallic and non-metallic solid catalysts and absorbents, electrode surfaces, polymer, ceramics, and single metal crystals. Experiments will involve pretreatment of samples under controlled temperature and gas pressure conditions in a dedicated chamber, unattended long-term acquisition of photoelectron spectra of one or more chemical surface species in a sample, including quantitative monitoring of sample charging effects, depth profiling of sampels by both angle-resolved XPS data collection and surface sputtering, and ion scattering spectroscopy studies of surface species. In addition, the instrument will be used in Chemistry 491 and 691, two courses designed to familiarize students with the techniques and methodology of modern chemical research. *Application Received by Commissioner of Customs:* July 27, 1989.

Docket Number: 89–202. *Applicant:* Massachusetts Institute of Technology, Center for Materials Science and Engineering, 77 Massachusetts Avenue, Room 13–2098, Cambridge, MA 02139. *Instrument:* Electron Microscope, Model EM–002B. *Manufacturer:* Akashi Beam Technology, Japan. *Intended Use:* Studies of microstructures on atomic scale of steels, advanced ceramic materials, semiconductor materials, composite materials and combustion products. The objectives of the research are to relate the microstructure to macroscopic properties to: validate theories of structure of materials; determine the effects of processing parameters on structure and properties; and to provide empirical data on the structure of materials. The instrument will also be used for educational purposes in the courses 3.081, Materials Characterization and 3.30, Transmission Electron Microscopy. *Application Received by Commissioner of Customs:* July 28, 1989.

Docket Number: 89–203. *Applicant:* University of Nebraska-Lincoln, 14th & R Streets, Lincoln, NE 68588–0304. *Instrument:* Time-Domain Fluorescence Spectrometer, Model 199T. *Manufacturer:* Edinburgh Instruments, United Kingdom. *Intended Use:* Studies of biological and organic material and their photochemical reactions. Students will follow the reactions of these fluorescent materials in the light activated state by monitoring the fluorescence in ultrafast time scale (nanosecond to picosecond range). The objective of these studies is to elucidate how light-activated materials undergo reactions, especially those involved in light-sensitive sensor molecules in biological systems. *Application Received by Commissioner of Customs:* July 28, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–19517 Filed 8–18–89; 8:45 am]

BILLING CODE 3510-DS-M

Harlem Hospital, et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89–127. *Applicant:* Harlem Hospital, New York, NY 10037. *Instrument:* Electron Microscope, Model EM 109T. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 54 FR 18690, May 2, 1989. *Instrument Ordered:* November 29, 1988.

Docket Number: 89–130. *Applicant:* Johns Hopkins University, Baltimore, MD 21205. *Instrument:* Electron Microscope, Model CM 12T. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 54 FR 18690, May 2, 1989. *Instrument Ordered:* February 16, 1989.

Docket Number: 89–140. *Applicant:* University of California, San Francisco, CA 94143. *Instrument:* Electron Microscope, Model JEM–100CXII. *Manufacturer:* JEOL, Japan. *Intended Use:* See notice at 54 FR 22000, May 22, 1989. *Application Received by Commissioner of Customs:* April 20, 1989.

Docket Number: 89–141. *Applicant:* Wright State University, Dayton, OH 45435. *Instrument:* Electron Microscope, Model JEM–100CXII. *Manufacturer:* JEOL, Japan. *Intended Use:* See notice at 54 FR 22000, May 22, 1989. *Instrument Ordered:* March 24, 1989.

Docket Number: 89–146. *Applicant:* University of Arizona, Tucson, AZ 85724. *Instrument:* Electron Microscope, Model CM12/STEM. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 54 FR 23509, June 1, 1989. *Instrument Ordered:* February 23, 1989.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–19516 Filed 8–18–89; 8:45 am]

BILLING CODE 3510-DS-M

Purdue University; Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89–033R. *Applicant:* Purdue University, West Lafayette, IN 47907. *Instrument:* Mass Spectrometer and Data System, Model MS–25. *Manufacturer:* Kratos, United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of January 31, 1989.

Docket Number: 89–161. *Applicant:* University of California at Davis, Department of Geology, Davis, CA 95616. *Instrument:* Mass Spectrometer, MAT 251. *Manufacturer:* Finnigan MAT, West Germany. *Intended Use:* The instrument will be used in experiments to examine natural isotopic variations with formation temperatures and infiltration histories of rocks and fossils. Biological experiments will principally examine the water balance of animals and plants. In addition, the instrument will be used in scheduled introductory geology courses for demonstration purposes and in advanced geology courses for laboratory exercises. *Application Received by Commissioner of Customs:* July 7, 1989.

Docket Number: 89–183. *Applicant:* University of California at Santa Barbara, Department of Chemistry, Santa Barbara, CA 93106. *Instrument:* Electron Spin Resonance Spectrometer, Model ESP 300–10/7. *Manufacturer:* Bruker Instruments, West Germany. *Intended Use:* The instrument will be used to carry out a variety of research projects including:

(1) Studies of the mechanisms of biochemically important oxidation reduction reactions and the elucidation of the structures of intermediates.

(2) Bioinorganic chemistry, both from the standpoint of metallo-protein studies and small molecule investigations designed to mimic a metal-mediated biological process.

(3) Design, synthesis and characterization of new microporous hosts and microcomposite materials for use in electronic material development.

(4) Solution studies required for characterization of ferromagnetic metal molecular intermediates.

(5) Two areas of mechanistic inorganic chemistry, (a) the photoreactions of metal complexes and (b) the homogeneous catalysis of small molecule reactions.

(6) Study of protein conformation in solution.

(7) Low temperature ESR spectroscopy experiments in an effort to actually detect the diyls as intermediates and to study the temperature dependency of the spectra.

(8) ESR studies of reduced ortho-metalated complexes.

The instrument will also be used in the course Chemistry 596. Directed Reading and Research for student research for Masters or Ph.D. degree. *Application Received by Commissioner of Customs:* July 10, 1989.

Docket Number: 89–184. *Applicant:* University of North Carolina at Chapel Hill, CB 1100, Chapel Hill, NC 27599–1100. *Instrument:* FTIR Interferometer System, Model DA3.16. *Manufacturer:* Bomem, Canada. *Intended Use:* The instrument will be used in the investigation of (a) small gas phase molecules such as ammonia, ethylene and cyanogen; (b) metallo-organic compounds of the early transition metals; (c) synthetic peptides and proteins and (d) electroactive films and solid state electrodes. The vibrational spectra of the various materials will be measured in a sample dependent manner, yielding structural and dynamic information about the material of physical process or interest. Educational uses will include training graduate students and postdoctoral associates in various state-of-the-art techniques. *Application Received by Commissioner of Customs:* July 10, 1989.

Docket Number: 89–185. *Applicant:* Lehigh University, Physics Department #16, Bethlehem, PA 18015. *Instrument:* FTIR Spectrometer, Model DA3.16. *Manufacturer:* Bomem, Canada. *Intended Use:* The instrument will be used for investigating elemental and compound semiconductors and their alloys. Experiments include infrared absorption, photoluminescence and photothermal ionization studies of the electronic and vibrational properties of defects in semiconductors. In addition, the instrument will be used by graduate students in physics to perform research required by their Ph.D programs. Summer research students will also use the instrument to undertake brief research projects prior to beginning their Ph.D studies. *Application Received by Commissioner of Customs:* July 7, 1989.

Docket Number: 89–186. *Applicant:* University of Minnesota, Department of Cell Biology and Neuroanatomy, 4–135 Jackson Hall, Minneapolis, MN 55455. *Instrument:* Scanning Electron Microscope, Model S–900. *Manufacturer:* Hitachi, Japan. *Intended Use:* The instrument will be used for high resolution topographical imaging of cell surfaces, cellular organelles, and connective tissue matrix and determination of topographical distribution of immunogold labeled antigens or gold-lectin labeled sugars by backscatter electron imaging. Experiments will be related to basic cellular phenomena and will increase both the knowledge and understanding of cellular morphology and function. In addition, the instrument will be used in courses in Biological Electron Microscopy open to medical and graduate students, postdoctoral fellows and faculty who have expressed an interest in learning electron microscopy and associated techniques. *Application Received by Commissioner of Customs:* July 10, 1989.

Docket Number: 89–187. *Applicant:* University of California at San Francisco, School of Pharmacy, San Francisco, CA 94143–0446. *Instrument:* Mass Spectrometer System, Model VG 70–VSE. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* The instrument will be used for high various research projects concerning the structure elucidation of complex

oligosaccharides which are often critical structural units in biologically important glycoproteins. Another area of research involves studies on the characterization of metabolically generated species which are likely to be responsible for the cytotoxicity associated with various xenobiotics. The instrument will also be used in Pharmaceutical Chemistry 235, Mass Spectrometry in the Life Sciences, a course to give students an overview of all the mass spectrometric techniques used in research in the biological sciences at the present time and to teach students how to operate a modern multi-functional gc/mass spectrometer and data system. *Application Received by Commissioner of Customs:* July 11, 1989.

Docket Number: 89-188. *Applicant:* University of Michigan, Department of Geological Sciences, 425 E. University, Ann Arbor, MI 48109-1063. *Instrument:* Mass Spectrometer, Model 251. *Manufacturer:* Finnigan MAT, West Germany. *Intended Use:* The instrument will be used for analysis of isotopic enrichments of carbon, hydrogen and oxygen produced from rock, water and organic materials during several research projects underway. In addition, the instrument will be used in numerous courses providing training in mass spectrometry with applications to geologic and hydrologic studies. *Applications Received by Commissioner of Customs:* July 12, 1989.

Docket Number: 89-189. *Applicant:* University of Michigan, Department of Geological Sciences, 425 E. University, Ann Arbor, MI 48109-1063. *Instrument:* Mass Spectrometer, Model MAT Delta S. *Manufacturer:* Finnigan MAT, West Germany. *Intended Use:* The instrument will be used in a variety of research projects for analyses of the isotopic compositions of H, C, N, and O extracted from rocks, fluids, and organic material. In addition, the instrument will be used in numerous courses providing training in mass spectrometry with applications to geological and hydrologic studies. *Applications Received by Commissioner of Customs:* July 12, 1989.

Docket Number: 89-190. *Applicant:* Old Dominion University, Norfolk, VA 23529. *Instrument:* Electron Microscope, Model JEM-100CX II. *Manufacturer:* JEOL, Japan. *Intended Use:* The instrument will be used for ultrastructural investigation of rat brain tissues, tissues from the short-tailed shrew, remipede crustaceans, frozen heart valves, human semen samples, and cultured tumor cells. In addition, the instrument will be used for training students in theory and practical aspects of specimen preparation for electron microscopy and in operation of an electron microscope in Biology 712 and 497. *Application Received by Commissioner of Customs:* July 13, 1989.

Docket Number: 89-191. *Applicant:* Ohio State University, Department of Physiological Chemistry, 333 West 10th Avenue, Columbus, OH 43210. *Instrument:* Stopped-Flow Spectrofluorimeter, Model SF.17MV. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* The instrument will be used to investigate the rates of calcium binding and exchange with calcium binding proteins in muscle. Calcium will be rapidly mixed with fluorescently labeled calcium bonding proteins and the rate of their fluorescene change measured. In addition, the instrument will be used in the course Physiological Chemisty 999 by graduate students for the above research. *Application Received by Commissioner of Customs:* July 14, 1989.

Frank Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-19519 Filed 8-18-89; 8:45 am]

BILLING CODE 3510-DS-M

Rensselaer Polytechnic Institute; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 89-117. *Applicant:* Rensselaer Polytechnic Institute, Troy, NY 12180-3590. *Instrument:* Centrifuge for Geotechnical Applications, Model 665-1. *Manufacturer:* Acutronic France S.A., France. *Intended Use:* See notice at 54 FR 18689, May 2, 1989. *Comments:* None received. *Decision:* Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (December 31, 1987). *Reasons:* The foreign apparatus provides dynamic loads for the centrifuge at 200g of: 1200 lbs max. payload; 120g max. acceleration in two perpendicular horizontal directions; 30 in/sec max. velocity of shake table; and a max. frequency of excitation of 2000Hz. These capabilities are pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where an applicant, as in this case, received no response to a formal request for quotation sent to the only known domestic manufacturer of comparable apparatus it is apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-19520 Filed 8-18-89; 8:45 am]

BILLING CODE 3510-DS-M

University of California, et al., Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89-132. *Applicant:* University of California, Los Angeles, CA 90049 *Instrument:* Streak Camera, Model IMACON 500. *Manufacturer:* Hadland Photonics, United Kingdom. *Intended Use:* See notice at 54 FR 21090, May 16, 1989. *Reasons For This Decision:* The foreign article provides a 2psec time resolution with a dynamic range of 30:1.

Docket Number: 89-137. *Applicant:* Rensselaer Polytechnic Institute, Troy, NY 12180. *Instrument:* Fabry-Perot Interferometer. *Manufacturer:* Queensgate Instruments Ltd., United Kingdom. *Intended Use:* See notice at 54 FR 21090, May 16, 1989. *Reasons For This Decision:* The foreign article provides nanometer precision of parallelism with optical window from 400 to 700 nanometers.

Docket Number: 89-139. *Applicant:* Baltimore Museum of Art, Baltimore, MD 21218. *Instrument:* Infrared Reflectography Equipment, Model BG 250. *Manufacturer:* Vanandel B.V. Rotterdam, The Netherlands. *Intended Use:* See notice at 54 FR 22000, May 22, 1989. *Reasons For This Decision:* The foreign article provides a high degree of resolution (Positional hum equal to or greater than 0.1% of picture height, bandwidth 10 MHz).

Docket Number: 89-150. *Applicant:* Michigan Molecular Institute, Midland, MI 48640. *Instrument:* Temperature-Pulse Light Scattering Photometer. *Manufacturer:* DSM, The Netherlands. *Intended Use:* See notice at 54 FR 23509, June 1, 1989. *Reasons For This Decision:* The foreign apparatus provides for automated characterization of copolymer composition, tacticity, or cross-linking.

Docket Number: 89-152. *Applicant:* University of Nevada-Reno, Reno, NV 89557-0047. *Instrument:* Single Cylinder Engine Test Bed. *Manufacturer:* G. Cussons, Ltd., United Kingdom. *Intended Use:* See notice at 54 FR 24372, June 7, 1989. *Reasons For This Decision:* The foreign apparatus facilitates the study of various components of mine engineering (thermodynamics, analysis of exhaust gases, etc.).

Docket Number: 89-155. *Applicant:* Virginia Military Institute, Lexington, VA 24450. *Instrument:* Ground Contactivity Electromagnetic Meter, Model EM-31DL. *Manufacturer:* Geonics Limited, Canada. *Intended Use:* See notice at 54 FR 24372, June 7, 1989. *Reasons For This Decision:* The foreign instrument provides in situ measurement of ground conductivity in milli-ohms per meter.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-19521 Filed 8-18-89; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89-192. *Applicant:* University of Nebraska-Lincoln, Institute of Agriculture and Natural Resources, Department of Biochemistry, 206 BCH, East Campus, Lincoln, NE 68583-0718. *Instrument:* Mass Spectrometer System, Model Delta S. *Manufacturer:* Finnigan Corp., West Germany. *Intended Use:* The instrument will be used in studies to determine the fractionation of carbon, oxygen, hydrogen, and nitrogen insotopes associated with various biological and chemical processes. In addition, the instrument will be used in the course Biochemistry 996 for teaching students to do research and gain significant new information about biochemical systems. *Application Received by Commissioner of Customs:* July 14, 1989.

Docket Number: 89-193. *Applicant:* University of California at Davis, Department of Geology, Davis, CA 95616. *Instrument:* FTI Spectrometer with Assessories, Model DA3.16. *Manufacturer:* Bomem, Canada. *Intended Use:* The instrument will be used for studies of common rock-forming minerals, candidates for minerals occurring in the mantle, high pressure phases, structural analogues of the previous categories, and glasses with compositions mimicking those of magmas. The types of experiments to be conducted involve measurement of the single-crystal infrared spectra of a mineral and measurement of the infrared spectra of minerals as a function of pressure. The instrument will also be used in the course Advanced Mineralogy to acquaint students with forefront research in minerals and to provide them with background to pursue thesis in mineral physics. *Application Received by Commissioner of Customs:* July 17, 1989.

Docket Number: 89-194. *Applicant:* Rensselaer Polytechnic Institute, 110 8th Street, Troy, NY 12180-3590. *Instrument:* Electron Microscope, Model CM 12. *Manufacturer:* N.V. Phillips, Netherlands. *Intended Use:* The instrument will be used to study a variety of biologically-derived materials, which include the following: alpha crystallin of the vertebrate eye lens; the eukaryotic waterfern *Azolla* and its prokaryotic cyanobacterial endosymbiont *Anabaena*; mitochondria, bacterial spheroplasts and reconstituted phospholipid vesicles; membrane proteins in phospholipid bilayers; several types of bacteria and fungi; and tumor tissue. The instrument will also be used for educational purposes. *Application Received by Commissioner of Customs:* July 17, 1989.

Docket Number: 89-196. *Applicant:* Health and Human Services, FDA, Center for Food Safety & Applied Nutrition, 200 C Street, SW., Washington, DC 20204. *Instrument:* Mass Spectrometer, Model AutoSpec-Q. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* The instrument will be used for studies of the molecular weight and fragmentation patterns of manmade and naturally occurring organic components found in foods and feeds. *Application Received by Commissioner of Customs:* July 20, 1989.

Docket Number: 89-197. *Applicant:* University of Alabama, P.O. Box 870130, Tuscaloosa, AL 35487. *Instrument:* Electron Microprobe, Model JXA-8600. *Manufacturer:* JEOL, Japan. *Intended Use:* The instrument will be used for geological research which will include using mineral chemistry to determine the pressure, temperature, and chemical conditions during crystallization of

metamorphic and igneous rocks, and formation of ore deposits; and using high resolution microscopy and image analysis for characterizing grain sizes and shapes in sedimentary, igneous, and metamorphic rocks. In addition, the instrument will also be used for educational purposes in various geology courses. *Application Received by Commissioner of Customs:* July 21, 1989.

Docket Number: 89-196. *Applicant:* Duke University Medical Center, Medical Research Park, Bldg. 2, Room 213, Research Drive, Durham, NC 27710. *Instrument:* Mechanical and Optical Measurement of Muscle Contractile Biophysics System. *Manufacturer:* Wissenschaftliche Gerate Dr. K Guth, West Germany. *Intended Use:* The instrument will be used to study the mechanisms that control the ability of the heart to contract. These studies focus on the proteins, which are present in the basic contractile unit of the heart, that regulate contraction. The system will measure the physical properties of the isolated muscle during exposure of the myofilaments of the muscle to solutions containing different ionic concentrations. *Application Received by Commissioner of Customs:* July 24, 1989.

Docket Number: 89-199. *Applicant:* Goucher College, Dulaney Valley Road, Towson, MD 21204. *Instrument:* Rapid Kinetics Spectrometer Accessory, Model RX 1000. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* The instrument will be used for studies of synthetic biological polymers composed of amino acids and nucleic acids and synthetic macrocyclic ligands of the porphyrin and metalloporphyrin family. Experiments will be conducted to obtain an understanding of the nature of small ligand molecule binding to model biological polymers, probing of the properties of biological polymers particularly through changes in polymer conformation upon ligand binding, and the construction of model light harvesting centers. The instrument will also be used in the courses Biochemistry II and Independent Research to expose students to the fundamentals of biochemical research and to allow students the opportunity to develop as independent thinkers and workers in the laboratory, in preparation for graduate school study. *Application Received by Commissioner of Customs:* July 24, 1989.

Frank Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-19522 Filed 8-18-89; 8:45 am]

BILLING CODE 3510-DS-M

University of Wisconsin, Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87-181R2. *Applicant:* University of Wisconsin, Madison, WI 53706. *Instrument:* NMR Spectrometer, Model AM 400 WB. *Manufacturer:* Bruker Instruments, Switzerland. *Intended Use:* See notice at 52 FR 19904, May 28, 1987.

Comments: None received. *Decision:* Approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the purchase was contracted (July 3, 1985). *Reasons:* The foreign instrument provides (1) phase shifts of transmitter, decoupler and receiver to less than one degree with 12-bit accuracy and (2) superior shaped pulse capability. The National Institutes of Health advises in its memorandum dated July 5, 1989 that (1) these capabilities are pertinent to the applicant's intended purposes and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which was being manufactured in the United States at the time of purchase.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-19523 Filed 8-18-89; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

Meeting to Describe the Consortium on Automation of Analytical Laboratory Systems (CAALS)

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the National Institute of Standards and Technology is conducting a meeting to describe its Consortium on Automation of Analytical Laboratory Systems (CAALS) and to setup its organizational committees. NIST perceives that analytical measurement tasks are ripe for automation technologies and that development of automated analytical laboratory offers U.S. industry opportunities for significant improvements in the quality and cost of their analytical operations. To accelerate development of these benefits and to provide a broad utilization base, NIST proposes the establishment of an industry-government research consortium. Parties planning to attend should make reservations.

DATES: The meeting will be on September 28, from 8:30 a.m. to 5:00 p.m., followed by the consortium's first organizational meeting on Sept. 29, 1989, from 9:00 a.m. to 12:30 p.m.

ADDRESSES: Meeting will be held at the National Institute of Standards and Technology, Conference Room A, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Howard M. Kingston, National Institute of Standards and Technology, Center for Analytical Chemistry, Building 222, Room A309, Gaithersburg, MD 20899; telephone (301) 975-4136, (FTS) 879-4136.

SUPPLEMENTARY INFORMATION: Industry and government both depend heavily upon analytical laboratory measurements. These measurements provide critical feedback in many situations, such as, product quality assurance, acceptance testing, and regulatory compliances.

These analytical measurements are generally viewed with mixed feelings. On the positive side, industry recognizes that improvements in product and process capability often depend upon improvements in the analytical measurement technologies. A firm's competitiveness depends in part on the accuracy, sensitivity, reliability, and controllability of its measurements and processess. This precision and control are reflected in the quality and cost of the firm's products. On the negative side, analytical measurements are expensive because they are labor intensive, utilizing high cost personnel and expensive equipment.

NIST scientists project that in the next decade, analytical measurement capabilities will experience technical growth equal to that of the previous three decades combined. Furthermore, NIST perceives that analytical measurement tasks are ripe for automation technologies and that development of automated analytical laboratory offers U.S. industry opportunities for significant improvements in the quality and cost of their analytical operations. To accelerate development of these benefits and to provide a broad utilization base, NIST proposes the establishment of an industry-government research consortium.

Consortium Philosophy

The basic philosophy of this Consortium is that industrial community and NIST work as a team to develop automated chemical analysis technologies. NIST believes that "working shoulder to shoulder" enriches all involved in the research effort. Active industrial involvement focuses the research on industrial needs, and accelerates the transfer of technology to member firms. This philosophy of active involvement is reflected in the consortium design. The more a Consortium member contributes to the active reasearch of the Consortium, the more benefits the Consortium member accrues. Members of the NIST Consortium will have:

1. An active voice in setting the research agenda and research priorities;
2. The opportunity to collaborate actively in the development of Consortium technologies;
3. The intellectual property (publications and patents) benefits in technologies developed by the Consortium; and
4. Access to research seminars, workshops, and training sessions on Consortium activities and products.

The Consortium Focus and Objectives

The focus of the consortium is on the automation of (organic and inorganic) analytic laboratory methods and processes. The objectives of the consortium research are to:

1. Automate organic and inorganic laboratory procedure. This requires that research must develop generally applicable analytic procedures that can be automated; and, apply these "automated procedures" to common laboratory functions.
2. Build chemical analysis expertise into the operation of the laboratory system. The system will be "smart" as well as automated. Expert systems and other forms of Artificial Intelligence will be woven into the system to play appropriate roles in guiding the various operations of the chemical analysis.
3. Develop standard reference methods to be used and applied on automated analytical laboratory systems. These activities are necessary to establish the validity of these techniques and aid their implementation to replace commonly employed manual techniques. Implementation of these automated standard methods will be accomplished with the active involvement of voluntary standards organizations, professional societies, and regulatory agencies.
4. Build in quality assurance into the automated system; i.e., to develop the automated analytical system so that it will monitor and requlate the procedural conditions to provide a highly controlled environment for the analysis. These methods can be used to ensure reproducibility and transferability of the results.

Dated: August 15, 1989.

Raymond G. Kammer,

Acting Director.

[FR Doc. 89-19618 Filed 8-18-89; 8:45 am]

BILLING CODE 3510-13-M

Office of Inspector General

Membership of the Office of Inspector General Performance Review Board

In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), the office of Inspector General (OIG) announces the appointment of persons to serve as members of its Performance Review Board (PRB). The OIG PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointment authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and amounts, and initial recommendations for potential rank awards. The names of all Commerce OIG Senior Executives will be placed on a register from which Boards will be established; the register will be established on September 18, 1989. The names and titles of the OIG PRB membership follow.

The selection of a member for the OIG PRB from outside the OIG will be made from the President's Council on Integrity and Efficiency Performance Review Board roster of OIG Senior Executive Service employees.

Charles M. Hall, Assistant Inspector General for Planning, Evaluation and Inspections

Franklyn J. Howatt, Deputy Assistant Inspector General for Investigations

John D. Newell, Assistant Inspector General for Audits

J. Steven Sadler, Deputy Assistant Inspector General for Regional Audits

Frederick J. Pinciaro, Assistant Inspector General for Investigations

K. Wayne Weaver, Counsel to the Inspector General

FOR FURTHER INFORMATION: Contact Marie Van Wyk, Director, Resource Management Division, Department of Commerce, Office of Inspector General, 14th & Constitution, NW., Room 7713, Washington, DC 20230, (202) 377-4948.

Dated: August 10, 1989.

Approved:

Francis D. DeGeorge,

Inspector General.

[FR Doc. 89-19534 Filed 8-18-89; 8:45 am]

BILLING CODE 3510-17-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Approval of Compliance Survey of Futon Manufacturers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 44), the Consumer Product Safety Commission has submitted a request to the Office of Management and Budget for approval of a survey of futon manufacturers to determine the overall level of compliance by the futon industry with the flammability standard for mattresses (16 CFR Part 1632). A futon is a thin, flexible mattress which can be used on the floor and folded or rolled for storage. Futons are typically manufactured from cotton batting enclosed in ticking material. Since the 1980's, futons have become increasingly popular in the United States.

The mattress flammability standard was issued to reduce unreasonable risks of burn injuries and deaths from fires associated with mattresses and mattress pads. The standard prescribes a test to assure that a mattress or mattress pad will resist ignition from a smoldering cigarette. The standard requires manufacturers to perform prototype tests of each combination of materials and construction methods used to produce mattresses with accepable results.

The Commission staff will use the information obtained from this survey to determine appropriate methods for improving the level of compliance with the mattress standard by the futon segment of the mattress industry.

Additional Details About the Proposed Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: FY 1990 Mattress Enforcement Program.

Type of request: New collection.

Frequency of collection: One time.

General description of respondents: Manufacturers of futons.

Number of respondents: 50.

Number of hours per respondent: 6.

Total number of hours for all respondents: 300.

Comments: Comments on this request for approval of a collection of information should be addressed to Pamela Barr, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395-7340. Copies of the request for approval of a collection of information are available from Francine Schacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20206; telephone (301) 492-6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: August 15, 1989.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 89-19620 Filed 8-18-89; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning OMB Report Control Number 9000-0017, Jewel Bearings and Related Items Certificate Requirements.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Roger M. Schwartz, Office of Federal Acquisition Policy, (202) 523-4748.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* This request covers recordkeeping and information collection requirements regarding the need for and use of jewel bearings and related items. The requirements are necessary to ensure contractor compliance with contract clauses regarding required usage of Government-owned sources of supplies for such items.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 13,500; responses per respondent, 20; total annual responses, 270,000; hours per response, .1125 and total response burden hours, 30,375.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0017, Jewel Bearings and Related Items Certificate Requirements.

Dated: August 10, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89-19690 Filed 8-18-89; 8:45 am]

BILLING CODE 6820-JC-M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive Patent License to LTC Corp.

The Department of the Army announces its intention to grant an exclusive license to LTC Corporation, having a place of business at 675 Prospect Street, Trenton, NJ 08618, under U.S. Patent No. 4,721,362 entitled "Phase Gradient Contrast Microscope", issued on 26 January 1988, and under U.S. Patent Application Serial No. 07/296,555, "Phase Contrast Image Microscopy Using Optical Phase Conjugation in a Hybrid Analog/Digital Design", filed 11 January 1989.

The proposed exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and the Department of Commerce's regulations at 37 CFR 404.7. The proposed license may be granted unless, within 60 days from the date of this notice, the Department of the Army receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest. All comments and materials must be submitted to the Intellectual Property Counsel of the Army, Patents, Copyrights, and Trademarks Division, Office of the Judge Advocate General, Department of the Army, 5611 Columbia Pike, Falls Church, VA 22041-5013.

For further information concerning this notice, contact: Earl T. Reichert, Patents, Copyrights, and Trademarks Division, Office of the Judge Advocate General, Department of the Army, 5611 Columbia Pike, JALS-PC, Room 332-A, Falls Church, VA 22041-5013, Telephone No. (202) 756-2623.

Kenneth L. Denton,

Department of the Army, Alternate Liaison Officer With the Federal Register.

[FR Doc. 89-19559 Filed 8-18-89; 8:45 am]

BILLING CODE 3710-08-M

U.S. Army Laboratory Command; Availability of a Method for Processing $LiCoO_2$ Battery for Exclusive Licensing

In accordance with 37 CFR 404.7 announcement is made of the availability of a method for processing flexible $LiCoO_2$ cathodes for use in a rechargeable $Li/LiCoO_2$ electrochemical cell containing an electrolyte of $LiAsF_6$ in methylacetate for exclusive licensing. Inventors at the U.S. Army Electronics Technology and Devices Laboratory (USA ET&DL) have been awarded a patent (U.S. Patent #4,818,647) on a method for preparing $LiCoO_2$ cathodes using an aqueous dough mixture of the active material, conductive difuent, and an emulsified teflon binder. The cathode dough is roll pressed onto both sides of an expanded aluminum grid current collector and sintered at 280°C under vacuum for 1 hour. This preparation results in a cathode structure having excellent flexibility and a high porosity of at least 50 percent. Use of cathodes prepared by this method in $Li/LiCoO_2$ cells with $LiAsF_6$ in methyl acetate, as the electrolyte demonstrated good rate capabilities, low temperature performance, and cycle life. Because $LiCoO_2$ was found to be stable in the presence of air and moisture, this cathode preparation is suitable for use under non-specialized manufacturing environments thus eliminating the need to prepare the cathodes in costly low humidity rooms.

Under the authority of section 11 (a) (2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and section 207 of title 35, United States Code, the Department of the Army as represented by USA ET&DL wishes to exclusively license rights to this cathode preparation to a party interested in manufacturing and commercially selling a rechargeable $LiCoO_2$ electrochemical cell.

For further technical information, contact: Mr. Edward J. Plichta, US Army Electronics Technology and Devices Laboratory, ATTN: SLCET-PR, Fort Monmouth, NJ 07703-5000; (201) 544-2691.

Kenneth L. Denton,

Department of the Army, Alternate Liaison Officer With the Federal Register.

[FR Doc. 89-19588 Filed 8-18-89; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Intent To Prepare an Environmental Impact Statement for Trestle Replacement at Naval Weapons Station Earle, Colts Neck, NJ

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council of Environmental Quality regulations (40 CFR parts 1500-1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) for the replacement of the trestle which connects the deep water piers to the shoreline at Naval Weapons Station (NWS) Earle, Colts Neck, New Jersey. A waterfront location at Leonardo, New Jersey, is maintained by NWS for homeporting of ammunition ships of the U.S. Atlantic Fleet.

Three deep water piers located about two miles off shore are connected by a 34 feet wide trestle. This trestle supports two rail lines and a truck travel lane. Replacement of the trestle is necessary due to accelerated deterioration of the concrete deck. Detailed investigations of the structural conditions of the deck and supporting wood piles have revealed significant deterioration of the concrete cementing agent, thus resulting in reduced carrying capacity of the trestle system.

Three alternatives are currently identified for evaluation in the EIS:

1. No action alternative (continued use of the existing deteriorated trestle).
2. Redecking of existing trestle.
3. Construction of a new trestle adjacent to existing trestle.

The proposed new trestle would utilize concrete or steel piles to support a reinforced concrete deck. The trestle would also carry utility lines to support homeported ships; five ships are homeported at NWS. In order to improve safety or truck/train operations on the trestle, it would be wider to allow two truck travel lanes and two rail lines.

Environmental impacts resulting from the proposed action would be associated with construction of the replacement trestle, including a one time dredging of an access channel to allow a barge mounted pile driver access to the shallow, near-shore water. This channel would be about 500 feet wide and would extend about 3,500 feet from shore to the 8 feet mean level water contour. Channel depth would be 8 feet with dredge depths ranging from one to seven feet. About 350,000 cubic yards of sediment would be dredged. Following trestle construction, the channel would be allowed to return to normal depth. Impacts from trestle construction, channel dredging and dredge material disposal will be addressed in the EIS.

The U.S. Army Corps of Engineers has agreed to act as a cooperating agency pursuant to 40 CFR 1501.6. The Corps will review a Navy permit application or the proposed action pursuant to authorization found in section 10 of the River and Harbor Act, section 404 of the Clean Water Act, and section 103 of the Marine Protection, Research and Sanctuary Act.

Efforts are underway to retain an unaffiliated consulting firm to prepare Draft and Final Environmental Impact Statements. Publication of the DEIS is planned for January 1990.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. The Navy will hold a public scoping meeting on September 19, 1989, beginning at 7:30 pm, in Building R-1 (Gundeck Club), at Naval Weapons Station Waterfront location in Leonardo, New Jersey. This meeting will be advertised in the Colts Neck area newspapers.

A formal presentation will precede request for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to 5 minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meetings. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed no later than September 30, 1989 to Mr. Robert Ostermueller (telephone (215) 897-6282 (Code 2022)), Northern Division, Naval Facilities Engineering Command, U.S. Naval Base, Philadelphia, Pennsylvania 19112-5000.

Dated: August 15, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-19568 Filed 8-18-89; 8:45 am]

BILLING CODE 3810-AE-M

Government-Owned Inventions; Availability for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice of availability of invention for licensing.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is made available for licensing by the Department of the Navy.

Requests for copies of the patent application cited should be directed to the Office of the Chief of Naval Research (Code OOCCIP), 800 North Quincy Street, Arlington, Virginia 22217-5000 and must include the application serial number.

DATE: August 21, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 N. Quincy Street, Arlington, VA 22217-5000, telephone (202) 696-4001.

Patent Application Ser. No. 275,433: Immunotherapy Involving CD28 Stimulation; filed November 23, 1988.

Dated: August 16, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-19569 Filed 8-18-89; 8:45 am]

BILLING CODE 3810-AE-M

CNO Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Space Task Force will meet September 26-27, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue,

BEST COPY AVAILABLE

Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to assess the Navy's potential role in space. The entire agenda of the meeting will consist of discussions of key issues regarding space exploration in support of U.S. national security, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Faye Buckman, Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: August 15, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-19567 Filed 8-18-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Intent to Repay to the Georgia Department of Education Funds Recovered as a Result of Final Audit Determinations

AGENCY: Department of Education.

ACTION: Notice of Intent to Award Grantback Funds.

SUMMARY: Under Section 456 of the General Education Provisions Act, the U.S. Secretary of Education (Secretary) intends to repay to the Georgia Department of Education (GDE) under a grantback arrangement an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of five final audit determinations. This notice describes the GDE's plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATES: Comments must be received on or before (September 20, 1989.

ADDRESSES: All comments concerning this notice should be addressed to Mrs. Alicia Coro, Director, School Improvement Programs, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mrs. Alicia Coro, telephone (202) 732-4857.

SUPPLEMENTARY INFORMATION:

A. Background

The Department has recovered a total of $237,087.57 from the GDE in resolution of final audit determinations issued by the Assistant Secretary for Elementary and Secondary Education. These final audit determinations arose from the organization-wide audits of the GDE for fiscal years 1983-1986. They involved various misexpenditures by the GDE under Chapter 2 of the Education Consolidation and Improvement Act of 1981 (ECIA) (20 U.S.C. 3811-3876 (1982)), which consolidated a number of categorical Federal education programs into a single authorization of grants to States. Specifically, the Assistant Secretary determined that the GDE had used Chapter 2 funds to supplant State funds in violation of Section 585(b) of Chapter 2 (20 U.S.C. 3861(b) (1982)) and for unallowable activities in violation of Sections 561(a) and 571-582 of Chapter 2 (20 U.S.C. 3811(a), 3821-3842 (1982)).

B. Authority for Awarding a Grantback

Section 456(a) of the General Education Provisions Act (GEPA) (20 U.S.C. 1234e(a) (1982)) provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for that program and may arrange to repay to the State affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that—

(1) The practices and procedures of the State that resulted in the final audit determinations have been corrected and the State is, in all other respects, in compliance with the requirements of the applicable program;

(2) The State has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) The use of the funds to be awarded under the grantback arrangement in accordance with the State's plan would serve to achieve the purpose of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to Section 456(a)(2) of GEPA, the GDE has applied for a grantback of $177,816 and has submitted a plan for use of the grantback funds under Chapter 2 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended. Although the final audit determinations resulted from improper expenditures of Chapter 2, ECIA funds, that program has been repealed. Chapter 2 of the ESEA is the successor program.

Under its plan, the GDE proposes to implement the Resource Alignment Project (RAP). The major purpose of the project would be to provide administrators, curriculum specialists, media specialists, and teachers with current, useable and accessible information needed for instructional decisions. Activities of the project would include the alignment of textbooks, criterion and norm referenced tests, computer software, video programs, and other available instructional materials with Georgia's Quality Core Curriculum objectives. The alignment information would be entered into a statewide database which would be available to local school systems throughout the State of Georgia.

The first phase of the project would be completed by the end of FY 1989 and would include long-range planning and the beginning of the alignment process. A total of $34,492 of the requested grantback monies would be used for this phase. The second phase of the project would be conducted over a period of two years. The second phase would include continuation of first-year efforts, additional activities in developing a statewide data base system, identification of implementation sites, and evaluation. A total of $143,324, the balance of the requested grantback monies, would be used for the second phase.

D. The Secretary's Determination

The Secretary has carefully reviewed the GDE's grantback request, the GDE's plan, and other information submitted by the GDE. Based upon that review, the Secretary has determined that the conditions under Section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least thirty days prior to entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the GDE under a grantback arrangement. The grantback award would be in the amount of $177,816, which is 75 percent of the funds recovered by the Department as a result of the final audit determinations.

F. Terms and Conditions Under Which Payment Under a Grantback Arrangement Would Be Made

Section 456(b) of GEPA provides that any payments made under a grantback arrangement shall be subject to terms and conditions that the Secretary deems necessary to accomplish the purposes of the affected program, including the submission of periodic reports on the use of the repaid funds and evidence that the State has consulted with parents or representatives of the population that would benefit from the grantback award.

The GDE agrees to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The GDE will expend the funds awarded under the grantback in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the GDE submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) Pursuant to section 456(c) of GEPA, the GDE will obligate $34,492 of the grantback funds by September 30, 1989, $712 of the funds by September 30, 1990 and the remainder of the funds by September 30, 1991.

(3) The GDE will, not later than January 1, 1992, submit a report to the Secretary that—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget;

(b) Shows that the funds awarded under the grantback have been liquidated; and

(c) Describes the results and effectiveness of the project for which the funds were spent.

(4) The GDE will maintain separate accounting records documenting the expenditure of the grantback funds.

(Catalog of Federal Domestic Assistance (CFDA) Number 84.151; Chapter 2 of Title I of the Elementary and Secondary Education Act of 1965, as amended)

Dated: August 15, 1989.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89-19572 Filed 8-18-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

Public Hearings To Solicit Views From Public Officials and the General Public on the Development of a National Energy Strategy

AGENCY: Office of the Secretary, DOE.

ACTION: Notice of meetings to invite public officials and the general public to provide comments on the development of a national energy strategy.

SUMMARY: This is the fourth in a series of public hearings being conducted throughout the country by the Department of Energy soliciting comments from interested parties on a wide range of energy issues and recommended solutions. Dates and Procedures: The public hearing is scheduled for August 28, 1989, from 8:30 a.m. to 1:00 p.m. and 1:45 p.m. to 6:00 p.m., at the Washington State Convention and Trade Center, 800 Convention Place, Level 6, Seattle, Washington. Individuals interested in testifying at this hearing should contact William H. Hatch, Office of Policy, Planning and Analysis, Department of Energy at (202) 586-4767 no later than 4:00 p.m., Wednesday, August 23, 1989. Persons wishing to submit testimony for the record in conjunction with this hearing should forward written comments to William H. Hatch, Office of Policy, Planning and Analysis, Department of Energy, Forrestal Building, Room 7H-034, 1000 Independence Avenue SW., Washington, DC 20585. All testimony received will be compiled and made available to the public.

The fifth hearing in this initial series has been scheduled in Louisville, Kentucky, on September 8, 1989. As soon as information is available regarding the specific location and time, it will be announced.

FURTHER INFORMATION CONTACT: For further information, please write or call William H. Hatch, Office of Policy, Planning and Analysis, Department of Energy, Forrestal Building, Room 7H-034, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4767.

Linda G. Stuntz,

Deputy Under Secretary, Office of Policy, Planning and Analysis, U.S. Department of Energy.

[FR Doc. 89-19703 Filed 8-17-89; 11:54 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 3109-001]

Blue River Dam, Oregon; Availability of Environmental Assessment

August 11, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Blue Rive Dam Project located on the Blue River in Lane County, near Eugene, Oregon and has prepared an Envrionmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-19532 Filed 8-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-42-004]

Pacific Offshore Pipeline Co.; Compliance Filing of Proposed Change in FERC Gas Tariff Rate

August 14, 1989.

Take notice that Pacific Offshore Pipeline Company ("POPCO") on August 8, 1989, tendered for filing the following proposed change to its FERC

Gas Tariff, Original Volume No. 1, to be effective May 24, 1989:

Third Revised Sheet No. 6

POPCO states that the tariff sheet has been filed in compliance with a Letter Order dated July 14, 1989 in the above referenced Dockets. POPCO is filing this revised tariff sheet to correct for a mispagination which occurred with its June 23, 1989 compliance filing.

Copies of the filing were served on POPCO's supplier, customer, and the interested State Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before August 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19533 Filed 8-18-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3632-7]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractors, Versar, Inc.; Radian Corporation; DPRA, Inc.; Tetra Tech, Inc.; and Jacobs Engineering Group information which has been, or will be, submitted to EPA under section 3007 of the Resource Conservation and Recovery Act (RCRA). These firms are assisting EPA in conducting analyses of the data submitted to EPA under section 3007 of RCRA for the development of treatment standards for hazardous wastes subject to the land disposal restriction rules. Some of the information may have a claim of business confidentiality.

DATES: The transfer of data submitted to EPA will occur no sooner than August 28, 1989.

ADDRESSES: Comments should be sent to Dina Villari, Document Control Officer, Office of Solid Waste (OS-312), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Dina Villari, Document Control Officer, Office of Solid Waste (OS-312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4670.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

In November, 1984, Congress enacted amendments to the Resource Conservation and Recovery Act (RCRA) requiring the Agency to establish standards for treatment of hazardous wastes prior to land disposal. A major portion of this program involves identifying generators and treaters of these wastes and collecting and analyzing data from full-scale technologies.

Under EPA Contract NO. 68-01-7310, Versar, Inc.; DPRA, Inc.; Radian Corporation; Tetra Tech, Inc.; and Jacobs Engineering Group will assist the Waste Treatment Branch of the Office of Solid Waste in conducting analyses of data submitted to EPA under section 3007 of RCRA for the development of treatment standards for hazardous wastes subject to the land disposal restriction rules. Some of the information being transferred may have been claimed as confidential business information.

In accordance with 40 CFR 2.305(h), EPA has determined that Versar, Inc.; Radian Corporation; DPRA, Inc.; Tetra Tech, Inc.; and Jacobs Engineering Group require access to confidential business information (CBI) submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is issuing this notice to inform all submitters of confidential business information that EPA may transfer to these firms, on a need-to-know basis, CBI collected under the authority of RCRA. Upon completing their review of materials submitted, the contractors will return all such materials to EPA.

Versar, Inc.; Radian Corporation; DPRA, Inc.; Tetra Tech, Inc.; and Jacobs Engineering Group have been authorized to have access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA will approve the security plan of the contractors and will inspect their facilities and approve them prior to RCRA CBI being transmitted to the contractors. Personnel from these firms will be required to sign non-diclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contractor Requirements Manual.

Dated: August 4, 1989.

Robert L. Duprey,

Acting Assistant Administrator.

[FR Doc. 89-19613 Filed 8-18-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3632-6]

Extension of the Period for Preparation of Regional 404(c) Recommendation Concerning the Use of Big River, Mishnock River, Their Tributaries and Adjacent Wetlands as Disposal Sites; Kent County, RI

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of Extension of the Period for Preparation of Regional 404(c) Recommendation.

SUMMARY: On February 1, 1989, EPA published in the **Federal Register** (54 FR 18694) a Notice of a Proposed Determination, under Section 404(c) of the Clean Water Act, to prohibit the use of Big River, Mishnock River, their tributaries and adjacent wetlands as disposal sites for the purpose of building a reservoir. The notice established a public comment period, which ended on July 31, 1989. On June 8, 1989, a public hearing concerning the Proposed Determination was held in Coventry, Rhode Island. EPA has received over 200 written comments, including substantial technical field data, which need to be evaluated. In order to allow full consideration of the extensive administrative record, the time period provided in 40 CFR 231.5(a) for the preparation of the Regional Recommendation, the next step in the 404(c) process, is being extended until close of business, October 10, 1989. This time extension is made under authority of 40 CFR 231.8.

FOR FURTHER INFORMATION CONTACT: Mr. Mark J. Kern, EPA Water Quality Branch, JFK Federal Building, WWP-1900, Boston, MA 02203-2211, (617) 565-4421.

Dated: August 11, 1989.

Paul G. Keough,

Acting Regional Administrator, Region I.

[FR Doc. 89-19614 Filed 8-18-89; 8:45 am]

BILLING CODE 6560-50-M

FARM CREDIT ADMINISTRATION

Performance Review Board; Designation of Members

AGENCY: Farm Credit Administration.

ACTION: Notice.

SUMMARY: In accordance with the provisions of Title 5, U.S.C. 4313(c)(4), the Farm Credit Administration hereby publishes a roster of the names of the executives who may be designated as membess of the Agency's Performance Review Board(s). The roster is as follows:

1. Francis J. Boyd, Jr.;
2. David C. Baer;
3. Anne E. Dewey;
4. Michael J. Powers;
5. Michael A. Bronson; and
6. William L. Robertson.

Dated: August 15, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89-19612 Filed 8-18-89; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.7 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200277

Title: Port of Portland Terminal Agreement.

Parties: Port of Portland (Port), Oregon Terminal Company (OTC).

Filing Party: Elaine Lycan, Manager, Price Estimating & Regulatory Affairs, Port of Portland, P.O. Box 3529, Portland, OR 97208.

Synopsis: The Agreement provides for OTC to manage and operate the Port's Container Freight Station located at Fulton Terminal 6, Port of Portland. As compensation, the Port will pay OTC a monthly base management fee of $4,000 per month, subject to adjustment commencing with the third quarter of the Agreement based on a productivity index. The term of this Agreement is three years.

By Order of the Federal Maritime Commission.

Dated: August 15, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-19566 Filed 8-18-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

The Bank of Novo Scotia, Toronto, Canada; Proposal to Underwrite and Deal in Debt and Equity Securities to a Limited Extent

The Bank of Nova Scotia, Toronto, Canada ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), for permission for its indirect subsidiary, ScotiaMcLeod (USA) Inc., New York, New York ("Company"), to underwrite and deal in all types of debt and equity securities to a limited extent.

Company is currently authorized to: (1) Provide brokerage and investment advisory services to institutional customers; (2) provide advice in connection with financial transactions; (3) provide financial advice to the Canadian federal and provincial governments, such as with respect to the issuance of their securities in the United States; (4) provide discounts brokerage services; (5) provide portfolio investment advice and research and furnish general economic information and advice; and (6) underwrite and deal in securities eligible to be underwritten and dealt in by U.S. member banks. 74 Federal Reserve Bulletin 249 (1988).

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has previously determined that underwriting and dealing in debt and equity securities that are not eligible to be underwritten and dealt in by member banks ("ineligible securities") are closely related and proper incidents to banking, subject to certain conditions. J.P. Morgan & Co. Incorporated, The Chase Manhatan Corporation, Bankers Trust New York Corporation, Citicorp and Security Pacific Corporation, 75 Federal Reserve Bulletin 192 (1989) ("*Morgan* Order").

Applicant has proposed to underwrite and deal in ineligible debt and equity securities under limitations that differ from those approved by the Board in its *Morgan* Order. Generally, Applicant proposes that the framework of limitations established by the Board in the *Morgan* Order should not apply to its operations outside the United States. For example, under the terms of its proposal, Applicant, which is a foreign bank as well as a bank holding company, and its foreign offices and subsidiaries would be permitted to lend to and in support of Company. Applicant does not propose that any U.S. bank, branch, or agency affiliate would lend or otherwise provide support to Company. Applicant has also made other commitments as alternatives to those approved in the *Morgan* Order.

Applicant has also requested additional authority for Company: (1) To underwrite and deal in ineligible debt and equity securities in amounts generating up to 10 percent of Company's gross revenues; (2) to underwrite and deal in equity securities immediately without regard to the one-year waiting period established by the Board in the *Morgan* Order; and (3) to underwrite and deal in securities representing interests in, or secured by, obligations originated or sponsored by its affiliates if such securities are rated by a nationally-recognized rating agency or are issued or guaranteed by a U.S. government agency or a U.S. government-sponsored agency. Applicant's commitments and application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and

does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act or the Glass-Steagall Act.

Any comments or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than September 21, 1989. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Board of Governors of the Federal Reserve System, August 15, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-19577 Filed 8-18-89; 8:45 am]

BILLING CODE 6210-01-M

Banc One Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Govenors not later than September 8, 1989.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation,* Columbus, Ohio; to acquire Weaver Bros., Inc., Chevy Chase, Maryland, and thereby engage in originating and arranging 1-4 family residential mortgages, commercial mortgage financing, and mortgage servicing pursuant to § 225.25 (b)(1) an (b)(14) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 15,1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-19573 Filed 8-21-89; 8:45 am]

BILLING CODE 6210-01-M

Cardinal Bancshares, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 8, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Cardinal Bancshares, Inc.,* Lexington, Kentucky; to open a consumer loan office in Harlan, Kentucky, through its subsidiary, Cardinal Credit Corporation, and thereby engage *de novo* in offering consumer loans up to $15,000 regulated by the Kentucky Consumer Loan Act as well as unregulated loans in amounts greater than $15,000, and purchase retail installment notes on consumer goods and services pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the Harlan County, Kentucky area, including but not limited to the communities of Evarts, Harlan, Loyall, and Wallins Creek.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *CNBC Bancorp, Inc.,* Chicago, Illinois; to engage *de novo* through its subsidiary, CNBC Investment Corp., Chicago, Illinois, in making, acquiring, and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. *CNBC Bancorp, Inc.,* Chicago, Illinois; to engage *de novo* through its subsidiary, CNBC Leasing Corp., Chicago, Illinois, in leasing personal or real property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation,* Los Angeles, California; to engage *de novo* through its subsidiary, Sumisei Secpac Investment Advisors, Inc., Los Angeles, California, in investment advisory services, acting as investment financial advisor to the extent of (1) serving as the advisory company for mortgage or real estate investment trusts, (2) serving as investment advisor (as defined in section 2(a)(20) of the Investment Company Act of 1940) to investment companies registered under that Act including sponsoring, organizing, and managing closed-end investment companies, (3) providing portfolio investment advice to any other persons, (4) furnishing general economic information and advice, general economic statistical forecasting services and industry studies, and (5) providing financial advice to state and local governments, such as with respect to the issuance of their securities pursuant to § 225.25(b)(4) of the Board's Regulation Y. These activities will be conducted through a joint venture which is owned 50 percent by Security Pacific and 50 percent by Sumitomo Life Insurance Company. Initially, Company will only engage in investment advisory activities with respect to a portion of Sumitomo's own investment portfolio allocated to U.S. Securities.

Board of Governors of the Federal Reserve System, August 15, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-19574 Filed 8-18-89; 8:45 am]

BILLING CODE 6210-01-M

Fifth Third Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 8, 1989.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Fifth Third Bancorp,* Cincinnati, Ohio; to acquire 100 percent of the voting shares of The National Bank and Trust Company of Paris, Paris, Kentucky.

2. *Indebancorp,* Oak Harbor, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The National Bank of Oak Harbor, Oak Harbor, Ohio.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Barrow Bancshares, Inc.,* Winder, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Barrow Bank & Trust Company, Winder, Georgia.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Huron National Bancorp, Inc.,* Rogers City, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Huron National Bank, Rogers City, Michigan.

2. *Marseilles Bancorporation, Inc.,* Marseilles, Illinois; to become a bank holding company by acquiring at least 66⅔ percent of the voting shares of Union National Bank of Marseilles, Marseilles, Illinois.

3. *Premier Bancorp, Inc.,* Farmer City, Illinois; to acquire 19.6 percent of the voting shares of FM Bancorp, Inc., Paxton, Illinois, and thereby indirectly acquire Melvin State Bank, Melvin, Illinois.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *BFW Financial Corporation,* Burleson, Texas; to acquire 100 percent of the voting shares of Alvord Financial Corporation, Alvord, Texas, and thereby indirectly acquire The Alvord National Bank in Alvord, Alvord, Texas.

2. *GNB Bancshares, Inc.,* Gainesville, Texas, to become a bank holding company by acquiring 100 percent of the voting shares of Guaranty National Bancshares, Inc., Wilmington, Delaware, and thereby indirectly acquire Gainesville National Bank, Gainesville, Texas.

3. *Guaranty National Bancshares, Inc.,* Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Gainesville National Bank, Gainesville, Texas.

Board of Governors of the Federal Reserve System, August 15, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-19575 Filed 8-18-89; 8:45 am]

BILLING CODE 6210-01-M

Fourth Financial Corp., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank

indicated or the offices of the Board of Governors not later than September 8, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Fourth Financial Corporation,* Wichita, Kansas; to merge with Southwest Financial Corporation, Garden City, Kansas, and thereby indirectly acquire The Garden National Bank, Garden City, Kansas.

In connection with this application, Applicant proposes to engage in credit-related insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 15, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-19676 Filed 8-18-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meeting in September

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for the forthcoming meeting of an agency extramural science advisory board in the month of September 1989. The Board will discuss current research program activities. Attendance by the public will be limited to space available.

Committee Name: Extramural Science Advisory Board, NIAAA.

Date and Time: September 12: 1:00 p.m.–6:00 p.m.; September 13: 9:00 a.m.–5:00 p.m.

Place: National Institutes of Health, Building 31, Conference Room 9, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting: Open.

Contact: Michael J. Lewis, Parklawn Building, Room 16C–20, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.

Purpose: The Advisory Board advises the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Alcohol Abuse and Alcoholism, based on an ongoing review of the direction, scope, balance, and emphasis of the Institute's extramural science program.

Substantive program information may be obtained from the contract person listed above. The NIAAA Advisory Board Staff Coordinator, Ms. Nancy Colladay, Room 16C–23, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 will furnish summaries of the meeting and a roster of committee members upon request.

Dated: August 15, 1989.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89-19630 Filed 8-18-89; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

In Vitro Systems for Human Biological Monitoring; National Institute for Occupational Safety and Health Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC).

Name: In Vitro Systems for Human Biological Monitoring.

Time and Date: 9:00 a.m.–3:00 p.m.—September 5, 1989.

Place: Robert A. Taft Laboratories, 4676 Columbia Parkway, Auditorium, Cincinnati, Ohio 45226–1998.

Status: Open to the public, limited only by the space available.

Purpose: To review and discuss in vitro systems for the generation of biotransformation data that may be used in the selection of biomarkers of human exposure to chemical xenobiotics.

Contact Person: Donald E. Richards, NIOSH, CDC, Robert A. Taft Laboratories (C23), 4676 Columbia Parkway, Cincinnati, Ohio 45226–1998, Telephone: Commercial: (513) 533–8192, FTS: 684–8192.

Dated: August 15, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-19581 Filed 8-18-89; 8:45 am]

BILLING CODE 4160-18-M

Advisory Committee for Injury Prevention and Control; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following Committee meeting:

Name: CDC Advisory Committee on Injury Prevention and Control.

Time and Date: 9:00 a.m.–5:00 p.m.—September 6, 1989, 9:00 a.m.–3:00 p.m.—September 7, 1989.

Place: Koger Center, Davidson Building, Room 2060, 2858 Woodcock Boulevard, NE, Atlanta, Georgia 30341.

Status: Open to the public, limited only by the space available

Purpose: The Committee will make recommendations on policy, strategy, objectives, and priorities including the balance and mix of intramural and extramural research; advise on the development of a national plan for injury prevention and control and the development of new technologies and their application; and review progress toward injury prevention and control.

Matters to be Discussed: The Committee will discuss its purpose and goals, and map out its agenda for the next 12 months. The meeting will include an orientation to CDC programs and activities related to the prevention and control of injuries.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Mark Rosenberg, M.D., Director, Division of Injury Epidemiology and Control, Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road NE., Mailstop F–36, Atlanta, Georgia 30333, telephone: FTS: 236–4690; Commercial: 404/488–4690.

Dated: August 15, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-19583 Filed 8-18-89; 8:45 am]

BILLING CODE 4160-18-M

Board of Scientific Counselors (BSC); National Institute for Occupational Safety and Health; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following Committee meeting:

Name: NIOSH Board of Scientific Counselors.

Time and Date: 1:00 p.m.–5:00 p.m.—September 11, 1989, 9:00 a.m.–4:30 p.m.—September 12, 1989.

Place: Newport Beach Marriot Hotel, 900 Newport Center Drive, Newport Beach, California.

Status: Closed: 3:45 p.m.–5:00 p.m., September 11, 1989. All other portions of the meeting are open to the public, limited only by the space available.

Purpose: The Board is charged with advising the Director of NIOSH on the scientific quality and efficacy of the Institute's research.

Contact Person: Roy M. Fleming, Sc.D., Executive Secretary, BSC, NIOSH, CDC, Bldg. 1, Room 3057, D30, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephone: Commercial: (404) 639–3343, FTS: 236–3343.

Agenda: Agenda items for the meeting will include announcements, consideration of minutes of the previous meeting, a report from the Director of NIOSH, site visit reports, surveillance subcommittee report, Gouverneur Talc subcommittee report, research needs subcommittee report, discussions of NIOSH research initiatives, and future Board activities. Beginning at 3:45 p.m. through 5:00 p.m., September 11, the Board will discuss certain matters the public disclosure of which would constitute a violation of sections 552b(c)(6) and/or 552b(c)(9)(B) of Title 5 U.S. Code related to personal privacy. Therefore, pursuant to said provisions and the determination of the Acting Director, CDC, this portion of the meeting will not be open to the public.

Agenda items are subject to change as priorities dictate.

The portions of the meeting so indicated are open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: August 15, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-19562 Filed 8-18-89; 8:45 am]

BILLING CODE 4160-18-M

National Committee on Vital and Health Statistics Subcommittee on Minority Health Statistics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Minority Health Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2), of the Public Health Service Act, as amended, announces the following Subcommittee meeting.

Name: NCVHS Subcommittee on Minority Health Statistics.

Time and Date: 10:00 a.m.–3:00 p.m., September 6, 1989.

Place: Room 337A–339A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The Subcommittee will develop a 1990 work plan and develop a report on medically indigent issues.

Contact Person: Substantive program information as well as summaries of the meeting and roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, Room 2–12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7050

Dated: August 15, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-19564 Filed 8-18-89; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: San Francisco District Office, chaired by Ronald M. Johnson, District Director. The topic to be discussed is food labeling.

DATES: Thursday, September 21, 1989, 7:30 p.m. to 8:30 p.m.

ADDRESSES: O'Connor Hospital, Medical Office Bldg. Auditorium, 2105 Forest Ave., San Jose, CA 95128.

FOR FURTHER INFORMATION CONTACT: Janet McDonald, Consumer Affairs Officer, Food and Drug Administration, 50 United Nations Plaza, Rm. 528, San Franscisco, CA 94102, 415–556–1364.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: August 11, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-19612 Filed 8-18-89; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BERC-638-GN]

Medicare Program; National Coverage Decisions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice lists those current Medicare national coverage decisions which have been issued in the Medicare Coverage Issues Manual (HCFA Pub. 6). These national coverage decisions are also widely distributed through the U.S. Government Printing Office, the National Technical Information Service, and private publishers such as the Commerce Clearing House. From time to time, some of the individual decisions have been published in the Federal Register. In this Federal Register notice, HCFA is publishing a compilation of these national coverage decisions. We will publish subsequent national coverage decisions in the Federal Register on a quarterly basis.

FOR FURTHER INFORMATION CONTACT: Sam Della Vechia, (301) 966–5316.

SUPPLEMENTARY INFORMATION:

I. Process for Making National Coverage Decisions

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare program, a program which pays for health care and related services for 33 million Medicare beneficiaries. Under the Medicare program, the benefits available to eligible beneficiaries are called "covered" services and include those medical supplies, treatment procedures and technologies that often have been referred to as "items." Throughout this notice, the term "services" refers to both services and items.

Except in circumstances specified in the statute, Medicare program funds cannot be used to pay for services furnished to Medicare beneficiaries that are not covered under the Social Security Act (the Act). Additionally, section 1862(a)(1)(A) of the Act prohibits payment under the Medicare program for any expense incurred for services "which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member."

The coverage decisions listed in the Medicare Coverage Issues Manual and this notice constitute "national coverage determination[s]," as provided for in

sections 1869(b)(3) and 1871(a)(2) of the Act. HCFA uses the terms "national coverage decision" and "national coverage determination" interchangeably. These sections of the Act address issuance, publication, and administrative and judicial review of national coverage decisions. In the absence of national coverage decisions, local Medicare contractors have the discretion to determine whether a particular service that meets all other requirements for coverage appears to be reasonable and necessary and therefore covered under Medicare.

The process by which national coverage decisions would be made and the criteria for these decisions are described in a proposed rule published in the **Federal Register** on January 30, 1989 (54 FR 4302). (We are currently considering public comments on that proposed rule and are developing the final rule that will be published in the **Federal Register**. The statutory basis for all national coverage decisions in the Medicare Coverage Issues Manual is section 1862(a)(1)(A) of the Act (the "not reasonable and necessary" exclusion) unless otherwise specified. If a decision to exclude or limited a service is imposed under another statutory authority, that statutory basis for exclusion or limitation constitutes the sole basis for that decision, unless otherwise specified. The section 1862(a)(1)(A) exclusion is applicable only if no other statutory basis for exclusion applies.

In addition to the national coverage decisions that have been published in the Medicare Coverage Issues Manual (HCFA Pub. 6), others have been published in Part 3 of the Intermediary (HCFA Pub. 13–3) and Carriers (HCFA Pub. 14–3) manuals, as well as in regulations, rulings and **Federal Register** notices. Many of these same national coverage decisions also have been repeated in the program manuals issued to Medicare providers. Those manuals include: Outpatient Physical Therapy Provider and CORF (HCFA Pub. 9), Hospital (HCFA Pub. 10), Home Health Agency (HCFA Pub. 11), SNF (HCFA Pub. 12), Hospice (HCFA Pub. 21), and Renal Dialysis Facility (HCFA Pub. 29).

II. Purpose of this General Notice

This notice lists those current Medicare national coverage decisions issued in the Medicare Coverage Issues Manual, which we have included as an appendix. All future revisions to the Medicare Coverage Issues Manual will be published in the Federal Register as general notices on a quarterly basis.

An individual or organization interested in receiving the Medicare Coverage Issues Manual (HCFA Pub. 6) and revisions to it may purchase a subscription by contacting either:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (Telephone (202) 783–3238)

or

National Technical Information Service, U.S. Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, (Telephone (703) 487–4630).

Authority: Section 1102, 1862, 1869 and 1871 of the Social Security Act (42 U.S.C. 1302, 1395(ff), 1395(hh) and 1395(y)).

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance and Program 13.774, Medicare Supplementary Medical Insurance).

Dated: July 13, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Appendix—Medicare Coverage Issues Manual

Foreword

A. *Function of the Medicare Coverage Issues Manual.*—The Coverage Issues Manual sets forth whether specific medical items, services, treatment procedures or technologies can be paid for under Medicare. National coverage decisions have been made on the items addressed in this manual. All decisions that items, services, etc. are not covered are based on § 1862(a)(1) of the Social Security Act (the "not reasonable and necessary" exclusion) unless otherwise specifically noted. Where another statutory authority for denial is indicated, that is the sole authority for denial. Where an item, service, etc. is stated to be *covered*, but such coverage is explicitly limited to specified indications or specified circumstances, all limitations on coverage of the items or services because they do not meet those specified indications or circumstances are based on § 1862(a)(1) of the Act. Where coverage of an item or service is provided for specified indications or circumstances but is not explicitly excluded for others, or where the item or service is not mentioned at all in this Manual, the Intermediary Manual, or the Carriers Manual, it is up to the Medicare contractor to make the coverage decision, in consultation with its medical staff, and with the Health Care Financing Administration (HCFA) when appropriate, based on the law, regulations, rulings and general program instruction.

B. *Contents and Organization.*—

1. *Contents.*—The statutory and policy framework within which coverage decisions are made may be found in title XVIII of the Social Security Act, and in Medicare regulations, rulings, and other instructions of HCFA issued under its authority, including this manual and the Intermediary and Carriers Manuals. Certain sections may include cross-references to specific sections of the statute, regulations, or other Medicare manuals.

The coverage decisions in the manual will be kept current, based on the most recent medical and other scientific and technical advice available to HCFA.

2. *Organization.*—The material is organized by categories, e.g., Medical Procedures, Supplies, Diagnostic Services. A Table of Contents is provided at the beginning of the manual designating coverage decision categories. Each subject discussed within the category is listed and identified by a number.

Revisions to the manual are issued through new pages; the reader is not asked to pencil-in changes in the text. Changed material will be indicated in the left margin of a page in the following manner:

Line on which change begins.
Line on which change ends.

The revision transmittal sheet identifies new material and summarizes the principal changes. When a change in policy or procedure is involved, the background and effective date for the change is provided. If, at a later date, you wish to refer to the background explanation given on a transmittal sheet, you can identify the transmittal by its number which appears on each manual page.

C. *Use of the Revision Transmittal Check Sheet.*—Immediately after the title page, there is a check sheet on which receipt of revisions can be recorded. Revised manual transmittals should be filed in transmittal number order to avoid discarding a more recent page in favor of an older one.

If it appears that you have not received a particular transmittal, allow 10 working days after receipt of a higher numbered transmittal before requesting a transmittal that is missing. Transmittals are not always distributed in strict numerical sequence.

D. *Effective Dates for Medicare Coverage Issues Manual Issuances.*—Manual transmittals specify whether the material involves a new policy or procedure, a change, or simply a clarification of existing policies or procedures. For a new or changed policy or procedure, the transmittals and the manual text specify the effective date. It usually carries prospective dates. However, a policy or procedural issuance which corrects a prior instruction may be given retroactive effect, as specified on the transmittal. A clarification is intended to improve the understanding of policies/procedures that are already in effect, and an effective date is not specified.

Coverage Issues

Medical Procedures	
Colonic Irrigation	35–1
Manipulation	35–2
Heat Treatment, Including the Use of Diathermy and Ultrasound for Pulmonary Conditions	35–3
Ultrasonic Surgery	35–4
Cellular Therapy	35–5
Thermogenic Therapy	35–6
Carotid Body Resection/Carotid Body Denervation	35–7
Acupuncture	35–8
Phaco-Emulsification Procedure-Cataract Extraction	35–9
Hyperbaric Oxygen Therapy	35–10
Sterilization	35–11
Plastic Surgery to Correct "Moon Face"	35–12
Prolotherapy, Joint Sclerotherapy, and Ligamentous Injections With Sclerosing Agents	35–13
Consultations With a Beneficiary's Family and Associates	35–14
Postural Drainage Procedures and Pulmonary Exercises	35–15
Vitrectomy	35–16
Induced Lesions of Nerve Tracts	35–17
Electrosleep Therapy	35–18
Intravenous Histamine Therapy	35–19
Treatment of Motor Function Disorders With Electric Nerve Stimulation	35–20
Inpatient Hospital Pain Rehabilitation Programs	35–21
Outpatient Hospital Pain Rehabilitation Programs	35–21.1
Inpatient Hospital Stays for the Treatment of Alcoholism	35–22
Outpatient Hospital Services for Treatment of Alcoholism	35–22.1
Treatment of Drug Abuse (Chemical Dependency)	35–22.2
Treatment of Alcoholism and Drug Abuse in a Freestanding Clinic	35–22.3
Chemical Aversion Therapy for Treatment of Alcoholism	35–23
Electrical Aversion Therapy for Treatment of Alcoholism	35–23.1
Treatment of Impotency	35–24
Cardiac Rehabilitation Programs	35–25
Treatment of Obesity	35–26
Supplemented Fasting	35–26.1
Biofeedback Therapy	35–27
Oxygen Treatment of Inner Ear/Carbon Therapy	35–29
Blood Platelet Transfusions and Bone Marrow Transplantation	35–30
Treatment of Decubitus Ulcers	35–31
Vertebral Artery Surgery	35–32
Intestinal By-Pass Surgery	35–33
Fabric Wrapping of Abdominal Aneurysms	35–34
Therapeutic Embolization	35–35
Extraintracranial Artery Bypass (EIAB) Surgery in the Treatment of Strokes	35–37
Ultrafiltration, Hemoperfusion and Hemofiltration	35–38
Intraocular Photography	35–39
Gastric Bypass Surgery for Obesity	35–40
Diathermy and Diapulse Treatment	35–41
Withdrawal Teatments for Narcotic Addictions	35–42
Esophageal Speech Training	35–43
General Anesthesia in Cataract Surgery	35–44
Cardiac Catheterization Performed in Other Than A Hospital Setting	35–45
Assessing Patient's Suitability for Electrical Nerve Stimulation Therapy	35–46
Breast Reconstruction Following Mastectomy	35–47
Osteogenic Stimulation	35–48
Hyperthermia for Teatment of Cancer	35–49
Cochleostomy with Neurovascular Transplant for Meniere's Disease	35–50
Hemodialysis for Treatment of Schizophenia	35–51
Laser Procedures	35–52
Liver Transplantation	35–53
Refractive Keratoplasty	35–54
Transvenous (Catheter) Pulmonary Embolectomy	35–55
Fluidized Therapy Dry Heat for Certain Musculoskeletal Disorders	35–56
Electroencephalographic Monitoring During Surgical Procedures Involving the Cerebral Vasculature	35–57
Electroencephalographic Monitoring During Open-Heart Surgery	35–57.1
Thoracic Duct Drainage (TDD) in Renal Transplants	35–58
Endoscopy	35–59
Therapeutic Pheresis (Apheresis)	35–60
Transsexual Surgery	35–61
Invasive Intracranial Pressure Monitoring	35–62
Tinnitus Masking	35–63
Chelation Therapy for Treatment of Atherosclerosis	35–64
Gastric Freezing	35–65
Treatment of Psoriasis	35–66
Melodic Intonation Therapy	35–67
Anti-Gastroesophageal Reflux Implantation	35–69
Closed-Loop Blood Glucose Control Device (CBGCD)	35–70
Nonselective (Random) Transfusions and Living-Related Donor Specific Transfusions (DST in Kidney Transplantation	35–71
Electrotherapy for Treatment of Facial Nerve Paralysis (Bell's Palsy)	35–72
Injection Sclerotherapy for Esophageal Variceal Bleeding	35–73
External Counterpulsation (ECP)	35–74
Intraoperative Ventricular Mapping	35–76
Neuromuscular Electrical Stimulation (NMES) in the Treatment of Disuse Atrophy	35–77
Diagnostic Endocardial Electrical Stimulation (Pacing)	35–78
Anesthesia in Cardiac Pacemaker Surgery	35–79
Treatment of Kidney Stones	35–81
Pancreas Transplants	35–82
24-Hour Ambulatory Esophageal pH Monitoring	35–83
Stereotactic Cingulotomy as a Means of Psychosurgery	35–84
Implantation of Automatic Defibrillators	35–85
Gastric Balloon for Treatment of Obesity	35–86
Heart Transplants	35–87
Extracorporeal Photopheresis	35–88
Supplies—Drugs	
L–Dopa	45–1
Insulin Syringe	45–3
Vitamin B–12 Injections to Strengthen Tendons, Ligaments, Etc., of the Foot	45–4
Hydrophilic Contact Lens for Corneal Bandage	45–7
Laetril and Related Substances	45–10
Autogenous Epidural Blood Graft	45–11
Porcine Skin and Gradient Pressure Dressing	45–12
Physician's Office Within an Institution-Coverage of Services and Supplies Incident to a Physician's Services	45–15
Certain Drugs Distributed by the National Cancer Institute	45–16
Transfer Factor for Treatment of Multiple Sclerosis	45–17
Granulocyte Transfusions	45–18
Transcutaneous Electrical Nerve Stimulation (TENS) for Acute Post-Operative Pain	45–19
Ethylenediamine-Tetra-Acetic Acid (EDTA) Chelation Therapy for Treatment of Atherosclerosis	45–20
Scalp Hypothermia during Chemotherapy to Prevent Hair Loss	45–21
Lymphocyte Immune Globulin, Anti-Thymocyte Globulin (Equine)	45–22
Dimethyl Sulfoxide (DMSO)	45–23
Anti-inhibitor Coagulant Complex (AICC)	45–24
Supplies Used in the Delivery of Transcutaneous Electrical Nerve Stimulation (TENS) and Neuromuscular Electrical Stimulation (NMES)	45–25
Diagnostic Services	
Cardiac Pacemaker Evaluation Services	50–1
Cytotoxic Food Tests	50–2
His Bundle Study	50–3
Gravlee Jet Washer	50–4
Thermography	50–5
Plethysmography	50–6
Ultrasound Diagnostic Procedures	50–7

Coverage Issues—Continued

Consulation Service Rendered by a Podiatrist in a Skilled Nursing Facility	50-8
Gastrophotography	50-9
Vabra Aspirator	50-10
Computerized Tomography	50-12
Magnetic Resonance Imaging	50-13
Electrocardiographic Services	50-15
Hemorheograph	50-16
Laboratory Tests—CRD Patients	50-17
Electron Microscopes	50-18
Pronouncement of Death	50-19
Pap Smears	50-20
Mammograms	50-21
Challenge Ingestion Food Testing	50-22
Histocompatability Testing	50-23
Hair Analysis	50-24
Esophageal Manometry	50-25
Dental Examination Prior to Kidney Transplantation	50-26
Xenon Scan	50-27
Hospital and SNF Admission Diagnostic Procedures	50-28
Cytogenetic Studies	50-29
Nuclear Radiology Procedures	50-30
Evoked Response Tests	50-31
Percutaneous Transluminal Angioplasty (PTA) in the Treatment of Arteriosclerotic Obstructions in the Lower Extremities	50-32
Percutaneous Transluminal Coronary Angioplasty (PTCA) in the Treatment of Stenotic Lesions of a Single Coronary Artery	50-32.1
Percutaneous Transluminal Angioplasty (PTA) in the Treatment of Stenotic Lesions of the Renal Arteries	50-32.2
Percutaneous Transluminal Angioplasty (PTA) in the Treatment of Obstructive Lesions of the Aortic Arch Vessels	50-32.3
Percutaneous Transluminal Angioplasty (PTA) in the Treatment of Obstructive Lesions of Arteriovenous Dialysis Fistulas	50-32.4
Uroflowmetric Evaluations	50-33
Obsolete or Unreliable Diagnostic Tests	50-34
Sweat Test	50-35
Positron Emission Transverse Tomography (PETT) Scans	50-36
Noninvasive Tests of Carotid Function	50-37
Endothelial Cell Photography	50-38
Telephone Transmission of Electroencephalograms	50-39
Ambulatory Electroencephalographic (EEG) Monitoring	50-39.1
Stereotaxic Depth Electrode Implantation	50-40
Human Tumor Stem Cell Drug Sensitivity Assays	50-41
Ambulatory Blood Pressure Monitoring with Fully and Semi-Automatic (Patient-Activated) Portable Monitor	50-42
Digital Subtraction Angiography	50-43
Bone (Mineral) Density Studies	50-44
Lymphocyte Mitogen Response Assays	50-45
Transillumination Light Scanning, or Diaphanography	50-46

Coverage Issues—Continued

Cardiointegram (CIG) as an Alternative to Stress Test or Thallium Stress Test	50-47
Portable Hand-Held X-Ray Instrument	50-48
Computer Enhanced Perimetry	50-49
Displacement Cardiography	50-50
Diagnostic Breath Analyses	50-51
Serologic Testing for Acquired Immunodeficiency Syndrome (AIDS)	50-52
Food Allergy Testing and Treatment	50-53
Dialysis Equipment	
Water Purification and Softening Systems Used In Conjunction with Home Hemodialysis	55-1
Peridex CAPD Filter Set	55-2
Ultrafiltration Monitor	55-3
Durable Medical Equipment	
White Cane for Use by a Blind Person	60-3
Home Use of oxygen	60-4
Power-Operated Vehicles that may be used as Wheelchairs	60-5
Specially Sized Wheelchairs	60-6
Self-Contained Pacemaker Monitors	60-7
Seat Lift	60-8
Durable Medical Equipment Reference List	60-9
Home Blood Glucose Monitor	60-11
Infusion Pumps	60-14
Safety Roller	60-15
Lymphedema Pumps	60-16
Continuous Positive Airway Pressure	60-17
Hospital Beds	60-18
Prosthetic Devices	
Hydrophilic Contact Lenses	65-1
Electrical Continence Aid	65-2
Scleral Shell	65-3
Carotid Sinus Nerve Stimulator	65-4
Electronic Speech Aids	65-5
Cardiac Pacemakers	65-6
Intraocular Lenses (IOLs)	65-7
Electrical Nerve Stimulators	65-8
Mechnical/Hydraulic Incontinence Control Devices	65-9
Enteral and Parenteral Nutritional Therapy Covered as a Prosthetic Device	65-10
Parenteral Nutrition Therapy	65-10.1
Enteral Nutrition Therapy	65-10.2
Nutritional Supplementation	65-10.3
Bladder Stimulators (Pacemakers)	65-11
Phrenic Nerve Stimulator	65-13
Cochlear Implantation	65-14
Artificial Hearts and Related Devices	65-15
Tracheostomy Speaking Valve	65-16
Braces—Trusses—Artificial Limbs and Eyes	
Corset Used as a Hernia Support	70-1
Sykes Hernia Control	70-2
Prosthetic Shoe	70-3
Patient Education Programs	
Institutional and Home Care Patient Education Programs	80-1

Coverage Issues—Continued

Nursing Services	
Home Health Visits to a Blind Diabetic	90-1
Home Health Nurses' Visits to Patients Requiring Heparin Injections	90-2

35 MEDICAL PROCEDURES

35-1 COLONIC IRRIGATION—NOT COVERED

Colonic irrigation is a procedure to wash out or lavage material on the walls of the bowel to an unlimited distance without inducing defecation. This procedure is distinguished from all types of enemas which are primarily used to induce defecation.

There are no conditions for which colonic irrigation is medically indicated and no evidence of therapeutic value. Accordingly, colonic irrigation cannot be considered reasonable and necessary within the meaning of section 1862(a)(1) of the law.

35-2 MANIPULATION

A. *Manipulation of the Rib Cage.*—Manual manipulation of the rib cage contributes to the treatment of respiratory conditions such as bronchitis, emphysema, and asthma as part of a regimen which includes other elements of therapy, and is covered only under such circumstances.

B. *Manipulation of the Head.*—Manipulation of the occipitocervical or temporomandibular regions of the head when indicated for conditions affecting those portions of the head and neck is a covered service.

35-3 HEAT TREATMENT, INCLUDING THE USE OF DIATHERMY AND ULTRASOUND FOR PULMONARY CONDITIONS—NOT COVERED

There is no physiological rationale or valid scientific documentation of effectiveness of diathermy or ultrasound heat treatments for asthma, bronchitis, or any other pulmonary condition and for such purpose this treatment cannot be considered reasonable and necessary within the meaning of section 1862(a)(1) of the law.

Cross-refer: § 35-41.

35-4 ULTRASONIC SURGERY

Reimbursement may be made for ultrasonic surgery when required in the treatment of patients with severe and recurrent episodes of vertigo due to Meniere's syndrome.

This procedure utilizes a machine which produces ultrasonic waves of high intensity and frequency that selectively irradiate certain portions of the inner ear thereby destroying the tissue. The procedure is usually done under local anesthesia, and requires the services of a surgeon and another individual who is responsible for calibrating the electrical equipment, and who assists in observing certain physical changes (e.g., movement of the eyes, "nystagmus") indicative of inner ear reaction to the ultrasonic destruction. Except in rare instances the desired result is achieved with one treatment. At present, there are two different approaches being used to apply the ultrasound to the inner ear: one through the lateral semicircular canal and, more recently, a simpler approach from a technical viewpoint, through the round window.

35-5 CELLULAR THERAPY—NOT COVERED

Cellular therapy involves the practice of injecting humans with foreign proteins like the placenta or lungs of unborn lambs. Cellular therapy is without scientific or statistical evidence to document its therapeutic efficacy and, in fact, is considered a potentially dangerous practice. Accordingly, cellular therapy is not considered reasonable and necessary within the meaning of section 1862(a)(1) of the law.

35-6 THERMOGENIC THERAPY—NOT COVERED

Thermogenic therapy which is the production of artificial fever has been in use since 1919 in the treatment of certain types of resistant infectious diseases, rheumatoid arthritis and Sydenham's chorea. Regardless of the medium by which the fever is induced, this modality is not scientifically accepted for the treatment of any specific disease. Since the advent of potent antibiotics, the procedure has for all practical purposes been replaced as a mode of treatment. Therefore, thermogenic therapy is not considered reasonable and necessary for the treatment of an illness or injury as required by section 1862(a)(1) of the law. (Of course, where other *covered* services are needed and it would be reasonable and necessary that they be furnished on an inpatient hospital basis, payment would not be excluded for the inpatient stay, notwithstanding the fact that reimbursement may not be made for thermogenic therapy furnished during the hospital stay.)

35-7 CAROTID BODY RESECTION/CAROTID BODY DENERVATION

Carotid body resection is occasionally used to relieve pulmonary symptoms, including asthma, but has been shown to lack general acceptance of the professional medical community. In addition, controlled clinical studies establishing the safety and effectiveness of this procedure are needed. Therefore, all carotid body resections to relieve pulmonary symptoms must be considered investigational and cannot be considered reasonable and necessary within the meaning of section 1862(a)(1) of the law. No program reimbursement may be made in such cases.

There is, however, one instance where carotid body resection has been accepted by the medical community as effective. That instance is when evidence of a mass in the carotid body, *with or without symptoms,* indicates the need for surgery of remove the carotid body tumor.

Denervation of a carotid sinus to treat hypersensitive carotid sinus reflex is another procedure performed in the area of the carotid body. In the case of hypersensitive carotid sinus, light pressure on the upper part of the neck (such as might be experienced when turning or raising one's head) results in symptoms such as dizziness or syncope due to hypotension and slowed heart rate. Failure of medical therapy and continued deterioration in the condition of the patient in such cases may indicate need for surgery. Denervation of the carotid sinus is rarely performed, but when elected as the therapy of choice with the above indications, this procedure may be considered reasonable and necessary.

35-8 ACUPUNCTURE—NOT COVERED

Although acupuncture has been used for thousands of years in China and for decades in parts of Europe, it is a new agent of unknown use and efficacy in the United States. Even in those areas of the world where it has been widely used, its mechanism is not known. Three units of the National Institutes of Health, the National Institute of General Medical Sciences, National Institute of Neurological Diseases and Stroke, and Fogarty International Center have been designed to assess and identify specific opportunities and needs for research attending the use of acupuncture for surgical anesthesia and relief of chronic pain. Until the pending scientific assessment of the technique has been completed and its efficacy has been established, Medicare reimbursement for acupuncture, as an anesthetic or as an analgesic or for other therapeutic purposes may not be made. Accordingly, acupuncture is not considered reasonable and necessary within the meaning of section 1862(a)(1) of the law."

35-9 PHACO-EMULSIFICATION PROCEDURE—CATARACT EXTRACTION

In view of recommendations of authoritative sources in the field of ophthalmology, the subject technique is viewed as an accepted procedure for removal of cataracts. Accordingly, program reimbursement may be made for necessary services furnished in connection with cataract extraction utilizing the phaco-emulsification procedure.

35-10 HYPERBARIC OXYGEN THERAPY

For purposes of coverage under Medicare, hyperbaric oxygen (HBO) therapy is a modality in which the entire body is exposed to oxygen under increased atmospheric pressure.

A. *Covered Conditions.*—Program reimbursement for HBO therapy will be limited to that which is administered in a chamber (including the one man unit) for the following conditions:

1. Acute carbon monoxide intoxication.
2. Decompression illness.
3. Gas embolism.
4. Gas gangrene.
5. Acute traumatic peripheral ischemia. HBO therapy is a valuable adjunction treatment to be used in combination with accepted standard therapeutic measures, when loss of function, limb, or life is threatened.
6. Crush injuries and suturing of severed limbs. As in the previous conditions, HBO therapy would be an adjunctive treatment, when loss of function, limb, or life is threatened.
7. Meleney ulcers. The use of hyperbaric oxygen in any other type of cutaneous ulcere is not covered.
8. Acute peripheral arterial insufficiency.
9. Preparation and preservation of compromised skin grafts.
10. Chronic refractory osteomyelitis, unresponsive to conventional medical and surgical management.
11. Osteoradionecrosis as an adjunct to conventional treatment.

The following use of HBO is covered for services rendered on and after 10/1/82.

12. Soft tissue radionecrosis as an adjunct to conventional treatment.
13. Cyanide poisoning

The following use of HBO is covered for services rendered on or after 2/22/84.

14. Actinomycosis, only as an adjunct to conventional therapy when the

disease process is refractory to antibiotics and surgical treatment.

B. *Noncovered Conditions.*—No program payment may be made for HBO in the treatment of the following conditions:

1. Cutaneous, decubitus, and stasis ulcers.
2. Chronic peripheral vascular insufficiency.
3. Anaerobic septicemia and infection other than clostridial.
4. Skin burns (thermal).
5. Senility.
6. Myocardial infarction.
7. Cardiogenic shock.
8. Sickle cell crisis.
9. Acute thermal and chemical pulmonary damage, i.e., smoke inhalation with pulmonary insufficiency.
10. Acute or chronic cerebral vascular insufficiency.
11. Hepatic necrosis.
12. Aerobic septicemia.
13. Nonvascular causes of chronic brain syndrome (Pick's disease, Alzheimer's disease, Korsakoff's disease).
14. Tetanus.
15. Systemic aerobic infection.
16. Organ transplantation.
17. Organ storage.
18. Pulmonary emphysema.
19. Exceptional blood loss anemia.
20. Multiple Sclerosis.
21. Arthritic Diseases.

Effective for services rendered on or after September 8, 1984:

22. Acute cerebral edema.

C. *Reasonable Utilization Parameters.*—Make payment where HBO therapy is clinically practical. HBO therapy should not be a replacement for other standard successful therapeutic measures. Depending on the responses of the individual patient and the severity of the original problem, treatment may range from less than 1 week to several months duration, the average being 2 to 4 weeks. Review and document the medical necessity for use of hyperbaric oxygen for more than 2 months, regardless of the condition of the patient, before further reimbursement is made.

D. *Topical Application of Oxygen.*—This method of administering oxygen does not meet the definition of HBO therapy as stated above. Also, its clinical efficacy has not been established. Therefore, no Medicare reimbursement may be made for the topical application of oxygen. (Cross refer: § 35–31.)

35–11 STERILIZATION

A. *Covered Conditions.*—

• Payment may be made only where sterilization is a necessary part of the treatment of an illness or injury, e.g., removal of a uterus because of a tumor, removal of diseased ovaries (bilateral oophorectomy), or bilateral orchidectomy in a case of cancer of the prostate. Deny claims when the pathological evidence of the necessity to perform any such procedures to treat an illness or injury is absent; and.

• Sterilization of a mentally retarded beneficiary is covered if it is a necessary part of the treatment of an illness or injury.

Monitor such surgeries closely and obtain the information needed to determine whether in fact the surgery was performed as a means of treating an illness or injury or only to achieve sterilization.

B. *Noncovered Conditions.*—

• Elective hysterectomy, tubal ligation, and vasectomy, if the stated reason for these procedures is sterilization;

• A sterilization that is performed because a physician believes another pregnancy would endanger the overall general health of the woman is not considered to be reasonable and necessary for the diagnosis or treatment of illness or injury within the meaning of § 1862(a)(1) of the law. The same conclusion would apply where the sterilization is performed only as a measure to prevent the possible development of, or effect on, a mental condition should the individual become pregnant; and

• Sterilization of a mentally retarded person where the purpose is to prevent conception, rather than the treatment of an illness or injury.

35–12 PLASTIC SURGERY TO CORRECT "MOON FACE"—NOT COVERED

The cosmetic surgery exclusion precludes payment for any surgical procedure directed at improving appearance. The condition giving rise to the patient's preoperative appearance is generally not a consideration. The only exception to the exclusion is surgery for the prompt repair of an accidental injury or for the improvement of a malformed body member which coincidentially serves some cosmetic purpose. Since surgery to correct a condition of "moon face" which developed as a side effect of cortisone therapy does not meet the exception to the exclusion, it is not covered under Medicare (§ 1862(a)(10) of the Act).

Cross refer: Intermediary Manual, § 3160; Carriers Manual, § 2229; Hospital Manual, § 269.11.

35–13 PROLOTHERAPY, JOINT SCLEROTHERAPY, AND LIGAMENTOUS INJECTIONS WITH SCLEROSING AGENTS—NOT COVERED

The medical effectiveness of the above therapies has not been verified by scientifically controlled studies. Accordingly, reimbursement for these modalities should be denied on the ground that they are not reasonable and necessary as required by § 1862(a)(1) of the law.

35–14 CONSULTATIONS WITH A BENEFICIARY'S FAMILY AND ASSOCIATES

In certain types of medical conditions, including when a patient is withdrawn and uncommunicative due to a mental disorder or comatose, the physician may contact relatives and close associates to secure background information to assist in diagnosis and treatment planning. When a physician contacts his patient's relatives or associates for this purpose, expenses of such interviews are properly chargeable as physician's services to the patient on whose behalf the information was secured. If the beneficiary is not an inpatient of a hospital, Part B reimbursement for such an interview is subject to the special limitation on payments for physicians' services in connection with mental, psychoneurotic, and personality disorders.

A physician may also have contacts with a patient's family and associates for purposes other than securing background information. In some cases, the physician will provide counseling to members of the household. Family counseling services are covered only where the primary purpose of such counseling is the treatment of the patient's condition. For example, two situations where family counseling services would be appropriate are as follows: (1) where there is a need to observe the patient's interaction with family members; and/or (2) where there is a need to assess the capability of and assist the family members in aiding in the management of the patient. Counseling principally concerned with the effects of the patient's condition on the individual being interviewed would not be reimbursable as part of the physician's personal services to the patient. While to a limited degree, the counseling described in the second situation may be used to modify the behavior of the family members, such services nevertheless are covered because they relate primarily to the management of the patient's problems and not to the treatment of the family member's problems.

Cross refer: HCFA–Pub. 13–3, § 3212(1); HCFA-Pub. 14–3, §§ 2020, 2470–2476.2; HCFA–Pub. 10, § 160.1

35–15 POSTURAL DRAINAGE PROCEDURES AND PULMONARY EXERCISES

In most cases postural drainage procedures and pulmonary exercises can be carried out safely and effectively by nursing personnel. However, in some cases patients may have acute or severe pulmonary conditions involving complex situations in which these procedures or exercises require the knowledge and skills of a physical therapist or a respiratory therapist. Therefore, if the attending physician determines as part of his plan of treatment that for the safe and effective administration of such services the procedures or exercises in question need to be performed by a *physical therapist*, the services of such a therapist would constitute covered physical therapy when provided as an inpatient hospital service, extended care service, home health service, or outpatient physical therapy service. (NOTE: Physical therapy furnished in the outpatient department of a hospital is covered under the outpatient physical therapy benefit).

If the attending physician determines that the services should be performed by an *respiratory therapist*, The services of such a therapist would constitute covered respiratory therapy when provided as an inpatient hospital service, outpatient hospital service, or extended care service, assuming that such services are furnished to the skilled nursing facility by a hospital with which the facility has a transfer agreement. Since the services of a respiratory therapist are not covered under the home health benefit, payment may not be made under the home health benefit for visits by a respiratory therapist to a patient's home to provide such services. Postural drainage procedures and pulmonary exercises are also covered when furnished by a physical therapist or a respiratory therapist as incident to a physician's professional service.

Cross refer: HCFA-Pub. 13–3, §§ 3112, 3133.9B, 3116; HCFA-Pub. 14–3, § 2050.2

35–16 VITRECTOMY

The conditions for which vitrectomy is indicated are vitreous loss incident to cataract surgery, vitreous opacities due to vitreous hemorrhage or other causes, retinal detachments secondary to vitreous strands, proliferative retinopathy and vitreous retraction.

Medicare payment may be made for (1) Simple vitrectomy (i.e., removal of vitreous humor and replacement with saline whenever there is loss of vitreous), an accepted routine procedure performed incident to cataract surgery, and which prevents postoperative complications, and (2) Complex vitrectomy, as used in cases involving opaque vitreous and secondary retinal detachments.

35–17 INDUCED LESIONS OF NERVE TRACTS

Surgically induced lesions of nerve tracts, which involve destruction of nerve tissue, are primarily indicated for controlling the chronic or acute pain arising from conditions such as terminal cancer or lumbar degenerative arthritis. Induced lesions of nerve tracts may be produced by surgical cutting of the nerve (rhizolysis), chemical destruction of the nerve, or by creation of a radio-frequency lesion (electrocautery). Accordingly, program payment may be made for these denervation procedures when used in selected cases (concurred in by contractor's medical staff) to treat chronic pain.

It should be noted that these procedures differ from those employing implanted electrodes and associated equipment to control pain in that the nerve fibers are ablated rather than stimulated and no electronic equipment is required by the patient after the operation.

35–18 ELECTROSLEEP THERAPY—NOT COVERED

Electrosleep therapy consists of the application of short duration, low-amplitude pulses of direct current to the patient's brain via externally placed occipital electrodes. It is commonly used in the treatment of chronic insomnia, anxiety, and depression, but has also been used for psychosomatic disorders such as asthma, spastic colitis, or tension headache, and for organic disorders including essential hypertension. Until scientific assessment of this technique has been completed and its efficacy is established, no program payment may be made for electrosleep therapy.

35–19 INTRAVENOUS HISTAMINE THERAPY

The only accepted and scientifically valid medical use of histamine is diagnostic including tests to assess; the ability of the stomach to secrete acid; the integrity of peripheral sensory nerves (e.g., in leprosy); the circulatory competency in limb extremities; and the presence of a pheochromocytoma. However, there is no scientifically valid clinical evidence that histamine *therapy* is effective for any condition regardless of the method of administration, nor is it accepted or widely used by the medical profession. Therefore, histamine *therapy* cannot be considered reasonable and necessary, and program payment for such therapy should not be made.

35–20 TREATMENT OF MOTOR FUNCTION DISORDERS WITH ELECTRIC NERVE STIMULATION—NOT COVERED

While electric nerve stimulation has been employed to control chronic intractable pain for some time, its use in the treatment of motor function disorders, such as multiple sclerosis, is a recent innovtion, and the medical effectiveness of such therapy has not been verified by scientifically controlled studies. Therefore, where electric nerve stimulation is employed to treat motor function disorders, no reimbursement may be made for the stimulator or for the services related to its implantation since this treatment cannot be considered reasonable and necessary.

Cross refer: §§ 35–27, 65–8

35–21 INPATIENT HOSPITAL PAIN REHABILITATION PROGRAMS

Pain rehabilitation programs are a relatively new and innovative approach to the treatment of intractable pain. The goal of such programs is to give a patient the tools to manage and control his pain, and thereby improve his ability to function independently.

A hospital level pain rehabilitation program is one that employs a coordinated multidisciplinary team to deliver, in a controlled environment, a concentrated program which is designed to modify pain behavior through the treatment of the physiological, psychological, and social aspects of pain. Such programs generally include diagnostic testing, skilled nursing, psychotherapy, structured progressive withdrawal from pain medications, physical therapy and occupational therapy to restore physical fitness (mobility and endurance) to a maximal level within the constraints of a patient's physical disability, and the use of mechanical devices and/or activities to relieve pain or modify a patient's reaction to it (e.g., nerve stimulator, hydrotherapy, massage, ice, systemic muscle relaxation training, and diversional activities). The nurse's responsibility in such pain rehabilitation programs is to observe and assess, on a continuing basis, a patient's condition and response to the program as reflected by his actions while in the nursing unit, and to assure that the atmosphere within the unit is not supportive of pain behavior. The day-to-day activities

involved in carrying out the program are under the general supervision and, as needed, direct supervision of a physician.

Since pain rehabilitation programs of a lesser scope than that described above would raise a question as to whether the program could be provided in a less intensive setting than on an inpatient hospital basis, carefully evaluate such programs to determine whether the program does, in fact, necessitate a hospital level of care. Some pain rehabilitation programs may utilize services and devices which are excluded from coverage, e.g., acupuncture (see § 35–8), biofeedback (see § 35–27), dorsal column stimulator (see § 65–8), and family counseling services (see § 35–14). In determining whether the scope of a pain program does necessitate inpatient hospital care, evaluate only those services and devices which are covered. Although diagnostic tests may be an appropriate part of pain rehabilitation programs, such tests would be covered in an individual case only where they can be reasonably related to a patient's illness, complaint, symptom, or injury and where they do not represent an unnecessary duplication of tests previously performed.

An inpatient program of 4 weeks' duration is generally required to modify pain behavior. After this period it would be expected that any additional rehabilitation services which might be required could be effectively provided on an outpatient basis under an outpatient pain rehabilitation program (see § 35–21.1) or other outpatient program. The first 7–20 days of such an inpatient program constitute, in effect, an evaluation period. If a patient is unable to adjust to the program within this period, it is generally concluded that it is unlikely that the program will be effective and the patient is discharged from the program. On occasions a program longer than 4 weeks may be required in a particular case. In such a case there should be documentation to substantiate that inpatient care beyond a 4-week period was reasonable and necessary. Similarly, where it appears that a patient participating in a program is being granted frequent outside passes, a question would exist as to whether an inpatient program is reasonable and necessary for the treatment of the patient's condition.

An inpatient hospital stay for the purpose of participating in a pain rehabilitation program would be covered as reasonable and necessary to the treatment of a patient's condition where the pain is attributable to a physical cause, the usual methods of treatment have not been successful in alleviating it, and a significant loss of ability to function independently has resulted from the pain. Chronic pain patients often have psychological problems which accompany or stem from the physical pain and it is appropriate to include psychological treatment in the multidisciplinary approach. However, patients whose pain symptoms result from a mental condition, rather than from any physical cause, generally cannot be successfully treated in a pain rehabilitation program.

35–21.1 OUTPATIENT HOSPITAL PAIN REHABILITATION PROGRAMS

Some hospitals also provide pain rehabilitation programs for outpatients. In such programs, services frequently are provided in group settings even though they are being furnished pursuant to each patient's individualized plan of treatment.

Coverage of services furnished under outpatient hospital pain rehabilitation programs, including services furnished in group settings under individualized plans of treatment, is available if the patient's pain is attributable to a physical cause, the usual methods of treatment have not been successful in alleviating it, and a significant loss of ability by the patient to function independently has resulted from the pain. If a patient meets these conditions and the program provides services of the types discussed in § 35–21 the services provided under the program may be covered. Noncovered services (e.g., vocational counseling, meals for outpatients, or acupuncture) continue to be excluded from coverage, and intermediaries would not be precluded from finding, in the case of particular patients, that the pain rehabilitation program is not reasonable and necessary under § 1862(a)(1) of the law for the treatment of their conditions.

35–22 INPATIENT HOSPITAL STAYS FOR THE TREATMENT OF ALCOHOLISM

A. *Inpatient Hospital Stay for Alcohol Detoxification.*—Many hospitals provide detoxification services during the more actute stages of alcoholism or alcohol withdrawal. When the high probability or occurrence of medical complications (e.g., delirium, confusion, trauma, or unconsciousness) during detoxification for acute alcoholism or alcohol withdrawal necessitates the constant availability of physicians and/or complex medical equipment found only in the hospital setting, inpatient hospital care during this period is considered reasonable and necessary and is therefore covered under the program. Generally, detoxification can be accomplished within 2–3 days with an occasional need for up to 5 days where the patient's condition dictates. This limit (5 days) may be extended in an individual case where there is a need for a longer period for detoxification for a particular patient. In such cases, however, there should be documentation by a physician which substantiates that a longer period of detoxification was reasonable and necessary. When the detoxification needs of an individual no longer require an inpatient hospital setting, coverage should be denied on the basis that inpatient hospital care is not reasonable and necessary as required by section 1862(a)(1) of the law. Following detoxification a patient may be transferred to an inpatient rehabilitation unit or discharged to a residential treatment program or outpatient treatment setting.

B. *Inpatient Hospital Stay for Alcohol Rehabilitation.*—Hospitals may also provide structured inpatient alcohol rehabilitation programs to the chronic alcoholic. These programs are composed primarily of coordinated educational and psychotherapeutic services provided on a group basis. Depending on the subject matter, a series of lectures, discussions, films, and group therapy sessions are led by either physicians, psychologists, or alcoholism counselors from the hospital or various outside organizations. In addition, individual psychotherapy and family counseling (see § 35–14) may be provided in selected cases. These programs are conducted under the supervision and direction of a physician. Patients may directly enter an inpatient hospital rehabilitation program after having undergone detoxification in the same hospital or in another hospital or may enter an inpatient hospital rehabilitation program without prior hospitalization for detoxification.

Alcohol rehabilitation can be provided in a variety of settings other than the hospital setting. In order for an inpatient hospital stay for alcohol rehabilitation to be covered under Medicare it must be medically necessary for the care to be provided in the inpatient hospital setting rather than in a less costly facility or on an outpatient basis. Inpatient hospital care for receipt of an alcohol rehabilitation program would generally be medically necessary where either [1] there is documentation by the physician that recent alcohol rehabilitation services in a less intensive setting or on an outpatient basis have proven unsuccessful and, as a consequence, the patient requires the supervision and intensity of services which can only be found in the controlled environment of the hospital, *or* (2) only the hospital environment can assure the medical management or control of the patient's concomitant conditions during the course of alcohol rehabilitation. (However, a patient's concomitant condition may make the use of certain alcohol treatment modalities medically inappropriate.) In addition, the "active treatment" criteria (see HCFA–Pub. 13–3, § 3102.1 or HCFA–Pub. 10, § 212.1) should be applied to psychiatric care in the general hospital as well as to psychiatric care in a psychiatric hospital. Since alcoholism is classifiable as a psychiatric condition the "active treatment" criteria must also be met in order for alcohol rehabilitation services to be covered under Medicare. (Thus, it is the combined need for "active treatment" and for covered care *which can only be provided in the inpatient hospital setting,* rather than the fact that rehabilitation immediately follows a period of detoxification, which provides the basis for coverage of inpatient hospital alcohol rehabilitation programs.)

Generally 16–19 days of rehabilitation services are sufficient to bring a patient to a point where care could be continued in other than an inpatient hospital setting. An inpatient hospital stay for alcohol rehabilitation may be extended beyond this limit in an individual case where a longer period of alcohol rehabilitation is medically necessary. In such cases, however, there should be documentation by a physician which substantiates the need for such care. Where the rehabilitation needs of an individual no longer require an inpatient hospital setting, coverage should be denied on the basis that inpatient hospital care is not reasonable and necessary as required by section 1862(a)(1) of the law.

Subsequent admissions to the inpatient hospital setting for alcohol rehabilitation followup, reinforcement, or "recap" treatments are considered to be readmissions (rather than an extension of the original stay) and must meet the requirements of this section for coverage under Medicare. Prior admissions to the inpatient hospital setting—either in the same hospital or in a different hospital—may be an indication that the "active treatment" requirements are not met (i.e., there is no reasonable expectation of improvement) and the stay should not be covered. Accordingly, there should be documentation to establish that "readmission" to the hospital setting for alcohol rehabilitation services can reasonably be expected to result in improvement of the patient's condition. For example, the documentation should indicate what changes in the patient's medical condition, social or emotional status, or treatment plan make improvement likely, or why the patient's initial hospital treatment was not sufficient.

C. *Combined Alcohol Detoxification/Rehabilitation Programs.*—Fiscal intermediaries should apply the guidelines in A. and B. above to both phases of a combined inpatient hospital alcohol detoxification/rehabilitation program. Not all patients who require the inpatient hospital setting for detoxification also need the inpatient hospital setting for rehabilitation. (See § 35–22.1 for coverage of outpatient hospital alcohol rehabilitation services.) Where the inpatient hospital setting is medically necessary for both alcohol detoxification and rehabilitation, generally a 3-week period is reasonable and necessary to bring the patient to the point where care can be continued in other than an inpatient hospital setting.

Decisions regarding reasonableness and necessity of treatment, the need for an inpatient hospital level of care, and length of treatment should be made by intermediaries based on accepted medical practice with the advice of their medical consultant. (In hospitals under PSRO review, PSRO determinations of medical necessity of services and appropriateness of the level of care at which services are provided are binding on the title XVIII fiscal intermediaries for purposes of adjudicating claims for payment.)

35–22.1 OUTPATIENT HOSPITAL SERVICES FOR TREATMENT OF ALCOHOLISM

Some hospitals also provide services on an outpatient basis, either individually or as part of a day hospitalization program, for treatment of alcoholism. These services may include, for example, drug therapy, psychotherapy, and patient education and may be furnished by physicians, psychologists, nurses, and alcoholism counselors to individuals who have been discharged from an inpatient hospital stay for treatment of alcoholism and require continued treatment or to individuals from the community who require treatment but do not require the inpatient hospital setting.

Coverage is available for both diagnostic and therapeutic services furnished for the treatment of alcoholism by the hospital to outpatients subject to the same rules applicable to outpatient hospital services in general (see HCFA–Pub. 13–3, §§ 3112 ff.; HCFA–Pub. 10, §§ 230 ff.). While there is no coverage for day hospitalization programs, per se, individual services which meet the requirements in HCFA–Pub. 13–3, §§ 3112 ff. or HCFA–Pub. 10, §§ 230 ff. may be covered. (Meals, transportation and recreational and social activities do not fall within the scope of covered outpatient hospital services under Medicare.)

All services must be reasonable and necessary for diagnosis or treatment of the patient's condition (see HCFA–Pub. 13–3, § 3101, HCFA–Pub. 10, § 208.1). Thus, educational services and family counseling would only be covered where they are directly related to treatment of the patient's condition. (See also § 35–14.) The frequency of treatment and period of time over which it occurs must also be reasonable and necessary.

35–22.2 TREATMENT OF DRUG ABUSE (CHEMICAL DEPENDENCY)

We recognize that there are similarities between the approach to treatment of drug abuse and alcohol detoxification and rehabilitation. However, the intensity and duration of treatment for drug abuse may vary (depending on the particular substance(s) of abuse, duration of use, and the patient's medical and emotional condition) from the duration of treatment or intensity needed to treat alcoholism. Accordingly, when it is medically necessary for a patient to receive detoxification and/or rehabilitation for drug substance abuse as a hospital inpatient, coverage for care in that setting is available. Coverage is also available for treatment services that are provided in the outpatient department of a hospital to patients who, for example, have been discharged from an inpatient stay for the treatment of drug substance abuse or who require treatment but do not require the availability and intensity of services found only in the inpatient hospital setting. The coverage available for these services is subject to the same rules generally applicable to the coverage of outpatient hospital services. (See HCFA–Pub. 13–3, §§ 3112 ff.; HCFA–Pub. 10, §§ 230 ff.). The services must also be reasonable and necessary for treatment of the individual's condition. (See HCFA–Pub. 13–3, § 3101; HBM–10, § 208.1.) Decisions regarding reasonableness and necessity of treatment, the need for an inpatient hospital level of care, and length of treatment should be made by intermediaries based on accepted medical practice with the advice of their

medical consultant. (In hospitals under PSRO review, PSRO determinations of medical necessity of services and appropriateness of the level of care at which services are provided are binding on the title XVIII fiscal intermediaries for purposes of adjudicating claims for payment.)

35–22.3 TREATMENT OF ALCOHOLISM AND DRUG ABUSE IN A FREESTANDING CLINIC

Coverage is available for alcoholism or drug abuse treatment services (such as drug therapy, psychotherapy, and patient education) that are provided incident to a physician's professional service in a freestanding clinic to patients who, for example, have been discharged from an inpatient hospital stay for the treatment of alcoholism or drug abuse or to individuals who are not in the acute stages of alcoholism or drug abuse but require treatment. The coverage available for these services is subject to the same rules generally applicable to the coverage of clinic services. (See HCFA–Pub. 14–3, §§ 2020 ff., and §§ 2050 ff.) Of course, the services also must be reasonable and necessary for the diagnosis or treatment of the individual's alcoholism or drug abuse. The Part B psychiatric limitation (see HCFA–Pub. 14–3, § 2470) would apply to alcoholism or drug abuse treatment services furnished by physicians to individuals who are not hospital inpatients.

35–23 CHEMICAL AVERSION THERAPY FOR TREATMENT OF ALCOHOLISM

Chemical aversion therapy is a behavior modification technique that is used in the treatment of alcoholism. Chemical aversion therapy facilitates alcohol abstinence through the development of conditioned aversions to the taste, smell, and sight of alcohol beverages. This is accomplished by repeatedly pairing alcohol with unpleasant symptoms (e.g., nausea) which have been induced by one of several chemical agents. While a number of drugs have been employed in chemical aversion therapy, the three most commonly used are emetine, apomorphine, and lithium. None of the drugs being used, however, have yet been approved by the Food and Drug Administration specifically for use in chemical aversion therapy for alcoholism. Accordingly, when these drugs are being employed in conjunction with this therapy, patients undergoing this treament need to be kept under medical observation.

Available evidence indicates that chemical aversion therapy may be an effective component of certain alcoholism treatment programs, particularly as part of multimodality treatment programs which include other behavioral techniques and therapies, such as psychotherapy. Based on this evidence, HCFA's medical consultants have recommended that chemical aversion therapy be covered under Medicare. However, since chemical aversion therapy is a demanding therapy which may not be appropriate for all Medicare beneficiaries needing treatment for alcoholism, a physician should certify to the appropriateness of chemical aversion therapy in the individual case. Therefore, if chemical aversion therapy for treatment of alcoholism is determined to be reasonable and necessary for an individual patient, it is covered under Medicare.

When it is medically necessary for a patient to receive chemical aversion therapy as a hospital inpatient, coverage for care in that setting is available. (See § 35–22 regarding coverage of multimodality treatment programs.) Followup treatments for chemical aversion therapy can generally be provided on an outpatient basis. Thus, where a patient is admitted as an inpatient for receipt of chemical aversion therapy, there must be documentation by the physician of the need in the individual case for the inpatient hospital admission.

Decisions regarding reasonableness and necessity of treatment and the need for an inpatient hospital level of care should be made by intermediaries based on accepted medical practice with the advice of their medical consultant. (In hospitals under PSRO review, PSRO determinations of medical necessity of services and appropriateness of the level of care at which services are provided are binding on the title XVIII fiscal intermediaries for purposes of adjudicating claims for payment.)

35–23.1 ELECTRICAL AVERSION THERAPY FOR TREATMENT OF ALCOHOLISM (ELECTROVERSION THERAPY, ELECTRO-SHOCK THERAPY, NOXIOUS FARADIC STIMULATION)

Electrical aversion therapy is a behavior modification technique to foster abstinence from ingestion of alcoholic beverages by developing in a patient conditioned aversions to their taste, smell and sight through electric stimulation. Electrical aversion therapy has not been shown to be safe and effective and therefore is excluded from coverage. (See also §§ 35–22, 35–23, and 35–27).

35–24 DIAGNOSIS AND TREATMENT OF IMPOTENCE

Program payment may be made for diagnosis and treatment of sexual impotence. Impotence is a failure of a body part for which the diagnosis, and frequently the treatment, require medical expertise. Depending on the cause of the condition, treatment may be surgical; e.g., implantation of a penile prosthesis, or nonsurgical; e.g., medical or psychotherapeutic treatment. Since causes and, therefore, appropriate treatment vary, if abuse is suspected it may be necessary to request documentation of appropriateness in individual cases. If treatment is furnished to patients (other than hospital inpatients) in connection with a mental condition, apply the psychiatric service limitation described in HCFA Pub. 14–3, § 2470.

35–25 CARDIAC REHABILITATION PROGRAMS.

A. *General.*—Exercise programs for cardiac patients, commonly referred to as cardiac rehabilitation programs, are increasingly being conducted in specialized, free-standing, cardiac rehabilitation clinics as well as in outpatient hospital departments. Exercise programs include specific types of exercise, individually prescribed for each patient.

Medicare coverage of cardiac rehabilitation programs would be considered reasonable and necessary only for patients with a clear medical need, who are referred by their attending physician and (1) have a documented diagnosis of acute myocardial infarction within the preceding 12 months; or (2) have had coronary bypass surgery; and/or (3) have stable angina pectoris.

Cardiac rehabilitation programs may be provided either by the outpatient department of a hospital or in a physician-directed clinic. Coverage for either program would be subject to the following conditions:

1. the facility meets the definition of a hospital outpatient department or a physician-directed clinic, i.e., a physician is on the premises available to perform medical duties at all times the facility is open, and each patient is under the care of a hospital or clinic physician;

2. the facility has available for immediate use all the necessary cardio-pulmonary emergency diagnostic and therapeutic life saving equipment accepted by the medical community as medically necessary, e.g., oxygen, cardiopulmonary resuscitation equipment, defibrillator, etc;

3. the program is conducted in an area set aside for the exclusive use of the program while it is in session;

4. the program is staffed by personnel necessary to conduct the program safely and effectively, who are trained in both basic and advanced life support techniques and in exercise therapy for coronary disease. Services of nonphysician personnel must be furnished under the direct supervision of a physician. Direct supervision means that a physician must be in the exercise program area and immediately available for an emergency at all times the exercise program is conducted;

5. the nonphysician personnel are employees of either the physician, hospital, or clinic conducting the program and their services are "incident-to a physician's professional services."

Contractors need not undertake elaborate or costly monitoring activities to determine whether these requirements are met, but need only satisfy themselves to the extent that they ordinarily do in connection with, for example, the requirements for coverage of services in physician-directed clinics (see HCFA Pub. 14–3, § 2050.4; HCFA Pub. 13.3, § 3112.4A; HCFA Pub. 10, § 230.4).

In addition to the conditions listed above, coverage for cardiac rehabilitation programs furnished by hospitals to outpatients would also be subject to the rules described in HCFA Pub. 13–3, § 3112.4 and HCFA Pub. 10, § 230.4. Reasonable charge reimbursement for these services which are performed in "freestanding" clinics would be subject to the limitations set forth in HCFA Pub. 14–3, § 5241.

B. *Diagnostic Testing.—Stress Testing.* A prospective candidate for a cardiac rehabilitation program must be evaluated for his suitability to participate. A valuable diagnostic test for this purpose is the stress test. The program need not necessarily perform the stress test, but may accept one performed by the patient's attending physician. Stress testing performed in the outpatient department of a hospital or in a physician-directed clinic may be covered when reasonable and necessary for:

1. evaluation of chest pain, especially atypical chest pain;

2. development of exercise prescriptions for patients with known cardiac disease;

3. pre and postoperative evaluation of patients undergoing coronary artery bypass procedures.

Refer to Section E, Utilization Screens, for the acceptable frequency of stress testing performed during an individual's exercise program.

ECG Rhythm Strips. ECG rhythm strips (and other ECG monitoring) constitute an important and necessary procedure which should be done periodically while a cardiac patient is engaged in a physician-controlled exercise program. See Section E, Utilization Screens, for allowable screens.

C. *Other Diagnostic and Therapeutic Services.*—A freestanding or hospital based cardiac rehabilitation clinic may also provide diagnostic and therapeutic services other than stress testing and ECG monitoring. Any such other services must meet the usual coverage requirements for the specific service, e.g., the incident-to, and reasonable and necessary requirements.

1. *Psychotherapy and Psychological Testing.*—It would not normally be considered reasonable and necessary to provide psychotherapy to all cardiac rehabilitation patients, or even to test all such patients to determine whether they may have a mental, psychoneurotic, or personality disorder. However, where a patient has a diagnosed mental, psychoneurotic, or personality disorder, psychotherapy furnished by a psychiatrist—or by a psychologist rendering such services incident to a physician's professional service—may be covered. Similarly, diagnostic testing of a cardiac rehabilitation patient for a mental problem may be covered where the patient shows appropriate symptoms, e.g., excessive anxiety or fear associated with the cardiac disease.

2. *Physical and Occupational Therapy.*—Physical therapy and occupational therapy would not be covered when furnished in connection with cardiac rehabilitation exercise program services covered under this section unless there also is a diagnosed noncardiac condition requiring such therapy, e.g., where a patient who is just recuperating from an acute phase of heart disease may have had a stroke which would require physical and/or occupational therapy. (While the cardiac rehabilitation exercise program may by some be considered a form of physical therapy, it is a specialized program conducted and/or supervised by specially trained personnel whose services are performed under the direct supervision of a physician.) Restrictions on coverage of physical therapy and occupational therapy under this section do not affect rules regarding coverage or noncoverage of such services when furnished in a hospital inpatient or outpatient setting.

(See HCFA Pub. 13–3, § 2101.8 and HCFA Pub. 10, § 210.8.)

3. *Patient Education Services.*—Many cardiac rehabilitation programs provide health education in the form of lectures or counseling in which patients and/or family members are given information, e.g., on diet, nutrition, and sexual activity to assist them in adjusting their living habits because of the cardiac condition. However, the same kind of information would have been furnished to a patient and/or family members by the attending physician following the patient's acute cardiac episode. Therefore, formal lectures and couseling on these subjects would not be considered reasonable and necessary as a separately identifiable service when provided as part of a cardiac rehabilitation exercise program. In addition, where a free-standing cardiac rehabilitation clinic provides board and room for the patient (and in some cases family members), these services would not be covered under Medicare.

D. *Duration of the Program.*—Services provided in connection with a cardiac rehabilitation exercise program may be considered reasonable and necessary for up to 36 sessions, usually 3 sessions a week in a single 12 week period. Coverage for continued participation in cardiac exercise programs beyond 12 weeks would be allowed only on a case-by-case basis with exit criteria taken into consideration.

Although firm exit criteria for terminating the therapeutic outpatient exercise treatment and rehabilitation program have not been established, the following guidelines have been identified as acceptable when the patient progresses to a maintenance program:

1. The patient has achieved a stable level of exercise tolerance without ischemia or dysrhythmia.

2. Symptoms of angina or dyspnea are stable at the patient's maximum exercise level.

3. Patient's *resting* blood pressure and heart rate are within normal limits.

4. The stress test is not *positive* during exercise. (A *positive test* in this context implies an ECG with a junctional depression of 2mm or more associated with slowly rising, horizontal, or down sloping ST segment.)

Accordingly, claims for coverage of cardiac rehabilitation exercise programs beyond 12 weeks should be reviewed by contractors' medical consultants. When claims are accompanied by acceptable documentation that the patient has not reached an exit level, coverage may be extended, but should not exceed a maximum of 24 weeks.

E. *Utilization Screens.*—Patients who participate in cardiac rehabilitation programs will require certain services more frequently than other patients being treated on an outpatient basis. Therefore, in order to provide coverage in a uniform manner, the following utilization screens should be implemented in addition to existing screens for any cardiac rehabilitation services not listed:

1. *Group 1 Services*

a. Continuous ECG telemetric monitoring during exercise.

b. ECG rhythm strip with interpretation and physician's revisions of exercise prescription.

c. Limited examination for physician followup to adjust medication or other treatment changes.

A visit including one or more of this range of routine services would be considered as one routine cardiac rehabilitation visit. In order for the visit to be reimbursable, at least one of the Group 1 services must be performed. The same rate of reimbursement would be allowed for each visit, but not all the services need be performed at each visit.

Allow a maximum of three visits per week.

2. *Group 2 Services*

a. New patient comprehensive evaluation, including history physical, and preparation of initial exercise prescription.

Allow one at the beginning of the program if not already performed by the patient's attending physician, or if that performed by the patient's attending physician is not accpetable to the program's director.

b. ECG stress test (treadmill or bicycle ergometer) with physician monitoring and report.

Allow one at the beginning of the program and one after 3 months (usually the completion of the program).

c. Other physician services, as needed.

35–26 TREATMENT OF OBESITY

Obesity itself cannot be considered an illness. The immediate cause is a caloric intake which is persistently higher than caloric output. Program payment may not be made for treatment for obesity alone since this treatment cannot be considered reasonable and necessary for the diagnosis or treatment of an illness or injury. However, although obesity is not in itself an illness, it may be caused by illnesses such as hypothyroidism, Cushing's disease, and hypothalamic lesions. In addition, obesity can aggravate a number of cardiac and respiratory diseases as well as diabetes and hypertension. Therefore, services in connection with the treatment of obesity could be covered services when such services are an integral and necessary part of a course of treatment for one of these illnesses.

Cross refer: CIA 35–33 and 35–40.

35–26.1 SUPPLEMENTED FASTING

Supplemented fasting is a type of very low calorie weight reduction regiment used to achieve rapid weight loss. The reduced calorie intake is supplemented by a mixture of protein, carbohydrates, vitamins and minerals. Serious questions exist about the safety of prolonged adherence for 2 months or more to a very low calorie weight reduction regimen as a general treatment for obesity, because of instances of cardiopathology and sudden death, as well as possible loss of body protein. Therefore, supplemented fasting is not covered as a general treatment for obesity.

In cases where weight loss is necessary before surgery in order to ameliorate the complications posed by obesity when it coexists with pathological conditions such as cardiac and respiratory diseases, diabetes or hypertension (and other more conservative techniques to achieve this end are not regarded as appropriate), supplemented fasting with adequate monitoring of the patient may be covered under Medicare on a case-by-case basis, as determined by the contractor's medical consultant. The risks associated with the achievement of rapid weight loss must be carefully balanced against the risk posed by the condition requiring surgical treatment.

35–27 BIOFEEDBACK THERAPY

Biofeedback therapy provides visual, auditory or other evidence of the status of certain body functions so that a person can exert voluntary control over the functions, and thereby alleviate an abnormal bodily condition. Biofeedback therapy often uses electrical devices to transform bodily signals indicative of such functions as heart rate, blood pressure, skin temperature, salivation, peripheral vasomotor activity, and gross muscle tone into a tone or light, the loudness or brightness of which shows the extent of activity in the function being measured.

Biofeedback therapy differs from electromyography, which is a diagnostic procedure used to record and study the electrical properties of skeletal muscle. An electromyography device may be used to provide feedback with certain types of biofeedback, however.

Biofeedback therapy is covered under Medicare only when it is reasonable and necessary for the individual patient for muscle re-education of specific muscle groups or for treating pathological muscle abnormalities of spasticity, incapacitating muscle spasm, or weakness, and more conventional treatments (heat, cold, massage, exercise, support) have not been successful. This therapy is not covered for treatment of ordinary muscle tension states or for psychosomatic conditions. (See HCFA–Pub. 14–3, §§ 2200ff, 2215, and 4161; HCFA–Pub. 13–3, §§ 3133.3, 3148, and 3149; HCFA–Pub. 10, §§ 242 and 242.5 for special physical therapy requirements. See also 35–20 and 65–8.)

35–29 OXYGEN TREATMENT OF INNER EAR/CARBON THERAPY

(Effective for services performed on and after August 1, 1978).—Not covered.

Oxygen (95 percent) and carbon dioxide (5 percent) inhalation therapy for inner ear disease, such as endolymphatic hydrops and fluctuant hearing loss, cannot be considered reasonable and necessary. The therapeutic benefit deriving from this procedure is highly questionable.

35–30 BLOOD PLATELET TRANSFUSIONS AND BONE MARROW TRANSPLANTATION

A. *Blood Platelet Transfusions.*

(Effective for services performed on or after August 1, 1978.)

Blood platelet transplants are safe and effective for the correction of thrombocytopenia and other blood defects. If such treatment is reasonable and necessary for the individual patient, it is covered under Medicare.

B. *Allogeneic Bone Marrow Transplantation.*

Allogeneic bone marrow transplantation is a procedure in which a portion of a healthy donor's bone marrow is obtained and prepared for intravenous infusion to restore normal marrow function in recipients having an inherited or acquired marrow deficiency or defect.

THE FOLLOWING USES OF ALLOGENEIC BONE MARROW TRANSPLANTATION ARE COVERED UNDER MEDICARE:

(Effective for services performed on or after August 1, 1978.)

1. For the treatment of leukemia or aplastic anemia when it is reasonable and necessary for the individual patient to receive this therapy.

(Effective for services performed on or after June 3, 1985.)

2. For the treatment of severe combined immunodeficiency disease (SCID).

3. For the treatment of Wiskott-Aldrich syndrome.

C. *Autologous Bone Marow Transplantation.*

(Effective for services performed on or after *04/28/89.*)

Autologores bone marrow transplantation is a technique for restoring bone marrow stem cells using the patient's own previously stored marrow.

1. *Covered Conditions.*—Autologous bone marrow transplantation (ICD–9–CM code 41.01, CPT–4 code 38240) is considered reasonable and necessary under § 1862(a)(1) of the Medicare law for the following conditions and is covered under Medicare for patients with:

- Acute leukemia in remission (ICD–9–CM code NEC V 10.60) who have a high probability of relapse and who have no HLA—matched donor (codes lymphoid V10.61, monocytic V10.63, myeloid V 10.62, NEC V10.69);
- Resistant non-Hodgkin's lymphomas (ICD–9CM codes 202.80–202.88) or those presenting with poor prognostic features following an initial response;
- Recurrent or refractory neuroblastoma (see ICD–9CM Neoplasm by site; malignant); or
- Advanced Hodgkin's disease (ICD–9CM code 201) who have failed conventional therapy and have no HLA-matched donor.

2. *Noncovered Conditions.*—Insufficient data exist to establish definite conclusions regarding the efficacy of autologous bone marrow transplantation for the following conditions:

- Acute leukemia in relapse (ICD–9CM codes 204.0, 205.0, 206.0, and 208.0);
- Chronic granulocytic leukemia (ICD–9CM code 205.1); or
- Solid tumors (other than neuroblastoma) (ICD–9CM codes 140–199).

In these cases, autologous bone marrow transplantation is not considered reasonable and necessary within the meaning of § 1862(a)(1) of the Medicare law and is not covered under Medicare for these conditions.

35–31 TREATMENT OF DECUBITUS ULCERS

An accepted procedure for healing decubitus ulcers is to remove dead tissue from the lesions and to keep them clean to promote the growth of new tissue. This may be accomplished by hydrotherapy (whirlpool) treatments. Hydrotherapy (whirlpool) treatment for decubitus ulcers is a coverd service under Medicare for patients for whom this form of treatment is reasonable and necessary. Some other methods of treating decubitus ulcers, the safety and effectiveness of which have not been established, are not covered under the Medicare program. Some examples of these types of treatments are: ultraviolet light, low intensity direct current, topical appliction of oxygen, and topical dressings with Balsam of Peru in castor oil.

35–32 VERTEBRAL ARTERY SURGERY

Obstructions which block the flow of blood through the vertebral artery can cause vertigo, visual or speech defects, ataxia, mental confusion, or stroke. These symptoms in patients result from reduction in blood flow to the brain and range from symptoms of transient basilar ischemia to mental deterioration or completed stroke.

Five types of surgical procedures are performed to relieve obstructions to vertebral artery blood flow. They are:

1. Vertebral artery endarterectomy, a procedure which cleans out arteriosclerotic plaques which are inside the vertebral artery;
2. Vertebral artery by-pass or resection with anastomosis or graft;
3. Subclavian artery resection with or without endarterectomy;
4. Removal of laterally located osteophytes anywhere in the $C_5(C_7)$–C_2 course of the vertebral artery; and
5. Arteriolysis which frees the artery from surrounding tissue, with or without arteriopexy (fixation of the vessel).

These procedures can be medically reasonable and necessary, but only if each of the following conditions is met:

1. Symptoms of vertebral artery obstruction exist;
2. Other causes have been considered and ruled out;
3. There is radiographic evidence of a valid vertebral artery obstruction; and
4. Contraindications to the procedure do not exist, such as coexistent obstructions of multiple cerebral vessels.

Angiograms documenting a valid obstruction should show not only the aortic arch with the vessels off the arch, but also show the vessels in the neck and head (providing biplane views of the carotid and vertebral vascular system). In addition, serial views are needed to diagnose "subclavian steal," the condition in which subclavian artery obstruction causes the symptoms of vertebral artery obstruction. Because the symptoms are not specific for vertebral artery obstruction, other causes must be considered. In addition to vertebral artery obstruction, the differential diagnosis should include various degenerative disorders of the brain, orthostatic hypotension, acoustic neuroma, labyrinthitis, diabetes mellitus and hypoglycemia related disorders.

Obstructions which can cause symptoms of blocked vertebral artery blood flow and which can be documented by an angiogram include:

1. Intravascular obstructions—arteriosclerotic lesions within the vertebral artery or in the other arteries.
2. Extravascular obstructions—

a. Bony tissue or osteophytes, located laterally in the $C_5(C_7)$–C_2 cervical vertebral area course of the vertebral artery, most commonly at C_5–C_6.

b. Anatomical variations—Anomalous location of the origin of the vertebral artery, a congenital aberration, and tortuosity and kinks of the vertebral artery.

c. "Fiberous tissue"—Tissue changed as a result of manipulation of the neck for neck pain or injury associated with hematoma; "external bands," "tendinous slings," and "fibrous bands."

The most controversial obstructions include vertebral artery tortuosity and kinks and connective tissue along the course of the vertebral artery, and variously called "external bands," "tendinous slings" and "fibrous bands." In the absence of symptoms of vertebral artery obstruction, vascular surgeons feel such abnormalities are insignificant. Vascular surgery experts, however, agree that these abnormalities in very rare cases do cause symptoms of vertebral artery obstruction and do necessitate surgical correction.

"Vertebral artery construction" and "vertebral artery surgery" are phrases which most physicians interpret to include only surgical cleaning (endarterectomy) and bypass (resection) procedures. However, some physicians who use these terms mean all operative manipulations which remove vertebral artery blood flow obstructions. Also, some physicians use general terms of vascular surgery, such as "endarterectomy" when vertebral artery related surgery is performed. Use of the above terminology specifies neither the surgical procedure performed nor its relationship to the vertebral artery. Therefore, in developing claims for this type of procedure, the Medicare contractors should require specific identification of the obstruction in question and the surgical procedure performed. Also, in view of the specific coverage criteria given above, the Medicare contractors are expected to develop all claims for vertebral artery surgery on a case-by-case basis.

Payment may be made for a surgical procedure listed above if: (1) It is reasonable and necessary for the

BEST COPY AVAILABLE

individual patient to have the surgery performed to remove or relieve an obstruction to vertebral artery flow, and (2) The four conditions noted above are met.

In all other cases, these procedures cannot be considered reasonable and necessary within the meaning of § 1862(a)(1) of the Medicare law and are not reimbursable under the program.

35–33 INTESTINAL BY-PASS SURGERY—NOT COVERED

The safety of intestinal bypass surgery for treatment of obesity has not been demonstrated. Severe adverse reactions such as steatorrhea, electrolyte depletion, liver failure, arthralgia, hypoplasia of bone marrow, and avitaminosis have sometimes occurred as a result of this procedure. It does not meet the reasonable and necessary provisions of § 1862(a)(1) of the Social Security Act and is not a covered Medicare procedure.

Cross-refer: §§ 35–26, 35–40.

35–34 FABRIC WRAPPING OF ABDOMINAL ANEURYSMS—NOT COVERED

Fabric wrapping of abdominal aneurysms is not a covered Medicare procedure. This is a treatment for abdominal aneurysms which involves aneurysms with cellophane or facia lata. This procedure has not been shown to prevent eventual rupture. In extremely rare instances, external wall reinforcement may be indicated when the current accepted treatment (excison of the aneurysm and reconstruction with synthetic materials) is not a viable alternative, but external wall reinforcement is not "fabric wrapping". Accordingly, fabric wrapping of abdominal aneurysms is not considered reasonable and necessary within the meaning of § 1862(a)(1) of the law.

35–35 THERAPEUTIC EMOBOLIZATION (EFFECTIVE FOR SERVICES PERFORMED ON OR AFTER APRIL 15, 1982)

Theurapeutic embolization is covered when done for hemorrhage, and for other conditions amenable to treatment by the procedure, when reasonable and necessary for the individual patient. Renal emoblization for the treatment of renal adenocarcinoma continues to be covered, effective December 15, 1978, as one type of therapeutic emoblization, to:

- Reduce tumor vascularity preoperatively;
- Reduce tumor buld in inoperable cases; or
- Palliate specific symptoms.

35–37 EXTRAINTRACRANIAL ARTERY BYPASS (EIAB) SURGERY IN THE TREATMENT OF STROKES (EFFECTIVE FOR SERVICES FURNISHED ON OR AFTER SEPTEMBER 1, 1979)

Extraintracranial artery bypass (EIAB) surgery is covered for the following indications:

1. Occlusion or stenosis of the inaccessible portion of the internal carotid artery presenting with a transient ischemic attack (TIA), prolonged reversible ischemic neurological deficit (PRIND), or completed stroke (CS).
2. Middle cerebral artery stenosis or occlusion presenting with TIA, PRIND, or CS.
3. A longstanding complete internal carotid occlusion considered inoperable by carotid endarterectomy because of difficulties in establishing or maintaining patency.
4. In prevention of an expected vascular insufficiency in surgical treatment of a giant aneurysm of the carotid bifurcation or middle cerebral artery and of skull based tumors involving internal carotid and middle cerebral artery.

Patients with the following conditions are generally not candidates for EIAB surgery, and payment may be made in those cases only if the intermediary's medical consultants determine that there is sufficient medical justification for the procedure to be performed in the patient's case.

1. Strokes with major severe neurological deficits.
2. Stroke in evolution. There are a small number of such patients with known occlusion of the internal carotid who may benefit by EIAB surgery during the period of evolution.
3. Cerebral edema.
4. Diffuse cerebral occlusive disease.
5. Severe cardiopulmonary disease and other diseases such as diabetes which contribute significantly to the mortality and morbidity of the operation.

35–38 ULTRAFILTRATION, HEMOPERFUSION AND HEMOFILTRATION

A. *Ultrafiltration.*—is a process for removing excess fluid from the blood through the dialysis membrane by means of pressure. It is not a substitute for dialysis. Ultrafiltration is utilized in cases where excess fluid cannot be removed easily during the regular course of hemodialysis. When it is performed it is commonly done during the first hour or two of each hemodialysis on patients who, e.g., have refractory edema. Ultrafiltration is a covered procedure under the Medicare program (effective for services performed on and after 9/1/79).

Predialysis Ultrafiltration.—While this procedure requires additional staff care, the facility dialysis rate is intended to cover the full range of complicated and uncomplicated nonacute dialysis treatments. Therefore, no additional facility charge is recognized for predialysis ultrafiltration. The physician's role in ultrafiltration varies with the stability of the patient's condition. In unstable patients, the physician may need to be present at the initiation of dialysis, and available either in-house or in close proximity to monitor the patient carefully. In patients who are relatively stable, but who seem to accumulate excessive weight gain, the procedure requires only a modest increase in physician involvement over routine outpatient hemodialysis.

Occassionally, medical complications may occur which require that ultrafiltration be performed separate from the dialysis treatment, and in these cases an additional charge can be recognized. However, the claim must be documented as to why the ultrafiltration could not have been performed at the same time as the dialysis.

B. *Hemoperfusion.*—A process which removes substances from the blood using a charcoal or resin artifical kidney. When used in the treatment of life threatening *drug overdose,* hemoperfusion is a covered service for patients with or without renal failure (effective for services performed on and after 9/1/79). Hemoperfusion generally requires a physician to be present to initiate treatment and to be present in the hospital or an adjacent medical office during the entire procedure, as changes may be sudden. Special staff training and equipment are required.

Develop charges for hemoperfusion in the same manner as for any new or unusual service. One or two treatments are usually all that is necessary to remove the toxic compound; document additional treatments. Hemoperfusion may be performed concurrently with dialysis, and in those cases payment for the hemoperfusion reflects only the additional care rendered over and above the care which is given to the dialysis.

The effects of using hemoperfusion to *improve* the results of *chronic hemodialysis* are not known. Therefore, hemoperfusion is not a covered service when used to improve the results of hemodialysis. In addition, it has not been demonstrated that the use of hemoperfusion in conjunction with DFO, in treating symptomatic patients with iron overload, is efficacious. There is also a paucity of data regarding its efficacy in treating asymptomatic patients with iron overload. Therefore, hemoperfusion used in conjunction with DFO in treating patients with iron overload is not a covered service; i.e., it is not considered reasonable and necessary within the meaning of § 1862(a)(1) of the law.

However, the use of hemoperfusion in conjunction with DFO for the treatment of patients with aluminum toxicity has been demonstrated to be clinically efficacious and is therefore regarded as a covered service.

C. *Hemofiltration.*—A process which removes fluid, electrolytes and other low molecular weight toxic substances from the blood by filtration through hollow artificial membranes and may be routinely performed in 3 weekly sessions. Hemofiltration (which is also known as diafiltration) is a covered procedure under Medicare and is a safe and effective technique for the treatment of ESRD patients and an alternative to pertioneal dialysis and hemodialysis (effective for services performed on and after August 20, 1987). In contrast to both hemodialysis and pertioneal dialysis treatments, which eliminate dissolved substances via diffusion across semipermeable membranes, hemofiltration mimics the filtration process of the normal kidney. The technique requires an arteriovenous access. Hemofiltration may be performed either in facility or at home.

The procedure is most advantageous when applied to high-risk unstable patients, such as older patients with cardiovascular diseases or diabetes, because there are fewer side effects such as hypotension, hypertension or volume overload.

Cross-refer: Intermediary Manual, § 3188

35–39 INTRAOCULAR PHOTOGRAPHY (EFFECTIVE FOR SERVICES FURNISHED ON OR AFTER SEPTEMBER 1, 1979)

Intraocular photography may be covered when used for the diagnosis of such conditions as macular degeneration, retinal neoplasms, choroid disturbances and diabetic retinopathy, or to identify glaucoma, multiple sclerosis and other central nervous system abnormalities. Medicare payment may be made for the use of this procedure by an opthalmologist in these situations when it is reasonable and necessary for the individual patient to receive these services.

35–40 GASTRIC BYPASS SURGERY FOR OBESITY (EFFECTIVE FOR SERVICES PERFORMED ON AND AFTER OCTOBER 1, 1979)

Gastric bypass surgery, which is a variation of the gastrojejunostomy, is performed for patients with extreme obesity. Gastric bypass surgery for extreme obestity may be covered under the program if: (1) It is medically appropriate for the individual to have such surgery; and (2) The surgery is to correct an illness which caused the obesity or was aggravated by the obesity.

Cross-refer: §§ 35–26, 35–33.

35–41 DIATHERMY AND DIAPULSE TREATMENT

Since Diapulse, Theramatic (standard model only), Spectrowave and Superpulse are not able to sufficiently elevate tissue temperature to produce a therapeutic effect, reimbursement for treatment utilizing such low energy pulsed wave diathermy devices is not appropriate. However, other pulsed wave diathermy machines have been found to produce some degree of therapeutic benefit for essentially the same conditions and to the same extent as standard diathermy. Accordingly, where the contractor's medical staff has determined that the pulsed wave diathermy apparatus used is one which is considered therapeutically effective, the treatments are considered a covered service, but only for those conditions for which standard diathermy is medically indicated and only when rendered by a physician or incident to a physician's professional services. Further, when the charge for covered pulsed wave diathermy treatment is substantially in excess of that which is reasonable for standard diathermy, reimbursement is based on the reasonable charge for standard diathermy.

Cross-refer: §35–3.

35–42 WITHDRAWAL TREATMENTS FOR NARCOTIC ADDICTIONS

Withdrawal is an accepted treatment for narcotic addiction, and Part B reimbursement can be made for these services if they are provided by the physician directly or under his personal sueprvision and if they are reasonable and necessary. In reviewing claims, reasonableness and necessity are determined with the aid of the contractor's medical staff.

Drugs that the physician provides in connection with this treatment are also covered if they cannot be self-administered and meet all other statutory requirements.

Cross-refer: Intermediary Manual, § 3112.4B; Carriers Manual, § 2050.5.

35–44 GENERAL ANESTHESIA IN CATARACT SURGERY

A. *Pre-Surgery Evaluations.*—(Effective for services performed on or after *09–14–88.*) Cataract surgery with an intraocular lens (IOL) implant is a high volume Medicare procedure. Along with the surgery, a substantial number of preoperative tests are available to the surgeon. In most cases, a comprehensive eye examination (ocular history and ocular examination) and a single scan to determine the appropriate pseudophakic power of the IOL are sufficient. In most cases involving a simple cataract, a diagnostic ultrasound A-scan is used. For patients with a dense cataract, an ultrasound B-scan may be used.

Accordingly, where the only diagnosis is "cataract(s)," Medicare will not routinely cover testing other than one comprehensive eye examination (or a combination of a brief/intermediate examination not to exceed the charge of a comprehensive examination) and an A-scan or, if medically justified, a B-scan. Claims for additional tests will be denied as not reasonable and necessary unless there is an additional diagnosis *and* the medical need for the additional test is fully documented.

Because cataract surgery is an elective procedure, the patient may decide not to have the surgery until later, or to have the surgery performed by a physician other than the diagnosing physician. In these situations, it may be medically appropriate for the operating physician to conduct another examination. To the extent the additional tests are considered reasonable and necessary by the carrier's medical staff, they would be covered.

B. *General Anesthesia.*—The use of general anesthesia in cataract surgery may be considered reasonable and necessary if, for particular medical indications, it is the accepted procedure among opthalmologists in the local community to use general anesthesia. In the claims review process, do not "front-end" reject any claims for the use of general anesthesia in cataract surgery. Obtain advice from your medical consultants before deciding whether to deny a claim involving use of general anesthesia in cataract surgery. Where regular postpayment review discloses a questionable utilization pattern, obtain case documentation.

35-45 CARDIAC CATHETERIZATION PERFORMED IN OTHER THAN A HOSPITAL SETTING. (EFFECTIVE FOR SERVICES PERFORMED ON OR AFTER 07/01/79.)

Cardiac catheterization performed in a hospital setting for either inpatients or outpatients is a covered service. The procedure may also be covered when performed in a freestanding clinic when the carrier, in consultation with the appropriate Peer Review Organization (PRO), determines that the procedure can be performed safely in all respects in the particular facility. Prior to approving Medicare reimbursement for cardiac catheterizations performed in freestanding clinics, *carriers must request PRO review* of the clinic.

35-46 ASSESSING PATIENT'S SUITABILITY FOR ELECTRICAL NERVE STIMULATION THERAPY.

Electrical nerve stimulation is an accepted modality for assessing a patient's suitability for ongoing treatment with a transcutaneous or an implanted nerve stimulator. Accordingly, program reimbursement may be made for the following techniques when used to determine the potential therapeutic usefulness of an electric nerve stimulator:

A. *Transcutaneous Electrical Nerve Stimulation (TENS).*—This technique involves attachment of a transcutaneous nerve stimulator to the surface of the skin over the peripheral nerve to be stimulated. It is used by the patient on a trial basis and its effectiveness in modulating pain is monitored by the physician, or physical therapist. Generally, the physician or physical therapist is able to determine whether the patient is likely to derive a significant therapeutic benefit from continuous use of a transcutaneous stimulator within a trial period of 1 month; in a few cases this determination may take longer to make. Document the medical necessity for such services which are furnished beyond the first month. (See § 45-25 for an explanation of coverage of medically necessary supplies for the effective use of TENS.)

If TENS significantly alleviates pain, it may be considered as primary treatment; if it produces no relief or greater discomfort than the original pain, electrical nerve stimulation therapy is ruled out. However, where TENS produces incomplete relief, further evaluation with percutaneous electrical nerve stimulation may be considered to determine whether an implanted peripheral nerve stimulator would provide significant relief from pain. (See § 35-46B.)

Usually, the physician or physical therapist providing the services will furnish the equipment necessary for assessment. Where the physician or physical therapist advises the patient to rent the TENS from a supplier during the trial period rather than supplying it himself, program payment may be made for rental of the TENS as well as for the services of the physician or physical therapist who is evaluating its use. However, the combined program payment which is made for the physician's or physical therapist's service and the rental of the stimulator from a supplier should not exceed the amount which would be payable for the total service, including the stimulator, furnished by the physician or physical therapist alone.

B. *Percutaneous Electrical Nerve Stimulation (PENS).*—This diagnostic procedure which involves stimulation of peripheral nerves by a needle electrode inserted through the skin is performed only in a physician's office, clinic, or hospital outpatient department. Therefore, it is covered only when performed by a physician or incident to physician's service. If pain is effectively controlled by percutaneous stimulation, implantation of electrodes is warranted.

As in the case of TENS (described in subsection A), generally the physician should be able to determine whether the patient is likely to derive a significant therapeutic benefit from continuing use of an implanted nerve stimulator within a trial period of 1 month. In a few cases, this determination may take longer to make. The medical necessity for such diagnostic services which are furnished beyond the first month must be documented.

Note.—Electrical nerve stimulators do not prevent pain but only alleviate pain as it occurs. A patient can be taught how to employ the stimulator, and once this is done, can use it safely and effectively without direct physician supervision. Consequently, it is inappropriate for a patient to visit his physician, physical therapist or an outpatient clinic on a continuing basis for treatment of pain with electrical nerve stimulation. Once it is determined that electrical nerve stimulation should be continued as therapy and the patient has been trained to use the stimulator, it is expected that a stimulator will be implanted or the patient will employ the TENS on a continual basis in his home. Electrical nerve stimulation treatments furnished by a physician in his office, by a physical therapist or outpatient clinic are excluded from coverage by § 1862(a)(1) of the law. (See § 65-8 for an explanation of coverage of the therapeutic use of transcutaneous and implanted peripheral nerve stimulators under the prosthetic devices benefit.)

35-47 BREAST RECONSTRUCTION FOLLOWING MASTECTOMY—(EFFECTIVE FOR SERVICES PERFORMED ON AND AFTER MAY 15, 1980)

During recent years there has been a considerable change in the treatment of carcinoma of the breast. While extirpation of the disease remains of primary importance, the quality of life following initial treatment is increasingly recognized as of great concern. The increased use of breast reconstruction procedures is due to several factors:

- a change in epidemiology of breast cancer, include an apparent increase in incidences;
- improved surgical skills and techniques;
- the continuing development of better prostheses; and
- increasing awareness by physicians of the importance of postsurgical psychological adjustment. Breast reconstruction following mastectomy is considered a relatively safe and effective noncosmetic procedure.

Accordingly, program payment may be made for this procedure.

35-48 OSTEOGENIC STIMULATION—(EFFECTIVE FOR SERVICES PERFORMED ON AND AFTER SEPTEMBER 15, 1980)

Electrical stimulation to augment bone repair can be attained either invasively or noninvasively. Invasive devices provide electrical stimulation directly at the fracture site either through percutaneously placed cathodes or by implantation of a coiled cathode wire into the fracture site. The power pack for the latter device is implanted into soft tissue near the fracture site and subcutaneously connected to the cathode, creating a self-contained system with no external components. The power supply for the former device is externally placed and the leads connected to the inserted cathodes. With the noninvasive device, opposing pads, wired to an external power supply, are placed over the cast. An electromagnetic field is created between the pads at the fracture site.

Use of the noninvasive stimulator is covered for the following indications:

- Nonunion of long bone fractures;
- Failed fusion; and
- Congenital Pseudarthroses

Use of the invasive device is covered only for nonunion of long bone fractures.

Nonunion, for all types of devices, is considered to exist only after six or more months have elapsed without healing of the fracture.

35-49 HYPERTHERMIA FOR TREATMENT OF CANCER (EFFECTIVE FOR SERVICES PERFORMED ON OR AFTER 12/31/84.)

Local hyperthermia for treatment of cancer consists of the use of heat to make tumors more susceptible to cancer therapy measures.

Local hyperthermia is covered under Medicare when used in connection with radiation therapy for the treatment of primary or metastatic cutaneous or subcutaneous superficial malignancies. It is *not* covered when used alone or in connection with chemotherapy.

35-50 COCHLEOSTOMY WITH NEUROVASCULAR TRANSPLANT FOR MENIERE'S DISEASE—NOT COVERED

Meniere's disease (or syndrome) is a common cause of paroxysmal vertigo. Meniere's syndrome is usually treated medically. When medical treatment fails, surgical treatment may be required.

While there are two recognized surgical procedures used in treating Meniere's disease (decompression of the endolymphatic hydrops and labyrinthectomy), there is no scientific evidence supporting the safety and effectiveness of cochleostomy with neurovascular transplant in treatment of Meniere's syndrome. Accordingly, Medicare does not cover cochleostomy with neurovascular transplant for treatment of Meniere's disease.

35-51 HEMODIALYSIS FOR TREATMENT OF SCHIZOPHRENIA—NOT COVERED

Scientific evidence supporting use of hemodialysis as a safe and effective means of treatment for schizophrenia is inconclusive at this time. Accordingly, Medicare does not cover hemodialysis for treatment of schizophrenia.

35-52 LASER PROCEDURES

Medicare recognizes the use of lasers for many medical indications. Procedures performed with lasers are sometimes used in place of more conventional techniques. In the absence of a specific noncoverage instruction, and where a laser has been approved for marketing by the Food and Drug Administration, contractor discretion may be used to determine whether a procedure performed with a laser is reasonable and necessary and, therefore, covered.

35-53 LIVER TRANSPLANTATION—LIMITED COVERAGE

For most people, liver transplantation is considered an experimental procedure and, therefore, is not covered. However, effective for services rendered on or after February 9, 1984, liver transplantation is no longer considered experimental with respect to children (under age 18) with extrahepatic biliary atresia or any other form of end-stage liver disease, except that coverage is not provided for children with a malignancy extending beyond the margins of the liver or those with persistent viremia, since existing data indicate that the potential for benefit from liver transplantation in this group is low. Children's claims for liver transplantation should be developed for medical necessity on an individual case basis.

35-54 REFRACTIVE KERATOPLASTY—NOT COVERED

Refractive keratoplasty is surgery to reshape the cornea of the eye to correct vision problems such as myopia (nearsightedness) and hyperopia (farsightedness). Refractive keratoplasty procedures include keratomileusis, in which the front of the cornea is removed, frozen, reshaped, and stitched back on the eye to correct either near or farsightedness; keratophakia, in which a reshaped donor cornea is inserted in the eye to correct farsightedness; and radial keratotomy, in which spoke-like slits are cut in the cornea to weaken and flatten the normally curved central portion to correct nearsightedness.

Refractive keratoplasty in any form is not covered because it is still under investigation, and has not yet been subjected to adequate scientific evaluation in humans.

35-55 TRANSVENOUS [CATHETER] PULMONARY EMBOLECTOMY—NOT COVERED

Transvenous (catheter) pulmonary embolectomy is a procedure for removing pulmonary emboli by passing a chatheter through the femoral vein. It is not covered under Medicare because it is still experimental.

35-56 FLUIDIZED THERAPY DRY HEAT FOR CERTAIN MUSCULOSKELETAL DISORDERS

Fluidized therapy is a high intensity heat modality consisting of a dry whirlpool of finely divided solid particles suspended in a heated air stream, the mixture having the properties of a liquid. Use of fluidized therapy dry heat is covered as an acceptable alternative to other heat therapy modalities in the treatment of acute or subacute traumatic or nontraumatic musculoskeletal disorders of the extremities.

35-57 ELECTROENCEPHALOGRAPHIC MONITORING DURING SURGICAL PROCEDURES INVOLVING THE CEREBRAL VASCULATURE

Electroencephalographic (EEG) monitoring is a safe and reliable technique for the measurement of gross cerebral blood flow during general anesthesia, and is covered under Medicare. Very characteristic changes in the EEG occur when cerebral perfusion is inadequate for cerebral function. EEG monitoring as an indirect measure of cerebral perfusion requires the expertise of an electroencephalographer, a neurologist trained in EEG, or an advanced EEG technician for its proper interpretation.

The EEG monitoring may be covered routinely in carotid endarterectomies and in other neurological procedures where cerebral perfusion could be reduced. Such other procedures might include aneurysm surgery where hypotensive anesthesia is used, or other cerebral vascular procedures whose cerebral blood flow may be interrupted.

35-57.1 ELECTROENCEPHALOGRAPHIC (EEG) MONITORING DURING OPEN-HEART SURGERY—NOT COVERED

The value of EEG monitoring during open-heart surgery and in the immediate post-operative period is debatable, because there are little published data based on well-designated studies regarding its clinical effectiveness. The procedure is not frequently used and does not enjoy widespread acceptance of benefit.

Accordingly, Medicare does not cover EEG monitoring during open-heart surgery and during the immediate post-operative period.

35-58 THORACIC DUCT DRAINAGE (TDD) IN RENAL TRANSPLANTS

Thoracic Duct Drainage (TDD) is an immunosuppressive technique used in renal transplantation. This procedure, which removes lymph from kidney transplant recipients as a means of achieving suppression of the immune mechanism, is currently being used both pre-transplant and post-transplant, in conjunction with more conventional immunotherapy. TDD is performed on an inpatient basis and the inpatient stay is covered for patients admitted for treatment in advance of a kidney transplant as well as for those receiving it post-transplant.

TDD is a covered technique when furnished to a kidney transplant recipient or an individual approved to receive kidney transplantation by a

hospital approved to perform kidney transplantation.

35–59 ENDOSCOPY

Endoscopy is a technique in which a long flexible tube-like instrument is inserted into the body orally or rectally, permitting visual inspection of the gastrointestinal tract. Although primarily a diagnostic tool, endoscopy includes certain therapeutic procedures, such as removal of polyps, endoscopic papillotomy, by which stones are removed from the bile duct.

Endoscopic procedures are covered when reasonable and necessary for the individual patient.

35–60 THERAPEUTIC PHERESIS (APHERESIS)

Pheresis is a medical procedure utilizing specialized equipment to remove selected blood constituents (plasma or cells) from whole blood and return the remaining consituents to the person from whom the blood was taken.

For purposes of Medicare coverage, therapeutic pheresis is defined as an autologous procedure—that is, blood is taken from the patient, processed, and returned to the patient as part of a continuous procedure—as distinguished from the procedure in which a patient donates blood preoperatively and is transfused with the donated blood at a later date.

Therapuetic pheresis is covered for the following indications:

A. Plasma, exchange for acquired myasthenia gravis.

B. Leukapheresis in the treatment of leukemia.

C. Plasmapheresis in the treatment of primary macroglobulinemia (Waldenstrom).

D. Apheresis in the treatment of hyperglobulinemias, including (but not limited to) multiple myelomas, cryoglobulinemia and hyperviscosity syndromes.

The following uses of apheresis are covered for services performed on or after January 31, 1983.

E. Plasmapheresis or plasma exchange as a last resort treatment of thrombotic thrombocytopenic purpura (TTP).

F. Plasmapheresis or plasma exchange in the last-resort treatment of life-threatening rheumatoid vasculitis when all other conventional therapies have failed.

The following use of apheresis is covered for services performed on or after October 19, 1983.

G. Plasma perfusion of charcoal filters for treatment of pruritis of cholestatic liver disease.

The following uses of apheresis are covered for services performed on or after September 6, 1984.

H. Plasma exchange in the treatment of Goodpasture's Syndrome.

I. Plasma exchange in the treatment of glomerulonephritis associated with antiglomerular basement membrane antibodies and advancing renal failure or pulmonary hemorrhage.

The following uses of apheresis are covered for services performed on or after October 15, 1984.

J. Apheresis in the treatment of chronic relapsing polyneuropathy for patients with severe or life-threatening symptoms who have failed to respond to conventional therapy.

K. Apheresis in the treatment of life-threatening scleroderma and polymyositis, when the patient is unresponsive to conventional therapy.

The following uses of apheresis are covered for services performed on or after February 14, 1986.

L. Apheresis for the treatment of Guillain-Barre Syndrome.

M. Apheresis as a treatment of last resort for life-threatening Systemic Lupus Erythematosus (SLE) when conventional therapy has failed to prevent clinical deterioration.

Apheresis is covered only when performed in the inpatient or outpatient hospital setting.

35–61 TRANSSEXUAL SURGERY

Transsexual surgery, also known as sex reassignment surgery or intersex surgery, is the culmination of a series of procedures designed to change the anatomy of transsexuals to conform to their gender identity. Transsexuals are persons with an overwhelming desire to change anatomic sex because of their fixed conviction that they are members of the opposite sex. For the male-to-female, transsexual surgery entails castration, penectomy and vulva-vaginal construction. Surgery for the female-to-male transsexual consists of bilateral mammectomy, hysterectomy and salpingo-oophorectomy, which may be followed by phalloplasty and the insertion of testicular prostheses.

Transsexual surgery for sex reassignment of transsexuals is controversial. Because of the lack of well controlled, long-term studies of the safety and effectiveness of the surgical procedures and attendant therapies for transsexualism, the treatment is considered experimental. Moreover, there is a high rate of serious complications of these surgical procedures. For these reasons, transsexual surgery is not covered.

35–62 INVASIVE INTRACRANIAL PRESSURE MONITORING

Invasive intracranial pressure monitoring is a safe and effective therapeutic tool used to monitor intracranial pressure, usually used for patients suffering from head injury, subarachnoid hemorrhage, intracerebral hemorrhage, Reye's syndrome, and posthypoxic, metabolic, and viral encephalopathies. It is usually performed in specialized intensive care units for neurosurgical and neurologic patients. It is a covered procedure when reasonable and necessary for the individual patient.

35–63 TINNITUS MASKING

A tinnitus masker is a device designed to be worn like a behind-the-ear hearing aid by persons seeking relief from tinnitus, which is the perception of noise in the ear and/or head area. The masker produces external sounds to distract the person from the tinnitus.

By producing an external sound a few decibels above the person's audible threshhold, tinnitus masking is thought to provide sufficient distraction from subjective idiopathic tinnitus to alleviate the discomfort and debilitation associated with endogenous sounds within the ear and/or head area.

Tinnitus masking is considered an experimental therapy at this time, because of the lack of controlled clinical trials demonstrating effectiveness, in addition to the unstudied possibility of serious toxicity in the form of noise-induced hearing loss. Therefore, it is not covered.

35–64 CHELATION THERAPY FOR TREATMENT OF ATHEROSCLEROSIS

Chelation therapy is the application of chelation techniques for the therapeutic or preventive effects of removing unwanted metal ions from the body. The application of chelation therapy using ethylenediamine-tetra-acetic acid (EDTA) for the treatment and prevention of atherosclerosis is controversial. There is no widely accepted rationale to explain the beneficial effects attributed to this therapy. Its safety is questioned and its clinical effectiveness has never been established by well designed, controlled clinical trials. It is not widely accepted and practiced by American physicians. EDTA chelation therapy for atherosclerosis is considered experimental. For these reasons, EDTA chelation therapy for the treatment or prevention of atherosclerosis is not covered.

Some practitioners refer to this therapy as chemoendarterectomy and may also show a diagnosis other than atherosclerosis, such as arteriosclerosis or calcinosis. Claims employing such variant terms should also be denied under this section.

Cross-refer: § 45–20.

35–65 GASTRIC FREEZING

Gastric freezing for chronic peptic ulcer disease is a non-surgical treatment which was popular about 20 years ago but now is seldom done. It has been abandoned due to a high complication rate, only temporary improvement experienced by patients, and lack of effectiveness when tested by double-blind, controlled clinical trials. Since the procedure is now considered obsolete, it is not covered.

35–66 TREATMENT OF PSORIASIS

Psoriasis is a chronic skin disease, for which several conventional methods of treatment have been recognized as covered. These include topical application of steroids or other drugs; ultraviolet light (actinotherapy); and coal tar alone or in combination with ultraviolet B light (Goeckerman treatment).

A newer treatment for psoriasis uses a psoralen derivative drug in combination with ultraviolet A light, known as PUVA. PUVA therapy is covered for treatment of intractable, disabling psoriasis, but only after the psoriasis has not responded to more conventional treatment. The contractor should document this before paying for PUVA therapy.

In addition, reimbursement for PUVA therapy should be limited to amounts paid for other types of photochemotherapy; ordinarily, payment should not be allowed for more than 30 days of treatment, unless improvement is documented.

35–67 MELODIC INTONATION THERAPY (Effective for Services Performed On or After March 11, 1985)

Melodic intonation therapy is a technique used in language rehabilitation. Its purpose is to teach aphasic patients to produce useful phrases by intoning them in a melodic pattern with strong rhythmic support. Limited studies by a few institutions show some benefit for a small number of nonfluent aphasic patients otherwise unresponsive to conventional therapy.

Melodic intonation therapy is a covered service only for nonfluent aphasic patients unresponsive to conventional therapy, and only when the conditions for coverage of speech pathology services are met. Please refer to HCFA–Pub. 14–3, §§ 2220–2206.4, and 2216, HCFA–Pub. 13–3, §§ 3101.19A, and 3147–3148.4; or HCFA–Pub. 29 §§ 241–242.5 for these conditions of coverage.

35–69 IMPLANTATION OF ANTI-GASTROESOPHAGEAL REFLUX DEVICE.—(Effective for Services Performed On or After 06/22/87.)

The implantation of an anti-gastroesophageal reflux device is a surgical procedure for the treatment of gastroesophageal reflux, a condition in which the caustic contents of the stomach flow back into the esophagus. The procedure involves the implantation of this special device around the esophagus under the diaphragm and above the stomach, which is secured in place by a circumferential tie strap.

The implantation of this device may be considered reasonable and necessary in specific clinical situations where a conventional valvuloplasty procedure is contraindicated. The implantation of an anti-gastroesophageal reflux device is covered only for patients with documented severe or life threatening gastroesophageal reflux disease whose conditions have been resistant to medical treatment and who also:

- have esophageal involvement with progressive systemic sclerosis; or
- have foreshortening of the esophagus such that insufficient tissue exists to permit a valve reconstruction; or
- are poor surgical risks for a valvuloplasty procedure; or
- have failed previous attempts at surgical treatment with valvuloplasty procedures.

35–70 CLOSED-LOOP BLOOD GLUCOSE CONTROL DEVICE (CBGCD).—(Effective for Services Rendered On or After 7/1/83.)

The closed-loop blood glucose control device (CBGCD) is a hospital bedside device designed for short-term management of patients with insulin dependent diabetes mellitus (Type I). It consists of a rapid on-line glucose analyzer; a computer with a controller for the calculation and control of the infusion of either insulin or dextrose; a multi-channel infusion system; and a printer designed to record continuous glucose values and to provide cumulative totals of the substances infused. Its primary use is for the stabilization of Type I diabetics during periods of stress, such as trauma, labor and delivery, and surgery, when there are acute fluctuations in blood sugar levels. It serves to temporarily correct abnormal blood glucose level (hyper- or hypo-glycemia) and this correction is made by infusion of either insulin or dextrose. Its use is generally limited to a 24- to 48-hour period because of potential complications (e.g., sepsis, thrombosis, and nonportability, etc.). The CBGCD requires specialized training for use and interpretation of its diagnostic and therapeutic contribution and continuous observation by specially trained medical personnel.

Use of the CBGCD is covered for short-term management of insulin dependent diabetics in crisis situations, in a hospital inpatient setting, and only under the direction of specially trained medical personnel.

35–71 NONSELECTIVE (RANDOM) TRANSFUSIONS AND LIVING-RELATED DONOR SPECIFIC TRANSFUSIONS (DST) IN KIDNEY TRANSPLANTATION.—(Effective for Services Rendered on or After 12/01/83.)

Transplant surgeons have established a definite correlation in both cadaver and living-related kidney transplantation between pretransplant transfusions of blood into the recipient and the success of graft retention.

These pretransplant transfusions are covered under Medicare without a specific limitation on the number of transfusions, subject to the normal Medicare blood deductible provisions. Where blood is given directly to the transplant patient; e.g., in the case of donor specific transfusions, the blood is considered replaced for purposes of the blood deductible provisions. (See HCFA Pub. 13–3 § 3235.4; HCFA Pub. 14–3 § 2455, and HCFA Pub. 10 §§ 222.3.)

35–72 ELECTROTHERAPY FOR TREATMENT OF FACIAL NERVE PARALYSIS (BELL'S PALSY).—NOT COVERED.

Electrotherapy for the treatment of facial nerve paralysis, commonly known as Bell's Palsy, is not covered under Medicare because its clinical effectiveness has not been established.

Electrotherapy for the treatment of facial nerve paralysis is the application of electrical stimulation to affected facial muscles to provide muscle innervation with the intention of preventing muscle degeneration. A device that generates an electrical current with controlled frequency, intensity, wave form and type (galvanic of faradic) is used in combination with a pad electrode and a hand applicator electrode to provide electrical stimulation.

35–73 INJECTION SCLEROTHERAPY FOR ESOPHAGEAL VARICEAL BLEEDING. (Effective for Services Performed on or After 10/29/84.)

Injection sclerotherapy is a technique involving insertion of a flexible fiberoptic endoscope into the esophagus, and the injection of a sclerosing agent or solution into the varicosities to control bleeding. This procedure is covered under Medicare.

35–74 EXTERNAL COUNTERPULSATION (ECP).—NOT COVERED.

External counterpulsation, a noninvasive means of producing the hemodynamic effects of intravascular counterpulsation, is a way of supporting a failing circulatory system due to myocardial infarction and cardiogenic shock by helping the heart pump more blood with less effort. The device uses the patient's legs as a pumbing chamber by enclosing the leg in rigid cylinders with a water-filled bag situated between the patient's legs and the cylinders, and changing the vascular pressure by alternate infusion and removal of water from the bag. An electrocardiogram with delay and duration circuits controls phasing of the pump with cardiac action.

Although the external counterpulsation device appears to be safe, published clinical evidence and the option of the medical community do not support the clinical utility of the device as a means of treating heart failure. While external counterpulsation appears to yield some benefits, there is less evidence that it reduces systolic pressure and, thus, the workload of the heart. External counterpulsation is therefore, not covered under Medicare.

35–75 INTRAOPERATIVE VENTRICULAR MAPPING—(Effective for services rendered on or after 10/29/84.)

Intraoperative ventricular mapping is the technique of recording cardiac electrical activity directly from the heart. The recording sites are usually identified from an anatomical grid and may consist of epicardial, intramural, and endocardial sites. A probe with electrodes is used to explore these surfaces and generate a map that displays the sequence of electrical activation. This information is used by the surgeon to locate precisely the site of an operative intervention.

The intraoperative ventricular mapping procedure is covered under Medicare only for the uses and medical conditions described below:

- localize accessory pathways associated with the Wolff-Parkinson-White (WPW) and other preexcitation syndromes;
- map the sequence of atrial and ventricular activation for drug-resistant supraventricular tachycardias;
- delineate the anatomical course of His bundle and/or bundle branches during corrective cardiac surgery for congenital heart diseases; and
- direct the surgical treatment of patients with refractory ventricular tachyarrhythmias.

35–77 NEUROMUSCULAR ELECTRICAL STIMULATION (NMES) IN THE TREATMENT OF DISUSE ATROPHY (Effective for services performed on and after 11–5–84.)

Neuromuscular electrical stimulation (NMES) involves the use of a device which transmits an electrical impulse to the skin over selected muscle groups by way of electrodes. Coverage of NMES is limited to the treatment of disuse atrophy where nerve supply to the muscle is intact, including brain, spinal cord and peripheral nerves, and other non-neurological reasons for disuse are causing atrophy. Some examples would be casting or splinting of a limb, contracture due to scarring of soft tissue as in burn lesions, and hip replacement surgery (until orthotic training begins). (See § 45–25 for an explanation of coverage of medically necessary supplies for the effective use of NMES.)

35–78 DIAGNOSTIC ENDOCARDIAL ELECTRICAL STIMULATION (PACING)—Effective for services performed on or after 12–03–84.)

Diagnostic endocardial electrical stimulation (EES), also called programmed electrical stimulation of the heart, is covered under Medicare when used for patients with severe cardiac arrhythmias.

Diagnostic endocardial electrical stimulation involves the detection and stimulation of cardiac electrical activity for the purpose of studying arrhythmias and abnormalities of the heart's conduction system. Intracardiac electrode catheters, intracardiac and extracardiac recordings and a stimulator device are required. From two to six multipolar electrode catheters are inserted percutaneously, usually through the femoral veins, and advanced to the heart under fluoroscopic control. Other venous are arterial routes may be employed as well. An intracardiac His bundle cardiogram is usually obtained during EES as are conventional electrocardiograms. No separate charge will be recognized for the His Bundle cardiogram. (See § 50–3.)

EES is used to investigate the mechanisms, site of origin and pathways of cardiac arrhythmias as well as to select therapeutic approaches for their resolution. EES is also employed to identify patients at risk of sudden arrhythmic death. The principal use for EES is in the diagnosis and treatment of sustained ventricular tachycardia. However, it has also proven to be of value in the diagnosis and management of other complex arrhythmias, conduction defects, and after cardiac arrest.

35–79 ANESTHESIA IN CARDIAC PACEMAKER SURGERY (Effective for services performed on or after *July 27, 1988.*

The use of general or monitored anesthesia during *transvenous* cardiac pacemaker surgery may be reasonable and necessary and therefore covered under Medicare *only* if adequate documentation of medical necessity is provided on a case-by-case basis. Obtain advice from your medical consultants or from appropriate specialty physicians of groups in your locality regarding the adequacy of documentation before deciding whether a particular claim should be covered.

A second type of pacemaker surgery that is sometimes performed involves the use of the *thoracic* method of implantation, which requires open surgery. Where the thoracic method is employed, general anesthesia is always used and should not require special medical documentation.

35–81 TREATMENT OF KIDNEY STONES.

Traditional approaches for the treatment of kidney stones are the surgical technique nephrectomy (or nephrotomy) and endoscopic treatments via the urethra. In the last few years several new approaches in the surgical management of upper urinary tract kidney stones have been developed, among them invasive and non-invasive lithotripsy techniques.

In addition to the traditional surgical/endoscopic techniques for the treatment of kidney stones the following lithotripsy techniques are also covered for services rendered on or after March 15, 1985.

A. *Extracorporeal Shock Wave Lithotripsy.*—Extracorporeal Shock Wave Lithotripsy (ESWL) is a non-invasive method of treating kidney stones using a device called a lithotriptor. The lithotriptor uses shock waves generated outside of the body to break up upper urinary tract stones; it focuses the shock waves specifically on stones under X-ray visualization, pulverizing them by repeated shocks.

ESWL is covered under Medicare for use in the treatment of upper urinary tract kidney stones.

B. *Percutaneous Lithotripsy.*—Percutaneous lithotripsy (or nephrolithotomy) is an invasive method of treating kidney stones by using ultrasound, electrohydraulic or mechanical lithotripsy. A probe is inserted through an incision in the skin directly over the kidney and applied to the stone. A form of lithotripsy is then used to fragment the stone. Mechanical or electrohydraulic lithotripsy may be used as an alternative or adjunct to ultrasonic lithotripsy. Percutaneous lithotripsy of kidney stones by ultrasound or by the related techniques of electrohydraulic or mechanical lithotripsy is covered under Medicare.

The following is covered for services rendered on or after *JANUARY 16, 1988.*

C. *Transurethral Ureteroscopic Lithotripsy.*—Transurethral ureteroscopic lithotripsy is a method of fragmenting and removing ureteral and renal stones through a cystoscope. The cystoscope is inserted through the urethra into the bladder. Catheters are passed through the scope into the opening where the ureters enter the bladder. Instruments passed through this opening into the ureters are used to manipulate and ultimately disintegrate stones, using either mechanical crushing, transcystroscopic electrohydraulic shock waves, ultrasound or laser. Transurethral ureteroscopic lithotripsy for the treatment of urinary tract stones of the kidney or ureter is covered under Medicare.

35–82 PANCREAS TRANSPLANTS—Not Covered.

Pancreas transplants of any type are considered investigational and are, therefore, not covered under Medicare.

35–83 24–HOUR AMBULATORY ESOPHAGEAL pH MONITORING—(Effective for services performed on or after 6–11–85).

Twenty-four hour ambulatory esophageal pH monitoring is a diagnostic procedure involving the placement of an indwelling electrode into the lower esophagus of a patient for the purpose of determining the presence of gastric reflux and measuring abnormal esophageal acid exposure.

Twenty-four hour ambulatory pH monitoring is covered by Medicare for patients who are suspected of having gastric reflux, but only if the patient presents diagnostic problems associated with atypical symptoms or the patient's symptoms are suggestive of reflux, but conventional tests have not confirmed the presence of reflux.

35–84 STEREOTACTIC CINGULOTOMY AS A MEANS OF PSYCHOSURGERY—NOT COVERED.

Cingulotomy is a psychosurgial procedure designed to interrupt the interconnecting neuronal pathways of the brain involved in the regulation of the emotions and certain autonomic functions. The intent of psychosurgery is to modify or alter disturbances of behavior, thought content, or mood that are not responsive to other conventional modes of therapy, or for which no organic pathological cause can be demonstrated by established methods.

The operation usually involves bilateral lesions that are placed in the anterior cingulum of the brain. Electrocautery probes are stereotactically inserted through lateral burr holes in the skull. A radiofrequency pulsating current is used to ablate the tissue that connects the limbic system to the frontal lobe. Two or three repeat procedures may be performed in the same patient when a satisfactory result has not been achieved with the first cingulotomy.

Stereotactic cingulotomy is not covered under Medicare because the procedure is considered to be investigational.

35–85 IMPLANTATION OF AUTOMATIC DEFIBRILLATORS (Effective for services performed on and after 1–24–86).

The implantable automatic defibrillator is an electronic device designed to detect and treat life-threatening tachyarrhythmias. The device consists of a pulse generator and electrodes for sensing and defibrillating. The implantation of an automatic defibrillator is a covered service only when used as a treatment of last resort for patients who have had a documented episode of life-threatening ventricular tachyarrhythmia or cardiac arrest not associated with myocardial infarction. Patients must also be found, by electrophysiologic testing, to have an inducible tachyarrhythmia that proves unresponsive to medication or surgical therapy (or be considered unsuitable candidates for surgical therapy).

It must be emphasized that unless *all* of the above described conditions and stipulations are met in a particular case, *including the inducibility of tachyarrhythmia, etc.*, implantation of an automatic deibrillator *cannot* be covered.

35–86 GASTRIC BALLOON FOR TREATMENT OF OBESITY—NOT COVERED.

The gastric balloon is a medical device developed for use as a temporary adjunct to diet and behavior modification to reduce the weight of patients who fail to lose weight with those measures alone. It is inserted into the stomach to reduce the capacity of the stomach and to affect early satiety.

The use of the gastric balloon is not covered under Medicare, since the long term safety and efficacy of the device in the treatment of obesity has not been established.

35–87 HEART TRANSPLANTS—(Effective for services rendered on or after October 17, 1986.)

A. *General.*—Cardiac transplantation is covered under Medicare when performed in a facility which is approved by Medicare as meeting institutional coverage criteria. (See HCFA Ruling 87–1.)

B. *Exceptions.*—In certain limited cases, exceptions to the criteria may be warranted if there is justification and if the facility ensures our objectives of safety and efficacy. Under no circumstances will exceptions be made for facilities whose transplant programs have been in existence for less than two years, and application from consortia will not be approved.

Although consortium arrangements will not be approved for payment of Medicare heart transplants, consideration will be given to application from heart transplant facilities that consist of more than one hospital where *all* of the following conditions exist:

- The hospitals are under the common control or have a formal affiliation arrangement with each other under the auspices of an organization such as a university or a legally-constituted medical research institute; and
- The hospitals share resources by routinely using the same personnel or services in their transplant programs. The sharing of resources must be supported by the submission of operative notes or other information that documents the routine use of the same personnel and services in all of the individual hospitals. At a minimum, shared resources means:

—The individual members of the transplant team, consisting of the cardiac transplant surgeons, cardiologists and pathologists, must practice in all the hospitals and it can be documented that they otherwise

function as members of the transplant team; and

—The same organ procurement organization, immunology, and tissue-typing services must be used by all the hospitals; and

• The hospitals submit, in the manner required (Kaplan-Meier method) their individual and pooled experience and survival data; and

• The hospitals otherwise meet the remaining Medicare criteria for heart transplant facilities; that is, the criteria regarding patient selection, patient management, program commitment, etc.

C. *Pediatric Hospitals.*—Cardiac transplantation is covered for Medicare beneficiaries when performed in a pediatric hospital that performs pediatric heart transplants if the hospital submits an application which HCFA approves as documenting that:

• The hospital's pediatric heart transplant program is operated jointly by the hospital and another facility that has been found by HCFA to meet the institutional coverage criteria in HCFA Ruling 87–1;

• The unified program shares the same transplant surgeons and quality assurance program (including oversight committee, patient protocol, and patient selection criteria); and

• The hospital is able to provide the specialized facilities, services, and personnel that are required by pediatric heart transplant patients.

D. *Follow-up Care.*—Follow-up care required as a result of a covered heart transplant is covered, provided such services are otherwise reasonable and necessary. Follow-up care is also covered for patients who have been discharged from a hosptial after receiving a noncovered heart transplant. Coverage for follow-up care would be for items and services that are reasonable and necessary, as determined by Medicare guidelines. (See Intermediary Manual § 3101.14 and Carriers Manual § 2300.1.)

E. *Immunosuppressive Drugs.*—(See Intermediary Manual § 3660.8 and Carriers Manual §§ 2050.5, 4471 and 5249.)

F. *Artificial Hearts.*—Medicare does not cover the use of artificial hearts or ventricular assist devices, either as a permanent replacement for a human heart or as a temporary life-support system until a human heart becomes available for transplant (often referred to as a "bridge to transplant"). (See § 65–15.)

35–88 EXTRACORPOREAL PHOTOPHERESIS (Effective for services performed on or after April 8, 1988.)

Extracorporeal photophereses is a treatment for cutaneous T-cell lymphoma (CTCL), a condition that is generally resistant to chemotherapy and radiotherapy. The treatment begins with the oral administration of the drug methoxsalen. The patient's blood is then passed through a device that permits exposure of the blood, while it is outside the body (extracorporeal), to ultraviolet A light. The blood is then returned to the patient.

Extrcorporeal photopheresis is covered by Medicare only when used in the palliative treatment of skin manifestations of CTCL that has not responded to other therapy.

45 SUPPLIES—DRUGS

45–1 L-DOPA

A. *Part A Reimbursement for L-Dopa and Associated Inpatient Hospital Services.*—A hospital stay and related ancillary services for the administration of L-Dopa are covered if medically required for this purpose. Whether a drug represents an allowable inpatient hospital cost during such stay depends on whether it meets the definition of a drug in section 1861(t) of the law; i.e., on its inclusion in the compendia named in the law or approval by the hospital's pharmacy and drug therapeutics (P&DT) or equivalent committee. (Levodopa (L-Dopa) has been favorably evaluated for the treatment of Parkisonism by A.M.A. Drug Evaluations, First Edition 1971, the replacement compendia for "New Drugs."

Inpatient hospital services are frequently *not* required in many cases when L-Dopa therapy is initiated. Therefore, the medical need for inpatient hospital services must be determined on the basis of medical facts in the individual case. It is not necessary to hospitalize the typical, well-functioning, ambulatory Parkinsonian patient who has no concurrent disease at the start of L-Dopa treatment. It *is* reasonable to provide inpatient hospital services for Parkinsonian patients with concurrent diseases, particularly of the cardiovascular, gastrointestinal, and neuropsychiatric systems. Although many patients may require hospitalization for a period of under 2 weeks, a 4-week period of inpatient care is not unreasonable.

Laboratory tests in connection with the administration of L-Dopa.—The tests medically warranted in connection with the achievement of optimal dosage and the control of the side effects of L-Dopa include a complete blood count, liver function tests such as SGOT, SGPT, and/or alkaline phosphatase, BUN or creatinine and urinalysis, blood sugar, and electrocardiogram.

Whether or not the patient is hospitalized, laboratory tests in certain cases are reasonable at weekly intervals, although some physicians prefer to perform the tests much less frequently.

Physical therapy furnished in connection with administration of L-Dopa.—Where, following administration of the drug, the patient experiences a reduction of rigidity which permits the reestablishment of a restorative goal for him, physical therapy services required to enable him to achieve this goal are reimbursable provided they require the skills of a qualified physical therapist and are furnished by or under the supervision of such a therapist. However, once the individual's restoration potential has been achieved, the services required to maintain him at this level do not generally require the skills of a qualified physical therapist. In such situations the role of the therapist is to evaluate the patient's needs in consultation with his physician, design a program of exercise appropriate to the capacity and tolerance of the patient and treatment objectives of the physician, leaving to others the actual carrying out of the program. While the evaluative services rendered by a qualified physical therapist are reimburseable as physical therapy, services furnished by others in connection with the carrying out of the maintenance program established by the therapist are not.

Cross refer: Intermediary Manual, § 3101.3; Carriers Manual, § 2050.5.

B. *Part A Reimbursement for L-Dopa Therapy in SNFs.*—Initiation of L-Dopa therapy can be appropriately carried out in the SNF setting, applying the same guidelines used for initiation of L-Dopa therapy in the hospital, including the types of patients who should be covered by inpatient services, the role of physical therapy, and the use of laboratory tests. (See subsection A.)

Where inpatient care is required and L-Dopa therapy is initiated in the SNF, limit the stay to a maximum of 4 weeks; but in many cases the need maybe no longer than 1 or 2 weeks, depending upon the patient's condition. However, where L-Dopa therapy is begun in the hospital and the patient is transferred to an SNF for continuation of the therapy, a combined length of stay in hospital and SNF of no longer than 4 weeks is reasonable (i.e., 1 week hospital stay followed by 3 weeks SNF stay; or 2 weeks hospital stay followed by 2 weeks SNF stay; etc.). Medical need must be demonstrated in cases where the combined length of stay in hospital and SNF is longer than 4 weeks. The choice of hospital or SNF, and the decision regarding the relative length of time spent in each, should be left to the medical judgment of the treating physician.

Cross refer: Intermediary Manual, § 3133.5.

C. *L-Dopa Coverage Under Part B.*—Part B reimbursement may not be made for the drug L-Dopa since it is a self-administrable drug. (See Intermediary Manual, § 3112.4B; Carriers Manual, § 2050.5B; Hospital Manual § 230.4B.) However, physician services rendered in conneciton with its administration and control of its side effects are covered if determined to be reasonable and necessary. Initiation of L-Dopa therapy on an outpatient basis is possible in most cases. Visit frequency ranging from every week to every 2 or 3 months is aceptable. However, after half a year of therapy, visits more frequent than every month would usually not be reasonable.

45–3 INSULIN SYRINGE

Medical supplies are covered under § 1861(s)(2)(A) of the law only when they are furnished incident to a physician's professional services. To be covered under this provision an insulin syringe must have been used by the physician or under his direct personal supervision, and the insulin injection must have been given in an emergency situation (e.g., diabetic coma).

The use of an insulin syringe by a diabetic would not meet the requirements of § 1861(s)(2)(A) of the Act.

Cross-refer: Intermediary Manual, § 3112.4B; Carriers Manual, § 2050

45–4 VITAMIN B12 INJECTIONS TO STRENGTHEN TENDONS, LIGAMENTS, ETC., OF THE FOOT—NOT COVERED

Vitamin B12 injections to stengthen tendons, ligaments, etc., of the foot are not covered under Medicare because (1) there is no evidence that vitamin B12 injections are effective for the purpose of strengthening weakened tendons and ligaments, and (2) this is nonsurgical treatment under the subluxation exclusion. Accordingly, vitamin B12 injections are not considered reasonable and necessary within the meaning of § 1862 (a)(1) of the law.

Cross-refer: Intermediary Manual, §§ 3101.3, 3158; Carriers Manual, §§ 2050.5, 2323.

45–7 HYDROPHILIC CONTACT LENS FOR CORNEAL BANDAGE

Some hydrophilic contact lenses are used as moist corneal bandages for the treatment of acute or chronic corneal pathology, such as bullous keratopathy, dry eyes, corneal ulcers and erosion, keratitis, and for other therapeutic reasons.

Payment may be made under § 1861(s)(2) of the law for a hydrophilic contact lens approved by the Food and Drug Administration (FDA) and used as a supply incident to a physician's service. Contractors are authorized to accept an FDA letter of approval or other FDA published material as evidence of FDA approval. (See § 65–1 for coverage of a hydrophilic contact lens as a prosthetic device.)

Cross-refer: Intermediary Manual, § 3112–4; Carriers Manual, § 2050.1.

45–10 LAETRILE AND RELATED SUBSTANCES—NOT COVERED.

Laetrile (and the other drugs called by the various terms mentioned below) have been used primarily in the treatment or "control" of cancer. Although the terms "Laetrile," "laetrile," "amygdalin," "Sarcarcinase," "vitamin B–17," and "nitriloside" have been used interchangeably, the chemical identity of the substances to which these terms refer has varied.

The FDA has determined that neither Laetrile nor any other drug called by the various terms mentioned above, nor any other product which might be characterized as a "nitriloside" is generally recognized (by experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs) to be safe and effective for any therapeutic use. Therefore, use of this drug cannot be considered to be reasonable and necessary within the meaning of § 1862(a)(1) of the law and program payment may not be made for its use or any services furnished in connection with its administration.

A hospital stay only for the purpose of having laetrile (or any other drug called by the terms mentioned above) administered is not covered. Also, program payment may not be made for laetrile (or other drug noted above) when it is used during the course of an otherwise covered hospital stay, since the FDA has found such drugs to not be safe and effective for any therapeutic purpose.

45–11 AUTOGENOUS EPIDURAL BLOOD GRAFT (Effective for services performed on and after March 1, 1989)

Autogenous epidural blood grafts are considered a safe and effective remedy for severe headaches that may occur after performance of spinal anesthesia, spinal taps or myelograms, and are covered. In the procedure blood is removed from the patient's vein and injected into his epidural space, to seal the spinal fluid leak and stop the pain.

45–12 PORCINE SKIN AND GRADIENT PRESSURE DRESSINGS

Porcine (pig) skin dressings are covered, if reasonable and necessary for the individual patient as an occlusive dressing for burns, donor sites of a homograft, and decubiti and other ulcers.

Gradient pressure dressings are Jobst elasticized heavy duty dressings used to reduce hypertrophic scarring and joint contractures following burn injury. They are covered when used for that purpose.

45–15 PHYSICIAN'S OFFICE WITHIN AN INSTITUTION—COVERAGE OF SERVICES AND SUPPLIES INCIDENT TO A PHYSICIAN'S SERVICES

Where a physician establishes an office within a nursing home or other institution, coverage of services and supplies furnished in the office must be determined in accordance with the "incident to a physician's professional service" provision (see Intermediary Manual, § 3112.4A or Carriers Manual, § 2050.1), as in any physician's office. A physician's office within an institution must be confined to a separately identified part of the facility which is used solely as the physician's office and cannot be construed to extend throughout the entire institution. Thus, services performed outside the "office" area would be subject to the coverage rules applicable to services furnished outside the office setting.

In order to accurately apply the criteria in § 3112.4 or § 2050.1, give consideration to the physical proximity of the institution and physician's office. When his office is located within a facility, a physician may not be reimbursed for services, supplies, and use of equipment which fall outside the scope of services "commonly furnished" in physician's offices generally, even though such services may be furnished in his institutional office. Additionally, make a distinction between the physician's office practice and the institution, especially when the physician is administrator or owner of the facility. Thus, for their services to be covered under the criteria in § 3112.4A

or § 2050.1, the auxiliary medical personnel must be members of the office staff rather than of the institution's staff, and the cost of supplies must represent an expense to the physician's office practice. Finally, services performed by the employees of the physician outside the "office" area must be *directly* supervised by the physician; his presence in the facility as a whole would not suffice to meet this requirement. (In *any* setting, of course, supervision of auxiliary personnel in and of itself is not considered a "physician's professional service" to which the services of the auxiliary personnel could be an incidental part, i.e., in addition to supervision, the physician must perform or have performed a personal professional service to the patient to which the services of the auxiliary personnel could be considered an incidental part). Denials for failure to meet any of these requirements would be based on § 1861(s)(2)(A) of the Act.

Establishment of an office within an institution would not modify rules otherwise applicable for determining coverage of the physician's personal professional services within the institution. However, in view of the opportunity afforded to a physician who maintains such an office for rendering services to a sizable number of patients in a short period of time or for performing frequent services for the same patient, claims for physicians' services rendered under such circumstances would require careful evaluation by the carrier to assure that payment is made only for services that are reasonable and necessary.

Cross-refer: Intermediary Manual, § 3112.4A; Carriers Manual, § 2050.1.

45–16 CERTAIN DRUGS DISTRIBUTED BY THE NATIONAL CANCER INSTITUTE (Effective for services furnished on or after October 1, 1980.)

Under its Cancer Therapy Evaluation, the Division of Cancer Treatment of the National Cancer Institute (NCI), in cooperation with the Food and Drug Administration, approves and distributes certain drugs for use in treating terminally ill cancer patients. One group of these drugs, designated as Group C drugs, unlike other drugs distributed by the NCI, are not limited to use in clinical trials for the purpose of testing their efficacy. Drugs are classified as Group C drugs only if there is sufficient evidence demonstrating their efficacy within a tumor type and that they can be safely administered.

A physician is eligible to receive Group C drugs from the Division of Cancer Treatment only if the following requirements are met:

A. A physician must be registered with the NCI as an investigator by having completed an FD–Form 1573.

B. A written request for the drug, indicating the disease to be treated, must be submitted to the NCI.

C. The use of the drug must be limited to indications outlined in the NCI's guidelines.

D. All adverse reactions must be reported to the Investigational Drug Branch of the Division of Cancer Treatment.

In view of these NCI controls on distribution and use of Group C drugs, intermediaries may assume, in the absence of evidence to the contrary, that a Group C drug and the related hospital stay are covered if all other applicable coverage requirements are satisfied.

If there is reason to question coverage in a particular case, the matter should be resolved with the assistance of the local PSRO, or if there is none, the assistance of your medical consultants.

Information regarding those drugs which are classified as Group C drugs may be obtained from:

Office of the Chief, Investigational Drug Branch, Division of Cancer Treatment, CTEP, Landow Building, Room 4C09, National Cancer Institute, Bethesda, Maryland 20205

45–17 TRANSFER FACTOR FOR TREATMENT OF MULTIPLE SCLEROSIS

Transfer factor is the dialysate of an extract from sensitized leukocytes which increases cellular immune activity in the recipient. It is not covered as a treatment for multiple sclerosis because its use for the purpose is still experimental.

45–18 GRANULOCYTE TRANSFUSIONS

Granulocyte transfusions to patients suffering from severe infection and granulocytopenia are a covered service under Medicare. Granulocytopenia is usually identified as fewer than 500 granulocytes/mm whole blood. Accepted indications for granulocyte transfusions include:

(1) Granulocytopenia with evidence of gram negative sepsis;

(2) Granulocytopenia in febrile patients with local progressive infections unresponsive to appropriate antibiotic therapy, thought to be due to gram negative organisms.

45–19 TRANSCUTANEOUS ELECTRICAL NERVE STIMULATION (TENS) FOR ACUTE POST-OPERATIVE PAIN

The use of transcutaneous electrical nerve stimulation (TENS) for the relief of acute post-operative pain is covered under Medicare. TENS may be covered whether used as an adjunct to the use of drugs, or as an alternative to drugs, in the treatment or acute pain resuting from surgery.

TENS devices, whether durable or disposable, may be used in furnishing this service. When used for the purpose of treating acute post-operative pain, TENS devices are considered supplies. As such they may be hospital supplies furnished inpatients covered under Part A, or supplies incident to a physician's service when furnished in connection with surgery done on an outpatient basis, and covered under Part B.

It is expected that TENS, when used for acute post-operative pain, will be necessary for relatively short periods of time, usually 30 days or less. In case when TENS is used for longer periods, contractors should attempt to ascertain whether TENS is no longer being used for acute pain but rather for chronic pain, in which case the TENS device may be covered as a prosthetic device as described in section 65–8.

Cross-refer: HCFA Pub. 13–3, §§ 65–8, 3101.4, 3112.4, 3113; HCFA Pub. 14–3, §§ 65–8, 2050.1, 2100; HCFA Pub. 10, §§ 65–8, 210.4, 230, 235.

45–20 ETHYLENEDIAMINE-TETRA-ACETIC (EDTA) CHELATION THERAPY FOR TREATMENT OF ATHEROSCLEROSIS

The use of EDTA as a chelating agent to treat atherosclerosis, arteriosclerosis, calcinosis, or similar generalized condition not listed by the FDA as an approved use is not covered. Any such use of EDTA is considered experimental.

See § 35–64 for an explanation of this conclusion.

45–21 SCALP HYPOTHERMIA DURING CHEMOTHERAPY, TO PREVENT HAIR LOSS

Keeping the scalp cool during chemotherapy has been noted to reduce the risk of hair loss. The cooling may be done by packing the scalp with ice-filled bags or bandages, or by specially-designed devices filled with cold-producing chemicals activated during chemotherapy.

While ice-filled bags or bandages or other devices used for scalp hypothermia during chemotherapy may be covered as supplies of the kind commonly furnished without a separate charge, no separate charge for them would be recognized.

45–22 LYMPHOCYTE IMMUNE GLOBULIN, ANTI-THYMOCYTE GLOBULIN (EQUINE)

The lymphocyte immune globulin preparations are biologic drugs not previously approved or licensed for use in the management of renal allograft rejection. A number of other lymphocyte immune globulin products of equine, lapine, and murine origin are currently under investigation for their potential usefulness in controlling allograft rejections in human transplantation. These biologic drugs are reviewed as adjunctive to traditional immunosuppressive products such as steroids and anti-metabolic drugs. At present, lymphocyte immune globulin preparations are not recommended to replace conventional immunosuppressive drugs, but to supplement them and to be used as alternatives to elevated or accelerated dosing with conventional immunosuppressive agents.

The FDA has approved one lymphocyte immune globulin preparation for marketing, lymphocyte immune globulin, anti-thymocyte globulin (equine). This drug is indicated for the management of allograft rejection episodes in renal transplantation. It is covered under Medicare when used for this purpose. Other forms of lymphocyte globulin preparation which the FDA approves for this indication in the future may be covered under Medicare.

45–23 DIMETHYL SULFOXIDE (DMSO)

DMSO is an industrial solvent produced as a chemical byproduct of paper production from wood pulp. The Food and Drug Administration has detemined that the only purpose for which DMSO is safe and effective for humans is in the treatment of the bladder condition, interstitial cystitis. Therefore, the use of DMSO for all other indications is not considered to be reasonable and necessary. Payment may be made for its use only when reasonable and necessary for a patient in the treatment of interstitial cystitis.

45–24 ANTI-INHIBITOR COAGULANT COMPLEX (AICC)

Anti-hibitor coagulant complex, AICC, is a drug used to treat hemophilia in patients with factor VIII inhibitor antibodies. AICC has been shown to be safe and effective and has Medicare coverage when furnished to patients with hemophilia A and inhibitor antibodies to factor VIII who have major bleeding episodes and who fail to respond to other, less expensive therapies.

45–25 SUPPLIES USED IN THE DELIVERY OF TRANSCUTANEOUS ELECTRICAL NERVE STIMULATION (TENS) AND NEUROMUSCULAR ELECTRICAL STIMULATION (NMES)—(Effective for services rendered (i.e., items rented or purchased) on or after JULY 14, 1988.)

Transcutaneous Electrical Nerve Stimulation (TENS) and/or Neuromuscular Electrical Stimulation (NMES) can ordinarily be delivered to patients through the use of conventional electrodes, adhesive tapes and lead wires. There may be times, however, where it might be medically necessary for certain patients receiving TENS or NMES treatment to use, as an alternative to conventional electrodes, adhesive tapes and lead wires, a form-fitting conductive garment (i.e., a garment with conductive fibers which are separated from the patients' skin by layers of fabric).

A form-fitting conductive garment (and medically necessary related supplies) may be covered under the program *only* when:

- It has received permission or approval for marketing by the Food and Drug Administration;
- It has been prescribed by a physician for use in delivering covered TENS or NMES treatment; and
- *One* of the medical indications outlined below is met:

—the patient cannot manage without the conductive garment because there is such a large area or so many sites to be stimulated *and* the stimulation would have to be delivered so frequently that it is not feasible to use conventional electrodes, adhesive tapes and lead wires;

—the patient cannot manage without the conductive garment for the treatment of chronic intractable pain because the areas or sites to be stimulated are inaccessible with the use of conventional electrodes, adhesive tapes and lead wires;

—the patient has a documented medical condition such as skin problems that preclude the application of conventional electrodes, adhesive tapes and lead wires;

—the patient requires electrical stimulation beneath a cast either to treat disuse atrophy, where the nerve supply to the muscle is intact, or to treat chronic intractable pain; or

—the patient has a medical need for rehabilitation strengthening (pursuant to a written plan of rehabilitation) following an injury where the nerve supply to the muscle is intact.

A conductive garment is not covered for use with a TENS device during the trial period specified in § 35–49 unless:

- The patient has a documented skin problem prior to the start of the trial period; and
- The carrier's medical consultants are satisfied that use of such an item is medically necessary for the patient.

(See conditions for coverage of the use of TENS in the diagnosis and treatment of chronic intractable pain in §§ 35–46 and 65–8A.1 and the use of NMES in the treatment of disuse atrophy in § 35–77.)

50 DIAGNOSTIC SERVICES

50–1 CARDIAC PACEMAKER EVALUATION SERVICES (Effective for services rendered on or after October 1, 1984.)

Medicare covers a variety of services for the post-implant follow-up and evaluation of implanted cardiac pacemakers. The following guidelines are designed to assist contractors in identifying and processing claims for such services.

Note.—These new guidelines are limited to lithium battery-powered pacemakers, because mercury-zinc battery-powered pacemakers are no longer being manufactured and virtually all have been replaced by lithium units. Contractors still receiving claims for monitoring such units should continue to apply the guidelines published in 1980 to those units until they are replaced.

There are two general types of pacemakers in current use—single-chamber pacemakers, which sense and pace the ventricles of the heart, and dual-chamber pacemakers which sense and pace both the atria and the ventricles. These differences require different monitoring patterns over the expected life of the units involved. One fact of which contractors should be aware is that many dual-chamber units may be programmed to pace only the ventricles; this may be done either at the time the pacemaker is implanted or at some time afterward. In such cases, a dual-chamber unit, when programmed or reprogrammed for ventricular pacing, should be treated as a single-chamber pacemaker in applying screening guidelines.

The decision as to how often any patient's pacemaker should be monitored is the responsibility of the patient's physician who is best able to take into account the condition and circumstances of the individual patient. These may vary over time, requiring modifications of the frequency with which the patient should be monitored.

In cases where monitoring is done by some entity other than the patient's physician, such as a commercial monitoring service or hospital outpatient department, the physician's prescription for monitoring is required and should be periodically renewed (at least annually) to assure that the frequency of monitoring is proper for the patient. *Where a patient is monitored both during clinic visits and transtelephonically, the contractor should be sure to include fequency data on both types of monitoring in evaluating the reasonableness of the frequency of monitoring services received by the patient.*

Since there are over 200 pacemaker models in service at any given point, and a variety of patient conditions that give rise to the need for pacemakers, the question of the appropriate frequency of monitorings is a complex one. Nevertheless, it is possible to develop guidelines within which the vast majority of pacemaker monitorings will fall and contractors should do this, using their own data and experience, as well as the frequency guidelines which follow, in order to limit extensive claims development to those cases requiring special attention.

Guidelines for Transtelephonic Monitoring of Cardiac Pacemakers

A. *General.*—Transtelephonic monitoring of pacemakers is coming into increasingly widespread use, with the services being furnished by commercial suppliers, hospital outpatient departments and physicians' offices.

Telephone monitoring of cardiac pacemakers as described below is medically efficacious in identifying early signs of possible pacemaker failure, thus reducing the number of sudden pacemaker failures requiring emergency replacement. All systems which monitor the pacemaker rate (bpm) in both the free-running and/or magnetic mode are effective in detecting subclinical pacemaker failure due to battery depletion. More sophisticated systems are also capable of detecting internal electronic problems within the pulse generator itself and other potential problems. In the case of dual chamber pacemakers in particular, such monitoring may detect failure of synchronization of the atria and ventricles, and the need for adjustment and reprogramming of the device.

Note.—The transmitting device furnished to the patient is simply one component of the diagnostic system, and is not covered as durable medical equipment. Those engaged in transtelephonic pacemaker monitoring should reflect the costs of the transmitters in setting their charges for monitoring.

B. *Definition of Transtelephonic Monitoring.*—In order for transtelephonic monitoring services to be covered, the services must consist of the following elements:

1. A minimum 30-second readable strip of the pacemaker in the free-running mode;

2. Unless contraindicated, a minimum 30-second readable strip of the pacemaker in the magnetic mode; and

3. A minimum 30 seconds of readable ECG strip.

C. *Frequency Guidelines for Transtelephonic Monitoring.*—The guidelines below constitute a system which contractors should use, in conjunction with their knowledge of local medical practices, to screen claims for transtelephonic monitoring prior to payment. It is important to note that they are not recommendations with respect to a *minimum* frequency for such monitorings, but rather a *maximum* frequency (within which payment may be made without further claims development). As with previous guidelines, more frequent monitorings may be covered in cases where contractors are satisfied that such monitorings are medically necessary; e.g., based on the condition of the patient, or with respect to pacemakers exhibiting unexpected defects or premature failure. Contractors should seek written justification for more frequent monitorings from the patient's physician and/or any monitoring service involved.

These guidelines are divided into two broad categories—Guideline I, which will apply to the majority of pacemakers now in use, and Guideline II, which will apply to pacemaker systems (pacemaker and leads) for which sufficient long-term clinical information exists to assure that they meet the standards of the Inter-Society Commission for Heart Disease Resources (ICHD) for longevity and end-of-life decay. (The ICHD standards are: (1) 90 percent cumulative survival at 5 years following implant; and (2) an end-of-life decay of less than a 50 percent drop of output voltage and less than 20 percent deviation of magnet rate, or a drop of 5 beats per minute or less, over a period of 3 months or more.) Contractors should consult with their medical advisers and other appropriate individuals and organizations (such as the Northern American Society of Pacing and Electrophysiology, which publishes product reliability information) should questions arise over whether a pacemaker system meets the ICHD standards.

The two groups of guidelines are then further broken down into two general categories—single chamber and dual-chamber pacemakers. Contractors should be aware that the frequency with which a patient is monitored may be changed from time to time for a number of reasons, such as a change in the patient's overall condition, a reprogramming of the patient's pacemaker, the development of better information on the pacemaker's longevity or failure mode, etc. Consequently, changes in the proper set of guidelines may be required. Contractors should inform physicians and monitoring services to alert contractors to any changes in the patient's monitoring prescription that might necessitate changes in the screening guidelines applied to that patient. (Of particular importance is the reprogramming of a dual-chamber pacemaker to a single-chamber mode of operation. Such reprogramming would shift the patient from the appropriate dual-chamber guideline to the appropriate single-chamber guideline.)

Guideline I

1. Single-chamber pacemakers:
   1st month—every 2 weeks;
   2nd through 36th month—every 8 weeks;
   37th month to failure—every 4 weeks.
2. Dual-chamber pacemaker:
   1st month—every 2 weeks;
   2nd through 6th month—every 4 weeks;
   7th through 36th month—every 8 weeks;
   37th month to failure—every 4 weeks.

Guideline II

1. Single-chamber pacemakers:
   1st month—every 2 weeks;
   2nd through 48th month—every 12 weeks;
   49th through 72nd month—every 8 weeks;
   Thereafter—every 4 weeks.
2. Dual-chamber pacemaker:
   1st month—every 2 weeks;
   2nd through 30th month—every 12 weeks;
   31st through 48th month—every 8 weeks;
   Thereafter—every 4 weeks.

D. *Pacemaker Clinic Services:*

1. *General*—Pacemaker monitoring is also covered when done by pacemaker clinics. Clinic visits may be done in conjunction with transtelephonic monitoring or as a separate service; however, the services rendered by a pacemaker clinic are more extensive than those currently possible by telephone. They include, for example, physical examination of patients and reprogramming of pacemakers. Thus, the use of one of these types of monitoring does not preclude concurrent use of the other.

2. *Frequency Guidelines*—As with transtelephonic pacemaker monitoring, the frequency of clinic visits is the decision of the patient's physician, taking into account, among other things, the medical condition of the patient. However, contractors can develop monitoring guidelines that will prove useful in screening claims. The following are recommendations for monitoring guidelines on lithium-battery pacemakers:

a. For single-chamber pacemakers—twice in the first 6 months following implant, then once every 12 months.

b. For dual-chamber pacemakers—twice in the first 6 months, then once every 6 months.

50–2 CYTOTOXIC FOOD TESTS—NOT COVERED (Effective for services performed on or after August 5, 1985.)

Prior to August 5, 1985, Medicare covered cytotoxic food tests as an adjunct to in vivo clinical allergy tests in complex food allergy problems. Effective August 5, 1985, cytotoxic leukocyte tests for food allergies are excluded from Medicare coverage because available evidence does not show that these tests are safe and effective. This exclusion was published as a HCFA Ruling in the **Federal Register** on July 5, 1985.

50–3 HIS BUNDLE STUDY

The His Bundle Study is a specialized type of electrocardiography requiring catheterization of the right side of the heart and is a recognized diagnostic procedure. Medicare coverage of the procedure would be limited to selected patients: those with complex ongoing acute arrhythmias, those with intermittent or permanent heart block in whom pacemaker implantation is being considered, and those patients who have recently developed heart block secondary to a myocardial infarction. When heart catheterization and the His Bundle Study are performed at the same time, the program will cover only one catheterization and a small additional charge for the study.

The following is effective for services performed on or after 12–03–84.

When a His bundle cardiogram is obtained as part of a diagnostic endocardial electrical stimulation, no separate charge will be recognized for the His bundle study. (See 36–76, Diagnostic Endocardial Electrical Stimulation.)

50–4 GRAVLEE JET WASHER

The Gravlee Jet Washer is a sterile, disposable, diagnostic device for detecting endometrial cancer. The use of this device is indicated where the patient exhibits clinical symptoms or signs suggestive of endometrial disease, such as irregular or heavy vaginal bleeding.

Program payment cannot be made for the washer or the related diagnostic services when furnished in connection with the examination of an asymptomatic patient. Payment for routine physical checkups is precluded under the statute (§ 1862(a)(7) of the Act).

Cross-refer: Intermediary Manual, § 3157; Carriers Manual, § 2320.

50–5 THERMOGRAPHY

Thermography is a procedure which relies upon measurement of infrared radiation from the body for diagnostic purposes. Its use is indicated when disease is suspected and not as a screening device for ostensibly healthy individuals. Thermography must be performed by a physician or under his direct supervision; however, only a physician can interpret the results.

The use of thermography for the following indications is covered:

- Peripheral vascular disease (e.g., thrombophlebitis, arterial insufficiency);
- Musculoskeletal injury (e.g., low back injury involving musculoligamentous soft tissue or herniated disc); and
- Cervical thermography for diagnosis of extra-cranial vessel disease causing CNS symptoms (carotid insufficiency), and for diagnosis of inflammatory, neoplastic, and hyperplastic lesions.

The following are some examples, by category, of the use of cervical thermography in diagnosing lesions:

—Inflammatory lesions:
  *Soft tissue injury (e.g., whiplash);
  *Presence of a foreign body (e.g., loa loa, a filarial roundworm infestation);
—Neoplastic lesions:
  *Parathyroid adenoma;
  *Isotopically cold thyroid nodule;
  *Tumor of the larynx with metastases to neck lymph nodes; and
—Hyperplastic lesions:
  *Parathyroid adenoma;
  *Isotopically hot thyroid nodule.

The use of thermography for the following indication is excluded from coverage effective for services rendered on and after July 20, 1984.

Detection of breast disease.

50–6 PLETHYSMOGRAPHY

Plethysmography involves the measurement and recording (by one of several methods) of changes in the size of a body part as modified by the circulation of blood in that part. Plethysmography is of value as a noninvasive technique for diagnostic, preoperative and postoperative evaluation of peripheral artery disease in the internal medicine or vascular surgery practice. It is also a useful tool for the preoperative podiatric evaluation of the diabetic patient or one who has intermittent claudication or other signs or symptoms indicative of peripheral vascular disease which would have a bearing on the patient's candidacy for foot surgery.

The oldest form of plethysmography is the venous occlusive pneumoplethysmography. This method is cumbersome, time consuming, and requires considerable training to give useful, reproducible results. Nonetheless, in the setting of the hospital vascular laboratory, this technique should be considered a reasonable and necessary procedure for the diagnostic evaluation of suspected peripheral arterial disease. It is unsuitable for routine use in the physician's office.

Recently, however, a number of other plethysmographic methods have been developed which make use of phenomena such as changes in electric impedance or changes in segmental blood pressure at constant volume to assess regional perfusion. Several of these methods have reached a level of development which makes them clinically valuable.

Medicare coverage is extended to those procedures listed in Category I below when used for the accepted medical indications mentioned above. The procedures in Category II are still considered experimental and are not covered at this time. Denial of claims because a noncovered procedure was used or because there was no medical indication for plethysmographic evaluation of any type should be based on § 1862(a)(1) of the law.

CATEGORY I

Segmental Plethysmography—Included under this procedure are services performed with a regional plethysmograph, differential plethysmograph, recording oscillometer, and a pulse volume recorder.

Electrical Impedance Plethysmography

Ultrasonic Measurement of Blood Flow (Doppler)—While not strictly a plethysmographic method this is also a useful tool in the evaluation of suspected peripheral vascular disease or preoperative screening of podiatric patients with suspected peripheral vascular compromise. (See § 50–7 for the

applicable coverage policy on this procedure).

Oculoplethysmography—See § 50–37, Noninvasive Tests of Carotid Function.

Strain Gauge Plethysmography—This test is based on recording the non-pulsatile aspects of inflowing blood at various points on an extremity by a mercury-in-silastic strain gauge sensor. The instrument consists of a chart recorder, an automatic cuff inflation and deflation system, and a recording manometer.

CATEGORY II

The following methods have not yet reached a level of development such as to allow their routine use in the evaluation of suspected peripheral vascular disease.

Inductance Plethysmography—This method is considered experimental and does not provide reproducible results.

Capacitance Plethysmography—This method is considered experimental and does not provide reproducible results.

Mechanical Oscillometry—This is a non-standardized method which offers poor sensitivity and is not considered superior to the simple measurement of peripheral blood pressure.

Strain Gauge Plethysmography—This method is still considered experimental, does not provide consistent results, and is therefore not suitable for routine office use.

Photoelectric Plethysmography—This method is considered useful only in determining whether or not a pulse is present and does not provide reproducible measurements of blood flow.

Differential plethysmography, on the other hand, is a system which uses an impedance technique to compare pulse pressures at various points along a limb, with a reference pressure at the mid-brachial or wrist level. It is not clear whether this technique, as usually performed in the physician's office, meets the definition of plethysmography because quantitative measurements of blood flow are usually not made. It has been concluded, in any event, that the differential plethysmography system is a blood pulse recorder of undetermined value, which has the potential for significant overutilization. Therefore, reimbursement for studies done by techniques other than venous occlusive pneumoplethysmography should be denied, at least until additional data on these devices, including controlled clinical studies, become available.

50–7 ULTRASOUND DIAGNOSTIC PROCEDURES

Coverage.—Ultrasound diagnostic procedures utilizing low energy sound waves are being widely employed to determine the composition and contours of nearly all body tissues except bone and air-filled spaces. This technique permits noninvasive visualization of even the deepest structures in the body. The use of the ultrasound technique is sufficiently developed that it can be considered essential to good patient care in diagnosing a wide variety of conditions.

Ultrasound diagnostic procedures are listed below and are divided into two categories. Medicare coverage is extended to the procedures listed in Category I. Periodic claims review by the intermediary's medical consultants should be conducted to insure that the techniques are medically appropriate and the general indications specified in these categories are met.

Techniques in Category II are considered experimental and should not be covered at this time.

CATEGORY I (Clinically effective, usually part of initial patient evaluation, may be an adjunct to radiologic and nuclear medicine diagnostic technique).

Echoencephalography, (Diencephalic Midline) (A-Mode)

Echoencephalography, Complete (Diencephalic Midline and Ventricular Size)

Ocular and Orbital Echography (A-Mode)

Covered procedures include efforts to determine the suitability of aphakic patients for implantation of an artificial lens (pseudophakoi) following cataract surgery.

Ocular and Orbital Sonography (B-Mode)

Echocardiography, Pericardial Effusion (M-Mode)

Pericardiocentesis, by Ultrasonic Guidance

Echocardiography, Cardiac Valve(s) (M-Mode)

Echocardiography, Complete (M-Mode)

Echocardiography, limited (e.g., follow-up or limited study) (M-Mode)

Pleural Effusion Echography

Thoracentesis, by Ultrasonic Guidance

Abdominal Sonography, complete survey study (B-Scan)

Abdominal Sonography, limited (e.g., follow-up or limited study) (B-Scan)

Abdominal sonography is not synonymous with ultrasound examination of individual organs.

Renal Cyst Aspiration, by Ultrasonic Guidance

Renal Biopsy, by Ultrasonic Guidance

Pancreas Sonography (B-Scan)

Pancreatic sonography has proven effective in diagnosing pseudocysts.

Spleen Sonography (B-Scan)

Abdominal Aorta Echography (A-Mode)

Abdominal Aorta Sonography (B-Scan)

Retroperitoneal Sonography (B-Scan)

Retroperitoneal sonography does not include planning of fields for radiation therapy.

Urinary Bladder Sonography (B-Scan)

Urinary bladder sonography does not include staging of bladder tumors.

Pregnancy Diagnosis Sonography (B-Scan)

Fetal Age Determination (Biparietal Diameter) Sonography (B-Scan)

Fetal Growth Rate Sonography (B-Scan)

Placenta Localization Sonography (B-Scan)

Pregnancy Sonography, Complete (B-Scan)

Molar Pregnancy Diagnosis Sonography (B-Scan)

Ectopic Pregnancy Diagnosis Sonography (B-Scan)

Passive Testing (Antepartum Monitoring of Fetal Heart Rate In the Resting Fetus)

Intrauterine Contraceptive Device Sonography (B-Scan)

Pelvic Mass Diagnosis Sonography (B-Scan)

Amniocentesis, by Ultrasonic Guidance

Arterial Flow Study, Peripheral (Doppler)

Venous Flow Study, Peripheral (Doppler)

Arterial Aneurysm, Peripheral (B-Scan)

Radiation Therapy Planning Sonography (B-Scan)

Thyroid Echography (A-Mode)

Thyroid Sonography (B-Scan)

Breast Echography (A-Mode)

Breast Sonography (B-Scan)

Hepatic Sonography (B-Scan)

Gallbladder Sonography

Renal Sonography

Two-Dimensional Echocardiography (B-Mode)

CATEGORY II (Clinical reliability and efficacy not proven).

B-Scan for atherosclerotic narrowing of peripheral arteries.

Monitoring of cardiac output (Doppler).

Note.—In view of the rapid changes in the field of ultrasound diagnosis, uses for ultrasound diagnostic procedures other than those listed under Categories I and II should be carefully reviewed before payment. Medical justification may be required. When appropriate, new uses for ultrasound diagnostic procedures should be forwarded to the Bureau of Eligibility, Reimbursement and Coverage, HCFA, so that revisions may be made in the coverage policy when appropriate.

Cross refer: § 50–37.

50–8 CONSULTATION SERVICES RENDERED BY A PODIATRIST IN A SKILLED NURSING FACILITY

Consultation services rendered by a podiatrist in a skilled nursing facility are covered if the services are reasonable and necessary and do not come within any of the specific statutory exclusions. Section 1862(a)(13) of the Act excludes payment for the treatment of flat foot conditions, the treatment of subluxations of the foot, and routine foot care. To determine whether the consultation comes within the foot care exlusions, apply the same rule as for initial diagnostic examinations, i.e., where services are performed in connection with specific symptoms or complaints which suggest the need for covered services, the services are covered regardless of the resulting diagnosis. The exclusion of routine physician examinations is also pertinent and would generally exclude podiatric consultation performed on all patients in a skilled nursing facility on a routine basis for screening purposes, except in those cases where a specific foot ailment is involved. Section 1862(a)(7) of the Act excludes payment for routine physical checkups.

Cross-refer: Intermediary Manual, §§ 3157, 3158; Carriers Manual, § 2323.

50–9 GASTROPHOTOGRAPHY

Gastrophotography is an accepted procedure for diagnosis and treatment of gastrointestinal disorders. The photographic record provided by this procedure is often necessary for consultation and/or followup purposes and when required for such purposes, is more valuable than a conventional gastroscopic examination. Such a record facilitates the documentation and evaluation (healing or worsening) of lesions such as the gastric ulcer, facilitates consultation between physicians concerning difficult-to-interpret lesions, provides preoperative characterization for the surgeon, and permits better diagnosis of postoperative gastric bleeding to help determine whether there is a need for reoperation. Therefore, program reimbursement may be made for this procedure.

50–10 VABRA ASPIRATOR

The VABRA aspirator is a sterile, disposable, vacuum aspirator which is used to collect uterine tissue for study to detect endometrial carcinoma. The use of this device is indicated where the patient exhibits clinical symptoms or signs suggestive of endometrial disease, such as irregular or heavy vaginal bleeding.

Program payment cannot be made for the aspirator or the related diagnostic services when furnished in connection with the examination of an asymptomatic patient. Payment for routine physical checkups is precluded under the statute (section 1862(a)(7) of the Act).

Cross-refer: Intermediary Manual, § 3157; Carriers Manual § 2320; § 50–4.

50–12 COMPUTERIZED TOMOGRAPHY

A. *General.*—Diagnostic examinations of the head (head scans) and of other parts of the body (body scans) performed by computerized tomography (CT) scanners are covered if you find that the medical and scientific literature and opinion support the effective use of a scan for the condition, and the scan is: (1) reasonable and necessary for the individual patient; and (2) performed on a model of CT equipment that meets the criteria in C below.

CT scans have become the primary diagnostic tool for many conditions and symptoms. CT scanning used as the primary diagnostic tool can be cost effective because it can eliminate the need for a series of other tests, is non-invasive and thus virtually eliminates complications, and does not require hospitalization.

B. *Determining Whether a CT Scan Is Reasonable and Necessary.*—Sufficient information must be provided with claims to differentiate CT scans from other radiology services and to make coverage determinations. Carefully review claims to insure that a scan is reasonable and necessary for the individual patient; i.e., the use must be found to be medically appropriate considering the patient's symptoms and preliminary diagnosis.

There is no general rule that requires other diagnostic tests to be tried before CT scanning is used. However, in an individual case the contractor's medical staff may determine that use of a CT scan as the initial diagnostic test was not reasonable and necessary because it was not supported by the patient's symptoms or complaints stated on the claim form; e.g., "periodic headaches."

Continue to review claims for CT scans for evidence of abuse which might include the absence of reasonable indications for the scans, an excessive number of scans or unnecessarily expensive types of scans considering the facts in the particular cases.

C. *Approved Models of CT Equipment.*—

1. *Criteria for Approval.*—In the absence of evidence to the contrary, you may assume that a CT scan for which payment is requested has been performed on equipment that meets the following criteria:

- The model must be known to the Food and Drug Administration, and
- Must be in the full market release phase of development.

Should it be necessary to confirm that those criteria are met, ask the manufacturer to submit the information in subsection C.2. If manufacturers inquire about obtaining Medicare approval for their equipment, inform them of the foregoing criteria.

2. *Evidence of Approval:*

a. The letter sent by the Bureau of Radiological Health, Food and Drug Administration (FDA), to the manufacturer acknowledging the FDA's receipt of information on the specific CT scanner system model submitted as required under Public Law 90–602, "The Radiation Control for Health and Safety Act of 1968."

b. A letter signed by the chief executive officer or other officer acting in a similar capactity for the manufacturer which:

(1) Furnishes the CT scanner system model number, all names that hospitals and physicians' offices may use to refer to the CT scanner system on claims, and the accession number assigned by FDA to the specific model;

(2) Specifies whether the scanner performs head scans only, body scans only (i.e., scans of parts of the body other than the head), or head and body scans;

(3) States that the company or corporation is satisfied with the results of the developmental stages that preceded the full market release phase of the equipment, that the equipment is in the full market release phase, and the date on which it was decided to put the product into the full market release phase.

D. *Mobile CT Equipment.*—CT scans performed on mobile units are subject to the same Medicare coverage requirements applicable to scans performed on stationary units, as well as certain health and safety requirements recommended by PHS. As with scans performed on stationary units, the scans must be determined medically necessary for the individual patient. The scans must be performed on types of CT scanning equipment that have been approved for use as stationary units (see C above), and must be in compliance with applicable State laws and regulations for control or radiation.

1. *Hospital Setting.*—The hospital must assume responsibility for the quality of the scan furnished to inpatients and outpatients and must

assure that a radiologist or other qualified physician is in charge of the procedure. The radiologist or other physician (i.e., one who is with the mobile unit) who is responsible for the procedure must be approved by the hospital for similar privileges.

2. *Ambulatory Setting.*—If mobile CT scan services are furnished at an ambulatory health care facility other than a hospital-based facility, e.g., a freestanding physician-directed clinic, the diagnostic procedure must be performed by or under the direct personal supervision of a radiologist or other qualified physician. In addition, the facility must maintain a record of the attending physician's order for a scan performed on a mobile unit.

3. *Billing for Mobile CT Scans.*—Hospitals, hospital-associated radiologists, ambulatory health care facilities, and physician owner/operators of mobile units may bill for mobile scans as they would for scans performed on stationary equipment.

4. *Claims Review.*—Evidence of compliance with applicable State laws and regulations for control of radiation should be requested from owners of mobile CT scan units upon receipt of the first claims. All mobile scan claims should be reviewed very carefully in accordance with instructions applicable to scans performed on fixed units, with particular emphasis on the medical necessity for scans performed in an ambulatory setting.

E. *Multiplanar Diagnostic Imaging (MPDI).*—(Effective for services performed on or after 8–11–85.)

In usual computerized tomography (CT) scanning procedures, a series of transverse or axial images are reproduced. These transverse images are routinely translated into coronal and/or sagittal views. Multiplanar diagnostic imaging (MPDI) is a process which further translates the data produced by CT scanning by providing reconstructed oblique images which can contribute to diagnostic information. MPDI, also known as planar image reconstruction or reformatted imaging, is covered under Medicare when provided as a service to an entity performing a covered CT scan.

50–13 MAGNETIC RESONANCE IMAGING (Effective for services performed on or after 11–22–85.)

Magnetic resonance imaging (MRI), formerly called nuclear magnetic resonance (NMR), is covered under Medicare when furnished as described below for the types of covered conditions described in this instruction.

A. *General.*

1. *Method of Operation.*—Magnetic resonance imaging is a noninvasive method of graphically representing the distribution of water and other hydrogen-rich molecules in the human body. In contrast to conventional radiographs or CT scans, in which the image is produced by X-ray beam attenuation by an object, MRI is capable of producing images by several techniques. In fact, various combinations of MR image production methods may be employed to emphasize particular characteristics of the tissue or body part being examined. The basic elements by which MRI produces an image are the density of hydrogen nuclei in the object being examined, their motion, and the relaxation times, the period of time required for the nuclei to return to their original states in the main, static magnetic field after being subjected to a brief additional magnetic field. These relaxation times reflect the physical-chemical properties of tissue and the molecular environment of its hydrogen nuclei. Only hydrogen atoms are present in human tissues in sufficient concentration for current use in clinical MRI.

2. *General Clinical Utility.*—Overall, MRI is a useful diagnostic imaging modality that is capable for demonstrating a wide variety of soft-tissue lesions with contrast resolution equal or superior to CT scanning in various parts of the body.

Among the advantages of MRI are the absence of ionizing radiation and the ability to achieve high levels of tissue contract resolution without injected inodiated contrast agents. Recent advances in technology have resulted in development of new paramagnetic contrast agents for MRI which allow even better visualization in some instances. Multislice imaging and the ability to image in multiple planes, especially sagittal and coronal, have provided a flexibility not easily available with other modalities. Because cortical bone and metallic prostheses do not cause distortion of MR images, it has been possible to visualize certain lesions and body regions with greater certainty than has been possible with CT. The use of MRI on certain soft tissue structures for the purpose of detecting disruptive, neoplastic, degenerative or inflammatory lesions has now become established in medical practice.

B. *Covered Clinical Applications.*—Although several uses of MRI are still considered investigational, and some uses are clearly contraindicated (see C. below), MRI is considered medically efficacious for a number of uses. Contractors should use the following descriptions as general guidelines or examples of what may be considered covered, rather than as a restrictive list of specific coverages. Coverage is limited to MRI units which have received premarket approval by the Food and Drug Administration; and such units must be operated within the parameters specified by the approval. As with all items and services, the services must be reasonable and necessary for the diagnosis or treatment of the specific patient involved.

MRI is useful in examining the head, central nervous system, and spine. Multiple sclerosis can be diagnosed with MRI and the contents of the posterior fossa are visible. The inherent tissue contrast-resolution of MRI makes it an appropriate standard diagnostic modality for general neuroradiology. Although MRI can be used to detect degeneration of intervertebral discs, radiological imaging is the preferred modality for diagnosing disc herniation or prolapse. However, in some cases, especially when sensitivity to radiological contrast agents exists and their use is contraindicated, MRI may be covered.

MRI can assist in the differential diagnosis of mediastinal and retroperitoneal masses including abnormalities of the large vessels such as aneurysms and dissection. When a clinical need exists to visualize the parenchyma of solid organs to detect anatomic disruption or neoplasia, this can be accomplished in the liver, urogenital system, adrenals, and pelvic organs without the use of radiological contrast materials. MRI may also be used to detect and stage pelvic and retroperitoneal neoplasms, and to evaluate disorders of cancellous bone and soft tissues. It may also be used in the detection of pericardial thickening.

Primary and secondary bone neoplasms and aseptic necrosis can be detected at an early stage and monitored with MRI. Patients with metallic prostheses, especially of the hip, can be imaged in order to detect the early stages of infection of the bone to which the prothesis is attached.

C. *Contraindications and investigational uses.*

1. *Contraindications.*—MRI is not covered when the following patient-specific contraindications are present. It is not covered for patients with cardiac pacemakers or with metallic clips on vascular aneurysms. MRI during a viable pregnancy is also contraindicated at this time. The danger inherent in bringing ferromagnetic materials within range of MRI units generally constrains the use of MRI on acutely ill patients requiring life support systems and monitoring devices which employ ferromagnetic materials. In addition, the long imaging time and the enclosed position of the patient may result in claustrophobia, making patients who have a history of claustrophobia unsuitable candidates for MRI procedures.

2. *Investigational uses.*—Several uses of MRI have been identified as investigational and are not covered. These include procedures involving gating devices, which are generally used on organs which are in motion, such as the heart or lungs, the measurement of blood flow and spectroscopy. In addition, MRI is not suitable for the imaging of cortical bone and calcifications, or for procedures involving spatial resolution of bone or calcifications.

The use of surface RF coils, whether for sending or receiving RF signals, in conjunction with MRI procedures, is also considered investigational.

50–15 ELECTROCARDIOGRAPHIC SERVICES

Reimbursement may be made under Part B for electrocardiographic services rendered by a physician or incident to his services or by an approved laboratory or an approved supplier of portable X-ray services. Since there is no coverage for EKG services of any type rendered on a screening basis or as part of a routine examination, the claim must indicate the signs and symptoms or other clinical reason necessitating the services.

A separate charge by an attending or consulting physician for EKG interpretation should be allowed only where it is the normal practice to make such charge in addition to the regular office visit charge. No payment should be made for EKG interpretations by individuals other than physicians.

A claim involving EKG services furnished by a *laboratory* or a *portable X-ray supplier* should identify the physician ordering the service and, where the charge includes both the taking of the tracing and its interpretation, the identity of the physician making the interpretation. No separate bill for the services of a physician should be paid unless it is clear that he was the patient's attending physician or was acting as a consulting physician. The taking of an EKG in an emergency, i.e., where the patient is or may be experiencing what is commonly referred to as a "heart attack," would be covered as a laboratory service or a diagnostic service by a portable X-ray supplier only where the evidence shows that a physician was in attendance at the time the service was performed or immediately thereafter.

Where EKG services are rendered in the patient's home and the laboratory's or portable X-ray supplier's charge is higher than that imposed for the same service when performed in the laboratory or portable X-ray supplier's office, the medical need for home service should be documented. In the absence of such justification, reimbursement for the service if otherwise medically necessary should be based on the reasonable charge applicable when performed in the laboratory or X-ray supplier's office.

The documentation required in the various situations mentioned above must be furnished not only when the laboratory or portable X-ray supplier bills the patient or carrier for its service, but also when such a facility bills the attending physician who, in turn, bills the patient or carrier for the EKG services. (In addition to the evidence required to document the claim, the laboratory or portable X-ray supplier must maintain in its records the referring physician's written order and the identity of the employee taking the tracing.)

Long Term EKG Monitoring, also referred to as long-term EKG recording, Holter recording, or dynamic electrocardiography, is a diagnostic procedure which provides a continuous record of the electrocardiographic activity of a patient's heart while he is engaged in his daily activities.

The basic components of the long-term EKG monitoring systems are a sensing element, the design of which may provide either for the recording of electrocardiographic information on magnetic tape or for detecting significant variations in rate or rhythm as they occur, and a component for either graphically recording the electrocardiographic data or for visual or computer assisted analysis of the information recorded on magnetic tape. The long-term EKG permits the examination in the ambulant or potentially ambulant patient of as many as 70,000 heartbeats in a 12-hour recording while the standard EKG which is obtained in the recumbent position, yields information on only 50 to 60 cardiac cycles and provides only a limited data base on which diagnostic judgments may be made.

Many patients with cardiac arrhythmias are unaware of the presence of an irregularity in heart rhythm. Due to the transient nature of many arrhythmias and the short intervals in which the rhythm of the heart is observed by conventional standard EKG techniques, the offending arrhythmias can go undetected. With the extended examination provided by the long-term EKG, the physician is able not only to detect but also to classify various types of rhythm disturbances and waveform abnormalities and note the frequency of their occurrence. The knowledge of the reaction of the heart to daily activities with respect to rhythm, rate, conduction disturbances, and ischemic changes are of great assistance in directing proper therapy and rehabilitation.

This modality is valuable in both inpatient and outpatient diagnosis and therapy. Long-term monitoring of ambulant or potentially ambulant inpatients provides significant potential for reducing the length of stay for post-coronary infarct patients in the intensive care setting and may result in earlier discharge from the hospital with greater assurance of safety to the patients. The indications for the use of this technique, noted below, are similar for both inpatients and outpatients.

The long-term EKG has proven effective in detecting transient episodes of cardiac dysrhythmia and in permitting the correlation of these episodes with cardiovascular symptomatology. It is also useful for patients who have symptoms of obscure etiology suggestive of cardiac arrhythmia. Examples of such symptoms include palpitations, chest pain, dizziness, light-headedness, near syncope, syncope, transient ischemic episodes, dyspnea, and shortness of breath.

This technique would also be appropriate at the time of institution of any arrhythmic drug therapy and may be performed during the course of therapy to evaluate response. It is also appropriate for evaluating a change of dosage and may be indicated shortly before and after the discontinuation of anti-arrhythemic medication. The therapeutic response to a drug whose duration of action and peak of effectiveness is defined in hours cannot be properly assessed by examining 30-40 cycles on a standard EKG rhythm strip. The knowledge that all patients placed on anti-arrhythmic medication do not respond to therapy and the known toxicity of anti-arrhythmic agents clearly indicate that proper assessment should be made on an individual basis to determine whether medication should be continued and at what dosage level.

The long-term EKG is also valuable in the assessment of patients with coronary artery disease. It enable the documentation of etiology of such symptoms as chest pain and shortness of breath. Since the standard EKG is

often normal during the intervals between the episodes of precordial pain, it is essential to obtain EKG information while the symptoms are occurring. The long-term EKG has enabled the correlation of chest symptoms with the objective evidence of ST-segment abnormalities. It is appropriate for patients who are recovering from an acute myocardial infarction or coronary insufficiency before and after discharge from the hospital, since it is impossible to predict which of these patients is subject to ventricular arrhythmias on the basis of the presence or absence of rhythm disturbances during the period of initial coronary care. The long-term EKG enables the physician to identify patients who are at a higher risk of dying suddenly in the period following an acute myocardial infarction. It may also be reasonable and necessary where the high-risk patient with known cardiovascular disease advances to a substantially higher level of activity which might trigger increased or new types of arrhythmias necessitating treatment. Such a high-risk case would be one in which there is documentation that acute phase arrhythmias have not totally disappeared during the period of convalescence.

In view of recent developments in cardiac pacemaker monitoring techniques (see CIA 50-1), the use of the long-term EKG for routine assessment of pacemaker function can no longer be justified. Its use for the patient with an internal pacemaker would be covered only when he has symptoms suggestive of arrhythmia not revealed by the standard EKG or rhythm strip.

These guidelines are intended as a general outline of the circumstances under which the use of this diagnostic procedure would be warranted. Each patient receiving a long-term EKG should be evaluated completely, prior to performance of this diagnostic study. A complete history and physical examination should be obtained and the indications for use of the long-term EKG should be reviewed by the referring physician.

The performance of a long-term EKG does not necessarily require the prior performance of a standard EKG. Nor does the demonstration of a normal standard EKG preclude the need for a long-time EKG. Finally, the demonstration of an abnormal standard EKG does not obviate the need for a long-term EKG if there is suspicion that the dysrhythmia is transient in nature.

A period of recording of up to 24 hours would normally be adequate to detect most transient arrhythmias and provide essential diagnostic information. The medical necessity for longer periods of monitoring must be documented.

Medical documentation for adjudicating claims for the use of the long-term EKG should be similar to other EKG services, X-ray services, and laboratory procedures. Generally, a statement of the diagnostic impression of the referring physician with an indication of the patient's relevant signs and symptoms should be sufficient for purposes of making a determination regarding the reasonableness and medical necessity for the use of this procedure. However, the intermediaries or carriers should require whatever additional documentation their medical consultants deem necessary to properly adjudicate the individual claim where the information submitted is not adequate.

It should be noted that the recording device furnished to the patient is simply one component of the diagnostic system and a separate charge for it will not be recognized under the durable medical equipment benefit.

Patient-Activated EKG Recorders, distributed under a variety of brand names, permit the patient to record an EKG upon manifestation of symptoms, or in response to a physician's order (e.g., immediately following strong exertion). Most such devices also permit the patient to simultaneously voice-record in order to describe symptoms and/or activty. In addition, some of these devices permit transtelephonic transmission of the recording to a physician's office, clinic, hospital, etc., having a decoder/recorder for review and analysis, thus eliminating the need to physicially transport the tape. Some of thes devices also permit a "time sampling" mode of operation. However, the "time sampling" mode is not covered—only the patient-activated mode of operation, when used for the indications described below, is covered at this time.

Services in connection with patient-activated EKG recorders are covered when used as an alternative to the long-term EKG monitoring (described above) for similar indications—detecting and characterizing symptomatic arrhythmias, regulation of anti-arrhythmic drug therapy, etc. Like long-term EKG monitoring, use of these devices is covered for evaluating patients with symptoms of obscure etiology suggestive of cardiac arrhythmia such as palpitations, chest pain, dizziness, lightheadedness, near syncope, syncope, transient ischemic episodes, dyspnea and shortness of breath.

As with long-term EKG monitors, patient-activated EKG recorders may be useful for both inpatient and outpatient diagnosis and therapy. While useful for assessing some post-coronary infarct patients in the hospital setting, these devices should not, however, be covered for outpatient monitoring of recently discharged post-infarct patients.

Computer Analyzed Electrocardiograms.—Computer interpretation of EKG's is recognized as a valid and effective technique which will improve the quality and availability of cardiology services. Reimbursement may be made for such computer service when furnished in the setting and under the circumstances required for coverage of other electrocardigraphic services. Where either a laboratory's or a portable x-ray supplier's charge for EKG services includes the physician review and certification of the printout as well as the computer interpretation, the certifying physician must be identified on the HCFA-1490 before the entire charge can be considered a reimbursable charge. Where the laboratory's [or portable x-ray supplier's] reviewing physician is not identified, the carrier should conclude that no professional component is involved and make its charge determination accordingly. If the supplying laboratory [or portable x-ray supplier when supplied by such a facility] does not include professional review and certification of the hard copy, a charge of the patient's physician may be recognized for the service. In any case the charge for the physician component should be substantially less than that for physician interpretation of the conventional EKG tracing in view of markedly reduced demand on the physician's time where computer interpretation is involved. Considering the unit cost reduction expected of this innovation, the total charge for the complete EKG service (taking of tracing and interpretation) when computer interpretation is employed should never exceed that considered reasonable for the service when physician interpretation is involved.

Transtelephonic Electrocardiographic Transmissions (Formerly Referred to as EKG Telephone Reporter Systems).—Effective for services furnished on and after March 1, 1980, coverage is extended to include the use of transtelephonic electrocardiographic (EKG) transmissions as a diagnostic service for the indications described below, when performed with equipment meeting the standards described below, subject to the limitations and conditions specified below. Coverage is further limited to the amounts payable with respect to the physician's service in interpreting the results of such transmissions, including charges for rental of the equipment. The device used by the beneficiary is part of a total diagnostic system and is not considered durable medical equipment.

1. *Covered Uses.*—The use of transtelephonic EKGs is covered for the following uses:

a. to detect, characterize, and document *symptomatic* transient arrhythmias;

b. To overcome problems in regulating antiarrhythmic drug dosage;

c. To carry out early posthospital monitoring of patients discharged after myocardial infarction; (only if 24-hour coverage is provided, see 4. below).

Since cardiology is a rapidly changing field, some uses other than those specified above may be covered if, in the judgment of the contractor's medical consultants, such a use was justifiable in the particular case. The enumerated uses above represent uses for which a firm coverage determination has been made, and for which contractors may make payment without extensive claims development or review.

2. *Specifications for Devices.*—The devices used by the patient are highly portable (usually pocket-sized) and detect and convert the normal EKG signal so that it can be transmitted via ordinary telephone apparatus to a receiving station. At the receiving end, the signal is decoded and transcribed into a conventional EKG. There are numerous devices available which transmit EKG readings in this fashion. For purposes of Medicare coverage, however, the transmitting devices must meet at least the following criteria:

a. They must be capable of transmitting EKG Leads, I, II, or III;

b. These lead transmissions must be sufficiently comparable to readings obtained by a conventional EKG to permit proper interpretation of abnormal cardiac rhythms.

3. *Potential for Abuse—Need for Screening Guidelines.*—While the use of these devices may often compare favorably with more costly alternatives, this is the case only where the information they contribute is actively utilized by a knowledgeable practitioner as part of overall medical management of the patient. Consequently, it is vital that contractors be aware of the potential for abuse of these devices, and adopt necessary screening and physician education policies to detect and halt potentially abusive situations. For example, use of these devices to diagnose and treat suspected arrhythmias as a routine substitute for more conventional methods of diagnosis, such as a careful history, physical examination, and standard EKG and rhythm strip would not be appropriate. Moreover, contractors should require written justification for use of such devices in excess of 30 consecutive days in cases involving detection of transient arrhythmias.

Contractors may find it useful to review claims for these devices with a view toward detecting patterns of practice which may be useful in developing schedules which may be adopted for screening such claims in the future.

4. *Twenty-four Hour Coverage.*—No payment may be made for the use of these devices to carry out early posthospital monitoring of patients discharged after myocardial infarction unless provision is made for 24 hour coverage in the manner described below.

Twenty-four hour coverage means that there must be, at the monitoring site (or sites) an experienced EKG technician receiving calls; tape recording devices do not meet this requirement. Further, such technicians should have immediate access to a physician, and have been instructed in when and how to contact available facilities to assist the patient in case of emergencies.

Cross-refer: HCFA-Pub. 13-3, §§ 3101.5, 3110, 3112.3, HCFA-Pub. 14-3, §§ 2070, 2255, 2050.1.

50-16 HEMORHEOGRAPH

The hemorheograph is a diagnostic instrument which is safe and effective for determining the adequacy of skin perfusion prior to the performance of minor surgical procedures on the extremities, including minor podiatric procedures, and as an adjunct to the evaluation of patients suspected of having peripheral vascular disease.

Program reimbursement may be made only for those services employing the hemorheograph which are performed for preoperative and postoperative diagnostic evaluation of suspected peripheral artery disease.

Note.—This instrument is not a plethysmograph and should not be considered as such. A plethysmograph measures and records changes in the size of a body part as modified by the circulation of blood in that part. The hemorheograph, on the other hand, measures surface blood flow in the skin; it does not measure total blood flow in a digit or limb. (See § 50-6).

50-17 LABORATORY TESTS—CRD PATIENTS

A. Laboratory tests are essential to monitor the progess of CRD patients. The following list and frequencies of tests constitutes the level and types of routine laboratory tests that are covered. Bills for other types of tests are considered nonroutine. Routine tests at greater frequencies must include medical justification. Nonroutine tests generally are justified by the diagnosis. The routinely covered regimen includes the following tests:

Per Dialysis

Hematocrit

Per Week

Prothrombin time for patients on anti-coagulant therapy
Serum Creatinine
BUN

Monthly

Serum Calcium
Serum Potassium
Serum Chloride
Serum Bicarbonate
Serum Phosphorous
Total Protein
Serum Albumin
Alkaline Phospatase
SGOT
LDH

Guidelines for tests other than those routinely performed include:

Bone survey, either the roentgenographic method or the photon absorptiometric procedure for bone mineral analysis-annually.

The frequency of the need to perform "bone surveys" varies with many factors, some of which are the age of the patient (e.g., children and the elderly), clinical symptoms (e.g., bone pain, evidence of metastatic calcification), abnormal laboratory tests) e.g., changes in alkaline phosphatase, calcium, phosphorus), and because of therapeutic intervention directed at forestalling or improving pre-exisitng or potential bone disease (e.g., vitamin D, calcium supplments, parathyroidectomy). Where any of these factors apply to the beneficiary, claims for "bone surveys" performed on a frequency more often than annually need only have minimal documentation of medical need.

Nerve conductor velocity test (peritoneal NCV)—once every 3 months.

EKG—once very 3 months.

Chest X-ray—once every 6 months (effective for services rendered on or after December 1, 1976).

Hepatitis associated antigen tests—once a month. (These tests previously were subject to a guideline limit of once a quarter. While their category has been changed so that they now can be provided once a month without additional documentation, they should

BEST COPY AVAILABLE

be billed for separately because the reimbursement screens for maintenance dialysis treatments did not take them into account).

B. Laboratory tests are subject to the normal coverage requirements. If the laboratory services are performed by a free-standing facility, it must meet the conditions of coverage for independent laboratories.

50–18 ELECTRON MICROSCOPE

The electron microscope has been used in the examination of biopsies for years and its efficacy, and therefore its Medicare coverage, is not being questioned. However, there also are other less expensive methods for examining biopsies which are normally adequate. The additional expense for the electron microscope is normally warranted only when distinguishing different types of nephritis from renal needle biopsies or when there is an uncertain diagnosis from the pathologist. When an uncertain diagnosis from the pathologists results from a less expensive method of examination, and an electron microscope examination is therefore necessary, both biopsy examinations are covered. Where the additional expense for an electron microscope examination is not warranted, program payment will be based upon the less costly methods of examining biopsies.

50–19 PRONOUNCEMENT OF DEATH

According to estabished legal principles, an individual is not considered deceased until there has been official pronouncement of death. An individual is therefore considered to have expired as of the time he is pronounced dead by a person who is legally authorized to make such a pronouncement, usually a physician. Reasonable and necessary medical services rendered up to and including pronouncement of death by a physician are covered diagnostic or therapeutic services.

50–20 PAP SMEARS (Effective for pap smears performed on or after May 15, 1978.)

The pap smear is a diagnostic test which can show the absence or presence of one or more of the following conditions: trauma, infection, carcinogens, and viruses. The test is also frequently part of a routine physical examination; as such, it is not a covered Medicare service. A pap smear may be covered under the following conditions: (1) Previous cancer of the cervix, uterus, or vagina which has been or is presently being treated, (2) Previous abnormal pap smear, (3) Any abnormal findings of the vagina, cervix, uterus, ovaries, or adnexa, (4) Any significant complaint by the patient referrable to the female reproductive system, or (5) any signs or symptoms which might in the physician's judgment reasonably be related to gynecologic disorder.

In respect to number five (5) above, the intermediary's medical staff should determine whether in a particular case a previous malignancy at another site is a diagnostic indication for a pap smear so that the test would not be considered part of a routine screening.

Cross-refer: HCFA 13–3, §§ 3101.5; HCFA 14–3, § 2070.

50–21 MAMMOGRAMS

(Effective for mammograms performed on or after May 15, 1978).

A radiological mammogram is a covered diagnostic test under the following conditions: (1) A patient has distinct signs and symptoms for which a mammogram is indicated, (2) A patient has a history of breast cancer, or (3) A patient is asymptomatic but, on the basis of the patient's history and other factors the physician considers significant, the physician's judgment is that a mammogram is appropriate.

Use of mammograms in routine screening of (1) asymptomatic women aged 50 and over, and (2) asymptomatic women aged 40 or over whose mothers or sisters have had the disease, is considered medically appropriate, but would not be covered for Medicare purposes.

Cross-refer: HCFA 13–3, §§ 3101.5; HCFA 14–3, § 2070.

50–22 CHALLENGE INGESTION FOOD TESTING

(Effective for services performed on and after August 1, 1978).

Challenge ingestion food testing is a safe and effective technique in the diagnosis of food allergies. This procedure may be covered when it is used on an outpatient basis if it is reasonable and necessary for the individual patient.

Challenge ingestion food testing has not been proven to be effective in the diagnosis of rheumatoid arthritis, depression, or respiratory disorders. Accordingly, its use in the diagnosis of these conditions is not reasonable and necessary within the meaning of section 1862(a)(1) of the Medicare law, and no program payment may be made for this procedure when it is so used.

50–23 HISTOCOMPATIBILITY TESTING

(Effective for services performed on and after August 1, 1978).

Histocompatibility testing involves the matching or typing of the human leucocyte antigen (HLA). This testing is safe and effective when it is performed on patients:

A. In preparation for a kidney transplant;

B. In preparation for bone marrow transplant;

C. In preparation for blood platelet transfusions (particularly where multiple infusions are involved); or

D. Who are suspected of having ankylosing spondylitis.

This testing is covered under Medicare when used for any of the indications listed in A, B, and C and if it is reasonable and necessary for the patient.

It is covered for ankylosing spondylitis in cases where other methods of diagnosis would not be appropriate or have yielded inconclusive results. Request documentation supporting the medical necessity of the test from the physician in all cases where ankylosing spondylitis is indicated as the reason for the test.

50–24 HAIR ANALYSIS—NOT COVERED

Hair analysis to detect mineral traces as an aid in diagnosing human disease is not a covered service under Medicare.

The correlation of hair analysis to the chemical state of the whole body is not possible at this time, and therefore this diagnostic procedure cannot be considered to be reasonable and necessary under § 1862(a)(1) of the law.

50–25 ESOPHAGEAL MANOMETRY

(Effective for services performed on and after October 2, 1978).

Esophageal manometry is covered under Medicare where it is determined to be reasonable and necessary for the individual patient. The major use of esophageal manometry is to measure pressure within the esophagus to assist in the diagnosis of esophageal pathology including aperistalsis, spasm, achalasia, esophagitis, esophageal ulcer, esophageal congenital webs, diverticuli, scleroderma, hiatus hernia, congenital cysts, benign and malignant tumors, hypermobility, hypomobility, and extrinsic lesions. Esophageal manometry is mostly used in difficult diagnostic cases and as an adjunct to X-rays and direct visualization of the esophagus (endoscopy) through the fiberscope.

50–26 DENTAL EXAMINATION PRIOR TO KIDNEY TRANSPLANTATION

Despite the "dental services exclusion" in § 1862(a)(12) of the Act (see Intermediary Manual, § 3162; Carriers Manual, § 2336), an oral or dental examination performed on an inpatient basis as part of a comprehensive workup prior to renal transplant surgery is a covered service. This is because the purpose of the examination is not for the care of the teeth or structures directly supporting the teeth. Rather, the examination is for the identification, prior to a complex surgical procedure, of existing medical problems where the increased possibility of infection would not only reduce the chances for successful surgery but would also expose the patient to additional risks in undergoing such surgery.

Such a dental or oral examination would be covered under Part A of the program if performed by a dentist on the hospital's staff, or under Part B if performed by a physician. (When performing a dental or oral examination, a dentist is not recognized as a physician under § 1861(r) of the law.) (See Intermediary Manual, §§ 3020.2; Carriers Manual § 2020.3.)

50–27 XENON SCAN

(Effective for services performed on and after September 1, 1979).

Program payment may be made for this diagnostic procedure which involves perfusion lung imaging with 133 xenon. However, review for evidence of abuse which might include absence of reasonable indications, inappropriate sequence, or excessive number or kinds of procedures used in the care of individual patients.

50–28 HOSPITAL AND SKILLED NURSING FACILITY ADMISSION DIAGNOSTIC PROCEDURES

These instructions clarify the application of the reasonable and necessary payment exclusion to diagnostic procedures, such as chest X-rays, urinalysis, etc. provided to patients upon admission to a hospital or skilled nursing facility.

The major factors which support a determination that a diagnostic procedure performed as part of the admitting procedure to a hospital or skilled nursing facility is reasonable and necessary are:

A. The test is specifically ordered by the admitting physician (or a hospital or skilled nursing facility staff physician having responsibility for the patient where there is no admitting physician): i.e., it is not furnished under the standing orders of a physician for his patients;

B. The test is medically necessary for the diagnosis or treatment of the individual patient's condition; and

C. The test does not unnecessarily duplicate the same test performed on an outpatient basis prior to admission or performed in connection with a recent hospital or skilled nursing facility admission.

Where you have not already done so, consult with PROs to obtain information gathered by the PROs on a sample basis as to whether X-rays and diagnostic tests are being specifically ordered as described under subsection (A).

50–29 CYTOGENETIC STUDIES

(Effective for services performed on and after October 1, 1979).

The term cytogenetic studies is used to describe the microscopic examination of the physical appearance of human chromosomes. Medicare covers these tests when they are reasonable and necessary for the diagnosis or treatment of: (1) Genetic disorders (e.g., mongolism) in a fetus (See Intermediary Manual, § 3101.13); (2) Failure of sexual development; or (3) Chronic myelogenous leukemia.

50–30 NUCLEAR RADIOLOGY PROCEDURE

(Effective for services performed on and after September 1, 1979).

Nuclear radiology procedures, including nuclear examinations performed with mobile radiological equipment, are covered if reasonable and necessary for the individual patient. Although these procedures may not be widely used, they are generally accepted. Review claims for these procedures for evidence of abuse which might include absence of reasonable indications, inappropriate sequence, or excessive number or kinds of procedures used in the care of individual patients.

50–31 EVOKED RESPONSE TESTS

(Effective for services furnished on and after January 15, 1980).

Evoked response tests, including brain stem evoked response and visual evoked response tests, are generally accepted as safe and effective diagnostic tools. These test measure brain responses to repetitive visual, click or other stimuli. Program payment may be made for these procedures.

50–32 PERCUTANEOUS TRANSLUMINAL ANGIOPLASTY (PTA) IN THE TREATMENT OF ARTERIOSCLEROTIC OBSTRUCTIONS IN THE LOWER EXTREMITIES (EFFECTIVE FOR SERVICES PERFORMED ON AND AFTER MAY 15, 1981.)

This procedure involves inserting a balloon catheter into a narrow or occluded artery in order to recanalize and dilate the artery by inflating the balloon. PTA in the treatment of arteriosclerotic obstructions in the lower extremities—i.e., the iliac, femoral, and popliteal arteries—is a covered service.

50–32.1 PERCUTANEOUS TRANSLUMINAL CORONARY ANGIOPLASTY (PTCA) IN THE TREATMENT OF STENOTIC LESIONS OF A SINGLE CORONARY ARTERY (EFFECTIVE FOR SERVICES PERFORMED ON AND AFTER 11–22–85.)

PTCA, a percutaneous transluminal angioplasty procedure performed in the coronary artery, is covered for treatment of stenotic lesions of a single coronary artery for patients for whom the likely alternative treatment is coronary bypass surgery, and who have the following characteristics:

Angina refractory to optimal medical management;

Objective evidence of myocardial ischemia; and

Lesions amenable to angioplasty.

50–32.2 PERCUTANEOUS TRANSLUMINAL ANGIOPLASTY (PTA) IN THE TREATMENT OF STENOTIC LESIONS OF THE RENAL ARTERIES (EFFECTIVE FOR SERVICES PERFORMED ON AND AFTER MARCH 21, 1983.)

PTA in the treatment of stenotic lesions of the renal arteries is a covered procedure for a limited group of patients. This group comprises those patients in whom there is an inadequate response to a thorough medical management of symptoms and for whom surgery is the likely alternative. PTA for this group of patients is an alternative to surgery, not simply an addition to medical management.

50–32.3 PERCUTANEOUS TRANSLUMINAL ANGIOPLASTY (PTA) IN THE TREATMENT OF OBSTRUCTIVE LESIONS OF THE AORTIC ARCH VESSELS—NOT COVERED

PTA in the treatment of obstructive lesions of the aortic arch vessels, including the carotid, subclavian, and vertebral arteries, is excluded from

coverage. This treatment is a relatively new procedure whose safety and efficacy has not yet been established.

50-32.4 PERCUTANEOUS TRANSLUMINAL ANGIOPLASTY (PTA) IN THE TREATMENT OF OBSTRUCTIVE LESIONS OF ARTERIOVENOUS DIALYSIS FISTULAS—NOT COVERED

The use of PTA to dilate failing arteriovenous dialysis fistulas and shunts is excluded from coverage. This recent application of PTA has rarely been performed. More experience in controlled studies is needed to better define the safety and effectiveness of this procedure.

50-33 UROFLOWMETRIC EVALUATIONS

(Effective for services performed on and after January 1, 1980).

Uroflowmetric evaluations (also referred to as urodynamic voiding or urodynamic flow studies) are covered under Medicare for diagnosing various urological dysfunctions, including bladder outlet obstructions.

50-34 OBSOLETE OR UNRELIABLE DIAGNOSTIC TESTS

(Effective for services performed on and after May 15, 1980).

The following diagnostic tests should not be paid for routinely becaused they are obsolete and have been replaced by more advanced procedures. This listed tests may be paid for only if the medical need for the procedure is satisfactorily justified by the physician who performs it. Where a PSRO is responsible for reviewing the services for which payment is claimed, the determination that satisfactory justification of medical necessity exists is the PSRO's responsibility. Where the services are not subject to PSRO review, the intermediary or carrier is responsible for determining that satisfactory medical justification exists:

—amylase, blood isoenzymes, electrophoretic
—chromium, blood
—guanase, blood
—zinc sulphate turbidiaty, blood
—skin test, cat scratch fever
—skin test, lymphopathia venereum
—circulation time, one test
—cephalin flocculation
—congo red, blood
—hormones, adrenocorticotropin quantitative animal tests
—hormones, adrenocorticotropin quantitative bioassay
—thymol turbidity, blood
—skin test, actinomycosis
—skin test, brucellosis
—skin test, psittacosis
—skin test, trichinosis
—calcium, feces, 24-hour quantiative
—starch, feces, screening
—chymotrypsin, duodenal contents
—gastric analysis pepsin
—gastric analysis, tubeless
—calcium saturation clotting time
—capillary fragility test (Rumpel-Leede)
—colloidal gold

Effective for services performed on and after July 31, 1982, the following additional diagnostic tests are added:

—Bendien's test for cancer and tuberculosis
—Bolen's test for cancer
—Rehfuss test for gastric acidity

Effective for services performed on and after December 3, 1982, the following diagnostic test is added:

—Serum seromucoid assay for cancer and other diseases

50-35 SWEAT TEST

(Effective for services performed on and after September 30, 1980).

The sweat test is an important diagnostic tool in cystic fibrosis and may be covered when used for that purpose. Usage of the sweat test as a predictor of efficacy of sympathectomy in peripheral vascular disease in unproven and, therefore, is not covered.

50-36 POSITRON EMISSION TRANSVERSE TOMOGRAPHY (PETT) SCANS—NOT COVERED

Positron emission transverse tomography (PETT) scans are a new type of scanning system currently in the experimental stage of development. Since this is considered an experimental technology, no payment may be made under Medicare for such scans.

50-37 NONINVASIVE TESTS OF CAROTID FUNCTION

(Effective for services performed on and after November 15, 1980)

Noninvasive tests of carotid function aid physicians in studying and diagnosing carotid disease. There are a variety of these tests which measure various anatomical and physiological aspects of carotid function, including pressure (systolic, diastolic, and pulse), flow, collateral circulation, and turbulence.

For operational purposes it is useful to classify noninvasive tests of carotid function into direct and indirect tests; the direct tests examine the anatomy and physiology of the carotid artery, while the indirect tests examine hemodynamic changes in the disal beds of the carotid artery (the orbital and cerebral circulations).

It is important to note that the names of these tests are not standardized. Following are some of the acceptable tests, recognizing that this list is not inclusive and that determinations should be made by local medical consultants:

DIRECT TESTS

Carotid Phonoangiography
Direct Bruit Analysis
Spectral Bruit Analysis
Doppler Flow Velocity
Ultrasound Imaging including Real Time B-Scan and Doppler Devices

INDIRECT TESTS

Periorbital Directional Doppler Ultrasonography
Oculoplethysmography
Ophthalmodynamometry

50-38 ENDOTHELIAL CELL PHOTOGRAPH

(Effective for services rendered on and after August 19, 1983)

Endothelial cell photography involves the use of a specular microscope to determine the endothelial cell count. It is used by ophthalmologists as a predictor of success of ocular surgery or certain other ocular procedures. Endothelial cell photography is a covered procedure under Medicare when reasonable and necessary for patients who meet one or more of the following criteria:

1. Have slit lamp evidence of endothelial dystrophy (cornea guttata).
2. Have slit lamp evidence of corneal edema (unilateral or bilateral).
3. Are about to undergo a secondary intraocular lens implantation.
4. Have had previous intraocular surgery and require cataract surgery.
5. Are about to undergo a surgical procedure associated with a higher risk to corneal endothelium; ie., phacoemulsification, or refractive surgery. (See § 35-54 for excluded refractive procedures.)
6. With evidence of posterior polymorphous dystrophy of the cornea or iridocorneal-endothelium syndrome.
7. Are about to be fitted with extended wear contact lenses after intraocular surgery.

50-39 TELEPHONE TRANSMISSION OF ELECTROENCEPHALOGRAMS

Telephone transmission of electroencephalograms (EEGs) is covered as a physician's service or as incident to a physician's service when reasonable and necessary for the individual patient, under appropriate circumstances. The service is safe, and may save time and cost in sending EEGs from remote areas without special competence in neurology, neurosurgery, and electroencephalography, by

avoiding the need to transport patients to large medical centers for standard EEG testing.

Telephone transmission of EEGs has been most helpful in the following clinical situations:

A. Altered consciousness, such as stuporous, semicomatose, or comatose states;

B. Atypical seizure variants in patients experiencing bizarre, distressing symptoms as seen with "spike and wave stupor" or other forms of seizure disorders;

C. Diagnosis of a suspected intracranial tumor;

D. Head injury, where a subdural hematoma may be identified;

E. Headaches during the acute phase where, for instance, in migraine syndrome, abnormal responses may be seen.

Telephonically transmitted EEGs should *not* be used for determining electrical inactivity (i.e., brain death), because of unavoidable signal interference.

50-39.1 AMBULATORY ELECTROENCEPHALOGRAPHIC (EEG) MONITORING

(Effective for services performed on or after June 12, 1984)

Ambulatory or 24-hour electroencephalographic (EEG) monitoring is accomplished by a cassette recorder that continuously records brain wave patterns during 24 hours of a patient's routine daily activities and sleep. The monitoring equipment consists of an electrode set, preamplifiers, and a cassette recorder. The electrodes attach to the scalp, and their leads are connected to a recorder, usually worn on a belt.

Ambulatory EEG monitoring is a diagnostic procedure for patients in whom a seizure diathesis is suspected but not defined by history, physical or resting EEG. Ambulatory EEG can be utilized in the differential diagnosis of syncope and transient ischemic attacks if not elucidated by conventional studies. Ambulatory EEG should always be preceded by a resting EEG.

Ambulatory EEG monitoring is considered an established technique and covered under Medicare for the above purposes.

50-40 STEREOTAXIC DEPTH ELECTRODE IMPLANTATION

Stereotaxic depth electrode implantation prior to surgical treatment of focal epilepsy for patients who are unresponsive to anticonvulsant medications has been found both safe and effective for diagnosing resectable seizure foci that may go undetected by conventional scalp electroencephalographs (EEGs).

The procedure employs thin wire electrodes which are implanted in the brain of the focal epileptic patient for EEG monitoring. By taking several readings during seizure activity, the location of the epileptic focus may be found, so that better informed decisions can be made regarding the surgical treatment of persons with intractable seizures.

50-41 HUMAN TUMOR STEM CELL DRUG SENSITIVITY ASSAYS

Human tumor stem cell drug sensitivity assays involve exposure of human tumor stem cell colonies grown in tissue culture to anticancer drugs and observing for cytotoxic effects. Their purpose is to screen potential anticancer drugs and predict the effects of these drugs on tumors of individual patients, to allow the selection of the most effective drug or drugs for that patient. Human tumor drug sensitivity assays are considered experimental, and therefore, not covered under Medicare at this time.

50-42 AMBULATORY BLOOD PRESSURE MONITORING WITH FULLY AND SEMI-AUTOMATIC (PATIENT-ACTIVATED) PORTABLE MONITORS—NOT COVERED

While ambulatory blood pressure monitoring in hypertensive patients using fully and semi-automatic (patient-activated) portable monitors is a safe and accurate means of measuring blood pressure, the clinical usefulness of the data obtained from such devices is not clearly established. Researchers and clinicians cite the need for standardization of instrumentation and further study of this technology to better ascertain its role in hypertensive therapy. Accordingly, program payment may not be made for the use of such devices at this time.

50-43 DIGITAL SUBTRACTION ANGIOGRAPHY

Digital subtraction angiography (DSA) is a diagnostic imaging technique that applies computer technology to fluoroscopy for the purpose of visualizing the same vascular structures observable with conventional angiography. Since the radiographic contrast material can be injected into a vein rather than an artery, the procedure reduces the risk to patients, and can be done on an outpatient basis. Contractors should be alert to possible increases in utilization of DSA over conventional angiographic procedures, as well as to the fact that ordinarily patients should not require inpatient hospitalization solely to perform the procedure.

Reimbursement for DSA should not exceed, and may be less than, that being paid for conventional angiographic techniques. (See HCFA Pub. 14-3, § 5242 for reasonable charge instructions.)

50-44 BONE (MINERAL) DENSITY STUDIES

Effective for services rendered on or after March 4, 1983.

Bone (mineral) density studies are used to evaluate disease of bone and/or the responses of bone diseases to treatment. The studies assess bone mass or density associated with such diseases as osteoporosis, osteomalacia, and renal osteodystrophy. Various single or combined methods of measurement may be required to: (a) diagnose bone disease; (b) monitor the course of bone changes with disease progression; or (c) monitor the course of bone changes with therapy. Bone density is usually studied by using photodensitometry, single or dual photon absorptiometry, or bone biopsy.

The following bone (mineral) density studies are covered under Medicare:

A. *Single Photon Absorptiometry.*—A non-invasive radiological technique that measures absorption of a monochromatic photon beam by bone material. The device is placed directly on the patient, uses a low dose of radionuclide, and measures the mass absorption efficiency of the energy used. It provides a quantitative measurement of the bone mineral of cortical and trabecular bone, and is used in assessing an individual's treatment response at appropriate intervals.

Single photon absorptiometry is covered under Medicare when used in assessing changes in bone density of patients with osteodystrophy or osteoporosis when performed on the same individual at intervals of 6 to 12 months.

B. *Bone Biopsy.*—A physiologic test which is a surgical, invasive procedure. A small sample of bone (usually from the ilium) is removed, generally by a biopsy needle. The biopsy sample is then examined histologically, and provides a qualitative measurement of the bone mineral of trabecular bone. This procedure is used in ascertaining a differential diagnosis of bone disorders and is used primarily to differentiate osteomalacia from osteoporosis.

Bone biopsy is covered under Medicare when used for the qualitative evaluation of bone no more than four times per patient, unless there is special special justification given. When used more than four times on a patient, bone

biopsy leaves a defect in the pelvis and may produce some patient discomfort.

C. *Photodensitometry.*—(radiographic absorptiometry).—A noninvasive radiological procedure that attempts to assess bone mass by measuring the optical density of extremity radiographs with a photodensitometer, usually with a reference to a standard density wedge placed on the film at the time of exposure. This procedure provides a quantitative measurement of the bone mineral of cortical bone, and is used for monitoring gross bone change.

The following bone (mineral) density study is not covered under Medicare:

Dual Photon Absorptiometry.—A noninvasive radiological technique that measures absorption of a dichromatic beam by bone material. This procedure is not covered under Medicare because it is still considered to be in the investigational stage.

50–45 LYMPHOCYTE MITOGEN RESPONSE ASSAYS

For services performed on or after May 16, 1983.

The lymphocyte mitogen response assay measures the immune response of patient peripheral blood lymphocytes. It is a covered test under Medicare when it is medically necessary to assess lymphocytic function in diagnosed immunodeficiency diseases and to monitor immunotherapy.

It is *not covered* when it is used to monitor the treatment of cancer, because its use for that purpose is experimental.

50–46 TRANSILLUMINATION LIGHT SCANNING, OR DIAPHANOGRAPHY—NOT COVERED

While transillumination light scanning, or diaphanography, for use in detection of cancer and other diseases of the breast, appears safe, the usefulness of this instrumentation, when compared to existing modes of cancer and other breast disease detection, has not clearly been established. Further study of this technology is needed to determine its role in breast cancer diagnosis. Program payment may not be made for this procedure at this time.

50–47 CARDIOINTEGRAM (CIG) AS AN ALTERNATIVE TO STRESS TEST OR THALLIUM STRESS TEST—NOT COVERED

A cardiointegram device consists of a microcomputer which receives output from a standard electrocardiogram (EKG) and transforms it to produce a graphic representation of heart electrophysiologic signals. This procedure is used primarily as a substitute for Exercise Tolerance Testing with Thallium Imaging in patients for whom a resting EKG may be inadequate to identify changes compatible with coronary artery disease. Because this device is still considered investigational pending additional data on its clinical efficacy/sensitivity and value as a diagnostic tool, program payment may not be made for its use at this time.

50–48 PORTABLE HAND-HELD X-RAY INSTRUMENT

(Effective for services performed on or after November 6, 1986.)

This low intensity X-ray imaging device is a light weight portable hand-held instrument using a low level isotope as its penetrating energy source. It can picture any part of the human anatomy which can be inserted in the space between the energy source and the viewing mechanism. The device can be useful in making an immediate diagnosis in the following settings: isolated areas, accident scenes, sports events and emergency rooms. It is also useful in the following instances where fluoroscopy would ordinarily be used: localization of foreign bodies, selected surgical procedures and the evaluation of premature or low birth weight infants. The use of the portable hand-held X-ray instrument as an imaging device is covered under Medicare. It should be reimbursed as part of the physician's professional service, and no additional charge should be allowed.

50–49 COMPUTER ENHANCED PERIMETRY

(Effective for services rendered on or after February 15, 1984).

Computer enhanced perimetry involves the use of a micro-computer to measure visual sensitivity at preselected locations in the visual field. It is a covered service when used in assessing visual fields in patients with glaucoma or other neuropathologic defects.

50–50 DISPLACEMENT CARDIOGRAPHY

Displacement cardiography, including cardiokymography and photokymography, is a noninvasive diagnostic test used in evaluating coronary artery disease.

A. *Cardiokymography.*—(Effective for services rendered on or after October 12, 1988).

Cardiokymography is a covered service only when it is used as an adjunct to electrocardiographic stress testing in evaluating coronary artery disease and only when the following clinical indications are present:

- For male patients, atypical angina pectoris or nonischemic chest pain; or
- For female patients, angina, either typical or atypical.

B. *Photokymography.*—Not covered.

Photokymography remains excluded from coverage.

50–51 DIAGNOSTIC BREATH ANALYSES

Diagnostic breath analyses are tests performed to measure either the hydrogen or carbon dioxide content of the breath after the ingestion of certain compounds. The analyses are performed to diagnose certain gastrointestinal disease states.

The following breath test is covered:

Lactose breath hydrogen to detect lactose malabsorption effective for services rendered on and after June 12, 1984.

The following breath tests are excluded from coverage:

- Lactulose breath hydrogen for diagnosing small bowel bacterial overgrowth and measuring small bowel transit time, effective for services rendered on and after May 4, 1984.
- $^{13}CO_2$ for diagnosing bile acid malabsorption, effective for services rendered on and after June 12, 1984.
- $^{13}CO_2$ for diagnosing fat malabsorption, effective for services rendered on and after June 12, 1984.

50–52 SEROLOGIC TESTING FOR A ACQUIRED IMMUNODEFICIENCY SYNDROME (AIDS)

(Effective for Services Performed on or after August 12, 1987.)

Serologic testing is employed to detect antibodies to the AIDS virus, which is currently identified by the term "human immunodeficiency virus (HIV)." The virus originally was named "human T-cell lymphotropic virus, type III (HTLV–III), a term that remains in common usage.

Antibodies may be detected by a variety of immunoassay techniques, the most common being an enzyme linked immunosorbent assay (ELISA). When an assay is reactive on initial testing, it should be repeated on the same specimen. A more specific test, (Western blot, immunofluorescent assay) is usually performed following repeatedly reactive ELISA results.

These tests may be covered when performed to help determine a diagnosis for symptomatic patients. They are not covered when furnished as part of a screening program for asymptomatic persons.

NOTE: Two enzyme-linked immunosorbent assay (ELISA) tests that were conducted on the same specimen must both be positive before Medicare will cover the Western blot test.

50–53 FOOD ALLERGY TESTING AND TREATMENT—NOT COVERED

(Effective for services furnished on or after October 31, 1988.)

Effective October 31, 1988, sublingual intracutaneous and subcutaneous provocative and neutralization testing and neutralization therapy for food allergies are excluded from Medicare coverage because available evidence does not show that these tests and therapies are effective. This exclusion was published as a Final Notice in the Federal Register on September 29, 1988.

55 DIALYSIS EQUIPMENT

55–1 WATER PURIFICATION AND SOFTENING SYSTEMS USED IN CONJUNCTION WITH HOME DIALYSIS

A. *Water Purification Systems.*—Water used for home dialysis should be chemically free of heavy trace metals and/or organic contaminants which could be hazardous to the patient. It should also be as free of bacteria as possible but need not be biologically sterile. Since the characteristics of natural water supplies in most areas of the country are such that some type of water purification system is needed, such a system used in conjunction with a home dialysis (either peritoneal or hemodialysis) unit is covered under Medicare.

There are two types of water purification systems which will satisfy these requirements:

Deionization.—The removal of organic substances, mineral salts or magnesium and calcium (causing hardness), compounds of fluoride and chloride from tap water using the process of filtration and ion exchange; or

Reverse Osmosis.—The process used to remove impurities from tap water utilizing pressure to force water through a porous membrane.

Use of both a deionization unit and reverse osmosis unit in series, theoretically to provide the advantages of both systems, has been determined medically unnecessary since either system can provide water which is both chemically and bacteriologically pure enough for acceptable use in home dialysis. In addition, spare deionization tanks are not covered since they are essentially a precautionary supply rather than a current requirement for treatment of the patient.

Activated carbon filters used as a component of water purification systems to remove unsafe concentrations of chlorine and chloramines are covered when prescribed by a physician.

B. *Water Softening System.*—Except as indicated below, a water softening system used in conjunction with home dialysis is excluded from coverage under Medicare as not being reasonable and necessary within the meaning of § 1862(a)(1) of the law. Such a system, in conjunction with a home dialysis unit, does not adequately remove the hazardous heavy metal contaminants (such as arsenic) which may be present in trace amounts.

A water softening system may be covered when used to pretreat water to be purified by a reverse osmosis (RO) unit for home dialysis where:

- The manufacturer of the RO unit has set standards for the quality of water entering the RO (e.g., the water to be purified by the RO must be of a certain quality if the unit is to perform as intended);
- The patient's water is demonstrated to be of a lesser quality than required; and
- The softener is used only to soften water entering the RO unit, and thus, used only for dialysis. (The softener need not actually be built into the RO unit, but must be an integral part of the dialysis *system.*)

C. *Developing Need When a Water Softening System is Replaced with a Water Purification Unit in an Existing Home Dialysis System.*—The medical necessity of water purification units must be carefully developed when they replace water softening systems in existing home dialysis systems. A purification system may be ordered under these circumstances for a number of reasons. For example, changes in the medical community's opinions regarding the quality of water necessary for safe dialysis may lead the physician to decide the quality of water previously used should be improved, or the water quality itself may have deteriorated. Patients may have dialyzed using only an existing water softener previous to Medicare ESRD coverage because of inability to pay for a purification system. On the other hand, in some cases, the installation of a purification system is not medically necessary. Thus, when such a case comes to your attention, ask the physician to furnish the reason for the changes. Supporting documentation, such as the supplier's recommendations or water analysis, may be required. All such cases should be reviewed by your medical consultants.

Cross-refer: Intermediary Manual, §§ 3113, 3643 (item 1c); Carriers Manual, §§ 2100, 2100.2 2130, 2105 (item 1c); Hospital Manual, § 235.

55–2 PERIDEX CAPD FILTER SET—NOT COVERED

The Peridex Filter Set is used by home continuous ambulatory peritoneal dialysis (CAPD) patients. The Peridex Filter Set is designed to provide sterile filtration during infusion of the dialysis solution in a beneficiary's peritoneal cavity; included in the filter set is a bacterial filter designed to block peritonitis-causing organisms and thus reduce the incidence of peritonitis.

Based upon advice of our medical consultants, we have determined that the Peridex CAPD Filter Set cannot be covered at this time by Medicare because it has not yet been shown to be safe and effective in preventing peritonitis.

55–3 ULTRAFILTRATION MONITOR

(Effective for services performed on and after July 11, 1983.)

The Ultrafiltration Monitor is designed to reduce the clinical risks of overfiltration and underfiltration during hemodialysis. Overfiltration is the removal of too much fluid from body tissues and underfiltration is removal of too little fluid.

Covered: Ultrafiltration and ultrafiltration monitoring as a component of hemodialysis has an established and critical role in maintaining the well-being of ESRD patients and is a covered service. The Ultrafiltration Monitor is covered under the Medicare program when it is used to calculate fluid rates for those recipients who present difficult fluid management problems. Determine the medical necessity of this device on a case-by-case basis.

Not Covered: Ultrafiltration, independent of conventional dialysis, is considered experimental, and technology exclusively designed for this purpose is *not* covered under Medicare.

60–3 WHITE CANE FOR USE BY A BLIND PERSON–NOT COVERED

A white cane for use by a blind person is more in the nature of an identifying and self-help device rather than an item which makes a meaningful contribution in the treatment of an illness or injury.

60–4 HOME USE OF OXYGEN

A. *General.*–Medicare coverage of home oxygen and oxygen equipment under the durable medical equipment benefit (§ 1861(s)(6)) will be considered reasonable and necessary *only* for patients with significant hypoxemia who meet the medical documentation, laboratory evidence and health conditions specified in subsections B, C

and D. This section also includes special coverage criteria for portable oxygen systems in subsection E. Special requirements for patients already covered under a program of home oxygen therapy as of September 30, 1985, are described in subsection F. Finally, a statement on the absence of coverage of the professional services of a respiratory therapist under the DME benefit is included in subsection G.

B. *Medical Documentation.—Initial* claims for oxygen services *must* include a short written statement from the attending physician indicating that other forms of treatment (e.g., medical and physical therapy directed at secretions, bronchospasm and infection) have been tried, have not been sufficiently successful, and oxygen therapy is still required. While there is no substitute for oxygen therapy, it is appropriate that each patient should receive optimum therapy before long-term home oxygen therapy is ordered.

Initial claims for oxygen services *must* also be supported by medical documentation (separate documentation where electronic billing is used), such as a prescription, written by the patient's attending physician who has recently examined the patient (normally within a month of the start of therapy) that specifies:

- A diagnosis of the disease requiring home use of oxygen;
- The oxygen flow rate; and

NOTE: All claims with flow rates of more than 2 liters per minute *must* be reviewed by a carrier's medical staff before payment can be made.

- An estimate of the frequency, duration of use (e.g., 2 liters per minute, 10 minutes per hour, 12-hours a day) and duration of need (e.g., 6 months or lifetime).

NOTE: A prescription for "Oxygen PRN" or "Oxygen as needed" does not meet this last requirement. Neither provides any basis for determining if the amount of oxygen is reasonable and necessary for the patient.

The attending physician may also specify the type of oxygen delivery system to be used (i.e., gas, liquid, or concentrator). If the type of system is specified, then the medical reasons for selecting that system over the alternative systems must also be specified.

New medical documentation written by the patient's attending physician must be submitted to the carrier in support of revised oxygen requirements when there has been a change in the patient's condition and need for oxygen therapy.

Carriers are required to conduct periodic, continuing medical necessity review on patients whose conditions warrant these reviews and on patients with indefinite or extended periods of necessity as described in Carriers Manual, Part 3, § 4105.2B. Where indicated, carriers may also request documentation of the results of a repeat arterial blood gas or oximetry study. (See subsection C.)

C. *Laboratory Evidence.—Initial* claims for oxygen therapy *must* also include the results of a blood gas study that has been ordered and evaluated by the attenting physician. This will *usually* be in the form of a measurement of the partial pressure of oxygen (PO2) in arterial blood. (See Carriers Manual, Part 3, § 2070.1 for instructions on clinical laboratory tests.) A measurement of arterial oxygen saturation obtained by ear or pulse oximetry, however, will also be acceptable when ordered and evaluated by the attending physician *and* performed under his or her supervision or when performed by a qualified provider or supplier of laboratory services. A DME supplier will not be considered a qualified provider or supplier of laboratory services for purposes of these guidelines. The conditions under which the laboratory tests are performed must be specified in writing and submitted with the *initial* claim, i.e., at rest, while sleeping, while exercising, on room air, or if while on oxygen, the amount, body position during testing, and similar information necessary for interpreting the evidence as specified by the carrier.

The preferred sources of laboratory evidence are existing physician and/or hospital records that reflect the patient's medical condition. Since it is expected that virtually all patients who qualify for home oxygen coverage for the first time under these guidelines would have recently been discharged from a hospital where they submitted to arterial blood gas tests, the carrier should request that such test results be submitted in support of their initial claims for home oxygen. If more than one arterial blood gas test is performed during the patient's hospital stay, the test result obtained closest to the hospital discharge date would be the best evidence of the need for home oxygen therapy. Carriers may accept an attending physician's statement of recent hospital test results for a particular patient, where appropriate, in lieu of copies of actual hospital records. Subsequent blood gas tests that appear to duplicate the hospital test (e.g., where there is no reason to believe the patient's condition may have changed) should be denied as not medically reasonable and necessary.

A repeat arterial blood gas or oximetry study will normally be necessary only where evidence indicates that an oxygen recipient has undergone a *major* change relevant to home use of oxygen. For example, if the carrier has reason to believe that there has been a major change in the patient's physical condition (e.g., where there has been a significant increase in the amount of oxygen billed on a monthly basis) it may ask for documentation of the results of another blood gas or oximetry study.

D. *Health Conditions.*—Coverage is available for patients with significant hypoxemia in the chronic stable state if: (1) the attending physician has determined that the patient has a health condition outlined in subsection D.1, (2) the patient meets the blood gas evidence requirements specified in subsection D.3, and (3) the patient has appropriately tried other alternative treatment measures without complete success. (See subsection B1.)

1. *Conditions for Which Oxygen Therapy May Be Covered.—*

- A severe lung disease, such as chronic obstructive pulmonary disease, diffuse interstitial lung disease, whether of known or unknown etiology; cystic fibrosis bronchiectasis; widespread pulmonary neoplasm; or
- Hypoxia-related symptoms or findings that might be expected to improve with oxygen therapy. Examples of these symptoms and findings are pulmonary hypertension, recurring congestive heart failure due to chronic cor pulmonale, erythrocytosis, impairment of the cognitive process, nocturnal restlessness, and morning headache.

2. *Conditions for Which Oxygen Therapy Is Not Covered.—*

- Angina pectoris in the absence of hypoxemia. This condition is generally not the result of a low oxygen level in the blood and there are other preferred treatments.
- Breathlessness without cor pulmonale or evidence of hypoxemia. Although intermittent oxygen use is sometimes prescribed to relieve this condition, it is potentially harmful and psychologically addicting.
- Severe peripheral vascular disease resulting in clinically evident desaturation in one or more extremities. There is no evidence that increased PO_2 will improve the oxygenation of tissues with impaired circulation.
- Terminal illnesses that do not affect the lungs.

3. *Covered Blood Gas Values.*—If the patient has a condition specified in subsection D.1., the carrier must review the medical documentation and laboratory evidence that has been submitted for a particular patient (see subsections B and C) and determine if coverage is available under one of the three group categories outlined below:

a. *Group I.*—Except as modified in subsection d, coverage is provided for patients with significant hypoxemia evidenced by *any* of the following:

(1) An arterial PO_2 at or below 55 mm Hg, or an arterial oxygen saturation at or below 88 percent, *taken at rest,* breathing room air.

(2) An arterial PO_2 at or below 55 mm Hg, or an arterial oxygen saturation at or below 88 percent, taken *during sleep* for a patient who demonstrates an arterial PO_2 at or above 56 mm Hg, or an arterial oxygen saturation at or above 89 percent, while awake; or a greater than normal fall in oxygen level *during sleep* (a decrease in arterial PO_2 more than 10 mm Hg, or decrease in arterial oxygen saturation more than 5 percent) associated with symptoms or signs reasonably attributable to hypoxemia (e.g., impairment of cognitive processes and nocturnal restlessness or insomnia). In either of these cases, coverage is provided *only* for *nocturnal* use of oxygen.

(3) An arterial PO_2 at or below 55 mm Hg or an arterial oxygen saturation at or below 88 percent, taken *during exercise* for a patient who demonstrates an arterial PO_2 at or above 56 mm Hg, or an arterial oxygen saturation at or above 89 percent, during the day while at rest. In this case, supplemental oxygen is provided for *during exercise* if there is evidence the use of oxygen improves the hypoxemia that was demonstrated during exercise when the patient was breathing room air.

b. *Group II.*—Except as modified in subsection d, coverage is available for patients whose arterial PO_2 is 56–59 mm Hg or whose arterial blood oxygen saturation is 89 percent, *if* there is evidence of:

(1) Dependent edema suggesting congestive heart failure;

(2) "P" pulmonale on EKG (P wave greater than 3 mm in standard leads II, III, or AVF); or

(3) Erythrocythemia with a hematocrit greater than 56 percent.

c. *Group III.*—Except as modified in subsection d, carriers *must* apply a rebuttable presumption that a home program of oxygen use is not medically necessary for patients with arterial PO_2 levels at or above 60 mm Hg, or arterial blood oxygen saturation at or above 90 percent. In order for claims in this category to be reimbursed, the carrier's reviewing physician would need to review any documentation submitted in rebuttal of this presumption and grant specific approval of the claims. It is expected that very few claims will be approved for coverage in this category.

d. *Variable Factors That May Affect Blood Gas Values.*—In reviewing arterial PO_2 levels and the arterial oxygen saturation percentages specified in subsections D, 3, a, b and c, the carrier's medical staff must take into account variations in oxygen measurements that may result from such factors as the patient's age, the altitude level, or the patient's decreased oxygen carrying capacity.

E. *Portable Oxygen Systems.*—A patient meeting the requirements specified below may qualify for coverage of a portable oxygen system either (1) by itself or, (2) to complement a stationary oxygen system. A portable oxygen system is covered for a particular patient if:

- The claim meets the requirements specified in subsections A–D, as appropriate; and
- The medical documentation includes a description of the activities or exercise routine (e.g., amount and frequency of ambulation) that the patient undertakes on a regular basis, and that requires the portable system in the home. The documentation must describe the medical therapeutic purpose to be served by the portable system that cannot be met by a stationary system.

F. *Patients Covered Under a Program of Home Oxygen as of September 30, 1985.*—Patients who have already been determined by the carrier to be covered under a program of home oxygen (either for stationary *and* portable systems or just a stationary system) as of September 30, 1985, must meet the following requirements in order to continue to received coverage after that date:

1. *Medical Need Already Established.*—Where the carrier has already received documentation of the medical need for oxygen services for such patients, as specified in subsections A–E, new documentation is not required regardless of when the existing documentation was submitted. However, the patient's continuing need for oxygen services must be periodically verified as specified in Carriers Manual, Part 3, § 4105.2.

2. *Medical Need Not Established.*—Where documentation of the medical need for oxygen services for such patients, as specified in subsections A–E, has not submitted to the appropriate carrier, the following provisions will apply:

a. *Up to October 1, 1988.*—The carrier will continue to reimburse for oxygen services furnished up to October 1, 1988. During this 12-month grace period, the carrier will continue to apply the local requirements in effect before October 1, 1985 and will continue to verify the patient's medical need for oxygen services according to the review procedures described in Carriers Manual, Part 3, § 4105.2.

b. *After October 1, 1988.*—Except as provided in subsection c, the carrier will not reimburse for oxygen services furnished later than October 1, 1988 unless:

- the documentation specified in subsections A–E is submitted to the carrier; and
- the carrier makes a determination that the oxygen services are covered.

c. *Exception.*—If the patient does not meet the criteria specified in subsections A–E, the carrier reimburses for oxygen services furnished after October 1, 1988 *only* if:

- There is a medical risk that the patient's condition could be complicated by his withdrawal from oxygen (e.g., where the patient has a physiological dependence on oxygen) and the attending physician certifies that there is a continuing medical need for the patient to receive oxygen; and
- The carrier makes a determination that the services *are* covered.

G. *Respiratory Therapists.*—Respiratory therapists' services are *not covered* under the provisions for coverage of oxygen services under the Part B durable medical equipment benefit as outlined above. This benefit provides for coverage of home use of oxygen and oxygen equipment, but does not include a professional component in the delivery of such services.

Cross-Refer: Intermediary Manual, Part 3, §§ 3113ff; Carriers Manual, Part 3, §§ 2100ff; § 60–9.

60–5 POWER-OPERATED VEHICLES THAT MAY BE USED AS WHEELCHAIRS

Power-operated vehicles that may be appropriately used as wheelchairs are covered under the durable medical equipment provision.

These vehicles have been appropriately used in the home setting for vocational rehabilitation and to improve the ability of chronically disabled persons to cope with normal domestic, vocational and social activities. They may be covered if a wheelchair is medically necessary and the patient is unable to operate a wheelchair manually.

A specialist in physical medicine, orthopedic surgery, neurology, or rheumatology must provide an

evaluation of the patient's medical and physical condition and a prescription for the vehicle to assure that the patient requires the vehicle and is capable of using it safely. Where an intermediary determines that such a specialist is not reasonably accessible, e.g., more than 1 day's round trip from the beneficiary's home, or the patient's condition precludes such travel, a prescription from the beneficiary's physician is acceptable.

The intermediary's medical staff reviews all claims for a power-operated vehicle, including the specialists' or other physicians' prescriptions and evaluations of the patient's medical and physical conditions, to insure that all coverage requirements are met.

Cross-refer: Intermediary Manual, Part 3, § 3643; see wheelchairs in § 60–9.

60–6 SPECIALLY SIZED WHEELCHAIRS

Payment may be made for a specially sized wheelchair even though it is more expensive than a standard wheelchair. For example, a narrow wheelchair may be required because of the narrow doorways of a patient's home or because of a patient's slender build. Such difference in the size of the wheelchair from the standard model is not considered a deluxe feature.

A physician's certification or prescription that a special size is needed is not required where you can determine from the information in file or other sources that a specially sized wheelchair (rather than a standard one) is needed to accommodate the wheelchair to the place of use or the physical size of the patient.

To determine the reasonable charge in these cases, use the criteria set out in Carriers Manual, §§ 5022, 5022.1, 5200, and 5205, as necessary.

Cross-refer: Intermediary Manual, §§ 3113.2C, 3642.1, 3643 (item 3); Carriers Manual, §§ 2100.2c, 2105, 4105.2, 5107; Hospital Manual, §§ 235.2c, 420.1 (item 13).

60–7 SELF-CONTAINED PACEMAKER MONITORS

Self-contained pacemaker monitors are accepted devices for monitoring cardiac pacemakers. Accordingly, program payment may be made for the rental or purchase of either of the following pacemaker monitors when it is prescribed by a physician for a patient with a cardiac pacemaker:

A. *Digitial Electronic Pacemaker Monitor.*—This device provides the patient with an instantaneous digital readout of his pacemaker pulse rate. Use of this device does not involve professional services until there has been a change of five pulses (or more) per minute above or below the initial rate of the pacemaker; when such change occurs, the patient contacts his physician.

B. *Audible/Visible Signal Pacemaker Monitor.*—This device produces an audible and visible signal which indicates the pacemaker rate. Use of this device does not involve professional services until a change occurs in these signals; at such time, the patient contacts his physician.

NOTE: The design of the self-contained pacemaker monitor makes it possible for the patient to monitor his pacemaker periodically and minimizes the need for regular visits to the outpatient department of the provider.

Therefore, documentation of the medical necessity for pacemaker evaluation in the outpatient department of the provider should be obtained where such evaluation is employed in addition to the self-contained pacemaker monitor used by the patient in his home.

Cross-refer: § 50–1.

60–8 SEAT LIFT

Reimbursement may be made for the rental or purchase of a medically necessary seat lift when prescribed by a physician for a patient with severe arthritis of the hip or knee and patients with muscular dystrophy or other neuromuscular diseases when it has been determined the patient can benefit therapeutically from use of the device. In establishing medical necessity for the seat lift, the evidence must show that the item is included in the physician's course of treatment, that it is likely to effect improvement, or arrest or retard deterioration in the patient's condition, and that the severity of the condition is such that the alternative would be chair or bed confinement.

Coverage of seat lifts is limited to those types which operate smoothly, can be controlled by the patient, and effectively assist a patient in standing up and sitting down without other assistance. Excluded from coverage is the type of lift which operates by a spring release mechanism with a sudden, catapult-like motion and jolts the patient from a seated to a standing position. Limit the payment for units which incorporate a recliner feature along with the seat lift to the amount payable for a seat lift without this feature.

Cross Refer: Carriers Manual, § 5107.

60–9 DURABLE MEDICAL EQUIPMENT REFERENCE LIST.

The durable medical equipment (DME) list which follows is designed to facilitate your procesing of DME claims. This section is designed to be used as a quick reference tool for determining the coverage status of certain pieces of DME and especially for those items which are commonly referred to by both brand and generic names. The information contained herein is applicable (where appropriate) to all DME coverage determinations discussed in the DME portion of this manual. The list is organized into two columns. The first column lists alphabetically various *generic* categories of equipment on which national coverage decisions have been made by HCFA; and the second column notes the coverage status of each equipment category.

In the case of equipment categories that have been determined by HCFA to be covered under the DME benefit, the list outlines the conditions of coverage that must be met if payment is to be allowed for the rental or purchase of the DME by a particular patient, or cross-refers to another section of the manual where the applicable coverage criteria are described in more detail. With respect to equipment categories that cannot be covered as DME, the list includes a brief explanation of why the equipment is not covered. This DME list will be updated periodically to reflect any additional national coverage decisions that HCFA may make with regard to other categories of equipment.

When you receive a claim for an item of equipment which does not appear to fall logically into any of the *generic* categories listed, you have the authority and responsibility for deciding whether those items are covered under the DME benefit. These decisions must be made by each contractor based on the advice of its medical consultants, taking into account:

- The general DME coverage instructions in the Carriers Manual, § 2100ff and Intermediary Manual, § 3113ff (see below for brief summary);
- Whether the item has been approved for marketing by the Food and Drug Administration (FDA) (see Carriers Manual, § 2303.1 and Intermediary Manual, § 3151.1) and is otherwise generally considered to be safe and effective for the purpose intended; and
- Whether the item is reasonable and necessary for the individual patient.

As provided in the Carriers Manual, § 2100.1, and Intermediary Manual, § 3113.1, the term DME is defined as equipment which

- Can withstand repeated use; i.e., could normally be rented, and used by successive patients;
- Is primarily and customarily used to serve a medical purpose;
- Generally is not useful to a person in the absence of illness or injuiry; and
- Is appropriate for use in a patient's home.

DURABLE MEDICAL EQUIPMENT REFERENCE LIST

Item	Coverage Status
Air Cleaners	Deny—environmental control equipment; not primarily medical in nature (§ 1861(n) of the Act).
Air Conditioners	Deny—Environmental control equipment; not primarily medical in nature (§ 1861(n) of the Act).
Alternating Pressure Pads, and Mattresses and Lambs Wool Pads.	—Covered if patient has, or is highly susceptible to decubitus ulcers, and patient's physician has specified that he will be supervising its use in connection with his course of treatment.)
Audible/Visible Signal Pacemaker Monitor	(See Self-Contained Pacemaker Monitor.)
Augmentative Communication Device	(See Communicator.)
Bathtub Lifts	Deny—convenience item; not primarily medical in nature (§ 1861(n) of the Act).
Bathtub Seats	Deny—comfort or convenience item; hygienic equipment; not primarily medical in nature (§ 1861(n) of the Act).
Bead Bed	Deny—institutional equipment; inappropriate for home use.
Bed Baths (home type)	Deny—hygienic equipment; not primarily medical in nature (§ 1861(n) of the Act).
Bed Lifter (bed elevator) of the Act	Deny—not primarily medical in nature (§ 1861(n).
Bedboards	Deny—not primarily medical in nature (§ 1861(n) of the Act).
Bed pans (autoclavable hospital type)	Covered if patient is bed confined.
Bed Side Rails	(See Hospital Beds, § 60–18.)
Beads-Lounger (power or manual)	Deny—not a hospital bed; comfort or convenience item; not primarily medical in nature (§ 1861(n) of the Act).
Beds—Oscillating	Deny—institutional equipment; inappropriate for home use.
Bidet Toilet Seat	(See Toilet Seats.)
Blood Glucose Analyzer—Reflectance Colorimeter	Deny—unsuitable for home use (See § 60–11.)
Blood Glucose Monitor	Covered if patient meets certain conditions (See § 60–11.)
Braille Teaching Texts	Deny—education equipment; not primarily medical in nature (§ 1861(n) of the Act).
Canes	Covered if patient's condition impairs ambulation (See § 60–9.)
Carafes	Deny—convenience item; not primarily medical in nature (§ 1861(n) of the Act).
Catheters	Deny—nonreusable disposable supply (§ 1861(n) of the Act).
Commodes	Covered if patient is confined to bed or room.
	Note: The term "room confined" means that the patient's condition is such that leaving the room is medically contraindicated. The accessibility of bathroom facilities generally would not be a factor in this determination. However, confinement of a patient to this home is a case where there are no toilet facilities in the home may be equated to room confinement. Moreover, payment may also be made if a patient's medical condition cofines him to a floor of his home and there is no bathroom located on that floor (See Hospital Beds in § 60–18 for definition of "bed confinement".)
Communicator	Deny—convenience item; not primarily medical in nature (§ 1861(n) of the Act).
Continuous Passive Motion (CPM) Devices	Continuous Passive Motion devices are covered for patients who have received a total knee replacement. To qualify for coverage, use of the device must commence within two days following surgery. In addition, coverage is limited to that portion of the three week period following surgery during which the device is used in the patient's home. There is insufficient evidence to justify coverage of these devices for longer periods of time or for other applications.
Continuous Positive Airway Pressure (CPAP)	(See § 60–17.)
Crutches	Covered if patient's condition impairs ambulation.
Cushion Lift Power Seat	(See Seat Lifts.)
Dehumidifiers (room or central heating system type)	Deny—environmental control equipment; not primarily medical in nature (§ 1861(n) of the Act).
Diathermy Machines (standard and pulsed wave types)	Deny—inappropriate for home use (See § 35–41.)
Digital Electronic Pacemaker Monitor	(See Self-Contained Pacemaker Monitor.)
Disposable Sheets and Bags	Deny—nonreusable disposable supplies (§ 1861(n) of the Act).
Elastic Stockings	Deny—nonreusable supply; not rental-type items (§ 1861(n) of the Act).
Electric Air Cleaners	Deny—(See Air Cleaners.) (§ 1861(n) of the Act).
Electric Hospital Beds	(See Hospital Beds (See § 60–18.)
Electrostatic Machines	Deny—(See Air Cleaners and Air Conditioners.) (§ 1861(n) of the Act).
Elevators	Deny—convenience item; not primarily medical in nature (§ 1861(n) of the Act).
Emesis Basins	Deny—convenience item; not primarily medical in nature (§ 1861(n) of the Act).
Esophageal Dilator	Deny—physician instrument; inappropriate for patient use.
Exercise Equipment	Deny—not primarily medical in nature (§ 1861(n) of the Act).
Fabric Supports	Deny—nonreusable supplies; not rental-type item (§ 1861(n) of the Act).
Face Masks (oxygen)	Covered if oxygen is covered (See § 60–4.)
Face Masks (surgical)	Deny—nonreusable disposable items (§ 1861(n) of the Act).
Flowmeter	(See Medical Oxygen Regulators.)
Fluidic Breathing Assister	(See IPPB Machines.)
Fomentation Device	(See Heating Pads.)
Gel Flotation Pads and Mattresses	(See Alternating Pressure Pads and Mattresses.)
Grab Bars	Deny—self-help device; not primarily medical in nature (§ 1861(n) and 1862(a)(6) of the Act).
Heat and Massage Foam Cushion Pad	Deny—not primarily medical in nature; personal comfort item (§ 1861(n) and 1862(a)(6) of the Act).
Heating and Cooling Plants	Deny—environmental control equipment; not primarily medical in nature (§ 1861(n) of the Act).
Heating Pads	Covered if the contractor's medical staff determines patient's medical condition is one for which the application of heat in the form of a heating pad is therapeutically effective.
Heat Lamps	Covered if the contractor's medical staff determines patient's medical condition is one for which the application of heat in the form of a heat lamp is therapeutically effective.
Hospital Beds	(See § 60–18.)
Hot Packs	(See Heating Pads.)
Humidifiers (oxygen)	(See Oxygen Humidifiers.)
Humidifiers (room or central heating system types)	Deny—environmental control equipment; not medical in nature (§ 1861(n) of the Act).
Hydraulic Lift	(See Patient Lifts.)
Incontinent Pads	Deny—nonreusable supply; hygienic item (§ 1861(n) of the Act).
Infusion Pumps	For external and implantable pumps, see § 60–14. If the pump is used with an enteral or parenteral nutritional therapy system, see §§ 65–10—65.10.2 for special coverage rules.

DURABLE MEDICAL EQUIPMENT REFERENCE LIST—Continued

Item	Coverage Status
Injectors (hypodermic jet pressure powered devices for injection of insulin).	Deny—effectiveness not adequately demonstrated.
IPPB Machines	Covered if patient's ability to breathe is severely impaired.
Iron Lungs	(See Ventilators.)
Irrigating Kit	Deny—nonreusable supply; hygienic equipment (§ 1861(n) of the Act).
Lambs Wool Pads pressure pads and mattresses	Covered under same conditions as alternating
Leotards	Deny—(See Pressure Leotards.) (§ 1861(n) of the Act).
Lymphedema Pumps (segmental and non-segmental therapy types).	Covered (See § 60–15.)
Massage Devices	Deny—personal comfort items; not primarily medical in nature (§§ 1861(n) and 1862(a)(6) of the Act).
Mattress	Covered only where hospital bed is medically necessary (Separate Charge for replacement mattress should not be allowed where hospital bed with mattress is rented.) (See § 60–16.)
Medical Oxygen Regulators	Covered if patient's ability to breathe is severely impaired (See § 60–4.)
Mobile Geriatric Chair	(See Rolling Chairs.)
Motorized Wheelchairs	(See Wheelchairs (power operated).)
Muscle Stimulators	Covered for certain conditions (See § 35–77.)
Nebulizers	Covered if patient's ability to breathe is severely impaired.
Oscillating Beds	Deny—institutional equipment—inappropriate for home use.
Overbed Tables	Deny—convenience item; not primarily medical in nature (§ 1861(n) of the Act).
Oxygen	Covered if the oxygen has been prescribed for use in connection with medically necessary durable medical equipment (See § 60–4.)
Oxygen Humidifiers	Covered if a medical humidifier has been prescribed for use in connection with medically necessary durable medical equipment for purposes of moisturizing oxygen (See § 60–4.)
Oxygen Regulators (Medical)	(See Medical Oxygen Regulators.)
Oxygen Tents	(See § 60–4.)
Paraffin Bath Units (Portable)	(See Portable Paraffin Bath Units.)
Paraffin Bath Units (Standard)	Deny—institutional equipment; inappropriate for home use.
Parallel Bars	Deny—support exercise equipment; primarily for institutional use; in the home setting other devices (e.g., a walker) satisfy the patient's need.
Patient Lifts	Covered if contractor's medical staff determines patient's condition is such that periodic movement is necessary to effect improvement or to arrest or retard deterioration in his condition.
Percussors	Covered for mobilizing respiratory tract secretions in patients with chronic obstructive lung disease, chronic bronchitis, or emphysema, when patient or operator of powered percussor has received appropriate training by a physician or therapist, and no one competent to administer manual therapy is available.
Portable Oxygen Systems:	
1. Regulated (adjustable flow rate)	Covered under the conditions specified in § 60–4. Refer all claims to medical staff for this determination.
2. Preset (flow rate not adjustable)	Deny—emergency, first-aid, or precautionary equipment; essentially not therapeutic in nature.
Portable Paraffin Bath Units	Covered when the patient has undergone a successful trial period of paraffin therapy ordered by a physician and the patient's condition is expected to be relieved by long term use of this modality.
Portable Room Heaters	Deny—environmental control equipment; not primarily medical in nature (§ 1861(n) of the Act).
Portable Whirlpool Pumps	Deny—not primarily medical in nature; personal comfort items (§§ 1861(n) and 1862(a)(6) of the Act).
Postural Drainage Boards condition	Covered if patient has a chronic pulmonary.
Preset Portable Oxygen Units	Deny—emergency, first-aid, or precautionary equipment; essentially not therapeutic in nature.
Pressure Leotards	Deny—nonreusable supply, not rental-type item (§ 1861(n) of the Act).
Pulse Tachometer	Deny—not reasonable or necessary for monitoring pulse of homebound patient with or without a cardiac pacemaker.
Quad-Canes	(See Walkers.)
Raised Toilet Seats	Deny—Convenience item; hygienic equipment; not primarily medical in nature (§ 1861(n) of the Act).
Reflectance Colorimeters	(See Blood Glucose Analyzers.)
Respirators	(See Ventilators.)
Rolling Chairs	Covered if the contractor's medical staff determines that the patient's condition is such that there is a medical need for this item and it has been prescribed by the patient's physician in lieu of a wheelchair. Coverage is limited to those rollabout chairs having casters of at least 5 inches in diameter and specifically designed to meet the needs of ill, injured, or otherwise impaired individuals. Coverage is denied for the wide range of chairs with smaller casters as are found in general use in homes, offices, and institutions for many purposes not related to the care or treatment of ill or injured persons. This type is not primarily medical in nature. (§ 1861(n) of the Act).
Safety Roller	(See § 60–15.)
Sauna Baths	Deny—not primarily medical in nature; personal comfort items (§§ 1861(n) and (1862(a)(6) of the Act).
Seat Lift	Covered under the conditions specified in § 60–8. Refer all to medical staff for this determination.
Self-Contained Pacemaker Monitor	Covered when prescribed by a physician for a patient with a cardiac pacemaker (see §§50–1C and 60–7).
Sitz Bath	Covered if the contractor's medical staff determines patient has an infection or injury of the perineal area and the item has been prescribed by the patient's physician as a part of his planned regimen of treatment in the patient's home.
Spare Tanks of Oxygen	Deny—convenience or precautionary supply.
Speech Teaching Machine	Deny—education equipment; not primarily medical in nature (§ 1861(n) of the Act).
Stairway Elevators	Deny—(See Elevators.) (§ 1861(n) of the Act).
Standing Table	Deny—convenience item; not primarily medical in nature (§ 1861(n) of the Act).
Steam Packs	These packs are covered under the same conditions as a heating pad (See Heating Pads.)
Suction Machine	Covered if the contractor's medical staff determines that the machine specified in the claim is medically required and appropriate for home use without technical or professional supervision.
Support Hose	Deny (See Fabric Supports). (§ 1861(n) of the Act.)
Surgical Leggings	Deny—nonreusable supply; not rental-type item (§ 1861(n) of the Act).
Telephone Alert Systems	Deny—these are emergency communications systems and do not serve a diagnostic or therapeutic purpose.
Telephone Arms	Deny—convenience item; not medical in nature (§ 1861(n) of the Act).
Toilet Seats	Deny—not medical equipment (§ 1861(n) of the Act).

DURABLE MEDICAL EQUIPMENT REFERENCE LIST—Continued

Item	Coverage Status
Traction Equipment	Covered if patient has orthopedic impairment requiring traction equipment which prevents ambulation during the period of use (Consider covering devices usable during ambulation; e.g., cervical traction collar, under the brace provision).
Trapeze Bars	Covered if patient is bed confined and the patient needs a trapeze bar to sit up because of respiratory condition, to change body position for other medical reasons, or to get in and out of bed.
Treadmill Exercise	Deny—exercise equipment; not primarily medical in nature (§ 1861(n) of the Act).
Ultraviolet Cabinet	Covered for selected patients with generalized intractable psoriasis. Using appropriate consultation, the contractor should determine whether medical and other factors justify treatment at home rather than at alternative sites, e.g., outpatient department of a hospital.
Urinals (autoclavable hospital type)	Covered if patient is bed confined.
Vaporizers	Covered if patient has a respiratory illness.
Ventilators	Covered for treatment of neuromuscular diseases, thoracic restrictive diseases, and chronic respiratory failure consequent to chronic obstructive pulmonary disease. Includes both positive and negative pressure types.
Walkers	Covered if patient's condition impairs ambulation (See § 60–15).
Water and Pressure Pads and Mattresses	(See Alternating Pressure Pads and Mattresses.)
Wheelchairs	Covered if patient's condition is such that without the use of a wheelchair he would otherwise be bed or chair confined. An individual may qualify for a wheelchair and still be considered bed confined.
Wheelchairs (power operated) and wheelchairs with other special features.	Covered if patient's condition is such that a wheelchair is medically necessary and the patient is unable to operate the wheelchair manually. Any claim involving a power wheelchair or a wheelchair with other special features should be referred for medical consultation since payment for the special features is limited to those which are medically required because of the patient's condition. (See § 60–5 for power operated and § 60–6 for specially sized wheelchairs.)
	Note: A power-operated vehicle that may appropriately be used as a wheelchair can be covered. (See § 60–5 for coverage details.)
Whirlpool Bath Equipment	Covered if patient is homebound and has a condition for which the whirlpool bath can be expected to provide substantial therapeutic benefit justifying its cost. Where patient is not homebound but has such a condition, payment is restricted to the cost of providing the services elsewhere, e.g., an outpatient department of a participating hospital, if that alternative is less costly. In all cases, refer claim to medical staff for a determination.
Whirlpool Pumps	Deny—(See Portable Whirlpool Pumps.)
White Cane	Deny—(See § 60–3.)

60–11 HOME BLOOD GLUCOSE MONITORS

There are several different types of blood glucose monitors which use reflectance meters to determine blood glucose levels. Medicare coverage of these devices varies, both with respect to the type of device and the medical condition of the patient for whom the device is prescribed.

Reflectance colorimeter devices used for measuring blood glucose levels in clinical settings are not covered as durable medical equipment for use in the home, because their need for frequent professional recalibration makes them unsuitable for home use. However, some types of blood glucose monitors which use a reflectance meter specifically designed for home use by diabetic patients may be covered as durable medical equipment, subject to the conditions and limitations described below.

Blood glucose monitors are meter devices which "read" color changes produced on specially-treated reagent strips by glucose concentrations in the patient's blood. The patient, using a disposable sterile lancet, draws a drop of blood, places it on a reagent strip and, following instructions which may vary with the device used, inserts it into the device to obtain a reading. Lancets, reagent strips and other supplies necessary for the proper functioning of the device are also covered for patients for whom the device is indicated. Home blood glucose monitors enable certain patients to better control their blood glucose levels by frequently checking and appropriately contacting their attending physician for advice and treatment. Studies indicate that the patient's ability to carefully follow proper procedures is critical to obtaining satisfactory results with these devices. In addition, the cost of the devices, with their supplies, limits economical use to patients who must make frequent checks of their blood glucose levels. Accordingly, coverage of home blood glucose monitors is limited to patients meeting the following conditions:

- The patient must be an insulin-treated diabetic;
- There must be documentation by a physician of poor diabetic control, i.e.,
  —widely fluctuating blood sugars before meal time;
  —frequent episodes of insulin reactions; or
  —evidence of frequent significant ketosis;
- The patient's physician states that the patient is capable of being trained to use the particular device prescribed in an appropriate manner. In some cases, the patient may not be able to perform this function, but a responsible family member can be trained to use the equipment and monitor the patient to assure that the intended effect is achieved. This is permissible if the record is properly documented by the patient's physician; and
- The device is designed for home rather than clinical use.

The following devices are covered on or after December 28, 1984.

There is also a blood glucose monitoring system designed especially for use by those with visual impairments. The monitors used in such systems are identical in terms of reliability and sensitivity to the standard blood glucose monitors described above. They differ by having such features as voice synthesizers, automatic timers, and specially designed arrangements of supplies and materials to enable the visually-impaired to use the equipment without assistance.

These special blood glucose monitoring systems are covered under Medicare if the following conditions are met:

- The patient and device meet the four conditions listed above for coverage of standard home blood glucose monitors; and
- The patient's physician certifies that he or she has a visual impairment severe enough to require use of this special monitoring system.

The additional features and equipment of these special systems justify a higher reimbursement amount

than allowed for standard blood glucose monitors. Separately identify claims for such devices and establish a separate reimbursement amount for them. For those carriers using HCPCS, the procedure code and definition is: E0609—Blood Glucose Monitor—with special features (e.g., voice synthesizers, automatic timer, etc.).

60–14 INFUSION PUMPS

The following indications for treatment using infusion pumps are covered under Medicare:

A. *External Infusion Pumps.*

(Effective for services performed on or after 9/28/84.)

1. *Iron Poisoning*—When used in the administration of deferoxamine for the treatment of acute iron poisoning and iron overload, only external infusion pumps are covered.

2. *Thromboembolic Disease*—When used in the administration of heparin for the treatment of thromboembolic disease and/or pulmonary embolism, only external infusion pumps used in an institutional setting are covered.

(NOTE: For end-state renal disease patients, see 60–1.)

(Effective for services performed on or after 1/29/85.)

3. *Chemotherapy for Liver Cancer*—The external chemotherapy infusion pump is covered when used in the treatment of primary hepatocellular carcinoma or colorectal cancer where this disease is unresectable or where the patient refuses surgical excision of the tumor.

(Effective for services performed on or after 4/22/85.)

4. *Morphine for Intractable Cancer Pain*—Morphine infusion via an external infusion pump is covered when used in the treatment of intractable pain caused by cancer (in either an inpatient or outpatient setting, including a hospice).

Other uses of external infusion pumps *are covered* if the contractor's medical staff verifies the appropriateness of the therapy and of the prescribed pump for the individual patient.

B. *Implantable Infusion Pumps.*

(Effective for services performed on or after 9/28/84.)

Chemotherapy for Liver Cancer.—The implantable infusion pump is covered for intra-arterial infusion of 5-FUdR for the treatment of liver cancer for patients with primary hepatocellular carcinoma or Duke's Class D colorectal cancer, in whom the metastases are limited to the liver, and where (1) the disease is unresectable or (2) where the patient refuses surgical of the tumor.

NOTE: Payment may also be made for drugs necessary for the effective use of the pump, as long as the drug being used with the pump is itself reasonable and necessary for the patient's treatment.

The following indications for treatment using infusion pumps are *not* covered under Medicare:

A. *External Infusion Pumps*

(Effective for services performed on or after 1/29/85.)

Diabetes—The use of an external infusion pump for the subcutaneous infusion of insulin in the treatment of diabetes is not covered.

B. *Implantable Infusion Pump*

(Effective for services performed on or after 9/28/84.)

Thromboembolic Disease.—According to the Public Health Service, there is insufficient published clinical data to support the safety and effectiveness of the heparin implantable pump. Therefore, the use of an implantable infusion pump for infusion of heparin in the treatment of recurrent thromboembolic disease is not covered.

Other uses of the implanted infusion pump are currently under investigation by the Public Health Service and would still be considered experimental, and therefore not covered under Medicare.

60–15 SAFETY ROLLER

(Effective for claims adjudicated on or after 6/3/85.)

"Safety roller" is the generic name applied to devices for patients who cannot use standard wheeled walkers. They may be appropriate, and therefore covered, for some patients who are obese, have severe neurological disorders, or restricted use of one hand, which makes it impossible to use a wheeled walker that does not have the sophisticated braking system found on safety rollers.

In order to assure that payment is not made for a safety roller when a less expensive standard wheeled walker would satisfy the patient's medical needs, carriers will refer safety roller claims to their medical consultants. The medical consultant will determine whether some or all of the features provided in a safety roller are necessary, and therefore covered and reimbursable. If it is determined that the patient could use a standard wheeled walker, the charge for the safety roller will be reduced to the charge of a standard wheeled walker.

Some obese patients who could use a standard wheeled walker if their weight did not exceed the walker's strength and stability limits can have it reinforced and its wheel base expanded. Such modifications are routine mechanical adjustments and justify a moderate surcharge. In these cases the carrier will reduce the charge for the safety roller to the charge for the standard wheeled walker plus the surcharge for modifications.

In the case of patients with medical documentation showing severe neurological disorders or restricted use of one hand which makes it impossible for them to use a wheeled walker that does not have a sophisticated braking system, a reasonable charge for the safety roller may be determined without relating it to the reasonable charge for a standard wheeled walker. (Such reasonable charge should be developed in accordance with the instructions in Medicare Carriers Manual §§ 5010 and 5205.)

Cross Refer: Carriers Manual §§ 2100ff., § 60–9.

60–16 LYMPHEDEMA PUMPS.

Non-segmental lymphedema pumps are currently covered under the Medicare program. Effective for services rendered on or after September 19, 1986 segmental lymphedema pumps will also become a covered Medicare item.

Lymphedema is the swelling of subcutaneous tissues in an affected body part due to the accumulation of excessive lymph fluid. It is a relatively uncommon, chronic condition which may be due to many causes; e.g., surgical removal of lymph nodes, post-radiation fibrosis, scarring of lymphatic channels onset of puberty (Milroy's Disease), congenital anomalies, etc.

Both the segmental and non-segmental type pumps are appropriate for use in the home for the treatment of intractable lymphedema of the extremities. However, they may be covered only as a prescription item with appropriate physician oversight; i.e., physician evaluation of the patient's condition to determine medical necessity of the device, and suitable instruction in the operation of the machine as to the pressure to be used and the frequency and duration of use.

Cross Refer: § 60–9.

60–17 CONTINUOUS POSITIVE AIRWAY PRESSURE (CPAP)

(Effective for Claims Adjudicated on and After January 12, 1987.)

CPAP is a non-invasive technique for providing low levels of air pressure from a flow generator, via a nose mask, through the nares. The purpose is to prevent the collapse of the oropharyngeal walls and the obstruction of airflow during sleep, which occurs in obstructive sleep apnea (OSA). The diagnosis of OSA requires documentation of at least 30 episodes of apnea, each lasting a minimum of 10 seconds, during 6–7 hours of recorded sleep. The use of CPAP is covered under Medicare when used in adult patients with moderate or severe OSA for whom surgery is a likely alternative to CPAP.

Initial claims must be supported by medical documentation (separate documentation where electronic billing is used), such as a prescription written by the patient's attending physician, that specifies:

A diagnosis of moderate or severe obstructive sleep apnea, and

Surgery is a likely alternative.

The claim must also certify that the documentation supporting a diagnosis of OSA (described above) is available.

Cross Refer: § 60–9.

60–18 HOSPITAL BEDS

A. *General Requirements for Coverage of Hospital Beds.*—A physician's prescription, and such additional documentation as the contractors' medical staffs may consider necessary, including medical records and physicians' reports, must establish the medical necessity for a hospital bed due to one of the following reasons:

- The patient's condition requires positioning of the body, e.g., to alleviate pain, promote good body alignment, prevent contractures, avoid respiratory infections, in ways not feasible in an ordinary bed; or
- The patient's condition requires special attachments that cannot be fixed and used on an ordinary bed.

B. *Physician's Prescription.*—The physician's prescription, which must accompany the initial claim, and supplementing documentation when required, must establish that a hospital bed is medically necessary. If the stated reason for the need for a hospital bed is the patient's condition requires positioning, the prescription or other documentation must describe the medical condition, e.g., cardiac disease, chronic obstructive pulmonary disease, quadriplegia or paraplegia, and also the severity and frequency of the symptoms of the condition, that necessitates a hospital bed for positioning.

If the stated reason for requiring a hospital bed is the patient's condition requires special attachments, the prescription must describe the patient's condition and specify the attachments that require a hospital bed.

C. *Variable Height Feature.*—In well documented cases, the contractors' medical staffs may determine that a variable height feature of a hospital bed, approved for coverage under subsection A above, is medically necessary and, therefore, covered, for one of the following conditions:

- Severe arthritis and other injuries to lower extremities; e.g., fractured hip. The condition requires the variable height feature to assist the patient to ambulate by enabling the patient to place his or her feet on the floor while sitting on the edge of the bed;
- Severe cardiac conditions. For those cardiac patients who are able to leave bed, but who must avoid the strain of "bumping" up or down;
- Spinal cord injuries, including quadriplegic and paraplegic patients, multiple limb amputee and stroke patients. For those patients who are able to transfer from bed to a wheelchair, with or without help; or
- Other severely debilitating diseases and conditions, if the variable height feature is required to assist the patient to ambulate.

D. *Electric Powered Hospital Bed Adjustments.*—Electric powered adjustments to lower and raise head and foot may be covered when the contractor's medical staff determines that the patient's condition requires frequent change in body position and/or there may be an immediate need for a change in position (i.e., no delay can be tolerated) and the patient can operate the controls and cause the adjustments. Exceptions may be made to this last requirement in case of spinal cord injury and brain damaged patients.

E. *Side Rails.*—If the patient's condition requires bed side rails, they can be covered when an integral part of, or an accessory to, a hospital bed.

Cross refer: Carriers Manual, § 5015.4.

65 PROSTHETIC DEVICES

65–1 HYDROPHILIC CONTACT LENSES

Hydrophilic contact lenses are eyeglasses within the meaning of the exclusion in § 1862(a)(7) of the law and so are not covered when used in the treatment of nondiseased eyes with spherical ametrophia, refractive astigmatism, and/or corneal astigmatism. Payment may be made under the prosthetic device benefit, however, for hydrophilic contact lenses when prescribed for an aphakic patient.

Contractors are authorized to accept an FDA letter of approval or other FDA published material as evidence of FDA approval.

(See § 45–7 for coverage of a hydrophilic lens as a corneal bandage.)

Cross-refer: Intermediary Manual, §§ 3110.3, 3110.4, 3151, and 3157; Carriers Manual, §§ 2130, 2320; Hospital Manual, §§ 226.3, 226.4, 260.1 and 260.7.

65–2 ELECTRICAL CONTINENCE AID—NOT COVERED

An electrical continence aid is a device consisting of a plastic plug, molded into the shape of the patient's anal canal, which contains two implanted electrodes that are connected by a wire to a small portable generator. An electrical current is produced which stimulates the anal musculature to cause a contraction sufficient to hold the plug in while allowing the patient to ambulate without incontinence.

Electrical continence aids are in the experimental stage of development and there is no valid scientific documentation of their effectiveness and safety. Therefore, they are not covered under Medicare since they cannot be considered to be reasonable and necessary for the treatment of an illness or injury or to improve the functioning of a malformed body member as required by § 1862(a)(1) of the law.

65–3 SCLERAL SHELL

Scleral shell (or shield) is a catchall term for different types of hard scleral contact lenses.

A scleral shell fits over the entire exposed surface of the eye as opposed to a corneal contact lens which covers only the central non-white area encompassing the pupil and iris. Where an eye has been rendered sightless and shrunken by inflammatory disease, a scleral shell may, among other things, obviate the need for surgical enucleation and prosthetic implant and act to support the surrounding orbital tissue.

In such a case, the device serves essentially as an artificial eye. In this situation, payment may be made for a scleral shell under § 1861(s)(8) of the law.

Scleral shells are occasionally used in combination with artifical tears in the treatment of "dry eye" of diverse etiology. Tears ordinarily dry at a rapid rate, and are continually replaced by the lacrimal gland. When the lacrimal gland fails, the half-life of artifical tears may be greatly prolonged by the use of the scleral contact lens as a protective barrier against the drying action of the atmosphere. Thus, the difficult and sometimes hazardous process of frequent installation of anifical tears may be avoided. The lens acts in this instance to substitute, in part, for the functioning of the diseased lacrimal gland and would be covered as a prosthetic device in the rare case when it is used in the treatment of "dry eye."

Cross-refer: HCFA-Pub. 23–3, §§ 3110.4, 3110.5; HCFA-Pub. 14–3, §§ 2130, 2133; HCFA-Pub. 10, §§ 210.4, 211

65–4 CAROTID SINUS NERVE STIMULATOR

Implanation of the carotid sinus nerve stimulator is indicated for relief of

angina pectoris is carefully selected patients who are refractory to medical therapy *and* who after undergoing coronary angiography study either are poor candidates for or refuse to have coronary bypass surgery. In such cases, Medicare reimbursement may be made for this device and for the related services required for its implantation.

However, the use of the carotid sinus nerve stimulator in the treatment of paroxysmal supraventricular tachycardia is considered investigational and is not in common use by the medical community. The device and related services in such cases cannot be considered as reasonable and necessary for the treatment of an illness or injury or to improve the functioning of a malformed body member as required by § 1862(a)(1) of the law.

Cross-refer: HCFA-Pub. 13–3, § 3110.4; HCFA-Pub. 14–3, § 2130; HCFA-Pub. 10, §§ 210.4, 211

65–5 ELECTRONIC SPEECH AIDS

Electronic speech aids are covered under Part B as prosthetic devices when the patient has had a laryngectomy or his larynx is permanently inoperative. There are two types of speech aids. One operates by placing a vibrating head against the throat; the other amplifies sound waves through a tube which is inserted into the user's mouth. A patient who has had radical neck surgery and/or extensive radiation to the anterior part of the neck would generally be able to use only the "oral tube" model or one of the more sensitive and more expensive "throat contact" devices.

Cross-refer: HCFA-Pub. 13–3, § 3110.4; HCFA-Pub. 14–3, § 2130; HCFA-Pub. 10, § 228.4

65–6 CARDIAC PACEMAKERS

Cardiac pacemakers are covered as prosthetic devices under the Medicare program, subject to the conditions and limitations described in this section. While cardiac pacemakers have been covered under Medicare for many years, until recently there have been no specific guidelines for their implanation other than the general Medicare requirement that covered services be reasonable and necessary for the treatment of the condition. Services rendered for pacemaker implanations on or after the effective dates of this instruction are subject to the guidelines of this section.

These guidelines are based on certain assumptions regarding the clinical goals of pacemaker implantation. While some uses of pacemakers represent relatively certain or unambiguous usage, many others require considerable expertise and judgment.

Consequently, the medical necessity for pacemaker implantation must be viewed in the context of the overall management of the particular patient. The appropriateness of such implants may be conditional on other diagnostic or therapeutic modalities having been undertaken. Although significant complications and adverse side effects of pacemakers are relatively rare, they cannot be ignored when considering the use of pacemakers for dubious medical conditions, or marginal clinical benefit.

These guidelines represent current concepts regarding medical circumstances in which pacemaker implantation may be appropriate or necessary. As with other areas of medicine, advances in knowledge and techniques in cardiology are expected. Consequently, judgments about the medical necessity and acceptability of pacemaker implants can be expected to change, and instructions modified as more information becomes available.

It should be noted that this instruction applies only to permanent, implanted pacemakers, and does not address the use of temporary, nonimplanted pacemakers.

The two groups of conditions outlined below deal with the necessity for cardiac pacemaker implants for patients in general. These are intended as guidelines for Medicare contractors to use in assessing the medical necessity of claims for pacemaker implantation. As with other guidelines, final coverage determinations must take account of the circumstances of the particular claim, as well as factors such as the medical history of the individual patient. However, as a general rule, contractors may view the two groups of current medical concepts below as representing:

Group I: Single-Chamber Cardiac Pacemakers—(A) conditions under which single-chamber pacemaker claims may be considered covered without further claims development; and (B) conditions under which single-chamber pacemaker claims would be denied unless further claims development shows that they fall into the covered category, or special medical circumstances exist sufficient to convince the contractor that the claim should be paid.

Group II. Dual-Chamber Cardiac Pacemakers—(A) conditions under which dual-chamber pacemaker claims may be considered covered without further claims development, and (B) conditions under which dual-chamber pacemaker claims would be denied unless further claims development shows that they fall into the covered categories for single-and dual chamber pacemakers, or special medical circumstances exist sufficient to convince the contractor that the claim should be paid.

GROUP I: SINGLE-CHAMBER CARDIAC PACEMAKERS—Effective for services rendered on or after March 16, 1983.

A. *COVERED.*

Conditions under which implantation of a cardiac pacemaker is generally considered acceptable or necessary, provided that the conditions are chronic or recurrent and not due to transient causes such as acute myocardial infarction, drug toxicity, or electrolyte imbalance. (In cases where there is a rhythm disturbance, if the rhythm disturbance is chronic or recurrent, a single episode of a symptom such as syncope or seizure is adequate to establish medical necessity.)

1. Acquired complete (also referred to as third degree) AV heart block.

2. Congenital complete heart block with severe bradycardia (in relation to age), or significant physiological deficits or significant symptoms due to the bradycardia.

3. Second degree AV heart block of Type II (i.e., *no* progressive prolongation of P–R interval prior to each blocked beat).

4. Second degree AV heart block of Type I (i.e., progressive prolongation of P–R interval prior to each blocked beat) with significant symptoms due to hemodynamic instability associated with the heart block.

5. Sinus bradycardia associated with major symptoms (e.g., syncope, seizures, congestive heart failure); or substantial sinus bradycardia (heart rate less than 50) associated with dizziness or confusion. The correlation between symptoms and bradycardia must be documented, or the symptoms must be clearly attributable to the bradycardia rather than to some other cause.

6. In selected and few patients, sinus bradycardia of lesser severity (heart rate 50–59) with dizziness or confusion. The correlation between symptoms and bradycardia must be documented, or the symptoms must be clearly attributable to the bradycardia rather than to some other cause.

7. Sinus bradycardia which is the consequence of long-term necessary drug treatment for which there is no acceptable alternative, when accompanied by significant symptoms (e.g., syncope, seizures, congestive heart failure, dizziness or confusion). The correlation between symptoms and bradycardia must be documented, or the symptoms must be clearly attributable to the bradycardia rather than to some other cause.

8. Sinus node dysfunction with or without tachyarrhythmias or AV conduction block—i.e., the bradycardia-tachycardia syndrome, sino-atrial block, sinus arrest—when accompanied by significant symptoms (e.g., syncope, seizures, congestive heart failure, dizziness or confusion).

9. Sinus node dysfunction with or without symptoms when there are potentially life-threatening ventricular arrhythmias or tachycardia secondary to the bradycardia (e.g., numerous premature ventricular contractions, couplets, runs of premature ventricular contractions, or ventricular tachycardia).

10. Bradycardia associated with supraventricular tachycardia (e.g., atrial fibrillation, atrial flutter, or paroxysmal atrial tachycardia) with high degree AV block which is unresponsive to appropriate pharmacological management and when the bradycardia is associated with significant symptoms (e.g., syncope, seizures, congestive heart failure, dizziness or confusion).

11. The occasional patient with hypersensitive carotid sinus syndrome with syncope due to bradycardia and unresponsive to prophylactic medical measures.

12. Bifascicular or trifascicular block accompanied by syncope which is attributed to transient complete heart block after other plausible causes of syncope have been reasonably excluded.

13. Prophylactic pacemaker use following recovery from acute myocardial infarction during which there was temporary complete (third degree) and/or Mobitz Type II second degree AV block in association with bundle branch block.

14. In patients with recurrent and refractory ventricular tachycardia, "overdrive pacing" (pacing above the basal rate) to prevent ventricular tachycardia.

Effective for services rendered on or after May 9, 1985.

15. Second degree AV heart block of Type I with the QRS complexes prolonged.

B. *NOT COVERED*—Additional claims development may be required.

Conditions which, although used by some physicians as bases for permanent pacemaker implantation, are considered unsupported by adequate evidence of benefit and therefore should not generally be considered appropriate uses for single-chamber pacemakers in the absence of indications cited above. Contractors should review claims for pacemakers with these indications to determine the need for further claims development prior to denying the claim. The object of such further development is to establish whether the particular claim actually meets the conditions in A. above. In claims where this is not the case or where such an event appears unlikely, the contractor may deny the claim.

1. Syncope of undetermined cause.

2. Sinus bradycardia without significant symptoms.

3. Sino-atrial block or sinus arrest without significant symptoms.

4. Prolonged R–R intervals with atrial fibrillation (without third degree AV block) or with other causes of transient ventricular pause.

5. Bradycardia during sleep.

6. Right bundle branch block with left axis deviation (and other forms of fascicular or bundle branch block) without syncope or other symptoms of intermittent AV block.

7. Asymptomatic second degree AV block of Type I unless the QRS complexes are prolonged or electrophysiological studies have demonstrated that the block is at or beyond the level of the His Bundle.

GROUP II. DUAL-CHAMBER CARDIA PACEMAKERS—Effective for services rendered on or after May 9, 1985.

A. *COVERED.*

Conditions under which implantation of a dual-chamber cardiac pacemaker is considered acceptable or necessary in the general medical community unless conditions #1 and #2, Group II.B., are present:

1. Patients in whom single-chamber (ventricular pacing) at the time of pacemaker insertion elicits a definite drop in blood pressure, retrograde conduction, or discomfort.

2. Patients in whom the pacemaker syndrome (atrial ventricular asynchrony), with significant symptoms, has already been experienced with a pacemaker that is being replaced.

3. Patients in whom even a relatively small increase in cardiac efficiency will importantly improve the quality of life, e.g., patients with congestive heart failure despite adequate other medical measures.

4. Patients in whom the pacemaker syndrome can be anticipated, e.g., in young and active people, etc.

Dual-chamber pacemakers may also be covered for the conditions, as listed in Group I.A. (Single-Chamber Cardia Pacemakers), if the medical necessity is sufficiently justified through adequate claims development. Expert physicians differ in their judgments about what constitutes appropriate criteria for dual-chamber pacemaker use. The judgment that such a pacemaker is warranted in the patient meeting accepted criteria must be based upon the individual needs and characteristics of that patient, weighing the magnitude and likelihood of anticipated benefits against the magnitude and likelihood of disadvantages to the patient.

B. *NOT COVERED.*

Whenever the following conditions (which represent overriding, contraindications) are present, dual-chamber pacemakers are not covered:

1. Ineffective atrial contractions—e.g., chronic atrial fibrillation or flutter, or giant left atrium.

2. Frequent or persistent supraventricular tachycardias, *except* where the pacemaker is specifically for the control of the tachycardia.

3. A clinical condition in which pacing takes place only intermittently and briefly, and which is not associated with a reasonable likelihood that pacing needs will become prolonged, e.g., the occasional patient with hypersensitive carotid sinus syndrome with syncope due to bradycardia and unresponsive to prophylactic medical measures.

4. Prophylactic pacemaker use following recovery from acute myocardial infarction during which there was temporary complete (third degree) and/or Type II second degree AV block in association with bundle branch block.

Cross refer: HCFA Pub. 13–3, §§ 3101.4, 3110.4, HCFA Pub. 14–3, § 2130; HCFA Pub. 10, §§ 210.4, 228.4.

65–7 INTRAOCULAR LENSES (IOL's)

An intraocular lens, or pseudophakos, is a hard artificial lens which may be implanted to replace the natural lens after cataract surgery. Intraocular lens implantation services, as well as the lens itself, may be covered if reasonable and necessary for the individual. Implantation services may include hospital, surgical, and other medical services, including pre-implantation ultrasound (A-scan) eye measurement of one or both eyes.

The Food and Drug Administration (FDA) has classified IOL's into the following four categories, any of which may be covered:

- Anterior chamber angle fixation lenses;
- Iris fixation lenses;
- Irido-capsular fixation lenses; and
- Posterior chamber lenses

Although the FDA still considers IOL's investigational, their coverage under Medicare is an exception to the general policy not to cover experimental or investigational items or services. The exception is made because the Congress, recognizing the widespread

use of IOL's, directed the FDA to study them without interfering with their availability to patients.

Cross-refer: HCFA-Pub. 13-3, §§ 3110.4, 3151, 3157; HCFA-Pub. 14-3; § 2130; HCFA-Pub. 10, § 228.4

65-8 ELECTRICAL NERVE STIMULATORS

Two general classifications of electrical nerve stimulators are employed to treat chronic intractable pain: peripheral nerve stimulators and central nervous system stimulators.

A. *Peripheral Nerve Stimulators.*—Payment may be made under the prosthetic devices benefit for the following types of peripheral nerve stimulators:

1. *Transcutaneous Electrical Nerve Stimulator (TENS).*—This stimulator is attached to the surface of the patient's skin over the peripheral nerve to be stimulated. It may be applied in a variety of settings—in the patient's home, a physician's office, or in an outpatient clinic. (See § 65-25 for an explanation of coverage of medically necessary supplies for the effective use of TENS.)

2. *Implanted Peripheral Nerve Stimulator.*—Use of this stimulator involves implantation of electrodes around a selected peripheral nerve. The stimulating electrode is connected by an insulated lead to a receiver unit which is implanted under the skin at a depth not greater then ½ inch. Stimulation is induced by a generator connected to an antenna unit which is attached to the skin surface over the receiver unit. Implantation of electrodes requires surgery and usually necessitates an operating room.

NOTE: Peripheral nerve stimulators may also be employed to assess a patient's suitability for continued treatment with an electric nerve stimulator. As explained in § 35-48 such use of the stimulator would be covered as part of the total diagnostic service furnished to the beneficiary rather than as a prosthesis.

B. *Central Nervous System Stimulators (Dorsal Column and Depth Brain Stimulators).*—The implantation of central nervous system stimulators may be covered as therapies for the relief of chronic intractable pain, subject to the following conditions:

1. *Types of Implantations.*—There are two types of implantations covered by this instruction:

a. *Dorsal Column (Spinal Cord) Neurostimulation.*—The surgical implantation of neurostimulator electrodes within the dura mater (endodural) or the percutaneous insertion of electrodes in the epidural space.

b. *Depth Brain Neurostimulation.*—The stereotactic implantation of electrodes in the deep brain (e.g., thalamus and periaqueductal gray matter).

2. *Conditions for coverage.*—No payment may be made for the implantation of dorsal column or depth brain stimulators or services and supplies related to such implantation, unless *all* of the conditions listed below have been met:

a. The implantation of the stimulator is used only as a late resort (if not a last resort) for patients with chronic intractable pain;

b. With respect to a., other treatment modalities (pharmacological, surgical, physical, or psychological therapies) have been tried and did not prove satisfactory, or are judged to be unsuitable or contraindicated for the given patient;

c. Patients have undergone careful screening, evaluation and diagnosis by a multidisciplinary team prior to implantation. (Such screening must include psychological, as well as physical evaluation);

d. All the facilities, equipment and professional and support personnel required for the proper diagnosis, treatment training and followup of the patient (including that required to satisfy condition c.), must be available; and

e. Demonstration of pain relief with a temporarily implanted electrode precedes permanent implantation.

Contractors may find it helpful to work with PSROs to obtain the information needed to apply these conditions to claims.

Cross-refer: HCFA Pub. 13-3, § 3110.4; §§ 35-20, 35-27

65-9 MECHANICAL/HYDRAULIC INCONTINENCE CONTROL DEVICES

Mechanical/hydraulic incontinence control devices are accepted as safe and effective in the management of urinary incontinence in patients with permanent anatomic and neurologic dysfunctions of the bladder. Although the materials used and the success rate may vary somewhat from device to device, this class of devices achieves control of urination by either mechanical or hydraulic compression of the urethra. Such a device is covered when its use is reasonable and necessary for the individual patient.

Implantable electronic stimulators continue to be not covered. See Section 65-11 (Bladder Stimulators (Pacemakers)).

Cross-refer: HCFA Pub. 13-3, § 3110.4.

65-10 ENTERAL AND PARENTERAL NUTRITIONAL THERAPY COVERED AS A PROSTHETIC DEVICE (Effective for items and services furnished on and after 07-11-84.)

There are patients who, because of chronic illness or trauma, cannot be sustained through oral feeding. These people must rely on either enteral or parenteral nutritional therapy, depending upon the particular nature of their medical condition.

Coverage of nutritional therapy as a Part B benefit is provided under the prosthetic device benefit provision, which requires that the patient must have a permanently inoperative internal body organ or function thereof (see 3110.4). Therefore, enteral and parenteral nutritional therapy is not covered under Part B in situations involving temporary impairments. Coverage of such therapy, however, does not require a medical judgment that the impairment giving rise to the therapy will persist throughout the patient's remaining years. If the medical record, including the judgment of the attending physician, indicates that the impairment will be of long and indefinite duration, the test of permanence will be considered met.

If the coverage requirements for enteral or parenteral nutritional therapy are met under the prosthetic device benefit provision, related supplies, equipment and nutrients are also covered under the conditions in the following paragraphs and § 3110.4.

65-10.1 *Parenteral Nutrition Therapy.*—Daily parenteral nutrition is considered reasonable and necessary for a patient with severe pathology of the alimentary tract which does not allow absorption of sufficient nutrients to maintain weight and strength commensurate with the patient's general condition.

Since the alimentary tract of such a patient does not function adequately, an indwelling catheter is placed percutaneously in the subclavian vein and then advanced into the supeiror vena cava where intravenous infusion of nutrients is given for part of the day. The catheter is then plugged by the patient until the next infusion. Following a period of hospitalization, which is required to initiate parenteral nutrition and to train the patient in catheter care, solution preparation, and infusion technique, the parenteral nutrition can be provided safely and effectively in the patient's home by nonprofessional persons who have undergone special training. However, such persons cannot be reimbursed for their services, nor is reimbursement available for any services furnished by nonphysician professionals except as services furnished incident to a physician's service.

For parenteral nutrition therapy to be covered under Part B, the claim must contain a physician's written order or prescription, and sufficient medical documentation to permit an independent conclusion that the requirements of the prosthetic device benefit are met and that parenteral nutrition therapy is medically necessary. An example of a condition that would typically qualify for coverage is a massive small bowel resection resulting in severe nutritional deficiency in spite of adequate oral intake. However, coverage of parenteral nutrition therapy for this and any other condition must be approved on an individual, case-by-case basis initially and at periodic intervals of no more than 3 months by the carrier's medical consultant or specially trained staff, relying on such medical and other documentation as the carrier may require. If the claim involves an infusion pump, sufficient evidence must be provided to support a determination of medical necessity for the pump. Program reimbursement for the pump will be based on the reasonable charge for the simplest model that meets the medical needs of the patient as established by medical documentation (see § 3113.2B).

Nutrient solutions for parenteral therapy are routinely covered. However Medicare will pay for no more than one months supply of nutrients at any one time. Reimbursement for the nutrients is based on the reasonable charge for the solution components unless the medical record, including a signed statement from the attending physician, establishes that the beneficiary, due to his physical or mental state, is unable to safely or effectively mix the solution and there is no family member or other person who can do so. Payment will be on the basis of the reasonable charge for more expensive pre-mixed solutions only under the latter circumstances.

65-10.2 *Enteral Nutrition Therapy.*—Enteral nutrition is considered reasonable and necessary for a patient with a functioning gastrointestinal tract who, due to pathology to or nonfunction of the structures that normally permit food to reach the digestive tract, cannot maintain weight and strength commensurate with his or her general condition. Enteral therapy may be given by nasogastric, jejunostomy, or gastrostomy tubes, and can be provided safely and effectively in the home by nonprofessional persons who have undergone special training. However, such persons cannot be reimbursed for their services, nor is reimbursement available for any services furnished by nonphysician professionals except as services furnished incident to a physician's service.

Typical examples of conditions that would qualify for coverage are head and neck cancer with reconstructive surgery, and central nervous system disease leading to interference with the neuromuscular mechanisms of ingestion of such severity that the beneficiary cannot be maintained with oral feeding. However claims for Part B coverage of enteral nutrition therapy for these and any other conditions must be approved on an individual, case-by-case basis. Each claim must contain a physician's written order or prescription, and sufficient medical documentation (e.g., hospital records, clinical findings from the attending physician, etc.) to permit an independent conclusion that the patient's condition meets the requirements of the prosthetic device benefit and that enteral nutrition therapy is medically necessary. Allowed claims are to be reviewed at periodic intervals of no more than 3 months by the contractor's medical consultant or specially trained staff, and additional medical documentation considered necessary should be obtained as part of this review.

Medicare will pay for no more than one months supply of enteral nutrients at any one time.

If the claim involves a pump, it must be supported by sufficient medical documentation to establish that the pump is medically necessary, i.e., gravity feeding is not satisfactory due to aspiration, diarrhea, dumping syndrome, etc. Program reimbursement for the pump will be based on the reasonable charge for the simplest model that meets the medical needs of the patient as established by medical documentation (see §§ 3113.2).

65-10.3 *Nutritional Supplementation.*—Some patients require supplementation of their daily protein and caloric intake. Nutritional supplements are often given as a medicine between meals to boost protein-caloric intake or the mainstay of a daily nutritional plan. Nutritional supplementation is not covered under Medicare Part B.

65-11 BLADDER STIMULATORS (PACEMAKERS)—NOT COVERED

There are a number of devices available to induce emptying of the urinary bladder in patients who cannot void by using electrical current to force the muscles of the bladder to contract. These devices (commonly known as bladder stimulators or pacemakers) are characterized by the implantation of electrodes in the wall of the bladder, the rectal canes, or the spinal cord. While these treatments may effectively empty the bladder, the issue of safety involving the initiation of infection, erosion, placement, and material selection has not been resolved. Further, some facilities previously using electronic emptying have stopped using this method due to the pain experienced by the patient.

The use of spinal cord electrical stimulators, rectal electrical stimulators (including the Continaid), and bladder wall stimulators (including the Mentor Bladder Pacemaker) cannot be considered reasonable and necessary. Therefore, no program payment may be made for these devices or for their implantation.

65-13 PHRENIC NERVE STIMULATOR

The implantation of a phrenic nerve stimulator is covered for selected patients with partial or complete respiratory insufficiency.

The phrenic nerve stimulator provides electrical stimulation of the patient's phrenic nerve to contract the diaphragm rhythmically and produce breathing in patients who have hypoventilation—a state in which an abnormally low amount of air enters the lungs. The device has been used successfully to treat hypoventilation caused by a variety of conditions, including respiratory paralysis resulting from lesions of the brain stem and cervical spinal cord and chronic pulmonary disease with ventilatory insufficiency. The phrenic nerve stimulator is intended to be an alternative to management of patients with respiratory insufficiency who are dependent upon the usual therapy of intermittent or permanent use of a mechanical ventilator as well as maintenance of a permanent tracheotomy stoma.

However, an implanted phrenic nerve stimulator can be effective only if the patient has an intact phrenic nerve and diaphragm. Moreover, nerve injury may occur during the surgical procedure and if sufficient injury is incurred, the device will not prove useful to the patient. Consequently, it is possible for such a device to be indicated for a patient but, due to injury sustained during implant, fail to assist the patient, resulting in a return to the use of mechanical ventilation.

65-14 COCHLEAR IMPLANTATION

(Effective for services performed on and after October 1, 1988.)

As cochlear implant device is an electronic instrument, part of which is implanted surgically to stimulate auditory nerve fibers, and part of which is worn or carried by the individual to capture and amplify sound. Cochlear implant devices are available in single channel and multi-channel models. The purpose of implanting the device is to provide an awareness and identification of sounds and to facilitate communication for persons who are profoundly hearing impaired.

Medicare coverage is provided only for those patients who meet *all* of the following selection guidelines:

1. Diagnosis of total sensorineural deafness that cannot be mitigated by use of a hearing aid in patients whose auditory cranial nerves are stimulable.

2. Cognitive ability to use auditory clues and a willingness to undergo an extended program of rehabilitation.

3. Post-lingual deafness.

4. Adulthood (at least 18 years of age).

5. Freedom from middle ear infection, an accessible cochlear lumen that is structurally suited to implantation, and freedom from lesions in the auditory nerve and acoustic areas of the central nervous system.

6. No contraindications to surgery.

65–15 ARTIFICIAL HEARTS AND RELATED DEVICES—NOT COVERED

There are several devices either in use or under development which replace all or part of the human heart, or assist the heart in performing its pumping function. Artificial hearts are considered investigational and not covered under Medicare either when used as a permanent replacement for a human heart, or when used as temporary life-support systems (i.e., until a human heart becomes available for transplant).

Also, ventricular assist devices used as temporary life-support systems are also considered investigational and not covered under the Medicare program.

65–16 TRACHEOSTOMY SPEAKING VALVE

A trachea tube has been determined to satisfy the definition of a prosthetic device, and the tracheostomy speaking valve is an "add on" to the trachea tube which may be considered a medically necessary accessory that enhances the function of the tube. In other words it makes the system a better prothesis. As such, a tracheostomy speaking valve is covered as an element of the trachea tube which makes the tube more effective.

70 BRACES—TRUSSES—ARTIFICIAL LIMBS AND EYES

70–1 CORSET USED AS A HERNIA SUPPORT

A hernia support (whether in the form of a corset or truss) which meets the definition of a brace is covered under Part B under § 1861(s)(9) of the law.

Cross-refer: Intermediary Manual, § 3110.5; Carriers Manual, § 2133; Hospital Manual, § 228.5

70–2 SYKES HERNIA CONTROL

Based on professional advice it has been determined that the Sykes Hernia Control [a spring-type, "U-shaped," strapless truss] is not functionally more beneficial than a conventional truss. Make program reimbursement for this device only when an ordinary truss would be covered. [Like all trusses, it is only of benefit when dealing with a reducible hernia]. Thus, where a charge for this item is substantially in excess of that which would be reasonable for a conventional truss used for the same condition, base reimbursement on the reasonable charges for the conventional truss.

Cross-refer: Intermediary Manual, § 3110.5; Carriers Manual, § 2133; Hospital Manual, § 228.5

70–3 PROSTHETIC SHOE

A prosthetic shoe (a device used when all or a substantial portion of the front part of the foot is missing) can be covered as a terminal device; i.e., a structural supplement replacing a totally or substantially absent hand or foot. The coverage of artificial arms and legs includes payment for terminal devices such as hands or hooks even though the patient may not require an artificial limb. The function of the prosthetic shoe is quite distinct from that of excluded orthopedic shoe and supportive foot devices which are used by individuals whose feet, although impaired, are essentially intact. (Section 1862(a)(8) of the Act excludes payment for orthopedic shoes or other supportive devices for the feet.)

Cross-refer: Intermediary Manual, § 3110.5; Carriers Manual, § 2133; Hospital Manual, § 228.5

80 PATIENT EDUCATION PROGRAMS

81–1 INSTITUTIONAL AND HOME CARE PATIENT EDUCATION PROGRAMS

While the law does not specifically identify patient education programs as covered services, reimbursement may be made under Medicare for such programs furnished by providers of services (i.e., hospitals, SNFs, HHAs, and OPT providers) to the extent that the programs are appropriate, integral parts in the rendition of covered services which are reasonable and necessary for the treatment of the individual's illness or injury. For example, educational activities carried out by nurses teaching patients to give themselves injections, follow prescribed diets, administer colostomy care, administer medical gases, and carry out other inpatient care activities—may be reimbursable as a part of covered routine nursing care. Also, the teaching by an occupational therapist of compensatory techniques to improve a patient's level of independence in the activities of daily living may be reimbursed as a part of covered occupational therapy. Similarly, the instruction of a patient in the carrying out of a maintenance program designed for him by a physical therapist may be reimbursed as part of covered physical therapy.

However, where the educational activities are not closely related to the care and treatment of the patient, such as programs directed toward instructing patients or the public generally in preventive health care activities, reimbursement cannot be made since the law limits Medicare payment to covered care which is reasonable and necessary for the treatment of an illness or injury. For example, programs designed to prevent illness by instructing the general public in the importance of good nutritional habits, exercise regimens, and good hygiene are not reimbursable under the program.

90 NURSING SERVICES

90–1 HOME HEALTH VISITS TO A BLIND DIABETIC

Many individuals who are blind and require daily insulin for the control of a diabetic condition are able to administer their injections without assistance (other than possibly that which may be furnished by family members or friends). There are organizations which encourage and train blind diabetics, both to fill their own syringes and to inject themselves. There are also a number of devices available for blind individuals to fill their syringes accurately. However, the individuals who may need assistance with prefilling their syringes may also require periodic observation and evaluation, even though their diabetes is fairly stabilized. In such cases, probably few in number, home health services may be required for this purpose.

To qualify for home health benefits, a blind diabetic must be confined to his home, under the care of a physician, and

a need of either skilled nursing services on an intermittent basis or physical therapy or speech therapy. Effective July 1, 1981, a person may qualify for home health benefits based on his or her need for skilled nursing services on an intermittent basis, physical therapy, speech therapy, or occupational therapy. Effective December 1, 1981, occupational therapy is eliminated as a basis for entitlement to home health services. However, if a person has otherwise qualified for home health services because of the need for skilled nursing care, physical therapy or speech therapy, the patient's eligibility for home health services may be extended solely on the basis of the continuing need for occupational therapy. (See Intermediary Manual, § 3116; Home Health Agency Manual, § 203; Hospital Manual, § 155.3.) There must be a plan of treatment, established and periodically reviewed by a physician, which indicates that there is a recurring need for home health services to supplement the physician's contacts with the patient; e.g., skilled nursing visits for observing and determining the need for changes in the level and type of care which has been prescribed. (See Intermediary Manual, § 3117ff; Home Health Agency Manual, § 204ff.) Once an initial regimen has been established, the frequency of need for further home health services can vary greatly from patient to patient, depending on their condition and the likelihood of its changing. Some may need visits only every 90 days, for example, while others may require them much more frequently. If a nurse makes a visit to provide skilled services, and also prefills syringes, the purpose of the visit, which was to provide skilled services, does not change. However, if the sole purpose of the nurse's visit is to prefil insulin syringes for a blind diabetic, it is not a skilled nursing visit although it may be reimbursed as such as indicated below.

Filling a syringe can be safely and effectively performed by the average nonmedical person without the direct supervision of a licensed nurse. Consequently, it would not constitute a skilled nursing service even if it is performed by a nurse. (See Intermediary Manual, § 3117.2B; Home Health Agency Manual, § 204.2B.) The personal care duties normally performed by home health aides include assisting the patient with medications ordered by a physician which are ordinarily self-administered. (See Intermediary Manual, § 3119.2; Home Health Agency Manual, § 208.2.) Performance of such a service by an aide is consistent with the Medicare conditions of participation for home health agencies. Therefore, home health aide services would be appropriate for those blind diabetics who are qualified for home health benefits and who cannot fill their syringes. An adequately trained home health aide could make intermittent visits, usually on a weekly basis, to the home for the purpose of filling that supply of insulin ordered by the physician.

If State law, however, precludes a home health aide from prefilling insulin syringes, payment may be made for this service as part of the cost of skilled nursing services when performed by a nurse for a blind diabetic who is otherwise unable to prefill his or her syringes. There are no adverse consequences with respect to reimbursement to the home health agency for providing the service in this manner.

If State law does not preclude a home health aide from prefilling insulin syringes, but the home health agency chooses to send a nurse to perform only this task, the visit is reimbursed as if made by a home health aide.

NOTE: As indicated, to qualify for home health benefits, a patient must require skilled nursing services on an intermittent basis or physical therapy or speech therapy. If a beneficiary does not qualify for home health benefits but only needs someone to prefill syringes with the correct dosage of insulin, then no program payment can be made.

Cross-refer: Intermediary Manual, §§ 3116, 3117.2B, 3117ff, 3119.2; Home Health Agency Manual, §§ 203, 204ff, 204.2B, 208.

90–2 HOME HEALTH NURSES' VISITS TO PATIENTS REQUIRING HEPARIN INJECTIONS

Professional medical advice indicates that subcutaneous injections of low dose heparin can be, under certain circumstances, medically accepted therapy for the treatment of recurrent deep venous thrombosis, recurrent pulmonary emboli, and other conditions requiring long term anticoagulation. The usual drug of choice for these conditions is warfarin. Heparin may be substituted for warfarin in circumstances such as demonstrated warfarin sensitivity. Heparin is now the drug of choice for anticagulation during pregnancy.

Medicare payment may be made for several visits by the home health nurse to teach the patient or the caring person to give subcutaneous injections of low dose heparin if it is prescribed by a physician for a homebound patient who: (1) is pregnant and requires anticoagulant therapy, or (2) requires treatment for deep venous thrombosis or pulmonary emboli or for another condition requiring anticoagulation and documentation justifies that the patient cannot tolerate warfarin. If the patient or caring person is unable to administer the injection, nursing visits to give the injections on a daily basis, 7 days a week, for a period of up to 6 months (in the case of pregnancy, visits may be made for a period beyond 6 months if reasonable and necessary) would be reimbursed by Medicare. Coverage for these services after 6 months of treatment would be provided only if the prescribing physician can justify and document the need for such an extended course of treatment. Documentation of need for heparin injections beyond 6 months would not be required for pregnant patients who meet the homebound criteria.

Cross-refer: Intermediary Manual, §§ 3117.4B, 31174H.1; Home Health Agency Manual, §§ 204.4B, 204.4H.1.

	Section Number [1]
A	
Abdominal Aneurysms, Fabric Wrapping	35-34
Absorptiometry, Single or Dual Photon, and Radiographic	80-44
Acquired Immunodeficiency Syndrome, Serologic Testing for	50-52
Acupuncture	35-8
Actinotherapy	35-60
Acute Post-Operative Pain Relief	45-19
Admission Diagnostic Procedures (Hospital/SNF)	50-28
AICC	45-24
AIDS	50-52
Alcoholism, Treatment of	35-22—35-23.1
Allogeneic Bone Marrow Transplant	35-30
Allograft Rejection Episodes	45-22
Ambulatory Blood Pressure Monitoring	50-42
Ambulatory Electroencephalographic (EEG) Monitoring	50-39.1
Amygdalin	45-10
Analgesic, Acupuncture	35-8
Anesthesia	35-14, 35-57
Anesthetic, Acupuncture	35-8
Aneurysm	35-34, 35-37, 35-57, 50-7
Angina Pectoris	65-4
Angiograms	35-32, 80-48
Ankylosing Spondylitis	50-23
Anticancer Drugs	50-41
Antigastroesophageal Reflux Device, Implantation of	35-59
Anti-Inhibitor Coagulant Complex	45-24
Anti-Thymocyte Globulin (Equine)	45-22
Aortic Arch Vessels, Obstructive Lesions of	50-32.3
Aphakia	65-1
Apheresis—Therapeutic Pharmacis	35-60
Aplastic Anemia	35-30
Apomorphine	35-23
Arterial Insufficiency	65-5
Arteriolysis	35-32
Arteriopexy	35-32
Arteriosclerosis	35-32, 35-34, 45-39, 80-52
Arteriovenous Dialysis Fistulas, Obstructive Lesions of	50-32.4
Artery Bypass Surgery	35-37

BEST COPY AVAILABLE

	Section Number [1]
Arthralgia	35-33
Arthritis	35-6, 35-17, 50-22, 60-5
Artificial Fever	35-6
Artificial Heart	65-15
Artificial Lenses (Pseudophakos)	65-7
Artificial Limbs and Eyes	65-7, 70-3
Aspirator, VABRA	50-10
Assessing Patient's Suitability for Electrical Nerve Stimulation Therapy	35-46
Asthma	35-3, 35-7, 35-18
Astigmatism	65-1
Ataxia	35-32
Atherosclerosis	35-64, 45-20, 50-7
Autogenous Epidural Blood Graft	45-11
Autologous Bone Marrow Transplant	35-30
Automatic Defibrillators, Implantation of	35-85
Aversion Therapy:	
Chemical	35-23
Electrical	35-23.1
Avitaminosis	35-33
B	
Bandages	45-21
Baths	60-9, 60-10
Beds	60-9
Behavior Modification:	
Alcohol	
Pain	35-22.1 35-21
Bell's Palsy	35-72
Bendien's Test for Cancer and Tuberculosis	50-34
Bilateral Mammectomy	35-61
Bile Acid Malabsorption, Diagnosis of	50-51
Biofeedback Therapy	35-27
Bladder Outlet Obstructions	50-33
Bladder Stimulators (Pacemakers)	65-9, 65-11
Blindness	60-3, 90-1
Blood Graft, Autogenous Epidural	45-11
Blood Glucose Analyser	60-11
Blood Platelet Transfusions	35-38, 50-23
Blood Plasma	35-60
Blood Pressure Monitoring Devices	60-43, 60-1, 60-9
Blood Tests	35-1, 50-2, 50-34
Bolen's Test for Cancer	50-34
Bone Biopsy	50-44
Bone (Mineral) Density Studies	50-44
Bone Marrow Transplantation	35-30, 50-23
Bone Repair	35-46
Bone Survey	50-17
Breast Reconstruction Following Mastectomy	35-47
Bullous Keratopathy	45-7
Burns	45-12
Bypass:	
Gastric	45-40
Intestinal	35-33
Vertebral Artery	35-32
C	
Calcinosis	35-64, 45-20
Cancer, Tests:	
Computerized Tomography	50-12
Cytogenic Studies	50-29
Esophageal Manometry	50-25
Gravlee Jet Washer	50-4
Intraocular Photography	35-39
Mammogram	50-21
Obsolete or Unreliable Diagnostic Tests	50-34
Pap Smears	50-29
Thermography	50-5
Ultrasound Diagnostic Procedures	50-7
Vabra Aspirator	50-10
Cancer, Treatment of:	
Breast Reconstruction Following Mastectomy	35-47
Drugs Distributed by National Cancer Institute	45-16
Enteral and Parenteral Nutritional Therapy	65-10
Human Tumor Stem Cell Drug Sensitivity Assays	50-41
Hyperthermia	35-49
Induced Lesions of Nerve Tracts	35-17
Laetrile and Related Substances	45-10
Sterilization	35-11
Therapeutic Pheresis	35-60
Canes	60-3, 60-9
Carbon Therapy/Inner Ear/Oxygen Therapy	35-29
Cardiac:	
Catheterization Performed in Other Than a Hospital Setting	35-45
Pacemaker Evaluation Services	50-1
Pacemakers	65-6
Rehabilitation Program	35-25
Stress Testing	35-25
Transplants	35-67
Cardiography, Displacement	50-50
Cardiointegram	50-47
Cardiokymography	50-50
Carotid:	
Body Resection/Body Denervation	35-7
Enderterectomines	35-57
Function Tests	50-37
Hypersensitive Sinus	35-7
Insufficiency	50-5
Occlusion	35-37
Sinus Nerve Stimulator	65-4
Castration	35-81
CAT Scan	50-12
Cataract Surgery	35-6, 35-16, 35-44
Catheter, Transvenous Pulmonary Embolectomy	35-55
Catheterization, Cardiac	35-45
CBGCD	35-70
Cellular Therapy	35-5
Central Nervous System Stimulators	65-8
Centrifuge Readacrit	60-1
Cerebral Edema	35-37
Cerebral Vascular Procedures	35-57
Certain Drugs Distributed by the National Cancer Institute	45-16
Challenge Ingestion Food Testing	50-22
Chelation Therapy, Treatment of Atherosclerosis	35-64, 45-20
Chemical Aversion Therapy	35-23
Chemical Dependency	35-22.2
Chemical Nerve Destruction	35-17
Chemoendarterectomy	35-64
Chemotherapy, Prevention of Hair Loss	45-21
Choroid Disturbances	35-39
Chronic Pain	35-17, 35-20, 35-21, 35-35, 65-9
Chronic Renal Disease Patient	50-17
CIG	50-47
Cingulotomy	35-64
Closed-Loop Blood Glucose Control Device (CBGCD)	35-70
CNS	50-5
Cochlear Implantation	65-14
Cochleostomy With Neurovascular Transplant for Meniere's Disease	35-50
Colitis	35-16
Colonic Irrigation	35-1
Completed Stroke (CS)	35-37
Computer Analyzed Electrocardiograms	50-15
Computer Enhanced Perimetry	50-49
Computerized Tomography	50-12
Congenital Pseudarthroses	35-46
Consultation Services Rendered by a Podiatrist in a Skilled Nursing Facility	50-8
Consultation With Family	35-14
Contact Lenses	45-17, 65-1, 65-3, 65-17
Continaid	65-11
Continuous Positive Airway Pressure (CPAP)	60-17
Corneal Bandage	45-7, 65-1
Corneal Surgery	35-54
Corset Used as a Hernia Support	70-1
Cosmetic Surgery:	
Breast Reconstruction	35-47
Moon Face-Correction	35-12
Counseling, Beneficiary's Family and Associates	35-14
CPAP	60-17
CRD Patents, Laboratory Tests	60-17
Crutches	60-9
CS	35-37
Cushings Disease	35-26
Cystic Fibrosis	50-35
Cytogenetic Studies	50-29
Cytotoxic Food Tests	50-2
D	
Death, Pronouncement of	50-19
Decubitis Ulcers, Treatment of	35-31, 45-12
Defibrillators, Implantation of Automatic	35-85
Deionization	60-2
Denervation	35-17
Carotid Body	35-7
Dental Examination Prior to Kidney Transplantation	50-26
Depth Brain Stimulator	65-8
Detoxification:	
Alcohol	35-22
Drugs (Chemical)	35.22.2
Diabetes	35-25, 35-32, 35-37, 35-39, 45-9, 50-8, 60-1
Diafiltration	35-36
Diagnosis and Treatment of Impotence	35-54
Diagnostic Breath Analysis	50-51
Diagnostic Endocardial Electrical Stimulation (Pacing)	35-78
Diagnostic Tests:	
Electrical Nerve Stimulation, Patient's Suitability for	35-46
Endocardial Electrical Stimulation, Diagnostic (Pacing)	35-78
Endoscopy	35-59
Esophageal pH Monitoring, 24-hour Ambulatory	35-63
Intraocular Photography	35-39
Obsolete or Unreliable	50-34
Note: Other diagnostic services are indexed by name of test.	
Dialysis	35-36
Dialyzers	60-1
Disphanography	50-46
Dispulse Treatment	35-41, 60-9
Diathermy Treatment	35-3, 35-41, 60-9
Digital Subtraction Angiography	50-43
Dimethyl Sulfoxide	45-23
Direct Noninvasive Carotid Function Tests	35-70
Displacement Cardiography	50-7, 65-37
Disuse Atrophy, Treatment of	50-50
DMSO	35-77
Doppler	45-23
Dorsal Column Stimulator	50-6, 50-7, 50-37
Drainage, Postural	65-8
Drug Abuse, Treatment of	35-16
Drugs Distributed by the National Cancer Institute	35-22, 35-22.2, 35-32.2
Drug Sensitivity Assays	45-16
Drug Therapy	50-41
Histamine	35-41
Drugs:	35-16
Anti-Inhibitor Coagulant Complex (AICC)	
Dimethyl Sulfoxide (DMSO)	45-24
Insulin Syringe	45-29
Laetrile	45-3
L-Dopa	45-10
Lymphocyte Immune Globulin, Anti Thymocyte Globulin	45-1
National Cancer Institute, Drugs Distributed by	45-22
Vitamin B12 Injections	45-16
Dry Heat Treatment for Certain Musculoskeletal Disorders	46-4
DSA	35-56
Dual Photon Absorptiometry	50-48
Durable Medical Equipment, (Screening List)	50-44
E	60-1, 60-9
EC/IC	35-37
ECP	35-74
EDTA (Chelation Therapy)	35-64, 45-20
EEC	35-57, 50-39, 50-40
EIAB	35-37
EKG	50-1, 60-15, 50-17
Electrical Aversion Therapy	35-23.1
Electrical Continence Aid	65-2
Electrical Current for Decubitus Ulcers	35-31
Electrical Nerve Stimulators	35-20, 35-46, 65-5
Electrical Stimulation to Treat Fractures	35-46
Electrical Stimulation, Diagnostic Endocardial	35-78
Electrocardiographic Services (EKG)	50-1, 50-3, 60-15
Electrical Nerve Stimulators, Assessing Patient's Suitability for	35-46
Electrocautery	35-17
Electrode Implantation, Stereotaxic Depth	50-40
Electroencephalograms	35-37, 50-39, 50-40
Electroencephalographic (EEG) Monitoring During Open Heart Surgery	35-57.1
Electroencephalographic Monitoring During Surgical Procedures Involving the Cerebral Vascular	35-57
Electrolyte Depletion	35-33
Electromyography	35-27
Electron Microscopes	50-18
Electronic Pacemaker Analysis	50-1
Electronic Speech Aids	65-5
Electroshock Therapy	35-23.1
Electrosleep Therapy	35-18
Electrotherapy for Treatment of Facial Nerve Paralysis (Bell's Palsy)	35-72
Electroversion Therapy	35-23.1
Embolectomy—Pulmonary	35-55
Embolization, therapeutic	35-35
Emetine	35-23
Enderterectomy, Vertebral	35-32, 35-37, 35-57
Endocardial Electrical Stimulation, Diagnostic (Pacing)	35-78
Endolymphatic Hydrops	35-29, 35-50
Endoscopy	35-59, 50-25
Endothelial Cell Photography	50-39
End-Stage Renal Disease (ESRD)	50-17
Enteral Nutrition Therapy	65-10, 65-10.2
Epilepsy	50-40
Equine	45-22
Esophageal Manometry	50-25
Esophageal pH Monitoring, 24-hr Ambulatory	35-63
Esophageal Speech Training	35-43
ESRD	50-17
ESWL	35-61
Ethylenediamine-Tetra-Acetic Acid (Chelation Therapy)	35-64, 45-20
Extracorporeal Shock Wave Lithotripsy (ESWL)	35-61
Evoked Response Tests	50-31
Exercises, Pulmonary	35-15
External Bands	35-32
External Counterpulsation (ECP)	35-74
External Infusion Pumps	60-14
Extracorporeal Photopheresis	35-67
Extraintracranial Artery Bypass (EIAB) Surgery in the Treatment of Strokes	35-37
Extracranial/Intracranial Surgery (EC/IC)	35-37
F	
Fabric Wrapping of Abdominal Aneurysms	35-34
Facial Nerve Paralysis (Bell's Palsy), Electrotherapy for	35-72
Family Counseling	35-14
Farsightedness	35-54
Fasting, Supplemented	35-28.1
Fat Malabsorption, Diagnosis of	50-51
Fever Therapy	35-6
Fibrous Bands	35-32
Fibrous Tissue	35-32
Fluctuant Hearing Loss	35-29
Fluidized Therapy Dry Heat for Certain Musculoskeletal Disorders	35-66
Food Tests	50-6, 50-22
Foot Care	45-4, 50-8
Fractures, Treatment by Electrical Stimulation	35-46
Freestanding Clinic	35-22.3, 35-25, 35-45
G	
Gastric Acidity, Refluse Test for	50-34
Gastric Analysis Tests	50-6, 50-34
Gastric Balloon for Treatment of Obesity	35-66
Gastric Bypass Surgery for Obesity	35-40
Gastric Freezing	35-65
Gastroesophageal Reflux Implantation	35-69
Gastrojejunostomy	35-40
Gastrophotography	50-9
General Anesthesia	35-44
Glaucoma	35-39
Glucose Monitors, Home	60-11
Goeckerman Treatment	35-66
Gradient Pressure Dressings	45-12
Granulocyte Transfusions	45-18
Gravlee Jet Washer	50-4
Group C Drugs	45-16
H	
Hair Analysis	50-24
Hair Loss, Including the Use of Diathermy and Ultrasound for Pulmonary Conditions	35-6
Hair Loss, Prevention of During Chemotherapy	45-21
HBO	35-10
Hearing Aid	35-69, 65-14
Heart Transplants	35-[illegible]
Heat Treatment	35-3, 35-49, 35-58
Hematocrit Tubes	60-1
Hematoma	35-32, 50-12, 50-39
Hemodialysis	35-36, 35-61
Hemodialysis Equipment—Home Use	60-1, 60-2, 60-9, 60-10
Hemodialysis, Treatment of Schizophrenia	35-61
Hemofiltration	35-36
Hemoperfusion	35-36
Hemorheograph	50-16
Heparin:	
Infusion Pumps	60-1
Injections	90-2
Hernia Support	70-1, 70-2
His Bundle Study	50-3
Histamine Therapy, Intravenous	35-19
Histocompatibility Testing	50-23
Holter Recording	50-15
Home Care Patient Education Programs	60-1
Home Glucose Monitors	60-11
Home Health Nurses' Visits to Patients Requiring Heparin Injections	90-2
Home Health Nurses' Visits to the Home of a Blind Diabetic to Prefill Insulin Syringes	90-1
Homograft	45-12
Hospital and Skilled Nursing Facility Admission Diagnostic Procedures	50-39
Hospital Beds	60-9
Human Tumor Stem Cell Drug Sensitivity Assays	50-41
Hydraulic Incontinence Control Devices	65-9
Hydrophilic Contact Lenses	45-7, 65-1
Hydrotherapy	35-31
Hyperbaric Oxygen (HBO) Therapy	35-10
Hyperglobulinemias	35-60
Hyperopia	35-54
Hyperplastic Lesions	50-5
Hypertension	35-18, 35-26
Hyperthermia Treatment of Cancer	35-49
Hypoglycemia	35-32
Hypoplasia of Bone Marrow	35-33
Hypotension	35-7, 35-32
Hypotensive Anesthesia	35-57
Hypothalamic Lesions	35-26
Hypothyroidism	35-26
Hypoxemic	50-4
Hysterectomy	35-11, 35-61
I	
Immunodeficiency Disease, Lymphocytic Function in	50-46
Implantable Electronic Stimulators	65-9
Implantable Infusion Pumps	60-14
Implantation of Anti-Gastroesophageal Reflux Device	35-69
Implantation, Stereotaxic Depth Electrode	50-40
Implanted Nerve Stimulator	65-4, 65-6
Impotence, Diagnosis and Treatment	35-54
Indirect Noninvasive Carotid Function Tests	50-37
Induced Lesions of Nerve Tracts	35-17
Infusion Pumps	60-14

	Section Number [1]
Inhalation Therapy	35–15, 35–29
Injection Sclerotherapy for Esophageal Variceal Bleeding	35–73
Injections:	
Cellular Therapy	35–5
Heparin	90–2
Insulin	45–3, 90–1
Ligamentous With Sclerosing Agents	35–13
Patient Education	90–1
Vitamin B–12	45–4
Inner Ear:	
Carbon Therapy	35–29
Ultrasonic Surgery	35–4
Inpatient Hospital Stays For the Treatment of Alcoholism	35–22
Insomnia	35–15
Institutional/Home Care Patient Education Programs	90–1
Insulin Syringe	45–3, 90–1
Intersex Surgery	35–61
Intestinal By-Pass Surgery	35–33
Intonation Therapy, Melodic	35–67
Intracranial Pressure Monitoring, Invasive	35–32
Intraocular Lenses (IOL's)	50–35, 65–7
Intraocular Photography	35–39
Intraoperative Ventricular Mapping	35–75
Intravenous Histamine Therapy	35–19
Invasive Intracranial Pressure Monitoring	35–62
IOL's	65–7
Irrigation, Colonic	35–1
J	
Jobst Elasticized Heavy Duty Dressings	45–12
Joint Sclerotherapy	35–13
K	
Keratomileusis	35–54
Keratophakia	35–54, 45–7
Keratoplasty	35–54
Kidney Stones, Treatment of	35–61
Kidney Transplant	35–58, 35–71, 50–23, 50–26
L	
L-Dopa	45–1
Laboratory Tests:	
Chronic Renal Disease Patients	50–17
Cytogenetic Studie	50–29
Cytotoxic Food Tests	50–2
Diagnostic Breath Analysis	50–51
Endothelial Cell Photography	50–38
End-Stage Renal Disease Patients	50–17
Gravlee Jet Washer	50–4
Hair Analysis	50–24
Histocompatability Testing	50–23
Human Tumor Stem Cell Drug Sensitivity Assays	50–41
Lymphocyte Mitogen Response Assays	50–45
Obsolete or Unreliable Diagnostic Tests	50–34
VABRA Aspirator	50–10
Labyrinthectomy	35–50
Labyrinthitis	35–32
Lactose Breath Hydrogen	50–51
Laetrile and Related Substances	45–10
Lapine	45–22
Laser Procedures	35–52
Leukemia	35–30, 35–69, 50–29
Ligamentous Injections With Sclerosing Agents	35–13
Lithium	35–33
Lithotripsy: Extracorporeal Shock Wave, Percutaneous, Transurethral Ureteroscopic	35–61
Liver Failure	35–33
Liver Tests	45–1
Liver Transplantation	35–53
Long-Term Parenteral Nutritional Therapy in the Home, Parenteral and Enteral Therapies and Nutritional Supplements	65–10
Low Intensity Direct Current	35–31
Lymphedema Pump	60–16
Lymphocyte Immune Globulin	45–22
Lymphocyte Mitogen Response Assays	50–45
M	
Macular Degeneration by Photocoagulation	35–39, 35–52
Magnetic Resonance Imaging (MRI)	50–13
Mammectomy, Bilateral	35–61
Mammograms	50–5, 60–21
Manipulation (of Ribcage, Head)	35–2
Mastectomy, Breast Reconstruction	35–47
Mechanical/Hydraulic Incontinence Control Devices	65–6
Mechanical/Oscillometry	50–6
Melodic Intonation Therapy	35–67
Meniere's Disease	35–4, 35–29, 35–60
Mentor Bladder Pacemaker	65–11
Mongolism	50–29
Moon Face, Correction of	35–12
Motor Function Disorders, Treatment with Electrical Nerve Stimulation	35–20
MRI	50–13
Multiple Myelomas	35–60
Multiple Sclerosis:	
Diagnosis	35–39
Treatment	35–10, 35–20, 45–17
Murine	45–22
Muscular Dystrophy	60–6
Musculoskeletal Disorders	35–58, 50–5
Myasthenia Gravis	35–60
Myopia	35–54
N	
National Cancer Institute (NCI)	45–16
Narcotic Addiction, Treatment of	35–42
Nearsightedness	34–54
Neoplastic Lesions	50–5
Nerve Conductor Velocity Test	50–17
Nerve Destruction, Chemical	35–17
Nerve Stimulator:	
Carotid Sinus	65–4
Electrical	65–6
Phrenic	65–13
Neuromuscular Electrical Stimulation (NMES) in the Treatment of Disuse Atrophy	35–77
Neurovascular Transplant	35–50
Nitrilosides	45–10
NMES	35–77
Noninvasive Tests of Carotid Function	50–37
Nuclear Radiology Procedures	50–30
Nursing Services	90–1, 90–2
Nutritional Supplementation	65–10, 65–10.3
Nutritional Therapy	65–10, 65–10.1, 65–10.2
O	
Obesity	35–26, 35–26.1, 35–33, 35–40, 35–69, 35–86
Obsolete/Unreliable Diagnostic Tests	50–34
Obstructive Sleep Apnea (OSA)	60–17
Occupational Therapy	35–25, 90–1, 90–1
Oculopethysmography	50–37
Ophthalmologist	35–8, 35–26, 35–44, 50–37
Orthostatic Hypotension	35–32
OSA	60–17
Osteogenic Stimulation	35–48
Osteophytes	35–32
Outpatient Hospital Cardiac Rehabilitation Programs	35–25
Outpatient Hospital Services For Treatment of Alcoholism	35–22.1, 35–23
Oxygen:	
Home Use	60–4
Hyperbaric Therapy	35–10
Portable Systems	60–4, 60–9
Topical Application of	35–31
Treatment of Inner Ear/Carbon Therapy	35–29
P	
Pacemaker	65–6
Pacemaker Evaluation Services, Cardiac	50–1
Pacemaker Monitors	65–7, 60–9
Pacing	35–76
Pain Control:	
Acupuncture	35–8
Acute Post-Operative	45–19
Biofeedback	35–27
Denervation	35–17
Destruction of Nerve Tissue	35–17
Electric Nerve Stimulation	35–20
Electric Nerve Stimulation Therapy	35–46
Electrical Nerve Stimulators	65–8
Pain Rehabilitation Programs	35–21
Pancreas Transplants	35–82
PAP Smears	50–20
Parenteral Nutritional Therapy	65–10, 65–10.1
Parkinsonism	45–1
Paroxysmal Supraventricular Tachycardia, Treatment of	65–4
Paroxymal Vertigo	35–50
Patient Activated EKG Recorders	50–15
Patient Education Programs	90–1
Patient Lifts	60–8, 60–9
Penile Prosthesis	35–24
Penectomy	35–61
PENS	35–65
Peptic Ulcer Disease	35–46, 65–6
Percutaneous Electrical Nerve Stimulation (PENS)	50–32, 50–32.2, 50–32.3, 50–32.4
Percutaneous Transluminal Angioplasty (PTA)	50–32.1
Percutaneous Transluminal Coronary Angioplasty (PTCA)	60–12
Peridex Card Filter Set	50–49
Perimetry, Computer Enhanced	65–8
Peripheral Nerve Stimulators	50–5, 50–6, 50–16, 50–35
Peripheral Vascular Disease	90–10, 60–12
Peritoneal Dialysis Equipment—Home Use	50–36
PET (PETT) Scans	35–63
pH Monitoring, 24-hr Ambulatory Esophageal	35–9
Phaco-Emulsification Procedure (Cataract Extraction)	35–61
Phalloplasty	35–60
Pharesis, Therapeutic	50–44
Photodensitometry (Radiographic Absorptiometry)	35–39
Photography, Intraocular	50–50
Photokymography	35–87
Photopheresis, Extracorporeal	65–13
Phrenic Nerve Stimulator	
Physical Therapy	35–15, 35–25, 35–46, 45–1, 60–1, 90–1
Physician's Office Within an Institution—Coverage of Services and Supplies Incident to a Physician's Services	45–15, 35–48
Plasma Exchange	35–60
Plasmapheresis	35–60
Plastic Surgery to Correct "Moon Face"	35–12
Plastic Surgery—Breast Reconstruction	35–47
Plethysmography	50–6, 50–16
Podiatrist Consultation Services in a Skilled Nursing Facility	50–8
Polyps	35–59
Porcine Skin and Gradient Pressure Dressings	45–12
Portable Hand-Held X-Ray Instrument	50–48
Portable Monitors, Blood Pressure	50–42
Portable Oxygen Systems	60–4
Positron Emission Transverse Tomography (PETT) Scans	50–36
Postural Drainage Procedures and Pulmonary Exercises	35–15
Power-Operated Vehicles That May be Used as Wheelchairs	60–5
Predialysis Ultrafiltration	35–38
Primary Macroglobulinemia	35–60
PRIND (Prolonged Reversible Ischemic Neurological Deficit)	35–37
Prolotherapy, Joint Sclerotherapy, and Ligamentous Injections With Sclerosing Agents	35–13
Pronouncement of Death	50–19
Prosthetic Devices	35–24, 35–61, 70–3
Prosthetic Shoe	70–3
Pseudophakos	65–7
Psychiatric Care	35–14, 35–22, 35–23, 35–24
Psychiatrist's Consultation With a Beneficiary's Family and Associates	35–14
Psychosomatic Conditions	35–18, 35–27
Psychosurgery	35–84
Psychotherapy	35–25
PTA	50–32, 50–32.2, 50–32.3, 50–32.4
PTCA	50–32.1
Pulmonary Conditions	35–3, 35–7, 35–10, 35–15, 35–37, 35–55, 60–4, 90–2
Pulmonary Exercises	35–15
Pulsed Waved Diathermy Apparatus	35–41
Pumps:	
Infusion	60–14
Lymphedema	60–16
PUVA Therapy	35–66
Q	
R	
Radial Keratomy	35–54
Radiation Therapy Planning Sonography	50–7
Radiographic Absorptiometry	50–44
Recliner Chairs	60–1, 60–9
Reflectance Colorimeters	60–11
Reflux, Anti-Gastroesophageal	35–59
Refractive Keratoplasty	35–54
Refractory Edema	35–38
Rehabilitation Programs:	
Alcoholism	35–22, 35–23, 35–23.1, 35–25
Cardiac	35–25
Drug Abuse (Chemical Dependency)	35–22.2
Pain	35–21
Rehfuss Test For Gastric Acidity	50–34
Renal:	
Adenocarcinoma	35–35
Arteries, Stenotic Lesions of	50–32.2
Embolization	35–35
Transplants	35–58, 45–22, 50–26
Resection, Carotid Body	35–7
Respiratory Therapy	35–15, 50–22, 60–9, 65–13
Retinal Neoplasms	35–39
Reverse Osmosis	60–2
Rhizolysis	35–17
Rupture	35–34
S	
Safety Roller	60–15
Salpingo-oophorectomy	35–61
Sarcarcinase	45–10
Scalp	45–21, 50–40
Scalp Hypothermia During Chemotherapy to Prevent Hair Loss	45–21
Scanners	50–12, 50–36
Schizophrenia, Hemodialysis Treatment for	35–51
Scleral Shell	65–3
Sclerosing Agents	35–13
Sclerotherapy, Joint	35–13
Screening List For Durable Medical Equipment	60–9
Seat Lift	60–8, 60–9
Self-Contained Pacemaker Monitors	50–1, 60–7
Senile Macular Degeneration, Treatment by Photocoagulation	35–32
Serologic Testing for Acquired Immunodeficiency Syndrome (AIDS)	50–52
Sex Reassignment Surgery	35–61
Sexual Impotence, Treatment of	35–24
Shoe, Prosthetic	70–3
Single Photon Absorptiometry	50–44
Skilled Nursing Facility Admission Diagnostic Procedures	50–28
Skin Tests	50–34
Sleep Apnea	60–17
Sleep Therapy (Electro)	35–18
Small Bowel Bacteria Overgrowth, Diagnosis of	50–51
Space Shoe	70–3
Specially Sized Wheelchairs	60–8
Spectrowave	35–41
Speech Aids, Electronic	65–5
Speech Therapy	90–1
Sphygmomanometer	60–1, 60–9
Stastorrhea	35–33
Stenotic Lesions, Treatment of	50–32.1, 50–32.2
Stereotactic Cingulotomy as a Means of Psychosurgery	35–84
Stereotaxic Depth Electrode Implantation	50–40
Sterilization	35–11
Stimulation:	
Electrical	35–46
Noxious Faradic	35–23.1
Osteogenic	35–48
Streptokinase Infusion	35–79
Stress Testing, Cardiac	35–25, 50–47
Stroke	35–32, 35–37
Subclavian Steal	35–32
Superpulse	35–41
Supplemented Fasting	35–26.1
Surgery:	
Aneurysm	35–57
Artery Bypass	35–57
Cataract	35–44
Coronary Bypass	65–4
Intestinal Bypass	35–33
Obesity	35–33, 35–40
Plastic	35–12
Refractive Keratoplasty	35–54
Sex Reassignment	35–61
Transsexual	35–61
Ultrasound	35–4, 50–7
Vertebral Artery	35–32
Surgically Induced Lesions of Nerve Tracts	35–17
Sweat Test	50–35
Syncope	35–7, 50–15
Sykes Hernia control	70–2
T	
TDD	35–58
Telephone Transmission of Electroencephalograms	50–39
Tendinous Slings	35–32
TENS	35–46
Testicular Prostheses	35–61
Thallium Stress Test, Alternative to	50–47
Theramatic	35–41
Therapeutic Embolization	35–35
Therapeutic Pheresis (Apheresis)	35–60
Therapy:	
Cellular	35–5
Chemical Aversion	35–23
Electrical Version, for Alcoholism (Electroversion, Electro-Shock)	35–23.1
Electrosleep	35–18
Hyperbaric Oxygen (HBO)	35–10
Intravenous Histamine	35–19
Prolotherapy	35–13
Thermogenic	35–6
Thermogenic Therapy	35–6
Thermography	50–6
Thoracic Duct Drainage (TDD) in Renal Transplants	35–58
Thrombocytopenia	35–30
Thrombolytic Therapy	35–79
Thrombophlebitis	50–5
TIA	35–32, 35–37, 50–15
Tinnitus Masking	35–63
Toilet Seats	60–9
Topical Dressings—Application of Oxygen	35–31
Topical Dressing With Balsam of Peru in Castor Oil	35–31
Trancutaneous Electrical Nerve Stimulation (TENS)	35–46, 45–19, 65–8
Transfer Factor For Treatment of Multiple Sclerosis	45–17
Transfusions, Blood Platelet	35–30
Transfusions, Granulocyte	45–18
Transfusions, Nonselective and Living-Related Donor Specific in Kidney Transplantation	35–71
Transient Ischemic Attach (TIA)	35–32, 35–37, 50–15
Transillumination Light Scanning	50–46
Transplant, Neurovascular	35–50
Transplantation:	
Bone Marrow	35–36; 50–23
Heart	35–67
Kidney	35–71
Liver	35–53
Neurovascular	35–50
Pancreas	35–82
Renal	35–58, 45–22, 50–26
Transsexual Surgery	35–61
Transtelephonic Electrocardiographic Transmissions	50–15

	Section Number [1]
Transtelephonic Monitoring of Cardiac Pacemaker	50-1
Transvenous (Catheter) Pulmonary Embolectomy	35-55
Truss	70-1, 70-2
Tubal Ligation	35-11
Tuberculosis:	
Bendien's Test For	50-34
Treatment	50-4
Tumor:	
8-Scan	50-7
Carotid Body	35-7
Drug Sensitivity Assays	50-41
Esophageal Manometry	35-25
Renal	35-35
Stem Cell	50-41
Thermography	50-5
Uterus	35-11
U	
Ulcers:	
Corneal	45-7
Decubitus, Treatment of	35-10, 35-31, 45-12
Esophageal	50-25
Gastric	50-9
Meleney	35-10
Peptic	35-85
Ultrafiltration, Diafiltration and Hemoperfusion	35-38
Ultrafiltration Monitor	50-13
Ultrasonic Measurement of Blood Flow	50-8
Ultrasonic Surgery (Meniere's Disease)	35-4
Ultrasound	35-3, 50-7, 50-37
Ultraviolet Light	35-31
Unreliable/Obsolete Diagnostic Tests	50-34
Urodynamic Flow Studies	50-33
Urodynamic Voiding	50-33
Urofluxometric Evaluations	50-33
Utility Baths	50-10
V	
VABRA Aspirator	50-10
Variceal Bleeding	35-73
Vasectomy	35-11
Ventricular Mapping, Intraoperative	35-75
Vertebral Artery Surgery	35-32
Vertigo	35-4, 35-32, 35-50
Visual Sensitivity, Measurement of	50-49
Vitamin B-12 Injections to Strengthen Tendons, Ligaments, etc., of the Foot	45-4
Vitamin B-17	45-10
Vitrectomy	35-16
Vulva-Vaginal Construction	35-61
W	
Walker	50-15
Warfarin	50-2
Water Purification and Softening Systems Used in Conjunction With Home Dialysis	50-2
Wheelchairs	50-5, 50-6, 50-9
Whiplash	50-5
Whirlpool Treatments	35-31, 35-66, 50-9
White Cane For Use By a Blind Person	50-3
Windsop Tubes	50-1
Withdrawal Treatments For Narcotic Addictions	35-42
Wrapping, Fabric/Abdominal Aneurysms	35-34
X	
Xenon Scan	50-27
X-Ray Instrument, Portable Hand-Held	50-48
Y	
Z	

[1] Note: When more than one section is indicated, primary locations, if any, are listed in bold face type.

[FR Doc. 89-19426 Filed 8-18-89; 8:45 am]

BILLING CODE 4120-15-M

Privacy Act of 1974; System of Records

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Drug Bill Processor Records on Medicare Prescription Drug Beneficiaries," HHS/HCFA/BPO No. 09-70-0528. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires that only the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice.

DATES: HCFA filed a new system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on August 16, 1989. The new system of records, including routine uses, will become effective October 20, 1989, unless HCFA receives comments which warrant modification of the notice.

ADDRESS: The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, Room G-M-1, East Low Rise, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Dorothy A. Kielkopf, Division of Operational Systems Development, Office of Program Operations Procedures, Bureau of Program Operations, Health Care Financing Administration, Room G-A-1, Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Telephone (301) 966-6121.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records and to collect data under the authority of section 1842(o)(4) of the Social Security Act as amended by the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360), which mandates that: "the Secretary shall establish, by not later than January 1, 1991, a point-of-sale electronic system for use by carriers and participating pharmacies in the submission of information respecting covered outpatient drugs dispensed to Medicare beneficiaries under this part." (Related provisions of the Social Security Act are at sections 1842(b)(3)(J) and (K), 1842(c)(1)(A)(i), 1842(f)(3), 1842(h)(1), and the remainder of Section 1842(o). This system of records will contain beneficiary-specific information on Medicare prescription drug benefit entitlement, deductible status, and, over time, prescription drug use. HCFA will thus be able to properly and expeditiously pay Medicare benefits to or on behalf of the beneficiary in question and to inform the beneficiary at the point of sale of her/his deductible status and of potential prescription drug interaction problems. Under all conditions, sensitive data will be safeguarded from disclosure and protected from unauthorized modification or destruction. Each user will be required to present a valid password before being allowed access to the system. Only those persons whose duties require access to beneficiaries' records will be given passwords. Authorized pharmacy personnel will have only limited read/write access to beneficiaries' records. Beneficiary-specific prescription Drug information will be available to authorized personnel of enrolled pharmacies only in instances of potential outpatient prescription drug interactions, and the information available will be limited to the prescription drug(s) implicated.

The Privacy Act permits us to disclose information without the consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purpose for which we collect the information. We anticipate that disclosure under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: August 14, 1989.

Lewis B. Hays,

Acting Administrator, Health Care Financing Administration.

09-70-0528

System Name: Drug Bill Processor Records on Medicare Prescription Drug Beneficiaries.

Security Classification: None.

System Location: Contact the System Manager for location of records.

Categories of Individuals Covered by the System: Medicare beneficiaries eligible for the Medicare outpatient prescription drug benefit.

Categories of Records in the System: The system contains beneficiary-specific Medicare Part B enrollment data, including name, date of birth, sex, race, Health Insurance Claim Number (HICN), address, marital status, and date of death. It also contains information on Medicare prescription drug benefit entitlement, deductible status, Medicare-covered outpatient prescription drug use history, representative payee name and address, and Medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare payment.

Authority for Maintenance of the System: Section 1842(o)(4) of Pub. L. 100-360.

Purpose(s): The system is intended to facilitate proper and expeditious payment of Medicare prescription drug benefits to or on behalf of entitled beneficiaries; to allow eligibility for Medicare prescription drug benefits and deductible status to be ascertained at the point of sale; to ensure that beneficiaries who travel or move will not lose credit for payments toward the deductible; to facilitate the prevention of outpatient prescription drug interactions; to allow for prospective and retrospective utilization review. Beneficiary-specific outpatient prescription drug information will be available to authorized personnel of enrolled pharmacies only in instances of potential outpatient prescription drug interactions, and the information available will be limited to the prescription drug(s) implicated.

Routine Uses of Records Maintained in the System, Including Categories of Users and Purposes of Such Uses: Disclosure may be made to:

1. Claimants, their authorized representatives, or their representative payers or payees to the extent necessary to pursue payment of Medicare-covered outpatient prescription drug bills.

2. Third-party contacts (without the consent of the individual to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capability to manage her/his affairs or to her/his eligibility for or entitlement to prescription drug benefits under the Medicare program when:

a. The individual is unable to provide the information being sought. An individual is considered to be unable to provide certain types of information when any of the following conditions exist: The individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual.

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual or an authorized representative, and it concerns one or more of the following: The individual's eligibility for prescription drug benefits under the Medicare program; the amount of reimbursement; any case in which the evidence is being reviewed for the purposes of an audit or as a result of suspected abuse or fraud, concern for program integrity or quality appraisal, or evaluation and measurement of system activities.

3. Federal, State, and local law enforcement authorities for investigating alleged theft, forgery, or unlawful negotiation of Medicare reimbursement checks.

4. The U.S. Postal Service for investigating alleged forgery or theft of Medicare checks.

5. The Department of Justice for investigating and prosecuting violations of the Social Security Act to which criminal penalties attach, or other criminal statutes as they pertain to the Social Security Act programs, for representing the Secretary, and for investigating issues of fraud by agency officers or employees, or violation of civil rights.

6. The Department of Justice, when:

a. HHS or any HHS component,

b. Any HHS employee in her/his official capacity,

c. Any HHS employee in her/his individual capacity, where the Department of Justice (or HHS, where authorized to do so) has agreed to represent the employee, or

d. The United States or any United States agency, where HHS determines that the litigation is likely to affect HHS or any HHS component

is a party to litigation, or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, in each case, that HHS determines that such disclosure is compatible with the purpose for which the records were collected.

7. A court or adjudicative body before which HHS is authorized to appear, when:

a. HHS or any HHS component,

b. Any HHS employee in her/his official capacity,

c. Any HHS employee in her/his individual capacity, where HHS has agreed to represent the employee, or

d. The United States or any United States agency, where HHS determines that the litigation is likely to affect HHS or any HHS component

is a party to litigation, or has an interest in such litigation, and HHS determines that the use of such records is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, in each case, that HHS determines that such disclosure is compatible with the purpose for which the records were collected.

8. The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment.

9. Peer Review Organizations in connection with their review of claims, or in connection with studies of other review activities, conducted pursuant to Part B of Title XI of the Social Security Act.

10. Peer review groups, consisting of members of State, County, or local health care societies or health care foundations (health care professionals), appointed by the society or foundation at the request of the processor, carrier, or intermediary to assist in the resolution of questions of medical necessity, over-, under-, or misuse of services or prescription drugs with respect to Medicare claims submitted to the processor, carrier, or intermediary.

11. State Licensing Boards for review of unethical practices or nonprofessional conduct.

12. An individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease and disability; or the restoration or maintenance of health, if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained and

b. Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form,

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished; and

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record,

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such informaiton, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual,

(b) For use in another research project under these same conditions and with written authorization of HCFA,

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the adult, or

(d) When required by law;

(4) Furnish a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

13. State welfare departments, pursuant to agreements with the Department of Health and Human Services for administration of State supplementation payments, for enrollment of welfare recipients under the Social Security Act, for quality control studies, for determining eligibility of recipients of assistance under Titles IV and XIX of the Social Security Act, and for the complete administration of the Medicaid program. Re-release of records is prohibited without the express, written consent of HCFA.

14. State audit agencies in connection with the audit of Medicaid prescription drug benefit eligibility and payment determinations, with respect to recipients who also are (or may be) Medicare beneficiaries.

15. To an agency of a State Government, or established by State law, for purposes of determining, evaluating, and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained,

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act,

c. Determines that the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form,

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished; and

d. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record,

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual,

(b) For use in another project under the same conditions and with written authorization of HCFA,

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would allow project subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of and willingness to abide by these provisions. The recipient must agree to the following:

(a) Not to use the data for purposes that are not related to the evaluation of cost, quality, and effectiveness of care,

(b) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary specific and must be aggregated to a level in which no data cells have ten or fewer beneficiaries), and

(c) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

16. A congressional office requesting the record of an individual in response to an inquiry from the congressional office at the request of that individual.

17. Senior citizen volunteers working to assist Medicare beneficiaries in response to beneficiaries' requests for assistance.

18. A contractor working with Medicare processors to identify and recover erroneous Medicare payments for which other insurance programs are liable.

19. State and other governmental Workers' Compensation Agencies working with benefits payable under workers' compensation programs.

20. Insurance companies, self-insurers, Health Maintenance Organizations, multiple employer trusts, and other groups, including government programs providing protection from outpatient prescription drug expenses of their enrollees. Information to be disclosed shall be limited to Medicare prescription drug benefit entitlement data on specified individuals. In order to receive this information, the entity must agree to the following conditions:

a. To certify that the individual on whom the information is bring provided is one of its insureds,

b. To use the information solely for the purpose of processing the identified individual's insurance claims, and

c. To safeguard the confidentiality of the data and to prevent unauthorized access to it.

21. Authorized personnel of enrolled pharmacies for the purposes of establishing or verifying beneficiary eligibility, determining whether the annual Medicare prescription drug deductible has been reached or exceeded, and informing beneficiaries of potential outpatient prescription drug interactions.

22. A contractor of HCFA for the purpose of collating, analyzing, aggregating, or otherwise refining or processing records in this system or for developing, modifying, and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System

Storage: Paper and magnetic media

Retrievability: Records are retrieved by the HICN.

Safeguards

a. Authorized Users: Only authorized employees of HCFA and of HCFA's contractors and personnel of enrolled pharmacies whose duties require the use of information in the system shall have access to beneficiaries' records. Such agency employees, personnel of contractors, and personnel of enrolled pharmacies having access to records are precluded from disclosing and using any program data for non-programmatic uses and are advised of the confidentiality of the records and of the criminal sanctions for unauthorized disclosure of the information on individuals (5 USC 552a(i) and (m).

b. Physical Safeguards: Under all conditions, sensitive data are safeguarded from disclosure and protected from unauthorized modification or destruction. All records, computer terminals, and point-of-sale (POS) devices are maintained in secure areas and are accessible only to authorized employees of HCFA and of HCFA's contractors and to authorized personnel of enrolled pharmacies.

c. Procedural Safeguards: Every user is required to present a valid password before being allowed access to the system. Only those persons whose duties require access to beneficiaries' records will be given passwords. Terminals are prevented from gaining access to sensitive data not required at those work stations. The system will record every attempt to access or modify any beneficiary's record.

Authorized pharmacy personnel have only limited read/write access to beneficiaries' records. The information available is strictly limited to that necessary to establish or verify beneficiary eligibility and entitlement, to determine whether the annual Medicare prescription drug deductible has been reached or exceeded, and to counsel beneficiaries on any potential prescription drug interactions detected by the system.

Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act language is included in all contracts related to this system.

d. Implementation Guidelines: Safeguards are implemented in accordance with all guidelines required by the HHS. Safeguards for automated records have been established in accordance with the HHS *Information Resources Management Manual*, Part 6, "Automated Information System Security"; OMB Circular A–130; HCFA's Administrative Issuances System Guide, HCFA.g:0805–1; and the applicable Federal Information Processing Standards and Federal Telecommunication Standards.

Retention and Disposal: Medicare beneficiary prescription drug data will be maintained on line for six months. Records will then be stored at the drug bill processor sites for twenty-one months and at the Federal Records Center for an additional five years before being destroyed.

System Manager and Address: Director, Bureau of Program Operations, Health Care Financing Administration, Room 300 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Notification Procedure: Inquiries and requests for system records should be addressed to the System Manager at the address above. The requestor must specify the Health Insurance Claim Number.

Record Access Procedure: Same as notification procedure. Requestors should also reasonably specify the record contents being sought. These procedures are in accordance with Departmental Regulations (45 CFR 5b.5(a)(2)).

Contesting Record Procedures: Contact the System Manager and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete, or not current). These procedures are in accordance with Departmental Regulations (45 CFR 5b.7).

Records Source Categories: HCFA obtains the identifying information in this system from the HCFA Master Beneficiary Record, enrolled pharmacies, and beneficiaries.

Systems Exempted from Certain Provisions of the Act: None.

[FR Doc. 89–19562 Filed 8–18–89; 8:45 am]

BILLING CODE 4120–03–M

Health Resources and Services Administration

Advisory Council; November and December Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the months of November and December 1989.

Name: Faculty Development Review Committee

Date and Time: November 6–7, 1989, 8:30 a.m.

Place: Conference Rooms I and J, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on November 6, 8:30 a.m.–9:30 a.m.

Closed for Remainder of Meeting

Purpose: The Faculty Development Review Committee shall review applications that (1) plan, develop and operate programs for the training of physicians who plan to teach in family medicine training programs; and support physicians who are trainees in such programs and who plan to teach in family medicine training programs; and that (2) plan, develop and operate programs for the training of physicians who plan to teach in general internal medicine or general pediatrics training programs and support traineeships and fellowships to physicians in training.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on November 6, at 9:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. Code, and the Determination by the Acting Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the subject Council should contact Mrs. Sherry Whipple, Executive Secretary, Faculty Development Review Committee, Room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6874.

Name: Faculty Development Review Committee

Date and Time: December 11–12, 1989, 8:30 a.m.

Place: Conference Rooms I and J, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on December 11, 8:30 a.m.–9:30 a.m.

Closed for Remainder of Meeting

Purpose: The Faculty Development Review Committee shall review applications that (1) plan, develop and operate programs for the training of physicians who plan to teach in family medicine training programs; and support physicians who are trainees in such programs and who plan to teach in family medicine training programs; and that (2) plan, develop and operate programs for the training of physicians who plan to teach in general internal medicine or general pediatrics training programs and support traineeships and fellowships to physicians in training.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the reivew process. The meeting will be closed to the public on December 11, at 9:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. Code, and the Determination by the Acting Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the subject Council should contact Mrs. Sherry Whipple, Executive Secretary, Faculty Development Review Committee, Room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6574.

Agenda Items are subject to change as priorities dictate.

Dated: August 15, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89–19509 Filed 8–18–89; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–89–2035]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 15, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Indian Housing Program: Revised Consolidated Program Regulations.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: Under 24 CFR 905.485, Indian Housing Authorities (IHAs) may request conversion of rental units into homeownership by submitting an application of HUD for approval. Under 24 CFR 905.465, IHAs attempting to evict/terminate Mutual Help Homebuyers leases for noncompliance with lease-purchase contracts are instructed to document all meetings with the evictee. This information is needed and used to avoid legal repercussions.

Form Number: None.

Respondents: Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application (§ 905.485)	15		2		12		360
Recordkeeping (§ 905.485)	170		1		4		680

Total Estimated Burden Hours: 1,040.

Status: Extension.

Contact: Dom Nessi, HUD, (202) 755–1015, John Allison, OMB, (202) 395–6880.

Dated: August 15, 1989.

[FR Doc. 89–19571 Filed 8–18–89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–08–4120–11; WYW117027]

Cheyenne, WY; Invitation for Coal Exploration License; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice, correction.

SUMMARY: In the **Federal Register** of July 27, 1989, the Bureau of Land Management published an invitation for coal exploration license for the Thunder Basin Coal Company. An error has been identified. This document corrects this error.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Wyoming State Office, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, Wyoming, 82003.

SUPPLEMENTARY INFORMATION: In FR Doc. 89–17500, appearing at page 31255 in the **Federal Register** of July 27, 1989, the following corrections are made: Under the heading SUMMARY in the first land description, Sec. 19 is corrected to read:

David J. Walter,

Acting State Director.

[FR Doc. 89–19438 Filed 8–18–89; 8:45 am]

BILLING CODE 5310-22-M

[UT–020–89–4212–14; U–65654]

Sale of Public Lands in Box Elder County, UT; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Sale of Public Lands, U–65654.

SUMMARY: The following described land has been examined and identified as suitable for disposal under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised value shown:

Legal description	Acreage	Value
T. 13 N., R. 13 W., SLM Section 31, Tract 37	11.00	$275.00

The above described land will be sold in order to dispose of land which is currently leased to Box Elder County for a sanitary landfill. This action will allow the continued operation of the landfill while eliminating the United States interest in the site.

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action.

The above described land will be sold at the value shown by direct sale to the County of Box Elder. The patent will contain a reservation for ditches and canals and be subject to all valid existing rights. All minerals will be reserved to the United States including the right of ingress or egress for mineral development.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, BLM, 2370 South 2300 West, Salt Lake City, Utah, 84119. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: August 14, 1989.

Jordan Pope,

Acting District Manager.

[FR Doc. 89–19567 Filed 8–18–89; 8:45 am]

BILLING CODE 4310-DQ-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: St. Augustine Alligator Farm St. Augustine, FL (PRT 736616)

The applicant requests a permit to export one pair of captive-born Siamese crocodiles (*Crocodylus siamensis*) to Zoo Zurich, Zurich, Switzerland, for enhancement of propagation and exhibition.

Applicant: Woodland Park Zoological Garden Seattle, WA (PRT 740203)

The applicant requests a permit to import two captive-born female jaguarundi (*Felis yagouaroundi*) from the Miguel Romero Antoni Zoological Park, Venezuela, for the purpose of captive propagation.

Applicant: Jordan Productions Las Vegas, NV (PRT 739567)

The applicant requests a permit to purchase in interstate commerce three captive-bred Bengal tigers (*Panthera tigris*) for the purpose of conservation education. In the future the applicant will export and re-import these tigers for conservation education.

Applicant: Florida Museum of Natural History Gainesville, FL (PRT 740371)

The applicant requests a permit to import from Belize skeletal material and 96 male reproductive tracts from the Central American river turtle (*Dermatemys mawii*). Skeletal material and reproductive organs will be salvaged from turtles already slaughtered for consumptive purposes.

Applicant: Larry Johnson Phoenix, AZ (PRT 738633)

The applicant requests a permit to purchase in interstate commerce 2 captive-bred cotton top tamarins (*Saguinus oedipus*) for re-sale and export to Zoologico de Guadalajara, Mexico, for the purposes of exhibition and propagation.

Applicant: George Kalb Las Vegas, NV (PRT 740387)

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by Mr. M. Wienand, Bedford, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Ronald John Pavlik Fort Lauderdale, FL (PRT 740390)

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by Mr. V.L. Pringle, Huntley Glen, Bedford, Cape Province, Republic of South Africa, for enhancement of survival of the species.

Applicant: Arthur F. Reimann Oak Brook, IL (PRT 740377)

The applicant request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by Mr. M.J. D'Alton, Bredasdorp, Republic of South Africa, for the enhancement of survival of the species.

Applicant: Roger Williams Park Zoo Providence, RI (PRT 740392)

The applicant requests a permit to import two captive-born female Parma wallabies (*Macropus parma*) from

Harewood Bird Gardens, Harewood Estate, Leeds, West Yorkshire, England, for captive breeding purposes.

Applicant: Houston Zoological Garden Houston, TX (PRT 740375)

The applicant requests a permit to import two male and one female captive-born cheetahs (*Acinonyx jubatus*) from the Pretoria Zoo, Pretoria, Republic of South Africa, for the purpose of captive propagation.

Applicant: Ringling Bros. and Barnum & Bailey Circus Washington, DC (PRT 740358)

The applicant requests a permit to import two female and one male tigers (*Panthera tigris*), two male leopards (*Panthera pardus*) and fifteen female Asian elephants (*Elephas maximus*) from Rotterdam, the Netherlands, as part of the Circus Togni which will be performing with Ringling Bros. during 1990 and 1991. During circus performances the public will be provided written information regarding the species' ecological roles and conservation needs.

Applicant: Ringling Bros. and Barnum & Bailey Circus, Washington, DC (PRT-740559)

The applicant requests a permit to import two pairs of captive born tigers (*Panthera tigris*) and one male and two female captive born leopards (*Panthera pardus*) from Tokyo, Japan, as part of the Clubb-Chipperfield touring animals. The animals will be performing with Ringling Bros. during 1990 and 1991. During circus performances the public will be provided written information regarding the species' ecological roles and conservation needs.

Applicant: Robert McDonald, Waltahm, MA (PRT-736127)

The applicant requests a permit to purchase in interstate commerce one pair of captive-bred turquoise parakeets (*Neopheme pulchella*) from Finest Van, Finest Bird Farm, Tulare, California, for the purpose of enhancement of propagation and survival of the species.

Applicant: Robert M. Lasley, Orlando, FL (PRT-736235)

The applicant requests a permit to purchase in interstate commerce two captive-bred scarlet-chested parakeets (*Neopheme splendida*) and two captive-bred turquoise parakeets, (*Neopheme pulchella*) from Finest Bird Farm, Tulare, California, for the purpose of enhancement of propagation and survival of the species.

Applicant: Los Angeles Zoo, Los Angeles, CA (PRT-740420)

The applicant requests a permit to export one female Asian elephant (*Elephas maximus*), to African Lion Safari, Ontario, Canada, for the purpose of enhancement of propagation and survival of the species.

Applicant: Cincinnati Zoo, Cincinnati, Ohio (PRT-740559)

The applicant requests a permit to import one wildcaught male and two captive-bred female Malayan tigers (*Panthera tigris corbetti*) from Zoo Negara, Selangor, Malaysis for educational and propagation purposes.

Applicant: Philadelphia Zoological Garden, Philadelphia, PA (PRT-740507)

The applicant requests a permit to import approximately 30 serum samples taken from wild golden crowned sifakas (*Propithecus tattersalli*) in the Daraina Region, Madagascar, for purposes of scientific research.

Applicant: Tommy Hemeford, Sarasota, FL (PRT-720154)

The applicant requests a permit to export and reimport three female Asian elephants (*Elephas maximus*) for circus performances, during which the applicant will present information to the public regarding the Asian elephant's ecological role and conservation needs.

Applicant: Staten Island Zoological Society, Staten Island, NY (PRT-740606)

The applicant requests a permit to export one pair of captive born leopards (*Panthera pardus*) to Zoologico Benito Juarez, Calzada Juarez, Morelia, Michoacan, Mexico, for breeding and educational display.

Applicant: Moscow Circus, c/o Circus Productions Inc., New York, NY (PRT-740597)

The applicant requests a permit to import and reexport 8 male and 9 female tigers (*Panthera tigris*) plus any additional tigers born while the animals are on tour in Canada and the United States. The tigers will be imported from Canada and reexported to the Union of Soviet Socialist Republics for the purposes of enhancement of survival through conservation education and exhibition.

Applicant: San Diego Zoo, San Diego, CA (PRT-740354)

The applicant requests a permit to import 2.2 captive born banteng (*Bos javanicus*) from Zoologischer Garten Berlin, West Germany, and 0.2 captive born banteng from River Zoo Gelsenkirchen, West Germany, for the purposes of enhancement of propagation and survival of the species through captive breeding and for exhibition.

Applicant: San Diego Zoo, San Diego, CA (PRT-740427)

The applicant requests a permit to import one female captive born dhole (=Asian wild dog) (*Cuon alpinus*) from Asiniboine Park Zoo, Winnipeg, Canada, for the purpose of enhancement of propagation and survival of the species through captive-breeding.

Applicant: San Diego Zoo, San Diego, CA (PRT-740479)

The applicant requests a permit to import 2.3 captive barbary deer (*Cervus elaphus barbarus*) from Municipalite de Tunis, Parc Zoologique du Belvedere, Tunis, Tunisia, for the purpose of enhancement of propagation.

Applicant: Warren J. Schafer, Miami, FL (PRT-740038)

The applicant requests a permit to import the trophy of a sport-hunted bontebok (*Damaliscus dorcas dorcas*) taken from the captive herd of N.B. Pohl, Shenfield, Riebeek East, Cape Province, Republic of South Africa for the purpose of enhancement of survival of the species.

Applicant: James Stewart, Tulsa, OK (PRT-740353)

The applicant requests a permit to import fixed whole eggs of tuataras (*Sphenodon punctatus*) collected in the wild in the 1980's in New Zealand. The specimens will be used for embryological and histological studies to determine the evolutionary relationship between the genus *Sphenodon* and the group Squamata. The specimens will be returned to Victoria University, Wellington, New Zealand, upon completion of the study.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 432, 4401 N. Fairfax Dr., Arlington, VA, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203-3507.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: August 15, 1989.

R. K. Robinson,

Chief, Branch of Permits U.S. Office of Management Authority.

[FR Doc. 89-19825 Filed 8-18-89; 8:45 am]

BILLING CODE 4310-55-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0059), Washington, DC 20503, telephone 202-395-7340.

Title: State Reclamation Grants, 30 CFR 886.

OMB Approval Number: 1029-0059.

Abstract: States and Indian tribes participating in the Abandoned Mine Land Reclamation Program are required to assist in the development of the annual submission of projects by providing information required by section 405(d) of the Surface Mining Control and Reclamation Act of 1977. This information is used in the preparation of requests for appropriation of monies for reclamation grants.

Bureau form number: None.

Frequency: Annually.

Description of respondents: States and Indian tribes.

Estimated Completion Time: 49 hours.

Annual Responses: 23.

Annual Burden Hours: 1,128.

Bureau Clearance Officer: Andrew F. DeVito, 202-343-5064.

Dated: July 24, 1989.

Annetta L. Cheek,

Chief, Regulatory Development and Issues Management.

[FR Doc. 89-19826 Filed 8-18-89; 8:45 am]

BILLING CODE 4310-05-M

[OSMRE-EIS-25]

Availability of the Draft Environmental Impact Statement on the Proposed Permit Application for Black Mesa-Kayenta Mine, Navajo and Hopi Indian Reservations, AZ; Extension of Comment Period

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Extension of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) published in the Federal Register, Vol. 54, No. 114, June 15, 1989 (54 FR 25508), a notice of availability for the Black Mesa-Kayenta mine draft environmental impact statement (EIS). Written comments on the draft EIS were to have been received by OSMRE by August 14, 1989. The public comment period for the draft EIS is hereby extended to 4:00 p.m. m.d.t., September 15, 1989. Written comments must be received by this date at the location listed below under "ADDRESSES."

ADDRESSES: Written comments on the draft EIS should be hand-delivered or mailed to Peter A. Rutledge, Chief, Federal Programs Division, Office of Surface Mining Reclamation and Enforcement, Western Field Operations, Brooks Towers, Second Floor, 1020 15th Street, Denver, Colorado 80202, Attention: Sarah E. Bransom.

FOR FURTHER INFORMATION CONTACT: Sarah E. Bransom, Black Mesa-Kayenta mine EIS Project Leader (Telephone: (303) 844-2897) at the Denver, Colorado, location given under "ADDRESSES."

Dated: August 15, 1989.

Jonathan P. Deason,

Director, Office of Environmental Project Review.

[FR Doc. 89-19827 Filed 8-18-89; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 47 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Hartmarx Corporation, a Delaware corporation, 101 North Wacker Drive, Chicago, Illinois 60606.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(1) American Apparel Brands Inc., New York
(2) Anniston Sportswear Corporation, Indiana
(3) Baskin Clothing Company, Illinois
(4) The Ray Beers Clothing Company, Kansas
(5) Biltwell Company, Inc., Missouri
(6) Briar, Inc., Delaware
(7) Capper & Capper, Ltd., Illinois
(8) Chicago Trouser Company, Ltd., Illinois
(9) Coleman Clothes, Inc., Florida
(10) De Jong's Incorporated, Indiana
(11) Direct Resorts Marketing Corporation, New Hampshire
(12) E-Town Sportswear Corporation, Kentucky
(13) Fairwood-Wells, Inc., Delaware
(14) Fashionaire Apparel, Inc., Illinois
(15) Field Bros., Inc., New York
(16) Frank Bros., Inc., Texas
(17) Gleneagles, Inc., Maryland
(18) Henry Grethel Apparel, Inc., Delaware
(19) Hagstrum Bros., Inc., Minnesota
(20) Hart Schaffner & Marx, New York
(21) Hart Services, Inc., Delaware
(22) Hartmarx Retail Marketing and Merchandising Corporation, Delaware
(23) Hartmarx Specialty Stores, Inc., Delaware
(24) Hastings Clothing Company, California
(25) Thos. Heath Clothes, Inc., Illinois
(26) Jack Henry Clothing Company, Missouri
(27) HGA Licensing, Inc., Delaware
(28) Hickey-Freeman Co., Inc., New York
(29) Higgins, Frank & Hill, Inc., Illinois
(30) Hoosier Factories, Incorporated, Indiana
(31) HSM University, Inc., Illinois
(32) Intercontinental Apparel, Inc., Delaware
(33) Jaymar-Ruby, Inc., Indiana
(34) JRSS, Inc., Indiana
(35) Kleinhans Company, Inc., New York
(36) Klopfenstein's Inc., Washington
(37) Klapfensteins, Inc. of Alaska, Alaska
(38) Klopfenstein's Inc. of Tacoma, Washington
(39) Kuppenheimer Manufacturing Company, Inc., Ohio
(40) Kuppenheimer Men's Clothiers Huntsville, Inc., Alabama
(41) The C.J. Lang Clothing Company, Ohio
(42) Leopold, Price & Rolle, Inc., Texas
(43) Morris Levy's Store for Men, Inc., Georgia
(44) Liemandt's, Inc., Minnesota
(45) Littler's, Inc., Washington
(46) Mansfield Building Corporation, Illinois
(47) Men's Market Service Corp., New York
(48) Men's Quality Brands, Inc., New York
(49) Merritt Schaefer & Brown, Inc., Texas
(50) National Clothing Company, Inc., New York
(51) H. Oritsky, Inc., Pennsylvania
(52) Peer-Gordon, Inc., Ohio
(53) Porter's Incorporated, Louisiana
(54) Porter's-Stevens, Inc., Louisiana

(55) Raleighs Clothiers, Inc., North Carolina
(56) Rector Sportswear Corporation, Arkansas
(57) Robert's International Corporation, Illinois
(58) Root's Inc., New Jersey
(59) Saml. Rosenblatt Co., Oregon
(60) S. Clothiers, Inc., Mississippi
(61) Seafood Clothing Co., Illinois
(62) F.B. Silverwood, California
(63) Society Brand, Ltd., Illinois
(64) Stevens, Inc., Louisiana
(65) Robert Surrey, Inc., Illinois
(66) Thorngate, Ltd., Missouri
(67) Thorngate Uniforms, Inc., Pennsylvania
(68) F.R. Tripler & Co., Inc., New York
(69) C.N. Vicary Co., Ohio
(70) Walker's Tremont, Inc., Ohio
(71) Wallach's, Inc., New York
(72) Walton Manufacturing Company, Georgia
(73) Washer Brothers Company, Texas
(74) Wicks & Greenman, Inc., New York
(75) M. Wile & Company, Inc., New York
(76) James K. Wilson Company, Texas
(77) Winchester Clothing Company, Kentucky
(78) Wolf Bros., Inc., Florida
(79) Wolff's Clothiers, Inc., Missouri
(80) Yorke Shirt Corporation, South Carolina
(81) A.L. Zachry Company, Georgia

Noreta R. McGee,

Secretary.

[FR Doc. 89-19535 Filed 8-18-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-36; Sub-No. 12X]

St. Louis Southwestern Railway Co. Abandonment Exemption in McLennan and Coryell Counties, TX

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 16.16-mile line of railroad between milepost 686.6, at or near Atco, and milepost 694.85, at or near McGregor, and between milepost 696.75, at or near McGregor, and milepost 704.66, at or near Lime City, in McLennan and Coryell Counties, TX.

Applicant has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 20, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 31, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by September 11, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Gary A. Laakso, Southern Pacific Building, Room 846, One Market Plaza, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 25, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 16, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-19606 Filed 8-18-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12; (Sub-No. 124X)]

Southern Pacific Transportation Co.; Abandonment Exemption in Mineral County, NV

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 33.0-mile line of railroad between milepost 385.0, near Thorne, and milepost 418.0, at or near Mina, in Mineral County, NV.

Applicant has certified that: (1) no local traffic has moved over the line for at least 2 years; any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 20, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 31, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by September 11, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Gary A. Laakso, Southern Pacific Building, Room 846, One Market Plaza, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 25, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 11, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-19498 Filed 8-18-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12; Sub-No. 125X]

Southern Pacific Transportation Company, Abandonment Exemption in Dallas County, TX

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 7.06-mile line of railroad between milepost 298.7, near Elam, and milepost 305.76, at or near Seagoville, in Dallas County, TX.

Applicant has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 20, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 31, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by September 11, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Gary A. Laakso, Southern Pacific Building, Room 846, One Market Plaza, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 25, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 14, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-19539 Filed 8-18-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; French Limited, Inc. et al.

In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ["CERCLA"], 42 U.S.C. 9622, and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint was filed on June 31, 1989, in *United States v. French*

---

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Limited, Inc., et al., Civil Action No. H–89–2544, in the United States District Court for the Southern District of Texas, Houston Division, and, simultaneously, a consent decree between the United States, French Limited, Inc. and eighty-six other defendants was lodged with the court. This consent decree settles the government's claims in the complaint pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, for (1) injunctive relief to abate an imminent and substantial endangerment to the public health, welfare or the environment because of actual or threatened releases of hazardous substances from a facility located near Crosby, Harris County, Texas, and known as the "French Limited Site" and (2) for recovery of response costs incurred, and to be incurred, by the United States. The complaint alleged, among other things, that certain defendants were owners or operators of the facility at the time of disposal of hazardous substances at the French Limited Site and that certain defendants were persons who by contract, agreement or otherwise arranged for disposal of hazardous substances at the Site or who arranged for transport of hazardous substances to the Site. The complaint further alleged that the United States has incurred and will continue to incur response costs in response to actual or threatened releases of hazardous substances at or from the French Limited Site.

Under the terms of the proposed consent decree, the defendants agree to fund and implement a remedy at the Site which includes bioremediation of sludges and contaminated soil, recovery and treatment of surface water and groundwater, residue stabilization, backfilling and grading of the site and groundwater monitoring. The consent decree also calls for the defendant to reimburse the United States for $1,275,000.00 in past government response costs incurred through March 31, 1988, and to reimburse the United States for all of its reponse and oversight costs related to the remedial action incurred after March 31, 1988.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *French Limited, Inc.*, D.J. Ref. 90–11–3–46A.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI

Contact: Pamela Phillips, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 655–2120.

United States Attorney's Office

Assistant United States Attorney, Civil Division, U.S. Courthouse & Federal Building, 515 Rusk, 3rd Floor, Houston, Texas 77002, (713) 229–2800.

Copies of the proposed consent decreee may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW., Washington, DC 20503. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclosed a check for copying costs in the amount of $19.90 payable to Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–19592 Filed 8–18–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree; Gulf States Utilities Co.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on August 3, 1989, a proposed Consent Decree in *United States* v. *Gulf States Utilities Company*, Civil Action No. H–89–2584 was lodged with the United States District Court for the Southern District of Texas.

The Complaint in this enforcement action was filed on August 3, 1989, against Gulf States Utilities Company ("Gulf States") under Sections 106 and 107 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. 9606, 9607, seeking injunctive relief and reimbursement of costs incurred by the United States in responding to the release or threat of release or a hazardous substance from the Sol Lynn/Industrial Transformer site located in Houston, Texas.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Gulf States Utilities Company*, D.J. No. 90–11–2–329.

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Texas, 515 Rusk Ave., Third Floor, Houston, Texas 77002 and the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of Justice, 9th and Pennsylvania Avenue, NW., Washington, DC 20530. In requesting a copy please enclose a check in the amount of $1.50 payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 89–19592 Filed 8–18–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree; William R. McGraw

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States of America* v. *William R. McGraw*, Civil Action No. CV–88–2050–A (W.D. La.) was lodged with the United States District Court for the Western District of Louisiana, Alexandria Division, on August 8, 1989.

The proposed consent decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311 and 1319, as a result of the discharge of fill material onto portions of property located in Rapides Parish, Louisiana, which are alleged to constitute "waters of the United States." The consent decree requires William R. McGraw to restore 455.8 acres of property located in Sections 57, 58 and 59, Township T 3 N, R 1 W, Rapides, Parish, Louisiana, by mowing and planting cypress seedlings or by disking and planting cypress if seedlings are not available. The consent decree further requires William R. McGraw to restore the hydrology of the above property by installing culverts and breaching existing rice levees. Restoration is to be completed in accordance with the restoration plans attached to the consent decree lodged with the court.

The Department of Justice will receive until September 15, 1989, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Attention: Robert LeFevre, Room 7130, 10th St. and Constitution Avenue, NW., Washington, DC 20530 and should refer to *United States* v. *McGraw*, DJ Reference No. 90–5–1–1–2678.

The consent decree may be examined at the Clerk's Office, United States District Court, 515 Murray Street, Alexandria, LA 71301.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–19594 Filed 8–18–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree; Southern Pacific Transportation

In accordance with section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation and Liability Act and with Department of Justice policy, 28 CFR 50.7, notice is hereby given that on August 11, 1989, a proposed Consent Decree in *United States v. Southern Pacific Transportation Company*, Civil Action No. 589–1081–EJG/JFM was lodged with the United States District Court for the Eastern District of California. The proposed Consent Decree concerns the clean-up of the City of Coalinga Operable Unit (the "Site"), which is a part of the Atlas Mine Superfund Site and the Johns-Manville Coalinga Mill Superfund Site, or the "Mine and Mill Sites." The proposed Consent Decree requires the Defendant Southern Pacific to fully implement the remedy selected by EPA for the Site, as set forth in the Record of Decision (ROD), and to reimburse the United States for all costs incurred and to be incurred at the Site. The remedy requires Southern Pacific to construct an underground Waste Management Unit (WMU) for the permanent burial of waste and hazardous substances under an impermeable cap. The Consent Decree also requires Southern Pacific to perform operation and maintenance activities to ensure that no contaminants migrate from the Waste Management Unit (WMU) constructed by Southern Pacific at the Site. The Consent Decree further provides for graduated stipulated penalties for Southern Pacific's failure to comply with the terms of the Consent Decree. Termination of the Consent Decree is effected upon Southern Pacific's satisfactory completion of all remedial activities as set forth in the Consent Decree. However, termination of the Consent Decree shall not effect the Covenant Not to Sue provisions in the Consent Decree or Southern Pacific's continuing obligation to perform operation and maintenance at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Southern Pacific Transportation Company*, D.J. Ref. 90–11–3–459.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of California, United States Courthouse, Fresno, California and at the Region IX, Office of the Environmental Protection Agency, 215 Fremont Street, San Francisco, California. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $5.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90–19593 Filed 8–18–89; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 88–52]

Arthur Sklar, R.Ph., d/b/a King Pharmacy; Revocation of Registration

On April 12, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Arthur Sklar, R.Ph., d/b/a King Pharmacy (Respondent), located at 8609 West Grand River, Brighton, Michigan, proposing to revoke DEA Certificate of Registration AK1806085 and to deny any pending applications for renewal of his registration as a retail pharmacy under 21 U.S.C. 823(f). The statutory predicate for seeking the revocation of Respondent's registration was that his continued registration was inconsistent with the public interest, as the term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, filed a request for hearing on the issue raised in the Order to Show Cause and the matter was placed on the docket of Administrative Law Judge May Ellen Bittner. Following prehearing procedures, a hearing was held on November 8 and 9, 1988, in Ann Arbor, Michigan, and was continued in Washington, D.C. on December 15, 1988.

On April 11, 1989, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, in which she recommended that the Administrator revoke Respondent's registration and deny any pending applications for renewal on the ground that his continued registration was inconsistent with the public interest. Respondent's counsel filed exceptions to the Administrative Law Judge's findings and recommendation.

After careful consideration of the entire record in this matter, including the exceptions filed by Respondent's counsel, the Administrator adopts the Administrative Law Judge's findings of fact, conclusions of law and recommendation.

The Administrator finds that Respondent has been a licensed pharmacist in the State of Michigan since 1958. He is the sole owner and operator of King Pharmacy in Brighton, Michigan, which is approximately 45 miles northwest of Detroit. According to Respondent, approximately 95 percent of the pharmacy's business involves dispensing prescription medication, and 10 to 20 percent of the prescriptions filled at the pharmacy are for controlled substances.

In November 1985, Special Agent Robert Barenie of the Detroit Field Office of the Federal Bureau of Investigation (FBI) received information that various individuals were obtaining controlled substances from Respondent for other than legitimate medical purposes. Based upon that information, Agent Barenie initiated an investigation into Respondent's controlled substances dispensing practices. As part of the investigation, the FBI furnished a fictitious prescription for 100 dosage units of Dilaudid 4 mg. tablets, an extremely potent and often abused Schedule II narcotic controlled substance, to an informant who, in turn, sold the prescription to one Alvin Zachery, one of the individuals suspected in the scheme. Although the prescription bore the name and

signature of legitimate physician, the telephone number was not the doctor's. Instead, the number was for the FBI Detroit Field Office. The prescription was provided to Mr. Zachery to determine whether, when he presented it to Respondent for filling, Respondent would make any attempt to verify the prescription by calling the telephone number.

On February 14, 1988, Agent Barenie and his partner observed Mr. Zachery enter King Pharmacy. Respondent filled the bogus prescription with Dilaudid without attempting to verify it. As Mr. Zachery left the pharmacy, he was stopped and questioned by the FBI Agents. During questioning, he informed the Agents that he had obtained Dilaudid and other Schedule II narcotic controlled substances from Respondent since 1982. He also admitted that he was a heroin addict and that his purpose for obtaining the drugs from Respondent was for illegal resale, not for personal use. Mr. Zachery explained that he bought prescriptions on the street from persons engaged in the business of selling stolen or fraudulent prescriptions and that he routinely presented the prescriptions to Respondent for filling. He also told the Agents that he visited King Pharmacy two to three times per month to purchase Dilaudid and other narcotics from Respondent, and that he usually received 100 to 200 Dilaudid 4 mg. tablets on each visit. Mr. Zachery also told the Agents that he informed Respondent that he needed Dilaudid because he suffered from prostrate cancer. According to Agent Barenie, Mr. Zachery appeared healthy. In fact, because of his healthy appearance, Agent Barenie was surprised to learn that Mr. Zachery was a heroin addict. During the DEA hearing, Lisa Dean, a former store clerk who worked at the pharmacy from July 1980 to March 1984, corroborated Agent Barenie's statements regarding Mr. Zachery's physical appearance. She stated that he did not appear weak, gave no indication that he was dying of cancer, and appeared to move about the store freely.

On July 14, 1988, following the questioning of Mr. Zachery, Agent Barenie interviewed Respondent. Respondent informed Agent Barenie that he had known Mr. Zachery since 1984 and had regularly filled prescriptions for Dilaudid for him since that time. Respondent also told Agent Barenie that he had verified some of Mr. Zachery's prescriptions before filling them, but when asked to identify those that he verified, he could not do so. Respondent further stated that the entire stock of Dilaudid he ordered for the pharmacy was used to fill Mr. Zachery's prescriptions. He explained that, at one point in 1984, he was ordering approximately 800 dosage units of Dilaudid per month, but had cut the amount down to between 100 and 200 per month to stop the abuse he thought was taking place. Respondent did not elaborate about what he thought was abusing the Dilaudid.

Agent Barenie later obtained a search warrant and seized the Schedule II prescriptions which Respondent filled for Mr. Zachery. Most of the prescriptions were either illegally "manufactured" by street dealers, or were purchased in bulk from various physicians. Agent Barenie's investigation revealed that none of the prescriptions that Mr. Zachery had filled at King Pharmacy were legitimate. From September 1982 to February 1988, Mr. Zachery received approximately 7,745 dosage units of Dilaudid 4 mg. tablets, 300 dosage units of Demerol 100 mg. tablets, and 100 dosage units of Demerol 50 mg. tablets from Respondent pursuant to 83 illegal prescriptions bearing the names of 22 different physicians. In all, over a three-year period, Mr. Zachery received approximately 8,145 dosage units of Schedule II narcotic controlled substances from Respondent, an average of more than seven tablets per day.

Agent Barenie also seized several Schedule II narcotic controlled substance prescriptions filled by Respondent for Cynthia Cooks and Hershel O'Neal. In November 1988, Agent Barenie interviewed Ms. Cooks regarding the prescriptions he found at the pharmacy. She informed him that she learned of King Pharmacy from Mr. Zachery and that for 18 months in 1984 and 1985, she routinely made trips from Detroit to Brighton to obtain Dilaudid tablets from Respondent. She used the same methods as Mr. Zachery in obtaining the drugs. Like Mr. Zachery, Ms. Cooks sold the drugs she received from Respondent. She also admitted that none of the prescriptions she presented to Respondent were legitimate. Many of the prescriptions were written for her, using approximately ten aliases. Respondent never refused to fill the prescription she presented, despite her use of the several different names. Ms. Cooks also explained that she often would bring two prescriptions to the pharmacy on the same date, one in her name and the other in someone else's name, and Respondent always filled them. In addition, Ms. Cooks never told Respondent that she was suffering from any ailment for which she might need the Dilaudid. On at least one occasion, Respondent filled a Dilaudid prescription for Ms. Cooks although she was obviously pregnant at the time.

Agent Barenie also interviewed Herschel O'Neal. Mr. O'Neal informed him that he originally supplied Mr. Zachery with illegal prescriptions which were filled at King Pharmacy. He also told Agent Barenie that he once followed Mr. Zachery to the pharmacy and later brought his own prescriptions to the pharmacy to be filled.

Lisa Dean, Respondent's former store clerk was re-interviewed by Agent Barenie and by DEA Diversion Investigators. She testified at Respondent's criminal trial and at the DEA hearing. She corroborated Ms. Cooks' statements that Respondent filled a Dilaudid prescription for her when she was obviously pregnant in March 1984. She further stated that following that incident, she called the Michigan State Police to report Respondent's dispensing practices. Shortly thereafter, Respondent fired Ms. Dean, telling her that she was "losing him money" because she was behind in her billing. Ms. Dean credibly testified that, prior to her discharge, Respondent had never previously warned her, complained about her billing procedure, or ever expressed any dissatisfaction about her work. Ms. Dean stated that Respondent was also dispensing large quantities of Schedule V cough syrups from the pharmacy and that several individuals were receiving more than one four-ounce bottle of these medications within a 48-hour period. This was later verified by a pharmacy audit conducted by DEA Diversion Investigators. Ms. Dean testified that Respondent regularly dispensed pint or quart bottles of Naldecon codeine-based cough syrups to one customer not pursuant to any prescription. She also stated that Respondent did not routinely verify prescriptions by calling the physicians who purportedly issued them.

In October 1988, in the United States District Court for the Southern District of Michigan, Respondent was tried and acquitted of criminal charges stemming from the bogus Schedule II narcotic prescriptions he filled for Alvin Zachery.

Also in 1988, the DEA Detroit Field Division received information from drug distributors and suppliers that Respondent was purchasing unusually large quantities of Dilaudid. Upon receiving that information, DEA Diversion Investigator Kristine Riddle initiated an administrative investigation of the pharmacy's controlled substance handling practices. Pursuant to an administrative inspection warrant

served on March 10, 1987, DEA Diversion Investigators seized Respondent's controlled substance records for the period from May 1, 1986, to March 10, 1987, and conducted an audit of the pharmacy's controlled substance stock. The audit revealed the following unexplained overages and shortages of controlled substances at the pharmacy:

Drug	Overage or shortage (in dosage units or ounces)	Percentage
Percodan	−580 d.u.	−16.9
Percocet	−49 d.u.	−4.6
Demerol 50 mg.	+32 d.u.	+8.6
Demerol 100 mg.	−162 d.u.	−32.9
Ritalin 5 mg.	+22 d.u.	+5.29
Ritalin 10 mg.	+9 d.u.	+2.48
Ritalin 20 mg.	+62 d.u.	+11.11
Dilaudid 4 mg.	−100 d.u.	−4
Dilaudid 1 mg.	+40 d.u.	+40
Acetaminophen w/codeine #3	−5250 d.u.	−29.8
Acetaminophen w/codeine #4	−2947 d.u.	−40.9
Aspirin w/Codeine #3	+562 d.u.	+27.8
Talwin NX	−170 d.u.	−42.5
Cheracol 4 ounce	−651 ozs.	−36.6
ETH w/codeine 4 ounce	−6256 ozs.	−56.36
Guiatuss AC 4 ounces	−2334 ozs.	−51.86
Robitussin AC ounces	−136 ozs.	−53.1
Novahistine DH ounces	−366 ozs.	−61

Respondent never explained or attempted to justify the overages and shortages found during the audit. In addition, he did not file any reports of theft of controlled substances for the time period covered by the audit.

Investigator Riddle also found numerous recordkeeping violations during her review of the pharmacy's controlled substance prescriptions and order forms. The violations included 57 prescriptions which did not bear a physician's DEA number, in violation of 21 CFR 1306.05(a); 28 prescriptions which lacked a dispensing date, in violation of 21 CFR 1306.05(a); 13 prescriptions which bore invalid or expired DEA registration numbers, in violation of 21 CFR 1306.05(a); 11 prescriptions which were filled beyond the time period legally permitted for refilling (i.e., more than six months after the original issuance date), in violation of 21 CFR 1306.22(A); six prescriptions which were refilled more than five times, in violation of 21 CFR 1306.22(a); two prescriptions which were signed by physicians' assistants rather than authorized physicians, in violation of 21 CFR 1306.05(a); one prescription filled was meant to be used by a physician for dispensing the substance to the ultimate user, in violation of 21 CFR 1306.04(b); and numerous oral Schedule II prescriptions were not followed up with a written prescription by the physician after being called in on an "emergency" basis, in violation of 1306.11(d)(4). Respondent could not locate, and therefore did not provide, any Schedule III–V controlled substance prescriptions filled between May 1986 and August 12, 1985, although he was able to locate Schedule II prescriptions for this same period. During the DEA hearing, Respondent presented no credible explanation or justification of his failure to comply with applicable regulations.

In September 1986, Investigator Riddle received information that two individuals regularly received multiple bottles of Schedule V cough syrups during single visits to the pharmacy. Investigator Riddle's review of the pharmacy's Schedule V cough syrup logs confirmed the allegations. In addition, the review also confirmed Ms. Dean's testimony that several individuals received more than four ounces of cough syrup within 48-hour periods and/or that they received the drugs every day, or every other day, for extended periods of time. The pharmacy records also establish that many of these same individuals received narcotic controlled substances from the pharmacy on the same dates they received narcotic cough syrups.

One pharmacy customer, Wallace Gardner, regularly purchased Schedule V cough syrups and other controlled substances by presenting bogus prescriptions. Mr. Gardner was arrested several times by the Brighton Police for various drug violations, including controlled substance abuse and forging prescriptions. Michael Kinaschuk, the Brighton Chief of Police, testified that Mr. Gardner was known to police as a heavy abuser of codeine-based medications, marijuana and cocaine. On one occasion, Respondent filled a prescription for Mr. Gardner which listed Nadia Turkewycz, D.D.S., as the prescribing dentist. Respondent did not call Dr. Turkewycz to verify the prescription until after he filled it. When Respondent called Dr. Turkewycz to verify the prescription, she informed him that it was a forgery. Respondent then called the police. Respondent also dispensed refills of that prescription the same day he filled the original prescription. Respondent dispensed over 120 dosage units of Tylenol #3 to Mr. Gardner over a five-day period.

On September 23, 1987, several months after DEA Investigators conducted their audit at the pharmacy, Respondent filed a criminal complaint with the Brighton Police against Gary Stepien, another regular controlled substance and cough syrup purchaser at King Pharmacy. Mr. Stepien attempted to fill a prescription Respondent believed to be forged. Dr. Allen, the physician whose name appeared on the prescription, informed Respondent that it was not authorized and that at no time had he written any prescription for Mr. Stepien.

In November 1982, the Brighton Police Department responded to an alarm indicating a possible break-in at King Pharmacy. Upon arriving at the scene, police officers discovered an open window in the basement. They later determined that there had been no forced entry into the pharmacy. Chief Kinaschuk credibly testified that Respondent later filed an insurance claim listing larger amounts of stolen controlled substances than he initially reported to the police. On January 27, 1985, Brighton Police responded to another alarm at King Pharmacy. When the police arrived at the pharmacy, they checked the exterior of the building, but found no signs of illegal entry. The following day, Respondent called the police to report that a quantity of controlled substances had been stolen. Chief Kinaschuk testified that Respondent's explanation as to how the alleged thieves entered the pharmacy was illogical and unsubstantiated by a later search of the premises. Respondent never submitted to the police an inventory of drugs allegedly stolen from the pharmacy on that date.

Respondent testified that in February 1986, the wholesale price for 100 Dilaudid tablets was $36.00, and that he charged his customers $40.00 for the same quantity of the medication. He testified that that amount was his standard mark-up on drugs, and that pharmacies in the Detroit area charged $100.00 to $200.00 for the same quantity of medication. He claimed that customers were willing to drive 45 miles from Detroit to have prescriptions filled at his pharmacy because his prices were lower than those charged by Detroit pharmacies. Respondent asserted that these customers were Black and that, unlike the other pharmacies in Brighton, he had good relations with the Black community. He claimed that "Black families had told me that they were going to send all their relatives to me to fill their prescriptions." Respondent did not appear to be a credible witness; he was frequently evasive and nonresponsive in answering questions. He appeared to be more concerned with tailoring his testimony to support his defenses than with testifying truthfully; therefore, the Administrative Law Judge

and the Administrator do not credit his testimony on this issue.

During his cross-examination in the administrative hearing, Respondent admitted that he had dispensed narcotic controlled substances to an individual he personally knew was addicted to them, and who periodically underwent treatment, apparently unsuccessfully, for his drug addiction.

Although Respondent testified that he verified controlled substance prescriptions with the issuing physicians before dispensing the drugs to his customers, he was unable to provide any evidence to support his claim. Even though he offered into evidence numerous telephone records from King Pharmacy which covered several years of calls, only six of the telephone calls listed were to physicians, and only one of those related to a controlled substance prescription germane to this proceeding. Accordingly, in light of the lack of corroborative evidence, Respondent's claim that he verified controlled substance prescriptions prior to filling them is not credible.

When asked on cross-examination about filling controlled substance prescriptions for customers he knew to be addicted to the medications, Respondent's reply was that, "[i]t's not our obligation [as pharmacists] to refuse to fill the prescription. We are there to help the doctor with his treatment."

The Administrator may revoke a DEA Certificate of Registration and deny pending applications for registration if he determines that the continued registration of the registrant would be inconsistent with the public interest. See 21 U.S.C. 823(f) and 824(a)(4). Pursuant to 21 U.S.C. 823(f), the following factors are considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances;

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances;

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances;

(5) Such other conduct which may threaten the public health and safety.

The Administrator need not make findings as to all of the factors enumerated above, but may give each factor the weight he deems appropriate. *See, e.g., James Beale, M.D.*, Docket No. 87-19, 53 FR 19160 (1988), and *Richard T. Robinson, M.D.*, Docket No. 87-22, 53 FR 29184 (1988).

In this case, factors two, four, and five are relevant in considering whether Respondent's continued registration would be inconsistent with the public interest. Factors one and three do not apply to the facts in this matter.

As a threshold issue, Respondent contends that any alleged misconduct which occurred prior to October 12, 1984, cannot be considered in this proceeding. To support his position, Respondent states that prior to that date, a pharmacy's or practitioner's DEA Certificate of Registration could be revoked only if the registrant: (1) was not authorized by the State to handle controlled substances; (2) had falsified his application for registration with DEA; or (3) had been convicted of a felony offense relating to controlled substances. Since none of the previous grounds for revocation apply to Respondent, and since the amendments to the Controlled Substances Act giving the Administrator the authority to revoke DEA Certificates of Registration on public interest grounds were not enacted until October 12, 1984, Respondent argues that none of the alleged misconduct prior to that date can be considered in this proceeding. Respondent's contention is unfounded. In *James Beale, M.D., and Richard T. Robinson, M.D., supra*, the Administrator considered similar arguments regarding the public interest amendments to the Controlled Substances Act and concluded that retroactive application of the amendments contravenes neither the *ex post facto* clause nor the Due Process clause of the United States Constitution and, therefore, there is no bar to considering the pre-1984 conduct according to the 1984 amendments.

In this case, there is more than ample evidence to support the revocation of Respondent's DEA Certificate of Registration. The record is replete with Respondent's controlled substance violations and misuse of his registration. Under 21 CFR 1306.04(a), in order for a prescription for controlled substances to be valid, it must be issued for a legitimate medical purpose by a registered practitioner acting in the course of his professional practice. The regulation provides, in part, that:

> A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding *responsibility* rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of section 309 of the Act (21 U.S.C. 829) and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances. (Emphasis added.)

This provision was considered by the U.S. Court of Appeals for the Fifth Circuit in *United States* v. *Henry*, 727 F.2d 1373 (5th Cir. 1984). The court interpreted the regulation as requiring that:

> The physician's responsibility is not to prescribe improperly while the pharmacist's responsibility is not to dispense a controlled substance for non-medical reasons. The regulation does not place an unduly heavy burden on the pharmacist. Proof is required that the pharmacist had *reason to believe* that the prescription was not issued in the usual course of professional treatment. (Emphasis added.) (Id. at 1374)

A similar standard was applied in *United States* v. *Lawson*, 682 F.2d 490 (4th Cir. 1982), in which the court found that a pharmacist had knowingly filled prescriptions which were unlawfully issued. Despite evidence that the pharmacist had verified the legitimacy of the first prescription a customer presented for filling, the court noted that the pharmacist did not attempt to verify later prescriptions. The court concluded that the pharmacist:

> . . . willingly ignored every sign that he should question the volume of controlled drugs dispensed from his pharmacies. Moreover, there is evidence that beyond suspicion, he knew the prescriptions were not legitimate. (Id. at 493)

In the instant case, there were several indications that Respondent knew or should have known the controlled substance prescriptions he was filling were not legitimately issued. With respect to the Schedule II narcotic controlled substance prescriptions filled for Alvin Zachery, Cynthia Cooks and Herschel O'Neal, the record establishes that: (1) Each of those individuals travelled 45 miles from Detroit to Brighton to fill the prescriptions; (2) many of the rpescriptions were issued in the names of individuals other than the person presenting them; (3) most of the prescriptions were not from licensed physicians authorized to handle controlled substances; (4) all of the prescriptions were for large quantities of controlled substances; (5) the individuals presented the prescriptions for filling on a frequent, regular basis; and (6) often, the same individual would present prescriptions for the same controlled substances allegedly issued by several different physicians. With respect to Alvin Zachery, he presented prescriptions from 22 different physicians and Respondent filled each of them. Furthermore, although the prescriptions were for heavily abused substances, and even though a cursory inspection would have revealed many of them fraudulent, Respondent made no attempt to verify that they were legitimate.

In addition, Respondent violated numerous recordkeeping provisions. The Administrator consistently has held that failure to maintain proper records in violation of Federal controlled substance laws can form the basis for revocation of a pharmacy's registration on public interest grounds. *See, e.g., The Boro Pharmacy, and Bell Apothecary*, Docket No. 86-70, 87-5, 38 FR 25151 (1988).

Respondent dispensed controlled substances to individuals he knew, or should have known, were addicted to them. He admitted to dispensing controlled substances to one individual who had undergone repeated detoxification treatment for addiction to the same drugs he dispensed to him. Other individuals received narcotic controlled substances from Respondent while also receiving Schedule V narcotic cough syrups. Many of these persons received large quantities of the cough syrups on a daily or 48-hour basis for more than a year. 21 CFR 1308.32(b) provides that pharmacies cannot dispense more than four ounces of Schedule V cough syrups to the same individual within a 48-hour period. Since Schedule V cough syrups need not be dispensed pursuant to prescriptions, the responsibility for dispensing the drugs for legitimate medical purposes rests on the pharmacy alone. Clearly, Respondent abrogated this responsibility.

Further, Respondent could not account for the disappearance of nearly 12,000 dosage units of various controlled substances and the equivalent of more than 2,000 four-ounce bottles of Schedule V cough syrups during a 22-month period. In addition, there were unexplained overages of several controlled substances as well. Respondent expressed little concern and gave no explanation for the shortages and overages. These excessive, unexplained shortages and overages of controlled substances constitute further grounds for concluding that Respondent's continued registration is not in the public interest. *See e.g., Good Peoples, Inc. Pharmacy*, 52 FR 7908 (1987).

Respondent's only explanation or justification for his conduct was that he had an obligation to fill any prescription issued by a physician. Respondent's view of his responsibility as a handler of controlled substances is erroneous as well as dangerous. The Administrator is in full agreement with Judge Bittner's conclusion that:

> As the evidence amply establishes, Respondent has demonstrated an utter disregard for his responsibility as a DEA registrant to properly dispense controlled substances. Further, Respondent has presented no evidence that he even recognizes that his dispensing practices are improper, much less that he intends to change them. I therefore conclude that Respondent's continued registration is not in the public interest. [Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of Administrative Law Judge, pp. 18-19]

Respondent's counsel's exceptions to Judge Bittner's Opinion and Recommended Ruling are without merit. He first argues that Judge Bittner based some of her findings on inadmissible hearsay. Hearsay is freely admissible in administrative proceedings. *See, Klinestiver* v. *Drug Enforcement Administration*, 606 F.2d 1128 (D.C. Cir. 1979). The fact that certain evidence is hearsay only affects the weight it is given. In determining the weight to be given to such hearsay, the finder of fact must consider the reliability of the source and the reliability of any conflicting evidence. *See Calhoun* v. *Bailar*, 626 F.2d 148, cert. denied 101 S.Ct. 3033 (1980) and *Cookow* v. *Office of Personnel Management*, 25 M.S.P.R. 319 (1984). The Administrator agrees with Judge Bittner that the hearsay evidence relied upon in her findings was reliable and trustworthy.

Respondent's counsel also argues that DEA should be barred from taking action against Respondent under the principles of *res judicata* since Respondent was acquitted of all criminal charges involving prescriptions filled for Alvin Zachery. He further argues that the acquittal should weigh significantly in Respondent's favor in this proceeding. First, *res judicata* only applies in cases involving the same forum. Respondent was acquitted in a previous criminal case. The pending case is not criminal, rather it is administrative. 21 U.S.C. 824(c) provides that administrative proceedings involving DEA registrants are independent of criminal matters. The Administrator's purpose in revoking a registrant's controlled substance handling privileges is to protect the public from the diversion of dangerous drugs. Criminal matters, on the other hand, are punitive in nature. The fact that Respondent was acquitted on criminal charges is somewhat irrelevant for purposes of this proceeding. In criminal cases, the prosecution is required to prove guilt beyond a reasonable doubt. In administrative law, the standard of proof is a preponderance of the evidence. In this case, there is more than sufficient evidence showing that Respondent illegally filled prescriptions for Alvin Zachery, Cynthia Cooks and Herschel O'Neal. Furthermore, the evidence of Respondent's multitude of other violations was unrefuted.

Respondent's counsel also claims that Judge Bittner misinterpreted and misapplied previous caselaw to Respondent. He claims that Respondent's case can be distinguished from the earlier cases since, in those cases, the courts found that the pharmacists knew they were filling unauthorized prescriptions. He claims that Respondent did not know he was filling bogus prescriptions. Respondent's counsel has misinterpreted the earlier caselaw. In those cases, as with Respondent, willful ignorance of obvious evidence of presentation of bogus prescriptions constitutes imputed knowledge on Respondent's part. There is no question, based upon credible evidence, that Respondent knew, or should have known that the prescriptions he was filling were not lawful. Respondent cannot be credited because he may have chosen to blatently ignore such obvious signs. Pharmacies such as Respondent's must take reasonable steps to verify that prescriptions they fill are valid. To hold otherwise would absolve all pharmacies of their corresponding liability under the law.

Respondent's counsel also asserts that Judge Bittner erred in finding that Respondent never explained the shortages and overages of controlled substances found during the audit. He claims that Respondent had no burden to explain the discrepancies and that to find otherwise improperly shifted the burden of proof from the Government to the Respondent. This argument is also flawed. There is no dispute that, in its case-in-chief, the Government established that unexplained shortages and overages of controlled substances were found during an audit of Respondent's pharmacy. Therefore, the Government met its burden of proof in establishing a violation of the law. Once the Government met its burden, the burden of proof shifted to Respondent to either disprove or explain the shortages and overages. Respondent provided neither an explanation nor a

BEST COPY AVAILABLE

justification. Thus, Respondent failed to meet his burden on this point.

The remainder of Respondent's exceptions are wholly without merit. They need not be discussed further. The Administrator determines that Judge Bittner's findings are accurate and are substantiated by credible evidence in the hearing record. Consequently, the Administrator finds nothing in Respondent's exceptions which would alter his conclusion that Respondent's continued registration would be inconsistent with the public interest.

Accordingly, the Administrator of the Drug Enforcement Administration (DEA), pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) orders that DEA Certificate of Registration AK1606085, previously issued to Arthur Sklar, R.Ph., d/b/a King Pharmacy, be, and it hereby is, revoked. It is further ordered that any pending applications of renewal of said registration be, and they hereby are, denied.

This order is effective September 20, 1989.

Dated: August 10, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89-19528 Filed 8-18-89; 8:45 am]

BILLING CODE 4410-09-M

White's Discount Drugs; Denial of Application

On May 8, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to White's Discount Drugs, Old Highway 49 North, Collins, Mississippi 39428, proposing to deny its application, executed on April 30, 1988, for registration as a retail pharmacy under 21 U.S.C. 823(f). The Order to Show Cause alleged that the registration of the pharmacy would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

The Order to Show Cause was sent to White's Discount Drugs by registered mail. More than thirty days have passed since the Order to Show Cause was received by the pharmacy and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), White's Discount Drugs is deemed to have waived its opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that White's Discount Drugs is owned by Jimmie D. White and was previously known as White's Best Buy Drugs. Following a hearing, the DEA Certificate of Registration of White's Best Buy Drugs was revoked by the Administrator. See, *White's Best Buy Drugs*, Docket No. 87-41, 53 FR 7251 (1988). In revoking the registration of White's Best Buy Drugs, the Administrator found that in 1983 and 1984, agents of the Mississippi State Board of Pharmacy conducted several audits of controlled substances at the pharmacy. These audits revealed significant shortages and overages of controlled substances. One audit also revealed a shortage of over 7,000 dosage units of pyribenzamine, a non-controlled substance. Pyribenzamine is often sold in the illicit market in combination with Talwin, a Schedule IV controlled substance. The audits of the pharmacy revealed significant shortages of Talwin. During the course of conducting one of the audits, an agent of the Mississippi State Board of Pharmacy discovered that over a five-month period, the pharmacy dispensed to a single individual, 312 10cc vials of Talwin 30 mg/per cc injectable. Pharmacy records indicated that the pharmacy dispensed the Talwin pursuant to 14 prescriptions which were written for the individual and pusuant to subsequent refill authorization from the prescribing physician. An interview of the prescribing physician revealed that he did not issue the prescriptions nor did he verbally authorize the pharmacy to dispense the Talwin to the individual. In an interview conducted in 1983, the known drug abuser told DEA investigators and agents of the Mississippi Bureau of Narcotics and the Mississippi State Board of Pharmacy that since 1981, he had often obtained Talwin from White's Best Buy Drugs without a prescription. On April 23, 1986, Jimmie D. White, the owner and pharmacist of White's Best Buy Drugs, was convicted of two counts of failure to maintain records of controlled substances in violation of 21 U.S.C. 842(a)(5).

There is enough evidence to justify the denial of White's Discount Drugs' application for registration based on the controlled substance handling practices of White's Best Buy Drugs. In addition, however, White's Discount Drugs does not possess a Mississippi controlled substance registration with the Mississippi State Board of Pharmacy and therefore, the pharmacy is not authorized to handle controlled substances in the State of Mississippi.

The Administrator and his predecessors have consistently held that DEA does not have the statutory authority under the Controlled Substance Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. 21 U.S.C. 823(f). See, *Clifford E. Bigott, D.M.D.*, Docket No. 88-24, 53 FR 28711 (1988); *Edward L. McIver, M.D.*, 53 FR 16477 (1988); *Howard J. Reuben, M.D.*, 52 FR 8375 (1987); and cases cited therein.

The Administrator has considered the factors listed in 21 U.S.C. 823(f) as they relate to this case and has concluded that the registration of White's Discount Drugs would be inconsistent with the public interest. No evidence of explanation or mitigating circumstances has been offered on behalf of the pharmacy. Therefore, the Administrator concludes that White's Discount Drugs' application for registration must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application of White's Discount Drugs, executed on April 30, 1988, for registration under the Controlled Substances Act, be, and it hereby is, denied.

Dated: August 10, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89-19529 Filed 8-18-89; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Issues Related to Federal Information Policy; Meeting

AGENCY: U.S. National Commission on Libraries and Information Science (NCLIS).

ACTION: Notice of public meeting.

SUMMARY: On July 13, 1989, the U.S. National Commission on Libraries and Information Science held a public hearing concerning the 1988 report from the U.S. Office of Technology Assessment entitled *Informing the Nation*. As a followup to that hearing, NCLIS has established an Information Policy Committee which will conduct a series of public meetings/forums to discuss issues related to information policies. This notice announces the first in a series of these public meetings/forums designed to elicit views, comments, concerns, ideas, and information from interested organizational representatives, and for the interchange of such among organizations, concerning information policies. The Commission's meetings are authorized under Public Law 91-345.

DATE/LOCATION: The public meeting will be held October 11, 1989 in the Bernard Auditorium at the U.S. Department of Education, F.O.B. #6, 400 Maryland Avenue, SW., Washington, DC., 8:30 a.m. to 12:30 p.m.

AGENDA: The proposed agenda for this meeting (subject to change):

Presentations and discussion: Technology and Proprietary Rights—Public Domain Information and the Private Sector; Technology and Public Access to Information.

Open Discussion: Information Policy Issues; Identification of Information Policy Issues to be Considered; Consideration of Principles of Information Policies.

PARTICIPATION: This meeting is open by invitation to anyone intrested in information policy issues. Requests for invitations must be submitted to NCLIS on or before September 21, 1989. Because of meeting space, participation will be limited to about 100.

ADDRESS: Written requests for invitation must be submitted to: U.S. National Commission on Libraries and Information Science, Attn. Bob Dugan, 1111 18th Street, NW., Suite 310, Washington, DC 20036.

Special provisions will be made for handicapped individuals by calling June McDuffie (202) 254-31600, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Bob Dugan, Research Associate, U.S. National Commission on Libraries and Information Science, (202) 254-3130.

Dated: August 14, 1989.

Susan K. Martin,

Executive Director.

[FR Doc. 89-19585 Filed 8-18-89; 8:45 am]

BILLING CODE 7527-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by September 20, 1989.

ADDRESS: Send comments to Mr. Jim Houser, Officer of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC., 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC. 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of a new collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 1990 Inter-Arts Program Application Guidelines: New Forms Regional Initiative.

Frequency of Collection: One-time.

Respondents: Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from non-profit organizations that apply for funding under the New Forms Regional Initiative category. This information is necessary for the accurate, thorough, and fair consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 20.

Average Burden Hours per Response: 25.

Total Estimated Burden: 500.

Anne C. Doyle,

Administrative Services Division, National Endowment for the Arts.

[FR Doc. 89-19569 Filed 8-18-89; 8:45 am]

BILLING CODE 7537-01-M

Design Arts Advisory Panel (Overview Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on September 7, 1989, from 4 p.m.-6:30 p.m., September 8, 1989, from 9 a.m.-6:30 p.m., and September 9, 1989, from 9 a.m.-1:30 p.m. in Room M07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 7, 1989, from 4 p.m.-6:30 p.m., on September 8, 1989, from 9 a.m.-6:30 p.m., and on September 9, 1989, from 9 a.m.-11 a.m. and 12:30 p.m.-1:30 p.m. The topic for discussion will be guidelines and policy issues.

The remaining portion of this meeting on September 8, 1989, from 11 a.m.-12:30 p.m. is for discussion and development of confidential FY 1990 budgetary projections and related plans to be submitted to the Office of Management and Budget and the Congress. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1989, this session will be closed to the public pursuant to subsection (c)(9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: August 15, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-19578 Filed 8-18-89; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel (Festival Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Festivals Section) to the National Council on the Arts will be held on September 6, 1989, from 9 a.m.-5 p.m. and September 7, 1989, from 9 a.m.-5:30 p.m. in Room M14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 7, 1989, from

4:30 p.m.–5:30 p.m. The topic for discussion will be guidelines and policy issues.

The remaining portion of this meeting on September 6, 1989, from 9 a.m.–6 p.m. and September 7, 1989, from 9 a.m.–4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: August 14, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–19579 Filed 8–18–89; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 13th meeting on September 13–15, 1989, 8:30 a.m.–5:00 p.m. each day, Room P–110, 7920 Norfolk Avenue, Bethesda, MD. The purpose of this meeting includes:

(1) A discussion of the approach to performance assessment for the high level waste repository and status of activities.

(2) A review of the Pathfinder Reactor Dismantlement Plan.

(3) The review of a number of staff technical positions.

(4) A discussion of the concrete bunker prototype license application.

(5) A discussion on the availability of data from the USGS.

(6) A discussion of activities at the Center for Nuclear Waste Regulatory Analyses.

(7) A discussion of waste related activities of NRC's Advisory Committee on Research.

(8) A discussion of DOE's Program to store and dispose of Greater-Than-Class C wastes.

(9) An Administrative session to discuss anticipated proposed Committee activities, future meeting agendas, and organizational matters, as appropriate.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. The Office of the ACRS is providing Staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the Office of the ACRS as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the Office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492–4516), prior to the meeting.

In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

Dated: August 15, 1989.

Andrew L. Bates,

Acting Advisory Committee Management Officer.

[FR Doc. 89–19628 Filed 8–18–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Joint Subcommittees on Containment Systems and Structural Engineering; Meeting

The ACRS Subcommittees on Containment Systems and Structural Engineering will hold a joint meeting on September 12, 1989, at the San Francisco International Airport Hilton, Savoy Room West, San Francisco, CA.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, September 12, 1989–8:30 a.m. until the conclusion of business

The Subcommittees will discuss containment design criteria for future plants with invited speakers from industry and national laboratories.

Oral statments may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with invited speakers as noted above.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: August 15, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89–19629 Filed 8–18–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–261]

Carolina Power & Light Co.; H.B. Robinson Steam Electric Plant, Unit No. 2

Partial Exemption

I.

Carolina Power & Light Company (the licensee) is the holder of Facility Operating License No. DPR–23, which authorizes operation of the H.B. Robinson Steam Electric Plant, Unit No. 2. The license provides, among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a Westinghouse pressurized water reactor located at the licensee's site in Darlington County, South Carolina.

II.

Paragraph III.A1(a) of Appendix J to 10 CFR Part 50 requires, in part, that if during a Type A test (Containment Integrated Leakage Rate Test or CILRT) potentially excessive leakage paths are identified which will interfere with satisfactory completion of the test, the Type A test shall be terminated and local leakage testing performed on the paths of concern.

By letter dated June 30, 1983, and clarified by letter dated September 14, 1987, the licensee requested a wavier of the above mentioned Appendix J requirement to terminate the Type A testing. Instead, the licensee proposed an alternative which would allow the satisfactory completion of the CILRT. The licensee also requested that the acceptance criterion for "as found" Type A tests be set at the same value as the maximum allowable leakage rate, L_a, or the corresponding L_a, as defined in Paragraphs II.L and II.M of Appendix J.

The Commission has reviewed the licensee's exemption request and the details of the commission's evaluation are contained in the related Safety Evaluatioun issued concurrently with this partial exemption. The Commission review concludes that the licensee's approach for continuing Type A containment leakage rate testing when excessive leakage is identified satisfies the intent of the regulation and is, therefore, technically acceptable. Also, the proposed "as found" Type A test acceptance criterion of L_a or L_a is acceptable, with the "as left" allowable leakage criterion to remain at 0.75 L_a as stated in the Technical Specifications.

III.

The Commission has determined that, pursuant to 10 CFR 50.12, this partial exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the partial exemption. Namely, application of the regulation in the particular circumstances is not necessary to achieve its underlying purpose, which is to ensure that accurate and conservative methods are used to assess the results of containment leak rate tests.

Accordingly, the Commission hereby grants a partial exemption from Paragraph III.A.1(a) of Appendix J to 10 CFR Part 50 to allow the licensee to implement an alternative approach, so that CILRT can continue if excessive leakage is determined. Specifically, when excessive leakage is experienced during a Type A test, significant leaks will be identified and isolated from the test. Penetrations so isolated will be capable of local leakage rate testing. Once these leaks have been isolated, the Type A test will be continued. In addition, this Exemption permits the licensee to use L_a, the maximum allowable leakage rate, as the acceptance criterion for the "as found" Type A test results.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this partial exemption will have no significant impact on the quality of the human environment (54 FR 28132).

The partial exemption is effective upon issuance.

Dated at Rockville, Maryland this 14th day of August 1989.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 89–19605 Filed 8–18–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Haddam Neck Plant

Exemption

I.

The Connecticut Yankee Atomic Power Company (CYAPCO, the Licensee) is the holder of Operating License No. DPR–61 which authorizes operation of the Haddam Neck Plant. The license provides, among other things, that the Haddam Neck Plant is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The plant is a single-unit pressurized water reactor at the licensee's site located in Middlesex County, Connecticut.

II.

One of the conditions of all operating licenses for water-cooled power reactors, as specified in 10 CFR 50.54(o), is that primary reactor containments shall meet the containment leakage test requirements set forth in 10 CFR Part 50, Appendix J. More specifically the following sections require that:

Section III.A.6(b), "Additional Requirements—Type A Test"

"If two consecutive periodic Type A tests fail the applicable acceptance criteria in III.A.5.(b), notwithstanding the periodic retest schedule of III.D, a Type A test shall be performed at each plant shutdown for refueling or approximately every 18 months, whichever occurs first, until two consecutive Type A tests meet the acceptance criteria in III.A.5.(b), after which time the retest schedule specified in III.D. may be resumed."

Section III.D.2.(a), "Type B Test"

"Type B tests, except tests for air locks, shall be performed during reactor shutdown for refueling or other convenient intervals but in no case at intervals greater than 2 years."

Section III.D.3, "Type C Test"

"Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years."

By letter dated April 26, 1989 CYAPCO requested a schedular exemption from the above requirements. Haddam Neck was last shutdown for refueling in July 1987 and the leak rate tests were performed over a period of the next 3 months. Haddam Neck was restarted in March 1988, after a 9 month outage and has operated essentially continuously since then, a total of 15 months. By September 5, 1989 Haddam Neck will have operated 18 months and will be ready for refueling. However, the 18 month Type A test and the two year Type B and C test periods end before the next refueling on various dates beginning April 27, 1989.

III.

By letter dated April 26, CYAPCO requested a schedular exemption from the regulatory requirements cited in Section II above. In this Section, the staff has evaluated the Type A and Type B and C test separately. The acceptability of the exemption requests

for each item is advanced below. More details are contained in the NRC staff's related Safety Evaluation issued concurrent with this exemption.

The Safety Evaluation and the above referenced submittal by the licensee are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Section III.A.3.(b)

As indicated above the intent of Appendix J was that after two consecutive failures of the integrated leak rate test (ILRT) the plant should perform the ILRT during each refueling outage not to exceed 24 months. Haddam Neck is presently scheduled to conduct a refueling outage on or before September 5, 1989. The exemption would allow the ILRT to be postponed until that refueling outage. Such an extension of approximately 6 months is desirable in order to prevent a midcycle shutdown. The "as found" failure of the ILRT has been due to excessive Type C leakages. CYAPCO has taken aggressive actions to improve the Type C leakages. These efforts have included:

(1) Improving test procedures and methods,

(2) Making modifications to penetrations of poor performers,

(3) Making modifications to the Service Water System to limit silt,

(4) Conducting supplemental Type C test, and

(5) Pursuing an enhanced testing and maintenance program to identify, test, repair and reduce containment leakage.

The staff has reviewed these actions and agrees these actions should reduce leakage from historically poor penetrations and provide CYAPCO a method to detect and focus its attention on future bad performers.

During the last refueling outage unexpected core barrel and thermal shield repairs extended the outage several months. During this time of approximately 6 months plant components were not exposed to the normal operating temperature, pressure and radiation conditions. The time interval of 18 months specified in Appendix J was based, in part, on the expected degradation of components exposed to the environment resulting from a full 24 months of normal plant operations. The total exposure time for the containment to normal plant operation environment at Haddam Neck Plant will be about 18 months.

Therefore the staff would not expect the containment condition to degrade significantly during the extension of the test period.

Section III.D.2.(c) and III.D.3

As indicated above the intent of Appendix J was that isolation valves and the associated penetrations be tested during each refueling outage not to exceed 24 months. Haddam Neck is presently scheduled to conduct a refueling outage on or before September 5, 1989. The exemption would allow the local leak rate tests (Type B and C) to be postponed until that refueling outage. Such an extension of approximately 2 months is desirable in order to prevent a midcycle shutdown.

As noted in the Type A test evaluation, CYAPCO has taken aggressive action to improve the chances of the Type C leakage test of passing the ILRT. Historically, Haddam Neck has not had a problem with Type B leakage. The NRC staff has concluded that the actions taken by CYAPCO should reduce leakage through historically poor penetrations and provide CYAPCO a method to detect and focus attention on future bad performers.

During the last refueling outage an unexpected core barrel and thermal shield repairs extended the outage several months. During this time of approximately 6 months, plant components were not exposed to the normal operating temperatures, pressure and radiation conditions. The time interval of 24 months, specified in Appendix J, was based, in part, on the expected degradation of components exposed to the environment resulting from a full 24 months of normal plant operation. The total exposure time for the containment penetration to normal plant operating environment will be only about 15 months.

The 24-month interval requirement for Types B and C penetrations is intended to be often enough to prevent significant deterioration from occurring and long enough to permit the local leak rate tests (LLRTs) to be performed during plant outages. In addition leak testing of the penetrations during plant shutdown is preferable because of the lower radiation exposures to plant personnel. Moreover, some penetrations, because of their intended functions, cannot be tested at power operation. For penetrations that cannot be tested during power operation or those that if tested during plant operation would cause a degradation in the plant's overall safety (e.g., the closing of a redundant line in a safety system), the increase in confidence of containment integrity following a successful test is not significant enough to justify a plant shutdown specifically to perform the LLRTs within the 24-month time period, especially in light of the above discussions.

IV.

Pursuant to 10 CFR 50.12(a)(2)(v), the Commission will not consider granting a schedular exemption unless the licensee has made good faith efforts to comply with the regulation. The NRC staff believes that CYAPCO has taken prudent steps to improve the containment integrity and if not for the extended refueling outage would have complied with Appendix J.

Based on our evaluation, the NRC staff has concluded CYAPCO has made good faith effort to comply with the requirements of Appendix J and that the special circumstances as described in 10 CFR 50.12(a)(2)(v) exist and the schedular exemptions from 10 CFR 50, Appendix J should be granted.

V.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, the exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby approves the following exemption request.

A temporary exemption is hereby granted from the requirement of 10 CFR 50, Appendix J, Section III.A.6.(b), which requires that an ILRT be conducted within 18 months of the last refueling outage for good cause shown, this exemption extends that period by approximately 5 months from April 27, 1989.

A temporary exemption also is granted from the requirements of sections III.D.2.(a) and III.D.3, which require a local leak rate test be conducted within 24 months of the previous refueling outage. For good cause shown, this exemption extends that period of approximately 2 months from July 15, 1989.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (54 FR 27460).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 14th day of August, 1989.

For the Nuclear Regulatory Commission.
Steven A. Varga,
Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.
[FR Doc. 89-19607 Filed 8-18-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-369 and 50-370]

Duke Power Co; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. NPF-9 and Facility Operating License NPF-17, issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendments would revise Technical Specification (TS) 3/4.2.2, 3/4.2.3, 3/4.2.4, 3/4.3.1 and 3/4.3.3.2 to reduce from 75% to 50%, the number of moveable incore detector thimbles in McGuire Unit 1 required to be available for the Moveable Incore Detection System to be declared operable. McGuire Unit 1 is experiencing problems with sticking detectors that prevent the detectors from traveling the entire length of the incore thimbles. This problem apparently resulted from a new, ineffective cleaning process during the last refueling outage which left a lubricant residue on the thimbles. The thimbles will be cleaned using a proven process during the next refueling outage or unplanned outage of sufficient duration. The proposed TS change, thus, would apply only to the remainder of the present Unit 1 fuel cycle (Cycle 6) and would be applied by the licensee only if the sticking problem precludes insertion of the presently required number of detectors. Unit 2 is affected by this change only administratively because it shares a common TS with Unit 1; no technical change is intended for Unit 2. The licensee's application for the amendments was dated August 3, 1989.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The McGuire Moveable Incore Detection System consists of 58 incore flux thimbles in which moveable fission chamber detectors scan the length of 58 selected fuel assemblies to measure axial and radial neutron flux distributions of the reactor. The licensee has determined that a reduction in the required number of moveable incore detector thimbles from 75% (44 thimbles) to 50% (29 thimbles) would not significantly degrade the ability of the system to measure core flux (or power) distributions. The licensee's conclusions are based, in part, upon a Westinghouse study (Attachment 3B of the August 3, 1989 application for amendments) showing that the increased uncertainty for peaking factor measurements using only 29 detector thimbles rather than 58 would be small (i.e., the additional uncertainty would be about 1% for the nuclear enthalpy rise hot channel factor and 2% for total heat flux hot channel factor). As the number of available moveable detector thimbles decreases from 75% to 50%, the measurement uncertainty presently specified in the TS would be increased and would, therefore, increase the margin to the allowable TS limit for hot channel factors. The TS would continue to require that sufficient detector thimbles be available to ensure each core quadrant is monitored; thus, the available detector thimbles, although reduced would have a negligible impact on the quadrant tilt and core average axial power shape measurements.

Based on these factors and the Westinghouse study, the licensee has determined that the margin of safety would not be significantly reduced. The NRC has reviewed this determination and the McGuire Unit 1 core characteristics at this point in the fuel cycle (Unit 1 Cycle 6 is currently at about 5700 MWD/MTU of a 15,500 MWD/MTU cycle.) We find that the core power distribution is presently well defined and that all power distribution surveillance parameters have sufficient margin to their limits to accommodate the additional measurement uncertainties associated with the proposed change. Therefore, we concur with the licensee's finding for the remainder of the Unit 1 fuel cycle.

Since the power distribution surveillance parameters will not be exceeded, and existing safety limits are not changed, the proposed TS change would not increase the consequences of any previously evaluated accident. Since the incore detectors are used only as information and are not used to cause actuation of engineered safety features or to cause a reactor trip (separate flux detectors located outside the core are provided for such purposes), the proposed amendments would not increase the probability of a previously evaluated accident. Similarly, since the proposed change would add no new equipment or otherwise change the plant configuration, the proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Accordingly, the Commission proposes to find that the changes do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene are discussed below.

By September 21, 1989, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for

leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the basis for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David Matthews: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Rockville, Maryland, this 15th day of August 1989.

For the Nuclear Regulatory Commission.

Dail S. Hood,

Project Manager Project Directorate II-3 Division of Reactor Projects-I/II Office of Nuclear Reactor Regulation.

[FR Doc. 89-19909 Filed 8-18-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Extension of an Information Collection Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, (Title 44, U.S.C. chapter 35), this notice announces a request submitted to OMB to extend a clearance for collecting data from selected Federal agencies for general purpose statistics. On an annual basis, salary and wage data not otherwise available to the Office of Personnel Management are collected using OPM Forms 1078-A and 1078-B, or automated means. This report is completed by ten agencies, and takes approximately 12 hours to complete, for a total burden of 120 hours. The data are used by the Office of Personnel Management to calculate the Federal pay line and to manage pay policy and special rate programs. For copies of this clearance package, call Grace Butler on (202) 632-0259.

DATE: Comments on this data collection should be received on or before September 5, 1989.

ADDRESSES: Send or deliver comments to:

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415

and

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, New Executive Office Building, Room 3002, Office of Management and Budget, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Randall T. Matke (202) 632-5022.

Constance B. Newman,

Director, U.S. Office of Personnel Management.

[FR Doc. 89-19871 Filed 8-18-89; 8:45 am]

BILLING CODE 6325-01-M

Proposed Extension of a Form Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, (title 44, U.S. Code, chapter 35), this notice announces the proposed extension of a form which collects information from the public. Optional Form 306, Qualifications Analysis and Appraisal of Candidates for Supervisory Positions, is completed by the employers and/or co-workers of applicants for supervisory positions throughout the Federal Government. The qualification standard for supervisory positions in General Schedule occupations (GS-15 and below) contained in the Qualification Standards Handbook, recommends the use of this form to facilitate the collection of information used in evaluating supervisory candidates. Approximately 400 forms are completed annually and require about 15 minutes to complete for a public burden of 100 hours. For copies of the proposal, call Larry Dambrose on (202) 632-6199.

DATE: Comments on this extension should be received on or before September 5, 1989.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3235, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Stephen Perloff, (202) 632-0587.

Constance Berry Newman,

Director, Office of Personnel Management.

[FR Doc. 89-19872 Filed 8-18-89; 8:45 am]

BILLING CODE 6325-01-M

POSTAL RATE COMMISSION

[Docket No. A89-12; Order No. 83]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued August 15, 1989.

Before Commissioners: Henry R. Folsom, Vice-Chairman; John W. Crutcher; W.H. "Trey" LeBlanc, III; Patti Birge Tyson.

In the Matter of Hoxeyville, Michigan 49941 (Pauline Ruark, et al., Petitioners).

Docket Number: A89-12
Name of Affected Post Office: Hoxeyville, Michigan 49941
Name(s) of Petitioner(s): Pauline Ruark and others
Type of Determination: Closing
Date of Filing of Appeal Papers: August 7, 1989
Categories of Issues Apparently Raised: 1. Effect on postal services [39 U.S.C. 404 (b)(2)(C)] 2. Effect on the community [39 U.S.C. 404(b)(2)(A)]

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before August 22, 1989.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Charles L. Clapp

Secretary.

August 7, 1989—Filing of Petition
August 15, 1989—Notice and order of Filing of Appeal
September 1, 1989—Last day of filing of petitions to intervene [see 39 CFR 3001.111(b)]
September 11, 1989—Petitioners' Participant Statement or Initial Brief [see 39 CFR 3001.115(a) and (b)]
October 2, 1989—Postal Service Answering Brief [see 39 CFR 3001.115(c)]
October 17, 1989—Petitioners' Reply Brief should Petitioners choose to file one [see 39 CFR 3001.115(d)]
October 24, 1989—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116]
December 5, 1989—Expiration of 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]

[FR Doc. 89-19810 Filed 8-18-89; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-9059]

Self-Regulatory Organizations; Order Granting Application to Strike From Listing and Registration; The American Stock Exchange, Inc. (De Laurentis Film Partners L.P., Depositary Units)

August 14, 1989.

The American Stock Exchange, Inc. ("Exchange") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(c) promulgated thereunder to strike the above specified security from listing and registration thereon.

The reasons alleged for striking this security from listing and registration include the following:

The delisting policies of the Exchange provide, among other things, that consideration may be given to the suspension or removal of any securities when the financial condition and/or operating results of the issuer appear to be unsatisfactory or if the aggregate market value of the security has become so reduced as to make further dealings on the Exchange inadvisable or if the issuer has sold or otherwise disposed of its principal operating assets, or has ceased to be an operating company or if the issuer has failed to comply with its listing agreements with the Exchange.

In applying these policies, the Exchange gives consideration to delisting the securities of a company in the event that it has stockholders' equity of less than $2,000,000 if such company has sustained losses from continuing operations and/or net losses in two of

its three most recent fiscal years or if it has sustained losses which are substantial in relation to its overall operations or its existing financial resources, or its financial condition has become so impaired that it appears questionable, in the opinion of the Exchange, as to whether such company will be able to continue operations and/or meet its obligations as they mature.

Additionally, the Exchange gives consideration to the removal of a common stock issue if the aggregate market value of shares publicly held is less than $1,000,000.

The Depositary Units of De Laurentis Film Partners L.P. (the "Partnership") do not qualify for continued listing under these policies for the following reasons:

The Company has incurred net losses since organization in November 1986 as follows: 1987, $18,456,000; and 1988, $4,465,000.

In a report dated April 13, 1988 on the Partnership's 1987 financial statements, the Partnership's independent accountants note the Partnership's 1987 net loss and, after discussing other material financial uncertainties, question the Partnership's ability to continue in business.

The Partnership's latest Form 10-Q also (for the nine months ended September 30, 1988) discloses that, due to a lack of funds, the Partnership has discontinued its principal business in that it has stopped investing in motion pictures.

The Commission, having considered the facts stated in the application and having due regard for the public interest and protection of investors, orders that said application be, and it hereby is, granted, effective at the opening of business on August 15, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19546 Filed 8-18-89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-7017]

Self-Regulatory Organizations; Order Granting Application to Strike From Listing and Registration; The Boston Stock Exchange, Inc. (Mutual Of of America, Inc.; Common Stock, $.10 Par Value)

August 11, 1989.

The Boston Stock Exchange, Inc. ("Exchange") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(c) promulgated thereunder to strike the above specified securities from listing and registration thereon.

The reasons alleged for striking these securities from listing and registration include the following:

The Company has entered into Chapter 7 of the United States Bankruptcy Code which calls for complete liquidation. Trading was suspended at 1:40 p.m. on July 28, 1989.

The Commission, having considered the facts stated in the application and having due regard for the public interest and protection of investors, orders that said application be, and it hereby is, granted, effective at the opening of business on August 14, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19609 Filed 8-18-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 89-063]

Chemical Transportation Advisory Committee; Request for Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Chemical Transportation Advisory Committee (CTAC). The objectives and mission of the Committee are to provide advice and consultation to the Office of Marine Safety, Security and Environmental Protection with respect to water transportation of hazardous materials in bulk. Members of the Committee serve without compensation from the Federal Government.

Applications will be considered for nine expiring terms and any other existing vacancies. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in applications from minorities and women.

The Committee usually meets at least once a year in Washington, DC, with subcommittee meetings for specific problems on an as-required basis.

DATE: Requests for applications should be received no later than December 1, 1989.

ADDRESS: Persons interested in applying should write to Commandant (G-MTH-1), U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Mrs. Dawn Anderson or Commander Ronald Tanner, at the above mailing address, or telephone (202) 267-1217.

Dated: August 11, 1989.

J.D. Sipes,

Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-19545 Filed 8-18-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 166—User Requirements for Future Airport and Terminal Area Communication, Navigation, and Surveillance Systems; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the fourth meeting of RTCA Special Committee 166 on User Requirements for Future Airport and Terminal Area Communication, Navigation, and Surveillance Systems to be held September 14-15, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of the third meeting's minutes, RTCA Paper No. 273-89/SC166-24; (3) review of Revised Terms of Reference for SC-166; (4) Working Group Activities Reports on Operations Working Group, Technology Working Group, and Transition and Economics Working Group; (5) review of action items from June Committee Meeting; (6) briefing on FAA Advanced Aviation System; (7) review and approval of Revised Committee Report Outline; (8) other business; and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on August 14, 1989.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 89-19560 Filed 8-18-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[OTS-89001; No. 89-1]

Statement of Organization, Functions and Delegations of Authority

Date: August 9, 1989.

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Statement of Organization, Functions, and Delegations of Authority.

SUPPLEMENTARY INFORMATION: The Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 183, signed into law on August 9, 1989, established the Office of Thrift Supervision ("Office"), headed by a Director, as an office within the Department of the Treasury, effective August 9, 1989. The Office will perform those functions formerly performed by the Federal Home Loan Bank Board ("Bank Board") in its own right and as operating head of the Federal Home Loan Bank System ("Bank System") and the Federal Savings and Loan Insurance Corporation ("FSLIC") that have been transferred to it by the FIRREA. These functions include the chartering of federal savings associations and the regulation and supervision of all savings associations and savings and loan holding companies. *See* FIRREA, Title II, paragraph (f)(4) of section 204, amending section 3(q) of the Federal Deposit Insurance Act; Title III, section 301, amending subsections 3(a), 3(e), 4(a), 5(a) of the Home Owner's Loan Act of 1933; and Title IV, sections 401(f), 401(g), 401(h).

Under FIRREA, both the Bank Board and the Office will exist for a period of 60 days. *See* FIRREA, Title III, amending section 3 of the Home Loan Owners' Loan Act of 1933, and Title IV, section 401. During that period, however, the Chairman of the Bank Board is empowered to take only such actions as are necessary to wind up the affairs of the Bank Board and the FSLIC. *See* FIRREA, Title IV, section 401. At the end of that period, the Bank Board will be abolished. Since the Director will determine the final organizational structure of the Office during this 60 day period, the description of the Office provided in this statement is interim in nature. A final statement of organization, functions, and delegations of authority will be published in the Federal Register at a later date.

The Office of Thrift Supervision headquarters are located at 1700 G Street, NW., Washington, DC 20552. Phone 202-906-6000. The Office is directed by the Director, who is appointed by the President and confirmed by the Senate, for a term of five years pursuant to section 3 of the HOLA, as amended by the FIRREA. The Director is the chief federal regulatory officer for all savings associations. The Director has overall responsibility for the development, execution, and review of all Office programs and functions. The Director is assisted by the following officials who perform such duties as the Director may prescribe:

Senior Deputy Director for Congressional Relations and Communications
Senior Deputy Director for Supervision (Policy)
Senior Deputy Director for Supervision (Operations)
Senior Deputy Director for Management
General Counsel
Chief Economist

The Office has the following District offices, each under an official who reports to the Senior Deputy Director for Supervision (Operations), at the following locations:

Boston District Office
One Financial Center, 20th Floor
Boston, Massachusetts 02111
Telephone: 617-542-0150
New York District Office
One World Trade Center, Floor 102
New York, New York 10048
Telephone: 212-912-4600
Pittsburgh District Office
One Riverfront Center
Twenty Stanwix Street
Pittsburgh, Pennsylvania 15222-4893
Telephone: 412-288-3400
Atlanta District Office
1475 Peachtree Street, N.E.
Atlanta, Georgia 30309
Telephone: 404-888-8000
Cincinnati District Office
2000 Atrium TWO
221 E. 4th Street
Cincinnati, Ohio 45202
Telephone: 513-852-7500
Indianapolis District Office
1350 Merchants Plaza, South Tower
115 West Washington Street
Indianapolis, Indiana 46204
Telephone: 317-631-0130
Chicago District Office
111 East Wacker Drive, Suite 800
Chicago, Illinois 60601
Telephone: 312-565-5700
Des Moines District Office
907 Walnut Street
Des Moines, Iowa 50309
Telephone: 515-243-4211
Dallas/Ft. Worth District Office
500 E. John Carpenter Freeway
P.O. Box [illegible]
Dallas/Ft. Worth, TX 75261-9038
Telephone: 214-541-6500
Topeka District Office
2 Townsite Plaza
200 East 6th Street
Topeka, Kansas 66603
Telephone: 913-233-0507
San Francisco District Office
1 Montgomery Street
Pacific Telesis Center, Suite 400
San Francisco, California 94104
Telephone: 415-393-1000
Seattle District Office
1501 4th Avenue, 19th Floor
Seattle, Washington 98101-1693
Telephone: 206-340-2300

Effective August 9, 1989, the Office adopts and ratifies, until modified or canceled, the Federal Home Loan Bank Board's internal operating instructions and procedures. Pursuant to the FIRREA, all rules, regulations, resolutions (including delegations), agreements, contracts, orders, directives, decisions, enforcement proceedings, legal actions, formal examinations and investigations, and other determinations of the Bank Board and the FSLIC not transferred to the Federal Deposit Insurance Corporation or the Federal Housing Finance Board, which were in force and effect on the day prior to enactment of FIRREA, remain in effect and enforceable by the Office, until such time as modified, canceled, or repealed by the Office. *See* FIRREA, Title III, section 301, amending subsection 5(c) of the Home Owners' Loan Act of 1933, and Title IV, sections 401(f), 401(g), 401(h). Due to changes in statutory authority which have resulted from the enactment of FIRREA, references to Title IV of the National Housing Act and the Federal Home Loan Bank Act within these rules, regulations, resolutions, agreements, contracts, orders, and determinations will become references to the Home Owners' Loan Act, as amended, or the Federal Deposit Insurance Act, as amended, as dictated by the context.

The regulations for the Office will appear in 12 CFR Chapter V, which formerly contained the regulations of the Bank Board. The Office will shortly publish in the Federal Register its initial body of regulations. These regulations will be essentially those of the former Bank Board in its own right and as operating head of the Bank System and the FSLIC, with such technical and nomenclature changes as are made necessary by the FIRREA.

Additional documents will be published setting forth the disposition of the former Bank Board, FSLIC, and Bank System regulations that are being transferred to either the Federal Deposit

Insurance Corporation or the Federal Housing Finance Board pursuant to the FIRREA.

M. Danny Wall,
Director, Office of Thrift Supervision.
[FR Doc. 89-19717 Filed 8-18-89; 8:45 am]
BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Grants Program for Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175, entitled "A Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities," announced in the **Federal Register** June 3, 1987.

Private sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

Environmental Protection and Cooperation: A Dialogue with Central European Officials:

The Office of Private Sector Programs will assist in supporting a fourteen-day study tour for a delegation of ten Central European environmental officials. The program will focus on the work of the private and public sectors in the U.S. in dealing with air and water pollution problems. It will include travel to Washington, DC for a discussion of these issues from a national perspective as well as to cities which have coped with these problems.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in additional to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have a lasting impact on their participants.

Interested organizations should submit a request for complete application materials marked "Eastern European Environmental Officials' Project"—postmarked no later than thirty days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials which contains proposal guidelines. This announcement is not a solicitation for proposals. It requests letters of interest from potential grantee institutions. Information on the proposal submission deadline will be forwarded with the application materials.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, (ATTN: Initiative Programs), United States Information Agency, 301 4th Street, SW., Washington, DC 20547, Attn: M. Feldman.

Dated: August 9, 1989.
Stephen J. Schwartz,
Director, Office of Private Sector Programs.
[FR Doc. 89-19624 Filed 8-18-89; 8:45 am]
BILLING CODE 8230-01-M

Book and Library Book and Library Advisory Committee; Meeting

The United States Information Agency announces an open meeting of the Book and Library Advisory Committee on September 19, 1989, 10:00 a.m.-4:30 p.m. in room 600, USIA Headquarters, 301 Fourth St., SW., Washington, DC.

The Agenda will include a briefing for the committee members on book and library programs by officials of USIA's Bureau of Educational and Cultural Affairs. The emphasis will be on how the Committee members can best assist USIA. Committee Chairman, S. William Pattis plans to appoint subcommittees to help USIA with its book programs.

For additional information call Louise G. Wheeler or Patricia Gribben at 485-8890.

Copies of minutes can be obtained by calling 485-8889.

Dated: August 11, 1989.
Douglas Wertman,
Committee Management Officer.
[FR Doc. 89-19625 Filed 8-18-89; 8:45 am]
BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 160
Monday, August 21, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:05 p.m. on Tuesday, August 15, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider: (1) Matters relating to the Corporation's assistance agreements with insured banks; (2) matters relating to the possible failure of certain insured banks; (3) matters relating to the Corporation's corporate activities; and (4) personnel matters.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), second by Mr. Darrell W. Dochow, acting in the place and stead of Director M. Danny Wall (Director of the Office of Thrift Supervision), concurred in by Chairman L. William Seidman and Director Robert L. Clark (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: August 16, 1989.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 89-19700 Filed 8-17-89; 10:48 am]
BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:00 a.m., Thursday, August 24, 1989, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 17, 1989.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 89-19690 Filed 8-17-89; 10:18 am]
BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Thursday, August 24, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washingon, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed amendment to Regulation Y (Bank Holding Companies and Change in Bank Control) regarding acquisition of savings associations by bank holding companies, in accordance with provisions of the Financial Institutions Reform, Recovery and Enforcement Act of 1989. (Proposed earlier for public comment; Docket No. R-0614)
2. Any items carried forward from a previously announced meeting.

Note. This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: August 17, 1989.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 89-19689 Filed 8-17-89; 8:45 am]
BILLING CODE 6210-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Vote To Close Meeting

At its meeting on August 14, 1989, the Board of Governors of the United States Postal Service unanimously voted to close to public observation its meeting scheduled for September 11, 1989, in Washington DC. The meeting will concern: (1) Consideration of the Postal Rate Commission Recommended Decision Upon Reconsideration in Docket No. MC88-2, Second-Class Eligibility, and (2) consideration of a contract award for outside audit services.

As to the first item, the Board determined that, pursuant to section 552b(c)(3) of Title 5, United States Code, and section 7.3(c) of Title 39, Code of Federal Regulations, the meeting is exempt from the open meeting requirements of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information in connection with proceedings under Chapter 36 of Title 39 (having to do with postal rate making, classification, and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of Title 39, United States Code. The Board also determined that pursuant to section 552b(c)(10) of Title 5, United States Code, and section 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern the participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing.

As to the second item, the Board determined that pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and section 7.3(i) of Title 39, Code of Federal Regulations, discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act, [5 U.S.C. 552b(b)], because it is likely to disclose information, the premature disclosure of

which would likely significantly frustrate the implementation of a proposed procurement action.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3), (9)(B), and (10) of Title 5, United States Code, and section 7.3 (c), (i), (j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 89-19748 Filed 8-17-89; 1:33 pm]

BILLING CODE 7710-12-M

RESOLUTION TRUST CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:33 p.m. on Tuesday, August 15, 1989, the Board of Directors of the Resolution Trust Corporation met in closed session to consider (1) matters regarding the Corporation's corporate activities; and (2) matters relating to the resolution of certain depository institutions placed in conversatorship under the joint regulatory oversight program.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, and Mr. Darrell W. Dochow, acting in the place and stead of Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, N.W., Washington DC.

Dated: August 16, 1989.

Resolution Trust Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 89-19761 Filed 8-17-89; 8:45 am]

BILLING CODE 6714-01-M

federal register

Monday
August 21, 1989

Part II

State Justice Institute

Grant Guidelines; Notice

STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Proposed grant guideline

SUMMARY: This Guideline sets forth the proposed administrative, programmatic, and financial requirements attendant to Fiscal Year 1990 State Justice Institute grants, cooperative agreements, and contracts.

DATE: The Institute invites public comment on the Guideline until September 20, 1989.

ADDRESS: Comments should be sent to: State Justice Institute, 120 S. Fairfax St., Alexandria, Va. 22314.

FOR FURTHER INFORMATION CONTACT: David I. Tevelin, Executive Director, or Richard Van Duizend, Deputy Director, at the above address, or at (703) 684–6100.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, et seq., as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the administration of justice in the State courts of the United States. Approximately $10 million is expected to be available for award in FY 1990.

The Guideline published for comment below establishes the Institute's funding schedule, priorities, and procedures for FY 1990. As in previous years, the Guideline sets forth "Special Interest" categories of Institute funding. Several proposed administrative changes are also summarized below.

FY 1990 Funding Schedule

The FY 1990 concept paper deadline is November 30, 1989. Papers must be postmarked by that date. The Board of Directors will meet on March 9–11, 1990 to invite formal applications based on the most promising concept papers. Applications will be due in mid-May, and awards approved by the Board in mid-July.

This will be the only round of funding in FY 1990. The FY 1991 funding cycle is expected to begin with submission of concept papers in late November, 1990 and to follow the same general schedule. However, the Institute will consider proposals submitted after the established deadlines if the Board determines that "time factors or other critical considerations" justify waiving the deadlines or concept paper requirement. See section VI.

Special Interest Categories

The Board proposes to reduce the 21 Special Interest categories in the FY 1989 Grant Guideline to 15. Three FY 1989 Special Interest categories are proposed for elimination: "The Impact of User Fees on Court Revenues and the Access to Justice"; "The Implications of AIDS for the Courts"; and "Courthouse Security and Operation."

Several other FY 1989 Special Interest categories have been consolidated into new FY 1990 categories. The FY 1989 categories entitled "Judicial and Court Personnel Career Enhancement" and Careers in the Courts" have been combined into a new category entitled "Career Development in the Courts." See section II.B.2.a. The FY 1989 categories entitled "Enforcement of Fines and Orders To Pay," "Improved Enforcement and Management of Probation," and "Review and Enforcement of Continuing Court Orders" have been merged into a new category, "Enforcement of Court Orders." See section II.B.2.j.

In addition, the FY 1989 Special Interest category on jury issues has been refocused on improving the use of juries. Many of the jury system management issues included in last year's Guideline have been included in the Special Interest category on the "Reduction of Litigation Expense and Delay." See sections II.B.2. h. and i. The Special Interest category entitled "Special Needs of the Largest Urban Courts" has been dropped from the list of Special Interest categories, but retained in the Guideline as a potential "set-aside" category in the same manner as "Single Jurisdiction" projects. See section II.C.2. One new Special Interest category has been added: "Improving Communication and Coordination Between Courts." Section II.B.2.e.

Two other Special Interest categories are also highlighted for comment. The "Education and Training for Judges and Other Key Court Personnel" category (section II.B.2.b.) contains the funding allocations published for public comment on May 12, 1989, as part of the Institute's Judicial Education Support Strategy. 54 FR 20764. The allocations remain the same as published, but the language has been revised to clarify that the allocations are not "target" amounts but estimated allocations, depending on the volume and quality of proposals submitted both in that Special Interest category and in other Guideline areas and categories. The Board also wishes to clarify that the allocations will be reconsidered in each year's Guideline and adjusted annually, as appropriate, in light of the Institute's experience and perceptions of the educational needs of judges and other court personnel. The Board specifically invites comment on the nature and scope of the sub-categories, as well as the amount of estimated funding to be allocated to each sub-category.

The Board also invites comment on whether "formula" grants should be awarded to each State for the purpose of supporting the travel costs incurred by judges and other court personnel in attending in-State or out-of-State educational sessions. The Board specifically solicits comment on the appropriate basis for making such "formula" grants, e.g., State population, number of judges, amount of State funding dedicated to training judges and other court personnel, as well as on the wisdom of the approach generally.

The "Alternative Dispute Resolution" category (section II.B.2.c.) is also highlighted for comment because of its inclusion of a major focus on the impact of private judging services on the State courts.

Other Special Interest categories have also been revised to accord new emphasis to some topics, or to clarify their focus and intent.

Administrative Changes

Several minor administrative changes have been made in the proposed Guideline. Section VII ("Application Requirements for New Projects") has been revised to clarify what should be included in the description of a project's objectives; what evaluation approaches should be considered for various types of projects; and what information and explanations are needed to justify budget items. Section VII.D.12. now makes explicit the requirement that applicants describe the manner in which in-kind match contributions will be documented.

Section IX ("Renewal Funding Procedures and Requirements") has been revised to clarify what information must be provided to the Institute in an application for continuation or on-going support. Section X ("Compliance Requirements") has been amended to clarify that when a cash match is offered, the Institute may reduce the award amount if the full cash match is not contributed. See section X.B.; see also Section XI.D. Section XI ("Financial Requirements") also has been amended to include expressly a longstanding Institute policy prohibiting the use of grant funds to support the travel costs of a member of an organization to attend an annual or other standing meeting of the organization; to clarify the audit reporting requirements; to describe the contents of Final Financial and Progress Reports; and to specify that after the end of the grant period, any unused grant funds must be remitted as soon as it is determined that they will not be required to meet outstanding obligations. Section XII has been revised to set forth the procedures for transferring a grant from one organization to another.

Recommendations to Grantseekers

Over the past three years, Institute staff have reviewed approximately 600 concept papers and 300 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals that can meet the funding criteria set forth in this guideline. Suggestions regarding the preparation of application budgets have been added to the recommendations for concept papers and applications made in last year's Guideline.

The Institute suggests that applicants make certain that they address the following questions and issues when preparing a concept paper or application:

1. *What is the subject or problem you wish to address?* Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote.

2. *What do you want to do?* Explain the goal(s) of the project in simple, straightforward terms. To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper.

3. *How will you do it?* Describe the methodology carefully so that what you propose to do and how you would do it is clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks and relate these tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, err on the side of caution and provide the additional information. A description of project tasks will also help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed.

4. *How will you know it works?* Every project design must include an evaluation component to determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Concept papers and applications should describe the criteria that will be used to evaluate the project's effectiveness and identify program elements which will require further modification. The description in the application should include how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

5. *How will others find out about it?* Every project design must include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, presentations at appropriate conferences, or the distribution of key materials. A statement that a report or research findings "will be made available to" the field is not sufficient. The specific means of distribution or dissemination should be identified. Reproduction and dissemination costs are allowable budget items.

6. *What are the specific costs involved?* The budget in both concept papers and applications should be clearly presented. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be clearly identified.

7. *What, if any, match is being offered?* Courts and other units of State and local government (not including publicly supported institutions of higher education) are required by the State Justice Institute Act, as amended, to contribute a match (cash, non-cash, or both) of not less than 50 percent of the grant funds requested from the Institute. All other applicants are also encouraged to provide a matching contribution to assist in meeting the costs of a project. The match requirement works as follows: If the total cost of a project is anticipated to be $150,000, a State or local court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as match.

Cash match includes funds directly contributed to the project by the applicant, or by other public or private sources. Non-cash match refers to in-kind contributions by the applicant, or other public private sources. When match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which costs will be covered wholly or in part by match should be specified.

8. *Which of the two budget forms should be used?* Section VII.A.3. of the SJI Grant Guideline encourages use of the spreadsheet format of Form C1 if the funding request exceeds $100,000. Form C1 also works well for projects with discrete tasks, no matter what the dollar value of the project. Form C, the tabular format, may be preferred for projects lacking a number of discrete tasks, or for projects requiring less than $100,000 of Institute funding. Generally, it is acceptable to use the form that best lends itself to representing most accurately the budget estimates for the project.

9. *How much detail should be included in the budget narrative?* The budget narrative of an application should provide the basis for computing all project-related costs, as indicated in section VII.D. of the SJI Grant Guideline. To avoid common shortcomings of application budget narratives, the following information should be included:

- Personnel estimates that accurately provide the amount of time to be spent by personnel involved with the project and the total associated costs, including current salaries for the designated personnel (e.g., Project Director, 50% for one year, annual salary of $30,000 = $15,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work-year should be shown.
- Estimates for supplies and expenses supported by a complete description of the supplies to be used, nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (e.g., 100 reports × 75 pages each × .05/page = $375.00). Supply and expense estimates offered simply as "based on experience" are not sufficient.

In order to expedite Institute review of the budget, applicants should make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form against those in the narrative will preclude such confusion.

10. *What travel regulations apply to the budget estimates?* Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which regulations are in force for the project and should include the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, and other subsistence should be listed separately. When combined, the subtotals for these categories should equal the estimate listed on the budget form.

11. *May grant funds be used to purchase equipment?* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The budget narrative must list such equipment and explain why the equipment is necessary. Written prior approval of the Institute is required when the amount of automatic data processing equipment to be purchased or leased exceeds $10,000, or the software to be purchased exceeds $3,000.

12. *To what extent may indirect costs be included in the budget estimates?* It is the policy of the Institute that all costs should be budgeted directly; however, if an applicant has an indirect cost rate that has been approved by a Federal agency within the last two years, an indirect cost recovery estimate may be included in the budget. A copy of the approved rate agreement should be submitted as an appendix to the application. If an applicant does not have an approved rate agreement, an indirect cost rate proposal should be prepared in accordance with Section XI.H.3 of the Grant Guideline, based on the applicant's audited financial statements for the prior fiscal year (applicants lacking an audit must budget all project costs directly). If an indirect cost rate proposal is to be submitted, the budget should reflect estimates based on that proposal. Obviously, this requires that the proposal be completed for the applicant's use at the time of application so that the appropriate estimates may be included; however, grantees have until three months after the project start date to submit the indirect cost proposal to the Institute for approval.

13. *Does the budget truly reflect all costs required to complete the project?* After preparing the program narrative portion of the application, applicants may find it helpful to list all the major tasks or activities required by the proposed project, including the preparation of products, and note the individual expenses, including personnel time, related to each. This will help to ensure that, for all tasks described in the application (e.g., development of a videotape, research site visits, distribution of a final report), the related costs appear in the budget and are explained correctly in the budget narrative.

Contact Persons for State Agencies Administering Institute Grants to State and Local Courts

The Institute would appreciate information regarding the name, title, address and telephone number of the person designated by the State Supreme Court to be responsible for overseeing the administration of Institute grants awarded to the courts of the State. A list of the persons currently so designated is appended to the guideline.

Proposed State Justice Institute Grant Guideline

The following Grant Guideline is accordingly adopted by the State Justice Institute for Fiscal Year 1990:

State Justice Institute Grant Guideline

Summary

I. Background
II. Scope of the Program
III. Definitions
IV. Eligibility for award
V. Types of projects and amounts of awards
VI. Concept Paper Submission Requirements for New Projects
VII. Application Requirements for New Projects
VIII. Application Review Procedures
IX. Renewal Funding Procedures and Requirements
X. Compliance Requirements
XI. Financial Requirements
XII. Grant Adjustments
Appendix—Contact Persons for State Agencies Administering Institute Grants to State and Local Courts

Summary

This Guideline sets forth the programmatic, financial, and administrative requirements of grants, cooperative agreements, and contracts awarded by the State Justice Institute. The Institute, a private nonprofit corporation established by an Act of Congress, is authorized to award grants, cooperative agreements and contracts to State and local courts and their agencies; national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branch of State governments; and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments.

The Institute may also award funds to other nonprofit organizations with expertise in judicial administration; institutions of higher education; individuals, partnerships, firms, or corporations; and private agencies with expertise in judicial administration if the objectives of the funded program can be better served by such an entity. Funds may also be awarded to Federal, State or local agencies and institutions other than courts for services that cannot be provided for adequately through nongovernmental arrangements.

Approximately $10 million is available for grants, contracts, and cooperative agreements from FY 1990 appropriations. The Institute may also provide financial assistance in the form of interagency agreements with other grantors. The Institute will consider applications for funding support that address any of the areas specified in its enabling legislation; however, the Board of Directors of the Institute has designated certain program categories as being of special interest.

The Institute has established one round of competition for FY 1990 funds, with a concept paper submission deadline of November 30, 1989. This guideline applies to concept papers and formal applications submitted for FY 1990 funding.

The awards made by the State Justice Institute are governed by the requirements of this guideline and the authority conferred by Pub. L. 98–620, Title II, 42 U.S.C. 10701, *et seq.* as amended.

I. Background

The State Justice Institute ("Institute") was established by Public Law 98–620 to improve the administration of justice in the State courts in the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an eleven-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator and four members of the public, no more than two of whom can be of the same political party.

The Institute's program budget for Fiscal Year 1990 is approximately $10 million. Through the award of grants, contracts and cooperative agreements, the Institute is authorized to perform the following activities:

1. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

2. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

3. Participate in joint projects with Federal agencies and other private grantors;

4. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

5. Encourage and assist in furthering judicial education;

6. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

7. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

During FY 1990, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board, however, has designated certain program categories as being of "special interest." See section II.B.

A. Authorized Program Areas

The State Justice Institute Act authorizes the Institute to fund projects addressing one or more of the following program areas:

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards; and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity; and the development, testing and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

14. Other programs, consistent with the purposes of the Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems in areas where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

Funds will *not* be made available for the ordinary, routine operation of court systems in any of these areas.

B. Special Interest Program Categories

1. General Description.

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. Although applications in any of the statutory

program areas are eligible for funding in FY 1990, the Institute is especially interested in funding those projects that:

a. Formulate new procedures and techniques, or creatively enhance existing arrangements to improve the courts;

b. Address aspects of the State judicial systems that are in special need of serious attention;

c. Have national significance in terms of their impact or replicability in that they develop products, services and techniques that may be used in other States;

d. Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions. A project will be identified as a "Special Interest" project if it meets the four criteria set forth above and (1) it falls within the scope of the "special interest" program areas designated below or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

Concept papers and applications which address a "Special Interest" category will be accorded a preference in the rating process. (See the selection criteria listed in sections VI.B., "Concept Paper Submission Requirements for New Projects," and VIII.B., "Application Review Procedures.")

2. Specific Categories.

The Board has designated the areas set forth below as "Special Interest" program categories. The order of listing does not imply any ordering of priorities among the categories.

a. *Career Development in the Courts.* This category includes the development and testing of innovative methods to enhance judicial and court personnel careers, other than direct increases in salary, and innovative methods to attract and select persons in the judiciary and other court occupations. These methods could include approaches that emphasize the intrinsic rewards of the profession, such as job enrichment and participative management strategies, judicial and nonjudicial personnel exchange programs, innovative programs or techniques for reducing judicial stress or "burnout," sabbatical programs, or mentoring programs. This category also includes efforts to prepare lawyers for judicial careers, to encourage qualified persons to seek and accept positions as judges and court professionals, and to evaluate the impact of equal employment opportunity policies on court personnel, administration and the public perception of the courts.

In addition, the Board is interested in supporting projects to assess and enhance university-based programs preparing individuals for careers in court management. Possible projects include an assessment of current curricula in terms of the emerging needs of the field; a study of ways to attract students to court management courses more effectively; and the development or enhancement of a specific university-based program.

b. *Education and Training for Judges and Other Key Court Personnel.* The Board of Directors anticipates allocating approximately $3,350,000 for judicial education projects in FY 1990. Of this amount, it is expected that up to $2,600,000 will provide support to projects which the Institute has not funded previously, and up to $750,000 will provide renewal funding for judicial education programs of proven merit under Section IX of the Guideline. The exact amount to be awarded in each subcategory listed below will depend on the number and quality of the applications submitted in both this Special Interest category and other areas of the Guideline. The Board anticipates allocating the $2,600,000 available for new awards in Fiscal Year 1990 as follows:

i. State Initiatives	$750,000
ii. National/Regional Training Programs	750,000
iii. Technical Assistance	600,000
iv. Conferences	500,000
Total	2,600,000

i. *State Initiatives.* This category includes support for training projects developed or endorsed by a State's courts for the benefit of judges and other court personnel in that State. Funding of these initiatives does not include support for training programs conducted by national providers of judicial education unless such a program is designed specifically for a particular State and has the express support of the State Chief Justice, State Court Administrator, or State Judicial Educator. The types of prog ams to be supported within this category should be defined by individual State need but may include:

—The development of State-determined standards for judicial education;
—The preparation of State plans for judicial education, including model plans for career-long education for the judiciary (e.g., new judge training and orientation followed by continuing education and career development);
—Seed money for the creation of an ongoing State-based entity for planning, developing and administering judicial education programs;
—The development of a pre-bench orientation program and other training for new judges;
—The development of benchbooks and other educational materials; and
—Seed money for innovative continuing education and career development programs, including training which brings teams of judges, court managers and other court personnel together to address topics of mutual interest and concern.

ii. *National and Regional Training Programs.* This category includes support for national or regional training programs developed by any provider, e.g., national organizations, State courts, universities, or public interest groups. Within this category, priority will be given to training projects which address issues of major concern to the State judiciary and other court personnel. Programs to be supported may include:

—Training programs or seminars on topics of interest and concern that transcend State lines;
—Multi-State or regional training programs sponsored by national organizations, State courts or universities; and
—Specialized training programs for State trial and appellate court judges, State and local court managers, or other court personnel.

iii. *Technical Assistance.* Unlike the preceding categories which support direct training, "Technical Assistance" refers to services necessary for the development of effective educational projects for judges and other court personnel. Projects in this category should focus on the needs of the States, and applicants should demonstrate clearly their ability to work effectively with State judicial educators.

Within this category, priority will be given to the support of projects focused on State-to-State, State-to-national, and national-to-State transfer of ideas and information. Support and assistance to be provided by such projects may include:

—Development of educational curricula and support materials;
—Training faculty in adult education theory and practice;
—Consultation on planning, developing and administering State judicial education programs;
—Coordination and exchange of information among judicial education providers;
—Collection and dissemination of information about exemplary adult and continuing judicial education programs;
—Development of improved methods of evaluating court education programs; and
—On-site assistance in any of the areas listed above.

iv. *Conferences.* This category includes support for regional or national conferences on topics of major concern to the State judiciary and court personnel.

Court education programs should assure that faculty understand and apply adult education techniques and teaching methods; provide opportunities for structured interaction among participants; develop tangible products and materials for use by the faculty, participants and other judicial educators; employ a process for the recruitment of qualified and effective faculty; and develop sound methods for evaluating the impact of the training.

c. *Alternative Dispute Resolution (ADR).* This category covers the evaluation of new and existing dispute resolution procedures and programs that have a substantial likelihood of resolving complex civil litigation, and cases involving families and children (e.g., divorce, child support, visitation, and custody, juvenile delinquency, children in need of supervision, and child abuse and neglect) more fairly, more expeditiously and less expensively than the traditional court process, with particular emphasis on the impact of those procedures and programs on the quality of justice provided, litigant and court costs, court workload, and case processing.

This category also includes evaluation of the impact of "settlement weeks" in civil cases and the examination of the judicial role in settling cases, including the effectiveness of various settlement techniques that judges may use, the most appropriate point(s) in the litigation process to convene a settlement conference, and the ethical questions that may confront a judge seeking to settle a case.

The Board is especially interested in empirical research projects that would examine the impact of "private judging services" on the State courts, including studies of:

—The volume and nature of cases, e.g., contract, tort, insurance, being adjudicated by private judging organizations;
—The types of substantive legal issues, e.g., grounds for liability, that are being adjudicated, the types of procedures used to adjudicate cases and the frequency with which those procedures used;
—The "due process" protections afforded by private judging organizations, including evidentiary rules;
—The types of parties in such cases, including the demographic and economic characteristics of both plaintiffs and defendants;
—The factors that motivate litigants to take their cases to private judges;
—The disposition of the cases, including the speed of disposition, the satisfaction of the parties, and the frequency with which judgments are being brought to the State courts for enforcement or appeal;
—The effect that private judging organizations have had on the caseload of State courts in the immediate jurisdiction; and
—The numbers of judges retained by such organizations, their legal backgrounds, their compensation, and the factors that motivated their decision to seek and accept employment with such organizations.

To help interested applicants secure the cooperation of the organizations to be studied, the Institute plans to send letters expressing its interest in such research projects to leading private judging organizations in the near future. The letters will solicit their cooperation and explain the confidentiality and human subject protection provisions of the SJI Act and Grant Guideline.

d. *The Future and the Courts.* This category includes research on the changing demands and circumstances that will face the courts in the 21st century, and the long-range planning and implementation of modifications that may be needed in court organization, financing, procedures, services, personnel, and facilities to respond to those demands and circumstances. A proposed project could focus on such issues as:

—The possible changes in court structure, court administration, or legal authority that might help the State courts more effectively administer justice;
—How developments in biology, chemistry, disease and disease control, engineering, genetics, computer design and other sciences are likely to affect the cases adjudicated by the State courts; and
—The impact that demographic changes in the American population over the next generation will have on the State courts.

e. *Improving Communication and Coordination Among Courts.* This category includes the development, implementation and evaluation of innovative procedural, administrative, technological, and organizational methods to improve communication and coordination among State courts and between State and Federal courts hearing related cases. Among the circumstances in which such improved communication and coordination are particularly needed, are:

—Instances in which multiple cases are pending involving members of a single family (e.g., divorce, domestic violence, child support, and child custody proceedings);
—Post conviction challenges in capital cases;
—Mass tort litigation; and
—Instances in which a litigant in a State civil, criminal, or domestic relations case is subject to a Federal bankruptcy proceeding.

f. *Application of Technology.* This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels.

The Board seeks to support local experiments with promising but untested applications of technology in the courts that include a structured evaluation of the impact of the technology in terms of costs, benefits, and staff workload. In this context, untested refers to applications of technology that are not used widely by the courts or that include a unique element to enhance their usefulness to the courts. (See paragraph XI.H.2.b. regarding the limits on the use of grant funds to purchase equipment and software.)

In previous funding cycles, grants have been awarded to support development and evaluation of: an interactive computerized information system to assist pro se litigants; the effects, costs, and benefits of videotape as a technique for making the record of trial court proceedings; an automated microfilm system and an optical disk system for maintaining and retrieving probate court records; an electronic mail system and computer-based bulletin board to facilitate information transfer among criminal justice agencies in adjoining local jurisdictions; an automated Statewide records management system; the effects of telephone conferencing in interstate

BEST COPY AVAILABLE

child support cases; the integration of bar-coding technology with an existing automated case management system; and the use of FAX technology by courts. Current grants are also supporting the development of court automation performance standards and the development of a court technology bulletin and court technology assistance services.

g. *Improving the Decisionmaking Process in the Appellate Courts.* The Board specifically invites proposals for establishing intermediate appellate court panels responsible for handling specific subject matter cases. The Board would like to support a carefully designed and evaluated "subject matter panel" experiment to test whether such panels result in more uniformity and stability in the law; preserve judicial authority and avoid undue delegation to non-judicial staff; and expedite the decisionmaking process.

The Board contemplates that the subject matter panels would consist of three to five judges who are assigned specific types of cases, e.g., torts, family matters, property cases. Criminal cases could be assigned to one panel or allocated among all of them. The panels need not be permanent but could shift through gradual rotation. For a more thorough discussion of subject matter panels, see Meador, "An Appellate Court Dilemma and a Solution Through Subject Matter Organization," 16 *Journal of Law Reform* 471 (1983).

In addition, the Board is interested in supporting projects which examine the usefulness of structural changes and procedures designed to expedite the decisionmaking process in the appellate courts, including innovative procedures for the submission of cases through oral argument without traditional briefing, and the application of differential case management techniques to the appellate process.

h. *Reduction of Litigation Expense and Delay.* This category includes the implementation and evaluation of innovative programs and procedures designed to reduce substantially the expense and delay in civil, criminal, domestic relations, juvenile or other types of litigation at the trial or appellate level (or both); the examination of effective methods of limiting the expense and delay arising from the use of discovery procedures; and the development, implementation and evaluation of legal and administrative procedures to expedite the jury selection and empanelment process, reduce the expense of operating the jury system, and limit the cost and inconvenience of jury service.

i. *The Use of Juries.* This category includes the evaluation of legal and administrative procedures relating to jurors that are designed to enhance the fairness and expeditiousness of the litigation process, such as improved methods for orienting and instructing jurors, the clarification of jury instructions, permitting jurors to take notes or ask questions, the use of jury panels of different sizes, the acceptance of non-unanimous verdicts, the use of "blue ribbon" panels, or the elimination of juries in specified classes of cases.

j. *Enforcement of Court Orders.* This category includes the development, implementation and evaluation of the effectiveness and costs of innovative methods of enforcing compliance with court orders. These methods may apply to orders issued in a range of cases, such as orders imposing fines, restitution, community service, or conditions of probation in a criminal or juvenile delinquency proceeding; orders requiring payment of child support or setting the terms for visitation and custody in divorce and paternity cases; dispositional orders in child abuse and neglect, civil commitment, guardianship, and institutional reform litigation; and protection orders in domestic violence proceedings.

k. *Substance Abuse.* This category includes the planning and presentation of conferences, seminars, or other forums for judges, probation officers, caseworkers and other court personnel to examine court-related issues concerning drug and alcohol abuse, and to discuss the appropriate role of the courts in addressing the problem of substance abuse; the development and testing of profiles, guides, risk assessment instruments and other tools to assist judges in making release, dispositional and treatment decisions in cases involving substance-abusing persons; the development and evaluation of innovative case management techniques for handling the increasing volume of substance abuse-related cases fairly and expeditiously; and the evaluation of the effectiveness of innovative drug and alcohol treatment programs that are administered directly by the courts or through contracts negotiated between the service providers and the courts.

l. *Responding to the Court-Related Needs of Victims of Crime and Witnesses.* This category includes the implementation and evaluation of innovative court-based programs and procedures for providing fair treatment to victims of crime and witnesses. Court-based programs are those that are administered directly by the courts or through contracts negotiated between service providers and the courts. Programs and services operating in prosecutors' offices are ordinarily not considered favorably for funding. Eligible projects may involve civil, criminal, domestic relations, and other types of cases, including but not limited to demonstrations and evaluations of programs and procedures to assure the fair, effective and efficient handling of domestic violence cases, such as: the appropriate use of court-ordered domestic violence mediation programs; evaluations of innovative court-ordered treatment programs for offenders and their families; and implementation and evaluation of innovative procedures governing the issuance and enforcement of protective orders.

m. *Responding to the Court-Related Needs of Elderly and Disabled Persons.* This category includes research and demonstration projects on issues related to access to the courts by elderly persons and physically or mentally disabled persons, and the fair and effective handling of cases affecting those persons. The issues that may be addressed include but are not limited to:

—The fair and effective consideration of cases concerning the provision of medical, mental health, social and support services to;
—The fair and effective consideration of cases concerning the imposition of plenary or limited surrogate decisionmakers; and
—The improvement of access to courthouses and court proceedings for litigants, jurors, witnesses, and victims of crime who have mobility or communication impairments.

n. *Public Education about the Courts.* This category includes projects designed to improve the public's understanding of the courts, such as the development of videotapes and other informational materials to be shown to citizens' groups or in schools; the development of survey instruments by which the courts could determine areas of public dissatisfaction or misunderstanding; and other innovative approaches to enhancing the public's understanding of the purpose of the courts, the operations of the judicial system, and the system's responsiveness to its citizens.

o. *The Relationship Between State and Federal Courts.* This category includes research to develop creative ideas and procedures that could improve the administration of justice in the State courts and at the same time reduce the work burdens of the Federal courts. Such research projects might address innovative State court procedures for:

—Reducing the burdens attendant to Federal habeas corpus cases involving State convictions;
—Handling civil, criminal, domestic relations or other types of cases in which a party also is subject to a Federal bankruptcy proceeding;
—Processing complex multistate litigation in the State courts;
—Facilitating the adjudication of Federal law questions by State courts with appropriate opportunities for review; and
—Otherwise allocating judicial burdens between and among Federal and State courts.

Other possible areas of research include studies examining the impact of the enforcement of selected Federal statutes on the State courts, and the factors that motivate litigants to select the Federal or State courts in cases in which there is concurrent jurisdiction.

C. Programs Addressing a Critical Need of a Single State or Local Jurisdiction

1. The Board will consider supporting a limited number of projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction.

Concept papers and applications requesting funds for projects under this section must meet the requirements of sections VI ("Concept Paper Submission Requirements for New Projects") and VII ("Application Requirements"), respectively, and must demonstrate that:

a. The proposed project is essential to meeting a critical need of the jurisdiction; and

b. The need cannot be met solely with State and local resources within the foreseeable future.

2. The Board has established two categories of such projects:

a. *Critical Needs of the Largest Urban Courts.* This category is limited to projects submitted by State or local court systems regarding the implementation and evaluation of programs and procedures to address the critical needs of a trial court serving a city or county with a population of at least 1,000,000 persons. Such projects might include but are not limited to the development and testing of improved methods to assist those courts in selecting, retaining and removing judges, or projects to relieve acute problems in the court's ability to handle civil, criminal, domestic relations, juvenile and other types of cases in a fair and timely manner. The Board will consider awarding grants of up to $500,000 each to support projects in this category. The Board has set aside up to $1,000,000 of available grant funds to support such projects.

b. *Projects Addressing the Critical Needs of Other State and Local Jurisdictions.* This category includes projects addressing a critical need of a State or local jurisdiction that is not a major urban court, as defined in the preceding paragraph. A project within this category may address any of the topics included in the Special Interest Categories or statutory Program Areas. The Board has set aside up to $500,000 of available grant funds to support such projects.

3. All awards under this category are subject to the matching requirements set forth in section X.B.

III. Definitions

The following definitions apply for the purposes of this guideline:

A. *Institute.* The State Justice Institute.

B. *State Supreme Court.* The highest appellate court in a State, unless, for the purposes of the Institute program, a constitutionally or legislatively established judicial council acts in place of that court. In States having more than one court with final appellate authority, *State Supreme Court* shall mean that court which also has administrative responsibility for the State's judicial system. *State Supreme Court* also includes the office of the court or council, if any, it designates to perform the functions described in this guideline.

C. *Designated Agency or Council.* The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

D. *Grantor Agency.* The State Justice Institute.

E. *Grantee.* The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, *grantee* refers to the State Supreme Court.

F. *Subgrantee.* A State or local court which receives Institute funds through the State Supreme Court.

G. *Match.* The portion of project costs not borne by the Institute. *Match* includes both cash and in-kind contributions.

H. *Renewal Funding.* A grant to support an existing project for an additional period of time. Renewal funding may take the form of a continuation grant or an on-going support grant.

I. *Continuation Grant.* A grant of no more than 24 months to permit completion of activities initiated under an existing Institute grant or enhancement of the programs or services produced or established during the prior grant period.

J. *On-Going Support Grant.* A grant of up to 36 months to support a project that is national in scope and that provides the State courts with services, programs or products for which there is a continuing important need.

K. *Human Subjects.* Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions and/or experiences through an interview, questionnaire, or other data collection technique(s).

IV. Eligibility for Award

In awarding funds to accomplish these objectives and purposes, the Institute has been directed by Congress to give priority to State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)); national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705(b)(1)(B)); and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).

An applicant will be considered a "priority" education and training applicant under section 10705(b)(1)(C) if: (1) The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and (2) the applicant demonstrates a record of substantial experience in the field of judicial education and training.

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration, institutions of higher education, individuals, partnerships, firms, corporations, and private agencies with expertise in judicial administration, provided that the objectives of the relevant program area(s) can be served better. In making this judgment, the Institute will consider the likely replicability of the projects' methodology and results in other jurisdictions. For-profit organizations are also eligible for grants and cooperative agreements; however, they must waive their fees.

Finally, the Institute is authorized to make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's

Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section XI.B.2 of this guideline. A list of persons to contact in each State regarding approval of applications from State and local courts and administration of Institute grants to those courts is contained in the Appendix.

V. Types of Projects and Amounts of Awards

A. Types of Projects

Except as expressly provided in section II.B.2.b. and II.C. above, the Institute has placed no limitation on the overall number of awards or the number of awards in each special interest category. The general types of projects are:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

B. Size of Awards

1. Except as specified in paragraphs V.B.2. and 3., concept papers and applications for new projects and applications for continuation grants may request funding in amounts up to $300,000, although awards in excess of $200,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. A project addressing the needs of the largest urban courts under Section II.C.2.a. may receive support of up to $500,000.

3. Applications for on-going support grants may request funding in amounts up to $300,000. At the discretion of the Board, the funds to support ongoing support grants may be awarded either entirely from the Institute's appropriations for the Fiscal Year of the award or from the Institute's appropriations for successive Fiscal Years beginning with the Fiscal Year of the award. When funds to support the full amount of an ongoing support grant are not awarded from the appropriations for the Fiscal Year of award, funds to support the second and any subsequent years of the grant will be made available upon the satisfactory performance of the project as reflected in the quarterly Progress Reports required to be filed and routine grant monitoring, and subject to the availability of appropriations for that Fiscal Year.

C. Length of Grant Periods

1. Grant periods for all new and continuation projects ordinarily will not exceed 24 months.

2. Grant periods for on-going support grants ordinarily will not exceed 36 months.

VI. Concept Paper Submission Requirements for New Projects

Concept papers are an extremely important part of the application process because they enable the Institute to learn the program areas of primary interest to the courts and to explore innovative ideas, without imposing heavy burdens on prospective applicants. The use of concept papers also permits the Institute to better project the nature and amount of grant awards. Because of their importance, the Institute requires all parties requesting financial assistance from the Institute (except those seeking renewal funding pursuant to section IX.) to submit concept papers prior to submitting a formal grant application. This requirement and the submission deadlines for concept papers and applications may be waived by the Board if it determines that time factors or other critical considerations justify the waiver.

A. Format and Content.

Concept papers must include a cover sheet and a narrative.

1. The cover sheet must contain:

a. A title describing the proposed project;

b. The name and address of the court, organization or individual submitting the paper; and

c. The name, title, address (if different from that in b.), and telephone number of a contact person who can provide further information about the paper.

2. The narrative must be no more than 10 doublespaced pages on 8½ by 11 inch paper. Margins should not be less than 1 inch. The narrative should contain:

a. *Program Areas To Be Covered.* A statement which lists the program areas set forth in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest program categories that are addressed by the proposed project. Applicants should explain the proposed project's relationship to a Program Area or Special Interest Category only if it is not obvious.

b. An explanation of the need for the project. If the project is to be conducted in a specific location(s), applicants should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services or other resources.

If the project is not site specific, applicants should discuss the problems that the proposed project will address, and explain why existing materials, programs, procedures, services or other resources do not adequately resolve those problems.

c. A summary description of the approach to be taken;

d. A summary description of how the project will be evaluated, including the evaluation criteria;

e. A description of the products that will result, the degree to which they will be applicable to courts across the nation, and the manner in which the products and results of the project will be disseminated;

f. An explanation of the expected benefits to be derived from the project;

g. The identity of the key staff (if known) and a summary description of their qualifications;

h. A preliminary budget estimate including the anticipated costs for personnel, fringe benefits, travel, equipment, supplies, contracts, indirect costs, and other anticipated major expenditure categories;

i. The amount, nature (cash or non-cash), and source of match to be provided (see section X.B.); and

j. A statement of whether financial assistance for the project has been or will be sought from other sources.

3. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. The Institute will not accept concept papers exceeding 10 pages. The page limit does not include letters of cooperation or endorsements. Additional material should not be attached unless it is essential to impart a clear understanding of the project.

5. Applicants submitting more than one concept paper may include material that would be identical in each concept paper in a cover letter, and incorporate that material by reference in each paper. The incorporated material will be counted against the 10-page limit for each paper. A copy of the cover letter should be attached to each copy of each concept paper.

B. Selection Criteria

1. All concept papers will be evaluated by the staff on the basis of the following criteria:

a. The demonstration of need for the project;

b. The soundness and innovativeness of the approach described;

c. The benefits to be derived from the project; and

d. The reasonableness of the proposed budget.

2. "Special Interest" category concept papers submitted pursuant to section II.B. will also be rated on the proposed project's relationship to one of the "Special Interest" categories set forth in that section, and the degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

3. "Single jurisdiction" concept papers submitted pursuant to section II.C. will be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B., and on the special requirements listed in section II.C.1.

4. In determining which concept papers will be selected for development into full applications, the Institute will also consider the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the submitter's anticipated match; whether the submitter is a "priority applicant" under the Institute's enabling legislation (see 42 U.S.C. 10705(b)(1) and section IV above); and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

C. Review Process

Concept papers will be reviewed competitively by the Board of Directors. Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion for those concept papers which fall within the scope of the Institute's funding program and merit serious consideration by the Board. Staff will also prepare a list of those papers that, in the judgment of the Executive Director, propose projects that lie outside the scope of the Institute's funding program or are not likely to merit serious consideration by the Board. The narrative summaries, rating sheets, and list of non-reviewed papers will be presented to the Board for their review. Committees of the Board will review concept paper summaries within assigned program areas and prepare recommendations for the full Board. The full Board of Directors will then decide which concept paper applicants should be invited to submit formal applications for funding. The decision to invite an application is solely that of the Board of Directors.

D. Submission Requirements

An original and three copies of all concept papers submitted for consideration in Fiscal Year 1990 must be sent by first class or overnight mail, or by courier no later than November 30, 1989. A postmark or courier receipt will constitute evidence of the submission date. All envelopes containing concept papers should be marked Concept Paper and should be sent to State Justice Institute, 120 S. Fairfax Street, Alexandria, Virginia 22314.

Receipt of each concept paper will be acknowledged in writing. Extensions of the deadline for submission of concept papers will not be granted.

The Board expects to meet on March 9–11, 1990, to review the concept papers and invite applications. The Institute will send written notice to all persons submitting concept papers of the Board's decisions regarding their papers and of the key issues and questions that arose during the review process. A decision by the Board not to invite an application may not be appealed, but does not prohibit resubmission of the concept paper or a revision thereof in a subsequent round of funding. The Institute will also notify the designated State contact listed in the Appendix when the Board invites applications that are based on concept papers which are submitted by courts within their State or which specify a participating site within their State.

VII. Application Requirements for New Projects

Except as specified in Section VI, a formal application for a new project is to be submitted only upon invitation of the Board following review of a concept paper. An application for Institute funding support must include an application form, budget forms (with appropriate documentation), a project abstract and program narrative, and certain certifications and assurances. These documents are described below.

A. Forms

1. *Application Form* (FORM A)—The application form requests basic information regarding the proposed project, the applicant, and the amount of funding support requested. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete, that submission of the application has been authorized by the applicant, and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

2. *Certificate of State Approval* (FORM B)—An application from a State or local court must include a copy of FORM B signed by the State's Chief Judge or Chief Justice, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or designated agency or council will receive, administer, and be accountable for the awarded funds.

3. *Budget Forms* (FORM C or C1)—Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM C1. Applicants requesting more than $100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, a separate form should be submitted for the portion of the project extending beyond month 12.

In addition to FORM C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (See Section VII.D.)

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

4. *Assurances* (FORM D)—This form lists the statutory, regulatory, and policy requirements and conditions with which recipients of Institute funds must comply.

B. Project Abstract.

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed one single-spaced page on 8½ by 11 inch paper.

C. Program Narrative.

The program narrative should not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins should not be less than 1 inch. The page limit does not include appendices containing resumes and letters of cooperation or endorsement. Additional background material may be attached only if it is essential to obtaining a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

1. *Project Objectives.* A clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (e.g., to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (e.g., provide training for 32 judges and court managers, or review data from 300 cases).

2. *Program Areas to be Covered.* A statement which lists the program areas set forth in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest program categories that are addressed by the proposed projects. A discussion should be included only if the relationship between the proposed project and the program areas and special interest categories is not obvious.

3. *Need for the Project.* If the project is to be conducted in a specific location(s), a discussion of the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services or other resources.

If the project is not site specific, a discussion of the problems that the proposed project will address, and why existing materials, programs, procedures, services or other resources do not adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

4. *Tasks, Methods and Evaluation.*

a. *Tasks and Methods.* A delineation of the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

For research and evaluation projects, the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to the human subjects, a discussion should be included of the value of the proposed research and the methods to be used to minimize or eliminate such risk.

For education and training projects, the adult education techniques to be used in designing and presenting the training, including the teaching methods to be used and the opportunities for structured interaction among the participants; how faculty will be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars or workshops to be conducted; the materials to be provided and how they will be developed; and the cost to participants.

For demonstration projects, the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they will be identified and their cooperation obtained; how the program or procedures will be implemented and monitored.

For technical assistance projects, the types of assistance that will be provided; the particular program area(s) for which assistance will be provided; how requests will be obtained and the type of assistance determined; how suitable providers will be selected and briefed; how reports will be reviewed; and the cost to recipients.

b. *Evaluation.* Every project design must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology or services tested; or the validity and applicability of the research conducted. The plan should present the qualifications of the evaluator(s); describe the criteria that will be used to evaluate the project's effectiveness; explain how the evaluation will be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach is appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example, an appropriate evaluation approach for many research projects is the review of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted by an advisory panel comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

An appropriate evaluation approach for many education or training projects is to obtain the reaction of training participants to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented and other relevant factors. Another appropriate approach when an education project involves the development of curricular materials is the use of an advisory panel of relevant experts coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

The evaluation plan for a demonstration project should encompass an assessment of program effectiveness (e.g., how well did it work?); user satisfaction, if appropriate; the cost effectiveness of the program; a process analysis of the program (e.g., was the program implemented as designed? did it provide the services intended to the targeted population?); the impact of the program (e.g., what effect did the program have on the court? what benefits resulted from the program?); and the replicability of the program or components of the program.

For technical assistance projects, applicants should explain how the quality, timeliness, and impact of the assistance provided will be determined.

5. *Project Management.* A detailed management plan including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that will be used to ensure that all tasks are performed on time, within budget, and at the highest level of quality. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30).

6. *Products.* A description of the products to be developed by the project (e.g., monographs, training curricula and materials, videotapes, articles, or handbooks), including when they will be submitted to the Institute. The application must explain how and to whom the products will be disseminated; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant will be offered to the courts community and the public at large. Ordinarily, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts

community nationally, an executive summary that will be disseminated to the project's primary audience, or both. The products developed by education and training projects should be designed for use outside the classroom so that they may be used again by original participants and others in the course of their duties. Fourteen copies of all project products must be submitted to the Institute.

7. *Applicant Status.* An applicant that is not a State or local court and has not received a grant from the Institute within the past two years should include a statement indicating whether it is requesting "priority status" recognition as either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. A request for recognition as a priority recipient pursuant to 42 U.S.C. 10705 (b)(1)(B) or (1)(C) must set forth the basis for designation as a priority recipient in its application. If the applicant is neither an organization qualifying as a priority recipient nor a State court, this section must demonstrate how it will serve the objectives of the relevant program area(s) in terms of replicability and other appropriate factors. Nonjudicial units of Federal, State, or local government available from non-governmental sources.

8. *Staff Capability.* A summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Résumés of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that will be used to select persons for these positions should be included.

9. *Organizational Capacity.* Applicants that have not received a grant from the Institute within the past two years should include a statement describing the capacity of the applicant to administer grant funds including the financial systems used to monitor project expenditures (and income, if any), and a summary of the applicant's past experience in administering grants, as well as any resources or capabilities that the applicant has that will particularly assist in the successful completion of the project.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the current calendar year. If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire which must be certified by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past two years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

10. *Letters of Support for the Project.* If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, written assurances of cooperation and availability should be attached as an appendix to the application.

D. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. Additional background or schedules may be attached only if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should address the items listed below. The costs attributable to the project evaluation should be clearly identified.

1. *Justification of Personnel Compensation.* The applicant should set forth the percentages of time to be devoted by the individuals who will serve as the staff of the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rate of those individuals. The applicant should explain any deviations from current rates or established written organization policies.

2. *Fringe Benefit Computation.* The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented as well as a description of the elements included in the determination of the percentage rate.

3. *Consultant/Contractual Services.* The applicant should describe each type of service to be provided. The basis for compensation rates and the method for selection should also be included. Rates for consultant services must be set in accordance with Section XI.H.2.c.

4. *Travel.* Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose for travel should also be included in the narrative.

5. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases for automatic data processing equipment must comply with section XI.H.2.b.

6. *Supplies.* The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the details supporting the total requested for this expenditure category.

7. *Construction.* Construction expenses are prohibited except for the limited purposes set forth in section X.G.2. Any allowable construction or renovation expense should be described in detail in the budget narrative.

8. *Telephone.* Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used in developing the monthly and long distance estimates.

9. *Postage.* Anticipated postage costs for project related mailings should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the justification material.

10. *Printing/Photocopying.* Anticipated costs for printing or photocopying should be included in the budget narrative. Applicants should

provide the details underlying these estimates in support of the request.

11. *Indirect Costs.* Applicants should describe the indirect cost rates applicable to the grant in detail. These rates must be established in accordance with section XI.H.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement should be attached to the application.

12. *Match.* The applicant should describe the source of any matching contribution and the nature of the match provided. Any additional contributions to the project should be described in this section of the budget narrative as well. If in-kind match is to be provided, the applicant should describe how the amount and value of the time, services, or materials actually contributed will be documented.

E. Submission Requirements

1. An application package containing the application, an original signature on FORM A (and on FORM B, if the application is from a State or local court), and four photocopies of the application package must be sent by first class or overnight mail, or by courier no later than May 23, 1990. A postmark or courier receipt will constitute evidence of the submission date. Please mark application on all application package envelopes and send to: State Justice Institute, 120 S. Fairfax Street, Alexandria, Virginia 22314. Receipt of each proposal will be acknowledged in writing. Extensions of the deadline for receipt of applications will not be granted.

2. Applicants invited to submit more than one application may include material that would be identical in each application in a cover letter, and incorporate that material by reference in each application. The incorporated material will be counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

VIII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter inviting submission of a formal application.

B. Selection Criteria

1. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

a. The soundness of the methodology;

b. The appropriateness of the proposed evaluation design;

c. The qualifications of the project's staff;

d. The applicant's management plan and organizational capabilities;

e. The reasonableness of the proposed budget;

f. The demonstration of need for the project;

g. The products and benefits resulting from the project; and

h. The demonstration of cooperation and support of other agencies that may be affected by the project.

2. "Special Interest" applications submitted pursuant to section II.B. will also be rated on the proposed project's relationship to one of the "Special Interest" categories set forth in that section, and the degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

3. "Single jurisdiction" applications submitted pursuant to section II.C. will also be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B. and on the special requirements listed in section II.C.1.

4. In determining which applicants to fund, the Institute will also consider the applicant's standing in relation to the statutory priorities discussed in section IV; the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's match; and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

C. Review and Approval Process

Applications will be reviewed competitively by the Board of Directors. The Institute staff will prepare a narrative summary of each application, and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for a grant. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

The Institute will send written notice to applicants concerning all Board decisions to approve or deny their respective applications and the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but does not prohibit resubmission of a concept paper based on that application in a subsequent round of funding. The Institute will also notify the designated State contact listed in Appendix A when grants are approved by the Board to support projects that will be conducted by or involve courts in their State.

F. Response to Notification of Approval

Applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) has not been submitted to the Institute within 30 days after notification, the approval will be automatically rescinded and the application presented to the Board for reconsideration.

IX. Renewal Funding Procedures and Requirements

The Institute recognizes two types of renewal funding—"continuation grants" and "on-going support grants." Pursuant to the procedures and requirements set forth below, the Board may, in its discretion and subject to the availability of funds, consider requests for renewal funding at times other than those set for new projects in sections VI. and VIII.

A. Continuation Grants

1. *Purpose and Scope.* "Continuation grants" are intended to support projects with a limited duration that involve the same type of activities as the previous project. They are intended to enhance the specific program or service produced or established during the prior grant period. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support.

In order for a project to be considered for continuation funding, the grantee must have completed the project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks.

2. *Application Procedures—Letters of Intent.* In lieu of a concept paper, a grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and must contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested and a brief description of anticipated changes in scope, focus or audience of the project.

b. Letters of intent will not be reviewed competitively. Institute staff will review the proposed activities for the next project period and, within 30 days of receiving a letter of intent, inform the grantee of specific issues to be addressed in the continuation application and the date by which the application for a continuation grant must be submitted.

3. *Application Format.* An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of an application for a continuation grant should address:

a. *Need for Continuation.* Explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation will benefit the participating courts or the courts community generally. That is, to what extent will the goals and objectives of the project be unfulfilled if the project is not continued, and conversely, how will the findings or results of the project be enhanced by continuing the project?

b. *Report of Current Project Activities.* Discuss the status of all activities conducted during the previous project period, identify any activities that were not completed, and explain why.

c. *Evaluation Findings.* Describe the key findings or recommendations resulting from the evaluation of the project, if they are available, and explain how they will be addressed during the proposed continuation. If the findings are not yet available, provide the date by which they will be submitted to the Institute.

d. *Tasks and Methods.* Describe fully any changes in the tasks to be performed, the methods to be used, the products of the project, the assigned staff, or the grantee's organizational capacity;

e. *Task Schedule.* Present a detailed task schedule and time line for the next project period.

f. *Other Sources of Support.* Indicate why other sources of support are inadequate, inappropriate or unavailable; and

g. *Budget and Budget Narrative.* Provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered.

4. *References to Previously Submitted Material.* An application for a continuation grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

5. *Submission Requirements, Review and Approval Process, and Notification of Decision.* The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for a continuation grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

C. On-going Support Grants

1. *Purpose and Scope.* On-going support grants are intended to support a project that is national in scope and that provides the State courts with services, programs or products for which there is a continuing important need. On-going support grants are subject to the limits on size and duration set forth in V.B.2. and V.C.2. A project is eligible for consideration for an on-going support grant if:

a. The project is supported by and has been evaluated under a grant from the Institute;

b. The project is national in scope and provides a significant benefit to the State courts;

c. There is a continuing important need for the services, programs or products provided by the project as indicated by the level of use and support by members of the court community;

d. The project is accomplishing its objectives in an effective and efficient manner; and

e. It is likely that the service or program provided by the project would be curtailed or significantly reduced without Institute support.

Each project supported by an on-going support grant must include an evaluation component assessing its effectiveness and operation throughout the grant period. A comprehensive evaluation report must be completed not less than 90 days before the end of the grant period. In addition, a detailed annual task schedule must be submitted for Institute approval within 30 days after the end of each project year.

2. *Application Procedures—Letters of Intent.* The Board will consider awarding an on-going support grant for a period of up to 36 months. The total amount of the grant will be fixed at the time of the initial award. Funds ordinarily will be made available in annual increments as specified in section V.B.3.

In lieu of a concept paper, a grantee seeking an ongoing support grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period. The letter of intent should be in the same format as that prescribed for continuation grants in section IX.A.2.a.

3. *Application Procedures and Format.* An application for an on-going support grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of applications for on-going support grants should address:

a. *Description of Need for and Benefits of the Project.* Provide a detailed discussion of the benefits provided by the project to the State courts around the country, including the degree to which State courts, State court judges, or State court managers and personnel are using the services or programs provided by the project;

b. *Demonstration of Court Support.* Demonstrate support for the continuation of the project from the courts community;

c. *Report on Current Project Activities.* Discuss the extent to which the project has met its goals and objectives, identify any activities that have not been completed, and explain why;

d. *Evaluation Findings.* Attach a copy of the final evaluation report regarding the effectiveness and operation of the project, specify the key findings or recommendations resulting from the evaluation, and explain how they will be addressed during the proposed renewal period;

e. *Tasks and Methods.* Describe fully any changes in the tasks to be performed, the methods to be used, the products of the project, the assigned staff, or the grantee's organizational capacity.

f. *Task Schedule.* Present a general schedule for the full proposed project period and a detailed task schedule for the first year of the proposed new project period;

g. *Other Sources of Support.* Indicate why other sources of support are inadequate, inappropriate or unavailable; and

h. *Budget and Budget Narrative.* Provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered.

4. *References to Previously Submitted Material.* An application for an on-going support grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

5. *Submission Requirements, Review and Approval Process, and Notification of Decision.* The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for an ongoing support grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to these findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

X. Compliance Requirements

The State Justice Institute Act (Pub. L. 98-620) contains limitations and conditions on grants, contracts and cooperative agreements of which applicants and recipients should be aware. In addition to eligibility requirements which must be met to be considered for an award from the Institute, all applicants should be aware of and all recipients will be responsible for ensuring compliance with the following:

A. State and Local Court Systems

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The latter shall receive, administer, and be accountable for all funds awarded to such courts. 42 U.S.C. 10705(b)(4). The Appendix to this guideline lists the agencies, councils and contact persons designated to administer Institute awards to the State and local courts.

B. Matching Requirements

1. All awards to courts or other units of State or local government (not including publicly supported institutions of higher education) require a match from private or public sources of not less than 50 percent of the total amount of the Institute's award. For example, if the total cost of a project is anticipated to be $150,000, a State court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as a match. A cash match, non-cash match, or both may be provided, but the Institute will give preference to those applicants who provide a cash match to the Institute's award.

The requirement to provide match may be waived in exceptionally rare circumstances upon approval of the Chief Justice of the highest court in the State and a majority of the Board of Directors. 42 U.S.C. 10705(d) (as amended).

2. Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project. In instances where a cash match is proposed, the grantee is responsible for ensuring that the total amount proposed is actually contributed. If a proposed cash match contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section VIII.B. above and XI.D).

C. Conflict of Interest

Personnel and other officials connected with Institute-funded programs shall adhere to the following requirements:

1. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where to his/her knowledge he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

a. Using an official position for private gain; or

b. Affecting adversely the confidence of the public in the integrity of the Institute program.

3. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

D. Lobbying

Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

E. Political Activities

No recipient shall contribute or make available Institute funds, program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Finally, officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

F. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

G. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

1. To supplant State or local funds supporting a program or activity;

2. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

3. Solely to purchase equipment.

H. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

I. Reporting Requirements

Recipients of Institute funds shall submit Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

The quarterly financial status report shall be submitted in accordance with section XI.G.2. of this guideline.

J. Audit

Each recipient must provide for an annual fiscal audit. (See section XI.J. of this guideline for the requirements of such audits.)

Accounting principles employed in recording transactions and preparing financial statements must be based upon generally accepted accounting principles (GAAP).

K. Suspension of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, Institute guidelines, or the terms and conditions of the award. 42 U.S.C. 10708(1).

L. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

M. Disclaimer

Recipients of Institute funds shall prominently display the following disclaimer on all project-related products developed with Institute funds:

"This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute."

N. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

O. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

P. Charges for Grant-Related Products

When Institute funds fully cover the cost of developing, producing, and disseminating a product, e.g., a document or software, the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, and dissemination costs, the grantee may recover its costs for reproducing and disseminating the material to those requesting it.

Q. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, a recipient shall submit a description of the qualifications of the newly assigned person to the Institute. Prior written

approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

XI. Financial Requirements

A. Accounting Systems and Financial Records

All grantees, subgrantees, contractors and other organizations directly or indirectly receiving Institute funds are required to establish and maintain accounting systems and financial records to accurately account for funds they receive. These records shall include total program costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget.

1. *Purpose.* The purpose of this section is to establish accounting system requirements and to offer guidance on procedures which will assist all grantees/subgrantees in:

a. Complying with the statutory requirements for the awarding, disbursement, and accounting of funds;

b. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

c. Generating financial data which can be used in the planning, management and control of programs; and

d. Facilitating an effective audit of funded programs and projects.

2. *References.* Except where inconsistent with specific provisions of this guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements. These materials supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied.

a. *Office of Management and Budget (OMB) Circular A–21,* Cost Principles for Educational Institutions.

b. *Office of Management and Budget (OMB) Circular A–87,* Cost Principles for State and Local Governments.

c. *Office of Management and Budget (OMB) Circular A–88 (revised),* Indirect Cost Rates, Audit and Audit Followup at Educational Institutions.

d. *Office of Management and Budget (OMB) Circular A–102,* Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

e. *Office of Management and Budget (OMB) Circular A–110,* Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations.

f. *Office of Management and Budget (OMB) Circular A–128,* Audits of State and Local Governments.

g. *Office of Management and Budget (OMB) Circular A–122,* Cost Principles for Non-profit Organizations.

B. Supervision and Monitoring Responsibilities

1. *Grantee Responsibilities.* All grantees receiving direct awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include the accounting for receipts and expenditures, the maintaining of adequate financial records and the refunding of expenditures disallowed by audits.

2. *Responsibilities of State Supreme Court.* Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council.

The State Supreme Court shall receive all Institute funds awarded to such courts and shall be responsible for assuring proper administration of Institute funds. The State Supreme Court is responsible for all aspects of the project, including proper accounting and financial recordkeeping by the subgrantee. The responsibilities include:

a. *Reviewing Financial Operations.* The State Supreme Court should be familiar with, and periodically monitor, its subgrantees' financial operations, records system and procedures. Particular attention should be directed to the maintenance of current financial data.

b. *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court *OR* evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to projects by subgrantees should likewise be recorded, as should any project income resulting from program operations.

c. *Budgeting and Budget Review.* The State Supreme Court should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The detail of each project budget should be maintained on file by the State Supreme Court.

d. *Accounting for Non-Institute Contributions.* The State Supreme Court will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds, that the requirements and limitations of this guideline are applied to such funds.

e. *Audit Requirement.* The State Supreme Court is required to ensure that subgrantees have met the necessary audit requirements as set forth by the Institute (see sections X.J. and XI.J).

f. *Reporting Irregularities.* The State Supreme Court and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

C. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system is considered to be one which:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

D. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute shall be structured and executed on a "total project cost" basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. *Timing of Matching Contributions.* Matching contributions need not be applied at the exact time of the obligation of Institute funds. However, the full matching share must be obligated by the end of the period for which the Institute funds have been made available for obligation under an approved project. In instances where a proposed cash match contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement.

2. *Records for Match.* All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does the Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See XI.B.2.)

E. Maintenance and Retention of Records

All financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants, cooperative agreements or contracts under grants shall be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

1. *Coverage.* The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. *Retention Period.* The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. *Maintenance.* Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

F. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income. The policies governing the disposition of the various types of project-related income are listed below.

1. *Interest.* A State and any agency or instrumentality of a State including State institutions of higher education and State hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government that are direct grantees and nonprofit organizations must refund any interest earned. Grantees shall so order their affairs to ensure minimum balances in their respective grant cash accounts.

2. *Royalties.* The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the project provide otherwise.

3. *Registration and tuition fees.* Registration and tuition fees shall be used to pay project-related costs not covered by the grant, or to reduce the amount of grant funds needed to support the project. Registration and tuition fees may be used for other purposes only with the prior written approval of the Institute.

4. *Other.* Other project income shall be treated in accordance with disposition instructions set forth in the project's terms and conditions.

G. Payments and Financial Reporting Requirements

1. *Payment of Grant Funds.* The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a "Check-Issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. Termination of Advance Funding. When a grantee organization receiving cash advances from the Institute:

i. Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

ii. Engages in the improper award and administration of subgrants or contracts; or

iii. Is unable to submit reliable and/or timely reports,

the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by the use of the Institute check method to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute reserves the right to suspend payments until the deficiencies are corrected.

c. *Principle of Minimum Cash on Hand.* Recipient organizations should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees will impair the goals of good cash management.

2. *Financial Reporting.* In order to obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees of these funds submit timely reports for review.

Two copies of the Financial Status Report are required from all grantees for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, and any other fund sources included in the approved project budget. The report contains information on obligations as well as outlays. A copy of the Financial Status Report, along with instructions

for its preparation, will be included in the official Institute Award package. In circumstances where an organization requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, in support of the Request for Advance or Reimbursement.

3. *Consequences of Non-Compliance with Submission Requirements.* Failure of the grantee organization to submit required financial and program reports may result in a suspension of grant payments.

H. Allowability of Costs

1. *General.* Except as may be otherwise provided in the conditions of a particular grant, cost allowability shall be determined in accordance with the principles set forth in *OMB Circulars A–87*, Cost Principles for State and Local Governments; *A–21*, Cost Principles Applicable to Grants and Contracts with Educational Institutions; and *A–122*, Cost Principles for Non-Profit Organizations.

2. *Costs Requiring Prior Approval.*

a. *Preagreement Costs.* The written prior approval of the Institute is required for costs which are considered necessary to the project but occur prior to the starting date of the grant period.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or the software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $200 a day.

3. *Travel Costs.* Transportation and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established written travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. Institute funds shall not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. *Indirect Costs.* These are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. It is the policy of the Institute that all costs should be budgeted directly; however, if a recipient has an indirect cost rate approved by a Federal agency as set forth below, the Institute will accept that rate.

a. *Approved Plan Available.* (1) The Institute will accept an indirect cost rate or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars. A copy of the approved rate agreement must be submitted to the Institute.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

(3) Organizations with an approved indirect cost rate, utilizing total direct costs as the base, usually exclude contracts under grants from any overhead recovery. The negotiation agreement will stipulate that contracts are excluded from the base for overhead recovery.

b. *Establishment of Indirect Cost Rates.* In order to be reimbursed for indirect costs, a grantee or organization must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute. The proposal must be submitted in a timely manner (within three months after the start of the grant period) to assure recovery of the full amount of allowable indirect costs, and it must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved.

c. *No Approved Plan.* If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received. This policy is effective for all grant awards.

I. Procurement and Property Management Standards

1. *Procurement Standards.* For State and local governments, the Institute is adopting the standards set forth in Attachment O of *OMB Circular A–102.* Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110.*

2. *Property Management Standards.* The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* shall be applicable to all grantees and subgrantees of Institute funds except as provided in subsection b. below.

a. *Acquisition.* All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

b. *Title to Property.* At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not received, or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

J. Audit Requirements

1. *Audit Objectives.* Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the grantee's or subgrantee's administration of grant funds and required non-Institute contributions for the purpose of determining whether the recipient has:

a. Established an accounting system integrated with adequate internal fiscal and management controls to provide full accountability for revenues, expenditures, assets, and liabilities;

b. Prepared financial statements which are presented fairly, in accordance with generally accepted accounting principles;

c. Prepared Institute financial reports (including Financial Status Reports, Cash Reports, and Requests for Advances and Reimbursements) which contain accurate and reliable financial data, and are presented in accordance with prescribed procedures; and

d. Expended Institute funds in accordance with the terms of applicable agreements and those provisions of Federal law or Institute regulations that could have a material effect on the financial statements or on the awards tested.

2. *Implementation.* Each grantee (including a State or local court receiving a subgrant from the State Supreme Court) shall provide for an annual fiscal audit. The audit may be of the entire grantee organization (e.g., a university) or of the specific project funded by the Institute. The audit shall be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. The audit shall be conducted in compliance with generally accepted auditing standards established by the American Institute of Certified Public Accountants. A written report shall be prepared upon completion of the audit. Grantees are responsible for submitting copies of the reports to the Institute within thirty days after the acceptance of the report by the grantee, for each year that there is financial activity involving Institute funds.

Grantees who receive funds from a Federal agency and who satisfy audit requirements of the cognizant Federal agency, should submit a copy of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section. Cognizant Federal agencies do not send reports to the Institute. Therefore, each grantee must send this report directly to the Institute.

Audit reports from nonprofit organizations which do not receive Federal funds, and which decide to perform an audit of the entire organization, shall include a supplemental schedule depicting a project-by-project summary of Institute grant activity for the audit period. At a minimum, this summary should include the grant award number, project title, award amount, payments received, expenditures made and balances remaining. The auditors should also conduct adequate tests to ensure that the audit objectives listed in sections XI.J.1. c. and d. above have been satisfied.

3. *Resolution and Clearance of Audit Reports.* Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grant recipient shall have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up, maintaining a record of the actions taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Institute on recommendations and actions taken.

4. *Consequences of Non-Resolution of Audit Issues.* It is the general policy of the State Justice Institute not to make new grant awards to an applicant having an unresolved audit report involving Institute awards. Failure of the grantee organization to resolve audit questions may also result in the suspension of payments for active Institute grants to that organization.

K. Close-Out of Grants

1. *Definition.* Close-out is a process by which the Institute determines that all applicable administrative and financial actions and all required work of the grant have been completed by both the grantee and the Institute.

2. *Grantee Close-Out Requirements.* Within 90 days after the end date of the grant or any approved extension thereof (revised end date), the following documents must be submitted by the grantee to the Institute.

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final financial status report.

b. *Final Progress Report.* This report should describe the project activities during the final calendar quarter of the project and the closeout period, including to whom project products have been disseminated; specify whether all the objectives set forth in the approved application or an approved adjustment thereto have been met, and, if any of the objectives have not been met; explain the reasons therefor.

XII. Grant Adjustments

All requests for program or budget adjustments requiring Institute approval must be submitted in a timely manner by the project director. All requests for changes from the approved application will be carefully reviewed for both consistency with this guideline and the enhancement of grant goals and objectives.

A. Grant Adjustments Requiring Prior Written Approval

There are several types of grant adjustments which require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories which exceed or are expected to exceed 5 percent of the approved budget.

2. A change in the scope of work to be performed or the objectives of the project (see section XII.D.).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the expenditure deadline (see section XII.E.).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see sections XII.F. and G.).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section X.Q.).

8. A successor in interest or name change agreements.

9. A transfer or contracting out of grant-supported activities (see section XII.H.).

10. *A transfer of the grant to another recipient.*

11. Preagreement costs, the purchase of automated data processing equipment and software, and consultant rates, as specified in section XI.H.2.

B. Request for Grant Adjustments

All grantees and subgrantees must promptly notify the SJI program managers, in writing, of events or proposed changes which may require an adjustment from the approved application. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the SJI program managers determine would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his/her designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

A grantee/subgrantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's

objectives with subsequent notification of the SJI program manager. Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute.

E. Date Changes

Requests for changes or extensions of the grant period are to be made 90 days in advance of the end date of the grant whenever possible. In no instance may the request be made less than 30 days before the end date of the grant.

F. Temporary Absence of the Project Director

Whenever absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

A principal activity of the grant-supported project shall not be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements should be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, are to be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

State Justice Institute Board of Directors

C. C. Torbert, Jr., Chairman, former Chief Justice, Supreme Court of Alabama
Rodney A. Peeples, Vice Chairman, Resident Judge, Second Judicial Circuit, South Carolina
John F. Daffron, Jr., Secretary, Judge, Chesterfield, Virginia Circuit Court
Larry P. Polansky, Treasurer, Executive Officer, District of Columbia Courts
Joseph W. Brown, Esq., Jones, Jones, Close & Brown
James Duke Cameron, Justice, Supreme Court of Arizona
Ralph J. Erickstad, Chief Justice, Supreme Court of North Dakota
Janice Gradwohl, Judge, County Court, Lincoln, Nebraska
Daniel J. Meador, Professor of Law, University of Virginia Law School
Sandra A. O'Connor, States Attorney of Baltimore County, Towson, Maryland
David I. Tevelin, Executive Director (ex officio)

David I. Tevelin,

Executive Director.

Appendix—List of State Contacts Regarding Administration of Institute Grants to State and Local Courts

Mr. Allen L. Tapley, Administrative Director, Administrative Office of the Courts, 817 South Court Street, Montgomery, Alabama 36130, (205) 834–7990.
Mr. Arthur H. Snowden II, Administrative Director, Alaska Court System, 303 K Street, Anchorage, Alaska 99501, (907) 264–0547.
Mr. William L. McDonald, Administrative Director, Supreme Court of Arizona, 1314 North 3rd Street, Suite 200, Phoenix, Arizona 85004, (602) 255–4359.
Mr. James D. Gingerich, Executive Secretary, Arkansas Judicial Department, Justice Building, Little Rock, Arkansas 72201, (501) 371–2295.
Mr. William E. Davis, Administrative Director, State Building, 350 McAllister Street, Room 3154, San Francisco, California 94102, (415) 557–1561.
Mr. James D. Thomas, State Court Administrator, Colorado Judicial Department, 1301 Pennsylvania Street, Suite 300, Denver, Colorado 80203–2416, (303) 861–1111, ext. 585.
Mr. Bruce Borre, Director, Research and Planning, Office of the Chief Court Administrator, Drawer N, Station A, Hartford, Connecticut 06106, (203) 722–5836.
Mr. Lowell Groundland, Director, Administrative Office of the Courts, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware 19801, (302) 571–2480.
Mr. James Lynch, Deputy Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, NW., Washington, DC 20001, (202) 879–1700.
Mr. Kenneth Palmer, State Courts Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399–1900, (904) 488–8621.
Mr. Robert L. Doss, Jr., Administrative Director of the Courts, The Judicial Council of Georgia, 244 Washington Street, S.W., Suite 500, Atlanta, Georgia 30334, (404) 656–5171.
Mr. Perry C. Taitano, Administrative Director, Superior Court of Guam, Judiciary Building, 110 West O'Brien Drive, Agana, Guam 96910, 011 (671) 472–8861 through 8868.
Ms. Janice Wolfe, Administrative Director of Courts, The Judiciary, Post Office Box 2560, Honolulu, Hawaii 96804, (808) 548–4605.
Mr. Carl F. Bianchi, Administrative Director of the Courts, Supreme Court Building, 451 West State Street, Boise, Idaho 83720, (208) 334–2246.
Mr. Samuel D. Conti, Administrative Director of the Courts, Supreme Court Building, Springfield, Illinois 62701–1791, (217) 782 7770.
Mr. Bruce A. Kotzan, Executive Director, Supreme Court of Indiana, State House, Room 323, Indianapolis, Indiana 46204, (317) 232–2542.
Mr. William J. O'Brien, State Court Administrator, Supreme Court of Iowa, State House, Des Moines, Iowa 50319, (515) 281–5241.
Mr. Howard P. Schwartz, Judicial Administrator, Kansas Judicial Center, 301 West 10th Street, Topeka, Kansas 66612, (913) 296–4873.
Ms. Laura Stammel, Comptroller, Administrative Office of the Courts, 403 Wapping Street, Frankfort, Kentucky 40601, (502) 564–2350.
Dr. Hugh M. Collins, Judicial Administrator, Supreme Court of Louisiana, 301 Loyola Avenue, Room 109, New Orleans, Louisiana 70112–1887, (504) 568–5747.
Mr. Dana R. Baggett, State Court Administrator, Administrative Office of the Courts, P.O. Box 4820, Downtown Station, Portland, Maine 04112, (207) 879–4792.
Mr. Peter J. Lally, Assistant State Court Administrator, Courts of Appeal Building, 361 Rowe Boulevard, Annapolis, Maryland 21401, (301) 974–2141.
Honorable Arthur M. Mason, Chief Administrative Justice, The Trial Court, Commonwealth of Massachusetts, 317 New Courthouse, Boston, Massachusetts 02108, (617) 725–8787.
Honorable Dorothy Comstock Riley, Chief Justice, Supreme Court of Michigan, Law Building, Post Office Box 30052, Lansing, Michigan 48909, (517) 373–0128.
Ms. Sue K. Dosal, State Court Administrator, Supreme Court of Minnesota, 230 State Capitol, St. Paul, Minnesota 55155, (617) 296–2474.
Ms. Krista Johns, Director, Center for Court Education and Continuing Studies, Box 879, Oxford, Mississippi 38677, (601) 232–5955.

Mr. Ron Larkin, Director of Operations, Office of the State Court Administrator, 1105 R Southwest Blvd., Jefferson City, Missouri 65109, (314) 751–3585.
Mr. R. James Oppedahl, State Court Administrator, Montana Supreme Court, Justice Building, Room 315, 215 North Sanders, Helena, Montana 59620–3001, (406) 444–2621.
Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, State Capitol Building, Room 1220, Lincoln, Nebraska 68509, (404) 471–2643.
Mr. Donald J. Mello, Court Administrator, Administrative Office of the Courts, Capitol Complex, Carson City, Nevada 89710, (702) 885–5076.
Mr. Jeffrey Leidinger, Director, Administrative Office of the Courts, Supreme Court of New Hampshire, Noble Drive, Concord, New Hampshire 03301, (603) 271–2521.
Mr. Robert Lipscher, Administrative Director, Administrative Office of the Courts, CN–037, RJH Justice Complex, Trenton, New Jersey 08625, (609) 984–0275.
Honorable Albert M. Rosenblatt, Chief Administrative Judge, New York State Office of Court Administrator, Empire State Plaza, Agency Building 4, 20th Floor, Albany, New York 12207, (913) 431–1930.
Mr. Robert L. Lovato, State Court Administrator, Administrative Office of the Courts, Supreme Court of New Mexico, Supreme Court Building, Room 25, Sante Fe, New Mexico 87503, (505) 827–4800.
Mr. Franklin E. Freeman, Jr., Administrative Director, Administrative Office of the Courts, Post Office Box 2448, Raleigh, North Carolina 27602, (919) 733–7106/7107.
Mr. William G. Bohn, State Court Administrator, Supreme Court of North Dakota, State Capitol Building, Bismarck, North Dakota 58505, (701) 224–4216.
Mr. Stephan W. Stover, Administrative Director of the Courts, Supreme Court of Ohio, State Office Tower, 30 East Broad Street, Columbus, Ohio 43266–0419, (614) 466–2653.
Mr. Howard W. Conyers, Administrative Director, Administrative Office of the Courts, 1915 N. Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521–2450.
Mr. R. William Linden, Jr., State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310, (503) 378–6046.
Mr. Ralph Hunsicker, Administrative Office of Pennsylvania Courts, 407 City Towers, 301 Chestnut Street, Harrisburg, Pennsylvania 17101, (717) 783–7322.
Mr. Matthew J. Smith, State Court Administrator, Supreme Court of Rhode Island, 250 Benefit Street, Providence, Rhode Island 02903, (401) 277–3263 or 277–3272.
Mr. Louis L. Rosen, Director, South Carolina Court Administration, Post Office Box 50447, Columbia, South Carolina 29250, (803) 758–2961.
Honorable George W. Wuest, Chief Justice, Supreme Court of South Dakota, 500 East Capitol Avenue, Pierre, South Dakota 57501, (605) 773–4885.
Mr. Cletus W. McWilliams, Executive Secretary, Supreme Court of Tennessee, Supreme Court Building, Room 422, Nashville, Tennessee 37219, (615) 741–2687.
Mr. C. Raymond Judice, Administrative Director, Office of Court Administration of the Texas Judicial System, Post Office Box 12066, Austin, Texas 78711, (512) 463–1625.
Honorable Gordon R. Hall, Chief Justice, Supreme Court of Utah, State Capitol Building, Room 332, Salt Lake City, Utah 84114, (801) 533–5286.
Mr. Thomas J. Lehner, Court Administrator, Supreme Court of Vermont, 111 State Street, Montpelier, Vermont 05602, (802) 828–3281.
Ms. Viola E. Smith, Clerk of the Court/Administrator, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774–6680, ext. 248.
Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, 3rd Floor, Richmond, Virginia 23219, (804) 786–6455.
Ms. Mary McQueen, State Court Administrator for the Courts, Supreme Court of Washington, Highways-Licensing Building, 6th Floor, 12th & Washington, Olympia, Washington 98504, (206) 753–5750.
Mr. Ted J. Philyaw, Administrative Director of the Courts, Administrative Office, 402–E State Capitol, Charleston, West Virginia 25305, (304) 348–0145.
Mr. J. Denis Moran, Director of State Courts, Post Office Box 1688, Madison, Wisconsin 53701–1688, (608) 266–6828.
Justice Walter Urbigkit, Supreme Court of Wyoming, Supreme Court Building, Cheyenne, Wyoming 82002, (307) 777–7571.

[FR Doc. 89–19561 Filed 8–18–89; 8:45 am]
BILLING CODE 6820–SC–M

federal register

Monday
August 21, 1989

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Part 172
Hazardous Substances; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. HM-145G; Amdt No. 172-117]

RIN 2137-AA68

Hazardous Substances

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In this final rule, RSPA is amending the Hazardous Materials Regulations (HMR) by revising the "List of Hazardous Substances and Reportable Quantities" which appears in the appendix to 49 CFR 172.101. This action is necessary to comply with a 1986 amendment (Pub. L. 99-499) to section 306(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (Pub. L. 96-510). The intended effect of this action is to enable carriers of hazardous materials to specifically identify CERCLA hazardous substances and to make the required notification if a discharge of a reportable quantity occurs.

EFFECTIVE DATE: This amendment is effective October 13, 1989. However, immediate compliance with the regulations as amended herein is authorized. The provisions of 49 CFR 172.101(j), which allows up to one year after a change to the Hazardous Materials Table (HMT) to use up stocks of preprinted shipping papers and to ship packages that were marked prior to the change, do not apply to these amendments.

FOR FURTHER INFORMATION CONTACT: John A. Gale (202) 366-4488, Standards Division, or George Cushmac (202) 336-4545, Technical Division, Office of Hazardous Materials Transportation RSPA, 400 7th Street, SW. Washington, DC 20590. Questions about hazardous substance designations or reportable quantities should be directed to the Environmental Protection Agency (EPA) Call the RCRA/Superfund hotline at (800) 424-9346 or in Washington, DC (202) 382-3000.

SUPPLEMENTARY INFORMATION:

I. Background

Section 202 of the Superfund Amendments and Reauthorization Act (SARA; Pub. L. 99-499) of 1986 amended section 306(a) of CERCLA by requiring the Secretary of Transportation to list and regulate hazardous substances, listed or designated under section 101(14) of CERCLA, as hazardous materials under the Hazardous Materials Transportation Act (MHTA; 49 App. U.S.C. 1801 et seq.). RSPA carries out the rulemaking responsibilities of the Secretary of Transportation under the HMTA. This final rule is necessary to comply with section 306(a) of CERCLA as it is amended by section 202 of SARA.

RSPA's role in regulating hazardous substances is directly tied to EPA's ongoing hazardous substances responsibility. RSPA has no role in determining what is or is not a hazardous substance or the appropriate reportable quantity (RQ) for materials designated as hazardous substances. This authority is vested in EPA. Therefore, under the CERCLA scheme EPA must issue final rules amending the list of CERCLA hazardous substances, including adjusting RQs, before RSPA can amend its list of hazardous substances. In the preamble to the final rule on this subject issued under Docket HM-145F (51 FR 42174; November 21, 1986), RSPA included the following statement:

> It is RSPA's intention to make changes from time to time to the list of hazardous substances or their RQs in the Appendix as adjustments are made by EPA.

This document adjust the "List of Hazardous Substances and Reportable Quantities" based on five final rules published by EPA in the past several months. On August 14, 1989, EPA published two final rules (54 FR 33418 and 54 FR 33426, respectively) which revised the reportable quantities of 193 hazardous substances (136 were raised and 57 were lowered), added four waste streams and deleted one material—ammonium thiosulfate—from the CERCLA list of hazardous substances. Because of synonyms, a total of 277 revisions were made to the CERCLA list of hazardous substances and reportable quantities. In addition, the entry "Kelthane" was changed to "Dicofol", and "1,1,2-Trichloroethane" was added to the waste stream F002. The reportable quantity of F002-1,1,2-trichloroethane is 100 pounds. The four waste streams that were added to the list were K123, K124, K125, and K126. Each of these waste streams was assigned an RQ of 10 pounds.

On September 13, 1988, and October 31, 1988, EPA published three final rules (53 FR 35412, 53 FR 43878, and 53 FR 43881, respectively), which amended the list of CERCLA hazardous substances. The final rule EPA published on September 13, 1988, added the following six waste streams to the CERCLA list of hazardous substances: K064; K065; K066; K088; K090; and K091. Each of these waste streams was assigned an RQ of one pound (0.454 kg). The final rules EPA published on October 31, 1988, removed "iron dextran", "ferric dextran" and "strontium sulfide" from the CERCLA list of hazardous substances.

To keep its "List of Hazardous Substances and Reportable Quantities" consistent with EPA's list of CERCLA hazardous substances and reportable quantities, RSPA is amending the HMR in accordance with the five EPA final rules previously discussed. In addition, RSPA is making three nonsubstantive editorial changes to its "List of Hazardous Substances and Reportable Quantities", RSPA has added names to the "List of Hazardous Substances and Reportable Quantities", found in the appendix to § 172.101, because they are synonyms of specific hazardous substances and the names appear in the HMT as proper shipping names. RSPA is revising the RQ of four of these names because the RQ of their corresponding synonym has been revised. These four synonyms are as follows: (1) Ammonium dichromate; (2) dimethylhydrazine, unsymmetrical; (3) potassium dichromate; and (4) sodium dichromate. Second, RSPA is adding "Cumene hydroperoxide", "Nitrogen peroxide" and "Nitrogen tetroxide", with the footnote "@" and corresponding RQs of 10 pounds, to the list of hazardous substances. Cumene hydroperoxide is a synonym for the hazardous substances "Alpha, alpha-Dimethylbenzyl-hydroperoxide" and "Hydroperoxide, 1-methyl-1-phenylethyl" and appears in the HMT as a proper shipping name. Nitrogen peroxide and Nitrogen tetroxide are both synonyms for the hazardous substances "Nitrogen dioxide" and "Nitrogen(IV) oxide" and appear in the HMT as proper shipping names. Third, the footnote "*" is added to the entry "Sulfuric acid" because Sulfuric acid appears in the HMT as a proper shipping name.

The regulatory action in this final rule is mandated by statute, and for this reason, RSPA is not affording persons affected by this rule the relief afforded by § 172.101(j) which allows up to one year after a change to the HMT to use up stocks of preprinted shipping papers and to ship packages that were marked prior to the change.

Because this rulemaking is making numerous modifications to the "List of Hazardous Substances and Reportable Quantities" found in the appendix to § 172.101 RSPA is reprinting it in its entirety. Changes to specific entries not

identified in the foregoing discussion are categorized as follows:

A. *Those hazardous substances the RQs of which increased from 1 to 10 pounds:*

Amitrole
Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione,6-amino-8-[[(aminocarbonyl)oxy)methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl
Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-
Benz[a]anthracene
1,2-Benzanthracene
Benzenamine, N,N-dimethyl-4-phenylazo-
Benzenamine, 4,4'-methylenebis[2-chloro-
Benzene, hexachloro-
Benzene, 1,2-methylenedioxy-4-propyl-
Benzene, (trichloromethyl)-
Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester
Benzo [a] anthracene
Benzotrichloride
Beryllium
Beryllium dust
Alpha-BHC
2,2'-Bioxirane
[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethoxy-
[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl
Bis (2-chloroethyl) ether
1-Butanamine, N-butyl-N-nitroso-
Butanoic acid, 4-[bis(2-chloroethyl)amino]benzene-
Cadmium
Carbamide, thio-
Chlorambucil
1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
Cyclophosphamide
Daunomycin
Diaminotoluene
1,2:7,8-Dibenzopyrene
Dibenz[a,i]pyrene
Dichloroethyl ether
1,2:3,4-Diepoxybutane
N,N'-Diethylhydrazine
Dihydrosafrole
3,3'-Dimethoxybenzidine
Dimethylaminoazobenzene
3,3'-Dimethylbenzidine
1,1-Dimethylhydrazine
Dimethylhydrazine, unsymmetrical
Dimethylnitrosamine
Dimethyl sulfate
1,2-Diphenylhydrazine
Di-N-propylnitrosamine
Ethane, 1,1'-Oxybis(2-chloro-
Ethane, pentachloro-
Ethanethioamide
Ethenamine, N-methyl-N-nitroso-
Ethyl 4,4'-dichlorobenzilate
Ethylene oxide
Ethylene thiourea
Glycidylaldehyde
Guanidine, N-nitroso-N-methyl-N'-nitro-
Hexachlorobenzene
Hexachlorocyclopentadiene
Hydrazine, 1,2-diethyl-
Hydrazine, 1,1-dimethyl-
Hydrazine, 1,2-diphenyl-
2-Imidazolidinethione
Lasiocarpine
3-Methylcholanthrene
4,4'-Methylenebis(2-chloroaniline)
N-Methyl-N'-nitro-N-nitrosoguanidine
Methyl thiouracil
Mitomycin C
5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-[3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-
2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl-[1,1'-biphenyl]-4,4'-diyl)-bis(azo)]bis(5-amino-4-hydroxy)-tetrasodium salt
Nickel carbonyl
Nickel cyanide
Nickel(II) cyanide
Nickel tetracarbonyl
2-Nitropropane
N-Nitrosodi-n-butylamine
N-Nitrosodimethylamine
N-Nitrosodi-n-propylamine
N-Nitrosomethylvinylamine
N-Nitrosopiperidine
1,2-Oxathiolane, 2,2-dioxide
2H-1,3,2-Oxazaphosphorine, 2-[bis(2-chloroethyl]amino] tetrahydro-2-oxide
Oxirane
Parathion
Pentachloroethane
Phosphorothioic acid, O,O-diethyl O-[p-nitrophenyl) ester
1-Propanal, 2,3-epoxy-
Propane, 2-nitro-
1,3-Propane sultone
1-Propanol, 2,3-dibromo-, phosphate (3:1)
Pyridine, hexahydro-N-nitroso-
4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-
Selenium disulfide
Sulfur selenide
Sulfuric acid, dimethyl ester
Thioacetamide
Thiourea
Toluenediamine
1H-1,2,4-Triazol-3-amine
Tris(2,3-dibromopropyl) phosphate
Trypan blue
Unlisted Hazardous Wastes Characteristic of EP Toxicity Cadmium D006
Uracil, 5-[bis(2-chloroethyl)amino]-
Uracil mustard
Waste Streams:

F001	K034
F002	K036
F005	K040
F039	K042
K004	K048
K008	K050
K087	K073
K009	K085
K010	K099
K011	K104
K013	K105
K015	K111
K021	K112
K025	K113
K027	K114
K032	K115
K033	K176
	D007

B. *Those hazardous substances the RQs of which increased from 1 to 100 pounds:*

Acetamide, N-(4-ethoxyphenyl)-
2-Amino-1-methyl benzene
4-Amino-1-methyl benzene
Auramine
Benz[c]acridine
3,4-Benzacridine
Benzenamine, 4,4'-carbonimidoylbis[N,N-dimethyl-
Benzenamine, 4-chloro-2-methyl-, hydrochloride
Benzenamine, 2-methyl-, hydrochloride
Benzenamine, 2-methyl-5-nitro-
Benzene, 1,2-methylenedioxy-4-allyl-
Benzene, 1,2-methylenedioxy-4-propenyl-
Benzene, pentachloronitro-
1,2-Benzenedicarboxylic acid, [bis(2-ethylhexyl)] ester
1,2-Benzisothiazolin-3-one, 1,1-dioxide, and salts
1,2-Benzphenanthrene
Bis(2-ethylhexyl)phthalate
Carbamic acid, ethyl ester
Chlornaphazine
4-Chloro-o-toluidine, hydrochloride
Chrysene
Diallate
S-(2,3-Dichloroallyl) diisopropylthiocarbamate
1,4-Diethylene dioxide
1,4-Dioxane
Ethane, 1,1,1,2,2,2-hexachloro-
Ethane, 1,1,1,2-tetrachloro-
Ethane, 1,1,2,2,-tetrachloro-
Ethane, 1,1,2-trichloro-
Ethene, 1,1,2,2,-tetrachloro-
Ethyl carbamate (urethan)
Hexachloroethane
Indeno[1,2,3-cd]pyrene
Isosafrole
Lead subacetate
Methane, chloro-
Methane, iodo-
Methyl chloride
Methyl iodide
1-Naphthylamine
alpha-Naphthylamine
2-Naphthylamine, N,N-bis[2-chloroethyl]-
Nickel
5-Nitro-o-toluidine
Pentachloronitrobenzene
Perchloroethylene
Phenacetin
1,10-(1,2-Phenylene)pyrene
Safrole
Saccharin and salts
1,1,1,2-Tetrachloroethane
1,1,2,2-Tetrachloroethane
Tetrachloroethene
Tetrachloroethylene
O-Toluidine
P-Toluidine
O-Toluidine hydrochloride
1,1,2 Trichloroethane
F001-Tetrachloroethylene
F002-Tetrachloroethylene
K095
K096

C. *Those hazardous substances the RQs of which increased from 1 to 1000 pounds:*

2-Ethoxyethanol
Ethylene glycol monoethyl ether

D. *Those hazardous substances the ROs of which increased from 1 to 5000 pounds:*

Acetaldehyde, trichloro-
Benzo(K)fluoranthene
Chloral
Chromium

E. *Those hazardous substances the RQs of which increased from 10 to 100 pounds:*

BEST COPY AVAILABLE

Acrylonitrile
2-Propenenitrile

F. *Those hazardous substances the RQs of which decreased from 5000 to 1 pound:*

Arsenic disulfide
Arsenic(III) oxide
Arsenic(V) oxide
Arsenic pentoxide
Arsenic trichloride
Arsenic trioxide
Arsenic trisulfide
Beryllium chloride
Beryllium fluoride
Beryllium nitrate
Lead arsenate

G. *Those hazardous substances the RQs of which decreased fom 5000 to 10 pounds:*

Carbon tetrachloride
Chloroform
Methane, tetrachloro-
Methane, trichloro-
F001-Carbon tetrachloride

H. *Those hazardous substances the RQs of which decreased from 5000 to 100 pounds:*

1,2-Dichloroethane
1,1-Dichloroethylene
Ethane, 1,2-dichloro-
Ethene, 1,1-dichloro-
Ethylene dichloride
Nickel ammonium sulfate
Nickel chloride
Nickel nitrate
Nickel sulfate
Vinylidene chloride

I. *Those hazardous substances the RQs of which decreased from 1000 to 1 pound:*

Calcium arsenate
Calcium arsenite
Ethane, 1,2-dibromo-
Ethylene dibromide
Potassium arsenate
Potassium arsenite
Sodium arsenate
Sodium arsenite

J. *Those hazardous substances the RQs of which decreased from 1000 to 10 pounds:*

Ammonium bichromate
Ammonium chromate
Ammonium dichromate
Benzene
Benzene, 1-methyl-2,4-dinitro-
Calcium chromate
Chromic acid
Chromic acid, calcium salt
2,4-Dinitrotoluene
Dinitrotoluene
Formaldehyde
Lithium chromate
Methylene oxide
Nickel hydroxide
Potassium bichromate
Potassium chromate
Potassium dichromate
Sodium bichromate
Sodium chromate
Sodium dichromate
Strontium chromate

K. *Those hazardous substances the RQs of which decreased from 1000 to 100 pounds:*

Benzene, 1-methyl-2,6-dinitro-
1-Chloro-2, 3-epoxypropane
2,6-Dinitrotoluene
Epichlorohydrin
Oxirane, 2-(chloromethyl)-
Trichloroethene
Trichloroethylene
F001-Trichloroethylene
F002-Trichloroethylene

L. *Those hazardous substances the RQs of which decreased from 100 to 1 pound:*

Cupric acetoarsenite

M. *Those hazardous substances the RQs of which decreased from 100 to 10 pounds:*

Cadmium acetate
Cadmium bromide
Cadmium chloride

N. *Those hazardous substances the RQs of which decreased from 10 to 1 pound:*

Aroclor 1016
Aroclor 1221
Aroclor 1232
Aroclor 1242
Aroclor 1248
Aroclor 1254
Aroclor 1260
POLYCHLORINATED BIPHENYLS (PCB's)

Administrative Notices

In accordance with the Administrative Procedure Act, 5 U.S.C. 553, RSPA has determined that a notice of proposed rulemaking and an opportunity for public comment and review are impracticable and unnecessary. SARA mandated that the Department of Transportation regulate, as hazardous materials under 49 CFR parts 171–179, those hazardous substances designated under CERCLA. EPA is the sole agency authorized to designate hazardous substances and their reportable quantities. Therefore, public comment and review are unnecessary because: (1) The public was afforded time to comment when EPA published its notice of proposed rulemaking concerning that agency's change in the subject RQs; and (2) RSPA does not have the authority to designate hazardous substances or determine their reportable quantities.

RSPA has determined that this rulemaking: (1) Is not a "major rule" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*); and (5) does not require the preparation of a regulatory evaluation.

Based on limited information concerning the size and nature of entities likely to be affected, I certify that this regulation will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

List of Subjects in 49 CFR 172

Hazardous materials transportation, Hazardous substances.

In consideration of the foregoing, part 172 of title 49, Code of Federal Regulations is amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, and 1806; Pub. L. 99–499 and 49 CFR part 1, unless otherwise noted.

2. The appendix to § 172.101, entitled "List of Hazardous Substances and Reportable Quantities", is revised to read as follows:

Appendix to § 172.101—List of Hazardous Substances and Reportable Quantities

1. This appendix lists materials and their corresponding reportable quantities (RQs) which are listed or designated as "hazardous substances" under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA; Pub. L. 96–510). A material in this list is regulated as a hazardous material and a hazardous substance under this subchapter if it meets the definition of a hazardous substance in § 171.8 of this subchapter.

2. Column 1 of the list, entitled *"Hazardous substance"*, contains the names of hazardous substances. Elements and compounds are listed first in alphabetical sequence. Following the listing of elements and compounds is a listing of waste streams. These waste streams appear on the list in numerical sequence and are referenced by the appropriate "F" or "K" numbers. Column 2 of the list, entitled *"Synonyms"*, contains the names of synonyms for certain elements and compounds listed in Column 1. No synonyms are listed for waste streams. Synonyms are useful in identifying hazardous substances and in identifying proper shipping names. Column 3 of the list, entitled *"Reportable quantity (RQ)"*, contains the reportable quantity (RQ) in pounds and kilograms, for each hazardous substance listed in Column 1.

3. The procedure for selecting a proper shipping name for a hazardous substance is set forth in § 172.101(c)(9).

4. A series of notes are used throughout the list to provide additional information concerning certain hazardous substances. These notes are explained at the end of the list.

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Acenaphthene		100 (45.4)
Acenaphthylene		5000 (2270)
Acetaldehyde *	Ethanal	1000 (454)
Acetaldehyde, chloro-	Chloroacetaldehyde	1000 (454)
Acetaldehyde, trichloro-	Chloral	5000 (2270)
Acetamide, N-(aminothioxomethyl)-	1-Acetyl-2-thiourea	1000 [454]
Acetamide, N-(4-ethoxyphenyl)-	Phenacetin	100 (45.4)
Acetamide, N-fluoren-2-yl-	2-Acetylaminofluorene	1 (0.454)
Acetamide, 2-fluoro-	Fluoroacetamide	100 (45.4)
Acetic acid *		5000 (2270)
Acetic acid, ethyl ester	Ethyl acetate	5000 (2270)
Acetic acid, fluoro-, sodium salt	Fluoroacetic acid, sodium salt	10 (4.54)
Acetic acid, lead salt	Lead acetate	5000 (2270)
Acetic acid, thallium(I) salt	Thallium(I) acetate	100 (45.4)
Acetic anhydride *		5000 (2270)
Acetimidic acid, N-[(methylcarbamoyl)oxy]thio-methyl ester	Methomyl	100 (45.4)
Acetone *	2-Propanone	5000 (2270)
Acetone cyanohydrin *	Propanenitrile, 2-hydroxy-2-methyl-	10 (4.54)
	2-Methyllactonitrile	
Acetonitrile *	Ethanenitrile	5000 (2270)
3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts	Warfarin	100 (45.4)
Acetophenone	Ethanone, 1-phenyl-	5000 (2270)
2-Acetylaminofluorene	Acetamide, N-fluoren-2-yl-	1 (0.454)
Acetyl bromide *		5000 (2270)
Acetyl chloride *	Ethanoyl chloride	5000 (2270)
1-Acetyl-2-thiourea	Acetamide, N-(aminothioxomethyl)-	1000 [454]
Acrolein *	2-Propenal	1 (0.454)
Acrylamide	2-Propenamide	5000 (2270)
Acrylic acid *	2-Propenoic acid	5000 (2270)
Acrylonitrile *	2-Propenenitrile	100 (45.4)
Adipic acid		5000 (2270)
Alanine, 3-[p-bis(2-chloroethyl)amino]phenyl-, L-	Melphalan	1 (0.454)
Aldicarb	Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime	1 (0.454)
Aldrin *	1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo,exo-dimethanonaphthalene	1 (0.454)
Allyl alcohol *	2-Propen-1-ol	100 (45.4)
Allyl chloride *		1000 (454)
Aluminum phosphide *		100 (45.4)
Aluminum sulfate *		5000 (2270)
2-Amino-1-methyl benzene	o-Toluidine	100 (45.4)
4-Amino-1-methyl benzene	p-Toluidine	100 (45.4)
5-(Aminomethyl)-3-isoxazolol	3(2H)-Isoxazolone, 5-(aminomethyl)-	1000 (454)
4-Aminopyridine	4-Pyridinamine	1000 (454)
Amitrole	1H-1,2,4-Triazol-3-amine	10 (4.54)
Ammonia *		100 (45.4)
Ammonium acetate		5000 (2270)
Ammonium benzoate		5000 (2270)
Ammonium bicarbonate		5000 (2270)
Ammonium bichromate	Ammonium dichromate @	10 (4.54)
Ammonium bifluoride *		100 (45.4)
Ammonium bisulfite *		5000 (2270)
Ammonium carbamate *		5000 (2270)
Ammonium carbonate *		5000 (2270)
Ammonium chloride		5000 (2270)
Ammonium chromate		10 (4.54)
Ammonium citrate, dibasic		5000 (2270)
Ammonium dichromate @	Ammonium bichromate	10 (4.54)
Ammonium fluoborate *		5000 (2270)
Ammonium fluoride *		100 (45.4)
Ammonium hydroxide *		5000 (2270)
Ammonium oxalate *		5000 (454)
Ammonium picrate *	Phenol, 2,4,6-trinitro-, ammonium salt	10 (4.54)
Ammonium silicofluoride *		1000 (454)
Ammonium sulfamate		5000 (2270)
Ammonium sulfide *		100 (45.4)
Ammonium sulfite		5000 (2270)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Ammonium tartrate		5000 (2270)
Ammonium thiocyanate		5000 (2270)
Ammonium vanadate	Vanadic acid, ammonium salt	1000 (454)
Amyl acetate *		5000 (2270)
iso-Amyl acetate		
sec-Amyl acetate		
tert-Amyl acetate		
Aniline *	Benzenamine	5000 (2270)
Anthracene		5000 (2270)
Antimony ¢		5000 (2270)
Antimony pentachloride *		1000 (454)
Antimony potassium tartrate *		100 (45.4)
Antimony tribromide *		1000 (454)
Antimony trichloride *		1000 (454)
Antimony trifluoride *		1000 (454)
Antimony trioxide		1000 (454)
Aroclor 1016	POLYCHLORINATED BIPHENYLS (PCBs)	1 (0.454)
Aroclor 1221	POLYCHLORINATED BIPHENYLS (PCBs)	1 (0.454)
Aroclor 1232	POLYCHLORINATED BIPHENYLS (PCBs)	1 (0.454)
Aroclor 1242	POLYCHLORINATED BIPHENYLS (PCBs)	1 (0.454)
Aroclor 1248	POLYCHLORINATED BIPHENYLS (PCBs)	1 (0.454)
Aroclor 1254	POLYCHLORINATED BIPHENYLS (PCBs)	1 (0.454)
Aroclor 1260	POLYCHLORINATED BIPHENYLS (PCBs)	1 (0.454)
Arsenic * ¢		1 (0.454)
Arsenic acid *		1 (0.454)
Arsenic disulfide *		1 (0.454)
Arsenic(III) oxide	Arsenic trioxide *	1 (0.454)
Arsenic(V) oxide	Arsenic pentoxide *	1 (0.454)
Arsenic pentoxide *	Arsenic(V) oxide	1 (0.454)
Arsenic trichloride *		1 (0.454)
Arsenic trioxide *	Arsenic(III) oxide	1 (0.454)
Arsenic trisulfide *		1 (0.454)
Arsine, diethyl-	Diethylarsine	1 (0.454)
Asbestos * ¢¢		100 (45.4)
Auramine	Benzeneamine, 4,4'-carbonimidoylbis (N,N-dimethyl-	1 (0.454)
Azaserine	L-Serine, diazoacetate (ester)	1 (0.454)
Azinphos methyl @	Guthion *	1 (0.454)
Aziridine	Ethyleneimine	1 (0.454)
Azirino(2',3':3,4)pyrrolo(1,2-a)indole-4,7-dione,8-amino-6-[((aminocarbonyl)oxy) methyl]-1,1a,2,8,8a, 8b-hexahydro-8a-methoxy-5-methyl-.	Mitomycin C	10 (4.54)
Barium cyanide *		
Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	3-Methylcholanthrene	10 (4.54)
Benz[c]acridine	3,4-Benzacridine	10 (4.54)
3,4-Benzacridine	Benz[c]acridine	100 (45.4)
Benzal chloride	Benzene, dichloromethyl-	100 (45.4)
Benz[a]anthracene	BenzoIa]anthracene	5000 (2270)
	1,2-Benzanthracene	10 (4.54)
1,2-Benzanthracene	Benz[a]anthracene	
	Benzo[a]anthracene	10 (4.54)
1,2-Benzanthracene, 7,12-dimethyl-	7,12-Dimethylbenz[a]anthracene	1 (0.454)
Benzenamine	Aniline *	5000 (2270)
Benzenamine, 4,4'-carbonimidoylbis (N,N-dimethyl-	Auramine	100 (45.4)
Benzenamine, 4-chloro-	p-Chloroaniline	1000 (454)
Benzenamine, 4-chloro-2-methyl-, hydrochloride	4-Chloro-o-toluidine, hydrochloride	100 (45.4)
Benzenamine, N,N-dimethyl-4-phenylazo-	Dimethylaminoazobenzene	10 (4.54)
Benzenamine, 4,4'-methylenebis(2-chloro-	4,4'-Methylenebis(2-chloroaniline)	10 (4.54)
Benzenamine, 2-methyl-, hydrochloride	o-Toluidine hydrochloride	100 (45.4)
Benzenamine, 2-methyl-5-nitro-	5-Nitro-o-toluidine	100 (45.4)
Benzenamine, 4-nitro-	p-Nitroaniline	5000 (2270)
Benzene *		10 (4.54)
Benzene, 1-bromo-4-phenoxy-	4-Bromophenyl phenyl ether	100 (45.4)
Benzene, chloro-	Chlorobenzene *	100 (45.4)
Benzene, chloromethyl-	Benzyl chloride *	100 (45.4)
Benzene, 1,2-dichloro-	o-Dichlorobenzene *	100 (45.4)
	1,2-Dichlorobenzene	
Benzene, 1,3-dichloro-	m-Dichlorobenzene	100 (45.4)
	1,3-Dichlorobenzene	
Benzene, 1,4-dichloro-	p-Dichlorobenzene *	100 (45.4)
	1,4-Dichlorobenzene	
Benzene, dichloromethyl-	Benzal chloride	5000 (2270)
Benzene, 2,4-diisocyanatomethyl-	Toluene diisocyanate *	100 (45.4)
Benzene, dimethyl-	Xylene * (mixed)	1000 (454)
m-	m-	
o-	o-	
p-	p-	
Benzene, hexachloro-	Hexachlorobenzene	10 (4.54)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Benzene, hexahydro-	Cyclohexane *	1000 (454)
Benzene, hydroxy-	Phenol *	1000 (454)
Benzene, methyl-	Toluene *	1000 (454)
Benzene, 1-methyl-2,4-dinitro-	2,4-Dinitrotoluene	10 (4.54)
Benzene, 1-methyl-2,6-dinitro-	2,6-Dinitrotoluene	100 (45.4)
Benzene, 1,2-methylenedioxy-4-allyl-	Safrole	100 (45.4)
Benzene, 1,2-methylenedioxy-4-propenyl-	Isosafrole	100 (45.4)
Benzene, 1,2-methylenedioxy-4-propyl-	Dihydrosafrole	10 (4.54)
Benzene, 1-methylethyl-	Cumene	5000 (2270)
Benzene, nitro-	Nitrobenzene *	1000 (454)
Benzene, pentachloro-	Pentachlorobenzene	10 (4.54)
Benzene, pentachloronitro-	Pentachloronitrobenzene	100 (45.4)
Benzene, 1,2,4,5-tetrachloro-	1,2,4,5-Tetrachlorobenzene	5000 (2270)
Benzene, trichloromethyl-	Benzotrichloride	10 (4.54)
Benzene, 1,3,5-trinitro-	sym-Trinitrobenzene *	10 (4.54)
Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester.	Ethyl 4,4'-dichlorobenzilate	10 (4.54)
1,2-Benzenedicarboxylic acid anhydride	Phthalic anhydride	5000 (2270)
1,2-Benzenedicarboxylic acid, [bis(2-ethylhexyl)] ester	Bis(2-ethylhexyl)phthalate	100 (45.4)
1,2-Benzenedicarboxylic acid, dibutyl ester	Di-n-butyl phthalate	10 (4.54)
	Dibutyl phthalate	
	n-Butyl phthalate	
1,2-Benzenedicarboxylic acid, diethyl ester	Diethyl phthalate	1000(454)
1,2-Benzenedicarboxylic acid, dimethyl ester	Dimethyl phthalate	5000 (2270)
1,2-Benzenedicarboxylic acid, di-n-octyl ester	Di-n-octyl phthalate	5000 (2270)
1,3-Benzenediol	Resorcinol	5000 (2270)
1,2-Benzenediol,4-[1-hydroxy-2-(methylamino)ethyl]-	Epinephrine	1000 (454)
Benzenesulfonic acid chloride	Benzenesulfonyl chloride	100 (45.4)
Benzenesulfonyl chloride	Benzenesulfonic acid chloride	100 (45.4)
Benzenethiol	Phenyl mercaptan @	100 (45.4)
	Thiophenol	
Benzidine *	(1,1'-Biphenyl)-4,4'diamine	1 (0.454)
1,2-Benzisothiazolin-3-one,1,1-dioxide, and salts	Saccharin and salts	100 (45.4)
Benzo[a]anthracene	Benz[a]anthracene	10 (4.54)
	1,2-Benzanthracene	
Benzo[b]fluoranthene		1 (0.454)
Benzo[k]fluoranthene	Fluoranthene	5000 (2270)
Benzo[j,k]fluorene		100 (45.4)
Benzoic acid		5000 (2270)
Benzonitrile *		5000 (2270)
Benzo[g,h,i]perylene		5000 (2270)
Benzo[a]pyrene	3,4-Benzopyrene	1 (0.454)
3,4-Benzopyrene	Benzo[a]pyrene	1 (0.454)
p-Benzoquinone	1,4-Cyclohexadienedione	10 (4.54)
Benzotrichloride	Benzene, trichloromethyl-	10 (4.54)
Benzoyl chloride *		1000 (454)
1,2-Benzphenanthrene	Chrysene	100 (45.4)
Benzyl chloride *	Benzene, chloromethyl-	100 (45.4)
Beryllium ¢	Beryllium dust ¢	10 (4.54)
Beryllium chloride *		1 (0.454)
Beryllium dust ¢	Beryllium ¢	10 (4.54)
Beryllium fluoride *		1 (0.454)
Beryllium nitrate *		1 (0.454)
alpha - BHC		10 (4.54)
beta - BHC		1 (0.454)
delta - BHC		1 (0.454)
gamma - BHC	Hexachlorocyclohexane (gamma isomer)	1 (0.454)
	Lindane *	
2,2'-Bioxirane	1,2-3,4-Diepoxybutane	10 (4.54)
(1,1'-Biphenyl)-4,4'-diamine	Benzidine *	1 (0.454)
(1,1'-Biphenyl)-4,4'-diamine,3,3'-dichloro-	3,3'-Dichlorobenzidine	1 (0.454)
(1,1'-Biphenyl)-4,4'-diamine,3,3'-dimethoxy-	3,3'-Dimethoxybenzidine	10 (4.54)
(1,1'-Biphenyl)-4,4'-diamine,3,3'-dimethyl-	3,3'-Dimethylbenzidine	10 (4.54)
Bis(2-chloroethoxy) methane	Ethane, 1,1'-[methylenebis(oxy)]bis(2-chloro-	1000 (454)
Bis(2-chloroethyl) ether	Dichloroethyl ether	10 (4.54)
	Ethane, 1,1'-oxybis(2-chloro-	
Bis(2-chloroisopropyl) ether	Propane, 2,2'-oxybis(2-chloro-	1000 (454)
Bis(chloromethyl) ether	Methane, oxybis(chloro-	1 (0.454)
Bis(dimethylthiocarbamoyl) disulfide	Thiram	10 (4.54)
Bis(2-ethylhexyl)phthalate	1,2-Benzenedicarboxylic acid, [bis(2-ethylhexyl)]ester	100 (45.4)
Bromine cyanide	Cyanogen bromide *	1000 (454)
Bromoacetone *	2-Propanone, 1-bromo-	1000 (454)
Bromoform	Methane, tribromo-	100 (45.4)
4-Bromophenyl phenyl ether	Benzene, 1-bromo-4-phenoxy-	100 (45.4)
Brucine	Strychnidin-10-one, 2,3-dimethoxy-	100 (45.4)
1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	Hexachlorobutadiene *	1 (0.454)
1-Butanamine, N-butyl-N-nitroso-	N-Nitrosodi-n-butylamine	10 (4.54)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Butanoic acid, 4-[bis(2-chloroethyl)amino]benzene-	Chlorambucil	10 (4.54)
1-Butanol	n-Butyl alcohol °	5000 (2270)
2-Butanone	Ethyl methyl ketone @	5000 (2270)
	Methyl ethyl ketone °	
2-Butanone peroxide	Methyl ethyl ketone peroxide °	10 (4.54)
2-Butenal	Crotonaldehyde °	100 (45.4)
2-Butene, 1,4-dichloro-	1,4-Dichloro-2-butene	1 (0.454)
Butyl acetate °		5000 (2270)
iso-Butyl acetate		
sec-Butyl acetate		
tert-Butyl acetate		
n-Butyl alcohol °	1-Butanol	5000 (2270)
Butylamine °		1000 (454)
iso-Butylamine		
sec-Butylamine		
tert-Butylamine		
Butyl benzyl phthalate		100 (45.4)
n-Butyl phthalate	Di-n-butyl phthalate	10 (4.54)
	Dibutyl phthalate	
	1,2-Benzenedicarboxylic acid, dibutyl ester	
Butyric acid °		5000 (2270)
iso-Butyric acid		
Cacodylic acid	Hydroxydimethylarsine oxide	1 (0.454)
Cadmium ¢		10 (4.54)
Cadmium acetate		10 (4.54)
Cadmium bromide		10 (4.54)
Cadmium chloride		10 (4.54)
Calcium arsenate °		1 (0.454)
Calcium arsenite °		1 (0.454)
Calcium carbide °		10 (4.54)
Calcium chromate	Chromic acid, calcium salt	10 (4.54)
Calcium cyanide °		10 (4.54)
Calcium dodecylbenzene sulfonate		1000 (454)
Calcium hypochlorite °		10 (4.54)
Camphene, octachloro-	Toxaphene °	1 (0.454)
Captan		10 (4.54)
Carbamic acid, ethyl ester	Ethyl carbamate (Urethan)	100 (45.4)
Carbamic acid, methylnitroso-, ethyl ester	N-Nitroso-N-methylurethane	1 (0.454)
Carbamide, N-ethyl-N-nitroso-	N-Nitroso-N-ethylurea	1 (0.454)
Carbamide, N-methyl-N-nitroso-	N-Nitroso-N-methylurea	1 (0.454)
Carbamide, thio-	Thiourea	10 (4.54)
Carbamimidoselenoic acid	Selenourea	1000 (454)
Carbamoyl chloride, dimethyl-	Dimethylcarbamoyl chloride	1 (0.454)
Carbaryl °		100 (45.4)
Carbofuran °		10 (4.54)
Carbon bisulfide °	Carbon disulfide °	100 (45.4)
Carbon disulfide °	Carbon bisulfide °	100 (45.4)
Carbonic acid, dithallium (I) salt	Thallium(I) carbonate	100 (45.4)
Carbonochloridic acid, methyl ester	Methyl chlorocarbonate °	1000 (454)
	Methyl chloroformate @	
Carbon oxyfluoride	Carbonyl fluoride	1000 (454)
Carbon tetrachloride °	Methane, tetrachloro-	10 (4.54)
Carbonyl chloride	Phosgene °	10 (4.54)
Carbonyl fluoride	Carbon oxyfluoride	1000 (454)
Chloral	Acetaldehyde, trichloro-	5000(2270)
Chlorambucil	Butanoic acid, 4-[bis(2-chloroethyl)amino]benzene-	10 (4.54)
Chlordane °	Chlordane, technical °	1 (0.454)
	4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro-3a,4,7,7a-tetrahydro-	
Chlordane, technical °	Chlordane °	1 (0.454)
	4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro-3a,4,7,7a-tetrahydro-	
Chlorine °		10 (4.54)
Chlorine cyanide	Cyanogen chloride °	10 (4.54)
Chlormaphazine	2-Naphthylamine, N,N-bis(2-chloroethyl)-	100 (45.4)
Chloroacetaldehyde	Acetaldehyde, chloro-	1000 (454)
p-Chloroaniline	Benzenamine, 4-chloro-	1000 (454)
Chlorobenzene °	Benzene, chloro-	100 (45.4)
4-Chloro-m-cresol	p-Chloro-m-cresol	5000 (2270)
	Phenol, 4-chloro-3-methyl-	
p-Chloro-m-cresol	Phenol, 4-chloro-3-methyl-	5000 (2270)
	4-Chloro-m-cresol	
Chlorodibromomethane		100 (45.4)
1-Chloro-2,3-epoxypropane	Epichlorohydrin °	100 (45.4)
	Oxirane, 2-(chloromethyl)-	
Chloroethane	Ethyl chloride @	100 (45.4)
2-Chloroethyl vinyl ether	Ethene, 2-chloroethoxy-	1000 (454)
Chloroform °	Methene, trichloro-	10 (4.54)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Chloromethane	Methane, chloro-	100 (45.4)
Chloromethyl methyl ether	Methyl chloride °	1 (0.454)
	Methane, chloromethoxy-	
beta-Chloronaphthalene	Methylchloromethyl ether @	1 (0.454)
	Naphthalene, 2-chloro-	
2-Chloronaphthalene	2-Chloronaphthalene	5000 (2270)
	beta-Chloronaphthalene	
2-Chlorophenol	Naphthalene, 2-chloro-	5000 (2270)
	o-Chlorophenol	
o-Chlorophenol	Phenol, 2-chloro-	100 (45.4)
	Phenol, 2-chloro-	
4-Chlorophenyl phenyl ether	2-Chlorophenol	100 (45.4)
1-(o-Chlorophenyl)thiourea	Thiourea, (2-chlorophenyl)-	5000 (2270)
3-Chloropropionitrile	Propanenitrile, 3-chloro-	100 (45.4)
Chlorosulfonic acid °		1000 (454)
4-Chloro-o-toluidine, hydrochloride	Benzenamine, 4-chloro-2-methyl-, hydrochloride	1000 (454)
Chlorpyrifos °		100 (45.4)
Chromic acetate		1 (0.454)
Chromic acid °		1000 (454)
Chromic acid, calcium salt	Calcium chromate	10 (4.54)
Chromic sulfate		10 (4.54)
Chromium ¢		1000 (454)
Chromous chloride		5000 (2270)
Chrysene	1,2-Benzphenanthrene	1000 (454)
Cobaltous bromide		100 (45.4)
Cobaltous formate		1000 (454)
Cobaltous sulfamate		1000 (454)
Coke Oven Emissions		1000 (454)
Copper ¢		1 (0.454)
Copper cyanide °		5000 (2270)
Coumaphos °		10 (4.54)
Creosote		10 (4.54)
Cresol °		1 (0.454)
m-Cresol	Cresylic acid	1000 (454)
o-Cresol	m-Cresylic acid	
p-Cresol	o-Cresylic acid	
Cresylic acid	p-Cresylic acid	
m-Cresol	Cresol °	1000 (454)
o-Cresol	m-Cresylic acid	
p-Cresol	o-Cresylic acid	
Crotonaldehyde °	p-Cresylic acid	
Cumene	2-Butenal	100 (45.4)
Cumene hydroperoxide @	Benzene, 1-methylethyl-	5000 (2270)
	alpha,alpha-Dimethylbenzylhydroperoxide	10 (4.54)
Cupric acetate	Hydroperoxide, 1-methyl-1-phenylethyl-	100 (45.4)
Cupric acetoarsenite °		1 (0.454)
Cupric chloride °		10 (4.54)
Cupric nitrate °		100 (45.4)
Cupric oxalate		100 (45.4)
Cupric sulfate		10 (4.54)
Cupric sulfate ammoniated		100 (45.4)
Cupric tartrate		100 (45.4)
Cyanides (soluble cyanide salts), not elsewhere specified °		10 (4.54)
Cyanogen °	Bromine cyanide	1000 (454)
Cyanogen bromide °	Chlorine cyanide	10 (4.54)
Cyanogen chloride °	p-Benzoquinone	10 (4.54)
1,4-Cyclohexadienedione	Benzene, hexahydro-	1000 (454)
Cyclohexane °	Hexachlorocyclopentadiene °	10 (4.54)
Cyclohexanone	2H-1,3,2-Oxazaphosphorine,2-[bis(2-chloroethyl)amino] tetrahydro-2-oxide.	10 (4.54)
1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	2,4-D °, salts and esters	100 (45.4)
Cyclophosphamide	2,4-Dichlorophenoxyacetic acid °, salts and esters	
2,4-D Acid	2,4-D Acid	100 (45.4)
2,4-D Esters	2,4-Dichlorophenoxyacetic acid °, salts and esters	100 (45.4)
2,4-D °, salts and esters	5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-[3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-	10 (4.54)
Daunomycin	Dichlorodiphenyl dichloroethane	1 (0.454)
	TDE °	
DDD	4,4'-DDD	
4,4'-DDD	DDD	1 (0.454)
	Dichlorodiphenyl dichloroethane	
	TDE °	

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
DDE	4,4'-DDE	1 (0.454)
4,4'-DDE	DDE	1 (0.454)
DDT *	Dichlorodiphenyl trichloroethane *	1 (0.454)
4,4'-DDT	4,4'-DDT	1 (0.454)
	DDT *	
	Dichlorodiphenyl trichloroethane *	
Decachlorooctahydro-1,3,4-metheno-2H-cyclobuta[c,d]-pentalen-2-one	Kepone *	1 (0.454)
Diallate	S-(2,3-Dichloroallyl) diisopropylthiocarbamate	100 (45.4)
Diamine	Hydrazine *	1 (0.454)
Diaminotoluene	Toluenediamine *	10 (4.54)
Diazinon *		1 (0.454)
Dibenz[a,h]anthracene	Dibenzo[a,h]anthracene	1 (0.454)
	1,2:5,6-Dibenzanthracene	
1,2:5,6-Dibenzanthracene	Dibenz[a,h]anthracene	1 (0.454)
	Dibenzo[a,h]anthracene	
Dibenzo[a,h]anthracene	Dibenz[a,h]anthracene	1 (0.454)
	1,2:5,6-Dibenzanthracene	
1,2:7,8-Dibenzopyrene	Dibenz[a,j]pyrene	10 (4.54)
Dibenz[a,j]pyrene	1,2:7,8-Dibenzopyrene	10 (4.54)
1,2-Dibromo-3-chloropropane	Propane, 1,2-dibromo-3-chloro-	1 (0.454)
Dibutyl phthalate	Di-n-butyl phthalate	10 (4.54)
	n-Butyl phthalate *	
	1,2-Benzenedicarboxylic acid, dibutyl ester	
Di-n-butyl phthalate	Dibutyl phthalate	10 (4.54)
	n-Butyl phthalate *	
	1,2-Benzenedicarboxylic acid, dibutyl ester	
Dicamba		1000 (454)
Dichlobenil		100 (45.4)
Dichlone		1 (0.454)
S-(2,3-Dichloroallyl) diisopropylthiocarbamate	Diallate	100 (45.4)
3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide	Pronamide	5000 (2270)
Dichlorobenzene (mixed)		100 (45.4)
1,2-Dichlorobenzene	Benzene, 1,2-dichloro-	100 (45.4)
	o-Dichlorobenzene *	
1,3-Dichlorobenzene	Benzene, 1,3-dichloro-	100 (45.4)
	m-Dichlorobenzene	
1,4-Dichlorobenzene	Benzene, 1,4-dichloro-	100 (45.4)
	p-Dichlorobenzene *	
m-Dichlorobenzene	Benzene, 1,3-dichloro-	100 (45.4)
	1,3-Dichlorobenzene	
o-Dichlorobenzene *	Benzene, 1,2-dichloro-	100 (45.4)
	1,2-Dichlorobenzene	
p-Dichlorobenzene *	Benzene, 1,4-dichloro-	100 (45.4)
	1,4-Dichlorobenzene	
3,3'-Dichlorobenzidine	(1,1'-Biphenyl)-4,4'-diamine,3,3'-dichloro-	1 (0.454)
Dichlorobromomethane		5000 (2270)
1,4-Dichloro-2-butene		1 (0.454)
Dichlorodifluoromethane *	2-Butene, 1,4-dichloro-	5000 (2270)
Dichlorodiphenyl dichloroethane	Methane, dichlorodifluoro-	1 (0.454)
	DDD	
	TDE *	
	4,4'-DDD	
Dichlorodiphenyl trichloroethane *	DDT *	1 (0.454)
	4,4'-DDT	
1,1-Dichloroethane	Ethane, 1,1-dichloro-	1000 (454)
	Ethylidene dichloride	
1,2-Dichloroethane	Ethane, 1,2-dichloro-	100 (45.4)
	Ethylene dichloride *	
1,1-Dichloroethylene	Ethene, 1,1-dichloro-	100 (45.4)
	Vinylidene chloride *	
1,2-trans-Dichloroethylene	Ethene, trans-1,2-dichloro-	1000 (454)
Dichloroethyl ether	Bis (2-chloroethyl) ether	10 (4.54)
	Ethane, 1,1'-oxybis(2-chloro-	
2,4-Dichlorophenol	Phenol, 2,4-dichloro-	100 (45.4)
2,6-Dichlorophenol	Phenol, 2,6-dichloro-	100 (45.4)
2,4-Dichlorophenoxyacetic acid *, salts and esters	2,4-D Acid	100 (45.4)
	2,4-D *, salts and esters	
Dichlorophenylarsine	Phenyl dichloroarsine *	1 (0.454)
Dichloropropane *		1000 (454)
1,1-Dichloropropane		
1,3-Dichloropropane		
1,2-Dichloropropane	Propylene dichloride *	1000 (454)
Dichloropropane - Dichloropropene (mixture)		100 (45.4)
Dichloropropene(s) *		100 (45.4)
2,3-Dichloropropene (isomer)		
1,3-Dichloropropene	Propene, 1,3-dichloro-	100 (45.4)
2,2-Dichloropropionic acid *		5000 (2270)
Dichlorvos *		10 (4.54)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Dicofol		10 (4.54)
Dieldrin *	1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,exo-1,4:5,8-dimethanonaphthalene.	1 (0.454)
1,2:3,4-Diepoxybutane	2,2'-Bioxirane	10 (4.54)
Diethylamine *		100 (45.4)
Diethylarsine	Arsine, diethyl-	1 (0.454)
1,4-Diethylene dioxide	1,4-Dioxane	100 (45.4)
O,O-Diethyl S-[2-(ethylthio)ethyl] phosphorodithioate	Disulfoton *	1 (0.454)
N,N'-Diethylhydrazine	Hydrazine, 1,2-diethyl-	10 (4.54)
O,O-Diethyl S-methyl dithiophosphate	Phosphorodithioic acid, O,O-diethylS-methyl ester	5000 (2270)
Diethyl-p-nitrophenyl phosphate	Phosphoric acid, diethyl p-nitrophenyl ester	100 (45.4)
Diethyl phthalate	1,2-Benzenedicarboxylic acid, diethyl ester	1000(454)
O,O-Diethyl O-pyrazinyl phosphorothioate	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	100 (45.4)
Diethylstilbestrol	4,4'-Stilbenediol, alpha,alpha'-diethyl-	1 (0.454)
1,2-Dihydro-3,6-pyridazinedione	Maleic hydrazide	5000 (2270)
Dihydrosafrole	Benzene, 1,2-methylenedioxy-4-propyl-	10 (4.54)
Diisopropyl fluorophosphate	Phosphorofluoridic acid, bis(1-methylethyl) ester	100 (45.4)
Dimethoate	Phosphorodithioic acid, O,O-dimethyl S-[2(methylamino)-2-oxoethyl] ester.	10 (4.54)
3,3'-Dimethoxybenzidine	(1,1'-Biphenyl)-4,4'-diamine,3,3'-dimethoxy-	10 (4.54)
Dimethylamine *	Methanamine, N-methyl-	1000 (454)
Dimethylaminoazobenzene	Benzenamine, N,N-dimethyl-4-phenylazo-	10 (4.54)
7,12-Dimethylbenz[a]anthracene	1,2-Benzanthracene, 7,12-dimethyl-	1 (0.454)
3,3'-Dimethylbenzidine	(1,1'-Biphenyl)-4,4'-diamine,3,3'-dimethyl-	10 (4.54)
alpha,alpha-Dimethylbenzylhydroperoxide	Hydroperoxide, 1-methyl-1-phenylethyl-	10 (4.54)
	Cumene hydroperoxide @	
3,3-Dimethyl-1-(methylthio)-2-butanone, O-[(methylamino)carbonyl] oxime.	Thiofanox	100 (45.4)
Dimethylcarbamoyl chloride	Carbamoyl chloride, dimethyl-	1 (0.454)
1,1-Dimethylhydrazine	Dimethylhydrazine, unsymmetrical @	10 (4.54)
1,2-Dimethylhydrazine	Hydrazine, 1,1-dimethyl-	
Dimethylhydrazine, unsymmetrical @	Hydrazine, 1,2-dimethyl-	1 (0.454)
	1,1-Dimethylhydrazine	10 (4.54)
O,O-Dimethyl O-p-nitrophenyl phosphorothioate	Hydrazine, 1,1-dimethyl-	
Dimethylnitrosamine	Methyl parathion *	100 (45.4)
alpha,alpha-Dimethylphenethylamine	(-Nitrosodimethylamine	10 (4.54)
2,4-Dimethylphenol	Ethanamine, 1,1-dimethyl-2-phenyl-	5000 (2270)
Dimethyl phthalate	Phenol, 2,4-dimethyl-	100 (45.4)
Dimethyl sulfate *	1,2-Benzenedicarboxylic acid, dimethyl ester	5000 (2270)
Dinitrobenzene * (mixed)	Sulfuric acid, dimethyl ester	10 (4.54)
m-Dinitrobenzene		100 (45.4)
o-Dinitrobenzene		
p-Dinitrobenzene		
4,6-Dinitro-o-cresol and salts	Phenol, 2,4-dinitro-6-methyl-, and salts	10 (4.54)
4,6-Dinitro-o-cyclohexylphenol	Phenol, 2-cyclohexyl-4,6-dinitro-	100 (45.4)
Dinitrophenol		10 (4.54)
2,5-Dinitrophenol		
2,6-Dinitrophenol		
2,4-Dinitrophenol	Phenol, 2,4-dinitro-	10 (4.54)
Dinitrotoluene		10 (4.54)
3,4-Dinitrotoluene		
2,4-Dinitrotoluene	Benzene, 1-methyl-2,4-dinitro-	10 (4.54)
2,6-Dinitrotoluene	Benzene, 1-methyl-2,6-dinitro-	100 (45.4)
Dinoseb	Phenol, 2,4-dinitro-6-(1-methylpropyl)-	1000 (454)
Di-n-octyl phthalate	1,2-Benzenedicarboxylic acid, di-n-octyl ester	5000 (2270)
1,4-Dioxane	1,4-Diethylene dioxide	100 (45.4)
1,2-Diphenylhydrazine	Hydrazine, 1,2-diphenyl-	10 (4.54)
Diphosphoramide, octamethyl-	Octamethylpyrophosphoramide	100 (45.4)
Dipropylamine	1-Propanamine, N-propyl-	5000 (2270)
Di-n-propylnitrosamine	N-Nitrosodi-n-propylamine	10 (4.54)
Diquat		1000 (454)
Disulfoton *	O,O-Diethyl S-[2-(ethylthio)ethyl]phosphorodithioate	1 (0.454)
2,4-Dithiobiuret	Thiomidodicarbonic diamide	100 (45.4)
Dithiopyrophosphoric acid, tetraethyl ester	Tetraethyldithiopyrophosphate	100 (45.4)
Diuron		100 (45.4)
Dodecylbenzenesulfonic acid *		1000 (454)
Endosulfan *	5-Norbornene-2,3-dimethanol,1,4,5,6,7,7-hexachloro,cyclic sulfite	1 (0.454)
alpha - Endosulfan		1 (0.454)
beta - Endosulfan		1 (0.454)
Endosulfan sulfate		1 (0.454)
Endothall	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid	1000 (454)
Endrin *	1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,endo-1,4:5,8-dimethanonaphthalene.	1 (0.454)
Endrin aldehyde		1 (0.454)
Epichlorohydrin *	1-Chloro-2,3-epoxypropane	100 (45.4)
	Oxirane, 2-(chloromethyl)-	

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Ephinephrine	1,2-Benzenediol,4-[1-hydroxy-2-(methylamino)ethyl]	1000 (454)
Ethanal	Acetaldehyde *	1000 (454)
Ethanamine, 1,1-dimethyl-2-phenyl-	alpha,alpha-Dimethylphenethylamine	5000 (2270)
Ethanamine, N-ethyl-N-nitroso-	N-Nitrosodiethylamine	1 (0.454)
Ethane, 1,2-dibromo-	Ethylene dibromide *	1 (0.454)
Ethane, 1,1-dichloro-	Ethylidene dichloride	1000 (454)
Ethane, 1,2-dichloro-	1,1-Dichloroethane Ethylene dichloride * 1,2-Dichloroethane	100 (45.4)
Ethane, 1,1,1,2,2,2-hexachloro-	Hexachloroethane *	100 (45.4)
Ethane, 1,1'-[methylenebis(oxy)]bis(2-chloro-	Bis(2-chloroethoxy)methane	1000 (454)
Ethane, 1,1'-oxybis-	Ethyl ether *	100 (45.4)
Ethane, 1,1'-oxybis(2-chloro-	Bis (2-chloroethyl) ether Dichlorethyl ether	10 (4.54)
Ethane, pentachloro-	Pentachloroethane	10 (4.54)
Ethane, 1,1,1,2-tetrachloro-	1,1,1,2-Tetrachloroethane	100 (45.4)
Ethane, 1,1,2,2-tetrachloro-	1,1,2,2-Tetrachloroethane	100 (45.4)
Ethane, 1,1,2-trichloro-	1,1,2-Trichloroethane	100 (45.4)
Ethane, 1,1,1-trichloro-2,2-bis(p-methoxyphenyl)-	Methoxychlor	1 (0.454)
1,2-Ethanedylbiscarbamodithioic acid	Ethylenebis(dithiocarbamic acid)	5000 (2270)
Ethanenitrile	Acetonitrile *	5000 (2270)
Ethanethioamide	Thioacetamide	10 (4.54)
Ethanol, 2,2'-(nitrosoimino)bis-	N-Nitrosodiethanolamine	1 (0.454)
Ethanone, 1-phenyl-	Acetophenone	5000 (2270)
Ethanoyl chloride	Acetyl chloride *	5000 (2270)
Ethanamine, N-methyl-N-nitroso-	N-Nitrosomethylvinylamine	10 (4.54)
Ethene, chloro-	Vinyl chloride *	1 (0.454)
Ethene, 2-chloroethoxy-	2-Chloroethyl vinyl ether	1000 (454)
Ethene, 1,1-dichloro-	Vinylidene chloride *	100 (45.4)
Ethene, 1,1,2,2-tetrachloro-	1,1-Dichloroethylene Perchloroethylene Tetrachloroethene Tetrachloroethylene	100 (45.4)
Ethene, trans-1,2-dichloro-	1,2-trans-Dichloroethylene	1000 (454)
Ethion *		10 (4.54)
2-Ethoxyethanol	Ethylene glycol monoethyl ether *	1000 (454)
Ethyl acetate	Acetic acid, ethyl ester	5000 (2270)
Ethyl acrylate *	2-Propenoic acid, ethyl ester	1000 (454)
Ethylbenzene *		1000 (454)
Ethyl carbamate (Urethan)	Carbamic acid, ethyl ester	100 (45.4)
Ethyl chloride @	Chloroethane	100 (45.4)
Ethyl cyanide	Propanenitrile	10 (4.54)
Ethyl 4,4'-dichlorobenzilate	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester.	10 (4.54)
Ethylene dibromide *	Ethane, 1,2-dibromo-	1 (0.454)
Ethylene dichloride *	1,2-Dichloroethane Ethane, 1,2-dichloro-	100 (45.4)
Ethylene glycol monoethyl ether *	2-Ethoxyethanol	1000 (454)
Ethylene oxide *	Oxirane	10 (4.54)
Ethylenebis(dithiocarbamic acid)	1,2-Ethanediylbiscarbamodithioicacid	5000 (2270)
Ethylenediamine *		5000 (2270)
Ethylenediamine tetraacetic acid (EDTA)		5000 (2270)
Ethylenethioures	2-Imidazolidinethione	10 (4.54)
Ethylenimine	Aziridine	1 (0.454)
Ethyl ether *	Ethane, 1,1'-oxybis-	100 (45.4)
Ethylidene dichloride	Ethane, 1,1-dichloro- 1,1-Dichloroethane	1000 (454)
Ethyl methacrylate	2-Propenoic acid, 2-methyl-, ethyl ester	1000 (454)
Ethyl methanesulfonate	Methanesulfonic acid, ethyl ester	1 (0.454)
Ethyl methyl ketone @	2-Butanone Methyl ethyl ketone *	5000 (2270)
Famphur	Phosphorothioic acid, O,O-dimethyl O-[p-[(dimethylamino)-sulfonyl] phenyl] ester.	1000 (454)
Ferric ammonium citrate		1000 (454)
Ferric ammonium oxalate		1000 (454)
Ferric chloride		1000 (454)
Ferric fluoride		100 (45.4)
Ferric nitrate *		1000 (454)
Ferric sulfate		1000 (454)
Ferrous ammonium sulfate		1000 (454)
Ferrous chloride *		1000 (454)
Ferrous sulfate		100 (45.4)
Fluoranthene	Benzo[j,k]fluorene	1000 (454)
Fluorene		100 (45.4)
Fluorine *		5000 (2270)
Fluoroacetamide	Acetamide, 2-fluoro-	10 (4.54)
Fluoroacetic acid, sodium salt	Acetic acid, fluoro-, sodium salt	100 (45.4) 10 (4.54)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Formaldehyde *	Methylene oxide	100 (45.4)
Formic acid *	Methanoic acid	5000 (2270)
Fulminic acid, mercury(II)salt	Mercury fulminate	10 (4.54)
Fumaric acid		5000 (2270)
Furan *		100 (45.4)
Furan, tetrahydro-	Tetrahydrofuran *	1000 (454)
2-Furancarboxaldehyde	Furfural *	5000 (2270)
2,5-Furandione	Maleic anhydride *	5000 (2270)
Furfural *	2-Furancarboxaldehyde	100 (45.4)
Furfuran	Furan *	1 (0.454)
D-Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-	Streptozotocin	10 (4.54)
Glycidylaldehyde	1-Propanal, 2,3-epoxy-	10 (4.54)
Guanidine, N-nitroso-N-methyl-N'-nitro-	N-Methyl-N'-nitro-N-nitrosoguanidine	10 (4.54)
Guthion *	Azinphos methyl @	1 (0.454)
Heptachlor	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	1 (0.454)
Heptachlor epoxide		1 (0.454)
Hexachlorobenzene	Benzene, hexachloro-	10 (4.54)
Hexachlorobutadiene *	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	1 (0.454)
Hexachlorocyclohexane (gamma isomer)	gamma - BHC Lindane *	1 (0.454)
Hexachlorocyclopentadiene *	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	10 (4.54)
1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,endo-1,4:5,8-dimethanonaphthalene.	Endrin *	1 (0.454)
1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,exo-1,4:5,8-dimethanonaphthalene.	Dieldrin *	1 (0.454)
Hexachloroethane *	Ethane, 1,1,1,2,2,2-hexachloro-	100 (45.4)
Hexachlorohexahydro-endo,endo-dimethanonaphthalene	1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4,5,8-endo,endo-dimethanonaphthalene.	1 (0.454)
1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo,exo-dimethanonaphthalene.	Hexachlorohexahydro-endo,endo-dimethanonaphthalene	1 (0.454)
Hexachlorophene	Aldrin *	1 (0.454)
Hexachloropropene	2,2'-Methylenebis(3,4,6-trichlorophenol)	100 (45.4)
Hexaethyl tetraphosphate *	1-Propene, 1,1,2,3,3,3-hexachloro-	1000 (454)
Hydrazine *	Tetraphosphoric acid, hexaethyl ester	100 (45.4)
Hydrazine, 1,2-diethyl-	Diamine	1 (0.454)
Hydrazine, 1,1-dimethyl-	N,N'-Diethylhydrazine 1,1-Dimethylhydrazine	10 (4.54)
Hydrazine, 1,2-dimethyl-	Dimethylhydrazine, unsymmetrical @ 1,2-Dimethylhydrazine	10 (4.54)
Hydrazine, 1,2-diphenyl-	1,2-Diphenylhydrazine	1 (0.454)
Hydrazine, methyl-	Methyl hydrazine *	10 (4.54)
Hydrazinecarbothioamide	Thiosemicarbazide	10 (4.54)
Hydrochloric acid *		100 (45.4)
Hydrocyanic acid *	Hydrogen cyanide	5000 (2270)
Hydrofluoric acid *	Hydrogen fluoride *	100 (45.4)
Hydrogen cyanide	Hydrocyanic acid *	10 (4.54)
Hydrogen fluoride *	Hydrofluoric acid *	100 (45.4)
Hydrogen phosphide	Phosphine *	100 (45.4)
Hydrogen sulfide *	Hydrosulfuric acid	100 (45.4)
Hydroperoxide, 1-methyl-1-phenylethyl-	Sulfur hydride alpha,alpha-Dimethylbenzylhydroperoxide	10 (4.54)
Hydrosulfuric acid	Cumene hydroperoxide @ Hydrogen sulfide *	100 (45.4)
Hydroxydimethylarsine oxide	Sulfur hydride Cacodylic acid	1 (0.454)
2-Imidazolidinethione	Ethylenethioures	10 (4.54)
Indeno(1,2,3-cd)pyrene	1,10-(1,2-Phenylene)pyrene	100 (45.4)
Isobutyl alcohol	1-Propanol, 2-methyl-	5000 (2270)
Isocyanic acid, methyl ester	Methyl isocyanate *	1 (0.454)
Isophorone		5000 (2270)
Isoprene *		100 (45.4)
Isopropanolamine dodecylbenzene sulfonate		1000 (454)
Isosafrole	Benzene, 1,2-methylenedioxy-4-propenyl-	100 (45.4)
3(2H)-Isoxazolone, 5-(aminomethyl)-	5-(Aminomethyl)-3-Isoxazolol	1000 (454)
Kepone	Decachlorooctahydro-1,3,4-metheno-2H-cyclobuta[c,d]-pentalen-2-one	1 (0.454)
Lasiocarpine		10 (4.54)
Lead *		1 (0.454)
Lead acetate	Acetic acid, lead salt	5000 (2270)
Lead arsenate *		1 (0.454)
Lead chloride *		100 (45.4)
Lead fluoborate *		100 (45.4)
Lead fluoride *		100 (45.4)
Lead iodide		100 (45.4)
Lead nitrate *		100 (45.4)
Lead phosphate	Phosphoric acid, lead salt	100 (45.4)
Lead stearate		1 (0.454)
		5000 (2270)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Lead subacetate		100 (45.4)
Lead sulfate *		100 (45.4)
Lead sulfide		5000 (2270)
Lead thiocyanate		100 (45.4)
Lindane *	gamma - BHC	1 (0.454)
	Hexachlorocyclohexane (gamma isomer)	
Lithium chromate		10 (4.54)
Malathion *		100 (45.4)
Maleic acid *		5000 (2270)
Maleic anhydride *	2,5-Furandione	5000 (2270)
Maleic hydrazide	1,2-Dihydro-3,6-pyridazinedione	5000 (2270)
Malononitrile	Propanedinitrile	1000 (454)
Melphalan	Alanine, 3-[p-bis(2-chloroethyl)amino]phenyl-, L-	1 (0.454)
Mercaptodimethur		10 (4.54)
Mercuric cyanide *		1 (0.454)
Mercuric nitrate *		10 (4.54)
Mercuric sulfate *		10 (4.54)
Mercuric thiocyanate		10 (4.54)
Mercurous nitrate *		10 (4.54)
Mercury *		1 (0.454)
Mercury, (acetato-O)phenyl-	Phenylmercuric acetate	100 (45.4)
Mercury fulminate	Fulminic acid, mercury(II)salt	10 (4.54)
Methacrylonitrile	2-Propenenitrile, 2-methyl-	1000 (454)
Methanamine, N-methyl-	Dimethylamine *	1000 (454)
Methane, bromo-	Methyl bromide *	1000 (454)
Methane, chloro-	Chloromethane	100 (45.4)
	Methyl chloride *	
Methane, chloromethoxy-	Chloromethyl methyl ether	1 (0.454)
	Methylchloromethyl ether @	
Methane, dibromo-	Methylene bromide	1000 (454)
Methane, dichloro-	Methylene chloride *	1000 (454)
Methane, dichlorodifluoro-	Dichlorodifluoromethane *	5000 (2270)
Methane, iodo-	Methyl iodide	100 (45.4)
Methane, oxybis(chloro-	Bis(chloromethyl) ether	1 (0.454)
Methane, tetrachloro-	Carbon tetrachloride *	10 (4.54)
Methane, tetranitro-	Tetranitromethane *	10 (4.54)
Methane, tribromo-	Bromoform	100 (45.4)
Methane, trichloro-	Chloroform *	10 (4.54)
Methane, trichlorofluoro-	Trichloromonofluoromethane	5000 (2270)
Methanesulfenyl chloride, trichloro-	Perchloromethyl mercaptan @	100 (45.4)
	Trichloromethanesulfenyl chloride	
Methanesulfonic acid, ethyl ester	Ethyl methanesulfonate	1 (0.454)
Methanethiol	Methyl mercaptan *	100 (45.4)
	Thiomethanol	
Methanoic acid	Formic acid *	5000 (2270)
4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-a,4,7,7a-tetrahydro-	Chlordane *	1 (0.454)
	Chlordane, technical *	
Methanol *	Heptachlor	1 (0.454)
Methapyrilene	Methyl alcohol *	5000 (2270)
Methomyl	Pyridine, 2-[(2-(dimethylamino)ethyl)-2-thenylamino]-	5000 (2270)
Methoxychlor	Acetamidic acid, N-[(methylcarbamoyl)oxy]thio-, methyl ester	100 (45.4)
Methyl alcohol *	Ethane, 1,1,1-trichloro-2,2-bis(p-methoxyphenyl)-	1 (0.454)
Methylamine @	Methanol *	5000 (2270)
2-Methylaziridine	Monomethylamine	100 (45.4)
Methyl bromide *	1,2-Propylenimine	1 (0.454)
1-Methylbutadiene	Methane, bromo-	1000 (454)
Methyl chloride *	1,3-Pentadiene	100 (45.4)
	Chloromethane	
Methyl chlorocarbonate *	Methane, chloro-	1000 (454)
	Carbonochloridic acid, methyl ester	
Methyl chloroform *	Methyl chloroformate @	1000 (454)
Methyl chloroformate @	1,1,1-Trichloroethane *	1000 (454)
	Carbonochloridic acid, methyl ester	
Methylchloromethyl ether @	Methyl chlorocarbonate *	1 (0.454)
	Chloromethyl methyl ether	
3-Methylcholanthrene	Methane, chloromethoxy-	10 (4.54)
4,4'-Methylenebis(2-chloroaniline)	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	10 (4.54)
2,2'-Methylenebis(3,4,6-trichlorophenol)	Benzenamine, 4,4'-methylenebis(2-chloro-	100 (45.4)
Methylene bromide	Hexachlorophene	1000 (454)
Methylene chloride *	Methane, dibromo-	1000 (454)
Methylene oxide	Methane, dichloro-	10 (4.54)
Methyl ethyl ketone *	Formaldehyde *	5000 (2270)
	2-Butanone	
Methyl ethyl ketone peroxide *	Ethyl methyl ketone @	10 (4.54)
Methyl hydrazine *	2-Butanone peroxide	10 (4.54)
Methyl iodide	Hydrazine, methyl-	100 (45.4)
	Methane, iodo-	

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Methyl isobutyl ketone	4-Methyl-2-pentanone	5000 (2270)
Methyl isocyanate *	Isocyanic acid, methyl ester	1 (0.454)
2-Methyllactonitrile	Acetone cyanohydrin *	10 (4.54)
	Propanenitrile, 2-hydroxy-2-methyl-	
Methyl mercaptan *	Methanethiol	100 (45.4)
	Thiomethanol	
Methyl methacrylate *	2-Propenoic acid, 2-methyl-, methyl ester	1000 (454)
N-Methyl-N'-nitro-N-nitrosoguanidine	Guanidine, N-nitroso-N-methyl-N'-nitro-	10 (4.54)
Methyl parathion *	O,O-Dimethyl O-p-nitrophenyl phosphorothioate	100 (45.4)
4-Methyl-2-pentanone	Methyl isobutyl ketone	5000 (2270)
Methylthiouracil	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	10 (4.54)
Mevinphos *		10 (4.54)
Mexacarbate *		1000 (454)
Mitomycin C	Azirino(2',3':3,4)pyrrolo(1,2-a)indole-4,7-dione,6-amino-8-[((aminocarbonyl)oxy) methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-.	10 (4.54)
Monoethylamine *		100 (45.4)
Monomethylamine	Methylamine @	100 (45.4)
Naled		10 (4.54)
5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-[3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl) oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-.	Daunomycin	10 (4.54)
Naphthalene *		100 (45.4)
Naphthalene, 2-chloro-	beta-Chloronaphthalene	5000 (2270)
	2-Chloronaphthalene	
1,4-Naphthalenedione	1,4-Naphthoquinone	5000 (2270)
2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'- dimethyl-(1,1'-biphenyl)-4,4'-diyl)-bis(azo)]bis(5-amino-4-hydroxy)-tetrasodium salt.	Trypan blue	10 (4.54)
Naphthenic acid		100 (45.4)
1,4-Naphthoquinone	1,4-Naphthalenedione	5000 (2270)
alpha-Naphthylamine	1-Naphthylamine	100 (45.4)
beta-Naphthylamine	2-Naphthylamine	1 (0.454)
1-Naphthylamine	alpha-Naphthylamine	100 (45.4)
2-Naphthylamine	beta-Naphthylamine	1 (0.454)
2-Naphthylamine, N,N-bis(2-chloroethyl)-	Chlornaphazine	100 (45.4)
alpha-Naphthylthiourea	Thiourea, 1-naphthalenyl-	100 (45.4)
Nickel ¢		100 (45.4)
Nickel ammonium sulfate		100 (45.4)
Nickel carbonyl *	Nickel tetracarbonyl	10 (4.54)
Nickel chloride		100 (45.4)
Nickel cyanide *	Nickel(II) cyanide	10 (4.54)
Nickel(II) cyanide	Nickel cyanide *	10 (4.54)
Nickel hydroxide		10 (4.54)
Nickel nitrate *		100 (45.4)
Nickel sulfate		100 (45.4)
Nickel tetracarbonyl	Nickel carbonyl *	10 (4.54)
Nicotine * and salts *	Pyridine, (S)-3-(1-methyl-2-pyrrolidinyl)-, and salts	100 (45.4)
Nitric acid *		1000 (454)
Nitric oxide *	Nitrogen(II) oxide	10 (4.54)
p-Nitroaniline *	Benzenamine, 4-nitro-	5000 (2270)
Nitrobenzene *	Benzene, nitro-	1000 (454)
Nitrogen dioxide *	Nitrogen(IV) oxide	10 (4.54)
	Nitrogen peroxide @	
Nitrogen(II) oxide	Nitrogen tetroxide @	
Nitrogen(IV) oxide	Nitric oxide *	10 (4.54)
	Nitrogen dioxide *	10 (4.54)
Nitrogen peroxide @	Nitrogen peroxide @	
	Nitrogen tetroxide @	
Nitrogen tetroxide @	Nitrogen dioxide *	10 (4.54)
	Nitrogen(IV) oxide	
Nitroglycerine *	Nitrogen peroxide	
Nitrophenol (mixed)	1,2,3-Propanetriol, trinitrate-	10 (4.54)
m-		100 (45.4)
o-	2-Nitrophenol	
p-	4-Nitrophenol	
o-Nitrophenol	Phenol, 4-nitro-	
p-Nitrophenol	2-Nitrophenol	100 (45.4)
	Phenol, 4-nitro-	100 (45.4)
2-Nitrophenol	4-Nitrophenol	
4-Nitrophenol	o-Nitrophenol	100 (45.4)
	p-Nitrophenol	100 (45.4)
2-Nitropropane	Phenol, 4-nitro-	
	Propane, 2-nitro-	10 (4.54)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
N-Nitrosodi-n-butylamine	1-Butanamine, N-butyl-N-nitroso-	10 (4.54)
N-Nitrosodiethanolamine	Ethanol, 2,2'-(nitrosoimino)bis-	1 (0.454)
N-Nitrosodiethylamine	Ethanamine, N-ethyl-N-nitroso-	1 (0.454)
N-Nitrosodimethylamine	Dimethylnitrosamine	10 (4.54)
N-Nitrosodiphenylamine		100 (45.4)
N-Nitrosodi-n-propylamine	Di-n-propylnitrosamine	10 (4.54)
N-Nitroso-N-ethylurea	Carbamide, N-ethyl-N-nitroso-	1 (0.454)
N-Nitroso-N-methylurea	Carbamide, N-methyl-N-nitroso-	1 (0.454)
N-Nitroso-N-methylurethane	Carbamic acid, methylnitroso-, ethyl ester	1 (0.454)
N-Nitrosomethylvinylamine	Ethenamine, N-methyl-N-nitroso-	10 (4.54)
N-Nitrosopiperidine	Pyridine, hexahydro-N-nitroso-	10 (4.54)
N-Nitrosopyrrolidine	Pyrrole, tetrahydro-N-nitroso-	1 (0.454)
Nitrotoluene		1000 (454)
m-Nitrotoluene		
o-Nitrotoluene		
p-Nitrotoluene		
5-Nitro-o-toluidine	Benzeneamine, 2-methyl-5-nitro-	100 (45.4)
5-Norbornene-2,3-dimethanol,1,4,5,6,7,7-hexachloro,cyclic sulfite	Endosulfan *	1 (0.454)
Octamethylpyrophosphoramide	Diphosphoramide, octamethyl-	100 (45.4)
Osmium oxide	Osmium tetroxide	1000 (454)
Osmium tetroxide	Osmium oxide	1000 (454)
7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid	Endothall	1000 (454)
1,2-Oxathiolane, 2,2-dioxide	1,3-Propane sultone	10 (4.54)
2H-1,3,2-Oxazaphosphorine,2-[bis(2-chloroethyl) amino] tetrahydro-2-oxide.	Cyclophosphamide	10 (4.54)
Oxirane	Ethylene oxide *	10 (4.54)
Oxirane, 2-(chloromethyl)-	Epichlorohydrin *	100 (45.4)
	1-Chloro-2,3-epoxypropane	
Paraformaldehyde *		1000 (454)
Paraldehyde *	1,3,5-Trioxane, 2,4,6-trimethyl-	1000 (454)
Parathion *	Phosphorothioic acid, O,O-diethyl O-(p-nitrophenyl)ester	10 (4.54)
Pentachlorobenzene	Benzene, pentachloro-	10 (4.54)
Pentachloroethane	Ethane, pentachloro-	10 (4.54)
Pentachloronitrobenzene	Benzene, pentachloronitro-	100 (45.4)
Pentachlorophenol	Phenol, pentachloro-	10 (4.54)
1,3-Pentadiene	1-Methylbutadiene	100 (45.4)
Perchloroethylene *	Ethene, 1,1,2,2-tetrachloro	
	Tetrachloroethene	
	Tetrachloroethylene *	
Perchloromethyl mercaptan @	Methanesulfenyl chloride, trichloro-	100 (45.4)
	Trichloromethanesulfenyl chloride	
Phenacetin	Acetamide, N-(4-ethoxyphenyl)-	100 (45.4)
Phenanthrene		5000 (2270)
Phenol *	Benzene, hydroxy-	1000 (454)
Phenol, 2-chloro-	o-Chlorophenol	100 (45.4)
	2-Chlorophenol	
Phenol, 4-chloro-3-methyl-	p-Chloro-m-cresol	5000 (2270)
	4-Chloro-m-cresol	
Phenol, 2-cyclohexyl-4,6-dinitro-	4,6-Dinitro-o-cyclohexylphenol	100 (45.4)
Phenol, 2,4-dichloro-	2,4-Dichlorophenol	100 (45.4)
Phenol, 2,6-dichloro-	2,6-Dichlorophenol	100 (45.4)
Phenol, 2,4-dimethyl-	2,4-Dimethylphenol	100 (45.4)
Phenol, 2,4-dinitro-	2,4-Dinitrophenol	10 (4.54)
Phenol, 2,4-dinitro-6-(1-methylpropyl)-	Dinoseb	1000 (454)
Phenol, 2,4-dinitro-6-methyl-, and salts	4,6-Dinitro-o-cresol and salts	10 (4.54)
Phenol, 4-nitro-	p-Nitrophenol *	100 (45.4)
	4-Nitrophenol *	
Phenol, pentachloro-	Pentachlorophenol	10 (4.54)
Phenol, 2,3,4,6-tetrachloro-	2,3,4,6-Tetrachlorophenol	10 (4.54)
Phenol, 2,4,5-trichloro-	2,4,5-Trichlorophenol	10 (4.54)
Phenol, 2,4,6-trichloro-	2,4,6-Trichlorophenol	10 (4.54)
Phenol, 2,4,6-trinitro-, ammonium salt	Ammonium picrate *	10 (4.54)
Phenyl dichloroarsine *	Dichlorophenylarsine	1 (0.454)
1,10-(1,2-Phenylene)pyrene	Indeno(1,2,3-cd)pyrene	100 (45.4)
Phenyl mercaptan @	Benzenethiol	100 (45.4)
	Thiophenol *	
Phenylmercuric acetate	Mercury, (acetato-O)phenyl-	100 (45.4)
N-Phenylthiourea	Thiourea, phenyl-	100 (45.4)
Phorate	Phosphorodithioic acid, O,O-diethyl S-(ethylthio), methylester	10 (4.54)
Phosgene *	Carbonyl chloride	10 (4.54)
Phosphine *	Hydrogen phosphide	100 (45.4)
Phosphoric acid *		5000 (2270)
Phosphoric acid, diethyl p-nitrophenyl ester	Diethyl-p-nitrophenyl phosphate	100 (45.4)
Phosphoric acid, lead salt	Lead phosphate	1 (0.454)
Phosphorodithioic acid, O,O-diethyl S-(ethylthio), methyl ester	Phorate	10 (4.54)
Phosphorodithioic acid, O,O-diethyl S-methyl ester	O,O-Diethyl S-methyl dithiophosphate	5000 (2270)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Phosphorodithioic acid, O,O-dimethyl S-[2 (methylamino)-2-oxoethyl] ester.	Dimethoate	10 (4.54)
Phosphorofluoridic acid, bis(1-methylethyl) ester	Diisopropyl fluorophosphate	100 (45.4)
Phosphorothioic acid, O,O-diethyl O-(p-nitrophenyl) ester	Parathion *	10 (4.54)
Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	O,O-Diethyl O-pyrazinyl phosphorothioate	100 (45.4)
Phosphorothioic acid, O,O-dimethyl O-[p-[(dimethylamino)-sulfonyl] phenyl] ester.	Famphur	1000 (454)
Phosphorus *		1 (0.454)
Phosphorus oxychloride *		1000 (454)
Phosphorus pentasulfide *	Phosphorus sulfide	100 (45.4)
	Sulfur phosphide	
Phosphorus sulfide	Phosphorus pentasulfide *	100 (45.4)
	Sulfur phosphide	
Phosphorus trichloride *		1000 (454)
Phthalic anhydride	1,2-Benzenedicarboxylic acid anhydride	5000 (2270)
2-Picoline	Pyridine, 2-methyl-	5000 (2270)
Plumbane, tetraethyl-	Tetraethyl lead *	10 (4.54)
POLYCHLORINATED BIPHENYLS (PCBs)	Aroclor 1016	1 (0.454)
	Aroclor 1221	
	Aroclor 1232	
	Aroclor 1242	
	Aroclor 1248	
	Aroclor 1254	
	Aroclor 1260	
Potassium arsenate *		1 (0.454)
Potassium arsenite *		1 (0.454)
Potassium bichromate	Potassium dichromate @	10 (4.54)
Potassium chromate		10 (4.54)
Potassium cyanide *		10 (4.54)
Potassium dichromate @	Potassium bichromate	10 (4.54)
Potassium hydroxide *		1000 (454)
Potassium permanganate *		100 (45.4)
Potassium silver cyanide		1 (0.454)
Pronamide	3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide	5000 (2270)
1-Propanal, 2,3-epoxy-	Glycidylaldehyde	10 (4.54)
Propanal, 2-methyl-2-(methylthio)-,O-[(methylamino)carbonyl]oxime	Aldicarb	1 (0.454)
1-Propanamine	n-Propylamine *	5000 (2270)
1-Propanamine, N-propyl-	Dipropylamine	5000 (2270)
Propane, 1,2-dibromo-3-chloro-	1,2-Dibromo-3-chloropropane	1 (0.454)
Propane, 2-nitro-	2-Nitropropane	10 (4.54)
Propane, 2,2'-oxybis(2-chloro-	Bis(2-chloroisopropyl) ether	1000 (454)
1,3-Propane sultone	1,2-Oxathiolane, 2,2-dioxide	10 (4.54)
Propanedinitrile	Malononitrile	1000 (454)
Propanenitrile	Ethyl cyanide	10 (4.54)
Propanenitrile, 3-chloro-	3-Chloropropionitrile	1000 (454)
Propanenitrile, 2-hydroxy-2-methyl-	Acetone cyanohydrin *	10 (4.54)
	2-Methyllactonitrile	
1,2,3-Propanetriol, trinitrate-	Nitroglycerine *	10 (4.54)
1-Propanol, 2,3-dibromo-, phosphate (3:1)	Tris(2,3-dibromopropyl)phosphate	10 (4.54)
1-Propanol, 2-methyl-	Isobutyl alcohol	5000 (2270)
2-Propanone	Acetone *	5000 (2270)
2-Propanone, 1-bromo-	Bromoacetone *	1000 (454)
Propargite		10 (4.54)
Propargyl alcohol *	2-Propyn-1-ol	1000 (454)
2-Propenal	Acrolein *	1 (0.454)
2-Propenamide	Acrylamide	5000 (2270)
Propene, 1,3-dichloro-	1,3-Dichloropropene	100 (45.4)
1-Propene, 1,1,2,3,3,3-hexachloro-	Hexachloropropene	1000 (454)
2-Propenenitrile	Acrylonitrile *	100 (45.4)
2-Propenenitrile, 2-methyl-	Methacrylonitrile	1000 (454)
2-Propenoic acid	Acrylic acid *	5000 (2270)
2-Propenoic acid, ethyl ester	Ethyl acrylate *	1000 (454)
2-Propenoic acid, 2-methyl-, ethyl ester	Ethyl methacrylate	1000 (454)
2-Propenoic acid, 2-methyl-, methyl ester	Methyl methacrylate *	1000 (454)
2-Propen-1-ol	Allyl alcohol *	100 (45.4)
Propionic acid *	Silvex	5000 (2270)
Propionic acid, 2-(2,4,5-trichlorophenoxy)-	2,4,5-TP @	100 (45.4)
	2,4,5-TP acid	
Propionic anhydride	1-Propanamine	5000 (2270)
n-Propylamine *	1,2-Dichloropropane	5000 (2270)
Propylene dichloride *		1000 (454)
Propylene oxide *	2-Methylaziridine	100 (45.4)
1,2-Propylenimine *	Propargyl alcohol *	1 (0.454)
2-Propyn-1-ol		1000 (454)
Pyrene		5000 (2270)
Pyrethrins		1 (0.454)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
4-Pyridinamine	4-Aminopyridine	1000 (454)
Pyridine *		1000 (454)
Pyridine, 2-[(2-(dimethylamino)ethyl)-2- thenylamino]-	Methapyrilene	5000 (2270)
Pyridine, hexahydro-N-nitroso-	N-Nitrosopiperidine	10 (4.54)
Pyridine, 2-methyl-	2-Picoline	5000 (2270)
Pyridine, (S)-3-(1-methyl-2-pyrrolidinyl)-, and salts	Nicotine * and salts *	100 (45.4)
4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	Methylthiouracil	10 (4.54)
Pyrophosphoric acid, tetraethyl ester	Tetraethyl pyrophosphate *	10 (4.54)
Pyrrole, tetrahydro-N-nitroso-	N-Nitrosopyrrolidine	1 (0.454)
Quinoline		5000 (2270)
RADIONUCLIDES		1 (0.454)
Reserpine	Yohimban-16-carboxylic acid,11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester.	5000 (2270)
Resorcinol	1,3-Benzenediol	5000 (2270)
Saccharin and salts	1,2-Benzisothiazolin-3-one,1,1-dioxide, and salts	100 (45.4)
Safrole	Benzene, 1,2-methylenedioxy-4-allyl-	100 (45.4)
Selenious acid		10 (4.54)
Selenium ¢		100 (45.4)
Selenium dioxide	Selenium oxide *	10 (4.54)
Selenium disulfide	Sulfur selenide	10 (4.54)
Selenium oxide *	Selenium dioxide	10 (4.54)
Selenoureas	Carbamimidoselenoic acid	1000 (454)
L-Serine, diazoacetate (ester)	Azaserine	1 (0.454)
Silver ¢		1000 (454)
Silver cyanide *		1 (0.454)
Silver nitrate *		1 (0.454)
Silvex	Propionic acid, 2-(2,4,5-trichlorophenoxy)-	100 (45.4)
	2,4,5-TP @	
	2,4,5-TP acid	10 (4.54)
Sodium *		1 (0.454)
Sodium arsenate *		1 (0.454)
Sodium arsenite *		1000 (454)
Sodium azide *		10 (4.54)
Sodium bichromate	Sodium dichromate @	100 (45.4)
Sodium bifluoride *		5000 (2270)
Sodium bisulfite *		10 (4.54)
Sodium chromate		10 (4.54)
Sodium cyanide *		10 (4.54)
Sodium dichromate @	Sodium bichromate	1000 (454)
Sodium dodecylbenzene sulfonate		1000 (454)
Sodium fluoride *		5000 (2270)
Sodium hydrosulfide *		1000 (454)
Sodium hydroxide *		100 (45.4)
Sodium hypochlorite *		1000 (454)
Sodium methylate *		100 (45.4)
Sodium nitrite *		5000 (2270)
Sodium phosphate, dibasic		5000 (2270)
Sodium phosphate, tribasic		100 (45.4)
Sodium selenite *		1 (0.454)
4,4'-Stilbenediol, alpha,alpha'-diethyl-	Diethylstilbestrol	1 (0.454)
Streptozotocin	D-Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-	10 (4.54)
Strontium chromate		100 (45.4)
Strychnidin-10-one, 2,3-dimethoxy-	Brucine	10 (4.54)
Strychnidin-10-one, and salts	Strychnine * and salts *	10 (4.54)
Strychnine * and salts *	Strychnidin-10-one, and salts	1000 (454)
Styrene		100 (45.4)
Sulfur hydride	Hydrogen sulfide *	
	Hydrosulfuric acid	1000 (454)
Sulfur monochloride		100 (45.4)
Sulfur phosphide	Phosphorus pentasulfide *	
	Phosphorus sulfide	
	Selenium disulfide	10 (4.54)
Sulfur selenide		1000 (454)
Sulfuric acid *	Dimethyl sulfate *	10 (4.54)
Sulfuric acid, dimethyl ester	Thallium(I) sulfate *	100 (45.4)
Sulfuric acid, thallium(I) salt	2,4,5-T acid	1000 (454)
2,4,5-T *	2,4,5-Trichlorophenoxyacetic acid *	
	2,4,5-T *	1000 (454)
2,4,5-T acid	2,4,5-Trichlorophenoxyacetic acid *	
2,4,5-T amines		5000 (2270)
2,4,5-T esters		1000 (454)
2,4,5-T salts		1000 (454)
TDE *	DDD	1 (0.454)
	Dichlorodiphenyl dichloroethane	
	4,4'-DDD	
1,2,4,5-Tetrachlorobenzene	Benzene, 1,2,4,5-tetrachloro-	5000 (2270)
2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)		1 (0.454)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
1,1,1,2-Tetrachloroethane	Ethane, 1,1,1,2-tetrachloro-	100 (45.4)
1,1,2,2-Tetrachloroethane	Ethane, 1,1,2,2-tetrachloro-	100 (45.4)
Tetrachloroethene	Ethene, 1,1,2,2-tetrachloro-	100 (45.4)
	Perchloroethylene *	
	Tetrachloroethylene *	
Tetrachloroethylene *	Ethene, 1,1,2,2-tetrachloro-	100 (45.4)
	Perchloroethylene *	
	Tetrachloroethene	
2,3,4,6-Tetrachlorophenol	Phenol, 2,3,4,6-tetrachloro-	10 (4.54)
Tetraethyl lead *	Plumbane, tetraethyl-	10 (4.54)
Tetraethyl pyrophosphate *	Pyrophosphoric acid, tetraethyl ester	10 (4.54)
Tetraethyldithiopyrophosphate	Dithiopyrophosphoric acid, tetraethyl ester	100 (45.4)
Tetrahydrofuran *	Furan, tetrahydro-	1000 (454)
Tetranitromethane *	Methane, tetranitro-	10 (4.54)
Tetraphosphonic acid, hexaethyl ester	Hexaethyl tetraphosphate *	100 (45.4)
Thallic oxide	Thallium(III) oxide	100 (45.4)
Thallium ¢		1000 (454)
Thallium(I) acetate	Acetic acid, thallium(I) salt	100 (45.4)
Thallium(I) carbonate	Carbonic acid, dithallium (I) salt	100 (45.4)
Thallium(I) chloride		100 (45.4)
Thallium(I) nitrate		100 (45.4)
Thallium(III) oxide	Thallic oxide	100 (45.4)
Thallium(I) selenide		1000 (454)
Thallium(I) sulfate *	Sulfuric acid, thallium(I) salt	100 (45.4)
Thioacetamide	Ethanethioamide	10 (4.54)
Thiofanox	3,3-Dimethyl-1-(methylthio)-2-butanone,O-[(methylamino)carbonyl] oxime.	100 (45.4)
Thiolmidodicarbonic diamide	2,4-Dithiobiuret	100 (45.4)
Thiomethanol	Methanethiol	100 (45.4)
	Methyl mercaptan *	
Thiophenol *	Benzenethiol	100 (45.4)
	Phenyl mercaptan @	
Thiosemicarbazide	Hydrazinecarbothioamide	100 (45.4)
Thiourea	Carbamide, thio-	10 (4.54)
Thiourea, (2-chlorophenyl)-	1-(o-Chlorophenyl)thiourea	100 (45.4)
Thiourea, 1-naphthalenyl-	alpha-Naphthylthiourea	100 (45.4)
Thiourea, phenyl-	N-Phenylthiourea	100 (45.4)
Thiram	Bis(dimethylthiocarbamoyl) disulfide	10 (4.54)
Toluene *	Benzene, methyl-	1000 (454)
Toluenediamine *	Diaminotoluene	10 (4.54)
Toluene diisocyanate *	Benzene, 2,4-diisocyanatomethyl-	100 (45.4)
o-Toluidine	2-Amino-1-methyl benzene	100 (45.4)
p-Toluidine	4-Amino-1-methyl benzene	100 (45.4)
o-Toluidine hydrochloride	Benzenamine, 2-methyl-, hydrochloride	100 (45.4)
Toxaphene *	Camphene, octachloro-	1 (0.454)
2,4,5-TP @	Propionic acid, 2-(2,4,5-trichlorophenoxy)-	100 (45.4)
	Silvex	
	2,4,5-TP acid	
2,4,5-TP acid	Propionic acid, 2-(2,4,5-trichlorophenoxy)-	100 (45.4)
	Silvex	
	2,4,5-TP @	
2,4,5-TP acid esters		100 (45.4)
1H-1,2,4-Triazol-3-amine	Amitrole	10 (4.54)
Trichlorfon		100 (45.4)
1,2,4-Trichlorobenzene		100 (45.4)
1,1,1-Trichloroethane *	Methyl chloroform *	1000 (454)
1,1,2-Trichloroethane	Ethane, 1,1,2-trichloro-	100 (45.4)
Trichloroethene	Trichloroethylene *	100 (45.4)
Trichloroethylene *	Trichloroethene	100 (45.4)
Trichloromethanesulfenyl chloride	Methanesulfenyl chloride, trichloro-	100 (45.4)
	Perchloromethyl mercaptan @	
Trichloromonofluoromethane	Methane, trichlorofluoro-	5000 (2270)
Trichlorophenol *		10 (4.54)
2,3,4-Trichlorophenol		
2,3,5-Trichlorophenol		
2,3,6-Trichlorophenol		
2,4,5-Trichlorophenol	Phenol, 2,4,5-trichloro-	
2,4,6-Trichlorophenol	Phenol, 2,4,6-trichloro-	
3,4,5-Trichlorophenol		
2,4,5-Trichlorophenol	Phenol, 2,4,5-trichloro-	10 (4.54)
2,4,6-Trichlorophenol	Phenol, 2,4,6-trichloro-	10 (4.54)
2,4,5-Trichlorophenoxyacetic acid *	2,4,5-T *	1000 (454)
	2,4,5-T acid	
Triethanolamine dodecylbenzene sulfonate		1000 (454)
Triethylamine		5000 (2270)
Trimethylamine *		100 (45.4)
sym-Trinitrobenzene *	Benzene, 1,3,5-trinitro-	10 (4.54)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
1,3,5-Trioxane, 2,4,6-trimethyl-	Paraldehyde	1000 (454)
Tris(2,3-dibromopropyl) phosphate	1-Propanol, 2,3-dibromo-, phosphate (3:1)	10 (4.54)
Trypan blue	2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl-(l,1'-biphenyl)-4,4'-diyl)-bis(azo)]bis(5-amino-4-hydroxy)-tetrasodium salt.	10 (4.54)
Unlisted Hazardous Wastes Characteristic of Corrosivity D002		100 (45.4)
Unlisted Hazardous Wastes Characteristic of EP Toxicity		
Arsenic D004		1 (0.454)
Barium D005		1000 (454)
Cadmium D006		10 (4.54)
Chromium D007		10 (4.54)
Lead D008		1 (0.454)
Mercury D009		1 (0.454)
Selenium D010		10 (4.54)
Silver D011		1 (0.454)
Endrin D012		1 (0.454)
Lindane D013		1 (0.454)
Methoxychlor D014		1 (0.454)
Toxaphene D015		1 (0.454)
2,4-D D016		100 (45.4)
2,4,5-TP D017		100 (45.4)
Unlisted Hazardous Wastes Characteristic of Ignitability D001		100 (45.4)
Unlisted Hazardous Wastes Characteristic of Reactivity DC03		100 (45.4)
Uracil, 5-[bis(2-chloroethyl)amino]-	Uracil mestard	10 (4.54)
Uracil mustard	Uracil, 5-[bis(2-chloroethyl)amino]-	10 (4.54)
Uranyl acetate *		100 (45.4)
Uranyl nitrate *		100 (45.4)
Vanadic acid, ammonium salt	Ammonium vanadate	1000 (454)
Vanadium(V) oxide	Vanadium pentoxide	1000 (454)
Vanadium pentoxide	Vanadium(V) oxide	1000 (454)
Vanadyl sulfate		1000 (454)
Vinyl acetate *		5000 (2270)
Vinyl chloride *	Ethene, chloro-	1 (0.454)
Vinylidene chloride *	Ethene, 1,1-dichloro-	100 (45.4)
	1,1-Dichloroethylene	
Warfarin	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts	100 (45.4)
Xylene * (mixed)	Benzene, dimethyl	1000 (454)
m-	m-	
o-	o-	
p-	p-	
Xylenol *		1000 (454)
Yohimban-16-carboxylic acid,11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester.	Reserpine	5000 (2270)
Zinc ¢		1000 (454)
Zinc acetate		1000 (454)
Zinc ammonium chloride		1000 (454)
Zinc borate		1000 (454)
Zinc bromide		1000 (454)
Zinc carbonate		1000 (454)
Zinc chloride		1000 (454)
Zinc cyanide *		10 (4.54)
Zinc fluoride		1000 (454)
Zinc formate		1000 (454)
Zinc hydrosulfite *		1000 (454)
Zinc nitrate *		1000 (454)
Zinc phenolsulfonate		5000 (2270)
Zinc phosphide *		100 (45.4)
Zinc silicofluoride		5000 (2270)
Zinc sulfate		1000 (454)
Zirconium nitrate *		5000 (2270)
Zirconium potassium fluoride		1000 (454)
Zirconium sulfate *		5000 (2270)
Zirconium tetrachloride *		5000 (2270)
F001		10 (4.54)
The following spent halogenated solvents used in degreasing: all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures..		
(a) Tetrachloroethylene		100 (45.4)
(b) Trichloroethylene		100 (45.4)
(c) Methylene chloride		1000 (454)
(d) 1,1,1-Trichloroethane		1000 (454)
(e) Carbon tetrachloride		10 (4.54)
(f) Chlorinated fluorocarbons		5000 (2270)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
F002		
The following spent halogenated solvents: all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004, F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures..		10 (4.54)
(a) Tetrachloroethylene		100 (45.4)
(b) Methylene chloride		1000 (454)
(c) Trichloroethylene		100 (45.4)
(d) 1,1,1-Trichloroethane		1000 (454)
(e) Chlorobenzene		100 (45.4)
(f) 1,1,2-Trichloro-1,2,2-trifluoroethane		5000 (2270)
(g) o-Dichlorobenzene		100 (45.4)
(h) Trichlorofluoromethane		5000 (2270)
(i) 1,1,2 Trichloroethane		100 (45.4)
F003		100 (45.4)
The following spent non-halogenated solvents and solvents:		
(a) Xylene		1000 (454)
(b) Acetone		5000 (2270)
(c) Ethyl acetate		5000 (2270)
(d) Ethylbenzene		1000 (454)
(e) Ethyl ether		100 (45.4)
(f) Methyl isobutyl ketone		5000 (2270)
(g) n-Butyl alcohol		5000 (2270)
(h) Cyclohexanone		5000 (2270)
(i) Methanol		5000 (2270)
F004		1000 (454)
The following spent non-halogenated solvents and the stillbottoms from the recovery of these solvents:.		
(a) Cresols/Cresylic acid		1000 (454)
(b) Nitrobenzene		1000 (454)
F005		100 (45.4)
The following spent non-halogenated solvents and the stillbottoms from the recovery of these solvents:.		
(a) Toluene		1000 (454)
(b) Methyl ethyl ketone		5000 (2270)
(c) Carbon disulfide		100 (45.4)
(d) Isobutanol		5000 (2270)
(e) Pyridine		1000 (454)
F006		10 (4.54)
Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum,(2) tin plating on carbon steel, (3) zinc plating (segregated basis) on carbonsteel, (4) aluminum or zinc-aluminum plating on carbon steel, (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel, and (6) chemical etchingand milling of aluminum.		
F007		10 (4.54)
Spent cyanide plating bath solutions from electroplating operations		
F008		10 (4.54)
Plating bath sludges from the bottom of plating baths fromelectroplating operations where cyanides are used in the process (except for precious metals electroplating plating bath sludges).		
F009		10 (4.54)
Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process (except for precious metals electroplating spent stripping and cleaning bath solutions).		
F010		10 (4.54)
Quenching bath sludge from oil baths from metal heat treating operationswhere cyanides are used in the process (except for precious metals heat-treating quenching bath sludges).		
F011		10 (4.54)
Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations (except for precious metals heat treating spent cyanide solutions from salt bath pot cleaning).		
F012		10 (4.54)
Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process (except for precious metals heat treating quenching wastewater treatment sludges).		
F019		10 (4.54)
Wastewater treatment sludges from the chemical conversion coating of aluminum.		

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
F020		1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of hexachlorophene from highly purified 2,4,5-trichlorophenol.).		
F021		1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentáchlorophenol, or of intermediates used to produce its derivatives..		
F022		1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions..		
F023		1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- and tetrachlorophenols. (This listing does not include wastes from equipment used only for the productionor use of hexachlorophene from highly purified 2,4,5-trichlorophenol.).		
F024		1 (0.454)
Wastes, including but not limited to distillation residues, heavy ends, tars, and reactor cleanout wastes, from the production of chlorinated aliphatichydrocarbons, having carbon content from one to five, utilizing free radical catalyzed processes. (This listing does not include light ends, spent filters and filter aids, spent dessicants(sic), wastewater, wastewater treatment sludges,spent catalysts, and wastes listed in 40 CFR 261.32.).		
F026		1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions..		
F027		1 (0.454)
Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derivedfrom these chlorophenols. (This listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.).		
F028		1 (0.454)
Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027..		
K001		1 (0.454)
Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.		
K002		1 (0.454)
Wastewater treatment sludge from the production of chrome yellow and orange pigments.		
K003		1 (0.454)
Wastewater treatment sludge from the production of molybdate orange pigments.		
K004		10 (4.54)
Wastewater treatment sludge from the production of zinc yellow pigments.		
K005		1 (0.454)
Wastewater treatment sludge from the production of chrome green pigments.		
K006		10 (4.54)
Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).		
K007		10 (4.54)
Wastewater treatment sludge from the production of iron blue pigments		10 (4.54)
K008		10 (4.54)
Oven residue from the production of chrome oxide green pigments		10 (4.54)
K009		10 (4.54)
Distillation bottoms from the production of acetaldehyde from ethylene		
K010		10 (4.54)
Distillation side cuts from the production of acetaldehydefrom ethylene		

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
K011		
Bottom stream from the wastewater stripper in the production of acrylonitrile.		10 (4.54)
K013		
Bottom stream from the acetonitrile column in the production of acrylonitrile.		10 (4.54)
K014		
Bottoms from the acetonitrile purification column in the production of acrylonitrile.		5000 (2270)
K015		
Still bottoms from the distillation of benzyl chloride		10 (4.54)
K016		
Heavy ends or distillation residues from the production of carbon tetrachloride.		1 (0.454)
K017		
Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.		1 (0.454)
K018		
Heavy ends from the fractionation column in ethyl chloride production		1 (0.454)
K019		
Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production..		1 (0.454)
K020		
Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.		1 (0.454)
K021		
Aqueous spent antimony catalyst waste from fluoromethanes production.		10 (4.54)
K022		
Distillation bottom tars from the production of phenol/acetone from cumene.		1 (0.454)
K023		
Distillation light ends from the production of phthalic anhydride from naphthalene.		5000 (2270)
K024		
Distillation bottoms from the production of phthalic anhydride from naphthalene.		5000 (2270)
K025		
Distillation bottoms from the production of nitrobenzene by the nitration of benzene.		10 (4.54)
K026		
Stripping still tails from the production of methyl ethyl pyridines		1000 (454)
K027		
Centrifuge and distillation residues from toluene diisocyanate production.		10 (4.54)
K028		
Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.		1 (0.454)
K029		
Waste from the product steam stripper in the production of 1,1,1-trichloroethane.		1 (0.454)
K030		
Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene.		1 (0.454)
K031		
By-product salts generated in the production of MSMA and cacodylic acid.		1 (0.454)
K032		
Wastewater treatment sludge from the production of chlordane		10 (4.54)
K033		
Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.		10 (4.54)
K034		
Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.		10 (4.54)
K035		
Wastewater treatment sludges generated in the production of creosote		1 (0.454)
K036		
Still bottoms from toluene reclamation distillation in the production ofdisulfoton.		1 (0.454)
K037		
Wastewater treatment sludges from the production of disulfoton		1 (0.454)
K038		
Wastewater from the washing and stripping of phorate production		10 (4.54)
K039		
Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate.		10 (4.54)

BEST COPY AVAILABLE

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
K040		10 (4.54)
Wastewater treatment sludge from the production of phorate		
K041		1 (0.454)
Wastewater treatment sludge from the production of toxaphene		
K042		10 (4.54)
Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.		
K043		10 (4.54)
2,6-dichlorophenol waste from the production of 2,4-D		
K044		10 (4.54)
Wastewater treatment sludges from the manufacturing and processing of explosives.		
K045		10 (4.54)
Spent carbon from the treatment of wastewater containing explosives		
K046		100 (45.4)
Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.		
K047		10 (4.54)
Pink/red water from TNT operations		
K048		1 (0.454)
Dissolved air flotation (DAF) float from the petroleum refining industry		
K049		1 (0.454)
Slop oil emulsion solids from the petroleum refining industry		
K050		10 (4.54)
Heat exchanger bundle cleaning sludge from the petroleum refining industry.		
K051		1 (0.454)
API separator sludge from the petroleum refining industry		
K052		10 (4.54)
Tank bottoms (leaded) from the petroleum refining industry		
K060		1 (0.454)
Ammonia still lime sludge from coking operations		
K061		1 (0.454)
Emission control dust/sludge from the primary production of steel in electric furnaces.		
K062		1 (0.454)
Spent pickle liquor from steel finishing operations		
K064		1 (0.454)
Acid plant blowdown slurry/sludge resulting from thickening of blowdown slurry from primary copper production..		
K065		1 (0.454)
Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities.		
K066		1 (0.454)
Sludge from treatment of process wastewater and /or acid plant blowdown from primary zinc production..		
K069		1 (0.454)
Emission control dust/sludge from secondary lead smelting		
K071		1 (0.454)
Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.		
K073		10 (4.54)
Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production..		
K083		100 (45.4)
Distillation bottoms from aniline extraction		
K084		1 (0.454)
Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.		
K085		10 (4.54)
Distillation or fractionation column bottoms from the production of chlorobenzenes.		
K086		1 (0.454)
Solvent washes and sludges, caustic washes and sludges, orwater washes and sludges from cleaning tubs and equipment used in the formulation of ink frompigments, driers, soaps, and stabilizers containing chromium and lead.		
K087		100 (45.4)
Decanter tank tar sludge from coking operations		
K088		1 (0.454)
Spent potliners from primary aluminum reduction		
K090		1 (0.454)
Emission control dust or sludge from ferrochromiumsilicon production		
K091		1 (0.454)
Emission control dust or sludge from ferrochromium production.		

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
K093		
Distillation light ends from the production of phthalic anhydride from ortho-xylene.		5000 (2270)
K094		
Distillation bottoms from the production of phthalic anhydride from ortho-xylene.		5000 (2270)
K095		
Distillation bottoms from the production of 1,1,1-trichloroethane.		100 (45.4)
K096		
Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane..		100 (45.4)
K097		
Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.		1 (0.454)
K098		
Untreated process wastewater from the production of toxaphene		1 (0.454)
K099		
Untreated wastewater from the production of 2,4-D		10 (4.54)
K100		
Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.		1 (0.454)
K101		
Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.		1 (0.454)
K102		
Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.		1 (0.454)
K103		
Process residues from aniline extraction from the production of aniline		100 (45.4)
K104		
Combined wastewater streams generated from nitrobenzene/aniline chlorobenzenes.		10 (4.54)
K105		
Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.		10 (4.54)
K106		
Wastewater treatment sludge from the mercury cell process in chlorine production.		1 (0.454)
K111		
Product washwaters from the production of dinitrotoluene via nitration of toluene..		10 (4.54)
K112		
Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene..		10 (4.54)
K113		
Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene..		10 (4.54)
K114		
Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene..		10 (4.54)
K115		
Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene..		10 (4.54)
K116		
Organic condensate from the solvent recovery column in theproduction of toluene diisocyanate via phoegenation of toluenediamine..		10 (4.54)
K117		
Wastewater from the reaction vent gas scrubber in the production of ethylene bromide via bromination of ethene..		1 (0.454)
K118		
Spent absorbent solids from purification of ethylene dibromide in the production of ethylene dibromide..		1 (0.454)
K123		
Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbemic acid and its salts..		10 (4.54)
K124		
Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts..		10 (4.54)
K125		
Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts..		10 (4.54)
K126		
Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbemic acid and its salts..		10 (4.54)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
K136		1 (0.454)
Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene..		

Footnotes:
¢ - the RQ for these hazardous substances is limited to those pieces of the metal having a diameter smaller than 100 micrometers (0.004 inches)
¢¢ - the RQ for asbestos is limited to friable forms only
* - indicates that this material appears by name in the Hazardous Materials Table
@ - indicates that the name was added by RSPA because (1) the name is a synonym for a specific hazardous substance and (2) the name appears in the Hazardous Materials Tables as a proper shipping name.

Issued in Washington, DC on August 14, 1989, under authority delegated in 49 CFR part 1.

Travis P. Dungan,
Administrator, Research and Special Programs Administration.

[FR Doc. 89-19419 Filed 8-18-89; 8:45 am]
BILLING CODE 4910-60-M

federal register

Monday
August 21, 1989

Part IV

Small Business Administration

13 CFR Part 124
Minority Small Business and Capital Ownership Development Program; Final Rule

13 CFR Part 105
Standards of Conduct; Final Rule

13 CFR Part 134
Office of Hearings and Appeals; 8(a) Program Conforming Amendments; Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

Minority Small Business and Capital Ownership Development Program

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) hereby amends its regulations governing the Minority Small Business and Capital Ownership Development Program authorized by sections 7(j)(10) and 8(a) of the Small Business Act (15 U.S.C. 636(j)(10), 637(a)). In most instances the revisions implement changes required by the Business Opportunity Development Reform Act of 1988 (Pub. L. 100–656), enacted November 15, 1988 and the Business Opportunity Development Reform Act Technical Corrections Act (Pub. L. 101–37), enacted June 15, 1989. Some provisions, however, incorporate into the regulations existing Agency policy while others implement policy changes.

EFFECTIVE DATES: Except for §§ 124.311 and 124.312, this regulation is effective on August 21, 1989. Sections 124.311 and 124.312 are effective on October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Associate Administrator for Minority Small Business and Capital Ownership Development, (202) 653–6407, Jane P. Butler, (202) 653–6813, or Rodney A. Lewis, (202) 653–6549.

SUPPLEMENTARY INFORMATION: On March 23, 1989, SBA published a proposed rule in the **Federal Register** (54 FR 12054) which revised the Minority Small Business and Capital Ownership Development Program (8(a) Program) and implemented the Business Opportunity Development Reform Act of 1988 (Reform Act) (Pub. L. 100–656, enacted November 15, 1988). In preparing the proposed rule, SBA held two public meetings in December 1988 to receive public comment on the nature and extent of the regulations needed to implement the Reform Act. The first was held in San Francisco, California on December 9, 1988 and was attended by approximately 75 members of the public. The second was held in Washington, DC, on December 19, 1988, and was attended by approximately 325 members of the public. All comments received at the hearings were considered in the preparation of the proposed rule.

Since, at the time of publication of the proposed rule, the Reform Act required SBA to publish final implementing regulations by June 15, 1989, SBA was able to provide a 30 day public comment period on the proposed regulations. The required implementation date for the final rule was subsequently extended to August 15, 1989 by Public Law 101–37, which was enacted June 15, 1989. During the public comment period, SBA received approximately 330 comment letters. SBA has analyzed these comments and has made changes to the rules where appropriate. A summary of the key issues raised by the public comments and the action SBA took with respect to the comment follows the general overview portion of this preamble.

General Overview

The numbering scheme of these regulations is generally similar to that used in SBA's previous 8(a) program regulations, published October 8, 1986 (51 FR 36132, *et seq.*). Some sections, however, have been renumbered or combined with other sections to accommodate new provisions required by the Reform Act. Sections 124.1 through 124.7 address issues which pertain to the program in general. Section 124.100 sets forth definitions of key terms used in the regulations. Some of these definitions are identicial to those previously included in SBA's existing regulations. Others have been added or amended in this final rule in response to public comment.

Sections 124.101 through 124.113 address matters relating to program eligibility requirements both for admission to the 8(a) program and for continued participation in the 8(a) program. Sections 124.201 through 124.205 set forth information concerning the application process. Sections 124.206 through 124.211 set forth procedures relating to the Agency review of applications, program graduations, program terminations and suspensions as well as procedures relating to administrative appeal rights which the Reform Act affords program applicants and participants.

Sections 124.300 through 124.320 address requirements relating to business development and contracting. Sections 124.401 through 124.403 relate to special methods of contract financing: advance payments and business development expense. In this final rule, SBA has renumbered, but has not amended, former §§ 124.501 and 124.502, concerning the Development Assistance Program authorized by the Minority Small Business and Capital Ownership Development Program as §§ 124.404 and 124.405. Section 124.501, proposed as § 124.601, sets forth miscellaneous reporting requirements for current and former 8(a) Program Participants. It has been renumbered in this final rule to correct an inadvertent overlap with regulations published in subpart B of part 124, relating to protest and appeal procedures for small disadvantaged businesses.

The Reform Act also contains provisions imposing new requirements relating to standards of conduct for certain SBA employees who have 8(a) program responsibilities and authorizing a loan program for 8(a) Program Participants. SBA is publishing separate rules amending parts 105 and 122 of this title, respectively, to implement these Reform Act requirements. In addition, in order to implement the adminsitrative hearing requirements of the Reform Act, SBA is promulgating separate conforming amendments to its administrative hearing procedures found in part 134 of this title which complement §§ 124.206 through 124.211, of this rule.

Summary of Issues Raised by Public Comment

Many commenters objected to the brevity of the 30 day comment period and requested that SBA extend it. As noted previously, the statutorily mandated publication timetable for implementing rules made it impossible for SBA to do so.

Some commenters objected to SBA's inclusion of certain provisions of the proposed regulation which were not required by the Reform Act. The commenters believed that SBA violated the Administrative Procedure Act (APA, 5 U.S.C. 551, *et seq.*) by proposing regulatory provisions which were not specifically authorized or required by statute.

This view, however, is not consistent with the requirements of the APA. In promulgating rules, the APA does not limit an agency to provisions specifically required by statute. Under section 5(b)(6) of the Small Business Act (15 U.S.C. 632(b)(6)), the Administrator of SBA has general rulemaking authority to "make such rules and regulations as he/she deems necessary to carry out the authority vested in him/her by or pursuant to this Act." This authority permits SBA to fashion rules to operate its programs effectively and efficiently. It is for this purpose as well as to implement the specific requirements of the Reform Act that SBA is promulgating these revisions to the 8(a) program regulations.

Section 124.1 describes the scope of these regulations. The rules apply to participants in the 8(a) program, as authorized by sections 7(j)(10) and 8(a) of the Small Business Act (15 U.S.C. 636(j)(10) and 637(a)). Certain sections of these rules relating to social and economic disadvantaged status apply to other Federal programs for which social and economic disadvantaged status is a requirement of program eligibility. Such programs include, among others, the Defense Department's (DoD's) Small Disadvantaged Business (SDB) Set-aside and Bid Preference programs authorized by section 1207(a) of Pub. L. 99–661, and the section 8(d) Subcontracting Program, authorized by section 8(d) of the Small Business Act (15 U.S.C. 637(d)). SBA received no public comments on this section.

Concerns with applications in process on the effective date of § 124.107 will be subject to Agency policy requirements regarding potential for success which were in effect on the date of application. They will not be required to meet the new provisions of § 124.107(a) regarding length of time in business. In addition, concerns with applications in process on the effective date of § 124.109 will not be subject to the provisions of section 109(b) which excludes franchises from 8(a) program participation.

The regulations also provide that actions to graduate, terminate or suspend which were commenced by the issuance of an Order to Show Cause prior to the effective date of §§ 124.206 through 124.211 will be governed by the procedures in effect on the date the Order to Show Cause was issued.

Sections 124.2 and 124.3 describe statutorily mandated changes to 8(a) program administration. Section 124.2 provides that the position of the Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSB&COD) is required to be a career civil service position as opposed to a non-career appointive position. SBA received one public comment on this section which supported the idea of a career civil service position for the AA/MSB&COD and addressed selection criteria, which are not appropriately addressed in these regulations. Section 124.3 provides information regarding the Division of Program Certification and Eligibility. No comments were received on this section.

Section 124.4 describes the Commission on Minority Business Development which was authorized by section 505 of the Reform Act. The purpose of the Commission is to review all Federal programs designed to promote the development of minority owned businesses in order to ascertain whether the congressionally described goals and purposes of such programs are being realized. SBA received a few comments on the Commission which expressed the view that the conclusions of the Commission may be biased if SBA is a member and is responsible for selecting staff for the Commission. SBA believes that Agency participation is essential and that it can maintain its objectivity. In any case, the final rule makes no change to the provisions concerning the Commission because the composition of the Commission is statutorily mandated and cannot be altered by regulation.

Section 124.5 repeats previous § 124.3 which describes the effect of an 8(a) program applicant's willful violation of any SBA's regulations governing its other programs. SBA received no comments on this provision.

Section 124.6 notifies 8(a) program applicants and participants of the range and severity of penalties which could result from making misrepresentations or false statements in relation to the 8(a) program. A number of commenters objected to the imposition of such penalties when representations are made based on a good faith interpretation of the requirements, but are found to be misrepresentation. Although SBA cannot alter the penalties which are imposed by statute, in response to public comments, SBA has revised the proposed rule relating to social and economic disadvantage to make the criteria to which a certification would relate more specific. SBA has also added the word "intentional" to § 124.6 to clarify that such penalties will only attach when a misrepresentation is intentional.

One commenter asked if the penalties described in § 124.6 apply to misrepresentations of small disadvantaged business status made for purposes of DoD's Small Disadvantaged Business (SDB) Program or for other programs for which social and economic disadvantage are requirements of eligibility. Section 124.6 implements section 405 of the Reform Act which, in an amendment to section 16(d)(1)(D), specifically applies the penalties to situations where the misrepresentations have been made to obtain "any prime or subcontract to be awarded as a result, or in furtherance, of any other provision of Federal law that specifically references section 8(d) [of the Small Business Act] for a definition of program eligibility * * *" Since DoD's SDB program relies on section 8(d) of the Small Business Act for its definition of social and economic disadvantage, the penalties set forth in § 124.6 apply misrepresentations of that Small Disadvantaged Business status.

Section 124.7 sets forth restrictions on fees for applicant and 8(a) participant representatives. As proposed, this section prohibited any applicant concern or Program Participant from, among other things, paying any fee to such representatives which is contingent on program certification or on specific 8(a) contract award(s). A number of commenters objected to the restrictions as they relate to contingent fees for assistance in obtaining a contract. The commenters cited section 3.4 of the Federal Acquisition Regulations (48 CFR 3.4) (FAR) which permits some contingent fees for such assistance in limited circumstances. SBA has amended paragraph (b) of § 124.7 to adopt the FAR provisions. SBA has retained without change the remainder of the section, which contains prohibitions against contingent fees for assistance in program admission and against fees which are based on a percentage of any contract awarded.

SBA has amended § 124.100 to include a number of new and changed definitions for terms used throughout this title and has eliminated definitions which are no longer relevant or which are defined in the body of the regulations. For ease of amendment, the lettered paragraphs have been deleted from the section and the terms appear alphabetically.

The definition of "Fixed Program Participation Term" ("FPPT") has been changed to clarify that an FPPT is the specific term of Program Participation negotiated with a concern under the authority of the Small Business Act, as amended by Public Law 96–481, effective April 21, 1982.

The definition of "primary industry classification" has been changed to conform to the definition of "primary industry" provided in SBA's Size Regulations (part 121 of this title).

SBA has also amended its definition of "principal place of business." This definition requires SBA to determine a concern's principal place of business based on two factors: The location of the concern's books and records, and the location at which the individual who manages the concern's day-to-day operations spends the majority of his/her working hours. In commenting on this definition, one commenter urged SBA to include a grandfathering provision in the definition. The commenter's view was that a concern which had participated in the 8(a) program for 3 years or more should not have to change either its SBA Servicing Office or its principal place of business to comply with the new definition. The commenter believed that to do so would disrupt the working relationship of the concern in the SBA district or region in which it is currently operating. SBA considered this comment and, in light of the 12 month grandfathering provision contained in § 124.101(b), SBA decided

not to adopt the comment. The grandfathering provision contained in § 124.101(b) applies to all requirements of this final rule which have not been previously imposed by regulation. SBA believes that a compliance period of one year from the effective date of these regulations allows firms a reasonable amount of time to adjust to the new requirements.

Another commenter urged that the definition of "disadvantaged owner" be amended to include a reference to Indian tribes, since tribally-owned concerns are eligible to participate in the 8(a) program and the proposed definition was phrased only in terms of individuals, not tribal entities. SBA has adopted this comment and has amended the term "disadvantaged owner" accordingly.

Section 124.101 describes the process for determining 8(a) program eligibility. Except for concerns owned by Indian tribes, including Alaska Native Corporations, and Native Hawaiian Organizations, addressed by §§ 124.112 and 124.113, respectively, each applicant concern must meet the requirements set forth in §§ 124.102 through 124.109. Under 8(a) eligibility procedures, the AA/MSB&COD will approve or decline each application in writing setting forth the basis of his or her determination. An applicant is entitled to appeal to SBA's Office of Hearings and Appeals (OHA) if its application is declined based solely on a negative finding of one or more of the following eligibility criteria: Social disadvantage, economic disadvantage, ownership or control. Appeal procedures are set forth in § 124.210 and part 134 of this title. The written decision of OHA is the final agency action on the matter.

Under these regulations, Program Participants are required to continue to meet the eligibility criteria of §§ 124.102 through 124.109, except as provided in § 124.111(a). Failure to maintain 8(a) program eligibility is grounds for termination from the 8(a) program.

Paragraph (c) of § 124.101 describes grounds for which SBA would review the eligibility of any applicant concern or Program Participant. One commenter expressed the view that due process rights, including a hearing before OHA, should be afforded an individual or concern about whom information has been submitted which leads SBA to reexamine the concern's program eligibility. SBA considered the comment but did not adopt it. Due process rights, including hearings, are already provided for terminations, graduations and suspensions. (*See* §§ 124.206 through 124.211.) If SBA takes no action, there is no need to afford the concern a hearing.

Section 124.102 discusses the requirement that 8(a) applicant concerns and Program Participants qualify as small businesses under § 121.4 of title 13, Code of Federal Regulations. Paragraphs (a), (c), and (d) restate the requirements of existing paragraphs (a) and (b) of § 124.102 and have been reorganized as proposed paragraphs (a), (c), and (d) for greater clarity. Paragraph (d) also references an exemption from the size requirement authorized by Public Law 100-656 and set forth in proposed § 124.321 for contracts awarded to joint ventures controlled by eligible Indian tribes.

Paragraph (b) of § 124.102, as proposed, authorized the Division of Program Certification and Eligibility (Division) to deny an application or to request a formal size determination when it is unable to determine that an applicant qualifies as a small business. In response to a public comment, this paragraph has been amended to replace all references to the Division with references to the AA/MSB&COD. The commenter correctly noted that only the AA/MSB&COD has the authority to deny an application even if the denial is for failure to meet size requirements.

In response to a public comment, paragraph (a) has been amended to clarify that concerns owned by Indian tribes, which are not joint ventures, are required to certify as small businesses in compliance with § 124.112.

Paragraph (d) has also been reworded slightly to make clear that in the event that SBA does not accept a concern's size certification, the concern may pursue review of its size status through the formal size determination process. As worded in the proposed rule, the language could have been interpreted to permit only an appeal to OHA and not an initial review at SBA's regional office. In addition, another commenter asked SBA to define the time at which a Participant would be required to certify size. SBA made no changes to this rule as a result of the comment because part 121 of this title already addresses this question. In accordance with SBA's size rules, a Participant is required to certify to its small business status at the time of submission of its initial offer which includes price. Changes in size subsequent to that certification will not affect the Participant's eligibility for that contract, unless the change is caused by acquisition of the firm.

Section 124.103 addresses ownership requirements for 8(a) program entry and for continued 8(a) program eligibility. Any ownership interest in an 8(a) concern which is held by a disadvantaged individual upon whom eligibility is based must be unconditionally held. This requirement was mandated by the Reform Act Technical Amendments, Public Law 101-37, which was enacted on June 15, 1989 subsequent to the publication date of the proposed rule. In order to conform the regulations to the new statutory requirement, SBA has amended paragraphs (a), (b) and (c) to specify that unconditional ownership is required.

A number of commenters objected to a proposed provision requiring an owner(s) upon whom 8(a) eligibility is based to have been a 51 percent owner(s) for at least two years prior to applying for 8(a) certification. This restriction was viewed as overly burdensome. SBA has adopted this comment and has deleted the two year ownership rule from the prefatory language of § 124.103.

A few commenters objected to proposed paragraph (b) which required disadvantaged individuals to hold 51 percent of the combined total of all classes of stock. The commenters expressed the view that this would overly restrict the 8(a) concern's access to capital through preferred stock offerings, etc. The commenters recommended that SBA return to its former regulation which only required that such individuals hold 51 percent of voting stock. The proposed requirement resulted from a General Counsel's opinion which found that such ownership was necessary to meet the 51 percent ownership requirement of section 8(a) of the Small Business Act (15 U.S.C. 637(a)). While disadvantaged ownership of 51 percent of the voting stock would satisfy the control requirement, it would not satisfy the separate requirement of 51 percent disadvantaged ownership. Therefore, the requirement of 51 percent ownership of the aggregate of all classes of stock remains unchanged in this final rule.

One commenter noted that SBA's treatment of options held by Small Business Investment Companies (SBICs) and Minority Enterprise Small Business Investment Companies (MESBICs) should be included in § 124.103, which addresses ownership of 8(a) concerns, and not, as proposed in § 124.317, which relates to performance of contracts by the original 8(a) concern awardee. SBA has adopted this comment and added the paragraph to § 124.103(d).

A number of commenters found the restrictions on ownership to be too severe and expressed the view that they would overly limit the ability of a small and disadvantaged firm to secure necessary long-term financing. SBA considered this comment and has amended paragraphs (f), (g), (h), and (i) of § 124.103 so that the restrictions do not apply to ownership interests of less than 10 percent. In addition, equity interests held by SBICs, including MESBICs, or other financial institutions which are licensed by Federal, State or local government are not restricted under paragraph (g). SBA has also added the word "equity" before ownership interest in paragraphs (f), (g), and (h) to clarify that the restrictions apply to stock ownership or equity in a concern, but do not prohibit other concerns or individuals, whether or not disadvantaged, from making loans to 8(a) concerns. While such loans are generally encouraged, there may be instances where they would not be permitted during a concern's 8(a) program participation. For example, for purposes of size eligibility, SBA may still find affiliation between the lender and the 8(a) concern. In addition, certain loan arrangements could result in negative control of an 8(a) concern and would be prohibited for that reason under § 124.104(d)(5).

Paragraph (i) of § 124.103 addresses changes in 8(a) ownership. Where such changes result from the death or incapacity of an individual upon whom eligibility is based, SBA will not require prior approval of the change of ownership. For changes of ownership resulting from such circumstances, SBA will allow the concern reasonable period of time to replace the disadvantaged individual. However, any changes of ownership must be approved by SBA.

Proposed paragraph (j) contained exceptions to the restrictions contained in paragraphs (g), (h), and (i) for ownership interests of less than 5 percent. It also set forth procedures for obtaining approval of a public offering. To the extent that exceptions will be permitted to the ownership restrictions, they are set forth separately in individual paragraphs. Therefore, they have been deleted from paragraph (j). The remainder of proposed paragraph (j) is adopted without change.

Section 124.104 addresses requirements of, and restrictions on, the control and management of 8(a) Program applicants and participants. SBA has reordered the paragraphs to state first, in paragraphs (a) and (b) (proposed paragraph (c) and (d)), the control and management requirements. Paragraphs (c) and (d) (proposed paragraphs (a) and (b)) set forth the restrictions on control and management of an 8(a) concern by nondisadvantaged individuals, their spouses or immediate family members. This final rule permits any such individual to be an officer, director, or up to a 10 percent owner, stockholder, or partner of another concern in the same or similar line of business and may hold individually up to a 10 percent interest in one or more other 8(a) concerns. This represents a change from the proposed rule which exempted from the restrictions nondisadvantaged owners, stockholders and partners with up to 5 percent ownership interests.

In addition, this final rule does not restrict MESBICs, SBICs and other financial institutions which are licensed by Federal, state or local government to holding 10 percent interests. However, by statute, no nondisadvantaged individual or entity is permitted to hold more than 49 percent of any 8(a) concern.

One commenter urged SBA to permit MESBICs to acquire temporary control in instances where it is necessary to protect the MESBICs' investments. SBA rejected this suggestion because it conflicts with the statutory requirement that the disadvantaged individual(s) control the 8(a) concern.

A number of commenters objected to the prefatory language of § 124.104 which required the disadvantaged individual(s) who control the 8(a) applicant or participant to have managerial and technical experience and competency directly related to the primary industry of the concern. The commenters expressed the view that good managers do not need to personally possess all the technical experience and competency to operate a successful business. SBA has considered this comment and has amended the rule to require that the disadvantaged individual(s) possess either managerial or technical experience and competency.

Several commenters opposed SBA's proposed paragraph (e) which required disadvantaged individuals to control the Board of Directors either in actual numbers or through weighted voting. The commenters' believed that such restriction would prevent an 8(a) concern from assembling a varied and experienced Board of Directors. This requirement was included to comply with the statutory requirement of control by disadvantaged individuals. However, SBA has amended paragraph (e) to make clear that non-voting or honorary Board members are permitted.

Paragraph (c)(3) of § 124.104 has been amended to clarify that excessive compensation of any nondisadvantaged individual, spouse or immediate family member in any form, including stock dividends, is prohibited. In addition, compensation will be deemed excessive if it exceeds the compensation to be received by any of the individuals who control and manage the day-to-day operations of the 8(a) concern. As proposed, § 124.104 prohibited nondisadvantaged former employers of the disadvantaged owner(s) from participating in an 8(a) concern as partners, stockholders, officers or directors. Several commenters objected to this restriction as overly broad. The final rule has been amended in paragraph (c)(4) to permit such participation by former employers if the relationship is in the best interests of the concern and if the former employer does not have actual control of, or the power to, control the 8(a) applicant or participant.

Finally, § 124.104(a) has been amended to require, for those industries which require professional licensing (i.e., public accountancy, professional engineering, etc.), that either the applicant concern or one or more individuals employed by the applicant concern hold the requisite license. This represents a relaxation from the proposed rule which required the individual upon whom 8(a) eligibility is based to hold the requisite license. SBA proposed the more restrictive requirement as a means to guard against nondisadvantaged individuals controlling an 8(a) concern. Upon reconsideration, SBA concluded that the other requirements of § 124.104 relating to control of an 8(a) concern are adequate to guard against a nondisadvantaged individual controlling the firm by virtue of holding a professional license. SBA has amended the rule accordingly.

Section 124.105 addresses the regulatory requirements of social disadvantage. In the proposed regulation SBA made only three substantive amendments to the existing § 124.105. First, it proposed to specifically state that social disadvantage would be "presumed" for members of certain named groups. In addition, it proposed to include in the regulations a definition of "Subcontinent Asian Americans." Finally, it proposed to amend the existing regulatory definition of "Asian Pacific Americans" and the existing policy definition of "Subcontinenf Asian Americans" to include individuals with origins in countries which has not previously been included. SBA specifically requested comments on the proposed definitional charges.

SBA received approximately ten comments on the proposed changes to this section. Of these, approximately seven commented that the proposed changes should not be adopted because

the SBA had failed to provide any justification for the changes, and because adding additional groups would serve to dilute the program. Three commenters concurred with the broadening of the definitions, and one of these also provided a detailed explanation of the geographical boundaries of the Subcontinent Asian and Asian Pacific areas. This commenter noted that SBA had omitted from its definition of "Asian Pacific American," individuals with origins from Hong Kong, and Macao; and from its definition of "Subcontinent Asian Americans," individuals from Sikkim and the Maldives Islands. SBA has adopted the additional locations suggested with the exception fo Sikkim. Sikkim has not been included since it is a state within India, and individuals with origins from India are already included among those presumed to be socially disadvantaged. In addition, SBA has also noted that it inadvertently omitted Fiji, Kiribati, Tuvalu, Nauru, Indonesia and Tonga from its listing of countries whose people are regarded as Asian Pacific American.

SBA has concluded that since it was the agency that had previously defined the two groups, either in regulations or policy documents, it is appropriate that these definitions be amended to include other countries of origin whose people share similar culture, heritage and physical characteristics with people from those countries that were previously included. The final rules will therefore adopt the definitions of "Asian Pacific American" and "Subcontinent Asian American" as proposed with the inclusion of the additional listed locations.

One commenter noted that SBA had failed to clearly indicate that tribal entities are regarded as socially disadvantaged. The final regulations have also been amended to reflect that comment.

In § 124.106 SBA proposed to establish criteria for determining economic disadvantage for purposes of 8(a) program entry and for participation in other programs which require SBA to determine social and economic disadvantage as a condition of eligibility.

SBA received many comments on this section. A number of the commenters recommended that objective criteria be established for measuring economic disadvantage. In addition, some commenters recommended that separate criteria be established for 8(a) program entry, continuing 8(a) program participation and participation in other Federal programs which require SBA to determine social and economic disadvantage as a condition of program eligibility. Comments on both this section and § 124.6 indicated that it would be unfair to enforce civil and criminal penalties for misrepresentations of economic disadvantage without clearly defining the criteria for determining such disadvantage.

In response to these comments, SBA has significantly revised § 124.106. Section 124.106(a) now provides that an individual with a net worth of less than $250,000 will be regarded as economically disadvantaged for purposes of 8(a) program entry. Section 102.106(b) now provides that an individual with a net worth of less than $750,000 will be regarded as economically disadvantaged for purposes of participation in programs, other than 8(a), which require SBA to determine social and economic disadvantage as a condition of eligibility.

After discussions with the Congressional Small Business Committees, the $250,000 threshold figure was selected as an appropriate ceiling for determinations of economic disadvantage for purposes of 8(a) program entry. The $750,000 threshold for determining economic disadvantage for purposes of participation in other Federal programs was selected to provide for a concern's business development. In both cases, the individual's net worth will be computed excluding the equity in his or her personal residence and his or her ownership interest in the applicant or Participant business concern. SBA has also amended § 124.111 to provide threshold figures for determining continuing economic disadvantage for 8(a) Program Participants.

SBA received a number of comments objecting to the proposed requirement that the net worth of an individual claiming economic disadvantage include the assets and liabilities of the individual and his or her spouse, if married. In response to these comments, SBA has amended the section to include new paragraphs (a)(2)(i)(A)(*1*) and (a)(2)(i)(A)(*2*).

The cited paragraphs now provide that, for purposes of program entry only, SBA will require separate financial statements from an individual claiming disadvantaged status and from his or her spouse, if any. However, the financial condition of the spouse will not be considered except to the extent that a non-applicant spouse has received assets from the applicant spouse within two years of the date of program application. Any assets transferred within two years will be presumed to be the property of the applicant spouse for purposes of determining that individual's personal net worth unless the couple is subject to a legal separation. In addition, SBA will not require financial statements from the non-applicant spouse if the couple is subject to a legal separation. SBA has also amended this section to indicate the special requirements governing the disclosure of assets and liabilities in community property states.

These provisions are not applicable to concerns where both spouses are individuals upon whom eligibility is based. In those cases, SBA will consider the net worth of each spouse individually for purposes of both program entry and for continued participation in the 8(a) program.

SBA has also amended paragraph (a)(2)(ii) to simplify the business financial condition criterion. SBA will continue to evaluate a concern's financial condition based on a comparison of its condition to other concerns in the same industry. However, SBA has amended the list of factors which it will generally consider in determining a concern's financial condition to add "working capital," and to delete "return on assets," "return on sales," "ratio of current assets to current liability (current ratio)," "ratio of the concern's sales to the compensation of its officers," "ratio of the concern's sales to its working capital," and "ratio of the concern's debt to its net worth."

Finally, SBA has amended paragraph (a)(2)(i)(C) to reflect that SBA will only evaluate the personal economic disadvantage of an Alaska Native who is claiming disadvantaged status for the purpose of qualifying an individually owned concern. In accordance with the provisions of the Alaska Native Claims Settlement Act, as amended, concerns which are majority owned by Alaska Native Corporations are also determined to be controlled by disadvantaged Alaska Natives. Therefore, SBA will not examine the economic disadvantage of an individual manager, officer or director of such a concern.

Section 124.107 sets forth criteria for determining whether an applicant concern has potential for success in the 8(a) program. SBA has amended § 124.107 to incorporate existing progam policy regarding determinations of potential for success, and has included an absolute requirement that an applicant concern demonstrate that it has been in business for two years prior to the date of its 8(a) program application. In addition, SBA has provided language to implement section

7(j)(11) of the Small Business Act, as amended by Public Law 100–656, which authorized SBA to deny program admission on the basis of lack of contract support only if the Government does not procure the types of products or if the purchase of such products or services is not in sufficient quantities to support the applicant concern's 8(a) program business development.

A number of comments objected to the "two year rule," and a few found the exemptions to the rule to be too narrow. Another commenter noted that the former 8(a) Program rules permitted too many exceptions to 8(a) program eligibility requirements, and recommended that the requirements of the program be less discretionary. It is SBA's conclusion that the business development goals of the program necessitate a determination of reasonable potential for success as one criterion of 8(a) program eligibility. SBA's experience has led it to conclude that a concern's potential for success can generally be assumed if the concern has been in business for two years, has a demonstrated track record and is financially sound. Therefore, SBA has deleted the provisions permitting exceptions to the two year in business requirement. This change is further supported by the fact that a concern's Program Term now begins on the date of its Program certification rather than on the date of award of the concern's first 8(a) contract. Therefore, firms which have been in business for at at least two years will have maximum opportunity for business development.

SBA has also deleted paragraph (d) from this section. Proposed paragraph (d) would have permitted SBA to decline to process applications if the agency lacked the resources in a particular district or region to serve the 8(a) concern. While this would have only been invoked in extraordinary circumstances, SBA has decided, that should the need arise, it will rely on the increase in, or realignment of, Agency resources to correct for any lack of resources in a particular district or regional office rather than suspend processing of applications.

Section 124.108 sets forth additional 8(a) program eligibility requirements. Paragraph (c) of this section implements the provisions of section 7(j)(11) of the Small Business Act, as amended by Public Law 100–656, by permitting an individual or a business concern to use his/her or its eligibility only one time to qualify a concern for 8(a) program participation. An individual or concern is deemed to have used his/her or its eligibility effective upon the date of the concern's approval for program participation. In this final rule SBA has clarified this restriction does not apply to concerns owned by Indian tribes or Alaska Native Corporations. The provisions relating to such concerns and their managers are set forth in § 124.112. This separate rule for tribally-owned concerns conforms to section 8(a)(4)(B) of the Small Business Act (15 U.S.C. 636(a)(4)(B)) which requires that such managers be members of the tribe, but does not require that they be socially and economically disadvantaged. Similarly, the rule regarding concerns owned by Alsaka Native Corporations (ANCs) conforms to the Alaska Native Claims Settlement Act, as amended. That Act mandates that for purposes of participation in federal programs, a concern which is majority owned by an ANC shall be deemed and controlled by the ANC.

In addition, SBA received a comment relating to this paragraph which objected to the imposition of a limitation on reapplication of a disadvantaged individual who had previously used his or her eligibility to qualify an 8(a) Participant. The commenter stated that very good reasons may exist for an individual to leave participant concern, for example, to assume an appointed position. SBA has made no change to the rule as a result of this comment because the limitation is statutorily mandated.

Section 124.109 describes types of businesses which are ineligible for the 8(a) program. SBA received a comment opposing paragraph (a) which makes packagers ineligible for 8(a) program participation. The commenter expressed that a packager would normally have more invested in its business than a dealer, which is permitted 8(a) participation. Therefore, a packager should also be eligible. SBA considered this comment but has not altered the regulation because packagers do not meet Walsh-Healey standards and are therefore ineligible to receive Federal contracts. Since the firms cannot receive Federal contracts, they have no prospects for business development through the 8(a) program.

SBA also received a few comments opposing paragraph (b) of § 124.109 which makes franchises ineligible for 8(a) program participation. The commenters expressed the view that all businesses are subject to some degree of control by external forces and that franchise agreements are not predicated on abusive control. SBA considered this comment but has decided to retain the prohibition because of concern that the franchisor-franchisee arrangement, by its nature, gives the franchisor more control over the management, daily business operations and business development of the franchisee than is appropriate in light of the business development goals of the 8(a) program and the statutory requirement of control by disadvantaged individuals.

Section 124.109(c) prohibits an 8(a) applicant or Program Participant from establishing its disadvantaged status by virtue of ownership by another disadvantaged concern. One commenter questioned whether this restriction applies to DoD's Small Disadvantaged Business (SDB) program or SBA's 8(d) Subcontracting program. Because the provision is rooted in the Small Business Act requirement of 51 percent ownership by disadvantaged individuals, and both the SDB program and 8(d) program use the 8(a) program definitions of social and economic disadvantage, this requirement applies also to the SDB program and the 8(d) program. The regulation has been amended accordingly. In contrast to some other ownership requirements set forth in § 124.103, because this requirement is required by statute, SBA has provided no exceptions.

Section 124.110 reflects the Program Term mandated by section 7(j) of the Small Business Act, as amended by Public Law 100–656. SBA received some comments which supported the fixed nine year term and one which opposed it. Since the term is set by statute, SBA has no authority to change it in these regulations.

SBA proposed to add to the regulations a new § 124.111 to implement section 8(a) of the Small Business Act, as amended by Public Law 100–656, which requires each Program Participant to make certain annual submissions to SBA. The statute also requires SBA to examine each Participant on the basis of these annual submissions, or on information received from other sources, to determine whether the Participant and its disadvantaged owners continue to meet all 8(a) program eligibility standards, including the standards established for determining economic disadvantage.

SBA received many comments pertaining to § 124.111. Most commenters objected to the vagueness of the standards for continued program eligibility and urged SBA to make them more specific. In the commenters' view, it would be unfair to require an individual to certify to his or her economic disadvantage without defining clearly the term. It would be particularly unfair in light of the penalties to be

imposed for false representation as set forth in § 124.6.

In response to these comments, SBA has added two new threshold personal net worth figures for determining continuing economic disadvantage for individuals claiming disadvantaged status for 8(a) program participation. For firms in the developmental stage (years 1–4) of program participation, an individual whose personal net worth exceeds $500,000 will not be considered economically disadvantaged. For firms in the transitional stage (years 5–9) of program participation, an individual whose personal net worth exceeds $750,000 will not be considered economically disadvantaged. To allow for the Participant's business development SBA has established three progressively higher thresholds for determining economic disadvantage throughout its Program Term: $250,000 for program entry and $500,000 and $750,000 as noted above for continuing eligibility. For determining continuing economic disadvantage, personal net worth will be calculated in accordance with the provisions of § 124.105(a)(2).

Some comments objected to SBA's requirement that it examine a concern's continued eligibility for 8(a) Program Participation both on an annual basis and whenever it receives information from any source that causes SBA to believe the Program Participant is no longer economically disadvantaged or no longer meets any of the other eligibility criteria for 8(a) program participation. These commenters recommended that SBA conduct reviews of continued eligibility only once annually, and that the findings of such reviews be conclusive evidence of eligibility for the next year. The Small Business Act, as amended by Public Law 100–656, states that SBA "shall conduct an evaluation of a Program Participant's eligibility for continued participation in the Program whenever it received specific and credible information alleging that such Program Participant no longer meets the requirements of Program eligibility." Because of this mandate, SBA has not adopted the suggested change.

In § 124.112, SBA proposed to address 8(a) program eligibility requirements for concerns owned by Indian Tribes, including Alaska Native Corporations (ANCs). SBA received a number of substantive comments on this proposed section from representatives of Indian Tribes and Alaska Native Corporations. In response to these comments SBA has made several amendments to § 124.112.

Paragraph (a)(3)(iv) has been amended to reflect the special status accorded to ANCs by the Alaska Native Claims Settlement Act, as amended. In accordance with that statute, ANCs are not required to provide the documentation required of other tribally-owned entities by paragraphs (b)(3) (i) and (ii). Neither are ANCs subject to the provisions of paragraph (c)(1).

SBA received several comments suggesting that the Agency presume economic disadvantage for tribally owned concerns. SBA could not adopt these comments because the Small Business Act, as amended by Public Law 99–272, expressly requires SBA to examine the economic disadvantage of a tribal owner of an 8(a) applicant concern. In the proposed regulations, SBA did provide that once a tribe has established its economic disadvantage for purposes of qualifying a concern for 8(a) program participation, it would not need to reestablish such status to qualify other concerns, unless specifically asked to do so. SBA has retained this provision in its final regulations.

SBA has deleted paragraph (b)(2)(viii) of this section since directors, managers, and officers of tribally-owned concerns, including those owned by ANCs are not required to establish individual economic disadvantage. (*See* § 124.112 (c) and (d).)

SBA also received several comments on paragraph (c)(1) which requires that a tribally-owned concern be a legal business entity organized for profit and susceptible to suit. In response to these comments, SBA has amended this paragraph to more clearly indicate that SBA's requirement is that the Articles of Incorporation of a tribally-owned concern contain language that expressly waives sovereign immunity, or allows suit only for those matters related to SBA's programs, including, but not limited to 8(a) program participation, SBA direct or guaranty loans, advance payments and contract performance.

Section 124.112(c)(3) has been amended to correct a typographical error. The corrected language now reads: "For corporate entities, a tribe must own at least 51 percent of the voting stock * * *" This provision mirrors the intent of Congress that disadvantaged concerns be 51% owned by disadvantaged individuals or tribes, or for those owned by Alaska Native Corporations, majority owned by the ANC. For the sake of administrative ease, SBA has interpreted "majority" ownership to mean 51%.

SBA received several comments regarding its proposed requirement that a tribal member who is a manager, officer or director of a tribally-owned concern use his or her personal status as disadvantaged in order to qualify the concern for Program Participation. In response to these comments SBA re-examined both the Small Business Act, as amended by Public Law 99–272, and the Alaska Native Claims Settlement Act, as amended. SBA has concluded that the statutory requirements of disadvantaged management and control are met for a tribally-owned concern if such concern is controlled by one or more members of an economically disadvantaged Indian Tribe. SBA has also concluded that the disadvantaged management and control requirements are met for concerns owned by Alaska Native Corporations if the majority of such concern is owned by an ANC. Therefore, for both tribally-owned and ANC-owned concerns, the individual managers, directors and officers are not required to establish individual social and economic disadvantage in order to qualify the concerns for 8(a) Program Participation. They are not, therefore, precluded from subsequently qualifying an individually owned concern for 8(a) Program Participation. Sections 124.112(c)(4)(i) and 124.112(d) have been amended to reflect these changes.

One commenter suggested that SBA allow tribally-owned concerns to be managed by individuals who are not members of the tribe which owns the 8(a) applicant or participant concern. Other commenters have recommended that SBA allow management of a tribally-owned concern to come from a mix of tribal members, Indians who are members of other tribes, and non-Indians. SBA has not adopted these comments because they are contrary to SBA's interpretation of the requirements of the Small Business Act, as amended by Public Law 99–272, which requires that tribally owned concerns, except those owned by ANCs, be managed by members of the economically disadvantaged Indian Tribe which owns the company.

Several comments indicated that ANC's should not be required to form separate corporate entities. SBA has considered these comments, but has not adopted them. It is SBA's conclusion that the administrative requirements of 8(a) program participation require that each ANC-owned concern be a separate entity.

SBA did not adopt comments indicating that the Agency should not require a tribally-owned Participant to receive prior approval in order to include Tribal Council members on its Board of Directors. This was not adopted because SBA has determined that it needs to be aware of any interrelationships between the tribe and

the concern(s) which it owns. However, it is not anticipated that SBA will generally refuse to allow Tribal Council members to serve as directors of tribally-owned 8(a) concerns, unless such dual roles will cause findings of affiliation due to common management, or will otherwise detract from the business development goals of the 8(a) program.

Comments were also received on § 124.112(c)(2) (ii) and (iii) which proposed that, except for joint ventures expressly authorized by the Small Business Act, as amended by Public Law 100–656, a tribally-owned Program Participant must qualify as a small business pursuant to § 121.4(g)(2) of this Title for each individual 8(a) contract award. It was suggested that SBA amend this section to allow 8(a) program eligibility for a joint venture of which a tribally-owned concern is a partner.

SBA has not adopted this recommendation. The Small Business Act, as amended by Public Law 100–656, provided for only two exemptions to SBA's size requirements specifically for award of section 8(a) contracts to tribally-owned concerns. Nothing in either the Act or the Conference Report allows SBA to exempt from its size regulations joint ventures of which a tribally-owned concern is a party for purposes of program entry.

In new § 124.113, SBA proposed to implement section 8(a)(15) of the Small Business Act, as amended by Public Law 100–656. In this section, SBA proposed that concerns owned by disadvantaged Native Hawaiian Organizations would be eligible for participation in the 8(a) program and other Federal programs which require SBA to determine social and economic disadvantage as a condition of eligibility. No comments were received on this section. However, SBA has amended § 124.113 to comport with the language of the statute by adding the words "economically disadvantaged" to provide that concerns owned by economically disadvantaged Native Hawaiian Organizations are eligible for participation in the 8(a) program and other cited programs.

In § 124.201, SBA proposed to provide general information regarding the processing of 8(a) applications. Paragraph (a) of this section provided authority to the AA/MSBA-COD to decline to process an 8(a) application if SBA lacked appropriate resources to serve an additional Program Participant. Although SBA received no comments on this section, it did receive a number of comments on § 124.107(d) which contained a similar provision. In response to those comments SBA has deleted paragraph (a) in its entirety, and has deleted the paragraph designation for paragraph (b) of this section.

To conform with changes which have been made to § 124.107(a) and § 124.107(b) of this part regarding determinations of potential for success, SBA has amended proposed paragraph (b) of this section to state that it is the Agency's policy that any concern or individual on behalf of such concern has the right to apply for 8(a) program participation whether or not there is an appearance of eligibility. It should be noted, however, that concerns which have not been in business of two full years as defined by SBA will not be approved for 8(a) program participation.

Proposed § 124.202 provided information regarding the place of filing an 8(a) application. SBA received no comments on this section. However, to accommodate changes which have been made in SBA's organizational structure, the section has been amended to indicate the applications for 8(a) program participation will be filed in the field office serving the territory where the concern's principal place of business is located. These offices, generally district offices, except in SBA's Boston region, will also provide potential applicants with information regarding the program and with the required application forms. The section also states that applications for Program Participation will be processed by the appropriate regional office of the Division of Program Certification and Eligibility.

Section 124.203 states that concerns approved for Program Participation will be serviced in the field office serving the territory in which the concern's principal place of business is located. No comments were received in this section, and no changes have been made to it.

In § 124.204, SBA proposed to provide information regarding the use of representatives in connection with the 8(a) program application process. No comments were received on this section. However, SBA has amended § 124.204 to more clearly indicate that applicant representatives are subject to the prohibitions against contingency fees set forth in § 124.7 of this part.

Proposed § 124.205 provided general information regarding the forms and attachments required for making application to the 8(a) program. No comments were received on this section, and no changes have been made to it.

Sections 124.206 through 124.211 implement section 8(a)(9) of the Small Business Act, as amended by section 409 of the Reform Act. These sections describe the rights of an applicant concern or Program Participant to seek further Agency review of certain initial Agency decisions. The agency review may include an administrative appeal to an Administrative Law Judge. The Reform Act authorizes an appeal of an initial Agency decision if such decision relates to program graduation, program termination, a denial of a request for a waiver of the restriction against the sale of an 8(a) concern pursuant to § 124.317 or denial of program admission based solely on one or more of the following eligibility criteria: social disadvantage, economic disadvantage, ownership or control.

SBA received very few comments on these sections. One commenter requested that SBA allow the Participant 180 days to respond to SBA's Notice of Intent to Graduate or Terminate (§§ 124.208 and 124.209). SBA considered the comment but made no change to these sections, which, as written, allow two 45 day periods to respond to SBA's Notice of Intent to Graduate or Terminate. The Small Business Act requires SBA to provide 8(a) program benefits only to such firms which meet the continuing program eligibility requirements. If a firm has met the objectives of its business plan or ceases to meet the continued program eligibility requirements, it should be promptly graduated or terminated from the program. SBA believes that the 45 day response periods are adequate to protect the rights of the concern while also adhering to the statutory mandate that 8(a) Participants meet all Program eligibility requirements.

One commenter requested SBA to clarify that a graduated 8(a) concern is obligated to complete previously awarded 8(a) subcontracts, including price options. SBA has included a reference to priced options in § 124.108(d). One commenter urged SBA not to consider ligitimate temporary absences of the disadvantaged owner(s) as grounds for termination of the program. In § 124.209, SBA is granted discretion to terminate a concern's Program Participation for any of the listed causes. SBA is not required to do so. It is unlikely that SBA would base program termination on temporary incapacity of a disadvantaged principal due to illness or accident. Among other reasons, this is unlikely to occur because the time involved in terminating a concern from the program is likely to exceed the period of illness. Therefore, SBA has made no change to § 124.208.

Another Federal agency also commented on § 124.209 and asked that SBA notify the contracting agencies when termination or suspension

procedures have been initiated. SBA does not notify contracting agencies of proposed suspensions or proposed terminations because to do so would deny the 8(a) concern the due process rights which the Small Business Act accords them.

One commenter recommended that § 124.210 relating to the appeals process permit the Agency to submit an affidavit to explain documentary evidence. This would be used to supplement the written record. SBA has considered this recommendation, but has not adopted it. The Reform Act mandated an arbitrary and capricious standard of review for 8(a) appeals, which in turn limits the evidence reviewed to that in the written record, unless a showing is made of bad faith or improper behavior on the part of the initial decisionmaker.

One commenter suggested that SBA clarify § 124.210(h)(3)(ii), which states that the burden of proof remains with the concern following the concern's preliminary showing of the initial decisionmaker's bad faith or improper behavior. SBA has made no change to the regulations, but offers the following explanation to clarify the intent of this provision. Under normal circumstances, neither SBA nor the 8(a) concern may introduce evidence beyond the written record in an 8(a) appeal. If, after the concern makes a preliminary showing of bad faith or improper behavior and the Agency has had an opportunity to rebut such showing, the Administrative Law Judge hearing the case will determine whether a substantial showing has been made. If so, the concern may engage in discovery and may introduce other evidence to show that the Agency arrived at the initial decision improperly. The Agency may engage in discovery and may introduce evidence to rebut such additional evidence offered by the concern. However, the burden of proof remains with the 8(a) concern to demonstrate that the decision was made in bad faith or as a result of improper behavior and was, therefore, arbitrary and capricious.

SBA received one comment on § 124.211 which addresses the suspension of program assistance to 8(a) Participant concerns. The commenter was not clear why the decision whether to permit a hearing relating to a suspension may be based on advice from the Department of Labor or the Department of Justice, since a hearing would not necessarily be prejudicial to the other agency's case. While this is true, it is government procedure to rely on advice from those named Departments so that their cases are not inadvertently prejudiced by an SBA hearing on a suspension.

SBA has revised § 124.211 to provide that actions to suspend a concern's program participation can be commenced at any time after the issuance of an Initial Letter of Termination. This change has been made to continue SBA's authority to protect the Government's interest by suspending a concern's Program Participation prior to its termination from the 8(a) Program.

Sections 124.301 through 124.320 address the provision of various forms of assistance to 8(a) Program Participants, such as financial, technical, managerial assistance and contract support, to promote the business development of such concerns.

Section 124.301 addresses the submission of business plans and the required contents of such plans. Section 301(a) sets forth general submission requirements. A number of commenters expressed the view that the 30-day time limit set forth in the proposed rule for the development and submission of a business plan was too short. SBA agrees with this comment and has amended the rule to provide that business plans must be submitted to SBA promptly after certification. The new language conforms to section 205 of the Reform Act. Another commenter recommended that a deadline be placed in the regulations for SBA review of the business plan. SBA has carefully considered this comment and has decided not to adopt it because of the differences in length and complexity of the various business plans requiring review. General time limitations will be placed in SBA's Standard Operating Procedures (SOP), however. In addition, SBA will consider requests to perform expedited reviews of business plans where receipt of an 8(a) contract is contingent upon approval of the business plan.

SBA has also amended this paragraph to provide that a Participant will not be eligible for program benefits until the SBA approves its business plan. The proposed regulation provided that the Participant would not be eligible for 8(a) contracts until approval of its business plan and did not address other program benefits. This amendment was made in response to the comment that SBA cannot determine appropriate program benefits for a Participant without an approved business plan.

Section 301(b) sets forth the requirement that Standard Industrial Classification (SIC) codes for the nine year Program Term be set forth in the business plan. Numerous commenters were opposed to this requirement, reasoning that it would be too difficult to project necessary SIC codes nine years in advance. The SIC code designation requirement is intended to be an estimate or projection of the industry areas in which the concern intends to concentrate. 8(a) concerns are not expected to make absolute determinations concerning the SIC codes under which they will operate for the next nine years. In fact, specific provision is made in § 124.302(c) for amendments and additions to the SIC codes set forth in the business plan. In addition, annual reviews of business plans are intended to permit 8(a) concerns to amend their business plans in accordance with the changing structure and needs of the concern. As part of the annual review process, 8(a) concerns have the opportunity to change the SIC codes in their business plans. The language of this section has been modified to clarify SBA's intent and to correct the misimpression that the SIC code requirement is inflexible.

Section 124.301(c) sets forth the required contents of the business plan. A few commenters objected to these requirements as too onerous. These requirements are mandated by section 205 of the Reform Act and, therefore, may not be altered.

Section 124.302 sets forth the procedures for review and modification of the business plan. The majority of comments on this section focused on paragraph (c) which provides the conditions under which SBA will permit an 8(a) concern to change the SIC codes in its business plan or to add new SIC codes. Most concerns expressed the view that SBA would apply this section strictly to preclude concerns from expanding their businesses and venturing into new areas. This is not SBA's intent. If a concern is able to demonstrate that it is able to perform under a new or different SIC code, that the new SIC code represents a logical business progression, and other applicable criteria (i.e., Walsh-Healey Act, non-manufacturer rule * * *) are met, the concern will be permitted to amend its business plan to change or add a new SIC code. *See* preamble concerning § 124.301(b).

One commenter expressed concern regarding the requirement in the proposed rule that the requested SIC code be related to the primary SIC code of the concern. The commenter felt this requirement would be interpreted to prohibit concerns from adding SIC codes in two-digit SIC code industries other than the two-digit SIC code industry for the concern's primary industry. This was not SBA's intent. To avoid this misimpression, SBA has deleted this requirement. The requirement that the new SIC code represent a logical business progression for the firm adequately addresses SBA's concern that the business limit its expansion to areas related to its primary area of endeavor.

This paragraph has also been amended to delete the designation of the Regional Administrator or his/her designee as the deciding official on SIC code requests. The final regulation provides that SBA will approve SIC code changes/additions. The reason for this change is that the SBA official authorized to approve these requests will vary from region to region depending on how the 8(a) program is managed in a particular region. In most regions 8(a) contracting is handled by the district office, and the appropriate District Director shall be responsible for approving SIC code changes. In those regions were 8(a) contracting is handled by the regional office, the appropriate ARA/MSB&COD shall approve such requests. Finally, paragraph (c) of § 124.302 has been amended as a result of the comments to add a requirement that SBA make a decision on a request for a SIC code change within 45 days from the date the request is received. The time limitation is designed to minimize delay in processing requests so as to maximize the business development potential of 8(a) concerns.

Paragraph (d) of § 123.302 requires a transition management plan to be submitted in the first year of a Participant's participation in the transitional stage of the Program Term. A few commenters asked when current Program Participants are expected to submit transition management plans if they are in the transitional stage on the effective date of these regulations. Such participants should submit these plans as soon as possible after the effective date of these regulations.

Section 303 sets forth the stages of Program Participation. General Program Participation is divided into two stages—a developmental stage and a transitional stage. For concerns entering the 8(a) program after November 15, 1988, the developmental stage is four years and the transitional stage is five years. One commenter asked for clarification concerning the length of time in each stage for concerns already in the program. The regulation has been amended to clarify the method of calculation for these Program Participants. For those concerns with five or fewer years in the program as of August 15, 1988, the program year they are in on August 15, 1989 shall be considered the first year in the transitional stage. These concerns are subject to the modified business activity targets established in § 124.312(c)(5).

For concerns with more than five years remaining in the program as of August 15, 1989, the stages of Program Participation shall be determined so that the Participant will have five years in the transitional stage. The remaining time in the program shall be considered to be time in the developmental stage. For instance, if a concern had six and one half years remaining in the program as of August 15, 1989, the concern would have one and one half years remaining in the developmental stage and five years in the transitional stage. The time in the developmental stage will naturally precede the time in the transitional stage. These concerns are subject to the full business activity targets set forth in § 124.312(c)(4).

Section 124.303 also set forth the various forms of assistance available to concerns in the developmental and transitional stages. One commenter expressed the view that teaming arrangements should be permitted at the developmental as well as transitional stage of program participation. SBA is unable to adopt this comment because section 301 of the Reform Act provides for teaming arrangements only during the transitional stage.

Another commenter requested clarification concerning whether SBA would be responsible for providing the training assistance available in the transitional stage. SBA will be responsible for arranging for such training assistance, either through the BOS or through its 7(j), Small Business Development Center (SBDC), or Service Corps of Retired Executives (SCORE) programs, or through referrals to other programs.

Section 124.304 sets forth the statutory exemption from the Walsh-Healey Act. One commenter suggested that the final rule clarify that these exemptions shall apply only to requirements received on or after the effective date of these regulations. SBA agrees with this comment and has adopted it. Section 124.305(f) of the final rule concerning Miller Act exemptions has also been amended to include this clarification.

Section 124.305 sets forth the statutory exemption from the requirement in the Miller Act that payment and performance bonds be obtained on construction contracts. SBA has made four substantive amendments to this section based on public comment. First, paragraph (c)(6) of the proposed rule (paragraph (b)(3) of the final rule) required Program Participants requesting exemptions to demonstrate that they had been denied bonds from three sureties, one of which was required to be a corporate surety. There were two major comments pertaining to this requirement. The first requested clarification concerning how a concern would "demonstrate" denial. The second expressed the view that obtaining three denials was overly burdensome for Program Participants. As a result of these comments, SBA has amended this paragraph to provide that a concern must obtain two denials from sureties, one of which must be from a corporate surety and one of which must be from an individual surety, and that the concern is to demonstrate such denial by submitting written denials from the sureties to SBA.

The second change made to this section as a result of comments concerns § 124.305(d), which provides for the protection of third parties. The commenters pointed out that the statute provides for direct disbursement of contract proceeds to subcontractors as an option for protecting suppliers, but that SBA's regulations did not contain this option. SBA agrees with this comment and has added to the regulation a provision listing direct disbursement as an option procuring agencies can utilize to protect suppliers.

The third change to this section also is to paragraph (d)(4). This paragraph provides, among other things, that suppliers must be notified in writing of the existence of a Miller Act exemption and that the 8(a) concern must obtain written acknowledgement of such notification from its suppliers. This paragraph has been amended to provide that in all instances SBA must have in its possession all required acknowledgments prior to the payment of invoices. The proposed rule required that SBA should possess such acknowledgments before invoices are paid "where practicable." The effect of this change is to provide further protection to suppliers of materials and labor.

The fourth substantive change is the addition of the requirements of paragraph (d)(4) concerning notifications to and acknowledgments from suppliers to the list of requirements which must be contained in special contract clauses.

SBA has also added proposed paragraph (c)(6) of § 124.305 to § 124.305 as paragraph (b)(3) because it believes that the requirement that a firm prove that it cannot obtain a bond is more appropriately placed in the paragraph concerning conditions for obtaining a

waiver than in the paragraph on limitations to the waiver.

Another commenter expressed the view that there should be a blanket exemption from the Miller Act for all 8(a) concerns involved in the construction industry. SBA is unable to adopt this comment because the Reform Act provides for an exemption from the Miller Act only where an 8(a) concern is unable to obtain a bond. Moreover, the purpose of the exemption is to enable responsible 8(a) concerns to perform contracts where they cannot persuade a surety to provide them a bond. The purpose is not to enable the concern to avoid paying for "high risk" bonding as the comment suggests.

One commenter suggested that bonds should not be waived below the $1.25 million surety bond guarantee ceiling. Under SBA's Surety Bond Guarantee program, SBA agrees to guarantee sureties where a surety company is unwilling to provide a surety bond to a small business without such guarantee. SBA has not adopted this comment because, under certain circumstances, a surety may not be willing to provide a bond to an 8(a) concern even if SBA agrees to guarantee the bond. In such case SBA may want to provide an exemption to the bonding requirement of the Miller Act if it determines that the 8(a) concern is capable of performing the requirement.

A number of other commenters were opposed to SBA's unwillingness to assume responsibility for payment of subcontractors when an 8(a) contractor fails to reimburse them. Congress has not appropriated funds for this purpose and, therefore, SBA is unable to assume this responsibility. Moreover, the Reform Act provides that SBA and the procuring agency should take steps to protect subcontractors by establishing a special bank account or by direct disbursement procedures.

A few commenters requested that the $3,000,000 ceiling for the exemptions be lowered. Inasmuch as the $3,000,000 ceiling is statutory, SBA cannot adopt this comment. It is the intent of Congress that SBA consider all requests under the ceiling.

One commenter suggested that SBA automatically reject a request for a bond waiver where the 8(a) concern requesting the waiver has defaulted on a prior contract; or, at a minimum, that SBA require such concern to meet a higher standard before it may obtain a waiver. SBA has considered this comment, but has not adopted it. There are many reasons why a concern might default on a contract. If such concern corrects the problem which caused the default or if the cause of the default would not pertain to the contract for which the waiver is requested, such concern should not be penalized for the default. However, SBA will carefully consider a prior default and the circumstances which caused the default in determining whether a concern is capable of performing a subsequent contract for purposes of determining whether a waiver is appropriate. Moreover, the regulation does provide that SBA will not grant an exemption where a concern has defaulted on a prior contract for which it received an exemption. *See* § 124.305(c)(5).

A few commenters opposed the provision in § 124.305(d)(1)(iii) which authorizes SBA to delegate to a third party its authority to approve disbursements from the special bank account established to protect third parties. SBA has considered and rejected this comment. The authority to delegate this authority is necessary due to SBA's limited personnel resources. SBA will exercise great care in approving qualified and responsible persons to approve disbursements from the special bank account.

For clarification, SBA has specified in § 124.305(d)(2) that the 8(a) concern receiving the bond waiver notify suppliers of material and labor in writing of the exemption.

A number of commenters asked whether SBA would grant a bond waiver over the objection of the procuring agency offering the requirement. If a procuring agency objects to a decision by SBA to grant a waiver, the agency can withdraw the requirement, in which case SBA may appeal the withdrawal, or the procuring agency may agree to offer the requirement to another 8(a) concern.

Section 124.306 sets forth both the standards and procedures for obtaining financial assistance from SBA for skills training. Paragraph (a) of § 124.306 in the proposed rule provided that payment would be made to the training providers pursuant to appropriate agreement. That paragraph has been amended as a result of amendments to the Reform Act by the Technical Corrections Act, Public Law 101–37. Section 8 of the Technical Corrections Act amended the Reform Act to permit SBA to make payments either to the training providers or as reimbursement to the 8(a) concern or the employee of the 8(a) concern receiving the training. The final rule has been amended to reflect this amendment to the Reform Act.

One commenter objected to the limitations in paragraph (b)(5) of § 124.306 on the types of institutions eligible to provide training under this section. SBA is unable to relax such limitations as they are required by section 301 of the Reform Act.

Paragraph (b) has been amended to include as paragraph (b)(12) the requirement that appropriate written employment contracts must be executed and submitted to SBA in accordance with paragraph (f) of § 124.306.

Paragraph (d) of § 124.306 has been amended to substitute the word "request" for the word "proposal" to avoid any confusion that the word "proposal" might cause, and to add a sentence clarifying that SBA may request additional information before the request is processed.

Section 124.307 sets forth the general standards for acceptance of contracts for the 8(a) program. One commenter requested that paragraph (d) of this section be amended to provide that approval of an 8(a) contract will be contingent upon a determination by the procuring agency as well as by SBA that the concern is capable of performing the contract. SBA has rejected this comment inasmuch as it is SBA's responsibility to certify its own capability to perform the contract as the prime contractor. Such certification is based on a determination by SBA that the 8(a) concern to which it will subcontract the requirement is capable of performing the requirement. This certification requirement remains unchanged from SBA's former regulations. If the procuring agency questions an 8(a) concern's capacity or capability to perform a particular requirement, it may express its concerns to SBA. However, the final authority to determine the capability of the 8(a) concern remains with SBA.

One commenter requested that SBA add a provision to this section prohibiting SBA from accepting for the 8(a) program any previously competed contract that is now an umbrella contract. SBA has not adopted this comment because under many circumstances, it would be appropriate to accept such an umbrella contract for the 8(a) program. The circumstances under which SBA will refuse to accept a procurement for the 8(a) program are set forth in § 124.309 of the rule. SBA will generally make such a refusal where acceptance would have an adverse impact on other small business programs or on an individual small business. If acceptance of the umbrella contract would result in any of the consequences listed in § 124.309, SBA would refuse to accept it. For instance, SBA would refuse to accept the requirement if the umbrella contract was substantially the same as the prior contract with minimal added requirements and a small business

concern would be adversely affected by acceptance of the contract for the 8(a) program.

Section 124.308 sets forth the procedures for obtaining and accepting procurements for the 8(a) program. Paragraph (b) of this section provides, among other things, that if SBA disagrees with the SIC code assigned to the requirement by the procuring agency, SBA may request that the procuring Agency assign a different SIC code to the requirement. A few of the procuring agencies commented that a sentence should be added to this provision to clarify that the procuring agency shall make the final decision with regard to the SIC code assigned to the requirement. SBA has not adopted this comment because SBA retains the right to refuse the requirement if the procuring agency chooses an incorrect SIC code for the requirement. SBA has therefore, amended this paragraph to provide that if SBA is unable to accept the procuring agency's SIC code designation for the requirement, the AA/MSB&COD may file a SIC code appeal to the Office of Hearings and Appeals of the SBA or may refuse to accept the requirement for the 8(a) program. SBA will only take such actions when a SIC code is clearly incorrect, however. So long as the SIC code assigned to the requirement by the procuring agency contracting officer is reasonable, it will be accepted by SBA.

Paragraph (b) has been further amended to provide that SBA may accept a requirement for competition even if it is below the applicable competitive threshold if it receives a request to do so from the procuring agency. One commenter correctly pointed out that SBA had inadvertently omitted this option from the proposed rule.

Paragraph (b) has also been subdivided for clarity.

Paragraph (c) of § 124.308 has been amended to reflect the proposed amendment to the Federal Acquisition Regulation (FAR) on competitive 8(a) procurements. That proposed rule was published in the **Federal Register** on June 28, 1989, 54 FR 27310. SBA has made minor language changes so that the language in this paragraph is virtually identical to that used in § 19.804–2(a) of the proposed FAR amendment. In addition, SBA has redesignated paragraph (c)(14) of the proposed rule as paragraph (c)(17) and has added new paragraphs (a)(14), (a)(15) and (a)(16) to comport with the proposed FAR amendment. Paragraph (a)(14) provides that the procuring agency will identify in the offering letter all 8(a) concerns which have expressed an interest in being considered for the acquisition. Paragraph (a)(15) provides that, if the requirement is a national buy, the procuring agency will identify all SBA district or regional offices which have asked for the acquisition for the 8(a) program. Paragraph (a)(16) provides that the offering letter shall contain a request that the acquisition be competitive, if appropriate, and the estimated contract value is under the applicable threshold. These additions represent either current policy which was not clear in SBA's proposed rule, or items contained in the Reform Act.

SBA has also added a new paragraph (h) to the final rule to clarify current policy and to comport with § 19.804–4 of the proposed FAR amendment. New Paragraph (h) provides that in order for repetitive acquisitions to be awarded through the 8(a) program, there must be separate offers and acceptances. This clarifies the general rule that every new contract must be separately accepted for the 8(a) program, even if such contract is for a repeat requirement.

Paragraph (d) of § 124.308 provides procedures for SBA acceptance of a requirement for the 8(a) program. A few commenters requested that time frames be established so that procuring agencies and contractors will know when to expect decisions with regard to SBA's acceptance of national buys and designations of specific participants to perform. SBA has rejected this comment because generally procuring agencies provide time frames in which they need decisions made for particular procurements. Moreover, general time frames will be placed in SBA's Standard Operating Procedures (SOP). Another commenter suggested that SBA make a detailed analysis of its portfolio within the 15-day time frame for acceptance, to include analyses of the business plans of all eligible Participants. Unfortunately, SBA does not have the resources to perform such extensive research within such a short time frame.

Paragraph (e) of § 124.308 sets forth the requirements and procedures for acceptance of sole source requirements when the procuring agency nominates a particular Program Participant for award. One commenter requested that an exception be made to the requirement that an 8(a) concern not be awarded a sole source contract if the concern has exceeded its support level when award of that contract would assist the concern in meeting its 8(a) program objectives. It is SBA's policy that 8(a) concerns must stay within their support levels. There are a number of reasons for setting support levels, including the encouragement of logical and well-planned development of the concern, reduced reliance on 8(a) contracts, and fair distribution of sole source contracts. If an 8(a) concern believes that its support level is too low, it may request that its support level be raised. If SBA granted exceptions to support level requirements to permit 8(a) concerns to be awarded additional sole source contracts, it would render such support levels meaningless.

Another commenter requested that the regulation permit the procuring agency to withdraw the requirement or appeal if SBA refuses to award the contract to the nominated concern. The procuring agency always has the option of withdrawing the requirement. Therefore, it is unnecessary to include that option in this regulation. There is no appeal process for issues of Participant selection.

Paragraph (g) of § 124.308 provides that procuring agencies may not request formal technical evaluations for sole source contracts. One commenter objected to formal technical evaluations in all cases, reasoning that these evaluations discriminate against smaller concerns which cannot afford costly proposal efforts. One of the purposes of the introduction of competition into the 8(a) program is to educate 8(a) concerns in the competitive process and to provide them with experience in following the procedures they will have to follow once they leave the 8(a) program. Formal technical evaluations are an integral part of unrestricted procurements of certain services. Therefore, to prohibit their use in 8(a) competitive procurements would artificially ease competitions for these procurements. The Conference Report to the Reform Act, H.R. Rep. No. 1070, 100th Cong., 2d Sess. 64 (1988) specifically provides that competitions should be representative of competition which is the normal practice in the relevant industries. In order to protect the smaller or newer Participants in the program, SBA has prohibited formal technical evaluations for sole source awards.

Section 124.309 sets forth the conditions under which SBA will refuse to accept a requirement for the 8(a) program where to do so would adversely affect the Small Business or Small Disadvantaged Business (SDB) set-aside programs or a particular small business. One commenter requested that this section be deleted as discriminatory to 8(a) concerns. This policy is well established and is set forth in SBA's former regulations. Congress intended that the various programs developed for assistance to small firms and small disadvantaged firms function

cooperatively and harmoniously. It is therefore necessary to have regulations in place which permit such cooperative functioning and prevent unnecessary and counter-productive competition between programs. The intent of this section is merely to preclude 8(a) awards where a procurement has already been committed to another small business program.

SBA has amended the language in paragraph (c) to clarify that in determining whether adverse impact exists, SBA will consider all relevant factors. In light of this clarification, paragraph (c)(2) of the proposed rule has been deleted as unnecessary.

A few commenters opposed paragraph (d) of § 124.309, which provides that under certain specified circumstances, SBA will release a requirement from the 8(a) program so that it can be competed. One commenter requested that the word "released" be changed to "rejected" since every new contract (even if it is a repeat requirement) must be separately accepted for the 8(a) program. SBA agrees with this comment and has substituted the word "rejected" for "released" everywhere it appears.

Another commenter requested that specific criteria be provided for rejection of a requirement. SBA has decided not to include specific criteria in the regulation because of the differences in the types of requirements offered to the 8(a) program, differing circumstances, and lack of experience in this area. After ABA develops clear policy guidelines for implementation of this paragraph, it will consider promulgating such guidelines and criteria as regulations.

Finally, one commenter suggested that the procuring agency have input into the decision to reject a requirement so that it can be competed. SBA agrees with this comment and has adopted it.

Section 124.310 provides that SBA must approve subcontracting arrangements under 8(a) contracts. One commenter asked whether this requirement is retroactive to contracts awarded prior to the effective date of the regulations. This requirement is not new and therefore retroactivity is not an issue. The requirement reflects long-standing SBA policy and is included in the FAR regulations under the section on required special clauses. [48 CFR 52.219-12(b)(3).]

A number of the commenters opposed the requirement generally, arguing that it needlessly injects SBA into the legitimate decisions of 8(a) concerns. Because the 8(a) program is a business development program, SBA has a legitimate interest in being informed of and involved in Participants' decisions. Moreover, this approval process is necessary in order to prevent fronts and to prohibit excessive control and/or benefits to non-8(a) concerns. Finally, SBA must examine the subcontracting arrangements of 8(a) concerns to insure that the legislatively mandated subcontracting percentage limitations are met. *See* section 921 of Public Law 99-661 and § 124.314 of these regulations.

It should also be noted that SBA is not required to affirmatively approve each subcontract and will generally accept the 8(a) concern's subcontracting arrangements if the requirements of § 124.314 are met. However, SBA must be informed of such arrangements and reserves the right to disapprove subcontractors or subcontracting arrangements.

Section 124.311 sets forth the statutory thresholds for competition within the 8(a) program and describes the procedures for conducting competitions. The introduction of competition into the 8(a) program over the threshold amounts was mandated by section 303(b) of the Reform Act. A number of commenters expressed the general view that competition cannot be effectively integrated into the 8(a) program. The primary concern was that the delay involved in conducting competitions would take away the primary motivations for procuring agencies to set aside contracts for the 8(a) program—ease and speed. SBA and the various procuring agencies which utilize the 8(a) program are aware of the danger that requirements could be lost to the 8(a) program as a result of the competitive requirements. In order to ensure that 8(a) activity is maintained at current levels or increased, SBA will use all due diligence to expedite the competitive 8(a) process and will encourage contracting agencies to do the same. Moreover, in revising the Federal Acquisition Regulation (FAR) to include standards and procedures for conducting competitions within the 8(a) program, Federal procuring agencies have taken into consideration the danger of increased delay and have provided, where possible, for streamlined procedures for conducting 8(a) competitions.

A number of commenters requested that the threshold amounts set forth in § 124.311(a)(2) be raised and many presented precise formulas for determining when competition should be required. SBA is unable to adopt these comments because the threshold amounts are mandated by statute. *See* section 303(b) of the Reform Act. The statute also mandates that option years be included in calculating the threshold amounts and that the calculation be based on "anticipated award price." Therefore, comments opposing these requirements could not be adopted.

One commenter suggested that paragraph (a) be amended to provide that for purposes of indefinite quantity/delivery contracts, the threshold amounts should apply to the guaranteed minimum value of the contract. SBA agrees with this comment and has amended the regulation accordingly.

Section 124.311(b) sets forth the effective date of the threshold requirements. A number of commenters objected to the requirement that a proposal containing price must be submitted to the procuring agency before October 1, 1989 in order for a requirement to avoid the requirement that contracts over the threshold requirements be competed. The commenters pointed out that 8(a) concerns expend valuable resources both in terms of personnel time and money to self-market and negotiate contracts with procuring agencies. The commenters requested SBA to revise the regulation to permit a requirement to be awarded as a sole source contract if it is accepted for the 8(a) program before October 1, 1989. SBA agrees with this comment and has amended paragraph (b) to provide that the threshold requirements shall not apply to any 8(a) requirement that has been accepted for the 8(a) program prior to October 1, 1989.

Paragraph (c) of § 124.311 provides that SBA may award an 8(a) contract on a non-competitive basis to an 8(a) concern owned and controlled by an economically disadvantaged Indian tribe even if such contract exceeds the competitive thresholds. A number of commenters recommended that SBA add a provision to this paragraph specifying that it will not consider a request to award a contract above the threshold amounts to an Indian tribe where the requirement has already been accepted for competition. The commenters reasoned that removal of a requirement from competition would prejudice prospective bidders who have expended valuable resources in preparing bids or proposals. SBA agrees with this view and has amended this paragraph to preclude SBA from awarding a requirement above the threshold amounts on a sole source basis to a tribally-owned 8(a) concern once it has been accepted for competition and prospective offerors have been notified. However, if a requirement is offered to the 8(a) program again [after the concern which was awarded such contract pursuant to

competition has completed performance), the requirement must then be separately accepted for the 8(a) program and could be offered to a tribally-owned concern.

Paragraph (d) of § 124.311 sets forth the circumstances under which SBA will consider a request from a procuring agency that a requirement under the applicable threshold amount be competed. A number of commenters expressed the view that contracts under the threshold amounts should never be competed. SBA has not adopted this comment for the following reasons. First, section 303(b) of the Reform Act expressly authorizes SBA to permit competition under the threshold amounts. Second, the regulation authorizes SBA to permit competition under the threshold amounts only under limited circumstances, and examples of the circumstances where SBA will consider granting such permission are clearly specified in the regulations. SBA intends to utilize this authority infrequently. Finally, it is SBA's policy to prohibit technical evaluations on sole source contracts. Therefore, SBA must have the authority to approve sole source contracts under the threshold amounts in order to permit agencies to perform technical evaluations on contracts under the threshold amounts.

Another commenter suggested that paragraph (d) be amended to provide that the head of the procuring agency must make the request to SBA to compete a contract under the applicable threshold. The statute does not specify that the request must come from the head of the procuring agency and SBA sees no need to require such high-level involvement. SBA will defer to the various procuring agencies with regard to the appropriate official to make the request.

Paragraph (e) of § 124.311 provides that SBA may accept a requirement above the applicable threshold on a sole source basis if there are not two eligible bidders in cases where SBA determines that there is one eligible Program Participant capable of performing the requirement at a fair price. One commenter suggested that this paragraph be amended to provide that the procuring agency rather than SBA will determine whether an 8(a) concern exists capable of performing the contract. SBA has always determined the competency of 8(a) concerns to perform sole source contracts and is in the best position to do so. Therefore, SBA has not adopted this comment.

Another commenter asked whether SBA would accept a requirement above the applicable threshold on a sole source basis if it was a local buy and there was only one eligible 8(a) concern in the district in which the procurement would be performed. Under these circumstances, SBA would look first to other districts in the applicable region and then to adjacent regions in order to determine whether two eligible offerors exist which are capable of performing the requirement at a fair price. SBA has amended paragraph (d) to clarify this policy.

SBA has amended paragraph (e) to clarify how it will determine the absence of two eligible bidders for local buys where the geographic boundaries for competition are flexible. The added language provides that, for national buys, SBA will determine that there are not two eligible bidders if there are not two eligible bidders anywhere in the United States. For local buys, SBA will determine that there are not two eligible bidders if there are not two eligible bidders located in the applicable region or adjacent regions. This clear threshold will preclude arbitrary decisions and requests to manipulate the thresholds to benefit particular 8(a) concerns.

Paragraph (f) of § 124.311 sets forth the procedures for conducting competitions. Numerous commenters objected to the requirement in paragraph (f)(1) that SBA approve the competitive criteria utilized by a procuring agency to select a concern for award. The commenters reasoned that SBA does not have the technical expertise to evaluate competitive criteria effectively and that, in exercising approval authority over the procuring agency, SBA would be usurping such agency's legitimate role in the procurement process. SBA agrees with this comment and has removed the clause in paragraph (f)(1) providing that SBA must approve the competitive criteria.

Many of the comments on this paragraph concerned issues that will be addressed in the amendments to the Federal Acquisition Regulation (FAR) implementing the Reform Act. As previously noted, those regulations were published in proposed form on June 28, 1989 in the **Federal Register** for comment. (54 FR 27310.) The proposed rule contains detailed procedures for conducting 8(a) competitions, including solicitation procedures and procedures for identifying potential offerors. Many of the comments also addressed issues which should more appropriately be made as comments on the proposed amendments to the FAR. For instance, a number of comments were received concerning when sealed bidding should be used and when competitions should be conducted based solely on technical capability without regard to price. These determinations are the responsibility of the procuring agencies rather than SBA.

A number of commenters requested that SBA provide a list of eligible offerors to procuring agencies for each competitive procurement. This would be impracticable for purposes of national buys in view of the number of concerns in the national portfolio. However, SBA is willing to provide procuring agencies with such a list where the requirement is a local buy, provided that the procuring agency returns the list with a copy of the solicitation when it is made public. This will permit SBA to update or correct the list of potential bidders if necessary.

Paragraph (f)(4) of § 124.311 of the proposed rule provided that, in a negotiated procurement, the procuring agency would identify all offerors to SBA for purposes of obtaining from SBA a determination of the eligibility of each offeror. This paragraph has been amended in the final rule to conform to the proposed FAR rule. That rule provides that in a sealed bid procurement, the procuring agency would provide SBA with a list of ranked offerors and that SBA would examine the eligibility of each concern on the list starting with the lowest bidder until it finds an eligible concern. This procedure is slightly different from the procedure set forth in SBA's proposed rule. The FAR proposed rule also provides that, in a negotiated procurement, the procuring agency would identify all offerors in the competitive range. SBA's proposed rule provided that the procuring agency would provide SBA a list of all offerors. SBA's final rule has been amended to conform to these provisions of the proposed FAR rule. Other technical changes have also been made to the language in the final rule to replicate the proposed FAR rule.

Paragraph (f)(5) of § 124.311 provides that SBA will determine whether any firm identified by the procuring agency is eligible for award and specifies the factors SBA will examine in making such determination. One of the factors SBA will examine is whether the 8(a) concern has achieved its competitive business mix targets. A number of commenters expressed the view that inability to achieve the competitive business targets should not preclude the 8(a) concern from competing for contracts inasmuch as denial of 8(a) contracts is only one possible remedy for failure to achieve the targets. SBA agrees with this view and has amended this paragraph to provide that SBA will determine whether the 8(a) concern has achieved or has made substantial and sustained efforts to achieve the competitive business mix targets set

forth in its business plan. A final sentence has been added to provide that failure to achieve the competitive business activity targets will not affect a concern's eligibility for an 8(a) competitive award if SBA and the concern have agreed upon a remedial plan and such plan does not include denial of future 8(a) awards.

Another commenter expressed the view that SBA should not consider support levels or achievement of business activity targets at all in determining whether an 8(a) concern is eligible for a competitive 8(a) award. SBA must consider these factors in order to insure that 8(a) contracts are equitably distributed among Program Participants, and in order to insure that concerns do not become unduly dependent on 8(a) contracts.

One commenter suggested that concerns be approved for competition before the bidding process; i.e., that SBA perform eligibility reviews on all the concerns in the 8(a) portfolio and submit to the procuring agency a list of all potential offerors eligible for an 8(a) competitive procurement. This comment was rejected as it would be an inappropriate use of SBA's time and resources to determine the eligibility of every concern in the portfolio for the appropriate geographical boundaries where only a small fraction of those concerns would ultimately bid on a particular procurement.

A number of commenters asked whether SBA or the procuring agency would be responsible for notifying 8(a) concerns that they are ineligible for award. SBA will notify those firms determined to be ineligible.

Another factor which SBA will examine in determining the eligibility of an 8(a) concern for a competitive 8(a) award is whether the concern has the SIC code for the procurement in its business plan. A few commenters suggested that the regulation be amended to provide that firms may compete for a procurement if they have the "same or similar" SIC code in their business plan as the SIC code for the procurement. SBA has rejected this comment because to permit a concern to compete for a contract where it does not have the SIC code for the contract in its business plan would defeat the purpose of requiring concerns to include all SIC codes under which they will operate in their business plans.

A few commenters recommended that concerns certify as to eligibility to a particular competitive 8(a) award with penalties for false certifications. SBA has considered this comment but has not adopted it. If a concern self-certifies and is awarded the contract and it is determined after performance has begun that the concern was ineligible for such contract, either the procuring agency would be harmed by having to terminate the contract and reaward it or, if the contract is not terminated, offerors which are eligible for the contract would be harmed.

In order to comport with § 19.805–2(d) of the FAR proposed rule, SBA has amended paragraph (f)(5) to provide that SBA will make eligibility determinations on competitive procurements within five working days of receipt of the list of offerors.

Section 124.312 requires a firm to establish targets of non-8(a) business activity during its participation in the 8(a) program. During the developmental stage of program participation (program years 1–4), a firm is required to make substantial and sustained efforts to meet the targeted dollar levels of non-8(a) revenue set forth in its business plan. These targets may be set as a percentage of revenues or as a specified dollar level. During each program year in the transitional stage of program participation (program years 5–9), a fixed percentage of a Participant's total revenue is required to be derived from non-8(a) business. The section sets forth varying ranges of non-8(a) business revenues that a Participant is required to achieve, depending upon its year in the program.

Section 124.312(c) identifies the non-8(a) business activity targets that Participants are required to meet during the transitional stage of Program Participation. Participants approved for participation on or after November 15, 1988, and Participants with more than five years remaining in the program as of August 15, 1989, are subject to the non-8(a) business activity targets set forth in § 124.312(c)(4). Participants with five years or less remaining in the program as of August 15, 1989, are subject to modified non-8(a) business activity targets set forth in § 124.312(c)(5).

SBA received many comments concerning its proposed implementation of the non-8(a) business activity targets. Generally, commenters felt that the proposed targets were too difficult to meet, particularly for current Participants in the program, although several commenters did believe that the targets should be more "challenging." SBA concurs that the proposed modified targets could have been difficult to meet for some current Participants and that more flexibility was needed in the final rule to avoid unduly burdening current Program Participants. In response to the comments, SBA has reduced the percentages of required non-8(a) revenue applicable for firms subject to the modified targets. As a result, a firm subject to the modified targets will be required to attain less non-8(a) revenue during each year in the transitional stage of program participation.

Several commenters urged SBA to make the modified targets applicable to current Participants with six years or less remaining in the program instead of five years or less as set forth in the proposed rule. SBA considered this recommendation, but believes it to be contrary to section 303(a) of the Business Opportunity Development Reform Act of 1988 which authorizes SBA to "establish modified targets for Program Participants that have participated in the Program for a period of *longer than four years* on the effective date of this subparagraph." [August 15, 1989] [Emphasis added]. If the modified targets were made applicable to firms with six years or less remaining in the program (instead of five years), they could apply to firms which have been in the program for only three years. This would be contrary to the statutory authority.

Several commenters also expressed confusion concerning the application of the modified targets. They wondered, for example, whether they were required to meet the target for year one or year two if they had four years remaining in the program on the effective date of this section (i.e., on October 1, 1989). The targets correspond to a firm's year in the transitional stage, not its year in the program or the number of years remaining in the program. As such, every firm subject to the modified targets must attain between 10–15% non-8(a) revenue (the target corresponding to year one in the transitional stage) during its first program year after the effective date of this provision. The following example of the application of this provision is offered to further illustrate the Agency's intent.

Example: Program Participant XYZ has 4 years remaining in the program as of August 15, 1989 (i.e., it graduates from the program on August 14, 1993). Because this firm has between 3 and 5 years remaining in the program, the modified non-8(a) business activity targets are applicable. During its first full program year after the effective date of this provision (i.e., August 15, 1989–August 14, 1990), the applicable non-8(a) business target is 10–15%—the target corresponding to year one in the transitional stage. During the program year of August 15, 1990–August 14, 1991, the applicable non-8(a) business target is 15–20%—the target corresponding to year two in the transitional stage. The applicable non-8(a) business activity targets for the third and fourth program years would be 20–30% and 30–40% respectively. XYX would exit the program having a target of between 30–40% non-8(a) revenues. The modified target corresponding to the fifth year in the transitional stage would never be applicable in this instance.

SBA has not changed the non-8(a) business activity targets applicable to newly admitted firms and firms with more than five years remaining in the program as of August 15, 1989. It is SBA's view that the targets established in the proposed rule are entirely consistent with the intent of the Business Opportunity Development Reform Act of 1988 and are not unrealistic to achieve. The 8(a) program is a program designed to aid in the development of business concerns owned and controlled by disadvantaged individuals. It is not intended to be the sole support of such concerns. Firms are encouraged to develop a business base outside the 8(a) program so that they can survive after existing the program. While several commenters felt that the proposed non-8(a) business activity targets were too high, these targets must be set at levels that will encourage a firm to prosper in the open marketplace after leaving the 8(a) program.

The Conference Report to the Business Opportunity Development Reform Act of 1988, H.R. Rep. No. 1070, 100th Cong., 2d Sess. 62–63 (1988), provides guidance to SBA for establishing non-8(a) business activity targets. The conference report states that the targets established "*should generally* require firms in the fifth and sixth years to show 25% of revenues from sources other than 8(a) contracts, while in the seventh and eighth years such business revenues should *move toward* 50%," and, in the final year of program participation, "firms should *strive to achieve* at least three-fourths of their business revenues from sources other than 8(a) contracts." [Emphasis added]. SBA has taken these general parameters and has refined them in order to have realistic, attainable targets which firms are more likely to meet.

Instead of grouping years 5 and 6 and years 7 and 8 together (i.e., having the same business activity targets), the final rule sets different business activity targets for each year in the transitional stage of program participation. SBA believes that a requirement of approximately 25 percent non-8(a) business in year 6 followed by a requirement of approximately 50 percent non-8(a) business in year 7 would be unreasonable. A Participant that barely meets the target in year 6, and is thus not subject to remedial measures, could have difficulty in reaching the target in year 7. SBA believes that a more gradual progression away from 8(a) reliance is preferable. In addition, the final rule sets ranges of acceptable non-8(a) business revenues instead of requiring a specific minimum level of non-8(a) business. SBA believes that the attainment of non-8(a) business by Program Participants within a specified range is more realistic than minimum level requirements.

A few commenters also suggested that the non-8(a) business activity targets be industry specific (i.e., that they vary based on the primary SIC Code of the concern). SBA believes that such a system would be unworkable and subject to charges of prejudicial treatment. In addition, there is no support for such a concept in the Business Development Opportunity Reform Act of 1988 or its legislative history.

Comment was also made that compliance with the non-8(a) business activity targets should be based solely on new sales during the applicable program year, rather than on total revenues. SBA disagrees. In determining support levels, options and modifications are counted in the program year in which they are exercised. SBA believes that they should be similarly counted in determining compliance to business mix targets. To disregard 8(a) options and modifications in determining business mix compliance would be to skew a firm's true reliance on the 8(a) program. The intent of the new legislation was to require firms to become less dependent on the 8(a) program. The only way to do that is to count all revenues derived during the applicable program year in determining business mix compliance.

Several commenters felt that competitive 8(a) awards should count positively for a firm in determining business mix compliance, and not negatively (i.e., that sole source 8(a) awards should be measured against all other revenues instead of adding competitive 8(a) awards to sole source awards and measuring that figure against all other revenues). Another commenter believed that the regulations should not permit the Department of Defense Small Disadvantaged Business and other preference program contracts to count toward non-8(a) revenues. SBA believes that the statute and legislative history are clear concerning both of these points. Section 303(a) of the Business Development Opportunity Reform Act of 1988 requires SBA to set business activity targets which reflect a reasonably consistent increase in "contracts awarded other than pursuant to section 8(a)" of the Small Business Act. In addition, the conference report states that "the targets established by SBA shall be for business outside of the program that firms must attain and does not include those awards that firms receive after competitions restricted to the 8(a) program." H.R. Rep. No. 1070, 100th Cong., 2d Sess. 62 (1988). The statutory distinction is clear. All 8(a) revenue, whether awarded through competition or as a sole source contract, is measured against all revenue obtained outside the 8(a) program, including SDB and other preference program contracts.

SBA also received many comments concerning the imposition of remedial measures for failure to meet the required non-8(a) business activity targets (§ 124.312(c)(12)). Several commenters believed that the proposed remedial measures were penalties and recommended that SBA provide constructive assistance such as advice on marketing and financial strategies instead of imposing such penalties. Commenters also recommended that 8(a) contract support should not be reduced where good faith efforts were made by an 8(a) concern to obtain non-8(a) contracts, but where the concern did not meet its required non-8(a) business activity target (e.g., a firm submitted 8 offers for non-8(a) competitive contracts, but failed to receive an award). The proposed remedial measures were not intended to be penalties unless no efforts were made to obtain non-8(a) revenues or a firm repeatedly failed to come close to the applicable non-8(a) business activity target.

SBA has clarified the regulation to provide that the type of remedial measure to be used depends on the extent to which the Participant failed to obtain, and the effort expended in seeking, non-8(a) business. If a firm is close to its targets, or demonstrates that it has made good faith efforts to obtain non-8(a) business, the remedial measures to be taken by SBA will generally be the provision of technical and/or managerial assistance—not a reduction in 8(a) support levels. For example, if a firm has submitted offers for a variety of non-8(a) contracts, but fails to obtain any awards, the firm undoubtedly needs and should be required to obtain managerial and technical assistance. Reducing 8(a) support, however, might cripple the firm's ability to continue to operate. It should be noted, however, that good faith efforts alone will not insulate a

BEST COPY AVAILABLE

firm from reduced 8(a) support levels and/or termination from the program where the firm repeatedly makes no improvement in obtaining non-8(a) revenues.

The potential remedies can range from requiring a Participant to obtain management and/or technical assistance where the Participant's non-8(a) business activity is very close to the required target, to reducing a Participant's 8(a) support level or reducing or eliminating sole source 8(a) awards for Participants which have had less success in meeting the required targets, to termination where a Participant makes no effort to obtain non-8(a) business and is content to rely solely on the 8(a) program. The management and/or technical assistance called for in the regulations may be provided by SBA sponsored entities (e.g., through the 7(j) program, the Small Business Development Center program, or SCORE and ACE counselors), local chambers of commerce, private and public sector consultants, educational institutions, and other entities as specified by SBA as part of the annual review process. A provision has also been added to the final rule that notifies Program Participants that termination proceedings will be commenced where no efforts are made to obtain non-8(a) revenues.

Comment was also made that SBA should not include the denial or restriction of competitive 8(a) contracts as a remedial measure since this kind of competition will strengthen the firm's chances of obtaining non-8(a) competitive contracts. SBA has removed from the final rule the subparagraph that permitted restricting the award of new competitive 8(a) contracts (proposed § 124.312(c)(12)(iii)). This proposed subparagraph also authorized restricting the award of new sole source 8(a) contracts. Although that subparagraph has been eliminated from the final rule, restricting the award of new sole source 8(a) contracts may be imposed under § 124.312(c)(12)(iv) (proposed § 124.312(c)(12)(ii)).

Several commenters objected to the provision of proposed § 124.312(b)(4) which prohibited a firm in the developmental stage of Program Participation from receiving 8(a) contract support (whether it is awarded as a sole source contract or through competition) in excess of 125 percent of the 8(a) support level established in its approved business plan. The commenters argued that this provision ignored the nature of business cycles. SBA disagrees with the commenters concerning this provision. SBA encourages firms to plan for business cycles and authorizes changes (increases) in approved support levels throughout a firm's life in the program to account for such cycles. Specifically, the regulations authorize increases in approved support levels twice a year if such increases can be justified (i.e., once, at the time of the annual review, and again at the halfway mark of the specific program year). The Participant's support level can be increased at the mid-year point of a Participant's program year, but not solely to enable the firm to receive an additional 8(a) contract that it has identified. In the past, SBA may have approved requests for increases in 8(a) support levels without regard for whether or not the firm could increase its non-8(a) business simultaneously.

This brought about two results. First, it gave little meaning to a firm's approved 8(a) support level. A firm could seek 8(a) contracts in excess of its approved 8(a) support level, knowing that SBA might increase the support level if requested. Second, it encouraged a reliance on the 8(a) program. It was possible that a concern could request, and receive, an increase in its 8(a) support level that resulted in the entire capacity of the business being devoted to the performance of 8(a) contracts. This would have made it difficult for a firm to make the transition into the competitive marketplace upon leaving the program.

The final rule permits a Participant to request, and receive, an increase in its approved 8(a) support level, but only if it can demonstrate that it has increased its capacity and capability to the point that its currently approved 8(a) support level is inappropriate. In addition, the increased capacity and capability must be to the point that any approved increase in 8(a) support would not commit the entire increased capacity of the concern (i.e., after increasing its 8(a) support level, the Participant would still be able to perform additional non-8(a) contracts).

In measuring whether a Participant has reached its approved 8(a) support level during any program year, the regulations (§ 124.312(b)(6) for firms in the developmental stage and § 124.312(c)(9) for firms in the transitional stage) state that the dollar value of the base year of all contracts awarded during that program year (excluding options on such contracts which would be exercisable in one or more subsequent program years) will be added to the dollar value of all options and other modifications affecting price that are exercised during that program year. Options and modifications are counted in the program year during which they are exercised. If an option or modification were exercised in the same program year in which the base year of an 8(a) contract was awarded, then both the base year and option/modification would be counted in that program year. If, however, an option or modification is exercised in a subsequent program year, only the base year of the 8(a) contract would be counted in determining 8(a) support received. In such a case, the dollar value of the option or modification would be counted in the program year in which the option/modification was exercised.

Several commenters felt that the measurement of support levels should be based on revenues instead of on the value of contracts awarded during the year. They reasoned that this change was particularly needed in the case of indefinite quantity contracts where a ceiling dollar amount might never by reached. In such a case, if a ceiling dollar figure is counted toward a firm's support level and the procuring agency's needs under the contract do not come close to that figure, the 8(a) firm could be penalized (i.e., it might not have been eligible for other 8(a) contracts because it had reached its approved support level). SBA agrees that the application of this provision in the indefinite quantity contract context should be clarified. In this regard, the final rule now specifies that in the case of an indefinite quantity contract having a guaranteed minimum, only the guaranteed minimum dollar amount is counted against a concern's approved 8(a) support level. SBA does not, however, believe that the support level measurement should be changed from contract value to revenues. If such a change were made, adherence to a firm's approved support level could not be determined until after the program year ended. In which case, it would be too late to restrict 8(a) awards because the firm would have exceeded its approved support level. Restrictions in the subsequent program year would not be supportable because the firm would have a newly established approved support level for each year.

Section 124.313 repeats the provision of SBA's previously existing regulations that SBA will certify its own competence to perform the 8(a) requirement. This certification, required by law as a condition of 8(a) contract award for both sole source and competitive 8(a) contracts, should not be confused with the entirely distinct Certificate of Competency (COC)

available under the Small Business Act and part 125 of this Title. The COC program does not apply to 8(a) contracts. One commenter questioned whether an 8(a) firm could appeal SBA's refusal to certify its competency on behalf of a specific concern. The regulations call for no such appeal process. Practically, however, the firm's views concerning this issue will be heard. In a sole source 8(a) contract, the firm will generally be involved in negotiations with the procuring agency. If the procuring agency is not satisfied that the concern has the capacity or capability to perform the requirement, it will so notify SBA. SBA will discuss the matter with the firm and the procuring agency to determine whether the firm can perform the contract. The firm's, as well as the agency's, views will be considered in this regard. If SBA concurs with the procuring agency, the procuring agency will be authorized to negotiate with another 8(a) firm. If SBA determines that the firm can perform, but the procuring agency still disagrees, SBA can appeal that decision to the head of the procuring agency.

Section 124.314 requires the selected 8(a) concern in either a sole source or competitive 8(a) award to perform a certain percentage of the requirement with its own work force. The percentages for service and supply contracts are taken directly from section 8(a)(14)(A) of the Small Business Act, 15 U.S.C. 637(a)(14)(A), as amended by Public Law 99-661. In addition, section 8(a)(14)(C) of the Small Business Act requires SBA to establish performance of work requirements for general and specialty construction. This rule requires an 8(a) contractor to perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees for a general construction contract, and at least 25% of the cost of the contract, not including the cost of materials, with its own employees for a specialty construction contract. These are the same percentage of work requirements that the 8(a) regulations have historically required for general and specialty trade construction contracts. The rule clarifies that work done by an 8(a) concern's subsidiary, even if wholly owned, does not count in determining whether the applicable performance of requirement is being fulfilled. While a few commenters objected to the inclusion of this clarification in the regulations, SBA did not adopt these comments in as much as this provision is based on an opinion of SBA's Office of General Counsel and represents the Agency's past practice regarding subsidiaries.

One commenter also suggested that there be a separate lower performance of work requirement for architect and engineering services. Such a requirement would be contrary to section 8(a)(14)(A) of the Small Business Act, as amended by Public Law 99-661. That section applies to all services, excluding construction. Architect and engineering services are not excluded from that requirement.

Section 124.315 defines what constitutes "fair market price" for 8(a) contract purposes. This section is taken almost verbatim from section 308(e) of the Business Opportunity Development Reform Act of 1988. SBA received little comment on this section and it is unchanged from the proposed regulations.

Section 124.316 authorizes SBA to delegate, by the use of special clauses in the price and subcontract, the responsibility for administering an 8(a) subcontract to the procuring agency. The proposed rule excluded certain actions from those that could be delegated to the procuring agency by SBA. Procuring agencies felt that they should have administration functions with respect to the exercise of options and modifications. SBA agrees with respect to options and has deleted the reference to options within the provisions of actions that SBA will not delegate to procuring agencies. SBA also agrees that the exercise of modifications within the scope of the contract is within the authority of the procuring agency contracting officer. However, modifications outside the scope of the contract are, in effect, new contracts which need SBA's concurrence. SBA has seen many instances where a modification clearly outside the scope of the original contract has been exercised by the procuring agency (without any SBA involvement and many times without notice to SBA) to permit an 8(a) firm which has exited the program to perform work it would otherwise not have been eligible to perform.

SBA has deleted modifications from the list of actions which SBA will not delegate to procuring agencies. SBA believes that § 124.318, dealing with the exercise of modifications beyond the scope of the original 8(a) contract, is sufficient to ensure SBA's involvement and concurrence in such actions. SBA also believes that its second concern with regard to modifications, that many times SBA does not receive copies of modifications of 8(a) contracts, will be remedied by an addition requiring such notice in the FAR.

Although decisions to terminate a contract are to be made by the procuring agency contracting officer, SBA should be involved in the process because it can often prevent a default from occurring by providing technical and/or managerial assistance to the performing 8(a) concern. SBA believes that such involvement is ensured by the provisions of § 124.319 and, thus, has deleted terminations from this section. Comments were made that SBA's concurrence should be required before novations can be entered and with regard to all matters pertaining to advance payments. SBA concurs, and has left these two actions as actions that cannot be delegated to procuring agencies.

Section 124.317 provides for termination of a contract for convenience if the disadvantaged owner(s) of the 8(a) concern performing the contract transfer(s) ownership of the concern. This section is taken directly from section 407 of the Business Opportunity Development Reform Act of 1988 and implements the requirement that a contract be performed by the 8(a) firm that initially received the contract award. The SBA Administrator is authorized to waive this requirement under certain specified conditions. Several commenters questioned who could request a waiver to be granted by the SBA Administrator. The final rule clarifies that either the 8(a) Participant which was awarded the 8(a) contract or the procuring agency may request a waiver. Generally, this request must be made prior to the relinquishment of ownership and control by the original 8(a) awardee unless, pursuant to § 124.317(d), the head of the procuring agency certifies that termination of the contract would severely impair the attainment of the agency's program objectives or missions. In such case, a request for a waiver by the procuring agency may be considered subsequent to the change in ownership and control. The decision to grant a waiver is still statutorily vested solely in the SBA Administrator. In addition, where the change in ownership and control is due to the death or incapacity of an individual(s) upon whom eligibility is based, the request for a waiver may be made as soon as possible after the occurrence of such event pursuant to § 124.317(c).

SBA also wishes to clarify that waivers may be requested and granted, for "changes in ownership and control" or for "performance" of specific contracts. A waiver for a change of ownership, if granted, applies to all 8(a) contracts being performed by the concern (i.e., such a waiver authorizes an 8(a) concern to continue performance

on all of its 8(a) contracts.) A waiver relating to the performance of a specific contract is just that. The Participant is authorized to continue performance on the 8(a) contract for which the waiver was granted. If a waiver for a change in ownership is not granted, the 8(a) concern must obtain a waiver of performance for each 8(a) contract it seeks to perform after the change of ownership and control occurs.

Several commenters noted that this provision was not limited in its application to contracts entered into on or after October 1, 1989 as set forth in the Business Opportunity Development Reform Act of 1988. SBA has clarified the final rule to so limit the application of this provision. As such, this provision does not apply to previously awarded 8(a) contracts or to contracts which may yet be awarded prior to October 1, 1989. A few commenters also believed that there should be discretion in whether to terminate an 8(a) contract for convenience where there is a change in ownership and control. The statute does not give such flexibility, and, therefore, SBA has not adopted this comment. Conversely, several commenters felt that the termination should be for default instead of convenience (so that reprocurement costs, etc., would not be borne by the Government) where the concern was no longer owned and controlled by disadvantaged individuals. In such instances, termination for convenience is statutorily required and cannot be changed by SBA in these regulations.

Section 124.316 incorporates into the regulations opinions of the SBA's General Counsel concerning the exercise of options and modifications. Specifically, this section treats the exercise of an unpriced option or a modification beyond the scope of the initial 8(a) as a new contracting action. As such, if a concern has exited the 8(a) program or is other than small under the size standard corresponding to the SIC code for the requirement, the option or modification cannot be exercised. If, however, the concern were still a Program Participant and still a small business under the size standard corresponding to the SIC code for the requirement, negotiations concerning the modification or pricing the option could be entered into and, if a fair and reasonable price is negotiated, the option or modification could be exercised. Alternatively, a priced option or a modification within the scope of the initial 8(a) contract award could be exercised whether or not the concern that received the award has exited the 8(a) program and whether the concern has grown large under the size standard corresponding to the SIC code for the requirement. One commenter noted that a modification beyond the scope of the initial 8(a) award should not be exercised even if the concern were still a Program Participant and still a small business under the size standard corresponding to the SIC code for the requirement where the value of the modification exceeds the applicable threshold amount set forth in § 124.311. SBA concurs. As long as such a modification is considered a new contracting action, if it exceeds the applicable threshold amount, it can only be accepted by SBA for competition among eligible 8(a) concerns. Although not commented on, the same rationale applies to unpriced options. Consequently, the final rule has been amended to specify that an unpriced option or modification beyond the scope of the contract cannot be exercised in any case where the anticipated value of the option or modification exceeds the threshold amount for the concern wishing to exercise it. SBA may only accept such requirement for competition among eligible 8(a) concerns.

Section 124.319 sets forth the procedures for terminations of 8(a) contracts for both default and convenience. These provisions, with one exception, are identical to those previously contained in § 124.302(d). The only exception is that, as noted above in § 124.317, a termination for convenience must be initiated whenever the disadvantaged owner(s) of an 8(a) concern transfer(s) ownership of the concern to any other party and the SBA Administrator does not grant a waiver pursuant to the exceptions set forth in § 124.317. Aside from a few comments relating to the provision relating to contract transfers, this section was not commented on.

Section 124.320 addresses disputes and appeals. Paragraph (a) speaks to contract disputes generally. Disputes arising between an 8(a) subcontractor and a procuring agency contracting officer will generally be decided unilaterally by the procuring agency contracting officer. Disputes arising out of matters relating to advance payments or business development expense funds will be decided unilaterally by SBA's contracting offices. For disputes arising out of construction contracts where SBA has waived bonding pursuant to § 124.305, the proposed rule specified that the contracting officer deciding the dispute will be that as agreed between SBA and the procuring agency. Comment was received objecting to this provision. Commenters felt that the procuring agency contracting officer should always be the official deciding disputes concerning performance. SBA agrees with that comment. The proposed rule intended that the procuring agency contracting officer decide such disputes. The proposal was also intended to permit the SBA contracting officer to decide disputes concerning the disbursement of funds from the special bank account established to protect suppliers of the 8(a) concern. That clarification has been made in this final rule. Participants have the right to appeal contracting officer decisions under the Contract Disputes Act of 1978.

Paragraph (b) describes the conditions and procedures for appeal by SBA to the head of a procuring agency. This paragraph clarifies that SBA is authorized to appeal both the decision not to set aside a requirement for the 8(a) program and the terms and conditions of a contract already set aside for the program. No specific comments were received concerning this paragraph and it remains unchanged in the final rule.

Section 124.321 sets forth the requirements by which a Program Participant may enter joint venture agreements to perform 8(a) contracts. Several commenters objected to the requirement that SBA's size regulations apply to the joint venture entity. While the 8(a) program is designed to develop small businesses owned and controlled by disadvantaged individuals, it must be remembered that 8(a) subcontracts must be awarded to small business entities. If an 8(a) concern is not small, either in its own right or because of affiliation, it cannot receive an 8(a) award. If an 8(a) concern wishes to be involved with a large concern in an 8(a) contracting matter, to gain experience in a certain area or for another reason, it can subcontract a portion of the performance of the 8(a) contract (in accordance with the percentages set forth in § 124.413) to the large concern. It cannot, however, joint venture with that concern. Failure to comply with the requirements of this section with respect to performance and/or control of the joint venture project may subject the firm to Program termination proceedings.

In response to comments, SBA has also added a new paragraph in the final rule concerning required performance of work percentages by the 8(a) party to the joint venture. Section 124.321(f) requires the 8(a) partner(s) to an eligible 8(a) joint venture to perform the applicable percentages of work required by § 124.314. For example, in a professional services contract, at least 50% of the cost of contract performance incurred for labor must be expended for employees of the 8(a) partner(s) to the joint venture. Performance by the other joint venturer(s) does not satisfy this requirement. To permit performance by other joint venturers to count toward the performance of work requirements imposed by § 124.314 would be to permit circumvention of the subcontracting limitations through the joint venture mechanism.

Section 124.401 addresses advance payments. The requirements set forth in this section are substantively the same as those formerly used by SBA in authorizing and administering advance payments. The former regulation has been reworded where necessary for clarity. In addition, several provisions which previously appeared only in SBA's Standard Operating Procedures or policy guidelines have been added to the regulations. This section also incorporates the provisions formerly appearing in § 124.403 concerning letters of credit. Again, the substance of the regulation dealing with letters of credit has not been changed, but it has been incorporated into the advance payment section for ease of use, understanding and clarity.

Several commenters recommended that advance payments be authorized only in connection with sole source 8(a) awards and not for competitive 8(a) awards, noting that firms lacking financial capacity would otherwise submit offers in response to a competitive 8(a) solicitation with an expectation of obtaining financing through advance payments. The commenters believed that such a practice would lead to unfair advantages in an 8(a) competition. SBA agrees and has inserted a new § 124.401(a)(3) which limits advance payments to sole source 8(a) contracts.

SBA has also clarified that options are not included when determining the amount of advance payments that may be authorized (see § 124.401(a)(4)). While SBA has never directly authorized advance payments in excess of the value of the base contract, we are aware that a few such advance payments have been made. There have been several cases where advance payments have been given in excess of the base contract, in anticipation of options to the contract, only to have the procuring agency not exercise the options. In such a situation, SBA is left in the precarious position of seeking repayment in excess of the value of the entire contract. The rule has been amended to prevent this situation from arising.

Section 124.402 addresses Business Development Expense (BDE). This section governs those Program Participants that are performing contracts for which BDE was given prior to the expiration of the BDE program. As previously noted, the newly authorized loan program set forth in § 122.57 of this title is intended to replace BDE. The granting of BDE is no longer authorized after June 1, 1989, the effective date of the statutory provision authorizing the loan program. No comments were received concerning the substance of these provisions.

Section 124.403 (proposed § 124.501), Development assistance program, and § 124.404 (proposed § 124.502), Small Business and Capital Ownership Development Program are identical to §§ 124.501 and 124.502 of the former regulations, respectively. No comments were received concerning these sections and, except for typographical corrections, they have not been changed in this final rule.

Section 124.501 (proposed § 124.601) sets forth those reporting requirements not set forth in other sections. This section states requirements which are mandated by the reform legislation. Only a few comments were received from the public concerning this section. These comments recommended changes which were contrary to the statutory mandates and, thus, have not been adopted.

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch 35)

For purposes of Executive Order 12291 and the Regulatory Flexibility Act, this rule is a major rule which is likely to have a significant economic effect on a substantial number of small entities. As discussed in the initial regulatory flexibility analysis contained in the proposed rule (54 FR 12071), this rule is necessary to implement the Business Opportunity Development Reform Act of 1988 (Pub. L. 100-656) and to implement changes in Agency policy relating to the 8(a) program. A summary of the public comments on the proposed rule and SBA's actions as a result of such comments is set forth in the preceding section of this preamble. SBA submits that there are no alternatives, which were not highlighted in the summary of the public comments, which could implement the policies and legal requirements addressed by this rule in a more cost effective manner or in a manner which would have less economic effect on small businesses.

The potential costs and benefits of the rule as well as the net benefit of the rule are unchanged from those set forth in the preamble to the proposed rule (54 FR 12070-12071). Projected annual purchases through the 8(a) Program as revised by implementation of the Reform Act are estimated at approximately $4 billion. The cost of implementing this rule is estimated to be approximately $11 million, to be used primarily to establish and implement new rules and guidelines and to purchase new equipment and to hire and/or train personnel. The net benefits of the rule realized by program participants through their greater access to and ownership of productive capital as a result of 8(a) program participation. In addition, the national defense production base will be strengthened by assisting 8(a) participants which perform defense contracts to develop into stronger, better established and more competitive businesses.

In the preamble to the proposed rule, SBA noted 5 sections of the proposed rule which contained new or changed paperwork requirements. The paperwork requirements have been made a part of this final rule and relate to the following: business plan (§ 124.301), annual reviews and continuing program eligibility (§§ 124.111 and 124.302), reporting and verification of 8(a) and non-8(a) business activity (§ 124.312) and capability statements (§ 124.501, proposed as § 124.601). Prior to use in the 8(a) Program, these requirements will be submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act.

Finally, SBA certifies that this rule does not require a Federalism Assessment under Executive Order 12612.

List of Subjects in 13 CFR Part 124

Government procurement, Minority business, Reporting and recordkeeping requirements, Technical assistance.

Accordingly, pursuant to the authority set forth in sections 7(j) and 8(a) of the Small Business Act, 15 U.S.C. 636(j) and 637(a), SBA hereby revises subpart A, part 124 of title 13 of the Code of Federal Regulations to read as follows:

PART 124—[AMENDED]

1. The authority citation for part 124 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99-661, sec. 1207, Pub. L. 100-656, and Pub. L. 101-37.

2. Subpart A of part 124 is revised to read as follows:

Subpart A—Minority Small Business and Capital Ownership Development

Sec.

124.1 Scope of regulations.
124.2 Associate Administrator for Minority Small Business and Capital Ownership Development.
124.3 Division of Program Certification and Eligibility.
124.4 Commission on Minority Business Development.
124.5 Violations.
124.6 Penalties for misrepresentations and false statements.
124.7 Restrictions on fees for applicant and Participant representatives.
124.100 Definitions.
124.101 The 8(a) program: General eligibility.
124.102 Small business concern.
124.103 Ownership requirements.
124.104 Control and management.
124.105 Social disadvantage.
124.106 Economic disadvantage.
124.107 Potential for success.
124.108 Additional 8(a) program eligibility requirements.
124.109 Ineligible businesses.
124.110 Program term.
124.111 Continued 8(a) program eligibility.
124.112 Concerns owned by Indian tribes, including Alaska Native Corporations.
124.113 Concerns owned by Native Hawaiian Organizations.
124.201 8(a) Program application.
124.202 Place of filing.
124.203 Servicing office.
124.204 Applicant representatives.
124.205 Forms and documents required.
124.206 Approval and decline of applications for 8(a) program admission.
124.207 8(a) Program exist.
124.208 Program graduation.
124.209 Program termination.
124.210 Appeals to SBA's Office of Hearings and Appeals.
124.211 Suspension of program assistance.
124.300 Business development.
124.301 Development of business plan.
124.302 Review and modification of business plan.
124.303 Stages of 8(a) program participation.
124.304 Statutory exemption from the Walsh-Healey Act.
124.305 Statutory exemption from Miller Act bonds.
124.306 Financial assistance for skills training.
124.307 Contractual assistance.
124.308 Procedures for obtaining and accepting procurements for the 8(a) program.
124.309 Barriers to acceptance.
124.310 Approval of lower tier subcontractors.
124.311 8(a) competition.
124.312 Competitive business mix.
124.313 Certification of SBA's competency.
124.314 Performance of work by the 8(a) concern.
124.315 Fair market price for 8(a) awards.
124.316 Contract administration.
124.317 Performance of contracts by original 8(a) concern.
124.318 Exercise of options and modifications.
124.319 Contract termination.
124.320 Disputes and appeals.
124.321 Joint venture agreements.
124.401 Advance payments.
124.402 Business development expense.
124.403 Development Assistance Program.
124.404 Small Business and Capital Ownership Development Program.
124.501 Miscellaneous reporting requirements.

§ 124.1 Scope of regulations.

(a) *General.* (1) These regulations implement sections 8(a) and 7(j) of the Small Business Act, as amended by the Business Opportunity Development Reform Act of 1988, and Business Opportunity Development Reform Act Technical Corrections Act, (15 U.S.C. 637(a) and 636(j), as amended by Pub. L. 100–656 and Pub. L. 101–37.). Sections 8(a) and 7(j) of the Small Business Act establish the Minority Small Business and Capital Ownership Development Program or 8(a) Program. The 8(a) Program is intended to be used exclusively for business development purposes to help small businesses owned and controlled by socially and economically disadvantaged individuals, economically disadvantaged Indian tribes, including Alaska Native Corporations, and economically Native Hawaiian Organizations to compete on an equal basis in the mainstream of the American economy.

(2)(i) Except as set forth in paragraphs (a)(2) (ii) and (iii) of this section and § 124.311(b) of this title, these regulations apply to all business concerns applying for or participating in the 8(a) program as of the effective date of the regulations. As noted, portions of these regulations also apply to other Federal programs for which social and economic disadvantaged status is a requirement of program eligibility. Such programs include, among others, the Small Disadvantaged Business (SDB) Set-aside and Bid Preference Programs authorized by section 1207(a) of Public Law 99–661, and the Minority Small Business Subcontracting Program authorized by section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

(ii) Applications in process as of the effective date of these regulations, including applications that have been declined but have not received final determinations on requests for reconsideration, will not be subject to the new provisions of § 124.107(a) regarding length of time in business or the new provisions of § 124.109(b) which make franchises ineligible for 8(a) program participation. Such applicants will be subject to Agency policy requirements regarding potential for success and ineligible businesses which were in effect on the date of application.

(iii) Procedures described in § 124.210 relating to appeal of SBA's decline of an application are effective as to applications which are declined, after reconsideration, by the Associate Administrator for Minority Small Business and Capital Ownership Development on or after the effective date of these regulations. Procedures described in §§ 124.208, 124.209, 124.211, relating to Program graduation, Program termination and Program suspension shall apply to concerns which SBA seeks to graduate, terminate or suspend but to which, as of the effective date of these regulations, an Order to Show Cause has not been issued pursuant to 13 CFR 124.110(k), 124.112 and 124.113 of SBA's rules which were in effect on July 31, 1989. Proceedings relating to any concern to which SBA has issued an Order to Show Cause prior to the effective date of these regulations shall be governed by 13 CFR part 124 and part 134 as it existed on the date of the issuance of the Order to Show Cause.

(b) *The 8(a) and 7(j) programs.* (1) Section 8(a) authorizes SBA to enter into all types of contracts, including, but not limited to, contracts for supplies, services, construction, research and development with other Government departments and agencies and to subcontract the performance of these contracts to small business concerns owned and controlled by socially and economically disadvantaged individuals, Indian tribes or Hawaiian Native Organizations.

(2) Section 7(j) authorizes SBA to provide financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals or small business concerns eligible for assistance under sections 7(i), 7(j)(10), and 8(a) of the Small Business Act.

§ 124.2 Associate Administrator for Minority Small Business and Capital Ownership Development.

The Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSB&COD), who shall be an employee in the competitive service or in the Senior Executive Service, and a career appointee, is responsible for the formulation and execution of the policies and programs under sections 7(j) and 8(a) of the Small Business Act. The AA/MSB&COD operates under the ultimate supervision of, and is generally responsible to, the Administrator of SBA.

§ 124.3 Division of Program Certification and Eligibility.

The Division of Program Certification and Eligibility (Division) within the Office of Minority Small Business and Capital Ownership Development (MSB&COD) shall be responsible for handling all matters relating to 8(a) program eligibility, termination and graduation from 8(a) program participation, and certifications of disadvantaged status for purposes of any program or activity conducted under the authority of section 8(d) of the Small Business Act or any Federal law that references such section. The Division, headed by a Director who shall report directly to the AA/MSB&COD, shall have field offices within some or all of the Agency's regional offices.

§ 124.4 Commission on Minority Business Development.

A Commission on Minority Business Development (Commission) shall be established pursuant to section 505 of the Business Opportunity Development Reform Act of 1988 (Pub. L. 100–656). This Commission is authorized to review all Federal programs designed to promote the development of minority-owned businesses in order to ascertain whether the congressionally described goals and purposes of such programs are being realized.

§ 124.5 Violations.

Willful violation by an applicant for admission to the section 8(a) program or an applicant for participation in the section 7(j) program or any of SBA's regulations governing these or its other programs may result in the applicant's denial of admission to the program. The nature and severity of any such violation will be considered by the AA/MSB&COD in making a determination on the admission of an applicant to the program.

§ 124.6 Penalties for misrepresentations and false statements.

(a) *General.* Section 16 of the Small Business Act (15 U.S.C. 645) sets forth penalties for false statements and misrepresentations.

(b) *Misrepresentation of small business or small disadvantaged business status.* The Business Opportunity Development Reform Act of 1988 (Pub. L. 100–656) increased the penalties for intentional misrepresentation of small business status or small disadvantaged business status. Generally, section 16(d) of the Small Business Act provides that any person or entity that intentionally misrepresents the status of any concern or person as a "small business concern" or "small business concern owned and controlled by socially and economically disadvantaged individuals" in order to obtain for him/herself or another any of the contracting opportunities set forth in paragraph (b)(1) of this section will be subject to the penalties set forth in paragraph (b)(2) of this section. The following contracting opportunities are subject to penalties for misrepresentation described in this section:

(1)(i) A prime contract to be awarded pursuant to section 9 (Small Business Innovation Research Program authority) or section 15 (various small business set-aside authorities) of the Small Business Act;

(ii) A subcontract to be awarded pursuant to section 8(a) of the Small Business Act;

(iii) A subcontract that is to be included as part or all of a goal contained in a subcontracting plan required pursuant to section 8(d) of the Small Business Act; or

(iv) A prime or subcontract to be awarded as a result, or in furtherance, of any other provision of Federal law that specifically references section 8(d) of the Small Business Act for a definition of program eligibility.

(2) The following penalties apply for violations of this section:

(i) A fine of not more than $500,000 or by imprisonment for not more than 10 years, or both;

(ii) The administrative remedies prescribed by the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812) and implementing regulations in part 142 of this chapter;

(iii) Suspension and debarment as specified in 13 CFR part 145 of subpart 9.4 of the Federal Acquisition Regulation (FAR) (48 CFR subpart 9.4), or any successor regulation, on the basis that such misrepresentation indicates a lack of business integrity that seriously and directly affects the present responsibility of a person or entity to transact business wtih the Federal government; and

(iv) Ineligibility for participation in any program or activity conducted under the authority of the Small Business Act or the Small Business Investment Act of 1958 (15 U.S.C. 661, *et seq.*) for a period not to exceed 3 years.

(c) *Misrepresentation concerning compliance with competitive mix targets.* Section 16(f) of the Small Business Act, as amended by Public Law 100–656, imposes the penalties set forth in paragraph (b)(2) of this section on any person or entity that falsely certifies past compliance with the requirements of section 7(j)(10)(I) of the Small Business Act which deals with competitive business mix and attainment of business activity targets (*see* section 124.312).

§ 124.7 Restrictions on fees for applicant and Participant representatives.

(a) *General.* The compensation received by any agent or representative of an 8(a) applicant or Program Participant for assisting the applicant in obtaining 8(a) certification or for assisting the Program Participant in obtaining 8(a) contracts must be reasonable in light of the service(s) performed by the agent or representative.

(b) *Contingent fees.* (1) The fee charged by any agent or representative of an 8(a) applicant for assisting the applicant in obtaining 8(a) certification cannot be contingent upon the applicant/Participant receiving 8(a) certification.

(2) Payment of a contingent fee for assisting a Program Participant in obtaining any 8(a) contract is generally prohibited as contrary to public policy, but is permitted if the payment is made by a Program Participant to a "bona fide employee" or a "bona fide agency," as defined by the FAR, 48 CFR subpart 3.4, and section 124.100.

(c) *Fees as a percentage of contract award.* A Program Participant is prohibited from agreeing to pay or paying a fee to any agent or representative for assistance in obtaining a specific 8(a) contract award, if such fee is based on a percentage of the contract award, either in terms of total value of the award, profit, or otherwise.

§ 124.100 Definitions.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination thereof. The term includes, in the absence of proof of a minimum blood quantum, any citizen who is regarded as an Alaska Native by a Native village or Native group and whose father or mother is regarded as an Alaska Native.

Alaska Native Corporation means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*)

Application or 8(a) application means all forms and attachments required by SBA to be completed by an applicant for the 8(a) program for the purpose of establishing program eligibility.

Bona fide agency means an established commercial or selling agency, maintained by a contractor (or subcontractor where SBA is the contractor) for the purpose of securing business that neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds itself out as being able to obtain any government contract or contracts through improper influence.

Bona fide employee, means a person, who is employed by a contractor (or subcontractor where SBA is the contractor) and subject to the contractor's, (or where SBA is the contractor, the subcontractor's) supervision; control as to time, place, and manner of performance; and who neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds himself/herself out as being able to obtain any government contract or contracts through improper influence.

Business Opportunity Specialist (BOS) means the SBA field office employee responsible for providing business development assistance to Program Participants pursuant to sections 7(j) and 8(a) of the Small Business Act (15 U.S.C. 636(j) 637(a)).

Business plan means the business plan documents as submitted by the 8(a) concern and approved in writing by SBA which include the objectives, goals, and business projections of an 8(a) concern, and all written amendments or modifications which have also been approved in writing by SBA.

Certification of SBA's competency means a certification by SBA, based on its assessment of an 8(a) concern's competency to perform, that SBA is competent to perform the requirements as stated in the contract. The assessment does not require a special investigation or the issuance of a Certificate of Competency (COC) as provided for elsewhere in these regulations under the authority of section 8(b)(7) (A), (B) and (C) of the Small Business Act.

Concern is defined in part 121 of this title.

Days means calendar days unless otherwise specified.

Descendant of an Alaska Native means a lineal descendant of an Alaska Native, or of an individual who would have been an Alaska Native if such individual were alive on December 18, 1971, or an adoptee of an Alaska Native, or of a descendant of an Alaska Native whose adoption occurred prior to his or her majority (age 18 in the State of Alaska), and is recognized at law or in equity.

Disadvantaged individual means an individual who SBA has determined to be socially and economically disadvantaged in connection with a concern's application for or participation in the 8(a) program.

Fixed Program Participation Term means that ultimate time period during which a concern may have participated in the 8(a) program under Public Law 96-481, (April 21, 1982).

Graduation means completion of 8(a) Program Participation pursuant to § 124.208 prior to expiration of the Program Term because of substantial achievement of the targets, objectives and goals contained in the Participant's business plan.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, step-father, step-mother, step-son, step-daughter, step-brother, step-sister, half-brother and half-sister.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native Corporation, as defined in this section, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which such tribe, band, nation, group, or community resides. *See,* definition of "tribally-owned concern."

Joint venture agreement means an agreement between an eligible 8(a) concern and another small business concern, whether or not an 8(a) participant, solely for the purpose of performing a specific 8(a) contract. *See* § 124.321(h) for joint venture agreements with tribally-owned 8(a) concerns.

Local buy item means a supply, service (nonprofessional/professional) or product purchased to meet the specific needs of one user in one location. Examples include the purchase of services, such as custodial, trash hauling, ADP support, auditing and training as well as construction work to be performed in one location and single user manufactured items.

Manufacturer means a concern which owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment described in the business plan. In order to qualify as a manufacturer, a concern must be able to show that it is an established manufacturer of particular goods or goods of general character which may be sought by the Government, or, if it is newly entering into such manufacturing activity, that it has made all necessary prior arrangements for space, equipment, and personnel to perform manufacturing operations. A new firm which has made such definite commitments in order to enter a manufacturing business which will later qualify it for the 8(a) program, shall not be barred from 8(a) approval because it has not yet done any manufacturing; however, this interpretation is not intended to qualify a firm whose arrangements to use space, equipment, or personnel are contingent upon 8(a) approval. This definition is based upon the Walsh-Healey Public Contracts Act, 41 U.S.C. 35-45.

National buy item means an item or service purchased to meet the needs of a system where supply control, inventory management, and procurement responsibility have been assigned to a central procuring activity to support the needs of one or more users of the item in two or more locations. Examples include military clothing purchased by the Defense Personnel Support Center of the Department of Defense, paint or hand tools purchased by the Federal Supply Service of the General Services Administration, medical supplies purchased by the Veterans Administration, or studies, evaluations, consulting services or similar services purchased by the headquarters office of a Department or agency for use in two or more commands or field offices.

Native Hawaiian means any individual whose ancestors were natives prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which

(1) Is a not-for-profit organization chartered by the State of Hawaii,

(2) Is controlled by Native Hawaiians, and

(3) Whose business activities will principally benefit such Native Hawaiians.

Negative control is defined in part 121 of this title.

Nondisadvantaged individual means any individual who does not claim disadvantaged status, does not qualify as disadvantaged, or upon whose disadvantaged status applicant concern does not rely in qualifying for 8(a) program participation. An individual who has used his/her disadvantaged status in previously qualifying a concern for 8(a) program participation is considered a nondisadvantaged individual for all other 8(a) program purposes.

Non-8(a) business activity target means the amount of non-8(a) revenue forecasted in a Participant's approved business plan during each year of its participation in the 8(a) program. During the developmental stage of program participation, these targets are goals of non-8(a) business that a Participant must strive to achieve and may be either a percentage of total revenues or a specified dollar figure. During the transitional stage of program participation these targets must be expressed as a percentage of total revenues, as set forth in § 124.312(c), that a Participant is required to achieve in each year in the transitional stage.

Open requirement means a requirement submitted to SBA by a procuring agency for possible 8(a) award without a particular 8(a) concern being identified as a candidate for the award. Open requirements can be for local buy items or national buy items.

Operational control means actual or constructive authority to establish long and short term goals for the concern, and to manage the concern's day-to-day operations.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. *See* § 124.108.

Primary industry classification means the four digit Standard Industrial Classification (SIC) code designation which best describes the primary of industry the 8(a) applicant or Participant as defined in part 121 of this title.

Principal place of business means the location at which the business records of the applicant concern are maintained and the location at which the individual who manages the concern's day-to-day operations spends the majority of his/her working hours.

Program Participant (Participant or *8(a) Participant)* means a small business concern participating in the Small Business and Capital Ownership Development Program established by sections 7(j) and 8(a) of the Small Business Act (15 U.S.C. 636(j) and 637(a)).

Program suspension means the temporary cessation of all 8(a) program assistance pursuant to § 124.211 of these regulations.

Program year means a 12-month period of an 8(a) Participant's Program Participation. The first program year begins on the date that the concern is certified to participate in the 8(a) program and ends one year later. Each subsequent program year begins on the Participant's anniversary of program certification and runs for one 12-month period.

Regular dealer means regular dealer as defined by the Walsh-Healey Public Contracts Act, 41 U.S.C. 35-45, and Department of Labor regulations found at 41 CFR 50-201.101, 50-206.53, and 50-206.54.

Requirement means a contract opportunity from a Federal procuring agency to acquire articles, equipment, supplies, services, materials or construction work.

Same or similar line of business means all business activities within the same two-digit "Major Group" of the Standard Industrial Classification (SIC) System (set forth in the SIC Manual), as the primary industry classification of the applicant concern.

Self-marketing of a requirement occurs when an 8(a) firm identifies a requirement that has not been committed to the 8(a) program and, through its marketing efforts causes the procuring agency to offer that specific requirement to the 8(a) program on its behalf. A firm which identifies and markets a requirement which is subsequently offered to the 8(a) program as an open requirement or on behalf of another 8(a) Participant has not "self-marketed" the requirement within the meaning of these regulations.

Termination means the permanent cessation of 8(a) Program Participation prior to the expiration of the concern's Program Term for good cause pursuant to § 124.209.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

Unconditional ownership means ownership that is not subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, shareholder agreements or other similar arrangements which serve to allow the primary benefits of Program Participation to accrue to entities or individuals other than upon whom 8(a) program eligibility is based.

§ 124.101 The 8(a) program: General eligibility.

(a) In order to be eligible to participate in the 8(a) program, an applicant concern and an individual upon whom 8(a) eligibility is based must meet all of the eligibility criteria set forth in § 124.102 through § 124.109 hereunder. An applicant concern owned and controlled by an Indian tribe must meet the requirements set forth in § 124.112 and in §§ 124.102 through 124.109 as applicable. An applicant concern owned and controlled by a Native Hawaiian Organization must meet the requirements set forth in § 124.113 and in §§ 124.102 through 124.109, as applicable. All determinations by the AA/MSB&COD made pursuant to §§ 124.102, 124.103, 124.104, 124.105, 124.108, and 124.107 shall be in writing, setting forth the findings based on relevant facts and in accordance with law and regulations, upon which the determination is based. An applicant concern which is declined 8(a) program admission may request a reconsideration of such decline, as set forth in § 124.208. If the application is declined on reconsideration based solely on a negative finding of social disadvantage, economic disadvantage, ownership or control, such decline may be appealed by an unsuccessful applicant to the Office of Hearings and Appeals. If no reconsideration is sought, or if after reconsideration, the application is declined based in whole or in part on a ground other than a negative finding of social disadvantage, economic disadvantage, ownership or control, the written decline of the AA/MSB&COD is final and not subject to appeal. Appeal procedures for a decline of program admission by the AA/MSB&COD and grounds for which such an appeal may be brought are set forth in § 124.210 and Part 134 of this Title. The written decision of the Office of Hearings and Appeals shall be the final Agency decision. A concern which has been declined for 8(a) program admission may reapply for program admission 12 months after the date of the final Agency decision to decline.

(b) In order to continue its participation in the 8(a) program, a concern certified for Program Participation on or after the effective date of these regulations must continue to meet all eligibility requirements described in § 124.102 through § 124.109, § 124.111(a), and § 124.112 or § 124.113, if applicable. In order to continue its participation in the 8(a) program, a concern certified for program participation prior to the effective date of these regulations must comply with the requirements of §§ 124.102 through 124.109, 124.11(a) and 124.112, if applicable, which have been previously required by regulation, policy or procedure. Within 12 months of the effective date of these regulations, such concerns must also come into compliance with the requirements of paragraph (a) of this section which have not been previously required by regulation, policy or procedure. Failure to do so may lead to termination or graduation pursuant to §§ 124.208 and 124.209.

(c)(1) It is SBA's intent to process applications for participation in a fair

and consistent manner and to ensure that 8(a) program participation is limited to eligible individuals and concerns. Toward that end, SBA invites the participation of the public in preventing fraud and assuring the integrity of the 8(a) program.

(2) The AA/MSB&COD shall cause to be reviewed any determination that an individual, applicant concern or Participant is eligible to participate in the 8(a) program whenever a member of the public submits credible evidence that

(i) Such determination was based on fraudulent information;

(ii) SBA did not follow the requirements of these regulations in rendering the determination; or

(iii) The individual or concern has undergone one or more changes which have rendered it ineligible for 8(a) Program Participation.

(3) The AA/MSB&COD shall determine whether the facts developed during any such review warrant further action. The member of the public whose information gave rise to the review shall be advised of SBA's findings, consistent with laws protecting confidentiality.

§ 124.102 Small business concern.

(a) In order to be approved for participation in the 8(a) program, an applicant concern must qualify as a small business concern as defined in part 121 of this title, and, if a tribally-owned concern, as additionally defined in § 124.112. The particular size standard to be applied will be based on the primary industry classification of the applicant concern. A concern owned by a Native Hawaiian Organization must also qualify as a small business concern, but the circumstance of ownership by the Native Hawaiian Organization shall not, by itself, cause affiliation with the Native Hawaiian Organization.

(b) If the AA/MSB&COD is unable to determine that an applicant concern qualifies as a small business, the AA/MSB&COD may deny the concern's application for 8(a) program admission or may request a formal size determination from the appropriate regional office. If the application is so denied, the small business concern may request a formal size determination from the appropriate regional office pursuant to part 121 of this title. Size determinations by an SBA regional office may be appealed to SBA's Office of Hearings and Appeals pursuant to part 121 of this title.

(c) In order to continue to participate in the 8(a) program, a Program Participant must qualify pursuant to the provisions of part 121 of this title as a small business under one or more of the SIC Codes contained in the concern's approved business plan.

(d) Except for contracts awarded to joint ventures controlled by eligible Indian tribes, under § 124.321, a Program Participant must certify that it is a small business pursuant to part 121 of this title for the purpose of performing each contract awarded under the authority of section 8(a). SBA, in turn, will undertake to verify such certifications. In the event that the SBA does not verify a certification, the Program Participant may request a formal size determination from the appropriate SBA regional office. Formal size determinations will be conducted in accordance with part 121 of this title.

§ 124.103 Ownership requirements.

Except for concerns owned by Indian tribes, Alaska Native Corporations or Native Hawaiian Organizations, in order to be eligible to participate in the 8(a) program, an applicant concern must be one which is at least 51 percent unconditionally owned by an individual(s) who is a citizen of the United States (specifically excluding permanent resident alien(s)) and who is determined by SBA to be socially and economically disadvantaged. *See* § 124.100 for definition of unconditional ownership. Special ownership requirements for concerns owned by Indian tribes and Alaska Native Corporations are set forth in § 124.112. Ownership requirements for Native Hawaiian Organizations are set forth in § 124.113.

(a) In the case of an applicant concern which is a partnership, 51 percent of the partnership interest must be unconditionally owned by an individual(s) determined by SBA to be socially and economically disadvantaged. Such unconditional ownership must be reflected in the concern's partnership agreement.

(b) In the case of an applicant concern which is a corporation, 51 percent of each class of voting stock and 51 percent of the aggregate of all outstanding shares of stock must be unconditionally owned by an individual(s) determined by SBA to be socially and economically disadvantaged.

(c) SBA will not find unconditional ownership if socially and economically disadvantaged individual(s) asserts ownership of a concern on the basis of unexercised stock options or other arrangements.

(d) When determining ownership for purposes of 8(a) program eligibility, SBA will consider options to purchase stock held by nondisadvantaged individuals or entities, or to rights to convert non-voting stock or debentures held by nondisadvantaged individuals or entities into voting stock, to have been exercised. However, any potential ownership interests (such as options or warrants) held by investment companies licensed under the Small Business Investment Act of 1958 shall not be treated as ownership interests until exercised.

(e)(1) The individual(s) upon whom eligibility is based must receive at least 51 percent of the annual distribution of dividends paid on the voting stock of a corporate applicant concern;

(2) In the event that the stock is sold, the individual(s) upon whom eligibility is based must be entitled to receive 100 percent of the value of each share of stock in his/her possession; and

(3) In the event of dissolution of the corporation, the individual(s) upon whom eligibility is based must be entitled to receive at least 51 percent of the retained earnings of the concern and 100 percent of the value of each share of stock in his/her possession.

(f) One 8(a) concern may not hold more than a 10 percent equity ownership interest in any other 8(a) concern.

(g) Except for partners or shareholders which are financial institutions licensed or chartered by Federal, state or local government, including investment companies which are licensed under the Small Business Investment Act of 1958, an individual, whether or not disadvantaged, or entity, who/which is a partner, stockholder, officer and/or director in an 8(a) concern is prohibited from simultaneously holding an equity ownership interest exceeding 10 percent in another 8(a) concern. In no case shall an ownership interest in an 8(a) concern held by any such financial institution exceed 49 percent.

(h) a non-8(a) concern in the same or similar line of business is prohibited from having an equity ownership interest in an 8(a) concern which exceeds 10 percent.

(i) An 8(a) business concern may continue participation in the program subsequent to a change in its 8(a) ownership, provided that SBA gave prior written approval to such change. Where the change in 8(a) ownership represents less than a 10 percent interest in the concern or results from the death or incapacity due to serious, long-term illness or injury of a disadvantaged principal, prior approval is not required; however, the concern shall notify SBA as soon as possible. Continued participation of the 8(a) concern under new disadvantaged ownership requires SBA's determination that all individual and business eligibility requirements of these regulations are met by the concern and the new owners.

(j) A Program Participant's request for SBA's approval for the issuance of a public offering will be treated as a request for a change of ownership. Such request will cause SBA to examine the concern's continued need for access to the business development resources of the 8(a) program.

§ 124.104 Control and management.

Except for concerns owned by Indian tribes, Alaska Native Corporations (ANCs) and Native Hawaiian Organizations as defined in § 124.100, an applicant concern's management and daily business operations must be controlled by an owner(s) of the applicant concern who has (have) been determined to be socially and economically disadvantaged. (*See* § 124.112 for the requirements for tribally-owned entities and those owned by ANCs and § 124.113 for requirements for concerns owned by Native Hawaiian Organizations.) In order for a disadvantaged individual to be found to control the concern, that individual must have managerial or technical experience and competency directly related to the primary industry in which the applicant concern is seeking 8(a) certification.

(a)(1) An applicant concern must be managed on a full-time basis by one or more individuals who have been found by SBA to be socially and economically disadvantaged, and such person(s) must possess requisite management or technical capabilities as determined by SBA. In addition, for those industries requiring professional licensing (i.e., public accountancy, law, professional engineering, etc.), SBA must determine that the applicant concern or individuals employed by the applicant concern hold(s) the requisite license(s).

(2) At least one socially and economically disadvantaged full-time manger must hold the position of President or Chief Executive Officer. This precludes outside employment or any other business interest by the individual which conflicts with the management of the firm or hinders it in achieving the objectives of its business development plan. Any disadvantaged person upon whom 8(a) eligibility is based, who is engaged in the management and daily business operations of the 8(a) concern and who wishes to engage in outside employment must notify SBA of the nature and anticipated duration of the outside employment and obtain the written approval of SBA, prior to engaging in such employment. SBA will review such notification for compliance with the requirement of day-to-day management and control of the 8(a) concern.

(b) The socially and economically disadvantaged individual(s) upon whom eligibility is based shall control the Board of Directors of an applicant or 8(a) concern, either in actual numbers of voting directors or through weighted voting (e.g., in a concern having a two-person Board of Directors where one individual on the Board is disadvantaged and one is not, the disadvantaged vote must be weighted—worth more than one vote—in order for the concern to be eligible for 8(a) participation.) This does not preclude the appointment of non-voting or honorary Directors so as to allow the firm to have a varied and experienced Board of Directors. All arrangements regarding the structure and voting rights of the Board must comply with applicable state law.

(c) Individuals who are not socially and economically disadvantaged may be involved in the management of an applicant concern, and may be stockholders, partners, officers, and/or directors of such concern. Such individual(s), their spouses or immediate family members who reside in the individual's household may not however:

(1) Exercise actual control or have the power to control the applicant or 8(a) concern.

(2) Be an officer or director or more than a 10% owner, stockholder, or partner of another firm in the same or similar line of business as the applicant or 8(a) concern.

(3) Receive excessive compensation from the applicant or 8(a) concern as directors, officers or employees. Individual compensation from the concern in any form, including dividends, which is paid to a nondisadvantaged owner, his/her spouse or immediate family member residing in the same household will be deemed excessive if it exceeds the compensation to be received by the Chief Executive Officer or, if no Chief Executive Officer, the President; provided that, with the written consent of the AA/MSB&COD or designee, the Chief Executive Officer or President may elect to take a lower salary than such a nondisadvantaged individual if it is demonstrated to be in the best interest of the applicant or 8(a) concern.

(4) Be former employers of the disadvantaged owner(s) of the applicant or 8(a) concern, unless it is determined by the AA/MSB&COD that the contemplated relationship between the former employer and the disadvantaged individual or applicant concern does not give the former actual control or the potential to control the applicant or 8(a) concern and such relationship is in the best interests of the 8(a) firm.

(5) Have an equity ownership interest of more than 10 percent in another 8(a) concern.

(d) Nondisadvantaged individuals or entities may be found to control or have the power to control in any of the following circumstances, which are illustrative only and not all inclusive:

(1) Nondisadvantaged individuals control the voting Board of Directors of the 8(a) concern, either directly through majority voting membership, or indirectly, if the by-laws allow nondisadvantaged individuals to block any action proposed by the disadvantaged individuals through negative control. For example, an equal number of disadvantaged and nondisadvantaged voting directors could create negative control.

(2) A nondisadvantaged individual, as an officer or member of the Board of Directors of the 8(a) concern, or through stock ownership, has the power to control day-to-day direction of the business affairs of the concern.

(3) The nondisadvantaged individual or entity provides critical financial or bonding support or licenses to the 8(a) concern which directly or indirectly allows the nondisadvantaged individual to gain control or direction of the 8(a) concern.

(4) A nondisadvantaged individual or entity exercises voting control of the Participant through a nominee(s).

(5) A nondisadvantaged individual or entity controls the corporation or the individual disadvantaged owners through loan arrangements.

(6) Other contractual relationships exist with nondisadvantaged individuals or entities, the terms of which would create control over the disadvantaged concern.

§ 124.105 Social disadvantage.

(a) *General.* Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identities as members of groups without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control. For social disadvantage relating to Indian tribes and Alaska Native Corporations, *see* § 124.112(a).

(b) *Members of designated groups.* (1) In the absence of evidence to the contrary, the following individuals are presumed to be socially disadvantaged: Black Americans; Hispanic Americans; Native Americans (American Indians,

Eskimos, Aleuts, or Native Hawaiians); Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru); Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal); and members of other groups designated from time to time by SBA according to procedures set forth at paragraph (d) of this section.

(2) An individual seeking socially disadvantaged status as a member of a designated group may be required to demonstrate that he/she holds himself/herself out and is identified as a member of a designated group if SBA has reason to question such individual's status as a group member.

(c) *Individuals not members of designated groups.* (1) An individual who is not a member of one of the above-named groups must establish his/her individual social disadvantage on the basis of clear and convincing evidence. A clear and convincing case of social disadvantage must include the following elements:

(i) The individual's social disadvantage must stem from his or her color, ethnic origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause not common to small business persons who are not socially disadvantaged.

(ii) The individual must demonstrate that he or she has personally suffered social disadvantage, not merely claim membership in a non-designated group which could be considered socially disadvantaged.

(iii) The individual's social disadvantage must be rooted in treatment which he or she has experienced in American society, not in other countries.

(iv) The individual's social disadvantage must be chronic and substantial, not fleeting or insignificant.

(v) The individual's social disadvantage must have negatively impacted on his or her entry into and/or advancement in the business world. SBA will entertain any relevant evidence in assessing this element of an applicant's case. SBA will particularly consider and place emphasis on the following experiences of the individual, where relevant:

(A) *Education.* SBA shall consider, as evidence of an individual's social disadvantage, denial of equal access to institutions of higher education; exclusion from social and professional association with students and teachers; denial of educational honors; social patterns or pressures which have discouraged the individual from pursuing a professional or business education; and other similar factors.

(B) *Employment.* SBA shall consider, as evidence of an individual's social disadvantage, discrimination in hiring; discrimination in promotions and other aspects of professional advancement; discrimination in pay and fringe benefits; discrimination in other terms and conditions of employment; retaliatory behavior by an employer; social patterns or pressures which have channelled the individual into nonprofessional or non-business fields; and other similar factors.

(C) *Business history.* SBA shall consider, as evidence of an individual's social disadvantage, unequal access to credit or capital; acquisition of credit or capital under unfavorable circumstances; discrimination in receipt (award and/or bid) of government contracts; discrimination by potential clients; exclusion from business or professional organizations; and other similar factors which have impeded the individual's business development.

(d) *Socially disadvantaged group inclusion*—(1) *General.* Upon an adequate preliminary showing to SBA by representatives of an identifiable group that the group has suffered chronic racial or ethnic prejudice or cultural bias, and upon the request of the representatives of the group that SBA do so, SBA shall publish in the **Federal Register** a notice of its receipt of a request that it consider a group not specifically named in paragraph (b)(1) of this section to have members which are socially disadvantaged because of their identification as members of the group for the purpose of eligibility for the 8(a) program. The notice shall adequately identify the group making the request, and if a hearing is requested on the matter and such request is granted, the time, date and location at which such hearing is to be held. All information submitted to support a request should be addressed to the AA/MSB&COD.

(2) *Standards to be applied.* In determining whether a group has made an adequate preliminary showing that it has suffered chronic racial or ethnic prejudice or cultural bias for the purposes of this regulation, SBA shall determine:

(i) Whether the group has suffered the effects of prejudice, bias, or discriminatory practices;

(ii) Whether such conditions have resulted in economic deprivation for the group of the type which Congress has found exists for the groups named in the Small Business Act; and

(iii) Whether such conditions have produced impediments in the business world for members of the group over which they have no control and which are not common to all small business owners. If it is demonstrated to SBA by a particular group that it satisfies the above criteria, SBA will publish the notice described in paragraph (d)(1) of this section.

(3) *Procedure.* Once a notice is published under paragraph (d)(1) of this section, SBA shall adduce further information on the record of the proceeding which tends to support or refute the group's request. Such information may be submitted by any member of the public, including Government representatives and any member of the private sector. Information may be submitted in written form, or orally at such hearings as SBA may hold on the matter.

(4) *Decision.* Once SBA has published a notice under paragraph (d)(1) of this section, it shall afford a period of not more than thirty (30) days for public comment concerning the petition for socially disadvantaged group status. If appropriate, SBA may hold hearings within such comment period. Thereafter, SBA shall consider all information received and shall render its final decision within 60 days of the close of the comment period. Such decisions shall be published as a notice in the **Federal Register**. Concurrent with the notice, SBA shall advise the petitioners of its final decision in writing. If appropriate, SBA shall amend this regulation accordingly.

§ 124.106 Economic disadvantage.

(a) *Economic disadvantage for the 8(a) program.* (1)(i) For purposes of the 8(a) program, economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged, and such diminished opportunities have precluded or are likely to preclude such individuals from successfully competing in the open market. In determining economic disadvantage for purposes of 8(a) program eligibility, SBA shall compare the applicant concern's business and financial profile with profiles of businesses in the same or similar line of business which are not owned and controlled by socially and economically disadvantaged individuals.

(ii) This program is not intended to assist concerns owned and controlled by socially disadvantaged individuals who have accumulated substantial wealth, who have unlimited growth potential or who have not experienced or have overcome impediments to obtaining access to financing, markets and resources.

(iii) For economic disadvantage as it relates to tribally-owned concerns, *see* § 124.112(b)(2).

(2) *Factors to be considered.* In determining the degree of diminished credit and capital opportunities of a socially disadvantaged individual, SBA will consider factors relating both to the applicant concern and to the individual(s) claiming disadvantaged status. Factors fall into three general categories: The personal financial condition of the individual(s) claiming disadvantaged status, including that individual's access to credit and capital; the financial condition of the applicant concern; and the applicant concern's access to credit, capital and markets.

(i) *Personal financial condition of the individuals claiming disadvantaged status.* This criterion is designed to assess the relative degree of economic disadvantage of the individual, as well as the individual's potential to capitalize or otherwise provide financial support for the business. The specific factors to be considered include, but are not limited to: the individual's personal income for at least the past two years; total fair market value of all assets; and the individual's personal net worth. Subject to the exclusions set forth in paragraph (a)(2)(i)(B) of this section, an individual whose personal net worth exceeds $250,000 will not be considered economically disadvantaged for purposes of 8(a) program entry. For personal net worth thresholds relating to continued 8(a) program eligibility, *see* § 124.111(a).

(A)(*1*) Except as provided in paragraph (a)(2)(i)(A)(*2*) of this section, when married, an individual upon whom eligibility is based shall submit a financial statement relating to his/her personal finances and a separate financial statement relating to his/her spouse's personal finances. A married applicant individual residing in any of the community property states or territories of the United States (e.g., Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico Texas, Washington and Wisconsin) must clearly identify on his or her financial statement those assets which are his or her separate property and those which are community property. The spouse of such married applicant must similarly identify on his or her financial statement those assets which are his or her separate property and those which are community property. A one-half interest in the assets identified as community property (and income derived from such assets) will be attributed to the applicant individual for purposes of determining economic disadvantage. Assets or a community property interest in assets, which applicant spouse has transferred to a non-applicant spouse within 2 years of the date of application to the 8(a) program will be presumed to be the property of the applicant spouse for purposes of determining his/her personal net worth. However, such presumption shall not apply to any applicant spouse who is subject to a legal separation recognized by a court of competent jurisdiction. A financial statement of a spouse of an applicant is not required if the individual and his/her spouse are subject to a legal separation recognized by a court of competent jurisdiction. However, an applicant individual must include on his or her statement all community property in which he or she has an interest.

(*2*) Except for concerns where both spouses are individuals upon whom eligibility is based, the requirement of paragraph (a)(2)(i)(A)(*1*) of this section, relating to the separate financial statements, applies only to determinations of economic disadvantage for purposes of 8(a) program entry. For a concern where both spouses are individuals upon whom program eligibility is based, the personal net worth of each spouse individually will be considered for program certification and for continued program eligibility.

(B) Whenever SBA calculates the personal net worth of an individual claiming disadvantaged status for purposes of the 8(a) program, SBA shall exclude the individual's ownership interest in the applicant or participating 8(a) concern and the equity in his/her primary personal residence (including, for 8(a) Program certification, the equity of both spouses, if married), but shall not exclude any portion of such equity in his/her primary residence which is attributable to excessive withdrawals from the applicant or participating 8(a) concern.

(C) Whenever SBA calculates the personal net worth of an individual claiming to be an Alaska Native, as defined in § 124.100, for purposes of qualifying an individually owned 8(a) applicant concern, SBA shall include assets and income from sources other than an Alaska Native Corporation, as defined in § 124.100, and shall exclude from such calculation any of the following which the individual receives from any Alaska Native Corporation:

(*1*) Cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum;

(*2*) Stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock);

(*3*) A partnership interest;

(*4*) Land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and

(*5*) An interest in a settlement trust.

(ii) *Business financial condition.* This criterion will be used to provide a financial picture of a firm at a specific point in time in comparison to other concerns in the same or similar line of business which are not owned and controlled by socially and economically disadvantaged individuals. In evaluating a concern's financial condition, SBA's consideration will include, but not be limited to, the following factors: business assets, revenues, pre-tax profit, working capital and net worth of the concern, including the value of the investments in the concern held by the individual claiming disadvantaged status.

(iii) *Access to credit and capital.* This criterion will be used to evalute the ability of the applicant concern to obtain the external support necessary to operate a competitive business enterprise. In making the evaluation, SBA shall consider the concern's access to credit and capital, including, but not limited to, the following factors: Access to long-term financing; access to working capital financing; equipment trade credit; access to raw materials and/or supplier trade credit; and bonding capability.

(b) *Economic disadvantage for the 8(d) Subcontracting Program, Small Disadvantaged Business Set-Asides, Small Disadvantaged Business Evaluation Preferences and for any other Federal procurement programs requiring SBA's determination of disadvantaged status.* (1) For purposes of the section 8(d) Subcontracting Program and other programs requiring SBA's determination of disadvantaged status, economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in

the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same or similar line of business and whose diminished opportunities have precluded or are likely to preclude such individuals from successfully competing in the open market. In determining economic disadvantage for the section 8(d) Subcontracting program, Small Disadvantaged Business set-asides and Small Disadvantaged Business Evaluation preferences, SBA will consider the factors set forth in paragraph (a) of this section but will apply standards to each factor that are less restrictive than those applied when determining economic disadvantage for purposes of the 8(a) program. This approach corresponds to the Congressional intent that partial or complete achievement of a concern's 8(a) program business development goals should not necessarily preclude its participation in other Federal procurement programs for concerns owned and controlled by socially and economically disadvantaged individuals.

(2) An individual whose personal net worth exceeds $750,000 as calculated pursuant to paragraph (a)(2)(i) of this section, will not be considered economically disadvantaged for purposes of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or any Federal procurement program which uses section 8(d) for its definition of economic disadvantage.

§ 124.107 Potential for success.

SBA will approve a concern for Program Participation only when it finds that the applicant concern has been in business in its primary industry classification for two full years, and possesses the potential for success.

(a) An applicant concern must demonstrate that it has been in business in the primary industry classification in which it seeks 8(a) certification for two full years prior to the date of its 8(a) application by submitting income tax returns showing revenues for each of the two previous years.

(b) In determining whether a concern has the potential for success, SBA will look at a number of factors including, but not limited to, the technical and managerial experience and competency of the individual(s) upon whom eligibility is based, the financial capacity of the applicant concern and the concern's record of performance on previous Federal and private sector contracts in the primary industry in which the concern is seeking 8(a) certification. SBA will examine each of these factors to determine whether the otherwise eligible applicant concern has the potential to successfully perform subcontracts awarded under the 8(a) program and to meet the business development objectives and goals of the program.

(c) An applicant concern shall not be denied admission into the program due solely to a determination that specific contract opportunities are unavailable to assist in the development of the concern unless:

(1) The Government has not previously procured and is unlikely to procure the types of products or services offered by the concern; or

(2) The purchase of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other Program Participants providing the same or similar items or services.

§ 124.108 Additional 8(a) program eligibility requirements.

(a) *Individual character review.* If, during the processing of an application, adverse information is obtained from the 8(a) program applicant or a credible source regarding possible criminal conduct by an applicant concern or any of its principals, no further action will be taken on the application until SBA's Inspector General has evaluated that information and has advised the AA/MSB&COD of his or her findings. The AA/MSB&COD will consider those findings when evaluating the application.

(b) *Standards of conduct.* The SBA Standards of Conduct regulations, 13 CFR part 105, *et seq.*, apply to eligibility questions involving SBA employees and their relatives. In particular, *see* §§ 105.404 and 105.506 of this title prohibiting certain SBA employees and former employees from, among other things, holding an ownership interest in an 8(a) concern.

(c) *Eligibility limitations.* (1) Except for concerns owned by Indian tribes or Alaska Native Corporations, once a concern or disadvantaged individual upon whom eligibility was based has participated in the 8(a) program and the concern has exited the program by termination, graduation, voluntary withdrawal or expiration of its program term, neither the concern nor any individual whose personal disadvantaged status was required to qualify the concern for 8(a) Program Participation shall be eligible to reapply for Program Participation. *See* § 124.112 regarding eligibility limitations for Indian tribes, including Alaska Native Corporations.

(2) An individual will be found to have used his or her eligibility for the 8(a) Program if he or she has claimed disadvantaged status by completing the appropriate SBA forms and SBA has approved the applicant concern's entry into the 8(a) program.

(3) Use of eligibility will take effect on the date of the concern's approval into the program.

(4) After an 8(a) concern exits the program, a disadvantaged owner of that concern may hold an ownership interest in or be involved in the management of another 8(a) concern, subject to the provisions of § 124.104(c). In these instances, for purposes of 8(a) participation only, such an individual will be deemed to be a non-disadvantaged owner of that concern and criteria restricting non-disadvantaged individual participation shall apply. *See* §§ 124.103 and 124.104.

(5) Transfer of the ownership and control of an 8(a) Participant to one or more other individuals does not terminate such concern's eligibility for the program provided that SBA determines the transferee(s) to be socially and economically disadvantaged. However, the 8(a) concern's Program Term as described in § 124.110 is in no way affected by such transfer.

(d) *Manufacturers and regular dealers.* (1) For purposes of program entry, each applicant concern whose primary industry classification is as a manufacturer or supplier of materials, supplies, articles and equipment must be determined to be a manufacturer or regular dealer as defined in the Walsh-Healey Public Contracts Act Regulations found at 48 CFR part 22, subpart 22.6.

(2) Participants in the developmental stage of 8(a) Program Participation may be eligible for two exemptions from the contingent agreement requirements of the Walsh-Healey Public Contracts Act, *see*, § 124.304(d). However, the availability of such exemptions during the Program Term in no way affects the requirement that an applicant concern comply with the provisions of paragraph (d)(1) of this section for purposes of program entry.

(e) Multiple concerns in same household. Immediate family members living in the same household may not each use their individual disadvantaged status to qualify more than one business concern for 8(a) Program Participation if the concerns are in the same or similar line of business. When the concerns are in separate lines of business, each applicant must establish that the concerns are separately owned, managed and controlled. (For size limitations *see* part 121 of this title.)

§ 124.109 Ineligible businesses.

(a) *Brokers and packagers.* Brokers and packagers are ineligible to participate in the 8(a) program. These types of businesses do not satisfy the definition of a manufacturer or regular dealer, as stated in § 124.100.

(b) *Franchises.* Except for those admitted to the 8(a) program prior to the effective date of these regulations, franchisees are ineligible to participate in the section 8(a) program.

(c) *Debarred or suspended person or concern.* Pursuant to 48 CFR part 9, subpart 9.4, or 13 CFR part 145, individuals or concerns who are debarred, suspended, voluntarily excluded from Federal programs, including the 8(a) program, or are found to be ineligible for Federal programs, including the 8(a) Program, by any agency of the Federal Government are ineligible for admission into the 8(a) program during the period of debarment, suspension, voluntary exclusion or status as ineligible. Prior to approval for admission to the 8(a) program, the applicant must certify that both the applicant concern and the disadvantaged individual(s) upon whom eligibility is based are not at that time debarred, suspended, voluntarily excluded or otherwise ineligible.

(d) *Non-profit organizations.* A non-profit organization does not meet the general definition of a concern as set forth in part 121 and § 124.100 of these regulations and is, therefore, ineligible for 8(a) Program Participation. Nothing in this paragraph affects the eligibility of a for-profit concern owned and controlled by a Hawaiian Native Organization, Indian tribe, including an Alaska Native Corporation (*see* §§ 124.112 and 124.113.)

(e) *Concerns owned by other disadvantaged concerns.* A concern which is owned in whole or in part by another business concern and relies on the disadvantaged status of that concern to claim disadvantaged status is ineligible for 8(a) Program Participation and for participation in the Defense Department's Small Disadvantaged Business program (Pub. L. 99-661, section 1207(a)) and the section 8(d) Subcontracting Program, (15 U.S.C. 637(d)). These types of businesses do not meet the individual disadvantaged ownership requirements of the Small Business Act and these regulations as set forth in § 124.103.

§ 124.110 Program term.

(a) Each concern certified for program participation on or after November 15, 1988, is subject to a Program Term of nine years from the date of such certification. The term will consist of two stages: the developmental stage and the transitional stage, which are described in § 124.303. Nothing in this subsection shall be construed to limit SBA from initiating graduation, termination or suspension actions pursuant to §§ 124.208, 124.209 and 124.211 or to prohibit a Participant from voluntarily withdrawing from the program.

(b) A concern is subject to a revised Program Term if the following conditions are met:

(1) The concern was a Program Participant as of September 1, 1988 or was approved for 8(a) Program Participation between September 1, 1988 and November 15, 1988; and

(2) The concern did not voluntarily withdraw from the 8(a) program and was not graduated or terminated pursuant to §§ 124.208 and 124.209 between September 1, 1988 and November 15, 1988.

(c) The revised Program Term shall be the greater of nine years from the date of the Participant's first contract pursuant to section 8(a) or the Participant's Fixed Program Participation Term (FPPT) expiration date, including any extension thereof, plus 18 months, whichever is greater.

(d) Once a Program Term has been established or revised in accordance with this section, SBA is statutorily prohibited from extending such term beyond the specified expiration date.

§ 124.111 Continued 8(a) program eligibility.

(a) *Standards.* (1) Except as set forth in paragraph (a)(2) of this section, in order for a concern to remain eligible for 8(a) program participation, it must continue to meet all eligibility criteria contained in § 124.101 through § 124.109. Failure to do so may cause SBA to initiate a graduation or termination proceeding in accordance with §§ 124.208 and 124.209.

(2)(i) For purposes of maintaining continued 8(a) program eligibility of a Program Participant in the developmental stage of the 8(a) program, an individual whose personal net worth exceeds $500,000 as calculated pursuant to § 124.106(a)(2)(i), will not be considered economically disadvantaged. (*See*, § 124.303 for discussion of the developmental stage of 8(a) Program Participation).

(ii) For purposes of maintaining such eligibility of a Program Participant in the transitional stage of the 8(a) program, an individual whose personal net worth exceeds $750,000, as calculated pursuant to § 124.106(a)(2)(i), will not be considered economically disadvantaged (*See*, § 124.303 for discussion of the developmental stage of 8(a) program participation).

(b) *Submissions supporting continued eligibility.* As part of an annual review, each Program Participant shall annually submit to the Division of Program Certification and Eligibility and to the servicing field office the following:

(1) A certification that it meets the 8(a) program eligibility requirements as set forth in § 124.101 through § 124.109 and paragraph (a) of this section;

(2) A personal financial statement for each disadvantaged owner;

(3) A record of all payments, compensation, and distribution (including loans, advances, salaries and dividends) made by the Participant to each of its owners or to any person or entity affiliated with such owners; and

(4) Such other information as SBA may deem necessary. For other required annual submissions, *see* § 124.501.

(c) *Economic disadvantage eligibility reviews.* (1) Upon receipt of specific and credible information alleging that a Program Participant no longer meets the requirements of economic disadvantage for continued program eligibility, SBA shall conduct a review of the concern's eligibility for continued participation in the Program.

(2)(i) If, based on information received from the Participant or elsewhere, SBA has reason to believe that the Participant no longer meets the standards of economic disadvantage as set forth in § 124.106 or paragraph (a) of this section, SBA shall conduct a review to determine whether the Participant and its disadvantaged owners continue to meet such standards.

(ii) Sufficient reasons for SBA to conclude that an 8(a) Participant is no longer economically disadvantaged may include, but are not limited to: demonstrated access of the concern and/or its owners to a substantial new source of capital or loans, an unusually large amount of funds withdrawn from the concern by its owners, or personal net worth of the disadvantaged owner(s) which exceeds the threshold described in paragraph (a) of this section, not including the owner's equity in the 8(a) concern and in his/her primary personal residence.

(3) If SBA determines, pursuant to paragraphs (c)(1) or (c)(2) of this section, that a Program Participant and/or its disadvantaged owner(s) are no longer economically disadvantaged, SBA shall initiate a graduation or a termination proceeding under §§ 124.208 and 124.209.

(4) If, based on information received from the Participant or elsewhere, SBA has reason to believe that an excessive amount of funds or other assets has been withdrawn from the Participant for the personal benefit of the disadvantaged owner(s) or that of any person or entity affiliated with such owner(s), SBA shall conduct a review to determine whether such withdrawal was detrimental to the achievement of the targets, objectives and goals of the Participant's business plan.

(5) If SBA determines, pursuant to paragraph (c)(4) of this section, that funds or other assets have been withdrawn to the detriment of the achievement of the targets, objectives and goals of the Participant's business plan, SBA shall initiate a termination proceeding under § 124.209 or shall require an appropriate reinvestment of funds or other assets and such other actions as SBA may deem necessary to counteract the detrimental withdrawals as a condition of maintaining program eligibility.

(d) *Eligibility Reviews.* If, on the basis of information submitted pursuant to paragraph (b) of this section or upon information received from any source, SBA has reason to believe the Program Participant no longer meets the eligibility criteria (other than economic disadvantage), SBA shall conduct a review of the Participant's 8(a) program eligibility. If as a result of such review, SBA determines such Participant may no longer be eligible for program participation, SBA shall initiate termination proceedings under § 124.209.

§ 124.112 Concerns owned by Indian tribes, including Alaska Native Corporations.

(a) *General.* (1) Small business concerns owned by Indian tribes are eligible for participation in the section 8(a) program, provided that certain conditions are met as described below. The term "Indian tribe" is defined in § 124.100.

(2) Small business concerns owned and controlled by Indian tribes are generally considered socially and economically disadvantaged for purposes of participation in programs authorized by section 8(d) of the Small Business Act, section 1207(a) of the Defense Authorization Act of 1987 and any other program, except the 8(a) program, which requires social and economic disadvantaged status as a condition of eligibility. If the disadvantaged status of a tribally-owned concern is challenged under subpart B of this part, SBA will evaluate the concern's disadvantaged status using the criteria set forth in this section.

(3) Small business concerns owned and controlled by Alaska Native Corporations (ANCs) are eligible for participation in the 8(a) program, subject to the same conditions as apply to tribally-owned concerns which are described at paragraphs (b) through (e) of this section, with the following exceptions which apply solely to ANC-owned concerns:

(i) In evaluating the economic disadvantage of the ANC, no consideration shall be given to assets or income derived from distributions of the Alaska Native Fund established by the Alaska Native Claims Settlement Act, 43 U.S.C. 1601, *et seq.* Such assets and income should be included and specifically identified on the ANC's financial statements.

(ii) Alaska Natives and descendants of Natives must own a majority of both the total equity of the ANC and the total voting powers to elect directors of the ANC through their holdings of settlement common stock. Settlement common stock means stock of an ANC issued pursuant to 43 U.S.C. 1606(g)(1), which is subject to the rights and restrictions listed in 43 U.S.C. 1606(h)(1).

(iii) Even though an ANC can be either for profit or non-profit, a small business concern owned and controlled by ANC must be for profit to be eligible for the 8(a) program. The concern will be deemed owned and controlled by the ANC for purposes of program eligibility so as to satisfy paragraph (c)(3) of this section where the majority of stock or other ownership interest is held by the ANC and holders of its settlement common stock. Both a majority of the total equity and total voting power must be so held.

(iv) Paragraphs (b)(3) (i) and (ii) of this section are not generally applicable to an ANC, provided its status as an ANC is clearly shown in its articles of incorporation and by-laws. Additionally, paragraph (c)(1) of this section is not applicable to the ANC-owned concern to the extent it requires an express waiver of sovereign immunity or a "sue and be sued" clause.

(v) The Alaska Native Claims Settlement Act provides that a concern minority-owned by an ANC shall be deemed to be both owned and controlled by such ANC. Therefore, an individual responsible for control and management of an ANC-owned 8(a) applicant or Participant need not establish personal social and economic disadvantage.

(b) *Tribal eligibility.* In order to qualify a concern which it owns and controls for participation in the 8(a) program, an Indian tribe itself must meet the conditions set forth in paragraphs (b)(1) and (b)(2) of this section. Once an Indian tribe has so established its disadvantaged status, it need not reestablish such status in order to have other businesses that it owns certified for 8(a) Program Participation, unless specifically required to do so by the AA/MSB&COD or his/her designee. The AA/MSB&COD, or designee, may require proof of tribal eligibility during the Program Participation of any tribally-owned business or at any time during the processing of an 8(a) program application from a tribally-owned concern. However, nothing in this paragraph affects the requirement that each tribally-owned concern seeking to be certified for 8(a) Program Participation comply with the provisions of paragraph (c) of this section.

(1) *Social disadvantage.* An Indian tribe meeting the definition set forth in § 124.100 shall be deemed socially disadvantaged.

(2) *Economic disadvantage.* In order to be eligible to participate in the 8(a) Program the Indian tribe must demonstrate to SBA that the tribe itself is economically disadvantaged. This shall involve the consideration of available data showing the tribe's economic condition, including but not limited to, the following information:

(i) The number of tribal members.

(ii) The present tribal unemployment rate.

(iii) The per capita income of tribal members, excluding judgment awards.

(iv) The percentage of the local Indian population below the poverty level.

(v) The tribe's access to capital markets.

(vi) The tribal assets as disclosed in a current tribal financial statement. The statement should list all assets including those which are encumbered or held in trust, but the status of those encumbered or trust assets should be clearly delineated.

(vii) A list of all wholly or partially owned tribal enterprises or affiliates and the primary industry classification of each, as defined in § 124.100. The list must also specify the members of the tribe who manage or control such enterprises or serve as officers or directors.

(3) *Application process—forms and documents required.* Except as provided in paragraph (a)(3)(iv) of this section, in order to establish tribal eligibility to qualify for the 8(a) program, the Indian tribe must submit the forms and documents required of 8(a) applicants generally as well as the following material:

(i) A copy of the tribe's governing document(s) such as its constitution or business charter.

(ii) Evidence of its recognition as a tribe eligible for the special programs and services provided by the United States or by its state of residence.

(iii) Copies of its articles of incorporation and bylaws as filed with the organizing or chartering authority, or similar documents needed to establish and govern a non-corporate legal entity.

(iv) Documents or materials needed to show the tribe's economically disadvantaged status as described in paragraph (b)(2) of this section.

(c) *Business eligibility.* In order to be eligible to participate in the 8(a) program, a concern which is owned by an eligible Indian tribe must meet the conditions set forth in paragraphs (c)(1) through (c)(6) of this section.

(1) *Legal business entity organized for profit and susceptible to suit.* The applicant or participating concern must be a separate and distinct legal entity organized or chartered by the tribe, or Federal or state authorities. Except as provided in paragraph (a)(3)(iv) of this section, the concern's articles of incorporation must contain express sovereign immunity waiver language, or a "sue and be sued" clause which designates United States Federal Courts to be among the courts of competent jurisdiction for all matters relating to SBA's programs including, but not limited to, 8(a) Program Participation, loans, advance payments and contract performance. Also, the concern must be organized for profit, and the tribe must possess economic development powers in the tribe's governing documents.

(2) *Size.* (i) A tribally-owned applicant concern must qualify as a small business concern as defined for purposes of Government procurement in part 121 of this title. The particular size standard to be applied shall be based on the primary industry classification of the applicant concern. Ownership by the tribe will not, in and of itself, cause affiliation with the tribe or with other entities owned by the tribe. However, affiliation with other tribally-owned entities may be caused by circumstances other than common tribal ownership. (*See* part 121 of this title regarding affiliation.)

(ii) Except as provided in paragraph (c)(2)(iii) of this section, a tribally-owned Program Participant must certify to SBA that it is a small business pursuant to the provisions of part 121 of this title for the purpose of performing each individual contract which it is awarded.

(iii) During its Program Term, a tribally-owned Program Participant may, for up to two 8(a) contracts, be a party to a joint venture which exceeds the applicable size standard, if the joint venture is:

(A) 51 percent or more owned and controlled by the tribally-owned Participant;

(B) Is located on the tribe's reservation or land owned by such tribe;

(C) Performs most of its activities on such reservation or tribally-owned land; and

(D) Employs members of the tribe for at least 50 percent of its total workforce.

(3) *Ownership.* For corporate entities, a tribe must own at least 51 percent of the voting stock and at least 51 percent of the aggregate of all classes of stock. For non-corporate entities, a tribe must own at least a 51 percent interest. No Indian tribe shall own more than one current or former 8(a) Program Participant having the same primary industry classification. Tribally-owned Program Participants are subject to the provisions of paragraphs (g) and (h) of § 124.103 relating to ownership by nondisadvantaged individuals and non-8(a) concerns.

(4) *Control and management.* (i) Except for concerns owned by ANCs, the management and daily business operations of a tribally-owned concern must be controlled by an individual member(s) of the tribe, who does not manage and control more than one other tribally-owned 8(a) Program Participant. In addition, such manager(s) must be found to possess the requisite management of technical capabilities as determined by SBA. This paragraph does not preclude management of a tribally-owned concern by committees, teams, or Boards controlled by such individuals.

(ii) Members of the tribal council shall not participate in the daily management or on the board of directors of any tribally-owned 8(a) concern without obtaining prior written approval for such participation from SBA.

(iii) Except as permitted by paragraph (c)(4)(i) of this section, members of the management team, business committee members, officers, and directors are precluded from engaging in any outside employment or other business interests which conflict with the management of the concern or prevent the concern from achieving the objectives set forth in its business development plan. This is not intended to preclude participation in tribal or other activities which do not interfere with such individual's responsibilities in the operation of the applicant concern.

(5) *Location and economic benefit.* The primary economic benefits from the concern must accrue to the tribe. A concern located on a designated Indian reservation or on tribally-owned land will be presumed to provide an economic benefit, such as employment, to the tribal community. SBA may approve a location not on tribally-owned land, if the applicant concern can demonstrate that similar economic benefits will accrue to the tribal community.

(6) *Other eligibility criteria.* A tribally-owned concern must also meet the eligibility criteria set forth in § 124.107 through 124.109.

(d) *Individual eligibility limitation.*—(1) *Concerns owned by Indian tribes except those owned by Alaska Native Corporations.* The Small Business Act, as amended, provides that the 8(a) requirements regarding management and daily business operations are met if a tribally-owned concern is controlled by one or more members of the economically disadvantaged Indian tribe. The statute does not require that such individual be found by SBA to be personally socially and economically disadvantaged. Therefore, SBA does not deem an individual involved in the management or daily business operations of the tribally-owned concern to have used his or her individual eligibility within the meaning of § 124.108(c).

(2) *Concerns owned by Alaska Native Corporations.* The Alaska Native Claims Settlement Act, as amended, provides that a concern which is majority owned by an Alaska Native Corporation shall be deemed to be controlled and managed by minority individuals for purpose of participation in Federal programs. Therefore, SBA will not examine the disadvantaged status of an individual involved in the management of daily business operations of an Alaska Native Corporation-owned concern, and such individual will not be deemed to have used his or her individual eligibility within the meaning of § 124.108(c).

(e) *Existing Section 8(a) Firms.* Tribally-owned concerns presently in the section 8(a) program must comply with the requirements of this section within 12 months from the effective date of these regulations. Failure to do so may result in the commencement of section 8(a) program termination proceedings.

§ 124.113 Concerns owned by Native Hawaiian Organizations.

Concerns owned by economically disadvantaged Native Hawaiian Organizations as defined in § 124.100 are eligible for participation in the 8(a) program and other federal programs

requiring SBA to determine social and economic disadvantage as a condition of eligibility. Such concerns must meet all eligibility criteria set forth in §§ 124.102 through 124.109 and § 124.111(a) of this part.

§ 124.201 8(a) Program application.

It is SBA's policy that any concern or any individual on behalf of such business has the right to apply for 8(a) Program Participation whether or not there is an appearance of eligibility. However, concerns which have not been in business for two full years as described § 124.107 will not be approved for 8(a) Program Participation.

§ 124.202 Place of filing.

An application for 8(a) program admission is to be filed in the SBA field office serving the territory in which the principal place of business, as defined in § 124.100, is located. The field office will provide an applicant concern with information regarding the 8(a) program, and with all required application forms. An 8(a) application will be processed by the appropriate SBA regional office of the Division of Program Certification and Eligibility.

§ 124.203 Servicing office.

Once approved, a Program Participant will be serviced in the field office serving the territory in which the concern's principal place of business, as defined in § 124.100, is located.

§ 124.204 Applicant representatives.

Subject to the limitations of § 124.7, an applicant concern may employ at its option outside representatives in connection with an application for 8(a) Program Participation. If the applicant chooses to employ outside representation such as an attorney, accountant, or others, the requirements of part 103 of this title dealing with the appearance and compensation of persons appearing before SBA are applicable to the conduct of the representative. In addition, representation in proceedings before the Office of Hearings and Appeals shall be limited as provided in § 134.16 of this title.

§ 124.205 Forms and documents required.

Each 8(a) applicant concern must submit the forms and attachments thereto required by SBA when making application for admission to the 8(a) program. Such forms and attachments will include, but are not limited to, financial statements and Federal personal and business tax returns.

§ 124.206 Approval and decline of applications for 8(a) program admission.

(a) *General.* The AA/MSB&COD is authorized to approve or decline applications for admission to the 8(a) program. However, denials of program admission based on his/her finding that the individual(s) claiming social and economic disadvantage are not socially and/or economically disadvantaged and/or that such individual(s) does (do) not own and/or does (do) not control the applicant concern, may be appealed to SBA's Office of Hearings and Appeals (OHA). The Division of Program Certification and Eligibility (the Division) will receive, review and evaluate all 8(a) applications. The Division will advise each program applicant within 15 days after the receipt of an application whether such application is complete and suitable for evaluation and, if not, what additional information or clarification is required to complete the application. SBA will process an application for 8(a) Program Participation within 90 days of receipt by the Division of a complete application package. Incomplete application packages will not be processed.

(b) *Approval.* If the AA/MSB&COD finds that the applicant concern meets all eligibility criteria, he/she shall issue an approval letter to the concern. The date of the approval letter shall be the date of program certification for purposes of determining the concern's Program Term pursuant to § 124.110. A concern is not approved for participation in the 8(a) program until an approval letter is sent by the AA/MSB&COD to the concern. Up until that event occurs, any new information which could have an adverse-affect on the application may be considered by the AA/MSB&COD. An applicant is not entitled to receive program benefits of any kind until a participation agreement is signed and SBA has approved the concern's business plan pursuant § 124.301.

(c) *Decline.* If the AA/MSB&COD finds that an applicant concern does not meet all eligibility criteria, he/she will provide written notification of this finding to the applicant in a letter of decline. The letter of decline shall set forth findings based on the facts and in accordance with law and regulations for every material issue relating to each eligibility factor with specific reasons for each finding. The letter of decline shall inform the applicant of its rights to request reconsideration of the AA/MSB&COD's decision and/or to appeal such decision.

(1) *Reconsideration.* Every applicant has the right to request that the AA/MSB&COD reconsider his/her decline decision. Such request must be made in writing to the appropriate regional office of the Division by certified mail, return receipt requested, within 45 days of the date of service of the decline letter. As part of the reconsideration request, the applicant should include any additional information and documentation pertinent to overcoming the reason(s) for the initial decline. If the concern requests reconsideration, the AA/MSB&COD will issue a written determination on the reconsideration within 45 days of receipt of the request by the Regional Office of the Division which processed the original application. The Agency's eligibility analysis on reconsideration will consider all eligibility factors in light of all information then available to the Agency, and may approve the application, decline it for any of the same reasons cited in the initial decline or decline it for reasons not previously identified. If, on reconsideration, the AA/MSB&COD finds that the applicant concern meets all eligibility criteria, he/she shall issue an approval letter to the concern. The date of the approval letter shall be the date of program certification for purposes of determining the concern's Program Term pursuant to § 124.110. If, on reconsideration, the AA/MSB&COD determines that the concern does not meet all eligibility criteria, he/she will notify the applicant of this decision by letter. Such letter shall set forth findings based on the facts and in accordance with law and regulations for every material issue relating to each eligibility factor with specific reasons for each finding. If the concern is being declined solely for reasons not identified in the initial decline, the concern will be advised that SBA will treat the decline as an initial decline, and that the concern will be afforded all rights which were available to it on its initial decline.

(2) *Appeal.* An unsuccessful applicant will have the right to appeal its decline to OHA if the application is denied based solely on a negative finding of one or more of the following criteria: social disadvantage, economic disadvantage, ownership or control. The applicant, at its option, may bring such appeal either after the initial decline or after a decline on reconsideration. Petitions of appeal must conform to the requirements of § 124.210 and will be handled in accordance with the procedures contained in § 124.210 and part 134 of this title.

(3) *Final Agency Decision.* If a declined applicant does not request reconsideration of the decline or, if eligible under paragraph (c)(2) of this section, a declined applicant does not file an appeal with OHA within 45 days of the date of service of the decline letter, the determination of the AA/MSB&COD will become the final Agency division. If the application is denied on reconsideration and the applicant does not appeal or have the right to appeal the denial under paragraph (c)(2) of this section, the decision of the AA/MSB&COD is the final Agency decision. If the applicant is entitled under paragraph (c)(2) of this section to an appeal, and exercises that right, the decision of the Administrative Law Judge shall be the final Agency decision.

(4) *Reapplication for Program Participation.* A concern which has been declined for 8(a) program admission may reapply for admission to the program 12 months after the date of the final Agency decision to decline.

§ 124.207 8(a) Program exit.

A concern participating in the 8(a) program may leave the program by any of the following means:

(a) Voluntary withdrawal.

(b) Expiration of the Program Term established pursuant to § 124.110;

(c) Graduation pursuant to the provisions of § 124.208;

(d) Termination pursuant to the provisions of § 124.209.

§ 124.208 Program graduation.

(a) *General.* When an 8(a) concern is recognized as successfully completing the 8(a) program by substantially achieving the targets, objectives and goals set forth in its business plan prior to the expiration of its Program Term, and has demonstrated the ability to compete in the marketplace without assistance under the 8(a) program, its participation within the program may be determined by SBA to be completed and the firm may be graduated from the program.

(b) *Graduation criteria.* In determining whether a concern has substantially achieved the goals and objectives of its business plan and has attained the ability to compete in the marketplace without 8(a) program assistance, the following factors, among others, shall be considered by SBA. Positive overall financial trends, including but not limited to:

(1) Profitability;

(2) Sales, including improved ratio of non-8(a) sales to 8(a) sales;

(3) Net worth, financial ratios, working capital, capitalization, access to credit and capital;

(4) Ability to obtain bonding;

(5) A positive comparison of the 8(a) concern's business and financial profile with profiles of non-8(a) businesses in the same area or similar business category; and

(6) Good management capacity and capability.

(c) *Graduation procedures*—(1) *Letter of notification.* Upon determination by the SBA pursuant to paragraph (b) of this section that an 8(a) concern should be graduated from the 8(a) program, SBA shall notify the Participant in writing of its intent to graduate in a letter of notification. The letter of notification shall set forth findings, based on the facts and in accordance with law and regulations, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification shall also provide the Participant 45 days from the date of service of the letter to submit in writing information which would explain why the proposed basis of graduation is not warranted.

(2) *Second letter of notification.* After the 45 day response period has elapsed, the Division shall consider the proposed graduation, including information submitted by the Participant, if any. As appropriate, the Division shall notify the Participant that it will not recommend program graduation or that, despite the information that may have been provided, the basis for graduation continues to exist. Where appropriate, the Division Director shall further notify that he/she intends to recommend to the AA/MSB&COD that the Participant be graduated. In instances where graduation will be recommended, the Division Director shall further notify the Participant that it will have a further 45 day period from the date of service of the second letter of notification to submit to SBA such further information which would explain why the proposed graduation is not justified.

(3) *Recommendation of the Division.* Following the second day response period, the Division Director will consider the facts of the proposed graduation, including all information submitted by the Participant. If the Division Director determines that graduation is not appropriate, he/she will so notify the Participant within 15 days of the close of the response period. If the Division Director determines that graduation is appropriate, he/she will recommend in writing to the AA/MSB&COD, within 15 days of the close of the response period, that the Participant be graduated.

(4) *Decision of the AA/MSB&COD.* Upon the recommendation of the Division Director, the AA/MSB&COD will consider the proposed graduation and the written record supporting it. If the AA/MSB&COD determines that program graduation is warranted, he/she will issue a Notice of Program Graduation to the Participant. If not, he/she will so notify the Participant.

(5) *Notice requirements.* A Notice of Program Graduation shall conform to the form, filing and service requirements of part 134 of this title, under which the appeal proceeding shall be conducted. The Notice of Program Graduation shall set forth findings, based on the facts and in accordance with law and regulations, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The Notice of Program Graduation shall also advise the Program Participant that it may avail itself of an opportunity for an appeal by filing a petition in accordance with the provisions of § 124.210 and part 134 of this title.

(6) *Appeal to Office of Hearings and Appeals.* Procedures governing appeals of program graduation to the Office of Hearings and Appeals are set forth in § 124.210 and part 134.

(d) *Post-graduation.* After the effective date of a program graduation as provided for herein, an 8(a) concern is no longer eligible to receive any 8(a) program assistance. However, such concern is obligated to complete previously awarded 8(a) subcontracts, including any priced options which may be exercised.

§ 124.209 Program termination.

(a) *General.* Participation of a 8(a) business concern in the 8(a) program may be terminated by SBA prior to the expiration of the concern's Program Term for good cause. Examples of good cause include, but are not limited to, the following:

(1) Failure by the concern to continue to maintain its eligibility for program participation.

(2) Failure by the concern to maintain its status as a small business under the Small Business Act, as amended, and the regulations promulgated thereunder. *See* § 124.102.

(3) Failure by the concern for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership, full-time day-to-day management, and control by the person(s) who has (have) been determined to be socially and economically disadvantaged pursuant to these regulations.

(4) Failure by the concern to obtain written approval from SBA for any changes in ownership, management or

control pursuant to §§ 124.103 and 124.104.

(5) Failure by the concern to disclose to SBA the extent to which nondisadvantaged persons or firms participate in the management of the section 8(a) business concern.

(6) A demonstrated pattern of failing to make required submissions or responses to the Administration in a timely manner, including:

(i) Failure by the concern to provide SBA with required quarterly or annual financial statements within 90 days of the close of the reporting period, or required audited financial statements within 180 days of the close of the reporting period. Failure to provide SBA with requested tax returns, reports, or other available data within 30 days of the date of request.

(ii) Failure by the concern to submit an updated business plan within 30 days of receipt of request, without an extension of time which has been approved by SBA.

(iii) Failure by the concern to provide documents or certifications of continued eligibility or otherwise respond to requests for information relating to the section 8(a) program from SBA or other authorized government officials within the time frames provided for in the requests.

(7) Cessation of business operations by the concern.

(8) Failure by the concern to achieve the goals cited in its original or modified business plan as a result of repeated refusals to accept or utilize SBA assistance.

(9) Failure by the concern to pursue competitive and commercial business in accordance with the business plan, or failure to make reasonable efforts to achieve competitive status.

(10) Failure by the concern to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance or terminations for default with respect to contracts awarded under the authority of section 8(a).

(11) A pattern of inadequate performance of awarded section 8(a) procurement subcontracts by the concern.

(12) Failure by the concern to pay or repay significant financial obligations owed to the Federal Government.

(13) Failure by the concern to obtain and keep current any and all required permits, licenses, and charters.

(14) Diversion of funds or other assets from the section 8(a) business concern or excessive withdrawals from such concern for the personal benefit of its disadvantaged owners or any person or entity affiliated with such owners which is detrimental to the achievement of the targets, objectives, and goals contained in such Program Participant's business plan.

(15) Unauthorized use of business development expense funds and/or advance payment funds and/or SBA direct, guaranty or immediate participation loan proceeds; or violation of an advance payment, business development expense agreement, or loan agreement.

(16) Failure by the concern to obtain prior SBA approval of any management agreement, joint venture agreement or other agreement relative to the performance of a section 8(a) subcontract. Violation of any requirement of a management, joint venture, or other agreement approved by SBA by either the section 8(a) concern or one of the joint venturers.

(17) Failure by the concern to obtain approval from SBA before subcontracting under a section 8(a) subcontract, or failure by the concern to abide by any conditions imposed by SBA upon such approval.

(18) Violation by the concern of a section 8(a) subcontract provision which prohibits contingent fees and gratuities; or failure to disclose to SBA fees paid or to be paid, or costs incurred or committed to third parties, directly or indirectly, in the process of obtaining section 8(a) contracts or subcontracts, or violation of § 124.7.

(19) Knowing submission of false information to SBA, including false certification of compliance with non-8(a) business activity targets under § 124.312(c)(11), on behalf of a section 8(a) business concern by its principals, officers, or agents, or by its employees, where the principal(s) of the section 8(a) concern knows or should have known such submission to be false.

(20) Debarment, suspension, voluntary exclusion, or ineligibility of the concern or its principals pursuant to 13 CFR part 145, FAR subpart 9.4, 48 CFR Ch.1, and 48 CFR Ch. 22, or any successor regulation.

(21) Conviction of the concern the individual(s) upon whom 8(a) program eligibility, or the director, officer or manager of tribally-owned concern, including one owned by an Alaska Native Corporation, or concern owned by a Hawaiian organization is based for any offense indicating a lack of business integrity including, but not limited to:

(i) Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract;

(ii) Violation of the Organized Crime Control Act of 1970 (Pub. L. 91-452; 84 Stat. 922);

(iii) Embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a government contractor;

(iv) Violation of any Federal antitrust statute;

(v) Commission of any felony not specifically listed above; or

(vi) Violation of section 16 of the Small Business Act, (15 U.S.C. 645).

(22) Conviction of a nondisadvantaged owner, officer, or director the concern for any offense described in paragraph (a)(21) of this section, provided that one or more disadvantaged owners or officers of the concern abetted, conspired with or otherwise acquiesced in the owner's or officer's commission of the offense.

(23) Willful failure on behalf of an 8(a) business concern to comply with applicable labor standards and obligations.

(24) Violation of any terms and conditions of the 8(a) Program Participation Agreement.

(25) Willful violation by an 8(a) business concern, or any of its principals, of any rule or regulation of the Administration pertaining to material issues.

(b) *Termination procedures*—(1) *Letter of notification.* When SBA determines that grounds exist to terminate a concern's participation in the 8(a) program pursuant to this section, SBA shall notify the Participant in writing of its intent to terminate in a letter of notification. The letter of notification shall set forth findings, based on the facts and in accordance with law and regulations, for every material issue relating to the grounds upon which such termination would be based with specific reasons for each finding. The letter of notification shall provide the Participant 45 days from the date of service of the letter to submit in writing information which would eliminate the ground(s) for termination or would explain why the proposed ground(s) should not justify termination.

(2) *Second letter of notification.* After the 45 day response period has elapsed, the Division shall consider the proposed termination, including information submitted by the Participant, if any. The Division shall notify the Participant that the grounds for proposed termination have been eliminated or that, despite the information that may have been provided, some or all of the grounds for termination continue to exist. Where appropriate, the Division Director shall further notify the Participant that he/she intends to recommend to the AA/MSB&COD that the Participant be terminated from the program, and that, within 45 days of the date of service of the second letter of notification, the Participant may submit to SBA such further information as would eliminate the ground(s) for termination or would explain why the proposed ground(s) should not justify termination.

(3) *Recommendation of the Division.* Following the second 45 day response period, the Division Director will have 15 days to consider the facts of the proposed termination, including all information submitted by the Participant and to notify the Participant of his/her recommendation to the AA/MSB&COD. If the grounds for proposed termination continue to exist, the Division Director will recommend in writing to the AA/MSB&COD that the Participant be terminated.

(4) *Decision of the AA/MSB&COD.* Upon the recommendation of the Division Director, the AA/MSB&COD will consider the proposed termination and the written record supporting it. If the AA/MSB&COD determines that a termination is warranted, he/she will issue a Notice of Termination to the Participant. If not, he/she will so notify the Participant.

(5) *Notice requirements.* A Notice of Termination shall conform to the form, filing and service requirements of Part 134 of this Title, under which the appeal proceeding shall be conducted. The Notice of Termination shall set forth findings, based on the facts and in accordance with law and regulations, for every material issue relating to the grounds upon which the termination is based. The Notice of Termination shall also advise the Program Participant that it may avail itself of an opportunity for an appeal by filing a petition in accordance with the provisions of § 124.210 and part 134 of this title.

(6) *Appeal to Office of Hearings and Appeals.* Procedures governing appeals of program termination to the Office of Hearings and Appeals are set forth in § 124.210 and part 134 of this title.

(c) *Post-termination.* After the effective date of a program termination, an 8(a) business concern is no longer eligible to receive any section 8(a) program assistance. However, such concern is obligated to complete previously awarded 8(a) subcontracts, including any priced options which may be exercised. (*See* § 124.211 for Program Suspension).

§ 124.210 Appeals to SBA's Office of Hearings and Appeals.

(a) Except as provided in paragraph (d) of this section, an applicant concern or Program Participant shall be afforded the opportunity to appeal any of the following Agency determinations:

(1) Denial of program admission based solely on a negative finding(s) of social disadvantage, economic disadvantage, ownership or control pursuant to § 124.206;

(2) Graduation pursuant to § 124.208;

(3) Termination pursuant to § 124.209; or,

(4) Denial of a request to issue a waiver pursuant to § 124.317.

(b) The applicant or Participant concern may initiate such appeal by filing a petition in accordance with part 134 of this title with SBA's Office of Hearings and Appeals (OHA) within 45 days of the date of service of the final Agency determination pursuant to paragraph (a) of this section. In addition to the requirements of § 134.11(a), the petition shall state, with specific reference to the determination and the record supporting such determination, the reasons why the determination is alleged to be arbitrary, capricious or contrary to law. Concurrent with its filing with OHA, the concern shall also serve the AA/MSB&COD with a copy of the petition, including all attachments.

(c) Appeal proceedings brought under the authority of this section shall be conducted by an Administrative Law Judge.

(d) The Administrative Law Judge selected to preside over an appeal shall decline to accept jurisdiction over any matter if:

(1) The appeal does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the determination, including appeals of proposed denials of 8(a) program admission which have been based in whole or in part on grounds other than a negative finding of social disadvantage, economic disadvantage, ownership or control;

(2) The appeal is untimely filed under § 134.12 or is not otherwise filed in accordance with the requirements of this section and the rules of procedure set forth in part 134 of this title; or

(3) The matter has been decided or is the subject of an adjudication before a court of competent jurisdiction over such matters.

(e) Once the Administrative Law Judge accepts jurisdiction over an appeal, subsequent initiation of an adjudication of the matter by a court of competent jurisdiction will not preclude the Administrative Law Judge from rendering a final decision on the matter.

(f) Proceedings conducted under the authority of this section shall be conducted in accordance with the provisions of this section and part 134 of this title.

(g) Unless it is established that the convenience and necessity of the parties requires otherwise, in the sole discretion of the Administrative Law Judge, any oral hearing conducted with respect to an appeal pursuant to paragraph (a) of this section shall be held in the Washington, DC area.

(h)(1) Except as provided in paragraph (h)(3) of this section, any proceeding conducted under the authority of paragraph (a) of this section shall be decided solely on a review of the written administrative record. The determination by the AA/MSB&COD or a designee for matters related to paragraphs (a)(1), (a)(2), and (a)(3) of this section, and the determination by the Administrator for matters related to paragraph (a)(4) of this section, shall be sustained unless such determination is found to be arbitrary, capricious, or contrary to law.

(2) If the Administrative Law Judge determines that, due to the absence in the written administrative record of the reasons upon which the determination in question was based, such administrative record is insufficiently complete to decide whether the determination is arbitrary and capricious or contrary to law, the case shall be remanded by the Administrative Law Judge to the AA/MSB&COD for further consideration in accordance with the terms of such remand. Such remand shall be for a period of no more than 10 working days. The ALJ shall retain jurisdiction of the matter during such period as the matter is on remand.

(3)(i) Neither the admission of evidence beyond the written administrative record, nor any form of discovery, will be permitted in proceedings under this section unless it is first determined by the Administrative Law Judge that the applicant concern or Participant, upon written submission, has made a substantial showing, based upon credible evidence, and not mere allegation, that the Agency determination in question may have resulted from bad faith or improper behavior. Prior to any such determination, the Agency shall be afforded an opportunity to respond in writing to the submission of the applicant concern or Participant. Upon a determination by the Administrative

BEST COPY AVAILABLE

Law Judge that the applicant concern or Participant has made such a substantial showing, the Administrative Law Judge may permit appropriate discovery, and accept relevant evidence beyond the written administrative record, which is specifically limited to the alleged bad faith or improper behavior asserted by the applicant concern or Participant.

(ii) A determination by the Administrative Law Judge that the required showing set forth in paragraph (h)(3)(i) of this section has been made does not shift the burden of proof, which continues to rest with the applicant concern or the Participant.

(i) A decision rendered by the Administrative Law Judge under the authority of this section shall be the final decision of the Administration and shall be binding upon the parties and those within the employ of the Administration.

(j) Such decision shall be rendered, insofar as practicable, within ninety days after a petition for appeal is filed, and, in the event such 90-day time limit has not been met, the Administrative Law Judge shall indicate the reason therefor in the decision, when issued.

§ 124.211. Suspension of program assistance.

(a) At any time after the issuance of an initial letter of notification of termination pursuant to § 124.209(b)(1), the AA/MSB and COD may suspend contract support and all other forms of 8(a) program assistance to that concern for a period of time not to exceed the time necessary to resolve the issue of the concern's termination from the program under the procedures set forth in § 124.209 and in part 134 of this title. The institution of such a suspension will not occur in conjunction with each proposed termination, but will only occur when SBA determines that suspension of the concern's program participation is needed to protect the interests of the Government. For example, SBA will generally find that it is in the best interests of the Government to suspend a Participant where the proposed termination is based on fraud or the submission of false statements or program ineligibility.

(b) Immediately upon SBA's determination to suspend an 8(a) concern, SBA will furnish that concern with a Notice of Suspension by certified mail, return receipt requested, to the last known address of the concern. If no receipt is returned within ten calendar days from the mailing of the notice, notice will be presumed to have occurred as of that time. The Notice of Suspension will provide the following information:

(1) The reason(s) for the suspension;

(2) A statement that the suspension will continue pending the completion of further investigation or final program termination proceeding or some other specified period of time;

(3) Notice that awards of competitive and non-competitive section 8(a) subcontracts, including those which have been "self-marketed" by an 8(a) concern, will not be made during the pendency of the suspension unless it is determined by the head of the relevant procuring agency or his/her authorized representative to be in the best interest of the Government to do so, and SBA adopts that determination;

(4) Notice that the concern is obligated to complete previously awarded section 8(a) subcontracts;

(5) Notice that the suspension is effective nationally throughout the SBA;

(6) A statement that a request for a hearing on the suspension will be considered by an Administrative Law Judge in SBA's Office of Hearings and Appeals (OHA), and granted or denied as a matter of his/her discretion.

(7) A statement that the firm's Program Term is suspended effective the date of the suspension and that it will resume only if the concern's participation in the program is not terminated.

(c) *It is* contemplated that in most cases a hearing on the issue of the suspension will be afforded if the Participant requests one. However, no hearing shall be granted if the suspension is based upon advice from either the Department of Justice or the Department of Labor that such a hearing would prejudice substantial interests of the Government.

(d) The applicant concern may appeal a Notice of Suspension by filing a petition in accordance with part 134 of this title with OHA within 30 days of the date of service of a Notice of Suspension pursuant to paragraph (b) of this section. Concurrent with its filing with OHA, the concern shall also serve the AA/MSB&COD with a copy of the petition including all attachments.

(e) A request for a hearing on the suspension will be considered by an Administrative Law Judge in OHA, and granted as a matter of his/her discretion.

(f) Proceedings conducted under the authority of this section shall be conducted in accordance with the provisions of this section and part 134 of this title.

(g) For any oral hearing convened pursuant to § 134.19 of this Title resulting from a request filed in accordance with this section, the Administrative Law Judge shall give due regard to the convenience and necessity of the parties or their authorized representatives in designating the place of the oral hearing.

(h) A hearing on the suspension will commence as soon as possible following the decision of the Administrative Law Judge to grant a request, but in no case more than 20 calendar days after the Administrative Law Judge's ruling if the request is granted.

(i) At the close of such suspension hearing, the Administrative Law Judge shall issue a decision upholding or lifting the suspension. The decision of the Administrative Law Judge shall be the final Agency decision.

(j) Any program suspension which occurs in accordance with these regulations will continue in effect until such time as the SBA lifts the suspension or the 8(a) concern's participation in the program is fully terminated. If all program assistance to an 8(a) concern has been suspended under these regulations and the concern's participation in the program is not terminated, the suspension will be lifted and the Program Term remaining as of the effective date of Program Suspension will be restored to the concern. However, nothing in this paragraph precludes SBA from initiating termination, graduation or suspension proceedings at any time during the concern's Program Term.

(k) SBA does not recognize the concept of *de facto* suspension. Reinstatement of the remaining portion of a Program Term will occur only where a concern's program participation has been formally suspended by SBA in accordance with the procedures set forth in this section.

§ 124.300 Business development.

The regulations at § 124.301 through § 124.321 address the provision of various forms of assistance to 8(a) Program Participants to promote the business development of such concerns. Such assistance includes financial, management and technical assistance, and contract support.

§ 124.301 Development of business plan.

(a) *General.* In order to assist the SBA in determining the business development needs of each 8(a) Program Participant, each such Participant shall develop a comprehensive business plan, setting forth the Participant's business targets, objectives, and goals. The business plan shall be submitted to the SBA servicing field office in final form promptly after the Participant's receipt of notice of certification to participate in the 8(a) program. The Participant will not be eligible for 8(a) Program benefits until the SBA approves its business plan. The approved business plan will constitute the Participant's short and long term goals and the strategy for developmental growth to the point of economic viability independent of the 8(a) program.

(b) *Standard Industrial Classification (SIC) code designations.* The concern's primary industry classification as defined in § 124.100 and all related secondary Standard Industrial Classification (SIC) code designations shall be stated in an 8(a) concern's original business plan. Such SIC codes may be changed, and new SIC codes may be added to the business plan, however, where the conditions of § 124.302(c) are met. Once admitted to the 8(a) program, a concern will only be permitted to perform 8(a) contracts which are classified under approved SIC codes which appear in its business plan. An 8(a) concern may receive a Federal contract classified under a SIC code not contained in its business plan where the contract is not awarded through the section 8(a) program.

(c) *Contents of business plan.* The initial business plan shall contain at least the following:

(1) An analysis of market potential, competitive environment, and other business analyses estimating the Program Participant's prospects for profitable operations during the term of program participation and after graduation;

(2) An analysis of the Program Participant's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the Participant from receiving contracts other than those awarded through the 8(a) Program;

(3) Specific targets, objectives, and goals for the business development of the Participant during the next two years, utilizing the results of the analyses conducted pursuant to paragraphs (c)(1) and (c)(2) of this section;

(4) Estimates of contract awards pursuant to section 8(a) and from other sources which would be needed by the Participant to meet the specific targets, objectives and goals for the years covered by the business plan; and

(5) Such other information as SBA may require.

§ 124.302 Review and modification of business plan.

(a) *Annual review.* Each Participant shall annually review its currently approved business plan with the Business Opportunity Specialist (BOS) and shall modify such plan as may be appropriate. Any modified plan shall be submitted to the BOS for approval. A currently approved plan shall be considered the applicable plan for all program purposes until the SBA approves in writing a modified plan. SBA shall establish an anniversary date for review of the Participant's business plan and contract support forecasts. The annual review of a Participant's business plan will generally occur within 15 working days before or after the anniversary of the firm's certification of 8(a) eligibility.

(b) *Contract support forecast.* Each Participant shall annually forecast in writing its needs for contract awards for the next program year and the succeeding program year during the review of its business plan conducted under paragraph (a) of this section. Such forecast shall be included in the Participant's business plan. The forecast shall include:

(1) The aggregate dollar value of contract support to be sought under section 8(a) (sole source and competitive), reflecting compliance with the business mix requirements of § 124.312;

(2) The aggregate dollar value of non-8(a) contracts to be sought;

(3) The types of contract opportunities being sought, identified by the appropriate Standard Industrial Classification (SIC) code; and

(4) Such other information as may be requested by the SBA to aid in providing effective business development assistance to the Participant.

(c) *Changes in SIC code designations.* (1) Requests for changes in SIC code designations stated in a business plan shall be approved by SBA if it is determined that:

(i)(A) The requested SIC code represents a logical business progression for the concern;

(B) The 8(a) concern has demonstrated capacity and capability to perform in the requested SIC code; and

(C) Other applicable eligibility criteria (Walsh-Healey Act, the non-manufacturer rule, size rules, etc.) appear to be met; or

(ii) SBA erred in omitting a previously requested and supported SIC code, improperly classifying a business industry or making a typographical or other error in its letter of approval to the 8(a) concern.

(2) SBA will make a decision on such request within 45 days from the date it receives the request.

(d) *Transition management plan.* Beginning in the first year of the transitional stage of program participation under § 124.303, each Participant shall annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations after graduation. The transition management plan should be submitted to the BOS at the same time other modifications are submitted pursuant to the annual review under paragraph (a) of this section. Such plan shall set forth the same information as required under paragraph (b) of this section for the initial plan, incorporate the competitive mix requirements of § 124.312, and provide specific transition steps the Participant will take to continue its business development after the expiration of its Program Term.

§ 124.303 Stages of 8(a) program participation.

(a) *General.* Program participation is divided into two stages—a developmental stage and a transitional stage. For firms approved for 8(a) program participation after November 15, 1988, the developmental stage shall be 4 years and the transitional stage shall be 5 years unless the Participant has exited the program by one of the means set forth in § 124.110. The developmental stage is designed to assist participants to overcome their economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation follows the developmental stage and is designed to assist Participants to overcome, insofar as practicable, the remaining elements of economic disadvantage and to prepare Participants for leaving the 8(a) program.

(b) *Stages for grandfathered Program Participants.* (1) For Program Participants with five or fewer years remaining in the 8(a) program as of August 15, 1989, the program year they are in on August 15, 1989 shall be considered the first year of the transitional stage. Such Participants shall be subject to the modified business targets set forth in § 124.312.

(2) For concerns with more than five years remaining in the 8(a) program as of August 15, 1989, the stages of program participation shall be determined so that the Participant will have five years in the transitional stage. The remaining time in the program shall be considered time in the developmental stage. For example, if a Participant has seven years remaining in the program as of August 15, 1989, it will be considered to

have 2 years remaining in the developmental stage and five years in the transitional stage.

(c) *Developmental stage of program participation.* A Program Participant, if otherwise eligible, shall be qualified to receive the following assistance during the developmental stage of program participation:

(1) Sole source and competitive 8(a) contract support;

(2) Financial assistance pursuant to § 122.57 of this title;

(3) Pursuant to § 124.304, a maximum of two exemptions from the requirements of section 1(a) of the Walsh-Healey Act, 41 U.S.C. 35(a);

(4) Pursuant to § 124.305, a maximum of five exemptions from the requirements of the Miller Act (40 U.S.C. 270a through 270d) that performance bonds be issued for the protection of the United States and payment bonds be issued for the protection of persons furnishing material and labor for the construction, alteration, or repair of public buildings or public works;

(5) Pursuant to § 124.308, financial assistance from SBA for skills training or upgrading for employees or potential employees of Program Participants;

(6) The transfer of technology or surplus property owned by the United States to Program Participants by grant, license, or sale. Technology or property transferred pursuant to this paragraph must be used by the Participant during the normal conduct of its business operation and cannot be sold or transferred to any other party (other than the Government) during such concern's Program Term and for one year thereafter. A Participant must agree to these conditions prior to any transfer of technology or property; and

(7) Training sessions to assist individuals and enterprises eligible to receive 8(a) contracts in the development of business principles and strategies to enhance their ability to compete successfully for contracts in the marketplace.

(d) *Transitional stage of program participation.* A Program Participant, if otherwise eligible, shall be qualified to receive the following assistance during the transitional stage of program participation:

(1) The same assistance as that provided to Participants in the developmental stage under paragraphs (c)(1), (c)(2), (c)(6) and (c)(7) of this section;

(2) Assistance from procuring agencies (in cooperation with SBA) in forming joint ventures, leader-follower arrangements, and teaming agreements between the Participant and other Program Participants or other business concerns, in accordance with all applicable statutes and regulations, with respect to contracting opportunities for research, development, fullscale engineering or production of major systems. In the case of a requirement to be procured as a Small Business Set-aside, a Small Disadvantaged Business Set-aside, or through the 8(a) program, applicable size regulations will apply in determining whether the cooperative venture between a Participant and another business entity qualifies as a small business concern; and

(3) Training and technical assistance in transitional business planning.

§ 124.304 Statutory exemption from the Walsh-Healey Act.

(a) SBA is authorized to grant Program Participants in the developmental stage of participation a maximum of two exemptions from the requirements of section 1(a) of the Walsh-Healey Act, 41 U.S.C. 35(a). These exemptions apply only to specific 8(a) contracts with anticipated contract values under $10,000,000 (including options) and shall be used only to allow for contingent agreements by a Participant to acquire the machinery, equipment, facilities, or labor needed to perform such contracts. An exemption may be granted only where such exemption is needed to permit the firm to perform a contract which is consistent with the business development goals set forth in its approved business plan and SBA determines that the Participant is fully capable of performing the contract. SBA must be provided with a copy of the intended contingent agreement for its review prior to granting an exemption.

(b) The exemptions described in this section are authorized only until October 1, 1992 and apply only to those contracts awarded on or after August 21, 1989, the effective date fo these regulations.

§ 124.305 Statutory exemption from Miller Act bonds.

(a) *Policy.* Subject to the conditions contained in this section, SBA may exempt an 8(a) Participant in the developmental stage of program participation from any payment and performance bonds required by the Miller Act (40 U.S.C. 270a through 270d) for, and in connection with, any 8(a) construction contract whenever it is determined by SBA that the 8(a) concern is unable to obtain the requisite bond(s) from a surety for the performance of the 8(a) contract. The exercise of this authority by SBA is subject to the conditions set forth in paragraph (b) of this section.

(b) *Conditions for SBA exemption of bonding requirements.* In order to be eligible to obtain an exemption from the bonds required by the Miller Act, the following requirements must be met:

(1) The Program Participant must have been engaged in construction activities for a period of at least two years;

(2) SBA must find that the concern is otherwise eligible to receive a specific 8(a) construction contract, but is unable to obtain the requisite bond(s) required by the Miller Act for the performance of the contract;

(3) The Participant must demonstrate that it cannot obtain a bond for the performance of the requirement by submitting to SBA written denials from at least two sureties, one of which is a corporate surety and one of which is an individual surety.

(4) SBA must determine that the firm has the potential to become bondable for future contracts if assisted by the bond exemption.

(c) *Limitations.* (1) The maximum dollar value of an 8(a) contract on which a bond requirement can be exempted is $3,000,000 (including options).

(2) Exemptions from Miller Act bond requirements are available only on sole source 8(a) contracts. Exemptions will not be granted on competitive 8(a) contracts.

(3) In no event shall the exemption described in paragraph (a) of this section be construed to make SBA liable to the procuring agency, 8(a) concern or any supplier, subcontractor, laborer or others for contractual obligations entered into by the 8(a) concern under the 8(a) contract to which the exemption applies.

(4) Unless approved in writing by the Regional Administrator or his/her designee, Participant may receive an exemption for a 8(a) contract under this section. If it is performing a contract for which an exemption under this section has been granted.

(5) No Participant may receive more than a total of five exemptions under this section. Where a Participant receives an exemption for a procurement having a base year and one or more option years, a continuation of the exemption, an option which is exercised does not count as an additional exemption (i.e., an exemption on such a contract counts as one exemption, not one for the base year and one for each of the option years exercised).

(6) No further bond exemptions shall be granted where a contract for which a Participant has previously received an exemption has been terminated for default.

(d) *Protection of third parties.* The following requirements must be met before a contract will be awarded under this section. These requirements are intended to protect third parties to the contract.

(1) The 8(a) contractor must make timely payment to all persons furnishing materials or labor to the 8(a) concern in the performance of the contract.

(2) There must be established a special bank account in an institution insured by the Federal Deposit Insurance Corporation (FDIC), into which the procuring agency will deposit all payments relating to the performance of the contract, or, in the alternative, the procuring agency, at its option, shall provide for direct disbursement of contract proceeds to suppliers, subcontractors, laborers and others.

(3) All disbursements from any special bank account established shall be subject to the approval and counter signature by SBA or a third party approved in writing by the AA/MSB & COD. (This requirement for a controlled account will be satisfied if SBA makes an advance payment to the Participant pursuant to § 124.401 of these regulations and a special bank account is established in connection therewith.)

(4) The 8(a) contractor must notify persons supplying it with materials or labor in writing that the contract is exempt from the Miller Act's bonding requirement and must also notify such suppliers in writing that SBA will not be liable for payment for materials or labor. The 8(a) contractor must obtain a written acknowledgment of such notification from each supplier of materials or labor, and such acknowledgment(s) must be in SBA's possession prior to award of the contract where practicable, and, in all instances prior to payment of invoices.

(5) The requirements set forth in paragraphs (d)(1), (d)(2), (d)(3), and (d)(4) of this section must be contained in the special 8(a) contract clauses, as appropriate.

(e) *Procedure for obtaining a bond exemption.* (1) A Program Participant which seeks a bond exemption under this section may submit a written request to the applicable SBA servicing field office.

(2) Upon receipt of the request, SBA shall notify the Participant of supporting documentation that must be submitted in order to process the exemption request.

(3) If SBA preliminarily determines that a bond exemption is appropriate, SBA shall contact the procuring agency and obtain its written views with respect to the bond exemption.

(4) The views and concerns of the procuring agency will be heavily weighed in determining whether to grant a bond exemption.

(5) If the procuring agency does not concur with the bond exemption and SBA determines that an exemption should not be granted, SBA may accept the offer for another 8(a) concern.

(f) *Expiration date.* The exemptions described in this section are authorized only until October 1, 1992 and apply only to those contracts awarded on or after August 21, 1989, the effective date of these regulations.

§ 124.308 Financial assistance for skills training.

(a) SBA may pay in whole or in part the costs of training or upgrading of employees or potential employees of 8(a) concerns. An owner participating in the day-to-day management of a Participant may be considered to be an employee for purposes of this section. Payments may be made directly to the training provider or by reimbursing the Program Participant or the Participant's employee, if such reimbursement is found to be reasonable and appropriate.

(b) SBA assistance under this section is subject to the following conditions and requirements:

(1) The concern must be in the developmental stage of program participation.

(2) The 8(a) concern must document that it has explored the use of existing cost-free or cost-subsidized training programs offered by public and private sector agencies working with programs of employment and training and economic development and that no such programs are available or are capable of meeting the training needs of the participant.

(3) The concern must be current with any reporting requirements established by SBA for ongoing program participation.

(4) The employee receiving the training or upgrading may not be a beneficiary of any other publicly or privately funded training program which benefits the trainee or upgraded employee for the same activity SBA is compensating under this section.

(5) The training provider must be an institution of higher education, a community or vocational college, or an institution eligible to provide skills training under the Job Training Partnership Act (29 U.S.C. 1501, *et seq.*).

(6) The training provider may not be debarred or suspended from any Federal programs.

(7) The training of employees or potential employees of a concern must be consistent with the concern's approved business plan.

(8) SBA must approve the training in writing prior to its commencement.

(9) No more than five employees or potential employees of a single 8(a) concern may be recipients of benefits under this section at one time.

(10) The length of training or skills upgrading financed under this section may be no less than one month nor more than six months.

(11) The training of skills upgrading assistance must be of a type which will offer genuine capacity development for the employing firm.

(12) No more than $2,500 shall be made available for any one employee or potential employee.

(13) The Participant must execute and submit to SBA any appropriate written employment agreements in accordance with paragraph (f) of this section.

(c) SBA's allocation of resources appropriated for the purposes of this section shall generally be based on the identification of needs of developmental stage concerns. SBA shall evaluate training needs in the annual business plan review process, and may conduct other surveys as appropriate.

(d) Projects to be funded under this section shall be initiated by a request prepared by the 8(a) concern and submitted to SBA. SBA may request additional information before the request is processed.

(e) Assistance under this section will be made only when the agreements entered into by SBA to fund training or upgrading contain acceptable training and upgrading standards and acceptable monitoring standards and requirements to insure the integrity and effectiveness of the training or upgrading.

(f) The Participant must give adequate assurance that it will employ the trainee or upgraded employee for at least six months after the training or upgrading financed pursuant to this section has been completed. Trainees and upgraded employees must provide a similar assurance that they will remain in the employ of the 8(a) firm for such six-month period. Such assurance will consist of an appropriate written employment agreement. If a trainee or upgraded employee does not remain in the employ of the participant for at least six months after receiving such SBA-financed training or upgrading, the violating party must reimburse SBA for the amount expended together with any reasonable interest and costs incurred for collection. In addition, the violating party, whether it is the Participant, individual trainee or upgraded employee, shall be barred from receiving

any further assistance under this section. The appropriate SBA Regional Administrator, or his/her designee, may waive the reimbursement provisions of this paragraph in limited circumstances where an employee's leaving is due to an unforseen event (e.g., the employee's spouse is relocated by his/her business and the employee must move).

§ 124.307 Contractual assistance.

(a) It is the policy of SBA to enter into contracts with other Government agencies and to subcontract the performance of such contracts, pursuant to section 8(a)(1)(C) of the Small Business Act, to 8(a) Program Participants at prices which will enable such concerns to perform the contracts and earn a reasonable profit.

(b) Such subcontracts may either be sole source awards or awards attained through competition reserved for eligible Participants.

(c) Admission into the 8(a) program does not bestow a right to receive 8(a) contracts. SBA's approval of a Participant's business plan pursuant to § 124.301 does not guarantee the Participant any particular level of contract support.

(d) An 8(a) contract will be provided to a Participant only when such contract is consistent with the Participant's capabilities and business development needs, as determined by SBA.

§ 124.308 Procedures for obtaining and accepting procurements for the 8(a) program.

(a) *PCR-serviced agencies.* If an SBA Procurement Center Representative (PCR) is resident or has liaison responsibilities in a procuring agency, he/she will be responsible for screening proposed procurements for possible 8(a) contracts, in accordance with 13 CFR 125.6.

(b) *Requirement identification.* (1) A requirement for possible award may be identified by SBA, a particular Program Participant or the procuring agency itself. Once a requirement that appears suitable for the 8(a) program has been identified, SBA shall verify the appropriateness of the SIC code designation assigned to the requirement and request the procuring agency to offer the requirement to the 8(a) program.

So long as the SIC code assigned to the requirement by the procuring agency contracting officer is reasonable, the SIC Code will be accepted by SBA.

(2) If SBA and the procuring agency are unable to agree as to the proper SIC code designation for the requirement, SBA may refuse to accept the requirement for the 8(a) program, or appeal the contracting officer's determination to the head of the agency pursuant to § 124.320, or the AA/MSB & COD file a SIC code appeal to SBA's Office of Hearings and Appeals.

(3) If the requirement exceeds the thresholds established by § 124.311, the SBA will request that the requirement be offered to the 8(a) program to be competed among eligible Program Participants, unless SBA determines that there is not a reasonable expectation that at least two eligible 8(a) concerns will submit offers.

(4) If the requirement is below the thresholds established by § 124.311, the SBA may request that it be offered to the 8(a) program for possible sole source award as an open requirement or in support of the approved business plan of a specific Program Participant, or it may accept the requirement for competition upon the procuring agency's request.

(c) *Offering letter.* When a requirement is offered to the 8(a) program, the offering letter or notification from the procuring activity shall contain the following information.

(1) A description of the work to be performed or items to be delivered and a copy of the statement of work, if available;

(2) The estimated period of performance;

(3) The SIC code that applies to the principal nature of the acquisition;

(4) The anticipated dollar value of the requirement, including options, if any;

(5) Any special restrictions or geographical limitations on the requirement;

(6) The location of the work to be performed for construction and service procurements;

(7) Any special capabilities or disciplines needed for contract performance;

(8) The type of contract to be awarded, such as firm fixed price, cost reimbursement, or time and materials;

(9) The acquisition history, if any, of the requirement;

(10) The names and addresses of any small business contractors which have performed on this requirement during the previous 24 months;

(11) A statement that no solicitation for the specific acquisition has been issued as a small business set-aside or small disadvantaged business set-aside and that no other public communication (such as a notice in the Commerce Business Daily) has been made evidencing the procuring agency's clear intention to set aside the acquisition for small business or small disadvantaged business (*see* § 124.309(a));

(12) Identification of any particular 8(a) concern designated for consideration, including a brief justification, such as one of the following:

(i) The 8(a) concern, through its own efforts, marketed the requirement and caused it to be reserved for the 8(a) program; or

(ii) The acquisition is a follow-on or renewal contract and the nominated concern is the incumbent;

(13) Bonding requirements, if applicable;

(14) Identification of all 8(a) concerns which have expressed an interest in being considered for the acquisition;

(15) If the requirement is a national buy, identification of all SBA district or regional offices which have asked for the acquisition for the 8(a) program;

(16) A request that the acquisition be competitive, if appropriate, and the estimated contract value is under the applicable threshold; and

(17) Any other information that the procuring agency deems relevant or SBA requests.

(d) *Acceptance of the requirement.* Upon receipt of the procuring agency's offer, SBA will determine whether it will accept the requirement for the 8(a) program. SBA's decision whether to accept the requirement will be transmitted to the procuring agency in writing within 15 working days of receipt of the offer, unless SBA requests, and the procuring agency grants, an extension. If SBA decides to accept a sole source requirement for the 8(a) program, it will advise the procuring agency in writing. In the case of a local buy requirement, as defined in § 124.100, SBA will accept the offer both on behalf of the program and in support of the business plan of a specific Participant. In the case of a national buy requirement, as defined in § 124.100 SBA will accept the offer for the 8(a) program generally and will advise the procuring activity that SBA's appropriate field office will designate a specific Participant for contract performance. If SBA decides to accept a competitive requirement for the 8(a) program, it will send a letter to the procuring agency accepting the offer for the benefit of the 8(a) program generally. SBA is not required to accept any particular procurement for the 8(a) program.

(e) *Sole source award where procuring agency nominates a specific program participant.* If the procuring agency identifies a particular 8(a) concern for a sole source award, SBA will determine whether an appropriate match exists.

(1) Once a procurement is deemed suitable for acceptance as an 8(a) sole source contract, it will normally be accepted on behalf of the participant recommended by the procuring agency, provided that:

(i) The procurement is consistent with the Participant's business plan;

(ii) The Participant is determined by SBA to be a responsible contractor with respect to performance of the contract; and

(iii) The award of the contract would not result in the Participant exceeding its approved 8(a) business support level or the business mix requirements established under § 124.312.

(2) If an appropriate match exists, SBA will send a letter accepting the offer in support of the business plan of the identified Participant to the procuring agency. This letter will advise the procuring agency whether SBA will participate in contract negotiations or whether SBA will authorize the procuring agency to negotiate directly with the identified Program Participant. A Program Participant selected by SBA to perform a noncompetitive 8(a) contract shall, when practicable, participate in any negotiation of the terms and conditions of such contract.

(3) If SBA determines that an appropriate match with the nominated 8(a) concern does not exist based on the factors set forth in paragraph (e)(1) of this section, it will notify the affected 8(a) concern and may then select an alternate 8(a) concern, in accordance with paragraph (f)(3) of this section. It will so advise the procuring agency of its actions.

(f) *Open requirements.* When a procuring agency does not nominate a particular concern for performance of a sole source 8(a) contract (open requirement), the following additional procedures will apply:

(1) If the contract is a local buy item, SBA will examine the portfolio of 8(a) concerns for the SBA district office where the work is to be performed or the items delivered for selection of a qualified 8(a) concern. If none is found to be qualified or a match for a concern in that district is determined to be impossible or inappropriate, the requirement may be considered for other 8(a) concerns located within the region or, if appropriate, other regions.

(2) If the procurement is a national buy item, it shall be referred to SBA's Central Office in Washington, DC. The Central Office will allocate national buy requirements on an equitable basis.

(3) In cases in which SBA must select a participant for possible award from among two or more eligible and qualified participants, the selection will be based upon consideration of relevant factors, including the business development needs, compliance with

competitive business mix requirements (if applicable), financial condition, management ability, and technical capability of each participant. SBA shall make its selection based upon an examination of the business plan and procurement history of the concern as well as any supplemental materials requested and received.

(4) To the maximum extent practicable, the SBA shall promote the equitable geographic distribution of 8(a) sole source contracts.

(g) *Formal technical evaluations.* SBA will not authorize formal technical evaluations for sole source 8(a) contracts. If a procuring agency requires the performance of a formal technical evaluation among more than one 8(a) concern, the procuring agency must request that the requirement be a competitive 8(a) award. The procuring agency may request a formal two-step procurement process pursuant to section 14.5 of the FAR, 48 CFR subpart 14.5, or a standard negotiated competitive procurement. Agencies may, however, conduct informal assessments of several 8(a) firms' capabilities to perform a specific requirement, provided that the statement of work for the requirement is not released to any of the participating 8(a) firms.

(h) *Repetitive acquisitions.* In order for repetitive acquisitions to be awarded through the 8(a) program, there must be separate offers and acceptances. This enables the SBA to reassess a firm's eligibility, to evaluate the suitability of each acquisition for competitive 8(a) award, and to determine whether the requirement should continue under the 8(a) program.

§ 124.309 Barriers to acceptance.

SBA will not accept for 8(a) award proposed procurements not previously in the 8(a) program if any of the circumstances identified in paragraphs (a), (b), or (c) of this section exist.

(a) *Solicitation previously issued.* A solicitation has already been issued for the procurement as a small business set-aside, such as an Invitation for Bid (IFB) or Request for Proposal (RFP). The AA/MSB&COD may permit the acceptance of the requirement, however, under extraordinary circumstances, such as where a procuring agency had made a decision to offer the requirement to the 8(a) program before the solicitation was sent out and the procuring agency acknowledges and documents that the solicitation was in error.

(b) *Reservation as small business or SDB set-aside.* The procuring agency has expressed publicly a clear intention to reserve the procurement as a small business or small disadvantaged business (SDB) set-aside (e.g., a notice of intent to set aside a procurement published in the Commerce Business Daily which invites a response from interested small businesses). The AA/MSB&COD may permit the acceptance of the requirement, however, under extraordinary circumstances, such as where a procuring agency had made a decision to offer the requirement to the 8(a) program before the notice was sent out and the procuring agency acknowledges and documents that the notice was in error. An annual procurement forecast or solicitation of information for possible small business set aside will generally not be considered as a clear exhibition of intention to set aside a procurement for small businesses.

(c) *Adverse impact.* SBA has made a written determination that acceptance of the procurement for 8(a) award would have an adverse impact on other small business programs or on an individual small business, whether or not the affected small business is in the 8(a) program. The adverse impact concept is designed to protect small business concerns which are performing Government contracts awarded outside the 8(a) program. Adverse impact does not apply to "new" requirements. A new requirement is a requirement which has not been previously procured by the relevant procuring agency. Where a requirement is new, no small business could have performed the requirement and, thus, an impact determination need not be performed. The expansion or alteration of an existing requirement shall be considered a new requirement where the requirement is materially expanded or modified so that the ensuing requirement is not substantially similar to the prior requirement due to the magnitude of the expansion or alteration.

(1) In determining whether or not adverse impact exist, all relevant factors will be considered.

(2) SBA presumes adverse impact to exist when a small business concern has performed a specific requirement for at least 24 months, it is currently performing the requirement or finished such performance within 30 days of the procuring agency's offer of the requirement for the 8(a) program, and the estimated dollar value of the offered 8(a) award is 25 percent or more of its most recent annual gross sales (including those of its affiliates).

(d) *Release for non-8(a) competition.* In limited instances, SBA may determine that a sole source 8(a) contract being performed by either a Program Participant whose Program Term will

expire prior to contract completion, or, by a former Program Participant whose Program Term has expired within one year of the requirement may be rejected so that it may be competed outside the 8(a) program. If such a determination is made, SBA will reject the procuring agency's offer of the requirement for award through the 8(a) program. In such a case, SBA will recommend that the requirement be procured as a small business set-aside or, where appropriate, through a small disadvantaged business competition authorized by Public Law 99-661.

(1) In making such a determination, SBA will balance the importance of the contract for the (former) Participant's stability and business development needs against the needs of other Program Participants qualified to perform the requirement in order to develop in accord with their business plan. Such a determination will include consideration of whether the rejection of the requirement would seriously reduce the pool of similar types of contracts to be fulfilled through the 8(a) program. In making such determination, SBA will also seek the views of the procuring agency.

(2) A written request for the rejection of a contract must be made to SBA by the applicable (former) Participant prior to SBA's acceptance of the requirement for the 8(a) program. SBA will not reject a requirement absent such a request.

§ 124.310 Approval of lower tier subcontractors.

(a) SBA's approval must be obtained prior to a Particpant's subcontracting of the performance of an 8(a) contract to another concern.

(b) SBA will not approve any subcontracting arrangement where:

(1) The performance of work requirements set forth in § 124.314 would not be met;

(2) The proposed subcontractor has been suspended, debarred, or determined to be ineligible by any Federal agency;

(3) SBA determines that the proposed subcontractor would control the performance of the requirement;

(4) SBA determines that the proposed subcontracting relationship is not an arms length agreement; or

(5) SBA determines that the proposed subcontracting arrangement is an attempt to circumvent SBA's size regulations.

§ 124.311 8(a) competition.

(a) *Competitive thresholds.* A contract opportunity offered to the 8(a) program for award shall be awarded on the basis of a competition restricted to eligible Program Participants if:

(1) There is a reasonable expectation that at least two eligible program participants will submit offers and that award can be made at a fair market price; and

(2) The anticipated award price of the contract, including options, will exceed $5,000,000 for contracts assigned manufacturing Standard Industrial Classification (SIC) codes and $3,000,000 for all other contracts. For purposes of indefinite quantity/delivery contracts, the thresholds will be applied to the guaranteed minimum value of the contract.

Example. If the anticipated award price for a professional services requirement is determined to be $2.7 million and it is accepted as a sole source 8(a) requirement on that basis, a sole source award will be valid even if the contract price arrived at after negotiation is $3.1 million.

(b) *Effective date of thresholds.* The thresholds specified in paragraph (a) of this section shall not apply to any 8(a) requirement that has been accepted for the 8(a) program prior to October 1, 1989.

(c) *Exemption from competitive thresholds for 8(a) concerns owned by Indian tribes.* SBA may award an 8(a) subcontract on a non-competitive basis to an 8(a) concern owned and controlled by an economically disadvantaged Indian tribe, as defined in § 124.100, even if such contract exceeds the competitive thresholds set forth in paragraph (a) of this section. *See* generally, § 124.112. However, once a requirement is accepted into the 8(a) program for competition and prospective offerors have been notified of such acceptance, SBA may not remove the requirement from competition and award it to a disadvantaged Indian tribe as a sole source contract.

(d) *Competition below thresholds.* The AA/MSB&COD may, on a nondelegable basis, approve a request from a procuring agency that an 8(a) contract be competed even if the anticipated award price is not expected to exceed the dollar amounts specified in paragraph (a) of this section. Such approvals will be granted on a limited basis.

(1) This authority will be used primarily in areas where technical competitions are appropriate or when a large number of responsible 8(a) contractors exists.

(2) In determining whether to approve a request to compete an 8(a) contract below the applicable threshold amount, the AA/MSB&COD shall consider whether the requesting agency has made and will continue to make available a significant number of its contracts to the 8(a) program on a noncompetitive basis.

(3) The AA/MSB&COD shall deny a request to compete a contract having a dollar figure below the applicable threshold amount where the requirement was previously offered to the 8(a) program on a noncompetitive basis if he/she concludes that the request is based on the inability of the contracting agency and the Participant selected to perform the contract to reach an agreement on price or some other material term or condition.

(e) *Sole source above thresholds.* Where a contract opportunity exceeds the applicable threshold dollar figure and there is not a reasonable expectation that at least two eligible Program Participants will submit offers at a fair price, SBA may accept the requirement for a sole source 8(a) award if SBA determines that an eligible participant in the 8(a) portfolio is capable of performing the requirement at a fair price.

(1) For purposes of national buy procurements, SBA will accept a contract opportunity above the applicable threshold as a sole source contract only if there are not two eligible offerors in the United States capable of performing the requirement at a fair price.

(2) For purposes of local buy procurements, SBA will accept a contract opportunity above the applicable threshold as a sole source contract only if there are not two eligible offerors located in the applicable region or adjacent regions which are capable of performing the requirement at a fair price.

(f) *Procedures for competition.* (1) Competitions among eligible 8(a) participants shall be conducted by the procuring agencies in accordance with the Federal Acquisition Regulation (FAR). Such competitions shall be representative of competitions which are the normal practice in the relevant industries. Competitions need not stress price as the dominant factor, but may be based primarily on technical evaluations or other non-price related factors. Selection of a particular Program Participant by the procuring agency shall be based on specific evaluation criteria set forth in the solicitation.

(2) All solicitations for competitive 8(a) requirements shall include the appropriate SIC code for the requirement.

(3) The procuring agency shall evaluate offers pursuant to the evaluation criteria in the solicitation and the applicable FAR provisions.

(4) In a sealed bid procurement, the procuring agency shall submit to SBA a list of offerors ranked in the order of their standing for award; i.e., first low, second low, etc., with the total evaluated price for each offer, differentiating between basic and any options. In a negotiated procurement, the procuring agency shall submit to SBA an unranked list of offerors within the competitive range. Actual offered prices in a negotiated acquisition will not be submitted or revealed to SBA. SBA will make business support level and competitive business activity determinations based on the estimated fair market price of the contract.

(5) Within 5 working days after receipt of the list of offerors, the SBA will determine whether any firm identified is eligible for award of the contract, including:

(i) Whether it has the SIC code for the requirement in its approved business plan;

(ii) Whether it is small under the SIC code for the requirement;

(iii) If the firm is in the developmental stage, whether it has exceeded its approved business support level by more than 25 percent (or will exceed such level if it is awarded the contract at issue); and,

(iv) If the firm is in the transitional stage, whether it has achieved its competitive business mix targets under § 124.312. Failure to achieve the competitive business activity targets will not affect a concern's eligibility for 8(a) competitive awards if SBA and the concern have agreed upon a remedial plan and such plan does not include denial of future 8(a) awards.

(6) If the low bidder in a sealed bid procurement is determined to be ineligible by SBA, SBA shall determine the eligibility of the next low bidder. This process shall be repeated until SBA determines that an identified participant is eligible for award, or until the list is exhausted.

(7) In a negotiated procurement, the procuring agency will evaluate the offers of those firms determined by SBA to be eligible for award pursuant to paragraph (f)(5) of this section and will conduct discussions and/or negotiations with those firms deemed appropriate.

(8) After negotiaitons and/or discussions occur in a negotiated procurement, the potential awardee will be selected by the procuring agency.

(9) Award shall be made through the normal 8(a) award procedures (i.e., a prime contract between the procuring agency and SBA and a subcontract between SBA and the selected 8(a) concern).

(g) *Protest restrictions.* The eligibility of a Program Participant for a competitive 8(a) award may not be challenged by another Program Participant or any other party to SBA or to any other administrative forum as part of a bid or other contract protest. Anyone with information concerning the eligibility of a Program Participant to continue participation in the 8(a) program may submit such information to SBA in accordance with § 124.111(c).

(h) *Restricted competition.*—(1) *Competition within stages of program participation.* SBA may accept a requirement to be awarded through a competition limited to 8(a) concerns in the developmental stage of program participation or limited to concerns in the transitional stage of program participation, or may accept a requirement to be competed among firms both in the developmental and transitional stages of program participation.

(2) *SIC code requirements.* Only those Participants that have in their approved business plan the SIC code identified in the solicitation may submit offers for the requirement. A participant will be deemed ineligible for award by SBA if it submits an offer for a requirement for which it does not have an approved SIC code.

(3) *Local buy competitions.* Where a competitive 8(a) contract opportunity is a local buy requirement, the appropriate Assistant Regional Administrator for Minority Small Business and Capital Ownership Development (ARA/MSB&COD) will determine, based on his/her knowledge of the 8(a) portfolio, whether the competition should be limited only to those Program Participants located within the geographical boundaries of one or more district offices or the entire region. Only those participants located within the appropriate geographical boundaries are eligible to submit offers. If SBA determines, however, that there is not a reasonable expectation that at least two participants within such region will submit offers, SBA may authorize the procuring agency to accept offers from eligible Program Participants in one or more other adjacent regions. Without such authorization, Program Participants located outside the relevant SBA regional boundaries which submit offers shall be considered ineligible. In appropriate instances, a competition may be limited to eligible Program Participants in adjacent SBA district offices which are in different SBA regional offices where the ARA/MSB&CODs in the two relevant regions so agree.

(4) *National buy competitions.* Where a competitive 8(a) contract opportunity is a national buy requirement, all eligible Program Participants may submit offers.

§ 124.312 Competitive business mix.

(a) *General.* To ensure that 8(a) firms do not develop an unreasonable reliance on 8(a) contracts and to ease the transition of such firms into the competitive marketplace after exiting the 8(a) program, Program Participants must make maximum efforts to obtain business outside the 8(a) program.

(b) *Non-8(a) business activity targets and support levels during developmental stage.*—(1) *Attainment of targeted levels.* During the developmental stage of Program Participation, an 8(a) concern must make substantial and sustained efforts to attain the targeted dollar levels of non-8(a) revenue established in its business plan.

(2) *Maintenance of existing business base.* A business concern which enters the 8(a) program must make maximum efforts to maintain its existing business base and use the 8(a) program as a resource to strengthen the firm after its 8(a) certification.

(3) *Marketing strategy to attain targeted levels.* Every Program Participant must engage in a reasonable marketing strategy that will maximize its potential to achieve the targeted levels of non-8(a) revenue established in its business plan.

(4) *Establishing support levels.* SBA shall establish 8(a) and non-8(a) support levels by considering the firm's salesforecast and supporting data in its business plan, the firm's demonstrated capacity and capability level, current level of non-8(a) contracts on hand and the availability of 8(a) support. The aggregate dollar amount of 8(a) support provided to a Program Participant for any year of program participation during the developmental stage may not exceed the applicable 8(a) support level approved by SBA as reflected in the concern's business plan by more than 25 percent.

(5) *Increasing support levels.* An 8(a) concern in the developmental stage of program participation may request an increase in its approved 8(a) support level no more than once during a program year other than at the date of its annual review. Such request must be made in writing and must be made within 15 days (either before or after) of the six month date of its preceding annual review (e.g., if a firm's annual review occurs on June 23, the firm may request an increase in its approved 8(a)

support level between December 8 and January 7—15 days before and after December 23). A revision to a Participant's business plan may not, however, be based solely on the identification of an 8(a) contract in excess of the Program Participant's approved 8(a) support level. A Participant must demonstrate that it has increased its capacity and capability to the point that its currently approved 8(a) support level is inappropriate. The Participant's increased capacity and capability must be greater than the increased level of 8(a) support requested so that the Participant is still able to increase its non-8(a) revenue if the request is approved. Any increase in a Participant's approved 8(a) support level other than as part of the annual review process must be approved in writing by the appropriate Regional Administrator or his/her designee.

(6) *Measuring 8(a) support.* In determining whether a Program Participant has reached its approved 8(a) support level during any program year, the base year value of all 8(a) contracts awarded during that program year shall be added to the value of all options and other modifications executed during that year. In the case of an indefinite quantity contract having a guaranteed minimum condition, only the guaranteed minimum dollar amount and task orders above that amount actually issued are counted against a concern's approved 8(a) support level.

Example: During a specific program year, Program Participant X receives three 8(a) contracts as follows: (1) $1,000,000 contract—$400,000 base year, and two $300,000 options; (2) $800,000 contract—$200,000 base year, and one $200,000 option; and (3) $160,000 contract with no options. In addition, two options on 8(a) contracts awarded in a previous program year, each worth $200,000, are exercised in the program year under consideration. The 8(a) contract support received during that program year is $1,150,000.

(7) *Reporting and verification of business activity.* Once admitted to the 8(a) program, the program participant must provide SBA with quarterly and annual financial statements within 90 calendar days (180 days for audited statements) from the end of each quarter. The statements shall segregate revenues as non-8(a) and 8(a) revenue as appropriate. Also, within 30 days from the end of the program year, the Program Participant shall provide SBA with an annual report of all non-8(a) contracts, options and modifications affecting price executed during the program year.

(c) *Required Non-8(a) Business Activity Targets During Transitional Stage.*—(1) *General.* During the transitional stage of the program, the Program Participant shall be required to achieve certain targets of non-8(a) contract revenue. Such targets shall be referred to as non-8(a) business activity targets and shall be expressed as a percentage of total revenue. The targets shall reflect a reasonably consistent increase in non-8(a) revenue. Participants approved for participation on or after November 15, 1988 and Participants with more than five years remaining in the program as of August 15, 1989 shall be subject to the non-8(a) business activity targets set forth in paragraph (c)(4) of this section. Participants with five years or less remaining in the program as of August 15, 1989 shall be subject to the modified non-8(a) business activity targets set forth in paragraph (c)(5) of this section.

(2) *Establishing support levels.* During the transitional stage of the program, SBA shall establish 8(a) and non-8(a) support levels for each Program Participant. The aggregate dollar amount of 8(a) support provided to a program participant during the transitional stage may not exceed the established 8(a) support level for the applicable program year. The 8(a) support level shall be established so as to ensure that the 8(a) firm meets the non-8(a) business activity targets or the modified non-8(a) firm meets the non-8(a) business activity targets or the modified non-8(a) business activity targets set forth in paragraphs (c)(4) and (c)(5) of this section. In establishing the 8(a) support level, SBA will consider the following:

(i) The 8(a) and non-8(a) sales forecast and support data contained in the Program Participant's business plan;

(ii) Current 8(a) and non-8(a) contracts on hand;

(iii) Historical 8(a) and non-8(a) revenue and the current level of 8(a) and non-8(a) revenue;

(iv) The Program Participant's demonstrated capacity and capability level which may include current levels of 8(a) and non-8(a) revenue, current 8(a) and non-8(a) contracts on hand, working capital, access to credit, production capacity, projected increase in 8(a) revenue, and management and technical capability;

(v) The applicable 8(a) business activity target for the applicable transitional year.

(3) *Increasing support levels.* An 8(a) concern in the transitional stage of program participation may request an increase in its approved 8(a) support level once during a program year other than at the date of its annual review. Such request must be in writing and must be made within 15 days before or after of the six month date of its preceding annual review (e.g., if a firm's annual review occurs on June 23, the firm may request an increase in its approved 8(a) support level between December 8 and January 7–15 calendar days before and after December 23). A revision to a Participant's business plan may not, however, be based solely on the identification of an 8(a) contract in excess of the Program Participant's approved 8(a) support level. A Participant must demonstrate that it has increased its capacity and capability to the point that its currently approved 8(a) support level is inappropriate and that an increase in its approved support level will not conflict with the applicable non-8(a) business activity targets set forth in paragraphs (c)(4) and (c)(5) of this section.

(4) *Non-8(a) business activity targets.* Firms approved for program participation on or after the enactment of Public Law 100-656 (November 15, 1988) and current Program Participants that have more than five years remaining in the program as of August 15, 1989 shall be subject to the following non-8(a) business activity targets during each year of program participation in the transitional stage:

Program participant's year in the transitional stage	Non-8(a) business activity targets (non-8(a) revenue as a percentage of total revenue)
1	15–25
2	25–35
3	40–45
4	50–65
5	65–75

(5) *Modified non-8(a) business activity targets.* Firms that have five years or less remaining in the program as of August 15, 1989 shall be subject to modified non-8(a) business activity targets during the transitional stage of program participation.

(i) A firm with three to five years remaining in the program as of August 15, 1989 shall be subject to the following non-8(a) business activity targets:

Program participant's year in the transitional stage	Modified non-8(a) business activity targets (non-8(a) revenue as a percentage of total revenue)
1	10–15
2	15–20
3	25–30
4	30–40
5	40–50

(ii) A firm with less than three years remaining in the program as of August 15, 1989 shall make substantial and sustained efforts to attain the targeted dollar levels of non-8(a) sales approved in its business plan.

(6) *Failure to meet required non-8(a) business activity target.* Firms that fail to achieve the minimum percentage non-8(a) business activity target in any year of the transitional stage will be subject to the remedial measures set forth in paragraph (c)(12) of this section. Compliance with the applicable business activity target is measured at the end of any program year in the transitional stage of program participation (e.g., at the end of the first year in the transitional stage of program participation, non-8(a) revenue is compared to total revenue). Remedial measures, if appropriate, will be imposed during the subsequent program year (e.g., non-complaince with the required business activity target in year one of the transitional stage of program participation would cause remedial measures to be imposed in year two in the transitional stage).

(7) *Attainment of targeted levels.* The program participant must make maximum efforts to maintain and increase its targeted level of non-8(a) revenue during the transitional stage.

(8) *Marketing strategy to attain targeted levels.* The program participant must engage in a reasonable maretking strategy that will maximize its potential to achieve the targeted levels of non-8(a) revenue established in the business plan.

(9) *Measuring 8(a) support.* In determining whether a Program Participant has reached its approved 8(a) support level during any program year, the base year value of all 8(a) contracts awarded during that program year shall be added to the value of all options and other modifications executed during that year. In the case of an indefinite quantity contract having a guaranteed minimum condition, only the guaranteed minimum dollar amount and tasks orders above that amount actually issued are counted against a concern's approved 8(a) support level. (*See* example in paragraph (b)(6) of this section).

(10) *Reporting and vertification of business activity.* Program Participants during the transitional stage shall provide SBA with quarterly and annual financial statements with a breakdown of 8(a) and non-8(a) revenue within 90 days (180 days for audited statements) from the close of the reporting period. The Program Participant shall also provide SBA with quarterly and annual reports of all non-8(a) contracts, options and modifications affecting price executed during teh program year (and any other information as required by SBA) within thirty days from the end of the reporting period. At the end of each year of participation In the transitional stage, the BOS assigned to work with the participant shall review the participant's total revenues to determine whether the participant's non-8(a) revenues have met the targets estabished pursuant to paragraphs (c)(4) and (c)(5) of this section.

(11) *Certification of compliance.* Before the receipt of any 8(a) contract during the transitional stage of the program, a Program Participant must certify that it is in compliance with the non-8(a) business activity targets estabished in its business plan as approved by SBA or that it is in compliance with any remedial measures imposed by SBA pursuant to paragraph (c)(12) of this section, if such remedial measures allow the continued award of 8(a) contracts.

(12) *Remedial measures for failure to achieve non-8(a) business activity targets.* SBA is authorized to take appropriate remedial measures with respect to a Program Participant which has failed to attain the minimum required business activity targets as established in paragraphs (c)(4) and (c)(5) of this section. The type of remedial measure used depends in part on the extent to which the Participant failed to obtain and the effort expended in seeking non-8(a) business. These remedial actions include, but are not limited to:

(i) Requiring the Program Participant to obtain management and technical assistance or to obtain counseling and/or attend seminars relating to management assistance, business development, financing, marketing, or proposal preparation.

(ii) Conditioning the award of future sole source 8(a) contracts on the Participant's taking affirmative steps to expand the dollar volume of its competitive business activity, such as changes in marketing of financing strategies;

(iii) Reducing a Participant's approved level of 8(a) support;

(iv) Reducing, or eliminating, sole source 8(a) contracts;

(v) Program termination pursuant to § 124.209—program termination proceedings will be commenced where a firm makes no efforts to obtain non-8(a) revenues.

§ 124.313 Certification of SBA's competency.

(a) SBA will certify that it is competent to perform the requirement, as provided by section 8(a)(1)(A) of the Small Business Act, based on its determination that the 8(a) concern with which it intends to subcontract is responsible to perform the requirement. If SBA determines that the concern lacks the capability, competency, capacity, credit, integrity, or tenacity and perseverance to perform on a specific 8(a) subcontract, the subcontract will not be awarded to such concern. A Program Participant which has not submitted required financial statements to SBA will be deemed not responsible to receive 8(a) subcontracts. In addition, SBA will also certify whether an 8(a) concern is eligible under the Walsh-Healey Public Contracts Act, 41 U.S.C. 35(a), for each individual 8(a) subcontract.

(b) SBA's determination not to award a Program Participant a specific 8(a) subcontract because the concern lacks an element of responsibility, or is ineligible under the Walsh-Healey Public Contracts Act, does not constitute a denial of total 8(a) program participation for the purposes of section 8(a)(9) of the Small Business Act.

(c) A Participant that is determined by SBA not to be responsible to perform a sole source or competitive 8(a) contract may not seek the issuance of a Certificate of Competency pursuant to § 125.5 of this title.

§ 124.314 Performance of work by the 8(a) concern.

(a) To assure the accomplishment of the purposes of the 8(a) program, each 8(a) subcontractor must perform work equivalent to the following percentages:

(1) *Services (except construction).* In the case of an 8(a) contract for professional and/or non-professional services (except construction), at least 50 percent of the cost of contract performance incurred for labor must be expended for employees of the 8(a) concern.

(2) *Supplies (other than procurement from a regular dealer in such supplies).* In the case of an 8(a) contract for supplies, an 8(a) concern that seeks to perform the requirement as a manufacturer must perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials. This requirement does not apply to 8(a) concerns that seek to perform 8(a) supply contracts as regular dealers in such supplies.

(3) *General construction.* In the case of an 8(a) general construction contract, the 8(a) concern must perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) *Construction by special trade contractors.* In the case of an 8(a) contract for special trade construction (e.g., electrical, plumbing, mechanical), the 8(a) concern must perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(b) The Program Participant must certify in its bid or proposal that it will perform the required percentage of work with its own employees. Failure of the concern to provide such a statement will result in the firm being considered ineligible for award.

(c) For purposes of determining whether a Program Participant will perform the required percentage of the contract, the work to be performed by a subsidiary(ies) of the Participant or a concern(s) otherwise affiliated with the Participant is not counted as being performed by the Participant.

(d) *Indefinite quantity contracts.* (1) In order to ensure that the required percentage of an indefinite quantity 8(a) award is performed by the Program Participant, at any point in time the Program Participant must have performed the required percentage of the total value of the contract to that date. For a service or supply contract, this does not mean that the Program Participant must perform 50% of each task order with its own force. But, rather, the Participant is required to perform 50% of the combined total of all task orders to date. The Regional Administrator or his/her designee may waive this requirement where a large amount of subcontracting is essential in the early stages of performance before the work to be done by the Participant can be performed, provided that there are written assurances from both the Participant and the procuring agency that the contract will ultimately comply with the requirements of this section.

Example. If a Program Participant performed 90 percent of a $100,000 task order on an indefinite quantity service contract with its own work force, it would only have to perform 10 percent of a second task order for $100,000 because the concern would still have performed 50 percent of the combined total value of the contract to date ($100,000 out of $200,000).

(2) Where there is a guaranteed minimum condition in an indefinite quantity 8(a) award, the required performance of work percentage need not be met on the first task order. In such a case, however, the percentage of work to be subcontracted to other concerns by the Program Participant on the first task order may not exceed 50 percent of the total guaranteed minimum dollar value to be provided by the contract. If the first task order exceeds 50 percent of the guaranteed minimum amount, the Participant may subcontract no more than 50 percent of the guaranteed amount. Once the guaranteed minimum amount is met, the general rule for indefinite quantity contracts set forth in paragraph (d)(1) of this section applies.

Example. Where a contract guarantees a minimum of $100,000 in professional services and the first task order is for $80,000 in such services, it would be acceptable for the Program Participant to perform less than $30,000 (i.e., 50 percent of $80,000). The Program Participant could be permitted to perform only $10,000 of that first task order. In such a case, the entire remainder of the guaranteed minimum ($40,000), however, would have to be performed by the Program Participant so that the Participant would have ultimately performed $50,000 (i.e., 50% of the $100,000 guaranteed minimum).

§ 124.315 Fair market price for 8(a) awards.

(a) A "fair market price" for an 8(a) contract shall be determined by the agency offering the procurement requirement to SBA in accordance with paragraphs (a)(1) and (a)(2) of this section.

(1) The estimate of a current fair market price for a new procurement requirement, or a requirement that does not have a satisfactory procurement history, shall be derived from a price or cost analysis. Such analysis may take into account prevailing market conditions, commercial prices for similar products or services, or data obtained from any other agency. Such analysis must also consider any cost or pricing data that is timely submitted by the SBA.

(2) The estimate of a current fair market price for a procurement requirement that has a satisfactory procurement history shall be based on recent award prices adjusted to insure comparability. Such adjustments shall take into account differences in quantities, performance, times, plans, specifications, transportation costs, packaging and packing costs, labor and material costs, overhead costs, and any other additional costs which may be deemed appropriate.

(b) Upon the request of SBA, an agency offering a procurement requirement for potential award through the 8(a) program shall submit to SBA a written statement detailing the method used by the agency to estimate the current fair market price for such contract. Such statement shall be submitted within 10 working days. The procuring agency must identify the information, studies, analyses, and other data it used in making its estimate. The procuring agency's estimate of fair market price and any supporting data may not be disclosed to any potential contractor or subcontractor, other than SBA.

(c) The concern selected to perform the 8(a) contract may request SBA to protest the procuring agency's estimate of current fair market price to the Secretary of the Department or head of the agency in accordance with § 124.320(b).

§ 124.316 Contract administration.

(a) SBA may delegate, by the use of special clauses in the prime contract and subcontract, certain responsibilities for administering an 8(a) subcontract to the procuring agency.

(b) SBA may delegate to the procuring agency all subcontract administration functions except the following: the approval of novation agreements (48 CFR 42.302(a)(25)); and pertaining advance payments approved by SBA.

§ 124.317 Performance of contracts by original 8(a) concern.

(a) Subject to the provisions of paragraph (b) of this section, a contract (including options) awarded pursuant to section 8(a) of the Small Business Act on or after October 1, 1989 shall be performed by the concern that initially received such contract. If the owner or owners upon whom eligibility was based relinquishes ownership or control of such concern, or enters into any agreement to relinquish such ownership or control, such contract or option shall be terminated for the convenience of the Government. In such a case, repurchase costs or other damages cannot be assessed against the concern due solely to the provisions of this paragraph. This provision applies whether the concern that initially received 8(a) certification remains a separate legal entity after a transfer of ownership or whether the concern merges into or is acquired by another business concern.

(b) The Administrator may, as a matter of discretion and on a nondelegable basis, waive the requirements of paragraph (a) of this section if requested to do so by the original 8(a) awardee if any of the following conditions exist:

(1) When it is necessary for the owner(s) of the concern to surrender partial control of such concern on a temporary basis in order to obtain equity financing;

(2) The head of the procuring agency for which the contract is being performed certifies that termination of the contract would severely impair attainment of the agency's program objectives or missions;

(3) Ownership and control of the concern that is performing the contract will pass to another Program Participant, but only if the acquiring firm would otherwise be eligible to receive the award directly as an 8(a) contract;

(4) The individuals upon whom eligibility was based are no longer able to exercise control of the concern due to incapacity of death; and

(5) When, in order to raise equity capital, it is necessary for the disadvantaged owner(s) of the concern to relinquish ownership of a majority of the voting stock of such concern, but only if—

(i) Such concern has exited the 8(a) program;

(ii) The disadvantaged owner(s) will maintain ownership of the largest single outstanding block of voting stock (including stock held by affiliated parties); and

(iii) The disadvantaged owner(s) will maintain control of the daily business operations of the concern.

(c) Requests pursuant to paragraph (b) of this section must be made prior to the relinquishment of ownership and control except in the case of death or incapacity. A request for a waiver under paragraph (b)(4) of this section must be made as soon as possible after the incapacity or death occurs.

(d) A procuring agency may request a waiver of the requirements of paragraph (a) of this section if the head of the procuring agency certifies that termination of the contract would severely impair attainment of the agency's program objectives or missions.

(e) A concern performing an 8(a) contract must notify the SBA in writing immediately upon entering into an agreement or agreement in principle (either oral or written) to transfer all or part of its stock or other ownership interest or assets to any other party. Such an agreement could include an oral agreement to enter into a transaction to transfer interests in the future.

(f) Denial of a waiver request may be appealed to SBA's Office of Hearings and Appeals in accordance with § 124.210 and part 134 of the title.

(g) For the purposes of determining ownership and control of a concern under these regulations, any potential ownership interests (such as options or warrants) held by investment companies licensed under the Small Business Investment Act of 1958 shall not be treated as ownership interests until exercised.

(h) An 8(a) concern may not transfer the performance of an 8(a) contract to another concern, absent a waiver or authorized by this section. Such a transfer may be grounds for termination of the concern from the 8(a) program.

§ 124.318 Exercise of options and modifications.

(a) *Unpriced Options.* The exercise of an unpriced option is considered to be a new contracting action. As such, if a concern has exited the 8(a) program or is no longer small under the size standard corresponding to the SIC code for the requirement, negotiations to price the option cannot be entered into and the option cannot be exercised. If, however, the concern is still a Program Participant and is still a small business under the size standard corresponding to the SIC code for the requirement, negotiations to price the option may be entered into provided the estimated fair market price falls below the applicable threshold amount set forth in § 124.311 and, if a fair and reasonable price is negotiated, and it is otherwise consistent with program requirements, the option may be exercised. If the estimated fair market price exceeds the applicable threshold amount set forth in § 124.311, the requirement must be competed among eligible 8(a) concerns. Because this equates to a new contracting action, SBA's concurrence in the exercise of such options is required.

(b) *Priced Options.* A priced option to an 8(a) contract award may be exercised whether the concern that received the award has existed the 8(a) program and whether the concern is no longer small under the size standard corresponding to the SIC Code for the requirement, if to do so is in the best interests of the Government considering the purposes of the 8(a) program.

(c) *Modifications Beyond the Scope.* A modification beyond the scope of the initial 8(a) contract award is considered to be a new contracting action. As such, if a concern has exited the 8(a) program or is no longer small under the size standard corresponding to the SIC Code for the requirement, the modification cannot be exercised. If, however, the concern is still a Program Participant and is still a small business under the size standard corresponding to the SIC Code for the requirement, the modification may be made provided the estimated fair market price falls below the applicable threshold amount set forth in § 124.311 and other program requirements are met, since the authority exists to enter into a new 8(a) contract to fulfill the requirement. If the estimated fair market price exceeds the applicable threshold amount set forth in § 124.311, the requirement must be competed among eligible 8(a) concerns. Because this equates to a new contracting action, SBA's concurrence in the exercise of such modifications is required.

(d) *Modifications Within the Scope.* A modification within the scope of the initial 8(a) contract award may be exercised whether the concern that received the award has exited the 8(a) program and whether the concern is no longer small under the size standard corresponding to the SIC Code for the requirement.

§ 124.319 Contract termination.

(a) *Termination for default.* A decision to terminate a specific 8(a) contract for default is made by the procuring agency contracting officer in cooperation with SBA. The contracting officer will advise SBA in writing in advance of his/her intent to terminate the 8(a) contract for default. SBA may provide to the 8(a) concern any program benefits reasonably available in order to assist in preventing termination for default of the contract. SBA will advise the contracting officer of this effort. If, despite the efforts of the SBA, the procuring agency contracting officer believes grounds for termination continue to exist, he/she may terminate the 8(a) contract for default, after consulting with SBA. Such terminations shall be processed in accordance with the FAR, 48 CFR. SBA will have no liability for termination costs or reprocurement costs.

(b) *Termination for convenience.* (1) In cooperation with SBA, the procuring agency contracting officer may terminate an 8(a) contract for convenience any time it is determined to be in the best interest of the government to do so.

(2) Pursuant to § 124.317, a contract shall be terminated for convenience if the owner or owners upon whom eligibility was based relinquish ownership or control of such concern, or enter into any agreement to relinquish such ownership or control, unless a waiver is granted pursuant to § 124.317. Such terminations shall be processed in accordance with the FAR, 48 CFR.

§ 124.320 Disputes and appeals.

(a) *Contract disputes generally.* (1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, for purposes of the Disputes Clause of a specific 8(a) contract, the contracting officer is that of the procuring agency. A dispute arising between an 8(a) subcontractor and the procuring agency contracting officer will be decided unilaterally by the procuring agency contracting officer.

(2) For disputes arising out of advance payments or business development

expense funds, the contracting officer is that of SBA.

(3) For disputes arising out of construction contracts where SBA has waived bonding pursuant to § 124.305, the appropriate contracting officer depends upon the dispute. Where the dispute arises out of the disbursement of funds from the special bank account established to protect persons furnishing materials or labor to the 8(a) concern, the SBA contracting officer shall decide the dispute. In all other disputes, including disputes arising out of the performance of the contract, the procuring agency contracting officer shall decide the dispute.

(4) Decisions by contracting officers (either of SBA or a procuring agency) may be appealed as provided by the Contract Disputes Act of 1978.

(b) *SBA appeals of nonselection or terms and conditions.* (1) The Administrator of SBA may appeal the following matters to the head of the procuring agency:

(i) The decision not to make a particular procurement requirement available for award under the 8(a) program; or

(ii) The terms and conditions of a particular contract to be awarded under the 8(a) program, including selection of an appropriate SIC code.

(2) The SBA must notify the contracting officer of the Administrator's intent to appeal an adverse determination within 5 working days of the SBA's receipt of such determination. The SBA Administrator must file a written request to reconsider the adverse decision with the head of the procuring agency (appeal) within 15 working days of the SBA's notification of intent to appeal.

(3) Upon receipt of the notice of intent to appeal, the procuring agency shall suspend further action regarding the procurement until the head of the procuring agency issues a written decision on the appeal, unless the head of the procuring agency makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for a reconsideration of the adverse decision.

(4) If the Administrator's appeal is denied, the procuring agency head shall so notify the SBA, specifying the reasons for the denial. This information shall be made a part of the contract file for the requirement.

(c) An 8(a) Participant selected by the SBA to perform or negotiate an 8(a) contract may request the SBA to protest the procuring agency's estimate of the fair market price for such contract pursuant to paragraph (b) of this section.

§ 124.321 Joint venture agreements.

(a) *Prerequisites for joint venture agreement.* If approved by the AA/MCB&COD or his/her designee, an 8(a) concern may enter into a joint venture agreement, as defined in § 124.100, with another small business concern, whether or not an 8(a) participant, for the purpose of performing a specific 8(a) contract. A joint venture agreement is permissible only when the 8(a) concern lacks the necessary capacity to perform the contract on its own, and when the agreement is fair and equitable and will be of substantial benefit to the 8(a) concern.

(b) *Size limitations.* Except for certain Program Participants owned and controlled by Indian tribes, an 8(a) concern entering into a joint venture agreement with another concern is considered to be affiliated for size purposes with the other concern with respect to performance of the 8(a) subcontract. As such, the annual receipts or employees of the other concern are included in determining the size of the selected 8(a) concern. The combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the SIC code industry designated for the contract. *See* paragraph (h) of this section for joint ventures controlled by tribally-owned concerns.

(c) *Contents of joint venture agreements.* The following provisions shall be included in all joint venture agreements:

(1) A provision setting forth the purpose of the joint venture.

(2) A provision designating the parties to the joint venture as co-managers.

(3) A provision stating that not less than 51 percent of the net profits earned by the joint venture shall be distributed to the 8(a) concern.

(4) A provision providing for the establishment and administration of a special bank account in the name of the joint venture. This account shall require the signature of all participants to the joint venture or designees for withdrawal purposes. All payments due the joint venture for performance on an 8(a) subcontract shall be deposited in the special account from which all expenses incurred under the subcontract shall be paid.

(5) An itemized description of all major equipment, facilities, and other resources to be furnished by each participant to the joint venture, with a detailed schedule of cost or value of each.

(6) A provision specifying the responsibilities of the parties with regard to contract performance, source of labor and negotiation of the 8(a) contract and any subcontracts to the joint venture.

(d) *Other requirements.* Joint venture agreements are subject to the following additional requirements:

(1) The joint venture agreement must be approved in advance of contract award by AA/MSB&COD or his/her designee.

(2) An employee of the 8(a) concern must be the designated project manager responsible for contract performance.

(3) Accounting and other administrative records relating to the joint venture shall be kept in the office of the 8(a) concern, unless approval to keep them elsewhere is granted by the Regional Administrator or his/her designee upon written request. Upon completion of the contract performed by the joint venture, the final original records shall be retained by the 8(a) concern.

(4) Quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the joint venture's principals) shall be submitted to SBA not later than 45 days after each operating quarter of the joint venture.

(5) A project-end profit and loss statement shall be submitted no later than 90 days after completion of the contract including a statement of final profit distribution.

(e) *Obligation of performance.* All parties to the joint venture must sign such documents as are necessary to obligate themselves to ensure performance of the 8(a) contract.

(f) *Performance of work by 8(a) concern(s).* The 8(a) partner(s) to an eligible joint venture, and not the aggregate of all parties to the joint venture, must perform the applicable percentages of work required by § 124.314.

(g) *Inspection of records.* The SBA shall have the right to inspect the records of the joint venture without notice at any time deemed necessary.

(h) *Joint ventures with concerns owned by Indian tribes*—(1) *Exemption from size limitations.* The size limitations set forth in paragraph (b) of this section will not be applied to joint ventures entered into by an 8(a) con a owned and controlled by an economically disadvantaged Indian tribe, as defined in § 124.100, if the concern:

(i) Owns and controls 51 percent or more of the joint venture;

(ii) Is located on the reservation of or land owned by the tribe;

(iii) Performs most of its activities on such reservation or tribally owned land; and

(iv) Employs members of such tribe for at least 50 percent of its total workforce.

(2) *Identification of requirements.* Requirements suitable for joint ventures with tribally owned concerns must be identified by SBA and/or the tribally owned concern. Large business concerns may not be involved in identifying such requirements.

(3) *Limitations.* A tribally owned 8(a) concern as a party to a joint venture may receive the exemption set forth in paragraph (h) of this section on no more than two contracts.

(4) *Sunset.* This paragraph shall cease to be effective after September 30, 1991.

§ 124.401 Advance payments.

(a) *General.* (1) Advance payments are disbursements of cash made by SBA to an 8(a) concern prior to the completion of performance of a specific 8(a) subcontract and are based on anticipated performance on the part of the 8(a) concern under a particular 8(a) subcontract. Advance payments are made for the purpose of assisting the 8(a) concern to meet financial requirements pertinent to the performance of an 8(a) subcontract. Advance payments will be considered only after all other forms of financing have been considered by SBA and are determined to be either unavailable or unacceptable to support performance of the 8(a) subcontract.

(2) Advance payments may be authorized only for concerns which are current Program Participants at the time of the approval of the advance payment. A firm which has graduated from or otherwise exited the 8(a) program prior to approval is ineligible for advance payments. Where the concern will graduate from the 8(a) program during the initial performance period (base year), advance payments may be authorized only for that year, and may not be authorized for option years.

(3) The gross amount of advance payments will be determined by SBA at the time the request for such payments is approved. The gross amount of advance payments must be determined by SBA prior to commencement of performance of the contract. In no event shall the total amount of advance payments disbursed and not repaid exceed 90 percent of the outstanding unpaid proceeds of the 8(a) subcontract to which the advance payments relate. The value of unexercised options is not considered in determining the outstanding unpaid proceeds of the 8(a) subcontract. In the case of requirements and indefinite quantity type contracts, advance payments will be authorized only when a guaranteed minimum value is established in the 8(a) subcontract, and the amount of advance payments approved shall not exceed 90 percent of that guaranteed minimum. SBA must approve in writing any subsequent change in the gross amount of advance payments.

(4) All advance payments, whether disbursed by letter of credit or otherwise, and all 8(a) subcontract proceeds shall be deposited into a Special Bank Account established exclusively for that purpose pursuant to the Advance Payment clause of the 8(a) subcontract. Under no circumstances may advance payment funds be deposited in certificates of deposit or other securities. The procuring agency shall pay all 8(a) subcontract proceeds directly into the Special Bank Account until notified by SBA in writing that the advance payments have been fully liquidated. SBA will not authorize any withdrawals from the Special Bank Account that are inconsistent with the disbursement schedule established by the 8(a) subcontract under which the advance payments were made.

(5) Advance payments shall be liquidated from proceeds derived from the performance of the specific 8(a) subcontract to which they pertain or from other revenues of the business (except other advance payments). 8(a) subcontract proceeds shall be applied first to liquidate outstanding advance payments. Repayment must occur according to the liquidation schedule established by the 8(a) subcontract under which the advance payments were made.

(6) The special bank account may not be used as a revolving line of credit. The cumulative total amount of advance payments disbursed may not exceed the amount authorized by the Regional Administrator or his/her designee.

(b) *Requirements and conditions.* (1) Advance payments may be approved for an 8(a) concern only when all of the following conditions are found by SBA to exist:

(i) An 8(a) concern does not have adequate working capital to perform a specific 8(a) subcontract.

(ii) Adequate and timely private financing is not available on reasonable terms to provide necessary capital.

(iii) Progress payments based on costs at customary rates will not satisfy the working capital requirements of the 8(a) concern to perform the 8(a) subcontract.

(iv) When applicable, loan guarantees for defense production are not available.

(v) Progress payments based on costs with unusual terms will not satisfy the working capital requirements of the 8(a) concern to perform the 8(a) subcontract.

(vi) The 8(a) concern has established or agrees to establish and maintain financial records and controls which will provide for complete accountability and required reporting of advance payment funds. These records must be made available upon request for review and copying by SBA and other appropriate Federal officials.

(vii) The 8(a) concern has no unliquidated advance payments outstanding on another 8(a) subcontract which is completed, terminated or in default, unless such unliquidated advance payments are due only to the contracting agency's delay in making final payment to the 8(a) concern after it has successfully completed the 8(a) subcontract.

(2) Advance payments shall not be made to an 8(a) concern in any case in which the concern has assigned its right to receive any payment under the specific 8(a) subcontract to any person or entity.

(3) SBA shall not charge interest on advance payments disbursed pursuant to these regulations, except upon an event of default, as defined in the subcontract. When charged, interest shall be assessed at such rate as established by the Secretary of the Treasury pursuant to Public Law 92-41.

(4) Under no circumstances may a liquidation schedule be waived. However, the cognizant Regional Administrator or ARA/MSB&COD may authorize a modified liquidation schedule in appropriate cases. Such modified schedule becomes effective when contained in an appropriate modification to the subcontract.

(c) *Application and approval procedure.* The following procedures apply to the approval of advance payments:

(1) The 8(a) concern must submit a written request for advance payments to the cognizant SBA Regional Administrator or his/her designee. Such request must include such detailed documentation as SBA may specify to support 8(a) concern's need for such funds and proof that working capital financing cannot be found from financing institutions at reasonable terms.

(2) The 8(a) concern must identify a commercial bank which is a member of the Federal Reserve System in which it will establish a Special Bank Account for the deposit of advance payments and all payments made to it by the procuring agency for its performance of the 8(a)

subcontract. This special account shall be a non-interest bearing demand deposit account.

(3) The 8(a) concern must, as required by IRS regulations, select a Federal Depository into which the Federal withholding and FICA payment will be made.

(4) Upon review of all of the circumstances, the Regional Administrator or the ARA/MSB&COD shall decide whether to approve or deny a request for advance payments, and, if approval is granted, shall designate the amount thereof and the terms and conditions upon which such advance payments may be made.

(d) *Post-approval procedures.* The Contracting Officer shall be responsible for assuring that advance payments are implemented consistent with the Finding, Determination and Authorization for Advance Payments issued by the Regional Administrator or his/her designee. Before any advance payments are disbursed, the following actions must occur:

(1) The 8(a) concern must execute a note evidencing the full amount of the advance payments and any other documents needed to create and perfect such other sources of security as SBA shall require, including, but not limited to the following:

(i) Real estate, deeds of trust and mortgages;

(ii) Security agreements and financing statements; and

(iii) Personal guarantees.

(2)(i) The 8(a) concern and SBA shall execute a modification to the 8(a) subcontract adding an Advance Payment clause prior to the disbursement of any advance payments. The clause shall state the amount of the advance payments, a liquidation schedule and all other terms and conditions to govern the advance payments, consistent with the Finding, Determination and Authorization for Advance Payments issued by the Regional Administrator or ARA/MSB&COD.

(ii) The Contracting Officer, when other contract terms reducing the quantity, price or term of performance of the 8(a) prime and subcontract are modified by the procuring agency, shall initiate action to modify the Advance Payment clause and, if appropriate, the letter of credit as necessary, including but not limited to reduction of the total amount of advance payments authorized or the amount of the letter of credit and/or restructuring the liquidation schedule, to ensure that at no time during the performance of the 8(a) subcontract does the unliquidated advance payments exceed 90 percent of the unpaid value of the 8(a) subcontract.

(3) The 8(a) concern, SBA and the bank in which the Special Bank Account has been established will enter into a Special Bank Account Agreement prior to disbursement of any funds. The agreement shall specify the respective rights and responsibilities of the parties. The Agreement shall grant to SBA the unilateral right to withdraw any funds in the Special Bank Account to the extent necessary to liquidate any unliquidated advance payments.

(i) The cognizant SBA Regional Administrator shall designate at least two SBA employees to serve as countersignatories on the Special Bank Account. Withdrawals from the account will be made only upon the authorized signatures of a representative of the 8(a) concern and one of the designated SBA employees, as identified on the signature card for the Special Bank Account. Under no circumstances shall the requirement for an SBA employee countersignature be waived.

(ii) At the time that SBA disburses advance payment funds into the Special Bank Account, SBA shall obtain a paramount lien upon the Special Bank Account, any property contracted for, supplies, material and other property acquired with the advance payment funds, and the most superior lien possible upon any other security required by the Finding, Determination and Authorization for Advance Payments.

(4) Prior to disbursement of an advance payment, SBA shall modify the prime contract with the procuring agency in the following respects:

(i) Reassign contract administration authority to the extent necessary to administer the Advance Payment clause of the 8(a) subcontract to SBA's Contracting Officer.

(ii) Direct payment of all contract proceeds into the Special Bank Account until SBA issues written notice that the advance payments have been fully liquidated.

(iii) Require prompt notice of any adverse developments in contract performance, changes in the Government requirement, or of any other condition that may affect contract payments.

(iv) Require that copies of all payment vouchers issued by the procuring agency's disbursing office be sent to the Contracting Officer.

(e) *Procedures for use of Advance Payment funds.* (1) Except for repayment to SBA in appropriate circumstances, advance payment funds may be used by an 8(a) concern only for the purchase of materials, payment of labor, payment for equipment expenses, general and administrative expenses and overhead, and payments to the subcontractors of the 8(a) concern necessary for the performance of the specific 8(a) subcontract for which the advance payments were authorized. Program Participants shall follow a two-step process to gain access to advance payment funds. The first step is the disbursement of the advance payment funds from SBA, either directly or by way of letter of credit into the Special Bank Account. The second step is the withdrawal of funds from the Special Bank Account by check to pay particular contract expenses.

(2) *Disbursement of advance payment funds by SBA.* (i) SBA shall disburse advance payments through a letter of credit where the Agency anticipates that all of the following conditions exist:

(A) Its relationship with the particular 8(a) concern will last for a year or more.

(B) The cumulative disbursements to that 8(a) concern will total at least $120,000 annually.

(C) The 8(a) concern has submitted a schedule of its projected monthly advance requirements for 8(a) subcontract disbursements and SBA has reviewed it and found it to be reasonable.

(D) The 8(a) concern has established or agrees to establish and maintain financial records and controls which will provide for complete accountability and required reporting of program funds. These records must be made available upon request for review and audit by SBA and the General Accounting Office.

(ii) *Procedures for disbursements by letter of credit.* The procedures for the utilization of the letter of credit method of payment shall be in accord with 48 CFR 32.406. Where disbursement is by the letter of credit method, 8(a) concerns shall draw down funds against their letters of credit for deposit into the Special Bank Account only as needed and in such amounts necessary for its immediate cash needs under the 8(a) subcontract for which the advance payments were authorized. Such immediate cash needs shall be documented by the 8(a) concern and verified by SBA prior to draw down. The amount of each draw down against the letter of credit shall be for the minimum amount needed to satisfy immediate cash needs, taking into account other financial resources available to the 8(a) concern, including progress payments not required for the liquidation of disbursed advance payments.

(iii) In all instances not covered by paragraph (e)(2)(i) of this section, SBA shall disburse advance payments by Treasury check or electronic funds transfer. In such cases, the Contracting Officer shall request SBA's Office of Financial Operations, Denver, Colorado, to disburse the authorized amount of the advance payments into the Special Bank Account.

(3) *Procedures for withdrawal of funds from the Special Bank Account.* All payments to the 8(a) concern under the 8(a) subcontract for which advance payments were authorized, together with all disbursements of such advance payments, shall be paid into the Special Bank Account.

(i) *Liquidation of disbursed advance payments.* The funds in the Special Bank Account shall be applied by SBA first to liquidate the balance of disbursed advance payments, in accordance with the liquidation schedule in the Advance Payment clause of the 8(a) subcontract. Withdrawals for liquidation of disbursed advance payments shall be made in accordance with the procedures contained in the Advance Payment clause of the 8(a) subcontract.

(ii) *Payment of 8(a) subcontract expenses.* Any amounts in the Special Bank Account not required to liquidate disbursed advance payments shall next be applied to pay allowable and allocable costs incurred in the performance of the 8(a) subcontract for which the advance payments were authorized. To obtain withdrawals from the Special Bank Account for the payment of such costs, the 8(a) concern shall request issuance of checks for the payment of expenses to the Contracting Officer, supported by the documentation described below. Such requests shall be made sufficiently in advance of the due date for such obligations to permit the review of the request by SBA and countersignature by the designated SBA countersignatories. The 8(a) concern shall support each request for a withdrawal from the Special Bank Account by submitting to the Contracting Officer or his/her designee, to the extent applicable, the following:

(A) The original vendor invoice or original payroll record;

(B) A certified statement, dated and signed by the concern's authorized certifying official, attesting to the truth and accuracy of the vendor invoice, and/or the payroll records for the requested withdrawal, including records of direct payroll expenditures as well as labor overhead;

(C) A certification by the 8(a) concern that all Federal taxes and FICA payments are current, or a copy of any agreement with the Internal Revenue Service (IRS) providing for payment of delinquent taxes; and

(D) Documentation of overhead and general and administrative rates, using projected indirect costs applied to a valid base, which have been properly allocated to direct material, labor, or other direct costs.

(E) Where the requested withdrawal is for payroll expenses, the 8(a) concern must prepare a check for Federal taxes in the name of the tax collecting agency, or the Federal Depository selected by the 8(a) concern into which its Federal withholding and FICA payments are made, to be signed by SBA and the 8(a) concern concurrent with the check for the submitted payroll. If the amount of a check payable to IRS or to the Federal Depository is less than 25 percent of the gross payroll for the period, the 8(a) concern's authorized certifying official shall prepare a statement certifying that the amount designated as payable to IRS or to the Federal Depository is true and correct. There shall be no change of Federal Depository without obtaining the prior written consent of SBA.

(iii) *Release of residual funds after liquidation of the advance payments and payment of 8(a) subcontract expenses.* Any funds remaining in the Special Bank Account after the 8(a) subcontract has been successfully completed or terminated and after the advance payments have been fully liquidated and all allowable and allocable 8(a) subcontract performance costs have been paid shall be disbursed to the 8(a) concern. Upon receipt of the final progress payment, the Contracting Officer shall expeditiously close the Special Bank Account, executing a check withdrawing the remaining balance of the Account payable to the 8(a) concern.

(f) *Cancellation.* (1) SBA may determine that advance payments should be cancelled under appropriate circumstances, including but not limited to the following:

(i) The terms and conditions of the Advance Payment clause have not been adhered to by an 8(a) concern.

(ii) The 8(a) concern is not in compliance with its 8(a) Participation Agreement.

(iii) The 8(a) concern has been suspended pursuant to § 124.115 or has been terminated by administrative action under section 8(a)(9) of the Small Business Act, 15 U.S.C. 637(a)(9).

(2) In the event of cancellation of advance payments to an 8(a) concern, all previous advance payments made to that 8(a) concern shall become due and payable to SBA prior to the receipt of final contract payment.

§ 124.402 Business development expense.

(a) Any Business Development Expense (BDE) funds received by a Program Participant prior to the expiration of the BDE program must be used exclusively for the purposes stated in the BDE approval. Use of such funds for any other purpose may be good cause for termination from the 8(a) program pursuant to § 124.209.

(b) Any Program Participant which received BDE funds prior to the expiration of the BDE program shall maintain records to substantiate the uses for which the BDE funds have been expended.

(c) In the event of default on an 8(a) contract to which BDE funds relate, the Participant shall be liable for repayment of the full amount of the BDE to SBA.

§ 124.403 Development Assistance Program.

(a) *General.* Section 7(j)(1) of the Small Business Act provides for financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individual or enterprises eligible for assistance under sections 7(a)(11), 7(j)(10) and 8(a) of the Small Business Act. The AA/MSB&COD is responsible for coordinating and formulating policies relating to the dissemination of this assistance to small business concerns eligible for assistance under sections 7(a)(11), 7(j)(10) and 8(a) of the Small Business Act.

(b) *Services.* (1) Section 7(j)(1–2) of the Small Business Act empowers the SBA to provide through public and private organizations the management and technical assistance enumerated in paragraph (b)(3) of this section to those individuals or concerns who meet the eligibility criteria contained in sections 7(a)(1) and 8(a) of the Small Business Act.

(2) The SBA shall give preference to projects which promote the ownership, participation in ownership, or management of small businesses owned by low-income individuals and small businesses eligible to participate in the section 8(a) program.

(3) This assistance may include any or all of the following:

(i) Planning and research, including feasibility studies and market research;

(ii) The identification and development of new business opportunities;

(iii) The furnishing of centralized services with regard to public services and Federal Government programs including programs authorized under

sections 7(a)(11), 7(j)(10) and 8(a) of the Small Business Act.

(iv) The establishment and strengthening of business service agencies, including trade associations and cooperatives;

(v) The furnishing of business counseling, management training, with special emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing business, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

(4) Sections 7(j)(3) and 7(j)(9) of the Small Business Act authorize SBA to:

(i) Encourage the placement of subcontracts with small business concerns located in areas of high concentration of unemployed or low-income individuals, with small businesses owned by low-income individuals, and with small businesses eligible to receive contracts pursuant to section 8(a) of the Act. SBA may provide incentives and assistance to such business that will aid in the training and upgrading of potential subcontractors or other small business concerns eligible for assistance under sections 7(a)(11), 7(j), and 8(a) of the Small Business Act.

(ii) Coordinate and cooperate with the heads of other Federal departments and agencies, to insure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such a way as to further the purposes of sections 7(a)(11), 7(j) and 8(a) of the Small Business Act.

(c) *Eligibility.* (1) Eligibility for the assistance enumerated under paragraph (b) of this section above shall include, but not limited to:

(i) Businesses which qualify as small within the meaning of size standards prescribed in 13 CFR part 121, and which are located in urban or rural areas with a high proportion of unemployed or low-income individuals, or which are owned by such low-income individuals; and

(ii) Businesses eligible to receive contracts pursuant to section 8(a) of the Small Business Act.

(d) *Delivery of services.* (1) The financial assistance authorized for projects under paragraph (b) of this section includes assistance advanced by grant, cooperative agreement, or contract.

(2) To the extent feasible, services available under paragraph (b) of this section shall be provided in a location which is easily accessible to the individuals and small business concerns served.

(e) *Coordination and cooperation with other government agencies.* (1) The AA/MSB&COD may utilize the resources of other agencies and departments whenever practicable which can directly or indirectly support or augment the purposes of sections 7(a)(11), 7(j) and 8(a) of the Small Business Act.

(2) The AA/MSB&COD shall enter into agreements with Federal agencies and departments to further the objectives of sections 7(a)(11), 7(j) and 8(a) of the Small Business Act.

(3) The AA/MSB&COD shall encourage the placement of deposits made by the Federal Government, or by programs aided with Federal Funds, in such a way as to further the purposes of section 7(a)(11), 7(j) and 8(a) of the Small Business Act.

§ 124.404 Small Business and Capital Ownership Development Program.

Section 7(j)(10) of the Small Business Act establishes a Small Business and Capital Ownership Development program which shall provide additional assistance exclusively for small business concerns eligible to receive contracts pursuant to section 8(a) of Small Business Act. The management of the Capital Ownership Development program is vested in the AA/MSB&COD who is responsible for the oversight of the program and activities set forth in this part of these regulations. The development assistance described below shall be provided exclusively to those small business concerns eligible to receive contracts pursuant to section 8(a) of the Small Business Act. Such small business concerns shall be participants in the Small Business Capital Ownership Development program. This program shall:

(a) Assist small business concerns participating in the program to develop comprehensive business plans with specific business targets, objectives, and goals;

(b) Provide for such other nonfinancial services as deemed necessary for the establishment, preservation, and growth of small business concerns participating in the program, including but not limted to:

(1) Loan packaging,

(2) Financial counseling,

(3) Accounting and Bookkeeping assistance,

(4) Marketing assistance, and

(5) Management assistance.

(c) Assist small business concerns participating in the program to obtain equity and debt financing;

(d) Establish regular performance monitoring and reporting systems for small business concerns participating in the program to assure compliance with their business plans;

(e) Analyze and report the causes of success and failure of small business concerns participating in the program; and

(f) Provide assistance necessary to help small business concerns participating in the program to procure surety bonds. Such assistance shall include, but not be limited to:

(1) The preparation of surety bond participating forms;

(2) Special management and technical assistance designed to meet the specific needs of small business concerns participating in the program and which have received or are applying to receive a surety bond, and

(3) Preparation of all forms necessary to receive a surety bond guarantee from the SBA pursuant to Title IV, part B of the Small Business Investment Act of 1958.

§ 124.501 Miscellaneous reporting requirements.

(a) *Capability statements.* Each 8(a) concern shall annually prepare and submit to the SBA a capability statement. Such statement shall briefly describe the concern's various contract performance capabilities and shall contain the name and telephone number of the BOS assigned to the concern. SBA will submit the capability statements to appropriate procuring agencies for the purpose of matching requirements with 8(a) concerns.

(b) *Participant reports on parties assisting it and fees.* (1) Each 8(a) Program Participant shall submit semi-annually a written report to its assigned BOS to include the following information:

(i) A listing of any agents, representatives, attorneys, accountants, consultants and other parties (other than employees) receiving fees, commissions, or compensation of any kind to assist such participant in obtaining a Federal contract;

(ii) The amount of compensation received by any person listed under paragraph (b)(1)(i) of this section during the relevant reporting period along with a description of the activities performed for such compensation.

(2) The BOS will review the report and forward it to the AA/MSB&COD. Any report that raises a suspicion of improper activity shall be referred immediately to the SBA Inspector General.

(3) The failure to submit a report pursuant to the requirements of this section shall be considered good cause for the initiation of a termination proceeding pursuant to § 124.209.

(c) *Reporting requirements after exiting the 8(a) program.* Former 8(a) Program Participants shall provide such information as SBA may request concerning such former Participant's continued business operations, contract portfolio and financial condition for a period of three years following the date on which the concern exits the program. Failure to provide such information when requested may result in the nonexercise of options on contracts awarded through the 8(a) program.

Dated: August 14, 1989.

Susan S. Engeleiter,

Administrator.

[FR Doc. 89-19500 Filed 8-18-89; 1:26 pm]

BILLING CODE 8025-01-M

---

13 CFR Part 105

Standards of Conduct

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration is hereby implementing sections 402 and 403 of the Business Opportunity Development Reform Act of 1988 (Pub. L. 100-656, effective June 1, 1989). This legislation provided for certain prohibitions, reporting requirements and penalties in connection with actions by SBA employees with regard to the administration of SBA's Minority Small Business and Capital Ownership Development Program. These regulations are required to implement the requirements of the legislation.

EFFECTIVE DATE: These regulations are effective September 20, 1989.

ADDRESS: Written comments may be submitted to Martin D. Teckler, Deputy General Counsel, 1441 L Street, NW., Room 700, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Martin D. Teckler, Deputy General Counsel, (202) 653-6642.

SUPPLEMENTARY INFORMATION: As indicated above, sections 402 and 403 of Pub. L. 100-656 imposed certain requirements upon SBA and its employees in administering the Agency's Minority Small Business and Capital Ownership Development (MSB&COD) program, more commonly known as the section 8(a) program. In this regard, section 402 prohibits SBA employees who participated personally either directly or indirectly in decisionmaking responsibilities or the administration of assistance relating to a program participant from certain relationships with that participant. (§ 105.521(a)). Further, certain enumerated employees are required to submit to the Administration annual written certifications of compliance with the provisions of the statute (§ 105.521(b)). There are specified civil penalties for noncompliance along with sanctions for false certification. (§ 105.521 (c) and (d)). in this regard, certifications required under (§ 105.521(b)) will be made to SBA's Office of General Counsel by each of the enumerated individuals on a yearly basis under instructions from SBA's General Counsel.

Section 403 of the legislation is implemented by (§ 105.522. Section 105.522(a) forbids any employee to exercise or threaten to exercise authority in taking actions with respect to the section 8(a) program on the basis of political activity or affiliation. Section 105.522(b) provides penalties for violation of § 105.522(a).

This rule involves a matter of Agency management and therefore notice and comment rulemaking is not required pursuant to 5 U.S.C. 553(a)(2). Thus, this rule is being published as final. SBA does, however, solicit comment from any interested party.

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b), SBA certifies that this rule will not have a significant impact on a substantial number of small entities. For purposes of Executive Order 12291, SBA certifies that this rule is not a major rule. This rule will not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35, nor will it have federalism implications warranting preparation of a Federal Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 105

Standards of conduct.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA hereby amends 13 CFR part 105 as follows:

PART 105—[AMENDED]

1. The authority citation is revised to read:

Authority: 15 U.S.C. 634, Sec. 5, 72 Stat. 385; 15 U.S.C. 63(a)(18) and (19) as amended by Pub. L. 100-656; E.O. 11222; 3 CFR 1964-65 Comp.; 5 CFR 735-104.

2. Sections 105.521 and 105.522 are added to read as follows:

§ 105.521 Prohibited actions with respect to the Minority Small Business Program.

(a) (1) No person within the employ of the Administration shall, during the term of such employment and for a period of two years after such employment has been terminated, engage in any activity or transaction specified below with respect to any participant in the section 8(a) program which has been certified during such person's term of employment, if such person participated personally (either directly or indirectly) in decisionmaking responsibilities relating to such program participant or with respect to the administration of any assistance provided to program participants generally under section 8(a), section 7(j)(10), or section 7(a)(20) of the Small Business Act (15 U.S.C. 637(a), 636(j)(10) or 636(g)(20)).

(2) The activities and transactions prohibited by this section include:

(i) The buying, selling, or receiving (except by inheritance) of any legal or other beneficial ownership of stock or any other ownership interest in a section 8(a) program participant or the right to acquire any such interest;

(ii) The entering into or execution of any written or oral agreement (whether or not legally enforceable) to purchase or otherwise obtain any right or interest described in paragraph (a)(2)(i) of this section; or

(iii) The receipt of any other benefit or right that may be an incident of ownership of a section 8(a) program participant.

(b) The employees designated below shall annually submit a written certification to the Administration regarding compliance with the requirements of this section:

(1) Regional Administrators;

(2) District Directors;

(3) the Associate Administrator for Minority Small Business and Capital Ownership Development;

(4) employees whose principal duties relate to the award of contracts or the provision of other assistance pursuant to this subsection or section 7(j)(10); and

(5) such other employees as the Administrator may deem appropriate.

(c) Any present or former employee of the Administration who violates this section shall be subject to a civil penalty, assessed by the Attorney General, that shall not exceed 300 per centum of the maximum amount of gain such employee realized or could have realized as a result of engaging in those activities and transactions proscribed by this section.

(d) In addition to any other remedy or sanction provided for under law or regulation, any person who falsely certifies pursuant to this section shall be subject to a civil penalty under the program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812).

§ 106.522 Politically motivated activities with respect to the Minority Small Business Program.

(a) Any employee of the Administration who has authority to take, direct others to take, recommend, or approve any action with respect to any program or activity conducted pursuant to section 8(a) or section 7(j) of the Small Business Act, shall not, with respect to any such action, exercise or threaten to exercise such authority on the basis of the political activity or affiliation of any party. Employees of the Administration shall expeditiously report to the Inspector General of the Administration any such action for which such employee's participation has been solicited or directed.

(b) Any employee who willfully and knowingly violates this section shall be subject to disciplinary action, imposed by the Administrator, which may consist of separation from service, reduction in grade, suspension, or reprimand.

(c) This section shall not apply to any action taken as a penalty or other enforcement of a violation of any law, rules, or regulation prohibiting or restricting political activity.

(d) The prohibitions of and remedial measures provided for under this section with regard to such prohibitions, shall be in addition to, and not in lieu of, any other prohibitions, measures or liabilities that may arise under any other provision of law.

Dated: August 14, 1989.

Susan S. Engeleiter,

Administrator.

[FR Doc. 89–19501 Filed 8–18–89; 1:28 pm]

BILLING CODE 8025–01–M

---

13 CFR Part 134

Office of Hearings and Appeals; 8(a) Program Conforming Amendments

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule implements changes to the operational procedures of the Small Business Administration's Office of Hearings and Appeals necessitated by the Business Opportunity Development Reform Act of 1988 (Pub. L. 100–656) and its implementing regulations (part 124, subpart A of this title).

EFFECTIVE DATE: August 21, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia R. Forbes, Chief Counsel for Legislation, Small Business Administration, 1441 L Street NW., Washington, DC 20416, (202) 653–6573.

SUPPLEMENTARY INFORMATION: The Business Opportunity Development Reform Act (Reform Act), Public Law 100–656, requires the Small Business Administration (SBA) to change the procedures of its Office of Hearings and Appeals (OHA) with respect to the administrative appeal rights relating to its Minority Small Business and Capital Ownership Development Program (8(a) Program). This rule makes changes to OHA procedures in order to conform them to revised 8(a) Program rules which were proposed on March 23, 1989 (54 FR 12054) and are published in final form elsewhere in this Federal Register issue.

Section 134.1 is amended in paragraphs (b) and (c) to make clear that where inconsistencies between part 124, subpart A and part 134 exist, the provisions of part 124 are controlling. Paragraph 134.1(g)(1) is amended to require the Administrative Law Judge to first apply the standards set forth in § 124.210(h) in determining whether or not to grant an oral hearing in proceedings relating to the 8(a) Program. However, even if the standards of § 124.210(h) have not been met in a particular case, the Administrative Law Judge has the discretion to permit oral argument limited to the legal issues presented. Similarly, § 134.1(h)(2) is amended to require the ALJ to apply the provisions of § 124.210 as a prerequisite to making a decision to permit discovery in proceedings relating to the 8(a) Program.

Section 134.2(a)(15) is amended to conform the definition of "reviewing official" to the changes in § 124.32 regarding which proceedings involve initial decisions by the agency reviewing official and which involve final decisions by the agency reviewing official.

Section 134.3 is amended to clarify that OHA has jurisdiction over several types of proceedings relating to the 8(a) Program, including program graduation, program suspension and program termination, denials of program admission for certain appealable grounds and waiver of the requirement that each 8(a) contract be performed by the concern to which it was originally awarded.

Section 134.11 is amended in paragraphs (a)(2) and (c) and by adding a new paragraph (a)(7) to establish the procedure for commencing all OHA proceedings relating to the 8(a) Program, except for 8(a) program suspension. Under the procedure, a proceeding will be commenced by filing a petition with OHA no later than 45 days from the date of service of the determination of the Associate Administrator for Minority Small Business and Capital Ownership Development. 8(a) program suspensions are subject to the requirements of §§ 134.11(a)(2) and 124.211 of this chapter.

Section 134.12 is amended to conform the response time to the expended filing time for petitions in an OHA proceeding relating to the 8(a) Program. The time frame afforded will be 45 days for both filing and responding to a petition in an 8(a) program proceeding before OHA.

Section 134.13 is amended to permit amendments to pleadings and supplemental pleadings in 8(a) program proceedings before OHA only when such amendments and supplemental pleadings would not be inconsistent with the requirements of § 124.210(h), relating to limited circumstances when the ALJ will go beyond the written record of the action.

Section 134.18 is amended to reflect SBA's current personnel structure in the Office of Hearings and Appeals (OHA). The head of OHA is the Assistant Administrator for Hearings and Appeals (AA/OHA), and SBA has no Chief Administrative Law Judge. Therefore, the section is amended to provide that the AA/OHA will make assignments to Administrative Law Judges or Administrative Judges.

Section 134.19 is amended to clarify that §§ 124.206 through 124.211 are controlling for oral hearings before OHA relating to the 8(a) program.

Section 134.23 is amended to include OHA proceedings relating to the 8(a) program in the list of proceedings in which interlocutory appeals will not be entertained. Section 134.24 is amended to specify that the ALJ may grant discovery only if the determination(s) required by § 124.210(h) has (have) been made.

Section 134.32 is amended by adding a reference to OHA proceedings relating to the 8(a) program to the list of proceedings over which OHA has final decisionmaking authority and by deleting the reference to such proceedings from the list of proceedings over which OHA has initial decisionmaking authority. This is required by section 409 of the Reform Act (Pub. L. 100–656).

Compliance with Executive Orders 12291 and 12612, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

This rule merely amends agency administrative hearing procedures to conform to amendments to SBA's 8(a) program regulations (13 CFR part 124, subpart A), published in this issue of the Federal Register. Therefore, pursuant to section 553 of the Administrative Procedure Act (5 U.S.C. 553), the agency is publishing this final rule without providing an opportunity for prior notice and public comment. For such rules, the agency is similarly exempt from publishing a Regulatory Flexibility Analysis under sections 603 and 604 of the Regulatory Flexibility Act.

SBA certifies that this rule is not a major rule under E.O. 12291 because it is unlikely to have an annual economic impact of $100 million or more. This rule does not require a Federal Assessment under E.O. 12612 and imposes no new reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

Accordingly, part 134, title 13, Code of Federal Regulations, is revised as follows:

PART 134—[AMENDED]

1. The authority citation is revised to read:

Authority: 15 U.S.C. 634(b)(6) and Pub. L. 100–56, secs. 208, 409 (102 Stat. 3853).

2. Section 134.1 is amended by revising paragraph (b), the first sentence of paragraph (c), (g)(1), and the first two sentences in paragraph (h)(2), as follows:

§ 134.1 Authority and implementation policy.

* * * * *

(b) The regulations in this part represent a single, consolidated set of rules governing the conduct of all proceedings within the jurisdiction of the Office of Hearings and Appeals, except size determination and product or service classification appeals, and to the extent there may be any inconsistencies between these regulations and §§ 124.206 through 124.211, relating to administrative hearings in the 8(a) Program. The size determination and product or service classification appeals are governed by the rules set forth in § 121.11 of this chapter.

(c) Except as may be limited by statute or by §§ 124.206 through 211 of this chapter, the full panoply of formalities will be available, as appropriate, in individual cases required by law to be heard on the record in accordance with the Administrative Procedure Act (APA), the Small Business Act, as amended, the Small Business Investment Act of 1958, as amended and any other applicable statute. * * *

* * * * *

(g) * * *

(1) In APA proceedings, the requirement of an opportunity for an oral hearing on the record raises a presumption in favor of an oral hearing where requested, although resolution of APA cases on the basis of a written record is encouraged, where appropriate. In proceedings relating to the 8(a) program, the Administrative Law Judge shall first apply the standards set forth in § 124.210(h) concerning the confrontation of witnesses in determining whether to grant an oral hearing.

* * * * *

(h) * * *

(2) In the external cases, discovery beyond that which may result from pre-hearing conferences is more likely to be appropriate in some cases. This, again, is a matter that must remain within the discretion of the judge, except that in 8(a) program proceedings, the Administrative Law Judge's decision to permit such discovery shall also be guided by the provisions of § 124.210 of this chapter. * * *

3. Section 134.2 is amended by revising paragraph (a)(15) to read as follows:

§ 134.2 Definitions and miscellaneous rules.

(a) * * *

(15) "Agency reviewing official," as used in §§ 134.32(b) and 134.34, concerning initial decision means: The Administrator, in those proceedings specified in § 134.32(b)(1), (2) and (7); and the Assistant Administrator for the Office of Hearings and Appeals or an Administrative Law Judge of the Office of Hearings and Appeals, in those proceedings specified in § 134.32(b)(3), (4), (5), (6) and (8).

* * * * *

4. Section 134.3 is amended by revising paragraph (c) to read as follows:

§ 134.3 Jurisdiction and function.

* * * * *

(c) Proceedings relative to the following aspects of SBA's 8(a) Program authorized by 15 U.S.C. 637(c) and implemented by part 124, subpart A of this chapter: Program graduation (§§ 124.209 and 124.210); program termination (§§ 124.209 and 124.210); program suspension (§ 124.211) denials of program admission for certain appealable grounds (§§ 124.208 and 124.210); and waiver of the requirement that each 8(a) contract be performed by the concern to which it was originally awarded (§§ 124.210 and 124.317).

5. Section 134.11 is amended by revising paragraph (a)(2) and by adding a new paragraph (a)(7) to read as follows:

§ 134.11 Commencement proceedings.

(a) * * *

(2) Except as provided in paragraphs (a)(3), (4), (5), (6), and (7) of this section a petition shall be served and filed no later than 30 days after the date of issuance of the written Agency action to which it applies.

* * * * *

(7) In the case of a proceeding relating to the Minority Small Business and Capital Ownership Development Program (8(a) Program) pursuant to §§ 124.206 through 124.210 of this chapter, a petition meeting the requirements of § 124.210(b) of this chapter shall be filed no later than 45 days from the date of service of the determination of the Associate Administrator for Minority Small Business and Capital Ownership Development. For filing requirements relating to 8(a) program suspension, see paragraph (a)(2) of this section and § 124.211 of this chapter.

* * * * *

6. Section 134.12 is amended by revising paragraph (a) to read as follows:

§ 134.12 Answer.

(a) *Time for filing.* Except for answers in proceedings relating to the 8(a) program, the answer to a petition, order to show cause or notice shall be served and filed in accordance with §§ 134.14 and 134.15 of this part, no later than 30 days after the service of such petition, order to show cause or notice or an amendment thereto made in response to a motion for more definite statement pursuant to § 134.11(c) of this part or an amendment made pursuant to § 134.13. In proceedings relating to the 8(a) program, such answers shall be served and filed no later than 45 days after the service of the petition, order to show cause or notice, or any amendment thereto, and shall otherwise be in accordance with the requirements of this section.

* * * * *

§ 134.13 [Amended]

7. Section 134.13 is amended in paragraphs (a), (b) and (c) as follows:

BEST COPY AVAILABLE

a. In paragraph (a) by removing the period and by adding at the end thereof the following: "* * * and except that in proceedings relating to the 8(a) program, such amendments may be permitted only if the requirements of §§ 124.210 (d) and (h) have first been met."

b. In paragraph (b) by adding the following as the last sentence: "This paragraph applies to proceedings relating to the 8(a) program only when the requirements of § 124.210 (d) and (h) have been met."

c. In paragraph (c) by removing the period and adding at the end thereof the following: "* * * except that in proceedings relating to the 8(a) program, such supplemental pleadings may be permitted only if the requirements of § 124.210 (d) and (h) have first been met."

§ 134.18 [Amended]

8. Section 134.18 is amended in paragraph (a) by removing the remainder of the first sentence following the words "shall be assigned" and by substituting therefor: "by the Assistant Administrator for Office of Hearings and Appeals to an Administrative Law Judge."

§ 134.19 [Amended]

9. Section 134.19 is amended in paragraphs (a) and (b) to read as follows:

a. In paragraph (a), by removing the period and by adding at the end thereof: "* * * *Provided however,* That in proceedings relating to the 8(a) Program, an Administrative Law Judge may permit an oral hearing only if the requirements of § 124.210(h) have been met."

b. In paragraph (b), by adding the following to the beginning of the second sentence: "Except for an oral hearing in any proceeding relating to the 8(a) program, the location of which is governed by § 124.210(g), * * *".

§ 134.23 [Amended]

10. Section 134.23 is amended in paragraph (a) by removing the words "specified in § 134.32(a) (2) and (3) of this part" and substituting therefor the words "specified in § 134.32(a) (2), (3), and (4) of this part".

11. Section 134.24 is amended by designating the existing text as paragraph (a), adding a new introductory phrase to paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 134.24 Discovery.

(a) Except as provided in paragraph (b) of this section, * * *

(b) For purposes of proceedings relating to the Minority Small Business and Capital Ownership Development Program (8(a) Program), the Administrative Law Judge may permit discovery in accordance with paragraph (a) of this section only if the determination(s) required by § 124.210(h) has (have) first been made.

12. Section 134.32 is amended by adding the following new paragraph (a)(4), by removing paragraph (b)(2), and by renumbering the remaining paragraphs (b)(3) through (b)(9) as (b)(2) through (b)(8) accordingly:

§ 134.32 Finality of decisions.

(a) * * *

(4) Proceedings relating to certain aspects of the Minority Small Business and Capital Ownership Development Program (8(a) Program), authorized by 15 U.S.C. 637(a) and implemented by part 124, subpart A of this chapter: program graduations, program terminations, program suspensions, denials of entrance based on a negative finding of social disadvantage, economic disadvantage, ownership or control, and waivers pursuant to § 124.317 of this chapter.

* * * * *

Dated: August 14, 1989.

Susan S. Engeleiter,

Administrator.

[FR Doc. 89-19502 Filed 8-16-89; 1:26 pm]

BILLING CODE 8025-01-M

federal register

Monday
August 21, 1989

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 4, et al.
Federal Acquisition Regulation (FAR); Miscellaneous Amendments; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 9, 12,15, 19, 22, 23, 25, 27, 28, 31, 32, 42, 45, 52, and 53

[Federal Acquisition Circular 84-51]

RIN AC84, AC48, AC74, AC98, AB66, AC72, AC17, AC42, AC89

Federal Acquisition Regulation (FAR); Miscellaneous Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-51 amends the Federal Acquisition Regulation (FAR) with respect to the following: Reporting Contract Payments to the IRS; Deobligation of Excess Funds; Waiver of First Article Testing; Delivery of Excess Quantities; Threshold, part 15; Review of Subcontractors' Proposed Contract Costs; Termination of Defined Benefit Pension Plans; SBA Tripartite Agreements; Deletion of FAR 27.400; Requirements for Bid Guarantees; Public Relations Costs; Interest on Final Decisions; Expansion of Contract Administration Functions; Determination of Necessity for GFP; Plant Clearance Policies; Insurance, Subcontractor Certification; Indemnification and Medical Liability Insurance Clause; and Editorial changes.

EFFECTIVE DATE: September 20, 1989.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAC 84-51.

SUPPLEMENTARY INFORMATION:

A. Background

FAC 84-51, Item I. 26 U.S.C. 6041, 6041A, and 6060M contain various reporting requirements that direct Federal agencies to transmit information to the Internal Revenue Service (IRS). FAR subpart 4.9 and corresponding coverage in part 52 were developed to provide for contractors to submit their taxpayer identification number and certain related information to the appropriate contracting officer in order for Federal contracting agencies to comply with the reporting requirements.

As a result of public comments FAR coverage was revised to add a requirement that the copy of the contract sent to the paying office contain the appropriate information for the paying office to prepare necessary returns to the IRS. The definition of "common parent" was revised to comport with the draft IRS regulations. The provision at 52.204-3 was clarified to reflect that no Taxpayer Identification Number needs to be submitted where the offeror is an agency or instrumentality of the Federal Government.

FAC 84-51, Item VII. This final rule is issued by the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration to make revisions to the FAR cost principles regarding the termination of defined pension benefit plans. The Federal Register of February 9, 1987 (52 FR 4062) contained the proposed cost principle rules.

The proposed rule predicated the Government's share of the refund upon the ratio of all Government business to all business of the contractor over the ten-year period prior to the plan termination. As a result of public comments received, the final rule requires the Government's equitable share to be based upon only those Government contracts requiring certified cost or pricing data.

FAC 84-51, Item XII. Currently, there is no explicit requirement that a demand for payment be made concurrently with issuance of the final decision. This change is intended to clarify the policy of the Government concerning demands for payment so that interest will be charged on contractual debts due to the Government at the earliest practicable time.

B. Regulatory Flexibility Act

FAC 84-51, Items I, VI, VII, XI, and XII. DoD, GSA, and NASA certify that these final rules in FAC 84-51 will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because—

Item I. All taxpayers are required to have a Taxpayer Identification Number (TIN), and this rule merely requests that contractors provide that number. No comments were received on the interim rule from small entities with respect to the impact on small businesses.

Item VI. Most prime contracts, as well as subcontracts with small entities, do not require the submission of cost or pricing data. Public comments on the possible impact on small entities were sought and none were received.

Item VII. Small entities rarely establish defined benefit pension plans, but instead employ other, less administratively burdensome, deferred compensation plans. Also, no comments were received from small entities.

Item XI. Most contracts awarded to small entities are awarded on a competitive fixed-price basis, and the cost principles do not apply.

Item XII. The revisions merely clarify existing policy dealing with the timing of demands for payment of debts which are owed to the Government.

Therefore, the Regulatory Flexibility Act does not apply.

However, comments from small entities concerning the affected FAR sections will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 89-610 in correspondence pertaining to the items in FAC 84-51.

FAC 84-51, Items II, III, V, VIII, IX, X, and XIII thru XVIII. DoD, GSA, and NASA certify that the Regulatory Flexibility Act (Pub. L. 96-354) does not apply to these final rules because each revision is not a "significant revision" as defined in FAR 1.501-1; i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies.

FAC 84-51, Item IV. A Final Regulatory Flexibility Analysis pertaining to Delivery of Excess Quantities has been prepared in accordance with the Regulatory Flexibility Act of 1980, Public Law 96-354, is on file in the FAR Secretariat, and will be submitted to the Chief Counsel for Advocacy, Small Business Administration.

C. Paperwork Reduction Act

FAC 84-51, Item I. The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501, et seq., under OMB Control Number 9000-0097. This OMB report number was published in FAC 84-49 in the Federal Register on July 11, 1989 (54 FR 29278).

FAC 84-51, Items II, III, IV, VI, VII, VIII, IX, X, XII, XIII, XIV, XVI, XVII, and XVIII. The Paperwork Reduction Act (Pub. L. 96-511) does not apply because these final rules do not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

FAC 84-51, Item V. The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501, et seq., under OMB Control Number 9000-0078. Due to the reduction in the paperwork burdens, resulting from raising the threshold from $2 million to $5 million, the number of respondents will decrease by one-third. The annual reporting burden decrease should be reflected for OMB Control Number 9000-0078 as follows: Number of respondents, −100; responses per respondent, annual responses, −300; hours per response, 8; annual burden hours, −2400. Public comments concerning this request should be submitted to OMB, Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503 by September 11, 1989.

FAC 84-51, Item XV. The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501, et seq. under OMB Control Number 9000-0015.

D. Public Comments

FAC 84-51, Items I, IV, VI, VII, X, XI, XII, and XV. The comments that were received were considered by the Councils in the development of the following final rules:

Item I. On October 26, 1988, an interim rule was published in the Federal Register (53 FR 43366).

Item IV. On August 25, 1988, a proposed rule was published in the Federal Register (53 FR 32561).

Item VI. On July 7, 1988, a proposed rule was published in the Federal Register (53 FR 25572).

Item VII. On February 9, 1987, a proposed rule was published in the Federal Register (52 FR 4062).

Item X. On December 30, 1988, a proposed rule was published in the Federal Register (53 FR 532).

Item XI. On October 21, 1988, a proposed rule was published in the Federal Register (53 FR 41527).

Item XII. On January 28, 1988, a proposed rule was published in the Federal Register (53 FR 2577).

Item XV. On July 1, 1988, a proposed rule was published in the Federal Register (53 FR 25084).

List of Subjects in 48 CFR Parts 4, 9, 12, 15, 19, 22, 23, 25, 27, 28, 31, 32, 42, 45, 52, and 53

Government procurement.

Dated: August 16, 1989.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition Policy.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-51 is effective September 20, 1989.

Eleanor Spector,

Assistant Secretary of Defense for Procurement, DOD.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy, GSA.

S. J. Evans,

Associate Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84-51 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Reporting Contract Payments to the IRS

FAR 4.203 is added to provide that a copy of the Taxpayer Identification Number (TIN) and corporate status of the contractor, obtained from the provision at 52.204-3, be attached to the copy of the contract forwarded to the paying office. The definition of "common parent" at 4.901 and the provision at 52.204-3 are revised to comport with the definition in the IRS regulations. The provision at 52.204-3 clarifies that no TIN is required where the offeror is an agency or instrumentality of the Federal Government.

Item II—Deobligation of Excess Funds

FAR 4.804-1(b), 4.804-5(a) and (a)(15) are revised, and 42.302(a)(65) is added to ensure prompt deobligation of excess funds and timely administrative closeout; provide specific guidance for performing contract funds reviews to ensure that any excess funds are identified to the contracting officer to permit reprogramming before the funds expire; clarify that contract funds review is required as part of administrative closeout; and identify performance of administrative closeout procedures as a normal contract administration function.

Item III—Waiver of First Article Testing

FAR 9.308(c) is revised, and the notice to offerors that the Government may waive first article testing, is added to the clauses at 52.209-3, First Article Approval—Contractor Testing, and 52.209-4, First Article Approval—Government Testing. Placement of the notice had previously been left to agency implementation.

Item IV—Delivery of Excess Quantities

FAR 12.401 and the clause at 52.212-10, Delivery of Excess Quantities, are revised to increase the delivery of excess quantities threshold from $100 to $250 and to modify the clause title accordingly.

Item V—Threshold, Part 15

FAR 15.703(a) and (b) estimated contract value threshold is raised to $5 million, above which a make-or-buy program should generally be required in negotiated acquisitions.

Item VI—Review of Subcontractors' Proposed Contract Costs

FAR 15.804, 15.806, and 15.808, and Table 15-2 are amended to clarify the roles that the Government and its prime contractors play in pricing of subcontracts, to provide guidance on certain aspects of subcontract pricing, to consolidate requirements for ease of use, and to ensure that the Government pays fair and reasonable prices for its needs, as a result of increased management concern over subcontract pricing.

Item VII—Termination of Defined Benefit Pension Plans

FAR 31.109 is revised to add termination of defined benefit pension plans to the list of topics under "Compensation For Personal Services" for which advance agreements are encouraged.

FAR 31.201-5 and 31.205-6(j) are revised and a new clause is added at 52.215-27 to clearly establish the Government's right to receive a credit or refund for an equitable share of any reversions to contractors of pension fund assets, including those resulting from termination of defined benefit pension plans. The revised coverage requires the Government's equitable share of such reversions to be based upon the Government's participation in pension costs through those contracts with commercial organizations requiring certified cost or pricing data.

Item VIII—SBA Tripartite Agreements

FAR 19.809 and 52.219-12 are revised to explicitly permit the use of a three-party contract for 8(a) contracts, as opposed to the previous method of preparing two separate contract documents. This will permit contracting officers to use one document which contains the signatures of the SBA, the SBA's contractor, and the agency contracting officer.

Item IX—Deletion of FAR 27.400(b)

FAR 27.400 is revised to delete paragraph (b), which was added to the regulation for the sole purpose of monitoring any agency implementing regulation issued subsequent to the original paperwork clearance expiration

date, since extended, of September 30, 1988. It was never intended to serve as a sunset date for the regulations in subpart 27.4.

Item X—Requirements for Bid Guarantees

FAR 28.101-1 is revised to clarify existing policy regarding the requirement for bid guarantees.

Item XI—Public Solicitous Costs

FAR 31.205-1 is revised to delete paragraph (h) to be consistent with coverage in 31.204.

Item XII—Interest on Final Decisions

FAR 32.606(c), 32.615(c), and 33.211(a)(4)(vi) are revised to clarify the policy of the Government concerning demands for payment of contract debts owed the Government.

Item XIII—Expansion of Contract Administration Functions

FAR 42.302 is revised to add five new contract administration office functions ((a) (62), (63), (64), (65), (b)(9) and (10)), and to amend another ((a)(30)). New functions include authority to issue supplemental agreements changing packaging subcontractors and contract shipping points, authority to negotiate contract delivery schedule extensions up to 90 days on contracts with a Criticality Designator of C, authority to issue notices canceling unilateral purchase orders, authority to reduce contract line item quantities and deobligate excess funds due to inconsequential delivery shortages, and authority to change the site of origin inspection specified in firm-fixed price contracts awarded to nonmanufacturers. FAR 42.302(a)(50) is amended to provide examples of contract changes which can be accomplished by use of an administrative change.

Item XIV—Determination of Necessity for GFP

FAR 45.302-1 is revised to remove contractor unwillingness to obtain their own facilities as a basis on which the Government will provide facilities. Government officials are now required to determine the need for providing facilities prior to approving their acquisition. Government policy requires that contractors shall normally provide all facilities required for performing Government contracts. Recent studies, however, indicate that the amount of Government-owned facilities in the possession of contractors has been increasing.

Item XV—Plant Clearance Policies

FAR 45.606-3(d)(3), 45.606-3(f), 45.606-7, 45.606-8(b), 45.614(a), (b), (c), and (d), 52.245(c), 53.301-1423, and SF 1428, Inventory Verification Survey, are revised to clarify plant clearance policies and procedures. (FAR 45.606-5(d)(3) revision was previously published in FAR 84-48.)

Item XVI—Insurance, Subcontractor Certification

FAR 52.228-5, Insurance-Work on a Government Installation, is revised to eliminate the administrative burden on contracting officers to maintain copies of subcontractor's certificates of insurance. The change does not alter insurance requirements or the documentation to be held by the prime contractor.

Item XVII—Indemnification and Medical Liability Insurance Clause

FAR 52.237-7(a) is revised to conform the wording of the last sentence in paragraph (a) of the clause, requesting information from contractors on medical liability insurance, with the instructions on the requested information currently in the note at the end of the clause. The clause at 52.237-7 prescribes uniform procedures regarding nonpersonal service contracts for health care services. The clause requires that health care providers maintain medical liability insurance as a contract requirement, and indemnify the government against liability producing acts or omissions by the contractor and agents or employees of the contractor occurring during contract performance.

Item XVIII—Editorial Changes

FAR 19.601(c) is revised to correct the reference to read "see 22.608-2(f)(3)."

FAR 22.1008-5 is revised to correct the notice on each anniversary date to read "biennial" vice biannual."

FAR 23.401(a) is revised to add the words "as amended."

FAR 25.401 is revised to add Guyana, effective November 24, 1988, as a beneficiary under the Caribbean Basin Economic Recovery Act, and to remove Panama from the list of designated beneficiaries.

FAR 52.227-17 is revised to correct the prescribed reference in the introductory text to read "27.409(a)(1)(iv)."

Therefore, 48 CFR parts 4, 9, 12, 15, 19, 22, 23, 25, 27, 28, 31, 32, 42, 45, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR parts 4, 9, 12, 15, 19, 22, 23, 25, 27, 28, 31, 32, 42, 45, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

2. Section 4.203 is added to read as follows:

4.203 Taxpayer identification number information.

If the contractor has furnished a taxpayer identification number when completing the solicitation provision at 52.204-3, Taxpayer Identification, the contracting officer shall, unless otherwise provided in agency procedures, attach a copy of the completed solicitation provision as the last page of the copy of the contract sent to the paying office.

3. Section 4.804-1 is amended in paragraph (a) by adding third sentence to read as follows:

4.804-1 Closeout by the office administering the contract.

* * * * *

(b) * * * Quick closeout procedures (see 42.708) should be used, when appropriate, to reduce administrative costs and to enable deobligation of excess funds.

* * * * *

4. Section 4.804-5 is amended by revising the introductory text of paragraph (a) and by revising paragraph (a)(15) to read as follows:

4.804-5 Detailed procedures for closing out contract files.

(a) The office administering the contract is responsible for initiating (automated or manual) administrative closeout of the contract after receiving evidence of its physical completion. At the outset of this process, an initial contract funds status review shall be accomplished and, where appropriate, excess funds identified to the contracting office. When complete, the administrative closeout procedures shall ensure that—

* * * * *

(15) Contract funds review is completed and deobligation of any excess funds is recommended.

* * * * *

5. Section 4.901 is amended by revising the definition "Common parent" to read as follows:

4.901 Definitions.

"Common parent," as used in this subpart, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

* * * * *

6. Section 4.903 is amended by adding a second sentence to read as follows:

4.903 Procedures.

* * * Requirements concerning information to be transmitted to paying offices are specified in 4.203.

PART 9—CONTRACTOR QUALIFICATIONS

7. Section 9.306 is amended by revising paragraph (c) to read as follows:

9.306 Solicitation requirements.

* * * * *

(c) Inform offerors that the requirement may be waived when supplies identical or similar to those called for have previously been delivered by the offeror and accepted by the Government (see 52.209-3(h) and 52.209-4(i));

* * * * *

PART 12—CONTRACT DELIVERY OR PERFORMANCE

12.401 [Amended]

8. Section 12.401 is amended by removing in the third sentence of paragraph (c) introductory text, the words "of $100 or Less", and by removing in paragraphs (c)(1) and (c)(2) the figure "$100" and inserting in both places the figure "$250".

12.403 [Amended]

9. Section 12.403 is amended in paragraph (b) by removing the words "of $100 or Less".

PART 15—CONTRACTING BY NEGOTIATION

15.703 [Amended]

10. Section 15.703 is amended in paragraphs (a) introductory text and (b) introductory text by removing the figure "$2 million" and inserting in both places the figure "$5 million".

11. Section 15.804-6 is amended by revising in paragraph (b)(2) the basic element of cost, "Materials", in paragraph 1. of Table 15-2; by revising paragraph (g); and by removing paragraphs (h) and (i) to read as follows:

15.804-6 Procedural requirements.

* * * * *

(b) * * *

(2) * * *

Table 15-2—Instructions for Submission of a Contract Pricing Proposal

1. * * *

Materials—Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.). Include raw materials, parts, components, assemblies, and services to be produced or performed by others. For all items proposed, identify the item and show the source, quantity, and price.

Competitive Methods—For those acquisitions (e.g. subcontracts, purchase orders, material orders, etc.) over $100,000 priced on a competitive basis, also provide data showing degree of competition, and the basis for establishing the source and reasonableness of price. For interorganizational transfers priced at other than cost of the comparable competitive commercial work of the division, subsidiary, or affiliate of the contractor, explain the pricing method (see 31.205-26(e)).

Established Catalog or Market Prices/ Prices Set by Law or Regulation—When an exemption from the requirement to submit cost or pricing data is claimed, whether the item was produced by others or by the offeror, provide justification for the exemption as required by 15.804-3(e).

Noncompetitive Methods—For those acquisitions (e.g. subcontracts, purchase orders, material orders, etc.) over $100,000 priced on a noncompetitive basis, also provide data showing the basis for establishing source and reasonableness of price. For standard commercial items fabricated by the offeror that are generally stocked in inventory, provide a separate cost breakdown if priced based on cost. For interorganizational transfers priced at cost, provide a separate breakdown of cost by elements. As required by 15.806-2(a), provide a copy of cost or pricing data submitted by the prospective source in support of each subcontract, or purchase order that is either: (i) $1,000,000 or more, or (ii) both more than $100,000 and more than 10 percent of the prime contractor's proposed price. The contracting officer may require submission of cost or pricing data in support of proposals in lower amounts. Submit the results of the analysis of the prospective source's proposal as required by 15.806. When the submission of a prospective source's cost or pricing data is required as described above, it shall be included as part of the offeror's initial pricing proposal.

* * * * *

(g) The requirements for contractors to obtain cost or pricing data from prospective subcontractors, to analyze these data and to submit the results of the analyses are prescribed in 15.806.

12. Section 15.804-6 is amended by adding paragraph (e) to read as follows:

15.804-6 Contract clauses.

* * * * *

(e) *Termination of Defined Benefit Pension Plans.* The contracting officer shall insert the clause at 52.215-27, Termination of Defined Benefit Pension Plans, in all solicitations and contracts for which it is anticipated that certified cost or pricing data will be required and for which any preaward or post-award cost determinations will be subject to subpart 31.2.

13. Section 15.805-5 is amended by revising paragraph (i), by removing existing paragraphs (j) and (k), and by redesignating paragraphs (l) and (m) as new (j) and (k) to read as follows:

15.805-5 Field pricing support.

* * * * *

(i) The requirements for field pricing support reports for subcontracts are prescribed in 15.806.

* * * * *

15.806 [Amended]

14. Section 15.806 is amended by removing paragraphs (a), (b), and (c). The section heading remains.

15. Sections 15.806-1, 15.806-2, and 15.806-3 are added to read as follows:

15.806-1 General.

(a)(1) The contracting officer is responsible for the determination of price reasonableness for the prime contract. In order to make this determination, it is required that an analysis be conducted of all the relevant facts and data including subcontractor cost or pricing data required to be submitted, results of the prime or higher tier subcontractor's analyses of subcontractor proposals, the field pricing support (if any), and historical pricing data. The fact that a contractor or higher tier subcontractor has an approved purchasing system or performs an analysis of subcontractor cost or pricing data does not in any way relieve the contracting officer or field pricing support team from the responsibility to analyze the prime contractor's submission, including the subcontractor cost or pricing data. However, the prime contractor or higher tier subcontractor is responsible for conducting appropriate price and cost analysis before awarding any subcontract.

(2) Subcontractors must submit to the contractor or higher tier subcontractor, cost or pricing data or claims for exemption from the requirement to submit them. The contractor and the higher tier subcontractor shall:

(i) Conduct price analyses and, when the subcontractor is required to submit cost or pricing data, or if the contractor or higher tier subcontractor is unable to perform an adequate price analysis, cost analyses for all subcontracts,

(ii) Include the results of these analyses as part of their own cost or pricing data submission, and

(iii) When required, in accordance with 15.806-2(a), submit the

subcontractor cost or pricing data as part of their own cost or pricing data submission.

(b) Except when the subcontract prices are based on adequate price competition, on established catalog or market prices of commercial items sold in substantial quantities to the general public, or are set by law or regulation, any contractor required to submit certified cost or pricing data also shall obtain certified cost or pricing data before awarding any subcontract or purchase order expected to exceed $100,000, or issuing any modification involving a price adjustment expected to exceed $100,000 (see example of pricing adjustment at 15.804–2(a)(1)(iii)). To waive subcontractor cost or pricing data, follow the procedures at 15.804–3(i).

(c) The requirements in paragraphs (a) and (b) of this subsection, modified to relate to higher tier subcontractors rather than to the prime contractor, shall apply to lower tier subcontracts for which subcontractor cost or pricing data are required.

(d) If the prime contractor negotiates subcontract prices before negotiating the prime contract, such subcontract prices must nevertheless be reviewed and analyzed by the Government. In no instance should such negotiated subcontract prices be accepted as the sole evidence that these prices are fair and reasonable.

15.806–2 Prospective subcontractor cost or pricing data.

(a) The contracting officer shall require a contractor that is required to submit certified cost or pricing data also to submit to the Government (or cause the submission of) accurate, complete, and current cost or pricing data from prospective subcontractors in support of each subcontract cost estimate that is:

(1) $1,000,000 or more,

(2) Both more than $100,000 and more than 10 percent of the prime contractor's proposed price, or

(3) Considered to be necessary for adequately pricing the prime contract. These subcontract cost or pricing data may be submitted using a Standard Form 1411 (SF 1411), Contract Pricing Proposal Cover Sheet.

(b) The contracting officer shall require the prospective contractor to support subcontractor cost estimates below the threshold in 15.806–1(b) with any data or information (including other subcontractor quotations) needed to establish a reasonable price.

(c) If the prospective contractor satisfies the contracting officer that a subcontract will be priced on the basis of one of the exemptions in 15.806–3, the contracting officer normally shall not require submission of subcontractor cost or pricing data to the Government in that case. If the subcontract estimate is based upon the cost or pricing data of the prospective subcontractor most likely to be awarded the subcontract, the contracting officer shall not require submission to the Government of data from more than one proposed subcontractor for that subcontract.

(d) Subcontractor cost or pricing data shall be accurate, complete, and current as of the date of final price agreement given on the contractor's Certificate of Current Cost or Pricing Data. The prospective contractor shall be responsible for updating a prospective subcontractor's data.

(e) In exceptional cases, the contracting officer may, with the approval of the chief of the contracting office, excuse a prospective contractor from submitting subcontractor cost or pricing data and the required related analyses before completion of negotiations of the prime contract. The prime contractor must, however, obtain this cost or pricing data before award of the subcontract in question. Any request from a prospective contractor to be excused from submitting subcontractor data before completion of negotiations of the prime contract must be supported by an explanation as to why the data and analyses cannot be submitted in a timely manner. If excusing the prospective contractor appears to be appropriate, the contracting officer shall provide the chief of the contracting office with the prospective contractor's explanation, the contracting officer's supporting rationale, and a discussion of how the subcontract price will be determined to be fair and reasonable or what steps will be taken to protect the interest of the Government, e.g., include a contract clause that provides for negotiating an adjustment to the prime contract amount after award.

15.806–3 Field pricing reports.

(a) When obtaining field pricing support on a prime contractor proposal in accordance with 15.805–5, the contracting officer should request audit or field pricing support to analyze and evaluate the proposal of a subcontractor at any tier (notwithstanding availability of data or analyses performed by the prime contractor) if the contracting officer believes that such support is necessary to ensure reasonableness of the total proposed price. This step may be appropriate when, for example—

(1) There is a business relationship between the contractor and subcontractor not conducive to independence and objectivity;

(2) The contractor is a sole source and the subcontract costs represent a substantial part of the contract cost;

(3) The contractor has been denied access to the subcontractor's records; or

(4) The contracting officer determines that, because of factors such as the size of the proposed subcontract price, audit or field pricing support for a subcontract or subcontracts at any tier is critical to a fully detailed analysis of the prime contract proposal.

(b) When the contracting officer requests the cognizant ACO or auditor to review a subcontractor's cost estimates, the request shall include, when available, a copy of any review prepared by the prime contractor or higher tier subcontractor, the subcontractor's proposal, cost or pricing data provided by the subcontractor, and the results of the prime contractor's cost or price analysis.

(c) When the Government performs the subcontract analysis, the Government shall furnish to the prime contractor or higher tier subcontractor, with the consent of the subcontractor reviewed, a summary of the analysis performed in determining any unacceptable costs, by element, included in the subcontract proposal. If the subcontractor withholds consent, the Government shall furnish a range of unacceptable costs for each element in such a way as to prevent disclosure of subcontractor proprietary data.

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

19.601 [Amended]

16. Section 19.601 is amended in paragraph (c) by removing the citation "9.104–3(a)" and inserting in its place "22.608–2(f)(3)".

17. Section 19.809–1 is amended by adding paragraph (c) to read as follows:

19.809–1 General.

* * * * *

(c)(1) Except in procurements where SBA will make advance payments to its 8(a) subcontractor, the agency contracting officer may, as an alternative to the procedures in 19.809–1(a) and 19.809–1(b), use a single contract document for both the prime contract between the agency and SBA and the subcontract between SBA and its 8(a) subcontractor. The single contract document shall contain the information in 19.809–1(b) (1), (2), (3) and (5) and both clauses prescribed in 19.809–2. The agency shall prepare:

(i) Agency acquisition office, prime contract number, name of agency contracting officer and lines for signature, date signed, and effective date.

(ii) SBA office, SBA subcontract number, name of the SBA contracting officer, and lines for signature and date signed.

(iii) Name and lines for the 8(a) subcontractor's signature and date signed.

(2) The award form shall reference the three-party signature page by asterisks (*) in the affected blocks.

18. Section 19.809–2 is amended by revising paragraph (b) to read as follows:

19.809–2 Contract clauses.

* * * * *

(b) The contracting officer shall insert the clause at 52.219–12, Special 8(a) Subcontract Conditions, in contracts between the SBA and its 8(a) contractor. When a single contract document is used in accordance with 19.809–1(c), the contracting officer shall use the clause with its Alternate I.

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

19. Section 23.401 is amended by revising paragraph (a) to read as follows:

23.401 Authority.

(a) The statutory basis for this program is the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901, et seq.)

* * * * *

PART 25—FOREIGN ACQUISITION

25.401 [Amended]

20. Section 25.401 is amended in the definition "Caribbean Basin country", by alphabetically adding "Guyana" and by removing "Panama" from the list of designated beneficiaries.

PART 27—PATENTS, DATA, AND COPYRIGHTS

27.400 [Amended]

21. Section 27.400 is amended by removing paragraph (b) and redesignating existing paragraph (c) as new paragraph (b).

PART 28—BONDS AND INSURANCE

22. Section 28.101–1 is amended by revising paragraphs (a) and (c) to read as follows:

28.101–1 Policy on use.

(a) A contracting officer shall not require a bid guarantee unless a performance bond or a performance and payment bond is also required (see 28.102 and 28.103). Except as provided in paragraph (c) of this subsection, bid guarantees shall be required whenever a performance bond or a performance and payment bond is required.

* * * * *

(c) The chief of the contracting office may waive the requirement to obtain a bid guarantee when a performance bond or a performance and payment bond is required if it is determined that a bid guarantee is not in the best interest of the Government for a specific acquisition (e.g., overseas construction, emergency acquisitions). Class waivers may be authorized by the agency head or designee.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

23. Section 31.109 is amended by revising paragraph (h)(1) to read as follows:

31.109 Advance agreements.

* * * * *

(h) * * *

(1) Compensation for personal services, including but not limited to allowances for off-site pay, incentive pay, location allowances, hardship pay, cost of living differential, and termination of defined benefit pension plans;

* * * * *

24. Section 31.201–5 is amended by adding a second sentence to read as follows:

31.201–5 Credits.

* * * See 31.205–6(j)(4) for rules related to refund or credit to the Government upon termination of an overfunded defined benefit pension plan.

31.205–1 [Amended]

25. Section 31.205–1 is amended by removing paragraph (h).

26. Section 31.205–6 is amended by removing in the last sentence of paragraph (j)(2) the words "subparagraphs (j) (3), (4), (5), and (7)" and inserting in their place "subparagraphs (j) (3) through (6)"; by removing in paragraph (j)(2)(iii) the words "paragraph (j)(6) below" and inserting "subparagraph (j)(7) of this subsection"; by redesignating existing paragraphs (j) (4), (5), (6), and (7) as (j) (5), (6), (7), and (8), and adding a new (j)(4) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(j) * * *

(4) *Termination of defined benefit pension plans.* When excess or surplus assets revert to the contractor as a result of termination of a defined benefit pension plan, or such assets are constructively received by it for any reason, the contractor shall make a refund or give a credit to the Government for its equitable share. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which certified (see 15.804) cost or pricing data were submitted or which are subject to subpart 31.2.

* * * * *

PART 32—CONTRACT FINANCING

27. Section 32.608 is amended by revising paragraph (c) to read as follows:

32.608 Negotiation of contract debts.

* * * * *

(c) For unilateral debt determinations, the contracting officer shall issue a decision as required by the clause at 52.233–1, Disputes. Such decision shall include a demand for payment (see 33.211(a)(4)(vi)). No demand for payment under 32.610 shall be issued prior to a contracting officer's final decision. A copy of the final decision shall be sent to the appropriate finance office.

32.610 [Amended]

28. Section 32.610 is amended by removing the first sentence in paragraph (c).

PART 33—PROTESTS, DISPUTES, AND APPEALS

29. Section 33.211 is amended by removing in paragraph (a)(4)(iv) the word "and" at the end of the sentence; by removing in paragraph (a)(4)(v) the period at the end of the sentence and inserting in its place "; and"; and by adding paragraph (a)(4)(vi) to read as follows:

33.211 Contracting officer's decision.

(a) * * *

(4) * * *

(vi) Demand for payment prepared in accordance with 32.610(b) in all cases where the decision results in a finding that the contractor is indebted to the Government.

* * * * *

PART 42—CONTRACT ADMINISTRATION

30. Section 42.302 is amended by revising paragraph (a)(56); and by adding paragraphs (a)(62), (a)(63),

(a)(64), (a)(65), (b)(9), and (b)(10) to read as follows:

42.302 Contract administration functions.

(a) * * *

(59) Issue administrative changes, correcting errors or omissions in typing, contractor address, facility or activity code, remittance address, computations, which do not require additional contract funds, and other such changes (see 43.101).

* * * * *

(62) Negotiate and/or execute supplemental agreements, as required, making changes in packaging subcontractors or contract shipping points.

(63) Cancel unilateral purchase orders when notified of nonacceptance by the contractor. The ACO shall notify the contracting officer when the purchase order is canceled.

(64) Negotiated and execute one-time supplemental agreements providing for the extension of contract delivery schedules up to 90 days on contracts with an assigned Critically Designator of C (see 42.1105). Notification that the contract delivery schedule is being extended shall be provided to the contracting office. Subsequent extensions on any individual contract shall be authorized only upon concurrence of the contracting office.

(65) Accomplish administrative closeout procedures (see 4.804).

(b) * * *

(9) Execute supplemental agreements on firm-fixed price supply contracts to reduce required contract line item quantities and deobligate excess funds when notified by the contractor of an inconsequential delivery shortage, and it is determined that such action is in the best interests of the Government, notwithstanding the default provisions of the contract. Such action will be taken only upon the written request of the contractor and, in no event shall the total downward contract price adjustment resulting from an inconsequential delivery shortage exceed $250.00 or 5 percent of the contract price, whichever is less.

(10) Execute supplemental agreements to permit a chance in place of inspection at origin specified in firm fixed-price supply contracts awarded to nonmanufacturers, as deemed necessary to protect the Government's interests.

* * * * *

PART 45—GOVERNMENT PROPERTY

31. Section 45.302–1 is amended by revising the introductory text of paragraph (a) and by revising paragraph (a)(4) to read as follows:

45.302–1 Policy.

(a) Contractors shall furnish all facilities required for performing Government contracts except as provided in this subsection. Government facilities provided to contractors shall be individually identified in the solicitation, if possible, and contract. Agencies shall not furnish facilities to contractors for any purpose, including restoration, replacement, or modernization, except as follows:

* * * * *

(4) When, as a result of the prospective contractor's written statement asserting inability to obtain facilities, the agency head or designeee issues a Determination and Finding (see subpart 1.7) that the contract cannot be fulfilled by any other practical means or that it is in the public interest to provide the facilities.

(i) If the contractor's inability to provide facilities is due to insufficient lead time, the Government may provide existing facilities until the contractor's facilities can be installed.

(ii) Mere assertion by a contractor that it is unable to provide facilities is not, in itself, sufficient to justify approval. Appropriate Government officials must determine that providing Government facilities is justified.

(iii) The determination shall include findings that private financing of the facilities was sought but not available or that private financing was determined not advantageous to the Government. The determination shall also state that the contract cannot be accomplished without Government facilities being provided.

(iv) The original determination shall be included in the contract file.

(v) No determination is required when the facilities are provided as components of special tooling or special test equipment acquired or fabricated at Government expense.

* * * * *

45.606–5 [Amended]

32. Section 45.606–5 is amended by removing paragraph (f).

33. Section 45.606–7 is revised to read as follows:

45.606–7 Reimbursement of costs for transfer of contractor inventory.

The contracting agency shall not be reimbursed for the acquisition cost of any property selected by another agency or for overhead or administrative costs associated with such property. The transferree will pay any transportation costs that are not the contractor's responsibility. Costs for packing, crating, preparation for shipment, and loading of contractor inventory are chargeable to the contract for assets subject to the Government property clauses at 52.245–2, Government Property (Fixed-Price Contracts) and 52.245–5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-hour Contracts), and such costs are ordinarily included in the contractor's settlement proposal for termination inventory. The transferee will pay such costs for property subject to 52.245–7, Government Property (Consolidated Facilities), or 52.245–10, Government Property (Facilities Acquisition), or 52.245–11, Government Property (Facilities Use), unless such costs are otherwise the contractor's responsibility. The contract administration office is responsible for obtaining packing, crating, and handling service. To accelerate plant clearance, the transferee shall include all appropriate data, including funding data, in the transfer or shipping document.

34. Section 45.608–8 is amended in paragraph (b) by revising items 5, 13, 17, and paragraph (3) of item 18 to read as follows:

45.608–8 Report of excess personal property (SF 120).

* * * * *

(b) All items on the form are self-explanatory except as follows:

* * * * *

Item 5, To. Enter the name(s) and address(es) of the screening agencies or the GSA regional office cognizant of the location of the property. (ADPE, except supply items under $1,500, is reported to the Central Office, GSA.)

* * * * *

Item 13, FSC group number, if known. If inventory schedules contain multiple FSC groups, insert "See Inventory Schedules."

* * * * *

Item 17, Surplus release date (see 45.608–2).

* * * * *

Item 18, * * * The following notation: "It is imperative that fund appropriations for the transportation of the materials be furnished with the transfer order." If, pursuant to 45.606–7, the transferee is responsible for funding, packing, crating, and handling, include this additional notation: "Fund appropriations for packing, crating, and handling of inventory described herein must also be provided by the transferee."

* * * * *

35. Section 45.614 is amended in paragraph (a) by removing the parenthetical reference "(see 49.108)" and inserting in its place the reference "(see 49.108–4)"; by adding in paragraph (b) a fifth sentence; by removing in paragraph (c) the first sentence; and by revising paragraph (d) to read as follows:

45.614 Subcontractor inventory.

* * * * *

(b) * * * This includes review and, if necessary, physical survey of subcontractor inventory that is contained in a termination settlement proposal to assure that it is physically, technically, and quantitatively allocable to the contract, and cannot be reasonably diverted to other work of the subcontractor.

* * * * *

(d) Contract administration offices shall assure that prime contractors have performed adequate allocability reviews of subcontractor inventory and have determined that materials reasonably usable on other prime or subcontractor work are not included in a termination settlement proposal. The plant clearance officer for the prime contractor plant is responsible for determining the adequacy of screening, allocability reviews, and proper crediting of proceeds for the disposal of subcontractor inventory by the prime contractor. Assistance should generally be secured from other officers for verification, determination of allocability, local screening, and plant clearance action when property is located outside the geographic area of the cognizant contract administration office.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

36. Section 52.204–3 is amended in the title of the provision by removing the date "(NOV 1988)" and inserting in its place "(SEP 1989)"; by revising in the provision the definition "Common parent"; and by revising in paragraph (c) the third condition when TIN is not required to read as follows:

52.204–3 Taxpayer identification.

* * * * *

"Common parent," as used in this solicitation provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

* * * * *

(c) * * *

* * * * *

☐ TIN is not required because:

* * * * *

☐ Offeror is an agency or instrumentality of a Federal, state, or local government;

* * * * *

37. Section 52.209–3 is amended by revising the introductory text; by removing in the title of the clause the date "(APR 1984)" and inserting in its place "(SEP 1989)"; by adding paragraph (h) to the clause; by removing the derivation line following "(End of clause)"; by revising the introductory text of Alternates I and II; by redesignating paragraphs (h) and (i) in Alternate I; and by removing both derivation lines following Alternates I and II, to read as follows:

52.209–3 First article approval—Contractor Testing.

As prescribed in 9.308–2 (a) and (b), insert the following clause:

* * * * *

(h) The Government may waive the requirement for first article approval test where supplies identical or similar to those called for in the schedule have been previously furnished by the offeror/contractor and have been accepted by the Government. The offeror/contractor may request a waiver.

(End of clause)

Alternate I (SEP 1989). As prescribed in 9.308–1 (a)(2) and (b)(2), add the following paragraph (i) to the basic clause:

* * * * *

Alternate II (SEP 1989). As prescribed in 9.308–1 (a)(3) and (b)(3), substitute the following paragraph (g) for paragraph (g) of the basic clause:

* * * * *

38. Section 52.209–4 is amended by revising the introductory text; by removing in the title of the clause the date "(APR 1984)" and inserting in its place "(SEP 1989)"; by adding paragraph (i) to the clause; by removing the derivation line following "(End of clause)"; by revising the introductory text of Alternate I and Alternate II; by redesignating paragraph (i) as (j) in Alternate I; and by removing both derivation lines following Alternates I and II, to read as follows:

52.209–4 First article approval—Government testing.

As prescribed in 9.308–29 (a) and (b), insert the following clause:

* * * * *

(i) The Government may waive the requirement for first article approval test where supplies identical or similar to those called for in the schedule have been previously furnished by the Offeror/Contractor and have been accepted by the Government. The Offeror/Contractor may request a waiver.

(End of clause)

Alternate I (SEP 1989). As prescribed in 9.308–2 (a)(2) and (b)(2), add the following paragraph (j) to the basic clause:

* * * * *

Alternate II (SEP 1989). As prescribed in 9.308–2 (a)(3) and (b)(3) substitute the following paragraph (h) for paragraph (h) of the basic clause:

* * * * *

39. Section 52.212–10 is amended by revising the section title, the introductory text, and the title of the clause; by removing in the second and third sentences of the clause the figure "$100" and inserting in each place "$250"; and by removing the derivation line following "[End of clause]" to read as follows:

52.212–10 Delivery of Excess Quantities.

As prescribed in 12.408(b), insert the following clause:

Delivery of Excess Quantities (Sep 1989)

* * * * *

40. Section 52.215–27 is added to read as follows:

52.215–27 Termination of Defined Benefit Pension Plans.

As prescribed in 15.804–8(e), insert the following clause:

Termination of Defined Benefit Pension Plans (Sep 1989)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205–6(j)(4). The Contractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirement of FAR 15.804–8(e).

(End of clause)

41. Section 52.219–12 is amended by adding Alternate I following "(End of clause)" to read as follows:

52.219–12 Special S(a) Subcontract Conditions.

* * * * *

Alternate I (SEP 1989). When a single contract document is used pursuant to 19.809–1(c), substitute the following paragraphs (a) and (b)(1) for paragraphs (a) and (b)(1) of the basic clause:

(a) The Small Business Administration (SBA) has entered into Contract No. _____ (insert number of contract) with the _____ (insert name of contracting agency) to furnish the supplies and services as described herein.

(b)(1) That it will, for and on behalf of the SBA, fulfill and perform all of the requirements of Contract No. _____ (insert number of contract) for the consideration stated herein and that it has read and is familiar with each and every part of the contract.

52.227-17 [Amended]

42. Section 52.227-17 is amended in the introductory text by removing "27.409(i)" and inserting in its place "27.409(a)(1)(iv)".

43. Section 52.228-5 is revised to read as follows:

52.228-5 Insurance—Work on a Government Installation.

As prescribed in 28.310, insert the following clause:

Insurance—Work on a Government Installation (Sep 1989)

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall certify to the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe or (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

(End of clause)

44. Section 52.237-7 is amended by removing in the title of the clause the date "(MAR 1989)" and inserting in its place "(SEP 1989)"; and by revising the last sentence in paragraph (a) to read as follows:

52.237-7 Indemnification and Medical Liability Insurance.

* * * * *

(a) * * * The Contractor shall maintain during the term of this contract liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence:_____.

* * * * *

PART 53—FORMS

45. Section 53.245 is amended by revising the introductory text of paragraph (c) to read as follows:

53.245 Government Property (SF's 120, 120-A, 126, 126-A, 1423, 1424, 1426 through 1434).

* * * * *

(c) SF 1423 (REV. 12/88), *Inventory Verification Survey*. * * *

* * * * *

46. Section 53.301-1423 is revised to read as follows:

BILLING CODE 6820-JC-M

53.301-1423 Inventory Verification Survey.

INVENTORY VERIFICATION SURVEY
(See FAR 45.606-3)

DATE

FORM APPROVED OMB NO. 9000-0015

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0015), Washington, D.C. 20503.

SECTION I - GENERAL

1. FROM: (Include ZIP Code)

2. CONTRACT NUMBER

3. TO: (Include ZIP Code)

4. CONTRACT/SUBCONTRACTOR

5. SCHEDULES OF INVENTORY TO BE INSPECTED AND VERIFIED

SF 1426 pages ____ through ____ $____
SF 1428 pages ____ through ____ $____
SF 1430 pages ____ through ____ $____
SF 1432 pages ____ through ____ $____
SF 1434 pages ____ through ____ $____

SECTION II - TECHNICAL VERIFICATION

	YES	NO
6. IS PROPERTY LISTED ON THE INVENTORY SCHEDULES ON HAND AND IN THE QUANTITIES INDICATED?		
7. IS THE PROPERTY CORRECTLY DESCRIBED ON THE INVENTORY SCHEDULES?		
8. IS THE PROPERTY SEGREGATED OR ADEQUATELY PROTECTED?		
9. IS THE PROPERTY PROPERLY TAGGED?		
10. ARE THE CONDITION CODES ACCURATE?		
11. ARE THE ITEMS LISTED ON SF 1432 CORRECTLY CATEGORIZED AS SPECIAL TOOLING OR SPECIAL TEST EQUIPMENT?		
12. ARE THE WEIGHTS OF THE ITEMS RECOMMENDED AS SCRAP APPROXIMATELY CORRECT? IF WEIGHTS ARE NOT SHOWN, GIVE ESTIMATE OF WEIGHT BY BASIC MATERIAL CONTENT:		
13. DO THE ITEMS APPEAR TO HAVE COMMERCIAL VALUE OTHER THAN SCRAP?		
14. ARE THE ITEMS AGENCY-PECULIAR?		
15. DO ANY ITEMS REQUIRE SPECIAL PROCESSING (Fire arms, drugs, hazardous or sensitive items, or precious metals, etc.)?		
16. ARE COMMON ITEMS INCLUDED ON THE INVENTORY SCHEDULE?		

SECTION III - TERMINATION INVENTORY

COMPLETION OF THIS SECTION ☐ IS ☐ IS NOT REQUIRED (Requestor, check one)

	YES	NO
17. DID WORK STOP PROMPTLY UPON RECEIPT OF THE TERMINATION NOTICE? DATE OF NOTICE:		
18. DO THE QUANTITIES OF MATERIAL EXCEED THE AMOUNTS THAT WOULD HAVE BEEN REQUIRED TO COMPLETE THE TERMINATED PORTION OF THE CONTRACT?		
CAN THE ITEMS OF TERMINATION INVENTORY BE USED ON THE CONTINUING PORTION OF THE CONTRACT?		
19. ARE ALL ITEMS AND QUANTITIES ALLOCABLE TO THE TERMINATION PORTION OF THIS CONTRACT OR ORDER?		
20. DOES THE INVENTORY INCLUDE REJECTS? IF YES, EXPLAIN SPECIFIC LINE ITEM ENTRIES. OBTAIN FROM CONTRACTOR ESTIMATED COST OF REWORKING REJECTS ON SPECIFIC LINE ITEM BASIS.		
21a. HAVE COMPLETED ARTICLES BEEN INSPECTED AS TO QUALITY AND CONFORMANCE TO SPECIFICATIONS?		
b. DO THE COMPLETED ITEMS INSPECTED CONFORM TO CONTRACT SPECIFICATIONS?		
c. DO OTHER THAN COMPLETED ITEMS CONFORM WITH TECHNICAL REQUIREMENTS OF THE CONTRACT OR ORDER?		

22. REQUESTING OFFICE REMARKS (Where the answer to any question is placed in a block containing an asterisk (*) detailed comments of the verifier shall be included on the reverse of this form and identified by section and item number.)

23. SIGNATURE OF REQUESTOR

INVENTORY VERIFICATION CERTIFICATION

The above information is based on a physical verification of inventory listed under Item 5.

24. NAME AND TITLE	25. SIGNATURE OF VERIFIER	26. DATE

NSN 7540-01-142-8847 EXPIRATION DATE 4-30-92 1423-102 STANDARD FORM 1423 (REV. 12-88)
Previous edition not usable. Prescribed by GSA - FAR (48 CFR) 53.245(c)

[FR Doc. 89-19600 Filed 8-18-89; 8:45 am]
BILLING CODE 6820-JC-C

federal register

Monday
August 21, 1989

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 39

Airworthiness Directives; Boeing Models 707, 727, 737, 747, and 757 Series Airplanes, and McDonnell Douglas Models DC-8, DC-9 (Including MD-80 Series) and DC-10 Series Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-80-AD; Amdt. 39-6301]

Airworthiness Directives; Boeing Models 707, 727, 737, 747, and 757 Series Airplanes; and McDonnell Douglas Models DC-8, DC-9 (Includes MD-80 Series), and DC-10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain transport category airplanes, certificated for operation with a main deck Class B cargo compartment. This AD requires that certain operational and equipment changes and design modifications be accomplished to maximize cargo fire detection and control. This amendment is prompted by the loss of a Boeing Model 747-200 "Combi" airplane that apparently developed a major fire in the main deck cargo compartment. This condition, if not corrected, could result in an uncontrolled cargo fire that could cause systems and structural damage, leading to the loss of the airplane.

DATES: *Effective* September 25, 1989.

Comments must be received by September 25, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124; or McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington; the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington; or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Weston B. Slifer, Systems & Equipment Branch, ANM-130S, FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, telephone (206) 431-1945; or Mr. Kevin Kuniyoshi, Systems & Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806, telephone (213) 988-5337.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Models 707, 727, 737, 747, and 757 series airplanes, and McDonnell Douglas Models DC-8, DC-9 (includes MD-80 series), and DC-10 series airplanes, which requires either (1) modification of all Class B cargo compartments to Class C cargo compartments, or (2) the use of flame penetration-resistant cargo containers equipped with smoke detection and fire extinguishing systems, was published in the Federal Register on July 15, 1988 (53 FR 26788).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

There were a total of 38 commenters, representing manufacturers, airlines, crew unions, consumer advocates, and foreign airworthiness authorities.

Some commenters stated that not enough technical/research data is available either to substantiate that an unsafe condition exists or to determine a consummate design modification to address the unsafe condition, and suggested that the proposal be withdrawn. The FAA disagrees. As explained in the Notice, the FAA conducted an in-depth review of existing regulations, policies, and procedures pertaining to the certification of large main deck Class B cargo compartments with volumes exceeding 200 cu. ft. This review revealed that, notwithstanding compliance with the existing regulations, airplanes equipped with main deck Class B cargo compartments do not provide an acceptable level of safety in terms of smoke and fire protection, for the following reasons:

1. The existing rules, policies, and procedures being applied to the certification of Class B cargo or baggage compartments in terms of smoke and fire protection, are inadequate.

2. While entry into the cargo compartment is available, not all cargo is accessible.

3. It is unlikely that personnel would have the means available to extinguish a fire (particularly a deep-seated fire).

4. The quantity of fire extinguishing agent and the number of portable extinguishers are inadequate.

5. The level of visibility available in a smoke filled cargo compartment is not adequate for locating and fighting a fire with a portable fire extinguisher

6. Most existing transport airplane smoke or fire detection systems were certified prior to FAR 25 Amendment 25-54 and are incapable of giving timely warning.

7. Current designs do not provide adequate means to monitor conditions in the cargo compartment after fire warning and firefighting procedures have been implemented.

8. Cargo compartment lining does not provide adequate fire containment.

9. Current designs do not provide a means to shut off ventilation air into the cargo compartment to limit oxygen to the fire.

In addition to that study, data available from full-scale fire tests at the FAA Technical Center reveals the rapid exponential growth of cargo fires and the quick loss of visibility in the compartment. Past testing in Class C, D, and E compartments indicates that, without a fire suppression system, "cargo fires can easily reach dangerous proportions in any size compartment." (Reference 1) It was also concluded that "fire in large loaded cargo compartments may be expected to result in a flash fire shortly after detection and the shutoff of ventilation air." (Reference 2) Testing utilizing smoke detection systems similar to those presently used in newer Class B compartments led to the conclusion that "the smoke detection system did not always give early warning of fire and subsequently gave false warnings of fire and subsequently gave false indications of the level of smoke in the compartment." (Reference 3) Although a shorter detection time could increase the time available for fire fighting, all the referenced FAA studies indicate that a flash fire could occur in as little as 2 to 3 minutes after ignition of standard type cargo packing material in cardboard boxes. It was concluded from testing in References 3 and 4 studies that a Halon 1301 suppression system could effectively suppress and control a cargo fire as long as the initial concentration was in excess of 5 percent and at least a 3 percent concentration was maintained.

References

Reference 1—Blake, D.R. and Hill, R.G., *Fire Containment Characteristics of Aircraft Class D Cargo Compartments*, FAA Technical Report No. DOT/FAA/82-156, March 1983.

Reference 2—Gassmann, Julius J., *Characteristics of Fire in Large Cargo Aircraft (Phase 11)*. FAA RD-70-42, September 1970.

Reference 3—Blake, David R., *Suppression and Control of Class C Cargo Compartment Fires*, DOT/FAA/CT-84/21, February 1985.

Reference 4—Gassmann, Julius J. and Hill, Richard G., *Fire Extinguishing Methods for New Passenger/Cargo Aircraft*, FAA-RD-71-88, November 1971.)

In light of the considerable amount of data and information available, the FAA has determined that an unsafe condition exists with regard to Class B cargo compartments, and considers this AD action a positive step in addressing the unsafe condition posed by fire in Class B cargo compartments.

Some commenters contend that the proposed AD would be inflexible, ineffective, or inappropriate, and that the means of dealing with the described safety deficiency would be more appropriate as a change to FAR part 25 or FAR part 121. The FAA disagrees with these comments. FAR part 39 provides for the issuance of airworthiness directives when an unsafe condition exists in a product and is likely to exist or develop in other products of the same type design. As discussed in the Notice, the FAA has determined that an unsafe condition exists with regard to fire hazards in the Class B cargo compartment. The proposal was prompted by information from a specific accident, a Boeing Model 747 "Combi" airplane operating with a main deck Class B cargo compartment, as defined by FAR 25.857(b), that was lost over the Indian Ocean on November 28, 1987. Although no formal findings have been issued by the foreign authority having jurisdiction over the accident investigation, there is firm evidence that an inflight fire occurred in a Class B cargo compartment, which contributed to the loss of the airplane.

Some commenters suggested that the Class C compartment was not as good as a Class B because a Class B compartment can be accessed by an individual to identify and evaluate the fire situation. Further, this method prevents adverse action being taken in the event there is a smoke alarm failure instead of a fire. The FAA acknowledges that for the false warning situation, where there is no fire, the Class B cargo compartment has an advantage over the Class C. Verification that there is a fire, or that the fire is extinguished is not an option with the Class C compartment. It is generally assumed for a Class C cargo compartment that a fire warning constitutes a fire, the compartment is flooded with Halon, and the airplane is landed at the nearest suitable airport. If there is no fire then it is only a case of inconvenience, lost time, and fuel, but safety is not adversely affected. When there is a fire in a cargo compartment, which is the critical situation as opposed to the false warning condition, optimum safety within technological limits has been provided by the Class C cargo compartment. That is not the case with the Class B cargo compartment. Simulated fire tests have shown that the smoke detection systems and the compartment liner materials may not be adequate to contain the fire until it can be reached by a fire fighter with extinguishing agent. Further, the fire fighter may not be able to locate the fire to extinguish it because of the presence of smoke and obstructing cargo.

Over the years, the size of Class B cargo compartments and the size of cargo packages has increased, making timely fire detection, fire location identification, and manual fire suppression much more complicated, difficult, and ineffective. In Class C cargo compartments, cargo is not accessible by a fire fighter; therefore, the equipment is equipped with cargo liners for containment, control of ventilation and drafts, and fire detection and suppression systems to control or extinguish the fire. There are no known cases of loss of aircraft due to fire in Class C cargo compartments.

Several commenters agreed with the intent of the rule, but opposed the proposed requirements. In general, these commenters pointed out significant technical difficulties with converting in-service airplanes with Class B cargo compartments to Class C cargo compartments. There are significant design considerations, since most Class B compartments are designed for easy and quick conversion for carriage of passengers or cargo on short notice. Therefore, to maintain the proper fire extinguishing agent concentration, major changes would be necessary not only to provide compartment ventilation and air exhaust, but also to provide protection against rapid decompression. The commenters stated that conversion to a Class C cargo compartment would probably prevent them from having the needed flexibility of rapid compartment size changes to support certain customer requirements. These commenters suggested that there were other alternate actions and/or modifications to the Class B compartment that were appropriate safety improvements and more easily accomplished. The following were suggested as areas of improvements:

1. Reducing the detection time to 1 minute.

2. Providing a means to "knock down" fire, plus a method to stop direct flow of ventilation system air into the compartment.

Note: "Knock down" is a term often used to refer to a process that occurs when a sufficient concentration level of extinguishing agent is present at the fire to reduce it to a non-threatening level.

3. Improving the firefighting training.

4. Providing an improved smoke "barrier."

5. Providing public address (PA) speakers in the compartment.

6. Providing improved lighting in the compartment.

7. Reviewing the "access" to cargo within the compartment.

8. Installing viewing ports in access doors to the compartment for monitoring compartment conditions.

As stated in the preamble to the Notice, the FAA recognized that other alternative design changes may be developed which would provide a level of safety equivalent to the options proposed in the Notice. Therefore, as a result of these concerns raised by the commenters, the high cost of retrofit of Class C cargo compartments, and the jeopardy to certain highly desirable cargo operations, the FAA has evaluated the suggested alternative design features and concurs in part with the commenters. In regards to the suggestions listed above, the FAA has determined that the following design changes and procedures are appropriate to achieve major fire safety improvements for Class B cargo compartments:

1. Provide a smoke or fire detection system that meets FAR 25.858 (Amdt. 25-54), FAR 25.1309, and also provide an aural and visual warning to the station assigned to individuals trained to fight cargo fires.

2. Requiring a compartment fire extinguishing system that provides an extinguishant concentration to "knock down" a fire and suppress it, allowing time for a trained individual to find and extinguish a fire, or to verify that the fire is extinguished; and provide a means to shut off ventilation system air inflow to the compartment from the flight deck.

3. Requiring individuals trained to fight cargo fires.

4. Provide a cargo compartment liner that meets FAR 25.855 (Amdt. 25-60).

5. Provide two-way communication means between the flight deck, the station assigned to the trained individual, and the interior of the cargo compartment.

6. Provide improved illumination within the cargo compartment.

7. Requiring cargo loading envelopes and limitations to provide access to all the cargo for fighting a fire.

8. Provide a cargo compartment temperature indication system to the flight deck and designated station.

In addition to the above items, the FAA has determined that the following features are necessary to ensure that an acceptable level of safety is attained:

1. Additional portable fire extinguishers appropriately located for use in the compartment and a means to effectively discharge portable fire extinguishers into each container or into each pallet that is covered. This will provide sufficient extinguishing agent and will ensure a means to properly use that agent in containers or covered pallets.

2. Protective garments and protective breathing equipment for individuals fighting a cargo fire. This will provide protection for the individual assigned to control a cargo compartment fire.

3. Fire thermal protective covers for cockpit voice and flight data recorders, windows, safety devices, wiring, flight controls (unless it can be shown that a fire could not result in jamming or loss of affected control systems), and other equipment necessary for safe flight and landing that is located within the compartment. This is necessary to ensure that items which are not critical for continued safe flight, but are essential for the overall safe operation of the airplane, are not damaged in the event of a cargo compartment fire.

Accordingly, the final rule has been revised to include the accomplishment of the design changes and procedures specified above as an alternate method of compliance with the rule. The FAA has determined that if these items are incorporated, they will adequately address the unsafe condition. This alternative action is a logical outgrowth of the proposal and is responsive to the commenters.

Several commenters stated that discontinued use of pallets for cargo is not practical and would result in serious adverse economic consequences to the operators and to very remote communities that heavily rely upon the Combi service. Other commenters stated that cargo loads are often transferred from one airplane size to another of different size. In addition, cargo loads are transferred from airline to airline creating compatibility, logistic, and airworthiness control problems for cargo containers that have a detection and extinguisher system and meet the flame resistant liner requirements.

It is not the FAA's intent to deny the use of pallets in "Combi" aircraft. The issue is the fire control and containment capability with cargo loaded on pallets. With the present practice, in which the cargo is loaded on pallets, a deep-seated fire could develop and result in the compartment being filled with dense smoke. By revising the final rule, as described above, the FAA has addressed these concerns by requiring a means to discharge portable extinguishers into covered pallets, improved access, lighting, and protective equipment for the individual fighting the fire.

Numerous commenters indicated that the 180-day compliance time is unrealistic. After further consideration, the FAA concurs. The FAA has determined that certain of the equipment and operational changes described above (including the formulation and implementation of a training program for fighting cargo compartment fires) can be reasonably accomplished within one year after the effective date of the final rule and will provide an acceptable level of safety as an interim measure. In addition, the FAA has determined that the originally proposed alternatives or the remaining design changes described above can be reasonably accomplished within three years after the effective date and will provide an acceptable level of safety thereafter.

Several commenters provided cost estimates, based on discussions with airplane manufacturers, that indicate the cost of converting a Class B cargo compartment to a Class C cargo compartment would be approximately $2,500,000 for a wide body airplane and about $1,000,000 for a standard body. The FAA agrees that these cost estimates are reasonable, and has revised the economic impact analysis paragraph below, to incorporate these figures.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 276 Boeing Model 707, 727, 737, and 747 series airplanes and 124 McDonnell Douglas Model DC-8, DC-9, and DC-10 series airplanes of the affected desitificated to operate with a Class B main deck cargo compartment. Many of these airplanes have been permanently operated in the all-passenger configuration and are, therefore, not affected by this proposal. Approximately 40 of these airplanes are presently operated by U.S. operators in the mixed cargo/passenger configuration. Based on the estimated cost of conversion submitted by several commenters, $1,000,000 per standard body airplane and $2,500,000 per wide body airplane, the costs associated with incorporating additional design features, enhanced protective systems and equipment, and fire control procedures for the Class B cargo compartment are estimated to be $800,000 per standard body airplane and $2,200,000 per wide body airplane. (These estimated figures are based on the fact that these changes require less redesign than is required for conversion to a Class C compartment.)

Because this final rule contains a significant alternative to the proposed requirements, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-80-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. All communications received by the deadline date indicated above will be considered by the Administrator, and the AD may be changed in light of the comments received.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, Jan. 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing and McDonnell Douglas: Applies to Boeing Models 707, 727, 737, 747, and 757 series airplanes; and McDonnell Douglas Models DC-8, DC-9 (includes MD-80 series), and DC-10 series airplanes, equipped with a main deck Class B cargo compartment, as defined by FAR 25.857(b) or its predecessors, with a volume exceeding 200 cu. ft., certificated in any category. Compliance required as indicated, unless previously accomplished.

To minimize the hazard associated with a main deck Class B cargo compartment fire, accomplish the following:

A. Within one year after the effective date of this rule, or prior to carrying cargo in a Class B cargo compartment, whichever occurs later, accomplish the following in accordance with the appropriate technical data approved by the Manager, Seattle Aircraft Certification Office (for Boeing series airplanes); or the Manager, Los Angeles Aircraft Certification Office (for McDonnell Douglas series airplanes):

1. Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following:

For each flight in which cargo is transported in the class B cargo compartment:

a. For airplanes having compartments with 200 square feet or less of cargo/baggage floor area a minimum of one individual trained to fight cargo fires must be provided. (This individual is in addition to crewmembers required by the operational rules.) The training program must be approved by the FAA.

b. Prior to flight, the pilot, copilot, or individual required by paragraph A.1.a., above, must make a visual inspection throughout the Class B cargo compartment to verify access to cargo and the general fire security of the compartment after cargo door is closed and secured.

c. At intervals not to exceed 30 minutes in flight and continuously after a smoke alarm, the individual trained to fight cargo fires must conduct a visual inspection throughout the Class B cargo compartment to monitor for evidence of fire, unless an approved temperature (thermal) monitoring system is installed.

d. For airplanes having compartments with more than 200 square feet of cargo/baggage floor area provide an additional person trained to fight cargo fires to work with the individual required by paragraph A.1.a., above. (This individual may be a required flight attendant.)

e. Establish firefighting procedures for controlling cargo compartment fires.

2. Incorporate the following systems and equipment:

a. Provide appropriate protective garments stored adjacent to the cargo compartment entrance for use by the designated individuals trained to fight cargo fire required by paragraphs A.1.(a) and A.1.(d) above.

b. Provide a minimum of 30 minutes of protective breathing and an additional quantity of oxygen sufficient to conduct the inspections required by paragraph A.1.c., above. The equipment must meet the requirements of Technical Standard Order (TSO) C-116, Action Notice 8120.2A, or equivalent, and be stored adjacent to the cargo compartment entrance.

c. Provide a minimum of 45 lbs. Halon 1211 fire extinguishant, or its equivalent, in portable fire extinguisher bottles readily available for use in the cargo compartment. At least two bottles must be a minimum of 15 lb. capacity.

d. Provide at least two Underwriters Laboratories (UL)2A (2½ gallon) rated water portable fire extinguisher, or its equivalent, adjacent to the cargo compartment entrance for use in the compartment.

e. Provide a means for two-way communications between the following:

(1) The flight deck and the station assigned to the individual trained to fight cargo fires.

(2) The flight deck and the interior of the cargo compartment.

f. Install placards in conspicuous place(s) within the cargo compartment clearly defining the cargo loading envelope and limitations that provide sufficient access of sufficient width for firefighting along the entire length of at least two sides of a loaded pallet or container. Amend the appropriate Weight and Balance and loading instructions by description and diagrams to include this information.

Note: In accordance with paragraph C., below, if the requirements of paragraph B.1. or B.2. are accomplished within one year after the effective date of this AD, compliance with paragraph A. of this AD is unnecessary.

B. Within three years after the effective date of this rule, or prior to carrying cargo in a Class B cargo compartment, whichever occurs later, accomplish the requirements of paragraph B.1., B.2., or B.3., below:

1. Modify the Class B cargo compartment to comply with the requirements for a Class C cargo compartment, as defined in FAR 25.855 (Amdt. 25-60), 25.857(c) and 25.858(Amdt. 25-54).

2. Modify all main deck Class B cargo compartments to require the following placard installed in conspicuous locations approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region (for Boeing airplanes), or the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region (for McDonnell Douglas airplanes), throughout the compartment:

Cargo carried in this compartment must be loaded in an approved flame penetration-resistant container meeting the requirements of FAR 25.857(c), with ceiling and sidewall liners and floor panels that meet the requirements of FAR 25, Appendix F, Part III, (Amdt. 25-60).

3. In addition to the requirements of paragraph A., above, modify Class B cargo compartments and associated systems in accordance with technical data approved by the Manager, Seattle Aircraft Certification Office (for affected Boeing series airplanes), or the Manager, Los Angeles Aircraft Certification Office (for affected McDonnell Douglas series airplanes), to include the following:

a. Provide a cargo compartment fire "knock down" extinguishing system that provides an initial fire extinguishant concentration of at least 5 percent of the empty compartment volume of Halon 1301 or equivalent, and a fire suppression extinguishant concentration of at least 3 percent of the empty compartment volume of Halon 1301 or equivalent, for a period of time not less than 15 minutes.

b. Provide a smoke or fire detection system that meets the requirements of FAR 25.858 (Amdt. 25-54) and also provides an aural and visual warning to the station assigned to the individual trained to fight cargo fire. The designated station must be located adjacent to the inflight access door to the cargo compartment.

c. Provide a means from the flight deck to shut off ventilation system inflow to the cargo compartment.

d. Provide a temperature indication system to the flight deck and station designated for the individual trained to fight cargo fire to advise of potentially hazardous conditions within the cargo compartment.

e. Provide a cargo compartment liner that meets the requirements of FAR 25.855, (Amdt. 25-60). The smoke/fire barrier between the occupants and cargo compartment must extend from the cargo compartment floor to the ceiling liner, or top skin of the airplane, and from the right side liner to the left side liner of the cargo compartment. The liner and barrier seals must also be constructed of materials that meet the Flame Penetration Resistance requirements of FAR 25, Appendix F, Part III (Amdt. 25-60), except that currently-installed glass fiber reinforced resin material is acceptable. In addition, provide protective covers for cockpit voice and flight data recorders, windows, wiring, and primary flight control systems (unless it can be shown that a fire could not cause jamming or loss of control), and other equipment within the compartment that is required for safe flight and landing; those covers must be constructed of materials that meet the Flame Penetration Resistance requirements of FAR 25, Appendix F, Part III (Amdt. 25-60).

f. Provide illumination in the cargo compartment as follows:

(1) General area illumination of the cargo with an average illumination of 0.1 foot-candle measured at 40-inch intervals both at one-half the pallet or container height, and at the full pallet or container height.

(2) Illumination of the access pathways required by paragraph A.2.f., above, under visibility conditions likely to be encountered after fire and discharge of the fire extinguishant, and prior to the decay of

extinguishant concentration below 3 percent, must provide an average of 0.1 foot-candle measured at each 40-inch interval, with not less than 0.05 foot-candle minimum along a line that is within 2 inches of and parallel to the floor centered on the pathway.

g. Provide a safe means to effectively discharge portable fire extinguishers into each container or into each pallet that is covered.

h. Demonstrate the following features and functions during flight tests;

(1) Fire Extinguishant Concentration, required by paragraph B.3.a., above.

(2) Smoke or Fire detection system, required by paragraph B.3.b., above.

(3) Prevention of smoke penetration into occupied compartments. [Refer to FAR 25.857(b)2 and 25.855(e)2.]

(4) Compartment temperature indication, required by paragraph B.3.d., above.

(5) Cargo accessibility, required by paragraph A.2.f., above.

(6) Firefighting procedures, required by paragraph A.1.e., above.

i. Items specified in paragraphs B.3.h(5) and B.3.h(6), above, must be evaluated under reduced visibility conditions representative of those likely to occur with cargo fires.

C. Compliance with the requirements of paragraph SB.1 or B.2., above, constitutes terminating action for the requirements of paragraph A., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124, or McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington; the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective September 25, 1989.

Issued in Seattle, Washington, on August 10, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19676 Filed 8-17-89; 11:41 a.m.]

BILLING CODE 4910-13-M

Reader Aids

Federal Register

Vol. 54, No. 160

Monday, August 21, 1989

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237
Code of Federal Regulations	
Index, finding aids & general information	523-5227
Printing schedules	523-3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230
The United States Government Manual	
General information	523-5230
Other Services	
Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

31645-31796	1
31797-31932	2
31933-32034	3
32035-32332	4
32333-32432	7
32433-32628	8
32629-32784	9
32785-32950	10
32951-33182	11
33183-33492	14
33493-33664	15
33665-33852	16
33853-34118	17
34119-34474	18
34475-34766	21

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Presidential Determinations:

No. 89-22 of Aug. 9, 1989 34475

Proclamations:

6002 31794
6003 31931
6004 31933
6005 32033
6006 32783
6007 33853
6008 33855
6009 33857
6010 34119
6011 34121
6012 34123
6013 34125

Executive Orders:

10355 (See EO 12688) 34129
12549 (See EO 12689) 34131
12685 31795
12686 32629
12687 34127
12688 34129
12689 34131

5 CFR

1620 32785

7 CFR

29 31797
58 31646
301 ..... 32788, 34477
319 ..... 33665, 34133
401 33493
406 33493
910 ..... 32035, 32951, 34134
917 ..... 32794, 33667
926 34483
945 31796
947 32433
948 33484
989 ..... 34134, 34484
1076 31799
1126 32951
1772 34138
1864 32953

Proposed Rules:

1e 32985
51 32419
401 ..... 33557, 33566, 34518, 34519
403 33567
800 33702
910 ..... 33704, 34183
911 31843
920 34521
929 31844
931 33706
932 33706
945 33707
948 34184
947 34522
948 34524
967 31845
989 34525
993 31846
1001 33709
1002 33709
1004 33709
1005 33709
1006 33709
1007 33709
1011 33709
1012 33709
1013 33709
1030 33709
1032 33709
1033 33709
1036 33709
1040 33709
1046 33709
1049 33709
1050 33709
1064 33709
1065 33709
1068 33709
1078 33709
1079 33709
1089 33709
1093 33709
1094 33709
1096 33709
1097 33709
1098 33709
1099 33709
1106 33709
1108 33709
1120 33709
1124 33709
1126 33709
1131 33709
1132 33709
1134 33709
1135 33709
1137 33709
1138 33709
1139 33709
1900 33906
1910 33906
1951 33906
1955 33906
1956 33917
1962 33906
1965 33906

8 CFR

204 34141

Proposed Rules:

210 31966

BEST COPY AVAILABLE

9 CFR
61 32434
91 33668
92 ..... 31800, 34485
Proposed Rules:
94 33918
309 33920
310 33920
318 33920

10 CFR
2 33165
7 31646
26 33148
Proposed Rules:
Ch. I 32653
50 33568
55 33568
70 33570
72 33570
73 33570
75 33570
430 ..... 32340, 32744

11 CFR
100 34086
102 34086
110 34086
114 34086
9004 34086

12 CFR
33 31935
207 31646
220 31646
221 31646
224 31646
226 32963
229 32035
262 33163
329 33669
545 ..... 32954, 33859, 34143
546 34143
561 34143
563 ..... 33670, 34143, 34146
563b 34143
563c 34143
570 34143
571 34143
574 ..... 32959, 33183
1300 34487
Proposed Rules:
4 32620
5 33711
7 33711
12 32653
226 32069
325 33716
563 33923–33926
563b 33926
564 33235

13 CFR
105 34745
124 34682
134 34746

14 CFR
1 34284
21 34284
23 34284
25 34284
27 34284
29 34284
31 34284
33 34284
35 34284
36 34284
39 ..... 31649, 31651–31653, 31603–31609, 31935, 32435–32437, 32796, 33186, 33873–33875, 34499–34501, 34762
43 34284
45 34284
47 34284
61 34284
63 34284
65 34284
71 ..... 31654, 31636, 31637, 34284, 34503
73 ..... 31655, 32800
75 31937
91 34284
93 34284
97 33497
99 34284
103 34284
121 34284
125 34284
127 34284
133 34284
135 34284
137 34284
141 34284
217 31810
241 31810
305 ..... 32439, 32440, 32693, 32797–32800, 33489
1221 32963
Proposed Rules:
Ch. I 33557
25 34116
39 ..... 31693, 31694, 31847, 32824, 32826, 33235, 33237, 33934–33936, 34185
39 34527
43 32563
65 32563
71 ..... 31696–31704, 31966, 32452, 32827, 33579, 33941, 34528
75 ..... 31705, 31967
121 ..... 34116, 34394
125 34116
145 32563
Ch. II 33577, 33578
239 33560
252 33560
259 33560
302 33560
377 33562

15 CFR
773 31812
799 33676

16 CFR
305 32631
Proposed Rules:
4 32654

17 CFR
1 33676
146 31814
209 33500
211 ..... 32333, 32334
230 33500
269 33500
270 ..... 31850, 32048
274 32048
275 ..... 32048, 32441
279 32048
Proposed Rules:
230 ..... 32226, 32993
239 ..... 32226, 32993
240 ..... 31850, 32229
249 32226
260 32226
269 32226
270 ..... 32993, 33027
274 32993

18 CFR
35 32802
270 32805
271 ..... 31938, 32805
Proposed Rules:
37 31706
803 33036

19 CFR
4 ..... 33187, 33188
10 33189
113 33672
177 ..... 32742, 32810
213 33881
Proposed Rules:
12 34186
355 33238

20 CFR
Proposed Rules:
208 32163
219 31939
220 32163
230 32163
260 32163
327 31966
404 33238
416 ..... 31656, 33238

21 CFR
133 32050
179 32395
510 ..... 32632, 33672
520 ..... 32396, 33501, 33614
522 32632
524 32632
540 ..... 33672, 33673
556 32633
558 ..... 32633–32634, 32963, 33684
573 33673
1301 33674
1305 33674
Proposed Rules:
Ch. I 32610
133 32091
168 33582
333 34188
448 34188
522 31949
556 31949
1308 ..... 31815, 31855
1310 31657
1313 31657
1316 31669

22 CFR
60 31815
61 31815
62 31815
63 31815
64 31815
65 31815
514 ..... 32964, 34503

23 CFR
659 32967
Proposed Rules:
635 34529

24 CFR
200 ..... 32059, 32968
203 32968
204 32968
206 32059
219 32968
220 32968
221 32968
222 32968
226 32968
227 32968
235 32968
237 32968
240 32968
570 31670
Proposed Rules:
Ch. I 31856
200 33039
205 33039

25 CFR
122 34154

26 CFR
1 ..... 31672, 31816
602 31672
Proposed Rules:
1 ..... 31706, 32453

28 CFR
31 32615
74 34157
523 32027
544 32028
Proposed Rules:
551 34064

29 CFR
524 ..... 32920, 33814
525 ..... 32920, 33814
529 ..... 32920, 33814
775 34504
1600 32061
1601 32061
1610 32061
1611 32061
1620 32061
1626 ..... 32061, 33501
1627 33675
1691 32061
1910 ..... 31765, 31970
2589 32635
2619 33504
2676 33505
Proposed Rules:
503 32985
1910 ..... 31858, 33832

30 CFR
934 32063
938 34168
Proposed Rules:
250 ..... 31768, 32316, 32563, 33042
906 32828
917 32093
920 33042
925 ..... 32094, 34190
931 ..... 32095, 32096
946 ..... 32097, 32098

31 CFR
103 33675
500 32064

32 CFR
231 33512
231a 33516
286 33190
385 33521
706 31825

33 CFR
100 ..... 31826, 32066, 32441–32442, 33679, 33680, 34505
110 32419
117 31827
146 32971
162 32419
165 ..... 32419, 32443
Proposed Rules:
100 ..... 31859, 31860, 32453, 32659
117 34530
162 32661
334 33584

34 CFR
208 32936
345 32770
425 34402
426 34402
432 34402
433 34402
434 34402
435 34402
436 34402
437 34402
438 34402
441 34402
755 32946

35 CFR
Proposed Rules:
133 32099
135 32099

36 CFR
217 34505
251 34505
1153 32337–32342
1155 32337–32342
1202 32067
1250 32067
1254 32067
Proposed Rules:
254 34368
1206 32455

37 CFR
1 ..... 32637, 34282
2 32637
301 32810
309 32810

38 CFR
3 ..... 31828, 31950
21 ..... 31829, 31950–31952, 32070, 33685
Proposed Rules:
4 34531
14 34334
18 34334
20 34334

39 CFR
111 ..... 32071, 33523
3001 ..... 33525, 33681

40 CFR
52 ..... 31953, 32072, 32073, 32637, 32971, 33526, 33528–33536, 33894, 34512, 34515
60 ..... 32444, 32972, 34008
61 32444
80 33218
81 ..... 32078, 33219, 33536
85 32566
116 33426
117 33426
146 34169
180 34502
167 32638
180 ..... 31674, 31830–31836, 33690
228 ..... 33585, 34172
261 34175
264 33376
265 33376
270 33376
271 32973
302 ..... 33418, 33426
792 34034
795 33400
796 33148
797 33148
799 ..... 33148, 33400
Proposed Rules:
52 ..... 32101, 33245, 33247, 33717
81 ..... 31860, 31971, 31972
85 32596
180 ..... 31971, 31972, 33044, 33716
185 31836
186 31832–31836
228 ..... 32351–32356, 34191
261 ..... 31675, 32320, 32662, 33942
300 33846
302 ..... 32320, 32671
355 32671
704 31680
799 32829

41 CFR
101–47 32445

42 CFR
50 32448
484 33354
Proposed Rules:
5 32459

43 CFR
Public Lands Orders:
6741 32812
6742 32812
6743 33693
Proposed Rules:
2090 34380
2200 34380

44 CFR
59 33541
60 33541
64 ..... 32813, 32814, 33220, 33222
65 ..... 33541, 33896
67 ..... 33693, 33897
80 31681
83 31681
352 31920
Proposed Rules:
67 33943
335 32359

45 CFR
232 32284
302 32284
303 32284
304 32284
306 32284
307 32284
1632 31954

46 CFR
552 34182
553 34182
Proposed Rules:
10 33045
15 33045
586 34194

47 CFR
Chapter I 33224
2 ..... 32339, 33898
15 32339
22 ..... 33551, 33898
25 ..... 33226, 33898
73 ..... 31685, 31686, 31838, 31960, 32340, 32639–32641, 33227, 33899, 33700, 33900, 33901, 34182
80 31839
90 33902
Proposed Rules:
2 32830
64 33585
69 33585
73 ..... 32361, 32362, 32672–32676, 33249, 33250, 33719–33721, 33946
94 32362

48 CFR
4 34750
9 34750
12 34750
15 34750
19 34750
22 34750
23 34750
25 34750
27 34750
28 34750
31 34750
32 34750
42 34750
45 34750
52 34750
53 34750
203 32161
206 32161
209 32161
212 32161
213 32161
214 32161
215 ..... 32161, 32975
216 32161
217 32161
219 32161
222 32161
223 32161
226 32161
242 32161
245 32161
252 32161
253 32161
273 32161
525 33554
801 31961
Proposed Rules:
44 32422
45 32424
51 32424
52 32424
205 33045
970 33251

49 CFR
172 34866
190 32342
191 32342
192 ..... 32344, 32841
195 ..... 32342, 32344
210 33227
215 33227
216 33227
217 33227
225 33227
228 33227
229 33227
231 33227
232 33227
383 33230
571 ..... 31687, 32345
1207 33555
1249 33555
Proposed Rules:
571 32830

50 CFR
17 ..... 32326, 34464, 34468
20 32975
23 33231
215 32346
217 32815
226 ..... 32085, 34282
227 ..... 32085, 32815, 34282
611 ..... 32642, 32819
652 33700
661 31841
663 31688
672 ..... 32819, 33701
674 33904
675 ..... 31842, 32642
Proposed Rules:
16 33947
18 ..... 33949, 34201
17 ..... 32833, 33656
20 33721
228 33949
263 32362
267 32362
611 31861
620 31861
649 32834
655 31862
672 ..... 31861, 33737
675 ..... 31861, 33737
Ch. VII 33735

LIST OF PUBLIC LAWS

Last List August 17, 1989
This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws

Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 1960/Pub. L. 101-86

To provide that a Federal annuitant or former member of a uniformed service who returns to Government service, under a temporary appointment, to assist in carrying out the 1990 decennial census of population shall be exempt from certain provisions of title 5, United States Code, relating to offsets from pay and other benefits. (Aug. 16, 1989; 103 Stat. 593; 2 pages) Price: $1.00

H.R. 2847/Pub. L. 101-87

To extend by 1 year a program under which the Government is allowed to accept the voluntary services of private-sector executives. (Aug. 16, 1989; 103 Stat. 595; 1 page) Price: $1.00

H.J. Res. 225/Pub. L. 101-88

To authorize and request the President to issue a proclamation designating the third Sunday of August of 1989 as "National Senior Citizens Day." (Aug. 16, 1989; 103 Stat. 596; 1 page) Price: $1.00

H.J. Res. 231/Pub. L. 101-89

Designating September 1989 as "National Library Card Sign-Up Month." (Aug. 16, 1989; 103 Stat. 597; 1 page) Price: $1.00

H.J. Res. 253/Pub. L. 101-90

Designating September 8, 1989, as "National Pledge of Allegiance Day." (Aug. 16, 1989; 103 Stat. 598; 1 page) Price: $1.00

H.J. Res. 379/Pub. L. 101-91

Commending the citizens of the Sioux City, Iowa, tri-State area for their heroism and spirit of volunteerism in selflessly providing assistance and life-saving services to the passengers and crew of United Airlines Flight 232. (Aug. 16, 1989; 103 Stat. 599; 2 pages) Price: $1.00

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $820.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Apr. 1, 1989
3 (1988 Compilation and Parts 100 and 101)	21.00	[1] Jan. 1, 1989
4	15.00	Jan. 1, 1989
5 Parts:		
1-699	15.00	Jan. 1, 1989
700-1199	17.00	Jan. 1, 1989
1200-End, 6 (6 Reserved)	13.00	Jan. 1, 1989
7 Parts:		
0-26	15.00	Jan. 1, 1989
27-45	12.00	Jan. 1, 1989
46-51	17.00	Jan. 1, 1989
52	23.00	[2] Jan. 1, 1988
53-209	18.00	Jan. 1, 1989
210-299	22.00	Jan. 1, 1988
300-399	12.00	Jan. 1, 1989
400-699	19.00	Jan. 1, 1989
*700-899	22.00	Jan. 1, 1989
900-999	26.00	Jan. 1, 1988
1000-1059	16.00	Jan. 1, 1989
1060-1119	13.00	Jan. 1, 1989
1120-1199	11.00	Jan. 1, 1989
1200-1499	17.00	Jan. 1, 1988
1500-1899	10.00	Jan. 1, 1989
1900-1939	11.00	Jan. 1, 1989
1940-1949	21.00	Jan. 1, 1988
1950-1999	18.00	Jan. 1, 1988
2000-End	9.00	Jan. 1, 1989
*8	13.00	Jan. 1, 1989
9 Parts:		
1-199	20.00	Jan. 1, 1989
200-End	18.00	Jan. 1, 1989
10 Parts:		
0-50	19.00	Jan. 1, 1989
51-199	17.00	Jan. 1, 1989
200-399	13.00	[3] Jan. 1, 1987
400-499	14.00	Jan. 1, 1989
500-End	28.00	Jan. 1, 1989
11	10.00	[3] Jan. 1, 1988
12 Parts:		
1-199	12.00	Jan. 1, 1989
200-219	11.00	Jan. 1, 1989
*220-299	19.00	Jan. 1, 1989
300-499	15.00	Jan. 1, 1989
*500-599	20.00	Jan. 1, 1989
600-End	14.00	Jan. 1, 1989
13	22.00	Jan. 1, 1989
14 Parts:		
1-59	21.00	Jan. 1, 1988
*60-139	21.00	Jan. 1, 1989
140-199	10.00	Jan. 1, 1989
200-1199	21.00	Jan. 1, 1989
*1200-End	12.00	Jan. 1, 1989
15 Parts:		
0-299	12.00	Jan. 1, 1989
300-399	20.00	Jan. 1, 1988
800-End	14.00	Jan. 1, 1989
16 Parts:		
0-149	12.00	Jan. 1, 1989
150-999	14.00	Jan. 1, 1989
1000-End	19.00	Jan. 1, 1989
17 Parts:		
1-199	14.00	Apr. 1, 1988
200-239	14.00	Apr. 1, 1988
240-End	21.00	Apr. 1, 1988
18 Parts:		
1-149	15.00	Apr. 1, 1988
150-279	12.00	Apr. 1, 1988
280-399	13.00	Apr. 1, 1988
400-End	9.00	Apr. 1, 1988
19 Parts:		
1-199	27.00	Apr. 1, 1988
200-End	5.50	Apr. 1, 1988
20 Parts:		
1-399	12.00	Apr. 1, 1988
400-499	23.00	Apr. 1, 1988
500-End	25.00	Apr. 1, 1988
21 Parts:		
1-99	12.00	Apr. 1, 1988
100-169	14.00	Apr. 1, 1988
170-199	16.00	Apr. 1, 1988
*200-299	6.00	Apr. 1, 1989
300-499	26.00	Apr. 1, 1988
500-599	20.00	Apr. 1, 1988
*600-799	8.00	Apr. 1, 1989
800-1299	16.00	Apr. 1, 1988
*1300-End	6.50	Apr. 1, 1989
22 Parts:		
1-299	20.00	Apr. 1, 1988
300-End	13.00	Apr. 1, 1988
23	16.00	Apr. 1, 1988
24 Parts:		
0-199	15.00	Apr. 1, 1988
200-499	26.00	Apr. 1, 1988
500-699	9.50	Apr. 1, 1988
700-1699	19.00	Apr. 1, 1988
1700-End	15.00	Apr. 1, 1988
25	24.00	Apr. 1, 1988
26 Parts:		
§§ 1.0-1-1.60	13.00	Apr. 1, 1988
§§ 1.61-1.169	23.00	Apr. 1, 1988
§§ 1.170-1.300	17.00	Apr. 1, 1988
§§ 1.301-1.400	14.00	Apr. 1, 1988
§§ 1.401-1.500	24.00	Apr. 1, 1988
§§ 1.501-1.640	15.00	Apr. 1, 1988
§§ 1.641-1.850	17.00	Apr. 1, 1988
§§ 1.851-1.1000	28.00	Apr. 1, 1988
§§ 1.1001-1.1400	16.00	Apr. 1, 1988
§§ 1.1401-End	21.00	Apr. 1, 1988
2-29	19.00	Apr. 1, 1988
30-39	14.00	Apr. 1, 1988
40-49	13.00	Apr. 1, 1988
50-299	15.00	Apr. 1, 1988
300-499	15.00	Apr. 1, 1988
*500-599	7.00	Apr. 1, 1989
600-End	6.00	Apr. 1, 1988
27 Parts:		
1-199	23.00	Apr. 1, 1988
200-End	13.00	Apr. 1, 1988
28	25.00	July 1, 1988

Title	Price	Revision Date
29 Parts:		
0–99	17.00	July 1, 1988
100–499	6.50	July 1, 1988
500–899	24.00	July 1, 1988
900–1899	11.00	July 1, 1988
1900–1910	29.00	July 1, 1988
1911–1925	8.50	July 1, 1988
1926	10.00	July 1, 1988
1927–End	24.00	July 1, 1988
30 Parts:		
0–199	20.00	July 1, 1988
200–699	12.00	July 1, 1988
700–End	18.00	July 1, 1988
31 Parts:		
0–199	13.00	July 1, 1988
200–End	17.00	July 1, 1988
32 Parts:		
1–39, Vol. I	15.00	[4] July 1, 1984
1–39, Vol. II	19.00	[4] July 1, 1984
1–39, Vol. III	18.00	[4] July 1, 1984
1–189	21.00	July 1, 1988
190–399	27.00	July 1, 1988
400–629	21.00	July 1, 1988
630–699	13.00	[5] July 1, 1986
700–799	15.00	July 1, 1988
800–End	16.00	July 1, 1988
33 Parts:		
1–199	27.00	July 1, 1988
200–End	19.00	July 1, 1988
34 Parts:		
1–299	22.00	July 1, 1988
300–399	12.00	July 1, 1988
400–End	26.00	July 1, 1988
35	9.50	July 1, 1988
36 Parts:		
1–199	12.00	July 1, 1988
200–End	20.00	July 1, 1988
37	13.00	July 1, 1988
38 Parts:		
0–17	21.00	July 1, 1988
18–End	19.00	July 1, 1988
39	13.00	July 1, 1988
40 Parts:		
1–51	23.00	July 1, 1988
52	27.00	July 1, 1988
53–60	28.00	July 1, 1988
61–80	12.00	July 1, 1988
81–99	25.00	July 1, 1988
100–149	25.00	July 1, 1988
150–189	24.00	July 1, 1988
190–299	24.00	July 1, 1988
300–399	8.50	July 1, 1988
400–424	21.00	July 1, 1988
425–699	21.00	July 1, 1988
700–End	31.00	July 1, 1988
41 Chapters:		
1, 1–1 to 1–10	13.00	[6] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[6] July 1, 1984
3–6	14.00	[6] July 1, 1984
7	6.00	[6] July 1, 1984
8	4.50	[6] July 1, 1984
9	13.00	[6] July 1, 1984
10–17	9.50	[6] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[6] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[6] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[6] July 1, 1984
19–100	13.00	[6] July 1, 1984
1–100	10.00	July 1, 1988
101	25.00	July 1, 1988
102–200	12.00	July 1, 1988
201–End	8.50	July 1, 1988

Title	Price	Revision Date
42 Parts:		
1–60	15.00	Oct. 1, 1988
61–399	5.50	Oct. 1, 1988
400–429	22.00	Oct. 1, 1988
430–End	22.00	Oct. 1, 1988
43 Parts:		
1–999	15.00	Oct. 1, 1988
1000–3999	26.00	Oct. 1, 1988
4000–End	11.00	Oct. 1, 1988
44	20.00	Oct. 1, 1988
45 Parts:		
1–199	17.00	Oct. 1, 1988
200–499	9.00	Oct. 1, 1988
500–1199	24.00	Oct. 1, 1988
1200–End	17.00	Oct. 1, 1988
46 Parts:		
1–40	14.00	Oct. 1, 1988
41–69	14.00	Oct. 1, 1988
70–89	7.50	Oct. 1, 1988
90–139	12.00	Oct. 1, 1988
140–155	12.00	Oct. 1, 1988
156–165	13.00	Oct. 1, 1988
166–199	14.00	Oct. 1, 1988
200–499	20.00	Oct. 1, 1988
500–End	10.00	Oct. 1, 1988
47 Parts:		
0–19	18.00	Oct. 1, 1988
20–39	18.00	Oct. 1, 1988
40–69	9.00	Oct. 1, 1988
70–79	18.00	Oct. 1, 1988
80–End	19.00	Oct. 1, 1988
48 Chapters:		
1 (Parts 1–51)	28.00	Oct. 1, 1988
1 (Parts 52–99)	18.00	Oct. 1, 1988
2 (Parts 201–251)	18.00	Oct. 1, 1988
2 (Parts 252–299)	18.00	Oct. 1, 1988
3–6	20.00	Oct. 1, 1988
7–14	25.00	Oct. 1, 1988
15–End	26.00	Oct. 1, 1988
49 Parts:		
1–99	13.00	Oct. 1, 1988
100–177	24.00	Oct. 1, 1988
178–199	20.00	Oct. 1, 1988
200–399	19.00	Oct. 1, 1988
400–999	24.00	Oct. 1, 1988
1000–1199	18.00	Oct. 1, 1988
1200–End	18.00	Oct. 1, 1988
50 Parts:		
1–199	17.00	Oct. 1, 1988
200–599	13.00	Oct. 1, 1988
600–End	13.00	Oct. 1, 1988
CFR Index and Findings Aids	29.00	Jan. 1, 1989
Complete 1989 CFR set	620.00	1989
Microfiche CFR Edition:		
Complete set (one-time mailing)	125.00	1984
Complete set (one-time mailing)	115.00	1985
Subscription (mailed as issued)	185.00	1987
Subscription (mailed as issued)	185.00	1988
Subscription (mailed as issued)	188.00	1989

Title	Price	Revision Date
Individual copies	2.00	1989

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan.1, 1988 to Dec.31, 1988. The CFR volume issued January 1, 1988, should be retained.

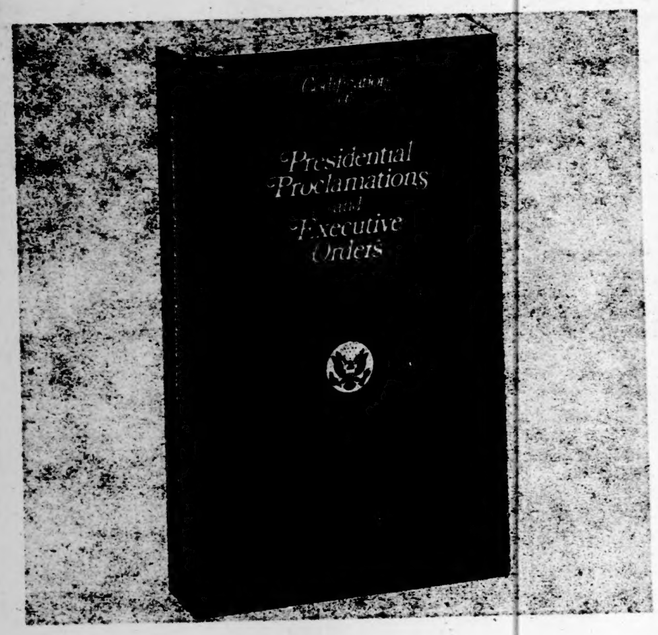
[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

New edition .... Order now !



For those of you who must keep informed about **Presidential Proclamations and Executive Orders,** there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period April 13, 1945, through January 20, 1989, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1945–1989 period—along with any amendments—an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325

Order Processing Code: *6661

Superintendent of Documents **Publications** Order Form

Charge your order. It's easy!

To fax your orders and inquiries–(202) 275-0019

☐ **YES,** please send me the following indicated publication:

_____ copies of the CODIFICATION OF PRESIDENTIAL PROCLAMATIONS AND EXECUTIVE ORDERS. S/N 069-000-00018-5 at $32.00 each.

The total cost of my order is $_____. (International customers please add 25%.) Prices include regular domestic postage and handling and are good through 1/90. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

_____
(Company or personal name) (Please type or print)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature) 7/89

Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325